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Friday
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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 238

[INS No. 1681–94]

RIN 1115–AD85

Contracts With Transportation Lines; Signatory Authority

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule amends Immigration and Naturalization Service (Service) regulations regarding the listing of preinspection stations and airlines who have entered into agreements with the Service. This rule is necessary so that air carriers, who become signatory to preinspection agreements with the Service, are listed in Service regulations.

EFFECTIVE DATE: June 9, 1995.

FOR FURTHER INFORMATION CONTACT: Una Brien, Assistant Chief Inspector, Inspections Division, Immigration and Naturalization Service, 425 I Street, NW., Room 7228, Washington, DC 20536, telephone (202) 514–2681.

SUPPLEMENTARY INFORMATION: Under the current regulations, air carriers are required to enter into contracts with the Service in order to participate in the preinspection program. Contracts have been signed using Forms I–425 (Agreement for Preinspection) and I–426 (Immediate and Continuous Transit Agreement) under the purview of section 238 of the Immigration and Nationality Act (Act). This rule also adds Dublin, Ireland, to the list of preinspection stations. Accordingly, 8 CFR 238.3 and 8 CFR 238.4 are being amended to include these changes.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities, as the revisions are administrative in nature and merely update the current listing of preinspection stations and airlines who have entered into agreements with the Service.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federal Assessment.

Executive Order 12606

The Commissioner of the Immigration and Naturalization Service certifies that she has assessed this rule in light of the criteria in Executive order 12606 and has determined that this regulation will not have an impact on family well-being.

List of Subjects in 8 CFR Part 238

Administrative practice and procedures, Air carriers, Aliens, Government contracts, Travel.

Accordingly, part 238 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 238—CONTRACTS WITH TRANSPORTATION LINES

1. The authority citation for part 238 continues to read as follows:

Authority: 8 U.S.C. 1103, 1228; 8 CFR part 2.

§ 238.3 [Amended]

2. In § 238.3, paragraph (b) is amended by removing "Aeroflot—Soviet Airlines.", "Aeronaves de Mexico, S.A.", "Eastern Airlines, Inc.", "LAP-Lineas Aereas Paraguayas.", Pan Am Express", and "Pan American World Airways, Inc." from the list of carriers.

3. Section 238.3 paragraph (b) is further amended by adding the following airline carriers in alphabetical sequence to read as follows:

§ 238.3 Aliens in immediate and continuous transit.

* * * * *

(b) * * *

Aero Costa Rica
* * * * *
Aeroflot Russian International Airlines
* * * * *
Aerovias de Mexico, S.A. de C.V.
* * * * *
Gulf Air
* * * * *
Lineas Aereas de Paraguay Sociedad Anonima
* * * * *
North American
* * * * *
Pacific Islands Airways, Inc.
* * * * *
Turks and Caicos
* * * * *
USAfrica Airways, Inc.
* * * * *

4. Section 238.4 is amended by removing "Eastern Airlines, Inc.", and "Pan American World Airways, Inc." at each location that any of these air carriers are listed as signatory to a preinspection agreement.

5. Section 238.4 is further amended by adding the following preinspection stations and airline carriers in alphabetical sequence within each location, to read as follows:

§ 238.4 Preinspection outside the United States.

* * * * *

At Aruba
* * * * *
American Trans Air, Inc.
AvAtlantic
Carnival Airlines
Express One International, Inc.
* * * * *

At Bermuda

* * * * *

AvAtlantic

* * * * *

At Calgary

* * * * *

Air Niagara Express, Inc.

* * * * *

Express One International, Inc.

* * * * *

At Dublin

Air Lingus
American Trans Air, Inc.
Delta Airlines
Tower Air

At Edmonton

* * * * *

Express One International, Inc.

* * * * *

At Freeport

* * * * *

Express One International, Inc.

* * * * *

At Montreal

* * * * *

Air Niagara Express, Inc.

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Express One International, Inc.

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At Nassau

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Continental

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Express One International, Inc.

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Florida Air, Inc.

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At Paradise Island

Express One International

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At Toronto

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Astral Aviation, Inc. d/b/a Skyway Airlines

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Chautauqua Airlines, Inc. d/b/a USAir Express

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Express One International, Inc.

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At Shannon

Aer Lingus

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Condor

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Tower Air

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At Vancouver

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Air Niagara Express, Inc.

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Empire Airlines, Inc.

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Express One International, Inc.

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At Winnipeg

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Air Niagara Express, Inc.

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Express One International, Inc.

Dated: June 1, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–14124 Filed 6–8–95; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–AWP–2]

Amendment to Class D Airspace; Glendale, AZ and Class E Airspace; Luke Air Force Base (AFB), AZ

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class D airspace area at Glendale, AZ, and Class E airspace area at Luke AFB, AZ. This action is necessary due to the relocation of the Luke AFB TACAN. This amendment will provide adequate Class D and E airspace for instrument flight rules (IFR) operations at these locations.

EFFECTIVE DATE: 0901 UTC, September 14, 1995.

FOR FURTHER INFORMATION CONTACT: Scott Speer, System Management Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 297–0010.

SUPPLEMENTARY INFORMATION:

History

On March 3, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by modifying the Class D airspace area at Glendale, AZ, and Class E airspace area at Luke AFB, AZ (60 FR 13931).

Interested parties were invited to participate in this proposed rulemaking by submitting written comments to the FAA. No comments were received. Class D and E airspace designations are published in paragraphs 5000 and 6002, respectively, of FAA Order 7400.9B, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. Class D and E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies the Class D airspace area at Glendale, AZ, and Class E airspace area at Luke AFB, AZ. The relocation of the Luke AFB TACAN has made this action necessary. The intended effect of this action is to provide adequate Class D and E airspace for aircraft executing instrument approach procedures at these locations.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AWP AZ D Glendale, AZ [Revised]

Glendale Municipal Airport AZ
(lat. 33°31'38" N, long. 112°17'42" W)

That airspace entending upward from the surface to and including 3,100 feet MSL within a 3-mile radius of the Gendale Municipal Airport excluding that portion west of a line beginning at lat. 33°29'00" N, long. 112°19'26" W; to lat. 33°29'29" N, long. 112°19'29" W; to lat. 33°33'24" N, long. 112°18'04" W, to lat. 33°34'32" N, long. 112°16'43" W. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E airspace areas designated as a surface area for an airport

* * * * *

AWP AZ E2 Phoenix, Luke AFB, AZ [Revised]

Luke AFB, AZ
(lat. 33°32'06" N, long. 112°22'59" W)
Luke AFB TACAN
(lat. 33°32'16" N, long. 112°22'49" W)

That airspace extending upward from the surface to and including 3,600 feet MSL within 4.4-mile radius of the Luke AFB and within 2 miles each side of the Luke TACAN 220° radial, extending from the 4.4-mile radius to 5.2 miles southwest of the Luke TACAN, excluding that portion within the Glendale, AZ Class D airspace area. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on May 31, 1995.

Dennis T. Koehler,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 95–14176 Filed 6–8–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28239; Amdt. No. 1668]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refers to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents in unnecessary. The provisions of this amendment state the affected CFR (an FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires meking them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air

commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regularly Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC, on June 2, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * Effective Upon Publication

FDC date	State	City	Airport	FDC No.	SIAP
05/23/95	PA	Carlisle	Carlisle	5/2277	VOR/DME OR GPS–A AMDT 1.
05/23/95	PA	Carlisle	Carlisle	5/2278	NDB OR GPS RWY 28 AMDT 2
05/24/95	MO	St. Louis	St. Louis/Lambert-St. Louis Intl	5/2298	LDA/DME RWY 30L, AMDT 1A.
05/25/95	NC	Greenville	Pitt-Greenville	5/2331	ILS RWY 19 AMDT 2A.
05/25/95	NC	Greenville	Pitt-Greenville	5/2332	NDB RWY 19 AMDT 14.
05/25/95	WI	Juneau	Dodge County	5/2345	LOC RWY 26 ORIG.
05/26/95	AZ	Phoenix	Williams Gateway	5/2370	VOR OR TACAN OR GPS RWY 30C ORIG.
05/26/95	AZ	Phoenix	Williams Gateway	5/2371	ILS RWY 33L AMDT 6A.
05/26/95	MD	Baltimore	Baltimore-Washington Intl	5/2349	ILS RWY 33L AMDT 6A.
05/26/95	MD	Baltimore	Baltimore-Washington Intl	5/2352	VOR/DME RWY 33L ORIG.
05/26/95	MD	Baltimore	Baltimore-Washington Intl	5/2353	VOR/DME RWY 22 AMDT 8A.
05/26/95	MD	Baltimore	Baltimore-Washington Intl	5/2354	VOR OR GPS RWY 28 AMDT 21B.
05/26/95	MN	Maple Lake	Maple Lake Muni	5/2368	VOR–A AMDT 2A.
05/30/95	GA	Toccoa	Toccoa RG Letourneau Field	5/2531	VOR/DME OR GPS RWY 2 ORIG.

[FR Doc. 95–14179 Filed 6–8–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28236; Amdt. No. 1667]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impractical and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC on June 2, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 44701, 40120; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective June 22, 1995*

Fort Myers, FL, Southwest Florida Intl, ILS RWY 6, Amdt 4
Tallulah/Vicksburg, LA, Vicksburg Tallulah Rgnl, LOC RWY 36, Orig
Tallulah/Vicksburg, LA, Vicksburg Tallulah Rgnl, NDB RWY 36, Orig
Petersburg, VA, Petersburg Muni, LOC RWY 5, Orig
Petersburg, VA, Petersburg Muni, NDB OR GPS RWY 5, Amdt 4
Milwaukee, WI, General Mitchell International, LOC RWY 25L, Amdt 4
Milwaukee, WI, General Mitchell International, NDB or GPS RWY 1L, Amdt 4
Milwaukee, WI, General Mitchell International, NDB or GPS RWY 7R, Amdt 10
Milwaukee, WI, General Mitchell International, ILS RWY 1L, Amdt 7
Milwaukee, WI, General Mitchell International, ILS RWY 7R, Amdt 14
Milwaukee, WI, General Mitchell International, ILS RWY 19R, Amdt 9
Milwaukee, WI, General Mitchell International, RADAR–1, Amdt 23

* * * *Effective July 20, 1995*

Jasper, AL, Walker County-Bevill Field, LOC/DME RWY 27, Orig
Ruston, LA, Ruston Rgnl, VOR/DME–A, Orig
Broken Bow, NE, Broken Bow Muni, VOR OR GPS RWY 14, Amdt 4
Broken Bow, NE, Broken Bow Muni, NDB RWY 14, Amdt 8
Burwell, NE, Cram Field, NDB OR GPS RWY 15, Amdt 4
Harvard, NE, Harvard State, VOR/DME RNAV RWY 35, Orig
Wapakoneta, OH, Neil Armstrong, VOR–A, Amdt 7
Wapakoneta, OH, Neil Armstrong, LOC RWY 26, Amdt 2
Wapakoneta, OH, Neil Armstrong, VOR/DME RNAV RWY 26, Amdt 5
Youngstown, OH, Youngstown Executive, VOR/DME or GPS–A, Amdt 10
Youngstown, OH, Youngstown Executive, VOR or GPS RWY 11, Amdt 6
Madison, SD, Madison Muni, NDB or GPS RWY 15, Amdt 8
Brownfield, TX, Terry County, NDB OR GPS RWY 2, Amdt 2
Uvalde, TX, Garner Fld, NDB OR GPS RWY 33, Amdt 1
Danville, VA, Danville Regional, VOR RWY 20, Orig

* * * *Effective August 17, 1995*

Alexandria, LA, Alexandria Esler Regional, LOC BC RWY 8, Amdt 10

* * * *Effective September 14, 1995*

Shell Lake, WI, Shell Lake Muni, VOR/DME RWY 32, Orig

* * * *Effective Upon Publication*

Baltimore, MD, Baltimore-Washington Intl, ILS RWY 28, Amdt 9
Raleigh-Durham, NC, Raleigh-Durham International, RADAR–1, Amdt 7

Note: The FAA published an amendment in Docket No 28214, Amdt No 1662 to Part 97 of the Federal Aviation Regulations (FR Vol 60, No 91, Page 25127, dated May 11,

1995), under Section 97.23 effective June 22, 1995, which is hereby amended as follows:

Marion, IN, Marion Muni
VOR RWY 22
Change: Amdt 1 to Amdt 15.

The FAA published an amendment in Docket No. 28199, Amdt No. 1660 to Part 97 of the Federal Aviation Regulations (FR Vol 60, No. 81, Page 20625, dated April 27, 1995), under Section 97.25 effective July 20, 1995, which is hereby amended as follows:

Owensboro, KY, Owensboro Daviess County, LOC BC RWY 18, Orig. is RESCINDED.

[FR Doc. 95–14180 Filed 6–8–95; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Futures and Option Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC"), subject to the conditions specified below, is authorizing certain option contracts traded on the MEFF Sociedad Rectora de Productos Financieros Derivados de Renta Fija (the "Exchange" or "MEFF Renta Fija") to be offered or sold to persons located in the United States; and granting an exemption to designated members of the Exchange from the application of certain of the Commission's foreign futures and option rules based on substituted compliance with certain comparable regulatory and self-regulatory requirements of a foreign regulatory authority.

This Order is issued pursuant to Commission rule 30.3(a), 17 CFR 30.3(a), which makes it unlawful for any person to engage in the offer or sale of a foreign option product until the Commission, by order, authorizes such foreign option to be offered in the United States, and rule 30.10, 17 CFR 30.10, which allows certain persons to petition the Commission for exemption from the application of certain of the rules set forth in Part 30 and authorizes the Commission to grant such petition if the exemption is not otherwise contrary to the public interest or to the purposes of the provisions from which exemption is sought.

EFFECTIVE DATE: July 10, 1995.

FOR FURTHER INFORMATION CONTACT: Jane C. Kang, Esq., or Robert H. Rosenfeld, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION: On July 23, 1987, the Commission adopted final rules governing the domestic offer and sale of commodity futures and option contracts traded on or subject to the rules of a foreign board of trade. 52 FR 28980 (August 5, 1987). These rules, which are codified in Part 30 of the Commission's regulations, 17 CFR part 30, generally extend the Commission's existing customer protection regulations for products offered or sold on contract markets in the United States to foreign futures and option products[1] sold to United States customers by imposing requirements with respect to registration, disclosure, capital adequacy, protection of customer funds, recordkeeping and reporting, sales practice and compliance procedures that are generally comparable to those applicable to wholly domestic transactions.

With respect to foreign options, in view of the history of abuses in the options markets prior to the imposition of the options ban,[2] the Commission determined to phase in foreign options on a market-by-market basis through particularized review of applications submitted by individual markets and issuance of an authorization order, as appropriate, by the Commission.[3] In adopting the final rules which implement that procedure, the Commission stated that notwithstanding part 30, which provides a regulatory framework to govern transactions in both foreign futures and foreign options, and which has been the subject of extensive notice and comment, it would be unlawful for any person to engage in the offer or sale of a particular foreign option product until the Commission specifically authorizes such foreign option to be offered and sold in the United States.[4] As a consequence, rule 30.3(a) permits the Commission to consider, among other things, its ability to determine whether or not a particular trade has been transmitted to and executed on a foreign exchange as part of its decision to authorize transactions in specific foreign exchange-traded options.[5]

In issuing orders under rule 30.3(a), the Commission considers: (1) The existence of information sharing arrangements relevant to preventing abuses in the trading of option contracts on the exchange; (2) the arrangements in place for assuring that sales practice abuses in such options do not occur, including that sales practice compliance audits commensurate with those which apply to domestic products will be conducted with respect to firms engaged in the offer or sale of the exchange's option products in the United States; (3) the arrangements for United States customers to redress grievances with respect to matters directly pertaining to the conduct of trading or other activities relevant to the offer or sale of such products; and (4) the regulatory environment in which the options are traded.

In formulating a regulatory program to govern the offer and sale of foreign futures and option products to United States customers, the Commission, among other things, considers the potential extraterritorial impact of such a program and the desirability of avoiding duplicative regulation of firms engaged in international business. Based upon these considerations, the Commission, as set forth in Commission rule 30.10, determined to permit persons located outside the United States and subject to a comparable regulatory structure in the jurisdiction in which they are located to seek an exemption from certain of the requirements imposed by the Part 30 rules based upon substituted compliance with the comparable regulatory requirements imposed by the foreign jurisdiction.

In issuing orders under rule 30.10, the Commission evaluates whether the particular foreign regulatory program provides a basis for permitting substituted compliance for purposes of exemptive relief pursuant to Commission rule 30.10. The specific elements examined are set forth in Appendix A to Part 30, "Interpretative Statement With Respect to the Commission's Exemptive Authority Under Section 30.10 of Its Rules" ("Appendix A"). 17 CFR part 30, appendix A. These elements include: (1) Registration, authorization or other form of licensing, fitness review or qualification of persons (both individuals and firms) through which customer orders are solicited and accepted; (2) minimum financial requirements for those persons who accept customer funds; (3) protection of customer funds from misapplication; (4) minimum sales practice standards, including the disclosure of the risks of futures transactions; (5) recordkeeping and reporting requirements; (6) procedures to audit for compliance with, and to take action against those persons who violate, the requirements of the program; and (7) the existence of appropriate information-sharing arrangements. The Commission may apply additional conditions to ensure that brokers licensed under other regulatory regimes are not permitted to solicit U.S. customers while effectively evading U.S. requirements, such as those relative to statutory disqualification.

Moreover, the Commission specifically stated in adopting rule 30.10 that no exemption based on substituted compliance of a general nature would be granted unless the persons to whom the exemption is to be applied: (1) consent to jurisdiction in the United States and designate an agent for service of process in the United States with respect to transactions subject to Part 30 by filing a copy of the relevant agency agreement with the National Futures Association ("NFA"); (2) agree to make their books and records available in the United States to Commission and Department of Justice representatives; and (3) notify NFA of the commencement or termination of business in the United States.[6]

By letter dated May 14, 1993, as supplemented, counsel for the Exchange requested that the Commission: (1) Authorize the offer and sale of option contracts traded on the Exchange to persons located in the United States under rule 30.3(a); and (2) exercise its authority under Commission rule 30.10 to exempt certain members of the Exchange from compliance with Part 30's registration and other requirements with respect to brokerage activities undertaken on behalf of customers in the United States[7] with respect to transactions on or subject to the rules of MEFF Renta Fija, and which U.S. customers may trade.[8] The Exchange also has requested that the Commission confirm the application of the Commission's Limited Marketing Orders to MEFF Renta Fija member firms designated by the Exchange for rule 30.10 relief, and this request will be addressed separately.[9]

Order

The Commission is hereby issuing the following order:

ORDER UNDER CFTC RULE 30.3 PERMITTING OPTION CONTRACTS TRADED ON MEFF RENTA FIJA TO BE OFFERED OR SOLD IN THE UNITED STATES THIRTY DAYS AFTER PUBLICATION OF THE TERMS AND CONDITIONS OF THE PARTICULAR EXCHANGE OPTION CONTRACT IN THE **FEDERAL REGISTER**, *UNLESS PRIOR TO THAT DATE THE COMMISSION RECEIVES ANY COMMENTS WHICH MAY RESULT IN THE DETERMINATION TO DELAY THE EFFECTIVE DATE OF THE ORDER;* AND

ORDER UNDER CFTC RULE 30.10 EXEMPTING DESIGNATED MEMBERS OF THE MEFF RENTA FIJA FROM THE APPLICATION OF CERTAIN OF THE FOREIGN FUTURES AND OPTION RULES THE LATER OF THIRTY DAYS AFTER PUBLICATION OF THE ORDER HEREIN IN THE **FEDERAL REGISTER** *OR AFTER THE FILING OF RELEVANT CONSENTS BY MEMBERS OF THE EXCHANGE AND EXCHANGE UNDER THE TERMS AND CONDITIONS OF THIS ORDER.*

The Commission has reviewed the information and representations contained in, among other things, the following submissions:

—Petition dated May 14, 1993;
—The Spanish Securities Market Act 24/1988;
—Royal Decree 1814 Governing Official Futures and Options Markets;
—Royal Decree 629/1993 of May 3, 1993 "Concerning the Regulations Governing Participation in the Stock Markets and Obligatory Registers of Transactions;"
—MEFF Renta Fija Articles of Association (1992);
—MEFF Renta Fija Rules and Regulations;
—Letters dated October 1, 8, and 15 1993; December 23, 1993; August 26, 1994; December 20, 1994; and January 31, 1995, from Philip McBride Johnson, Skadden, Arps, Slate, Meagher & Flom, counsel for the Exchange;
—Letters dated May 19, 1994 and September 28, 1994 from the Comision Nacional del Mercado de Valores ("CNMV"); and
—Letter dated January 12, 1995 from MEFF Renta Fija.

Based upon its review of the above supporting materials, and the memorandum from the Division of Trading and Markets dated April 24, 1995 (the "Staff Memorandum") and subject to the conditions set forth below, the Commission has determined to issue this Order which:[10]

(a) As to matters subject to rule 30.3(a), will become effective thirty days after publication of the terms and conditions of the particular Exchange option contract in the **Federal Register**, unless prior to that date the Commission receives any comments which may result in the determination to delay the effective date of the Order pending review of such comments (under such circumstances, the Commission will provide notice); and

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[1] Commission rule 30.1(a), 17 CFR 30.1(a), defines the term "foreign futures" as "any contract for the purchase or sale of any commodity for future delivery made, or to be made, on or subject to the rules of any foreign board of trade."

Commission rule 30.1(b), 17 CFR 30.1(b), defines the term "foreign option" as "any transaction or agreement which is or is held out to be of the character of, or is commonly known to the trade as, an "option," "privilege," "indemnity," "bid," "offer," "put," "call," "advance guaranty," or "decline guaranty," made on or subject to the rules of any foreign board of trade."

[2] *See* 51 FR 12104 (April 8, 1986). The pattern of abuses that was characteristic of option sales practices in the past, and which contributed to the Commission's decision to suspend all option sales in 1978, included the unavailability of data necessary to permit a determination of whether orders for options had in fact been executed or whether they simply had been "bucketed". *See* 43 FR 16155 (April 17, 1978).

[3] Although the statutory prohibition on the offer and sale of foreign options formerly contained in section 4c(c) of the Commodity Exchange Act ("CEA" or the "Act") has been removed, *see* Futures Trading Act of 1986, Pub. L. No. 99–641, section 102, 100 Stat. 3556 (1987), the regulatory prohibition in Commission rule 32.11, 17 CFR 32.11, adopted pursuant to section 4c(b) of the CEA, remains in effect.

[4] 52 FR 28980 (August 5, 1987). Notwithstanding the prohibition in Commission rule 30.3(a), nondomestic exchange-traded options which are traded pursuant to the trade option exemption in Commission rule 32.4(a), 17 CFR 32.4(a), may continue to be offered and sold.

[5] 51 FR 12104, 12105 (April 8, 1986).

[6] 52 FR 28980, 28981 and 29002.

[7] *See* Letter dated May 14, 1993, from Philip McBride Johnson, Esq., to Jean A. Webb, Commission, Re: Petition for Authorization of the Offer and Sale in the United States of Futures and Options Contracts Traded on the MEFF Renta Fija ("Petition").

By letter dated August 26, 1994, MEFF confirmed that it seeks initial authorization for the following contracts: options on the three year Spanish government bond futures contracts, monthly and quarterly options on the ten year Spanish government bond futures contracts and options on the MIBOR '90 futures contract. Spanish government debt obligations have been designated by the U.S. Securities and Exchange Commission as "exempted securities" under SEC rule 3a12–8, a prerequisite before an option product based on such a foreign government debt futures contract may be offered or sold in the United States. *See* 59 FR 54812 (November 2, 1994).

[8] The Part 30 rules apply solely with respect to foreign futures and foreign options, which are defined by reference to the term "foreign board of trade." *See* note 1 above. For purposes of this Order, the term "foreign board of trade" shall mean any board of trade, exchange or market located outside the United States, its territories or possessions, whether incorporated or unincorporated, where foreign futures or foreign options transactions are entered into. Commission rule 1.3(ss), 17 CFR 1.3(ss). Thus, contracts that are traded on a market that has been designated as a contract market pursuant to section 5a of the Commodity Exchange Act (CEA) are not within the scope of this Order.

[9] *See* letter dated January 31, 1995 from Philip McBride Johnson, Skadden, Arps, Slate, Meagher & Flom, to Jane C. Kang, CFTC. The Commission has authorized, subject to certain conditions, direct limited marketing activities from within the United States by rule 30.10 firms. *See* 57 FR 49644 (November 3, 1992), and 59 FR 42156 (August 17, 1994) ("Limited Marketing Orders").

[10] Although the Commission in the past has issued separate orders under rules 30.3(a) and 30.10 as requested by the petitioners, there are many issues common to the consideration of the two types of petitions such that the review of one would facilitate the review of the other.

(b) As to matters subject to rule 30.10, will become effective the later of thirty days after publication of this Order in the **Federal Register** or the filing of consents by members of the Exchange and the Exchange to the terms and conditions of the Order herein.

In particular, pursuant to Commission rule 30.3(a), the Commission authorizes the offer and sale in the United States of options traded on the Exchange subject to the conditions described below:

(1) Except as otherwise permitted under the Commodity Exchange Act and regulations thereunder, that no offer or sale of any MEFF Renta Fija option product in the United States shall be made until thirty days after publication in the **Federal Register** of notice specifying the particular option(s) to be offered or sold pursuant to this Order, unless prior to that date the Commission receives any comments which may result in the determination to delay the effective date of the Order pending review of such comments (under such circumstances, the Commission will provide notice);

(2) That the CNMV and MEFF Renta Fija represent that all transactions with respect to the option(s) referenced in such **Federal Register** notice will be governed by the Securities Market Act ("SMA"), Royal Decree 1814 ("R.D. 1814"), Royal Decree 629 ("R.D. 629") and related statutes and MEFF Renta Fija rules as more particularly discussed in the Staff Memorandum and that the CNMV and/or MEFF Renta Fija will provide the Commission with information as to all material changes thereto promptly;

(3) That options on futures on stock indices [11] and options on futures on foreign government debt securities [12] will not be permitted to be offered or sold hereunder absent certain additional procedures;

(4) That options traded pursuant to this Order may only be offset on the MEFF Renta Fija or another market with respect to which the Commission has issued an order under Commission rule 30.3(a) authorizing its option products to be offered or sold in the United States; and

(5) That options traded pursuant to this Order herein may only be offered or sold by persons registered in the appropriate capacity under the Act or by persons who have been granted an exemption from registration under rule 30.10 based on substituted compliance with the terms of that exemption order and relevant laws of the jurisdiction, provided such persons also provide customers resident in the United States with the options risk disclosure statement in Commission rule 33.7, 17 CFR 33.7, or the generic risk disclosure statement approved by the Commission pursuant to Commission rule 1.55(c).[13]

[11] *See* 52 FR 28980, 28982 n. 6 and section 2a(1) of the CEA.

[12] *See* section 2a(1) of the CEA, section 3(a)(12) of the Securities Exchange Act of 1934 and Rule 3a12-8 promulgated thereunder. As previously noted, Spanish government debt obligations have been designated as "exempted securities" by the SEC.

[13] 59 FR 34376, 34379 (July 5, 1994).

Furthermore, subject to the conditions set forth below, the Commission concludes that the standards for relief set forth in Commission rule 30.10 and, in particular, Appendix A thereof, have generally been satisfied and that compliance with the SMA, R.D. 1814, R.D. 629 and MEFF Renta Fija and CNMV rules may be substituted for compliance with certain sections of the Act as more particularly set forth herein. By this Order, the Commission hereby exempts, subject to specified conditions, those firms identified to the Commission as eligible for the rule 30.10 relief granted herein from:

(1) Registration with the Commission;

(2) Certain sections of Part 1 of the Commission's rules relating to financial regulations and books and records that apply to foreign futures and options sold in the United States as set forth in Part 30;

based upon substituted compliance by such persons with the applicable statutes and relevant Exchange and other rules in effect in Spain.

This determination to permit substituted compliance is based on, among other things, the Commission's finding that the regulatory scheme governing the persons trading on the Exchange who would be exempted hereunder provides:

(1) A system of qualification or licensing of firms and persons who deal in transactions subject to regulation under Part 30 that includes, for example, criteria and procedures for granting, monitoring, suspending and revoking licenses, and provisions for requiring and obtaining access to information about licensees;

(2) Financial requirements for licensees;

(3) A system for the protection of customer funds that applies to all customers and which requires the separate accounting for such funds, augmented by funds designed to compensate customers who have suffered a loss as a result of fraud or insolvency or other failure of an Exchange member;

(4) Recordkeeping and reporting requirements pertaining to financial and trade information including, without limitation, order tickets, trade confirmations, customer account statements, customers' deposit records, and accounting records for customer and proprietary trades;

(5) Sales practice standards for licensees which include, for example, required disclosures to prospective customers and prohibitions on (a) certain representations, (b) conflicts of interest, and (c) improper trading activities;

(6) Procedures to audit for compliance with, and to redress violations of, customer protection and sales practice requirements including, without limitation, a surveillance program and the existence of broad powers to conduct investigations and to impose sanctions; and

(7) Mechanisms for sharing information between the Exchange and the CNMV and the Commission on an "as needed" basis including, without limitation, confirmation data, data necessary to trace funds, position data, data on firms' standing to do business and financial condition, and mechanisms for cooperating with the Commission in inquiries, compliance matters, investigations and enforcement proceedings.[14]

This Order does not provide an exemption from any provision of the Act or regulations thereunder not specified herein, for example, without limitation, the antifraud provision in Commission rule 30.9, 17 CFR 30.9, or the disclosure provisions of Commission rules 1.55, 30.6 and 33.7, 17 CFR 1.55, 30.6 and 33.7, including the requirements of rule 1.55(f), 30.6(e) and 33.7(f).[15] Moreover, the relief granted is limited to brokerage activities undertaken on behalf of customers in the United States with respect to transactions on or subject to the rules of MEFF Renta Fija, and which U.S. customers may trade.

The relief does not extend to rules or regulations relating to trading, directly or indirectly, on United States exchanges. For example, such a firm trading in United States markets for its own account would be subject to the Commission's large trader reporting requirements. *See, e.g.*, 17 CFR Part 18. Similarly, if such a firm were carrying a position on a United States exchange on behalf of foreign clients, it would be subject to the reporting requirements applicable to foreign brokers. *See, e.g.*, 17 CFR parts 17 and 21. The relief herein does not apply to firms that solicit United States customers for transactions on United States markets.

The eligibility of any firm to seek rule 30.10 relief under this exemptive Order is subject to the following conditions:

(1) The regulatory or self-regulatory organization responsible for monitoring the compliance of such firm with the regulatory requirements described in the rule 30.10 petition must represent in writing to the CFTC that:

[14] The Exchange and its regulator, CNMV, have provided assurances to the Commission, subject to certain agreed upon principles, regarding the availability of information relevant to Part 30 on an "as needed" basis. *See* Letter dated October 1, 1993 from Philip McBride Johnson, Skadden, Arps, Slate, Meagher & Flom (Skadden); and letter May 19, 1994 from Eudald Canadell, CNMV, to Andrea M. Corcoran, CFTC (confirming that information may be shared between the CFTC and the CNMV pursuant to the Memorandum of Understanding on Mutual Assistance and Exchange of Information of October 1992. *See* also letter dated January 31, 1995 from Philip McBride Johnson, Skadden, Arps, Slate, Meagher & Flom to Jane C. Kang, CFTC Division of Trading and Markets.

[15] These rules essentially provide that delivery of a mandated risk disclosure statement does not eliminate any obligation under the Act to disclose all material information to existing or prospective customers even if the information is not specifically required by the applicable risk disclosure rule.

(a) Each firm for which relief is sought is registered, licensed or authorized, as appropriate, and is otherwise in good standing under the standards in place in Spain; such firm is engaged in business with customers located in Spain as well as in the United States; and, such firm would not be statutorily disqualified from registration under section 8a(2) of the CEA, 7 U.S.C. 12(a)(2);

(b) It will monitor firms to which relief is granted for compliance with the regulatory requirements for which substituted compliance is accepted and will promptly notify the Commission or NFA of any change in status of a firm which would affect its continued eligibility for the exemption granted hereunder, including the termination of its activities in the United States;

(c) All transactions on the Exchange with respect to customers resident in the United States will be made on or subject to the rules of the Exchange and the Commission will receive prompt notice of all material changes to MEFF Renta Fija rules, the SMA and other laws relevant to futures and options (*e.g.*, Royal Decree 1814 and Royal Decree 629);

(d) Customers resident in the United States will be provided no less stringent regulatory protection than Spanish customers under all relevant provisions of Spanish law; and

(e) It will cooperate with the Commission with respect to any inquiries concerning any activity subject to regulation under the Part 30 rules, including sharing the information specified in Appendix A to the Part 30 rules on an "as needed" basis in accordance with the agreed information sharing arrangement and will use its best efforts to notify the Commission if it becomes aware of any information which in its judgment affects the financial or operational viability of a Spanish-domiciled firm doing business in the United States under the exemption granted by this Order.

(2) Each firm seeking rule 30.10 relief hereunder must apply in writing whereby it:

(a) Consents to jurisdiction in the United States under the Act and files a valid and binding appointment of an agent in the United States for service of process in accordance with the requirements set forth in Commission rule 30.5, 17 CFR 30.5;

(b) Acknowledges that it can be required by the Exchange to provide the Exchange immediate access to its books and records related to transactions under Part 30 required to be maintained under the applicable laws and Exchange rules in effect in Spain and that the Exchange will cooperate in providing access to such books and records to the Commission in accordance with the agreed upon information sharing arrangement;

(c) Represents that no principal, and no employee who solicits or accepts orders from United States customers, would be disqualified from directly applying to do business in the United States under section 8a(2) of the CEA, 7 USC 12a(2), and consents to notify the Commission promptly of any change in that representation based on a change in control as generally defined in Commission rule 3.32, 17 CFR 3.32;

(d) Consents that all futures or options transactions for customers located in the United States will be undertaken from a location in Spain (except as otherwise permitted by the Commission) solely with respect to transactions on or subject to the rules of MEFF Renta Fija, and which U.S. customers may trade;

(e)(1) If a Clearing Member of the Exchange which carries the accounts of customers located in the United States: agrees to maintain funds equivalent to the aggregate "secured amount" (described in Commission rule 1.3(rr), 17 CFR 1.3(rr)), for all United States customers in a separate account as set forth in Commission rule 30.7, 17 CFR 30.7, and to treat those funds in the manner described by that rule;

(e)(2) If a Non-Clearing Member of the Exchange: agrees to comply with relevant Spanish laws and Exchange rules prohibiting them from accepting or otherwise handling customer funds;

(f) Agrees to provide customers with account statements on at least a monthly basis;

(g) Discloses the identity of each subsidiary or affiliate domiciled in the United States with a related business (*e.g.*, banks and broker/dealer affiliates) and provides a brief description of such subsidiary's or affiliate's principal business in the United States;

(h)(1) Consents to participate in any NFA arbitration program which offers a procedure for resolving customer disputes on the papers where such disputes involve representations or activities with respect to transactions under Part 30, and consents to notify customers resident in the United States of the availability of such a program; *provided, however*, that the firm may require its customers resident in the United States to execute the consent attached hereto as Exhibit A concerning the exhaustion of certain mediation procedures made available by the Exchange prior to bringing an NFA arbitration proceeding; and *provided further* that the firm must undertake to provide the customer with information concerning how to commence such procedures pursuant to the consent attached hereto as Exhibit A;

(h)(2) *Provided, however*, that until the Exchange adopts a procedure for an "on the papers" hearing applicable to all Exchange arbitrations, consents to notify such customers that if they elect Exchange arbitration, they or their agent could be required to appear personally at a hearing, and if the customer elects NFA arbitration, consents to participate in such proceeding even in circumstances where the dispute arises primarily out of delivery, clearing, settlement or floor practices;

(i) Undertakes to comply with the applicable provisions of Spanish law and Exchange and CNMV rules which form the basis upon which this exemption from certain provisions of the Act is granted; and

(j) Agrees to provide to any U.S. customers either the generic risk disclosure statement approved by the Commission under rule 1.55(c), or the risk disclosure statements mandated by Commission rules 30.6(a) [*i.e.*, 1.55(a)] and 33.7, and applicable Commission orders, as appropriate.[16]

[16] See, *e.g.*, CFTC Advisory No. 90-1 [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,597 (disclosure statement related to the deferred payment of option premiums).

Upon filing of the notice required under paragraph (1)(b) as to any such firm, the rule 30.10 relief granted by this Order may be suspended immediately as to that firm. That suspension will remain in effect pending further notice by the Commission, or the Commission's designee, to the firm and the Exchange and/or any applicable regulatory or self-regulatory organization.

Any material changes or omissions in the facts and circumstances pursuant to which this Order is granted might require the Commission to reconsider its finding that the standards for issuance of an order under Commission rules 30.3(a) and 30.10, including Appendix A of rule 30.10, have generally been satisfied.

Further, if experience demonstrates that the continued effectiveness of this Order in general, or with respect to a particular firm or product, would be contrary to public policy or the public interest, or that the systems in place for the exchange of information or other circumstances do not warrant continuation of the exemptive relief granted herein, the Commission may condition, modify, suspend, terminate, withhold as to a specific firm or product, or otherwise restrict the exemptive relief granted in this Order, as appropriate, on its own motion. If necessary, provisions will be made for servicing existing client positions.

Terms and Conditions of MEFF Renta Fija Options

Option on the MIBOR'90 Futures

Underlying Asset: MIBOR'90 Futures Contract
Contract Size: 1 futures contract
Exercise Style: American
Traded Options: Options on futures with expiration on the four nearest months of the quarterly cycle (March, June, September and December)
Last Trading Day: The last business day prior to the expiration date
Expiration Date: Third Wednesday of the underlying futures contract month (same date and time as the underlying futures expiration date)
Quotation Method: Multiples of Ptas. 250
Tick Value: The minimum fluctuation of the premium is one basis point, equal to Ptas. 250
Morgining: Margin is calculated taking into account the overall futures and options portfolio

Option on the 3-Year Government Bond Futures

Underlying Asset: 3-year Government Bond Futures Contract

Contract Size: 1 futures contract
Exercise Style: American
Traded Options: Options on futures with expiration on the two nearest months of the quarterly cycle (March, June, September and December)
Last Trading Day: Expiration date
Expiration Date: First Wednesday of the underlying futures contract month (two weeks prior to the underlying futures contract expiration date)
Quotation Method: In percentage of nominal
Tick Value: The minimum fluctuation of the premiums is one basis point, equal to Ptas. 1,000
Margining: Margin is calculated taking into account the overall futures and options portfolio

Monthly Option on the 10-Year Government Bond Futures

Underlying Asset: 10-year Government Bond Futures Contract
Contract Size: 1 futures contract
Exercise Style: American
Traded Options: One spot month on the underlying nearby futures contract
Last Trading Day: Expiration date
Expiration Date: First Wednesday of each month
Quotation Method: In percentage of nominal
Tick Value: The minimum fluctuation of the premium is one basis point, equal to Ptas. 1,000
Margining: Margin is calculated taking into account the overall futures and options portfolio

Quarterly Option on the 10-Year Government Bond Futures

Underlying Asset: 10-year Government Bond Futures Contract
Contract Size: 1 futures contract
Exercise Style: American
Traded Options: Options on futures with expiration on the two nearest months of the quarterly cycle (March, June, September and December)
Last Trading Day: Expiration date
Expiration Date: First Wednesday of the underlying futures contract month (two weeks prior to the underlying futures contract expiration date)
Quotation Method: In percentage of nominal
Tick Value: The minimum fluctuation of the premium is one basis point, equal to Ptas. 1,000
Margining: Margin is calculated taking into account the overall futures and options portfolio

List of Subjects in 17 CFR Part 30

Commodity futures, Commodity options, Foreign futures and options.

Accordingly, 17 CFR part 30 is amended as set forth below:

PART 30—FOREIGN FUTURES AND FOREIGN OPTION TRANSACTIONS

1. The authority citation for part 30 continues to read as follows:

Authority: Secs. 2(a)(1)(A), 4, 4c, and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 6, 6c and 12a.

2. Appendix B to part 30 is amended by adding the following entry alphabetically:

Appendix B—Option Contracts Permitted To Be Offered or Sold in the U.S. Pursuant to § 30.3(a)

Exchange	Type of contract	FR date and citation
MEFF Renta Fija	Options on the: Mibor'90, 3-Year and monthly and quarterly 10-Year Spanish Government Bond futures contracts.	June 9, 1995, 60 FR _____

3. Appendix C to part 30 is amended by adding the following entry to read as follows:

Appendix C—Foreign Petitioners Granted Relief From the Application of Certain of the Part 30 Rules Pursuant to § 30.10

* * * * *

Firms designated by the MEFF Sociedad Rectora de Productos Financieros Derivados de Renta Fija ("MEFF Renta Fija").

FR date and citation: June 9, 1995, 60 FR _____.

* * * * *

Issued in Washington, D.C., on June 5, 1995.

Jean A. Webb,

Secretary to the Commission.

Note: The following Exhibit will not be published in the Code of Federal Regulations.

Exhibit A—Form of Consent to Undertake Mediation Prior to NFA Arbitration

In the event that a dispute arises between you [name of customer resident in the United States] and [name of MEFF Renta Fija member firm] with respect to transactions subject to Part 30 of the Commodity Futures Trading Commission's rules, various forums may be available for resolving the dispute, including courts of competent jurisdiction in the United States and Spain and arbitration programs made available both in the United States and Spain.

In the event you wish to initiate an arbitration proceeding against this firm to resolve such dispute under the applicable rules of the National Futures Association ("NFA") in the United States, you hereby consent that you will first commence mediation in accordance with such procedures as may be made available by the MEFF Sociedad Rectora de Productos Financieros Derivados de Renta Fija ("MEFF Renta Fija" or "Exchange"), information on which is provided to you herewith. The outcome of such MEFF Renta Fija mediation is nonbinding. You may subsequently accept this resolution, or you may proceed either to binding arbitration under the rules of the MEFF Renta Fija or to binding arbitration in the United States under the rules of NFA. If you accept the mediated resolution or elect to proceed to arbitration, or to any other form of binding resolution under the rules of the Exchange, you will be precluded from subsequently initiating an arbitration proceeding at NFA.

You may initiate an NFA arbitration proceeding upon receipt of documentation from MEFF Renta Fija:

(1) Evidencing completion of the mediation process and reminding you of your right of access to NFA's arbitration proceeding; or

(2) Representing that more than nine months have elapsed since you commenced the mediation process and that such process is not yet complete and reminding you of your right of access to NFA's arbitration proceeding.

The documentation referred to above must be presented to NFA at the time you initiate the NFA arbitration proceeding. NFA will exercise its discretion not to accept your demand for arbitration absent such documentation.

By signing this consent you are not waiving any other right to any other legal remedies available under the law.

Customer

Date

[FR Doc. 95–14147 Filed 6–8–95; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 105–95]

Exemption of System of Records Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice (DOJ), U.S. Marshals Service (USMS), amends its Privacy Act regulations in 28 CFR part 16 to exempt a new Privacy Act system of records entitled, "Joint Automated Booking Stations (JABS), USM–014." This system of records is exempted from subsections (c) (3) and (4), (d), (e) (1), (2) and (3), (e)(5), (e)(8) and (g) of the Privacy Act (5 U.S.C. 552a). Information in this system of records relates to matters of law enforcement, and the exemptions are necessary to avoid interference with law enforcement responsibilities and to protect the privacy of third parties. The reasons for the exemptions are set forth in the text below.

EFFECTIVE DATE: June 9, 1995.

FOR FURTHER INFORMATION CONTACT: Patricia E. Neely on (202) 616–0178.

SUPPLEMENTARY INFORMATION: A proposed rule with invitation to comment was published in the **Federal Register** on April 13, 1995 (60 FR 18784). The public was provided 30 days in which to comment. No comments have been received.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby stated that the order will not have "a significant economic impact on a substantial number of small entities."

List of Subjects in 28 CFR Part 16

Administrative Practices and Procedures, Courts, Freedom of Information Act, Government in the Sunshine Act, and the Privacy Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, 28 CFR part 16 is amended as set forth below.

Dated: May 22, 1995.

Stephen R. Colgate,

Assistant Attorney General for Administration.

PART 16—[AMENDED]

1. The authority for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. 28 CFR 16.101 is amended by redesignating paragraph (s) as paragraph (u), and by adding new paragraphs (s) and (t) as set forth below.

§ 16.101 Exemption of U.S. Marshals Service (USMS) Systems—Limited Access, as indicated.

* * * * *

(s) The following system of records is exempt from 5 U.S.C. 552a(c) (3) and (4), (d), (e) (1), (2), (3), (e) (5) and (e) (8) and (g):

Joint Automated Booking Stations, Justice/USM–014

(t) These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2). Where compliance would not interfere with or adversely affect the law enforcement process, the USMS may waive the exemptions, either partially or totally. Exemption from the particular subsections are justified for the following reasons:

(1) From subsections (c)(3) and (d) to the extent that access to records in this system of records may impede or interfere with law enforcement efforts, result in the disclosure of information that would constitute and unwarranted invasion of the personal privacy of collateral record subjects or other third parties, and/or jeopardize the health and/or safety of third parties.

(2) Where access to certain records may be appropriate, exemption from the amendment provisions of subsection (d)(2) in necessary to the extent that the necessary and appropriate justification, together with proof of record inaccuracy, is not provided, and/or to the extent that numerous, frivolous requests to amend could impose an impossible administrative burden by requiring agencies to continuously review booking and arrest data, much of which is collected from the arrestee during the arrest.

(3) From subsection (e)(1) to the extent that it is necessary to retain all information in order not to impede, compromise, or interfere with law enforcement efforts, e.g., where the significance of the information may not be readily determined and/or where such information may provide leads or assistance to Federal and other law enforcement agencies in discharging their law enforcement responsibilities.

(4) From subsection (e)(2) because, in some instances, the application of this provision would present a serious impediment to law enforcement since it may be necessary to obtain and verify information from a variety of sources other than the record subject to ensure safekeeping, security, and effective law enforcement. For example, it may be necessary that medical and psychiatric personnel provide information regarding the subject's behavior, physical health, or mental stability, etc. To ensure proper care while in custody, or it may be necessary to obtain information from a case agent or the court to ensure proper disposition of the subject individual.

(5) From subsection (e)(3) because the requirement that agencies inform each individual whom it asks to supply information of such information as is required by subsection (e)(3) may, in some cases, impede the information gathering process or otherwise interfere with or compromise law enforcement efforts, e.g., the subject may deliberately withhold information, or give erroneous information.

(6) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance and the accuracy of such information can only be determined in a court of law. The restrictions imposed by subsection (e)(5) would restrict the ability to collect information for law enforcement purposes and may prevent the eventual development of the necessary criminal intelligence or otherwise impede effective law enforcement.

(7) From subsection (e)(8) to the extent that such notice may impede, interfere with, or otherwise compromise law enforcement and security efforts.

(8) From subsection (g) to the extent that this system is exempt from the access and amendment provisions of subsection (d).

* * * * *

[FR Doc. 95–14106 Filed 6–8–95; 8:45 am]

BILLING CODE 4410–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50591G; FRL–4951–7]

RIN 2070–AB27

2–Propenoic Acid, 2–Methyl-, 2[3-(2*H*-Benzotriazole-2-yl)-[4-hydroxyphenyl]ethyl Ester and 2–Substituted Benzotriazole; Modification of Significant New Use Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is modifying the significant new use rules (SNURs) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for 2-propenoic acid, 2-methyl-, 2[3-(2*H*-benzotriazole-2-yl)-4-hydroxyphenyl]ethyl ester and 2-substituted benzotriazole based on a modification to the TSCA 5(e) consent order regulating the substances.

DATES: The effective date of this rule is July 10, 1995.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, TSCA Assistance Office (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 25, 1991 (56 FR 19228), EPA issued SNURs establishing significant new uses for 2-propenoic acid, 2-methyl-, 2[3-(2*H*-benzotriazole-2-yl)-4-hydroxyphenyl]ethyl ester and 2-substituted benzotriazole based on the section 5(e) consent order for the substances. Because of additional data EPA has received for these substances, EPA is modifying the SNURs.

I. Background

The Agency proposed the modification of the SNURs for these substances in the **Federal Register** of December 14, 1994 (59 FR 64365). The background and reasons for the modification of the SNURs are set forth in the preamble to the proposed modification. The Agency received one public comment concerning the proposed modification urging EPA to finalize the SNUR modification as soon as possible. As a result EPA is modifying these SNURs.

II. Objectives and Rationale of Modification of the Rule

During review of the PMNs submitted for the chemical substances that are the subject of this modification, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health effects of the substances. EPA identified the tests considered necessary to evaluate the risks of the substances and identified the protective equipment necessary to protect any workers who may be exposed to the substances. The basis for such findings is in the rulemaking record referenced in Unit III. of this preamble. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and SNURs were promulgated. In light of the petition to modify the consent order and SNUR provisions and the recalculation of the risk assessment of the PMN substances based on information provided by the petitioner, the Agency determined air-purifying respirators equipped with high efficiency particulate air filter cartridges would adequately protect the workers who may be exposed to the PMN substances via inhalation. The Agency has determined, therefore, that modifying the consent order and SNUR provisions would not pose an unreasonable risk to human health. The modification of SNUR provisions for the substances designated herein is consistent with the provisions of the section 5(e) order.

III. Rulemaking Record

The record for the rule which EPA is modifying was established at OPPTS–50591. This record includes information considered by the Agency in developing the rule and includes the modification to consent orders to which the Agency has responded with this modification. A public version of the record, without any Confidential Business Information, is available in the TSCA Nonconfidential Information Center (NCIC) from 12 noon to 4 p.m., Monday through Friday, except legal holidays. The TSCA NCIC is located in Rm. NE–B607, 401 M St., SW., Washington, DC.

IV. Regulatory Assessment Requirements

EPA is modifying the requirements of the rule by eliminating one of the recordkeeping requirements. Any costs or burdens associated with the rule will be reduced when the rule is modified. Therefore, EPA finds that no additional assessments of costs or burdens are necessary under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 605(b)), or the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: May 30, 1995.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR part 721 is amended to read as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. In § 721.1765 by revising paragraph (a)(2)(i) to read as follows:

§ 721.1765 2–Substituted benzotriazole.

(a) * * *

(2) * * *

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(ii), (a)(5)(iv), (a)(5)(v), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

* * * * *

3. In § 721.8450 by revising paragraph (a)(2)(i) to read as follows:

§ 721.8450 2–Propenoic acid, 2-methyl-, 2[3-(2*H*-benzotriazole-2-yl)-4-hydroxyphenyl]ethyl ester.

(a) * * *

(2) * * *

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(ii), (a)(5)(iv), (a)(5)(v), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

* * * * * *

[FR Doc. 95–14202 Filed 6–8–95; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 218

[FRA Docket Number RSOR–11, Notice No. 5]

RIN 2130–AA77

Protection of Utility Employees

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Suspension of amendment to final rule; extension of comment period.

SUMMARY: On March 1, 1995, FRA published an amendment (49 CFR 218.24) to the final rule on safety standards for utility employees working as temporary members of train and yard crews. The amendment, which permitted one-person crews to work within the protections provided for train and yard crews, became effective on May 15th and is hereby suspended as of May 15. FRA also reopens the comment period.

DATES: The amendment to § 218.24 published on March 1, 1995 (60 FR 11047) is suspended as of May 15, 1995. Comments on the amendment (49 CFR 218.24) will be accepted and reviewed until FRA publishes further notice.

ADDRESSES: Comments on the amendment should be submitted to the Docket Clerk, Office of Chief Counsel, RCC–30, Federal Railroad Administration, 400 Seventh Street SW., Room 8201, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: James T. Schultz, Chief, Operating Practices Division, Office of Safety, FRA, RRS–11, Washington, DC 20590 (telephone: 202–366–9252), or Kyle M. Mulhall, Trial Attorney, Office of Chief Counsel, FRA, Washington, DC 20590 (telephone: 202–366–0443).

SUPPLEMENTARY INFORMATION: On March 1, 1995, FRA published an amendment to the final rule on utility employees. 60 FR 11047. The utility employee rule set safety standards for temporary members of train or yard crews to join these crews and work with alternative protection to blue signals. The amendment (49 CFR 218.24) permitted one-person crews to work within the crew exclusion from the blue signal rule.

In response to comments and petitions received, FRA suspends the effect of 49 CFR 218.24 until further notice. By this notice, FRA also reopens the comment period on this amendment regarding only the issue of one-person crews, until further notice. All other amendments and corrections made in the March 1st publication took effect on May 15th and remain in effect.

Jolene M. Molitoris,

Federal Railroad Administrator.

[FR Doc. 95–13981 Filed 6–8–95; 8:45 am]

BILLING CODE 4910–06–P

Proposed Rules

Federal Register
Vol. 60, No. 111
Friday, June 9, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FARM CREDIT ADMINISTRATION

12 CFR Parts 615 and 620

RIN 3052–AB60

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Disclosure to Shareholders; Director Elections

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board, proposes to amend the regulations relating to the implementation of cooperative principles to allow greater flexibility in the method by which directors of Farm Credit System associations and banks for cooperatives are elected, consistent with cooperative principles. The amendments are intended to permit regional election of directors.

DATES: Comments should be received on or before July 10, 1995.

ADDRESSES: Comments may be mailed or delivered (in triplicate) to Patricia W. DiMuzio, Associate Director, Regulation Development, Office of Examination, Farm Credit Administration, McLean, Virginia 22102–5090. Copies of all communications received will be available for examination by interested parties in the Office of Examination, Farm Credit Administration, McLean, Virginia.

FOR FURTHER INFORMATION CONTACT:

John J. Hays, Policy Analyst, Regulation Development, Office of Examination, (703) 883–4498, TDD (703) 883–4444;

or

Rebecca S. Orlich, Senior Attorney, Regulatory Operations Division, Office of General Counsel, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: The FCA has received requests from a number of Farm Credit System associations to reconsider its regulation pertaining to the at-large election of directors of associations. This regulation is one of many promulgated by the FCA in 1988 to implement extensive changes to the structure of the System affected by the Agricultural Credit Act of 1987. It provides that voting shareholders of associations and Banks for Cooperatives (BCs) shall:

> [b]e accorded the right to vote in the election of each director and, unless otherwise provided in the capitalization bylaws, be allowed to cumulate such votes and distribute them among the candidates in the shareholder's discretion.

12 CFR 615.5230(a)(1)(ii). At the time of promulgation, the FCA believed that enabling each shareholder to vote in the election of each director was necessary to ensure that each director is accountable to all shareholders of the institution, since each director owes fiduciary duties to all shareholders. The FCA was also concerned that shareholders in regions with a small number of shareholders would be able to wield proportionately more voting power than shareholders in regions with a greater number of shareholders. It therefore required the at-large election of directors but permitted associations that, in 1988, had bylaws providing for regional elections of directors to continue to do so until January 1, 1993. In response to the desire for regional representation expressed in the comments, the FCA placed no restrictions on the institution's ability to provide for geographic representation on the board and provided for cumulative voting unless shareholders approved bylaws providing otherwise.

A number of associations have objected that the prohibition of regional election of directors imposes an unreasonable burden on director candidates, who must campaign over widespread territories, and deprives voting shareholders of the ability to elect a representative to the board who lives and farms in their area, and with whom they could become acquainted. Furthermore, these associations have argued that regional voting in agricultural cooperatives is increasingly commonplace and is consistent with cooperative principles. In response to these concerns, the FCA has reconsidered the issue and has determined that its concerns about director accountability and equitable voting power can be addressed in a less burdensome way, consistent with cooperative principles, that will permit the regional election of directors. The Agency has also determined that regional voting should be an option for BCs. This proposed regulation has no application to agricultural credit banks at this time, because issues pertaining to corporate governance for an agricultural credit bank, including board structure, are being studied separately. The FCA does welcome comments concerning Farm Credit Bank director elections on a regional basis, as stated later in this proposed rule.

The FCA proposes to amend § 615.5230(a)(1)(ii) to permit the regional election of directors of associations and BCs subject to the following conditions:

(1) To ensure that a director is accountable to all shareholders, institutions with bylaws providing for shareholder removal of directors must provide that each director may be removed by a majority vote of all voting shareholders and may not be removed by a vote of only the shareholders in his or her region; and

(2) The bylaw provides for the apportionment of the institution's territory into voting regions with approximately equal numbers of voting shareholders and ensures equitable representation from each voting region through an annual evaluation by the institution's board of directors.

The bylaw procedure to ensure equitable voting regions may, for example, contain procedures to redraw the boundaries of the voting regions, alter the number of directors from a region, or other similar action.

The FCA also proposes a conforming amendment to § 620.21(d)(1) of the FCA regulations. This regulation would be amended to require disclosures regarding regional voting in the association's annual information statement.

Since these proposed amendments would significantly affect the voting rights of individual borrower/shareholders and cooperatives, rather than the rights of associations and BCs, the FCA specifically seeks comment on the proposals from voting shareholders. The FCA strongly encourages the associations and BCs to call on their member-borrowers to make their views known to the FCA on this matter.

There are certain director election matters that would not be changed by an association's or BC's adoption of regional voting. Pursuant to section 4.15 of the Act, there would continue to be only one nominating committee for an association, who would "endeavor to assure representation to all sections of the association territory and as nearly as possible to all types of agriculture practiced within the area." Both association nominating committees and BCs must assure that there are at least two nominees for each elective office to be filled. Nominations for association directors will continue to be accepted from the floor and may be made by any eligible voting shareholder, whether or not he or she resides in the nominee's region, unless the bylaws provide otherwise. In addition, each director would continue to owe a fiduciary duty to all the shareholders of the association, not just to the shareholders in his/her region.

Finally, the FCA has received a request from one System association to propose amendments to the regulations that would extend regional voting to elections of Farm Credit Bank directors and make changes regarding the cumulative voting requirement. The FCA is considering this request and seeks comment on whether other System institutions, shareholders, or members of the public share the requester's same interest.

It is the FCA's view that this proposed regulation is consistent with the FCA Board's Policy Statement on Regulatory Philosophy and achieves the statement's objectives of: (1) Addressing specifically identified risks in a way that causes the least burden for institutions; (2) formulating regulations that are clear and easy to understand; and (3) providing flexibility to institutions in their election procedures.

List of Subjects

12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

12 CFR Part 620

Accounting, Agriculture, Banks, banking, Reporting and recording requirements, Rural areas.

For the reasons stated in the preamble, parts 615 and 620 of chapter VI, title 12 of the Code of Federal Regulations are proposed to be amended to read as follows:

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

1. The authority citation for part 615 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b-6, 2279aa, 2279aa-4, 2279aa-6, 2279aa-7, 2279aa-8, 2279aa-10, 2279aa-12); sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

Subpart I—Issuance of Equities

2. Section 615.5230 is amended by adding a new paragraph (a)(1)(iii) and revising paragraphs (a)(1)(ii) and (a)(3) to read as follows:

§ 615.5230 Implementation of cooperative principles.

(a) * * *

(1) * * *

(i) * * *

(ii) Unless regional election of directors is provided for in the bylaws pursuant to § 615.5230(a)(3), be accorded the right to vote in the election of each director (except for a director that is elected by the other directors);

(iii) Unless regional election of directors is provided for in the bylaws, or unless otherwise provided in the bylaws, be allowed to cumulate such votes and distribute them among the candidates in the shareholder's discretion.

(2) * * *

(3) Regional election of directors is permitted under the following conditions:

(i) A bylaw establishing regional elections is approved by a majority of voting shareholders, voting in person or by proxy;

(ii) The bylaw provides for the apportionment of the institution's territory into voting regions with an approximately equal number of voting shareholders and ensures equitable representation from each voting region by means of an annual evaluation by the institution's board of directors; and

(iii) If there is a bylaw providing for shareholder removal of directors, it provides that all voting shareholders of the institution, whether or not they reside in the director's region, have the right to vote to remove each director.

* * * * *

PART 620—DISCLOSURE TO SHAREHOLDERS

3. The authority citation for part 620 continues to read as follows:

Authority: Secs. 5.17, 5.19, 8.11 of the Farm Credit Act (12 U.S.C. 2252, 2254, 2279aa-11); sec. 424 of Pub. L. 100–233, 101 Stat. 1568, 1656.

Subpart D—Association Annual Meeting Information Statement

§ 620.21 [Amended]

4. Section 620.21 is amended by adding the words "or elected" after the word "nominated" in the first sentence of paragraph (d)(1).

Dated: June 6, 1995.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 95–14217 Filed 6–8–95; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–243–AD]

Airworthiness Directives; Airbus Model A300 and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Airbus Model A300 series airplanes, that currently requires repetitive inspections for cracking of the No. 2 flap beams, and replacement of the flap beams, if necessary. That AD was prompted by reports of cracking of the No. 2 flap beams. This action would provide optional modifications for extending certain inspection thresholds, and an optional terminating modification for certain inspections. This action also would expand the applicability of the existing AD to include Model A300–600 series airplanes. The actions specified by the proposed AD are intended to prevent asymmetry of the flaps due to cracking of the No. 2 flap beams.

DATES: Comments must be received by July 21, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–243–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at

the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2776; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–243–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–243–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On March 25, 1985, the FAA issued AD 85–07–04, amendment 39–5027 (49 FR 45755, April 2, 1985), applicable to all Airbus A300 series airplanes, to require repetitive inspections for cracking of the No. 2 flap beams, and replacement of the flap beams, if necessary. That action was prompted by reports of cracking detected in the No. 2 flap beams. The requirements of that AD are intended to prevent asymmetry of the flaps due to cracking in the No. 2 flap beams.

Since the issuance of that AD, Airbus has issued the following service bulletin revisions for Model A300 series airplanes:

1. Airbus Service Bulletin A300–57–116, Revision 6, dated July 16, 1993, which describes procedures for repetitive ultrasonic inspections for cracking in the base member and side members of the No. 2 flap beams, and replacement of the beams, if necessary. (Revision 1 of this service bulletin was referenced in the existing AD.)

2. Airbus Service Bulletin A300–57–128, Revision 3, dated January 26, 1990, which describes procedures for optional modification of the No. 2 flap beams (Modification 4740). This modification entails performing an eddy current inspection of the bolt holes of the flap beam and oversizing these holes. Accomplishment of this modification will provide a new flight cycle threshold before the next inspection is necessary. (The original issue of this service bulletin was referenced in the existing AD.)

3. Airbus Service Bulletin A300–57–141, Revision 7, dated July 16, 1993, which describes a second optional modification (Modification 5815). This modification will extend the fatigue life of the flap beams. The modification involves cold working and increasing the size of the bolt holes, and installing interference fit bolts. As with Modification 4740, accomplishment of Modification 5815 will provide a new flight cycle threshold before the next inspection is necessary.

Since Model A300–600 series airplanes are similar in design to Model A300 series airplanes in the subject area, the Model A300–600 is subject to the same addressed unsafe condition. Accordingly, Airbus has issued the following service bulletins that apply to Model A300–600 series airplanes:

1. Airbus Service Bulletin A300–57–6005, Revision 2, dated December 16, 1993, which describes procedures for repetitive ultrasonic inspections for cracking in the base member and side members of the No. 2 flap beams. (These inspections are identical to the inspections specified for Model A300 series airplanes in Airbus Service Bulletin A300–57–116.)

2. Airbus Service Bulletin A300–57–6006, Revision 4, dated July 25, 1994, which describes procedures for installing Modification 5815. This modification entails increasing the size of and cold working certain holes in the No. 2 flap beams. Once accomplished, this modification increases the life of the flap beam and eliminates the need for repetitive inspections, if it is accomplished after 15,000 total landings have been accumulated and if no cracking is detected while performing the inspections described in Airbus Service Bulletin No. A300–57–6005, Revision 2, dated December 16, 1993.

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has approved these service bulletins, and has issued French airworthiness directive 86–187–076(B)R3, dated March 2, 1994, in order to assure the continued airworthiness of these airplanes in France.

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 85–07–04 to continue to require repetitive inspections for cracking of the No. 2 flap beams of Model A300 series airplanes, and replacement of the flap beams, if necessary. The proposed AD would require identical inspections of Model A300–600 series airplanes. The proposed AD also would provide an optional terminating modification for the repetitive inspections on the Model 300–600 series airplanes, and optional modifications for extending certain inspection thresholds for Model A300 series airplanes. The actions would be required to be accomplished in accordance with the service bulletins described previously.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long-standing requirement.

The FAA estimates that 68 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $24,480, or $360 per airplane, per inspection cycle.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator of a Model A300–600 series airplane elect to accomplish the optional terminating action rather than continue the repetitive inspections, it would take approximately 55 work hours to accomplish it, at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of the optional terminating action would be $3,300 per airplane.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–5027 (49 FR 45755, April 2, 1985), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 94–NM–243–AD. Supersedes AD 85–07–04, Amendment 39–5027.

Applicability: All Model A300 and A300–600 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (f) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent asymmetry of the No. 2 flaps, accomplish the following:

Note 2: Paragraph (a) of this AD restates the requirement for an initial and repetitive inspections contained in paragraph A. of AD 85–07–04. Therefore, for operators who have previously accomplished at least the initial inspection in accordance with AD 85–07–04, paragraph (a) of this AD requires that the next scheduled inspection be performed within the intervals specified in (a)(1), (a)(2), or (a)(3), as applicable, after the last inspection performed in accordance with paragraph A. of AD 85–07–04.

Note 3: Measurement of crack length is performed by measurement of the probe displacement (perpendicular to symmetry plane of beam) between defect indication appearance and its complete disappearance. The bolt hole indication should not be interpreted as an indication of a defect. These two indications appear very close together because the defects originate from the bolt holes.

(a) For Model A300 series airplanes: Prior to the accumulation of 15,000 total landings, or within the next 120 days after May 9, 1985 (the effective date of AD 85–07–04, amendment 39–5027), whichever occurs later, inspect for cracking of the base steel member and light alloy side members of the No. 2 flap beams, left hand and right hand, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–57–116, Revision No. 6, dated July 16, 1993.

Note 4: Inspections required by paragraph (a) of this AD that have been accomplished prior to the effective date of this AD in accordance with Airbus Service Bulletin A300–57–116, Revision 1, dated August 27, 1983; Revision 2, dated April 24, 1984; Revision 3, dated July 20, 1984; Revision 4, dated August 13, 1986; or Revision 5, dated July 10, 1989; as applicable; are considered acceptable for compliance with the applicable action specified in this amendment.

(1) If no cracking is detected: Except as provided by paragraph (c) of this AD, repeat the inspection at intervals not to exceed 1,700 landings until the requirements of paragraph (b) of this AD are accomplished.

(2) If any crack is detected that is less than or equal to 4 mm: Repeat the inspection at intervals not to exceed 250 landings, until the requirements of paragraph (b) of this AD are accomplished.

(3) If any crack is detected that exceeds 4 mm: Prior to further flight, replace the flap beam in accordance with the service bulletin, and prior to the accumulation of 15,000 flight cycles on the replaced flap beam, perform the ultrasonic inspection as required by paragraph (b) of this AD.

(b) For Model A300 series airplanes: Prior to the accumulation of 15,000 total landings, or within the next 1,000 landings after the effective date of this AD, whichever occurs later, perform an ultrasonic inspection to detect cracking of the No. 2 flap beams, in accordance with Airbus Service Bulletin No. A300–57–116, Revision 6, dated July 16, 1993. Accomplishment of this inspection terminates the inspection required by paragraph (a) of this AD.

(1) If no cracking is detected: Except as provided by paragraph (c) of this AD, repeat the ultrasonic inspections thereafter at intervals not to exceed 1,700 landings.

(2) If any crack is detected beyond the bolt hole, and that crack that is less than or equal to 4 mm in length: Repeat the ultrasonic inspections thereafter at intervals not to exceed 250 landings.

(3) If any crack is detected beyond the bolt hole and that crack is greater than 4 mm in length: Prior to further flight, replace the flap beam in accordance with the service bulletin, and prior to the accumulation of 15,000 flight cycles on the replaced flap beam, perform the ultrasonic inspection as required by this paragraph.

(c) For Model A300 series airplanes: After accomplishing the initial inspection required by paragraph (b) of this AD, accomplishment of either paragraph (c)(1) or (c)(2) of this AD extends the fatigue life of the No. 2 flap track beam as specified in those paragraphs, provided that no cracking is detected during any inspection required by paragraph (a) or (b) of this AD.

(1) Removal of any damage and the installation of larger diameter bolts on the No. 2 flap track beam (Modification No. 4740), in accordance with Airbus Service Bulletin No. A300–57–128, Revision 3, dated January 26, 1990, extends the interval for the first repetitive inspection required by paragraph (b) of this AD from 1,700 landings to 12,000 landings, provided that Modification No. 4740 is accomplished prior to the accumulation of 16,700 total landings on the flap beams. Following accomplishment of the first repetitive inspection, subsequent repetitive inspections shall be performed at intervals not to exceed 1,700 landings. Or

(2) Cold working of the bolt holes and the installation of larger diameter bolts on the No. 2 flap track beam (Modification No. 5815), in accordance with Airbus Service Bulletin No. A300–57–141, Revision 7, dated July 16, 1993, extends the interval for the first repetitive inspection required by paragraph (b) of this AD from 1,700 landings to the interval specified in paragraph (c)(2)(i) or (c)(2)(ii) of this AD.

(i) If interference fit bolts that are 15/32-inch in diameter are fitted, the interval for the first repetitive inspection required by paragraph (b) of this AD is extended to 22,000 landings, provided that Modification 5815 is accomplished prior to the accumulation of 16,700 total landings on the flap beam. Following accomplishment of the first repetitive inspection required by paragraph (b) of this AD, subsequent repetitive inspections shall be performed at intervals not to exceed 1,700 landings. Or

(ii) If interference fit bolts that are 7/16- or 3/8-inch in diameter are fitted, the interval for the first repetitive inspection required by paragraph (b) of this AD is extended to 33,000 landings, provided that Modification 5815 is accomplished prior to the accumulation of 16,700 total landings on the flap beam. Following accomplishment of the first repetitive inspection required by paragraph (b) of this AD, subsequent repetitive inspections shall be performed at intervals not to exceed 1,700 landings.

(d) For Model A300–600 series airplanes: Prior to the accumulation of 15,000 total landings, or within the next 1,000 landings after the effective date of this AD, whichever occurs later, perform an ultrasonic inspection to detect cracking of the No. 2 flap track beams, in accordance with Airbus Service Bulletin No. A300–57–6005, Revision 2, dated December 16, 1993.

(1) If no cracking is detected, repeat the ultrasonic inspections thereafter at intervals not to exceed 1,700 landings.

(2) If any crack is detected beyond the bolt hole and that crack that is less than or equal to 4 mm in length: Repeat the ultrasonic inspections thereafter at intervals not to exceed 250 landings.

(3) If any crack is detected beyond the bolt hole and that crack is greater than 4 mm in length: Prior to further flight, replace the flap beam in accordance with the service bulletin, and prior to the accumulation of 15,000 landings on the replaced flap beam, perform the ultrasonic inspection required by paragraph (b) of this AD.

(e) For Model A300–600 series airplanes: Installation of oversized transition fit bolts in cold-worked holes, in accordance with Airbus Service Bulletin No. A300–57–6006 (Modification 5815), Revision 4, dated July 25, 1994, constitutes terminating action for the repetitive inspection requirements of paragraph (d) of this AD, provided that no cracking is detected during any inspection required by paragraph (d) of this AD, and provided that the installation is accomplished prior to the accumulation of 15,000 total landings. If any bolt requires oversizing above 7/16-inch diameter during accomplishment of this installation, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note 5: If Airbus Service Bulletin No. A300–57–6005, Revision 2, dated December 16, 1993, is accomplished concurrently with Airbus Service Bulletin No. A300–57–6006, Revision 3, dated December 16, 1993 (Modification 5815), the ultrasonic inspection for cracking required by paragraph (d) of this AD need not be performed since the eddy current inspection detailed for Modification 5815 is more comprehensive.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 5, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–14168 Filed 6–8–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–184–AD]

Airworthiness Directives; British Aerospace Model BAC 1–11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all British Aerospace Model BAC 1–11 200 and 400 series airplanes. This proposal would require various repetitive inspections to detect cracks in certain panels of the lower skin of the wing, and in certain fixed ribs of the leading edge of the wing. This proposal would also require repair or replacement of cracked parts, which would terminate certain repetitive inspections. This proposal is prompted by reports of cracking in certain panels of the lower skin of the wing, and in certain fixed ribs of the leading edge of the wing due to fatigue-related stress. The actions specified by the proposed AD are intended to ensure the structural integrity of the wing by detecting fatigue-related cracking in a timely manner in the panels of the lower skin of the wing or in the fixed ribs of the leading edge of the wing.

DATES: Comments must be received by July 21, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–184–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, Airbus Limited, P.O. Box 77, Bristol BS99 7AR, England. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–184–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–184–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on all British Aerospace Model BAC 1–11 200 and 400 series airplanes. The CAA advises that it has received reports of cracking in panel number 1 at rib 6 of the lower skin of the wing on these airplanes that had accumulated 17,000 to 42,000 total flight cycles. Cracking was also found in the panel number 2 at rib 10 of the lower skin of the wing on these airplanes that had accumulated 45,000 to 53,000 total flight cycles. Furthermore, cracking was found in fixed ribs 6, 10, and 14 of the leading edge of the wing. Investigation revealed that the cause of this cracking has been attributed to fatigue-related stress. Fatigue-related cracking in the panels of the lower skin of the wing or in the fixed ribs of the leading edge of the wing, if not detected and corrected in a timely manner, could reduce the structural integrity of the wing.

British Aerospace has issued Alert Service Bulletin 57–A-PM5992, Issue 1, dated October 14, 1992, which describes procedures for various repetitive inspections to detect cracks in panel number 1 at rib 6 and in panel number 2 at rib 10 of the lower skin of the wing, in the rebate radius of panel number 2 at the joint between panels 1 and 2 of the lower skin of the wing, and in the top and bottom flanges of fixed ribs 6, 10, and 14 of the leading edge of the wing. This alert service bulletin also describes procedures for repair or replacement of cracked parts, which would eliminate the need for certain repetitive inspections. The CAA classified this alert service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require various repetitive inspections to detect cracks in panel number 1 at rib 6 and in panel number 2 at rib 10 of the lower skin of the wing, in the rebate radius of panel number 2 at the joint between panels 1 and 2 of lower skin of the wing, and in the top and bottom flanges of fixed ribs 6, 10, and 14 of the leading edge of the wing. This proposed AD would also require repair or replacement of cracked parts, which would constitute terminating action for certain repetitive inspection requirements. The actions would be required to be accomplished in accordance with the alert service bulletin described previously. If any cracks are detected at rib 10, the repair of panel number 2 would be required to be accomplished in accordance with a method approved by the FAA.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long standing requirement.

The FAA estimates that 31 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 14 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $26,040, or $840 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the

location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace Airbus Limited (Formerly British Aerospace Commercial Aircraft Limited, British Aerospace Aircraft Group): Docket 94–NM–184–AD.

Applicability: All Model BAC 1–11 200 and 400 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To ensure the structural integrity of the wing, accomplish the following:

(a) Prior to the accumulation of 12,000 total landings or within 1,500 landings after the effective date of this AD, whichever occurs later, perform a close visual and dye penetrant inspection to detect cracks in panel number 1 at rib 6 and in panel number 2 at rib 10 of the lower skin of the wing, in accordance with British Aerospace Alert Service Bulletin 57–A–PM5992, Issue 1, dated October 14, 1992.

(1) If no crack is detected, repeat the inspections thereafter at intervals not to exceed 8,000 landings.

(2) If any crack is detected at rib 6, prior to further flight, repair panel number 1 in accordance with the alert service bulletin. Accomplishment of this repair constitutes terminating action for the repetitive inspections of panel number 1 as required by this paragraph.

(3) If any crack is detected at rib 10, prior to further flight, repair panel number 2 in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(b) Prior to the accumulation of 30,000 total landings or within 1,500 landings after the effective date of this AD, whichever occurs later, perform an eddy current inspection to detect cracks in the rebate radius of panel number 2 at the joint between panels 1 and 2 of lower skin of the wing, in accordance with British Aerospace Alert Service Bulletin 57–A–PM5992, Issue 1, dated October 14, 1992.

(1) If no crack is detected, repeat the inspection thereafter at intervals not to exceed 8,000 landings.

(2) If any crack is detected, prior to further flight, repair panel number 2 in accordance with the alert service bulletin. Accomplishment of this repair constitutes terminating action for the repetitive inspections of panel number 2 as required by this paragraph.

(c) Prior to the accumulation of 30,000 total landings or within 1,500 landings after the effective date of this AD, whichever occurs later, perform a close visual inspection to detect cracks in the top and bottom flanges of fixed ribs 6, 10, and 14 of the leading edge of the wing, in accordance with British Aerospace Alert Service Bulletin 57–A–PM5992, Issue 1, dated October 14, 1992.

(1) If no crack is detected, repeat the inspection thereafter at intervals not to exceed 8,000 landings.

(2) If any crack is detected, prior to further flight, replace the cracked rib with a new rib, in accordance with the alert service bulletin. Prior to the accumulation of 30,000 total landings on the newly installed rib, perform a close visual inspection to detect cracks on the newly installed rib in accordance with the service bulletin. Repeat the inspection thereafter at intervals not to exceed 8,000 landings.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 5, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–14169 Filed 6–8–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–232–AD]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes. This proposal would require modification of the rear spar-to-fuselage attachment. This proposal is prompted by a report indicating that, during full-scale fatigue tests on a Model F28 Mark 0100 test article, cracking was found in the coupling plate and web plate of the rear spar end fitting at the attachment to the main frame at fuselage station 17011 due to fatigue-related stress. The actions specified by the proposed AD are intended to prevent fatigue-related cracking in the rear spar-to-fuselage attachment which, if not detected and corrected in a timely manner, could result in reduced structural integrity of the wing.

DATES: Comments must be received by July 21, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–232–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1100.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–232–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–232–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F28 Mark 0100 series airplanes. The RLD advises that, during full-scale fatigue tests on a Model F28 Mark 0100 test article, cracking was found in the coupling plate and web plate of the rear spar end fitting at the attachment to the main frame at fuselage station 17011. Additional cracks were found around the fastener holes in the rear spar end fitting. Such cracking is attributed to fatigue-related stress. Fatigue-related cracking in the rear spar-to-fuselage attachment, if not detected and corrected in a timely manner, could result in reduced structural integrity of the wing.

Fokker has issued Service Bulletin SBF100–53–039, dated February 10, 1993, which describes procedures for modification of the rear spar-to-fuselage attachment. This modification involves reinforcement and cold sleeve expansion of the coupling of the rear spar-to-fuselage attachment and of the fastener holes of the rear spar end fitting. This modification improves the fatigue life of the rear spar-to-fuselage attachment. The RLD classified this service bulletin as mandatory and issued Dutch airworthiness directive BLA 93–027 (A), dated February 24, 1993, in order to assure the continued airworthiness of these airplanes in the Netherlands.

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification of the rear spar-to-fuselage attachment. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 21 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 176 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $9,000 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $410,760, or $19,560 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Docket 94–NM–232–AD.

Applicability: Model F28 Mark 0100 series airplanes; having serial numbers 11244 through 11319 inclusive, 11321, and 11323 through 11332 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration

eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue-related cracking in the rear spar-to-fuselage attachment, which could result in reduced structural integrity of the wing, accomplish the following:

(a) Prior to the accumulation of 24,000 total flight cycles or within 6 months after the effective date of this AD, whichever occurs later, modify the rear spar-to-fuselage attachment, in accordance with Fokker Service Bulletin SBF100–53–039, dated February 10, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 5, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–14170 Filed 6–8–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 95–AGL–6]

Proposed Modification of Class E Airspace; Mount Vernon, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify the Class E2 airspace near Mount Vernon-Outland Airport, Mount Vernon, IL, by changing the airspace area's effective hours from part-time to full-time. The intent of this proposed action is to enhance safety for all potential users of this airspace by providing segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. An automated Weather Observation System (AWOS) provides 24-hour weather reporting capability for the airport which makes it possible to designate a full-time Class E2 airspace area. The appropriate publications would be modified to provide the aviation public with updated information.

DATES: Comments must be received on or before July 25, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of Assistant Chief Counsel, AGL–7, Rules Docket No. 95–AGL–6, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Angeline Perri, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7571.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Comments wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–AGL–6." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class E2 airspace area near Mount Vernon-Outland Airport, Mount Vernon, IL, by changing the airspace area's effective hours from part-time to full-time. The intent of this proposed action is to enhance safety for all potential users of this airspace by providing segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. An AWOS provides 24-hour weather reporting capability for the airport which makes it possible to designate a full-time Class E2 airspace area. The appropriate publications would be modified to provide the aviation public with updated information.

Class E airspace designations designated as a surface area for an airport are published in Paragraph 6002 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40102; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6002 Class E airpsace oreas designated as a surface area for an airport.

* * * * *

AGL IL E2 Mount Vernon, IL [Revised]

Mount Vernon-Outland Airport, IL
(Lat. 38°19'24" N, long. 88°51'31" W)
Mount Vernon VOR/DME
(Lat. 38°21'43" N, long. 88°48'26" W)

Within a 4.2-mile radius of Mount Vernon-Outland Airport and within 4 miles each side of the Mount Vernon VOR/DME 044° radial extending from the 4.2-mile radius to 9.1 miles northeast of the VOR/DME.

* * * * *

Issued in Des Plaines, Illinois on May 30, 1995.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 95–14173 Filed 6–8–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–AGL–5]

Proposed Modification of Class E Airspace; Devils Lake, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify the Class E5 airspace near Devils Lake, ND. Based on the results of an airspace review the existing geographic size of the E5 airspace area is insufficient to accommodate existing instrument approach procedures to Devils Lake Municipal Airport, Devils Lake, ND. The intent of this proposed action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on aeronautical charts to provide a reference for pilots operating under Visual Flight Rule (VFR).

DATES: Comments must be received on or before July 25, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 95–AGL–5, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Angeline Perri, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7571.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–AGL–5." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class E5 airspace near Devils Lake, ND. Based on the results of an airspace review the existing geographic size of the E5 airspace area is insufficient to accommodate existing instrument approach procedures to Devils Lake Municipal Airport, Devils Lake, ND. The intent of this proposed action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures.

Class E airspace designations for airspace extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9B, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL ND E5 Devils Lake, ND [Revised]

Devils Lake Municipal Airport, ND
(Lat. 48°06' 51" N, long. 98°54' 32" W)
Devils Lake VORTAC
(Lat. 48°06' 48" N, long. 98°54' 29" W)

That airspace extending upward from 700 feet above the surface within an 8.7-mile radius of the Devils Lake Municipal Airport and that airspace extending upward from 1,200 feet above the surface within a 22-mile radius of the Devils Lake VORTAC.

* * * * *

Issued in Des Plaines, Illinois on May 30, 1995.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 95–14174 Filed 6–8–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ANM–6]

Proposed Realignment of VOR Federal Airway V–421; CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would extend Federal Airway V–421 from the Kremmling, CO, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) to Robert, CO, Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) to the HAHNS Intersection. This action would improve traffic flow and reduce pilot/controller workload.

DATES: Comments must be received on or before July 28, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ANM–500, Docket No. 95–ANM–6, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98055–4056.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9230.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–ANM–6." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to extend Federal Airway V–421 from the Kremmling, CO, VORTAC to the Robert, CO, VOR/DME to the HAHNS Intersection. In addition, this action would create two new intersections, "ECHO" and "HAHNS," to support a new instrument approach procedure for the Steamboat Springs Bob Adam Airport. This action would improve traffic flow and reduce pilot/controller workload. Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Domestic VOR Federal airway listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore - (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways

* * * * *

V–421 [Revised]

From Zuni, NM, via Gallup, NM; Farmington, NM; Durango, CO; Blue Mesa, CO; Red Table, CO; Kremmling, CO; Robert, CO; INT Robert 340° T(327 °M) and Hayden, CO, 055° T(041° M) radials.

* * * * *

Issued in Washington, DC, on June 5, 1995.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–14175 Filed 6–8–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 95–AWP–9]

Proposed Revocation of Class D Airspace Area at Miramar NAS, CA

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revoke the Class D airspace area at Miramar NAS, CA. This airspace is presently contained within the San Diego, CA, Class B surface area, and is no longer required.

DATES: Comments must be received on or before July 10, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, System Management Branch, AWP–530, Docket No. 95–AWP–9, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California, 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California, 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, System Management Branch, Air Traffic Division, at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Speer, System Management Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 297–0010.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–AWP–9." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) by revoking the Class D airspace area at Miramar NAS, CA. This airspace is presenting located within the San Diego, CA, Class B surface area. Class D airspace designations are published in paragraph 5000 of FAA Order 7400.9B, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be removed subsequently in this Order.

The FAA has determined that this proposed regulation only involves established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

AWPCA D Miramar NAS, CA [Removed]

* * * * *

Issued in Los Angeles, California, on May 31, 1995.

Dennis T. Koehler,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 95–14177 Filed 6–8–95; 8:45 am]

BILLING CODE 4910–13–M

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

RIN 0960–AE06

Administrative Review Process, Testing Modifications to Prehearing Procedures and Decisions by Adjudication Officers

AGENCY: Social Security Administration.

ACTION: Proposed rule.

SUMMARY: We propose to amend our rules to establish the authority to test the position of an adjudication officer who, under the *Plan for a New Disability Claim Process* approved by the Commissioner of Social Security in September 1994 (the disability redesign plan), would be the focal point for all prehearing activities when a request for a hearing before an administrative law judge (ALJ) is filed. The adjudication officer is an integral element of the disability redesign plan. We expect that our test of the adjudication officer position will provide us with sufficient information to determine the effect of the position on the hearing process. This proposed rule only refers to the changes to the disability procedures we will test. Unless specified, all other regulations related to the disability determination process remain unchanged.

DATES: To be sure that your comments are considered, we must receive them no later than July 10, 1995.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, P.O. Box 1585, Baltimore, Maryland 21235, sent by telefax to (410) 966–2830, sent by E-mail to "regulations@ssa.gov," or delivered to the Division of Regulations and Rulings, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments may be inspected during these same hours by making arrangements with the contact person shown below.

The electronic file of this document is available on the Federal Bulletin Board (FBB) at 9:00 a.m. on the date of publication in the **Federal Register**. To download the file, modem dial (202) 512–1387. The FBB instructions will explain how to download the file and the fee. This file is in Wordperfect and will remain on the FBB during the comment period.

FOR FURTHER INFORMATION CONTACT: Harry J. Short, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, (410) 965–6243.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The Social Security Administration (SSA) decides claims for Social Security benefits under title II of the Social Security Act (the Act) and for Supplemental Security Income (SSI) benefits under title XVI of the Act in an administrative review process that generally consists of four steps. Claimants who are not satisfied with the initial determination we make on a claim may request reconsideration. Claimants who are not satisfied with our reconsidered determination may request a hearing before an ALJ, and claimants who are dissatisfied with an ALJ's decision may request review by the Appeals Council. Claimants who have completed these steps and who are not satisfied with our final decision, may request judicial review of the decision in the Federal courts.

Generally, when a claim is filed for Social Security or SSI benefits based on disability, a State agency makes the initial and reconsideration disability determination for us. A hearing requested after we have made a reconsideration determination is conducted by an ALJ in one of the 132 hearing offices we have nationwide.

Applications for Social Security and SSI benefits based on disability have risen dramatically in recent years. The number of new disability claims SSA received in Fiscal Year (FY) 1994—3.56 million—represented a 40 percent increase over the number received in FY 1990—2.55 million. Requests for an ALJ hearing also have increased dramatically. In FY 1994, our hearing offices had almost 540,000 hearing receipts, and most of these receipts were filed by persons claiming disability benefits. In that year, the number of hearing receipts we received exceeded the number of receipts we received in FY 1990 by more than 70 percent.

Despite management initiatives that resulted in a record increase in ALJ productivity in FY 1994 and the hiring of more than 200 new ALJs and more than 650 new support staff in that year, the number of cases pending in our hearing offices has reached unprecedented levels—more than 480,000 at the end of FY 1994.

In order to process this workload the disability redesign plan contains other changes to the disability determination process by which SSA plans to decrease processing times while providing world class service. For example, the disability redesign plan envisions a streamlined

initial disability determination process which will result in more timely determinations and the elimination of the reconsideration step in the administrative review process for disability claims. We expect that one consequence of these initiatives will be an increase in the number of requests for hearings filed over the next several years. In light of these growing workload expectations, and to process more efficiently the hearing requests now pending at our hearing offices, we are issuing this notice of proposed rule making (NPRM) which proposes to establish the authority to test having an adjudication officer conduct prehearing development and, if appropriate, issue a decision wholly favorable to the claimant.

We expect that use of an adjudication officer process, as described in our *Plan for a New Disability Claim Process*, will enable us to ensure development of a complete record and to issue decisions in a more efficient manner when a request for a hearing has been filed. Under this NPRM, we propose initially to test the adjudication officer position before implementing it as contemplated in the disability redesign plan. We anticipate that our tests of the adjudication officer position will provide us with information regarding the effect the position has on the hearing process currently, and how to best implement it under the redesigned disability process. We will do this by testing the adjudication officer position alone and in combination with one or more of the tests we are conducting pursuant to the final rule "Testing Modifications to the Disability Determination Procedures," which was published in the **Federal Register** on April 24, 1995 (60 FR 20023).

We consider testing and implementation of the adjudication officer position to be a high priority. It is a complementary approach to short-term disability processing initiatives we currently are undertaking which are designed to reduce pending requests for hearings from more than 480,000 at the end of FY 1994 to 375,000 at the end of FY 1996. One short-term initiative is set out in the NPRM we published in the **Federal Register** on April 14, 1995 (60 FR 19008) to authorize attorney advisors in our Office of Hearings and Appeals to conduct certain prehearing proceedings and, where appropriate, issue decisions which are wholly favorable to the claimant. The principal aim of the attorney advisor procedures is to expedite decisions on pending requests for hearings. The adjudication officer process is focused on making more efficient use of existing resources so that ongoing cases are processed more timely and in a more efficient manner. This proposed rule authorizing testing of an adjudication officer process, if published as a final rule, will allow us to test the effect of a process that we expect will allow us to better manage the hearing process in the years to come.

In view of the salutary effect we expect this rule to have on our ability to improve our service to claimants, and the importance we place on ensuring that we adjudicate claims timely and accurately, we are providing a 30-day comment period for this rule rather than the 60-day period we usually provide. We also believe that a 30-day comment period is appropriate in this instance because we previously provided the public with the opportunity to comment on all aspects of the disability redesign plan, including the establishment of the adjudication officer position. We believe that for these reasons, a 30-day comment period is sufficiently long to allow the public a meaningful opportunity to comment on the proposed rule in accordance with Executive Order 12866.

The proposed rules are explained below in more detail.

Prehearing Procedures Under the Disability Redesign Plan

On April 15, 1994, SSA published a notice in the **Federal Register** (59 FR 18188), setting out a proposal to reengineer the initial and administrative review process we use to determine an individual's entitlement to Social Security and SSI benefits based on disability. Comments on this comprehensive and far-reaching proposal were requested, and during the comment period that began on April 1, 1994, and ended on June 14, 1994, SSA received, from a broad spectrum of respondents, over 6,000 written responses and extensive verbal comments. The commenters expressed their belief that improvements were needed to provide better service and to manage the claims process more effectively. While some concerns were expressed, the commenters praised SSA for taking on the task of redesigning the disability claim process.

On September 7, 1994, the Commissioner of Social Security accepted the revised disability redesign plan that was submitted for her approval on June 30, 1994, with the full understanding that some aspects of the proposal would require research and testing. The plan as approved by the Commissioner was published in the **Federal Register** on September 19, 1994 (59 FR 47887).

The plan anticipates a redesigned, two-level process for deciding social security and SSI claims based on disability. The claimant's right of administrative review following an initial determination will be to request an ALJ hearing. When a hearing is requested, as planned in the redesigned process, the focal point for prehearing activities will be an adjudication officer who will work with, among others, claimants and their representatives. Adjudication officers will have authority to make decisions wholly favorable to the claimant where such decisions are warranted by the evidence.

The adjudication officer, together with the claimant and his or her representative, will have responsibility for ensuring that claims coming before ALJs are fully developed.

The procedures outlined in the disability redesign plan make the best use of representatives' services by defining the clear responsibility on the part of claimants and their representatives to submit evidence. One of the features of the adjudication officer process is an informal conference with a claimant's representative to identify the issues in dispute and to prepare written agreements regarding those issues which are not in dispute and those issues proposed for hearing. We would not ask a claimant who does not have a representative to limit issues prior to the hearing. However, if the claimant obtains representation subsequent to the AO's conclusion that the case is ready for a hearing, the case will be returned to the AO who will conduct an informal conference with the claimant and his representative.

In this NPRM we propose to amend our rules by adding new §§ 404.943 and 416.1443 to establish the authority to test having an adjudication officer be the focal point for prehearing activities, as described in the disability redesign plan.

For many years, our hearing offices nationwide have productively utilized various forms of prehearing development. We have successfully conducted tests of a standard prehearing development process. Our recent experience with many of the elements of the adjudication officer's responsibilities and duties has given us some information about the effect the establishment of an adjudication officer position would have on the administrative review process. However, as we believe that further information will be helpful, we will begin testing the adjudication officer position as soon as possible after publication of a final rule in order to

assess whether the position meets the goals of the disability redesign process and whether it will have an effect on administrative and program expenditures. We propose that the adjudication officer's functions will be performed when a hearing before an ALJ is requested. We will be closely managing the tests of the adjudication officer position to ensure that the procedures are consistently and effectively applied at all locations.

In accordance with the goals and directives of the National Performance Review I and II and our disability redesign plan, the nature of the adjudication officer must be flexible to make the best use of available program resources consistent with providing world class service to our customers. Accordingly, the rule as proposed for testing permits the adjudication officer to be a qualified employee of the SSA or a State agency that makes disability determinations for us. The adjudication officer may be located in field offices or program service centers, in State agencies that make disability determinations for us, in our Office of Hearings and Appeals, or in our Regional Office of Program and Integrity Reviews.

Adjudication Officer Qualifications

The adjudication officer will be expected to bring relevant experience to the position, with additional training provided as may be essential to complete the preparation of the individual to assume the full range of duties. The adjudication officer must be qualified to communicate effectively with the public (including claimant representatives), in informal conferences and in writing. The adjudication officer must, of necessity, be able to manage a substantial caseload, must be able to review independently the claim file information and determine the need for additional evidence, and then be able to evaluate that evidence under the applicable provisions of the Social Security Act, our regulations and rulings. In addition, where appropriate, the adjudication officer must be able to write a comprehensive, factually correct and legally sound decision that can be readily understood by the public.

Evaluation of Implementation of Prehearing Procedures and Decisions by Adjudication Officers

This NPRM proposes to establish the authority to test implementation of prehearing procedures involving the adjudication officer. We plan to test the procedures in multiple sites to provide a means of determining the effect of the procedures in an operational environment. Each test will involve a representative mix of geographic areas and caseloads. Before we commence each test we will publish a notice in the **Federal Register** designating the test site and duration of the test. The notice will also describe when the test will be conducted in combination with one or more of the tests we are conducting pursuant to the final rule "Testing Modifications to the Disability Determination Procedures." We will evaluate test outcomes against the objectives of the disability redesign:

- Is the process user friendly?
- Does the process maintain a high level of payment quality?
- Does the process take less time?
- Is the process efficient?
- Does the process result in satisfying work for employees?

One of the most important measures is the effect of the procedures on overall disability allowance rates. The adjudication officer's functions are not designed to change the overall allowance rates. In order to determine whether the prehearing procedures result in processing improvements consistent with expected outcomes, the Commissioner of Social Security will review evaluation results on a quarterly basis. If there is evidence that overall allowance rates increase or decrease unacceptably, the Commissioner will cease use of, or make appropriate adjustments to the prehearing procedures consistent with this regulatory authority.

SSA published a final rule, "Testing Modifications to the Disability Determination Procedures," at 60 FR 20023 on April 24, 1995 which provided authority for us to test several elements of the disability redesign plan. In the preamble to that final rule, we indicated that we plan to test the adjudication officer prehearing procedures, as well as other aspects of the disability redesign which do not require regulatory changes, in combination with one or more of the four models described in that final rule at some test sites. This continues to be our intention. Such tests will provide us with a body of information about each individual part of the redesign, as well as whether the combined effect of the redesign meets our goals of making the disability process user friendly, more timely and more accurate and efficient. It will also provide us with information about program expenditures in connection with the overall redesign.

Regulatory Procedures

Executive Order No. 12866

We have consulted with the Office of Management and Budget (OMB) and determined that this proposed rule meets the criteria for a significant regulatory action under Executive Order (E.O.) 12866. Thus it was subject to OMB review. This rule does not adversely affect State, local or tribal governments. The administrative costs of the tests will be covered within budgeted resources. No program costs are expected. We have not, therefore, prepared a cost/benefit analysis under E.O. 12866.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

This regulation imposes no new reporting or record keeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 93.802, Social Security-Disability Insurance; 93.807, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and record keeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI), Reporting and record keeping requirements.

Dated: May 4, 1995.

Shirley S. Chater,

Commissioner of Social Security.

For the reasons set out in the preamble, subpart J of part 404 and subpart N of part 416 of chapter III of title 20 of the Code of Federal Regulations are proposed to be amended as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart J—[Amended]

1. The authority citation for subpart J of part 404 is revised to read as follows:

Authority: Secs. 201(j), 205(a), (b), and (d)–(h), 221(d), 225 and 702(a)(5) of the Social Security Act; (42 U.S.C. 401(j), 405 (a), (b), and (d)–(h), 421(d), 425 and 902(a)(5); 31 U.S.C. 3720A.

2. New § 404.943 is added under the undesignated center heading "Hearing Before an Administrative Law Judge" to read as follows:

§ 404.943 Responsibilities of the adjudication officer.

(a)(1) *General.* Under the procedures set out in this section we will test modifications to the prehearing procedures we follow when you file a request for a hearing before an administrative law judge in connection with a claim for benefits based on disability where the question of whether you are under a disability as defined in § 404.1505 is at issue. These modifications will enable us to test the effect of having an adjudication officer be your primary point of contact after you file a hearing request and before you have a hearing with an administrative law judge. The tests may be conducted alone, or in combination with the tests of the modifications to the disability determination procedures which we conduct under § 404.906. The adjudication officer, working with you and/or your representative, identifies issues in dispute, develops evidence, conducts informal conferences, and conducts other prehearing proceedings as may be necessary. The adjudication officer has the authority to make a decision wholly favorable to you if the evidence so warrants. If the adjudication officer does not make a decision on your claim, your hearing request will be assigned to an administrative law judge for further proceedings.

(2) *Procedures for cases included in the tests.* Prior to commencing tests of the adjudication officer position in selected site(s), we will publish a notice in the **Federal Register**. The notice will describe where the specific test site(s) will be and the duration of the test(s). We will also state whether the tests of the adjudication officer position in each site will be conducted alone, or in combination with the test of the modifications to the disability determination process which we conduct under § 404.906. The individuals who participate in the test(s) will be assigned randomly to a test group in each site where the tests are conducted.

(b)(1) *Prehearing procedures conducted by an Adjudication Officer.* When you file a request for a hearing before an administrative law judge in connection with a claim for benefits based on disability where the question of whether you are under a disability as defined in § 404.1505 is at issue, the adjudication officer will conduct an interview with you. The interview may take place in person, by telephone, or by videoconference, as the adjudication officer determines is appropriate under the circumstances of your case. If you file a request for an extension of time to request a hearing in accordance with § 404.933(c), the adjudication officer may develop information on, and may decide in wholly favorable decisions that you had good cause for missing the deadline for requesting a hearing. To determine whether you had good cause for missing the deadline, the adjudication officer will use the standards contained in § 404.911.

(2) *Representation.* The adjudication officer will provide you with information regarding the hearing process, including your right to representation. As may be appropriate, the adjudication officer will provide you with referral sources for representation, and give you copies of necessary documents to facilitate the appointment of a representative. If you have a representative, the adjudication officer will conduct an informal conference with the representative, in person or by telephone, to identify the issues in dispute and prepare written agreements regarding those issues which are not in dispute and those issues proposed for the hearing. If you decide to proceed without representation, the AO may hold an informal conference with you. If you obtain representation subsequent to the AO's conclusion that your case is ready for a hearing, your case will be returned to the AO who will conduct an informal conference with you and your representative.

(3) *Evidence.* You, or your representative, may submit, or may be asked to obtain and submit, additional evidence to the adjudication officer. As the adjudication officer determines is appropriate under the circumstances of your case, the adjudication officer may refer the claim for further medical or vocational evidence.

(4) *Referral for a hearing.* The adjudication officer will refer the prepared claim to the administrative law judge for a hearing when the development of evidence is complete, and you or your representative agree that a hearing is ready to be held. At this point, the administrative law judge conducts all further hearing proceedings, including scheduling and holding a hearing and issuing a decision or dismissal of your request for a hearing, as may be appropriate.

(c)(1) *Wholly favorable decisions issued by an adjudication officer.* (i) If, after a hearing is requested but before it is held, the adjudication officer decides that the evidence in your case warrants a decision which is wholly favorable to you, the adjudication officer may issue such a decision. For purposes of the tests authorized under this section, the adjudication officer's decision shall be considered to be a decision as defined in § 404.901.

(ii) If the adjudication officer issues a decision under this section, it will be in writing and will give the findings of fact and the reasons for the decision. The adjudication officer will evaluate the issues relevant to determining whether or not you are disabled in accordance with the provisions of the Social Security Act, the rules in this part and part 422 of this chapter and applicable Social Security Rulings, which are available from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402. For cases in which the adjudication officer issues a decision, he or she may determine your residual functional capacity in the same manner that an administrative law judge is authorized to do so in § 404.1546. The adjudication officer may also evaluate the severity of your mental impairments in the same manner that an administrative law judge is authorized to do so under § 404.1520a. The adjudication officer's decision will be based on the evidence which is included in the record and, subject to paragraph (c)(2) of this section, will complete the actions that will be taken on your request for hearing. A copy of the decision will be mailed to all parties at their last known address. We will tell you in the notice that the administrative law judge will not hold a hearing unless a party to the hearing requests that the hearing proceed. A request to proceed with the hearing must be made in writing within 30 days after the date the notice of the decision of the adjudication officer is mailed.

(2) *Effect of a decision by an adjudication officer.* A decision by an adjudication officer which is wholly favorable to you under this section, and notification thereof, completes the administrative action on your request for hearing and is binding on all parties to the hearing and not subject to further review, unless—

(i) You or another party requests that the hearing continue, as provided in paragraph (c)(1) of this section;

(ii) The Appeals Council decides to review the decision on its own initiative under the authority provided in § 404.969;

(iii) The decision is revised under the procedures explained in §§ 404.987 through 404.989; or

(iv) In a case remanded by a Federal court, the Appeals Council assumes jurisdiction under the procedures in § 404.984.

(3) *Fee for a representative's services.* The adjudication officer may authorize a fee for your representative's services if the adjudication officer makes a decision on your claim that is wholly favorable to you, and you are represented. The actions of, and any fee authorization made by, the adjudication officer with respect to representation will be made in accordance with the provisions of subpart R of this part.

(d) *Who may be an adjudication officer.* The adjudication officer described in this section may be an employee of the Social Security Administration or a State agency that makes disability determinations for us.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart N—[Amended]

1. The authority citation for subpart N of part 416 is revised to read as follows:

Authority: Sec. 702(a)(5), 1631, and 1633 of the Social Security Act; (42 U.S.C. 902(a)(5), 1383, and 1383b.)

2. New § 416.1443 is added under the undesignated center heading "Hearing Before an Administrative Law Judge" to read as follows:

§ 416.1443 Responsibilities of the adjudication officer.

(a)(1) *General.* Under the procedures set out in this section we will test modifications to the prehearing procedures we follow when you file a request for a hearing before an administrative law judge in connection with a claim for benefits based on disability where the question of whether you are under a disability as defined in §§ 416.905 and 416.906 is at issue. These modifications will enable us to test the effect of having an adjudication officer be your primary point of contact after you file a hearing request and before you have a hearing with an administrative law judge. The tests may be conducted alone, or in combination with the tests of the modifications to the disability determination procedures which we conduct under § 416.1406. The adjudication officer, working with you and/or your representative, identifies issues in dispute, develops evidence, conducts informal conferences, and conducts other prehearing proceedings as may be necessary. The adjudication officer has the authority to make a decision wholly favorable to you if the evidence so warrants. If the adjudication officer does not make a decision on your claim, your hearing request will be assigned to an administrative law judge for further proceedings.

(2) *Procedures for cases included in the tests.* Prior to commencing tests of the adjudication officer position in selected site(s), we will publish a notice in the **Federal Register**. The notice will describe where the specific test site(s) will be and the duration of the test(s). We will also state whether the tests of the adjudication officer position in each site will be conducted alone, or in combination with the test of the modifications to the disability determination process which we conduct under § 416.1406. The individuals who participate in the test(s) will be assigned randomly to a test group in each site where the tests are conducted.

(b)(1) *Prehearing procedures conducted by an Adjudication Officer.* When you file a request for a hearing before an administrative law judge in connection with a claim for benefits based on disability where the question of whether you are under a disability as defined in §§ 416.905 and 416.906 is at issue, the adjudication officer will conduct an interview with you. The interview may take place in person, by telephone, or by videoconference, as the adjudication officer determines is appropriate under the circumstances of your case. If you file a request for an extension of time to request a hearing in accordance with § 416.1433(c), the adjudication officer may develop information on, and may decide in wholly favorable decisions that you had good cause for missing the deadline for requesting a hearing. To determine whether you had good cause for missing the deadline, the adjudication officer will use the standards contained in § 416.1411.

(2) *Representation.* The adjudication officer will provide you with information regarding the hearing process, including your right to representation. As may be appropriate, the adjudication officer will provide you with referral sources for representation, and give you copies of necessary documents to facilitate the appointment of a representative. If you have a representative, the adjudication officer will conduct an informal conference with the representative, in person or by telephone, to identify the issues in dispute and prepare written agreements regarding those issues which are not in dispute and those issues proposed for the hearing. If you decide to proceed without representation, the AO may hold an informal conference with you. If you obtain representation subsequent to the AO's conclusion that your case is ready for a hearing, your case will be returned to the AO who will conduct an informal conference with you and your representative..

(3) *Evidence.* You, or your representative, may submit, or may be asked to obtain and submit, additional evidence to the adjudication officer. As the adjudication officer determines is appropriate under the circumstances of your case, the adjudication officer may refer the claim for further medical or vocational evidence.

(4) *Referral for a hearing.* The adjudication officer will refer the prepared claim to the administrative law judge for a hearing when the development of evidence is complete, and you or your representative agree that a hearing is ready to be held. At this point, the administrative law judge conducts all further hearing proceedings, including scheduling and holding a hearing and issuing a decision or dismissal of your request for a hearing, as may be appropriate.

(c)(1) *Wholly favorable decisions issued by an adjudication officer.* (i) If, after a hearing is requested but before it is held, the adjudication officer decides that the evidence in your case warrants a decision which is wholly favorable to you, the adjudication officer may issue such a decision. For purposes of the tests authorized under this section, the adjudication officer's decision shall be considered to be a decision as defined in § 416.1401.

(ii) If the adjudication officer issues a decision under this section, it will be in writing and will give the findings of fact and the reasons for the decision. The adjudication officer will evaluate the issues relevant to determining whether or not you are disabled in accordance with the provisions of the Social Security Act, the rules in this part and part 422 of this chapter and applicable Social Security Rulings which are available from the Superintendent of Documents United States Government Printing Office, Washington DC 20402. For cases in which the adjudication officer issues a decision, he or she may determine your residual functional capacity in the same manner that an administrative law judge is authorized to do so in § 416.946. The adjudication officer may also evaluate the severity of your mental impairments in the same manner that an administrative law judge is authorized to do so under § 416.920a. The adjudication officer's decision will be based on the evidence which is included in the record and, subject to paragraph (c)(2) of this section, will complete the actions that will be taken on your request for hearing. A copy of the decision will be mailed to all parties at their last known address. We will tell you in the notice that the administrative law judge will not hold a hearing unless a party to the hearing requests that the hearing proceed. A request to proceed with the hearing must be made in writing within 30 days after the date the notice of the decision of the adjudication officer is mailed.

(2) *Effect of a decision by an adjudication officer.* A decision by an adjudication officer which is wholly favorable to you under this section, and notification thereof, completes the administrative action on your request for hearing and is binding on all parties to the hearing and not subject to further review, unless—

(i) You or another party requests that the hearing continue, as provided in paragraph (c)(1) of this section;

(ii) The Appeals Council decides to review the decision on its own initiative under the authority provided in § 416.1469;

(iii) The decision is revised under the procedures explained in §§ 416.1487 through 416.1489; or

(iv) In a case remanded by a Federal court, the Appeals Council assumes jurisdiction under the procedures in § 416.1484.

(3) *Fee for a representative's services.* The adjudication officer may authorize a fee for your representative's services if the adjudication officer makes a decision on your claim that is wholly favorable to you, and you are represented. The actions of, and any fee authorization made by, the adjudication officer with respect to representation will be made in accordance with the provisions of subpart O of this part.

(d) *Who may be an adjudication officer.* The adjudication officer described in this section may be an employee of the Social Security Administration or a State agency that makes disability determinations for us.

[FR Doc. 95–14037 Filed 6–8–95; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE–61–93]

RIN 1545–AS23

Disallowance of Deductions for Employee Remuneration in Excess of $1,000,000; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of public hearing on amendments to the proposed regulations relating to the disallowance of deductions for employee remuneration in excess of $1,000,000.

DATES: The public hearing will be held on Friday, August 11, 1995, beginning at 10:00 a.m. Requests to speak and outlines of oral comments must be received by Friday, July 21, 1995.

ADDRESSES: The public hearing will be held in the Internal Revenue Service Auditorium, Seventh floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. Requests to speak and outlines of oral comments should be mailed to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:DOM:CORP:T:R [EE–61–93], room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Christina Vasquez of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–6803 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed amendments to the Income Tax Regulations under section 162(m) of the Internal Revenue Code of 1986. The proposed regulations appeared in the **Federal Register** for Friday, December 2, 1994 (59 FR 61844).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Friday, July 21, 1995, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answer thereto.

Because of controlled access restrictions, attenders cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 95–14135 Filed 6–8–95; 8:45 am]

BILLING CODE 4830–01–P

26 CFR Part 301

[Notice 95–14]

Simplification of Entity Classification Rules; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of public hearing on regulations.

SUMMARY: This document contains a correction to the notice of public hearing (Notice 95–14), which was published in the Federal Register on Wednesday, May 10, 1995, (60 FR 24813) on simplifying the classification regulations to allow taxpayers to treat domestic unincorporated business organizations as partnerships or as associations on an elective basis.

FOR FURTHER INFORMATION CONTACT: Armando Gomez at (202) 622–3050, (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The regulations that are the subject of this correction pertain to section 7701(a)(2) of the Internal Revenue Code.

Need for Correction

As published, the Notice 95–14 contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of Notice 95–14, which is the subject of FR Doc. 95–11414, is corrected as follows:

On page 24813, column 2, under the caption "SUMMARY:", last line, the language "elective basis." is corrected to read "elective basis. The Service and Treasury also are considering adopting

similar rules for foreign business organizations.".

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 95–14136 Filed 6–8–95; 8:45 am]

BILLING CODE 4830–01–P–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

Steel Erection Negotiated Rulemaking Advisory Committee

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of Committee meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (FACA), notice is hereby given of a meeting of the Steel Erection Negotiated Rulemaking Advisory Committee (SENRAC). Notice is also given of the location of the meeting. This meeting will be open to the public.

DATES: The meeting is scheduled for June 27–29, 1995. The meeting will begin at 9:00 a.m. on June 27th.

ADDRESSES: U.S. Department of Labor, DOL Academy, Room C–5320, Seminar Room 6, 200 Constitution Avenue, N.W. Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Anne Cyr, Acting Director, Office of Information and Consumer Affairs, OSHA, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue, N.W., Washington, D.C. 20210; telephone (202) 219–8151.

SUPPLEMENTARY INFORMATION: On May 11, 1994, OSHA announced that it had established the Steel Erection Negotiated Rulemaking Advisory Committee (SENRAC) (59 FR 24389) in accordance with the Federal Advisory Committee Act (FACA), the Negotiated Rulemaking Act of 1990 (NRA) and section 7(b) of the Occupational Safety and Health Act (OSH Act) to resolve issues associated with the development of a Notice of Proposed Rulemaking on Steel Erection. Appointees to the Committee include representatives from labor, industry, public interests and government agencies.

SENRAC began negotiations in mid June, 1994, and has met eight times since. Initial meetings dealt with procedural matters, including schedules, agendas and the establishment of workgroups. The Committee established workgroups to address issues on Fall Protection, Allocation of Responsibility, Construction Specifications and Scope. During subsequent meetings, foundations for negotiations were established and additional workgroups were formed. In addition, the resolution of issues and the drafting of a revised rule continues.

This is the last scheduled meeting of SENRAC. It is expected that consensus will be reached on a draft proposal at this meeting at which time OSHA will complete the preamble and prepare the document in the proper **Federal Register** format for publication. It is anticipated that SENRAC will reconvene once OSHA has prepared the document to give final approval to the document.

All interested parties are invited to attend the Committee meetings at the time and place indicated above. No advanced registration is required. Seating will be available to the public on a first-come, first-served basis. Persons with disabilities, who need special accommodations, should contact the Facilitator by June 20, 1995.

During the meeting, members of the general public may informally request permission to address the Committee.

Minutes of the meetings and materials prepared for the Committee will be available for public inspection at the OSHA Docket Office, N–2625, 200 Constitution Ave., N.W., Washington, D.C. 20210; telephone (202) 219–7894. Copies of these materials may be obtained by sending a written request to the Facilitator.

The Facilitator, Philip J. Harter, can be reached at Suite 404, 2301 M Street, NW, Washington, D.C. 20037; telephone (202) 887–1033, FAX (202) 887–1036.

Authority

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, pursuant to section 3 of the Negotiated Rulemaking Act of 1990, 104 Stat. 4969, Title 5 U.S.C. 561 *et seq.*; and Section 7(b) of the Occupational Safety and Health Act of 1970, 84 Stat. 1597, Title 29 U.S.C. 656.

Signed at Washington, D.C., this 6th day of June, 1995.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 95–14161 Filed 6–8–95; 8:45 am]

BILLING CODE 4510–26–P

Mine Safety and Health Administration

30 CFR Parts 56 and 57

RIN 1219–AA17

Safety Standards for Explosives at Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of public hearings; Close of record.

SUMMARY: The Mine Safety and Health Administration (MSHA) will hold public hearings on its January 6, 1995, proposed safety standards for explosives at metal and nonmetal mines. The hearings will be held in Cleveland, Ohio and Elko, Nevada.

DATES: The hearings will be held in Cleveland, Ohio, July 6, 1995; and Elko, Nevada, July 12, 1995. Both hearings will begin at 9:00 a.m. MSHA requests that persons planning to participate in the public hearings notify the Agency at least five days prior to the public hearing date. There will be an opportunity for other persons, who have not made prior arrangements with MSHA and wish to speak, to register at the beginning of each public hearing. The public record for the rulemaking will close on August 18, 1995.

ADDRESSES: The hearings will be held at the following locations:

1. July 6, 1995—Quality Inn Airport, 16161 Brookpark Road, Cleveland, Ohio 44142.
2. July 12, 1995—Holiday Inn, 3015 Idaho Street, Elko, Nevada 89081.

Send requests to make oral presentations to: Mine Safety Health Administration, Office of Standards, Regulations and Variances, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, (703) 235–1910.

SUPPLEMENTARY INFORMATION:

A. Rulemaking Background

MSHA published comprehensive revisions to its explosives safety standards for metal and nonmetal mines in January 1991 (56 FR 2070). Prior to the effective date of the rule, MSHA stayed several provisions due to compliance issues raised by the mining community and explosives manufacturers. The provisions involved were subsequently reproposed on October 16, 1992, (57 FR 47524), and a public hearing was held in April 1993. On December 30, 1993, (58 FR 69596), MSHA published the final rule which became effective on January 31, 1994.

Some of the mining industry and explosive manufacturers challenged the final rule. In response to their concerns, MSHA issued Program Policy Letter (PPL) No. P94–IV–3 on September 30, 1994. This current policy provides information to the mining community regarding the proper usage of the IME–22 Container as a "laminated partition" under §§ 56/57.6000, §§ 56/57.6133, §§ 56/57.6201. The Agency also interpreted the "continuous loading" requirements of §§ 56/57.6306; clarified the meaning of the term "good condition" as it applies to vehicles used in §§ 56/57.6202; clarified the application of §§ 56/57.6501 regarding double trunklines or loop systems when using low energy detonating cord with inhole delays; and interpreted §§ 56/57.6602(e) on static electricity dissipation during loading as it applies to the use of plastic hole liners.

On January 5, 1995, MSHA published a proposed rule, (60 FR 1866) which included revisions to §§ 56/57.6000 concerning the definition of "laminated partition;" §§ 56/57.6133 concerning powder chests; §§ 56/57.6201 concerning separation of transported explosive material; §§ 56/57.6302 concerning separation of explosive material; §§ 56/57.6306 concerning loading, blasting and security; and §§ 56/57.6602 concerning static electricity dissipation during loading. Also, the proposal would add a new provision, §§ 56/57.6905 to address hangup blasting which was merged with requirements for separation of explosive material; would delete the security provisions of existing §§ 56/57.6313 and would incorporate them into proposed §§ 56/57.6306; and would clarify in the preamble to the final rule the meaning of the term "good condition" as used in §§ 56/57.6202. The standards in part 56 apply to all surface metal and nonmetal mines; those in part 57 apply to all underground and all surface areas of underground metal and nonmetal mines.

The comment period closed on March 6, 1995. MSHA received numerous comments concerning the proposed provisions, including requests for public hearings.

MSHA is conducting these rulemaking hearings pursuant to section 101 of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 801 *et. seq.* The purpose of the hearings is to give the public further opportunity to submit comments on the proposal and to discuss their concerns. The hearings will be conducted in an informal manner by a panel of MSHA officials. Although formal rules of evidence or cross-examination will not apply, the presiding MSHA official may exercise discretion to ensure the orderly progress of the hearings and may exclude irrelevant or unduly repetitious material and questions.

The hearings will begin with an introduction from MSHA, followed by an opportunity for members of the public to make oral presentations. The hearing panel will be available to address relevant questions. At the discretion of the presiding official, speakers may be limited to a maximum of 20 minutes for their presentations. In the interests of conducting productive hearings, MSHA will schedule speakers in a manner that allows all points of view to be heard as effectively as possible.

Verbatim transcripts of the proceedings will be prepared and made part of the rulemaking record. Copies of the hearing transcripts will be made available to the public for review.

MSHA will also accept for the record additional written comments and other related data from any interested party, including those who do not present oral statements. Written comments and data submitted to MSHA will be included in the rulemaking record. To allow for the submission of any post-hearing comments, the record will remain open until August 18, 1995.

B. Issues

Commenters posed various questions about the proposed rule. Of greatest concern to commenters are the issues discussed below.

1.
§§ 56/57.6000 Definition of Laminated Partition
§§ 56/57.6133 Powder Chests
§§ 56/57.6201 Separation of Transported Explosive Material.

Existing §§ 56/57.6000 defines the composition of a "laminated partition," that may be used to separate detonators from other explosive materials under .6133 and .6201. The existing definition also states that the IME–22 Container meets the criteria of a "laminated partition." This definition and the nominal dimensions of the partition were derived from the Institute of Makers of Explosives' (IME) Safety Library Publication No. 22, "Recommendations for the Safe Transportation of Detonators in a Vehicle with other Explosive Materials," 1985.

IME objected to allowing the container to be used in a manner that is inconsistent with their recommendations for proper and safe usage. IME states that the IME–22 Container should not be used as a "laminated partition" when certain detonators are transported with explosives or blasting agents in the same vehicle or stored together in powder chests.

Existing §§ 56/57.6133(b) allows the storage of detonators with other explosives in the same powder chests, as long as they are separated by 4-inches of hardwood, laminated partition, or equivalent. Similarly, existing §§ 56/57.6201 (a)(2) and (b)(2) allow the transportation of detonators with explosives as long as they are separated by 4-inches of hardwood, laminated partition, or equivalent. These current regulations make no distinction between different classes of detonators.

MSHA proposes minor revisions to the existing definition of "laminated partition." The proposal specifies the construction requirements for a "laminated partition" as described in the IME Safety Library Publication No. 22 (May 1993), and the Generic Loading Guide for the IME–22 Container (October 1993). For compliance with §§ 56/57.6133(b) and §§ 56/57.6201 (a)(2) and (b)(2), the definition would allow alternative construction as well.

In addition, the proposal would revise the existing requirements for Powder chests, §§ 56/57.6133, and Separation of transported explosive material, §§ 56/57.6201, and require that whenever operators use the IME–22 Container under these regulations, they must follow the manufacturer's instructions included in the IME Safety Library Publication No. 22, "Recommendations for the Safe Transportation of Detonators in a Vehicle with other Explosive Materials," (May 1993) and the "Generic Loading Guide for the IME–22 Container," (October 1993).

Some commenters objected to MSHA's reference to the IME publications because the mining industry has not had an opportunity to comment on these publications. These commenters state that the IME publications are recommendations rather than federal regulations intended for the mining industry.

Regarding the term "equivalent" as used in proposed §§ 56/57.6133 and §§ 56/57.6201, some commenters requested that the Agency define the term, or specify in the regulation that any material or combination of materials providing the same degree of protection against the initiating force of detonators is equivalent to 4-inches of hardwood. At this stage, MSHA believes it would be appropriate to make this clarification in the preamble to the final regulation.

Another commenter requested that MSHA clarify the intent of the phrase "4 inches of hardwood." At this stage,

MSHA believes it would be appropriate to do so by stating in the preamble to the final regulation that the purpose of the 4 inches of hardwood is not to contain the force of initiated detonators but to provide sufficient separation of explosive materials from detonators to impede propagation should detonators be initiated by outside forces.

Finally, commenters recommended that MSHA specify in the regulation that any transport of explosives over the public highways is subject to the requirements of the Department of Transportation, Title 49 of Code of Federal Regulations. MSHA intends to include this advisory in the preamble to the final rule.

MSHA requests comments regarding the compliance impact on the mining industry under §§ 56/57.6133 and §§ 56/57.6201 requiring that any laminated partition conform to IME's prescribed usage for their container, which is also a laminated partition. The IME documentation is currently available to commenters and is a part of the rulemaking record. However, MSHA will make this information available to commenters at the hearings.

2. Sections 56/57.6202 Vehicles

Existing paragraphs (a)(1) require that vehicles containing explosives be maintained in good condition. In the preamble to the final standard, some operators believed that the Agency intended for such vehicles to comply with licensing requirements of Federal, State, and local authorities for over-the-road use. These operators requested that the Agency clarify its position regarding the term "good condition." In response to commenters' concerns, MSHA clarified the intended meaning of this term through policy and will include this language in the preamble to the final regulation. MSHA policy provides that a vehicle in "good condition" must be consistent with safe operating practices.

3. Sections 56/57.6306 Loading, Blasting, and Security.

Existing paragraphs (a) of §§ 56/57.6306 prohibit vehicles and other equipment from being driven over explosive material or initiating systems. Existing paragraph (b) allows haulage activity near the base of the highwall being loaded, if no other haulage access exists.

MSHA's proposed standard would redesignate these paragraphs, without change, as new paragraphs (b) and (c).

The proposal also would add a new paragraph (a), which would require that when explosive materials or initiating systems are brought to the blast site, the area must be barricaded and posted, or flagged against unauthorized entry.

Commenters stated that this provision is unnecessary and arbitrary, because it would require the demarcation of the blast site regardless of the presence of authorized personnel. These commenters suggested that MSHA modify the language of the standard by incorporating by reference the requirements of existing §§ 56/57.6313, which requires identification of the blast site only when the site is not attended.

Existing paragraph (c) of §§ 56/57.6306 require that the loading process be continuous, with certain exceptions. Currently, MSHA standards permit interruptions in the loading process for unfavorable atmospheric conditions, large equipment failure, or circumstances beyond the operator's control.

Similarly, existing paragraphs (e) of §§ 56/57.6306 require the firing of the blast without undue delay, with certain exceptions to minimize the risk of a partial detonation. The same permissible interruptions recognized under existing paragraph (c) are identified in this standard as well. However, the standard specifies that if the interruption will exceed 72 hours, the operator must notify the appropriate MSHA District Office before the 72 hours have elapsed.

MSHA's proposal would revise and combine into paragraph (d)(1) existing paragraphs (c) and (e) and the security provisions of existing §§ 56/57.6313 requiring that areas in which loading is suspended or loaded holes are awaiting firing be attended, barricaded and posted or flagged against unauthorized entry. The proposal would also delete the 72 hour notification requirement of existing paragraph (e).

Proposed paragraph (d)(1) of §§ 56/57.6306 would require that loading and firing of a blast be performed without undue interruption or delay. If loading is interrupted or firing of the blast is delayed for any reason, the proposed standard would require that the mine be attended to prevent unauthorized entry to the blast site.

Proposed paragraph (d)(1) of § 57.6306, for underground mines only, would add an additional sentence specifying that underground areas are secure against unauthorized entry when the entrance to the mine is through vertical shafts and inclined shafts or adits when locked at the surface.

MSHA specifies in the preamble to the proposal that the presence of maintenance and other personnel during off-shift and weekends could satisfy the requirements of the proposal, provided they prevent unauthorized entry to the blast site when loading is interrupted or firing is delayed.

Commenters objected to the proposed requirements as unreasonable, costly and burdensome, and requested that MSHA clarify the standard, specifically to reflect that the mine be attended rather than the blast site. Further, these commenters suggested that MSHA delete the phrase "to prevent unauthorized entry to the blast site" from the proposal because they believe that blast site would be protected by the proposed requirements in paragraph (a). Finally, these commenters objected to MSHA's concerns for trespassers as the basis for the regulation.

Other commenters requested that MSHA define what constitutes "undue delay" within the proposed regulation.

With regard to the underground provisions of proposed paragraph (d)(1), commenters indicated that the provisions were unrealistic and broad in that in some instances, it is infeasible to require that inclined shafts and adits be locked or attended, since there are many multiple-adit mines that cannot be locked. Other commenters indicated that the underground requirements of proposed paragraph (d)(1) cannot be met without having a negative impact on compliance with MSHA ventilation requirements.

Proposed paragraph (d)(2) of §§ 56/57.6306 would require persons securing a blast site at a surface mine or at the surface area of an underground mine to withdraw from the blast site during the approach and progress of an electrical storm. For underground mines, MSHA proposes to include a new provision requiring that persons who are used to secure an underground blast site involving an electrical blasting operation capable of being initiated by lightning must be withdrawn from the blast site into a safe location. These proposed provisions are derived from existing §§ 56/57.6604, which requires the suspension of blasting operations and the withdrawal of all personnel from the blast area to a safe location during the approach and progress of an electrical storm.

Existing paragraphs (d) of §§ 56/57.6306 require that in electric blasting prior to connecting to the power source, and in nonelectric blasting, prior to attaching an initiating device, all persons vacate the blast area except persons in a blasting shelter or other safe location. MSHA's proposal would redesignate this provision as paragraph (e) without change.

Existing paragraphs (f) require clear escape routes from the blast area, and all access to the blast area be protected against entry. Existing paragraphs (g) require, in part, that post-blast examinations be conducted by a person having the ability and experience to perform the examination. No changes were proposed to these existing paragraphs.

4. Sections 56/57.6302 Separation of Explosive Material. Sections 56/57.6905 Separation of Explosive Material and Hang-Up Blasting

Existing paragraphs (a) of §§ 56/57.6302 require that explosives and blasting agents be kept separated from detonators until loading begins. Paragraphs (b) require that explosive material be protected from impact and temperatures in excess of 150 °F when taken to the blast site.

This standard was promulgated under the "Use" portion of the explosives regulations. Shortly after publication, MSHA received information indicating a need to clarify that explosive material must be protected from impact during transportation and storage as well. MSHA agrees and the proposal would expand the scope of existing paragraph (b) to the cover storage and transportation, in addition to use. The Agency received no comments concerning proposed §§ 56/57.6302 and proposed paragraphs (a) and (b) of §§ 56/57.6905.

Under MSHA's proposal, the existing requirements of paragraph (a) of §§ 56/57.6302 would remain unchanged. The proposal, however, would revise the section heading to "Separation of explosive material."

Proposed § 57.6905, would include a new paragraph (c), which would require the use of detonating cord to initiate explosives placed in raises, chutes and ore passes to free hang-ups. MSHA's proposed rule would not preclude the use of such devices as ballistic disks which are initiated by a detonating cord.

With regard to proposed paragraph (c) of § 57.6905, commenters found the proposal too restrictive in that it would limit commonly accepted methods of blasting. Specifically, these commenters stated that the use of detonating cord as proposed by MSHA may introduce inherent hazards such as fire from the ignition of timber, loosening timber or other supports, contributing to fly rock, and loosening rib and back. These commenters also believe that MSHA's proposed standard would restrict technological developments in this area and questioned MSHA's evidence for requiring that operators use detonator cord in blasting hang-ups.

5. Sections 56/57.6313, Blast Site Security

As explained above, existing §§ 56/57.6313 requires that areas in which loading is suspended or loaded holes are awaiting firing be attended, barricaded and posted, or flagged against unauthorized entry.

MSHA's proposed rule would revise and incorporate the security provisions of existing §§ 56/57.6313 into §§ 56/57.6306 to ensure that the blast site is secure at all times.

6. Sections 56/57.6602 Static Electricity Dissipation During Loading

Existing §§ 56/57.6602 address the build-up of static electricity during pneumatic loading or dropping of explosive material into a blasthole and require that when explosive material is loaded pneumatically or dropped into a blasthole in a manner that could generate static electricity, an evaluation must be made of potential static electricity hazards and the hazard must be eliminated before loading begins.

Following publication of the final rule, MSHA received technical information indicating that the scope of this provision may be too broad because the term "dropping" encompasses dropping, pouring, or auguring explosive materials into blastholes which are performed at a low velocity. As a result, the generation of static electricity is insufficient to initiate the primer.

MSHA clarified the scope of the final standard through policy by interpreting the standard to apply only to pneumatic loading of explosive material. As indicated in the PPL, MSHA intends to delete the term "dropping" from the introductory text of existing §§ 56/57.6602. Some commenters believe that the provision, as revised, would still be too restrictive.

7. Executive Order 12866 and the Regulatory Flexibility Act

Based on an analysis of the impact of the proposed rule, MSHA estimates that the total annual recurring cost impact would be about $70,000. All of these costs are attributable to the attended provision of paragraph (d)(1) of §§ 56/57.6306. The total cost impact on all small mines, those employing fewer than 20 miners, would be nominal.

Some commenters stated that MSHA significantly understates the expense that will result from this requirement. These commenters believe that they would either have to hire specific persons for security or use managerial personnel which would cost approximately $300,000 annually.

Another commenter stated that MSHA's analysis considered only medium-sized underground and most open pit mines, but did not adequately consider large mines.

Dated: June 2, 1995.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 95–14305 Filed 6–7–95; 12:07 pm]

BILLING CODE 4510–43–P

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30 CFR Parts 56 and 57

Public Meetings on Development of Program Policy Letters; First Aid Training for Selected Supervisors; and Examination of Working Places

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of public meetings.

SUMMARY: The Mine Safety and Health Administration (MSHA) will hold three public meetings to discuss the Agency's newly implemented process of soliciting public input on certain draft policy statements. The Agency will also discuss its draft policy statements which interpret existing MSHA regulations pertaining to metal and nonmetal mines concerning first aid training for selected supervisors, and draft policy statements which interpret existing MSHA regulations for metal and nonmetal mines concerning examination of working places.

DATES: MSHA requests that persons planning to participate in the public meetings notify the Agency at least five days prior to the public meeting date. All post-meeting written comments should be submitted by August 25, 1995. The public meetings will be held at the following locations: July 6 and 7, 1995 in Cleveland, Ohio; July 12 and 13, 1995, in Elko, Nevada; and July 19, 1995 in Dallas, Texas.

The meetings in Cleveland, Ohio and Elko, Nevada will commence immediately following the public hearings on MSHA's proposed rule on safety standards for explosives at metal and nonmetal mines. The public meeting in Dallas, Texas will commence on the date indicated, beginning at 9:00 a.m.

ADDRESSES: The public meetings will be held at the following locations:

1. July 6 and 7, 1995—Quality Inn Airport, 16161 Brookpark Road, Cleveland, Ohio 44142.

2. July 12 and 13, 1995—Holiday Inn, 3015 Idaho Street, Elko, Nevada 89081.

3. July 19, 1995—U.S. Department of Labor, 525 S. Griffin Street, 7th Floor, Room 754, Dallas, Texas, Zip 75202.

FOR FURTHER INFORMATION CONTACT: Rodric Breland, chief, Division of Safety, Metal and Nonmetal Mine Safety and Health, 703–235–8647.

SUPPLEMENTARY INFORMATION:

A. Public Participation

The purpose of these public meetings is to provide a forum for the mining community to informally and openly exchange ideas with MSHA about how best to implement current regulatory requirements.

All persons who notify MSHA in advance that they plan to speak will have time allotted to them for their presentations. MSHA requests that the notification identify the person and organization, the amount of time requested for the presentation, and the location where the presentation will be made. Written statements are not required, but participants are encouraged to submit written materials and a computer disk containing the same information.

There will be an opportunity for other persons, who have not made prior arrangements with MSHA and wish to speak, to register at the beginning of each public meeting.

Discussion and comments may address revisions as well as alternative language for the policy statements. No transcript will be made of these public meetings.

B. Background

On February 22, 1995, MSHA withdrew the following Program Policy Letters (PPL): PPL No. P94–IV–2, First Aid Training for Selected Supervisors; PPL No. P94–IV–4, Ventilation Plan; and PPL No. P94–IV–5, Examination of Working Places (60 FR 9986). On that date MSHA also informed the public of its intentions to establish a process which expanded public opportunity to comment on certain policies. As a part of the same notice, the agency requested public comment on draft interpretations of existing MSHA regulations at 30 CFR §§ 56/57.18010 concerning first aid training for selected supervisors, and 30 CFR §§ 56/57.18002 regarding examination of working places. Both draft interpretations pertain solely to metal and nonmetal mines.

C. Discussion of Comments

Some commenters opposed MSHA's new process for issuing policy and suggested that the Agency should utilize its statutory rulemaking process to revise the regulations rather than issue a policy statement. These draft Program Policy Letters are intended to be clarifying statements of what existing MSHA regulations mean and require. As such, they do not substantively alter the applicable regulations and rulemaking is not required.

56/57.18010—First Aid Training for Selected Supervisors

Some commenters agreed with this draft policy statement, while other commenters wanted to make certain that MSHA interpreted the regulations as requiring first aid assistance to sick or injured employees on each working shift. These other commenters suggested that the agency add to the course content subject matter by addressing patient assessment, artificial ventilation, control of bleeding, control of shock, wounds and dressing, burns and scalds, musculoskeletal injuries, handling and transportation, and immediate treatment of exposure to hazardous liquids and gases. Some other commenters objected to MSHA's interpretations of course content, duration, refresher requirements and posting of course schedules. In addition, some commenters requested that a record of first aid training be kept on file.

A few commenters objected to MSHA's interpretation that the regulations require first aid trained supervisors to be present at the mine site during all production shifts.

Some commenters suggested that MSHA allow registered nurses, emergency medical technicians and other medical professionals to qualify as "selected supervisors" under the regulations. These same commenters also suggested that noncompliance with the standard could be handled by MSHA's current enforcement tools without the draft policy statement.

56/57.18002—Examination of Working Places

Some commenters agreed with MSHA's draft policy statement, while other commenters questioned the qualifications of persons assigned by operators to conduct required examinations under the regulations. Some of these commenters also stated that the draft policy could encourage operators to delegate the responsibilities under the regulations to conduct these examinations by hourly employees, who do not represent management.

Regarding recordkeeping requirements of the regulations, some commenters suggested that MSHA interpret the regulations to include remedial action taken to address hazardous conditions found during the examination, in addition to the interpretation of recordkeeping requirements included in the draft policy. Commenters also objected to the recordkeeping portion of the draft policy statement as being too detailed and going beyond the regulatory requirement. Commenters also recommended that operators be allowed to certify daily that the examination was conducted in order to satisfy the recordkeeping requirements of the regulations.

One commenter indicated that MSHA is interpreting the regulations to require pre-shift examinations. MSHA encouraged operators to perform these examinations prior to commencement of work in an area. MSHA, however, clarifies in the draft policy statement that the regulations allow for the examinations to be performed at any time during the shift. MSHA has no intentions of citing operators if such examinations are not conducted prior to each shift.

These commenters also suggested that a trained miner be considered a "competent person" under the regulations. Additionally, these commenters objected to MSHA's interpretation of the standard's language that operators promptly initiate appropriate action in order to correct hazardous conditions as requiring operators to "promptly initiate the correction of any hazardous conditions that are found." These commenters support requiring withdrawal of all persons from affected areas in an imminent danger situation, but suggest that MSHA modify the draft program policy letter language to permit removing persons from the area and barricading or posting the area until it is safe for entry.

Dated: June 2, 1995.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

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DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 211

RIN 1010–AB45

Amendments of Regulations to Establish Liability for Royalty Due on Federal and Indian Leases, and To Establish Responsibility to Pay and Report Royalty and Other Payments

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Minerals Management Service (MMS), Royalty Management Program (RMP) proposes to amend its regulations to establish and clarify which persons may be held liable for unpaid or underpaid royalties, compensatory royalties, or other payments on Federal and Indian minerals leases. The proposed rules also would establish who is required to report and pay royalties on production from leases not in approved Federal or Indian agreements or leases in approved Federal or Indian agreements containing 100 percent Federal or Indian Tribal leases with the same lessor, the same royalty rate, and the same fund code for royalty distribution (hereinafter referred to as 100 percent Federal or Indian agreements). In the near future, MMS intends to issue a further notice of proposed rulemaking regarding who is required to report and pay royalties on production from leases in all other approved Federal or Indian Agreements.

DATES: Comments must be submitted on or before August 8, 1995.

ADDRESSES: Mail written comments, suggestions or objections regarding the proposed amendment to: Minerals Management Service, Royalty Management Program, Rules and Procedures Staff, P.O. Box 25165, MS 3101, Mail Stop 3101, Denver, Colorado 80225–0165.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Procedures Staff, telephone (303) 231–3432, FAX (303) 231–3194. Minerals Management Service, Royalty Management Program, building 85, P.O. Box 25165, Mail Stop 3101, Denver, Colorado 80225–0165.

SUPPLEMENTARY INFORMATION: The principal authors of this rule are members of a team of Minerals Management Service employees led by Cecelia Williams of the Office of Enforcement, Lakewood, Colorado, and attorneys from the Office of the Solicitor in Washington, D.C.

I. General

Since its formation in 1982, and following the mandate of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1701 *et seq.*, MMS improved substantially the process of accounting for and collecting royalties on mineral production from Federal and Indian leases. MMS implemented automated procedures to detect potentially unpaid and underpaid royalties after payors file their monthly royalty reports, and developed an effective audit program in conjunction with states and Indian tribes.

When MMS determines that royalties are underpaid for a Federal or Indian lease, MMS generally bills the person who filed a Payor Information Form (PIF) (Form MMS–4025 for oil and gas and Form MMS–4030 for solid minerals) for that lease, and that payor usually resolves the matter with MMS. However, sometimes that royalty payor no longer is able to pay (*e.g.*, it is bankrupt or otherwise out of business), or it asserts that someone else is responsible for the royalty payment. In other situations, an interest in the lease is assigned between the time the royalty obligation accrued and the time MMS discovers and orders payment. In such events, the current payor often does not agree to pay the deficiency, requiring MMS to determine who is liable for the royalty or other payment deficiency.

The purpose of these proposed rules is to establish and clarify which persons are liable, either individually or in conjunction with others, if royalties, compensatory royalties, or other payments due for a Federal or Indian lease are unpaid or underpaid. As explained in more detail below, this includes record title owners of a lease and operating rights owners other than record title owners. In addition, MMS would amend the Payor Information Form (PIF) (Form MMS–4025 for oil and gas and MMS–4030 for solid minerals), required under 30 CFR 210.10, to expressly provide that the payor agrees to pay any additional royalties owed on the production for which it reported royalties originally. Operators and other persons could be liable for the underpayments in certain circumstances. The rules further would clarify how liability attaches, and terminates, when a record title interest is assigned or operating rights are transferred. For the most part, these proposed rules are consistent with current MMS practice and procedures.

MMS also proposes to amend its rules to provide who is required to report and pay royalties on production from, or attributable to, leases not in approved Federal or Indian agreements or leases in 100 percent Federal or Indian agreements (all leases in the agreement have the same lessor, the same royalty rate, and the same fund code for distribution, *e.g.* same state or county). MMS is reserving for a further notice of proposed rulemaking rules regarding who is required to report and pay royalties on production from leases in all other approved Federal or Indian agreements.

Commenters must recognize that the standards for who is required to report and pay could be different from the standards for determining liability for underpayments. For example, as explained in more detail below, if you hold half of the record title interest in a Federal lease (that is not in an approved Federal or Indian agreement), you would be liable ultimately for 50 percent of the royalties due on production from that lease. However, under the proposed rules, the person who actually takes and sells the production from a lease that is not in an approved Federal or Indian agreement is required to report and pay each month, so you may not be the person required initially to report that production and remit the royalties. If that payor underpaid royalties, MMS may seek to collect additional monies from you, and then only for 50 percent of the production.

II. Section-by-Section Analysis

Subpart A—General Provisions

Section 211.10 Purpose

This section would explain that this part of the MMS rule is intended to address two principal issues. The first is to establish which persons are liable for royalty, compensatory royalty, and other payments on a lease by virtue of ownership of a lease interest or other connection to lease production. The second issue addressed in this part concerns which persons would be required to report and pay royalties on lease production each month or as otherwise required. However, as explained above, at this time MMS is proposing new rules addressing reporting and paying requirements only for leases not in approved Federal or Indian agreements or leases in 100 percent Federal or Indian agreements.

Section 211.11 Scope

This section would explain the general content of Subparts A, B, and C. Subpart A explains which leases the rules on liability and reporting and paying would apply to, and the definitions you would need to know. Subpart B establishes who would be liable under the leases set out in Subpart A and the extent of that liability. Subpart C explains who would be responsible for reporting and paying royalties on the leases set out in Subpart A, and would describe the obligations to report and pay properly.

Section 211.12 Leases to Which This Part Applies

This section would explain that the rules on liability contained in this part apply to all Federal and Indian mineral leases. This includes, but is not limited to, Indian oil and gas leases, onshore Federal oil and gas leases (whether on public domain or acquired lands, and regardless of the statute under which the lease was issued), oil and gas leases

on the Outer Continental Shelf (OCS), Federal and Indian coal leases, and Federal geothermal leases. Leases or other agreements under the Indian Mineral Development Act of 1982 also would be included.

As explained in more detail below, there will be situations where Federal or Indian leases are part of an approved Federal or Indian agreement (*e.g.*, a unit or communitization agreement) that includes state or fee leases. When the proposed rules refer to a lease, this includes only the Federal and Indian leases in that agreement.

Leases issued by private predecessors in interest to the Federal government, under which the Federal government subsequently became the lessor when it acquired land subject to such a lease, would not be included within the scope of these rules.

Section 211.13 Definitions

This section would include definitions of certain terms that are relevant to the regulations in this part.

- *Approved Federal or Indian agreement* would be defined as an agreement for exploration or development of mineral resources as described by 25 CFR Subchapter I, 30 CFR Subchapter B—Offshore, and 43 CFR Part 3000. This definition basically would incorporate existing descriptions of unit agreements and communitization agreements for Federal and Indian leases.
- *Compensatory Royalty* would be defined as the amounts the Bureau of Land Management (BLM) or Offshore Minerals Management assesses to compensate for failure to prevent drainage. This definition would basically summarize the BLM's regulations at 43 CFR 3100.2 (1993) and 43 CFR 3162.2(a) (1993). This term is separate and distinct from "other payments" defined below.
- *Operator* would be defined by referencing several existing definitions in 30 CFR and 43 CFR to maintain consistency between the proposed definition and existing definitions in departmental rules.
- *Operating rights owner (working interest owner)* would be defined as a person who owns or has been transferred operating rights in a lease subject to the regulations in this proposed new part. The operating rights owner could be the record title owner. However, the record title owner may transfer some or all of its operating rights to another person who may further transfer those rights. The operating rights owner has the right to take and sell production from a Federal or Indian lease, and is often referred to as the working interest owner. (*See* BLM rules at 43 CFR 3100.0–5(d)).
- *Other payments* would be defined to include, but not be limited to, rentals minimum royalties, bonuses, net profit share payments, gas storage agreement payments, late and erroneous reporting assessments, and late payment interest charges. The term is intended to include all payments due to MMS's Royalty Management Program (including payments directly to Indian lessors and other royalty recipients), except for compensatory royalty payments assessed for drainage. It would not include the cost of plugging and abandonment of wells, or other lease reclamation obligations.
- *Payor* would be defined by referencing several existing sections in 30 CFR to maintain consistency between the proposed definition and existing departmental rules. MMS proposes to combine the definition of payor at 30 CFR 208.2 with the payor rule at 30 CFR 210.51 which further defines payor. By combining the existent regulations, it is MMS' intent to make clear that a payor is the person who is responsible for reporting and paying royalties consistent with the liability provisions of this proposed rule in sections 211.14, 211.15, 211.16, 211.17, and 211.18.
- *Payor code* would be defined as the five-character code that MMS assigns to the persons required to report and pay royalties. The payor code uniquely identifies the persons responsible for reporting and paying royalties and other payments. The payor code is used on royalty reports, payments, and correspondence to MMS. Persons required to report and pay must obtain a payor code from MMS.
- *Payor Information Form (PIF)* would be defined as the Form MMS–4025 for oil and gas and geothermal resources, and Form MMS–4030 for solid minerals, as described in 30 CFR 210.10(c)(3) and (4). The PIF is a document that informs MMS who will report and pay royalties and other payments to the Federal or Indian mineral lessor. As explained below, the present PIF would be revised to provide expressly that the payor agrees to pay any additional royalties and other payments owed on production for which it reported, or should have reported, originally.
- *Person* would be defined basically the same as in FOGRMA at 30 U.S.C. § 1702(12). It would include, but not be limited to, any and all entities that report and make royalty and other payments to MMS or the Indian lessor.
- *Record title owner* would be defined as the person who has entered into a lease subject to this part or a person to whom the responsible leasing agency has approved assignment of all or part of the record title interest. This term also means the same as record title holder, record title interest owner, or lessee of record. The record title owner may transfer all or a part of the operating rights to another person and in fact may have no involvement in lease operations or the sale of production. After the record title owner transfers its operating rights, it usually maintains an overriding royalty interest, but the record title owner has no right to the production from or allocated to the operating rights it transferred.
- *Royalty* would be defined as any payment based on the volume or value of production from a lease subject to this part. This is basically the same definition as in FOGRMA, expanded to include other minerals.
- *Take* would be defined as occurring when the operating rights owner sells or removes production from or allocated to a lease, or when such sale occurs for the benefit of an operating rights owner. Production would be "taken" when it is removed from the lease or agreement. Production would not be "taken" if it is used on or for the benefit of the lease or agreement (and not subject to royalty under MMS rules), except for lease use gas for leases issued under section 6 of the Outer Continental Shelf Lands Act, 43 U.S.C. 1335 (because that gas is subject to royalty under the lease terms). Also, for purposes of these rules, a purchaser who receives production would not be considered to have "taken" the production.

Subpart B—Liability

Section 211.14 Who is Liable for Royalties and Other Payments Due on a Lease?

The purpose of this section is to provide a comprehensive explanation regarding which persons are liable to the MMS for royalties or other payments due on a lease. It does not apply to compensatory royalties which are addressed in the next section. It also does not apply to, or affect, other lease obligations such as plugging and abandonment.

Unless you are subject to one of the paragraphs in this part of the rule, you would have no liability. However, you may be liable under more than one paragraph. For example, as explained further below, you may be liable for royalty on half the production on the lease under paragraph (a) of this section because you own 50 percent of the record title. In addition, you could be liable for all the royalty on production under paragraph (b) of this section if you own operating rights in that lease and "take" 100 percent of that production.

a. *Record title owners.* Paragraph (a) of this section applies to record title owners. As explained in the definitions section, the record title owner is the person to whom the lease originally was issued, or the assignee of that person. You may be the record title owner for a whole lease or a portion of a lease. As a record title owner, you would be liable for royalties on the percentage of production from the lease that equals the percentage of your record title ownership in the lease. Therefore, if you are a 50 percent record title owner, and the MMS determines that the person who reported and paid royalties on the total production from the lease for a particular month undervalued that production, then you are responsible to MMS for 50 percent of the resulting underpayment plus any interest owed thereon. The amount of underpaid royalties or other payments would be determined through application of statutes, regulations (e.g., royalty valuation rules in 30 CFR Part 206), lease terms and orders.

It also is possible that you may be liable for royalties on production for a month that exceeds your percentage ownership of the lease. (Some leases may prescribe a royalty reporting period other than monthly. Because most leases are monthly, we will refer to the reporting "month" in this preamble. However, for your lease, a different period may be applicable). If you also own operating rights in the lease and for a month take production in an amount that exceeds your percentage of record title ownership, you are liable for the royalties due on that additional amount. Thus, if you are a 50 percent record title interest owner, but for a month you take 75 percent of the production, you are liable for the royalties due on 75 percent of the production. If MMS determines that the royalties on that production should be higher than what was paid, you are liable for those additional royalties plus interest.

When a lease is issued, the holders of record title also own operating rights in the lease. The liability of operating rights owners for royalties is addressed in the next section. It is important to understand, however, that under these proposed rules, even if you transfer a portion or *all* of your operating rights, you still are liable for royalties as the record title owner.

It also is important to remember that Subpart B of the proposed rules addresses only liability for royalty and other payments. It is Subpart C that establishes who must report and pay the royalties to MMS each month. Thus, even though you may have liability for unpaid or underpaid royalties for a production month, you may not be the person who is required initially to report and pay the royalties to MMS. For example, if you own 50 percent of the record title for the lease, but transferred all your operating rights to another person, you have no right to take production from the lease. However, if the person required to report and pay the royalties on the total lease production fails to pay, or underpays, MMS still would hold you liable for 50 percent of what was owed for that production.

As will be explained below, the record title owner is not the only person who is liable for royalty. In fact, several different persons may be liable, and the extent of each such person's responsibility is addressed in later sections of the rule. Section 211.14(a) would clearly provide that as a record title owner you are jointly and severally liable for the royalty and other payments (to the extent of your liability described above) with these other responsible persons including:

(1) Any person transferred some or all of the operating rights severed from your record title interest. This would include the original transferee and subsequent transferees. Note, however, the responsibility is limited to the extent of the transfer. Therefore, if you are the 100 percent record title owner, but transfer only 30 percent of your operating rights to another person, you and that person have joint and several liability for the 30 percent interest.

The transferee has no liability for the remaining 70 percent interest by virtue of holding operating rights—there may be liability for other reasons, discussed further below, such as a situation where that holder of 30 percent of the operating rights actually takes a greater percentage of the production.

(2) Any other person assigned or who has assumed the obligation to pay royalty due. By way of illustration, if the purchaser of production from your lease agrees in the sales contract to be responsible for the payment of all royalties, and if MMS determines royalties were underpaid, that purchaser would be liable for the royalties. However, you too would be liable up to the percentage of your record title interest or your takes if they are greater.

(3) Any person who filed a PIF with MMS for the production for which you are liable. As explained later in this preamble, if a person files a PIF for a lease and reports royalties for that lease, that person is liable for proper payment of royalties due on the production. Thus, if MMS determines that royalties were underpaid on that production, the filer of the PIF is responsible for the additional royalties. As a record title owner, you would be jointly and severally liable for those additional royalties up to the percentage of your record title interest or your takes if they are greater.

(4) Any other person liable under Part 211 for the royalty due for which you are responsible. This would be a general provision to cover an operator (but only in certain limited circumstances, discussed below), a person who takes production from your lease (under the limited circumstances discussed below), or any other person that is liable for royalty under the regulations in this subpart.

It is important to note that the joint and several liability described above is vertical, not horizontal. Therefore, if you are a 50 percent record title owner, you are not automatically liable for the debts of the other record title owners for the same lease (although liability may accrue by operation of other provisions of these regulations). However, if you are a 50 percent record title owner and transfer half of your operating rights, you would be jointly and severally liable with the transferee for the royalties and other payments due for the transferred operating rights interest.

Although this preamble has referred primarily to liability, including joint and several liability, for royalties, the rules also would apply to other payment obligations on the lease, including late payment charges, reporting assessment, and rentals. The proposed liability rules addressed above are intended to apply only to such payment obligations payable to MMS's Royalty Management Program or royalty recipients.

In these rules, MMS proposes that the record title owner's liability for payment of royalty and other payments be proportionate to its interest in a lease, because royalty and other payment obligations are divisible according to that interest. There are, however, other lease obligations of the several record title owners of a lease that are not divisible, including plugging and abandonment of wells, and other reclamation obligations. BLM enforces these and other lease obligations for onshore leases and MMS's Offshore Minerals Management program enforces lease obligations for offshore leases. These lease obligations are not subject to this rulemaking.

Liability for compensatory royalty payments, addressed in § 211.15, is also a lease obligation that is not divisible. Compensatory royalties are amounts assessed to compensate the Federal

Government when a lessee breaches its operational obligation to diligently protect the lease from drainage. *See Benson-Montin-Greer*, 123 IBLA 341 (1992); *See* 43 CFR 3100.2 and 3162.2(a). Just as the other means of satisfying the requirement to protect from drainage (drilling of an offset well or communitization) are indivisible, and thus joint and several, so is the alternative of compensatory royalty payments. It is proposed that the liability of a record title owner or operating rights owner for payment of compensatory royalty would not be proportionate to the share owned. In other words, each record title owner and operating rights owner would be jointly and severally liable for the total amount of compensatory royalty due.

As explained above, it is MMS's principal proposal in this rule that the liability of a record title owner for royalties and other payments is limited to its proportionate ownership interest in the lease, or takes if greater. However, MMS would like comment on whether MMS should hold each record title owner liable for the royalties and other payments due on all the production from the lease. In other words, under this alternative, all record title owners would be jointly and severally liable for all the royalties and other payments, like they are proposed to be for compensatory royalties. Commenters are requested to provide legal authority and citations to support their comments either in support of, or opposed to, this alternative proposal.

b. *Operating rights owners.* When a lease is issued, the record title owner owns operating rights for the lease equal to its percentage of record title. The operating rights owner is the person who has the right to take production from the lease equal to its percentage of operating rights ownership. The record title owner may sever some or all of its operating rights and transfer them to another person. In such event, under § 211.14.(b), if you are the transferee of the operating rights, you would incur liability for royalty due on production from, or allocated to, the lease, and for other payments, in the amount MMS determines to be owed. The liability would be determined essentially the same as for record title owners. Therefore, at a minimum, you would be liable for royalty and other payments based on a percentage equal to your percentage of operation rights ownership in the lease. To illustrate, assume a Lease is issued to Record Title Owner A and Record Title Owner B, each owning 50 percent. Record Title Owner A then transfers half of its operating rights to you. In this example, you would be liable for royalty due on 25 percent of the lease production. However, under proposed § 211.14(b)(1)(ii), if you actually take 40 percent of the production from the Lease and sell it, your liability extends to 40 percent of the production. Like record title owners, your liability exists even if you assigned the obligation to make the royalty payments to another person, such as the purchaser of the production.

Under proposed § 211.14(b)(2), if you own operating rights that were not transferred from your record title interest, paragraph (a) determines your liability. This is because your record title interest would be equal to or greater than your operating rights interest and would govern your liability. If you own operating rights that were transferred from the record title interest, you are jointly and severally liable for royalty and other payments with the person who holds the record title interest from which your operating rights were transferred. However, you are still only liable for your percentage interest. You are not jointly and severally liable for the percentage of the operating rights interest that the record title owner either retained or transferred to another person. But, if you take more than your percentage entitlement, then you expand your joint and several liability. Thus, if in the above-described example you take 40 percent of the production, Record Title Owner A takes 10 percent and Record Title Owner B takes 50 percent, you and Record Title Owner A are jointly and severally liable for 40 percent of the production. If the example is changed and you take 10 percent of the production and Record Title Owner A takes 40 percent, then you are jointly and severally liable with Record Title Owner A for royalty on 25 percent of the production (equal to your percentage of operating rights ownership). (Remember: this section addresses liability only. The responsibility to report and pay may be different and is addressed later.)

As an operating rights owner, you also would be jointly and severally liable with the same other persons as the record title owner described under proposed § 211.14(a), including:

- any other person assigned or who has assumed the obligation to pay royalty or make other payments,
- any person who filed a PIF for the production or other payments for which you are liable, and
- any other person who is liable for the payments under this part.

For operating rights owners, like for record title owners, MMS's principal proposal in these rules is to determine liability based on percentage of ownership, or takes if greater. MMS would like commenters to address whether it should provide instead that all operating rights owners are jointly and severally liable for all royalties and other payments due from the lease. Comments should include legal authority and citations in support of the comment.

c. *Persons who file PIFs with MMS.* Under MMS's current royalty accounting and collection procedures, any person may report and pay the royalties and other payments owed on lease production. It may be the record title owner, an operating rights owner, an operator or even a purchaser. However, the MMS's Automated Financial System (AFS) requires that a royalty payor file a Payor Information Form (PIF) (Form MMS–4025 for oil and gas and Form MMS–4030 for solid minerals) and be assigned a payor code before the system will accept the monthly Report of Sales and Royalty Remittance (Form MMs–2014). *See* the MMS "Oil and Gas Payor Handbook," Volume 1, at Chapter 2; and the MMS "Solid Minerals Payor Handbook" at Chapter 2.

When MMS determines either through its automated compliance procedures or an audit that royalties are underpaid, MMS will bill or order payment from the payor for that deficiency. The payor is billed because that is the person on whom MMS has information in its system regarding that production; MMS's Royalty Management Program does not maintain data on record title owners or operating rights owners. Therefore, while there are other persons who may be liable for some or all of the royalty deficiency (such as the record title owner or an operating rights owner), it is essential that MMS be able to look first to the payor for the underpayment. It would be the payor's responsibility to then seek appropriate contribution from other parties.

Under existing procedures, MMS has always considered that the person who filed the PIF would be liable for underpaid royalties. However, in *Mesa Operating Limited Partnership*, 125 IBLA 29 (Dec. 31, 1992), Mesa filed Payor Information Forms and paid MMS royalties on production it purchased from several Indian oil and gas leases. Mesa did not own any interest in these leases. MMS ordered Mesa to pay additional royalties found to be owed on these leases. Mesa administratively appealed MMS's order and the Interior Board of Land Appeals (IBLA) held that when Mesa filed the Payor Information Forms and made royalty payments, that

did not demonstrate that Mesa had been assigned and accepted the royalty payment responsibility.

Although the IBLA held Mesa to be liable for other reasons, MMS is proposing § 211.14(c) to clarify the liability for the person who files the PIF. Under this subsection, if you file a PIF, you would be liable in the amount MMS determines for any unpaid or underpaid royalties on the volumes for which you reported or should have reported. Thus, if you are a purchaser of lease production and file a PIF for that lease, you would be liable for the royalties and other payments owed on the volume of production you received in a month. If you file a PIF and arrange a sale or other disposition of lease production for the benefit of an operating rights owner on the lease, you would be liable for that volume. This would occur in situations where you are the lease operator or a marketer. Finally, under § 211.14(c)(1)(iii), you would be liable for the amounts due on the volume reported to MMS on the Report of Sales and Royalty Remittance (Form MMS–2014) with your payor code. You would be allowed to correct reporting errors and adjust those volumes accordingly.

Concurrently with this proposed rulemaking, MMS proposes to modify the PIF. The new PIF would include a statement that the person executing the PIF agrees to be liable for all the royalties owed on the production for which it reports, or should report, each month. The new PIF would provide for the payor to include its Taxpayer Identification Number. A draft of the new PIF is attached to this notice of proposed rulemaking as Appendix A (oil and gas, page 1) and Appendix B (solid minerals). Commenters are requested to provide comments on the draft PIF.

Under proposed § 211.14(c)(2), if you are liable for royalties and other payments because you filed a PIF, you would be jointly and severally liable with:

- All record title owners who are liable for that production;
- All operating rights owners who are liable for that production; and
- Any other person liable under the proposed rules for the royalties and other payments due on that production.

The MMS is aware that companies have been set up to perform the service of reporting and paying royalty to MMS. These companies complete and submit monthly reports and payments to MMS using their clients' MMS-assigned payor code. If you use one of these service companies to report and pay royalties, under the proposed rules, the service company does not incur any additional liability by virtue of submitting a Form MMS–2014 and payments on your behalf. You would be liable for any unpaid or underpaid royalties and other payments because the service company acted as an agent on your behalf.

d. *Operators.* Under proposed § 211.14(d), if you are a lease operator, you would not be liable for royalty or other payments due on a lease simply because you are the operator. You only would be liable to the extent that you also may be a record title owner or an operating rights owner under § 211.14 (a) or (b).

Also, you assume liability if you file a PIF under § 211.14(c), or if you otherwise agree to be liable for royalty and other payments, as discussed in the next paragraph. You also may be liable if a regulation of the Department of the Interior provides that the operator is liable for royalty or other payment. See 30 CFR 250.8 (1993); 43 CFR 3162.1 (1993).

e. *Other liable persons.* Proposed § 211.14(e) is intended to be a general provision to establish the liability of any person who agrees to be liable. For example, a purchaser or a marketer may agree by contract to pay royalties on behalf of an operating rights owner. In that event, that purchaser or marketer would be liable to the same extent as the person on whose behalf it agreed to pay.

While this rule proposes generally to hold co-tenants responsible only for their entitled share of the production from a Federal or Indian lease, or their takes if they are greater, the rule recognizes that co-tenants or working interest owners may have other contractual relationships which may increase their liability. For example, co-tenants may decide to develop a property as partners or joint venturers. In addition, a less formal organizational structure, known as a "mining partnership," also may result in expanded liability. The general rule of liability for all such joint venturers or partners is that each member is personally liable for all partnership obligations arising out of contract or tort. *Misco-United Supply, Inc.* v. *Petroleum Corp.*, 462 F.2d 75 (5th Cir. 1972).

f. *Operating rights owners of a lease in an approved Federal or Indian agreement.* The proposed liability rules in § 211.14(a)–(e) addressed thus far apply to all Federal or Indian leases, whether an individual lease or a lease that is included in an approved Federal or Indian agreement. However, for those Federal or Indian leases that are included in an approved Federal or Indian agreement, there are additional rules that would apply. Under proposed § 211.14(f), if you own operating rights in any Federal or Indian lease in the agreement, and you take production that is allocable to a Federal or Indian lease in that agreement, then you are liable for the royalties or other payments due on the production. What this means is that if you take production allocable to a Federal or Indian lease in your agreement, and you own operating rights in that lease or any other Federal or Indian lease in the agreement, MMS would hold you liable for royalties and other payments for that production. This would be the only section of the liability portion of these rules that could involve an interest owner with an interest in a lease other than the lease the production was from or attributable to.

For example, assume there is a unit that consists of four leases of equal acreage, two Federal leases (Federal A and Federal B), one state lease and one fee lease. Each lease is entitled to one-fourth of the unit production and each lease has only one operating rights owner. Assume that for the month of January 1994, the operating rights owner for the Federal A lease actually takes no production. Assume further that the operating rights owners for the Federal B and the state lease each take half of the production that was allocable to the Federal A lease. Under the proposed rule, the operating rights owner of the Federal B lease would be liable to MMS for royalty and other payments on the one-fourth of unit production allocable to the Federal B lease plus the portion of production it took that was allocable to the Federal A lease. The operating rights owner of the state lease would not be liable to MMS for royalty and other payments for the volume of production that it took that was allocable to the Federal A lease.

Under proposed § 211.14(f)(2), liability would be joint and several with the persons liable under the other subsections of the rule. Thus, in the above example, for the volumes allocable to the Federal A lease they took, the operating rights owners for the Federal B lease would be jointly and severally liable with the operating rights owners and record title owners for the Federal A lease (and, if applicable, any other liable party such as an operator or the filer of the PIF).

For this section MMS specifically would like comment on whether a Federal or Indian lessee, in an agreement should be held liable if it takes production from a Federal or Indian lease other than its own in an agreement situation. Commenters are requested to provide legal authority and citations in support of their comments.

g. *Other liability issues.* As explained earlier, the purpose of these rules is to address the legal issue of who is liable to MMS for royalty or other payments due on a lease. These rules do not address against whom MMS will take enforcement action if MMS discovers underpaid royalties. MMS is retaining the discretion to determine which person to pursue. However, since the liability of the person who files the PIF would be clearly established under these rules and the amended Forms, MMS–4025 and MMS–4030, in most cases MMS would issue a payment order to that person. That person could then seek contribution from other liable persons. While these proposed rules should make it easier to determine who all the liable parties are, it is not MMS's intention that these rules govern the relationship or liabilities between and among the affected parties other than MMS.

Section 211.15 Who is Liable for Payment of Compensatory Royalty?

The purpose of this section is to provide an explanation regarding which persons are liable to MMS for compensatory royalties due on a lease. If you are not subject to one of the paragraphs in this section, you would not be liable.

This section applies to record title owners. As explained in the definitions section, the record title owner is the person to whom the lease originally was issued, or the assignee of that person. You may be the record title owner for a whole lease or a portion of a lease. As a record title owner, no matter what your percentage interest, you are jointly and severally liable for the full amount of compensatory royalty owned with all other record title owners on that lease, all operating rights owners on that lease, and any other persons obligated to pay compensatory royalties under departmental rules.

This section also applies to operating rights owners. As explained in the definitions section, the operating rights owner is the person who has the right to take production from the lease equal to its percentage of operating rights ownership in the lease, or the transferee of that person. You may be the operating rights owner for a whole lease or a portion of a lease. As an operating rights owner, you are jointly and severally liable with all other operating rights owners on that lease, all record title owners on that lease, and any other person obligated to pay compensatory royalty under the regulations of the Department of the Interior, for payment of all compensatory royalty due on that lease, regardless of the percentage of your operating rights ownership interest in the lease. For example, if you are a 50 percent operating rights owner, and MMS determines compensatory royalties due on the lease equals $100,000, you are liable for the entire $100,000, not 50 percent of the $100,000.

It is important to note that, unlike liability for payment of royalties, liability for compensatory royalty is not proportionate to the ownership interest. In addition, unlike liability for payment of royalties, liability for compensatory royalty is joint and several among each liable group, i.e. horizontally as well as vertically. Therefore, if you are a 50 percent record title owner you are liable for payment of compensatory royalties with all other record title owners as well persons to whom you or another record title owner transferred operating rights.

Section 211.15 How Does Assignment of Record Title Interests or Transfer of Operating Rights Interests Affect Liability?

One of the other principal purposes of these proposed rules is to clarify how assignment of record title or transfer of operating rights affects the liability established in proposed § 211.14 or § 211.15. It is important to state at the outset that the rules proposed in this section, like the rules in the previous sections, relate only to liability for royalties and other payments, such as interest or assessments, or compensatory royalties, that are the responsibility of MMS's Royalty Management Program. They do not address responsibility for plugging and abandonment of wells, or other lease reclamation requirements. Under applicable law, a record title owner's responsibility for these other types of obligations may be different than what would be prescribed in these rules for royalty, compensatory royalty, or other payments.

Under paragraph (a) of this section of the proposed rule, if you are a record title owner and you assign some or all of your record title interest to another person, you would not be liable for royalties and other payments for the interest you assigned that accrue on or after the date of the assignment (unless you agree with the assignee to remain liable for those payments). However, under § 211.15 all record title owners are jointly and severally liable for compensatory royalties. Therefore, you would continue to be liable for compensatory royalties that accrue after the effective date of the assignment unless you assigned all of your record title interest in the lease.

Thus, for example, if you assign your record title and the effective date is January 1, you are liable for all obligations through December 31. If you assign only a part of your record title, your liability for royalties and other payments would extinguish only for the percentage assigned, but your liability for compensatory royalties would not end. Note, however, that the termination provision in this example relates only to liability under § 211.14(a) by virtue of record title ownership. You may continue to be liable for royalties or other payments if you retain operating rights, if you file a PIF for the production, or if you meet any of the other liability criteria in § 211.14 other than record title ownership. Your liability also may not end on the assignment date if a departmental regulation provides that your liability continues. In such event, that regulation would control.

Under § 211.16(a)(2), the person to whom you assign some or all of your record title interest would not be liable for royalties, compensatory royalties, or other payments for the percentage of the interest assigned that accrued prior to the effective date of the assignment (unless the assignee agrees to be liable for those payments). Therefore, if the effective date of the assignment is January 1, 1994, and in March 1994 MMS were to issue a payment demand for underpaid royalties that occurred for production in July 1993, the assignee would not be liable. This liability that accrued prior to the assignment would be the responsibility of the assignor. You should be aware, however, that a regulation of the leasing bureau could expand this liability to an earlier date.

The concepts embodied in the proposed rules for assignor/assignee liability are consistent with MMS administrative decisions. *See Branch Oil and Gas, MMS–88–0079–O&G (June 29, 1989).*

The limitations on liability just described apply only to royalty, compensatory royalty, and other payments. It may not apply to other lease obligations such as plugging and abandonment of wells under statutes, lease terms, or the regulations in Title 25, Title 30, or Title 43.

Under section 211.16(b), which is applicable to transfer of operating rights, the effects of that transfer are exactly the same as those described for assignment of record title. This section would apply to both a record title owner's transfer of operating rights and an operating rights owner's (who is not a record title owner) transfer of operating rights.

Section 211.17 How Does Liability Affect the Requirement to Report and Pay Royalties?

As stated earlier in this preamble, Subpart B of the proposed rules relates to liability, not to the requirement to report and pay royalties. Liability for royalties does not automatically mean that you are required to report and pay—it means that if the person required to report underpays, and if MMS does not resolve the underpayment with that person, then you are responsible for some or all of the deficiency.

The proposed rules on liability in § 211.14 rely in part on a person's "entitled share" of production, determined by its percentage of owned interest of record title or operating rights, to establish liability. However, as will be explained below regarding Subpart C, this would not mean that MMS is requiring reporting on what has been called an "entitlement" basis. In fact, it should be clear from these proposed rules that in actual situations where the lease is committed to an agreement in an approved Federal/Indian agreement, MMS proposes to rely on a "takes" system to establish who is obligated to report and pay royalties each month.

Subpart C—Reporting and Paying Royalties.

Subpart C would establish requirements for who is required to report and pay royalties each month on lease production. As explained above, all persons who are liable for royalties under Subpart B would not be required to report and pay. They would be responsible only if the person required to report and pay fails to pay or underpays.

Section 211.18 Who Is Required to Report and Pay Royalties?

Persons Who Take Production From Leases not in an Approved Federal or Indian Agreement

The basic requirement under the proposed rules is that if you are an operating rights owner who takes production from an individual lease that is not part of an approved Federal or Indian agreement, you must report and pay royalties for that production. If you own 40 percent of the operating rights for a lease, but you actually take 70 percent of the production for a month, you are required to report and pay on the 70 percent of the production you take.

As explained earlier, only the operating rights owners may take production from a lease. An operator or purchaser who is not an operating rights owner may be involved in the sales transaction, but they do not take production for purposes of these rules.

Under § 211.18(a)(1) of the proposed rule, if you take production and are required to report and pay, you must:

1. File a PIF with MMS as specified in 30 CFR Part 210 and the MMS Payor Handbook.
2. Report the volume and value of production and royalties owed on a Form MMS–2014.
3. Pay the royalties owed as specified in 30 CFR Part 218 and the MMS Payor Handbook.

However, as described below, under section 211.18(d), another person may agree to report and pay on your behalf.

Persons who Take Production Allocable to Leases in Approved Federal or Indian Agreements Containing 100 Percent Federal or Indian Tribal Leases

If all of the leases in an agreement have the same lessor, the same royalty rate, and the same fund code for royalty distribution (*e.g.*, all the leases are on the OCS and not subject to 43 U.S.C. 1337(g), all the leases are public domain leases in the same state, or all the leases have the identical Tribal Indian lessor), it would appear to not be necessary to specifically identify the individual leases in the agreement to which the production is attributable. Royalties would be reported and paid to the lessor on 100 percent of agreement production each month. Therefore, MMS is considering a simplified reporting procedure.

The current reporting requirements mandate that production be treated and reported for the lease to which it is attributable. *See* 30 CFR 202.100(e). MMS is considering allowing the taking party to report and pay royalties on the total volume taken on one or more of its AID numbers associated with the agreement without concern about which lease in the agreement the production actually is attributable to. However, for those payors whose production is committed to a royalty-in-kind contract, it would be necessary for them to continue to report volumes for the specific AID number for the leases committed to that contract. MMS proposes this option because specific lease identification is not necessary in these circumstances since all leases have the same lessor, royalty rate, and royalty distribution.

If this proposed rule is adopted, MMS would modify the Payor Handbook to reflect this simplified reporting. In addition to this method of simplified reporting, MMS also is considering simplified reporting at the agreement level, similar to how production is now reported. Under this option, MMS would establish a single AID number for each participating area in the agreement. Each party taking production from the agreement would report to MMS on this AID number.

MMS would report this information to the royalty recipient (States or Bureau of Indian Affairs) and they would then make further distribution to the actual owners or royalty recipients.

Each expansion or contraction of an existing unit would be reviewed to determine if the new participating area qualifies to be reported in this manner. If it does not meet the criteria for this type of reporting, MMS would assign a new agreement AID number to the property. (This option could be applied to all agreements, not just those that meet the criteria).

Again, as discussed below, another person may agree to report and pay royalties on your behalf.

Persons Who Take Production Allocable to Federal or Indian Leases in all Other Approved Federal or Indian Agreements

For leases in agreements containing a mixture of Federal, Indian, State, and/or fee leases or containing leases with varying royalty rates or funds distributions (called mixed agreements), MMS is not proposing any reporting or payment requirements under this rulemaking. At this time, MMS has chartered a Federal negotiated rulemaking committee **Federal Register**, 59 FR 32943, June 27, 1994) comprised of Federal, industry, and State representatives to develop a negotiated rulemaking that would address, among other matters, how to report and pay royalties for these mixed agreements. Therefore, until this committee completes its chartered task, MMS is not proposing rules for this section. Once the committee is finished, MMS will issue a further notice of proposed rulemaking with a recommendation for reporting and paying royalties for these mixed agreements.

What if Another Person Agrees To Report and Pay for You?

You may be relieved of the requirement to report and pay royalties under §§ 211.18(a)–(c) if another person files a PIF under its name and reports and pays the royalties for the production for which you are required to report and pay under §§ 211.18(a)–(c). For example, this could be an operator or a purchaser who would follow the requirements specified above. However, this relief relates only to the reporting and payment obligation, therefore, you

still would be liable for any unpaid or underpaid royalties under § 211.14.

Liable Persons Who MMS Requires To Report and Pay

Under proposed § 211.18(e), MMS may require any person liable for royalty payments under subpart B to report and pay. This could be necessary where the person principally required to report and pay under § 211.18 fails to do so.

Section 211.19 What Are the Obligations for Proper Reporting and Paying?

How to report and pay. This paragraph would state that if you are required to report and pay under § 211.18, then you must do so timely, accurately, and in the manner MMS specifies. This requires following instructions in the MMS Payor Handbook and the valuation regulations in 30 CFR Parts 202 and 206.

What you must do if you report or pay royalties incorrectly. Under this proposed paragraph, if you do not report and pay royalties properly, MMS may require you to submit amended reports and pay additional royalties.

III. Procedural Matters

The Regulatory Flexibility Act

The Department certifies that this rule will not have significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 611 *et seq.*). The proposed rule will establish and clarify which persons are liable for unpaid or underpaid royalties, compensatory royalties, or other payments on Federal and Indian mineral leases. The proposed rule also clarifies who is required to report and pay royalties on production from those leases.

Executive Order 12630

The Department certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared under Executive Order 12630, "Government Action and Interference with Constitutionally Protected Property Rights."

Executive Order 12778

The Department has certified to the Office of Management and Budget that these final regulations meet the applicable standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778.

Executive Order 12866

This document has been reviewed under Executive Order 12866 and is not a significant regulatory action requiring Office of Management and Budget review.

Paperwork Reduction Act of 1980

The rule contains revised Payor Information Forms, therefore this rule will be submitted to the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act of 1969

We have determined that this rulemaking is not a major Federal action significantly affecting the quality of the human environment, and a detailed statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects in 30 CFR Part 211

Coal, Continental shelf, Geothermal energy, Indians-lands, Mineral resources, Mineral royalties, Natural gas, Oil, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: March 21, 1995.

Bob Armstrong,

Assistant Secretary—Land and Minerals Management.

For the reasons set up in the preamble, 30 CFR Part 211 is proposed to be added as follows:

PART 211—LIABILITY FOR ROYALTY DUE ON FEDERAL AND INDIAN LEASES AND RESPONSIBILITY TO REPORT ROYALTY AND OTHER PAYMENTS

Subpart A—General Provisions

Sec.

211.10 Purpose.
211.11 Scope.
211.12 Leases to which this part applies.
211.13 Definitions.

Subpart B—Liability

211.14 Who is liable for royalties and other payments due on a lease.
211.15 Who is liable for payment of compensatory royalty?
211.16 How does assignment of record title interests or transfer of operating rights interests affect liability?
211.17 How does liability affect the requirement to report and pay royalties?

Subpart C—Reporting and Paying Royalties

211.18 Who is required to report and pay royalties?
211.19 What are the obligations for proper reporting and paying?

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*; 1801 *et seq.*.

Subpart A—General Provisions

§ 211.10 Purpose.

Part 211 establishes who is liable for royalty, compensatory royalty, and other payments due on Federal and Indian leases. This part also establishes who must report and pay those royalties.

§ 211.11 Scope.

(a) Subpart A explains which leases are subject to this part and what definitions you need to know.

(b) Subpart B explains whether you are liable for royalties, compensatory royalties, or other payments under those leases and the extent of your liability. Nothing in this subpart applies to, or affects, liability for other lease obligations.

(c) Subpart C explains whether you must report and pay royalties on those leases and what your obligations are to report and pay properly.

(d) As explained under Subparts B and C, your liability may be different from your obligation to report and pay royalties.

§ 211.12 Leases to which this part applies.

This part applies to the following leases:

(a) Oil and gas leases subject to 30 U.S.C. § 1701 *et seq.* These leases include Federal onshore leases, Indian leases, and leases on the Outer Continental Shelf.

(b) Coal and other solid mineral leases and agreements that the Secretary of the Interior administers under the mineral leasing laws. These leases include Federal and Indian leases.

(c) Geothermal leases issued under the Geothermal Steam Act of 1970, 30 U.S.C. 1001 *et seq.*

(d) Leases or other agreements under the Indian Mineral Development Act of 1982.

(e) Other mineral leases or agreements for which the Secretary of the Interior collects royalty and other payments.

§ 211.13 Definitions.

In determining if you are liable or if you must report and pay royalties, the following definitions apply:

Approved Federal or Indian agreement—means an agreement for exploration or development of mineral resources as described at 25 CFR Subchapter I, 30 CFR Subchapter B-Offshore, and 43 CFR Part 3000.

Compensatory royalty—means the amount the Bureau of Land Management assesses to compensate for failure to prevent drainage under 43 CFR 3100.2 and 43 CFR 3162.2(a).

Operator—means a person as defined by 30 CFR 208.3—Royalty in kind; 30 CFR 216.6—Production accounting; 30 CFR 250.2—Offshore. Persons defined as operators in the following sections are included within the definition of operator in this section: 43 CFR 3100.0–5—Onshore Leasing: General; 43 CFR 3200.0–5(v)—Geothermal Resources Leasing: General; or 43 CFR 3400.0–5(cc)—Coal Management: General.

Operating rights owner (working interest owner)—means a person who owns operating rights in a lease that is subject to this part. A record title owner is the owner of operating rights under a lease except to the extent that the operating rights or a portion thereof have been transferred from record title.

Other payments—includes, but is not limited to, payments or assessments such as rentals, minimum royalties, bonuses, net profit share lease payments, gas storage agreement payments, late and incorrect reporting assessments, and late payment interest charges.

Payor—means any person responsible for reporting and paying royalties from a Federal or Indian lease or leases on Form MMS–2014, as defined in 30 CFR § 208.2 and as further defined in 30 CFR § 210.51.

Payor code—means the five-character MMS-assigned code that uniquely identifies the company or individual responsible for reporting and paying. It is used on royalty reports, payments, and correspondence to MMS.

Payor Information Form (PIF)—means Form MMS–4025 for oil, gas, and geothermal resources and Form MMS–4030 for solid materials, as described in 30 CFR 210.10(c)(3)(4).

Person—means any individual, firm, corporation, association, partnership, consortium, or joint venture (when established as a separate entity). The term does not include Federal agencies.

Record title owner—means the person who has entered into a lease subject to this Part or the person to whom the leasing agency has approved the assignment of all or a portion of the record title interest. For purposes of this Part, record title owner means the same as record title holder, record title interest owner, and lessee of record.

Royalty—means any payment based on the amount or value of production of oil, gas, or other minerals from the Outer Continental Shelf, Federal, or Indian lands, under any provision of a lease.

Take—occurs when the operating rights owner sells or removes production from or allocated to a lease, or when such sale or removal occurs for the benefit of an operating rights owner.

Subpart B—Liability

§ 211.14 Who is liable for royalties and other payments due on a lease?

This section establishes which persons are liable for royalty or other payments due on a lease. You are not liable for royalty or other payments due on a lease except as provided in this section. However, you may be liable under more than one paragraph of this section. The limitation on liability established in this section applies only to royalty and other payments. This limitation does not apply to compensatory royalty and may not apply to other lease obligations established under statute, lease terms, or regulations in Title 25, Title 30, or Title 43.

(a) *Record title owners.*

(1) If you are a record title owner of a lease, you are liable for royalty due on production from or allocated to the lease, and for other payments, in the amount MMS determines under applicable statutes, lease terms, regulations, or orders. You remain liable even if you transfer some or all of your operating rights to another person or if you assign to another person the obligation to report and pay royalty on some or all of the production, or to make other payments. You are liable for royalties or other payments owed on:

(i) The percentage of production equal to the percentage of your record title ownership in the lease; and

(ii) The portion of production you take in a month that exceeds the volume in paragraph (a)(1)(i) of this section.

(2) If you are a record title owner, you are jointly and severally liable for the royalty or other payments due as described in paragraph (a)(1) of this section with:

(i) Any person who owns some or all of the operating rights for the lease that were transferred from the record title interest you currently own, but only to the extent of the transfer;

(ii) Any other person assigned or who has assumed the obligation to pay royalty due on the production or to make other payments for which you are liable;

(iii) Any person who filed a PIF with MMS for the production or other payments for which you are liable; and

(iv) Any other person liable under this part for the royalty due on the production, or for the other payments, for which you are liable.

(b) *Operating rights owners.*

(1) If you own operating rights that were not transferred from the record title interest, paragraph (a) determines your liability for royalty and other payments due on a lease. If you own operating rights that were transferred from the record title interest for a lease, you are liable for royalty due on production from or allocated to the lease, and for other payments, in the amount MMS determines under applicable statutes, lease terms, regulations, or orders. You are liable even if you assigned the obligation to pay royalty on some or all of the production, or to make other payments, to another person. You are liable for:

(i) The percentage of royalties or other payments owed that equals the percentage of your operating rights ownership in the lease; and

(ii) The portion of production you take that exceeds the volume in paragraph (b)(1)(i) of this section.

(2) If you own operating rights that were transferred from the record title interest, you are jointly and severally liable for the royalty or other payments due as described in paragraph (b)(1) of this section with:

(i) The person who owns the record title interest from which your operating rights were transferred;

(ii) Any other person assigned or who has assumed the obligation to pay royalty due on the production or to make other payments for which you are liable;

(iii) Any person who filed a PIF with MMS for the production or other payments for which you are liable; and

(iv) Any other person liable under this part for the royalty due on production or for the other payments for which you are liable.

(c) *Persons who file PIFs with MMS.*

(1) If you file a PIF with MMS, you are liable for royalty and other payments due on the production from or allocated to the lease specified on that PIF in the amount MMS determines under applicable statutes, lease terms, regulations, or orders. You are liable under this paragraph whether or not you own a record title interest or an operating rights interest in the lease. You are liable for royalties and other payments due on that production under one or more of the following paragraphs:

(i) The volume received in a month if you purchase production from or allocated to a lease.

(ii) The volume delivered in a month if you arrange a sale or other disposition of production from or allocated to the lease for the benefit of an operating rights owner on the lease.

(iii) The volume reported to MMS on the Report of Sales and Royalty Remittance (Form MMS–2014) with your payor code.

(2) If you file a PIF with MMS, you are jointly and severally liable for the royalty or other payments due as

described in paragraph (c)(1) of this section with:

(i) All record title owners who are liable for the royalty due on the production and for other payments;

(ii) All operating rights owners who are liable for the royalty due on the production and for other payments; and

(iii) Any other person liable under this part for the royalty due on production or for other payments for which you are liable.

(3) If another person uses your payor code to report royalties on Form MMS–2014, that person is not liable for those royalties solely on the basis of that reporting. However, that person may be liable under paragraphs (a), (b), (d), or (e) of this section.

(d) *Operators.*

(1) If you are an operator, you are liable for royalty or other payments due on a lease only if:

(i) You are subject to paragraph (a) or (b) of this section to the extent you are a record title or operating rights owner; or

(ii) You are subject to paragraph (c) of this section by filing a PIF; or

(iii) You are subject to paragraph (e) of this section by assuming royalty or other payment liability by contract or agreement; or

(iv) You are liable under a regulation of the Department of the Interior.

(e) *Other liable persons.*

(1) You are liable for royalty or other payments due in the amount MMS determines under applicable statutes, lease terms, regulations, or orders if:

(i) You have a contract or other agreement to assume that liability on behalf of another person who is liable for those royalties or other payments under this subpart; or

(ii) Liability is established under a regulation of the Department of the Interior.

(f) *Operating rights owners of a lease in an approved Federal or Indian agreement.*

(1) You are liable for the royalty and other payments due on production allocated to a Federal or Indian lease in an approved Federal or Indian agreement in the amount that MMS determines under applicable statutes, lease terms, agreement terms, regulations, or orders if:

(i) You own operating rights in that lease or in another Federal or Indian lease in that agreement and

(ii) You take that production specified under paragraph (f)(1) of this section.

(2) If you own operating rights and take production as provided in paragraph (f)(1) of this section, you are jointly and severally liable for the royalty and other payments with any other person who is liable for the payments under this subpart.

§ 211.15 Who is liable for payment of compensatory royalty?

If you are a record title owner or operating rights owner of all or a portion of a lease, you are jointly and severally liable for payment of all compensatory royalty owed for that lease with:

(a) All other record title owners on that lease;

(b) All other operating rights owners on the lease; and

(c) Any other persons obligated to pay compensatory royalties under regulations of the Department of the Interior.

§ 211.16 How does assignment of record title interests or transfer of operating rights interests affect liability?

(a) If you assign some or all of your record title interest in a lease to another person:

(1) You are not liable for royalties and other payments that accrue on or after the effective date of the assignment for the percentage of the interest you assign, except as provided in a regulation of the Department of the Interior or unless you agree with the assignee to remain liable for those payments. You will continue to be liable for compensatory royalties that accrue for a lease after the effective date of the assignment, unless you assigned all of your record title interest in that lease.

(2) The person to whom you assign some or all of your record title interest is not liable for royalties, compensatory royalties, or other payments for the percentage of the interest assigned that accrued prior to the effective date of the assignment, except as provided in a regulation of the Department of the Interior or unless the assignee agrees to be liable for those payments.

(3) The limitations on liability established in this section apply only to royalty, compensatory royalty, and other payments. This limitation may not apply to other lease obligations established under statutes, lease terms, or regulations in Title 25, Title 30, or Title 43.

(b) If you transfer some or all of your operating rights interest in a lease to another person:

(1) You are not liable for royalties and other payments that accrue on or after the effective date of the transfer for the interest you transfer, except as provided in a regulation of the Department of the Interior or unless you agree with the transferee to remain liable for those payments. You will continue to be liable for compensatory royalties that accrue for a lease after the effective date of the transfer, unless you transferred all of your operating rights interest in that lease.

(2) The person to whom you transfer some or all of your operating rights interest is not liable for royalties, compensatory royalties, or other payments for the interest transferred that accrued prior to the effective date of the transfer, except as provided in a regulation of the Department of the Interior or unless the transferee agrees to be liable for those payments.

(3) The limitations on liability established in this section apply only to royalty, compensatory royalty, and other payments. This limitation may not apply to other lease obligations established under statutes, lease terms, or regulations in Title 25, Title 30, or Title 43.

§ 211.17 How does liability affect the requirement to report and pay royalties?

Not all persons liable for royalty or other payments due on a lease are required to report and pay those amounts to MMS. Subpart C establishes the requirements for who reports and pays.

Subpart C—Reporting and Paying Royalties

§ 211.18 Who is required to report and pay royalties?

You must report and pay royalties for Federal and Indian leases in accordance with this section. You also must report and pay royalties in accordance with applicable statutes, lease terms, regulations, and orders, and submit corrected reports or payments to MMS.

(a) *Persons who take production from leases not in an approved Federal or Indian agreement.*

Except as provided in paragraph (d) of this section, if you are an operating rights owner who takes production from a Federal or Indian lease that is not included in an approved Federal or Indian agreement, you must report and pay royalties and other payments on the production you take. You must:

(1) File a PIF with MMS as specified in Part 210 of this chapter and the MMS Payor Handbooks (see §§ 210.54 and 210.204 for availability)

(2) Report the royalties owed on a Form MMS–2014 as specified in Part 210 of this chapter and the MMS Payor Handbooks; and

(3) Pay royalties as specified in Part 218 of this chapter and the MMS Payor Handbooks.

(b) *Persons who take production allocable to leases in approved Federal or Indian agreements containing 100 percent Federal or Indian tribal leases.*

(1) This paragraph provides requirements and instructions for reporting and paying royalties and other payments for:

(i) Leases in an approved Federal agreement comprised only of Federal leases that each have the same royalty rate and funds distribution requirement; and

(ii) Approved Indian agreements comprised only of Indian tribal leases that each have the same royalty rate and tribal lessor.

(2) Except as provided in paragraph (d) of this section, if you are an operating rights owner who takes production allocated to a lease in an agreement under this paragraph, you must report and pay royalties on the production you take. You must:

(i) File a PIF with MMS as specified in Part 210 of this title and the MMS Payor Handbooks;

(ii) Report the royalties owed for that production on a Form MMS–2014. You must use one or more of your MMS-assigned lease accounting identification numbers (AID). Also, you must follow the instructions provided in Part 210 of this title and the MMS Payor Handbooks; and

(iii) Pay royalties on that production as specified in Part 218 of this title and the MMS Payor Handbooks.

(c) *Persons who take production allocable to Federal or Indian leases in all other approved Federal or Indian agreements.* [Reserved]

(d) *What if another agrees to report and pay for you?* If another person files a PIF under its own name and reports and pays royalties for the production for which you are required to report and pay under paragraphs (a)-(c) of this section, then you are not required to report and pay under paragraphs (a)-(c) of this section. However, you are not relieved of any underlying liability you may have on the lease and you may be required to report and pay under paragraph (e) of this section. The person filing the PIF under its own name must follow the requirements under paragraphs (a)-(c) of this section for the royalty or other payments due.

(e) *Liable persons who MMS requires to report and pay.* MMS may require any person liable for royalty or other payments under Subpart B of this part to report and pay royalties as provided by this subpart.

§ 211.19 What are the obligations for proper reporting and paying?

(a) *How to report and pay.*

If you are required to report and pay royalties under § 211.18, you are obligated to report and pay those royalties timely, accurately, and in the manner MMS specifies. Instructions for timely and proper reporting are provided under Parts 210 and 218 of this title and in the MMS Payor Handbooks. You also must report accurate volumes and values of production on which royalties are due under applicable statutes, lease terms, regulations, or orders. Parts 202 and 206 of this title provide instructions for proper valuation and volume determinations.

(b) *What you must do if you report or pay royalties incorrectly.*

If you incorrectly report or pay royalties, you must submit corrected reports or payments, or both, to MMS. Also, MMS may require you to:

(1) Submit adjustments on Form MMS–2014;

(2) Correct production regarding sales exceptions;

(3) Comply with audit orders to perform;

(4) Pay bills;

(5) Pay applicable late-payment charges; and

(6) Pay civil penalties.

Note: The Following Appendices A and B will not appear in the Code of Federal Regulations.

BILLING CODE 4310–MR–M

APPENDIX A

U.S. DEPARTMENT OF THE INTERIOR
Minerals Management Service
Royalty Management Program

PAYOR INFORMATION FORM

OMB 1010-0033
(Expires June 30, 1997)
The Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) requires us to inform you that this information is being collected to set up an automated accounting data base for Federal and Indian oil and gas lease production and sales. MMS will use the information to monitor and collect rents and royalties due the Government and Indians.

Public reporting burden for this form is estimated to average one-half hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining data, and completing and reviewing the form. Direct comments regarding the burden estimate or any other aspect of this form including suggestions for reducing this burden to the Information Collection Clearance Officer, Mail Stop 2053, Minerals Management Service, 381 Elden Street, Herndon, Va 22070; and the Office of Management and Budget, Paperwork Reduction Project (1010-0033), Washington, DC 20503.

PAYOR NAME _____ PAYOR CODE _____

PERSON TO CONTACT _____ AREA CODE _____ TELEPHONE NUMBER _____ EXTEN. _____

☐ EMPLOYER IDENTIFICATION NUMBER
OR
☐ SOCIAL SECURITY NUMBER

SECTION I PAYOR INFORMATION

_____ agrees that as of the start date of this PIF and until the date the PIF is end dated, it is liable for the payment of all royalties, rents, and other payments due on production reported to MMS, or production which should have been reported to MMS, for the revenue source and selling arrangement for the lease specified on this PIF. _____ agrees that it will pay the amount MMS determines to be due under applicable statutes, lease terms, regulations and orders.

The undersigned individual represents and warrants that he/she is authorized to enter into this agreement on behalf of _____.

Date: _____ By: _____

Title: _____

SECTION II LEASE INFORMATION

Bureau of Land Mgmt. / Outer Continental Shelf Lease No. or Bureau of Indian Affairs Contract No. _____

MMS Lease No. _____

SECTION III

A) LEASE LEVEL PAYMENTS

FILL IN A., B., OR BOTH

☐ ADD
☐ CHANGE
☐ DELETE

START DATE _____ MO. DAY YR.

END DATE _____ MO. DAY YR.

RENTAL (RN) ☐ RENT RECOUPMENT (RR) ☐

MINIMUM ROYALTY (MR) ☐ OTHER (Well Fees, Gas Storage, Etc.) ☐

B) ROYALTIES ON PRODUCTION

ROYALTY RATE _____ REVENUE SOURCE CODE _____

YOUR INTERNAL ID (NAME/NO.) _____

☐ UNITIZED PRODUCTION ALLOCATION (COMPLETE (C) UNIT AGREEMENT DATA)

☐ COMMUNITIZED PRODUCTION ALLOCATION (COMPLETE (C) COMM. AGREEMENT DATA)

☐ LEASE PRODUCTION (COMPLETE (D) WELL DATA)

☐ COMPENSATORY ROYALTY

C.) UNIT/COMM AGREEMENT DATA (APPROVED AGREEMENT DATA ONLY)

UNIT NAME (COMM. WELL NAME) _____

PARTICIPATING AREA (COMM. FORMATION) _____

BLM/OCS AGREEMENT NO _____

MMS AGREEMENT NO _____ TRACT NO. _____ TRACT % _____

D.) WELL DATA (Use Well Data Continuation Sheet To List Additional Lease Basis Wells)

1.) WELL NAME _____ FORMATION _____

API WELL NO. _____

ST. CNTY. WELL CODE S/T CMPL -OR- LOCATION 1/4 1/4 SEC. TOWNSHIP RANGE

COMMENTS:

FORM MMS-4025 (REV. 10/94)

APPENDIX B

OMB 1010-0064
(Expires 4/30/97)

U.S.DEPARTMENT OF THE INTERIOR
Minerals Management Service
Royalty Management Program

PAYOR INFORMATION FORM
SOLID MINERALS

FEDERAL ☐ INDIAN ☐ CHECK IF REVISED ☐

PART 1: COMPANY DATA

Company Name		Payor Code	MA-
Address		City, State, Zip	
Person to Contact		Phone Number/Extension	

☐ EMPLOYER IDENTIFICATION NUMBER OR ☐ SOCIAL SECURITY NUMBER

_____ agrees that as of the start date of this PIF and until the date the PIF is end dated, it is liable for the payment of all royalties, rents, and other payments due on production reported to MMS, or production which should have been reported to MMS, for the revenue source and selling arrangement for the lease specified on this PIF. _____ agrees that it will pay the amount MMS determines to be due under applicable statutes, lease terms, regulations and orders.

The undersigned individual represents and warrants that he/she is authorized to enter into this agreement on behalf of _____.

By: _____

Title: _____

Date: _____

PART 2: LEASE DATA

MMS Lease Number or BLM/BIA Number				
Lease producing - Y/N Date of First Production	MSHA Mine Number		Start Date	End Date
		Y/N		
Rent Payor?				
Minimum Royalty Payor?				
Advance Royalty Payor?				
Comments:				

PART 3: PRODUCING LEASE DETAIL

Action Code	Effective Date	Mining Type Code	Royalty Rate, Range or Schedule	MMS Use Only	Royalty Reporting Codes			Product	Arm's Length or Non-Arm's Length Sales?	Percent of Sales	Royalty Reporting Codes		
					Revenue Source	Product Code	Selling Arrangement				Revenue Source	Product Code	Selling Arrangement

Authorized Signature _____ Date _____

WARNING: This is to inform you that failure to report accurately and timely in accordance with the statutes, regulations, or terms of the lease, permit, or contract may result in late payment charges, civil penalties, or liquidated damages being assessed without further notification. Intentional false or inaccurate reporting is subject to criminal prosecution in accordance with applicable Federal law(s).

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) requires us to inform you that this information is being collected to set up an automated accounting data base for Federal and Indian solid minerals lease production and sales. MMS will use the information to monitor and collecting rents and royalties due the Government and Indians.

Public reporting burden for this form is estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining data, and completing and reviewing the form. Direct comments regarding the burden estimate or any other aspect of this form including suggestions for reducing this burden to the Information Collection Clearance Officer, Mail Stop 2053, Minerals Management Service, 381 Elden Street, Herndon, Va. 22070; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1010 - 0064), Washington, DC 20503.

FORM MMS-4030 (Rev. 10/94)

[FR Doc. 95–13856 Filed 6–8–95; 8:45 am]
BILLING CODE 4310–MR–C

ENVIRONMENTAL PROTECTION AGENCY

[FRL–52192]

40 CFR Chapter I

Open Meeting of the Negotiated Rulemaking Advisory Committee for Small Nonroad Engine Regulations

AGENCY: Environmental Protection Agency.

ACTION: FACA Committee Meeting—Negotiated Rulemaking on Small Nonroad Engine Regulations.

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), EPA is giving notice of the next meeting of the Advisory Committee to negotiate the Phase II rule to reduce air emissions from small nonroad engines. Small nonroad engines are engines which are spark ignited gasoline engines less than 25 horsepower. The meeting is open to the public without advance registration. Agenda items for the meeting include reports from the task groups and discussions of the emissions standard and standard structure. The Committee is hoping to finalize a series of recommendations to EPA regarding the control of emissions in Phase II of the rule.

DATES: The committee will meet on June 27, 1995 from 10:00 a.m. to 6:00 p.m., June 28, 1995 from 9:00 a.m. to 5:00 p.m. and on June 29, 1995 from 8:00 a.m. to 4:00 p.m..

ADDRESSES: The location of the meeting will be the Courtyard by Marriott, 3205 Boardwalk, Ann Arbor, MI 48108; phone: (313) 995–5900.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on the substantive matters of the rule should contact Lisa Snapp, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Rd., Ann Arbor, MI 48105, (313) 668–4200. Persons needing further information on committee procedural matters should call Deborah Dalton, Consensus and Dispute Resolution Program, Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460, (202) 260–5495, or the Committee's facilitators, Lucy Moore or John Folk-Williams, Western Network, 616 Don Gaspar, Santa Fe, NM, 87501, (505) 982–9805.

Dated: June 6, 1995.

Deborah Dalton,

Designated Federal Official.

[FR Doc. 95–14233 Filed 6–8–95; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–48; DA 95–1191]

Broadcast Services; Children's Television

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Commission granted a request filed jointly by the National Association of Broadcasters and the Association of Independent Television Stations, Inc., for a 90-day extension of time to file comments in this proceeding. The deadline for filing comments was originally June 16, 1995, and the deadline for reply comments was July 17, 1995. The Commission determined that the requested extension was warranted in order to facilitate the development of a full and complete record.

DATES: Comments are now due on September 14, 1995, and reply comments are now due on October 16, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Diane Conley, Mass Media Bureau, (202) 776–1653.

SUPPLEMENTARY INFORMATION:

Adopted: June 1, 1995.

Released: June 1, 1995.

By the Chief, Mass Media Bureau.

Comment Date: September 14, 1995.

Reply Comment Date: October 16, 1995.

1. On April 5, 1995, the Commission adopted a Notice of Proposed Rule Making seeking comment on proposals to amend the Commission's rules implementing the Children's Television Act of 1990. Notice of Proposed Rule Making in Million Docket No. 93–48, 60 FR 20586 (1995) ("NPRM"). Comments in this proceeding are currently due on June 16, 1995, and reply comments are due on July 17, 1995.

2. On May 30, 1995, the National Association of Broadcasters and the Association of Independent Television Stations, Inc. Filed a joint request for a 90-day extension of time to file comments in this proceeding. Petitioners argue primarily that additional time is needed to conduct and thoroughly evaluate studies relevant to the issues raised by the Commission in the NPRM.

3. As set forth in Section 1.46 of the Commission's Rules, 47 CFR 1.46, it is our policy that extensions of time for filing comments in rulemaking proceedings shall not be routinely granted. However, we recognize that it may take longer than the initial comment period established in this proceeding to collect the kinds of data sought by the Commission, and we believe that a 90-day extension of time to file comments and reply comments is warranted in order to facilitate the development of a full and complete record.

4. Accordingly, *it is ordered* that the Motion for Extension of Time filed in MM Docket No. 93–48 by the National Association of Broadcasters and the Association of Independent Television Stations, Inc., is granted.

5. *It is further ordered* that the time for filing comments in this proceeding is extended to September 14, 1995, and the time for filing reply comments is extended to October 16, 1995.

6. This action is taken pursuant to authority found in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), and Sections 0.204(b), 0.283 and 1.45 of the Commission's Rules, 47 CFR 0.204(b), 0.283 and 1.45.

Federal Commuunications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau..

[FR Doc. 95–14085 Filed 6–8–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 95–28; Notice 1]

RIN 2127–AF73

Lamps, Reflective Devices and Associated Equipment; Establishment of Negotiated Rulemaking Advisory Committee

AGENCY: National Highway Traffic Safety Administration (NHTSA); DOT.

ACTION: Notice of proposal to form a negotiated rulemaking advisory committee and request for representation.

SUMMARY: NHTSA proposes to establish a Negotiated Rulemaking Advisory Committee under the Negotiated Rulemaking Act of 1990 and the Federal Advisory Committee Act to develop recommended specifications for altering the U.S. lower headlamp beam pattern to be more sharply defined. Such a pattern would facilitate visual aimability of headlamps and might be the basis for a world-wide lower beam pattern. The Committee would develop its recommendations through a negotiation process. The Committee would be composed of persons who represent the interests affected by the rule such as domestic and foreign manufacturers of motor vehicles, headlamps, and headlamp aimers, motor vehicle inspection facilities, consumers, and State and Federal governments. NHTSA invites interested persons to submit nominations and applications for membership on the Committee, and comments on the subject matter.

DATES: NHTSA must receive written comments and requests for representation or membership not later than July 10, 1995.

ADDRESSES: Comments should mention the docket and notice number shown above and be submitted in triplicate to Docket Clerk, room 5109, 400 Seventh Street, SW, Washington, DC 20590. Docket hours are from 9:00 a.m. to 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Jere Medlin, Office of Vehicle Safety Standards, NHTSA (202–366–5276).

SUPPLEMENTARY INFORMATION:

I. Background

(A) Petition for Rulemaking Submitted by General Motors

General Motors Corporation (GM) petitioned NHTSA for rulemaking to amend Federal Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment* to allow fractional balance optical amiability of certain replaceable bulb and integral beam headlamps. GM wants to use headlamps that can not be aimed with external mechanical aimers, or with the on-vehicle mechanical aimers now specified by the standard. Lamps that used fractional balance optical aim could be aimed only by means of a new optical aimer, which is estimated to cost about $3,000. The cost of a current mechanical aimer capable of achieving accurate headlamp aim is about $250.

Information submitted by GM with its petition indicates that most facilities performing motor vehicle inspections, whether owned privately or by the State, choose to check and adjust headlamp aim visually, rather than with the more objective mechanical aimers. In the most common form, aim in State inspections is judged subjectively by the eye of an inspector viewing a headlamp beam pattern cast upon a distant vertical surface, such as a wall or screen. Based on this subjective observation, the inspector decides whether the beam pattern falls in the area (s)he believes is correct. Another form of visual inspection involves the use of optical machines which condense the beam pattern onto an internal aiming screen so that the longer separation distance between lamp and target necessary for the other form of visual aiming is not necessary. The cost of these machines is moderate.

Until 1983, headlamps were required to be sealed beam in construction, of specific shapes and sizes and capable of mechanical aim. There was a standardized location for aiming pads on headlamp lenses, and only four simple adapters were required for the base mechanical aimer to fulfill its function. When Standard No. 108 was amended to permit replaceable bulb headlamps of no specific shape and size, headlamps began growing both smaller and larger for reasons of weight and drag reduction and style, requiring additional, adjustable adapters for aiming by mechanical means. To preclude designing separate adapters for mechanical aimers, and to permit even smaller headlamps not capable of using adapters, manufacturers developed on-board mechanical aiming devices, and Standard No. 108 was further amended to permit these "vehicle headlamp aiming devices" (VHADs). While this added modestly to vehicle cost, it eliminated the need to use external means to mechanically aim the headlamps. However, because of the need to reduce time and costs, the GM data indicate that inspection stations have resorted to judging aim visually, rather than through on-board or exterior mechanical aimers.

NHTSA granted GM's petition in order to engage in a review of the subject of headlamp aim and amiability.

(B) Regulatory Goals

Visual aim of headlamps conforming to Standard No. 108 has a potential negative safety effect because U.S. lower beam patterns lack clearly defined borders which, if present, would permit a more objective visual determination of aim. Visual aiming of U.S. lower beam patterns introduces an element of subjectivity into the inspection process and substantial aim error that does not exist with mechanical or on-board aimers. Beam patterns with clearly defined fiducial marks or cutoffs, such as those typical of European or Japanese market headlamps, permit a more objective and more accurate determination of whether the aim of the headlamp is correct when the headlamp is visually aimed.

For some years, NHTSA has been engaged in harmonization efforts to find and implement windows of overlapping performance between the lighting requirements of Standard No. 108 and those of Europe and Japan. With respect to headlamps, to achieve such a window where a headlamp could comply with regulations worldwide, Standard No. 108 would need to move toward a beam pattern with more clearly defined features in it for visual amiability. Such a move would recognize the current reality of headlamp aiming inspection in the United States, and ultimately enhance safety by increasing the objectivity and accuracy of determining correct headlamp aim with the naked eye.

The Society of Automotive Engineers (SAE) has addressed the issue of a modified beam pattern in SAE Standard J1735 *Harmonized Vehicle Headlamp Performance Requirement*. SAE members from vehicle and lighting manufacturers around the world have participated in this effort for the sole purpose of developing a lower beam pattern that could be the model for a world-wide specification, if not the specification itself. It is similar, but not identical, to the European, Japanese and U.S. lower beam patterns, combining important features of each, while trying not to compromise features deemed essential by those regulatory jurisdictions.

In summary, given the trend away from mechanical aiming by those who aim headlamps and the desire to not offer a mechanically amiable headlamp on vehicles, the optimal solution for improving headlamp aim in the United States appears to be the development of a beam pattern that provides an objective visual determination of the accuracy of that aim.

II. Regulatory Negotiation

Due to the increasing complexity and formalization of the written rulemaking process, it can be difficult for an agency to craft effective regulatory solutions to certain problems. During the rulemaking process, the participants may develop adversarial relationships that prevent effective communication and creative solutions. The exchange of ideas that can lead to solutions acceptable to all interested groups sometimes do not occur in the traditional notice and comment context. As the Administrative Conference of the United States (ACUS) noted in its Recommendation 82–4:

> Experience indicates that if the parties in interest work together to negotiate the text of a proposed rule, they might be able in some circumstances to identify the major issues, gauge their importance to the respective

parties, identify the information and data necessary to resolve the issues, and develop a rule that is acceptable to the respective interests, all within the contours of the substantive statute.

ACUS adopted this recommendation in "Procedures for Negotiating Proposed Regulations," 47 FR 30708. The thrust of the recommendation is that representatives of all interests should be assembled to discuss the issue and all potential solutions, reach consensus, and prepare a proposed rule for consideration by the agency. After public comment on any proposal issued by the agency, the group would reconvene to review the comments and make recommendations for a final rule. This inclusive process is intended to make the rule more acceptable to all affected interests and prevent the need for petitions for reconsideration (and litigation) that often follow issuance of a final rule.

The movement toward negotiated rulemaking gained impetus with enactment of the Negotiated Rulemaking Act of 1990 (RegNeg), 5 U.S.C. Sec. 561 *et seq.* In 1993, Executive Order 12866 (58 FR 51735) added to this impetus:

> In particular, before issuing a notice of proposed rulemaking, each agency should, where appropriate, seek the involvement of those who are intended to benefit from and those expected to be burdened by any regulation * * * Each agency is also directed to explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking. (Sec. 6(a), p. 51740)

Although relatively new, negotiated rulemakings have been used successfully by agencies within DOT: the Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration, and the United States Coast Guard. NHTSA now intends to begin this process in a formal manner for the first time in promulgating a Federal motor vehicle safety standard. It welcomes the opportunity to work with those who will be affected directly by such a rule, and is confident that the agency, industry, and the public will benefit with the creation of an effective and reasonable regulation.

Pursuant to section 563(a) of RegNeg, an agency considering rulemaking by negotiation should consider whether:

(1) There is need for the rule;

(2) There is a limited number of identifiable interests;

(3) These interests can be adequately represented by persons willing to negotiate in good faith to reach a consensus;

(4) There is a reasonable likelihood that the committee will reach consensus within a fixed period of time;

(5) The negotiated rulemaking procedure will not unreasonably delay the notice of proposed rulemaking;

(6) The agency has adequate resources and is willing to commit such resources to the process; and

(7) The agency is committed to use the result of the negotiation in formulating a proposed rule if at all possible.

For the reasons stated in this Notice, NHTSA believes that these criteria have been met with regard to headlamp amiability and beam pattern issues.

The regulatory negotiation NHTSA proposes would be carried out by an advisory committee (Committee) created under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App., and in a manner that reflects appropriate rulemaking directives, including pertinent executive Orders. NHTSA will be represented on the Committee and will take an active part in the negotiations as a Committee member. However, pursuant to section 566(c) of RegNeg, those representing NHTSA would not facilitate or otherwise chair the proceedings.

III. Procedures and Guidelines

The following proposed procedures and guidelines would apply to NHTSA's negotiated rulemaking process, subject to appropriate changes made as a result of comments received on this Notice or as are determined to be necessary during the negotiating process.

(A) *Facilitator:* The Facilitator will not be involved with substantive development of this regulation. This individual will chair the negotiations, may offer alternative suggestions toward the desired consensus, and will determine the feasibility of negotiating particular issues. The Facilitator may ask members to submit additional information or to reconsider their position. NHTSA has contracted with the Federal Mediation and Conciliation Service for a Facilitator.

(B) *Feasibility:* NHTSA has examined the issues and interests involved and has made a preliminary inquiry among representatives of those interests to determine whether it is possible to reach agreement on: (a) individuals to represent those interests; (b) the preliminary scope of the issues to be addressed; and (c) a schedule for developing a notice of proposed rulemaking. The results are sufficiently encouraging to believe that a workable proposal could be developed, and that there are potential participants who could adequately represent the affected interests.

(C) *Participants and Interests:* The number of Committee participants generally should not exceed 25. However, it is not necessary that each individual or organization affected by a final rule have its own representative on the Committee. Rather, each interest must be adequately represented, and the Committee should be fairly balanced. However, individuals who are not part of the Committee may attend sessions and confer with or provide their views to Committee members.

The following interests have been tentatively identified as those that are likely to be significantly affected by the rule:

(1) Motor vehicle manufacturers
(2) Motor vehicle headlamp manufacturers
(3) Manufacturers of headlamp aiming devices
(4) International standards organizations
(5) State and Federal governments
(6) General public

NHTSA proposes that persons selected by the various interests be named to the Committee. In addition to NHTSA, the following interests have been tentatively identified as those that would supply Committee members:

(1) American Automobile Manufacturers Association (AAMA)
(2) Association of International Automobile Manufacturers, Inc. (AIAM)
(3) Society of Automotive Engineers, Road Illumination Devices Subcommittee
(4) Hopkins Manufacturing Corporation
(5) Groupe de Travail Brussels
(6) Liaison Committee for the Manufacturers of Automobile Equipment and Spare Parts
(7) Japanese Automobile Standards Internationalization Center
(8) American Association of Motor Vehicle Administrators (AAMVA)
(9) National Automobile Dealers Association
(10) Automotive Service Association
(11) Advocates for Highway and Auto Safety
(12) Federal Highway Administration

As indicated previously in this Notice, NHTSA invites applications for representation from any interests that will be affected by a final rule on the subject but are not named in this list or who may not be represented or be able to be represented by the interests on the list. Such applications must be filed within thirty days from the date of publication of this Notice, and must meet the requirements set forth herein. Also, such interests should provide the name(s) of the individual(s) they propose to represent their interest. As noted, the Committee should not exceed 25 members.

(D) *Good Faith:* Participants must be committed to negotiate in good faith. It is therefore important that senior individuals within each interest group be designated to represent that interest. No individual will be required to "bind" the interest represented, but the individual should be at a high enough level to represent the interest with confidence. For this process to be successful, the interests represented should be willing to accept the final Committee product.

(E) *Notice of Intent to Establish Advisory Committee and Request for Comment:* In accordance with the requirements of FACA, an agency of the Federal government cannot establish or utilize a group of people in the interest of obtaining consensus advice or recommendations unless that group is chartered as a Federal advisory committee. It is the purpose of this Notice to indicate NHTSA's intent to create a Federal advisory committee, to identify the issues involved in the rulemaking, to identify the interests affected by the rulemaking, to identify potential participants who will adequately represent those interests, and to ask for comment on the use of regulatory negotiation and on the identification of the issues, interests, procedures, and participants.

(F) *Requests for Representation:* One purpose of this notice is to determine whether interests exist that may be substantially affected by a rule, but have not been represented in the list of prospective Committee members. Commenters should identify such interests if they exist. Each application or nomination to the Committee should include (i) the name of the applicant or nominee and the interests such person would represent; (ii) evidence that the applicant or nominee is authorized to represent parties related to the interest the person proposes to represent; and (iii) a written commitment that the applicant or nominee would participate in good faith. If any additional person or interest requests membership or representation on the Committee, NHTSA shall determine (i) whether that interest will be substantially affected by the rule, (ii) if such interest would be adequately represented by an individual on the Committee, and (iii) whether the requested organization should be added to the group or whether interests can be consolidated to provide adequate representation.

(G) *Final Notice:* After evaluating the comments received in response to this Notice, NHTSA will issue a further notice announcing the establishment of the Federal advisory committee, unless it determines that such action is inappropriate in light of comments received, and the composition of the Committee. After the Committee is chartered, the negotiations should begin.

(H) *Administrative Support and Meetings:* Staff support would be provided by NHTSA and meetings would take place in Washington, D.C. unless agreed otherwise by the Committee.

(I) *Tentative Schedule:* If the Committee is established and selected, NHTSA will publish a schedule for the first meeting in the **Federal Register**. The first meeting will focus on procedural matters, including dates, times, and locations of further meetings. Notice of subsequent meetings would also be published in the **Federal Register** before being held.

NHTSA expects that the Committee would reach consensus and prepare a report recommending a proposed rule within ten months of the first meeting. However, if unforeseen delays occur, the Administrator may agree to an extension of that time if it is the consensus of the Committee that additional time will result in agreement. The process may end earlier if the Facilitator so recommends.

(J) *Committee Procedures:* Under the general guidance of the Facilitator, and subject to legal requirements, the Committee would establish the detailed procedures for meetings which it considers appropriate.

(K) *Records of Meetings:* In accordance with FACA's requirements, NHTSA would keep a summary record of all Committee meetings. This record would be placed in Docket No. 95–28. Meetings of the Committee would be open to the public to observe, but not to participate.

(L) *Consensus:* The goal of the negotiating process is consensus. NHTSA proposes that the Committee would develop its own definition of consensus, which may include unanimity, a simple majority, or substantial agreement such that no member will disapprove the final recommendation of the Committee. However, if the Committee does not develop its own definition, consensus shall mean unanimous concurrence.

(M) *Regulatory Approach:* The Committee's first objective is to prepare a report recommending a regulatory approach for resolving the issues discussed in the BACKGROUND section of this notice. If consensus is not obtained on some issues, the report should identify the areas of agreement and disagreement, and explanations for any disagreement. It is expected that participants will be mindful of cost/benefit considerations.

NHTSA will issue a notice of proposed rulemaking based upon the approach recommended by the Committee.

(N) *Key Issues for Negotiation:* NHTSA has reviewed correspondence, reports, petitions, relevant data, and other information. Based on this information and rulemaking requirements, NHTSA has tentatively identified major issues that should be considered in this negotiated rulemaking. Other issues related to headlamp amiability and beam pattern not specifically listed in this Notice may be addressed as they arise in the course of the negotiation. Comments are invited concerning the appropriateness of these issues for consideration and whether other issues should be added. These issues are:

1. Should NHTSA be involved in specifying headlamp amiability requirements? Standard No. 108 applies only to the manufacture and sale of new vehicles and new equipment. It is the States that specify headlamp aim regulations for vehicles in service. Some States, at present, specify procedures for visually aiming headlamps, even though headlamps are not intended to be visually aimed. Is it appropriate for NHTSA to try to develop a single approach to visual aim or any other aim? Should NHTSA delete amiability requirements from Standard No. 108 and leave this subject to be regulated at the State level?

2. If negotiations produce a result, is it likely that the States and individual inspection stations would follow the results to adjust the aim of headlamps on vehicles in service, or would those groups continue to use inappropriate procedures to aim headlamps? If they would choose not to follow the procedures of the potential solution, is there any reason to proceed with negotiations?

3. Is SAE Standard J1735 *Harmonized Vehicle Headlamp Performance Requirement* acceptable to all parties as a starting point from which to begin negotiating the details of a visual aim provision in Standard No. 108?

IV. Public Participation

NHTSA invites comments on all issues, procedures, guidelines, interests, and suggested participants embodied in this Notice. All comments and requests for participation should be submitted to the Docket Clerk, NHTSA, Room 5109, 400 Seventh Street, S.W., Washington, D.C. 20590.

Issued on: June 7, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–14329 Filed 6–7–95; 12:50 pm]

BILLING CODE 4910–59–P

Notices

Federal Register

Vol. 60, No. 111

Friday, June 9, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent to Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of Intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Pioneer Hi-Bred International, Inc. of Des Moines, Iowa a limited exclusive license to U.S. Patent Application Serial No. 08/215,065 filed March 17, 1994, "Low Phytic Acid Mutants and Selection Thereof." Notice of Availability was published in the **Federal Register** on June 21, 1994.

DATES: Comments must be received on or before August 8, 1995.

ADDRESSES: Send comments to: USDA, ARS Office of Technology Transfer, Room 401, Building 005, BARC-West, Baltimore Boulevard, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Pioneer Hi-Bred International, Inc. has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

R.M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 95–14162 Filed 6–8–95; 8:45 am]

BILLING CODE 3410–03–M

Forest Service

Application Power Company Transmission Line Construction-Cloverdale, Virginia, to Oceana, West Virginia. Jefferson National Forest, Appalachian National Scenic Trail, the New River, and R.D. Bailey Lake Flowage Easement Land. Virginia Counties of Botetourt, Roanoke, Craig, Montgomery, Pulaski, Bland, and Giles and the West Virginia Counties of Monroe, Summers, Mercer, and Wyoming

AGENCY: Forest Service, USDA.

ACTION: Revised Notice—Revises the publication date for the draft and final environmental impact statements; changes the length of the comment period for the draft environmental impact statement; changes the name of the responsible official for the US Army Corps of Engineers in West Virginia; changes the name of the responsible official for the USDA Forest Service; changes the name of the Jefferson National Forest to the George Washington and Jefferson National Forest; adds a new responsible official for the US Army Corps of Engineers in Virginia; and provides updated information on the federal agencies' analysis.

SUMMARY: The Forest Service will prepare a draft and final environmental impact statement on a proposed action to authorize the Appalachian Power Company to construct a 765,000-volt transmission line across approximately twelve miles of the George Washington and Jefferson National Forests, as well as portions of the Appalachian National Scenic Trail, the New River (at Bluestone Lake) and R.D. Bailey Lake Flowage Easement Land (at Guyandotte River).

The federal agencies identified a study area in which alternatives to the proposed action were developed. The study area includes land located in the Virginia counties of Botetourt, Roanoke, Craig, Montgomery, Pulaski, Bland and Giles and the West Virginia counties of Monroe, Summers, Mercer and Wyoming.

The Appalachian Power Company proposal involves federal land under the administrative jurisdiction of the USDA Forest Service (George Washington and Jefferson National Forests), the USDI National Park Service (Appalachian National Scenic Trail) and the US Army Corps of Engineers (New River and R.D. Bailey Lake Flowage Easement Land).

The Forest Service is the lead agency and is responsible for the preparation of the environmental impact statement. The National Park Service and the US Army Corps of Engineers are cooperating agencies in accordance with 40 CFR 1501.6.

In initiating and conducting the analysis the federal agencies are responding to the requirements of their respective permitting processes and the need for the Appalachian Power Company to cross federal lands with the proposed transmission line.

The Forest Service additionally will assess how the proposed transmission line conforms to the direction contained in the Jefferson National Forest's Land and Resource Management Plan (LRMP). Changes in the LRMP could be required if the transmission line is authorized across the George Washington and Jefferson National Forests.

The total length of the electric transmission line proposed by the Appalachian Power Company is approximately 115 miles.

The Notice of Intent for the proposed action was published in the **Federal Register** on November 21, 1991 (56 FR 58677–58679). The Notice was revised on March 13, 1992 (57 FR 8859), April 24, 1992 (57 FR 15049), June 16, 1993 (58 FR 33248–33250) and June 21, 1994 (59 FR 31975–31978).

FOR FURTHER INFORMATION CONTACT: Frank Bergmann, Forest Service Project Coordinator, George Washington and Jefferson National Forests, 5162 Valleypointe Parkway, Roanoke, Virginia, 24019/(703) 265–6005.

TO PROVIDE COMMENTS TO THE FEDERAL AGENCIES: Write to the George Washington and Jefferson National Forests, Attn: Transmission Line Analysis, 5162 Valleypointe Parkway, Roanoke, Virginia, 24019.

SUPPLEMENTARY INFORMATION: The Appalachian Power Company submitted an application to the Jefferson National Forests (the name changed in 1995) for authorization to construct a 765,000-volt electric transmission line across approximately twelve miles of the National Forest. Portions of the Appalachian National Scenic Trail, the New River (at Bluestone Lake), and R.D. Bailey Lake Flowage Easement Land (at Guyandotte River) would also be crossed by the proposed transmission line.

Studies conducted by the Appalachian Power Company and submitted to the Virginia State Corporation Commission, as part of its application and approval process, indicate a need to reinforce its extra high voltage transmission system by the mid-to-late 1990s in order to maintain a reliable power supply for projected demands within its service territory in central and western Virginia and southern West Virginia.

A study to evaluate potential route locations for the proposed transmission line was prepared for the Appalachian Power Company through a contract with Virginia Polytechnic Institute and State University (VPI) and West Virginia University (WVU). The information gathered by VPI and WVU, along with other information collected during the analysis process, will be utilized in the preparation of the environmental impact statement. General information about the transmission line route proposal is available from the Jefferson National Forest.

The decisions to be made following the environmental analysis are whether the Forest Service, the National Park Service, and the US Army Corps of Engineers will authorize Appalachian Power Company to cross the George Washington and Jefferson National Forests, the Appalachian National Scenic Trail, and the new River and R.D. Bailey Lake Flowage Easement Land, respectively, with the proposed 765,000-volt transmission line and, if so, under what conditions a crossing would be authorized.

In preparing the environmental impact statement a range of routing alternatives will be considered to meet the purpose and need for the proposed action. A no action alternative will also be analyzed. Under the no action alternative APCO would not be authorized to cross the George Washington and Jefferson National Forests, the Appalachian National Scenic Trail, the New River or R.D. Bailey Lake Flowage Easement Land. The alternatives developed by VPI and WVU will also be considered.

In July of 1994, the federal agencies identified a number of alternatives to the proposed action in the Virginia counties of Botetourt, Roanoke, Craig, Montgomery, Pulaski, Bland, and Giles and the West Virginia counties of Monroe, Summers, and Mercer.

The federal analysis will include an analysis of the effects of the proposed transmission line along the entire proposed route as well as all alternative routes which are considered in detail.

The significant issues identified for the federal analysis are listed below:

—The construction and maintenance of the 765kV transmission line and the associated access roads and right-of-way may (1) affect soil productivity by increasing soil compaction and erosion; (2) affect geologic resources (karst areas, Peters, Lewis, Potts Mountains, Arnolds Knob) and unique geologic features like caves through blasting, earthmoving or construction machinery operations; and (3) result in unstable structural conditions due to the placement of the towers.

—The construction and maintenance of the 765kV transmission line and the associated access roads and right-of-way may (1) degrade surface and ground water quality due to the application of herbicides; (2) degrade surface and ground water quality because of sedimentation resulting from soil disturbance and vegetation removal; (3) reduce the quantity of ground and spring water due to the disturbance of aquifers resulting from blasting, earthmoving or construction machinery operation; and (4) adversely affect the commercial use of ground and surface waters due to herbicide contamination and sedimentation.

—The construction and maintenance of the 765kV transmission line and the associated access roads and right-of-way may affect existing cultural resources, and historic structures and districts through the direct effects of the construction and maintenance activities and by changing the existing resource setting.

—The operation and maintenance of the 765kV transmission line and the associated access roads and right-of-way may adversely affect human health through (1) direct and indirect exposure to herbicides and (2) exposure to electromagnetic fields and induced voltage.

—The construction of the 765kV transmission line may adversely affect the safety of those operating aircraft at low altitudes or from airports located near the transmission line.

—The operation of the 765kV transmission line may (1) adversely affect communications by introducing a source of interference; (2) increase noise levels for those in close proximity to the line.

—The construction, operation and maintenance of the 765kV transmission line and the associated access roads and right-of-way may (1) adversely affect trails (including the Appalachian Trail) and trail facilities by facilitating vehicle access through new road construction and the upgrading of existing roads; and (2) reduce hiker safety by facilitating vehicle access to remote trail locations.

—The construction, operation and maintenance of the 765kV transmission line and the associated access roads and right-of-way may affect hunting, fishing, hiking, camping, boating and birding opportunities and experiences because (1) the setting in which these pursuits take place may be altered; and (2) the noise associated with the operation of the line may detract from the backcountry or recreation experience.

—The construction and operation of the 765kV transmission line and the associated access roads and right-of-way may affect local communities by (1) reducing the value of private lands adjacent to the line; (2) decreasing tax revenues due to the reductions in land value; and (3) influencing economic growth, industry siting, and employment.

—The construction, operation and maintenance of the 765kV transmission line and the associated access roads and right-of-way may (1) conflict with management direction contained in resource management plans and designations; (2) affect the uses that presently occur on and adjacent to the proposed right-of-way; (3) affect the wild, scenic and/or recreational qualities of the New River; (4) affect sensitive land uses like schools, churches, and community facilities; (5) affect the cultural attachment residents feel toward Peters Mountain; and (6) affect the scenic and/or recreational qualities of the Appalachian National Scenic Trail (Appalachian Trail).

—The construction, operation and maintenance of the 765kV transmission line and the associated access roads and right-of-way may adversely affect the visual attributes of the area because the line, the associated right-of-way, and access roads may (1) alter the existing landscape; and (2) conflict with the standards established for scenic designations.

—The construction, operation and maintenance of the 765kV transmission line and the associated access roads and right-of-way may affect wildlife, plant and aquatic populations, habitat and livestock because(1) habitats are created, changed or eliminated; (2) herbicides are used and herbicides may be toxic; (3) the transmission line presents a flight hazard to birds; (4) electromagnetic fields and induced voltage may be injurious.

The following significant issues were added by the federal agencies in 1995:

—The construction of the 765kV transmission line and the associated access roads and right-of-way may have a disproportionately high and adverse human health or environmental effects on minority and low income populations as indicated in Executive Order 12898.

—The construction and operation of the 765kV transmission line may adversely affect astronomical observation activities at the Martin Observatory (VPI) due to the introduction of obstructions to the sky (lines and towers), the introduction of light from coronal discharge, and the disruption of sensitive electronic equipment by electromagnetic fields.

—The construction and operation of the 765kV transmission line may adversely affect seismological observation activities at the VPI seismic stations located near Forest Hill and Potts Mountain.

—The construction and maintenance of the 765kV transmission line and the associated access roads and right-of-way may affect the cultural attachment that residents have for the valley between Blacksburg and Catawba, Craig County, Mercer County and portions of Montgomery County.

The following permits and/or licenses would be required to implement the proposed action:

—Certificate of Public Convenience and Necessity (Virginia State Corporation Commission)

—Certificate of Public Convenience and Necessity (West Virginia Public Service Commission)

—Special Use Authorization (Forest Service)

—Right-of-Way Authorization (National Park Service)

Section 10 Permit (US Army Corps of Engineers)

Right-of-Way Easement (US Army Corps of Engineers)

Consent to Easement (US Army Corps of Engineers)

Other authorizations may be required from a variety of Federal and State agencies.

Public participation will occur at several points during the federal analysis process. The first point in the analysis was the scoping process (40 CFR 1501.7). The Forest Service obtained information, comments, and assistance from Federal, State and local agencies, the proponent of the action, and other individuals or organizations who are interested in or affected by the electric transmission line proposal. This input will be utilized in the preparation of the draft environmental impact statement. The scoping process included, (1) identifying potential issues, (2) identifying issues to be analyzed in depth, (3) eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.

Public participation was solicited through contacts with known interested and/or affected groups, and individuals; news releases; direct mailings; and/or newspaper advertisements. Public meetings were also held to hear comments concerning the Appalachian Power Company proposal and to develop the significant issues to be considered in the analysis.

A similar process of public involvement was implemented by the federal agencies for the Preliminary Alternative Corridors announced in July of 1995.

Other public participation opportunities will be provided throughout the federal analysis process.

The Forest Service will be publishing a number of reports in 1995 regarding the federal agencies' analysis of the transmission line proposal. In February a newsletter was published to update those interested in the federal agencies' analysis of the transmission line proposal. Similar newsletters are scheduled for publication in May and July of 1995. In March a report describing the public comments received by the federal agencies was published and distributed to a number of public repositories. An update to this report will be published and similarly distributed in May of 1995.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and available for public review by October 20, 1995. This revises the February 28, 1995 date previously announced. At that time, EPA will publish a notice of availability of the draft environmental impact statement in the **Federal Register**. The comment period on the draft environmental impact statement will be 90 days from the date the EPA publishes the notice of availability in the **Federal Register**. This changes the 45-day comment period previously announced.

Reviewers need to be aware of several court rulings related to public participation in the environmental impact statement review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 90-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

After the comment period ends on the draft environmental impact statement, the comments will be analyzed, considered, and responded to by the three federal agencies in preparing the final environmental impact statement. The federal agencies have decided to await the decisions of the Virginia State Corporation Commission and the West Virginia Public Service Commission on the Appalachian Power Company proposal before publishing the final environmental impact statement. It is not known when the two Commission's will issue their decisions. When these decisions are made the federal agencies

will announce the publication date of the final environmental impact statement. This revises the August 1, 1995 date previously announced.

The responsible officials will consider the comments, responses, environmental consequences discussed in the final environmental impact statement, and applicable laws, regulations, and policies in making a decision regarding this document. The responsible officials will document their decisions and reasons for their decisions in a Record of Decision.

The responsible official for the Forest Service is changed from Joy E. Berg to William E. Damon, Jr., Forest Supervisor, George Washington and Jefferson National Forests, 5162 Valleypointe Parkway, Roanoke, Virginia, 24019. The responsible official for the National Park Service is Don King, Acting Project Manager, Appalachian National Scenic Trail, National Park Service, Harpers Ferry Center, Harpers Ferry, West Virginia 25425. The responsible official for the US Army Corps of Engineers in West Virginia is changed from Colonel Earle C. Richardson to Colonel Richard Jemiola, US Army Corps of Engineers, Huntington District, 508 8th Street, Huntington, West Virginia 25701–2070. The responsible official for the US Army Corps of Engineers in Virginia is Colonel Andrew M. Perkins, Jr., US Army Corps of Engineers, Norfolk District, 803 Front Street, Norfolk, Virginia 23510.

Dated: June 2, 1995.

William E. Damon, Jr.,

Forest Supervisor, George Washington and Jefferson National Forests.

[FR Doc. 95–14093 Filed 6–8–95; 8:45 am]

BILLING CODE 3410–11–M

Natural Resources Conservation Service

Harquahala Valley Watershed, Maricopa and La Paz Counties, Arizona

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of availability of record of decision.

SUMMARY: Humberto Hernandez, responsible Federal official for projects administered under the provisions of Public Law 83–566, 16 U.S.C. 1001–1008, in the State of Arizona, is hereby providing notification that a record of decision to delete the measure, Centennial Levee, Reach 2, from the Harquahala Watershed Plan is available.

No significant comments were received during the 45-day comment period as provided by the interagency review.

Because this was the last remaining measure to be built, Supplement No. 2, in effect will terminate all future planned construction in the Harquahala Watershed Project. Single copies of this record of decision may be obtained from Humberto Hernandez at the address shown below.

FOR FURTHER INFORMATION CONTACT: Humberto Hernandez, State Conservationist, Natural Resources Conservation Service, 3003 North Central Avenue, Suite 800, Phoenix, Arizona 85012. Telephone: (602) 280–8808.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

Dated: June 1, 1995.

Humberto Hernandez,

State Conservationist.

[FR Doc. 95–14108 Filed 6–8–95; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. 950510133–5133–01]

Summary of Secretarial Report Under Section 232 of the Trade Expansion Act of 1962, as Amended

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Notice.

SUMMARY: On February 16, 1995, President William J. Clinton concurred in the Secretary of Commerce's finding that oil imports threaten to impair the national security. The President determined that no action is necessary to adjust imports of petroleum under Section 232 of the Trade Expansion Act of 1962, as amended, because on balance the costs to the economy of an import adjustment outweigh the benefits. Included herein is the Executive Summary of the Department of Commerce's Section 232 report to the President dated December 29, 1994.

ADDRESSES: A copy of the report is available for public review and duplication in the Bureau of Export Administration's Freedom of Information Facility, Room 4525, U.S. Department of Commerce, Washington, DC 20230, (202) 482–5653.

FOR FURTHER INFORMATION CONTACT: John A. Richards, Deputy Assistant Secretary for Strategic Industries and Economic Security, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230 (202) 482–4506.

SUPPLEMENTARY INFORMATION: On March 11, 1994, the Independent Petroleum Association of America (IPAA) and various other industry associations, companies, and individuals filed a petition under Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. Section 1862 (1988)) requesting the Department to initiate an investigation of the impact on the national security of imports of crude oil and refined petroleum products.

On April 5, 1994, the Department initiated the investigation and invited public comment. The Department held three public hearings in New York, New York; Dallas, Texas; and Santa Clara, California. During the comment period, 69 people presented comments reflecting both support for and opposition to the allegations made by the petitioner. The Department also chaired an interagency working group that included the Departments of Energy, Interior, Defense, Labor, State, and Treasury, the Office of Management and Budget, the Council of Economic Advisors, and the U.S. Trade Representative to assist in the investigation.

On December 29, 1994, Secretary Ronald H. Brown submitted his investigation report to President Clinton. The Department found that since the previous Section 232 petroleum finding in 1988, there have been some improvements in U.S. energy security. The breakup of the Soviet Union and the apparent disarray within OPEC have enhanced U.S. energy security. However, the reduction in exploration, dwindling reserves, falling production, and the relatively high cost of U.S. production all point toward increasing imports from OPEC sources. Growing import dependence increases U.S. vulnerability to a supply disruption because non-OPEC sources lack surge production capacity, and there are at present no substitutes for oil-based transportation fuels. Given the above factors, the Secretary found that petroleum imports threaten to impair the national security.

The Secretary recommended, however, that the President not use his authority under Section 232 of the Trade Expansion Act to adjust oil imports through the imposition of tariffs because the economic costs of such a move outweigh the benefits, and because current Clinton Administration energy policies will limit the growth of imports. On February 16, 1995, President Clinton approved Secretary Brown's finding and determined that no action to adjust oil imports under Section 232 need be taken.

The Executive Summary of the December 29, 1994, U.S. Department of Commerce Section 232 Study is reproduced below.

Dated: June 5, 1995.

Sue E. Eckert,

Assistant Secretory for Export Administration.

Executive Summary

Introduction

On March 11, 1994, the Independent Petroleum Association of America (IPAA) and various other industry associations, companies, and individuals filed a petition under Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. Section 1862 (1988)) requesting the Department to initiate an investigation of the impact on the national security of imports of crude oil and refined petroleum products.

The IPAA petition alleged that U.S. energy security worsened since the Department's last Section 232 oil import investigation in 1988 because oil imports grew both in absolute terms and as a percentage of U.S. oil consumption, leaving the United States further subject to an oil supply disruption with the resultant economic costs. The petition also alleged that imports of low-priced oil are weakening the domestic petroleum industry to such an extent that it will not be able to support U.S. security needs in the event of a major conventional war.

On April 5, 1994, the Department initiated the investigation and invited public comment. The Department held three public hearings in New York, New York; Dallas, Texas; and Santa Clara, California. During the comment period, 69 people presented comments reflecting both support for and opposition to the allegations made by the petitioner.

Under Section 232, the Department had 270 days, until December 31, 1994, from the date of initiation of an investigation to submit a report of findings and recommendations to the President.

Methodology

The Department chaired an interagency working group that included the Departments of Energy, Interior, Defense, Labor, State, and Treasury, the Office of Management and Budget, the Council of Economic Advisors, and the U.S. Trade Representative to assist in the investigation.

The Department used a two-step process to evaluate the petition. In the first step, the Department reviewed key factors from the 1988 investigation to determine whether they improved or deteriorated. These factors included: (1) domestic oil reserves; (2) domestic oil production; (3) industry employment; (4) the impact of low oil prices on the economy; (5) the status of the domestic oil industry; (6) oil import dependence; (7) import vulnerability, including measures to offset an oil supply disruption; (8) foreign policy flexibility; and (9) U.S. military requirements. The second step involved review of new factors that emerged since the last investigation, including: (1) the status of OPEC; (2) oil price transparency due to the emergence of a futures market; and (3) the demise of the Soviet Union.

The Department made use of the extensive data and analyses that were already available regarding the current and prospective status of the domestic petroleum industry and the world oil market. In view of this extensive body of available data, the Department determined that an industry survey was not necessary. The Department also drew upon the written comments and testimony from interested parties who participated in the public hearings.

This report is based on a number of agreed-upon economic assumptions including, *inter alia*, crude oil price levels, U.S. crude oil production, economic growth rates, and inflation.

Review of Key Factors From the 1988 Investigation

1. Domestic Oil Reserves

Petition: Low-priced oil imports (hereinafter referred to as low oil prices) were largely responsible for the decline in domestic oil reserves.

DOC Analysis and Conclusion: Since the 1988 investigation, U.S. proved crude oil reserves declined by 3.8 billion barrels. Low oil prices contributed to, but are not totally responsible for, the erosion of the U.S. oil reserves base. The underlying physical reality is that the U.S. already developed the bulk of its known and easily accessible low cost deposits and decided against developing other geological prospects such as the Arctic National Wildlife Refuge and the Outer Continental Shelf. Since the reserves base reflects the structural geological reality, given present technology, oil price increases at best can arrest, but not reverse this trend.

2. Domestic Oil Production

Petition: Low oil prices are responsible for the decline in U.S. production.

DOC Analysis and Conclusion: The production outlook remains essentially the same as in the 1988 investigation. The United States is a high-cost producer compared to other countries because we have already depleted our known low-cost reserves. Since 1986, low oil prices have exacerbated the cost-price squeeze facing U.S. producers. U.S. production declined by 1.7 million barrels per day (MB/D) and net imports increased. The dislocation undercut U.S. exploration activities and impaired the development of competing energy sources, thereby enabling OPEC to recapture part of the market it lost after the price shocks of the late 1970s.

3. Exploration and Industry Employment

Petition: Low oil prices are responsible for the massive falloff in drilling and in industry employment.

DOC Analysis and Conclusion: The Department found a sharp reduction in U.S. drilling and oil and gas industry employment between 1985 and 1993. The level of exploratory drilling, well completions, and rotary rigs in use for oil and gas exploration declined since 1988. Employment fell from 582,000 in 1985 to 351,000 in 1993. A large share of the lost jobs occurred in petroleum exploration and development sectors.

However, oil imports are *not* the only reason for the decline in exploratory drilling and well completions. U.S. companies are drilling less because they made substantial gains in total productivity by employing new exploration and drilling technology and focussing on the most productive geological opportunities.

4. The Impact on the Economy of Low Oil Prices

Petition: The petitioner did not specifically address the benefits to the economy of low oil prices.

DOC Analysis and Conclusion: The Department found that the economic consequences of low prices resulted in positive benefits to the U.S. economy. Because the United States is now a net importer of oil, lower prices on balance helped the economy. The public benefitted from lower prices for transportation fuels and heating oil. For the economy as a whole, low oil prices contributed to a reduction in inflation, a rise in real disposable income, and an increase in the Gross Domestic Product.

5. Current Status of the Domestic Oil Industry

Petition: Low oil prices and the uncertainty concerning future price drops were forcing small producers to abandon many fields prematurely. The possible loss of these reserves and production would result in increased dependence on foreign oil.

DOC Analysis and Conclusion: The Department found that, as world crude oil prices declined since 1986, the relatively smaller U.S. oil fields with higher cost production became uneconomical and the operators shut-in or abandoned some wells. The impact of low prices has been especially severe on small producers operating stripper wells with average production of 15 barrels per day or less. If small producers continue to shut-in production because of low oil prices, this could result in reduced cash flow to reinvest in exploration and increased dependence on lower-cost foreign oil.

6. Oil Import Dependence

Petition: U.S. national security worsened because oil imports have increased since 1988 both in absolute terms and as a percentage of U.S. oil consumption and our dependence on imported oil will continue.

DOC Analysis and Conclusion: The Department found that net U.S. imports have grown from 5.9 MB/D in 1987 to 7.5 MB/D in 1993. Imports currently account for 44 percent of domestic consumption compared to 37 percent in 1987. Imports from Persian Gulf countries increased from 1.07 MB/D in 1987 to 1.64 MB/D in 1993.

U.S. demand for imported oil is expected to continue growing because of declining production and increased economic growth. The Energy Information Administration of the U.S. Department of Energy (EIA/DOE) projects that net imports will increase to 11 MB/D by 2000 and account for approximately 51.5 percent of domestic consumption.

To the extent the United States and other countries import more oil in the future, EIA/DOE projects that they will turn increasingly to OPEC countries located in the Persian Gulf which has the largest amount of known low-cost reserves and surplus production capacity. The Persian Gulf producers will account for approximately 55 percent of world crude oil exports by 2000.

7. Vulnerability to a Supply Disruption

Petition: Increased reliance on low-priced oil imports will leave the United States subject to a supply disruption and resulting costs to the economy.

DOC Analysis and Conclusion: The Department found that political and economic problems in the Persian Gulf region make supply disruptions a possibility in the near-term. Disruptions are possible in other regions, but the risks to the U.S. and other importing countries are lower because oil production facilities elsewhere are not as concentrated as they are in the Persian Gulf.

The United States and the OECD countries have limited prospects to offset a major oil supply disruption because: (1) there is little surplus production outside the Persian Gulf; (2) U.S. and OECD government oil stocks today provide less protection from an interruption than was the case in 1988; and, (3) there is currently no substitute for liquid transportation fuels which account for approximately two-thirds of all oil consumption in the United States. During a major oil supply disruption, there could be substantial economic austerity as a result of the decreased availability of oil. This, in turn, could pose hardships for the U.S. economy.

8. Foreign Policy Flexibility

Petition: The petitioner did not raise this issue.

DOC Analysis and Conclusion: The Department found that our allies' and trading partners' dependence on potentially insecure sources of oil may affect their willingness to cooperate with the United States during a major oil supply disruption.

9. U.S. Military Requirements

Petition: Low oil prices are weakening the domestic petroleum industry to such an extent that it will not be able to support U.S. security needs in the event of a global conventional war.

DOC Analysis and Conclusion: The Department of Defense advised that the military requirements for petroleum fuels could be satisfied under current planning scenarios.

10. Other Factors

The Department evaluated several factors that served to improve the security of U.S. oil supplies since the 1988 investigation. Foremost among these factors are the following:

Status of OPEC: Low oil prices are in large part a symptom of the apparent disarray within OPEC. The ability of OPEC to manipulate prices has been impaired because its members have been unable to coordinate production levels among themselves.

Transparency of Oil Markets: The growth of the futures market into a full-fledged commodity market has made crude oil prices more transparent and less subject to manipulation. Computerized trading, options, and forward contracts have connected refined products and crude oil markets more closely than was the case in 1988.

Demise of the Soviet Union: The end of the Cold War and the breakup of the Soviet Union removed the risk of Middle East oil becoming a pawn in East-West competition. The demise of the Soviet Union also has reduced the probability of a conventional war that could jeopardize Western Europe's and Japan's access to Middle East oil.

Finding

Since the previous Section 232 petroleum finding in 1988, there have been some improvements in U.S. energy security. The breakup of the Soviet Union and the apparent disarray within OPEC have enhanced U.S. energy security. Lower oil prices on balance benefitted the U.S. economy. However, the reduction in exploration, dwindling reserves, falling production, and the relatively high cost of U.S. production all point toward a contraction of the U.S. petroleum industry and increasing imports from OPEC sources. Growing import dependence, in turn, *increases* U.S. vulnerability to a supply disruption because non-OPEC sources lack surge production capacity; and there are at present no substitutes for oil-based transportation fuels. Given the above factors, the Department finds that petroleum imports threaten to impair the national security.

Recommendation

The Department does *not* recommend that the President use his authority under Section 232 to adjust imports. The Clinton Administration's other efforts to improve U.S. energy security are more appropriate than an import adjustment.

Section 232 requires the Secretary of Commerce and the President to recognize the close relationship between the economic welfare of the nation and U.S. national security. As energy security effects the economic welfare of the U.S., energy security must be considered in determining the effects on the national security of petroleum imports.

The Department concurs with the conclusions of the 1988 study that, on balance, the costs to the national security of an oil import adjustment outweigh the potential benefits. For example, an oil import adjustment such as a tariff would likely have an inflationary effect on the economy and would result in the loss of significant jobs in the non-petroleum sectors. This, in turn, would reduce real Gross National Product (GNP). An import adjustment would diminish the competitiveness of energy-intensive export companies and strain relations with close trading partners who may seek an exemption from the adjustment.

The Clinton Administration recognizes the importance of U.S. energy security and is pursuing a series of policies to enhance that security. It is important to note that no cost-effective government action could eliminate U.S. dependence on foreign oil entirely, but the following supply enhancement and energy conservation and efficiency policies help limit that dependence. Thus, the Department recommends continuing the policies described below:

- *Increased Investment in Energy Efficiency*—The Administration increased the budgets substantially over the last two years to achieve an enhanced energy efficiency level. There are extensive programs underway ranging from developing new appliance standards to working on innovative workplace solutions to decrease long-distance commuting. The goals of these extensive energy efficiency programs are to decrease consumption of oil.
- *Increased Investment in Alternative Fuels*—The Administration placed particular emphasis on improving the efficiency of the transportation sector where oil comprises about 98 percent of the fuel utilization. The Administration is among other things initiating a partnership with automobile manufacturers to design more energy efficient automobiles and developing a program to bring alternative transportation fuels and vehicles into the marketplace. These actions will reduce direct consumption of petroleum-based transportation fuels so that the need for imports will decrease.
- *Increased Government Investment in Technology*—The Administration more than doubled its investment with American industry in advanced technologies for the exploration and production of natural gas and oil. This is important because technological innovation can significantly decrease the domestic finding costs for natural gas and oil, thereby maintaining and expanding the domestic resource base and improving its economics.
- *Expanded Utilization of Natural Gas*—The Administration aggressively promoted expanded markets for natural gas at the expense of imported oil. In addition, reliance upon natural gas as one of the cornerstones of our Climate Change Action Plan provides benefits to our environment through the reduction of greenhouse gas emissions.
- *Increased Government Investment in Renewables*—The Administration increased investment in renewable resources because they offer great hope of replacing imported oil in selected end uses.
- *Increased Government Regulatory Efficiency*—The Administration is reducing the red tape and regulations that burden domestic industries. Various government agencies are conducting sweeping reviews to make their regulatory structures more responsive to domestic concerns.
- *Increased Emphasis on Free Trade and U.S. Exports*—Free trade, privatization, and promotion of American exports helps develop the world's energy resources and prevent over-reliance on any single region of the world. These actions include: assisting energy conservation efforts and the development of new energy supplies in this hemisphere and other areas friendly to the United States.
- *Maintaining the Strategic Petroleum Reserve*—The Strategic Petroleum Reserve is the nation's stockpile of crude oil available in the event of an oil supply disruption. The 580 million barrels of crude oil under government ownership and control provides a bulwark against a supply disruption.
- *Coordinating Emergency Cooperation Measures*—The United States is coordinating oil emergency cooperation among the energy consuming countries through the International Energy Agency. Discussions are continuing to strengthen the existing market-oriented coordinated energy response measures for dealing with possible future disruptions.

[FR Doc. 95–14214 Filed 6–8–95; 8:45 am]

BILLING CODE 3510–DT–P

Foreign-Trade Zones Board

[Order No. 749]

Grant of Authority for Subzone Status; Wal-Mart Stores, Inc. (Distribution/Processing Facility), Bullock County, Georgia

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Savannah Airport Commission, grantee of Foreign-Trade Zone 104 (Savannah, Georgia), for authority to establish special-purpose subzone status at the distribution/processing facility of Wal-Mart Stores, Inc., located in Bulloch County, Georgia, was filed by the Board on July 15, 1994, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 27–94, 59 FR 39234, 8/2/94); and,

Whereas, the application includes a request for authority to assemble/process stereo systems and camera kits under zone procedures; and,

Whereas, the Board has found that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby authorizes the establishment of a subzone (Subzone 104B) at the Wal-Mart Stores, Inc., facilities in Bulloch County, Georgia, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28. Approval includes authority to assemble/process stereo systems (using domestic speakers) and camera kits. As indicated in the application, no foreign textile products will be used in any processing or manufacturing under zone procedures.

Signed at Washington, DC, this 5th day of June 1995.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–14209 Filed 6–8–95; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 745; FTZ Docket 7–94]

Approval for Manufacturing Authority (Industrial Robots), Within Foreign-Trade Subzone 59A; Kawasaki Motors Manufacturing Corporation, U.S.A., Lincoln, Nebraska

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u),

the Foreign-Trade Zones Board (the Board) adopts the following Order:

After consideration of the application of the Kawasaki Motors Manufacturing Corporation, U.S.A. (KMM), operator of FTZ Subzone 59A, located at the KMM manufacturing facilities in Lincoln, Nebraska, filed with the Foreign-Trade Zones (FTZ) Board (the Board) on February 24, 1994, requesting authority to manufacture industrial robots under zone procedures within the subzone, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied, and that the proposal would be in the public interest if approval were subject to certain restrictions, approves the application, subject to the following restrictions:

1. Authority is initially granted until July 1, 1999, subject to extension upon review.

2. The scope of authority is limited to the manufacture of industrial robots having six or more axes of motion.

Approval is subject to the FTZ Act and the FTZ Board's regulations, including § 400.28.

Signed at Washington, DC, this 2nd day of June 1995.

Susan G. Esserman,

Assistont Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–14211 Filed 6–8–95; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 744; FTZ Docket 4–94]

Approval for Manufacturing Authority (Utility Work Trucks), Within Foreign-Trade Subzone 59A; Kawasaki Motors Manufacturing Corporation, U.S.A., Lincoln, Nebraska

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

After consideration of the application of the Kawasaki Motors Manufacturing Corporation, U.S.A. (KMM), operator of FTZ Subzone 59A, located at the KMM manufacturing facilities in Lincoln, Nebraska, filed with the Foreign-Trade Zones (FTZ) Board (the Board) on January 10, 1994, requesting authority to manufacture utility work trucks under zone procedures within the subzone, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied, and that the proposal would be in the public interest if initial approval is for a limited time period, approves the application for a period ending July 1, 1999, subject to extension upon review.

Approval is subject to the FTZ Act and the FTZ Board's regulations, including § 400.28.

Signed at Washington, DC, this 2nd day of June 1995.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–14210 Filed 6–8–95; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–588–703]

Internal Combustion Forklift Trucks From Japan; Amendment to Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amendment to Final Results of Antidumping Duty Administrative Review.

SUMMARY: On March 1, 1994, and June 23, 1994, the United States Court of International Trade (CIT) affirmed the final results of redetermination issued by the Department of Commerce (the Department) pursuant to three remands of the final results of the first review of the antidumping duty order on internal combustion industrial forklift trucks from Japan (57 FR 3167, January 28, 1992). These remands pertained to three manufacturers/exporters of forklift trucks from Japan. The period of review was November 25, 1987, through May 31, 1989. The CIT's opinions have not been appealed. Therefore, we are amending the final results of this review.

EFFECTIVE DATE: June 9, 1995.

FOR FURTHER INFORMATION CONTACT: Davina Friedmann or Michael Rill, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On January 28, 1992, the Department published in the **Federal Register** the final results of the first administrative review of the antidumping duty order on forklift trucks from Japan (57 FR 3167; January 28, 1992). The review covered four manufacturers/exporters of forklift trucks. The period of review was November 25, 1987, through May 31, 1989. In February 1992, interested parties initiated actions in the CIT contesting the final results of this review.

On July 23, 1993, the CIT, in *Toyota Motor Sales, U.S.A., Inc. and Toyo Umpanki Company, Ltd. v. United States*, remanded the final results to the Department. The CIT instructed the Department to (1) reconsider whether it properly allocated Toyota Motor Corporation's (Toyota) U.S. brokerage and handling, inland freight, and warranty expenses to the forklifts subject to the administrative review; (2) reconsider whether it properly recategorized Toyota's home market direct warranty expenses; (3) correct the treatment of the circumstance-of-sale (COS) adjustment for certain direct selling expenses of Toyo Umpanki, Ltd. (TCM) ; and (4) correct the treatment of TCM's credit income in the calculation of U.S. price (USP).

The Department submitted its final results of redetermination pursuant to court remand on September 17, 1993. In the final results of redetermination, the Department reallocated Toyota's U.S. brokerage and handling, inland freight, and warranty expenses over Toyota's total industrial truck sales for exporter's sales price (ESP) sales, as opposed to allocating these expenses only over Toyota's sales of subject merchandise. The Department also corrected arithmetic errors in the treatment of Toyota's home market warranty expenses in both the purchase price and ESP analyses for two categories of forklift trucks.

The Department changed TCM's ESP analysis so that the direct selling expenses which were included in constructed value (CV) were subtracted from foreign market value (FMV). As ordered by the CIT, the Department also corrected TCM's purchase price analysis by adding U.S. credit income to USP instead of to FMV. As a result of these changes, the dumping margins changed from 12.22% to 12.02% for Toyota, and changed from 7.71% to 6.17% for TCM. The CIT affirmed these results and dismissed the case on March 1, 1994.

The CIT, in *Hyster Co., et al. v. United States*, issued a second remand on August 6, 1993. This remand pertained only to Toyota. The Department submitted its final results of redetermination on October 4, 1993. In accordance with the CIT's instructions, the Department corrected its treatment of selling expenses, recategorizing certain U.S. advertising expenses from indirect to direct selling expenses. This recategorization affected ESP sales only. Despite this change, Toyota's dumping margin remained at 12.02%.

On March 1, 1994, the CIT, in *NACCO Materials Handling Group, Inc. v. United States* (formerly known as *Hyster Co., et al. v. United States*), issued another order remanding the final results to the Department to (1) reconsider the treatment of the commodity tax in Japan for Toyota, TCM, and Nissan Motor Company (Nissan); (2) redetermine whether Nissan's and Toyota's related-party sales were at arm's-length prices; and (3) correct certain errors in TCM's database.

The Department changed its methodology for commodity tax adjustments by eliminating the COS adjustment for differences in taxes. The Department added to USP the result of multiplying the foreign market tax rate by the price of the U.S. merchandise at the same point in the chain of commerce that the foreign market tax was applied to foreign market sales. The Department also adjusted the tax amount calculated for USP and the amount of tax included in FMV. We deducted the portions of the foreign market tax and the U.S. tax adjustment that are the result of expenses that are included in the foreign market price used to calculate the foreign market tax and in the USP used to calculate the USP tax, but later deducted to calculate FMV and USP.

The CIT ordered the Department to point to substantial evidence on the record in support of its determination that Nissan and Toyota's related-party transfer prices were negotiated at arm's length, and, if unable to do so, to make any necessary adjustments. The Department was not able to find evidence on the record to support its original determination that Nissan's and Toyota's reported transfer prices were at arm's length. Therefore, the Department adjusted Nissan's material costs in the calculation of home market cost of production, CV, and further manufacturing in the United States. The Department also adjusted for Toyota's material costs by disallowing Toyota's claimed discount from the dealer price list and using the related supplier's prices to unrelated dealers in calculating the cost of inputs in the computation of Toyota's United States further manufacturing costs.

As directed by the CIT, the Department also corrected certain errors in TCM's database. The Department corrected errors regarding (1) reported fees paid to trading companies, (2) U.S. brokerage and handling, (3) containerization costs, (4) ocean freight, (5) marine insurance, (6) U.S. duty, (7) U.S. freight to warehouse, (8) credit, and (9) warranty.

The CIT affirmed these results and dismissed the case on June 23, 1994.

Amended Final Results of Review

As a result of the revisions made pursuant to these remands, we determine that the following weighted-average dumping margins exist for the period November 25, 1987, through May 31, 1989:

Manufacturer/Exporter	Margin (percent)
Nissan	7.39%
TCM	6.74%
Toyota	13.75%

Because the CIT's decision has not been appealed, the Department will order the immediate lifting of the suspension of liquidation of, and instruct the U.S. Customs Service to assess antidumping duties on, entries subject to these reviews, as appropriate. Individual differences between FMV and USP may vary from the percentages stated above. The Department will issue appraisement instructions concerning these entries directly to the Customs Service.

This notice is published in accordance with section 751(a) (1) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a) (1)), and 19 CFR 353.22(c) (8).

Dated: June 2, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–14212 Filed 6–8–95; 8:45 am]

BILLING CODE 3510–DS–P

Determination Not to Revoke Countervailing Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of determination not to revoke countervailing duty orders.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its determination not to revoke the countervailing duty orders listed below.

EFFECTIVE DATE: June 9, 1995.

FOR FURTHER INFORMATION CONTACT: Brian Albright or Maria MacKay, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202)482–2786.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 1995, the Department published in the **Federal Register** (60 FR 11075) its intent to revoke the countervailing duty orders listed below. Under 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no domestic interested party (as defined in sections 355.2(i)(3), (i)(4), (i)(5), and (i)(6) of the regulations) objects to revocation and no interested party requests an administrative review by the last day of the 5th anniversary month.

Within the specified time frame, we received an objection from a domestic interested party to our intent to revoke these countervailing duty orders. Therefore, because the requirements of 19 CFR 355.25(d)(4)(iii) have not been met, we will not revoke these orders.

This determination is in accordance with 19 CFR 355.25(d)(4).

Countervailing Duty Orders

Chile:	
Standard Carnations .. (C–337–601).	03/19/87, 52 FR 8635.
Iran:	
Raw Pistachios ..... (C–507–501).	03/11/86, 51 FR 8344.
Israel:	
Oil Country Tubular Goods. (C–508–601).	03/06/87, 52 FR 6999.
New Zealand:	
Carbon Steel Wire Rod. (C–614–504).	03/07/86, 51 FR 7971.
Turkey:	
Welded Carbon Steel Pipes and Tubes. (C–489–502).	03/07/86, 51 FR 7984.
Turkey:	
Welded Carbon Steel Line Pipe. (C–489–502).	03/07/86, 51 FR 7984.
France:	
Brass Sheet and Strip (C–427–603).	03/06/87, 52 FR 6996.

Dated: May 25, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–14213 Filed 6–8–95; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 052695C]

Caribbean Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Caribbean Fishery Management Council (Council) and its Administrative Committee will hold meetings on June 27–29, 1995.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, PR 00918–2577; telephone: (809) 766–5926.

ADDRESSES: Both meetings will be held at the Conference Room of the Point Pleasant Resort, in St. Thomas, U.S.V.I.

SUPPLEMENTARY INFORMATION: The Council will hold its 85th regular public meeting to discuss the Draft Coastal Pelagics Fishery Management Plan, among other topics.

The Council will convene on June 28, 1995, from 9:00 a.m. until 5:00 p.m., and on June 29, from 9:00 a.m. until approximately 12:00 noon.

The Administrative Committee will meet on June 27, from 2:00 p.m. until 5:00 p.m., to discuss administrative matters regarding Council operations.

The meetings are open to the public, and will be conducted in English. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

These meetings are physically accessible to people with disabilities. For more information or requests for sign language interpretation and/or other auxiliary aids please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, at the above address and telephone number, at least 5 days prior to the meeting date.

Dated: June 2, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–14132 Filed 6–8–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 053095E]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of its Mississippi/Louisiana Habitat Protection Advisory Panel.

DATES: The meeting will be held on June 20, 1995, from 9:00 a.m. to 3:00 p.m.

ADDRESSES: The meeting will be held at the Radisson Inn New Orleans Airport, 2150 Veterans Memorial Boulevard, Kenner, LA.

Council address: Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL 33609.

FOR FURTHER INFORMATION CONTACT: Richard J. Hoogland, Biologist; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and discuss Louisiana State University's Sea Grant Program grants, the Corps of Engineers' Mississippi River diversion and barrier islands studies, Louisiana Department of Natural Resources' approach to wetland restoration, updates on marsh management studies by the Office of Biological Survey and NMFS, update on the Corps of Engineers' Marsh Management Environmental Impact Statement, and a review of coastal projects in Mississippi.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Julie Krebs at the Council (see **ADDRESSES**) by June 13, 1995.

Dated: June 5, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–14196 Filed 6–8–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 052695E]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting and availability of biomass estimate for the northern anchovy fishery.

SUMMARY: The Pacific Fishery Management Council's (Council) Coastal Pelagic Species Plan Development Team and Advisory Subpanel will hold a public meeting.

DATES: The meeting will be held on June 21, 1995, at 10:00 a.m.

ADDRESSES: The meeting will be held at the NMFS Southwest Regional Office, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA.

FOR FURTHER INFORMATION CONTACT: Jim Glock, Pacific Fishery Management Council, (503) 326–6352; Jim Morgan, NMFS, (310) 980–4036; or Svein Fougner, NMFS, (310) 980–4034.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to discuss the biomass estimate for northern anchovy for the 1995 fishing season and the draft coastal pelagic species fishery management plan (FMP). At the meeting, the estimated spawning biomass will be presented with an overview of historical abundance, quotas available for harvest will be announced, and public comments will be received. Also, the subpanel will review the edited FMP and may develop additional comments for the Council on final adoption of the document.

All materials relating to the annual quotas will be forwarded to the Council and its Scientific and Statistical Committee and will be available for public inspection at the NMFS Office of the Regional Director in Long Beach. The final quotas will be published in the **Federal Register** on or about August 1, 1995, with an opportunity for public comment. The draft FMP will be available in mid-June.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Michelle Sailer at (503) 326–6352, at least 5 days prior to the meeting date.

Dated: June 2, 1995.

Richard W. Surdi,

Acting Director, Office f Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–14133 Filed 6–8–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 060195B]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of modification 1 to permit 895 (P504D), an amendment of permit 947 (P504F), and modification 4 to permit 848 (P507D).

SUMMARY: Notice is hereby given that NMFS has issued modifications to permits and an amendment to a permit authorizing takes of listed species for the purpose of scientific research and enhancement, subject to certain conditions set forth therein, to the U.S. Army Corps of Engineers (Corps), Department of Defense and the Washington Department of Fish and Wildlife (WDFW).

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301-713-1401); and

Environmental and Technical Services Division, F/NWO3, NMFS, 525 NE Oregon Street, Portland, OR 97232–4169 (503–230–5400).

SUPPLEMENTARY INFORMATION: Modification 1 to permit 895, the amendment of permit 947, and modification 4 to permit 848 were issued under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–222).

On May 22, 1995, modification 1 to enhancement permit 895 was issued by NMFS to the Corps (P504D). Permit 895 authorizes a take of juvenile Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*), juvenile Snake River fall chinook salmon (*Oncorhynchus tshawytscha*), and juvenile Snake River sockeye salmon (*Oncorhynchus nerka*) associated with the barge transport of outmigrating juvenile anadromous fish past numerous hydroelectric projects on the Columbia and Snake Rivers to below Bonneville Dam.

Modification 1 to permit 895 authorizes an increase in the take of these listed juvenile fish associated with barge transportation in 1995 only, because the number of juvenile outmigrants appears to be higher than expected this year. This could be due to a greater overwinter survival of parr. Modification 1 to Permit 895 is valid for 1995 only. Permit 895 expires on December 31, 1998.

On May 23, 1995, an amendment to scientific research permit 947 was issued by NMFS to the Corps (P504F). Permit 947 authorizes a take of juvenile, listed, artificially-propagated, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) associated with a turbine passage survival study at Lower Granite Dam on the Snake River in Washington. The purpose of the research is to determine the immediate and delayed (48–120 hour) survival rates of run-of-the-river chinook salmon smolts passing through a turbine at the dam under different locations and operating conditions.

The amendment of permit 947 allows Corps researchers to conduct their research during periods when the hydropower turbine units are operating outside of peak efficiency levels. Out-of-peak efficiency tests will provide necessary information for calibrating the Corps' Lower Granite Dam turbine model. Data on the survival of fish passing through turbines during such times will also be beneficial for use in future risk analyses. This amendment is valid for the duration of the permit. Permit 947 expires on August 31, 1995.

On May 19, 1995, modification 4 to scientific research and enhancement permit 848 was issued by NMFS to WDFW (P507D). Permit 848 authorizes a take of adult and juvenile, listed, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) from the Tucannon River in Washington for scientific research and supplementation of the wild stock. The research includes the application of radio tags and passive integrated transponder tags and the conduct of morphometric, meristic, pathologic, electrophoretic, snorkeling, electrofishing, and spawning surveys. Permit 848 also authorizes releases of the progeny of the listed adult salmon collected for broodstock.

Modification 4 to permit 848 authorizes the retention of all of the listed adult salmon that return to the Tucannon Hatchery adult trap in 1995 if the total adult returns to the trap in 1995 is less than 105 fish. The 1995 forecast for total adult returns to the trap is 19–25. Monitoring and evaluations have shown about a three-to-one survival advantage for fish reared in the hatchery as compared to natural production. Based on this large survival advantage, and the fact that natural production has been at less than replacement levels in recent years, this level of adult take in 1995 and any subsequent artificially-propagated progeny production of these fish, will serve to perpetuate the listed species. WDFW must confer with NMFS as to the disposition of the listed adult fish retained in 1995 prior to the spawning of these fish. This adult retention strategy is valid for 1995 only.

Also for modification 4, WDFW is authorized for an increase in the annual take of listed juvenile salmon associated with their smolt trapping and monitoring research. The increase is necessary because WDFW researchers are now emphasizing the collection of marked hatchery fish to evaluate their outplanting program. In addition, higher than usual river flows in 1995 have resulted in higher trapping efficiencies and thus, a higher take associated with research. The increased take of listed juvenile fish is valid for the duration of the permit. Permit 848 expires on March 31, 1998.

Issuance of these permit actions, as required by the ESA, was based on a finding that such actions: (1) Were applied for in good faith, (2) will not operate to the disadvantage of the listed species that are the subject of the permits, and (3) are consistent with the purposes and policies set forth in section 2 of the ESA and the NMFS regulations governing listed species permits.

Dated: June 2, 1995.

Russell J. Bellmer,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–14130 Filed 6–8–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 060295B]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of a modification request (P555).

SUMMARY: Notice is hereby given that the Mark Bain of Cornell University (P555) has requested Modification 1 to Permit 885 to take listed shortnose sturgeon for the purpose of scientific research.

DATES: Written comments or requests for a public hearing on this application must be received on or before July 10, 1995.

ADDRESSES: The application and related documents are available for review by appointment in the following offices:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Hwy., Room 13307, Silver Spring, MD 20910–3226 (301–713–1401); and

Director, Northeast Region, NMFS, NOAA, One Blackburn Drive, Gloucester, MA 01930–2298 (508–281–9250).

Written comments, or requests for a public hearing on this modification request should be submitted to the Chief, Endangered Species Division, Office of Protected Resources.

SUPPLEMENTARY INFORMATION: Mark Bain (P555) has requested a modification to Permit 885 under the authority of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–227). The applicant requests authorization to increase his take and release of shortnose sturgeon (*Acipenser brevirostrum*) from the Hudson River from 500 to 5,000, to help determine population size, trends, and dynamics. The applicant also wishes to extend his permit until August, 1997, and to discontinue his previously authorized gastric lavage procedures.

Those individuals requesting a hearing (see **ADDRESSES**) should set out the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in this application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: June 2, 1995.

Russell J. Bellmer,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–14131 Filed 6–8–95; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: July 10, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On February 17, April 14 and 21, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (60 FR 9326, 19027 and 19894) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.
2. The action does not appear to have a severe economic impact on current contractors for the services.
3. The action will result in authorizing small entities to furnish the services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Food Service Attendant, Department of Veterans Affairs Medical Center, 7305 N. Military Trail, West Palm Beach, Florida
Grounds Maintenance, U.S. Army Reserve Center, 1420 John C. Calhoun Drive, S.E., Orangeburg, South Carolina
Medical Transcription, Department of Veterans Affairs Medical Center, 508 Fulton Street, Durham, North Carolina

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–14152 Filed 6–8–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions From Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 10, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.
2. The action does not appear to have a severe economic impact on current contractors for the services.
3. The action will result in authorizing small entities to furnish the services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Administrative Services, General Services Administration, FSS, National Furniture Center, Crystal Mall Building 4, Arlington, Virginia
NPA: Fairfax Opportunities Unlimited, Inc., Springfield, Virginia
Janitorial/Custodial, Drug Enforcement Agency, Camp Upshur International Training Center, Quantico, Virginia
NPA: Rappahannock Goodwill Industries, Inc., Fredericksburg, Virginia
Microfilming of EEG Records, Department of Veterans Affairs, William S. Middleton Memorial Veterans Hospital, Madison, Wisconsin,
NPA: Curative Rehabilitation Center, Milwaukee, Wisconsin

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action does not appear to have a severe economic impact on future contractors for the commodities.
3. The action will result in authorizing small entities to furnish the commodities to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

File Front
7510–00–NIB–0001
File Back
7510–00–NIB–0002

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–14153 Filed 6–8–95; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

TITLE: Customer Service Evaluation System (CSES) Survey; DeCA Form 60–28

Type of request: Existing collection

Number of Respondents: 39,341

Responses per respondent: 1

Annual responses: 39,341

Average burden per responses: 4 minutes

Annual burden hours: 2,623

Needs and uses: The DoD Commissionary Agency (DeCA) has developed the Customer Service Evaluation System (CSES) as a management tool to evaluate customer satisfaction in each commissary, worldwide. CSES utilizes a survey (DeCA Form 60–28), designed to query commissary patrons regarding customer satisfaction, to identify and record the subjective aspects of this highly valued benefit. The information collected hereby, is subsequently provided to each commissary for their use in more effectively serving patrons' needs, as well as in operating a more efficient and cost-effective system.

Affected public: Individuals or households

Frequency: Annually.

Respondent's obligation: Voluntary

OMB desk officer: Mr. Edward C. Springer Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503

DOD clearance officer: Mr. William Pearce

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 6, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–14159 Filed 6–8–95; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday, 13 June 1995.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Becky Terry, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. No. 92–463, as amended (5 U.S.C. App. II § 10(d) (1988), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: June 5, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–14113 Filed 6–8–95; 8:45 am]

BILLING CODE 5000–04–M

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group A (Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Wednesday, 14 June 1995.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 1745 Jefferson Davis

Highway, Crystal Square Four, Suite 500, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Walter Gelnovatch; AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Advanced Research Projects Agency (ARPA) and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. II § 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1988), and that accordingly, this meeting will be closed to the public.

Dated: June 5, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–14112 Filed 6–8–95; 8:45 am]

BILLING CODE 5000–04–M

National Defense University, Board of Visitors

AGENCY: Department of Defense, National Defense University.

ACTION: Notice.

SUMMARY: The President, National Defense University has scheduled a meeting of the Board of Visitors. The meeting will be held between 0800 to 1200 and 1330 to 1530 on June 16, 1995. The meeting will be held in the Command Conference Room, Marshall Hall, Building 62, Fort Lesley J. McNair. The agenda will include present and future educational and research plans for the National Defense University and its components. The meeting is open to the public, but the limited space available for observers will be allocated on a first come, first served basis. For further information contact the Director, University Plans and Programs, National Defense University, Fort Lesley J. McNair, Washington, D.C. 20319–6000. To reserve space, interested persons should phone (202) 287–9416.

Dated: June 5, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–14114 Filed 6–8–95; 8:45 am]

BILLING CODE 5000–04–M

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that closed meetings of the Department of Defense Wage Committee will be held on July 11, 1995; July 18, 1995; and July 25, 1995, at 10:00 a.m. in Room 800, Hoffman Building #1, Alexandria, Virginia.

Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data considered were obtained from officials to private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

Dated: June 6, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–14160 Filed 6–8–95; 8:45 am]

BILLING CODE 5000–04–M

Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Tucson Drainage Area Flood Control Feasibility Study, Pima County, AZ

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The Los Angeles District will prepare a Draft Environmental Impact Statement (EIS) for the Tucson Drainage Area Flood Control Feasibility Study, Pima County, Arizona. This study is in response to flooding problems associated with the Tucson Arroyo/Arroyo Chico watershed within the City of Tucson. The problems result from an existing flood control system that is inadequate because of increasing urbanization that has changed the runoff conditions. The feasibility study will recommend a flood control plan for implementation to solve the current flooding problem.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and Draft EIS can be answered by: Mr. Elden Gatwood, Study Manager, (213) 894–4341, or Mr. William Butler, Environmental Manager, (213) 894–0245, P.O. Box 2711, Los Angeles, California 90053–22325.

SUPPLEMENTARY INFORMATION:

A. Authority

This study is conducted under the authority given in Section 6 of the Flood Control Act of 1938, dated 28 June 1938, and in accordance with provisions of the Water Resources Development Act of 1986 (WRDA '86; Public Law 99–662).

B. Proposed Action/Alternatives

The proposed action for the Tucson Drainage Area Study will investigate and evaluate the establishment of one of several detention basin plans along the Tucson Arroyo/Arroyo Chico watershed in Tucson.

Detention Plan I will evaluate the establishment of detention basins in three areas identified as potential basin sites: Randolph Golf Course, Reid Park and Upstream of Park Avenue.

Detention Plan II will evaluate the establishment of detention facilities at Randolph Golf Course and Upstream of Park Avenue.

C. Scoping

An extensive mailing list has been developed which includes Federal, State, and local agencies and other interested public and private organizations and parties. Individuals on the mailing list will be sent a copy of each notice announcing a public scoping meeting. A public scoping meeting has been tentatively scheduled for sometime in June 1995. When available, the specific date, time, and location of this meeting will be announced in a mailing to those on the mailing list and announcements through local media channels. Additional public meetings will be scheduled during the review period for the draft EIS. Formal coordination with the appropriate Federal, State, and local agencies has begun.

D. Potentially Significant Issues

Potentially significant issues identified include impacts to land and water use, biological resources including riparian resources, and recreational resources.

E. Availability of the Draft EIS

The draft EIS is expected to be available to the public for review and comment beginning in February 1996.

F. Comments

Comments and questions regarding the project may be addressed to: U.S. Army Corps of Engineers, Los Angeles District, ATTN: Mr. Elden Gatwood, CESPL–PD–WB, or Mr. William O. Butler, CESPL–PD–RN, P.O. Box 2711, Los Angeles, California 90053–2325.

Dated: May 22, 1995.

Michael R. Robinson,

Colonel, Corps of Engineers District Engineer.

[FR Doc. 95–14090 Filed 6–8–95; 8:45 am]

BILLING CODE 3710–KF–M4

Department of the Army

Distribution of Weekly Army Officer Assignment List and Monthly Army Enlisted Assignment List

AGENCY: U.S. Total Army Personnel Command, DOD.

ACTION: Notice.

SUMMARY: The Department of the Army, U.S. Total Army Personnel Command, has executed an inter-agency agreement with the Department of Commerce, National Technical Information Service, which authorizes the National Technical Information Service to distribute and make publicly available the Weekly Officer Assignment List and the Monthly Enlisted Assignment List.

EFFECTIVE DATE: June 30, 1995.

FOR FURTHER INFORMATION CONTACT: Robert Dickerson, Freedom of Information and Privacy Act Officer, U.S. Total Army Personnel Command, Attention: TAPC–ALP–A, 200 Stovall Street, Alexandria, Virginia 22332–0405, (703) 325–4053.

SUPPLEMENTARY INFORMATION: As a result of a court settlement, the Army is required to create these lists to respond to Freedom of Information Act Requests. These lists are requested by Realtors under the Freedom of Information Act and are primarily used to solicit Army personnel who will be changing duty locations. Realtors offer assistance in selling current homes and offer services in renting or buying homes at an individual's future duty location. The lists contain name, rank, current duty address, date of orders, report date, and future duty location.

Current reductions in manpower have forced the Army to look at alternative methods of distribution. The number of requesters increase each month. Each requester is required to submit a separate request for each week desired. Currently, the U.S. Total Army Personnel Command receives approximately 180 Freedom of Information Act requests for these lists each month.

Since the information is releasable to the public, it is not necessary to continue to process these requests under the administrative requirements of the Freedom of Information Act. The National Technical Information Service was created to distribute releasable information to the public and has chosen to offer the lists as a fax subscriber service. This will eliminate the requirement for requesters to submit weekly Freedom of Information Act requests and will ensure that the information is received by requesters at the earliest possible date. Since the National Technical Information Service can more efficiently distribute the lists without the administrative requirements imposed by the Freedom of Information Act, the agreement will benefit the requesters and the Army.

Dated: May 31, 1995.

Robert Dickerson,

Freedom of Information and Privacy Act Officer.

[FR Doc. 95–14089 Filed 6–8–95; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Community Redevelopment Authority and Available Surplus Buildings and Land at Military Installations Designated for Closure: Naval Training Center, San Diego, CA

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: This Notice provides information regarding: The redevelopment authority established to plan the reuse of the Naval Training Center, San Diego; the surplus property that is located at that base closure site; and the timely election by the redevelopment authority to proceed under the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, Public Law 103–421 ("the Act").

FOR FURTHER INFORMATION CONTACT: John J. Kane, Director, Real Estate Operations Division, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300, telephone (703) 325–0474, or Linda Geldner, Base Closure Manager, Southwest Division, Naval Facilities Engineering Command, 1420 Kettner Blvd., Suite 507, San Diego, CA 92101–2404, telephone (619) 556–0257. For detailed information regarding particular properties identified in this Notice (i.e., acreage, floorplans, condition, exact street address, etc.), contact Lieutenant Commander Bob Citrano, Base Transition Coordinator, Naval Training Center, San Diego, 33502 Decatur Road, #120, San Diego, CA 92133–1449, telephone (619) 524–1024.

SUPPLEMENTARY INFORMATION: In 1993, the Naval Training Center, San Diego, CA, was designated for closure pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. By this Notice, the land and facilities described below are declared surplus to the needs of the Federal government and available for use by: (a) State and local governments and other interested parties pursuant to various statutes which authorize conveyance of surplus properties, and (b) homeless providers pursuant to the Act.

Election To Proceed Under New Statutory Procedures

The Act was signed into law on October 25, 1994. Section 2 of the Act gives the redevelopment authority at base closure sites the option of following new procedures regarding the manner in which the redevelopment plan for the base is prepared and approved, and how requests are to be made by State and local governments and other interested parties, including homeless assistance providers, for future use of the property. On December 21, 1994, the City of San Diego submitted a timely request to be covered by the provisions of the Act. This notice fulfills the requirement of Section 2(e)(3) of the Act that information describing the redevelopment authority be published in the **Federal Register**.

Also, pursuant to Section 2905(b)(7)(B) of the Defense Base Closure and Realignment Act of 1990, as amended by the Act, the following information regarding the redevelopment authority for and surplus property at the Naval Training Center, San Diego, CA, is published:

Redevelopment Authority

The redevelopment authority for the Naval Training Center, San Diego, CA, for purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, is the San Diego City Council. The Mayor of the City has established a committee to provide recommendations to the Council concerning the redevelopment plan for the training center. This committee is known as the "NTC Reuse Planning Committee" and is chaired by the Mayor. A cross section of community interests is represented on the committee. Day-to-day operations of the committee are handled by Tim Johnson, Project Manager, 1200 Third Avenue, Suite 1700, MS #51A, San Diego, CA 92101, telephone (619) 236–6732.

Surplus Property Descriptions

The following is a listing of the land and facilities at the Naval Training Center, San Diego, CA, that are declared surplus to the needs of the federal government.

Land

Approximately 418 acres of improved and unimproved fee simple land at the U.S. Naval Training Center, San Diego, CA, will be available. In general, all areas will be available when the installation closes on June 30, 1997.

Excluded from the determination of surplus are:

—A parcel of property for the maintenance and possible enhancement of the existing California least tern nesting area at a location or locations to be determined by the Navy and the U.S. Fish and Wildlife Service in connection with the development of a reuse plan for the Naval Training Center.

—A parcel of property approximately 2.3 acres in size which includes a small arms range and several support structures (Bldg. 569,570 and 571). This compound will be transferred to the U.S. Border Patrol upon operational closure of the Naval Training Center.

Buildings

The following is a summary of the buildings and other improvements located on the above described land which will also be available when the installation closes. Many of these buildings may be eligible for listing on the National Register of Historical Places. Property numbers are available on request.

Bachelor quarters housing (78 structures). Comments: Approx. 1,691,395 square feet. Most have open bay rooms.

—Boat storage and marina facilities (5 structures) at Pier 445, east of Harbor Drive and near Marine Corps Recruiting Depot. Comments: Approx. 4,328 square feet.

—Chapel facility (1 structure). Comments: Approx. 7,868 square feet.

—Child care facility (1 structure). Comments: Approx. 19,650 square feet.

—Community support center (1 structure). Comments: Approx. 33,000 square feet.

—Fire protection facility (1 structure). Comments: Approx. 5,484 square feet.

—Golf course (4 structures). Comments: Approx. 4,503 square feet for buildings, a nine hole golf course, driving range, maintenance shop, and clubhouse.

—Hazardous storage facilities (2 structures). Comments: Approx. 2,087 square feet.

—Housing units (4 structures). Comments: Approx. 17,312 square feet. Senior officer housing units.

—Instructional facilities (21 structures). Comments: Approx. 635,392 square feet.

—Library (1 structure). Comments: Approx. 12,814 square feet.

—Maintenance facilities (8 structures). Comments: Approx. 47,898 square feet. Shop buildings.

—Medical clinic (2 structures). Comments: Approx. 6,548 square feet.

—Mess and dining facilities (4 structures). Comments: Approx. 197,093 square feet. Club facility, cafeteria and enlisted mess hall.

—Miscellaneous facilities (60 structures). Comments: Approx. 8,676 square feet. Small buildings and sheds.

—Office/administration buildings (17 structures). Comments: Approx. 130,111 square feet.

—Paved areas (4 structures). Comments: Approx. 615,000 square yards. Roads, parking areas, sidewalks, etc.

—Recreational facilities (18 structures). Comments: Approx. 202,343 square feet. Gymnasium, theater, amusement center, hobby shops, picnic sheds, pools, tennis courts, handball courts, softball fields.

—Recruit processing facility (1 structure). Comments: Approx. 91,992 square feet.

—Stores and services facilities (8 structures). Comments: Approx. 224,705 square feet. Small retail facilities.

—Utility facilities (49 structures). Comments: Measuring systems vary; telephone, electric, steam and water utility systems.

—Warehouse/storage facilities (24 structures). Comments: Approx. 214,618 square feet.

Expressions of Interest

Pursuant to section 2905(b)(7)(C) of the Defense Base Closure and Realignment Act of 1990, state and local governments, representatives of the homeless, and other interested parties located in the vicinity of the Naval Training Center, San Diego, CA, may submit to the City of San Diego (as the redevelopment authority) a notice of interest in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant to Section 2905(b)(7)(C) and (D), the redevelopment authority shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in the City of San Diego the date by which expressions of interest must be submitted. Under Section 2(e)(6) of the Act, the deadline for submissions of expressions of interest may not be less than one month nor more than six months from the date the City of San Diego elected to proceed under the Act, i.e., December 21, 1994.

Dated: May 30, 1995.

M. D. Schetzsle,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 95–14111 Filed 6–8–95; 8:45 am]

BILLING CODE 3810–FF–P

Naval Research Advisory Committee; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Naval Research Advisory Committee Panel on Life Cycle Cost Reduction will meet on June 20, 21, and 22, 1995. The meeting will be held at the Office of Naval Research, 800 North Quincy Street, Arlington, Virginia. The sessions will commence at 8:30 a.m. and terminate at 5:00 p.m. on June 20, 21, and 22, 1995. All sessions of the meeting will be open to the public.

The purpose of the meeting is to provide the Navy with an assessment of the impact of science and technology on life cycle cost initiatives of current Department of the Navy systems and projected acquisitions programs.

The meeting will include briefings and discussions relating to the requirements process as it relates to life cycle costs, joint advance strike technology—Life Cycle Cost tradeoffs, weapons system cost reductions, service life extension, condition based maintenance, the DDG–51 v. Japanese AEGIS, Life Cycle Cost of the Trident, designing for reduced maintenance, and industry life cycle cost initiatives.

This Notice is being published late because of administrative delays which constitute an exceptional circumstance, not allowing Notice to be published in the **Federal Register** at least 15 days before the date of the meeting.

For further information concerning this meeting contact: Ms. Diane Mason-Muir, Office of Naval Research, Ballston Center Tower One, 800 North Quincy Street, Arlington, VA 22217–5660, Telephone Number: (703) 696–4870.

Dated: June 6, 1995.

L. R. McNees,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 95–14331 Filed 6–8–95; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval of the Office of Management and Budget (OMB) has been requested by June 5, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Group, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review has been requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: June 5, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Elementary and Secondary Education

Type of Review: Expedited
Title: Safe and Drug-Free Schools and Communities Alternative Education Program
Frequency: Annually
Affected Public: State, Local or Tribal Governments
Reporting Burden: Responses: 1
Burden Hours: 11,200
Recordkeeping
Burden: Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used to establish, expand or improve model alternative education projects that have been designed for young people who have been expelled or suspended from their regular school program. The Department will use the information to make grant awards.
Additional Information: Clearance for this information collection is requested for June 5, 1995. An expedited review is requested in order to conduct a grant competition by August 15, 1995 and make awards by September 30, 1995.

[FR Doc. 95–14218 Filed 6–8–95; 8:45 am]

BILLING CODE 4000–01–M

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of Arbitration Panel Decision Under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on July 22, 1993, an arbitration panel rendered a decision in the matter of *Albert W. Travers v. Maryland Division of Vocational Rehabilitation, (Docket No. R-S/92–7).* This panel was convened by the Department of Education pursuant to 20 U.S.C. 107d-1(a), upon receipt of a complaint filed by petitioner, Albert Travers, on May 22, 1992. The Randolph-Sheppard Act (the Act) provides a priority for blind individuals to operate vending facilities on Federal property. Under this section of the Act, a blind licensee, dissatisfied with the State's operation or administration of the vending facility program authorized under the Act, may request a full evidentiary hearing from the State licensing agency (SLA). If the licensee is dissatisfied with the SLA's decision, the licensee may file a complaint with the Secretary of Education, who then is required to convene an arbitration panel to resolve the dispute.

FOR FURTHER INFORMATION CONTACT: A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 600 Independence Avenue, SW., Room 3230, Switzer Building, Washington, DC. 20202–2738, Telephone: (202) 205–9317. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8298.

SUPPLEMENTARY INFORMATION: Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d-2(c), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal property.

Background

The complainant, Albert W. Travers, is a blind vendor licensed by the respondent, the Maryland Division of Vocational Rehabilitation, pursuant to the Randolph-Sheppard Act, 20 U.S.C. 107 *et seq.* The Maryland Division of Vocational Rehabilitation (DVR) is the SLA responsible for the operation of the Maryland vending facility program for blind individuals.

The complainant operates a Randolph-Sheppard snack bar located on the ground floor of the Fallon Federal Office Building at 31 Hopkins Plaza, Baltimore, Maryland. This facility

is identified as Facility #63 by the SLA. The current permit listing items to be sold by Facility #63 provided that both hot and cold beverages may be sold. However, the permit did not specify the nature of the beverage nor were there restrictions on the type of container.

Located on the same floor with Facility #63 is another Randolph-Sheppard facility identified as Facility #54. Facility #54 was permitted to sell canned and bottled beverages in May of 1987.

In May 1990, the vendor at Facility #54 filed a grievance against Mr. Travers alleging unfair competition due to the sale of similar products. The SLA's regulations pursuant to the Code of Maryland Rules (COMAR) Section 13A provides for a committee of peers to review complaints between two or more blind vendors managing facilities on the same property. A peer review was conducted in June of 1990. On July 11, 1990, the peer review panel ruled in favor of complainant.

Subsequently, the vendor of Facility #54 appealed this decision and requested an administrative review, which was held on October 30, 1990. On November 9, 1990, the Director of the Office of Program and Administrative Support Services issued a determination that competition existed between Facilities #63 and #54. The decision of the SLA was to take steps to minimize the competitive situation between Facility #63 and Facility #54. The Director decided that Facility #54 should be authorized to sell canned and bottled sodas and that Facility #63 should be authorized to sell fountain sodas. The Director further decided that both Facility #54 and Facility #63 should be authorized to sell bottled water and canned and bottled juices.

On December 4, 1990, complainant requested a full evidentiary hearing to appeal the Director's decision. The hearing officer affirmed the Director of Office Program and Administrative Support Services' decision that Mr. Travers should not be permitted to sell bottled sodas. On April 10, 1992, the SLA affirmed the decision of the hearing officer.

The complainant, Albert Travers, on May 22, 1992, filed a request with the Secretary of Education to convene an arbitration panel to hear an appeal of his grievance. An arbitration hearing was conducted on March 16, 1993, pursuant to the Act. The complainant was challenging the SLA's actions on the grounds that (1) the SLA lacked the legal authority to act unilaterally to effectively amend the operating permits without the concurrence of either the Federal property managing agency, GSA, or complainant and over the objections of both; (2) no basis was shown to restrict complainant's sale of non-natural bottled sodas, given the lack of any evidence concerning the impact of competition upon the operations conducted by complainant or by another program vendor; (3) the SLA failed to adhere to its own regulations and internal Administrative Manual in the handling of the unfair competition claim; and (4) the SLA improperly attempted to retroactively apply its Administrative Manual against complainant.

Arbitration Panel Decision

The majority of the panel found that the Randolph-Sheppard Act is silent on the issue of limiting competition between two or more program vendors at a single Federal installation. The Act does provide for a sharing of vending machine income in cases of more than one program vendor operating at a single Federal installation. The panel found that the SLA does have a legitimate interest in restricting "ruinous competition" between program vendors since "ruinous competition" would deprive one or both program vendors of the ability to survive economically and would be contrary to the intent of the Act.

The panel ruled that, based upon the record of evidence viewed in its entirety, the SLA's actions were arbitrary and capricious and unsupported by any specific factual evidence as to the impact of competition between Mr. Travers and the vendor of Facility #54 relating to the sale of bottled sodas. The panel reasoned that, absent that factual evidence, no conclusion could be drawn regarding the competition as unfair or ruinous. The SLA's actions were not supported procedurally or substantively or by its Administrative Manual or by any other cited regulatory or statutory authority that would allow the SLA to retroactively eliminate the sale of products that were authorized by the operating permit and that were not restricted by a valid operating agreement.

The panel found that the SLA failed to adequately take into account the fact that Mr. Travers had been selling bottled sodas for an extended period of time before the vendor of Facility #54 attempted to compete with him. The panel found that the final decision of the SLA arbitrarily and capriciously drew a distinction between "natural" bottled sodas and "non-natural" bottled sodas, which led to the absurd results of complainant selling exclusively bottled 7–Up and bottled Birch Beer and the vendor of Facility #54 selling bottled Diet 7–Up and bottled Root Beer. No rationale was provided for distinguishing between "natural" and "non-natural" sodas.

The panel directed the SLA to rescind its final agency determination regarding the restriction of complainant to sell bottled sodas. The SLA was precluded from attempting to force the complainant to sign an operating agreement that would contain such a restriction. The panel specifically noted the SLA's authority pursuant to State regulations to insist that complainant enter into a valid operating agreement governing the operation of his facility.

A panel member issued a concurring opinion but disagreed with the panel's findings that complainant's request for reimbursement for costs and attorney's fees was outside the jurisdiction of the panel. That panel member urged the panel to award costs of the arbitration to the complainant.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

Dated: June 6, 1995.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 95–14219 Filed 6–8–95; 8:45 am]

BILLING CODE 4001–01–P

DEPARTMENT OF ENERGY

Nevada Operations Office; Acceptance of an Unsolicited Proposal

AGENCY: Nevada Operations Office (DOE/NV), Department of Energy.

ACTION: Acceptance of an Unsolicited Proposal.

SUMMARY: DOE/NV announces that pursuant to the DOE Financial Assistance Rules, 10 C.F.R. Section 600.14(f), it is awarding a grant to the Corporation for Solar Technology and Alternative Resources (CSTAR) of Las Vegas, Nevada, on the basis of acceptance of an unsolicited proposal.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Nevada Operations Office, ATTN: Kevin Thornton, P.O. Box 98518, Las Vegas, NV 89193–8518.

SUPPLEMENTARY INFORMATION: This award will provide financial support to CSTAR who will pursue highly leveraged renewable energy development, especially the commercialization of new technologies looking for market entry projects.

This project is to advance the competitive position of solar-power generation technologies by constructing facilities capable of generating up to 1000 megawatts of solar-generated electrical power and to create a sustaining manufacturing and technology infrastructure in southern Nevada. The mix of types of solar generation will be determined through a competitive process and will potentially include photovoltaics, dish/Stirling, solar trough, power tower, and other renewable technologies.

The unsolicited proposal submitted by CSTAR is considered to be meritorious and the proposed project represents a unique and innovative idea, method, and approach which would not be eligible for financial assistance under a recent current, or planned solicitation.

The project is of value to the DOE, other Federal agencies, the scientific and technological communities, and the general public through growth of a new manufacturing and technology industry in the southern Nevada area.

The project period of this grant is for four and one-half years and will commence on June 15, 1995, through December 31, 1999. The total estimated cost of the award is $7,722,027 of which $4,700,000 is Federal funding and $3,022,027 non-Federal.

Issued in Las Vegas, Nevada, on May 22, 1995.

Joseph N. Fiore,

Acting Deputy Manager, DOE Nevada Operations Office.

[FR Doc. 95–14207 Filed 6–8–85; 8:45 am]

BILLING CODE 6450–01–M

Office of Economic Impact and Diversity; Guidelines for Department of Energy Mentor Protege Initiative

AGENCY: U.S. Department of Energy (DOE).

ACTION: Final Guidelines.

SUMMARY: On August 22, 1994, the Department of Energy (DOE) published proposed guidelines for its Mentor-Protege Pilot Initiative. The Mentor-Protege Pilot Initiatives is designed to encourage Department of Energy management and operating contractors, Environmental Restoration management contractors and DOE prime contractors to assist energy-related small disadvantaged, (8a), and women-owned businesses in enhancing their business and technical capabilities to ensure full participation in the mission of the Department.

EFFECTIVE DATE: June 9, 1995.

FOR FURTHER INFORMATION CONTACT: Eugene Tates at (202) 586–4556.

SUPPLEMENTARY INFORMATION:

Purpose and Program Overview

The Department of Energy Mentor-Protege Pilot Initiative is designed to encourage Department of Energy management and operating contractors, Environmental Restoration management contractors and DOE prime contractors, to assist energy related small disadvantaged, 8(a), and women-owned businesses in enhancing their business and technical capabilities to ensure full participation in the mission of the Department. The use of this integrated working arrangement between companies will promote economic and technological growth, foster the establishment of long term business relationships and increase the number of small disadvantaged, 8(a), or women-owned businesses that receive Department of Energy, other Federal and commercial contracts.

Comments to Proposal Guidelines

On August 22, 1994, the Department of Energy published proposed guidelines for its Mentor-Protege Pilot Initiative and requested written comments on the draft guidelines and supporting materials on or before September 21, 1994 (59 FR 43098). Although the Department received numerous telephone inquiries regarding the Initiative, only 22 written responses or comments were received.

Issues raised by respondents were distilled into the following relevant issues:

(1) Expand the mentor base to include more than Department of Energy management and operating contractors.

DOE reviewed the Mentor-Protege Pilot Initiative mentor participation limitations and decided to expand the mentor base to include Environmental Restoration management contractors and DOE prime contractors.

(2) Separate funding to operate the Initiative should be provided to approved mentor firms.

Unlike other mentor-protege programs which have appropriated funds, the Mentor-Protege Pilot Initiative is a program conceived by the Department of Energy and operated within the constraints of available resources. The Initiative does not have any appropriated funding. The Initiative does not provide cost reimbursement.

(3) A clear definition of "energy-related" should be given when the final guidelines are published.

"Energy-related" refers to any business relevant to the mission of the Department of Energy.

A. General Policy

(1) Department of Energy management and operating contractors, Environmental Restoration management contractors and prime contractors who are approved as mentor firms may enter into agreements with eligible small disadvantaged, 8(a), and women-owned businesses as protege firms to provide appropriate developmental assistance to enhance the business and technical capabilities of small disadvantaged, 8(a), and women-owned businesses to perform as contractors, subcontractors and suppliers.

(2) The mentor-protege initiatives described in these regulations constitutes a pilot program that will have a duration of two years from the date of the published final notice. During this period, management and operating contractors, Environmental Restoration management contractors and prime contractors which have received approval by the Department of Energy to participate in the program may enter into agreements with protege firms.

B. Incentives for Mentor Participation

(1) Active participation in the Department of Energy Mentor Protege Initiative may be a source selection factor in the awarding of Department of Energy contracts.

(2) The award fee evaluation plans contained in all Department of Energy Performance-Based Management contracts may include a factor for evaluation of a contractor's performance associated with Mentor-Protege Initiative participation.

(3) Mentor firms shall receive credit toward Department of Energy subcontracting goals contained in their subcontracting plan.

C. Incentives for Protege Firms

(1) Protege firms may be eligible for noncompetitive subcontracting procurement opportunities with the Department.

(2) Technical and developmental assistance provided by the mentor.

(3) Development of business relationships with Department of Energy, its contractors, and procurement personnel.

D. Mentor Firms

Department of Energy mentor candidates must be:

(1) Management and operating contractors of Department of Energy facilities.

(2) Environmental Restoration management contractors.

(3) DOE prime contractors.

E. Protege Firms

Department of Energy Protege candidates must be:

(1) A small disadvantaged, 8(a), or woman-owned small business concern in operation for two years as defined by the Small Business Administration.

(2) Eligible for receipt of government contracts, and;

(3) In operation and actively engaged in an energy related, technical or construction business field for two years.

F. Selection of Protege Firms

(1) Proteges may be selected from each of the following areas:

(a) Small disadvantaged and women-owned businesses that presently have contracts or subcontracts with the Department;

(b) Small disadvantaged and women-owned businesses that are presently 8(a) or 8(a) graduates under the Small Business Administration Program.

(c) Emerging small disadvantaged and women-owned business firms that possess energy related or technical capability and have been actively engaged in business for at least two years.

G. Agreement Contents

(1) Once a protege firm has been selected for participation in the program, a Mentor-Protege Plan signed by the respective firms shall be submitted to the Office of Economic Impact and Diversity/Office of Small Disadvantaged Business Utilization for approval. The Plan shall contain a description of the developmental assistance that is mutually agr d upon and in the best developmental interest of the protege firm, not to exceed ten (10) typed pages.

(2) The Mentor-Protege Plan shall also include information on the mentor's ability to provide developmental assistance, schedule for providing such assistance, and criteria for evaluating the protege's developmental success. The Plan shall include termination provisions complying with Notice and due process rights of both parties and a statement agreeing to submit periodic report reviews and cooperate in any studies or surveys as may be required by the Department in order to determine the extent of compliance with the terms of the agreement

(3) The submitted Mentor-Protege Agreement shall be reviewed by a Department of Energy committee consisting of representatives of the Office of Procurement and Assistance Management, the Office of Economic Impact and Diversity, and a Small Business Manager affiliated with the DOE Field Operations Offices.

The committee may recommend acceptance of the submitted Agreement if the Agreement is in compliance with Department of Energy Mentor-Protege guidelines.

H. Measurement of Program Success

The overall success of the Mentor-Protege Initiative will be measured by the extent to which it results in:

(1) An increase in the protege firm's technical and business capability, industrial competitiveness, client base expansion and improved financial stability.

(2) An increase in the number and value of contracts, subcontracts and suppliers by small disadvantaged business protege firms in industry categories where small disadvantaged businesses have not traditionally participated.

(3) The overall enhancement and development of protege firms as a competitive contractor, subcontractor, or supplier to the Department of Energy, other Federal agencies or commercial markets.

I. Review and Approval of Mentor-Protege Agreements

(1) All mentor-protege agreements shall be reviewed and approved by the Department of Energy's Office of Economic Impact and Diversity/Office of Small and Disadvantaged Business Utilization.

(2) Upon agreement approval, the mentor may implement the developmental assistance under the program.

(3) Proteges may seek multiple mentors provided, conflict of interest provisions would not prevent such an arrangement and the approval of the Office of Economic Impact and Diversity/Office of Small and Disadvantaged Business Utilization is received.

J. Internal Controls by the Department

(1) The Department of Energy's Office of Economic Impact and Diversity/ Office of Small and Disadvantaged Business Utilization will manage the program and establish internal controls to achieve the stated program objectives. Controls will include:

(a) Reviewing and evaluating mentor-protege agreements for goals and objectives; and

(b) Reviewing semi-annual progress reports submitted by mentors and proteges on protege development to measure protege progress against the approved agreement.

(c) Requesting and reviewing periodic reports and any studies or surveys as may be required by the Department.

K. Non Performance

(1) Failure of the mentor to meet the terms of the Mentor-Protege Agreement may have an adverse affect on future award fees.

(2) Failure of the protege to meet the terms of the Mentor-Protege Agreement may result in termination of the agreement by the mentor and exclusion from future participation in the Mentor-Protege Initiative.

L. Program Review

At the conclusion of each year in the Mentor-Protege Initiative the mentor and protege will formally brief the Department of Energy Office of Economic Impact and Diversity/Office of Small and Disadvantaged Business Utilization, regarding program accomplishments as it pertains to the approved agreement. The briefing may be held at either the Department of Energy Headquarters or the mentor or protege's site.

Issued in Washington, DC on June 2, 1995.

Corlis S. Moody,

Director, Office of Economic Impact and Diversity.

[FR Doc. 95–14206 Filed 6–8–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket Nos. CP95–61–000 and CP95–62–000]

Columbia Gas Transmission Corporation; Notice of Availability of the Environmental Assessment for the Proposed Majorsville/Crawford Storage Project

June 5, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Columbia Gas Transmission Corporation (Columbia) in the above-referenced dockets.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of temporary deactivation of the existing Majorsville-Heard Storage Complex over the next 13 years and the construction and operation of additional natural gas storage facilities at the Crawford Storage Field.

Deactivation at the Majorsville-Heard Storage Complex in Greene and Washington Counties, Pennsylvania and Marshall County, West Virginia could involve:

- Abandonment or relocation of up to 60 miles of existing pipeline; and
- Abandonment of up to 238 wells.

Additional facilities proposed at the Crawford Storage Field in Fairfield and Hocking Counties, Ohio include:

- Installation of 0.66 mile of electronic measurement cable;
- Replacement of 3.75 miles of pipeline;
- Construction of 0.95 mile of new pipeline;
- Drilling of four new wells;
- Modifications at the Crawford Compressor Station; and
- Installation of other appurtenant facilities, including wellhead measurement stations, well tie-ins, launchers/receivers, and an anode bed.

Temporary deactivation of the Majorsville-Heard Storage Complex is required to prevent damage to wells and pipelines from longwall coal mining that is in progress within the storage complex. The proposed facilities at the Crawford Storage Field would be used to offset the temporary deactivation of the Majorsville-Heard Storage Complex and would increase design day deliverability by 67.2 million cubic feet per day and storage capability by 5 billion cubic feet.

The EA has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 941 North Capitol Street, N.E., Room 3104, Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

A limited number of copies of the EA are available from: Ms. Laura Turner, EA Project Manager, Environmental Review and Compliance Branch II, Office of Pipeline Regulation, Room 7312, 825 North Capitol Street, N.E., Washington, DC 20426, (202) 208–0916.

Any person wishing to comment on the EA may do so. Written comments must reference Docket Nos. CP95–61–000 and CP95–62–000, and be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Comments should be filed as soon as possible, but must be received no later than June 30, 1995, to ensure consideration prior to a Commission decision on this proposal. A copy of any comments should also be sent to Ms. Laura Turner, EA Project Manager, Room 7312, at the above address.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. EA Project Manager, Room 7312, at the above address.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your comments considered.

Additional information about this project is available from Ms. Laura Turner, EA Project Manager.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14129 Filed 6–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 7888–010 Vermont]

Comtu Falls Corp.; Notice of Availability of Environmental Assessment

June 5, 1995.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's Regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) reviewed the proposed downstream fish passage plan (plan), filed on October 24, 1994, pursuant to Commission order issued September 22, 1994, for the Comtu Falls Project. The plan would replace about 33 feet of the 2-foot-high flashboards adjacent to a proposed discharge weir with a 2-foot-high fixed concrete crest. A 2.5 foot wide by 2.0 foot high discharge weir would be opened in this concrete cap at the west abutment of the dam and trashrack to produce a 20-cubic-foot-per-second (cfs) flow to attract/convey outmigrating Atlantic salmon smolts safety past the project. The flow would discharge into a 3-foot-deep plunge pool to be constructed on the bedrock falls below the discharge. To further ensure efficient operation of the passage facility, 18 feet of the east edge of the dam would be capped with concrete to cover the exposed bedrock. The remaining 74 feet of the dam would retain the 2-foot-high flashboards. The downstream fish passage facility would be operated annually from April 1 through June 15. The staff prepared an Environmental Assessment (EA) for the action. In the EA, staff concludes that approval of the licensee's plan would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, Room 3308, of the Commission's offices at 941 North Capitol Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14126 Filed 6–8–95; 8:45 am]

BILLING CODE 6717–01–M

[RP95–31–000]

National Fuel Gas Supply Corporation; Notice of Informal Settlement Conference

June 5, 1995.

Take notice that an informal settlement conference will be convened in these proceedings on June 12, 1995 at 10:00 a.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street, N.E., Washington, D.C., 20426, for the purpose of exploring the possible settlement of the issues in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Marc G. Denkinger (202) 208–2215 or Arnold H. Meltz (202) 208–2161.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14128 Filed 6–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2474–004]

Niagara Mohawk Power Corporation; Notice of Extension of Time

June 5, 1995.

The time for filing comments on the application for license for the Oswego River Project No. 2474 is hereby extended until further notice, based on the representation of the parties to Commission staff that active settlement discussions will commence in early June.[1] A new deadline for filing responses will be established in a future notice.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14127 Filed 6–8–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[Docket No. EA–101–A]

Application To Amend Electricity Export Authorization, Washington Water Power Company

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Application.

SUMMARY: Washington Water Power Company (WWP) has submitted a request to amend its existing authorization to export electric energy to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before July 10, 1995.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE–52), Office of Fuels Programs, Office of Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202–586–4708 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA).

WWP is currently authorized to export electric energy to Canada pursuant to two separate export authorizations. On September 2, 1994, the Office of Fossil Energy (FE) of the Department of Energy (DOE) issued an order in Docket EA–98 authorizing WWP and 21 other members of the Western Systems Power Pool (WSPP) to export electric energy to British Columbia Hydro & Power Authority (B.C. Hydro), and other future Canadian members of the WSPP, under the terms and conditions of WSPP's pooling agreement and service schedules approved by the Federal Energy Regulatory Commission (FERC). A condition of the WSPP agreement is that all transactions among WSPP members must be no longer than one year in duration and in accordance with one of four service schedules on file with FERC. The facilities to be utilized for these exports are the international transmission facilities owned and operated by the Bonneville Power Administration (BPA), also a WSPP member. These facilities consist of two 500-kilovolt (kV) lines located at Blaine, Washington, one 230-kV line at Nelway, British Columbia, and one 230-kV transmission line connecting to West Kootenay Power, Limited, at Nelway, British Columbia. The construction and operation of these international transmission facilities were previously authorized by Presidential Permits PP–10, PP–46, and PP–36, respectively. Exports under this order are authorized through September 2, 1996.

On October 17, 1994, FE issued an order in Docket EA–101 authorizing WWP to export through BPA's Nelway facilities (Presidential Permit PP–36[1]) up to 100 megawatts (MW) of firm capacity and associated energy to West Kootenay Power, Limited, for only the months of November, December, January, and February. This authorization expires in February 1999.

On May 12, 1995, WWP applied to DOE to amend the export authorization issued in Docket EA–101 by: (1) Increasing the authorized export limit to 400 MW; (2) authorizing exports for all months of the calendar year; (3) removing the expiration date of the export authorization; and (4) adding the BPA facilities authorized by Presidential Permits PP–10 and PP–46 to the list of facilities that WWP may use for export.

WWP asserts that amending the export authorization will allow it to more readily respond to the competitive changes taking place in the electric utility industry and that the limits in the existing export authorization create a significant barrier to meeting competitive market opportunities. WWP is seeking an export authorization that will allow it to negotiate contracts for transactions that occur during any month over a period of years. Specifically WWP is requesting authorization to enter into multiple contracts in order to export not more than 400 megawatts of electricity to Canada annually.

Procedural Matters

Any person desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Rules of Practice and Procedures (18 CFR 385.211, 385.214).

Any such petitions and protests should be filed with DOE on or before the date listed above. Additional copies of such petitions to intervene or protests also should be filed directly with: Charles M. Goligoski, Power Resource Analyst, Washington Water Power, East 1411 Mission, P.O. Box 3727, Spokane, Washington 99220–3727.

Pursuant to 18 CFR 385.211, protests and comments will be considered by the DOE in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a part must file a petition to intervene under 18 CFR 385.214. Section 385.214 requires that a petition to intervene must state, to the extent known, the position taken by the petitioner and the petitioners interest in sufficient factual detail to demonstrate either that the petitioner has a right to participate because it is a State Commission; that it has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a consumer, customer, competitor, or a security holder of a party to the proceeding; or that the petitioner's participation is in the public interest.

A final decision will be made on this application after the DOE determines whether the proposed action would impair the sufficiency of electric supply within the United States or would impede or tend to impede the coordination in the public interest of facilities as required by Section 202(e) of FPA.

Before an export authorization may be issued, the environmental impacts of the proposed DOE action (i.e., granting the export authorization, with any conditions and limitations, or denying it) must be evaluated pursuant to the National Environment Policy Act of 1969 (NEPA).

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC, June 2, 1995.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Fossil Energy.

[FR Doc. 95–14205 Filed 6–8–95; 8:45 am]

BILLING CODE 6450–01–P

[1] Notice of Application Ready for Environmental Analysis issued April 3, 1995. (60 FR 19906, Apr. 21, 1995)

[1] In the electricity export authorization issued to Washington Water Power on October 17, 1994, in FE Docket EA–101, Order EA–101, the DOE misidentified the Presidential permit to be used to execute the transfer of electric energy to West Kootenay Power, Limited. The correct Presidential permit number is PP–36, not PP–46.

Western Area Power Administration

Final Principles of Integrated Resource Planning for Use in Resource Acquisition and Transmission Planning

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of final principles.

SUMMARY: The Western Area Power Administration (Western) will use principles of integrated resource planning (IRP) in its acquisition of resources (supply-side and demand-side) and in its transmission planning. Western published proposed principles for public consideration in the **Federal Register** on December 6, 1994 (59 FR 62724). After considering public comment on that proposal, Western has adopted the final principles of IRP contained in this notice as the policy under which project-specific resource acquisition and transmission planning procedures will be developed. These project-specific procedures will be developed through separate public processes.

DATES: The final principles of IRP will be effective on July 10, 1995.

BACKGROUND: On August 9, 1994, Western provided notice of its proposed Energy Planning and Management Program (Program), 59 FR 40543, concerning requirements for Western's customers to undertake integrated resource planning consistent with the statutory requirements of the Energy Policy Act of 1992 (section 114 of the Energy Policy Act, codified at 42 U.S.C. §§ 7275–7276c). In that notice, Western committed to develop and use principles of IRP in its own resource acquisition and transmission planning. The separate public process to develop principles of IRP began with publication of draft principles of IRP in the **Federal Register** on December 6, 1994. A public information and comment forum was held in Denver, Colorado, on January 12, 1995, to explain the proposed principles and receive comments on the proposal. Written comments on the proposal were received through March 7, 1995.

The final Western principles of IRP outlined in this notice will be used by Western in its resource acquisition and transmission planning and differ from those proposed in the Program for Western's customers. Western's resource acquisitions are primarily short-term purchases of supplemental resources to firm variable hydropower generation and are not acquisitions of resources to meet long-term load growth. The principles of IRP also have been adapted to Western's transmission planning process, which does not deal with new generation resources, only new or upgraded transmission facilities.

Western currently is involved in other public processes that can have an impact on future purchase power and transmission requirements. The final principles of IRP will be applied when acquiring resources or planning transmission related to the decisions from these other public processes. These principles will serve as the policy under which specific procedures are developed as each project identifies the need to acquire resources or increase Western's transmission capability.

RESPONSE TO COMMENTS: Western received 4 oral comments at the January 12, 1995, public meeting and 11 comment letters on the proposed principles of IRP published December 6, 1994. The comments received and Western's responses follow.

1. *Comment:* The scope of the principles of IRP should be broadened to possibly include examination of project-use loads.

Response: Western is responsible for marketing the power surplus to the needs of the Bureau of Reclamation (Reclamation) projects. Reclamation has jurisdiction for operation of the projects. However, we do agree that there may be opportunities for collaborating with Reclamation to expand the IRP process to include, where feasible, energy efficiency improvements at project-use facilities. Western and Reclamation completed a study in 1992 that indicated very limited opportunity for cost-effective improvements at Central Valley Project project-use facilities. However, Western may continue to evaluate such opportunities as part of project-specific resource acquisition evaluation criteria.

2. *Comment:* Western should increase cooperation with Reclamation on planning studies to extract the maximum possible benefit out of the projects to reduce the need for additional purchases.

Response: We agree with this comment. As part of the National Performance Review, Reclamation is reviewing its power functions and operations. Western is cooperating in this effort.

3. *Comment:* The evaluation of supply-side and demand-side alternatives requires some additional clarification of the interplay between the customer demand-side management (DSM) and the Western DSM programs.

Response: The evaluation of demand-side alternatives for customers is generally focused on use of DSM to impact the customer's total load to reduce or delay resource acquisitions. Since Western is a partial requirements supplier for most of its customers, the evaluation of Western DSM alternatives will focus upon whether DSM will impact that portion of a customer's load supplied by Western (Western's contract obligation) to reduce the customer's need for the Western resource, which may, in some cases, reduce Western's resource acquisitions. Western DSM alternatives also may include improvements that reduce losses or project use energy efficiency improvements, if such alternatives reduce the amount of energy that Western needs to acquire to meet its contract commitments. A customer DSM activity that reduces only the amount a customer self-generates or purchases from an auxiliary supplier has no impact on Western's obligation and, therefore, is not a Western DSM alternative under these principles.

4. *Comment:* Western's proposal to apply principles of IRP to resource acquisition and transmission planning was strongly supported by one commenter, and Western was commended for developing an internal IRP process by two commenters at the January 12, 1995, public meeting.

Response: Western appreciates the support of these commenters.

5. *Comment:* Several commenters expressed concerns that these principles of IRP should not interfere with or duplicate existing partnership efforts between our firm power customers and Area Offices for resource acquisition and transmission planning.

Response: Western fully supports the on-going processes between Area Offices and customers relating to cost containment, transmission planning and resource acquisition. However, one of the basic foundations of IRP is full public involvement in resource decisions. To the extent that on-going partnership processes, such as the Glen Canyon Replacement Power process, include involvement by all interested stakeholders, those processes can integrate these final principles of IRP within their decision making process without additional effort.

6. *Comment:* The Salt Lake City Area replacement power process for Glen Canyon resources provides for each

customer to decide if it wants its lost resource to be replaced by Western or by the customer. Principle number I.2 would violate this by taking the decision away from the customer and letting it be made by interested stakeholders.

Response: Western has no intent to overturn any agreements in the Glen Canyon power replacement process. At the January 12, 1995, public meeting, Western recognized that "* * * the extent of Western's future resource acquisitions * * * will depend on the choices made by long-term firm power customers to arrange their own purchases of firming energy or to have Western acquire firming resources for them." Principle number I.2 has been modified to avoid confusion by deleting the provision for public input into the necessity for resource acquisitions and only provide for public input in the development of criteria to be used in evaluating power resource alternatives. This allows customers to decide whether or not Western should acquire firming resources for them and allows all interested stakeholders input into the criteria for evaluating resource alternatives consistent with the intent of integrated resource planning.

7. *Comment:* Several commenters questioned the costs and benefits to Western and the power customers of yet another public process.

Response: It is not Western's intent to add the additional cost and burden of yet another process. It is, however, Western's intent to fully integrate the principles of IRP into ongoing Western-Customer partnership processes and to ensure that all stakeholders have an opportunity to provide input into Western's resource acquisition and transmission planning processes. Western believes that making informed, least-cost resource acquisition and transmission planning decisions with involvement by all interested stakeholders will be worth the effort.

8. *Comment:* Principles of IRP will become less useful as the industry becomes more competitive.

Response: Western believes that the principles of IRP contained in this notice will facilitate Western's competitiveness by helping it make informed decisions with input from all interested stakeholders. In addition, the principles of IRP can be used to identify uncertainties associated with the more competitive generation sector of the industry, thereby providing the mechanism to evaluate risks associated with resource acquisition and transmission planning decisions.

9. *Comment:* These principles could duplicate, delay, and complicate Western's participation in transmission projects proposed through a regional transmission group, such as the Western Regional Transmission Association (WRTA) and the Southwest Regional Transmission Association (SWRTA).

Response: Western does not believe that these principles will impede its ability to participate in regional transmission groups. It is Western's intent to integrate the principles of IRP into Western's ongoing processes in order to ensure that transmission plans proposed by Western will have the benefit of input from all interested stakeholders. Western has joined WRTA and SWRTA. Both groups will promote coordinated planning and efficient use of transmission capacity and will provide another means for involvement by Western's customers. As appropriate, Western can invite other interested parties to attend SWRTA meetings as guests of Western. Additionally, both WRTA and SWRTA allow for State regulatory commissions' involvement as ex officio members. It is anticipated that some form of regional transmission group will be established in the Mid-Continent Area Power Pool. This will also facilitate public involvement in considering Western's future transmission needs.

10. *Comment:* Western needs to be creative about DSM when applying these principles to actual decisions.

Response: We agree. This issue will be addressed during Area Office development of resource evaluation criteria at the time that a resource acquisition appears to be necessary.

11. *Comment:* Customers and the broader public should have opportunity to comment before Western signs long-term purchase power contracts.

Response: These principles provide opportunity for all interested stakeholders to participate in the development of resource evaluation criteria by an Area Office for project-specific resource acquisitions. In addition, customers and the broader public will continue to have an opportunity to comment on power marketing plans which determine the need for long-term purchase power contracts. It is unnecessary and duplicative to have an additional comment opportunity on individual contracts implementing the evaluation criteria decisions.

12. *Comment:* The transmission planning evaluation criteria should include the following criteria that were discussed at the January 12, 1995, public meeting: (1) increased revenues from new transmission exceed costs; (2) customers benefit sufficiently that they support the project; or (3) new facilities are funded directly by others.

Response: Western does not feel that it is appropriate to include these criteria in the final principles of IRP since they are part of Western's internal decision rules as currently adopted in its strategic planning process that may change from time to time based on customer feedback or Department of Energy or Congressional direction. However, Western is committed to our strategic planning process which currently includes these evaluation criteria. The intent of the principles of IRP as applied to transmission planning is to foster wide and early public involvement and a free exchange of ideas to develop alternatives that best meet regional needs.

13. *Comment:* Western should change the scope to specify purchases for 2 years or longer or recurring purchases of more than 250 gigawatthours per year.

Response: Western believes such a requirement in the scope would reduce the flexibility of the Area Offices and interested stakeholders to collaboratively determine the amount of recurring purchases that would justify use of these principles. At the January 12, 1995, meeting, Western described a "continuous" or "recurring" purchase to mean, "* * * a resource need, capacity and/or energy of a fixed quantity and seasonal pattern and over an extended period, usually longer than 5 years." Western believes that it is important to maintain flexibility within these principles.

14. *Comment:* The principles of IRP do not apply to transmission planning.

Response: Western believes that the principles of IRP do apply for public participation and consideration of alternatives to construction.

15. *Comment:* One commenter asked several questions concerning implementation of these principles: What are classified as renewables? Will decentralized, smaller resources, such as PV, be considered as renewables? Will public education and incentives for conservation be included in DSM programs? Will global climate change needs be included in considerations of environmental impact?

Response: Western believes that consideration of these important issues at this time is beyond the scope of these principles. However, these issues will be considered in Area Office development of evaluation criteria for specific resource acquisition or transmission planning activities.

SCOPE: The principles of IRP will apply specifically to:

1. Resource acquisitions involving a commitment to purchase a resource continuously or a commitment to make recurring purchases. Normally, formal principles will not be applied to unpredictable seasonal purchases, day-to-day economy energy purchases, and other short-term transactions.

2. New or upgraded transmission system construction with a 1995 total cost estimate in excess of $5 million for an individual project. This 1995 cost level will be adjusted each year using the construction cost index. Normally, formal principles of IRP will not be applied to transmission facilities needed for reliability. Transmission facilities needed for reliability will be based on mitigating problems related to power system operations or replacing unsafe, aged, worn out, or inefficient equipment.

Where practicable, principles of IRP will also be applied informally to other Western transmission projects and/or resource acquisitions.

PROPOSED PRINCIPLES OF INTEGRATED RESOURCE PLANNING:

I. Resource Acquisition Principles: Western's resource acquisition activities will be determined by project-specific power marketing plans, hydropower production capability, and the application of the following proposed principles of IRP:

1. Western will consider a full range of resource options, both supply-side and demand-side, as well as renewable resource options.

2. On a project-by-project basis, Western, through a public process involving interested stakeholders, will develop criteria to be used in evaluating power resource alternatives.

3. Evaluation criteria will address cost, environmental impact, dependability, dispatchability, risk, diversity, and the ability to verify demand-side alternatives. Evaluation criteria will be reviewed as the need for resources changes or when long-term commitments to purchase power expire.

4. Evaluation criteria will be consistent with Western's power marketing policy, which states that Federal power is to be marketed in such a manner as to encourage the most widespread use thereof at the lowest possible rates to consumers consistent with sound business principles. The policy, found in Delegation Order No. 0204–108, is derived from statutes authorizing the sale of power from both Department of the Army and Department of the Interior hydroelectric projects. These statutes include section 5 of the Flood Control Act of 1944, 16 U.S.C. 825 and section 9(c) of the Reclamation Project Act of 1939 .

5. Resource acquisition planning will be consistent with power marketing plans and associated contractual obligations.

6. Resource acquisition decisions will be documented and made available to Western's power customers and the public.

II. Transmission Planning Principles: Western's transmission planning is conducted to assess the capability of the Federal transmission system to provide adequate and reliable electric service to its customers and the interconnected power grid. The principles of IRP that will apply to Western's transmission planning are as follows:

1. Western will conduct early and wide public involvement to confirm the purpose and need of a proposed transmission project. Western proposes that a public meeting be held early in the planning process once the need for system modifications has been identified and prior to start of the National Environmental Policy Act of 1969 (NEPA) process. To the extent appropriate, Western's use of principles of IRP for transmission planning will include existing forums and customer partnerships with regard to public involvement.

2. At the public meeting, Western will describe the need to be met and seek comments on alternative ways to address the need, including demand-side management, new construction, or upgrade of existing facilities.

3. Western will include opportunity for participation in the early and wide public involvement process by interested parties, including power customers, residents of the area, environmental groups, various resource suppliers, including renewable generation entities, and other transmission utilities in the area, as well as other participants in the proposed transmission project if it is a joint participation project.

4. Alternatives that are reasonable will be initially evaluated for cost, general environmental impacts, and system reliability concerns in coordination with interested parties. Data from this initial evaluation will be included in the subsequent NEPA analysis.

5. The results of this preliminary evaluation will be made available to Western's power customers and the public.

ENVIRONMENTAL EVALUATION: Methods, procedures, and criteria for implementing these principles of IRP and any related environmental effects will be project-specific. Western will conduct appropriate public processes under NEPA and its implementing regulations for these project-specific actions.

DETERMINATION UNDER EXECUTIVE ORDER 12866: DOE has determined this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Issued at Golden, Colorado, May 17, 1995.

J.M. Shafer,

Administrator.

[FR Doc. 95–14208 Filed 6–8–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5219–3]

Ambient Air Monitoring Reference and Equivalent Methods; Receipt of Applications for Reference and Equivalent Method Determinations

Notice is hereby given that the Environmental Protection Agency has received three applications for reference or equivalent method determinations under 40 CFR part 53. On April 3, 1995, an application was received from Environnement S.A., 111 bd, Robespierre, 78300 Poissy, France, to determine if their Model $O_3$41M UV Absorption Ozone Analyzer should be designated by the Administrator of the EPA as an equivalent method. On April 4, 1995, an application was received from Horiba Instruments Incorporated, 17671 Armstrong Avenue, Irvine, California, to determine if their Model APMA–360 Ambient Carbon Monoxide Monitor should be designated as a reference method. And on April 24, 1995, an application was received from Environnement S.A., 111 bd, Robespierre, 78300 Poissy, France, to determine if their Model CO11M Gas Filter Correlation Carbon Monoxide Analyzer should be designated as a reference method. If, after appropriate technical study, the Administrator determines that these methods should be so designated, notice thereof will be given in a subsequent issue of the **Federal Register**. For additional information regarding receipt of any of these applications, please contact Frank F. McElroy (MD–77), Methods Research and Development Division, U.S. EPA, Research Triangle Park, NC, 27711 (919–541–2622).

Dated: May 24, 1995

Joseph K. Alexander,

Acting Assistant Administrator for Research and Development.

[FR Doc. 95–14234 Filed 6–8–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5218–9]

Process Source Opt-in Program Technical Background Document

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft report for public comment.

SUMMARY: The Acid Rain Division (ARD) of the U.S. Environmental Protection Agency (EPA) is preparing this technical background document to gather relevant information, in preparation of an upcoming rulemaking, on various process source industries that emit sulfur dioxide (SO_2). This rulemaking will implement section 410(d) of the 1990 Clean Air Act Amendments and will expand participation into the Opt-in Program for process sources that are able to meet program requirements.

EPA seeks public participation in developing this rulemaking to build a solid technical foundation on which to establish program requirements. In addition, the number and variety of industries that could potentially participate in this program make public input essential in crafting a regulation that can specifically address the many aspects of participation (e.g. allowance allocation, monitoring, etc.) and, at the same time, be flexible in accommodating differing approaches taken in different industries.

DATES: The draft Process Source Opt-in Program: Technical Background Document will be available for review and comment. EPA requests comments on or before July 24, 1995.

ADDRESSES: *Availability:* To obtain a copy of the draft Process Source Opt-in Program: Technical Background Document contact the Office of Air and Radiation Docket and Information Center at 202–260–7548 or 202–260–7549 or by fax at 202–260–4400. Refer to Docket A–95–23.

Comments: Written statements should be submitted (in duplicate if possible) to: Adam Klinger, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Adam Klinger, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. Telephone: (202) 233–9122.

Dated: May 31, 1995.

Brian J. McLean,

Director, Acid Rain Division.

[FR Doc. 95–14232 Filed 6–8–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5218–8]

Acid Rain Program: Notice of Final Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of permits.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is approving a 5-year sulfur dioxide compliance plan, according to the Acid Rain Program regulations (40 CFR part 72), for the following 2 utility plants: Baldwin and Havana in Illinois.

FOR FURTHER INFORMATION CONTACT: Cecilia Mijares, (312) 886–0968, EPA Region 5, Air and Radiation Division, 77 West Jackson Blvd., Chicago, IL, 60604.

Dated: May 31, 1995.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 95–14230 Filed 6–8–95; 8:45 am]

BILLING CODE 6560–50–P

[ER–FRL–4723–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 1, 1995 through May 5, 1995 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 1995 (72 FR 19047).

Draft EISs

ERP No. D–BLM–J65229–MT

Rating EC2, Sweet Grass Hills Resource Management Plan Amendment, Implementation, West HiLine Resource Management Plan, Toole and Liberty Counties, MT.

Summary: EPA expressed environmental concerns regarding potential impacts to water resources wildlife resources, air quality and cultural resources which should be avoided in order to fully protect the environment. EPA requested that additional information regarding these issues be included in the final document.

ERP No. D–DOE–L05210–00

Rating EO2, Resource Contingency Program, Construction and Operation, Three Proposed Plant Sites, Chelalis Hermiston and Satsop Power Projects, Lewis and Grays Harbor Counties, WA and Washington and Umattilla Counties, OR.

Summary: EPA expressed environmental objections based on potential water quality and wetland impacts. EPA requested additional information concerning the alternatives for potential cumulative impacts and proposed mitigation and monitoring.

ERP No. D1–DOE–A00163–00

Rating EC2, Programmatic EIS–Tritium Supply and Recycling Facilities Siting, Construction and Operation, Implementation, Idaho National Engineering Laboratory, ID; Nevada Test Site, NV; Oak Ridge Reservation, TN; Pantex Plant, TX or Savannah River Site, SC.

Summary: EPA endorsed the accelerator technology as the most environmentally preferred technology and noted that each site has a unique set of environmental challenges to mitigate. EPA requested additional information in the final EIS concerning groundwater, aquifer impacts, and emergency preparedness.

Final EISs

ERP No. F–DOD–K11057–CA

California Acoustic Thermometry of Ocean Climate (ATOC) Program and Marine Mammal Research Program (MMRP), Funding, Marine Mammal Research Permit and COE Nationwide Permits Issuance, Monterey County, CA.

Summary: Review of the Final EIS was not deemed necessary. No comment letter was sent to the preparing Agency.

ERP No. F–DOE–A00166–00

NAT, Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs, Implementation.

Summary: EPA environmental concerns on the draft environmental impact statement have been adequately addressed.

ERP No. F–NPS–K61130–HI

Haleakala National Park General Management Plan and Conceptual Framework, Implementation, Island of Maui, Maui County, HI.

Summary: Review of the final EIS was not deemed necessary. No comment letter was sent to the preparing Agency.

Dated: June 6, 1995.

William D. Dickerson,

Director, NEPA Complionce Division, Office of Federal Activities.

[FR Doc. 95–14224 Filed 6–8–95; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–4723–7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075. Weekly receipt of Environmental Impact Statements Filed May 29, 1995 Through June 02, 1995 Pursuant to 40 CFR 1506.9.

EIS No. 950223, DRAFT EIS, USA, AR,

Pine Bluff Arsenal Disposal of Chemical Agents and Munitions Stored, Construction and Operation, Approval of Permits, Jefferson County, AR, Due: July 24, 1995, Contact: Trent Moxley (800) 488–0648.

EIS No. 950224, FINAL EIS, AFS, OR

East Fork Deer Creek Long-Term Ecosystem Productivity Research Study, Implementation, Willamette National Forest, Blue River Ranger District, Lane County, OR, Due: July 10, 1995, Contact: Lynn Burditt (503) 822–3317.

EIS No. 950225, FINAL EIS, EPA, CA

Joint Water Pollution Control Plant (JWPCP), Full Secondary Treatment Upgrade Project, Construction and Funding, City of Carson, Los Angeles County, CA, Due: July 10, 1995, Contact: Elizabeth Borowiec (415) 744–1948.

EIS No. 950226, DRAFT EIS, FHW, WA

WA–20 Transportation Improvements, between Fredonia (WA–536) and Interstate 5) Burlington, Funding, Right-of-Way Acquisition and COE Section 404 Permit, Skagit County, WA, Due: July 24, 1995, Contact: Gene Fong (360) 753–2120.

EIS No. 950227, FINAL EIS, NPS, PA,

White-Tailed Deer Management Plan, Implementation, Gettysburg National Military Park and Eisenhower Historic Site, Adams County, PA, Due: July 10, 1995, Contact: John A. Latschar (717) 334–0909.

EIS No. 950228, REVISED DRAFT EIS, FHW, AK

Whittier Access Project, Additional Information, Construction between Port of Whittier and Seward Highway, Funding, Right-of-Way Agreement and COE Section 10 and 404 Permits, Chugauch National Forest, Municipality of Anchorage, City of Whittier, AK, Due: July 24, 1995, Contact: Phillip Smith (907) 586–7428.

EIS No. 950229, DRAFT EIS, NOA, ME, RI, NJ, CT, NY

Scup (Stenotomus Chrysops) Fishery Amendment, Fishery Management Plan (FMP), Implementation, Elimination or Prevention of Over Fishing in the Exclusive Economic Zone (EEZ), Approval and Permits, ME, CT, RI, NY and NJ, Due: July 24, 1995, Contact: Rolland A. Schmitten (301) 713–2239.

EIS No. 950230, FINAL EIS, DOE, WA

Washington Windplant No. 1, Construction and Operation, 115 Megawatt (MW) Windpower Project, Conditional-Use-Permit, NPDES and COE Section 404 Permits, Klickitat County, WA, Due: July 10, 1995, Contact: Kathy Fisher (800) 622–4520.

EIS No. 950231, FINAL EIS, BOP, PA

Federal Prison Camp—Scranton, Pennsylvania, Construction, Operation and Site Selection, Jessup Borough, Lackawanna County, PA, Due: July 10, 1995, Contact: David J. Dorworth (202) 514–6470.

EIS No. 950232, FINAL EIS, FHW, NC

US 117 Corridor Improvement Project, US 13/70 at Goldsboro, north to US 301 in Wilson, Funding and Section 404 Permit, Wayne and Wilson Counties, NC, Due: July 24, 1995, Contact: Nicholas L. Graf (919) 856–4346.

EIS No. 950233, FINAL EIS, FHW, WV

US 52 (Tolsia Highway) Transportation Improvement, Kenova to Nolan (I–64 to US 119), Funding, Wayne and Mingo Counties, WV, Due: July 10, 1995, Contact: David Bender (304) 347–5928.

EIS No. 950234, FINAL EIS, AFS, AK

Polk Inlet Project, Long-Term Timber Sale Contract, Implementation, Tongass National Forest, Prince of Wales Island, AK, Due: July 10, 1995, Contact: Dave Arrasmith (907) 225–3101.

EIS No. 950235, DRAFT EIS, AFS, MT

Two Joe Timber Sales, Implementation, Lolo National Forest, Superior Ranger District, St. Regis River, Mineral County, MT, Due: July 24, 1995, Contact: Terry Egenhoff (406) 822–4233.

EIS No. 950236, DRAFT EIS, IBR, MT

Tongue River Basin Project, Implementation, Tongue River Dam and Reservoir, COE Section 404 Permit, Bighorn County, MT, Due: August 04, 1995, Contact: Edward M. Pettit (406) 444–6646.

EIS No. 950237, REVISED DRAFT EIS, DOE, WA

Yakima River Basin Fisheries Project, Updated and Additional Information, Construction, Operation and Maintenance, Funding, COE Section 10/404 Permits and NPDES Permit, Yakima Indian Nation, Yakima County, WA, Due: July 24, 1995, Contact: Nancy Weintraub (800) 622–4520.

EIS No. 950238, FINAL EIS, SFW, NV

Desert Tortoises (Gopherus Agassizii) Habitat, Issuance of Permit to Allow Incidental Take, Federal Land and Non-Federal Land, Clark County, NV, Due: July 10, 1995, Contact: Al Pfister (303) 231–6241.

EIS No. 950239, FINAL EIS, DOE, PA

York County Energy Partners Cogeneration Facility, Funding, Construction and Operation, 250 Megawatt Coal-Fired Cogeneration Facility, Clean Coal Technology Program (CCTP), North Codorus Township, York County, PA, Due: July 10, 1995, Contact: Jan K. Wachter (304) 285–4607.

Amended Notices

EIS No. 950085, DRAFT EIS, AFS, ID

Thunderbolt Wildfire Recovery Project, Implementation, Boise and Payette National Forests, Valley County, ID, Due: July 03, 1995, Contact: Steve Patterson (208) 364–7400. Published FR 03–17–95—Review period extended.

EIS No. 950118, DRAFT EIS, IBR, WA, ND, OR, ID, NV, MT, SD, WY, NB, UT, CO, CA, NM, OK, KS, AZ, TX

Acreage Limitation and Water Conservation Rules and Regulations, Revised and/or New Rules for Replacement and Expansion of Existing Rules pertaining to the Administration of the Reclamation Reform Act of 1982, Implementation in Seventeen Western States, Due: June 26, 1995, Contact: Ronald J. Schuster (303) 236–9336. Published FR 04–7–95—Review period extended.

EIS No. 950188, DRAFT EIS, USN, CA

San Diego Homeporting Facilities Construction and Operation to Support Berthing One NIMITZ Class Aircraft Carrier, Implementation, San Diego County, CA, Due: June 26, 1995, Contact: Robert Hexton (619) 532–3761. Published 5–12–95—Telephone Number Correction.

EIS No. 950196, LEGISLATIVE DRAFT, AFS, OR

Dutch Flat Creek, Killamacue Creek and Rock Creek Wild and Scenic River Study, Designation or Nondesignation, National Wild and Scenic River System, Wallowa-Whitman National Forest, American Rivers, Baker County, OR, Due: August 17, 1995; Contact: Steve Davis (503) 523–1316. Published FR—05–19–95 Due Date Correction.

Dated: June 06, 1995.

Wiliam D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–14226 Filed 6–8–95; 8:45 am]

BILLING CODE 6560–50–U

[FRL–5218–7]

Public Meeting on Drinking Water, Consumer Awareness Project

Notice is hereby given that the U.S. Environmental Protection Agency (EPA) is holding a public meeting on drinking water consumer awareness on June 26, 1995, from 9:00 a.m. to 4:00 p.m. at Resolve, Inc., 2828 Pennsylvania Avenue NW., Washington, DC. The purpose of the meeting is to obtain ideas, suggestions and options for activities the Agency may undertake to improve consumer awareness of drinking water protection and safety issues, including the possible streamlining of Public Notice requirements currently in effect under Section 1414 of the Safe Drinking Water Act.

As part of a comprehensive review of the federal safe drinking water program, EPA's report, *Strengthening the Safety of Our Drinking Water*, (March 1995) identified the following action item as a priority:

Give Americans More Information About Our Drinking Water. In cooperation with water suppliers, states, citizen groups, and other stakeholders, EPA is seeking ways to improve consumer information. Broader public understanding and support for drinking water protection measures could be achieved through inexpensive, simple steps, such as informing consumers (perhaps directly on their bills) about (1) the source of incoming water which the utility must turn into safe tap water; and (2) water testing results and the actions necessary to address potential problems.

EPA plans to ask participants at the June 26, 1995, meeting to assist in identifying and prioritizing activities the Agency can carry out under current legislative authorities to implement this agenda item. Such approaches may include, for example: partnerships with stakeholder organizations; pilot projects; the publication of data or reports; and support of community-based projects. Participants will also be asked to provide their views on the possible streamlining of current regulations under the federal Safe Drinking Water Act that require water system operators to notify the public of violations of safe drinking water standards.

Following the public meeting, EPA intends to provide meeting summaries to senior EPA managers to oversee the development of an action plan consistent with available resources. The meeting summary and the action plan will be provided to the National Drinking Water Advisory Council for its comment. Additional public meetings are not planned at this time, but participants at the June 26, 1995, meeting will be asked whether additional public meetings (or other means of involvement) are recommended. Final decisions concerning the implementation of the consumer awareness project will be made by Assistant Administrator for Water, Robert Perciasepe.

Alternatively or in addition to the public meeting, member of the public may submit written comments to EPA for up to fifteen days after the meeting. These comments should be sent to Charlene Shaw, EPA, Office of Ground Water and Drinking Water (4601), 401 M Street, SW., Washington, DC 20460. Members of the public who wish to attend the meeting, should call EPA's Safe Drinking Water Hotline at 1–800–426–4791. A package of meeting materials will be mailed to callers prior to June 26, 1995. If you do not plan to participate, but wish to receive the documents and materials prepared for and subsequent to the meeting, you may also call EPA's Safe Drinking Water Hotline to request this information.

A limited number of telephone lines have been reserved for members of the public wishing to participate in the June 26, 1995, meeting by telephone. Telephone lines will be available on a "first come, first served" basis to members of the public who contact EPA prior to June 21, 1995. EPA will cover long distance telephone charges for meeting participants. General questions about the meeting process and telephone participation should be directed to Charlene Shaw with EPA's Office of Ground Water and Drinking Water at (202) 260–2285.

Dated: June 2, 1995.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 95–14231 Filed 6–8–95; 8:45 am]

BILLING CODE 6560–50–M

[OPPTS–00170; FRL–4959–2]

Forum on State and Tribal Toxics Action (FOSTTA) Projects; Open Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meetings.

SUMMARY: The four Projects of the Forum on State and Tribal Toxics Action (FOSTTA) will hold meetings open to the public at the time and place listed below in this notice.

DATES: The four Projects will meet June 26, 1995 from 8 a.m. to 5 p.m., with a plenary session from 1 p.m. until 2 p.m., and on June 27, 1995, from 8 a.m. to noon.

ADDRESSES: The meetings will be held at: The Holiday Inn, 480 King St., Alexandria, VA.

FOR FURTHER INFORMATION CONTACT: Erica Phipps, Office of Pollution Prevention and Toxics (7408), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 260–9094.

SUPPLEMENTARY INFORMATION: FOSTTA, a group of State and Tribal toxics environmental managers, is intended to foster the exchange of toxics-related program and enforcement information among the States/Tribes and between the States/Tribes and U.S. EPA's Office of Prevention, Pesticides and Toxic Substances (OPPTS) and Office of Enforcement and Compliance Assurance (OECA). FOSTTA currently consists of the Coordinating Committee and four issue-specific Projects. The Projects are: (1) The Toxics Release Inventory Project; (2) The State and Tribal Enhancement Project; (3) The Chemical Management Project; and (4) The Lead (Pb) Project.

List of Subjects

Environmental protection.

Dated: June 1, 1995.

James B. Willis,

Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics.

[FR Doc. 95–14203 Filed 6–8–95; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–211042; FRL–4960–4]

TSCA Section 21 Petition; Notice of Receipt

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of a petition submitted by 24 organizations under section 21 of the Toxic Substances Control Act (TSCA), and requests comments on the petition. The petition asks EPA to issue a rule under section 6 of TSCA, requiring cement manufacturers who burn hazardous wastes as fuel in their kilns to label their product with a notice to that effect. The requested label would: (1) Note that the cement had been made while burning hazardous waste; (2) state that the product contained residuals of that waste, including increased amounts of toxic and carcinogenic metals; and (3) caution users to avoid emitting or breathing dust from the product, and to avoid direct contact. Under TSCA section 21, the Agency must respond by July 18, 1995.

ADDRESSES: Persons wishing to provide comments to the Agency should submit them to: TSCA Document Receipt Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–G99, 401 M St., SW., Washington, DC 20460, Attention: Docket Number OPPTS–211042. A public version of the record is available in the TSCA Nonconfidential Information Center (NCIC), from noon to 4 p.m., Monday though Friday, except legal holidays. The TSCA NCIC is located in Rm. NE–B607, Northeast Mall, 401 M St., SW., Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number "OPPTS–211042." No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in the **SUPPLEMENTARY INFORMATION** unit of this document.

DATES: To be of greatest use to EPA in responding to the petition, comments should be received on or before June 23, 1995. However, the Agency will accept comments received after that date.

FOR FURTHER INFORMATION CONTACT: Edward M. Brooks, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–201C, 401 M St., SW., Washington, DC 20460, Telephone: (202) 260–3754, e-mail: brooks.edward@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: On April 19, 1995, EPA received a petition under section 21 of TSCA from 24 organizations located in 10 States. Section 21 of TSCA allows citizens to petition EPA to initiate a proceeding for the issuance, amendment, or repeal of a rule under section 4, 6, or 8 or an order under section 5(e) or 6(b)(2). A section 21 petition must set forth facts which the petitioner believes establish the need for the action requested. EPA is required to grant or deny the petition within 90 days. If EPA grants the petition, the Agency must promptly commence an appropriate proceeding. If EPA denies the petition, the Agency must publish its reasons for the denial in the **Federal Register**. Within 60 days of denial, petitioners may commence a civil action in a U.S. district court to compel initiation of the requested rulemaking. When reviewing a petition for a new rule, as in this case, the court must provide an opportunity for *de novo* review of the petition. After hearing the evidence, the court can order EPA to initiate the requested action.

Petitioners' request for a mandatory labeling rule under section 6 of TSCA is based upon assertions that burning hazardous waste fuel in cement kilns concentrates toxic metals in cement and cement products to levels at which they pose an unreasonable risk to human health and the environment. EPA has commenced a review and evaluation of this petition. Anyone with relevant information or interest may submit comments on the petition or on other information in the docket. The Agency will be considering the following issues:

1. Whether or not—and, if so, the extent to which burning hazardous waste fuel in cement kilns elevates concentrations of toxic metals in cement distributed in commerce.

2. The contribution that burning hazardous waste fuel makes to concentrations of toxic metals in cement relative to other factors such as (a) concentrations in the original feedstock, (b) recycling of cement kiln dust (with or without using hazardous waste fuel), and (c) operating equipment and practices.

3. High-end and typical concentrations of toxic metals found in cement produced by facilities that do and do not use hazardous waste fuel.

4. The major source of variations in these concentrations from one facility to another.

5. The populations at greatest risk.

6. The adverse effects most likely to be experienced by these populations.

7. The concentrations of toxic metals in cement at which those effects are likely to occur.

8. Value added by the proposed label to labeling currently required under the Occupational Safety and Health Administration's Hazard Communication regulations.

A record has been established for this section 21 petition under docket number "OPPTS–211042" (including comments and data submitted electronically as described below). The record includes a copy of the petition and supplementary information submitted to the Agency by the petitioner. The Agency will include all comments and information received in response to this notice, as well as other relevant material. A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA NCIC, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this document, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

List of Subjects

Environmental protection.

Dated: June 2, 1995.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 95–14204 Filed 6–8–95; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5217–9]

Massachusetts Marine Sanitation Device Standard; Receipt of Petition

Notice is hereby given that a petition has been received from the State of

Massachusetts requesting a determination of the Regional Administrator, U.S. Environmental Protection Agency, pursuant to Section 312(f)(3) of Public Law 92–500 as amended by Public Law 95–217 and Public Law 100–4, that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for Wellfleet Harbor, in the Town of Wellfleet, County of Barnstable, State of Massachusetts, to qualify as a "No Discharge Area" (NDA). The areas covered under this petition include all the waters and tributaries of Wellfleet Harbor enclosed by a line drawn between Jeremy Point (latitude 41° 52′ 40″ Longitude 70° 04′ 00″) eastward to the Wellfleet-Eastham town line at the mouth of Hatches Creek.

The State of Massachusetts has certified that there will be three disposal facilities available to service vessels in Wellfleet Harbor. The facilities will be operated by the Town of Wellfleet through the Office of the Harbormaster. These facilities are available between the hours of 6:00 am and 8:00 pm, seven days a week, from mid-May to mid-November. Outside of these hours appointments can be made by calling the Harbormaster's office at (508) 349–0320 or by radio on Channel 9. There is no fee for pump-out services.

Two of the disposal services are rolling pump-out facilities located on the town dock. Each pump is capable of evacuating and discharging to head differences of 15 feet. One rolling facility has a capacity of 25 gallons and the other has a capacity of 40 gallons. The third pump-out facility is a 22-foot pump-out boat with a holding capacity of 300 gallons. In addition, there is a restroom facility located on the town dock and will be used for emptying of portable toliet devices. All three pump-out facilities are expected to be operational by mid June.

All sanitary wastes removed from boats are transferred to a 3500 gallon tight tank storage facility located near the Harbormaster's office. These tanks are fitted with alarms that activate in time to ensure waste removal long before the capacity is reached. The Town of Wellfleet has an annual agreement with a septage pumper to service the holding tanks at the town marina. The septage is transported to the Tri-Town Septage Treatment Facility in Orlean, and occasionally, to the Upper Blackstone Septage Treatment Facility. Trucks used by the septage pumpers are inspected annually by the town to ensure tightness.

The approximate number of boats using the harbor at present is 200 slips, 250 moorings in the primary mooring basin, 12 transient moorings, and approximately 100 moorings in scattered satellite areas throughout the harbor. There are an estimated 640 boats that use the harbor per season.

In 1988 the State of Massachusetts designated the Wellfleet Harbor as an Area of Critical Environmental Concern (ACEC). The Cape Cod National Seashore and the Wellfleet Audubon Bird Sanctuary boarder the waters of Wellfleet Harbor. The harbor supports year-round commercial fishing and shellfishing activities. Additionally, recreational swimming and boating draws tens of thousands of daily visitors to the area.

Comments and reviews regarding this request for action may be filed on or before July 10, 1995. Such communications, or requests for information or a copy of the applicant's petition, should be addressed to Ann Rodney, U.S. Environmental Protection Agency—New England Region, Marine and Estuarine Protection Section (WQE), JFK Federal Building, Boston, MA 02203. Telephone: 617–565–4424.

Dated: May 30, 1995.

John P. DeVillars,

Regional Administrator.

[FR Doc. 95–14229 Filed 6–8–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1050–DR]

North Dakota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Dakota, (FEMA–1050–DR), dated May 16, 1995, and related determinations.

EFFECTIVE DATE: May 31, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of North Dakota dated May 16, 1995, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 16, 1995:

The counties of Barnes, Burleigh, Dickey, Eddy, Foster, Kidder, LaMoure, Logan, McHenry, McIntosh, McLean, Pembina, Pierce, Ransom, Sheridan, Sioux, Stutsman, Traill, and Wells for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 95–14188 Filed 6–8–95; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1052–DR]

South Dakota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of South Dakota, (FEMA–1052–DR), dated June 2, 1995, and related determinations.

EFFECTIVE DATE: June 2, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of South Dakota dated June 2, 1995, is hereby amended to include Disaster Unemployment Assistance in the following areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 2, 1995.

Aurora, Beadle, Brookings, Brown, Brule, Buffalo, Butte, Campbell, Charles Mix, Clark, Codington, Davison, Day, Deuel, Edmunds, Faulk, Gregory, Hamlin, Hand, Hanson, Hughes, Hyde, Jerauld, Jones, Kingsbury, Lawrence, Lyman, McPherson, Marshall, Meade, Pennington, Potter, Roberts, Sanborn, Spink, Stanley, Sully, and Tripp Disaster Unemployment Assistance under the Individual Assistance program. (Already designated for Public Assistance.)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

William C. Tidball,

Chief of Staff.

[FR Doc. 95–14187 Filed 6–18–95; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200133–002

Title: Port Authority of New York & New Jersey/Sea-Land Service, Inc. Terminal Agreement

Parties:

Port Authority of New York & New Jersey Sea-Land Services, Inc. ("Sea-Land")

Synopsis: The proposed amendment provides for the expansion of Sea-Land's Elizabeth, New Jersey Container Terminal.

Agreement No.: 232–011212–003

Title: North Europe/North American Pacific Coast Space Charter and Sailing Agreement

Parties:

Hapag-Lloyd Aktiengesellschaft, P&O Containers (TFL) Limited, Nedlloyd Lijnen B.V., Compagnie Generale Maritime, Atlantic Container Line AB, Sea-Land Service, Inc.

Synopsis: The proposed amendment deletes Compagnie Generale Maritime, Atlantic Container Line AB and Sea-Land Service, Inc., as parties to the Agreement. It also makes other non-substantive changes.

Agreement No.: 232–011502

Title: NYK/HUAL Space Charter and Cooperative Working Agreement

Parties:

NYK Bulkship (USA) Inc. ("NYK")
HUAL c/o Autoliners, Inc. ("Hual")

Synopsis: The proposed Agreement authorizes NYK to charter space on vessels owned by HUAL and to rationalize sailings in the trade between U.S. Gulf and Atlantic Coast ports and ports on the Red Sea and Arabian Gulf.

Agreement No.: 224–200801–001

Title: Port of San Francisco/Stevedoring Services of America Terminal Agreement

Parties:

Port of San Francisco ("Port")
Stevedoring Services of America ("SSA")

Synopsis: The proposed amendment authorizes the Port to establish an Interim Management fee to SSA for one year.

Dated: June 5, 1995.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–14116 Filed 6–8–95; 8:45 am]

BILLING CODE 6730–01–M

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.602 and/or 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224–200937

Title: Canaveral Port Authority/DCL Port Facilities Corporation Marine Terminal Agreement

Parties:

Canaveral Port Authority ("Port")
DCL Port Facilities Corporation ("DCL")

Filing Agent: Suzanne Sanford, Esquire, Schmeltzer, Aptaker & Shepard, P.C., Suite 1000, 2600 Virginia Avenue, N.W., Washington, DC 20037–1905

Synopsis: The proposed Agreement provides for the construction of a cruise ship terminal facility by the Port at Port Canaveral, Florida for the exclusive use by DCL for the term of the Agreement.

Agreement No.: 224–200938

Title: Port of Houston Authority/Econo-Rail Corporation Bulk Materials Plant Operating Agreement

Parties:

Port of Houston ("Port")
Econo-Rail Corporation ("Econo-Rail")

Filing Agent: Martha T. Williams, Esquire, Port of Houston Authority, P.O. Box 2562, Houston, TX 77252–2562

Synopsis: The proposed Agreement authorizes Econo-Rail to perform bulk handling services at the Port's Bulk Materials Handling Plant.

Dated: June 5, 1995.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–14117 Filed 6–8–95; 8:45 am]

BILLING CODE 6730–01–M

P&O Containers/Nedlloyd/Sea-Land Agreement (Agreement No. 203–011171–004); Space Charter and Sailing Agreement Between Orient Overseas Container Line (U.K.) Ltd. and Sea-Land Service, Inc., P&O Containers Ltd., Nedlloyd Lijnen BV, Sea-land Service Inc. (Agreement No. 203–011394–001); Space Charter and Sailing Agreement, A.P. Moller-Maersk Line, P&O Containers Limited, Sea-Land Service, Inc., Nedlloyd Lijnen BV (Agreement No. 203–011395–001); Cooperative Working Agreement Among Orient Overseas Container Line (U.K.) Ltd., A.P. Moller-Maersk Line and Sea-Land Service, Inc., P&O Containers, Ltd., Nedlloyd Lijnen BV (Agreement No. 203–011396–001); Erratum

Reference is made to the Federal Register Notice of May 31, 1995 (FR (28410, 28411) Vol. 60, No. 104).

The Synopsis of the subject Agreement Notice should have stated that the proposed modifications amend the Agreements to permit a party to withdraw after giving 24 months' notice instead of 24 hours' notice.

Dated: June 5, 1995.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–14118 Filed 6–8–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Roger and Vivian Hensley, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are

set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 23, 1995.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Roger and Vivian Hensley, Eudora, Arkansas; to acquire an additional 11.94 percent, for a total of 23.21 percent, of the voting shares of Delta Bancshares, Inc., Eudora, Arkansas, and thereby indirectly acquire The Eudora Bank, Eudora, Arkansas.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Thomas H. and Cynthia A. Olson, Lisco, Nebraska; to acquire directly, and indirectly through Lisco State Company, Lisco, Nebraska, an additional 70.13 percent, for a total of 94.56 percent, of the voting shares of Woodstock Land & Cattle Company, Fullerton, Nebraska, and thereby indirectly acquire Fullerton National Bank, Fullerton, Nebraska.

Board of Governors of the Federal Reserve System, June 5, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–14150 Filed 6–8–95; 8:45 am]

BILLING CODE 6210–01–F

South Banking Company, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 3, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. South Banking Company, Alma, Georgia; to acquire 28.4 percent of the voting shares of Pineland State Bank, Metter, Georgia.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Lisco State Company, Lisco, Nebraska; to acquire 46.24 percent of the voting shares of Woodstock Land & Cattle Company, Fullerton, Nebraska, and thereby indirectly acquire Fullerton National Bank, Fullerton, Nebraska.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Trenton Bankshares, Inc., Trenton, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Trenton, Trenton, Texas.

Board of Governors of the Federal Reserve System, June 5, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–14149 Filed 6–8–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Survey of User Satisfaction With The NAAG–FTC Telemarketing Complaint System

ACTION: Notice of application to OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) for clearance of an information collection to gather information on the effectiveness of the NAAG–FTC Telemarketing Complaint System.

SUMMARY: OMB clearance is being sought for a survey to gather information concerning user satisfaction with the operation of the NAAG–FTC Telemarketing Complaint Service (TCS).

A thirty-three question survey, including subparts, is proposed to enable the Commission to determine the effectiveness of the TCS and its utility to the various law enforcement users of the system. Results of the survey will enable the Commission to structure improvements and modifications to the TCS to enhance its usefulness as a law enforcement tool.

DATES: Comments on this clearance application must be submitted on or before July 10, 1995.

ADDRESSES: Send comments to FTC Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, D.C. 20503. Copies of the application may be obtained from the Public Reference Section, Room 130, Federal Trade Commission, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: John A. Crowley of the Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580 (202) 326–3280.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–14139 Filed 6–8–95; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–2856]

The American Academy of Orthopaedic Surgeons; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Set Aside Order.

SUMMARY: This order reopens a 1976 consent order, that was modified in 1985,—which prohibited the respondent from initiating, publishing or circulating relative value scales for medical or surgical procedures—and sets aside the modified consent order based on changed conditions of facts, such as, the decision by Congress to base reimbursement for medical services provided under Medicare on resource based relative value scales.

DATES: Consent order issued December 14, 1976. Set aside order issued May 4, 1995.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, FTC/S–2115, Washington, D.C. 20580. (202) 326–2861.

SUPPLEMENTARY INFORMATION: In the Matter of The American Academy of Orthopaedic Surgeons. The prohibited trade practices and/or corrective actions are removed as indicated.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

In the matter of: The American Academy of Orthopaedic Surgeons, a corporation.

Order Setting Aside Order

On November 23, 1994, the American Academy of Orthopaedic Surgeons ("AAOS") filed a Petition To Reopen and Rescind or Modify Consent Order ("Petition") in Docket C–2856 ("Order"), pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. § 45(b), and Section 2.51 of the Commission's Rules of Practice, 16 C.F.R. § 2.51. In its Petition, AAOS requests that the Commission reopen the Order and rescind it or, in the alternative, modify provisions of the Order that restrict the ability of AAOS to develop and distribute a relative value scale ("RVS"), as defined in the Order.

AAOS asserts in its Petition that changed conditions of law or fact and the public interest warrant reopening the Order and rescinding or modifying it. A redacted version of the Petition was placed on the public record for thirty days; no comments were received. For the reasons described below, the Commission has determined that the Order should be reopened and set aside.

I. Background

The Commission's complaint alleged, among other things, that the preparation and circulation by AAOS of comparative numerical values for services performed by orthopaedic surgeons had the effect of establishing or maintaining fees charged by orthopaedic surgeons for their services, in violation of Section 5 of the FTC Act. The complaint also alleged that the numerical values were convertible into a monetary fee by application of a dollar conversion factor. The Order, in relevant part, requires AAOS to cease initiating, publishing or circulating, in whole or in part, any relative value scale, as defined.[1] *The American Academy of Orthopaedic Surgeons*, 88 F.T.C. 968 (1976).

The Order does not prevent AAOS from exercising rights under the First Amendment to the Constitution to petition state or federal government agencies and to participate in federal or state administrative or judicial proceedings or from providing information or views to third party payers concerning any issue, including reimbursement. *The American Academy of Orthopaedic Surgeons*, 105 F.T.C. 248 (1985) (modifying Order).

II. The Petition

AAOS requests that the Commission reopen the Order and rescind or modify it to permit the AAOS to provide information concerning Medicare resource based relative value scales ("RBRVS") to third party payers, managed care organizations, other physician organizations and others in the private sector, including its members. AAOS states that the information will facilitate the development and adoption of RBRVS that accurately reflect the values of orthopaedic procedures, resulting in the efficient allocation of resources. AAOS already has provided information to government entities involved in medical reimbursement issues; it wants to provide the information to nongovernment entities and to its members.

In particular, AAOS wants to be able to circulate the Abt Restudy, a physician work value scale commissioned by AAOS.[2] AAOS also wants to be able to sponsor and disseminate future research projects that analyze other components of the Medicare RBRVS.

AAOS cites as changed conditions the adoption and implementation by the federal government of resource based relative value scales for purposes of physician reimbursement under Medicare. In 1986, Congress created the Physician Payment Review Commission ("PPRC") to make recommendations regarding physician reimbursement under Medicare. At that time, physician reimbursement was determined by the "customary, prevailing and reasonable" ("CPR") method, which relied on historical fees. The PPRC concluded that the CPR method increased costs under Medicare and recommended adopting instead a relative value scale based on resource costs.[3] In 1989, Congress enacted the Omnibus Budget Reconciliation Act of 1989, which, among other things, requires use of resource based relative value scales for purposes of physician reimbursement under Medicare.[4] The Act provides for consultations with "organizations representing physicians" to develop relative values for medical services.[5]

According to AAOS, the Abt Restudy was commissioned to respond to perceived shortcomings in Medicare RBRVS for orthopaedic services. *See* Petition at 13–15; Abt Restudy at 1. Providing the Abt Restudy to government entities is consistent with the proviso to the Order,[6] which permits AAOS to petition government agencies and legislatures. AAOS would like to distribute the Abt Restudy to third party payers and other nongovernment entities, such as other medical societies, and to individual members of AAOS, at least for the limited purpose of preparing AAOS representatives to lobby state government bodies regarding physician reimbursement practices. AAOS also would like to sponsor future research projects analyzing other components of Medicare RBRVS. According to AAOS, to the extent that it is precluded by the Order from providing information concerning reimbursement levels, the efficiency of RBRVS-based systems is lessened, "payers who would benefit from more efficient payment mechanisms are hindered in their ability to compete, and physicians and patients are given distorted incentives, and market signals for production and consumption of resources."[7]

III. Standard for Reopening a Final Order of the Commission

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. § 45(b), provides that the Commission shall reopen an order to consider whether it should be modified if the respondent "makes a satisfactory showing that changed conditions of law or fact" so required. A satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows that the changes eliminate the need for the order or make continued application of it inequitable or harmful to competition. S. Rep. No. 96–500, 96th Cong., 2d Sess. 9 (1979) (significant changes or changes causing

[1] "Relative value scale" is defined in the Order as any list or compilation of surgical or medical procedures that states comparative numerical values for those procedures or services. Order Paragraph I.A.

[2] Noether & Sheehy, The Abt Restudy of Physician Work Values for Orthopaedic Surgery (Sept. 23, 1992), attached as Exhibit 8 to the AAOS Petition (hereafter "Abt Restudy").

[3] *See* Physician Payment Review Commission, *Annual Report to Congress* (1988); Physician Payment Review Commission, *Medicare Physician Payment: An Agenda for Reform* (1987).

[4] Section 6102 of the Omnibus Budget Reconciliation Act of 1989, 42 U.S.C. § 1395w–4. Medicare RBRVS bases physician reimbursement on (1) a relative value unit for the medical service, which is based on physician work, practice costs and professional liability costs; (2) a geographic adjustment factor; and (3) a conversion factor. Components of the RBRVS are to be updated periodically. Payment is based on the lesser of the RBRVS amount and the physician's actual fee. Petition at 12–13.

[5] 42 U.S.C. § 1395w–4(c)(2)(B)(iii).

[6] 105 F.T.C. at 249; *see* letter from Roberta S. Baruch, Deputy Assistant Director, Bureau of Competition, FTC, to Richard N. Peterson, General Counsel, American Academy of Orthopaedic Surgeons (May 12, 1993) ("staff advisory opinion"), Petition Exhibit 16.

[7] Petition at 25–26.

unfair disadvantage); *Louisiana-Pacific Corp.*, Docket No. C–2956, Letter to John C. Hart (June 5, 1986), at 4 (unpublished) ("Hart Letter").[8]

Section 5(b) also provides that the Commission may modify an order when, although changed circumstances would not require reopening, the Commission determines that the public interest so requires. Respondents are therefore invited in petitions to reopen to show how the public interest warrants the requested modification. Hart Letter at 5; 15 C.F.R. § 2.51. In such a case, the respondent must demonstrate as a threshold matter some affirmative need to modify the order. *Damon Corp.*, Docket No. C–2916, Letter to Joel E. Hoffman, Esq. (March 29, 1983), at 2 [1979–1983 Transfer Binder] Trade Reg. Rep. (CCH) ¶ 22,207 ("Damon Letter"). For example, it may be in the public interest to modify an order "to relieve any impediment to effective competition that may result from the order." *Damon Corp.*, 101 F.T.C. 689, 692 (1983). Once such a showing of need is made, the Commission will balance the reasons favoring the requested modification against any reasons not to make the modification. Damon Letter at 2. The Commission also will consider whether the particular modification sought is appropriate to remedy the identified harm. Damon Letter at 4.

The language of Section 5(b) plainly anticipates that the burden is on the petitioner to make a "satisfactory showing" of changed conditions to obtain reopening of the order. The legislative history also makes clear that the petitioner has the burden of showing, other than by conclusory statements, why an order should be modified. The Commission "may properly decline to reopen an order if a request is merely conclusory or otherwise fails to set forth specific facts demonstrating in detail the nature of the changed conditions and the reasons why these changed conditions require the requested modification of the order." S. Rep. No. 96–500, 96th Cong., 1st Sess. 9–10 (1979); *see also* Rule 2.51(b) (requiring affidavits in support of petitions to reopen and modify). If the Commission determines that the petitioner has made the necessary showing, the Commission must reopen the order to consider whether modification is required and, if so, the nature and extent of the modification. The Commission is not required to reopen the order, however, if the petitioner fails to meet its burden of making the satisfactory showing required by the statute. The petitioner's burden is not a light one in view of the public interest in response and the finality of Commission orders. *See Federated Department Stores, Inc. v. Moitie*, 425 U.S. 394 (1981) (strong public interest considerations support repose and finality).

IV. The Order Should Be Reopened

AAOS has shown changed conditions of fact that require the Order to be reopened to consider modification.[9] The decision by Congress to base reimbursement for medical services provided under Medicare on resource based relative value scales, with the participation of physicians and medical professional societies in identifying and modifying RBRVS for Medicare purposes, is a changed condition that makes application of the order inequitable.

The Order bars AAOS from "directly or indirectly initiating, originating, developing, publishing, or circulating, the whole or any part of any proposed or existing relatives value scales," while the Omnibus Budget Reconciliation Act of 1989, among other things, requires use of resource based relative value scales for purposes of physician reimbursement under Medicare and contemplates professional participation in the development of RBRVS. The Act requires the Department of Health and Human Services ("HHS") to consult with physician organizations in developing and modifying Medicare RBRVS. The Order addressed conduct that allegedly contributed to the unlawful maintenance of fees by orthopaedic surgeons. It now appears that the Order may inhibit participation by AAOS in the development and revision of RBRVS systems of reimbursement and thus may harm competition. Accordingly, the Order should be reopened to consider modification.

V. The Order Should Be Set Aside

AAOS requests that the Order be set aside or modified to permit AAOS to distribute the Abt Restudy and similar information to third party payers, other medical societies and its members.

The Order, as modified in 1985, permits AAOS to "discuss[] relative value scales with governmental entities and third-party payers." 105 F.T.C. at 248. The Commission, in modifying the Order in 1985, concluded that the Order's "restriction on [AAOS]'s ability to discuss relative value scales with third-party payers and governmental entities * * * caused injury to [AAOS] and the public that outweighed any benefit that might be derived from the restriction." *Id.* The Commission also observed that the modification was consistent with its opinion in *Michigan State Medical Society*, 105 F.T.C. 191 (1983) ("*MSMS*"). Also consistent with *MSMS*, AAOS is not limited under the Order to responding to requests from government and third party payers.[10] AAOS "may have a useful role to play in offering suggestions and advice to third payers on a wide variety of issues, including reimbursement. * * * [T]he potential value of this role is not limited to responsive communications but extends * * * to similar communications initiated by" AAOS. 105 F.T.C. at 308.[11]

As the Commission recognized in *MSMS*, "there is some inherent danger in allowing any collective dialogue with third party payers on questions directly related to reimbursement amounts or policies."[12] Similarly, in modifying the Order in *AAOS*, the Commission cautioned that "serious antitrust concerns would arise were AAOS to negotiate or attempt to negotiate an agreement with any such party or engage in any type of coercive activity to effect such an agreement."[13] Such actions concerning terms of reimbursement could be examined under Section 5 of the Federal Trade Commission Act.[14]

AAOS also would like to provide copies of the Abt Restudy to other medical professional societies. The process of establishing and refining

[8] *See also* United States v. Louisiana-Pacific Corp., 967 F.2d 1372, 1376–77 (9th Cir. 1992) ("A decision to reopen does not necessarily entail a decision to modify the order. Reopening may occur even where the petition itself does not plead facts requiring modification.").

[9] AAOS also cited changed conditions of law and the public interest. Because the Order is set aside on the ground of changed conditions of fact, the Commission need not and does not consider the additional alleged grounds.

[10] The Order, as modified in 1985, permits AAOS to discuss relative value guides with third party payers, but the staff of the Commission construed the Order as barring AAOS from providing relative value guides to third party payers. *See* Staff advisory opinion at 3 ("[B]ased on the information we now have, we cannot conclude that it would be consistent with the Order for AAOS to publish or circulate the Abt Restudy to the AAOS membership or to any non-governmental entity.").

[11] *See also* Advisory Opinion in *American Society of Internal Medicine*, 105 F.T.C. 505, 510–11 (1985).

[12] The Order in *MSMS* permitted the dialogue and addressed the risk by barring the medical society from entering into unlawful agreements with third party payers regarding reimbursement. 101 F.T.C. at 308.

[13] 105 F.T.C. at 249.

[14] *See, e.g.*, Department of Justice and FTC Statements of Enforcement Policy and Analytical Principles Relating to Health Care and Antitrust, Statements 5 & 6, *reprinted in* 4 Trade Reg. Rep. (CCH) ¶ 13,152, at 20, 782–785 (1994) ("Health Care Policy Statements").

Medicare RBRVS involves consideration of recommendations from the AMA/Specialty Society RVS Update Committee ("RUC"),[15] which is composed of representatives of major medical societies, including AAOS. The Abt Restudy could be useful to the RUC and ultimately to the Health Care Financing Administration ("HCFA"), which administers the Medicare program, in the review and refinement of Medicare RBRVS.[16] The inability of AAOS under the Order to disseminate the Abt Restudy to members of the RUC appears likely to hinder participation in the process sponsored by HCFA for identifying information relevant to revising Medicare RBRVS and could increase the costs to HCFA in obtaining such information. Such inhibitions resulting from the Order would be inconsistent with federal policy as expressed in the Omnibus Budget Reconciliation Act of 1989 and the implementing regulations. The Order should be modified to permit AAOS to disseminate the Abt Study to other medical professional societies.

Finally, AAOS would like to provide copies of the Abt Restudy to its members, at least for the "limited purpose of furthering the Academy's efforts to persuade government bodies to modify their own physician payment practices." For example, according to AAOS, "in virtually all states, the Academy has no members who have ever seen the [Abt] Restudy, and therefore no one to meet with interested state officials responsible for compensation issues in Medicaid, workers' compensation or other medical programs."[17]

The prohibition on distribution by AAOS of relative value scales to its members is at the core of the Order, because of the alleged effect of maintaining the prices charged by its members.[18] Given the federal policy to rely on RBRVS for Medicare reimbursement and the increasing interest on the part of state governments and third party payers in relative value guides as a basis for physician reimbursement, however, the prohibition in the Order on dissemination by AAOS may inhibit the contributions of its members to the development of RBRVS and increase the costs of disseminating the information.[19] Allowing AAOS to distribute the Abt Restudy to its members would allow them to participate in an informed manner in lobbying activities before state government agencies. Accordingly, AAOS should be permitted to distribute the Abt Restudy to its members.

The danger that AAOS members will use the Abt Restudy or other relative value guides as a basis for an unlawful agreement to fix the prices for their services has not been eliminated. Although the federal policy to use RBRVS for Medicare reimbursement counsels in favor of setting aside the restriction of the Order on distribution of relative values to AAOS members, AAOS and its members remain subject to the laws against price fixing. Setting aside the restrictions of the Order should not be construed as approval for use by AAOS or its members of a relative value guide as a basis for an unlawful agreement on price.

In some circumstances, preparation and circulation by a medical society of a relative value scale may have anticompetitive consequences. For example, in *American Society of Internal Medicine*, 105 F.T.C. 505 (1985) (advisory opinion), the Commission declined to approve a proposal to circulate a relative guide because of the "substantial danger that ASIM's proposed conduct would involve an agreement in restraint of trade amoung ASIM and physicians to concertedly adhere to the RVG."[20] The Joint Health Care Policy Statements also caution that "information exchanges among competing providers may facilitate collusion or otherwise reduce competition on prices."[21]

VI. Conclusion

Accordingly, it is ordered that this matter be, and it hereby is, reopened, and that the modified Order in Docket C–2856 be, and it hereby is, set aside, as of the effective date of this order.

By the Commission, Commissioner Starek concurring in the result only.

Donald S. Clark,

Secretary.

[FR Doc. 95–14186 Filed 6–8–95; 8:45 am]

BILLING CODE 6750–01–M

[15] Petition at 13, *citing* 59 Fed. Reg. 32,754 & 32,760 (1994).

[16] *See* Petition at 18–19.

[17] Petition at 26.

[18] *See also* Advisory Opinion in *American Society of Internal Medicine*, 105 F.T.C. 505, 510 (1985) ("[A]lthough the Commission cannot * * * predict that widespread concerted conformance to the RVG would necessarily result from its dissemination * * * the available information on this specific RVG proposal indicates that this type of agreement in restraint of trade is a substantial danger.").

[19] As a practical matter, material submitted to the Health Care Financing Administration on the public record presumably is available to members of AAOS on request.

[20] *Id.* at 511.

[21] Health Care Policy Statements at 20,784.

[Dkt. No. 3152]

General Motors Corporation, et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Set aside order.

SUMMARY: This order reopens a 1942 modified consent order—which prohibited the respondent from coercing or intimidating its automobile retail dealers into purchasing accessories supplied by General Motors or from its designated source—and sets aside the modified consent order pursuant to the Commission's Sunset Policy Statement, under which the Commission presumes that the public interest requires terminating competition orders that are more than 20 years old.

DATES: Modified consent order issued June 25, 1942. Set aside order issued April 18, 1995.

FOR FURTHER INFORMATION CONTACT: Daniel Ducore, FTC/S–2115, Washington, DC 20580. (202) 326–2526.

SUPPLEMENTARY INFORMATION: In the Matter of General Motors Corporation, et al. The prohibited trade practices and/or corrective actions are removed as indicated.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 3, 38 Stat. 731; 15 U.S.C. 14)

Order Reopening Proceeding and Setting Aside Order

Commissioners: Robert Pitofsky, Chairman, Mary L. Azcuenaga, Janet D. Steiger, Roscoe B. Starek, III, and Christine A. Varney.

On February 6, 1995, General Motors Corporation ("GM") as respondent and successor to General Motors Sales Corporation,[1] filed its Petition to Reopen and Vacate Modified Order ("Petition") in this matter. GM requests that the Commission set aside the 1942 modified consent order in this matter pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. § 45(b), Rule 2.51 of the Commission's Rules of Practice, 16 CFR 2.51, and the Statement of Policy With Respect to Duration of Competition Orders and Statement of Intention to Solicit Public Comment With Respect to Duration of Consumer Protection Orders, issued on July 22, 1994, and published at 59 FR 45,286–92 (Sept. 1, 1994) ("Sunset Policy Statement"). In the Petition, GM affirmatively states that it has not engaged in any conduct violating the

[1] Since the Commission issued the order in this matter General Motors Sales Corporation, a named respondent in the order, was dissolved and its assets now reside within respondent General Motors Corporation.

terms of the order. The Petition was placed on the public record, and the thirty-day comment period expired on March 27, 1995. No comments were received.

The Commission in its Sunset Policy Statement said, in relevant part, that "effective immediately, the Commission will presume, in the context of petitions to reopen and modify existing orders, that the public interest requires setting aside orders in effect for more than twenty years."[2] The Commission's modified consent order in Docket No. 3152 was issued on June 25, 1942, and has been in effect for more than fifty years. Consistent with the Commission's Sunset Policy Statement, the presumption is that the order should be terminated. Nothing to overcome the presumption having been presented, the Commission has determined to reopen the proceeding and set aside the order in Docket No. 3152.

Accordingly, it is ordered that this matter be, and it hereby is, reopened;

It is further ordered that the Commission's order in Docket No. 3152 be, and it hereby is, set aside, as of the effective date of this order.

By the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–14183 Filed 6–8–95; 8:45 am]

BILLING CODE 6750–01–M

[2] *See* Sunset Policy Statement, 59 FR at 45,289.

[File No. 932–3340]

Jerry's Ford Sales, Inc., et al.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair and deceptive acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, three corporations in Annandale, Virginia and Leesburg, Virginia and their President and CEO, individually and as an officer of the three corporations, in any advertisement to promote any extension of consumer credit, to cease and desist from misrepresenting the terms of financing the purchase of a vehicle, including whether there may be a balloon payment and the amount of any balloon payment. The order would also require the respondents, in any advertisement to promote any extension of consumer credit, to cease and desist from failing to state all terms required by Sections 226.24(b) and 226.24(c) of Regulation Z. The order would also require the respondents, in any advertisement to aid, promote or assist any consumer lease, to cease and desist from failing to state all terms required by Section 213.5(c) of Regulation M.

DATES: Comments must be received on or before August 8, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Carole Reynolds, FTC/S–4429, Washington, D.C. 20580. (202) 326–3230.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying of its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

In The Matter of Jerry's Ford Sales, Inc.: John's Ford Inc. dba Jerry's Leesburg Ford; Jerry's Chevrolet Geo Oldsmobile, Inc.; corporations, and Jerry C. Cohen, individually and as an officer of the corporations.

[Docket No. 932–3340]

The agreement herein, by and between Jerry's Ford Sales, Inc., John's Ford, Inc. dba Jerry's Leesburg Ford, and Jerry's Chevrolet Geo Oldsmobile, Inc., corporations, by their duly authorized officer, and Jerry C. Cohen, individually and as an officer of the corporations (hereinafter sometimes referred to as "proposed respondents" or "respondents"), and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Jerry's Ford Sales, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 6510 Little River Turnpike, Annandale, Virginia 22003. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint.

2. John's Ford, Inc. dba Jerry's Leesburg Ford is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its principal office and place of business located at 847 East Market Street, Leesburg, Virginia 22075. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint.

3. Jerry's Chevrolet Geo Oldsmobile, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its principal office and place of business located at 325 East Market Street, Leesburg, Virginia 22075. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint.

4. Jerry C. Cohen is an individual and an officer and director of the aforenamed corporate respondents. He formulates, directs and controls the acts and practices of the aforenamed corporate respondents, including the acts and practices hereinafter set forth. His business address is 6510 Little River Turnpike, Annandale, Virginia 22003. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint.

5. Proposed respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act.

6. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of the complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

7. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of the complaint or that the facts alleged in the draft complaint, other than the jurisdictional facts, are true.

8. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission's Rules, the Commission may, without further notice to the proposed respondents, (a) issue its complaint corresponding in form and substance with the draft of the complaint and its decision containing the following order to cease and desist in disposition of the proceeding and (b) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

9. Proposed respondents have read the proposed complaint and order contemplated hereby. Proposed respondents understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that respondent Jerry's Ford Sales, Inc., John's Ford, Inc. dba Jerry's Leesburg Ford, Jerry's Chevrolet Geo Oldsmobile Inc., corporations, their successors and assigns and their officers, and Jerry C. Cohen, individually and as an officer of the corporate respondents, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or any other device, in connection with any advertisement to promote directly or indirectly any extension of consumer credit, as "advertisement," and "consumer credit" are defined in the TILA and Regulation Z, do forthwith cease and desist from:

A. Misrepresenting in any manner, directly or by implication, the terms of financing the purchase of a vehicle, including but not limited to whether there may be a balloon payment and the amount of any balloon payment.

B. Stating a rate of finance charge without stating the rate as an "annual percentage rate" or the abbreviation "APR," using that term, and failing to calculate the rate in accordance with Regulation Z. If the annual percentage rate may be increased after consummation, the advertisement shall state that fact. The advertisement shall not state any other rate, except that a simple annual rate or periodic rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the annual percentage rate.

(Sections 144 and 107 of the TILA, 15 U.S.C. 1664 and 1606, and Sections 226.24(b) and 226.22 of Regulation Z, 12 CFR 226.24(b) and 226.22, as more fully set out in Sections 226.24(b) and 226.22 of the Federal Reserve Board's Official Staff Commentary to Regulation Z, 12 CFR 226.24(b) and 226.22, respectively.)

C. Stating any number or amount of payment(s) required to repay the debt, without stating accurately, clearly and conspicuously, all of the terms required by Regulation Z, as follows:

(1) The amount or percentage of the downpayment;

(2) The terms of repayment, including the amount of any balloon payment, and

(3) The annual percentage rate, using that term or the abbreviation "APR." If the annual percentage rate may be increased after consummation of the credit transaction, that fact must also be disclosed.

Section 144 of the TILA, 15 U.S.C. 1664, and Section 226.24(c) of Regulation Z, 12 CFR 226.24(c), as more fully set out in Section 226.24(c) of the Federal Reserve Board's Official Staff Commentary to Regulation Z, 12 CFR 226.24(c).)

D. Stating the amount or percentage of any downpayment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge, without stating, clearly and conspicuously, all of the terms required by Regulation Z, as follows:

(1) The amount or percentage of the downpayment;

(2) The terms of repayment, and

(3) The annual percentage rate, using that term or the abbreviation "APR." If the annual percentage rate may be increased after consummation of the credit transaction, that fact must also be disclosed.

(Section 144 of the TILA, 15 U.S.C. 1664, and Section 226.24(c) of Regulation Z, 12 CFR 226.24(c).)

E. Failing to state only those terms that actually are or will be arranged or offered by the creditor, in any advertisement for credit that states specific credit terms, as required by Regulation Z.

(Section 144 of the TILA, 15 U.S.C. 1664, and Section 226.24(a) of Regulation Z, 12 CFR 226.24(a).)

F. Failing to comply in any other respect with Regulation Z and the TILA.

(Regulation Z, 12 C.F.R. 226, as amended, and the TILA, 15 U.S.C. 1601–1667, as amended.)

II

It is ordered that respondents Jerry's Ford Sales, Inc., John's Ford, Inc. dba Jerry's Leesburg Ford, Jerry's Chevrolet Geo Oldsmobile, Inc., corporations, their successors and assigns and their officers, and Jerry C. Cohen, individually and as an officer of the corporate respondents, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or any other device, in connection with any advertisement to aid, promote or assist directly or indirectly any consumer lease, as "advertisement," and "consumer lease" are defined in the CLA and Regulation M, do forthwith cease and desist from:

A. Stating the amount of any payment, the number of required payments, or that any or no downpayment or other payment is required at consummation of the lease, unless all of the following items are disclosed, clearly and conspicuously, as applicable, as required by Regulation M:

(1) That the transaction advertised is a lease;

(2) The total amount of any payment such as a security deposit or capitalized cost reduction required at the consummation of the lease, or that no such payments are required;

(3) The number, amounts, due dates or periods of scheduled payments, and the total of such payments under the lease;

(4) A statement of whether or not the lessee has the option to purchase the leased property and at what price and time (the method of determining the price may be substituted for disclosure of the price), and

(5) A statement of the amount or method of determining the amount of

any liabilities the lease imposes upon the lessee at the end of the term and a statement that the lessee shall be liable for the difference, if any, between the estimated value of the leased property and its realized value at the end of the lease term, if the lessee has such liability.

(Section 184 of the CLA, 15 U.S.C. 1667c, and Section 213.5(c) of Regulation M, 12 CFR 213.5(c).)

B. Stating that a specific lease of any property at specific amounts or terms is available unless the lessor usually and customarily leases or will lease such property at those amounts or terms, as required by Regulation M.

(Section 184 of the CLA, 15 U.S.C. 1667c, and Section 213.5(a) of Regulation M, 12 CFR 213.5(a).)

C. Failing to comply in any other respect with Regulation M and the CLA.

(Regulation M, 12 CFR 213, and the CLA, 15 U.S.C. 1667–1667e, as amended.)

III

It is further ordered that respondents, their successors and assigns shall distribute a copy of this order to any present or future officers, agents, representatives, and employees having responsibility with respect to the subject matter of this order and that respondents, their successors and assigns shall secure from each such person a signed statement acknowledging receipt of said order.

IV

It is further ordered that respondents, their successors and assigns shall promptly notify the Commission at least thirty (30) days prior to any proposed change in the corporate entity such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the order.

V

It is further ordered that for five years after the date of service of this order respondents, their successors and assigns shall maintain and upon request make available all records that will demonstrate compliance with the requirements of this order.

VI

It is further ordered that respondents, their successors and assigns shall, within sixty days (60) days of the date of service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from respondents Jerry's Ford Sales, Inc., John's Ford, Inc. dba Jerry's Leesburg Ford, Jerry's Chevrolet Geo Oldsmobile, Inc., and Jerry C. Cohen, individually and as an officer of the corporations.[1]

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that respondents Jerry's Ford and Cohen have disseminated or caused to be disseminated advertisement that state an initial low monthly payment and in fine print, *inter alia*, state an initial number of payments and another amount variously described as "optional final payment," "optional final price," of "COP." The complaint alleges that these advertisements misrepresent that the remaining obligation is optional and fail to disclose that the financing to be signed at purchase requires the consumer to make a substantial balloon payment at the conclusion of the initial payments, which is a mandatory obligation, and have therefore engaged in an unfair and deceptive act or practice, in violation of Section 5(a) of the Federal Trade Commission Act. The complaint also alleges that these advertisements state an initial number and amount of payments required to repay the indebtedness and another amount variously described as "optional final payment," "optional final price," or "COP," but fail to accurately state the terms of repayment, by failing to disclose that the additional amount required is a final payment and by inaccurately stating that the final amount is optional when, in fact, it is mandatory based on the financing to be signed at purchase, in violation of the TILA and Section 226.24(c) of Regulation Z.

The complaint also alleges that respondents Jerry's Ford and Cohen have disseminated or caused to be disseminated advertisements that state a rate of finance charge without stating that rate as an "annual percentage rate," using that term or the abbreviation "APR," and have failed to calculate that rate in accordance with Regulation Z, in violation of the TILA and Sections 226.22 and 226.24(b) of Regulation Z, and have also engaged in an unfair and deceptive act or practice, in violation of Section 5(a) of the FTC Act.

The complaint also alleges that respondents Jerry's Chevy and Cohen have disseminated or caused to be disseminated advertisements that state an initial, low monthly payment and an initial number of payments but fail to disclose that the financing to be signed at purchase requires the consumer to make a substantial final balloon payment, and have therefore engaged in an unfair and deceptive act or practice, in violation of Section 5(a) of the FTC Act. The complaint also alleges that these advertisements state an initial number and amount of payments required to repay the indebtedness, but fail to accurately state the terms of repayment, by failing to disclose the amount of the final balloon payment required at the end of the initial payments, based on the financing to be signed at purchase, in violation of the TILA and Section 226.24(c) of Regulation Z.

The complaint also alleges that respondents Jerry's Ford, Jerry's Chevy and Cohen have disseminated or caused to be disseminated advertisements that state the amount of percentage of any downpayment, the number of payments of period of repayment, or the amount of any payment, but fail to state all of the terms required by Regulation Z, as follows: The amount or percentage of the downpayment, the terms of repayment, and the annual percentage rate, using that term or the abbreviation "APR," in violation of the TILA and Section 226.24(c) of Regulation Z.

The complaint also alleges that respondents Jerry's Ford, Jerry's Chevy and Cohen have disseminated or caused to be disseminated advertisements that state the amount of any payment, the number of required payments, or that any or no downpayment or other payment is required at consummation of the lease, but fail to state all of the terms required by Regulation M, as applicable and as follows: That the transaction advertised is a lease; the total amount of any payment such as a security deposit or capitalized cost reduction required at the consummation of the lease or that no such payments are required; the number, amount, due dates or periods of scheduled payments, and the total of such payments under the lease; and a statement of whether or not the lessee has the option to purchase the leased property and at what price and time (the method of determining the price may be substituted for disclosure of the price), in violation of the CLA and Section 213.5(c) of Regulation M.

The proposed order prohibits respondents Jerry's Ford, Jerry's Chevy and Cohen, in any advertisement to promote any extension of consumer credit, from misrepresenting in any manner, directly or by implication, the terms of financing the purchase of a vehicle, including but not limited to whether there may be a balloon payment and the amount of any balloon payment.

The proposed order also prohibits respondents Jerry's Ford, Jerry's Chevy and Cohen, in any advertisement to promote any extension of consumer credit, from stating a rate of finance charge without stating the rate as an "annual percentage rate," using that term or the abbreviation "APR," and from failing to calculate the rate in accordance with Regulation Z.

The proposed order also requires respondents Jerry's Ford, Jerry's Chevy and Cohen, in any advertisement to promote any extension of consumer credit, whenever the number or amount of payments required to repay the debt are stated, to accurately, clear and conspicuously, state all of the terms required by Regulation Z, as follows: the amount or percentage of the downpayment; the terms of repayment, including the amount of any balloon payment, and the annual percentage rate.

The proposed order also requires respondents Jerry's Ford, Jerry's Chevy and Cohen, in any advertisement to promote any extension of consumer credit, whenever the number or amount of payments required to repay the debt are stated, to accurately, clearly and conspicuously, state all of the terms required by Regulation Z, as follows: The amount or percentage of the downpayment, the terms of repayment, and the annual percentage rate. The proposed order also requires respondents Jerry's Ford, Jerry's Chevy and Cohen to state only those terms that actually are or will be arranged or offered by the creditor, in any credit advertisement.

The proposed order also requires respondents Jerry's Ford, Jerry's Chevy and Cohen, in any advertisement to aid, promote or assist any consumer lease, whenever the amount of any payment, the number of required payments, or that any or no downpayment or other payment is required at consummation of the lease is stated, to state, clearly and conspicuously, all of the terms required by Regulation M, as applicable and as follows: That the transaction advertised is a lease; the total amount of any payment such as a security deposit or capitalized cost reduction required at the consummation of the lease, or that no such payments are required; the number, amounts, due dates or periods of scheduled payments, and the total of such payments under the lease; a statement of whether or not the lessee has the option to purchase the leased property and at what price and time (the method of determining the price may be substituted for disclosure of the price), and a statement of the amount or method of determining the amount of any liabilities the lease imposes upon the lessee at the end of the term and a statement that the lessee shall be liable for the difference, if any, between the estimated value of the leased property and its realized value at the end of the lease term if the lessee has such liability. The proposed order also requires respondents in any lease advertisement to state that a specific lease of any property at specific amounts or terms is available only if the lessor usually and customarily leases or will lease such property at those amounts or terms.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in an way their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 95–14138 Filed 6–8–95; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3574]

Orchid Technology; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a California-based company from falsely representing that any of its computer peripheral products had been rated, reviewed or endorsed by any person or publication, and from misrepresenting the results of any test, study or evaluation in connection with marketing its computer peripheral equipment. The consent order also requires the respondent to possess competent and reliable evidence to substantiate performance claims.

DATES: Complaint and Order issued May 1, 1995.[1]

FOR FURTHER INFORMATION CONTACT: Matthew Gold or Jeffrey Klurfeld, FTC/San Francisco Regional Office, 901 Market St., Suite 570, San Francisco, CA 94103, (415) 744–7920.

SUPPLEMENTARY INFORMATION: On Monday, February 13, 1995, there was published in the **Federal Register**, 60 FR 8237, a proposed consent agreement with analysis In the Matter of Orchid Technology, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 95–14184 Filed 6–8–95; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3577]

The Penn Traffic company; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order permits, among other things, the Penn Traffic Company to acquire a number of Acme supermarkets from American Stores Company, but requires it to divest, to a Commission approved acquirer or acquirers within twelve months, one supermarket in each of the three Pennsylvania areas designated (Towanda, Mount Carmel, and Pittston). If the divestitures are not completed on time, the consent order permits the

[1] In this Analysis to Aid Public Comment, Jerry's Ford Sales, Inc. and John's Ford, Inc. dba Jerry's Leesburg Ford are referred to collectively as "respondent Jerry's Ford." Jerry's Chevrolet Geo Oldsmobile, Inc. is referred to as "respondent Jerry's Chevy." Jerry C. Cohen is referred to as "respondent Cohen."

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

Commission to appoint a trustee to complete the transactions. In addition, the consent order requires the respondent, for ten years, to obtain Commission approval before acquiring any interest in any entity that owns or operates a supermarket in any of the three areas designated.

DATES: Complaint and Order issued May 15, 1995[1]

FOR FURTHER INFORMATION CONTACT: Ronald Rowe or Marimichael Skubel, FTC/S–2105, Washington, D.C. 20580. (202) 326–2610 or 326–2611.

SUPPLEMENTARY INFORMATION: On Monday, February 13, 1995, there was published in the **Federal Register**, 60 FR 8239, a proposed consent agreement with analysis In the Matter of the Penn Traffic Company, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended ; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 95–14185 Filed 6–8–95; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACYF–PA–CC–9501]

Administration on Children, Youth and Families Child Care Bureau; Child Care Research Partnerships

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF).

ACTION: Announcement of the availability of funds and request for applications to conduct Child Care Research Partnerships.

SUMMARY: The purpose of this solicitation is to announce a competition for approximately three cooperative agreements to conduct Child Care Research Partnerships. The Child Care Research Partnerships are intended to study critical child care issues concerning: (1) The child care needs, utilization patterns and outcomes for low-income families, particularly those moving from welfare to work and those who are currently employed but are at risk of needing welfare services; (2) child care opportunities and constraints which affect the lives of low-income families and children; and (3) systemic issues which affect the delivery of subsidized child care services to welfare clients and low-income working families. Each of the individual projects will participate as a member of an ACYF Research Consortium to be cooperatively formed by the Child Care Research Partnership projects and the ACYF Child Care Bureau. The purpose of this consortium will be to coordinate and link the individual studies in order to maximize their contributions to basic knowledge, policy and practice.

DATES: The closing date for submission of applications is August 8, 1995. Applications which are sent by mail must be received on or before the deadline date at the following address: Mail applications to: Department of Health and Human Services, ACF/ Division of Discretionary Grants, 6th floor, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: Child Care Research Partnerships.

Hand deliver applications during the normal working hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date to: Administration for Children and Families, Division of Discretionary Grants, 6th Floor, ACF Guard Station, 901 D Street, S.W., Washington, D.C. 20447, Attn: Child Care Research Partnerships.

FOR FURTHER INFORMATION CONTACT: Dr. Pia Divine, ACYF Child Care Bureau, Third Floor, Hubert Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201, Attn: Child Care Research Partnerships, Phone: 202–690–6705.

NOTICE OF INTENT TO SUBMIT APPLICATION: If you intend to submit an application, please send a post card with the number and title of this announcement, your organization name, address, contact person and telephone number to: Administration on Children, Youth and Families, Operations Center, 3030 Clarendon Blvd., Suite 240, Arlington, Virginia 22201, Attn: Child Care Research Partnerships.

Please submit this information within two weeks after receiving the announcement. The information will be used to determine the number of expert reviewers needed and to update the mailing list of persons to whom program announcements are sent.

CONTENTS OF THIS ANNOUNCEMENT: This announcement contains all necessary instructions and forms needed to submit an application. The forms to be used for submitting an application follow Part VI. Please copy as single-sided forms and use in submitting an application under this announcement. No additional application materials are needed.

The announcement consists of six parts. Part I provides general information about the Child Care Research Partnerships, funding requirements, and application procedures. Part II provides background information on ACYF and the Child Care Bureau. Part III describes the ACYF research goals, partnerships, and expectations for collaborative research. Part IV discusses the Project Narrative Statement and outlines additional requirements for applicants in designing their projects. Part V describes the proposal review process, evaluation criteria and selection process. Part VI provides detailed information and instructions for the development and submission of applications. The contents are organized as follows:

Part I. General Information

A. Purpose
B. Citations
C. Number of Awards
D. Project Duration
E. Funding Levels and Budget Periods
F. Non-Federal Share of Project Costs
G. Eligible Applicants

Part II. Background and Context

A. The Administration on Children, Youth and Families
B. The Child Care Bureau

Part III. Research Goals and Partnerships

A. Need for New Research
B. Cooperative Agreements

Part IV. Project Narrative Statement

A. Issues and Objectives
B. Background and Significance
C. Technical Approach
D. Staff Background and Organizational Capability

Part V. Evaluation and Selection

A. The Review Process
B. Evaluation Criteria
C. The Selection Process
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A. Required Notification of the State Single Point of Contact
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C. Deadline for Submission of Applications
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Part I. General Information

A. Purpose

The purpose of this research initiative is to study critical child care issues as they relate to welfare recipients and low-income working families.

B. Citations

Funding for this research is authorized under Section 1110 of the Social Security Act.

The Catalogue of Federal Domestic Assistance Number is 93.647.

C. Number of Awards

Approximately three projects will be funded in fiscal year 1995 (ending September 30, 1995), subject to the availability of funds.

D. Project Duration

The total project period will be 36 months.

E. Funding Levels and Budget Periods

Initial awards will be for a one-year budget period. Individual projects will be funded at approximately $100,000 for the first budget period of 12 months, with a possibility of up to $100,000 per year in continuation funding to be awarded in fiscal years 1996 and 1997. It is anticipated that the total Federal funding for a three-year project will be approximately $300,000.

Applications for continuation of cooperative agreements funded under this announcement will be entertained in subsequent years on a non-competitive basis. The award of continuation funding beyond each one-year budget period (but within the three- year project-period) will be subject to the availability of funds, satisfactory progress of the grantee, and a determination that continued funding would be in the best interest of the government.

F. Non-Federal Share of Project Costs

A non-Federal match is required. Grantees must provide at least 25 percent of the total approved cost of the project. The total approved cost of the project is the sum of the Federal share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project approved for funding under this announcement which is awarded a total of $300,000 in Federal funds (based on an award of $100,000 per 12-month budget period for three years) must include a match of at least $100,000 (25 percent of the total cost of $400,000).

Applicants are also encouraged to develop more extensive funding partnerships in order to propose a project of greater scope and complexity than would be possible within the funding levels specified in this announcement.

G. Eligible Applicants

This announcement solicits applications from non-profit partnerships composed of child care research groups in concert with child care agencies, organizations, businesses, or other entities with an interest in child care services for low-income families. A partnership is required. At least one member of the Child Care Research Partnership must be a research group affiliated with a university or four-year college.

The application must identify only one partner as the lead organization and official applicant. The official applicant must be a public or private non-profit agency or organization and may be either the research group or another partner. If the application is funded, the official applicant will be the recipient of the award and will be responsible for ensuring that the terms of the cooperative agreement are met. Profit-making organizations and non-federally recognized Tribes are not eligible to act as the official applicant.

Priority will be given to partnerships which (1) have access to an ongoing data base of current information about local market conditions and (2) are capable of analyzing local patterns of demand and supply in conjunction with state-level data on subsidized child care services. Applicants are also encouraged to form broadly constituted research partnerships in order to bring together interdisciplinary specialties, populations, services, data, and financial contributions.

Partnerships might include: (1) State, Tribal, county or local agencies which administer child care subsidy programs; (2) resource and referral organizations which collect and maintain an ongoing data base of local or statewide information on child care demand and supply; (3) organizations which conduct needs assessments or local market surveys; (4) planning councils, commissions, advisory groups, and civic organizations which participate in child care planning and policy making; (5) early childhood programs, organizations, or professional associations; (6) providers of supportive services such as provider training, technical assistance, or consumer education; (7) child care consumer and provider groups; (8) foundations and charitable organizations; and (9) businesses and business associations.

Non-profit organizations must submit proof of non-profit status with the grant application. The non-profit agency can accomplish this by providing a copy of its listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS Tax exemption certificate *and* by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Part II. Background and Context

The cooperative agreements for research being awarded under this announcement will be funded by the U.S. Department of Health and Human Services (DHHS), Administration for Children and Families (ACF), under authority of the Social Security Act, Section 1110. The projects will be managed by the Child Care Bureau of the Administration on Children, Youth and Families.

A. The Administration on Children, Youth and Families

The Administration on Children, Youth and Families (ACYF) is one of ACF's component offices. The ACYF administers national programs for children, youth and families; works with States, Territories, Tribes and local communities to develop services which support and strengthen family life; seeks out joint ventures with the private sector to enhance the lives of children and their families; and provides information and other assistance to parents. The ACYF contains four programmatic bureaus and the National Center on Child Abuse and Neglect. The four bureaus include the Children's Bureau, the Family and Youth Services Bureau, the Head Start Bureau, and the Child Care Bureau, which will be responsible for managing the Child Care Research Partnerships.

B. The Child Care Bureau

The Child Care Bureau is a newly formed unit which provides a single locus for child care activities within ACF. The bureau seeks to enhance the quality, availability and affordability of

child care services, to promote safe and healthy environments that support children's development, to enhance parental choice and involvement in their children's care, and to facilitate the linkage of child care with other community services. The Child Care Bureau also works with other ACYF bureaus to promote integrated family-focused services and coordinated delivery systems.

The Child Care Bureau consolidates in a single organization the responsibility for five Federal child care programs carried out under three legislative authorities as described below.

1. State Dependent Care Planning and Development Grants

The State Dependent Care Planning and Development Grant program (Pub. L. 98–55B as amended), enacted in 1986, provides funds to States and Territories through a formula grant. This program has been instrumental in the growth of child care resource and referral services and school-age child care programs over the past decade. Statutory requirements are located at 42 U.S.C. 9871 and reauthorized by Pub.L. 103–252.

2. Family Support Act of 1988 (FSA)

The Family Support Act of 1988 (Pub. L. 100–485) amended title IV-A of the Social Security Act, by adding section 402(g), which significantly expanded ACYF's ability to fund child care services. The amendment created two new child care programs: AFDC Child Care and Transitional Child Care. Both of these programs are entitlements, and both require matching State funds. Statutory requirements are located at 42 U.S.C., section 602(g).

a. *AFDC Child Care.* The FSA guarantees child care necessary for working AFDC recipients and for AFDC recipients in approved education or training activities (including the Job Opportunities and Basic Skills Training (JOBS) Program). This provision is often called AFDC child care or JOBS child care. The regulations for AFDC child care are located at 45 CFR part 255.

b. *Transitional Child Care (TCC).* The FSA also addressed the need for transitional child care during the 12 months after a family becomes ineligible for AFDC due to work. The regulations specific to TCC are located at 45 CFR part 256. However, many of the regulations for AFDC child care (part 255) also apply to TCC.

3. Omnibus Budget Reconciliation Act of 1990 (OBRA '90)

With OBRA '90, Congress established two additional child care programs that further extended child care services to the Nation's low-income families: (1) An optional At-Risk Child Care program (child care needed by low-income working families who are otherwise at risk of becoming eligible for AFDC); and (2) the Child Care and Development Block Grant (CCDBG) which also primarily serves working families.

a. *At-Risk Child Care (ARCC).* OBRA '90 amended title IV-A of the Social Security Act by adding section 402(i), establishing the ARCC program. Though optional, the ARCC program has been implemented by all States and the District of Columbia. This program, like the other title IV-A child care programs, requires the State to match Federal funds. However, unlike these other programs, ARCC funding is capped and its funds are distributed according to a formula. The statutory provisions for ARCC are located at 42 U.S.C. 9858. The regulations are located at 45 CFR part 257.

b. *Child Care and Development Block Grant (CCDBG).* The CCDBG has been implemented by all States and Territories, the District of Columbia, and 226 Tribal grantees, of which 25 are Tribal consortia). The purpose of the CCDBG is to increase the availability, affordability, and quality of child care services. This program offers Federal funding to States, Territories, and Federally-recognized Tribes and Tribal consortia in order to (1) provide low-income families with the financial resources to find and afford quality child care; (2) enhance the quality and increase the supply of child care for all families, including those who do not receive direct subsidies; (3) provide parents with a broad range of options in addressing their child care needs, particularly through the issuance of certificates; (4) strengthen the role of the family; (5) improve the quality of, and coordination among, child care programs and early childhood development programs; and (6) increase the availability of early childhood development programs and before- and after-school services. The statutory provisions for the CCDBG program are found at 42 U.S.C. 9858. Regulations are located at 45 CFR parts 98 and 99.

In support of these five child care programs, the Child Care Bureau develops policies, monitors service delivery systems, and provides technical assistance in close cooperation with ten ACF regional offices which in turn work directly with States, Territories and Tribes.

Part III. Research Goals and Partnerships

A. Need for New Research

The research being funded under this announcement represents an important strategy for ACYF in the ongoing process of developing service delivery systems which are more efficient, effective, and responsive to the needs of children and families. This initiative embodies recognition of the critical need for new knowledge to guide the delivery of child care services to children and their families, inform policy debates, and point the way to more effective solutions of complex child care issues. Whereas there is a growing body of knowledge about child care demand and supply, only limited research has been directed to the child care needs, options, and utilization patterns of low-income families. For these reasons, ACYF is interested in field-initiated projects which focus on the low-income segment of the child care market.

The overriding goal of the Child Care Research Partnerships is to better understand how child care markets operate for low-income families in different communities and how subsidized child care services, or their absence, impact on the accessibility, affordability and quality of services for low-income parents and their children. In particular, ACYF is interested in the role of child care as an essential support to low-income families in achieving and sustaining economic self-sufficiency while balancing the competing demands of work and family life. Equally important is the quality of care that children are receiving and the implications of available options for the development and well-being of young children throughout their formative years.

The Child Care Research Partnerships are specifically intended to study critical child care issues related to (1) the child care needs, utilization patterns and outcomes for low-income families, particularly those moving from welfare to work and those who are currently employed but are at risk of needing welfare services; (2) child care opportunities and constraints which affect the lives of low-income families and children; and (3) systemic issues which affect the delivery of subsidized child care services to welfare clients and low-income working families.

Another important goal of these projects is to optimize the knowledge gained from research by careful, collaborative planning, linkage with other current studies, and secondary analysis of existing data. Priority will be given to applicants who propose cost-effective ways of utilizing existing information. For example, resource and referral data, subsidized program data, and census data might be analyzed to characterize local and statewide patterns of demand and supply in the low-income sector as well as point to possible future trends. Ongoing studies might also be expanded, linked, or otherwise utilized in the development of a comprehensive research strategy. In addition, it is often possible for teams working cooperatively to produce a more cohesive, conceptually integrated project than would otherwise be possible. For this reason, researchers are challenged to develop innovative research partnerships which leverage existing knowledge and resources. Priority will also be given to applicants who are able to obtain significant additional funding or in-kind contributions from their partners.

A third goal is to increase the practical utility of research and develop methods of utilizing existing data to answer pressing questions. Studies carried out under these partnerships are expected to have clear relevance for child care policies, practices, and the well-being of children and families. These projects should also contribute to the development of methodological strategies which do not require the launching of large-scale studies in order to provide valid, reliable and important findings.

B. Cooperative Agreements

The Child Care Research Partnerships are being funded as cooperative agreements in order to facilitate a high degree of coordination between projects and to accommodate the flexibility in project design needed to carry out collaborative research. In applying for financial assistance under this announcement, applicants agree to enter into a cooperative agreement with the ACYF Child Care Bureau. The general roles of research partners and Federal staff are outlined in the following sections. Specific terms and conditions of each cooperative agreement will be negotiated prior to award of funds.

1. The Grantee Role

The grantee is the official applicant to whom a financial assistance award is made. The grantee is responsible for the performance of its subgrantees or subcontractors, and for ensuring that agreements with co-partners are carried out in good faith and to a high level of quality. The grantee is expected to participate and cooperate fully with the Child Care Bureau in carrying out the Child Care Research Partnership detailed in the cooperative agreement. The specific terms of each agreement will be based on this announcement, the successful applicant's proposal, and related items to be negotiated prior to award.

Each of the Child Care Research Partnerships will participate as a member of an ACYF Child Care Research Consortium to be formed shortly after projects are funded. The goals of this consortium are four-fold: (1) To coordinate and assist the individual research partnerships; (2) to produce a more sophisticated and comprehensive body of research than would be achievable by any project alone; (3) to provide a forum for consideration of technical issues which are of mutual concern to the researchers; and (4) to assist ACYF in the development of research strategies to effectively examine complex child care issues. As part of this effort, two meetings of the consortium will be held in Washington, D.C., the first shortly after funds are awarded and the second in the spring of 1996.

2. The Federal Role

The Federal Project Officer (FPO) will work closely with each of the individual Child Care Research Partnerships and with the ACYF Child Care Research Consortium to share priorities and plans, identify and resolve common issues, and ensure that final plans and products comprehensively address the goals of this announcement. Such involvement may include, but is not limited to: (1) provision of technical assistance to grantees; (2) consultation on and participation in formulation of research plans; (3) arrangement of meetings to support research activities; (4) membership in policy, planning, steering or other working groups established to facilitate accomplishment of the project goals; (5) review of major activities and products; and (6) participation in negotiations for revised cooperative agreements to carry out each succeeding phase of the research. The FPO will also chair meetings of the ACYF Child Care Research Consortium and will coordinate consortium activities and information sharing.

Part IV. Project Narrative Statement

The Project Narrative Statement provides most of the information on which proposals will be competitively reviewed. This section should be carefully developed in accordance with the research goals and expectations described in Part III, the evaluation criteria and selection factors described in Part V, and the requirements described in sections A through D below.

The Project Narrative sets forth the technical proposal and how it will be carried out. This statement should be organized according to the evaluation criteria contained in Part V as follows: (1) Issues and Objectives; (2) Background and Significance; (3) Technical Approach; and (4) Staff Background and Organizational Capacity.

The clarity and conciseness of proposals are of the utmost importance to ACYF. Project Narrative Statements may not exceed 80 pages single-spaced (160 pages double-spaced) with standard one-inch margins and 10–12 point fonts. This page limitation applies to the entire Project Narrative Statement, including text, tables, charts, graphs, resumes, corporate statements and appendices. Excess pages of Project Narrative will not be reviewed. (Note: Applicants are asked to print their statement in double-spaced format for ease of review.)

A. Issues and Objectives

Applicants must demonstrate a sound understanding of the goals of this announcement and show how their proposed research would address ACYF's child care research objectives. Applicants should discuss the purpose of their research and indicate how their project would address major issues and hypotheses. This section should also describe how the study would relate to, or build upon, other relevant research.

Applicants should describe how the proposed project could fit into a broader framework for collaborative child care research, and suggest specific substudies or components which could be undertaken as part of a holistic approach made possible by a research consortium. In this regard, applicants must describe the nature of their research partnership, articulate a rationale for this partnership vis- a-vis ACYF research goals, and provide assurances that they and their partners have the willingness and flexibility to collaborate with other members of the ACYF Child Care Research Consortium.

B. Background and Significance

The Background and Significance section is intended to demonstrate the applicant's understanding of (1) critical child care issues affecting low-income families and the complex interrelationships among major variables; (2) the significance of these issues and variables for child care policies and programs; (3) how existing

knowledge can be brought to bear on the proposed research; and (4) how the research would benefit various audiences. Applicants are expected to provide a review of relevant literature which is sufficient to demonstrate their understanding of important issues, variables, methods, and findings. The literature review must include previous work of the author(s) of the proposal. A list of references must be included.

This section of the narrative must address issues related to (a) low-income populations and the challenges they face; (b) the structure and dynamics of child care demand and supply as these factors relate to low-income children and families; and (c) the ways in which welfare and child care services interact in creating opportunities or constraints for the populations they serve. Applicants should address these issues in terms of their proposed research, explaining their reasoning, suggesting lines of inquiry, and developing their hypotheses.

Applicants should clearly show how their proposed research will build on the current knowledge base and contribute to policy, practice and future research. The proposal is expected to demonstrate understanding of current welfare and child care policies and programs, to show how the proposed research would further such understanding, and to suggest practical applications which might be derived from the findings. Applicants are asked to consider the significance, reliability, and validity of existing data for questions of interest to the Child Care Research Partnerships. In addition, applicants should identify important gaps in the literature and areas in which findings are contradictory or ambiguous.

If ongoing studies or pilot research identified in the review will be included in the proposed design, applicants should describe how such studies would be utilized in the proposed research and how they would foster ACYF child care research goals.

If especially important data bases from completed studies are identified, applicants are asked to suggest ways in which such data could be analyzed or otherwise utilized. It will also be important to consider what demographic, economic, and social data are available as context for the proposed research. Applicants should describe how data from the Census Bureau, Bureau of Labor Statistics, and other statistical organizations can be used to help profile market parameters and trends.

C. Technical Approach

The Technical Approach section of the Project Narrative Statement details a specific research design and implementation plans. This section should address three broad areas: (1) research methodology; (2) management and quality control; and (3) collaborative strategy.

1. Research Methodology

The methodological discussion must include technical details of the proposed research design, including specific research questions, variables and data sources, sampling and data collection or compilation (including selection of client records or construction of subsamples from data tapes), statistical analysis, and reporting. Applicants are asked to lay out a research design for examining the relationships between selected issues, questions, variables, and data elements (Applicants may include a chart showing these linkages). In addition, applicants should discuss the strengths and limitations of all proposed data sources, samples, and techniques for this research.

Applicants should fully address technical considerations appropriate to their proposed design:

- If secondary analyses are to be conducted on completed data sets, describe the appropriateness and limitations of the original research for this study. Describe the nature, scope and representativeness of the original sample and characteristics of the data (including data quality). Describe hypotheses to be tested, variables to be analyzed, the unit of analysis to be employed, analytic procedures, and limitations of the data base for the proposed study.
- If data will be compiled from service delivery records of State or local agencies, from resource and referral files, from records maintained by child care facilities, or from other primary data sources, describe the nature of the data and how it would be accessed, what sampling procedure would be employed, how confidentiality of individual records would be maintained, and how the data would be processed and analyzed.
- If the proposed project involves linkage with ongoing research, describe the ongoing research design and stage of progress, how the applicant's proposed study would benefit from and contribute to it, how the technical aspects of the linkage would be structured and carried out, and how the linked studies would address the goals of this announcement.
- If new data are to be collected on human subjects in conjunction with another ongoing study (e.g., adding a component to a survey) discuss the benefits of and justify this approach. Describe the characteristics of the target population and provide a rationale for any sample stratification based on personal characteristics of individuals (such as ethnicity, income, marital status, age of child, etc.). Describe data collection procedures and safeguards for data quality. Discuss procedures to protect human subjects, maintain confidentiality of data, and obtain consent for participation (if applicable).
- Include a detailed plan for the processing and analysis of data from all sources which illustrates how the analysis will meet the goals of this research. Discuss the processing of data for analysis, including the procedures which will be used to ensure data quality, the preparation and documentation of data files and tapes, and the archiving of data for analysis by other researchers. Discuss plans for the analysis of data, including units of analysis, analytic techniques to be used with various types of data, statistical considerations, and the linkage of data sets.
- Include a product development and dissemination plan which describes the products to be generated during the course of this research (such as technical papers or reports, summaries, briefings, conference presentations, doctoral dissertations, journal articles, archival data tapes, data documentation, software, and the final report) and the steps that will be undertaken to disseminate and promote the utilization of products and findings. This plan should include a discussion of products which might be collaboratively developed or disseminated to effectively reach intended audiences.

2. Management and Quality Control

The applicant's approach must contain a sound and workable plan of action which describes in detail how the project will be carried out. This section should detail how the project will be structured and managed, how roles and functions will be coordinated, how the timeliness of activities will be ensured, and how quality control will be maintained. Applicants should discuss their management of the project as a whole, and the management roles of their partners. In particular, applicants are asked to provide the following information:

- Describe how an appropriate research and management team will be assembled, what expertise will be represented, how individuals will be selected, and what roles they will play (including consultants and advisors).

- Lay out the major tasks to illustrate the sequence and timing of tasks, time commitments of staff, important milestones, reports, and completion dates.
- Describe how participating organizations will coordinate their management of project tasks and other functions.
- Discuss how the proposed methodology might reasonably fit into a broader research scheme and what design flexibility exists for coordination with other approaches.
- Discuss potential problems or difficulties with the proposed methodological approach, including factors which might affect the quality of the research or its outcomes, issues related to the reliability, validity and generalizability of data, and issues related to management and coordination.
- Include a detailed budget narrative which describes and justifies line item expenses within the budget categories listed on the form S.F. 424. A realistic amount must be set aside for two trips to Washington, D.C. to participate in meetings of the ACYF Research Consortium. Each meeting is expected to require two days.
- If project funds are being subcontracted, a detailed budget for the use of those funds must be included.

D. Staff Background and Organizational Capacity

In this section of the Project Narrative Statement, applicants must provide evidence that they and their partners have the ability to carry out the proposed project on time and to a high degree of quality.

1. Staff Background

- Identify all key staff positions for this project, including job descriptions, salary rates and employee benefits; the proportion of time to be committed to the project; the period of time for which staff holding these positions will be employed; and whether their continued employment is dependent solely on the funds to be awarded under this announcement.
- Provide evidence that individuals proposed for key positions have the necessary technical skill and experience to successfully carry out their assigned roles.
- Identify the authors of the proposal and describe their continuing role in the project if funded.
- Identify all consultants or advisors, document their expertise, and describe how their services will be utilized.
- Describe recruitment and hiring procedures.

2. Organizational Capacity

- Provide evidence of sufficient organizational resources to ensure successful project management, compliance with terms and conditions of the cooperative agreement, and oversight of the proper use of Federal funds.
- Include a separate two-page organizational capability statement for each partner (these statements are to be included with the application as part of the general requirements described in Part VI).
- Provide evidence of the organizational capacity to coordinate the activities of research partners, participate as a member of the ACYF research consortium, and resolve collaboration issues which may arise during the course of the research.
- Document the ability of all partners to carry out their assigned roles and functions. Describe all research partnerships, collaborations and agreements. Describe how each partner was included in the planning of the project and what contributions each will make throughout the project.
- Include a list of research partners and financial supporters, including the name and address of the organization, the name of its director, and the telephone, fax and internet numbers.
- Include letters of specific commitment or support where possible. Partners who will provide access to data or records must provide a letter stipulating the terms of their agreement with the researchers.
- Describe the extent of financial participation from all sources. Describe the extent to which funds, staff time, in-kind services, and other resources have been committed to the research effort during the planning period. Describe what other resources will help support the proposed child care research, including existing commitments and negotiations in progress. Discuss what commitments are expected of financial partners in the second and third years.
- Describe the relationship between this project and other relevant work planned, anticipated or underway by the applicant with Federal assistance. Include examples of past or current partnerships which demonstrate the ability to carry out the proposed project.

Part V. Evaluation and Selection

A. The Review Process

Before applications are reviewed, each application will be screened to determine whether the applicant organization is eligible as specified in Part I, section G, above. Applications from organizations which do not meet the eligibility requirements will not be considered or reviewed in the competition, and the applicant will be so informed. In addition, inadequate preparation, omission of essential components of the application, or failure to comply with format specifications as described in Part VI will result in the application being withdrawn from further consideration.

Applications will be reviewed and scored competitively against the published evaluation criteria described below. The review will be conducted in Washington, D.C. Expert reviewers in relevant fields will include researchers, Federal or State staff, early childhood program staff, or other individuals experienced in the study of child care demand and supply, child care delivery systems, welfare and supportive services, early childhood programs, child development and education, parental choice and involvement, and other relevant areas.

A panel of at least three reviewers will evaluate each application to determine the strengths and weaknesses of each proposal in terms of ACYF research goals and expectations discussed in Part III, the proposal requirements described in Part IV, and the evaluation criteria listed in section B below. Panelists will also provide written comments and assign numerical scores for each application. The point value for each criterion indicates the maximum numerical score which that criterion may be given in the review process. The assigned scores for each criterion will be summed to yield a total evaluation score for the proposal.

In addition to the panel review, the Child Care Bureau or ACYF may solicit comments from ACF Regional Office staff, other Federal agencies, organizations who are or may become ACYF research partners, and individuals whose particular expertise is identified as necessary for the consideration of technical issues arising during the review. These comments, along with those of the panelists, will be considered by the Child Care Bureau and ACYF in making funding decisions. The Child Care Bureau and ACYF will also take into account the best combination of proposed projects to meet overall research goals. In addition, priority will be given to applicants who are able to obtain significant financial contributions from other sources and who propose cost-effective ways of utilizing existing research.

B. Evaluation Criteria

The criteria listed below will be used in conjunction with other requirements set forth in Part IV, Project Narrative

Statement, to evaluate how well each proposal addresses the goals of this announcement.

1. Issues and Objectives (maximum of 10 points)

- The extent to which the application reflects a solid understanding of critical issues, information needs, and research goals.
- The extent to which the conceptual model, research issues, objectives and hypotheses are significant, well-formulated and appropriately linked.
- The extent to which the collaborative framework is appropriate, feasible, and will significantly contribute to the importance, comprehensiveness, and quality of the proposed research.

2. Background and Significance (maximum of 15 points)

- The completeness and sophistication with which the applicant reviews the relevant literature.
- The effectiveness with which the application articulates the current state of knowledge relative to issues being addressed, including (1) critical child care issues and the complex interrelationships among major variables; (2) the significance of these issues and variables for child care policies and programs; (3) how current knowledge can be brought to bear on the proposed research; and (4) how the research would benefit various audiences.
- How well the proposed research will build on the current knowledge base and contribute to policy, practice and future research.

3. Technical Approach (maximum of 50 points)

- The extent to which the applicant's proposed research methodology (1) appropriately links critical research issues, questions, variables and data sources; (2) employs technically sound and appropriate approaches, design elements and procedures for sampling, data collection, data processing and analysis; (3) reflects sensitivity to technical, logistical, cultural and ethical issues that may arise; (4) includes realistic strategies for the resolution of difficulties; (5) adequately protects human subjects, confidentiality of data, and consent procedures, as appropriate; (6) includes an effective plan for the dissemination and utilization information by researchers, policy-makers, and practitioners in the field; and (7) effectively utilizes collaborative strategies.
- The extent to which the application (1) outlines a sound and workable plan of action that details how the proposed work will be accomplished; (2) shows a reasonable schedule of accomplishments and target dates; (3) presents an adequate staffing plan; and (4) demonstrates the ability to gain access to necessary information, data and subjects.
- The extent to which the application (1) presents a sound administrative framework for maintaining quality control over the implementation and operation of the study; (2) includes a sound plan for coordination of activities carried out by partners; (3) demonstrates an effective approach to team-building, including project staff, consultants and advisory panels; and (4) demonstrates the ability to carry out collaborative research, both within the proposed Child Care Research Partnership and as a member of the ACYF Child Care Research Consortium.
- The extent to which proposed project costs are reasonable, the funds are appropriately allocated across component areas, and the budget is sufficient to accomplish the objectives.

4. Staff Background and Organizational Capacity (maximum of 25 points)

- The extent to which the application (1) presents relevant background, experience, training and qualifications of the key staff and consultants, including work on related research and similar projects; (2) makes available adequate personnel resources for sampling, experimental design, field work, statistical analysis and reporting; and (3) proposes key personnel who have demonstrated competence in areas addressed by the proposed research and are geographically accessible.
- The extent to which the application demonstrates that (1) facilities and organizational experience are adequate to carry out the tasks of the proposed project; (2) the collaborative partnerships are well structured and demonstrate effective coordination of organizational resources; (3) the organization can effectively and efficiently administer a project of the size, complexity and scope proposed; (4) the applicant has the capacity to coordinate activities with other organizations for the successful accomplishment of project objectives; and (5) research partners have the capacity to carry out their proposed functions and roles.

C. The Selection Process

The Commissioner of ACYF will make the final selection of the applicants to be funded. Applications may be funded in whole or in part depending on the applicant ranking, consultations and staff review, the combination of projects which best meets ACYF research objectives, the funds available, and other relevant considerations.

Successful applicants will be notified through the issuance of a Financial Assistance Award which sets forth the amount of funds granted, the terms and conditions of the cooperative agreement, the effective date of the award, the budget period for which support is given, and the total project period for which support is provided.

D. Funding Date

It is anticipated that successful applications will be funded no later than September 30, 1995.

Part VI. Instructions for the Development and Submission of Applications

This part contains information and instructions for submitting applications in response to this announcement. Application forms are provided along with a checklist for assembling an application package. Please copy and use these as single-sided forms in submitting an application.

Potential applicants should read this section carefully in conjunction with other information and proposal requirements contained within this announcement.

A. Required Notification of the State Single Point of Contact

All applications for research projects are covered under Executive Order (E.O.) 12372, Intergovernmental Review of Federal Programs, and title 45 Code of Federal Regulations (CFR) Part 100, Intergovernmental Review of Department of Health and Human Services Programs and Activities. Under E.O. 12372, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. Therefore, the applicant should contact his or her State Single Point of Contact (SPOC) directly to determine what materials, if any, the SPOC requires. Contact information for each State's SPOC is found at the end of this announcement.

All States and territories, except Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Minnesota, Montana, Nebraska, Oklahoma, Pennsylvania, Oregon, South Dakota, Virginia, Washington, American Samoa and Palau, have elected to participate in the Executive Order process and have established a State Single Point of Contact (SPOC). Applicants from these

19 jurisdictions need take no action regarding E.O. 12372. Applications for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372.

It is imperative that the applicant submit all required materials to the SPOC and indicate the date of this submittal (or the date of contact, if no submittal is required) on the Standard Form (SF) 424, item 16a. Under 45 CFR 100.8(a)(2), SPOCs have 60 days from the grant application deadline to comment on applications for financial assistance under this program. These comments are reviewed as part of the award process. Failure to notify the SPOC can result in a delay in the award of funds.

The SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the accommodate or explain rule. It is helpful to ACYF in tracking SPOC comments if the SPOC will clearly indicate the applicant organization as it appears on the application SF 424. When comments are submitted directly to ACYF, they should be addressed to the application mailing address located in the front section of this announcement.

B. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Public Law 96–511, the Department is required to submit to OMB for review and approval any reporting and record keeping requirements in regulations, including program announcements. This program announcement does not contain information collection requirements beyond those approved for ACF grant applications under OMB Control Number 0348–0043.

C. Deadline for Submission of Applications

The closing date for submission of applications under this program announcement is August 8, 1995.

Applications sent by fax will not be accepted. Applications which are sent by mail must be received on or before the deadline date at the following address: Department of Health and Human Services, ACF/Division of Discretionary Grants, 6th floor, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: Child Care Research Partnerships.

Hand delivered applications are accepted during the normal working hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at: Administration for Children and Families, Division of Discretionary Grants, 6th Floor, ACF Guard Station, 901 D Street, SW., Washington, DC 20047, Attn: Child Care Research Partnerships.

An application will be considered as meeting the deadline if it is received on or before the deadline date at the address or receipt point specified in this program announcement.

Applications which do not meet the above criteria are considered late applications and will not be considered or reviewed in the current competition. The ACYF will send a letter to this effect to each late applicant.

The ACYF reserves the right to extend the deadline for all applicants due to acts of God, such as floods, hurricanes or earthquakes; if there is widespread disruption of the mail; or if ACYF determines a deadline extension to be in the best interest of the Government. However, ACYF will not waive or extend the deadline for any applicant unless the deadline is waived or extended for all applicants.

D. Instructions for Preparing the Application and Completing Forms

The SF 424, 424A, 424B, and certifications have been reprinted for your convenience in preparing the application. You should reproduce single-sided copies of these forms from the reprinted forms in the announcement, typing your information onto the copies. Please do not use forms directly from the **Federal Register** announcement, as they are printed on both sides of the page. Make single-sided copies and use them.

Please prepare your application in accordance with the following instructions:

1. SF 424 Page 1, Application Cover Sheet

Please read the following instructions before completing the application cover sheet. An explanation of each item is included. Complete only the items specified.

Top of Page Leave blank.

Item 1—Type of Submission—Preprinted on the form.

Item 2—Date Submitted and Applicant Identifier—Date application is submitted to ACF and applicant's own internal control number, if applicable.

Item 3—Date Received By State—State use only (if applicable).

Item 4—Date Received by Federal Agency—leave blank.

Item 5—Applicant Information.

Legal Name—Enter the legal name of the applicant organization. For applications developed jointly, enter the name of the lead organization only. There must be a single applicant for each application. Organizational Unit—Enter the name of the primary unit within the applicant organization which will actually carry out the project activity. Do not use the name of an individual as the applicant. If this is the same as the applicant organization, leave the organizational unit blank. Address—Enter the complete address that the organization actually uses to receive mail, since this is the address to which all correspondence will be sent. Do not include both street address and P.O. box number unless both must be used in mailing. Name and telephone number of the person to be contacted on matters involving this application (give area code)—Enter the full name (including academic degree, if applicable) and telephone number of a person who can respond to questions about the application. This person should be accessible at the address given here and will receive all correspondence regarding the application.

Item 6—Employer Identification Number (EIN)—Enter the employer identification number of the applicant organization, as assigned by the Internal Revenue Service, including, if known, the Central Registry System suffix.

Item 7—Type of Applicant—Self-explanatory.

Item 8—Type of Application—Preprinted on the form.

Item 9—Name of Federal Agency—Preprinted on the form.

Item 10—Catalog of Federal Domestic Assistance Number and Title—Enter the Catalog of Federal Domestic Assistance (CFDA) number which is assigned to the program under which assistance is requested and its title. The CFDA for the Child Care Research Partnerships is 93.647.

Item 11—Descriptive Title of Applicant's Project—Enter the project title. The title is generally short and is descriptive of the project.

Item 12—Areas Affected by Project—Enter the governmental unit where significant and meaningful impact could be observed. List only the largest unit or units affected, such as State, county, or city. If an entire unit is affected, list it rather than subunits.

Item 13—Proposed Project—Enter the desired start date for the project and projected completion date.

Item 14—Congressional District of Applicant/Project—Enter the number of the Congressional district where the applicant's principal office is located and the number of the Congressional district(s) where the project will be located. If statewide, a multi-State effort, or nationwide, enter 00.

Item 15—Estimated Funding Levels.

In completing 15a through 15f, enter only those dollar amounts needed for the first 12 months of the proposed project.

Item 15a—Enter the amount of Federal funds requested in accordance with the preceding paragraph. This amount should be no greater than the maximum amount specified in the announcement.

Items 15b–e—Enter the amount(s) of funds from non-Federal sources that will be contributed to the proposed project. Items b–e are considered cost-sharing or matching funds. The value of third party in-kind contributions should be included on appropriate lines as applicable.

Item 15f—Enter the estimated amount of income, if any, expected to be generated from the proposed project. Do not add or subtract this amount from the total project amount entered under item 15g. Describe the nature, source and anticipated use of this income in the Project Narrative Statement.

Item 15g—Enter the sum of items 15a–15e.

Item 16a—Is Application Subject to Review By State Executive Order 12372 Process? Yes.—If the application is covered by E.O. 12372, enter the date the applicant contacted the SPOC regarding this application. Select the appropriate SPOC from the listing provided at the end of Part VI. The review of the application is at the discretion of the SPOC. The SPOC will verify the date noted on the application. If there is a discrepancy in dates, the SPOC may request that the Federal agency delay any proposed funding until September 10, 1994.

Item 16b—Is Application Subject to Review By State Executive Order 12372 Process? No.—Check the appropriate box if the application is not covered by E.O. 12372 or if the program has not been selected by the State for review.

Item 17—Is the Applicant Delinquent on any Federal Debt?—Check the appropriate box. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include audit disallowances, loans and taxes.

Item 18—To the best of my knowledge and belief, all data in this application/preapplication are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.—To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for signature of this application by this individual as the official representative must be on file in the applicant's office, and may be requested from the applicant.

Item 18a–c—Typed Name of Authorized Representative, Title, Telephone Number—Enter the name, title and telephone number of the authorized representative of the applicant organization.

Item 18d—Signature of Authorized Representative—Signature of the authorized representative named in Item 18a. At least one copy of the application must have an original signature. Use colored ink (not black) so that the original signature is easily identified.

Item 18e—Date Signed—Enter the date the application was signed by the authorized representative.

2. SF 424A—Budget Information—Non-Construction Programs

This is a form used by many Federal agencies. For this application, Sections A, B, C, E and F are to be completed. Section D does not need to be completed.

Sections A and B should include the Federal as well as the non-Federal funding for the proposed project covering the first year budget period.

Section A—Budget Summary—This section includes a summary of the budget. On line 5, enter total Federal costs in column (e) and total non-Federal costs, including third party in-kind contributions, but not program income, in column (f). Enter the total of (e) and (f) in column (g).

Section B—Budget Categories—This budget, which includes the Federal as well as non-Federal funding for the proposed project, covers the first year budget period of the 36 month project. It should relate to item 15g, total funding, on the SF 424. Under column (5), enter the total requirements for funds (Federal and non-Federal) by object class category.

A separate itemized budget justification for each line item is required. The types of information to be included in the justification are indicated under each category. For multiple year projects, it is desirable to provide this information for each year of the project. The budget justification should immediately follow the second page of the SF 424A.

Personnel—Line 6a—Enter the total costs of salaries and wages of applicant/grantee staff. Do not include the costs of consultants, which should be included on line 6h, Other.

Justification—Identify the principal investigator or project director, if known. Specify by title or name the percentage of time allocated to the project, the individual annual salaries, and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

Fringe Benefits—Line 6b—Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate.

Justification—Provide a break-down of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, etc.

Travel—6c—Enter total costs of out-of-town travel (travel requiring per diem) for staff of the project. Do not enter costs for consultant's travel or local transportation, which should be included on Line 6h, Other.

Justification—Include the name(s) of traveler(s), total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

Equipment—Line 6d—Enter the total costs of all equipment to be acquired by the project. Equipment is tangible, non-expendable personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit.

Justification—Equipment to be purchased with Federal funds must be justified. The equipment must be required to conduct the project, and the applicant organization or its subgrantees must not have the equipment or a reasonable facsimile available to the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

Supplies—Line 6e—Enter the total costs of all tangible expendable personal property (supplies) other than those included on Line 6d.

Justification—Specify general categories of supplies and their costs.

Contractual—Line 6f—Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and (2) contracts with secondary recipient organizations, including delegate agencies. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line. If the name of the contractor, scope of work, and estimated total costs are not

available or have not been negotiated, include on Line 6h, Other.

Justification—Attach a list of contractors, indicating the names of the organizations, the purposes of the contracts, and the estimated dollar amounts of the awards as part of the budget justification. Whenever the applicant/grantee intends to delegate part or all of the program to another agency, the applicant/grantee must complete this section (Section 8, Budget Categories) for each delegate agency by agency title, along with the supporting information. The total cost of all such agencies will be part of the amount shown on Line 6f. Provide backup documentation identifying the name of contractor, purpose of contract, and major cost elements. Applicants who anticipate procurements that will exceed $5,000 (non-governmental entities) or $25,000 (governmental entities) and are requesting an award without competition should include sole source justification in the proposal which at a minimum should include the basis for contractor's selection, justification for lack of competition when competitive bids or offers are not obtained and basis for award cost or price. (Note: Previous or past experience with a contractor is not sufficient justification for sole source.)

Construction—Line 6g—Not applicable. New construction is not allowable.

Other—Line 6h—Enter the total of all other costs. Where applicable, such costs may include, but are not limited to: insurance; medical and dental costs; noncontractual fees and travel paid directly to individual consultants; local transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use; training costs, including tuition and stipends; training service costs, including wage payments to individuals and supportive service payments; and staff development costs. Note that costs identified as miscellaneous and honoraria are not allowable.

Justification—Specify the costs included.

Total Direct Charges—Line 6i—Enter the total of Lines 6a through 6h.

Indirect Charges—6j—Enter the total amount of indirect charges (costs). If no indirect costs are requested, enter None. Generally, this line should be used when the applicant (except local governments) has a current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency. Local and State governments should enter the amount of indirect costs determined in accordance with HHS requirements. When an indirect cost rate is requested, these costs are included in the indirect cost pool and should not be charged again as direct costs to the grant.

Total—Line 6k—Enter the total amounts of lines 6i and 6j.

Program Income—Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount.

Justification—Describe the nature, source, and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources—This section summarizes the amounts of non-Federal resources that will be applied to the grant. Enter this information on line 12 entitled Totals. In-kind contributions are defined in 45 CFR Part 74.2 and 45 CFR Part 92.3, as The value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

Justification—Describe third party in-kind contributions, if included.

Section D—Forecasted Cash Needs—Not applicable.

Section E—Budget Estimate of Federal Funds Needed For Balance of the Project—This section should be completed for each subsequent year of the three-year project.

Totals—Line 20.

Enter the estimated required Federal funds for the second budget period (months 13 through 24) under column (b) First. Enter the Federal funds needed for months 25 through 36 under (c) Second. Columns (d) and (e) are not applicable, since funding is limited to a three-year maximum project period. They should remain blank.

Section F—Other Budget Information.

Direct Charges—Line 21—Not applicable.

Indirect Charges—Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Remarks—Line 23.

You must enter your proposed non-Federal share of the project budget for each of the remaining years of the project.

3. Project Summary Description

Clearly mark this separate page with the applicant name as shown in item 5 of the SF 424, the announcement number and title, and the title of the project as shown in item 11 of the SF 424. The summary description should not exceed 300 words. These 300 words become part of the computer database on each project.

Care should be taken to produce a summary description which accurately and concisely reflects the proposal. It should describe the objectives of the project, the approaches to be used and the outcomes expected. The description should also include a list of major products that will result from the proposed project, such as research reports, public summaries, data tapes, and technical papers). The project summary description, together with the information on the SF 424, will constitute the project abstract. It is the major source of information about the proposed project and is usually the first part of the application that the reviewers read in evaluating the application.

At the bottom of the page, following the summary description, type up to 10 key words which best describe the proposed project, the service(s) involved and the target population(s) to be covered. These key words will be used for computerized information retrieval. Key words should be selected from commonly used research and practice terminology.

4. Project Narrative Statement

The Project Narrative Statement should be clear, concise, and address the specific expectations and requirements mentioned in Parts III and IV. The narrative should also provide information concerning how the application meets the evaluation criteria described in Part V. Inclusion and discussion of the evaluation criteria is important since the reviewers will rate the application against the evaluation criteria. Research applications should use the following section headings:

(a) *Issues and Objectives;*
(b) *Background and Significance;*
(c) *Technical Approach;* and
(d) *Staff Background and Organizational Experience.*

The specific information to be included under each of these headings is described in Part IV, Project Narrative, and Part V, Section B, Evaluation Criteria.

The narrative should be double-spaced and single-sided on 8½ × 11 plain white paper, with 1" margins on all sides. Use only a standard size font

such as 10 or 12 pitch throughout the announcement. All pages of the narrative (including appendices, resumes, charts, references/footnotes, tables, maps and exhibits) must be sequentially numbered, beginning with Objectives as page number one. Applicants should not submit reproductions of larger sized paper that is reduced to meet the size requirement. Applicants are requested not to send pamphlets, brochures, or other printed material along with their applications as these pose copying difficulties. These materials, if submitted, will not be included in the review process, though they will be kept on file.

The clarity and conciseness of proposals are of the utmost importance to ACYF. Project Narrative Statements may not exceed 80 pages single-spaced (160 pages double-spaced). This page limitation applies to the entire Project Narrative Statement, including text, tables, charts, graphs, resumes, tables, maps, exhibits, references, footnotes, and appendices. Excess pages of Project Narrative will not be reviewed. (Note: Applicants are asked to print their statement in double-spaced format for ease of review.)

Please note that applicants that do not comply with the specific requirements in the section on "Eligible Applicants" in Part I will not be included in the review process. Applicants should also note that non-responsiveness to Part III, ACYF Research Goals and Partnerships, and Part IV, Project Narrative Statement, will result in a low evaluation score by the panel of expert reviewers.

Applicants should closely tailor their applications to the announcement. Previous experience has shown that an application which is broader and more general in concept than outlined in the agency's request for proposals is less likely to score as well as one which is more clearly focused on and directly responsive to the concerns and objectives outlined in the announcement.

5. Assurances/Certifications

Applicants are required to file an SF 424B, Assurances—Non-Construction Programs and the Certification Regarding Lobbying. Both must be signed and returned with the application. In addition, applicants must provide certifications regarding: (1) Drug-Free Workplace Requirements; (2) Debarment and Other Responsibilities; and (3) Environmental Tobacco Smoke. These three certifications are self-explanatory. A duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances/certifications. A signature on the SF 424 indicates compliance with the Drug Free Workplace Requirements, the Debarment and Other Responsibilities certifications, and the Certification Regarding Environmental Tobacco Smoke.

All applicants for research projects involving human subjects must provide a Protection of Human Subjects Assurance as specified in the policy described on the HHS Form 596. If there is a question regarding the applicability of this assurance, contact the Office for Protection from Research Risks of the National Institutes of Health at (301)-496–7041. Those applying for or currently conducting research projects are further advised of the availability of a Certificate of Confidentiality through the National Institute of Mental Health of the Department of Health and Human Services. To obtain more information and to apply for a Certificate of Confidentiality, under the authority of Section 301(d) of the Public Health Service Act (42 U.S.C. 82421(d) to protect against involuntary disclosure of the identities of research subjects, contact the Division of Extramural Activities of the National Institute of Mental Health at (301) 443–4673.

E. Checklist for a Complete Application

The checklist below is for your use to ensure that your application package has been properly prepared.

_____One original, signed and dated application, plus two copies. Applications for different priority areas should be packaged separately;

_____Application is from an organization which is eligible under the eligibility requirements defined in Part I (screening requirement).

A complete application consists of the following items in this order:

—Application for Federal Assistance (SF 424, REV 4–88); a completed SPOC certification (if applicable) with the date of SPOC contact entered in line 16, page 1 of the SF 424 if applicable.
—Budget Information—Non-Construction Programs (SF 424A, REV 4–88);
—Budget justification for Section B—Budget Categories;
—Letter from the Internal Revenue Service to prove non-profit status, if necessary;
—Copy of the applicant's approved indirect cost rate agreement, if appropriate;
—Project summary description;
—Table of Contents, including the following:
—Program Narrative Statement (organized by the evaluation criteria), which when combined with appendices/attachments should not exceed 80 pages total;
—Any appendices/attachments;
—Assurances—Non-Construction Programs (Standard Form 424B, REV 4–88);
—Certification Regarding Lobbying;
—Certification Regarding Drug-Free Workplace Requirements;
—Certification Regarding Debarment and Other Responsibilities;
—Certification Regarding Environmental Tobacco Smoke; and
—Certification of Protection of Human Subjects, if necessary.

F. The Application Package

Each application package must include an original and two copies of the complete application. Each copy should be stapled securely (front and back if necessary) in the upper left-hand corner. All pages of the narrative must be sequentially numbered, beginning with page one. Because each application will be duplicated, do not use or include separate covers, binders, clips, tabs, plastic inserts, brochures, videos, or any other items that cannot be photocopied. Your application should only include the information as requested in this announcement.

Do not include a self-addressed, stamped acknowledgment card. All applicants will be notified automatically about the receipt of their application and of the four digit identification number assigned to their application. This number and the priority area must be referred to in all subsequent communication with the Child Care Bureau, ACYF, or ACF concerning the application. If acknowledgment of receipt of your application is not received within eight weeks after the deadline date, please notify the ACYF Operations Center by telephone at 1–800–351–2293.

Dated: May 26, 1995.

Olivia A. Golden

Commissioner, Administration on Children, Youth and Families.

BILLING CODE 4184–01–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:
Application: ☐ Construction ☐ Non-Construction
Preapplication: ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name: | Organizational Unit:

Address (give city, county, state, and zip code): | Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A State H Independent School Dist
B County I State Controlled Institution of Higher Learning
C Municipal J Private University
D Township K Indian Tribe
E Interstate L Individual
F Intermunicipal M Profit Organization
G Special District N Other (Specify) _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A Increase Award B Decrease Award C Increase Duration
D Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ . ☐☐☐
TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date | Ending Date

14. CONGRESSIONAL DISTRICTS OF: a. Applicant | b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____
b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4184–01–C

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
—"New" means a new assistance award.
—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project, if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Point 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184-01-P

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		Total (g)
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Nonfederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years) (b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 - 19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION
(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
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Instructions for the SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b). For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g). For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts of Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section needs not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in

accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentially of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 92–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official

Title

Applicant organization

Date Submitted

Executive Order 12372—State Single Points of Contact

Arizona

Mrs. Janice Dunn, Attn: Arizona State Clearinghouse, 3800 N. Central Avenue, 14th Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315

Arkansas

Tracie L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 682–1074

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480

Delaware

Ms. Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326

District of Columbia

Rodney T. Hallman, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street NW., suite 500, Washington, DC 20005, Telephone (202) 727–6551

Florida

Florida State Clearinghouse, Intergovernmental Affairs Policy Unit, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone (904) 488–8441

Georgia

Mr. Charles H. Badger, Administrator, Georgia State Clearinghouse, 254 Washington Street SW., Atlanta, Georgia 30334, Telephone (404) 656–3855

Illinois

Steve Klokkenga, State Single Point of Contact, Office of the Governor, 107 Stratton Building, Springfield, Illinois 62706, Telephone (217) 782–1671

Indiana

Jean S. Blackwell, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610

Iowa

Mr. Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725

Kentucky

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601, Telephone (502) 564–2382

Maine

Ms. Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261

Maryland

Ms. Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (410) 225–4490

Massachusetts

Karen Arone, State Clearinghouse, Executive Office of Communities and Development, 100 Cambridge Street, room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001

Michigan

Richard S. Pastula, Director, Michigan Department of Commerce, Lansing, Michigan 48909, Telephone (517) 373–7356

Mississippi

Ms. Cathy Mallette, Clearinghouse Officer, Office of Federal Grant Management and Reporting, 301 West Pearl Street, Jackson, Mississippi 39203, Telephone (601) 960–2174

Missouri

Ms. Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834

Nevada

Department of Agriculture, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone (702) 687–4065, Attention: Ron Sparks, Clearinghouse Coordinator

New Hampshire

Mr. Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review, Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155

New Jersey

Gregory W. Adkins, Acting Director, Division of Community Resources, N.J. Department of Community Affairs, Trenton, New Jersey 08625–0803, Telephone (609) 292–6613

Please direct correspondence and questions to:

Andrew J. Jaskolka, State Review Process, Division of Community Resources, CN 814, Room 609, Trenton, New Jersey 08625–0803, Telephone (609) 292–9025

New Mexico

George Elliott, Deputy Director, State Budget Division, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3640, FAX (505) 827–3006

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605

North Carolina

Mrs. Chrys Baggett, Director, Office of the Secretary of Admin., N.C. State Clearinghouse, 116 W. Jones Street, Raleigh, North Carolina 27603–8003, Telephone (919) 733–7232

North Dakota

N.D. Single Point of Contact, Office of Intergovernmental Assistance, Office of Management and Budget, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone (701) 224–2094

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411, Telephone (614) 466–0698

Rhode Island

Mr. Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277–2656

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning.

South Carolina

Omeagia Burgess, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734–0494

Tennessee

Mr. Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741–1676

Texas

Mr. Thomas Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463–1778

Utah

Utah State Clearinghouse, Office of Planning and Budget, Attn: Carolyn Wright, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538–1535

Vermont

Mr. Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828–3326

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, West Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348–4010

Wisconsin

Mr. William C. Carey, Federal/State Relations, Wisconsin Department of Administration, 101 South Webster Street, P.O. Box 7864, Madison, Wisconsin 53707, Telephone (608) 266–0267

Wyoming

Sheryl Jeffries, State Single Point of Contact, Herschler Building, 4th Floor, East Wing, Cheyenne, Wyoming 82002, Telephone (307) 777–7574

Guam

Mr. Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472–2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

Norma Burgos/Jose H. Caro, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Telephone (809) 727–4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802

Please direct correspondence to: Linda Clarke, Telephone (809) 774–0750.

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Date

BILLING CODE 4184-01-P

Approved by OMB 0348-0046

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. **Type of Federal Action:** ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. **Status of Federal Action:** ☐ a. bid/offer/application b. initial award c. post-award	3. **Report Type:** ☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter ____ date of last report _____

4. **Name and Address of Reporting Entity:** ☐ Prime ☐ Subawardee Tier ____, *if known:* **Congressional District,** *if known:*	5. **If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:** **Congressional District,** *if known:*
6. **Federal Department/Agency:**	7. **Federal Program Name/Description:** CFDA Number, *if applicable:* _____
8. **Federal Action Number,** *if known:*	9. **Award Amount,** *if known:* $
10. a. **Name and Address of Lobbying Entity** *(if individual, last name, first name, MI):*	b. **Individuals Performing Services** *(including address if different from No. 10a)* *(last name, first name, MI):*
(attach Continuation Sheet(s) SF-LLL-A, if necessary)	
11. **Amount of Payment** *(check all that apply):* $ _____ ☐ actual ☐ planned	13. **Type of Payment** *(check all that apply):* ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. **Form of Payment** *(check all that apply):* ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. **Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:**

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. **Continuation Sheet(s) SF-LLL-A attached:** ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	**Signature:** _____ **Print Name:** _____ **Title:** _____ **Telephone No.:** _____ **Date:** _____
Federal Use Only:	Authorized for Local Reproduction Standard Form - LLL

U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

BILLING CODE 4184-01-C

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction" provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certificaton Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (To Be Supplied to Lower Tire Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions. "without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Environmental Tobacco Smoke

Public Law 103–227, Part C—Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act). requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act. The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees certify accordingly.

[FR Doc. 95–14086 Filed 6–8–95; 8:45 am]
BILLING CODE 4184–01–P

Centers for Disease Control and Prevention

[Announcement 560]

National Institute for Occupational Safety and Health; Implementation of Strategies for the Prevention of Occupational Transmission of Blood-Borne Pathogens

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1995 funds for a cooperative agreement program for implementation and evaluation of strategies, including compliance with infection control recommendations, to prevent occupational transmission of blood-borne pathogens, including the human immunodeficiency virus (HIV) and related infections (e.g., Mycobacterium tuberculosis).

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering a copy of Healthy People 2000 see the section Where to Obtain Additional Information.)

Authority

The legislative authority for this program is contained in Sections 20(a)(1) and 22(e)(7) of the Occupational Safety and Health Act (29 U.S.C. Sections 669(a)(1)and 671(e)(7)).

Smoke-Free Workplace

The PHS strongly encourages all recipients to provide a smoke-free workplace and promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Applications may be submitted by public and private, non-profit and for-profit organizations and governments and their agencies. Thus, universities, colleges, research institutions, hospitals, health-care institutions, other public and private organizations, State and local governments or their bona fide agents, federally recognized Indian tribes or Indian tribal organizations, and small, minority- and/or women-owned businesses are eligible to apply.

Availability of Funds

Approximately $1,300,000 is available in FY 1995 to fund approximately 4 to 6 awards. It is expected that the average award will be $271,000, ranging from $216,000 to $325,000. It is expected that the awards will begin on or about September 30, 1995, and will be made for a 12-month budget period within a project period of up to 3 years. (At least one behavioral science project will be included.) Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of this cooperative agreement program is to utilize the special resources of the extramural community to assist in the implementation and evaluation of strategies for the prevention of occupational transmission of blood-borne and related pathogens among certain workers.

The control technology component will evaluate the effectiveness of engineering control or personal protective equipment in preventing occupational exposure to blood. Evaluation parameters include efficacy of exposure prevention, prevention effectiveness including cost analysis, and impact on patient care. A discussion of methodologies for conducting prevention effectiveness is presented in A Framework for Assessing the Effectiveness of Disease and Injury Prevention (CDC, Morbidity and Mortality Weekly Report, March 27, 1992, Volume 41, Number RR–3, pages 5–11). (For ordering a copy of A Framework for Assessing the Effectiveness of Disease and Injury Prevention, see the Section Where to Obtain Additional Information.)

The behavioral evaluation component of this cooperative agreement will assess the efficacy of one or more specific intervention(s) to affect organizational, social and/or individual health-care workers' behavior(s) to improve compliance with CDC recommendations and to generate data upon which to base recommendations for practical methods of increasing worker compliance.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and CDC will be responsible for conducting activities under B. (CDC Activities).

A. Recipient Activities

From among the following activities, applicants should address the general activities and those areas that are within the interests and strengths of their organizations:

1. General

a. Develop communication models for informing management and labor of the nature of the work hazards and for modifying attitudes and behavior.

b. Publish results of research in appropriate scientific literature.

2. Blood-Borne Pathogen Control Technology

a. Develop a plan to evaluate the efficacy and effectiveness of specific types of control technologies including devices/personal protective equipment for prevention of blood exposures in a health-care workplace. This plan should include: (1) collection and analysis of data on needlestick/sharps injuries; (2) identification of new technologies to reduce needlestick/sharps injuries; (3) analysis of the impact of implementation of new technologies on the incidence, epidemiology and cost of needlestick injuries/blood exposures; and (4) determination of the relationships between exposures and devices/equipment. The plan may also include: (1) development of device/personal protective equipment selection and evaluation criteria; (2) evaluation of the decision analysis process for purchasing anti-needlestick devices and evaluation of cost-effectiveness; (3) collection and analysis of data regarding positive and negative aspects of user acceptance for devices; (4) evaluation of impact of placement/and use of devices/equipment such as in patient rooms and emergency vehicles; and (5) impact of user/worker involvement (e.g., focus groups) in the selection and evaluation of devices. The plan should include a detailed evaluation methodology.

b. Develop and maintain a data management system for the study.

3. Behavioral

a. Develop, implement, and evaluate a plan that assesses one or more specific interventions to improve workers' compliance with specific infection control (IC) recommendations (e.g., hand washing, use of personal protective equipment, appropriate sharps disposal).

b. Develop a plan to evaluate one or more specific interventions by: (1) implementing the intervention(s) in a health-care work place; (2) quantifying its impact on an appropriate measurable outcome related to compliance with IC recommendations; and (3) using the data to propose practical recommendations to increase workers' compliance with IC recommendations. The plan should include a detailed description of the evaluation methodology, including describing potential confounders/bias that might affect the data and addressing methods to account for these confounders/bias.

c. Develop and maintain a data management system for the study.

B. CDC Activities

1. Provide consultation and technical assistance in the conduct of the intervention evaluation, including input in the development of intervention design and review of raw and summary data.

2. Provide assistance on analysis, dissemination, presentation and publication of the data.

3. Provide scientific information related to the proposed research topics.

4. Meet periodically with recipient(s) to discuss progress, exchange information, and seek means of resolving problems which have arisen.

5. Assist in predicting hazards that may be associated with new technologies and new occupations and characterize changes that are occurring in health care settings and occupational safety and health.

6. Assist in determining the efficacy and effectiveness of intervention and in measuring the impact of prevention.

Evaluation Criteria

The application will be reviewed and evaluated according to the following criteria:

1. Understanding of Purpose and Objectives (15%)

Responsiveness to the objective of the cooperative agreement including: (a) applicants understanding of the objective of the proposed cooperative agreement, (b) relevance of the proposal to the objective, and (c) willingness to cooperate with CDC in the design, implementation and analysis of the project. The extent to which the applicant demonstrates knowledge and understanding of health-care settings and interventions described in this cooperative agreement.

In addition, applications targeting the behavioral component should specifically address: The extent to which the applicant demonstrates knowledge and understanding of health care settings and work behaviors/practices which influence compliance with infection control recommendations and need to develop specific practical interventions that will influence

workers compliance with recommended infection control practices.

2. Study Design (40%)

Steps proposed in planning, implementing, and evaluating a project. The quality of the plans to coordinate and conduct the project, including a description of techniques for data collection, management, and analysis and a schedule for accomplishing the program activities, including time frames. The quality and feasibility of the proposed program activities for achieving the objectives, including the applicant's ability to conduct control technology or behavioral intervention studies with sufficient numbers to draw meaningful conclusions in a reasonable time period. The extent to which the intervention is specific and practical to implement in a hospital or other appropriate clinical setting.

If the outcome variable could be affected by confounding variables or biases, the extent to which the proposal addressed these confounding variables or biases to ensure that they do not call into question the results of the intervention assessment. Extent to which the outcome variable(s) chosen represents potentially important risks for large numbers of HCWs and/or patients in U.S. hospitals.

In addition, applications targeting the behavioral component should specifically address: The extent to which the appropriate methodology is proposed so that the targeted compliance behavior(s) (outcome variable) measured is reliably quantifiable.

The extent to which the proposed evaluation system will document program process, efficacy, effectiveness, impact, and outcome, and, if applicable, measure surveillance system sensitivity, timeliness, representativeness, predictive values, and ability to detect the impact of specific intervention on morbidity, mortality, severity, disability, and cost of related diseases, injuries and prevention interventions. The extent to which a feasible plan for reporting evaluation results and using evaluation information for programmatic decisions is included.

3. Program Personnel (25%)

Qualifications and time allocation of the professional staff to be assigned to a project and applicant's ability to provide the knowledgeable staff required to perform the applicant's responsibilities in this project, and to describe the approach to be used in carrying out those responsibilities. How the study will be administered, including the size, qualifications, duties, responsibilities, and time allocation, of the proposed staff. A statement of the applicant's demonstrated capabilities and experience in conducting such a project.

4. Facilities and Resources (20%)

The adequacy of the applicants facilities, equipment, and other resources available for performance of a project.

5. Budget and Justification (Not Scored)

The budget will be evaluated to the extent that it is reasonable, clearly justified, and consistent with the intended use of the funds.

Executive Order 12372 Review

This program is not subject to review by Executive Order 12372.

Public Health System Reporting Requirements

This program is not subject to the Public Health System reporting Requirements.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number is 93.262.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by this cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicants must comply with the Department of Health and Human Services Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and forms provided in the application kit.

In addition to other applicable committees, Indian Health Service (IHS) institutional review committees also must review the project if any component of IHS will be involved or will support the research. If any American Indian community is involved, its tribal government must also approve that portion of the project applicable to it.

Application Submission and Deadline

The original and two copies of the application PHS form 5161–1 (revised 7/92, OMB Number 0937–0189) must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, N.E., Mailstop E–13, Atlanta, GA 30305 on or before July 17, 1995.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date, or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailings.)

2. Late Applications: Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, telephone number and will need to refer to Announcement 560. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from David Elswick, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305, telephone (404) 842–6521. Programmatic technical assistance may be obtained from Linda S. Martin, Ph.D., National Institute for Occupational Safety and Health, HIV Activity, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, Mailstop F–40, Atlanta, GA 30333, telephone (404) 639–2377.

Please refer to Announcement Number 560, when requesting information and submitting an application.

Copies of A Framework for Assessing the Effectiveness of Disease and Injury Prevention (CDC, Morbidity and Mortality Weekly Report, March 27, 1992, Volume 41, Number RR–3, pages 5–11) may be obtained by calling (404) 488–4334.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: June 5, 1995.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–14165 Filed 6–8–95; 8:45 am]

BILLING CODE 4163–19–P

[Announcement 575]

National Institute for Occupational Safety and Health; Evaluation of the Effectiveness of Medical Management and Rehabilitation Programs for Work-Related Musculoskeletal Disorders

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1995 funds for cooperative agreements to provide assistance for the development, implementation, and evaluation of demonstration projects that will determine the overall effectiveness of medical management and rehabilitation programs for individuals with work-related musculoskeletal disorders.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering a copy of Healthy People 2000, see the Section Where to Obtain Additional Information.)

Authority

The legislative authority for this program is authorized under Sections 20(a) and 22(e)(7) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669(a) and 671(e)(7)) and Section 501(a) of the Federal Mine Safety and Health Act (30 U.S.C. 951).

Smoke-Free Workplace

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the nonuse of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Applications may be submitted by public and private, non-profit and for-profit organizations. Thus, universities, colleges, research institutions, hospitals, and other public and private organizations, State and local governments or their bona fide agents, federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations, and small, minority- and/or women-owned businesses are eligible to apply.

Availability of Funds

Approximately $225,000 is available in FY 1995 to fund approximately 1 to 2 awards. It is expected the award(s) will begin on or about September 30, 1995, and will be made for a 12-month budget period within a project period of 3 to 5 years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of the demonstration projects is to assess the effectiveness of medical management programs regarding rehabilitation and return-to-work of employees with work-related musculoskeletal disorders. Through the development and application of objective evaluation criteria, the project will provide a basis with which to compare the success rate of various medical management, rehabilitation and return-to-work programs. In addition, the demonstrations will provide additional data on the types of programs available; components of the programs; elements necessary for successful programs; the success rates of programs for returning populations to work and possible explanations; the influence programs have in convincing employers to change activities in jobs where the injury was noted; and the direct and indirect costs of successful medical management, rehabilitation, and return-to-work programs.

This program may build on an existing program or provide assistance in initiating a new program. Personnel for the demonstration projects will include researchers from many disciplines such as ergonomics, epidemiology, occupational medicine, physical and occupational therapy and physical and rehabilitation medicine, nursing, health education, and economics. Additionally, this program will report and disseminate findings, relevant health and safety education and training information to State health officials, health-care providers, workers, management, unions, and employers. It is envisioned that new research methods and techniques will be developed that improve the success of rehabilitation and return-to-work programs for work-related musculoskeletal disorders.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and CDC/NIOSH will be responsible for the activities listed under B. (CDC/NIOSH Activities).

A. Recipient Activities

1. Develop and conduct a demonstration project for the evaluation of medical management, rehabilitation and return-to-work programs targeted at work-related musculoskeletal disorders.

2. Develop objective criteria for determination of "successful" medical management, rehabilitative, and return-to-work programs for work-related musculoskeletal disorders. (Issues to consider include assessment of the level of exposure prior to the injury and the type of job to which the individual returns, and how the job where the injury was noted was changed to reduce the risk of injury to workers.)

3. Identify existing medical management, rehabilitative and return-to-work programs to validate criteria and facilitate implementation of the demonstration project.

4. Develop a protocol that reviews the pertinent literature on program evaluation, describes the project methodology, the data to be collected and the proposed analysis of the data. Present the protocol to a panel of peer reviewers and revise the protocol as required for final approval.

5. Conduct data collection, management and analysis.

6. Prepare a final report summarizing the study methodology, results obtained, and conclusions reached, including recommendations regarding critical elements of effective medical management, rehabilitation and return-to-work programs for work-related musculoskeletal disorders.

7. Report research results to the scientific community via presentations at professional conferences and articles

in peer-reviewed journals and the lay community.

B. CDC/NIOSH Activities

1. Provide scientific, epidemiologic, ergonomic and clinical technical assistance to the recipient for the successful completion of the project.

2. Identify reviews and/or clearances that must be fulfilled by the recipient, and identify and convene a Peer Review Panel for review of draft study protocol.

3. Assist in study design, survey instrument designs (if necessary), the collection, tabulation and analysis of data, interpretation of the results and preparation of the written reports.

4. Assist in the reporting of project results to the scientific, public health, labor and industrial communities via presentations at professional conferences and publications in peer-reviewed and technical publications.

Evaluation Criteria

A CDC convened ad hoc committee will review the applications. The review will be based on the evidence submitted in the application which specifically describes the applicant's ability to meet the following criteria:

1. Understanding the Problem (30%)

Responsiveness to the objectives of the cooperative agreement including: (a) applicant's understanding of the objective of the proposed cooperative agreement; and, (b) relevance of the proposal to the objective.

2. Program Personnel (25%)

(a) Applicant's qualifications to do research on this topic; (b) the qualifications and time allocation of the professional staff to be assigned to this project; and (c) the applicant's ability to describe the approach to be used in carrying out the responsibilities of the applicant in this project.

3. Project Design (20%)

Steps proposed in planning and implementing this project and the respective responsibilities of the applicant for carrying out those steps.

4. Project Planning (15%)

The applicant's schedule proposed for accomplishing the activities to be carried out in this project and for evaluating the accomplishments.

5. Facilities and Resources (10%)

The adequacy of the applicant's facilities, equipment, and other resources available for performance of this project.

6. Budget Justification (not scored)

The budget will be evaluated to the extent that it is reasonable, clearly justified, and consistent with the intended use of funds.

Executive Order 12372 Review

This program is not subject to review by Executive Order 12372, Intergovernmental Review of Federal Programs.

Public Health Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance Number for this program is 93.283.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by this cooperative agreement will be subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

In addition to other applicable committees, Indian Health Service (IHS) institutional review committees also must review the project if any component of IHS will be involved or will support the research. If any American Indian community is involved, its tribal government must also approve that portion of the project applicable to it.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (Revised 7/92, OMB Number 0937–0189) must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305, on or before July 19, 1995.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the review group. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing.

2. Late Applications: Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late and will be returned to the applicant.

Where to Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and telephone number and will need to refer to Announcement 575. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Oppie Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305, telephone (404) 842–6546. Programmatic technical assistance may be obtained from Centers for Disease Control and Prevention (CDC), National Institute for Occupational Safety and Health, Division of Surveillance, Hazard Evaluation and Field Studies, ATTN: Marie Haring Sweeney, Ph.D., Mailstop R–13, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, OH 45226–1049, telephone (513) 841–4207, FAX (513) 841–4486.

Please refer to Announcement 575 when requesting information and submitting an application.

A copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction Section may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Copies of A Framework for Assessing the Effectiveness of Disease and Injury Prevention (CDC, Morbidity and Mortality Weekly Report, March 27, 1992, Volume 41, Number RR–3, Pages 5–11) may be obtained by calling (404) 488–4334.

Dated: June 5, 1995.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–14164 Filed 6–8–95; 8:45 am]

BILLING CODE 4163–19–P

Public Health Service

Agency Forms Undergoing Paperwork Reduction Act Review

Each Friday the Public Health Service (PHS) publishes a list of information collection requests under review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the PHS Reports Clearance Office on (202) 690–7100.

The following requests have been submitted for review since the list was last published on June 2.

1. Protocol for a Case-Control Study of the Deterrent Effect of Environmental Designs on Robbery in VA—0920–0352—Extension, no change—This study proposes a case-control study of the deterrent effect of environmental designs and crime strategies to deter violent crime in Virginia Convenience Stores. The information to be collected will be used to determine criteria for estimating a safe and healthy work environment. Respondents: Business or other for-profit; State, Local or Tribal Government; Number of Respondents: 5,096; Number of Responses per Respondent: 1; Average Burden per Response: .165 hour; Estimated Annual burden: 849 hours. Send comments to Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503.

2. Common Reporting Requirements for Urban Indian Health Programs—0917–0007—Reinstatement, no change—Congress mandated that standard reporting requirements be established for Indian Health Service Urban Health Clinics. Data collected is used to monitor contracts; prepare reports to Congress; for program evaluation, program planning, and to establish program performance indicators. Respondents: Not-for-profit institutions; State, Local or Tribal Government; Number of Respondents: 34; Number of Responses per Respondent: 2; Average Burden per Response: 10.68 hours; Estimated Annual burden: 726 hours. Send comments to James Scanlon, Office of the Assistant Secretary for Health, Room 737–F, Humphrey Building, 200 Independence Ave., SW., Washington, DC 20201.

3. Reader Evaluation of Public Health Assessments—New—This collection attempts to evaluate the reader's use of public health assessment reports issued by the Agency for Toxic Substances and Disease Registry which represent decisions about the public health risk posed by hazardous waste sites. ATSDR is attempting to evaluate the usefulness of these documents to those individuals who work or reside near these sites. Respondents: Individuals or households; Number of Respondents: 2,120; Number of Responses per Respondent: 1; Average Burden per Response: .24 hours; Estimated Annual burden: 507 hours. Send comments to James Scanlon, Office of the Assistant Secretary for Health, Room 737–F, Humphrey Building, 200 Independence Ave., SW., Washington, DC 20201.

	No. of respondents	No. of responses/respondent	Avg. burden/response
Applicants; Initial	1,265	1	0.77 hour
Reappointment	644	1	1 hour
References	1,800	1	0.33 hour
Estimated annual burden			2,221 hours
Estimated annual burden			2,221 hours

4. IHS Medical Staff Credentials and Privileges File—0917–0009—Reinstatment with change—Information collected is used by IHS Medical Staff to review, evaluate, and verify the credentials, training, and experience of applicants applying for medical staff privileges at IHS healthcare facilities. Respondents: Federal Government; State, Local or Tribal Government. Send comments to James Scanlon, Office of the Assistant Secretary for Health, Room 737–F, Humphrey Building, 200 Independence Ave., Sw., Washington, DC 20201.

5. HIV/AIDS Dental Reimbursement Program—0915–0151—Revision—Dental schools will apply for reimbursement of documented uncompensated costs of oral health care for HIV-infected persons. The information will be used to determine eligibility and amount of reimbursement under this program. Respondents: Not-for-profit institutions; Number of Respondents: 125; Number of Responses per Respondent: 1; Average Burden per Response: 3.5 hours; Estimated Annual burden: 438 hours. Send comments to Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Uniform Data System—New—A Uniform Data System (UDS) has been developed for primary care and family planning grantees funded by the Bureau of Primary Health Care and the Office of Population Affairs. The UDS consolidates the Bureau Common Reporting Requirements (BCRR) with reporting requirements in grant applications and progress reports. Send comments to Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, D.C. 20503.

	No. of respondents	No. of responses/respondent	Avg burden/response
BPHC grantees (universal report)	694	1	24 hours
BPHC grantees (grant report)	88	1	16 hours
OPA grantees (grant report)	87	1	16 hours
Estimated annual burden			19,457 hours

Written comments and recommendations concerning the proposed information collections should be sent within 30 days of this notice directly to the individual designated.

Dated: June 5, 1995.

James Scanlon,

Director, Data Policy Staff, Office of the Assistant Secretary for Health and PHS Reports Clearance Officer.

[FR Doc. 95–14115 Filed 6–8–95; 8:45 am]

BILLING CODE 4160–01–M

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Treatment; Correction of Meeting Notice

Public notice was given in the **Federal Register** on May 22, 1995, Vol. 60, No. 98, page 27116, that the Substance Abuse Treatment (CSAT) National Advisory Council meeting on June 26, 1995 would be open from 8:30 a.m. to 2:00 p.m. and closed for review of grant applications and procurement plans

from 2:00 p.m. to 4:30 p.m. Due to unforeseen circumstances, the meeting schedule has been revised. The June 26 closed session is now scheduled from 8:30 a.m. to 10:30 a.m., and the open session will be from 10:30 a.m. until 5:00 p.m. The times given for June 27 are not changed.

Dated: June 5, 1995.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 95–14148 Filed 6–8–95; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–95–1917; FR–3778–N–40]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD suitability for possible use to assist the homeless.

EFFECTIVE DATE: June 9, 1995.

ADDRESSES: For further information, contact David Pollack, Department of Housing and Urban Development, Room 7254, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TDD number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the tool-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in National Coalition for the Homeless v. Veterans Administration, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: June 2, 1995.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 95–14079 Filed 6–8–95; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU–74350]

Utah—Notice of Invitation To Participate in Coal Exploration Program; Coastal States Energy Company; Upper Huntington Canyon

Coastal States Energy Company is inviting all qualified parties to participate in its proposed exploration of certain Federal coal deposits in the following described lands in Sanpete County, Utah:

T. 13 S., R. 6 E., SLM, Utah
Sec. 21, Lots 1–4, E2E2;
Sec. 28, Lots 1–8, S2NW, SW;
Sec. 33, E2, E2NW, NWNW, SWSW, E2SW.
Containing 1,421.92 acres

Any party electing to participate in this exploration program must send written notice of such election to the Bureau of Land Management, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145–0155, and to Wendell A. Koontz, P.O. Box 719, Helper, Utah 84526. Such written notice must be received within thirty days after publication of this notice in the **Federal Register**.

Any party wishing to participate in this exploration program must be qualified to hold a lease under the provisions of 43 CFR 3472.1 and must share all cost on a pro rata basis. An exploration plan submitted by Coastal States Energy Company, detailing the scope and timing of this exploration program, is available for public review during normal business hours in the Public Room of the BLM State Office, 324 South State Street, Salt Lake City, Utah, under serial number UTU–74350.

Douglas M. Koza,

Deputy State Director, Mineral Resources.

[FR Doc. 95–14142 Filed 6–8–95; 8:45 am]

BILLING CODE 4310–DQ–M

Change of Mailing Address for Las Vegas District

The mailing address for the Las Vegas District Office and Stateline Resource Area has been changed from: P.O. Box 26569, Las Vegas, NV 89126, to: 4765 West Vegas Dr., Las Vegas, NV 89108.

The office location has not changed.

Dated: May 30, 1995.

Michael F. Dwyer,

District Manager, Las Vegas, NV.

[FR Doc. 95–14110 Filed 6–8–95; 8:45 am]

BILLING CODE 4310–HC–M

[OR–092–05–1430–01: G5–138; OR 51729]

Realty Action; Direct Sale of Public Lands; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action—Direct Sale of Public Lands in Lane County, Oregon.

SUMMARY: The following land is suitable for direct sale under Sections 203 and 209 of the Federal Land Policy and Management Act of 1976, (43 U.S.C. 1713 and 1719), at no less than the appraised fair market value. The land will not be offered for sale until at least 60 days after publication of this notice:

Willamette Meridian, Oregon

T. 17 S., R. 1 W.
Sec. 3: Lot 6
Containing 0.37 acre.

The above described land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statute, for 270 days from the date of publication of this notice in the **Federal Register** or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

This land is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal agency. No significant resource values will be affected by this disposal. The sale is consistent with BLM's planning for the land involved and the public interest will be served by the sale.

Purchasers must be U.S. citizens, 18 years of age or older, a state or state instrumentality authorized to hold property, or a corporation authorized to own real estate in the state in which the land is located.

The land is being offered to Eugene and Valentine Cooper using the direct sale procedures authorized under 43 CFR 2711.3–3. Direct sale is appropriate since the land has been inadvertently occupied by a portion of the Cooper's house, car port, shop and yard for several years and direct sale will resolve the unauthorized use while preserving the occupants' equity in the property.

The terms, conditions, and reservations applicable to the sale are as follows:

1. A right-of-way for ditches and canals will be reserved to the United States under 43 U.S.C. 945.

2. The mineral interests being offered for conveyance have no known mineral value. The acceptance of a direct sale offer will constitute an application for conveyance of the mineral estate in accordance with Section 209 of the Federal Land Policy and Management Act. Direct purchasers must submit a nonrefundable $50.00 filing fee for the conveyance of the mineral estate upon request by the Bureau of Land Management.

3. A quitclaim deed will be issued subject to all valid existing rights and reservations of record.

DATES: On or before July 24, 1995, interested parties may submit comments to the District Manager, Bureau of Land Management, at the address below. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In absence of any objections, this realty action will become the final determination of the Department of the Interior.

ADDRESSES: Detailed information concerning the sale, including the reservations, sale procedures and conditions, and planning and environmental documents, is available at the Eugene District Office, P. O. Box 10226 (2890 Chad Drive), Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Steve Madsen, Realty Specialist, Eugene District Office, at (503) 683–6948.

Date of Issue: May 31, 1995.

Judy Ellen Nelson,

District Manager.

[FR Doc. 95–14098 Filed 6–8–95; 8:45 am]

BILLING CODE 4310–33–P

[UT–040–05–4210–05–P]; UTU–71714, UTU–72763

Realty Action: Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Recreation and Public Purposes (R&PP) Act Classification; Utah.

SUMMARY: The following described public lands in Garfield County and Kane County, Utah have been examined and found suitable for lease or conveyance under the provisions of the Recreation and Public Purposes Amendment Act of 1988 (Pub. L. 100–648). The lands to be conveyed and the proposed patentees are as follows:

Patentee: Panguitch City Corp.

Location: Salt Lake Meridian, Utah, Township 34 South, Range 5 West, Section 26, SW¼SW¼SE¼, containing 10 acres.

Patentee: Church Wells Special Service District.

Location: Salt Lake Meridian, Utah, Township 42 South, Range 1 East, Section 35, SE¼SE¼SE¼SE¼, containing 2.5 acres.

These lands are hereby segregated from all forms of appropriation under the public land laws, including the mining laws.

These communities propose to use the lands as source reduction sites and transfer stations. The lands are not needed for Federal purposes. Conveyance is consistent with current BLM land use planning and would be in the public interest.

The patent, when issued, will be subject to the following terms, conditions, and reservations:

1. All minerals, including oil and gas, shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals. The Secretary of Interior reserves the right to determine whether such mining and removal of minerals will interfere with the development, operation, and maintenance of the source reduction site or transfer station.

2. A right-of-way will be reserved for ditches and canals constructed by the authority of the United States (Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945).

3. The conveyance will be subject to all valid existing rights.

4. The patentees assume all liability for and shall defend, indemnify, and save harmless the United States and its officers, agents, representatives, and employees (hereinafter referred to as the United States), from all claims, loss, damage, actions, causes of action, expense, and liability resulting from, brought for, or on account of, any personal injury, threat of personal injury, or property damage received or sustained by any person or persons (including the patentee's employees) or property growing out of, occurring, or attributable directly or indirectly to the disposal of solid waste on, or the release of hazardous substances from the above listed tracts, regardless of whether such claims shall be attributable to: (1) The concurrent, contributory, or partial fault, failure, or negligence of the United States, or (2) the sole fault, failure, or negligence of the United States.

5. Title shall revert to the United States upon a finding, after notice and opportunity for a hearing, that the patentee has not substantially developed the lands in accordance with the approved plan of development on or before the date five years after the date of conveyance. No portion of the land shall under any circumstance revert to the United States if any such portion has been used for solid waste disposal, or for any other purpose which may result in the disposal, placement, or release of any hazardous substance.

6. If, at any time, the patentee transfers to another party ownership of any portion of the land not used for the purpose(s) specified in the application and approved plan of development, the patentee shall pay the Bureau of Land Management the fair market value, as determined by the authorized officer, of the transferred portion as of the date of transfer, including the value of any improvements thereon.

DATES: Interested persons may submit comments regarding the proposed conveyance of the lands to the District Manager, Cedar City District Office, 176 D.L. Sargent Drive, Cedar City, Utah 84720. Comments will be accepted until July 24, 1995.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the lands for source reduction sites or transfer stations.

Any adverse comments will be reviewed by the State Director who may vacate or modify this realty action and issue a final determination. In the absence of any adverse comments, this notice will become the final determination of the Department of Interior on August 8, 1995.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this action is available for review at the Kanab Resource Area office by contacting Rod Schipper, 318 North 100 East, Kanab, Utah 84741, or telephone (801) 644–2672 Ext. 2650.

Dated: May 26, 1995.

A.J. Meredith,

District Manager.

[FR Doc. 95–14107 Filed 6–8–95; 8:45 am]

BILLING CODE 4310–DQ–M

[ID–942–1420–00]

Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m., May 31, 1995.

The plat representing the dependent resurvey of portions of the south

boundary and subdivisional lines, and the survey of the centerline of the May to Patterson Road and Lot 2 in section 32, T. 15 N., R. 22 E., Boise Meridian, Idaho, Group No. 887, was accepted, May 24, 1995.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: May 31, 1995.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 95–14109 Filed 6–8–95; 8:45 am]

BILLING CODE 4310–GG–M

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for reinstatement approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service Clearance Officer and the Office of Management and Budget, Paperwork Reduction Project (1018–0066) Washington, D.C. 20503, telephone 202–395–7340.

Title: Marking, Tagging and Reporting Regulations for Polar Bear, Sea Otter and Walrus.

OMB Approval Number: 1018–0066.

Abstract: The Marine Mammal Protection Act of 1972, (Act) as amended, authorized the Secretary of the Interior to prescribe marking, tagging and reporting regulations in 50 CFR 18.23(f), for Alaska Natives harvesting polar bear, seat otter, and walrus. Under the Act Alaska Natives residing in Alaska and dwelling on the coast of the North Pacific or arctic Oceans may harvest these species for subsistence or handicraft purposes. The marking and tagging program is intended to gather reports of all kills made, and to tag or mark, as appropriate, skins, skulls and tusks of marine mammals killed to reduce illegal trading in walrus ivory, polar pear and sea otter skins. The information collected is used by the Fish and Wildlife Service to improve its decision-making ability by substantially expanding the quality and quantity of harvest and biological data upon which future management decisions can be based. It provides the Service with the ability to make inferences about the condition and general health of the populations and to consider the importance and impact to these populations from such processes as development activities and habitat degradation.

Service Form Number(s): R7–50 (Walrus Certificate); R7–51 (Polar Bear Certificate); R7–52 (Sea Otter Certificate)

Frequency: On occasion.

Description of Respondents: Individuals and household.

Completion Time: The reporting burden is estimated to average 15 minutes per respondent; respondents will average 1.46 responses per year.

Annual Responses: 2,925.

Annual Burden Hours: 732.

Service Clearance Officer: Phyllis H. Cook, 703–358–1943, Mail Stop—224 Arlington Square, U.S. Fish and Wildlife Service, Washington, D.C. 20240.

Dated May 22, 1995.

Rowan W. Gould,

Acting Assistant Director—Fisheries.

[FR Doc. 95–14087 Filed 6–8–95; 8:45 am]

BILLING CODE 4310–55–M

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife, Interior.

ACTION: Notice of availability of the Final Environmental Impact Statement (EIS) on the Proposed Issuance of an Incidental Take Permit for Desert Tortoises in Clark County, Nevada.

SUMMARY: This notice advises the public that the Final Environmental Impact Statement (EIS) on the proposed issuance of an incidental take permit for desert tortoises in Clark County, Nevada is available. The Record of Decision will be published no sooner than 30 days from this notice.

FOR FURTHER INFORMATION CONTACT: Dolores Savignano, U.S. Fish and Wildlife Service, 1500 North Decatur Boulevard, #01, Las Vegas, Nevada 89108 or Carlos Mendoza, U.S. Fish and Wildlife Service, 4600 Kietzke Lane, Building C, Room 125, Reno, Nevada 89502.

Individuals wishing copies of this Final EIS should immediately contact Christine Robinson, Clark County Manager's Office, 225 Bridger Avenue, Las Vegas, Nevada 89155. Copies of the Final EIS have been sent to all agencies and individuals who previously received copies of the Draft EIS and to all others who have already requested copies.

SUPPLEMENTARY INFORMATION:

A. Background

On April 2, 1990, the U.S. Fish and Wildlife Service (Service) issued a final rule (55 FR 12178) that determined the desert tortoise to be a threatened species under the Endangered Species Act of 1973, as amended (Act). That regulation became effective on the date of its publication in the **Federal Register**. Because of its listing as a threatened species, the desert tortoise is protected by the Act's prohibition against "taking." The Act defines "take" to mean: to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in such conduct. "Harm" is further defined by regulation as any act that kills or injures wildlife including significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3).

The Service, however, may issue permits to carry out otherwise lawful activities involving take of endangered and threatened wildlife under certain circumstances. Regulations governing permits are in 50 CFR 17.22, 17.23, and 17.32. For threatened species, such permits are available for scientific purposes, enhancing the propagation or survival of the species, economic hardship, zoological exhibition or educational purposes, incidental taking, or special purposes consistent with the purposes of the Act.

Clark County; the cities of Las Vegas, North Las Vegas, Henderson, Mesquite, and Boulder City; and Nevada Department of Transportation (NDOT) (Applicants) submitted an application to the Service for a permit to incidentally take desert tortoises (*Gopherus agassizii*), pursuant to section 10(a)(1)(B) of the Act, in association with various proposed public and private projects in Clark County, Nevada. The proposed permit would allow incidental take of desert tortoises for a period of 30 years, resulting from development on up to 113,900 acres of private lands within Clark County, Nevada. The permit application was received September 28, 1994, and was accompanied by the *Clark County Desert Conservation Plan* (CCDCP), which serves as the Applicant's habitat conservation plan and details their proposed measures to minimize, monitor, and mitigate the impacts of the proposed take on the desert tortoise.

The Applicants propose to expend $1.35 million per year, and up to $1.65 million per year for the first 10 years, to minimize and mitigate the potential loss of desert tortoise habitat. It is anticipated that the majority of these funds will be used to implement mitigation measures as described in the CCDCP. In addition, funds will be provided to State and Federal resource managers for implementing desert tortoise recovery measures recommended in the *Desert Tortoise* (Mojave Population) *Recovery Plan*, and for planning and managing lands both within and outside of desert wildlife management areas. The desert tortoise is only part of the desert ecosystem, and unless the various species of plants and animals which co-inhabit that system are likewise preserved, the status of the desert tortoise is likely to decline. Therefore, the needs of other plant and wildlife resources will be addressed, possibly avoiding the need to list these species as threatened or endangered under the Act in the future. The Applicants also propose to purchase a conservation easement that preserves, protects, and assures the management and study of the conservation values, and in particular the habitat of the desert tortoise, of more than 85,000 acres of non-Federal land in Clark County.

To minimize the impacts of take, the Applicants propose to provide a free pick-up and collection service for desert tortoises encountered in harm's way within Clark County. These desert tortoises will be made available for beneficial uses such as translocation studies and programs, research, education, zoos, museums, or other programs approved by the Service and Nevada Division of Wildlife. Sick or injured desert tortoises will be humanely euthanized. NDOT will incorporate specific measures into its operations to avoid or minimize impacts to desert tortoises. Clark County will also implement a public information and education program to benefit the desert tortoise and the desert ecosystem.

Clark County or the cities would approve the issuance of land development permits for otherwise lawful public and private project proponents during the 30-year period in which the proposed Federal permit would be in effect. Clark County or the cities would impose, and NDOT would pay, a fee of $550 per acre of habitat disturbance to fund the measures to minimize and mitigate the impacts of the proposed action on desert tortoises.

The underlying purpose or goal of the proposed action is to develop a program designed to ensure the continued existence of the species, while resolving potential conflicts that may arise from otherwise lawful private and public improvement projects.

B. Development of the Final EIS

This Final EIS has been developed by the U.S. Fish and Wildlife Service. In the development of this Final EIS, the Service initiated action to assure compliance with the purpose and intent of the National Environmental Policy Act of 1969, as amended (NEPA). Scoping activities were undertaken preparatory to developing a Draft EIS with a variety of Federal, State, and local entities. A Notice of Intent to prepare a Draft EIS was published February 4, 1994 (59 FR 5439); a public scoping meeting was held February 14, 1994; and a Notice of Availability of a Draft EIS and Receipt of an Application for an Incidental Take Permit for Desert Tortoises in Clark County, Nevada was published February 10, 1995 (60 FR 8058).

Potential consequences, in terms of adverse impacts and benefits associated with the implementation of each alternative selected for detailed analysis, were described in the Draft EIS. The Service received 13 letters of comment on the Draft EIS which focused on the following subject areas: (1) Survey and removal of desert tortoises; (2) translocation of tortoises to a sanctuary; (3) euthanasia of tortoises; (4) measurable criteria for short-term and long-term conservation goals; (5) tortoise adoption; (6) effects to other species and resources; and (7) financing implementation of the CCDCP.

Appendix A of the Final EIS contains copies of all comments received and responses to all comments received. The Final EIS was revised where appropriate based on public comment and review. Issues and potential consequences have remained identical from the draft to the final EIS.

C. Alternatives Analyzed in the Final EIS

Two alternatives were considered. Issuance of the permit with the mitigating, minimizing, and monitoring measures outlined in the CCDCP is the Service's preferred action and is discussed above. The Draft EIS outlined alternative measures that were considered by the Service prior to issuance of the permit. The other alternative selected for detailed evaluation was a No Action alternative. The No Action alternative would benefit individual desert tortoises on private lands in the short-term, however, it has been determined that viable populations of desert tortoises will not persist in the urban areas over the long-term. The No Action alternative would, therefore, not provide the benefits of the long-term recovery efforts for the desert tortoise identified in the CCDCP. The No Action alternative was not identified as the preferred alternative because it would diffuse existing regional conservation planning efforts for the desert tortoise and possibly concentrate activity on individual project needs, not meet the purpose and needs of the Applicants, and not provide the long-term benefits to the desert tortoise. Additionally, the No Action alternative could result in adverse impacts to the social environment within Clark County due to constraints on land-use activities that would impact the desert tortoise.

Dated: June 1, 1995.

Thomas Dwyer,

Deputy Regional Director.

[FR Doc. 95–13901 Filed 6–8–95; 8:45 am]

BILLING CODE 4310–65–P

Finding of No Significant Impact for Incidental Take Permits for the Construction of Single-Family Residences at the Specific Site Locations Indicated Below in Travis County, Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has prepared an Environmental Assessment for issuance of a Section 10(a)(1)(B) permit for the incidental take of the federally endangered golden-cheeked warbler (*Dendroica chrysoparia*) during the construction and operation of single-family residences in Travis County, Texas.

Proposed Action

The proposed action is the issuance of permits under Section 10(a)(1)(B) of the Endangered Species Act to authorize the incidental take of the golden-cheeked warbler.

The Applicant (Steven G. Madere) plans to construct a single-family residence at the specific site indicated as Lot 22, Block H, Long Canyon Phase IIA, aka 9000 Bell Mountain Drive, Austin, Travis County, Texas (PRT–799859).

The Applicant (Larry Michael Beasley) plans to construct a single-family residence at the specific site

indicated as Lot 4 on Lake Travis Subdivision No. 2, Lime Creek Road, Leander, Travis County, Texas (PRT–800080).

The Applicant (Stephen I. Adler) plans to construct a single-family residence at the specific site indicated as Lot 12, Westlake Highlands, Section 5, Phase 2, Revised Plat Record V.31 P.2, Austin, Travis County, Texas (PRT–800130).

The Applicants (Cecil Eugene Ethridge and Doug Van Skyock) plan to construct a single-family residence at the specific site indicated as Lot 44 in Comanche Trail No. 3 Resubdivision, on Mountain Trail, Austin, Travis County, Texas (PRT–799863).

The proposed construction and operation of the single-family residences will comply with all local, State, and Federal environmental regulations addressing environmental impacts associated with this type of development. Details of the mitigation are provided in the individual Environmental Assessment/Habitat Conservation Plans. These conservation plan actions ensure that the criteria established for issuance of an incidental take permit will be fully satisfied.

Alternatives Considered

1. Proposed action,
2. Alternate site locations,
3. Alternative site designs,
4. Wait for issuance of a regional Section 10(a)(1)(B) permit,
5. No action.

Determination

Based upon information contained in the Environmental Assessment/Habitat Conservation Plans, the Service has determined that these actions are not major Federal actions which would significantly affect the quality of the human environment within the meaning of Section 102(2)(c) of the National Environmental Policy Act of 1969. Accordingly, the preparation of Environmental Impact Statements on the proposed action is not warranted.

It is my decision to issue the Section 10(a)(1)(B) permits for the construction and operation of the single-family residences at the sites specified above in Travis County, Texas.

Lynn B. Starnes,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 95–14163 Filed 6–8–95; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF INTERIOR

National Park Service

Delaware and Lehigh Navigation Canal National Heritage Corridor Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Delaware and Lehigh Navigation Canal National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

MEETING DATE AND TIME: Wednesday, June 21, 1995; 1:30 p.m. until 4:30 p.m..

ADDRESSES: Commission Office, 10 East Church Street, Room P–205, Bethlehem, PA 18018.

The agenda for the meeting will focus on implementation of the management Action Plan for the Delaware and Lehigh Canal National heritage Corridor and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and to Congress.

SUPPLEMENTARY INFORMATION: The Delaware and Lehigh Navigation Canal National Heritage Corridor Commission was established by Public Law 100–692, November 18, 1988.

FOR FURTHER INFORMATION CONTACT: Acting Executive Director, Delaware and Lehigh Navigation Canal, National Heritage Corridor Commission, 10 E. Church Street, Room P–208, Bethlehem, PA 18018, (610) 861–9345.

Dated: May 31, 1995.

Donald M. Bernhard,

Chairman, Delaware and Lehigh Navigation Canal NHC Commission.

[FR Doc. 95–14227 Filed 6–8–95; 8:45 am]

BILLING CODE 4310–70–M

Indian Memorial Advisory Committee

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a scheduled meeting of the Indian Memorial Advisory Committee. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

MEETING DATE AND TIME: June 23–25, 1995, 8:00 a.m.–5:00 p.m.

ADDRESSES: Sheraton Billings Hotel, 27 North 27th Street, Billings, Montana 59101.

The Agenda of this Meeting will be: Review minutes of last meeting, discuss follow-up actions from previous meeting, introductions/opening remarks, review of design competition criteria and related proposal packages, and media/public relations.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with: Superintendent, Little Bighorn Battlefield National Monument, P.O. Box 39, Crow Agency, Montana 59022, telephone (406) 638–2621. Minutes of the meeting will be available for public inspection four weeks after the meeting at the Office of the Superintendent of Little Bighorn Battlefield National Monument.

SUPPLEMENTARY INFORMATION: The Advisory Committee was established under Title II of the Act of December 10, 1991, for the purpose of advising the Secretary on the site selection for a memorial in honor and recognition of the Indians who fought to preserve their land and culture at the Battle of Little Bighorn, on the conduct of a national design competition for the memorial, and ". . .to ensure that the memorial designed and constructed as provided in section 203 shall be appropriate to the monument, its resources and landscape, sensitive to the history being portrayed and artistically commendable."

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Sutteer, Indian Affairs Coordinator, Intermountain Field Area Office, National Park Service, 12795 W. Alameda Parkway, P.O. Box 25287, Denver, Colorado 80225–0287, (303) 969–2511.

Dated: May 22, 1995.

Dawn A. Carey,

Designated Federal Officer, Little Bighorn Battlefield National Manument, National Park Service.

[FR Doc. 95–14228 Filed 6–8–95; 8:45 am]

BILLING CODE 4310–70–P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–418 (Sub-No. 1X)]

Cooperstown and Charlotte Valley Railway Corporation—Abandonment Exemption—in Otsego County, NY

Cooperstown and Charlotte Valley Railway Corporation (CCV), a subsidiary of Delaware Otsego Corporation, has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its entire 15.49-mile line of railroad, between milepost 16.0, at Cooperstown Junction, and milepost 0.51, at Cooperstown, in Otsego County, NY.

CCV has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

In its verified notice, applicant said that it "recognizes that this abandonment will be made subject to the customary employee protective conditions imposed by the Commission." Where, as here, however, a railroad proposes to abandon its entire line of railroad, employee protective conditions are normally not imposed. Thus, consistent with Commission precedent, employee protective conditions will not be imposed here.[1]

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on July 9, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29[4] must be filed by June 19, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by June 29, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Nathan R. Fenno, Cooperstown and Charlotte Valley Railway Corporation, 1 Railroad Ave., Cooperstown, NY 13326.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio.*

CCV has filed an environmental report which addresses the effects of the abandonment, if any, on the environment and historic resources. The Commission's Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by June 14, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 2, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–14200 Filed 6–8–95; 8:45 am]

BILLING CODE 7035–01–P

[1] The Commission will only consider imposing employee protective conditions in the context of an entire line abandonment when the evidence of record demonstrates the existence of: (1) a corporate affiliate that will continue substantially similar rail operations; or (2) a corporate parent that will realize substantial financial benefits over and above relief from the burden of deficit operations by its subsidiary railroad. *See Northhampton and Bath R. Co.—Abandonment,* 354 I.C.C. 784 (1978).

[2] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request prior to the effective date of this exemption.

[3] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[4] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

[Docket Nos. AB–427X; AB–428X]

Crystal City Railroad, Inc.—Abandonment Exemption—in LaSalle, Zavala, and Dimmit Counties, TX; and Texas Railroad Switching, Inc.—Discontinuance of Service Exemption—in LaSalle, Zavala, and Dimmit Counties, TX

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemptions.

SUMMARY: The Commission, under 49 U.S.C. 10505, exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by Crystal City Railroad, Inc., and discontinuance of service by Texas Railroad Switching, Inc., of 51.55 miles of rail line consisting of: (1) A 40.4-mile portion of the Crystal City branch line between milepost 107.0 west of Gardendale and milepost 147.4 near Crystal City; and (2) the 11.15-mile Carrizo Springs branch line between milepost 145.2 near Crystal City and milepost 156.35 near Carrizo Springs, in LaSalle, Zavala, and Dimmit Counties, TX, subject to standard labor protective conditions, an environmental condition, and a public use condition.[1]

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 9, 1995. Formal expressions of intent to file an offer[2] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by June 19, 1995; petitions to stay must be filed by June 26, 1995; requests for a public use condition must be filed by June 29, 1995; and petitions to reopen must be filed by July 5, 1995.

ADDRESSES: Send pleadings referring to Docket Nos. AB–427X and AB–428X to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, NW., Washington, DC 20423; and (2) Thomas F. McFarland, Jr., 20 North Wacker Drive, Suite 3118, Chicago, IL 60606–3101.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUMMARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic

[1] CCR will retain the 1.86-mile portion of the Crystal City branch line between milepost 105.14 and milepost 107.0 near Gardendale, TX.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

Concepts, Inc., Interstate Commerce Commission Building, 1201 Constitution Avenue, NW, Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5271.]

Decided: May 31, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–14199 Filed 6–8–95; 8:45 am]

BILLING CODE 7035–01–P

[Docket Nos. AB–425; AB–426]

Lone Star Railroad, Inc.—Abandonment and Discontinuance of Trackage Rights—In Wichita, Archer, Baylor, Knox, Haskell and Jones Counties, TX; and Southern Switching Company—Discontinuance of Service—In Wichita, Archer, Baylor, Knox, Haskell and Jones Counties, TX

The Commission has found that the public convenience and necessity permit: (1) In Docket No. AB–425, Lone Star Railroad, Inc. (Lone Star) to abandon a portion of its line of railroad between milepost 142.8 near Lanius, TX, and milepost 8.0 near Howard, TX, and to discontinue trackage rights over Burlington Northern Railroad Company (BN) between milepost 8.0 near Howard and milepost 0.0 at Valley Junction, TX, and from Valley Junction east for 331 feet to the switching point in Sunshine Yard, Wichita Falls, TX, a total distance of 142.86 miles in Wichita, Archer, Baylor, Knox, Haskell and Jones Counties, TX; and (2) in Docket No. AB–426, Southern Switching Company (Southern) to discontinue service that it performs over the 142.86-mile rail line pursuant to an operating agreement with Lone Star. The certificate will be issued 30 days after this publication unless the Commission finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable rail service to continue; and (2) it is likely that the assistance would fully compensate the railroad.

Requests for public use conditions must be filed with the Commission and applicants within 10 days after publication.

Any financial assistance offer must be filed with the Commission and applicants no later than 10 days from the publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Office of Proceedings, AB–OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27. Requests for public use conditions must conform with 49 CFR 1152.28(a)(2).

Decided: May 26, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–14198 Filed 6–8–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act (44 USC Chapter 35) and the Paperwork Reduction Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 *AND* to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer *AND* the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, *AND* to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20530.

New Collection

(1) Inter-Agency Alien Witness and Informant Record.

(2) FORM I–854 (Attached).

Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Federal Government. Others: Individuals or households. The FORM I/854 will be used by law enforcement agencies to bring alien witnesses and informants to the United States in an "S" nonimmigrant classification. Additionally, Form I–854 provides the Department of State, and the Immigration and Naturalization Service with the information necessary to identify the requesting law enforcement agency, the alien witness, and/or informant.

(4) 125 annual respondents at 4.25 hours per response.

(5) 531.25 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: June 6, 1995.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

BILLING CODE 4410–10–M

U.S. Department of Justice
Immigration and Naturalization Service

Inter-Agency Alien Witness and Informant Record

INSTRUCTIONS

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PART I. GENERAL

Purpose Of This Form. This form is used by law enforcement agencies (LEA's) to bring alien witnesses and informants to the United States in a "S" nonimmigrant classification. This form provides the Department of State (DOS) and the Immigration and Naturalization Service (INS) with information necessary to identify the requesting LEA, the alien witness and/or informant, and others e.g., the United States Attorney, needing the information or testimony of that alien. It assists DOS and INS in the exercise of their joint responsibility to adjudicate requests by LEA's for S classification.

General Instructions. Please read the instructions carefully. A separate form must be used for each witness/informant requested. Please answer all questions by typing or clearly printing in ink. Failure to answer all questions will delay the processing of this application and may result in its denial. Indicate a non-applicable question with "N/A." If the answer is "none", please so state. Submit both copies of the form. **If you, as the requesting agent, need extra space to answer any item, attach a sheet of paper with your name on it, as well as the name of the alien, the LEA requestor and the control agent.** You should make copies of this completed form for your records. Please provide exact information about the request you are making (e.g., for S classification waivers of grounds of inadmissibility or adjustment of status) and complete and attach all necessary certifications and documentation.

PART II. WHO IS TO USE THIS FORM

This form may be used only by a Federal or State LEA and only to request that an alien witness or informant be allowed to: (1) proceed into the United States pursuant to the S nonimmigrant classification; (2) change nonimmigrant classification to an S classification, or; (3) adjust to lawful permanent resident status from the S nonimmigrant classification. For the witness/informant, the LEA must specifically request:

S-5 or S-6 nonimmigrant classification. The S classification may be requested when an alien witness or informant intends to remain permanently in the United States. An **S-5 classification may be requested** for an alien who possesses and is willing to provide to the requesting LEA critical, reliable information on a criminal organization and who otherwise qualifies under section 101(a)(15)(S) of the Immigration and Nationality (Act) and 8 CFR 214.2(t). An **S-6 classification may be requested** for an alien who possesses and is willing to provide information on a terrorist organization, who will be or is placed in danger as a result, is eligible for an award under section 36(a) of the State Department Basic Authorities Act of 1956, 22 U.S.C. 2708(a), and who otherwise qualifies under section 101(a)(15)(S) of the Act and 8 CFR 214.2(t).

Please note: A Federal or State LEA may request S-5 nonimmigrant classification for an alien witness or informant. However, only a Federal LEA or Federal court may request S-6 classification for an alien witness or informant.

The LEA May Also Make A Request For Derivative Beneficiaries (Part A 6). Qualifying relatives (spouse, married and unmarried sons and daughters, and parents) of the principal alien witness and informant may be included in a request for the S nonimmigrant classification. All required information for such derivative beneficiaries of this request must be included at the time of filing the request for nonimmigrant classification. Only qualifying relatives identified at the time of filing will be considered as accompanying or following to join. Proof of family relationship, biographical data, and grounds of excludability must be attached for each named qualifying relative.

For Change of Status To The S Classification. An LEA may request the Service to change the classification of an alien already in the United States from another valid nonimmigrant classification to S-5 or S-6 classification (8 CFR 214.2(t)(12)) by filing this form and Form I-539, Application to Extend/Change Nonimmigrant Status, together with the relevant documentation and requisite fees, pursuant to the instructions for filing requests for an S classification, below.

For Requests To Allow An S Nonimmigrant To File For Adjustment Of Status To That Of Lawful Permanent Resident (8 CFR 245.11). A request to allow a nonimmigrant in an S classification to file for adjustment of status must be filed by the LEA that originally requested the S classification and may not be filed until the alien has fulfilled the terms and conditions of his or her S classification. Please attach to the request on Part F of this form all relevant documentation establishing that the alien has fulfilled the terms and conditions of his or her S classification and related recommendations. Only the derivative beneficiaries named on the request for S classification are eligible to adjust pursuant to 8 CFR 245.11.

Please carefully complete all relevant parts of this form.

PART III. REQUIRED DOCUMENTATION

For The S Classification. Requests for the S classification (8 CFR 214.2(t)) are premised on the alien witness and informant's willingness to provide critical, reliable information. You must provide clear, **VERY SPECIFIC** statements of the following:

- The operations that form the basis of the request. For example, if you need the alien to appear as a witness, please give the date and place of the trial and the nature of the testimony you expect to receive.
- The objective of the request, that is, why the admission of this alien is necessary, essential, and in the national interest. The terms and conditions pursuant to which an S classification is requested must be stated very clearly on, or attached to, this form.
- The nature of the alien's cooperation with the government, any bargains you have made with the alien, and any benefits promised in return. **NOTE THAT NO PROMISES FOR IMMIGRATION BENEFITS MAY BE MADE TO AN ALIEN SEEKING S CLASSIFICATION.**

For Ground(s) Of Excludability:

Part A. All grounds of excludability (i.e., the reasons the alien may not be admissible to the United States) must be ascertained and a statement of each ground, or suspected ground, must be attached to this form. Please review the grounds of excludability carefully with the alien and remind the alien that a failure to disclose all grounds of excludability (conduct or conditions) on this form may result in exclusion or deportation from the United States. Then for each ground checked in Part A 7, you must provide a statement of all reasons why you believe discretionary waiver authority should be exercised favorably for this alien so that the alien may be admitted in the S classification.

Be as specific as possible and attach affidavits, statements, memorandum, or other documentation as necessary to explain all the possible grounds of inadmissibility and surrounding circumstances. Specific reasons for exercising discretionary waiver authority should be presented whenever possible, e.g., if the alien has a history of drug abuse, you may present evidence of rehabilitation such as the affidavits of doctors, psychiatrists, or other experts.

Documentation. The evidence submitted with this request to verify the basis of the request, i.e., for a waiver, classification, or adjustment of status, may be in the form of affidavits, statements, memoranda, or similar documentation.

You must also submit for each alien named in this request:

- Two-sets of fingerprints and signatures on Form FD-258;
- Two-color-photos with a white background taken no earlier than 30 days before submission to the INS. They should be unmounted; printed on thin paper and show a three-quarter front profile of the right side of the face, with the right ear visible. The head should be bare unless the alien is wearing a headdress as required by a religious order. Lightly print the alien's name and A#, if known, on the back of each photo with a pencil; the name of the LEA may also be used.
- The alien's A#, FBI #, Social Security #, if known, and biographical information (Form G-325).

PART IV. REQUIRED CERTIFICATIONS

Alien Certification. The certifications made by the alien and made by you, the LEA requestor, provide a critical record for the future. After you have carefully explained the certifications at Part B and reviewed all statements on or attached to the form for accuracy, read the certification to the alien and be sure that the alien understands each condition of admission and continued stay in lawful status. If the certification is translated to ensure the alien's understanding, please so indicate. Make sure the alien understands that adjustment of status is not available to the alien unless and until he or she has satisfied the conditions of admission and continued stay in lawful status in the S classification.

LEA Certifications. Your signature as a witness to the alien's certification certifies your assurance of the alien's understanding of his or her certification. LEA headquarters level certification is required to ensure that no promises have been made other than those afforded by section 101(a)(15)(S) of the Act and that full assumption of the responsibilities outlined in the request has been authorized. The name of the LEA agency contact on the case who is available by phone for questions and verification of information is also necessary.

United States Attorney Certification. The United States Attorney's certification is necessary if the alien witness or informant will be participating in a prosecution or investigation that falls within the jurisdictional authority of a United States Attorney or if this form is to be submitted by a State LEA. The United States Attorney may and sometimes does refer to the Criminal Division or another federal entity. In such a case, the referred entity must provide the required certification and documentation of the referral by the United States Attorney.

PART V. FEE FOR REQUESTS FOR THE S NONIMMIGRANT CLASSIFICATION

The fee for this form is $150. **(This fee will not go into effect until the Service publishes a final regulation in the Federal Register adding a fee for Form I-854)** It is not refundable. Pay in the exact amount. Make check or money order payable to "Immigration and Naturalization Service." There will be an additional charge if your check is not honored. Please do not send cash in the mail.

PART VI. WHERE TO FILE

Requests for an S nonimmigrant classification or for an S nonimmigrant to file for adjustment of status, should be sent to:

DOJ-OEO
P.O. BOX 7600
Washington, DC 20044-7600

Please note: The Criminal Division will forward certified requests to the INS Commissioner, for adjudication of the request for S classification. No request for S classification may proceed to the INS without the certification of the Criminal Division.

PART VII. OTHER INFORMATION

Employment Authorization: Witnesses and informants who have received S nonimmigrant classification are entitled to receive an Employment Authorization Document (EAD), enabling them to seek employment in the United States. Aliens so entitled may request an EAD by filing Form I-765 according to the instructions on that form. Form I-765 may not accompany this form and must be filed separately.

Authority For The Collection Of The Information. The authority to require you to file Form I-854, Inter-Agency Alien Witness and Informant Record, when requesting authorization to bring a witness or informant into the United States, is found at section 101(a)(15)(S) of the Act and the Congressional concerns behind that provision. Information you provide on Form I-854 is used to determine eligibility for the requested classification/authorization, to record the numbers of requests and determinations made on this form, to track and monitor the alien, and to provide Congress with a required annual report on the admission of alien witnesses and informants. Failure to provide all information as required may result in the denial or rejection of this application. The information you provide may also be disclosed to other Federal, State, local and foreign law enforcement, intelligence and regulatory agencies.

Penalties For Perjury. All statements made in response to questions in this application are declared to be true and correct under penalty of perjury. 18 U.S.C. 1546, provides in part:

Whoever knowingly makes under oath, or as permitted under penality of perjury under 28 U.S.C. 1746, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document containing any such false statement - shall be fined in accordance with this title or imprisoned not more than five years, or both.

The knowing placement of false information on this application may subject you and/or the preparer of this application to criminal penalties under Title 18 of the United States Code. The knowing placement of false information on this application may also subject you and/or the preparer to civil penalties under Section 274C of the Act, 8 U.S.C. 1324c. Under 8 U.S.C. 1324c, a person subject to a final order for civil document fraud is deportable from the United States and may be subject to fines.

Paperwork Reduction Act Notice.

We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. Often this is difficult because some immigration laws are very complex. Accordingly, the reporting burden for this collection of information is computed as follows: (1) learning about the law and form, **60** minutes; (2) completing the form, **75** minutes; and (3) assembling and filing the application **120** minutes, for an estimated average of **4** hours and **15** minutes per response. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, you can write to both the Immigration and Naturalization Service, 425 I Street, N.W., Room 5307, Washington, D.C. 20536; and the Office of Management and Budget, Paperwork Reduction Project, OMB No. 1115-xxxx, Washington, D.C. 20503

OMB #1115-XXX

U.S. Department of Justice
Immigration and Naturalization Service

Inter-Agency Alien Witness and Informant Record

PART A. To Be Completed by Law Enforcement Agencies. *(See instructions for specific information.)*

1. Name of LEA/Requestor: _____
2. Requesting Agent: _____ Control Agent: _____
   Address: _____ Phone No.: ( ) _____
   _____ Fax No.: ( ) _____

Check if Applicable:

3. [ ] Alien will be placed in danger in U.S./abroad (circle) as a result of providing information, etc.
   [ ] Alien poses no danger to people or property of the U.S.
   [ ] If the alien poses a danger, the danger posed by alien is outweighed by the assistance the alien will furnish.
   [ ] Investigation . [ ] Prosecution. [ ] United States Attorney involvement.
4. Type of Request(s). *(Attach legal basis for request)*
   [ ] S-5 [ ] S-6
   State consular post at which visa will be sought: _____
   [ ] Change of Status. - If change of status is requested, current INS status is _____
   [ ] Adjustment of status *(Go to PART F. after completing information in 5,6, & 7, below)*
   [ ] Fee(s) attached. [ ] Security concerns. State special instructions regarding security precautions.

PROVIDE A CLEAR STATEMENT OF THE OPERATIONS THAT FORM THE BASIS OF THE REQUEST (E.G., GRAND JURY SUBPOENA). THE OBJECTIVE OF THE REQUEST AND ANY BARGAIN THE REQUESTOR WISHES TO MAKE/HAS MADE WITH THE ALIEN. ATTACH COMPLETE CRIMINAL HISTORY, FBI# and SSN#.

5. Alien's Name *(Last Name, First and Middle Name)*:			Other Names Used:	
Alien's Address *(Street Number and Name)*:			A#	I-94#
City:		State or Province:	Zip/Postal Code:	Current Location of Alien:
Marital Status:	Date of Birth:	Place of Birth *(City or Country)*:	Nationality:	Occupation:

Date of last entry to U.S. *(Month/Day/Year)*_____ [ ] Form G-325 attached [ ] Form FD-258 attached [ ] Photos attached

6. Provide all information requested in 5, above, for spouse, parents, and all sons and daughters of alien for whom an S classification is requested who seek derivative status *on a separate piece of paper for each beneficiary.*

7. For the above named alien, I request waiver(s) of the following grounds of excludability:
(Check all possible grounds & attach all relevant documents establishing the ground(s) of inadmissibility and why you feel a waiver is appropriate for this alien. This information must be provided for each alien named in 5 and 6 above. Please copy this checklist of grounds of excludability and submit for each derivative.)

[ ] communicable disease
[ ] immigrant visa issued outside numerical limits
[ ] crime of moral turpitude
[ ] international child abduction
[ ] multiple criminal convictions
[ ] engaged in unlawful commercialized vice
[ ] entrance prejudicial to public interest
[ ] involved in espionage, sabotage or laws relating to technology transfer
[ ] coming to overthrow the U.S. government
[ ] foreign policy exclusion
[ ] Nazi persecutor
[ ] unqualified physician
[ ] previously removed-aggravated felony -20 year applicability
[ ] stowaway
[ ] nonimmigrant without a valid passport or visa
[ ] previously excluded and deported
[ ] alien smuggler
[ ] participant in genocide
[ ] physical/mental disorder (dangerous)
[ ] drug abuser or addict
[ ] convicted of law pertaining to controlled substances
[ ] controlled substance trafficker
[ ] prostitute, or [ ] procurer of prostitution
[ ] exercised diplomatic immunity to avoid prosecution
[ ] unlawful activity related to national security
[ ] terrorist activities
[ ] communist party member
[ ] public charge
[ ] lacking labor certification
[ ] fraud/misrepresentation
[ ] immigrant without a visa
[ ] draft evader-was immigrant when left
[ ] alien accompanying helpless excludable alien
[ ] violator of section 274C
[ ] No waivers are requested/needed.

PART B . Certifications.

1. Alien Certification.
(S classification request) I certify under penalty of perjury that I have reviewed with the LEA all the information in Part A, disclosed all information to the best of my ability, and disclosed all reasons for which I may be excludable from the United States; that I shall report at least every three (3) months my whereabouts and activities as the above LEA shall require; that I understand I am subject to deportation for any grounds of excludability (conduct or condition) not disclosed at this time or for conduct committed after admission to the United States; that I shall abide by all conditions, limitations, and restrictions imposed upon my entry; that the classification I seek is temporary and will terminate within three (3) years; that I am restricted by the terms of my admission to very specific means by which I will be able to remain permanently in the United States; that I will pay Social Security and all applicable taxes on all employment in the United States and; that I hereby waive my right to a deportation hearing and to contest, other than on the basis of an application for withholding of deportation, any action for deportation instituted against me. **Certification: I certify that I have read and understand all the questions and statements on this form. If I do not understand English, I further acknowledge that this has been read to me in a language I do understand. The answers I have furnished are true and correct to the best of my knowledge and belief.**

Signature: _____ **Date:** _____

LEA Witness: _____ **Title:** _____ **Date:** _____

Translator: _____ **Language Used** _____ **Date:** _____

2. LEA Certification. I certify the above information is true and correct to the best of my knowledge; that I may make, have made, and will make no promises regarding the above alien's ability to adjust status or stay permanently in the United States other than those that comport with section 101(a)(15)(S) of the Act that I will collect quarterly reports detailing the above alien's whereabouts and activities and forward required information to the Criminal Division; that I will immediately report to the Service if this alien fails to report quarterly or fails to comply or to cooperate with the terms and conditions of admission or if the alien commits any deportable activity after the date of admission. I further certify that I assume complete law enforcement responsibility for control and continued stay in lawful status of the alien, including necessary monitoring, travel arrangements for arrival and departure, safety precautions, and specified conditions of stay or departure, that I have provided a sworn declaration as to the basis of this petition and checked all available database information on the above alien, and that I have carefully reviewed the above statements with the alien to ensure that all terms and conditions are understood.
[ ] **Translation** *(this serves to verify alien certification of translation, above.)*

Signature of HQ Chief of LEA: _____ **Title:** _____ **Date:** _____

Phone: ( ) _____ **Name of Agency Contact:** _____ **Phone:** ( ) _____

3. For United States Attorney Use Only *(if applicable).* Because the alien's presence is essential to the success of a Federal or State investigation or prosecution, the United States Attorney recommends the above request be granted and further certifies that there has not been and will be no promise or promises at all regarding the above alien's ability to adjust status or stay permanently in the United States other than those that comport with section 101(a)(15)(S) of the Act.

Signature: _____ **Date:** _____

Office: _____ **Phone:** ( ) _____

4. For Department of State/Rewards Committee - S6 Classification Use Only.
After checking all information, the Department of State:
[ ] Certifies the alien is eligible to receive an award under 22 U.S.C. 2708(a). **Date:** _____
[ ] Certifies the alien is not eligible for such award.

Signature: _____ **Date:** _____ **Phone:** ( ) _____

Title: _____ **Office:** _____

PART C. For Department of Justice, Criminal Division Use Only.

After checking and evaluating all waiver and other information available, the Department of Justice, Criminal Division:
[ ] Certifies that, pursuant to section 101(a)(15)(S) of the Act and the request of the above LEA, the above alien is recommended for the S classification requested, that the above request(s) for waivers of excludability appear to warrant approval, that all conditions and limitations of the request for classification are attached, that this request falls within the numerical limitation for an S visa and that, therefore, this request is forwarded to the Commissioner for approval.
[ ] Denies Request

Signature: _____ **Date:** _____ **Phone:** ( ) _____

Title: _____ **Office:** _____

PART D. For Immigration and Naturalization Service Use Only.

[ ] Fee Received. [ ] Waiver(s) of Grounds of Inadmissibility Granted Per Request.
Note all grounds waived and conditions attached thereto.
LEA Request: [ ] Granted [ ] Forwarded to DOS/VO [ ]Request Denied
[ ] Change of Classification Granted [ ] Denied.

Signature: _____ Date: _____ Phone: ( ) _____

Title: _____ INS Office: _____

PART E. For Department of State/Visa Office Use Only.

[ ] FORWARDED TO CONSUL BY VO FOR Visa Approval; [ ] Not Forwarded

Signature: _____ Date: _____ Phone: ( ) _____

Title: _____ Office: _____

[ ] Visa Granted [ ] Visa Denied Signature: _____ Date: _____

Title: _____ Office: _____

PART F. Request to Allow An S Nonimmigrant to File for Adjustment of Status to Permanent Resident.

(This request may not be completed or submitted until the alien has fulfilled the terms and conditions of his or her S nonimmigrant classification.)

(For Department of Justice, Criminal Division use only)

(Please attach all relevant documentation establishing (1) the information certified to below; (2) the recommendations, and reasons for the certified recommendations.)

1. **Name of LEA: _____ submitting request to allow an S nonimmigrant to file for adjustment of status: Date submitted: _____**

2. **CRIMINAL DIVISION (ASSISTANT ATTORNEY GENERAL) CERTIFICATIONS.**

I Certify that *(alien's name)*_____ has

If S -5:
[ ] Supplied the information that formed the basis of entry;
[ ] The information substantially contributed to the success of an authorized criminal investigation or the prosecution of an individual as per terms of entry.

If S-6:
[ ] Supplied the information that formed the basis of entry;
[ ] The information substantially contributed to the prevention or frustration of an act of terrorism against a U.S. person or property or the success of an authorized criminal investigation of, or the prosecution of, an individual involved in such an act of terrorism.
[ ] Has received a reward under section 36(a) of the State Department Basic Authorities Act of 1956;

If S-5 or S-6
[ ] Has abided by all the terms, conditions and specific 22 U.S.C. 2708(a) limitations of the S classification.

Other comments:

Signature: _____ Date: _____ Phone: ( ) _____

Title: _____ Office: _____

3. **FOR IMMIGRATION AND NATURALIZATION SERVICE USE ONLY:**
[ ] Adjustment [ ] Other action

Signature: _____ Date: _____ Phone: ( ) _____

Title: _____ Office: _____

Form I-854 (6-1-95)

[FR Doc. 95–14201 Filed 6–8–95; 8:45 am]
BILLING CODE 4410–10–C

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Excel Corporation*, Civil Action No. 94–C–493, was lodged on May 25, 1995 in the United States District Court for the District of Colorado. The consent decree settles an action brought under the Clean Water Act (the "Act"), 33 U.S.C. 1251 et seq. seeking an injunction and civil penalties for Excel's violations of the Act and for violations of the General Pretreatment Regulations, 40 CFR Part 403. Pursuant to the consent decree, Excel will pay a total civil penalty of $450,000. By separate agreement, Excel has agreed to pay the City of Fort Morgan a penalty of $205,000 to settle the City's parallel enforcement action against Excel. The United States' settlement with Excel recognizes Excel's penalty payment to the City by allowing credit for the penalty paid to the City. Accordingly, Excel's civil penalty payment to the United States pursuant to this settlement totals $245,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Excel Corporation*, DOJ Ref. #90–5–1–1–4041.

The proposed consent decree may be examined at the office of the United States Attorney, 1961 Stout Street, Suite 1200, Denver, Colorado 80294; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $2.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Acting Chief, Environmental Enforcement Section.

[FR Doc. 95–14099 Filed 6–8–95; 8:45 am]
BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Bell Communications Research Inc.

Notice is hereby given that, on February 14, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") has filed written notifications on behalf of Bellcore; Camber Corporation ("Camber"); OGIS Ltd. ("OGIS"); Resources Agency of California ("RAC"); and Rutgers, the State University of New Jersey ("Rutgers") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Bellcore, Livingston, NJ; Camber, Huntville, AL; OGIS, Wayland, MA; RAC, Sacramento, CA; and Rutgers, New Brunswick, NJ. Bellcore; Camber; OGIS; RAC; and Rutgers entered into Articles of Collaboration, effective as of December 12, 1994, establishing a consortium to engage in a collaborative research effort of limited duration in order to gain further knowledge in the area of digital libraries technology for locating, accessing, browsing, transporting, and reusing geospatial data, and to better understand the applications of such technology for telecommunications networks, particularly exchange and exchange access service networks.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–14104 Filed 6–8–95; 8:45 am]
BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Citronella Joint Venture

Notice is hereby given that, on April 11, 1995, pursuant to the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), The Citronella Joint Venture (the "Joint Venture") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, S.C. Johnson & Son, Inc., Racine, WI has now become a member of the Joint Venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership remains open and the Joint Venture intends to file additional written notification disclosing all changes in membership.

On December 15, 1993, the Joint Venture filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 26, 1994 (59 Fed. Reg. 3738).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–14105 Filed 6–8–95; 8:45 am]
BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Fieldbus Foundation

Notice is hereby given that, on April 6, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Fieldbus Foundation ("Fieldbus") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new members are as follows: Alfa Laval Automation AB, Malmo, SWEDEN; Caltex Services Corporation, Dallas, TX; GSC Precision Controls Division of DA-Tech, Ivyland, PA; Klaus Fischer GmbH, Bad Salzuflen, GERMANY; Milltronics Ltd., Ontario, CANADA; Monsanto Company, St. Louis MO; Shell Oil Co., Houston, TX; VEGA Grieshaber KG, Schiltach GERMANY: and WorldFIP Europe, Vernevil Enhalatte, FRANCE. In addition, Square D Company changed its name to AEG Schneider Automation, Inc., N. Andover, MA.

No other change shave been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Fieldbus intends to file additional written notification disclosing all changes in membership.

On May 7, 1993, Fieldbus filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act of September 23, 1993 (58 Fed. Reg. 49529).

The last notification was filed with the Department on December 8, 1994. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 15, 1995 (60 Fed. Reg. 14003).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–14103 Filed 6–8–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—First Data Health Systems Corporation

Notice is hereby given that, on January 30, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), First Data Health Systems Corporation, has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: First Data Health Systems Corporation, Charlotte, NC; Hughes Aircraft Company, Fullerton, CA; and The Charlotte-Mecklenburg Hospital Authority, Charlotte, NC.

The nature and objective of the cooperative venture is test-bed research in the analysis of computing and telecommunication technologies applied to the creation of a virtually available patient-centered computer-based healthcare record for use across a diverse healthcare setting, and over heterogeneous computing and telecommunications environments.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–14101 Filed 6–8–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Inframetrics Inc. Cooperative Research Program

Notice is hereby given that, on April 11, 1995, pursuant to the National cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Inframetrics Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of involving the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Inframetrics Inc., Billerica, MA; Rockwell International Corporation, Anaheim, CA; Honeywell Inc., Minneapolis, MN; and New Jersey Institute of Technology, Newark, NJ. The objective of the joint venture is to form a cooperative research program (Agreement MDA972–3–0022) under an Advanced Research Project Agency (ARPA) Technology Reinvestment Project (TRP) for the purpose of developing low-cost uncooled infrared sensors and component technology.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–14100 Filed 6–8–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—VISA Interactive, Inc.

Notice is hereby given that, on October 28, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Visa International Service Association ("Visa International") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) The identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are the member financial institutions of VISA International, Foster City, CA, and their constituent National Group members of VISA International. The name of the joint venture is VISA Interactive, Inc., Herndon, VA. The member financial institutions of VISA International comprise approximately 18,000 commercial banks, thrifts, credit unions and similar banking institutions in the United States and most foreign jurisdictions. In many countries where member financial institutions of VISA International operate, they have formed National Group Members, which are also member of VISA International. The actual list of members changes constantly as new members join and members cease business or resign for various business-related reasons.

Visa Interactive, Inc., wholly-owned by the joint venture was formed for the purpose of researching and developing data processing and data communications systems for, and the production of, electronic banking and payment services and information services ancillary thereto, to be initiated by consumers or commercial and non-profit entities that are customers of the member financial institutions of Visa International. The services produced by the joint venture would be marketed by the member financial institutions to their customers. The technology under development would: (1) Allow customers to communicate with their financial institution using devices such as touch-tone telephones, personal computers, "smart telephones" (telephones which have additional functionality based on computing and information storage capabilities), "personal digital assistants" (portable computing and communications devices) and other devices as they emerge; (2) allow customers using such electronic devices to transact business with their financial institution similar to transactions presently transacted at automated teller machines and additional functions presently under development; (3) allow customers to order their financial institution to pay bills on their behalf, schedule the payment of such bills and cancel scheduled payments prior to their execution, and track the status of such payment orders; (4) process the transactions described above, including the routing of payments to numerous potential payees of bill payment transactions, and provide automated accounting and customer service capabilities to member financial institutions whose customers use the service; (5) provide authorization, clearing and settlement of resulting financial transactions; (6) develop standards for data communications between customers' electronic devices and service providers and between financial institutions and the processing systems; (7) develop standards for identifying payees capable of receiving electronic payments through the system and for routing payments to them; and (8) facilitate the interactive communication of additional information which does not necessarily represent financial transactions.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–14102 Filed 6–8–95; 8:45 am]

BILLING CODE 4410–01–M

Immigration and Naturalization Service

[INS No. 1725–95]

Citizens Advisory Panel Meeting

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of meeting.

SUMMARY: The Immigration and Naturalization Service (Service) in accordance with the Federal Advisory Committee Act [5 U.S.C. App. 2] and 41 CFR 101–6.1001–101–6.1035 (1992), has established a Citizens' Advisory panel (CAP) to provide the Department of Justice with recommendations on ways to reduce the number of complaints of abuse made against employees of the Service, and to minimize or eliminate the causes for those complaints. This notice announces the CAP's forthcoming meeting and the agenda for the meeting.

DATES: July 12–14, 1995 at 8 a.m.

ADDRESSES: Doubletree Hotel at Horton Plaza, 910 Broadway Circle, Plaza Meeting Room, Second Floor, San Diego, CA 92101.

FOR FURTHER INFORMATION CONTACT: Janice Pavlik, CAP Designated Federal official (DFO), Immigration and naturalization Service, Room 3260, Chester Arthur Building, 425 I Street NW., Washington, DC 20536, Telephone (202) 514–2373.

SUPPLEMENTARY INFORMATION: Pursuant to the charging language of the Senate Appropriations Committee Report 102–331 on the FY 1993 Budget for the Immigration and Naturalization Service, Department of Justice, the Service established a Citizens' Advisory Panel for the purpose of providing recommendations to the Attorney General on ways to reduce the number of complaints of abuse made against employees of the Service and, most importantly, to minimize or eliminate the causes for those complaints. The CAP is authorized by the Attorney General to (1) Accept and review civilian complaints made against Service employees, and (2) review the systems and procedures used by the Service for responding to such complaints. (February 11, 1994 at 59 FR 6658)

Summary of Agenda

The principal purpose of the meeting will be a presentation and general discussion of the current process for reviewing complaints of abuse against INS employees.

Public Participation

The CAP meeting is open to the interested public, but limited to the space available. Persons wishing to attend should notify the CAP DFO at least 2 days prior to the meeting by contacting the DFO at (202) 514–2373. After July 3, 1995, contact Armand Olvera at the San Diego Border Patrol Sector (619)–662–7251. Any hearing challenged individuals wishing to attend please contact the DFO so services can be arranged.

Any member of the public may file a written statement with the CAP DFO before the meeting. Materials submitted at the meeting, should be submitted in 20 copies. The CAP Chairperson will permit members of the public to present oral statements at the meeting with prior registration.

Minutes of the meeting will be available on request from the CAP DFO.

Dated: May 23, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–14125 Filed 6–8–95; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by

writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled "General Wage Determination Issued Under the Davis-Bacon and related Acts" are listed by Volume and State:

VOLUME I

Vermont:
VT950026 (Jun. 09, 1995)
VT950027 (Jun. 09, 1995)
VT950028 (Jun. 09, 1995)
VT950029 (Jun. 09, 1995)
VT950030 (Jun. 09, 1995)
VT950031 (Jun. 09, 1995)
VT950032 (Jun. 09, 1995)
VT950033 (Jun. 09, 1995)
VT950034 (Jun. 09, 1995)
VT950035 (Jun. 09, 1995)
VT950036 (Jun. 09, 1995)
VT950037 (Jun. 09, 1995)
VT950038 (Jun. 09, 1995)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

VOLUME I

Connecticut:
CT950001 (Feb. 10, 1995)
CT950003 (Feb. 10, 1995)
CT950004 (Feb. 10, 1995)
Massachusetts:
MA950001 (Feb. 10, 1995)
MA950002 (Feb. 10, 1995)
MA950003 (Feb. 10, 1995)
MA950005 (Feb. 10, 1995)
MA950006 (Feb. 10, 1995)
MA950007 (Feb. 10, 1995)
MA950008 (Feb. 10, 1995)
MA950009 (Feb. 10, 1995)
MA950010 (Feb. 10, 1995)
MA950017 (Feb. 10, 1995)
MA950018 (Feb. 10, 1995)
MA950019 (Feb. 10, 1995)
MA950020 (Feb. 10, 1995)
MA950021 (Feb. 10, 1995)
New York:
NY950006 (Feb. 10, 1995)
NY950020 (Feb. 10, 1995)
NY950042 (Feb. 10, 1995)
Vermont:
VT950002 (Feb. 10, 1995)

VOLUME II

District of Columbia:
DC950001 (Feb. 10, 1995)
DC950002 (Feb. 10, 1995)
Delaware:
DE950002 (Feb. 10, 1995)
DE950004 (Feb. 10, 1995)
DE950005 (Feb. 10, 1995)
DE950009 (Feb. 10, 1995)
Maryland:
MD950002 (Feb. 10, 1995)
MD950008 (Feb. 10, 1995)
MD950015 (Feb. 10, 1995)
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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which included all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 2nd day of June 1995.

Alan L. Moss,

Director, Division of Wage Determination.

[FR Doc. 95–13912 Filed 6–8–95; 8:45 am]

BILLING CODE 4510–27–M

Occupational Safety and Health Administration

[Docket No. NRTL–2–94]

Electro-Test, Inc.

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of Application for Recognition as a Nationally Recognized Testing Laboratory, and Preliminary Finding.

SUMMARY: This notice announces the application of Electro-Test, Inc. for recognition as a National Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7, and presents the Agency's preliminary finding.

DATES: The last date for interested parties to submit comments is August 8, 1995.

ADDRESSES: Send comments to: NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor—Room N3653, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Room N3653, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

Notice of Application

Notice is hereby given that Electro-Test, Inc. (ETI) has made application pursuant to section 6(b) of the Occupational Safety and Health Act of 1970, (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 1–90 (55 FR 9033), and 29 CFR 1910.7, for recognition as a Nationally Recognized Testing Laboratory.

The addresses of the laboratories covered by this application are:

Electro-Test, Inc., 5645 Gibraltar Drive, Pleasanton, California 94588

Electro-Test, Inc., 5370 E. Hunter Avenue, Anaheim, California 92807

Background

Electro-Test, Inc., according to the applicant, is a privately held corporation incorporated in the State of California in 1971.

Regarding the merits of the application, the applicant contends that it meets the requirements of 29 CFR 1910.7 for recognition to certify products in the areas of testing which it has specified. See Exhibit 2A.

Electro-Test, Inc. states that its application documents demonstrate that for each specified item of equipment or material to be certified, it has the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform testing and examination of equipment and materials for workplace safety purposes to determine conformance with appropriate product test standards.

The applicant states also that it shall provide, to the extent needed for the particular equipment or materials listed, labeled, or accepted, the following controls or services:

(i) Implementation of control procedures for identifying the listed and labeled equipment or materials.

(ii) Inspection of the run of such item at factories for product evaluation purposes to assure conformance with the test standards

(iii) Conduction of field inspections to monitor and to insure the proper use of its identifying mark or labels on products.

ETI claims that it is completely independent of employers subject to the tested equipment requirements, and of any manufacturers or vendors of equipment or materials being tested for these purposes.

The applicant also claims that it maintains effective procedures for producing creditable findings or reports that are objective and without bias, and for handling complaints and disputes under a fair and reasonable system.

ETI states that it has the capability to perform field evaluations and code compliance inspections of unique and non-listed equipment or materials. It claims that it has a large inventory of portable test equipment that can support these activities at the customers' facilities. These services are supported by written procedures, quality control, and trained personnel.

In summary, Electro-Test, Inc. claims that it maintains the experience, expertise, personnel, organization, equipment, and facilities suitable for accreditation as an OSHA Nationally Recognized Testing Laboratory.

Facilities

ETI's Pleasanton facility consists of 33,000 square feet of space, consisting of a small testing area, storage, shipping/receiving, library, training room, personnel offices, calibration laboratory, and a forensic laboratory. All laboratories are temperature controlled, and supplied with necessary utilities. ETI has owned the facility since 1992.

The Anaheim facility contains some 9,500 square feet of space. The facility houses a small testing laboratory, shipping/receiving and storage areas, calibration laboratory, administrative offices, and conference room. Most of the testing at Anaheim is performed at the site of the installation rather than at the ETI facility. ETI test engineers perform site testing.

Standards

Electro-Test, Inc., desires recognition for testing and certification of products when tested for compliance with the following test standard, which is appropriate within the meaning of 29 CFR 1910.7(c): ANSI/UL 508—Industrial Control Equipment.

Preliminary Finding

Electro-Test, Inc. addressed all of the criteria which had to be met for recognition as an NRTL in its initial application and in its further correspondence. For example, the applicant submitted a list of its test equipment and instrumentation; a roster

of its personnel including resumes of those in key positions and copies of position descriptions; copies of a typical test report; a summary of its listing, labeling, and follow-up services; a statement of its independence as a testing laboratory; appeals procedure; calibration laboratories; and a copy of its Operations Manuals for Quality control and Audit, Test Form Instruction, and Compliance Labeling Field.

Nine major areas were examined in depth during the on-site laboratory evaluation: facility; test equipment; calibration program; test and evaluation procedures; test reports; records; quality assurance program; follow-up listing program; and personnel.

The discrepancies noted by the survey team during the on-site evaluations were adequately responded to [Exs. 2B(2) and 2C(2)] following the final on-site evaluations [Exs. 2B(1) and 2C(1)]. With the preparation of the final report, the survey team was satisfied that the testing facility appeared to meet the necessary criteria required by the standard, and so noted in the On-Site Review Reports (Surveys). (See Exs. 2B and 2C).

Following a review of the application file and the on-site survey reports of the ETI Pleasanton and Anaheim, California facilities, the NRTL Recognition Program staff concluded that the applicant appeared to have met the requirements for recognition as a Nationally Recognized Testing Laboratory for the above noted facilities and, therefore, recommended to the Assistant Secretary that the application be preliminarily approved.

Based upon a review of the completed application file and the recommendation of the staff, the Assistant Secretary has made a preliminary finding that the Electro-Test, Inc. facilities for which accreditation was requested (Pleasanton and Anaheim, California) can meet the requirements for recognition as required by 29 CFR 1910.7.

All interested members of the public are invited to supply detailed reasons and evidence supporting or challenging the sufficiency of the applicant's having met the requirements for recognition as a Nationally Recognized Testing Laboratory, as well as Appendix A, of 29 CFR 1910.7. Submission of pertinent written documents and exhibits shall be made no later than August 8, 1995, and must be addressed to the NRTL Recognition Program, Office of Variance Determination, Room N 3653, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Copies of the ETI, Inc. application, the laboratory survey report, and all submitted comments, as received, (Docket No. NRTL–2–94), are available for inspection and duplication at the Docket Office, Room N 2634, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address.

The Assistant Secretary's final decision on whether the applicant (Electro-Test, Inc.) satisfies the requirements for recognition as an NRTL will be made on the basis of the entire record including the public submissions and any further proceedings that the Assistant Secretary may consider appropriate in accordance with Appendix A of Section 1910.7.

Signed at Washington, DC, this 5th day of June, 1995.

Joseph A. Dear,

Assistant Secretary.

[FR Doc. 95–14181 Filed 6–8–95; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

DATES: Request for copies must be received in writing on or before July 24, 1995. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, College Park, MD 20740. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of Commerce, Economic Development Administration (N1–378–95–1). Public Works Project Case Files.

2. Department of Interior (N1–48–93–4). Appointment books and daily schedules maintained within the Office of the Secretary.

3. Department of State, Bureau of Legislative Affairs (N1–59–95–8). Copies of documents sent to Congress in response to requests.

4. Department of State, Bureau of Public Affairs (N1–59–95–10). Electronic print files for publications of the Office of the Historian.

5. Administration for Children and Families (N1–292–95–1). Reduction in retention period for audit records.

6. Centers for Disease Control and Prevention (N1–442–95–2). Infant Screening Quality Assurance Program Records.

7. Environmental Protection Agency (N1–412–94–3). Revision of Superfund records schedule.

8. Federal Aviation Administration (N1–237–92–4). Enforcement Information System tapes (public use tapes are proposed for permanent retention).

9. Federal Retirement Thrift Investment Board (N1–474–95–1). Forms filed by participants.

10. Office of Personnel Management (N1–478–95–1). Application records for the Federal Executive Institute.

11. Office of Personnel Management (N1–478–95–3). Databases on Federal executive positions and executive personnel.

12. United States Information Agency, Office of Administration (N1–306–95–2). Routine and facilitative records relating to executive reservists and agency programs.

13. United States Information Agency, Bureau of Information (N1–306–95–6). Photographs used in the production of USIA World and predecessor or successor "house publications."

Dated: May 26, 1995.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 95–14119 Filed 6–8–95; 8:45 am]

BILLING CODE 7515–01–M

Privacy Act of 1974; Transfer of Records

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of transfer of records subject to the Privacy Act to the National Archives.

SUMMARY: Records retrievable by personal identifiers which are transferred to the National Archives of the United States are exempt from most provisions of the Privacy Act of 1974 (5 U.S.C. 552a) except for publication of a notice in the **Federal Register**. NARA publishes a notice of the records newly transferred to the National Archives of the United States which were maintained by the originating agency as a system of records subject to the Privacy Act.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Kurtz, Assistant Archivist for the National Archives, on (301) 713–7000.

SUPPLEMENTARY INFORMATION: In accordance with section (l)(1)(3) of the Privacy Act, archival records transferred from executive branch agencies to the National Archives of the United States are not subject to the provisions of the Act relating to access, disclosure, and amendment. The Privacy Act does require that a notice appear in the **Federal Register** when executive branch systems of records retrievable by personal identifiers are transferred to the National Archives of the United States. After transfer of records retrievable by personal identifiers to the National Archives of the United States, NARA does not maintain these records as a separate system of records. NARA will attempt to locate specific records about an individual in any system of records described in a Privacy Act Notice as being part of the National Archives of the United States. Furthermore, records in the National Archives of the United States may not be amended, and NARA will not consider any requests for amendment.

Archival records maintained by NARA are arranged by Record Group depending on the agency of origin. Within each Record Group, the records are arranged by series, thereunder generally by filing unit, and thereunder by document or groups of documents. The arrangement at the series level or below is generally the one used by the originating agency. Usually, a system of records corresponds to a series.

In this notice, each system is identified by the system name used by the executive branch agency that accumulated the records. That system name is followed by information in parentheses about the National Archives Record Group to which records in the system have been allocated. In the section of the notice covering categories of records in the system, the specific segment of the system transferred to the National Archives is identified by the accession number assigned to the system segment when it was transferred to the National Archives and the series title associated with the system in the National Archives.

The following systems of records, or parts thereof, retrievable by personal identifiers have been transferred to the National Archives since the last notice published at 58 FR 28633 (May 14, 1993):

1. *System name:* Immigration and Naturalization Service Index System (part of National Archives Record Group 85, Records of the Immigration and Naturalization Service).

System location: National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740, and National Archives—Pacific Northwest Region, 6125 Sand Point Way, Seattle, WA, 98115.

Categories of individuals covered by the system: Records in the National Archives cover: (1) Individuals named or referenced in documents classified for national security reasons; (2) aliens required to report addresses; (3) individuals covered by provisions of the immigration and nationality laws of the United States; (4) individuals named in correspondence received, including INS employees and past employees; federal, state, and local officials; and members of the general public; (5) examinations indexes; (6) Freedom of Information correspondence control index; (7) individuals who have arrived or departed by aircraft or vessel at a United States port; (8) naturalization and citizenship indexes; (9) aliens lawfully admitted for permanent residence, commuters and other authorized frequent border crossings, and nonimmigrant persons other than transients.

Categories of records in the system: Records in the National Archives in Washington covered by this notice are the Statistical Reporting System, 1977–1991, consisting of the Deportations Series (G–174), Lawful Immigrants Series (G–173), and Required Departure Series (G–189). This system contains data files, record layouts, codebooks, other appropriate documentation, and administrative, immigration, central subject, class 146–13–0/146–13–2 case, and class 146–13–2 legal case files. (NARA Accession Numbers NN3–085–093–001 through NN3–085–093–004, and NN3–085–094–001 through NN3–085–094–005). Records in Seattle are Chinese Exclusion Act case files, 1908–1943. (NARA Accession Number 10NS–085–093–001).

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(1)(l)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the General Notice published by the National Archives and Records Administration in 40 FR 45786 (October 2, 1975).

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage: Paper records in archival containers.

Electronic database stored on magnetic tape.

b. Retrievability: Generally, records are indexed and retrievable by name and/or "A" or "C" file number.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.

d. Retention and disposal: Records are retained permanently.

System manager and address: The system manager is the Assistant Archivist for Special and Regional Archives, National Archives and Records Administration, 7th and Pennsylvania Avenue, NW, Washington, DC 20408.

Notification procedures: Individuals desiring information from or about these records should direct inquiries to the appropriate system manager.

Records access procedures: Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the Guide to the National Archives of the United States, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR part 1253.

2. *System name:* Enlisted Master File Automated System (part of National Archives Record Group 24, Records of the Bureau of Naval Personnel).

System location: National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740.

Categories of individuals covered by the system: Records in the National Archives cover all Navy enlisted personnel: active and inactive.

Categories of records in the system: Records in the National Archives covered by this notice include individual personnel records of all military personnel in the active duty navy, 1990; and enlisted personnel history and attrition files, 1981. (NARA Accession Numbers NN3–024–093–001 and NN3–024–093–002).

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(1)(l)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage: Electronic database stored on magnetic tape.

b. Retrievability: Automated records are retrieved by social security number.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.

d. Retention and disposal: Records are retained permanently.

System manager and address: The system manager is the Assistant Archivist for Special and Regional Archives, National Archives and Records Administration, 7th and Pennsylvania Avenue, NW., Washington, DC 20408.

Notification procedures: Individuals desiring information from or about these records should direct inquiries to the system manager.

Records access procedures: Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the Guide to the National Archives of the United States, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR part 1253.

3. *System name:* Officer Master File Automated System (part of National Archives Record Group 24, Records of the Bureau of Naval Personnel).

System location: National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740.

Categories of individuals covered by the system: Records in the National Archives cover all Naval officers: commissioned, warrant, active, and inactive; officer candidates; and Naval Reserve Officer Training Corps personnel.

Categories of records in the system: Records in the National Archives covered by this notice include individual personnel records of all military personnel in the active duty Navy, 1990; and officer history and attrition files, 1991–1992. (NARA Accession Numbers NN3–024–093–001, NN3–024–093–003, and NN3–024–093–004).

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(1)(l)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage: Electronic database stored on magnetic tape.

b. Retrievability: Automated records are retrieved by social security account number.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.

d. Retention and disposal: Records are retained permanently.

System manager and address: The system manager is the Assistant Archivist for Special and Regional Archives, National Archives and Records Administration, 7th and Pennsylvania Avenue, NW, Washington, DC 20408.

Notification procedures: Individuals desiring information from or about these records should direct inquiries to the system manager.

Records access procedures: Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the Guide to the National Archives of the United States, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR part 1253.

4. *System name:* USAINSCOM Investigative Files System (part of National Archives Record Group 319, Records of the Army Staff). System location: National Archives Building, 7th and Pennsylvania Avenue, NW, Washington, DC 20408.

Categories of individuals covered by the system: Records in the National Archives cover military personnel of the U.S. Army; aliens granted limited access authorization to U.S. Defense Information; DOD alien personnel investigated for visa purposes; and individuals about whom there is reasonable basis to believe that they are engaged in, or plan to engage in specific adverse activities.

Categories of records in the system: Records in the National Archives covered by this notice include Army investigative material, technical coverage, and third agency material, 1936–1976. (NN3–319–093–001, and NN3–319–094–001).

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the General Notice published by the National Archives and Records Administration in 40 FR 45786 (October 2, 1975).

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage: Paper records stored in archival containers.

b. Retrievability: Maintained in alphabetical order by surname of individual.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.

d. Retention and disposal: Records are retained permanently.

System manager and address: The system manager is the Assistant Archivist for the National Archives, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740.

Notification procedures: Individuals desiring information from or about these records should direct inquiries to the system manager.

Records access procedures: Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States,* which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR part 1253.

5. *System name:* Biomedical Research: Records of Subjects in National Institute of Dental Research Contracted Epidemiological and Biometric Studies, HHS/NIH/NIDR (part of National Archives Record Group 443, Records of the National Institutes of Health).

System location: National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740.

Categories of individuals covered by the system: Records in the National Archives cover voluntary participants in epidemiological and biometric studies sponsored by NIDR who are minors, both males and females, with known or suspected diseases or disorders of the teeth and supporting structures, as well as normal or nonsuspect individuals in control or study groups for purposes of comparison.

Categories of records in the system: Records in the National Archives covered by this notice include the Survey of Oral Health in U.S. School Children, 1986–1987. (NARA Accession Number NN3–443–093–003). Public use data file documentation and survey methodology are also included.

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(1)(l)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage: Electronic records on magnetic tape. Paper records in archival containers.

b. Retrievability: Information is retrieved by name and/or a participant identification number.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.

d. Retention and disposal: Records are retained permanently.

System manager and address: The system manager is the Assistant Archivist for Special and Regional Archives, National Archives and Records Administration, 7th and Pennsylvania Avenue, NW, Washington, DC 20408.

Notification procedures: Individuals desiring information from or about these records should direct inquiries to the system manager.

Records access procedures: Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States,* which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR part 1253.

6. *System name:* Clinical Research: Records of Subjects in Intramural Research, Epidemiology, Demography and Biometry Studies on Aging, HHS/NIH/NIA (part of National Archives Record Group 443, Records of the National Institutes of Health).

System location: National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740.

Categories of individuals covered by the system: Records in the National Archives cover individuals whose physical, genetic, social, psychological, cultural, economic, environmental, behavioral, pharmacological, or nutritional conditions or habits are studied in relationship to the normal aging process and/or diseases and other normal or abnormal physical or psychological conditions of the aged.

Categories of records in the system: Records in the National Archives covered by this notice include

Established Populations for Epidemiologic Studies of the Elderly, 1981–1983, (EPESE). (NARA Accession Number NN3–443–093–004). Public use data file along with machine-readable codebook/documentation and paper copy codebook, data collection instrument, and frequencies are also included.

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage: Electronic records on magnetic tape. Paper records in archival containers.

b. Retrievability: Information is retrieved by name, code number and/or social security number.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.

d. Retention and disposal: Records are retained permanently.

System manager and address: The system manager is the Assistant Archivist for Special and Regional Archives, National Archives and Records Administration, 7th and Pennsylvania Avenue, NW, Washington, DC 20408.

Notification procedures: Individuals desiring information from or about these records should direct inquiries to the system manager.

Records access procedures: Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR part 1253.

7. *System name:* Directorate of Operations Records System (part of National Archives Record Group 226, Records of the Office of Strategic Services).

System location: National Archives Building, 7th and Pennsylvania Avenue, NW, Washington, DC 20408.

Categories of individuals covered by the system: Records in the National Archives cover individuals who are of foreign intelligence or foreign counterintelligence interest to the CIA.

Categories of records in the system: Records in the National Archives covered by this notice are central files, OSS station special funds finance records, Washington OSS operation and support records, OSS field office files, OSS Washington/London Special Funds Branch records, and miscellaneous documents, 1941–1951. (NARA Accession Numbers NN3–226–093–001, NN3–226–093–002, and NN3–226–094–001).

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the General Notice published by the National Archives and Records Administration in 40 FR 45786 (October 2, 1975).

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage: Paper records in archival containers.

b. Retrievability: By name.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.

d. Retention and disposal: Records are retained permanently.

System manager and address: The system manager is the Assistant Archivist for the National Archives, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD, 20740

Notification procedures: Individuals desiring information from or about these records should direct inquiries to the system manager.

Records access procedures: Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR part 1253.

8. *System name:* General Personnel Records; File on Position Classification Appeals, Job Grading Appeals, and Retained Grade or Pay Appeals; and Appeal and Administrative Review Records (part of National Archives Record Group 146, Records of the U. S. Civil Service Commission, and part of National Archives Record Group 478, Records of the Office of Personnel Management).

System location: National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740, and National Archives Building, 7th and Pennsylvania Avenue, NW, Washington, DC 20408.

Categories of individuals covered by the system: Records in the National Archives cover current and former Federal employees as defined in 5 U.S.C. 2105, current and former Federal employees who have filed a position classification appeal and a retained grade or pay appeal, and current and former Federal employees of the OPM.

Categories of records in the system: Records in the National Archives covered by this notice include the Central Personnel Data File (CPDF), 1977 through 1983, comprising electronic databases of personal and employment-related information on Federal workers. (NARA Accession Numbers NN3–146–093–001, NN3–478–093–002, and NN3–478–094–001). A definitive list of CPDF data elements is contained in Federal Personnel Manual Supplement 293–31, Personnel Data Standards. Also, included are organizational and functional files documenting both internal and external Civil Service Commission operations, policies, and precedents, 1920–1964. (NARA Accession Number NN3–146–094–004).

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the General Notice published by the National Archives and Records Administration in 40 FR 45786 (October 2, 1975).

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage: Electronic database stored on magnetic tape. Paper records in archival containers.

b. Retrievability: These records are retrieved by various combinations of name, birth date, social security number, or identification number of the individual on whom they are maintained.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.

d. Retention and disposal: Records are retained permanently.

System manager and address: The system manager (for electronic records) is the Assistant Archivist for Special and Regional Archives, National Archives and Records Administration, 7th and Pennsylvania Avenue NW., Washington, DC 20408, and (for textual records) the Assistant Archivist for the National Archives, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740.

Notification procedures: Individuals desiring information from or about these records should direct inquiries to the system manager.

Records access procedures: Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR part 1253.

9. *System name:* Criminal Case Files (part of National Archives Record Group 118, Records of U.S. Attorneys and Marshals).

System location: National Archives—Mid-Atlantic Region, 9th and Market Streets, Room 1350, Philadelphia, PA 19107; and National Archives—Southeast Region, 1557 St. Joseph Avenue, East Point, GA 30344.

Categories of individuals covered by the system: Records in the National Archives cover (a) individuals charged with violations; (b) individuals being investigated for violations; (c) defense counsel(s); (d) information sources; (e) individuals relevant to development of criminal cases; (f) individuals investigated, but prosecution declined; (g) individuals referred to in potential or actual cases and matters of concern to a U.S. attorney's office; and individuals placed into the Department's Pretrial Diversion Program.

Categories of records in the system: Records in the National Archives covered by this notice include (in Philadelphia) case files for significant cases, 1970–1978 and 1980–1981. (NARA Accession Numbers 3NS–118–093–008, 3NS–118–093–009, 3NS–118–093–010, and 3NS–118–093–013.) Also (in East Point), a single significant criminal case from Nashville, 1946. (NARA Accession Number 4NS–118–093–011.)

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(1)(l)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the appendix following this notice.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage: Paper records stored in archival containers.

b. Retrievability: Primarily by name of person, case number, complaint or court docket number.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.

d. Retention and disposal: Records are retained permanently.

System manager and address: The system manager is the Assistant Archivist for Special and Regional Archives, National Archives and Records Administration, 7th and Pennsylvania Avenue NW., Washington, DC 20408.

Notification procedures: Individuals desiring information from or about these records should direct inquiries to the system manager.

Records access procedures: Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR part 1253.

10. *System name:* Civil Case Files (part of National Archives Record Group 118, Records of U.S. Attorneys and Marshals).

System location: National Archives—Mid-Atlantic Region, 9th and Market Streets, Room 1350, Philadelphia, PA 19107.

Categories of individuals covered by the system: Records in the National Archives cover (1) individuals being investigated in anticipation of civil suits; (2) individuals involved in civil suits; (3) defense counsel(s); (4) information sources; and (5) individuals relevant to the development of civil suits.

Categories of records in the system: Records in the National Archives covered by this notice include case files for significant cases, 1970–1978 and 1980–1981. (NARA Accession Numbers 3NS–118–093–008, 3NS–118–093–009, 3NS–118–093–010, and 3NS–118–093–013.) Also, the case file for *U.S. vs. Riccobene*, 1982. (NARA Accession Number 3NS–118–093–012.)

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(1)(l)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the appendix following this notice.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage: Paper records stored in archival containers.

b. Retrievability: Primarily by name of person, case number, complaint or court docket number.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.

d. Retention and disposal: Records are retained permanently.

System manager and address: The system manager is the Assistant Archivist for Special and Regional Archives, National Archives and Records Administration, 7th and Pennsylvania Avenue NW., Washington, DC 20408.

Notification procedures: Individuals desiring information from or about these records should direct inquiries to the system manager.

Records access procedures: Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR part 1253.

11. *System name:* Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of the National Institutes of Health, HHS/NIH/OD (part of National Archives Record Group 443, Records of the National Institutes of Health).

System location: National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740.

Categories of individuals covered by the system: Records in the National Archives cover those who provide information or opinions that are useful in evaluating programs or activities of the NIH, other persons who have participated in or benefitted from NIH programs or activities; or other persons included in evaluation studies for purposes of comparison.

Categories of records in the system: Records in the National Archives covered by this notice include Research Analysis and Evaluation Branch NCI Grant Principal Investigator Files, 1938–1990. Includes resumes, grant summary statements, and progress reports arranged by investigator's name. (NARA Accession Numbers NN3–443–093–005 and NN3–443–093–007).

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the General Notice published by the National Archives and Records Administration in 40 FR 45786 (October 2, 1975).

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage: Paper records in archival containers.

b. Retrievability: Information is retrieved by name and/or participant identification number within each evaluation study.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.

d. Retention and disposal: Records are retained permanently.

System manager and address: The system manager is the Assistant Archivist for the National Archives, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD, 20740.

Notification procedures: Individuals desiring information from or about these records should direct inquiries to the system manager.

Records access procedures: Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR part 1253.

12. *System name:* Personnel Files–TVA (part of National Archives Record Group 142, Records of the Tennessee Valley Authority).

System location: National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740.

Categories of individuals covered by the system: Records in the National Archives cover current and former TVA employees and applicants for employment.

Categories of records in the system: Records in the National Archives covered by this notice include the Human Resource Information System (HRS)–formerly Employee Information System (EIS), Annual Snapshot, 1985–1993, with documentation; unaltered restricted version and public use version. (NARA Accession Numbers NN3–142–92–002 through NN3–142–092–008, NN3–142–094–001, and NN3–142–094–002).

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage: Electronic records on magnetic tape. Paper records in archival containers.

b. Retrievability: Records are indexed by name and social security number.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.

d. Retention and disposal: Records are retained permanently.

System manager and address: The system manager is the Assistant Archivist for Special and Regional Archives, National Archives and Records Administration, 7th and Pennsylvania Avenue, NW., Washington, DC 20408.

Notification procedures: Individuals desiring information from or about these records should direct inquiries to the system manager.

Records access procedures: Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit

the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR part 1253.

13. *System name:* General Files of the Office of the Attorney General (part of National Archives Record Group 60, General Records of the Department of Justice).

System location: National Archives Building, 7th and Pennsylvania Avenue, NW., Washington, DC 20408.

Categories of individuals covered by the system: Records in the National Archives cover individuals who relate to official Federal investigations, policy decisions, and administrative matters of such significance that the Attorney General maintains information indexed to the name of that individual including, but not limited to, subjects of litigation, targets of investigations, members and staff members of Congress, upper echelon government officials, and individuals of national prominence or notoriety.

Categories of records in the system: Records in the National Archives covered by this notice include files of Robert L. Keuch, Special Counsel to the Attorney General on the House Select Committee on Assassinations, 1977–1979. (NARA Accession Number NN3–060–092–004).

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the General Notice published by the National Archives and Records Administration in 40 FR 45786 (October 2, 1975).

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage: Paper records in archival containers.

b. Retrievability: Records created before 1975 are indexed and retrieved manually by subject title. Records created since 1975 are indexed and retrieved manually by subject title, individual's name, the department component which created the record, and by name of the Attorney General under whose administration the records were created.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.

d. Retention and disposal: Records are retained permanently.

System manager and address: The system manager is the Assistant Archivist for the National Archives, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740.

Notification procedures: Individuals desiring information from or about these records should direct inquiries to the system manager.

Records access procedures: Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR part 1253.

14. *System name:* Executive Clemency Files (part of National Archives Record Group 204, Records of the Office of the Pardon Attorney).

System location: National Archives Building, 7th and Pennsylvania Avenue, NW., Washington, DC 20408.

Categories of individuals covered by the system: Records in the National Archives cover individuals who have applied for or been granted executive clemency.

Categories of records in the system: Records in the National Archives covered by this notice include Pardon Attorney Index/Docket Cards, 1945–1969. (NARA Accession Number NN3–204–092–002).

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage: Paper records stored in archival containers.

b. Retrievability: Information is retrieved by reference to the file number assigned to the name of each applicant for clemency.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.

d. Retention and disposal: Records are retained permanently.

System manager and address: The system manager is the Assistant Archivist for the National Archives, National Archives and Records Administration, 8601 Adelphi Rd., College Park, MD 20740.

Notification procedures: Individuals desiring information from or about these records should direct inquiries to the system manager.

Records access procedures: Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR part 1253.

15. *System name: Recruiting, Examination, and Placement Records (part of National Archives Record Group 220, Records of Temporary Committees, Commissions, and Boards).*

System location: National Archives Building, 7th and Pennsylvania Avenue, NW., Washington, DC 20408.

Categories of individuals covered by the system: Records in the National Archives cover: (1) Persons who have applied to the office or agencies for federal employment and current and former federal employees submitting applications for other positions in the

federal Service. (2) Applicants for federal employment believed or found to be unsuitable for employment on medical grounds.

Categories of records in the system: Records in the National Archives covered by this notice include applications, 1965–1991, and trip reports, 1983–1988, of the Presidential Commission on White House Fellowships. (NARA Accession Number NN3–220–092–002).

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the General Notice published by the National Archives and Records Administration in 40 FR 45786 (October 2, 1975).

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage: Paper records in archival containers.

b. Retrievability: Records are retrieved by the name, date of birth, social security number, and /or identification number assigned to the individual on whom they are maintained.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.

d. Retention and disposal: Records are retained permanently.

System manager and address: The system manager is the Assistant Archivist for the National Archives, National Archives and Records Administration, 8601 Adelphi Rd., College Park, MD 20740.

Notification procedures: Individuals desiring information from or about these records should direct inquiries to the system manager.

Records access procedures: Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the Guide to the National Archives of the United States, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR part 1253.

16. *System name:* USAINSCOM Investigative Files System (part of National Archives Record Group 338, Records of U.S. Army Commands).

System location: National Archives Building, 7th and Pennsylvania Avenue, NW., Washington, DC 20408.

Categories of individuals covered by the system: Records in the National Archives cover military personnel of the U.S. Army; civilian employees of the Department of the Army; industrial or contractor personnel; aliens granted limited access authorization to U.S. Defense Information; and DOD alien personnel investigated for visa purposes.

Categories of records in the system: Records in the National Archives covered by this notice include requests for investigation and attachments such as personal history statements; fingerprint cards; personnel security questionnaires; waivers for release of credit; medical and/or educational records; and National Agency check requests, 1986–1991. (NARA Accession Number NN3–338–092–001).

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(1)(l)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. *Storage:* Paper records stored in archival containers.

b. *Retrievability:* Maintained in terminal digit order by dossier number and social security number.

c. *Safeguards:* Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.

d. *Retention and disposal:* Records are retained permanently.

System manager and address: The system manager is the Assistant Archivist for the National Archives, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740.

Notification procedures: Individuals desiring information from or about these records should direct inquiries to the system manager.

Records access procedures: Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the Guide to the National Archives of the United States, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR part 1253.

17. *System name:* Indian Student Records-Interior, BIA–22 (part of National Archives Record Group 75, Records of the Bureau of Indian Affairs).

System location: National Archives—Pacific Northwest Region, 6125 Sand Point Way, Seattle, WA 98115.

Categories of individuals covered by the system: Records in the National Archives cover students or potential students at BIA schools (including contact schools) and applicants for or recipients of BIA scholarships or educational grants.

Categories of records in the system: Records in the National Archives covered by this notice include student case files, Portland Area Office, 1960–1972, and Mission Correspondence, Tacoma Indian Hospital, 1932–1942. (NARA Accession Numbers 10NS–075–93–001, and 10NS–075–093–018).

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(1)(l)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the General Notice published by the National Archives and Records Administration in 40 FR 45786 (October 2, 1975).

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. *Storage:* Paper records in archival containers.

b. *Retrievability:* Indexed by name of student and filed by student identification number.

c. *Safeguards:* Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.

d. *Retention and disposal:* Records are retained permanently.

System manager and address: The system manager is the Assistant Archivist for Special and Regional Archives, National Archives and Records Administration, 7th and Pennsylvania Avenue, NW., Washington, DC 20408.

Notification procedures: Individuals desiring information from or about these records should direct inquiries to the system manager.

Records access procedures: Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the Guide to the National Archives of the United States, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR part 1253.

18. *System name:* Tribal Rolls-Interior, BIA–7 (part of National Archives Record Group 75, Records of the Bureau of Indian Affairs).

System location: National Archives—Pacific Northwest Region, 6125 Sand Point Way, Seattle, WA 98115.

Categories of individuals covered by the system: Records in the National Archives cover individual Indians who are applying for or have been assigned interests of any kind in Indian tribes, bands, pueblos or corporations.

Categories of records in the system: Records in the National Archives covered by this notice include Tribal operation service files (claims), Portland Area Office, 1972. (NARA Accession Number 10NS–075–093–003).

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 FR part 1256 and in the General Notice published by the National Archives and Records Administration in 40 FR 45786 (October 2, 1975).

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage: Paper records stored in archival containers.

b. Retrievability: Indexed by name, identification numbers, family numbers, etc.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.

d. Retention and disposal: Records are retained permanently.

System manager and address: The system manager is the Assistant Archivist for Special and Regional Archives, National Archives and Records Administration, 7th and Pennsylvania Avenue, NW., Washington, DC 20408.

Notification procedures: Individuals desiring information from or about these records should direct inquiries to the system manager.

Records access procedures: Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the Guide to the National Archives of the United States, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR part 1253.

19. *System name:* Employment Assistance Case Files-Interior, BIA–23 (part of National Archives Record Group 75, Records of the Bureau of Indian Affairs).

System location: National Archives—Pacific Northwest Region, 6125 Sand Point Way, Seattle, WA 98115.

Categories of individuals covered by the system: Records in the National Archives cover individual Indians who are given assistance in connection with direct employment service or adult vocational training.

Categories of records in the system: Records in the National Archives covered by this notice include employment assistance case files, Portland Area Office, 1960–1981. (NARA Accession Numbers 10NS–075–093–005, and 10NS–075–093–006).

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(1)(l)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the General Notice published by the National Archives and Records Administration in 40 FR 45786 (October 2, 1975).

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage: Paper records stored in archival containers.

b. Retrievability: Indexed alphabetically by name of applicant and/or recipient.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.

d. Retention and disposal: Records are retained permanently.

System manager and address: The system manager is the Assistant Archivist for Special and Regional Archives, National Archives and Records Administration, 7th and Pennsylvania Avenue, NW., Washington, DC 20408.

Notification procedures: Individuals desiring information from or about these records should direct inquiries to the system manager.

Records access procedures: Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives

research facilities listed in 36 CFR part 1253.

20. *System name:* USNA Applicants, Candidates, and Midshipmen Records (part of National Archives Record Group 405, Records of the U.S. Naval Academy).

System location: National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740.

Categories of individuals covered by the system: Records in the National Archives cover applicants and candidates for admission and naval academy midshipmen.

Categories of records in the system: Records in the National Archives covered by this notice include records relating to courses and the Student Identification and Student Education databases for the U.S. Naval Academy classes of 1991–1993. (NARA Accession Numbers NN3–405–094–002, NN3–405–094–003, and NN3–405–094–004).

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage: Electronic records on magnetic tape. Paper records stored in archival containers.

b. Retrievability: Records can be retrieved from data base by selection of any data element, e.g., name, address, alpha code, six digit candidate number, or social security number, etc.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.

d. Retention and disposal: Records are retained permanently.

System manager and address: The system manager is the Assistant Archivist for Special and Regional Archives, National Archives and Records Administration, 7th and Pennsylvania Avenue, NW., Washington, DC 20408.

Notification procedures: Individuals desiring information from or about these records should direct inquiries to the system manager.

Records access procedures: Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States,* which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR part 1253.

21. *System name:* Principal Investigator/Proposal File and Associated Records (part of National Archives Record Group 307, Records of the National Science Foundation).

System location: National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740.

Categories of individuals covered by the system: Records in the National Archives cover certain persons who received support from the National Science Foundation, either individually or through an academic institution.

Categories of records in the system: Records in the National Archives covered by this notice include Proposal and Award System Magnetic Media, 1989. (NARA Accession Number NN3–307–094–001). *Routine uses of records maintained in the system, including categories of users and the purpose of such uses:* Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage: Electronic records on magnetic tape.

b. Retrievability: Information can be accessed from the computer database by addressing data contained in the database, including individual names.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.

d. Retention and disposal: Records are retained permanently.

System manager and address: The system manager is the Assistant Archivist for Special and Regional Archives, National Archives and Records Administration, 7th and Pennsylvania Avenue, NW., Washington, DC 20408.

Notification procedures: Individuals desiring information from or about these records should direct inquiries to the system manager.

Records access procedures: Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States,* which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR part 1253.

22. *System name:* 1988 Physician's Practice Costs and Incomes Survey, HHS/HCFA/ORD, (Geographic Cost of Practice Index) (part of National Archives Record Group 440, Records of the Health Care Financing Administration).

System location: National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740.

Categories of individuals covered by the system: Records in the National Archives cover a sample of at least 5,000 physicians who provide patient care at least 20 hours per week in either an office or hospital based setting, and who live in the 50 United States and the District of Columbia.

Categories of records in the system: Records in the National Archives covered by this notice include data tapes and documentation for the Physician's Practice Costs and Incomes Survey (PPCIS), 1988. (NARA Accession Number NN3–440–094–001).

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage: Paper records stored in archival containers. Electronic records on magnetic tape.

b. Retrievability: Information will be retrieved by a unique identifier assigned by the contractor to each physician record.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.

d. Retention and disposal: Records are retained permanently.

System manager and address: The system manager is the Assistant Archivist for Special and Regional Archives, National Archives and Records Administration, 7th and Pennsylvania Avenue, NW, Washington, DC 20408.

Notification procedures: Individuals desiring information from or about these records should direct inquiries to the system manager.

Records access procedures: Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the Guide to the National Archives of the United States, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR part 1253.

23. *System name:* Physician's Practice Costs and Incomes Survey, HHS/HCFA/ORD, (Medicare Economic Index) (part of National Archives Record Group 440, Records of the Health Care Financing Administration).

System location: National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740.

Categories of individuals covered by the system: Records in the National Archives cover a sample of 5,000 physicians who provide patient care at least 20 hours per week in either an office or hospital based setting, and who live in the 50 United States and the District of Columbia.

Categories of records in the system: Records in the National Archives covered by this notice include data tapes and documentation for the Physician's Practice Costs and Incomes Survey (PPCIS), 1983. (NARA Accession Number NN3–440–094–002).

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage: Paper records stored in archival containers. Electronic records on magnetic tape.

b. Retrievability: Information will be retrieved by a unique identifier assigned by the contractor to each physician record.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.

d. Retention and disposal: Records are retained permanently.

System manager and address: The system manager is the Assistant Archivist for Special and Regional Archives, National Archives and Records Administration, 7th and Pennsylvania Avenue, NW, Washington, DC 20408.

Notification procedures: Individuals desiring information from or about these records should direct inquiries to the system manager.

Records access procedures: Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the Guide to the National Archives of the United States, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR part 1253.

24. System name: Secretary's Correspondence Control System (part of National Archives Record Group 207, General Records of the Department of Housing and Urban Development).

System location: National Archives at College Park, 8601 Adelphi Road, College Park, MD, 20740.

Categories of individuals covered by the system: Records in the National Archives cover (1) individuals who correspond with the Secretary or the Under Secretary, (2) individuals whose correspondence has been referred by the White House, other executive agencies, or members of congress to the Secretary or Under Secretary for response.

Categories of records in the system: Records in the National Archives covered by this notice include subject correspondence and a correspondence index, 1960–1978. (NARA Accession Numbers NN3–207–094–002 and NN3–207–094–003).

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(1)(l)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage: Paper records stored in archival containers.

b. Retrievability: Name, control number, name of person referring correspondence, return address on letters, organization name, title, date of letter, subject of letter, office assigned, date due, and current disposition.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.

d. Retention and disposal: Records are retained permanently.

System manager and address: The system manager is the Assistant Archivist for the National Archives, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740.

Notification procedures: Individuals desiring information from or about these records should direct inquiries to the system manager.

Records access procedures: Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit the National Archives to locate the

records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the Guide to the National Archives of the United States, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR part 1253.

25. *System name:* Berlin Document Center Records (part of National Archives Record Group 242, National Archives Collection of Foreign Records Seized).

System location: National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740.

Categories of individuals covered by the system: Records in the National Archives cover individuals associated with former government, organization, or party apparatus, of the Third Reich.

Categories of records in the system: Records in the National Archives covered by this notice include records of the Berlin Document Center, consisting of approximately 39,358 reels of master negative microfilm of captured and seized German records, as well as associated finding aids, reference materials, and administrative files. (NARA Accession Number NN3–242–094–001).

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(1)(l)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage: Microfilm and paper in archival containers.

b. Retrievability: By individual name.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.

d. Retention and disposal: Records are retained permanently.

System manager and address: The system manager is the Assistant Archivist for the National Archives, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740.

Notification procedures: Individuals desiring information from or about these records should direct inquiries to the system manager.

Records access procedures: Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the Guide to the National Archives of the United States, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR part 1253.

26. *System name:* Current Research Information System (CRIS), USDA/CSRS (part of National Archives Record Group 164, Records of the Cooperative State Research Service).

System location: National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740.

Categories of individuals covered by the system: Records in the National Archives cover scientists listed on research projects entered into the CRIS.

Categories of records in the system: Records in the National Archives covered by this notice include electronic records containing detailed data on Current Research Information System (CRIS) Projects, 1993. (NARA Accession Number NN3–164–094–001).

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage: Electronic records on magnetic tape.

b. Retrievability: Records can be retrieved by name of project leader or co-investigator.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.

d. Retention and disposal: Records are retained permanently.

System manager and address: The system manager is the Assistant Archivist for Special and Regional Archives, National Archives and Records Administration, 7th and Pennsylvania Avenue, NW., Washington, DC 20408.

Notification procedures: Individuals desiring information from or about these records should direct inquiries to the system manager.

Records access procedures: Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the Guide to the National Archives of the United States, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR part 1253.

Appendix—General Statement About Uses and Restrictions

A record from an accessioned system of records may be made available to any person who has applied for and received a researcher identification card. No special qualifications are required in order to use the records of the National Archives. Rule governing the use of records and procedures for applying for research cards are found in 36 CFR part 1254. However, the use of some of the records is subject to restrictions imposed by statute or Executive order, or by the restrictions specified in writing in accordance with 44 U.S.C. 2108 by the transferring agency. Restrictions currently in effect on access to particular records that have been specified by the transferring agency are known as "specific restrictions." Restrictions on access that may apply to more than one record group are termed "general restrictions." They are applicable to the kinds of information or classes of accessioned records designated regardless of the record group to which they have been allocated or the specific system of records in which they are contained. The restrictions are published in the "Guide to the National Archives of the United States" and supplemented by restriction statements approved by the Archivist of the United States and set forth in 36 CFR part 1256.

Dated: May 31, 1995.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 95–14097 Filed 6–8–95; 8:45 am]

BILLING CODE 7515–01–W

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Principles of Public Information

AGENCY: National Commission on Libraries and Information Science.

ACTION: Request for comments.

SUMMARY: In 1989 and 1990 the National Commission on Libraries and Information Science (NCLIS) developed and adopted Principles of Public Information and offered them as a foundation for governmental decisions about public information, for use in developing information policies, and for use in creating, using, disseminating and preserving public information. The Commission is reviewing these Principles of Public Information and invites public comment on their current application, relevance and usability.

DATES: Comments should be received by July 15, 1995.

ADDRESSES: All comments should be sent to Peter R. Young, Executive Director NCLIS, 1110 Vermont Avenue, NW., Suite 820, Washington, DC 20005–3522. Comments can be sent by fax to 202/606–9203. Comments can be sent by electronic mail to py__nclis@inet.ed.gov.

FOR FURTHER INFORMATION CONTACT: Peter R. Young or Jane Williams, tel. 202/606–9200.

SUPPLEMENTARY INFORMATION: Following are the principles as adopted by the Commission on June 29, 1990.

Principles of Public Information

Preamble

From the birth of our nation, open and uninhibited access to public information has ensured good government and a free society. Public information helps to educate our people, stimulate our progress and solve our most complex economic, scientific and social problems. With the coming of the Information Age and its many new technologies, however, public information has expanded so quickly that basic principles regarding its creation, use and dissemination are in danger of being neglected and even forgotten.

The National Commission of Libraries and Information Science, therefore, reaffirms that the information policies of the U.S. government are based on the freedoms guaranteed by the constitution, and on the recognition of public information as a national resource to be developed and preserved in the public interest. We define public information as information created, compiled and/or maintained by the Federal Government. We assert that public information is information owned by the people, held in trust by their government, and should be available to the people except where restricted by law. It is in this spirit of public ownership and public trust that we offer the following Principles of Public Information.

Principles

1. The Public Has the Right of Access to Public Information

Government agencies should guarantee open, timely and uninhibited access to public information except where restricted by law. People should be able to access public information, regardless of its format, without any special training or expertise.

2. The Federal Government Should Guarantee the Integrity and Preservation of Public Information, Regardless of its Format

By maintaining public information in the face of changing times and technologies, government agencies assure the government's accountability and the accessibility of the government's business to the public.

3. The Federal Government Should Guarantee the Dissemination, Reproduction, and Redistribution of Public Information

Any restriction of dissemination or any other function dealing with public information must be strictly defined by law.

4. The Federal Government Should Safeguard the Privacy of Persons Who Use or Request Information, as Well as Persons About Whom Information Exists in Government Records

5. The Federal Government Should Ensure a Wide Diversity of Sources of Access, Private as Well as Governmental, to Public Information

Although sources of access may change over time and because of advances in technology, government agencies have an obligation to the public to encourage diversity.

6. The Federal Government Should Not Allow Cost to Obstruct the People's Access to Public Information

Costs incurred by creating, collecting and processing information for the government's own purposes Should not be passed on to people who wish to utilize public information.

7. The Federal Government Should Ensure that Information About Government Information is Easily Available and in a Single Index Accessible in a Variety of Formats

The government index of public information should be in addition to inventories of information kept within individual government agencies.

8. The Federal Government Should Guarantee the Public's Access to Public Information, Regardless of Where They Live and Work, through National Networks and Programs like the Depository Library Program

Government agencies should periodically review such programs as well as the emerging technology to ensure that access to public information remains inexpensive and convenient to the public

Conclusion

The National Commission on Libraries and Information Science offers these Principles of Public Information as a foundation for the decisions made throughout the Federal Government and the nation regarding issues of public information. We urge all branches of the Federal Government, state and local governments and the private sector to utilize these principles in the development of information policies and in the creation, use, dissemination and preservation of public information. We believe that in so acting, they will serve the best interests of the nation and the people in the Information Age.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these principles. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Suite 820, 1100 Vermont Ave., NW., Washington, DC from 8:30 a.m.–4 p.m., Monday through Friday, except Federal holidays.

Dated: June 1, 1995.

Peter R. Young,

NCLIS Executive Director.

[FR Doc. 95–14091 Filed 6–8–95; 8:45 am]

BILLING CODE 7527–01–M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Expansion Arts Advisory Panel: Overview Section

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Overview Section) to the National Council on the Arts will be held on June 27, 1995 from 9 a.m. to 4:30 p.m. This meeting will be held in Room M–07, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis.

Any interested person may observe meetings or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Dated: June 2, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95–14141 Filed 6–8–95; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; President's Committee on the Arts and the Humanities: Meeting XXXIII

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the President's Committee on the Arts and the Humanities will be held on June 27, 1995 from 1:30 p.m. and will conclude no later than 5 p.m. This meeting will be held in Room M–09, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis and will feature presentations on cultural tourism by Harvey Golub, the chairman and chief executive officer of the American Express Company, Irene Hirano, the director of the Japanese American National Museum and Richard Moe, the president of the National Trust for Historic Preservation. In addition, Jaroslav Pelikan, Sterling Professor of History at Yale University and a member of the President's Committee, will speak on the importance of the humanities in American life. The agenda of topics for the plenary session is subject to revision.

The President's Committee on the Arts and the Humanities was created by Executive Order in 1982 to advise the President, the two Endowments, and the IMS on measures to encourage private sector support for the nation's cultural institutions and to promote public understanding of the arts and the humanities.

If, in the course of discussion, it becomes necessary for the Committee to discuss nonpublic commercial or financial information of intrinsic value, the Committee will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b.

Any interested persons may attend, as observers, on a space available basis, Committee discussions which are open to the public. For a copy of the agenda or more information about the agenda or more information about the meeting, please write to the President's Committee at 1100 Pennsylvania Avenue, NW., Suite 526, Washington, DC 20506 or phone 202/682–5409. The Committee's fax number is 202/682–5668.

Dated: June 5, 1995.

Yvonne M. Sabine,

Director, Council & Panel Operations, National Endowment for the Arts.

[FR Doc. 95–14140 Filed 6–8–95; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL MEDIATION BOARD

Notice of Appointment of Members to the Performance Review Board

Notice is hereby given in accordance with 5 USC 4314 of the membership of the National Mediation Board's Performance Review Board. The members are as follows:

Ms. Magdalena G. Jacobsen, Member, National Mediation Board, Washington, DC

Mr. Gary J. Edles, General Counsel, Administrative Conference of the United States, Washington, DC

Mr. John C. Truesdale, Executive Secretary, National Labor Relations Board, Washington, DC

EFFECTIVE DATE: June 6, 1995.

FOR FURTHER INFORMATION CONTACT: Mrs. Gerilyn E. Johnson, Chief Operating Officer, 1301 K Street, NW., Washington, DC 20572, (202) 523–5950.

By direction of the National Mediation Board.

Gerilyn E. Johnson,

Chief Operating Officer.

[FR Doc. 95–14158 Filed 6–8–95; 8:45 am]

BILLING CODE 7550–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting(s):

Name and Committee Code: Special Emphasis Panel in Civil and Mechanical Systems (#1205).

Date & Time: June 29 & 30, 1995, 8:30 a.m. to 5:00 p.m.

Place: Holiday Inn at Ballston, i–66 & Glebe Road, 4610 North Fairfax Drive, Clarendon Rm. & Fairfax/Glebe Rm., Arlington, VA 22203. Telephone: 703–243–0103.

Contact: Dr. John B. Scalzi, Program Director, Large Structural and Building Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington VA 22230, Room 545, Telephone: 703–306–1361.

Type of Meetings(s): Closed.

Purpose of Meetings(s): To provide advice and recommendations concerning the Large Structural and Building Systems program proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Division of Civil and Mechanical Systems as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: June 5, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–14095 Filed 6–8–95; 8:45 am]

BILLING CODE 7555–01–M

Committee on Equal Opportunities in Science and Engineering; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Committee on Equal Opportunities in Science and Engineering (CEOSE) (1173).

Date and Time: June 28, 1995, 10 a.m.–5 p.m. (Open); June 29, 1995, 8:30 a.m.–5 p.m. (Open); June 30, 1995, 8:30 a.m.–12 Noon (Open).

Place: Room 375, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Wanda E. Ward, Executive Secretary, CEOSE, National Science Foundation, 4201 Wilson Boulevard, Room 805, Arlington, VA 22230. Telephone: (703) 306–1604.

Summary Minutes: May be obtained from the Executive Secretary at the above address.

Purpose of Meeting: To discuss national policy issues, including the importance of science, engineering to the national interest; to discuss future directions of the university for the twenty-first century; and to discuss the participation rates of all segments of society in science and engineering at NSF and in its programs.

Summary Agenda: June 28: 10 a.m. to 5 p.m.—Sessions to discuss national policy issues, future directions of the university system and the participation rates of all segments of society at NSF and in its programs; 5 p.m.—Reception, Room 375; June 29: 8:30 a.m. to 5 p.m.—Continuation of sessions to discuss national policy issues, future directions of the university system, and the participation rates of all segments of society at NSF and in its programs; June 30: 8:30 a.m. to 12 Noon—Committee deliberations; discussion of NSF future directions.

Dated: June 5, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–14094 Filed 6–8–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–334 and 50–412

Duquesne Light Company; et al.; Beaver Valley Power Station, Unit Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License Nos. DPR–66 and NPF–73, issued to Duquesne Light Company et al. (the licensee), for operation of the Beaver Valley Power Station, Unit Nos. 1 and 2, located in Beaver County, Pennsylvania.

Identification of the Proposed Action

The proposed action is in accordance with the licensee's application dated February 4, 1994, for exemption from certain requirements of paragraph III.D.2(b)(ii) of 10 CFR Part 50, Appendix J. The proposed exemption would allow substitution of local leak rate testing (where the design permits)in lieu of an overall airlock leakage test which would otherwise be required after performing maintenance on the air lock. The air lock components for which this exemption would be applicable would be those where the design of the affected component(s) would permit local leak testing at a pressure of not less than Pa (the calculated peak containment internal pressure related to the design basis accident and specified either in the technical specification or associated bases). The use of the words "where the design permits" is intended to require that two criteria be satisfied if the proposed exemption is applied. The first criterion, is that any component which has had maintenance performed on it have local leak rate test provisions included into its design. The second criterion is that the method for measuring the component's local leak rate must be equivalent to or more conservative than the method which would be used on that component during performance of an overall air lock leakage test.

The Need for the Proposed Action

Paragraph III.D.2.(b)(ii) of 10 CFR Part 50, Appendix J, requires licensees to perform an overall air lock leak test at Pa at the end of periods during which the air lock has been opened when containment integrity was not required. Performance of an overall air lock leak test requires 4 to 6 hours and results in additional occupational radiation exposures. The time required to perform overall tests at the conclusion of a plant shutdown can result in delaying plant restart. Application of the proposed exemption would be applicable only to those air lock components provided with local leak rate testing capabilities and for which the leak rate does not exceed the leak rate that has been measured on that component during performance of previous acceptable overall air lock leakage tests. Therefore, local leak rate tests provide adequate assurance that the offsite doses following a design basis accident will be within acceptable limits.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the licensee's application. The proposed exemption will not increase the probability or consequences of accidents. The probability of accidents is not increased because the air locks do not affect the initiation of any design basis accident. The consequences of an accident are not increased because the component local leak rates will not be permitted to exceed the leak rate which would be measured on that component during performance of the overall air lock leakage test. No changes are being made in the types of any radioactive effluents that may be released offsite as a result of the proposed exemption, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not effect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated, As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Beaver Valley Power Station Units Nos. 1 and 2.

Agencies and Persons Consulted

In accordance with its stated policy, on May 9, 1995, the staff consulted with the Pennsylvania State official, Robert C. Maiers of the Bureau of Radiation Protection, Department of Environmental Resources, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated February 4, 1994, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Dated at Rockville, Maryland, this 2nd day of June 1995.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–2 Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–14156 Filed 6–8–95; 8:45 am]

BILLING CODE 7590–01–M

Proposed Generic Letter; Relocation of the Pressure Temperature Limit Curves and Low Temperature Overpressure System Limits; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment, correction.

SUMMARY: This document corrects a general notice appearing in the **Federal Register** on June 2, 1995 (60 FR 28805), that requested public comment on a draft generic letter that would allow licensees to voluntarily relocate the pressure temperature limit curves and low temperature overpressure protection system limits from the technical specifications to a licensee-controlled document. This action is necessary to correct the inadvertent omission of a line of document text.

FOR FURTHER INFORMATION CONTACT: Maggalean W. Weston, Technical Specification Branch, Division of Project Support, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone (301) 415–3151.

SUPPLEMENTARY INFORMATION: On page 28807, the first and second sentences of the first full paragraph in the first column are corrected to read as follows:

"As required by Appendix G to Part 50 of title 10 of the *Code of Federal Regulations* (10 CFR), operating P/T limits are calculated and adhered to by plant operations personnel to ensure that fracture toughness requirements for the RCPB are maintained. Further, in accordance with Appendix H to 10 CFR Part 50, specimens of reactor vessel material are installed near the inside reactor vessel wall and are withdrawn on a schedule to provide date on the effects of radiation fluence and the thermal environment on the vessel material."

Dated at Rockville, Maryland, this 5th day of June, 1995.

Michael T. Lesar,

Chief, Rules Review Section, Office of Administration.

[FR Doc. 95–14155 Filed 6–8–95; 8:45 am]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

[Docket No. A95–13; Order No. 1061]

Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5) (Issued June 2, 1995)

Before Commissioners: Edward J. Gleiman, Chairman; W. H. "Trey" LeBlanc III, Vice-Chairman; George W. Haley; H. Edward Quick, Jr.; Wayne A. Schley.

In the Matter of: Erwin, South Dakota 57233 (Lois C. Penn, Petitioner).

Docket Number: A95–13.

Name of Affected Post Office: Erwin, South Dakota 57233.

Name(s) of Petitioner(s): Lois C. Penn.

Type of Determination: Consolidation.

Date of Filing of Appeal Papers: May 30, 1995.

Categories of Issues Apparently Raised:

1. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

2. Effect on the community [39 U:S.C. 404(b)(2)(A)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. 404 (b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission Orders

(a) The Postal Service shall file the record in this appeal by June 14, 1995.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Margaret P. Crenshaw,

Secretary.

Appendix

May 30, 1995—Filing of Appeal letter.

June 2, 1995—Commission Notice and Order of Filing of Appeal.

June 26, 1995—Last day of filing of petitions to intervene (*see* 39 CFR 3001.111(b)).

July 5, 1995—Petitioner's Participant Statement or Initial Brief (*see* 39 CFR 3001.115 (a) and (b)).

July 24, 1995—Postal Service's Answering Brief (*see* 39 CFR 3001.115(c)).

August 8, 1995—Petitioner's Reply Brief should Petitioner choose to file one (*see* 39 CFR 3001.115(d)).

August 15, 1995—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).

September 27, 1995—Expiration of the Commission's 120-day decisional schedule (*see* 39 USC 404(b)(5)).

[FR Doc. 95–14145 Filed 6–8–95; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35797; File No. SR–Amex–95–15]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Solicitation of Options Transactions

June 1, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on March 22, 1995, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Exchange filed Amendment No. 1 to the proposed rule change on May 30, 1995.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1) (1988).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend its Rule 950(d), Commentary .03, to modify the manner in which members solicit other members to participate in options transactions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In 1989, the Exchange adopted its solicitation rule[3] to govern the manner in which members may solicit other members and non-member broker dealers to participate in options transactions. Generally, members solicit participation in large size orders and orders that might contain complex terms and conditions, including orders involving both stock and options. Currently, if the solicited party is a broker dealer other than a registered trader, the rule permits the solicitation of such a broker dealer to participate in trades without first attempting to determine whether the trading crowd wishes to participate. The rule had sought to reconcile the growing practice of soliciting participation in orders outside of trading crowds with the rules and practices of the auction market. Since its adoption, the rule has operated successfully and has helped in giving fair and equal access to information regarding solicited transactions to participants in trading crowds and has resulted in more competitive markets and executions for customers at the best available prices.

Specifically, the rule permits the solicitation of on-floor and off-floor members outside of a trading crowd to participate as the contra-side of an order only if the trading crowd is given (1) the same information about the options order as is given to the solicited party; and (2) a reasonable opportunity to accept the bid or offer before the solicited party participates in the transaction. However, with respect to the solicitation of a registered options trader, the soliciting member must also disclose to the trading crowd, prior to the solicitation, the same terms and conditions as will be disclosed to the solicited registered options trader.

The Exchange now seeks to modify the rule to eliminate the difference in how the rule is applied to the solicitation of registered options traders. Members who are engaged in the practice of soliciting orders indicate that it is difficult, at times, to determine prior to the solicitation whether the solicited party is a registered options trader. Such a determination is important for a soliciting member seeking to adhere to the rule requirement that the trading crowd be notified of the terms of an order prior to solicitation of a registered options trader. Rather than chance violating the Exchange's rule, these members advise that in the case of multiple traded options, they frequently seek to trade at another options exchange whose solicitation rule does not differentiate between broker dealers other than registered traders, and registered traders.

Therefore, the Exchange seeks to eliminate the requirement that a soliciting member first disclose to a trading crowd the terms and conditions of the order prior to the solicitation of a registered trader. The Exchange believes that if trading crowds are given a reasonable opportunity to accept the bid or offer,[4] after the terms and conditions of the order are announced, then it is not necessary for the soliciting member to disclose those terms and conditions to the trading crowd prior to soliciting a registered options trader. Once other market participants are given a reasonable opportunity to accept the bid or offer, the solicited party may accept all or any remaining part of such order, or the member may cross all or any remaining part of the originating order with the solicited party at such bid or offer by announcing that the member is crossing the orders and stating the quantity and price.

The Exchange also proposed to add language to its solicitations rule to make it clear that non-solicited market participants and floor brokers holding non-solicited discretionary orders in the trading crowd will have priority over the solicited party or the solicited order to trade with the original order at the best bid or offer price subject to the precedence rules set forth in Rule 155.[5]

Finally, the Exchange proposes to codify its policy that its solicitation rule also applies to the solicitation of non-member broker dealers.

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Amex believes that the proposed rule change will not impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

[2] Amendment No. 1 concerns the priority of non-solicited market participants and floor brokers in the trading crowd over solicited parties or solicited orders. In addition, Amendment No. 1 makes certain minor technical and clarifying modifications to the proposed changes to Amex Rule 950(d), Commentary .03. *See* letter from Claire P. McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Michael Walinskas, Branch Chief, Division of Market Regulation, Commission, dated May 26, 1995 ("Amendment No. 1").

[3] Securities Exchange Act Release No. 26947 (June 19, 1989), 54 FR 26869 (approving Amex Rule 950(d), Commentary .03).

[4] Since the size and complexity of orders for options can vary widely, the phrase "reasonable opportunity to accept the bid and offer" has not been specifically defined. However, the Exchange has determined that the following factors should be considered when deciding whether a reasonable opportunity has been given: (1) size and complexity of the order; (2) ease of executing hedging transactions in the underlying stock; and (3) effect of the options order on the positions held by participants in the trading crowd.

[5] *See* Amendment No. 1, *supra* note 2. Amex Rule 155 generally provides that a specialist shall give precedence to orders entrusted to him as an agent in any stock in which he is registered before executing at the same price any purchase or sale in the same stock for an account in which he has an interest.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–Amex–95–15 and should be submitted by June 30, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. 95–14120 Filed 6–8–95; 8:45 am]

BILLING CODE 8010–01–M

[6] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35802; File No. SR-Amex-95–20]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Listing and Trading of Indexed Term Notes

June 2, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 30, 1995, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to approve for listing and trading under Section 107A of the Amex Company Guide ("Guide"), Indexed Term Notes ("Notes"), the return on which is based in whole or in part on changes in the value of twenty-four (24) equity securities of companies that have been identified by the underwriter as "consolidation candidates" ("Index").[1] The text of the proposed rule change is available at the Office of the Secretary, the Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] The components of the Index are: Agouron Pharmaceuticals, Inc; Biogen, Inc.; Campbell Soup Co.; Crestar Financial Corp.; Electronic Arts, Inc.; H.J. Heinz Co.; Healthcare Compare Corp.; Integra Financial Corp.; McCormick & Co.; Mercantile Bancorporation; Mesa, Inc.; Midlantic Corp.; Inc.; Money Store, Inc.; Multicare Companies, Inc.; Oryx Energy Co.; Physician Corp. of America; Protein Design Labs, Inc.; Quaker Oats Co.; Santa Fe Energy Resources; Sierra Health Services; Triton Energy Corp.; United Financial Corp.; Upjohn Co.; and Vertex Pharmaceuticals, Inc.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Under Section 107A of the Guide, the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.[2] The Amex now proposes to list for trading, under Section 107A of the Guide, Notes whose value is based in whole or in part on the value of the Index.

The Notes will be non-convertible debt securities and will conform to the listing guidelines under section 107A of the Guide.[3] The Notes will have a term of three years from the date of issue.[4] Additionally, the Notes will provide that at maturity, holders will receive not less than 90% of the initial issue price of the Notes. Prior to the commencement of listing and trading of the Notes, the Exchange will distribute a circular to its membership providing guidance with regard to member firm compliance responsibilities, including appropriate suitability criteria and/or guidelines.

Eligibility Standards for Index Components

The AMEX represents that at the time of issuance of the Notes, each security in the Index will satisfy the following criteria: (1) A minimum market capitalization of $75 million, except that up to 10% of the component securities may have a market capitalization of not less than $50 million; (2) average monthly trading volume for the six months prior to the offering of the Notes of not less than one million shares, except that up to 10% of the component securities may have an average monthly trading volume of 500,000 shares or more for the six months prior to the offering; (3) 90% of the Index's numerical Index value and at least 80% of the total number of component securities will meet the then current criteria for standardized options trading set forth in Exchange Rule 915; and (4) all component stocks will (i) either be listed on the Amex, the New York Stock Exchange, or will be National Market securities traded through the facilities of Nasdaq and (ii) be subject to last sale reporting pursuant to Rule 11Aa–3 of the Act.

[2] See Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990).

[3] Specifically, issuances of securities pursuant to § 107A of the Guide must have: (1) A minimum public distribution of one million trading units; (2) a minimum of 400 holders; (3) an aggregate market value of at least $4 million; and (4) a term of at least one year. Additionally, the issuers must have assets of at least $100 million, stockholders' equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in two of the three prior fiscal years. As an alternative to these financial criteria, the issuer may have either: (1) Assets in excess of $200 million and stockholders' equity in excess of $10 million; or (2) assets in excess of $100 million and stockholders' equity in excess of $20 million.

[4] The Commission notes that the value of the Index at maturity will not be adjusted to account for ordinary cash dividends paid on the component securities during the term of the Notes.

Index Calculation

The Index will be calculated using an "equal dollarweighting" methodology designed to ensure that each of the component securities is represented in an approximately equal dollar amount in the Index at the time the Notes are issued. To create the Index, a portfolio of the securities comprising the Index will be established by the issuer representing an investment of a specified dollar amount in each component security (rounded to the nearest whole share). The value of the Index will equal the current market value of the sum of the assigned number of shares of each of the component securities divided by the current Index divisor. The Index divisor will initially be set to provide a benchmark value of 100.00 at the close of trading on the day preceding the issuance of the Notes.

The number of shares of each component stock in the Index will remain fixed except in the event of certain types of corporate actions such as the payment of a dividend (other than an ordinary cash dividend), a stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, or similar event with respect to the component securities. The number of shares of each component security may also be adjusted, if necessary, in the event of a merger, consolidation, dissolution, or liquidation of an issuer or in certain other events such as the distribution of property by an issuer to shareholders. Shares of a component security may be replaced (or supplemented) with other securities under certain circumstances, such as the conversion of a component stock into another class of security, or the spin-off of a subsidiary. If the security remains in the Index, the number of shares of that security may be adjusted, to the nearest whole share, to maintain the component's relative weight in the Index at the level immediately prior to the event(s) discussed above.[5] In all cases, the divisor will be adjusted, if necessary, to ensure continuity of the value of the Index. In the event that a security in the Index is canceled due to a corporate consolidation and the holders of such security receive cash, the cash value of that security will be included in the Index and will accrue interest at LIBOR to term, compounded daily.

The value of the Index will be calculated continuously by the Amex and disseminated every 15 seconds over the Consolidated Tape Association's Network B.

Payment at Maturity

The Notes will provide for a single payment at maturity, *i.e.*, there will be no periodic interest payments. The Notes will entitle the holder, upon maturity, to receive an amount based upon the percentage change between the "original portfolio value" and the "average portfolio value," provided, however that the amount payable at maturity will not be less than 90% of the principal amount of the Notes. The "original portfolio value" is the closing level of the Index on the day immediately preceding the issuance of the Notes. The "average portfolio value" is the average of the closing values of the Index on the last trading day of each of the last 30 months of the term of the Notes.

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5) in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

[5] The issuer will not attempt to find a replacement stock or compensate for the extinction of a security due to bankruptcy or a similar event.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether, the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–95–20 and should be submitted by June 30, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. 95–14192 Filed 6–8–95; 8:45 am]

BILLING CODE 8010–01–M

[6] 17 CFR 200.30–3(a) (12) (1994).

[Release No. 34–35800; File No. SR–BSE–95–10]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Boston Stock Exchange, Inc., Relating to Amendments to the Pilot Program Regarding Certain Procedures for the Handling of Market-on-Close Orders on Non-Expiration Days

June 1, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 19, 1995, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change, and on May 31, 1995, filed Amendment No. 1 to the proposed rule change,[3] as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The BSE has requested accelerated approval of the proposal. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to adopt procedures for the handling of market-on-close orders on expiration days, non-expiration days and in market conditions where New York Stock Exchange, Inc. ("NYSE") Rule 80A is in effect. These procedures mirror the procedures in place on the primary markets in order to ensure equal treatment of orders in both markets.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Karen A. Aluise, Assistant Vice President, BSE to Elisa Metzger, Senior Counsel, SEC, dated May 31, 1995.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule is to adopt certain procedures to mirror those of the primary markets for the handling of market-on-close ("MOC") orders on expiration days[4] and non-expiration days so that the BSE does not become a haven for MOC orders that are prohibited on the primary markets.[5] In this way, all orders sent to the Exchange will receive equal treatment to orders sent to the primary markets. The proposed rule change proposes that on expiration days, all MOC orders in all stocks will be prohibited after 3:40 p.m., eliminating the limitation related to a strategy including stock index futures, stock index options or options on stock index futures in expiring contracts. The proposed procedures also include procedures applicable on non-expiration days, such as: (a) Providing a 3:50 p.m. deadline for the entry of all MOC orders in all stocks, (b) prohibiting the cancellation or reduction of any MOC order in any stock after 3:50 p.m., (c) publishing order imbalances of 50,000 shares or more as soon as practicable after 3:50 p.m. in the pilot stocks, stocks being added to or dropped from an index, and in any other stock with the approval of a Floor Official and (d) limiting the entry of MOC orders after 3:50 p.m. to offset published imbalances. With respect to item (b) above, the Exchange will permit cancellations of MOC orders after 3:50 p.m. in those instances where a legitimate error has been made. The term "pilot stocks" refers to the list of stocks designated by the NYSE as pilot stocks for purposes of its auxiliary closing procedures.[6]

The proposed rule change also proposes certain procedures for the handling of MOC orders in market conditions where the NYSE's Rule 80A is in effect. On non-expiration days, if an MOC index arbitrage order to buy (sell) to establish or increase a position is entered, and Rule 80A subsequently goes into effect because of significant upward (downward) market movement, the MOC order must be canceled, regardless of the time Rule 80A goes into effect. If Rule 80A goes into effect prior to 3:50 p.m., the MOC order may be re-entered with the instruction "buy minus" ("sell plus"). If Rule 80A goes into effect after 3:50 p.m. and there is a published imbalance in the subject stock the MOC order may be re-entered with the instruction "buy minus" ("sell plus") to offset the imbalance.

On expiration days, if an MOC index arbitrage order to buy (sell) to establish or increase a position is entered, and Rule 80A subsequently goes into effect because of significant upward (downward) market movement, the MOC order must be canceled, regardless of the time Rule 80A goes into effect. If Rule 80A goes into effect prior to 3:40 p.m., the MOC order may be re-entered with the instruction "buy minus" ("sell plus"). If Rule 80A goes into effect after 3:40 p.m. and there is a published imbalance in the subject stock, the MOC order may be re-entered with the instruction "buy minus" ("sell plus") to offset the imbalance.

2. Statutory Basis

The statutory basis for the proposed rule is Section 6(b)(5) of the Exchange Act in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

[4] The term "expiration days" refers to both (1) the trading day, usually the third Friday of the month, when some stock index options, stock index futures and options on stock index futures expire or settle concurrently ("Expiration Fridays") and (2) the trading day on which end of calendar quarter index options expire ("QIX Expiration Days").

[5] The BSE's auxiliary closing procedures for expiration days have been approved on a pilot basis until October 31, 1995. *See* Securities Exchange Act Release No. 34918 (October 31, 1994), 59 FR 55504 ("1994 Pilot Approval Order").

[6] The Expiration Friday pilot stocks consist of the 50 most highly capitalized Standard & Poors ("S&P") 500 stocks and any component stocks of the Major Market Index ("MMI") not included therein. The QIX Expiration Day pilot stocks consist of the 50 most highly capitalized S&P 500 stocks, any component stocks of the MMI not included therein and the 10 highest weighted S&P Midcap 400 stocks.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR–BSE–95–10 and should be submitted by [insert date 21 days from date of publication].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular with the requirements of Section 6[7] of the Act. In particular, the proposal is consistent with the Section 6(b)(5)[8] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and in general, to protect investors and the public interest.

In recent years, the self-regulatory organizations have instituted certain safeguards to minimize excess market volatility that may arise from the liquidation of stock positions related to trading strategies involving index derivative products. For instance, since 1986, the NYSE has utilized auxiliary closing procedures on expiration days. These procedures allow NYSE specialists to obtain an indication of the buying and selling interest in MOC orders at expiration and, if there is a substantial imbalance on one side of the market, to provide the investing public with timely and reliable notice thereof and with an opportunity to make appropriate investment decisions in response. Based on the NYSE's experience,[9] the Commission believes that the MOC order handling requirements work relatively well and may result in more orderly markets at the close on expiration days.

In today's highly competitive market environment, however, it is possible that a regional exchange, which trades NYSE-listed stocks but does not have comparable closing procedures, could be utilized by market participants to enter MOC orders prohibited on the NYSE. Although the Commission has no reason to believe that the BSE market has become a significant alternative market to enter otherwise prohibited MOC orders, the Commission agrees with the BSE that, if this possibility were realized, it could have a negative impact on the fairness and orderliness of the national market system.[10] Accordingly, the Commission believes that it is reasonable for the BSE to adopt procedures for the handling of MOC orders that mirror the NYSE's, thereby ensuring the equal treatment of orders in both markets and, in the event of unusual market conditions, offering the BSE the same benefits in terms of potentially reducing volatility.

In this regard, the Commission notes that the proposed rule change will standardize the BSE's closing procedures on expiration days with those on the NYSE.[11] Specifically, on expiration days, the BSE proposal will impose a 3:40 p.m. deadline for entry of *all* MOC orders. In conjunction with the prohibition on cancellation or reduction of any MOC order after 3:40 p.m., this requirement should allow the specialist to make a timely and reliable assessment, for every stock, of MOC order flow and its potential impact on the closing price. While the Commission recognizes that 3:40 p.m. is relatively near the close, the Commission previously has determined that such a deadline strikes a reasonable balance between the need to effectuate an orderly closing and the need to avoid unduly infringing upon legitimate trading strategies.[12]

The amended procedures for expiration days will continue to require that, as soon as practicable after 3:40 p.m., BSE specialists disseminate substantial imbalances in the pilot stocks. Thereafter, no MOC orders may be entered except to offset a published imbalance in a pilot stock. In this regard, the BSE pilot program combines early submission of MOC orders with prompt dissemination of imbalances that reflect actual investor interest. As noted in prior Commission orders approving these procedures,[13] the BSE should have sufficient opportunity to attract any contra-side interest necessary to alleviate substantial MOC order imbalances in the pilot stocks and to dampen their effect on the closing price.

In addition, under the proposed rule change, the BSE will adopt MOC order handling requirements for non-expiration days that are substantially similar to those in place for expiration days. This will allow members and member organizations to follow comparable procedures at the close on all trading days. Although there is less likelihood of an influx of MOC orders at the close of non-expiration days, certain trading and asset allocation strategies could employ MOC orders. The 3:50 p.m. deadline for MOC order entry and cancellation, as well as the requirement to disseminate MOC orders consisting of 50,000 shares or more as soon as practicable after 3:50 p.m., on non-expiration days should help the specialist make a timely and reliable assessment of MOC order flow and its potential impact on the closing price and also should ensure that any imbalance publications reflect actual investor interest. In the Commission's opinion, a 3:50 p.m. deadline strikes a more appropriate balance for non-expiration days (as opposed to the 3:40 p.m. deadline for expiration days) given the reduced likelihood of substantial MOC order imbalances due to derivatives-related trading strategies.

In the event of unusual market conditions, the Commission believes that the amended procedures for non-expiration days will offer benefits in terms of assessing volatility at the close of trading in the same manner as the BSE's procedures for expiration days. Additionally, the Commission notes that, by permitting a Floor Official to authorize the publication of substantial MOC order imbalances on non-expiration days in any stock, the proposal should increase the information available to market participants and provide BSE specialists

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] The NYSE has submitted to the Commission several monitoring reports describing its experience with the auxiliary closing procedures. For further discussion of the NYSE's results, *see* Securities Exchange Act Release No. 34916 (October 31, 1994), 59 FR 55507.

[10] For example, if MOC orders prohibited on the NYSE were entered instead on the BSE, unusually large MOC order imbalances on the regional exchange could contribute to overall market volatility.

[11] See Securities Exchange Act Release No. 35589 (April 10, 1995), 60 FR 19313.

[12] *See, e.g.*, Securities Exchange Act Release No. 33639 (February 17, 1994), 59 FR 9295.

[13] *See* 1994 Pilot Approval Order, *supra*, note 5.

with a mechanism, if necessary, to attract contra-side interest in any stock.

The Commission finds it appropriate for the BSE to provide for procedures for the handling of MOC orders in market conditions when the NYSE's Rule 80A is in effect. The Commission believes that the rule change clearly informs market participants of the manner in which MOC order can be placed when the NYSE's Rule 80A is in effect. The Commission continues to believe that the provisions of NYSE Rule 80A provide a useful means of addressing market volatility.[14]

The Commission is approving the amendments to the BSE's auxiliary closing procedures for expiration days and non-expiration days as part of the existing pilot program that expires on October 31, 1995.

The Commission finds good cause for approving the proposed rule change prior the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. This will permit the proposed amendments to be effective simultaneously with the NYSE's amendments to the procedures for handling MOC orders.[15] In addition, the procedures the BSE proposes to use are identical to NYSE procedures that were published in the **Federal Register** for the full comment period and were approved by the Commission.[16]

It is therefore ordered, pursuant to Section 19(b)(2)[17] that the proposed rule change is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Jonathan G. Katz,

Secretary.

[FR Doc. 95–14190 Filed 6–8–95; 8:45 am]

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[14] See Securities Exchange Act Release No. 29854 (October 24, 1991), 56 FR 55963.

[15] See Release No. 35589, supra note 11.

[16] No comments were received in connection with the most recent proposed rule change which modified the NYSE procedures. See Release No. 35589, *supra* note 11.

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

[Release No. 34–35801; File No. SR–NASD–95–12]

Self-Regulatory Organizations; Notice of Filing Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Advertising and Sales Literature Filing and Review Requirements Under the Rules of Fair Practice and the Government Securities Rules

June 2, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 10, 1995,[1] the National Association of Securities Dealers, Inc. ("NASD") or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is herewith filing a proposed rule change to Article III, Section 35 of the Rules of Fair Practice and Section 8 of the Government Securities Rules. Proposed new language is italicized and proposed deletions are bracketed.

ARTICLE III

Rules of Fair Practice

* * * * *

Communications With the Public

Sec. 35.

(a) Definitions

(1) Advertisement—For purposes of this section and any interpretation thereof, "advertisement" means material published, or designed for use in, a newspaper, magazine or other periodical, radio, television, telephone or tape recording, videotape display, signs or billboards, motion pictures, telephone directories (other than listings), *electronic* or other public media.

(2) Sales literature—For purposes of this section and any interpretation thereof, "sales literature" means any written *or electronic* communication distributed or made generally available to customers or the public, which communication does not meet the foregoing definition of "advertisement." Sales literature includes, but is not limited to, circulars, research reports, market letters, performance reports or summaries, form letters, *telemarketing scripts*, seminar texts, and reprints or excerpts of any other advertisement, sales literature or published article.

(b) Approval and Recordkeeping

(1) Each item of advertising and sales literature shall be approved by signature or initial, prior to use *or filing with the NASD*, by a registered principal [(or his designee)] of the member.

* * * * *

(c) Filing Requirements and Review Procedures

(1) Advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts and unit investment trusts) not included within the requirements of Subsection (c)(2) of this section, and public direct participation programs (as defined in Article III, Section 34 of the Rules of Fair Practice) shall be filed with the Association's Advertising Regulation Department within 10 days of first use or publication by any member. *The member must provide with each filing the actual or anticipated date of first use.* Filing in advance of use is recommended. Members are not required to file advertising and sales literature which have previously been filed and which are used without change. Any members filing any investment company advertisement or sales literature pursuant to this Subsection that includes or incorporates rankings or comparisons of the investment company with other investment companies shall include a copy of the ranking or comparison used in the advertisement or sales literature.

(2) Advertisements concerning collateralized mortgage obligations registered under the Securities Act of 1933, and advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts and unit investment trusts) that include or incorporate rankings or comparisons of the investment company with other investment companies where the ranking or comparison category is not generally published or is the creation, either directly or indirectly, of the investment company, its underwriter or an affiliate, shall be filed with the Association's Advertising Regulation Department for review at least 10 days prior to use (or such shorter period as the Department may allow in particular circumstances) for approval and, if

[1] The proposed rule change was initially submitted on April 10, 1995, but was amended on May 10, 1995, in order to make technical changes and clarify rule language.

changed [or expressly disapproved] by the Association, shall be withheld from publication or circulation until any changes specified by the Association has been made or, [in the event of disapproval] *if expressly disapproved*, until the advertisement has been refiled for, and has received, Association approval. *The member must provide with each filing the actual or anticipated date of first use.* Any member filing any investment company advertisement or sales literature pursuant to this Subsection shall include a copy of the data, ranking or comparison on which the ranking or comparison is based.

(3) (A) Each member of the Association which has not previously filed advertisements with the Association (or with a registered securities exchange having standards comparable to those contained in this section) shall file its initial advertisement with the Association's Advertising Department at least ten days prior to use and shall continue to file its advertisements at least ten days prior to use for a period of one year. *The member must provide with each filing the actual or anticipated date of first use.*

[(B) Each member which, on the effective date of this section, had been filing advertisements with the Association (or with a registered securities exchange having standards comparable to those contained in this section) for a period of less than one year shall continue to file its advertisements, at least ten days prior to use, until the completion of one year from the date the first advertisement was filed with the Association or such exchange.]

* * * * *

(4) Notwithstanding the foregoing provisions, any District Business Conduct Committee of the Association, upon review of a member's advertising and/or sales literature, and after determining that the member has departed and there is a reasonable likelihood that the member will again depart from the standards of this section, may require that such member file all advertising and/or sales literature, or the portion of such member's material which is related to any specific types or classes of securities or services, with the Association's Advertising Department and/or the District Committee, at least ten days prior to use. *The member must provide with each filing the actual or anticipated date of first use.*

The Committee shall notify the member in writing of the types of material to be filed and the length of time such requirement is to be in effect. The requirement shall not exceed one year, however, and shall not take effect until 30 days after the member receives the written notice, during which time the member may request a hearing before the District Business Conduct Committee, and any such hearings shall be held in reasonable conformity with the hearing and appeal procedures of the Code of Procedure.

* * * * *

(d) Standards Applicable to Communications With the Public

* * * * *

(2) Specific Standards

In addition to the foregoing general standards, the following specific standards apply:

* * * * *

(B) Recommendations: In making a recommendation, whether or not labeled as such, a member must have a reasonable basis for the recommendation and must disclose [the price at the time the recommendation is made, as well as] any of the following situations which are applicable:

(i) That the member usually makes a market in the securities being recommended, or in the underlying security if the recommended security is an option, and/or that the member or associated persons will sell to or buy from customers on a principal basis;

(ii) That the member and/or its officers or partners own options, rights or warrants to purchase any of the securities of the issuer whose securities are recommended, unless the extent of such ownership is nominal;

(iii) That the member was manager or co-manager of a public offering of any securities of the recommended issuer within the last 3 years.

The member shall also provide, or offer to furnish upon request, available investment information supporting the recommendation. *Recommendations on behalf of corporate equities must provide the price at the time the recommendation is made.*

A member may use material referring to past recommendations if it sets forth all recommendations as to the same type, kind, grade or classification of securities made by a member within the last year. Longer periods of years may be covered if they are consecutive and include the most recent year. Such material must also name each security recommended and give the date and nature of each recommendation (e.g., whether to buy or sell), the price at the time of the recommendation was to be acted upon, and indicate the general market conditions during the period covered.

Also permitted is material which does not make any specific recommendation but which offers to furnish a list of all recommendations made by a member within the past year or over longer periods of consecutive years, including the most recent year, if this list contains all the information specified in the previous paragraph. Neither the list of recommendations, nor material offering such list, shall imply comparable future performance. Reference to the results of a previous specific recommendation, including such a reference in a follow-up research report or market letter, is prohibited if the intent or the effect is to show the success of a past recommendation, unless all of the foregoing requirements with respect to past recommendations are met.

* * * * *

GOVERNMENT SECURITIES RULES

* * * * *

Communications With the Public

Sec. 8

(a) Definitions

(1) Advertisement—For purposes of this section and any interpretation thereof, "advertisement" means material published, or designed for use in, a newspaper, magazine or other periodical, radio, television, telephone or tape recording, videotape display, signs or billboards, motion pictures, telephone directories (other than routine listings), *electronic* or other public media.

(2) Sales Literature—For purposes of this section and any interpretation thereof, "sales literature" means any written *or electronic* communication distributed or made generally available to customers or the public that does not meet the foregoing definition of "advertisement." Sales literature includes, but is not limited to, circulars, research reports, market letters, performance reports or summaries, form letters, standard forms of option worksheets, *telemarketing scripts*, seminar texts, and reprints or excerpts of any other advertisement, sales literature, or published article.

(b) Approval and Recordkeeping

(1) Each item of advertising and sales literature shall be approved by signature or initial, prior to use *or filing with the NASD*, by a registered principal [(or designee)] of the member.

* * * * *

(c) Filing Requirements and Review Procedures

(1) Members shall file advertisements for review with the Association's Advertising Regulation Department as follows:

(A) Advertisements concerning government securities (as defined in Section 3(a)(42) of the Securities Exchange Act of 1934) other than collateralized mortgage obligations shall be filed by members with the Association's Advertising Department within 10 days of first use or publication; and

(B) Advertisements concerning collateralized mortgage obligations shall be filed with the Association's Advertising Regulation Department for review at least 10 days prior to use (or such shorter period as the Department may allow in particular circumstances) for approval and, if changed [or expressly disapproved] by the Association, shall be withheld from publication or circulation until any changes specified by the Association have been made or, [in the event of disapproval] *if expressly disapproved,* until the advertisement has been refiled for, and has received, Association approval. *The member must provide with each filing concerning government securities, including collateralized mortgage obligations, the actual or anticipated date of first use.*

(2) Each member of the Association that has not previously filed advertisements with the Association shall file its initial advertisement concerning government securities with the Association's Advertising Department at least 10 days prior to use and shall continue to file its advertisements concerning government securities at least 10 days prior to use for a period of one year. *The member must provide with each filing the actual or anticipated date of first use.*

(3) Notwithstanding the foregoing provisions, any District Business Conduct Committee of the Association, upon review of a member's government securities advertising and/or sales literature, and after determining that the member will again depart from the standards of this section, may require that such member file all government securities advertising and/or sales literature, or the portion of such member's material that is related to any specific types or classes of securities or services, with the Association's Advertising Department and/or the District Committee, at least 10 days prior to use. *The member must provide with each filing the actual or anticipated date of first use.*

The Committee shall notify the member in writing of the types of material to be filed and the length of time such requirement is to be in effect. The requirement shall not exceed one year, however, and shall not take effect until 30 days after the member receives the written notice, during which time the member may request a hearing before the District Business Conduct Committee, and any such hearings shall be held in reasonable conformity with the hearing and appeal procedures of the Code of Procedure.

* * * * *

(d) Standards Applicable to Communications With the Public

* * * * *

(2) Specific Standards

In addition to the foregoing general standards, the following specific standards apply:

* * * * *

(B) Recommendations: In making a recommendation, whether or not labeled as such, a member must have a reasonable basis for the recommendation made and must disclose [the price at the time the recommendation is made, as well as] any of the following situations which are applicable:

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Article III, Section 35 of the Rules of Fair Practice and Section 8 of the Government Securities Rules ("Rules") govern members' communications with the public regarding general securities and government securities, respectively. The Rules contain definitions, internal approval and recordkeeping requirements, filing requirements and standards applicable to the content of such communications. The NASD is proposing to modify certain sections of the Rules in order to revise the definitions of, and the internal approval and timeliness of filing requirements for, advertising and sales literature and the scope of rules relating to "Recommendations." The revisions will codify existing rule interpretations, rectify inconsistencies, and clarify issues which have been the source of member misunderstanding. It is not anticipated that these proposals will create additional regulatory burdens on the membership.

The NASD is proposing to modify the definitions of "Advertisement" and "Sales Literature" in Article III, Subsections 35(a) (1) and (2) of the Rules of Fair Practice and Subsections 8(a) (1) and (2) of the Government Securities Rules to include electronic messages. The NASD has consistently applied its standards for communications with the public to electronic messages sent via computer. The inclusion of the term "electronic" in the definition of "Advertisement" is intended to apply to communications available to all network subscribers including items displayed over network bulletin boards. The inclusion of the term "electronic" in the definition of "Sales Literature" is intended to apply to messages sent directly to individuals or targeted groups. The NASD believes that the proposed rule change will reduce member confusion by clarifying that the requirements set forth in these sections are applicable to such electronic communications.

The NASD is proposing to further modify the definition of "Sales Literature" in Article III, Subsection 35(a)(2) of the Rules of Fair Practice and Subsection 8(a)(2) of the Government Securities Rules to include telemarketing scripts. Members often file for review with the Advertising Regulation Department telemarketing scripts intended to be read to prospects and existing customers or delivered electronically through a telemarketing service. These scripts differ from other forms of telephone prospecting and customer contact in that they are followed without variation by the caller or callers. The NASD considers these scripts as comparable to a form letter delivered orally. The inclusion of telemarketing scripts in the definition will reduce confusion among members and promote more consistent application of the rules.

The NASD is proposing to modify Article III, Subsection 35(b)(1) of the Rules of Fair Practice and Subsection 8(b)(1) of the Government Securities Rules to require that each item of advertising and sales literature be approved internally prior to use only by a registered principal. Currently, the Rules allow a registered principal to perform the review or to delegate this responsibility to a designee. The rules contain no guidelines regarding the level of experience, expertise, or qualification that the designee must have in order to assume this compliance responsibility. However, Part II of Schedule C to the By-Laws sets forth the categories and requirements of registered principals and subsection (2)(g)(ii)c.3 thereunder states definitively that a Limited Principal-General Securities Sales Supervisor shall not be qualified to perform final approval of advertising. Since the internal approval rule currently does not address the qualifications necessary for the designee, individuals less qualified than principals are being designated by registered principals to provide internal approval. The proposed amendment eliminates the potential for inconsistent internal standards applied by different members regarding the review of communications with the public.

The NASD is also proposing to modify Article III, Subsection 35(b)(1) of the Rules of Fair Practice and Subsection 8(b)(1) of the Government Securities Rules to require that advertising and sales literature be approved internally by members prior to being filed with the NASD Advertising Regulation Department. The current rules for review of advertisements and sales literature require that the material be approved internally by the member prior to first use, but do not require that material be approved internally by the member before being filed with the NASD. Members have verified to the NASD that their internal review sometimes occurs after the NASD response is received. This practice places the NASD in the role of providing the initial compliance review, a role that should, in the NASD's view, be maintained within the member firms' compliance departments. The proposed amendment will ensure that members are accountable for submitting material which is in reasonable conformity to the applicable rules. It is anticipated that this amendment will reduce the amount of refiling requested by the Advertising Regulation Department due to extensive deficiencies in the original filings.

The NASD is proposing to modify Article III, Subsections 35(c) (1), (2), (3)(A) and (4) to the Rules of Fair Practice and Subsections 8(c)(1)(A) and (B), (c)(2) and (c)(3) of the Government Securities Rules to require that, for filing requirements that have timeliness requirements, the member provide the actual or expected date of first use or publication of the item filed. Currently the rules provide that material be filed within ten days of first use or ten days prior to use, depending on the status of the firm and the subject matter of the communication. For example, the rules require that firms which have never filed material with the Advertising Regulation Department shall file their advertisement at least ten days prior to first use and continue to file their advertisements ten days prior to use for a period of one year from the date of first filing. For advertisements and sales literature for registered investment companies, direct participation programs and government securities, the rules currently require that they be filed on an ongoing basis within ten days of first use. Advertisements for collateralized mortgage obligations must always be filed at least ten days prior to use.

Under these guidelines, members file communications for review in various stages of a document's production. These stages range from first drafts to finished products. It is often impossible to determine the date of first use unless the information is provided voluntarily by the member or requested by the NASD reviewer. Because the NASD Advertising Regulation Department reviews approximately 3500 to 4000 items per month, it is impractical to routinely contact members and request they provide the date of use for each piece filed. Consequently, the NASD is unable to determine systematically if the member firms are meeting their filing obligations. The proposed amendment will enable the NASD to enforce the existing rules more effectively and consistently.

The NASD is proposihg to delete Article III, Subsection 35(c)(3)(B) to the Rules of Fair Practice. This provision was always intended to be temporary in that it applied the pre-filing requirements of Subsection 35(c)(3)(A) for a period of one year to those firms that had been filing advertisements for less than one year when the pre-filing provisions became effective. The provision ensured that such firms continued to pre-file advertisements for a period of at least one year from the date their first advertisements were filed. As such, the provision became inapplicable exactly one year from its effective date.

The NASD is proposing to modify Article III, Subsection 35(d)(2)(B) to the Rules of Fair Practice and Subsection 8(d)(2)(B) to the Government Securities Rules to clarify that the requirement to disclose the price of the security applies only to recommendations for corporate equities. The literal language of the current rule arguably would require price disclosure with respect to all securities products in all communications deemed to be recommendations. However, the NASD has a longstanding practice of not requiring price disclosure on communications for securities products other than corporate equities. The proposed amendment specifies that the price requirement applies only to communications on behalf of corporate equities and deletes the price requirement entirely from the Government Securities Rules. In proposing this modification, the NASD has considered that both the Rules of Fair Practice and the Government Securities Rules prohibit members from omitting material information in communications with the public. Therefore, if inclusion of the price of the security is necessary to make the material not misleading, then the member is required to include the price as applicable.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[2] which require that the Association adopt and amend its rules to promote just and equitable principles of trade, and generally provide for the protection of customers and the public interest in that the proposed rule change codifies existing rule interpretations, rectifies inconsistencies and clarifies issues which have been the source of member misunderstanding regarding the filing, review and approval of advertising and sales literature, and improves the efficiency of the advertising filing, review and approval process without creating additional regulatory burdens on the membership.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal**

[2] 15 U.S.C. § 78o–3(b)(6).

Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds no longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approved such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–95–12 and should be submitted by June 30, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Jonathan G. Katz,

Secretary.

[FR Doc. 95–14191 Filed 6–8–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35795; File No. SR–NASD–95–23]

Self-Regulatory Organizations; Notice of Filing and Partial Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Gross Assessments and Continuing Education Fees

June 1, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on May 23, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated the part of this proposal for continuing education fees as on establishing or changing a fee under § 19(b)(3)(A)(ii) of the Act, which renders the rule effective upon the Commission's receipt of this filing. The NASD is, however, requesting that the fee be implemented on July 1, 1995.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing a rule change to amend Sections 1 and 2 to Schedule A of the By-Laws to clarify gross income filing requirements and to assess a fee for continuing education requirements. Proposed new language is italicized; proposed deletions are in brackets.

Schedule A

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of the Corporation, shall be determined on the following basis.

Assessments

Sec. 1.

Each member shall pay an annual assessment composed of:

(a) An amount equal to the greater of $850.00 or the total of:

(i) 0.125% of the annual gross *revenue* [income] from state and municipal securities transactions,

(ii) 0.125% of annual gross *revenue* [income] from other over-the-counter securities transactions,

(iii) 0.125% of the annual gross *revenue* [income] from U.S. Government securities transactions, and

(iv) with respect to members whose books, records, and financial operations are examined by the NASD, 0.125% of annual gross *revenue* [income] from securities transactions executed on an exchange.

Each member is to report annual gross *revenue* [income] as defined in Section 5 of this Schedule, for [either] the preceding calendar year. [or the member's fiscal year ending in the preceding calendar year. The 12-month reporting period must be in accordance with the member's previously written election. New members will be given an opportunity to make this election after they become members. Members wishing to change their reporting year must advise the Association, in writing, of the change in dates and provide a reason for the change (i.e., merger or other organizational change and/or change in tax or fiscal year). If the change is from a fiscal year to the calendar year or to a new fiscal year ending at a later date, the member is to provide two reports of gross income covering the 12 consecutive months of both the new and old years. In such case, the assessment in the year of change will be the greater amount determined from the two reports. If the change is from a calendar year or a fiscal year to a new fiscal year ending at an earlier date, the member is to report gross income for the 12 consecutive months to the end of its new fiscal year.]

* * * * *

Fees

Sec. 2.

* * * * *

(k) There shall be a session fee of $75.00 assessed as to each individual who is required to complete the Regulatory Element of the Continuing Education Requirements pursuant to the provisions of Part XII of Schedule "C" of the By-Laws.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Recently, the NASD amended Section 5 of Schedule A to the By-Laws to define gross revenue for assessment purposes as income reported on the FOCUS report, with certain limited exclusions and deductions.[2] The FOCUS report reports income on a calendar year basis. However, Section 1 (a) of Schedule A was not amended when this change was enacted and still gives members the election to report on either a calendar year or fiscal year basis. The NASD is proposing to amend Section 1(a) of Schedule A to require all member firms to report annual gross revenue on a calendar year basis and to delete portions of the section that are no longer applicable. The NASD believes that the proposed amendment will simplify the data collection and reporting process for the NASD, provide a consistent basis for assessments among member firms and rectify the current inconsistency between Sections 1 and 5 of Schedule A.

Recently, the NASD also amended Schedule C to the By-Laws by adding new Part XII prescribing requirements for the continuing education of certain registered persons subsequent to their qualification and registration with the NASD.[3] The new rule established a formal two-part Securities Industry Continuing Education Program for securities industry professionals that would require uniform periodic training in regulatory matters (the "Regulatory Element") and ongoing programs by firms to keep employees informed of the products, services and investment strategies of their firms (the "Firm Elements"). Uniform rules in this area have also been adopted by other self-regulatory organizations, including the New York Stock Exchange, the American Stock Exchange, the Philadelphia Stock Exchange, the Chicago Board Options Exchange and the Municipal Securities Rulemaking Board ("SROs"). The participating SROs have established a permanent Securities Industry/Regulatory Council on Continuing Education ("Council") to make recommendations to SROs concerning the content of the Regulatory Element and requirements for satisfying the Firm Element.

An important feature of the continuing education program is that it would be operated on a cost recovery basis and generate modest reserves for unanticipated future expenditures. The participating SROs will begin administration of the Regulatory Element on July 1, 1995. This will include tracking and follow-up by the NASD's Central Registration Depository of persons subject to the program's requirements and administering the computer-based training program through the NASD PROCTOR system at PROCTOR centers or at newly-created mobile centers or special sessions for on-site delivery of the program. The Firm Element will be administered in two stages, with members required to complete written training plans by July 1, 1995 and implement such plans no later than January 1, 1996. The administration of this element will involve on-site review by the SROs of compliance of the plans with the Firm Element will be borne largely by the members, the NASD will function as Program Administrator for the Regulatory Element and will incur significant initial start-up and ongoing operational costs.

In order to cover the costs associated with the administration of the program, the NASD is proposing to amend Section 2 to Schedule A by adding a new provision to assess a $75.00 session fee against each individual required to complete the Regulatory Element of the continuing education program. The fee would apply to recoup the expenses of the Council and to cover the development, start-up and on-going operational costs of administering the Regulatory Element.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act[4] which require that the rules of the Association provide for the equitable allocation of reasonable dues, fees, and other changes in that the proposed rule provides a consistent basis for assessments among member firms and rectifies the current inconsistency between Sections 1 and 5 of Schedule A, and fairly assesses a charge to cover the start-up and ongoing costs incurred by the Association in the administration of the Regulatory Element of the continuing education requirements.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice of the proposed rule change to Section 1 to Schedule A to the NASD By-Laws in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

The proposed rule change to Section 2 to Schedule A to the NASD By-Laws has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder because the NASD has designated the part of the proposal for continuing education fees as one establishing or changing a fee under § 19(b)(3)(A)(ii), which renders the rule effective upon the Commission's receipt of this filing. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statement with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–95–23 and should be submitted by June 30, 1995.

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[3] 17 CFR 200.30–3(a)(12).

[1] The proposal was originally filed with the Commission on May 15, 1995. The NASD subsequently submitted Amendment No. 1 to the filing which amends the proposed rule to publish under Section 19(b)(2) of the Act that portion of the proposed rule change that amends Section 1 to Schedule A to the NASD By-Laws and to publish under Section 19(b)(3)(A)(ii) of the Act that portion of the proposed rule change that amends Section 2 to Schedule A of the NASD By-Laws. Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Mark P. Barracca, Branch Chief, Over-the-Counter Regulation, Division of Market Regulation, SEC, dated May 22, 1995.

[2] *See* Securities Exchange At Release No. 35074 (December 9, 1994); 59 FR 64827 (December 15, 1994).

[3] *See* Securities Exchange Act Release No. 35341 (February 8, 1995); 60 FR 8426 (February 14, 1995).

[4] 15 U.S.C. 78o3.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,

Secretary.

[FR Doc. 95-14121 Filed 6-8-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-35820; File No. SR-NASD-95-22]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of a Proposed Rule Change Relating to Extending the Continuing Education Requirement for Registered Persons to Government Securities Principals and Representatives

June 7, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 11, 1995, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend Schedule C of the NASD By-Laws to include government securities principals and representatives in the continuing education requirement for registered persons. Below is the text of the proposed rule change. Proposed new language is italicized, deleted language is in brackets:

Part XII

Continuing Education Requirements

This Part prescribes requirements regarding the continuing education of certain registered persons subsequent to their initial qualification and registration with the NASD. The requirements shall consist of a Regulatory Element and a Firm Element as set forth below.

(1) Regulatory Element

* * * * *

(e) Definition of registered person—For purposes of this Part, the term "registered person" means any person registered with the NASD as a representative, principal or assistant representative pursuant to Parts II, III [or], IV *or XI* respectively of Schedule C to the By-Laws.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to make a technical amendment to the rule language in Section (1)(e) of Part XII of Schedule C of the NASD By-Laws, Continuing Education Requirements. The proposed change will require Government Securities Principals and Representatives to participate in the continuing education program. Such persons who are designated in Part XI of Schedule C of the By-Laws were inadvertently excluded from the definition of registered person in Section (1)(e) of Part XII of Schedule C when the NASD filed SR-NASD-94-72 with the Commission on December 7, 1994.[2]

The NASD believes the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act in that the proposed changes to Schedule C of the By-Laws will improve the standards of training, experience, and competence for persons associated with NASD members. Pursuant to this statutory obligation, the NASD has proposed this rule change to operate its two-part continuing education program for industry professionals.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD has requested that the Commission find good cause pursuant to Section 19(b)(2) for approving the proposed rule change prior to the thirtieth day after publication in the **Federal Register**. In support of its request, the NASD states that it desires to ensure that all NASD registered persons will be required to participate in the continuing education program which will commence on July 1, 1995.

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by June 26, 1995.

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission approved SR-NASD-94-72 on February 8, 1995. Securities Exchange Act Release No. 35341 (February 8, 1995), 60 FR 8426.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-14325 Filed 6-7-95; 12:29 pm]

BILLING CODE 8010-01-M

[Release No. 34-35796; File No. SR-NYSE-95-20]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange, Inc., Relating to the Annual Maintenance Fee for Registered Persons

June 1, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on May 24, 1995, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to increase the annual maintenance fee for registered persons from forty-six ($46.00) to fifty-two dollars ($52.00). The proposed fee change will be implemented July 1, 1995.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries as set forth in section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to increase the annual maintenance fee for registered persons from forty-six ($46.00) to fifty-two dollars ($52.00). The annual maintenance fee charged all persons registered with the Exchange was originally adopted in 1976. The fee is intended to offset, in part, the costs incurred by the Exchange in the oversight of member organizations' sales practice activities. The fee was last increased in 1988 to its current forty-six dollar ($46.00) level.

On February 8, 1995, the SEC approved rules filed by the Exchange and other self-regulatory organizations to implement an industry-wide continuing education program commencing July 1, 1995.[1] six dollar increase in the annual maintenance fee is required to offset the increase in costs the Exchange estimates it will incur as a result of incorporating oversight of member organizations' continuing education programs into its annual field examination process.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(4) of the Securities Exchange Act of 1934 because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the New York Stock Exchange. All submissions should refer to File No. SR-NYSE-95-20 and should be submitted by June 30, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95-14122 Filed 6-8-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-21110; 812-9552]

IMG Mutual Funds, Inc., et al.; Notice of Application

June 2, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: IMG Mutual Funds, Inc. (the "Company"); the IMG Equity Trust (the "Equity Trust"); The IMG Income Trust (the "Income Trust," and together

[3] 17 CFR 200.30-3(a)(12) (1994).

[1] Securities Exchange Act Release No. 35341 (Feb. 8, 1995), 60 FR 8426.

with the Equity Trust, the "Trusts"); Investors Management Group, Ltd. (the "Adviser"); and certain persons who may be deemed to be affiliated persons, or affiliated persons of affiliated persons, of the Company (the "Affiliated Persons").

RELEVANT ACT SECTIONS: Order requested under section 17(b) for an exemption from the provisions of section 17(a).

SUMMARY OF APPLICATION: Applicants seek relief to permit the exchange of shares of the Company for portfolio securities of two private investment trusts that are not registered under the Act. After the exchanges, the Trusts will dissolve and distribute the shares of the Company they receive *pro rata* to their participants.

FILING DATES: The application was filed on March 27, 1995 and amended on May 8, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 27, 1995, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, 720 Liberty Building, 418 Sixth Avenue, Des Moines, IA 50309–2410.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Senior Attorney, (202) 942–0565, or C. David Messman, Branch Chief, (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be available for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Company is registered under the Act as an open-end diversified management investment company consisting of two series, the Stock Fund and the Bond Fund (together, the "Funds"). The Company's registration statement under the Securities Act of 1933 (the "Securities Act") has been declared effective but no offering of the shares of the Funds has commenced. Each Fund will offer shares in three classes in reliance on rule 18f–3 under the Act. The classes will differ solely on the basis of minimum and routine investment requirements, and distribution and shareholder servicing fees. Classes of shares of the Funds will not be sold with any sales charge but will pay varying rule 12b–1 distribution fees under certain circumstances. The Company also may impose contingent deferred sales charges in the future. The Funds may, from time to time, enlist the assistance of an outside broker-dealer to market shares in the Funds. The Adviser will act as investment adviser to the Funds. The Adviser is registered under the Investment Advisers Act of 1940.

2. The Trusts were formed in 1991 as common law revocable grantor trusts under the laws of the State of Iowa. The Trusts have not registered under the Act in reliance on section 3(c)(1) of the Act, and the interests therein have not been registered under the Securities Act in reliance on section 4(2) of the Securities Act. Each participant in the Trust (a "Participant") established a separate revocable grantor trust under an individual Trust Agreement appointing Richard A. Westcott ("Westcott"), David W. Miles ("Miles") and James W. Paulsen ("Paulsen") to serve as Co-Trustees and authorizing the commingling of Participant funds in a single account. Westcott, Miles, and Paulsen are each directors and controlling persons of the Adviser, and directors of the Company. The Adviser selects the investments for the Trusts.

3. The Affiliated Persons consist of: (a) directors, principal shareholders, and employees of the Adviser, (b) spouses of the foregoing, (c) entities that are owned or controlled by one or more of the foregoing, and (d) trustees and/or participants in the Trusts who could be deemed to be affiliated persons, or affiliated persons of affiliated persons, of the Company under section 2(a)(3) of the Act.

4. Applicants propose that, prior to offering shares of the Stock Fund to the public, the Stock Fund will acquire portfolio securities of the Equity Trust in exchange for shares of the Stock Fund equal in value to the net asset value of the Equity Trust. The Equity Trust then will dissolve and distribute the Stock Fund shares it receives to its Participants *pro rata*, along with cash received from the sale of portfolio securities, if any, of the Equity Trust not acquired by the Company. A like exchange of shares of the Bond Fund for portfolio securities of the Income Trust will take place, followed by the distribution to Participants and dissolution of the Income Trust (together, the "Exchanges"). Participants will receive that class of shares of the Stock Fund or the Bond Fund with the lowest expenses that they would otherwise be qualified to purchase based on the value of their Trust accounts. Following the Exchanges, Participants of the Trusts will hold all of the shares of each Fund, except for shares representing seed capital contributed to the Funds by the Adviser or one of its affiliates pursuant to section 14(a) of the Act.

5. Currently, on an annual basis, the Equity Trust incurs investment advisory fees of 1.25% and total expenses of 1.50%, and the Income Trust incurs investment advisory fees of 0.75% and total expenses of 1.00%. Following the Exchanges, the Stock Fund is expected to incur investment advisory fees of 0.50% and total expenses, which will vary among the different classes, of between 0.85% and 1.35%. The Bond Fund is expected to incur investment advisory fees of 0.30% and total expenses, which will vary among the different classes, of between 0.60% and 1.00%. Based on current valuations of the Trusts, the Adviser does not anticipate that any Participant will pay more expenses directly or indirectly for the Company shares received than what they are currently bearing as Participants in the Trusts.

6. Applicants would like to covert the Trusts to registered investment company form because the Trusts have proven to be more popular than originally anticipated and because of continuing investor interest in the Trusts. In contrast to the Trusts, which are not registered under the Act in reliance on section 3(c)(1), the Funds will not be subject to any limitation on the number of shareholders.

7. After the Exchanges, the Adviser intends for the foreseeable future to manage the assets of the Funds in substantially the same manner as it did for the Trusts, except as may be necessary or desirable: (a) To qualify the Funds as regulated investment companies under the Internal Revenue Code; (b) to comply with investment restrictions adopted by the Funds in accordance with the requirements of the Act or securities laws of states where shares in the Company will be offered; or (c) in light of changed market conditions.

8. The Exchanges will be effected under agreements and plans of exchange (the "Plans") to be approved by the Participants of the Trusts, in accordance with the respective Trust Agreements and the laws of the State of Iowa. A registration statement under the Securities Act on Form N–14 relating to the Exchanges has been filed on behalf of the Company. Consent of the Participants of the Trusts for approval of the Plans will be made by means of a prospectus/information statement that forms part of the Form N–14 registration statement. The prospectus/information statement will describe the nature of and reasons for the Exchanges, the tax and other consequences to the Participants, and other relevant matters, including comparisons of the Funds and the Trusts in terms of their respective investment objectives and policies, fee structures, management structures, and other aspects of their operations, as well as the financial information required by Form N–14.

9. The Exchanges will not cause taxable gain or loss to be recognized by the Participants. As a result of the Exchanges, however, the Funds may acquire securities that have anticipated in value or that have depreciated in value from the date they were acquired. If appreciated securities were sold after the Exchanges, the amount of the gain would be taxable to future shareholders as well as Participants.

10. No brokerage commission, fee, or other remuneration will be paid in connection with the Exchanges. Neither Participants nor the Adviser or the Affiliated Persons will receive any financial benefit from the Exchanges (except as described in paragraph 9 above), apart from their *pro rata* interests in Company shares and other property distributed by the Trusts upon dissolution.

11. The Exchanges will not be effected unless and until each of the following conditions is satisfied: (a) The Company's Form N–1A and Form N–14 registration statements have been declared effective; (b) the Plans have been approved by the Participants of the Trusts; (c) the SEC has issued an order relating to this application; and (d) the Participants have received a favorable opinion of counsel regarding the tax consequences of the Exchanges.

12. The Adviser will assume all costs of the Exchanges, including the cost of transferring portfolio securities to the Company's custodian and the issuance costs (except registration and filing fees) of the Company's shares issued in the Exchanges, as well as the legal fees and expenses relating to this application and obtaining the opinion of counsel on certain tax matters.

13. A majority of the members of the Board of Directors of the Company (the "Board") are not "interested persons" as that term is defined in the Act. The Board has considered the desirability of the Exchanges from the point of view of the Company and the Trusts, and a majority of the non-interested members of the Board, have concluded that: (a) The Exchanges are in the best interest of the respective Funds, the Trusts, and the Participants; (b) the Exchanges will not dilute the respective interests of the Participants of the Trusts when their interests are converted into Company Shares; and (c) the terms of the Exchanges as reflected in the Plans will be reasonable and fair, will not involve overreaching, and will be consistent with the policies of the Funds and the Trusts.

Applicants' Legal Conclusions

1. Applicants seek an exemption under section 17(b) of the Act from the provisions of section 17(a) to the extent necessary to permit the Funds to acquire the assets of the Trusts in exchange for shares of the Funds. Section 17(a), in pertinent part, prohibits an affiliated person of a registered investment company, or an affiliated person of such person, from selling to or purchasing from such investment company any security or other property.

2. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include any person directly or indirectly controlling, controlled by, or under common control with, such other person. The Trusts may be considered affiliated persons of the Company because the Trusts and the Company may be deemed to be under the common control of the Adviser. Similarly, the Affiliated Persons may require relief from section 17(a) because they could be deemed to be affiliated persons of the Trusts and therefore affiliated persons of affiliated persons of the Company.

3. Section 17(b) authorizes the SEC to exempt any person from the provisions of section 17(a) if evidence establishes that: (a) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of the registered investment company; and (c) the proposed transaction is consistent with the general purposes of the Act. Applicants assert that each of these standards is met.

4. Given the similarity of investment objectives and policies of the Funds and their corresponding Trusts, each Fund will be attempting to assemble a portfolio of securities substantially similar to that held by the corresponding Trust. The Funds will acquire portfolio securities, for which market quotations are readily available, from the Trusts at their independent "current market price," as defined in rule 17a–7 under the Act. Neither the participants nor the Adviser or the Affiliated Persons will be in a position to influence the valuation of the securities acquired by the Funds. Further, the Funds have the opportunity to purchase the portfolio securities of the Trusts with lower transaction costs than would have been possible purchasing such securities in the open market.

5. The proposed Exchanges do not give rise to the abuses that section 17(a) was designed to prevent. After the Exchanges, Participants will hold substantially the same assets as shareholders of the Funds as they had previously held as Participants. In this sense, the Exchanges can be viewed as a change in the form in which assets are held, rather than a disposition giving rise to section 17(a) concerns.

For the SEC by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–14123 Filed 6–8–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26300]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

June 2, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 26, 1995, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so

requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Consolidated Natural Gas Company, et al. (70–8619)

Consolidated Natural Gas Company ("CNG"), a registered holding company, CNG Tower, 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222–3199, and its wholly owned nonutility subsidiary companies, CNG Research Company ("Research") and Consolidated Natural Gas Service Company, Inc. ("Service"), both located at CNG Tower, 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222–3199; CNG Coal Company ("Coal"); CNG Producing Company ("Producing") and its subsidiary company, CNG Pipeline Company ("Pipeline"), all located at CNG Tower, 1450 Poydras Street, New Orleans, Louisiana 70112–6000; CNG Transmission Corporation ("Transmission") and CNG Storage Service Company ("Storage"), both located at 445 West Main Street, Clarksburg, West Virginia 26301; CNG Energy Services Corporation ("Energy Services"), One park Ridge Center, P.O. Box 15746, Pittsburgh, Pennsylvania 15244–0746; and CNG's public-utility subsidiary companies, The Peoples Natural Gas Company ("Peoples"), CNG Tower, 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222–3199; The East Ohio Gas Company ("East Ohio"), located at 1717 East Ninth Street, Cleveland, Ohio 44114–0759; Virginia Natural Gas, Inc. ("VNG"), 5100 East Virginia Beach Boulevard, Norfolk, Virginia 23502–3488; Hope Gas, Inc. ("Hope Gas"), P.O. Box 2868, Clarksburg, West Virginia 26301–2868; and West Ohio Gas Company ("West Ohio"), P.O. Box 1217, Lima, Ohio 45802–1217 (collectively, "Subsidiaries"), have filed an application-declaration under sections 6(a), 6(a)(2), 7, 9(a), 10, 12(b) and 12(c) of the Act and rules 43 and 45.

CNG proposes to issue and sell commercial paper in an aggregate principal amount not to exceed $800 million outstanding at any one time, from time-to-time through June 30, 1996 ("Commercial Paper"). Such Commercial Paper may be domestic commercial paper ("Domestic Paper") and/or European commercial paper ("Euro Paper"). Domestic Paper will have varying maturities of not more than 270 days and Euro Paper will have maturities from 7 to 183 days. CNG proposes to sell Domestic Paper or Euro Paper, whichever provides the lower cost in a given transaction, but only so long as the discount rate or the effective interest cost on the date of sale does not exceed the prime rate of interest from a commercial bank.

To the extent that it becomes impractical to sell the Commercial Paper due to market conditions or otherwise, CNG proposes to borrow, repay and reborrow, without collateral under back-up lines of credit, an aggregate principal amount not to exceed $600 million through June 30, 1996 ("Loans"). Any additional funding needs in excess of $600 million that would otherwise have been provided by the Commercial Paper will be provided by advances under a proposed credit agreement described below. The Loans, together with any sales of Commercial Paper, will not exceed an aggregate outstanding principal amount of $800 million.

The Loans will mature not more than one year from the date of each borrowing, will be prepayable in whole or part at any time, and will bear interest at a rate not to exceed the prime commercial rate of interest of the lending bank in effect on the date of each borrowing. A commitment fee of no more than 0.125% of the principal amount of each bank's commitment may be paid.

CNG additionally proposes to obtain a revolving line of credit through June 30, 1996 of up to $150 million, with advances thereunder maturing in no more than 364 days. The interest rate on fixed rate advances under such line of credit would not exceed 50 basis points over LIBOR and the interest rate on floating rate advances under such line of credit would not exceed the higher of (i) 325 basis points over LIBOR or (ii) 47.5 basis points over the certificate of deposit rate.

Additionally, CNG proposes to restructure an existing credit agreement authorized by the Commission by orders dated March 28, 1991 and September 9, 1992 (HCAR Nos. 25383 and 25626, respectively). Pursuant to this agreement, loans of up to $300 million would be advanced to Consolidated from time to time through June 30, 1996, each such advance being evidenced by either a note to a group of participating banks ("Syndicated Note") or to individual participating banks ("Money Market Note"). Each such note will mature in 364 days.

The interest rate for any Syndicated Note will not exceed (i) the higher of the prime rate announced by Chase Manhattan Bank or the federal funds rate plus 50 basis points, (ii) LIBOR, adjusted for reserve requirements, plus 25 basis points, or (iii) the certificate of deposit rate, adjusted for reserve requirements and deposit insurance costs, plus 37.5 basis points. The interest rate for a Money Market Note will be such rate as the banks may bid, which will either be expressed as an all-in-rate or with reference to LIBOR.

It is also proposed that, through June 30, 1996, CNG provide financing to the Subsidiaries in an aggregate amount not to exceed $1.225 billion in the form of open account advances, long-term loans and/or capital stock purchases. Individual Subsidiary financing by CNG would not exceed the following amounts: (1) Transmission, $100 million; (2) East Ohio, $265 million; (3) Peoples, $100 million; (4) VNG, $100 million; (5) Hope Gas, $15 million; (6) Energy Services, $300 million; (7) Storage, $1 million; (8) West Ohio, $25 million; (9) Service, $15 million; (10) Producing, $300 million; (11) Coal, $3 million; and (12) Research, $1 million.

Open account advances ("Advances"), may be made, repaid and remade on a revolving basis, and all such Advances will be repaid within one year from the date of the first Advance to the borrowing Subsidiary with interest at the same effective rate of interest as CNG's weighted average effective rate of commercial paper and/or revolving credit borrowings. If no such borrowings are outstanding, the interest rate shall be predicated on the Federal Funds' effective rate of interest as quoted by the Federal Reserve Bank of New York. Advances will be made through the CNG System Money Pool authorized by Commission order dated June 12, 1986 (HCAR No. 24128).

Long-term loans will mature over a period of time not in excess of 30 years with the interest rate predicated on and substantially equal to CNG's cost of funds for comparable borrowings. In the event CNG has not had recent comparable borrowings, the rates will be tied to the Salomon Brothers indicative rate for comparable debt issuances published in Salomon Brothers, Inc. Bond Market Roundup, or to a comparable rate index, on the date nearest to the time of takedown.

Capital stock will be purchased from the Subsidiaries at its par value (book value in the case of VNG). Capital stock transactions between CNG and its utility Subsidiaries would occur under an exemption pursuant to rule 52 and are not part of the authorization requested.

Producing proposes to provide to Pipeline, from time-to-time through June 30, 1996, up to an aggregate of $1 million of financing through short-term loans in the form of open account advances and/or long-term loans evidenced by non-negotiable notes (documented by book entry only) and/or the purchase of up to 10,000 shares of Pipeline's common stock, $100 par value. The open account advances and long-term loans will bear interest at rates equal to the cost of money to Producing through its borrowing from CNG.

The Subsidiaries also propose to increase their authorized common stock as needed to accommodate proposed stock sales and to provide for future issues, any such increase being limited to a number of shares calculated by dividing the aggregate financing proposed for such Subsidiary herein by the par value (book value in the case of VNG) of such Subsidiary's common stock rounded up to the nearest hundred. The proposed increase in the authorized number of shares for each Subsidiary would not exceed the following amounts: (1) Transmissions, 10,000; (2) East Ohio, 5.3 million; (3) Peoples, 1 million; (4) VNG, 2,503; (5) Hope Gas, 150,000; (6) Energy Services, 300 million; (7) Storage, 100,000; (8) West Ohio, 2,500; (9) Service, 150,000; (10) Producing, 30,000; (11) Coal, 300; and (12) Research, 100.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–14193 Filed 6–8–95; 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–11476]

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Voice Powered Technology International, Inc., Common Stock, $0.001 Par Value, Redeemable Warrants Expiring on October 19, 1997)

June 5, 1995.

Voice Powered Technology International, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities ("Securities") from listing and registration on the Boston Stock Exchange, Inc. ("BSE" or "Exchange").

The reasons alleged in the application for withdrawing the Securities from listing and registration include the following:

According to the Company, the reason for the withdrawal is the fact that since October 1992, when the Securities were listed on the Exchange and began trading through the NASDAQ/Small Cap system there has been essentially no trading of the Securities on the Exchange. On the other hand, there has consistently been active trading of the Securities through NASDAQ/Small Cap system (*i.e.*, daily trading volume frequently in the 100,000 or greater range). There are presently thirty (30) market makers for the Securities on NASDAQ. There have been at least approximately twenty-five (25) market makers for the Securities on NASDAQ at any point in time over the past twelve (12) months.

Any interested person may, on or before June 23, 1995 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–14189 Filed 6–8–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2782]

Illinois; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on May 30, 1995, I find that Madison and St. Clair Counties in the State of Illinois constitute a disaster area due to damages caused by severe storms and flooding beginning on May 15, 1995 and continuing. Applications for loans for physical damages may be filed until the close of business on July 29, 1995, and for loans for economic injury until the close of business on March 1, 1996, at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308 or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous counties of Bond, Clinton, Jersey, Macoupin, Monroe, Montgomery, Randolph, and Washington in the Sate of Illinois, and St. Charles and St. Louis Counties and the City of St. Louis in the State of Missouri may be filed until the specified date at the above location.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 278206 and for economic injury the numbers are 853300 for Illinois and 853400 for Missouri.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 2, 1995.

James W. Hammersley,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 95–14143 Filed 6–8–95; 8:45 am]

BILLING CODE 8025–01–M

[License No. 01/02–0493]

NYSTRS/NV Capital, L.P.; Notice of Surrender of Licensee

Notice is hereby given that NYSTRS/NV Capital, L.P. ("NYSTRS"), 111 Westminster Street, Providence, Rhode Island, 02903 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (Act). NYSTRS was licensed by the Small Business Administration on February 7, 1986.

Under the authority vested by the Act and Pursuant to the Regulations promulgated thereunder, the surrender of the license was accepted on May 25, 1995, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

[Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 1, 1995.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 95-14195 Filed 6-8-95; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 2215]

Office of Protocol; Gifts to Federal Employees From Foreign Government Sources Reported to Employing Agencies in Calendar Year 1994

The Department of State submits the following comprehensive listing of the statements which, as required by law, Federal employees filed with their employing agencies during calendar year 1994 concerning gifts received from foreign governments sources. The compilation includes reports of both tangible gifts and gifts of travel expenses of more than minimal value, as defined by statute.

Publication of this listing in the **Federal Register** is required by Section 7342(f) of title 5, United States Code, as added by section 515(a)(1) of the Foreign Relations Authorization Act, Fiscal Year 1978 (Public Law 95-105, August 17, 1977, 91 Stat. 865).

Dated: April 13, 1995

Richard Moose,

Under Secretary for Management.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	4' scroll that bears Chinese characters on brocade paper. Recd—January 5, 1994. Est. Value—$1,200. Archive Foreign.	Mr. Chen Jie, Foreign Affairs Office, Huaibei People's Government, People's Republic of China.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	19" glass scepter, with brown glass handle and brown spikes. Recd—January 6, 1994. Est. Value—$1,500. Archive Foreign.	His Excellency, Valeriy Shmarov, Deputy Prime Minister of Ukraine.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Sterling silver clipper ship model and wooden stand. Approx. 9" x 8". Recd—January 10, 1994. Est. Value—$600. Archive Foreign.	His Excellency Ruud Lubbers, Prime Minister of the Netherlands.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Framed Turkish tapestry that incorporates a portrait of the President. Recd—January 12, 1994. Est. Value—$1,400. Archive Foreign.	Her Excellency Tansu Ciller, Prime Minister of the Republic of Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Gold-toned saxophone with mother-of-pearl keys and the engraved signature of President Havel, made by Amati Krasilce. Recd—January 18, 1994. Est. Value—$1,800. Archive Foreign.	His Excellency Vaclav Havel, President of the Czech Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	(1) Porcelain blue and white statue of the President holding a saxophone, made in Russia. (2) Green marble mantel striking clock with ormolu mounts and an eagle on a pedestal holding three crowns. Approx. 16½" x 21". (3) Framed photograph of the President with Boris Yeltsin. Recd—January 18, 1994. Est. Value—$1,800. Archive Foreign.	His Excellency Boris Yeltsin, President of the Russian Federation.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	(1) Brown and green glass vase that bears abstract designs. Approx. 10". (2) Portrait of the President etched on a grain of rice and set in a lucite box with magnifying glass. Recd—January 11, 1994. Est. Value—$850. Archive Foreign.	His Excellency Leonid Kravchuk, President of Ukraine.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Blue leather scrapbook that contains various articles and photographs from the Slovak Republic. Approx. 13" x 16". Recd—January 15, 1994. Est. Value—$850. Archive Foreign.	His Excellency Michal Kovac, President of the Slovak Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Green cut-crystal bowl, made by Val St. Lambert Cristal, Belgium. Approx. 12" x 4". Recd—January 18, 1994. Est. Value—$400. Archive Foreign.	His Excellency Jean-Luc Dehaene, Prime Minister of Belgium.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Miniature oak vodka cask that bears a male bronze figure on top with a ladle and a sword at his side. Cask bears Russian calligraphy on its side. Approx. 10" x 15". Recd—January 18, 1994. Est. Value—$300. Archive Foreign.	The Honorable Vitaly V. Pevnev, Mayor of the City of Azov Russian Federation.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Bronze sculpture of a knight on a horse, the symbol of Belarus. Approx. 10" x 6" x 4". Recd—January 18, 1994. Est. Value—$750. Archive Foreign.	His Excellency Stanislav Shushkevich, Chairman of the Supreme Soviet Republic of Belarus.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Gold Pendulum date and time clock. Recd—January 14, 1994. Est. Value—$1,800. Archive Foreign.	His Excellency Claude Haegi, President of the State Council of the Republic and Canton of Geneva, Switzerland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Large crystal vase that bears gold detail and miniature cartouche portrait of a woman. Recd—January 18, 1994. Est. Value—$500. Archive Foreign.	His Excellency Vaclav Klaus, Prime Minister of the Czech Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	(1) Large hardcover folio book, "The Mosaics of Jordan," by Michele Piccirillo, in a red slipcase. (2) Bedoin-style red, black and green pillowcases. Recd—January 26, 1994. Est. Value—$425. Archive Foreign.	His Majesty Hussein I, King of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Sterling silver figure of an Arab warrior on a camel, inlaid with yellow gold. The figure is mounted on an agate panel base. Approx. 7½" x 6¼". Recd—January 26, 1994. Est. Value—$5,000. Archive Foreign.	.....	
President	Model of an Amtrak ICE train housed in a clear plastic container. Approx. 34" x 9". Recd—January 31, 1994. Est. Value—$1,200. Archive Foreign.	His Excellency Dr. Helmut Koho, Chancellor of the Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Pair of Zeiss binoculars in a plastic case. Recd.—January 31, 1994. Est. Value—$225. Archive Foreign.		
President	(1) 40" x 35" framed oil painting that depicts Kazakh horsemen with mountains in the background. Approx. 40" x 35". (2) Oriental rug that bears portraits of the President and First Lady in its center. Approx. 90" x 60". (3) Traditional Kazakh burgundy colored hat with gold embroidery and mink trim. (4) Burgundy velvet robe with gold embroidery. Recd—February 14, 1994. Est. Value—$2,750. Archive Foreign.	His Excellency Nursultan Nazarbayev, President of the Republic of Kazakhstan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Gold and pearl tie tac. Recd.—February 11, 1994. Est. Value—$300. Archive Foreign.	His Excellency Morihiro Hosokawa, Prime Minister of Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
First Family	A matted and framed 1851 engraving of Emmanuel Leuize's "Washington Crossing the Delaware," by Paul Girardet. Recd—July 14, 1994. Est. Value—$750. Archive Foreign.	His Excellency Dr. Helmut Kohl, Chancellor of the Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Porcelain bowl that bears the image of a pink flamingo, titled "The Audobon" and made by Limoges. Approx. 9" diameter. Recd—July 14, 1994. Est. Value—$300. Archive Foreign.		
First Family	Wool kilim-style rug, made in Egypt. Approx 7'6" x 5'. Recd—October 31, 1994. Est. Value—$3,000. Archive Foreign.	His Excellency Mohammad Hosni Mubarak, President of the Arab Republic of Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family	(1) Intricately designed and crafted model wooden ship. (2) Large gold breast medal, the Order of Kuwait, and two pins housed in a presentation case. (3) Three black leather briefcases with red stitching. (4) Gold pen and a pencil set in leather box that bears the Seal of Kuwait. (5) Christian Dior wristwatch with leather band and four tiny sapphires. (6) Black and white robed Arab dress outfit. (7) Dress with black silk undergarment and sheer overgarment embossed with yellow gold threads and bangles in a geometric band motif. (8) Cloak in black, gold, and white with gold and black stripes. (9) Pen set and blotter. (10) Six Bedouin pillows, one blanket, and two saddlebags. (11) Book titled, "Al Sadu Technique on Bedouin Weaving." (12) 18 kt. yellow gold double-link neck chain of Mubarak the Great. (13) Several books about Kuwait. Recd—October 28, 1994. Est. Value—$21,300. Archive Foreign.	His Highness Sheikh Jabir Al Ahmad Al Sabah, Amir of the State of Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Greek icon, titled "Coronation of the Virgin Enthroned," circa 1700. Egg tempera on wood. Recd—April 26, 1994. Est. Value—$3,000. Archive Foreign.	His Excellency Andreas Papandreou, Prime Minister of the Hellenic Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Watercolor painting that bears Chinese characters on brocade paper. Recd—May 4, 1994. Est. Value—$1,500. Archive Foreign.	His Excellency, Zou Jiahua, Vice Premier and Minister of Foreign Affairs of the People's Republic of China.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Seven-piece sterling silver tea service. Recd—May 16, 1994. Est. Value—$2,500. Archive Foreign.	His Excellency Datuk Seri Dr. Mahathir bin Mohamad, Prime Minister of Malaysia.	Non-Acceptance would cause embarrassment to donor and U.S. Government.
President	Indian oriental carpet whose design incorporates twelve square medallions. Approx. 4" x 6". Recd—May 19, 1994. Est. Value—$1,200. Archive Foreign.	His Excellency P.V. Narasimha Rao, Prime Minister of India.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Framed hand-knit tapestry in paisley motif, speciality of Kashmir. Approx. 77" x 5" x 151". Recd—May 24, 1994. Est. Value—$650. Archive Foreign.	His Excellency Farooq Leghari, President of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	(1) Statue of Romulus and Remus with SheWolf. (2) Hardcover book, "Marcus Aurelius: History of a Monument and its Restoration." (3) Matted Watercolor of a Roman fountain. Approx. 18" x 14". Recd—June 2, 1994. Est. Value—$1,200. Archive Foreign.	The Honorable Francesco Rutelli, Mayor, City of Rome, Italy.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Oversized hardcover book, titled "Roma Capitale," number 725, in a slipcase. Recd—June 2, 1994. Est. Value—$350. Archive Foreign.	.....	
	Presentation box for the statue. Recd—June 2, 1994. Est. Value—$50. Archive Foreign.	.....	
President	800 fine silver medal that depicts President Clinton and the Leaning Tower of Pisa. Approx 2" diameter. Recd—June 2, 1994. Est. Value—$300. Archive Foreign.	His Excellency Oscar Luigi Scalfaro, President of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Stone mosaic that depicts the Roman Colliseum and is set in a gold frame. Approx. 13" x 23". Recd—June 2, 1994. Est. Value—$6,000. Archive Foreign.	His Holiness John Paul II	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Sterling silver box that bears an etching of the Italian Presidential Palace. The inside bears an inscription to the President. Recd—June 3, 1994. Est. Value—$850. Archive Foreign.	His Excellency Silvio Berlusconi, President of the Council of Ministers of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Velvet presentation box. Recd—June 3, 1994. Est. Value—$10. Archive Foreign.		
President	(1) Book about the artwork of Bernadette Kelly. (2) An oil painting by Bernadette Kelly. Recd—June 3, 1994. Est. Value—$1,800. Archive Foreign.	His Excellency Francois Mitterrand, President of the French Republic, and Mrs. Mitterrand.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Signed photographs of Queen Elizabeth II and Prince Philip. Each is in a sterling silver frame. Recd—June 6, 1994. Est. Value—$1,000. Archive Foreign.	Her Majesty Queen Elizabeth II	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Two presentation boxes. Recd—June 6, 1994. Est. Value—$15. Archive Foreign.		
President	Cobalt blue vase that bears a gold design. Approx. 12". Recd—June 6, 1994. Est. Value—$350. Archive Foreign.	His Excellency Edouard Balladur, Prime Minister of the French Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Four Diadora brand sweatsuits. Recd—June 4, 1994. Est. Value—$300. Archive Foreign.	His Excellency Roberto Maroni, Minister of the Interior, Italy.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Signed color photograph of the Emperor and Empress of Japan inside an 11½″ x 14½″ sterling silver frame. Recd—June 22, 1994. Est. Value—$350. Archive Foreign.	Their Imperial Majesties, The Emperor and Empress of Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Four ceramic plates and a large ceramic bowl. Recd—June 23, 1994. Est. Value—$300. Archive Foreign.	His Majesty Hussein I, King of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	(1) Large crystal vase. (2) Ceramic glazed platter that bears a portrait of the President and First Lady in the center and a floral border. (3) Hardcover book with leather cover, titled "Slovakia for the World." Recd—June 23, 1994. Est. Value—$400. Archive Foreign.	His Excellency Michal Kovac, President of the Slovak Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Lapis-lazuli table box with sterling silver trim and hinges and an inscription plate that reads "Cordialmente Eduardo Frei Ruiz-Tagle, President of Chile 1994." Recd—June 30, 1994. Est. Value—$750. Archive Foreign.	His Excellency Eduardo Frei, President of the Republic of Chile.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Carved stone statue of a female religious figure. Recd—June 30, 1994. Est. Value—$250. Archive Foreign.	His Excellency Viktor Chernomyrdin, Chairman of the Council of Ministers of the Russian Federation.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Gold soccer ball trophy on a malachite and gold pedestal. Recd—July 14, 1994. Est. Value—$500. Archive Foreign.	His Royal Highness Prince Saud Al Faisal, Minister of Foreign Affairs of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Set of 12 Sudety hand-cut lead crystal old-fashioned glasses, matching decanter with stopper, and a round ashtray. All made in Poland. Recd—July 6, 1994. Est. Value—$620. Archive Foreign.	His Excellency Lech Walesa, President of the Republic of Poland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Silver-colored metal bell with etched design, lettered "That this world under God shall have a new birthday of freedom." Recd—July 11, 1994. Est. Value—$500. Archive Foreign.	The Honorable Eberhard Diepgen, Governing Mayor of Berlin, Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Large selection of ceramic Artistica Solimene dinnerware consisting of: 24 dinner plates in various designs; 12 salad plates; 12 soup bowls; soup tureen; large serving bowl; sectioned serving dish; two round-shaped and two oval-shaped serving platters; two serving bowls; and two small serving platters. Recd—July 8, 1994. Est. Value—$800. Archive Foreign.	The Honorable Giorgio Franchetti Pardo, Head of the Delegation for the Italian Presidency for the G–7 Summit for the Ministry of Foreign Affairs Italy.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Brown leather photograph album that contains photographs from the President's and Mrs. Clinton's trip to Paris in June 1994, in a slipcase. Recd—July 14, 1994. Est. Value—$500. Archive Foreign.	His Excellency Francois Mitterrand, President of the French Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Saxophone with engraved lettering "Amati Kraslice, ATS 21." Recd—July 6, 1994. Est. Value—$1,500. Archive Foreign.	His Excellency Lech Walesa, President of the Republic of Poland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Oil on canvas painting of an abstract figure of a bird, titled "She Wolf," by Latvian artist Illinere. Approx. 40″ x 35½″. Recd—July 15, 1994. Est. Value—$2,500. Archive Foreign.	His Excellency Guntis Ulmanis, President of the Republic of Latvia, and Mrs. Ulmane.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Reproduction of a pre-Columbian artifact. Recd—July 22, 1994. Est. Value—$350. Archive Foreign.	His Excellency Ernesto Perez Balladares, President of the Republic of Panama.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Glass and precious stone sculpture that is a model of the twin cities Eilat and Aqaba. Recd—July 28, 1994. Est. Value—$650. Archive Foreign.	The Honorable Gabi Kadosh, Mayor, City of Eilat, Israel.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Oil on canvas painting by Robert Elibekian, titled "Actresses." Approx. 35″ x 42″. Recd—August 10, 1994. Est. Value—$2,000. Archive Foreign.	His Excellency Levon Ter-Petrosyan, President of the Republic of Armenia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Antique leather-bound manuscript of the Old and New Testaments, written in Ge'ez (the Ethiopian equivalent of Latin), the official language of the Ethiopian Orthodox Church. Recd—August 12, 1994. Est. Value—$1,500. Archive Foreign.	His Excellency Meles Zenawi, President of the Transitional Government of Ethiopia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Large floral arrangement of birds of paradise and proteus. Recd—August 19, 1994. Est. Value—$250. Accepted by Another Government Agency.	His Royal Highness Prince Bandar Bin Sultan, Ambassador of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Large floral arrangement. Recd—August 19, 1994. Est. Value—$350. Accepted by another Government agency.	His Majesty Hassan II, King of Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Large goldfish bowl vase that bears an oriental-style floral design on a white background. Recd—August 19, 1994. Est. Value—$90. Archive Foreign.		

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	Steel storage chest with two lock clasps, fruit finial, two ring handles and flared base. The chest contains eleven coffee table books about Morocco: "Tangier," 'Casablanca," "The Majesty of Morocco," "Morocco Seen from Above," "La Mosquee Hassan II," "Marakesh," "Morocco Design from Casablanca to Marakesh," "Living in Morocco," "De L'Empire Aux Villes Imperiales," "Marakesh—Demeures and Secret Gardens," and "Traditional Islamic Craft in Moroccan Architecture." Recd—August 19, 1994. Est. Value—$4,300. Archive Foreign.		
President	Antique sword with steel blade, inlaid with silver and gold. The scabbard is gold and has a carved ivory top. Recd—September 14, 1994. Est. Value—Pending Value. Archive Foreign.	Dr. Ing. Wardiman Djojonegoro, Minister of Education and Culture, Republic of Indonesia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Silver Byzantine icon of the Virgin Mary holding baby Jesus. Recd—September 21, 1994. Est. Value—$300. Archive Foreign.	Nicholas S. Revezoulis, Chairman, American Hellenic Friends of Clinton Organization, Greece.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	.....	The Honorable George Lianis, Deputy Minister of Culture, Greece.	
President	Hour Lavigne clock. Recd—September 22, 1994. Est. Value—$5,990. Archive Foreign.	The Honorable Jacques Chirac, Mayor of Paris, France.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Paperback, "Romania in Europe and in the World," written and inscribed by Ion Iliescu. Recd—September 30, 1994. Est. Value—$25. Archive Foreign.	His Excellency Ion Iliescu, President of Romania.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	(1) Portrait of President Roosevelt. (2) Romanian tapestry. Recd—September 30, 1994. Est. Value—$700. Archive Foreign.		
President	Paperback, "Century's Contract," inscribed by President Aliyev. Recd—September 30, 1994. Est. Value—$20. Archive Foreign.	His Excellency Heydar Alieyev, President of the Republic of Azerbaijan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Carpet with the President's portrait woven into the pattern. Recd—September 30, 1994. Est. Value—$500. Archive Foreign.		
President	A pair of candlesticks. Recd—September 27, 1994. Est. Value—$900. Archive Foreign.	His Excellency Boris Yeltsin, President of the Russian Federation.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Small hardcover book, "Hope," inscribed to President Clinton. Recd—October 6, 1994. Est. Value—$5. Archive Foreign.	Mr. Nelson Mandela, President of the State Republic of South Africa.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	(1) Bronze sculpture of an elephant, with gold tusks, Approx. 10"x12". (2) White gold pin in the shape of South Africa. (3) Photograph album that contains photographs of the great bull elephant. (4) White box that housed Inaugural Coin. Recd—October 6, 1994. Est. Value—$1,000. Archive Foreign.		
	Coin that commemorates the inauguration of President Mandela. Recd—October 6, 1994. Est. Value—$500. Archive Foreign.		
President	Ukrainian pine box with hinged lid that bears a native inlaid intricate geometrical design. Approx. 14"x17". Recd—October 11, 1994. Est. Value—$250. Archive Foreign.	His Excellency Oleksandr Moroz, Chairman, Supreme Rada of Ukraine.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Sterling silver compote with wood interior. Recd—October 12, 1994. Est. Value—$700. Archive Foreign.	His Excellency Carlos Salinas de Gortari, President of the United Mexican States.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Sterling silver astrolabio nautico (compass), circa 1555. Recd—October 12, 1994. Est. Value—$4,000. Archive Foreign.	His Excellency Anibal Cavaco Silva, Prime Minister of Portugal.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Sterling silver box that bears the crest of Thailand on its lid. The inside is made of lacquered wood. Approx. 9"x5½". Recd—October 20, 1994. Est. Value—$2,000. Archive Foreign.	His Excellency Chuan Leekpai, Prime Minister of the Kingdom of Thailand.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	(1) Inlaid wood and mother-of-pearl game table for playing backgammon and chess. (2) Inlaid wooden box. Recd—October 27, 1994. Est. Value—$2,000. Archive Foreign.	His Excellency Hafiz al-Asad, President of the Syrian Arab Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	The Order of Al-Hussein Bin Ali, the Kingdom of Jordan's highest decoration. Recd—October 26, 1994. Est. Value—$3,275. Archive Foreign.	His Majesty Hussein I, King of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Sterling silver box with wooden interior. Recd—October 26, 1994. Est. Value—$650. Archive Foreign.		
President	Three ancient oil lamps in a glass case on a wooden base. Recd—October 27, 1994. Est. Value—$650. Archive Foreign.	The Honorable Ehud Olmert, Mayor of Jerusalem, Israel.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Sterling silver serving tray with inscription. Recd—October 26, 1994. Est. Value—$600. Archive Foreign.	His Excellency, Yitzhak Rabin, Prime Minister of Israel.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Framed antique map of the Holy Land. Recd—October 26, 1994. Est. Value—$1,000. Archive Foreign.		

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Large, thick gold necklace and pendant. Necklace is housed in a green presentation box that bears the seal of the Saudi Royal Family on its cover. Recd—October 28, 1994. Est. Value—$15,000. Archive Foreign.	Fahd bin Abd Al-Aziz Al Saud, Custodian of the Two Holy Mosques, King of the Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	(1) Three books with sterling silver covers. (2) Blue presentation box. Recd—October 31, 1994. Est. Value—$1,000. Archive Foreign.	His Excellency Ezer Weizman, President of Israel, and Mrs. Weizman.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	(1) Dark wooden jewelry box that bears a golfing scene on its cover. (2) Three packages of golf balls. Recd—November 8, 1994. Est. Value—$65. Archive Foreign.	His Excellency Martti Ahtisaari, President of Finland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	(1) Wilson golf putter housed in a blond wooden box. (2) Large navy leather picture frame that contains a photograph of President and Mrs. Ahtisaari. Recd—November 8, 1994. Est. Value—$375. Archive Foreign.		
President	Wooden sculpture of a Filipino family by artist Baldemor. Approx. 14″x10″. Recd—November 14, 1994. Est. Value—$250. Archive Foreign.	His Excellency Fidel Ramos, President of the Republic of the Philippines.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	(1) Silk batik shirt. (2) Seven titles on Indonesia: "Lordly Shardes," "Indonesia 1994," "Art of Indonesia," "Green Indonesia," "Bobbodadar Prayer in Stone," "Istana President Indonesia," "30 Years of Indonesia's Independence" (two volumes, both autographed by President Soeharto). Recd—November 15, 1994. Est. Value—$500. Archive Foreign.	His Excellency Soeharto, President of the Republic of Indonesia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Five boxes of mangoes. Recd—November 15, 1994. Est. Value—$100. Accepted by Another Government Agency.		
	(1) Mask. (2) Dagger. (3) Two books that contain photographs commemorating President Clinton's trip to Indonesia. Recd—November 15, 1994. Est. Value—$1,000. Archive Foreign.		
	Red velvet presentation boxes for the mask, dagger, and photographs. Recd—November 15, 1994. Est. Value—$15. Archive Foreign.		
President	Cloisonne plate with stand. Recd—November 15, 1994. Est. Value—$1,200. Archive Foreign.	His Excellency Jiang Zemin, President of the People's Republic of China.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts

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President	Framed and matted oil on canvas painting, titled "Charcoal Vendors," by artist Claude Dambreville. Approx. 24″ x 36″. Recd—November 3, 1994. Est. Value—$500. Archive Foreign.	His Excellency Jean-Bertrand Aristide, President of the Republic of Haiti.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Sterling silver model boat with plaque on base that reads, "Presented by Try Sutrisno, Vice President of the Republic of Indonesia." Recd—November 17, 1994. Est. Value—$600. Archive Foreign.	His Excellency Try Sutrisno, Vice President of the Republic of Indonesia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Clear glass presentation box for the model boat. Recd—November 17, 1994. Est. Value—$10 Archive Foreign.		
President	A wooden cask that bears a handpainted floral design. Approx. 12″ x 17″. Recd—November 22, 1994. Est. Value—$325. Archive Foreign.	His Excellency Leonid Kuchma, President of Ukraine.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Large porcelain vase made by Herend. Approx. 20½″. Recd—December 5, 1994. Est. Value—$3,000. Archive Foreign.	His Excellency Arpad Goncz, President of the Republic of Hungary.	Non-acceptance would cause embarrassment to donor and U.S. Government.
		His Excellency Gyula Horn, Prime Minister of the Republic of Hungary.	
President	Korean lacquer box. The interior is inlaid with mother-of-pearl and holds a shelf. Approx. 13¾″ x 10¾″. Recd—December 8, 1994. Est. Value—$1,200. Archive Foreign.	His Excellency Kim Young Sam, President of the Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Hand-hammered copper relief plaque that bears the image of a temple and the title "Candi Borobudur, Indonesia." Recd—December 8, 1994. Est. Value—$450. Archive Foreign.	His Excellency Soewardi, Governor of Central Java, Indonesia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	(1) Small oval painting of the Three Kings in an oval sterling silver frame. Approx. 12″ x 8″. (2) Large carved papier mache and wooden archangel with wings in the form of a hunter in native costume holding an arquebus. (3) Paperback book, "Bolivian Masterpieces: Colonial Painting." Recd—December 9, 1994. Est. Value—$1,670. Archive Foreign.	His Excellency Gonzalo Sanchez de Lozada, President of the Republic of Bolivia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Framed and matted oil painting of a corn patch on sandy terrain. Recd—December 9, 1994. Est. Value—$350. Archive Foreign.	His Excellency Luis Alberto Lacalle, President of the Oriental Republic of Uruguay.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Ten sterling silver demitasse spoons. Recd—December 9, 1994. Est. Value—$500. Archive Foreign.	His Excellency Oscar Alfredo Santamaria, Minister of Foreign Affairs of the Republic of El Salvador.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Framed and matted oil painting that depicts a farmer plowing a field. Recd—December 9, 1994. Est. Value—$650. Archive Foreign.	His Excellency Armando Calderon Sol, President of the Republic of El Salvador.	Non-acceptance would cause embarrassment to donor and U.S. Government.

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Report of Tangible Gifts

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President	Hollow silver bird statue with aquamarine colored stone eyes. Recd—December 9, 1994. Est. Value—$400. Archive Foreign	His Excellency Galo Leoro, Minister of Foreign Relations of the Republic of Ecuador	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Composition bust of Sister Euphemia wearing a turban and cross. Recd—December 10, 1994. Est. Value—$250. Archive Foreign	The Honorable P.J. Patterson, M.P., Prime Minister of Jamaica	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Small gilt metal framed enamel-on-metal painting of mountains and ocean. Recd—December 12, 1994. Est. Value—$250. Archive Foreign	The Right Honorable John Compton, Prime Minister of Saint Lucia	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	(1) Gold 500 pesos coin from the Dominican Republic. (2) Two hardcover books (one copy in Spanish, one in English) of "Emotional Guide of the Romantic City," by President Balaguer. (3) A two volume set of books, titled "Dominican Paintings." Recd—December 9, 1994. Est. Value—$500. Archive Foreign	His Excellency Joaquin Balaguer, President of the Dominican Republic	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	1967 Royal Mint Bahamanian four coin set: ten dollar, twenty dollar, fifty dollar, and one hundred dollar. Recd—December 10, 1994. Est. Value—$950. Archive Foreign	The Right Honorable Sir Hubert A. Ingraham, Prime Minister of the Commonwealth of the Bahamas	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Framed and matted oil painting that depicts an idealized tropical nature scene of trees, water, and white long-necked swallows. Approx. 40½"21". Recd—December 10, 1994. Est. Value—$1,500. Archive Foreign	Her Excellency Violeta Barrios de Chamorro, President of the Republic of Nicaragua	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Framed and matted watercolor painting that depicts a village scene. Approx. 38½"26". Recd—December 10, 1994. Est. Value—$475. Archive Foreign	The Right Honorable Dr. Kennedy Alphonse Simmonds, Prime Minister of the Federation of Saint Kitts and Nevis	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Framed and matted oil painting that depicts a street scene. Approx. 40"23". Recd—December 13, 1994. Est. Value—$1,200. Archive Foreign	His Excellency Ramiro De Leon Carpio, President of the Republic of Guatemala	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Four coins from Suriname in a carved wooden case. Recd—December 12, 1994. Est. Value—$400. Archive Foreign	His Excellency Ronald Venetiaan, President of the Republic of Suriname	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	(1) Blue leather stamp album that contains stamps from Barbados. (2) Wooden box with a sea urchin depicted in silver on its lid. (3). Brown gourd ornately encased in silver and presented in a blue case with a silver stirrer. (4) Round wooden box whose lid bears a silver abstract design representing the limestone of Barbados. Recd—December 10, 1994. Est. Value—$2,200. Archive Foreign	The Right Honorable Sir Owen S. Arthur, M.P., Prime Minister of Barbados	Non-acceptance would cause embarrassment to donor and U.S. Government.

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President	(1) Large ceramic vase that bears a traditional Peruvian scene. (2) Rug that bears a portrait of President Clinton. Recd—December 9, 1994. Est. Value—$950. Archive Foreign	His Excellency Alberto Fujimori, President of the Republic of Peru	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	(1) Silver bowl with floral design. (2) Decorative pin. Recd—December 16, 1994. Est. Value—$2,100. Archive Foreign.	His Excellency N.K.P. Salve, Minister of Power, Republic of India.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	(1) 10 lbs. of dates. (2) Six bottles of olive oil. (3) Six bottles of wine. Recd—December 20, 1994. Est. Value—$125. Accepted by another Government Agency. Green leather trunk whose lid is decorated with gold design. Approx. 15" x 22". Recd—December 20, 1994. Est. Value—$150. Archive Foreign.	His Excellency Zine El-Abidine Ben Ali, President of the Republic of Tunisia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	(1) Five 4 oz. jars of Russian caviar. (2) Five bottles of Russian vodka. Recd—December 28, 1994. Est. Value—$300. Accepted by another Government Agency.	His Excellency Yuli M. Vorontsov, Ambassador of the Russian Federation.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	(1) 25-year-old Glenfarclas scotch. (2) 1982 magnum of Krug champagne. (3) 1963 Taylors sherry. (4) 1989 Raymond Lafont wine. (5) 1982 Margaux wine. (6) 1988 Montrachet wine. (7) Hennessy Paradis cognac. (8) Cristal Rose champagne. (9) Puligny Montrachet Les Clairvoyants. (10) Domain Jacques wine. (11) Exotic snack selection. (12) Red currant jelly with vintage port. (13) Moutarde de Meaux. (14) Walkers Highland Oatcakes in tin. (15) Super luxury Christmas pudding. (16) Brandy butter. (17) Algerian dates. (18) Mixed nuts. (19) Glazed nuts. (20) Box of glazed fruits. (23) Gold Rush tea. (24) Darjeeling Goomtee Tea. (25) Harrods homemade mince pies. (26) Harrods Christmas Cake in tin. (27) Christmas tin of traditional English biscuits. (28) Strawberry preserve with Cointreau. (29) Seville orange marmalade with cognac. (30) Selection of butter florentines in chocolate. Recd—December 28, 1994. Est. Value—$1,500. Accepted by another Government Agency.	His Majesty Sultan Haji Hassanal Bolkiah Mu'lzzaddin Waddaulah, Sultan, and Yang Di-Pertuan of Brunei Darussalam.	Non-acceptance would cause embarrassment to donor and U.S. Government.

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Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	(1) Aynsley Pembroke cake knife. (2) Tea set for four. (3) Two dressing gowns. (4) Set of two towels. (5) Harrods corkscrew. (6) Malcom Sargent decanter. (7) Four champagne flutes. (8) Six handmade Christmas crackers. (9) Christmas bear. (10) Four hand-cut lead crystal glasses. (11) Natural wood coffee grinder. (12) Harrods selection compact disc volume I. Recd—December 28, 1994. Est. Value—$1,000. Archive Foreign.		
First Lady	Six silver dessert spoons and dessert forks. Recd—January 5, 1994. Est. Value—$1,000. Archive Foreign.	Mrs. Son Myong Sun, wife of the President of the Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	(1) Straw hat. (2) Floral bouquet made of straw. (3) Doll in Belarussian traditional dress made of straw. (4) Crystal slipper. Recd—January 14, 1994. Est. Value—$340. Archive Foreign.	His Excellency Petr Kravchanka, Minister of Foreign Affairs of the Republic of Belarus.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Two boxes of chocolates. Recd—January 14, 1994. Est. Value—$30. Accepted by another Government Agency.		
First Lady	Large cut-crystal bowl with elaborate design, made by Bohemian Crystal. Approx. 18″. Recd—January 18, 1994. Est. Value—$350. Archive Foreign.	Mrs. Livia Klausova, Wife of the Prime Minister of the Czech Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	18″ high glass goblet with brown and green bowl. Recd—January 11, 1994. Est. Value—$250. Archive Foreign.	His Excellency Vaclav Havel, President of the Czech Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	(1) Traditional Kazakh burgundy colored hat with gold embroidery and mink trim. (2) Burgundy velvet robe with gold embroidery. (3) Silver filigreed bracelet with three attached rings set with semiprecious stones and matching pair of earrings. The jewelry is housed in a burgundy velvet box. Recd—February 14, 1994. Est. Value—$765. Archive Foreign.	Mrs. Cara A. Nazarbayeve, wife of the President of the Republic of Kazakhstan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Gold and pearl pin. Recd—March 11, 1994. Est. Value—$650. Archive Foreign.	His Excellency Morihiro Hosokawa, Prime Minister of Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Silk stitchery of a kitten mounted in a rosewood rotating frame. Recd—May 3, 1994. Est. Value—$850. Archive Foreign.	His Excellency Zou Jiahua, Vice Premier and Minister of Foreign Affairs of the People's Republic of China.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	(1) Catalog of items from Manufacture Nationale de Sevres. (2) White vase with design of flowers and blue butterflies. Recd—June 10, 1994. Est. Value—$300. Archive Foreign.	His Excellency Francois Mitterrand, President of the French Republic, and Mrs. Mitterrand.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Silk kimono robe. Recd—June 29, 1994. Est. Value—$12,700. Archive Foreign.	The Honorable Teiichi Aramaki, Governor, Kyoto Prefecture Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
First Lady	Silver necklace set with milky-white stone. Recd—July 14, 1994. Est. Value—$350. Archive Foreign.	His Excellency Lech Walesa, President of the Republic of Poland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Amber stone and bead necklace and matching bracelet. Recd—July 14, 1994. Est. Value—$700. Archive Foreign.	His Excellency Guntis Ulmanis, President of the Republic of Latvia, and Mrs. Ulmane.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	12″ religious icon. Recd—June 30, 1994. Est. Value—$250. Archive Foreign.	Mrs. Valentina Fedorovna Chernomyrdina, wife of the Chairman of the Council of Ministers of the Russian Federation.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Large oval cameo. Recd—July 5, 1994. Est. Value—$650. Archive Foreign.	His Excellency Silvio Berlusconi, President of the Council of Ministers of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Painting on goatskin that depicts various biblical events and stories. Recd—August 30, 1994. Est. Value—$1,000. Archive Foreign.	His Excellency Meles Zenawi, President of the Transitional Government of Ethiopia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Four handpainted china teacups and saucers. Recd—September 27, 1994. Est. Value—$250. Archive Foreign.	Mrs. Naina Iosifovna Yeltsin, wife of the President of the Russian Federation.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Large arrangement of flowers, including roses, orchids, and lilies. Recd—October 25, 1994. Est. Value—$400. Accepted by Another Government Agency.	His Majesty Hassan II, King of Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	White bowl-shaped floral vase. Recd—October 25, 1994. Est. Value—$200. Archive Foreign.		
First Lady	The Grand Cordon of the Order of Al-Nahda. Recd—October 26, 1994. Est. Value—$2,700. Archive Foreign.	His Majesty Hussein I, King of the Hashemite Kingdom of Jordon.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Gold necklace. Recd—October 31, 1994. Est. Value—$350. Archive Foreign.	Mrs. Leah Rabin, wife of the Prime Minister of Israel.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Round sterling silver platter with an engraving that commemorates the signing of the Israeli-Jordanian peace agreement. Recd—October 31, 1994. Est. Value—$600. Archive Foreign.	Her Majesty Noor Al Hussein, Queen of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Small stone sculpture of a woman in the shape of a chair. Recd—October 27, 1994. Est. Value—$450. Archive Foreign.	Mrs. Sonia Peres, wife of the Minister of Foreign Affairs of Israel.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Pearl necklace with diamond clasp. Recd—October 28, 1994. Est.Value—$3,000. Archive Foreign.	His Highness Sheikh Jabir Al Ahmad Al Sabah, Amir of the State of Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Bronze coin from 66–70 a.d. encircled in gold and on a gold chain. Recd—October 31, 1994. Est. Value—$400. Archieve Foreign.	His Excellency Ezer Weizman, President of Israel, and Mrs. Weizman.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
First Lady	(1) Batik fabric. (2) Stuffed toy monkey. (3) Gold plate flatware service for 12. (4) Compact 35 mm camera. (5) Commemorative medals. (6) Cosmetics. (7) Silk batick material. (8) Silk scarf. (9) Silk fabric. (10) Eight books: "Bogor," "Tanali Air," "Museum Puma Bhakti Periwi," "Indonesia Indah," "Indonesia," "What and Who in Beautiful Indonesia," "Puspa Warna," "Borobudor: Prayer in Stone." (11) Set of Indonesian 835 silver flatware service for 12, housed in large red box. Recd—November 15, 1994. Est. Value—$28,225. Archive Foreign.	Mrs. Tien Soeharto, wife of the President of the Republic of Indonesia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	A wooden vase that bears scenes from village life, signed on the bottom. Approx. 13″ x 7″. Recd—December 5, 1994. Est. Value—$275. Archive Foreign.	Mrs. Lydymyla Kuchma, wife of the President of Ukraine.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Hollow sterling silver bird figurine. Recd—December 9, 1994. Est. Value—$325. Archive Foreign.	Mrs. Aglae De Leoro, wife of the Minister of Foreign Relations of Ecuador.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Gold and amber stone necklace with matching earrings. Recd—December 9, 1994. Est. Value—$500. Archive Foreign.	His Excellency Joaquin Balaguer, President of the Dominican Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Sterling silver necklace with blue lapis pendant. Recd—December 9, 1994. Est. Value—$600. Archive Foreign.	Mrs. Marta Larraechea de Frei, wife of the President of the Republic of Chile.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Brazilian polished pewter milk pitcher. Recd—December 9, 1994. Est. Value—$235. Archive Foreign.	Mrs. Lucia Flecha de Lima, wife of the Brazilian Ambassador to the United States.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Small sterling silver harp in a blue velvet presentation case. Recd—December 16, 1994. Est. Value—$325. Archive Foreign.	Mrs. Maria Teresa Carrasco de Wasmosy, wife of the President of Paraguay.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	(1) Wine coaster with wooden bottom and a sterling silver decorative ring around its perimeter. (2) Six sterling silver teaspoons with a decorative floral pattern on their handles. (3) Sterling silver link bracelet. Recd—January 5, 1994. Est. Value—$910. Archive Foreign.	The Honorable Paul Keating, Prime Minister of Australia, and Mrs. Keating.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Three items by Hermes: (1) Wooden jewelry box. (2) Enamel bracelet. (3) Four-piece desk set. Recd—June 3, 1994. Est. Value—$3,645. Archive Foreign.	The Honorable Philippe Seguin, President of the National Assembly, France.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Two items by Hermes: (1) Scarf. (2) Sterling silver tray with leather handles for letters. Recd—June 3, 1994. Est. Value—$775. Archive Foreign.	His Excellency Alain Juppe, Minister of State for Foreign Affairs of the French Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President and First Lady	(1) Three hardcover books on Argentina: "Argentina Panorama," "Argentina Una Aventura Fotografica," and "Magica Buenos Aires" (for the First Lady). (2) Sterling silver etched goblet (for the President). Recd—June 30, 1994. Est. Value—$775. Archive Foreign.	His Excellency Carlos Menem, President of the Argentine Nation.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Brass tray with inlaid silver traditional Arabic designs. Recd—October 27, 1994. Est. Value—$2,800. Archive Foreign.	His Excellency Hafiz al-Asad, President of the Syrian Arab Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	(1) Wool rug that bears traditional Bedouin motifs. (2) Sterling silver Arabic coffee set. Recd—October 26, 1994. Est. Value—$7,000. Archive Foreign.	Their Majesties King Hussein I and Queen Noor Al Hussein, King and Queen of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Chelsea	(1) Gold brooch with inlaid stones in the colors of the Jordanian flag. (2) Signed photograph of the King and Queen on a motorcycle. Recd—October 26, 1994. Est. Value—$3,000. Archive Foreign.		
	(1) Pair of Adidas "Predator" soccer shoes. (2) Four Adidas "World Cup" commemorative jerseys and three pairs of matching shorts. (3) Small black leather Etienne Aigner handbag. Recd—July 14, 1994. Est. Value—$430. Archive Foreign.	His Excellency Dr. Helmut Kohl, Chancellor of the Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Chelsea	Silk brocade material. Recd.—October 28, 1994. Est. Value—$300. Archive Foreign.	Mrs. al-Asad Wife of the President of the Syrian Arab Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
James Alan Dorsking, Special Assistant to the President and Director of Correspondence and Presidential Messages.	Bronze statue of Jesus Christ. Recd—August 3, 1994. Est. Value—$400. General Services Administration.	Mr. Mikhail Alexeevitch Mironov, Director of correspondence, Office of Administration of the President of the Russian Federation.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Dr. John H. Gibbons, Assistant to the President for Science and Technology Policy and Director of the Office of Science and Technology Policy.	Sterling silver box with engraved etchings. Presented in cloth box. Recd—October 3, 1994. Est. Value—$800. Archives, Staff Gift.	Dr. Bacharuddin J. Habibie, Minister of State for Research and Technology of the Republic of Indonesia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Brenda I. Hilliard, Special Assistant to the Executive Secretary, National Security Council.	Women's Omega wristwatch with a gold face and a black leather band. Recd—March 28, 1994. Est. Value—$300. General Services Administration.	His Majesty Hussein I, King of the Hashemite Kingdom of Jordon.	Non-acceptance would cause embarrassment to donor and U.S. Government
Martin S. Indyk, Special Assistant to the President for Near East and South Asian Affairs, National Security Council.	One man's and one woman's Longines wristwatches. Recd—August 2, 1994. Est. Value—$300. General Services Administration.	Their Majesties King Hussein I and Queen Noor Al Hussein, King and Queen of the Hashemite Kingdom of Jordon.	Non-acceptance would cause embarrassment to donor and U.S. Government.
William H. Itoh, Executive Secretary, National Security Council.	Man's Breitling wristwatch. Recd—June 21, 1994. Est. Value—$500. General Services Administration.	His Excellency Ayman Majali, Chief of Protocol of the Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Ellen B. Laipson, Director, Near East and South Asian Affairs, National Security Council.	(1) 63″40″ silk ghoum rug; green with a medallion design (2) 58½″40½″ silk ghoum rug; blue with an animal design. Recd—July 26, 1994. Est. Value—$4,500. General Services Administration.	Mr. Jalal Talalbani, Secretary General of the Patriotic Union of Kurdistan Iraqui National Congress.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Anthony Lake, Assistant to the President for National Security Affairs.	Woven silk rug with blue and cream colored medallion design. Approx. 3'3"5'8". Recd—May 2, 1994 Est. Value—$850. General Services Administration.	General Abdul Waheed, Chief of the Army Staff, Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government
Anthony Lake, Assistant to the President for National Security Affairs.	(1) Navy blue leather briefcase with red stitching. (2) Ceremonial black and white robe and headdress. (3) Wristwatch with a white face, gold case, and brown leather band. (4) Two red and gold pens. Recd—October 28, 1994. Est. Value—$1,035. General Services Administration.	His Highness Sheikh Jabir Al Ahmad AL Sabah, Amir of the State of Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Anthony Lake, Assistant to the President for National Security Affairs.	Framed oil on canvas painting, "Cock Fighters," by Gesner Armand and signed by artist. Approx. 16"20". Recd—November 2, 1994. Est. Value—$250. General Services Administration.	His Excellency Jean-Bertrand Aristide, President of the Republic of Haiti.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Robert E. Rubin, Assistant to the President for Economic Policy.	Print of New Amsterdam, dated circa 1650. Recd—September 6, 1994. Est. Value—$450. General Services Administration.	His Excellency Helmut Tuerk, Ambassador of Austria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Nancy Elisabet Soderberg, Special Assistant to the President for National Security Affairs and Staff Director of the National Security Council.	Framed painting on panel, "Children in the Yard," by Buffon Thermidor and signed by artist. Approx. 12"16". Recd—November 3, 1994. Est. Value—$250. General Services Administration.	His Excellency Jean-Bertrand Aristide, President of the Republic of Haiti.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: OFFICE OF THE VICE PRESIDENT

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and Government	Circumstances justifying acceptance
The Vice President	(1) Coffer, domed lid, red leather with gilt tooling, two doors enclosing drawers to interior. Approx. 21½" W (Tunisia—late 20th century). Residence: For Official Use. (2) Dates, six bottles of Tunisian wine, and eight bottles of Tunisian olive oil. All food destroyed. Recd—January 1, 1994. Est.Value—$490.00.	His Excellency Zine El-Abidine Ben Ali, President of the Republic of Tunisia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Vice President	Covered vegetable dishes, silver, each with nut finial and pierced anthemion border (Turkey—late 20th century). Recd—January 13, 1994. Est. Value—$225.00. Archive Foreign.	His Excellency Murat Karayalcin, Deputy Prime Minister of the Republic of Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Vice President	Ewer, matte green ceramic reproduction of the original iron age vessel, applied with silver scrolling, hieroglyphics and pictograms, wire stand (late 20th century). Recd—March 7, 1994. Est. Value—$250.00. Archive Foreign.	His Excellency Yitzak Rabin, Prime Minister of Israel.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: OFFICE OF THE VICE PRESIDENT—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and Government	Circumstances justifying acceptance
The Vice President	Platter, silver, shaped border, deep cavetto. Approx. 16¼" L (Bolivia—20th century). Recd—March 20, 1994. Est. Value—$450.00. Mrs. Gore's Office: For Official Use.	His Excellency Gonzalo Sanchez De Lozada, President of the Republic of Bolivia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Vice President	Vase, porcelain having red, green and gold foliate latticework ground, green and gold border, centered with the seal of the Vice President Gore. Approx. 16" diameter across two handles (Thailand—late 20 century). Recd—May 5, 1994. Est. Value—$650.00. Mrs. Gore's Office: For Official Use.	The Honorable Pramual Sabhavasu, Member of Parliament in Thailand.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Vice President	Trophy, silvered and gilded metal in the form of a soccer ball flanked by two feathers, malachite, base, fitted case and box. Approx. 12" H. (Saudi Arabia—late 20th century). Recd—July 11, 1994. Est. Value—$250.00. Archive Foreign.	His Royal Highness Prince Saud Al Faisal, Minister of Foreign Affairs of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Vice President	Plaques, bronze, 50 year celebration of the Warsaw Insurrection by the following Polish artists: Trzebiatowski, Dobrucka, Dworski, Januskiewicz, and Nowakowski. Approx. 4" x 3½" (varies). Recd—August 1, 1994. Est. Value—$650.00. Archive Foreign.	His Excellency Lech Walesa, President of the Republic of Poland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Vice President	(1) Tray, 800 silver decorated with bright cut engraving with a fitted case. Approx. 10" diameter (Egypt—20th century). Mrs. Gore's Office: For Official Use. (2) Tablecloth and six napkins, cotton, with polychrome and gilt floral embroidery (Egypt—late 20th century). Archive Foreign. (3) Mirror, 800 silver repousse back and frame, bird finial with a fitted case. Approx. 7" diameter (Egypt—late 20th century). Mrs. Gore's Office: For Official Use. Recd—September 6, 1994. Est. Value—$480.00.	His Excellency Mohamed Hosni Mobarak, President of the Arab Republic of Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Vice President	Medal, high karat yellow gold, reproduction of an ancient coin. Approx. 1½" diameter (late 20th century). Recd— October 19, 1994. Est. Value—$600.00. Archive Foreign.	The Honorable Carlo Scognamiglio, President of the Italian Senate.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Vice President	(1) Footed bowl, silver and parcel silver gilt having repousse floral motifs. Appox. 11" diameter (India—late 20th century). (2) Badge, 18 karat yellow gold with enamel decoration "Indian Power Delegation, India USA" and name "Albert Gore." Recd—November 11, 1994. Est. Value—$625.00.	The Honorable N.K.P. Salve, Minister of Power, Government of India.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: OFFICE OF THE VICE PRESIDENT—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and Government	Circumstances justifying acceptance
The Vice President	(1) Five jars of malossol caviar. Approx. 4 ounces. (2) Five bottles of vodka. Recd—December 25, 1994. Est. Value—$300.00. White House Mess: For Official Use.	The Honorable Yuli M. Vorontsov, Ambassador Extraordinary and Plenipotentiary of the Russian Federation.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mrs. Gore	Covered bowl, oval, 800 silver, hinged lid with pierced and bright cut engraved decoration. Approx. 8½" L oval (Egypt—20th century). Recd—September 22, 1994. Est. Value—$350.00. Mrs. Gore's Office: For Official Use.	Mrs. Laila Moussa, Wife Amre Moussa, Minister of Foreign Affairs of the Arab Republic of Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Vice President and Mrs. Gore	(1) Painting, oil on canvas, landscape, framed. Approx. 22" x 33" (by P.I. Krivenko, 1994). (2) Vase, porcelain having grey luster glaze with applied roses of the same material. Approx. 15¼" (Kazakhstan—late 20th century). (3) Pelt of a wolf. (4) Cufflinks, 18 karat yellow gold disks, each engraved with the coat of arms of Kazakhstan. Recd—February 14, 1994. Est. Value—$1,175.00. Archive Foreign.	His Excellency Nursultan Nazarbayev, President of the Republic of Kazakhstan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Vice President and Mrs. Gore	(1) Book, the Tretyakov Gallery collection. (2) Jewelry (necklace, pair of earrings, and ring), silver wire mountings, each set with a polished piece of amber (late 20th century). (3) Scarf, silk, printed "Russia" in cyrillic. (4) Tea service (a teapot, covered sugar bowl, creamer, and six cups and saucers), porcelain having brown "embroidery" decoration (Russia—late 20th century). Recd—March 9, 1994. Est. Value—$615.00. Archive Foreign.	His Excellency Gherman V. Zharov, Head, Section of Protocol Administrative Department, The State Duma, The Assembly of the Russian Federation.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Vice President and Mrs. Gore	(1) Satchel, leather and suede, by Casa Lopez (Argentina—late 20th century). (2) Attache case, brown leather (Argentina—late 20th century). (3) Suitcase, two suiter, brown leather, by Casa Lopez (Argentina). (4) Mate cup and sipper (Approx. 5½" H), plus straw, repoussee sterling silver with yellow gold highlights and Argentina coat of arms by Ricciardi (late 20th century). Recd—March 21, 1994. Est. Value—$725.00. Archive Foreign.	His Excellency Carlos Menem, President of the Argentine Nation.	Non-acceptance would cause embarrassment to donor and U.S. Government.

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Report of Tangible Gifts

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The Vice President and Mrs. Gore	(1) Bolts of Moroccan fabric with hold maylar threads. (2) Trunk, rose leather with gold tooling over a wood case, monogram of King Hassan II. Approx. 23¾" W (Morocco—late 20th century). (3) Cachepot, pottery with polychrome glazes and gilding. Approx. 18" H x 21" diameter (Morocco—late 20th century). Recd—April 14, 1994. Est. Value—$1,200.00. Archive Foreign.	His Majesty Hassan II, King of Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Vice President and Mrs. Gore	(1) Belt buckle, sterling silver, two parts by Michala. Each approx. 2¼" diameter (Greece—late 20th century). Archive Foreign. (2) Urn, sterling silver, elongated handles, gilt lined by Michala. Approx. 4¾" H (Greece—late 20th century). Mrs. Gore's Office: For Official Use. Recd—April 20, 1994. Est. Value—$575.00..	His Excellency Andreas Papandreou, Prime Minister of the Hellenic Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Vice President and Mrs. Gore	Figure, polished bronze, warrior holding axe in right hand and bird in left. Approx. 25½" H. (Benin—late 20th century). Recd—May 11, 1994. Est. Value—$250.00. Archive Foreign.	His Excellency Nicephore Soglo, President of the Republic of Benin, and Mrs. Soglo.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Vice President and Mrs. Gore	(1) Tightly woven basket with cover, decorations are brown and designs are geometric. Approx. 21" H x 17" W. (2) Ostrich purses (3) Round woven straw plate to hang. Recd—May 11, 1994. Est. Value—$550.00. Residence: For Official Use.	His Excellency President K.T. Nujoma, President of the Republic of Nimibia, and Mrs. Nujoma.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Vice President and Mrs. Gore	(1) Incense burner, silver, pierced and chased, removable lid, in fitted box. Approx. 8" diameter x 9" H (India—late 20th century). Residence: For Official Use. (2) Charger, white marble decorated with gold, red, and green lacquers in geometric motif. Approx. 12" diameter (India—late 20th century). Archive Foreign. (3) Rosewater bottle, white marble decorated with gold, red, and green lacquers. 6" H (India—late 20th century). Archive Foreign. Recd—May 18, 1994. Est. Value—$660.00.	His Excellency P.V. Narasimha Rao, Prime Minister of India.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT

Report of Tangible Gifts

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President	Two Bangladeshi-made jute carpets; one is blue with white trim and geometric designs, and the other is red. Recd—February 14, 1994. Est. Value—$1000. Archive Foreign.	His Excellency Humayun Kabir, Ambassador of the People's Republic of Bangladesh.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	(1) Enamel shield that bears a picture of a gladiator on a white horse stabbing a serpent with a spear. The shield is lettered "Good Defeats Evil" in English and Georgian text. (2) Multicolored, handwoven rug with white trim. Approx. 58" x 43". Recd—March 7, 1994. Est. Value—$1850. Archive Foreign.	His Excellency Eduard Shevardnadze, Chairman of the State Council of the Republic of Georgia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	(1) Three abstract glass sculptures: yellow/green, blue, and rose. Each has a hole in its base for bulb insert to illuminate sculpture. (2) Two volumes of illuminated manuscripts in Cyrillic text. Recd—March 4, 1994. Est. Value—$750. Archive Foreign.	His Excellency Leonid Kravchuk, President of Ukraine.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	(1) Waterford cut-crystal punch bowl. (2) Wooden statue of seagulls. Recd—March 18, 1994. Est. Value—$5000. Archive Foreign.	His Excellency Albert Reynolds, Prime Minister of Ireland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Sterling silver sugar nips, circa 1750. Recd—March 18, 1994. Est. Value—$500. Archive Foreign	.....	
President	(1) Framed expressionist-style oil painting of Jesus Christ by Anto Mamusa. Approx. 46" x 34". (2) Gold Croatian coin. Recd—March 22, 1994. Est. Value—$800. Archive Foreign.	His Excellency Franjo Tudjman, President of the Republic of Croatia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	73 trees planted in Israel in memory of the President's mother, Virginia Kelly. Recd—March 11, 1994. Est. Value—$730. Archive Foreign.	His Excellency Yitzhak Rabin, Prime Minister of Israel.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: OFFICE OF THE VICE PRESIDENT

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Vice President and Mrs. Gore	(1) Two bangle bracelets, 22 karat yellow gold pierced filigree (Pakistan—late 20th century). Archive Foreign. (2) Rug, wool on cotton, ivory field with six round pastel foliate and floral medallions, seven borders with tan main. Approx. 54¼"x87" (Pakistan—late 20th century). Residence: For Official Use. Recd—May 25, 1994. Est. Value—$1,700.00.	His Excellency Faroog Ahmad Khan Leghari, President of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: OFFICE OF THE VICE PRESIDENT—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Vice President and Mrs. Gore	(1) Cigarette box, sterling silver with niello decoration, bright cut engraved center. Approx. 8½" L (Thai—late 20th century). (2) Fabric, salmon and white woven silk in traditional "Ikat" manner, boxed. Approx. 39" x 14,6" (Thai—late 20th century). Recd—October 19, 1994. Est. Value—$350.00. Archive Foreign.	His Excellency Chuan Leekpai, Prime Minister of the Kingdom of Thailand.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Vice President and Mrs. Gore	(1) Vase, silver with imperial gold chrysanthemum "mon" to side in fitted wood box. Approx. 13" H (Japanese—late 20th century). (2) Picture frame, silver with gold imperial Chrysanthemum "mon" to top. Approx. 13¼" x 10¼" (Japanese—late 20th century). (3) Box covered, silver with pale and darker green cloisonne enamel decoration centered with the imperial gold chrysanthemum "mon". Approx. 3¾" diameter (Japanese—late 20th century). Recd—November 10, 1994. Est. Value—$775.00. Archive Foreign.	His Imperial Majesty, The Emperor of Japan, and The Empress of Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Vice President and Mrs. Gore	(1) Sculpture, soapstone (steatite), depicting a musk ox with composition horns. Approx. 6½" H (Eskimo—late 20th century). The Vice President's Office: For Official Use. Recd—December 13, 1994. (2) Box, silver plate, cast with Northwest American Indian motifs by Boma. Approx. 4½" diameter (late 20th century). Archive Foreign. Recd—December 13, 1994. Est. Value—$285.00.	The Right Honorable Jean Cretien, P.C., M.P., Prime Minister of Canada, and Mrs. Aline Cretien.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Vice President's Family	(1) Pocket watch, silver plated hunt case decorated with imperial Russian eagle coat of arms to front and rear, plated chain. The Vice President's Senate Office: For Official Use. (2) Plaque, Palekh lacquer, two troikas. Approx. 9¼" x 15¾" (by S. Fedoskino, Russia—1989). Foreign Archive. (3) Brooch, carved bone rose, inside a cigarette box, Palekh lacquer, landscape, by Fedoskino. Approx. 6½" L (Russia—late 20th century). The Vice President's Senate Office: For Official Use. Recd—June 22, 1994. Est. Value)—$755.00.	His Excellency, Viktor Chernomydin, Chairman of the Council of Ministers of the Russian Federation, and Mrs. Chernomydin.	Non-acceptance would cause embarrassment to donor and U.S. Government.

UNITED STATES SENATE

Report of Tangible Gifts Calendar Year 1994

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Robert L. Benoit, Sergeant at Arms.	Etched plate with silver plating. Recd—July 26, 1994. Est. value—$175. Disposition: Display in Sergeant at Arms' office.	King Hussein of the Kingdom of Jordan.	Non-acceptance would have caused embarrassment to the donor and the U.S. Government.
Hank Brown, U.S. Senator	Polish cavalry sword. Recd—Oct. 24, 1994. Est. value—$523. Deposited with the Secretary of the Senate.	Predsident Lech Walesa of Poland.	Non-acceptance would have caused embarrassment to the donor and the U.S. Government.
Bob Dole, U.S. Senator	Mother-of-pearl box. Recd—May 18, 1994. Est. value—$100. Deposited with the Secretary of the Senate.	Prime Minister of India, P.V. Narasimha Rao.	Non-acceptance would have caused embarrassment to the donor and the U.S. Government.
Bob Dole, U.S. Senator	Gold and Silver boat. Recd—July 8, 1994. Est. value—$504. Disposition: Display in the Senator's office.	President of the Kuwaiti National Assembly, Ahmed Abdul-Aziz Al-Saadoon.	Non-acceptance would have caused embarrassment to the donor and the U.S. Government.
John McCain, U.S. Senator	Solid gold medallion. Recd—June 24, 1994. Est. value—$106. Deposited with the Secretary of the Senate.	1st Prime Minister, Minister of State for Economic Reform, Mircea Cosea; Chairman of Credit Bank, Marcel Ivan; Government of Romania.	Non-acceptance would have caused embarrassment to the donor and the U.S. Government.
John McCain, U.S. Senator	Silver and gold ship. Recd—May 17, 1994. Est. value—$500. Deposited with the Secretary of the Senate.	Ahmed Abdul-Aziz Al-Saadoon, Government fo Kuwait.	Non-acceptance would have caused embarrassment to the donor and the U.S. Government.
George J. Mitchell, U.S. Senator	Power loomed, garden design oriental rug. Recd—Oct. 27, 1994. Est. value—$180. Deposited with the Secretary of the Senate.	President Hosni Mubarak of Egypt	Non-acceptance would have caused embarrassment to the donor and the U.S. Government.
Sam Nunn, U.S. Senator	Silver filigree box. Recd—Oct. 4, 1994. Est. value—$250–300. Disposition: Display in the Senator's office.	Minister J.B. Habibie of Indonesia	Non-acceptance would have caused embarrassment to the donor and the U.S. Government.
Sam Nunn, U.S. Senator	Set fo six silver with gold-tipped dessert spoons and forks. Recd—Oct. 19, 1994. Est. value—over $250. Disposition: Display in Senator's office.	President of South Korea, Kim Young Sam.	Non-acceptance would have caused embarrassment to the donor and the U.S. Government.

UNITED STATES SENATE

Report of Travel or Expenses of Travel Calendar Year 1994

Name and title of person accepting travel expenses consistent with the interests of the U.S. Government	Brief description of travel or expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Gale Awaya, Congressional Fellow, Office of Senator Inouye.	Transportation and lodging in country, Nov. 13–19, 1994.	Government of Pakistan	Official travel to meet with government officials, visit refugee camps and various sites.
Robert F. Bennett, U.S. Senator, Joyce Bennett, Spouse, U.S. Senator.	Transportation in country, Jan 4–8, 1994.	Government of China	No commercial transportation available to meeting sites.
Robert F. Bennett, U.S. Senator, Joyce Bennett, Spouse, U.S. Senator.	Transportation within country to official meetings, Jan. 13, 1994.	Government of Indonesia	U.S. military aircraft too large to land at airports where meetings held.
Benjamin S. Cooper, Staff Dir., Committee on Energy and Natural Resources.	Transportation in country, Jan. 4–8, 1994.	Government of China	No commercial transportation available to meeting sites.
Benjamin S. Cooper, Staff Dir., Committee on Energy and Natural Resources.	Transportation within country to official meetings, Jan. 13, 1994.	Government of Indonesia	U.S military aircraft too large to land at airports where meetings held.
Gary Ellisworth, Minority General Counsel, Committee on Energy and Natural Resources.	Transportation in country, Jan. 4–8, 1994.	Government of China	No commercial transportation available to meeting sites.

UNITED STATES SENATE—Continued

Report of Travel or Expenses of Travel Calendar Year 1994

Name and title of person accepting travel expenses consistent with the interests of the U.S. Government	Brief description of travel or expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Gary Ellsworth, Minority General Counsel, Committee on Energy and Natural Resources.	Transportation within country to official meetings, Jan. 13, 1994.	Government of Indonesia	U.S. military aircraft too large to land at airports where meetings held.
Mark O. Hatfield, U.S. Senator, Antoinette Hatfield, Spouse, U.S. Senator.	Transportation in country, Jan. 4–8, 1994.	Government of China	No commercial transportation available to meeting sites.
Mark O. Hatfield, U.S. Senator, Antoinette Hatfield, Spouse, U.S. Senator.	Transportation within country to official meetings, Jan. 13, 1994.	Government of Indonesia	U.S. military aircraft too large to land at airports where meetings held.
Laura Hudson, Legislative Director, Office of Senator Johnston.	Transportation in country, Jan. 4–8, 1994.	Government of China	No commercial transportation available to meeting sites.
Laura Hudson, Legislative Director, Office of Senator Johnston.	Transportation within country to official meetings, Jan. 13, 1994.	Government of Indonesia	U.S. military aircraft too large to land at airports where meetings held.
J. Bennett Johnston, U.S. Senator, Mary Johnston, Spouse, U.S. Senator.	Transportation in country, Jan. 4–8, 1994.	Government of China	No commercial transportation available to meeting sites.
J. Bennett Johnston, U.S. Senator, Mary Johnston, Spouse, U.S. Senator.	Transportation within country to official meetings, Jan. 13, 1994.	Government of Indonesia	U.S. military aircraft too large to land at airports where meetings held.
Anne LeMay, Legislative Correspondent, Office of Senator Jeffords.	Transportation and lodging in country, Nov. 13–19, 1994.	Government of Pakistan	Official travel to meet with government officials, visit refugee camps and various sites.
Greg McGinity, Legislative Aide, Office of Senator Cochran.	Transportation and lodging in country, Nov. 13–19, 1994.	Government of Pakistan	Official travel to meet with government officials, visit refugee camps and various sites.
Harlan Mathews, U.S. Senator, Patsy Mathews, Spouse, U.S. Senator.	Transportation in country, Jan. 4–8, 1994.	Government of China	No commercial transportation available to meeting sites.
Harlan Mathews, U.S. Senator, Patsy Mathews, Spouse, U.S. Senator.	Transportation within country to official meetings, Jan. 13, 1994.	Government of Indonesia	U.S. military aircraft too large to land at airports where meetings held.
Don Nickles, U.S. Senator	Transportation in coutnry, Jan. 4–8, 1994.	Government of China	No commercial transportation available to meeting sites.
Don Nickles, U.S. Senator	Transportation within country to official meetings, Jan. 13, 1994.	Government of Indonesia	U.S. military aircraft too large to land at airports where meetings held.
Jan Paulk, Director, Office of Interparliamentary Services.	Transportation in country, Jan. 4–8, 1994.	Government of China	No commercial transportation available to meeting sites.
Jan Paulk, Director, Office of Interparliamentary Services.	Transportation within country to official meetings, Jan. 13, 1994.	Government of Indonesia	U.S. military aircraft too large to land at airports where meetings held.
Eric Silagy, Legislative Assistant, Office of Senator Johnston.	Transportation in country, Jan. 4–8, 1994..	Government of China	No commercial transportation available to meeting sites.
Eric Silagy, Legislative Assistant, Office of Senator Johnston.	Transportation within country to official meetings, Jan. 13, 1994.	Government of Indonesia	U.S. military aircraft too large to land at airports where meetings held.
Alan K. Simpson, U.S. Senator, Ann Simpson, Spouse, U.S. Senator.	Transportation in country, Jan. 4–8, 1994.	Government of China	No commercial transportation available to meeting sites.
Alan K. Simpson, U.S. Senator, Ann Simpson, Spouse, U.S. Senator.	Transportation within country to official meetings, Jan. 13, 1994.	Government of Indonesia	U.S. military aircraft too large to land at airports where meetings held.
Arlen Specter, U.S. Senator, Joan Specter, Spouse, U.S. Senator.	Transportation in country, Jan. 4–8, 1994.	Government of China	No commercial transportation available to meeting sites.
Arlen Specter, U.S. Senator, Joan Specter, Spouse, U.S. Senator.	Transportation within country to official meetings, Jan. 13, 1994.	Government of Indonesia	U.S. military aircraft too large to land at airports where meetings held.
G. Robert Wallace, Minority Staff Director, Committee on Energy and Natural Resources.	Transportation in country, Jan. 4–8, 1994.	Government of China	No commercial transportation available to meeting sites.

UNITED STATES SENATE—Continued

Report of Travel or Expenses of Travel Calendar Year 1994

Name and title of person accepting travel expenses consistent with the interests of the U.S. Government	Brief description of travel or expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
G. Robert Wallace, Minority Staff Director, Committee on Energy and Natural Resources.	Transportation within country to official meetings, Jan. 13, 1994.	Government of Indonesia	U.S. military aircraft too large to land at airports where meetings held.
Sharon Waxman, Legislative Assistant, Office of Senator Lautenberg.	Transportation and lodging in country, Nov. 13–19, 1994.	Government of Pakistan	Official travel to meet with government officials, visit refugee camps and various sites.

AGENCY: U.S. HOUSE OF REPRESENTATIVES

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Lee H. Hamilton, Member of Congress.	Pakistani Rug, 4.8 x 7, Hunt scene with lance bearing horsemen and archers among various animals on cream ground, surrounded by pink border containing various animals. Recd—May 24, 1994. Est. Value—$500. Approved for official display.	President of Pakistan, H.E. Sardar Farooq Ahmed Leghari.	Non-acceptance would have caused embarrassment to donor.
Michael J. O'Neil, Counsel to the Speaker.	Box set of black lacquer and gold plated pens, wrist watch and lighter Recd—August 1, 1994. Est. Value—$600. To be retained by the Clerk of the House for official display..	King Hussein of Jordan	Non-acceptance would have caused embarrassment to donor.

AGENCY: U.S. HOUSE OF REPRESENTATIVES

Report of Travel or Expenses of Travel

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Jay Kim, Member of Congress	6 nights lodging in Korea, and food for Member and Spouse, Nov. 13–19, 1994.	Republic of Korea	Authorized by 5 U.S.C. §7342(c)(1)(B)(ii).
James T. Kolbe, Member of Congress.	One way airfare from Beijing, China to Qingdao, China, food and lodging, Nov. 12–16, 1994.	The People's Republic of China	Authorized by 5 U.S.C. §7342(c)(1)(B)(ii).
Michael G. Oxley, Member of Congress.	Ground transportation from Stutgart to Munich, Germany, for Member and Spouse, August 29, 1994.	German Federal Railway	Authorized by 5 U.S.C. §7342(c)(1)(B)(ii).
Michael G. Oxley, Member of Congress.	Ground transportation from Madrid to Avila, Spain, for Member and Spouse, September 3, 1994.	Spanish National Railway	Authorized by 5 U.S.C. §7342(c)(1)(B)(ii).
Al Swift, Member of Congress	Ground transportation from Stutgart to Munich, Germany, for Member and Spouse, August 29, 1994.	German Federal Railway	Authorized by 5 U.S.C. §7342(c)(1)(B)(ii).
Al Swift, Member of Congress	Ground transportation from Madrid to Avila, Spain, for Member and Spouse, September 3, 1994.	Spanish National Railway	Authorized by 5 U.S.C. §7342(c)(1)(B)(ii).
W.J. (Billy) Tauzin, Member of Congress.	Ground transportation from Stutgart to Munich, Germany, for Member and Spouse, August 29, 1994.	German Federal Railway	Authorized by 5 U.S.C. §7342(c)(1)(B)(ii).

AGENCY: U.S. HOUSE OF REPRESENTATIVES—Continued

Report of Travel or Expenses of Travel

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
W.J. (Billy) Tauzin, Member of Congress.	Ground transportation from Madrid to Avila, Spain, for Member and Spouse, September 3, 1994.	Spanish National Railway	Authorized by 5 U.S.C. §7342(c)(1)(B)(ii).
Mark Brown, Rep. William J. Hughes.	Food, lodging and ground transportation within Germany, April 23–May 7, 1994.	Federal Republic of Germany	Authorized by 5 U.S.C. §7342(c)(1)(B)(ii).
Sheila Canavan, Subcommittee on Environment, Energy and Natural Resources.	Food, lodging, air, ground and boat transportation within Germany, April 23–May 7, 1994.	Bundestag/Bundesrat of the Federal Republic of Germany.	Authorized by 5 U.S.C. §7342(c)(1)(B)(ii).
Arthur Endres, Subcommittee on Transportation and Hazardous Materials.	Ground transportation from Stutgart to Munich, Germany, August 29, 1994.	German Federal Railway	Authorized by 5 U.S.C. §7342(c)(1)(B)(ii).
Arthur Endres, Subcommittee on Transportation and Hazardous Materials.	Ground transportation from Madrid to Avila, Spain, September 3, 1994.	Spanish National Railway	Authorized by 5 U.S.C. §7342(c)(1)(B)(ii).
Janina A. Jaruzelski, Subcomm. on Oversight and Investigations.	Food, lodging, ground and boat transportation within Germany, April 23–May 7, 1994.	Bundestag/Bundesrat of the Federal Republic of Germany.	Authorized by 5 U.S.C. §7342(c)(1)(B)(ii).
James H. Mathews, Subcommittee on Fisheries Management.	Round trip air transportation from Mexico City, Mexico, to Guererro Negro (Bjoa California Sur) Mexico. Round trip boat trip Ojo de Liebre Lagoon, Feb. 27–28, 1994.	Mexico	Authorized by 5 U.S.C. §7342(c)(1)(B)(ii).
David P.W. Orlin, Appropriations Committee.	Food, lodging, round trip air transportation to Peshawar, and bus transportation from Lahore to Khati, Nov. 13–Nov. 20, 1994.	Government of Pakistan	Authorized by 5 U.S.C. §7342(c)(1)(B)(ii).

AGENCY: U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
J. Brian Atwood, Administrator	Wool wall hanging, approx. 41" x 74", multicolored, river scene. Recd—October 20, 1994. Est. Value—$250. Retained by Agency for official use.	Dr. Amal Osman, Minister of Insurance and Social Affairs, Arab Republic of Egypt.	Non-acceptance would have caused embarrassment to donor & U.S. Government.

AGENCY: DEPARTMENT OF THE AIR FORCE

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Mr. Bauerlein, Deputy Under Secretary of the Air Force for International Affairs.	Cufflinks (1 pair), 18 carat gold, oblong. Recd—May 10, 1994. Est. Value—$295.00. On official display in Mr. Bauerlein's office.	Gen. Tantawi, Minister of Defense, Egypt.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Colonel Samuel H. Clovis, Jr., Chief, U.S. Office of Military Cooperation, Bahrain.	Native cerémonial dagger. Recd—January 13, 1994. Est. Value—$200.00 Turned-in to GSA, June 23, 1994.	His Highness the Amir, Shaikh Isa Bin Salman Al Khalifa, Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Colonel Samuel H. Clovis, Jr., Chief, U.S. Office of Military Cooperation, Bahrain.	Men's Baume and Mercier wristwatch. Recd—Janúary 13, 1994. Est. Value—$600.00. Turned in to GSA, June 23, 1994.	His Highness the Amir, Shaikh Isa Bin Salman Al Khalifa, Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.

AGENCY: DEPARTMENT OF THE AIR FORCE—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Colonel Samuel H. Clovis, Jr., Chief, U.S. Office of Military Cooperation, Bahrain.	Women's Eterna wristwatch. Recd—January 13, 1994. Est. Value—$1,500.00. Turned in to GSA, June 23, 1994, subsequently purchased by Colonel Clovis.	His Highness the Amir, Shaikh Isa Bin Salman Al Khalifa, Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Colonel Samuel H. Clovis, Jr., Chief, U.S. Office of Military Cooperation, Bahrain.	Women's single-strand pearl necklace. Recd—January 13, 1994. Est. Value—$3,000. Turned in to GSA, June 23, 1994.	His Highness the Amir, Shaikh Isa Bin Salman Al Khalifa, Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Major General Henry M. Hobgood, Commander, 37th Training Wing, Lackland Air Force Base, Texas.	Oil painting (sunset and religious temple). Recd—May 31, 1994. Est. Value—$500.00. Turned in to GSA, August 4, 1994..	Lieutenant General Sophoan Khen, Cambodian student, Defense Language Institute, Lackland Air Force Base, Texas.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Major General Henry M. Hobgood, Commander, 37th Training Wing, Lackland Air Force Base, Texas.	Books (2), "Kuwait, A Nation's Story" and "Faces of Kuwait". Recd—November 23, 1994. Est. Value—$300.00. On official display in 37th Training Wing building.	Lieutenant Colonel Al-Zayed, Kuwait Liaison Officer to Defense Language Institute, Lackland Air Force Base, Texas.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Special Agent Joseph G. Lukowski, Commander, Air Force Office of Special Investigations, Det 614, Yongsan Army Garrison, Seoul, Korea.	Gift certificates (non redeemable for cash) for purchase of goods on Korean market. Recd—December 22, 1994. Est. Value—$250.00. Donated to Hye-Shim-Won Children's Orphanage, Seoul, Korea.	Senior Superintendent Kim Yong-Che, Foreign Affairs Division II, Seoul, Korea.	Attempts to decline acceptance were unsuccessful; further effort would have caused embarrassment to donor.
The Honorable Sheila Widnall, Secretary of the Air Force, The Pentagon, Washington, DC.	Necklace and pendant Recd—May 10, 1994. Est. Value—$560.00. On official display in the office of the Secretary of the Air Force.	Field Marshall Husien Tantawi, Minister of Defense & Military Production, Egypt.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
The Honorable Sheila Widnall, Secretary of the Air Force, The Pentagon, Washington, DC.	Vase, (90% silver). Recd—February 22, 1994. Est. Value—$350.00. On official display in the office of the Secretary of the Air Force.	Gen. Ramon Vega Hildago, Commander in Chief, Chilean Air Force.	Non-acceptance would have caused embarrassment to donor & U.S. Government.

AGENCY: DEPARTMENT OF THE ARMY

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
BG William P. Tangney, Commander, Special Operations Command Central, MacDill AFB, Florida 33621.	Chronosport Universal Diving Timer Watch. Recd—February 1994. Est. Value—$495.00. Pending a report to GSA. Approved for official display.	Prince Abdullah Lah Bin Hussein, Commander, Jordanian Special Forces.	Non-acceptance would have caused embarrassment to the donor.
LTG James R. Ellis, Cdr, Third United States Army, Fort McPherson, GA 30330–7000.	One Pakistani Rug (3'/2" x 5'/2"). Recd—November 30, 1993. Est. Value—$450.00. Pending a report to GSA. Approved for official display.	LTG Ali Farrakh Khan, Chief of the General of the Pakistan Army.	Non-acceptance would have caused embarrassment to the donor.
LTG James R. Ellis, Cdr, Third United States Army, Fort McPherson, GA 30330–7000.	One Egyptian Rug (6'/7" x 9'/8"). Recd—November 19, 1993. Est. Value—$400.00. Pending a report to GSA. Approved for official display.	MG Abdel Lottif Mabrouk, Chief Egyptian Training Authority.	Non-acceptance would have caused embarrassment to the donor.

AGENCY: DEPARTMENT OF THE ARMY—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
COL William H. Kennedy, III, ARCENT Training and Security-Kuwait, DOHA, APO AE 09889.	Gold, Jeweled Indian Necklace set with Bracelet, Earrings, and Ring. Recd—February 10, 1994. Est. Value—$600.00. Pending transfer to GSA.	Wife of MG Ali Al-Mumin, Chief of Staff of Kuwait Armed Forces.	Non-acceptance would have caused embarrassment to the donor.
GEN Frederick M. Franks, Jr., Cdr, Training and Doctrine Cmd, Fort Monroe, VA 23651–5000.	Book, "Japan: An Illustrated Encyclopedia". Recd—May 18, 1994. Est. Value—$250.00. Pending a report to GSA. Approved for official display.	GEN Tomizawa, Chief of Staff, Japan Ground Self Defense Force.	Non-acceptance would have caused embarrassment to the donor.
COL William H. Kennedy, III, Commander, U.S. Army Central Command, Area Support Group—Kuwait, APO AE 09889–9900.	Yves Saint Laurent Swiss, Stainless Steel, Quartz Watch. Recd—July 25, 1994. Est. Value—$675.00. Pending transfer to GSA.	MG Ali M. Al-Mu'min, Chief of the General Staff of the Kuwaiti Armed Forces.	Non-acceptance would have caused embarrassment to the donor.
Honorable Togo D. West, Jr., Secretary of the Army.	Gold key chain and cuff links. Recd—May 12, 1994. Est. Value—$650.00. Pending a report to GSA. Currently displayed in the Office of the Secretary of the Army.	Field Marshal Husien Tantawy, Minister of Defense and Military Production, Egypt.	Non-acceptance would have caused embarrassment to the donor and U.S. Government.
GEN G.R. Sullivan, Chief of Staff, Army, Pentagon, Washington, D.C.	Oriental Rug. Recd—1991. Est. Value—Unknown. Pending a report to GSA. Approved for display.	Chief of Staff Counterpart, Saudi Arabia.	Non-acceptance would have caused embarrassment to the donor.
GEN G.R. Sullivan, Chief of Staff, Army, Pentagon, Washington, D.C.	Taurus Model 44 Caliber .44. Magnum Pistol, SN: NF970833. Recd—August 1994. Est. Value—$449.00. Approved for display.	Chief of Staff Counterpart, Saudi Arabia.	Non-acceptance would have caused embarrassment to the donor.
Mrs. G.R. Sullivan, Chief of Staff, Army, Pentagon, Washington, D.C.	Gold Scarab Bettle Bracelet. Recd—April 1993. Est. Value—$250.00. Approved for display.	Mrs. Wagida Tantawi, Wife, Minister of Defense and CINC Egyptian Armed Forces.	Non-acceptance would have caused embarrassment to the donor.

AGENCY: DEPARTMENT OF THE ARMY

Report of Travel or Expenses of Travel

Name and title of person accepting travel or travel expenses consistent with the interest of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
MG Paul J. Vanderploog, Director of Logistics and Security Assistance Central Command, MacDill AFB, Florida 33621.	Recd.—January 10–11, 1993. Est. Value—$700.00. Expended for hotel room and meals.	Minister of Defense for the Government of Bahrain.	Non-acceptance would have caused embarrassment to the donor.
MG Paul J. Vanderploog, Director of Logistics and Security Assistance Central Command, MacDill AFB, Florida 33621.	Recd.—January 12–13, 1993. Est. Value—$550.00. Expended for hotel room and meals.	Minister of Defense for the Government of Bahrain.	Non-acceptance would have caused embarrassment to the donor.
MG Paul J. Vanderploog, Director of Logistics and Security Assistance Central Command, MacDill AFB, Florida 33621.	Recd.—May 23–25, 1993. Est. Value—$1,050.00. Expended for hotel room and meals.	Minister of Defense for the Government of Bahrain.	Non-acceptance would have caused embarrassment to the donor.
MG Paul J. Vanderploog, Director of Logistics and Security Assistance Central Command, MacDill AFB, Florida 33621.	Recd.—October 04–06, 1993. Est. Value—$1,050.00. Expended for hotel room and meals.	Minister of Defense for the Government of Bahrain.	Non-acceptance would have caused embarrassment to the donor.

AGENCY: DEPARTMENT OF THE ARMY—Continued

Report of Travel or Expenses of Travel

Name and title of person accepting travel or travel expenses consistent with the interest of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
MG Paul J. Vanderploog, Director of Logistics and Security Assistance Central Command, MacDill AFB, Florida 33621.	Recd.—October 09–10, 1993. Est. Value—$550.00. Expended for hotel room and meals.	Minister of Defense for the Government of Bahrain.	Non-acceptance would have caused embarrassment to the donor.
MG Paul J. Vanderploog, Director of Logistics and Security Assistance Central Command, MacDill AFB, Florida 33621.	Recd.—April 15–18, 1994. Est. Value—$500.00. Expended for hotel room.	Minister of Defense for the Government of Bahrain.	Non-acceptance would have caused embarrassment to the donor.

AGENCY: CENTRAL INTELLIGENCE AGENCY

Report of Tangible Gifts—1994

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Agency employee	Single strand of graduated cultered pearls measuring approximately 3 to 8½mm, with yellow gold clasp. L: 19 inches. Rec'd.—12 Jan 94. Est. Value—$900. To be retained for official display.	5USC7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Agency employee	Ladies Eterna wristwatch. With 18 karat (750) yellow gold flexible chain link bracelet band. Rec'd.—12 Jan 94. Est. value—$750. To be retained for official display.	5USC7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Agency employee	Baume & Mercier Riviera gentleman's wristwatch. With mother-of-pearl face and gilt Roman numerals and date calendar, within faceted gilt metal and stainless steel bezel and matching flexible bracelet. Case number 5131.3. Together with pair matching cuff links. Rec'd.—12 Jan 94. Est. value—$1,500. To be retained for official display.	5USC7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Unknown, employee	Goldish-onyx figure of a ram. Standing on all fours and looking to its left, on red lacquered stand. H: of figure 8½ inches. Rec'd.—Est. value—$250. To be retained for official display.	5USC7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Unknown, employee	Marquetry and engraved bone inlaid plaque of procession with elephant and soldiers. L: 29¾ inches. Rec'd.—1 Jan 73. Est. Value—$250. To be retained for official display.	5USC7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Unknown, employee	Quartz specimen gilt metal mounted figure of a boar. In dustproof case. H: of boar 7; L: 12 inches. Rec'd.—1 Jan 75. Est value—$500. To be retained for official display.	5USC7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: CENTRAL INTELLIGENCE AGENCY—Continued

Report of Tangible Gifts—1994

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Agency Employee	Gentleman's Rodo Diastar wristwatch. With yellow gold textured face and faceted simulated diamond stud at quarter hour. With gilt metal and stainless steel flexible band. Rec'd—1 May 93. Est. value—$250. To be retained for official display.	5USC7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Agency employee	Rug. 106.9. Red ground with floral medallion within floral border on white ground and complimentary guard border on light blue ground. Rec'd—1 May 94. Est. value—$750. To be retained for official display.	5USC7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Admiral W.O. Studeman, USN, Deputy Director, Central Intelligence.	Silver three-light candelabrum, 20th Century. Having cast palmette standard supporting scroll arms cresting in floriform candle sockets, and raised on domed base. H: 7⅛; W: 10 oz. Rec'd—8 May 94. Est. value—$450. To be retained for official display.	5USC7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Admiral W.O. Studeman, USN, Deputy Director, Central Intelligence.	Middle Eastern repoussé silver coffee pot, contemporary. Having a bulbous tapering body repoussed and chased with floral and leafage band, with strap handle and shaped spout; the domed lid and spear finial. H: 7⅞ inches. Wt. 12 oz. Rec'd—12 May 94. Est. value—$500. To be retained for official display.	5USC7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Admiral W.O. Studeman, USN, Deputy Director, Central Intelligence.	Enameled and gilt filigree silver and apple green jade bracelet, contemporary. Having four flexible panels set with round jade carved with stylized phoenix birds within filigree mount with enameled floral and leaves and blue lavender. Rec'd—7 Jun 94. Est. value—$750. To be retained for official display.	5USC7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Admiral W.O. Studeman, USN, Deputy Director, Central Intelligence.	Colored lithograph of *Place de la Concorde*. In burlwood frame with green mat. 914 inches. Rec'd—16 May 94. Est. value—$250. To be retained for official display.	5USC7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Agency employee	Mother-of-pearl inlaid reddish-brown lacquer jewelry box, contemporary. With rectangular hinged doomed lid opening to view a rose kid lined tray. With removable undertray. Overall inlaid with mother-of-pearl, butterflies, scrolling vines and flowers. L: 8½; H: 4½ inches. Rec'd—19 Jan 94. Est. value—$250. To be retained for official display.	5USC7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: CENTRAL INTELLIGENCE AGENCY—Continued

Report of Tangible Gifts—1994

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Agency employee	Turquoise faience mounted silver three-piece ensemble. Consisting of necklace, bracelet and ring. Each set with turquoise-blue cicada mounted panels. Rec'd—2 May 94. Est. value—$500. To be retained for official display.	5USC7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
R. James Woolsey, Director, Central Intelligence.	Brass and steel four-barrel percussion pistol, with burlwood stock. Note: reproduction of the original. L, of barrels: 5⅞ inches. Rec'd—28 Feb 94. Est. value—$300. To be retained for official display.	5USC7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
R. James Woolsey, Director, Central Intelligence.	Repoussé sterling vase. The bulbous body and flared neck repoussèd with band of flowers and leaves. H: 6¼ inches. Wt. 9 oz. Rec'd—17 Feb 94. Est. value—$350. To be retained for official display.	5USC7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
R. James Woolsey, Director, Central Intelligence.	Pictorial rug of Director Woolsey. 54.4. Rec'd—1 Feb 94. Est. value—$750. To be retained for official display.	5USC7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
R. James Woolsey, Director, Central Intelligence.	One volume of stamps. In gold brocaded floral silk binding. Rec'd—20 Jan 94. Est. value—$250. To be retained for official display.	5USC7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
R. James Woolsey, Director, Central Intelligence.	Mother-of-pearl inlaid black lacquer box. Rectangular with removable lid inlaid with bamboo stalks. 139½ inches. Rec'd—19 Jan 94. Est. value—$350. To be retained for official display.	5USC7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
R. James Woolsey, Director, Central Intelligence.	Partial silk rug. 4.9 x 3.2. Ivory ground with floral field and centering oval medallion with complementary field on red ground. Blue spandrels. Floral guard border on beige ground. Rec'd—30 Mar 94. Est. value—$600. To be retained for official display.	5USC7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
R. James Woolsey, Director, Central Intelligence.	Pair sterling low candlesticks. Each with chased candle sockets. Each, H: 3¼ inches. Total weight 15 oz. Rec'd—17 Jan 94. Est. value—$500. To be retained for official display.	5USC7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
R. James Woolsey, Director, Central Intelligence.	Inlaid silver plated and steel dagger. With decorated wood sheath. L: including sheath 16½ inches. Rec'd—6 Sep 94. Est. Value—$400. To be retained for official display.	5USC7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
R. James Woolsey, Director, Central Intelligence.	Green jade single strand necklace and pair earrings. The necklace with sixty-two beads measuring approximately 10½ mm with yellow gold oval clasp set with cabochon green jade. 3 pieces. Rec'd—31 Oct 94. Est. Value—$1,200. To be retained for official display.	5USC7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: CENTRAL INTELLIGENCE AGENCY—Continued

Report of Tangible Gifts—1994

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
R. James Woolsey, Director, Central Intelligence.	Oil on canvas. Signed in cyrillic lower right and dated '94; also, titled, signed and dated on reverse in cyrillic. 21½ x 35½ inches. Red'd—6 Sep 94. Est. value—$500. To be retained for official display.	5USC7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
R. James Woolsey, Director, Central Intelligence.	Chiesa di S. Maria a Trevi. Etching. Etching. Plate no. 104. In fruitwood and ebonized frame with ink drawn lined mat. 7½ x 12½ inches. Rec'd—18 Nov 94. Est. value—$450. To be retained for offical display.	5USC7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
R. James Woolsey, Director, Central Intelligence.	Silver and painted military figure. With 800-standard mark. H: 6 inches. Wt. 9 oz. Rec'd—16 Nov 94. Est. value—$500. To be retained for official display.	5USC7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
R. James Woolsey, Director, Central Intelligence.	Silver presentation tray, Within beaded floral border. D: 11 inches. Wt. 16 oz. Rec'd—12 Oct 94. Est. value—$450. To be retained for official display.	5USC7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
R. James Woolsey, Director, Central Intelligence.	Lacquered and gilt metal samurai suit mask, contemporary. H: 20 inches. Rec'd—19 Sep 94. Est. value—$500. To be retained for official display.	5USC7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
R. James Woolsey, Director, Central Intelligence.	Silver plated three-piece coffee set and tray. Consisting of teapot, covered sugar bowl, creamer and round tray. H: of coffee pot 7 inches. Rec'd—5 Sep 94. Est. value—$250. To be retained for official display.	5USC7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
R. James Woolsey, Director, Central Intelligence.	Pewter desk clock/thermometer. D: 5¼ inches. Rec'd—15 Sep 94. Est. value—$350. To be retained for official display.	5USC7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
R. James Woolsey, Director, Central Intelligence.	Sterling three-piece tea set. Consisting of teapot, creamer and sugar. Each with bulbous body and chased decoration. Total weight approximately 25 oz. Rec'd—14 Sep 94. Est. value—$750. To be retained for official display.	5USC7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
R. James Woolsey, Director, Central Intelligence.	Mottled brown agate vase. Urn-form with pedestal base. H: 10 inches. Rec'd—6 Sep 94. Est. value—$300. To be retained for official display.	5USC7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
R. James Woolsey, Director, Central Intelligence.	Cloisonné enamel vase. The bulbous body and flared neck and polychromed enamel with scrolling vines, flowers, leaves against a mottled red ground, with brass ring rim and base. On hardwood base. H: overall 14 inches. Rec'd—12 Apr 94. Est. value—$500. To be retained for official display.	5USC7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: CENTRAL INTELLIGENCE AGENCY—Continued

Report of Tangible Gifts—1994

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
R. James Woolsey, Director, Central Intelligence.	Serpentine dragon boat. Supporting central pagoda-form pavillion with shaped flags and calligraphy. On hardwood stand. L: 15 inches. Rec'd—30 Aug 94. Est. value—$500. To be retained for official display.	5USC7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
R. James Woolsey, Director, Central Intelligence.	Interior glass painted orb, 20th Century. Painted with continuous mountainous river landscape with boats, figures and bridge. On hardwood stand. D: of ball approximately 4 inches. Rec'd—31 Aug 94. Est. value—$400. To be retained for official display.	5USC7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
R. James Woolsey, Director, Central Intelligence.	Famille rose medallion tea set, contemporary. Consisting of teapot, covered sugar, creamer, six cups and six saucers. Each polychrome decorated with ladies in garden within floral and gilt border. Rec'd—30 Aug 94. Est. value—$350. To be retained for official display.	5USC7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
R. James Woolsey	Cloisonné enamel vase, contemporary. Pear-shaped and polychrome enameled with chrysanthemums and peony branches against a blue ground with brass ring base. On hardwood stand. H: overall 13½ inches. Rec'd—30 Aug 94. Est. value—$450. To be retained for official display.	5USC7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
R. James Woolsey	Gentleman's Fred Date Calendar Force X wristwatch. With pewter dial and gilt metal hour indicators. Within rope and cog bezel with black alligator band. Rec'd—20 Jun 94. Est. value—$350. To be retained for official display.	5USC7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
R. James Woolsey, Director, Central Intelligence.	Pewter mounted horn covered vessel. H: 10 inches. Rec'd—2 Jul 94. Est. value—$500. To be retained for official display.	5USC7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
R. James Woolsey, Director, Central Intelligence.	Middle Eastern repoussé and filigree silver Keris. The shaped handle fitted in repoussé and filigree silver sheath with scrolling vines and geometric pattern. L: 11¾ inches. Rec'd—12 May 94. Est. value—$500. To be retained for official display.	5USC7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
R. James Woolsey, Director, Central Intelligence.	Pair silver three-light candelabra, 20th Century. Having cast palmette standard supporting scroll arms cresting in floriform candle sockets, and raised on domed base. Each, H: 7⅛ inches. Total weight 20 oz. Rec'd—2 May 94. Est. value—$900. To be retained for official display.	5USC7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: CENTRAL INTELLIGENCE AGENCY—Continued

Report of Tangible Gifts—1994

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
R. James Woolsey, Director, Central Intelligence.	Watercolor on paper. Framed 28½ x 17¼ inches. Rec'd—18 Jan 94. Est. value—$500. To be retained for official display.	5USC7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
R. James Woolsey, Director, Central Intelligence.	Coral graduated necklace and pair earrings. The fifty-two graduated beads measuring approximately 10½ to 13.3mm; with yellow gold oval clasp, set with cabochon coral and pair cabochon pierced type earrings with yellow gold mount. L: 24 inches. Rec'd—12 Apr. 94. Est. value—$900. To be retained for official display.	5USC7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
R. James Woolsey, Director, Central Intelligence.	Embroidered black velvet ceremonial robe and hat. The border worked in trellising vines and flowers in red, blue and green, outlined in white and burgundy zigzag pattern. Rec'd—7 Sep 94. Est. value—$350. To be retained for official display.	5USC7342 (f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
R. James Woolsey, Director, Central Intelligence.	Etching and aquatint in color. In gilt frame. 7½ 12½ inches. Rec'd—15 Nov 94. Est. value—$400. To be retained for official display.	5USC7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Agency employee	Must de Cartier gentleman's wristwatch. With white dial and blue steel handle and gilt steel bezel dial and flexible bracelet. Numbered 1989/92. Rec'd—12 April 93. Est. value—$1,000. To be retained for official display.	5USC7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Agency employee	Middle Eastern repoussé silver coffee pot. The bulbous body repoussed with band of flowers and diamond shaped band within scroll handle shaped spout with hinged lid with spike finial. H: 7¾ inches. Wt. 10 oz. Rec'd—10 Dec 94. Est. value—$500. To be retained for official display.	5USC7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
R. James Woolsey, Director, Central Intelligence.	Replica of an early rowing sailing ship. In dustproof case. L: approximately 18 inches. Rec'd—15 Dec 94. Est. value—$750. To be retained for official display.	5USC7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
R. James Woolsey, Director, Central Intelligence.	Middle Eastern repoussé silver large coffee pot. The bulbous body and elongated neck repoussed with band of flowers and geometric devices with strap handle and hinged lidded shaped spout; the hinged domed lid with spike finial. H: 13 inches. Wt. 43 oz. Rec'd—10 Dec 94. Est. value—$1,500. To be retained for official display.	5USC7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: CENTRAL INTELLIGENCE AGENCY—Continued

Report of Tangible Gifts—1994

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
R. James Woolsey, Director, Central Intelligence.	Parcel gilt silver incense burner. The squared flared body chased with flowering vines in gilt metal, and raised on four gilt metal pilasters, on silver base etched with conforming vines and leaves. H: 10 inches. Wt. 26 oz. Rec'd—7 Dec 94. Est. value—$1,500. To be retained for official display.	5USC 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
R. James Woolsey, Director, Central Intelligence.	Silver box. Circa 1993. Rectangular with hinged lid engraved and chased with quadrant depicting the Roman Theater, Aman; Garden Triclinium, Petra; the South Theater, Jerash; and Eddeer at Petra. The sides engine turned; the interior with gilt lid having a cornet engraved monogram and wood lined interior. L: 9; W: 6½; H: 2½ inches. Gross weight 42 oz. Rec'd—7 Dec. 94. Est. value—$2,500. To be retained for official display.	5USC 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
R. James Woolsey, Director, Central Intelligence.	Three-piece graduated Keris set. Each with floral and leafage repoussé handles and sheaths. L: from 13½ to 16 inches. Rec'd—5 Dec 94. Est. value—$1,200. To be retained for official display.	5USC 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
R. James Woolsey, Director, Central Intelligence.	Molded crystal plaque of woman in Gothic niche. Numbered 0293. Inscribed indistinctly. H: 9⅞ inches. Rec'd—5 Dec 94. Est. value—$400. To be retained for official display.	5USC 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
R. James Woolsey, Director, Central Intelligence.	Pair silver candlesticks. Each with bulbous body and shaped candle socket and raised on round domed base ending on three scroll feet. Each, H: 9¾ inches. Total weight 12 oz. Rec'd—4 Dec 94. Est. value—$500. To be retained for official display.	5USC 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
R. James Woolsey, Director, Central Intelligence.	Silver presentation tray, within molded border cast with leaves and flowers. D: 10 inches. Wt. 16 oz. Rec'd—3 Dec 94. Est. value—$500. To be retained for official display.	5USC7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
R. James Woolsey, Director, Central Intelligence.	Repoussé silver box. Compressed oval-form with floral repoussé hinged lid and body and raised on four cast floral feet. L: 8 inches. Wt. 19 oz. Rec'd—2 Dec 94. Est. value—$600. To be retained for official display.	5USC7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: CENTRAL INTELLIGENCE AGENCY—Continued

Report of Tangible Gifts—1994

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Admiral W.O. Studeman, USN, Deputy Director, Central Intelligence.	Model of a rowing sailboat. In dustproof case. L: approximately 19 inches. Rec'd—15 Dec 94. Est. value—$750. To be retained for official display.	5USC7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
William E. Colby, Former Director, Central Intelligence.	_____ Rode (Mexican, 20th Century). Rural Landscape with Farmhouse and Mountains in Distance. Signed Rode lower right. Oil on canvas. Framed. 12 X 16. Rec'd—1 Jan 75. Est. value—$500. To be retained for official display.	5USC7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF COMMERCE

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Ronald H. Brown, Secretary of Commerce.	12″x14″ sand painting of the Great Wall of China, framed in ornate gold/white frame; Recd.—August 28, 1994; Est. Value—$300; Reporting to DOC September 14, 1994 pending transfer to GSA.	Li Qiyan, Mayor of Beijing Municipality, People's Republic of China.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Ronald H. Brown, Secretary of Commerce.	Carved Jade Ornament on a wooden base; Recd.—August 31, 1994; Est. Value—$325; Reported to DOC September 14, 1994; Approved for official use.	H.E. Hu Qili, Minister of Electronics, Beijing, People's Republic of China.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Ronald H. Brown, Secretary of Commerce.	Dragon shaped vessel with a glass and wood cover; Recd.—September 7, 1994; Est. Value—$325; Reported to DOC September 14, 1994; Approved for official use.	H.E. Chulsu Kim, Minister of Trade, Industry and Energy, Republic of Korea, Kyunggi-do, Korea.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF DEFENSE

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Lt. Gen. Wesley K. Clark, Army Director, Strategic Plans and Policy, The Joint Staff.	Pistol (9 mm), Recd—August 27, 1994. Est. Value—$500. Approved for historical item display in Europe at EUCOM Headquarters.	General Ratko Miadic, Bosnian Serb Army.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Lt. Col. Steven L. Neely, Army Country Director for Jordan (International Security Affairs).	Favre Leuba mens wristwatch, Serial Number F43–200–531 in a green box, approx. 4¾″x4¼″x2½″ with King's Crown on top. Recd—June 30, 1994. Est. Value—$650. Delivered to GSA December 29, 1994.	King Hussein of Jordan	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF DEFENSE—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Admiral William A. Owens, USN, Vice Chairman of the Joint Chiefs of Staff.	Pakistani Rug (approx. 4'1"x5'8"), Recd—April 1, 1994. Est. Value—$2,000. Approved for official display.	General Abdul Waheed, Chief of the Army Staff, Pakistan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
William J. Perry, Secretary of Defense.	Pakistani Rug (approx. 4'1" by 4'1"x5'8") Recd—April 1, 1994. Est. Value—$2,000. Approved for official display.	General Abdul Waheed, Chief of the Army Staff, Pakistan Army.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
William J. Perry, Secretary of Defense.	Bronze-tone plaque mounted on red velour, with metal eagle mounted on red, white and black stripes, and a chariot and presentation plaque on it, approx. 9½"x6¾", in red velour case; Goldplated hand held fire arm with cleaning accessories and ammunition, Number 11EE71 (Helwan CAL 9 MM, (A.R.E); Egyptian Rug, Multicolor. Recd—May 10, 1994. Est. Value—$1,390. Approved for official display.	Field Marshal Mohamed Husein Tantawy, Minister of Defense and Military Production of Egypt.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
William J. Perry, Secretary of Defense.	Gold cufflinks and gold key chain with Egyptian scroll writing, in a black velour case with silver trim. Recd—April 11, 1994. Est. Value—$500. Approved for official display.	Field Marshal Mohamed Husein Tantawy, Minister of Defense and Military Production of Egypt.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
William J. Perry, Secretary of Defense.	Zeiss Binoculars (approx. 4" x 4") 8 x 20 BT*P*, NR 497279 (522040). Two tone Gray in Black/White box. Recd—May 2, 1994. Est. Value—$450. Approved for official display.	Volker Ruehe, Minister of Defense of Germany.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mrs. William J. Perry, wife of Secretary of Defense.	Bracelet, 22 kt. Gold with alternating cartouches and scarabs links in green velour case with silver trim. Recd—May 10, 1994. Est. Value—$500. Approved for official display.	Field Marshal Mohamed Husein Tantawy, Minister of Defense and Military Production of Egypt.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
William J. Perry, Secretary of Defense.	Silver hand gun (Serial Number PX0485A) with ammunition and presentation plate in a wooden box with glass front, approx. 9½" wide 2½" tall. Enclosed in green denim bag with blue padding and two carrying handles; Four black wooden platters, hand painted, multi-colored with black background (1) approx. 7¾" across, (2) approx. 11¾" across; (3) approx. 14¾" across and (4) approx. 19¾" across; Two black wooden boxes, hand painted (approx. 7" wide 2¾" high, and 11¼" wide 2¾" high), multi-colored with black background; Ten black wooden eggs, hand painted, multi-colored with black background; White with red embroidery linen tablecloth, approx. 110" x 72" with six matching napkins, approx. 11½" 11". Recd—June 14, 1994. Est. Value—$695. Delivered to GSA December 29, 1994.	Army General Vitaliy Radetsky, Minister of Defense of Ukraine.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF DEFENSE—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
William J. Perry, Secretary of Defense.	Decorative Vase 26" with gold trim/handpainted. Recd—July 18, 1994. Est. Value—$250. Approved for Official Display.	Minister of National Defense Gheorghe Tinca.	Non-acceptance would have caused embarrassment to donor and the U.S. Government.
William J. Perry, Secretary of Defense.	Black Samsonite brief case with combination lock; Clothing: Baedlae-suit to include: Galabiyya-robe; Kafiyya-head cloth, agayla-band (size 48); Cartier watch with brown leather band and matching pen set. Recd—October 14, 1994. Est. Value—$930. Approved for Official Display.	Jaber Al-Ahmed Al-Sabah, Amir of Kuwait.	Non-acceptance would have caused embarrassment to donor and the U.S. Government.
William J. Perry, Secretary of Defense.	Hand-crafted porcelain horse on wooden base; String of Jade Beads with single Jade Bead clip earrings in red velour box. Recd November 2, 1994. Est. Value—$335. Approved for Official Display.	Chief of the General Staff, Ministry of National Defense Republic of China and Mrs. Liu Ho-Chien.	Non-acceptance would have caused embarrassment to donor and the U.S. Government.
General John M. Shalikashvili, Chairman, Joint Chiefs of Staff, and Mrs. Shalikashvili.	Double barrel shotgun, Serial Number 2962–1989 (in Arabic) in green case; Silver cartouche (personalized); Two scarab necklaces; Gold cartouche key chain, cuff links, and tie bar (personalized); Copper plate. Recd—December 4, 1994. Est. Value—$2,310. Approved for Official Display.	Lieutenant General Salah Halby, Chief of Staff of the Armed Forces, Egypt.	Non-acceptance would have caused embarrassment to donor and the U.S. Government.
Walter B. Slocombe, Under Secretary of Defense (Policy).	Small Oriental Rug (2½" x 4"—Gray with red); Copper Plate; Plaque. Recd—December 7, 1994. Est. Value—$770. Approved for Official Display.	Lieutenant General Mumtaz Gul, 11th Corps Commander, Pakistan.	Non-acceptance would have caused embarrassment to donor and the U.S. Government.
Walter B. Slocombe, Under Secretary of Defense (Policy).	Plaque: Plate (Jade); Large Oriental (Silk) Rug (Beige, 6' x 4'). Recd—December 7, 1994. Est. Value—$1560. Approved for Official Display.	General Abdul Waheed, Chief of the Army Staff, Pakistan.	Non-acceptance would have caused embarrassment to donor and the U.S. Government.
Frederick C. Smith, Director, Near Eastern and South Asian Affairs, Regional Security Affairs.	Men's silver and gold Baume and Mercier, Geneve wristwatch with Bahrain Defense Force emblem on the face. It is in a gray tri-fold box; Single strand of graduated cultured pearls with 18 kt. gold clasp in a black velvet case. Recd—January 20, 1994. Est. Value—$1,050. Delivered to GSA December 29, 1994..	Lieutenant General Khalifa bin Ahmad Al Khalifa, Minister of Defense, Deputy Commander-in-Chief Bahrain.	Non-acceptance would have caused embarrassment to donor and the U.S. Government.
Frank G. Wisner, Under Secretary of Defense (Policy).	Pakistani rug, approximately 3½' x 5', Beige, pink and blue. Recd—April 1, 1994. Est. Value—$750. Approved for Official Display.	General Abdul Waheed, Chief of the Army Staff, Pakistan.	Non-acceptance would have caused embarrassment to donor and the U.S. Government.

AGENCY: DEPARTMENT OF DEFENSE

Report of Travel or Expenses of Travel

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interest of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Lt. Gen. Thomas G. Rhame, USA, Director, Defense Security, Assistance Agency.	Recd—January 4–5, 1994. Est. Value—$494. Expended for airfare and meals.	Government of Saudi Arabia	To attend and meeting to discuss Saudi Arabia's Foreign Military Sales Program.

AGENCY: BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Alan Greenspan, Chairman	Gold commemorative medallion and book "LaBanca D'Italia 100 Anni." Received: December 14, 1993. Est. Value obtained as of February 1, 1994: $700. Retained for display.	Bank of Italy.	To have refused would have caused offense or embarrassment.
Louise Roseman, Associate Director, Division of Reserve Bank Operations and Payment Systems.	Unframed oil painting on canvas. Received: January 13, 1994. Est. Value: $225. Retained for display.	Mr. Haryono, Managing Director, Bank of Indonesia.	Presented at ceremony. Non-acceptance would have caused embarrassment to donor.

AGENCY: GENERAL SERVICES ADMINISTRATION (GSA)

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Frank P. Pugliese Commissioner, FSS.	Replica of the defense wall of Kuwait. Recd-Kuwait. Recd—March 22, 1994. Est. Value—$450. On display for official use.	Ahmad Hamzeh Mustafe, Kuwait delegation team leader, Kingdom of Kuwait.	Non-acceptance would have cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF HEALTH AND HUMAN SERVICES

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Donna E. Shalala, Secretary	Mother-of-pearl box with blue presentation case. Recd.—November 26, 1994. Est. Value—$350. Disp.—Retained for official display..	Yassir Arafat, Chairman, Palestine Liberation Organization.	Non-acceptance would have caused the donor embarrassment.

AGENCY: U.S. DEPARTMENT OF THE INTERIOR

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Bruce Babbitt, Secretary, U.S. Department of the Interior.	Gold Cup. Recd—May 8, 1994. Est. Vaue—$500. Displayed in Secretary's Immediate Office.	Secretaria Carpizo Mexico	Non-acceptance would have caused embarrassment to donor and the U.S. Government.

AGENCY: DEPARTMENT OF JUSTICE

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimatee value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Janet Reno, Attorney General	Silver and enamel cup and saucer set. Recd.—April 19, 1994. Est. Value—$300. Will report to GSA for disposition.	The Honorable Kim Doo-Hee, Minister of Justice, Republic of Korea.	Meeting with donor; non-acceptance would have caused embarrassment to the donor.
Louis J. Freeh, Director, Federal Bureau of Investigation.	Turkish blanket. Recd.—April 22, 1994. Est. Value—$350. Located in Director's office.	Mehmet Agar, Director General of State Police Force.	Meeting between the Director and donor; non-acceptance would have cause embarrassment to the donor.

AGENCY: DEPARTMENT OF THE NAVY
REPORT OF TANGIBLE GIFTS

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Vice Adm. Vernon E. Clark, USN, Commander Cruiser, Destroyer Group 3.	Sailboat on white marble stand. Recd—July 29, 1994. Est. Value—$320. Being retained at COMCRUDESGRU 3.	MGEN Fhad Al-Ameer, Kuwaiti Armed Forces.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Lt. James J. Cunha, USN, Administrative Support Unit, SW Asia.	Dagger. Recd—April 17, 1994. Est. Value—$800. Being retained at ASU, SW Asia.	Sheikh Isa Bin Salman Al Khalifa, the Amir of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Lt. James J. Cunha, USN, Administrative Support Unit, SW Asia.	Man's watch and cuff links. Recd—April 17, 1994. Est. Value—$1,600. Being retained at ASU, SW Asia.	Sheikh Isa Bin Salman Al Khalifa, the Amir of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Lt. James J. Cunha, USN, Administrative Support Unit, SW Asia.	Woman's watch and pearls. Recd—April 17, 1994. Est. Value—$8,799. Being retained at ASU, SW Asia.	Sheikh Isa Bin Salman Al Khalifa, the Amir of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Rear Adm. Joseph J. Dantone, Jr., Commander Carrier Group 3.	Man's watch. Recd—September 29, 1993. Est. Value—$931. Being held in CNO (N09B33) pending transfer to GSA for disposition.	Ambassador Ahmed al-Ayoub, Kuwait.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Comdr. William O. Hawn, USN, USS Jack Williams (FFG 24).	Man's watch. Recd—October 13, 1994. Est. Value—$1,500. Being retained on board USS Jack Williams (FFG 24).	Major Sager Hamad Sager Al Maawda, Bahrain-Ameri Naval Forces.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Lt. Comdr. James W. Houck, USN, Force Judge Advocate, U.S. Naval Forces Central Command.	Dagger. Recd—April 17, 1994. Est. Value—$800. Being retained at COMUSNAVCENT.	Sheikh Isa Bin Salman Al Khalifa, the Amir of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Lt. Comdr. James W. Houck, USN, Force Judge Advocate, U.S. Naval Forces Central Command.	Man's watch and cuff links. Recd—April 17, 1994. Est. Value—$1,600. Being retained at COMUSNAVCENT.	Sheikh Isa Bin Salman Al Khalifa, the Amir of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Lt. Comdr. James W. Houck, USN, Force Judge Advocate, U.S. Naval Forces Central Command.	Woman's watch and pearls. Recd—April 17, 1994. Est. Value—$8,799. Being retained at COMUSNAVCENT.	Sheikh Isa Bin Salman Al Khalifa, the Amir of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Lt. Comdr. William H. Jacobs, USN, USS Jack Williams (FFG 24).	Man's watch. Recd—October 13, 1994. Est. Value—$1,000. Being retained on board USS Jack Williams (FFG 24).	Major Khalifa Adaulla Khalifa Al Khalifa, Bahrain-Ameri Naval Forces.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Dr. Jerome Karle, chief scientist, Laboratory for the Structure of Matter.	Prize—Ettore Majorana Research Award. Recd—December 1994. Est. Value—$90,000.	Ettore Majorana Center for Scientific Culture, Manger of prize established by Sicilian Parliament.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Vice Adm. Douglas J. Katz, USN, Commander U.S. Naval Forces Central Command.	Dagger. Recd—April 17, 1994. Est. Value—$800. Being held in CNO (N09B33) pending transfer to GSA for disposition.	Sheikh Isa Bin Salman Al Khalifa, the Amir of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Vice Adm. Douglas J. Katz, USN, Commander U.S. Naval Forces Central Command.	Man's watch and cuff links. Recd—April 17, 1994. Est. Value—$4,522. Being held in CNO (N09B33) pending transfer to GSA for disposition.	Sheikh Isa Bin Salman Al Khalifa, the Amir of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Vice Adm. Douglas J. Katz, USN, Commander U.S. Naval Forces Central Command.	Woman's watch and pearls. Recd—April 17, 1994. Est. Value—$13,300. Being held in CNO (N09B33) pending transfer to GSA for disposition.	Sheikh Isa Bin Salman Al Khalifa, the Amir of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Com. Kim F. Kline, USN, U.S. Naval Forces Central Command.	Dagger. Recd—April 17, 1994. Est. Value—$800. Being held in CNO (N09B33) pending transfer to GSA for disposition.	Sheikh Isa Bin Salman Al Khalifa, the Amir of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Com. Kim F. Kline, USN, U.S. Naval Forces Central Command.	Man's watch and cuff links. Recd—April 17, 1994. Est. Value—$1,600. Being held in CNO (N09B33) pending transfer to GSA for disposition.	Sheikh Isa Bin Salman Al Khalifa, the Amir of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF THE NAVY—Continued
REPORT OF TANGIBLE GIFTS

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Com. Kim F. Kline, USN, U.S. Naval Forces Central Command.	Woman's watch and pearls. Recd—April 17, 1994. Est. Value—$8,799. Being held in CNO (N09B33) pending transfer to GSA for disposition.	Sheikh Isa Bin Salman Al Khalifa, the Amir of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Vice Adm. Joseph W. Prueher, USN, Commander Sixth Fleet.	Oil portrait. Recd—October 4, 1994. Est. Value—$300. On display in the Office of the Vice Chief of Naval Operations.	Vice Adm. Pytar Grigor'evich Svyatashon, Russian Federation Navy.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Dr. Thomas L. Reinecke, Head Electronic and Optical Properties Section, Naval Research Laboratory.	Prize—Humboldt Research Award. Recd—December 1994. Est. Value—$55,000.	Alexander von Humboldt Fountain, Federal Republic of Germany.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF THE NAVY
REPORT OF TRAVEL OR EXPENSES OF TRAVEL

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Negative	.....	.....	

AGENCY: DEPARTMENT OF STATE
Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Warren Christopher, Secretary of State.	Crystal rectangular box engraved to the Secretary, Rec'd—January 8, 1994. Est. Value—$250. In Office of Protocol pending transfer to GSA.	George A. Joulwan, general in Belgium.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Warren Christopher, Secretary of State.	Val St. Lambert Crystal Dove. Rec'd—January 9, 1994. Est. Value—$250. In Office of Protocol pending transfer to GSA.	Clement J. Barter, area vice president for Conrad Hotels—Belgium.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Warren Christopher, Secretary of State.	Val St. Lambert Pair of 7" crystal candlesticks. Rec'd—January 9, 1994. Est. Value—$800. In Office of Protocol pending transfer to GSA.	Willy Claus, Deputy Minister of Foreign Affairs of Belgium.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Warren Christopher, Secretary of State.	China tea set with teapot and two teacups. Rec'd—November 13, 1994. Est. Value—$250. Location: Unknown.	Boris Yeltsin, President of the Russian Federation.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Warren Christopher, Secretary of State.	Lacquered burl wood box measuring 9"x13". Rec'd—January 24, 1994. Est. Value—$600. In Office of Protocol pending transfer to GSA.	Francois Mitterrand, President, the French Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Warren Christopher, Secretary of State.	5'x7' carpet with blue border. Rec'd—May 16, 1994. Est. Value—$500. Approved for official use.	Farooq Leghari, President, the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF STATE—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Warren Christopher, Secretary of State.	Large wooden box inlaid with Mother of Pearl containing a decorative Damascus-style tablecloth and napkins. Rec'd—October 26, 1994. Est. Value—$300. In Office of Protocol pending transfer to GSA.	Faruq al-Shara', Minister of Foreign Affairs, Syrian Arab Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Warren Christopher, Secretary of State.	Silver box with engraving on top commemorating the peace accord. Rec'd—October 26, 1994. Est. Value—$300. In Office of Protocol pending transfer to GSA.	Hussein I, King of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Warren Christopher, Secretary of State.	Yves Saint Laurent watch and two pens. Rec'd—October 28, 1994. Est. Value—$400. In Office of Protocol pending transfer to GSA.	Jabir Sabah, Amir, of the State of Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Warren Christopher, Secretary of State.	Two sterling silver peacocks. Rec'd—December 9, 1994, Est. Value—$300. In Office of Protocol pending transfer to GSA.	Galo Leoto, Minister of Foreign Affairs, Republic of Ecuador.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Deputy Secretary of State, Strobe Talbott.	Rug, approximately 5'7', oriental in design. Rec'd—April 1, 1994. Est. Value—$500. Approved for official use.	General Abdul Waheed, Chief of Army Staff, Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Peter Tarnoff, Under Secretary for Political Affairs.	Sterling silver incense burner; sterling silver rosewater vase; sterling silver coffee server; tray, of mixed metals. Rec'd—November 10, 1994. Est. Value—$6,000. In Office of Protocol pending transfer to GSA.	His Highness Shaikh Hamad bin Khalifa Al Thani, Crown Prince of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Molly Raiser, chief of protocol	Sterling silver box with Jordan's Royal Seal and signatures of the King and Queen. Rec'd—August 24, 1994. Est. Value—$300. Approved for Official Use.	Hussein I, King of the Hashemite Kingdom.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Molly Raiser, chief of protocol	Six five-piece place settings, sterling silver. Rec'd—November 29, 1994. Est. Value—$1,000. In Office of Protocol pending transfer to GSA.	Leonid Kuchma, President of Ukraine.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Marvin Brown, Consulate/NIV American Embassy, Colombia.	Gold chain necklace with gold crucifix symbol. Rec'd—January 18, 1994. Est. Value—$570. In office of Protocol pending transfer to GSA.	Department of Choco, Republic of Colombia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Gretchen Gerwe Welch, Counsel General, American Embassy, Riyadh, Saudi Arabia.	Gold tone portable stereo. Rec'd—January 22, 1994. Est. Value—$300. In office of Protocol pending transfer to GSA.	Saudi Embassy in Washington, DC.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Robin Sanders, political officer, American Embassy, Dakar, Senegal.	Custom-made Senegalese costume. Rec'd—February 3, 1994. Est. Value—$300. In office of Protocol pending transfer to GSA.	Religious cosso mbacke	Non-acceptance would cause embarrassment to donor and U.S. Government.
Gretchen Gerwe Welch, Counsel General, American Embassy, Riyadh, Saudi Arabia.	Wristwatch. Rec'd—February 14, 1994. Est. Value—$300. In office of Protocol pending transfer to GSA.	Embassy of Saudi Arabia, Washington, D.C.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Lisa Gail Allyn, Vic Counsul, American Embassy, Bahrain.	Eterna 18k gold ladies watch. Rec'd—February 14, 1994. Est. Value—$5,000. In office of Protocol pending transfer to GSA.	Shiakh Isa Bin Salman Al Khalika, Amir of Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF STATE—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
David C. Litt, Deputy Director, NEA/NGA.	Two Oriental carpets. Rec'd—March 12, 1994. Est. Value—$600.	Jalal Talabani, Khosrat Rasul, Irbil, Iraq.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Amb. Robert Pelletreau, Asst. Secretary for NEA.	18K Piaget men's watch with matching cufflinks; 18k Piaget woman's watch. Authentic Bahraini 84–87 graduated pearl necklace. Rec'd—June 5, 1994. Est. Value—$14,000. In office of Protocol pending transfer to GSA.	Isa Bin Salman Al-Khalifa, Amir, Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Jerry Feierstein, NEA/ARP	Men's Eterna 18k watch. Women's Eterna 18k watch. Rec'd—June 5, 1995. Est. Value—$4,000. In Office of Protocol pending transfer to GSA.	Isa Bin Salman Al-Khalifa, Amir, Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
April Glaspie, Country Director/ AFIS.	Silver bowl, Rec'd—June 9, 1994. Est. Value—$300. In Office of Protocol pending transfer to GSA.	Nayla Muawwad, Lebanese Member of Parliament.	Non-acceptance would cause embarrassment to donor and U.S. Government.
David S. Robins, DCM, Manama, Bahrain.	Men's Piaget 22k watch diamond-studed—appx. 55 mini diamonds with matching gold and diamond studded cufflinks. Rec'd—July 26, 1994. Est. Value—$8,700. In Office of Protocol pending transfer to GSA.	His Highness Shaikh Isa bin Salman Al Khalita, Amir of Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Admiral Douglas Katz, and Mrs. Douglas Katz.	Double strand matched grad. pearls. Gold coin on 22" gold chain. Rec'd—October 3, 1994. Est. Value—$6,500. In Office of Protocol pending transfer to GSA.	His Highness Shaikh Isa bin Salman AL Khalita, Amir of Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Admiral Douglas Katz, and Mrs. Douglas Katz.	Man's 18k gold "Oyster Perpetual" Rolex watch. Ladies' 18k gold "Oyster Perpetual" Rolex watch Rec'd—October 3, 1994 Est. Value—$19,300 In Office of Protocol pending transfer to GSA.	His Highness Shaikh Isa bin Sulman Al Khalifa, amir of Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
David Hale, Special Assistant to the Under Secretary for Political Affairs.	Sterling silver incense burner 8½"4", with 18k gold seals. Rec'd—November 10, 1994. Est. Value—$2,000. In Office of Protocol pending transfer to GSA.	His Highness Shaikh Hamad bin Khalifa Al Thani, Crown Prince, State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government
David Hale, Special Assistant to the Deputy Under Secretary for Political Affairs.	Eterna 18 karat gold watch and 18 karat gold cufflinks in black case. Rec'd—November 15, 1994. Est. Value—$7,575. In Office of Protocol pending transfer to GSA.	Shaikh Isa bin Salman Al Khalita, amir of Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Robin L. Raphel, Assistant Secretary.	Two carpets 3'9"6'1"; 4'10"6'8". Rec'd—April 13, 1994. Est. Value—$500. In Office of Protocol pending transfer to GSA.	Amin Arsala, Foreign Minister	Non-acceptance would cause embarrassment to donor and U.S. Government.
Charles L. Sykes, Deputy Assistant Secretary Bureau of Populations, Refugees, and Migration.	Three pictures, three lamps, three necklaces, three pr. of earrings pr. of cuff links with tie clamp, eight video cassette tapes, two audio tapes. Rec'd—October 28, 1994. Est. Value—$815. In Office of Protocol pending transfer to GSA.	Ching Hai, International Supreme Master.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF STATE—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
U.S. Ambassador to Kuwait	Cressida attache case; Christian Dior watch/pen, Abaya, headress. Rec'd—November 6, 1994. Est. Value—$1,690.52. In Office of Protocol pending transfer to GSA.	Amir of Kuwait	Non-acceptance would cause embarrassment to donor and U.S. Government.
David M. Ransom, U.S. Ambassador to Bahrain.	Three men's Eterna watches. Five women's Eterna watches. Five sets of gold bangle bracelets. Rec'd—December 21, 1994. Est. Value—$22,680. In Office of Protocol pending transfer to GSA.	Shaikh Isa bin Sulman Al Khalifa, amir of Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: UNITED STATES COAST GUARD

Report of Travel or Expense of Travel For Year Ending 1994

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Joseph D. Hersey, Jr., Asst Chief, G–TTM , USCG HQ.	Rec: 8 Feb 94. Item: Meals and lodging. Value: $300..	John Carr, Faculty Mktg. Mgr., U.K. Plymouth College.	Presentation to Plymouth College on Maritime safety.
RADM H. B. Gehring, District Commander.	Rec: 4 Feb 94. Item: Transportation from Tokyo to Hiroshima. Value: $300..	Maritime Safety Agency of Japan (JMSA).	Official visit to attend JMSA graduation.
Frank J. Flyntz, Asst Chief, G–MVP USCG HQ.	Rec: 4 Apr 94. Item: Travel/meals, lodging.	Mr. S.T. Aung, Member of International Maritime Organization, Philippines.	Provided assistance and expertise in merchant marine boat licensing for the government of the Philippines
Randolph DeKroney, Boat Licensing Specialist, G–MVP, USCG HQ.	Rec. 4 Apr 94. Item: Travel/meals, lodging. Value: $5,652.	Mr. S. T. Aung, Member of International Maritime Organization, Philippines.	Provided assistance and expertise in merchant marine boat licensing for the government of the Philippines.
CDR Frank Whipple, Commanding Officer.	Rec. 22 Apr 94. Item: Travel/meals, lodging. Value: $3,000.	Mr. Ignacio Vergrara, Environmental Protection for Latin America. Member of IMO, United Nations.	Assisted as technical advisor to Chile on an enviromental spill involving sodium cyanide.

AGENCY: U.S. TREASURY DEPARTMENT, COMPTROLLER OF THE CURRENCY

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Douglas E. Harris, senior policy adviser to the Comptroller.	Hand made wood replica of a dhow, Kuwaiti fishing vessel. Stored in blue velvet covered case. Received 10/17/94. Estimated value—$300. Currently used as a decorative item in Mr. Harris' office.	Ali A. Rashaid Al-Bader, Managing Director, Kuwait Investment Authority.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENTAL OFFICES

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Joshua L. Steiner, Chief of Staff ..	Gold coin cufflinks. Rec'd—October 6, 1994. Est. Value—$250. Government property.	Minister of Finance, Saudi Arabia	Non-acceptance would have caused embarrassment to donor and U.S. Government
Lloyd Bentsen, Secretary	Silver dagger. Rec'd—September 30, 1994. Est. Value—$300. Pending purchase by recipient.	Deputy Prime Minister, Malaysia ..	Non-acceptance would have caused embarrassment to donor and U.S. Government
Lloyd Bentsen, Secretary	Sterling silver replica of Santa Maria. Rec'd—September 30, 1994. Est. Value—$300. Government property.	President, Assn. of Spanish Employer Organizations [CEOE].	Non-acceptance would have caused embarrassment to donor and U.S. Government
Lloyd Bentsen, Secretary	Statue of American Astronaut. Rec'd—September 30, 1994. Est. Value—$350. Government property.	President, Assn. of Spanish Employer Organizations [CEOE].	Non-acceptance would have caused embarrassment to donor and U.S. Government
Lloyd Bentsen, Secretary	Porcelain vase. Rec'd—March 19, 1994. Est. Value—$250. Government property.	Minister of Finance, Taiwan	Non-acceptance would have caused embarrassment to donor and U.S. Government
Lloyd Bentsen, Secretary	Gold palm tree statute. Rec'd—April 27, 1994. Est. Value—$400. Government property.	Minister of Finance, Saudi Arabia	Non-acceptance would have caused embarrassment to donor and U.S. Government
Jeffrey R. Shafer, Assistant Secretary for International Affairs.	Gold keyring. Rec'd—April 27, 1994. Est. Value—$450. Government property.	Minister of Finance, Saudi Arabia	Non-acceptance would have caused embarrassment to donor and U.S. Government
Lawrence H. Summers, Under Secretary for International Affairs.	Gold keyring. Rec'd—April 27, 1994. Est. Value—$450. Government property.	Minister of Finance, Saudi Arabia	Non-acceptance would have caused embarrassment to donor and U.S. Government
Jeffrey R. Shafer, Assistant Secretary for International Affairs.	Gold coin cufflinks. Rec'd—October 5, 1994. Est. Value—$250. Government property.	Minister of Finance, Saudi Arabia	Non-acceptance would have caused embarrassment to donor and U.S. Government
Lloyd Bentsen, Secretary	Wooden chess set. Rec'd—September 12, 1993. Est. Value—$300. Government property.	President, Kyrgyzstan	Non-acceptance would have caused embarrassment to donor and U.S. Government
Mark Sobel, Director, Office of Former Soviet Union Nations.	Wooden chess set. Rec'd—Septmeber 12, 1993. Est. Value—$300. Government property.	President, Kyrgyzstan	Non-acceptance would have caused embarrassment to donor and U.S. Government
Ronald K. Noble, Assistant Secretary for Enforcement.	2 books. Rec'd—December 11, 1993. Est. Value—$375. Government property.	Minister of Grce and Justice, Italy	Non-acceptance would have caused embarrassment to donor and U.S. Government
Lloyd Bentsen, Secretary	Agate statue. Rec'd—January 18, 1994. Est. Value—$400. Government property.	Minister of Finance, China	Non-acceptance would have caused embarrassment to donor and U.S. Government
Lloyd Bentsen, Secretary	Framed porcelain tile painting. Rec'd—January 27, 1994. Est. Value—$257. Government property.	Mayor, City of Shanghai, China ...	Non-acceptance would have caused embarrassment to donor and U.S. Government

AGENCY: DEPARTMENTAL OFFICES

Report of Travel or Expenses of Travel

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Evelyn Elgin, tax legislature attorney.	Rec'd—April 19, 1994. Est.—$4,135. Airfare, lodging, meals.	The State Tax Administration, Beijing, China.	Participate in seminar on non-governmental tax consultary services
David Lipton, Deputy Assistant Secretary for Eastern Europe and the Former Soviet Union.	Rec'd—June 15, 1994. Est.—$1,124.25. Airfare, meals and lodging.	Stockholm School of Economics, Institute of East European Economics, Stockholm, Sweden.	Participate in a conference on economic reforms in Russia

AGENCY: DEPARTMENTAL OFFICES—Continued

Report of Travel or Expenses of Travel

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Jeffrey Shafer, Assistant Secretary for International Affairs. Lawrence Summers, Under Secretary for International Affairs.	Rec'd—April 8, 1994. Est.—$493.50. Lodging and meals.. Rec'd—April 24, 1994. Est.—$270. Lodging.	Institute for International Finance, London, England. Italian Government	To attend a conference To participate in a Sherpa meeting and prepare for the economic summit.

AGENCY: U.S. CUSTOMS SERVICE

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Douglas M. Browning, Assistant Commissioner, Office of International Affairs.	Ten (10) Fresco's—prints. Recd—August 19, 1994. Est. Value—$350. Reported to GSA—December 21, 1994; pending transfer to GSA.	Dimitar Buzleviski, Director General, Macedonian Customs Service.	Non-acceptance would have caused embarrassment to donor and U.S. Government

AGENCY: Office of the United States Trade Representative

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Michael Kantor, U.S. Trade Representative.	duPont Chinese laquer and 18 karat gold fountain pen and pencil set, engraved General Agreement on Tariffs and Trade. Recd—April 12, 1994. Est. Value—$1,800. Located at USTR.	Sidi Mohammed, Crown Prince, and heir to throne of Morocco.	Morocco was host to 120 delegations for signing of the GATT Treaty. Each Minister was given same gift. Non-acceptance would have caused embarrassment to donor.

[FR Doc. 95–13832 Filed 6–8–95; 8:45 am]

BILLING CODE 4710–20–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Situational Awareness for Safety Systems Requirements Team Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting to solicit information from the aviation community concerning flight standards, and procedural applications based on advances in human factors, cognitive pilot decision making, computer and display technology, precision navigation, data link, and aviation weather systems. The information is requested to assist the Situational Awareness for Safety Systems Requirements Team (SASSRT) in forming the requirements for Basic and Advanced Situational Awareness for Safety Systems.

DATES: The meeting will be held on July 25, 1995, from 8:00 a.m. until 5:00 p.m.

ADDRESSES: The meeting will be held at the Virginia Center for Innovative Technology, 2214 Rock Hill Road, Herndon, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Cato, Crown Communications, Inc., 1850 K Street, NW Suite 1200, Washington, DC 20006; telephone (202) 785–2600, extension 3020.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. II), notice is hereby given of a meeting to solicit information from the aviation community concerning flight standards, and procedural applications based on advances in human factors, cognitive pilot decision making, computer and display technology, precision navigation, data link, and aviation weather systems. The information is requested to assist SASSRT in its deliberations with regard to a task assigned to SASSRT by the Federal Aviation Administration. Specifically the task is as follows:

Develop guidance, standards, and procedures that will: foster implementation of Situational Awareness for Safety (SAS) Systems; develop standards for the manufacture of equipment, hardware, software, and operational procedures; and coordinate validation of the SAS concept. SAS graphically displays aircraft position, terrain, weather, and other information, to pilots, dispatchers, and controllers. This information exchange will contribute to an environment that will promote an efficient and safe National Airspace System.

Attendance is open to the interested public, but may be limited to the space available. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the meeting coordinator listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on June 5, 1995.

Peter Hwoschinsky,

Program Manager, Situational Awareness for Safety.

[FR Doc. 95–14178 Filed 6–8–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Suffolk County, New York

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Suffolk County, New York.

FOR FURTHER INFORMATION CONTACT: Harold J. Brown, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 9th Floor, Clinton Avenue and North Pearl Street, Albany, New York,12207, Telephone: (518) 431–4127, or Philip J. Clark, Director, Design Division, New York State Department of Transportation,. State Campus, 1220 Washington Avenue, Albany, New York 12232, Telephone: (518) 457–6452.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration (FHWA), in cooperation with the New York State Department of Transportation (NYSDOT) will be preparing an Environmental Impact Statement (EIS) on a proposal to improve the Route 347 corridor in Suffolk County. The proposed improvement will involve the reconstruction of the existing route between its termini at the Northern State Parkway and Route 25A, a distance of approximately 15 miles, in the Towns of Smithtown, Islip and Brookhaven. Improvements to Route 347 are considered necessary to address the existing and projected traffic demand and traffic-related problems.

Alternatives being processed for detailed study in the Environmental Impact Statement include:

Section A—Northern State Parkway to Route 454 Diverge

1. No build;
2. Transportation Demand Management (TDM)/Transportation System Management (TSM);
3. Six lane (convert one existing General Use Lane [GUL] to one High Occupancy Vehicle [HOV] lane each direction) limited access expressway with two lane flanking service roads (includes TDM/TSM);
4. Six lane (GUL's) limited access expressway with two lane flanking service roads (includes TDM/TSM);
5. Eight lane (add one HOV lane each direction or GUL's) restricted access expressway (includes TDM/TSM).

Section B—Route 454 Diverge to Route 25A

1. No build;
2. TDM/TSM;
3. Four Lane (GUL's) arterial with restricted access by closing median openings and having grade separated interchanges (includes TDM/TSM);
4. Six lane (add one HOV lane each direction) arterial with some grade separations and jughandles (includes TDM/TSM);
5. Six lane (GUL's) arterial with some grade separations and jughandles (includes TDM/TSM).

One of the early opportunities for the public to be involved is in the scoping of the Draft Environmental Impact Statement (DEIS). Scoping is the process by which the important issues to be considered in the environmental analyses are identified. The purpose of scoping is to ensure that the DEIS is a concise, accurate and complete document that covers all concerns and issues for public and agency review.

Letters describing the proposed action and soliciting scoping comments will be sent to appropriate Federal, State and local agencies, public officials and various organizations that may have interest in this proposal. In addition to scoping discussions with these interested parties, the general public will have the opportunity to make scoping comments both in writing and at a Public Information/Scoping Meeting in Spring, 1995, exact time and location to be announced.

After the DEIS is prepared, it will be available for public and agency review and comment. This will be followed by a Public Hearing for which a public notice will be given of the time and place of the hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or NYSDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: May 30, 1995.

Harold J. Brown,

Division Administrator, Federal Highway Administration, Albany, New York.

[FR Doc. 95–14088 Filed 6–8–95; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

[Docket No. 95–22 Notice 2]

Decision That Nonconforming 1992 Mercedes-Benz 300E Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1992 Mercedes-Benz 300E passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1992 Mercedes-Benz 300E passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S.-certified version of the 1992 Mercedes-Benz 300E), and they are capable of being readily altered to conform to the standards.

DATES: This decision is effective June 9, 1995.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless

NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

Liphardt & Associates of Ronkonkoma, New York (Registered Importer R–93–016) petitioned NHTSA to decide whether 1992 Mercedes-Benz 300E passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on April 7, 1995 (60 FR 17847) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–114 is the vehicle eligibility number assigned to vehicles admissible under this decision.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby decides that a 1992 Mercedes-Benz 300E (Model ID 124.031) not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1992 Mercedes-Benz 300E originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. § 30115, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: June 5, 1995.

Marilynne Jacobs

Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–14134 Filed 6–8–95; 8:45 am]

BILLING CODE 4910–59–M

UNITED STATES INFORMATION AGENCY

Disability Exchanges Clearinghouse

ACTION: Notice—request for proposals.

SUMMARY: The United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c)(3)–1 may apply for a single award to establish and manage a disability exchanges clearinghouse, the overall purpose of which is two-fold: (1) To provide information for the disability community about international exchange opportunities available to them; and (2) to assist exchange organizations in developing skills and understanding about how to incorporate people with disabilities into their exchange programs.

Overall grant-making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *: to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program cited above is provided through the Fulbright-Hays Act.

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

ANNOUNCEMENT TITLE AND NUMBER: All communications with USIA concerning this announcement should refer to the Disability Exchanges Clearinghouse and reference number *E/AE–95–01.*

DEADLINE FOR PROPOSALS: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Thursday, July 27, 1995. Faxed documents will not be accepted, nor will documents postmarked July 27, 1995 but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline.

Award date: The award should begin on September 30, 1995.

Duration: September 30, 1995—September 30, 1997.

FOR FURTHER INFORMATION CONTACT: Bureau of Educational and Cultural Affairs, Office of Academic Programs, Academic Exchanges Divsiion—E/AE, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, telephone number; 201/619–4360, fax number: 202/401–5914, internet address: DLEVIN@USIAGOV to request a Solicitation Package, which includes all application forms and further guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please specify USIA Program Officer David Levin on all inquiries and correspondence. Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the Academic Exchanges Division or submitting their proposals. Once the RFP deadline has passed, the Academic Exchange Division may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

SUBMISSIONS: Applicants must follow all instructions given in the Solicitation Package. The original and 15 copies of the complete application should be sent to: U.S. Information Agency, Ref.: E/AE–95–01 (Disability Exchanges Clearinghouse), Office of Grants Management, E/XE, Room 326, 301 4th Street, SW., Washington, DC 20547.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including but not limited to race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle.

Proposals obviously will relate directly to the disability community. Proposals should make an effort to incorporate other types of diversity into various proposal elements and activities, including program staff, consultants and resource people, programmatic locations, program participants, materials and resources developed, collaborative programming, etc.

Overview

Background

For several years USIA's Bureau of Educational and Cultural Affairs has actively promoted the concept of diversity, making a concerted effort to increase the number of people from underrepresented audiences participating in its exchanges and other programming. This clearly has included outreach to the disability community. Simultaneously, the U.S. Congress has encouraged USIA to focus even more on people with disabilities and on disability-related matters. In FY 1995 the Congress appropriated funds to USIA for the purpose of making an award to a private non-profit organization to establish and manage a disability exchanges clearinghouse.

Special Note

In making this award and establishing the disability exchanges clearinghouse, funding priority will be given to entities that are operated by people with disabilities and knowledgeable about the operation and development of exchange programs for those with disabilities, and which have been involved for at least ten years in integrating persons with disabilities into such programs.

Objectives

The short term objectives in making an award to establish a disability exchanges clearinghouse are to develop a set of programs, products, and services that will: (1) provide information for the disability community at all levels about the various publicly-sponsored and privately-sponsored exchange opportunities available to them; and (2) assist exchange organizations, both private and public (including relevant USIA Offices, Divisions, and Branches) in developing skills and understanding about how to incorporate persons with disabilities into their exchange programs through training, technical assistance, and information-sharing.

The long-term objectives in making an award to establish a disability exchanges clearinghouse are: (1) To advance mutual understanding between the United States and other countries by increasing the number of people with disabilities participating in both publicly-sponsored and privately-sponsored international educational exchange programs; (2) to enable exchange organizations, associations and the broader public to understand and appreciate the importance and benefits of including people with disabilities in exchange programs; and (3) to help advance the civil rights of people with disabilities by their participating in exchange programs, thus benefiting personally and/or professionally from the exchange experience, while abroad and after returning home.

Guidelines

Successful Project Components

Proposals to establish and maintain a disability exchanges clearinghouse, in striving to meet the objectives described above, should include, but are not limited to the following components:

- Developing and disseminating an all-purpose brochure describing the Clearinghouse an its purposes, as well as its programs, products, and services.
- Developing a portable exhibit for use at conferences and meetings describing and promoting the Clearinghouse and its purposes, programs, products, and services.
- Developing and maintaining an electronic data base of exchange opportunities for individuals with disabilities in the principal types of international exchange programming—academic exchanges, professional and citizen exchanges, arts exchanges, international visitor programming, youth exchanges, etc. Selected information should be accessible by means of an internet gopher or web page. Selected information also should be available in alternate formats, including braille. The data base should also include resource information and references for internal use as well as information and references/resource material to assist exchange organizations to incorporate people with disabilities into their exchange programs.
- Establishing and strengthening relationships with the principal international exchange organizations and associations such as the Alliance for International Educational and Cultural Exchange, NAFSA: Association of International Educators, IIE, CIEE, and others, including selected Federal Departments and Agencies, in order to foster the possibility of collaborative efforts and to ensure that the Clearinghouse maintains comprehensive up-to-date information about exchange opportunities and resources.
- Establishing a toll-free telephone line, including TDD capability, with staff able to respond to incoming inquiries concerning international exchange programs vis-a-vis persons with disabilities.
- Developing and distributing a training/technical assistance manual, perhaps in loose-leaf format for easy update, for use by practitioners in the international exchanges field on how to incorporate persons with disabilities into their programs. Topics addressed would include such items as information about disabilities/disability awareness, publicity/recruitment, travel, affiliation/placement, accessibility and special needs accommodations, monitoring, evaluation, relevant Federal laws and regulations, resources/annotated organizational references, etc.
- Developing and conducting training/technical assistance workshops for relevant audiences regarding the incorporation of persons with disabilities into international exchange programs, perhaps in conjunction with regional/national conferences pertaining to international education/educational exchange or to the disability community.
- Writing, producing and distributing a quarterly or semi-annual journal devoted to topics pertaining to exchanges and persons with disabilities, highlighting success stories, new developments, collaborative efforts, special activities, etc. Articles written by people in the exchanges and disabilities communities and elsewhere should be welcome.
- Developing a brochure for individuals with disabilities and exchange practitioners detailing the rights and responsibilities of both when people with disabilities participate in international exchanges, following guidelines of the ADA and other Federal legislation.
- Authoring (or soliciting) and placing articles in selected local, regional, national and international newspapers and periodicals regarding the importance of including individuals with disabilities in international exchange programs, highlighting success stories, innovative programs, collaborative efforts, etc.

Where relevant, the awardee organization will be encouraged to conduct needs assessments to determine what information/resources/technical assistance is already available and what is needed by particular audiences, e.g., USIA Offices, Divisions, and Branches and related private organizations that manage or administer USIA-funded exchanges in addition to exchange associations representing the exchanges

community. Appropriate USIA elements will provide monitoring and oversight functions vis-a-vis Clearinghouse efforts. Products and services will be developed in consultation with the Agency and reviewed and approved by relevant Agency offices. All official documents should highlight the U.S. Government's role as sponsor and funding source. USIA requests that it receive the copyright use and be allowed to distribute written material as it sees fit.

Proposal Preparation

In developing proposals, particular attention should be paid to the objectives and guidelines stated in this RFP as well as to the stated proposal review criteria.

Proposals should include an executive summary (Tab B) not to exceed five double-spaced pages, providing the following information:

(1) Name of organization
(2) Beginning and ending date of the program
(3) Nature of activity
(4) Funding level requested from USIA, total cost-sharing from applicant and other sources, and total costs
(5) Scope and goals
(6) Brief descriptions of activaties, programs, products and services to be undertaken
(7) Nticipated results (short and long-term)

Proposals should include a narrative (Tab C) not to exceed forty double-spaced pages addressing the areas listed below:

(1) Vision (statement of need, objectives, goals, benefits)
(2) Participating organizations
(3) Clearinghouse programs, products and services
(4) Evaluation plan regarding Clearinghouse programs, products, and services
(5) Follow-on
(6) Clearinghouse management, including any subgrants
(7) Work plan/time frame

Proposed Budget

Organizations must submit a comprehensive line-item budget based on specific guidance in the Solicitation Package. The award will not exceed $500,000. The award will not be made to an organization with less than four years of experience in conducting international exchange programs, as USIA policy dictates that such organizations will be limited to $60,000 per assistance award.

Applicants must submit a comprehensive budget for the entire program. There must be a three-column summary budget as well as a break-down of each budget by line-item. For better understanding or further clarification, applicants should provide separate sub-budgets for each program component, or activity in order to facilitate USIA decisions on funding.

Allowable costs for the Clearinghouse include but are not limited to the following:

(1) Staff salaries and benefits
(2) staff travel and per diem
(3) occupancy
(4) telephone, TDD, fax, E-mail
(5) office furniture and equipment, including computer hardware, software and telecommunications, as well as equipment to convert written text into alternate formats, including braille
(6) office supplies
(7) reference materials
(8) accounting and auditing costs
(9) indirect costs, as appropriate
(10) consultant travel, per diem, and honoraria
(11) duplicating and printing
(12) postage and courier service
(13) participant travel and per diem
(14) conference attendance expenses, including exhibit space
(15) meeting expenses

Please refer to the Solicitation Package for further guidance regarding proposal preparation, complete budget guidelines and formatting instructions.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the Agency contracts office. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea: Proposals should exhibit originality, substance, precision, and relevance to Agency mission, and the short-term and long-term objectives and guidelines stated in this RFP.

2. Program planning: A detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. The agenda and plan should adhere to the program overview and guidelines described above.

3. Ability to achieve program objectives: Objective should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the organization will meet the program's objectives and plan.

4. Program comprehensiveness: Proposals should demonstrate how the various types of exchange programming—academic exchanges, citizen and professional exchanges, arts exchanges, youth exchanges, international visitor programming, etc. will be included in Clearinghouse planning and implementation efforts.

5. Cultural awareness and sensitivity: Proposals should demonstrate an awareness and sensitivity of issues related to people with disabilities, particularly in a cross-cultural/international setting.

6. Multiplier effect/impact: Proposed Clearinghouse activities should strengthen long-term mutual understanding, including maximum sharing of information and detail potential long-term benefits.

7. Support of Diversity: Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity.

8. Institutional Capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve the Clearinghouse's goals.

9. Institution's Record/Ability: Proposals should demonstrate an institutional record of successful exchange programs, including previous interactions with other organizations in the exchanges and disability fields, as well as responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

10. Follow-on Activities: Proposals should provide a plan for continued follow-on activity (without USIA support) which insures that USIA supported programs are not isolated events.

11. Project/Activity Evaluation: Proposals should include a plan to evaluate the Clearinghouse's success, at the macro and micro levels both as the activities unfold and at the end of the time period. USIA recommends that the proposal include draft survey questionnaires or other technique plus description of a methodology to be used to link outcomes to original project objectives. The award-receiving organization/institution will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

12. Cost-effectiveness: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

13. Cost-sharing: Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program. Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about September 20, 1995. The award made will be subject to periodic reporting and evaluation requirements.

Dated: June 2, 1995.

John P. Loiello,

Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 95–14247 Filed 6–7–95; 11:36 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 111
Friday, June 9, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 9:30 a.m., Wednesday, June 14, 1995.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

BOARD BRIEFING:

1. Insurance Fund Report.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Request from Hopewell Federal Credit Union, Heath, Ohio, for a Conversion to a Community Charter.
3. Appeal from Rochester Area State Employees FCU of the Regional Director's Decision to Grant a FOM Overlap to Brockport FCU.
4. Appeal from AOD Federal Credit Union of the Regional Director's Denial of a FOM Expansion Request.
5. Request for Comments: Operating Fee Scale.

RECESS: 10:45 a.m.

TIME AND DATE: 11:00 a.m., Wednesday, June 14, 1995.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Administrative Action under Section 206 of the FCU Act. Closed pursuant to exemptions (8), (9)(A)(ii) and (9)(B).
3. Administrative Action under Section 205 of the Federal Credit Union Act. Closed pursuant to exemption (8).
4. Administrative Action under Section 125 of the Federal Credit Union Act. Closed pursuant to exemption (8).
5. Administrative Action under Sections 206 and 208 of the Federal Credit Union Act. Closed pursuant to exemptions (5), (8) and (9)(A)(ii).
6. Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,
Secretary of the Board.
[FR Doc. 95–14381 Filed 6–7–95; 3:54 am]
BILLING CODE 7535–01–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: June 20, 1995, 2:00 P.M. (Eastern Time).

PLACE: Conference Room on the Ninth Floor of the EEOC Office Building, 1801 "L" Street, NW., Washington, DC 20507.

STATUS: Part of the Meeting will be open to the public and part of the Meeting will be closed.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Votes
2. Panel Discussion on Equal Pay Issues

Closed Session

Litigation Authorization: General Counsel Recommendations

Note: Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.) Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTD) at any time for information on these meetings. CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663–4070.

Dated: June 7, 1995.

Frances M. Hart,
Executive Officer, Executive Secretariat.
[FR Doc. 95–14370 Filed 6–7–95; 8:45 am]
BILLING CODE 6750–06–M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10 a.m., Tuesday, June 13, 1995.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

1. *Mid-Year Review/Additional Initiatives*

The staff will brief the Commission and the Commission will consider issues related to additional initiatives for fiscal year 1995 mid-year review.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207, (301) 504–0800.

Dated: June 6, 1995.

Sadye E. Dunn,
Secretary.
[FR Doc. 95–14363 Filed 6–7–95; 2:17 pm]
BILLING CODE 6355–01–M

BLACKSTONE RIVER VALLEY NATIONAL HERITAGE CORRIDOR

Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that a meeting of the Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, June 22, 1995.

The Commission was established pursuant to Public Law 99–647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 7:00 pm at Uxbridge Inn, 6 North Main Street, Uxbridge, MA for the following reasons:

1. Presentation from Town of Uxbridge
2. Report by Woonsocket Ad-hoc Committee
3. Commission Business
4. Other

It is anticipated that about twenty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: James R. Pepper, Executive Director, Blackstone River Valley National Heritage Corridor Commission, One Depot Square, Woonsocket, RI 02895, Tel.: (401) 762–0250.

Further information concerning this meeting may be obtained from James R. Pepper, Executive Director of the Commission at the aforementioned address.

Michael Creasey,
Acting, Executive Director BRVNHCC.
[FR Doc. 95–14330 Filed 6–7–95; 12:25 pm]
BILLING CODE 4310–70–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, June 14, 1995.

PLACE: William McChesney Martin, Jr. Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 7, 1995.

Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 95–14297 Filed 6–7–95; 10:37 am]
BILLING CODE 6210–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Pursuant to the provisions of the Government in the Sunshine Act (5 U.S.C. § 552(b)), notice is hereby given of the following meeting of the Board of Directors of the Corporation for National and Community Service:

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Previously announced in the May 30, 1995 **Federal Register.**

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m.—3:00 p.m., June 16, 1995.

CHANGES IN THE MEETING: The status of the meeting has been changed from "open" to "open and closed". The meeting will be open, except that Board deliberations on grant applications will be closed, pursuant to exemptions 4 and 9(B) of the Government in the Sunshine Act. This partial closing has been certified by the Corporation's General Counsel. A copy of the certification will be posted for public inspection at the Corporation's headquarters, located at 1201 New York Avenue NW, Office of General Counsel, 8th Floor, Washington, D.C. 20525, and will otherwise be available upon request.

CONTACT PERSON FOR FURTHER INFORMATION: Rhonda Taylor, Associate Director of Special Projects and Initiatives, The Corporation for National Service, 8th Floor, Room 8619, 1201 New York Avenue NW, Washington, D.C. 20525. Phone (202) 606–5000 ext. 282. Fax (202) 565–2794.

Dated: June 6, 1995.

Terry Russell,
General Counsel.
[FR Doc. 95–14282 Filed 6–7–95; 8:45 am]
BILLING CODE 6050–28–P

federal register

Friday
June 9, 1995

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 32

Cape May National Wildlife Refuge; Addition to the List of Open Areas for Hunting in New Jersey; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

RIN 1018–AD03

Addition of Cape May National Wildlife Refuge to the List of Open Areas for Hunting in New Jersey

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to add Cape May National Wildlife Refuge to the list of areas open for big game hunting in New Jersey along with pertinent refuge-specific regulations for such activities. The Service has determined that such use will be compatible with the purposes for which the refuge was established. The Service has further determined that this action is in accordance with the provisions of all applicable laws, is consistent with principles of sound wildlife management, and is otherwise in the public interest by providing additional recreational opportunities of a renewable natural resource.

DATES: Comments may be submitted on or before August 8, 1995.

ADDRESSES: Assistant Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1849 C Street NW., MS 670 ARLSQ, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Duncan L. Brown, Esq., at the address above; Telephone: 703–358–1744.

SUPPLEMENTARY INFORMATION: National wildlife refuges are generally closed to hunting and sport fishing until opened by rulemaking. The Secretary of the Interior (Secretary) may open refuge areas to hunting and/or fishing upon a determination that such uses are compatible with the purpose(s) for which the refuge was established. The action must also be in accordance with provisions of all laws applicable to the areas, must be consistent with the principles of sound wildlife management, and must otherwise be in the public interest. This rulemaking proposes to open Cape May National Wildlife Refuge to big game (white-tailed deer) hunting.

Request for Comments

Department of the Interior policy is, whenever practicable, to afford the public a meaningful opportunity to participate in the rulemaking process. A 60-day comment period is specified in order to facilitate public input. Accordingly, interested persons may submit written comments concerning this proposed rule to the person listed above under the heading **ADDRESSES**. All substantive comments will be reviewed and considered.

Statutory Authority

The National Wildlife Refuge System Administration Act of 1966, as amended (NWRSAA) (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (RRA) (16 U.S.C. 460k) govern the administration and public use of national wildlife refuges. Specifically, Section 4(d)(1)(A) of the NWRSAA authorizes the Secretary to permit the use of any areas within the National Wildlife Refuge System (Refuge System) for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access, when he determines that such uses are compatible with the purposes for which each refuge was established. The Service administers the Refuge System on behalf of the Secretary. The RRA gives the Secretary additional authority to administer refuge areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purposes for which the refuges were established.

Opening Package

In preparation for this opening, the refuge unit has included in its "openings package" for Regional review and approval from the Washington Office the following documents: a hunting/fishing plan; an environmental assessment; a Finding of No Significant Impact (FONSI); a Section 7 evaluation or statement, pursuant to the Endangered Species Act, that these openings are not likely to adversely affect a listed species or critical habitat; a letter of concurrence from the affected States; and refuge-specific regulations to administer the hunts. From a review of the totality of these documents, the Secretary has determined that the opening of the Cape May National Wildlife Refuge to big game hunting is compatible with the principles of sound wildlife management and will otherwise be in the public interest.

In accordance with the NWRSAA and the RRA, the Secretary has also determined that this opening for big game hunting is compatible and consistent with the primary purposes for which the refuge was established. The Secretary has also determined that funds are available to administer the programs. A brief description of the hunting program is as follows:

Cape May National Wildlife Refuge

The Cape May National Wildlife Refuge was established administratively on January 20, 1989, under the authority of the Fish and Wildlife Act of 1956 (16 U.S.C. 742a–742j; 70 Stat. 1119), as amended. The broad purposes of the refuge are for the development, advancement, management, conservation, and protection of fish and wildlife resources and for the benefit of the United States Fish and Wildlife Service, in performing its activities and services. There are approximately 16,700 acres within the approved refuge acquisition boundary. The Fish and Wildlife Service (Service) has already purchased approximately 6,700 acres of the acquisition area. The refuge is located in the Townships of Middle, Dennis and Upper in Cape May County, New Jersey. The refuge is divided into two approximately equal divisions: The Great Cedar Swamp Division and the Delaware Bay Division. The topography of the refuge is typical of the coastal areas of New Jersey, where uplands taper gradually to a wide band of saltmarsh. There are 22 major vegetation types found on the refuge. These communities include mixed hardwood swamps, oak/pine forests, Atlantic white cedar swamps, and estuarine communities dominated by Spartina patens, and saltmarsh cordgrass.

The unique configuration and location of Cape May attracts flocks of raptors, songbirds and woodcock. The refuge supports a variety of animal life, including approximately 317 species of birds, 42 species of mammals, 55 species of reptiles and amphibians, and numerous species of fish, shellfish, and other invertebrates. Furbearers of economic importance inhabiting the area include otter, muskrat, and raccoon. Small mammals such as shorttail shrews and white-footed mice are common in upland fields and shrub habitat. Gray and red foxes are also common.

State deer biologists estimate a deer density of approximately 18 deer per square mile in Cape May County's Deer Management Zone (DMZ) 34, of which the refuge is a part. The deer population appears to have increased since 1981 with a corresponding increase in farmer complaints. The number of complaints has risen from 4 in 1990 to 12 in 1993. Crop depredation permitted kills have increased from 9 in 1990 to 36 in 1993. In order to address the below average herd health indices, and to reduce deer complaints in DMZ 34, the short term goal of the New Jersey Division of Fish, Game and Wildlife is to reduce the herd by approximately 20 percent. There are no data on the number of hunters who have used the area within the refuge acquisition area in the past. However, the refuge estimates the annual visitation for deer hunting is less than 500 visits.

Based on the patrols that refuge law enforcement officers have made during the last two firearms deer hunting seasons, hunting pressure on white-tailed deer within the refuge boundary is low.

The sport hunting program will be monitored by refuge personnel, and conducted according to New Jersey Department of Environmental Protection, Division of Fish, Game and Wildlife deer hunt regulations.

Opening the refuge to big game hunting has been found to be compatible in a separate compatibility determination. The hunting program will be reviewed annually to ensure that a harvestable surplus of animals exist, and that sensitive habitats are protected from disturbance. A Section 7 evaluation pursuant to the Endangered Species Act was conducted. It was determined that the proposed action is not likely to adversely affect any Federally listed or proposed for listing threatened or endangered species or their critical habitats. Pursuant to the National Environmental Policy Act (NEPA), an environmental assessment was made and a Finding of No Significant Impact (FONSI) was made regarding the hunt. During the preparation of the environmental assessment, biologists and management personnel within the New Jersey Division of Fish, Game and Wildlife were consulted. Comments were solicited from the public during the draft environmental assessment phase. Articles on this assessment were carried in the local newspapers and sent to Federal, State and local legislators and conservation groups.

The Service has determined that there would be sufficient funds to administer the proposed hunt. Sufficient funds would be available within the refuge unit budget to operate such a hunt as proposed.

Paperwork Reduction Act

The information collection requirements for part 32 are found in 50 CFR part 25 and have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1018–0014. The information is being collected to assist the Service in administering these programs in accordance with statutory authorities which require that recreational uses be compatible with the primary purposes for which the areas were established. The information requested in the application form is required to obtain a benefit.

The public reporting burden for the application form is estimated to average six (6) minutes per response, including time for reviewing instructions, gathering and maintaining data, and completing the form. Direct comments on the burden estimate or any other aspect of this form to the Service Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018–0014), Washington, DC 20503.

Economic Effect

This rulemaking was not subject to Office of Management and Budget review under Executive Order 12866. In addition, a review under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) has revealed that the rulemaking would not have a significant effect on a substantial number of small entities, which include businesses, organizations or governmental jurisdictions. This proposed rule would have minimal effect on such entities.

Federalism

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Considerations

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), an environmental assessment has been prepared for this opening. Based upon the Environmental Assessments, the Service issued a Finding of No Significant Impact with respect to the opening. A Section 7 evaluation was prepared pursuant to the Endangered Species Act with a finding that no adverse impact would occur to any identified threatened or endangered species.

Primary Author

Duncan L. Brown, Esq., Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC, is the primary author of this rulemaking document.

List of Subjects in 50 CFR Part 32

Hunting, Fishing, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

Accordingly, part 32 of chapter I of Title 50 of the *Code of Federal Regulations* is proposed to be amended as set forth below:

PART 32—[AMENDED]

1. The authority citation for part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i.

§ 32.7 [Amended]

2. Section 32.7 *List of refuge units open to hunting and/or fishing* is amended by adding the alphabetical listing of "Cape May National Wildlife Refuge" under the state of New Jersey.

3. Section 32.49 *New Jersey* is amended by adding the alphabetical listing of Cape May National Wildlife Refuge to read as follows:

§ 32.49 New Jersey.

* * * * *

Cape May National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: During the firearms big game season, hunters must wear, in a conspicuous manner on head, chest and back, a minimum of 400 square inches of solid-colored hunter orange clothing or material.

D. Sport Fishing. [Reserved]

* * * * *

Dated: May 20, 1995.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–14154 Filed 6–8–95; 8:45 am]

BILLING CODE 4310–55–P

federal register

Friday
June 9, 1995

Part III

Department of Transportation

Federal Aviation Administration
National Highway Traffic Safety Administration

14 CFR Part 91 et al.
49 CFR Part 571
Child Restraint Systems; Proposed Rules

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 121, 125, and 135

[Docket No. 28229; Notice No. 95–7]

RIN 2120–AF52

Child Restraint Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to withdraw FAA approval for the use of booster seats and vest- and harness-type child restraint systems in aircraft during takeoff, landing, and movement on the surface. In addition, this notice emphasizes the existing prohibition in all aircraft against the use of lap held child restraint systems (including belly belts). The FAA believes that, during an aircraft crash, the banned devices may put children in a potentially worse situation than the allowable alternatives. This notice does not affect use of other types of approved child restraint devices. The FAA will continue to analyze methods to improve the alternatives to the proposed banned devices.

DATES: Comments must be received on or before July 10, 1995.

ADDRESSES: Comments on this notice should be mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 28229, 800 Independence Avenue, SW.; Washington, DC 20591. Comments delivered must be marked Docket No. 28229. Comments may be examined in room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Donell Pollard, (AFS–203), Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; Telephone (202) 267–3735.

SUPPLEMENTARY INFORMATION:

Background

The FAA is concerned about the safety of children who use certain forms of child restraint systems aboard aircraft. In 1992, the FAA set forth in §§ 91.107(a), 121.311(b), 125.211(b), and 135.128(a) the child restraint systems acceptable for use in aircraft by listing labeling requirements and certain use requirements. Since that time the FAA has supplemented the rule with advisory material and with a public information leaflet titled "Child/Infant Safety Seats Recommended for Use in Aircraft."

Under present regulations a child who has not reached his or her second birthday (infant) is not required to have a separate seat aboard an aircraft. This means that the person accompanying an infant may choose to hold the infant during flight.

If the accompanying adult wishes to put the infant in a child restraint system on a passenger seat, the airline may require the adult to purchase a separate ticket for the infant. Whether or not the airline requires the purchase of a ticket for the infant, a separate passenger seat is necessary if a child restraint is to be used (14 CFR §§ 121.311(c), 125.211(c), and 135.128(b)).

The provisions of §§ 91.107, 121.311, 125.211, and 135.128 identify those child restraints that are approved for use aboard aircraft. These child restraint provisions also apply whenever a child restraint is used for a child 2 years old or older who is required to have a separate seat on the aircraft. A child 2 years old or older must either be properly secured in an approved child restraint or properly secured with a safety belt in a passenger seat.

The FAA's 1992 determination as to which child restraint systems would be approved for use aboard aircraft was based on many years of work by both the FAA and the National Highway Traffic Safety Administration (NHTSA). In the 1970's, NHTSA proposed dynamic testing of child restraint systems for use in automobiles. In the mid 1980's, the FAA and NHTSA undertook an effort to develop a common approach to the approval of child restraints. Federal Motor Vehicle Safety Standards (FMVSS) No. 213 (49 CFR 571.213) was amended to provide criteria for the certification of child restraints that were appropriate for both aircraft and automobiles.

FMVSS No. 213, as revised, is the current U.S. standard, and has allowed hundreds of models of seats to be approved, including booster-type child restraint systems ("booster seats"). The current FAA child restraint rules do not specifically refer to FMVSS No. 213. However, FMVSS No. 213 is the basis for the labels required under the FAA rules.

The current FAA rules on child restraint systems permit the use of child restraint systems only if they bear a proper label(s), meet certain use requirements, and meet adult accompaniment requirements.

Approved labels fall into three categories as follows:

1. Seats manufactured to U.S. standards between January 1, 1981, and February 25, 1985, must bear a label that states "This child restraint system conforms to all applicable Federal motor vehicle safety standards." However, vest- and harness-type child restraint systems manufactured before February 26, 1985, are not approved for use on aircraft even if they bear this label.

2. Seats manufactured to U.S. standards on or after February 26, 1985, must bear the following two labels:

(i) "This child restraint system conforms to all applicable Federal motor vehicle safety standards;" and

(ii) "THIS RESTRAINT IS CERTIFIED FOR USE IN MOTOR VEHICLES AND AIRCRAFT," in red lettering.

3. Seats that are not manufactured to approved U.S. standards must bear either a label showing approval of a foreign government or a label showing that the seats were manufactured under the standards of the United Nations.

The use requirements for child restraint systems are as follows:

1. The restraint system must be properly secured to an approved forward-facing seat or berth;

2. The child must be properly secured in the restraint system and must not exceed the specified weight limit for the restraint system; and

3. The restraint system must bear that appropriate label(s).

The adult accompaniment provisions for child restraint systems require that the child be accompanied by a parent, guardian, or attendant designated by the child's parent or guardian to attend to the safety of the child during the flight.

While the current rule language disallows vest- and harness-type child restraint systems manufactured before February 26, 1985, some of these systems manufactured after that date meet U.S., foreign government, or United Nations requirements.

Need for Amendment

As discussed above, the present FAA rules on child restraint systems are based primarily on U.S. standards. However, the FAA now has determined that some child restraint systems that work well in automobiles may not be safe for use in aircraft. The FAA has reached this conclusion based in part on recent studies by FAA's Civil Aeromedical Institute (CAMI). A copy of CAMI's final report, as well as a follow-up report that clarifies certain issues in the CAMI report, is included in the docket. The CAMI studies were conducted to evaluate whether the FAA regulations regarding crashworthiness requirements for adult passenger seats and the standards applicable to child restraint devices were consistent, to respond to questions from the Air Transport Association concerning which child restraint systems were approved for aircraft, and to respond to comments received from child restraint manufacturers, private testing organizations, the National Transportation Safety Board, foreign regulatory organizations, and consumer activists at the January 1993, session of the Society of Automotive Engineers (SAE) ad hoc committee on child restraints. Some of the most serious issues identified by CAMI concern child restraints commonly referred to as shield-type booster seats, vest- and harness-type child restraint systems, and belly belts.

FMVSS No. 213 defines a "booster seat" as "either a backless child restraint system or a belt-positioning seat". FMVSS No. 213 defines a "backless child restraint system" as "a child restraint, other than a belt-positioning seat, that consists of a seating platform that does not extend up to provide a cushion for the child's back or head and has a structural element designed to restrain forward motion of the child's torso in a forward impact" (hereinafter referred to as "shield-type"). FMVSS No. 213 defines a "belt-positioning seat" as "a child restraint system that positions a child on a vehicle seat to improve the fit of a vehicle Type 2 belt system on the child and that lacks any component, such as a belt system or a structural element, designed to restrain forward movement of the child's torso in a forward impact" (49 CFR 571.213(S4)). NHTSA and the FAA are working together to develop additional standards to allow an improved assessment of the performance of child restraint systems in the aircraft environment.

Booster seats are generally designed for children who are 3 to 8 years old and weigh 30 to 60 pounds. As such, the children who weigh 40 pounds and over can be adequately protected in an aircraft seat restrained by the safety belt, and the children who weigh between 30 pounds (the threshold weight for a booster seat) and 40 pounds can be restrained in a forward facing child restraint system. The "shield-type" booster seat is secured to the vehicle with the passenger safety belt and the shield provides crash protection for the upper body of the child. The "belt-positioning" booster seat is secured to the vehicle, along with the child, with the passenger seat and shoulder belt system of the vehicle; the shoulder portion of the best provides crash protection for the upper body of the child.

Vest- and harness-type restraint devices are usually designed for children in the 25 to 50 pound range. The harness-type device usually consists of a torso harness with padded, adjustable straps over the shoulders and around the pelvis and, in some designs, it contains a crotch strap. The harness contains a means (e.g. a webbing attached to a metal back plate) for the passenger safety belt to attach the harness to the aircraft seat.

The belly belt included in the CAMI study has a short loop of webbing with standard buckle hardware installed on the ends. This belt is designed to be buckled around the child's abdomen and is secured to an adult's abdomen with the adult's safety belt by routing the safety belt through a small loop of webbing sewn on the belly belt. The belly belt, as well as other types of lap held child restraint devices, are not permitted to be used under the existing rules.

Under the existing rules, a child restraint system that bears one or more of the specified labels cannot be used unless the restraint system is properly secured to an approved forward-facing seat or berth (see §§ 91.107(a)(3)(iii)(C)(*1*), 121.311(b)(2)(iii)(A), 125.211(b)(2)(iii)(A), and 135.128(a)(2)(iii)(A)). Because lap held child restraint systems are not secured to a forward-facing seat or berth, but instead are secured to the adult, they cannot be used under existing rules. Nonetheless, the FAA has decided that it is important to emphasize this prohibition and, therefore, proposes to add clarifying language to the existing rules.

The CAMI study identified the following concerns with booster seats, vest- and harness-type child restraints, and belly belts:

Booster seats—In the test, the shield-type booster seat, in combination with other factors, contributed to an abdominal pressure measurement higher than in other means of protection.

Vest- and harness-type systems—When tested in an airplane seat, these systems allowed excessive forward body excursion, resulting in the anthropomorphic test dummy sliding off the front of the seat with a high likelihood of the child impacting the back of the row of seats in front of it. Rebound acceleration presents further risk for injury.

Belly belts—In the test, these systems allowed the anthropomorphic test dummy to make severe contact with the back of the seat in the row in front of the test dummy. The child also may be crushed by the forward bending motion of the adult to whom the child is attached.

CAMI research involved dynamic impact tests with a variety of certified child restraints installed in transport airplane passenger seats at the 16g peak loads required in 14 CFR § 25.562(b)(2). Some of the tests of child restraint systems were configured to represent a typical multi-row seat installation and included testing the effects of the occupant impact against the backs of seats. The tests investigated transport airplane passenger seat compatibility with child restraints and measured three performance factors: adaptability, structural response, and occupant protection.

Shield-Type Booster Seats

The FAA has determined that some child restraint systems that work well in automobiles may not be as safe for use in aircraft during takeoff, landing, and movement on the surface as other available means of protection. Unlike in an automobile, where seat backs are fixed and rigid and present a barrier to rear-generated forces, airline seats are generally not rigid and thus may breakover under their own inertia or when struck by a passenger. This represents a potential source of pressure and force to the occupant of a backless child restraint device.

The CAMI research found that in laboratory impact tests using representative airplane seats found in a transport airplane, shield-type booster seats may offer less protection from aft row occupant impact forces on the seat back than other available means of protection. Aft row occupant impact forces transmitted through the passenger seat back in which the child restraint is installed are an important consideration, particularly in seats with breakover seat backs. The movement of the aft row adult passenger may expose the child to an impact from behind and to being crushed between the airplane seat back and the booster seat shield. In addition, when this situation was studied by CAMI, increased abdominal loading of the child test dummy was discovered when the researchers reviewed the test data on an anthropomorphic dummy representing a 3-year old child weighing 33.3 pounds. The researchers then used a smaller "CAMIX" anthropomorphic dummy weighing 27.2 pounds, representing a 2-year old child, that was instrumented to measure abdominal loads. These measurements showed an increase in abdominal loads over those when the test dummy was protected by the aircraft seat's lap belt. The abdominal loading measured by this dummy in

shield-type booster seats was not caused by the dummy's impact against the shield alone, but by the force of the seat back and the aft row passenger as they pressed the dummy into the shield. Therefore, although CAMI used a test dummy weighing less than the range of children recommended by the manufacturer for its booster seat, the FAA believes that the dynamics would be the same for a child within the weight limits specified by the manufacturer.

The FAA believes that shield-type booster seats, which may contribute to higher abdominal loading, might put children in a potentially worse situation than the alternatives permitted in the FAA regulations. In the study, the FAA researchers at CAMI compared the abdominal load impacts on the CAMIX anthropomorphic test dummy when it was placed in a shield-type booster seat and when it was placed in a lap belt in a typical airplane passenger seat. When an adult-size test dummy aft of the CAMIX dummy and with a breakover seat back, the abdominal load was 37.6 pounds per square inch (psi) when the dummy was restrained by the lap belt compared to 59.5 psi for the dummy when it was in a shield-type booster seat.

The CAMI researchers also found that the abdominal loads on the CAMIX test dummy with a locked seat back were higher in the shield-type booster seat (in the 19.8 to 20.8 psi range) than in a typical airplane lap belt with a locked seat back (9.5 psi).

The FAA recognizes that the booster seats are designed for children in the 30 to 60 pound weight range. Although the CAMIX dummy is 27.2 pounds, it was the only test dummy available that was equipped to measure abdominal loads. However, the FAA believes that abdominal loads for children who are in the 30 to 60 pound weight range and who are in shield-type booster seats would similarly exceed the abdominal loads that those children would experience in lap belts in representative aircraft seats in a worst case survivable aircraft crash.

The FAA is proposing to ban shield-type booster seats in aircraft during takeoff, landing, and movement on the surface because of the concern about the increase in abdominal pressure. The FAA believes that there is a relationship between abdominal loading and injury. The agency notes, however, that no accepted injury criteria have been developed that would permit the FAA to predict precisely the severity or type of abdominal injury. In view of the absence of criteria for assessing the relationship between differences in measured levels of abdominal loading and the resulting risk of injury, the FAA invites comments, including statistical data, on the value of abdominal loading, by itself, as a predictor of injury.

The FAA recognizes that differences in abdominal loading are but one measure of the overall safety performance of child restraint devices. Among the others are the degree of extension of the spine and the head injury protection criteria (HIC) developed by NHTSA to measure head injury risk in motor vehicle crashes. Accordingly, the agency invites comments on the overall safety performance of shield-type booster seats compared to that of other available means of protection.

A separate seat or berth must be available in order to use a shield-type booster seat. If the FAA adopts this proposal to ban the use of shield-type booster seats, children over age 2 will have to use the passenger seat lap belt or some other type of approved child restraint system. The accompanying adult or the airline may provide the alternative approved child restraint system, but neither is required to do so. The FAA believes that children 2 years old or older will be safer in their own passenger seat restrained by a lap belt or in allowable child restraint systems than they would have been in the shield-type booster seats.

Under existing regulations, children under age 2 are not required to use a child restraint system or lap belt. Those children are permitted to be held on an adult's lap. By proposing to ban the use of shield-type booster seats, the FAA does not mean to encourage the practice of adults holding children under age 2 on their laps. Again, the FAA believes that a child who weighs enough to use a booster seat would be safer in a passenger seat lap belt or other approved type of child restraint system.

The FAA invites comments on the issue of whether the proposed ban would induce more parents to place more children on their laps during flight. The FAA also invites comments on the relative safety of placing children in shield-type booster seats versus putting children on laps. Although the FAA does not encourage the practice of holding a child under age 2 in an adult's lap, in 1992 the FAA decided not to mandate that children under age 2 use some type of restraint system (57 FR 42662). The FAA concluded that if children under age 2 were required to be in approved restraint systems and if the affected operators used such a requirement to charge for the transportation of children under age 2, more fatalities and injuries would occur. The FAA determined that if adults were charged for the transportation of infants, some adults would decide to drive in automobiles to their destinations rather than fly. Noting that the accident rate on the roads is higher than the accident rate in commercial air transportation, the FAA concluded that more deaths and injuries would occur for children in automobile accidents than would be avoided in aviation crashes if the FAA mandated the use of child restraint systems for children under age 2 on aircraft. The FAA invites comments on its previous decision not to mandate child restraint systems. Recently, Congress instructed the FAA to restudy the net safety impact that would result if the agency were to mandate restraint devices for infants. That study will be submitted to Congress shortly and will be added to this rulemaking docket.

Vest- and Harness-Type Child Restraint Systems

Because of the location of the safety belt anchors for an airplane seat, harness-type child restraints tested at CAMI did not provide adequate restraint to prevent a serious impact with a seat back in front of the child occupant and a rebound impact with the occupant's own seat.

The FAA is aware that there may be an issue as to whether a parent who has been told that these devices are banned will choose not to buy a ticket for a separate seat for a child under 2, and, instead, hold the child in the lap. A parent who has purchased a ticket for the use of the vest- and harness-type device also has the option of using the passenger seat lap belt or using an approved child restraint device. The FAA believes that a parent who has purchased a ticket for a child, upon being told that the child could not use a vest- and harness-type device, would elect to use the passenger seat lap belt or an approved child restraint device. Others may believe that the parent may choose to hold the child on his or her lap. However, as noted above, the FAA believes that a child would be safer in a passenger seat lap belt or other approved type of child restraint system. The FAA also believes that a parent of a child under 2, who is already predisposed to buy a ticket for a separate airplane seat for use with a vest- and harness-type device and who has received education on the effectiveness of the allowable alternatives in advance of purchasing tickets, would purchase a ticket for a separate seat in order to use an approved and recommended child restraint device. The FAA specifically invites comments on this issue. Based on the CAMI research and further analysis, the FAA believes that, in an aircraft crash, vest- and harness-type child restraint systems put children in a potentially worse situation than the alternatives permitted in the FAA regulations.

In an aircraft crash, these systems allow unacceptable levels of body excursion and/or submarining (the occupant's lower body slides underneath the restraint system). The FAA believes that if a child under 2 falls in the weight use limits (25–50 pounds) recommended by vest and harness manufacturers, the child would be safer in a passenger seat restrained by a lap belt than in a vest- and harness-type device if no other approved device were available.

However, the FAA believes that a child weighing between 25 and 40 pounds, a weight range consistent with harness use, would be better protected in a forward facing child restraint device than in a lap belt. The FAA notes that the CAMI study demonstrated that six of the eight forward facing child restraint systems it tested did not provide a desirable level of head injury protection (i.e., head injury criterion (HIC) less than 1,000) in the worst-case simulated survivable airplane crash. Nonetheless, based on an analysis of CAMI's testing of the harness, the lap belt, and forward facing child restraint devices, the FAA finds that forward facing child restraint devices will provide higher levels of protection than lap belts and harnesses for children between 25 and 40 pounds. In addition, CAMI testing revealed that lap belts provide a superior level of protection for children weighing more than 40 pounds to that provided by harnesses and booster seats. Consequently, the FAA recommends the use of forward facing child restraint devices for children weighing between 25 pounds (the threshold weight for a harness device) and 40 pounds; the FAA further recommends the use of lap belts for children weighting more than 40 pounds. The agency is continuing to analyze the relative protection afforded by forward facing child restraint devices and is aggressively examining methods by which the efficacy of such devices can meet desired testing levels.

Belt-Positioning Booster Seats

Belt-positioning booster seats require shoulder harnesses, and transport airplanes do not have passenger shoulder harnesses. In addition, in other aircraft that may have shoulder harnesses for passengers, the FAA believes that during an aircraft crash there is a likelihood that a belt-positioning booster seat will shift from the passenger seat, causing a degradation in the performance of that child restraint system, thus resulting in injury. NHTSA recently issued an amendment (59 FR 37164; July 21, 1994) to its standard requiring that belt-positioning booster seats be labeled with a statement that they are not certified for use on aircraft. Based on further analysis, the FAA is proposing to ban all use of belt-positioning booster seats on aircraft.

It should be noted that, while booster seats and vest- and harness-type child restraints may be appropriate for use in automobiles, further analysis has indicated that their design may render them unsuitable for use in aircraft during takeoff, landing, and movement on the surface. The aircraft environment differs from the automobile environment in ways that are significant to this rulemaking and that add justification for the proposal of this notice. First, many booster seats require the use of a shoulder harness for proper restraint; however, shoulder harnesses are usually not available in transport airplane passenger seats. Second, the action of the shoulder harness inertial reels in automobiles is different than those in aircraft. Third, automobiles employ a rigid seat back system that maximizes the effectiveness of these child restraint systems, but aircraft usually do not have rigid seatbacks. Further, as a practical matter, a uniform application of this proposal to all aircraft is desirable, regardless of whether the aircraft has breakover seats.

Other Issues

The CAMI study identified other types of child restraint systems that did not provide the level of protection in a worst-case simulated survivable airplane crash that the FAA anticipated they would provide when the child restraint rule was originally promulgated. As previously noted, six of the eight forward facing child restraint systems in the CAMI study did not provide a level of head injury protection that is desirable in the worst case simulated survivable airplane crash. Because, unlike shield-type booster seats, forward facing child restraint devices have backs, the FAA has determined that forward facing child restraint devices are likely to provide a higher level of protection than shield-type booster seats at crash levels below the worst case survivable airplane crash.

The FAA notes that Roger N. Hardy of the Cranfield Impact Centre tested forward facing child restraint devices on behalf of the British Civil Aviation Authority (BCAA). In his report, entitled *The Restraint of Infants and Young Children in Aircraft* (BCAA Paper 92929, December 12, 1992), Dr. Hardy concluded that while forward facing child restraint devices did not provide the optimal level of protection, they provided a higher level of protection relative to either the use of a belly belt or the holding of children on the laps of adults without the use of a belly belt.

The FAA believes that forward facing child restraint devices are superior to vest- and harness-type devices, booster seats, belly belts, and the holding of children on laps. Consequently, the FAA recommends the use of forward facing seats for children weighing between 20 and 40 pounds. (For children who weigh up to 20 pounds, and for children weighing over 40 pounds, the FAA recommends the use of aft facing child restraint devices and passenger lap belts, respectively.) While the FAA acknowledges that some forward facing child restraint devices may not presently provide a desired level of protection in a worst case survivable aircraft crash, it is examining means by which these seats will perform at optimal levels in such crashes. In addition, the agency is working with NHTSA to develop appropriate modifications to FMVSS No. 213 for future seat design approvals for airplane seats.

The FAA has issued directives to its inspectors that emphasize the existing prohibition on the use of devices, e.g. belly belts, that are not designed to be secured to forward-facing seats or berths. In issuing these statements, the FAA was motivated by its concern that such restraint systems could potentially result in a worse situation for children than the allowable alternatives would provide in the event of an aircraft crash.

The FAA is concerned as to whether the implementation of this rule may induce a significant number of parents to fail to provide child restraint devices for automotive travel to or from airports. Factors to be considered in addressing this issue are the share of the market that booster seats and vest- and harness-type devices comprise, the extent to which state laws require the use of child restraint systems in automobiles, and the availability of child restraint devices from car rental companies. The FAA seeks comments on the risks of children suffering increased injury due to their continued use of shield-type booster seats. The agency asks whether there are specific types of aircraft crashes or other aircraft events in which the measured difference in abdominal loading would have a greater potential for increasing the severity of injury to children.

Comments should include data on the frequency of such crashes or events, if available.

The agency also invites comments on the extent of any risks of children being injured in motor vehicles if parents are discouraged from bringing shield-type booster seats along on their combined air and land trips, and whether parents would in fact be so discouraged. If parents are so discouraged, the booster seat might not be available for motor vehicle use during the land portion of their trips, and parents might not obtain a restraint from another source. In addition, the agency requests additional comments and information on the number of shield-type booster seats currently used by children on aircraft, and how the proposed ban would affect the decisions of parents in selecting and purchasing child restraints.

Regulatory Evaluation Summary

Changes to Federal regulations are required to undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. With respect to this notice, the FAA has determined that it: (1) is "a significant regulatory action" as defined in the Executive Order; (2) is significant as defined in the Department of Transportation's Regulatory Policies and Procedures; (3) would not have a significant impact on a substantial number of small entities; and (4) would not constitute a barrier to international trade. The FAA does not believe that this proposal would impose any significant costs on the public. Therefore, a full regulatory analysis, which includes the identification and evaluation of cost-reducing alternatives to this notice, has not been prepared. Instead, the agency has prepared a more concise analysis of this notice that is presented in the following paragraphs.

Costs and Benefits

There would be some compliance costs associated with this notice. This proposed rule will reduce the types of child restraint systems that can be used during ground movement, takeoff, and landings by prohibiting the use of all booster seats and vest- and harness-type child restraint systems during these phases of a flight. The restrictions on the use of these devices would need to be incorporated into flight attendant training and included in flight manuals, and this will impose additional costs on air carriers. For a period of time after the proposed rule becomes effective, there will also be some public education necessary and potential flight delays when flight attendants tell parents who brought prohibited child restraint devices on board the aircraft that the devices are banned for use during takeoff, landing, and movement on the ground. The FAA specifically requests comments on the cost of this notice, however.

The FAA has determined that booster seats and vest- and harness-type devices put children in a potentially worse situation than the alternatives during an aircraft crash. According to the CAMI study, these child restraint systems do not securely hold a child in place in an aircraft crash, and may themselves even cause harm to a child in the event of a crash. These types of accidents, while they rarely happen, usually occur during the takeoff or landing phases of a flight. Thus, prohibiting the use of these child restraint systems during takeoff and landing will enhance the child's safety. Since it is impractical to expect flight attendants to monitor, just prior to takeoff, whether children are out of banned devices, the FAA is prohibiting the use of these devices during movement on the surface also.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by Federal regulations. The RFA requires a Regulatory Flexibility Analysis if a proposed rule will have "a significant economic impact on a substantial number of small entities." FAA Order 2100.14A outlines FAA's procedures and criteria for implementing the RFA. Small entities are defined as independently owned and operated small businesses and small not-for-profit organizations. This proposed rule will impose unquantified costs on air carriers. These costs include changing manuals and training flight attendants about the restrictions on the use of certain child restraint devices. Initially, there may be some public education necessary and possible flight delays when flight attendants tell parents or guardians that they may not use certain child restraint devices during ground movement, takeoff, or landing. However, the FAA believes that this proposed rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

This notice would not constitute a barrier to international trade, including the export of American goods and services to foreign countries and the import of foreign goods and services to the United States.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and that of any state, or on the distribution of power and responsibilities among the various levels of government. The respondents affected by the proposed amendments are private citizens, not state governments. Therefore, in accordance with Executive Order 12612, it is determined that this regulation would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is a significant regulatory action under Executive Order 12866. This rule is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, it is certified that this proposed rule would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects

14 CFR Part 91

Air carriers, Air transportation, Aviation safety, Safety.

14 CFR Part 121

Air carriers, Air transportation, Aviation safety, Common carriers, Safety, Transportation.

14 CFR Part 125

Air carriers, Air transportation, Aviation safety, Safety.

14 CFR Part 135

Air carriers, Air taxi, Air transportation, Aviation safety, Safety.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend parts 91, 121, 125, and 135 of the Federal Aviation Regulations (14 CFR parts 91, 121, 125, and 135) as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31 and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11514, 35 FR 4247, 3 CFR, 1966–70 Comp., p. 902; 49 U.S.C. 106(g).

2. Section 91.107 is amended by removing the sentence in paragraph (a)(3)(iii)(B)(*1*) that begins with "Vest- * * *", by removing the final "and" in paragraph (a)(3)(iii)(B)(*3*), by revising paragraph (a)(3)(i) and the introductory text of paragraph (a)(3)(iii)(B), and by adding a new paragraph (a)(3)(iii)(B)(*4*) to read as follows:

§ 91.107 Use of safety belts, shoulder harnesses, and child restraint systems.

(a) * * *

(3) * * *

(i) Be held by an adult who is occupying an approved seat or berth, provided that the person being held has not reached his or her second birthday and does not occupy or use any restraining device;

* * * * *

(iii) * * *

(B) Except as provided in paragraph (a)(3)(iii)(B)(*4*) of this section, the approved child restraint system bears one or more labels as follows:

* * * * *

(*4*) Notwithstanding any other provision of this section, booster-type child restraint systems (as defined in Federal Motor Vehicle Safety Standard No. 213 (49 CFR 571.213)), vest- and harness-type child restraint systems, and lap held child restraints are not approved for use in aircraft; and

* * * * *

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS, AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

3. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502.

4. Section 121.311 is amended by removing the sentence in paragraph (b)(2)(ii)(A) that begins with "Vest- * * *", by removing the final "and" in paragraph (b)(2)(ii)(C), by revising paragraph (b)(1) and the introductory text of paragraph (b)(2)(ii), by adding a new paragraph (b)(2)(ii)(D), and by revising paragraph (c) to read as follows:

§ 121.311 Seats, safety belts, and shoulder harnesses.

* * * * *

(b) * * *

(1) Be held by an adult who is occupying an approved seat or berth, provided the child has not reached his or her second birthday and the child does not occupy or use any restraining device; or

(2) * * *

(ii) Except as provided in paragraph (b)(2)(ii)(D) of this section, the approved child restraint system bears one or more labels as follows:

* * * * *

(D) Notwithstanding any other provisions of this section, booster-type child restraint systems (as defined in Federal Motor Vehicle Standard No. 213 (49 CFR 571.213)), vest- and harness-type child restraint systems, and lap held child restraints are not approved for use in aircraft; and

(c) Except as provided in paragraph (c)(3), the following prohibitions apply to certificate holders:

(1) No certificate holder may permit a child, in an aircraft, to occupy a booster-type child restraint system, a vest-type child restraint system, a harness-type child restraint system, or a lap held child restraint system during take off, landing, and movement on the surface.

(2) Except as required in paragraph (c)(1) of this section, no certificate holder may prohibit a child, if requested by the child's parent, guardian, or designated attendant, from occupying a child restraint system furnished by the child's parent, guardian, or designated attendant provided:

(i) The child holds a ticket for an approved seat or berth or such seat or berth is otherwise made available by the certificate holder for the child's use;

(ii) The requirements of paragraph (b)(2)(i) are met;

(iii) The requirements of (b)(2)(iii) are met; and

(iv) The child restraint system has one or more of the labels described in paragraph (b)(2)(ii)(A) through paragraph (b)(2)(ii)(C).

(3) This section does not prohibit the certificate holder from providing child restraint systems or, consistent with safe operating practices, determining the most appropriate passenger seat location for the child restraint system.

* * * * *

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

5. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1354, 1421 through 1430 and 1502.

6. Section 125.211 is amended by removing the sentence in paragraph (b)(2)(ii)(A) that begins with "Vest- * * *", by removing the final "and" in paragraph (b)(2)(ii)(C), by revising paragraph (b)(1) and the introductory text of paragraph (b)(2)(ii), by adding a new paragraph (b)(2)(ii)(D), and by revising paragraph (c) to read as follows:

§ 125.211 Seat and safety belts.

* * * * *

(b) * * *

(1) Be held by an adult who is occupying an approved seat or berth, provided the child has not reached his or her second birthday and the child does not occupy or use any restraining device; or

(2) * * *

(ii) Except as provided in paragraph (b)(2)(ii)(D) of this section, the approved child restraint system bears one or more labels as follows:

* * * * *

(D) Notwithstanding any other provisions of this section, booster-type child restraint systems (as defined in Federal Motor Vehicle Standard No. 213 (49 CFR 571.213)), vest- and harness-type child restraint systems, and lap held child restraints are not approved for use in aircraft; and

(c) Except as provided in paragraph (c)(3), the following prohibitions apply to certificate holders:

(1) No certificate holder may permit a child, in an aircraft, to occupy a booster-type child restraint system, a vest-type child restraint system, a harness-type child restraint system, or a lap held child restraint system during take off, landing, and movement on the surface:

(2) Except as required in paragraph (c)(1) of this section, no certificate holder may prohibit a child, if requested by the child's parent, guardian, or designated attendant, from occupying a child restraint system furnished by the child's parent, guardian, or designated attendant provided:

(i) The child holds a ticket for an approved seat or berth or such seat or berth is otherwise made available by the certificate holder for the child's use;

(ii) The requirements or paragraph (b)(2)(i) are met;

(iii) The requirements of (b)(2)(iii) are met; and

(iv) The child restraint system has one or more of the labels described in paragraph (b)(2)(ii)(A) through paragraph (b)(2)(ii)(C).

(3) This section does not prohibit the certificate holder from providing child restraint systems or, consistent with safe operating practices, determining the most appropriate passenger seat location for the child restraint system.

* * * * *

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

7. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g).

8. Section 135.128 is amended by removing the sentence in paragraph (a)(2)(ii)(A) that begins with "Vest- * * *", by removing the final "and" in paragraph (a)(2)(ii)(C), by revising paragraph (a)(1) and the introductory text of paragraph (a)(2)(ii), by adding a new paragraph (a)(2)(ii)(D), and by revising paragraph (b) to read as follows:

§ 135.128 Use of safety belts and child restraint systems.

(a) * * *

(1) Be held by an adult who is occupying an approved seat or berth, provided the child has not reached his or her second birthday and the child does not occupy or use any restraining device; or

(2) * * *

(ii) Except as provided in subparagraph (b)(2)(ii)(D) of this section, the approved child restraint system bears one or more labels as follows:

* * * * *

(D) Notwithstanding any other provision of this section, booster-type child restraint systems (as defined in Federal Motor Vehicle Standard No. 213 (49 CFR 571.213)), vest- and harness-type child restraint systems, and lap held child restraints are not approved for use in aircraft; and

(b) Except as provided in paragraph (b)(3), the following prohibitions apply to certificate holders:

(1) No certificate holder may permit a child, in an aircraft, to occupy a booster-type child restraint system, a vest-type child restraint system, a harness-type child restraint system, or a lap held child restraint system during take off, landing, and movement on the surface.

(2) Except as required in paragraph (b)(1) of this section, no certificate holder may prohibit a child, if requested by the child's parent, guardian, or designated attendant, from occupying a child restraint system furnished by the child's parent, guardian, or designated attendant provided:

(i) The child holds a ticket for an approved seat or berth or such seat or berth is otherwise made available by the certificate holder for the child's use;

(ii) The requirements or paragraph (a)(2)(i) are met;

(iii) The requirements of (a)(2)(iii) are met; and

(iv) The child restraint system has one or more of the labels described in paragraph (a)(2)(ii)(A) through paragraph (a)(2)(ii)(C).

(3) This section does not prohibit the certificate holder from providing child restraint systems or, consistent with safe operating practices, determining the most appropriate passenger seat location for the child restraint system.

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Issued in Washington, DC, on May 19, 1995.

William J. White,

Acting Director, Flight Standards Service.

[FR Doc. 95–12800 Filed 6–7–95; 8:45 am]

BILLING CODE 4910–13–M

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49 CFR Part 571

[Docket No. 74–09; Notice 41]

RIN 2127–AF46

Federal Motor Vehicle Safety Standards; Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposed rule, and a companion proposed rule issued by the Federal Aviation Administration (FAA), address the use of child harnesses and backless child restraints in aircraft. This document proposes to amend a provision in Federal Motor Vehicle Safety Standard No. 213, "Child Restraint Systems," that permits those restraints to be certified for use in both motor vehicles and aircraft.

Under the current FAA regulations, aircraft-certified child restraints may be used on aircraft. However, because testing has raised concerns about the safety of using harnesses and backless child restraint systems on the types of seats found in aircraft, FAA is publishing, in today's **Federal Register**, an NPRM that would prohibit the use of booster seats, and vest- and harness-type child restraint systems on aircraft even if they are certified for aircraft use.

NHTSA is, in turn, concerned that if FAA were to ban harnesses and backless booster seats from being used on aircraft, continuing to permit the certification of those restraints for aircraft use could be confusing to the public. Accordingly, this document proposes to require manufacturers to label these restraints as not being for aircraft use.

DATES: Comments on this proposed rule must be received by the agency no later than July 10, 1995.

ADDRESSES: Comments should refer to the docket number and notice number and be submitted in writing to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366–5267. Docket hours are 9:30 a.m. to 4:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. George Mouchahoir, Office of Vehicle Safety Standards (telephone 202–366–4919), or Ms. Deirdre Fujita, Office of the Chief Counsel (202–366–2992), National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. For information on FAA's proposal, contact Ms. Donell Pollard (AFS–203), Air Transportation Division, Flight Standards Service (telephone 202–267–3735), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION: This document proposes to amend the provision in Federal Motor Vehicle Safety Standard No. 213, "Child Restraint Systems," that permits child restraint systems to be certified for use in both motor vehicles and aircraft. This rule complements an FAA proposal, published elsewhere in today's **Federal Register**, that would prohibit the use of booster seats, and vest- and harness-type child restraint systems on aircraft even if the restraints are certified for aircraft use.

The types of child restraint systems that are the subject of this NPRM are harnesses and backless child restraints. A harness typically consists of a vest or a series of straps that form a vest-like garment, that attaches at the back of the harness to a vehicle seat's lap belt. Harnesses are generally intended for children who weigh from 25 to 50 pounds, and some require the use of a tether strap to supplement the lap belt. A backless child restraint system is a type of child booster seat that has a structural element (typically a shield) designed to restrain forward motion of the child's torso in a frontal crash. Backless child restraint systems are generally intended for children weighing from 30 to 60 pounds.

("Backless child restraint system" is defined in S4 of FMVSS 213; see, 59 FR 37167, July 21, 1994). Backless child restraint systems are also known as "backless booster seats" or "shield-type" booster seats.

Background

Standard 213 permits manufacturers to certify their restraints[1] for aircraft use if they are certified for use in motor vehicles and meet an additional requirement, an inversion test. The provisions permitting such certification were added to the standard in 1984 (49 FR 34357; August 30, 1984), partly in response to suggestions of the National Transportation Safety Board (NTSB) that DOT simplify its standards for the performance of child restraints on aircraft by combining all technical requirements into a single standard (NTSB Safety Recommendations A–83–1, February 24, 1983). Prior to the amendment, FAA had its own child restraint standard, Technical Standard Order C100 (TSO C100). TSO C100 and FMVSS 213 had different performance requirements, methods of certification and testing procedures.

In the 1984 rulemaking, NHTSA and FAA concluded that the DOT child restraint requirements should be consolidated in FMVSS 213 and that a TSO C100 inversion test was the only performance requirement from the FAA standard that needed to be incorporated into FMVSS 213. In the inversion test, the combination of a child restraint, test dummy and aircraft passenger seat is rotated to an inverted position and held there. During the test, the child restraint must not experience any failure or deformation that could seriously injure or prevent the subsequent removal of the occupant.

Prior to the 1984 rulemaking, a manufacturer wishing to designate a child restraint model as suitable for aircraft had to submit information to FAA to obtain its approval of the model. As a result of this pre-1984 approval process, there was a disparity between the number of child restraints available for use in motor vehicles and the number available for use in aircraft. In 1984, approximately 28 models of child restraints were produced under FMVSS 213 for use in motor vehicles. The child restraint manufacturers obtained TSO authorizations for only five of the 28 models, or only 16 percent of the total production of child restraints.

The lack of FAA approval of most motor vehicle child restraints for use in aircraft aroused several safety concerns. One was that some families traveling by air were discouraged from taking unapproved child restraints with them and thus did not have them available for use at their destination to protect their children while the family was driving. The other concern was that those families who nevertheless took their unapproved child restraints on trips had to stow the restraints in the aircraft cargo compartment, and thus were not able to use them to protect their children during the flight.

The effect of the 1984 rulemaking was to speed certification of child restraints for use in aircraft, and thereby increase the availability of aircraft-certified child restraints. Since then, manufacturers have been able, under FMVSS 213, to "self-certify" their child restraints for aircraft use by ensuring that they pass all of the standard's motor vehicle requirements and the inversion test. As a result, there has been a tremendous increase in the number of child restraints certified for use in aircraft.

FAA complemented NHTSA's rulemaking by amending its Federal Aviation Regulations (FARs) (14 CFR Parts 91, 121, 125 and 135) to provide for the in-flight use of aircraft-certified child restraints. The amendments required the air carriers to allow the use of any child restraint having a labeling indicating that it is certified to FMVSS 213, manufactured under the standards of the United Nations, or approved by a foreign government, as long as the restraint can be secured to a forward-facing passenger seat. An infant or child who is accompanied by a parent, guardian, or properly designated attendant and who is properly placed in a device that meets the labeling requirements of the FARs and that, in turn, is properly secured in an approved aircraft seat using the safety belt, has been considered by FAA to comply with its regulations requiring each person to occupy an approved seat during takeoff and landing.

There are currently many different types of child restraint systems that are certified as complying with FMVSS 213's motor vehicle and aircraft requirements, and thus permitted by FAA for use on aircraft. In addition to harnesses and shield boosters, these systems included "infant seats," which position an infant so that the baby faces toward the rear of the motor vehicle or aircraft; "car beds," which position the child laterally across the vehicle or aircraft seat; and "convertible" child seats, which convert so that they can be used rear-facing with infants and forward-facing with toddlers. In addition, there are restraint systems, such as the "belly belt," that are certified for use in airplanes by foreign countries. Belly belts restrain a small child on the lap of an adult and consist of a short loop of webbing with buckle hardware on the ends. The belt is buckled around the child's abdomen and is secured to the adult's safety belt by routing the adult's safety belt through a small loop of webbing sewn on the belly belt. Belly belts are certified for airplane use by the Civil Aviation Authority of the United Kingdom. However, belly belts cannot meet the performance requirements of FMVSS 213 and therefore have not been certified for use in the United States.

FAA Withdrawal of Approval

Elsewhere in today's **Federal Register**, FAA is proposing to withdraw approval for the use of harnesses and booster seats on aircraft. The FAA is also emphasizing the existing prohibition in all aircraft against the use of lap held child restraints, including belly belts. The action responds to recent research by FAA's Civil Aeromedical Institute (CAMI). The practical effect of that amendment would be to ban all use of these restraints on aircraft.

The CAMI research is discussed in a report entitled, "The Performance of Child Restraint Devices in Transport Airplane Passenger Seats," a copy of which has been placed in the NHTSA rulemaking docket for this notice. (Persons wishing to obtain a copy of the report should contact FAA at the address given in the "For Further Information" section at the beginning of this final rule document.) CAMI dynamically-tested six types of restraining devices: Child harnesses, booster seats, rear-facing infant seats, convertible child restraint systems, airplane seat lap belts, and belly belts. The first four devices were evaluated for their ability to fit and adjust to an airplane passenger seat and lap belt. The lap belt was evaluated for its ability to secure test dummies representative of children two and three years old. Fit and adjustment was not considered an issue for the installation of the belly belt. All of the devices were evaluated for their performance in aircraft seats with and without "breakover" seat backs (a breakover feature allows the seat back to rotate forward easily when impacted by an occupant from behind).

[1] One type of child restraint, the "belt positioning" booster seat, is not eligible for such certification. These restraints, which are intended for use by children weighing from 30 to 60 pounds, are designed for use with a lap/shoulder belt system. FMVSS No. 213 does not permit these restraints to be certified for aircraft use because aircraft passenger seats typically lack shoulder belts. See amendment of FMVSS 213 to permit manufacture of belt-positioning child seats (59 FR 37167; July 21, 1994). In its NPRM, the FAA proposes to ban the use of belt-positioning booster seats on airplanes.

They were also evaluated, using anthropomorphic test dummies representing children, for their ability to limit occupant head excursion, head and chest acceleration and abdominal forces. In addition, the test program evaluated the effect that the impact load of an "aft row occupant" had on the performance of a child restraint located in an aircraft seat immediately in front of the aft row occupant. The aft row occupant impact load was generated in tests called "double row tests," using an adult test dummy placed in the aft row seat.

Booster Seat Tests

CAMI tested four models of shield-type booster seats in six dynamic tests, three of which involved single row tests, and the other three, double row tests. With regard to fit and adjustment of the booster seats to the airplane seat, CAMI found that three had fit and adjustment problems. One booster seat had problems fitting an airplane seat because of the limited width between arm rests on the passenger seat. This may have occurred because of the difference in width between the representative aircraft seat (about 20 inches wide) used in FMVSS 213 and the aircraft seat (17.25 inches wide) used in the CAMI testing. Two booster seats had incompatibility problems between the buckle/webbing path molded in the front shield and the airplane web path and buckle position of the lap belt on the airplane passenger seat used by CAMI. In fact, the webbing could not be installed over the front shield in accordance with the positioning instruction of the booster seats' manufacturers. CAMI also found that one of the four booster seats failed structurally, and two of the others allowed forward head excursion in excess of the 32-inch distance permitted by FMVSS 213.

CAMI also found a problem with the loads that the child dummies restrained in the tested booster seats experienced when the boosters were on a seat with a breakover seat back and exposed to loads from the aft row occupant. Its tests showed that loads from an aft row adult occupant resulted in an increase in abdominal loading of the dummy in a booster seat, as compared to the abdominal loading of a dummy in an aircraft lap belt with an adult aft-row occupant. The CAMI study states that, when placed in a seat with a breakover seat back, the booster seat encounters problems because:

> With no back shell, the typical booster seat does not provide protection from the forces transmitted by the airplane seat back during horizontal impact conditions. Traditionally, restraint systems in airplanes have been designed to avoid loads transmitted to the soft tissues of the abdomen. A child restrained in a booster seat may be forced against the rigid shield due to the seat back breakover action. For the intended size of children in booster seats, the load path of these breakover forces may include the abdominal region.

It is to be noted that CAMI also found that the abdominal loads on a child dummy placed in a shield-type booster seat secured to an airplane seat with a locked seat back were higher than on a child dummy secured in a typical airplane seat lap belt with a locked seat back. The FAA recognizes in its NPRM, however, that there are no accepted criteria to assess the relationship between differences in measured levels of abdominal loadings and any resulting risk of abdominal injury, and the type and severity of such injury.

Harness Tests

CAMI tested one type of harness restraint. The restraint consisted of a torso vest with straps over the shoulders and around the waist, and a crotch strap. The shoulder and abdomen straps were attached to a rectangular metal plate on the back of the restraint. The airplane lap belts were routed through a loop of webbing attached to the metal back plate on the restraint.

The restraint was tested with a three-year-old test dummy in two single row tests. CAMI found incompatibility problems between the harness and the airplane seat lap belts: "With the lap belts adjusted to the minimum length, the [harness] could be moved forward approximately 7 inches before tension was developed in the belts. This was considered unsatisfactory for testing." CAMI also found grossly excessive excursion of the child anthropomorphic test dummy(ATD) restrained in the harness:

> The ATD moved forward and over the front edge of the seat cushion and proceeded to submarine toward the floor. Elasticity in the webbing of the harness and the lap belts then heaved the ATD rearward. The force pulling the ATD back into the seat appeared to be applied by the Gz [crotch] strap directly through the pubic symphysis of the pelvic bone.

Based on this finding, CAMI concluded that a harness performs poorly in protecting the child occupant.

NHTSA Proposal

NHTSA has tentatively concluded that, if FAA were to adopt its proposed ban on the use of harnesses and backless booster seats on aircraft, consumers would be confused if manufacturers were to continue nevertheless to certify these types of restraints for aircraft use. Accordingly, NHTSA proposes to amend FMVSS 213 to require manufacturers to label these child restraint systems as not being for use on aircraft. The standard already requires that belt-positioning booster seats be so labeled.

In issuing this proposal, NHTSA believes that it is important to emphasize several points about the use and performance of child restraints. First, there are significant differences between the seating environment of motor vehicles and that of aircraft. Second, because of those differences, the problems encountered with child restraint use in aircraft are not encountered with child restraint use in motor vehicles. Therefore, notwithstanding this proposal, the use of harnesses and booster seats in motor vehicles continues to be important for child safety.

The problems reported by CAMI, i.e., the combined effects of aircraft seatback breakover designs and aft occupant impacts, are not encountered in motor vehicles. The seat back in a motor vehicle is designed to remain fixed in a crash and not "breakover" in the manner of an airplane seat. Also, a vehicle seat containing a child restraint is less likely to be impacted from the rear by an adult than is an aircraft containing a child restraint. There are several reasons for this. First, child restraints are recommended for use in the rear vehicle seating positions. Thus, if a child restraint is installed as recommended, there will not, in most cases, be any passenger rearward of the child restraint who could impact and load the seat containing the child restraint in the event of a frontal crash. Exceptions would be in vehicles, such as vans and some station wagons, which have three rows of seats. Second, if there were a passenger seated behind the seat containing a child restraint, and that person were sitting in an outboard seating position, the person would have a lap/shoulder belt system available for use. Most aircraft lack shoulder belts. If the vehicle passenger were restrained by that belt system, the person would not load the seat with the child restraint in the manner observed in the CAMI study. Third, given the number of persons typically carried in a motor vehicle, it is unlikely there would be an adult seated behind a child in a child restraint, regardless of the number or pattern of seats in the vehicle.

Further, harnesses and other child restraints are tested under FMVSS 213 on a seat assembly that is representative of a motor vehicle seat, and that is equipped with a safety belt

representative of the lap belt in the center rear seating position. In its compliance testing, the agency has not found a problem between the vehicle lap belt and a child harness such as that found by CAMI between an airplane lap belt and a harness. In addition, NHTSA has not found in its compliance testing the type of fit and adjustment problems between booster seats and the vehicle seats that CAMI found between booster seats and the aircraft seats.

Booster seats could fit better on vehicles than aircraft in part because of the design of the belt restraints with which the boosters are attached to the vehicle. The position of the buckle for an aircraft seat belt assembly is very different from that of a buckle for a vehicle seat belt assembly. An aircraft seat belt assembly is designed so that when it is buckled, the buckle is located midway between the anchorages, in front of the user's abdomen. A motor vehicle lap/shoulder belt or lap-only belt is designed so that the buckle is located to the side of the user's torso, near the hip, when the belt is buckled.

Another reason for believing that the problems reported by CAMI are not indicative of the performance of child restraints in motor vehicles is the difference between the crash pulse used by CAMI and the crash pulse used in FMVSS 213 testing. In its testing of head excursion, head and chest acceleration and abdominal forces, CAMI used a crash pulse appropriate for aircraft. FMVSS 213 testing, by contrast, involves the use of a motor vehicle crash pulse.

In view of the problems revealed by the CAMI testing, NHTSA and FAA will consider whether there is a need for future rulemaking to improve FMVSS 213's requirements for aircraft-certified child restraints other than harnesses and booster seats. The agencies are developing possible requirements and procedures that could improve the assessment of the performance of child restraint systems in the aircraft environment. Among other issues, the agencies will consider whether the seat assembly used under FMVSS 213 in testing child restraints for aircraft use sufficiently represents an aircraft passenger seat. Child restraints certified as complying with FMVSS 213's aircraft requirements are currently tested on a "representative aircraft passenger seat" (S7.3 of FMVSS 213). FMVSS 213 also specifies that FAA approved aircraft safety belts are used to test child restraints that are certified to the aircraft requirements.

Proposed Effective Date

The proposed effective date is 90 days after the publication of a final rule in the **Federal Register**.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

NHTSA has evaluated the impacts of this proposal and has determined that it is significant within the meaning of the Department of Transportation's regulatory policies and procedures. The rulemaking action is significant because of the substantial public interest in issues involving child seats on aircraft. This rule is a significant regulatory action under E.O. 12866.

While this action is significant because of the public interest associated with it, NHTSA tentatively concludes that a rule resulting from this notice would have minimal impacts. In 1991, there were an estimated 1,200,000 booster seats produced. The consumer cost of a label is estimated to be $0.09 to $0.17, and total annual costs of a separate label range from $108,000 to $204,000. However, adding a sentence to the existing label, most likely the course of action taken in response to this rulemaking, would cost much less. This cost might be $0.01 per label, resulting in a total annual cost of $12,000. There is an added economic benefit of this proposed rule. Since booster seats would no longer be permitted to be certified for aircraft, there would be no need to perform the inversion test. Thus, testing costs to the child restraint manufacturer would be slightly reduced.

The agency is concerned whether this rulemaking action could affect consumers' use of booster seats before and after the air portion of their trips. In the 1984 rulemaking that allowed child restraints to be certified for use on motor vehicles and aircraft, NHTSA recognized that parents might not use child restraints to transport their children to and from the airport if the child restraint could not be used on the aircraft. The data indicated that child safety was not a critical issue for aircraft in terms of the number of child deaths, but that it was a large problem for motor vehicles before and after the flight. Many State laws that require the use of child seats in motor vehicles do not cover all the ages of children that might use booster seats. If booster seats may not be used on aircraft, and if parents are not willing to stow them with their luggage, NHTSA is concerned about the possibility that they could be left home altogether. As a result, the number of child injuries in motor vehicle accidents might increase. NHTSA requests comments on how it should assess this issue. The agency is particularly interested in information concerning how many of these booster seats are currently in use and on the availability of booster seats at car rental agencies.

Regulatory Flexibility Act

NHTSA has considered the effects of this proposal under the Regulatory Flexibility Act. I hereby certify that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Of the 11 current child restraint manufacturers known to the agency (not counting manufacturers of built-in restraints), there are six that qualify as small businesses. This is not a substantial number of small entities. Regardless of the number of small entities, the proposed rule would not have a significant economic impact on these entities. As noted above, the labeling costs associated with this rulemaking would be minimal. Further, the agency believes sales of booster seats would be minimally affected by this rulemaking, if at all. NHTSA believes almost all consumers decide to purchase a child restraint based on their intent to use the restraint in a motor vehicle, not in aircraft.

Executive Order 12612 (Federalism)

This rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. The agency has determined that this proposed rule would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

Executive Order 12778 (Civil Justice Reform)

This proposed rule would not have any retroactive effect. Under section 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets

forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Submission of Comments on This Proposal

There is a 30-day comment period for this notice. The FAA provides a 30-day comment period for its proposal. NHTSA believes the comment period for the agencies' proposals should be identical since the two rulemaking actions complement each other. The comment period is shorter than 60 days so that FAA can expeditiously assess what action should be taken to address what that agency has tentatively concluded to be a possible safety problem.

Interested persons are invited to submit comments on this proposed rule. It is requested, but not required, that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the proposal will be considered as suggestions for further rulemaking action. Comments will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR Part 571 as set forth below.

PART 571—[AMENDED]

1. The authority citation for Part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.213 would be amended by revising S5.5.2(n) to read as follows:

§ 571.213 Standard No. 213, Child Restraint Systems.

* * * * *

S5.5.2 * * * * *

(n) Child restraint systems, other than belt-positioning seats, harnesses and backless child restraint systems, that are certified as complying with the provisions of section S8, shall be labeled with the statement "This Restraint is Certified for Use in Motor Vehicles and Aircraft." Belt-positioning seats, harnesses and backless child restraint systems shall be labeled with the statement "This Restraint is Not Certified for Use in Aircraft." The statement required by this paragraph shall be in red lettering and shall be placed after the certification statement required by paragraph (e) of this section.

* * * * *

Issued on May 19, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–12801 Filed 6–7–95; 8:45 am]

BILLING CODE 4910–59–P

Federal Register

Friday
June 9, 1995

Part IV

Postal Service

39 CFR Part 20

Changes in International Postal Rates and Fees; Final Rule

POSTAL SERVICE

39 CFR Part 20

Changes In International Postal Rates and Fees

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service, after considering the comments submitted in response to its request published in the **Federal Register** on March 20, 1995 (60 FR 14878–14888), for comments on proposed changes in international postage rates, hereby gives notice that it is implementing the proposed rates, except the air parcel post rates for Canada, which are revised as explained below.

EFFECTIVE DATE: 12:01 a.m., Sunday, July 9, 1995.

FOR FURTHER INFORMATION CONTACT: John Alepa, (202) 268–2650.

SUPPLEMENTARY INFORMATION: On March 20, 1995, the Postal Service published in the **Federal Register** a notice of proposed changes in international postage rates (60 FR 14878–14888). The Postal Service requested comments by April 19, 1995, and by that date received four comments: Two from private individuals, one from a competitor delivery service, and one from a mailer using International Surface Air Lift.

One of the private individuals urged the Postal Service to retain the surface letter rates because of considerable rate differences for weights over ½ ounce. The commenter additionally stated that the volume of such mail is low because the Postal Service discourages the use of the surface letter rates by mishandling surface letters.

The Postal Service disagrees. The Postal Service does not discourage the use of surface rates. However, because of the low volume of surface letters, processing costs are higher for surface letter class (LC) items than processing costs for air LC. The high costs associated with processing and dispatching surface LC items, therefore, make it desirable to eliminate the surface rates and merge all LC into a single mailstream that will provide the lowest combined cost and improve overall service. For these reasons, the Postal Service is eliminating the surface LC rates.

The second private individual commented on four areas of the proposed rates.

First, the commenter stated that the 1-ounce rate of $1.00 for letters to countries other than Canada and Mexico "is not needed since the 40-cent increment will cover that." The Postal Service is uncertain of the meaning of the comment because this is just another way of presenting the rate and because ½-ounce and 1-ounce letters are most common and many people like to know what those rates are without performing the calculation.

Second, the commenter observed that the aerogramme rate for Canada and Mexico is higher than the proposed ½-ounce letter rates to Canada and Mexico. This is true. The proposed ½-ounce rates are 46 cents to Canada and 40 cents to Mexico, and the proposed aerogramme rate is 50 cents to all countries. This rate difference has been in place for many years. It is not practical to produce, distribute, and stock aerogrammes in three separate denominations at all post offices in the United States. For this reason, the Postal Service will continue to produce aerogrammes at a single rate for worldwide use.

Third, the commenter observed that the parcel post rates to Canada are inconsistent because the surface rates exceed the air rates for items weighing more than 10 pounds. The commenter is correct. The air parcel post rates published at 60 FR 14883–14884 were in error; the correct rates are published in section VB of this notice.

Fourth, the commenter noted inconsistencies in the rates for Canada and Mexico "where there are some weights where Canadian rates are less than Mexican rates and other weights where the reverse is true." The commenter further observed that "if the rates are related to the costs involved, it would appear that they should be more consistent." It is true that rates are based on the cost involved; however, the costs for mail sent to Canada and to Mexico are not the same. To the contrary, one of the costs in international rates is terminal dues (reimbursements between postal administrations exchanging mail), which are not the same for Canada and Mexico. Specifically, the United States and Mexico use the terminal dues specified by the Universal Postal Convention, whereas the United States and Canada have a bilateral agreement that provides for different terminal dues payments. In addition, there are different transportation and handling costs to each of these countries. As a result, in some weight steps, Canadian rates are less than Mexican rates, and for other weight steps the reverse is true.

The mailer using International Surface Air Lift (ISAL) observed that the effective rate increases are high for certain lightweight ISAL items. The Postal Service proposed changing the rate structure for ISAL to simplify the rates for this service and to associate the rate to cost more closely. Currently, there is a piece rate of 32 cents for all items weighing 2 ounces or less. Items weighing more than 2 ounces are charged only a per-pound rate based on the rate group assigned to the destination country. By averaging the rate for all items weighing 2 ounces, the same rate is charged notwithstanding that items that weigh closer to 2 ounces incur higher costs than items that weigh less. The proposed structure more closely reflects how the costs are incurred.

The competitor delivery company questioned the factual support for some of the rate changes. This commenter noted that some Express Mail International Service (EMS) rates increase whereas others decrease. The commenter also questioned the reassignment of some countries among country groups. The commenter requested the Postal Service to release cost and other information to support these changes and asserted that making such changes without providing such information would violate the Postal Reorganization Act and the Administrative Procedure Act (APA). The Postal Service disagrees. The international mail business is highly competitive, with private companies, other postal administrations, and alliances between private companies and postal administrations all competing for outbound U.S.-origin mail of all kinds. The information about costs and markets that this commenter requested the Postal Service to disclose is commercially sensitive and could be used by competitors to take business away from the Postal Service, to the detriment of the Postal Service's remaining customers. There is no legal requirement for the Postal Service to disclose commercially sensitive information and, indeed, such information is exempted from disclosure under the Freedom of Information Act. *See* 39 U.S.C. 410(c)(2). Similarly, the APA does not apply to the Postal Service except in those specific instances when the Postal Reorganization Act makes it applicable. 39 U.S.C. 410(b)(1). *See, e.g.*, 39 U.S.C. 3001(j). Nothing in the Postal Reorganization Act makes the APA applicable to the establishment of international rates. Accordingly, withholding the commercially sensitive information requested by this commenter violates neither the Postal Reorganization Act nor the APA.

The notice published on March 20, 1995, contained an error in section VIE2 at 60 FR 14884. The indemnity limit for registered items to all countries other than Canada is given as $32.25. The maximum indemnity is $32.35.

After reviewing and considering the comments received, the Postal Service adopts the following rates and fees and amends the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

Foreign relations, Incorporation by reference, International postal services.

Stanley F. Mires,

Chief Counsel, Legislative.

PART 20—[AMENDED]

1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. The International Mail Manual is amended to incorporate the following postal rates and fees:

International Postal Rates and Fees

I. Express Mail International Service

(See section VII for country rate groups.)

A. On Demand Service

1. Country-Specific Rates

Weight not over (lb.)	Country				
	Canada	Mexico	Great Britain	China	Japan
0.5	$15.50	$15.00	$16.50	$15.00	$15.00
1	18.00	17.50	18.75	17.50	17.00
2	22.00	21.00	22.50	20.00	19.50
3	25.50	24.50	26.50	26.00	25.00
4	28.50	28.00	30.00	33.00	31.00
5	32.00	30.75	34.00	36.00	34.00
Each add'l pound or fraction	3.50	2.75	3.75	6.00	5.50

2. Rate Group Countries

Weight not over (lb.)	Rate group					
	1	2	3	4	5	6
0.5	See Country-Specific Rates	$21.00	$15.00	$19.00	$18.00	$20.00
1		23.00	18.00	23.50	19.75	22.50
2		26.00	21.00	26.00	26.00	26.50
3		28.50	27.00	32.00	29.50	32.50
4		34.00	35.00	36.75	33.50	39.50
5		39.00	39.50	42.25	37.50	47.50
Each add'l pound or fraction		4.50	6.00	5.75	3.90	6.50

B. Custom Designed Service

1. Country-Specific Rates

Weight not over (lb.)	Country				
	Canada	Mexico	Great Britain	China	Japan
0.5	Custom Designed Service Not Available	$23.00	$24.50	$23.00	$23.00
1		25.50	26.75	25.50	25.00
2		29.00	30.50	28.00	27.50
3		32.50	34.50	34.00	33.00
4		36.00	38.00	41.00	39.00
5		38.75	42.00	44.00	42.00
Each add'l pound or fraction		2.75	3.75	6.00	5.50

2. Rate Group Countries

Weight not over (lb.)	Rate group					
	1	2	3	4	5	6
0.5	See Country-Specific Rates	$29.00	$23.00	$27.00	$26.00	$28.00
1		31.00	26.00	31.50	27.75	30.50
2		34.00	29.00	34.00	34.00	34.50
3		36.50	35.00	40.00	37.50	40.50
4		42.00	43.00	44.75	41.50	47.50
5		47.00	47.50	50.25	45.50	55.50
Each add'l pound or fraction		4.50	6.00	5.75	3.90	6.50

II. Letters and Letter Packages

All LC mail (letters, letter packages, post and postal cards, and aerogrammes) receives First-Class service in the United States, dispatch by the most expeditious transportation available, and airmail or priority service in the destination country. Mailer should endorse all LC items "Airmail" or "Par Avion."

A. Canada and Mexico

Weight not over (lb.)	Weight not over (oz.)	Canada [1]	Mexico
0	0.5	$0.46	$0.40
0	1	0.52	0.46
0	1.5	0.64	0.66
0	2	0.72	0.86
0	3	0.95	1.26
0	4	1.14	1.66
0	5	1.33	2.06
0	6	1.52	2.46
0	7	1.71	2.86
0	8	1.90	3.26
0	9	2.09	3.66
0	10	2.28	4.06
0	11	2.47	4.46
0	12	2.66	4.86
1	0	3.42	6.46
1	8	4.30	9.66
2	0	5.18	12.86
2	8	6.06	16.06
3	0	6.94	19.26
3	8	7.82	22.46
4	0	8.70	25.66

[1] A 4-pound maximum applies except for registered items sent to Canada. Canada-bound registered items may weigh up to 66 pounds. For registered items weighing over 4 pounds, the rate is $1.76 for each additional pound up to a 66-pound limit.

BULK LETTER SERVICE TO CANADA

[See IMM 225]

Weight not over (oz.)	Bulk letter service to Canada
0.5	$0.42
1	0.48
1.5	0.60
2	0.68
3	0.91

B. Countries Other Than Canada and Mexico

(Maximum weight: 64 ounces)

Weight Not Over (oz.)	All countries (other than Canada and Mexico)
0.5	$0.60
1.0	1.00
Each additional 0.5 ounce, up to and including 32 ounces	0.40
Each additional ounce over 32	0.40

C. International Priority Airmail (IPA)

(See section VII for country rate groups.)

Rate group	Piece rate	Pound rate
Worldwide Nonpresort	$0.25	$8.55
Presort:		
Group 1	0.25	5.15
Group 2	0.10	7.15
Group 3	0.10	8.50

III. Post/Postal Cards and Aerogrammes

A. Post/Postal Cards

Country	Rate
Canada	$0.40
Mexico	0.35
All others	0.50

B. Aerogrammes

All countries: $0.50 each.

IV. Other Articles (AO) (Includes Printed Matter and Small Packets)

A. Regular Printed Matter and Small Packets—Surface

Weight not over (lb.)	Weight not over (oz.)	Country: Canada	Mexico	All others
0	1	$0.46	$0.40	$0.50
0	2	0.60	0.60	0.80
0	3	0.88	0.80	1.00
0	4	1.02	0.94	1.21
0	5	1.16	1.22	1.63
0	6	1.30	1.22	1.63
0	7	1.44	1.50	2.05
0	8	1.58	1.50	2.05
0	9	1.72	1.78	2.47
0	10	1.86	1.78	2.47
0	11	2.00	2.06	2.89
0	12	2.14	2.06	2.89
0	13	2.28	2.34	3.31
0	14	2.42	2.34	3.31

Weight not over (lb.)	Weight not over (oz.)	Country: Canada	Mexico	All others
0	15	2.56	2.62	3.73
1	0	2.70	2.62	3.73
1	2	2.90	2.86	4.03
1	4	3.10	3.10	4.33
1	6	3.30	3.34	4.63
1	8	3.50	3.58	4.93
1	10	3.70	3.82	5.23
1	12	3.90	4.06	5.53
1	14	4.10	4.30	5.83
2	0	4.30	4.54	6.13
3	0	5.58	6.14	8.05
4	0	6.86	7.74	9.97
Each add'l pound or fraction		1.28	1.60	1.92
M-bag rate per pound or fraction		1.06	1.32	1.45

B. Valuepost/Canada

Weight	Rate
Letter-size:	
1 ounce or less	$0.32
Over 1 ounce	0.30 plus $0.39 per pound or fraction of a pound.
Flat-size:	
5 ounce or less	$0.57
Over 5 ounces	0.34 plus $0.93 per pound or fraction of a pound.

C. Publishers' Periodicals—Surface

Weight not over (oz.)	Country: Canada	Mexico	All others
1	$0.40	$0.32	$0.32
2	0.46	0.40	0.40
3	0.52	0.52	0.52
4	0.59	0.60	0.60
5	0.65	0.75	0.76
6	0.72	0.75	0.76
7	0.78	0.90	0.92
8	0.85	0.90	0.92
9	0.91	1.05	1.08
10	0.98	1.05	1.08
11	1.04	1.20	1.24
12	1.11	1.20	1.24
13	1.17	1.35	1.40
14	1.24	1.35	1.40
15	1.30	1.50	1.56
16	1.37	1.50	1.56
18	1.43	1.64	1.71
20	1.49	1.78	1.86
22	1.55	1.92	2.01
24	1.61	2.06	2.16
26	1.67	2.20	2.31
28	1.73	2.34	2.46
30	1.79	2.48	2.61
32	1.85	2.62	2.76
3 lb.	4.00	3.58	3.72
4 lb.	4.64	4.54	4.68
5 lb.	5.28	5.50	5.64
6 lb.	5.92	6.46	6.60
7 lb.	6.56	7.42	7.56
8 lb.	7.20	8.38	8.52
9 lb.	7.84	9.34	9.48
10 lb.	8.48	10.30	10.44
11 lb.	9.12	11.26	11.40
Each add'l pound or fraction	0.64	0.96	0.96
M-bag rate per pound or fraction	0.64	0.72	0.79

D. Books and Sheet Music—Surface

Weight not over (lb.)	Country		
	Canada	Mexico	All others
1	$1.37	$1.50	$1.56
2	1.85	2.62	2.76
3	4.00	3.58	3.72
4	4.64	4.54	4.68
5	5.28	5.50	5.64
6	5.92	6.46	6.60
7	6.56	7.42	7.56
8	7.20	8.38	8.52
9	7.84	9.34	9.48
10	8.48	10.30	10.44
11	9.12	11.26	11.40
Each add'l pound or fraction	0.64	0.96	0.96
M-bag rate per pound or fraction	0.64	0.72	0.79

E. International Surface Air Lift (ISAL)

(See section VII for country rate groups.)

Rates are per piece plus the per-pound rate for the each pound or fraction of a pound for the total weight in each rate group. M-bags are pound rates only.

Rate group	Piece rate	Regular per-pound rate		M-bag per-pound rate	
		Full service	Gateway/direct shipment	Full service	Gateway/direct shipment
1	$0.23	$2.10	$1.85	$2.12	$1.87
2	0.10	2.60	2.35	2.61	2.36
3	0.10	2.80	2.55	2.81	2.56
4	0.10	3.65	3.40	3.66	3.41

F. Air—Other Articles (Printed Matter, Matter for the Blind, and Small Packets)

1. Canada and Mexico—Air

Weight not over (oz.)	Canada	Mexico
0.5	$0.45	$0.46
1	0.51	0.60
1.5	0.62	0.70
2	0.70	0.80
3	0.93	1.00
4	1.11	1.20
5	1.29	1.40
6	1.47	1.60
7	1.65	1.80
8	1.83	2.00
9	2.01	2.20
10	2.19	2.40
11	2.37	2.60
12	2.55	2.80
16	3.27	3.60
24	4.07	5.20
32	4.87	6.80
2.5 lb	5.67	8.40
3.0 lb	6.47	10.00
3.5 lb	7.27	11.60
4.0 lb	8.07	13.20
Each add'l 0.5 pound or fraction	0.80	1.60
M-bag rate per pound or fraction	1.41	1.50

2. All Other Countries—Air (See section VII for country rate groups.)

Weight not over (oz.)	Western hemisphere (except Canada and Mexico) (WH)	Europe (EU)	Asia/Africa (AA)	Pacific Rim (PR)
1	$0.75	$0.90	$0.98	$1.00
2	1.07	1.32	1.48	1.55
3	1.39	1.74	1.98	2.10

Weight not over (oz.)	Western hemisphere (except Canada and Mexico) (WH)	Europe (EU)	Asia/Africa (AA)	Pacific Rim (PR)
4	1.71	2.16	2.48	2.65
6	2.35	3.00	3.48	3.75
8	2.99	3.84	4.48	4.85
10	3.63	4.68	5.48	5.95
12	4.27	5.52	6.48	7.05
14	4.91	6.36	7.48	8.15
16	5.55	7.20	8.48	9.25
18	5.85	7.80	9.28	10.15
20	6.15	8.40	10.08	11.05
22	6.45	9.00	10.88	11.95
24	6.75	9.60	11.68	12.85
26	7.05	10.20	12.48	13.75
28	7.35	10.80	13.28	14.65
30	7.65	11.40	14.08	15.55
32	7.95	12.00	14.88	16.45
2.5 lb	9.15	14.40	18.08	20.05
3.0 lb	10.35	16.80	21.28	23.65
3.5 lb	11.55	19.20	24.48	27.25
4.0 lb	12.75	21.60	27.68	30.85
Each additional 0.5 pound or fraction of 0.5 pound	1.20	2.40	3.20	3.60
M-bag rate per pound or fraction of a pound	2.47	4.41	6.27	6.35

V. Parcel Post

The weight limits for parcels vary by country and are usually 22, 33, or 44 pounds. Algeria, Canada, Denmark, Faroe Islands, Greenland, Ireland, Great Britain and Northern Ireland, Liechtenstein, and Switzerland have 66-pound weight limits. The rates over 44 pounds are given in anticipation of other countries increasing parcel weight limits.

A. Surface

Weight not over (lb.)	Canada	Bahamas, Bermuda, Caribbean Islands, Central America, Mexico, and St. Pierre & Miquelon	All other countries
2	$6.95	$7.50	$9.00
3	8.23	8.94	10.92
4	9.51	10.38	12.84
5	10.79	11.82	14.76
6	12.07	13.26	16.68
7	13.35	14.70	18.60
8	14.63	16.14	20.52
9	15.91	17.58	22.44
10	17.19	19.02	24.36
11	18.39	20.46	26.28
12	19.59	21.90	28.20
13	20.79	23.34	30.12
14	21.99	24.78	32.04
15	23.19	26.22	33.96
16	24.39	27.66	35.88
17	25.59	29.10	37.80
18	26.79	30.54	39.72
19	27.99	31.98	41.64
20	29.19	33.42	43.56
21	30.31	34.86	45.48
22	31.43	36.30	47.40
23	32.55	37.74	49.32
24	33.67	39.18	51.24
25	34.79	40.62	53.16
26	35.91	42.06	55.08
27	37.03	43.50	57.00
28	38.15	44.94	58.92
29	39.27	46.38	60.84
30	40.39	47.82	62.76
31	41.51	49.26	64.68
32	42.63	50.70	66.60
33	43.75	52.14	68.52
34	44.87	53.58	70.44

Weight not over (lb.)	Canada	Bahamas, Bermuda, Caribbean Islands, Central America, Mexico, and St. Pierre & Miquelon	All other countries
35	45.99	55.02	72.36
36	47.11	56.46	74.28
37	48.23	57.90	76.20
38	49.35	59.34	78.12
39	50.47	60.78	80.04
40	51.59	62.22	81.96
41	52.71	63.66	83.88
42	53.83	65.10	85.80
43	54.95	66.54	87.72
44	56.07	67.98	89.64
Each add'l pound or fraction	1.12	1.44	1.92

B. Air

Weight not over (lb)	Rate groups						
	Canada	Mexico	A	B	C	D	E
1		$6.50	$6.50	$8.25	$9.75	$11.20	$12.80
2	7.00	9.70	9.86	12.25	15.03	16.96	19.20
3	8.28	12.90	13.22	16.25	20.31	22.72	25.60
4	9.56	15.46	16.58	20.25	25.59	28.48	32.00
5	10.84	18.02	19.46	23.45	29.91	33.76	37.44
6	12.12	20.58	22.34	26.65	34.23	39.04	42.88
7	13.40	23.14	25.22	29.85	38.55	44.32	48.32
8	14.68	25.70	28.10	33.05	42.87	49.60	53.76
9	15.96	28.26	30.98	36.25	47.19	54.88	59.20
10	17.24	30.82	33.86	39.45	51.51	60.16	64.64
11	18.44	33.06	36.58	42.33	55.51	64.48	69.12
12	19.64	35.30	39.30	45.21	59.51	68.80	73.60
13	20.84	37.54	42.02	48.09	63.51	73.12	78.08
14	22.04	39.78	44.74	50.97	67.51	77.44	82.56
15	23.24	42.02	47.46	53.85	71.51	81.76	87.04
16	24.44	44.26	50.18	56.73	75.51	86.08	91.52
17	25.64	46.50	52.90	59.61	79.51	90.40	96.00
18	26.84	48.74	55.62	62.49	83.51	94.72	100.48
19	28.04	50.98	58.34	65.37	87.51	99.04	104.96
20	29.24	53.22	61.06	68.25	91.51	103.36	109.44
21	30.36	55.14	63.30	70.81	95.35	107.52	113.76
22	31.48	57.06	65.54	73.37	99.19	111.68	118.08
23	32.60	58.98	67.78	75.93	103.03	115.84	122.40
24	33.72	60.90	70.02	78.49	106.87	120.00	126.72
25	34.84	62.82	72.26	81.05	110.71	124.16	131.04
26	35.96	64.74	74.50	83.61	114.55	128.32	135.36
27	37.08	66.66	76.74	86.17	118.39	132.48	139.68
28	38.20	68.58	78.98	88.73	122.23	136.64	144.00
29	39.32	70.50	81.22	91.29	126.07	140.80	148.32
30	40.44	72.42	83.46	93.85	129.91	144.96	152.64
31	41.56	74.02	85.38	96.09	133.59	148.96	156.80
32	42.68	75.62	87.30	98.33	137.27	152.96	160.96
33	43.80	77.22	89.22	100.57	140.95	156.96	165.12
34	44.92	78.82	91.14	102.81	144.63	160.96	169.28
35	46.04	80.42	93.06	105.05	148.31	164.96	173.44
36	47.16	82.02	94.98	107.29	151.99	168.96	177.60
37	48.28	83.62	96.90	109.53	155.67	172.96	181.76
38	49.40	85.22	98.82	111.77	159.35	176.96	185.92
39	50.52	86.82	100.74	114.01	163.03	180.96	190.08
40	51.64	88.42	102.66	116.25	166.71	184.96	194.24
41	52.76	90.02	104.58	118.49	170.39	188.96	198.40
42	53.88	91.62	106.50	120.73	174.07	192.96	202.56
43	55.00	93.22	108.42	122.97	177.75	196.96	206.72
44	56.12	94.82	110.34	125.21	181.43	200.96	210.88
Each add'l pound or fraction	1.12	1.60	1.92	2.24	3.68	4.00	4.16

VI. Fees for Special Mail Services and Miscellaneous Charges

*=Fees changed effective January 1, 1995, based on changes in domestic rates and fees that took effect on that date.

A. Nonstandard Surcharge—Letters and regular printed matter weighing 1 ounce or less: $0.11*

B. Customs Clearance and Delivery Fee: $3.75

C. Inquiry Fee: $6.60*

D. Return Receipt: $1.10*

E. Registered Mail

1. Canada

Limit of indemnity	Fee
$100.00	*$4.95
500.00	*5.40
1,000.00	*5.85

2. All Other Countries

Limit of indemnity	Fee
$32.35	*$4.85

F. Insured Mail

Limit of indemnity	Fee	
	Canada	All other countries
$50	*$0.75	$1.60
100	*1.60	2.45
200	*2.50	3.35
300	*3.40	4.25
400	*4.30	5.15
500	*5.20	6.05
600	*6.10	6.95
700		7.40
800		7.85
900		8.30
1,000		8.75
1,100		9.20
1,200		9.65

G. Money Orders

The fees for international money orders issued on form MP 1 ($3.00) and money orders issued pursuant to an Authorization to Issue an International Money Order ($7.50) are not changed. The use of domestic money orders was abolished on March 1, 1995.

H. Special Handling

Weight (lb.)	Fee
Not over 10	*$5.40
Over 10	*7.50

I. Special Delivery

Class of mail	2 pounds or less	More than 2 pounds
Letters, Letter Packages, and Post/Postal Cards	*$9.95	*$10.35
Printed Matter, Matter for the Blind, and Small Packets	*$10.45	*$11.25

J. Restricted Delivery: $2.75*

K. Recorded Delivery: $1.10*

L. Certificates of Mailing

Type of mailing	Fee
Piece Mailing:	
Basic service (Form 3817)	*$0.55
Firm mailing book (Form 3877)	*0.20
Bulk Mailing:	
Up to 1,000 identical pieces	*$2.75
Each additional 1,000 pieces	*0.35
Duplicate copy	*$0.55

M. Return Charges

(For returned publishers' periodicals originally mailed to Canada by publishers or registered news agents, see IMM 781.5a.)

Weight not over (oz.)	Charge*
1	$0.32
2	0.55
3	0.78
4	1.01
5	1.24
6	1.47
7	1.70
8	1.93
9	2.16
10	2.39
11	2.62
12	2.90
13	2.90
14	2.95
15	2.95
16	2.95
Over 1 pound	Use domestic zone 8 fourth-class rates.

N. International Reply Coupons

Selling price for U.S.-issued coupons: $1.05. Redemption price for foreign-issued coupons: $0.60.

O. International Business Reply

Item	Fee
Envelope (not over 2 oz.)	$1.00
Card	0.60

P. Pickup Fee—$4.95*

VII. Country Table

Country	Air AO rate group	Express mail rate group	Air parcel post rate group	Int'l surface air lift (ISAL)	Int'l priority airmail (IPA)
Afghanistan	AA		D		2
Albania	EU		C	1	2
Algeria	AA	6	D	4	2
Ardorra	EU		B		2
Angola	AA	6	E	4	2
Anguila	WH		A		2
Antigua & Barbuda	WH		A		2
Argentina	WH	5	D	2	2
Armenia	EU	4	E		3
Aruba	WH	5	A	2	2
Ascension	AA				2
Australia	PR	3	D	3	1
Austria	EU	4	B	1	3
Azerbaijan	EU	4	E		3
Azores	EU	4	C		3
Bahamas	WH	5	A		2
Bahrain	AA	6	D	4	2

Country	Air AO rate group	Express mail rate group	Air parcel post rate group	Int'l surface air lift (ISAL)	Int'l priority airmail (IPA)
Bangladesh	AA	6	E	4	2
Barbados	WH	5	B	.....	2
Belarus	EU	4	E	.....	3
Belgium	EU	2	D	1	3
Belize	WH	5	A	2	2
Benin	AA	6	C	4	2
Bermuda	WH	5	A	.....	2
Bhutan	AA	[2]6	E	.....	2
Bolivia	WH	5	B	2	2
Bosnia—Herzegovina	EU	4	C	.....	3
Botswana	AA	6	E	.....	2
Brazil	WH	5	E	2	2
British Virgin Islands	WH	.....	A	.....	2
Brunei Darussalam	AA	6	D	.....	2
Bulgaria	EU	4	D	1	2
Burkina Faso	AA	6	D	4	2
Burma	AA	.....	D	.....	2
Burundi	AA	6	E	4	2
Cambodia (Kampuchea)	AA	6	D	.....	2
Cameroon	AA	6	D	4	2
Canada	(3)	(4)	(3)	.....	.....
Cape Verde	AA	6	D	.....	2
Cayman Islands	WH	5	A	.....	2
Central African Republic	AA	6	E	4	2
Chad	AA	6	D	.....	2
Chile	WH	5	D	2	2
China	PR	(5)	D	3	3
Colombia	WH	5	B	2	3
Comoros	AA	.....	E	.....	2
Congo	AA	6	D	4	2
Corsica	EU	2	E	.....	1
Costa Rica	WH	5	A	2	2
Cote d'Lvoire (Ivory Coast)	AA	6	D	4	2
Croatia	EU	4	C	.....	3
Cuba	WH	.....	D	2	2
Cyprus	AA	6	C	.....	2
Czech Republic	EU	4	C	1	3
Denmark	EU	4	C	1	1
Djibouti	AA	6	D	.....	2
Dominica	WH	.....	A	.....	2
Dominican Republic	WH	5	A	2	2
Ecuador	WH	5	C	2	2
Egypt	AA	6	D	4	2
El Salvador	WH	5	B	2	2
Equatorial Guinea	AA	6	D	.....	2
Eritrea	AA	6	D	.....	2
Estonia	EU	[6]4	E	.....	3
Ethiopia	AA	6	D	4	2
Falkland Islands	WH	.....	[7]	.....	2
Faroe Islands	EU	4	C	.....	1
Fiji	PR	[6]6	B	3	2
Finland	EU	4	D	1	1
France (incl. Monaco)	EU	[6]2	E	1	1
French Guiana	WH	5	C	2	2
French Polynesia	AA	.....	D	.....	2
Gabon	AA	6	D	4	2
Gambia	AA	.....	B	.....	2
Georgia, Republic of	EU	4	E	.....	3
Germany	EU	[6]2	B	1	1
Ghana	AA	6	D	4	2
Gibraltar	EU	.....	C	.....	2
Great Britain & Northern Ireland	EU	(5)	C	1	1
Greece	EU	4	C	1	3
Greenland	WH	.....	D	.....	1
Grenada	WH	5	A	.....	2
Guadeloupe	WH	5	A	.....	2
Guatemala	AA	5	A	2	2
Guinea	AA	6	B	.....	2
Guinea-Bissau	WH	6	B	.....	2
Guyana	WH	5	B	2	2
Haiti	WH	.....	A	2	2
Honduras	WH	5	B	2	2

Country	Air AO rate group	Express mail rate group	Air parcel post rate group	Int'l surface air lift (ISAL)	Int'l priority airmail (IPA)
Hong Kong	PR	3	C	3	3
Hungary	EU	4	C	1	3
Iceland	EU	4	C	1	1
India	AA	6	D	4	3
Indonesia [12]	PR	6	E	3	2
Iran	AA	.....	D	4	3
Iraq [8]	AA	6	D[9]	[10]4	2
Ireland	EU	2	C	1	1
Israel	AA	6	C	4	3
Italy	EU	4	C	1	1
Jamaica	WH	5	A	2	2
Japan	PR	(5)	E	3	1
Jordan	AA	6	C	4	2
Kazakhstan	EU	4	E	.....	3
Kenya	AA	6	D	4	2
Kiribati	AA	.....	B	.....	2
Korea, Dem. People's Rep. (North)	PR	.....	.....	.....	2
Korea, Republic of (South)	PR	3	C	3	3
Kuwait	AA	6	C	4	2
Kyrgyzstan	EU	4	E	.....	3
Laos	PR	6	E	.....	2
Latvia	EU	4	E	.....	3
Lebanon	AA	.....	C	4	2
Lesotho	AA	6	E	.....	2
Liberia	AA	6	C	[10]4	2
Libya	AA	.....	D	[10]4	2
Liechtenstein	EU	2	B	1	2
Lithuania	EU	4	E	.....	3
Luxembourg	EU	4	B	1	1
Macao	PR	6	C	.....	2
Macedonia, Republic of	EU	4	C	.....	3
Madagascar	AA	6	E	4	2
Madeira Islands	EU	4	B	.....	3
Malawi	AA	6	D	.....	2
Malaysia	PR	6	D	3	3
Maldives	AA	6	D	.....	2
Mali	AA	6	C	4	2
Malta	EU	4	C	.....	2
Martinique	WH	5	A	.....	2
Mauritania	AA	6	D	4	2
Mauritius	AA	6	E	4	2
Mexico	(11)	(5)	A	2	3
Moldova	EU	4	E	.....	3
Mongolia	AA	.....	.....	.....	2
Montserrat	WH	.....	A	.....	2
Morocco	AA	6	C	4	2
Mozambique	AA	6	E	4	2
Namibia	AA	6	D	.....	3
Nauru	AA	6	C	.....	2
Nepal	AA	.....	D	.....	2
Netherlands	EU	[6]2	C	1	1
Netherlands Antilles	WH	5	A	2	2
New Caledonia	AA	6	D	.....	1
New Zealand	PR	6	D	3	3
Nicaragua	WH	5	B	2	2
Niger	AA	6	D	4	2
Nigeria	AA	6	C	4	2
Norway	EU	4	D	1	1
Oman	AA	6	D	4	2
Pakistan	AA	6	D	4	2
Panama	WH	5	A	2	2
Papua New Guinea [8]	PR	6	D	3	2
Paraguay	WH	5	D	2	2
Peru	WH	5	B	2	2
Philippines	PR	6	D	3	3
Pitcairn Island	AA	.....	B	.....	2
Poland	EU	4	B	1	3
Portugal	EU	4	C	1	3
Qatar	AA	6	C	4	2
Reunion	AA	.....	E	4	2
Romania	EU	4	C	1	2
Russia	EU	4	E	1	3

Country	Air AO rate group	Express mail rate group	Air parcel post rate group	Int'l surface air lift (ISAL)	Int'l priority airmail (IPA)
Rwanda	AA	6	D	[10]4	2
Saint Christopher (St. Kitts) & Nevis	WH	.....	A	.....	2
Saint Helena	AA	.....	C	.....	2
Saint Lucia	WH	5	A	.....	2
Saint Pierre & Miquelon	WH	.....	A	.....	2
Saint Vincent & the Grenadines	WH	5	A	.....	2
San Marino	EU	.....	C	1	2
Sao Tome & Principe	AA	.....	D	.....	2
Saudi Arabia	AA	6	D	4	3
Senegal	AA	6	D	4	2
Serbia-Montenegro (Yugoslavia) [8]	EU	4	C[9]	.....	3
Seychelles	AA	6	D	.....	2
Sierra Leone	AA	6	D	4	2
Singapore	PR	3	D	3	3
Slovak Republic	EU	4	C	.....	2
Slovenia	EU	4	C	.....	3
Solomon Islands	AA	6	C	.....	2
Somalia [1]	AA	6	D	4	2
South Africa	AA	6	D	4	3
Spain	EU	4	C	1	2
Sri Lanka	AA	6	D	4	2
Sudan	AA	6	D	4	2
Suriname	WH	.....	B	2	2
Swaziland	AA	6	D	.....	2
Sweden	EU	[6] 4	D	1	1
Switzerland	EU	2	B	1	3
Syria	AA	6	C	4	2
Taiwan	PR	3	C	3	3
Tajikistan	EU	4	E	.....	3
Tanzania	AA	6	E	4	2
Thailand	PR	3	D	3	3
Togo	AA	6	D	4	2
Tonga	AA	.....	B	.....	2
Trinidad & Tobago	WH	5	B	2	2
Tristan da Cunha	AA	.....	E	.....	2
Tunisia	AA	6	C	4	2
Turkey	EU	4	C	1	2
Turkmenistan	EU	4	E	.....	3
Turks & Caicos Islands	WH	.....	A	.....	2
Tuvalu	AA	.....	B	.....	2
Uganda	AA	6	D	4	2
Ukraine	EU	4	E	.....	3
United Arab Emirates	AA	6	D	4	2
Uruguay	WH	5	B	2	2
Uzbekistan	EU	.....	E	.....	3
Vanuatu	AA	[6] 6	B	.....	2
Vatican City	EU	.....	C	.....	2
Venezuela	WH	5	B	2	2
Vietnam	PR	6	E	.....	2
Wallis & Futuna Islands	AA	.....	D	.....	1
Western Samoa	AA	6	B	.....	2
Yemen	AA	6	E	4	2
Zaire	AA	6	E	4	2
Zambia	AA	6	E	4	2
Zimbabwe	AA	6	E	4	2

[1] All mail service suspended.
[2] On Demand Service not available.
[3] See separate rates for Canada.
[4] See country-specific rate. Custom Designed Service not available.
[5] See country-specific rate.
[6] Custom Designed Service not available.
[7] Surface parcel post service available.
[8] Restrictions apply. See IMM.
[9] Parcel post service suspended.
[10] ISAL service suspended.
[11] See separate rates for Mexico.
[12] Mail service to East Timor is limited. See IMM.

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federal register

Friday
June 9, 1995

Part V

Postal Service

39 CFR Parts 111 and 501
Manufacture, Distribution, and Use of Postage Meters; Final Rule

POSTAL SERVICE

39 CFR Parts 111 and 501

Manufacture, Distribution, and Use of Postage Meters

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule clarifies and amends the standards in the Domestic Mail Manual (DMM) and the Domestic Mail Manual Transition Book (DMMT) regarding the manufacture, distribution, and use of postage meters.

This final rule adopts most of the proposed changes to the standards governing the manufacture, distribution, and use of postage meters as published by the Postal Service in the **Federal Register** on January 31, 1995 (60 FR 5964–5995). The final rule also allows the Postal Service to tighten its controls over meters and to protect postal revenue more efficiently. The changes are designed to increase the information available to the Postal Service for effective management and control of the meter program. In addition, security controls are being supplemented to ensure that correct postage is paid and that postage meter misuse is minimized.

EFFECTIVE DATE: This rule is effective June 30, 1995, except for §§ 501.22(b) and 501.22(e)(2), which are effective January 2, 1996.

January 2, 1996, is the effective date for the electronic transmission of license applications and centralized application processing. (In this document, see DMM P030.2.1, Procedures and DMM P030.2.3, Refusal to Issue Meter License.

January 2, 1996, is the effective date for the use of revised PS Form 3601–A, Application for a License to Lease and Use Postage Meters, and PS Form 3601–C, Postage Meter Installation, Withdrawal, or Replacement. (In this document, see Exhibit B, Exhibit C.

June 30, 1995, is the effective date for the use of the new security seals; however, implementation will depend on the availability from the Postal Service's supplier.

(In this document, see 39 CFR 501.20 Keys and setting equipment and 39 CFR 501.25(b)(5) Inspection of meters in use)

FOR FURTHER INFORMATION CONTACT: Nicholas S. Stankosky, (202) 268–5311.

SUPPLEMENTARY INFORMATION: On January 31, 1995, the Postal Service published a notice of proposed rulemaking for public comment in the **Federal Register** (60 FR 5964–5995) to revise existing standards in the Domestic Mail Manual (DMM) and Domestic Mail Manual Transition Book (DMMT) regarding the manufacture, distribution, and use of postage meters. Moreover, this proposed rule would introduce new regulations in title 39, Code of Federal Regulations (CFR), to clarify postal standards for the manufacture and distribution of postage meters.

The proposed rule detailed efforts undertaken by the Postal Service to adopt new standards for postage meters that satisfy and protect the interests of the users, manufacturers, and the Postal Service. These standards are designed to improve meter security through new rules on design deficiencies, manufacturers' inspections, refunds, meter licensing, missing meters, shipment of meters, security seals, meter labeling, and meter testing. The new rules also establish administrative controls and make adjustments to the Computerized Remote Postage Meter Resetting System (CMRS).

The Postal Service requested that comments on the proposed rules be submitted by March 17, 1995. Twelve written comments were received from interested companies and individuals. Having given thorough consideration to these comments, the Postal Service now adopts its final rule.

The Postal Service's evaluation of the comments follows. Because the regulations fall into four categories (meter security, administrative controls, other issues, and Computerized Remote Postage Meter Resetting System), the comments are organized into four sections in the comment section under these four categories. In addition, a fifth section in this comment section addresses general comments separately. The sixth section discusses specific revisions to the Domestic Mail Manual, Domestic Mail Manual Transition Book, and title 39, Code of Federal Regulations, part 501, followed by tables summarizing the revisions.

The revised regulations are published herein in their entirety. Applicable modifications to the proposed regulations, based on the comments received, are referenced in each section and summarized at the end of the comment section. Otherwise, the rules are adopted as proposed. The numbering scheme shown in the section titled Discussion of Comments reflects the scheme published in the **Federal Register** for the proposed rule (60 FR 5964–5995).

Discussion of Comments

I. Meter Security

Meter security pertains to integrity weakness and design deficiencies; meter manufacturers— inspections; custody of suspect meters; missing meters; security seals; and meter labeling. Prompt notification of all potential security weaknesses identified in a particular meter or class of meters is necessary to protect postal revenue. The Postal Service depends on manufacturers to identify and notify the Postal Service of any potential security weakness and to maintain proper distribution controls. The Postal Service therefore adopts with this final rule new requirements for reporting by manufacturers. The Postal Service will impose administrative sanctions against manufacturers that do not comply with these reporting and distribution requirements.

A. Integrity Weakness and Design Deficiencies

One commenter expressed concern about the meter security regulations proposed in 39 CFR 501.13 and 501.14. The commenter stated that the Postal Service is placing undue emphasis on meter design for revenue security.

The Postal Service notes that postage meters must protect against tampering and misuse. The Postal Service must emphasize the importance of meter security to reduce the threat of revenue losses to the greatest extent possible.

This commenter also believed that the proposed regulations fail to address adequately the importance of mailer profile and Postal Service in-plant verification as critical components of a secure postal payment system.

The commenter's point is well-taken. The new rules do take account of the importance of mailer profiles. For example, inspection frequencies in 39 CFR 501.25 are based on the characteristics of particular meters and on the mailer's profile. Additionally, in-plant verification of the makeup of metered mail is done during the acceptance process, and metered indicia are sampled at destinating post offices.

The commenter also stated that the proposed regulations are more a predicate for imposing penalties on meter manufacturers than an efficient means to improve security and that the Meter Accounting and Tracking System (MATS) is being developed with no assurance of operational efficiency or cost-effectiveness.

The Postal Service does not accept the commenter's view that the rules are a predicate for imposing penalties or that penalties are contemplated. Rather, these rules place more responsibility for security and revenue protection on those who manufacture and distribute postage meters. The new sanctions are remedial in nature, and, ideally, the Postal Service should never have to impose administrative sanctions. MATS does not pertain to the proposed rulemaking in the **Federal Register** notice published on January 31, 1995; therefore, it is not appropriate for the Postal Service to address MATS in this notice.

One commenter stated that one postal official had previously expressed that proposed 39 CFR 501.13, which establishes the manufacturer's duty to report integrity weaknesses and design deficiencies, would apply only to security defects or weaknesses of design in a particular meter or model of postage meter. The commenter further suggested that the rule should not apply to information or knowledge received by a manufacturer relating to postage-meter tampering by a customer or to other potential security breaches unrelated to the design and operation of a postage meter.

The requirements for reporting security weaknesses and methods of meter tampering are directly related to the manipulation of the meter made possible because of design deficiencies. The manipulation of a meter in and of itself is evidence of a security weakness of the manufacturer's product. It is the manufacturer's obligation to report those incidents in which misuse occurs because someone can take advantage of such deficiencies. Additionally, the collection of this information will increase manufacturer's awareness of a problem with meter performance. The number of reported instances will help in determining the extent or seriousness of the situation.

One commenter noted that the standards in 39 CFR 501.13 do not provide sufficient clarity and due process regarding what needs to be reported.

The standards in 39 CFR 501.13 define the information that must be provided in general terms. If there is any doubt about information that must be reported, the Postal Service invites interested parties to submit requests for advisory opinions on an ad hoc basis.

The same commenter also stated that the standards in 39 CFR 501.14 and 501.23 lack sufficient clarity and ascertainable standards for imposing administrative sanctions.

The Postal Service sees no reason for including additional standards. The sanctions in these sections merely allocate the risk of loss entirely to the manufacturer only when the manufacturer fails to execute certain prescribed tasks. Once facts underlying the violation and costs and losses are proved, the manufacturer is held liable for costs and losses. Except as provided in these sections, no other factors are considered, and thus no additional standards need be prescribed.

The same commenter also stated that 39 CFR 501.14 is arbitrary because it does not relate the sanction to losses actually caused by an alleged failure to report. The commenter suggested that the rule measure losses from the date when the defect should have been reported rather than the date of discovery.

The Postal Service does not agree. Sanctions are measured from the date when the manufacturer knows or should know information giving rise to the duty to report; hence, the measurement of damages and of duty to report are rationally related.

The commenter also stated that the proposed regulations would promote manufacturers' filing of numerous inconclusive reports to avoid liability. According to the commenter, such filings would place unnecessary strain on limited Postal Service resources and increase manufacturers' administrative costs. The commenter recommended that the Postal Service require manufacturers to report only those design deficiencies that, following testing, cause the manufacturer to conclude that a security threat exists.

The proposed regulations clearly articulate the manufacturer requirements for "preliminary" and "final" reporting. These requirements cover a substantial list of situations and occurrences relating to possible meter misuse. To limit reporting as the commenter suggested would undermine the ability of the manufacturers and the Postal Service to maintain control of the program. Although there might be some additional cost incurred by both parties, the risk of revenue losses would increase if the suggestion were adopted.

One commenter stated that the term "employees" should be deleted from the definition of manufacturer under 39 CFR 501.13(a). The definition of employee should be limited to the officers and those management employees of the manufacturer who have meter security responsibilities.

The Postal Service expects that each individual employed by a meter manufacturer is already charged with the responsibility to report meter security problems to the manufacturer's headquarters unit. To limit the definition as suggested would reduce the possible number of available sources of pertinent information. Field employees are important sources of information because they see meters in a live environment.

The commenter also suggested that the term "findings" should be deleted from 39 CFR 501.13(b)(1). Because findings must be based on test results, the commenter believed that the term "findings" is unnecessary and will result in the filing of superfluous reports and in contributing to confusion about when the meter manufacturer's obligation to report arises.

The Postal Service does not accept the commenter's narrow reading of the term "findings," which refers to the discovery, awareness, determination, or perception of information relating to all meter activities. The term is not limited to those situations surrounding meter-testing results. Findings in the field are just as important as testing results because they enable on-site evaluations of meter performance and mailer practices.

One commenter believed that manufacturers should be required to file reports on security issues only when they concern common security design features present in meters approved for use in the United States. The commenter suggested that the scope of the rule be narrowed so that the manufacturer need only report information about meter security when a meter model in use in foreign jurisdictions is subsequently submitted to the Postal Service for approval.

The Postal Service does not agree; it must be apprised of problems relating to all postage meters of the authorized manufacturers, regardless of where the meters have been approved for distribution. Because all meters share many of the same components, a problem discovered in a foreign location may provide useful information about a meter approved for use in the United States.

B. Meter Manufacturers' Inspections

One commenter expressed concern about the meter security regulations proposed in 39 CFR 501.5 and 501.23. The commenter believed that high-volume and high-risk mailers are not clearly identified for increased meter inspections. The commenter recommended that the Postal Service identify these mailers by the Standard Industrial Codes for third-party mailers.

A high-volume mailer is defined as one who has annual metered postage exceeding $12,000. Part B "Business Profile" of the license application (PS Form 3601–A) asks the applicant to report his or her annual estimated metered postage. The report is incremented to show usage exceeding $12,000. This information can be used initially to identify high-volume mailers. Manufacturers may use the Standard Industrial Codes for third-party mailers, other codes as appropriate, and their own mailer

records for the identification of high-volume and high-risk mailers.

C. Custody of Suspect Meters

No comments were received.

D. Missing Meters

No comments were received.

E. Shipment of Meters

Four commenters expressed concern about the meter security regulations proposed in 39 CFR 501.22 and 501.23 and in DMM P030.2.9. One commenter believed that only meters destined for customers should be shipped by registered mail. Another commenter stated that the criteria for exceptions and implementation schedules for shipping meters by registered mail must be developed. This commenter was concerned with the lengthy process for tracing registered mail. A third commenter stated that there is no justification for the mandated use of registered mail, and another commenter stated that the requirement to use registered mail is costly and unjustified.

All postage meters are capable of printing postage indicia for services to be rendered by the Postal Service. Meters must accordingly be kept out of the hands of unauthorized individuals who might misuse the meter. Therefore, the rule applies to all meter shipments regardless of destination to ensure security and safety. The regulation permits the manufacturers to use alternative delivery carriers that offer the same level of security as registered mail. However, the requirement for use of registered mail is retained in the final rule.

F. Security Seals

Two commenters expressed concern about the meter security regulations proposed in 39 CFR 501.20. One of these commenters had no objection to the proposed use of the seals but expressed concern about the added cost to manufacturers. The other commenter believed that the new seal was incompatible with one of its meter products.

Because the manufacturers lease meters and the Postal Service does not collect fees from the manufacturers or licensees, the cost of the new seals should be borne by the manufacturers as a cost of doing business. The new seals are being slightly modified in size to accommodate all postage meters.

G. Meter Labeling

One commenter expressed concern about the meter security regulations proposed in 39 CFR 501.22(r) and 501.23 and in DMM P030.2.4(g). The commenter stated that the Postal Service has not allowed sufficient time to complete meter labeling.

The manufacturers were originally notified of the labeling requirements in August 1993 and have been given a reasonable time in which to comply. Manufacturers are expected to have meter labeling completed by the effective date of these regulations.

H. Postage Meter Testing

No comments were received.

II. Administrative Controls

The administrative controls include postage meter refunds; use of PS Form 3602–A; meter licensing procedures; performance regulations; suspension and revocation; and installations and withdrawals. The Postal Service is establishing new procedures to enhance control over electronic meter register refunds and to expedite the refund process.

A. Postage Meter Refunds

No comments were received.

B. Use of PS Form 3602–A

Five commenters expressed concern about the standard proposed in DMM P030.2.4(b) requiring that meter users maintain a daily record of meter register readings (PS Form 3602–A). The commenters did not understand the need for this standard and believed that it would impose a hardship on small businesses. Another commenter believed that a reasonable transition period be allowed to supply the form to mailers and instruct them on its use.

These comments have merit; however, the form is a valuable document in substantiating the amount of refunds to be issued. The use of PS Form 3602–A will continue to be voluntary. In the event that a meter malfunctions and a customer has not maintained the PS 3602–A or its equivalent, the customer may not be eligible for a refund of the amount claimed. Current regulations are modified to reflect the Postal Service recommendation that the form be maintained by meter users. DMM P030.2.4(b) is revised accordingly in the final rule.

C. Meter Licensing Procedures

Three commenters expressed concern about the procedures proposed in 39 CFR 501.22(b) and 501.22(e) and in DMM P030.1.9, P030.2.2, P030.2.3, and P030.2.4. One commenter stated that customer-requested information on meter applications should be limited because of mailer privacy and the placement of an undue administrative burden on the applicant and the Postal Service system.

The mailer privacy issue is being addressed in proposed modifications to the Postal Service Administrative Support Manual and will be published in a separate **Federal Register** notice.

The commenter also recommended that the Postal Service be required to issue a decision on an appeal within 10 days after the appeal is filed with the Postal Service.

In some cases, time is needed to conduct additional research. Consistent with this objective, the commenter's recommendation to limit the decision process for appeals to 10 days is not reasonable. It is the intention of the Postal Service to act as quickly as possible on appeals without sacrificing the fact-finding effort required to render a fair decision.

One commenter suggested that the format for the meter license be reevaluated to make it less intimidating.

The new license application was reviewed by meter users in six customer focus groups before the issuance of the proposed changes. Invariably, the meter users acknowledged the reasonableness of the requirements for additional applicant information and stated that the proposed application would not be burdensome to complete. However, the statement pertaining to the penalties for submission of a false, fictitious, or fraudulent statement is deleted.

Another commenter believed that clarification is required on the options for submitting licenses.

The two options for submission of a meter license application are clearly stated in DMM P030.2.1, which pertains to meter license procedures.

This same commenter believed that implementation of new licensing procedures is inappropriate at this time because requirement and implementation issues are still undefined.

As stated above, the effective date for the electronic transmission of license applications, use of the revised PS Form 3601–A, and centralized application processing is January 2, 1996. Before this implementation, the Centralized Meter Licensing System (CMLS) requirements will be published in the **Federal Register** for public review and comment.

One commenter stated that the new licensing procedures constitute a form of worksharing that should result in some form of compensation to the meter manufacturers.

CMLS is essential for the effective control and management of applications and licenses. The Postal Service does not agree that this cooperative effort with the manufacturers, which will result in serving customers better, constitutes a form of worksharing for which compensation should be made. Manufacturers are engaged in a profit-making enterprise and must incur some costs as the price of doing business. The Postal Service, on the other hand, collects no fees for processing meter applications from either manufacturers or licensees.

One of the same commenters noted that MATS was not addressed in the proposed regulations.

MATS does not pertain to these regulations because it is a separate system being developed and implemented by another department within the Postal Service.

D. Performance Regulations

No comments were received.

E. Suspension and Revocation

One commenter stated that the criteria on which the Postal Service may suspend or revoke a meter manufacturer's authorization under 39 CFR 501.5 or approval of a meter under 39 CFR 501.12 fail to provide clear and ascertainable standards to guide meter manufacturer conduct or Postal Service decisionmaking. In the commenter's view, 39 CFR 501.5 authorizes the Postal Service to revoke a meter manufacturer's authorization based on potentially minor violations and in a manner not readily amenable to judicial review. The commenter suggested that suspension under 39 CFR 501.5 be imposed only when the Postal Service determines that a manufacturer has committed serious or persistent violations.

With respect to 39 CFR 501.5, the Postal Service refers the commenter to paragraph (b) of that section, which clearly sets forth the criteria in forming a decision to suspend or revoke. One of these factors is the "nature and circumstances of the violation." This factor enables the Postal Service to consider the seriousness of the violation in determining whether to suspend or revoke a manufacturer's authorization. Thus, if the violation is not serious, the sanction imposed, if any, can be narrowly tailored to fit the circumstances.

With respect to 39 CFR 501.12, the Postal Service refers the commenter to paragraph (a) of that section, which establishes the criteria to be evaluated when determining to suspend approval to manufacture or distribute a meter or class of meters. The rule clearly provides that decisionmaking will be based on the potential risk to postal revenue. Thus, the rule contemplates that when the risk to postal revenue is high in terms of amount and probability of loss, a suspension is more likely; when the amount at stake and probability of loss are low, suspension is less likely.

One commenter suggested that the standard of proof required by the Postal Service to suspend or revoke a meter manufacturer's authorization be raised to "clear and convincing evidence" instead of "preponderance of evidence."

The Postal Service does not subscribe to the commenter's view. First, the Postal Reorganization Act (Pub. L. No. 91–375, 84 Stat. 719 (1970)) is silent on regulation of the meter industry, and there is no suggestion in the legislative history that a standard of proof higher than a preponderance of the evidence was ever contemplated in this context, much less intended. Nor is the nature of the proceeding and parties affected similar to those in which courts have imposed a higher standard. The U.S. Supreme Court has generally required proof by clear and convincing evidence where "particularly important individual interests or rights are at stake," such as the potential deprivation of individual liberty, citizenship, or parental rights. *Herman & MacLean* v. *Huddleston*, 459 U.S. 375, 389 (1983). Such compelling individual interests are not present here.

Second, adoption of the commenter's proposal would, in essence, express a preference for the manufacturers' interests. The balance of interests here, however, warrants use of the preponderance standard. Postal Service revenue is placed at risk when manufacturers fail to execute their responsibilities in accordance with postal regulations. As experience demonstrates, this risk is not insubstantial. Ratepayers ultimately bear the cost of covering these losses. The interests of the manufacturers are thus outweighed by the interests of the Postal Service and ratepayers in protecting postal revenue.

One commenter stated that the Postal Service does not have the statutory authority to impose punitive sanctions.

The Postal Service does not accept the commenter's suggestion that express statutory authority is a prerequisite to the Postal Service's imposition of administrative sanctions in this context. In enacting the Postal Reorganization Act, Congress delegated broad rulemaking authority to the Postal Service to manage its operations. Largely absent from the Postal Reorganization Act are provisions establishing detailed postage payment programs. Prior to the enactment of the Postal Reorganization Act, Congress established that postage could be paid by meter. This statutory framework was eliminated by the Postal Reorganization Act, leaving no specific statutory authority for any meter program. Rather than addressing the specific methods of payment of postage available to ratepayers, the Postal Reorganization Act merely provides that the Postal Service has the power "to prescribe, in accordance with [title 39], the amount of postage and the manner in which it is to be paid" and "to provide such other evidences of payment of postage and fees as may be necessary or desirable." 39 U.S.C. 404(a)(2), (4). Accordingly, the Postal Reorganization Act evinces the intent of Congress to divest itself of the details of postage payment systems, including meters, and to delegate to the Postal Service the responsibility for establishing and maintaining programs for postage payment systems and their attending regulatory schemes. It is therefore implicit from the text of the Postal Reorganization Act that Congress delegated to the Postal Service authority to promulgate a regulatory scheme for the postage meter program without need for express statutory authority establishing the postage meter program.

Notwithstanding, in the view of the Postal Service the proposed administrative sanctions are not penalties because only make-whole relief is contemplated. As such, no express statutory authority is required. *See Gold Kist* v. *U.S. Dep't of Agriculture*, 741 F.2d 344, 347–48 (11th Cir. 1984), *amended in part*, 751 F.2d 115 (11th Cir. 1985); *Frame* v. *United States*, 885 F.2d 1119, 1142 (3d Cir. 1989), *cert. denied*, 493 U.S. 1094 (1990). Both the *Frame and Gold Kist* courts generally held that agencies have the power to impose administrative sanctions that are not penalties if the sanctions are remedial and reasonably related to the purposes of the enabling statutes. If the purpose of an administrative sanction is "not to stigmatize or punish wrongdoers," the sanction is remedial rather than punitive. *Frame*, 885 F.2d at 1143 (citing *West* v. *Bergland*, 611 F.2d 710, 722 n.14 (8th Cir. 1979), *cert. denied*, 449 U.S. 821 (1990)).

The proposed regulations at issue here are strictly remedial. Their purpose is not to punish or stigmatize manufacturers; rather, they serve to make the Postal Service whole for its losses attributable to manufacturers' products or conduct. Indeed, the Postal Service does not seek to recover any amount exceeding its costs or losses, net of any amount collected by meter users. The proposed sanctions merely permit the Postal Service to collect a fair

approximation of its costs and revenue losses and thus establish a method for allocating the risk of loss of Postal Service revenue.

One commenter stated that the temporary suspension under 39 CFR 501.5(c) and 501.12(b) should not be permitted to be extended more than 120 days for further investigation in the absence of clearly articulated good cause or the manufacturer's consent.

In response, the Postal Service notes that a good cause showing is implicit in the rule. Under 39 CFR 501(c)(4), the Postal Service must decide the disposition of a suspension at the end of a 90-day period. At such time, the Postal Service must withdraw the suspension, make a determination to revoke authorization, or extend the suspension either to allow more time for investigation or to permit the manufacturer to correct the problem. Thus, a suspension may extend beyond 90 days only if the Postal Service demonstrates good cause for its continuation, e.g., additional time is needed to investigate or the manufacturer needs additional time to correct the problem.

The commenter also suggested that the Postal Service lift a suspension under 39 CFR 501.5(c)(3) immediately upon the implementation of a solution to the problem that originally gave rise to the suspension.

The language in 39 CFR 501.5(c)(3) implicitly incorporates the standard in 39 CFR 501.5(c)(4)(iii) that a suspension is withdrawn before the close of the 90-day period upon the manufacturer's identification and implementation of a satisfactory solution. The final rule is revised to clarify this cross-reference. The parallel provision in 39 CFR 501.12(b)(3) is also revised.

One commenter stated that 39 CFR 501.5, 501.12, 501.14, and 501.23 do not expressly provide for separation of function in the adjudication of alleged violations. The commenter also proposed that the rules clarify that such appeals will be decided by an officer who is independent of the initial decisionmaking.

The Postal Service recognizes the importance of maintaining the integrity of the decisionmaking process. To maximize resource flexibility, however, the Postal Service has determined to address this concern on an ad hoc basis. In cases in which the decisionmaker has participated in the investigation, the adjudication will be handled by an alternative decisionmaker.

F. Installations and Withdrawals

One commenter believed that the meter installation/withdrawal report (PS Form 3601–C) should be redesigned or not implemented until the Meter Accounting and Tracking System is on-line. Another commenter recommended that the format and details required on PS Form 3601–C be tested in the field.

The Postal Service will require the use of PS Form 3601–C effective January 2, 1996, when the Centralized Meter Licensing System is implemented.

III. Other Issues

Other issues concern the taking of a meter outside the United States; licensee reporting of faulty or defective meters; quarterly meter reports; Postal Service examination of meters; and training media.

A. Taking a Meter Outside the United States

One commenter noted that the regulations for taking a meter outside the United States do not address the exceptions for government agencies and military branches.

DMM P030.2.2 provides that meters may be taken outside the United States, its territories, and its possessions with the express consent of the Postal Service. This provision applies to government agencies and military branches.

B. Licensee Reporting of Faulty or Defective Meters

No comments were received about this section.

C. Quarterly Meter Reports

No comments were received about this section.

D. Postal Service Examination of Meters

Three commenters stated that the requirements for the examination of meters that have not been reset within 3 months are excessive and inconvenient to customers. It is their opinion that a 6-month cycle is more appropriate. In addition, one commenter suggested that for CMRS meters, periodic calls be made to the manufacturers' data center instead of meter inspections.

The Postal Service does not agree that the requirement for the examination of those meters not reset within 3 months is excessive or especially burdensome to licensees. To extend the period would greatly increase the period of time before the Postal Service might identify tampering or misuse. Mailers who participated in the focus group discussion on this subject expressed no concerns on this requirement.

E. Training Media

One commenter expressed a concern about the costs associated with the development and distribution of training media for resetting and inspection and suggested that the manufacturers provide a master tape to the Postal Service for reproduction as needed.

The Postal Service is working in a cooperative effort with the manufacturers to develop training material. Once a master copy of the training materials is produced that covers all the meter families for all manufacturers, the Postal Service will reproduce and distribute copies to post offices. The expense borne by the manufacturers should be minimal.

IV. Computerized Remote Postage Meter Resetting System

The Postal Service is changing the cash management arrangements of the Computerized Remote Postage Meter Resetting System (CMRS) to establish more direct control of licensee payments and balances and to provide improved service for CMRS licensees.

One commenter stated that the proposed rule would improve the efficiency and security of Postal Service funds handling over the current methods. Also, the commenter believed that Postal Service investment results would improve because of earlier availability of funds that could be invested. This same commenter also requested that the Postal Service change the wording in the last sentence in the last paragraph under CMRS to read as follows: "The funds in the Postal Service fund at Treasury would be backed in full faith and credit by the U.S. Treasury, whereas that is not the case with investments by a commercial bank trustee."

The Postal Service agrees with the suggestion that "funds in the Postal Service fund would be backed in full faith and credit by U.S. Treasury securities, whereas that is not always the case with investments by a commercial bank trustee." The change is incorporated into 39 CFR 501.28(b)(1).

Another commenter supported the Postal Service initiative for CMRS and believed that customers would prefer this approach to the alternatives currently available. The commenter also stated that this initiative should promote the wider use of CMRS.

The Postal Service agrees that customers will prefer modernized cash management procedures that make customer funds available as soon as possible, and it believes that the initiative will promote the wider use of CMRS.

A third commenter strongly disagreed that approved changes to CMRS are necessary or in the best interests of mailers. This same commenter stated that it is unfair and unjustified for the Postal Service to restructure the system in a way that increases the responsibility of the manufacturers and simultaneously deprives them of compensation.

After careful consideration, the Postal Service respectfully disagrees with the assertions that the changes are unnecessary and contrary to mailers' best interests. The Postal Service believes strongly that current cash management and payment methods must be modernized, and it has therefore agreed to pay for envelopes, deposit tickets, and multiple lockbox bank locations. The Postal Service believes that the manufacturers should promote payment methods for customers that encourage customers to reduce or eliminate funds held in trust account deposits. Finally, the Postal Service believes that the responsibilities of manufacturers will remain the same while the Postal Service's responsibilities will increase.

A fourth commenter expressed concern about compensation to manufacturers and about procedures to advance funds to customers. The same commenter was concerned about customer price increases resulting from new CMRS procedures. This commenter found representatives of the Postal Service Corporate Treasury and the Finance Department to be responsive to the issues raised by bringing a new form of funds management to CMRS. The commenter also believed that the commenter's company should not be forced to suffer a financial penalty if its competitors are allowed an excessive amount of time to convert to the new system.

The Postal Service disagrees with the use of the term "compensation." The Postal Service has asked each manufacturer to provide details about expenses associated with CMRS and has indicated that it will review the services provided by the manufacturers in collecting and accounting for Postal Service revenue. The Postal Service also has repeatedly expressed its intention to have all manufacturers operating under the new regulations so that no manufacturer is at an advantage or disadvantage.

A fifth commenter objected to the proposed rulemaking on CMRS and stated that the current relationship cannot be unilaterally amended by regulation.

Before the publication of the proposed regulations, the Postal Service thoroughly reviewed and considered its legal authority and determined that it had the requisite authority to issue the proposed regulations. Upon receipt and review of the comments, the Postal Service reaffirmed its earlier conclusion.

The commenter stated that the proposed regulations violate a statement of understanding between the commenter and the Postal Service and that the Postal Service is recommending unilateral changes to the understanding to take over financial control of CMRS. This proposed takeover of a successful private sector-operated enterprise is contrary to the government trend of outsourcing business functions.

The Postal Service does not believe that the proposed regulations violate any relationship with any manufacturer. Further, the Postal Service is not proposing a takeover of a private sector-operated enterprise but rather the modernization of cash management and payment methods. The Postal Service has received letters supporting its position, including one from a cabinet-level agency. A key component of the new regulations is extensive use of the most modern collection methods available in the private commercial banking system.

One commenter maintained that investments were made based on the contractual commitment, entitling the manufacturer to recoup its investment.

The Postal Service concludes that no change to the proposed regulations is warranted in response to the comment about recoupment of investments.

One commenter stated that CMRS has attained a high degree of customer satisfaction and that all parties have benefited from enhanced security.

With respect to customer satisfaction, there has been no substantiation of high customer satisfaction, only anecdotal statements about adverse effects on customers. Customer satisfaction is one of the primary factors considered in publishing regulations designed partly to promote CMRS meters.

The commenter believed that the risks and benefits have not been identified by the Postal Service and that customers would object to any increased costs resulting from the proposed changes.

The Postal Service has identified the costs and benefits of the proposed regulations and continues to believe that the proposed changes will benefit both customers and meter manufacturers. Further, after reviewing manufacturers' CMRS costs and pricing behavior, the growth in the use of CMRS meters, the increase in competition in providing remote meter resetting services, and the savings that customers should realize from the proposed changes, the Postal Service believes that the changes can be made without necessarily increasing costs to customers. The Postal Service will continue to work with the manufacturers to identify additional ways in which costs can be controlled.

The same commenter disagreed with the Postal Service position that funds in commercial accounts are at risk.

The Postal Service considered the risk of loss of customer funds in commercial trustee accounts, both before and after publication of the proposed regulations. The Postal Service has determined that it should not continue to have more than $7 billion of its revenue held by and flow through an unnecessary third party, and the Postal Service continues to believe that the safest place for customer advance deposits is the U.S. Treasury, a view supported by the U.S. Department of the Treasury.

The commenter stated that Postal Service Treasury officials had not responded to the commenter's previous offer to review investment strategy.

The Postal Service believes that the location of the customer funds is an important component of risk. Because the safest place for customer advance deposits is the U.S. Treasury, the Postal Service has determined that the funds must be kept there, backed in full faith and credit by the U.S. Treasury.

The commenter also believed that there is no evidence that mail float time is an issue of customer concern.

The Postal Service disagrees. Another commenter indicated that customers would be pleased to have their funds available sooner for postage. Furthermore, reduction in the time between when funds are sent by a CMRS customer and the availability of such funds is consistent with commonly recognized, prudent business cash management practices.

The same commenter believed that one-time conversion costs would be significant and that the Postal Service has not presented an adequate proposal for compensation. The commenter stated that there is no evidence to support Postal Service notions of improved customer funds management or the reduced need for meter manufacturers to furnish advances to customers.

The Postal Service has asked each manufacturer to provide details on conversion costs, although the Postal Service does not agree with use of the term "compensation." Not all manufacturers have provided information in support of conversion costs, and that information is necessary for the Postal Service to determine the magnitude of such costs, if any.

V. General Comments

All the manufacturers supported the Postal Service efforts to improve meter security and control. One manufacturer specifically commented that the Postal Service was business-like and professional in giving manufacturers an opportunity to discuss their views on the regulations in an open forum. Another commenter believed that the Postal Service had disregarded comments previously made by manufacturers on the proposed regulations.

To keep the manufacturers informed, the Postal Service held several meetings to discuss the proposed regulations. Each manufacturer was given an opportunity to express the specific views of its organization and of the industry. In addition, the Postal Service conducted a series of customer focus group sessions to provide a forum for comments from interested parties who were not manufacturers. A public meeting also was conducted in which the manufacturers and others could express their views. The Postal Service noted the concerns and opinions from these discussions before publishing the proposed regulations.

One commenter stated that market tests or analyses were not conducted to measure the effect the proposed regulations would have on customers. In addition, the commenter believed that the regulations do not take into account new technology for encrypted data verification.

Participants in the customer focus groups recognized the need for revising meter regulations and indicated that any inconvenience to meter users will be minimal. They supported the Postal Service's effort because, in their opinion, meter misuse and fraud affect postage rates.

The Postal Service has solicited the cooperation of the meter manufacturers in the development of encrypted indicia. This effort is under way, and the results and specifications will be published for public review and comment when they become available.

VI. Revisions

The following sections were revised since the proposed rule; the revisions are reflected in the final rule.

A. PS Form 3601–A

The statement on PS Form 3601–A, Application for a License to Lease and Use Postage Meters, pertaining to the penalties for submission of a false, fictitious, or fraudulent statement is deleted.

Reference

Exhibit B

B. PS Form 3602–A

The use of PS Form 3602–A, Daily Record of Meter Register Readings, is voluntary, but its use is recommended to support refunds in case of register malfunctions.

References

DMM P030.2.1 Procedures
DMM P030.2.6 Licensee Responsibilities
DMM P030.3.4 Alternative Meter Setting Location
DMM P030.3.7 Postage Transfers and Refunds
DMM P030.3.8 Postage Adjustments, Misregistering Meters
DMM P030.3.11 Periodic Examination of CMRS Meters
39 CFR 501.22(g) Distribution controls.
39 CFR 501.22(h)(2) Distribution controls.
39 CFR 501.25(b)(3) Inspections of meters in use.

C. Computerized Remote Postage Meter Resetting System

For customers participating in the Computerized Remote Postage Meter Resetting System (CMRS) program, the Postal Service will include deposit tickets with check payments.

Reference

39 CFR 501.28(e)(6) Computerized remote postage meter resetting (parts of proposed 39 CFR 501.28 are renumbered).

D. Deposits in U.S. Treasury

Deposits in the Postal Service fund at Treasury are backed in full faith and credit by the U.S. Treasury.

Reference

39 CFR 501.28(b)(1) Computerized remote postage meter resetting.

E. Manufacturer Suspensions

Manufacturer suspensions may be withdrawn before the end of the 90-day period if the Postal Service determines that the manufacturer—s olution and implementation are satisfactory.

References

39 CFR 501.5(c)(4)(iii) Suspension and revocation of authorization.
39 CFR 501.12(b)(4)(iii) Suspension and revocation of approval.

F. Domestic Mail Manual

Domestic Mail Manual (DMM) P030.2.0, Meter License, is reorganized and renumbered since the proposed rule. DMM P030.1.9, Appeals, is renumbered as DMM P030.2.5.

G. High-Volume Mailers

High-volume mailers are defined for manufacturer meter inspections.

Reference

39 CFR 501.25 Inspection of meters in use.

H. Domestic Mail Manual Transition Book

Domestic Mail Manual Transition Book part 144 is transferred as revised to 39 CFR 501, with the exception of these sections: 144.312, 144.313, 144.341, 144.342, 144.344, 144.345, 144.346, 144.347, 144.348, 144.349, 144.35, 144.363, 144.37, 144.382(b), 144.383(b), 144.383(c), 144.383(d), 144.384, 144.53, 144.54, 144.61, 144.62, 144.63, 144.64, 144.65, and 144.67.

TABLES OF CROSS-REFERENCES.—DOMESTIC MAIL MANUAL (DMM) REVISIONS

DMM P030 old section	DMM P030 new section	Changes and comments
1.1	1.1	Editorial changes.
1.2	1.2	1.2 is revised to update names and addresses of authorized meter manufacturers. Editorial changes.
1.3	1.3	Editorial changes.
1.4, 1.5, 1.6, 1.7	1.4, 1.5, 1.6, 1.7	None.

TABLES OF CROSS-REFERENCES.—DOMESTIC MAIL MANUAL (DMM) REVISIONS—Continued

DMM P030 old section	DMM P030 new section	Changes and comments
1.8, 1.9	1.8	1.8, Meter Documentation, and 1.9, Markings and Endorsements, are combined into 1.8, Meter Documentation, Markings, and Endorsements. Editorial changes.
2.0	2.0	None.
2.1	2.1	2.1 is modified to include electronic transmission of license applications by the manufacturer and to require all licenses to be processed at a central location.
2.2	2.2	2.2 is renamed Licensee Agreement. Parts of 2.7 are incorporated into 2.2 and restrictions are clarified on taking meters outside the United States.
2.3	2.3	Editorial changes.
2.4	2.6	2.4 is renumbered as 2.6 and revised to make Postal Service (PS) Form 3602–A optional though recommended to support refunds. Revised 2.6 includes examination requirements; license revocation for failure to comply with examination requirements; modifications to licensing procedures; reporting of malfunctioning meters; labeling requirements.
—	2.5	New 2.5, Appeals, is added to specify appeal procedures for licensees and applicants.
—	2.7	New 2.7, Custody of Suspect Meters, is added to cite authority of postal inspectors to make on-site visits and withdraw suspect meters.
2.5	2.8	2.5 is renumbered as 2.8, renamed Defective Meters, and revised to change procedures when a meter's registers are faulty or defective. Manufacturers are required to check meters out of service within a specific period and provide replacement meter.
2.6	2.4	2.6, Place of Mailing, is incorporated into 2.4(e), Revocation of License.
2.7	2.4	2.7 is renumbered as 2.4 and revised to clarify that taking meters outside the United States can be grounds for license revocation.
—	2.9	2.9, Missing Meters, is added to specify reporting requirements for missing meters.
—	2.10	2.10, Returning Meters, is added to specify procedures for returning meters to manufacturer whenever meter is defective or no longer wanted by licensee.
3.0	3.0	None.
3.1	3.1	3.1 is revised to require use of new PS Form 3601–C for meter installations, withdrawals, or replacements.
3.2	3.2	3.2 is renamed Licensee Relocation. Editorial changes.
3.3	3.3	Editorial changes.
3.4	3.4	3.4 is renamed Alternative Meter Setting Location. Editorial changes.
3.5	3.6	3.5 is renumbered as 3.6.
3.6	—	3.6, Manufacturer Withdrawal, is moved to 39 CFR 501.22(g) and 501.22(i).
3.7	3.5	3.7 is renumbered as 3.5. Editorial changes.
3.8	3.7	3.8 is renumbered as 3.7 and renamed Postage Transfers and Refunds. Editorial changes.
—	3.8	New 3.8, Postage Adjustments, Misregistering Meters, is added to expand requirements that include new procedures for processing refunds for defective meters.
3.9	3.8	3.9, Manufacturer's Statement, is incorporated into new 3.8, Postage Adjustments, Misregistering Meters.
3.10	3.9	3.10 is renumbered as 3.9 and renamed Computerized Meter Resetting System. Requirement is added for use of PS Form 3601–C, Meter Installation, Withdrawal, or Replacement.

TABLES OF CROSS-REFERENCES.—DOMESTIC MAIL MANUAL (DMM) REVISIONS—Continued

DMM P030 old section	DMM P030 new section	Changes and comments
3.11	3.10	3.11 is renumbered as 3.10 and renamed Postage Transfer for CMRS Meters. Editorial changes.
3.12	3.11	3.12 is renumbered 3.11 and renamed Periodic Examination of CMRS Meters. Editorial changes.
3.13	3.12	3.13 is renumbered as 3.12 and revised to specify requirement changes.
—	3.13	New 3.13, CMRS Refunds, is added to outline CMRS refund procedures.
4.0	4.0	None.
4.1	4.1	Editorial changes.
4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10, 4.11, 4.12, 4.13, 4.14, 5.0, 5.1, 5.2, 5.3, 5.4	4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10, 4.11, 4.12, 4.13, 4.14, 5.0, 5.1, 5.2, 5.3, 5.4	None.
6.0	6.0	6.0 is revised to reference that requirements for manufacture and distribution of meters are published in 39 CFR 501.
6.1	—	6.1 is eliminated and requirements moved to 39 CFR 501.1 and 501.2.
6.2	—	6.2 is eliminated and requirements moved to 39 CFR 501.3
6.3	—	6.3 is eliminated and requirements moved to 39 CFR 501.5.
6.4	—	6.4 is eliminated and requirements moved to 39 CFR 501.5.
6.5	6.0	6.5 is revised and renumbered as 6.0.

DOMESTIC MAIL MANUAL TRANSITION BOOK (DMMT) AND 39 CFR 501 REVISIONS

DMMT section	39 CFR 501 section	Changes and comments
144.9	501	None.
144.91, 144.912	501.1	Section is moved from DMMT 144.91 and 144.912 and DMM P030.6.0.
144.911	501.2	Section is moved from DMMT 144.911. Editorial changes.
144.915	501.3	Section is moved from DMMT 144.915 and combined with DMM P030.6.0.
—	501.4	New 39 CFR 501.4, Burden of proof standard, clarifies burden of proof standard.
144.913, 144.914	501.5	Section is moved from DMMT 144.913 and 144.914, clarified, and expanded.
144.92	501.6	Section is moved from DMMT 144.92.
144.931	501.7	Section is moved from DMMT 144.931. Editorial changes.
144.932	501.8	Section is moved from DMMT 144.932.
144.935	501.9	Section is moved from parts of DMMT 144.935 and redrafted.
144.933, 144.935	501.10	Section is moved from DMMT 144.933 and parts of DMMT 144.935 and redrafted.
144.936, 144.937	501.11	Section is moved from DMMT 144.936 and 144.937 and expanded.
144.913, 144.914	501.12	Section is moved from parts of DMMT 144.913 and 144.914 and expanded.
—	501.13	39 CFR 501.13, Reporting, specifies manufacturer reporting requirements.

DOMESTIC MAIL MANUAL TRANSITION BOOK (DMMT) AND 39 CFR 501 REVISIONS—Continued

DMMT section	39 CFR 501 section	Changes and comments
—	501.14	39 CFR 501.14, Administrative sanction on reporting, specifies sanctions for noncompliance with manufacturer reporting requirements.
144.941	501.15	Section is moved from DMMT 144.941.
144.934, 144.942	501.16	Section is moved from DMMT 144.934 and 144.942.
144.943	501.17	Section is moved from DMMT 144.943.
144.944	501.18	Section is moved from DMMT 144.944.
144.945	501.19	Section is moved from DMMT 144.945.
144.946	501.20	Section is moved from DMMT 144.946 and expanded.
144.951	501.21	Section is moved from DMMT 144.951.
144.21, 144.225, 144.343, 144.355a, 144.36, 144.361, 144.383, 144.952, 144.963	501.22	Section is moved from DMMT 144.21, 144.225, 144.343, 144.355a, 144.36, 144.361, 144.383, 144.952, and 144.963, expanded, and redrafted.
—	501.23	39 CFR 501.23, Administrative sanction, specifies manufacturer sanctions for failure to comply with meter standards.
144.96	501.24	Section is moved from DMMT 144.96.
144.962	501.25	Section is moved from DMMT 144.962 and expanded.
144.952f, 144.963	501.26	Section is moved from DMMT 144.952f and 144.963 and expanded.
144.964	501.27	Section is moved from DMMT 144.964.
144.97, 144.971, 144.972, 144.973, 144.974, 144.975, 144.976, 144.977	501.28	Section is moved from DMMT 144.97, 144.971, 144.972, 144.973, 144.974, 144.975, 144.976, and 144.977 and expanded.
144.98	501.29	Section is moved from DMMT 144.98.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

In consideration of the foregoing, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR part 111).

PART 111—[AMENDED]

1. The authority citation for 39 CFR 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of the Domestic Mail Manual to read as set forth below:

P030 Postage Meters and Meter Stamps

1.0 BASIC INFORMATION

21.1 Description of Meters

Postage meters can print one or more denominations of postage and display the amount of postage used and the amount remaining. A meter locks when no postage or minimal postage remains. A meter generally must be taken to the licensing post office to be reset by payment for additional postage. Avoiding the payment of postage by misusing a meter is punishable by law.

1.2 Meter Manufacturers

Postage meters are available only by lease from authorized manufacturers. The USPS holds manufacturers responsible for the control, operation, maintenance, and replacement of their meters. The following manufacturers are authorized to lease meters:

ASCOM HASLER MAILING SYSTEMS INC
19 FOREST PKY
SHELTON CT 06484–0903

FRANCOTYP-POSTALIA INC
1980 UNIVERSITY LN
LISLE IL 60532–2152

FRIDEN NEOPOST
30955 HUNTWOOD
HAYWARD CA 94544–7005

PITNEY BOWES INC

1 ELMCROFT RD
STAMFORD CT 06926–0700

1.3 Possession

No one other than an authorized manufacturer may possess a postage meter without a valid USPS meter license and a rental agreement with the meter manufacturer and until the USPS sets, seals (if applicable), and checks the meter into service. Other parties in possession of a meter must immediately surrender it to the manufacturer or USPS.

* * * * *

1.8 Meter Documentation, Markings, and Endorsements

Unless excepted by standard, a mailing of pieces bearing meter stamp postage must be accompanied by documentation meeting the standards in P012 if the mailing contains nonidentical-weight pieces or pieces without the full correct postage at the applicable rate. Each piece bearing meter postage must show the markings and endorsements required for the rate claimed and any special service requested.

2.0 METER LICENSE

2.1 Procedures

An applicant wanting to be licensed to lease and use a meter must provide an original signed Form 3601–A to the post office where the applicant intends to deposit metered mail. A meter manufacturer may, on behalf of the applicant, electronically transmit the information requested on Form 3601–A to the designated USPS license application central processing center in USPS-specified format. A single license covers all meters licensed to the same applicant by the same post office, but a separate application must be submitted for each post office where the applicant wants to deposit metered mail. There is no fee for this application and license. After approving an application, the USPS issues a license (Form 3601–B) and one Form 3602–A for each meter checked into service. The use of Form 3602–A is voluntary, but its use supports refunds in the case of meter register malfunctions. If a meter manufacturer transmits the application on behalf of the applicant, the USPS notifies the manufacturer when a license is issued.

2.2 Licensee Agreement

By submitting an application, the licensee agrees that the license may be revoked immediately and the meter removed by the manufacturer or the USPS in these cases: the meter is used in any fraudulent or unlawful scheme or enterprise; the meter is unused during any consecutive 12-month period; the licensee fails to exercise sufficient control of the meter or fails to comply with the standards for meter care or use; or a meter is taken outside the United States, its territories, or its possessions (without written permission by the manager of Retail Systems and Equipment, USPS Headquarters).

2.3 Refusal to Issue Meter License

The USPS may refuse to issue a meter license for these reasons: the applicant submitted false or fictitious information on the license application; within 5 years preceding submission of the application, the applicant violated any standard for the care or use of a meter that resulted in the revocation of that applicant's meter license; or there is sufficient reason to believe that the meter is to be used in violation of the applicable standards. When an application for a license to lease and use meters is refused, the USPS sends the licensee written notice of the reason. If the license application is electronically transmitted to the USPS by a manufacturer on behalf of the applicant, the USPS notifies the manufacturer of the refusal. An applicant refused a meter license may appeal the decision under 2.5.

2.4 Revocation of License

The USPS notifies the licensee in writing of the reasons why the meter license is to be revoked. The USPS also notifies the licensee's meter manufacturer of the revocation so that the manufacturer can cancel the lease agreement and remove the meter from service. Revocation takes 10 days thereafter unless, within that time, the licensee appeals the decision under 2.5. A license is subject to revocation for any of these reasons:

a. A meter is used for any illegal scheme or enterprise.

b. The license or licensee's meter is not used for 12 consecutive months.

c. Sufficient control of a meter is not exercised or the standards for its care or use are not followed.

d. The meter is kept or used outside the boundaries of the United States or those U.S. territories and possessions where the USPS operates (except as specified in 2.2).

e. Metered mail is deposited at other than the licensing post office (except as permitted by 5.0 or D072).

2.5 Appeals

An applicant who has been refused a meter license, or a licensee who has had a license revoked, may file a written appeal with the manager of Retail Systems and Equipment (RSE), USPS Headquarters, within 10 calendar days of receipt of the decision. A licensee appealing decisions on postage adjustments may file the appeal with the same official within 60 days of the date that the manufacturer submitted the postage recommendation to the USPS.

2.6 Licensee Responsibilities

The meter licensee's responsibilities for the care and use of a meter include the following:

a. After a meter is delivered to a licensee, the licensee must keep the meter in the licensee's custody until it is returned to the authorized manufacturer or the licensing post office.

b. Each day of operation, the licensee may record the readings of the ascending and descending registers on Form 3602–A (except that licensees using metering systems that record these readings electronically may use system-generated printed records of the preceding 12 months of meter activity as a substitute for manual entry of daily readings on Form 3602–A). The licensee may bring Form 3602–A to the post office when the meter is reset or examined.

c. The licensee must make meters in the licensee's custody and records on meter transactions immediately available for review and audit on request by the USPS or the meter manufacturer.

d. The licensee must present meters not reset within a 3-month period to the licensing post office for examination. Remote-set meters that are reset at least once every 3 months need be presented for examination only annually. Failure to present a meter for examination as required following notification can result in revocation of the licensee's authorization to lease and use meters.

e. The licensee must immediately notify the licensing post office and manufacturer's representative of any change in the licensee's name, address, or telephone number, or the location of the meters, or any other information contained on the original Form 3601–A. The USPS thereafter issues a modified meter license reflecting the updated information. The licensee must verify and update license information on a periodic basis as well as following any event that indicates the need to update this information immediately (e.g., billings returned to a meter manufacturer or failure of a manufacturer to locate a meter for inspection).

f. The licensee must report a misregistering or otherwise defective meter to the manufacturer according to 2.8 and must ensure that the meter is not used.

g. The licensee must ensure that the cautionary and barcode labels placed onto each meter before its being checked into service are not removed while the meter is in the licensee's possession. The cautionary label contains basic reminders on leasing, meter movement, and misuse. The barcode label contains a barcoded representation of the meter serial number. Meters without these labels may not be checked into service.

2.7 Custody of Suspect Meters

Postal inspectors are authorized to conduct unannounced on-site examinations of meters reasonably suspected of being manipulated or otherwise defective. An inspector may also immediately withdraw a suspect meter from service for physical and/or laboratory examination. The inspector issues the licensee a receipt for the meter, forwards a copy to the manufacturer, and, if necessary, assists in obtaining a replacement meter from the meter manufacturer. Where possible, the Inspection Service provides the manufacturer with advance notice that a meter is to be inspected. Unless there is reason to believe that the meter has been fraudulently set with postage, existing postage in the meter to be examined is transferred to the replacement meter.

2.8 Defective Meters

The licensee must immediately report any defective meter to the licensing postmaster and the manufacturer. The manufacturer must pick up any defective meter and take it to the licensing post office to be checked out of service within 3 business days of being notified by the licensee. A faulty meter may not be used under any circumstance, and it must be removed from service when taken to the licensing post office. The manufacturer provides the licensee with a replacement meter.

2.9 Missing Meters

The licensee must immediately report to the licensing postmaster and the manufacturer the loss or theft of any meter or the recovery of any missing meter. Reports must include the meter model and serial number; the date, location, and details of the loss, theft, or recovery; and a copy of any police report.

2.10 Returning Meters

After a meter is delivered to a licensee, the meter must be kept in the licensee's custody until returned to the authorized manufacturer or licensing post office. A licensee with a faulty or misregistering meter or no longer wanting to retain a meter must notify the meter manufacturer's representative of any meter to be returned to the licensing post office to be checked out of service. Meters must be shipped by registered mail unless the manager of RSE, USPS Headquarters, gives written permission to ship meters otherwise.

3.0 SETTING METERS

3.1 Initial Setting

Before delivering a meter to the licensee, the meter manufacturer must take the meter to be set, sealed (if applicable), and checked into service by the post office where it is to be regularly set or examined, unless the meter is serviced through the on-site meter-setting program described in 3.5. The manufacturer must present the postal representative with the meter and a completed Form 3601–C when checking a meter into service.

3.2 Licensee Relocation

If a licensee changes the post office where metered mail is to be deposited, the meter must be checked out of service by the licensing post office. That meter or another meter must be licensed at the new post office before it is reset or initial settings are made. For this standard, a post office includes all subordinate branches and stations of the licensing post office.

3.3 Location of Setting

Except under 3.4 or 3.5, meters must be set at the licensing post office, not at contract stations or branches. Remote-set meters are subject to 3.9 through 3.13 and related standards.

3.4 Alternative Meter Setting Location

The postmaster serving a licensee's location may set a meter used to pay postage on mail presented at another post office, subject to these conditions:

a. The licensee must obtain a meter license from the post office where the mailing is to be deposited and must present the license to the licensee's local post office with the meter for setting and Form 3602–A, if maintained (or its electronic equivalent).

b. The postmark die must show the name of the post office of mailing (licensing post office).

c. A separate meter must be used for mailings made at each post office.

d. Mail matter sent to another post office for mailing must be shipped on private transportation, to be deposited at the time and place designated by the postmaster. Such matter may not be consigned to the USPS in bulk by freight, express, or other carrier. The USPS has no responsibility for the metered matter before it is accepted in the mail.

e. When a meter is no longer used, the licensee must return the meter to the manufacturer's representative or licensing post office to have it checked out of service.

3.5 On-Site Meter-Setting Program

The on-site meter-setting program allows USPS employees to set or examine meters at a licensee's place of business within the area served by the licensing post office. Only the licensee's meters participating in the program may be set or examined at that location. The program also provides for checking meters into or out of service at the meter manufacturer's branch offices, including meters set for use at another post office. A fee is charged for each meter set, examined, or checked into or out of service at a licensee's place of business or at a manufacturer's office, unless a USPS employee (qualified to set meters) is regularly assigned to that licensee's location for postal administrative duties. The licensee must pay on-site setting or examination fees (shown in R900) and postage by check or advance deposit account at the time of the setting or examination.

3.6 Payment for Postage

Payment must be made for postage when the meter is set. Payment may be in cash or by check, money order, or withdrawal from an advance deposit account established with the post office. (Advance deposit accounts may be established when the licensee's monthly metered postage is $500 or more.) Payment by check or advance deposit account is subject to USPS standards and procedures.

3.7 Postage Transfers and Refunds

Upon USPS verification, unused postage in a meter being checked out of service may be transferred to another of the licensee's meters licensed at the same post office, or the licensee may request a refund, which may include a refund for unused meter stamps according to applicable standards. The meter must be examined by the USPS before a refund or credit is initiated for unused postage or additional postage is collected, based on what is found. The licensee may also submit Form 3602–A, if maintained, or a system-generated register as supporting documentation.

3.8 Postage Adjustments, Misregistering Meters

To request a postage adjustment for a faulty or misregistering meter, the

licensee must present to the manufacturer the meter and the licensee's Form 3602–A, if maintained. After examining a meter checked out of service for apparent faulty operation affecting registration, the manufacturer must provide the licensing post office with a report of the malfunction. The report must contain all applicable meter documentation (including a copy of the licensee's Form 3602–A, if maintained, and the licensee's Form 3610 provided by the USPS) and a recommendation about the appropriate postage adjustment. If the electronic redundant memory data, as examined by the manufacturer, is inconclusive about the appropriate postage adjustment, the manufacturer must include an analysis of the licensee's recent mailing history supporting the recommended postage adjustment. (In the absence of a completed Form 3602–A, the licensee may submit some other reliable evidence showing that a postage adjustment is warranted.) A licensee may appeal a postage adjustment under 2.5.

3.9 Computerized Meter Resetting

The Computerized Remote Postage Meter Resetting System (CMRS) allows certain meters to be reset electronically at the licensee's place of business. CMRS meters must be set at the licensee's place of business, except under 3.11. Before delivering a meter to the licensee, the manufacturer must take the meter and a completed Form 3601–C to the licensing post office to have the meter checked into service, unless the meter is initially checked into service at the manufacturer's office under 3.5.

3.10 Postage Transfer for CMRS Meters

No postage is set by the licensing post office unless a CMRS meter is checked out of service and the unused postage in it is transferred to another CMRS meter leased by the same licensee for use at the same post office.

3.11 Periodic Examination of CMRS Meters

CMRS meters must be reset or examined every 3 months. CMRS meters set at least once every 3 months require examination by a USPS employee only annually. The licensee must take a CMRS meter and applicable Form 3602–A, if maintained, to the licensing post office when notified by the manufacturer of a required examination. A licensee who does not comply with examination requirements may not reset meters via CMRS. Failure to have a meter examined on notification can result in revocation of the licensee's meter license.

3.12 Resetting CMRS Meters

The following conditions must be met for resetting a CMRS meter:

a. The licensee's account must have sufficient funds to cover the desired postage increment, or the manufacturer must agree to advance funds to the licensee. The licensee may deposit funds by check, electronic funds, or automated clearinghouse transfer.

b. The licensee must provide the manufacturer or designated meter resetting company with the meter serial number, licensee's account number, and the meter's ascending and descending registers.

c. After a meter is reset, the manufacturer must provide the licensee with documentation of the transaction and the balance remaining in the licensee's account, unless the manufacturer provides a monthly statement documenting all transactions for the period and the balance after each transaction.

3.13 CMRS Refunds

The USPS issues a refund to a licensee for any unused postage in a meter. Refunds of licensee balances maintained by the USPS in the USPS fund are made to the licensee by the USPS lockbox bank within 48 hours after receipt of a licensee's request.

4.0 METER STAMPS

4.1 Designs

Meter stamp designs (types, sizes, and styles) must be those specified when a meter is approved by the USPS for manufacture (see Exhibit 4.1).

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6.0 METER MANUFACTURE AND DISTRIBUTION

Title 39, Code of Federal Regulations, part 501, contains information about the authorization to manufacture and distribute meters; the suspension and revocation of such authorization; performance standards required in meters, test plans, testing, and approval of meters; required manufacturing security measures; and standards for the distribution and maintenance of meters. Further information may be obtained from Retail Systems and Equipment, USPS Headquarters.

List of Subjects in 39 CFR Part 501

Administrative practice and procedure, Postal Service.

3. Add subchapter G, Postage Meters, consisting of part 501 to read as set forth below:

PART 501—AUTHORIZATION TO MANUFACTURE AND DISTRIBUTE POSTAGE METERS

Sec.

501.1 Manufacturer authorization.
501.2 Manufacturer qualification.
501.3 Changes in ownership or control.
501.4 Burden of proof standard.
501.5 Suspension and revocation of authorization.
501.6 Specifications.
501.7 Test plans.
501.8 Submission of each model.
501.9 Security testing.
501.10 Meter approval.
501.11 Conditions for approval.
501.12 Suspension and revocation of approval.
501.13 Reporting.
501.14 Administrative sanction on reporting.
501.15 Materials and workmanship.
501.16 Breakdown and endurance testing.
501.17 Protection of printing dies and keys.
501.18 Destruction of meter stamps.
501.19 Inspection of new and rebuilt meters.
501.20 Keys and setting equipment.
501.21 Distribution facilities.
501.22 Distribution controls.
501.23 Administrative sanction.
501.24 Meter replacement.
501.25 Inspection of meters in use.
501.26 Meters not located.
501.27 Repair of internal mechanism.
501.28 Computerized remote postage meter resetting.

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 410, 2601, 2605; Inspector General Act of 1978, as amended (Pub. L. 95–452, as amended), 5 U.S.C. App. 3.

§ 501.1 Manufacturer authorization.

Any person or concern seeking authorization to manufacture and distribute postage meters must submit a request to the Postal Service in person or in writing. Upon qualification and approval, the applicant is authorized in writing to manufacture meters and to lease them to persons licensed accordingly by the Postal Service. The Postal Service may specify the functional area charged with processing the application and administering its meter program.

§ 501.2 Manufacturer qualification.

Any concern wanting authorization to manufacture and/or lease postage meters for use by licensees under Domestic Mail Manual P030.1.2 must:

(a) Satisfy the Postal Service of its integrity and financial responsibility;

(b) Obtain approval of at least one meter model incorporating all the features and safeguards specified in § 501.6;

(c) Have, or establish, and keep under its supervision and control adequate manufacturing facilities suitable to carry out the provisions of §§ 501.15 through 501.20 to the satisfaction of the Postal Service (such facilities must be subject to unannounced inspection by representatives of the Postal Service); and

(d) Have, or establish, and keep adequate facilities for the control, distribution, and maintenance of meters and their replacement when necessary.

§ 501.3 Changes in ownership or control.

Any person or concern wanting to acquire ownership or control of an authorized postage meter manufacturer must provide the Postal Service with satisfactory evidence of that person's or concern's integrity and financial responsibility.

§ 501.4 Burden of proof standard.

The burden of proof is on the Postal Service in adjudications of suspension and revocation under §§ 501.5 and 501.12 and administrative sanctions under §§ 501.14 and 501.23. Except as otherwise indicated in those sections, the standard of proof shall be the preponderance-of-evidence standard.

§ 501.5 Suspension and revocation of authorization.

(a) The Postal Service may suspend and/or revoke authorization to manufacture and/or distribute any or all of a manufacturer's postage meters if the manufacturer engages in any unlawful scheme or enterprise, fails to comply with any provision in this part 501, or fails to implement instructions issued in accordance with any final decision issued by the Postal Service within its authority over the meter program.

(b) The decision to suspend or revoke a manufacturer's authorization shall be based on the nature and circumstances of the violation (whether the violation was willful, whether the manufacturer voluntarily admitted to the violation, whether the manufacturer cooperated with the Postal Service, whether the manufacturer implemented successful remedial measures) and on the manufacturer's performance history. Before determining whether a manufacturer's authorization to manufacture and/or distribute meters should be revoked, the procedures in paragraph (c) of this section shall be followed.

(c) Suspension in all cases shall be as follows:

(1) Upon determination by the Postal Service that a manufacturer is in violation of the provisions in this part 501, the Postal Service shall issue a written notice of proposed suspension citing deficiencies for which suspension of authorization to manufacture and/or distribute a specific meter or class of meters may be imposed under paragraph (c)(2) of this section. Except in cases of willful violation, the manufacturer shall be given an opportunity to correct deficiencies and achieve compliance with all requirements within a time limit corresponding to the potential risk to postal revenue.

(2) In cases of willful violation, or if the Postal Service determines that the manufacturer has failed to correct cited deficiencies within the specified time limit, the Postal Service shall issue a written notice setting forth the facts and reasons for the decision to suspend and the effective date if a written defense is not presented as provided in paragraph (d) of this section.

(3) If, upon consideration of the defense as provided in paragraph (e) of this section, the Postal Service deems that the suspension is warranted, the suspension shall remain in effect for up to 90 days unless withdrawn by the Postal Service, as provided in paragraph (c)(4)(iii) of this section.

(4) At the end of the 90-day suspension, the Postal Service may:

(i) Extend the suspension in order to allow more time for investigation or to allow the manufacturer to correct the problem;

(ii) Make a determination to revoke authorization to manufacture and/or distribute the manufacturer's meters in part or in whole; or

(iii) Withdraw the suspension based on identification and implementation of a satisfactory solution to the problem. Manufacturer suspensions may be withdrawn before the end of the 90-day period if the Postal Service determines that the manufacturer's solution and implementation are satisfactory.

(d) The manufacturer may present the Postal Service with a written defense to any suspension or revocation determination within 30 calendar days of receiving the written notice (unless a shorter period is deemed necessary). The defense must include all supporting evidence and state with specificity the reasons for which the order should not be imposed.

(e) After receipt and consideration of the defense, the Postal Service shall advise the manufacturer of the decision and the facts and reasons for it. The decision shall be effective on receipt unless it provides otherwise. The decision shall also advise the manufacturer that it may appeal that determination within 30 calendar days of receiving written notice (unless a shorter time frame is deemed necessary), as specified therein. The appeal must include all supporting evidence and state with specificity the reasons the manufacturer believes that the decision is erroneous.

(f) An order or final decision under this section does not preclude any other criminal or civil statutory, common law, or administrative remedy that is available by law to the Postal Service, the United States, or any other person or concern.

§ 501.6 Specifications.

Postage meters must incorporate all the following features and safeguards:

(a) A postage meter is the postage printing die and postage registering mechanism of a mailing machine. It may be integral with the mailing machine or separable. In either case, the licensee must be able to take the meter to the post office for setting or examination.

(b) A meter may be capable of printing one denomination of postage and registering the number of such impressions made (single denomination), or it may be capable of printing varying denominations and registering either multiples of the smallest unit printed (multidenomination) or the currency value of the impressions made (omnidenomination). The printing die or dies, counters, and counteractuating mechanism must be inseparable from the meter, except by the manufacturer.

(c) In each meter, there must be two accurate and dependable counting devices: one ascending and registering the total imprinted, the other descending and registering the unused postage balance. The descending register must actuate a locking mechanism that prevents further operation of the meter after the register descends to zero or an amount less than the largest denomination printable in one operation. In electronic meters; the locking device must prevent printing if the amount to be printed reduces the descending register to less than zero. The construction of the descending register must allow the post office to set any amount of postage or number of impressions within its capacity, prepaid by the licensee.

(d) The entire meter must be encased in a substantial housing to which unauthorized access cannot be gained without creating obvious damage. The descending register must be accessible to the post office by a door equipped with a suitable lock and with provision for a post office seal. The requirement that accessibility to the descending register be restricted does not apply to Computerized Remote Postage Meter Resetting System electronic meters that have no access to the descending register of the meter. Descending

registers on this type of meter are reset electronically by coded input only. The ascending register and all other components must be so shielded as not to be accessible even when the door is open. The readings of both registers must be easily obtainable at any time between operations, by visibility through closed windows, by imprint on tape or card, or by a combination of the two methods. The construction of the housing must make it impossible to alter the readings of the ascending register except by normal operation or impossible to gain access to the internal components, except for setting the descending register under § 501.20(c), without mutilation.

(e) The printing die must either conform in design to one already in use or be approved by the Postal Service. The die must include the serial number of the meter and identification of the manufacturer, and the die must be so constructed or shielded that it is not practically possible without proper registration in the ascending and descending register to obtain imprints fraudulently. The die must be attached to the meter in a manner (such as with breakoff screws) that it is not practicable to remove or replace the die fraudulently.

(f) The meter die must include a postmark to print the name of the city and state from which mail is dispatched and the date of mailing, except as specified by the Postal Service. Information that must appear in the meter postmark and the location of that postmark must be as specified by the Postal Service.

(g) A meter may be designed to print a meter slogan or ad plate to the left of, and next to, the postmark. The size and position of a meter slogan or ad plate must not interfere with or obscure the meter stamp or postmark, and it must be possible to install the plate easily without exposing the meter stamp die. Plates must be made of suitable, durable material that does not soften or disintegrate while in use. Plates must be well-fitted and so securely fastened to the printing mechanism that they do not become loose or detached or otherwise interfere with proper operation of a meter.

(h) The entire meter must be of sufficiently solid, substantial, and dependable construction that protects the Postal Service amply against loss of revenue from fraud, manipulation, misoperation, or breakdown.

(i) In addition to the features and safeguards above, electronic meters must:

(1) Have either nonvolatile ascending and descending registers or a solid-state memory that stores the data for the ascending and descending registers. Solid-state memories that rely on applied voltage for memory retention must be powered by batteries with a minimum support life of 5 years from the date of battery renewal with no external power applied and with sufficient redundancy to be self-checking.

(2) Be able to display the amounts in both the ascending and the descending registers (not necessarily at the same time).

(3) Be able to display, free from accidental changes, the next amount of postage to be printed.

(4) Be resettable by Postal Service employees, preferably without customized equipment.

(5) Contain a fault-detection device for computational security that automatically locks out the meter and prevents printing of additional postage in the event of malfunction.

(6) Meet Postal Service test specifications in United States Postal Service Specification, Postage Meters, Electronic, Postal Service-M–942 (RDC). Persons wanting to manufacture electronic meters may obtain a copy of this Postal Service test specification from Postal Service Headquarters.

(j) Auxiliary equipment required for the operation of the meters must be part of the final production models submitted for Postal Service approval. Failure of the auxiliary equipment, which could cause malfunction in meter operation, is considered the same as a meter failure.

§ 501.7 Test plans.

To receive Postal Service approval, a postage meter must be tested. Manufacturers of electronic meters must submit a detailed test plan to the Postal Service for approval at least 60 days before conducting the tests. The test plan must include tests that, if passed by a meter, prove compliance by the meter with all postal requirements. The test plan must list the parameters to be tested, test equipment, procedures, test sample sizes, and test data formats. Also, the plan must include detailed descriptions, specifications, design drawings, schematic diagrams, and explanations of the purposes of all special test equipment and nonstandard or noncommercial instrumentation.

§ 501.8 Submission of each model.

Each meter model proposed for manufacture must be approved by the Postal Service after testing at the manufacturer's expense. A preliminary working model that meets the specifications in § 501.6 may be submitted for tentative approval. No meter of any model may be distributed or used for postage payment until a complete unit made to production drawings and specifications is submitted, tested, and approved, unless authorized for preliminary field testing.

§ 501.9 Security testing.

The Postal Service reserves the right to require or conduct additional examination and testing at any time, without cause, of any meter submitted to the Postal Service for approval or approved by the Postal Service for manufacture and distribution.

§ 501.10 Meter approval.

As provided in § 501.13, the manufacturer has a duty to report security weaknesses to the Postal Service to ensure that each meter model and every meter in service protects the Postal Service against loss of revenue at all times. A grant of approval of a model does not constitute an irrevocable determination that the Postal Service is satisfied with the revenue-protection capabilities of the model. After approval is granted to manufacture and distribute a meter, no change affecting the basic features or safeguards of a meter may be made except as authorized or ordered by the Postal Service in writing.

§ 501.11 Conditions for approval.

(a) The Postal Service may require, and reserves future rights to require, that production models of approved meters be deposited with the Postal Service.

(b) The manufacturer must provide copies of resetting and inspection media to each licensing post office before distribution. The contents of the media must explain how the meter is reset and describe any special or unique features of the meter. The manufacturer must also provide a training video for any new metering product that includes an explanation of how the device is reset as well as recommended methods for detecting evidence of tampering.

(c) As a condition of approval, the manufacturer has a continuing obligation to provide the Postal Service with copies of service manuals and updates to setting instructions. The manufacturer must also promptly provide Retail Systems and Equipment, Postal Service Headquarters, with any additional documentation on request.

(d) On request by the Postal Service, additional meters must be submitted to the Postal Service for testing, at the expense of the manufacturer.

§ 501.12 Suspension and revocation of approval.

(a) The Postal Service may suspend meter approval under § 501.10 if the Postal Service has probable cause to believe that a manufacturer's meter or class of meters poses an unreasonable risk to postal revenue. Suspension of approval to manufacture or distribute a meter or class of meters in whole or in part shall be based on the potential risk to postal revenue. Before determining whether approval of a meter or class of meters should be revoked, the procedures in paragraph (b) of this section shall be followed.

(b) Suspension in all cases shall be as follows:

(1) Upon determination by the Postal Service that a meter poses an unreasonable risk to postal revenue, the Postal Service shall issue a written notice of proposed suspension citing deficiencies for which suspension may be imposed under paragraph (b)(2) of this section. The manufacturer shall be given an opportunity to correct deficiencies and achieve compliance with all requirements within a time limit corresponding to the potential risk to postal revenue.

(2) If the Postal Service determines that the manufacturer has failed to correct cited deficiencies within the specified time limit, the Postal Service shall issue a written notice setting forth the facts and reasons for the decision to suspend and the effective date if a written defense is not presented as provided in paragraph (c) of this section.

(3) If, upon consideration of the defense as provided in paragraph (d) of this section, the Postal Service deems that the suspension is warranted, the suspension shall remain in effect for up to 90 days unless withdrawn by the Postal Service, as provided in paragraph (b)(4)(iii) of this section.

(4) At the end of the 90-day suspension, the Postal Service may:

(i) Extend the suspension in order to allow more time for investigation or to allow the manufacturer to correct the problem;

(ii) Make a determination to revoke the approval of the manufacturer's meter or class of meters; or

(iii) Withdraw the suspension based on identification and implementation of a satisfactory solution to the problem. Manufacturer suspensions may be withdrawn before the end of the 90-day period if the Postal Service determines that the manufacturer's solution and implementation are satisfactory.

(c) The manufacturer may present the Postal Service with a written defense to any suspension or revocation determination within 30 calendar days of receiving the written notice (unless a shorter period is deemed necessary). The defense must include all supporting evidence and state with specificity the reasons for which the order should not be imposed.

(d) After receipt and consideration of the written defense, the Postal Service shall advise the manufacturer of the decision and the facts and reasons for it. The decision shall be effective on receipt unless it provides otherwise. The decision shall also advise the manufacturer that it may appeal that determination within 30 calendar days of receiving written notice (unless a shorter period is deemed necessary), as specified therein. The appeal must include all supporting evidence and state with specificity the reasons that the manufacturer believes that the decision is erroneous.

(e) An order or final decision under this section does not preclude any other criminal or civil statutory, common law, or administrative remedy that is available by law to the Postal Service, the United States, or any other person or concern.

§ 501.13 Reporting.

(a) For purposes of this section, "manufacturer" refers to the authorized postage meter manufacturer in § 501.1 and its foreign affiliates, subsidiaries, assigns, dealers, independent dealers, employees, and parent corporations.

(b) Each authorized meter manufacturer in § 501.1 must submit a preliminary report to notify the Postal Service promptly (in no event more than 21 calendar days of discovery or 21 calendar days from June 30, 1995) of the following:

(1) All findings or results of any testing known to the manufacturer concerning the security or revenue protection features, capabilities, or failings of any meters sold, leased, or distributed by the manufacturer that have been approved for sale, lease, or distribution by the Postal Service or any foreign postal administration; or have been submitted for approval by the manufacturer to the Postal Service or other foreign postal administration(s).

(2) All potential security weaknesses or methods of meter tampering of the meters that the manufacturer distributes of which the manufacturer knows or should know, and the meter or model subject to each method. These potential security weaknesses include but are not limited to suspected equipment defects, suspected abuse by a meter licensee or manufacturer employee, suspected security breaches of the Computerized Remote Postage Meter Resetting System, occurrences outside normal performance, or any repeatable deviation from normal meter performance (within the same model family and/or by the same licensee).

(c) Within 45 days of the preliminary notification of the Postal Service under § 501.13(b), the manufacturer must submit a written report to the Postal Service. The report must include the circumstances, proposed investigative procedure, and the anticipated completion date of the investigation. The manufacturer must also provide periodic status reports to the Postal Service during subsequent investigation and, on completion, must submit a summary of the investigative findings.

(d) The manufacturer must establish and adhere to timely and efficient procedures for internal reporting of potential security weaknesses. The manufacturer is required to submit a copy of internal reporting procedures and instructions to the Postal Service for review.

§ 501.14 Administrative sanction on reporting.

(a) Notwithstanding any act, admission, or omission by the Postal Service before June 30, 1995, an authorized postage meter manufacturer may be subject to an administrative sanction for failing to comply with § 501.13.

(b) The Postal Service shall determine all costs and revenue losses measured from the date that the manufacturer knew, or should have known, of a potential security weakness, including, but not limited to, administrative and investigative costs and documented revenue losses that result from any meter for which the manufacturer failed to comply with any provision in § 501.13. The Postal Service shall recover any and all such costs and losses (net of any amount collected by the Postal Service from the licensees or meter users) with interest by issuing a written notice to the manufacturer setting forth the facts and reasons on which the determination to impose the sanction is based. The notice shall advise the manufacturer of the date that the action takes effect if a written defense is not presented within 30 calendar days of receipt of the notice.

(c) The manufacturer may present the Postal Service with a written defense to the proposed action within 30 calendar days of receipt. The defense must include all supporting evidence and state with specificity the reasons for which the sanction should not be imposed.

(d) After receipt and consideration of the defense, the Postal Service shall

advise the manufacturer of the decision and the facts and reasons for it; the decision shall be effective on receipt unless it provides otherwise. The decision shall also advise the manufacturer that it may, within 30 calendar days of receiving written notice, appeal that determination as specified therein.

(e) The manufacturer may submit a written appeal to the Postal Service within 30 calendar days of receipt of the decision. The appeal must include all supporting evidence and state with specificity the reasons that the manufacturer believes that the administrative sanction was erroneously imposed. The submission of an appeal stays the effectiveness of the sanction.

(f) The imposition of an administrative sanction under this section does not preclude any other criminal or civil statutory, common law, or administrative remedy that is available by law to the Postal Service, the United States, or any other person or concern.

§ 501.15 Materials and workmanship.

All meters must adhere to the quality in materials and workmanship of the approved production model and must be manufactured with suitable jigs, dies, tools, etc., to ensure proper maintenance and interchangeability of parts.

§ 501.16 Breakdown and endurance testing.

Each meter model proposed for manufacturing must pass without error or breakdown the following described printing cycle endurance test, which includes operation of the printing mechanism with proper registration of the selected postage value in both the ascending and descending registers. At reasonably frequent intervals, the manufacturer must take meters at random from production and subject them to breakdown tests to make certain that quality and performance standards are maintained.

(a) For meters that operate at 100 or more printing cycles per minute—4 million cycles. For meters that operate at less than 100 printing cycles per minute (and cannot be used interchangeably on power-base machines that operate at 100 or more printing cycles per minute)—2 million cycles.

(b) For multidenomination and omnidenomination meters, postage value selection elements must be tested for one-half million operations. A complete operation includes selection of a value and return to zero.

(c) Balance register lockout operation must be done at the start of, at intervals during, and after the printing cycle test.

§ 501.17 Protection of printing dies and keys.

During the process of fabricating parts and assembling postage meters, the manufacturer must exercise due care to prevent loss or theft of keys or of serially numbered postage-printing dies or component parts (such as denomination-printing dies, or auxiliary power supply and meter-setting equipment for electronic meters) that might be used in some manner to defraud the Postal Service of revenue. All serially numbered printing dies produced should be accounted for by assembly into meters or by evidence of mutilation or destruction. Postage printing dies removed from meters and not suitable for reassembly must also be mutilated so that the dies cannot be used or they must be completely destroyed.

§ 501.18 Destruction of meter stamps.

All meter stamps printed in the process of testing dies or meters must be collected and destroyed daily.

§ 501.19 Inspection of new and rebuilt meters.

All new and rebuilt meters must be inspected carefully before leaving the manufacturer's meter service station.

§ 501.20 Keys and setting equipment.

The meter manufacturer must furnish keys and other essential equipment for setting the meters to all post offices under whose jurisdiction its meters are licensed for use. These items must be protected and must not be furnished to persons not authorized by the Postal Service to possess them. The Postal Service shall maintain control over the procurement, manufacture, and distribution of meter security seals. Manufacturers must reimburse the Postal Service promptly for the cost of the seals. All costs associated with meter security seals are apportioned twice annually to the meter manufacturers by the installed base of each manufacturer.

§ 501.21 Distribution facilities.

Authorized manufacturers must keep adequate facilities for and records of the distribution, control, and maintenance of postage meters. All such facilities and records are subject to inspection by Postal Service representatives.

§ 501.22 Distribution controls.

Each authorized postage meter manufacturer must do the following:

(a) Hold title permanently to all meters of its manufacture except those purchased by the Postal Service.

(b) On behalf of applicants, transmit electronically copies of completed PS Forms 3601–A, Application for a License to Lease and Use Postage Meters, to the designated Postal Service central processing facility.

(c) Lease meters only to parties that have valid licenses issued by the Postal Service.

(d) Supply only those meter slogan or ad plates that meet the Postal Service requirements for suitable quality and content.

(e) (1) Have all meters set, sealed (if applicable), and checked into service by the appropriate Postal Service representative before delivering them to licensees. Meters must be checked into service at the licensing post office, unless the meter is serviced under the on-site meter-setting program.

(2) The meter manufacturer must present the meter and a completed PS Form 3601–C, Postage Meter Installation, Withdrawal, or Replacement, to the appropriate Postal Service representative when checking a meter into service.

(3) A meter should show a zero in the descending register before being checked into service. If a zero is not shown, the initial payment must include the residual amount the locked-out meter could not imprint.

(f) Notify Computerized Remote Postage Meter Resetting System licensees of the dates on which meter examinations are due, and notify the licensing post offices of CMRS meters that have not been reset during the previous 3 months and/or are due for an annual examination. Resetting transactions must not be completed by the manufacturer if the meters are not taken to the post office for examination by the due date. Licensees who do not bring in their meters after the initial manufacturer notification must be approached again within 15 days, preferably by personal contact. If a response is not received within another 15 days, the Postal Service shall notify the licensee that the meter is to be removed from service and the meter license revoked, following the procedures for revocation specified by regulation. The Postal Service shall notify the manufacturer to remove the meter from the licensee's location and present it to the licensing post office to be checked out of service within 15 days.

(g) Present meters to the licensing post office to be checked out of service if the licensee no longer wants the meter or if the meter is to be removed from service for any other reason. Take the meter to the licensing post office for withdrawal, with a completed PS Form 3601–C, Postage Meter Installation, Withdrawal, or Replacement, and copy of the applicable PS Form 3602–A, Record of Meter Register Readings, or equivalent.

(h) Retrieve any misregistering, faulty, or defective meter and present it to the licensing post office to have the meter checked out of service within 3 business days of being notified by the licensee of the defect. After examining a meter withdrawn for apparent faulty operation affecting registration, the manufacturer must furnish a report explaining the malfunction to the licensing post office. That report must include all applicable meter documentation and a recommendation for the appropriate postage adjustment, if applicable, as follows:

(1) *Mechanical meters.* The manufacturer's postage adjustment recommendation for a misregistering mechanical meter must be accompanied by a refund request; a copy of the licensee's PS Form 3610, Record of Postage Meter Settings, and PS Form 3602–A, Record of Meter Register Readings, or equivalent, and the manufacturer's analysis of the licensee's recent mailing history supporting the recommended postage adjustment.

(2) *Electronic meters.* The manufacturer's postage adjustment recommendation for a misregistering electronic meter must be accompanied by a manufacturer-generated summary report of the appropriate redundant electronic register memory readouts for the meter, clearly indicating the register readings; a letter of instruction explaining the summary report; a copy of the licensee's PS Form 3610, PS Form 3602–A, if maintained, and applicable system-generated register documentation (if maintained in lieu of PS Form 3602–A); and an explanation of the meter malfunction that resulted in inaccurate registration, if determined. If a summary report of the appropriate redundant electronic register memory readouts cannot be retrieved, the manufacturer's recommendation must be accompanied by a refund request; a copy of the licensee's PS Form 3610, PS Form 3602–A, and applicable system-generated register documentation (if the PS Form 3602–A is not maintained); and the manufacturer's analysis of the licensee's recent mailing history supporting the recommended postage adjustment.

(i) Report promptly the loss or theft of any meter or the recovery of any lost or stolen meter. The manufacturer must provide notification by the Postal Service with completing a standardized lost and stolen meter incident report notifying within 30 calendar days of the manufacturer's determination of a meter loss, theft, or recovery. The manufacturer must complete all preliminary location activities specified in § 501.26 before submitting this report to the Postal Service.

(j) Provide the designated Postal Service Information Systems Service Center (ISSC) with a compatible computer magnetic tape, computer diskette, or electronic transmission, listing all licensee meters in service, at the close of business each postal quarter. Include in each file record the meter serial number, model number, the user's name and address, the date that the meter was placed in service, and the ZIP Code or finance number of the licensing post office. Manufacturers are responsible for reconciling differences and keeping accurate records. This reporting includes reconciliation of differences with licensing post offices by the manufacturer's branches or dealers, which results from meters that are not in Postal Service or manufacturer records.

(k) Keep at manufacturer's headquarters a complete record by serial number of all meters manufactured, showing all movements of each from the time that the meter is produced until it is scrapped, and the reading of the ascending register each time the meter is checked into or out of service through a post office. These records must be available for inspection by Postal Service officials at any time during business hours. These records must be destroyed 3 years after the meter is scrapped.

(l) Cancel a lease agreement with any lessee whose meter license is revoked by the Postal Service, remove the meter within 15 calendar days, and have the meter checked out of service.

(m) Promptly remove from service any meter that the Postal Service indicates should be removed from service. When a meter license is canceled, all meters in use by the licensee must be removed from service.

(n) Keep a permanent record by serial number of all meter keys issued to postmasters, as well as those sections of the manufacturer's establishment in which their use of the keys is essential, preferably in the form of signed receipt cards. The record must include the date, location, and details of any loss, theft, or recovery of such keys.

(o) Examine each meter withdrawn from service for failure to record its operations correctly and accurately, and report to the Postal Service the mechanical condition or fault that caused the failure.

(p) Provide monthly the designated ISSC with a compatible computer tape of lost or stolen meters. The file is due on the first of each month (for the preceding month's activity).

(q) Take reasonable precautions in the transportation and storage of meters to prevent use by unauthorized individuals. Manufacturers must ship all meters by Postal Service registered mail unless given written permission by the Postal Service to use another carrier. The manufacturer must demonstrate that the alternative delivery carrier employs security procedures equivalent to those for registered mail.

(r) Affix to all meters both a cautionary label providing the meter user with basic reminders on leasing, meter movement, and misuse and a barcoded label containing a barcoded representation of the meter serial number.

(1) The cautionary label must be placed on all meters in a conspicuous and highly visible location. Words printed in capital letters should be emphasized, preferably printed in red. The minimum width of the label should be 3.25 inches, and the minimum height should be 1.75 inches. The label should read as follows:

RENTED POSTAGE METER—NOT FOR SALE

PROPERTY OF [NAME OF MANUFACTURER]

Use of this meter is permissible only under U.S. Postal Service license. Call [Name of Manufacturer] at (800) ###-#### to relocate/return this meter.

WARNING! METER TAMPERING IS A FEDERAL OFFENSE.

IF YOU SUSPECT METER TAMPERING,

CALL POSTAL INSPECTORS AT 1–800–654–8896 OR (202) 484–5480.

REWARD UP TO $50,000 for information leading to the conviction of any person who misuses postage meters resulting in the Postal Service not receiving correct postage payments.

(2) The barcode label must be placed near the stamped serial number and must meet these specifications: Code 3 of 9, ten digits long, with the first two digits being the manufacturer code (01—Ascom Hasler, 02—Pitney Bowes, 03—Francotyp-Postalia, 04—Friden Neopost) and the next eight digits being the meter serial number, zero-filled, right-justified. Additional barcode digits may be used for manufacturer purposes if the Postal Service is notified of the information to be encoded thereby.

(3) Exceptions to the formatting of required labeling are determined on a case-by-case basis. Any deviation from standardized meter labeling requirements must be approved in writing by the Postal Service.

§ 501.23 Administrative sanction.

(a) "Meter" for purposes of this section means any postage meter manufactured by an authorized postage meter manufacturer under § 501.1 that is not owned or leased by the Postal Service.

(b) An authorized manufacturer that, without just cause, fails to conduct or perform adequately any of the controls in § 501.22, to follow standardized lost and stolen meter incident reporting in § 501.26, or to conduct any of the inspections required by § 501.25 in a timely fashion is subject to an administrative sanction based on the investigative and administrative costs and documented revenue losses (net of any amount collected by the Postal Service from the licensee or meter user) with interest per occurrence measured from the date on which the cost and/or loss occurred, as determined by the Postal Service. Sanctions shall be based on the costs and revenue losses that result from the manufacturer's failure to comply with these requirements.

(c) The Postal Service may impose an administrative sanction under this section by issuing a written notice to the manufacturer setting forth the facts and reasons on which the determination to impose the sanction is based. The Postal Service shall determine all costs and losses. The notice shall advise the manufacturer of the date that the action shall take effect if a written defense is not presented within 30 calendar days of receipt of the notice.

(d) The manufacturer may present to the Postal Service a written defense to the proposed action within 30 calendar days of receipt of the notice. The defense must include all supporting evidence and state with specificity the reasons for which the sanction should not be imposed.

(e) After receipt and consideration of the written defense, the Postal Service shall advise the manufacturer of the decision and the facts and reasons for it. The decision shall be effective on receipt unless it provides otherwise.

(f) The manufacturer may submit a written appeal of the decision within 30 calendar days of receiving the decision, addressed to the manager of Retail and Customer Service, Postal Service Headquarters. The appeal must include all supporting evidence and state with specificity the reasons that the manufacturer believes that the administrative sanction was erroneously imposed. The submission of an appeal stays the effectiveness of the sanction.

(g) The imposition of an administrative sanction under this section does not preclude any other criminal or civil statutory, common law, or administrative remedy that is available by law to the Postal Service, the United States, or any other person or concern.

§ 501.24 Meter replacement.

The manufacturer must keep its postage meters in proper operating condition for licensees by replacing them when necessary or desirable to prevent mechanical breakdown.

§ 501.25 Inspection of meters in use.

(a) The manufacturer must have all its meters in service with licensees inspected according to the following schedule. A high-volume mailer is defined as one who has annual metered postage in excess of $12,000.

BILLING CODE 7710-12-P

Meter Type	Monthly	Quarterly	Semiannually	Annually
Mechanical	Special Circumstances	High-Volume Licensees Using System Meters	Other Licensees Using System Meters	Stand-Alone Meters
Electronic	Special Circumstances		High-Volume Licensees Using Non-CMRS System Meters	All CMRS and Other Electronic Meters

BILLING CODE 7710-12-C

(b) Manufacturer inspections must be sufficiently thorough to determine that each meter is clean, in proper operating condition, and recording its operations correctly and accurately. The manufacturers must:

(1) Compare the meter serial number on the meter with the serial number on the source document (manufacturer's records).

(2) Record the ascending and descending register readings and calculate the total readings. Record the locking-seal identification number.

(3) Obtain the licensee's PS Form 3602-A, Record of Meter Register Readings, or equivalent, and a copy of the most recent PS Form 3603, Receipt for Postage Meter Setting, and verify the control total after the last setting with the control total calculated during the proof-of-register procedure.

(4) Verify the accuracy of postage selection, denomination indicator wheels or electronic display, and denomination printing wheels following the proof of registers by printing a .00 meter stamp and then comparing the register readings with the recorded register readings.

(5) Check to determine that the post office locking seal is in place and properly sealed and that the seal wire is properly wound and tightly gripped by the seal-locking mechanism, and tightly pulled up to the lock cover or post. Ensure that the locking-seal identification number matches the seal number recorded at the time of the last meter resetting.

(6) Check to determine that the lock cover properly protects the lock and has not been loosened, bent, or tampered with.

(7) Complete the following, as applicable to the specific meter model:

(i) Check to ensure that the meter fits properly on the meter base.

(ii) Check all breakoff screws to determine that no screw is missing or loose or shows signs of removal.

(iii) Operate the dater and meter ad selector dials to test the dater, postmark die, and meter ad plate.

(iv) Check the alignment and condition of engraving on the denomination printing wheels, when visible.

(v) Check the descending register door for damage, pry marks, or scarring.

Make certain that the door cannot be opened without unlocking it.

(vi) Examine the meter drum for damage, pry marks, or scarring.

(vii) Examine the meter cover for pry marks or scarring near the post office lock or breakoff screws, any drilled holes, or any signs of attempted entry into the internal mechanism of the meter.

(viii) Examine the meter stamp die for excessive wear, damage, breakage, or scars from prying, and the postage die retaining screws for signs of wear to ensure that none is missing or shows signs of removal.

(ix) Check the register, counter, and display windows for breakage or cloudiness.

(x) Obtain the signature of the licensee to show that a meter inspection has taken place.

(8) Report immediately to the licensee's licensing postmaster any irregularity in the operation of the meter or sign of improper use, and take steps to replace or remove the meter.

§ 501.26 Meters not located.

Upon learning that one or more of its postage meters in service cannot be located, the manufacturer must undertake reasonable efforts to locate the meters by following a series of Postal Service-specified actions designed to locate the meters. If these efforts are unsuccessful and a meter is determined to be lost or stolen, the manufacturer must notify the Postal Service within 30 days by submitting a Lost and Stolen Meter Incident Report.

(a) If a licensee cannot be located, the manufacturer must, at a minimum, complete the following actions:

(1) Call the licensee's last known telephone number.

(2) Call directory assistance for the licensee's new telephone number.

(3) Contact the licensee's local post office for current change of address information.

(4) Contact the local post office for a copy of the applicable PS Form 3610 and PS Form 3601-C. Verify the location of the meter or licensee currently maintained in those meter records.

(5) Contact the rental agency responsible for the property where the licensee was located, if applicable.

(6) Visit the licensee's last known address to see whether the building superintendent or a neighbor knows the meter licensee's new address.

(7) Check the centralized meter inspection file for change of address notation.

(8) Mail a certified letter with return receipt to the licensee at the last known address with the notation "Forwarding and Address Correction Requested."

(9) If new address information is obtained during these steps, any scheduled meter inspections must be completed promptly.

(b) If a meter is reported to be lost or stolen by the licensee, the manufacturer must, at a minimum, complete the following actions:

(1) Ensure that the meter licensee has filed a police report and that copies have been provided to the appropriate Inspection Service Contraband Postage Identification Program (CPIP) specialist.

(2) Withhold issuance of a replacement meter until the missing meter has been properly reported to the police and to the appropriate Inspection Service CPIP specialist.

(c) If the manufacturer later learns that the meter has been located and/or recovered, the manufacturer must update lost and stolen meter activity records, inspect the meter promptly, initiate a postage adjustment or transfer if appropriate, and check the meter out of service if a replacement meter has been supplied to the meter licensee.

(d) If a meter reported to the Postal Service as lost or stolen is later located, the manufacturer is responsible for submitting a new Lost and Stolen Meter Incident Report that references the initial report and outlines the details of how the meter was recovered. This report must be submitted to the Postal Service within 30 days of recovery of the meter. The meter manufacturer is also responsible for purging lost and stolen meter reports that are provided on a periodic basis to the Postal Service ISSC for those meters that have been recovered.

(e) Any authorized manufacturer that fails to comply with standardized lost and stolen reporting procedures and instructions is subject to an administrative sanction under § 501.23, as determined by the Postal Service.

§ 501.27 Repair of internal mechanism.

Repair or reconditioning of meters involving access to internal mechanisms must be done only within a factory or suitable meter repair department under the manufacturer's direct control and supervision. Meters must be checked out of service by the post office of setting before they are opened or internal repairs are undertaken.

§ 501.28 Computerized remote postage meter resetting.

(a) *Description.* The Computerized Remote Postage Meter Resetting System (CMRS) permits postal licensees using specially designed postage meters to reset their meters at their places of business via telephonic communications. Authorized meter manufacturers that offer CMRS services are known as meter resetting companies (MRCs). To reset a meter, the licensee telephones the MRC and provides identifying data. Before proceeding with the setting transaction, the MRC must verify the data and ascertain from its own files whether the licensee has sufficient funds on deposit with the Postal Service. If the funds are available or the manufacturer opts to provide a funds advance in accordance with paragraph (b)(5) of this section, the MRC may complete the setting transaction.

(b) *Deposits with the Postal Service.* (1) Deposits in the Postal Service Fund at Treasury are backed in full faith and credit by the U. S. Treasury.

(2) A CMRS licensee is required to have funds available on deposit with the Postal Service before resetting a meter or the manufacturer may opt to provide a funds advance in accordance with paragraph (b)(4) of this section. The details of this deposit requirement are covered within the Acknowledgment of Deposit Requirement document. By signing this document, the licensee agrees to transfer funds to the Postal Service through a lockbox bank, as specified by the MRC, for the purpose of prepayment of postage. The MRC representative must provide all new CMRS licensees with this document when a new account is established. The document must be completed and signed by the licensee and sent to the licensing post office by the MRC.

(3) The MRC is required to incorporate the following language into its meter rental agreements:

Acknowledgment of Deposit Requirement

By signing this meter rental agreement, you represent that you have read the Acknowledgment of Deposit Requirement and are familiar with its terms. You agree that, upon execution of this Agreement with [the MRC], you will also be bound by all terms and conditions of the Acknowledgment of Deposit Requirement, as it may be amended from time to time.

(4) The licensee is permitted to make deposits in one of three ways: check, electronic funds transfer (or wire transfer), or automated clearinghouse (ACH) transfer. These deposits are to be processed by the lockbox bank. The lockbox bank must wire daily all available balances to the Postal Service.

(5) If the MRC chooses to offer advancement of funds to licensees, the MRC is required to maintain a deposit with the Postal Service equal to at least 1 day's average funds advanced. The total amount of funds advanced to

licensees on any given day may not exceed the amount the manufacturer has on deposit with the Postal Service. The MRC is not authorized to perform settings in excess of the licensee's balance in any other circumstance. The Postal Service shall not be liable for any payment made by the MRC on behalf of a licensee that is not reimbursed by the licensee because the MRC is solely responsible for the collection of advances.

(c) *Revenue protection.* The Postal Service shall conduct periodic assessments of the revenue protection safeguards of each MRC system and shall reserve the right to revoke an MRC's authorization if the CMRS system does not meet all requirements set forth by the Postal Service. In addition, the Postal Service shall reserve the right to suspend the operation of the MRC for any serious operational deficiency that is likely to result in the loss of funds to the Postal Service as provided in § 501.12.

(d) *Equipment.* The meters used in the computerized resetting system must conform to the specifications in § 501.6. They must be tested under § 501.7 and conform to the safeguards, distribution, and maintenance requirements of §§ 501.15 through 501.23 to protect the Postal Service against loss of revenue from fraud, manipulation, misoperation, or breakdown.

(e) *Financial operation.* (1) Before the Postal Service's selection of a lockbox provider, the MRC must establish a lockbox account in the name of the Postal Service at a bank or banks approved by the Postal Service to handle the deposits of licensees. The MRC must make arrangements with such banks under which the banks are to inform the manufacturer of the amounts of licensee funds received each banking day.

(2) The Postal Service lockbox bank processes the CMRS deposits daily, consolidates the data, and performs a direct file transmission to each MRC. The daily deposit processing cutoff times and the automated file transmission times are coordinated independently with each of the MRCs. Manufacturers must ensure that their data center computers are programmed to reflect each licensee deposit and track all licensee activity.

(3) The MRC must require each licensee that requests meter resetting to provide the meter serial number, the licensee account number, and the meter's ascending and descending register readings. The manufacturer must verify that the information provided to the licensee is consistent with its records. The MRC must also verify that there are sufficient funds in the licensee's account to cover the postage setting requested before proceeding with the setting transaction (unless the manufacturer opts to provide the licensee a funds advance). Immediately following each such resetting, the MRC must charge the licensee's account for the amount of the postage reset. After the completion of each transaction, the manufacturer must promptly provide the licensee with a statement documenting the transaction and the balance remaining in the licensee's account. As an alternative, the manufacturer may provide a statement monthly that documents all transactions for the period and that shows the balance in the licensee's account after each transaction.

(4) Each banking day, the lockbox bank is to transfer, by 10 a.m. local time, amounts payable to the Postal Service from the transactions during the previous day to a designated Federal Reserve Bank. The MRC must maintain licensee service activity data to accept and respond to inquiries from licensees concerning the status of their payments. The lockbox bank must provide the MRCs with a nationwide, toll-free telephone number for licensee service. The Postal Service lockbox bank must assign a dedicated senior level licensee service representative to handle all inquiries and investigations.

(5) The Postal Service requires that the MRCs publicize to all CMRS licensees the following payment options (listed in order of preference):

(i) Automated clearinghouse (ACH) debits/credits.

(ii) Electronic funds transfers (wire transfers).

(iii) Checks.

(6) Licensee check deposits must be mailed to a predetermined post office box address specified by the lockbox bank and accompanied by a preencoded deposit ticket. The Postal Service provides CMRS customers with deposit tickets for inclusion with check payments. At the time a new account is opened, a licensee not possessing a preencoded deposit slip must present the initial payment to the MRC representative who in turn assigns the licensee a new account number and manually prepares a deposit ticket to be mailed to the lockbox bank for processing.

(7) If a licensee prefers to use a payment form other than a check, the licensee must contact the MRC representative for instructions, and the MRC must provide the licensee with the appropriate information regarding the use of ACH debits/credits and electronic funds transfers (wire transfers).

(8) Returned checks and ACH debits are the responsibility of the Postal Service. In the case of a returned check, the Postal Service lockbox bank, after an automatic second presentment, advises the MRC of the account in question so that the MRC data file can be locked. The MRC must lock the licensee account immediately so that the licensee is unable to reset the meter until the Postal Service receives payment in full for the check returned. The lockbox bank provides collection services for returned checks on behalf of the Postal Service. The Postal Service lockbox bank notifies the MRC once this item is paid. The MRC then releases the account for activity.

(f) *Refunds.* The Postal Service issues a refund to a licensee for any unused postage in a meter. Refunds of licensee balances maintained by the Postal Service in the Postal Service fund are intended to be made directly to the licensee by the lockbox bank within 48 hours after receipt of a licensee's request.

(g) *Reports.* The manufacturer must provide reports according to the following schedule:

Report description	Content	Frequency	Medium
MRC CMRS Daily Activity Report	Summary of Business Activity	Daily	Paper (facsimile).
Revenue Allocation Report	ZIP Code of Licensing Post Office; Amount of Resettings.	Postal Accounting Period	Electronic.
Postage Refunds Report	Customer ID; ZIP Code; Amount of Refund.	Daily (by request only)	Paper.
Funds Advanced Report	Customer ID; ZIP Code; Amount of Funds Advanced.	Daily (by request only)	Paper.

(h) *Inspection of records and facilities.* The manufacturer must make its facilities that handle the operation of the computerized resetting system and all records about the operation of the system available for inspection by representatives of the Postal Service at all reasonable times.

Stanley F. Mires,
Chief Counsel, Legislative.

Note: The following report and Postal Service forms are published for information only and will not be codified in the Code of Federal Regulations.

BILLING CODE 7710-12-P

Exhibit A

Lost and Stolen Meter Incident Report

(To be filed within 30 days of determining that a meter is lost, stolen, or recovered)

1. Report code: _____
2. Report number: _____
3. Report date: _____
4. Occurrence date: _____
5. Manufacturer's code: _____
6. Meter serial number: _____
7. Model number: _____
8. Licensing post office finance number: _____
9. Meter license number: _____

A. Administrative Details

10. Accountable district/branch/dealer:

11. Complete address (including ZIP+4):

12. Complete name and last known address of licensee:

13. Indicate whether the licensee is a third-party mailer:

14. Police report number, if stolen:

Note: For stolen meters, a copy of the applicable police report must be attached to the stolen report. For recovered meters, a copy of the original lost or stolen report must be attached to the recovery report.

15. Name, precinct, and address of applicable police department:

16. For **lost or stolen** meters:

Last known register readings:
- Ascending: _____
- Descending: _____
- Seal number: _____
- Date of last setting: _____

Date of last manufacturer's inspection: _____

17. For **found or recovered** meter:

Reference initial report number: _____
Meter date reading at time of recovery: _____

Exhibit A

B. Circumstances

18. Details of loss or recovery (include time, place, name of individual who reported incident, and all pertinent facts):

19. Indicate any history of other meters reported as lost or stolen by this customer and attach all reports relating to these instances:

C. Report Distribution

Concurrent distribution of this report must be made to the licensing post office and the applicable Inspection Service Contraband Postage Identification Program (CPIP) specialist.

20. Name and address of licensing post office:

21. Name and address of applicable Inspection Service CPIP specialist:

D. Report Certification

The following certify that this report was accurately completed and submitted after the actions specified in 39 CFR 501.26 were followed:

22. Printed name and signature of person completing the report:

23. Printed name and signature of supervisor:

The submission of false, fictitious, or fraudulent statements can result in imprisonment of up to 5 years and a fine of up to $10,000 (18 U.S.C. 1001).

Failure to report a lost or stolen meter according to standardized reporting procedures outlined in 39 CFR 501.26 and/or 39 CFR 501.22 can result in an administrative sanction. Additionally, lost and stolen meter activity reports must be submitted upon locating or recovering a meter that has been reported as lost or stolen. The submission of a lost and stolen meter activity report does not relinquish the manufacturer's responsibility to update input for the national computerized quarterly lost and stolen report.

Exhibit A

Missing Meters Required Actions
(39 CFR 501.26)

If a meter licensee cannot be located, do the following:

1. Call licensee's last known telephone number.
2. Call directory assistance for new telephone number.
3. Contact local post office for current change of address information.
4. Contact local post office for a copy of Form 3610 and Form 3601-C for indication of new address.
5. Contact rental agency responsible for property where licensee was located.
6. Visit licensee's last known address to determine whether building superintendent or a neighbor knows licensee's new address.
7. Check centralized meter inspection file for change of address notation.
8. Mail a certified letter with return receipt to licensee at last known address, and add notation "Forwarding and Address Correction Requested" on the envelope.

If a meter licensee reports a lost or stolen meter, do the following:

1. Ensure that meter licensee has filed a police report and that copies have been provided to appropriate Contraband Postage Identification Program (CPIP) postal inspector.
2. Do not issue a replacement meter without ensuring that missing meter has been properly reported to police and to Inspection Service.

Lost and Stolen Meter Incident Report [DRAFT]

Exhibit B

U.S. Postal Service
Application for a License to Lease and Use Postage Meters
(Complete and submit original signed form to the post office where metered mail will be deposited.)

Post Office Where Mail to Be Deposited:
Name: _____ State: ___ ZIP Code: _____

A. Applicant

1. Business Name: _____ 2. Telephone: ( ) -
3. Corporate Business Customer Information System (CBCIS) Number *(if known)*: _____
4. Business Tax Identification Number: _____
5. Corporate Business Agent *(if applicable)*: _____
6. Federal Agency Code (for U.S. official mail [penalty indicia]) ___-_____
7. Mailing Address *(delivery)*:
   Address: _____
   City: _____ State: _____ ZIP+4: _____ Fax Number: _____
8. Physical Street Address *(if mailing address is a post office box or different from above)*:
   _____
   City: _____ State: _____ ZIP+4: _____

B. Business Profile

1. Company's primary business function: _____
2. Give us your best estimate of postage usage:

   a. Anticipated Annual Metered Postage:
   Less than $7,000 [ ]
   $7,000 to $12,000 [ ]
   $12,001 to $25,000 [ ]
   More than $25,000 [ ]

   b. Annual Percentage of Metered Mail:
   Letters ___%
   Flats ___%
   Parcels ___%

3. Does your business anticipate mailing metered mail at discounted rates? [ ] Y [ ] N
4. Does your business have an authorization to use permit imprints at this or any other post office? [ ] Y [ ] N
5. Does your business prepare or process mail for other *(third)* parties? [ ] Y [ ] N
6. Does your business currently hold any other meter licenses at this or any other post office? [ ] Y [ ] N
   If yes, list:

Post Office City	State	ZIP Code	License Number

7. Have you or your business ever had a meter license revoked? [ ] Y [ ] N
   If yes, provide specific details *(including dates and licensing post office)*: _____

PS Form 3601-A [DRAFT]

Exhibit B

The collection of this information is authorized by 39 U.S.C. 401 and 404. This information will be used to administer postage meter activities. As a routine use, the information may be disclosed to an appropriate government agency, domestic or foreign, for law enforcement purposes; where pertinent, in a legal proceeding to which the U.S. Postal Service is a party or has an interest; to a government agency in order to obtain information relevant to a Postal Service decision concerning employment, security clearances, contracts, licenses, grants, permits, or other benefits; to a government agency upon its request when relevant to its decision concerning employment, security clearances, security or suitability investigations, contracts, licenses, grants, or other benefits; to a congressional office at your request; to an expert, consultant, or other person under contract with the Postal Service to fulfill an agency function; to the Federal Records Center for storage; to the Office of Management and Budget for review of private relief legislation; to an independent certified public accountant during an official audit of Postal Service finances; to a labor organization as required by the National Labor Relations Act; and to disclose the identity and address of user and identity of agent to any member of the public. Completion of this form is voluntary; however, if this information is not provided, you may not receive meter services.

C. Certification

The application must be signed and submitted to the U.S. Postal Service by a corporate officer or an individual within the business with the authority to sign checks.

I hereby certify that all information furnished on this form is accurate and truthful.

Applicant's Signature: _____ Date: _____

Printed Name: _____ Contact Telephone: ( ) -

Business Title: _____

PS Form 3601-A [DRAFT]

Exhibit C

U.S. Postal Service

Postage Meter Installation, Withdrawal, or Replacement

[ ] Installation **[ ] Withdrawal** **[ ] Replacement**

Reason for Meter Activity:

[ ] New Meter [ ] Model Change [ ] Mechanical Failure
[ ] Register Failure [ ] Cancellation of Lease [ ] USPS Revocation of License
[ ] Other: _____

Explanation: _____

A. Licensee Information

Meter License Number: _____

Licensee Business/Individual Name: _____

B. Meter Location

Address: _____

City: _____ State: ____ ZIP+4: _____

Contact Person: _____ Telephone: _____

Meter Indicia Option Requested:

1. City: _____ State: _____
2. Name of Classified Branch: _____ State: _____
3. ZIP Code Designation: _____
4. Military APO/FPO: _____

C. Meter Information

Withdrawn Meter		**Installed Meter**	
Meter Manufacturer:	_____	Meter Manufacturer:	_____
Model Number:	_____	Model Number:	_____
Serial Number:	_____	Serial Number:	_____
Locking Seal Number:	_____	Locking Seal Number:	_____
Ascending Register:	_____	Ascending Register:	_____
Descending Register:	_____	Descending Register:	_____
Control Total:	_____	Control Number:	_____

PS Form 3601-C [DRAFT]

Exhibit C

D. Refunded/Transferred Postage

[ ] Postage Refunded $ _____ [ ] Postage Transferred $ _____

[ ] Refund Not Determined and/or Locally Authorized *(provide explanation)*

Explanation: _____

E. Manufacturer's Authorized Representative

Name *(typed)* and Title: _____

Employee ID #: _____

Dealer/Branch Office Code #: _____

Address: _____

City: _____ State: _____ ZIP+4: _____

Telephone: _____

Signature: _____

The submission of a false, fictitious, or fraudulent statement can result in imprisonment of up to 5 years and a fine of up to $10,000 (18 U.S.C. 1001).

F. USPS Representative **Round Stamp Here** (required)

Name *(typed)* and Title: _____

Post Office. Station. or Branch Location: _____

Signature: _____

PS Form 3601-C [DRAFT]

[FR Doc. 95–14137 Filed 6–8–95; 8:45 am]
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federal register

Friday
June 9, 1995

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Parts 1 and 25

Airworthiness Standards: European Transport Category Airplanes; Changes to Advisory Circular (AC) 25–7; Final Rule and Notice

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1 and 25

[Docket No. 27705; Amendment Nos. 1–40 and 25–84]

RIN 2120–AF25

Revision of Certain Flight Airworthiness Standards To Harmonize With European Airworthiness Standards for Transport Category Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: The Federal Aviation Administration (FAA) is amending part 25 of the Federal Aviation Regulations (FAR) to harmonize certain flight requirements with the European Joint Aviation Requirements 25 (JAR–25). This action responds to a petition from the Aerospace Industries Association of America, Inc. and the Association Europeenne des Constructeurs de Materiel Aerospatial. These changes are intended to benefit the public interest by standardizing certain requirements, concepts, and procedures contained in the airworthiness standards for transport category airplanes.

EFFECTIVE DATE: July 10, 1995.

FOR FURTHER INFORMATION CONTACT: Donald K. Stimson, Flight Test and Systems Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, FAA, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (206) 227–1129, facsimile (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Background

These amendments are based on Notice of Proposed Rulemaking (NPRM) 94–15, which was published in the **Federal Register** on April 22, 1994 (59 FR 19296). In that notice, the FAA proposed amendments to 14 CFR parts 1 and 25 to harmonize certain airworthiness standards for transport category airplanes with the European Joint Aviation Requirements 25 (JAR–25). Harmonizing the U.S. and European airworthiness standards benefits the public interest by reducing the costs associated with showing compliance to disparate standards, while maintaining a high level of safety.

NPRM 94–15 was developed in response to a petition for rulemaking from the Aerospace Industries Association of America, Inc. (AIA) and the Association Europeenne des Constructeurs de Materiel Aerospatial (AECMA). In their petition, AIA and AECMA requested changes to §§ 25.143(c), 25.143(f), 25.149, and 25.201 to standardize certain requirements, concepts, and procedures for certification flight testing and to enhance reciprocity between the FAA and JAA. In addition, AIA and AECMA recommended changes to FAA Advisory Circular (AC) 25–7, "Flight Test Guide for Certification of Transport Category Airplanes," to ensure that the harmonized standards would be interpreted and applied consistently. A copy of that petition is included in the docket.

The proposals published in NPRM 94–15 would harmonize not only the sections of part 25 and JAR–25 addressed in the petition, but also related sections. These proposals were developed by the Aviation Rulemaking Advisory Committee (ARAC) and forwarded to the FAA as an ARAC recommendation. The FAA accepted the recommendation and published NPRM 94–15 for public comment in accordance with the normal rulemaking process.

The Aviation Rulemaking Advisory Committee

The ARAC was formally established by the FAA on January 22, 1991 (56 FR 2190), to provide advice and recommendations concerning the full range of the FAA's safety-related rulemaking activity. This advice was sought to develop better rules in less overall time using fewer FAA resources than are currently needed. The committee provides the opportunity for the FAA to obtain firsthand information and insight from interested parties regarding proposed new rules or revisions of existing rules.

There are over 60 member organizations on the committee, representing a wide range of interests within the aviation community. Meetings of the committee are open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act.

The ARAC establishes working groups to develop proposals to recommend to the FAA for resolving specific issues. Tasks assigned to working groups are published in the **Federal Register**. Although working group meetings are not generally open to the public, all interested parties are invited to participate as working group members. Working groups report directly to the ARAC, and the ARAC must concur with a working group proposal before that proposal can be presented to the FAA as an advisory committee recommendation.

The activities of the ARAC will not, however, circumvent the public rulemaking procedures. After an ARAC recommendation is received and it is found acceptable by the FAA, the agency proceeds with the normal public rulemaking procedures. Any ARAC participation in a rulemaking package will be fully disclosed in the public docket.

Discussion of the Proposals

In NPRM 94–15, the FAA proposed amending certain sections of the FAR, as recommended by the ARAC, to harmonize these sections with JAR–25. Concurrently, the JAA circulated Notice of Proposed Amendment (NPA) 25B–261, which proposed revising JAR–25, as necessary, to ensure harmonization in those areas for which the amendments proposed in NPRM 94–15 differ from the current JAR–25.

The FAA proposed to: (1) Introduce the term "go-around power or thrust setting" to clarify certain part 25 flight requirements; (2) revise the maximum control forces permitted for demonstrating compliance with the controllability and maneuverability requirements; (3) provide requirements for stick force and stick force gradient in maneuvering flight; (4) revise and clarify the requirements defining minimum control speed during approach and landing; (5) clarify the procedural and airplane configuration requirements for demonstrating stalls and revise the list of acceptable flight characteristics used to define the occurrence of stall; and (6) require that stall characteristics be demonstrated for turning flight stalls at deceleration rates up to 3 knots per second.

Revisions were also proposed for AC 25–7 to ensure consistent application of these proposed revised standards. Public comments concerning the revisions to AC 25–7 were invited by separate notice in the same issue of the **Federal Register** as NPRM 94–15 (59 FR 19303).

Proposal 1. Certain part 25 flight requirements involving flight conditions other than takeoff (i.e., §§ 25.119, 25.121(d), 25.145(b)(3), 25.145(b)(4), 25.145(b)(5), 25.145(c)(1), 25.149(f)(6), and 25.149(g)(7)(ii)) specify using the maximum available takeoff power or thrust as being representative of the appropriate maximum in-flight power or thrust. In practice, however, the power or thrust setting used to obtain the maximum in-flight power or thrust (commonly referred to as the go-around power or thrust setting) usually differs from the setting used for takeoff. In the past, the FAA interpreted the words "maximum available takeoff power or thrust" to mean the maximum in-flight power or thrust, with the takeoff power or thrust setting not always being "available" in flight. In NPRM 94–15, the FAA proposed changing the nomenclature to "go-around power or thrust setting" for clarification and to reflect terminology commonly used in the operational environment. (The term "go-around" refers to a deliberate maneuver to abort a landing attempt prior to touchdown by applying the maximum available power or thrust, retracting flaps, and climbing to a safe level-off altitude.)

The go-around power or thrust setting may differ from the takeoff power or thrust setting, for example, due to the airspeed difference between the takeoff and go-around flight conditions. In addition, complying with the powerplant limitations of § 25.1521 may result in a lower power setting at the higher airspeeds associated with a go-around. As another example, the controllability requirements of §§ 25.145(b)(3), 25.145(b)(4), 25.145(b)(5), 25.149(f), and 25.149(g) may also limit the go-around power or thrust setting to less than that used for takeoff. Another reason to separate the takeoff and go-around power (or thrust) nomenclature is that certification practice has not required, and applicants have not always proposed, changing the go-around power or thrust setting when a previously approved takeoff power or thrust is increased.

The FAA proposed to substitute the term "go-around power or thrust setting" for "maximum available takeoff power or thrust" in §§ 25.119, 25.121(d), 25.145(b)(3), 25.145(b)(4), 25.145(c)(1), 25.149(f)(6), and 25.149(g)(7)(ii). (Note that the requirement of § 25.145(b)(5) also uses the power specified in § 25.145(b)(4).) In addition, the FAA proposed to define "go-around power or thrust setting" in part 1 as "the maximum allowable in-flight power or thrust setting identified in the performance data." By this revision, the FAA intended to clarify that the applicable controllability requirements should be based on the same power or thrust setting used to determine the approach and landing climb performance contained in the approved Airplane Flight Manual (AFM).

The proposed terminology referred to a power or thrust "setting" rather than a power or thrust to make it clear that existing engine ratings would be unaffected. The powerplant limitations of § 25.1521 would continue to apply at the go-around power (or thrust) setting. Existing certification practices would also remain the same, including the relationship between the power or thrust values used to comply with the landing and approach climb requirements of §§ 25.119 and 25.121(d). For example, the thrust value used to comply with § 25.121(d) may be greater than that used for § 25.119, if the operating engine(s) do not reach the maximum allowable in-flight thrust by the end of the eight second time period specified in § 25.119.

Proposal 2. The FAA proposed to revise the table in § 25.143(c) to match the control force limits currently provided in JAR 25.143(c). This table prescribes the maximum control forces for the controllability and maneuverability flight testing required by §§ 25.143(a) and 25.143(b). For transient application of the pitch and roll control, the revised table would contain more restrictive maximum control force limits for those maneuvers in which the pilot might be using one hand to operate other controls, relative to those maneuvers in which both hands are normally available for applying pitch and roll control. The revised table would retain the current control force limits for transient application of the yaw control, and for sustained application of the pitch, roll, and yaw controls.

For maneuvers in which only one hand is assumed to be available, the FAA proposed to reduce the maximum permissible control forces from 75 pounds to 50 pounds for pitch control, and from 60 pounds to 25 pounds for roll control. These lower control forces would be more consistent with § 25.145(b), which states that a force of 50 pounds for longitudinal (pitch) control is "representative of the maximum temporary force that readily can be applied by one hand." In addition to adding more restrictive control force limits for maneuvers in which only one hand may be available to apply pitch and roll control, the FAA proposed to reduce the maximum permissible force for roll control from 60 pounds to 50 pounds for maneuvers in which the pilot normally has both hands available to operate the control.

The FAA proposed to further revise § 25.143(c) by specifying that the table of maximum permissible control forces applies only to conventional wheel type controls. This restriction, also specified in the current JAR 25.143(c), recognizes that different control force limits may be necessary when considering sidestick controllers or other types of control systems.

For clarification, the FAA proposed to replace the terms "temporary" and "prolonged," used in §§ 25.143(c), 25.143 (d), 25.143(e), and 25.145(b), with "transient" and "sustained," respectively. "Transient" forces are those control forces resulting from maintaining the intended flight path during changes to the airplane configuration, normal transitions from one flight condition to another, or regaining control after a failure. The pilot is assumed to take immediate action to reduce or eliminate these forces by retrimming or by changing the airplane configuration or flight condition. "Sustained forces," on the other hand, are those control forces resulting from normal or failure conditions that cannot readily be trimmed out or eliminated. The FAA proposed adding these definitions of "transient" and "sustained" forces to AC 25–7.

In addition, the FAA proposed several minor editorial changes for §§ 25.143(c) through 25.143(e) to improve readability and correct grammatical errors. For example, the words "immediately preceding" were proposed to replace "next preceding" in § 25.143(d). These editorial changes were intended only to clarify the regulatory language, while retaining the existing interpretation of the affected sections.

Proposal 3. The FAA proposed to add the JAR 25.143(f) requirements regarding control force characteristics during maneuvering flight to part 25 as a new § 25.143(f). By adding these requirements, the FAA would ensure that the force to move the control column, or "stick," must not be so great as to make excessive demands on the pilot's strength when maneuvering the airplane, and must not be so low that the airplane can easily be overstressed inadvertently.

These harmonized requirements would apply up to the speed V_{FC}/M_{FC} (the maximum speed for stability characteristics) rather than the speed V_{MC}/M_{MC} (the maximum operating limit speed) specified by the current JAR 25.143(f). Requiring these maneuvering requirements to be met up to V_{FC}/M_{FC} is consistent with other part 25 stability requirements. Section 25.253, which defines V_{FC}/M_{FC}, would be revised to reference the use of this speed in the proposed § 25.143(f). An acceptable means of compliance with § 25.143(f), including detailed interpretations of the stick force characteristics that meet these requirements, would be added to AC 25–7.

Proposal 4. Section 25.149(f) requires that the minimum control speed be determined assuming the critical engine suddenly fails during (or just prior to) a go-around from an all-engines-operating approach. For airplanes with

three or more engines, § 25.149(g) requires the minimum control speed to be determined for a one-engine-inoperative landing approach in which a second critical engine suddenly fails. The FAA proposed to revise §§ 25.149(f) through 25.149(h) to clarify and revise the criteria for establishing these minimum control speeds, V_{MCL} and V_{MCL-2}, respectively, for use during approach and landing.

The FAA proposed to clarify that V_{MCL} and V_{MCL-2} apply not only to the airplane's approach configuration(s), as prescribed in the current standards, but also to the landing configuration(s). The FAA recognizes that configuration changes occur during approach and landing (e.g. flap setting and landing gear position) and considers that the minimum control speeds provided in the AFM should ensure airplane controllability, following a sudden engine failure, throughout the approach and landing.

Applicants would have the option of determining V_{MCL} and V_{MCL-2} either for the most critical of the approach and landing configurations (i.e., the configuration resulting in the highest minimum control speed), or for each configuration used for approach or for landing. By determining the minimum control speeds in the most critical configuration, applicants would not be required to conduct any additional testing to that already required by the current standards. Only if these resulting speeds proved too constraining for other configurations would the FAA expect applicants to exercise the option of testing multiple configurations.

The FAA also proposed to add provisions to state the position of the propeller, for propeller airplanes, when establishing these minimum control speeds. For the critical engine that is suddenly made inoperative, the propeller position must reflect the most critical mode of powerplant failure with respect to controllability, as required by § 25.149(a). Also, since credit cannot be given for pilot action to feather the propeller during this high flightcrew workload phase of flight, the FAA proposed that V_{MCL} and V_{MCL-2} be determined with the propeller position of the most critical engine in the position it automatically achieves. For $_{MCL-2}$, the engine that is already inoperative before beginning the approach may be feathered, since the pilot is expected to ensure the propeller is feathered before initiating the approach.

To ensure that airplanes have adequate lateral control capability at V_{MCL} and V_{MCL-2}, the FAA proposed to require airplanes to be capable of rolling, from an initial condition of steady straight flight, through an angle of 20 degrees in not more than 5 seconds, in the direction necessary to start a turn away from the inoperative engine. This proposed addition to § 25.149 is contained in the current JAR 25.149.

The FAA also proposed guidance material for AC 25–7 to enable applicants to additionally determine the appropriate minimum control speeds for an approach and landing in which one engine, and, for airplanes with three or more engines, two engines, are already inoperative prior to beginning the approach. These speeds, $V_{MCL(1\ out)}$ and $V_{MCL-2(2\ out)}$, would be less restrictive than V_{MCL} and V_{MCL-2} because the pilot is assumed to have trimmed the airplane for the approach with an inoperative engine (for $V_{MCL(1\ out)}$) or two inoperative engines (for $V_{MCL-2(2\ out)}$). Also, the approach and landing procedures under these circumstances may use different approach and landing flaps than for the situations defining V_{MCL} or V_{MCL-2}. These additional speeds could be used as guidance in determining the recommended procedures and speeds for a one-engine-inoperative, or, in the case of an airplane with three or more engines, a two-engine-inoperative approach and landing.

The FAA proposed to revise § 25.125 to require the approach speed used for determining the landing distance to be equal to or greater than V_{MCL}, the minimum control speed for approach and landing with all-engines-operating. This provision would ensure that the speeds used for normal landing approaches with all-engines-operating would provide satisfactory controllability in the event of a sudden engine failure during, or just prior to, a go-around.

Proposal 5. The FAA proposed to revise the stall demonstration requirements of § 25.201 to clarify the airplane configurations and procedures used in flight tests to demonstrate stall speeds and stall handling characteristics. The list of acceptable flight characteristics used to define the occurrence of stall would also be revised. To be consistent with current practice, § 25.201(b)(1) would require that stall demonstrations also be conducted with deceleration devices (e.g., speed brakes) deployed. Additionally, the FAA proposed clarifying the intent of § 25.201(b) to cover normal, rather than failure, conditions by requiring that stalls need only be demonstrated for the approved configurations.

Section 25.201(c) would be revised to more accurately describe the procedures used for demonstrating stall handling characteristics. The cross-reference to § 25.103(b), currently contained in § 25.201(c)(1), would be moved to a new § 25.201(b)(4) for editorial clarity and harmony with the JAR–25 format. Reference to the pitch control reaching the aft stop, which would be interpreted as one of the indications that the airplane has stalled, would be moved from § 25.201(c)(1) to § 25.201(d)(3).

The list of acceptable flight characteristics that define the occurrence of a stall, used during the flight tests demonstrating compliance with the stall requirements, is provided in § 25.201(d). The FAA proposed to revise this list to conform with current practices. Section 25.201(d)(1)(ii) would be removed to clarify that a rolling motion, occurring by itself, is not considered an acceptable flight characteristics for defining the occurrence of a stall. The proposed § 25.201(d)(2) would replace the criteria of §§ 25.201(d)(1)(iii) and 25.201(d)(2) because only deterrent buffeting (i.e., a distinctive shaking of the airplane that is a strong and effective deterrent to further speed reduction) is considered to comply with those criteria. Finally, the proposed § 25.201(d)(3) would define as a stall a condition in which the airplane does not continue to pitch up after the pitch control has been pulled back as far as it will go and held there for a short period of time. Guidance material was proposed for AC 25–7 to define the length of time that the control stick must be held in this full aft position when using § 25.201(d)(3) to define a stall.

Proposal 6. Section 25.201 currently requires stalls to be demonstrated at airspeed deceleration rates (i.e., entry rates) not exceeding one knot per second. JAR 25.201 currently requires, in addition, that turning flight stalls must be demonstrated at accelerated rates of entry into the stall (i.e., dynamic stalls). According to the JAA, the intended procedure for demonstrating dynamic stalls begins with a 1 knot per second deceleration from the trim speed (similar to normal stalls). Then, approximately halfway between the trim speed and the stall warning speed, the flight test pilot applies the elevator control to achieve an increase in the rate of change of angle-of-attack. The final angle-of-attack rate and the control input to achieve it should be appropriate to the type of airplane and its particular control characteristics.

The AIA/AECMA petition detailed various difficulties with interpretation of the JAR–25 requirement, noted that the requirement is not contained in the FAR, and proposed that dynamic stalls be removed from JAR–25. Some of the concerns with the JAR–25 dynamic stall requirement include: (1) A significant number of flight test demonstrations for compliance used inappropriate piloting techniques considering the capabilities of transport category airplanes; (2) the stated test procedures depend, to a large extent, on pilot interpretation, resulting in test demonstrations that could vary significantly for different test pilots; (3) the safety objective of the requirement is not well understood within the aviation community; and (4) the flight test procedures that are provided are inconsistent with the flight characteristics being evaluated. As a result, applicants are unable to ensure that their designs will comply with the JAR–25 dynamic stall requirement prior to the certification flight test.

In practice, FAA certification testing has typically included stall demonstrations at entry rates higher than 1 knot per second. For airplanes with certain special features, such as systems designed to prevent a stall or that are needed to provide an acceptable stall indication, higher entry rates are demonstrated to show that the system will continue to safely perform its intended function under such conditions. These higher entry rate stalls are different, however, from the JAR–25 dynamic stalls.

Rather than simply deleting the dynamic stall requirements from JAR–25, or adding this requirement to part 25, the ARAC recommended harmonizing the two standards by requiring turning flight stalls be demonstrated at steady airspeed deceleration rates up to 3 knots per second. The FAA agrees with this recommendation and proposed to add the requirement for a higher entry rate stall demonstration to part 25 as § 25.201(c)(2). The current § 25.201(c)(2) would be redesignated § 25.201(c)(3). The JAA would replace the JAR–25 dynamic stall requirement with the ARAC recommendation.

The proposed higher entry rate stall demonstration is a controlled and repeatable maneuver that meets the objective of evaluating stall characteristics over a range of entry conditions that might reasonably be encountered by transport category airplanes in operational service. Some degradation in characteristics would be accepted at the higher entry rates, as long as it does not present a major threat to recovery from the point at which the pilot has recognized the stall. Guidance material was proposed for AC 25–7 to point out that the specified deceleration rate, and associated rate of increase in angle of attack, should be established from the trim speed specified in § 25.103(b)(1) and maintained up to the point at which the airplane stalls.

The FAA proposed to revise § 25.203(c) to specify a bank angle that must not be exceeded during the recovery from the turning flight stall demonstrations. Currently, § 25.203(c) provides only a qualitative statement that a prompt recovery must be easily attainable using normal piloting skill. By specifying a maximum bank angle limit, the FAA proposed to augment this qualitative requirement with a quantitative one.

For deceleration rates up to 1 knot per second, the maximum bank angle would be approximately 60 degrees in the original direction of the turn, or 30 degrees in the opposite direction. These bank angle limits are currently contained in JAR–25 guidance material, and have been used informally during FAA certification programs as well. For deceleration rates higher than 1 knot per second, the FAA proposed to allow a greater maximum bank angle—approximately 90 degrees in the original direction of the turn, or 60 degrees in the opposite direction. These are the same acceptance criteria currently used by the JAA to evaluate dynamic stall demonstrations.

In addition to the amendments to part 25 adopted by this final rule, AC 25–7 is being revised to ensure that these harmonized standards will be interpreted and applied consistently. AC 25–7 provides guidelines that the FAA has found acceptable regarding flight testing transport category airplanes to demonstrate compliance with the applicable airworthiness requirements. The changes to AC 25–7 are described in a separate notice published elsewhere in this issue of the **Federal Register**. Copies of the affected pages will be available for distribution shortly after publication of this final rule.

Discussion of the Comments

Five commenters responded to the request for comments contained in NPRM 94–15. All five commenters support the proposals, with two of the commenters requesting that the FAA and JAA concurrently adopt the proposed amendments soon. One of the commenters supports the proposals as long as they apply only to future airplane certification programs, and not to existing fleets.

The FAA appreciates the widespread support for these proposals, which the FAA attributes to the use of the ARAC process. As a result of this support, the FAA is adopting the proposed rules with only a few minor clarifying changes. These changes, which do not affect the intended application of the requirements, were made to prevent any confusion that may have resulted from the proposed wording.

In § 25.125(a)(2), the FAA has added the words "whichever is greater" in reference to the two constraints on the stabilized approach speed used to determine the landing distance. This addition provides consistency with other sections of part 25 containing multiple constraints, and clarifies that the more critical of the two constraints must be satisfied.

In § 25.143(c), the FAA proposed to replace the term "temporary" with the term "transient" to refer to those control forces that the pilot is assumed to take immediate action to reduce or eliminate. Examples of such forces are those resulting from raising or lowering the flaps or landing gear, changing altitude or speed, or recovering from some type of failure. The intended requirement relates to the initial stabilized force resulting from these events, not to any force peaks that may occur instantaneously. The term "transient," however, could too easily be misinterpreted to refer to an instantaneous peaking of the force level. Therefore, the FAA is replacing "temporary" with "short term" rather than "transient" in § 25.143(c). For consistent terminology, the FAA is also replacing the term "prolonged" in § 25.143(c) with "long term." These changes are carried through to the other sections of the proposal in which the terms "temporary" and "prolonged" appear (§§ 25.143(d) and (e) and 25.145(b)). The accompanying advisory material that was proposed for AC 25–7 will also be revised accordingly.

Due to a comment on the revisions proposed for AC 25–7 associated with the proposed rule changes, the FAA finds it necessary to clarify the requirements for the position of the propeller on the engine suddenly made inoperative during the V_{MCL} and V_{MCL-2} determination of §§ 25.149(f) and 25.149(g). A windmilling propeller creates significantly more drag than a feathered propeller, and hence is the more critical position relative to maintaining control of the airplane after an engine failure. Since § 25.149(a) requires V_{MCL} and V_{MCL-2} to be determined using the most critical mode of powerplant failure with respect to controllability, the windmilling position must be assumed. Subsequent feathering of the propeller would be accomplished either by an automatic system that

senses the engine failure or by the pilot manually adjusting the cockpit controls.

The requirements proposed in NPRM 94–15 would allow the propeller to be in the feathered position if the propeller feathering is done automatically. Credit for pilot action to manually feather the propeller would be inappropriate during this high workload phase of flight. Because an autofeather system may not be designed to respond to an engine failure at low power settings, one commenter proposes adding a statement to the advisory material in AC 25–7 to state that the engine failure could be assumed to occur after the pilot sets go-around power. The commenter's proposal would ensure that automatic propeller feathering could be taken into account in determining V_{MCL} and V_{MCL-2}, even if the automatic feathering would not occur for engine failures at low power settings.

The FAA does not concur with the commenter's proposal. As was noted in the NPRM 94–15 preamble discussion, V_{MCL} and V_{MCL-2} must be determined assuming the critical engine suddenly fails during, or just prior to, the go-around maneuver. A sudden engine failure during an approach for landing may be the reason for initiating the go-around. If the autofeather system does not feather the propeller in this situation, the minimum control speeds should not assume the propeller is feathered.

To clarify this point, §§ 25.149(f)(5) and 25.149(g)(5) have been revised to state that the engine failure must be assumed to occur from the power setting associated with maintaining a three degree approach path angle. The revised wording also clarifies that these provisions apply only to propeller airplanes. The word "automatically," referring to the position achieved by the propeller, has been replaced with "without pilot action." This revision further clarifies the intent of the requirement and is more appropriate terminology for applying these requirements to airplanes lacking an autofeather system.

The FAA is clarifying § 25.201(d)(1) by removing the reference to rolling motion. Section 25.201(d) defines and lists the airplane behavior that gives the pilot a clear indication that the airplane has stalled. The presence of rolling motion is immaterial to determining whether or not the airplane has stalled. The proposed wording had been intended to emphasize that a rolling motion by itself would be unacceptable as a stall indication, and that any rolling motion that did occur must be within the bounds allowed by §§ 25.203 (b) and (c); however, the FAA has decided that this explanatory material would be better placed in AC 25–7.

With the exceptions noted above, the FAA is revising parts 1 and 25 as proposed. These amendments apply only to airplanes for which an application for a new (or amended or supplemental, if applicable) type certificate is made after the date the amendment becomes effective.

Regulatory Evaluation Summary

Final Regulatory Evaluation, Final Regulatory Flexibility Determination, and Trade Impact Assessment

Three principal requirements pertain to the economic impacts of changes to the Federal Aviation Regulations. First, Executive Order 12866 directs Federal agencies to promulgate new regulations or modify existing regulations only if the expected benefits to society outweigh the expected costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Finally, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule: (1) Will generate benefits exceeding costs; (2) is not "significant" as defined in the Executive Order and the Department of Transportation's (DOT) policies and procedures; (3) will not have a significant impact on a substantial number of small entities; and (4) will lessen restraints on international trade. These analyses, available in the docket, are summarized below.

Cost Benefit Analysis

Three of the 48 provisions will require additional flight testing and engineering analysis, resulting in compliance costs of $18,500 per type-certification, or about $37 per airplane when amortized over a representative production run of 500 airplanes. The primary benefits of the rule are harmonization of flight test airworthiness standards with the European Joint Aviation Requirements and clarification of existing standards. The resulting increased uniformity of flight test standards will simplify airworthiness approvals and reduce over flight testing costs. While not readily quantifiable, these benefits will far exceed the incremental costs of the rule.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by Federal regulations. The RFA requires a Regulatory Flexibility Analysis if a rule will have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, prescribes standards for complying with RFA review requirements in FAA rulemaking actions. The Order defines "small entities" in terms of size thresholds, "significant economic impact" in terms of annualized cost thresholds, and "substantial number" as a number which is not less than eleven and which is more than one-third of the small entities subject to the proposed or final rule.

The rule will affect manufacturers of transport category airplanes produced under future new airplane type certifications. For manufacturers, Order 2100.14A specifies a size threshold for classification as a small entity as 75 or fewer employees. Since no part 25 airplane manufacturer has 75 or fewer employees, the rule will not have a significant economic impact on a substantial number of small airplane manufacturers.

Trade Impact Assessment

This final rule will not constitute a barrier to international trade, including the export of American airplanes to foreign countries, and the import of foreign airplanes into the United States. Instead, the flight testing standards have been harmonized with those of foreign aviation authorities, thereby lessening restraints on trade.

Federalism Implications

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the State, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule will not have sufficient federalism implications to warrant preparing a Federalism Assessment.

Conclusion

Because the changes to standardize specific flight requirements of part 25 of the FAR are not expected to result in substantial economic cost, the FAA has determined that this regulation is not significant under Executive Order 12866. Because this is an issue that has not prompted a great deal of public concern, the FAA has determined that this action is not significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 25, 1979). In addition, since there are no small entities affected by this rulemaking, the FAA certifies, under the criteria of the Regulatory Flexibility Act, that this regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities. A copy of the regulatory evaluation prepared for this regulation has been placed in the public docket. A copy may be obtained by contacting the person identified under the caption, **FOR FURTHER INFORMATION CONTACT.**

List of Subjects

14 CFR Part 1

Air transportation.

14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration (FAA) amends 14 CFR parts 1 and 25 of the Federal Aviation Regulations (FAR) as follows:

PART 1—DEFINITIONS AND ABBREVIATIONS

1. The authority citation for part 1 continues to read as follows:

Authority: 49 U.S.C. app. 1347, 1348, 1354(a), 1357(d)(2), 1372, 1421 through 1430, 1432, 1442, 1443, 1472, 1510, 1522, 1652(e), 1655(c), 1657(f), and 49 U.S.C. 106(g).

2. Section 1.1 is amended by adding a new definition to read as follows:

§ 1.1 General definitions.

* * * * *

Go-around power or thrust setting means the maximum allowable in-flight power or thrust setting identified in the performance data.

* * * * *

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

3. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. app. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g); and 49 CFR 1.47(a).

4. Section 25.119 is amended by revising paragraph (a) to read as follows:

§ 25.119 Landing climb: All-engines-operating.

* * * * *

(a) The engines at the power or thrust that is available eight seconds after initiation of movement of the power or thrust controls from the minimum flight idle to the go-around power or thrust setting; and

* * * * *

5. Section 25.121 is amended by revising paragraph (d)(1) to read as follows:

§ 25.121 Climb: One-engine-inoperative.

* * * * *

(d) * * *

(1) The critical engine inoperative, the remaining engines at the go-around power or thrust setting;

* * * * *

6. Section 25.125 is amended by revising paragraph (a)(2) to read as follows:

§ 25.125 Landing.

* * * * *

(a) * * *

(2) A stabilized approach, with a calibrated airspeed of not less than 1.3 V_S or V_{MCL}, whichever is greater, must be maintained down to the 50 foot height.

* * * * *

7. Section 25.143 is amended by revising paragraphs (c), (d), and (e) and adding a new paragraph (f) to read as follows:

§ 25.143 General.

* * * * *

(c) The following table prescribes, for conventional wheel type controls, the maximum control forces permitted during the testing required by paragraphs (a) and (b) of this section:

Force, in pounds, applied to the control wheel or rudder pedals	Pitch	Roll	Yaw
For short term application for pitch and roll control—two hands available for control	75	50	.....
For short term application for pitch and roll control—one hand available for control	50	25	.....
For short term application for yaw control	.....	.....	150
For long term application	10	5	20

(d) Approved operating procedures or conventional operating practices must be followed when demonstrating compliance with the control force limitations for short term application that are prescribed in paragraph (c) of this section. The airplane must be in trim, or as near to being in trim as practical, in the immediately preceding steady flight condition. For the takeoff condition, the airplane must be trimmed according to the approved operating procedures.

(e) When demonstrating compliance with the control force limitations for long term application that are prescribed in paragraph (c) of this section, the airplane must be in trim, or as near to being in trim as practical.

(f) When maneuvering at a constant airspeed or Mach number (up to V_{FC}/M_{FC}), the stick forces and the gradient of the stick force versus maneuvering load factor must lie within satisfactory limits. The stick forces must not be so great as to make excessive demands on the pilot's strength when maneuvering the airplane, and must not be so low that the airplane can easily be overstressed inadvertently. Changes of gradient that occur with changes of load factor must not cause undue difficulty in maintaining control of the airplane, and local gradients must not be so low as to result in a danger of overcontrolling.

8. Section 25.145 is amended by revising paragraphs (b) introductory paragraph, (b)(3), (b)(4), and (c)(1) to read as follows:

§ 25.145 Longitudinal control.

* * * * *

(b) With the landing gear extended, no change in trim control, or exertion of more than 50 pounds control force (representative of the maximum short term force that can be applied readily by one hand) may be required for the following maneuvers:

* * * * *

(3) Repeat paragraph (b)(2), except at the go-around power or thrust setting.

(4) With power off, flaps retracted, and the airplane trimmed at 1.4 V_{SI}, rapidly set go-around power or thrust while maintaining the same airspeed.

* * * * *

(c) * * *

(1) Simultaneous movement of the power or thrust controls to the go-around power or thrust setting;

* * * * *

9. Section 25.149 is amended by revising paragraphs (f), (g) and (h) to read as follows:

§ 25.149 Minimum control speed.

* * * * *

(f) V_{MCL}, the minimum control speed during approach and landing with all engines operating, is the calibrated airspeed at which, when the critical engine is suddenly made inoperative, it

is possible to maintain control of the airplane with that engine still inoperative, and maintain straight flight with an angle of bank of not more than 5 degrees. V_{MCL} must be established with—

(1) The airplane in the most critical configuration (or, at the option of the applicant, each configuration) for approach and landing with all engines operating;

(2) The most unfavorable center of gravity;

(3) The airplane trimmed for approach with all engines operating;

(4) The most favorable weight, or, at the option of the applicant, as a function of weight;

(5) For propeller airplanes, the propeller of the inoperative engine in the position it achieves without pilot action, assuming the engine fails while at the power or thrust necessary to maintain a three degree approach path angle; and

(6) Go-around power or thrust setting on the operating engine(s).

(g) For airplanes with three or more engines, V_{MCL-2}, the minimum control speed during approach and landing with one critical engine inoperative, is the calibrated airspeed at which, when a second critical engine is suddenly made inoperative, it is possible to maintain control of the airplane with both engines still inoperative, and maintain straight flight with an angle of bank of not more than 5 degrees. V_{MCL-2} must be established with—

(1) The airplane in the most critical configuration (or, at the option of the applicant, each configuration) for approach and landing with one critical engine inoperative;

(2) The most unfavorable center of gravity;

(3) The airplane trimmed for approach with one critical engine inoperative;

(4) The most unfavorable weight, or, at the option of the applicant, as a function of weight;

(5) For propeller airplanes, the propeller of the more critical inoperative engine in the position it achieves without pilot action, assuming the engine fails while at the power or thrust necessary to maintain a three degree approach path angle, and the propeller of the other inoperative engine feathered;

(6) The power or thrust on the operating engine(s) necessary to maintain an approach path angle of three degrees when one critical engine is inoperative; and

(7) The power or thrust on the operating engine(s) rapidly changed, immediately after the second critical engine is made inoperative, from the power or thrust prescribed in paragraph (g)(6) of this section to—

(i) Minimum power or thrust; and

(ii) Go-around power or thrust setting.

(h) In demonstrations of V_{MCL} and V_{MCL-2}—

(1) The rudder force may not exceed 150 pounds;

(2) The airplane may not exhibit hazardous flight characteristics or require exceptional piloting skill, alertness, or strength;

(3) Lateral control must be sufficient to roll the airplane, from an initial condition of steady flight, through an angle of 20 degrees in the direction necessary to initiate a turn away from the inoperative engine(s), in not more than 5 seconds; and

(4) For propeller airplanes, hazardous flight characteristics must not be exhibited due to any propeller position achieved when the engine fails or during any likely subsequent movements of the engine or propeller controls.

10. Section 25.201 is amended by revising paragraphs (b), (c), and (d) to read as follows:

§ 25.201 Stall demonstration.

* * * * *

(b) In each condition required by paragraph (a) of this section, it must be possible to meet the applicable requirements of § 25.203 with—

(1) Flaps, landing gear, and deceleration devices in any likely combination of positions approved for operation;

(2) Representative weights within the range for which certification is requested;

(3) The most adverse center of gravity for recovery; and

(4) The airplane trimmed for straight flight at the speed prescribed in § 25.103(b)(1).

(c) The following procedures must be used to show compliance with § 25.203:

(1) Starting at a speed sufficiently above the stalling speed to ensure that a steady rate of speed reduction can be established, apply the longitudinal control so that the speed reduction does not exceed one knot per second until the airplane is stalled.

(2) In addition, for turning flight stalls, apply the longitudinal control to achieve airspeed deceleration rates up to 3 knots per second.

(3) As soon as the airplane is stalled, recover by normal recovery techniques.

(d) The airplane is considered stalled when the behavior of the airplane gives the pilot a clear and distinctive indication of an acceptable nature that the airplane is stalled. Acceptable indications of a stall, occurring either individually or in combination, are—

(1) A nose-down pitch that cannot be readily arrested;

(2) Buffeting, of a magnitude and severity that is a strong and effective deterrent to further speed reduction; or

(3) The pitch control reaches the aft stop and no further increase in pitch attitude occurs when the control is held full aft for a short time before recovery is initiated.

11. Section 25.203 is amended by revising paragraph (c) to read as follows:

§ 25.203 Stall characteristics.

* * * * *

(c) For turning flight stalls, the action of the airplane after the stall may not be so violent or extreme as to make it difficult, with normal piloting skill, to effect a prompt recovery and to regain control of the airplane. The maximum bank angle that occurs during the recovery may not exceed—

(1) Approximately 60 degrees in the original direction of the turn, or 30 degrees in the opposite direction, for deceleration rates up to 1 knot per second; and

(2) Approximately 90 degrees in the original direction of the turn, or 60 degrees in the opposite direction, for deceleration rates in excess of 1 knot per second.

12. Section 25.253 is amended by revising paragraph (b) to read as follows:

§ 25.253 High-speed characteristics.

* * * * *

(b) *Maximum speed for stability characteristics, V_{FC}/M_{FC}.* V_{FC}/M_{FC} is the maximum speed at which the requirements of §§ 25.143(f), 25.147(e), 25.175(b)(1), 25.177, and 25.181 must be met with flaps and landing gear retracted. It may not be less than a speed midway between V_{MO}/M_{MO} and V_{DF}/M_{DF}, except that for altitudes where Mach number is the limiting factor, M_{FC} need not exceed the Mach number at which effective speed warning occurs.

Issued in Washington, D.C. on June 2, 1995.

David R. Hinson,

Administrator.

[FR Doc. 95–14171 Filed 6–8–95; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 25–7, Flight Test Guide for Certification of Transport Category Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of changes to advisory circular.

SUMMARY: This notice describes the changes to Advisory Circular (AC) 25–7, "Flight Test Guide for Certification of Transport Category Airplanes," that accompany Amendment 25–84, published elsewhere in this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Donald K. Stimson, Flight Test and Systems Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, FAA, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (206) 227–1129; facsimile (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Discussion

On May 22, 1990, the Aerospace Industries Association of America, Inc. (AIA) and the Association Europeenne des Constructeurs de Materiel Aerospatial (AECMA) jointly petitioned the FAA and the European Joint Aviation Authorities (JAA) to harmonize certain airworthiness requirements that apply to transport category airplanes. In their petition, a summary of which was published in the July 17, 1990, edition of the **Federal Register** (55 FR 137), AIA and AECMA also recommended changes to Advisory Circular (AC) 25–7, "Flight Test Guide for Certification of Transport Category Airplanes," to ensure that the harmonized standards would be interpreted and applied consistently.

Part 25 of the Federal Aviation Regulations (FAR) prescribes the United States airworthiness standards for transport category airplanes. Advisory Circular (AC) 25–7 provides guidelines that the FAA has found acceptable for flight testing transport category airplanes to demonstrate compliance with those airworthiness standards. Revisions to part 25, in response to the AIA/AECMA petition, were proposed by the FAA in Notice of Proposed Rulemaking (NPRM) 94–15, which was published in the **Federal Register** on April 22, 1994 (59 FR 19296). The proposed revisions to AC 25–7 were published in the same issue of the **Federal Register** as NPRM 94–15 (59 FR 19303).

Amendment 25–84, which resulted from publication of Notice 94–15, is published elsewhere in this issue of the **Federal Register**. The changes to AC 25–7 that accompany Amendment 25–84 are detailed below. Copies of the affected pages will be available for distribution shortly after publication of this notice.

Revisions to AC 25–7 to Accompany Amendment 25–84

1. Replace Paragraph 16.a With the Following

a. Section 25.119(a) states that the engines are to be set at the power or thrust that is available eight seconds after initiating movement of the power or thrust controls from the minimum flight idle position to the go-around power or thrust setting. The procedures given are for the determination of this maximum thrust for showing compliance with the climb requirements of § 25.119.

2. Replace Paragraph 16.b.(3) With the Following

(3) *For the critical air bleed configuration,* stabilize the airplane in level flight with symmetric power on all engines, landing gear down, flaps in the landing position, at a speed of 1.3 V_{SO}, simulating the estimated minimum climb limiting landing weights at an altitude sufficiently above the selected test altitude so that the time to descend to the test altitude with the throttles closed equals the appropriate engine r.p.m. stabilization time determined in paragraph (2). Retard the throttles to the flight idle position and descend at 1.3 V_S to approximately the test altitude; when the appropriate time has elapsed, rapidly advance the power or thrust controls to the go-around power or thrust setting. The power or thrust controls may first be advanced to the forward stop and then retarded to the go-around power or thrust setting. At the applicant's option, additional less critical bleed configurations may be tested.

3. Add the Following Sections to Paragraph 20.a

(1) The maximum forces given in the table in § 25.143(c) for pitch and roll control for short-term application are applicable to maneuvers in which the control force is only needed for a short period. Where the maneuver is such that the pilot will need to use one hand to operate other controls (such as during the landing flare or a go-around, or during changes of configuration or power resulting in a change of control force that must be trimmed out) the single-handed maximum control forces will be applicable. In other cases (such as takeoff rotation, or maneuvering during en route flight), the two-handed maximum forces will apply.

(2) Short-term and long-term forces should be interpreted as follows:

(i) Short-term forces are the initial stabilized control forces that result from maintaining the intended flight path following configuration changes and normal transactions from one flight condition to another, or from regaining control following a failure. It is assumed that the pilot will take immediate action to reduce or eliminate such forces by re-trimming or changing configuration or flight conditions, and consequently short-term forces are not considered to exist for any significant duration. They do not include transient force peaks that may occur during the configuration change, change of flight conditions, or recovery of control following a failure.

(ii) Long-term forces are those control forces that result from normal or failure conditions that cannot readily be trimmed out or eliminated.

4. Add the Following Sections to Paragraph 20

d. *Acceptable Means of Compliance.* An acceptable means of compliance with the requirement that stick forces may not be excessive when maneuvering the airplane is to demonstrate that, in a turn for 0.5g incremental normal acceleration (0.3g above 20,000 feet) at speeds up to V_{FC}/M_{FC}, the average stick force gradient does not exceed 120 lbs/g.

e. *Interpretive Material.* (1) The objective of § 25.143(f) is to ensure that the limit strength of any critical component on the airplane would not be exceeded in maneuvering flight. In much of the structure, the load sustained in maneuvering flight can be assumed to be directly proportional of the load factor applied. However, this may not be the case for some parts of the structure, e.g., the tail and rear fuselage. Nevertheless, it is accepted that the airplane load factor will be a sufficient guide to the possibility of exceeding limit strength on any critical component if a structural investigation is undertaken whenever the design positive limit maneuvering load factor is closely approached. If flight testing indicates that the design positive limit maneuvering load factor could be exceeded in steady maneuvering flight with a 50-pound stick force, the airplane structure should be evaluated for the anticipated load at a 50-pound stick force. The airplane will be considered to have been overstressed if limit strength has been exceeded in any critical

component. For the purposes of this evaluation, limit strength is defined as the larger of either the limit design loads envelope increased by the available margins of safety, or the ultimate static test strength divided by 1.5.

(2) Minimum Stick Force to Reach Limit Strength. (i) A stick force of at least 50 pounds to reach limit strength in steady maneuvers or wind-up turns in considered acceptable to demonstrate adequate minimum force at limit strength in the absence of deterrent buffeting. If heavy buffeting occurs before the limit strength condition is reached, a somewhat lower stick force at limit strength may be acceptable. The acceptability of a stick force of less than 50 pounds at the limit strength condition will depend upon the intensity of he buffet, the adequacy of the warning margin (i.e., the load factor increment between the heavy buffet and the limit strength condition), and the stick force characteristics. In determining the limit strength condition for each critical component, the contribution of buffet loads to the overall maneuvering loads should be taken into account.

(ii) This minimum stick force applies in the en route configuration with the airplane trimmed for straight flight, at all speeds above the minimum speed at which the limit strength condition can be achieved without stalling. No minimum stick force is specified for other configurations, but the requirements of § 25.143(f) are applicable in these conditions.

(3) Stick Force Characteristics. (i) At all points within the buffet onset boundary determined in accordance with § 25.251(e), but not including speeds above V_{FC}/M_{FC}, the stick force should increase progressively with increasing load factor. Any reduction in stick force gradient with change of load factor should not be so large or abrupt as to impair significantly the ability of the pilot to maintain control over the load factor and pitch attitude of the airplane.

(ii) Beyond the buffet onset boundary, hazardous stick force characteristics should not be encountered within the permitted maneuvering envelope as limited by paragraph 20.e.(3)(iii). It should be possible, by use of the primary longitudinal control alone, to pitch the airplane rapidly nose down so as to regain the initial trimmed conditions. The stick force characteristics demonstrated should comply with the following:

(A) For normal acceleration increments of up to 0.3g beyond buffet onset, where these can be achieved, local reversal of the stick force gradient may be acceptable, provided that any tendency to pitch up is mild and easily controllable.

(B) For normal acceleration increments of more than 0.3g beyond buffet onset, where these can be achieved, more marked reversals of the stick force gradient may be acceptable. It should be possible for any tendency to pitch up to be contained within the allowable maneuvering limits without applying push forces to the control column and without making a large and rapid forward movement of the control column.

(iii) In flight tests to satisfy paragraphs 20.e.(3) (i) and (ii), the load factor should be increased until either:

(A) The level of buffet becomes sufficient to provide a strong and effective deterrent to further increase of load factor; or

(B) Further increase the load factor requires a stick force in excess of 150 pounds (or in excess of 100 pounds when beyond the buffet onset boundary) or is impossible because of the limitations of the control system; or

(C) The positive limit maneuvering load factor established in compliance with § 25.337(b) is achieved.

(4) Negative Load Factors. It is not intended that a detailed flight test assessment of the maneuvering characteristics under negative load factors should necessarily be made throughout the specified range of conditions. An assessment of the characteristics in the normal flight envelope involving normal accelerations from 1g to zero g will normally be sufficient. Stick forces should also be assessed during other required flight testing involving negative load factors. Where these assessments reveal stick force gradients that are unusually low, or that are subject to significant variation, a more detailed assessment, in the most critical of the specified conditions, will be required. This may be based on calculations provided these are supported by adequate flight test or wind tunnel data.

5. Replace Paragraph 21.a.(e) With the Following

(3) *Section 25.145(c)* contains requirements associated primarily with attempting a go-around maneuver from the landing configuration. Retraction of the high-lift devices from the landing configuration should not result in a loss of altitude if the power or thrust controls are moved to the go-around setting at the same time that flap/slat retraction is begun. The design features involved with this requirement are the rate of flap/slat retraction, the presence of any flap gates, and the go-around power or thrust setting.

(i) Flap gates, which prevent the pilot from moving the flap selector through the gated position without a separate and distinct movement of the selector, allow compliance with these requirements to be demonstrated in segments. High lift device retraction must be demonstrated beginning from the maximum landing position to the first gated position, between gated positions, and from the last gated position to the fully retracted position.

(ii) The go-around power or thrust setting should be the same as is used to comply with the approach and landing climb performance requirements of §§ 25.121(d) and 25.119, and the controllability requirements of §§ 25.145(b)(3), 25.145(b)(4), 25.145(b)(5), 25.149(f), and 25.149(g). The controllability requirements may limit the go-around power or thrust setting.

6. Replace Paragraph 21.c.(3)(i)(E) With the Following

(E) Engine power at flight idle and the go-around power or thrust setting.

7. Replace Paragraph 21.c.(4)(ii) With the Following

(ii) The airplane should be trimmed at a speed of 1.4 V_S. Quickly set go-around power or thrust while maintaining the speed of 1.4 V_S. The longitudinal control force should not exceed 50 lbs. throughout the maneuver without changing the trim control.

8. Replace Paragraph 21.c.(6)(ii) With the Following

(ii) Test procedure: With the airplane stable in level flight at a speed of 1.1 V_S for propeller driven airplanes, or 1.2 V_S for turbojet powered airplanes, retract the flaps to the full up position, or the next gated position, while simultaneously setting go-around power. Use the same power or thrust as is used to comply with the performance requirement of § 25.121(d), as limited by the applicable controllability requirements. It must be possible, without requiring exceptional piloting skill, to prevent losing altitude during the maneuver. Trimming is permissible at any time during the maneuver. If gates are provided, conduct this test beginning from the maximum landing flap position to the first gate, from gate to gate, and from the last gate to the fully retracted position. (The gate design requirements are specified within the rule.) Keep the landing gear extended throughout the test.

9. Revise the First Sentence of Paragraph 23.a by Replacing "Landing Approach (V_{MCL})" by "Approach and Landing V_{MCL} and V_{MCL-2})." Revise the Second Sentence in the Same Paragraph by Replacing "V_{MCL}" with "V_{MCL} and V_{MCL-2}"

10. Replace Paragraph 23.b.(2)(iii) With the Following

(iii) During determination of V_{MCG}, engine failure recognition should be provided by:

(A) The pilot feeling a distinct change in the directional tracking characteristics of the airplane, or

(B) The pilot seeing a directional divergence of the airplane with respect to the view outside the airplane.

11. Replace Paragraph 23.b.(3) With the Following

(3) Minimum Control Speed During Approach and Landing (V_{MCL})—§ 25.149(f).

(i) This section is intended to ensure that the airplane is safely controllable following an engine failure during an all-engines-operating approach and landing. From a controllability standpoint, the most critical case usually consists of an engine failing after the power or thrust has been increased to perform a go-around from an all-engines-operating approach. Section 25.149(f) requires the minimum control speed to be determined that allows a pilot of average skill and strength to retain control of the airplane after the critical engine becomes inoperative and to maintain straight flight with less than five degrees of bank angle. Section 25.149(h) requires that sufficient lateral control be available at V_{MCL} to roll the airplane through an angle of 20 degrees, in the direction necessary to initiate a turn away from the inoperative engine, in not more than five seconds when starting from a steady flight condition.

(ii) Conduct this test using the most critical of the all-engines-operating approach and landing configurations, or at the option of the applicant, each of the all-engines-operating approach and landing configurations. The procedures given in paragraph 23.b.(1)(ii) for V_{MCA} may be used to determine V_{MCL}, except that flap and trim settings should be appropriate to the approach and landing configurations, the power or thrust on the operating engine(s) should be set to the go-around power or thrust setting, and compliance with all V_{MCL} requirements of §§ 25.149 (f) and (h) must be demonstrated.

12. Add the Following New Sections to Paragraph 23.b.(3)

(iii) For propeller driven airplanes, the propeller must be in the position it achieves without pilot action following engine failure, assuming the engine fails while at the power or thrust necessary to maintain a three degree approach path angle.

(iv) At the option of the applicant, a one-engine-inoperative landing minimum control speed, $V_{MCL(1\ out)}$, may be determined in the conditions appropriate to an approach and landing with one engine having failed before the start of the approach. In this case, only those configurations recommended for use during an approach and landing with one engine inoperative need be considered. The propeller of the inoperative engine, if applicable, may be feathered throughout. The resulting value of $V_{MCL(1\ out)}$ may be used in determining the recommended procedures and speeds for a one-engine-inoperative approach and landing.

13. Replace and Re-Designate Paragraphs 23.b.(4), 23.b.4(ii), and 23.b.4(ii)(A) With the Following

(4) Minimum Control Speed With One Engine Inoperative During Approach and Landing (V_{MCL-2})—§ 25.149(g).

(iii) Conduct this test using the most critical approved one-engine-inoperative approach or landing configuration (usually the minimum flap deflection), or at the option of the applicant, each of the approved one-engine-inoperative approach and landing configurations. The following demonstrations are required to determine V_{MCL-2}:

(A) With the power or thrust on the operating engines set to maintain a minus 3 degree glideslope with one critical engine inoperative, the second critical engine is made inoperative and the remaining operating engine(s) are advanced to the go-around power or thrust setting. The V_{MCL-2} speed is established by the procedures presented in paragraph 23.b.(1)(ii) for V_{MCA}, except that flap and trim setting should be appropriate to the approach and landing configurations, the power or thrust on the operating engine(s) should be set to the go-around power or thrust setting, and compliance with all V_{MCL-2} requirements of §§ 25.149(g) and (h) must be demonstrated.

14. Add the Following New Section to Paragraph 23.b.(4)

(ii) For propeller driven airplanes, the propeller of the engine inoperative at the beginning of the approach may be in the feathered position. The propeller of the more critical engine must be in the position it automatically assumes following engine failure.

(iii)(C) Starting from a steady straight flight condition, demonstrate that sufficient lateral control is available at V_{MCL-2} to roll the airplane through an angle of 20 degrees in the direction necessary to initiate a turn away from the inoperative engines in not more than five seconds. This maneuver may be flown in a bank-to-bank roll through a wings level attitude.

(iv) At the option of the applicant, a two-engines-inoperative landing minimum control speed, $V_{MCL-2(2\ out)}$, may be determined in the conditions appropriate to an approach and landing with two engines having failed before the start of the approach. In this case, only those configurations recommended for use during an approach and landing with two engines inoperative need be considered. The propellers of the inoperative engines, if applicable, may be feathered throughout. The values of V_{MCL-2} or $V_{MCL-2(2\ out)}$ should be used as guidance in determining the recommended procedures and speeds for a two-engines-inoperative approach and landing.

15. Add the Following New Section to Paragraph 23.b

(5) *Autofeather Effects.* Where an autofeather or other drag limiting system is installed and will be operative at approach power settings, its operation may be assumed in determining the propeller position achieved when the engine fails. Where automatic feathering is not available, the effects of subsequent movements of the engine and propeller controls should be considered, including fully closing the power lever of the failed engine in conjunction with maintaining the go-around power setting on the operating engine(s).

16. Replace Paragraph 29.b.(3)(i) With the Following

(i) The pitch control reaches the aft stop is held full aft for two seconds, or until the pitch attitude stops increasing, whichever occurs later. In the case of turning flight stalls, recovery may be initiated once the pitch control reaches the aft stop when accompanied by a rolling motion that is not immediately controllable (provided the rolling motion complies with § 25.203 (c)).

17. Replace Paragraph 29.b.(3)(ii) With the Following

(ii) An uncommanded, distinctive and easily recognizable nose down pitch that cannot be readily arrested. This nose down pitch may be accompanied

by a rolling motion that is not immediately controllable, provided that the rolling motion complies with § 25.203(b) or (c) as appropriate.

18. Remove Paragraph 29.b.(3)(iii) (and Redesignate Paragraph 29.b.(3) (iv) and (v) as 29.b.(3) (iii) and (iv), Respectively

(iii) A roll that cannot be readily arrested with normal use of lateral/directional control.

19. Replace Paragraph 29.d.(3)(i) With the Following

(i) The airplane should be trimmed for hands-off flight at a speed 20 percent to 40 percent above the stall speed, with the appropriate power setting and configuration. Then, using only the primary longitudinal control, establish and maintain a deceleration (entry rate) consistent with that specified in §§ 25.201(c)(1) or 25.201(c)(2), as appropriate, until the airplane is stalled. Both power and pilot selectable trim should remain constant throughout the stall and recovery (angle of attack has decreased to the point of no stall warning).

20. Replace Paragraph 29.d.(3)(iii) With the Following

(iii) In addition, for turning flight stalls, apply the longitudinal control to achieve airspeed deceleration rates up to 3 knots per second. The intent of evaluating higher deceleration rates is to demonstrate safe characteristics at higher rates of increase of angle of attack than are obtained from the 1 knot per second stalls. The specified airspeed deceleration rate, and associated angle of attack rate, should be maintained up to the point at which the airplane stalls.

21. Replace Paragraph 29.d.(3)(iv) With the Following

(iv) For those airplanes where stall is defined by full nose-up longitudinal control for both forward and aft c.g., the time at full aft stick during characteristics testing should be not less than that used for all speed determination. For turning flight stalls, however, recovery may be initiated once the pitch control reaches the aft stop when accompanied by a rolling motion that is not immediately controllable (provided the rolling motion complies with § 25.203(c)).

22. Add the Following New Section to Paragraph 29.d.(3)

(vi) In level wing stalls the bank angle may exceed 20 degrees occasionally, provided that lateral control is effective during recovery.

Issued in Renton, Washington, on March 9, 1995.

Ronald T. Wojnar,

Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 95–14172 Filed 6–8–95; 8:45 am]

BILLING CODE 4910–13–M

federal register

Friday
June 9, 1995

Part VII

Department of Education

21st Century Community Learning Centers; Notice Inviting Applications for New Awards for Fiscal Year 1995; Notices

DEPARTMENT OF EDUCATION

[CFDA No. 84.287]

21st Century Community Learning Centers; Notice Inviting Applications for New Awards for Fiscal Year 1995

Purpose of Program: To award grants to rural and inner-city public elementary or secondary schools, or consortia of such schools, to enable such schools to plan, implement, or to expand projects that benefit the educational, health, social service, cultural, and recreational needs of a rural or inner-city community.

Eligible Applicants: Rural and inner-city public elementary or secondary schools, or consortia of such schools. In accordance with the absolute priority published elsewhere in this part of this issue of the **Federal Register**, eligible applicants are limited to schools located in an Empowerment Zone or a Supplemental Empowerment Zone.

Deadline for Transmittal of Applications: July 25, 1995.

Deadline for Intergovernmental Review: September 23, 1995.

Applications Available: June 12, 1995.

Estimated Available Funds: $700,000.

Estimated Range of Awards: $75,000–$150,000.

Estimated Average Size of Awards: $100,000.

Estimated Number of Awards: 7.

Note: The Department is not bound by any estimates in this notice.

Budget Period: 12 months.

Project Period: Up to 36 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Priorities: Eligible applicants are limited for this competition by the Absolute Priority published elsewhere in this part of this issue of the **Federal Register**. Applicants must also address the following absolute priority.

Absolute Priority: Under 34 CFR 75.105(c)(3) and 20 U.S.C. 8244(b), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet the following absolute priority and the priority found elsewhere in this part of this issue of the **Federal Register**.

Absolute Priority: Projects that offer a broad selection of services that address the needs of the community.

Grants awarded may be used to plan, implement, or expand community learning centers which must include not less than four of the following activities:

(1) Literacy education programs.

(2) Senior citizen programs.

(3) Children's day care services.

(4) Integrated education, health, social service, recreational, or cultural programs.

(5) Summer and weekend school programs in conjunction with recreation programs.

(6) Nutrition and health programs.

(7) Expanded library service hours to serve community needs.

(8) Telecommunications and technology education programs for individuals of all ages.

(9) Parenting skills education programs.

(10) Support and training for child day care providers.

(11) Employment counseling, training, and placement.

(12) Services for individuals who leave school before graduating from secondary school, regardless of the age of such individual.

(13) Services for individuals with disabilities.

Application Requirements

Each application must include—

(a) A comprehensive local plan that enables the school or consortium to serve as a center for the delivery of education and human resources for members of a community;

(b) An evaluation of the needs, available resources, and goals and objectives for the proposed project in order to determine which activities will be undertaken to address such needs; and

(c) A description of the proposed project, including—

(1) A description of the mechanism that will be used to disseminate information in a manner that is understandable and accessible to the community;

(2) Identification of Federal, State, and local programs to be merged or coordinated so that public resources may be maximized;

(3) A description of the collaborative efforts to be undertaken by community-based organizations, related public agencies, businesses, or other appropriate organizations;

(4) A description of how the school or consortium will serve as a delivery center for existing and new services, especially for interactive telecommunication used for education and professional training; and

(5) An assurance that the school or consortium will establish a facility utilization policy that specifically states—

(I) The rules and regulations applicable to building and equipment use; and (II) supervision guidelines.

Definition

20 U.S.C. 8246 defines the term "community learning center" as an entity within a public elementary or secondary school building that—

(a) Provides educational, recreational, health, and social service programs for residents of all ages within a local community; and

(b) Is operated by a local educational agency in conjunction with local governmental agencies, businesses, vocational education programs, institutions of higher education, community colleges, and cultural, recreational, and other community and human service entities.

Selection Criteria: In evaluating applications for grants under this competition, the Secretary uses the selection criteria in 34 CFR 75.210(b). Under 34 CFR 75.210(c), the Secretary is authorized to distribute an additional 15 points among the criteria to bring the total to a maximum of 100 points. For this competition, the Secretary distributes the additional points as follows:

Plan of Operation (34 CFR 75.210(b)(3)). Five additional points are added to this criterion for a possible total of 20 points.

Evaluation Plan (34 CFR 75.210(b)(6)). Ten additional points are added to this competition for a possible total of 15 points.

For Applications or Information Contact: Seresa Simpson, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 522, Washington, DC 20208–5524. Telephone (202) 219–1935.

For Users of TDD or FIRS: Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

For Electronic Access to Information: Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 8241–8246.

Dated: June 6, 1995.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 95–14222 Filed 6–8–95; 8:45 am]

BILLING CODE 4000–01–P

21st Century Community Learning Centers

AGENCY: Department of Education.

ACTION: Notice of Final Priority for FY 1995.

SUMMARY: The Secretary announces a priority for Fiscal Year 1995 under the 21st Century Community Learning Centers Program. The Secretary takes this action to focus Federal financial assistance in areas of the country identified as areas of pervasive poverty, unemployment and general distress. The priority restricts the funds available under the 21st Century Program to applicants that are located in Empowerment Zones or Supplemental Empowerment Zones.

EFFECTIVE DATE: This priority takes effect July 10, 1995.

FOR FURTHER INFORMATION CONTACT: Seresa Simpson, U.S. Department of Education, 555 New Jersey Avenue, NW, Room 522, Washington, DC 20208–5524. Telephone (202) 219–1935. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: This notice contains one final priority under the 21st Century Community Learning Centers Program. The purpose of this program is to award grants to rural and inner-city public elementary or secondary schools, or consortia of such schools, to enable them to plan, implement, or to expand projects that benefit the educational, health, social service, cultural, and recreational needs of a rural or inner-city community.

Background on Empowerment Zone Initiative

The Empowerment Zone initiative is a critical element of the Administration's community revitalization strategy. The program is the first step in rebuilding communities in America's poverty-stricken inner cities and rural heartlands. It is designed to empower people and communities by inspiring Americans to work together to create jobs and opportunity.

The Departments of Agriculture and Housing and Urban Development have designated 6 urban and 3 rural empowerment zones and two supplemental urban empowerment zones. These urban zones are located within the following cities: Atlanta, Georgia; Baltimore, Maryland; Chicago, Illinois; Cleveland, Ohio; Detroit, Michigan; Los Angeles, California; New York, New York; and Philadelphia, Pennsylvania/Camden, New Jersey. The rural zones are located in the following states and counties: Kentucky (Clinton, Jackson and Wayne Counties); Mississippi (Bolivar, Holmes, Humphreys, and LeFlore Counties); and Texas (Cameron, Hidalgo, Starr and Willacy Counties).

The Empowerment Zones and Supplemental Empowerment Zones were designated based on locally-developed strategic plans that comprehensively address how the community will link economic development with education and training, as well as how community development, public safety, human services, and environmental initiatives will together support sustainable communities. Designated areas will receive Federal grant funds and substantial tax benefits and will have access to other Federal programs. (For additional information on the Empowerment Zones program contact HUD at 1–800–998–9999.)

The Department of Education is supporting the Empowerment Zone initiative in a variety of ways. It is encouraging zones to use funds they already receive from Department of Education programs (including Chapter 1 of Title I of the Elementary and Secondary Education Act, the Drug-Free Schools and Communities Act, the Adult Education Act, and the Carl D. Perkins Vocational and Applied Technology Education Act) to support the comprehensive vision of their strategic plans. In addition, the Department of Education is giving preferences to zones in a number of discretionary grant programs that are well suited for inclusion in a comprehensive approach to economic and community development.

The Empowerment Zone initiative and the 21st Century Community Learning Centers Program share some common features. Both programs are concerned with helping communities that have areas with high poverty rates address educational, health, social service, cultural, and recreational needs. Communities that have been designated as Empowerment Zones or Supplemental Empowerment Zones have demonstrated a capacity for the type of cooperative planning that is required to implement a 21st Century Community Learning Center. The Secretary believes that the limited resources available under the 21st Century Program will have the greatest impact if the funds are directed to communities that have the greatest need and have already established comprehensive community development plans. Therefore, the Secretary establishes the following absolute priority to focus Federal funds on 21st Century projects that will address the needs of Empowerment Zones or Supplemental Empowerment Zones.

Absolute Priority: Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet the following absolute priority:

Projects that offer a broad selection of services that address the needs of the community. Grants may be used to plan, implement, or expand community learning centers and projects must be carried out by a school or consortia of schools located in an Empowerment Zone or Supplemental Empowerment Zone.

Applicants must ensure that the proposed program relates to the strategic plan and will be an integral part of the Empowerment Zone program.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Department of Education to offer interested parties the opportunity to comment on proposed regulations. However, in order to make timely grant awards in Fiscal Year (FY) 1995, the Assistant Secretary, in accordance with section 437(d)(1) of the General Education Provisions Act, has decided to issue these final priorities which will apply only to the FY 1995 grant competition.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Program Authority: 20 U.S.C. 8241–8246.

(Catalog of Federal Domestic Assistance Number 84.287, 21st Century Community Learning Centers Program)

Dated: June 6, 1995.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 95–14223 Filed 6–8–95; 8:45 am]

BILLING CODE 4000–01–P

federal register

Friday
June 9, 1995

Part VIII

Department of Agriculture

Cooperative State Research, Education, and Extension Service

Agricultural Telecommunications Program; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Agricultural Telecommunications Program

AGENCY: Cooperative State Research, Education, and Extension Service, Department of Agriculture.

ACTION: Notice.

SUBJECT: Agricultural Telecommunications Program; Fiscal Year 1995; Request for Proposals; Application Guidelines.

FOR FURTHER INFORMATION CONTACT: Dr. Barbara A. White, 202–720–3029 for program information, or Margaret Bell, Cooperative Funds Division, Cooperative State Research, Education, and Extension Service, USDA, 202–401–4314, for fiscal or budget information.

Program Description

(a) Purpose

Proposals are requested for the purpose of awarding competitive grants for fiscal year 1995 under the Agricultural Telecommunications Program. Grants will be awarded to eligible institutions to assist in development and utilization of an agricultural communications network to facilitate and to strengthen agricultural extension, resident education and research, and domestic and international marketing of United States commodities and products through a partnership between eligible institutions and the U.S. Department of Agriculture (USDA). The network will employ satellite and other telecommunications technology to disseminate and to share academic instruction, cooperative extension programming, agricultural research, and marketing information. The authority for this program is contained in section 1673 of the Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. 101–624. The program is administered by the Cooperative State Research, Education, and Extension Service (CSREES) of USDA.

(b) Available Funding

For fiscal year 1995, $1.221 million is available for the program. Grants under this program may provide funds for no more than 50 percent (50%) of the cost of a propose project, unless otherwise determined by the Secretary. For the purpose of determining the non-Federal share of such costs, consideration will be given to contributions in cash and in-kind, fairly evaluated, including, but not limited to, premises, equipment and services.

(c) Eligibility

Proposals are invited from accredited institutions of higher education. Applicants must demonstrate that they participate in a network that distributes programs consistent with the following objectives: (1) Make optimal use of available resources for agricultural extension, resident education, and research by sharing resources between participating institutions; (2) improve the competitive position of United States agriculture in international markets by disseminating information to producers, processors, and researchers; (3) train students for careers in agriculture and food industries; (4) facilitate interaction among leading agricultural scientists; (5) enhance the ability of United States agriculture to respond to environmental and food safety concerns; and; (6) identify new uses for farm commodities and to increase the demand for United States agricultural products in both domestic and foreign markets.

In addition to the above, an applicant must qualify as a responsible applicant in order to be eligible for a grant under the program. To qualify as responsible, an applicant must meet the following standards:

(1) Adequate financial resources for performance, the necessary experience, organizational and technical qualifications, and facilities, or a firm commitment, arrangement, or ability to obtain the same (including any to be obtained through sub-agreement(s)/contract(s));

(2) Ability to comply with the proposed or required completion schedule for the project;

(3) Adequate financial management system and audit procedures that provide efficient and effective accountability and control of all funds, property, and other assets;

(4) Satisfactory record of integrity, judgment, and performance, including, in particular, any prior performance under grants and contracts from the Federal Government; and

(5) Otherwise be qualified and eligible to receive Federal assistance under the applicable laws and regulations.

(d) Definitions

For the purpose of awarding funding under this program, the following definitions are applicable:

(1) "Administrative costs" means the total of direct and indirect costs as defined in 7 CFR part 3015, USDA Uniform Federal Assistance Regulations, related to the operation of a project under this program;

(2) "Administrator" means the Administrator of CSREES and any other officer or employee of the Department to whom the authority to issue or modify grant instruments has been delegated.

(3) "Agricultural telecommunications" means those activities established to encourage development and utilization of an agricultural communications network employing satellite and other telecommunications technologies to disseminate and to share academic instruction, cooperation extension programming, agricultural research, and marketing information;

(4) "Awarding official" means the Administrator, CSREES, or any other officer or employee of the Department to whom the authority to issue or modify Agricultural Telecommunications grant instruments on behalf of the Department has been delegated.

(5) "Communications network" refers to television or cable television origination or distribution equipment, signal conversion equipment (including both modulators and demodulators), computer hardware and software, programs or terminals, or related devices, used to process and exchange data through a telecommunications system in which signals are generated, modified or prepared for transmission, or received, via telecommunications terminal equipment or via telecommunications transmission;

(6) "Delivery" means the transmission and reception of programs by facilities that transmit, receive, or carry data between telecommunications terminal equipment at each end of a telecommunications circuit or path;

(7) "Facilities" includes microwave antennae, fiberoptic cables and repeaters, coaxial cables, communications satellite ground station complexes, copper cable electronic equipment associated with telecommunications transmission;

(8) "Grant" means the assistance award by the Administrator to a grantee to develop agricultural telecommunications programs utilizing an agricultural telecommunications network;

(9) "Grantee" means the entity designated in the grant award document as the responsible legal entity to whom a grant is awarded;

(10) "Peer Review Panel" means a group of appropriate employees of the Federal Government qualified to give advice on the merit of grant applications submitted under this program;

(11) "Project" means the particular activity within the scope of the program as identified herein that is supported by a grant under this program;

(12) "Project Director" means the individual who is responsible for technical direction of the project, as designated by the grantee in the award proposal and approved by the Administrator, CSREES, USDA;

(13) "Project Period" means the total time approved by the Administrator for conducting the proposed project as outlined in the approved Federal assistance proposal or the approved portions thereof.

Proposal Preparation

(a) Proposal Cover Page

(1) Title of Proposal

The title of the proposal must be brief (80-charactermaximum) yet represent the major thrust of the project.

(2) Other Information

Include the following information on the proposal cover page:

(a) Name, address, telephone, fax number, and e-mail address of applicant and project director.

(b) Signatures and date. The cover page must contain the original signatures of the Project Director and the Authorized Organizational Representative who possesses the necessary authority to commit the applicant's time and other relevant resources.

(c) Project Summary. Each proposal must contain a 200-word abstract containing a brief description of the project. The abstract should describe the situation, targeted audience, purpose of project, program goal, methodology, and expected outcomes of the project.

(d) Application Category. Each proposal must state the category under which funds are requested.

Application Categories

Applicants may submit proposals in any of the following program areas as specified in the authorization: (a) Program Delivery, (b) Innovative Program Development/Production, and (c) Capacity Building.

(a) Program Delivery

Applicants may submit a proposal in the Program Delivery Category requesting funding to operate an agricultural communications network, employing satellite and other telecommunications technology, to deliver Cooperative Extension programming, academic instruction, agricultural research and marketing information through partnership(s) between eligible institutions and the Department of Agriculture. The project goal(s) and objective(s) must be clearly stated in the proposal.

Proposal Narrative

The narrative portion of the proposal is limited to 20 pages in length. No other material will be considered. The narrative should contain the following sections:

(1) Project Need

Each proposal must contain a clear and concise statement identifying the background and situation leading to the project need, goal(s), and supporting objectives.

(2) Audience Description

Describe targeted audience(s) for whom the project will be designed including pertinent history identified in need, demographics, and expected impact on audience.

(3) Partnerships and Collaboration

Describe partnerships and collaborations fostered through this project including expected impact and benefit to those involved such as learner, institution, agency, state, and nation.

(4) Staffing Pattern and Procedure

Describe the staff needed for project administration, instructional design/curriculum development, production, evaluation, and marketing/promotion. Narrative should demonstrate that the staffing and implementation procedure will result in an integrated approach involving content specialists, instructional designers, and quality production resources, and that the individual staff members proposed are qualified to perform these roles. Provide an outline (management plan) demonstrating integration.

(5) Project Sustainability

Projects should not depend on continued funding from this program. Each proposal should include convincing evidence of the project's ability to continue and grow after receiving the funding.

(6) Budget

A budget and a detailed narrative in support of the budget is required. Show all funding sources and itemize costs by the following line items: salary costs, fringe benefits costs, equipment, materials and supplies, travel, publication/printing/duplication costs, computer costs, and all other costs. While some funds are available for the acquisition and installation of telecommunications transmission facilities, applicants are cautioned that no more than 10 percent of the funds available may be awarded for that purpose.

Funds may be requested under any of the line items listed above provided that the item or service for which support is requested is identified as necessary for successful conduct of the project, is allowable under the authorizing legislation and the applicable Federal cost principles, and is not prohibited under any applicable Federal statute. Salaries of project personnel who will be working on the project may be requested, but must be in proportion to the effort they will devote to the project.

In addition to the initial required information under Project Description (Project Need; Audience Description: Partnerships and Collaboration; Staffing Pattern and Procedure; Sustainability and Budget), the proposal must define a structure for the technical design and development of the delivery system, including:

(7) Alternative Distance Learning Technologies

Development and employment of alternative distance learning technologies including, but not limited to, internet, multimedia, audio/visual, and other telecommunications technologies.

(8) Learner and Program Support

Each proposal should include evidence of learner support including, but not limited to, facilitation of access, accommodation for diversity in special needs and learning styles, and recognition of need for alternative modes of program design and delivery. There should be a plan for learner and program support.

(9) Innovation

Innovative application of distance delivery including, but not limited to, approaches in reaching audience; methods of connectivity and/or interaction; use of existing resources; and innovations in the teaching-learning transaction.

(10) Infrastructure

Framework representing both the technological and human infrastructure including, but not limited to, technical troubleshooting, scheduling and operation.

(11) Marketing

Marketing plan including, but not limited to, rationale for promotional effort; logistical considerations; convincing tie to needs assessment.

(12) Cost/Benefit

The proposal must include a cost-benefit analysis of the proposed project, including comparison to other delivery methods, relative benefit to learner, and staffing costs versus benefits.

(b) Innovative Program Development/ Production

Applicants submitting an application in the Innovative Program Development/Production Category must demonstrate a creative approach to distance education programming. Examples might include: Pilot projects demonstrating innovative combinations of satellite/video, computer networking, audio conferencing, and/or wrap-around plans and materials; inclusion of limited resource audiences; match of audience needs/characteristics to delivery system; and design of evaluation protocol for measuring teaching-learning transaction.

An integrated approach to instructional design should be evident including subject-matter content, educational methodology and compatible production and delivery techniques.

Project Narrative

The narrative portion of the proposal must not exceed 20 pages in length. No additional material will be considered. The narrative should contain the following sections:

(1) Project Need

Each proposal must contain a clear and concise statement identifying the background and situation leading to the project need, goal(s), and supporting objectives.

(2) Audience Description

Describe targeted audience(s) for whom the project will be designed including pertinent history identified in need, demographics, and expected impact on audience.

(3) Partnerships and Collaboration

Describe partnerships and collaborations fostered through this project including expected impact and benefit to those involved such as learner, institution, agency, state, and nation.

(4) Staffing Pattern and Procedure

Describe the staff needs for project administration, instructional design/ curriculum development, production, evaluation, and marketing/promotion. Narrative should demonstrate that the staffing and implementation procedure will result in an integrated approach involving content specialists, instructional designers, and quality production resources, and that the individual staff members proposed are qualified to perform these roles. Provide an outline (management plan) demonstrating integration.

(5) Project Sustainability

Projects should not depend on continued funding from this program. Each proposal should include convincing evidence of the project's ability to continue and grow after receiving the funding.

(6) Budget

A budget and a detailed narrative in support of the budget is required. Show all funding sources and itemize costs by the following line items: salary costs, firing benefits costs, equipment, materials and supplies, travel, publication/printing/duplication costs, computer costs, and all other costs. While some funds are available for the acquisition and installation of telecommunications transmission facilities, applicants are cautioned that no more than 10 percent of the funds available may be awarded for that purpose.

Funds may be requested under any of the line items listed above provided that the item or service for which support is requested is identified as necessary for successful conduct of the project, is allowable under the authorizing legislation and the applicable Federal statute. Salaries of project personnel who will be working on the project may be requested, but must be in proportion to the effort they will devote to the project.

(7) Specific Learning Objectives

Learning objectives should be stated in terms of behavioral changes expected to occur in the audience(s) based on participation in the program, not in terms of what the program will deliver.

(8) Instructional Methodology/Strategies

Explain the instructional/educational method or strategy to be implemented including appropriateness for audience and learning environment. Explanation should demonstrate knowledge of how people learn and/or interact in a mediated environment.

(9) Content/Curriculum

Each proposal should include detailed outline of curriculum to be included in the program, including, but not limited to, overview of content, learner activities, mechanism for evaluating learning outcome.

(10) Production Techniques

Provide detailed explanation of production techniques used in producing and delivery of program. It should be clear from the narrative how subject-matter content, instructional method/strategy, and production will be integrated.

(11) On-site Activities

Innovative design for implementation of on-site or personal learning environment (i.e., creative design and implementation plan for support materials and enrichment activities for on-site and personal learning environments).

(12) Interactivity

Describe the expected level of interactivity necessary based on principles underlying teaching-learning transaction, sound instructional design, and mode of delivery used.

(13) Program Evaluation

Describe both formative and summative design for evaluating success in meeting learning objective(s) listed under Project Need. In addition, describe strategy for evaluating overall effectiveness of program in terms of teaching and learning, behavior change/ problem-solving, immediate application, meeting learner need, and potential for replication.

(14) Marketing Plan

Describe the marketing plan including rationale for promotional effort, logistical considerations, and evidence that plan will reach intended audience.

(c) Capacity Building

Proposals in this category should target a specific need in the area of distance education. The need may be at the university, regional or national level. The proposal must include:

(1) detailed plan for assessing capability; and

(2) existing plan for targeting need based on completed assessment.

Project Narrative

Project narratives should be no more than 20 pages in length. No additional materials will be considered. The narrative portion of the proposal should contain the following sections:

(1) Project Need

Each proposal must contain a clear and concise statement identifying the background and situation leading to the project need, goal(s), and supporting objectives.

(2) Audience Description

Describe targeted audience(s) for whom the project will be designed including pertinent history identified in need, demographics, and expected impact on audience.

(3) Partnerships and Collaboration

Describe partnerships and collaborations fostered through this project including expected impact and benefit to those involved such as learner, institution, agency, state, and nation.

(4) Staffing Pattern and Procedure

Describe the staff needed for project administration, instructional design/ curriculum development, production, evaluation, and marketing/promotion. Narrative should demonstrate that the staffing and implementation procedure will result in an integrated approach involving content specialists, instructional designers, and quality production resources, and that the individual staff members proposed are qualified to perform these roles. Provide an outline (management plan) demonstrating integration.

(5) Project Sustainability

Projects should not depend on continued funding from this program. Each proposal should include convincing evidence of the project's ability to continue and grow after receiving the funding.

(6) Budget

A budget and a detailed narrative in support of the budget is required. Show all funding sources and itemize costs by the following line items: Salary costs, fringe benefits costs, equipment, materials and supplies, travel, publication/printing/duplication costs, computer costs, and all other costs. While some funds are available for the acquisition and installation of telecommunications transmission facilities, applicants are cautioned that no more than 10 percent of the funds available may be awarded for that purpose.

Funds may be requested under any of the line items listed above provided that the item or service for which support is requested is identified as necessary for successful conduct of the project, is allowable under the authorizing legislation and the applicable Federal cost principles, and is not prohibited under any applicable Federal statute. Salaries of project personnel who will be working in the project may be requested, but must be in proportion to the effort they will devote to the project.

(7) Capability Assessment

Include a detailed assessment of capability or fully developed plan for assessing capability. Areas of consideration include, but are not limited to, faculty development; support resources; production/technical capability; delivery capability; building learner capacity.

(8) Project Objectives

Project objectives should be stated in terms of what the program will deliver and should be measurable.

(9) Evaluation

Describe both formative and summative design for evaluating success in meeting project objective(s). In addition, describe strategy for evaluating overall effectiveness of program in terms of teaching and learning, behavior change/problem-solving, immediate application, meeting learner need, and potential for replication.

(10) Dissemination

Describe the plan for sharing results with institution, organization or agency, and plan for integration in outreach mission of institution, organization, or agency.

(11) Institutional Commitment

Discuss the institution's commitment to the project. For example, substantiate that the institution attributes a high priority to the project; discuss how the project will contribute to the achievement of the institution's long-term (five-to-ten-year) goals; explain how the project will help satisfy the institution's high priority objectives; or show how this project is linked to and supported by the institution's strategic plan.

Proposal Review

All proposals received will be acknowledged. Prior to technical examination, a preliminary review will be made for responsiveness to this solicitation. Proposals that do not fall within the solicitation guidelines will be eliminated from competition. All accepted proposals will be reviewed by a peer review panel comprised of full-time Federal employees and will be evaluated against criteria included in the announcement.

Evaluation Criteria

The maximum score a proposal can receive is 200 points. The peer review panel will be selected and organized to provide maximum expertise and objective judgment in the evaluation of proposals. In the event the number of proposals accepted outnumber dollars available, proposals will be ranked and support levels will be recommended by the panel(s) within the limitation of total funding available in fiscal year 1995.

(a) Program Delivery

Evaluation Criterion and Weight

(1) Project Need—10 points.

Does the proposal contain a clear and concise statement identifying the background and situation leading to the project need, goal(s), and supporting objectives?

(2) Audience Description—10 points.

Is the targeted audience(s) for whom the project will be designed adequately described, including pertinent history identified in need, demographics, and expected impact on audience?

(3) Partnerships and Collaboration—10 points.

Are the partnerships and collaborations fostered through this project including expected impact and benefit to those involved such as learner, institution, agency, state, and nation adequately described?

(4) Staffing Pattern and Procedures—10 points.

Is the staff needed for project administration, instructional design/ curriculum development, production, evaluation, and marketing/promotion adequately described? Does the narrative demonstrate that the staffing and implementation procedure will result in an integrated approach involving content specialists, instructional designers, and quality production resources, and that the individuals are qualified to perform these roles. Is there an outline (management plan) demonstrating integration?

(5) Project Sustainability—30 points.

Does the proposal include convincing evidence of the project's ability to continue and grow after receiving the funding?

(6) Budget—10 points.

Is there a budget and a detailed narrative in support of the budget included in the proposal? Are the following funding sources and itemized costs shown by the following line items: Salary costs, fringe benefits costs, equipment, materials and supplies, travel, publication/printing/duplication costs, computer costs, and all other costs. Is less than 10 percent of the funds requested for equipment?

Are all items or services for which support is requested identified as necessary for successful conduct of the project, is allowable under the authorizing legislation and the

applicable Federal cost principles, and is not prohibited under any applicable Federal statute? Are salaries of project personnel who will be working on the project in proportion to the effort they will devote to the project?

(7) Alternative Distance Learning Technologies—20 points.

Is there a plan for development and employment of alternative distance learning technologies including, but not limited to, internet, multimedia, audio/visual, and other telecommunications technologies?

(8) Learner and Program Support—20 points.

Is there provision of learner and program support?

(9) Innovation—20 points.

Is there a plan for innovation application of distance delivery including, but not limited to, approaches in reaching audience; methods of connectivity and/or interaction; use of existing resources; and innovations in the teaching-learning transaction?

(10) Infrastructure— 20 points.

Is a framework present representing both the technological and human infrastructure including, but not limited to, technical trouble-shooting, scheduling and operation?

(11) Marketing—20 points.

Is there a marketing plan which includes a rationale for promotional effort, logistical considerations, and convincing tie to needs assessment?

(12) Cost-Benefit—20 points.

Is there a cost-benefit analysis of the proposed project, including comparison to other delivery methods, relative benefit to learner, and staffing costs versus benefits?

(b) Innovative Program Development/ Production

Evaluation Criterion and Weight

(1) Project Need—10 points.

Each proposal must contain a clear and concise statement identifying the background and situation leading to the project need, goal(s), and supporting objectives.

(2) Audience Description—10 points.

Is the targeted audience(s) for whom the project will be designed adequately described, including pertinent history identified in need, demographics, and expected impact on audience?

(3) Partnerships and Collaboration—10 points.

Are the partnerships and collaborations fostered through this project including expected impact and benefit to those involved such as learner, institution, agency, state, and nation adequately described?

(4) Staffing Pattern and Procedure—10 points.

Is the staff needed for project administration, instructional design/curriculum development, production, evaluation, and marketing/promotion adequately described? Does the narrative demonstrate that the staffing and implementation procedure will result in an integrated approach involving content specialists, instructional designers, and quality production resources, and that the individuals are qualified to perform these roles. Is there an outline (management plan) demonstrating integration?

(5) Project Sustainability—20 points.

Does the proposal include convincing evidence of the project's ability to continue and grow after receiving the funding?

(6) Budget—10 points.

Is there a budget and a detailed narrative in support of the budget included in the proposal? Are the following funding sources and itemized costs shown by the following line items: Salary costs, fringe benefits costs, equipment, materials and supplies, travel, publication/printing/duplication costs, computer costs, and all other costs. Is less than 10 percent of the funds requested for equipment?

Are all items or services for which support is requested identified as necessary for successful conduct of the project, is allowable under the authorizing legislation and the applicable Federal cost principles, and is not prohibited under any applicable Federal statute? Are salaries of project personnel who will be working on the project in proportion to the effort they will devote to the project?

(7) Specific Learning Objectives—20 points.

Are learning objectives stated in terms of behavioral changes expected to occur in the audience(s) based on participation in the program?

(8) Instructional Methodology/ Strategies—30 Points.

Is the instructional/educational method or strategy to be implemented fully explained, including appropriateness for audience and learning environment. Does the explanation demonstrate knowledge of how people learn and/or interact in a mediated environment?

(9) Content/Curriculum—10 points.

Is a detailed outline of subject-matter content/curriculum included in the proposal?

(10) Production Techniques—10 points.

Is a detailed explanation of how the production techniques used in producing and delivery of program included. Is it clear how subject-matter content, instructional method/strategy, and production will be integrated?

(11) On-Site Activities—20 points.

Is there an innovative design for implementation of on-site or personal learning environment, including creative design and implementation plan for support materials and enrichment activities for on-site and personal learning environment?

(12) Interactivity—10 points.

Is there a full description of the expected level of interactivity necessary based on principles underlying teaching-learning transaction, sound instructional design, and mode of delivery used?

(13) Program Evaluation—20 points.

Are both formative and summative design for evaluating success in meeting learning objective(s) listed? Is there convincing evidence that the described strategy for evaluating overall effectiveness of program measure teaching and learning, behavior change/problem-solving, immediate application, meeting learner need, and potential for replication?

(14) Marketing Plan—10 points.

Does the marketing plan include a rationale for promotional effort, logistical considerations, and convincing tie to needs assessment?

(c) Capacity Building

Evaluation Criterion and Weight

(1) Project Need—10 points.

Each proposal must contain a clear and concise statement identifying the background and situation leading to the project need, goal(s), and supporting objectives.

(2) Audience Description—10 points.

Is the targeted audience(s) for whom the project will be designed adequately described, including pertinent history identified in need, demographics, and expected impact on audience?

(3) Partnerships and Collaboration—10 points.

Are the partnerships and collaborations fostered through this project including expected impact and benefit to those involved such as learner, institution, agency, state, and nation adequately described?

(4) Staffing Pattern and Procedure—10 points.

Is the staff needed for project administration, instructional design/curriculum development, production, evaluation, and marketing/promotion adequately described? Does the narrative demonstrate that the staffing and implementation procedure will result in an integrated approach involving content specialists, instructional designers, and quality production resources, and that the individuals are qualified to perform these roles. Is there an outline (management plan) demonstrating integration?

(5) Project Sustainability—20 points.

Does the proposal include convincing evidence of the project's ability to continue and grow after receiving the funding?

(6) Budget—10 points.

Is there a budget and a detailed narrative in support of the budget included in the proposal? Are the following funding sources and itemized costs shown by the following line items: Salary costs, fringe benefits costs, equipment, materials and supplies, travel, publication/printing/duplication costs, computer costs, and all other costs? Is less than 10 percent of the funds requested for equipment?

Are all items or services for which support is requested identified as necessary for successful conduct of the project, allowable under the authorizing legislation and the applicable Federal cost principles, and not prohibited under any applicable Federal statute? Are salaries of project personnel who will be working on the project in proportion to the effort they will devote to the project?

(7) Capability Assessment—40 points.

Is there a detailed assessment of capability or a fully developed plan for assessing capability? Does it include the following areas of consideration: Faculty development, support resources, production/technical capability, delivery capability, and building learner capacity?

(8) Project Objectives—20 points.

Are program objectives stated in terms of what the program will deliver? Are the outcomes measurable and tied to the evaluation strategy?

(9) Evaluation—20 points.

Does the evaluation include both formative and summative design for evaluating success in meeting project objective(s)? Is there a description of the strategy for evaluating overall effectiveness of program in terms of teaching and learning, behavior change/problem-solving, immediate application, meeting learner need, and potential for replication? Are the individuals skilled in evaluation strategies and procedures?

(10) Dissemination—20 points.

Is there a detailed plan for sharing results with the institution, organization or agency?

(11) Institutional Commitment—30 points.

Is there evidence to substantiate that the institution attributes high-priority to the project; that the project is linked to the achievement of the institution's long-term goals; that is will help satisfy the institution's high-priority objectives; or that the project is supported by the institution's strategic plans? Is there a plan for integration into the outreach mission of the institution, organization, or agency.

Proposal Disposition

When the peer review panel has completed its deliberations, the USDA program coordinator, based on the recommendations of the peer review panel, will recommend to the Awarding Official that the project be (a) approved for support from currently available funds or (b) declined due to insufficient funds or unfavorable review.

USDA reserves the right to negotiate with the Project Director and/or the submitting entity regarding project revisions (e.g., reductions in scope of work), funding level, or period of support prior to recommending any project for funding.

A proposal may be withdrawn at any time before a final funding decision is made. One copy of each proposal that is not selected for funding (including those that are withdrawn) will be retained by USDA for one year and remaining copies will be destroyed.

Proposal Submission

(1) What to Submit

An original and two copies of the proposal must be submitted. Each copy of each proposal must be stapled securely in the upper left hand corner (Do Not Bind). All copies of the proposal must be submitted in one package.

(2) Where and When to Submit

Proposals submitted through regular mail must be received by close of business July 28, 1995, and sent to:

By Surface Mail (U.S. Postal Service)

Cooperative State Research, Education, and Extension Service, USDA, Cooperative Funds Division, Ag Box 0995, Washington, DC 20250–0995

By Overnight Mail or Courier

Cooperative State Research, Education, and Extension Service, USDA, Cooperative Funds Division, 2nd Floor Mezzanine, Cotton Annex, 300–12th Street, SW, Washington, DC 20250–0995, (202) 401–4314

Hard copy proposals must be received by close of business July 28, 1995.

Include the following information on the proposal cover page:

(a) Name, address, telephone, fax number, and e-mail address of applicant and project director.

(b) Signatures and date. The cover page must contain the original signatures of the Project Director and the Authorized Organizational Representative who possesses the necessary authority to commit the applicant's time and other relevant resources.

(c) Project Summary. Each proposal must contain a 200 word abstract containing a brief description of the project. The abstract should describe the situation, targeted audience, purpose of project, program goal, methodology, and expected outcomes of the project.

Proposals may also be submitted electronically via the Internet in addition to the required hard copy version to the address listed. To obtain a copy of the electronic application submission information, send an electronic mail message to: ALMANAC@esusda.gov. In the body of the message, type the following one-line-only message: Send atf-guidelines. To submit a copy of your proposal electronically, send an ascii text version to: Atf-proposal@esusda.gov. Additionally, when submitting electronically, applicants are still required to submit three hard copies of the Proposal Cover Page which contains original signatures and date (i.e., three cover pages with original signatures and date must be submitted even though electronic submission is used). Electronically submitted proposals and the hard copy Proposal Cover Pages must be received by close of business July 28, 1995.

SUPPLEMENTARY INFORMATION:

(a) Federal Assistance Awards

Within the limits of funds available for such purposes, the awarding official shall make awards to those responsible, eligible applicants whose proposals are judged most meritorious under the evaluation criteria and procedures set forth in these application guidelines.

The date specified by the awarding official as the beginning of the project period shall not be later than September 30, 1994.

All funds awarded under the Program shall be expended solely for the purpose for which the funds are awarded in accordance with the approved application and budget, the terms and conditions of any resulting award, the applicable Federal cost principles, and the USDA Uniform Federal Assistance Regulations (7 CFR part 3015).

(b) Obligation of the Federal Government

Neither the approval of any application nor the award of any Federal assistance commits or obligates the United States in any way to provide further support of a project or any portion thereof.

(c) Applicable Federal Statutes and Regulations That Apply

Federal statutes and regulations that apply to Federal assistance proposals considered for review or grants awarded under the Program include, but are not limited to, the following:

7 CFR part 1.1—USDA Implementation of the Freedom of Information Act;

7 CFR part 1b—USDA Implementation of the National Environmental Policy Act;

7 CFR part 3—USDA Implementation of OMB Circular A–129 regarding debt collection;

7 CFR part 15, Subpart A—USDA Implementation of Title VI of the Civil Rights Act of 1964;

7 CFR part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (i.e., Circular Nos. A–110, A–21, and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly, the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance;

7 CFR part 3016—USDA Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;

7 CFR part 3017—USDA Implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants);

7 CFR part 3018—USDA Implementation of New Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans;

7 CFR part 3051—Audits of Institutions of Higher Education and Other Nonprofit Institutions, implementing OMB Circular A–133, regarding audits of institutions of higher education and other nonprofit institutions;

29 U.S.C. 794, Section 504—Rehabilitation Act of 1973, and 7 CFR part 15B (USDA implementation of the statute), prohibiting discrimination based upon physical or mental handicap in Federally assisted programs; and,

35 U.S.C. 200, et seq. Bayh-Dole Act controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

Leodrey Williams,

Acting Associate Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 95–14197 Filed 6–8–95; 8:45 am]

BILLING CODE 3410–09–M

Friday
June 9, 1995

Part IX

The President

Executive Order 12962—Recreational Fisheries

Memorandum of June 6, 1995—Delegation of Certain Presidential Authorities Under the African Conflict Resolution Act of 1994

Federal Register
Vol. 60, No. 111
Friday, June 9, 1995

Presidential Documents

Title 3—

The President

Executive Order 12962 of June 7, 1995

Recreational Fisheries

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in furtherance of the purposes of the Fish and Wildlife Act of 1956 (16 U.S.C. 742a-d, and e-j), the Fish and Wildlife Coordination Act (16 U.S.C. 661–666c), the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), and the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801–1882), and other pertinent statutes, and in order to conserve, restore, and enhance aquatic systems to provide for increased recreational fishing opportunities nationwide, it is ordered as follows:

Section 1. *Federal Agency Duties.* Federal agencies shall, to the extent permitted by law and where practicable, and in cooperation with States and Tribes, improve the quantity, function, sustainable productivity, and distribution of U.S. aquatic resources for increased recreational fishing opportunities by: (a) developing and encouraging partnerships between governments and the private sector to advance aquatic resource conservation and enhance recreational fishing opportunities;

(b) identifying recreational fishing opportunities that are limited by water quality and habitat degradation and promoting restoration to support viable, healthy, and, where feasible, self-sustaining recreational fisheries;

(c) fostering sound aquatic conservation and restoration endeavors to benefit recreational fisheries;

(d) providing access to and promoting awareness of opportunities for public participation and enjoyment of U.S. recreational fishery resources;

(e) supporting outreach programs designed to stimulate angler participation in the conservation and restoration of aquatic systems;

(f) implementing laws under their purview in a manner that will conserve, restore, and enhance aquatic systems that support recreational fisheries;

(g) establishing cost-share programs, under existing authorities, that match or exceed Federal funds with nonfederal contributions;

(h) evaluating the effects of Federally funded, permitted, or authorized actions on aquatic systems and recreational fisheries and document those effects relative to the purpose of this order; and

(i) assisting private landowners to conserve and enhance aquatic resources on their lands.

Sec. 2. *National Recreational Fisheries Coordination Council.* A National Recreational Fisheries Coordination Council ("Coordination Council") is hereby established. The Coordination Council shall consist of seven members, one member designated by each of the following Secretaries—Interior, Commerce, Agriculture, Energy, Transportation, and Defense—and one by the Administrator of the Environmental Protection Agency. The Coordination Council shall: (a) ensure that the social and economic values of healthy aquatic systems that support recreational fisheries are considered by Federal agencies in the course of their actions;

(b) reduce duplicative and cost-inefficient programs among Federal agencies involved in conserving or managing recreational fisheries;

(c) share the latest resource information and management technologies to assist in the conservation and management of recreational fisheries;

(d) assess the implementation of the Conservation Plan required under section 3 of this order; and

(e) develop a biennial report of accomplishments of the Conservation Plan.

The representatives designated by the Secretaries of Commerce and the Interior shall cochair the Coordination Council.

Sec. 3. *Recreational Fishery Resources Conservation Plan.* (a) Within 12 months of the date of this order, the Coordination Council, in cooperation with Federal agencies, States, and Tribes, and after consulting with the Federally chartered Sport Fishing and Boating Partnership Council, shall develop a comprehensive Recreational Fishery Resources Conservation Plan ("Conservation Plan").

(b) The Conservation Plan will set forth a 5-year agenda for Federal agencies identified by the Coordination Council. In so doing, the Conservation Plan will establish, to the extent permitted by law and where practicable; (1) measurable objectives to conserve and restore aquatic systems that support viable and healthy recreational fishery resources, (2) actions to be taken by the identified Federal agencies, (3) a method of ensuring the accountability of such Federal agencies, and (4) a comprehensive mechanism to evaluate achievements. The Conservation Plan will, to the extent practicable, be integrated with existing plans and programs, reduce duplication, and will include recommended actions for cooperation with States, Tribes, conservation groups, and the recreational fisheries community.

Sec. 4. *Joint Policy for Administering the Endangered Species Act of 1973.* All Federal agencies will aggressively work to identify and minimize conflicts between recreational fisheries and their respective responsibilities under the Endangered Species Act of 1973 ("ESA") (16 U.S.C. 1531 *et seq.*). Within 6 months of the date of this order, the Fish and Wildlife Service and the National Marine Fisheries Service will promote compatibility and reduce conflicts between the administration of the ESA and recreational fisheries by developing a joint agency policy that will; (1) ensure consistency in the administration of the ESA between and within the two agencies, (2) promote collaboration with other Federal, State, and Tribal fisheries managers, and (3) improve and increase efforts to inform nonfederal entities of the requirements of the ESA.

Sec. 5. *Sport Fishing and Boating Partnership Council.* To assist in the implementation of this order, the Secretary of the Interior shall expand the role of the Sport Fishing and Boating Partnership Council to: (a) monitor specific Federal activities affecting aquatic systems and the recreational fisheries they support;

(b) review and evaluate the relation of Federal policies and activities to the status and conditions of recreational fishery resources; and

(c) prepare an annual report of its activities, findings, and recommendations for submission to the Coordination Council.

Sec. 6. *Judicial Review.* This order is intended only to improve the internal management of the executive branch and it is not intended to create any right, benefit or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any other person.

William J. Clinton

THE WHITE HOUSE,
June 7, 1995.

[FR Doc. 95–14407
Filed 6–8–95; 10:50 am]
Billing code 3195–01–P

Presidential Documents

Memorandum of June 6, 1995

Delegation of Certain Presidential Authorities Under the African Conflict Resolution Act of 1994

Memorandum for the Administrator of the Agency for International Development

By virtue of the authority vested in me by the Constitution and laws of the United States of America, including section 301 of title 3 of the United States Code, I hereby delegate the authorities vested in the President under sections 8 and 9 of the African Conflict Resolution Act (Public Law 103–381, 108 Stat. 3516) to the Administrator of the Agency for International Development.

The functions delegated by this memorandum may be redelegated within the Agency for International Development, as appropriate.

The Administrator of the Agency for International Development is authorized and directed to publish this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, June 6, 1995.

[FR Doc. 95–14387
Filed 6–7–95; 4:15 pm]
Billing code 6116–01–P

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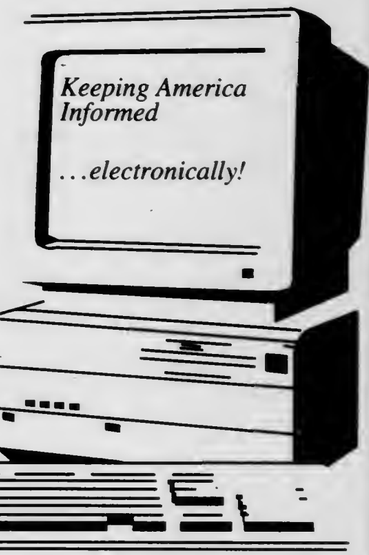
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FARM CREDIT SYSTEM INSURANCE CORPORATION

5 CFR Part 4001

12 CFR Part 1401

RIN 3055–AA03, 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the Farm Credit System Insurance Corporation

AGENCY: Farm Credit System Insurance Corporation (Corporation).

ACTION: Interim rule; request for comments.

SUMMARY: The Farm Credit System Insurance Corporation, with the concurrence of the Office of Government Ethics (OGE), is issuing as an interim rule regulations for the officers and employees of the Corporation that supplement the Standards of Ethical Conduct for Employees of the Executive Branch (Executive Branch-wide Standards) issued by OGE. The interim rule is a necessary supplement to the Executive Branch-wide Standards because it addresses ethical issues unique to Corporation programs and operations. Prior to the issuance of the interim rule, the Corporation had administratively adopted the Farm Credit Administration (FCA) standards of conduct regulations. The FCA, however, is issuing supplemental regulations to the Executive Branch-wide Standards that, when effective, will remove its conduct regulations except for a residual cross-reference. This Corporation interim rule establishes regulations imposing prohibitions on the ownership of certain financial interests; prohibitions on certain forms of borrowing and extensions of credit; limitations on purchases of assets owned by Farm Credit System (System) institutions, conservatorship or receivership assets, or certain assets held by the Corporation; restrictions arising from the employment of relatives; a prohibition against involvement in Farm Credit System board member elections; and restrictions on outside employment and business activities. In addition to this interim rule, the Corporation will be issuing a single section in its regulations that provides cross-references to the Executive Branch-wide Standards and financial disclosure regulations, as well as these new supplemental regulations.

DATES: This interim rule is effective July 12, 1995. Notice of effective date will be published in the **Federal Register**. Comments must be submitted on or before July 12, 1995.

ADDRESSES: Comments should be mailed or delivered (in triplicate) to Mary A. Creedon, Chief Operating Officer, in care of Cindy Nicholson, Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826. Copies of all comments will be available for examination by interested parties in the offices of the Farm Credit System Insurance Corporation.

FOR FURTHER INFORMATION CONTACT:

Eric Howard, Policy Analyst, Farm Credit System Insurance Corporation, McLean, VA 22102–0826, (703) 883–4498,

or

Wendy R. Laguarda, Senior Attorney and Deputy Ethics Official, Farm Credit System Insurance Corporation, McLean, VA 22102–0826, (703) 883–4234, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, OGE published Executive Branch-wide Standards for employees of the executive branch. *See* 57 FR 35006–35067, as corrected at 57 FR 48557 and FR 52583, with additional grace period extensions at 59 FR 4779–4780 and 60 FR 6390–6391. The Executive Branch-wide Standards are codified at 5 CFR part 2635. Effective February 3, 1993, they established uniform ethical conduct standards applicable to all executive branch personnel.

With the concurrence of OGE, 5 CFR 2635.105 authorizes executive branch agencies to publish agency-specific supplemental regulations necessary to implement their respective ethics programs. The Corporation, with OGE's concurrence, has determined, in light of the Corporation's specialized functions as insurer, conservator, and receiver for Corporation-insured System institutions, that the following supplemental regulations being codified in new chapter XXX, consisting of part 4001, of title 5 of the Code of Federal Regulations, are necessary to implement the Corporation's ethics program successfully.

II. Analysis of the Regulations

Section 4001.101—General

Section 4001.101 explains that the regulations contained in the interim rule apply to Corporation employees and supplement the Executive Branch-wide Standards. Corporation employees must comply with the Executive Branch-wide Standards, the supplemental regulations in this interim rule, and Corporation guidance and procedures issued pursuant to the Executive Branch-wide Standards and these supplemental regulations.

Section 4001.102—Definitions

Section 4001.102 identifies and defines the unique terms used in the supplemental regulations. The term "covered employee" is intended to include all examiners of System institutions who perform work for the Corporation and any other employee specified as such by Corporation directive whose duties and responsibilities require application of these supplemental regulations to ensure public confidence that the Corporation's programs are conducted impartially and objectively. The Corporation Designated Agency Ethics Official (DAEO) or his or her designee, in consultation with the Chief Operating Officer, will determine which employees are covered for purposes of this regulation.

The term "related entity" is intended to be broadly interpreted and includes agricultural mortgage marketing facilities established by System institutions, affiliates of the Federal Agricultural Mortgage Corporation, service organizations established by the System banks, and all other entities owned or controlled by one or more System institutions that are not chartered by the FCA.

The term "System institution" refers to all institutions chartered and regulated by the FCA, and also includes

the Federal Farm Credit Banks Funding Corporation and the Federal Agricultural Mortgage Corporation.

Section 4001.103—Prohibited Financial Interests

(a) *Prohibition.* Section 4001.103(a) prohibits a covered employee, or a spouse or minor child of a covered employee, from owning securities issued by a System institution or related entity.

The Corporation has determined, in accordance with 5 CFR 2635.403(a), that this restriction is necessary, in light of its multifaceted responsibilities, to maintain public confidence in the impartiality and objectivity with which the Corporation executes its functions. The restriction will eliminate any reason for regulated entities to be concerned that sensitive information provided to the Corporation might be misused for private gain and will avoid widespread disqualification of employees from official matters, which might result in the Corporation's inability to fulfill its mission.

(b) *Definition of Securities.* Section 4001.103(b) contains a definition of the term "securities" to be applied to § 4001.103. It includes any "interest in debt or equity instruments" such as, for example, stocks, bonds, and commercial paper.

(c) *Exceptions.* Section 4001.103(c) includes several exceptions to the prohibition in § 4001.103(a) against owning securities issued by System institutions or related entities. The exceptions are intended to permit ownership of interests of a character unlikely to raise questions regarding the objective and impartial performance of Corporation employees' official duties or the possible misuse of their positions.

Section 4001.103(c) (1) and (2) permit employees to retain System securities in certain funds or plans, the assets of which are managed by an independent third party and are not concentrated in System securities. Such funds may include a publicly traded or publicly available investment fund or an employee's interest in a qualified profit sharing, retirement, or similar plan.

Section 4001.103(c)(3) permits employees to retain securities of System institutions held, in accordance with § 4001.104(b), as a result of pre-existing credit. This exception is necessary because the System institutions are borrower-owned institutions that require eligible borrowers to purchase a minimum amount of an institution's stock as a condition of obtaining a loan. Thus, if an employee has pre-existing credit from a System institution, he or she also will own stock in the institution, which is generally not retired until after the loan is paid off.

Section 4001.103(c)(4) is included as a specific cross-reference to the waiver authority at § 4001.109 which is to be used on a case-by-case basis.

Section 4001.104—Prohibited Borrowing

(a) *Prohibition on Employee Borrowing.* Section 4001.104(a) prohibits a covered employee, or a spouse or minor child of a covered employee, from seeking or obtaining a loan or extension of credit from a System institution or an officer, director, employee, or related entity of a System institution.

Imposed pursuant to 5 CFR 2635.403(a), this prohibition on borrowing is necessary for several reasons. First, it is necessary to prevent covered employees from obtaining or appearing to obtain loans or extensions of credit on preferential terms, or from benefiting or appearing to benefit from their official positions through possible forbearance by the lender in collecting on the indebtedness. Public confidence in the impartiality and objectivity with which Corporation programs are administered will be strengthened by prohibiting Corporation employees from engaging in financial transactions with institutions insured by the Corporation. The borrowing prohibition also will help to ensure that System institutions and their examiners do not violate the prohibitions in 18 U.S.C. 212 and 213 against the offer and acceptance of certain loans. Finally, limitations on Corporation employees borrowing from regulated institutions will result in fewer employee disqualifications from official matters, thereby avoiding a situation that would have a detrimental effect on the Corporation's ability to carry out its mission.

(b) *Exception.* Section 4001.104(b) serves to clarify that § 4001.104(a) only prohibits covered employees and their spouses and minor children from seeking or obtaining loans or extensions of credit. Thus, a covered employee, or a spouse or minor child of a covered employee, is not prohibited from retaining a loan from a System institution on its original terms if the loan was obtained prior to appointment to a covered employee position at the Corporation. The renewal or renegotiation of a pre-existing loan or extension of credit, however, will be treated as a new loan subject to the prohibition in § 4001.104(a), but an employee may request, pursuant to the waiver provision in § 4001.109, that an exception be made. Employees who retain pre-existing credit, by virtue of their own credit or the credit of a spouse or minor child, will be required to disqualify themselves from participation in the regulation, supervision, examination, audit, visitation, review, investigation, or other particular matter involving the System institution providing the retained credit.

Section 4001.105—Purchase of System Institution Assets

(a) *Prohibition on Purchasing Assets Owned by a System Institution.* Section 4001.105(a) prohibits all Corporation employees, or a spouse or minor child of an employee, from purchasing assets from a System institution or related entity, regardless of how the asset is sold.

(b) *Assets Held or Managed by the Farm Credit System Insurance Corporation or a Receiver or Conservator.* Section 4001.105(b)(1) prohibits all Corporation employees, or a spouse or minor child of an employee, from purchasing assets held or managed by a receiver or conservator for a System institution or by the Corporation as a result of its provision of open bank assistance to troubled System banks, regardless of how the asset is sold. This section prohibits the purchase of such assets held by a receiver or conservator appointed by the FCA prior to January 1, 1993, as well as assets held by the Corporation, which is the only entity FCA may appoint as receiver or conservator of troubled System institutions starting January 1, 1993.

Section 4001.105(b)(2) requires a Corporation employee who is involved in the disposition of receivership or conservatorship assets to disqualify himself from a sales transaction when the employee becomes aware that anyone with whom he holds a covered relationship, as defined in § 2635.502(b)(1) of the Executive Branch-wide Standards, is or will be attempting to acquire receivership or conservatorship assets.

The prohibitions in § 4001.105 are intended to supplement the provisions of 5 CFR 2635.702 regarding use of public office for private gain and to preserve public confidence in the impartiality and objectivity with which Corporation programs and operations are administered. They are necessary to prevent employees from purchasing or appearing to purchase assets on preferential terms, or from benefiting or appearing to benefit from their official positions by purchasing assets based on information obtained in the course of the employees' performance of their official duties. And because the Corporation, acting through its receivership powers, exercises broad powers to seize, hold, and forfeit private property, the prohibitions will help to preserve the public's confidence that these powers will not be misused to benefit the private interests of a Corporation employee.

Section 4001.106—Restrictions Arising From the Employment of Relatives

Section 4001.106 requires a covered employee to file a report of family member employment with his or her immediate supervisor, the ethics liaison in the office, and the DAEO if the covered employee's spouse or a relative who is dependent on or resides with the covered employee is employed with an entity specified in § 4001.108(a). The employee would be disqualified from participating in any matter involving the employee's spouse or relative, or the employing entity, unless the employee received the appropriate authorization pursuant to the standard in § 2635.502(d) of the Executive Branch-wide Standards.

In effect, § 4001.106 supplements § 2635.502 of the Executive Branch-wide Standards, relating to impartial performance of official duties, and is necessary to ensure that the employment of a close family member by System institutions or related entities does not interfere with the objective and impartial execution of a covered employee's official duties. The requirements ot § 4001.106 will help to ensure public confidence in the Corporation's execution of its mission.

Section 4001.107—Involvement in System Institution Boord Member Elections

Section 4001.107 prohibits those covered employees who own stock in a System institution, by virtue of retaining a pre-existing loan or extension of credit from a System institution in accordance with § 4001.104(b), from participating in a stockholder nomination or election of a System institution's board members, other than by exercising their right to vote. In addition, this section prohibits covered employees from making any oral or written statements that could be reasonably construed as an attempt to influence a nomination or election.

Section 4001.107 supplements § 2635.702 of the Executive Branch-wide Standards by prohibiting conduct that, given the broad power of the Corporation over System institutions, is likely to give rise to an appearance of misuse of official authority.

Section 4001.108—Outside Employment and Business Activity

(a) *Prohibition.* Section 4001.108(a) supplements § 2635.802 of the Executive Branch-wide Standards by prohibiting covered employees from engaging in specified outside employment and activities. Covered employees are prohibited from performing paid or unpaid services for any System institution or related entity, or any officer, director, employee, or person connected with a System institution or related entity. This regulation is based, in part, on 18 U.S.C. 1909, which prohibits an examiner of a System institution from performing any service for compensation for any System institution or for any person connected therewith, such as persons working on a contract basis for a System institution. It is expanded to cover persons other than examiners in order to ensure that covered employees do not engage in outside activities that are likely to appear to interfere with the objective and impartial performance of their official duties.

(b) *General Requirement for Prior Approval.* Pursuant to § 2635.803 of the Executive Branch-wide Standards, agencies may, by supplemental regulation, require employees to obtain prior approval before engaging in outside employment or activities. Under 12 CFR 601.101, which has been administratively adopted by the Corporation, the Corporation has required employees who engage in outside employment to seek prior approval. Based on its finding that this requirement has helped ensure that employees' outside activities conform to applicable statutes and regulations, the Corporation has determined that continuing this requirement is necessary for the purposes of its ethics program. Thus, § 4001.108(b) requires all employees to obtain written approval from the DAEO before engaging in any outside employment, with or without compensation. This section also provides that approval shall be granted only upon a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635 and these supplemental regulations.

(c) *Definition.* The term "employment" is broadly defined at § 4001.108(c) to cover any form of non-Federal employment or business relationship involving the provision of personal services, including writing when done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of nonprofit charitable, religious, professional, social, fraternal, and similar organizations for which no compensation is received other than reimbursement for necessary expenses.

Section 4001.109—Waivers

Section 4001.109 gives the DAEO authority to grant a written waiver of any provision in part 4001 based upon a determination that the waiver is not inconsistent with law and the Executive Branch-wide Standards, and meets the waiver standard established in § 4001.109. An employee may be required under the waiver to disqualify himself or herself from a particular matter or take other appropriate action.

The waiver provision is intended, in appropriate cases, to ease the burden that the supplemental regulations may impose on the private lives of Corporation employees, while ensuring that employees do not engage in actions that may interfere with the objective and impartial execution of their official duties or raise questions about possible misuse of their official positions.

III. Addition of Corporation Employee Responsibilities and Conduct Regulations

On the effective date of the FCA's interim rule, the FCA's regulations on Employee Responsibilities and Conduct, 12 CFR part 601, which had been administratively adopted by the Corporation, will be amended by the FCA to remove §§ 601.100 through 601.102 and to add a residual cross-reference. On the effective date of the Corporation's own interim rule, the Corporation will issue new regulations on Employee Responsibilities and Conduct in 12 CFR part 1401, to provide a cross-reference to the Corporation's own supplemental ethical conduct regulation, to be codified at 5 CFR part 4001, and to the Executive Branch-wide financial disclosure and standards of ethical conduct regulations at 5 CFR parts 2634 and 2635.

IV. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553 (b) and (d), the Corporation finds good cause exists for waiving the general notice of proposed rulemaking and 30-day delay in effectiveness as to this interim final rule. The notice and delayed effective date are being waived because these supplemental regulations for Corporation employees and their families concern matters of Corporation organization, practice and procedure and because it is in the public interest that these supplemental regulations be effective as soon as possible. The Corporation is, however, issuing these regulations as an interim rule, with a request for comments, and will consider any comments received when adopting the regulations in final form.

Executive Order 12866

In promulgating these interim supplemental regulations, the Corporation has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This interim rule deals with Corporation organization, management, and personnel matters and is, therefore, not deemed "significant" under Executive Order 12866.

Regulatory Flexibility Act

It is hereby certified that this interim rule will not have significant economic impact on a substantial number of small entities. This rule affects only Federal employees and their immediate families.

Paperwork Reduction Act

It is hereby certified that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects

5 CFR Part 4001

Conflicts of interest, Government employees.

12 CFR Part 1401

Conflicts of interest.

Dated: May 10, 1995.

Floyd Fithian,

Secretary, Farm Credit System Insurance Corporation.

Approved: May 30, 1995.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Farm Credit System Insurance Corporation, with the concurrence of the Office of Government Ethics, is amending title 5 and adding a new part 1401 to chapter XIV, title 12 of the Code of Federal Regulations to read as follows:

TITLE 5—[AMENDED]

1. A new chapter XXX, consisting of part 4001, is added to title 5 of the Code of Federal Regulations to read as follows:

CHAPTER XXX—FARM CREDIT SYSTEM INSURANCE CORPORATION

PART 4001—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE FARM CREDIT SYSTEM INSURANCE CORPORATION

Sec.

4001.101 General.
4001.102 Definitions.
4001.103 Prohibited financial interests.
4001.104 Prohibited borrowing.
4001.105 Purchase of System institution assets.
4001.106 Restrictions arising from the employment of relatives.
4001.107 Involvement in System institution board member elections.
4001.108 Outside employment and business activity.
4001.109 Waivers.

Authority: 5 U.S.C. 7301, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); 12 U.S.C. 2277a–7, 2277a–8; E.O. 12674, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.403(a), 2635.502, 2635.702, 2635.802(a), 2635.803.

§ 4001.101 General.

In accordance with 5 CFR 2635.105, the regulations in this part apply to Farm Credit System Insurance Corporation (Corporation) employees and supplement the Standards of Ethical Conduct for Employees of the executive branch contained in 5 CFR part 2635. Employees are required to comply with 5 CFR part 2635, this part, and Corporation guidance and procedures established pursuant to 5 CFR 2635.105.

§ 4001.102 Definitions.

For purposes of this part:

(a) *Covered employee* means:

(1) All examiners who perform work for the Corporation; and

(2) Any other employee specified by Corporation directive whose duties and responsibilities require application of these supplemental regulations to ensure public confidence that the Corporation's programs are conducted impartially and objectively. The Corporation Designated Agency Ethics Official (DAEO) or his or her designee, in consultation with the Chief Operating Officer, will determine which employees are covered for the purpose of this part.

(b) *Related entity* means:

(1) Affiliates defined in section 8.5(e) of the Farm Credit Act of 1971, as amended (Act), 12 U.S.C. 2001 *et seq.*, 12 U.S.C. 2279aa–5;

(2) Affiliates defined in section 8.11(e) of the Act, 12 U.S.C. 2279aa–11;

(3) Service organizations authorized by section 4.25 of the Act, 12 U.S.C. 2211; and

(4) Any other entity owned or controlled by one or more Farm Credit System (System) institution that is not chartered by the Farm Credit Administration (FCA).

(c) *System institution* refers to:

(1) All institutions chartered and regulated by the FCA as described in section 1.2 of the Act, 12 U.S.C. 2002;

(2) The Federal Farm Credit Banks Funding Corporation, established pursuant to section 4.9 of the Act, 12 U.S.C. 2160; and

(3) The Federal Agricultural Mortgage Corporation, established pursuant to section 8.1 of the Act, 12 U.S.C. 2279aa–1.

§ 4001.103 Prohibited financial interests.

(a) *Prohibition.* Except as provided in paragraph (c) of this section and § 4001.109, no covered employee, or spouse or minor child of a covered employee, shall own, directly or indirectly, securities issued by a System institution or related entity.

(b) *Definition of securities.* For purposes of this section, the term "securities" includes all interests in debt or equity instruments. The term includes, without limitation, secured and unsecured bonds, debentures, notes, securitized assets and commercial paper, as well as all types of preferred and common stock. The term encompasses both current and contingent ownership interests, including any beneficial or legal interest derived from a trust. It extends to any right to acquire or dispose of any long and short position in such securities and includes, without limitation, interests convertible into such securities, as well as options, rights, warrants, puts, calls, and straddles relating to such securities.

(c) *Exceptions.* Nothing in this section prohibits a covered employee, or spouse or minor child of a covered employee, from:

(1) Investing in a publicly traded or publicly available investment fund which, in its prospectus, does not indicate the objective or practice of concentrating its investments in the securities of System institutions or related entities, if the employee neither exercises control over nor has the ability to exercise control over the financial interests held in the fund;

(2) Having a legal or beneficial interest in a qualified profit sharing, retirement, or similar plan, provided that the plan does not invest more than 25 percent of its funds in securities of System institutions or related entities,

and the employee neither exercises control over nor has the ability to exercise control over the financial interests held in the plan;

(3) Owning securities of System institutions held as a result of pre-existing credit, as specified in § 4001.104(b); or

(4) Owning any security pursuant to a waiver granted under § 4001.109.

§ 4001.104 Prohibited borrowing.

(a) *Prohibition on employee borrowing.* Except as provided in paragraph (b) of this section, no covered employee, or spouse or minor child of a covered employee, shall seek or obtain any loan or extension of credit from a System institution or from an officer, director, employee, or related entity of a System institution.

(b) *Exception.* This section does not prohibit a covered employee, or spouse or minor child of a covered employee, from retaining a loan from a System institution on its original terms if the loan was obtained prior to appointment to a covered employee position. For loans retained pursuant to this paragraph, a covered employee shall submit to his or her immediate supervisor, the ethics liaison in his or her office, and the DAEO, a written disqualification from examining, auditing, visiting, reviewing, investigating, or otherwise participating in the regulation or supervision of the System institution that is providing the retained credit. Written disqualification shall be made within 30 days of appointment to a covered employee position on a form prescribed by the DAEO. Any renewal or renegotiation of a pre-existing loan or extension of credit will be treated as a new loan subject to the prohibition in paragraph (a) of this section.

§ 4001.105 Purchase of System institution assets.

(a) *Prohibition on purchasing assets owned by a System institution.* No employee, or spouse or minor child of an employee, shall purchase, directly or indirectly, an asset (such as real property, vehicles, furniture, or similar items) from a System institution or related entity, regardless of how the asset is sold.

(b) *Assets held or managed by the Corporation or a receiver or conservator*—(1) *Prohibition on purchase.* No employee, or spouse or minor child of an employee, shall purchase, directly or indirectly, an asset (such as real property, vehicles, furniture, or similar items) that is held or managed by a receiver or conservator for a System institution or that is held by the Corporation as a result of its provision of open bank assistance to troubled System banks, regardless of how the asset is sold.

(2) *Disqualification.* An employee who is involved in the disposition of receivership or conservatorship assets, or assets acquired by the Corporation as a result of its provision of open bank assistance to troubled System banks, shall disqualify himself or herself from participation in the disposition of such assets when the employee becomes aware that anyone with whom the employee has a covered relationship, as defined in § 2635.502(b)(1) of the Executive Branch-wide Standards, is or will be attempting to acquire such assets. The employee shall provide written notification of the disqualification to his or her immediate supervisor, the ethics liaison in his or her office, and the DAEO.

§ 4001.106 Restrictions arising from the employment of relatives.

When the spouse of a covered employee, or other relative who is dependent on or resides with a covered employee, is employed in a position that the employee would be prohibited from occupying by § 4001.108(a), the employee shall file a report of family member employment with his or her immediate supervisor, the ethics liaison in his or her office, and the DAEO on a form prescribed by the DAEO. Notice shall be made as soon as possible after learning about employment already in existence or in advance of known prospective employment. The employee shall be disqualified from participation in any matter involving the employee's spouse or relative, or the employing entity, unless the DAEO authorizes the employee to participate in the matter using the standard in § 2635.502(d) of the Executive Branch-wide Standards.

§ 4001.107 Involvement in System institution board member elections.

No covered employee who is able to participate in a System institution board election because of System securities owned by virtue of retaining a pre-existing loan or extension of credit from a System institution in accordance with § 4001.104(b) shall take any part, directly or indirectly, in the nomination or election of a board member of a System institution, other than by exercising the right to vote. In addition, a covered employee shall not make any oral or written statement that may be reasonably construed as intending to influence any vote in such nominations or elections.

§ 4001.108 Outside employment and business activity.

(a) *Prohibition.* No covered employee shall perform services, either on a paid or unpaid basis, for any System institution or related entity, or any officer, director, employee, or person connected with a System institution or related entity. Nothing in this section would prohibit covered employees from providing any service that is a part of their official duties.

(b) *General requirement for prior approval.* All employees shall obtain prior written approval before engaging in any outside employment or business activity, with or without compensation, unless the outside activity is exempt from the definition of "employment" as set forth in paragraph (c) of this section. An employee proposing to engage in outside employment and business activities is required, prior to commencement, to send a written notice of the proposed employment or activity to the DAEO on a form prescribed by the DAEO. Approval shall be granted only upon a determination that the employment or activity is not expected to involve conduct prohibited by statute, part 2635 of this title, or paragraph (a) of this section.

(c) *Definition.* For purposes of this section, "employment" means any form of non-Federal employment, business relationship or activity involving the provision of personal services by the employee, whether or not for compensation. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher, or speaker. It includes writing when done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization for which no compensation is received other than reimbursement for necessary expenses.

§ 4001.109 Waivers.

The DAEO may grant a written waiver from any provision of this part based on a determination that the waiver is not inconsistent with part 2635 of this title or otherwise prohibited by law and that, under the particular circumstances, application of the provision is not necessary to avoid the appearance of misuse of position or loss of impartiality, or otherwise to ensure confidence in the impartiality and objectivity with which Corporation programs are administered. A waiver

under this paragraph may impose appropriate conditions, such as requiring execution of a written disqualification.

12 CFR CHAPTER XIV—FARM CREDIT SYSTEM INSURANCE CORPORATION

2. Part 1401.1 is added to read as follows:

PART 1401—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Authority: 5 U.S.C. 7301; 12 U.S.C. 2277a–7.

§ 1401.1 Cross-references to employee ethical conduct standards and financial disclosure regulations.

Board members, officers, and other employees of the Farm Credit System Insurance Corporation are subject to the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635, the Farm Credit System Insurance Corporation regulation at 5 CFR part 4001, which supplements the Executive Branch-wide Standards, and the executive branch-wide financial disclosure regulations at 5 CFR part 2634.

[FR Doc. 95–14215 Filed 6–9–95; 8:45 am]
BILLING CODE 6710–01–P

FARM CREDIT ADMINISTRATION

5 CFR Part 4101

12 CFR Part 601

RIN 3052–AB50, 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the Farm Credit Administration

AGENCY: Farm Credit Administration (FCA or Agency).

ACTION: Interim rule; request for comments.

SUMMARY: The Farm Credit Administration, with the concurrence of the Office of Government Ethics (OGE), is issuing as an interim rule regulations for the officers and employees of the FCA that supplement the Standards of Ethical Conduct for Employees of the Executive Branch (Executive Branch-wide Standards) issued by OGE. The interim rule is a necessary supplement to the Executive Branch-wide Standards because it addresses ethical issues unique to FCA programs and operations. The interim rule establishes regulations imposing prohibitions on the ownership of certain financial interests; prohibitions on certain forms of borrowing and extensions of credit; limitations on purchases of assets owned by Farm Credit System (System) institutions, conservatorship or receivership assets, or certain assets held by the Farm Credit System Insurance Corporation (Corporation); restrictions arising from the employment of relatives; a prohibition against involvement in Farm Credit System board member elections; and restrictions on outside employment and business activities. The FCA is also repealing its current regulations on these subjects and replacing them with a single section that provides cross-references to the Executive Branch-wide Standards and financial disclosure regulations, as well as these new supplemental regulations.

DATES: This interim rule is effective upon the expiration of 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. Notice of effective date will be published in the **Federal Register**. Comments must be submitted on or before July 12, 1995.

ADDRESSES: Comments should be mailed or delivered (in triplicate) to Patricia W. DiMuzio, Associate Director, Regulation Development, Office of Examination, Farm Credit Administration, McLean, Virginia 22102–5090. Copies of all comments will be available for examination by interested parties in Regulation Development, Office of Examination, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Eric Howard, Policy Analyst, Regulation Development, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498,

or

Wendy R. Laguarda, Senior Attorney and Deputy Ethics Official, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4234, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, OGE published Executive Branch-wide Standards for employees of the executive branch. *See* 57 FR 35006–35067, as corrected at 57 FR 48557 and FR 52583, with additional grace period extensions at 59 FR 4779–4780 and 60 FR 6390–6391. The Executive Branch-wide Standards are codified at 5 CFR part 2635. Effective February 3, 1993, they established uniform ethical conduct standards applicable to all executive branch personnel.

With the concurrence of OGE, 5 CFR 2635.105 authorizes executive branch agencies to publish agency-specific supplemental regulations necessary to implement their respective ethics programs. The FCA, with OGE's concurrence, has determined, in light of the FCA's unique programs and operations, that the following supplemental regulations, being codified in new chapter XXXI, consisting of part 4101, of 5 CFR, are necessary to implement the Agency's ethics program successfully.

II. Analysis of the Regulations

Section 4101.101—General

Section 4101.101 explains that the regulations contained in the interim rule apply to FCA employees and supplement the Executive Branch-wide Standards. Farm Credit Administration employees must comply with the Executive Branch-wide Standards, the supplemental regulations in this interim rule, and FCA guidance and procedures issued pursuant to the Executive Branch-wide Standards and these supplemental regulations.

Section 4101.102—Definitions

Section 4101.102 identifies and defines the unique terms used in the supplemental regulations. The term "covered employee" is intended to include all FCA examiners and any other employee specified as such by FCA directive whose duties and responsibilities require application of these supplemental regulations to ensure public confidence that the FCA's programs are conducted impartially and objectively. The FCA Designated Agency Ethics Official (DAEO) or his or her designee, in consultation with the Office Directors, will determine which employees are covered for purposes of this regulation.

The term "related entity" is intended to be broadly interpreted and includes agricultural mortgage marketing facilities established by System institutions, affiliates of the Federal Agricultural Mortgage Corporation, service organizations established by the System banks, and all other entities owned or controlled by one or more System institutions that are not chartered by the FCA.

The term "System institution" refers to all institutions chartered and regulated by the FCA, and also includes the Federal Farm Credit Banks Funding Corporation and the Federal Agricultural Mortgage Corporation.

Section 4101.103—Prohibited Financial Interests

(a) *Prohibition.* Section 4101.103(a) prohibits a covered employee, or a spouse or minor child of a covered employee, from owning securities issued by a System institution or related entity.

The FCA has determined, in accordance with 5 CFR 2635.403(a), that this restriction is necessary, in light of the Agency's sensitive regulatory, supervisory, examination, and enforcement functions, to maintain public confidence in the impartiality and objectivity with which the FCA executes its functions. The restriction will eliminate any reason for regulated entities to be concerned that sensitive information provided to the FCA might be misused for private gain and will avoid widespread disqualification of employees from official matters, which might result in the FCA's inability to fulfill its mission.

(b) *Definition of Securities.* Section 4101.103(b) contains a definition of the term "securities" to be applied to § 4101.103. It includes any "interest in debt or equity instruments" such as, for example, stocks, bonds, and commercial paper.

(c) *Exceptions.* Section 4101.103(c) includes several exceptions to the prohibition in § 4101.103(a) against owning securities issued by System institutions or related entities. The exceptions are intended to permit ownership interests of a character unlikely to raise questions regarding the objective and impartial performance of FCA employees' official duties or the possible misuse of their positions.

Section 4101.103(c) (1) and (2) permits employees to retain System securities that are in certain funds or plans, the assets of which are managed by an independent third party and are not concentrated in System securities. Such funds may include a publicly traded or publicly available investment fund or an employee's interest in a qualified profit sharing, retirement, or similar plan.

Section 4101.103(c)(3) permits employees to retain securities of System institutions held, in accordance with § 4101.104(b), as a result of pre-existing credit. This exception is necessary because the System institutions are borrower-owned institutions that require eligible borrowers to purchase a minimum amount of an institution's stock as a condition of obtaining a loan. Thus, if an employee has pre-existing credit from a System institution, he or she also will own stock in the institution, which is generally not retired until after the loan is paid off.

Section 4101.103(c)(4) is included as a specific cross-reference to the waiver authority at § 4101.109 which is to be used on a case-by-case basis.

Section 4101.104—Prohibited Borrowing

(a) *Prohibition on Employee Borrowing.* Section 4101.104(a) prohibits a covered employee, or a spouse or minor child of a covered employee, from seeking or obtaining a loan or extension of credit from a System institution or an officer, director, employee, or related entity of a System institution.

Imposed pursuant to 5 CFR 2635.403(a), this prohibition on borrowing is necessary for several reasons. First, it is necessary to prevent covered employees from obtaining or appearing to obtain loans or extensions of credit on preferential terms, or from benefiting or appearing to benefit from their official positions through possible forbearance by the lender in collecting on the indebtedness. Public confidence in the impartiality and objectivity with which FCA programs are administered will be strengthened by prohibiting FCA employees from engaging in financial transactions with institutions regulated by the Agency. The borrowing prohibition also will help to ensure that FCA examiners and regulated institutions do not violate the prohibitions in 18 U.S.C. 212 and 213 against the offer and acceptance of certain loans. Finally, limitations on FCA employees borrowing from regulated institutions will result in fewer employee disqualifications from official matters, thereby avoiding a situation that would have a detrimental effect on the FCA's ability to carry out its mission.

(b) *Exception.* Section 4101.104(b) serves to clarify that § 4101.104(a) only prohibits covered employees and their spouses and minor children from seeking or obtaining loans or extensions of credit. Thus, a covered employee, or a spouse or minor child of a covered employee, is not prohibited from retaining a loan from a System institution on its original terms if the loan was obtained prior to appointment to a covered employee position at FCA. The renewal or renegotiation of a pre-existing loan or extension of credit, however, will be treated as a new loan subject to the prohibition in § 4101.104(a), but an employee may request, pursuant to the waiver provision in § 4101.109, that an exception be made. Employees who retain pre-existing credit, by virtue of their own credit or credit of a spouse or minor child, will be required to disqualify themselves from participation in the regulation, supervision, examination, audit, visitation, review, investigation, or other particular matter involving the System institution providing the retained credit.

Section 4101.105—Purchase of System Institution Assets

(a) *Prohibition on Purchasing Assets Owned by a System Institution.* Section 4101.105(a) prohibits a covered employee, or a spouse or minor child of a covered employee, from purchasing assets from a System institution or related entity. Assets sold by public auction or by a method that ensures that the asset is sold at its fair market value are exempt from this prohibition. Covered employees are required to obtain concurrence from the DAEO, however, about the applicability of this exemption.

(b) *Assets Held or Managed by the Farm Credit System Insurance Corporation or a Receiver or Conservator.* Section 4101.105(b)(1) prohibits a covered employee, or a spouse or minor child of a covered employee, from purchasing assets held or managed by a receiver or conservator for a System institution or by the Corporation as a result of its provision of open bank assistance to troubled System banks regardless of how the asset is sold. This section prohibits the purchase of such assets held by a receiver or conservator appointed by the FCA prior to January 1, 1993, as well as assets held by the Corporation, which is the only entity FCA may appoint as receiver or conservator of troubled System institutions starting January 1, 1993.

Section 4101.105(b)(2) requires a covered employee who is involved in the disposition of receivership or conservatorship assets to disqualify himself from a sales transaction when the employee becomes aware that anyone with whom he holds a covered relationship, as defined in § 2635.502(b)(1) of the Executive Branch-wide Standards, is or will be attempting to acquire receivership or conservatorship assets.

The prohibitions in § 4101.105 are intended to supplement the provisions of 5 CFR 2635.702 regarding use of public office for private gain and to preserve public confidence in the impartiality and objectivity with which FCA programs and operations are administered. They are necessary to prevent employees from purchasing or appearing to purchase assets on preferential terms, or from benefiting or appearing to benefit from their official positions by purchasing assets based on information obtained in the course of the employees' performance of their official duties.

Section 4101.106—Restrictions Arising From the Employment of Relatives

Section 4101.106 requires a covered employee to file a report of family member employment with his or her immediate supervisor, the ethics liaison in the office, and the DAEO if the covered employee's spouse or a relative who is dependent on or resides with the covered employee is employed with an entity specified in § 4101.108(a). The employee would be disqualified from participating in any matter involving the employee's spouse or relative, or the employing entity, unless the employee received the appropriate authorization pursuant to the standard in § 2635.502(d) of the Executive Branch-wide Standards.

In effect, § 4101.106 supplements § 2635.502 of the Executive Branch-wide Standards, relating to impartial performance of official duties, and is necessary to ensure that the employment of a close family member by System institutions or related entities does not interfere with the objective and impartial execution of a covered employee's official duties. The requirements of § 4101.106 will help to ensure public confidence in the FCA's execution of its mission.

Section 4101.107—Involvement in System Institution Board Member Elections

Section 4101.107 prohibits those covered employees who own stock in a System institution, by virtue of retaining a pre-existing loan or extension of credit from a System institution in accordance with § 4101.104(b), from participating in a stockholder nomination or election of a System institution's board members, other than by exercising their right to vote. In addition, this section prohibits covered employees from making any oral or written statements that could be reasonably construed as an attempt to influence a nomination or election.

Section 4101.107 supplements § 2635.702 of the Executive Branch-wide Standards by prohibiting conduct that, given the broad power of the Agency over System institutions, is likely to give rise to an appearance of misuse of official authority.

Section 4101.108—Outside Employment and Business Activity

(a) *Prohibition.* Section 4101.108(a) supplements § 2635.802 of the Executive Branch-wide Standards by prohibiting covered employees from engaging in specified outside employment and activities. Covered employees are prohibited from performing paid or unpaid services for any System institution or related entity, or any officer, director, employee, or person connected with a System institution or related entity. This regulation is based, in part, on 18 U.S.C. 1909, which prohibits an FCA examiner from performing any service for compensation for any System institution or for any person connected therewith, such as persons working on a contract basis for a System institution. It is expanded to cover persons other than examiners in order to ensure that covered employees do not engage in outside activities that are likely to appear to interfere with the objective and impartial performance of their official duties.

(b) *General Requirement for Prior Approval.* Pursuant to § 2635.803 of the Executive Branch-wide Standards, agencies may, by supplemental regulation, require employees to obtain prior approval before engaging in outside employment or activities. Under 12 CFR 601.101, FCA has required employees who engage in outside employment to seek prior approval. Based on its finding that this requirement has helped ensure that employees' outside activities conform to applicable statutes and regulations, FCA has determined that continuing this requirement is necessary for the purposes of its ethics program. Thus, § 4101.108(b) requires all employees to obtain written approval from the DAEO before engaging in any outside employment, with or without compensation. This section also provides that approval shall be granted only upon a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635 and these supplemental regulations.

(c) *Definition.* The term "employment" is broadly defined at § 4101.108(c) to cover any form of non-Federal employment or business relationship involving the provision of personal services, including writing when done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of nonprofit charitable, religious, professional, social, fraternal, and similar organizations for which no compensation is received other than reimbursement for necessary expenses.

Section 4101.109—Waivers

Section 4101.109 gives the DAEO authority to grant a written waiver of any provision in part 4101 based upon a determination that the waiver is not inconsistent with law and the Executive Branch-wide Standards, and meets the waiver standard established in § 4101.109. An employee may be required under the waiver to disqualify himself or herself from a particular matter or take other appropriate action.

The waiver provision is intended, in appropriate cases, to ease the burden that the supplemental regulations may impose on the private lives of FCA employees, while ensuring that employees do not engage in actions that may interfere with the objective and impartial execution of their official duties or raise questions about possible misuse of their official positions.

III. Repeal of FCA Employee Responsibilities and Conduct Regulations

On the effective date of the interim rule, the FCA's regulations on Employee Responsibilities and Conduct, 12 CFR part 601, will be amended to remove §§ 601.100–601.102. A new § 601.100 will be added to provide a cross-reference to FCA's supplemental ethical conduct regulation, to be codified at 5 CFR part 4101, and to the Executive Branch-wide financial disclosure and standards of ethical conduct regulations at 5 CFR parts 2634 and 2635. Most sections of 12 CFR part 601 were removed and certain sections reserved by action of the FCA Board, dated January 25, 1993, 58 FR 5919.

IV. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553 (b) and (d), the FCA finds good cause exists for waiving the general notice of proposed rulemaking and 30-day delay in effectiveness as to this interim final rule. The notice and delayed effective date are being waived because these supplemental regulations for FCA employees and their families concern matters of Agency organization, practice and procedure and because it is in the public interest that these supplemental regulations be effective as soon as possible. The FCA is, however, issuing these regulations as an interim rule, with a request for comments, and will consider any comments received when adopting the regulations in final form.

Executive Order 12866

In promulgating these interim supplemental regulations, the FCA has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This interim rule deals with Agency organization, management, and personnel matters and is, therefore, not deemed "significant" under Executive Order 12866.

Regulatory Flexibility Act

It is hereby certified that this interim rule will not have significant economic impact on a substantial number of small entities. This rule affects only Federal employees and their immediate families.

Paperwork Reduction Act

It is hereby certified that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects

5 CFR Part 4101

Conflicts of interests, Government employees.

12 CFR Part 601

Conflict of interests.

Dated: May 10, 1995.

Floyd Fithian,

Secretary, Farm Credit Administration.

Approved: May 30, 1995.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Farm Credit Administration, with the concurrence of the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations and part 601 of chapter VI, title 12, of the Code of Federal Regulations to read as follows:

Title 5—[Amended]

1. A new chapter XXXI, consisting of part 4101, is added to title 5 of the Code of Federal Regulations to read as follows:

CHAPTER XXXI—FARM CREDIT ADMINISTRATION

PART 4101—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE FARM CREDIT ADMINISTRATION

Sec.

4101.101 General.
4101.102 Definitions.
4101.103 Prohibited financial interests.
4101.104 Prohibited borrowing.
4101.105 Purchase of System institution assets.
4101.106 Restrictions arising from the employment of relatives.
4101.107 Involvement in System institution board member elections.
4101.108 Outside employment and business activity.
4101.109 Waivers.

Authority: 5 U.S.C. 7301, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); 12 U.S.C. 2245(c)(2)(C), 2252; E.O. 12674, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.403(a), 2635.502, 2635.702, 2635.802(a), 2635.803.

§ 4101.101 General.

In accordance with 5 CFR 2635.105, the regulations in this part apply to Farm Credit Administration (FCA) employees and supplement the Standards of Ethical Conduct for Employees of the executive branch contained in 5 CFR part 2635. Employees are required to comply with 5 CFR part 2635, this part, and Agency guidance and procedures established pursuant to 5 CFR 2635.105.

§ 4101.102 Definitions.

For purposes of this part:

(a) *Covered employee* means:

(1) Examiners; and

(2) Any other employee specified by FCA directive whose duties and responsibilities require application of these supplemental regulations to ensure public confidence that the FCA's programs are conducted impartially and objectively. The FCA Designated Agency Ethics Official (DAEO) or his or her designee, in consultation with the Office Directors, will determine which employees are covered for the purpose of this part.

(b) *Related entity* means:

(1) Affiliates defined in section 8.5(e) of the Farm Credit Act of 1971, as amended (Act), 12 U.S.C. 2001 *et seq.*, 12 U.S.C. 2279aa–5;

(2) Affiliates defined in section 8.11(e) of the Act, 12 U.S.C. 2279aa-11;

(3) Service organizations authorized by section 4.25 of the Act, 12 U.S.C. 2211; and

(4) Any other entity owned or controlled by one or more Farm Credit System (System) institution that is not chartered by the FCA.

(c) *System institution* refers to:

(1) All institutions chartered and regulated by the FCA as described in section 1.2 of the Act, 12 U.S.C. 2002;

(2) The Federal Farm Credit Banks Funding Corporation, established pursuant to section 4.9 of the Act, 12 U.S.C. 2160; and

(3) The Federal Agricultural Mortgage Corporation, established pursuant to section 8.1 of the Act, 12 U.S.C. 2279aa–1.

§ 4101.103 Prohibited financial interests.

(a) *Prohibition.* Except as provided in paragraph (c) of this section and § 4101.109, no covered employee, or spouse or minor child of a covered employee, shall own, directly or indirectly, securities issued by a System institution or related entity.

(b) *Definition of securities.* For purposes of this section, the term "securities" includes all interests in debt or equity instruments. The term includes, without limitation, secured and unsecured bonds, debentures, notes, securitized assets and commercial paper, as well as all types of preferred and common stock. The term encompasses both current and contingent ownership interests, including any beneficial or legal interest derived from a trust. It extends to any right to acquire or dispose of any long and short position in such securities and includes, without limitation, interests convertible into such securities, as well as options, rights, warrants, puts, calls, and straddles relating to such securities.

(c) *Exceptions.* Nothing in this section prohibits a covered employee, or spouse or minor child of a covered employee, from:

(1) Investing in a publicly traded or publicly available investment fund which, in its prospectus, does not indicate the objective or practice of concentrating its investments in the securities of System institutions or related entities, and the employee neither exercises control over nor has the ability to exercise control over the financial interests held in the fund;

(2) Having a legal or beneficial interest in a qualified profit sharing, retirement, or similar plan, provided that the plan does not invest more than 25 percent of its funds in securities of System institutions or related entities, and the employee neither exercises control over nor has the ability to exercise control over the financial interests held in the plan;

(3) Owning securities of System institutions held as a result of pre-existing credit, as specified in § 4101.104(b); or

(4) Owning any security pursuant to a waiver granted under § 4101.109.

§ 4101.104 Prohibited borrowing.

(a) *Prohibition on employee borrowing.* Except as provided in paragraph (b) of this section, no covered employee, or spouse or minor child of a covered employee, shall seek or obtain any loan or extension of credit from a System institution or from an officer, director, employee, or related entity of a System institution.

(b) *Exception.* This section does not prohibit a covered employee, or spouse or minor child of a covered employee, from retaining a loan from a System institution on its original terms if the loan was obtained prior to appointment

to a covered employee position. For loans retained pursuant to this paragraph, a covered employee shall submit to his or her immediate supervisor, the ethics liaison in his or her office, and the DAEO, a written disqualification from examining, auditing, visiting, reviewing, investigating, or otherwise participating in the supervision of the System institution that is providing the retained credit. Written disqualification shall be made within 30 days of appointment to a covered employee position on a form prescribed by the DAEO. Any renewal or renegotiation of a pre-existing loan or extension of credit will be treated as a new loan subject to the prohibition in paragraph (a) of this section.

§ 4101.105 Purchase of System institution assets.

(a) *Prohibition on purchasing assets owned by a System institution.* No covered employee, or spouse or minor child of a covered employee, shall purchase, directly or indirectly, an asset (such as real property, vehicles, furniture, or similar items) from a System institution or related entity, unless it is sold at a public auction or by other means which assure that the selling price is the asset's fair market value. A covered employee shall obtain concurrence from the DAEO about whether a proposed purchase of a System institution asset is proper.

(b) *Assets held or managed by the Farm Credit System Insurance Corporation or a receiver or conservator*—(1) *Prohibition on purchase.* No covered employee, or spouse or minor child of a covered employee, shall purchase, directly or indirectly, an asset (such as real property, vehicles, furniture, or similar items) that is held or managed by a receiver or conservator for a System institution or that is held by the Farm Credit System Insurance Corporation (Corporation) as a result of its provision of open bank assistance to troubled System banks regardless of how the asset is sold.

(2) *Disqualification.* A covered employee who is involved in the disposition of receivership or conservatorship assets, or assets acquired by the Corporation as a result of its provision of open bank assistance to troubled System banks, shall disqualify himself or herself from participation in the disposition of such assets when the employee becomes aware that anyone with whom the employee has a covered relationship, as defined in § 2635.502(b)(1) of the Executive Branch-wide Standards, is or will be attempting to acquire such assets. The employee shall provide written notification of the disqualification to his or her immediate supervisor, the ethics liaison in his or her office, and the DAEO.

§ 4101.106 Restrictions arising from the employment of relatives.

When the spouse of a covered employee, or other relative who is dependent on or resides with a covered employee, is employed in a position that the employee would be prohibited from occupying by § 4101.108(a), the employee shall file a report of family member employment with his or her immediate supervisor, the ethics liaison in his or her office, and the DAEO on a form prescribed by the DAEO. Notice shall be made as soon as possible after learning about employment already in existence or in advance of known prospective employment. The employee shall be disqualified from participation in any matter involving the employee's spouse or relative, or the employing entity, unless the DAEO authorizes the employee to participate in the matter using the standard in § 2635.502(d) of the Executive Branch-wide Standards.

§ 4101.107 Involvement in System institution board member elections.

No covered employee who is able to participate in a System institution board election because of System securities owned by virtue of retaining a pre-existing loan or extension of credit from a System institution in accordance with § 4101.104(b) shall take any part, directly or indirectly, in the nomination or election of a board member of a System institution, other than by exercising the right to vote. In addition, a covered employee shall not make any oral or written statement that may be reasonably construed as intending to influence any vote in such nominations or elections.

§ 4101.108 Outside employment and business activity.

(a) *Prohibition.* No covered employee shall perform services, either on a paid or unpaid basis, for any System institution or related entity, or any officer, director, employee, or person connected with a System institution or related entity. Nothing in this section would prohibit covered employees from providing any service that is a part of their official duties.

(b) *General requirement for prior approval.* All employees shall obtain prior written approval before engaging in any outside employment or business activity, with or without compensation, unless the outside activity is exempt from the definition of "employment" as set forth in paragraph (c) of this section. An employee proposing to engage in outside employment and business activities is required, prior to commencement, to send a written notice of the proposed employment or activity to the DAEO on a form prescribed by the DAEO. Approval shall be granted only upon a determination that the employment or activity is not expected to involve conduct prohibited by statute, part 2635 of this title, or paragraph (a) of this section.

(c) *Definition.* For purposes of this section, "employment" means any form of non-Federal employment, business relationship or activity involving the provision of personal services by the employee, whether or not for compensation. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher, or speaker. It includes writing when done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization for which no compensation is received other than reimbursement for necessary expenses.

§ 4101.109 Waivers.

The DAEO may grant a written waiver from any provision of this part based on a determination that the waiver is not inconsistent with part 2635 of this title or otherwise prohibited by law and that, under the particular circumstances, application of the provision is not necessary to avoid the appearance of misuse of position or loss of impartiality, or otherwise to ensure confidence in the impartiality and objectivity with which Agency programs are administered. A waiver under this paragraph may impose appropriate conditions, such as requiring execution of a written disqualification.

12 CFR CHAPTER VI—FARM CREDIT ADMINISTRATION

2. Part 601 is revised to read as follows:

PART 601—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Authority: § U.S.C. 7301; 12 U.S.C. 2243, 2252.

§ 601.100 Cross-references to employee ethical conduct standards and financial disclosure regulations.

Board members, officers, and other employees of the Farm Credit Administration are subject to the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635, the Farm Credit Administration regulation at 5 CFR part 4101, which supplements the Executive Branch-wide Standards, and the executive branch-wide financial disclosure regulations at 5 CFR part 2634.

[FR Doc. 95–14216 Filed 6–9–95; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[FV95–985–2FIR]

Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for Class 3 (Native) Spearmint Oil for the 1994–95 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule increasing the quantity of Class 3 (Native) spearmint oil produced in the Far West that handlers may purchase from, or handle for, producers during the 1994–95 marketing year. This rule was recommended by the Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West. The Committee recommended this rule to avoid extreme fluctuations in supplies and prices and thus help to maintain stability in the Far West spearmint oil market.

EFFECTIVE DATE: June 1, 1994, through May 31, 1995.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW. Third Avenue, room 369, Portland, Oregon 97204–2807; telephone: (503) 326–2724; or Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525, South Building, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–8139; or Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 985 (7 CFR part 985), regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of California, Nevada, Montana, and Utah), hereinafter referred to as the "order." This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This final rule finalizes an interim final rule that increased the quantity of Class 3 spearmint oil produced in the Far West that may be purchased from or handled for producers by handlers during the 1994–95 marketing year, which ends on May 31, 1995. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 8 spearmint oil handlers subject to regulation under the order and approximately 260 producers of spearmint oil in the regulated production area. Of the 260 producers, approximately 160 producers hold Class 1 (Scotch) spearmint oil allotment base, and approximately 145 producers hold Class 3 (Native) spearmint oil allotment base. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. A minority of handlers and producers of Far West spearmint oil may be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity and whose income from farming operations are not exclusively dependent on the production of spearmint oil. The U.S. production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (part of the area covered by the order). Spearmint oil is also produced in the Midwest. The production area covered by the order accounts for approximately 75 percent of the annual U.S. production of spearmint oil.

This final rule finalizes an interim final rule increasing the quantity of Native spearmint oil that handlers may purchase from, or handle for, producers during the 1994–95 marketing year, which ends on May 31, 1995. This rule increases the salable quantity from 1,287,680 pounds to 1,358,404 pounds and the allotment percentage from 66 percent to 70 percent for Native spearmint oil for the 1994–95 marketing year.

The salable quantity is the total quantity of each class of oil that handlers may purchase from, or handle for, producers during a marketing year. The salable quantity calculated by the Committee is based on the estimated trade demand. The total salable quantity is divided by the total industry allotment base to determine an allotment percentage. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil.

The initial salable quantities and allotment percentages for Scotch and Native spearmint oils for the 1994–95 marketing year were recommended by the Committee at its October 6, 1993, meeting. The Committee recommended

salable quantities of 723,326 pounds and 897,388 pounds, and allotment percentages of 41 percent and 46 percent, respectively, for Scotch and Native spearmint oils. A proposed rule was published in the December 21, 1993, issue of the **Federal Register** (58 FR 67378). Comments on the proposed rule were solicited from interested persons until January 20, 1994. No comments were received. Accordingly, based upon analysis of available information, a final rule establishing the salable quantities and allotment percentages for Scotch and Native spearmint oils for the 1994–95 marketing year was published in the March 16, 1994, issue of the **Federal Register** (59 FR 12151).

At its June 14, 1994, teleconference meeting, the Committee recommended that the salable quantity and allotment percentage for Native spearmint oil for the 1994–95 marketing year be increased. The Committee recommended that the Native spearmint oil salable quantity be increased from 897,388 pounds to 1,092,577 pounds, and that the allotment percentage, based on a revised total allotment base of 1,951,032 pounds, be increased from 46 to 56 percent resulting in a 195,189 pound increase in the salable quantity.

An interim final rule was published in the August 26, 1994, **Federal Register** (59 FR 44028). Comments on the interim rule were solicited from interested persons until September 26, 1994. No comments were received.

At its October 5, 1994, meeting, the Committee recommended that the salable quantities for Scotch and Native spearmint oils for the 1994–95 marketing year be increased from 723,326 pounds to 811,516 pounds, and from 1,092,577 pounds to 1,287,680 pounds, respectively. Based on a revised total allotment base of 1,763,795 pounds, the Committee recommended that the allotment percentage for Scotch spearmint oil be increased from 41 percent to 46 percent, resulting in an 88,190 pound increase in the salable quantity. Further, based on the revised total allotment base published in the August 26, 1994, **Federal Register** (59 FR 44028), the Committee recommended that the allotment percentage for Native spearmint oil be increased from 56 percent to 66 percent, resulting in a 195,103 pound increase in the salable quantity.

An interim final rule amending the August 26, 1994, rule was published in the October 31, 1994, **Federal Register** (59 FR 54376). Comments on the interim rule were solicited from interested persons until November 30, 1994. No comments were received.

Accordingly, based upon an analysis of available information, a final rule finalizing the 1994–95 salable quantities and allotment percentages was published in the February 2, 1995, **Federal Register** (60 FR 6392).

Pursuant to authority contained in §§ 985.50, 985.51, and 985.52 of the order, at its February 22, 1995, meeting, the Committee recommended, with one member voting in opposition, that the salable quantity for Native spearmint oil for the 1994–95 marketing year be increased from 1,287,680 pounds to 1,358,404 pounds. The member voting in opposition favored the establishment of a lower salable quantity that would have resulted in a lower allotment percentage. Based on the revised total allotment base of 1,951,032 pounds, the allotment percentage for Native spearmint oil is increased from 66 percent to 70 percent, resulting in a 70,724 pound increase in the salable quantity.

Native Spearmint Oil Recommendations

(1) Salable Quantity
- October 6, 1993—897,388 pounds
- June 14, 1994—1,092,577 pounds
- October 5, 1994—1,287,680 pounds
- February 22, 1995—1,358,404 pounds

(2) Total Allotment Base
- October 6, 1993—1,950,843 pounds
- June 14, 1994—1,951,032 pounds
- October 5, 1994—1,951,032 pounds
- February 22, 1995—1,951,032 pounds

(3) Allotment Percentage
- October 6, 1993—46 percent
- June 14, 1994—56 percent
- October 5, 1994—66 percent
- February 22, 1995—70 percent

In making this latest recommendation the Committee considered all available information on supply and demand.

As of February 22, 1995, the Committee reports that of the 1994–95 marketing year Scotch and Native spearmint oil salable quantities of 811,516 pounds and 1,287,680 pounds, respectively, 154,375 pounds and 70,840 pounds remained available for handling. Handlers have indicated that the available supply of Scotch spearmint oil is adequate to meet anticipated demand through May 31, 1995. However, handlers have indicated that demand for Native spearmint oil may be as high as 100,000 pounds for the remainder of this marketing year. This level of demand was not anticipated by the Committee when it made its initial recommendation for the establishment of the Scotch and Native spearmint oil salable quantities and allotment percentages for the 1994–95 marketing year, nor was it foreseen when the Committee made its June 14 and October 5, 1994, recommendations for increasing the Native spearmint oil salable quantity and allotment percentage.

The recommended salable quantity of 1,358,404 pounds of Native spearmint oil (an increase of 70,724 pounds), combined with the June 1, 1994, carry-in of 19,139 pounds, results in a revised 1994–95 available supply of 1,377,543 pounds. The revised available supply of Native spearmint oil is approximately 300,000 pounds higher than the annual average of sales for the past five years. The Committee anticipates that foreseeable demand for Native spearmint oil will be adequately met for the remainder of the 1994–95 marketing year.

The Department, based on its analysis of available information, has determined that an allotment percentage of 70 percent should be established for Native spearmint oil for the 1994–95 marketing year. This percentage will provide an increased salable quantity of 1,358,404 pounds of Native spearmint oil.

An interim final rule concerning this action was issued on March 31, 1995, and was published in the **Federal Register** (60 FR 17434). Comments were solicited from interested persons through May 8, 1995. No comments were received.

Based on available information, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including that contained in the prior proposed, final, and interim final rules in connection with the establishment of the salable quantities and allotment percentages for Scotch and Native spearmint oils for the 1994–95 marketing year, the Committee's recommendation and other available information, it is found that to revise § 985.213 (60 FR 6392) to change the salable quantity and allotment percentage for Native spearmint oil, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This final rule finalizes an interim final rule increasing the quantity of Native spearmint oil that may be marketed during the marketing year beginning on June 1, 1994; and (2) Handlers are aware of this rule which was recommended by the Committee at a public meeting and published in the **Federal Register** as an interim final rule with a 30-day comment period.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

PART 985—SPEARMINT OIL PRODUCED IN THE FAR WEST

Accordingly, the interim final rule amending 7 CFR part 985 which was published at 60 FR 17434 on April 6, 1995, is adopted as a final rule without change.

Dated: June 6, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–14278 Filed 6–9–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 985

[FV95–985–3FIR]

Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for Class 3 (Native) Spearmint Oil for the 1995–96 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule that increased the quantity of Class 3 (Native) spearmint oil produced in the Far West that handlers may purchase from, or handle for, producers during the 1995–96 marketing year. This rule was recommended by the Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West. The Committee recommended this rule to avoid extreme fluctuations in supplies and prices and thus help to maintain stability in the Far West spearmint oil market.

EFFECTIVE DATE: Effective on July 12, 1995.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 S.W. Third Avenue, room 369, Portland, Oregon 97204–2807; telephone: (503) 326–2724; or Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, D.C. 20090–6456; telephone: (202) 720–8139; or Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 985 (7 CFR part 985), regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of California, Nevada, Montana, and Utah), hereinafter referred to as the "order." This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This final rule finalizes an interim final rule that increased the quantity of Class 3 spearmint oil produced in the Far West that may be purchased from or handled for producers by handlers during the 1995–96 marketing year, which ends on May 31, 1996. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 8 spearmint oil handlers subject to regulation under the order and approximately 260 producers of spearmint oil in the regulated production area. Of the 260 producers, approximately 160 producers hold Class 1 (Scotch) spearmint oil allotment base, and approximately 145 producers hold Class 3 (Native) spearmint oil allotment base. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. A minority of handlers and producers of Far West spearmint oil may be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity and whose income from farming operations are not exclusively dependent on the production of spearmint oil. The U.S. production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (part of the area covered by the order). Spearmint oil is also produced in the Midwest. The production area covered by the order normally accounts for approximately 75 percent of the annual U.S. production of spearmint oil.

This final rule finalizes an interim final rule that increased the quantity of Native spearmint oil that handlers may purchase from, or handle for, producers during the 1995–96 marketing year, which ends on May 31, 1996. The interim final rule increased the salable quantity from 906,449 pounds to 1,004,976 pounds and the allotment percentage from 46 percent to 51 percent for Native spearmint oil for the 1995–96 marketing year.

The interim final rule was issued on April 7, 1995, and published in the **Federal Register** (60 FR 18950, April 14, 1995), with an effective date of April 14, 1995. That rule amended section 985.214 of the rules and regulations in effect under the order. The rule provided a 30-day comment period which ended May 15, 1995. No comments were received.

The salable quantity is the total quantity of each class of oil that handlers may purchase from, or handle for, producers during a marketing year. The salable quantity calculated by the Committee is based on the estimated trade demand. The total salable quantity is divided by the total industry allotment base to determine an allotment percentage. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil.

The initial salable quantity and allotment percentages for Scotch and Native spearmint oils for the 1995–96 marketing year were recommended by the Committee at its October 5, 1994, meeting. The Committee recommended salable quantities of 908,531 pounds and 906,449 pounds, and allotment percentages of 51 percent and 46 percent, respectively, for Scotch and Native spearmint oils. A proposed rule was published in the December 15, 1994, issue of the **Federal Register** (59 FR 64625). Comments on the proposed rule were solicited from interested persons until January 17, 1995. No comments were received. Accordingly, based upon analysis of available information, a final rule establishing the Committee's recommendation as the salable quantities and allotment percentages for Scotch and Native spearmint oils for the 1995–96 marketing year was published in the February 15, 1995, issue of the **Federal Register** (60 FR 8524).

Pursuant to authority contained in sections 985.50, 985.51, and 985.52 of the order, at its February 22, 1995, meeting, the Committee recommended, with one member voting in opposition, that the salable quantity for Native spearmint oil for the 1995–96 marketing year be increased from 906,449 pounds to 1,004,976 pounds. The member voting in opposition did not favor an increase in the salable quantity and allotment percentage because he believed it was too early to determine what the market conditions will be during the 1995–96 marketing year. Based on the total allotment base of 1,970,542 pounds, the allotment percentage for Native spearmint oil is increased from 46 percent to 51 percent, resulting in a 98,527 pound increase in the salable quantity.

Native Spearmint Oil Recommendations

(1) Salable Quantity

October 5, 1994	906,449 pounds
February 22, 1995	1,004,976 pounds

(2) Allotment Base

October 5, 1994	1,970,542 pounds
February 22, 1995	1,970,542 pounds

(3) Allotment Percentage

October 5, 1994	46 percent
February 22, 1995	51 percent

In making this latest recommendation, the Committee considered all available information on supply and demand. The 1995–96 marketing year begins on June 1, 1995. Handlers have indicated that the available supply of Scotch spearmint oil appears adequate to meet anticipated demand through May 31, 1996. Handlers have indicated, however, that demand for Native spearmint oil is currently fairly strong and anticipate that this trend will likely continue into the next marketing year. Based upon this strengthening demand, as well as historical data that indicates the annual average of sales for the last eight years is 1,006,512 pounds, the Committee believes that an increase in the salable quantity to 1,004,976 pounds is necessary to meet anticipated demand. This level of demand was not anticipated by the Committee when it made its initial recommendation for the establishment of the Native spearmint oil salable quantity and allotment percentage for the 1995–96 marketing year.

The recommended salable quantity of 1,004,976 pounds of Native spearmint oil (an increase of 98,527 pounds), combined with a revised estimated carry-in of 100,000 pounds on June 1, 1995, results in a revised 1995–96 estimated available supply of 1,104,976 pounds. Thus, the revised estimate for the 1995–96 marketing year Native spearmint oil available supply is approximately 100,000 pounds higher than the annual average of sales for the past eight years. With this revision, the Committee anticipates that demand for Native spearmint oil during the 1995–96 marketing year will be adequately met.

The Department, based on its analysis of available information, has determined that an allotment percentage of 51 percent should be established for Native spearmint oil for the 1995–96 marketing year. This percentage will provide an increased salable quantity of 1,004,976 pounds of Native spearmint oil.

Based on available information, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including that contained in the prior proposed, interim final and final rules in connection with the establishment of the salable quantities and allotment percentages for Scotch and Native spearmint oils for the 1995–96 marketing year, the Committee's recommendation and other available information, it is found that to finalize the interim final rule revising § 985.214 (60 FR 8524) of the salable quantity and allotment percentage for Native spearmint oil, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

PART 985—SPEARMINT OIL PRODUCED IN THE FAR WEST

Accordingly, the interim final rule amending 7 CFR part 985 which was published at 60 FR 18950 on April 14, 1995, is adopted as a final rule without change.

Dated: June 6, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–14280 Filed 6–9–95; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 985

[Docket No. FV95–985–1FIR]

Spearmint Oil Produced in the Far West; Expenses and Assessment Rate for the 1995–96 Fiscal Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule that authorized expenses and established an assessment rate for the Spearmint Oil Administrative Committee (Committee) under Marketing Order No. 985 for the 1995–96 fiscal year. Authorization of this budget enables the Committee to incur expenses that are reasonable and necessary to administer this program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: June 1, 1995, through May 31, 1996.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone: (202) 720–5127; or Robert Curry, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1220 SW. Third Avenue, room 369, Portland, Oregon 97204, telephone: (503)326–2724.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 985 (7 CFR part 985), regulating the handling of spearmint oil produced in the Far West. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, spearmint oil produced in the Far West is subject to assessments. It is intended that the assessment rate specified herein will be applicable to all assessable oil produced during the 1995–96 fiscal year, beginning June 1, 1995, through May 31, 1996. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 8 handlers of spearmint oil regulated under the marketing order each season and approximately 260 spearmint oil producers in the Far West. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. A minority of these producers and handlers may be classified as small entities.

The marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable spearmint oil handled from the beginning of such year. Annual budgets of expenses are prepared by the Committee, the agency responsible for local administration of this marketing order, and submitted to the Department for approval. The members of the Committee are handlers and producers of spearmint oil. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The Committee's budget is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing the anticipated expenses by expected shipments of spearmint oil. Because that rate is applied to actual shipments, it must be established at a rate which will provide sufficient income to pay the Committee's expected expenses.

The Committee met on February 22, 1995, and unanimously recommended a total expense amount of $233,272 for its 1995–96 budget. This is $4,567 less in expenses than the 1994–95 budget.

The Committee also unanimously recommended an assessment rate of $.10 per pound for the 1995–96 fiscal year, which is $.01 more than the assessment rate from the 1994–95 fiscal year. The assessment rate, when applied to anticipated shipments of 2,000,000 pounds from the 1995–96 spearmint oil production, would yield $200,000 in assessment income. This, along with approximately $24,272 from the Committee's authorized reserves, and $9,000 interest will be adequate to cover estimated expenses.

Major expense categories for the 1995–96 fiscal year include $101,300 for salaries, $20,000 for market development, and $23,000 for travel. Funds in the reserve at the beginning of the 1995–96 fiscal year are estimated at $160,000, which is within the maximum permitted by the order of one fiscal year's expenses.

An interim final rule was issued on March 28, 1995, and published in the **Federal Register** on April 3, 1995 (60 FR 16770). That rule provided a 30-day comment period which ended May 3, 1995. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs should be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

It is found that the specified expenses for the marketing order covered in this rule are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1995–96 fiscal year starts on June 1, 1995, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable spearmint oil handled during the fiscal year. In addition, handlers are aware of this rule which was recommended by the Committee at a public meeting and published in the **Federal Register** as an interim final rule with a 30-day comment period. No comments were received and the interim final rule is adopted without change.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

Accordingly, the interim final rule amending 7 CFR part 985 which was

published at 60 FR 16770 on April 3, 1995, is adopted a final rule without change.

Dated: June 6, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–14281 Filed 6–9–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 93N–0283]

RIN 0905–AD89

Food Labeling; Placement of the Nutrition Label on Food Packages; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of April 5, 1995 (59 FR 17202). The document amended food labeling regulations to provide increased flexibility in the placement of the nutrition label on packaged foods. The document was published with some inadvertent errors. This document corrects those errors.

EFFECTIVE DATE: May 5, 1995.

FOR FURTHER INFORMATION CONTACT: Arletta M. Beloian, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5430.

SUPPLEMENTARY INFORMATION: In the last sentence of § 101.9(j)(17) (21 CFR 101.9(j)(17)), in the codified section of the final rule, the words "placement of", which were included in the sentence as noted in comment "2." of the preamble discussion, were inadvertently omitted. FDA is correcting § 101.9(j)(17) to include "placement of" preceding the words "the nutrition label" in that sentence. Further, to provide for parallel construction in the preceding sentence, FDA is also adding "placement of" preceding "the nutrition label."

In FR Doc. 95–8067, appearing in page 17202 in the **Federal Register** of Wednesday, April 5, 1995, the following correction is made:

§ 101.9 [Corrected]

On page 17205, in the third column, in § 101.9 (j)(17), under amendment "3.", in lines 15 and 19, the words "the placement of" are added before the word "the".

Dated: June 6. 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–14298 Filed 6–9–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF EDUCATION

34 CFR Part 682

RIN 1840–AB62, 1840–AB81, 1840–AB97, 1840–AB99, 1840–AC12

Federal Family Education Loan Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Federal Family Education Loan Program to add the Office of Management and Budget (OMB) control number to certain sections of the regulations. Those sections contain information collection requirements approved by OMB. The Secretary takes this action to inform the public that these requirements have been approved, and therefore affected parties must comply with them.

EFFECTIVE DATE: These regulations are effective on July 1, 1995.

FOR FURTHER INFORMATION CONTACT: Pamela Moran, Loans Branch, Division of Policy Development, Policy, Training, and Analysis Service, U.S. Department of Education, 600 Independence Avenue, S.W., (Room 3053, ROB–3), Washington, D.C. 20202. Telephone (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Final regulations for the Federal Family Education Loan Program were published in the **Federal Register** on June 16, 1994 (59 FR 31084), June 24, 1994 (59 FR 32862), June 28, 1994 (59 FR 33334), June 29, 1994 (59 FR 33580) and November 29, 1994 (59 FR 61210). Compliance with information collection requirements in certain sections of these regulations was delayed until those requirements were approved by OMB under the Paperwork Reduction Act of 1980. OMB approved the information collection requirements in the regulations on August 8, 1994 and December 5, 1994. The information collection requirements in these regulations will therefore become effective with all of the other provisions of the regulations on July 1, 1995.

Waiver of Proposed Rulemaking

It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the publication of OMB control numbers is purely technical and does not establish substantive policy. Therefore, the Secretary has determined under 5 U.S.C. 553(b)(B), that public comment on the regulations is unnecessary and contrary to the public interest.

List of Subjects in 34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: June 6, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

The Secretary amends part 682 of title 34 of the Code of Federal Regulations as follows:

PART 682—FEDERAL FAMILY EDUCATION LOAN PROGRAM

1. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

§§ 682.215, 682.405, and 682.415 [Amended]

2. Sections 682.215, 682.405, and 682.415, are amended by adding the OMB control number following each section to read as follows:

(Approved by the Office of Management and Budget under control number 1840–0538)

§§ 682.205, 682.209, 682.210, 682.211, 682.401, 682.409, 682.602, 682.604, and 682.605 [Amended]

3. Sections 682.205, 682.209, 682.210, 682.211, 682.401, 682.409, 682.602, 682.604, and 682.605 are amended by republishing the OMB control number following each section to read as follows:

(Approved by the Office of Management and Budget under control number 1840–0538)

[FR Doc. 95–14309 Filed 6–9–95; 8:45 am]

BILLING CODE 4000–01–P

34 CFR Parts 690

RIN 1840–AB73

Federal Pell Grant Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Federal Pell Grant Program to add the Office of Management and Budget (OMB) control number to certain sections of the regulations. Those sections contain information collection requirements approved by OMB. The Secretary takes this action to inform the public that these requirements have been approved, and therefore affected parties must comply with them.

EFFECTIVE DATE: These regulations are effective on July 1, 1995.

FOR FURTHER INFORMATION CONTACT: Greg Gerrans, Student Financial Assistance Programs, Office of Postsecondary Education, U.S. Department of Education, 600 Independence Avenue, S.W., (Room 3042, ROB–3), Washington, D.C. 20202–5447. Telephone (202) 708–4607. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Final regulations for the Federal Pell Grant Program were published in the **Federal Register** on November 1, 1994 (59 FR 54718). Compliance with information collection requirements in certain sections of these regulations was delayed until those requirements were approved by OMB under the Paperwork Reduction Act of 1980. OMB approved the information collection requirements in the regulations on December 5, 1994. The information collection requirements in these regulations will therefore become effective with all of the other provisions of the regulations on July 1, 1995.

Waiver of Proposed Rulemaking

It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the publication of OMB control numbers is purely technical and does not establish substantive policy. Therefore, the Secretary has determined under 5 U.S.C. 553(b)(B), that public comment on the regulations is unnecessary and contrary to the public interest.

List of Subjects in 34 CFR Part 690

Administrative practice and procedure, Colleges and universities, Education, Grant programs-education, Reporting and recordkeeping requirements, Student aid.

Dated: June 6, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

The Secretary amends part 690 of title 34 of the Code of Federal Regulations as follows:

PART 690—FEDERAL PELL GRANT PROGRAM

1. The authority citation for part 690 continues to read as follows:

Authority: 20 U.S.C. 1071a, unless otherwise noted.

§ 690.75 [Amended]

2. Section 690.75 is amended by adding the OMB control number following the section to read as follows:

(Approved by the Office of Management and Budget under control number 1840–0681)

§ 690.12, 690.13, 690.82 [Amended]

3. Sections 690.12, 690.13, and 690.82 are amended by revising the OMB control number following each section to read as follows:

(Approved by the Office of Management and Budget under control number 1840–0681)

[FR Doc. 95–14308 Filed 6–9–95; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[NM–25–1–6980; FRL–5218–1]

Designation of Area for Air Quality Planning Purposes; New Mexico; Designation of Sunland Park Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to section 107(d)(3) of the Clean Air Act (CAA), the EPA is taking final action to redesignate a portion of Dona Ana County, New Mexico (i.e. the Sunland Park area) from unclassifiable/attainment to nonattainment for the ozone National Ambient Air Quality Standards (NAAQS). The redesignation is based upon violations of the ozone NAAQS which were monitored from 1992–1994.

EFFECTIVE DATE: July 12, 1995.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the addresses listed below. The interested persons wanting to examine these documents should make an appointment at least twenty-four hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–A), 1445 Ross Avenue, suite 700, Dallas, Texas 75202–2733

New Mexico Environment Department, Air Monitoring & Control Strategy Bureau, 1190 St. Francis Drive, room So. 2100, Santa Fe, New Mexico 87503

FOR FURTHER INFORMATION CONTACT: Mr. Mark Sather, Planning Section (6T-AP), Air Programs Branch (6T-A), USEPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7258.

SUPPLEMENTARY INFORMATION:

Background

The CAA authorizes the EPA to revise the designation of current ozone areas from unclassifiable/attainment to nonattainment on the basis of air quality data, planning and control considerations, or any other air quality-related considerations the EPA deems appropriate (see section 107(d)(3) of the CAA).

Following the process outlined in section 107(d)(3) of the CAA, on December 16, 1994, the Regional Administrator of the EPA Region 6 notified the Governor of New Mexico that the EPA believed the Sunland Park area should be redesignated as nonattainment for ozone. Under section 107(d)(3)(B) of the CAA, the Governor of New Mexico was required to submit to the EPA the designation considered appropriate for the Sunland Park area within 120 days after the EPA's notification. The EPA received the State's response for the Sunland Park area on February 6, 1995 (letter dated January 30, 1995). Following receipt of the Governor's letter, the EPA proceeded to propose the nonattainment designation for the Sunland Park area (see 60 **Federal Register** (FR) 17756–17758, April 7, 1995). The EPA now is taking final action on the proposed nonattainment redesignation. Based upon the EPA's review of the State's January 30, 1995, letter for the Sunland Park area, the EPA is finalizing a redesignation to nonattainment which is consistent with the request submitted by the Governor of New Mexico.

Section 107(d)(1)(A) of the CAA sets out definitions of nonattainment, attainment, and unclassifiable. A nonattainment area is defined as any area that does not meet (or that significantly contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard for ozone (see section 107(d)(1)(A)(i) of the

CAA)[1]. Thus, in determining the appropriate boundaries for the nonattainment area finalized in this action, the EPA has considered not only the area where the violations of the ozone NAAQS are occurring, but nearby areas which significantly contribute to such violations.

Response to Public Comments

In the April 7, 1995, proposal FR action, the EPA requested public comments on all aspects of the proposal, including the appropriateness of the proposed designation and the scope of the proposed boundaries. The EPA received no comments on the proposal FR action.

Final Action

As noted above, pursuant to section 107(d)(3) of the CAA, the EPA is authorized to initiate the redesignation of areas as nonattainment for ozone. Based on the ozone air quality monitoring data for the Sunland Park monitoring station, the EPA notified the Governor of New Mexico on December 16, 1994, that the Sunland Park area should be redesignated from unclassifiable/attainment to nonattainment for the ozone NAAQS. Ozone monitoring began in Sunland Park on June 15, 1992. Seven measured exceedances of the ozone NAAQS have been recorded at the monitoring site, ranging from a low of .126 parts per million (ppm) to a high of .140 ppm. The seven exceedances represent a violation of the ozone NAAQS (see 40 Code of Federal Regulations (CFR) 50.9). Since less than three years of data have been collected at the Sunland Park monitoring site, the EPA design value (used to determine ozone attainment status) for the site is the third highest ozone value recorded—.136 ppm. Therefore, the Sunland Park ozone nonattainment area is classified as a marginal ozone nonattainment area according to the classification scheme set forth in section 181 of the CAA. Due to the marginal classification, the attainment date for the Sunland Park ozone nonattainment area will be three years from the effective date of this **Federal Register** final action establishing the nonattainment designation and classification.

In response to the EPA's December 16, 1994, letter, on January 30, 1995, the Governor of New Mexico concurred with the EPA that a small area of southern Dona Ana County, including Sunland Park, be redesignated as nonattainment for the ozone NAAQS. However, the Governor did not concur with the proposed nonattainment boundaries in one respect, proposing an alternate western boundary for the nonattainment area. Based on the information provided by the Governor, including monitoring data, the EPA believes that the nonattainment boundaries submitted by the Governor are appropriate. The technical information supporting the redesignation request and the boundary selections are available for public review at the addresses indicated above.

Significance of Final Action for the Sunland Park Area, New Mexico

Within 24 months after the effective date of this final action on the nonattainment redesignation, New Mexico must submit an implementation plan for the Sunland Park ozone nonattainment area meeting the requirements of part D, title I of the CAA (see section 182(a) of the CAA).

The CAA provides that the plan for the area must contain, among other things, the following items:

1. A comprehensive, accurate, current inventory of actual emissions from all sources, as described in section 172(c)(3) of the CAA, in accordance with guidance provided by the EPA. The pollutants inventoried must include volatile organic compounds (VOC), nitrogen oxides (NO_x) and carbon monoxide. No later than the end of each three year period after submission of the initial inventory, until the area is redesignated to attainment, the State must submit a revised inventory meeting all EPA requirements (see section 182(a)(1) of the CAA).

2. Requirements that the owner or operator of each stationary source of NOx or VOC provide the State with a statement, in such form as the EPA may prescribe, for classes or categories of sources, showing the actual emissions of NOx and VOC from that source. The first such statement must be submitted to the State within three years after the effective date of this final action establishing the nonattainment designation. Subsequent statements shall be submitted at least every year thereafter. The statement shall contain a certification that the information contained in the statement is accurate to the best knowledge of the individual certifying the statement. The State may waive the emission statement requirement for any class or category of stationary sources which emits less than 25 tons per year of VOC or NOx, if the State, in its initial and periodic emission inventories, provides an inventory of emissions from such class or category of sources, based on the use of the emission factors established by the EPA, or other methods acceptable to the EPA (see section 182(a)(3)(B) of the CAA).

3. A revised nonattainment new source review permitting program meeting the requirements of sections 172(c)(5) and 173 of the CAA, including the requirement that the ratio of total emission reductions of VOC to total increased emissions of such air pollutant shall be at least 1.1 to 1 (see section 182(a)(4) of the CAA).

4. Revised conformity rules (Regulations 20 NMAC 2.98 and 20 NMAC 2.99) if necessary (see sections 176 and 182 of the CAA).

Miscellaneous

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Redesignation of an area to nonattainment under section 107(d)(3) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the planning status of a geographical area and does not, in itself, impose any regulatory requirements on sources. To the extent that the area must adopt new regulations, based on its nonattainment status, the EPA will review, as appropriate, the effect of those actions on small entities at the time the State submits those regulations. I certify that approval of the redesignation request will not affect a substantial number of small entities.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 11, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

[1] The EPA has construed the definition of nonattainment area to require some material or significant contribution to a violation in a nearby area. The Agency believes it is reasonable to conclude that something greater than a molecular impact is required.

Executive Order

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: May 25, 1995.

Jane N. Saginaw,

Regional Administrator.

40 CFR part 81 is amended as follows:

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.332 the ozone table is amended by revising the entry "AQCR 153 El Paso-Las Cruces-Alamogordo" to read as follows:

§ 81.332 New Mexico.

* * * * *

NEW MEXICO—OZONE

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
AQCR 153 El Paso-Las Cruces-Alamogordo				
Dona Ana County (part)—The area bounded by the New Mexico-Texas State line on the east, the New Mexico-Mexico international line on the south, the Range 3E-Range 2E line on the west, and the N3200 latitude line on the north.	July 12, 1995	Nonattainment	July 12, 1995	Nonattainment.
Remainder of Dona Ana County		Unclassifiable/Attainment.		
Lincoln County		Unclassifiable/Attainment.		
Otero County		Unclassifiable/Attainment.		
Sierra County		Unclassifiable/Attainment.		

[1] This date is November 15, 1990, unless otherwise noted.

[FR Doc. 95–14339 Filed 6–9–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Part 501

[Docket No. 95–01]

Filing of Tariffs by Marine Terminal Operators; Publishing, Filing and Posting of Tariffs in Domestic Offshore Commerce; Publishing and Filing of Tariffs by Common Carriers in the Foreign Commerce of the United States; Service Contracts; Correction

AGENCY: Federal Maritime Commission.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final rule which was published May 23, 1995 (60 FR 27228). The final rule pertained to the removal of requirements for tariff filing in paper format.

EFFECTIVE DATE: June 12, 1995.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, Washington, DC 20573–0001, (202) 523–5796.

SUPPLEMENTARY INFORMATION: The final rule in this proceeding removed the Commission's regulations regarding paper tariff filing, and amended various other Commission rules to delete references to the removed regulations. This corrects an inadvertent omission in the language of the revision to the second sentence of paragraph (h) introductory text of § 501.5 of Title 46 CFR. On page 27229, 1st column the affected provision should read:

(h) * * * These programs carry out the provisions of the Shipping Act, 1916; the Intercoastal Shipping Act, 1933; the Shipping Act of 1984; and Pub. L. 89–777, as implemented under Parts 510, 514, 540, 552, 582 and 583 of this chapter. * * *

Joseph C. Polking,

Secretary.

[FR Doc. 95–14336 Filed 6–9–95; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

48 CFR Chapter 14

RIN 1090–AA50

Department of the Interior Acquisition Regulation

AGENCY: Office of the Secretary, Interior.

ACTION: Final Rule; removal.

SUMMARY: This document amends the Department of the Interior Acquisition Regulation by removing 16 parts. The complete Department of the Interior Acquisition Regulation (DIAR) consists of 42 parts that supplement or implement the Federal Acquisition Regulation (FAR), 23 of which now appear in the CFR. This action removes 16 of these 23 codified parts. The material being removed deals with procedures that do not have a significant effect outside the agency. The parts that are not obsolete will be retained as internal procedures.

EFFECTIVE DATE: July 12, 1995.

FOR FURTHER INFORMATION CONTACT: Dean A. Titcomb, Chief, Acquisition and Assistance Division, (202) 208–3433.

SUPPLEMENTARY INFORMATION: Under the auspices of the National Performance Review, a thorough review of the DIAR was conducted. The review revealed unnecessary regulation and excessively burdensome procedures. In the interests of streamlining processes, empowering contracting personnel to act responsibly without excessive oversight and improving relationships with contractors, nonessential portions of the regulation are being removed from the CFR.

The remaining seven codified parts of the DIAR will be dealt with in separate regulatory actions. While substantial portions of them will also be removed from the CFR, it is appropriate that other portions be rewritten and remain codified.

Required Determinations

The Department believes that public comment is unnecessary because the material being removed is outdated or deals exclusively with internal procedures. Therefore, in accordance with 5 U.S.C. 553(b)(B), the Department finds good cause to publish this document as a final rule. This rule was not subject to Office of Management and Budget review under Executive Order 12866. This rule does not contain a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Department has determined that this rule will not have a significant economic impact on a substantial number of small entities because no requirements are being added for small businesses and no protections are being withdrawn. The Department has determined that this rule does not constitute a major Federal action having a significant impact on the human environment under the National Environmental Policy Act of 1969. The Department has certified that this rule meets the applicable standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778.

List of Subjects in 48 CFR Chapter 14

Government procurement, Reporting and recordkeeping requirements.

Bonnie R. Cohen,

Assistant Secretary—Policy, Management and Budget.

PARTS 1404, 1405, 1406, 1407, 1409, 1410, 1413, 1414, 1419, 1420, 1424, 1432, 1433, 1436, 1437, 1442—[REMOVED]

Under the authority found at Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); and 5 U.S.C. 301, Chapter 14 of Title 48 of the Code of Federal Regulations is amended by removing Parts 1404, 1405, 1406, 1407, 1409, 1410, 1413, 1414, 1419, 1420, 1424, 1432, 1433, 1436, 1437 and 1442.

[FR Doc. 95–14283 Filed 6–9–95; 8:45 am]
BILLING CODE 4310–RF–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 950206040–5040–01; I.D. 060595A]

Groundfish of the Bering Sea and Aleutian Islands Area; Greenland Turbot in the Bering Sea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of Greenland turbot in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). NMFS is requiring that catches of Greenland turbot in these areas be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the Greenland turbot total allowable catch (TAC) in the Bering Sea subarea has been reached.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), June 7, 1995, until 12 midnight A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii), the TAC for Greenland turbot in the Bering Sea subarea was established by the final 1995 harvest specifications of groundfish (60 FR 8478, February 14, 1995), as 4,669 metric tons, as amended (60 FR 27488, May 24, 1995).

The Director, Alaska Region, NMFS, has determined, in accordance with § 675.20(a)(9), that the TAC for Greenland turbot in the Bering Sea subarea has been reached. Therefore, NMFS is requiring that further catches of Greenland turbot in the Bering Sea subarea be treated as prohibited species in accordance with § 675.20(c)(3), and is prohibiting their retention.

Classification

This action is taken under 50 CFR 675.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 6, 1995.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–14334 Filed 6–7–95; 3:06 pm]
BILLING CODE 3510–22–F

50 CFR Part 675

[Docket No. 950206040–5040–01; I.D. 060595B]

Groundfish of the Bering Sea and Aleutian Islands Area; Atka Mackerel in the Western Aleutian District

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of Atka mackerel in the Western Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). NMFS is requiring that catches of Atka mackerel in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the Atka mackerel total allowable catch (TAC) in the Western Aleutian District has been reached.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), June 7, 1995, until 12 midnight A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii), the TAC for Atka mackerel in the Western Aleutian District was established by the final 1995 harvest specifications of groundfish (60 FR 8478, February 14, 1995), as 16,500 metric tons, as amended (60 FR 27488, May 24, 1995).

The Director, Alaska Region, NMFS, has determined, in accordance with § 675.20(a)(9), that the TAC for Atka mackerel in the Western Aleutian District has been reached. Therefore, NMFS is requiring that further catches of Atka mackerel in the Western Aleutian District be treated as prohibited species in accordance with § 675.20(c)(3), and is prohibiting their retention.

Classification

This action is taken under 50 CFR 675.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 6, 1995.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–14335 Filed 6–7–95; 3:06 pm]
BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 112
Monday, June 12, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[FV95–959–1PR]

Onions Grown in South Texas; Changes in Bulk Bin Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would remove a requirement that polyethylene liners be used in bulk shipping bins. Such liners limit air flow inside the container and may cause the onions to decay more easily and result in a loss of product. Removal of this requirement should reduce product loss due to excessive decay and lessen the chances of receiver rejection. This proposed rule also would prohibit the use of bulk bins for shipments of onions for fresh whole use because the arrival condition of such onions is critical. Onions transported in bulk bins are not protected from damage, such as bruising, as well as those packed in smaller size cartons or bags. However, the arrival condition of onions for fresh chopping, slicing, or peeling, or other fresh use in which the form of the onion is changed is not as critical. The use of bulk bins, which are more cost effective for such shipments, would continue.

DATES: Comments must be received by July 12, 1995.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456, FAX (202) 720–5698. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456, telephone: (202) 690–0464; or Belinda G. Garza, McAllen Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 1313 East Hackberry, McAllen, Texas 78501; telephone: (210) 682–2833, FAX (210) 682–5942.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement No. 143 and Marketing Order No. 959 (7 CFR part 959), as amended, regulating the handling of onions grown in South Texas, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this action.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 35 handlers of South Texas onions who are subject to regulation under the order and approximately 70 producers in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of handlers and producers of South Texas onions may be classified as small entities.

At a public meeting on November 8, 1994, the South Texas Onion Committee (committee) recommended deleting a requirement that perforated polyethylene liners (poly liners) be used in the bulk bins under the authority for experimental shipments. It also recommended limiting the use of bulk bins to shipments of onions for peeling, slicing, chopping, or other fresh use in which the form of the onion is changed. Fourteen members and alternates were present, and all recommendations were unanimous.

Sweet onions normally have a high moisture content, and a poly liner, even when perforated, acts as a vapor barrier. Moisture remains inside the bin, or container, which can cause mold, bacteria, and other decay micro-organisms to develop. To avoid such a warm, damp environment, air circulation is necessary. However, use of the poly liner blocks air movement and may cause "sweating" and decay of the onions. Because satisfactory arrival condition is important to onion receivers, the committee recommended that the requirement for poly liners be removed. This should lessen the chances of receiver rejections due to excessive decay.

At the meeting, the committee also recommended permitting onions for fresh peeling, chopping, or slicing to be shipped in bulk bins, as authorized by the provision for experimental shipments in the handling regulation. Although bags and cartons provide better protection during shipping, the committee does not believe that such additional protection is necessary for onions moving to processing outlets. Handlers have found that both bags and cartons are more difficult to load and unload than are bulk containers. In addition, bags and cartons are more expensive to buy and only last for one shipment, while bins can be used repeatedly. Also, bags and cartons must be disposed of at the destination, an additional cost, while bins can be returned for further use. It is therefore proposed that sub-paragraph (i) of paragraph (f)(3) *Experimental shipments.* be revised to remove the requirement for a poly liner and be limited to shipments for peeling, slicing, and chopping, and redesignated as (f)(3) *Peeling, slicing, and chopping.* The remaining parts of paragraph (3) *Experimental shipments.* would be redesignated (f)(4) *Experimental shipments.* but would be otherwise unchanged. Both paragraph (f)(3) and (f)(4) would continue to be subject to the safeguards under paragraph (g).

In accordance with the Paperwork Reduction Act of 1988 (44 U.S.C. Chapter 35), the information collection requirements that are contained in this proposal have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB number 0581–0074.

Based on available information, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 959 is proposed to be amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Paragraphs (f)(4) and (f)(5) of § 959.322 are redesignated (f)(5) and (f)(6) respectively; paragraphs (f)(3)(ii) and (f)(3)(iii) are redesignated (f)(4)(i) and (f)(4)(ii) and revised; paragraph (f)(3)(i) is redesignated as (b)(3) and revised; and the introductory text of paragraphs (g) and (g)(4) are revised to read as follows:

§ 959.222 Handling regulation.

* * * * *

(f) * * *

(3) *Peeling, chopping, and slicing.* Upon approval of the committee, onions for peeling, chopping, and slicing may be shipped in bulk bins with inside dimensions of 47 inches x 37 1/2 inches x 36 inches deep and having a volume of 63,450 cubic inches, or containers deemed similar by the committee. Such shipments shall be exempt from paragraph (c) of this section, but shall be handled in accordance with the safeguard provisions of § 959.54 and shall meet the requirements of paragraphs (a), (b), (d), and (g) of this section.

(4) *Experimental shipments.* (i) Upon approval by the committee, onions may be shipped for experimental purposes exempt from regulations issued pursuant to §§ 959.42, 959.52, and 959.60, provided they are handled in accordance with the safeguard provisions of § 959.54 and paragraph (g) of this section.

(ii) Upon approval of the committee, onions may be shipped for testing in types and sizes of containers other than those specified in paragraphs (c) and (f)(2) of this section, provided that the handling of onions in such experimental containers shall be under the supervision of the committee.

* * * * *

(g) *Safeguards.* Each handler making shipments of onions for relief, charity, processing, experimental purposes, or peeling, chopping and slicing shall:

* * *

(g)(4) In addition to provisions in the preceding paragraphs, each handler making shipments for processing and peeling, chopping, and slicing shall:

* * * * *

Dated: June 6, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–14277 Filed 6–9–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 490

[Docket No. EE–RM–95–110A]

RIN 1904–AA64

Alternative Fuel Transportation Program

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice of limited reopening of the comment period.

SUMMARY: On February 28, 1995, the Department of Energy (DOE) published a notice of proposed rulemaking (60 FR 10970) to implement statutorily required alternative fueled vehicle acquisition requirements applicable to certain alternative fuel providers and State government fleets under sections 501 and 507(o) of the Energy Policy Act of 1992 (Act), respectively. Public hearings were held in three cities and the 60-day public comment period closed on May 1, 1995. The purpose of this notice is to reopen the comment period for 30 days in order to solicit comments on options being given consideration in light of the many comments for and against altering the dates of the statutory vehicle acquisition schedules.

DATES: Written comments (11 copies) on the issues presented in this notice must be received by the Department on or before July 12, 1995.

ADDRESSES: Written comments (11 copies) should be addressed to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–33, Docket No. EE–RM–95–110A, 1000 Independence Ave., SW, Washington, DC 20585, (202–586–3012).

Docket: Supporting information used in developing the proposed rule and written comments received on the Notice of Proposed Rulemaking are contained in Docket No. EE–RM–95–110A. This Docket is available for examination in DOE's Freedom of Information Reading Room, 1E–090, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, 202–586–6020, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth R. Katz, Program Manager, Office of Energy Efficiency and Renewable Energy (EE–33), U.S. Department of Energy, 1000

Independence Avenue, S.W., Washington, DC 20585, (202) 586–6116.

SUPPLEMENTARY INFORMATION: In the February 28, 1995, notice of proposed rulemaking, DOE described the statutory provisions of the Act that impose the alternative fueled vehicle acquisition schedules and provide for a starting date of September 1, 1995 (the beginning of model year 1996). Among other things, DOE pointed out that, with respect to the acquisition requirements applicable to alternative fuel providers in model years 1997 and thereafter, section 501(b) of the Act authorizes DOE to reduce the percentage to no less than 20 percent and to extend the deadlines for up to two years. 42 U.S.C. 13251(b). DOE indicated that it did not intend to exercise its discretion under section 501(b), but requested comment on the conditions that should be the basis for such action. DOE also pointed out that, with respect to the statutory vehicle acquisition schedule applicable to State government fleets, section 507(o) does not contain a provision similar to section 501(b), and therefore, does not explicitly authorize DOE to amend the percentages or deadlines in the statutory schedule. 60 FR 10970–1.

DOE received a significant amount of comment on the desirability of a delay of the vehicle acquisition schedules. Some of the comments argue that DOE should delay the acquisition schedules so as to provide the same amount of lead time as the Act contemplates between the statutory deadlines for promulgation of final regulations (January 1, 1994, for alternative fuel providers and April 24, 1994, for State fleets) and the date the vehicle acquisition requirements take effect (September 1, 1995). Others argue for a one or two-year delay of the vehicle acquisition requirements for both alternative fuel providers and State fleets. A one-year delay would shift the starting point for both vehicle acquisition schedules to the beginning of model year 1997 on September 1, 1996. A two-year delay would shift the starting point for both vehicle acquisition schedules to the beginning of model year 1998 on September 1, 1997. In making a case for delay, some comments have argued that a hiatus between the date of promulgation and the date the vehicle acquisition requirements become effective is needed so that those who are subject to the regulations can take necessary actions to comply and suppliers of alternative fuel and alternative fueled vehicles can adjust to the requirements. Moreover, some State officials have argued that a delay is necessary because section 507(o)(2)(A) of the Act provides for a 12-month period after promulgation of final regulations during which the State can submit an Alternative State Plan.

Other commenters argue against any modification of the statutory schedule, claiming that such a delay would be detrimental to those who planned and acted in light of the September 1, 1995, beginning date. They argue that the exemption process is adequate to provide relief to those who cannot comply for good cause.

DOE recognizes that it is appropriate to provide for lead time between the date the final regulations are promulgated and the date the vehicle acquisition requirements are enforced. Lead time could be provided by amending the statutory vehicle acquisition schedule, staying enforcement, or some combination of amending the schedule and staying enforcement. However, DOE must act within the constraints on its delegated authority under the Act to modify the statutory vehicle acquisition schedules. In this connection, DOE invites comment on the legal implications of: (1) The omission from section 501(b) of explicit authority to modify the model year 1996 percentage applicable to alternative fuel providers; and (2) the lack of any explicit authority in section. 507(o) to change the scheduled percentages applicable to State government fleets for model year 1996 or any model year thereafter. The Act does not provide any restrictions on DOE's enforcement discretion.

DOE also seeks comment on options for staying enforcement of the vehicle acquisition requirements in order to provide lead time. Relying on its broad enforcement discretion, DOE could modify proposed § 490.605 to provide for a stay of enforcement for both alternative fuel providers and State government fleets. Proposed §§ 490.201 (the requirements for State government fleets) and 490.302 (the requirements for alternative fuel providers) would be modified to be "subject to § 490.605."

DOE seeks comment on several options being considered for redrafting proposed § 490.605. One option would provide in substance that DOE: (1) Shall not enforce during the lead time period; and (2) thereafter shall enforce as if the statutory vehicle acquisition schedules had been amended to begin after the end of the lead time period. For example, if DOE chose to provide for one model year of lead time, this approach would provide for no enforcement in model year 1996 and enforcement of the model year 1996 requirements in model year 1997, and so on. Another option would only provide that DOE shall not enforce during the lead time period, but would not affect the enforcement requirements for later model years. The difference between these options is that under the latter option, after expiration of the lead time period, enforcement would begin at the applicable percentage set forth in the statutory vehicle acquisition schedule rather than at the percentage applicable for model year 1996.

The options being considered for the duration of the lead time period include one model year, two model years, or the lead time specifically provided by section 501 and 507(o) (20 months and 16 months, respectively). However, DOE is open to other suggestions.

A stay of enforcement would not preclude modifying the alternative fuel providers' vehicle acquisition schedule for model year 1997 and thereafter consistent with section 501(b) of the Act. Neither would it preclude processing of exemption requests under the criteria set forth in sections 501(a)(5) and 507(i) of the Act.

Options involving a stay of enforcement would have the virtue of leaving intact the statutory provision to acquire alternative fueled vehicles in model year 1996 and future years. Those who may have acted in reliance on the dates in the statutory schedule, such as the major domestic automobile manufacturers, could benefit from the stimulus to purchase that the program would still provide. In this connection, it is worth noting that Ford and Chrysler have indicated their plans to accept orders for alternative fuel vehicles during the second half of model year 1995 with delivery starting during the first half of model year 1996. They, as well as the General Motors Corporation, have also indicated that they have model year 1997 plans to broaden their product offerings.

DOE urges interested members of the public to comment on the important issue discussed in this notice.

Issued in Washington, DC on June 2, 1995.

Brian T. Castelli,

Chief-of-Staff, Energy Efficiency and Renewable Energy.

[FR Doc. 95–14236 Filed 6–9–95; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–242–AD]

Airworthiness Directives; Jetstream Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Jetstream Model ATP airplanes. This proposal would require an inspection to ensure that various components of the retraction actuator of the nose landing gear (NLG) are secure, and an inspection of the bearing cap mounting holes for correct hole and thread length. The proposed AD would also require a later inspection for certain discrepancies of the retraction actuator; installation of revised tolerance bushings; and correction of any discrepancy found. This proposal is prompted by reports of failure of the attachment bolts of the bearing cap of the retraction actuator of the NLG. The actions specified by the proposed AD are intended to prevent the inability to raise or lower the NLG, or possible collapse of the NLG, due to failure of the attachment bolts of the bearing cap.

DATES: Comments must be received by July 24, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–242–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–242–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–242–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Jetstream Model ATP airplanes. The CAA advises that there have been reports indicating that the attachment bolts of the bearing cap of the retraction actuator of the nose landing gear (NLG) have failed. This has been determined to be the result of mismatches between the bearing cap and bush, or inadequate counterboring of the bearing cap. This condition, if not corrected, could result in the inability to raise or lower the NLG, or possible collapse of the NLG.

Jetstream has issued Service Bulletin ATP–53–30–10372A, dated November 3, 1994, which describes procedures for an inspection to ensure that the bearing caps, bolts, and special washers are secure. The service bulletin also describes procedures for inspecting the bearing cap mounting holes for correct hole and thread length. Additionally, the service bulletin describes a later inspection for discrepancies of the retraction actuator; installation of revised tolerance bushings; and alignment of the outboard support bracket, if necessary. The service bulletin also describes corrective actions for any discrepancy that is found during the inspections. The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require, first, an inspection to ensure that the bearing caps, bolts, and special washers are secure; and inspection of the bearing cap mounting holes for correct hole and thread length. The proposed AD also would require a later inspection for discrepancies of the retraction actuator; installation of revised tolerance bushings; and alignment of the outboard support bracket, if necessary. This proposed AD would require corrective actions for any discrepancy found. The actions would be required to be accomplished in accordance with the Jetstream Service Bulletin ATP–76–16, dated October 14, 1994, described previously.

Unlike the procedures recommended in that Jetstream service bulletin, however, this proposed rule would not permit further flight after detection of any cable that is found with one wire broken in any strand. Instead, this proposed rule would require, prior to further flight; repair of the cable in accordance with the service bulletin. The FAA finds that an adequate level of safety for the affected fleet requires that damaged cables must be replaced prior to further flight. The FAA has

determined that, in cases where certain known unsafe conditions exist, and where actions to detect and correct that unsafe condition can be readily accomplished, those actions must be required.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long-standing requirement.

The FAA estimates that 10 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 17 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operator. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $10,200, or $1,020 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Jetstream Aircraft Limited (Formerly, British Aerospace Commercial Aircraft Limited): Docket 94–NM–242–AD.

Applicability: Model ATP airplanes, constructor's numbers 2002 through 2056 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent the inability to raise or lower the nose landing gear (NLG), or a possible collapse of the NLG, accomplish the following:

(a) Within 300 hours time-in-service or 90 days after the effective date of this AD, whichever occurs first: Perform an inspection to ensure that the components of the bracket attachment assembly of the retraction actuator of the NLG are secure, and to ensure that the inboard and outboard support brackets of the mounting holes of the bearing cap have correct hole and thread lengths, in accordance with paragraph 2.A. of the Accomplishment Instructions of Jetstream Service Bulletin ATP–53–30–10372A, dated November 3, 1994. If any discrepancy is found, prior to further flight, correct the discrepancy in accordance with the service bulletin.

(b) Within 3,000 landings, or 12 months after the effective date of this AD, whichever occurs first: Install revised tolerance bushings in the bearing cap/bracket attachment assemblies of the NLG retraction actuator, test the actuator for freedom of movement, and inspect for any discrepancy of the actuator, in accordance with paragraph 2.B. of the Accomplishment Instructions of Jetstream Service Bulletin ATP–53–30–10372A, dated November 3, 1994.

(1) If no discrepancy is found no further action is required by this AD.

(2) If any discrepancy is found, prior to further flight, correct the discrepancy in accordance with the service bulletin.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished. Issued in Renton, Washington, on June 6, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–14319 Filed 6–9–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–NM–173–AD]

Airworthiness Directives; Jetstream Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Jetstream Model ATP airplanes, that currently requires daily and/or pre-flight cleaning and inspections to detect damaged main landing gear (MLG) wheel bearings and replacement of discrepant parts. That AD was prompted by reports of failure of the MLG wheel bearings. The actions specified by that AD are intended to prevent failure of the MLG wheel bearing, which could result in detachment of a MLG wheel from the airplane. This action would require an additional inspection, in lieu of the pre-flight inspection, for certain airplanes. This action would also require the accomplishment of a terminating modification that would eliminate the need for daily and pre-flight inspections.

DATES: Comments must be received by July 24, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–173–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–173–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–173–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On February 18, 1994, the FAA issued AD 94–05–03, amendment 39–8841 (59 FR 9400, February 28, 1994), applicable to certain Jetstream Model ATP airplanes, to require daily and/or pre-flight cleaning and detailed visual inspections to detect damage or discoloration of the main wheel hub caps and of the outer side of each inflation valve side hubs on the main landing gear (MLG) wheels. That amendment also requires replacement of the damaged or discolored MLG wheel assembly and bearings with a serviceable wheel assembly and bearings. That action was prompted by reports of failure of the MLG wheel bearings. The requirements of that AD are intended to prevent detachment of a MLG wheel from the airplane.

Since the issuance of that AD, Jetstream has issued Revision 3 of Service Bulletin ATP–32–48, dated July 15, 1994. The daily cleaning and detailed visual inspection, and pre-flight detailed visual inspection procedures described in this revision are essentially identical to those described in Revision 1 of the service bulletin (which was referenced in AD 94–05–03 as the appropriate source of service information). For certain airplanes Revision 3 of the service bulletin describes procedures for performing an additional intermediate detailed visual inspection, in lieu of the pre-flight inspection. This intermediate inspection would detect damage (including blistering or flaking of the paint) or heat discoloration of the wheel hub cap and the outer side of each inflation valve side hub on the MLG wheels.

Jetstream has also issued Service Bulletin ATP–32–51–35296A, dated May 12, 1994, which describes procedures for modification of the MLG. This modification involves drilling two additional locking holes in each axle. This modification will reduce the axial movement between the locking positions to provide a closer control of the wheel bearing preload.

Additionally, Jetstream issued Service Bulletin ATP–32–53–35294A (including Erratum No. 1), dated July 18, 1994, and Revision 2, dated January 13, 1995, which describe procedures for modification of certain wheels on the MLG. This modification involves removing the existing valve side half hub assembly of the wheel and installing a new valve side half hub assembly, which is capable of accepting a new outer bearing with higher load capability.

Accomplishment of these modifications described in Service Bulletins ATP–32–51–35296A and ATP–32–53–35294A would eliminate the need for the daily, pre-flight, and daily intermediate inspections, and would positively address the unsafe condition identified as detachment of a MLG wheel from the airplane.

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, has classified these service bulletins as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 94–05–03 to continue to require daily cleaning and daily/pre-flight detailed visual inspections to detect damage (including blistering or flaking of the paint) or discoloration of the wheel hub caps and of the outer side of the inflation valve side hubs on the MLG wheels. The proposed AD would

also require an additional daily intermediate detailed visual inspection, in lieu of the pre-flight inspection, for certain airplanes. This intermediate inspection would detect damage or heat discoloration of the wheel hub cap and the outer side of each inflation valve side hub on the MLG wheel. Additionally, the proposed AD would require modification of the MLG, which would constitute terminating action for the daily, pre-flight, daily intermediate inspection requirements. The actions would be required to be accomplished in accordance with the service bulletins described previously. If any damage or discoloration is found, the replacement of the existing MLG wheel assembly and bearings with a serviceable wheel assembly and bearings would be required to be accomplished in accordance with a method approved by the FAA.

The FAA estimates that 10 airplanes of U.S. registry would be affected by this proposed AD.

The inspections that were previously required by AD 94–05–03, and would be retained in this proposed AD, take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of the inspection requirement of this AD on U.S. operators is estimated to be $1,200, or $120 per airplane, per inspection cycle.

The inspections that would be added by this proposed AD would take approximately 2 work hours per airplane to accomplish , at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of the inspections proposed by this AD on U.S. operators is estimated to be $1,200, or $120 per airplane, per inspection cycle.

It would take approximately 11 work hours per airplane to accomplish the proposed modifications at an average labor rate of $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the modification proposed by this AD on U.S. operators is estimated to be $6,600, or $660 per airplane.

The total cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8841 (59 FR 9400, February 28, 1994), and by adding a new airworthiness directive (AD), to read as follows:

Jetstream Aircraft Limited (Formerly British Aerospace Commercial Aircraft Limited): Docket 94–NM–173–AD. Supersedes AD 94–05–03, Amendment 39–8841.

Applicability: Model ATP airplanes, constructor numbers 2001 through 2063 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent detachment of a main landing gear (MLG) wheel from the airplane, accomplish the following:

(a) For airplanes on which Jetstream Modification 35296A (reference Jetstream Service Bulletin ATP–32–51–35296A) has not been installed: Accomplish paragraphs (a)(1) and (a)(2) of this AD.

(1) Within 24 hours after March 15, 1994 (the effective date of AD 94–05–03, amendment 39–8841), perform a cleaning and a detailed visual inspection to detect damage (including blistering or flaking of the paint) or discoloration of the wheel hub caps and of the outer side of the inflation valve side hubs on the MLG wheels, in accordance with paragraph 2.(2) of the Accomplishment Instructions of Jetstream Service Bulletin ATP–32–48, Revision 1, dated January 28, 1994; or in accordance with paragraph 2.A.(2) of the Accomplishment Instructions of Jetstream Service Bulletin ATP–32–48, Revision 3, dated July 15, 1994. Thereafter, prior to the first flight of each day, repeat this cleaning and inspection. The cleaning and inspection must be performed by appropriately certificated maintenance personnel as specified in section 43.3 of the Federal Aviation Regulations (14 CFR 43.3). If any damage or discoloration is found during any inspection required by this paragraph, prior to further flight, replace the existing MLG wheel assembly and bearings with a serviceable wheel assembly and bearings, in accordance with the airplane maintenance manual.

(2) Following accomplishment of the initial inspection required by paragraph (a)(1) of this AD, prior to each flight, with the exception of the first flight of each day, perform a pre-flight detailed visual inspection to detect damage (including blistering or flaking of the paint) or heat discoloration of the wheel hub cap and the outer side of each inflation valve side hub on the MLG wheels, in accordance with paragraph 2.A.(3) of the Accomplishment Instructions of Jetstream Service Bulletin ATP–32–48, Revision 1, dated January 28, 1994; or in accordance with paragraph 2.A.(3) of the Accomplishment Instruction of Jetstream Service Bulletin ATP–32–48, Revision 3, dated July 15, 1994. The pre-flight inspections must be performed by appropriately certificated maintenance personnel, as specified in section 43.3. If any damage or discoloration is found during any inspection required by this paragraph, prior to further flight, replace the existing MLG wheel assembly and bearings with a serviceable wheel assembly and bearings, in accordance with the airplane maintenance manual.

(b) For airplanes on which Jetstream Modification 35296A (reference Jetstream Service Bulletin ATP–32–51–35296A) has been installed: Accomplish paragraphs (b)(1) and (b)(2) of this AD.

(1) Within 24 hours after the last inspection performed in accordance with paragraph (a)(1) of this AD, perform a cleaning and a detailed visual inspection to detect damage (including blistering or flaking of the paint) or discoloration of the wheel hub caps and of the outer side of the inflation valve side hubs on the MLG wheels, in accordance with paragraph 2.Part B.(2) of the Accomplishment Instructions of Jetstream Service Bulletin ATP–32–48, Revision 3, dated July 15, 1994. Thereafter, prior to the first flight of each day, repeat this cleaning and inspection. The cleaning and inspection must be performed by appropriately certificated maintenance personnel as specified in section 43.3 of the Federal Aviation Regulations (14 CFR 43.3). If any damage or discoloration is found during any inspection required by this paragraph, prior to further flight, replace the existing MLG wheel assembly and bearings with a serviceable wheel assembly and bearings, in accordance with the airplane maintenance manual.

(2) Following accomplishment of the initial inspection required by paragraph (b)(1) of this AD, once a day, perform an additional intermediate detailed visual inspection to detect damage (including blistering or flaking of the paint) or heat discoloration of the wheel hub cap and the outer side of each inflation valve side hub on the MLG wheels, in accordance with paragraph 2.Part B.(3) of the Accomplishment Instructions of Jetstream Service Bulletin ATP–32–48, Revision 3, dated July 15, 1994. The once-a-day inspections must be performed by appropriately certificated maintenance personnel, as specified in 14 CFR 43.3. If any damage or discoloration is found during any inspection required by this paragraph, prior to further flight, replace the existing MLG wheel assembly and bearings with a serviceable wheel assembly and bearings, in accordance with the airplane maintenance manual.

(c) Within 10 months after the effective date of this AD, modify the MLG, in accordance with Jetstream Service Bulletin ATP–32–51–35296A (including Erratum No. 1), dated May 12, 1994; and Jetstream Service Bulletin ATP–32–53–35294A, dated July 18, 1994, or Revision 2, dated January 13, 1995. Accomplishment of these modifications constitutes terminating action for the daily and pre-flight inspection requirements of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished. Issued in Renton, Washington, on June 6, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–14316 Filed 6–9–95; 8:45 am]

BILLING CODE 4910–13–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD-FRL–5217–4]

RIN 2060–AD–56

National Emission Standards for Hazardous Air Pollutants for Butyl Rubber Production, Epichlorohydrin Elastomers Production, Ethylene-Propylene Elastomers Production, Hypalon™ Production, Neoprene Production, Nitrile Butadiene Rubber Production, Polybutadiene Rubber Production, Polysulfide Rubber Production, and Styrene-Butadiene Rubber and Latex Production (Group 1 Polymers and Resins)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The proposed rule would reduce emissions of hazardous air pollutants (HAP) from existing and new facilities that manufacture one or more of the following elastomers: Butyl rubber (BR), epichlorohydrin elastomers (EPI), ethylene-propylene elastomers (EPR), hypalon® (HYP), neoprene (NEO), nitrile butadiene rubber (NBR), polybutadiene rubber (PBR), polysulfide rubber (PSR), and styrene-butadiene rubber and latex (SBR). The EPA is in the process of developing standards for a wide range of types of polymers and resin production facilities. The materials covered by this proposed rule are elastomers used to make a variety of synthetic rubber products including tires, hoses, belts, footwear, adhesives, caulks, wire insulation, seals, floor tiles, and latexes. In the production of elastomers, a variety of HAP are used as monomers or process solvents. The HAP emitted by the facilities covered by this proposed rule include n-hexane, styrene, 1,3-butadiene, acrylonitrile, methyl chloride, hydrogen chloride, carbon tetrachloride, chloroprene, and toluene. Some of these pollutants are considered to be probable human carcinogens when inhaled and all can cause toxic effects following exposure. The proposed rule is estimated to reduce emissions of these pollutants by over 6,500 Mg/yr. The emission reductions achieved by these standards, when combined with the emission reductions achieved by other similar standards, will achieve the primary goal of the Clean Air Act, which is to "enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population."

The proposed rule implements section 112(d) of the Clean Air Act Amendments of 1990 (1990 Amendments), which requires the Administrator to regulate emissions of HAP listed in section 112(b) of the 1990 Amendments. The intent of this rule is to protect the public by requiring the maximum degree of reduction in emissions of HAP from new and existing major sources, taking into consideration the cost of achieving such emission reduction, and any nonair quality, health and environmental impacts, and energy requirements.

DATES: *Comments.* Comments must be received on or before August 11, 1995.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by July 3, 1995, a public hearing will be held on July 12, 1995 beginning at 10 a.m. Persons interested in attending the hearing should call Ms. Marguerite Thweatt at (919) 541–5607 to verify that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact the EPA by June 27, 1995 by contacting Ms. Marguerite Thweatt, Organic Chemicals Group, (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5607.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air Docket Section (LE–131), Attention: Docket No. A–92–44, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The EPA requests that a separate copy also be sent to the contact person listed below. The public hearing, if required, will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina.

The docket is located at the above address in room M–1500, Waterside Mall (ground floor), and may be

inspected from 8 a.m. to 4 p.m., Monday through Friday; telephone number (202) 260–7548. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: For information concerning the proposed rule, contact Mr. Leslie Evans at (919) 541–5410, Organic Chemicals Group, Emission Standards Division (MD–13), U. S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The proposed regulatory text and the rationale for selection of the different components of the standard are not included in this **Federal Register** notice. The regulatory text is available in Docket No. A–92–44, or from the EPA contact person designated in this notice. The proposed regulatory language is also available on the Technology Transfer Network (TTN) on the EPA's electronic bulletin boards. The TTN provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a telephone call. Dial (919) 541–5742 for up to a 14,400 bps modem. If more information on TTN is needed, call the HELP line at (919) 541–5384.

In addition to the proposed regulatory text, the Basis and Purpose Document, which contains the rationale for the various components of the standard, is available in the docket and on the TTN. This document is entitled Hazardous Air Pollutant emissions from Process Units in the Elastomer Manufacturing Industry—Basis and Purpose Document for Proposed Standards, May 1995, and has been assigned document number EPA–453–R–95–006a.

Other materials related to this rulemaking are available for review in the docket. Some of these memoranda have been compiled into a single document, the Supplementary Information Document (SID), to allow interested parties more convenient access to the information. The SID is available in the docket (Docket No. A–92–44, Category II–A), and from the EPA Library by calling (919) 541–2777. The document is entitled Hazardous Air Pollutant Emissions from Process Units in the Elastomer Manufacturing Industry—Supplementary Information Document for Proposed Standards, May 1995, and has been assigned document number EPA–453/R–95–005a.

In some cases, technical analyses conducted during the development of the Hazardous Organic NESHAP, or HON, were indirectly relied upon in the development of today's proposed rule. The HON was promulgated on April 22, 1994 (59 FR 19402), and supporting information for the HON is available in the Air Dockets A–90–19 through A–90–23.

The information presented in this preamble is organized as follows:

I. List of Source Categories
II. A Summary of Considerations Made in Developing This Rule
III. Authority for National Emission Standards for Hazardous Air Pollutants (NESHAP) Decision Process
  A. Source of Authority for NESHAP Development
  B. Criteria for Development of NESHAP
IV. Summary of Proposed Rule
  A. Source Categories to be Regulated
  B. Relationship to Other Rules
  C. Pollutants to be Regulated
  D. Affected Emission Points
  E. Format of the Standards
  F. Proposed Standards
  G. Recordkeeping and Reporting Requirements
V. Discussion of Major Issues
VI. Summary of Environmental, Energy, Cost, and Economic Impacts
  A. Facilities Affected by these NESHAP
  B. Primary Air Impacts
  C. Other Environmental Impacts
  D. Energy Impacts
  E. Cost Impacts
  F. Economic Impacts
VII. Administrative Requirements
  A. Public Hearing
  B. Docket
  C. Executive Order 12866
  D. Enhancing the Intergovernmental Partnership Under Executive Order 12875
  E. Paperwork Reduction Act
  F. Regulatory Flexibility Act
  G. Miscellaneous

I. List of Source Categories

Section 112 of the 1990 Amendments requires that the EPA evaluate and control emissions of HAP. The control of HAP is achieved through promulgation of emission standards under sections 112(d) and 112(f) and work practice and equipment standards under section 112(h) for categories of sources that emit HAP. On July 16, 1992, the EPA published an initial list of major and area source categories to be regulated, as required under section 112(c) of the 1990 amendments. Included on that list were major sources emitting HAP from the production of BR, EPI, EPR, HYP, NEO, NBR, PBR, PSR, and SBR. These source categories are combined under today's proposed rule because of similarities in process operations, emission characteristics, and control device applicability and costs. For the purpose of this notice, these nine source categories are collectively referred to as elastomer source categories.

The EPA identified a total of 35 plant sites producing one of more of the elastomers listed. At eight plant sites, elastomers from two or more subcategories are produced. For example, at one plant site there is one process producing EPR and another process producing PBR.

All of the facilities considered in the analysis supporting today's proposed rule are believed to be major sources according to the 1990 Amendments criterion of having the potential to emit 10 tons per year of any one HAP or 25 tons per year of combined HAP. The proposed rule would apply to all major sources that produce any of the nine types of elastomers identified in this notice. Area sources would not be subject to this proposed rule.

In developing the background information to support the proposed rule, the EPA chose to subcategorize three of the nine source categories for purposes of analyzing the maximum achievable control technology (MACT) floors and regulatory alternatives. A fourth subcategory was created by combining two processes that had virtually identical facilities, processes, and HAP emissions. Subcategorization was necessary to reflect major variations in production methods, raw material usage and/or HAP emissions that potentially affect the applicability of controls. Although the resulting level of the standard was identical for many subcategories, note that all technical analyses were conducted on a subcategory basis to determine the appropriate level of the standard. Table 1 summarizes the subcategories developed.

II. A Summary of Considerations Made in Developing This Rule

The Clean Air Act was created, in part, "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population" [the ACT, § 101(b)(1)]. As such, this proposed regulation would protect the public health by reducing emissions of HAP from elastomer production.

TABLE. 1.—SUBCATEGORIZATION OF GROUP I POLYMERS

Source category	Subcategory	Number of sources in subcategory
Butyl Rubber	Butyl Rubber (BR)	1
	Halobutyl Rubber (HBR)	1
Epichlorohydrin Rubber (EPI)	None	1
Ethylene Propylene Rubber (EPR)	None	5
Hypalon® (HYP)	None	1
Neoprene (NEO)	None	3
Nitrile Butadiene Rubber	Nitrile Butadiene Rubber by Emulsion (NBR)	4
	Nitrile Butadiene Latex (NBL)	3
Polysulfide Rubber (PSR)	None	1
Polybutadiene Rubber	Polybutadiene Rubber and Styrene Butadiene Rubber by Solution (PBR/SBRS).	5
Styrene Butadiene Rubber	Styrene Butadiene Rubber by Emulsion (SBRE)	4
	Styrene Butadiene Latex (SBL)	15

Pollutants emitted by Polymer and Resin I sources that are listed in Section 112(b)(1) include n-hexane, styrene, 1,3-butadiene, acrylonitrile, methyl chloride, carbon tetrachloride, chloroprene, and toluene. Some of these pollutants are considered to be probable human carcinogens when inhaled, and all can cause reversible and irreversible toxic effects following exposure. These effects include respiratory and skin irritation, effects upon the eye, various systemic effects including effects upon the liver, kidney, heart and circulatory systems, neurotoxic effects, and in extreme cases, death.

These effects vary in severity based on the level and length of exposure and are influenced by source-specific characteristics such as emission rates and local meteorological conditions. Health impacts are also dependent on multiple factors that affect human variability such as genetics, age, health status (e.g., presence of pre-existing disease) and lifestyle. The EPA does not have sufficient detailed data to conduct an intensive analysis to determine the actual population exposures to the HAP and resulting health effects around these facilities. This rule is technology-based; i.e., based on maximum achievable control technology. In addition, it is not a "significant" rule as defined by Executive Order 12866, and a benefits analysis is not required. Considering these factors, the EPA chose not to expend the resources required to collect additional data and conduct an intensive health impacts analysis. Therefore, the EPA does not know the extent to which the adverse health effects described above occur in the populations surrounding these facilities. However, to the extent the adverse effects do occur, the proposed standard will substantially reduce emissions and exposures to the level achievable with MACT.

Due to the volatility and relatively low potential for bioaccumulation of these pollutants, air emissions are not expected to deposit on land or water and cause subsequent adverse health or ecosystem effects.

The alternatives considered in the development of this regulation, including those alternatives selected as standards for new and existing elastomer sources, are based on process and emissions data received from every existing elastomer facility known to be in operation at the time of the initial data collection. The EPA met with industry several times to discuss this data. In addition, facilities and State regulatory authorities had the opportunity to comment on draft versions of the regulation and to provide additional information. Several facilities did provide comments; these comments were considered, and in some cases, today's proposed standards reflect these comments. Of major concern to industry were the reporting and recordkeeping burden and the requirements for wastewater control.

The proposed standards give existing facilities 3 years from the date of promulgation to comply. This is the maximum amount of time allowed under the Clean Air Act. New sources are required to comply with the standard upon start-up. The EPA sees no reason why new facilities would not be able to comply with the requirements of the standards upon startup. The number of existing sources affected by this rule is less than 50; therefore, the EPA does not believe that required retrofits or other actions cannot be achieved in the time frame allotted.

Included in the proposed rule are methods for determining initial compliance as well as monitoring, recordkeeping, and reporting requirements. All of these components are necessary to ensure that sources will comply with the standards both initially and over time. However, the EPA has made every effort to simplify the requirements in the rule. The Agency has also attempted to maintain consistency with existing regulations by either incorporating text from existing regulations or referencing the application sections, depending on which method would be least confusing for a given situation.

As described in the Basis and Purpose document, regulatory alternatives were considered that included a combination of requirements equal to, and above, the MACT floor. Cost-effectiveness was a factor considered in evaluating options above the floor; in cases where options more stringent than the floor were selected, they were judged to have a reasonable cost effectiveness. For EPR, PBR/SBR (by solution), and SBR (by emulsion) the estimated cost effectiveness was found to be relatively high at the MACT floor level due to the requirements for process back-end operations. However, the back-end provisions of the regulation contain several options for compliance that will allow facilities to select the most cost-effective option based on facility-specific considerations.

Representatives from other interested EPA offices and programs, as well as representatives from State regulatory agencies, are included in the regulatory development process as members of the Work Group. The Work Group is involved in the regulatory development process, and must review and concur with the regulation before proposal and promulgation. Therefore, the EPA believes that the implications to other EPA offices and programs have been

adequately considered during the development of these standards.

III. Authority for National Emission Standards for Hazardous Air Pollutants (NESHAP) Decision Process

A. Source of Authority for NESHAP Development

Section 112 of the 1990 Amendments gives the EPA the authority to establish national standards to reduce air emissions from sources that emit one or more HAP. Section 112(b) contains a list of HAP to be regulated by NESHAP. Section 112(c) directs the EPA to use this pollutant list to develop and publish a list of source categories for which NESHAP will be developed. The EPA must list all known source categories and subcategories of "major sources" (defined below) that emit one or more of the listed HAP. A major source is defined in section 112(a) as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit in the aggregate, considering controls, 10 tons per year or more of any one HAP or 25 tons per year or more of any combination of HAP. This list of source categories was published in the **Federal Register** on July 16, 1992 (57 FR 31576) and includes BR, EPI, EPR, HYP, NEO, NBR, PBR, PSR, and SBR.

Sources with a potential to emit at or greater than major source levels shall abide by the provisions of this rule unless they accept and comply with federally enforceable limitations on that potential which reduce their potential to emit to less than major source levels. The most common mechanisms for ensuring that these limitations are federally enforceable are Title V, State Implementation Plan (SIP), Prevention of Significant Deterioration (PSD), or New Source Review (NSR) permits. The Agency is currently reviewing what other mechanisms may be available.

B. Criteria for Development of NESHAP

The NESHAP are to be developed to control HAP emissions from both new and existing sources according to the statutory directives set out in section 112(d) of the 1990 Amendments. The statute requires the standards to reflect the maximum degree of reduction in emissions of HAP that is achievable for new or existing sources. This control level is referred to as MACT. When the selection of MACT considers control levels more stringent than the MACT floor (described below), its selection must reflect consideration of the cost of achieving the emission reduction, any non-air quality, health, and environmental impacts, and energy requirements.

The MACT floor is the least stringent level allowed for MACT standards. For new sources, the standards for a source category or subcategory "shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator" (section 112(d)(3)). Existing source standards shall be no less stringent than the average emission limitation achieved by the best performing 12 percent of the existing sources for categories and subcategories with 30 or more sources or the average emission limitation achieved by the best performing 5 sources for categories or subcategories with fewer than 30 sources (section 112(d)(3)). These two minimum levels of control define the MACT floor for new and existing sources.

IV. Summary of Proposed Standards

A. Source Categories To Be Regulated

Today's proposed standards would regulate HAP emissions from facilities in one of the 12 elastomer subcategories presented in Table 1, provided that a facility is a major source or is located at a plant site that is a major source. For the proposed rule, an affected source is defined as one of the following:

- All HAP emission points at a facility producing butyl rubber that are associated with butyl rubber production,
- All HAP emission points at a facility producing epichlorohydrin elastomer that are associated with epichlorohydrin elastomer production,
- All HAP emission points at a facility producing ethylene propylene rubber that are associated with ethylene propylene rubber production,
- All HAP emission points at a facility producing halobutyl rubber that are associated with halobutyl rubber production,
- All HAP emission points at a facility producing Hypalon™ that are associated with Hypalon™ production,
- All HAP emission points at a facility producing neoprene that are associated with neoprene production,
- All HAP emission points at a facility producing nitrile butadiene latex that are associated with nitrile butadiene latex production,
- All HAP emission points at a facility producing nitrile butadiene rubber that are associated with nitrile butadiene rubber production,
- All HAP emission points at a facility producing polybutadiene rubber and/or styrene butadiene rubber using a solution process that are associated with production of polybutadiene rubber and/or styrene butadiene rubber using a solution process,
- All HAP emission points at a facility producing polysulfide rubber that are associated with polysulfide production,
- All HAP emission points at a facility producing styrene butadiene latex that are associated with styrene butadiene latex production, and
- All HAP emission points at a facility producing styrene butadiene rubber using an emulsion process that are associated with styrene butadiene rubber production using an emulsion process.

In addition, if a facility produces elastomer products from more than one subcategory in the same equipment, then that facility is a single affected source.

The EPA is aware of some polymeric resin and copolymer products that are manufactured using similar chemicals and processes that are in some ways similar to the processes used in the manufacture of the elastomers covered by today's proposed rule. Several styrene butadiene, non-elastomer, resins and copolymers are included in this group. The EPA does not intend for today's proposed regulation to cover the production of these materials, which are often high conversion, block copolymers, with different end uses from the elastomers. However, the development of specific criteria to distinguish between elastomers and resins/copolymers has proven to be difficult. Therefore, the EPA is requesting comments on methods to clearly make this distinction.

B. Relationship to Other Rules

Sources subject to the proposed rule are also subject to other existing rules. In some cases, the proposed rule supersedes existing rules and affected sources are no longer required to comply with the existing rule. In other cases, there is no conflict between the existing rule and the proposed rule, and in these cases, the affected source must comply with both rules.

Sources subject to the proposed rule and subject to the NESHAP for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks (40 CFR part 63, subpart I) are required to continue to comply with subpart I until the compliance date of the proposed rule. After the compliance date of the proposed rule, compliance with the proposed rule will constitute compliance with subpart I.

Sources subject to the proposed rule may have storage vessels subject to the NSPS for Volatile Organic Liquid Storage Vessels (40 CFR part 60, subpart Kb). After the compliance date for the proposed rule, such storage vessels are only subject to the proposed rule and are no longer required to comply with subpart Kb.

Sources subject to the proposed rule may have cooling towers subject to the NESHAP for Industrial Cooling Towers (40 CFR part 63, subpart Q). There is no conflict between the requirements of subpart Q and the proposed rule. Therefore, sources subject to both rules must comply with both rules.

C. Pollutants To Be Regulated

The source categories covered by the proposed rule emit a variety of HAP. The most significant emissions are of the following HAP: n-hexane, styrene, 1,3-butadiene, acrylonitrile, methyl chloride, hydrogen chloride, carbon tetrachloride, chloroprene, and toluene. Today's proposed standards would regulate emissions of these compounds, as well as all other HAP that are emitted.

D. Affected Emission Points

Emissions from the following types of emission points (i.e., emission source types) are being covered by the proposed rule: Storage vessels, "front-end" process vents, process "back-end" operations, equipment leaks, and wastewater operations. The process "front-end" includes pre-polymerization, reaction, stripping, and material recovery operations; and the process "back-end" includes all operations after stripping (predominately drying and finishing).

E. Format of the Standards

As discussed in more detail in Section IV.F, Proposed Standards, the Hazardous Organic NESHAP (HON) (subparts F, G, and H of 40 CFR part 63) and the Batch Processes Alternative Control Techniques (ACT) document (EPA 453/R–93–017, November 1993) provided a basis for selection of the proposed formats. In most instances, the format of today's proposed standards is the same as those found in the HON and Batch Processes ACT. The following paragraphs summarize the selected formats, including those that are different from the HON and Batch Processes ACT. The formats and their selection are discussed in more detail in the Basis and Purpose Document for this proposed regulation.

For storage vessels, the format of today's proposed standards is dependent on the method selected to comply with the standards. If tank improvements (e.g., internal or external floating roofs with proper seals and fittings) are selected, the format is a combination of design, equipment, work practice, and operational standards. If a closed vent system and control device are selected, the format is a combination of design and equipment standards.

For front-end process vents, the format of today's proposed standards is also dependent on the method selected to comply with the standards. If a flare is selected, the format is a combination of equipment and operating specifications. If a control device other than a flare is used, the formats are a percent reduction and an outlet concentration.

For back-end process emissions, today's proposed standards are limits on the amount of residual HAP in the raw polymer product being fed to the back-end operation, in units of weight of HAP per weight of crumb rubber dry weight or latex. The format of today's proposed standards are dependent on the method selected to comply with the standards. If sampling is the method selected, the format is a weekly weighted average HAP content of all polymer processed in the stripping operations. The EPA is proposing test methods to determine residual HAP elsewhere in today's **Federal Register**. If add-on control is selected, the format is the reduction of HAP emissions to a level that would be equivalent to the emission reduction that would be achieved using stripping.

For equipment leaks, today's proposed standards incorporate several formats: Equipment, design, base performance levels (e.g., maximum allowable percent leaking valves), work practices, and operational practices. Different formats are necessary for different types of equipment, because of the nature of the equipment, available control techniques, and applicability of the measurement method. In addition, a work practice standard is adopted for equipment leaks resulting in the emission of HAP from cooling towers at all facilities producing a listed elastomer. This standard requires a leak detection and repair program to detect and repair leaks of HAP into cooling tower water.

For wastewater streams requiring control, today's proposed standards incorporate several formats: Equipment, operational, work practice, and emission standards. The particular format selected depends on which portion of the wastewater stream is involved. For transport and handling equipment, the selected format is a combination of equipment standards and work practices. For the reduction of HAP from the wastewater stream itself, several alternative formats are included, including five alternative numerical emission limit formats (overall percent reduction for total volatile organic HAP (VOHAP), individual HAP percent reduction, effluent concentration limit for total VOHAP, individual VOHAP effluent concentration limits, and mass removal for HAP) and equipment design and operation standard for a steam stripper. For vapor recovery and destruction devices other than flares, the format is a weight percent reduction. For flares, the format is a combination of equipment and operating specifications.

F. Proposed Standards

The standards being proposed for storage vessels, continuous front-end process vents, equipment leaks, and wastewater are the same as those promulgated for the corresponding emission source types at facilities subject to the HON. Also included are standards for two emission source types not covered by the HON, batch front-end process vents and process back-end operations. The batch front-end process vent applicability and control requirements are based on the approach described in the Batch Processes ACT. The standards being proposed today for process back-end emissions are primarily based on State permit conditions that restrict the amount of residual HAP in the raw polymer product that is sent to the back-end operations.

Tables 2 and 3 summarize the level of control being proposed for new and existing sources, respectively. Where the level of control is the same as the HON for storage vessels, equipment leaks, and wastewater, this is indicated in the table as "HON." When "HON/ACT" is used in the table, the level of control for continuous front-end process vents is equal to the HON level of control, and the level of control for batch front-end process vents is equal to the 90 percent control level from the Batch Processes ACT. The following sections describe today's proposed standards in more detail, by emission source type. The rationale on which regulatory components are based is summarized in the Basis and Purpose Document, which is available as described in the introductory material of this Preamble.

TABLE 2.—SUMMARY OF PROPOSED STANDARDS FOR EXISTING SOURCES

Subcategory	Level of proposed standard[a]				
	Storage	Front-end process vents	Back-end process emissions	Wastewater	Equipment leaks
Br, HBR	HON	HON/ACT,[b] exempting halogenated vent streams controlled by flare of boiler before porposal date.	No control	NON	HON
EPI, HYP, NEO, NBL, NBR, PSR, SBL	HON	HON/ACT	No control	HON	HON
EPR, PBR/SBRS,SBRE	HON	HON/ACT	MACT floor residual HAP limit.	HON	HON

[a] HON—the level of the standard is equivalent to existing source provisions of subpart G of 40 CFR 63 for storage and wastewater, and subpart H of 40 CFR 63 for equipment leaks.
[b] HON/ACT—the level of the standard for continuous front-end process vents is equal to the existing source process vent provisions in subpart G of 40 CFR 63, and the level of the standard for batch front-end process vents is equal to the 90 percent control level from the Batch Processes ACT.

TABLE 3.—SUMMARY OF PROPOSED STANDARDS FOR NEW SOURCES

Subcategory	Level of standard				
	Storage	Front-end process vents	Back-end process emissions	Wastewater	Equipment leaks
BR, EPI, HBR, HYP, NEO, NBL, NBR, SBL	New source HON[a].	New source HON/ACT[b].	no control	New source HON.	New source HON.
EPR, PBR/SBRS, SBRE	New source HON.	New source HON/ACT.	New source floor residual HAP limit.	New source HON.	New source HON.

[a] HON—the level of the standard is equivalent to new source provisions of subpart G of 40 CFR 63 for storage and wastewater, and subpart H of 40 CFR 63 for equipment leaks.
[b] HON/ACT—the level of the standard for continuous front-end process vents is equal to the new source process vent provisions in subpart G of 40 CFR 63, and the level of the standard for batch front-end process vents is equal to the 90 percent control level from the Batch Processes ACT.

1. Storage Vessels

For all subcategories, the storage vessel requirements are identical to the HON storage vessel requirements in subpart G. A storage vessel means a tank or other vessel that is associated with an elastomer product process unit and that stores a liquid containing one or more organic HAP. The proposed rule specifies assignment procedures for determining whether a storage vessel is associated with an elastomer product process unit. The storage vessel provisions do not apply to the following: (1) Vessels permanently attached to motor vehicles, (2) pressure vessels designed to operate in excess of 204.9 kpa (29.7 psia), (3) vessels with capacities smaller than 38 m^3 (10,000 gal), (4) wastewater tanks, and (5) vessels storing liquids that contain organic HAP only as impurities. An impurity is produced coincidentally with another chemical substance and is processed, used, or distributed with it.

In addition to those vessels that do not meet the definition of storage vessels, today's proposed standards exempt certain storage vessels containing latex. Specifically, storage vessels containing a latex, located downstream of the stripping operations, are exempt from the storage vessel requirements of the proposed rule.

The owner or operator must determine whether a storage vessel is Group 1 or Group 2; Group 1 storage vessels require control. The criteria for determining whether a storage vessel is Group 1 or Group 2 are shown in Table 4, and are the same as the HON criteria.

TABLE 4.—GROUP 1 STORAGE VESSEL CRITERIA

Vessel Capacity (cubic meters)	Vapor Pressure[a]
Existing sources	
75 ≤ capacity < 151	≥13.1
151 ≤ capacity	≥5.2
New sources	
38 ≤ capacity < 151	≥13.1
151 ≤ capacity	≥0.7

[a] Maximum true vapor pressure of total organic HAP at storage temperature.

The storage provisions require that one of the following control systems be applied to Group 1 storage vessels: (1) An internal floating roof with proper seals and fittings; (2) an external floating roof with proper seals and fittings; (3) an external floating roof converted to an internal floating roof with proper seals and fittings; or (4) a closed vent system with a 95-percent efficient control device. The storage provisions give details on the types of seals and fittings required. Monitoring and compliance provisions include periodic visual inspections of vessels, roof seals, and fittings, as well as internal inspections. If a closed vent system and control device is used, the owner or operator must establish appropriate monitoring procedures. Reports and records of inspections, repairs, and other information necessary to determine compliance are also required by the storage provisions. No controls are required for Group 2 storage vessels.

2. Front-End Process Vents

There are separate provisions in the proposed rule for front-end process vents that originate from unit operations operated in a continuous mode, and those from unit operations operated in a batch mode. An affected source could be subject to both the continuous and batch front-end process vent provisions if front-end operations at an elastomer production process unit consist of a combination of continuous and batch unit operations. The continuous provisions would be applied to those vents from continuous unit operations, and the batch provisions to vents from batch unit operations.

a. *Continuous Front-End Process Vents.* The provisions in the proposed rule for continuous front-end process vents are the same as the HON process vent provisions in subpart G. Continuous front-end process vents are gas streams that originate from continuously operated units in the front-end of an elastomer process, and include gas streams discharged directly to the atmosphere and gas streams discharged to the atmosphere after diversion through a product recovery device. The continuous front-end process vent provisions apply only to vents that emit gas streams containing more than 0.005 weight-percent HAP.

A Group 1 continuous front-end process vent is defined as a continuous front-end process vent with a flow rate greater than or equal to 0.005 scmm, an organic HAP concentration greater than or equal to 50 ppmv, and a total resource effectiveness (TRE) index value less than or equal to 1.0. The continuous front-end process vent provisions require the owner or operator of a Group 1 continuous front-end process vent stream to: (1) Reduce the emissions of organic HAP using a flare; (2) reduce emissions of organic HAP by 98 weight-percent or to a concentration of 20 ppmv or less; or (3) achieve and maintain a TRE index above 1. Performance test provisions are included for Group 1 continuous front-end process vents to verify that the control device achieves the required performance.

The organic HAP reduction is based on the level of control achieved by the reference control technology. Group 2 continuous front-end process vent streams with TRE index values between 1.0 and 4.0 are required to monitor those process vent streams to ensure those streams do not become Group 1, which require control.

The owner or operator can calculate a TRE index value to determine whether each process vent is a Group 1 or Group 2 continuous front-end process vent, or the owner or operator can elect to comply directly with the control requirements without calculating the TRE index. The TRE index value is determined after the final recovery device in the process or prior to venting to the atmosphere. The TRE calculation involves an emissions test or engineering assessment and use of the TRE equations in § 63.115 of subpart G.

The rule encourages pollution prevention through product recovery because an owner or operator of a Group 1 continuous front-end process vent may add recovery devices or otherwise reduce emissions to the extent that the TRE becomes greater than 1.0 and the Group 1 continuous front-end process vent becomes a Group 2 continuous front-end process vent.

Group 1 halogenated streams controlled using a combustion device must vent the emissions from the combustor to an acid gas scrubber or other device to limit emissions of halogens prior to venting to the atmosphere. The control device must reduce the overall emissions of hydrogen halides and halogens by 99 percent or reduce the outlet mass emission rate of total hydrogen halides and halogens to less than 0.45 kg/hr.

The proposed rule exempts certain halogenated process vent streams from the requirement to control the halogens at the exit from a combustion device. Specifically, halogenated continuous front-end process vents at affected sources producing butyl or halobutyl rubber are exempt from the requirements to control hydrogen halides and halogens from the outlet of combustion devices. However, the proposed rule requires that these vent streams be controlled in accordance with the other Group 1 requirements for continuous front-end process vents.

Monitoring, reporting, and recordkeeping provisions necessary to demonstrate compliance are also included in the continuous front-end process vent provisions. Compliance with the monitoring provisions is based on a comparison of daily average monitored values to enforceable parameter "levels" established by the owner or operator. A difference in the proposed rule and the HON is that the procedure for determining the enforceable parameter monitoring level for continuous process vents is both more specific and restrictive than that in subpart G. Subpart G allows the use of engineering assessments and manufacturers' recommendations in establishing the enforceable level, while the proposed rule would require that the level be established entirely based on the monitoring conducted during the compliance test. The level is established as the average of the maximum (or minimum) monitored point values for the three test runs. That is, if the operating parameter to be established is a maximum, the value of the parameter shall be the average of the maximum values from each of the three test runs. Likewise, if the operating parameter to be established is a minimum, the value of the parameter shall be the average of the minimum values from each of the three test runs.

b. *Batch Front-End Process Vents.* Process vents that include gas streams originating from batch unit operations in the front-end of an elastomer product process unit are subject to the batch front-end process vent provisions of the proposed rule. Consistent with provisions in the proposed rule for other emission source types, batch front-end process vents are classified as Group 1 or Group 2, with control being required for Group 1 batch front-end process vents.

An important aspect of the batch front-end process vent provisions is that applicability is on an individual vent basis. All batch emission episodes that are emitted to the atmosphere through the vent are to be considered in the group determination. The proposed rule does not require that emissions from similar batch unit operations emitted from different vents be combined for applicability determinations. In other words, if a process included four batch reactors, and each reactor had a dedicated vent to the atmosphere, applicability would be determined for each reactor.

The applicability criteria of the batch front-end process vent provisions are from the Batch Processes ACT, and are based on volatility and annual emissions of the HAP emitted from the vent, and the average flow rate of the vent stream. The vent stream characteristics are determined at the exit from the batch unit operation before any emission control or recovery device. The proposed rule specifies that reflux condensers, condensers recovering monomer or solvent from a batch stripping operation, and condensers recovering monomer or solvent from a batch distillation operation are considered part of the unit operation. Therefore, the batch front-end process vent applicability criteria would be applied after these condensers.

The first step in the applicability determination is to calculate the annual HAP emissions. Annual HAP emissions may be calculated using equations contained in the regulation (which are from the Batch Processes ACT) and/or testing. Engineering assessment may also be used if the equations are not appropriate and testing is not feasible. Batch front-end process vents with annual HAP emissions less than 225 kilograms per year are exempt from all batch front-end process vent requirements, other than the

requirement to estimate annual HAP emissions.

All batch front-end process vents with annual emissions greater than 225 kilograms per year are required to determine the volatility class of the vent. The volatility class of the batch front-end process vent is based on the weighted average vapor pressure of HAP emitted annually from the vent. There are three volatility classes—low, medium, and high, which are shown in Table 5.

TABLE 5.—BATCH FRONT-END PROCESS VENT VOLATILITY CLASSES

Vent volatility class	WAVP[a] kilopascals
low	< 10
moderate	10 ≤ vp < 20
high	≥ 20

[a] Weighted average vapor pressure of batch front-end process vent.

There are two tiers of Group 2 batch front-end process vents. First, if the annual HAP emissions of a vent are below specified cutoff levels, the batch front-end process vent is classified as a Group 2 vent, and a batch cycle limitation must be established (discussed below). These cutoff emission levels are 11,800 kilograms HAP per year for low volatility vents, 7,300 kilograms HAP per year for medium volatility vents, and 10,500 kilograms HAP per year for high volatility vents.

If annual HAP emissions are greater than the cutoff emission levels specified above, the owner must determine the annual average flow rate of the batch front-end process vent, and the "cutoff flow rate" using the equation in the proposed rule for the appropriate volatility class. The Group 1/Group 2 classification is then based on a comparison between the actual annual average flow rate, and the cutoff flow rate. If the actual flowrate is less than the calculated cutoff flowrate, then the batch process vent is a Group 1 vent under today's proposed standards, and control is required. If the actual flowrate is greater than the calculated cutoff flowrate, then the batch process vent is a Group 2 batch front-end process vent, and the owner or operator must establish a batch cycle limitation.

Owners and operators of Group 2 batch front-end process vents must establish a batch cycle limitation that ensures that HAP emissions from the vent do not increase to a level that would make the batch front-end process vent Group 1. The batch cycle limitation is an enforceable restriction on the number of batch cycles that can be performed in a year. An owner or operator has two choices regarding the level of the batch cycle limitation. The limitation may be set to maintain emissions below the annual emission cutoff levels listed above, or the limitation may be set to ensure that annual emissions do not increase to a level that makes the calculated cutoff flow rate increase beyond the actual annual average flow rate. The advantage to the first option is that the owner or operator would not be required to determine the annual average flow rate of the vent. A batch cycle limitation does not limit production to any previous production level, but is based on the number of cycles necessary to exceed one of the two batch front-end process vent applicability criteria discussed above.

The batch front-end process vent provisions require the owner or operator of a Group 1 batch front-end process vent stream to: (1) Reduce the emissions of organic HAP using a flare or (2) reduce emissions of organic HAP by 90 weight-percent over each batch cycle using a control or recovery device. If a halogenated batch vent stream (defined as a vent that has a mass emission rate of halogen atoms in organic compounds of 3,750 kilograms per year or greater) is sent to a combustion device, the outlet stream must be controlled to reduce emissions of hydrogen halides and halogens by 99 percent.

Control could be achieved at varying levels for different emission episodes as long as the required level of control for the batch cycle was achieved. The owner or operator could even elect to control some emission episodes and bypass control for others. Performance test provisions are included for Group 1 batch front-end process vents to verify that the control device achieves the required performance.

Monitoring, reporting, and recordkeeping provisions necessary to demonstrate compliance are also included in the batch front-end process vent provisions. These provisions are modeled after the analogous continuous process vent provisions in the HON. Compliance with the monitoring provisions is based on a comparison of batch cycle daily average monitored values to enforceable parameter monitoring levels established by the owner or operator.

The proposed provisions for batch front-end process vents contain three conditions that can greatly simplify compliance. First, an owner or operator can control a batch front-end process vent in accordance with the Group 1 batch front-end process vent requirements and bypass the applicability determination. Second, if a batch front-end process vent is combined with a continuous vent stream before a recovery or control device, the owner or operator is exempt from all batch front-end process vent requirements. However, applicability determinations, tests, etc. for the continuous vent must be conducted at conditions when the addition of the batch vent streams makes the HAP concentration in the combined stream greatest. Finally, if batch front-end process vents combined to create a "continuous" flow to a control or recovery device, the less complicated continuous process vent monitoring requirements are used.

3. Process Back-End Operations

Process back-end operations include all operations at an elastomer product process unit that occur after the stripping operations. These operations include, but are not limited to, filtering, drying, separating, and other finishing operations, as well as product storage.

The back-end process provisions contain residual HAP limitations for three subcategories: Ethylene propylene rubber (EPR), polybutadiene rubber and/or styrene butadiene rubber by solution (PBR/SBRS), and styrene butadiene rubber by emulsion (SBRE). The limitations for EPR and PBR/SBRS are in units of kilograms HAP per megagram of crumb rubber dry weight (crumb rubber dry weight means the weight of the polymer, minus the weight of water, residual organics, carbon black, and extender oils), and the limitation for SBRE is in units of kilogram HAP per megagram latex. The limitation is a weekly average weighted based on the weight of rubber or latex processed in the stripper. Two methods of compliance are available: (1) Stripping the polymer to remove the residual HAP to the levels in the standards, on a weekly weighted average basis, or (2) reducing emissions using add-on control to a level equivalent to the level that would be achieved if stripping was used.

a. *Compliance Using Stripping Technology.* If stripping is the method of compliance selected, the proposed rule allows two options for demonstrating compliance: By sampling and by monitoring stripper operating parameters. If compliance is demonstrated by sampling, samples of the stripped wet crumb or stripped latex must be taken immediately after the stripper and analyzed to determine the residual HAP content. The EPA is specifically requesting comments on the safety aspects associated with the sampling location of the wet crumb or stripped latex.

A sample must be taken once per grade per day or once per batch per day. The sample must be analyzed to determine the residual HAP content, and the corresponding weight of rubber or latex processed in the stripper must be recorded. This information is then used to calculate a weekly weighted average. A weekly weighted average that is above the limitation is a violation of the standard, as is a failure to sample and analyze at least 75 percent of the samples required during the week. The EPA has developed test methods that would be used to determine compliance with the standard, which are proposed separately in today's **Federal Register**. Records of each test result would be required, along with the corresponding weight of the polymer processed in the stripper. Records of the weekly weighted averages must also be maintained.

An owner or operator complying using stripping can also demonstrate compliance by continuously monitoring stripper operating parameters. If using this approach, the owner or operator must establish stripper operating parameters for each grade of polymer processed in the stripper, along with the corresponding residual HAP content of that grade. The parameters that must be monitored include, at a minimum, temperature, pressure, steaming rates (for steam strippers), and some parameter that is indicative of residence time. The HAP content of the grade must be determined initially using the proposed residual HAP test methods discussed above. The owner or operator can elect to establish a single set of stripper operating parameters for multiple grades. As discussed in section V of today's notice, the EPA is requesting comments on the use of predictive computer modeling in place of stripper parameter monitoring.

A difference in the demonstration of compliance by sampling, and the demonstration of compliance by monitoring stripping parameters, is that the monitoring option is entirely based on a grade or batch. To further explain, if a particular grade of polymer is processed in the stripped continuously for 32 hours, a sample of that grade is required to be taken each operating day, if the sampling compliance demonstration option is selected. However, if the stripping parameter monitoring option is selected, the entire length of time the grade is being processed in the stripper is treated as a single unit.

During the operation of the stripper, the parameters must be continuously monitored, with a reading of each parameter taken at least once every 15 minutes. If, during the processing of a grade, all hourly average parameter values are in accordance with the established levels, the owner or operator can use the HAP content determined initially in the calculation of the weekly weighted average, and sampling is not required. However, if one hourly average value for any parameter is not in accordance with the established operating parameter, a sample must be taken and the HAP content determined using the proposed test methods to be used in calculating the weekly weighted average.

Records of the initial residual HAP content results, along with the corresponding stripper parameter monitoring results for the sample, must be maintained. The hourly average monitoring results are required to be maintained, along with the results of any HAP content tests conducted due to exceedance of the established parameter monitoring levels. Records must also be kept of the weight of polymer processed in each grade, and the weekly weighted average values.

If complying with the residual HAP limitations using stripping technology, and demonstrating compliance by monitoring stripper parameters, there are three ways a facility can be in violation of the standard. First, a weekly weighted average that is above the limitation is a violation of the standard, as is a failure to sample and analyze a sample for a grade with an hourly average parameter value not in accordance with the established monitoring parameter levels. The third way for a facility to be out of compliance is if the stripper monitoring data are not sufficient for at least 75 percent of the grades produced during the week. Stripper data are considered insufficient if monitoring parameters are obtained for less than 75 percent of the 15 minute periods during the processing of a grade.

b. *Compliance Using Add-On Control.* If add-on control is the method of compliance selected, there are two levels of compliance. Initial compliance is based on a source test, and continuous compliance is based on the daily average of parameter monitoring results for the control or recovery device.

The initial performance test must consist of three 1-hour runs or three complete batch cycles, if the duration of the batch cycle is less than 1 hour. The test runs must be conducted during processing of "worst-case" grade, which means the grade with the highest residual HAP content leaving the stripper. The "uncontrolled" residual HAP content in the latex or wet crumb rubber must be determined, using the proposed test methods, after the stripper. Then, when the crumb for which the uncontrolled residual HAP was determined is being processed in the back-end unit operation being controlled, the inlet and outlet emissions for the control or recovery device must be determined using Method 18. The uncontrolled HAP content is then adjusted to account for the reduction in emissions by the control or recovery device, and compared to the levels in the standard. For initial compliance, the adjusted residual HAP content level for each test run must be less than the level in today's proposed standards.

During the initial test, the appropriate parameter must be monitored, and an enforceable "level" established as a maximum or minimum operating parameter based on this monitoring. As with continuous front-end process vents, the level is established as the average of the maximum (or minimum) point values for the three test runs.

Continuous monitoring must be conducted on the control or recovery device, and compliance is based on the daily average of the monitoring results. The monitoring, recordkeeping, and reporting provisions are the same as the process vent provisions in the HON, which are required for continuous front-end process vents in today's proposed standard.

c. *Carbon disulfide limitations for styrene butadiene rubber by emulsion producers.* Today's proposed regulation would reduce carbon disulfide (CS_2) emissions from styrene butadiene rubber producers using an emulsion process by limiting the concentration of CS_2 in the dryer vent stacks to 10 ppmv. Sulfur-containing shortstopping agents used to produce certain grades of rubber have been determined to be the source of CS_2 in the dryer stacks. Owners or operators would be required to develop standard operating procedures for each grade that uses a sulfur-containing shortstopping agent. These standard operating procedures would specify the type and amount of agent added, and the point in the process where the agent is added. One standard operating procedure can be used for more than one grade if possible.

For each standard operating procedure, the owner or operator would be required to conduct a performance test to measure the concentration of CS_2 in the dryer stack(s). A particular standard operating procedure would be acceptable if the average CS_2 concentration for the three required test

runs was less than 10 ppmv. The facility would be in compliance with this section of the proposed regulation if the appropriate standard operating procedure is followed whenever a sulfur-containing shortstopping agent is used. Facilities that route dryer vents to a combustion device would be exempt from this section of the regulation.

4. Wastewater Operations

For all subcategories, the wastewater provisions are identical to the wastewater provisions in subparts F and G. The proposed rule applies to any organic HAP-containing water, raw material, intermediate, product, by-product, co-product, or waste material that exits any elastomer production process unit equipment and has either (1) a total volatile organic HAP concentration of 5 ppmw or greater and a flow rate of 0.02 l/pm or greater; or (2) a total volatile organic HAP concentration of 10,000 ppmw or greater at any flow rate. "Wastewater," as defined in § 63.101 of subpart F, encompasses both maintenance wastewater and process wastewater. The process wastewater provisions also apply to organic HAP-containing residuals that are generated from the management and treatment of Group 1 wastewater streams. Examples of process wastewater streams include, but are not limited to, wastewater streams exiting process unit equipment (e.g., decanter water, such as condensed steam used in the process), feed tank drawdown, vessel washout/cleaning that is part of the routine batch cycle, and residuals recovered from waste management units. Examples of maintenance wastewater streams are those generated by descaling of heat exchanger tubing bundles, cleaning of distillation column traps, and draining of pumps into an individual drain system. Wastewater streams generated downstream of the stripper (i.e., back-end wastewater streams) located at facilities that are subject to a back-end emission limitation, are exempt from the wastewater requirements.

a. *Maintenance wastewater.* For maintenance wastewater, the proposed rule incorporates the requirements of § 63.105 of subpart F for maintenance wastewater. This requires owners or operators to prepare a description of procedures that will be used to manage HAP-containing wastewater created during maintenance activities, and to implement these procedures.

b. *Process wastewater.* The Group 1/Group 2 approach is also used for the HON process wastewater provisions, with Group 1 process wastewater streams requiring control. For existing sources, a Group 1 wastewater stream is one with an average flow rate greater than or equal to 10 liters per minute and a total VOHAP average concentration greater than or equal to 1,000 parts per million by weight. For new sources, a Group 1 wastewater stream is one with an average flow rate greater than or equal to 0.02 liter per minute and an average concentration of 10 parts per million by weight or greater.

An owner or operator may determine the VOHAP concentration and flow rate of a wastewater stream either (1) at the point of generation; or (2) downstream of the point of generation. If wastewater stream characteristics are determined downstream of the point of generation, an owner or operator must make corrections for losses by air emissions; reduction of VOHAP concentration or changes in flow rate by mixing with other water or wastewater streams; and reduction in flow rate or VOHAP concentration by treating or otherwise handling the wastewater stream to remove or destroy HAP. An owner or operator can determine the flow rate and VOHAP concentration for the point of generation by (1) sampling; (2) using engineering knowledge; or (3) using pilot-scale or bench-scale test data. Both the applicability determination and the Group 1/Group 2 determination must reflect the wastewater characteristics before losses due to volatilization, a concentration differential due to dilution, or a change in VOHAP concentration or flow rate due to treatment.

There are instances where an owner or operator can bypass the group determination. An owner or operator is allowed to designate a wastewater stream or mixture of wastewater streams to be a Group 1 wastewater stream without actually determining the flow rate and VOHAP concentration for the point of generation. Using this option, an owner or operator can simply declare that a wastewater stream or mixture of wastewater streams is a Group 1 wastewater stream and that the emissions from the stream(s) are controlled from the point of generation through treatment. An owner or operator is required to determine the wastewater stream characteristics (i.e., VOHAP concentration and flow rate) for the designated Group 1 wastewater stream in order to establish the treatment requirements in section 63.138. Also, an owner or operator who elects to use the process unit alternative in § 63.138(d) of subpart G or the 95-percent biological treatment option in section 63.138(e) of subpart G is not required to make a Group 1/Group 2 determination.

Controls must be applied to Group 1 wastewater streams, unless the source complies with the source-wide mass flow rate provisions of §§ 63.138(c)(5) or (c)(6) of subpart G; or implements process changes that reduce emissions as specified in § 63.138(c)(7) of subpart G. Control requirements include (1) suppressing emissions from the point of generation to the treatment device; (2) recycling the wastewater stream or treating the wastewater stream to the required Fr values for each HAP as listed in table 9 of subpart G (The required Fr values in table 9 of subpart G are based on steam stripping); (3) recycling any residuals or treating any residuals to destroy the total combined HAP mass flow rate by 99 percent or more; and (4) controlling the air emissions generated by treatment processes. While emission controls are not required for Group 2 wastewater streams, owners or operators may opt to include them in management and treatment options.

Suppression of emissions from the point of generation to the treatment device will be achieved by using covers and enclosures and closed vent systems to collect organic HAP vapors from the wastewater and convey them to treatment devices. Air emissions routed through closed-vent systems from covers, enclosures, and treatment processes must be reduced by 95 percent for combustion or recovery devices; or to a level of 20 ppmv for combustion devices.

The treatment requirements are designed to reduce the HAP content in the wastewater prior to placement in units without air emissions controls, and thus to reduce the HAP emissions to the atmosphere. The final rule provides several compliance options, including percent reduction, effluent concentration limitations, and mass removal.

For demonstrating compliance with the various requirements, owners or operators have a choice of using a specified design, conducting performance tests, or documenting engineering calculations. Appropriate compliance, monitoring, reporting, and recordkeeping provisions are included in the regulation.

5. Equipment Leaks

The equipment leak provisions in the proposed rule refer directly to the requirements contained in subpart H. In fact, many of the elastomer facilities are already subject to subpart H requirements through subpart I. Following is a summary of the subpart H requirements.

The standards would apply to equipment in organic HAP service 300 or more hours per year that is associated with a elastomer product process unit, including valves, pumps, connectors, compressors, pressure relief devices, open-ended valves or lines, sampling connection systems, instrumentation systems, surge control vessels, bottoms receivers, and agitators. The provisions also apply to closed vent systems and control devices used to control emissions from any of the listed equipment.

a. *Pumps and valves.* Today's proposed standard requires leak detection and repair for pumps in light liquid service and for valves in gas or light liquid service. Standards for both are implemented in three phases. The first and second phases for both types of equipment consist of a leak detection and repair (LDAR) program, with lower leak definitions in the second phase. The LDAR program involves a periodic check for organic vapor leaks with a portable instrument; if leaks are found, they must be repaired within a certain period of time. In the third phase, the periodic monitoring (a work practice standard) is combined with a performance requirement for an allowable percent leaking components.

The standard requires monthly monitoring of pumps using an instrument and weekly visual inspections for indications of leaks. In the first two phases of the valve standard, quarterly monitoring is required. In phase three, semiannual or annual monitoring may be used by process units with less than 1 percent and less than 0.5 percent leaking valves, respectively.

In phase three, if the base performance levels for a type of equipment are not achieved, owners or operators must, in the case of pumps, enter into a quality improvement program (QIP), and in the case of valves may either enter into a QIP or implement monthly LDAR. The QIP is a concept that enables plants exceeding the base performance levels to eventually achieve the desired levels without incurring penalty or being in a noncompliance status. As long as the requirements of the QIP are met, the plant is in compliance. The basic QIP consists of information gathering, determining superior performing technologies, and replacing poorer performers with the superior technologies until the base performance levels are achieved.

b. *Connectors.* The rule also requires leak detection and repair of connectors in gas or light liquid service. The monitoring frequency for connectors is determined by the percent leaking connectors in the process unit and the consistency of performance. Process units that have 0.5 percent or greater leaking connectors are required to monitor all connectors annually. Units that have less than 0.5 percent may monitor biannually and units that show less than 0.5 percent for two monitoring cycles may monitor once every 4 years.

c. *Other equipment.* Subpart H also contains standards for other types of equipment, compressors, open-ended lines, pressure relief devices, and sampling connection systems. Compressors are required to be controlled using a barrier-fluid seal system, by a closed vent system to a control device, or must be demonstrated to have no leaks greater than 500 ppm. Open-ended lines must be capped or plugged. Pressure relief devices are required to be controlled using a closed vent system to a control device, a rupture disk, or must be demonstrated to have no leaks greater than 500 ppm HAP. Sampling connections must be a closed-purge or closed-loop system, or must be controlled using a closed vent system to a control device. Agitators must either be monitored for leaks or use systems that are better designed, such as dual mechanical seals. Pumps, valves, connectors, and agitators in heavy liquid service; instrumentation systems; and pressure relief devices in liquid service are subject to instrument monitoring only if evidence of a potential leak is found through sight, sound, or smell. Instrumentation systems consist of smaller pipes and tubing that carry samples of process fluids to be analyzed to determine process operating conditions or systems for measurement of process conditions.

Surge control vessels and bottoms receivers are required to be controlled using a closed vent system vented to a control device. However, the applicability of controls to surge control vessels and bottoms receivers is based on the size of the vessel and the vapor pressure of the contents. Controls are required for surge control vessels and bottoms receivers meeting the criteria for Group 1 storage vessels. Further, in the proposed elastomer production provisions, surge control vessels and bottoms receivers located downstream from the stripper, that contain latex, are exempt from the equipment leak provisions.

d. *Other provisions.* Under certain conditions delay of repair beyond the required period may be acceptable. Examples of these situations include where: (1) A piece of equipment cannot be repaired without a process unit shutdown, (2) equipment is taken out of organic HAP service, (3) emissions from repair will exceed emissions from delay of repair until the next shutdown, and (4) equipment with better leak performance such as pumps with single mechanical seals are replaced with dual mechanical seals.

In addition, specific alternative standards are included for batch processes and enclosed buildings. For batch processes, the owner or operator can choose either to meet similar standards to those for continuous processes with monitoring frequency pro-rated to time in use of organic HAP, or to periodically pressure test the entire system. For enclosed buildings, the owner or operator may forego monitoring if the building is kept under a negative pressure and emissions are routed through a closed vent system to an approved control device.

The equipment leak standards require the use of Method 21 of appendix A of part 60 to detect leaks. Method 21 requires a portable organic vapor analyzer to monitor for leaks from equipment in use. Test procedures using either a gas or a liquid for pressure testing the batch system are specified to detect for leaks.

The standards would require certain records to demonstrate compliance with the standard and the records must be retained in a readily accessible recordkeeping system. Subpart H requires that records be maintained of equipment that would be subject to the standards, testing associated with batch processes, design specifications of closed vent systems and control devices, test results from performance tests, and information required by equipment in QIP.

6. Emissions Averaging

Today's proposed standards would apply basically the same emissions averaging scheme as has been adopted by the HON, although the emissions averaging provisions of the proposed rule are entirely contained in the proposed rule instead of referring to the subpart G emissions averaging provisions. Only owners or operators of existing sources may use emissions averaging. In addition, emissions averaging is only allowed within an affected source, where an affected source is generally defined as each process unit at a plant site that produces one of the twelve types of elastomer products. All HAP emissions, except those from batch front-end process vents, equipment leaks, and wastewater streams treated in a biological treatment unit, are allowed to be included in the average Up to 20 emission points may be included in emissions averages for all

affected sources at a single plant site (this is increased to 25 emission points where pollution prevention measures are used to control emission points to be included in an average). It is important to stress that the emission point limit is on a "plant site" basis, where the plant site is defined as all contiguous or adjoining property that is under common control. Therefore, if a plant site contains more than one affected source (i.e., different processes manufacturing more than one elastomer product), the 20 emission points allowed in emissions averages must be shared among the different processes. It should again be noted that the sharing of the number of emission points between affected sources does not mean that emission credits and debits can be shared between affected sources. In addition, the owner or operator must demonstrate that the averaging scheme will not result in greater hazard or risk relative to strict compliance with the standards in the absence of averaging.

The NESHAP for Polymers and Resins IV, which was proposed on March 29, 1995, contains a maximum number of emission points per subcategory (rather than per plant site) that can be included in emissions averaging. It is the EPA's intent, depending on consideration of public comments on both rules, to change Polymers and Resins IV to be like Polymers and Resins I (20–25 emission points per plant site), or at least to make the rules the same or consistent at promulgation.

The owner or operator must identify all the emission points that would be included in an emissions average and estimate their allowable and actual emissions using the reference efficiencies of the reference control technologies for each kind of emission point.

For each Group 1 point, the allowable emissions level is the emissions remaining after application of a reference control technology. As a result, all Group 1 emission points that are not being controlled with the reference control technology or a control measure achieving an equivalent reduction are emitting more than their allowable emissions. These points are generating emission "debits." Emission debits are calculated by subtracting the amount of emissions allowed by the standard for a given emission point from the amount of actual emissions for that point. If a Group 1 emission point is controlled by a device or a pollution prevention measure that does not achieve the control level of the reference control technology, the amount of emission debits will be based on the difference between the actual control level being achieved and what the reference control would have achieved. Equations for calculating debits are provided in the proposed rule.

The owner or operator must control other emission points to a level more stringent than what is required for that kind of point to generate emission "credits." Emission credits are calculated by subtracting the amount of emissions that actually exist for a given emission point from the amount of emissions that would be allowed under today's proposed rule, and then applying a 10-percent discount factor. If credits are generated through the use of a pollution prevention measure, no discount factor is applied. The discount factor mimics provisions in the HON.

Justification for inclusion of a discount factor and for the level at which it is set were discussed in the Preamble to the final HON rule.[1] Equations for calculating credits are also provided in today's proposed rule. To be in compliance, the owner or operator must be able to show that the source's emission credits were greater than or equal to its emission debits.

Credits may come from: (1) Control of Group 1 emission points using technologies that the EPA has rated as being more effective than the appropriate reference control technology; (2) control of Group 2 emission points; and (3) pollution prevention projects that result in control levels more stringent than what the standard requires for the relevant point or points.

A reference control technology cannot be used to generate credits beyond its assigned efficiency. For a new control technology or work practice, either the EPA or the permit authority must determine its control efficiency before it can be used to generate credits.

Today's proposed rule also grants State and local implementing agencies the discretion to preclude sources from using emissions averaging. This is also consistent with the HON provisions.

G. Recordkeeping and Reporting Requirements

Specific recordkeeping and reporting requirements related to each emission source type are included in the applicable sections of the proposed rule. Section 63.491 of the proposed rule provides general reporting, recordkeeping, and testing requirements.

The general reporting, recordkeeping, and testing requirements of this subpart are very similar to those found in subparts F and G. The proposed rule also incorporates provisions of subpart A of part 63. A table included in the proposed rule designates which sections of subpart A apply to the proposed rule.

The proposed rule requires sources to keep records and submit reports of information necessary to determine applicability and document compliance. The proposed rule requires retention of hourly average values (or batch cycle average values) of monitored parameters for operating days when there is not an excursion. If there is a monitoring parameter excursion, the 15-minute values for the excursion period must be retained. The proposed rule also requires that records of all residual HAP content test results. Records must be kept for 5 years.

Section 63.491 of the proposed rule lists the following types of reports that must be submitted to the Administrator as appropriate: (1) Initial Notification, (2) Application for Approval of Construction or Reconstruction, (3) Implementation Plan (if an operating permit application has not been submitted, (4) Emissions Averaging Plan, (5) Notification of Compliance Status, (6) Periodic Reports, and (7) other reports. The requirements for each of the seven types of reports are summarized below.

In addition, § 63.491 incorporates the reporting requirements of subpart H, which requires owners and operators to submit three types of reports: (1) An Initial Notification; (2) a Notification of Compliance Status; and (3) Periodic Reports.

1. Initial Notification

The Initial Notification is due 120 days after the date of promulgation for existing sources. For new sources, it is due 180 days before commencement of construction or reconstruction, or 45 days after promulgation, whichever is later. Owners or operators can submit one Initial Notification to comply with both the requirements of § 63.491 of the proposed rule and the requirements of subpart H. The notification must list the elastomer processes that are subject to the proposed rule, and which provisions may apply (e.g., storage vessels, continuous front-end process vents, batch front-end process vents, back-end process, wastewater, and/or equipment leak provisions). A detailed identification of emission points is not necessary for the Initial Notification. The notification, however, must include a statement of whether the source expects that it can achieve compliance by the specified compliance date.

[1] United States Environmental Protection Agency. 59 FR 19430, Friday, April 22, 1994. National Emission Standards for Hazardous Air Pollutants for Certain Source Categories; Final Rule.

2. Application for Approval of Construction or Reconstruction

The proposed rule requires that the owners or operator comply with § 63.5 of subpart A regarding the application for approval of construction or reconstruction, with one exception. The information required to be included in the Implementation Plan must be submitted as part of the application for approval of construction or reconstruction.

3. Implementation Plan

The Implementation Plan details how the source plans to comply. Implementation Plans are required only for existing sources that have not yet submitted operating permit applications. New sources are required to submit the information normally required in the Implementation Plan as part of the Application for Approval of Construction or Reconstruction. Implementation Plans are due 12 months prior to the date of compliance. The information in the Implementation Plan should be incorporated into the source's operating permit application. The terms and conditions of the plan, as approved by the permit authority, would then be incorporated into the operating permit.

The Implementation Plan would include a list of emission points subject to the storage vessels, continuous front-end process vents, batch front-end process vents, wastewater operations, and equipment leak provisions and, as applicable, whether each emission point (e.g., storage vessel or process vent) is Group 1 or Group 2. The control technology or method of compliance planned for each Group 1 emission point must be specified. In addition, the Implementation Plan must identify if the facility has back-end process emission operations that are subject to a back-end emission limitation. If the facility is subject to a back-end emission limitation, the owner or operator must specify if compliance will be achieved using stripping technology or add-on control. Additionally, the owner or operator must specify if continuous compliance using stripping technology will be demonstrated by sampling or by monitoring stripper parameters.

The plan must also certify that appropriate testing, monitoring, reporting, and recordkeeping will be done for each Group 1 emission point of subject process back-end. If a source requests approval to monitor a unique parameter, a rationale must be included.

4. Emissions Averaging Plan

The Emissions Averaging Plan would be due 18 months prior to the date of compliance. New sources are not allowed to comply through the use of emissions averaging. The owner or operator must demonstrate that the emissions described in the Plan will not result in greater hazard or risk to human health or the environment than would result if the emissions points were controlled through the traditional provisions on the rule.

For points included in emissions averaging, the Emissions Averaging Plan would include: An identification of all points in the average and whether they are Group 1 or Group 2 points; the specific control technique or pollution prevention measure that will be applied to each point; the control efficiency for each control used in the average; the projected credit or debit generated by each point; and the overall expected credits and debits. The plan must also certify that the same types of testing, monitoring, reporting, and recordkeeping that are required by the proposed rule for Group 1 points will be done for all points (both Group 1 and Group 2) included in an emissions average. If a source requests approval to monitor a unique parameter or use a unique recordkeeping and reporting system, a rationale must be included in the Emissions Averaging Plan.

5. Notification of Compliance Status

The Notification of Compliance Status would be required 150 days after the source's compliance date. It contains the information for Group 1 emission points, back-end process operations using add-on control, and for all emission points in emissions averages, necessary to demonstrate that compliance has been achieved. Such information includes, but is not limited to, the results of any performance tests for continuous and/or batch process vents, and wastewater emission points; one complete test report for each test method used for a particular kind of emission point; TRE determinations for process vents; group determinations for batch process vents; design analyses for storage vessels and wastewater emission points; monitored parameter levels for each emission point and supporting data for the designated level; and values of all parameters used to calculate emission credits and debits for emissions averaging. The Notification of Compliance Status required by subpart H must be submitted within 90 days after the compliance date.

6. Periodic Reports

Generally, Periodic Reports would be submitted semiannually. However, there are two exceptions. First, quarterly reports must be submitted for all points included in an emissions average. Second, if monitoring results show that the parameter values for an emission point are above the maximum or below the minimum established levels for more than 1 percent of the operating time in a reporting period, or the monitoring system is out of service for more than 5 percent of the time, the regulatory authority may request that the owner or operator submit quarterly reports for that emission point. After 1 year, semiannual reporting can be resumed, unless the regulatory authority requests continuation of quarterly reports.

All Periodic Reports would include information required to be reported under the recordkeeping and reporting provisions for each emission point. For emission points involved in emissions averages, the report would include the results of the calculations of credits and debits for each month and for the quarter.

For continuously monitored parameters, the Periodic Report must report when "excursions" occur. Table 6 shows what constitutes an excursion. A significant difference exists between the proposed rule and the HON. In the HON, a source was allowed a certain number of "excused" excursions each semi-annual period before the source was determined to be out of compliance. In today's proposed rule, the owner or operator is out of compliance with the provisions of this subpart for each excursion.

Periodic Reports would also include results of any performance tests conducted during the reporting period and instances when required inspections revealed problems. Additional information the source is required to report under its operating permit or Implementation Plan would also be described in Periodic Reports.

Periodic Reports for subpart H must be submitted every 6 months, and must contain summary information on the leak detection and repair program, changes to the process unit, changes in monitoring frequency or monitoring alternatives, and/or initiation of a QIP.

7. Other Reports

Other reports required under the proposed rule include: Reports of startup, shutdown, and malfunction; process changes that change the

compliance status of process vents; and requests for extensions of the allowable repair period and notifications of inspections for storage vessels and wastewater.

TABLE 6.—SUMMARY OF EXCURSIONS

Emission source type	Type of excursion	Description of excursion
Continuous Front-End Process Vents.	Daily average exceedance.	When the daily average of a monitored parameter is above the maximum, or below the minimum, established level.
	Insufficient monitoring data.	Insufficient monitoring data is when an owner or operator fails to obtain a valid hour of data for at least 75 percent of the operating hours during an operating day. Four 15-minute parameter measurements must be obtained to constitute a valid hour of data.
Batch Front-End Process Vents.	Batch cycle daily average exceedance.	When the daily average of a monitored parameter is above the maximum, or below the minimum, established level.
	Insufficient monitoring data.	Insufficient monitoring data is when an owner or operator fails to obtain valid parameter measurements for at least 75 percent of the 15-minute periods during all controlled batch cycles during an operating day.
Back-End Process Operations compying by stripping/sampling.	Weekly weighted average.	When the weekly weighted average HAP content of polymers processed is above the level in the standard.
	Insufficient sampling data.	Insufficient sampling data is when an owner or operator fails to sample and/or analyze the residual HAP content for at least 75 percent of the times during the week when sampling is required.
Back-End Process Operations complying by stripping/stripper parameter monitoring.	Weekly weighted average.	When the weekly weighted average HAP content of polymers processed is above the level in the standard.
	Failure to sample	When a sample is not taken and analyzed in situations where a one hourly average stripper parameter value is not in accordance with the established parameter level.
	Insufficient stripper monitoring data.	Insufficient stripper monitoring data is when an owner or operator fails to obtain valid stripper monitoring data for at least 75 percent of grades or batches processing during the week. Stripper operating parameter measurements must be obtained for at least 75 percent of the 15-minute periods during the processing of a grade or batch to constitute valid stripper monitoring data.

In addition, quarterly reporting of the number of batch cycles accomplished for Group 2 batch process vents is required. Every fourth quarterly report would be required to include the total batch cycles accomplished during the previous 12 months, and a statement whether the owner or operator is in compliance with the batch cycle limitation.

V. Discussion of Major Issues

The Administrator welcomes comments from interested persons on any aspect of the proposed standards, and on any statement in the preamble or the referenced supporting documents. The proposed standards were developed on the basis of information available. The Administrator is specifically requesting factual information that may support either the approach taken in the proposed standards or an alternate approach. To receive proper consideration, documentation or data should be provided. Specifically, the EPA is requesting comment and data on the following issues.

As mentioned in section IV.A, the manufacture of some polymeric resins and copolymers is similar in some ways to the manufacture of the elastomers covered by today's proposed rule. The EPA does not intend for today's proposed regulation to cover the production of resins and copolymers, but recognizes that the relatively broad elastomer type definitions in today's proposed regulation could be interpreted to include some styrene butadiene resins and copolymers. The EPA considered distinctions based on several factors, including glass transition temperature, extent of conversion of monomers, process difference, vulcanizability, SIC Codes, and relative ratio of styrene and butadiene monomers, but discovered that each of these has limitations in its ability to accurately and clearly distinguish between elastomers and resins/copolymers. Therefore, the EPA is asking for comment on specific methods or criteria to distinguish between elastomers and resins/copolymers.

The proposed rule allows the monitoring of stripper parameters instead of the daily crumb/latex sampling and analysis. The EPA is request comments on the use of predictive computer modeling to monitor process parameters and predict emissions, instead of parameter monitoring or daily sampling and testing.

The back-end operations provisions in today's proposed regulation requires that samples of crumb rubber or latex be taken at the exit of the stripper, before any opportunity for emission of HAP to the atmosphere. The EPA is requesting comments on the technical feasibility and potential safety problems associated with these sampling requirements.

The EPA is also requesting comments on the format of the back-end provisions limiting the concentration of carbon disulfide in dryer vents at styrene butadiene rubber by emulsion production facilities. Industry representatives have made the EPA aware of other approaches that could be taken to reduce these carbon disulfide emissions, such as a limit on the amount of sulfur-containing shortstopping that could be used. The EPA is interested in comments on the appropriateness of the format for this section of the proposed rule, as well suggestions for alternative approaches.

In today's proposed rule, emissions averaging is only allowed among emission points associated with a single elastomer subcategory. There are instances where more than one subcategory is present at the same plant site. The EPA is interested in specific instances where emissions averaging between subcategories is beneficial and, more broadly, on the merits of allowing emissions averaging across subcategories (or categories) at polymers and resins facilities where multiple subcategories are located. In addition, the EPA is interested in the implementation and legal ramifications of such cross-subcategory averaging.

Also, the EPA is specifically requesting comments on the application of the 20 emission point limit (25, if pollution prevention is used) on all elastomer affected sources located at a single plant site, for purposes of averaging in this proposed rule. The EPA is especially interested in specific situations where this limit will preclude known opportunities within real facilities to generate cost-effective credits. For these cases, the comments would be more useful if they address specifics on the emission and cost quantities computed, with detailed calculations and references.

Industry representatives have also mentioned to the EPA safety problems associated with the application of the subpart H requirements for open-ended valves or lines. The EPA is interested in comments on this issue.

VI. Summary of Environmental, Energy, Cost, and Economic Impacts

This section presents the air, non-air environmental (waste and solid waste), energy, cost, and economic impacts resulting from the control of HAP emissions under this rule.

A. Facilities Affected by These NESHAP

The proposed rule would affect BR, EPI, EPR, HYP, NEO, NBR, PBR, PSR, and SBR facilities that are major sources in themselves, or that are located at a major source. Based on available information, all of the facilities at which these elastomers are produced were judged to be major sources for the purpose of developing these standards. (Final determination of major source status occurs as part of the compliance determination process undertaken by each individual source.)

Impacts are presented relative to a baseline reflecting the level of control in the absence of the rule. The current level of control was well understood, because emissions and control data were collected on each facility included in the analysis. The impacts for existing sources were estimated by bringing each facility's control level up to today's proposed standards.

Impacts are presented relative to a baseline reflecting the level of control in the absence of the rule. The current level of control was well understood, because emissions and control data were collected on each facility included in the analysis. The impacts for existing sources were estimated by bringing each facility's control level up to today's proposed standards.

Impacts are not assessed for new sources because it was projected that no new sources are expected to begin operation through 1999. For more information on this projection, see the New Source Memo in the SID.

B. Primary Air Impacts

Today's proposed standards are estimated to reduce HAP emissions from all existing sources of listed elastomers by 6,400 Mg/yr. This represents a 48 percent reduction from baseline. Table 7 summarizes the HAP emission reductions for each individual subcategory.

C. Other Environmental Impacts

The total criteria air pollutant emissions resulting from process vent and wastewater control of today's proposed standards are estimated to be around 178 Mg/yr, with NO_X emissions from incinerators and boilers accounting for around 155 Mg/yr. Minimal wastewater or solid and hazardous waste impacts are projected.

TABLE 7.—HAP EMISSION REDUCTION BY SUBCATEGORY

Subcategory	HAP Emission Reduction (Mg/yr)						Percentage reduction from baseline
	Storage	Front-end process vents	Back-end process operations	Wastewater operations	Equipment leaks	Total	
Butyl rubber	0	211	0	102	293	606	64
Epichlorohydrin elastomer	4	0	0	0	120	124	77
Ethylene propylene rubber	2	85	979	0	1,020	2,087	62
Halobutyl rubber	64	38	0	0	233	335	26
Hypalon™	0	0	0	0	0	0	0
Neoprene	0	258	0	0	96	354	48
Nitrile butadiene latex	2	0	0	94	41	135	83
Nitrile butadiene rubber	0	0	0	0	364	364	62
Polybutadiene rubber/styrene butadiene rubber by solution	0	0	882	0	637	1,519	44
Polysulfide rubber	0	0	0	0	0	0	0
Styrene butadiene latex	0	22	0	272	332	627	44
Styrene butadiene rubber by emulsion	0	0	195	48	0	243	23
Total	71	615	2,056	516	3,136	6,393	48
Percent of total reduction	(1)	(12)	(31)	(7)	(48)	.....	.....

D. Energy Impacts

The total nationwide energy demands that would result from implementing the process vent and wastewater controls are around 1.10×10^{12} Btu annually.

E. Cost Impacts

Cost impacts include the capital costs of new control equipment, the cost of energy (supplemental fuel, steam, and electricity) required to operate control equipment, operation and maintenance costs, and the cost savings generated by reducing the loss of valuable product in the form of emissions. Also, cost impacts include the costs of monitoring, recordkeeping, and reporting associated with today's proposed standards. Average cost effectiveness ($/Mg of pollutant removed) is also presented as part of cost impacts and is determined by dividing the annual cost by the annual emission reduction. Table 8 summarizes the estimated capital and annual costs and average cost effectiveness by subcategory.

TABLE 8.—SUMMARY OF PROPOSED REGULATORY ALTERNATIVE COSTS

	TCI (1,000$)	TAC (1,000$/yr)	AER (Mg/yr)	CE ($/Mg)
Butyl	$691	$1,318	596	$2,200
Epichlorohydrin	491	241	124	1,900
Ethylene Propylene	5,957	3,732	2,087	1,800
Halobutyl	328	322	335	1,000
Hypalon®	.....	.....	.....	na
Neoprene	560	897	354	2,500
Nitrile Butadiene Latex	465	243	135	1,800
Nitrile Butadiene Rubber	397	444	365	1,200
Polybutadiene/Styrene Butadiene Rubber by Solution	11,780	8,335	1,519	*5,500
Polysulfide	.....	.....	.....	na
Styrene Butadiene Latex	1,480	1,028	627	1,600
Styrene Butadiene Rubber by Emulsion	3,942	2,112	243	*8,700

*This cost-effectiveness is primarily due to the high costs estimated to control back-end process emissions. The costs developed are costs for incineration devices to sufficient back-end vents so that emissions will be reduced to a level equivalent to the level achieved by meeting the residual HAP limit by stripping. Extrapolation of industry estimates of the cost of enhanced stripping place the cost of enhanced stripping as low as 10 percent of the cost of incineration.

Under the proposed rule, it is estimated that total capital costs for existing sources would be $26 million (1989 dollars), and total annual costs would by $18.7 million (1989 dollars) per year. It is expected that the actual compliance cost impacts of the proposed rule would be less than presented because of the potential to use common control devices, upgrade existing control devices, use other less expensive control technologies, implement pollution prevention technologies, or use emissions averaging. Because the effect of such practices is highly site-specific and data were unavailable to estimate how often the lower cost compliance practices could be utilized, it is not possible to quantify the amount by which actual compliance costs would be reduced.

F. Economic Impacts

Economic impacts for the regulatory alternatives analyzed show that the estimated price increases for the affected chemicals range from 0.2 percent for nitrile butadiene latex (NBL) to 2.5 percent for BR. Estimated decreases in production range from 0.7 percent for NBL to 5.0 percent for BR. No closures of facilities are expected as a result of the standard.

Three aspects of the analysis likely lead to an overestimate of the impacts. First, the economic analysis model assumes that all affected firms compete in a national market, though in reality some firms may be protected from competitors by regional or local trade barriers. Second, facilities with the highest control cost per unit of production are assumed to also have the highest baseline production costs per unit. This assumption may not always be true, because the baseline production cost per unit are not known, and thus, the estimated impacts, particularly for the smaller firms, may to too high. Finally, economic impacts may be overstated also because the alternative for halobutyl rubber and butyl rubber that was used in this analysis is more stringent and more costly than the selected regulatory alternative. For more information, consult the Basis and Purpose Document (see the Supplementary Information section near the beginning of the preamble).

VII. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss today's proposed standard in accordance with section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentation on today's proposed standards for BR, EPI, EPR, HYP, NEO, NBR, PBR, PSR, and SBR production should contact the EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Air Docket Section address given in the **ADDRESSES** section of this preamble and should refer to Docket No. A–92–45.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at the EPA's Air Docket Section in Washington, DC (see **ADDRESSES** section of this preamble).

B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by the EPA in the development of this proposed rulemaking. The principal purposes of the docket are:

(1) To allow interested parties to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process; and

(2) To serve as the record in case of judicial review (except for interagency review materials (section 307(d)(7)(A))).

C. Executive Order 12866

Under Executive Order 12866. (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, OMB has notified the EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order. The EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

D. Enhancing the Intergovernmental Partnership Under Executive Order 12875

In compliance with Executive Order 12875 we have involved State, local, and tribal Governments in the development of this rule. These governments are not directly impacted by the rule; i.e., they are not required to purchase control systems to meet the requirements of the rule. However, they will be required to implement the rule; e.g., incorporate the rule into permits and enforce the rule. They will collect permit fees that will be used to offset the resource burden of implementing the rule. Two representatives of the State governments have been members of the EPA Work Group developing the rule. The Work Group has met numerous times, and comments have been solicited from the Work Group members, including the State representatives; and their comments have been carefully considered in the rule development. In addition, all States are encouraged to comment on this proposed rule during the public comment period, and the EPA intends to fully consider these comments in the final rulemaking.

E. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An information collection request (ICR) document has been prepared by the EPA, and a copy may be obtained from Sandy Farmer, Information Policy Branch, EPA, 401 M Street SW. (2136), Washington, DC 20460, or by calling (202) 260–2740. The public reporting burden for this collection of information is estimated to average 587 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, 2136, U. S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (or RFA, Public Law 96–354, September 19, 1980) requires Federal agencies to give special consideration to the impact of regulation on small businesses. The RFA specifies that a final regulatory flexibility analysis must be prepared if a proposed regulation will have a significant economic impact on a substantial number of small entities. To determine whether a final RFA is required, a screening analysis, otherwise known as an initial RFA, is necessary.

Regulatory impacts are considered significant if:

(1) Annual compliance costs increase total costs of production by more than 5 percent, or

(2) Annual compliance costs as a percent of sales are at least 20 percent (percentage points) higher for small entities, or

(3) Capital cost of compliance represents a significant portion of capital available to small entities, or

(4) The requirements of the regulation are likely to result in closures of small entities.

A "substantial number" of small entities is generally considered to be more than 20 percent of the small entities in the affected industry.

Consistent with Small Business Administration (SBA) size standards, a resin producing firm is classified as a small entity if it has less than 1,000 employees, and is unaffiliated with a larger entity. Based upon this, 5 of the 18 firms affected are classified as small.

Data were not readily available to compare compliance costs to production costs (criterion 1) or to capital available to small firms (criterion 3), because the needed data were considered proprietary by those firms. Data were available to examine the remaining two criteria: the potential for closure, and a comparison of compliance costs as a percentage of sales.

No facilities are expected to close; therefore, the fourth criteria was not met. The final criteria was not met either, because the increase in annual compliance costs as a percentage of sales ranged from 0.04 percent to 1.11 percent, and therefore, the increases were not considered significant.

In conclusion, and pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities. The basis for the certification is that the economic impacts for small entities do not meet or exceed the criteria in the Guidelines to the Regulatory Flexibility Act of 1980, as shown above. Further information on the initial RFA is available in the background information package (see **SUPPLEMENTARY INFORMATION** section near the beginning of this preamble).

G. Miscellaneous

In accordance with section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator will welcome comments on all aspects of the proposed regulation, including health, economic and technical issues, and on the proposed test methods.

This regulation will be reviewed 8 years from the date of promulgation. This review will include an assessment of such factors as evaluation of the residual health and environmental risks, any overlap with other programs, the existence of alternative methods, enforceability, improvements in emission control technology and health data, and the recordkeeping and reporting requirements.

List of Subjects in 40 CFR Part 63

Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: May 30, 1995.

Carol M. Browner,

Administrator.

[FR Doc. 95–13924 Filed 6–9–95; 8:45 am]

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40 CFR Part 63

[FRL–5217–5]

Methods for the Polymers and Resins I Rule; Appendix A, Test Methods 310, 312, 313

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Methods 310, 312, and 313 are being proposed in conjunction with the National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Manufacture of Major Elastomers, commonly referred to as the Polymers and Resins I Rule. The proposed methods were adapted from industrial methods submitted by the facilities in the polymers and resins industry and reviewed by the EPA. After consideration of public comments, the methods will be promulgated, in conjunction with the Polymers and Resins I rule, as EPA methods 310, 312, and 313, 40 CFR part 63, appendix A.

Method 310 is applicable for determining the residual amount of solvent (hexane being the most commonly used solvent) and diene monomer in ethylene-propylene terpolymer (EPDM) as produced in the solution polymerization process. Method 312 is applicable for determining the residual amount of styrene in styrene-butadiene rubber (SBR) as produced in the emulsion polymerization process. Method 313 is applicable for determining the residual amount of toluene, dimer, and sty ene in polybutadiene rubber (PBR) and SBR crumb as produced in the solution polymerization process. All three-method analysis is through the use of gas chromatography.

DATES: *Comments.* Comments must be received on or before August 11, 1995.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by July 3, 1995, a public hearing will be held on July 12, 1995 beginning at 10 a.m. Persons interested in attending the hearing should call Ms. Marguerite Thweatt at (919) 541–5607 to verify that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact the EPA by July 3, 1995 by contacting Ms. Marguerite Thweatt, Organic Chemicals Group (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5607.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air Docket Section (LE–131), Attention: Docket No. A–92–44, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The EPA requests that a separate copy also be sent to the contact person listed below. The public hearing, if required, will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina.

The docket is located at the above address in room M–1500, Waterside Mall (ground floor), and may be inspected from 8 a.m. to 4 p.m., Monday through Friday; telephone number (202) 382–7548. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: For information concerning the methods, contact Mr. Solomon Ricks at (919) 541–5242, Emission Measurement Center, Emission Monitoring and Analysis Division (MD–19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The proposed regulatory text of the proposed rule is not included in this **Federal Register** document. The regulatory text is available in Docket No. A–92–44; or a limited number of copies of the regulatory text are available from the EPA contact person designated in this document. This document with the proposed regulatory language is also available on the Technology Transfer Network (TTN) on the EPA's electronic bulletin boards. The TTN provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a telephone call. Dial (919) 541–5742 for up to a 14,400 bps modem. If more information on TTN is needed, call the HELP line at (919) 541–5384.

Other materials related to this rulemaking are available for review in the docket.

I. Introduction

These methods will apply to ethylene-propylene elastomers production, polybutadiene rubber production, and styrene-butadiene rubber and latex production, using stripping technology as the method of compliance. As stated in the Polymers and Resins I rule, if compliance is to be demonstrated by sampling, samples of the stripped wet crumb or stripped latex must be taken immediately after the stripper and analyzed to determine the residual HAP content.

II. Summary of Proposed Methods

A. Method 310

The proposed method is adapted from a test method submitted to the EPA by the Exxon Chemical Company. The basic principle of the method is dissolving an EPDM crumb rubber sample in a polymer dissolving stock solution with an internal heptane standard. The solution is then analyzed for hexane and diene using a gas chromatograph (GC) with a flame ionization detector (FID). The solvent actually used in the production of the rubber is determined by the manufacturer. The particular solvent used by Exxon is hexane, therefore the proposed method is aimed towards the determination of residual hexane in the crumb rubber.

B. Method 312

The proposed method is adapted from a test method submitted to the EPA by the Goodyear Tire and Rubber Company. The basic principle of the method is coagulating the SBR latex sample with an internal standard and analyzing the extract to determine styrene concentration using a GC with a FID. The internal standard is prepared by mixing alpha-methylstyrene with either ethyl alcohol or isopropyl alcohol.

C. Method 313

The proposed method is adapted from a test method submitted to the EPA by the American Synthetic Rubber Corporation (ASRC). The basic principle of the method involves the use of a headspace analyzer in determining the residual amount of toluene, dimer, and styrene in PBR and SBR samples. As is the case with Method 310, the solvent used in the production of the rubber is determined by the manufacturer. ASRC uses toluene as its manufacturing solvent, therefore this proposed method highlights the determination of residual toluene as the solvent.

III. Adminstrative Requirements

A. Public Hearing

In accordance with section 307(d)(5) of the Clean Air Act as amended by Pub. L. 101–549, the Clean Air Act Amendments of 1990, a public hearing will be held, if requested, to discuss the proposed methods. Persons wishing to make oral presentations should contact EPA at the address given in the **ADDRESSES** section of the preamble in the Polymers and Resins I rule. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement with the EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the Air Docket Section address given in the **ADDRESSES** section of the Polymers and Resins I rule.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Air Docket Section in Washington, D.C.

B. Docket

The docket is an organized and complete file for all information submitted or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review (except for interagency review materials) (Clean Air Act section 307(d)(7)(A)).

C. Office of Management and Budget Review

Under Executive Order 12866 (58 FR 51735 October 4, 1993)), the EPA is required to judge whether a regulation is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of this Executive Order to prepare a regulatory impact analysis (RIA). The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

D. Regulatory Flexibility Act Compliance

The Regulatory Flexibility Act (RFA) of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The RFA specifically requires the completion of an analysis in those instances where small business impacts are possible. This rulemaking does not impose emission measurement requirements beyond those specified in the current regulations, nor does it change any emission standard. Because this rulemaking imposes no adverse economic impacts, an analysis has not been conducted.

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant impact on a substantial number of small entities because no additional cost will be incurred by such entities.

E. Paperwork Reduction Act

The rule does not change any information collection requirements subject of Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for significantly or uniquely impacted by the rule.

EPA has determined that the action proposed today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

G. Statutory Authority

The statutory authority for this proposal is provided by section 112 of the Clean Air Act, as amended, 42 U.S.C., 7412.

Dated: May 30, 1995.

Carol M. Browner,

Administrator.

[FR Doc. 95–13923 Filed 6–9–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–75, RM–8615]

Radio Broadcasting Services; Blossom, TX, and DeQueen, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Red River Wireless Communications proposing the allotment of Channel 224C2 to Blossom, Texas, as the community's first local aural transmission service. In order to accommodate the allotment of Channel 224C2 to Blossom, we also propose to substitute Channel 227A for Channel 224A at DeQueen, Arkansas, and to modify the license of Station KDQN(FM) accordingly. The licensees of Station KDQN(FM), DeQueen, Arkansas, has been ordered to show cause as to why their license should not be modified as described above. *See* Supplemental Information, *infra.*

DATES: Comments must be filed on or before July 28, 1995, and reply comments on or before August 14, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: William J. Pennington, III, 5519 Rockingham Road-East, Greensboro, North Carolina 27407 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–75, adopted May 25, 1995, and released June 6, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Channel 224C2 and Channel 227A can be allotted to Blossom, Texas, and DeQueen, Arkansas, respectively, in compliance with the Commission's minimum distance separation requirements. Channel 224C2 can be allotted to Blossom with a site restriction of 11.0 kilometers (6.8 miles) east in order to avoid a short-spacing conflict with a pending proposal to allot Channel 225A at Bells, Texas. The coordinates for Channel 224C2 at Blossom are 33–40–07 and 95–16–13. Channel 227A can be allotted to DeQueen, Arkansas, and can be used at Station KDQN(FM)'s licensed site. The coordinates for Channel 227A at DeQueen are 34–01–57 and 94–19–43.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–14275 Filed 6–9–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 80–9; Notice 11]

RIN 2127–AF59

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes that the rear of truck tractors be equipped with retroreflective sheeting similar to that required for the rear of heavy trailers. The agency tentatively concludes that the addition of such a conspicuity treatment would result in a reduction of deaths, injuries, and property costs.

DATES: Comments are due September 11, 1995. The amendments would be effective 120 days after publication of the final rule in the **Federal Register**.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, 400 Seventh Street, SW., Washington, DC 20590 (Docket hours are from 9:30 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Patrick Boyd, Office of Rulemaking, NHTSA (202–366–6346).

SUPPLEMENTARY INFORMATION:

Background

On December 10, 1992, NHTSA published a final rule amending Federal Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment* to add paragraph S5.7 *Conspicuity Systems*. (57 FR 58406). The rule has required, effective December 1, 1993, that large trailers, particularly the type that is hauled by truck tractors, be provided with reflective marking (either retroreflective tape or reflex reflectors) to enhance their detectability at night or under other conditions of reduced visibility. The preamble to the rule explained that the conspicuity requirements applied only to large trailers because most fatal accidents at night in which a truck is struck involves a truck tractor-trailer combination vehicle. But the notice also mentioned that the night accident involvement rate of truck tractors alone was much greater than that of other single unit trucks. The agency announced that it was considering truck tractors for future conspicuity rulemaking.

As part of its petition for reconsideration of the final rule, the Insurance Institute for Highway Safety (IIHS) asked that the conspicuity requirement be extended to single unit trucks and to truck tractors, citing accident statistics in support of its request.

NHTSA has tentatively concluded that motor vehicle safety would be enhanced if a conspicuity marking scheme were extended to truck tractors. Under 49 CFR 571.3(b), a truck tractor "means a truck designed primarily for drawing other motor vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and the load so drawn." Far fewer crashes involve vehicles colliding with the rear of truck tractors than with the rear of trailers, presumably because of a much lower exposure of tractors operating without trailers. However, NHTSA's data indicate that a higher proportion of rear end crashes involving truck tractors, including fatal crashes, occur at night than for either trailers or trucks.

It is obvious that truck tractors are less conspicuous at night from the rear than other motor vehicles. They are subject to fewer rear lighting requirements of Standard No. 108. Unlike other vehicles over 80 inches wide, tractors are not required to have rear side marker lamps, rear clearance lamps, or rear identification lamps. If double sided turn signal lamps are used on the front fenders, truck tractors are not required to have rear turn signal lamps either.

The only remaining rear marking lamps are the taillamps. These are usually mounted closer together on truck tractors than the taillamps are on other motor vehicles. Ongoing research at UMTRI concerning the relative placement of lower beam and upper beam headlamps demonstrates that the distance perception of motorists is distorted when viewing a vehicle with narrow lamp spacing. The taillamps on truck tractors are generally spaced closer together than the headlamps in UMTRI's study, and may have more influence on driving errors.

Since much of a truck tractor's operational life is spent in hauling trailers, it does not appear cost beneficial to require it to have the full panoply of rear lighting equipment required for other motor vehicles. Further, the configuration of truck tractors presents practicability problems for the mounting of the tail, stop, and turn signal lamps at the locations specified for other vehicles. However, the inexpensive and convenient use of retroreflective material would improve the detectability of the rear of truck tractors when they are being operated or parked without trailers. The familiarity of the public with the Federal conspicuity treatment applied to large trailers should improve the recognition of similarly treated truck tractors and make such a treatment more effective for accident prevention than it would have been in the past.

Proposed Conspicuity Treatment for Rear of Tractor Trailers

In view of the relatively short length of truck tractors and the fact that they are equipped with a full complement of lamps at the front, NHTSA is proposing a conspicuity treatment for the rear only. Retroreflective material would be applied in locations not obscured by vehicle equipment in a rear orthogonal view. As with large trailers, two strips of white material 300 mm in length would be applied horizontally and vertically to the right and left upper contours of the body, as close to the top of the body and as far apart as practicable. As with the presently existing restriction for red reflex reflectors on truck tractors (paragraph S5.3.1.2), the strips on the cab rear would be mounted not less than 100 mm above the height of the rear tires. Relocation of the material would be allowed to avoid obscuration by vehicle equipment. If relocation is required for one side of the body but not the other, the manufacturer may relocate the other strips to achieve a symmetrical effect.

To indicate the overall width of the truck tractor, two strips of retroreflective sheeting, 600 mm in length, of alternating colors of red and white would also be required on the rear, to be mounted as horizontal as practicable and as far apart as practicable, not more than 1525 mm above the road surface. This sheeting could be applied to the truck body, or, if the tractor is so equipped, to the mud flaps or mud flap support brackets. However, if the strips are located on the mud flaps, they must be placed not lower than 300 mm below the mud flap support bracket to avoid excessive movement. Since the tire diameter, and consequently the distance from the mud flap support to the road surface, is nominally 1 meter, the lowest practicable location of the strips is about 700 mm above the road surface.

Under the proposal, manufacturers of truck tractors would have the option of using an array of reflex reflectors on the rear instead of retroreflective sheeting, the same option that is available to trailer manufacturers. However, reflex reflectors would still be required by Table I of Standard No. 108, in addition to the conspicuity material, whether sheeting or reflectors, because

paragraphs S5.1.1.1 and S5.1.1.2 of Standard No. 108 excuse truck tractors from the full complement of rear lighting equipment required of trucks.

Presently, mounting of conspicuity material or reflectors on mud flaps is prohibited by section S5.3.1. This requires lighting equipment to be "securely mounted on a rigid part of the vehicle other than glazing that is not designed to be removed except for repair". In the past, NHTSA has deemed mudflaps not to be a "rigid part of the vehicle." However, the prohibition is subject to exceptions "in succeeding paragraphs of S5.3.1 and S7", and NHTSA proposes adding as exceptions tape or reflectors on mudflaps added in compliance with S5.7.

Estimate of Benefits

The benefits estimated for the trailer conspicuity regulation offer a reasonable basis for estimating the benefits of a similar regulation for truck tractors. The agency concluded that the likely result of adding conspicuity treatment to trailers was the prevention of 25 percent of rear collisions, and a significant reduction in the severity of the remaining collisions. Although the required rear lighting for truck tractors is less than is required for a trailer, NHTSA believes that the added degree of conspicuity of a tractor that would be provided by retroreflective sheeting is not less than the relative improvement in conspicuity of a trailer provided by its treatment. Thus, it is reasonable to assume a similar rate of crash prevention.

NHTSA estimated that the property damage savings of preventing a crash into the rear end of a trailer, in 1992 dollars, as $10,869, and, for damage mitigation, as $2,075 (in 1994 dollars, $11,434 and $2,183 respectively). The agency believes that, when the entire truck tractor population is equipped with conspicuity treatment, on an annual basis 276 collisions can be prevented, resulting in a savings of $3,156,000, and that 829 collisions can be mitigated, resulting in a savings of $1,800,000, or total property damage benefits of $4,966,000. If no benefits were presumed for any vehicle older than 15 years, the remaining property damage benefits would be $4,755,000. The present value of these future benefits of a model year fleet would range from $4,313,000 to $3,115,000 under discount rate assumptions of 2 percent to 10 percent.

However, the primary purposes of a tractor conspicuity regulation would be to save lives and reduce the severity of injuries. If fatalities involving rear collisions of truck tractors can be reduced by 15 to 25 percent, there would be 4 to 8 fewer deaths attributable to this type of accident. The agency also believes that there would be 107 to 178 fewer injuries when full coverage of the tractor population is achieved.

Estimate of Costs

In estimating costs, NHTSA has used a price for retroreflective material of $0.675 a linear foot, although market pressures may have reduced the cost to $0.60 for high volume users. Approximately 8 linear feet of material (7.8 feet actually) would be required to comply. NHTSA is also estimating a labor rate of $22.50 an hour, and an installation time of 10 minutes for the material.

On this basis, NHTSA estimates a manufacturer's cost of $9.15 to apply conspicuity treatment to the tractor body, and a consumer cost of $13.82, applying a consumer cost factor of 1.51. If the manufacturer chooses to apply the treatment to mud flaps, two mounting plates would be required, at an additional cost to the manufacturer of $1.11 each, or $2.22, a total cost to the consumer of $3.35. Thus, the cost to the manufacturer would range between $9.15 and $11.37, and to the consumer, between $12.31 and $17.17. Using this latter figure, and estimating an annual production of 150,000 for truck tractors, the agency estimated that the total annual cost impact of this regulation would not exceed $2,575,500. The present value of future property damage reduction benefits from this regulation in property damage alone are expected to be at least $3,115,000 with a discount rate of 10 percent and more if a lower discount rate prevails. The prevention of deaths and injuries would be achieved with no additional cost.

Request for Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Effective Date

NHTSA estimates that a final rule would become effective around January 1, 1997, but intends that the actual date will be the first day of the first month beginning following 120 days after publication of the final rule in the **Federal Register**. Because compliance with the final rule can be achieved by simple application of retroreflective sheeting, which does not require any structural modifications or changes in tooling, and because of the importance of reducing deaths, injuries, and property damage at the earliest feasible time, the agency tentatively finds for good cause shown that an effective date for the amendments to Standard No. 108 that is earlier than 180 days after their issuance would be in the public interest.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This action has not been reviewed under Executive Order 12866. It has been determined that the rulemaking action is not significant under Department of Transportation regulatory policies and procedures. Implementation of the rule would not

have a yearly cost impact that exceeds $2,500,000 in the aggregate. Although these cost impacts are not deemed significant and preparation of a full regulatory evaluation is not warranted, the agency has prepared a preliminary regulatory evaluation which has been placed in the docket.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. It is not anticipated that a final rule based on this proposal would have a significant effect upon the environment. Compliance would require the application of not more than 8 feet of retroreflective tape to the rear (1,200,000 feet for an estimated year's production of 150,000 truck tractors), a material currently in use with no known negative environmental effects.

Regulatory Flexibility Act

The agency has also considered the impacts of this rulemaking action in relation to the Regulatory Flexibility Act. I certify that this rulemaking action would not have a significant economic impact upon a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles, those affected by the rulemaking action, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Further, small organizations and governmental jurisdictions would not be significantly affected because the price of new truck tractors would be only minimally increased. An increase of less than $16 per vehicle is expected to be more than offset by savings in repair to it over its life.

Executive Order 12612 (Federalism)

This rulemaking action has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and NHTSA has determined that this rulemaking action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice

A final rule based on this proposal would not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 30163 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, 49 CFR part 571 would be amended as follows:

1. The authority citation for part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30162; delegation of authority at 49 CFR 1.50.

§ 571.108 [Amended]

2. Section 571.108 would be amended by:

(a) revising paragraphs S5.3.1, S5.7, S5.7.1, S5.7.1.3(a), S5.7.1.4 (a) and (b), and the headings of S5.7.1.4.1 and S5.7.1.4.2,

(b) adding new paragraph S5.7.1.4.3,

(c) revising paragraphs S5.7.2 and S5.7.3, and

(d) adding Figure 31, to read as follows:

§ 571.108 Motor Vehicle Safety Standard No. 108 Lamps, reflective devices, and associated equipment.

* * * * *

S5.3.1 Except as provided in succeeding paragraphs of S5.3.1, and paragraphs S5.7 and S7, each lamp, reflective device, and item of associated equipment shall be securely mounted on a rigid part of the vehicle other than glazing that is not designed to be removed except for repair, in accordance with the requirements of Table I and Table III, as applicable, and in the location specified in Table II (multipurpose passenger vehicles, trucks, trailers, and buses 80 or more inches in overall width) or Table IV (all passenger cars, and motorcycles, and multi-purpose passenger vehicles, truck, trailers and buses less than 80 inches in overall width), as applicable.

* * * * *

S5.7 *Conspicuity Systems.* Each trailer of 80 or more inches overall width, and with a GVWR over 10,000 lbs., manufactured on or after December 1, 1993, except a trailer designed exclusively for living or office use, and each truck tractor manufactured on or after _____ 1, 199x, shall be equipped with either retroreflective sheeting that meets the requirements of S5.7.1, reflex reflectors that meet the requirements of S5.7.2, or a combination of retroreflective sheeting that meet the requirement of S5.7.3.

S5.7.1 *Retroreflective sheeting.* Each trailer or truck tractor to which S5.7 applies that does not conform to S5.7.2 or S5.7.3 shall be equipped with retroreflective sheeting that conforms to the requirements specified in S5.7.1.1 through S5.7.1.5.

* * * * *

S5.7.1.3 *Sheeting pattern, dimensions, and relative coefficients of retroreflection.*

(a) Retroreflective sheeting shall be applied in a pattern of alternating white and red color segments to the side and rear of each trailer, and the rear of each truck tractor, and in white to the upper rear corners of each trailer and truck tractor, in the locations specified in S5.7.1.4, and Figures 30–1 through 30–4, and Figure 31, as appropriate.

* * * * *

S5.7.1.4 *Location.* (a) Retroreflective sheeting shall be applied to each trailer and truck tractor as specified below, but need not be applied to discontinuous surfaces such as outside ribs, stake post pickets on platform trailers, and external protruding beams, or to items of equipment such as door hinges and lamp bodies.

(b) The edge of white sheeting shall be not be located closer than 75 mm to the edge of the luminous lens area of any red or amber lamp that is required by this standard.

* * * * *

S5.7.1.4.1 *Rear of trailers.* * * *

S5.7.1.4.2 *Side of trailers.* * * *

S5.7.1.4.3 *Rear of truck tractors.* Retroreflective sheeting shall be applied to the rear of each truck tractor as follows, in locations not obscured by vehicle equipment as determined in a rear orthogonal view:

(a) Element 1: Two strips of sheeting in alternating colors, each not less than 600 mm long, located as close as practicable to the edges of the truck cab, or the mud flaps, or the mud flap support brackets, to mark the width of the truck tractor. The strips shall be mounted as horizontal as practicable, and as close as practicable to not less than 375 mm and not more than 1525 mm above the road surface at the stripe centerline. Strips on mud flaps shall be mounted not lower than 300 mm below the lower edge of the mud flap support bracket. Strips on the truck cab shall be mounted not less than 100 mm above the height of the rear tires.

(b) Element 2: Two pairs of white strips of sheeting, each pair consisting of strips 300 mm long, applied horizontally and vertically to the right and left upper contours of the body, as close to the top of the body and as far apart as practicable. If one pair must be relocated to avoid obscuration by vehicle equipment, the other pair may be relocated in order to be mounted symmetrically.

S5.7.2 *Reflex Reflectors.* Each trailer or truck tractor to which S5.7 applies that does not conform to S5.7.1 or S5.7.3 shall be equipped with reflex reflectors in accordance with this section.

* * * * *

S5.7.3 *Combination of sheeting and reflectors.* Each trailer or truck tractor to which S5.7 applies that does not conform to S5.7.1 or S5.7.2, shall be equipped with retroreflective materials that meet the requirements of S5.7.1 except that reflex reflectors that meet the requirements of S5.7.2.1, and that are installed in accordance with S5.7.2.2, may be used instead of any corresponding element of retroreflective sheeting located as required by S5.7.1.4.

* * * * *

BILLING CODE 4910–59–P

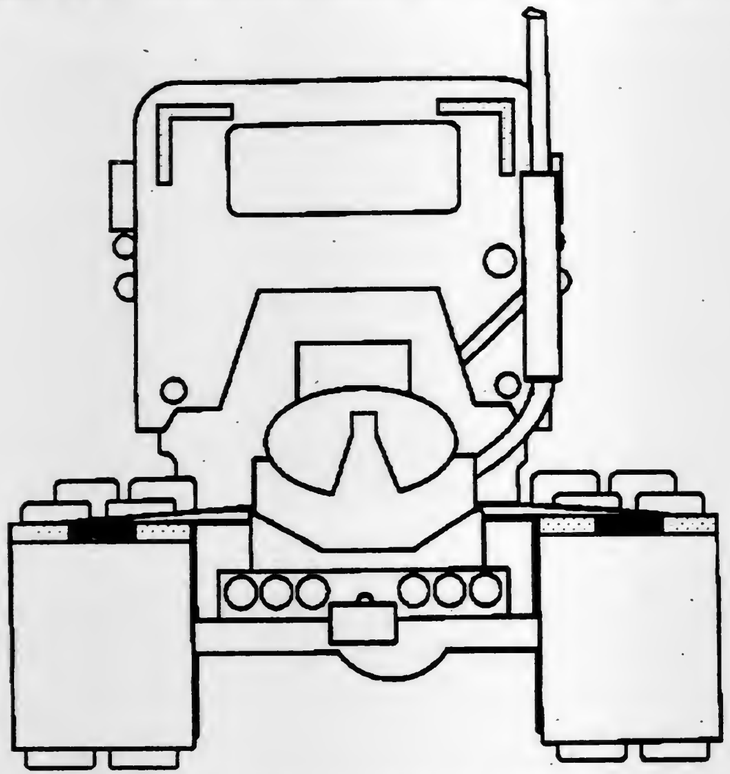


Figure 31 - Truck Tractor Conspicuity Treatment Example

Issued on May 23, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–14246 Filed 6–9–95; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Recycled Petition Finding for a Petition To List the Bull Trout as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month recycled petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 12-month recycled petition finding for a petition to list the bull trout (*Salvelinus confluentus*) under the Endangered Species Act of 1973, as amended. The Service finds that sufficient information is available on the biological vulnerability and threats to the species to support a warranted finding to list bull trout as a distinct population segment within the conterminous United States. After review of all available scientific and commercial information, the Service finds that listing this species is warranted, but precluded due to other higher priority listing actions. The Service continues to seek data and comments from the public on the status and threats to this species.

DATES: The finding announced in this document was made on May 31, 1995. Comments and information may be submitted until further notice.

ADDRESSES: Data, information, comments, or questions concerning this finding should be submitted to the Idaho State Supervisor, U.S. Fish and Wildlife Service, 4696 Overland Road, Room 576, Boise, Idaho, 83705. The petition, finding, and supporting data are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Idaho State Supervisor (see **ADDRESSES** section), at 208/334–1931.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B)(iii) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), provides that the Service may make "warranted but precluded" findings on petitions to revise the Lists of Endangered and Threatened Wildlife and Plants if an immediate proposed rule is precluded by other pending proposals. Section 4(b)(3)(C)(i) of Act requires that any petition for which a 12-month finding of "warranted but precluded" is made should be treated as if it was resubmitted on the date such finding was made. As a result, the Service must make one of the findings described in section 4(b)(3)(B) within 12 months of the most recent "warranted but precluded" finding (50 CFR 424.14(b)(4)). On June 10, 1994 the Service published a notice of petition finding (59 FR 30254) that determined listing a distinct vertebrate population segment of bull trout (*Salvelinus confluentus*) residing in the conterminous United States is "warranted, but precluded" due to other higher priority listing actions. This finding was made on a petition received October 30, 1992 from the Alliance for the Wild Rockies, Inc., Friends of the Wild Swan, and Swan View Coalition requesting that the bull trout be listed as an endangered species throughout its range. The Service determined that the threats facing the bull trout were imminent but of moderate magnitude. Therefore, in accordance with the Service's listing priority system (48 FR 43098), the listing priority number assigned to this population was 9.

Following the June 10, 1994 "warranted but precluded" finding (59 FR 30254), the Service solicited and continued to evaluate new information regarding the status of bull trout, as well as information pertinent to the present and future threats facing the species. In January 1995, the Service reevaluated the listing priority for the bull trout in the conterminous United States. At this time, there was uncertainty over the status of pending State and Federal actions, such as PACFISH and a new emphasis on timber harvest proposals in areas damaged by fires and insects. Following this reevaluation, the Service concluded that threats previously considered moderate in several watersheds were now of high magnitude and that the majority of the populations were subject to imminent threats of high magnitude. On January 31, 1995, the service elevated the listing priority for the species from 9 to 3.

In evaluating the current status of the bull trout to make the required annual recycled petition finding, information received from a variety of agency and private sources has been fully considered. The Service has carefully assessed the best scientific and commercial information available and has determined that sufficient information exists on the biological vulnerability and threats to the species to continue to support a warranted finding to list bull trout within the conterminous United States. While some of the remaining bull trout populations appear to be stable, all populations with one exception face one or more threats that may result in their future decline.

In conjunction with the determination that listing the bull trout within the conterminous United States was warranted, the Service evaluated the magnitude and imminence of threats faced by bull trout populations in over 60 watersheds in the course of assigning a priority for listing. While watersheds may contain several populations, the Service used watersheds as the evaluation units because in most cases threats in a watershed apply to all populations.

Actions recently taken at both the Federal and State levels are beginning to reverse the long-term decline of bull trout. The Forest Service and Bureau of Land Management, by implementing the President's Forest Management Plan, PACFISH, the Inland Native Fish Strategy and the Eastside Columbia Basin Environmental Impact Statements' recommendations, have initiated activities that will reduce the magnitude of threats to bull trout. In addition, the States of Idaho, Montana, Oregon, and Washington, through their development of bull troup protection agreements, are setting in place activities that will assist the recovery of the bull trout. The Service believes that these activities provide conservation actions and management strategies that will recover and sustain populations of the bull trout.

Based on an evaluation of the bull trout's status in the known watersheds of occurrence and actions undertaken by Federal agencies and the States, the Service's evaluation has determined that the majority of bull trout populations within the conterminous United States faces imminent threats of moderate magnitude. Therefore, bull trout populations residing within the conterminous United States have been assigned a listing priority number of 9.

Recently enacted legislation (P.L. 104–6) imposed a listing moratium of the remainder of Fiscal Year 1995, and rescinded $1.5 million from the Service's Fiscal Year 1995 listing funds. In response to this legislation, the Service will focus its limited resources on category 1 species, especially those with listing priority numbers of 2 or 3. Therefore, a listing proposal for bull trout in the conterminous United States remains "warranted but precluded."

Section 4(b)(3)(B)(iii) of the Act provides that the Service may make "warranted but precluded" findings only if it can demonstrate that expeditious progress is being made on other listing actions. Since October 1, 1993, the Service has proposed the

listing of 118 species and finalized the listing of 182 species. The Service believes this demonstrates expeditious progress on other listings.

References Cited

A complete list of references used in the preparation of this finding is available, upon request, from the Idaho State Office (see **ADDRESSES** section).

Author. The primary authors of this document are Patricia Klahr and Steve Duke (see **ADDRESSES** section); Bob Hallock, Northern Idaho Office, 11103 East Montgomery Drive, Suite 2, Spokane, WA; Lori Nordstrom, Helena Field Office, P.O. Box 10023, Helena, MT; Shelley Spalding, Washington State Office, 3704 Griffin Lane SE, Suite 102, Olympia, WA.

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*)

Dated: June 6, 1995.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 95–14284 Filed 6–9–95; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding for a Petition To List the Plant Lathyrus grimesii (Grimes vetchling) as Endangered in Nevada

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: The Fish and Wildlife Service (Service) announces a 12-month finding for a petition to list *Lathyrus grimesii* (Grimes vetchling) as an endangered species under the emergency provisions of the Endangered Species Act of 1973, as amended (Act). After review of all available scientific and commercial information concerning the status of the species, the Service finds that listing *Lathyrus grimesii* is not warranted.

DATES: The finding announced in this document was made on May 2, 1995.

ADDRESSES: Data, information, comments, or questions concerning this petition should be submitted to the Supervisor, U.S. Fish and Wildlife Service, Ecological Services Field Office, 4600 Kietzke Lane, Building C–125, Reno, Nevada 89502. The petition, findings, and supporting data are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Janet Bair, staff biologist, at the above address, or telephone 702–784–5227.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information, a finding be made within 12 months of the date of receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals. Such 12-month findings are to be published in the **Federal Register**.

On May 19, 1993, the Service received a petition dated May 10, 1993, to emergency list the plant *Lathyrus grimesii* (Grimes vetchling) as an endangered species. The Service's finding that substantial information existed indicating the petitioned action may be warranted, was published in the **Federal Register** on July 11, 1994 (59 FR 35304). A status review was initiated at that time.

Lathyrus grimesii, a member of the pea family (Fabaceae), is a perennial herb known only from the Independence Mountains and vicinity in Elko County, Nevada. At the time the petition was submitted to the Service, the total distribution of *Lathyrus grimesii* was believed to be restricted to three or four small populations located within an area smaller than 2 square kilometers (approximately 1 square mile) in the Dorsey Creek drainage of the Independence Mountains. All but one of these populations were located in the immediate vicinity of an area proposed for gold mine exploration.

Based on these data, the petition and supporting information suggested all known populations of *Lathyrus grimesii* were likely to be affected by gold exploration or mine development. However, the Forest Service, in conjunction with other agencies and concerned entities, modified the project so as to avoid all direct and most indirect impacts to the *Lathyrus grimesii* populations. In December 1993 the Service was notified that minerals exploration in this area was not successful and no further exploration was planned.

Data collected by Humboldt National Forest, Independence Mining Company, Inc., and Nevada Natural Heritage Program during the summers of 1993 and 1994 indicates that *Lathyrus grimesii* is more abundant than previously believed. Aerial and ground field surveys resulted in identification of 67 total populations of *Lathyrus grimesii*, located in nine separate drainages in the Independence Mountains. These populations collectively cover approximately 150 to 200 hectares (400 to 500 acres), distributed over an area of about 130 square kilometers (50 square miles) (James Morefield, Nevada Natural Heritage Program, *in litt.* 1994). In addition, a separate population occurs on Wilson Peak in the neighboring Bull Run Mountains. Approximately 30 percent of the known populations occur on private lands, while approximately 70 percent occur on lands under Forest Service management. A very small proportion of the known populations (approximately 1 percent) occur on lands managed by the Bureau of Land Management in the Bull Run Mountains.

The existence of disseminated gold has resulted in mine claims throughout the Independence Mountains as well as exploration projects and mine development in several areas. The recently discovered populations of *Lathyrus grimesii* occur on lands with high mineral potential (Dean Morgan, Humboldt NF, Mountain City Ranger District, *in litt.* 1994). However, while mine claims have been established in this area, exploration has not occurred. The few roads into the area are located primarily on private inholdings. Any extensive exploration of this area will require building new roads or agreements with the private landowners for access. Humboldt National Forest has not received any new proposals for mine exploration, development, or associated activities in areas populated by *Lathyrus grimesii*.

Livestock grazing is presently a dominant land use in the vicinity of the recently discovered populations. Grazing effects were noted as moderate to severe at some sites in 1994, and cattle were observed grazing on the dried stems of *Lathyrus grimesii* within one population (James Morefield, *in litt.* 1994). Grazing of green stems during flowering and fruiting has not been observed. Humboldt National Forest has notified ranchers of the presence of *Lathyrus grimesii* and advised them to minimize livestock movements through the populations (Jim Nelson, Humboldt NF, *in litt.*, 1994).

The petition indicated that *Lathyrus grimesii* qualified for listing, in part, because of the inadequacy of existing regulatory mechanisms. In April 1994, *Lathyrus grimesii* was added to the Forest Service's Intermountain Region's list of sensitive plants. The Forest Service has authority to develop and implement management practices to insure sensitive species do not become threatened or endangered because of Forest Service actions. The Forest Service also has authority to require that new project proposals in or near *Lathyrus grimesii* populations on Forest Service lands contain mitigation measures to insure population stability. Since the petition was received by the Fish and Wildlife Service, Humboldt National Forest has initiated various conservation activities involving *Lathyrus grimesii*, including population monitoring and seed collection. They have also expressed willingness to develop and implement a conservation agreement and strategy for *Lathyrus grimesii* (Jim Nelson, *in litt.* 1994). The species currently receives no protection by the State of Nevada, therefore, no regulatory mechanisms are in place to protect its populations or habitats on private lands. Major threats to populations located on private lands have not been identified.

Prior to the discovery of new populations of *Lathyrus grimesii*, the limited distribution of the species in the Dorsey Creek drainage and its occurrence on steep, unstable slopes indicated the species was vulnerable to stochastic extinction through natural or human-induced catastrophic events such as landslides and erosion. Recent discoveries of the species in multiple drainages indicates that stochastic extinction is unlikely.

The presence of exotic weeds within populations of *Lathyrus grimesii* may pose a threat to individual populations, but currently do not pose a threat to the continued existence of the species. The noxious *Euphorbia esula* (weed leafy spurge) was discovered in one *Lathyrus grimesii* population in the Deep Creek drainage, and *Bromus tectorum* (cheatgrass) was present in at least half of the populations surveyed in 1994. Presence of noxious weeds in these areas may be attributable to poor range condition.

After review of all scientific and commercial information available on *Lathyrus grimesii*, the Service has determined that listing *Lathyrus grimesii* is not warranted at this time. This decision is based on information contained in the petition and otherwise available to the Service at the time the 12-month finding was made. The Service recognizes that additional information on biology, threats to populations and habitats, and future conservation actions is necessary to keep track of the species' status. *Lathyrus grimesii* is, thus, retained in category 2 candidate status until sufficient information becomes available to base a decision on whether to retain or delete the species from the list of candidates. If additional data become available in the future, the Service may reassess the need for listing.

Author. The primary author of this document is Janet Bair (see **ADDRESSES** section above).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: May 2, 1995.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 95–14357 Filed 6–9–95; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition To List the Oahu Elepaio From the Island of Oahu, Hawaii, With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding on a petition to add the Oahu elepaio (*Chasiempis sandwichensis gayi*) to the List of Endangered and Threatened Wildlife under the Endangered Species Act of 1973 as amended. The Service finds that the petition presents substantial information indicating that listing this species may be warranted. A status review is initiated and a 12-month finding will be prepared. In addition, the Service is requesting comments on the petition to designate critical habitat for the species.

DATES: The finding announced in this document was made on May 23, 1995. Information and comments concerning this petition finding must be submitted by August 11, 1995 to be considered in the status review of this species.

ADDRESSES: Send comments and materials concerning this petition to Robert P. Smith, Ecoregion Manager, Pacific Islands Ecoregion, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 6307, P.O. Box 50167, Honolulu, Hawaii 96850. The petition finding, supporting data, comments, and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert P. Smith (see **ADDRESSES** section) (808–541–2749).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973 as amended (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. This finding is to be based on the best scientific and commercial information available to the Service at the time the finding is made. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the Service finds that a petition presents substantial information indicating that a requested action may be warranted, then the Service initiates a status review on that species, which results in a finding that the petitioned action is unwarranted, warranted, or warranted but precluded due to pending proposals to list other species. In addition, upon receiving a petition to designate critical habitat the Service is to promptly conduct a review in accordance with the Administrative Procedure Act and applicable Department of Interior regulations.

The Service has made a 90-day finding on a petition to list Oahu elepaio (*Chasiempis sandwichensis gayi*). On March 22, 1994, the Service received a petition dated March 21, 1994, from Mr. Vaughn Sherwood of Honolulu, Hawaii, to list the Oahu elepaio (*Chasiempis sandwichensis gayi*) as an endangered or threatened species with critical habitat. The Oahu elepaio is an endemic subspecies in the family *Muscicapidae* (Old world flycatchers) found only on the island of Oahu, Hawaii (Berger 1981, Pratt *et al.* 1987). Threats to the species include habitat degradation and exotic diseases, predators, and competitors.

The Service has reviewed the petition, literature cited in the petition, other available literature and information, and consulted with biologists familiar with the Oahu elepaio. On the basis of the best scientific and commercial information available, the Service finds the petition presents substantial information that listing this taxon may be warranted. This finding is based upon the following information:

1. Present and threatened destruction, modification, and curtailment of habitat is caused by highway construction projects, the activities of introduced alien pigs, and the spread of introduced alien weeds (Ellis *et al.* 1993, Sherwood 1993).

2. Diseases such as avian malaria and avian pox are thought to have contributed to the decline of this taxon (Ellis *et al.* 1993). Mosquitoes carrying alien diseases are now found throughout the entire range of the Oahu elepaio.

3. Inadequacy of existing regulatory mechanisms to prevent continued loss of habitat associated with highway construction projects. This taxon currently receives no protection from federal or state activities which adversely affect its habitat.

4. Other factors, including the relatively low number of individuals (ca. 200–500 birds) places this subspecies at risk of extinction due to inbreeding, stochastic events, and catastrophes (Ellis *et al.* 1993).

More detailed information may be obtained from the Service's Pacific Islands Ecoregion. The Service is requesting comments on the petition to designate critical habitat for this species. Interested persons or parties are invited to submit data, information, and comments on the Oahu elepaio (see **ADDRESSES** section above).

References Cited

Berger, A.J. 1981. Hawaiian Birdlife. Second Edition. University of Hawaii Press, Honolulu. 260 pp.

Ellis, S., C. Kuehler, R. Lacy, K. Hughes, and U.S. Seal. 1993. Hawaiian Forest Birds Conservation Assessment and Management Plan. Captive Breeding Specialist Group.

Pratt, H.D., P.L. Bruner, and D.G. Berrett. 1987. The birds of Hawaii and the Tropical Pacific. Princeton University Press, Princeton. 409 pp.

Sherwood, V. 1993. The Oahu 'elepaio (*Chasiempis sandwichensis gayi*): population histories and habitat: island of Oahu, Hawaii. Honors Thesis, University of Hawaii, Manoa. 110 pp.

Author. The author of this document is Dr. Loyal A. Mehrhoff, Ecological Services, Pacific Islands Ecoregion, (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: May 23, 1995.

Bruce Blanchard,

Deputy Director, Fish and Wildlife Service.

[FR Doc. 95–14249 Filed 6–9–95; 8:45 am]

BILLING CODE 4310–55–P

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition To List the Grass Lake/Green Cove Creek Population of the Olympic Mudminnow as Endangered and To Designate Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: The Fish and Wildlife Service (Service) announces a 90-day finding for a petition to list the Grass Lake/Green Cover Creek population of the Olympic mudminnow (*Novumbra hubbsi*) under the Endangered Species Act of 1973, as amended. The Service finds that the petition did not present substantial scientific or commercial information indicating that listing this population may be warranted. The Service concludes that the Olympic mudminnows occupying the Grass Lake/Green Cove Creek drainage do not constitute a distinct population segment.

DATES: The finding announced in this document was made on May 23, 1995.

ADDRESSES: Data, information comments, or questions concerning this petition should be submitted to the State Supervisor, U.S. Fish and Wildlife Service, Ecological Services Office, 3704 Griffin Lane SE., Suite 102, Olympia, Washington 98501–2192. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: David C. Frederick, Field Office Supervisor, see **ADDRESSES** section above or telephone 206–753–9440.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be waranted. This finding is to be based on all information available to the Service at the time the finding is made. To the maximum extent practicable, this finding is to be made within 90 days of the date the petition was received, and the finding is to be published promptly in the **Federal Register**. If the finding is that substantial information was presented, the Service also is required to commence a review of the status of the species involved if one has not already been initiated under the Service's internal candidate assessment process.

The Service has made a finding on a petition to list the Grass Lake/Green Cover Creek population of the Olympic mudminnow (*Novumbra hubbsi*). The petition, dated September 15, 1994, was submitted by Theodore A. Mahr, attorney representing the "Save Allison Springs" Citizens Committee, and several members of the "Save Allison Springs" Citizens Committee. The "Save Allison Springs" Citizens Committee is located in Olympia, Washington. The petition requests the Service to list the Grass Lake/Green Cove Creek population of the Olympic mudminnow as an endangered species and to simultaneously designate critical habitat for the population. The petitioner stated that the Olympic mudminnow in the Grass Lake/Green Cover Creek Basin may be an evolutionarily significant unit due to the apparent geographic isolation of this population; that this population may be imperiled by present and proposed housing developments in the Green Cove Creek Basin; and that existing regulatory mechanisms may not be adequate to protect this population.

The Service has reviewed the petition, the literature cited in the petition, and other information available in the Service's files. On the basis of the best scientific and commercial information available, the Service finds the petition does not present substantial information that listing this population may be warranted.

The Olympic mudminnow, a small, brightly colored fish in the Umbridae family, represents a monotypic genus, being the only species in the genus *Novumbra*. There are four genera in the family Umbridae, three found in North America, the fourth in Europe. Distribution of the Olympic mudminnow is limited to southwestern Washington and the Olympic Peninsula. Meldrim (1968) suggests that geological history has determined the general distribution of the species, while behavior and habitat preference have maintained the present limited distribution. Dispersal is limited yet the species is often abundant where found (Wydoski and Whitney 1979). This freshwater species is generally found in quiet, slow moving waters such as in swamps, bogs, ponds, ditches, shallow lagoons and most frequently in marshy habitats. The preferred habitat type is a marshy stream with a muddy bottom, dense vegetation, and stained or dark water (Harris 1974).

A species that is in danger of extinction throughout all or a significant portion of its range may be listed as an endangered species under the Act. The term "species" is defined in 16 U.S.C. 1532 (16) as including "any subspecies * * * and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." Thus the first deliberation is whether the Olympic mudminnow in the Grass Lake/Green Cove Creek Basin is a recognized subspecies or distinct population that interbreeds.

The Service has considered two factors in determining whether this population would be eligible for listing as a distinct population segment:

1. The discreteness of the population segment in relation to the remainder of the species, and

2. The significance of the population segment to the species.

While the petitioner cited a 1994 letter from Dr. Theodore W. Pietsch (College of Ocean and Fishery Sciences, University of Washington) as evidence of the discreteness and significance of the Grass Lake/Green Cove Creek population, Pietsch only speculated in his letter about the "apparently long-term geological and genetic isolation" of this population. He also noted that the reality of whether this population represents "an 'evolutionary significant unit' * * * should be explored further using modern genetic techniques." In this regard, the petitioner does not present, nor is the Service aware of any information indicating the genetic, morphological, or behavioral distinctness of the Olympic mudminnow from the Grass Lake/Green Cove Creek Basin.

Further, Congress directed that the listing of populations be used " * * * sparingly." Therefore, in addition to meeting the criteria for distinctness, the Service should consider a population's biological and ecological significance to the species as a whole. No evidence was presented to suggest that the loss of the mudminnows in Green Cove Creek would result in a significant gap in the range of the Olympic mudminnow, nor that this population occurs in an unusual or unique setting.

The Service concludes that the data contained in the petition, referenced in the petition, and otherwise available to the Service does not present substantial information that the requested action may be warranted since the Grass Lake/Green Cove Creek Basin population of Olympic mudminnows would not be eligible for listing as a distinct population. The Olympic mudminnow is recognized as a category 2 candidate species (59 FR 58999, November 15, 1994), and has been since the Service's December 30, 1982, Notice of Review (47 FR 58454). The Olympic mudminnow has been the subject of an ongoing status review since the 1982 Notice of Review. The Service will retain this species as a category 2 candidate, and will continue to seek information regarding the status or threats to the species. If additional data become available in the future, the Service may reassess the listing priority for this species or the need for listing.

References Cited

Harris, C.K. 1974. The geographical distribution and habitat of the Olympic mudminnow, *Novumbra hubbsi*. Unpublished report, College of fisheries, Univ. of Wash., Seattle.

Meldrim, J.W. 1968. The ecological zoogeography of the Olympic mudminnow (*Novumbra hubbsi*, Schultz). Ph.D. dissertation, Univ. of Wash., Seattle.

Wydoski, R.S. and R.R. Whitney. 1979. Inland Fishes of Washington. Univ. of Wash. Press, Seattle, Washington.

Author. The primary author of this document is Shelley Spalding of the Ecological Services Office in Olympia, Washington (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1972, as amended (16 U.S.C. 1531 *et seq.*).

Dated: May 23, 1995.

Bruce Blanchard,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 95–14358 Filed 6–9–95; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 60, No. 112
Monday, June 12, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. PY–95–002]

Tentative Voluntary Poultry Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) is announcing that it is approving the test marketing of USDA grade identified raw, ready-to-cook, boneless-skinless poultry products, based on tentative grade standards.

DATES: This test-market period begins June 12, 1995 and ends June 12, 1996.

FOR FURTHER INFORMATION CONTACT: Larry W. Robinson, Chief, Grading Branch, Poultry Division, 202–720–3271.

SUPPLEMENTARY INFORMATION:

Background

Poultry grading is a voluntary program provided under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 et seq.), and is offered on a fee-for-service basis. It is designed to assist the orderly marketing of poultry products. Quality in practical terms refers to the usability, desirability, and value of a product, as well as its marketability. Poultry grade standards identify and measure degrees of quality in poultry products. They permit important quality attributes to be evaluated uniformly and accurately; they provide a way for buyers and sellers to negotiate using a common language.

Once poultry has been graded according to these standards, it may be identified with the USDA grademark. Over the years, processors have found it advantageous to market grade-identified poultry products and consumers have come to rely on the USDA grademark as assurance that they are getting the quality they want.

Poultry producers and processors are continually developing new, innovative products. Chicken and turkey, in particular, have been transformed into numerous boneless and/or skinless products, thus increasing poultry's share of the consumer's food dollar and responding to consumer demand for food with more built-in convenience and less fat. Current regulations (7 CFR part 70) provide grade standards for boneless poultry breasts, thighs, and tenderloins (§ 70.231), as well as for skinless carcasses and parts (§ 70.232). In addition, on March 30, 1995, the Agency approved the test marketing of USDA grade-identified, boneless/skinless poultry legs and drumsticks, based on tentative grade standards, through April 1, 1996 (60 FR 16428).

The Agency has now been requested by industry to permit the grade identification of raw, ready-to-cook, boneless-skinless poultry products without added ingredients. These products include poultry that has been reduced in size by cutting, slicing, cubing, or similar means and products that are currently marketed ungraded because there are no grade standards for them.

The Agency recognizes that before new standards of quality can be established or current standards of quality can be amended, appropriate investigation is needed. This includes the test marketing of experimental packs of grade-identified poultry products to determine production requirements and consumer acceptance, and to permit the collection of other necessary data. Current regulations (§ 70.3) provide the Agency with the flexibility needed to permit such experimentation, so that new procedures and grading techniques may be tested.

The Agency has worked in partnership with members of the industry to develop tentative grade standards for raw, ready-to-cook, boneless-skinless poultry products without added ingredients and is granting permission for a 1-year test marketing period. At the expiration of this 1-year period, the Agency will then evaluate the test results to determine if the current poultry grading regulations should be amended, through notice-and-comment rulemaking, to include the following tentative standards.

Tentative Grade Standards for Ready-to-cook, Boneless-skinless Poultry Products Without Added Ingredients—A Quality

1. The raw, ready-to-cook, boneless-skinless poultry products without added ingredients must be labeled in accordance with 9 CFR part 381.
2. The poultry product must be derived from ready-to-cook carcasses or parts.
3. The skin and bones shall be removed in a neat manner without undue mutilation of adjacent muscle.
4. The poultry products may be further processed and subdivided by cutting, slicing, cubing, or similarly reducing the size prior to grading. Individual subdivided pieces of poultry must be of sufficient, and relatively uniform, size and shape to determine grade with respect to the quality factors set forth in this section.
5. The poultry products shall be free of cartilage, tendons extending more than ½ inch beyond the meat tissue, blood clots, bruises, and discolorations other than slight discolorations, provided they do not detract from the appearance of the product.
6. Trimming and minor flesh abrasions due to preparation techniques are permitted provided they result in a relatively smooth outer surface with no angular cuts, tears, holes, or undue muscle mutilation in the meat portion.

Dated: June 6, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–14279 Filed 6–9–95; 8:45 am]

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Forest Service

RIN 0596–AB53

Outfitting and Guiding Permit Administration and Fees

AGENCY: Forest Service, USDA.

ACTION: Notice; adoption of final policy.

SUMMARY: The Forest Service is adopting final policy and procedures for issuing and administering permits and assessing fees for outfitting and guiding activities on National Forest System lands. This policy has been revised to respond to comments on the proposed and interim policies previously published in the **Federal Register** and to address recommendations in several General Accounting Office reports on administration of Federal concessions. This policy will ensure consistency in outfitter and guide program administration and fees throughout Forest Service units. The text of this policy, which has also been edited and reorganized for clarity, is set forth at the end of this notice.

EFFECTIVE DATE: The final policy is effective June 19, 1995.

FOR FURTHER INFORMATION CONTACT: John Shilling, (202) 205–1426, Recreation, Heritage, and Wilderness Resources Management Staff (2340), Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090–6090.

SUPPLEMENTARY INFORMATION:

Background

Outfitting and guiding includes a wide range of activities, such as river rafting, horseback trips, guided wildlife photography excursions, and mountain-bike tours. Annually, some 2,800 special use permits are in effect for outfitting and guiding on National Forest System lands. The majority of these are for commercial operations. Fees are generally three percent of the revenue generated from the use of National Forest System lands.

On April 8, 1983, the Forest service published a proposed policy for notice and comment on issuance and administration of permits and assessment of fees for outfitting and guiding activities on National Forest System lands (48 FR 15296, Apr. 8, 1983). On February 15, 1984, the agency gave notice of adoption of a final policy as an interim directive to the Forest Service Manual which addressed issues raised in comments received on the proposed policy (49 FR 5782, Feb. 15, 1984). The same interim directive was reissued without change in 1988.

When that interim directive could no longer be reissued, the Forest Service published a notice of interim direction and request for comments on April 18, 1990 (55 FR 14445, Apr. 18, 1990). With only minor differences, the April 18, 1990, interim directive continued the direction contained in the 1983 proposed policy, the 1984 interim directive, and the 1988 interim directive which it replaced. The 1990 interim directive has been reissued several times and cannot be reissued again pursuant to agency directive policy.

Since April 1990, commercial recreation concessions on Federal lands have been the subject of several General Accounting Office (GAO) studies. In June 1991, GAO released a report, "Federal Lands: Improvements Needed in Managing Concessioners" (GAO/RCED–91–163, June 11, 1991), that directed the Federal land-management agencies to develop policies that achieve greater consistency in the management of concession programs and authorizing instruments. A subsequent report issued by GAO, "Federal Lands: Improvement Needed in Managing Short-Term Concessioners" GAO/RCED–93–177, Sept. 14, 1993), made further recommendations for improving administration of Federal concessions. The 1993 report specifically addressed short-term concessions, including outfitting and guiding.

The address the concerns expressed in these reports, to address the comments received on the previously published proposed policy and interim directive, and to improve consistency in program administration, the Forest Service is adopting final policy and procedures governing administration of outfitting and guiding permits and calculation of fees. This policy is being issued as amendments to chapters 30 and 40 of Forest Service Handbook (FSH) 2709.11, Special Uses Handbook. The text of these amendments is set out at the end of the notice.

This final policy makes substantive changes to the direction previously issued in the 1990 interim directive. This final policy also differs in certain nonsubstantive ways from the 1990 interim directive. The agency has reorganized, clarified, and edited the 1990 interim directive to conform with current agency requirements for the content, format, and style of Forest Service directives.

In response to a lawsuit, *Wilderness Watch v. Robertson*, No. 92–0740 (D.D.C, Apr. 8, 1993) and in accordance with the court's 1993 order in the case, this final policy revises terminology and clarifies and expands policy on the kinds of structures, improvements, or installations that may be authorized for use in outfitting and guiding operations.

The agency has also clarified its direction on permit renewal. At this time, where outfitting and guiding services have been previously authorized and the authorization is expiring, the agency favors noncompetitive reissuance of special use authorizations to outfitters and guides who have a history of satisfactory performance over providing new competitive opportunities (see sec. 41.53f, para. 3 of the policy set out at the end of this notice). In the future, however, the agency may publish for notice and comment a proposed policy providing for competition for outfitting and guiding permits.

The 1990 interim directive defined "priority use" as "a Forest Service commitment to the holder of a permit for outfitting and guiding to give priority consideration to granting the holder a specific amount of available future use." The Forest Service has redefined "priority use" in this final policy to reflect more accurately the duration of the authorized use, factors determining the amount of use, and renewability of permits providing for priority use. Priority use is now defined in section 41.53c as: "Authorization of use for a period not to exceed five years. The amount of use is based on the holder's past use and performance and on forest land and resource management plan allocations. Authorizations providing for priority use are subject to renewal." Under the final policy, outfitting and guiding permits may be renewed without competition when the holder has performed satisfactorily (sec. 41.53f, para. 3). Renewal will be at the sole discretion of the authorized officer. This final policy is consistent with applicable Federal regulations and continues direction contained in the 1983 draft policy, the 1984 interim directive, and the 1990 interim directive.

Further, the final policy in section 41.53f provides that an authorized officer may issue a permit without competition to the party who acquires ownership of or a controlling interest in an outfitting and guiding business entity, if the authorized officer determines that the prospective holder meets requirements under Forest Service regulations (36 CFR 251.54).

Summary of Key Revisions

The Forest Service received nine comments on the 1990 interim directive within the specified comment period: three from outfitter and guide associations; three from outfitters and guides; two from State outfitter and guide licensing boards; and one from an individual.

The following is a section-by-section analysis of the final policy in chapters 30 and 40 of FSH 2709.11 and the Forest Service's response to the comments received on the 1990 interim directive, relevant court rulings, and recommendations from GAO reports.

Chapter 30—Fee Determination

Sections 37 to 37.24—Outfitter and Guide Fees

In *Wilderness Watch v. Robertson*, plaintiffs contended that certain outfitting and guiding activities as authorized under special use permit and administered by the Forest Service in

the Frank Church River of No Return Wilderness (Frank Church Wilderness), located in the Boise, Challis, Payette, Salmon, Bitterroot, and Nez Perce National Forests in Idaho, violated the Wilderness Act of 1964 (16 U.S.C. 1131 *et seq.*). The court ruled in favor of plaintiffs on several issues, including authorization of permanent structures and installations (such as caches and water transmission systems) in the Frank Church Wilderness and continuing, exclusive use of campsites reserved by outfitters and guides in the Frank Church Wilderness. The court ordered the parties to confer and submit a joint remedial plan to ensure compliance with applicable provisions of the Wilderness Act and Forest Service regulations.

The 1990 interim directive included caches as acceptable installations and included the term "reserved site." In accordance with the holding in *Wilderness Watch* and the requirements of the Wilderness Act, the final policy does not authorize permanent structures in wilderness areas. The agency has replaced the term "reserved site" with the term "assigned site," which is defined as a site that is designated and authorized for occupancy and use by a holder who is providing a recreation service to the public during the period of occupancy (sec. 37.05). In addition, the agency has revised the administrative practice of reserving sites for use by outfitters and guides under special use permits. Under the final policy, the authorized officer must specify and describe the proposed use of specific assigned sites in operating plans and annual itineraries (sec. 41.53j).

Section 37.01—Authority. The agency has added this section to include cross-references to other sections of the Forest Service Handbook (FSH) and Forest Service Manual (FSM) that provide direction on laws, regulations, and other authorities for administration of special uses programs (including outfitting and guiding) and fees on NFS lands.

Section 37.03—Policy. The agency has added this section to provide direction and cross-references to other FSH and FSM sections that provide additional direction. The section includes direction on the use of the graduated rate fee system (GRFS) to determine fees for outfitting and guiding activities authorized in connection with a commercial service site under permit. This direction originally appeared in a different section of the 1990 interim directive, and the agency has determined that this direction is more appropriately coded to the policy section.

Section 37.04—Responsibility. The agency has added this section to provide a cross-reference to an FSM section that provides related direction and to add the responsibility of the Director of Recreation, Heritage, and Wilderness Resources Management for adjusting the minimum fee and the assigned campsite fee every three years with 1993 as the base year, based on the Gross Domestic Product—Implicit Price Deflator Index.

Section 37.05—Definitions. The agency has added definitions for "adjustment for use off National Forest System lands," "assigned site," "client days" (including "National Forest System client days" and "total client days"), "non-use," "revenue additions," "revenue exclusions," "short-stop fee," and "unapproved non-use." The agency has revised definitions for "adjusted gross revenue," "gross revenue," "service day," and "duration of the outfitted or guided trip." "Average adjusted service day client charge" is retitled "average client-day charge."

"Reserved site" is replaced with "assigned site," which is defined as a site that is designated and authorized for occupancy and use by a holder who is providing a recreation service to the public during the authorized period of occupancy.

"Adjustment for use off National Forest System lands" is defined as the reduction in the fee for commercial use to account for the portion of the outfitted or guided trip that occurs off National Forest System lands.

"Client days" is defined as either "National Forest System client days" or "total client days." "National Forest System client days" is defined as the number of service days (that is, days on the National Forest System) for the duration of the outfitted or guided trip multiplied by the number of clients on the trip. "Total client days," which applies where there is use both on and off National Forest System lands, is defined as the total number of days for the duration of the outfitted or guided trip multiplied by the number of clients on the trip. Client days are used to calculate the average client-day charge and the adjustment for use off National Forest System lands in determining the fee for commercial use.

"Non-use" was previously undefined, although the term was used in final fee calculation. Lack of a definition for "non-use" has resulted in inconsistent fee assessments and miscalculations in various Forest Service units. Consequently, the agency has defined "non-use" in the final policy as authorized use the holder did not use. In addition, the agency has defined "unapproved non-use" as authorized use the holder did not use and for which the holder has not properly requested and received a waiver. Under the final policy, the holder must pay for unapproved non-use. See the direction in section 37.21g set forth at the end of this document.

To conform with agency policy on fiscal management and accounting, including generally accepted accounting principles or other comprehensive basis of accounting, and to improve consistency in fee calculation when fees are based on gross revenue, the agency has added the definition of "revenue additions," which is defined as the value of gratuities and sales of certain kinds of goods and services; specified which items are excluded from gross revenue; and included a definition for "revenue exclusions."

The new term "short-stop fee" refers to a fee established by Regional Foresters for trips with two service days or less spent on National Forest System lands. (An example would be an Alaskan tour which stops for one day or less at a National Forest System site.) Under the 1990 interim directive, Regional Foresters were allowed to establish additional discounts for use off National Forest System lands. The Alaska Region of the Forest Service has suggested the short-stop fee for use in that Region. Since the short-stop fee may have applicability in other Regions, the agency has provided for its Servicewide use in the final policy (sec. 37.21c, para. 3).

The revised definition for "gross revenue" is revenue from goods or services provided during the outfitted or guided trip; revenue received for scheduling or booking the trip; and revenue provided off National Forest System lands, unless specifically excluded.

The term "adjusted gross revenue" is defined as gross revenue and revenue additions less applicable exclusions. "Revenue exclusions" is defined as revenue derived on private land from the sale of items not directly related to the outfitting or guiding operation conducted on National Forest System lands; revenue conveyed to the State for hunting and fishing licenses; and revenue from the sale of operating equipment.

The agency has edited the definitions for "service day" and "duration of outfitted or guided trip" for clarity and format.

Section 37.21—Fees. To clarify direction on fee calculation, the agency has reordered the sequence of topics in this section (including sections 37.21 to 37.21j) covering fees to be collected for specific uses associated with outfitting and guiding activities.

Section 37.21a—Minimum fee. For 1993–96, the agency has established a minimum annual fee of $70 per permit. Using 1993 as a base year, the agency will adjust the minimum annual fee per permit every three years based on the Gross Domestic Product—Implicit Price Deflator Index. In addition, the agency has edited this section to conform with Forest Service directive format and style.

Section 37.21b—Fee for Incidental Use for Temporary Special-Use Permits. To provide clarity and to ensure consistency in fee collection, the agency has added direction on collecting a minimum fee when commercial outfitting and guiding is authorized by a temporary permit. Form FS–2700–25, Temporary Special-Use Permit.

Section 37.21c—Fee for Commercial Use. Portions of the direction in this section previously appeared in a section entitled "Final Fee." The agency has included this section to ensure consistent fee calculation and collection for commercial outfitting and guiding activities on National Forest System lands. Further, to provide clear direction and to ensure consistent fee calculation, the agency has expanded this section to include examples of fee calculations for option A, option B, and the short-stop fee. Option A establishes a fee based on an average client-day charge. Option B establishes the fee as three percent of the adjusted gross revenue. A short-stop fee is established for activities of short duration (two service days or less).

Section 37.21d—Determining Service Days.

Comment: Three respondents objected to the definition for "service day," but did not offer alternative wording.

Response: The agency believes that the revised definition for "service day" (previously discussed under section 37.05) is clearer and will make fee calculations easier to perform and more accurate.

Comment: One respondent suggested a method for calculating service days for drop-off services that would account for the complete number of days a holder is providing goods or services to a client. The respondent recommended that all drop-off and packing days be counted as service days. Another respondent concurred with this view, observing that all full or fractional days on which supply, spot, dunnage, or drop-off services are provided by an outfitter or guide should be counted as service days.

Response: The agency with these comments. Under the final policy the agency counts service days in three drop-off situations. In the first situation, a holder guides a client to a specific drop-off site on National Forest System lands; the holder neither retrieves the client, nor returns to the drop-off site to guide the client. In the second situation, the holder guides the client to a specific drop-off site on National Forest System lands and returns to pack the client out. In the third situation, the holder guides the client to a specific drop-off site on National Forest System lands, the client occupies the holder's assigned site, and the holder packs the client out.

In the first situation, the agency would count one full service day for fee purposes. In the second situation, the agency would count one full service day for drop-off services and one full service day for pick-up services. In the third situation, the agency would count one full service day for drop-off services, one full service day for pick-up services, and one service day for each day in between.

The agency has expanded this section to include direction on the three situations to clarify counting of service days for fee calculation when drop-off and pick-up services are provided. To conform to Forest Service directive organization, the agency has removed the definition for "service day" that formerly appeared in this section of the 1990 interim directive and has included the definition in section 37.05, Definitions.

Section 37.21e—Adjustment for Use Off National Forest System Lands. The agency has edited this section to conform with Forest Service directive format and style.

Section 37.21f—Fee for Additional Use. The agency has edited this section to conform with Forest Service directive format and style.

Section 37.21g—Payment for Unapproved Non-Use. To ensure consistency in fee collection, the agency has clarified the direction to charge the holder for unapproved non-use when the holder has not properly requested and received a waiver for authorized non-use.

Section 37.21h—Fee for Assigned Sites. In accordance with the curt order is *Wilderness Watch* and the requirements of the Wilderness Act, the agency has replaced the term "reserved site" with the term "assigned site." For 1993–96, the agency has established an annual fee of $140 for the use of each assigned site. Using 1993 as a base year, the agency will adjust the minimum annual fee for each assigned site every three years based on the Gross Domestic Product—Implicit Price Deflator Index.

Section 37.21i—Fee for Grazing Livestock. The agency has edited this section to conform with Forest Service directive format and style.

Section 37.21j—Fee for Nonprofit Organizations. To ensure consistency in fee calculation, the agency has stated that the fee for nonprofit organizations is three percent of annual adjusted gross revenue. The 1990 interim directive did not clearly state that nonprofit organizations pay a fee based on a percentage of annual adjusted gross revenue.

Section 37.21k—Fee for Educational Institutions. To ensure consistency in fee calculation, the agency has stated that the fee for educational institutions is three percent of annual adjusted gross revenue. The 1990 interim directive did not clearly state that educational institutions pay a fee based on a percentage of annual adjusted gross revenue.

Section 37.22—Estimated Fee. To ensure consistency in fee collection, the agency has clarified direction on collecting a portion or all of the fee in advance.

Section 37.23—Final Fee. To ensure consistency in fee calculation, the agency has clarified direction on calculating the final fee.

Section 37.24—Billing and Refunds. Related direction in section 41.53f of the final policy, Applications and Issuance of Permits, directs the authorized officer to collect fees for outfitting and guiding under the authority of the Land and Water Conservation Fund (LWCF) Act of 1964. This is an administrative change; previously, fees were deposited into the general receipts of the Treasury. Fees collected under the LWCF Act are deposited into the LWCF. Once appropriated by Congress, LWCF monies many be used for management of Federal outdoor recreational resources and facilities.

Chpater 40—Special Uses Administration

Sections 41.53 to 41.531—Outfitters and Guides

Comment: Two respondents commented generally on the administrative topics of assignment and management of temporary use, applications and issuance of permits, reductions, and permits for institutional and semi-public outfitting and guiding. These respondents were representatives of State outfitter and guide licensing boards who expressed general concern about the policy but did not specify wording changes in the sections covering these topics.

The respondents requested exception for their States (Wyoming and Idaho) from certain sections of the policy, specifically: Assignment and Management of Temporary Use; Applications and Issuance of Permits; Reductions; and Permit Administration, including Performance Evaluation. They contended that their respective State laws, State outfitting and guiding rules and regulations, and memoranda of understanding with local Forest Service offices exempt them from Federal law and national policy.

Response: Forest Service Regional Offices in Missoula, Montana, Portland, Oregon, and Ogden, Utah have memoranda of understanding that were executed in 1985 with the States of Wyoming and Idaho. The memoranda describe local coordination and implementation procedures as agreed upon between those Regional Offices and the States of Wyoming and Idaho in the context of State laws and regulations. These memoranda do not provide any basis, however, for exempting these States from the requirements of Forest Service regulations or national policy for issuing and administering permits and assessing fees for outfitting and guiding activities; These requirements ensure consistency in program administration throughout the National Forest System units.

Applicable Federal regulations (36 CFR 251.50) require a special use authorization for commercial use and occupancy of National Forest System lands, including outfitting and guiding activities. The Forest Service further implements its delegated land-management authority by issuing national policy in the Forest Service Manual and Handbooks, including policy on outfitting and guiding activities. These regulations and policies cannot be waived by Regional memoranda of understanding. The final policy maintains the longstanding Forest Service policy that permit holders must agree to comply with all applicable State laws. Applicable State laws, including those enforced by State outfitter and guide licensing boards and game-management agencies, apply to holders of permits authorizing the use of National Forest System lands for outfitting and guiding activities.

Section 41.53a—Objectives. The agency has added the objective that outfitting and guiding activities be conducted in a manner that protects environmental resources.

Section 41.53b—Policy.

Comment: One respondent recommended that the term for outfitters and guides who are operating without a permit be changed from "pirate" to "illegal."

Response: applicable Federal regulations, commercial use and occupancy of National Forest System lands requires a special use authorization. Commercial use and occupancy of National Forest System lands without a special use authorization is defined as "unauthorized." Therefore, the agency has replaced the term "pirate outfitters" with the term "unauthorized outfitting and guiding activities" in paragraph 4.

In accordance with the holding in *Wilderness Watch* and the requirements of the Wilderness Act as described previously in the discussion of sections 37 to 37.24, the final policy in paragraphs 2 and 3 does not authorize permanent structures in wilderness. The agency has replaced the term "reserved site" with the term "assigned site," which is defined in section 27.05. In addition, the proposed use of specific assigned sites must be specified and described in operating plans and annual itineraries (sec. 41.53j).

To ensure consistency in permit administration, the agency has included in paragraph 5 of this section direction not to issue a separate special use authorization for commercial service sites (such as a lodge or resort) that have outfitting and guiding activities as part of the authorized operation. (Section 37.03, Policy, provides direction on the use of the Graduated Rate Fee System to determine fees for outfitting and guiding activities authorized in connection with a commercial service site under permit.)

Also, the agency has added "hitching posts" to the list in paragraph 2 of structures or improvements with negligible value and has moved "pack stations" from the list of structures or improvements with negligible value to the list of commercial public service sites in paragraph 5. This change more accurately acknowledges the value of pack station facilities.

Section 41.53c—Definitions.—The agency has made the following revisions to this section: adds definitions for "incidental use" and "renewal" and revises the definitions for "priority use," "temporary use," and "transportation livestock." The definitions for "guiding" and "outfitting" have been edited for clarity.

"Incidental use" was previously undefined, although the term was used in direction to allow the authorized officer to waive permit requirements. The lack of a definition for "incidental use" has created discrepancies in determining impacts on the environment and on the quality of services provided to the public. The agency has defined "incidental use" and has added it to this section.

The agency has clarified the definition for "priority use" in conformance with Forest Service directive style; included the five-year maximum term specified in earlier interim directives; provided for determination of use based on the holder's past use and performance and on forest land and resource management plan allocations; and provided for renewal subject to certain conditions.

This policy is consistent with applicable Federal regulations (36 CFR 251.64) and with direction contained in the 1983 draft policy, the 1984 interim directive, and the 1990 interim directive. These earlier directives provided for a five-year maximum term for priority use; reductions in priority use assignments and the number of permit holders based on forest land and resource management plan allocations; reductions in priority use assignments for reasons in the public interest, such as protection of forest resources and public health and safety; and changes in priority use assignments based on past use and performance.

The agency has edited the definitions for "temporary use" and "transportation livestock" to conform with Forest Service directive format and style.

Section 41.53d—When Permits Are Required. The agency has revised this section to conform with Forest Service directive format and style. In addition, the agency has clarified that a permit is not needed when services are being provided to Forest Service contractors or Federal officials in the course of their official duties.

Section 41.53e—Incidental Use. The agency has expanded and clarified this section by providing direction on authorizing incidental use. As defined in 41.53c, use is incidental when the proposed annual use is 50 service days or less and is anticipated to have little or no impact on public health and safety, the environment, or other authorized uses and activities.

The agency developed Form FS–2700–25, Temporary Special-Use Permit, in June 1992 for authorizing use that is seasonal or of short duration and that involves minimal improvements or investment. The agency has included direction in the final policy on use of Form FS–2700–25. The agency has also included direction on use of Form FS–2700–4, Special-Use Permit, rather than Form FS–2700–25, when the incidental use involves the following activities: white water travel, use of firearms, livestock or aircraft, or all-terrain or off-highway vehicle travel.

Section 41.53f—Applications and Issuance of Permits.—The agency has added this section to clarify the application process and the process for issuance of permits under applicable Federal regulations (36 CFR 251.54) and Forest Service policy. Paragraph 3 has been added which addresses renewal of terminating permits. The final policy states that direction in FSM 2712.2 on issuance of prospectuses applies to new outfitting and guiding opportunities.

The final policy directs the authorized officer to collect fees for outfitting and guiding under the authority of the LWCF Act of 1965. (Further discussion of this policy appears earlier in this notice under section 37.24.)

The agency also has revised this section to include direction in paragraph 4 on change of ownership or control of the business entity. The agency has added the term "business entity" to distinguish this change in ownership from change in ownership of personal or real property. The agency also has expanded and edited this section to conform with direction in FSM 2716, Change of Ownership.

Section 41.53g—Assignment and Management of Temporary Use. The agency has edited this section to conform with Forest Service directive format and style.

Section 41.53h—Assignment and Management of Priority Use. To ensure consistency in administration and compliance with standards and guidelines in forest land and resource management plans, the agency has added that assignment of priority use and the amount of priority use shall be at the discretion of the authorized officer and shall be consistent with direction in forest land and resource management plans.

To ensure consistency in administration, the agency has revised direction on reduction in the amount of priority use. The final policy (para. 3b) requires reduction in the amount of priority use if the holder has utilized less than 70 percent of the assigned amount for three consecutive years. The 1990 interim directive required reduction in the amount of priority use if the holder had used less than 70 percent of the assigned amount in at least two of the past five years. This direction has been subject to broad interpretation and misapplication. The agency believes that a period of three consecutive years of under-utilization is easier to quantify and demonstrates a trend of lack of business due to a decrease in customer demand for services.

Section 41.53i—Reduction of Use or Service Days. The agency has added direction that prior to reassigning use that may be available after a reduction, the authorized officer must solicit applications from current holders assigned priority use and base assignment of use on services proposed and performance.

Section 41.53j—Permit Terms and Conditions. The agency has edited this section of the final policy to conform with Forest Service directive format and style and with standard terms and conditions in special use permits.

Section 41.53k—Permit Administration. For clarity, the agency has put direction on performance standards and performance ratings of holders in separate paragraphs and provided more detailed direction, such as mid-season review and evaluation for all holders. This procedural direction is needed to meet due process requirements under Federal law for giving holders notice and the opportunity to comply. In addition, the section in the 1990 interim directive entitled "Subletting of Use" has been retitled "Assignment of Use" as paragraph 2 in this section of the final policy.

Section 41.52l—Permits for Institutional and Semi-Public Outfitting and Guiding. This section now states that permits must be consistent with forest land and resource management plan direction.

Regulatory Impact

This final policy has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is not a significant policy. The final policy does not have an effect of $100 million or more on the economy; substantially increase prices or costs for consumers, industry, or State or local governments; or adversely affect competition, employment, investment, productivity, innovation, or the ability of domestic companies to compete in foreign markets. The final policy consists primarily of technical and administrative changes for authorization of occupancy and use of National Forest System lands.

Moreover, this final policy has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It has been determined that this final policy will not have a significant economic impact on a substantial number of small entities because it will not impose recordkeeping requirements on them; it will not affect their competitive position in relation to large entities; and it will not affect their cash flow, liquidity, or ability to remain in the market. As stated previously, this final policy consists primarily of technical and administrative changes concerning authorization of occupancy and use of National Forest System lands.

No Takings Implication

This policy has been reviewed for its impact on private property rights under Executive Order 12630 of March 15, 1988, as implemented by the United States Attorney General's Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings. Executive Order 12630 does not apply to this final policy because it consists primarily of technical and administrative changes governing authorization of occupancy and use of National Forest System lands. Forest Service special use authorizations for outfitting and guiding do not grant any right, title, or interest in or to lands or resources held by the United States.

Civil Justice Reform Act

This policy has been reviewed under Executive Order 12778, Civil Justice Reform. After adoption of this final policy, (1) All State and local laws and regulations that conflict with this policy or that impede its full implementation will be preempted; (2) no retroactive effect will be given to this final policy; and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

Controlling Paperwork Burden on the Public

This final policy contains information collection requirements as defined in 5 CFR 1220 that have been approved by the Office of Management and Budget and assigned control number 0596–0082. The agency estimates that the reporting burden for the collection of information in the policy is 5 to 10 hours per response.

Environmental Impact

This final policy consists primarily of technical and administrative changes related to the authorization of occupancy and use of National Forest System lands. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180 Sept. 18, 1992), categorically excludes from documentation in an environmental assessment (EA) or environmental impact statement (EIS) "rules, regulations, or policies to establish Service-wide administrative procedures, program processes or instructions." Based on the nature and scope of this final policy, the agency has determined that it falls within this category of actions and that no extraordinary circumstances exist which

would require preparation of an EA or an EIS.

Dated: May 30, 1995.

Mark A. Reimers,

Acting Chief.

Final Handbook Revision

The Forest Service organizes its directive system by alpha-numeric codes and subject headings. Only those sections of the Forest Service Handbook (FSH) 2709.11, Special Uses Handbook, that are the subject of this notice are set out here. The audience for this direction is Forest Service employees charged with issuing and administering special use permits for outfitting and guiding.

CHAPTER 30—FEE DETERMINATION

37—Outfitter and Guide Fees. (For related direction on special uses administration, see sec. 41.53).

37.01—Authority. (Sec. 30.1; FSM 2701.1).

37.03—Policy. (Sec. 31; FSM 2715.03).

37.03a—Fees for Activities Associated with Commercial Public Service Site. Use the Graduated Rate Fee System (GRFS) (FSM 2715.11) to determine fees for outfitter and guide activities (such as cross-country skiing or horseback riding) authorized by the Forest Service in connection with an authorized commercial public service site on National Forest System lands (such as a resort or lodge). Where applicable, require holders under GRFS to pay additional fees for assignment of sites (sec. 37.21h) and livestock grazing use (sec. 37.21i).

37.03b—Fees for Activities Not Associated with Commercial Public Service Site. Require payment of fees according to the direction in sections 37.21 to 37.24 for outfitter and guide activities authorized as a distinct activity not associated with a public service site.

37.04—Responsibility. (FSM 2704.13). The Washington Office Director of Recreation, Heritage, and Wilderness Resources Management is responsible for adjusting the minimum fee and the assigned site fee every three years with 1993 as the base year, based on the Gross Domestic Product-Implicit Price Deflator Index.

37.05—Definitions. See section 41.53c for additional definitions for "guiding," "holder," "incidental use," "outfitting," "priority use," "renewal," "temporary use," and "transportation livestock".

Adjusted Gross Revenue. Gross revenue and revenue additions less applicable exclusions.

Adjustment for Use Off National Forest System Lands. The reduction in the fee for commercial use to account for the portion of the outfitted or guided trip that occurs off National Forest System lands (sec. 37.21e).

Assigned Site. A site that is designated and authorized for occupancy and use by a holder who is providing a recreation service to the public during the authorized period of occupancy. Examples include but are not limited to base and drop camps, picnic sites, loading facilities, boat launches, and helispots.

Average Client-Day Charge. Adjusted gross revenue divided by the total number of client days for the duration of the outfitted or guided trip.

Client Charge. The outfitter's or guide's charge per client for an outfitted or guided trip.

Client Days.

1. *National Forest System Client Days.* The number of service days (that is, days on National Forest System lands) for the duration of the outfitted or guided trip multiplied by the number of clients on the trip. See section 37.21c for related direction.

2. *Total Client Days.* Where there is use both on and off National Forest System lands, the total number of days for the duration of the outfitted or guided trip multiplied by the number of clients on the trip. See section 37.21c for related direction.

Duration of Outfitted or Guided Trip. The period that begins when the client first comes under the care and supervision of the outfitter or guide, including arrival at the holder's headquarters or local community, and ends when the client is released from the outfitter's or guide's care and supervision. Duration of the outfitted or guided trip is used to calculate client days, which in turn are used to determine the average client-day charge and the adjustment for use off the National Forest System lands. See section 37.21c for related direction.

Gross Revenue. The total amount of receipts from the sale of goods or services provided by the holder in connection with the outfitted or guided trip. These receipts include:

1. Revenue received by the holder from clients for goods or services provided during the outfitted or guided trip (the client charge per trip multiplied by the total number of clients on each trip);

2. Revenue received by the holder or the holder's employees or agents for scheduling or booking the outfitted or guided trip; and

3. Revenue from goods or services provided off National Forest System lands, such as lodging and meals, unless specifically excluded.

Non-Use. Authorized use the holder did not use (see also "Unapproved non-use").

Revenue Additions. The market value of the following items which are added to gross revenue:

1. The value of goods and services that are donated or the value of goods and services that are bartered in exchange for goods and services received that are directly related to the outfitted or guided trip; and

2. The value of gratuities, which are goods, services, or privileges that are not available to the general public and that are donated or provided without charge or at a discount to organizations; individuals; the holder's employees, owners, or officers; or immediate family members of the holder's employees, owners, or officers.

Revenue Exclusions. The following items which are excluded from gross revenue:

1. Revenue derived from goods or services sold on private land that are not related to outfitting and guiding operations conducted on National Forest System lands, such as souvenirs, telephone toll charges, and accident insurance sales;

2. Amounts paid or payable to a State government licensing authority or recreation administering agency from sales of hunting or fishing licenses and recreation fee tickets; and

3. Revenue from the sale of operating equipment, rental equipment, capitalized assets, or other assets used in outfitting and guiding operations. Examples are horses, tack, watercraft, and rental skis and boots, which are sold periodically and replaced.

Service Day. A day or any part of a day on National Forest System lands for which an outfitter or guide provides goods or services, including transportation, to a client.

Short-Stop Fee. Fees for trips that use National Forest System lands incidental to the purpose of the trip, such as a bus tour that takes clients on a sightseeing trip. The rate is established by the Regional Forester for trips with two service days per client or less spent on national Forest System lands.

Unapproved Non-Use. Authorized use days the holder has not used and for which the holder has not properly requested and received a waiver (see also "Non-use").

37.1—Commercial Services Associated with Commercial Public Service Site. Use the Graduated Rate Fee system to determine outfitter and guide fees associated with such sites (sec. 37.03a and FSM 2715.11).

37.2—Commercial Services Not Associated with Public Service Site

37.21—Fees. Fees are assessed against adjusted gross revenue. Fees are also assessed against all unapproved non-use.

37.21a—Minimum Fee. The minimum fee for outfitting and guiding on National Forest System lands is $70 annually per permit for 1993–1996. Using 1993 as a base year, the Washington Office Director of Recreation, Heritage, and Wilderness Resources Management adjusts the minimum fee every three years based on the Gross Domestic Product-Implicit Price Deflator Index.

37.21b—Fee for Temporary Use Permits for Incidental Use. When commercial outfitting and guiding is authorized by a temporary permit, use Form FS–2700–25, Temporary Special-Use Permit, to collect the minimum fee (sec. 3721a). The authorized officer may waive the minimum fee only if the use meets the criteria listed in 36 CFR 251.57 and section 31.21k.

37.21c—Fee for Commercial Use. Calculate and collect a fee for commercial outfitting and guiding occurring on National Forest System lands. Charge for any commercial use of National Forest System lands for outfitting or guiding, even if unauthorized.

Upon the authorized officer's approval of the prospective holder's application for a special use permit, advise the applicant to select option A or B (para. 1 and 2) to be used in calculating the fee. Include the selected method as a condition of the permit issued to the holder, and use that method to calculate the fee for the period authorized.

1. *Option A.* The fee is based on an average client-day charge using the following schedule of rates:

SCHEDULE OF RATES

Average client-day charge (for client days on and off NFS lands	Client-day fee
Less than $8.00	$.25
8.01–20.00	.40
20.01–35.00	.80
35.01–50.00	1.30
50.01–75.00	1.90
75.01–100.00	2.60
100.01–125.00	3.40
125.01–150.00	4.10
150.01–175.00	4.90
175.01–200.00	5.60
200.01–250.00	6.75
250.01–300.00	8.25
300.01–400.00	10.00
Over 400.00	3 percent of the average, client-day charge.

Calculate the fee as follows:

a. *Client Days (National Forest System and Total).* To determine the number of National Forest System client days, multiply the number of service days for the duration of the outfitted or guided trip by the number of clients on each trip. To determine the number of total client days, multiply the total number of days for the duration of the outfitted or guided trip by the number of clients on each trip. See example A–2 in this section for additional direction on determining total client days.

b. *Adjusted Gross Revenue.* Multiply the client charge per trip by the total number of clients on each trip, add any other gross revenue and applicable revenue additions, and subtract any applicable revenue exclusions (sec. 37.05). This figure represents adjusted gross revenue for the duration of the outfitted or guided trip.

c. *Average Client-Day Charge.* Divide the adjusted gross revenue by the number of client days (National Forest System or total) for the duration of the outfitted or guided trip. This figure is the average client-day charge.

d. *Client-Day Fee.* Refer to the preceding Schedule of Rates, and use the average client-day charge to determine the client-day fee.

e. *Interim Calculation for Fee for Commercial Use.* Where use is strictly on National Forest System lands, multiply the number of National Forest System client days by the client-day fee to determine the fee for commercial use. Where use is both on and off National Forest System lands, multiply the number of total client days by the client-day fee to determine the interim calculation for commercial use, and adjust for use off National Forest System lands under the following paragraph f.

f. *Adjustment for Use off National Forest System Lands.* Adjust for use off National Forest System lands, if applicable, by dividing the number of National Forest Client days (or hours, miles, and so forth) by the number of total client days (or hours, miles, and so forth) to determine the amount of time spent on National Forest System lands. Refer to the schedule in section 37.21e to determine the appropriate percentage of fee reduction. See section 37.21e for the use of other equitable units of measure to determine adjustment for use off National Forest System lands.

Example A–1: In one operating season, the holder is authorized to provide two trips, both of which are solely on NFS lands:
July 27–29 for 3 clients @ $450/client
August 18–21 for 7 clients @ $500/client

a. Client Days (all NFS):

3 service days × 3 clients = 9 NFS client days
4 service days × 7 clients = 28 NFS client days

37 NFS client days

b. Adjusted Gross Revenue:

$450 × 3 clients = $1,350
$500 × 7 clients = $3,500

$4,850 gross revenue, plus $0 revenue additions and minus $0 revenue exclusions.

c. Average Client-Day Charge (all NFS client days in this example):

$4,850 adjusted gross revenue / 37 NFS client days = $131

d. Client-day Fee (all NFS client days in this example):
$131 average client-day charge from step c corresponds to a $4.10 client-day fee.

e. Fee for Commercial Use:

37 NFS client days × $4.10 client-day fee = $151.70 fee.

Example A–2: In one operating season, the holder is authorized to provide two trips. Both Trips include time on and off NFS lands.

July 4–13 for 8 clients @ $2,000/client
August 10–23 for 7 clients @ $3,000/client

During each trip, 3 of the 10 days are on NFS lands.

a. Client Days (Total):

10 total days × 8 clients = 80 total client days
10 total days × 7 clients = 70 total client days

150 total client days

b. Adjusted Gross Revenue:

$2,000 × 8 clients = $16,000
$3,000 × 7 clients = $21,000

$37,000 gross revenue, plus $0 revenue additions and minus $0 revenue exclusions.

c. Average Client-Day Charge:

$$\frac{\text{\$37,000 adjusted gross revenue}}{\text{150 total client days}} = \$246.67$$

d. Client-Day Fee:
$246.67 average client-day charge corresponds to a $8.75 client-day fee.
e. Interim Calculation for Fee for Commercial Use:
150 total client days × $6.75 client-day fee = $1,012.
f. Adjustment for use off NFS lands:
NFS client days:

3 service days × 8 clients = 24 NFS client days
3 service days × 7 clients = 21 NFS client days

45 NFS client days

$$\frac{\text{45 NFS client days}}{\text{150 total client days}} = 30\%$$

Which corresponds to a 40% fee reduction (sec. 37.21e):
$1,012 × 40% = $404.80
$1,012 − 404.80 = $607.20 fee for commercial use, which can be rounded to $607.

2. *Option B.* The fee is 3 percent of the annual adjusted gross revenue, minus any applicable adjustment for use off National Forest System lands. Determine the gross revenue, add any applicable revenue additions, and subtract any applicable revenue exclusions to determine the adjusted gross revenue. Multiply the adjusted gross revenue by 3 percent; then adjust, if applicable, for use off National Forest System lands to determine the fee for commercial use (sec. 37.05; 37.21c, para. 1.b, and 37.21e).

Example B–2: For one year, the holder had an annual adjusted gross revenue of $4,850 and used all 100 authorized use days.

$4850 × 0.03 = $145.50 fee for actual commercial use.

Example B–2: For one year, the holder had an annual adjusted gross revenue of $4,650 and used 90 days of 100 authorized use days. Unapproved non-use accounted for 10 days.

$4,650 × 0.03 = $139.50 fee for 90 days of commercial use.

$$\frac{\$139.50}{90 \text{ days}} = \$1.55 \text{ per day}$$

$1.55 per day × 10 days = $15.50 fee for 10 days of unapproved non-use.
$139.50 + $15.50 = $155 fee for commercial use.

Example B–3: An off-road tour outfitter has an adjusted gross revenue of $250,000. The travel routes used are across NFS lands and private lands. The time spent on NFS lands is 50 percent of the duration of the outfitted or guided trips.

$250,000 × 0.3 = $7,500

50 percent duration on NFS lands corresponds to a 40% fee reduction (sec. 37.21e):

$7,500 × 40% = $3,000
$7,500 − $3,000 = $4,500 fee for commercial use.

3. *Short-Stop Fee.* (Sec. 37.05). Fees are calculated from rates established by the Regional Forester for situations in which commercial tours and trips involve only very short stops or visits on National Forest Systems lands of two service days or less.

Example 1: A float plane company markets fishing trips to the National Forest, flies anglers to high mountain lakes, drops them off, and picks them up. The company has 175 passenger trips. In this example, the Regional Forester has established a short-stop rate of $2.00 per client for this service.

175 passenger trips × $2.00 = $350 fee for commercial use.

Example 2: A bus company markets fall foliage tours and sends out 50 bus trips per season with 35 paying passengers. They stop at a National Forest Visitor Center for an average of 40 minutes. The Regional Forester has established a short-stop rate of $2.00 per client.

35 people × 50 buses × $2.00 = $3,500 fee for commercial use.

37.21d—Determining Service Days. Count any full or fractional part of a day the client receives goods or services as a full service day.

1. When livery, rental, supply, or drop-off service to customers is provided, count only the day on which the outfitter or guide provides services or goods.

2. When the outfitter or guide provides drop-off and pick-up service on two separate days, count one service day for drop-off and one service day for pick-up.

3. When the outfitter or guide provides drop-off and pick-up service and the clients occupy an outfitter's assigned site and/or the outfitter or guide furnishes equipment and supplies, count one service day for drop-off, one service day for pick-up, and one service day for each day in between.

37.21e—Adjustment for Use off National Forest System Lands. Reduce the fee or estimated fee if the outfitter or guide's clients occupy National Forest System lands for 60 percent or less of the duration of the outfitted or guided trip according to the schedule in paragraph 1. When days are the unit of measure, at least one entire day must be off National Forest System lands to qualify for the adjustment. Other units of measure besides days may be used where equitable to calculate the percentage on and off National Forest System lands. For example, trail distance may be used at Nordic centers.

1. Apply the following schedule in calculating adjustments for use off National Forest System lands:

SCHEDULE OF FEE REDUCTION FOR USE OFF NFS LANDS

Percentage on NFS Lands	Fee reduction
Less than 5 percent	80 percent.
5 to 60 percent	40 percent.
Over 60 percent	None.

Request the holder to provide documentation of the duration of trips, such as the itineraries for outfitted or guided trips, to support a request for a fee reduction based on use off National Forest System lands.

2. When use off National Forest System lands occurs on lands administered by another Federal agency and the holder is authorized by that agency, coordinate the fee calculations so that overcharges do not occur.

Example: An outfitter conducts a 10-day trip with 8 clients; 5 days are spent on NFS lands and 5 on Bureau of Land Management (BLM) lands. Assume the fee for the trip would be $100 if all 10 days were on either NFS or BLM lands. Coordinate with the BLM to charge the outfitter $100, and split the fee equitably between the two agencies. Do not adjust for use off NFS lands which would result in a higher fee of $120 ($60 for the Forest Service and $60 for the BLM).

37.21f—Fee for Additional Use. If the holder requests advance approval of additional use and if capacity is available, the authorized officer may approve the request and collect any additional estimated fees. When option A (sec. 37.21c, para. 1) is used to calculate the fee for commercial use, use the schedule of rates to calculate the additional fee. When option B (sec. 37.21c, para. 2) is used to calculate the fee for commercial use, estimate the additional adjusted gross revenue associated with the approved additional use, and include it in the calculation of the estimated and final fees (sec. 37.22 and 37.23). See sections 41.53g and 41.53h for additional direction.

37.21g—Payment for Unapproved Non-Use. Charge the holder for unapproved non-use when the holder does not properly request and receive a waiver for authorized use (see sec. 41.53h, para. 4). Add the amount calculated for unapproved non-use to the final fee total. This provision applies to calculation of the fee under option A or B.

37.21h—Fee for Assigned Sites.

1. The minimum annual fee for each assigned site is $140.

2. Using 1993 as a base year, the Washington Office Director of Recreation, Heritage, and Wilderness Resources Management adjusts the minimum annual fee (in para. 1) that applies to each assigned site every three years based on the Gross Domestic Product-Implicit Price Deflator Index (sec. 37.04). The assigned site fee is in addition to the minimum permit fee and other mandatory fees for commercial outfitting and guiding (sec. 37.21c).

3. The Regional Forester may establish higher fees if necessary to obtain fair market value.

4. Authorized officers may not prorate assigned site fees. Apply the full annual fee for each assigned site.

5. Authorized officers may not authorize refunds or credits for assigned site fees.

37.21i—Fee for Grazing Livestock. Assess livestock grazing fees when the Forest Service authorizes the holder to graze animals used for transport on National Forest System lands. Do not assess a grazing fee when the animals travel on National Forest System lands but the holder is not authorized to graze them. Charge grazing fees in accordance with direction in FSM 2238. Do not authorize refunds or credits for authorized but unused grazing use.

37.21j—Fee for Nonprofit Organizations. The fee for nonprofit organizations is three percent of annual adjusted gross revenue (option B, sec. 37.21c, para. 2). Include the amount of donations and grants as gross revenue if the holder requires the customer or client to make a donation or grant as a condition of receiving the service. Do not consider donations or grants made voluntarily by customers to support the programs or activities of the holder.

37.21k—Fee for Educational Institutions. The fee is three percent of annual adjusted gross revenue (option B, sec. 37.21c, para. 2).

1. *Credited Programs.* Exclude tuition and other payments made by students which are unrelated to the use of National Forest System lands authorized for outfitting and guiding purposes if the program provided under the permit is recognized for credit toward graduation or a degree in a recognized school system or accredited educational institution.

2. *Non-Credited Programs.* Include all payments made by students for authorized outfitting and guiding services if the program provided under the permit is not recognized for credit toward graduation or a degree in a recognized school system or accredited educational institution.

37.22—Estimate Fee.

1. Consult with the applicant or holder to estimate the anticipated number of service days and adjusted gross revenue. Use financial and related documents furnished by the applicant or holder, including records of the previous year's business activity, planned customer rate schedules, and itineraries. Retain documents used for fee calculations in the case folder.

2. Based on authorized use, calculate the total estimated annual fee, including the fee for commercial use, assigned site fee, and livestock grazing fee, on a fee determination statement (sec. 31.4) prior to the operating season.

3. Establish payment due dates prior to the start of the operating season for all payments.

4. Calculate the total estimated fee as a single amount, and collect the fee from the holder as follows:

a. Collect the total annual estimated fee in advance when it is less than $500.

b. Collect half of the total annual estimated fee in advance and the remainder by mid-season when the total

is equal to or greater than $500, but less than $2,500.

c. Collect one-third of the total annual estimated fee in advance and the remainder in two equal payments by mid-season when the total is $2,500 or more.

d. Deposit fees collected to the Land and Water Conservation Fund (FSM 6530).

37.23—Fee for Commercial Use. Record in the holder's operating plan the date established by the authorized officer and the holder by which the holder must submit financial records and records of use required to calculate the fee for commercial use.

In calculating the fee for commercial use, follow the procedure described in section 37.22, paragraph 1. Use financial records and records of use appropriate for the fee option selected (sec. 37.21c).

37.24—Billing and Refunds. Calculate the fee for commercial use and adjust for use off National Forest System lands, if applicable. Charge the holder for any unapproved non-use. Charge the holder for any unauthorized use.

1. When the final fee exceeds the paid estimated fee, bill the holder for the balance due.

2. When the final fee is less than the paid estimated fee and more than the minimum fee, refund the difference to the holder. If the holder is authorized to operate with a priority use assignment, at the holder's request credit the overpayment toward the next year's fee. If the holder is authorized to operate with a priority use assignment and the authorization is due to expire that year, refund the difference to the holder.

Follow billing and refund procedures found in FSH 6509.11k. Under the authority of the Land and Water Conservation Fund Act of 1964 (16 U.S.C. 460*l*–6a (c) and (i)(1)), deposit fees into the Land and Water Conservation Fund (FSM 6530).

Chapter 40—Special Uses Administration

41.53—Outfitters and Guides. (For related authorities, policies responsibilities, and definitions, see FSM 2340 and FSM 2701–2705. Direction on fees for outfitters and guides is in section 37 of this Handbook). Administer permits for outfitters and guides operating on National Forest System lands in accordance with the direction in sections 41.53a through 41.531. Outfitting and guiding services include but are not limited to packing, hunts, float trips, canoe or horse liveries, ski touring, helicopter skiing, jeep tours, boat tours, and fishing trips.

41.53a—Objectives.

1. As identified in forest and resource management plans, provide for commercial outfitting and guiding services that address concerns of public health and safety and that foster small businesses.

2. Encourage skilled and experienced individuals and entities to conduct outfitting and guiding activities in a manner that protects environmental resources and ensures that National Forest visitors receive high quality services.

41.53b—Policy. (FSM 2340.3, 2703).

1. Authorize only those outfitting and guiding activities that are consistent with forest land and resource management plans.

2. Do not authorize any development or permanent improvements on the National Forest System for outfitting and guiding services, except for temporary structures or improvements or installations with negligible value, such as hitching posts, corrals, tent frames, and shelters.

3. Do not authorize any development, improvement, or installation in wilderness for the purpose of convenience to the holder or the holder's clients. The authorized officer may authorize temporary structures, improvements, or installations in wilderness only when necessary to meet minimum requirements for administration of the area for the purposes of the Wilderness Act (16 U.S.C. 1121 (note)).

4. Work with other Federal agencies, State and local authorities, outfitters, and outfitter and guide organizations to ensure that outfitting and guiding activities are consistent with applicable laws and regulations and to identify unauthorized outfitting and guiding activities. Follow procedures in FSM 5300 in investigating and taking action to prevent the occurrence of unauthorized outfitting and guiding activities.

5. Do not issue a separate permit for outfitting or guiding activities (such as cross-country skiing and horseback riding) to a holder of a permit or term permit for a commercial public service site (such as a pack station, lodge, or resort) when the outfitting or guiding operations are part of commercial public service site operations. Include the outfitting and guiding activities in the commercial service site's annual operating plan. Attach the annual operating plan to the commercial service site permit or term permit and consider it part of the permit or term permit. See section 37.03 for related direction on fees.

41.53c—Definitions. See section 37.05 for additional related definitions for "adjusted gross revenue," "adjustment for use off National Forest System lands," "assigned site," "average client-day charge," "client days," "duration of the outfitted or guided trip," "non-use," "revenue additions," "revenue exclusions," "service day," "short-stop fee," and "unapproved non-use."

Guiding. Providing services or assistance (such as supervision, protection, education, training, packing, touring, subsistence, interpretation, or other assistance to individuals or groups in their pursuit of a natural resource-based outdoor activity) for pecuniary remuneration or other gain. The term "guide" includes the holder's employees, agents, and instructors.

Holder. An applicant who has received a special use authorization to conduct outfitting or guiding activities.

Incidental Use. Annual use that is proposed to be 50 service days or less and is anticipated to have little or no significant impact on public health and safety, the environment, or other authorized uses and activities.

Outfitting. Providing through rental or livery any saddle or pack animal, vehicle or boat, tents or camp gear, or similar supplies or equipment, for pecuniary remuneration or other gain. The term "outfitter" includes the holder's employees, agents, and instructors.

Priority Use. Authorization of use for a period not to exceed five years. The amount of use is based on the holder's past use and performance and on forest land and resource management plan allocations. Authorizations providing for priority use are subject to renewal (sec. 41.53f).

Renewal. The issuance of a new special use authorization for the same use to the same holder upon the expiration of the holder's current authorization.

Temporary Use. An amount of use assigned the holder of a permit with a period of one season or less.

Transportation Livestock. Pack and saddle animals authorized in connection with an outfitter or guide permit and expressed in animal months and by class of animal (FSM 2234.11).

41.53d—When Permits Are Required.

1. Individuals or organizations conducting outfitting or guiding activities on National Forest System lands must have a permit unless the authorized officer (FSM 2705) issues a Temporary Special-Use Permit (Form FS–2700–25) for incidental use (sec. 41.53e).

2. Outfitters based off National Forest System lands who rent and deliver equipment or livestock to the public on National Forest System lands must obtain a permit if they, their employees, or agents occupy or use National Forest System lands or related waters in connection with their rental programs. For example, a permit is required if a boat livery operator provides service, including delivery or pickup of boats, at sites on National Forest System lands. No permit is necessary nor is a fee charged if an operator's customers transport rented equipment to and from the National Forest System lands or if an operation serves Forest Service employees, Forest Service contractors, or other Federal officials in the course of their official duties.

41.53e—Incidental Use. When the proposed annual use is 50 service days or less and is expected to have little or no impact on public health and safety, the environment, or other authorized uses and activities on National Forest System lands, the use may be authorized by a temporary permit, Form FS–2700–25, Temporary Special-Use Permit. The following activities and uses shall not be authorized by a temporary permit and shall be authorized only by Form FS–2700–4, Special Use Permit: white water travel, use of firearms, livestock, or aircraft, or all-terrain and off-highway vehicle travel.

41.53f—Applications and Issuance of Permits.

1. *Applications.* Provide outfitter and guide applicants with Form FS–2700–3, Special Use Application and Report, to specify the services to be performed, the number of service days, the lands to be occupied, modes of transportation, season of use, scheduling, and other matters relating to the applicant's operation. Application and authorization procedures established in 36 CFR 251.54 and FSM 2712 are fully applicable to outfitter and guide applications. See FSM 2712.2 for direction regarding prospectuses for new opportunities as described in paragraphs 2a through 2d of this section.

Conduct environmental analyses for outfitter and guide applications in accordance with procedures in FSH 1909.15, National Environmental Policy Act Handbook.

2. *Issuance.* Outfitting and guiding permits may be issued when one or more of the following occurs:

a. An increased allocation, capacity, or public need is identified through the forest planning process;

b. An existing permit is revoked;

c. A reduction of service days by an existing holder or holders makes additional service days available;

d. Competitive interest in an area, unit, or activity arises where no previously authorized use exists and where the proposed use is compatible with objectives in forest land and resource management plans;

e. An application has been submitted to provide outfitter and guide services for an area or activity that has not previously been authorized and for which there is no competitive interest; or

f. An existing permit terminates.

For situations fitting the criteria in the preceding paragraphs 2a through 2d, solicit applicants by issuing a prospectus and contacting all parties who have expressed an interest. See FSM 2712.2 for additional direction on issuing a prospectus.

For an application fitting the criteria in the preceding paragraph 2e, document the determination of no competitive interest and then issue a permit to the qualified applicant. In issuing the permit, classify authorized use as temporary use until the holder has performed acceptably for at least two consecutive years.

When determining the most qualified applicants, consider past experience and knowledge of the area, financial capability, economic viability of existing holders, performance record, return to the Government, and other factors. The authorized officer may classify the use as priority if the selected applicant has a two-year record of acceptable performance as a holder of a permit for an outfitting and guiding operation similar to the proposed use. Process requests to expand a current holder's operations as an application for temporary use under section 41.53g. For a selected applicant with no previous record, classify the use as temporary.

Issue temporary permits and permits under the authority of the Land and Water Conservation Fund Act of September 3, 1964 (16 U.S.C. 460*l*–6a(c)), on Form FS–2700–25, Temporary Special-Use Permit, and on Form FS–2700–4, Special-Use Permit, respectively.

3. *Renewal without Competition.* When a permit of a holder assigned priority use terminates (preceding para. 2f) the permit is subject to renewal without competition, provided the current holder has performed satisfactorily as demonstrated by acceptable annual performance inspections. Renewal shall be at the sole discretion of the authorized officer and shall be in accordance with 36 CFR 251.64. In renewing the permit, the authorized officer may modify the terms and conditions of the permit.

4. *Change of Ownership or Control of Business Entity.*

a. Upon notification by the holder that a change in ownership of or a controlling interest in the business entity is being considered, the authorized officer shall inform the holder of the following:

(1) The permit is a privilege and is not transferable, either upon the sale of the business entity or the sale of a controlling interest in the business entity;

(2) Priority use is a privilege acquired by demonstrated acceptable performance and is not transferable;

(3) The permit is not real property, does not convey any interest in real property, and may not be used as collateral;

(4) Upon consummation of a change of ownership of or controlling interest in the business entity, the holder's permit terminates; and

(5) The party who acquires ownership of or a controlling interest in the business entity may be issued a permit if the authorized officer determines that the prospective holder meets Forest Service requirements, including financial and technical capability.

b. The authorized officer shall inform the holder to submit Form FS–2700–3a, Request for Termination of an Application for Special-Use Permit, for relinquishment of the permit.

c. The authorized officer shall inform the party who acquires ownership of or a controlling interest in the business entity to submit:

(1) An application for a permit on Form FS–2700–3, Special Use Application and Report; and

(2) Documentation of change of ownership, including properly executed documents showing a bona fide conveyance of the equipment or other assets previously used by the business, and for businesses based on private land, properly executed documents showing a bona fide conveyance of the real and personal property used by the business; or

(3) Documentation of a change of control, including properly executed documents showing a bona fide change of a controlling interest in the business entity.

d. If the change of ownership or control is not consummated and the original holder has relinquished the permit, the authorized officer may reissue the permit to the original holder. Prior to reissuance, the authorized officer must request the original holder to submit documentation establishing ownership or control of the business entity.

41.53g—Assignment and Management of Temporary Use.

1. *Eligibility.* All qualified applicants, including institutional and semi-public entities and holders of permits assigned priority use, are eligible to receive

temporary use assignments. Current holders assigned priority use and proposing to expand their use may also submit an application. Approved additional use may be assigned as temporary use.

2. *Assignment of Temporary Use.* If capacity is available, temporary use may be authorized if the need for the use exists and the use is consistent with the forest land and resource management plans (FSM 1920). If forest land and resource management plans do not address the use and/or capacity levels, assignments shall be at the discretion of the authorized officer subject to the requirements of the National Environmental Policy Act (FSH 1909.15). A temporary use assignment does not commit the Forest Service to authorizing that use for a similar number of service days in the future.

3. *Conversion to Priority Use.* A holder authorized for at least two years may be eligible for assignment of priority use if it is in the best interest of the Forest Service and the use is compatible with forest land and resource management plans. Assignment of priority use shall be based on documented acceptable performance by the holder for two consecutive years. The amount of use authorized may be based on the previous two-year average authorized use which was actually used. See section 41.53h, paragraph 2, for limitations on assignment of priority use.

41.53h—Assignment and Management of Priority Use.

1. *Eligibility.* Previously authorized outfitters or guides who have made their services available to all members of the public and who have performed acceptably for the previous two consecutive years may be eligible for assignment of priority use.

Outfitters or guides who provide services only to private or restricted clientele are not eligible for assignment of priority use. See section 41.531 for additional direction on semi-public outfitting and guiding.

2. *Assignment of Priority Use.* Assignment of priority use shall be at the discretion of the authorized officer and shall be consistent with forest land and resource management plans. Base any assignment of priority use on the capacity of the area or standards and guidelines as established in forest land and resource management plans.

a. Use may be based on the average of the highest two years of actual use authorized use which was actually used during the previous five years.

b. Record the following on the permit:

(1) The amount of authorized use in terms of service days, season, months, weeks, people-at-one-time (PAOT), or similar time factors that may apply;

(2) The nature of the authorized service or activity (such as big game hunting, white water rafting, or fishing trips);

(3) The resource area (such as wilderness, river, or administrative unit) within which the service or activity is to be authorized; and

(4) The various modes of transportation to be used and other factors necessary to define the quality and scope of the activity.

3. *Management of Priority Use.*

a. Establish use in terms of service days. Where recreation use levels are planned and managed in terms of launches and people per launch, camps and people per camp, or trips and people per trip, specify numbers of launches, campsites, and/or trips authorized for those service days.

b. When a permit is about to terminate and the holder has applied for renewal of the permit, the assignment of priority use for the new permit shall be at the discretion of the authorized officer and shall be consistent with forest land and resource management plans. Consider general market and other economic fluctuations, availability of state hunting licenses, and natural phenomena which may have adversely affected the ability of the holder to utilize the authorized use fully. The authorized officer may assign priority use consistent with the level of use utilized effectively under the former permit. If capacity is available and environmental analyses have been completed, authorize the amount of additional use that has been effectively used during the temporary use period. Base the amount of use recorded in the new permit as described in the preceding paragraph 2b(2). Reduce the authorized use if the holder has utilized less than 70 percent of the assigned amount in each of three consecutive years. Make no reductions in use assignment if non-use was approved by the authorized officer in accordance with the following paragraph 4.

4. *Approved Non-Use.* Prior to allowing the holder to operate, the authorized officer must review and approve a holder's annual proposed itinerary and requests for amendments to an operating plan. Any deviations from the assigned amount of use (referred to as "approved non-use") must be approved by the authorized officer. The authorized officer must document the basis for approving non-use and provide a copy to the holder. The holder is not responsible for fee payment on approved non-use.

Non-use may be approved:

a. To protect natural resources, to address concerns of public health and safety, or to prevent conflicts with other authorized uses of National Forest System lands; or

b. When requested by a holder far enough in advance to allow the authorized officer to reassign the approved non-use to other holders, if appropriate.

41.53i—Reduction of Use or Service Days. See section 41.53h, paragraph 3b, for additional direction on calculating reductions.

1. Amendments to or revisions of forest land and resource management plans may establish a level of outfitting and guiding that could result in a reduction of a holder's use or service days. When considering renewal of the permit, the authorized officer has three options:

a. Request holder(s) to reduce use voluntarily;

b. Proportionally reduce use for holders; or

c. Reassign the amount of use through solicitation of applications by issuing a prospectus. Limit solicitation to current holders who are assigned priority use. Base assignment of use on services proposed and performance. When reassigning use or service days, consider the holder's performance, experience and knowledge of the area, financial capability, performance record, return to the Government, economic viability of other holders, and other appropriate factors.

41.53j—Permit Terms and Conditions.

1. For new applicants, authorize use for periods not to exceed one year. For holders who are assigned priority use, a period of up to five years may be authorized. To the extent possible, issue permits with a length coinciding with time periods in forest land and resource management plans, as appropriate.

2. For applicants who have a limited record or no record of performance, a one-year permit subject to a conditional one-year renewal may be issued to provide a performance evaluation period. Renew the use and amend the permit term, unless the permit is revoked after the first year under section 41.53k, paragraph 1e(2).

3. Use the standard mandatory clauses for outfitter and guide service as defined in section 52. Include standard clauses from section 53 as appropriate.

4. Enter the total number of service days in each use category on the permit. Specify in the permit, operating plans, and annual itineraries all of the various modes of transportation authorized. Show amounts and class of use. If applicable, enter the number of launches and people per launch, camps and people per camp, or trips and people per trip associated with the use.

5. Require an annual operating plan for the period of the permit and approval of an annual itinerary as a provision of the permit.

6. Indicate in the permit the amount of livestock used for transportation of people and equipment in connection with the activity, and specify if the livestock may graze. Do not issue a separate livestock use permit. Include a clause that requires the holder to record and report the amount of livestock grazing use that will actually occur with the outfitting or guiding use. Report livestock grazing use in the Annual Grazing Statistical Report (Report FS–2200–j). Do not report occupancy by animals that were not authorized to graze.

7. Specify and describe proposed use of specific assigned sites in operating plans and annual itineraries.

8. Allow holders to choose one of two alternative fee systems based on FSH 2709.11, section 37.21c (option A or B).

9. Require holders to provide accurate information through an actual use report within 30 days of the close of the operating season.

10. Require holders to maintain accounting records in accordance with generally accepted accounting principles or other comprehensive bases of accounting, to make those records available to the Forest Service for review, and to retain them for at least five years.

11. The holder may be required to have public liability insurance under FSM 2713.32. The holder's insurance must name the United States Government as an additional insured.

41.54k—Permit Administration.

1. *Performance Review and Evaluation.* Monitor authorized operations to verify compliance with permit terms and conditions during the season of use. Assignment of priority use depends on documentation of satisfactory performance. More frequent reviews may be necessary to achieve compliance with the permit terms and conditions. Conduct a mid-season performance review and evaluation of the holder's operations. See FSM 2716.5 for additional direction.

a. *Performance Standards.* Forest Supervisors shall develop specific performance standards for inclusion in each permit and/or operating plan in consultation with District Rangers and individual holders, outfitter and guide licensing agencies, advisory councils, and other State and Federal land management agencies. At a minimum, Forest Supervisors shall develop specific standards for the degree of compliance with terms of the permit and operating plans and itineraries, customer satisfaction, and protection of natural resources.

b. *Performance Ratings.* Evaluate the holder's overall performance using three performance ratings: Acceptable, Probationary, and Unacceptable. Base these ratings on the specific performance standards included in the holder's permit and/or operating plan.

c. *Mid-Season Review and Evaluation.* Conduct a mid-season review and evaluation of all holders. Notify the holder in writing of the results of this mid-season review and evaluation. Include:

(1) Any deficiencies or items of noncompliance; and

(2) A time frame for remedying deficiencies and correcting noncompliance.

d. *Second Review and Evaluation.* Conduct a second review and evaluation at the end of each operating season if the mid-season review and evaluation disclose deficiencies or items of noncompliance that would substantiate a rating of Unacceptable, or in the case of holders assigned priority use, a rating of Unacceptable or Probationary. Notify the holder in writing of the results of this second review and evaluation. Include:

(1) Any deficiencies or items of noncompliance identified at mid-season and not remedied or corrected; and

(2) Any deficiencies or items of noncompliance identified during the second review.

e. *Annual Ratings.* Rate every holder at the end of the operating season. Provide the holder with a copy of the rating, and include notification of the holder's right to appeal.

(1) *Holders Assigned Priority Use.*

(a) If a holder receives an annual rating of Probationary at the end of the permit year, reduce the term of the permit to no more than one additional year. If at the end of that period the holder receives an annual rating of Probationary or Unacceptable, the authorized officer shall not renew the permit and shall allow the permit to terminate. If at the end of the additional year the holder receives an annual rating of Acceptable, the holder may again be assigned priority use, and the permit is subject to renewal under section 41.53f, paragraph 2f.

(b) If a holder receives an annual rating of Unacceptable, the permit shall be revoked. In the case of a permit that is about to expire, it shall be allowed to terminate.

(c) Holders may appeal final ratings of Probationary and Unacceptable under applicable Federal regulations. Termination of a permit is not subject to appeal.

(2) *Holders Not Assigned Priority Use.*

(a) If a holder receives an annual rating of Acceptable at the end of the permit year, the authorized officer may renew the permit for no more than one additional year. If at the end of that period the holder receives an annual rating of Acceptable then the holder may be eligible for assignment of priority use. See section 41.53g for additional direction on conversion to priority use.

(b) If a holder receives an annual rating of Unacceptable, the permit shall be revoked or allowed to terminate.

(c) Holders may appeal an annual rating of Unacceptable under applicable Federal regulations. Termination of a permit is not subject to appeal.

2. *Assignment of Use.* Do not approve requests to assign all or part of the authorized use to others. If a holder is unable or unwilling to provide the services authorized by the permit, revoke the permit or reduce the authorized use. If appropriate, assign the amount of use to others in accordance with section 41.53h.

41.531—Permits for Institutional and Semi-Public Outfitting and Guiding. Permits may be issued to institutional and semi-public outfitting and guiding applicants consistent with forest land and resource management plan direction for commercial use and group size. Schedules and services may fluctuate from season to season or year to year. Applicants may include a variety of membership or limited-constituency institutions, such as religious, conservation, youth, fraternal, service club, and social groups; educational institutions, such as schools, colleges and universities; and similar common interest organizations and associations. This category may also include applicants who operate commercially on a limited or intermittent basis in providing service to selected customer clientele rather than to the public at large. Outfitting and guiding activities conducted by institutional or semi-public groups may be authorized regardless of whether a fee or other consideration is collected from participants.

1. Issue permits when the use furthers the public interest and can be accommodated without causing unacceptable resource impacts or conflicts with other authorized users. The authorized activities must be consistent with applicable laws, regulations, and forest land and

resource management plans. See 36 CFR Part 251, Subpart B, for additional requirements on when a permit is required.

2. Ensure that applicants demonstrate financial and technical capability to meet the terms and conditions of the permit.

3. Issue a temporary permit, Form FS–2700–25, Temporary Special-Use Permit, if the permit period is for one year or less, such as for a single trip. See section 41.53e for direction on incidental use.

4. Do not assign priority use to holders of permits for institutional or semi-public outfitting and guiding.

5. Require an operating plan for permits issued for continuing intermittent use. An operating plan may also be necessary for single-trip permits to ensure public safety and resource protection, depending on the nature and scope of the trip.

6. Document performance evaluation as described in section 41.53k is optional.

7. Determine fees and fee waivers based on chapter 30 of this Handbook.

[FR Doc. 95–14361 Filed 6–9–95; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060595E]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of scientific research permit no. 959 (P418A).

SUMMARY: Notice is hereby given that Mason T. Weinrich, Cetacean Research Unit, Gloucester, MA 01930, has been issued a permit to take humpback whales (*Megaptera novaeangliae*), fin whales (*Balaenoptera physalus*), right whales (*Eubalaena borealis*), and sei whales (*Balaenoptera glacialis*) for the purpose of scientific research.

DATES: Written comments or requests for a public hearing must be received on or before July 12, 1995.

ADDRESSES: The permit is available for review by interested persons in the following offices by appointment:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298, (508/281–9150); and

Director, Southeast Region, NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (813/570–5312).

FOR FURTHER INFORMATION CONTACT: Kellie Foster (301/713–1401).

SUPPLEMENTARY INFORMATION: On March 16, 1995, notice was published in the **Federal Register** (60 FR 14270) that a permit had been requested by the above-named individual. The requested permit has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of §§ 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the Regulations Governing the Taking, Importing, and Exporting of Endangered Species (50 CFR part 222).

The permit authorized the holder to take 400 humpback whales (*Megaptera novaeangliae*), 250 fin whales (*Balaenoptera physalus*), 50 right whales (*Eubalaena borealis*), and 50 sei whales (*Balaenoptera borealis*) per year for 5 years for the purpose of photo-identification and behavioral studies.

Issuance of this permit, as required by the ESA, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species that is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: June 6, 1995.

Ann D. Terbush,

Chief, Permits & Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–14354 Filed 6–9–95; 8:45 am]

BILLING CODE 3510–22–F

COMMISSION ON PROTECTING AND REDUCING GOVERNMENT SECRECY

Notice of Meeting

This notice announces the third in a series of monthly meetings of the Commission on Protecting and Reducing Government Secrecy. Pursuant to Title IX of Pub. Law 103–236, dated April 30, 1994, the Commission consists of twelve members, four appointed by the President, two each by the Speaker of the House and the House Minority Leader and two each by the Senate Majority and Minority Leaders. The Commission will remain in effect for two years from the date of its first meeting.

Time and Date: 2:00 P.M., June 20, 1995.

Place: S–116, Committee on Foreign Relations Hearing Room, The Capitol.

Status: Open.

Agenda: Overview of classification and declassification policies; speakers from the National Archives and Records Administration and the Congressional Research Service.

Contact Person for More Information: Eric Biel, Staff Director, Commission on Protecting and Reducing Government Secrecy, (202) 857–0002; FAX: (202 457–0128.

Eric Biel,

Staff Director, Commission on Protecting and Reducing Government Secrecy.

[FR Doc. 95–14307 Filed 6–9–95; 8:45 am]

BILLING CODE 6820–ER–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

June 6, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: June 8, 1995.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6704. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being reduced for carryforward used during the July 1, 1994 through December 31, 1994 period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 17325, published on April 5, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 6, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on June 8, 1995, you are directed to amend the directive dated March 30, 1995 to reduce the limits for the following categories, as provided under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
336/636	476,316 dozen.
341	682,095 dozen.
351/651	368,577 dozen.
433	9,480 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.95–14296 Filed 6–9–95; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice Concerning the Idaho Training Range

The Air Force has determined that it will no longer pursue the Idaho Training Range as proposed by the State of Idaho. Accordingly, the Air Force has terminated work on its environmental impact statement (EIS) for the Idaho Training Range. The EIS was being prepared to consider the State of Idaho's proposal for a state-owned tactical training range to be used by the Air Force and the Air National Guard

The Air Force has committed to working with the State, the Department of Interior, the Shoshone-Paiute Tribes and others to try to identify other tactical training opportunities in Idaho. There are no proposals at this time. Should a new, mutually agreeable proposal be developed, it would be announced and the Air Force would begin a comprehensive environmental analysis of it in accordance with the National Environmental Policy Act.

Passy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–14454 Filed 6–9–95; 8:45 am]

BILLING CODE 3910–01–P

Department of the Navy

Naval Research Advisory Committee; Closed Meetings

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Naval Research Advisory Committee Special Study Panel to Review the Department of the Navy Science and Technology Program will meet on June 19 and 20, and August 14 and 15, 1995. The meeting on June 19 will be held at the Pentagon, Arlington, Virginia; the meeting on June 20 will be held at the Office of Naval Research, 800 North Quincy Street, Arlington, Virginia. The meeting on August 14 and 15 will be held at the Pentagon, Arlington, Virginia. The meeting will commence at 9 a.m. and terminate at 5 p.m. on June 19; commence at 9 a.m. and terminate at 3 p.m. on June 20; and commence at 9 a.m. and terminate at 4 p.m. on August 14 and 15, 1995. All sessions of the meetings will be closed to the public.

The purpose of the meetings is to provide an assessment of the Department of the Navy Science and Technology Program, make recommendations on how to best posture the Department to be a world class customer of science and technology innovation, and determine whether the Department's execution philosophy and management structure allow for the most effective utilization of innovation. The agenda will include briefings and discussions on perspectives from internal Department of the Navy sources, as well as the Joint Chiefs of Staff, the Office of the Secretary of Defense, the Department of the Air Force, the Department of the Army, and the Advanced Research Projects Agency. These briefings and discussions will involve sensitive Department of Defense information. Premature public disclosure of this information would be likely to significantly frustrate proposed agency action. The information involved is specifically authorized under criteria established by Executive order to be withheld from the public if the agency determines it to be in their best interest. The sensitive matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meetings. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meetings be closed to the public because they will be concerned with matters listed in section 552b(c)(9)(B) of title 5, United States Code.

This Notice is being published late because of administrative delays which constitute an exceptional circumstance, not allowing Notice to be published in the **Federal Register** at least 15 days before the date of the meeting.

For further information concerning these meetings contact: Ms. Diane Mason-Muir, Office of Naval Research, Naval Research Advisory Committee, 800 North Quincy Street, Arlington, VA 22217–5660, Telephone Number: (703) 696–6769.

Dated: June 6, 1995.

L. R. McNees,

LCDR, JAGC, USN Federal Register Liaison Officer.

[FR Doc. 95–14332 Filed 6–9–95; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent to Award Cooperative Agreement To Florida State University

AGENCY: Department of Energy (DOE).

ACTION: Notice of intent.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(5), it is making a discretionary financial assistance award based on the

criteria set forth at 10 CFR 600.7(b)(2)(i)(A) and (B) to Florida State University (FSU), and FSU's Institute for Central and Eastern European Cooperative Environmental Research (ICEECER), both located in Tallahassee, Florida, under Cooperative Agreement Number DE–FC01–95EW55101. The DOE intends to make a noncompetitive financial assistance award. The purposes of the proposed cooperative agreement are to continue FSU's work in environmental research technology and development, which the DOE has funded for the previous five years, and to establish an identification and evaluation program of innovative environmental technologies on an international scale. This five-year effort will have a total estimated cost of $9,373,600.

DATES: Any comments or inquiries should be submitted by June 26, 1995.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Jeffrey R. Dulberg, HR–561.22, 1000 Independence Avenue SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The proposed cooperative agreement will provide funding to FSU to continue its previous work focusing on both domestic U.S. and international environmental technology research and development and to establish a comprehensive program of identification and evaluation of innovative technologies. This program will encompass those technologies that are either currently being utilized in remediation efforts conducted by, or in development by, the DOE, other Federal agencies, State agencies, and private organizations. This program will also assist in the identification and evaluation of innovative technologies for environmental cleanup, which are under development by foreign scientists. ICEECER will conduct and participate in international symposia, conferences, workshops, and other meetings, which will serve as vehicles for identifying and evaluating these innovative environmental restoration technologies. The term of the project is planned to be five (5) years, commencing on June 30, 1995, and ending on June 29, 2000. The activity to be funded is necessary to the satisfactory completion of, or is a continuation or renewal of, an activity presently being funded by the DOE, and for which competition for support would have a significant adverse effect on continuity or completion of the activity. Without continuance of these worker safety studies funded by the DOE and which are still ongoing in Hungary, Poland, and throughout the former Soviet Union, the Government's investment to date would, in effect, be wasted, since the technologies being investigated are not yet mature enough for full scale implementation at U.S. cleanup sites. The activity is being conducted by the applicant using its own resources. FSU has invested its own resources in performing interdisciplinary research aimed at understanding and mitigating the effects that environmental pollutants have on human health and ecological systems. FSU has also invested its own resources in establishing critical links with academic institutions and private organizations in Central and Eastern Europe in the environmental technology field. By accelerating and significantly expanding FSU's current efforts, Departmental funding would enhance the public benefits to be derived. The DOE knows of no other entity which is conducting or is planning to conduct such an activity.

Based on the evaluation of relevance to the accomplishment of a public purpose, it is determined that the proposal represents a beneficial method and approach: to continue developing and testing advanced environmental technologies that could result in significant cost reductions and increased worker safety for cleanup projects in the U.S.; to perform interdisciplinary research aimed at understanding and mitigating the effects that environmental pollutants have on human health and ecological systems; to heighten public awareness concerning innovative technologies for managing radioactive wastes, hazardous wastes, and mixed wastes; and, to identify and evaluate innovative technologies for site characterization, monitoring, and restoration, as well as for waste management and the environmental consequences of energy production.

Issued in Washington, DC, on June 1, 1995.

Richard G. Lewis,

Contracting Officer, Office of Placement and Administration.

[FR Doc. 95–14240 Filed 6–9–95; 8:45 am]

BILLING CODE 6450–01–P

Secretary of Energy Advisory Board; Amended Notice

AGENCY: Department of Energy.

ACTION: Notice of open meeting; Amended.

SUMMARY: This notice first appeared on June 1, 1995 (60 FR 28599). Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretary of Energy Advisory Board
Date and Time: Important change Tuesday, June 13, 1995, 1 pm–4:15 pm
Place: New Location—National Press Club, Main Lounge, 14th and F Streets NW., Washington, D.C. 20045.

FOR FURTHER INFORMATION CONTACT: Peter F. Didisheim, Executive Director, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–7092.

SUPPLEMENTARY INFORMATION: Purpose of the Committee: The Secretary of Energy Advisory Board was established to serve as the Secretary of Energy's primary mechanism for long-range planning and analysis of major issues facing the Department of Energy. The Board will advise the Secretary on the research, development, energy and national defense responsibilities, activities, and operations of the Department and provide expert guidance in these areas to the Department.

Tentative Agenda

1:00 pm—Opening Remarks
1:15 pm—Task Force on Strategic Energy Research and Development—Final Report Presentation
1:45 pm—Discussion
2:15 pm—Break
2:30 pm—Overview of the Strategic Alignment of the Department of Energy
3:00 pm—Follow-On Activities of the Task Force on Alternative Futures for the DOE National Labs
3:30 pm—Discussion of Future Board Activities
4:00 pm—Public Comment
4:15 pm—Adjourn.

A final agenda will be available at the meeting.

Public Participation: The Chairman of the Board is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Washington, D.C. the Board welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Board will make every effort to hear the views of all interested parties. Written comments may be submitted to Peter F. Didisheim, Executive Director, Secretary of Energy Advisory Board, AB–1, 1000 Independence Avenue, SW, Washington, DC 20585. In order to insure that Board members have the opportunity to review written comments prior to the meeting, comments should be received by Friday, June 9, 1995.

Minutes: Minutes and a transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9:00 AM and 4:00 PM, Monday through Friday except Federal holidays.

Issued at Washington, DC, on June 2, 1995.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–14239 Filed 6–9–95; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site Specific Advisory Board, Idaho National Engineering Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Idaho National Engineering Laboratory.

DATES: Tuesday, June 20, 1995 from 8:00 a.m. Mountain Standard Time (MST) until 6:00 pm PST and Wednesday, June 21, 1995 from 8:00 a.m. MST until 5:00 p.m. MST. There will be a public comment availability session Tuesday, June 20, 1995 from 5 to 6 p.m. MST. A board member tour of four specific clean-up sites at the INEL is tentatively scheduled for Monday, June 19, 1995 from 8 am to 5 pm.

ADDRESSES: Shilo Inn, 780 Lindsay Blvd., Idaho Falls, ID 83402, (208) 523–1818.

FOR FURTHER INFORMATION CONTACT: Idaho National Engineering Laboratory Information 1–800–708–2680 or Marsha Hardy, Jason Associates Corporation Staff Support 1–208–522–1662.

SUPPLEMENTARY INFORMATION: Purpose of the Committee: The Board will be developing a recommendation on the DOE-Owned Spent Nuclear Fuel Strategic Plan. They will be discussing and potentially making recommendations on projects underway in the INEL's Environmental Restoration Program. The Board will also select and adopt an action plan identifying their issues of study over the next year and hear presentations on spent nuclear fuel issues.

Tentative Agenda

June 20, 1995

7:30 a.m.—*Sign-in and Registration*
8:00 a.m.—Miscellaneous Business:
Old Business
- Deputy Designated Federal Officer Report
- Chair Report

Member Reports
Standing Committee Reports
- Public Communications

9:30 am—Discussion with EM-HQ
10:30 am—Break
10:45 am—DOE-Owned Spent Nuclear Fuel Strategic Plan
12:00 noon—Lunch
1:00 pm—Spent Nuclear Fuel
4:00 pm—Discussion with DOE-ID
5:00 pm—Public Comment Availability
6:00 pm—Adjourn

Wednesday, June 21, 1995

7:30 am—Sign-In and Registration
8:00 am—Miscellaneous Business
8:30 am—Environmental Restoration
10:00 am—Break
10:45 am—Environmental Restoration - continued
12:00 noon—Lunch
1:00 pm—Action Plan Development
3:00 pm—Break
3:15 pm—Action Plan Development - continued
4:15 pm—Meeting Evaluation
5:00 pm—Adjourn

A final agenda will be available at the meeting.

Public Comment Availability

The two-day meeting is open to the public, with a Public Comment Availability session scheduled for Tuesday, June 20, 1995 from 5 p.m. to 6 p.m. MST. The Board will be available during this time period to hear verbal public comments or to review any written public comments. If there are no members of the public wishing to comment or no written comments to review, the board will continue with it's current discussion. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Idaho National Engineering Laboratory Information line or Marsha Hardy, Jason Associates, at the addresses or telephone numbers listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days before the date of the meeting, due to programmatic issues that had to be resolved prior to publication.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays.

Issued at Washington, DC on June 7, 1995.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–14345 Filed 6–9–95; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site-Specific Advisory Board, Monticello Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Board Committee Meeting:

Environmental Management Site-Specific Advisory Board, Monticello Site
Date and Time: Tuesday, June 20, 1995 7 p.m.—8:30 p.m.
Address: Monticello City Hall, 17 North 1st East, Monticello, Utah 84535.

FOR FURTHER INFORMATION CONTACT: Audrey Berry, Public Affairs Specialist, Department of Energy, Grand Junction Projects Office, P.O. Box 2567, Grand Junction, CO, 81502 (303) 248–7727.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to advise DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

The Environmental Management Site-Specific Advisory Board, Monticello Site, will be discussing reports from subcommittees on local training and hiring, health and safety, budget, future land use, and repository design.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Audrey Berry's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda.

The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days before the date of the meeting, due to programmatic issues that had to be resolved prior to publication.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Audrey Berry, Department of Energy Grand Junction Projects Office, P.O. Box 2567, Grand Junction, CO 81502, or by calling her at (303)-248–7727.

Issued at Washington, DC on June 7, 1995

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–14346 Filed 6–9–95; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site Specific Advisory Board, Pantex Plant

AGENCY: Department of Energy.

ACTION: Notice of open Meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Pantex Plant

DATE AND TIME: Tuesday, June 27, 1995: 1:30 pm–6:00 pm

ADDRESS: Carson County Square House Museum, Panhandle, Texas.

FOR FURTHER INFORMATION CONTACT: Tom Williams, Program Manager, Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120 (806) 477–3121.

SUPPLEMENTARY INFORMATION: Purpose of the Committee: The Pantex Plant Citizens' Advisory Board provides input to the Department of Energy on Environmental Management strategic decisions that impact future use, risk management, economic development, and budget prioritization activities.

Tentative Agenda

1:30 pm Welcome—Agenda Review—Introductions
Co-Chairs' Comments
2:00 pm Presentation
Resource Conservation & Recovery
2:30 pm Updates
- Occurrence Reports—DOE
- Agreement in Principle
- March fires and evaluation
- High explosives in well—sewage treatment plant
- Comments on Site Development Plan submittal

4:00 pm—Subcommittee Reports
- Budget and Finance
- Policy and Personnel
- Program and Training
- Community Outreach

5:00 pm—Task Force Reports
- Public Participation/Public Information

5:15 pm—Next Meetings
6:00 pm—Adjournment.

Public comment will be taken periodically throughout the meeting.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Written comments will be accepted at the address above for 15 days after the date of the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Tom Williams' office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes

The minutes of this meeting will be available for public review and copying at the Pantex Public Reading Rooms located at the Amarillo College Lynn Library and Learning Center, 2201 South Washington, Amarillo, TX phone (806) 371–5400. Hours of operation are from 7:45 am to 10:00 pm, Monday through Thursday; 7:45 am to 5 pm on Friday; 8:30 am to 12:00 noon on Saturday; and 2 pm to 6 pm on Sunday, except for Federal holidays. Additionally, there is a Public Reading Room located at the Carson County Public Library, 401 Main Street, Panhandle, TX phone (806) 537–3742. Hours of operation are from 9 am to 7 pm on Monday; 9 am to 5 pm, Tuesday through Friday; and closed Saturday and Sunday as well as Federal Holidays. Minutes will also be available by writing or calling Tom Williams at the address or telephone number listed above.

Issued at Washington, DC on June 7, 1995.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–14347 Filed 6–9–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. EL95–46–000, et al.]

Laidlaw Gas Recovery Systems, Inc., et al.; Electric Rate and Corporate Regulation Filings

June 2, 1995.

Take notice that the following filings have been made with the Commission:

1. Laidlaw Gas Recovery Systems, Inc., Coyote Canyon Landfill Gas Power Plant

[Docket No. EL95–46–000 and QF88–389–001]

Take notice that on May 22, 1995, Laidlaw Gas Recovery Systems, Inc. (Laidlaw), the operator and an owner of the Coyote Canyon Landfill Gas Power Plant (Coyote Canyon or Facility), a small power production qualifying facility (QF), filed a petition for declaratory order and request for expedited consideration. The Petitioner requests that the Commission issue a declaratory order stating that the use of fossil fuel by the Coyote Canyon Facility, in quantities less than 25 percent of the total energy input of the Facility during any calendar year, is consistent with Coyote Canyon's status as a qualifying facility pursuant to Commission regulations implementing Title II of the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 USC 796 (1978).

Comment date: June 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Wisconsin Power & Light Company

[Docket No. ER95–1036–000]

Take notice that on May 11, 1995, Wisconsin Power & Light Company (WP&L) tendered for filing an amended Wholesale Power Contract dated February 20, 1995, between the City of Brodhead and WP&L. WP&L states that this amended Wholesale Power Contract revises the previous agreement between the two parties dated December 10, 1990, and designated Rate Schedule Number 83 by the Commission.

The parties have amended the Wholesale Power Contract to add an additional delivery point. Service under this amended Wholesale Power Contract will be in accordance with standard WP&L Rate Schedule W–3.

WP&L requests that an effective date concurrent with the contract effective date be assigned. WP&L states that copies of the amended Wholesale Power Contract and the filing have been provided to the City of Brodhead and the Public Service Commission of Wisconsin.

Comment date: June 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Wisconsin Power & Light Company

[Docket No. ER95–1037–000]

Take notice that on May 11, 1995, Wisconsin Power & Light Company (WP&L) tendered for filing a Power Supply Agreement dated February 9, 1995, between the Menominee Indian Tribe of Wisconsin and WP&L. This is a new customer and the Commission has not previously assigned a Rate Schedule to this customer.

The parties have executed this Power Supply Agreement in conjunction with the initiation of service to the Menominee Indian Tribe. Service under this Power Supply Agreement will be in accordance with standard WP&L Rate Schedule W–3.

WP&K requests that an effective date concurrent with the contract effective date be assigned. WP&L states that copies of the Power Supply Agreement and the filing have been provided to the Menominee Indian Tribe of Wisconsin and the Public Service Commission of Wisconsin.

Comment date: June 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power & Light Company

[Docket No. ER95–1055–000]

Take notice that on May 16, 1995, Florida Power & Light Company (FPL), tendered for filing revised Attachments A for the Stanton Transmission Servie Agreement between Florida Power & Light Company (FPL) and the Florida Municipal Power Agency (FMPA), the Tri-City Transmission Service Agreement between FPL and FMPA, and the Restated and Revised Transmission Service Agreement between FPL and FMPA. FPL requests that the changes be permitted to become effective on May 1, 1995. FPL states that this filing is in accordance with Section 35 of the Commission's Regulations.

Comment date: June 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Company of Oklahoma, Southwestern Electric Power Company, and West Texas Utilities Company

[Docket No. ER95–1076–000]

Take notice that on May 19, 1995, Public Service Company of Oklahoma (PSO), Southwestern Electric Power Company (SWEPCO) and West Texas Utilities Company (WTU), tendered for filing certain non-rate revisions to their respective Coordination Sales Tariffs (CST–1 Tariffs). To the expanded and new provisions clarify certain matters under the Commission-approved CST–1 Tariffs.

PSO, SWEPCO and WTU have asked for expedited consideration and waiver of the Commission's notice requirements to the extent necessary to permit an effective date of May 22, 1995. Copies of this filing were served on the Public Utility Commission of Texas, the Oklahoma Corporation Commission, the Arkansas Public Service Commission, the Louisiana Public Service Commission and the customers for whom PSO, SWEPCO and WTU, respectively have filed service agreements.

Comment date: June 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Citizens Utilities Company

[Docket No. ES95–34–000]

Take notice that on June 2, 1995, Citizens Utilities Company filed an application under section 204 of the Federal Power Act requesting an order authorizing the issuance, from time to time, of up to 31 million shares of Common Stock Series A and 13 million shares of Common Stock Series B as stock dividends on shares of its outstanding Common Stock, during a two-year period ending July 1, 1997.

7. Chicago Energy Exchange of Chicago, Inc.

[Docket Nos. ER90–225–020]

Take notice that on May 18, 1995, Chicago Energy Exchange of Chicago, Inc. (Energy Exchange), filed certain information as required by the Commission's April 19, 1990, order in Docket No. ER90–225–000. Copies of Energy Exchange's informational filing are on file with the Commission and are available for public inspection.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14258 Filed 6–9–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER95–1020–000, et al.]

Louisville Gas & Electric Company, et al.; Electric Rate and Corporate Regulation Filings

June 5, 1995.

Take notice that the following filings have been made with the Commission:

1. Louisville Gas and Electric Company

[Docket No. ER95–1020–000]

Take notice that on May 22, 1995, Louisville Gas and Electric Company, tendered for filing a copy of a service agreement between Louisville Gas and Electric Company and ENRON Power Marketing, Inc. under Rate GSS.

Comment date: June 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER95–1063–000]

Take notice that on May 18, 1995, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Operating Companies), filed an executed Service Agreement between GPU and Stand Energy Corporation, dated May 15, 1995. This Service Agreement specifies that Stand Energy Corporation has agreed to the rates, terms and conditions of the GPU Operating Companies' Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in *Jersey Central Power & Light Co., Metropolitan Edison*

Co. and Pennsylvania Electric Co., Docket No. ER95–276–000 and allows GPU and Stand Energy Corporation to enter into separately scheduled transactions under which the GPU Operating Companies will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than the GPU Operating Companies' cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of May 15, 1995 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: June 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. ER95–1064–000]

Take notice that on May 18, 1995, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Operating Companies), filed an executed Service Agreement between GPU and Rainbow Energy Marketing Corporation, dated May 15, 1995. This Service Agreement specifies that Rainbow Energy Marketing Corporation has agreed to the rates, terms and conditions of the GPU Operating Companies' Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in *Jersey Central Power & Light Co., Metropolitan Edison Co., and Pennsylvania Electric Co.*, Docket No. ER95–276–000 and allows GPU and Rainbow Energy Marketing Corporation to enter into separately scheduled transactions under which the GPU Operating Companies will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than the GPU Operating Companies' cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of May 9, 1995 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: June 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Wisconsin Public Service Corporation

[Docket No. ER95–1066–000]

Take notice that on May 18, 1995, Wisconsin Public Service Corporation tendered for filing a contribution in aid of construction agreement with Wisconsin Power and Light Company to recover the costs of work required to connect a Wisconsin Public Service Corporation transmission line to a new Wisconsin Power and Light line to a new substation. WPSC respectfully requests that this agreement be accepted for filing and made effective 60 days after the filing date to allow the billing of the work.

Comment date: June 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Niagara Mohawk Power Corporation

[Docket No. ER95–1070–000]

Take notice that on May 19, 1995, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing an agreement between Niagara Mohawk and Rainbow Energy Marketing Corporation (REM) dated May 18, 1995, providing for certain transmission services to REM.

Copies of this filing were served upon REM and the New York State Public Service Commission.

Comment date: June 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Northern States Power Company (Minnesota Company)

[Docket No. ER95–1071–000]

Take notice that on May 19, 1995, Northern States Power Company (Minnesota) (NSP) tendered for filing a Distribution Facilities Agreement between NSP and the City of Arlington (City). NSP presently provides firm power service to the City pursuant to a Firm Power Service Resale Agreement dated August 2, 1983. The Commission has assigned Rate Schedule No. 421 to previously filed agreements between NSP and City. The Distribution Facilities Agreement will replace the distribution substation service portion of the Firm Power Service Resale Agreement and sets forth the terms and conditions and rates for service to City for the period July 1, 1995 to December 31, 1999.

Since distribution facilities are the subject matter of this Agreement, NSP requests the Commission waive jurisdiction. However, in the event the Commission determines the Agreement is subject to its jurisdiction, NSP requests the Distribution Facilities Agreement be accepted for filing effective July 1, 1995, and requests waiver of the Commission's notice requirements in order for the Distribution Facilities Agreement to be accepted for filing on the date requested.

Comment date: June 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Northern States Power Company (Minnesota Company)

[Docket No. ER95–1072–000]

Take notice that on May 19, 1995, Northern States Power Company (Minnesota)(NSP), tendered for filing a Distribution Facilities Agreement between NSP and the City of Arlington (City). NSP presently provides firm power service to the City pursuant to a Firm Power Service Resale Agreement dated August 19, 1983. The Commission has assigned Rate Schedule No. 433 to previously filed agreements between NSP and City. The Distribution Facilities Agreement will replace the distribution substation service portion of the Firm Power Service Resale Agreement, and sets forth the terms and conditions and rates for service to City for the period July 1, 1995 to December 31, 1999.

Since distribution facilities are the subject matter of this Agreement NSP requests the Commission waive jurisdiction. However, in the event the Commission determines the Agreement is subject to its jurisdiction, NSP requests the Distribution Facilities Agreement be accepted for filing effective July 1, 1995, and requests waiver of the Commission's notice requirements in order for the Distribution Facilities Agreement to be accepted for filing on the date requested.

Comment date: June 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Northern States Power Company (Minnesota Company)

[Docket No. ER95–1073–000]

Take notice that on May 19, 1995, Northern States Power Company (Minnesota) (NSP), tendered for filing a Distribution Facilities Agreement between NSP and the City of Brownton (City). NSP presently provides firm power service to the City pursuant to a Firm Power Service Resale Agreement dated August 19, 1983. The Commission has assigned Rate Schedule No. 422 to previously filed agreements between NSP and City. The Distribution Facilities Agreement will replace the distribution substation service portion of the Firm Power Service Resale Agreement, and sets forth the terms and conditions and rates for service to City for the period July 1, 1995 to December 31, 1999.

Since distribution facilities are the subject matter of this Agreement, NSP requests the Commission waive jurisdiction. However, in the event the Commission determines the Agreement is subject to its jurisdiction, NSP requests the Distribution Facilities Agreement be accepted for filing effective July 1, 1995, and requests waiver of the Commission's notice requirements in order for the Distribution Facilities Agreement to be accepted for filing on the date requested.

Comment date: June 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. ER95–1079–000]

Take notice that on May 22, 1995, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the "GPU Operating Companies"), filed an executed Service Agreement between GPU and Heartland Energy Services Inc., dated May 17, 1995. This Service Agreement specifies that Stand Energy Corporation has agreed to the rates, terms and conditions of the GPU Operating Companies' Operating Capacity and/or Energy Sales Tariff ("Sales Tariff") designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in *Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co.*, Docket No. ER95–276–000 and allows GPU and Heartland Energy Services Inc. to enter into separately scheduled transactions under which the GPU Operating Companies will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than the GPU Operating Companies' cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of May 17, 1995, for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: June 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Acme POSDEF Partners, L.P.

[Docket No. QF85–311–003]

On May 25, 1995, Acme POSDEF Partners, L.P. (Applicant), c/o James B. Vasile, Esquire, 1330 Connecticut Avenue NW., Washington, D.C. 20036, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to Section 292.205(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to Applicant, the topping-cycle cogeneration facility is located in Stockton, California. The Commission previously certified the facility as a qualifying cogeneration facility in Cogeneration National Corporation, 38 FERC ¶62,259 (1987) and recertified the facility in *Acme POSDEF Partners, L.P.*, 63 FERC ¶63,127 (1993). The instant request for recertification is due to a change in ownership of the facility.

Comment date: Thirty days after the date of publication of this notice in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protests with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14259 Filed 6–9–95; 8:45 am]

BILLING CODE 6717–01–P

[Project Nos. 11534–000, et al.]

Hydroelectric Applications [Red River Water Commission, et al.]; Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. *Type of Application:* Preliminary Permit.

b. *Project No.* 11534–000.

c. *Date Filed:* May 2, 1995.

d. *Applicant:* Red River Water Commission.

e. *Name of Project:* Red River Lock and Dam No. 1 Hydro Project.

f. *Location:* On the Red River, in Catahoula Parish, near Dunlap, Louisiana.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a). 825(r).

h. *Applicant Contact:* Mr. Ben M. Littlepage, 701 Highway 1 Bypass, P.O. Box 776, Natchitoches, LA 71458, (318) 352–7446.

i. *FERC Contact:* Ed Lee (202) 219–2809.

j. *Comment Date:* July 24, 1995.

k. *Description of Project:* The proposed project would utilize the U.S. Army Corps of Engineers' Red River Lock and Dam No. 1 and consists of the following new facilities: (1) a powerhouse containing two 12.5–MW generating units for a total installed capacity of 25 MW; (2) a proposed tailrace; (3) a 34.5-kV or equivalent transmission line; and (4) appurtenant facilities. The average annual generation would be 100 GWh. The applicant estimates that the cost of the studies under the terms of the permit would be $400,000. All power generated would be sold to a local utility company. The project lock and dam is owned by the U.S. Army Corps of Engineers, Lower Mississippi Valley Office, P.O. 80, Vicksburg, MS 39180.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

2 a. *Type of Application:* Preliminary Permit.

b. *Project No.* 11535–000.

c. *Date Filed:* May 2, 1995.

d. *Applicant:* Red River Water Commission.

e. *Name of Project:* Red River Lock and Dam No. 2 Hydro Project.

f. *Location:* On the Red River, in Rapides Parish, near Ruby, Louisiana.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a) 825(r).

h. *Applicant Contact:* Mr. Ben M. Littlepage, 701 Highway 1 Bypass, P.O. Box 776, Natchitoches, LA 71458, (318) 352–7446.

i. *FERC Contact:* Ed Lee (202) 219–2809.

j. *Comment Date:* July 24, 1995.

k. *Description of Project:* The proposed project would utilize the U.S. Army Corps of Engineers' Red River Lock and Dam No. 2 and consists of the following new facilities: (1) a powerhouse containing three 10.5–MW generating units for a total installed capacity of 31.5 MW; (2) a new tailrace; (3) a 34.5-kV or equivalent transmission line; and (4) appurtenant facilities. The average annual generation would be 131 GWh. The applicant estimates that the cost of the studies under the terms of the permit would be $400,000. All power generated would be sold to a local utility company. The project lock and dam is owned by the U.S. Army Corps of Engineers, Lower Mississippi Valley Office, P.O. 80, Vicksburg, MS 39180.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

3 a. *Type of Application*: Preliminary Permit.

b. *Project No.* 11536–000.

c. *Date Filed:* May 2, 1995.

d. *Applicant:* Red River Water Commission.

e. *Name of Project:* Red River Lock and Dam No. 3 Hydro Project.

f. *Location:* On the Red River, in Natchitoches Parish, near Colfax, Louisiana.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a) 825(r).

h. *Applicant Contact:* Mr. Ben M. Littlepage, 701 Highway 1 Bypass, P.O. Box 776, Natchitoches, LA 71458, (318) 352–7446.

i. *FERC Contact*: Ed Lee (202) 219–2809.

j. *Comment Date*: July 24, 1995.

k. *Description of Project*: The proposed project would utilize the U.S. Army Corps of Engineers' Red River Lock and Dam No. 3 and consists of the following new facilities: (1) a powerhouse containing three 20.5–MW generating units for a total installed capacity of 61.5 MW; (2) a new tailrace; (3) a 34.5-kV or equivalent transmission line; and (4) appurtenant facilities. The average annual generation would be 224 GWh. The applicant estimates that the cost of the studies under the terms of the permit would be $400,000. All power generated would be sold to a local utility company. The project lock and dam is owned by the U.S. Army Corps of Engineers, Lower Mississippi Valley Office, P.O. 80, Vicksburg, MS 39180.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

4 a. *Type of Application*: Preliminary Permit.

b. *Project No.* 11537–000.

c. *Date Filed*: May 2, 1995.

d. *Applicant*: Red River Water Commission.

e. *Name of Project:* Red River Lock and Dam No. 4 Hydro Project.

f. *Location:* On the Red River, in Red River Parish, near Lake End, Louisiana.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Ben M. Littlepage, 701 Highway 1 Bypass, P.O. Box 776, Natchitoches, LA 71458, (318) 352–7446.

i. *FERC Contact:* Ed Lee (202) 219–2809.

j. *Comment Date:* July 24, 1995.

k. *Description of Project:* The proposed project would utilize the U.S. Army Corps of Engineers' Red River Lock and Dam No. 4 and consists of the following new facilities: (1) A powerhouse containing three 11–MW generating units for a total installed capacity of 33 MW; (2) a new tailrace; (3) a 34.5-kV or equivalent transmission line; and (4) appurtenant facilities. The average annual generation would be 152 GWh. The applicant estimates that the cost of the studies under the terms of the permit would be $400,000. All power generated would be sold to a local utility company. The project lock and dam is owned by the U.S. Army Corps of Engineers, Lower Mississippi Valley Office, P.O. 80, Vicksburg, MS 39180.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

5 a. *Type of Application:* Preliminary Permit.

b. *Project No.* 11538–000.

c. *Date Filed:* May 2, 1995.

d. *Applicant:* Red River Water Commission.

e. *Name of Project:* Red River Lock and Dam No. 5 Hydro Project.

f. *Location:* On the Red River, in Caddo Parish, near Caspiana, Louisiana.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Ben M. Littlepage, 701 Highway 1 Bypass, P.O. Box 776, Natchitoches, LA 71458, (318) 352–7446.

i. *FERC Contact:* Ed Lee (202) 219–2809.

j. *Comment Date:* July 24, 1995.

k. *Description of Project:* The proposed project would utilize the U.S. Army Corps of Engineers' Red River Lock and Dam No. 5 and consists of the following new facilities: (1) A powerhouse containing three 13.5-MW generating units for a total installed capacity of 40.5 MW; (2) a new tailrace; (3) a 13.2-kV or equivalent transmission line; and (4) appurtenant facilities. The average annual generation would be 174 GWh. The applicant estimates that the cost of the studies under the terms of the permit would be $400,000. All power generated would be sold to a local utility company. The project lock and dam is owned by the U.S. Army. Corps of Engineers, Lower Mississippi Valley Office, P.O. 80, Vicksburg, MS 39180.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

6 a. *Type of Application:* Application to Amend Article 404.

b. *Project No.* 9985–021.

c. *Date Filed:* March 31, 1995.

d. *Applicant:* Rivers Electric Company, Inc.

e. *Name of Project:* Mill Pond Project.

f. *Location:* Catskill Creek, Greene County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Charles R. Pepe, Rivers Electric Company, Inc., Old Quarry Road, P.O. Box 707, Alpine, NJ 07620, (201) 768–4040.

i. *FERC Contact:* Patti Pakkala, (202) 219–0025.

j. *Comment Date:* July 7, 1995.

k. *Description of Project:* Rivers Electric Company, Inc, licensee for the Mill Pond Project, requests approval of an amendment application to change the location of the recreation facilities required by Article 404 of the project license. The amendment request proposes to relocate project-related recreation facilities to leased lands outside the boundary of the Mill Pond Project. The licensee proposes this change given extensive safety concerns at the previously proposed location.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

7 a. *Type of Application:* Transfer of License.

b. *Project No.* 2973–073.

c. *Date Filed:* May 8, 1995.

d. *Applicant:* Island Park Hydro L.L.C.

e. *Name of Project:* Island Park Hydroelectric.

f. *Location:* Henrys Fork, Snake River, Fremont County, Idaho, near Ashton.

g. *Filed Pursuant to:* Federal Power Act, §§ 791(a)–825(r).

h. *Applicant Contact:* Joe D. Davis, President, L.B. Industries, Inc., Member, Island Park Hydro L.L.C., P.O. Box 2797, Boise, ID 83701, (208) 345–7515.

i. *FERC Contact:* Mark Hooper, (202) 219–2680.

j. *Comment Date:* July 10, 1995.

k. *Description of Transfer:* Applicant wishes to transfer its license back to Fall River Rural Electric Cooperative, Inc.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

8 a. *Type of Application:* Approval to Reclassify 11.5 Acres Along Lake Marion.

b. *Project No.* 199–093.

c. *Date Filed:* April 20, 1995.

d. *Applicant:* South Carolina Public Service Authority.

e. *Name of Project:* Santee-Cooper Hydroelectric Project.

f. *Location:* Orangeburg, Berkeley, and Clarendon Counties, South Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. G. Denton Lindsay, Jr., Santee Cooper, One Riverwood Drive, P.O. Box 2946101, Moncks Corner, SC 29461–2901, (803) 761–4075.

i. *FERC Contact:* Jean Potvin, (202) 219–0022.

j. *Comment Date:* July 15, 1995.

k. *Description of Project:* Licensee proposes reclassifying 11.5 acres along Lake Marion in Orangeburg County in the vicinity of Rocks Landing and Rocks Pond Campground from Future Public Vacation Recreational to Residential Marginal.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

9 a. *Type of Application:* Preliminary Permit.

b. *Project No.* 11532–000.

c. *Date filed:* May 1, 1995.

d. *Applicant:* Engineering Company, Inc.

e. *Name of Project:* L&D 25.

f. *Location:* On the Mississippi River in Calhoun County, Illinois near Winfield, Missouri.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Richard A. Volkin, 354 Turnpike Street, Canton, MA 02021, (617) 821–4338.

i. *FERC Contact:* Charles T. Raabe (202) 219–2811.

j. *Comment Date:* July 28, 1995.

k. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Lock and Dam 25 and would consist of: (1) An inlet channel; (2) a powerhouse containing four generating units having a total installed capacity of 50,000-kW; (3) a tailrace channel; and (4) appurtenant facilities.

Applicant estimates that the cost of the studies under the terms of the permit would be $200,000 and that the average annual generation would be 246,000,000-kWh.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

10 a. *Type of Application:* Preliminary Permit.

b. *Project No.* 11533–000.

c. *Date filed:* May 1, 1995.

d. *Applicant:* Engineering Company, Inc.

e. *Name of Project:* L&D 24.

f. *Location:* On the Mississippi River in Calhoun County, Illinois near Clarksville, Missouri.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Richard A. Volkin, 354 Turnpike Street, Canton, MA 02021, (617) 821–4338.

i. *FERC Contact:* Charles T. Raabe (202) 219–2811.

j. *Comment Date:* July 28, 1995.

k. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Lock and Dam 24 and would consist of: (1) An inlet channel; (2) a powerhouse containing four generating units having a total installed capacity of 50,000-kW; and (3) appurtenant facilities.

Applicant estimates that the cost of the studies under the terms of the permit would be $250,000 and that the average annual generation would be 245,000,000-kWh.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

11a. *Type of Application:* Surrender of License.

b. *Project No.* 4669–030.

c. *Date Filed:* May 19, 1995.

d. *Applicant:* Rancho Riata Hydro Partners, Inc.

e. *Name of Project:* Rancho Riata.

f. *Location:* On Bishop Creek, Inyo County, California, near Bishop.

g. *Filed Pursuant to:* Federal Power Act, §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Joseph M. Keating, Rancho Riata Hydro Partners, Inc., 847 Pacific Street, Placerville, CA 95667, (916) 622–9013.

i. *FERC Contact:* Mark Hooper, (202) 219–2680.

j. *Comment Date:* July 17, 1995.

k. *Description of Application:* Applicant wishes to surrender its license for economic reasons. No construction has occurred.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

12 a. *Type of Application:* Surrender of Exemption.

b. *Project No.* 6633–007.

c. *Date Filed:* May 18, 1995.

d. *Applicant:* Humboldt State University.

e. *Name of Project:* Davis Creek.

f. *Location:* On Davis Creek, Humboldt County, California, near Maple Creek.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)825(r).

h. *Applicant Contact:* Eileen A. Lorimer, Project Manager, EA Engineering, Science, and Technology, 3468 Mt. Diablo Boulevard, Suite B–100, Lafayette, CA 94549, (510) 283–7077.

i. *FERC Contact:* Mark Hooper, (202) 219–2680.

j. *Comment Date:* July 17, 1995.

k. *Description of Application:* The project consists of: (1) A 3-foot-high, 25-foot-long diversion structure; (2) a 10-inch-diameter, 3,700-foot-long conduit/penstock system; (3) a powerhouse with a 100 Kw generator, operating under a 520-foot head; (4) a 4,200-foot-long, 12 Kv transmission line; and (5) a tailrace to Davis Creek.

Applicant wishes to surrender the exemption for economic reasons.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

13 a. *Type of Application:* Major License.

b. *Project No.* 11175–002.

c. *Date filed:* January 3, 1995.

d. *Applicant:* Crown Hydro Company.

e. *Name of Project:* Crown Mill.

f. *Location:* On the Mississippi River, in the city of Minneapolis, Hennepin County, Minnesota.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Greg Olsen Crown Hydro Company, 5416 Tenth Avenue South Minneapolis, MN 55417, (612) 822–2212.

i. *FERC Contact:* Charles T. Raabe (202) 219–2811.

j. *Deadline Date:* August 3, 1995.

k. *Status of Environmental Analysis:* The application is not ready for environmental analysis at this time—see attached paragraph D7.

l. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Upper St. Anthony Falls dam and reservoir and would consist of: (1) A reconstructed upper canal and intake tunnel; (2) a proposed powerhouse room, to be constructed on the lower level of Crown Mill, containing two hydropower units with a total capacity of 3,400–kW; (3) an existing tailrace tunnel and a reconstructed tailrace canal; (4) a proposed underground transmission line; and (5) appurtenant facilities.

The estimated annual energy production would be 16,650 MWh. Project power would be sold to Northern States Power Company.

m. This notice also consists of the following standard paragraphs: A2, A9, B1, and D7.

n. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, N.E. Room 3104, Washington, D.C. 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Crown Hydro Company, 5416 Tenth Avenue South, Minneapolis, MN 55417.

14 a. *Type of Application:* New Major License.

b. *Project No.* 1988–007.

c. *Date Filed:* March 5, 1985.

d. *Applicant:* Pacific Gas & Electric Company.

e. *Name of Project:* Haas-Kings River Project.

f. *Location:* On the North Fork of the Kings River and its tributaries, within the Sierra National Forest, in Fresno County, California.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Shan Bhattacharya, Manager, Hydro Generation, Pacific Gas & Electric Company, 201 Mission Street, Room 1012, P.O. Box 770000, P10A, San Francisco, CA 94177.

i. *FERC Contact:* Frankie Green (202) 501–7704.

j. *Deadline Date:* See standard paragraph D10.

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time.

l. *Description of Project:* The existing Haas-Kings River Project consists of two developments on the North Fork of the Kings River near the towns of Centerville, Fresno, and Sanger: the Haas Development and the Kings River Development. Courtright Lake and Lake Wishon are reservoirs for the project, and the Helms Pumped Storage Project (FERC No. 2735) cycles water between them. Water from the Haas Development passes through the Balch project (FERC No. 175) before entering the Kings River Development.

Haas Development

The Haas Development consists of: (1) The Courtright Dam, a 315-foot-high, 862-foot-long rock-fill concrete-faced dam consisting of (a) a 4-foot-high reinforced concrete parapet wall, (b) ungated spillway 300-foot-wide and 8-foot-deep, (c) outlet works with a tunnel through the left abutment, a submerged intake tower and discharge controls, and (d) a right abutment with an intake-discharge structure and tunnel; (2) the Wishon Dam, a 260-foot-high, 3,330-foot-long dumped rock-fill concrete-faced dam consisting of (a) a 4-foot-high reinforced concrete parapet wall, (b) four small auxiliary concrete gravity dams with a total length of 238 feet and a maximum height of 24 feet, (c) a 285-foot-long, 15-foot-deep gated spillway, (d) six radial gates, each 40-foot-wide by 11.5-foot-high, (e) outlet works (Haas tunnel) with a bifurcation that discharges into the North Fork Kings River, and (f) an intake-discharge structure and tunnel; (3) an unlined 6.19-mile-long, 13-foot-high by 13-foot-wide Haas tunnel consisting of (a) a submerged tunnel intake tower 15-feet by 15-feet and (b) a differential type surge tank; (4) a welded steel 4,560-foot-long Haas penstock, varying in diameter from 96 inches to 77.5 inches and branching into two penstocks upstream of the powerhouse, which further taper from 52 inches to 42 inches; (5) Haas powerhouse, 500 feet underground and 56 feet by 173 feet in plan containing two generators with a total rating of 140,000 Kw; (6) a 1,936-foot-long by 17.5-foot-high by 15-foot-wide tailrace tunnel connecting Haas powerhouse with Balch diversion reservoir; (7) two impoundments with a gross storage capacity of 123,286 acre-feet (AF) and 128,606 AF for Courtright Dam and Wishon Dam, respectively; and (8) appurtenant facilities.

Kings River Development

The Kings River Development consists of: (1) A 14-foot-wide, 3.9-mile-long, horseshoe-shaped unlined tunnel connecting the Balch afterbay reservoir with the Kings River penstock and consisting of (a) two sections 1.7 and 1.8 miles long, (b) 0.4-mile long Dinkey Creek Siphon, 108 to 98 inch diameter steel pipe, and (c) a simple vertical surge tank; (2) a 108-inch to 90-inch diameter, 1,810-foot-long welded steel penstock; (3) a 102-foot by 55-foot powerhouse containing one generator with a total rating of 49,000 Kw; (4) a 510-foot-long, 20-foot-wide bottom, trapezoidal-shaped open channel tailrace with 1½ to 1 minimum side slopes and a minimum depth of 10 feet, connecting the Kings River powerhouse with the Pine Flat reservoir; and (5) appurtenant facilities.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraph(s): A4 and D10.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, N.E., Room 3104, Washington, D.C., 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Pacific Gas & Electric Company, 201 Mission Street, San Francisco, CA 94106, or by calling Tom Jereb at (415) 973–9320.

Standard Paragraphs

A2. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D7. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," or "COMPETING APPLICATION;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

D10. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (August 4, 1995 for Project No. 1988–007). All reply comments must be filed with the Commission within 105 days from the date of this notice. (September 18, 1995 for Project No. 1988–007).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the

filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Dated: June 7, 1995, Washington, D.C.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14313 Filed 6–9–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–536–000]

Columbia Gulf Transmission Co.; Notice of Application

June 6, 1995.

Take notice that on June 1, 1995, Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 1273, Charleston, West Virginia 25325–1273, filed in Docket No. CP95–536–000 an application pursuant to Section 7(b) of the Natural Gas Act, as amended, and Sections 157.7 and 157.18 of the Commission's Regulations thereunder for permission and approval to abandon natural gas transportation and exchange services for Natural Gas Pipeline Company of America (Natural), all as more fully set forth in the application on file with the Commission and open to public inspection.

Columbia Gulf proposes to abandon the transportation and exchange services provided Natural by Columbia Gulf under Columbia Gulf's Rate Schedules X–81 and X–105. Columbia Gulf states that pursuant to Rate Schedule X–81, authorized in Docket No. CP81–185, Columbia Gulf and Natural exchanged up to 10,000 Mcf per day of natural gas attributable to Natural's South Marsh Island Block 265 volumes with volumes available to Columbia Gas Transmission Corporation (Columbia Gas) at the outlet of the Texaco, Inc. Henry Plant (Henry Plant), Vermilion Parish, Louisiana. Columbia Gulf explains that it transported Natural's gas from the point of receipt at Columbia Gulf's Pecan Island Plant, Vermilion Parish, Louisiana to the point of exchange at Columbia's Gulf's Rayne Compressor Station, Acadia Parish, Louisiana. Columbia Gulf relates that it redelivered thermally equivalent volumes of gas, less an adjustment for removal of liquefiable hydrocarbons, unaccounted-for gas and fuel, at the outlet of the Henry Plant.

Columbia Gulf further states that under Rate Schedule X–105, authorized in Docket No. CP84–132, Columbia Gulf, along with Tennessee Gas Pipeline Company (Tennessee), transported natural gas on a firm basis through the South Pass Project 77 offshore facilities of up to 64,000 Mcf per day (32,500 Mcf by Columbia Gulf) from receipt points at the interconnection of Columbia Gulf's and Tennessee's jointly owned South Pass Project 77 facilities and pipeline extending from the South Pass Block 78 and West Delta Block 109, offshore Louisiana, to the terminus of the South Pass Project 77 facilities in Plaquemines Parish, Louisiana.

Columbia Gulf asserts that as a result of Natural's restructuring of its services pursuant to Commission Order No. 636, Natural no longer has a need for the transportation and exchange services available under Rate Schedule X–81 and X–105. Columbia Gulf declares that as a consequence, Natural and Columbia have agreed to an exit fee as contemplated by Order No. 636, in which the parties, among other things, agreed to terminate Natural's contractual obligations under Rate Schedules X–81 and X–105 through the payment of the exit fee by Natural to Columbia Gulf in consideration for Columbia Gulf's early termination and abandonment of Rate Schedules X–81 and X–105.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 27, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulation Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that the abandonment is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia Gulf to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14264 Filed 6–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–327–000]

K N Interstate Gas Transmission Co.; Notice of Account No. 858 Filing

June 6, 1995.

Take notice that on June 1, 1995, K N Interstate Gas Transmission Co. (KNI) made its annual Account No. 858 tracker filing in the above captioned docket.

KNI states that the filing revises KNI's Account No. 858 rate component and details, for the months July 1994 through March 1995, its actual Account No. 858 cost recovery and incurrence.

KNI states that copies of the filing were served upon KNI's jurisdictional customers, interested public bodies, and all parties to the proceedings.

Any person desiring to be heard or to make any protest with reference to this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 13, 1995. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14269 Filed 6–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–2–53–000]

K N Interstate Gas Transmission Co.; Notice of Fuel and Loss Filing

June 6, 1995.

Take notice that on June 1, 1995, K N Interstate Gas Transmission Co. (KNI) made its annual fuel and loss reimbursement filing in the above captioned docket.

KNI states that the filing revises KNI's fuel and loss reimbursement percentages and details, for the fifteen months October 1993 through December 1994, its actual fuel and loss and its fuel and loss reimbursement.

KNI states that copies of the filing were served upon KNI's jurisdictional customers, interested public bodies, and all parties to the proceedings.

Any person desiring to be heard or to protest said filing should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 13, 1995. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14273 Filed 6–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–581–001]

National Fuel Gas Supply Corp.; Notice of Application

June 6, 1995.

Take notice that on June 1, 1995, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP94–581–001 an application pursuant to Section 7(b) of the Natural Gas Act to amend a Commission order issued September 13, 1994 in Docket No. CP94–581–001,[1] (September Order) for permission and approval to abandon an additional observation well within the Swede Hill Storage Field in McKean County, Pennsylvania, all as more fully set forth in the application on file with the Commission and open to public inspection.

The September Order granted National the authority to abandon Wells 412–P, 413–P and 415–P and Well Lines S–W413, S–W415, S–W416 and S–W418 at the Swede Hill Storage Field. National states that the authorized abandonments were performed during December 1994, January and February 1995 and that during that time it determined that Well 416–P, an observation well which is located at the end of Well Line S–W416, needed to be plugged and abandoned. National states that it completed the plugging work on February 23, 1995. In its application, National seeks to amend the abandonment authorization to include Well 416–P. National states that Well 416–P was not necessary for the continued operation of the Swede Hill Field and that its plugging will not reduce service form the field.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 27, 1995, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for National to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14263 Filed 6–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–326–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

June 6, 1995.

Take notice that on June 1, 1995, Natural Gas Pipeline Company of America (Natural) tendered for filing proposed changes in its FERC Gas Tariff, Sixth Revised Volume No. 1, to become effective July 1, 1995.

Natural states that the purpose of this filing is to comply with Article VIII of Natural's Stipulation and Agreement at Docket No. RP93–36, which required Natural to file a general rate case to be effective no later than December 1, 1995. The filing reflects a 14.25% equity return allowance, increased depreciation rates for onshore transmission and storage facilities, and increased levels of operating costs when compared to the Docket No. RP93–36 settlement. In addition, Natural's filing reflects the implementation of a revised transportation zone boundary system consistent with its pending rate design settlement filed February 8, 1995, at Docket No. RP93–36.

Natural has also included in the filing a Pro Forma set of rates covering new and revised services on its system. The Pro Forma filing reflects the requested implementation of two new storage services under Rate Schedules DSS and NSS, as well as the addition of new service options under existing Rate Schedules FTS and FTS–G. Natural states that the new and revised services are intended to replace services currently provided under Rate Schedules S–1, LS–2, LS–3, FSS, S–2, S–2/G, FTS–E and FTS–E/G and bring Natural's services more in line with the demands of the marketplace. An

[1] *See*, 68 FERC ¶ 62,242 (1994).

effective date of December 1, 1995 is requested for the new services.

Natural requests whatever waivers may be necessary to permit the tariff sheets as submitted herein to become effective as requested.

Natural states that copies of the filing are being mailed to Natural's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 13, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14270 Filed 6–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. R95–330–000]

NorAm Gas Transmission Co.; Notice of Filing

June 6, 1995.

Take notice that on June 1, 1995, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheet, to become effective July 1, 1995:

Third Revised Sheet No. 13

NGT states that these tariff sheets are filed in compliance with Section 5.7(c)(ii)(2)(B), Second Revised Sheet Nos. 214 and 215 of NGT's tariff.

Pursuant to said tariff provision, the proposed tariff sheets adjust NGT's cashout balancing revenue credit for the period January through March 1995.

Any person desiring to be heard or protest the said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before June 13, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14265 Filed 6–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–331–000]

NorAm Gas Transmission Co.; Notice of Filing

June 6, 1995.

Take notice that on June 1, 1995, NorAm Gas Transmission Company (NGT) tendered for filing tariff sheets that reflect two new Forms of Service Agreement and modifications to the existing Form of Request for Service and Form of Service Agreement in its FERC Gas Tariff, Fourth Revised Volume No. 1, to become effective July 1, 1995.

NGT states that the tariff sheets include new Forms of Service Agreement for Rate Schedule FT and ITA which have been streamlined to result in one page, front and back, as opposed to the existing multi-page and multi-exhibit Form of Service Agreement. Additionally, NGT's current Form of Request for Service is being modified to constitute a list of items of information required for a request for service to allow a Shipper to provide the applicable information in any written form.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before June 13, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14266 Filed 6–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–328–000]

Northern Natural Gas Co., Notice of Proposed Changes in FERC Gas Tariff

June 6, 1995.

Take notice that on June 1, 1995, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1.

Northern states that the filing revises the current GSR–RA surcharge which is designed to recover Northern's gas supply realignment costs. Therefore, Northern has filed 2nd Revised 17th Revised Sheet Nos. 50 and 51 to revise the GSR–RA surcharge, effective July 1, 1995.

Northern states that copies of this filing were served upon the Company's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 13, 1995. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestant a party to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14268 Filed 6–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–332–000]

Panhandle Eastern Pipe Line Co., Notice of Proposed Changes in FERC Gas Tariff

June 6, 1995.

Take notice that on June 1, 1995, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing. The proposed effective date of the revised tariff sheets is July 1, 1995.

Panhandle states that this filing is in compliance with the Commission's February 15, 1995 order in the above proceeding which requires Panhandle to file annual updates to its Unrecovered PGA Costs Surcharges to reflect current transportation billing determinants. The July 1, 1995 effective date proposed herein is the beginning of the second annual period under Section 18.12 of the General Terms and Conditions of Panhandle's FERC Gas Tariff, First Revised Volume No. 1. The firm determinants reflected represent those in effect on May 1, 1995, and the interruptible determinants are for the twelve months ended April 30, 1995. The Reservation Surcharge applicable to Rate Schedules FT and EFT decreases to $.07 from the currently effective $.09, the SCT Volumetric Surcharge decreases to 0.44¢ from the currently effective 0.56¢, and the Volumetric Surcharge applicable to Rate Schedules IT and EIT decreases to 0.18¢ from the currently effective 0.19¢.

Panhandle states that copies of its filing have been served on all affected customers, all parties to this proceeding and applicable state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 13, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14267 Filed 6–9–95; 8:45 am]

BILLING CODE 6717–01–M

S. D. Warren Co., Notice of Intent To File An Application for a New License

June 6, 1995.

Take notice that the S. D. Warren Company, the existing licensee for the Mallison Falls Power Station, Project No. 2932, filed a timely notice of intent to file an application for a new license, pursuant to 18 CFR 16.6 of the Commission's Regulations. The original license for Project No. 2932 was issued effective April 1, 1962, and expires May 31, 2000.

The project is located on the Presumpscot River in Cumberland County, Maine. The principal works of the Mallison Falls Project include a 288-foot-long, 14-foot-high dam with a reinforced concrete section and a cut granite section; a head gate structure with 5 headgates; a reservoir with negligible storage capacity; a 675-foot-long, 6-foot-deep intake canal cut into bedrock; a powerhouse containing two 400-kw generators; generator leads, step-up transformer; and appurtenant facilities.

Pursuant to 18 CFR 16.7, the licensee is required henceforth to make available certain information to the public. This information is now available from the licensee at 89 Cumberland Street, P.O. Box 5000, Westbrook, Maine 04098–1597.

Pursuant to 18 CFR 16.8, 16.9 and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by May 31, 1998.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14260 Filed 6–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2941 Maine]

S. D. Warren Co., Notice of Intent to File an Application for a New License

June 6, 1995.

Take notice that the S.D. Warren Company, the existing licensee for the Little Falls Power Station, Project No. 2941, filed a timely notice of intent to file an application for a new license, pursuant to 18 CFR 16.6 of the Commission's Regulations. The original license for Project No. 2941 was issued effective April 1, 1962, and expires May 31, 2000.

The project is located on the Presumpscot River in Cumberland County, Maine. The principal works of the Little Falls Project include a 200-foot-long, 14-foot-high reinforced concrete spillway dam and a 110-foot-long, 14-foot-high stone sluiceway dam, with 3 sluice gates, at a right angle to the spillway dam; a powerhouse at a right angle and adjacent to the spillway dam and containing four generators with a total rated capacity of 1000–kW; generator leads, step-up transformer, transmission line connections; and appurtenant facilities.

Pursuant to 18 CFR 16.7, the licensee is required henceforth to make available certain information to the public. This information is now available from the licensee at 89 Cumberland Street, P.O. Box 5000, Westbrook, Maine 04098–1597.

Pursuant to 18 CFR 16.8, 16.9 and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by May 31, 1998.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14261 Filed 6–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–314–000]

Tennessee Gas Pipeline Company; Notice of Take-or-Pay Report and Request for Waiver

June 6, 1995.

Take notice that on May 31, 1995 Tennessee Gas Pipeline Company (Tennessee) tendered for filing a Take-or-Pay Report and Request for Waiver.

Tennessee states that Article XXV of the General Terms and Conditions of its FERC Tariff, Fifth Revised Vol. No. 1, provides that Tennessee may file for the recovery of additional take-or-pay costs not included in previous filings. Tennessee further states that it has not incurred significant take-or-pay costs since its last filing in Docket No. RP94–261. Consequently, Tennessee requests a waiver of Section 2 of Article XXV to permit Tennessee to omit the filing of the revised tariff sheets scheduled to be filed on May 31, 1995.

Tennessee notes that the omission will not affect the accounting for these additional costs and carrying charges, in accord with Article XXV, Section 3.2, and the costs will be reflected in a future filing pursuant to Article XXV, Section 2.2.

Tennessee states that a copy of its filing was served on each of its customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before June 13, 1995. Protests will be

considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14271 Filed 6–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP92–137–038 and RP93–136–006]

Transcontinental Gas Pipe Line Corporation; Notice of Filing

June 6, 1995.

Take notice that on June 1, 1995 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to its FERC Gas Tariff Third Revised Volume No. 1 enumerated in Appendix A attached to the filing. The tariff sheets are proposed to be effective July 1, 1995.

Transco states that the instant filing is a result of an October 20, 1994, Presiding Administrative Law Judge (ALJ) "Initial Decision Granting Motion for Summary Disposition Concerning Merchant Allocation Question" requiring Transco to remove from its gathering function $5,556,863 of labor-related A&G costs and $74,240 of general plant and related costs, and to reassign these costs to its merchant service. On February 28, 1995 the Commission affirmed the ALJ's decision, and on May 24, 1995 denied Transco's request for rehearing. Accordingly, Transco is submitting tariff sheets reflecting the decreased charges for the Tilden Processing Plant and all other gathering facilities, and the increased Non-Gas Demand Fee under its sales service Rate Schedules FS and OFS.

TGPL states that copies of the instant filing has been served to interested parties to Docket No. RP92–137.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before June 13, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14272 Filed 6–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–541–000]

Trunkline Gas Co.; Notice of Request Under Blanket Authorization

June 6, 1995.

Take notice that on June 2, 1995, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP95–541–000 a request pursuant to Sections 157.205, 157.211 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, 157.212) for authorization to construct and operate a fourth delivery meter at an existing delivery station for Peoples Gas, Light and Coke Company (Peoples Gas) located in Champaign County, Illinois under Trunkline's blanket certificate issued in Docket No. CP83–84–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set fourth in the request that is on file with the Commission and open to public inspection.

Trunkline proposes to install a fourth 12-inch meter run and appurtenant valves and piping on approximately 0.85 acres of property owned by Peoples Gas at the existing Peoples Gas Manlove Storage Field delivery station. The proposed facilities will be used to measure gas delivery of up to 143.5 Mcf per day to Peoples Gas through a gas treatment facility being constructed pursuant to Section 2.55(a) of the Commission's Regulations. Trunkline states that it will own, operate and maintain the proposed facilities. Trunkline estimate of the cost of the facilities to be constructed is $200,000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

[FR Doc. 95–14262 Filed 6–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–329–000]

Wyoming Interstate Company, Ltd.; Notice of Tariff Filing

June 6, 1995.

Take Notice that on June 1, 1995, Wyoming Interstate Company, Ltd. (WIC), tendered for filing the following revised tariff sheets to its FERC Gas Tariffs, First Revised Volume No. 1 and Second Revised Volume No. 2:

First Revised Volume No. 1
Second Revised Sheet No. 25
Third Revised Sheet No. 26
Second Revised Sheet No. 27
First Revised Sheet No. 29B
Second Revised Volume No. 2
Second Revised Sheet No. 54
Third Revised Sheet No. 55
Second Revised Sheet No. 56
First Revised Sheet No. 57C
First Revised Sheet No. 57D

In compliance with Order No. 577, WIC is proposing to revise the capacity release provisions in its tariff to state that:

1. A Releasing Shipper can release capacity to a Replacement Shipper in a pre-arranged release exempt from the posting and bid requirements for a period of one calendar month or less.
2. A Releasing Shipper that has made a pre-arranged release exempt from posting and bidding cannot re-release the same capacity to the same Replacement Shipper in a pre-arranged release exempt from posting and bidding at less than the maximum rate until 28 days after the first release has terminated.

WIC states its tariff already conforms to the clarification in Order No. 577 that a pre-arranged release at the maximum rate is exempt from bidding, regardless of the duration of the release.

WIC states that effective May 4, 1995, WIC waived its tariff provisions to conform with Order No. 577 and it will continue such waiver until the revised tariff sheets, filed to comply with Order No. 577, are accepted. WIC has requested a July 1, 1995, effective date.

WIC states that copies of this filing were served upon all WIC transportation customers and State Commissions where WIC provides transportation service.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the

Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such petitions or protests should be filed on or before June 13, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14274 Filed 6–9–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Efficiency and Renewable Energy

State Energy Advisory Board; Open Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463; 86 Stat. 770), notice is hereby given of the following meeting:

Name: State Energy Advisory Board.

Date and Time: July 20–21, 1995 from 9:00 am to 5:00 pm.

Place: The San Francisco Hilton and Towers, 333 O'Farrell Street, San Francisco, California 94102. (415) 771–1400.

FOR FURTHER INFORMATION CONTACT: William J. Raup, Office of Technical and Financial Assistance (EE–50), Energy Efficiency and Renewable Energy, U.S. Department of Energy, Washington, DC 20585, Telephone 202/586–2214.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

To make recommendations to the Assistant Secretary for Energy Efficiency and Renewable Energy regarding goals and objectives and programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (P.L. 101–440).

Tentative Agenda: Briefings on, and discussions of:

- The current disposition of realignment efforts underway at the U.S. Department of Energy.
- The FY 1996 Federal budget request for Energy Efficiency and Renewable Energy programs.

Public Participation

The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William J. Raup at the address or telephone number listed above. Requests to make oral presentations must be received five days prior to the meeting; reasonable provision will be made to include the statements in the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes

The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on June 6, 1995.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–14348 Filed 6–9–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Fossil Energy

[FE Docket No. 95–35–NG]

DeKalb Energy Company; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting DEKALB Energy Company blanket authorization to import up to 73 Bcf of natural gas from Canada over a period of two years beginning on the date of first delivery after October 31, 1995. This order is available for inspection and copying in the Office of Fuels Programs Docket Room, Room 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C. on May 30, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–14237 Filed 6–9–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 95–36–NG]

Pennunion Energy Services, L.L.C.; Order Granting Blanket Authorization To Import Natural Gas From Canada and Mexico and To Export Natural Gas to Canada and Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting PennUnion Energy Services, L.L.C. authorization to import up to 40 Bcf of natural gas from Canada and to export up to 40 Bcf of natural gas to Canada. PennUnion also received authorization to import up to 40 Bcf of natural gas from Mexico and to export up to 40 Bcf of natural gas to Mexico. The term of this authorization is for a period of two years beginning on the date of the initial import or export delivery, whichever occurs first.

This order is available for inspection and copying in the Office of Fuels Programs docket room, 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., May 30, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–14238 Filed 6–9–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Hearings and Appeals

Cases Filed During the Week of April 24 Through April 28, 1995

During the Week of April 24 through April 28, 1995, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 C.F.R. part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of

the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: June 1, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of April 24 to April 28, 1995]

Date	Name and Location of Applicant	Case No.	Type of Submission
4/24/95	A. Victorian, Nottingham, England.	VFA–0036	Appeal of an Information Request Denial. If Granted: The March 23, 1995 Freedom of Information Request Denial issued by DOE Albuquerque Operations Office would be rescinded, and A. Victorian would receive access to copies of documents, findings and reports regarding the study of Karen Silkwood's bones, in the possession of the Los Alamos National Laboratory.
4/25/95	Albuquerque Operations Office, Albuquerque, New Mexico.	VSA–0011	Request for Review of Opinion under 10 C.F.R. Part 710. If Granted: The March 23, 1995 Opinion of the Office of Hearings and Appeals (Case No. VSO–0011) would be reviewed at the request of the Office of Safeguards and Security.
4/25/95	Gallen Seven-Up Bottling Co., Hackensack, New Jersey.	RK272–34	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If Granted: Gallen Seven-Up Bottling would receive a modification of their crude oil refund application granted in Case No. RF272–220.
4/25/95	Rocky Flats Field Office, Golden, Colorado.	VSA–0008	Request for Review of Opinion under 10 C.F.R. Part 710. If Granted: The March 27, 1995 Opinion of the Office of Hearings and Appeals (Case No. VSO–0008) would be reviewed at the request of the Office of Safeguards and Security.

REFUND APPLICATIONS RECEIVED

[Week of April 24 Through April 28, 1995]

Date received	Name of refund proceeding/name of refund application	Case No.
4/24/95	Richard Vardeman, Inc.	RC272–287
4/24/95	Cosey Brothers, Inc.	RC272–288
4/24/95	Morning Treat Caffe Co.	RC272–289

[FR Doc. 95–14241 Filed 6–9–95; 8:45 am]

BILLING CODE 6450–01–P

Notice of Cases Filed During the Week of April 3, 1995 Through April 7, 1995

During the Week of April 3 through April 7, 1995, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 C.F.R. part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: June 1, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

SUBMISSION OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of April 3 Through April 7, 1995]

Date	Name and Location of Applicant	Case No.	Type of Submission
4/3/95	County of Los Alamos, Los Alamos, New Mexico.	VWA–0002	Request for Hearing Under DOE Contractor Employee Protection Program. If Granted: At the request of County of Los Alamos, a hearing under 10 C.F.R. Part 708 would be held on the complaint of Peter I. Duran that reprisals were taken against him by the County of Los Alamos as a consequence of his having disclosed safety and health concerns.
4/3/95	Peter I. Duran, Santa Fe, New Mexico	VWA–0003	Request for Hearing under DOE Contractor Employee Protection Program. If Granted: A hearing under 10 C.F.R. Part 708 would be held on the complaint of Peter I. Duran that reprisals were taken against him by management officials of County of Los Alamos as a consequence of his having disclosed safety and health concerns.

SUBMISSION OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of April 3 Through April 7, 1995]

Date	Name and Location of Applicant	Case No.	Type of Submission
4/6/95	Albuquerque Operations Office, Albuquerque, New Mexico.	VSO–0028	Request for Hearing under 10 C.F.R. Part 710. If Granted: An individual employed at the DOE's Albuquerque Operations Office would receive a hearing under 10 C.F.R. Part 710.
4/7/95	Oak Ridge Operations Office, Oak Ridge, Tennessee.	VSO–0029	Request for Hearing under 10 C.F.R. Part 710. If Granted: An individual employed at the DOE Oak Ridge Operations Office would receive a hearing under 10 C.F.R. Part 710.
4/7/95	Oak Ridge Operations Office, Oak Ridge, Tennessee.	VSO–0030	Request for Hearing under 10 C.F.R. Part 710 Refund Proceeding. If Granted: An individual employed at the DOE's Oak Ridge Operations Office would receive a hearing under 10 C.F.R. Part 710.
4/7/95	Simmons Pole Piling, Orange Beach, Alabama.	RR300–262	Request for Modification/Rescission in the Gulf Oil Refund Proceeding. If Granted: The January 30, 1995 Dismissal, Case No. RF300–18835, issued to Simmons Pole Piling would be modified regarding the firm's application for refund submitted in the Gulf Oil Refund proceeding.

WEEK OF AUGUST 19 THROUGH AUGUST 26, 1994

Date received	Name of refund proceeding/name of refund application	Case No.
	Crude Oil Refund Applications	RG272–74 through RG272–77

[FR Doc. 95–14243 Filed 6–9–95; 8:45 am]

BILLING CODE 6450–01–P

Notice of Cases Filed During the Week of April 10 Through April 14 1995

During the Week of April 10 through April 14, 1995, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 C.F.R. Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: June 1, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of April 10 through April 14, 1995]

Date	Name and Location of Applicant	Case No.	Type of Submission
4/10/95	Granite Petroleum Corporation, Washington, D.C.	VEF–0015	Implementation of special refund procedures. If Granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R., Part 205, Subpart V, in connection with the September 1983 Remedial Order issued to Granite Petroleum Corporation.
4/10/95	Malcolm M. Turner, Washington, D.C.	VEF–0013	Implementation of special refund procedures. If Granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R., Part 205, Subpart V, in connection with the February 16, 1989 Remedial Order issued to Malcolm M. Turner.
4/10/95	Revere Petroleum Corporation *et al.*, Washington, D.C.	VEF–0014	Implementation of special refund procedures. If Granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R., Part 205, Subpart V, in connection with the May 29, 1992 Remedial Order issued to Revere Petroleum Corporation *et al.*

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of April 10 through April 14, 1995]

Date	Name and Location of Applicant	Case No.	Type of Submission
4/10/95	27 W. Landis Texaco/Langhorne, Texaco Service Station, Bethesda, Maryland.	RR321–177 RR321–178	Request for modification/rescission in the Texaco refund proceeding. If Granted: The February 23, 1995 Decision and Order, Case Nos. RF321–16943 and RF321–16944, issued to 27 W. Landis Texaco and Langhorne Texaco Service Station would be modified regarding the firm's applications for refund submitted in the Texaco Refund proceeding.
4/11/95	Rocket Oil Company, Madisonville, Kentucky.	VEE–0007	Exception to the Reporting Requirement. If Granted: Rocket Oil Company would not be required to file Form EIA–782B the Reseller's/Retailer's Monthly Petroleum Products Sales Report.

REFUND APPLICATIONS RECEIVED

[Week of April 10 Through April 14, 1995]

Date received	Name of refund proceeding/name of refund application	Case No.
9/26/94	Agway Petroleum Corp.	RF344–24
4/17/95	Livingston Gulf	RF300–21826

[FR Doc. 95–14244 Filed 6–9–95; 8:45 am]
BILLING CODE 6450–01–P

Notice of Cases Filed During the Week of April 17 Through April 21, 1995

During the Week of April 17 through April 21, 1995, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

June 1, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of April 17 Through April 21, 1995]

Date	Name and location of applicant	Case No.	Type of submission
4/18/95	International Federation of Professional and Technical Engineers, Idaho Falls, Idaho.	VFA–0034	Appeal of an information request denial. If Granted: The March 20, 1995 Freedom of Information Request Denial issued by the DOE Idaho Operations Office would be rescinded, and the International Federation of Professional and Technical Engineers would receive access to a copy of the DOE/Augustine Pitrolo Consulting Support contract and the Short List of SES Candidates for Deputy of the Office of Program Execution.
4/19/95	Albuquerque Operations Office, Albuquerque, New Mexico.	VSA–0031	Request for hearing under 10 CFR Part 710. If Granted: An individual employed at Albuquerque Operations Office would receive a hearing under 10 CFR Part 710.
4/21/95	U.A. Plumbers and Pipefitters, Local No. 36, Washington, DC.	VFA–0035	Appeal of an information request denial. If Granted: The March 20, 1995 Freedom of Information Request Denial issued by the Idaho Operations Office would be rescinded, and U.A. Plumbers and Pipefitters, Local Number 36, would receive access to certain Department of Energy documents relating to the West Valley Demonstration Project.

REFUND APPLICATIONS RECEIVED

[Week of April 17 to April 21, 1995]

Date received	Name of refund proceeding/name of refund application	Case No.
4/21/95	Zinn Companies, Inc	RF349–21
4/17/95 thru 4/21/95	Crude Oil Refund Applications	RG272–145 thru RG272–155

[FR Doc. 95–14245 Filed 6–9–95; 8:45 am]
BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders During the Week of April 24 Through April 28, 1995

During the week of April 24 through April 28, 1995, the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Request for Exception

Lane's Service, Inc., 4/27/95, LEE–0158

Lane's Service, Inc. (Lane), filed an Application for Exception from the provisions of the Energy Information Administration (EIA) reporting requirements in which the firm sought relief from filing Form EIA–782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." The DOE determined that Lane did not meet the standards for exception relief because it was not experiencing a serious hardship or gross inequity as a result of the reporting requirements. Accordingly, exception relief was denied.

Refund Applications

Gulf Oil Corporation/Marine Fueling, Inc., 4/27/95, RF300–17154

Marine Fueling, Inc. (Marine) filed an Application for Refund in the Gulf Oil Corporation (Gulf) special refund proceeding. In considering the application, the DOE noted that it had already held, in connection with another refund application filed by Marine, that the sales agreement pursuant to which Marine sold its business in 1975 transferred to the buyer the right to any future refunds. *See Murphy Oil Corp./Marine Fueling Division*, 21 DOE ¶ 85,329 (1991). Based on that holding, the Application was denied.

Texaco Inc./27 W. Landis Texaco, Langhorne Texaco Service Station, 4/27/95, RR321–177, RR321–178

The DOE issued a Decision and Order concerning two Motions for Reconsideration submitted by indirect purchasers of Texaco products. The DOE determined that the movants were eligible to receive refunds as determined in a prior Decision and Order of the DOE, *Texaco Inc./27 W. Landis Texaco*, 24 DOE ¶ 85,137 (1995). The total of the refunds disbursed to the movants was $15,066 ($10,302 principal and $4,764 interest).

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Glock Bros. Et al	RF304–12055	04/27/95
Gulf Oil Corporation/Airport Gulf	RF300–20608	04/27/95
Texaco Inc./Bill's Texaco Et al	RF321–16783	04/27/95

Dismissals

The following submissions were dismissed:

Name	Case No.
Brown-Graves Lumber	RF272–97305
Buffalo Aeronautical	RF272–98317
Central Vermont Medical Center, Inc	RF272–97387
City of Salem	RF272–85618
City of Williamsburg	RF272–85723
Columbia County	RF272–85676
Convenience Corner	RF321–14157
County of Oswego Highway Dept	RF272–96528
Dayton Vacuum Truck Service	RF321–6570
Fields Texaco	RF321–13437
James Bennett Grocery	RF321–18966
John R. & Seven Mile Texaco	RF321–18051
Kaloust Texaco	RF321–20907
Kaloust Texaco	RF321–20908
Lebanon County	RF272–85550
Lee County	RF272–85772
Lyndhurst, NJ	RF272–85398
Normandy Texaco	RF321–18008
Otter Tail County	RF272–88973
Parkway Texaco	RF321–18001
Roxbury Texaco	RF321–19415
Southwestern Vermont Medical Center	RF272–97392
Tippah County	RF272–85633
Town of Sandwich	RF272–85564
Town of Swampscott	RF272–88967
Town of Upton	RF272–85299
Town of Wayland	RF272–88027
Wright's Service Station	RF321–18648

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: June 1, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 95–14242 Filed 6–9–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 5220–1]

Border Environment Cooperation Commission (BECC) Draft Guidelines for Project Submission and Criteria for Project Certification

AGENCY: Border Environment Cooperation Commission (BECC).

ACTION: Request for Public Comment on the BECC Draft Guidelines for Project Submission and Criteria for Project Certification.

SUMMARY: This notice announces the availability of the BECC Draft Guidelines for Project Submission and Criteria for Project Certification for public review and comment.

DATES: Written comments must be submitted to the BECC on or before July 14, 1995. Oral comments may be received on July 28, 1995 at the BECC Board of Directors Public Meeting in Tijuana, Baja California.To mail comments or for further information contact:

April Lander, Environmental Program Manager, Border Environment Cooperation Commission, PO Box 221648, El Paso, TX 79913, Phone (011–52–16) 29–23–95 in Juarez, Mexico. Fax (011–52–16) 29–23–97

H. Roger Frauenfelder, General Manager, Border Environment Cooperation Commission, PO Box 221648, El Paso, TX 79913

Dated: June 2, 1995.

April Lander,

Acting General Manager.

Draft—Border Environment Cooperation Commission Guidelines for Project Submission and Criteria for Project Certification

I. Authority

These guidelines and criteria are adopted under the authority of the November 1993 Agreement Between the Government of the United States of America (U.S.) and the Government of the United Mexican States (Mexico) Concerning the Establishment of a Border Environment Cooperation Commission (BECC) and a North American Development Bank (NADBank) which authorizes the BECC Board of Directors (Board) to adopt rules, guidelines, and criteria as may be necessary or appropriate to conduct BECC business.

II. Program Purpose

The BECC was created in parallel with the North American Free Trade Agreement (NAFTA) as a binational institution to promote cooperation in achieving sustainable development for the well-being of present and future generations through the preservation, protection, and enhancement of the environment along the United States and Mexican border.

III. Program Scope

The BECC will work with states and localities, other public entities, and private investors, to develop effective solutions to environmental problems in the border region. The BECC may (1) assist with the planning, design, construction management, operations and maintenance phases of environmental infrastructure projects; (2) assess the technical and financial feasibility of projects, (3) evaluate social, environmental, and economic impacts of projects; (4) assist with public and private financing for projects; (5) provide technical assistance to applicants in development of proposals, project feasibility planning, engineering design, and environmental assessments; (6) assist with the development of a comprehensive public outreach and participation plan, and (7) certify projects for financing by the NADBank or other sources.

Projects located within 100 km (62 miles) on either side of the U.S./Mexico border may be considered for certification. Projects outside this region may be considered for certification if the BECC, with concurrence of the U.S. Environmental Protection Agency and the Mexican Secretaria de Desarrollo Social, find the project would remedy an environmental or health problem within the 100 km (62 mile) area.

Priority projects will be in the areas of water pollution, wastewater treatment, municipal solid waste, and related matters as defined by the November 1993 Agreement. Potential water pollution projects could include potable water treatment and/or water supply systems, water pollution prevention, or projects to improve or restore the quality of water resources. Potential wastewater treatment projects could include wastewater collection systems, wastewater treatment plants, water reuse systems, or systems providing for the beneficial use of sludge. Potential municipal solid waste projects could include landfills, solid waste collection and disposal, reuse, recycling, or waste to energy projects. Related projects include projects corresponding to the three priority areas described above.

The BECC acknowledges the importance of the environmental goals and objectives embodied in the following international agreements: Agreement on Cooperation for the Protection and Improvement of the Environment in the Boarder Area (La Paz Agreements), the North American Free Trade Agreement (NAFTA), and the North American Agreement on Environmental Cooperation as well as other treaties undertaken by the United States or Mexico.

IV Definition of Terms

Advisory Council. Advisory Council of the BECC. The Council has 18 members, 9 from the United States and 9 from Mexico. The Council may provide advice to the Board of Directors or the General Manager on certification of projects.

Applicant. States and localities, other public entities, and private investors.

BENEFIT-COST RATIO. The ration of total project economic benefits to total project costs discounted at a predetermined annual rate, once the benefits and costs have been corrected from market distortions.

Board of Directors. Board of Directors of the BECC. The Board has 10 directors, 5 from the United States and 5 from Mexico. The Board determines general operational and structural policies for the BECC, evaluates projects, and certifies qualified projects.

Cultural Resources. Historical, archeological, and ethnic resources.

DISCOUNT RATE. The rate of discount measures how much less a sum of money is worth by each year that passes.

Environmental Infrastructure Project. A project that will prevent, control, or reduce environmental pollutants or contaminants, improve the drinking water supply, or protect flora and fauna so as to improve human health, promote sustainable development, or contribute to a higher quality of life.

General Manager. General Manager of the BECC.

INTERNAL RATE OF RETURN. Discount rate that makes the present value of a stream of benefits equal to the present value of a stream of costs.

Life Cycle Cost. Cost of the entire project including planning, construction, operations and maintenance phases.

Municipal Solid Waste. Domestic and commercial waste accumulated by a community.

Natural Resources. Flora, fauna, geology, soil, surface water, groundwater, wetlands, and air.

Related Matters. Other environmental issues related to the priority areas listed.

Transfer of Technology. Process in which newer technology developed in one location is acquired by another.

User Fee. Fee paid by each member of the community to finance a new facility or public service.

Wastewater Treatment. Primary, secondary, or tertiary treatment of a polluted liquid of diverse composition coming from domestic, industrial, commercial, agricultural, livestock waste, or other sources.

Water Pollution. Presence of one or more contaminants in the environment which damage or degrade the quality of water resources and methods to prevent, reduce, or mitigate such contamination.

V. Technical Assistance Proposal Submission Procedures

Requests for technical assistance for development of proposals, project feasibility planning, and engineering design studies, and environmental assessments may be submitted at any time to the General Manager with the Step I Project Pre-Proposal Submission Form. Funds for technical assistance are limited but staff is available to assist with general proposal guidance. The General Manager will give priority to communities which have the least available resources for project development.

VI. Project Proposal Submission Procedures

A. Preapplication Communication

Prior to project submission, project originators are highly encouraged to meet or communicate with appropriate BECC staff to establish fundamental eligibility of the proposed project and to be briefed on the two step BECC project submission process and the BECC technical assistance program.

B. Step I: Project Pre-Proposal Submission Process

Step I is a preliminary stage in the project proposal submission process to be completed prior to, or in conjunction with, the comprehensive project proposal as described in Step II: Project Proposal Submission Process. Step I involves completion of a relatively simple, straightforward form describing the project's basic parameters. These parameters will provide basic administrative information, will be used to establish initial project conformance with BECC objectives, and may indicate the applicant's need for technical assistance. The Step I: Project Pre-Proposal Form may be submitted at any time to the General Manager of the BECC.

The project information requested on Step 1 Form includes the project title, project sponsor information, project description, project type and location, expected benefits to human health and the environment, previous environmental and technical studies, engineering technical design, description of environmental assessment, community participation and support, estimated project capital costs, estimated annual costs, time schedule for each project phase, proposed method and sources of project financing, proposed sources of revenue for bank loan repayment, and additional information considered pertinent by the applicant. The Step I Form is provided in this document.

Border Environment Cooperation Commission Project Pre-Proposal Submission Form

(STEP 1)

1. Title of proposed project
2. Project sponsor/e
   Name:
   Address:
   Phone:
   Fax:
   Email:
3. Type of project:
   Wastewater treatment ____ Water pollution/supply ____
   Solid waste management ____ Other related project ____
4. General information
   Impact of the project. Binational ____ National ____
   Number of people directly affected
   Is the project located within 100 km (62 miles) of the United States/Mexican border? Yes ____ No ____
   If the project is outside that region, does the project significantly impact the border? Yes ____ No ____
   Will the project have a positive environmental benefit to the community? Yes ____ No ____
   Does the project comply with local, regional, state, and federal laws and regulations? Yes ____ No ____
   Is there a source of revenue to repay loans? Yes ____ No ____
   Is the project widely supported by the community? Yes ____ No ____
   Is technical assistance needed to complete the application process? Yes ____ No ____
5. General description of project
6. Geographic location
7. Expected benefits to human health and the environment
8. Previous environmental assessments and technical feasibility studies regarding project development
9. Description of engineering technical design
10. Environmental assessment
    If the project is already in compliance with local, regional, state and federal environmental laws and regulations provide a list of permits authorized, documents approved, and authorizing agencies.
    Otherwise, describe how the project will comply with appropriate regulatory agencies.
    Describe negative short and long-term environmental impacts of project
    Describe implication of the no project alternative
    Describe mechanisms to preserve, protect, and enhance environmental quality on a sustainable basis
11. Describe community participation and support in project planning
12. Estimated project capital costs (dollars)
    Planning
    Design
    Construction
    Equipment
    Education & training programs
    Public outreach program
    Other
    Total
13. Estimated annual costs (dollars)
    Operation and maintenance
    Equipment replacement
    Other

14. Time schedule	Number of months	Estimated completion date
Planning		
Environmental assessment		
Site preparation		

14. Time schedule	Number of months	Estimated completion date
Construction		
Start up operations		

15. Proposed method of project financing. Indicate actual and potential sources
16. Proposed sources of revenue for bank loan repayment. Indicate user fee system to be used, if any
17. Additional information

C. Step II: Project Proposal Submission Process

Step II of the project submission process may be completed in conjunction with, or subsequent to, completion of the Step I form. Step II involves provision of detailed project proposal information to the BECC in the following areas (1) general project description, (2) environmental assessment, (3) technical feasibility, (4) economic and financial feasibility, (5) social aspects, (6) community participation, and (7) operation and maintenance. The BECC requests that project information be submitted in the same order and using the same alphanumeric system as in this document.

The proposed project must meet fundamental BECC criteria for project certification. Beyond the ability of a project to meet fundamental BECC criteria, projects will be given additional priority ratings using sustainable development evaluation criteria which will prioritize projects that meet standards above and beyond fundamental criteria. The fundamental and sustainable development criteria are indicated for each of the seven sections described above. The process is designed to prioritize projects which achieve the BECC objectives to promote binational cooperation and to help preserve, protect, and enhance the environment.

1. General Description of the Project

Information Requested

a. Project Originator/s. Provide information for each project originator including, lead project manager, main contact for each project originator (if applicable), addresses, phone numbers, fax numbers, and Email addresses.

b. Project Location. Describe the geographical location of the project and provide a map.

c. Environmental Issue. Describe the environmental issue to be addressed by the project.

d. Project Alternatives. Describe alternative methods considered to solve the environmental issue including the consequences of a no project alternative.

e. Project Justification. Justify the project including aspects which make project execution necessary.

f. Project Strengths and Weaknesses. Discuss project strengths and weaknesses and available resources to overcome the weaknesses.

g. Binational Aspects. Discuss difficulties created by the binational scope of the project and how these difficulties might be resolved.

Fundamental BECC Criteria

a. The project must be within 100 km (62 miles) of the U.S./Mexican border or has been found by the BECC, in concurrence with the U.S. Environmental Protection Agency and the Mexican Secretario de Desarrollo Social, to remedy a transboundary environmental or health issue within the 100 km (62 mile) zone.

Sustainable Development Criteria

a. National or Binational Project. A binational project will receive a higher priority for this criterion than a project which affects only one country.

b. Extent of Local or Regional Environmental Benefit. A project which has a higher positive environmental impact at the local and/or regional level will be given a higher priority.

c. Scope of Project Impact. A project which addresses a cross-border, regional environmental priority will receive a higher priority than a project which addresses a regional priority within only one country. A project which addresses a local priority in only one country will receive a lower priority.

2. Environment

The goal of BECC is to help preserve, protect, and enhance the environment in a sustainable manner in order to improve the quality of life in the U.S./Mexico border region. The applicant should ensure that all negative environmental impacts of the project have been identified and considered in the project evaluation process, that appropriate safeguards have been included in the project for unforeseen impacts which could cause damage to natural resources, and that projects are in compliance with appropriate local, regional, state, and federal environmental regulations.

Information Requested

a. Documentation of Environmental Regulatory Compliance. Project originators must coordinate with appropriate local, regional, state, and federal agencies to identify all environmental impacts to natural and cultural resources as early in the project planning process as possible. Documentation of project approval by appropriate regulatory organizations must be provided to BECC prior to certification. There must be a credible schedule to obtain permits prior to start of construction.

i. Provide a list of all environmental issues affected by project development.

ii. Describe environmental action required, including no action, regulatory organization requiring the action, proof of action completed or proof of approval for method to complete the action in the future, and contact person.

iii. List required permits, regulatory organization providing permit, date permit approved, proof of approval, and contact person.

iv. Provide copies of all documents submitted to regulatory agencies to BECC.

b. Conformance with Local and Regional Conservation and Development Plans. Projects submitted to the BECC must conform with local and regional plans.

i. List applicable local and regional plans, agency with authority, and contact person.

ii. Describe how the project complies with the plans.

c. Environmental Assessment. Discuss short, medium, and long-term impacts on biological diversity, sensitive environmental habitats, and human health. Include an analysis of environmental risks, negative and positive impacts, mitigation of negative impacts, environmental standards and objectives of the affected area, and project alternatives including implications of not implementing the project, and appropriate additional information which has not already been described in documents provided to the BECC.

Fundamental BECC Criteria

a. Compliance with Applicable Environmental Regulations. All projects certified by the BECC must comply with all appropriate environmental regulations. Projects which do not comply with appropriate environmental regulations cannot be certified.

b. Conformance with Applicable Local and Regional Plans. All projects must conform with applicable local and regional plans. Projects which do not conform with local and regional plans will not be certified.

c. Conformance with Applicable International Treaties. Projects must comply with applicable international treaties.

d. Environmental Mitigation. Projects with a major direct negative impact with no reasonable actions to mitigate the impact will not be certified.

Sustainable Development Criteria

a. Holistic Approach to Natural Resource Management. Projects which adopt a holistic approach to natural resource management and environmental protection by watershed, groundwater basin, airshed, land use planning, or similar method will receive higher priority. Projects addressing a single media within a small area will receive lower priority.

b. Natural Resource Sustainability. Projects which promote natural resource sustainability, such as a project which reduces waste at the source, uses fewer natural resources, reuses or recycles will receive higher priority.

c. Energy Sources. Projects which use only renewable energy sources will receive higher priority. A project which uses a combination of renewable energy resources and fossil fuel resources will receive medium priority and projects utilizing only fossil fuel resources will receive lower priority.

d. Energy Efficiency. Projects which have stronger energy efficiency/conservation measures will receive high priority. Projects which do not have efficiency/conservation measures will receive lower priority.

e. Negative Direct Environmental Impact at Project Site. Projects which do not create a direct negative impact on natural resources will receive higher priority. Projects which have a direct negative impact that will be mitigated will receive medium priority and projects which have a direct negative impact that will not be mitigated will receive lower priority.

f. Voluntary Environmental Mitigation Enhancement Measures. Projects which provide mitigation measures for restoration of degraded habitat, biodiversity enhancement, ecosystem preservation, or other measures which improve the quality of life for local residents or enhance the quality of the local environment such as parks will receive higher priority. Projects which provide marginal mitigation measures will receive medium priority. Projects which do not offer mitigation measures will receive lower priority.

g. Contamination Reduction. Projects which comprehensively address a contamination will receive medium priority, and projects which do not reduce contamination will receive lower priority.

h. Prevention of Contamination at Project Site. A project which has a highly effective pollution prevention of reduction program that prevents contamination at the project site during construction and operation of the project will receive high priority, an acceptable pollution prevention or reduction program will receive medium priority, and a less effective pollution prevention or reduction program will receive lower priority.

i. Monitoring and Enforcement. Projects with a highly effective environmental monitoring and enforcement program will receive higher priority. Projects with an acceptable program will receive medium priority and a less effective program will receive lower priority.

j. Human Health Issues. Projects which address critical human health needs will receive high priority. Projects which address some health needs will receive medium priority and projects which do not address health needs will receive lower priority.

3. Technical Feasibility

BECC will certify projects which use appropriate technology and are designed, and will be operated, and maintained in a manner which will achieve the project's purpose.

Information Requested

a. Project Specification. Include technical aspects which justify the project, providing the sensitivity analysis and justification of the following factors, dependent upon the type of project.

- Water Pollution: Growth analysis, both mid and long range for the proposed planning time frame; average daily consumption rate; characteristics of the production source, water quality analysis, pollution prevention program, transportation, and distribution infrastructure; type and capacity of treatment and its efficiencies, estimates of design and construction costs, estimated annual operation, and maintenance costs; and any other information that will ensure a better understanding of the project.
- Wastewater Treatment: Quantity and quality of wastewater to be treated; projection of the wastewater volume for the proposed life of the project; design of collection system including pumping; design of treated wastewater discharge or wastewater reuse systems; analysis of treated wastewater quality; sludge treatment analysis and system for final disposal of sludge; and any other information that will ensure a better understanding of the project.
- Municipal Solid Waste: Projection of amounts of solid waste generated by the population for the proposed life of the project; areas of collection; description of operation efficiency; type and capability of proposed equipment; plan for disposal of household hazardous waste; recycling proposals; plan for the expansion, upgrade, or closure of landfills; incineration capabilities; composting capabilities; energy production capabilities; and any other information that will ensure a better understanding of the project.

b. Technical Process. Use of proven or known effective technologies is encouraged. Criteria for selection and justification of the chosen technology should be included with emphasis on efficiency of operation. Projects that involve the transfer of technology should describe the process and projected performance data.

c. Quality Control Program. Submit the quality control plan for all aspects of the project. It should include contractor and equipment quality control, personnel training, as well as other quality control issues.

d. Investment Timetable. Submit the project financing plan and the required sequence to be followed in order to implement different stages of the project. Provide project development with a detailed description of stages, and activities necessary to reach the objectives in a timely and cost effective manner. Include a bar diagram showing the actions to be carried out, an investment schedule, stages of progress, cost and source of funds.

Fundamental BECC Criteria

None.

Sustainable Development Criteria

a. Transfer of Technology. Projects which transfer technology will receive a higher priority.

b. Level and Type of Technology to be Utilized. Projects which utilize proven technology will receive higher priority. Also, a closer match between the level of technology used and the ability of the local user to operate and maintain the system will result in a higher project priority.

c. Project Life Cycle Cost. Projects which have a lower life cycle cost will receive higher priority. Energy intensive systems, systems which incorporate high cost technical equipment, systems which require frequent maintenance and equipment replacement and that

require labor intensive operation all tend to be high life cycle cost projects.

d. Ease of Expanding Facilities to Meet Future Services Demands. Projects which can be expanded easily to meet future services demands will receive higher priority, projects which have restrictions in meeting future services demands will receive lower priority.

e. New Facility, Expansion of Existing Facility, or Rehabilitation of Existing Facility. Projects involving construction of new facilities will receive higher priority, assuming no facility is currently operating to deal with the environmental issue being addressed. Projects which expand the capacity of an existing facility or require addition of new facilities to existing facilities will receive medium priority and projects which rehabilitate existing facilities will receive lower priority.

4. Economic and Financial Feasibility

Economic and financial information will be used to verify the viability of proposed projects and assess the economic sustainability of the projects.

Information Requested

Applicants are requested to submit an analysis that shows a reasonable internal rate of return and payment capability and the basis for the assumptions. Furthermore, the applicant is requested to provide the following information:

a. Analysis of the cash flow, balance sheet, income statement, and sources of financing.

b. Plan to recover the investment and operational and maintenance costs. This plan should include an analysis of interest rate and anticipated income sources. If a user fee will be used discuss how the system will be set up and what assurances there are that users will pay.

c. Sensitivity analysis which compares the result of economic factors differing from those assumed in project planning (e.g. different interest rates, population growth rates, economic growth rates).

d. Financial statements for a 15 year horizon.

Fundamental BECC Criteria

a. Benefit/Cost (B/C) Ratio. This ratio is the main indicator of the economic feasibility of a project. It measures the proportion of benefits to costs. Projects must have a ratio greater than 1 in order to be considered for certification.

Sustainable Development Criteria

a. Relationship Between User Fees and Operating Costs (debt coverage). Projects which have a higher projected debt coverage (under payments as a percentage of required debt payment) will receive a higher priority.

b. Internal Rate of Return (IRR). The IRR indicates the economic feasibility of a project according to its expenditures and recoveries program. Projects having a greater IRR will receive higher priority than projects with a smaller IRR.

c. Community Economic Development. Projects which have a highly effective plan to promote local economic development such as procurement preference for local businesses and products and development of local employment and other community economic opportunities will receive higher priority. Projects with a plan which adequately promotes local economic development will receive medium priority and projects with less effective local economic development plans will receive lower priority.

d. Economic Sustainability. Projects should be both environmentally and economically sustainable. Projects which are economically sustainable over the long-term (e.g. projects which are sustainable with locally generated revenue) will receive higher priority. Projects which are only economically sustainable on a short-term basis (e.g. projects dependent on sources of revenue not reasonably assured for the life of the project) will receive lower priority.

5. Social Aspects

The BECC recognizes the need to assess social aspects which may affect the success of a project.

Information Requested

a. Project Impacts on Local Populations. Provide information on the number of people who will directly benefit if the project is implemented and the number of people who would be affected directly and indirectly if the project is not implemented. Discuss impacts on local employment, local economic development, and other local issues.

b. Project Impacts on Cultural Resources. Provide information on the cultural resources impacted by the project, if any.

c. Characterization of Local Economic Situation. Provide the most current information available on the local unemployment rate, the average per capital income, and current availability of environmental services.

Fundamental BECC Criteria

a. Compliance with Applicable Cultural Resources Regulations. All projects certified by the BECC must comply with all appropriate cultural resource regulations.

Sustainable Development Criteria

a. Size of Benefiting Community. Projects developed by small communities with fewer resources to develop projects independently will receive higher priority.

b. Unemployment Rate. Projects benefiting a population with a lower unemployment rate will receive higher priority.

c. Average Per Capita Income. Projects affecting a population with a lower per capita income will receive higher priority.

d. Availability of Services. Projects affecting an area with no services (i.e. water, wastewater, electricity) will receive higher priority. Projects with partial services will receive medium priority and projects which improve existing services will receive lower priority.

e. Creation of Local Employment Opportunities. If most of the jobs created by a project are within the border zone the project will receive higher priority. Projects which create jobs outside the border zone rather than within the border zone will receive lower priority.

f. Negative Direct Cultural Resource Impact at Project Site. Projects which do not create a direct negative impact on cultural resources will receive higher priority. Projects which have a direct negative impact that will be mitigated will receive medium priority and projects which have a direct negative impact that will not be mitigated will receive lower priority.

6. Community Participation

Due to the nature of BECC's mission, community acceptance of a project takes on a highly meaningful role. An interactive process has been developed to ensure meaningful community participation in the project planning and process of developing project proposals. Applicants should obtain community approval for a project by establishing consensus on the need for project implementation as well as for acceptance of user payments for service, operations, and maintenance of the proposed project.

Information Requested

a. Public Expectations. Indicate what the public expects if the project is executed. Indicate how the public was involved in the project development process and how public priorities were measured. For example, media campaigns, mailings, community meetings, and educational activities for affected citizens of all ages and groups.

Fundamental BECC Criteria

a. Outreach Program. Projects must have an effective outreach program in order to be considered for certification by the Board.

b. Public Opinion. Projects must be widely accepted by the Public as evidenced by comments at public meetings, hearings, and letters prior to certification by the Board.

Sustainable Development Criteria

a. Education Program. Projects which include a highly effective environmental education program will receive higher priority. Projects which include an adequate environmental education program will receive medium priority and projects which include a less effective environmental education program will receive lower priority.

b. Diversity of Community Participants. Projects with strong involvement in planning by diverse project sponsors, socioeconomic community groups, and individuals will receive higher priority. Conversely, projects with little or no diversity will receive lower priority.

7. Operation and Maintenance

It is important to detect and correct any shortcomings in operations at an early stage in order to reach planned operations efficiency levels as soon as possible.

Information Requested

a. Start-Up Operation Program. Establish the sequence in which the infrastructure's operation will start as well as how any projected problems or defects in equipment or workmanship will be identified and corrected during the start-up phase.

b. Contingency Program. Define actions and corrective measures to be taken should a contingency program be needed during the start-up operations of the project.

c. Operation and Maintenance Program. A well-defined long-term operation and maintenance program is necessary. Describe the system's operation and maintenance program to include training and certification of operators, training of maintenance personnel, and preparation of operation and maintenance instruction material. Also quantify funds reserved in project budget to ensure adequate support for operation and maintenance program.

d. Safety Program. An operational safety program should be an integral part of the operation and maintenance program.

Fundamental BECC Criteria

None.

Substainable Development Criteria

a. Preliminary Operations. Projects which have more effective start-up programs will receive higher priority.

b. Long-term Operation and Maintenance. Projects which have a planned and budgeted long-term operation and maintenance program, including personnel training, will receive higher priority.

c. Safety Program. Projects offering a plan for operational safety will receive higher priority.

VII. Project Certification

After review of the proposed project, BECC staff will make a determination on whether to recommend certification of the project, based on BECC fundamental and sustainable development criteria provided in this document, to the BECC Board of Directors. The BECC should be involved in local public meetings on the projects under consideration prior to certification in order to achieve a higher level of appreciation for public support. The Board may consider and certify projects during its quarterly public meetings. Projects certified by the board will be submitted as a proposal for financing to the NADBank or to other sources of funding as appropriate. Project certification does not guarantee financing by the NADBank or by other sources.

Project proposals submitted to the BECC should be delivered to either of the following addresses:

From Mexico:

Apartado Postal

Apartado Postal 3114–J, Cd. Juárez, Chihuahua, México

Teléfonos

(91–16) 29–2395, 29–2396, 29–2398

Fax

(91–16) 29–2397

Office Location

Blvd. Tomás Fernández #7940, Torres Campestre, Piso 6, Cd. Juárez, Chihuahua, C.P. 32470, México

From USA:

Post Office Box

P.O. Box 221648, El Paso, TX 79913, USDA

Telephone

(011–52–16) 29–2395, 29–2396, 29–2398,

Fax

(011–52–16) 29–2397

[FR Doc. 95–14343 Filed 6–9–95; 8:45 am]

BILLING CODE 6560–60–M

[FRL–5220–3]

Interagency Working Group on Environmental Justice: Notification of Availability of Final Federal Agency Environmental Justice Strategies

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-income Populations" (February 11, 1994) required Federal agencies to develop Environmental Justice strategies for carrying out the requirements of the Executive Order. The following strategies are available for distribution at this time:

Publication No	Agency or Department
200–R–95–900	Agriculture.
200–R–95–908	Commerce.
200–R–95–901	Defense.
200–R–95–002	Environmental Protection Agcy.
200–R–95–903	Health, Human Services.
200–R–95–904	Housing & Urban Development.
200–R–95–905	Interior.
200–R–95–906	Justice.
200–R–95–909	Labor.
200–R–95–910	NASA.
200–R–95–907	Nuclear Regulatory Commission.
200–R–95–911	Transportation.

These strategies may be obtained, free of charge, by contacting: The National Center for Environmental Publications and Information, P. O. Box 42419, Cincinnati, Ohio 45202; Phone: 513/489–8190; FAX: 513/489–8695 (Please include publication number).

The following strategy is available directly from the agency: Department of Energy—Toni Benjamin @ (800)586–3612.

Dated: June 6, 1995.

Clarice Gaylord,

Director, Office of Environmental Justice.

[FR Doc. 95–14341 Filed 6–9–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5219–9]

National Advisory Council for Environmental Policy and Technology; Ecosystems Information and Assessments Committee; Public Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, PL 92463, EPA gives notice of a two-day meeting of the Ecosystems Information and Assessments Committee of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy issues, and this meeting is being held to discuss the Ecosystems Information and Assessments Committee agenda for the coming year. The Administrator has asked NACEPT to concentrate on ecosystem management and how long-term ecological, economic, and social needs can be integrated to achieve a community-based approach to environmental management.

The Ecosystems Information and Assessments Committee will concentrate on specific information and assessment issues required to support a successful community-based approach to environmental management. These issues will include discussion of the role of EPA in information access and dissemination to support community-based environmental management; discussion of information technologies available to support community-based environmental management; and discussion of the role of science in support of community-based environmental management; and discussion of appropriate methodologies in support of community-based environmental management.

The Ecosystems Information and Assessments Committee, as does NACEPT, comprises a representative cross-section of EPA's partners and constituents. However, in order to gain additional insights and perspectives from all interested parties as this committee begins its work, time has been allotted during the meeting for oral comments from the public. Any member of the public wishing to present oral comments on any of these issues can schedule an appointment by contacting Joe Sierra at the address and telephone numbers below, no later than Sept. 1, 1995. Due to time constraints, oral presentations will be strictly held to five minutes, and slots are limited. Available time slots will be allocated on a first-come first served basis to those scheduling a presentation in advance. Written comments will be accepted at any time prior to, or at, the meeting.

DATES: The two-day public meeting will be held on Wednesday, September 13, 1995, from 9 a.m. to 5 p.m., and on Thursday, September 14, 1995, from 8 a.m. to 3 p.m. On both days the meeting will be held at the Dupont Plaza Hotel, 1500 New Hampshire Ave. N.W., Washington, D.C. 20036.

ADDRESSES: Written comments should be sent to: Joseph A. Sierra, DFO, Ecosystems Information & Assessments, Committee/NACEPT, Office of Cooperative Environmental Management, U.S. EPA (1601F), 401 M St. S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Joseph A. Sierra, Designated Federal Official, Direct line (202) 260–6839, Secretary's line (202) 260–6891.

Dated: June 2, 1995.

Joseph A. Sierra,

Designated Federal Official.

[FR Doc. 95–14342 Filed 6–9–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5220–2]

National Environmental Justice Advisory Council; Notification of Public Advisory Committee Meeting(s); Open Meeting

Pursuant to the Federal Advisory Committee Act (FACA), Public Law 92–463, notice is hereby given that the National Environmental Justice Advisory Council (NEJAC) will meet on the dates and times described below. The subcommittees are not meeting at this time. All times noted are Eastern Daylight Time. All meetings are open to the public. Due to limited space, seating at the NEJAC meeting will be on a first-come basis. For further information concerning the public comment period meeting, please contact the individual listed below. Documents that are the subject of NEJAC reviews are normally available from the originating EPA office and are not available from the NEJAC. The meetings will occur at the Doubletree Hotel National Airport, 300 Army/Navy Drive, Arlington, VA, Phone: 703/416–4100, FAX: 703/416–4126.

The NEJAC will meet Tuesday, July 25, from 9 a.m. to 7:30 p.m. and Wednesday, July 26, from 9 a.m. to 3 p.m. to discuss the role of the new council, follow-up on pending items from the January meeting, discuss future items to be addressed, and receive public comments from 11–12 a.m. and 6–7:30 p.m. on Tuesday, July 25 and from 11–12 a.m. on Wednesday, July 26.

Members of the public who wish to make a brief oral presentation at the meeting(s) should contact Patricia White of PRC Environmental Management, Inc. no later than July 10, 1995 in order to have time reserved on the agenda. In general, each individual or group making an oral presentation will be limited to a total time of five minutes. Written comments of any length (at least 35 copies) should be received no later than July 10, 1995, comments received after that date will be provided to the Council as logistics allow. They should be sent to PRC Environmental Management, Inc., 1505 PRC Drive, TM 220, McLean, VA 22102. Telephone number is (703)883–8880 or FAX (703) 556–2852.

FOR FURTHER INFORMATION CONTACT: For hearing impaired individuals or non-English speaking attendees wishing to make arrangements for a sign language or foreign language interpreter, please call or fax Patricia White at (703) 8834–8880 or (703) 556–2852 (fax).

Dated: June 6, 1995.

Clarice E. Gaylord,

Designated Federal Official, National Environmental Justice Advisory Council.

[FR Doc. 95–14340 Filed 6–9–95; 8:45 am]

BILLING CODE 6560–50–P

[OPP–250106; FRL–4958–7]

Chlorothalonil; Request for an Exception to Worker Protection Standard Early Entry Prohibition for Hand Harvest of Cantaloupe and Squash

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of receipt of petition for an exception; request for comment.

SUMMARY: EPA's Worker Protection Standard (WPS) allows the Agency to grant exceptions to the entry restrictions contained in 40 CFR 170.112(e). The State of Delaware has petitioned the Agency to allow workers to enter chlorothalonil-treated cantaloupe and squash fields to perform hand labor harvesting before expiration of the 48–hour restricted entry interval (REI). The time period for this exception request is during the harvest season from July 1 through September 15, 1995. This Notice acknowledges receipt of the exception request and invites comments from the public on the request.

DATES: Comments, data, or evidence should be submitted on or before July 12, 1995.

ADDRESSES: The Agency invites any interested person to submit written comments identified by docket number "OPP–250106" to: By mail: Public Response and Program Resources Branch, Field Operations Division (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number "OPP–250106." No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this document may be filed online at many Federal Depository Libraries.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the Virginia address given above from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Sara Ager or Ameesha Mehta, Office of Pesticide Programs (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 1121, 1921 Jefferson Davis Highway, Crystal Mall #2, Arlington, VA, (703) 305–7371, ager.sara@epamail.epa gov. or mehta.ameesha@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. Early Entry Exceptions

In general, § 170.112 of the Worker Protection Standard (WPS) prohibits agricultural workers from entering a pesticide-treated area during a restricted entry interval (REI). REIs are based on the toxicity of the active ingredient in the product. REIs are specified on the pesticide product label and typically range from 12 to 72 hours. Product-specific longer REIs have been set for a few pesticides.

The WPS currently contains the following exceptions to the general prohibition against worker entry during the REI:

(1) Entry resulting in no contact with treated surfaces.

(2) Entry allowing short-term tasks (less than 1 hour) to be performed with personal protective equipment (PPE) and other conditions.

(3) Entry to perform tasks associated with agricultural emergencies.

Under these exceptions, workers engaging in early entry work are not permitted to engage in hand labor, which results in substantial contact with treated surfaces. The WPS defines hand labor as any agricultural activity performed by hand or with hand tools that causes a worker to have substantial contact with treated surfaces (such as plants or soil) that may contain pesticide residues.

Under § 170.112(e) of the WPS, EPA may establish additional exceptions to the Standard's provision of prohibiting early entry to perform routine hand labor tasks. EPA will grant or deny a request for an exception based on a risk-benefit analysis. This analysis takes into account both the added risks and the benefits from allowing early entry to perform hand labor tasks.

On June 10, 1994 (59 FR 30265), EPA granted an exception which allows, under specified conditions, early entry into pesticide-treated areas in greenhouses to harvest cut roses. In the **Federal Register** of May 3, 1995 (60 FR 21953), two additional exceptions were granted which allow early-entry to perform irrigation and limited contact tasks under specified conditions.

B. Chemical-Specific Information

Chlorothalonil is a wettable granular fungicide used to control Downey Mildew disease, and has been classified as a probable human (Category B_2) carcinogen. Chlorothalonil has eye irritation concerns and other delayed health effects (kidney effects). The REI has been set for 48 hours. The pre-harvest interval (PHI) for melons and squash is at 0–days. The PHI is the time duration that must elapse, in days, from the last day of application to the first day that a crop can be harvested. The Registration Eligibility Document (RED) is scheduled for completion this year and changes to the REI and the PHI may occur.

II. Summary of Delaware's Petition

The State of Delaware has petitioned under § 170.112(e) the Agency to allow early entry by workers into chlorothalonil-treated cantaloupe and squash fields to perform hand labor harvesting 24 hours after the spray application. Delaware's petition states that if growers cannot harvest daily they will suffer substantial economic losses. The time period for the exception requested is from July 1 through September 15, 1995.

A. Need for Early Entry

According to the request, cantaloupe and squash are under severe disease pressure from Downey mildew in Delaware, and if unchecked, it can destroy the crop. The practice is to apply chlorothalonil every 7 days where Downy mildew is a problem. Delaware contends that considerable fruit could be damaged or lost during a 48–hour REI, due to the inability to harvest mature crops. The alternatives to chlorothalonil are Maneb or Penncozeb, both of which have a PHI of 5 days. Delaware states that rescheduling sprays would not be practical because the 7–day spray schedule is followed to protect against Downey mildew infection. Delaware contends that regardless of how a grower schedules sprays, there would be a 48–hour REI following a spray application, and weather and crop maturity may require harvest during that time. According to Delaware, the average plot size is 1 acre and requires 2 to 5 workers to harvest 1 hour per field. Workers would harvest several fields over an 8–hour day. Delaware also maintains that machine harvesting of cantaloupe or squash is not feasible. The State of Delaware is open to suggestions from the Agency for any means to mitigate possible eye hazards to harvest crews.

B. Proposed Terms of Exception

The State of Delaware has proposed the following protective measures:

1. No harvesting would be performed until 24 hours after application.
2. Growers harvesting cantaloupe and squash between 24 and 48 hours following the application of chlorothalonil would provide oral warnings to workers to avoid contacting their eyes with their hands and forearms or any clothing which may be in contact with the foliage during harvest. They would give this warning at the start of each workday.
3. Workers would be given instructions at the beginning of the workday to wash their hands, forearms, and faces after every 2 hours or at the conclusion of a period of picking if less than 2 hours.
4. To accommodate the increased use of water at the field decontamination site, the grower would provide 3 gallons of water or have running water available, as opposed to the recommended 1 gallon of water per worker.

The State of Delaware concludes that the costs of these measures are inconsequential when compared with the expected loss in the crop value without the exception.

C. Economic Impact

The exception request addresses 450 acres of cantaloupe and squash production, potentially affected by the Downey mildew disease. Based on Delaware's 1993 statistics, the revenue amount for cantaloupe is $2,250 per acre. The inability to harvest in time would result in decreased revenue per acre. An estimated percentage of loss was not provided, but would be determined by estimating the amount of acreage expected to be lost due to inability to harvest mature fruit during the REI after application of chlorothalonil.

As the State of Delaware indicated, if the Agency were to grant the exception, in conjunction with the measures proposed by the State of Delaware, the agricultural employer would also be required to ensure that the protective measures in § 170.112(c)(3) through (c)(9) are met. These measures specify that the PPE required, daily for early entry, is provided, cleaned, and maintained for the worker; decontamination and change areas are provided; basic training and label-specific information is provided; and measures to prevent heat-related illness are implemented, when appropriate. The Agency may add additional specific measures based on comments received.

III. Comments and Information Solicited

The Agency desires more information and is therefore, interested in receiving a full range of comments on this proposed exception. In particular, the Agency welcomes comments supported by information, including evidence demonstrating whether the risks to workers would be acceptable, given the measures proposed, and whether the use of personal protective equipment, engineering controls, any additional decontamination procedures, and safety training in these circumstances would be feasible. The Agency is interested in any available data on how heat stress can be mitigated effectively, and whether there are any reports of chlorothalonil poisoning incidents involving harvesters. The Agency also would like comments regarding the appropriate time limit on activities performed during the REI. Comments on feasible alternative fungicides or integrated pest management practices that would make early entry for hand harvesting unnecessary, and their associated costs are also solicited. The Agency would welcome any additional information concerning the economic impact (yield and/or price) on this industry of prohibiting hand harvesting during the full 48–hour REI for this fungicide. Information on average production life of squash and cantaloupe, and the stages of maturity required for different markets is further solicited.

In addition, the Agency requests comments on whether other States in which chlorothalonil is used on cantaloupe and squash would need a comparable exception. The States of Florida and Iowa have expressed a similar need for workers to enter chlorothalonil-treated cantaloupe and tomato fields to perform hand labor harvest before the expiration of the 48–hour REI. If Delaware's exception request is granted, the Agency may consider extending the exception beyond the State of Delaware, pending demonstration of need by other States. Interested parties have 30 days from the publication of this notice to comment.

A record has been established for this action under docket number "OPP–250106" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this action, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

List of Subjects

Environmental protection, Occupational safety and health, Pesticides and Pests.

Dated: June 8, 1995.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 95–14424 Filed 6–8–95; 1:13 pm]

BILLING CODE 6560–50–F

[OPPTS–42052R; FRL–4938–2]

RIN 2070–033

Solicitation of Testing Proposals for 1,6-Hexamethylene Diisocyanate for Negotiation of a TSCA Section 4 Enforceable Consent Agreement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice invites manufacturers and processors of 1,6-hexamethylene diisocyanate (HDI) and other interested parties to develop and submit to EPA specific toxicity testing program proposals for this chemical. In addition, EPA is also interested in the development of a voluntary product stewardship program for HDI as a complement to the testing effort.

DATES: Written testing proposals must be received by August 11, 1995. EPA may extend the deadline for receipt of testing proposals upon a showing of good faith efforts to develop testing proposals by the initial deadline.

ADDRESSES: Submit three copies of written testing proposals to TSCA Docket Receipts (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. NE–B607, 401 M St., SW., Washington, DC 20460. Submissions should bear the document control number (OPPTS–42052R; FRL–4938–2). The public docket supporting this action, including comments, is available for public inspection at the above address from 12 noon to 4 p.m., Monday through Friday, except legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number (OPPTS–42052R; FRL–4938–2). No CBI should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit II of this document.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Rm. E543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551. For specific information regarding this action or related activities, contact Keith Cronin, Project Manager, Chemical Testing and Information Branch (7405), Rm. E201E, 401 M St., SW., Washington, DC 20460, (202) 260-8157.

SUPPLEMENTARY INFORMATION:

I. Background

A. Enforceable Consent Agreement Solicitation

One, 6-hexamethylene diisocyanate (HDI) is an aliphatic diisocyanate. HDI is used in the manufacture of higher molecular biuret polyisocyanate resins and trimer polyisocyanate resins used in polyurethane paint systems. The production and uses of HDI in polyurethane paint systems results in potential exposures to substantial numbers of workers. The greatest potential for occupational exposures to HDI is in coating application operations, with an estimated 153,000 auto body repair workers having a potential for some exposure to paints containing HDI biuret and trimer. This potential for substantial exposure forms the foundation for the Agency's concern for the potential health risk that may be posed to workers by HDI.

In the **Federal Register** of May 20, 1988 (53 FR 18196), the Interagency Testing Committee (ITC) designated HDI for health effects testing for chronic toxicity, oncogenicity, and reproductive and developmental effects. EPA responded to the ITC's designation of HDI by issuing a proposed test rule in the **Federal Register** of May 17, 1989 (54 FR 21240), requiring that HDI be tested for oncogenicity, mutagenicity, reproductive toxicity, developmental toxicity, neurotoxicity, pharmacokinetics, and hydrolysis under section 4 of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2603). The proposed rule contains a chemical profile of HDI, a discussion of EPA's TSCA section 4(a) findings, and the proposed test standards and reporting requirements. EPA based its proposal on section 4(a)(1)(B) of TSCA, finding that HDI is produced in substantial quantities and that there is or may be substantial human exposure from its manufacture, processing, and use.

EPA has recently reviewed significant new scientific data developed since publication of the proposed rule in 1989. The new data — which address chronic toxicity, subchronic toxicity, and mutagenicity — significantly affect the final scope of testing needs for this chemical substance. In view of these developments' impact on the scope of needed HDI testing, EPA is considering negotiating an Enforceable Consent Agreement (ECA) as an alternative to finalizing the proposed test rule to acquire the data identified in table 1. In the past, EPA, chemical manufacturers and other interested parties have frequently found that in some circumstances, the ECA process provides a more efficient, more flexible and less resource-intensive means of obtaining needed test data than the rulemaking process.

To be considered for ECA negotiation, testing proposals for HDI should address all data needs identified in table 1. If, after receiving testing proposals, EPA decides to pursue negotiations for HDI, EPA will solicit requests from individuals and others to be designated interested parties to the negotiation. EPA maintains its authority to require testing for HDI under TSCA section 4 and if negotiations do not produce an ECA, EPA intends to proceed with rulemaking to obtain the needed HDI data. EPA is also interested in receiving indications of interest in product stewardship programs as a compliment to the testing effort. Depending on what can be developed, it may be possible to offset some of the testing identified in this notice.

B. Chemical Data Needs

The ITC designated HDI for health effects testing, including chronic toxicity, oncogenicity, and reproductive and developmental effects on May 20, 1988 (53 FR 18196). EPA responded to the ITC's designation of HDI by issuing a proposed test rule in the **Federal Register** of May 17, 1989 (54 FR 21240), which would require that HDI be tested for oncogenicity, mutagenicity, reproductive toxicity, developmental toxicity, neurotoxicity, pharmacokinetics, and hydrolysis. The proposed rule contained a chemical profile of HDI, a discussion of EPA's TSCA section 4(a) findings, and the proposed test standards and reporting requirements. EPA based its proposal on section 4(a)(1)(B) of TSCA, finding that HDI is produced in substantial quantities and that there is or may be substantial human exposure from its manufacture, processing, and use.

EPA has reviewed new significant scientific data developed since publication of the proposed rule in 1989. The new data addressed chronic toxicity and subchronic toxicity which impacts the final scope of testing needs for this chemical substance. EPA believes the testing identified in table 1 is both appropriate and needed for HDI.

TABLE 1.—Proposed Testing and Test Standards For HDI

Description of Tests	Species	Exposure Route	Test Duration	Guideline/Notes
Oncogenicity	1 species other than rat.	Inhalation	2 years	40 CFR 798.3300
2 generation reproductive study	1 species	Inhalation	2 generation	40 CFR 798.4700 as proposed for revision (59 FR 42272, August 17, 1994)
Developmental toxicity study	2 species	Inhalation		40 CFR 798.4900 as proposed for revision (59 FR 42272, August 17, 1994)
Acute neurotoxicity	1 species	Inhalation		1991 Neurotoxicity Testing Guidelines
Subchronic neurotoxicity	1 species	Inhalation	90 days	1991 Neurotoxicity Testing Guidelines
Mammalian cells in culture	NA	NA	NA	40 CFR 798.5300
Salmonella typhimurium	NA	NA	NA	40 CFR 798.5265
in vivo cytogenetics	NA	NA	NA	40 CFR 798.5385
Hydrolysis	NA	NA	NA	Holdren, et al.

II. Public Docket

EPA has established a docket for this action under docket control number OPPTS–42052R, FRL–4938–2 (including comments and data submitted electronically as described below). The docket contains basic information considered by EPA in developing this action and includes:

1. Notice containing the ITC designation of HDI to the Priority List (53 FR 18196, May 20, 1988).

2. 1,6-Hexamethylene Diisocyanate proposed test rule (54 FR 21240, May 17, 1989).

3. Notice containing the proposed revision to the Reproductive and Developmental Toxicity Studies (59 FR 42272, August 17, 1994).

EPA will supplement the docket with additional information as it is received.

A record has been established for this notice under docket control number OPPTS–42052R, FRL–4938–2 (including comments and data submitted electronically as described below). A public version of this docket, including printed, paper versions of electronic comments, which does not include any information claimed as confidential business information (CBI), is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public docket is located in the TSCA Nonconfidential Information Center, Rm NE–B607, 401 M St., SW., Washington, DC 20460. Written requests for copies of documents contained in this docket may be sent to the above address or faxed to (202) 260–9555.

Electronic comments can be sent directly to EPA at:
ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official notice record which will also include all comments submitted directly in writing. The official notice record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Authority: 15 U.S.C. 2603.

Dated: June 5, 1995.

Charles M. Auer,
Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 95–14344 Filed 6–9–95; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL RESERVE SYSTEM

Abess Properties, Ltd.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 26, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Abess Properties, Ltd., Miami, Florida; and City National Bancshares, Inc., Miami, Florida, to acquire 41.71 percent of the voting shares of Turnberry Savings & Loan Association, North Miami Beach, Florida, and thereby engage in operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 6, 1995.

Jennifer J. Johnson,
Deputy Secretary of the Board.

[FR Doc. 95–14302 Filed 6–9–95; 8:45 am]
BILLING CODE 6210–01–F

Chatuge Bank Shares, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 6, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Chatuge Bank Shares, Inc., Hiawassee, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Hiawassee, Hiawassee, Georgia.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Capitol Bankshares, Inc., Madison, Wisconsin to become a bank holding company by acquiring 100 percent of the voting shares of Capitol Bank, Madison, Wisconsin, a *de novo* bank.

Board of Governors of the Federal Reserve System, June 6, 1995.

Jennifer J. Johnson,
Deputy Secretary of the Board.

[FR Doc. 95–14301 Filed 6–9–95; 8:45 am]
BILLING CODE 6210–01–F

Community National Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 26, 1995.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Community National Corporation, Grand Forks, North Dakota; to engage *de novo* through its subsidiary Document Processing and Imaging Corporation, Grand Forks, North Dakota, in providing the entire data processing service for its affiliate, Community National Bank of Grand Forks, Grand Forks, North Dakota, and providing check imaging services for Bank and other financial institutions, pursuant to § 225.25 (b)(7) of the Board's Regulation Y. These activities will be conducted in North Dakota and Minnesota.

Board of Governors of the Federal Reserve System, June 6, 1995.

Jennifer J. Johnson,
Deputy Secretary of the Board.

[FR Doc. 95–14303 Filed 6–9–95; 8:45 am]
BILLING CODE 6210–01–F

John R. and Gwen Suderman, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 26, 1995.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. John R. and Gwen Suderman, Newton, Kansas; John R. Suderman to acquire an additional 2.57 percent, for a total of 10.49 percent; John C. Suderman Revocable Trust, John R. Suderman, successor co-trustee, to retain 19.59 percent; Elga B. Suderman Revocable Trust, John R. Suderman, successor co-trustee, to retain 7.40 percent; Gwen Suderman to acquire an additional 2.57 percent, for a total of 10.49 percent; John and Gwen Suderman to acquire .91 percent; James H. and Francis G. Suderman, James H. Suderman Revocable Trust, to acquire 3.40 percent, for a total of 13.97 percent, James H. and Francis G. Suderman, co-trustees; Francis G. Suderman Revocable Trust, to acquire an additional 3.43 percent, for a total of 14.03 percent, Francis G. and James H. Suderman, co-trustees; John C. Suderman Revocable Trust, to maintain 19.59 percent, James H. Suderman, successor co-trustee; Elga B. Suderman Revocable Trust, to retain 7.40 percent of the voting shares, James H. Suderman, successor co-trustee; of Midland Financial Corporation, Newton, Kansas, and thereby indirectly acquire Midland National Bank, Newton, Kansas.

Board of Governors of the Federal Reserve System, June 6, 1995.

Jennifer J. Johnson,
Deputy Secretary of the Board.

[FR Doc. 95–14304 Filed 6–9–95; 8:45 am]
BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPD–832–N]

Medicare Program: HHS' Approval of NAIC Statements Relating to Duplication of Medicare Benefits

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice contains 10 disclosure statements that have been developed by the National Association of Insurance Commissioners (NAIC) and approved by the Secretary, consistent with the requirements contained in the Social Security Act, as amended in 1994. The purpose of these statements is to inform prospective buyers of health insurance policies of the extent to which benefits under the policy duplicate Medicare benefits. Each of the 10 statements applies to a different type of health insurance policy the NAIC identified as needing a disclosure statement. As of the effective date of this notice, issuers of policies that duplicate Medicare benefits must display the applicable statement in a prominent manner as part of, or together with, the application for the policy. Issuers who fail to provide the duplication notice could be subject to penalties relating to the sale of duplicate health insurance coverage.

EFFECTIVE DATE: Health insurance policy issuers subject to this notice must comply with its provisions on and after August 11, 1995.

ADDRESSES: Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents,

P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy (in paper or microfiche form) is $8. As an alternative, you may view and photocopy the **Federal Register** document at most libraries designated as U.S. Government Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Julie Walton, (410) 966–4622.

SUPPLEMENTARY INFORMATION:

I. Background

The Medicare program covers approximately 38 million beneficiaries who are age 65 or over, are disabled, or have permanent kidney failure. The program consists of two separate but complementary insurance programs, a hospital insurance program (Part A) and a supplementary medical insurance program (Part B). Although Part A is called hospital insurance, covered benefits also include medical services furnished in skilled nursing facilities or by home health agencies and hospices.

Part B covers a wide range of medical services and supplies such as those furnished by physicians or others in connection with physicians' services, outpatient hospital services, outpatient physical and occupational therapy services, and home health services. Part B also covers other items including certain drugs and biologicals that cannot be self-administered, diagnostic x-ray and laboratory tests, purchase or rental of durable medical equipment, ambulance services, prosthetic devices, and certain medical supplies.

While the Medicare program provides extensive hospital insurance benefits and supplementary medical insurance, it was not designed to cover the total cost of providing medical care for its beneficiaries. In particular:

- Benefits under both Parts A and B are reduced by certain deductible and coinsurance amounts, for which the beneficiary is responsible.
- When beneficiaries receive covered services from physicians who do not accept assignment of their Medicare claims, the beneficiaries may also be required to pay amounts in excess of the Medicare approved amount ("excess charges"), up to a limit established under the Social Security Act (the Act).
- There are a number of items generally not covered under either of Medicare's two insurance programs, such as most outpatient prescription drugs, custodial nursing home care, dental care, and eyeglasses.

Beneficiaries are liable for all of the costs listed above and may choose to purchase additional private insurance to help pay these costs.

A. Supplements to Medicare

Because Medicare does not cover the total cost of providing medical care, approximately 75 percent of Medicare beneficiaries purchase, or have available through their own or a spouse's employment or former employment, some type of private health insurance coverage to help pay for medical expenses, services, and supplies that Medicare either does not cover or does not pay in full. This coverage includes Medicare supplemental ("Medigap") insurance; employer group health plans based on active employment or retiree coverage; hospital indemnity insurance; nursing home or long-term care insurance; and specified disease insurance. (Throughout this notice, the terms "Medicare supplemental policy" and "Medigap policy" will be used interchangeably.)

An alternative to Medigap is enrollment in a managed care plan that has a risk or cost contract with HCFA under section 1876 of the Act or a Health Care Prepayment Plan (HCPP) agreement under section 1833 of the Act. Beneficiaries who enroll in these plans are generally covered for out-of-pocket costs associated with Medicare benefits and often receive additional benefits such as prescription drugs coverage and preventive health care services at little or no cost.

In addition to the approximately 75 percent of Medicare beneficiaries with private insurance coverage, nearly 12 percent of Medicare beneficiaries are eligible for at least some Medicaid benefits. For most of these beneficiaries, Medicaid covers their Medicare coinsurance and deductible liabilities and may also provide additional benefits that Medicare does not cover, such as long term care.

B. Federal and State Regulation of Insurance

After Medicare was enacted in 1965, a number of States enacted laws and regulations governing insurance sold to supplement Medicare. However, the scope and enforcement of these laws varied considerably. Although Federal law recognizes the States as the primary regulators of insurance, in 1980 the Congress addressed certain abuses associated with the sale of health insurance to elderly Medicare beneficiaries. On June 9, 1980, Congress enacted section 507(a) of the Social Security Disability Amendments of 1980 (Public Law 96–265) (the "Baucus Amendment"), adding section 1882 to the Act.

In adding section 1882 to the Act, Congress recognized the progress already made by the National Association of Insurance Commissioners (NAIC) and some States in the area of Medigap regulation and chose not to alter the traditional role of the States in regulating insurance.

Created in 1871, the NAIC is the organization of the chief insurance regulatory officials from all 50 States, the District of Columbia and the four territories. It provides a forum for the development of uniform public policy where uniformity is deemed appropriate by its members. The NAIC's primary instruments of public policy are model laws, regulations, and guidelines. States are free to adopt the NAIC models in their entirety, modify them, or not adopt them at all. Federal statutory requirements, however, require all States to adopt at least the minimum standards reflected in the NAIC's "Model Regulation to Implement the Requirements of the NAIC Medicare Supplement Minimum Standards Model Act".

The Baucus Amendment established a voluntary program under which the Federal government would certify that Medigap policies met minimum standards established by section 1882 of the Act, although policies could still be sold even if they were not certified. It also provided that if State regulatory programs met or exceeded minimum standards, including standards established by the NAIC, Medigap policies issued in those States would be deemed to meet the Federal certification requirements, and separate Federal certification would not be available in those States. However, after hearing reports of continuing abuses in the marketplace, as part of extensive Medigap reforms contained in the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) enacted on November 5, 1990, the Congress made the certification program mandatory for both States and issuers. The Congress continued to base the Federal standards on the NAIC model regulation for Medicare supplement policies and continued to leave enforcement to the States. The model regulation was amended on July 30, 1991, to reflect the requirements of the new statutory provisions. By July 1992, all States had adopted standards equal to or more stringent than the 1991 NAIC model regulation for Medigap policies.

The Federal certification program applies exclusively to Medigap policies, as defined in section 1882 of the Act. State regulation, by contrast, includes a wider range of policies that might be sold to Medicare beneficiaries, including limited health benefit insurance such as indemnity, specified disease, and long term care policies. (In fact some States prohibit the sale of some types of policies that are the subject of this notice, such as specified disease policies). Section 1882 of the Act does, however, affect these policies, to the extent that they duplicate other coverage a beneficiary may have.

II. Anti-Duplication Provisions

A. Medigap Legislation Before 1990

Section 1882 of the Act contains a sanctions section that establishes criminal and civil money penalties designed to assist States and the Federal government in dealing with abuses identified in the various studies and investigations of Medigap insurance. Before OBRA '90 was enacted, penalties applied if an individual sold to a Medicare beneficiary any health insurance policy (that is, not just a Medigap policy) that was known to substantially duplicate the beneficiary's Medicare coverage or other health insurance. However, benefits that were payable without regard to the individual's other health benefit coverage were to be considered non-duplicative. Section 1882(d)(3)(C) of the Act further provided that the penalties for selling or issuing duplicative coverage did not apply to group policies or plans of employers or labor organizations.

B. The Omnibus Budget Reconciliation Act of 1990

Section 4354(a) of OBRA '90 amended section 1882(d)(3) of the Act to broaden the earlier anti-duplication provisions by making several significant changes. In section 1882(d)(3)(A) of the Act, it removed the qualifier "substantially" that modified "duplicates" in the earlier version of the Act. As a result, any amount of duplication became illegal. Section 4354(a) of OBRA '90 also deleted the original wording in section 1882(d)(3)(B) of the Act that provided that if the policy paid benefits without respect to other coverage (that is, the policy did not coordinate benefits with other coverage), it would be considered non-duplicative. Section 4354(a) of OBRA '90 also broadened the anti-duplication provisions to make it illegal to duplicate Medicaid as well as Medicare benefits or other private coverage. As amended by OBRA '90, section 1882(d)(3)(A) of the Act now made it:

> * * * unlawful for a person to sell or issue a health insurance policy to an individual entitled to benefits under part A or enrolled under part B of this title, with knowledge that such policy duplicates health benefits to which such individual is otherwise entitled [including Medicare and Medicaid or any private coverage the individual might have] * * *

Under section 1882(d)(3)(C) of the Act, employer group health plans continued to be exempt from these requirements.

While the provisions of OBRA '90 were intended to protect Medicare beneficiaries from abusive sales practices and prevent them from buying unnecessary and expensive duplicate coverage, it became apparent soon after enactment that a total prohibition against any amount of duplication of benefits, including even any incidental overlap, had the unintended effect of denying Medigap or other types of desired coverage, such as long term care insurance policies, to people who already had some coverage that would be at least partially duplicated by the new policy. This was true even in cases in which the beneficiary had good reasons for wanting to buy the additional coverage.

C. Social Security Act Amendments of 1994

The Social Security Act Amendments of 1994 (SSAA '94) (Public Law 103–432) retained, in section 1882(d)(3)(A)(i)(I) of the Act, the basic prohibition against selling or issuing to a Medicare beneficiary a health insurance policy with knowledge that the policy duplicates health benefits to which the individual is entitled under Medicare or Medicaid. However, the new law provides an exception to this basic prohibition.

The penalties for selling a policy that duplicates Medicare or Medicaid benefits (other than a Medigap policy to an individual entitled to any Medicaid benefits) do not apply if two conditions are met. First, all benefits under the policy must be fully payable directly to, or on behalf of, the beneficiary without regard to other health benefit coverage of the individual. Second, the issuer must display in a prominent manner as part of (or together with) the application a prescribed statement disclosing the extent to which benefits payable under the policy or plan duplicate Medicare benefits. The latter requirement only applies to policies sold or issued more than 60 days after the date that the required statements are published or promulgated under the provisions established in section 171(d)(3)(D) of SSAA '94. Therefore policies issued on or after August 11, 1995 must include these disclosure statements.

Section 171(d)(3)(D) of SSAA '94 provides that if, within 90 days of the statute's enactment, the NAIC develops and submits to the Secretary a statement for each type of non-Medigap health insurance policy and the Secretary approves all the statements as meeting the requirements of SSAA '94, the statements developed by the NAIC will be the ones prescribed by the law. The statute instructs the NAIC to consult with consumer and insurance industry representatives in developing the statements. The statute also specifies that the separate types of health insurance policies that need disclosure statements include, but are not limited to, fixed cash indemnity policies and specified disease policies. The statute gives the Secretary 30 days to review and approve or disapprove all the statements submitted by the NAIC. Upon approval of these statements the statute requires the Secretary to publish the statements.

III. Implementation of SSAA '94

A. Development of Disclosure Statements

In an effort to assure that consumer and insurance industry representatives had an opportunity to provide meaningful input into the NAIC's development of the disclosure statements, the NAIC undertook the following steps:

- On November 1, 1994, a Request for Comment was mailed to over 500 representatives of consumer organizations and insurance industry representatives as well as to the program directors of the Insurance Counseling and Assistance Programs established in each State.
- A Request for Comment was also sent to all NAIC members and the person responsible for health issues in each State as well as to all members of Congress and certain congressional health staff members.
- The Fall edition of the *NAIC NEWS* and the *NAIC Senior Counseling Letter* included a short summary of the major components of section 171 of the SSAA '94 (in particular, the provisions on duplication) and solicited input from the readers. These solicitations generated 33 written comment letters providing suggestions on how the NAIC should proceed.

• On December 2, 1994, a public hearing was conducted during an NAIC meeting in New Orleans, Louisiana. Sixteen representatives of organizations provided testimony at this hearing. On December 3 and 5, 1994, additional public meetings were held to begin drafting the statements.

• On December 13, 1994, draft disclosure statements were mailed to the same persons who received the Request for Comment. This mailing asked for comment on the draft statements and announced another public meeting. This mailing generated an additional 16 comment letters.

• On January 9 and 10, 1995, public meetings were held in Washington, D.C., to solicit further input from consumer and insurance industry representatives.

• On January 12, 1995, copies of the revised disclosure statements were faxed to the participants of the January 9 and 10 meetings requesting additional input and announcing the final public meeting. An additional 5 comment letters were received.

• On January 20, 1995, a final public meeting was held in Washington, D.C., seeking additional public comment on the statements before submitting them for adoption by the Commissioners in a plenary session held on January 21.

The NAIC delivered the statements to the Secretary on January 27, 1995. The Secretary approved them on February 24, 1995.

B. Availability of Comments Received During Development of NAIC Disclosure Statements

Comments concerning the 10 disclosure statements received during the development and approval process will be available for public inspection beginning with the date of the publication of this document. They may be viewed in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890), and in Room 132 East High Rise building, 6325 Security Boulevard, Baltimore Maryland, on Monday through Friday, of each week from 8:30 a.m. to 4:00 p.m. (phone: (410) 966–5633).

C. Criminal and Civil Money Penalties

Any issuer who is required to provide the appropriate statement as part of, or together with, the application after the effective date of this notice and fails to do so, or fails to pay benefits under the policy without regard to other coverage, is subject to the imposition of the Federal criminal and/or civil penalties that are identified in section 1882(d)(3)(A) of the Act. The criminal penalties identified in this section are fines under title 18 of the U.S. Code, which could be as much as $25,000, or imprisonment of not more than 5 years, or both. In addition to or in lieu of criminal penalties, an issuer who violates these requirements could be subject to a civil money penalty of up to $25,000 per violation. In the case of violation of these requirements by any person other than the issuer (e.g., an agent), the civil money penalty per violation may not exceed $15,000.

D. Policies Not Requiring Disclosure Statements

Certain policies do not have to carry a disclosure statement.

• Policies that do not duplicate Medicare benefits, even incidentally.

(An argument has been made that a policy that coordinates benefits with Medicare (that is, does not pay otherwise covered benefits if Medicare has already paid benefits) does not "duplicate" Medicare within the meaning of section 1882(d)(3) of the Act. However, this interpretation would make section 1882(d)(3)(C)(ii) of the Act meaningless. The latter provision permits duplication of Medicare only if a policy makes benefits fully payable without regard to other health benefit coverage. Therefore, section 1882 (d)(3)(C)(ii) of the Act only makes sense if the policy in question has a coordination of benefits clause. In other words, the controlling factor is whether the policy provides coverage of benefits that would duplicate Medicare benefits, not whether or not it actually pays.

A question was also raised as to whether policies that pay fixed dollar amounts that are not for specific services duplicate Medicare. Section 1882(d)(3)(D)(i)(I) of the Act specifically requires the NAIC to draft statements for policies that pay "fixed, cash benefits." This represents a congressional determination that these policies "duplicate" Medicare.)

• Life insurance policies that contain long term care riders or accelerated death benefits.

(These types of policies are not covered under the disclosure requirements for two reasons. First, they are advertised, marketed, and sold as life products, not as "health insurance." Second, as life insurance policies, these products will always pay the same amount of benefit whether the payment is made before or after death. By contrast, if a long term care insurance policyholder dies without ever filing a claim for long term care benefits, there is usually no return on his or her "investment" in premiums.)

• Disability insurance policies.

(Although in some contexts these types of policies may be considered to be a form of health insurance, we believe that they are not the type of insurance policies Congress intended to come within the scope of this legislation. They have traditionally been considered to be a separate type of insurance, and the Internal Revenue Code treats them differently from health insurance.)

• Property and casualty policies, including personal liability and automobile insurance.

(These types of policies may pay certain health benefits, but State laws do not consider property and casualty coverage to be "health insurance.")

• Employer and union group health plans.

(These types of policies are exempt from the anti-duplication prohibition under section 1882(d)(3)(C)(i) of the Act and therefore do not have to meet the requirements of section 1882 (d)(3)(C)(ii) of the Act. Such plans do not need to carry disclosure statements even though they may fit one of the above categories.)

• Managed care organizations with Medicare contracts under section 1876 of the Social Security Act.

(These plans do not "duplicate" Medicare benefits; rather their purpose is to actually provide all covered Medicare benefits directly to enrolled beneficiaries.)

• HCPPs that provide some or all Part B benefits under an agreement with HCFA under section 1833(a) of the Act.

(As with section 1876 managed care plans, under these agreements, HCPPs provide the actual Medicare benefits; they do not duplicate Medicare.)

E. Policies Requiring Disclosure Statements

The NAIC has identified 10 separate types of health insurance policies that each need an individualized statement of the extent to which the policy duplicates Medicare. These types of policies are—

(1) policies that provide benefits for expenses incurred for an accidental injury only;

(2) policies that provide benefits for specified limited services;

(3) policies that reimburse expenses incurred for specified disease or other specified impairments (including cancer policies, specified disease policies and other policies that limit reimbursement to named medical conditions);

(4) policies that pay fixed dollar amounts for specified disease or other specified impairments (including cancer, specified disease policies and other policies that pay a scheduled benefit or specified payment based on diagnosis of the conditions named in the policy);

(5) indemnity policies and other policies that pay a fixed dollar amount per day, excluding long term care policies;

(6) policies that provide benefits for both expenses incurred and fixed indemnity;

(7) long-term care policies providing both nursing home and non-institutional coverage;

(8) long-term care policies primarily providing nursing home benefits only;

(9) home care policies; and

(10) other health insurance policies not specifically identified above.

IV. Policy Disclosure Statements

We have reviewed and approved the statements developed by the NAIC along with the instructions for their use and they are set forth as an addendum to this notice.

V. Other

This notice was reviewed by the Office of Management and Budget.

(Section 1882(d)(3) of the Social Security Act (42 U.S.C. 1395ss(d)(3)))

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 17, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Addendum

Adopted by the NAIC on 1/21/95

Instructions for Use of the Disclosure Statements for Health Insurance Policies Sold to Medicare Beneficiaries That Duplicate Medicare

1. Federal law, P.L. 103–432, prohibits the sale of a health insurance policy (the term policy includes certificate) to Medicare beneficiaries that duplicates Medicare benefits unless it will pay benefits without regard to a beneficiary's other health coverage and it includes the prescribed disclosure statement on or together with the application for the policy.

2. All types of health insurance policies that duplicate Medicare shall include one of the attached disclosure statements, according to the particular policy type involved, on the application or together with the application. The disclosure statement may not vary from the attached statements in terms of language or format (type size, type proportional spacing, bold character, line spacing, and usage of boxes around text).

3. State and Federal law prohibits insurers from selling a Medicare supplement policy to a person that already has a Medicare supplement policy except as a replacement policy.

4. Property/Casualty and Life insurance policies are not considered health insurance.

5. Disability income policies are not considered to provide benefits that duplicate Medicare.

6. The federal law does not pre-empt state laws that are more stringent than the federal requirements.

7. The federal law does not pre-empt existing state form filing requirements.

BILLING CODE 4120–01–P

[For policies that provide benefits for expenses incurred for an accidental injury only.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses that result from accidental injury. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when it pays:

- hospital or medical expenses up to the maximum stated in the policy

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- other approved items and services

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.
√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
√ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[For policies that provide benefits for specified limited services.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance provides limited benefits, if you meet the policy conditions, for expenses relating to the specific services listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when:

- any of the services covered by the policy are also covered by Medicare

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- other approved items and services

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.
√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
√ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[For policies that reimburse expenses incurred for specified disease(s) or other specified impairment(s). This includes expense-incurred cancer, specified disease and other types of health insurance policies that limit reimbursement to named medical conditions.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses only when you are treated for one of the specific diseases or health conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when it pays:

- hospital or medical expenses up to the maximum stated in the policy

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- other approved items and services

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.
√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
√ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[For policies that pay fixed dollar amounts for specified disease(s) or other specified impairment(s). This includes cancer, specified disease, and other health insurance policies that pay a scheduled benefit or specific payment based on diagnosis of the conditions named in the policy.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance pays a fixed amount, regardless of your expenses, if you meet the policy conditions, for one of the specific diseases or health conditions named in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits because Medicare generally pays for most of the expenses for the diagnosis and treatment of the specific conditions or diagnoses named in the policy.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- other approved items and services

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.
√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
√ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[For indemnity policies and other policies that pay a fixed dollar amount per day, excluding long-term care policies.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance pays a fixed dollar amount, regardless of your expenses, for each day you meet the policy conditions. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when:

- any expenses or services covered by the policy are also covered by Medicare

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- other approved items and services

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.
√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
√ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[For policies that provide benefits upon both an expense-incurred and fixed indemnity basis.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance pays limited reimbursement for expenses if you meet the conditions listed in the policy. It also pays a fixed amount, regardless of your expenses, if you meet other policy conditions. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when:

- any expenses or services covered by the policy are also covered by Medicare; or
- it pays the fixed dollar amount stated in the policy and Medicare covers the same event

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice care
- other approved items & services

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.
√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
√ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[For long-term care policies providing both nursing home and non-institutional coverage.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

Federal law requires us to inform you that this insurance duplicates Medicare benefits in some situations.

- This is long term care insurance that provides benefits for covered nursing home and home care services.
- In some situations Medicare pays for short periods of skilled nursing home care, limited home health services and hospice care.
- This insurance does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Neither Medicare nor Medicare Supplement insurance provides benefits for most long term care expenses.

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.
√ For more information about long term care insurance, review the *Shopper's Guide to Long Term Care Insurance*, available from the insurance company.
√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
√ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[For policies providing nursing home benefits only.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

Federal law requires us to inform you that this insurance duplicates Medicare benefits in some situations.

- This insurance provides benefits primarily for covered nursing home services.
- In some situations Medicare pays for short periods of skilled nursing home care and hospice care.
- This insurance does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Neither Medicare nor Medicare Supplement insurance provides benefits for most nursing home expenses.

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.
√ For more information about long term care insurance, review the *Shopper's Guide to Long Term Care Insurance*, available from the insurance company.
√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
√ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[For policies providing home care benefits only]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

Federal law requires us to inform you that this insurance duplicates Medicare benefits in some situations.

- This insurance provides benefits primarily for covered home care services.
- In some situations, Medicare will cover some health related services in your home and hospice care which may also be covered by this insurance.
- This insurance does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Neither Medicare nor Medicare Supplement insurance provides benefits for most services in your home.

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.
√ For more information about long term care insurance, review the *Shopper's Guide to Long Term Care Insurance*, available from the insurance company.
√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
√ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[For other health insurance policies not specifically identified in the preceding statements.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance provides limited benefits if you meet the conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when it pays:

- the benefits stated in the policy and coverage for the same event is provided by Medicare

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- other approved items and services

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.
√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
√ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

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National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose

To review and evaluate grant applications.
Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: June 6, 1995.
Time: 12 p.m.
Place: Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.
Contact Person: Phyllis D. Artis, Grant Technical Assistant, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1367.

Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: June 19, 1995.
Time: 2 p.m.
Place: Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.
Contact Person: Sheri L. Schwartzback, Grant Technical Assistant, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: June 22, 1995.
Time: 3 p.m.
Place: Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.
Contact Person: Sheri L. Schwartzback, Grant Technical Assistant, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the review cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.126, Small Business Innovation Research; 93.176, ADAMHA Small Instrumentation Program Grants; 93.242, Mental Health Research Grants; 93.281, Mental Research Scientist Development Award and Research Scientist Development Award for Clinicians; 93.282, Mental Health Research Service Awards for Research Training; and 93.921, ADAMHA Science Education Partnership Award.)

Dated: June 6, 1995.
Susan K. Feldman,
Committee Management Officer, NIH.
[FR Doc. 95–14288 Filed 6–9–95; 8:45 am]
BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Cancellation of Meeting

Notice is hereby given of the cancellation of one meeting of the National Institute of Mental Health which was published in the **Federal Register** on May 31, 1995 (60 FR 28417): the Extramural Science Advisory Board, July 24–25, 1995, Conference Room 6, Building 31, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

The meeting was cancelled due to prior commitments of several members.

Dated: June 5, 1995.
Susan K. Feldman,
Committee Management Officer, NIH.
[FR Doc. 95–14287 Filed 6–9–95; 8:45 am]
BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Cancellation of Meeting

Notice is hereby given of the cancellation of one meeting of the National Institute of Mental Health which was published in the **Federal Register** on May 22, 1995 (60 FR 27115): the Board of Scientific Counselors, National Institute of Mental Health, June 13–14, 1995, Conference Room 1B07, Building 36, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

The meeting was cancelled due to prior commitments of several members.

Dated: June 5, 1995.
Susan K. Feldman,
Committee Management Officer, NIH.
[FR Doc. 95–14286 Filed 6–9–95; 8:45 am]
BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

AGENDA/PURPOSE

To review and evaluate grant applications.
Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: June 16, 1995.
Time: 12 p.m.
Place: Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.
Contact Person: Regina Thomas, Grant Technical Assistant, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: June 20, 1995.
Time: 11:30 p.m.
Place: Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.
Contact Person: Regina Thomas, Grant Technical Assistant, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: June 29, 1995.
Time: 11 a.m.
Place: Parklawn Building, Room 9C–101, 5600 Fishers Lane, Rockville, MD 20857.
Contact Person: Maureen L. Eister, Grant Technical Assistant, Parklawn Building, Room 9C–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the review cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.126, Small Business Innovation Research; 93.176, ADAMHA Small Instrumentation Program Grants; 93.242, Mental Health Research Grants; 93.281, Mental Research Scientist Development Award and Research Scientist Development Award for Clinicians; 93.282, Mental Health Research Service Awards for Research Training; and 93.921, ADAMHA Science Education Partnership Award.)

Dated: June 6, 1995.
Susan K. Feldman,
Committee Management Officer, NIH.
[FR Doc. 95–14289 Filed 6–9–95; 8:45 am]
BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda

To review individual grant applications.

Name of SEP: Multidisciplianary Sciences.
Date: June 30, 1995.
Time: 1:00 p.m.
Place: NIH, Rockledge II, Room 5212, Telephone Conference.
Contact Person: Dr. Bill Bunnag, Scientific Review Administrator, 6701 Rockledge Drive, Room 5212, Bethesda, MD 20892, (301) 435–1177.

Name of SEP: Behaviorel and Neurosciences.
Date: July 11, 1995.
Time: 9:00 p.m.
Place: Doubletree Hotel, Rockville, MD.
Contact Person: Dr. Joseph Kimm, Scientific Review Administrator, 6701 Rockledge Drive, Room 5178, Bethesda, MD 20892, (301) 435–1249.

Name of SEP: Chemistry and Related Sciences.
Date: July 12, 1995.
Time: 12:00 noon
Place: NIH, Rockledge II, Room 4176, Telephone Conference.
Contact Person: Dr. Mike Radtke, Scientific Review Administrator, 6701 Rockledge Drive, Room 5176, Bethesda, MD 20892, (301) 435–1728.

Name of SEP: Biological and Physiological Sciences.
Date: July 12, 1995.
Time: 1:00 p.m.
Place: NIH, Rockledge II, Room 5144, Telephone Conference.
Contact Person: Dr. Robert Su, Scientific Review Administrator, 6701 Rockledge Drive, Room 5144, Bethesda, MD 20892, (301) 435–1025.

Purpose/Agenda

To review Small Business Innovation Research Program grant applications.
Name of SEP: Behavioral and Neurosciences.
Date: July 6, 1995.
Time: 8:00 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Teresa Levitin, Scientific Review Administrator, 6701 Rockledge Drive, Room 5200, Bethesda, MD 20892, (301) 435–1259.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 6, 1995.
Susan K. Feldman,
Committee Management Officer, NIH.
[FR Doc. 95–14290 Filed 6–9–95; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Administration

[FR–3918–N–01]

Privacy Act of 1974; Proposed Amendment to Systems of Records

AGENCY: Office of the Assistant Secretary for Administration, (HUD).

ACTION: Notification of proposed amendments to five existing systems of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Housing and Urban Development is giving notice that it intends to amend the following Privacy Act systems of records: Property Improvement and Manufactured (Mobile) Home Loans-Default (HUD/Dept-28), Mortgages—Delinquent/Default/Assigned/Temporary Mortgage Assistance Payments (TMAP) Program (HUD/Dept-32), Single Family Case Files (HUD/Dept-46), Rehabilitation Grants and Loans Files (HUD/Dept-29) and Rehabilitation Loans—Delinquent/Default (HUD/CPD–1).

EFFECTIVE DATE: These amendments will be effective without further notice on July 12, 1995, unless comments are received that would result in a contrary determination.

ADDRESSES: Interested persons are invited to submit comments regarding the proposed amendments to the Rules Docket Clerk, Office of General Council, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. An original and four copies of the comments should be submitted. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Jeanette Smith, Departmental Privacy Act Officer, at (202) 708–2374. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: HUD/Dept-28, HUD/Dept-29, HUD/Dept-32, HUD/Dept-46 and HUD/CPD–1 are being amended to allow the release of relevant sales information to prospective purchasers for sale of mortgages, loans or insurance premiums or charges. The new routine use will read as follows: To prospective purchasers—for sale of mortgages, loans or insurance premiums or charges.

The amended portion of the system notice is set forth below. Previously, the system and a prefatory statement containing the general routine uses applicable to all HUD systems of records was published in the "Federal Register Privacy Act Issuances, 1991, Volume I."

Title 5 U.S.C. 552a(e) (4) and (11) provide that the public be afforded a 30-day period in which to comment on the new record system.

The system report, as required by 5 U.S.C. 552a(r), has been submitted to the Committee on Governmental Affairs of the United States Senate, the Committee on Government Reform and Oversight of the House of Representatives, and the Office of Management and Budget (OMB), pursuant to paragraph 4c of Appendix I to OMB Circular A–130, "Federal Agency Responsibilities for Maintaining Records about Individuals" dated June 25, 1993 (58 36075, July 2, 1993).

Authority: 5 U.S.C. 552a; 88 Stat. 1986; sec 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

Issued at Washington, DC, May 31, 1995.
Marilynn A. Davis,
Assistant Secretary for Administration.

HUD/Dept-28

SYSTEM NAME:

Property Improvement and Manufactured (Mobile) Home Loans-Default.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a (b) of the Privacy Act, other routine uses are as follows:

(a) To the Department of Justice for prosecution of fraud in the course of claims collection efforts and for the institution of suit or other proceedings to effect collection of claims;

(b) To the FBI to investigate possible fraud revealed in the course of claims collection efforts.

(c) General Accounting Office—for audit purposes.

(d) Private employers and Federal agencies to facilitate collection of claims against employees.

(e) Office of Personnel Management—for offsetting retirement payments.

(f) Consumer reporting and commercial credit agencies—to facilitate claims collection consistent with Federal Claims Collection Standards, 4 CFR 102.4.

(g) To financial institutions that originated or serviced loans to give notice of disposition of claims.

(h) To title insurance companies for payment of liens.

(i) To local recording offices for filing assignments of legal documents, satisfactions, etc.

(j) To bankruptcy courts for filing of proofs of claim.

(k) To HUD contractors for debt servicing.

(l) To state motor vehicle agencies and Internal Revenue Service to obtain current addresses of debtors.

(m) To prospective purchasers—for sale of mortgages, loans or insurance premiums or charges.

HUD/Dept-29

SYSTEM NAME:

Rehabilitation Grants and Loan Files.

* * * * *

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, other routine uses are as follows:

(a) To local agencies for monitoring and carrying out the program.

(b) To financial institutions—for providing supplemental rehabilitation funds.

(c) To credit reporting agencies, employers, financial institutions, and retail consumer credit grantors—for verification of employment and financial status.

(d) To Federal National Mortgage Association and loan servicers—for loan servicing.

(e) To Internal Revenue Service—for reporting of discharged indebtedness.

(f) To prospective purchasers—for sale of mortgages, loans or insurance premiums or charges.

HUD/Dept-32

SYSTEM NAME:

Delinquent/Default/Assigned/Temporary Assistance Payments (TMAP) Program.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, other routine uses are as follows:

(a) To FHA—for insurance investigations.

(b) To the Internal Revenue Service and the General Accounting Office for investigations.

(c) To state banking agencies to aid in processing mortgagor complaints.

(d) To mortgagees—to verify information provided by new loan applicants and to evaluate credit worthiness.

(e) To counseling agencies for counseling.

(f) To Legal Aid—to assist mortgagors.

(g) To HUD TMAP contractor for processing TMAP.

(h) To other Federal agencies for the purposes of collecting debts owed to the Federal Government by administrative or salary offset.

(i) To prospective purchasers—for sale of mortgages, loans or insurance premiums or charges.

HUD/DEPT-46

SYSTEM NAME:

Single Family Case Files.

* * * * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, other routine uses are as follows:

(a) To welfare agencies for fraud investigation.

(b) To the Department of Veterans Affairs for coordination with HUD in processing construction complaints.

(c) To Congressional delegation—providing information concerning status of complaints.

(d) Complainants and attorneys representing them—for review of complainant file for status and information.

(e) Builders and attorneys representing them—for review of complainant files for status information.

(f) To holders of secondary mortgages—to determine the outstanding balance due to HUD on a Secretary-held mortgage.

(g) To prospective purchasers—for sale of mortgages, loans or insurance premiums or charges.

HUD/CPD-1

SYSTEM NAME:

Rehabilitation Loans-Delinquent/Default.

* * * * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, other routine uses are as follows:

(a) Department of Justice—for prosecution of fraud revealed in the course of claims collection efforts and for the institution of suit or other proceedings to effect collection of claims.

(b) To the Federal Bureau of Investigation—for investigation of possible fraud revealed in the course of claims collection efforts.

(c) General Accounting Office—for audit purposes.

(d) To private employers and Federal agencies to facilitate collection of claims against employees.

(e) To the Office of Personnel Management—for offsetting retiring payments.

(f) To consumer reporting and commercial credit agencies to facilitate claims collection consistent with Federal Claims Collection Standards, 4 CFR 102.4.

(g) To financial institutions that serviced loans—to give notice of disposition of claims.

(h) To local recording offices for filing assignments of legal documents, satisfactions, etc.

(i) To bankruptcy courts for filing of proofs of claim.

(j) To local agencies that service HUD Section 312 Rehabilitation loans—to aid in the collection of delinquent loans.

(k) To counseling agencies to provide counseling and assistance in the collection of delinquent Section 312 loans in accordance with HUD/Dept-22

(l) To state motor vehicle agencies and Internal Revenue Service—to obtain current addresses of debtors.

(m) To prospective purchasers—for sale of mortgages, loans or insurance premiums or charges.

[FR Doc. 95-14250 Filed 6-9-95; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Las Vegas Paiute Tribe Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: None.

SUMMARY: This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. I certify that the Las Vegas Paiute Liquor Control Ordinance was duly adopted by the Las Vegas Paiute Tribe on February 21, 1995. The Ordinance provides for the regulation, distribution, possession, sale, and consumption of liquor on lands held in trust belonging to the Las Vegas Paiute Tribe.

DATES: This ordinance is effective as of June 12, 1995.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Judicial Services, Division of Tribal Government Services, 1849 C Street, NW., MS 2611-MIB, Washington, DC 20240-4001; telephone (202) 208-4400.

SUPPLEMENTARY INFORMATION: The Las Vegas Paiute Tribe Liquor Ordinance is to read as follows:

12-19 Findings and Purpose

12-10-010 *Legislative Control*—Federal law currently prohibits the introduction of liquor into Indian country and expressly delegates to tribes the decision regarding when and to what extent liquor transactions shall be permitted on their reservations. The Las Vegas Tribe of Paiute Indians has decided to open all lands within its jurisdiction to the possession, consumption, and sale of liquor by enacting this Title 12 (Title 12) to the Tribal Law and Order Code. Title 12 is adopted pursuant to the Act of August 15, 1953 (Pub. L. 83-277, 67 Stat. 588, 18 U.S.C. § 1161) and shall serve as the "liquor ordinance" referenced therein.

12-10-020 Control Desired—Title 12 shall govern all liquor sales and distribution on the reservation, will increase the ability of the tribe to control reservation liquor distribution and possession and will provide an additional source of revenue for tribal operations.

12-10-030 Goals of Regulation—Tribal regulation of the sale, possession, and consumption of liquor on the reservation is necessary to protect the health, security, and general welfare of the tribe, and to address tribal concerns relating to alcohol use on the reservation. In order to further these goals and to provide an additional source of governmental revenue, the tribe has adopted Title 12, which shall be liberally construed to fulfill the purposes for which it has been adopted. Title 12 is authorized by Article VII, Section 1(g) of the constitution and by-laws of the tribe which provides that the tribal council shall have the power "[t]o enact legislation for the purpose of safeguarding and promoting the peace, safety, morals, and general welfare of the members of the Las Vegas Paiute Tribe."

12-20 Definitions

12-20-010 *Definitions of Words*—As used in Title 12, the following words shall have the following meanings unless the context clearly requires otherwise:

(a) "Alcohol" means that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions and mixtures of this substance.

(b) "Alcoholic Beverage" is synonymous with the term "liquor" as defined at section 12-20-010(d) hereof.

(c) "Beer" means any beverage obtained by the fermentation or infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in water and which contains not more than four percent of alcohol by volume.

(d) "Liquor" includes the four varieties of liquor herein defined (alcohol, spirits, wine, and malt liquor), and all fermented, spirituous, vinous, or malt liquor, or combinations thereof, and mixed liquor, a part of which is fermented, spiritous, vinous, or malt liquor, or otherwise intoxicating. Every liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or malt liquor, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption and any liquid, semisolid, solid, or other substances, containing more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating.

(e) "Malt Liquor" means beer, strong beer, ale, stout, and porter.

(f) "Package" means any container or receptacle used for holding liquor.

(g) "Reservation" means all lands of the tribe described or referenced in the tribe's constitution, including, but not limited to, all lands described in United States Public Law 98-203, and any lands which may in the future come within the jurisdiction of the tribe by any lawful means

(h) "Sale" and "Sell" mean exchange, barter, and traffic; and also include the selling or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as "beer" or by any name whatsoever commonly used to describe "malt liquor" or "liquor" or "wine" by any person to any person.

(i) "Spirits" means any beverage which contains alcohol obtained by distillation, including wines exceeding seventeen percent of alcohol by weight.

(j) "Strong Beer" means any beverage obtained by the alcoholic fermentation or infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in water, including ale, stout, and porter, containing more than four percent of alcohol by weight.

(k) "Title 12" means this liquor code, which shall serve the tribe as the liquor ordinance referenced at 18 U.S.C. § 1161.

(l) "Tribe" means, and "Tribal" refers to, the Las Vegas Paiute Tribe, a federally recognized tribe of Native American Indians, listed at 58 FR 54364, 67 as the "Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada."

(m) "Tribal Council" shall mean the duly elected tribal council of the tribe, which is the governing body of the tribe.

(n) "Tribal Court" means the tribal courts of the tribe as established pursuant Title 1 of the Tribal Law and Order Code.

(o) "Wine" means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, etc.) or other agricultural product containing sugar, to which any saccharine substances may have been added before, during, or after fermentation, and containing not more than seventeen percent of alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel, and angelica, not exceeding seventeen percent of alcohol by weight.

12-30 Sales, Distribution, Possession, Consumption

12-30-010 *Authorization*—The tribe, its members and other persons including, but not limited to, corporations, partnerships, associations and natural persons are hereby authorized to introduce, sell, distribute, warehouse, possess and consume alcoholic beverages within the reservation, in accordance with the laws of the State of Nevada (including Nevada liquor licensing provisions); provided, however, that any person or entity, other than the tribe, which sells alcoholic beverages within the reservation must first obtain a tribal liquor license from the tribal council and such sales shall be subject to taxes and license fees as may be established by duly enacted resolution of the tribal council.

12-30-020 *Distribution of Taxes and Fees*—All taxes and license fees related to the sale or introduction of

alcoholic beverages on the reservation shall be remitted to the tribal council through the tribal secretary, who shall keep accurate records of all such receipts, and shall be subject to distribution by the tribal council in accordance with its usual appropriation procedures for governmental and social services.

12–30–030 *Tribal Liquor License elements*—Tribal liquor licenses shall authorize the holder thereof to sell alcoholic beverages at wholesale or at retail in cans, bottles or any other package within a defined area; provided, however, that a tribal liquor license shall be valid only if the holder thereof is in compliance with the laws of any other jurisdiction which may have any authority with regard to liquor sales and regulation on the reservation.

Tribal liquor licenses shall set forth the location and description of the building and premises for which each license is issued and shall define the area where the holder of each tribal liquor license may sell alcoholic beverages for a period of one year.

12–40 Penalties

12–40–010 *General*—Notwithstanding any other provision of Title 12, no penalty may be imposed pursuant or related to title 12 in contravention or in excess of any limitation imposed by the Indian Civil Rights Act of 1968, 82 Stat. 77, 25 U.S.C.A. § 1301 *et seq.* ("ICRA") or other applicable Federal law.

12–40–020 *Illegal Transportation, Still, or Sale Without Permit*—Any person who, within the reservation and without a valid tribal liquor license, sells or offers for sale or transport in any manner any liquor within the boundaries of the reservation in violation of Title 12, or who operates or has in his possession any spirit distillation device or any substance meant or specifically concocted to be distilled into liquor (not including devices or mash related to the home manufacture of beer, strong beer, or wine solely for the purpose of personal consumption and not for sale), shall be guilty of a Class A Offense as defined in the Tribal Law and Order Code.

12–40–030 *Illegal Purchase of Liquor*—Any person who buys liquor within the boundaries of the reservation other than from an individual or entity properly licensed pursuant to Title 12 shall be guilty of a Class A Offense as defined in the Tribal law and Order Code.

12–40–040 *Furnishing Liquor to Minors*—Except in the case of liquor given or administered to a person by his physician or dentist for medicinal purposes, no person under the age of 21 years shall consume, acquire or have in his possession any alcoholic beverages except when such beverages are used in connection with religious services. No person shall permit any other person under the age of 21 to consume liquor on his premises or on any premises under his control except in those situations set out in this section. Any person violating this section shall be guilty of a Class A Offense as defined in the Tribal Law and Order Code.

12–40–050 *Sales of Liquor to Minors*—Any person who shall sell any liquor to any person under the age of 21 years shall be guilty of a Class A Offense as defined in the tribal law and order code and shall be further subject to forfeit any license issued pursuant to Title 12; provided, however, that the forfeiture of any license issued pursuant to Title 12 may occur only after notice and a hearing according to the procedures set forth in section 12–50–020 of Title 12.

12–40–060 *Unlawful Transfer of Identification*—Any person who transfer in any manner an identification of age to a minor for the purpose of permitting such minor to obtain liquor shall be guilty of a Class A Offense as defined in the Tribal Law and Order Code. Corroborative testimony of a witness other than the minor shall be a requirement of conviction under this section.

12–40–070 *Possession of False or Altered Identification*—Any person who attempts to purchase an alcoholic beverage through the use of false or altered identification which falsely purports to show the individual to be over the age of 21 years shall be guilty of a Class D Offense as defined in the Tribal Law and Order Code.

12–40–080 *General Penalties*—Any person guilty of a violation of Title 12 for which no penalty has been specifically provided shall be liable upon conviction for the penalty prescribed for Class A Offenses in the Tribal Law and Order Code.

12–40–090 *Identification; Proof of Minimum Age*—Where there may be a question of a person's right to purchase liquor by reason of his age, such person shall be required to present any one of the following officially issued cards of identification which shows his correct age and bears his signature and photograph:

(a) Liquor control authority card of identification of any state;

(b) Driver's license of any state or "Identicard" issued by any state Department of Motor Vehicles;

(c) United States Active Duty Military Identification;

(d) Passport; or

(e) Las Vegas Paiute Tribal Identification or Enrollment Card.

12–40–100 *Illegal Items Declared Contraband*—Alcohol beverages which are possessed contrary to the terms of Title 12 are hereby declared to be contraband. Any officer who shall make an arrest under this section shall seize all contraband which he shall have the authority to seize consistent with the tribe's constitution, the Tribal Law and Order Code, the ICRA and any other applicable Federal law.

12–40–110 *Non-Indian Violations*—Nothing in Title 12 shall be construed to require or authorize the criminal trial and punishment by the tribal court of any non-Indian except to the extent allowed under Federal law. In general, when any provision of Title 12 is violated by a non-Indian, he or she shall be referred to state and/or Federal authorities for prosecution under applicable law. It is the expressed intent of the tribe that any non-Indian referred to state and/or Federal authorities pursuant to this section be prosecuted to the furthest extent of applicable law.

12–50 Abatement of Continuing Violations

12–50–010 *Declaration of Nuisance*—Any room, house, building, boat, vessel, vehicle, structure, or other place where liquor is sold, manufactured, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of Title 12 and all property kept in and used in maintaining such place, including tribal liquor licenses related to any such property, are hereby declared to be a common nuisance.

12–50–020 *Institution of Action*—The Chairman of the tribal council or the Chief of the tribal law enforcement department may institute and maintain an action in the tribal court in the name of the tribe to abate and perpetually enjoin any nuisance declared under article 12-50 of Title 12 or any other violation of Title 12. The plaintiff shall be required to file grounds in the action, and restraining orders, temporary injunctions, and permanent injunctions may be granted in the case as in other injunction proceedings. Upon final judgment against the defendant, the tribal court may order the forfeiture of any license issued pursuant to Title 12 and that the offending room, house, building, boat, vessel, vehicle, structure, or place be closed for a period of one year or until the owner, lessee, tenant, or occupant thereof shall give bond of sufficient sum of not less than $1,000.00 payable to the tribe, which bond shall be conditioned on the agreement of such person that liquor will not be thereafter manufactured, kept, sold, bartered, exchanged, given away, furnished, or otherwise disposed of thereof in violation of the provisions of Title 12 and that such person will pay all fines, costs and damages assessed against him for any violation of Title 12. If any conditions of the bond are violated, the whole amount may be recovered as a penalty for the use of the tribe. Any action taken under this section shall be in addition to any criminal penalties provided for under Title 12 or any other applicable provision of the Tribal Law and Order Code.

12–50–030 *Abatement of Nuisance*—In all cases where any person has been convicted of a violation of Title 12, an action may be brought in tribal court to abate as a nuisance any real estate or other property involved in the commission of the offense, and in any such action a certified copy of the record of such conviction shall be admissible in evidence and *prima facie* evidence that the room, house, vessel, boat, building, vehicle, structure, or place against which such action is brought is a public nuisance.

12–60 Severability and Effective date

12–60–010 *Severability*—If any application or provision, or any portion of any provisions, of Title 12 is determined by review of any court of competent jurisdiction to be invalid, such adjudication shall not render ineffectual the remaining portions of Title 12 or render such provisions automatically inapplicable to other persons or circumstances.

12–60–020 *Effective Date*—Title 12 shall be effective as a matter of tribal law on the date of its adoption by the tribal council and effective as a matter of Federal law on such date as the Secretary of the Interior certifies and publishes the same in the **Federal Register**.

12–60–030 *Inconsistent Enactments Rescinded*—Any and all prior enactments of the tribal council which are inconsistent with the provisions of Title 12 are hereby rescinded to the extent of such inconsistency.

12–60–040 *Application of 18 U.S.C. 1161*—All acts and transactions under Title 12 shall be in conformity with the laws of the State of Nevada to the extent required under 18 U.S.C. 1161.

12–60–050 *Jurisdiction and Sovereign Immunity*—Nothing in Title 12 shall be construed to limit the jurisdiction of the tribe, the tribal court or tribal law enforcement personnel and nothing herein shall limit or constitute a waiver of the sovereign immunity of the tribe or its officers, instrumentalities and agents or authorize any form a prospective waiver of such sovereign immunity. Nothing in Title 12 shall be construed as an admission that any body politic, other than the tribe, has jurisdiction over any matter arising from or related to the reservation, except to the extent such jurisdiction is confirmed by Federal law.

Dated: May 24, 1995.

Ada E. Deer,

Assistant Secretary-Indian Affairs.

[FR Doc. 95–14252 Filed 6–9–95; 8:45 am]

BILLING CODE 4310–02–M

National Park Service

Transcontinental Gas Pipe Line Co., Big Thicket National Preserve Hardin and Jasper Counties, TX; Availability of Plan of Operations and Environmental Assessment Pipeline Removal and Reclamation and Abandonment of Pipeline Easement

Notice is hereby given in accordance with Section 9.52(b) of Title 36 of the Code of Federal Regulations that the National Park Service has received from Transcontinental Gas Pipe Line Company a Plan of Operations for removal of a pipeline and reclamation and abandonment of pipeline easement within Big Thicket National Preserve, located within Hardin and Jasper Counties, Texas.

The Plan of Operations and Environmental Assessment are available for public review and comment for a period of 30 days from the publication date of this notice in the Office of the Superintendent, Big Thicket National Preserve, 3785 Milam Street, Beaumont, Texas. Copies are available from the Superintendent, Big Thicket National Preserve, 3785 Milam Street, Beaumont, Texas 77701, and will be sent upon request.

Dated: June 5, 1995.

Jerry L. Rogers,

Superintendent, Southwest System Support Office.

[FR Doc. 95–14333 Filed 6–9–95; 8:45 am]

BILLING CODE 4310–70–M

Notice of Inventory Completion for Human Remains and Associated Funerary Objects in the Possession of the Heard Museum, Phoenix, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003(d), of completion of inventory for Native American human remains and associated funerary objects presently in the possession of the Heard Museum, Phoenix, AZ.

The human remains and associated funerary objects consist of three sets of human remains and associated funerary objects which were collected by Frank Midvale from La Ciudad Ruin, a Hohokam site in Phoenix, Arizona between 1927 and 1929. Artifacts from the site, which was located on property then owned by the Museum, were transferred to the Museum for preservation as a field collection subsequent to their excavation. One set of remains (NA-SW-SD-A1–15) consists of a cremation associated with a Gila Red bowl and an unidentified potsherd. The second set (NA-SW-SD-A1–18) consists of a cremation associated with a Gila Red jar. The third set (NA-SW-SD-T–1) consists of cranial material. These materials were originally cataloged by the Museum as Salado, but were reidentified in 1994 as Hohokam, based on the La Ciudad site provenience and reevaluation of the associated funerary objects.

In 1990, the Salt River Pima-Maricopa Indian Community adopted a joint policy statement along with three other central Arizona tribes, which includes the Ak-Chin Indian Community, Gila River Indian Community, and the Tohono O'Odham Indian Nation. The policy statement asserted that these four communities claim an affiliation to ancestors defined as "Hohokam". In October 1993, the Museum supplied a summary and inventory of its holdings identified as Pima, Maricopa, Hohokam, Salado or Sinagua to the affiliated central Arizona tribes.

On April 19, 1995, a representative of the Salt River Pima-Maricopa Indian Community visited the Museum for an initial consultation, during which time it was determined that the tribe would seek return of the human remains and associated funerary objects from La Ciudad Ruin as part of their annual reburial ceremony. Subsequently, the Salt River Pima-Maricopa Indian Community has requested these three sets of remains and associated funerary objects in a letter dated April 20, 1995. The Museum's Board of Trustees responded positively to the request on April 26, 1995.

Inventory of the human remains and funerary objects and review of accompanying documentation from the three sets of Native American human remains listed above indicate that no known individuals were identifiable.

Based on the above mentioned information, officials of the Heard Museum have determined that,

pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between the Native American human remains and the Salt River Pima-Maricopa Indian Community. All of the objects are reasonably believed to have been placed with or near individual Native American human remains either at the time of death or later as part of a death rite or ceremony.

This notice has been sent to officials of the Salt River Pima-Maricopa Indian Community, the Ak-Chin Indian Community, Gila River Indian Community and the Tohono O'Odham Indian Nation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Martin Sullivan, Director, The Heard Museum, 22 E. Monte Vista Road, Phoenix Arizona 85004–1480, telephone (602) 252–8840 before July 12, 1995. Repatriation of the cultural item to the Salt River Pima-Maricopa Indian Community may begin after that date if no additional claimants come forward.

Dated: June 2, 1995.

Francis P. McManamon,

Departmental Consulting Archeologist Chief, Archeological Assistance Division.

[FR Doc. 95–14295 Filed 6–9–95; 8:45 am]

BILLING CODE 4310–70–F

Notice of Inventory Completion of Native American Human Remains from Kaena Point, Oahu, HI in the Possession of the Hood Museum of Art, Dartmouth College

AGENCY: National Park Service, Interior.

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003 (d), of the completion of the inventory of human remains from Oahu, Hawaii, that are currently in the possession of the Hood Museum of Art at Dartmouth College, Hanover, New Hampshire.

A detailed inventory and assessment of these human remains has been made by museum staff in consultation with representatives of *Hui Mālama I Nā Kūpuna 'O Hawai'i Nei*, a Native Hawaiian organization as defined in 25 U.S.C. 3001 (11).

The human remains identified by the accession number 13–143–6547 include a skull and mandible. From observations and measurements taken around 1962, it was determined that the "cranial index" relates to either the Hawaiian or Society Islands. Two sets of human remains identified as 13–143–6548 (thirteen vertebrae) and 13–143–6549 (one left culcaneus and one tarsus), are not morphologically diagnostic, but are identified as having been collected in Hawaii.

All three sets of human remains were probably acquired around 1900 by a private collector and were subsequently donated to the Dartmouth College Museum in 1939 by his son. Accession records suggest that all of the human remains were acquired at the same time from Kaena Point in the northwest corner of Oahu, Hawaii. Consultation with representatives of *Hui Mālama I Nā Kūpuna 'O Hawai'i Nei* has helped establish Kaena Point as a well known Native Hawaiian burial site. Representatives of *Hui Mālama I Nā Kūpuna 'O Hawai'i Nei* know of no non-Hawaiian occupation or burials in and around Kaena Point.

Based on the above mentioned information officials of the Hood Museum of Art have determined, in consultation with *Hui Mālama I Nā Kūpuna 'O Hawai'i Nei*, that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can reasonably be traced between the three sets of human remains described above and present day Native Hawaiian organizations.

Representatives of culturally affiliated Native Hawaiian organizations are advised that the human remains have been transferred, on loan, to representatives of *Hui Mālama I Nā Kūpuna 'O Hawai'i Nei* who have agreed to delay reinterment until July 12, 1995. This notice has been sent to officials of *Hui Mālama I Nā Kūpuna 'O Hawai'i Nei*, the Office of Hawaiian Affairs and the O'ahu Burial Committee. Representatives of any other Native Hawaiian organization that believes itself to be culturally affiliated with these human remains should contact Kellen G. Haak, Registrar and Repatriation Coordinator, Hood Museum of Art, Dartmouth College, Hanover, NH 03755, telephone (603) 646–3109 and Kunani Nihipali, *Hui Mālama I Nā Kūpuna 'O Hawai'i Nei*, P.O. Box 190 Hale'iwa, HI 96712–0190 telephone: (808)595–6575 before July 12, 1995. Repatriation of these remains to *Hui Mālama I Nā Kūpuna 'O Hawai'i Nei* may begin after that date if no additional claimants come forward.

Dated: June 6, 1995

Richard C. Waldbauer

Acting, Departmental Consulting Archeologist,

Acting, Chief, Archeological Assistance Division

[FR Doc. 95–14294 Filed 6–9–95; 8:45 am]

BILLING CODE 4310–70–F

Notice of Completion of Inventory of Native American Human Remains from Hawaii, Formerly in the Possession of the Joseph Moore Museum of Natural History, Earlham College, Richmond, IN

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003 (d), of the completion of the inventory of human remains from Oahu, Hawaii, formerly in the possession of the Joseph Moore Museum of Natural History, Earlham College, Richmond, Indiana.

The detailed inventory and assessment of the two sets of human remains from Oahu has been made by the museum staff and representatives of *Hui Mālama I Nā Kūpuna 'O Hawai'i Nei*, a Native Hawaiian organization recognized at 25 U.S.C. 3001 (6).

The two sets of remains were given to the museum in 1875 by unknown persons. Accession records indicate that one set of remains came from "* * *a sandbed east of Honolulu, Oahu, * * *" This locality is presumably in the ahupua'a of Waikiki, in the moku of Kona. These remains consist of a complete cranium (without lower jaw) of an adult. The second set is described as comming from "Laico, Oahu." The second location presumably refers to La'ie, which is an ahupua'a in the moku of Ko'olauloa, on the north shore of Oahu. These remains consist of a frontal bone of a juvenile.

Inventory of the human remains and funerary objects and review of accompanying documentation from the two sets of Native American human remains listed above indicate that no known individuals are identifiable.

Based on the above mentioned information, officials of the Joseph Moore Museum of Natural History, Earlham College, have determined pursuant to 25 U.S.C. 3001 (2) that there is a relationship of shared group identity which can be reasonably traced between these remains and present-day Native Hawaiian organizations.

Representatives of culturally affiliated Native Hawaiian organizations are advised that the human remains have been transferred, on loan, to representatives of *Hui Mālama I Nā Kūpuna 'O Hawai'i Nei* who have agreed to delay reinterment until July 12, 1995, after which they may be reinterred. This notice has been sent of officials of the Office of Hawaiian Affairs, *Hui Mālama I Nā Kūpuna 'O Hawai'i Nei*, and to the Oahu burial council. Representatives of any other Native Hawaiian organization that believes itself to be culturally affiliated with these human remains should contact Dr. John Iverson, Joseph Moore Museum of Natural History, Earlham College, Richmond, IN 47374, telephone: (317) 983–1405 and Kunani Nihipali, *Hui Mālama I Nā Kūpuna 'O Hawai'i Nei*, P.O. Box 190 Hale'iwa, HI 96712–0190 telephone: (808)595–6575 before July 12, 1995.

Dated: June 2, 1995.

Francis P. McManamon,

Departmental Consulting Archeologist Chief, Archeological Assistance Division.

[FR Doc. 95–14293 Filed 6–9–95; 8:45 am]

BILLING CODE 4310–70–F

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Public Information Collection Requirements Submitted to OMB for Review

The U.S. Agency for International Development (USAID) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, (44 U.S.C. Chapter 35). Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry. Comments may also be addressed to, and copies of the submissions obtained from the Records Management Officer, Renee Poehls, (202) 736–4743, M/AS/ISS Room 930B, N.S., Washington, D.C. 20523.

Date Submitted: May 9, 1995.

Submitting Agency: U.S. Agency for International Development.

OMB Number: OMB 0412–0536.

Form Number: AID 1420–62.

Type of Submission: Renewal.

Title: Report of Medical Examination.

Purpose: When USAID hires contractor personnel for overseas assignments, the contractors are required to obtain a physician's certification that they are physically qualified to engage in the type of activity for which they will be employed. Physicians who do not regularly deal with patients going to lesser developed countries do not appreciate the difficulties of providing even the most basic medical services in many such areas. This form requests the minimum information needed in order to make a determination as to whether or not the individual should travel to the post in question. The State Department's Office of Medical Service (M/MED) reviews the form prior to departure to insure the Mission or Embassy medical facility can meet special medical needs of the contractor. Thus the need for future medical evacuations would be reduced, since M/MED would find most existing medical problems that could not be dealt with locally and the individual would then most likely be denied approval to post.

Annual Reporting Burden: Respondents: 1650, Annual responses: 1650; Annual burden hours: 6600.

Reviewer: Jeffery Hill (202) 395–7340, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, D.C. 20503.

Dated: May 15, 1995.

Genease E. Pettigrew,

Chief, Information Support Services Division, Office of Administrative Service, Bureau of Management.

[FR Doc. 95–14251 Filed 6–9–95; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than June 22, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 22, 1995.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 30th day of May, 1995.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
ABC Mfg. Corp. (Wkrs)	Ashland, MS	05/30/95	05/10/95	31,062	Ladies' jackets.
Amsco International (Wkrs)	Erie, PA	05/30/95	05/05/95	31,063	Sterilizers for hospitals.
Elegante Sleepwear (Wkrs)	San German, PR	05/30/95	05/11/95	31,064	Sleepwear.
Heinz Pet Products, Inc. (UFCW)	Bloomsburg, PA	05/30/95	05/15/95	31,065	Food can lids.
Rich's Products (Wkrs)	Dayton, OH	05/30/95	05/07/95	31,066	Pies, cakes, etc.
UMC Petroleum Corporation (Wkrs)	Houston, TX	05/30/95	05/18/95	31,067	Exploration & production of oil & gas.
Clinton Swan (ACTWU)	Carlstadt, NJ	05/30/95	04/25/95	31,068	Men's suits.
Rainbow Fashions Inc. (ILGWU)	Pittston, PA	05/30/95	05/16/95	31,069	Dresses.

APPENDIX—Continued

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Forster Inc. (Wkrs)	Wilton, ME	05/30/95	05/15/95	31,070	Croquet sets.
Pittston Coal Co. (Wkrs)	McClure, VA	05/30/95	05/16/95	31,071	Coal.
Softhard Systems, Inc. (Wkrs)	Houston, TX	05/30/95	04/11/95	31,072	Assembly of computers.
Timberland Manufacturing, Inc. (Wkrs)	Boone, NC	05/30/95	04/28/95	31,073	Boots and shoes.
Timberland Manufacturing, Inc (Wkrs)	Mountain City, TN	05/30/95	04/28/95	31,074	Boots and shoes.
Gentek Building Products, Inc (Co)	Woodridge, NJ	05/30/95	03/24/95	31,075	Vinyl siding.
Hercules, Inc. (Wkrs)	McGregor, TX	05/30/95	05/12/95	31,076	Rocket motors.
Sundstrand Aerospace/Electric Power (IUE).	Lima, OH	05/30/95	05/17/95	31,077	Aircraft generators & power controls.
Penn Ventilator (Wkrs)	Keyser, WV	05/30/95	05/17/95	31,078	Automatic temperature control dampers.
Picker International (Wkrs)	Cleveland, OH	05/30/95	05/13/95	31,079	Medical imaging equipment.
Picker International (Wkrs)	Pittsburgh, PA	05/30/95	05/13/95	31,080	Medical imaging equipment.
B&B Equipment Co. (Wkrs)	Plumsteadville, PA	05/30/95	04/25/95	31,081	Insect exterminating equipment.
Barco of California (Wkrs)	Huntsville, TN	05/30/95	05/16/95	31,082	Health care uniforms.
R.J. Mfg. Co. (Wkrs)	York, PA	05/30/95	05/15/95	31,083	Children's & ladies' blouses & dresses.
Blind Design, Inc (Wkrs)	Tempe, AZ	05/30/95	05/11/95	31,084	Mini blinds.
Blind Design, Inc. (Wkrs)	San Diego, CA	05/30/95	05/11/95	31,085	Mini blinds.
Carus Chemical Company (Co.)	Peru, IL	05/30/95	05/19/95	31,086	Potassium permanganate.
Crown Pacific Limited Partnership (UBC)	Thompson Falls, MT.	05/30/95	05/15/95	31,087	Lumber.
Exeter Drilling (Wkrs.)	Denver, CO	05/30/95	04/18/95	31,088	Oil & gas drilling.
Flexel, Inc. (Co.)	Covington, IN	05/30/95	05/12/95	31,089	Cellephane.
Flexel, Inc. (Co.)	Atlanta, GA	05/30/95	05/12/95	31,090	Cellephane.
Flexel, Inc. (Co.)	Tecumseh, KS	05/30/95	05/12/95	31,091	Cellephane.
Paragon Dye (ACTWU)	Paterson, NY	05/30/95	05/18/95	31,092	Dyeing & finishing of textiles.
Planergy New York, Inc. (Wkrs)	East Syracuse, NY	05/30/95	05/18/95	31,093	Energy management services.

[FR Doc. 95–14349 Filed 6–9–95; 8:45 am]
BILLING CODE 4510–30–M

[NAFTA–00342]

Johnson & Johnson, Personal Products Company Division, North Little Rock, Arkansas; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued an Amended Certification for NAFTA Transitional Adjustment Assistance on March 3, 1995, applicable to all workers at the subject firm. The amended notice was published in the **Federal Register** on March 22, 1995 (60 FR 15164).

New information received from the company show that employees of Personal Products Company's Warehouse Department were inadvertently omitted from the certification.

The intent of the Department's certification is to include all workers who were adversely affected by increased imports.

Accordingly, the Department is amending the certification to include the Personal Products Company Warehouse Department workers in North Little Rock, Arkansas.

The amended notice applicable to NAFTA—00342 is hereby issued as follows:

"All workers in the Carefree, Serenity Thin Pads, Serenity Guards, and Warehouse Departments of the Personal Products Company Division of Johnson & Johnson, located in North Little Rock, Arkansas who became totally or partially separated from employment on or after January 23, 1994 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974."

Signed at Washington, DC this 24th day of May 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–14350 Filed 6–9–95; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–30,863]

Johnson Controls, Inc., a/k/a Johnson Controls Battery Group, Inc., Garland, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 1, 1995, applicable to all workers of Johnson Controls, Incorporated, located in Garland, Texas. The notice was published in the **Federal Register** on May 17, 1995 (60 FR 26459).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The investigation findings show that the claimants' wages for Johnson Controls, Inc. are being reported under Johnson Controls Battery Group, Inc.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Johnson Controls, Incorporated irrespective to which account their unemployment insurance (UI) taxes are paid.

The amended notice applicable to TA–W–30,863 is hereby issued as follows:

"All workers of Johnson Controls, Incorporated, a/k/a Johnson Controls Battery Group, Inc., Garland, Texas who became totally or partially separated from employment on or after March 15, 1994, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed in Washington, DC this 30th day of May, 1995

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–14351 Filed 6–9–95; 8:45 am]
BILLING CODE 4510–30–M

[NAFTA–00264]

NETP, Inc., Niagara Falls, New York; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on December 2, 1994, applicable to all workers at the subject firm. The notice was published in the **Federal Register** on December 16, 1994 (59 FR 65078).

New information received from the company shows that separations at the subject plant continue to occur. Separations are not limited to those workers producing 5 circuit and 7 circuit assemblies of electrical wire harnesses. Workers in all areas of support services and production of electrical wire harnesses are affected.

The intent of the Department's certification is to include all workers who are adversely affected by increased imports.

Accordingly, the Department is amending the certification to expand the coverage to all workers of NETP, Inc.

The amended notice applicable to NAFTA–00264 is hereby issued as follows:

"All workers of NETP, Inc., Niagara Falls, New York who became totally or partially separated from employment on or after January 23, 1994 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974."

Signed at Washington, DC, this 26th day of May 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–14352 Filed 6–9–95; 8:45 am]
BILLING CODE 4510–30–M

LEGAL SERVICES CORPORATION

Audit Guide for LSC Recipients and Auditors

AGENCY: Legal Services Corporation.

ACTION: Proposed guideline; extension of comment period.

SUMMARY: This notice extends for an additional 10 days the comment period on the proposed Legal Services Corporation (LSC) Audit Guide for Recipients and Auditors, that was published in the **Federal Register** on May 24, 1995 (60 FR 27562–27567). Respondents are now given a 40-day period from the original date of publication to comment.

DATES: Comments should be received in writing on or before July 3, 1995. Late comments will be considered to the extent practicable. Where possible, comments should reference applicable paragraph numbers in the proposed revision. To facilitate conversion of the comments in computer format for analysis, respondents are asked to send a copy of the comments on either a 3.5 or 5.25 inch diskette in ASCII format.

ADDRESSES: Comments should be submitted in writing to the Office of Inspector General, Legal Services Corporation, 750 First St., NE., 10th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Karen M. Voellm, Chief of Audits (202) 336–8830.

Dated: June 7, 1995.

Victor Fortune,

General Counsel.

[FR Doc. 95–14353 Filed 6–9–95; 8:45 am]
BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 95–038]

National Environmental Policy Act; Sounding Rocket Program

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of availability of draft supplemental environmental impact statement.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and NASA policy and procedures (14 CFR part 1216, subpart 1216.3), NASA has prepared and issued a draft supplemental environmental impact statement (DSEIS) for its Sounding Rocket Program (SRP). This DSEIS addresses the programmatic changes to the SRP that have occurred since the issuance of the 1973 final environmental impact statement (FEIS) for the NASA SRP and analyzes the site-specific environmetnal impacts at the three principal U.S. launch sites located at: Wallops Island, Virginia; Fairbanks, Alaska; and White Sands, New Mexico.

DATES: Comments on the DSEIS must be provided in writing to NASA on or before July 27, 1995 or 45 days from the date of publication in the **Federal Register** of the U.S. Environmental Protection Agency's notice of availability of the Sounding Rocket DSEIS, whichever is later.

ADDRESSES: Comments should be addressed to Mr. William Johnson, Goddard Space Flight Center, Wallops Flight Facility, Code 840, Wallops Island, Virginia 23337. The DSEIS may be reviewed at the following locations:

(a) NASA Headquarters, Library, Room 1J20, 300 E Street SW., Washington, DC 20546.

(b) NASA, Goddard Space Flight Center/Wallops Flight Facility, Public Affairs Office, Wallops Island, VA 23337.

(c) Eastern Shore Public Library, Accomac, VA.

(d) University of Alaska–Fairbanks Library, Fairbanks, AK.

(e) Alamogordo Library, Alamogordo, NM.

In addition, the DSEIS may be examined at the following NASA locations by contacting the pertinent Freedom of Information Act Office:

(f) NASA, Ames Research Center, Moffett Field, CA 94035 (415–604–4191).

(g) NASA, Dryden Flight Research Center, Edwards, CA 93523 (805–258–3047).

(h) NASA, Goddard Space Flight Center, Greenbelt, MD 20771 (301–286–0730).

(i) Jet Propulsion Laboratory, NASA Resident Office, 4800 Oak Grove Drive, Pasadena, CA 91109 (818–354–5179).

(j) NASA, Johnson Space Center, Houston, TX 77058 (713–483–8612).

(k) NASA, Kennedy Space Center, FL 32899 (407–867–2622).

(l) NASA, Langley Research Center, Hampton, VA 23665 (804–864–6125).

(m) NASA, Lewis Research Center, 21000 Brookpark Road, Cleveland, OH 44135 (216–433–2902).

(n) NASA, Marshall Space Flight Center, AL 35812 (205–544–4523).

(o) NASA, Stennis Space Center, MS 39529 (601–688–2164).

Limited copies of the DSEIS are available by contacting Mr. William B. Johnson, at the address or telephone number indicated herein.

FOR FURTHER INFORMATION CONTACT: William B. Johnson, 804–824–1099.

SUPPLEMENTARY INFORMATION: NASA's SRP is a suborbital spaceflight program used primarily in support of space and earth sciences research activities sponsored by NASA. This program also provides applicable support to other government agencies as well as international sounding rocket groups and scientists. The SRP is a relatively low-cost, quick response effort that

provides approximately 30 flight opportunities per year to space scientists involved in research relating to the upper atmosphere, plasma, physics, solar physics, planetary atmospheres, galactic astronomy, high energy astrophysics, and microgravity. The launch vehicles used are relatively small.

The proposed action and NASA's preferred alternative is the continued operation of the NASA SRP as presently managed. The DSEIS focuses on programmatic changes in the NASA SRP that have taken place since the original FEIS was issued in 1973 by deleting launch vehicles that are no longer used, adding new launch vehicles and systems currently being used, and reflecting changes in Federal and state environmental laws and regulations. The DSEIS addresses both the overall programmatic environmental impacts of the SRP and the site-specific environmental impacts at and in the area of the three principal domestic sounding rocket sites: Goddard space Flight Center/Wallops Flight Facility, Wallops Island, Virginia; Poker Flat Research Range, Fairbanks, Alaska; and White Sands Missile Range, White Sands, New Mexico.

Benita A. Cooper,

Associate Administrator for Management Systems and Facilities.

[FR Doc. 95–14362 Filed 6–9–95; 8:45 am]

BILLING CODE 7510–01–M

[Notice 95–037]

Intent To Grant a Partially Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant a patent license.

SUMMARY: NASA hereby gives notice of intent to grant DuPont Advanced Composites, P.O. Box 6108, Newark, DE 19714, a partially exclusive license to practice the inventions described in U.S. Patent Application Numbers 08/209,512 entitled "Phenylethnyl Terminated Imide Oligomers," which was filed on March 3, 1994; and 08/330,773 entitled "Imide Oligomers Endcapped with Phenylethynyl Phthalic Anhydrides and Polymers Therefrom," which was filed on October 28, 1994, both of which are assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration.

The partially exclusive license will contain appropriate terms and conditions to be negotiated in accordance with the Department of Commerce Licensing Regulations (37 CFR part 404). NASA will negotiate the final terms and conditions and grant the license unless, within 60 days of the date of this notice, the Director of Patent Licensing receives written objections to the grant, together with supporting documentation. The Director of Patent Licensing will review all written responses to the notice and then recommend to the Associate General Counsel (Intellectual Property) whether to grant the license.

DATES: Comments to the notice must be received by August 11, 1995.

ADDRESSES: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, NASA, Director of Patent Licensing at (202) 358–2041.

Dated: June 2, 1995.

Edward A. Frankle,

General Counsel.

[FR Doc. 95–14312 Filed 6–9–95; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–395]

South Carolina Electric & Gas Company; South Carolina Public Service Authority; Virgil C. Summer Nuclear Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–12, issued to South Carolina Electric & Gas Company and South Carolina Public Service Authority, (the licensee), for operation of the Virgil C. Summer Nuclear Station, Unit No. 1, located in Fairfield County, South Carolina.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow the licensee to discontinue the seismic monitoring program (which includes a network of seismometers near the Monticello Reservoir) that was put in place to monitor the seismic activity associated with the impoundment of the Monticello Reservoir. The monitoring program is currently funded by the licensee and operated and maintained by the University of South Carolina.

The proposed action is in accordance with the licensee's application for amendment dated March 6, 1955, as supplemented May 5, 1995.

The Need for the Proposed Action

The proposed action was requested because the licensee believes that the burden and costs of the seismic monitoring program for reservoir induced seismicity are no longer justified.

Environmental Impacts of the Proposed Action

The licensee's proposal will allow the seismic monitoring equipment to be permanently removed from current locations. This equipment is portable and is located around the Monticello Reservoir. The equipment is used solely for monitoring seismic activity around the reservoir and is not used for the operation of the plant. Based on the licensee's submittals and the discussions with other agencies and persons, the staff found that the removal of this equipment will have no significant impact on the environment.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar since the proposed amendment will allow the licensee to remove the seismic monitoring equipment and the licensee's present license condition does not prohibit the licensee from removing and relocating the seismic monitoring equipment from current locations. Thus, the current license condition already allows the licensee to permanently abandon the current monitoring sites (as long as alternate sites are selected).

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Virgil C. Summer Nuclear Station, Unit 1.

Agencies and Persons Consulted

On April 14, 1995, the staff consulted with Mr. John Sims, Deputy of External Research, U.S. Geological Survey regarding the type of equipment used for seismic monitoring networks. Mr. Sims commented that the equipment was generally compact; therefore, he judged that there were no significant environmental impacts associated with the removal of the equipment and abandonment of the sites.

On April 24, 1995, the staff consulted with Dr. Pradeep Talwani, of the University of South Carolina (USC) regarding the planned disposition of the network monitoring sites if the licensee stops funding the program. Dr. Talwani maintains the seismic monitoring system for the licensee. Dr. Talwani stated that if the licensee stops funding the network, all but one of the monitoring sites will be abandoned (i.e., the equipment will be removed). Dr. Talwani also stated that the monitors were solar powered with battery backups. Therefore, he judged that there were no significant environmental impacts associated with the removal of the equipment and abandonment of the sites.

In accordance with its stated policy, on April 24, 1995, the staff consulted with the South Carolina State official, Mr. Virgil Autry of the Bureau of Solid and Hazardous Waste Management, Department of Health and Environmental Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letters dated March 6, 1995, and May 5, 1995, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Fairfield County Library, 300 Washington Street, Winnsboro, SC.

Dated at Rockville, Maryland, this 5th day of June 1995.

For the Nuclear Regulatory Commission.

Frederick J. Hebdon,

Director, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–14300 Filed 6–9–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–424 and 50–425]

Georgia Power Company, Et Al.; (Vogtle Electric Generating Plant, Units 1 and 2)

Exemption

I

Georgia Power Company, et al. (the licensee) is the holder of Facility Operating License Nos. NPR–68 and NPF–81, which authorize operation of the Vogtle Electric Generating Plant (VEGP), Units 1 and 2, respectively. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facilities consist of two pressurized water reactors, VEGP Units 1 and 2, at the licensee's site located near Waynesboro, Georgia.

II

Title 10 of the Code of Federal Regulations (10 CFR), § 50.60, "Acceptance Criteria for Fracture Prevention Measures for Light-Water Nuclear Power Reactors for Normal Operation," states that all light-water nuclear power reactors must meet the fracture toughness and material surveillance program requirements for the reactor coolant pressure boundary as set forth in Appendices G and H to 10 CFR part 50. Appendix G to 10 CFR part 50 defines pressure/temperature (P/T) limits during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests to which the pressure boundary may be subjected over its service lifetime. Section 50.60 (b) specifies that alternatives to the described requirements in Appendices G and H to 10 CFR part 50 may be used when an exemption is granted by the Commission under 10 CFR 50.12.

To prevent low temperature overpressure transients that would produce pressure excursions exceeding the Appendix G P/T limits while the reactor is operating at low temperatures, the licensee installed a low temperature overpressure (LTOP) system. The system includes pressure-relieving devices called Power-Operated Relief Valves (PORVs). The PORVs are set at a pressure low enough so that if an LTOP transient occurred, the mitigation system would prevent the pressure in the reactor vessel from exceeding the Appendix G P/T limits. To prevent the PORVs from lifting as a result of normal operating pressure surges (e.g., reactor coolant pump starting, and shifting operating charging pumps) with the reactor coolant system in a water solid condition, the operating pressure must be maintained below the PORV setpoint. In addition, in order to prevent cavitation of a reactor coolant pump, the operator must maintain a differential pressure across the reactor coolant pump seals. Hence, the licensee must operate the plant in a pressure window that is defined as the difference between the minimum required pressure to start a reactor coolant pump and the operating margin to prevent lifting of the PORVs due to normal operating pressure surges. The licensee's proposed LTOP analysis includes changes to account for the non-conservatism identified in Westinghouse Nuclear Safety Advisory Letter 93005A and NRC Information Notice 93–58. The new analysis accounts for the static head due to evaluation differences and the dynamic head effect of four reactor coolant pump (RCP) operation. By including these factors and using the Appendix G safety margins, the licensee determined that the operating margin to the PORV setpoint would be depleted at approximately 120 °F for Unit 1 and 145 °F for Unit 2. Therefore, operating with these limits could result in the lifting of the PORVs and cavitation of the reactor coolant pumps during normal operation.

The licensee proposed that in determining the design setpoint for LTOP events for Vogtle Units 1 and 2, the allowable pressure be determined using the safety margins developed in an alternate methodology in lieu of the safety margins currently required by Appendix G, 10 CFR part 50. Designated Code Case N–514, the proposed alternate methodology is consistent with guidelines developed by the American Society of Mechanical Engineers (ASME) Working Group on Operating Plant Criteria to define pressure limits during LTOP events that avoid certain unnecessary operational restrictions, provide adequate margins against failure of the reactor pressure vessel, and reduce the potential for unnecessary activation of pressure-relieving devices

used for LTOP. Code Case N–514, "Low Temperature Overpressure Protection," has been approved by the ASME Code Committee. The content of this Code case has been incorporated into Appendix G of Section XI of the ASME Code and Published in the 1993 Addenda to Section XI. The NRC staff is revising 10 CFR 50.55a, which will endorse the 1993 Addenda and Appendix G of Section XI into the regulations.

An exemption from 10 CFR 50.60 is required to use the alternate methodology for calculating the maximum allowable pressure for the LTOP setpoint. By application dated October 3, 1994, as supplemented March 1, 1995, the licensee requested an exemption from 10 CFR 50.60 for this purpose.

In addition to requesting the exemption from 10 CFR 50.50, the licensee proposed an amendment to the Technical Specifications revising the LTOP analysis. The new analysis removes the non-conservatism as described previously.

III

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR 50.12(a)(2)(ii), "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule * * *"

The underlying purpose of 10 CFR 50.60 Appendix G is to establish fracture toughness requirements for ferritic materials of pressure-retaining components of the reactor coolant pressure boundary to provide adequate margins of safety during any condition of normal operation, including anticipated operational occurrences, to which the pressure boundary may be subjected over its service lifetime. Section IV.A.2 of this appendix requires that the reactor vessel be operated with P/T limits at least as conservative as those obtained by following the methods of analysis and the required margins of safety of Appendix G of the ASME Code.

Appendix G of the ASME Code requires that the P/T limits be calculated: (a) Using a safety factor of 2 on the principal membrane (pressure) stresses, (b) assuming a flaw at the surface with a depth of one-quarter (1/4) of the vessel wall thickness and a length of six (6) times its depth, and (c) using a conservative fracture toughness curve that is based on the lower bound of static, dynamic, and crack arrest fracture toughness tests on material similar to the Vogtle reactor vessel material.

In determining the setpoint for LTOP events, the licensee proposed to use safety margins based on an alternate methodology consistent with the proposed ASME Code Case N–514 guidelines. The ASME Code Case N–514 allows determination of the setpoint for LTOP events such that the maximum pressure in the vessel would not exceed 110% of the P/T limits of the existing ASME Appendix G. This results in a safety factor of 1.8 on the principal membrane stresses. All other factors, including assumed flaw size and fracture toughness, remain the same. Although this methodology would reduce the safety factor on the principal membrane stresses, the proposed criteria will provide adequate margins of safety to the reactor vessel during LTOP transients and will satisfy the underlying purpose of 10 CFR 50.60 for fracture toughness requirements.

Using the licensee's proposed safety factors instead of Appendix G safety factors to calculate the LTOP setpoint will permit a higher LTOP setpoint than would otherwise be required and will provide added margin to prevent normal operating surges from lifting the PORVs or cavitation of the reactor coolant pumps.

IV

For the foregoing reasons, the NRC staff has concluded that the licensee's proposed use of the alternate methodology in determining the acceptable setpoint for LTOP events will not present an undue risk to public health and safety and is consistent with the common defense and security. The NRC staff has determined that there are special circumstances present, as specified in 10 CFR 50.12(a)(2), such that application of 10 CFR 50.60 is not necessary in order to achieve the underlying purpose of this regulation.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), this exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Therefore, the Commission hereby grants the licensee an exemption from the requirements of 10 CFR 50.60 such that in determining the setpoint for LTOP events, the Appendix G curves for P/T limits are not exceeded by more than 10 percent in order to be in compliance with these regulations. This exemption is applicable only to LTOP conditions during normal operation.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant adverse environmental impact (60 FR 28178).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 5th day of June 1995.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–14299 Filed 6–9–95; 8:45 am]

BILLING CODE 7590–01–M

PRESIDENT'S COUNCIL ON SUSTAINABLE DEVELOPMENT

Meeting of the President's Council on Sustainable Development (PCSD) in Washington, DC; Notice

SUMMARY: The President's Council on Sustainable Development, a partnership of industry, government, and environmental, labor, Native American, and civil rights organizations, will convene its ninth meeting in Washington, DC.

The President's Council on Sustainable Development will present for the first time in a public forum its full set of draft goals and policy recommendations for establishing a long-term path toward a sustainable United States by the year 2040. The Council will also present the latest draft of the challenge statement, identifying what types of practices the United States has employed that have taken us down an unsustainable path, the most recent version of the draft vision statement, and defining principles of sustainable development.

Date/Time: Wednesday, 28 June 1995—9:00 a.m.–12:00 p.m.

Place: U.S. Chamber of Commerce, 1615 H Street, NW., Washington, DC.

Status: Open to the Public/Public comments are welcome.

Contact: 202–408–5296.

Molly Harriss Olson,

Executive Director, President's Council on Sustainable Development.

[FR Doc. 95–14311 Filed 6–9–95; 8:45 am]

BILLING CODE 4310–10–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35804; International Series No. 815; File No. S7–8–90]

Options Price Reporting Authority; Notice of Filing of Amendment to the National Market System Plan To Update the Current Fee Structure and Eliminate the Use of Separate News Service Agreements

June 5, 1995.

Pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on April 25, 1995, the Options Price Reporting Authority ("OPRA")[2] submitted to the Commission an amendment to its National Market System Plan for the purpose of updating OPRA's fee structure and eliminating the use of separate news service agreements.[3]

The Commission is publishing this notice to solicit comments from interested persons on the amendment.

I. Description and Purpose of the Amendment

OPRA proposes to amend its vendor agreement and the related fee schedule to impose a new redistribution fee on all persons who redistribute options market information, to reflect a reduction in the level of the access charge currently payable by vendors and other persons who receive direct or indirect access to OPRA's Processor, and to eliminate indirect-assess or pass-through vendors and news services as persons subject to the access charge. In addition, OPRA proposes to eliminate the separate news service agreement. Instead, OPRA would categorize news services as vendors and would seek to have such services sign vendor agreements. Conforming changes would be made to the OPRA Plan.

OPRA has made this proposal in response to the growth in the listed options market and the changes in the ways in which options market information is disseminated and used. Among these changes are the increased use of electronic forms of redistribution of market information from vendors and news services directly to individual investors, often on a fifteen minute delayed basis, and the expanded number of value-added intermediaries in the chain of transmission from OPRA's processor to the end users of the information.

OPRA proposes to institute a new redistribution fee. This fee would apply to persons who receive and retransmit delayed market information. The redistribution fee would not apply to historical information.[4] OPRA's redistribution fee proposal is in response to its belief that instead of encouraging vendors to distribute current options information, the current fee structure encourages the redistribution of delayed information.

With the introduction of the new redistribution fee, OPRA proposes to eliminate the vendor and news service pass-through fee, currently charged to vendors and news services that receive options information from another vendor instead of from the OPRA Processor. In addition, in light of the added revenue expected to be realized from redistribution fees payable by vendors of delayed data, the direct access charge is proposed to be reduced from its current level to the point where the direct access charge will be less than the access charge or pass-through fee currently charged. OPRA believes that total revenue from fees charged to vendors and news services will not increase as a result of these proposed changes and, in fact, may slightly decrease during the transition period.[5] The proposed amendment to the vendor agreement also includes some nonsubstantive, editorial changes.

In addition to the fee restructuring proposal, OPRA proposes to eliminate separate news service agreements. Instead, news services would be required to enter into vendor agreements with OPRA. OPRA proposes to eliminate these separate agreements in light of technological changes that it perceives have blurred the distinction between news services and other redistributors of market data, making it no longer useful to treat news services as a separate category of vendor. According to OPRA, only two news services currently are parties to news service agreements, with most redistributors of options information to news media having already entered into vendor agreements in order to be able to redistribute options market data electronically to entities other than news media. OPRA believes that the current news service agreement and the vendor agreement are substantially the same and that the same fees apply to both news services and vendors. The elimination of the separate news service agreement, therefore, will allow news services and other vendors to be subject to the same agreement and the same fees.

II. Implementation of the Plan Amendment

In accordance with OPRA's existing agreements with vendors and news services, amendments to these agreements and to the fees charged thereunder require not less than 30 days advance notice. In order to assure that the required notice has been given to vendors and to provide time during which vendors and news services will be asked to sign new agreements reflecting the new fee structure, OPRA does not intend to implement this amendment until September 1, 1995, subject to Commission approval.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Commenters are asked to address whether they believe the proposed amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of a national market system, or otherwise is in furtherance of the purposes of the Act.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed Plan amendment that are filed with the Commission and all written communications relating to the proposed Plan amendment between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 522, will be available for inspection and copying in

[1] 17 CFR 240.11Aa3–2.

[2] OPRA is a National Market System Plan approved by the Securities and Exchange Commission ("Commission" or "SEC") pursuant to Section 11A of the Act and Rule 11Aa3–2, thereunder. Securities Exchange Act Release No. 17638 (March 18, 1981).

The Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the five member exchanges. The five exchanges which agreed to the OPRA Plan are the American Stock Exchange ("AMEX"), the Chicago Board Options Exchange ("CBOE"), the New York Stock Exchange ("NYSE"), the Pacific Stock Exchange ("PSE"), and the Philadelphia Stock Exchange ("PHLX").

[3] The proposed amendment was approved by OPRA in accordance with the OPRA Plan at a meeting held on April 11, 1995.

[4] Under the proposal, information becomes "historical" upon the opening of trading in the next succeeding trading session of that same market. For example, reports of transactions completed in a trading session on Wednesday become historical reports from and after the opening of trading on the following Thursday.

[5] The transition period reflects the time in which vendors distributing delayed information are identified and brought under contract pursuant to the proposed redistribution fee.

the Commission's Public Reference Room. Copies of the filing also will be available at the offices of OPRA. All submissions should refer to File No. S7–8–90 and should be submitted by July 3, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–14254 Filed 6–9–95; 8:45 am]

BILLING CODE 8010–01–M

[Release Nos. 33–7177; 34–35815; IC–21117]

Securities Transactions Settlement

June 6, 1995.

AGENCY: Securites and Exchange Commission.

ACTION: Grant of exemption.

SUMMARY: The Securities and Exchange Commission ("Commission") is exempting transactions involving certain insurance contracts from the scope of Rule 15c6–1.

EFFECTIVE DATE: The exemption from Rule 15c6–1 for insurance contracts will be effective on June 7, 1995.

FOR FURTHER INFORMATION CONTACT: Jerry Carpenter, Assistant Director, Christine Sibille, Senior Counsel, or Cheryl Oler, Attorney, at 202/942–4187, Office of Securities Processing Regulation, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 5–1, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On October 6, 1993, the Commission adopted Rule 15c6–1 [1] under the Securities Exchange Act of 1934 ("Exchange Act") which establishes three business days after the trade date ("T+3") instead of five business days ("T+5") as the standard settlement time frame for most broker-dealer securities transactions.[2] Rule 15c6–1 becomes effective June 7, 1995.[3]

Rule 15c6–1 covers all securities other than exempted securities, government securities, municipal securities,[4] commercial paper, bankers' acceptances, or commercial bills. The rule contains a specific exemption for sales of unlisted limited partnership interests and alternate settlement time frames for certain firm commitment offerings of new issues.[5]

Certain insurance contracts, including variable annuity contracts and variable life insurance contracts, have been deemed to be securities under the Securities Act of 1933 ("Securities Act"),[6] and other insurance contracts, such as certain fixed dollar annuity contracts that include a market value adjustment provision, may fall within the definition of securities under the Exchange Act (collectively, these contracts are referred to hereinafter as insurance securities products). Accordingly, as adopted, the scope of Rule 15c6–1 includes purchases and sales of such securities issued by an insurance company.[7]

The American Council of Life Insurance ("ACLI") has requested that the Commission exempt from Rule 15c6–1 purchases or redemption transactions of variable annuity contracts, variable life insurance contracts, and certain fixed dollar annuity contracts.[8] According to ACLI, the complex nature and various unique processing requirements involved in the purchase or sale of insurance securities products cannot practically be condensed into a T+3 settlement cycle.

The Commission recognizes that the mechanics of purchases and redemptions of insurance securities products are distinct from those of other securities and that, because of the time required to complete necessary preparations, such transactions typically require more protracted settlement periods. Specifically, the Commission believes that compliance with the unique requirements of state and federal law, as well as of the particular administrative procedures, applicable to insurance securities products demands additional time beyond the standard settlement process, and supports an exemption of such securities from Rule 15c6–1. For example, the Commission notes that the purchase process for a variable life insurance contract involves the assessment of insurability of the contract purchaser and the acceptance of the mortality risk before a contract can be issued for delivery.[9] Processing of an annuity contract may be protracted by substantial review to determine that any requirements imposed under the Internal Revenue Code ("IRC") or the Employee Retirement Income Security Act ("ERISA") are met.

In addition, such insurance securities products are subject to extensive federal and state regulation on timing of certain actions.[10] For example, once processing for a contract is complete, many states require that the insurer provide the purchaser with the right to return the contract for any reason within a specified time of delivery, generally ten days, and to receive a refund of the premium or the contract's cash value without imposition of surrender charges.[11]

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[6] 17 CFR 200.30–3(a)(29).

[1] 17 CFR 240.15c6–1 (1994).

[2] Securities Exchange Act Release No. 33023 (October 6, 1993), 58 FR 52891.

[3] As adopted, Rule 15c6–1 was to become effective June 1, 1995. In order to provide for an efficient conversion the Commission changed the effective date to June 7, 1995. Securities Exchange Act Release No. 34952 (November 9, 1994), 59 FR 59137.

[4] Pursuant to Municipal Securities Rulemaking Board rules, transactions in municipal securities are required to settle by T+3. Securities Exchange Act Release No. 35427 (February 28, 1995), 60 FR 12798.

[5] Securities Exchange Act Release No. 35705 (May 11, 1995), 60 FR 26604.

[6] *Securities and Exchange Commission* v. *Variable Annuity Life Insurance Co. of America, et al.*, 359 U.S. 65, 79 S.Ct. 618, 3 L.Ed.2d 640 (1959) (variable annuity contracts are "securities" which must be registered with the Commission under the Securities Act); Securities Act Release No. 5360, Securities Exchange Act Release No. 9972, Investment Co. Act Release No. 7644, Investment Advisors Act Release No. 359 (January 31, 1973) (a public offering of variable life insurance contracts involved an offering of securities required to be registered under the Securities Act).

[7] Within the context of this order, the definition of an insurance company is set forth in Section 2(a)(17) of the Investment Company Act of 1940 ("Investment Company Act"). 15 U.S.C. § 80a–2(a)(17). An insurance company that sells and distributes insurance securities products may be acting as a broker and a dealer as defined in Sections 3(a)(4) and 3(a)(5) of the Exchange Act. There are, however, certain circumstances in which an insurance company that issues and distributes insurance securities may not be required to register with the Commission as a broker-dealer. The Commission staff, for example, has expressed the view that if an insurance company establishes a wholly-owned subsidiary to engage in the offer and sale of insurance securities, and the subsidiary complies with all applicable rules and regulations, including the requirement to direct and supervise all persons engaged directly or indirectly in the offer and sale of securities, it would not recommend enforcement action to the Commission if the insurance company itself did not register with the Commission. Securities Exchange Act Release No. 8389 (August 29, 1968), 33 FR 13005. Consistent with those specifications, the staff of the Division of Market Regulation has further expressed circumstances in which an insurance company may not be required to register as a broker-dealer. *See, e.g., Principal Marketing Services, Inc.* (June 2, 1988); *Pacific Mutual Life Insurance Company* (April 13, 1989); *Allstate Life Insurance Company and Lincoln Benefit Life Company* (September 12, 1988); and *Time Insurance Company* (October 17, 1989).

[8] Letters from Robert S. McConnaughey, Senior Counsel, ACLI, to Brandon Becker, Director, Division of Market Regulation, Commission (April 18, 1995 and May 17, 1995).

[9] This assessment is time consuming because it may involve medical examinations, laboratory tests, and review of medical records.

[10] Insurance companies are regulated primarily by the states in which they are organized and operate. In addition, federal regulations govern some aspects of insurance contract issuance affecting the timing of such transactions. For example, Rule 22c–1(c) under the Investment Company Act requires that an insurer price a variable annuity contract within certain time frames.

[11] *E.g.*, New York Insurance Law § 4240(13) (McKinney 1985).

Likewise, the redemption or withdrawal process for insurance securities products often extends beyond the T+3 time frame. With respect to annuity contracts, the effectiveness of a withdrawal request may be delayed by the need for additional information or instructions from the contract owner with respect to the withholding of proceeds or payments to the Internal Revenue Service. In addition, while the processing of a withdrawal may take place mechanically through the insurer's systems, various circumstances may give rise to additional or preliminary manual processing which can lengthen the withdrawal process.[12] Withdrawals also may require insurers' compliance with applicable IRC provisions or ERISA requirements, as well as various administrative procedures which are relevant only to insurance securities products and not to other securities. Such compliance may demand extra processing time for withdrawals.[13]

The various administrative processes and the requirements under state and federal law which pertain to insurance securities products add complexity and time to the purchase and sale of such securities. These circumstances support the exemption of such securities from the scope of Rule 15c6–1.

Furthermore, permitting a longer settlement cycle for transactions involving insurance securities products does not appear to adversely affect the market risk concerns which the T+3 settlement cycle seeks to address. In adopting Rule 15c6–1, the Commission stated that three day settlement would reduce risk by decreasing the time between trade execution and settlement during which the value of securities could deteriorate.[14] While insurance securities products are securities, neither the insurance company nor purchaser is subject to the same settlement risks attendant to the purchase of most securities. Moreover, insurance securities products are not traded in secondary market.

Likewise, withdrawal or redemption of an insurance securities product bears less risk to insurers and contract owners. Extensive state regulations exist to ensure that insurers meet their obligations to pay withdrawal proceeds to contract owners. Accordingly, an exemption from Rule 15c6–1 for insurance securities products does not appear to be inconsistent with the purposes of Rule 15c6–1.

The Commission believes that an exemption is appropriate to provide issuers with the time needed to settle transactions involving insurance securities products. Such an exemption should not affect the current regulatory scheme governing insurance securities products, including the relevant sections and rules under the Investment Company Act and the Securities Act pertaining to the purchase and sale of securities issued by insurance companies. Accordingly, the Commission finds that such exemption is consistent with the public interest and the protection of investors.

It is hereby ordered that a contract for the purchase or sale of any security issued by an insurance company as defined in Section 2(a)(17) of the Investment Company Act of 1940[15] ("Investment Company Act") that is funded by or participates in a "separate account" as defined in Section 2(a)(37) of the Investment Company Act,[16] including a "variable annuity contract" as defined in Rule 0–1(e)(1) under the Investment Company Act [17] or a "variable life insurance contract" as defined in Rule 6e–2(c)(1) or Rule 6e–3(T)(c)(1) under the Investment Company Act,[18] or any other insurance contract registered as a security under the Securities Act of 1933,[19] shall be exempt from the requirements of Rule 15c6–1.[20] This exemption is subject to modification or revocation at any time the Commission determines that such modification or revocation is consistent with the public interest or the protection of investors.

For the Commission by the Division of Market Regulation pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–14323 Filed 6–9–95; 8:45 am]

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[12] For example, contracts between insurers and contract owners may contain special rights restriction provisions which limit the right to effect withdrawals or impose other restrictions originating from, among other things, a tax lien or divorce decree. Such contracts usually require manual processing which results in delay of the actual processing of the withdrawal.

[13] Variable annuities, for example, can be used to fund a variety of plans, including tax sheltered annuities, each of which has its own set of complex tax rules regarding withdrawals. Certain variable life insurance contracts may become subject to classification as modified endowment contracts which have taxable predeath distributions. Consequently, some insurers undertake additional examination of withdrawal transactions to determine prior to their completion if the contracts at issue could be classified as a modified endowment contract. Payment of death benefits on variable life insurance contracts and on variable annuity contracts frequently require extended processing time because insurance companies cannot make payments until they receive and review all documentation relevant to the claims and in some instances conduct an investigation of the claims.

[14] Securities Exchange Act Release No. 33023 (October 6, 1993), 58 FR 52891 [File No. S7–5–93]. The other reasons given by the Commission for the rule's adoption, coordination between the derivative and cash markets and encouragement of greater efficiency in clearing agency end broker-dealer operations, are not applicable to insurance securities products.

[15] 15 U.S.C. 80a–2(a)(17).

[16] 15 U.S.C. 80a–2(a)(37).

[17] 17 CFR 270.0–1(e)(1).

[18] 17 CFR 270.6e–2(c)(1) and 270.6e–3(T)(c)(1).

[19] 15 U.S.C. 77a–77mm.

[20] 17 CFR 240.15c6–1 (1994).

[21] 17 CFR 200.30–3(a)(55).

[Release No. 34–35805; International Series Release No. 816; File No. SR–Amex–95–04]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 2 and 3 to the Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Listing of Currency Warrants Based on the Mexican Peso

June 5, 1995.

On February 8, 1995, the American Stock Exchange, Inc. ("Amex" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] filed with the Securities and Exchange Commission ("Commission") a proposed rule change to permit the listing of foreign currency warrants based on the value of the U.S. dollar in relation to the Mexican peso ("Peso Warrants"). Notice of the proposal appeared in the **Federal Register** on February 17, 1995.[3] The Exchange subsequently filed Amendment No. 1 to the proposal on March 16, 1995. Notice of Amendment No. 1 to the proposal appeared in the **Federal Register** on March 30, 1995.[4] No comment letters were received on the original proposed rule change or on Amendment No. 1. The Exchange then filed Amendment No. 2 to the proposal on May 11, 1995,[5] and Amendment No.

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] See Securities Exchange Act Release No. 35363 (February 13, 1995), 60 FR 9416.

[4] In Amendment No. 1, the Exchange amended the proposal to specify customer margin levels for the proposed currency warrants. See Securities Exchange Act Release No. 35524 (March 22, 1995), 60 FR 16517.

[5] Amendment No. 2, as discussed herein, effectively supersedes Amendment No. 1 by specifying higher minimum customer margin levels than those proposed in Amendment No. 1. *See* Letter from Howard Baker, Senior Vice President, Derivative Securities, Amex, to Sharon Lawson, Assistant Director, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), Commission, dated May 11, 1995 ("Amendment No. 2").

3 on May 26, 1995.[6] This order approves the Amex proposal, as amended by Amendment Nos. 2 and 3.

Pursuant to Section 106 of the Amex Company Guide ("Guide"), the Exchange is now proposing to list and trade currency warrants based upon the value of the U.S. dollar in relation to the Mexican peso. Peso Warrants will be unsecured obligations of their issuers and will be cash-settled in U.S. dollars. Peso Warrants will be exercisable either throughout their life (*i.e.*, American-style) or only immediately prior to their expiration date (*i.e.*, European-style). Upon exercise, the holder of a Peso Warrant structured as a "put" will receive payment in U.S. dollars to the extent that the value of the Mexican peso in relation to the U.S. dollar has declined below a pre-stated base level. Conversely, upon exercise, holders of a Peso Warrant structured as a "call" will receive payment in U.S. dollars to the extent that the value of the Mexican peso in relation to the U.S. dollar has increased above a pre-stated level. Peso Warrants that are "out-of-the-money" at the time of expiration will expire worthless.

Any issue of Peso Warrants will conform to the listing guidelines under Section 106 of the Guide which provide that: (1) the issuer will have assets in excess of $100,000,000 and otherwise substantially exceed the size and earnings requirements in Section 101(A) of the Guide; (2) the term of the warrants will be from one to five years from the date of issuance; and (3) the minimum public distribution of such issues will be one million warrants, with a minimum of 400 public holders, and an aggregate market value of at least $4 million.[7]

The Amex will also require that Peso Warrants be sold only to customers whose accounts have been approved for options trading pursuant to Exchange Rule 921. The suitability standards of Exchange Rule 923 will apply to recommendations for opening transactions in Peso Warrants. Additionally, all discretionary orders in Peso Warrants must be approved and initialed on the day entered by a Senior Registered Options Principal or Registered Options Principal.[8]

For customer margin purposes, the Exchange will set the customer margin "add-on"[9] percentage for Peso Warrants at 18% for both initial and maintenance margin, with a minimum add-on for out-of-the-money Peso Warrants of 15%.[10] If, as a result of the Exchange's routine monitoring of margin adequacy (*i.e.*, at least quarterly reviews), the Amex determines that a higher customer margin level would be appropriate, the Amex will take immediate steps to implement the change.[11] If, on the other hand, the Exchange determines that a lower margin percentage would be appropriate as a result of the Exchange's periodic reviews, the Exchange will file a proposal with the Commission pursuant to Section 19(b) of the Act to modify the margin add-on percentages applicable to Peso Warrants.[12] Anytime that the customer margin levels for Peso Warrants are changes, the Exchange will promptly notify the Exchange's membership and the public.

Prior to the commencement of trading of Peso Warrants, the Exchange will distribute a circular to its membership calling attention to certain compliance responsibilities when handling transactions in Peso Warrants.[13]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5)[14] in that it is designed to protect investors and the public interest. First, the Commission believes that the trading of listed warrants on the Mexican peso should provide investors with a hedging and risk transfer vehicle that will reflect the overall movement of the Mexican peso in relation to the U.S. dollar. In this regard, Peso Warrants should provide investors with an efficient and effective means of managing risk associated with the Mexican peso.

Second, the Exchange has proposed listing standards to provide for fair and orderly markets in Peso Warrants. Peso Warrants will conform to the listing standards in Section 106 of the Guide, which are similar to the standards pursuant to which currency warrants have previously been listed by the Amex.[15] In addition, the Exchange will limit transactions in Peso Warrants to customers with options approved accounts and impose the Amex's suitability standards and discretionary account standards to transactions in Peso Warrants.

Third, the Exchange has proposed adequate customer margin requirements. The proposed add-on margin (*i.e.*, 18%) provides sufficient coverage to account for historical and potential volatility in the Mexican Peso in relation to the U.S. dollar. In addition, the Exchange must conduct periodic reviews of the volatility in the Mexican peso and must take immediate steps to increase the existing customer margin levels if the Exchange determines that the existing levels are no longer adequate.[16] As a result, the Commission believes that the proposed customer margin levels and the review and maintenance criteria for those margin levels will result in adequate coverage of contract obligations and are designed to reduce risks arising from inadequate margin levels.

Finally, the Exchange will prepare and distribute to its membership a circular describing each issue of Peso Warrants listed by the Amex, calling attention to certain compliance responsibilities when handling transactions in Peso Warrants.[17]

Based on the foregoing, the Commission believes that the listing and trading of Peso Warrants, within the framework described above, is appropriate and consistent with the Act.

The Commission finds good cause for approving Amendment Nos. 2 and 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 2 realigns the customer margin requirements to reflect more accurately the recent volatility of the Mexican peso in relation to the U.S. dollar. Moreover, the Commission notes that the original proposal and Amendment No. 1 to the proposal were published in the **Federal Register** for the full 21-day comment period and that no comments were received by the Commission regarding either the original proposal or the lower customer margin levels proposed in Amendment No. 1.

Amendment No. 3 provides that the Amex will review the volatility of the Mexican peso in relation to the U.S. dollar on at least a quarterly basis and increase the applicable customer margin levels if appropriate. Moreover, the Amex cannot lower the customer margin levels from the 18% and 15% levels provided above without Commission approval pursuant to Section 19(b) of the Act. As discussed above, the Commission believes these procedures will ensure that the customer margin requirements for Peso Warrants are maintained at levels adequate to cover present and future volatility of the Mexican Peso in relation to the U.S. dollar.

Based on the above and in order to allow the Amex to begin listing Peso Warrants without delay, the Commission believes it is consistent with Section 6(b)(5) of the Act to approve Amendment Nos. 2 and 3 to the Amex's proposal on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendments Nos. 2 and 3. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 50 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the File No. SR-Amex-95-04 and should be submitted by July 3, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (File No. SR-Amex-95-04), as amended by Amendment Nos. 2 and 3, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-14255 Filed 6-9-95; 8:45 am]

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[6] In Amendment No. 3, discussed herein, the Exchange specified the standards the Amex will use to ensure continued adequate customer margin levels for short positions in Peso Warrants. *See* Letter from Clair McGarth Managing Director and Special Counsel, Derivative Securities, Amex, to Mike Welinskas, Branch Chief, OMS, Division, Commission, dated May 26, 1995 ("Amendment No. 3").

[7] The Exchange has submitted for Commission approval, proposed rules governing listing requirements, and customer protection and margin requirements for stock index warrants, currency index warrants, and currency warrants. *See* Securities Exchange Act Release No. 35086 (December 12, 1994), 59 FR 65561 (December 20, 1994) (notice of File No. SR-Amex-94-38) ("Generic Warrant Listing Proposal"). If ultimately approved by the Commission, Peso Warrants issued subsequent to that approval will be subject to these rules. These rules, however, will not change the customer margin requirements specified herein. *See* Amendment no. 2, *supra* note 5.

[8] *See* Amex Rule 421, Commentary .02.

[9] For these purposes, "add-on" is the percentage of the current market value of the Mexican pesos underlying each Peso Warrant that the holder of a "short" position must pay in addition to the current market value of each Peso Warrant.

[10] *See* Amendment No. 2, *supra* note 5.

[11] Prior to increasing the customer margin levels, the Exchange should immediately contact the Commission for a determination as to whether a rule filing pursuant to Section 19(b) of the Act will be required.

[12] Specifically, the Exchange will review, on at least a quarterly basis, the frequency distributions reflecting the percentage price returns for the Mexican peso in relation to the U.S. dollar for all seven day periods during the preceding two year period. If the current margin add-on is not sufficient to cover the least 97.5% of all such seven day price returns, the Exchange will take steps to increase the margin level to one that will cover at least 97.5% of all such instances. See Amendment No. 3, *supra* note 6. In no event, however, will the Exchange reduce the margin levels provided in Amendment No. 2 without the prior approval of the Commission. See Amendment No. 2, *supra* note 5.

[13] The circular should highlight: (1) the Peso Warrants may be sold only to customers with options approved accounts; (2) the applicable suitability requirements; (3) the standards regarding discretionary orders; and (4) the applicable customer margin requirements.

[14] 15 U.S.C. 78f(b)(5) (1988).

[15] For example, the Amex currently lists currency warrants on the Japanese yen and the German mark. If the Commission approves the Exchange's Generic Warrant Listing Proposal, Peso Warrants listed subsequent to that approval will be subject to the revised listing standards. See Generic Warrant Listing Proposal, *supra* note 7. The Commission notes that to the extent the customer margin requirements contained in the Generic Warrant Listing Proposal differ from those discussed herein for Peso Warrants, the customer margin level specified above will be applied.

[16] See supra note 12.

[17] See supra note 13.

[18] 15 U.S.C. 78S(b)(2) (1988).

[19] 17 CFR 200.30-3(a)(12) (1994).

[Release No. 34-35798; File Nos. SR-Amex-95-17; SR-BSE-95-09; SR-CHX-95-12; SR-NASD-95-24; SR-NYSE-95-19; SR-PSE-95-14; SR-PHLX-95-34]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Boston Stock Exchange, Incorporated; Chicago Stock Exchange Incorporated; National Association of Securities Dealers, Inc.; New York Stock Exchange, Inc.; the Pacific Stock Exchange Incorporated; Philadelphia Stock Exchange, Inc., Order Approving on an Accelerated Basis Proposed Rule Changes Regarding Depository Eligibility Requirements

June 1, 1995.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] the above-referenced self-regulatory organizations ("SROs") filed proposed rule changes[2] with the Securities and Exchange Commission ("Commission") regarding depository eligibility requirements for issuers. Notices of the proposed rule changes were published in the **Federal Register** to solicit comments from interested persons.[3] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule changes on an accelerated basis to be effective on June 7, 1995.

I. Description of the Proposal

Under the rule changes,[4] each SRO will adopt a depository eligibility rule[5] for issuers that desire to have their securities listed on a national securities exchange or be eligible for inclusion in the Nasdaq Stock Market ("Nasdaq").[6] The rule changes will require issuers to represent to a national securities exchange or the NASD that the CUSIP number identifying the securities[7] to be listed on such exchange or to be eligible for inclusion in Nasdaq has been included in the file of eligible issues maintained by a securities depository registered as a clearing agency under Section 17A of the Act.[8] This requirement will not apply to a security if the terms of such security cannot be reasonably modified to meet the criteria for depository eligibility at all securities depositories.

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Proposed rule changes were filed with the Commission by each SRO in conjunction with substantially similar proposals by the other SROs as follows: American Stock Exchange, Inc. ("Amex") on May 16, 1995; Boston Stock Exchange, Incorporated ("BSE") on May 18, 1995; Chicago Stock Exchange Incorporated ("CHX") on April 26, 1995; National Association of Securities Dealers, Inc. ("NASD") on May 19, 1995; New York Stock Exchange, Inc. ("NYSE") on May 16, 1995; The Pacific Stock Exchange Incorporated ("PSE") on May 15, 1995; and Philadelphia Stock Exchange, Inc. ("PHLX") on May 19, 1995. On May 18, 1995, PHLX amended its proposed rule change to conform to the rule changes filed by the other SROs. Letter from Sharon S. Metzger, PHLX, to Christine Sibille, Senior Counsel, Division of Market Regulation, Commission (May 18, 1995).

[3] Securities Exchange Act Release Nos. 35734 (May 18, 1995), 60 FR 27571 (Amex); 35735 (May 18, 1995), 60 FR 27572 (BSE); 35711 (May 12, 1995), 60 FR 27357 (CHX); 35774 (May 26, 1995), 60 FR 28813 (NASD); 35773 (May 26, 1995), 60 FR 28817 (NYSE); 35740 (May 19, 1995), 60 FR 27996 (PSE); 35772 (May 26, 1995), 60 FR 28815 (PHLX).

[4] The uniform rule has been developed by the Legal and Regulatory Subgroup of the U.S. Working Committee of the Group of Thirty in coordination with each of the national securities exchanges and the NASD.

[5] Rule 777 (Amex); Chapter III, Section 8(a) (BSE); Rule 7(J) (CHX); Part II, Section 1 (c)(23) of Schedule D to the NASD by-laws ("By-laws") and Section 11 of the Uniform Practice Code ("UPC") (NASD); Rule 227 (NYSE); Rule 5.9(d) (PSE); and Rule 853 (PHLX).

[6] In addition to the adoption of the uniform depository eligibility rule for inclusion in the By-laws, the NASD has amended the definition of "depository eligibility" set forth in Section 11 of the UPC consistent with the uniform depository eligibility rule. The NASD had to amend the definition of "depository eligibility" because the NASD's depository settlement rule applies to all NASD members regardless of where the securities are listed. In comparison, each exchange's depository settlement rule only applies to transactions in the securities listed on that exchange.

[7] This requirement does not apply to American Depositary Receipts for securities of a foreign issuer (Amex, BSE, CHX, NYSE, PSE, and PHLX) or securities of a Canadian issuer (NASD).

[8] 15 U.S.C. 78q-1 (1988).

The rule changes set forth additional requirements that must be met before a security will be deemed to be "depository eligible," within the meaning of the SROs' "uniform book-entry settlement rules."[9] The new rules specify different requirements for depository eligibility depending upon whether a new issue is distributed by an underwriting syndicate before or after the date a securities depository system is available for monitoring repurchases of the distributed shares by syndicate members ("flipping tracking system").[10] Prior to the availability of a flipping tracking system, the managing underwriter may delay the date a security is deemed "depository eligible" for up to three months after trading has commenced in the security. After the availability of a flipping tracking system, a new issue will be deemed to be depository eligible upon commencement of trading on a national securities exchange or Nasdaq.

II. Discussion

The Commission believes that the rule changes are consistent with Sections 6(b)(5)[11] and 15A(b)(6)[12] of the Act. Sections 6(b)(5) and 15A(b)(6), among other things, require that the rules of a national securities exchange and a national securities association, respectively, be designed to remove impediments to and perfect a national market system, and in general, to protect investors and the public interest. The depository-eligibility requirement should limit market impediments arising from the physical delivery of securities and thereby should promote the perfection of a national market system. Further, the rule changes should serve to increase the efficiency of the U.S. clearance and settlement system and thereby should reduce the risks associated with that system and should serve to better protect investors and the public interest.

Furthermore, the Commission believes the rule changes should promote the purposes of Section 17A of the Act.[13] In Section 17A, Congress called for the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions. In Section 17A(e),[14] Congress directed the Commission to use its authority to end the physical movement of securities certificates in connection with the settlement among brokers and dealers of transactions in securities.

Book-entry settlement of interdealer securities transactions has been a goal since Congress enacted the Securities Acts Amendments of 1975.[15] Since 1975, substantial progress has been made in reducing the flow of physical certificates for settlement of interdealer and institutional securities transactions.[16] In 1993, the Commission approved the uniform book-entry settlement rules applicable to transactions in depository eligible securities between SRO members and their customers when the SRO member extends certain credit privileges (*i.e.*, delivery versus payment) as a means to facilitate the conversion from a five-day settlement cycle to a three-day settlement cycle,[17] which is set to occur June 7, 1995.[18] The present rule changes are designed to facilitate efficient and timely settlement of trades through the various market facilities and to further aid the transition to a three-day settlement cycle by increasing the number of depository-eligible securities.[19] The uniform depository-eligibility requirement should reduce costs, risks, and delays associated with the physical delivery of securities certificates and should eliminate many of the labor intensive functions associated with physical deliver of nondepository eligible securities.

The SROs have requested that the Commission find good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving the proposed rule changes in order that they become effective on June 7, 1995, contemporaneously with the conversion to a three-day settlement cycle.[20]

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposals are consistent with Sections, 6, 15A, and 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule changes (File Nos. SR–Amex–95–17, SR–BSE–95–09, SR–CHX–95–12, SR–NASD–95–24, SR–NYSE–95–19, SR–PSE–95–14, and R–PHLX–95–34) be and hereby are approved for effectiveness on June 7, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–14253 Filed 6–9–95; 8:45 am]

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[9] Each SRO has a uniform book-entry settlement rule which generally requires SRO members to use the facilities of a securities depository for the book-entry settlement of all transactions in depository-eligible securities with another financial intermediary (*e.g.* a broker, dealer, or bank) or institutional customer. *See, e.g.*, Amex Rules, Part IV, Section 3, Rule 776; UPC Section 11; and NYSE Rule 226.

[10] Currently, a flipping tracking system is being developed that will include a securities depository service that (i) can be activated upon the request of the managing underwriter for a period of time that the managing underwriter specifies, (ii) in certain circumstances, will require the delivering participant to provide to the depository information sufficient to identify the seller of such shares as a precondition to the processing of book-entry delivery instructions for distributed shares, and (iii) will report to the managing underwriter the identity of any other syndicate member or selling group member whose customer(s) sold distributed shares (but will not report to the managing underwriter the identity of such customer[s]) and, in certain circumstances, will report to such syndicate member or selling group member the identity of such customer(s).

[11] 15 U.S.C. 78f(b)(5) (1988).

[12] 15 U.S.C. 78o–3(b)(6) (1988).

[13] 15 U.S.C. 78q–1 (1988)

[14] 15 U.S.C. 78q–1(e) (1988).

[15] Pub. L. No. 94–29, 89 Stat. 97 (1975) (codified at 15 U.S.C. 77–80H (1988)).

[16] *E.g.*, Securities Exchange Act Release Nos. 22021 (September 23, 1983), 48 FR 45167 (order granting full registration to nine clearing agencies); 19698 (April 15, 1983), 48 FR 17604 (order implementing The Depository Trust Company's ("DTC") Fast Automated Securities Transfer program); 30283 (January 23, 1992), 57 FR 3658 (order implementing DTC's Deposit/Withdrawal at Custodian program); 30505 (March 20, 1992), 57 FR 10683 (order eliminating DTC's Certificate on Demand service for most corporate issues); 31645 (December 23, 1992), 57 FR 62407 (order approving rule change requiring that most interdealer transactions in municipal securities be settled by book-entry through a depository); and 32455 (June 11, 1993), 58 FR 33679 (order approving uniform book-entry settlement rules).

[17] Securities Exchange Act Release No. 32455 (June 11, 1993), 58 FR 33679 (order approving uniform book-entry settlement rules).

[18] Securities Exchange Act Release Nos. 33023 (October 6, 1993), 58 FR 52891 (adoption of Rule 15c6–1) and 34952 (November 9, 1994), 59 FR 59137 (change of effective date of Rule 15c6–1 from June 1, 1995 to June 7, 1995).

[19] While the proposed rule changes should serve to further reduce the number of transactions in depository-eligible securities for which settlement is effected by the delivery of physical certificates, the rule changes will not eliminate the ability of investors to obtain physical certificates after settlement of the transaction. As the Commission recently noted, subject to an issuer's determination whether to make physical certificates available to shareholders, the Commission believes investors should be able to obtain negotiable certificates on request. Securities Exchange Act Release No. 35038, (December 1, 1994) at note 17.

[20] *Supra* note 17 and accompanying Text.

[21] 15 U.S.C. 78s(b)(2) (1988).

[22] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35806; International Series Release No. 817; File No. SR–CBOE–95–12]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 2 and 3 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Listing of Currency Warrants Based on the Mexican Peso

June 5, 1995.

On January 27, 1995, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] filed with the Securities and Exchange Commission ("Commission") a proposed rule change to permit the listing of foreign currency warrants based on the value of the U.S. dollar in relation to the Mexican peso ("Peso Warrants"). Notice of the proposal appeared in the **Federal Register** on February 8, 1995.[3] The Exchange subsequently filed Amendment No. 1 to the proposal on March 6, 1995. Notice of Amendment No. 1 to the proposal appeared in the **Federal Register** on March 15, 1995.[4] No comment letters were received on the original proposed rule change or on Amendment No. 1. The Exchange then filed Amendment No. 2 to the proposal on May 1, 1995,[5] and Amendment No. 3 on May 24, 1995.[6] This order approves the CBOE proposal, as amended by Amendment Nos. 2 and 3.

Pursuant to CBOE Rule 31.5(E), the Exchange is now proposing to list and trade currency warrants based upon the value of the U.S. dollar in relation to the Mexican peso. Peso Warrants will be unsecured obligations of their issuers and will be cash-settled in U.S. dollars. Peso Warrants will be exercisable either throughout their life (*i.e.*, American-style) or only immediately prior to their expiration date (*i.e.*, European-style). Upon exercise, the holder of Peso Warrant structured as a "put" will receive payment in U.S. dollars to the extent that the value of the Mexican peso in relation to the U.S. dollar has declined below a pre-stated base level. Conversely, upon exercise, holders of a Peso Warrant structured as a "call" will receive payment in U.S. dollars to the extent that the value of the Mexican peso in relation to the U.S. dollar has increased above a pre-stated level. Peso Warrants that are "out-of-the-money" at the time of expiration will expire worthless.

Any issue of Peso Warrants will conform to the listing guidelines under CBOE Rule 31.5(E) which provide that: (1) The issuer will have assets in excess of $100,000,000 and otherwise substantially exceed the size and earnings requirements in CBOE Rule 31.5(A); (2) the term of the warrants will be from one to five years from the date of issuance; and (3) the minimum public distribution of such issues will be one million warrants, with a minimum of 400 public holders, and an aggregate market value of at least $4 million.[7]

The CBOE will also require that Peso Warrants be sold only to customers whose accounts have been approved for options trading pursuant to Exchange Rule 9.7. The suitability standards of Exchange Rule 9.9 will apply to recommendations for opening transactions in Peso Warrants. Additionally, the standards of Rule 9.10(a), regarding discretionary orders, will also be applied to Peso Warrants. Moreover, the Exchange will require members and member organizations to report to the CBOE any positions of 100,000 or more Peso Warrants on the same side of the market.[8]

For customer margin purposes, the Exchange will set the customer margin "add-on"[9] percentage for Peso Warrants at 18% for both initial and maintenance margin, with a minimum add-on for out-of-the-money Peso Warrants of 15%.[10] If, as a result of the Exchange's routine monitoring of margin adequacy (*i.e.*, at least quarterly reviews), the CBOE determines that a higher customer margin level would be appropriate, the CBOE will take immediate steps to implement the change.[11] If, on the other hand, the Exchange determines that a lower margin percentage would be appropriate as a result of the Exchange's periodic reviews, the Exchange will file a proposal with the Commission pursuant to Section 19(b) of the Act to modify the margin add-on percentages applicable to Peso Warrants.[12] Anytime that the customer margin levels for Peso Warrants are changed, the Exchange will promptly notify the Exchange's membership and the public.

Prior to the commencement of trading of Peso Warrants, the Exchange will distribute a circular to its membership calling attention to certain compliance responsibilities when handling transactions in Peso Warrants.[13]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5)[14] in that

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] *See* Securities Exchange Act Release No. 35324 (February 2, 1995), 60 FR 7599.

[4] In Amendment No. 1, the Exchange amended the proposal to specify customer margin levels for the proposed currency warrants. *See* Securities Exchange Act Release No. 35463 (March 9, 1995), 60 FR 14042.

[5] Amendment No. 2, as discussed herein, effectively supersedes Amendment No. 1 by specifying higher minimum customer margin levels than those proposed in Amendment No. 1. *See* Letter from Mary Bender, Senior Vice President, Division of Regulatory Services, CBOE, to Sharon Lewson, Assistant Director, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), Commission, dated April 27, 1995 ("Amendment No. 2").

[6] In Amendment No. 3, as discussed herein, the Exchange: (1) Specified the standards the CBOE will use to ensure continued adequate customer margin levels for short positions in Peso Warrants; and (2) imposed reporting requirements for certain positions in Peso Warrants. *See* Letter from Mary Bender, Senior Vice President, Division of Regulatory Services, CBOE, to Brad Ritter, Senior Counsel, OMS, Division, Commission, dated May 24, 1995 ("Amendment No. 3").

[7] On September 28, 1994, the Exchange submitted for Commission approval, proposed rules governing listing requirements, and customer protection and margin requirements for stock index warrants, currency index warrants, and currency warrants. *See* Securities Exchange Act Release No. 35178 (December 29, 1994), 60 FR 2409 (January 9, 1995) (notice of File No. SR–CBOE–94–34) ("Generic Warrant Listing Proposal"). If ultimately approved by the Commission, Peso Warrants issued subsequent to that approval will be subject to these rules. These rules, however, will not change the customer margin requirements specified herein. *See* Amendment No. 2, *supra* note 5.

[8] *See* Amendment No. 3, *supra* note 6. In connection with the Generic Warrant Listing Proposal, the CBOE intends to impose similar reporting requirements for all currency warrants listed by the Exchange. *See* Generic Warrant Listing Proposal, *supra* note 7.

[9] For these purposes, "add-on" is the percentage of the current market value of the Mexican pesos underlying each Peso Warrant that the holder of a "short" position must pay in addition to the current market value of each Peso Warrant.

[10] *See* Amendment No. 2, *supra* note 5.

[11] Prior to increasing the customer margin levels, the Exchange should immediately contact the Commission for a determination as to whether a rule filing pursuant to Section 19(b) of the Act will be required.

[12] Specifically, the Exchange will review, on at least a quarterly basis, the frequently distributions reflecting the percentage price returns for the Mexican peso in relation to the U.S. dollar for all seven day periods during the preceding two year period. If the current margin add-on is not sufficient to cover at least 97.5% of all such seven day price returns, the Exchange will take steps to increase the margin level to one that will cover at least 97.5% of all such instances. *See* Amendment No. 3, *supra* note 6. In no event, however, will the Exchange reduce the margin levels provided in Amendment No. 2 without the prior approval of the Commission. *See* Amendment No. 2, *supra* note 5.

[13] The circular should highlight: (1) That Peso Warrants may be sold only to customers with options approved accounts; (2) the applicable suitability requirements; (3) the standards regarding discretionary orders; (4) the reporting requirements for positions of 100,000 or more Peso Warrants on the same side of the market; and (5) the applicable customer margin requirements.

[14] 15 U.S.C. 78f(b)(5) (1988).

it is designed to protect investors and the public interest. First, the Commission believes that the trading of listed warrants on the Mexican peso should provide investors with a hedging and risk transfer vehicle that will reflect the overall movement of the Mexican peso in relation to the U.S. dollar. In this regard, Peso Warrants should provide investors with an efficient and effective means of managing risk associated with the Mexican peso.

Second, the Exchange has proposed listing standards to provide for fair and orderly markets in Peso Warrants. Peso Warrants will conform to the listing standards in CBOE Rule 31.5(E), which are similar to the standards pursuant to which currency warrants have been listed by other securities exchanges.[15] In addition, the Exchange will limit transactions in Peso Warrants to customers with options approved accounts and impose the CBOE's suitability standards and discretionary account standards to transactions in Peso Warrants. Moreover, the requirements established by the Exchange for reporting positions in Peso Warrants on the same side of the market will assist the CBOE in detecting and deterring attempts at manipulation.

Third, the Exchange has proposed adequate customer margin requirements. The proposed add-on margin (*i.e.*, 18%) provides sufficient coverage to account for historical and potential volatility in the Mexican peso in relation to the U.S. dollar. In addition, the Exchange must conduct periodic reviews of the volatility in the Mexican peso and must take immediate steps to increase the existing customer margin levels if the Exchange determines that the existing levels are no longer adequate.[16] As a result, the Commission believes that the proposed customer margin levels and the review and maintenance criteria for those margin levels will result in adequate coverage of contract obligations and are designed to reduce risks arising from inadequate margin levels.

Finally, the Exchange will prepare and distribute to its membership a circular describing each issue of Peso Warrants listed by the CBOE, calling attention to certain compliance responsibilities when handling transactions in Peso Warrants.[17]

Based on the foregoing, the Commission believes that the listing and trading of Peso Warrants, within the framework described above, is appropriate and consistent with the Act.

The Commission finds good cause for approving Amendment Nos. 2 and 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 2 realigns the customer margin requirements to reflect more accurately the recent volatility of the Mexican peso in relation to the U.S. dollar. Moreover, the Commission notes that the original proposal and Amendment No. 1 to the proposal were published in the **Federal Register** for the full 21-day comment period and that no comments were received by the Commission regarding either the original proposal or the lower customer margin levels proposed in Amendment No. 1.

Amendment No. 3 also provides that the CBOE will review the volatility of the Mexican peso in relation to the U.S. dollar on at least a quarterly basis and increase the applicable customer margin levels if appropriate. Moreover, as provided in Amendment No. 2, the CBOE cannot lower the customer margin levels from the 18% and 15% levels provided above without Commission approval pursuant to Section 19(b) of the Act. As discussed above, the Commission believes these procedures will ensure that the customer margin requirements for Peso Warrants are maintained at levels adequate to cover present and future volatility of the Mexican peso in relation to the U.S. dollar.

Amendment No. 3 also imposes reporting requirements for certain large positions (*i.e.*, over 100,000 contracts on the same side of the market) in Peso Warrants. Because there currently are no position limits for positions in Peso Warrants, the Commission believes this is a reasonable approach by the CBOE for acquiring information that may be helpful in the Exchange's efforts to detect and deter attempted manipulation.

Based on the above and in order to allow the CBOE to begin listing Peso Warrants without delay, the Commission believes it is consistent with Section 6(b)(5) of the Act to approve Amendment Nos. 2 and 3 to the CBOE's proposal on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 2 and 3. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the File No. SR–CBOE–95–12 and should be submitted by July 3, 1995.

It Is therefore Ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (File No. SR–CBOE–95–12), as amended by Amendment Nos. 2 and 3, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–14256 Filed 6–9–95; 8:45 am]

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[15] For example, the American Stock Exchange ("Amex") currently lists currency warrants on the Japanese yen and the German mark pursuant to Section 106 of the Amex Company Guide. If the Commission approves the Exchange's Generic Warrant Listing Proposal, Peso Warrants listed subsequent to that approval will be subject to the revised listing standards. *See* Generic Warrant Listing Proposal, *supra* note 7. The Commission notes that to the extent the customer margin requirements contained in the Generic Warrant Listing Proposal differ from those discussed herein for Peso Warrants, the customer margin levels specified above will be applied.

[16] *See supra* note 12.

[17] *See supra* note 13.

[18] 15 U.S.C. 78s(b)(2) (1988).

[19] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

[Release No. 34–35809; File No. SR–NSCC–95–06]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Seeking To Establish the Collateral Management Service

June 5, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 22, 1995, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–NSCC–95–06) as described in Items I, II, and III below, which items have been prepared primarily by NSCC. On June 2, 1995, NSCC filed an amendment to the proposed rule change to clarify which entities may be permitted to participate in the proposed service.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to establish the Collateral Management Service ("CMS") which will provide access to information regarding participants' clearing fund, margin, and other similar requirements and deposits at NSCC and other participating clearing entities. As proposed, participating clearing entities will include clearing agencies registered pursuant to Section 17A of the Securities Exchange Act[3] and clearing organizations affiliated with or designated by contract markets trading specific futures products under the oversight of the Commodity Futures Trading Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to establish the CMS. The CMS will provide access to information regarding participants' clearing fund, margin, and other similar requirements and deposits at NSCC and other Participating Clearing Entities including excess or deficit amounts and comprehensive data on underlying collateral ("CMS data"). NSCC may provide the CMS data to participants of NSCC, to participating clearing entities, and, if a participating clearing entity requests, to participants of such participating clearing entity. Each participant that desires access to the CMS data will be required to complete a CMS participation application. A participant's access to CMS data will be limited to the participant's own information. Similarly, a participating clearing entity's access to CMS data will be limited to only the CMS data of participants of such entity. A participant may request that NSCC exclude data relating to such participant from the CMS by completing a request to exclude data form.

Participating clearing entities will be required to sign and execute NSCC's CMS agrement. The CMS agreement sets forth NSCC's authorization from participating clearing entities to collect and provide information relating to participants' clearing fund and margin requirements and participants' clearing fund and margin deposits as contained in the Securities Clearing Group's ("SCG")[5] data base and the Chicago Board of Trade Clearing Corporation's Pay Collect System ("BTCC System").[6] The CMS agreement also authorizes NSCC to disseminate additional information provided by the participating clearing entities. The CMS agreement also addresses such matters as the confidentiality of CMS Data, additional parties, costs, and limitation of liability. At the time of this filing, The Depository Trust Company and The Options Clearing Corporation have agreed in principle to participate in CMS.

NSCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because the rule proposal will facilitate cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which NSCC consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Person making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to the file number SR–NSCC–95–06 and should be submitted by July 3, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

[2] Letter from Anthony H. Davidson, Associate Counsel, NSCC, to Peter Geraghty, Division of Market Regulation, Commission (May 26, 1995).

[3] 15 U.S.C. 78q–1 (1988).

[4] The Commission has modified the text of the summaries submitted by NSCC.

[5] The SCG was established in 1989 as a result of developments surrounding the October 1987 Market Break and subsequent studies on the causes of the Market Break. The stated purpose of the SCG is to increase cooperation and coordination among securities clearing entities and to facilitate the sharing of certain clearance and settlement information regarding surveillance and member risk monitoring. For a further description of the SCG, refer to Securities Exchange Act Release No. 27044 (July 25, 1989), 54 FR 30963 [File Nos. SR–DTC–88–20, SR–MCC–88–10, SR–MSTC–88–07, SR–NSCC–88–09, SR–OCC–89–02, SR–Philadep–89–01, and SR–SCCP–89–01] (order approving the establishment of the SCG).

[6] The Chicago Board of Trade, through the Board of Trade Clearing Corporation, established the Shared Pay/Collect System which disseminates the daily pay/collects of all futures clearing firms which are affiliated with a participating futures exchanges.

[7] 17 CFR 200.30–3(a)(12) (1994).

Margaret H. McFarland,
Deputy Secretary.
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BILLING CODE 8010–01–M

[Release No. 34–35806; File No. SR–SCCP–95–1]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to One-Day Settlement

June 5, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on April 5, 1995, the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–SCCP–95–1) as described in Items I and II below, which items have been prepared primarily by SCCP. The Commission is publishing this notice to solicit comments from interested persons and grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

SCCP is filing the proposed rule change to offer its participants the ability to effect one-day settlements.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, SCCP included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under the proposed filing, SCCP proposes to offer one-day settlement capability to its participants through an interface with the one-day settlement system offered by the National Securities Clearing Corporation ("NSCC").[3] In the current T+5 settlement environment, trades compared or recorded after T+3 typically settle two days thereafter and therefore are not included in the normal settlement cycle on T+5. For example, trades received on T+4 presently settle on T+6. As the industry converts to a T+3 settlement environment, trades may miss the settlement date if the registered clearing corporations cannot effect one-day settlements. Without a one-day settling capability, trades compared and recorded on T+2 will not settle until T+4.

SCCP proposes to interface with NSCC to offer one-day settlement for trades submitted prior to SCCP's cut-off time on T+4 in a T+5 settlement environment and submitted prior to SCCP's cut-off time on T+2 in a T+3 settlement environment, including over-the-counter trades, fixed income transaction system trades, and other regional interface operator trades. SCCP will receive and accept input from participants up to approximately 7:00 p.m. in order to interface with the established NSCC cut-off time of 9 p.m. Those trades received before the 7 p.m. daily cut-off time on T+2 and thereafter (*i.e.*, trades received before the daily cut-off time on T+3, T+4, etc.) will settle on the next business day. Trades received subsequent to the daily cut-off time on T+2 and thereafter will continue to settle two business days later.

SCCP believes the proposed rule change is consistent with the requirements of the Act, specifically Section 17A of the Act, and the rules and regulations thereunder because the rule proposal will facilitate the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the proposed Rule Change Received From Members, Participants, or Others

No written comments have been solicited or received. SCCP will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act[4] requires the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that SCCP's one-day settling capability should help promote prompt and accurate clearing and settlement because it will increase the number of trades that are included in the normal settlement cycle. Thus, the number of failed trades and the time required for settlement should be reduced.

As of June 7, 1995, Rule 15c6–1 will require securities transactions to be completed within a three-day settlement cycle.[5] The Commission believes that settlement of trades in a shorter time frame will reduce risk to the securities market, including risk to clearing corporations as a result of member failure. Without one-day settling capability, it is possible that many trades may fail to settle within the new three-day cycle. Thus, the proposal advances the risk reduction goals of Rule 15c6–1.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing because such approval will permit SCCP to implement the interface with NSCC and to provide one-day settling capability prior to the conversion to a three-day settlement cycle.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference

[1] 15 U.S.C. 78s(b)(1) (1988).
[2] The Commission has modified the language in these sections.
[3] For a complete description of NSCC's one-day settlement system, refer to Securities Exchange Act Release No. 35442 (March 3, 1995), 60 FR 13196.
[4] 15 U.S.C. 78q–1(b)(3)(F) (1988).
[5] Securities Exchange Act Release Nos. 33023 (October 6, 1993), 58 FR 52891 (adoption of Rule 15c6–1) and 34952 (November 9, 1994), 59 FR 59137 (change of effective date of Rule 15c6–1 from June 1, 1995 to June 7, 1995).

Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of SCCP. All submissions should refer to the file number SR–SCCP–95–01 and should be submitted by July 3, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR–SCCP–95–01) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 95–14322 Filed 6–9–95; 8:45 am]
BILLING CODE 8010–01–M

[Release No. IC–21115; 812–9286]

AMBAC Capital Management, Inc.; Notice of Application

June 6, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption Under the Investment Company Act of 1940 (the "1940 ACT").

APPLICANT: AMBAC Capital Management, Inc.

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) of the 1940 Act for an exemption from the provisions of paragraphs (a)(1), (b)(2)(i) and (b)(3)(i) of rule 3a–5 under the 1940 Act.

SUMMARY OF APPLICATION: Applicant seeks relief from certain provisions of rule 3a–5 to enable it and other future wholly-owned finance subsidiaries of AMBAC, Inc. ("AMBAC") to rely on the exemption from all provisions of the 1940 Act afforded by the rule while engaging in certain lending and investing activities not included within the express terms of the rule.

FILING DATES: The application was filed on October 17, 1994, and amended and restated on June 2, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 30, 1995, and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549; Applicant, 10 Glenville Street, Greenwich, Connecticut 06831.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 942–0564 or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a Delaware corporation and wholly-owned subsidiary of AMBAC Capital Corporation, a Delaware corporation, which in turn is a wholly-owned subsidiary of AMBAC. AMBAC is a holding company primarily engaged through another wholly-owned subsidiary, AMBAC Indemnity Corporation ("AMBAC Indemnity"), in the financial guarantee insurance business. AMBAC's shares are publicly traded on the New York Stock Exchange.

2. AMBAC Indemnity is a licensed insurance company in all 50 states, the District of Columbia, the Commonwealth of Puerto Rico and Guam that primarily insures newly issued municipal bonds. AMBAC Indemnity has been assigned triple-A claims-paying ability ratings, the highest ratings of Moody's Investors Service, Inc. ("Moody's"), Standard & Poor's Corporation ("S&P") and Fitch Investors Service, Inc. AMBAC depends primarily on dividends from AMBAC Indemnity to pay dividends on its capital stock, to pay principal and interest on its indebtedness, and to pay its operating expenses.

3. Applicant was organized to issue and sell municipal investment contracts and similar investment agreements (together, the "MICs"). Applicant presently sells the MICs on a private placement basis primarily to state or local government entities or agencies and trustees for bond issues of such entities or agencies (collectively, the "MIC Holders"), for the investment of proceeds from municipal bond offerings.

4. The MICs are debt securities with an agreed-upon rate of return that may be collateralized by U.S. Treasury or other high quality securities. Municipal bond issuers find MICs attractive because their bonds are often issued to finance projects for which they have no immediate need for the entire proceeds of the issue. A MIC Holder may also purchase a MIC from the Applicant as a means of investing debt service reserve an similar funds held by the MIC Holder. The MICs provide the municipal bond issuer with a guaranteed yield that is advantageous relative to the interest rate on the bonds and can be structured to provide draw-downs as needed.

5. Because of restrictions on their permitted investments, some municipalities have requested that Applicant enter into MICs styled as repurchase agreements (each, a "Repo"), which would provide such municipalities with the economic equivalent of entering into a collateralized MIC. Applicant considers entering into such Repos to be equivalent to issuing a MIC in the form of a collateralized investment contract and will treat the proceeds generated thereby the same as any other proceeds raised in a debt issuance (hereinafter, any reference to "MIC" shall include such Repos).

6. The proceeds of MIC sales will be on-lent by Applicant to AMBAC and/or its direct and indirect subsidiaries (the "Recipients") for use in financing their respective operations. It is anticipated that substantially all of the proceeds from the MICs will be loaned by Applicant to the Recipients contemporaneously with the issuance of the related MIC, but in no event will less than 85 percent of such proceeds be loaned later than six months after Applicant's receipt of such proceeds. It is also anticipated that substantially all loans to Recipients will be collateralized by the Recipients themselves.

7. Pursuant to an Insurance and Indemnity Agreement with AMBAC Indemnity (the "Agreement"), Applicant's obligations under each MIC issued by it are fully insured by AMBAC Indemnity. The insurance policy (each, an "Indemnity Policy") provides that in the event of default by Applicant on the payment of principal or interest on the MIC, AMBAC Indemnity will make the scheduled payment. In addition, the MIC Holder may institute legal proceedings directly against AMBAC Indemnity to enforce such payment without first proceeding against Applicant. The Agreement requires

[6] 15 U.S.C. 78s(b)(2) (1988).
[7] 17 CFR 200.30–3(a)(12) (1994).

Applicant to reimburse AMBAC Indemnity for any payments made by AMBAC Indemnity under the Indemnity Policies.

8. In order to secure its performance under the Agreement, Applicant generally will rehypothecate all collateral received in respect of loans of proceeds to Recipients to The Bank of New York as trustee (together with any successor trustee, the "Trustee") for the benefit of AMBAC Indemnity under a Master Trust Agreement. With respect to MICs in the form of collateralized investment contracts or Repos, however, the collateral pledged to secure the related loan of proceeds will be rehypothecated to the MIC Holder rather than to the Trustee.

9. Applicant may come within the definition of an investment company under section 3(a) of the 1940 Act to the extent that its loans to AMBAC and the other Recipients may be considered as investing or reinvesting in debt securities of AMBAC and the other Recipients. Applicant presently is relying on the exception from the 1940 Act provided by section 3(c)(1). It will be unable to continue to do so, however, at such time as the 100 owner limit contained therein is exceeded or if Applicant were to make a public offering of its securities.

Applicant's Legal Analysis

1. Generally, rule 3a–5 grants an exemption from all provisions of the 1940 Act, subject to certain conditions, to any finance subsidiary (as defined in the rule) of an eligible parent company so as to permit the finance subsidiary to offer debt securities or non-voting preferred stock in the United States. Rule 3a–5 also permits a finance subsidiary to loan the proceeds of its securities offerings to eligible companies controlled by the parent company.

2. Applicant's proposed activities will not meet the requirement of paragraph (a)(1) of rule 3a–5 that any debt securities of the finance company issued to or held by the public be unconditionally guaranteed by the parent company. In Applicant's case, all MICs will receive a guarantee in the form of an unconditional insurance policy to be issued by AMBAC Indemnity, unless the parent company guarantee required by rule 3a–5 is delivered instead.

3. Applicant submits that its planned operations raise two further issues under rule 3a–5. First, paragraph (b)(2)(i) of rule 3a–5 defines an eligible parent company as a company that, among other things, is not an investment company under section 3(a) or that is excepted or exempted by order from the definition of investment company by section 3(b) or by the rules and regulations under section 3(a). Applicant states that there may be some uncertainty over AMBAC's status under section 3(a)(3) of the 1940 Act. Consequently, to the extent that AMBAC must rely on a section 3(c)(6) exception as an insurance holding company, AMBAC would not qualify as an eligible parent under rule 3a–5. Second, paragraph (b)(3)(i) of rule 3a–5 defines a "company controlled by the parent company" as a company that, among other things, is not an investment company under section 3(a) or that is excepted or exempted by order from the definition of investment company by section 3(b) or by the rules and regulations under section 3(a). AMBAC engages in certain activities (including certain investment activities) through wholly-owned subsidiaries that have no outstanding securities other than those owned directly or indirectly by AMBAC. Such subsidiaries would be eligible for exemption under rule 3a–3 under the 1940 Act, except that a section 3(c)(6) exempt entity is not an eligible parent of a rule 3a–3 exempt company. In addition, the Applicant might choose in the future to lend the proceeds of its MIC offerings to AMBAC Indemnity, which is a section 3(c)(3) exempt insurance company. Accordingly, Applicant requests exemptive relief from rule 3a–5(b)(3)(i) to permit it to lend the proceeds of its debt offerings to subsidiaries of AMBAC that would be exempt by virtue of rule 3a–3, but for AMBAC's status as their parent company, and to AMBAC Indemnity.

4. Section 6(c) of the 1940 Act provides, as here relevant, that the SEC, by order upon application, may conditionally or unconditionally exempt any person or persons from any provision of the 1940 Act or any rule thereunder, if such exemption is necessary and appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the 1940 Act. Applicant submits that the exemptive relief requested meets those standards.

5. Applicant submits that the Indemnity Policy issued by AMBAC Indemnity covering the MICs serves the underlying objectives of the rule 3a–5 guarantee since the MIC Holders will be provided with benefits substantially similar to those provided by the guarantee requirement of rule 3a–5. There will at all times be an uninterrupted payment of funds to the MIC Holders. MIC Holders will also benefit from safeguards that are not present in the guarantee of a non-regulated parent company, since AMBAC Indemnity is subject to a comprehensive scheme of regulation and supervision under the insurance laws of Wisconsin, its state of incorporation, as well as the insurance laws and regulations of other jurisdictions in which it does business.

6. Applicant further asserts that the receipt of an insurance policy from AMBAC Indemnity in lieu of an AMBAC guarantee increases the likelihood that the MIC Holders will be paid in full. This is because AMBAC's equity interest in AMBAC Indemnity is in excess of 99% of its assets, so that AMBAC's only significant source of funds with which to make payments is dividends on its AMBAC Indemnity stock. Furthermore, AMBAC Indemnity's triple-A rated claims paying ability has been assigned higher ratings than AMBAC's double-A rated senior debt by Moody's and S&P, reflecting an assessment by such rating agencies of the increased likelihood of payment in the case of AMBAC Indemnity. Based on the foregoing, Applicant requests exemptive relief from rule 3a–5(a)(1) to permit AMBAC Indemnity to issue insurance policies in lieu of the parent guarantees otherwise required.

7. Applicant's parent AMBAC may be considered a section 3(c)(6) exempt company, as noted above, because it is primarily engaged in a section 3(c)(3) business (insurance) through AMBAC Indemnity. Applicant contends that the types of businesses enumerated in section 3(c)(3) do not present the potential for investment company type activities with which the SEC was concerned when it limited the definition of parent company (such as AMBAC) and controlled company (such as AMBAC Indemnity) under rule 3a–5. Similarly, where AMBAC engages in certain activities through wholly-owned subsidiaries that would qualify for exemption under rule 3a–3, except for the fact that a section 3(c)(6) entity is not an eligible parent of a rule 3a–3 company, Applicant contends that there is no reason to impose the requirements of the 1940 Act on such subsidiaries. Accordingly, Applicant believes it is appropriate to grant relief from paragraphs (b)(2)(i) and (b)(3)(i) of rule 3a–5 to enable Applicant to lend the proceeds of its offerings to its parent company, AMBAC, and to the other Recipients.

8. Applicant believes that neither its structure nor its mode of operations resembles that of an investment company. Applicant asserts, therefore, that it is not the type of company Congress intended to regulate under the 1940 Act, and that under the circumstances, AMBAC's status as a section 3(c)(6) excepted company should not prevent the SEC's grant of requested relief.

9. Applicant and any other future wholly-owned subsidiary of AMBAC relying on any order granting the application will comply with the provisions of rule 3a–5 except to the limited extent for which relief is sought in the application. AMBAC believes that any such future subsidiaries would be formed in response to business or market concerns, such as business differentiation between products or to more specifically manage the risks of different MIC categories.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–14326 Filed 6–9–95; 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–5951]

Inssuer Delisting; Notice of Application To Withdraw From Listing and Registration; (CMI Corporation, Voting Class A Common Stock, $0.10 Par Value)

June 6, 1995.

CMI Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, the Security is listed on the New York Stock Exchange, Inc. ("NYSE"). The Security commenced trading on the NYSE at the opening of business on May 24, 1995, and concurrently therewith the Security was suspended from trading on the Amex.

In making the decision to withdraw the Security from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of the Security on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of the Security and believes that dual listing would fragment the market for the Security.

Any interested person may, on or before June 27, 1995 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–14320 Filed 6–9–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Rel. No. 21116; 812–9428]

Equitex, Inc.; Notice of Application

June 6, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application under the Investment Company Act of 1940 (the "Act").

APPLICANT: Equitex, Inc.

RELEVANT ACT SECTION: Section 61(a)(3)(B).

SUMMARY OF APPLICATION: Applicant seeks an order authorizing applicant to issue stock options pursuant to applicant's Amended 1993 Stock Option Plan for Non-Employee Directors (the "Directors' Plan").

FILING DATES: The application was filed on December 14, 1994 and amended on April 24, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 3, 1995, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of the date of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 7315 East Peakview Avenue, Englewood, Colorado 80111.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Staff Attorney, at (202) 942–0562, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

APPLICANT'S REPRESENTATIONS

1. Applicant is a business development company ("BDC") within the meaning of section 2(a)(48) of the Act.[1] Applicant seeks an order pursuant to section 61(a)(3)(B) of the Act authorizing it to: (a) Grant options to purchase 100,000 shares of applicant's common stock to each current non-employee director of applicant on the date the Commission issues the order requested hereby (the "Order Date"); and (b) grant options to purchase 100,000 shares of applicant's common stock to each new non-employee director of applicant who may be elected or appointed to applicant's Board of Directors (the "Board") subsequent to the Order Date.

2. The Directors' Plan provides for non-discretionary grants of stock options to non-employee directors of applicant to acquire, in the aggregate, up to 500,000 shares of applicant's common stock. The Directors' Plan was adopted by the Board on April 1, 1993 (the "Effective Date") and approved by applicant's shareholders on December 28, 1993 for a ten year term commencing on the Effective Date. On April 20, 1995, the Board cancelled all options conditionally granted under the Director's Plan, none of which were exercisable or had been exercised, and adopted amendments to the Directors' Plan (the "Directors' Plan Amendments"). The Directors' Plan Amendments revised the Directors' Plan to provide that options shall automatically be granted not on the

[1] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) and makes available significant managerial assistance with respect to the issuers of such securities. Such issuers are small, nascent companies whose securities typically are illiquid. Certain of the regulatory restrictions of the Act are relaxed for BDCs.

Effective Date but rather on the Order Date.[2]

3. Applicant's primary investment objective is to achieve long-term capital appreciation through investing in new and developing companies and in companies which are experiencing financial difficulties. Applicant does not have an external "investment adviser" within the meaning of the Act. Applicant's investment decisions are made by its officers and directors. Applicant typically provides a substantial commitment of capital to its investee companies and makes available to them significant managerial assistance.

4. Each non-employee director of applicant receives $1,500 for each Board meeting attended and reimbursement for expenses incurred in attending Board meetings. The non-employee directors do not receive any additional compensation for serving on applicant's audit or compensation committees. The non-employee directors do not receive compensation from applicant for providing managerial assistance to investees of applicant. Non-employee directors, may, however, receive nominal compensation from investee companies for serving on their boards of directors.

5. Each non-employee director of applicant, on the Order Date, will receive options to acquire 100,000 shares of applicant's common stock. Each person who becomes a non-employee director of applicant after the Order Date automatically will receive options to acquire 100,000 shares of applicant's common stock ninety days after the non-employee becomes a director. Currently, there are two non-employee directors who will be eligible to receive options under the Directors' Plan on the Order Date.

6. As of April 20, 1995, the aggregate amount of applicant's voting securities that would result from the exercise of all options issues or issuable under the Directors' Plan and applicant's existing employee stock option plan would be 1,289,786 shares, or approximately 19.99% of the 6,448,930 shares of applicant's common stock outstanding. Applicant has no warrants, options, or rights outstanding other than those granted to its directors, officers, and employees as part of its employee stock option plan.

7. Options granted under the Directors' Plan will expire within ten years from the date of grant. Fifty percent of the options granted will vest and become exercisable six months following the date of grant, with the remaining fifty percent of the options exercisable ratably on a monthly basis over the following eighteen months. The exercise price of options granted under the Directors' Plan will be the current market value of applicant's common stock on the date the option is granted.

8. If a non-employee director ceases to be a director or is removed as a director of applicant for cause, all options granted to that director will terminate on the date of his removal as a director. If a non-employee director dies while in office, all options granted to such director may be exercised by such person's estate at any time within one year after the director's death, but not later than the expiration of the original term of the option. If a non-employee director ceases to be a director of applicant for any reason other than cause or death, all options granted to such director will terminate three months after the date the director ceases to be a director.

Applicant's Legal Analysis

1. Section 63(3) of the Act permits a BDC to sell its common stock at a price below current net asset value upon the exercise of any option issued in accordance with section 61(a)(3) of the Act.

2. Section 61(a)(3)(B) of the Act provides, in pertinent part, that a BDC may issue to its non-employee directors options to purchase its voting securities pursuant to an executive compensation plan, provided that: (a) the options expire by their terms within ten years; (b) the exercise price of the options is not less than the current market value of the underlying securities at the date of issuance; (c) the proposal to issue such options is approved by the company's shareholders, and is authorized by order of the Commission upon application; (d) the options are not transferable except for the dispositions by gift, will or intestacy; (e) no investment adviser of the company receives any compensation described in section 205(1) of the Investment Advisers Act of 1940, except to the extent permitted by clause (A) or (B) of that section; and (f) the company does not have a profit-sharing plan as described in section 57(n) of the Act.

3. In addition, section 61(a)(3)(B) provides that the amount of the company's voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance may not exceed 25% of the company's outstanding voting securities except that if the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights issued to such company's directors, officers, and employees pursuant to an executive compensation plan would exceed fifteen percent of the company's outstanding voting securities, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance shall not exceed twenty percent of the outstanding voting securities of such company.

4. Applicant asserts that the Directors' Plan and the stock options to be granted automatically to applicant's non-employee directors, and the stock options to be granted automatically to each new non-employee director of applicant who joins applicant's Board subsequent to the Order Date, pursuant to such plan would meet all applicable requirements of the Act: (a) The options will expire by their terms within ten years; (b) the exercise price of the options will not be less than the current market value of the underlying securities at the date of the issuance of the options; (c) the proposal to issue the options has been authorized by applicant's shareholders; (d) the options will not be transferable except for disposition by gift, will, or intestacy; (e) applicant does not have an investment adviser; and (f) applicant does not have a profit-sharing plan described in section 57(n). In addition, the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance will not exceed 20% of the outstanding voting securities of applicant.

5. Applicant asserts that in order to attract and retain qualified personnel, it must provide non-employee directors with incentives in the form of an executive compensation program. Applicant believes that the skill and experience of its management and directors are critical to its success. Applicant asserts that it directors are actively involved in the oversight of applicant's affairs, and that it relies extensively on the judgment and experience of the directors. In addition, applicant represents that one or more of its officers and directors often are elected to the boards of directors of its portfolio companies.

6. Applicant submits that the terms of the Directors' Plan and the stock options to be granted automatically to applicant's non-employee directors are fair and reasonable and do not involve any overreaching of applicant or its shareholders. The total number of shares for which options would be granted under the Directors' Plan would depend on whether there are changes in applicant's Board. If the two non-employee directors currently serving on applicant's Board exercised all of the options proposed to be granted to them, 200,000 shares, or approximately, 3.1% of applicant's outstanding common stock, will be issued under the Directors' Plan. If all options available for grant under the Directors' Plan are granted and exercised, 500,000 shares, or approximately 7.8% of applicant's common stock will be issued. Given these relatively small amounts of stock, applicant submits that the exercise of the options will not have a substantial dilutive effect on the net asset value of the common stock of applicant.

7. Applicant asserts that because 50% of the stock options granted to a non-employee director would vest six months following the date of grant, and the remaining 50% would vest ratably on a monthly basis over the next eighteen months, the plan would provide non-employee directors with incentives to remain with applicant. In addition, applicant contends that because the options granted pursuant to the plan have no value unless the price of applicant's common stock exceeds their exercise price, the options provide significant incentives for non-employee directors to devote their best efforts to the success of applicant's business. The options also provide a means for applicant's thereby helping to ensure a closer identification of their interests with those of applicant and its shareholders. Applicant contends that incentives in the form of stock options enable it to maintain continuity in its board membership and to attract and retain as directors the highly experienced, successful, and dedicated business and professional people that are critical to its success as a BDC and to the success of its investee companies.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–14327 Filed 6–9–95; 8:45 am]

BILLING CODE 8010–01–M

[2] Section 61(a)(3)(B) requires that the proposal to issue stock options to non-employee directors of a BDC, pursuant to an executive compensation plan, be authorized by SEC order before any such options are issued. Since the options initially were issued without the required SEC order, applicant cancelled the outstanding options and proposes to reissue them, in accordance with section 61(a)(3)(B), upon receiving the order requested hereby.

[File No. 1–10567]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (International Murex Technologies Corporation, Common Stock, No Par Value)

June 6, 1995.

International Murex Technologies Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, its Board of Directors ("Board") approved resolutions on May 4, 1995 to withdraw the Company's Security from listing on the Amex and, instead, list such Security on the National Association of Securities Dealers Automated Quotations National Market System ("Nasdaq/NMS"). The decision of the Board followed a lengthy study of the matter and was based upon the belief that listing the Security on the Nasdaq/NMS will be more beneficial to the Company's shareholders than the present listing on the Amex because the Company believes:

(1) the Nasdaq/NMS system of competing market makers will result in increased visibility and sponsorship for the Security than is presently the case with the single specialist on the Amex;

(2) the Nasdaq/NMS system will offer the Company's shareholders more liquidity than is presently available on the Amex and less volatility in quoted prices per share when trading volume is slight;

(3) the Nasdaq/NMS system will offer the opportunity for the Company to secure its own group of market makers and expand the capital base available for trading in the common stock; and

(4) the firms making a market in the Security on the Nasdaq/NMS system will also be inclined to issue research reports concerning the Company, thereby increasing the number of firms providing institutional research and advisory reports.

Any interested person may, on or before June 27, 1995 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–14321 Filed 6–9–95; 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–2207]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Triarc Companies, Inc. Class A Common Stock, $.10 Par Value)

June 6, 1995.

Triarc Companies, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the Pacific Stock Exchange Incorporated ("PSE").

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, the Security is currently listed on both the New York Stock Exchange ("NYSE") and the PSE. The Company believes the added cost of maintaining both listings outweighs any incremental benefit the Company receives. Accordingly, the Company desires to terminate its listing on the PSE while maintaining its listing on the NYSE.

Any interested person may, on or before June 27, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–14257 Filed 6–9–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Washington, D.C. District Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Washington, DC District Advisory Council will hold a public meeting on Wednesday, June 28, 1995 from 9 a.m. to 5 p.m. to be held in the Executive Conference Room at Bell Atlantic, 1710 H Street, N.W., 11th Floor, Washington, D.C. to discuss matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Ms. Anita L. Irving, U.S. Small Business Administration, 1110 Vermont Avenue N.W., Suite 900, Washington, D.C. 20036, (202) 606–4000, Ext. 275.

Dated: June 6, 1995.

Dorothy A. Overal,

Director, Office of Advisory Council.

[FR Doc. 95–14285 Filed 6–9–95; 8:45 am]

BILLING CODE 8025–01–M

Sunshine Act Meetings

Federal Register

Vol. 60, No. 112

Monday, June 12, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on June 15, 1995, from 10 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

B. Reports

—FCSBA Quarterly Report

C. New Business

1. Regulations

—Loans in Areas Having Special Flood Hazards [12 CFR part 614] (Joint Final)
—Capital Adequacy [12 CFR parts 615, 618, and 620] (Proposed)
—Related Services [12 CFR parts 611, 618, and 620] (Final)

***Closed Session**

A. New Business

—Enforcement Action

Dated: June 7, 1995.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

*Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9)

[FR Doc. 95–14414 Filed 6–8–95; 11:06 am]

BILLING CODE 6705–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:02 p.m. on Wednesday, June 7, 1995, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Reports of the Office of Inspector General.

Matters relating to the Corporation's corporate and supervisory activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Ms. Judith A. Walter, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), concurred in by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision) and Chairman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Dated: June 7, 1995.

Federal Deposit Insurance Corporation.

Patti C. Fox,

Acting Deputy Executive Secretary.

[FR Doc. 95–14415 Filed 6–8–95; 11:07 am]

BILLING CODE 6714–01–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

TIME AND DATE: June 26, 1995 at 9:30 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–365–366 and 731–TA–734–735 (Preliminary) (Certain Pasta from Italy and Turkey)—briefing and vote.
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: June 8, 1995.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–14417 Filed 6–8–95; 11:08 am]

BILLING CODE 7020–02–M

NATIONAL COUNCIL ON DISABILITY

Quarterly Meeting

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming quarterly meeting of NCD. Notice of this meeting is required under Section 522b(e)(1) of the Government in the Sunshine Act, (P.L. 94–409).

DATES: July 24–26, 1995, 9:00 a.m. to 5:00 p.m.

LOCATION: Radisson Barcelo Hotel Washington, 2121 P Street, NW., Washington, DC, (202) 293–3100.

FOR INFORMATION CONTACT: Mark S. Quigley, Public Affairs Specialist, NCD 1331 F Street, NW., Suite 1050, Washington, DC 20004–1107, Telephone: (202) 272–2004, (202) 272–2074 (TT).

AGENCY MISSION: NCD is an independent federal agency led by 15 members appointed by the President of the United States and confirmed by the U.S. Senate. The overall purpose of NCD is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature of severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

ACCOMMODATIONS: Those needing interpreters or other accommodations should notify NCD by July 21, 1995.

ENVIRONMENTAL ILLNESS: People with environmental illness must reduce their exposure to volatile chemical substances in order to attend this meeting. In order to reduce such exposure, we ask that you not wear perfumes or scents at the meeting. We also ask that you smoke only designated

areas and the privacy of your room. Smoking is prohibited in the meeting room and surrounding area.

OPEN MEETING: This quarterly meeting of NCD shall be open to the public.

AGENDA: The proposed agenda includes:

Report from the Chairperson and the Executive Director
Committee Meetings and Committee Reports
ADA Town Meeting Tour Update
ADA Fifth Anniversary
ADA Report
National Disability Summit
Unfinished Business
New Business
Announcements
Adjournment

Records shall be kept of all NCD proceedings and shall be available after the meeting for public inspection at NCD.

Signed in Washington, DC, on June 5, 1995.

Speed Davis,

Acting Executive Director.

[FR Doc. 95–14400 Filed 6–8–95; 10:15 am]

BILLING CODE 8820–BS–M

Corrections

Federal Register
Vol. 60, No. 112
Monday, June 12, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 95–038–1]

International Sanitary and Phytosanitary Standard-Setting Activities

Correction

In notice document 95–13241 beginning on page 28387 in the issue of Wednesday, May 31, 1995, make the following corrections:

1. On page 28388, in the first column, in the sixth line, "customers" should read "consumers".

2. On the same page, in the third column, in paragraph 6., the *Date of Meeting* should read "February 19–23, 1996".

3. On page 28389, in the first column, in paragraph 8., in the *General Purpose*, in the second line, "director" should read "direction".

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 950206038–5038–01; I.D. 051595E]

Summer Flounder Fishery; Adjustments to 1995 State Quotas

Correction

In rule document 95–12935 beginning on page 27906 in the issue of Friday, May 26, 1995, make the following corrections:

On page 27907, in the table, in the seventh column, the third entry should read "446,446"; and in the sixth column, in the fourth line, "6,446" should be removed.

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35744; File No. SR–CBOE–95–25]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated, Relating to the Examination Specifications for the General Securities Registered Representative (Series 7) Examination

Correction

In notice document 95–12983 beginning on page 28005 in the issue of Friday, May 26, 1995, make the following corrections:

1. On page 28006, in the third column, the signature should read "**Jonathan G. Katz**".

2. On the same page, in the same column, in the FR Doc. line, the file date should read "5–25–95".

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35746; File No. SR–CBOE–95–27]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated, Relating to the Examination Specifications for the General Securities Sales Supervisor (Series 8) Examination

Correction

In notice document 95–12982 beginning on page 28006 in the issue of Friday, May 26, 1995, make the following correction:

On page 28007, in the third column, the FR Doc. line was omitted and should appear after the signature as follows:

[FR Doc. 95–12982 Filed 5–25–95; 8:45 am]

BILLING CODE 8010–01–M

BILLING CODE 1505–01–D

federal register

Monday
June 12, 1995

Part II

Environmental Protection Agency

40 CFR Parts 117, 302, and 355
Reportable Quantity Adjustments; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 117, 302, and 355

[SW H–FRL–5214–3]

RIN 2050–AD33

Reportable Quantity Adjustments

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) today is taking final action on changes proposed on October 22, 1993 to reportable quantities (RQs) for hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act. The person in charge of a facility or vessel from which a hazardous substance is released in excess of its RQs must notify appropriate authorities, who can then evaluate whether a response is needed. This rule revises the table of hazardous substances to add 47 individual Clean Air Act hazardous air pollutants; adjust their statutory one-pound RQs; add five other Clean Air Act hazardous air pollutants that are categories of substances and assign no RQ to the categories; and adjust RQs for 11 Resource Conservation and Recovery Act hazardous wastes. EPA also is making conforming changes to the Clean Water Act table of hazardous substances and the Emergency Planning and Community Right-to-Know Act tables of extremely hazardous substances.

EPA thoroughly evaluated the intrinsic properties of these substances to determine appropriate levels for the adjusted RQs; thus, this rule reflects a sound, scientific approach. The RQ adjustments are consistent with the Agency's common sense goals in that the rule will minimize net reporting and recordkeeping burdens. The rule results in an estimated net cost savings to industry and government of approximately $500,000 annually.

EFFECTIVE DATE: July 12, 1995.

ADDRESSES:

Docket: Copies of materials relevant to this rulemaking are contained in the U.S. Environmental Protection Agency CERCLA Docket Office, Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202 [Docket Number 102 RQ-CAA]. The docket is available for inspection between the hours of 9 a.m. and 4 p.m., Monday through Friday, excluding Federal holidays. Appointments to review the docket can be made by calling 703/603–8917. The public may copy a maximum of 266 pages from any regulatory docket at no cost. If the number of pages copied exceeds 266, however, an administrative fee of $25 and a charge of $0.15 per page for each page after page 266 will be incurred. The docket will mail copies of materials to requestors who are outside the Washington, DC metropolitan area.

Release Notification: The toll-free telephone number of the National Response Center is 800/424–8802; in the Washington, DC metropolitan area, the number is 202/267–2675. The facsimile number for the National Response Center is 202/267–2165 and the telex number is 892427.

FOR FURTHER INFORMATION CONTACT: The RCRA/UST, Superfund, and EPCRA Hotline at 800/424–9346 (in the Washington, DC metropolitan area, contact 703/412–9810). The Telecommunications Device for the Deaf (TDD) Hotline number is 800/553–7672 (in the Washington, DC metropolitan area, contact 703/486–3323); or Ms. Gerain H. Perry, Response Standards and Criteria Branch, Emergency Response Division (5202G), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, or at 703/603–8760.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Introduction
  A. Statutory Authority
  B. Background of this Rulemaking
  C. Reportable Quantity Adjustment Methodology
  D. Summary of Changes from the Proposed Rule
II. Response to Comments
  A. Support for Proposed RQ Adjustments
  1. Methylene Diphenyl Diisocyanate
  2. Ethylene Glycol
  B. Opposition to Proposed RQ Adjustments and/or Data
  1. Xylenes
  a. Aquatic Toxicity
  b. Application of BHP
  2. Dimethylformamide
  3. Titanium Tetrachloride
  4. Other Individual CAA Hazardous Air Pollutants
  a. Biphenyl
  b. 1,3-Butadiene
  c. Cresols
  d. Diethanolamine
  e. Ethylene Glycol
  5. K088
  6. F037 and F038
  C. Reporting Requirements for CAA Broad Generic Categories
  1. Options for Assigning RQs
  2. Definition and Scope of the Categories
  3. Other Issues
  D. Delisting Petition for Caprolactam
III. Changes to List of Hazardous Substances and Their RQs
IV. Changes to 40 CFR Parts 355 and 117
V. Regulatory Analyses
  A. Executive Order 12866
  B. Regulatory Flexibility Act
  C. Paperwork Reduction Act
  D. Unfunded Mandates

I. Introduction

A. Statutory Authority

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (Pub. L. 96–510), 42 U.S.C. 9601 et seq., as amended, established broad Federal authority to respond to releases or threats of releases of hazardous substances from vessels and facilities. The term "hazardous substance" is defined in section 101(14) of CERCLA chiefly by reference to various Federal environmental statutes. For example, the term includes "any hazardous air pollutant listed under section 112 of the Clean Air Act" (CAA), and "any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act * * *," also known as the Resource Conservation and Recovery Act (RCRA). Under CERCLA section 102(a), any substance that, when released into the environment, may present substantial danger to public health or welfare or the environment may be designated as a CERCLA hazardous substance.

Section 102(b) of CERCLA establishes RQs for releases of CERCLA hazardous substances at one pound, unless a substance has a different RQ established under section 311(b)(4) of the Clean Water Act (CWA). Section 102(a) of CERCLA authorizes EPA to adjust these RQs by regulation.

The person in charge of a vessel or facility from which a CERCLA hazardous substance has been released in a quantity that equals or exceeds its RQ must, under CERCLA section 103(a), immediately notify the National Response Center (see 40 CFR 302.6). The owner or operator of a facility from which an RQ or more of a CERCLA hazardous substance has been released must immediately notify State and local response authorities, as required by section 304 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (Pub. L. 99–499), 42 U.S.C. 11001 et seq. (see 40 CFR 355.40).

B. Background of This Rulemaking

The CERCLA list is being changed in today's final rule because: (1) Amendments to the CAA, signed into law on November 15, 1990 (Pub. L. 101–549), incorporated additional substances into the CERCLA list; and (2) RCRA listing rules and the rule revising the RCRA toxicity characteristics also incorporated substances into the CERCLA list.

Under section 112 of the CAA, as amended, 190 specific substances or broad generic categories of substances are listed as hazardous air pollutants; 52 of these (47 individual substances and five broad generic categories of substances) did not previously appear individually on the list of CERCLA hazardous substances at 40 CFR 302.4. The substances not previously listed became hazardous substances pursuant to CERCLA section 101(14) upon enactment of the 1990 CAA Amendments and were assigned a one-pound statutory RQ under CERCLA section 102(b).

In an October 22, 1993 Notice of Proposed Rulemaking (NPRM) (58 FR 54836), EPA proposed to add the 47 hazardous air pollutants to the regulatory list of CERCLA hazardous substances at 40 CFR 302.4, and adjust their RQs. For the five CAA hazardous air pollutants that are broad generic categories, EPA requested public comment on five options for reporting that could potentially apply.[1]

The October 22, 1993 NPRM also proposed to adjust the RQs for certain hazardous wastes listed under RCRA. In today's final rule, the Agency is adjusting the RQs for four hazardous wastes (F025, K088, K090, and K091) included in the October 22, 1993 NPRM from their statutory one-pound levels. As proposed in the October 22, 1993 NPRM, EPA is readjusting the RQs for five additional RCRA wastes (F004, D023, D024, D025, and D026) that already have been designated as hazardous and assigned adjusted RQs. RQ adjustments for the two remaining RCRA wastes that are included in this final rule, F037 and F038, were proposed prior to the October 22, 1993 NPRM. On March 27, 1991, EPA evaluated F037 and F038 under the RQ adjustment methodology and proposed one-pound adjusted RQs for these wastes (56 FR 12826); the Agency is promulgating the one-pound RQs for F037 and F038 in this final rule.

C. Reportable Quantity Adjustment Methodology

In today's rule, EPA is promulgating adjusted RQs for the individual hazardous air pollutants based upon specific scientific and technical criteria that relate to the possibility of harm from the release of a CERCLA hazardous substance in certain amounts.[2] EPA's methodology for adjusting the RQs of individual hazardous substances begins with an evaluation of the intrinsic physical, chemical, and toxicological properties of each hazardous substance. The intrinsic properties examined—called "primary criteria"—are aquatic toxicity, mammalian toxicity (oral, dermal, and inhalation), ignitability, reactivity, chronic toxicity, and potential carcinogenicity.[3]

Generally, for each intrinsic property, EPA ranks hazardous substances on a scale, associating a specific range of values on each scale with an RQ value of 1, 10, 100, 1,000, or 5,000 pounds. The data for each hazardous substance are evaluated using various primary criteria; each hazardous substance may receive several tentative RQ values based on its particular intrinsic properties. The lowest of the tentative RQs becomes the "primary criteria RQ" for that substance.

After the primary criteria RQs are assigned, substances are further evaluated for their susceptibility to certain degradative processes, which are used as secondary adjustment criteria.

These natural degradative processes are biodegradation, hydrolysis, and photolysis (BHP).[4] If a hazardous substance, when released into the environment, degrades relatively rapidly to a less hazardous form by one or more of the BHP processes, its RQ (as determined by the primary RQ adjustment criteria), is generally raised one level.[5] Conversely, if a hazardous substance degrades to a more hazardous product after its release, the original substance is assigned an RQ equal to the RQ for the more hazardous substance, which may be one or more levels lower than the RQ for the original substance.

EPA indicated in an August 30, 1989 proposed rule (54 FR 35988) that substances could be further evaluated by applying the methodology for developing threshold planning quantities (TPQs) pursuant to EPCRA section 302, but has not yet incorporated the TPQ methodology as part of the RQ adjustment methodology in any final rule.

EPA currently is evaluating the RQ adjustment methodology to identify ways in which the methodology could be improved; for example, the Agency is considering whether the application of BHP to developmental toxicants should be limited. EPA is interested in receiving other suggestions for refining or improving the existing RQ adjustment methodology. It is important to note, however, that the Agency does not intend to formally respond as part of the rulemaking to suggestions provided by the public for changes to the RQ adjustment methodology.

D. Summary of Changes From the Proposed Rule

EPA has made the following changes from the October 22, 1993 NPRM. Each change is discussed in the preamble section noted (if applicable).

- Six RCRA hazardous wastes (K119, K120, K121, U354, U355, and U357) with RQ adjustments proposed in the October 22, 1993 NPRM are not included in today's final rule. These six wastes are proposed, but not yet finalized, as RCRA hazardous wastes and, thus, are not yet CERCLA hazardous substances, as defined by CERCLA section 101(14)(C).
- The Agency is promulgating one-pound final RQs for two RCRA wastes, F037 and F038, that did not appear in the October 22, 1993 NPRM (see Section II.B.6).
- In the October 22, 1993 NPRM, EPA proposed to add m-xylene, one of the 47 hazardous air pollutants, to Table 302.4 and to adjust its statutory one-pound RQ to 100 pounds. After reviewing data recently submitted by the commenters, however, EPA has decided to promulgate a 1,000-pound final RQ for m-xylene (see Section II.B.1).
- The Agency also proposed in the October 22, 1993 NPRM to add dimethylformamide, another hazardous air pollutant, to Table 302.4 and to adjust its statutory one-pound RQ to 10 pounds. After evaluating data submitted by the commenters, the Agency has decided in this final rule to promulgate a 100-pound final RQ for dimethylformamide (see Section II.B.2).
- Similarly, after reviewing comments submitted on the 100-pound RQ proposed for titanium tetrachloride in the October 22, 1993 NPRM, the Agency has decided to promulgate a 1,000-pound RQ for this substance in today's final rule (see Section II.B.3).
- EPA requested public comments on five options for assigning RQs to the

[1] For a list of these options, see Section II.C.1 of today's preamble.

[2] See Section II.C.1 of this preamble for a discussion of RQ adjustments for the five broad generic categories.

[3] For further information on assigning adjusted RQs to hazardous substances under the primary criteria, see the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 2, August 1986 (for chronic toxicity), Volume 3, July 1989 (for potential carcinogenicity), and Volume 1, March 1985 (for the four other primary criteria), available for inspection at the CERCLA Docket Office, Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

[4] For further information on the methodology for applying BHP, see the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 1, March 1985, available for inspection at the CERCLA Docket Office, Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

[5] No RQ level increase based on BHP occurs if the primary criteria RQ is already at its highest possible level (100 pounds for potential carcinogens and 5,000 pounds for other types of hazardous substances). BHP is not applied to radionuclides.

CAA broad generic categories in the October 22, 1993 NPRM. In today's final rule, EPA is promulgating one of the scenarios described in Option 5, namely, the Agency is assigning no RQs to the categories, but will evaluate certain substances within the categories to determine whether they should be individually listed in Table 302.4 of 40 CFR 302.4, and be assigned RQs (see Section II.C.1).

II. Response to Comments

A. Support for Proposed RQ Adjustments

1. Methylene Diphenyl Diisocyanate

The proposed RQ adjustment for methylene diphenyl diisocyanate (MDI) from the statutory one-pound level to 5,000 pounds was supported by all of the 84 commenters who submitted comments regarding this substance.[6] The Agency agrees with commenters that the 5,000-pound adjusted RQ for MDI will reduce the number of reports of releases that are unlikely to pose a threat to public health or welfare or the environment, thereby reducing the reporting burden on industry and allowing EPA to focus its resources on those releases that are more likely to pose such threats.

The Agency is continuing to evaluate data on the chronic toxicity and potential carcinogenicity of MDI, as well as the potential carcinogenicity of p-phenylenediamine, another hazardous air pollutant included in today's final rule. Because these evaluations have not been completed, EPA is promulgating a 5,000-pound RQ for both MDI and p-phenylenediamine in today's final rule, as proposed. If, however, as a result of the potential carcinogenicity and chronic toxicity evaluations, the Agency determines that a change in the 5,000-pound RQ for either of these substances is warranted, EPA will propose to readjust the RQ for MDI and/or p-phenylenediamine in a separate rulemaking.

2. Ethylene Glycol

The proposed adjustment of the RQ for ethylene glycol from the statutory one-pound level to 5,000 pounds was supported by 75 of the 76 commenters who submitted comments on this substance.[7] It is important to note, however, that releases of ethylene glycol equal to or exceeding 5,000 pounds during a 24-hour period (e.g., from airplane de-icing operations) are reportable under CERCLA. If such a release is not federally permitted and, thus, is not exempt from CERCLA reporting and liability provisions, notification to the NRC under CERCLA and to the appropriate State emergency response commissions (SERCs) and local emergency planning committees (LEPCs) under EPCRA is required. The Agency anticipated that releases in excess of 5,000 pounds may occur and noted in the preamble to the October 22, 1993 NPRM that releases of ethylene glycol in de-icing operations equal to or exceeding the 5,000-pound RQ may qualify for reduced reporting as "continuous releases."[8]

B. Opposition to Proposed RQ Adjustments

1. Xylenes

In addition to RQ adjustments for the 47 individual CAA hazardous air pollutants, EPA also proposed an RQ adjustment for the hazardous substance category, "xylene (mixed)." This category is already listed in Table 302.4 as a CERCLA hazardous substance and represents a mixture of the three xylene isomers, m-xylene, o-xylene, and p-xylene, in any proportion. In 1990, the CAA Amendments added the three xylene isomers individually to the CAA section 112 list of hazardous air pollutants. In today's final rule, EPA is adding these three isomers as three separate entries in the 40 CFR 302.4 list of CERCLA hazardous substances.

In the October 22, 1993 NPRM, the Agency proposed to adjust the RQs for m-xylene and p-xylene to 100 pounds, and the RQ for o-xylene to 1,000 pounds. Because there are three substances within the xylenes category and EPA had sufficient data to assign RQs to each of these substances, the Agency also proposed to assign the lowest RQ of the individual member substances to the category. Specifically, EPA proposed to adjust the RQ for the "xylene (mixed)" category from 1,000 pounds to 100 pounds to be consistent with the data used to develop the 100-pound proposed RQs for the m- and p-xylene isomers. In today's final rule, the Agency is promulgating the 100-pound proposed RQ for "xylene (mixed)," as described below in Section II.B.1.a of the preamble.

It is important to note that the preceding paragraph only describes the Agency's adjustment of the RQ for the "xylenes (mixed)" category. This discussion does not address whether particular releases of mixed xylenes are reportable under various scenarios. The person in charge of a facility from which a release of mixed xylenes occurs should apply the mixture rule (as described in Section II.B.6 of today's preamble) on a case-by-case basis to determine if a particular release of mixed xylenes must be reported under CERCLA section 103 and EPCRA section 304. Essentially, the Agency's mixture rule provides that, if the quantity of each of the xylene isomers in a particular mixture of xylenes is known (and there are no other hazardous constituents in the xylenes mixture), reporting is required only when an RQ or more of m-, o-, or p-xylene is released. If, however, the quantity of one or more of the xylene isomers is unknown, reporting is required when 100 pounds or more of the total mixture of xylenes is released.

a. *Aquatic Toxicity.* Nine commenters favored promulgation of 1,000-pound adjusted RQs for m- and p-xylene and for the "xylene (mixed)" category, rather than the 100-pound RQs proposed for these substances. Six of the nine commenters asserted that the Agency had incorrectly assigned 100-pound primary criteria RQs to these substances. As correctly noted by these commenters, the 100-pound RQ adjustments proposed for m- and p-xylene were based on studies of fish species other than the standard species (i.e., fathead minnow or bluegill) preferred for assigning RQs based on aquatic toxicity. As stated in previous technical background documents to support RQ adjustment rulemakings, aquatic toxicity studies from other fish species may be used by the Agency to establish RQs when data on standard species are not available.

Several commenters performed and submitted additional studies (Springborn Laboratories (1994a and 1994b))[9] on the aquatic toxicity of m- and p-xylene using standard species. EPA has reviewed these and other standard species studies (Geiger et al. (1986, 1990))[10] submitted by the commenters on the xylene isomers.

Fathead minnow data on m-xylene in both the Geiger et al. (1990) and Springborn Laboratories (1994b) studies support the assignment of a 1,000-pound RQ for this substance.[11] In today's final rule, therefore, EPA is not promulgating the 100-pound RQ for m-xylene as proposed; rather, the Agency is promulgating a 1,000-pound RQ for this substance based, in part, on the aquatic toxicity data reported in Geiger et al. (1990) and Springborn Laboratories (1994b). (Chronic toxicity and ignitability data also support a 1,000-pound RQ for m-xylene.)

Fathead minnow data on p-xylene, however, as reported in both the Geiger et al. (1986) and Springborn Laboratories (1994a) studies, support the 100-pound RQ proposed for p-xylene in the October 22, 1993 proposed rule.[12] Therefore, EPA is finalizing a 100-pound adjusted RQ for p-xylene based on the standard aquatic toxicity data provided in Geiger et al. (1986) and Springborn Laboratories (1994a), and supported by the non-standard aquatic toxicity data used by EPA in the October 22, 1993 NPRM as the basis for the 100-pound RQ proposed for this substance.

With regard to the comments recommending a 1,000-pound RQ for the "xylenes (mixed)" category, although EPA appreciates the aquatic toxicity data provided by the commenters, the Agency is not using these data to determine an RQ for this hazardous substance category in the final rule. As noted previously, because there are three xylene isomers within the "xylenes (mixed)" category and EPA has sufficient data to assign RQs to each of these three substances, the Agency is assigning the lowest RQ of the individual member substances to the category. Thus, EPA is readjusting the 1,000-pound RQ for xylenes (mixed) to 100 pounds, as proposed, to be consistent with the 100-pound RQ for one of its member substances, p-xylene. Assigning a 100-pound RQ to the "xylenes (mixed)" category is consistent with other instances (e.g., cyanides) in which the Agency has assigned the lowest RQ of the individual member substances to a hazardous substance category, because the category contains only a limited number of substances and EPA has sufficient data to assign RQs to all of these substances in the category.

b. *Application of BHP.* Eight commenters contended that EPA did not properly evaluate xylenes for their susceptibility to degradation in the environment in proposing adjusted RQs for these substances in the October 22, 1993 NPRM. The Agency disagrees. EPA conducted a comprehensive search for data on both the primary RQ adjustment criteria and the secondary criteria of BHP, and was unable to locate any convincing degradation data indicating that application of BHP to raise the RQs of xylenes was warranted.[13] In addition, EPA applies the secondary RQ adjustment criteria of BHP to raise the RQ of a hazardous substance only when the reaction products are less hazardous than the parent substance. Data submitted on the xylenes indicate that the degradation products of xylenes in the atmosphere include 2,4-dimethylphenol and formaldehyde, each of which is a CERCLA hazardous substance with a 100-pound RQ. Because the RQs of these two degradative products are 100 pounds, application of the secondary criteria of BHP to the xylenes could not be used to raise the 1,000-pound RQs for m- and o-xylene or the 100-pound RQs for p-xylene and xylenes (mixed).

2. Dimethylformamide

One commenter opposed the 10-pound RQ proposed for dimethylformamide and asserted that a 100-pound RQ is more appropriate for this substance. To support this assertion, the commenter submitted data from a number of epidemiology and animal toxicity studies the commenter had used to challenge the Agency's classification of dimethylformamide as a probable human carcinogen. As the commenter correctly noted, the Agency proposed in the October 22, 1993 NPRM to adjust the RQ for dimethylformamide to 10 pounds, based on an evaluation of its potential carcinogenicity. Based on data reviewed at that time indicating limited evidence of carcinogenic effects in humans and inadequate evidence in animals, EPA classified dimethylformamide as a weight-of-evidence Group B1, probable human carcinogen. Combining this weight-of-evidence classification with a potency Group 2 classification resulted in a hazard ranking of "medium" and a proposed adjusted RQ of 10 pounds.

Since publication of the October 22, 1993 NPRM, however, the Agency has completed its own internal review of data on the potential carcinogenicity of dimethylformamide, including relevant data submitted by the commenter. As a result of this review, EPA agrees with the commenter that the weight of evidence is not currently sufficient to classify dimethylformamide as a Group B1, probable human carcinogen. For this reason, EPA has not relied on the potential carcinogenicity criterion as a basis for the RQ adjustment for dimethylformamide; rather, in today's final rule, the Agency is promulgating a 100-pound RQ for this substance based on chronic toxicity.

3. Titanium Tetrachloride

Two commenters asserted that a 1,000-pound primary criteria RQ is scientifically justified for titanium tetrachloride based on toxicity and, thus, more appropriate than the 100-pound RQ proposed for this substance. Although EPA continues to believe that a primary criteria RQ of 100 pounds is warranted for titanium tetrachloride,[14] the Agency has decided to promulgate an adjusted RQ of 1,000 pounds for this substance based on a re-evaluation of titanium tetrachloride under the secondary RQ adjustment criterion of hydrolysis. As noted in Section II.B.1.b of this preamble, one-level upward RQ adjustments based on hydrolysis are warranted only when the secondary products of the reaction are less toxic than the parent compound. The most prevalent secondary product of the titanium tetrachloride hydrolysis reaction is hydrochloric acid (or

[6] Detailed responses to these comments on MDI are included in Section I.A of the responses to comments document for this rulemaking, available for inspection at the CERCLA Docket Office, Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

[7] Detailed responses to these comments on ethylene glycol are included in Section I.B of the responses to comments document for this rulemaking, available at the CERCLA Docket Office, Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

[8] In addition to MDI and ethylene glycol, the Agency received a number of comments in support of RQs proposed for other individual hazardous air pollutants. Detailed responses to these comments are included in Section I.C of the responses to comments document for this rulemaking, available at the CERCLA Docket Office, Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

[9] Machado, M. 1994a. para-Xylene - Acute Toxicity to Fathead Minnow (*Pimephales promelas*) Under Flow-Through Conditions. Springborn Laboratories, Wareham, Massachusetts; and Machado, M. 1994b. meta-Xylene—Acute Toicity to Fathead Minnow (*Pimephales promelas*) Under Flow-Through Conditions. Springborn Laboratories, Wareham, Massachusetts.

[10] Geiger, D.L., S.H. Poirier, L.T. Brooke, D.J. Call, Eds. 1986. Acute Toxicities of Organic Chemicals to Fathead Minnows (*Pimephales promelas*). Vol III. Center for Lake Superior Environmental Studies, University of Wisconsin-Superior; and Geiger, D.L., S.H. Poirier, L.T. Brooke, D.J. Call, Eds. 1990. Acute Toxicities of Organic Chemicals to Fathead Minnows (*Pimephales promelas*). Vol V, Center for Lake Superior Environmental Studies, University of Wisconsin-Superior.

[11] For a detailed discussion of the studies on m-xylene, see Response Numbers II.A.3 and II.A.6 in Section II of the responses to comments document for this rulemaking, available for inspection at the CERCLA Docket Office, Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

[12] The Agency disagrees with one commenter's assertion that data from Geiger et al. (1986) are unacceptable because of certain deviations from standard test conditions. For a detailed discussion of the studies on p-xylene, see Response Numbers II.A.3, II.A.4, and II.A.5 in Section II of the responses to comments document for this rulemaking, available for inspection at the CERCLA Docket Office, Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

[13] For detailed responses to comments regarding the degradation of xylenes and application of BHP to these substances, see Response Numbers II.A.10 and II.A.11 in Section II of the responses to comments document for this rulemaking, available for inspection at the CERCLA Docket Office, Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

[14] For further discussion of the chronic toxicity primary criterion RQ for titanium tetrachloride, see Response Number II.B.17 in Section II of the responses to comments document for this rulemaking, available for inspection at the CERCLA Docket Office, Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

hydrogen chloride gas), which is a CERCLA hazardous substance with a 5,000-pound RQ. In an August 30, 1989 rule (54 FR 35988), the Agency proposed to adjust the 5,000-pound RQ for hydrochloric acid to 100 pounds, based on application of the TPQ methodology (see Section I.C of today's preamble) as part of the RQ adjustment methodology. Because the proposed 100-pound RQ for hydrochloric acid (the reaction product) from the 1989 rule was no higher than the 100-pound primary criteria RQ for titanium tetrachloride (the parent compound), the Agency did not apply the secondary RQ adjustment criteria to raise the RQ for titanium tetrachloride in the October 22, 1993 NPRM.

As of today's final rule, however, EPA has not yet promulgated the 100-pound RQ for hydrochloric acid that was proposed in the August 30, 1989 rule and has not yet included the TPQ methodology as part of the RQ adjustment methodology in any final rule; thus, the current 5,000-pound RQ for hydrochloric acid still applies. This 5,000-pound RQ for hydrochloric acid is higher than the 100-pound RQ for titanium tetrachloride (i.e., the secondary product of the hydrolysis reaction is less toxic than the parent compound). Therefore, the Agency is applying the secondary RQ adjustment criterion of hydrolysis in today's final rule to raise the 100-pound primary criteria RQ for titanium tetrachloride one level to 1,000 pounds.[15]

4. Other Individual CAA Hazardous Air Pollutants

a. *Biphenyl.* Four commenters supported a 1,000-pound adjusted RQ for biphenyl, rather than the 100-pound RQ adjustment proposed in the October 22, 1993 NPRM. One of these commenters submitted data on the biodegradation of biphenyl and concluded that these data support a 1,000-pound RQ. After reviewing the data submitted by this commenter, the Agency disagrees with the commenter's conclusions. The data on biphenyl provided by the commenter do not meet several conditions necessary for adjustment based on biodegradation, including: (1) The substance must have a five-day biochemical oxygen demand (BOD_5) equal to or greater than 50% in "unadapted" media, which have not been previously exposed to the substance; and (2) the substance must be in a form that is available to microorganisms responsible for biodegradation.[16] Therefore, the Agency is promulgating an adjusted RQ of 100 pounds for biphenyl based on the chronic toxicity criterion, with no upward adjustment based on BHP.

b. *1,3-Butadiene.* Two commenters opposed the 10-pound proposed RQ for 1,3-butadiene. These commenters submitted potential carcinogenicity data to support the assertion that the potency factor calculated for 1,3-butadiene by the Agency in the proposed rule was "at least an order of magnitude too high." According to the commenters, the Agency should recalculate a more accurate (and lower) value for the potency of 1,3-butadiene and should promulgate a 100-pound RQ for this substance, rather than the 10-pound proposed RQ.

Pending completion of its review of new epidemiology data on 1,3-butadiene submitted by the commenters, as well as data on the appropriate model for conducting quantitative risk assessments on this substance, the Agency will retain its current estimates, including a potency factor calculation of 8.4 $(mg/kg/day)^{-1}$ for RQ adjustment purposes.[17] This potency factor, coupled with a weight-of-evidence Group B2 classification, results in a final RQ of 10 pounds for 1,3-butadiene in today's final rule. EPA is continuing its comprehensive review of the potential carcinogenicity data on 1,3-butadiene to determine if a change in the Agency's potency factor estimate is necessary. The Agency will readjust the RQ for 1,3-butadiene in a separate rulemaking if its review results in an RQ other than 10 pounds for this substance.

c. *Cresols.* The Agency also proposed in the October 22, 1993 NPRM to adjust the RQ for another hazardous substance category, "cresol(s)," which, similar to "xylene (mixed)," is already listed in Table 302.4. This listing for the hazardous substance cresols represents a mixture of the three cresol isomers (m-cresol, o-cresol, and p-cresol) in any proportion. In 1990, the CAA Amendments added the three cresol isomers individually to the CAA section 112 list of hazardous air pollutants. In today's final rule, EPA is adding these three isomers as three separate entries in the 40 CFR 302.4 list of CERCLA hazardous substances.

In the October 22, 1993 NPRM, the Agency proposed adjustments to the statutory one-pound RQs for the three cresol isomers. EPA proposed to adjust each of the RQs for m-, o-, and p-cresol to 100 pounds based on studies published since the final rule designating the category cresols as a hazardous substance and assigning it a 1,000-pound RQ (see 51 FR 34561, September 29, 1986). Because there are three substances within the cresols category and EPA had sufficient data to assign 100-pound RQs to each of these substances, the Agency proposed to adjust the RQ for the "cresol(s)" category from 1,000 pounds to 100 pounds to be consistent with the data used to develop the 100-pound RQs for the m-, o-, and p-cresol isomers.

One commenter opposed the 100-pound RQ for the cresol isomers and asserted that the recent reclassification of cresols in the IRIS data base as a weight-of-evidence Group C, possible human carcinogen, was based on studies of doubtful validity. Based on data submitted to support its assertion, the commenter requested that EPA retain the 1,000-pound RQ for cresols, pending the outcome of EPA's decision on this matter.

EPA disagrees with the commenter that the 1,000-pound RQ for cresols should be retained. Hazardous substances are classified in weight-of-evidence Group C when the Agency determines that there is "limited" evidence of carcinogenicity in animals, in the absence of human data. According to EPA guidelines,[18] limited evidence of carcinogenicity in animals can be indicated by a wide variety of effects, including: (1) Malignant tumor responses in a single, well-conducted experiment that does not meet conditions for "sufficient" evidence; (2) tumor responses of marginal statistical significance in studies having inadequate design or reporting; (3) benign tumors (without malignant tumors) from an agent showing no response in a variety of short-term tests for mutagenicity; and (4) responses of marginal statistical significance in a tissue known to have a high or variable background rate of cancer.

EPA has carefully reviewed the data submitted by the commenter. As a result of this review, EPA has decided to retain its classification of each of the cresol isomers (m-, o-, and p-cresol) in weight-of-evidence Group C, possible human carcinogen. The deficiencies noted by the commenter regarding the in vitro and in vivo studies relied on by the Agency are reasons for the Agency's decision not to classify the evidence of carcinogenicity as "sufficient."[19] Reviewed together, however, these studies do provide limited evidence of animal carcinogenicity and, thus, justify classification of the cresol isomers in weight-of-evidence Group C. The Agency, therefore, will retain its original decision to adjust the RQ for cresols from 1,000 to 100 pounds, and to establish final RQs of 100 pounds for each of the cresol isomers.[20]

d. *Diethanolamine.* Three commenters opposed the 100-pound proposed RQ for diethanolamine based on the chronic toxicity criterion. The commenters asserted that a primary criteria RQ of 1,000 pounds is more appropriate for this substance, and that application of the secondary RQ adjustment criterion of biodegradation should be applied to raise the final RQ to 5,000 pounds.

Under the methodology for developing primary criterion RQs based on chronic toxicity, a substance is first assigned two rating values, one based on the dose that causes a particular effect, and one based on the severity of the effect. The dose rating value (RV_d) ranges from one to 10, with 10 representing the most toxic substances. The effect rating value (RV_e) also ranges from one to 10, with 10 representing the most severe effect. The product of the RV_d and RV_e for a substance yields a composite score between one and 100. Tentative chronic toxicity RQs are then assigned on the basis of the composite score.[21]

Because no chronic toxicity studies have been reported for diethanolamine, both EPA and the commenters used data from a 13-week subchronic study (Melnick (1992)[22] to develop their respective conclusions. Based on a different interpretation of these same data, the commenters supported use of an RV_e of 5, rather than the RV_e of 7 used by EPA to assign a 100-pound primary criterion RQ for diethanolamine. The commenters generally agreed with the Agency on an RV_d of 3.8 for the substance.

In supporting an RV_e of 5 for diethanolamine, one of the commenters asserted that increased blood urea nitrogen (BUN) is incorrectly listed as an effect and that reported kidney changes do not identify impairment of kidney function. EPA disagrees; upward trends in relative kidney weight and BUN have been observed together, suggesting that kidney function (i.e., removal of excess urea) in the exposed animals is impaired, resulting in increased kidney weight. The Agency, therefore, considers it appropriate to place diethanolamine in RV_e category 7 because of the observed "necrosis * * * with a detectable decrement of organ function." This results in a composite score of 26.6 (i.e., 3.8 RV_d x 7 RV_e) and a corresponding chronic toxicity primary criterion RQ of 100 pounds.

This commenter also supported raising the primary criterion RQ for diethanolamine one level, based on the secondary criterion of biodegradation. Two (Bridie et al. (1979) and Gannon et al. (1978))[23] of the eight studies submitted by the commenter on the biodegradation of diethanolamine reported BOD_5 values equal to or greater than the standard for upward RQ adjustment on the basis of biodegradation. These experiments, however, were conducted using "adapted" sewage sludge (see previous discussion on biphenyl), rather than under conditions normally found in the environment. One (Bridie et al. (1979)) of these two studies also evaluated diethanolamine using unadapted sewage sludge, but the result was a BOD_5 of only two percent.

Because the data provided by the commenter do not justify application of the secondary RQ adjustment criterion of biodegradation to diethanolamine, the Agency has promulgated a final RQ of 100 pounds (as proposed) based on chronic toxicity.

e. *Ethylene Glycol.* One commenter stated that, based on the incidence of pet and wildlife poisonings due to ingestion of ethylene glycol antifreeze, the 5,000-pound proposed RQ for ethylene glycol is inappropriate. The commenter asserted that, by raising the RQ to 5,000 pounds, EPA would be sending the false message that ethylene glycol is not dangerous. According to the commenter, such a message would result in reduced attention to all but the largest releases of this substance. For this reason, the commenter urges EPA to retain a one-pound RQ for ethylene glycol.

While EPA shares the concerns expressed by the commenter regarding acute exposures to ethylene glycol, the Agency believes that a lower RQ for ethylene glycol would not necessarily prevent accidental poisonings to humans, pets, and wildlife. RQs under CERCLA serve only to notify the Federal, State, and local governments of the release so that authorities can determine whether a response is necessary under the particular circumstances of the release.

In addition, the technical data supplied by the commenter do not support assignment of an RQ for ethylene glycol below 5,000 pounds. Under EPA's RQ adjustment methodology, an acute mammalian toxicity RQ for oral exposure to a hazardous substance (e.g., ethylene glycol) is determined based on the dose that is lethal to 50 percent of the animal population tested (known as the LD_{50} value). For the oral exposure route, LD_{50}s of between 100 and 499 milligrams per kilogram (mg/kg) define the range that results in a 5,000-pound RQ based on acute mammalian toxicity. LD_{50} values above 499 mg/kg also result in RQs at the maximum 5,000-pound level; LD_{50}s below 100 mg/kg result in RQs between one and 1,000 pounds.

The commenter supplied several pieces of information to support the position that ethylene glycol should be assigned a one-pound RQ. This information included studies on the toxicity of ethylene glycol, a table showing regulation of ethylene glycol under Federal environmental statutes (e.g., the CAA and CERCLA), and newspaper articles describing accidental poisonings. EPA has carefully reviewed these materials. None of the data submitted by the commenter support an RQ of one-pound; in fact, all of these data are well above the upper bound of the range of acute mammalian toxicity

[15] If EPA incorporates the TPQ methodology as part of the RQ adjustment methodology and adjusts the RQ for hydrochloric acid in a final rule, the RQ for titanium tetrachloride will be readjusted accordingly.

[16] For detailed responses to comments on the biodegradation of biphenyl, see Response Numbers II.B.4 and II.B.5 in Section II of the responses to comments document for this rulemaking, available for inspection at the CERCLA Docket Office, Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

[17] For detailed responses to comments on the potential carcinogenicity of 1,3-butadiene, and EPA's basis for using its current estimates to adjust the RQ for this substance, see Response Numbers II.B.7 and II.B.8 in the responses to comments document for this rulemaking, available for inspection at the CERCLA Docket Office, Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

[18] U.S. EPA 1988. Methodology for Evaluating Potential Carcinogenicity in Support of Reportable Quantity Adjustments Pursuant to CERCLA Section 102. Office of Health and Environmental Assessment, Washington, DC.

[19] For further information on the data and findings of the in vitro and in vivo studies, see Section 3 of the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 7, available for inspection as part of the public docket for this rulemaking at the CERCLA Docket Office, Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

[20] For detailed responses to the comments on the carcinogenicity of cresols, see Response Numbers II.B.10 and II.B.11 in Section II of the responses to comments document for this rulemaking, available for inspection at the CERCLA Docket Office, Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

[21] For further information on the relationship of composite scores to tentative chronic toxicity RQs, see the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 2, available for inspection as part of the public docket for this rulemaking at the CERCLA Docket Office, Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

[22] Melnick, R.L., 1992. NTP Technical Report on the Toxicity Studies of Diethanolamine (CAS No. 111-42-2) Administered Topically and in Drinking Water to F344/N Rats and B6C3F1 Mice. National Toxicology Program. NIH Publication No. 92-3343.

[23] Bridie, A.L. et al., 1979. Biochemical Oxygen Demand and Chemical Oxygen Demand of Some Petrochemicals. *Water Research* 13:627-30; and Gannon, J.E. et al., 1978. Microbial Degradation of Diethanolamine and Related Compounds. *Microbios.* 23:7-18.

data (499 mg/kg) that define a 5,000-pound RQ.[24]

The commenter also provided a table showing that ethylene glycol, unlike propylene glycol, is regulated under various environmental statutes. The commenter appears to be using the table to suggest that ethylene glycol is the more toxic of the two substances. Regardless of whether this assertion is correct, listing of ethylene glycol (i.e., under the CAA and CERCLA) indicates only that an RQ must be assigned to this CERCLA hazardous substance, but does not provide the technical data needed to support a particular RQ. The newspaper articles submitted by the commenter do not provide any data that can be used to adjust the RQ for ethylene glycol.

As noted above, all of the data from the studies submitted by the commenter are above the range of acute mammalian toxicity data that result in a 5,000-pound RQ. In fact, EPA has assigned a lower primary criteria RQ based on chronic toxicity (1,000 pounds) than indicated based on mammalian toxicity (5,000 pounds). The Agency then applied the secondary RQ adjustment criteria of BHP, which resulted in an upward adjustment of the 1,000-pound chronic toxicity RQ to 5,000 pounds based on ethylene glycol's susceptibility to biodegradation in the environment.

Thus, EPA does not have sufficient technical justification to establish a one-pound adjusted RQ for ethylene glycol, as requested by the commenter. Nevertheless. the Agency encourages users of ethylene glycol to exercise greater precautions to help prevent accidental poisonings. In addition, EPA would like to clarify that the 5,000-pound final RQ for ethylene glycol should not be interpreted as a determination that smaller releases are safe under all possible release scenarios.

5. K088

To assign an RQ to a hazardous waste stream, the Agency first identifies the substances that are constituents of the waste stream (as listed in 40 CFR part 261, Appendix VII) and determines the RQs for these constituents. The lowest of the constituent RQs becomes the RQ for the waste stream. In the case of spent potliner wastes (K088), the only hazardous constituent is cyanide, which is a CERCLA hazardous substance with a final RQ of 10 pounds (50 FR 13456, April 4, 1985). For this reason, EPA proposed an RQ of 10 pounds for waste stream K088 in the October 22, 1993 NPRM.

One commenter requested that the proposed 10-pound RQ for K088 be raised to 1,000 pounds based on the cyanide content of this waste stream. The Agency notes, however, that the RQ adjustment methodology does not consider the "content" or concentration of a constituent in the waste stream in determining an RQ for that waste stream. Therefore, EPA is promulgating a 10-pound RQ for K088 in today's final rule.

6. F037 and F038

As noted in Section I.B., the Agency has decided to promulgate final RQs for two hazardous waste streams (F037 and F038) for which RQs were proposed on March 27, 1991 (56 FR 12862). For this reason, EPA is addressing the two comments submitted on this previous proposal in today's final rule.

The two commenters supported EPA's methodology of applying the Agency's "mixture rule" in determining whether CERCLA notification for F037 and F038 is required, but opposed an RQ of one pound for F037 and F038 when constituent quantities of the waste are unknown.

Under the mixture rule, as set forth in 40 CFR 302.6(b), if the quantity of each of the constituents of a waste is known, reporting is required only when an RQ or more of any of the individual hazardous constituents is released. Knowledge that the average quantities of hazardous constituents in several waste streams with the same identification number (e.g., F037) are below their respective hazardous constituent RQs is not a sufficient basis for applying this provision of the mixture rule to all waste streams with that identification number.

The Agency's mixture rule also provides that, if the quantity of one or more of the hazardous constituents is unknown, reporting is required when an RQ or more of the waste itself is released. Thus, if the quantity of one or more of the constituents of F037 or F038 was unknown, reporting would be required when the amount of the waste stream released is one pound or more.

EPA believes that the one-pound adjusted RQs for waste streams F037 and F038 are necessary to fulfill the Agency's CERCLA mandate to protect public health and welfare and the environment from releases of these waste streams that may contain concentrations of hazardous constituents greater than those considered "typical" by the commenter.[25]

C. Reporting Requirements for CAA Broad Generic Categories

1. Options for Assigning RQs

Of the broad generic categories of chemicals listed as hazardous air pollutants by the CAA Amendments, five categories—cobalt compounds, glycol ethers, manganese compounds, fine mineral fibers, and polycyclic organic matter—were not previously on the CERCLA list.

In the October 22, 1993 NPRM, EPA requested public comments on the following five options for addressing the CERCLA reporting requirements for these broad categories:

(1) Assign no RQ level to the CAA broad generic categories;

(2) Retain a one-pound RQ for these categories (i.e., the lowest RQ EPA assigns to individual hazardous substances);

(3) Assign an RQ to each category that reflects either the average RQ or the lowest RQ of the substances within each category;

(4) Assign a 5,000-pound RQ to each category (i.e., the highest RQ EPA assigns to individual hazardous substances); or

(5) Identify and assign an RQ to certain substances within each category. For the remaining substances within each of the five categories not assigned a specific RQ, assign no RQ, retain a one-pound RQ, assign an average or lowest RQ, or assign a 5,000-pound RQ.

In the preamble to the proposed rule, EPA described a variety of factors that it would consider in choosing an option that protects public health and welfare and the environment. These factors included: the length of time EPA would need to evaluate a large number of compounds individually; the need to have meaningful information reported to the National Response Center (i.e., avoiding either too much or too little information); and the need to avoid unnecessary and costly reporting burdens. After careful evaluation of these factors and consideration of all public comments on the five options, the Agency believes that, as suggested by 34 of the 44 commenters who addressed the options, the most effective balance of these factors would be to implement one of the reporting scenarios described in Option 5. Under

[24] For a detailed response to this comment on ethylene glycol, see Response Number II.B.16 in Section II of the responses to comments document for this rulemaking, available for inspection at the CERCLA Docket Office, Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

[25] For a detailed discussion of these responses to comments on F037 and F038, see Response Numbers V.1 and V.2 in Section V of the responses to comments document for this rulemaking, available for inspection at the CERCLA Docket Office, Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

the selected option, the Agency is assigning no RQ level to the five CAA broad generic categories, but will evaluate and may individually list in Table 302.4 of 40 CFR 302.4 certain substances within the categories, and assign RQs to these substances.

In response to five commenters' requests to accelerate promulgation of the RQ adjustments for the hazardous air pollutants proposed in the October 22, 1993 NPRM, the Agency expedited the schedule for today's final rule; for this reason, the Agency has not yet implemented the portion of Option 5 that involves identifying additional substances within the categories to determine if individual listing in Table 302.4 is warranted, but will do so at a later date.

The remainder of Section II.C first provides an overview of EPA's evaluation of each of the five options using the factors presented in the proposed rule. This overview also includes the number of commenters that favored each option. The public comments are then summarized and responses provided by the following topic areas: (1) Definition and scope of the categories; and (2) other issues.

Selecting Option 1 (assigning no RQ to the five CAA broad generic categories) would eliminate the time needed for EPA to evaluate member substances individually. Option 1 also would be the least costly and burdensome of the options because reporting of such member substances would not be required (except for those that are already listed separately). The major disadvantage of Option 1 is that it does not contain any provisions for individually listing and assigning RQs to specific substances in future rulemakings. EPA believes that upon further identification and analysis of the substances within the categories, there may be certain individual substances that merit separate listing and reporting requirements to protect adequately public health and welfare and the environment. Eight commenters favored Option 1.

The Agency decided that Option 2 (retaining a one-pound RQ for the category) would be infeasible for a variety of reasons. As correctly noted by several commenters, a one-pound RQ would not take into consideration the varying characteristics of all of the specific compounds in the categories. Thus, Option 2 would result in a large burden on the regulated community for reporting small releases of thousands of substances whose inherent chemical characteristics do not warrant reporting at such low release levels. In addition, the large number of reports of small releases would hinder the National Response Center's ability to receive and process meaningful information and, therefore, the government's ability to respond to releases that are much more likely to pose a threat to public health or welfare or the environment. No commenters favored Option 2.

Similarly, the Agency determined that Option 3 (assign an RQ to each category that reflects either the average RQ or the lowest RQ of the substances within the category) would be infeasible. Assigning an average RQ to the categories, in addition to the disadvantages of Option 2, would be extremely time- and resource-intensive because EPA would need to evaluate all known individual substances within each category to determine an RQ for each so that an average RQ for the category could be calculated. Assigning the lowest RQ of the member substances to the category, similar to Option 2, would result in reporting of a large number of small releases that would hinder government response capabilities. This portion of Option 3 also would be time- and resource-intensive because EPA would need to evaluate the substances within the categories to determine the lowest RQ of the member substances. No commenters favored Option 3.

Option 4 (assign a 5,000-pound RQ to each category) would be less burdensome than Options 2 and 3, but also would be technically inappropriate for certain substances that may pose greater hazards. Only two commenters favored Option 4.

Option 5 involves identifying and assigning RQs to certain substances within each category, but contains several possible variations on how to treat the remaining substances (i.e., assign no RQ, assign a one-pound RQ, assign an average or lowest RQ, or assign a 5,000-pound RQ). These variations correspond to the previous four options. A total of 34 commenters favored Option 5 as an acceptable variation of Option 1.

EPA has concluded that Option 5 is preferable to the other four options because it allows the Agency greater flexibility to achieve the appropriate balance between reporting burdens, the amount of time needed for EPA to evaluate individual member substances, and protection of public health and welfare and the environment. In particular, EPA has chosen the variation of Option 5 under which the Agency assigns no RQ to the category but identifies, designates, and assigns RQs to certain individual substances within the category at a later date. Thus, reporting will be required for these substances, but not for other substances within the categories that do not merit separate CERCLA listing. This process of identifying member substances and assigning RQs will require a considerable amount of time and Agency resources, which will vary depending on the number of substances designated. The major advantage of this variation of Option 5 is that reports to the National Response Center will be limited to information that specifically applies to substances that have been evaluated and for which a determination has been made that they should be individually listed in Table 302.4 of 40 CFR part 302.

It is important to note that CERCLA liability continues to apply to releases of all compounds within each category, even if these compounds are not listed separately in Table 302.4 and, therefore, RQs have not been assigned. Parties responsible for releases of hazardous substances that fall under any of the five CAA broad generic categories are liable for the costs associated with cleanup and any natural resource damages resulting from the release.

2. Definition and Scope of the Categories

Five commenters noted that certain footnotes from the CAA Amendments of 1990 that apply to three of the five CAA broad generic categories (glycol ethers, fine mineral fibers, and polycyclic organic matter) were not included in the October 22, 1993 NPRM. The commenters asserted that, without these footnotes, the listings for these three categories in Table 302.4 of 40 CFR 302.4 would be unclear and subject to different interpretations. For this reason, the commenters urged EPA to include the footnotes to these three CAA categories in the regulatory list of CERCLA hazardous substances (i.e., Table 302.4).

In the October 22, 1993 NPRM, the Agency intended that the proposed listings in Table 302.4 of 40 CFR 302.4 for these hazardous air pollutants (including the five CAA broad generic categories) be the same as the listings for these substances in the CAA Amendments (subject to clarification by regulations implementing these amendments). As the commenters correctly note, footnotes 2, 3, and 4 in the CAA Amendments that limit the CAA section 112 listings of "glycol ethers," "fine mineral fibers," and "polycyclic organic matter," respectively, also apply to these same listings in Table 302.4. To clarify this issue in today's final rule, EPA is revising the three category listings (glycol ethers,[2] fine mineral fibers,[3] and polycyclic organic matter[4]) proposed in

the October 22, 1993 NPRM to add the applicable footnotes from the CAA Amendments of 1990:

[2] Includes mono- and di- ethers of ethylene glycol, diethylene glycol, and triethylene glycol R-(OCH2CH2)n-OR' where

n = 1, 2, or 3
R = alkyl or aryl groups
R'= R, H, or groups which, when removed, yield glycol ethers with the structure: R-(OCH2CH2)n-OH.[26] Polymers are excluded from the glycol category.

[3] Includes mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or other mineral derived fibers) of average diameter 1 micrometer or less.

[4] Includes organic compounds with more than one benzene ring, and which have a boiling point greater than or equal to 100 °C. (42 U.S.C.A. 7412 (b)(1))

EPA believes that such clarification will assist persons in charge of vessels and facilities in determining whether a release contains a substance within these three CAA categories and, thus, a CERCLA hazardous substance subject to liability, response, and abatement provisions under CERCLA.

Some commenters asserted that, even with the inclusion of these footnotes from the CAA Amendments of 1990, the definitions of the glycol ethers, fine mineral fibers, and polycyclic organic matter categories are overly broad. The Agency agrees that, although the categories have been partially limited in definition and scope by the footnotes noted above, the categories remain broad. The only action EPA is taking in this rulemaking is to codify the listings of polycyclic organic matter, glycol ethers, and fine mineral fibers on the regulatory list of hazardous substances in Table 302.4 of 40 CFR 302.4. Any further clarification of the definitions of these categories would more appropriately be addressed under regulations implementing CAA section 112.[27]

Four commenters concluded that, because of the footnote limiting the definition of the category fine mineral fibers, refractory ceramic fibers (RCF) and other manmade vitreous fibers (MMVF) are not within the scope of the category and, thus, are not CERCLA hazardous substances. Provided RCF and other MMVF have an average diameter larger than one micrometer, the Agency agrees that these substances would not fall within the fine mineral fibers category under CERCLA and, thus, would not be subject to release reporting and liability requirements. Should RCF or other MMVF, however, have an average diameter of one micrometer or less, these substances would be considered hazardous substances and, therefore, would be subject to CERCLA requirements.

One of these four commenters requested that any CERCLA listing of MMVF, including RCF, apply only to air emissions and should not include releases to water or land. The commenter stated that EPA's CERCLA listing for asbestos appears to provide a precedent for its recommended approach. EPA disagrees with the commenter's recommendation because CERCLA regulates releases of hazardous substances to all environmental media. For example, the listing of asbestos as a CERCLA hazardous substance encompasses all forms of this substance; it is only the reporting requirement that is limited to releases of "friable" forms of asbestos. Nevertheless, releases of "friable" asbestos to environmental media other than air remain subject to CERCLA reporting requirements and any releases of asbestos remain subject to the liability scheme under CERCLA. Similarly, releases of fine mineral fibers that are listed individually in Table 302.4 into any environmental medium are subject to reporting and releases of any fine mineral fibers that fall within the CAA fiber-size limitation (one micrometer or less) to any environmental medium are subject to CERCLA's liability scheme.

Owners and operators of underground storage tanks containing substances that may fall within the five CAA broad generic categories have requested guidance regarding the scope of these categories to assist them in determining whether they are regulated under RCRA Subtitle I. For an underground storage tank to fall under the regulatory jurisdiction of RCRA Subtitle I, the tank must store a "regulated substance." The term regulated substance is defined as petroleum and CERCLA hazardous substances, as defined in CERCLA section 101(14) (excluding RCRA hazardous wastes) (see 40 CFR 280.12). To assist in determining whether particular substances stored are members of the CAA categories and, therefore, are CERCLA hazardous substances subject to the RCRA Subtitle I underground storage tank regulations, owners and operators may refer to the definitions of these categories in section 112 of the CAA. Appropriate Agency offices will coordinate to develop a process to further assist owners and operators in making this determination.

3. Other Issues

Three commenters requested that EPA identify by Chemical Abstract Service Registry Number (CASRN) the substances within the CAA broad generic categories for which releases must be reported. EPA's choice of Option 5 satisfies this request. Because EPA is assigning no RQ to these five categories, only releases of substances individually listed with an RQ and CASRN in Table 302.4 require CERCLA notification. Therefore, in effect, EPA already has identified by CASRN in Table 302.4 the CERCLA hazardous substances for which releases must be reported.

Another commenter suggested that, because categories may not be identical in potential hazard, different reporting options may be suitable for different categories. The Agency does not agree that implementing differing approaches to reporting requirements for the different broad generic categories is warranted. The main similarity among the categories is that each contains hundreds or thousands of substances with varying toxicities. Based on this similarity, and on a variety of other factors considered by the Agency (see Section II.C.1 for a discussion of these factors), EPA decided that assigning a single RQ to a particular category is inappropriate for all five categories. Thus, for each of the five CAA categories, the Agency is assigning no RQ.

A different commenter suggested that overreporting would result if EPA were to assign an RQ for only a few specific compounds within a category. EPA disagrees with this assertion. In an April 4, 1985 final rule (50 FR 13456), and in several subsequent final rules, the Agency assigned adjusted RQs to specific substances that are listed individually in Table 302.4 and that also fall within the broad generic categories listed under CWA section 307(a). Adjusted RQs for some of these individually listed CWA substances have been in place for nearly 10 years. Based on the number of releases of these individually listed CWA substances that have been reported to the National Response Center, there is no indication that overreporting has resulted in the case of the CWA broad generic categories. Similarly, EPA does not believe that overreporting would occur for the CAA broad generic categories if the Agency, as a result of its evaluation of the CAA categories, chooses to list specific substances within the categories and assign RQs to these substances.

The same commenter asserted that, if EPA assigned an RQ to only one compound within a CAA broad generic category, a facility could be out of compliance if it chose not to report a release of that compound. In fact, each of the five CAA broad generic categories in today's final rule contains at least one substance that already is individually listed as a CERCLA hazardous substance with an RQ in Table 302.4. Examples of separately listed CERCLA hazardous substances that are members of the categories include cobaltous bromide (cobalt compounds), 2-ethoxyethanol (glycol ethers), potassium permanganate (manganese compounds), asbestos (fine mineral fibers), and benzo[a]pyrene (polycyclic organic matter). Under CERCLA section 103, releases equal to or greater than the RQs for these hazardous substances must be reported to the National Response Center as soon as the person in charge has knowledge of the release. Thus, EPA agrees with the commenter's assessment that a facility would be out of compliance if it failed to report a release of an RQ or more of an individually listed substance within any of the CAA broad generic categories.

In addition, the same commenter noted that, if a facility has no knowledge of the specific compounds released, then only the CAA broad generic category reporting requirement (i.e., no RQ for the category) would apply. This assertion, however, is inaccurate with respect to releases of hazardous substances that are within one of the generic listings and that also are individually listed in Table 302.4 with corresponding RQs.

Under CERCLA section 103(a), notification must occur when the person in charge of a facility has knowledge of a release of such a hazardous substance in an amount that equals or exceeds an RQ. This includes individually listed hazardous substances within the CAA broad generic categories. The determination of whether the person in charge has knowledge depends on the actions that a person in that position could reasonably be expected to take under the circumstances. In evaluating possible enforcement proceedings for failure to comply with the CERCLA section 103 reporting requirement, the Agency's determination whether the person in charge had knowledge will be made on a case-by-case basis. EPA believes that the most prudent course of action for the person in charge would be to identify the substance(s) being released and to determine if the amount of the substance(s) released equals or exceeds an RQ. The Agency believes that this approach on the part of persons in charge would also help to avoid overreporting.

A different commenter expressed confusion because EPA failed to mention, in the October 22, 1993 NPRM, the commenter's 1992 petition to designate and assign RQs to about 20 ethylene glycol ethers within the larger CAA category of glycol ethers.[28] When the proposed rule was published, however, the Agency was still evaluating various options for applying reporting requirements to the five CAA broad generic categories, including "glycol ethers." Only after receiving and evaluating comments on the five options presented in the October 22, 1993 NPRM, did the Agency decide to select Option 5. EPA believes that responding to the commenter's petition to adjust RQs of substances within the glycol ethers category, prior to an Agency decision on the appropriate reporting requirements for the category, would have been premature and might have led to confusion within the regulated community about what reporting requirements apply to the CAA category of glycol ethers. Following promulgation of today's final rule, however, EPA will begin to evaluate the data submitted by the commenter to determine whether individual listing in Table 302.4 and RQ adjustment of specific ethylene glycol ethers is warranted under the selected Option 5.

Two commenters suggested that EPA could establish subcategories within the CAA broad generic categories, and assign separate RQs to the subcategories. For example, one commenter suggested that EPA assign a low RQ to the subcategory of carcinogenic polynuclear aromatic hydrocarbons (PAHs) within the larger CAA category of polycyclic organic matter, and a higher RQ for non-carcinogenic PAHs. EPA appreciates the commenters' suggestion and may consider using these subcategories in any future determination of whether individual listing in Table 302.4 and RQ adjustment of specific PAHs (or subcategories of PAHs) is warranted.

One commenter claimed that only individual chemicals listed under CAA section 112 are CERCLA hazardous substances, and that CAA category members not otherwise listed under CERCLA need not be reported at the one-pound level. The Agency disagrees with the commenter's assertion that the one-pound statutory RQs did not require reporting of substances (other than those listed separately in Table 302.4) within the CAA categories *prior* to this final rule. CERCLA section 101(14)(E) states that the term "hazardous substance" includes "any hazardous air pollutant listed under section 112 of the Clean Air Act." Thus, the CAA categories automatically became hazardous substances by virtue of their listing as hazardous air pollutants under CAA section 112. CERCLA section 102(b) provides that an RQ of one pound applies to hazardous substances (which include the CAA hazardous air pollutants) until this RQ is adjusted by regulation. All substances within the categories, as well as the categories themselves, are CERCLA hazardous substances. Therefore, during the period beginning with the signing of the CAA Amendments of 1990 and ending with the effective date of today's final rule, the one-pound statutory RQs for the categories have applied to all substances within the categories.

One commenter requested that the Agency consider a low-percentage threshold for the CAA categories below which a component of a mixture may be excluded from regulation. Unless permitted or exempted, the release of an RQ or more of a hazardous substance must be reported, regardless of the concentration of the substance released. Notification of releases of hazardous substances that equal or exceed an RQ, even those with relatively low concentrations, is mandated by CERCLA and EPA believes that such reports are essential to allow government personnel to decide whether a response action is necessary to protect public health or welfare or the environment.[29]

D. Delisting Petition for Caprolactam

Two commenters requested that EPA respond to a delisting petition for caprolactam submitted on July 19, 1993. One of the commenters asserted that, "upon the removal of caprolactam from the [CAA section 112] list of 'hazardous air pollutants,' caprolactam will no longer be a CERCLA 'hazardous substance' under CERCLA § 101(14) * * *"

This assertion, however, is not a complete characterization of the CERCLA authority for listing

[26] The Agency would like to note that a typographical error has been made in the second mention of the chemical formula for glycol ethers in footnote 2 from the CAA Amendments. This formula appears in the CAA Amendments as "R-(OCH2CH)n-OH." In Table 302.4 of today's final rule, an additional "2" has been added within the parentheses; thus, the formula in the regulation will read "R-(OCH2CH2)n-OH," rather than the way it appears in the CAA Amendments.

[27] For detailed responses to specific comments on the scope of these five CAA categories, see Section III.A of the responses to comments document for this rulemaking, available for inspection at the CERCLA Docket Office, Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

[28] Petition to Adjust the Reportable Quantity for Glycol Ethers under CERCLA Section 102. July 8, 1992. From Gordon D. Strickland, Chemical Manufacturers Association to Barbara Hostage, Emergency Response Division, U.S. EPA.

[29] For detailed responses to comments on other issues related to the five CAA broad generic categories, see Section III.C of the responses to comments document for this rulemaking, available for inspection at the CERCLA Docket Office, Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

caprolactam as a hazardous substance. As the commenter correctly notes, caprolactam is included in the definition of "hazardous substance" because it has been listed as a hazardous air pollutant under the CAA, and CERCLA section 101(14)(E) incorporates by reference any hazardous air pollutant listed under section 112 of the CAA. The commenter has failed to mention, however, that under CERCLA section 101(14)(B), the term "hazardous substance" also includes "* * * any element, compound, mixture, solution, or substance designated pursuant to section 102 of [CERCLA] * * *." CERCLA section 102(a) authorizes EPA to designate as hazardous and assign RQs to those substances which, when released into the environment, may present substantial danger to the public health or welfare or the environment.

Furthermore, the regulations governing designation of hazardous substances (40 CFR 302.4(a)) provide that "[t]he elements and compounds and hazardous wastes appearing in Table 302.4 are designated as hazardous substances under section 102(a) of [CERCLA]." Thus, once a hazardous substance listed under any of the statutes referred to in CERCLA section 101(14) is added to the regulatory list at 40 CFR 302.4, that substance automatically is also designated as a hazardous substance under CERCLA section 102(a). As the commenter acknowledges, caprolactam has been proposed to be added to the list at 40 CFR 302.4; therefore, upon the effective date of this final rule, caprolactam is also designated as a hazardous substance under CERCLA section 102(a), not only under section 101(14)(E).

If the commenter is correct that its petition to delist caprolactam under CAA section 112 will be granted,[30] then EPA would evaluate caprolactam to determine whether there is any independent basis for retaining this substance as hazardous under section 102(a) of CERCLA and 40 CFR 302.4(a). If EPA determines that there is no independent basis for retaining caprolactam in Table 302.4, it may be possible to delete caprolactam from the CERCLA list of hazardous substances simultaneously with delisting under the CAA.

In addition, the commenter cited a May 25, 1983 proposed rule (48 FR 23554), in which EPA suggested that changes to lists of substances under statutes incorporated in the CERCLA definition of a hazardous substance (CERCLA section 101(14)) would be reflected simultaneously on the CERCLA list of hazardous substances in Table 302.4 at 40 CFR 302.4. In the April 4, 1985 final rule (50 FR 13456), however, EPA modified this previous policy by providing that all hazardous substances in Table 302.4 are also designated under CERCLA section 102(a) (see 40 CFR 302.4(a)). Thus, even if substances are removed from lists under other statutes referred to in CERCLA section 101(14), these substances may remain in Table 302.4 by virtue of their designation under CERCLA section 102(a). Because of the CERCLA section 102(a) designation reflected in 40 CFR 302.4(a), the Agency does not believe that changes to lists of substances under statutes listed in CERCLA section 101(14) necessarily require simultaneous changes to Table 302.4.

III. Changes to List of Hazardous Substances and Their RQs

To show more clearly the two types of changes to the list of CERCLA hazardous substances resulting from the addition of the CAA Amendments hazardous air pollutants and the RCRA hazardous wastes, EPA proposed in the October 22, 1993 NPRM, and is promulgating in today's final rule two sets of revisions to Table 302.4 of 40 CFR 302.4. One set of revisions contains the new listings for the CAA Amendments hazardous air pollutants (including the revised cresols and xylenes entries) and the RCRA hazardous wastes, including final RQs for these substances. The other set of revisions adds a new statutory source code for certain hazardous substances that were already on the CERCLA list (e.g., acetaldehyde and acetonitrile) to indicate that, as a result of their listing as hazardous air pollutants in the CAA Amendments, an additional statutory source for designation of these hazardous substances is CAA section 112.

IV. Changes to 40 CFR Parts 355 and 117

Appendices A and B of 40 CFR part 355, which list extremely hazardous substances (EHSs) and their threshold planning quantities (TPQs) under EPCRA, also show the RQs for EHSs. Five of the new CAA hazardous air pollutants whose RQs are adjusted today are also EHSs. These substances are chloroacetic acid, hydroquinone, beta-propiolactone, titanium tetrachloride, and o-cresol. This rule promulgates 100-pound RQ adjustments for chloroacetic acid, hydroquinone, and o-cresol, a 10-pound RQ adjustment for beta-propiolactone, and a 1,000-pound RQ adjustment for titanium tetrachloride. Therefore, to reflect fully the RQ adjustments for these five substances, EPA today is revising Appendices A and B of 40 CFR part 355 to include these new adjusted RQs.

EPA also is amending the RQs for "cresol" and "xylene (mixed)" in Table 117.3 of 40 CFR part 117 to be consistent with the CERCLA RQs. Table 117.3, the list of CWA hazardous substances and their RQs, currently contains listings for "cresol" and "xylene (mixed)," each with an RQ of 1,000 pounds. "Cresol" and "xylene (mixed)" are included in Table 117.3 because they were originally listed as hazardous substances under CWA section 311(b)(4).

V. Regulatory Analyses

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this final rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review. An economic analysis performed by EPA [31] shows that this final rule will result in a net cost savings of approximately $500,000 annually, and does not result in any of the other effects that define a significant regulatory action. In this final rule, RQs for 44 of the 47 individual hazardous air pollutants and three of the 11 RCRA wastes are raised. In addition, as noted in Section II.C.1 of this preamble, EPA is assigning no RQ level to the five broad generic categories of hazardous air pollutants. The RQs of the cresols and xylenes categories and the five hazardous wastes with RQs based on the RQ for cresols are being lowered from previously adjusted levels. The estimated net effect of these changes will be to reduce by approximately 1,300 the number of reportable releases for these hazardous substances each year (see the economic analysis mentioned above). The estimated $500,000 net cost savings reflects only those effects of the RQ adjustments that are readily quantifiable in dollars and are associated with the release notification requirements under section 103 of CERCLA and section 304 of EPCRA (including the associated activities of recordkeeping, notification processing, monitoring, and response).

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have a "significant impact on a substantial number of small entities." If this criterion is met, the Agency must conduct a Regulatory Flexibility Analysis to examine ways its regulation could be modified to mitigate these adverse impacts. A Regulatory Flexibility Analysis is not necessary for this final rule, because the upper-bound total cost of compliance to small firms is negligible.[32] In fact, as noted in Section V.A. of today's preamble, the Agency anticipates that raising most of the statutory one-pound RQs for the hazardous air pollutants, as well as assigning no RQ to the five CAA categories in this rule, will result in a net cost savings. Therefore, EPA hereby certifies that today's final rule is not likely to have a significant impact on a substantial number of small entities. As a result, no Regulatory Flexibility Analysis is necessary.

C. Paperwork Reduction Act

The information collection requirements contained in this final rule have been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., and have been assigned OMB control number 2050–0046. The public reporting burden for the collection of information pursuant to CERCLA section 103 is estimated to take, on average, 4.1 hours per response. This estimate includes the determination whether a release requires a report to the National Response Center, the time required to make the call, and the time required to maintain a log of any calls made to government organizations.

Because the RQs for almost all of the substances included in today's final rule are being raised, the net reporting and recordkeeping burden associated with reporting releases of these substances under CERCLA section 103 is expected to decrease. As noted in the economic impact analysis supporting today's final rule, EPA estimates that the annual reporting and recordkeeping burdens associated with reports to the National Response Center will be reduced by more than 5,300 hours as a result of these RQ adjustments.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, Mail Code 2136, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

D. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a statement to accompany any rule in which the estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, will be $100 million or more in any one year. Under section 205 of this Act, EPA must select the most cost-effective and least-burdensome alternative that achieves the objective of the rule and that is consistent with statutory requirements. Section 203 of the Act requires EPA to establish a plan for informing and advising any small governments that may be significantly impacted by the rule.

EPA has determined that this final rule does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

List of Subjects

40 CFR Part 117

Environmental protection, Hazardous substances, Penalties, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 302

Air pollution control, Chemicals, Emergency Planning and Community Right-to-Know Act, Extremely hazardous substances, Hazardous chemicals, Hazardous materials, Hazardous materials transportation, Hazardous substances, Hazardous wastes, Intergovernmental relations, Natural resources, Pesticides and pests, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

40 CFR Part 355

Air pollution control, Chemical accident prevention, Chemical emergency preparedness, Chemicals, Community emergency response plan, Community right-to-know, Contingency planning, Disaster assistance, Emergency Planning and Community Right-to-Know Act, Extremely hazardous substances, Hazardous substances, Intergovernmental relations, Natural resources, Penalties, Reportable quantity, Reporting and recordkeeping requirements, Superfund Amendments and Reauthorization Act, Threshold planning quantity, Water pollution control, Water supply.

Dated: May 23, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, Chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 117—DETERMINATION OF REPORTABLE QUANTITIES FOR HAZARDOUS SUBSTANCES

1. The authority citation for part 117 continues to read as follows:

Authority: Secs. 311 and 501(a), Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*), ("the Act") and Executive Order 11735, superseded by Executive Order 12777, 56 FR 54757.

2. Section 117.3 is amended by revising the entries in the "category" column and in the "RQ in pounds (kilograms)" column for "cresol" and "xylene (mixed)" in Table 117.3 from

[30] CAA section 112(b)(3)(C) requires delisting of a hazardous air pollutant if EPA finds "that there is adequate data on the health and environmental effects [of the substance] to determine that emissions, ambient concentrations, bioaccumulation or deposition of the substance may not reasonably be anticipated to cause any adverse effects to the human health or adverse environmental effects." EPA has not yet issued a final determination whether the petition to delist caprolactam meets the CAA delisting criteria.

[31] See the Economic Impact Analysis of Reportable Quantity Adjustments for CAA Hazardous Air Pollutants and RCRA Hazardous Wastes, Volume VI, available for inspection at the CERCLA Docket Office, Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

[32] See the Regulatory Impact Analysis of Reportable Quantity Adjustments Under Sections 102 and 103 of the Comprehensive Environmental Response, Compensation, and Liability Act, Volume I, March 1985, available for inspection at the CERCLA Docket Office, Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

"C" to "B" and from "1,000 (454)" to "100 (45.4)," respectively, as set forth below:

§ 117.3 Determination of Reportable Quantities.

* * * * *

TABLE 117.3.—REPORTABLE QUANTITIES OF HAZARDOUS SUBSTANCES DESIGNATED PURSUANT TO SECTION 311 OF THE CLEAN WATER ACT

* * * * *

Material	Category	RQ in pounds (kilograms)
* * * * *		
Cresol	B	100 (45.4)
* * * * *		
Xylene (mixed).	B	100 (45.4)
* * * * *		

* * * * *

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

3. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 9602, 9603, 9604; 33 U.S.C. 1321 and 1361.

4. Section 302.4 is amended by adding the following new entries to Table 302.4 and its Appendix A, and by adding footnotes "a" and "b" to Table 302.4 as set forth below:

§ 302.4 Designation of hazardous substances.

* * * * *

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

[NOTE: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste No.	Category	Pounds (Kg)
* * * * *							
Acetamide	60355		1*	3		B	100 (45.4)
* * * * *							
4-Aminobiophenyl	92671		1*	3		X	1 (0.454)
* * * * *							
o-Anisidine	90040		1*	3		B	100 (45.4)
* * * * *							
Benzene[a]							(*)
* * * * *							
Benzene, dimethyl-	1330207	Xylene, Xylene (mixed), Xylenes (isomers and mixture).	1000	1,3,4	U239	B	100 (45.4)
Benzene,m-dimethyl-	108383	m-Xylene	1*	3		C	1000 (454)
Benzene, o-dimethyl-	95476	o-Xylene	1*	3		C	1000 (454)
Benzene, p-dimethyl-	106423	p-Xylene	1*	3		B	100 (45.4)
* * * * *							
Biphenyl	92524		1*	3		B	100 (45.4)
* * * * *							
1,3-Butadiene	106990		1*	3		A	10 (4.54)
* * * * *							
Calcium cyanamide	156627		1*	3		C	1000 (454)
* * * * *							
Caprolactam	105602		1*	3		D	5000 (2270)
* * * * *							
Carbonyl sulfide	463581		1*	3		B	100 (45.4)
Catechol	120809		1*	3		B	100 (45.4)
* * * * *							
Chloramben	133904		1*	3		B	100 (45.4)
* * * * *							
Chloroacetic acid	79118		1*	3		B	100 (45.4)
2-Chloroacetophenone	532274		1*	3		B	100 (45.4)
* * * * *							
Chloroprene	126998		1*	3		B	100 (45.4)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[NOTE: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste No.	Category	Pounds (Kg)
* * * * *							
Cobalt compounds	N.A.		1*	3			(**)
* * * * *							
Cresols (isomers and mixture).	1319773	Cresylic acid (isomers and mixture) Phenol, methyl.	1000	1,3,4	U052	B	100 (45.4)
m-Cresol	108394	m-Cresylic acid	1*	3		B	100 (45.4)
o-Cresol	95487	o-Cresylic acid	1*	3		B	100 (45.4)
p-Cresol	106445	p-Cresylic acid	1*	3		B	100 (45.4)
Cresylic acid (isomers and mixture).	1319773	Cresols (isomers and mixture) Phenol, methyl.	1000	1,3,4	U052	B	100 (45.4)
m-Cresylic acid	108394	m-Cresol	1*	3		B	100 (45.4)
o-Cresylic acid	95487	o-Cresol	1*	3		B	100 (45.4)
p-Cresylic acid	106445	p-Cresol	1*	3		B	100 (45.4)
* * * * *							
DDET[b]	3547044		1*	3		D	5000 (2270)
* * * * *							
Diazomethane	334883		1*	3		B	100 (45.4)
* * * * *							
Dibenzofuran	132649		1*	3		B	100 (45.4)
* * * * *							
Diethanolamine	111422		1*	3		B	100 (45.4)
* * * * *							
N,N-Diethylaniline	91667		1*	3		C	1000 (454)
* * * * *							
Diethyl sulfate	64675		1*	3		A	10 (4.54)
* * * * *							
N,N-Dimethylaniline	121697		1*	3		B	100 (45.4)
* * * * *							
Dimethylformamide	68122		1*	3		B	100 (45.4)
* * * * *							
1,2-Epoxybutane	106887		1*	3		B	100 (45.4)
* * * * *							
Ethylene glycol	107211		1*	3		D	5000 (2270)
* * * * *							
Fine mineral fibers[c]	N.A.		1*	3			(**)
* * * * *							
Glycol ethers[d]	N.A.		1*	3			(**)
* * * * *							
Hexamethylene-1,6-diisocyanate.	822060		1*	3		B	100 (45.4)
Hexamethylphosphoramide.	680319		1*	3		X	1 (0.454)
Hexane	110543		1*	3		D	5000 (2270)
* * * * *							
Hydroquinone	123319		1*	3		B	100 (45.4)
* * * * *							
Manganese Compounds	N.A.		1*	3			(**)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[NOTE: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste No.	Category	Pounds (Kg)
MDI	101688	Methylene diphenyl diisocyanate.	1*	3		D	5000 (2270)
4,4'-Methylenedianiline	101779		1*	3		A	10 (4.54)
Methylene diphenyl diisocyanate.	101688	MDI	1*	3		D	5000 (2270)
Methyl tert-butyl ether	1634044		1*	3		C	1000 (454)
4-Nitrobiphenyl	92933		1*	3		A	10 (4.54)
N–Nitrosomorpholine	59892		1*	3		X	1 (0.454)
Phenol, methyl-	1319773	Cresols (isomers and mixture) Cresylic acid (isomers and mixture).	1000	1,3,4	U052	B	100 (45.4)
p-Phenylenediamine	106503		1*	3		D	5000 (2270)
Polycyclic Organic Matter.	N.A.		1*	3			(**)
beta-Propiolactone	57578		1*	3		A	10 (4.54)
Propionaldehyde	123386		1*	3		C	1000 (454)
Propoxur (Baygon)	114261		1*	3		B	100 (45.4)
Styrene oxide	96093		1*	3		B	100 (45.4)
Titanium tetrachloride	7550450		1*	3		C	1000 (454)
Trifluralin	1582098		1*	3		A	10 (4.54)
2,2,4-Trimethylpentane	540841		1*	3		C	1000 (454)
Unlisted Hazardous Wastes Characteristics:.	N.A.		1*	4			
Characteristics of Toxicity:							
o-Cresol (D023)	N.A.		1*	4	D023	B	100 (45.4)
m-Cresol (D024)	N.A.		1*	4	D024	B	100 (45.4)
p-Cresol (D025)	N.A.		1*	4	D025	B	100 (45.4)
Cresol (D026)	N.A.		1*	4	D026	B	100 (45.4)
Vinyl bromide	593602		1*	3		B	100 (45.4)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[NOTE: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste No.	Category	Pounds (Kg)
Xylene	1330207	Benzene, dimethyl-Xylene (mixed), Xylenes (isomers and mixture).	1000	1,3,4	U239	B	100 (45.4)
m-Xylene	108383	Benzene, m-dimethyl-	1*	3		C	1000 (454)
o-Xylene	95476	Benzene, o-dimethyl-	1*	3		C	1000 (454)
p-Xylene	106423	Benzene, p-dimethyl-	1*	3		B	100 (45.4)
Xylene (mixed)	1330207	Benzene, dimethyl-Xylene Xylenes (isomers and mixture).	1000	1,3,4	U239	B	100 (45.4)
Xylenes (isomers and mixture).	1330207	Benzene, dimethyl-Xylene Xylene (mixed).	1000	1,3,4	U239	B	100 (45.4)
F004			1*	4	F004	B	100(45.4)
The following spent non-halogenated solvents and the still bottoms from the recovery of these solvents:							
(a) Cresols/Cresylic acid.	1319773		1000	1,3,4	U052	B	100(45.4)
(b) Nitrobenzene	98953		1000	1,2,4	U169	C	1000(454)
F025			1*	4	F025	X	1(0.454)
Condensed light ends, spent filters and filter aids, and spent desiccant wastes from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution							
F037			1*	4	F037	X	1(0.454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[NOTE: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste No.	Category	Pounds (Kg)
Petroleum refinery primary oil/water/solids separation sludge—Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in: oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow. Sludge generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges generated in aggressive biological treatment units as defined in §261.31(b)(2) (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and K051 wastes are not included in this listing							
F038			1*	4	F038	X	1(0.454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[NOTE: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste No.	Category	Pounds (Kg)
Petroleum refinery secondary (emulsified) oil/water/solids separation sludge—Any sludge and/or float generated from the physical and/or chemical separation of oil/watersolids in process wastewaters and oily cooling wastewaters from petroleum refineries. Such wastes include, but are not limited to, all sludges and floats generated in: induced air flotation (IAF) units; tanks and impoundments, and all sludges generated in DAFunits. Sludges generated in stormwater units that do not receive dry weather flow, sludges generated from once-through non-contact cooling waters segregated for treatment from other process or oil cooling wastes, sludges and floats generated in aggressive biological treatment units as defined in §261.31(b)(2) (including sludges and floats generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and F037, K048, and K051 wastes are not included in this listing							
K088 Spent potliners from primary aluminum reduction			1*	4	K088	A	10 (4.54)
K090 Emission control dust or sludge from ferrochromiumsilicon production			1*	4	K090	A	10 (4.54)
K091 Emission control dust or sludge from ferrochromium production			1*	4	K091	A	10 (4.54)

†Indicates the staturory source as defined by 1, 2, 3, and 4 below.

1- Indicates that the statutory source for designation of this hazardous substance under CERCLA is CWA section 311(b)(4).
2- Indicates that the statutory source for designation of this hazardous substance under CERCLA is CWA section 307(a).

3- Indicates that the statutory source for designation of this hazardous substance under CERCLA is CAA section 112.
4- Indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA section 3001.
1* Indicates that 1-pound RQ is CERCLA is statutory RQ.

** Indicates that no RQ is being assigned to the generic or broad class.
[a] Benzene was already a CERCLA hazardous substance prior to the CAA Amendments of 1990 and received an adjusted 10-pound RQ based on potential carcinogenicity in an August 14, 1989, final rule (54 FR 33418). The CAA Amendments specify that "benzene (including benzene from gasoline)" is a hazardous air pollutant and , thus, a CERCLA hazardous substance.
[b] The CAA Amendments of 1990 list DDE (3547–04–4) as a CAA hazardous air pollutant. The CAS number, 3547–04–4, is for the chemical, p,p'-dichlorodiphenylethane. DDE or p,p'-dichlorodiphenyldichloroethylene, CAS number 72–55–9, is already listed in Table 302.4 with a final RQ of 1 pound. The substance identified by the CAS number 3547–04–4 has been evaluated and listed as DDE to be consistent with the CAA seciton 112 listing, as amended.
[c] Includes mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or other mineral derived fibers) of average diameter 1 micrometer or less.
[d] Includes mono- and di- ethers of ethylene glycol, diethylene glycol, and triethylene glycol R-(OCH2CH2)$_n$-OR' where
n=1, 2, or 3
R=alkyl or aryl groups
R'=R, H, or groups which, when removed, yield glycol ethers with the structure: R-(OCH2CH2)$_n$OH. Polymers are excluded from the glycol category.
[e] Includes organic compounds with more than one benzene ring, and which have a boiling point greater than or equal to 100 °C.

5. Section 302.4 is also amended by revising the following existing entries in Table 302.4 to add note "3" to the statutory code column and to add the following regulatory synonyms as set forth below. In addition, Appendix A to Table 302.4 is amended by revising the following entries as set forth below:

§ 302.4 Designation of hazardous substances.

* * * * *

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

[NOTE: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory RQ	Statutory Code†	Statutory RCRA waste No.	Final RQ Category	Final RQ Pounds (Kg)
Acetaldehyde	75070	Ethanal	1000	1,3,4	U001	C	1000 (454)
Acetamide, N-9H-fluoren-2-yl-.	53963	2-Acetylaminofluorene	1*	3,4	U005	X	1 (0.454)
Acetic acid (2,4-dichlorophenoxy)-, salts & esters.	94757	2,4-D Acid, 2,4-D salts and esters	100	1,3,4	U240	B	100 (45.4)
Acetonitrile	75058		1*	3,4	U003	D	5000 (2270)
Acetophenone	98862	Ethanone, 1-phenyl-	1*	3,4	U004	D	5000 (2270)
2-Acetylaminofluorene	53963	Acetamide, N-9H-fluoren-2-yl-.	1*	3,4	U005	X	1 (0.454)
Acrolein	107028	2-Propenal	1	1,2,3,4	P003	X	1 (0.454)
Acrylamide	79061	2-Propenamide	1*	3,4	U007	D	5000 (2270)
Acrylic acid	79107	2-Propenoic acid	1*	3,4	U008	D	5000 (2270)
Acrylonitrile	107131	2-Propenenitrile	100	1,2,3,4	U009	B	100 (45.4)
Allyl chloride [3d]	107051		1000	1,3		C	1000 (454)
Aniline	62533	Benzenamine	1000	1,3,4	U012	D	5000 (2270)
ANTIMONY AND COMPOUNDS.	N.A.	Antimony Compounds	1*	2,3			**
Antimony Compounds	N.A.	ANTIMONY AND COMPOUNDS.	1*	2,3			**
Aroclor 1016	12674112	Aroclors PCBs POLYCHLORINATED BIPHENYLS.	10	1,2,3		X	1 (0.454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[NOTE: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory RQ	Statutory Code†	Statutory RCRA waste No.	Final RQ Category	Final RQ Pounds (Kg)
Aroclor 1221	11104282	Aroclors PCBs POLYCHLORINATED BIPHENYLS	10	1,2,3		X	1 (0.454)
Aroclor 1232	11141165	PCBs POLYCHLORINATED BIPHENYLS	10	1,2,3		X	1 (0.454)
Aroclor 1242	53469219	Aroclors PCBs POLYCHLORINATED BIPHENYLS	10	1,2,3		X	1 (0.454)
Aroclor 1248	12672296	Aroclors PCBs POLYCHLORINATED BIPHENYLS	10	1,2,3		X	1 (0.454)
Aroclor 1254	11097691	Aroclors PCBs POLYCHLORINATED BIPHENYLS	10	1,2,3		X	1 (0.454)
Aroclor 1260	11096825	Aroclors PCBs POLYCHLORINATED BIPHENYLS	10	1,2,3		X	1 (0.454)
Aroclors	1336363	PCBs POLYCHLORINATED BIPHENYLS	10	1,2,3		X	1 (0.454)
Aroclor 1016	12674112		10	1,2,3		X	1 (0.454)
Aroclor 1221	11104282		10	1,2,3		X	1 (0.454)
Aroclor 1232	11141165		10	1,2,3		X	1 (0.454)
Aroclor 1242	53469219		10	1,2,3		X	1 (0.454)
Aroclor 1248	12672296		10	1,2,3		X	1 (0.454)
Aroclor 1254	11097691		10	1,2,3		X	1 (0.454)
Aroclor 1260	11096825		10	1,2,3		X	1 (0.454)
ARSENIC AND COMPOUNDS.	N.A.	Arsenic Compounds (inorganic including arsine).	1*	2,3			**
Arsenic Compounds (inorganic including arsine).	N.A.	ARSENIC AND COMPOUNDS.	1*	2,3			**
Aziridine	151564	Ethyleneimine	1*	3,4	P054	X	1 (0.454)
Aziridine, 2-methyl-	75558	2-Methyl aziridine 1,2-Propylenemine.	1*	3,4	P067	X	1 (0.454)
Benzenamine	62533	Aniline	1000	1,3,4	U012	D	5000 (2270)
Benzenamine, N,N-dimethyl-4-(phenylazo-).	60117	Dimethyl aminoazobenzene.	1*	3,4	U093	A	10 (4.54)
Benzenamine, 2-methyl-	95534	o-Toluidine	1*	3,4	U328	B	100 (45.4)
Benzenamine, 4,4'-methylenebis(2-chloro-.	101144	4,4'-Methylenebis(2-chloroaniline).	1*	3,4	U158	A	10 (4.54)
Benzeneacetic acid, 4-chloro-α-(4-chlorophenyl)-α-hydroxy-, ethyl ester.	510156	Chlorobenzilate	1*	3,4	U038	A	10 (4.54)
Benzene, chloro-	108907	Chlorobenzene	100	1,2,3,4	U037	B	100 (45.4)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[NOTE: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory RQ	Statutory Code†	Statutory RCRA waste No.	Final RQ Category	Final RQ Pounds (Kg)
Benzene, chloromethyl- ..	100447	Benzyl chloride	100	1,3,4	P028	B	100 (45.4)
Benzenediamine, ar-methyl-.	95807	Toluenediamine	1*	3,4	U221	A	10 (4.54)
	496720	2,4-Toluene diamine	.....	.....			.....
	823405	.....	.....	.....			.....
	25376458	.....	.....	.....			.....
1,2-Benzenedicarboxylic acid, dibutyl ester.	84742	n-Butyl phthalate ..... Dibutyl phthalate Di-n-butyl phthalate	100	1,2,3,4	U069	A	10 (4.54)
1,2-Benzenedicarboxylic acid, dimethyl ester.	131113	Dimethyl phthalate	1*	2,3,4	U102	D	5000 (2270)
1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester.	117817	Bis(2-ethylhexyl)phthalate. DEHP Diethylhexyl phthalate	1*	2,3,4	U028	B	100 (45.4)
Benzene, 1,4-dichloro- ...	106467	p-Dichlorobenzene 1,4-Dichlorobenzene	100	1,2,3,4	U072	B	100 (45.4)
Benzene, 1,3-diisocyanatomethyl-.	91087	Toluene diisocyanate	1*	3,4	U223	B	100 (45.4)
	584849	2,4-Toluene diisocyanate	.....	.....			.....
	26471625	.....	.....	.....			.....
Benzene, hexachloro-	118741	Hexachlorobenzene	1*	2,3,4	U127	A	10 (4.54)
Benzene, hydroxy-	108952	Phenol	1000	1,2,3,4	U188	C	1000 (454)
Benzene, methyl-	108883	Toluene	1000	1,2,3,4	U220	C	1000 (454)
Benzene, 1-methyl-2,4-dinitro-.	121142	2,4-Dinitrotoluene	1000	1,2,3,4	U105	A	10 (4.54)
Benzene, (1-methylethyl)-	98828	Cumene	1*	3,4	U055	D	5000 (2270)
Benzene, nitro-	98953	Nitrobenzene	1000	1,2,3,4	U169	C	1000 (454)
Benzene, pentachloronitro-.	82688	PCNB ..... Pentachloronitrobenzene Quintobenzene	1*	3,4	U185	B	100 (45.4)
Benzene, 1,1'-(2,2,2-trichloroethylidene) bis[4-methoxy-.	72435	Methoxychlor	1	1,3,4	U247	X	1 (0.454)
Benzene, (trichloromethyl)-.	98077	Benzotrichloride	1*	3,4	U023	A	10 (4.54)
Benzidine	92875	[1,1'-Biphenyl]-4,4'-diamine.	1*	2,3,4	U021	X	1 (0.454)
p-Benzoquinone	106514	2,5-Cyclohexadiene-1,4-dione Quinone.	1*	3,4	U197	A	10 (4.54)
Benzotrichloride	98077	Benzene, (trichloromethyl)-.	1*	3,4	U023	A	10 (4.54)
Benzyl chloride	100447	Benzene, chloromethyl- .	100	1,3,4	P028	B	100 (45.4)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[NOTE: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory RQ	Statutory Code†	Statutory RCRA waste No.	Final RQ Category	Final RQ Pounds (Kg)
BERYLLIUM AND COMPOUNDS.	N.A.	Beryllium Compounds	1*	2,3			(**)
Beryllium Compounds	N.A.	BERYLLIUM AND COMPOUNDS.	1*	2,3			(**)
γ-BHC	58899	Cyclohexane, 1,2,3,4,5,6-hexachloro- (1α, 2α, 3β,4α,5α,6β)-.	1	1,2,3,4	U129	X	1 (0.454)
2-Butanone	78933	MEK	1*	3,4	U159	D	5000 (2270)
n-Butyl phthalate	84742	1,2-Benzenedicarboxylic acid, dibutyl ester. Dibutyl phthalate Di-n-butyl phthalate	100	1,2,3,4	U069	A	10 (4.54)
CADMIUM AND COMPOUNDS.	N.A.	Cadmium Compounds ...	1*	2,3			(**)
Cadmium Compounds	N.A.	CADMIUM AND COMPOUNDS.	1*	2,3			(**)
Camphene, octachloro- ..	8001352	Chlorinated camphene Toxaphene.	1	1,2,3,4	P123	X	1 (0.454)
Captan	133062	.....	10	1,3		A	10 (4.54)
Carbamic acid, ethyl ester.	51796	Ethyl carbamate Urethane.	1*	3,4	U238	B	100 (45.4)
Carbamic chloride, dimethyl-.	79447	Dimethylcarbamoyl chloride.	1*	3,4	U097	X	1 (0.454)
Carbaryl	63252	.....	100	1,3		B	100 (45.4)
Carbon disulfide	75150	.....	5000	1,3,4	P022	B	100 (45.4)
Carbonic dichloride	75445	Phosgene	5000	1,3,4	P095	A	10 (4.54)
Carbon tetrachloride	56235	Methane, tetrachloro-	5000	1,2,3,4	U211	A	10 (4.54)
Chlordane	57749	Chlordane, alpha & gamma isomers. CHLORDANE (TECHNICAL MIXTURE AND METABOLITES) 4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-.	1	1,2,3,4	U036	X	1 (0.454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[NOTE: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste No.	Category	Pounds (Kg)
Chlordane, alpha & gamma isomers.	57749	Chlordane CHLORDANE (TECHNICAL MIXTURE AND METABOLITES) l4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-.	1	1,2,3,4	U036	X	1 (0.454)
CHLORDANE (TECHNICAL MIXTURE AND METABOLITES).	57749	Chlordane, alpha & gamma isomers. Chlordane, alpha & gamma isomers 4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-	1	1,2,3,4	U036	X	1 (0.454)
Chlorinated camphene	8001352	Camphene, octachloro- Toxaphene.	1	1,2,3,4	P123	X	1 (0.454)
Chlorine	7782505		10	1,3		A	10 (4.54)
Chlorobenzene	108907	Benzene, chloro-	100	1,2,3,4	U037	B	100 (45.4)
Chlorobenzilate	510156	Benzeneacetic acid, 4-chloro-α-(4-chlorophenyl)-α-hydroxy-, ethyl ester.	1*	3,4	U038	A	10 (4.54)
1-Chloro-2,3-epoxypropane.	106898	Epichlorohydrin Oxirane, (chloromethyl)-.	1000	1,3,4	U041	B	100 (45.4)
Chloroethane	75003	Ethyl chloride	1*	2,3		B	100 (45.4)
Chloroform	67663	Methane, trichloro-	5000	1,2,3,4	U044	A	10 (4.54)
Chloromethane	74873	Methane, chloro-Methyl chloride.	1*	2,3,4	U045	B	100 (45.4)
Chloromethyl methyl ether.	107302	Methane, chloromethoxy-.	1*	3,4	U046	A	10 (4.54)
CHROMIUM AND COMPOUNDS.	N.A.	Chromium Compounds	1*	2,3			(**)
Chromium Compounds	N.A.	CHROMIUM AND COMPOUNDS.	1*	2,3			(**)
Cumene	98828	Benzene, (1-methylethyl)-.	1*	3,4	U055	D	5000 (2270)
Cyanide Compounds	N.A.	CYANIDES	1*	2,3			(**)
CYANIDES	N.A.	Cyanide Compounds	1*	2,3			(**)
2,5-Cyclohexadiene-1,4-dione.	106514	p-Benzoquinone Quinone.	1*	3,4	U197	A	10 (4.54)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[NOTE: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste No.	Category	Pounds (Kg)
Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1α,2α,3β,4α,5α,6β)-.	58899	γ-BHC Hexachlorocyclohexane (gamma isomer) Lindane Lindane (all isomers).	1	1,2,3,4	U129	X	1 (0.454)
1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-.	77474	Hexachlorocyclopentadiene.	1	1,2,3,4	U130	A	10 (4.54)
2,4-D Acid	94757	Acetic acid, (2,4-dichlorophenoxy)-, salts & esters. 2,4-D, salts and esters	100	1,3,4	U240	B	100 (45.4)
2,4-D salts and esters	94757	Acetic acid, (2,4-dichlorophenoxy)-, salts & esters. 2,4-D Acid	100	1,3,4	U240	B	100 (45.4)
DDE	72559	4,4'-DDE	1*	2,3		X	1 (0.454)
4,4'-DDE	72559	DDE	1*	2,3		X	1 (0.454)
DEHP	117817	1,2-Benzenedicarboxylic acid, bis(2-ethyl-hexyl) ester. Bis(2-ethylhexyl)phthalate Diethylhexyl phthalate	1*	2,3,4	U028	B	100 (45.4)
1,2-Dibromo-3-chloropropane.	96128	Propane, 1,2-dibromo-3-chloro-.	1*	3,4	U066	X	1 (0.454)
Dibromoethane	106934	Ethane, 1,2-dibromo- Ethylene dibromide.	1000	1,3,4	U067	X	1 (0.454)
Dibutyl phthalate	84742	1,2-Benzenedicarboxylic acid, dibutyl ester. n-Butyl phthalate Di-n-butyl phthalate	100	1,2,3,4	U069	A	10 (4.54)
Di-n-butyl phthalate	84742	1,2-Benzenedicarboxylic acid, dibutyl ester. n-Butyl phthalate Dibutyl phthalate	100	1,2,3,4	U069	A	10 (4.54)
1,4-Dichlorobenzene	106467	Benzene, 1,4-dichloro- p-Dichlorobenzene	100	1,2,3,4	U072	B	100 (45.4)
p-Dichlorobenzene	106467	Benzene, 1,4-dichloro- 1,4-Dichlorobenzene	100	1,2,3,4	U072	B	100 (45.4)
3,3'-Dichlorobenzidine	91941	[1,1'-Biphenyl]-4,4'-diamine,3,3'-dichloro-.	1*	2,3,4	U073	X	1 (0.454)
1,1-Dichloroethane	75343	Ethane, 1,1-dichloro- Ethylidene dichloride	1*	2,3,4	U076	C	1000 (454)
1,2-Dichloroethane	107062	Ethane, 1,2-dichloro- Ethylene dichloride	5000	1,2,3,4	U077	B	100 (45.4)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[NOTE: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste No.	Category	Pounds (Kg)
1,1-Dichloroethylene	75354	Ethene, 1,1-dichloro- Vinylidene chloride	5000	1,2,3,4	U078	B	100 (45.4)
Dichloroethyl ether	111444	Bis(2-chloroethyl) ether Ethane, 1,1′-oxybis[2-chloro-	1*	2,3,4	U025	A	10 (4.54)
Dichloromethyl ether	542881	Bis(chloromethyl) ether Methane, oxybis(chloro-	1	3,4	P016	A	10 (4.54)
Dichloromethane	75092	Methane, dichoro- Methylene chloride	1	2,3,4	U080	C	1000 (454)
1,2-Dichloropropane	78875	Propane, 1,2-dichloro- Propylene dichloride	5000	1,2,3,4,	U083	C	1000 (454)
1,3-Dichloropropane	542756	1-Propene, 1,3-dichloro-	5000	1,2,3,4	U084	B	100 (45.4)
Dichlorvos	62737		10	1,3		A	10 (4.54)
1,4-Diethyleneoxide	123911	1,4-Dioxane 1,4-Diethylenedioxide	1	3,4	U108	B	100 (45.4)
1,4-Diethylenedioxide	123911	1,4-Dioxane 1,4-Diethyleneoxide	1	3,4	U108	B	100 (45.4)
Diethylhexyl phtnalate	117817	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester. Bis(2-ethylhexyl)phthalate DEHP	1	2,3,4	U028	B	100 (45.4)
3,3′-Dimethoxybenzidine	119904	[1,1′-Biphenyl]-4,4′-diamine,3,3′-dimethoxy-.	1	3,4	U091	B	100 (45.4)
Dimethyl aminoazobenzene.	60117	Benzenamine, N,N-dimethyl-4-(phenylazo-). P-Dimethylaminoazobenzene	1	3,4	U093	A	10 (4.54)
p-Dimethylaminoazobenzene.	60117	Benzenamine, N,N-dimethyl-4-(phenylazo-). Dimethyl aminoazobenzene	1	3,4	U093	A	10 (4.54)
3,3′-Dimethylbenzidine	119937	[1,1′-Biphenyl]-4,4′-diamine,3,3′-dimethyl-.	1	3,4	U095	A	10 (4.54)
Dimethylcarbamoyl chloride.	79447	Carbamic chloride, dimethyl-.	1	3,4	U097	X	1 (0.454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[NOTE: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste No.	Category	Pounds (Kg)
1,1-Dimethylhydrazine	57147	Hydrazine, 1,1-dimethyl-	1	3,4	U098	A	10 (4.54)
Dimethyl phthalate	131113	1,2-Benzenedicarboxylic acid, dimethyl ester.	1	2,3,4	U102	D	5000 (2270)
Dimethyl sulfate	77781	Sulfuric acid, dimethyl ester.	1	3,4	U103	B	100 (45.4)
4,6-Dinitro-o-cresol, and salts.	534521	Phenol, 2-methyl-4,6-dinitro-, & salts.	1	2,3,4	P047	A	10 (4.54)
2,4-Dinitrophenol	51285	Phenol, 2,4-dinitro-	1000	1,2,3,4,	P048	A	10 (4.54)
2,4-Dinitrotoluene	121142	Benzene, 1-methyl-2,4-dinitro-.	1000	1,2,3,4	U105	A	10 (4.54)
1,4-Dioxane	123911	1,4-Diethyleneoxide 1,4-Diethlyenedioxide	1	3,4	U108	B	100 (45.4)
1,2-Diphenyl-hydrazine	122667	Hydrazine, 1,2-diphenyl-	1*	2,3,4	U109	A	10(4.54)
Epichlorohydrin	106898	1-Chloro-2,3-epoxypropane. Oxirane, (chloromethyl)-	1000	1,3,4	U041	B	100(45.4)
Ethanal	75070	Acetaldehyde	1000	1,3,4	U001	C	1000(454)
Ethane, 1,2-dibromo	106934	Dibromoethane Ethylene dibromide	1000	1,3,4	U067	X	1(0.454)
Ethane, 1,1-dichloro	75343	1,1-Dichloroethane Ethylidene dichloride	1*	2,3,4	U076	C	1000(454)
Ethane, 1,2-dichloro	107062	1,2-Dichloroethane Ethylene dichloride	5000	1,2,3,4	U077	B	100(45.4)
Ethane, hexachloro-	67721	Hexachloroethane	1*	2,3,4	U131	B	100(45.4)
Ethane, 1,1′-oxybis[2-chloro-.	111444	Bis(2-chloroethyl) ether Dichloroethyl ether	1*	2,3,4	U025	A	10(4.54)
Ethane, 1,1,2,2-tetrachloro-.	79345	1,1,2,2-Tetra-chloroethane	1*	2,3,4	U209	B	100(45.4)
Ethane, 1,1,1-trichloro-	71556	Methyl chloroform 1,1,1-Trichloroethane	1*	2,3,4	U226	C	1000(454)
Ehane, 1,1,2-trichloro-	79005	1,1,2-Trichloroethane	1*	2,3,4	U227	B	100(45.4)
Ethanone, 1-phenyl-	98862	Acetophenone	1*	3,4	U004	D	5000(2270)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[NOTE: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste No.	Category	Pounds (Kg)
Ethene, 1,1-dichloro-	75354	1,1-Dichloroethylene Vinylidene chloride	5000	1,2,3,4	U078	B	100(45.4)
Ethene, tetrachloro-	127184	Perchloroethylene Tetrachloroethene Tetrachloroethylene	1*	2,3,4	U210	B	100(45.4)
Ethene, trichloro-	79016	Trichloroethene Trichloroethylene	1000	1,2,3,4	U228	B	100(45.4)
Ethyl acrylate	140885	2-Propenoic acid, ethyl ester.	1*	3,4	U113	C	1000(454)
Ethylbenzene	100414		1000	1,2,3		C	1000(454)
Ethyl carbamate	51796	Carbamic acid, ethyl ester. Urethane	1*	3,4	U238	B	100(45.4)
Ethyl chloride	75003	Chloroethane	1*	2,3		B	100(45.4)
Ethylene dibromide	106934	Dibromoethane	1000	1,3,4	U067	X	1(0.454)
Ethylene dichloride	107062	Ethane, 1,2-dibromo- 1,2-Dichloroethane Ethane, 1,2-dichloro-	5000	1,2,3,4	U077	B	100(45.4)
Ethyleneimine	151564	Aziridine	1*	3,4	P054	X	1(0.454)
Ethylene oxide	75218	Oxirane	1*	3,4	U115	A	10(4.54)
Ethylenethiourea	96457	2-Imidazolidinethione	1*	3,4	U116	A	10(4.54)
Ethylidene dichloride	75343	1,1-Dichloroethane Ethane, 1,1-dichloro-		2,3,4	U076	C	1000 (454)
Formaldehyde	50000		1000	1,3,4	U122	B	100 (45.4)
2,5-Furandione	108316	Maleic anhydride	5000	1,3,4	U147	D	5000 (2270)
Heptachlor	76448	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-.heptachloro-3a,4,7,7a-tetrahydro-	1	1,2,3,4	P059	X	1, (0.454)
Hexachlorobenzene	118741	Benzene, hexachloro-	1*	2,3,4	U127	A	10 (4.54)
Hexachlorobutadiene	87683	1,3-Butadiene 1,1,2,3,4,4-hexachloro-.	1*	2,3,4	U128	X	1 (0.454)
Hexachlorocyclohexane (gamma isomer).	58899	γ-BHC Chclohexane, 1,2,3,4,5,6-hexachloro-(1α,2α,3β,4α, 5α,6β)- Lindane Lindane (all isomers)	1	1,2,3,4	U129	X	1 (0.454)
Hexachlorocyclopentadiene.	77474	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-.	1	1,2,3,4	U130	A	10 (4.54)
Hexachloroethane	67721	Ethane, hexachloro-	1*	2,3,4	U131	B	100 (45.4)
Hexone	108101	Methyl isobutyl ketone 4-Methyl-2-pentanone	1*	3,4	U161	D	5000 (2270)
Hydrazine	302012		1*	3,4	U133	X	1 (0.454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[NOTE: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste No.	Category	Pounds (Kg)
Hydrazine, 1,1-dimethyl-	57147	1,1-Dimethylhydrazine	1*	3,4	U098	A	10 (4.54)
Hydrazine, 1,2-diphenyl-	122667	1,2-Diphenylhydrazine	1*	2,3,4	U109	A	10 (4.54)
Hydrazine, methyl-	60344	Methyl hydrazine	1*	3,4	P068	A	10 (4.54)
Hydrochloric acid	7647010	Hydrogen chloride	5000	1,3		D	5000 (2270)
Hydrofluoric acid	7664393	Hydrogen fluoride	5000	1,3,4	U134	B	100 (45.4)
Hydrogen chloride	7647010	Hydrochloric acid	5000	1,3		D	5000 (2270)
Hydrogen fluoride	7664393	Hydrofluoric acid	5000	1,3,4	U134	B	100 (45.4)
Hydrogen phosphide	7803512	Phosphine	1*	3,4	P096	B	100 (45.4)
2-Imidazolidinethione	96457	Ethylenethiourea	1*	3,4	U116	A	10 (4.54)
Iodomethane	74884	Methane, iodo- Methyl iodide	1*	3,4	U138	B	100 (45.4)
1,3-Isobenzofurandione	85449	Phthalic anhydride	1*	3,4	U190	D	5000 (2270)
Isophorone	78591		1*	2,3		D	5000 (2270)
LEAD AND COMPOUNDS.	N.A.	Lead Compounds	1*	2,3			(*)
Lead Compounds	N.A.	LEAD AND COMPOUNDS.	1*	2,3			(**)
Lindane	58899	γ-BHC Cyclohexane, 1,2,3,4,5,6-hexachloro-(1α,2α, 3β,4α,5α,6β)-, Hexachlorocyclohexane (gamma isomer) Lindane (all isomers)	1	1,2,3,4	U129	X	1 (0.454)
Lindane (all isomers)	58899	γ-BHC Cyclohexane, 1,2,3,4,5,6-hexachloro-(1α,2α,3β,4α,5α,6β)-, Hexachlorocyclohexane (gamma isomer) Lindane	1	1,2,3,4	U129	X	1 (0.454)
Maleic anhydride	108316	2,5-Furandione	5000	1,3,4	U147	D	5000 (2270)
MEK	78933	2-Butanone Methyl ethyl ketone	1*	3,4	U159	D	5000 (2270)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[NOTE: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste No.	Category	Pounds (Kg)
MERCURY AND COMPOUNDS.	N.A.	Mercury Compounds	1*	2,3			(**)
Mercury Compounds	N.A.	MERCURY AND COMPOUNDS.	1*	2,3			(**)
Methanamine, N-methyl-N-nitroso-.	62759	N-Nitrosodimethylamine .	1*	2,3,4	P082	A	10 (4.54)
Methane, bromo-	74839	Bromomethane ..... Methyl bromide	1*	2,3,4	U029	C	1000 (454)
Methane, chloro-	74873	Chloromethane	1*	2,3,4	U045	B	100 (45.4)
Methane, chloromethoxy-	107302	Chloromethyl methyl ether.	1*	3,4	U046	A	10 (4.54)
Methane, dichloro-	75092	Methylene chloride ..... Dichloromethane	1*	2,3,4	U080	C	1000 (454)
Methane, iodo-	74884	Iodomethane ..... Methyl iodide	1*	3,4	U138	B	100 (45.4)
Methane, oxybis(chloro- .	542881	Bis(chloromethyl)ether ... Dichloromethyl ether	1*	3,4	P016	A	10 (4.54)
Methane, tetrachloro-	56235	Carbon tetrachloride	5000	1,2,3,4	U211	A	10 (4.54)
Methane, tribromo-	75252	Bromoform	1*	2,3,4	U225	B	100 (45.4)
Methane, trichloro-	67663	Chloroform	5000	1,2,3,4	U044	A	10 (4.54)
4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-.	76448	Heptachlor	1*	1,2,3,4	P059	X	1 (0.454)
4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-.	57749	Chlordane ..... Chlordane, alpha & gamma isomers CHLORDANE (TECHNICAL MIXTURE AND METABOLITES)	1	1,2,3,4	U036	X	1 (0.454)
Methanol	67561	Methyl alcohol	1*	3,4	U154	D	5000 (2270)
Methoxychlor	72435	Benzene, 1,1'-(2,2,2-trichloroethyl-idene)bis[4-methoxy-	1	1,3,4	U247	X	1 (0.454)
Methyl alcohol	67561	Methanol	1*	3,4	U154	D	5000 (2270)
2-Methyl aziridine	75558	Aziridine, 2-methyl- 1,2-Propylenimine	1*	3,4	P067	X	1 (0.454)
Methyl bromide	74839	Bromomethane ..... Methane, bromo-	1*	2,3,4	U029	C	1000 (454)
Methyl chloride	74873	Chloromethane ..... Methane, chloro-	1*	2,3,4	U045	B	100 (45.4)
Methyl chloroform	71556	Ethane, 1,1,1,-trichloro- . 1,1,1-Trichloroethane	1*	2,3,4	U226	C	1000 (454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[NOTE: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste No.	Category	Pounds (Kg)
4,4'-Methylenebis(2-chloroaniline).	101144	Benzenamine, 4,4'-methylene-bis(2-chloro-.	1*	3,4	U158	A	10 (4.54)
Methylene chloride	75092	Dichloromethane ..... Methane, dichloro-	1*	2,3,4	U080	C	1000 (454)
Methyl ethyl ketone	78933	2-Butanone ..... MEK	1*	3,4	U159	D	5000 (2270)
Methyl hydrazine	60344	Hydrazine, methyl-	1*	3,4	P068	A	10 (4.54)
Methyl iodide	74884	Iodomethane ..... Methane, iodo-	1*	3,4	U138	B	100 (45.4)
Methyl isobutyl ketone	108101	Hexone 4-Methyl-2-pentanone	1*	3,4	U161	D	5000 (2270)
Methyl methacrylate	80626	2-Propenoic acid, 2-methyl-, methyl ester.	5000	1,3,4	U162	C	1000 (454)
4-Methyl-2-pentanone	108101	Hexone ..... Methyl isobutyl ketone	1*	3,4	U161	D	5000 (2270)
Naphthalene	91203	.....	5000	1,2,3,4	U165	B	100 (45.4)
NICKEL AND COMPOUNDS.	N.A.	Nickel Compounds	1*	2,3			(**)
Nickel Compounds	N.A.	NICKEL AND COMPOUNDS.	1*	2,3			(**)
Nitrobenzene	98953	Benzene, nitro-	1000	1,2,3,4	U169	C	1000 (454)
p-Nitrophenol	100027	4-Nitrophenol ..... Phenol, 4-nitro-	1000	1,2,3,4	U170	B	100 (45.4)
4-Nitrophenol	100027	p-Nitrophenol ..... Phenol, 4-nitro-	1000	1,2,3,4	U170	B	100 (45.4)
2-Nitropropane	79469	Propane, 2-nitro	1*	3,4	U171	A	10 (4.54)
N-Nitrosodimethylamine .	62759	Methanamine, N-methyl-N-nitroso-.	1*	2,3,4	P082	A	10 (4.54)
N-Nitroso-N-methylurea ..	684935	Urea, N-methyl-N-nitroso	1*	3,4	U177	X	1 (0.454)
1,2-Oxathiolane, 2,2-dioxide.	1120714	1,3-Propane sultone	1*	3,4	U193	A	10 (4.54)
Oxirane	75218	Ethylene oxide	1*	3,4	U115	A	10 (4.54)
Oxirane, (chloromethyl)- .	106898	1-Chloro-2,3-epoxypropane. Epichlorohydrin	1000	1,3,4	U041	B	100 (45.4)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[NOTE: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste No.	Category	Pounds (Kg)
Parathion	56382	Phosphorothioic acid, O,O-diethyl O-(4-nitrophenyl) ester	1	1,3,4	P089	A	10 (4.54)
PCBs	1336363	Aroclors POLYCHLORINATED BIPHENYLS	10	1,2,3		X	1 (0.454)
Aroclor 1016	12674112		10	1,2,3		X	1 (0.454)
Aroclor 1221	11104282		10	1,2,3		X	1 (0.454)
Aroclor 1232	11141165		10	1,2,3		X	1 (0.454)
Aroclor 1242	53469219		10	1,2,3		X	1 (0.454)
Aroclor 1248	12672296		10	1,2,3		X	1 (0.454)
Aroclor 1254	11097691		10	1,2,3		X	1 (0.454)
Aroclor 1260	11096825		10	1,2,3		X	1 (0.454)
PCNB	82688	Benzene, pentachloronitro-. Pentachloronitrobenzene Quintobenzene.	1*	3,4	U185	B	100 (45.4)
Pentachloronitrobenzene	82688	Benzene, pentachloronitro-. PCNB Quintobenzene.	1*	3,4	U185	B	100 (45.4)
Pentachlorophenol	87865	Phenol, pentachloro-	10	1,2,3,4	U242	A	10 (4.54)
Perchloroethylene	127184	Ethene, tetrachloro- Tetrachloroethene Tetrachloroethylene	1*	2,3,4	U210	B	100 (45.4)
Phenol	108952	Benzene, hydroxy-	1000	1,2,3,4	U188	C	1000 (454)
Phenol, 2,4-dinitro-	51285	2,4-Dinitrophenol	1000	1,2,3,4	P048	A	10 (4.54)
Phenol, 2-methyl-4,6-dinitro-, & salts.	534521	4,6-Dinitro-o-cresol, and salts.	1*	2,3,4	P047	A	10 (4.54)
Phenol, 4-nitro-	100027	p-Nitrophenol 4-Nitrophenol	1000	1,2,3,4	U170	B	100 (45.4)
Phenol, pentachloro	87865	Pentachlorophenol	10	1,2,3,4	U242	A	10 (4.54)
Phenol, 2,4,5-trichloro-	95954	2-4,5-Trichlorophenol	10	1,3,4	U230	A	10 (4.54)
Phenol, 2,4,6-trichloro-	88062	2,4,6-Trichlorophenol	10	1,2,3,4	U231	A	10 (4.54)
Phosgene	75445	Carbonic dichloride	5000	1,3,4	P095	A	10 (4.54)
Phosphine	7803512	Hydrogen phosphide	1*	3,4	P096	B	100 (45.4)
Phosphorothioic acid, O,O-diethyl O-(4-nitrophenyl) ester.	56382	Parathion	1	1,3,4	UP089	A	10 (4.54)
Phosphorus	7723140		1	1,3		X	1 (0.454)
Phthalic anhydride	85449	1,3-Isobenzofurandione	1*	3,4	U190	D	5000 (2270)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[NOTE: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste No.	Category	Pounds (Kg)
POLYCHLORINATED BIPHENYLS.	1336363	Aroclors PCBs	10	1,2,3		X	1 (0.454)
Aroclor 1016	12674112		10	1,2,3		X	1 (0.454)
Aroclor 1221	11104282		10	1,2,3		X	1 (0.454)
Aroclor 1232	11141165		10	1,2,3		X	1 (0.454)
Aroclor 1242	53469219		10	1,2,3		X	1 (0.454)
Aroclor 1248	12672296		10	1,2,3		X	1 (0.454)
Aroclor 1254	11097691		10	1,2,3		X	1 (0.454)
Aroclor 1260	11096825		10	1,2,3		X	1 (0.454)
Propane, 1,2-dibromo-3-chloro.	96128	1,2-Dibromo-3-chloropropane.	1*	3,4	U066	X	1 (0.454)
Propane, 1,2-dichloro-	78875	1,2-Dichloropropane Propylene dichloride	5000	1,2,3,4	U083	C	1000 (454)
Propane, 2-nitro	79469	2-Nitropropane	1*	3,4	U171	A	10 (4.54)
1,3-Propane sultone	1120714	1,2-Oxathiolane, 2,2-dioxide.	1*	3,4	U193	A	10 (4.54)
2-Propenal	107028	Acrolein	1	1,2,3,4	P003	X	1 (0.454)
2-Propenamide	79061	Acrylamide	1*	3,4	U007	D	5000 (2270)
1-Propene, 1,3-dichloro-	542756	1,3-Dichloropropene	5000	1,2,3,4	U084	B	100 (45.4)
2-Propenenitrile	107131	Acrylonitrile	100	1,2,3,4	U009	B	100 (4.54)
2-Propenoic acid	79107	Acrylic acid	1*	3,4	U008	D	5000 (2270)
2-Propenoic acid, ethyl ester.	140885	Ethyl acrylate	1*	3,4	U113	C	1000 (454)
2-Propenoic acid, 2-methyl-, methyl ester.	80626	Methyl Nethacrylate	5000	1,3,4	U162	C	1000 (454)
Propylene dichloride	78875	1,2-Dichloropropane Propane, 1,2-dichloro-.	5000	1,2,3,4	U083	C	1000 (454)
Propylene oxide	75569		5000	1,3		B	100 (45.4)
1,2-Propylenimine	75558	Aziridine, 2-methyl- 2-Methyl aziridine	1*	3,4	P067	X	1 (0.454)
Quinoline	91225		1000	1,3		D	5000 (2270)
Quinone	106514	p-Benzoquinone 2,5-Cyclohexadiene-1,4-dione.	1*	3,4	U197	A	10 (4.54)
Quintobenzene	82688	Benzene, pentachloronitro. PCNB Pentachloronitrobenzene.	1*	3,4	U185	B	100(45.4)
Radionuclides (including radon).	N.A.		1*	3			(§)
SELENIUM AND COMPOUNDS.	N.A.	Selenium Compounds	1*	2,3			(**)
Selenium Compounds	N.A.	SELENIUM COMPOUNDS.	1*	2,3			(**)
Styrene	100425		1000	1,3		C	1000(454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[NOTE: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory RQ	Statutory Code†	Statutory RCRA waste No.	Final RQ Category	Final RQ Pounds (Kg)
Sulfuric acid, dimethyl ester.	77781	Dimethyl sulfate	1*	3,4	U103	B	100(45.4)
TCDD	1746016	2,3,7,8,-Tetrachlorodibenzo-p-dioxin.	1*	2,3		X	1(0.454)
2,3,7,8-Tetrachlorodibenzo-p-dioxin.	1746016	TCDD	1*	2,3		X	1(0.454)
1,1,2,2,-Tetrachloroethane.	79345	Ethane, 1,1,2,2,-tetrachloro-.	1*	2,3,4	U209	B	100(45.4)
Tetrachloroethene	127184	Ethene, tetrachloro- Perchloroethylene Tetrachloroethylene	1*	2,3,4	U210	B	100(45.4)
Tetrachloroethylene	127184	Ethene, tetrachyloro Perchloroethylene Tetrachloroethlene	1*	2,3,4	U210	B	100(45.4)
Toluene	108883	Benzene, methyl	1000	1,2,3,4	U220	C	1000(454)
Toluenediamine	95807 496720 823405 25376458	Benzenediamine, ar-methyl-. 2,4-Toluene diamine	1*	3,4	U221	A	10(4,54)
2,4-Toluene diamine	95807 496710 823405 25376458	Benzenediamine, ar-methyl-. Toluenediamine	1*	3,4	U221	A	10(4.54)
Toluene diisocyanate	91087 5848349 26471625	Benzene, 1,3-diisocyanato methyl-. 2,4-Toluene diisocyanate-.	1*	3,4	U223	B	100 (45.5)
2,4-Toluene diisocyanate	91087 5848349 26471625	Benzene, 1,3-diisocyanatomethyl-. Toluene diisocyanate.	1*	3,4	U223	B	100 (45.5)
o-Toluidine	95534	Benzenamine, 2-methyl-	1*	3,4	U328	B	100(45.4)
Toxaphene	8001352	Camphene, octachloro- Chlorinated camphene	1*	1,2,3,4	P123	X	1 (0.454)
1,2,4-Trichlorobenzene	120821		1*	2,3		B	100 (45.5)
1,1,1-Trichloroethane	71556	Ethane, 1,1,1-trichloro- Methyl. chloroform	1*	2,3,4	U226	C	1000 (454)
1,1,2-Trichloroethane	79005	Ethane, 1,1,2-trichloro	1*	2,3,4	U227	B	100 (45.4)
Trichloroethene	79016	Ethene, trichloro- Trichloroethylene.	1000	1,2,3,4	U228	B	100 (45.4)
Trichloroethylene	79016	Ethene, trichloro Trichloroethene.	1000	1,2,3,4	U228	B	100 (45.4)
2,4,5-Trichlorophenol	95954	Phenol, 2,4,5-trichloro-	10	1,3,4	U230	A	10 (4.54)
2,4,6-Trichlorophenol	88062	Phenol, 2,4,6-trichloro-	10	1,2,3,4	U231	A	10 (4.54)
Triethylamine	121448		5000	1,3		D	5000 (2270)
Urea, N-menthyl-N-nitroso.	684935	N-Nitroso-N-methylurea	1*	3,4	U177	X	1 (0.454)
Urethane	51796	Carbamic acid, ethyl ester. Ethyl carbamate	1*	3,4	U238	B	100 (45.4)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[NOTE: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory RQ	Statutory Code†	Statutory RCRA waste No.	Final RQ Category	Final RQ Pounds (Kg)
Vinyl acetate	108054	Vinyl acetate monomer	1000	1,3		D	5000 (2270)
Vinyl acetate monomer	108054	Vinyl acetate	1000	1,3	D		5000 (2270)
Vinylidence chloride	75354	1,1-Dichloroethylene Ethene, 1,1-dichloro-	5000	1,2,3,4	U078	B	100 (45.4)

† Indicates the statutory source as defined by 1,2,3, and 4 below.

1- Indicates that the statutory source for designation of this hazardous substance under CERCLA is CWA section 311(b)(4).
2- Indicates that the statutory source for designation of this hazardous substance under CERCLA is CWA section 307(a).
3- Indicates that the statutory source for designation of this hazardous substance under CERCLA is CAA section 112.
4- Indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA section 3001.
! Indicates that the 1-pound RQ is a CERCLA statutory RQ.

**Indicates that no RQ is being assigned to the generic or broad class.

APPENDIX A TO § 302.4.—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES

CASRN	Hazardous substance
51796	Carbamic acid, ethyl ester Ethyl carbamate Urethane.
57749	Chlordane Chlordane, alpha & gamma isomers CHLORDANE (TECHNICAL MIXTURE AND METABOLITES) 4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8- octachloro-2,3,3a,4,7,7a-hexahydro-.
58899	γ-BHC Cyclohexane, 1,2,3,4,5,6-hexachloro (1α,2α,3β,4α,5α,6β)- Hexachlorocyclohexane (gamma isomer) Lindane Lindane (all isomers).
60117	Benzenamine, N,N-dimethyl-4-(phenylazo-) Dimethyl aminoazobenzene p-Dimethylaminoazobenzene.
72559	DDE 4,4'-DDE.
74839	Bromomethane Methane, bromo- Methyl bromide.
74873	Chloromethane Methane, chloro- Methyl chloride.
74884	Iodomethane Methane, iodo- Methyl iodide.
75003	Chloroethane Ethyl chloride.
75092	Dichloromethane Methane, dichloro- Methylene chloride.
75252	Bromoform Methane, tribromo-.
75558	Aziridine, 2-methyl- 2-Methyl aziridine 1,2-Propylenimine.
78933	2-Butanone MEK Methyl ethyl ketone.
82688	Benzene, pentachloronitro- PCNB Pentachloronitrobenzene Quintobenzene.

APPENDIX A TO § 302.4.—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous substance
91087	Benzene, 1,3-diisocyanatomethyl- Toluene diisocyanate 2,4-Toluene diisocyanate.
92875	Benzidine [1,1'-Biphenyl]-4,4'diamine.
94757	Acetic acid (2,4-dichlorophenoxy)-, salts & esters 2,4-D Acid 2,4-D, salts and esters.
95807	Benzenediamine, ar-methyl- Toluenediamine 2,4-Toluene diamine.
98828	Benzene, (1-methylethyl)- Cumene.
106514	p-Benzoquinone 2,5-Cyclohexadiene-1,4-dione Quinone.
106898	1-Chloro-2,3-epoxypropane Epichlorohydrin Oxirane, (chloromethyl)-.
106934	Dibromoethane Ethane, 1,2-dibromo- Ethylene, dibromide.
117817	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester Bis(2-ethylhexyl)phthalate DEHP Diethylhexyl phthalate.
123911	1,4-Diethyleneoxide 1,4-Diethylenedioxide 1,4-Dioxane.
131113	Dimethyl phthalate 1,2-Benzenedicarboxylic acid, dimethyl ester.
151564	Aziridine Ethyleneimine.
496720	Benzenediamine, ar-methyl- Toluenediamine 2,4-Toluene diamine.
510156	Benzeneacetic acid, 4-chloro-α- (4-chlorophenyl)-α-hydroxy-, ethyl ester Chlorobenzilate.
534521	4,6-Dinitro-o-cresol, and salts Phenol, 2-methyl-4,6-dinitro-, & salts.
542881	Bis(chloromethyl)ether Dichloromethyl ether Methane, oxybis(chloro)-.
584849	Benzene, 1,3-diisocyanatomethyl- Toluene diisocyanate 2,4-Toluene diisocyanate.
823405	Benzenediamine, ar-methyl- Toluenediamine 2,4-Toluene diamine.
1336363	Aroclors PCBs POLYCHLORINATED BIPHENYLS.
1746016	TCDD 2,3,7,8-Tetrachlorodibenzo-p-dioxin.
7803512	Hydrogen phosphide Phosphine.
8001352	Camphene, octachloro- Chlorinated camphene Toxaphene.
11096825	Aroclor 1260 Aroclors PCBs POLYCHLORINATED BIPHENYLS.
11097691	Aroclor 1254 Aroclors PCBs POLYCHLORINATED BIPHENYLS.

APPENDIX A TO § 302.4.—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous substance
11104282	Aroclor 1221 Aroclors PCBs POLYCHLORINATED BIPHENYLS.
11141165	Aroclor 1232 Aroclors PCBs POLYCHLORINATED BIPHENYLS.
12672296	Aroclor 1248 Aroclors PCBs POLYCHLORINATED BIPHENYLS.
12674112	Aroclor 1016 Aroclors PCBs POLYCHLORINATED BIPHENYLS.
25376458	Benzenediamine, ar-methyl- Toluenediamine 2,4-Toluene diamine.
26471625	Benzene, 1,3-diisocyanatomethyl- Toluene diisocyanate 2,4-Toluene diisocyanate.
53469219	Aroclor 1242 Aroclors PCBs POLYCHLORINATED BIPHENYLS.

PART 355—EMERGENCY PLANNING AND NOTIFICATION

6. The authority citation for part 355 continues to read as follows:

Authority: 42 U.S.C. 11002, 11004, and 11048.

7. Part 355 is amended by revising the following entries in Appendices A and B, to read as set forth below:

* * * * *

APPENDIX A TO PART 355.—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES

[Alphabetical order]

CAS No.	Chemical name	Notes	Reportable quantity* (pounds)	Threshold planning quantity (pounds)
79–11–8	Chloroacetic Acid		100	100/10,000
95–48–7	Cresol, o-		100	1,000/10,000
123–31–9	Hydroquinone	1	100	500/10,000
57–57–8	Propiolactone, Beta-		10	500
7550–45–0	Titanium Tetrachloride		1,000	100

*Only the statutory or final RQ is shown. For more information, see 40 CFR table 302.4.

Notes:

Chemicals on the original list that do not meet toxicity criteria but because of their high production volume and recognized toxicity are considered chemicals of concern ("Other chemicals").

APPENDIX B TO PART 355.—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES

[CAS number order]

CAS No.	Chemical name	Notes	Reportable quantity* (pounds)	Threshold planning quantity (pounds)
57–57–8	Propiolactone, Beta-		10	500
79–11–8	Chloroacetic Acid		100	100/10,000
95–48–7	Cresol, o-		100	1,000/10,000
123–31–9	Hydroquinone		100	500/10,000
7550–45–0	Titanium Tetrachloride		1,000	100

*Only the statutory or final RQ is shown. For more information, see 40 CFR table 302.4.

Notes:

Chemicals on the original list that do not meet toxicity criteria but because of their high production volume and recognized toxicity are considered chemicals of concern ("Other chemicals").

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federal register

Monday
June 12, 1995

Part III

Environmental Protection Agency

40 CFR Parts 257, 261, and 271

Criteria for Classification of Solid Waste Disposal Facilities and Practices; Identification and Listing of Hazardous Waste; Requirements for Authorization of State Hazard Waste Programs; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 257, 261, and 271

[FRL–5209–4]

RIN 2050–AE11

Criteria for Classification of Solid Waste Disposal Facilities and Practices; Identification and Listing of Hazardous Waste; Requirements for Authorization of State Hazardous Waste Programs

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing revisions to the existing Criteria for solid waste disposal facilities and practices. The proposed revisions would establish specific standards for non-municipal solid waste disposal facilities that receive conditionally exempt small quantity generator (CESQG) wastes. EPA is also proposing revisions to regulations for hazardous wastes generated by CESQGs. Today's proposal will clarify acceptable disposal options under Subtitle D of the Resource Conservation and Recovery Act (RCRA) by specifying that CESQG hazardous waste may be managed at municipal solid waste landfills subject to part 258 and at non-municipal solid waste facilities subject to the facility standards being proposed today.

The Agency is obligated to issue this proposal by Section 4010(c) of RCRA, and is issuing it today in partial settlement of a lawsuit brought by the Sierra Club to enforce the statutory mandate. The Agency generally believes that the facilities subject to today's proposal present a relatively small risk when compared to other conditions or situations, and that in a time of limited resources, EPA prefer to address higher priorities first. However, to satisfy its statutory and judicial obligations, today's proposal will clarify acceptable Subtitle D disposal options for non-municipal solid waste facilities that accept CESQG hazardous wastes. EPA has worked with the States, in their capacity as co-regulators, in developing standards that are flexible and efficient. To that end, EPA is proposing only the minimum standards described by the statute, and is offering maximum flexibility for states and facilities in meeting those standards. Indeed, in addition to proposing a flexible scheme modeled after the current part 258 Standards for municipal solid waste facilities, EPA is seeking comment on an option which would set a performance standard—that covered facilities be operated in a manner that is protective of human health and the environment. Under this approach, States would have maximum flexibility in developing standards appropriate to facilities under their jurisdiction.

DATES: Comments on this proposed rule must be submitted on or before August 11, 1995. Both written and electronic comments must be submitted on or before this date.

ADDRESSES: Commentors must send an original and two copies of their comments to: RCRA Information Center (5305), U.S. Environmental Protection Agency, 401 M Street, SW. Washington, D.C. 20460. All comments must be identified by docket number F–95–NCEP FFFFF. An original and two copies of Confidential Business Information (CBI) must be submitted under separate cover to: Document Control Officer (5305), Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW. Washington, D.C. 20460.

Public comments and relevant documents are available for viewing in the EPA RCRA Information Center (RIC), located in Room M2616, at the EPA address above. The RIC is open for viewing from 9 to 4 Monday through Friday, except federal holidays. The public must make an appointment to review docket materials. Call (202) 260–9327 for appointments. Materials may be copied for $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For specific information on aspects of this proposed rule, please contact Paul Cassidy of the Industrial Solid Waste Branch of the Office of Solid Waste at 1–703–308–7281. For a paper copy of the **Federal Register** notice or for general information, please contact the RCRA Hotline at 1–800–424–9346 or at 1–703–412–9810.

SUPPLEMENTARY INFORMATION:

Official Record for Proposed Rule

Both the **Federal Register** notice and the supporting material will be available in electronic format on the Internet system through the EPA Public Access Server @ gopher.epa.gov. The official record for this proposal, as well as the public version available through Internet will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed paper form as they are received and will place the paper copies in the official record, which will include all comments submitted directly in writing. The official record for this rulemaking is the paper copy maintained at the address in **ADDRESSES**.

Electronic Filing of Comments

Comments may also be submitted electronically by sending electronic mail to RCRA-Docket @epamai.epa.gov. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments also will be accepted on disks in Wordperfect 5.1 file format or ASCII file format.

1. Through Gopher: Go to: gopher.epa.gov. From the main menu, choose "EPA Offices and Regions". Next, choose "Office of Solid Waste and Emergency Response (OSWER)". Finally, choose "Office of Solid Waste".

2. Through FTP: Go to: ftp.epa.gov.

Login: anonymous

Password: Your Internet Address

Files are located in /pub. All OSW files are in directories beginning with "OSW".

3. Through Telnet: Go to: gopher.epa.gov. Choose the EPA Public Access Gopher. From the main (Gopher) menu, choose "EPA Offices and Regions." Next, choose "Office of Solid Waste and Emergency Response (OSWER)." Then, choose "Office of Solid Waste."

4. Through MOSAIC: Go to: http://www.epa.gov. Choose the EPA Public Access Gopher. From the main (Gopher) menu, choose "EPA Offices and Regions". Next, choose "Office of Solid Waste and Emergency Response (OSWER)". Finally, choose "Office of Solid Waste".

5. Through dial-up access: Dial 919–558–0335. Choose EPA Public Access Gopher. From the main (Gopher) menu, choose "EPA Offices and Regions". Next, choose "Office of Solid Waste and Emergency Response (OSWER)". Finally, choose "Office of Solid Waste".

Supporting Documents

All of the main and secondary supporting documents that were used in the development of this proposal have been placed in the docket. EPA is making the main supporting documents (listed below) available in electronic format on the Internet System through the EPA Public Access Server at gopher.epa.gov. A paper copy of these main supporting documents is available for purchase through the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, VA 22161. The phone number at NTIS is (703) 487–4650.

Main Supporting Documents

1. Background Document for the CESQG Rule, U.S. EPA, 1995, PB95–208930.

2. Damage Cases: Construction and Demolition Waste Landfills, U.S. EPA, Office of Solid Waste, Prepared by ICF, February 1995, PB95–208922.

3. Construction and Demolition Waste Landfills, U.S. EPA, Office of Solid Waste, Prepared by ICF, February, 1995, PB95–208906.

4. List of Industrial Waste Landfills and Construction and Demolition Waste Landfills, U.S. EPA, Office of Solid Waste, Prepared by Eastern Research Group, September 30, 1994, PB95–208914.

5. Generation and Management of CESQG Waste, U.S. EPA, Office of Solid Waste, Prepared by ICF, July 1994, PB95–208898.

6. Cost and Economic Impact Analysis of the CESQG Rule, Prepared by ICF, February, 1995, PB95–208948.

How to Access the Net

1. Through Gopher: Go to: gopher.epa.gov. From the main menu, choose "EPA Offices and Regions". Next, choose "Office of Solid Waste and Emergency Response (OSWER)". Next, choose "Office of Solid Waste". Then, choose "Non-Hazardous Waste—RCRA Subtitle D". Finally, choose "Industrial".

2. Through FTP: Go to: ftp.epa.gov.

Login: anonymous

Password: Your Internet Address

Files are located in directories/pub/gopher. All OSW files are in directories beginning with "OSW".

3. Through MOSAIC: Go to: http://www.epa.gov. Choose the EPA Public Access Gopher. From the main (Gopher) menu, choose "EPA Offices and Regions". Next, choose "Office of Solid Waste and Emergency Response (OSWER)". Next, choose "Office of Solid Waste". Then, choose "Non-Hazardous Waste—RCRA Subtitle D". Finally, choose "Industrial".

4. Through dial-up access: Dial 919–558–0335. Choose EPA Public Access Gopher. From the main (Gopher) menu, choose "EPA Offices and Regions". Next, choose "Office of Solid Waste and Emergency Response (OSWER)". Next, choose "Office of Solid Waste". Then, choose "Non-Hazardous Waste—RCRA Subtitle D". Finally, choose "Industrial".

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I. Authority

These regulations are being proposed under the authority of sections 1008, 2002 (general rulemaking authority), 3001(d)(4), 4004 and 4010 of RCRA, as amended. Section 3001(d)(4) authorizes EPA to promulgate standards for generators who do not generate more than 100 kilograms per month of hazardous waste. Section 4010(c) directs EPA to revise Criteria promulgated under sections 1008 and 4004 for facilities that may receive hazardous household wastes (HHW) or small quantity generator (SQG) hazardous waste.

II. Background

A. Current Solid Waste Controls Under the Resource Conservation and Recovery Act (RCRA) Non-Hazardous Waste Management: Municipal Wastes

As added by the Hazardous and Solid Waste Amendments (HSWA) of 1984, section 4010(c) requires that the Administrator revise the existing part 257 Subtitle D Criteria used to classify facilities as sanitary landfills or open dumps by March 31, 1988, for facilities that may receive household hazardous waste or hazardous waste from small quantity generators. The required revisions are those necessary to protect human health and the environment and which take into account the practicable capability of such facilities. At a minimum, the revised Criteria must include ground-water monitoring as necessary to detect contamination, location restrictions, and provide for corrective action, as appropriate.

On October 9, 1991, EPA promulgated revised Criteria for Solid Waste Disposal Facilities accepting household hazardous wastes. These revisions fulfilled the part of the statutory mandate found in RCRA section 4010 for all facilities that receive household hazardous wastes. (Any facility receiving any household waste is subject to the revised Criteria, which were relocated at 40 CFR part 258 for purposes of clarity). Revisions to the part 257 Criteria for other Subtitle D disposal facilities that may receive conditionally exempt small quantity generator (CESQG) hazardous wastes were delayed as the Agency had little information concerning the potential or actual impacts that these types of facilities may have on human health and the environment. CESQGs are those that generate no more than 100 kilograms of hazardous waste or no more than one kilogram of acutely hazardous waste in a month and who accumulate no more than 1000 kilograms of hazardous waste or no more than one kilogram of acutely hazardous waste at one time.

B. Sierra Club Lawsuit

The Sierra Club, on October 21, 1993, filed suit against the EPA in the United States District Court for the District of Columbia, seeking to compel the EPA to promulgate revised Criteria for nonmunicipal facilities that may receive small quantity generator hazardous waste.

As a result of the October 21, 1993 lawsuit, the EPA and the Sierra Club reached agreement on a schedule concerning revised Criteria for non-municipal facilities that may receive

CESQG wastes. This schedule requires that the EPA Administrator sign a proposal by May 15, 1995 and a final rule by July 1, 1996. Today's proposed amendments to 40 CFR parts 257 and 261 respond directly to the Sierra Club challenge to EPA's revised Criteria for MSWLFs.

III. Summary of Today's Proposed Regulatory Approach

Today's proposal would add the statutory minimum requirements for non-municipal solid waste disposal facilities that receive CESQG hazardous waste. Any non-municipal solid waste disposal facility that does not meet the proposed requirements may not receive CESQG hazardous waste. Sections 257.5 through 257.30 are being proposed to address the facility standards for owners/operators of non-municipal solid waste disposal facilities that receive CESQG hazardous wastes. The requirements being proposed in §§ 257.5 through 257.30 are substantially the same as the statutory minimum requirements developed for 40 CFR part 258. The location restrictions are proposed to be effective 18 months after publication of the final rule while the ground-water monitoring and corrective action requirements are proposed to be effective 24 months after publication of the final rule.

The Agency decided to use the previously promulgated MSWLF Criteria in part 258 as the basis for today's proposal for a number of reasons. The Agency believes that the part 258 Criteria are being used as mandatory standards by some States for non-municipal solid waste disposal facilities. Furthermore, additional States are incorporating as mandatory requirements standards that are substantially similar to the part 258 Criteria. The Agency also believes that the part 258 Criteria, particularly the ground-water monitoring and corrective action requirements, are an appropriate set of performance standards and minimum requirements that can be applied at non-municipal solid waste disposal facilities that receive CESQG hazardous waste to protect human health and the environment. In addition, EPA is requesting comment on an alternative approach which is solely a performance standard without the national minimum requirements in part 258.

Today's proposal also amends the existing language of § 261.5 clarifying acceptable Subtitle D management options for CESQGs. The existing language in § 261.5, paragraphs (f)(3) and (g)(3) allows for a CESQG hazardous waste to be managed at a hazardous waste facility (either in interim status or permitted), a reuse or recycling facility, or a non-hazardous solid waste facility that is permitted, licensed, or registered by a State to manage municipal or industrial waste. Today's proposal would continue to allow CESQG waste to be managed at a hazardous waste facility or at a reuse or recycling facility. Today's proposal, however, will require that if CESQG waste is managed in a Subtitle D disposal facility, it must be managed in a MSWLF that is subject to part 258 or a non-municipal solid waste disposal facility that is subject to the facility standards being proposed in §§ 257.5 through 257.30.

A complete discussion of the rationale of today's proposed approach, specifics of the proposed changes, and related issues is presented in Reference #1.

As previously discussed, today's proposal responds to both the statutory language in RCRA section 4010(c) and to the Sierra Club lawsuit. In responding initially to the statutory language of section 4010(c), EPA elected to regulate municipal solid waste landfills first, due to the comparatively higher risks presented by these types of facilities. As will be discussed later in today's preamble, the subject of today's proposal—non-municipal solid waste disposal facilities that receive CESQG waste—presents a small risk relative to risks presented by other environmental conditions or situations. Given this lower risk, the Agency would have elected not to issue this proposal at this time. In a time of limited resources, common sense dictates that we deal with higher priorities first, a principle on which EPA, members of the regulated community, and the public can agree. The Agency requests comment from members of the public and regulated community on whether they agree with the Agency's position that this rulemaking is a low priority.

However, given the D.C. Circuit's reading of RCRA section 4010(c), *Sierra Club* v. *EPA*, 992 F.2d 3337, 347 (D.C. Cir. 1993), and the schedule established as a result of the litigation initiated by Sierra Club in district court, the Agency believes it must issue this proposal now (although there are higher priorities within the Agency). Faced with having to issue this proposal for a class of facilities that do not generally pose risks as high as municipal solid waste landfills, the Agency is proposing alternatives that address only the statutory minimum requirements in an attempt to reduce the economic burden on the regulated community.

IV. Characterization of CESQG Waste, Industrial D Facilities That May Receive CESQG Wastes, and Existing State Programs Related to CESQG Disposal

A. CESQG Waste Volumes, Generators, and Management

In preparation for this rulemaking, EPA sought to characterize the CESQG universe. EPA examined several national, state, and local studies that contained information on CESQGs, and summarized this information into five categories: (1) Number of establishments, (2) waste volumes, (3) major waste generating industries, (4) major waste types, and (5) waste management practices. All of this information is contained in Reference #2. Reference #7 also presents an earlier comprehensive overview of the CESQG universe. The Agency is interested in receiving data on the current management practices for CESQG wastes likely to be covered by this rulemaking.

B. Facilities That May Receive CESQG Waste

1. Manufacturing Industries With On-Site CESQG Disposal

The first type of facility that may receive CESQG waste is a manufacturing facility that co-disposes its industrial non-hazardous process waste on-site with its CESQG hazardous wastes.

The Agency's 1987 "Screening Survey of Industrial Subtitle D Establishments" was used as the starting point in the Agency's evaluation of the number of potential establishments that operated land-based units for their industrial non-hazardous waste (Reference#3). The Screening Survey projected that only 605 establishments managed their CESQG waste on-site in a land-based unit (605 establishments represents approximately 5% of the total 12,000 establishments that managed industrial waste on-site in land-based units).

The Agency has conducted meetings and conference calls with some industries to ascertain the current status of CESQG hazardous waste generation and management. The results of those meetings and conference calls are summarized in Reference #1.

In regard to industrial waste facilities, the Agency believes that on-site co-disposal of industrial wastes with some amount of CESQG waste is a very limited practice. The Agency believes that industrial waste disposal facilities that may still be disposing of CESQG waste on-site, will elect to send their CESQG waste off-site to a municipal landfill, a hazardous waste landfill or off-site for treatment or recycling. These options would be cheaper for industrial waste facilities vs. continuation of CESQG on-site disposal and compliance with today's proposed standards (i.e., ground-water monitoring and corrective action).

The Agency wishes to emphasize that this proposal does not change the manner in which waste is determined to be hazardous. Generators of wastes have an obligation to determine through testing or their knowledge of the waste if a waste is a hazardous waste (40 CFR 262.11). The generator must then determine if any hazardous waste he generates is regulated hazardous waste, or conditionally exempt small quantity generator hazardous waste (40 CFR 261.5).

The Agency is requesting comment on the prevalence of manufacturing industries that manage CESQG hazardous wastes on-site along with volume estimates. The Agency is also interested in obtaining comments on the Agency's assumption that on-site disposal of CESQG hazardous waste at industrial waste facilities has decreased overall and will not continue in the future.

2. Commercial Off-Site Facilities

The second type of facility that in some cases receive CESQG waste is a commercial off-site facility that disposes of only industrial non-hazardous wastes with some amount of CESQG hazardous wastes being co-disposed at the facility. Based on information from the groups listed below, the Agency estimates that there are only 10–20 commercial off-site facilities that receive only non-hazardous industrial wastes. (Off-site commercial facilities that receive household hazardous waste are subject to the part 258 Criteria.) However, in meetings with the Environmental Industry Associations (EIA) (formerly known as the National Solid Waste Management Association) and Browning Ferris Industries, the Agency was told that as a general matter CESQG disposal is prohibited at these 10–20 facilities as a result of permitting conditions and due to decisions at the corporate level of the individual companies not to accept CESQG waste.

3. Construction and Demolition Landfills

The last group of facilities that receive CESQG wastes are construction and demolition waste landfills. The Agency's List of Construction and Demolition Waste Landfills estimates approximately 1900 construction and demolition waste facilities. These construction and demolition landfills dispose of construction waste and demolition debris (which generally refers to waste materials generated as a result of construction, renovation, or demolition). Many types of wastes are disposed of in construction and demolition landfills, such as metals, wood, concrete, dry wall, asphalt, rocks, soil, plastics, pipes and glass. Construction and demolition landfills may also receive CESQG hazardous waste materials, which could include things such as paints, adhesives, and roofing cements. Although the general term "construction and demolition waste" is used to describe all wastes generated in construction, renovation, and demolition activities, the specific types of waste generated are a direct result of the type of project. Construction of a new house, demolition of old buildings as part of a restoration of a downtown area, renovation of an old office building, and new highway construction all result in different types of construction and demolition waste materials being generated.

The report entitled "Construction Waste and Demolition Debris Recycling . . . A Primer" divided construction and demolition waste activities into five categories. These five categories and the typical construction and demolition waste materials associated with each category are presented below:

Roadwork Material: Mostly asphalt, concrete (with or without reinforcing bar), and dirt

Excavated Material: Mostly dirt, sand, stones (sometimes contaminated with site clearance wood waste and buried pipes)

Building Demolition: Mainly mixed rubble, concrete, steel beams, pipes, brick timber and other wastes from fittings and fixtures

Construction/Renovation: Mixed waste including wood, roofing, wall board, insulation materials, pieces of duct work and plumbing

Site Clearance: Mostly trees and dirt with the potential for some concrete, rubble, sand and steel

Some construction and demolition waste facilities may be subject to the requirements being proposed today. Construction and demolition waste facilities that receive wastes that are CESQG hazardous wastes will have to comply with the proposed changes in §§ 257.5 through 257.30.

CESQG hazardous wastes generated in construction, renovation, and demolition are most likely to be specific chemicals or products used in these activities. Listed below are typical examples of wastes generated by construction and demolition activities that may be CESQG wastes, if the wastes are hazardous and are generated under the CESQG limits (<100 kg per month, or less than 1 kg per month of acute hazardous waste):

- Excess materials used in construction, and their containers. Examples: adhesives and adhesive containers, leftover paint and paint containers, excess roofing cement and roofing cement cans.
- Waste oils, grease, and fluids. Examples: machinery lubricants, brake fluids, engine oils.
- Waste solvents or other chemicals that would fail a characteristic or that are listed as a hazardous waste that are removed from a building prior to demolition (e.g., ignitable spent solvents, spent acids or bases, listed spent solvents (F001–F005), or listed unused commercial chemical products that are to be discarded).

General construction and demolition debris (e.g., rubble from building demolition) would typically be hazardous waste only if it exhibits one of the four characteristics of hazardous waste: ignitability, corrosivity, reactivity, or toxicity (see subpart C of 40 CFR part 261). To determine if such debris is hazardous, the generator should use knowledge of the waste or test to determine if a representative sample of the waste exhibits any of the characteristics. See 40 CFR 262.11. See also Chapter nine of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW–846), Third Edition, on how to develop a sampling program. As an example, if a building is demolished, the generator should use his knowledge concerning the building debris, or test a representative sample of the building debris, to see if the building debris exhibits a characteristic of hazardous waste.

Prior to demolishing a building, the owner or the demolition company may choose to remove components of the building that contain concentrated constituents of concern such as lead pipe, lead flashing, mercury containing thermostats and switches, or mercury-containing lamps (light bulbs). This may be done for purposes of avoiding concern that the entire demolition rubble may exhibit the characteristic of toxicity, for recycling and resource conservation, or as required by state or local law. For purposes of resource conservation, the Agency encourages removal of items that may be cost-effectively recycled or reused. It should be noted that any removed items should be managed in compliance with applicable requirements, including, if the items exhibit characteristics, the

requirements for CESQGs or the full hazardous waste regulations. Also note that some such items may be, in the future, covered under streamlined "universal waste" regulations that would minimize the applicable regulatory requirements. (See final "universal waste rule," 60 FR 25492, May 11, 1995.)

Literature that was evaluated by the Agency and summarized in Chapter 2 of the Agency's report "Construction and Demolition Waste Landfills" identify a number of wastes that are referred to using such terms as "hazardous," "excluded," "unacceptable," "problem," "potentially toxic," or "illegal." It is not necessarily true that all of these wastes meet the definition of "hazardous" under Subtitle C of RCRA, but they provide an indication of the types of wastes that may be present in the construction and demolition waste stream that are considered by others to be a potential problem.

A construction and demolition waste generator should contact their State Solid Waste Program for their guidance or rules concerning the types of construction and demolition wastes that the State considers to be hazardous.

C. Existing State Programs

1. State Requirements Pertaining to Management of CESQG Hazardous Wastes

Since the existing controls governing the disposal of CESQG waste are under the Subtitle C program (i.e., § 261.5), State requirements must be at least as stringent as the Federal requirements. States may however establish more stringent controls for CESQGs within their jurisdiction. Some States require that CESQGs obtain a hazardous waste ID number while other States require CESQGs to use a manifest for off-site transportation. Some States require that all or some portion (e.g., those with liquid industrial and ignitable wastes) of CESQG waste be managed at only permitted Subtitle C facilities. States that require that CESQG waste be managed at only Subtitle C facilities would prohibit CESQG disposal in a municipal, non-hazardous industrial, or construction and demolition waste landfill.

2. State Requirements for Construction and Demolition Facilities

EPA conducted a study to determine the current regulatory standards for construction and demolition facilities that are applicable on a State level. State regulatory standards for construction and demolition facilities vary State-by-State and are generally not as detailed nor environmentally stringent as State standards for municipal solid waste landfills. Furthermore, States apply standards more frequently to off-site construction and demolition waste facilities vs. on-site construction and demolition waste facilities. In general, the EPA study focussed on the number of State programs that had requirements for the statutory minimum components specified in RCRA section 4010(c). The numbers, discussed below, correspond to the number of States that impose the requirement or standard on off-site construction and demolition waste facilities. Generally, a smaller number of States impose requirements on on-site facilities.

The most common location restrictions that States apply to C&D facilities relate to airports and bird hazards, wetlands and floodplains. A majority of the States (35) have restrictions applicable to construction and demolition facilities being located within the 100-yr. floodplain. Twenty-five (25) States have location restrictions pertaining to construction and demolition disposal facilities in wetlands. Similarly, 21 States have location restrictions for some or all construction and demolition facilities pertaining to airports and bird hazards. Fewer States have adopted location restrictions pertaining to seismic impact zones, fault areas, or unstable areas.

With regard to ground-water monitoring and corrective action, 29 States require some or all construction and demolition facilities to monitor ground-water and 22 States have corrective action requirements. For those States that impose ground-water monitoring requirements, most States have requirements that are substantially less stringent than the Municipal Solid Waste Landfill Criteria (part 258). With regard to those States that impose corrective action requirements, States usually require that either the permit applicant submit a corrective action plan with the permit or require the facility owner/operator to submit a plan after a release to ground water is detected.

V. Discussion of Today's Regulatory Proposal

A. Non-Municipal Solid Waste Disposal Facilities That Receive CESQG Hazardous Waste

This rule applies to non-municipal solid waste disposal facilities that receive CESQG hazardous waste, and the rule would provide that only such facilities which meet the requirements in §§ 257.5 through 257.30 "may receive" CESQG waste, as required by RCRA section 4010(c). Any non-municipal solid waste disposal facility that does not meet the proposed requirements may not receive CESQG hazardous wastes. The non-municipal units that are subject to this rule are surface impoundments, landfills, land application units and waste piles that receive CESQG waste for storage, treatment, or disposal. This is based on the existing applicability of part 257 to all solid waste disposal facilities (40 CFR 257.1(c)). Disposal is defined at § 257.2 to mean "the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waster, including ground waters." This is also the statutory definition of "disposal" in RCRA section 1004(3). The definition covers any placement of waste on the land whether it is intended to be temporary or permanent.

B. Decision to Impose or Go Beyond the Statutory Minimum Components

RCRA section 4010(c) requires that these revised Criteria must at a minimum include location restrictions, ground-water monitoring as necessary to detect contamination, and corrective action, as appropriate. The part 258 Municipal Solid Waste Landfill Criteria went beyond the statutory minimum requirements (see 56 FR 50977) and included the following additional requirements: Operational requirements, design standards, closure and post-closure care requirements and financial assurance standards. The Municipal Solid Waste Landfill Criteria went beyond the statutory minimum components for a variety of reasons. Some of these reasons included:

—163 case studies that revealed ground-water contamination at 146 MSWLFs, along with 73 MSWLFs that had documented cases of surface water contamination,
—29 documented cases of uncontrolled methane releases at MSWLF causing fires and explosions at 20 of the 29 facilities,
—A high percentage of National Priority List (NPL) sites were MSWLFs (184 sites out of 850 as of May 1986), and
—A belief, based on risk modelling, that some MSWLFs presented unacceptable risks to human health.

Taken together, these problems demonstrated a pattern of recurring problems and potential hazards associated with MSWLFs best addressed by requiring a comprehensive set of facility standards.

Today's proposal imposes only the statutory minimum components for non-municipal solid waste disposal facilities that receive CESQG hazardous wastes. Based on the data reviewed below, the Agency believes that these facilities do not pose risks that would warrant more comprehensive facility standards.

1. Construction and Demolition Waste Facilities

The Agency analyzed existing leachate and ground-water monitoring data, and damage cases associated with construction and demolition waste management to assess potential risks associated with construction and demolition waste disposal facilities. Landfill leachate sampling data and ground-water monitoring data were collected from states and from general literature provided to the Agency by the National Association of Demolition Contractors (NADC).

a. Construction and Demolition Leachate. EPA evaluated representative construction and demolition waste leachate values ("Construction and Demolition Waste Landfills"). (This data was compiled by NADC). Leachate sampling data for 305 parameters sampled for at one or more of 21 construction and demolition landfills were compiled into a database.

Of the 305 parameters sampled for, 93 were detected at least once. The highest detected concentrations of these parameters were compared to regulatory or health-based "benchmarks," or concern levels, identified for each parameter. Safe Drinking Water Act Maximum Contaminant Levels (MCLs) or Secondary Maximum Contaminant Levels (SMCLs) were used as the benchmarks if available. Otherwise, health-based benchmarks for a leachate ingestion scenario were identified; these were either reference doses (RfDs) for non-carcinogens, or 10^{-6} risk-specific doses (RSDs) for carcinogens. Benchmarks were unavailable for many parameters because they have not been studied sufficiently.

Of the 93 parameters detected in C&D landfill leachate, 25 had at least one measured value above the regulatory or health-based benchmark. For each of these 25 parameters, the median leachate concentration was calculated and compared to its benchmark. The median value was first calculated among the samples taken at each landfill, and then across all landfills at which the parameter was detected. Due to anomalies and inconsistencies among the sampling equipment used at different times and at different landfills, non-detects were not considered in determining median values; i.e., the non-detects were discarded before calculating both individual landfill concentration medians and medians across landfills. Thus, the median leachate concentrations represent the median among the detected values, rather than the median among all values. The median concentration among all values would in most cases have been lower than those calculated here.

Based on (1) the number of landfills at which the benchmark was exceeded and (2) a comparison between the median detected concentration and the benchmark, seven parameters emerge as being potentially problematic. The Agency identified this list of 7 potentially problematic parameters by eliminating from the original list of 25 parameters any parameter that was only detected at one landfill (this was determined to be not representative) and, furthermore, eliminating any parameter whose median concentration did not exceed the benchmark value for that parameter. The 7 potentially problematic parameters are as follows:

1,2-Dichloroethane
Methylene chloride
Cadmium
Iron
Lead
Manganese
Total dissolved solids

The benchmark values for three of the parameters (total dissolved solids, iron, and manganese) are secondary MCLs (SMCLs). Secondary MCLs are set to protect water supplies for aesthetic reasons, e.g., taste, rather than for health-based reasons. The remaining 4 constituents, their calculated medians, and health-based benchmark values are as follows:

Constituent	Median concentration	Health-based values	
		Value	Source
1,2-Dichloroethane	19 µg/l	5 µg/l	MCL.
Methylene chloride	15.2 µg/l	5 µg/l	10^{-6} RSD.
Cadmium	10.5 µg/l	5 µg/l	MCL.
Lead	55 µg/l	15 µg/l	Action level.

The next step in evaluating the significance of these constituent concentrations is to apply an exposure model to develop a relationship between the constituent concentration in the environment at an assumed exposure point and the constituent concentration in the waste. This is because constituents released from a waste undergo a variety of environmental fate and transport processes that result in exposure point concentrations that are lower than levels in the waste stream or in leachate.

The Agency assumed a dilution attenuation factor (DAF) of 100 for the fate and transport analysis. The value of 100 was selected based on the development of the Toxicity Characteristic (40 CFR 261.24). The DAF is an estimate of the factor by which the concentration is expected to decrease between the waste management facility and a hypothetical downgradient drinking water well. A multiplier of 100 corresponds to a cumulative frequency close to the 85th percentile from the EPACML simulations used to support the TC rule. In other words, in this exposure scenario, an estimated 15 percent of the drinking water wells closest to unlined municipal landfills could have contaminated concentrations above MCLs. Dividing the calculated median concentration by the DAF of 100 and comparing the new concentration allows for an estimate as to whether the new concentration will exceed the health-based value at an exposure point. In using the DAF of 100, the resulting new concentrations are all below their respective health-based values. The resulting concentrations as compared to the health-based values are presented in the table below.

Constituent	Median concentration divided by DAF of 100	Health-based value
1,2-Dichloro-ethane.	.19 µg/l	5 µg/l
Methylene chloride	.152 µg/l	5 µg/l
Cadmium	.105 µg/l	5 µg/l
Lead	.55 µg/l	15 µg/l

b. Construction and Demolition Damage Case Analysis. EPA conducted

a study ("Damage Cases: Construction and Demolition Waste Landfills") to determine whether the disposal of C&D debris in C&D landfills has led to the contamination of ground or surface water or damages to ecological resources. All of the damage case information EPA evaluated came from existing information in State files and literature sources. EPA was able to identify only 11 C&D landfills with evidence of ground water or surface water contamination. EPA found no documented evidence of existing human health risks or ecosystem damages at construction and demolition landfills and little documented evidence of off-site contamination.

When the Agency reviewed existing sources of data for C&D damage cases, the Agency reviewed existing Superfund databases (NPL), contacted EPA regional representatives, 32 States, county environmental Agencies, and existing studies or reports providing background information on C&D facilities and damages.

When EPA searched for C&D damage cases, several criteria were used to identify where the damages could reasonably be associated with construction and demolition facilities and construction and demolition waste disposal. First and foremost, the Agency sought to identify C&D facilities that accepted predominantly C&D wastes. Landfills that had received significant quantities of municipal waste, non-hazardous industrial waste, or hazardous waste in the past were excluded from consideration. Additionally construction and demolition sites located near other facilities or leaking underground storage tanks that could reasonably be the source of contamination were excluded as possible C&D damage cases. Lastly, there needed to be documented evidence of contamination at the C&D site.

The 11 damage cases that the Agency has identified are from New York, Virginia, and Wisconsin. Virginia and Wisconsin have required groundwater monitoring since 1988 at C&D facilities. The facilities in New York were among 9 C&D sites investigated due to public concerns about possible hazardous waste disposal and potential human health and environmental impacts.

A study of the 11 C&D sites revealed on-site ground-water contamination at all of the facilities and surface water contamination at 6 of the 11 sites, with the main contaminants being metals and other inorganics. At 3 of the 11 facilities, sediment contamination was also detected. Although most of the contamination associated with these damage cases occurred on-site, 2 of the eleven facilities did have off-site contamination (both facilities had sediments and surface water contamination occurring off-site).

Although most of the 11 sites were monitored for a wide range of organic and inorganic constituents, virtually all of the contamination was associated with inorganics. Constituents that exceeded State ground-water protection standards or Federal drinking water criteria most frequently were manganese (9 sites), iron (8 sites), total dissolved solids (6 sites), lead (5 sites), magnesium (4 sites), sodium (4 sites), pH (3 sites) and sulfate (3 sites). The other 8 constituents that were detected in ground water at these 11 sites were detected at only one or two sites.

For the 6 sites that had surface water contamination, the constituents that exceeded State surface water standards or Federal Ambient Water Quality Criteria most frequently were iron (4 sites), zinc (3 sites), lead (2 sites), and copper (2 sites). The other 5 constituents that were detected in surface water at these 6 sites were detected only once. No fish kills or other observable impacts on aquatic life were reported in any of the references that the Agency reviewed.

A look at the most frequently detected constituents in ground water or surface water reveals that of the 10 constituents, 7 are a concern due to SMCLs; only lead, magnesium, and sodium are not. Magnesium was found to exceed only an applicable State standard by a factor of 4 times, while sodium was found to exceed an applicable State standard by a factor of 14. Lead was found in ground water to exceed the Federal action level at the tap (15 µg/l) by a factor of 6. Lead was also found in surface water to exceed the established Federal Ambient Water Quality Criteria by a factor of 16 to 300 (although for the higher factor the reported value of lead in the surface water was "estimated").

c. Construction and Demolition Ground-Water Monitoring Data. Limited ground-water monitoring data suggests that a similar set of parameters that are detected in C&D leachate and that appear in damage cases associated with C&D facilities are also detected in ground water. Based on the limited ground-water data, only 19 parameters had a maximum value exceeding a health-based benchmark. Of these 19 parameters, 8 exceeded a secondary MCL (TDS, sulfates, Ph, manganese, chlorides, iron, copper, and aluminum). For the remaining 11 parameters, 5 are organics (Bis(2-ethylhexyl) phthalate, methylene chloride, tetrachloroethene, 1,2,4-trichlorobenzene, and 1,1,1-trichloroethane), 5 are inorganics (arsenic, cadmium, lead, mercury, and nickel), and 1 is a conventional parameter (nitrate). Only one constituent (cadmium) exceeded its health-based value by an order of magnitude. Some constituents had a maximum ground-water value just exceeding its health-based value. It is important to remember that when looking at the limited ground-water monitoring data what is being discussed in this paragraph are maximum levels; additional sampling events for these constituents resulted in lower levels or non-detects.

d. Conclusions for Construction and Demolition Facilities. While the data on construction and demolition waste landfills are limited, the Agency has reached some conclusions. Based on evaluation of the data analyzed above, individual construction and demolition waste facilities may have caused limited damage to ground water and surface water and potentially, may pose a risk to human health and the environment. Individual C&D facilities may also affect usability of drinking water due to aesthetic impacts. However, the Agency believes that C&D facilities, in general, do not currently pose significant risks and that individual damage cases are limited in occurrence. The small number of damage cases and the leachate concentration data reviewed above support these conclusions. Ground-water monitoring and corrective action at these facilities will ensure that any releases and potential risks at individual facilities will be identified and corrected in a timely fashion to protect human health and the environment. Location restrictions will ensure that non-municipal solid waste disposal facilities that receive CESQG waste will be located in acceptable areas, thereby, providing further protection of human health and the environment. Because construction and demolition waste facilities, in general, do not currently pose significant risk, the Agency has concluded that the statutory minimum requirements will ensure protection of human health and the environment.

2. Off-Site Commercial Landfills

As for the 10–20 commercial off-site facilities that accept only industrial wastes, the Agency understands that corporate policy has been to subject these types of facilities to stringent environmental controls. In addition, State regulations also apply to these types of facilities. A facility of this type generally employs a liner, has closure and post-closure care requirements and financial assurance standards. These State and corporate controls go beyond the statutory minimum controls and therefore the Agency believes that there is no need, on the Federal level, to impose additional standards beyond the statutory minimum.

3. Request for Additional Data and Comments Concerning Statutory Minimum or More Comprehensive Facility Requirements

The leachate and ground-water monitoring data and the damage cases analyzed represent a small number of facilities relative to the construction and demolition facility universe. The Agency solicits any additional data concerning C&D facilities to further assess the potential risks they may pose, as well as additional data on commercial industrial solid waste facilities or other types of facilities that may be subject to today's proposal.

The Agency also requests comment on whether the requirements being proposed today should go beyond the statutory minimum components. Requirements beyond the statutory minimum components could include all or any of the following components: Operational criteria, design standards, closure and post-closure care requirements, and financial assurance standards. The Agency is requesting that commentors provide data that documents the need to go beyond the statutory minimum components. The Agency is also requesting that commentors be specific as to whether any additional controls should be identical to the part 258 Criteria for municipal landfills or should require a different standard and what that standard should be.

C. Decision to Establish Facility Standards Under Part 257 and Revisions to Part 261

The Agency proposes today to establish facility standards for non-municipal solid waste disposal facilities that receive CESQG hazardous wastes. Section 4010(c) states that the Agency should revise the existing part 257 Criteria for facilities that "may receive" CESQG waste. Clearly, today's proposal responds to the statutory language. The Agency is proposing to establish facility standards, in a separate section of part 257, for non-municipal solid waste disposal facilities that receive CESQG hazardous waste. By providing that only those facilities meeting the new standards "may receive" CESQG waste, the Agency believes it will satisfy the statutory mandate of RCRA section 4010.

The Agency is also proposing revisions to the language in § 261.5 (Special requirements for hazardous waste generated by conditionally exempt small quantity generators). These revisions will clarify the types of acceptable treatment, storage, or disposal facilities that can be used to manage CESQG hazardous waste while making it clear that CESQGs are responsible for ensuring that their CESQG hazardous wastes destined for storage, treatment, or disposal are sent to acceptable facilities. This will help ensure that CESQG waste is not sent to facilities that do not meet the new part 257 regulations (i.e., to facilities that "may not receive" CESQG waste. Acceptable facilities are either interim status or permitted Subtitle C facilities; municipal solid waste facilities permitted, licensed, or registered by a State and subject to part 258 or an approved State program; non-municipal solid waste disposal facilities that are permitted, licensed, or registered by a State and subject to the new part 257 regulations or an approved State program; or solid waste management facilities that are permitted, licensed, or registered by a State (i.e., municipal solid waste combustor). EPA encourages CESQGs to consult with their State solid waste agency to determine which facilities are acceptable. Today's proposed changes to § 261.5 make no changes to the provisions allowing CESQGs to send their hazardous waste for beneficial use, reuse, legitimate recycling or reclamation.

D. Request for Comment on the Use of an Alternative Regulatory Approach in Today's Rule

The Agency previously discussed its proposed approach to impose only the statutory minimum requirements on non-municipal solid waste facilities that receive CESQG hazardous waste. The Agency has identified two options for writing the statutory minimum components. One option is to use the part 258 Criteria as the baseline for these requirements. The second option would be to specify general performance standards to be met by facility owners/operators as they implement the standards as well as to guide States in designing new regulatory programs (or revising existing regulatory programs).

There are several reasons why the Agency is considering using the part 258 Criteria. (1) Part 258 Criteria provide sufficient detail so that an individual owner/operator can self-implement them without State interaction in those instances where States do not seek approval of their permitting program as required in RCRA section 4005(c). (2) EPA believes that the national minimum requirements are necessary to collect reliable and consistent ground-water monitoring data and to respond to contamination from the unit. (3) They contain a substantial amount of flexibility that allows approved States to tailor standards to individual and classes of facilities. Also, EPA and State success in accomplishing 42 State program approvals demonstrates that a variety of State approaches are consistent with the part 258 Criteria. As an example, States have established different design standards based on State-specific or site-specific factors that comply with the part 258 criteria. The Agency expects States to likewise use this same flexibility in tailoring their ground-water monitoring programs. (4) Some States have expressed strong support for using 258 standards as the baseline for solid waste disposal facilities that receive CESQG hazardous waste. (5) While some States have standards for non-municipal facilities that are not identical to the 258 standards, the Agency believes there is a strong likelihood that many state programs would be approvable.

Reasons cited in support of using the general performance standard approach include: (1) Although the part 258 standards contain substantial flexibility for States to tailor the programs to their conditions, the part 258 standards put certain limits on State flexibility to design a program tailored to local conditions; (2) The part 258 standards also include certain national minimum requirements (which States can not modify) that EPA promulgated because of the risks posed by MSWLFs. However, since EPA has found that facilities that receive CESQG waste may pose substantially less risk than MSWLFs, these national minimum standards may be overly stringent at certain facilities; (3) In the absence of a significant Federal program, over half of the States have adopted location standards, ground-water monitoring requirements, and corrective action requirements that are significantly less extensive than the part 258 standards. If a State believes that its existing program satisfies the general RCRA performance standard—protects human health and the environment, taking into account the practicable capability of these facilities—it could seek approval of their existing programs and avoid substantial regulatory or legislative changes; and (4) a general performance standard would provide the maximum flexibility for States and owners to adopt new methodologies and technologies (e.g., detecting groundwater contamination from the

surface, not from wells) to meet the standard at the lowest possible cost.

In order to give the regulated community a better idea of how the ground-water monitoring and corrective action requirements could be written using a general performance standard approach, the Agency has developed the following examples of general performance language for each of the main elements of a ground-water and corrective action program.

For § 257.22, ground-water monitoring systems, the regulatory language for the general performance approach could require that the owner/operator install a ground-water monitoring system capable of detecting contamination that would consist of a sufficient number of wells, installed at appropriate locations and depths, to yield ground-water monitoring samples from the uppermost aquifer that represent both the quality of background ground-water and the quality of ground-water passing the point of compliance. However, this section would not specify how the monitoring wells should be cased or the proper depth and spacing of the wells. The part 258 approach establishes the point of compliance for units under today's proposed rulemaking to no more than 150 meters from the edge of a unit boundary. However, a general performance standard could be written to allow states to set the point of compliance at other protective locations. The Agency specifically requests comment on whether a flexible approach to establishing the point of compliance is particularly well suited to low-risk facilities such as those addressed by this rulemaking, and if so, which factors should be considered in making a determination at these facilities.

The Agency also is currently evaluating a performance-based approach to locating the point of compliance for clean-up of releases in the hazardous waste program as part of the corrective action rule development in subpart S of 40 CFR part 264. The states are participating in the subpart S rulemaking as co-regulators. Point of compliance options under consideration include: The unit boundary, the facility boundary, use of a buffer zone and anywhere in the plume of contamination beyond the unit boundary. We are contemplating that the subpart S approach could provide a basis for flexible, site-specific decision making for waste management facilities covered by today's rule.

For § 257.23, ground-water sampling and analysis requirements, the regulatory language for the general performance language could require that the owner/operator establish a ground-water monitoring program that includes consistent sampling and analysis procedures that ensure monitoring results that provide an accurate representation of background ground-water quality and down-gradient ground-water quality. The Agency would also state that the sampling and analysis procedures should also ensure that appropriate sampling and analytical methods are used and that ground-water quality data is based on appropriate statistical procedures. However, the regulatory language would not require that any specific statistical test be used nor would the regulatory language require that general performance standards be met as a condition of using an alternative statistical test.

For § 257.24, detection monitoring program, the regulatory language for the general performance language could require that the owner/operator establish a list of indicator or detection parameters that are monitored for and that enable the owner/operator to detect contamination. The Agency would also state that the monitoring frequency should be determined based on site specific factors and that the owner/operator must also establish a process for assessing any potential contamination, based on the statistical procedures established in § 257.23. However, EPA's regulatory language would not specify any factors that an owner/operator should consider in selecting his/her indicator/detection monitoring parameters nor would the regulatory language specify the site-specific factors that would need to be evaluated by the owner/operator in determining the frequency of monitoring.

For § 257.25, assessment monitoring program, the regulatory language for the general performance standard approach could require that the owner/operator establish a process for assessing any potential contamination based on (1) additional monitoring for hazardous constituents that are expected to be present at the facility and (2) the establishment of background standards and health-based standards for the constituents that are monitored. The Agency would also state that the process must allow for a comparison, based on the statistical procedures established in § 257.23, of those background and health-based standards in order to determine when a health-based standard has been exceeded and to allow for the assessment of corrective measures when it is determined that an exceedance has occurred. However, the regulatory language would not specify any steps that must be complied with as part of the process in assessing the monitoring program.

For § 257.26, assessment of corrective action, the regulatory language for the general performance standard approach could require that the owner/operator assess the potential range of corrective measures that could be used to meet the performance standard established in § 257.27. However, the regulatory language would not list any factors that should be considered by the owner/operator in assessing any potential remedy. It may allow the States flexibility to use a different risk assumption than those in part 258 to establish triggers for corrective action.

For § 257.27, selection of remedy, the regulatory language for the general performance standard approach could require that the owner/operator select the most appropriate remedy that (1) controls the source of releases to the maximum extent possible, (2) attains the health-based standard(s) developed in the assessment monitoring program, and (3) protects human health and the environment. The Agency would also state that the owner/operator would also need to establish a time period for initiating and completing the selected remedy. However, the regulatory language would not list any factors that an owner/operator should consider in selecting the remedy, in establishing a schedule for initiating and completing the remedy, or in deciding that remediation is not necessary.

For § 257.28, implementation of the corrective action program, the regulatory language for the general performance standard approach could require that the owner/operator implement the selected remedy, based on the schedule established in § 257.27, and attain compliance with the health-based standards established in § 257.25. The Agency would also state that the implementation of the corrective action program should include a consideration of interim measures that may need to be considered during corrective action and a consideration of alternative corrective measures if, after implementation of the selected remedy, the health-based standards in § 257.25 are not being achieved. However, the regulatory language would not list any factors that an owner/operator should consider in developing interim measures or in the selection of an alternative remedy.

The Agency believes that the general performance standard approach has some advantages. The approach would offer more flexibility to States to determine how best to run their State program for non-municipal solid waste facilities that receive CESQG hazardous waste, while allowing States to tailor

regulations based on anticipated risks. In the absence of a State program, owners/operators would have to determine how to comply based on risk. However, the Agency is concerned that such a performance standard approach may result in greater uncertainty for owners/operators.

While the Agency has not proposed the general performance standard approach in today's proposal, the Agency believes that the performance standard approach provides some interesting options/advantages for owners/operators and State agencies. Therefore, the Agency is requesting comments on the use of general performance standards in lieu of the approach used in today's proposal.

E. Highlights of Today's Statutory Minimum Requirements for Non-Municipal Solid Waste Disposal Facilities That May Receive CESQG Hazardous Waste

For today's proposed regulatory language, the Agency has used the part 258 Criteria as a baseline. The highlights of the part 258 requirements are presented in this section of today's preamble. The flexibility that was developed for the part 258 Criteria has been incorporated into today's proposal for the location restrictions and the ground-water monitoring and corrective action requirements. The Agency solicits comments from the regulated community on whether these standards would provide sufficient flexibility for construction and demolition waste facilities. Commentors are requested to review the proposal with an eye towards identifying those areas in the proposal that they believe do not contain sufficient flexibility and would unduly hinder or place unnecessary burdens on construction and demolition waste facilities or other facilities potentially affected by the rule. The Agency requests that if commentors identify a provision that is lacking in flexibility, that the commentors clearly identify alternative rule language that provides the necessary flexibility.

1. Applicability and Effective Date

Today's proposal establishes new sections in part 257 (i.e., §§ 257.5 through 257.30) that apply to any non-municipal solid waste disposal facility that receives CESQG hazardous wastes. Today's proposal does not apply to municipal solid waste landfills subject to part 258 or hazardous waste facilities subject to regulations under Subtitle C of RCRA.

Owners/operators of non-municipal solid waste disposal facilities whose facilities do not meet the proposed requirements may not receive CESQG hazardous waste. Owners/operators of such facilities would continue to be subject to the requirements in §§ 257.1–257.4.

Owners/operators of non-municipal solid waste disposal facilities that receive CESQG hazardous waste after the effective date (i.e., 18 months after the date of publication of the final rule in the **Federal Register**) must comply with the requirements in §§ 257.5 through 257.30.

Certain facilities may implement screening procedures to effectively eliminate the receipt of CESQG hazardous wastes. If an owner/operator has a question concerning applicability of the rule, he/she is encouraged to contact his/her State Agency to determine that the screening procedure ensures that the facility does not receive CESQG hazardous waste.

2. Existing Part 257 Requirements

All types of non-hazardous waste facilities, except municipal solid waste landfills, must comply with the current requirements in 40 CFR part 257. In developing today's proposal for non-municipal solid waste disposal facilities that receive CESQG wastes, the Agency decided to retain some of the existing part 257 requirements. Owners/operators of non-municipal solid waste disposal facilities that receive CESQG hazardous waste continue to be subject to the following existing requirements in §§ 257.1–257.4: §§ 257.3–2 (Endangered Species), 257.3–3 (Surface Water), 257.3–5 (Application to food-chain crops), 257.3–6 (Disease), 257.3–7 (Air), and 257.3–8 (a), (b), and (d) (Safety). The Agency saw no reason to eliminate these requirements because non-municipal solid waste facilities have been subject to these requirements since 1979. A non-municipal solid waste disposal facility that becomes subject to the CESQG requirements in §§ 257.5 through 257.30 would no longer be subject to the following existing requirements in §§ 257.1–257.4: §§ 257.3–1 (Floodplains), 257.3–4 (Ground water), and 257.3–8(c) (bird hazards to aircraft) because §§ 257.5 through 257.30 would contain separate standards for each of these areas.

As stated earlier, RCRA section 4010 requires that the Agency establish revised Criteria for non-municipal solid waste disposal facilities that receive CESQG wastes that include, at a minimum, ground-water monitoring, corrective action, and location restrictions. These requirements have been included in new §§ 257.5 through 257.30. Each of these requirements is discussed below and in more detail in Reference #1.

3. Specific Location Restrictions

The requirements in §§257.7 through 257.12 will establish location restrictions for any non-municipal solid waste disposal facility that receives CESQG hazardous wastes. The location restrictions are for airport safety, floodplains, wetlands, fault areas, seismic impact zones, and unstable areas. The location restrictions being proposed today for non-municipal solid waste disposal facilities that receive CESQG hazardous wastes are identical to the location restrictions that were promulgated under Part 258 for municipal solid waste landfills. A detailed discussion of the municipal solid waste landfill location restrictions can be found at 56 FR 51042–51049 and in reference #1.

a. Airport Safety

Today's Proposed Language Regarding Airport Safety (§ 257.7)

Today's proposal uses the identical airport safety language that was established for MSWLFs. Today's proposal will require that new, existing, and lateral expansions of non-municipal solid waste disposal facilities that receive CESQG hazardous waste demonstrate that the facility does not pose a bird hazard to aircraft. For existing facilities that become subject to today's rule, only the demonstration requirement is different from the current airport safety standard in § 257.3–8(c). The demonstration requirement is being proposed because today's airport safety requirement is written to be self-implementing and the demonstration documents compliance and may protect the owner/operator from a citizen suit. For new and lateral expansions of non-municipal solid waste disposal facilities, the notification to the FAA and the affected airport is a new provision. This provision is being proposed in order for the Agency to be consistent with existing FAA Order #5200.5A (see Reference #9—page 51043). This FAA Order establishes that any disposal site that attracts or sustains hazardous bird movements from feeding, watering or roosting areas may be incompatible with airport operations.

b. Floodplains

Today's Proposed Language Regarding Floodplains (§ 257.8)

Today's proposal uses the identical language from the MSWLF Criteria. The demonstration requirement for new, existing, and lateral expansions of non-municipal solid waste disposal facilities

is the only change to the existing part 257 language and is being proposed due to the self-implementing nature of today's proposal and to document compliance on the part of the owner/operator.

c. Wetlands

Today's Proposed Language Regarding Wetlands (§ 257.9)

Today's proposal establishes requirements applicable for new and lateral expansions of non-municipal solid waste disposal facilities regarding the siting in wetland locations. These requirements are identical to the requirements established for MSWLFs. The Agency has determined that new and lateral expansions of non-municipal solid waste disposal facilities, similar to MSWLFs, may be sited in wetlands only under very certain conditions. Therefore, the demonstration requirements that are in the MSWLF Criteria are being proposed today. These demonstration requirements will ensure that if a non-municipal solid waste disposal facility needs to be located in a wetland, protection of State water quality standards and protection of the wetland will be achieved. Furthermore, today's proposal is consistent with the Agency's goal of achieving no net loss of the nation's wetlands.

d. Fault Areas

Today's Proposed Language Regarding Fault Areas (§ 257.10)

Today's proposal for non-municipal solid waste disposal facilities that receive CESQG hazardous waste contains a location restriction regarding fault areas. These requirements are identical to the requirements established for MSWLFs. Today's proposal bans the siting of new non-municipal solid waste disposal facilities or lateral expansions of these facilities in areas that are susceptible to faulting (i.e., areas located within 200 feet of a fault that has had displacement in recent times) based on the fault area provision established in part 258. The Agency believes that locating a new facility or lateral expansion in a location that has experienced faulting has inherent dangers. If a facility is located near a fault and displacement occurs, release of solid waste and hazardous constituents will occur. The Agency, however, believes that some flexibility should be incorporated into the proposal for approved States and, as such, today's proposal allows approved States to site a new non-municipal solid waste disposal facility or lateral expansion within 200 feet of an active fault if the owner/operator demonstrates that such an action will be protective of human health and the environment. Existing non-municipal solid waste disposal facilities that receive CESQG hazardous wastes would not be subject to today's proposed fault area restriction.

The Agency requests comments on the necessity of requiring a fault area restriction for new non-municipal solid waste disposal facilities or lateral expansions of these types of facilities that receive CESQG hazardous waste.

e. Seismic Impact Zones

Today's Proposed Language Regarding Seismic Impact Zones (§ 257.11)

Today's proposal for non-municipal solid waste disposal facilities that receive CESQG hazardous waste contains a location restriction regarding seismic impact zones. These requirements are identical to the requirements established for MSWLFs. Today's proposal bans the siting of new non-municipal solid waste disposal facilities or lateral expansions of these facilities in seismic impact zones based on the seismic impact zone provision in part 258. Existing non-municipal solid waste disposal facilities that receive CESQG hazardous wastes would not be subject to today's proposed seismic zone restriction. Seismic activity manifests itself in the form of ground shaking and fracturing. These activities can, like faulting, result in the release of solid waste and hazardous constituents. The Agency has incorporated the flexibility found in the MSWLF Criteria in today's proposal. As such, if owners/operators of new non-municipal solid waste disposal facilities that receive CESQG hazardous waste or lateral expansions of such facilities can demonstrate to the Director of an approved State that the facility and any containment devices used in the construction of the facility are designed to withstand the effects of seismic activity, then such a facility may be located in a seismic impact zone.

f. Unstable Areas

Today's Proposed Language Regarding Unstable Areas (§ 257.12)

Today's proposal for non-municipal solid waste disposal facilities that receive CESQG hazardous waste contains a location restriction regarding unstable areas. These requirements are identical to the requirements established for MSWLFs. Today's proposal applies to existing non-municipal solid waste facilities, new non-municipal solid waste facilities, and lateral expansions of these types of facilities and is based on the unstable area provision in part 258. These facilities that receive CESQG waste must demonstrate that engineering measures have been incorporated into the facility design to ensure that the integrity of the structural components will not be disrupted. The rationale for requiring this location restriction is the same as that provided for fault areas and seismic activity zones: Waste placed in locations susceptible to mass movement or placed in areas with poor foundation conditions can result in the release of solid waste and hazardous constituents. The Agency, therefore, believes that these unstable areas should be avoided and locating in an unstable area should only be allowed after a successful demonstration by the owner/operator that the structural integrity of the facility will not be disrupted.

In summary, six location restrictions are being proposed: airport safety, floodplains, wetlands, fault areas, seismic impact zones, and unstable areas. Existing non-municipal solid waste disposal facilities that receive CESQG hazardous wastes are only required to comply with the airport safety, floodplain, and unstable area location restrictions. New or lateral expansions of non-municipal solid waste disposal facilities that receive CESQG hazardous wastes must comply with all six location restrictions prior to accepting waste for disposal.

EPA is proposing that existing non-municipal solid waste disposal facilities that cannot make the required demonstrations pertaining to airports, floodplains, or unstable areas by 18 months after publication of the final rule must stop receiving CESQG hazardous wastes. This 18-month period is much shorter than the 5-year period that was given to MSWLFs under 40 CFR 258.16. EPA provided five years to MSWLFs because there was concern about capacity shortages if existing owners/operators of MSWLFs had to close in the short term. For this proposal, existing non-municipal solid waste disposal facilities only have to comply with three location restrictions: airport safety, floodplains, and unstable areas. Two of these three restrictions being proposed are technically identical to the existing Part 257 standards that existing non-municipal solid waste disposal facilities have been subject to since 1979 (i.e., airport safety and floodplains). The new requirements for these two location restrictions are the demonstrations documenting compliance with these provisions and a notification to the FAA if a new or lateral expansion of an existing non-municipal solid waste disposal facility wants to site within a five-mile radius

of an airport runway end. The last location restriction applicable to existing facilities is the unstable area restriction. The Agency believes that 18 months is sufficient time for a owner/operator to demonstrate that the integrity of the facility will not be disrupted. Furthermore, the Agency does not believe that capacity concerns apply to the types of facilities that may potentially become subject to today's proposal.

With the effective date 18 months after the date of publication of the final rule, existing non-municipal solid waste disposal facilities that receive CESQG hazardous waste will need to make the necessary demonstrations during this 18-month period. In the event that an existing non-municipal solid waste facility can not make the demonstrations, the existing facility may not receive CESQG hazardous wastes after this 18-month period. If the existing non-municipal solid waste disposal facility fails to make the necessary demonstrations within 18 months and thereafter stops receiving CESQG hazardous waste, it can continue to stay open and operate; however, it must comply with the existing standards in §§ 257.1–257.4 vs. the requirements being proposed today in §§ 257.5 through 257.30.

3. Specific Ground-Water Monitoring and Corrective Action Requirements

The requirements in §§ 257.21–257.28 will establish ground water monitoring and corrective action requirements for any non-municipal solid waste disposal facility that receives CESQG hazardous wastes. Sections 257.21 through 257.28 establish the criteria for determining an acceptable ground-water monitoring system, the procedures for sampling and analyzing ground-water samples, the steps and factors to be used in proceeding from an initial detection monitoring phase, up to, and including corrective action for clean-up of contaminated ground water.

As stated earlier, the ground-water monitoring and corrective action requirements being proposed today for non-municipal solid waste disposal facilities that receive CESQG hazardous wastes are based on the ground-water monitoring and corrective action requirements that were promulgated under part 258 for municipal solid waste landfills. As such the areas of flexibility that exist within the MSWLF Criteria will also apply to non-municipal solid waste disposal facilities that receive CESQG hazardous waste. A detailed discussion of the MSWLF Criteria regarding ground-water monitoring and corrective action requirements can be found at 56 *FR* 51061–51093 and in reference #1.

Today's proposal is substantively identical to the Part 258 MSWLF Criteria. The two areas of difference concern when the ground-water and corrective action requirements become effective and the time period during which ground-water monitoring must be conducted after the active life of the facility. A summary of the applicability of the ground-water monitoring and corrective action requirements and each provision is presented below.

a. Applicability of Ground-water and Corrective Action Requirements

Today's Proposed Language Regarding Applicability of the Ground-Water Monitoring and Corrective Action Requirements (§ 257.21)

Today's proposal establishes ground-water monitoring and corrective action requirements (discussed separately below) for non-municipal solid waste disposal facilities that receive CESQG hazardous wastes. Existing non-municipal solid waste disposal facilities subject to this rule must be in compliance with the ground-water monitoring requirements within 2 years after the date of publication of the final rule. The Agency is proposing a shorter effective date for today's proposal than for the MSWLF Criteria because these ground-water requirements can be phased-in over a much shorter time frame.

The MSWLF Criteria were phased in over a three to five year period based on a lack of qualified well drillers. The Agency has decided on a two year effective date for a variety of reasons. First, 24 States prohibit hazardous waste from being managed in a construction/demolition waste facility (see Chapter 4 Reference #6). Construction and demolition waste disposal facilities in these 24 States will not be impacted because they, under State law, cannot receive hazardous waste. These 24 States account for 1060 of the approximate total of 1900 construction and demolition waste landfills. Further, 8 States require ground-water monitoring and corrective action that is similar to Part 258. These 8 States account for an additional 111 construction and demolition facilities. Therefore, a total of 1,171 construction and demolition waste facilities in 32 States will not be affected by this proposal. A total of 718 construction and demolition waste landfills in 17 States (New Hampshire has no construction and demolition landfills) will be affected after this proposal is finalized. Some States from the remaining 17 States have existing State regulations that allow them to impose ground-water monitoring requirements on a case-by-case basis. There are a total of 5 States that may impose ground-water monitoring requirements at their construction and demolition waste landfills (a total of 84 construction and demolition landfills exist in these 5 States). If only 718 construction and demolition waste owners/operators may have to have ground-water monitoring wells installed, the Agency believes that there are a sufficient number of firms that are qualified to install wells within 2 years.

The Agency is concerned that some States (3 States have a total of 491 construction and demolition waste landfills out of the 718 total that may be affected) may have difficulty in ensuring that all existing non-municipal solid waste disposal facilities that may receive CESQG waste have ground-water monitoring in place within 2 years and has allowed a one-year extension for an approved State. In an approved State, the Director can establish an alternative schedule that allows 50% of existing non-municipal solid waste disposal facilities to be in compliance within 2 years of the final rule and all non-municipal solid waste facilities that receive CESQG waste to be in compliance with the ground-water monitoring requirements within 3 years of the final rule. Similar to the MSWLF Criteria, today's proposal list a series of factors that the Director of an approved State should consider in establishing an alternative schedule.

Today's proposal establishes that the ground-water monitoring program must be conducted through the active life of the facility plus 30 years. Today's proposal does not contain provisions beyond the statutory minimum components and, therefore, no closure or post-closure care standards are being proposed. The Agency believes, however, that ground-water contamination resulting from the operation of a facility may not appear until after the active life of the facility. The Agency is therefore concerned that ground-water monitoring be conducted for some period of time after the active life of the facility. As such, today's proposal establishes the requirement that ground-water monitoring be conducted for 30 years after the active life. The term active life has also been changed from the definition in the MSWLF Criteria. Today's proposal defines active life to be the period of operation beginning with the initial receipt of solid waste end ending at the final receipt of solid waste. In the MSWLF Criteria the term active life was

defined to mean the period of operation beginning with the initial receipt of solid waste and ending at completion of closure activities in accordance with § 258.60 (i.e., closure and post-closure care activities). The change in the definition of the term active life was necessary to reflect the fact that today's proposal does not contain closure or post-closure care requirements.

The Agency selected the 30 year continuance of ground-water monitoring after the final receipt of waste because 30 years is consistent with the period of time that ground-water monitoring is done after the final receipt of waste at MSWLFs. Following the approach that was selected for MSWLFs, the Agency has allowed the Director of an approved State to decrease or increase the 30 year period of time that ground-water monitoring must be done after the final receipt of waste. Any reduction in the period of time may be granted only after a demonstration by the owner/operator that a shorter period of time is sufficient to protect human health and the environment and the Director of an approved State approves such a demonstration.

The Agency requests comments on the 2-year effective date and the 30-year period of time after the active life that ground-water monitoring must be conducted. Commentors should submit data that supports a shorter or longer effective date and data concerning the necessity of the 30-year ground-water monitoring period.

The flexibility that an approved State/Tribal Director has in suspending the ground-water monitoring requirements for MSWLFs has been provided for non-municipal solid waste disposal facilities that receive CESQG hazardous waste in today's proposal (Reference #9, 56 FR 51061–51062). The provision is proposed for the same reason that it was finalized in the MSWLF Criteria. The Agency believes that certain hydrogeologic settings may preclude the migration of hazardous constituents from the non-municipal solid waste disposal facility to the ground-water. This provision is in the applicability section of today's ground-water monitoring requirements.

The Agency is also proposing to provide to approved States the flexibility to determine alternative ground-water monitoring requirements for small, dry non-municipal solid waste disposal facilities that receive CESQG waste. The Agency had previously issued an exemption to small, dry municipal solid waste landfills from some of the requirements in the MSWLF Criteria (Reference #9, 56 FR 50989–50991). Although the D.C. Circuit vacated this exemption in the Sierra Club v. EPA opinion, 992 f.2d at 345, the Court left it to the Agency's discretion to allow for alternative types of ground-water monitoring based upon factors such as size, location, and climate. Concurrent with this proposal, the Agency is proposing that approved States be allowed to determine alternative ground-water monitoring requirements for small, dry MSWLFs. The Agency sees no reason to limit this flexibility to MSWLFs and, therefore, is proposing that approved States may allow alternative monitoring requirements for small, dry non-municipal solid waste disposal facilities that are receiving CESQG waste if the facilities meet the definition of small and dry proposed in § 257.21(i). Additional information concerning the alternative ground-water monitoring requirements for MSWLFs will be published soon in a FR notice.

In order to be considered small, the non-municipal solid waste disposal facility must dispose of less than 20 tons of non-municipal waste daily. The 20 tons per day is proposed in order to be consistent with the small landfill exemption under the municipal solid waste landfill Criteria. However, the Agency recognizes that the size distribution, potential risks, practical capability and other factors differ for these facilities. The Agency is accepting comments on whether this number should be different for non-municipal solid waste facilities.

b. Overall Performance of the Ground-Water Monitoring System

Today's Proposed Language Regarding Ground-Water Monitoring Systems (§ 257.22)

Today's proposal contains the same performance language in the MSWLF Criteria and, as such, will provide owners and operators a performance-based approach to establishment of a monitoring system that will ensure detection of contamination.

Today's proposal continues to allow State Directors the discretion to establish an alternative monitoring boundary and multi-unit monitoring. The establishment of an alternative boundary provides flexibility to owners/operators and in some cases can serve to reduce corrective action costs by allowing the owner/operator the advantage of a limited dilution and attenuation zone. The establishment of multi-unit monitoring allows for local conditions to be taken into account where individual monitoring systems cannot be established.

c. Ground-Water Sampling and Analysis Requirements

Today's Proposed Language Regarding Sampling and Analysis (§ 257.23)

Today's proposal contains the same sampling and analysis procedures that are in the MSWLF Criteria. The sampling and analysis requirements ensure accurate ground-water monitoring results and allow for an accurate representation of both the background ground-water quality and the quality of ground water at the monitoring wells placed downgradient from the facility. Owners/operators need to ensure that consistent sampling and analysis procedures are in place in order to determine if a statistically significant increase in the level of a constituent has occurred indicating the possibility of ground-water contamination.

In the promulgated Criteria for municipal solid waste landfills, the Agency required that ground-water samples not be field-filtered prior to laboratory analysis. (See § 258.53(b)). The preamble discussion for this requirement can be found at 56 FR 51074, October 9, 1991. The Agency has been actively working on the issue of sample filtration due to concerns expressed by some members of the scientific community. The Agency expects to issue, in the near future, a proposal addressing additional flexibility on this issue. This proposal would include any potential revision to the prohibition on field filtering as specified in proposed § 257.23. Thus, any rule language change to the part 258 Criteria on this issue will be addressed in the final rule language for non-municipal solid waste facilities that receive CESQG wastes.

d. Detection Monitoring Program

Today's Proposed Language Regarding Detection Monitoring Requirements (§ 257.24)

Today's proposal establishes the same series of steps for ground-water monitoring as developed in the MSWLF Criteria. The Agency believes that monitoring for a limited set of parameters and determining if there is a statistically significant increase for any of these parameters is an essential first step in evaluating the possibility of a release from a non-municipal solid waste disposal facility that receives CESQG wastes. Today's proposed detection monitoring program contains the same areas of flexibility that exist within the MSWLF Criteria. This flexibility can be used by the Director of an approved State to delete any parameter from appendix I (appendix I of part 258) where the Director believes that the constituent is not expected to be in or derived from the waste in the unit. Furthermore, the Director of an approved State can establish an alternative list of inorganic indicator parameters for the metals in appendix I of part 258. Also, today's proposal allows the Director of an approved State to allow for annual ground-water monitoring vs. semiannual based on a series of factors spelled-out in the proposal.

e. Assessment Monitoring Program

Today's Proposed Language Regarding Assessment Monitoring Requirements (§ 257.25)

Today's proposal establishes the same assessment monitoring program as in the MSWLF Criteria. The assessment monitoring program is essential in that an owner/operator must determine what constituents have entered the ground water and understand the extent of the contaminated plume to develop an efficient and effective corrective action program. The purpose of assessment monitoring is to evaluate, rather than detect, contamination. The Agency believes that a second phase of monitoring is essential for evaluating the nature and extent of contamination. The Agency also believes that the flexibility that exists in the MSWLF Criteria is sufficient to deal with the types of non-municipal facilities that receive CESQG hazardous waste and has, therefore, retained all of the flexibility in today's proposal.

f. Corrective Action Program

Today's Proposed Language Regarding Corrective Action Program §§ 257.26–257.28)

Today's proposal establishes the same corrective action steps as in the MSWLF Criteria. The steps that have been proposed today are those that are necessary for a successful corrective action program. Today's proposal allows the owner/operator to successfully remediate a ground-water contamination problem in a swift manner yet provides flexibility for selecting and implementing the corrective remedy. The proposed language contains performance objectives that must be considered in the evaluation, selection, and implementation of a remedy. The Agency also believes that the flexibility that exists in the MSWLF Criteria is sufficient to deal with the types of non-municipal facilities that receive CESQG hazardous waste and has, therefore, retained all of the flexibility in today's proposal.

4. Recordkeeping requirements (§ 257.30)

Similar to the recordkeeping requirement contained in the MSWLF Criteria, today's proposal requires that owners/operators of non-municipal solid waste disposal facilities that receive CESQG waste maintain a historical record of the facility. EPA is proposing this requirement to ensure the availability of basic information that will demonstrate compliance with the remainder of today's proposed requirements. Owners/operators would be required to maintain location restriction demonstrations and ground-water monitoring demonstrations, certifications, findings, reports, test results and analytical data in today's proposed operating record.

The goal of today's proposal is to have the owner/operator maintain such demonstrations in a single location that is easily accessible. The Director of an approved State has the flexibility to establish alternative locations for recordkeeping and alternative schedules for recordkeeping and notification requirements.

F. Other Issues Relating to Today's Proposal

1. Owner/Operator Responsibility and Flexibility in Approved States

The regulatory structure of the part 258 MSWLF Criteria is based on an owner/operator achieving compliance through self-implementation with the various requirements while allowing approved States the flexibility to consider local conditions in setting appropriate alternative standards that still achieve compliance with the basic goal of the part 258 Criteria. This flexibility that exists for approved States under part 258 has been retained in today's proposal and can be used by approved States in determining facility specific requirements. Individual areas of flexibility have been discussed in the previous sections detailing today's location restrictions, ground-water monitoring and corrective action requirements.

Owners/operators, due to the self-implementing nature of this proposal, would be required to comply with the promulgated standards, as of the appropriate effective date, regardless of the status of the States approval determination. If an owner/operator is located in a State that has not been approved under Subtitle D, then the owner/operator would have to comply with the promulgated standards, without the benefit of the flexibility allowed to be granted by the Director of an approved State. Owners/operators of non-municipal solid waste disposal facilities located in approved States, that become subject to today's proposed requirements when finalized, may be subject to alternate requirements based on the approved State standards.

2. CESQG's Responsibilities Relating to the Revisions in § 261.5, Paragraphs (f) and (g)

Today's proposal would allow that CESQG waste go to either a hazardous waste facility, a reuse or recycling facility, a municipal solid waste landfill subject to part 258, a non-municipal solid waste disposal facility that is subject to the requirements being proposed in §§ 257.5 through 257.30 or a solid waste management facility that is permitted, licensed, or registered by a State to manage municipal or non-municipal waste. The Agency believes that it is appropriate to establish facility standards for non-municipal solid waste disposal facilities that receive CESQG waste while at the same time specifying acceptable disposal options that are available to CESQGs in order to ensure that their waste is properly managed. The Agency believes that proposing both regulatory changes together clarifies the obligations of both CESQGs and owners/operators of disposal facilities to ensure proper management of CESQG hazardous waste and will lead to better management of these wastes. By regulating the generators, as well as the receiving facilities, today's proposal also helps to fulfill the statutory mandate that only facilities meeting the location, ground-water monitoring, and corrective action requirements (i.e., §§ 257.5 through 257.30) "may receive" CESQG waste. See RCRA Section 4010(c).

The Agency does not believe that today's proposed change to § 261.5 will result in a larger obligation for any CESQG. The Agency knows that the majority of CESQG waste is managed off-site. For the CESQG waste managed off-site, recycling is the predominant form of management. The Agency assumes that for the small amount of CESQG waste that is currently being sent off-site to a MSWLF, no additional obligation would be imposed on a CESQG by today's proposal because the MSWLF where the CESQG waste is being sent is subject to part 258. For construction and demolition waste generators who wish to send their CESQG waste to a non-municipal solid waste disposal facility subject to the proposed requirements in §§ 257.5 through 257.30, the only additional obligation would be that associated with a phone call to the appropriate State Agency to determine if the non-

municipal solid waste disposal facility is subject to §§ 257.5 through 257.30 and thus could legally accept CESQG waste. Furthermore, as stated previously, some States require that disposal of CESQG waste occur only at permitted Subtitle C facilities and CESQGs in these States would not face any burden as a result of this rule due to the more stringent State standard that the CESQG is currently subject to. Today's proposal does not change the generator's obligation to first determine if the waste is hazardous and, secondly, to determine if the waste is below the quantity levels established for a CESQG. If a generator is a CESQG, today's proposal continues an existing obligation on the generator to ensure that acceptable management of the CESQG hazardous waste occurs.

A CESQG may elect to screen-out or segregate out the CESQG hazardous wastes from his non-hazardous waste and then manage the CESQG hazardous portion in a facility meeting the requirements of proposed § 261.5(f)(3) and (g)(3). The remaining non-hazardous waste is not subject to today's proposed §§ 257.5 through 257.30; however, it must be managed in a facility that complies with either the part 258 Criteria or the existing Criteria in §§ 257.1–257.4.

On the other hand, a CESQG may elect not to screen-out or segregate the CESQG hazardous waste preferring instead to leave it mixed with the mass of non-hazardous waste. If the CESQG elects this option, the entire mass of material must be managed in a Subtitle C facility or a Subtitle D facility that is subject to part 258 or the proposed requirements in §§ 257.5 through 257.30.

VI. Implementation and Enforcement

A. State Activities Under Subtitle C

1. Hazardous and Solid Waste Amendments to RCRA

Today's proposal changes the existing requirements in § 261.5, paragraphs (f)(3) and (g)(3) pertaining to the special requirements for CESQGs. Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR part 271 for the standards and requirements for authorization). Following authorization, EPA retains enforcement authority under sections 3008, 7003 and 3013 of RCRA, although authorized States have primary enforcement responsibilities.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facility which the State was authorized to permit. When, new more stringent, Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time they take effect in unauthorized States. EPA is directed to carry out these requirements and prohibitions in previously authorized States, including the issuance of permits and primary enforcement, until the State is granted HSWA authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA provisions apply in authorized States in the interim.

The amendments to § 261.5, paragraphs (f)(3) and (g)(3), are proposed pursuant to section 3001(d)(4) of RCRA, which is a provision added by HSWA. Therefore, the Agency is proposing to add the requirement to Table 1 in § 271.1(j) which identifies the Federal program requirements that are promulgated pursuant to HSWA and that take effect in all States, regardless of their authorization status. States may apply for either interim or final authorization for the HSWA provisions identified in Table 1, as discussed in the following section of the preamble.

2. Effect on State Authorizations

As noted above, EPA will implement today's rule in authorized States until they modify their programs to adopt the § 261.5 rule change and the modification is approved by EPA. Because the rule is proposed pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final authorization under section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications for either interim or final authorization are described in 40 CFR 271.21. It should be noted that all HSWA interim authorizations will expire January 1, 2003. (See § 271.24(c) and 57 FR 60129 (December 18, 1992)).

40 CFR 271.21(e)(2) provides that States that have final authorization must modify their programs to reflect Federal program changes, and must subsequently submit the modifications to EPA for approval. The deadline by which the State must submit its application for approval for this proposed regulation will be determined by the date of publication of the final rule in accordance with § 271.21(e). These deadlines can be extended in certain cases (40 CFR 271.21(e)(3)). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

EPA is aware that a number of States have more stringent requirements for the disposal of waste generated by CESQGs. In particular, some States do not allow the disposal of this waste into any Subtitle D landfill. For these States, today's proposed rule would clearly be considered less stringent than the applicable provisions in these States' authorized programs. Section 3009 of RCRA allows States to adopt or retain provisions that are more stringent than the Federal provisions. Therefore, regarding today's proposed rule, EPA believes that States which do not allow the disposal of wastes generated by CESQGs into Subtitle D landfills under their existing authorized Subtitle C program would not be required to revise their programs and obtain authorization for today's proposed rule. Of course this situation would only apply in those cases where a State is not changing its regulatory language. Further, the authorized State requirements in such States, since they would be more stringent than today's proposed rule, would continue to apply in that State, even though today's rule is proposed pursuant to HSWA authority.

For a State to not be required to submit an authorization revision application for today's proposed rule, the State must have provisions that are authorized by EPA and that are more stringent than all the provisions in the new Federal rule. For those States that would not be required to revise their authorization, EPA strongly encourages the State to inform their EPA Regional Office by letter that for this proposed rule, it is not required to submit a revision application pursuant to 40 CFR 271.21(e), because in accordance with RCRA section 3009 the authorized State provision currently in effect is more stringent than the requirements contained in today's proposed rule. Otherwise, EPA would conclude that a revised authorization application is required.

Other States with authorized RCRA programs may already have adopted requirements under State law similar to those in today's proposal. These State regulations have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modification is approved. Although revisions to 40 CFR parts 257 and 261 are being proposed, for the purpose of authorization under Subtitle C, only the proposed changes to § 261.5 would be assessed against the Federal program. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law. In implementing the Federal program EPA will work with States under cooperative agreements to minimize duplication of efforts. In many cases EPA will be able to defer to the States in their efforts to implement their programs, rather than take separate actions under Federal authority.

States that submit their official applications for final authorization less than 12 months after the effective date of these standards are not required to include standards equivalent to these standards in their application. However, the State must modify its program by the deadlines set forth in § 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these standards must include standards equivalent to these standards in their applications. 40 CFR 271.3 sets forth the requirements a State must meet when submitting its final authorization application.

B. State Activities Under Subtitle D

States are the lead Agencies in implementing Subtitle D rules. The Agency intends to maintain the State's lead in implementing the Subtitle D program. RCRA requires States to adopt and implement, within 18 months of the publication of a final rule, a permit program or other system of prior approval and conditions to ensure that non-municipal solid waste disposal facilities comply with today's standards. EPA is required to determine whether States have developed adequate programs. States will need to review their existing programs to determine where their programs need to be upgraded and to complete program changes, if changes are necessary. The process that the Agency will use in evaluating the adequacy of State programs will be set forth in a separate rulemaking, the State/Tribal Permit Program Determination of Adequacy. For the purpose of determining adequacy and granting approval under Subtitle D, only the proposed technical changes in §§ 257.5 through 257.30 will be evaluated by the Agency. The State will need to meet other procedural and administrative requirements identified in the State/Tribal Permit Program Determination of Adequacy. The approval process to be used for non-municipal solid waste disposal facilities is the same process that the Agency used for determining the adequacy of State programs for the Municipal Solid Waste Landfill criteria. In States already approved for the part 258 MSWLF Criteria, changes required by this rulemaking will constitute a program revision.

The Agency believes that for many approved States, changes required by this rulemaking will affect the technical criteria only and should warrant limited changes to the approved application. For example, if non-municipal solid waste disposal facilities subject to this rule are already subject to an approved State MSWLF program (i.e., the non-municipal solid waste disposal facilities are currently subject to the part 258 location restrictions, ground-water monitoring, and corrective action), the State may only be required to submit documentation that the non-municipal solid waste disposal facilities are subject to their approved program. States are encouraged to contact their appropriate EPA Regional office to determine the specifics of the approval process.

In States that have not been approved for the MSWLF Criteria, these revisions can be incorporated into an application for overall program approval of part 258 and §§ 257.5 through 257.30. States that currently restrict CESQG disposal to Subtitle C facilities (and States that may choose to adopt that restriction) or approved States which currently restrict CESQG disposal to part 258 municipal solid waste landfills will not need to seek further EPA approval of their Subtitle D program. RCRA section 4005(c)(1)(B) requires States to adopt and implement permit programs to ensure that facilities which receive CESQG waste will comply with the revised Criteria promulgated under section 4010(c). However, the Agency sees no need for approved States that already require CESQG waste to be disposed of in either Subtitle C facilities or facilities subject to the part 258 MSWLF Criteria to adopt and implement a permit program based upon the standards being proposed today.

RCRA section 7004(b)(1) requires the Administrator and the States to encourage and provide for public participation in the development, revision, implementation, and enforcement of this regulation, and once it is promulgated, the State programs implemented to enforce it. EPA provides for public participation by seeking public comment on this proposal and its decisions on whether State programs are adequate under RCRA section 4005(c)(1)(c). In developing and implementing permit programs, States must provide for public participation in accordance with the provisions of 40 CFR part 256, subpart G.

C. Relationship Between Subtitle C and D

Today's proposal has an effective date of 18 months after publication of the final rule for the location restrictions with the ground-water monitoring and corrective action requirements becoming effective 2 years after the date of publication of the final rule. The Agency is proposing that the revisions to § 261.5(f)(3) and (g)(3) have the same effective date as the proposed changes in §§ 257.5 through 257.30 (i.e., 18 months after the date of publication of the final rule). Owners/operators of facilities that receive CESQG hazardous waste will be subject to the requirements in §§ 257.5 through 257.30. CESQGs will be subject to the proposed requirements in § 261.5. Today's proposed 18-month effective date coincides with the period of time that States have, under Subtitle D, to adopt and implement a program to ensure that owners/operators are in compliance with the proposed changes to §§ 257.5 through 257.30.

D. Enforcement

1. Hazardous Waste Enforcement

Today's proposal amends § 261.5, paragraphs (f)(3) and (g)(3), and as such any CESQG who mismanages their CESQG hazardous waste on-site or delivers the CESQG hazardous waste to an inappropriate Subtitle D facility becomes subject to the full set of Subtitle C hazardous waste regulations.

2. Subtitle D Enforcement

States that adopt programs meeting the standards in §§ 257.5 through 257.30 may enforce them in accordance with State authorities. Under RCRA section 7002, citizens may seek enforcement of the standards in §§ 257.5 through 257.30 independent of any State enforcement program. Section 7002 provides that any person may commence a civil action on his own behalf against any person who is alleged to be in violation of any permit, standard, regulation, condition, requirement, prohibition, or order that has become effective pursuant to RCRA. Once the self-implementing provisions in §§ 257.5 through 257.30 become

effective, they constitute the basis for citizen enforcement. Federal enforcement by EPA can be done only in States that EPA has determined have inadequate programs. EPA has no enforcement authorities under Section 4005 in approved States. EPA does, however, retain enforcement authority under section 7003 to protect against imminent and substantial endangerment to health and the environment in all States. A more complete discussion of the Subtitle D enforcement issue can be found in the MSWLF Criteria.

VII. Executive Order No. 12866—Regulatory Impacts Analysis

Under Executive Order No. 12866, EPA must determine whether a new regulation is significant. A significant regulatory action is defined as an action likely to result in a rule that may:

1. Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;
2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Pursuant to the terms of the Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because it raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

A. Cost Impacts

The Agency estimates that of the total 1900 construction and demolition waste facilities, 718 would be potentially affected. The national annual low-end cost is estimated to be $10.0M. This low-end cost assumes that all CESQG hazardous waste is separated at the point of generation for the construction industry. It assumes there will be no CESQG waste generated by the demolition industry. The CESQG portion is disposed of at hazardous waste facilities while the remaining non-hazardous waste portion is disposed of in non-upgraded construction and demolition waste facilities. The costs include the separation costs at the point of generation, costs of transporting/disposing the hazardous portion at a Subtitle C facility, and the costs of screening incoming wastes at all of the construction and demolition waste facilities. There are hundreds of thousands of construction and demolition sites active in the U.S. each year. EPA assumes that demolition rubble will not be CESQG waste and affected by this rule. Therefore, separation costs are likely to occur only at construction sites and the 3,742 industrial facilities with on-site non-hazardous waste landfills. The Agency requests comment on the labor and capital necessary to conduct separation at these facilities. The Agency also requests comment on how frequently CESQG hazardous waste is currently being separated at construction sites at these industrial facilities. In addition, the Agency requests comment on the transportation costs to bring small amounts of hazardous wastes from construction sites to a treatment and disposal facility.

The national annual high-end cost is estimated to be $47.0M. This high-end cost assumes that generators will not separate out CESQG waste from 30% of construction and demolition wastes and that this fraction will be sent to upgraded construction and demolition waste facilities that elect to comply with today's proposed requirements. Under this scenario, the Agency assumed that most medium to large size construction and demolition waste facilities (162) will upgrade. The costs include separation costs at the point of generation for waste not going to an upgraded landfill, costs of screening incoming wastes at 80% of the affected construction and demolition waste facilities which do not upgrade and costs for 20% of the affected construction and demolition wastes facilities to upgrade. Upgrade costs include ground-water monitoring and corrective action.

This rule allows States and individual owners/operators to choose among compliance options. States and owners/operators may determine that facility screening is a successful method to prevent the receipt of CESQG hazardous wastes. Other States and owners/operators may determine that upgrading is necessary or there is a market for upgraded landfill capacity for generators and, as such, some facilities may upgrade. If more States and owners/operators elect to use screening then the estimated cost of this proposal would be closer to the lower-bound estimate.

The full analysis that was used to determine the range of costs for this rulemaking is presented in the Cost and Economic Impact Analysis of the CESQG Rule.

B. Benefits

The Agency believes that the requirements being proposed for non-municipal solid waste disposal facilities will result in more Subtitle D facilities providing protection against ground-water contamination from the disposal of small amounts of hazardous waste. Today's action will force some non-municipal solid waste disposal facilities to either upgrade and install ground-water monitoring and perform corrective action if contamination is detected, or stop accepting hazardous waste. Today's action will also cause some generators of CESQG wastes to separate out these small quantities of hazardous waste and send them to more heavily regulated facilities (i.e., Subtitle C facilities or MSWLFs). These are the direct benefits of today's proposal, however, additional benefits will be realized due to this proposal.

Today's proposal will ensure that any ground-water contamination that is occurring at facilities that continue to accept small quantities of hazardous waste will be quickly detected and corrective action can be initiated sooner.

To the extent that existing non-municipal facilities that receive CESQG hazardous waste upgrade their facilities to include ground-water monitoring and to the extent that new facilities will be sited in acceptable areas with ground-water monitoring, public confidence in these types of facilities will be increased. Having public confidence increased would result in these types of facilities being easier to site in the future.

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 requires Federal agencies to consider "small entities" throughout the regulatory process. Section 603 of the RFA requires an initial screening analysis to be performed to determine whether small entities will be adversely affected by the regulation. If affected small entities are identified, regulatory alternatives must be considered to mitigate the potential impacts. The Agency believes that it is unlikely that any industry will face significant impacts under the low-end scenario.

To help mitigate these impacts, EPA is proposing the minimum regulatory requirements allowed under the statute (which are still protective of human health and the environment). As a result, EPA believes that the lower-bound scenario, where demolition firms separate-out their CESQG waste and continue to send the non-hazardous portion to landfills not subject to the revised Part 257 standards, is the most likely scenario and that small entities will not be significantly impacted.

The Agency's full analysis of the impacts on small entities can be found in the Cost and Economic Impact Analysis of the CESQG Rule.

IX. Paperwork Reduction Act

The information collection requirements in today's proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork reduction Act, 44 U.S.C. 3501 et seq. Submit comments on these requirements to the Office of Information and Regulatory Affairs, OMB, 726 Jackson Place, NW, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB comments or public comments on the information collection requirements.

X. Environmental Justice Issues

Executive Order 12898 requires Federal Agencies, to the greatest extent practicable, to identify and address disproportionately high adverse human health or environmental effects of its activities on minority and low-income populations.

The Agency does not currently have data on the demographics of populations surrounding the facilities affected by today's proposal (i.e., construction and demolition landfills). The Agency does not believe, however, that today's proposed rule will adversely impact minority or low-income populations. The facilities affected by the proposal currently pose limited risk to surrounding populations (see section V.B.1.d of today's preamble). In addition, today's proposal would further reduce this risk by requiring the affected facilities to either stop accepting CESQG hazardous waste or to begin ground-water monitoring and, if applicable, corrective action.

Thus, today's proposal would further reduce the already low risk for populations surrounding construction and demolition landfills, regardless of the population's ethnicity or income level. Minority and low-income populations would not be adversely affected.

XI. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (the Act), Pub. L. 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the Act EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the Act a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

EPA has determined that the proposal discussed in this notice does not include a Federal mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate, or to the private sector, in any one year. EPA has estimated that the annual costs of the proposed rule on generators of CESQG wastes and those entities which own or operate CESQG disposal facilities, including the private sector, States, local or tribal governments, range from $10.0M to $47.0M.

In addition to compliance costs for those who own or operate CESQG facilities, States will have a cost of developing permit programs or other systems of prior approval to ensure that CESQG facilities comply with the proposal, once it is promulgated. Adoption and implementation of such State permit programs is required under RCRA section 4005(c)(1)(B). 42 USC 6945(c)(1)(B). Forty-two states already have adopted and implemented permit programs to ensure compliance with the MSWLF rule (40 CFR part 258) which EPA has approved as "adequate." The Agency has estimated that the costs for a state to develop an application for approval of an MSWLF permit program to be approximately $15,000. Because these state permit programs already contain ground water monitoring, corrective action, and location standards for MSWLFs that are quite similar to those in this proposal, EPA believes that the additional costs for states to revise their permit programs to reflect the CESQG requirements are not expected to be significant. Also, because of the reduced level of regulatory requirements contained in this CESQG proposal as compared to the MSWLF Part 258 criteria, state costs for preparing applications for approval of a CESQG permit program should be considerably less than that $15,000 figure.

Indian tribes are not required to develop permit programs for approval by EPA, but the Agency believes tribal governments are authorized to development such permit programs and have them approved by EPA. EPA has estimated that it will cost a tribal government approximately $7,000 to prepare an application for approval of a MSWLF program. Because of the reduced regulatory provisions of the CESQG proposal, EPA expects that the costs which a tribal government might face in developing a permit program for CESQG facilities should be less than $7,000.

EPA is also proposing to revise the requirements for generators of CESQG hazardous waste. These amendments to 40 CFR 261.5 (f)(3) and (g)(3) are proposed pursuant to RCRA section 3001 (d)(4), which is a provision added by HSWA. The § 261.5 amendments are also more stringent than current Federal hazardous waste regulations. Subtitle C regulatory changes carried out under HSWA authority become effective in all states at the same time and are implemented by EPA until states revise their programs. States are obligated to revise their hazardous waste programs and seek EPA authorization of these program revisions, unless their programs already incorporate more stringent provisions. The Agency believes approximately 24 states already have more stringent CESQG hazardous waste provisions and would not have to take action because of these regulatory changes. About 26 states would have to revise their hazardous waste programs and seek authorization. States generally incorporate a number of hazardous waste program revisions and seek authorization for them at one time. The Agency estimates the State costs associated with Subtitle C program revision/authorization activity are approximately $7,320 per state. Since this estimate covers several separate program components at one time, the cost for revisions only to § 261.5 in the remaining 26 States would be substantially less.

As to section 203 of the Act, EPA has determined that the requirements being proposed today will not significantly or uniquely affect small governments, including tribal governments. EPA

recognizes that small governments may own or operate solid waste disposal facilities that receive CESQG waste. However, EPA currently estimates that the majority of construction and demolition landfills, which are the primary facilities likely to be subject to any final rule, are owned by the private sector. Moreover, EPA is aware that a number of states already require owners/operators of C&D landfills to meet regulatory standards that are similar to those being proposed today. Thus, EPA believes that the proposed rule contains no regulatory requirements that significantly or uniquely affect small governments.

EPA has, however, sought meaningful and timely input from the private sector, states, and small governments on the development of this notice. Prior to issuing this proposed rule, EPA met with members of the private sector as discussed earlier in the preamble. In addition, EPA met twice with an "Industrial D" Steering Committee of the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) to discuss the contents of today's proposal. The Agency provided a draft of the proposed rule to the ASTSWMO Steering Committee and incorporated comments that were received.

Finally, included in this proposal is a provision that would allow certain small CESQG landfills which are located in either arid or remote locations and which service small communities to utilize alternative methods of ground water monitoring. Prior to developing this provision, which is also being proposed in a separate notice applicable to small MSWLF facilities that are in arid or remote locations, EPA held a series of public meetings. These meetings were held in June 1994 in Texas, Utah, Alaska, and Washington, DC. EPA received comment from a variety of parties, including States and small governments. Through these meetings and publication of this notice, EPA expects that any applicable requirements of section 203 of the Act will have been satisfied prior to promulgating a final rule.

XII. References

1. Background Document for the, CESQG Rule, U.S. EPA, 1995
2. Generation and Management of CESQG Waste, U.S. EPA, Office of Solid Waste, Prepared by ICF, July 1994.
3. Screening Survey of Industrial Subtitle D Establishments, Draft Final Report, U.S. EPA, Office of Solid Waste, Prepared by Westat, December 29, 1987.
4. Construction Waste and Demolition Debris Recycling . . . A Primer, The Solid Waste Association of North America (SWANA), October 1993, Publication #: GR-REC 300
5. List of Industrial Waste Landfills and Construction and Demolition Waste Landfills, U.S. EPA, Office of Solid Waste, Prepared by Eastern Research Group, September 30, 1994.
6. Construction and Demolition Waste Landfills, U.S. EPA, Office of Solid Waste, Prepared by ICF, May, 1995.
7. National Small Quantity Hazardous Waste Generator Survey, U.S. EPA, Office of Solid Waste, Prepared by Abt Associates, Inc., February 1985.
8. Damage Cases: Construction and Demolition Waste Landfills, U.S. EPA, Office of Solid Waste, Prepared by ICF, May, 1995.
9. Solid Waste Disposal Facility Criteria, 56 FR 50977, October 9, 1991
10. Cost and Economic Impact Analysis of the CESQG Rule, Prepared by ICF, 1995.

List of Subjects

40 CFR Part 257

Environmental protection, Reporting and recordkeeping requirements, Waste disposal.

40 CFR Part 261

Hazardous materials, Recycling, Waste treatment and disposal.

40 CFR Part 271

Administrative practice and procedure, Hazardous materials transportation, Hazardous waste, Indian-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: May 15, 1995.

Carol M. Browner,

Administrator.

For reasons set out in the preamble, Title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 257—CRITERIA FOR CLASSIFICATION OF SOLID WASTE DISPOSAL FACILITIES AND PRACTICES

1. The authority citation for part 257 is revised to read as follows:

Authority: 42 U.S.C. 6907(a)(3), 6912(a)(1), 6944(a) and 6949(c), 33 U.S.C. 1345 (d) and (e).

2. Sections 257.1 through 257.4 are designated as Subpart A—Classification of Solid Waste Disposal Facilities and Practices.

3. Section 257.1, paragraph (a) is revised to read as follows:

§ 257.1 Scope and purpose.

(a) Unless otherwise provided, the criteria in §§ 257.1–257.4 are adopted for determining which solid waste disposal facilities and practices pose a reasonable probability of adverse effects on health or the environment under sections 1008(a)(3) and 4004(a) of the Resource Conservation and Recovery Act (The Act). Unless otherwise provided, the criteria in §§ 257.5–257.30 are adopted for purposes of ensuring that non-municipal solid waste disposal facilities that receive conditionally exempt small quantity generator (CESQG) waste do not present risks to human health and the environment taking into account the practicable capability of such facilities in accordance with section 4010(c) of the Act.

(1) Facilities failing to satisfy either the criteria in §§ 257.1–257.4 or §§ 257.5–257.30 are considered open dumps, which are prohibited under section 4005 of the Act.

(2) Practices failing to satisfy either the criteria in §§ 257.1–257.4 or §§ 257.5–257.30 constitute open dumping, which is prohibited under section 4005 of the Act.

* * * * *

4. Part 257 is amended by adding a new subpart B to read as follows:

Subpart B—Disposal Standards for the Receipt of Conditionally Exempt Small Quantity Generator (CESQG) Wastes at Non-Municipal Solid Waste Disposal Facilities

Sec.

257.5 Facility standards for owners/operators of non-municipal solid waste disposal facilities that receive Conditionally Exempt Small Quantity Generator (CESQG) waste.

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Ground-water Monitoring and Corrective Action

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Recordkeeping Requirement

257.30 Recordkeeping requirements.

Supart B—Disposal Standards for the Receipt of Confidentiality Exempt Small Generator (CESQG) Wastes at Non-Municpal Solid Waste Disposal Facilities

§ 257.5 Facility standards for owners/operators of non-municipal solid waste disposal facilities that receive Conditionally Exempt Small Quantity Generator (CESQG) waste.

(a) Applicability. (1) The requirements in this section apply to owners/operators of any non-municipal solid waste disposal facility that receives CESQG hazardous waste, as defined in 40 CFR 261.5. Any owner/operator of a non-municipal solid waste disposal facility that receives CESQG hazardous waste continues to be subject to the requirements in §§ 257.3–2, 257.3–3, 257.3–5, 257.3–6, 257.3–7, and 257.3–8 (a), (b), and (d).

(2) Any non-municipal solid waste disposal facility that does not meet the requirements in §§ 257.7 through 257.12 by [Insert date 18 months after date of publication of the final rule in the **Federal Register**] and the requirements in §§ 257.21 through 257.28 by [Insert date 24 months after date of publication of the final rule in the **Federal Register**] may not receive CESQG hazardous waste. Such a non-municipal solid waste disposal facility continues to be subject to the requirements in §§ 257.1–257.4.

(b) Definitions. Active life means the period of operation beginning with the initial receipt of solid waste and ending at the final receipt of solid waste.

Existing facility means any non-municipal solid waste disposal facility that is receiving CESQG hazardous waste as of the appropriate dates specified in § 257.5(a)(1).

Lateral expansion means a horizontal expansion of the waste boundaries of an existing non-municipal solid waste disposal facility.

New facility means any non-municipal solid waste disposal facility that has not received CESQG hazardous waste prior to [Insert date 18 months after date of publication of the final rule in the **Federal Register**].

State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and Indian Tribes.

State/Tribal Director means the chief administrative officer of the State/Tribal agency responsible for implementing the State/Tribal permit program for Subtitle D regulated facilities.

Uppermost aquifer means the geologic formation nearest the natural ground surface that is an aquifer, as well as, lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

Waste management unit boundary means a vertical surface located at the hydraulically downgradient limit of the unit. This vertical surface extends down into the uppermost aquifer.

Location Restrictions

§ 257.7 Airport Safety

(a) Owners or operators of new facilities, existing facilities, and lateral expansions that are located within 10,000 feet (3,048 meters) of any airport runway end used by turbojet aircraft or within 5,000 feet (1,524 meters) of any airport runway end used by only piston-type aircraft must demonstrate that the units are designed and operated so that the unit does not pose a bird hazard to aircraft.

(b) Owners or operators proposing to site new facilities and lateral expansions located within a five-mile radius of any airport runway end used by turbojet or piston-type aircraft must notify the affected airport and the Federal Aviation Administration (FAA).

(c) The owner or operator must place the demonstration in paragraph (a) of this section in the operating record and notify the State Director that it has been placed in the operating record.

(d) For purposes of this section:

(1) *Airport* means public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

(2) *Bird hazard* means an increase in the likelihood of bird/aircraft collisions that may cause damage to the aircraft or injury to its occupants.

§ 257.8 Floodplains.

(a) Owners or operators of new facilities, existing facilities, and lateral expansions located in 100-year floodplains must demonstrate that the unit will not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste so as to pose a hazard to human health and the environment. The owner or operator must place the demonstration in the operating record and notify the State Director that it has been placed in the operating record.

(b) For purposes of this section:

(1) *Floodplain* means the lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, that are inundated by the 100-year flood.

(2) *100-year flood* means a flood that has a 1-percent or greater chance of recurring in any given year or a flood of a magnitude equalled or exceeded once in 100 years on the average over a significantly long period.

(3) *Washout* means the carrying away of solid waste by waters of the base flood.

§ 257.9 Wetlands.

(a) Owners or operators of new facilities and lateral expansions shall not locate such facilities in wetlands, unless the owner or operator can make the following demonstrations to the Director of an approved State:

(1) Where applicable under section 404 of the Clean Water Act or applicable State wetlands laws, the presumption that a practicable alternative to the proposed landfill is available which does not involved wetlands is clearly rebutted:

(2) The construction and operation of the MSWLF unit will not:

(i) Cause or contribute to violations of any applicable State water quality standard,

(ii) Violate any applicable toxic effluent standard or prohibition under section 307 of the Clean Water Act,

(iii) Jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the Endangered Species Act of 1973, and

(iv) Violate any requirement under the Marine Protection, Research, and Sanctuaries Act of 1972 for the protection of a marine sanctuary;

(3) The facility will not cause or contribute to significant degradation of wetlands. The owner/operator must demonstrate the integrity of the facility and its ability to protect ecological resources by addressing the following factors:

(i) Erosion, stability, and migration potential of native wetland soils, muds and deposits used to support the facility;

(ii) Erosion, stability, and migration potential of dredged and fill materials used to support the facility;

(iii) The volume and chemical nature of the waste managed in the facility;

(iv) Impacts on fish, wildlife, and other aquatic resources and their habitat from release of the waste;

(v) The potential effects of catastrophic release of waste to the wetland and the resulting impacts on the environment; and

(vi) Any additional factors, as necessary, to demonstrate that ecological resources in the wetland are sufficiently protected.

(4) To the extent required under section 404 of the Clean Water Act or

applicable State wetlands laws, steps have been taken to attempt to achieve no net loss of wetlands (as defined by acreage and function) by first avoiding impacts to wetlands to the maximum extent practicable as required by paragraph (a)(1) of this section, then minimizing unavoidable impacts to the maximum extent practicable, and finally offsetting remaining unavoidable wetland impacts through all appropriate and practicable compensatory mitigation actions (e.g., restoration of existing degraded wetlands or creation of man-made wetlands); and

(5) Sufficient information is available to make a reasonable determination with respect to these demonstrations.

(b) For purposes of this section, wetlands means those areas that are defined in 40 CFR 232.2(r).

§ 257.10 Fault areas.

(a) Owners or operators of new facilities and lateral expansions shall not locate such facilities within 200 feet (60 meters) of a fault that has had displacement in Holocene time unless the owner or operator demonstrates to the Director of an approved State that an alternative setback distance of less than 200 feet (60 meters) will prevent damage to the structural integrity of the facility and will be protective of human health and the environment.

(b) For the purposes of this section:

(1) *Fault* means a fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side.

(2) *Displacement* means the relative movement of any two sides of a fault measured in any direction.

(3) *Holocene* means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene Epoch to the present.

§ 257.11 Seismic impact zones.

(a) Owners or operators of new facilities and lateral expansions shall not locate such facilities in seismic impact zones, unless the owner or operator demonstrates to the Director of an approved State that all containment structures are designed to resist the maximum horizontal acceleration in lithified earth material for the site. The owner or operator must place the demonstration in the operating record and notify the State Director that it has been placed in the operating record.

(b) For the purposes of this section:

(1) *Seismic impact zone* means an area with a ten percent or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull (g), will exceed 0.10g in 250 years.

(2) *Maximum horizontal acceleration in lithified earth material* means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a 90 percent or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

(3) *Lithified earth material* means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth surface.

§ 257.12 Unstable areas.

(a) Owners or operators of new facilities, existing facilities, and lateral expansions located in an unstable area must demonstrate that engineering measures have been incorporated into the facility design to ensure that the integrity of the structural components of the facility will not be disrupted. The owner or operator must place the demonstration in the operating record and notify the State Director that it has been placed in the operating record. The owner or operator must consider the following factors, at a minimum, when determining whether an area is unstable:

(1) On-site or local soil conditions that may result in significant differential settling;

(2) On-site or local geologic or geomorphologic features; and

(3) On-site or local human-made features or events (both surface and subsurface).

(b) For purposes of this section:

(1) *Unstable area* means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and karst terranes.

(2) *Structural components* means liners, leachate collection systems, final covers, run-on/run-off systems, and any other component used in the construction and operation of the facility that is necessary for protection of human health and the environment.

(3) *Poor foundation conditions* means those areas where features exist which indicate that a natural or man-induced event may result in inadequate foundation support for the structural components of the facility.

(4) *Areas susceptible to mass movement* means those areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where the movement of earth material at, beneath, or adjacent to the facility, because of natural or man-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include, but are not limited to, landslides, avalanches, debris slides and flows, soil fluction, block sliding, and rock fall.

(5) *Karst terranes* means areas where karst topography, with its characteristic surface and subterranean features, is developed as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in karst terranes include, but are not limited to, sinkholes, sinking streams, caves, large springs, and blind valleys.

§ 257.13 Deadline for making demonstrations.

(a) Existing facilities that cannot make the demonstration specified in §§ 257.7(a) pertaining to airports, 257.8(a) pertaining to floodplains, or 257.12(a) pertaining to unstable areas by [Insert date 18 months after date of publication of the final rule in the **Federal Register**] must not accept CESQG hazardous waste for disposal.

Ground-Water Monitoring and Corrective Action

§ 257.21 Applicability.

(a) The requirements in this section apply to facilities identified in § 257.5(a), except as provided in paragraph (b) of this section.

(b) Ground-water monitoring requirements under §§ 257.22 through 257.25 may be suspended by the Director of an approved State for a facility identified in § 257.5(a) if the owner or operator can demonstrate that there is no potential for migration of hazardous constituents from that facility to the uppermost aquifer during the active life of the unit plus 30 years. This demonstration must be certified by a qualified ground-water scientist and approved by the Director of an approved State, and must be based upon:

(1) Site-specific field collected measurements, sampling, and analysis of physical, chemical, and biological processes affecting contaminant fate and transport, and

(2) Contaminant fate and transport predictions that maximize contaminant migration and consider impacts on human health and environment.

(c) Owners and operators of facilities identified in § 257.5(a) must comply with the ground-water monitoring requirements of this section according to the following schedule unless an alternative schedule is specified under paragraph (d) of this section:

(1) Existing facilities and lateral expansions must be in compliance with the ground-water monitoring requirements specified in §§ 257.22–257.25 by [Insert date 2 years after date of publication of the final rule in the **Federal Register**]

(2) New facilities identified in § 257.5(a) must be in compliance with the ground-water monitoring requirements specified in §§ 257.22–257.25 before waste can be placed in the unit.

(d) The Director of an approved State may specify an alternative schedule for the owners or operators of existing facilities and lateral expansions to comply with the ground-water monitoring requirements specified in §§ 257.22–257.25. This schedule must ensure that 50 percent of all existing facilities are in compliance by [Insert date 2 years after date of publication of the final rule in the **Federal Register**] and all existing facilities are in compliance by [Insert date 3 years after date of publication of the final rule in the **Federal Register**]. In setting the compliance schedule, the Director of an approved State must consider potential risks posed by the unit to human health and the environment. The following factors should be considered in determining potential risk:

(1) Proximity of human and environmental receptors;

(2) Design of the unit;

(3) Age of the unit;

(4) The size of the unit;

(5) Resource value of the underlying aquifer, including:

(i) Current and future uses;

(ii) Proximity and withdrawal rate of users; and

(iii) Ground-water quality and quantity.

(e) Once established at a facility, ground-water monitoring shall be conducted throughout the active life plus 30 years. The Director of an approved State may decrease the 30 year period if the owner/operator demonstrates that a shorter period of time is adequate to protect human health and the environment and the Director approves the demonstration.

(f) For the purposes of this section, a qualified ground-water scientist is a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering and has sufficient training and experience in ground-water hydrology and related fields as may be demonstrated by State registration, professional Certifications, or completion of accredited university programs that enable that individual to make sound professional judgments regarding ground-water monitoring, contaminant fate and transport, and corrective-action.

(g) The Director of an approved State may establish alternative schedules for demonstrating compliance with § 257.22(d)(2), pertaining to notification of placement of certification in operating record; § 257.24(c)(1), pertaining to notification that statistically significant increase (SSI) notice is in operating record; § 257.24(c)(2) and (3), pertaining to an assessment monitoring program; § 257.25(b), pertaining to sampling and analyzing appendix II of Part 258 constituents; § 257.25(d)(1), pertaining to placement of notice (appendix II of Part 258 constituents detected) in record and notification of notice in record; § 257.25(d)(2), pertaining to sampling for appendix I and II of Part 258; § 257.25(g), pertaining to notification (and placement of notice in record) of SSI above ground-water protection standard; §§ 257.25(g)(1)(iv) and 257.26(a), pertaining to assessment of corrective measures; § 257.27(a), pertaining to selection of remedy and notification of placement in record; § 257.5–2.8(c)(4), pertaining to notification of placement in record (alternative corrective action measures); and § 257.28(f), pertaining to notification of placement in record (certification of remedy completed).

(h) Directors of approved States may allow any non-municipal solid waste disposal unit meeting the criteria in paragraph (i) of this section to:

(1) Use alternatives to the ground-water monitoring system prescribed in §§ 257.22 through 257.25 so long as the alternatives will detect and, if necessary, assess the nature or extent of contamination from the non-municipal solid waste disposal unit on a site-specific basis; or establish and use, on a site-specific basis, an alternative list of indicator parameters for some or all of the constituents listed in Appendix I (appendix I of part 258 of this chapter). Alternative indicator parameters approved by the Director of an approved State or Tribe under this section must ensure detection of contamination from the non-municipal solid waste disposal unit.

(2) If contamination is detected through the use of any alternative to the ground-water monitoring system prescribed in §§ 257.22 through 257.25, the non-municipal solid waste disposal unit owner or operator must perform expanded monitoring to determine whether the detected contamination is an actual release from the non-municipal solid waste disposal unit and, if so, to determine the nature and extent of the contamination. The non-municipal solid waste disposal unit owner or operator must submit the results from expanded monitoring to the Director of the approved State within 60 days from the time of detection.

(i) If detection indicates that contamination from the non-municipal solid waste disposal unit has reached the saturated zone, the owner or operator must install ground-water monitoring wells and sample these wells in accordance with §§ 257.22 through 257.25.

(ii) If detection indicates that contamination from the non-municipal solid waste disposal unit is present in the unsaturated zone or on the surface, the owner or operator must, within 60 days from the time expanded monitoring is completed, submit for approval by the Director of an approved State adequate corrective measures to prevent further contaminant migration, and where appropriate, to remediate contamination. The proposed corrective measures are subject to revision and approval by the Director of the approved State. The owner or operator must implement the corrective measures according to a schedule established by the Director of the approved State.

(3) When considering whether to allow alternatives to a ground-water monitoring system prescribed in §§ 257.22 through 257.25, including alternative indicator parameters, the Director of an approved State shall consider at least the following factors:

(i) The geological and hydrogeological characteristics of the site;

(ii) The impact of manmade and natural features on the effectiveness of an alternative technology;

(iii) Climatic factors that may influence the selection, use, and reliability of alternative ground-water monitoring procedures; and

(iv) the effectiveness of indicator parameters in detecting a release.

(4) The Director of an approved State can require an owner or operator to comply with the requirements of §§ 257.22 through 257.25, where it is determined by the Director that using alternatives to ground-water monitoring approved under this subsection are inadequate to detect contamination and,

if necessary, to assess the nature and extent of contamination.

(i) Directors of approved States can use the flexibility in paragraph (h) of this section for any non-municipal solid waste disposal facility that receives CESQG waste, if the non-municipal solid waste disposal facility:

(1) Disposes of less than 20 tons of non-municipal waste daily, based on an annual average, and,

(2) Has no evidence of ground-water contamination, and either,

(3) Serves a community that experiences an annual interruption of at least three consecutive months of surface transportation that prevents access to a regional waste management facility, or

(4) Serves a community that has no practicable waste management alternative and the non-municipal solid waste disposal facility is located in an area that annually receives less than or equal to 25 inches of precipitation.

(5) Owners/operators of any non-municipal solid waste disposal facility that meets the criteria in paragraph (i) of this section must place in the operating record information demonstrating this.

§ 257.22 Ground-water monitoring systems.

(a) A ground-water monitoring system must be installed that consists of a sufficient number of wells, installed at appropriate locations and depths, to yield ground-water samples from the uppermost aquifer (as defined in § 257.21(b)) that:

(1) Represent the quality of background ground water that has not been affected by leakage from a unit. A determination of background quality may include sampling of wells that are not hydraulically upgradient of the waste management area where:

(i) Hydrogeologic conditions do not allow the owner or operator to determine what wells are hydraulically upgradient; or

(ii) Sampling at other wells will provide an indication of background ground-water quality that is as representative or more representative than that provided by the upgradient wells; and

(2) Represent the quality of ground water passing the relevant point of compliance specified by the Director of an approved State or at the waste management unit boundary in an unapproved State. The downgradient monitoring system must be installed at the relevant point of compliance specified by the Director of an approved State or at the waste management unit boundary in an unapproved State that ensures detection of ground-water contamination in the uppermost aquifer. The relevant point of compliance specified by the Director of an approved State shall be no more than 150 meters from the waste management unit boundary and shall be located on land owned by the owner of the facility. In determining the relevant point of compliance the State Director shall consider at least the following factors: The hydrogeologic characteristics of the facility and surrounding land, the volume and physical and chemical characteristics of the leachate, the quantity, quality and direction of flow of ground water, the proximity and withdrawal rate of the ground-water users, the availability of alternative drinking water supplies, the existing quality of the ground water, including other sources of contamination and their cumulative impacts on the ground water, and whether the ground water is currently used or reasonably expected to be used for drinking water, public health, safety, and welfare effects, and practicable capability of the owner or operator. When physical obstacles preclude installation of ground-water monitoring wells at the relevant point of compliance at existing units, the down-gradient monitoring system may be installed at the closest practicable distance hydraulically down-gradient from the relevant point of compliance specified by the Director of an approved State that ensures detection of groundwater contamination in the uppermost aquifer.

(b) The Director of an approved State may approve a multi-unit ground-water monitoring system instead of separate ground-water monitoring systems for each unit when the facility has several units, provided the multi-unit ground-water monitoring system meets the requirement of § 257.22(a) and will be as protective of human health and the environment as individual monitoring systems for each unit, based on the following factors:

(1) Number, spacing, and orientation of the units;

(2) Hydrogeologic setting;

(3) Site history;

(4) Engineering design of the units, and

(5) Type of waste accepted at the units.

(c) Monitoring wells must be cased in a manner that maintains the integrity of the monitoring well bore hole. This casing must be screened or perforated and packed with gravel or sand, where necessary, to enable collection of ground-water samples. The annular space (i.e., the space between the bore hole and well casing) above the sampling depth must be sealed to prevent contamination of samples and the ground water.

(1) The owner or operator must notify the State Director that the design, installation, development, and decommission of any monitoring wells, piezometers and other measurement, sampling, and analytical devices documentation has been placed in the operating record; and

(2) The monitoring wells, piezometers, and other measurement, sampling, and analytical devices must be operated and maintained so that they perform to design specifications throughout the life of the monitoring program.

(d) The number, spacing, and depths of monitoring systems shall be:

(1) Determined based upon site-specific technical information that must include thorough characterization of:

(i) Aquifer thickness, ground-water flow rate, ground-water flow direction including seasonal and temporal fluctuations in ground-water flow; and

(ii) Saturated and unsaturated geologic units and fill materials overlying the uppermost aquifer, materials comprising the uppermost aquifer, and materials comprising the confining unit defining the lower boundary of the uppermost aquifer; including, but not limited to: Thicknesses, stratigraphy, lithology, hydraulic conductivities, porosities and effective porosities.

(2) Certified by a qualified ground-water scientist or approved by the Director of an approved State. Within 14 days of this certification, the owner or operator must notify the State Director that the certification has been placed in the operating record.

§ 257.23 Ground-water sampling and analysis requirements.

(a) The ground-water monitoring program must include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide an accurate representation of ground-water quality at the background and downgradient wells installed in compliance with § 257.22(a). The owner or operator must notify the State Director that the sampling and analysis program documentation has been placed in the operating record and the program must include procedures and techniques for:

(1) Sample collection;

(2) Sample preservation and shipment;

(3) Analytical procedures;

(4) Chain of custody control; and

(5) Quality assurance and quality control.

(b) The ground-water monitoring program must include sampling and analytical methods that are appropriate for ground-water sampling and that accurately measure hazardous constituents and other monitoring parameters in ground-water samples. Ground-water samples shall not be field-filtered prior to laboratory analysis.

(c) The sampling procedures and frequency must be protective of human health and the environment.

(d) Ground-water elevations must be measured in each well immediately prior to purging, each time ground water is sampled. The owner or operator must determine the rate and direction of ground-water flow each time ground water is sampled. Ground-water elevations in wells which monitor the same waste management area must be measured within a period of time short enough to avoid temporal variations in ground-water flow which could preclude accurate determination of ground-water flow rate and direction.

(e) The owner or operator must establish background ground-water quality in a hydraulically upgradient or background well(s) for each of the monitoring parameters or constituents required in the particular ground-water monitoring program that applies to the unit, as determined under § 257.24(a), or § 257.25(a). Background ground-water quality may be established at wells that are not located hydraulically upgradient from the unit if it meets the requirements of § 257.22(a)(1).

(f) The number of samples collected to establish ground-water quality data must be consistent with the appropriate statistical procedures determined pursuant to paragraph (g) of this section. The sampling procedures shall be those specified under § 257.24(b) for detection monitoring, § 257.25(b) and (d) for assessment monitoring, and § 257.26(b) for corrective action.

(g) The owner or operator must specify in the operating record one of the following statistical methods to be used in evaluating ground-water monitoring data for each hazardous constituent. The statistical test chosen shall be conducted separately for each hazardous constituent in each well.

(1) A parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent.

(2) An analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent.

(3) A tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit.

(4) A control chart approach that gives control limits for each constituent.

(5) Another statistical test method that meets the performance standards of § 257.23(h). The owner or operator must place a justification for this alternative in the operating record and notify the State Director of the use of this alternative test. The justification must demonstrate that the alternative method meets the performance standards of § 257.23(h).

(h) Any statistical method chosen under § 257.23(g) shall comply with the following performance standards, as appropriate:

(1) The statistical method used to evaluate ground-water monitoring data shall be appropriate for the distribution of chemical parameters or hazardous constituents. If the distribution of the chemical parameters or hazardous constituents is shown by the owner or operator to be inappropriate for a normal theory test, then the data should be transformed or a distribution-free theory test should be used. If the distributions for the constituents differ, more than one statistical method may be needed.

(2) If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a ground-water protection standard, the test shall be done at a Type I error level no less than 0.01 for each testing period. If a multiple comparisons procedure is used, the Type I experiment wise error rate for each testing period shall be no less than 0.05; however, the Type I error of no less than 0.01 for individual well comparisons must be maintained. This performance standard does not apply to tolerance intervals, prediction intervals, or control charts.

(3) If a control chart approach is used to evaluate ground-water monitoring data, the specific type of control chart and its associated parameter values shall be protective of human health and the environment. The parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(4) If a tolerance interval or a predictional interval is used to evaluate ground-water monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval must contain, shall be protective of human health and the environment. These parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(5) The statistical method shall account for data below the limit of detection with one or more statistical procedures that are protective of human health and the environment. Any practical quantitation limit (pql) that is used in the statistical method shall be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.

(6) If necessary, the statistical method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

(i) The owner or operator must determine whether or not there is a statistically significant increase over background values for each parameter or constituent required in the particular ground-water monitoring program that applies to the unit, as determined under §§ 257.24(a) or 257.25(a).

(A) In determining whether a statistically significant increase has occurred, the owner or operator must compare the ground-water quality of each parameter or constituent at each monitoring well designated pursuant to § 257.22(a)(2) to the background value of that constituent, according to the statistical procedures and performance standards specified under paragraphs (g) and (h) of this section.

(B) Within a reasonable period of time after completing sampling and analysis, the owner or operator must determine whether there has been a statistically significant increase over background at each monitoring well.

§ 257.24 Detection monitoring program.

(a) Detection monitoring is required at facilities identified in § 257.5(a) at all ground-water monitoring wells defined under §§ 257.22(a)(1) and (a)(2). At a minimum, a detection monitoring program must include the monitoring for the constituents listed in appendix I of part 258 of this chapter.

(1) The Director of an approved State may delete any of the appendix I (Appendix I of part 258 of this chapter) monitoring parameters for a unit if it can be shown that the removed constituents are not reasonably expected to be contained in or derived from the waste contained in the unit.

(2) The Director of an approved State may establish an alternative list of inorganic indicator parameters for a unit, in lieu of some or all of the heavy metals (constituents 1–15 in appendix I to part 258 of this chapter), if the alternative parameters provide a reliable indication of inorganic releases from the unit to the ground water. In determining alternative parameters, the Director shall consider the following factors:

(i) The types, quantities, and concentrations of constituents in waste managed at the unit;

(ii) The mobility, stability, and persistence of waste constituents or their reaction products in the unsaturated zone beneath the unit;

(iii) The detectability of indicator parameters, waste constituents, and reaction products in the ground water; and

(iv) The concentration or values and coefficients of variation of monitoring parameters or constituents in the groundwater background.

(b) The monitoring frequency for all constituents listed in appendix I to part 258 of this chapter, or in the alternative list approved in accordance with paragraph (a)(2) of this section, shall be at least semiannual during the active life of the facility plus 30 years. A minimum of four independent samples from each well (background and downgradient) must be collected and analyzed for the appendix I (appendix I of part 258 of this chapter) constituents, or the alternative list approved in accordance with paragraph (a)(2) of this section, during the first semiannual sampling event. At least one sample from each well (background and downgradient) must be collected and analyzed during subsequent semiannual sampling events. The Director of an approved State may specify an appropriate alternative frequency for repeated sampling and analysis for appendix I (appendix I of part 258 of this chapter) constituents, or the alternative list approved in accordance with paragraph (a)(2) of this section, during the active life plus 30 years. The alternative frequency during the active life shall be no less than annual. The alternative frequency shall be based on consideration of the following factors:

(1) Lithology of the aquifer and unsaturated zone;

(2) Hydraulic conductivity of the aquifer and unsaturated zone;

(3) Ground-water flow rates;

(4) Minimum distance between upgradient edge of the unit and downgradient monitoring well screen (minimum distance of travel); and

(5) Resource value of the aquifer.

(c) If the owner or operator determines, pursuant to § 257.23(g) of this part, that there is a statistically significant increase over background for one or more of the constituents listed in appendix I to part 258 of this chapter, or in the alternative list approved in accordance with paragraph (a)(2) of this section, at any monitoring well at the boundary specified under § 257.22(a)(2), the owner or operator:

(1) Must, within 14 days of this finding, place a notice in the operating record indicating which constituents have shown statistically significant changes from background levels, and notify the State/Tribal Director that this notice was placed in the operating record; and

(2) Must establish an assessment monitoring program meeting the requirements of § 257.25 within 90 days except as provided for in paragraph (c)(3) of this section.

(3) The owner/operator may demonstrate that a source other than the unit caused the contamination or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in ground-water quality. A report documenting this demonstration must be certified by a qualified ground-water scientist or approved by the Director of an approved State and be placed in the operating record. If a successful demonstration is made and documented, the owner or operator may continue detection monitoring as specified in this section. If, after 90 days, a successful demonstration is not made, the owner or operator must initiate an assessment monitoring program as required in § 257.25.

§ 257.25 Assessment monitoring program.

(a) Assessment monitoring is required whenever a statistically significant increase over background has been detected for one or more of the constituents listed in appendix I of part 258 of this chapter or in the alternative list approved in accordance with § 257.24(a)(2).

(b) Within 90 days of triggering an assessment monitoring program, and annually thereafter, the owner or operator must sample and analyze the ground water for all constituents identified in appendix II of part 258 of this chapter. A minimum of one sample from each downgradient well must be collected and analyzed during each sampling event. For any constituent detected in the downgradient wells as the result of the complete appendix II (appendix II of part 258 of this chapter) analysis, a minimum of four independent samples from each well (background and downgradient) must be collected and analyzed to establish background for the new constituents. The Director of an approved State may specify an appropriate subset of wells to be sampled and analyzed for appendix II (appendix II of part 258 of this chapter) constituents during assessment monitoring. The Director of an approved State may delete any of the appendix II (appendix II of part 258 of this chapter) monitoring parameters for a unit if it can be shown that the removed constituents are not reasonably expected to be in or derived from the waste contained in the unit.

(c) The Director of an approved State may specify an appropriate alternate frequency for repeated sampling and analysis for the full set of appendix II (appendix II of part 258) constituents required by § 257.25(b), during the active life plus 30 years considering the following factors:

(1) Lithology of the aquifer and unsaturated zone;

(2) Hydraulic conductivity of the aquifer and unsaturated zone;

(3) Ground-water flow rates;

(4) Minimum distance between upgradient edge of the unit and downgradient monitoring well screen (minimum distance of travel);

(5) Resource value of the aquifer; and

(6) Nature (fate and transport) of any constituents detected in response to this section.

(d) After obtaining the results from the initial or subsequent sampling events required in paragraph (b) of this section, the owner or operator must:

(1) Within 14 days, place a notice in the operating record identifying the appendix II (appendix II of part 258 of this chapter) constituents that have been detected and notify the State Director that this notice has been placed in the operating record;

(2) Within 90 days, and on at least a semiannual basis thereafter, resample all wells specified by § 257.22(a), conduct analyses for all constituents in appendix I (appendix I of part 258 of this chapter) to this part or in the alternative list approved in accordance with § 257.24(a)(2), and for those constituents in appendix II to part 258 that are detected in response to paragraph (b) of this section, and record their concentrations in the facility operating record. At least one sample from each well (background and downgradient) must be collected and analyzed during these sampling events. The Director of an approved State may specify an alternative monitoring frequency during the active life plus 30 years for the constituents referred to in this paragraph. The alternative frequency for appendix I (appendix I of part 258 of this chapter) constituents, or the alternative list approved in accordance with § 257.24(a)(2), during the active life shall be no less than annual. The alternative frequency shall be based on consideration of the factors specified in paragraph (c) of this section;

(3) Establish background concentrations for any constituents detected pursuant to paragraphs (b) or (d)(2) of this section; and

(4) Establish ground-water protection standards for all constituents detected pursuant to paragraph (b) or (d) of this section. The ground-water protection standards shall be established in accordance with paragraphs (h) or (i) of this section.

(e) If the concentrations of all appendix II (appendix II of part 258 of this chapter) constituents are shown to be at or below background values, using the statistical procedures in § 257.23(g), for two consecutive sampling events, the owner or operator must notify the State Director of this finding and may return to detection monitoring.

(f) If the concentrations of any appendix II (appendix II of part 258 of this chapter) constituents are above background values, but all concentrations are below the ground-water protection standard established under paragraphs (h) or (i) of this section, using the statistical procedures in § 257.23(g), the owner or operator must continue assessment monitoring in accordance with this section.

(g) If one or more appendix II (appendix II of part 258 of this chapter) constituents are detected at statistically significant levels above the ground-water protection standard established under paragraphs (h) or (i) of this section in any sampling event, the owner or operator must, within 14 days of this finding, place a notice in the operating record identifying the appendix II (appendix II of part 258 of this chapter) constituents that have exceeded the ground-water protection standard and notify the State Director and all appropriate local government officials that the notice has been placed in the operating record. The owner or operator also:

(1) (i) Must characterize the nature and extent of the release by installing additional monitoring wells as necessary;

(ii) Must install at least one additional monitoring well at the facility boundary in the direction of contaminant migration and sample this well in accordance with § 257.25(d)(2);

(iii) Must notify all persons who own the land or reside on the land that directly overlies any part of the plume of contamination if contaminants have migrated off-site if indicated by sampling of wells in accordance with § 257.25(g)(1); and

(iv) Must initiate an assessment of corrective measures as required by § 257.26 within 90 days; or

(2) May demonstrate that a source other than a MSWLF unit caused the contamination, or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in ground-water quality. A report documenting this demonstration must be certified by a qualified ground-water scientist or approved by the Director of an approved State and placed in the operating record. If a successful demonstration is made the owner or operator must continue monitoring in accordance with the assessment monitoring program pursuant to § 257.25, and may return to detection monitoring if the appendix II (appendix II of part 258 of this chapter) constituents are at or below background as specified in § 257.25(e). Until a successful demonstration is made, the owner or operator must comply with § 257.25(g) including initiating an assessment of corrective measures.

(h) The owner or operator must establish a ground-water protection standard for each appendix II (appendix II of part 258 of this chapter) constituent detected in the ground-water. The ground-water protection standard shall be:

(1) For constituents for which a maximum contaminant level (MCL) has been promulgated under section 1412 of the Safe Drinking Water Act (codified) under 40 CFR part 141, the MCL for that constituent;

(2) For constituents for which MCLs have not been promulgated, the background concentration for the constituent established from wells in accordance with § 257.22(a)(1); or

(3) For constituents for which the background level is higher than the MCL identified under paragraph (h)(1) of this section or health based levels identified under § 257.25(i)(1), the background concentration.

(i) The Director of an approved State may establish an alternative ground-water protection standard for constituents for which MCLs have not been established. These ground-water protection standards shall be appropriate health based levels that satisfy the following criteria:

(1) The level is derived in a manner consistent with Agency guidelines for assessing the health risks of environmental pollutants (51 FR 33992, 34006, 34014, 34028, September 24, 1986);

(2) The level is based on scientifically valid studies conducted in accordance with the Toxic Substances Control Act Good Laboratory Practice Standards (40 CFR part 792) or equivalent;

(3) For carcinogens, the level represents a concentration associated with an excess lifetime cancer risk level (due to continuous lifetime exposure) with the 1×10^{-4} to 1×10^{-6} range; and

(4) For systemic toxicants, the level represents a concentration to which the human population (including sensitive subgroups) could be exposed to on a daily basis that is likely to be without appreciable risk of deleterious effects during a lifetime. For purposes of this subpart, systemic toxicants include toxic chemicals that cause effects other than cancer or mutation.

(j) In establishing ground-water protection standards under paragraph (i) of this section, the Director of an approved State may consider the following:

(1) Multiple contaminants in the ground water;

(2) Exposure threats to sensitive environmental receptors; and

(3) Other site-specific exposure or potential exposure to ground water.

§ 257.26 Assessment of corrective measures.

(a) Within 90 days of finding that any of the constituents listed in appendix II (Appendix II of part 258 of this chapter) have been detected at a statistically significant level exceeding the ground-water protection standards defined under § 257.25 (h) or (i), the owner or operator must initiate an assessment of corrective measures. Such an assessment must be completed within a reasonable period of time.

(b) The owner or operator must continue to monitor in accordance with the assessment monitoring program as specified in § 257.25.

(c) The assessment shall include an analysis of the effectiveness of potential corrective measures in meeting all of the requirements and objectives of the remedy as described under § 257.27, addressing at least the following:

(1) The performance, reliability, ease of implementation, and potential impacts of appropriate potential

remedies, including safety impacts, cross-media impacts, and control of exposure to any residual contamination;

(2) The time required to begin and complete the remedy;

(3) The costs of remedy implementation; and

(4) The institutional requirements such as State or local permit requirements or other environmental or public health requirements that may substantially affect implementation of the remedy(s).

(d) The owner or operator must discuss the results of the corrective measures assessment, prior to the selection of remedy, in a public meeting with interested and affected parties.

§ 257.27 Selection of remedy.

(a) Based on the results of the corrective measures assessment conducted under § 257.26, the owner or operator must select a remedy that, at a minimum, meets the standards listed in paragraph (b) of this section. The owner or operator must notify the State Director, within 14 days of selecting a remedy, that a report describing the selected remedy has been placed in the operating record and how it meets the standards in paragraph (b) of this section.

(b) Remedies must:

(1) Be protective of human health and the environment;

(2) Attain the ground-water protection standard as specified pursuant to §§ 257.25(h) or (i);

(3) Control the source(s) of releases so as to reduce or eliminate, to the maximum extent practicable, further releases of appendix II (appendix II of part 258 of this chapter) constituents into the environment that may pose a threat to human health or the environment; and

(4) Comply with standards for management of wastes as specified in § 257.28(d).

(c) In selecting a remedy that meets the standards of § 257.27(b), the owner or operator shall consider the following evaluation factors:

(1) The long- and short-term effectiveness and protectiveness of the potential remedy(s), along with the degree of certainty that the remedy will prove successful based on consideration of the following:

(i) Magnitude of reduction of existing risks;

(ii) Magnitude of residual risks in terms of likelihood of further releases due to waste remaining following implementation of a remedy;

(iii) The type and degree of long-term management required, including monitoring, operation, and maintenance;

(iv) Short-term risks that might be posed to the community, workers, or the environment during implementation of such a remedy, including potential threats to human health and the environment associated with excavation, transportation, and redisposal or containment;

(v) Time until full protection is achieved;

(vi) Potential for exposure of humans and environmental receptors to remaining wastes, considering the potential threat to human health and the environment associated with excavation, transportation, redisposal, or containment;

(vii) Long-term reliability of the engineering and institutional controls; and

(viii) Potential need for replacement of the remedy.

(2) The effectiveness of the remedy in controlling the source to reduce further releases based on consideration of the following factors:

(i) The extent to which containment practices will reduce further releases;

(ii) The extent to which treatment technologies may be used.

(3) The ease or difficulty of implementing a potential remedy(s) based on consideration of the following types of factors:

(i) Degree of difficulty associated with constructing the technology;

(ii) Expected operational reliability of the technologies;

(iii) Need to coordinate with and obtain necessary approvals and permits from other agencies;

(iv) Availability of necessary equipment and specialists; and

(v) Available capacity and location of needed treatment, storage, and disposal services.

(4) Practicable capability of the owner or operator, including a consideration of the technical and economic capability.

(5) The degree to which community concerns are addressed by a potential remedy(s).

(d) The owner or operator shall specify as part of the selected remedy a schedule(s) for initiating and completing remedial activities. Such a schedule must require the initiation of remedial activities within a reasonable period of time taking into consideration the factors set forth in paragraphs (d)(1) through (d)(8) of this section. The owner or operator must consider the following factors in determining the schedule of remedial activities:

(1) Extent and nature of contamination;

(2) Practical capabilities of remedial technologies in achieving compliance with ground-water protection standards established under §§ 257.25(g) or (h) and other objectives of the remedy;

(3) Availability of treatment or disposal capacity for wastes managed during implementation of the remedy;

(4) Desirability of utilizing technologies that are not currently available, but which may offer significant advantages over already available technologies in terms of effectiveness, reliability, safety, or ability to achieve remedial objectives;

(5) Potential risks to human health and the environment from exposure to contamination prior to completion of the remedy;

(6) Resource value of the aquifer including:

(i) Current and future uses;

(ii) Proximity and withdrawal rate of users;

(iii) Ground-water quantity and quality;

(iv) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituent;

(v) The hydrogeologic characteristic of the facility and surrounding land;

(vi) Ground-water removal and treatment costs; and

(vii) The cost and availability of alternative water supplies.

(7) Practicable capability of the owner or operator.

(8) Other relevant factors.

(e) The Director of an approved State may determine that remediation of a release of an appendix II (appendix II of part 258 of this chapter) constituent from the unit is not necessary if the owner or operator demonstrates to the Director of the approved state that:

(1) The ground-water is additionally contaminated by substances that have originated from a source other than the unit and those substances are present in concentrations such that cleanup of the release from the unit would provide no significant reduction in risk to actual or potential receptors; or

(2) The constituent(s) is present in ground water that:

(i) Is not currently or reasonably expected to be a source of drinking water; and

(ii) Is not hydraulically connected with waters to which the hazardous constituents are migrating or are likely to migrate in a concentration(s) that would exceed the ground-water protection standards established under § 257.25 (h) or (i); or

(3) Remediation of the release(s) is technically impracticable; or

(4) Remediation results in unacceptable cross-media impacts.

(f) A determination by the Director of an approved State pursuant to paragraph (e) of this section shall not affect the authority of the State to require the owner or operator to undertake source control measures or other measures that may be necessary to eliminate or minimize further releases to the ground-water, to prevent exposure to the ground-water, or to remediate the ground-water to concentrations that are technically practicable and significantly reduce threats to human health or the environment.

§ 257.28 Implementation of the corrective action program.

(a) Based on the schedule established under § 257.27(d) for initiation and completion of remedial activities the owner/operator must:

(1) Establish and implement a corrective action ground-water monitoring program that:

(i) At a minimum, meets the requirements of an assessment monitoring program under § 257.25;

(ii) Indicates the effectiveness of the corrective action remedy; and

(iii) Demonstrates compliance with ground-water protection standard pursuant to paragraph (e) of this section.

(2) Implement the corrective action remedy selected under § 257.27; and

(3) Take any interim measures necessary to ensure the protection of human health and the environment. Interim measures should, to the greatest extent practicable, be consistent with the objectives of and contribute to the performance of any remedy that may be required pursuant to § 257.27. The following factors must be considered by an owner or operator in determining whether interim measures are necessary:

(i) Time required to develop and implement a final remedy;

(ii) Actual or potential exposure of nearby populations or environmental receptors to hazardous constituents;

(iii) Actual or potential contamination of drinking water supplies or sensitive ecosystems;

(iv) Further degradation of the ground-water that may occur if remedial action is not initiated expeditiously;

(v) Weather conditions that may cause hazardous constituents to migrate or be released;

(vi) Risks of fire or explosion, or potential for exposure to hazardous constituents as a result of an accident or failure of a container or handling system; and

(vii) Other situations that may pose threats to human health and the environment.

(b) An owner or operator may determine, based on information developed after implementation of the remedy has begun or other information, that compliance with requirements of § 257.27(b) are not being achieved through the remedy selected. In such cases, the owner or operator must implement other methods or techniques that could practicably achieve compliance with the requirements, unless the owner or operator makes the determination under § 257.28(c).

(c) If the owner or operator determines that compliance with requirements under § 257.27(b) cannot be practically achieved with any currently available methods, the owner or operator must:

(1) Obtain certification of a qualified ground-water scientist or approval by the Director of an approved State that compliance with requirements under § 257.27(b) cannot be practically achieved with any currently available methods;

(2) Implement alternate measures to control exposure of humans or the environment to residual contamination, as necessary to protect human health and the environment; and

(3) Implement alternate measures for control of the sources of contamination, or for removal or decontamination of equipment, units, devices, or structures that are:

(i) Technically practicable; and

(ii) Consistent with the overall objective of the remedy.

(4) Notify the State Director within 14 days that a report justifying the alternative measures prior to implementing the alternative measures has been placed in the operating record.

(d) All solid wastes that are managed pursuant to a remedy required under § 257.27, or an interim measure required under § 257.28(a)(3), shall be managed in a manner:

(1) That is protective of human health and the environment; and

(2) That complies with applicable RCRA requirements.

(e) Remedies selected pursuant to § 257.27 shall be considered complete when:

(1) The owner or operator complies with the ground-water protection standards established under §§ 257.25(h) or (i) at all points within the plume of contamination that lie beyond the ground-water monitoring well system established under § 257.22(a).

(2) Compliance with the ground-water protection standards established under §§ 257.25 (h) or (i) has been achieved by demonstrating that concentrations of appendix II (appendix II of part 258 of this chapter) constituents have not exceeded the ground-water protection standard(s) for a period of three consecutive years using the statistical procedures and performance standards in § 257.23 (g) and (h). The Director of an approved State may specify an alternative length of time during which the owner or operator must demonstrate that concentrations of appendix II (appendix II of part 258 of this chapter) constituents have not exceeded the ground-water protection standard(s) taking into consideration:

(i) Extent and concentration of the release(s);

(ii) Behavior characteristics of the hazardous constituents in the ground-water;

(iii) Accuracy of monitoring or modeling techniques, including any seasonal, meteorological, or other environmental variabilities that may affect the accuracy; and

(iv) Characteristics of the ground-water.

(3) All actions required to complete the remedy have been satisfied.

(f) Upon completion of the remedy, the owner or operator must notify the State Director within 14 days that a certification that the remedy has been completed in compliance with the requirements of § 257.28(e) has been placed in the operating record. The certification must be signed by the owner or operator and by a qualified ground-water scientist or approved by the Director of an approved State.

Recordkeeping Requirements

§ 257.30 Recordkeeping requirements.

(a) The owner/operator of a non-municipal solid waste disposal facility must record and retain near the facility in an operating record or in an alternative location approved by the Director of an approved State the following information as it becomes available:

(1) Any location restriction demonstration required under §§ 257.7 through 257.12; and

(2) Any demonstration, certification, finding, monitoring, testing, or analytical data required in §§ 257.21 through 257.28.

(b) The owner/operator must notify the State/Tribal Director when the documents from paragraph (a) of this section have been placed or added to the operating record, and all information contained in the operating record must be furnished upon request to the State Director or be made available at all reasonable times for inspection by the State Director.

(c) The Director of an approved State can set alternative schedules for recordkeeping and notification requirements as specified in paragraphs

(a) and (b) of this section, except for the notification requirements in §§ 257.7(b) and 257.25(g)(1)(iii).

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTES

5. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

Subpart A—General

6. Section 261.5 is amended by revising paragraphs (f)(3) and (g)(3) to read as follows:

§ 261.5 Special requirements for hazardous waste generated by conditionally exempt small quantity generators.

* * * * *

(f) * * *

(3) A conditionally exempt small quantity generator may either treat or dispose of his acute hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage, or disposal facility, either of which, if located in the U.S., is:

(i) Permitted under part 270 of this chapter;

(ii) In interim status under parts 270 and 265 of this chapter;

(iii) Authorized to manage hazardous waste by a State with a hazardous waste management program approved under part 271 of this chapter;

(iv) Permitted, licensed, or registered by a State to manage municipal solid waste and, if managed in a municipal solid waste landfill is subject to part 258 of this chapter;

(v) Permitted, licensed, or registered by a State to manage non-municipal solid waste and, if managed in a non-municipal solid waste disposal facility is subject to the requirements in §§ 257.5 through 257.30 of this chaper; or

(vi) A facility which:

(A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation.

(g) * * *

(3) A conditionally exempt small quantity generator may either treat or dispose of this hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage or disposal facility, either of which, if located in the U.S., is:

(i) Permitted under part 270 of this chapter;

(ii) In interim status under parts 270 and 265 of this chapter;

(iii) Authorized to manage hazardous waste by a State with a hazardous waste management program approved under part 271 of this chapter;

(iv) Permitted, licensed, or registered by a State to manage municipal solid waste and, if managed in a municipal solid waste landfill is subject to part 258 of this chapter;

(v) Permitted, licensed, or registered by a State to manage non-municipal solid waste and, if managed in a non-municipal solid waste disposal facility is subject to the requirements in §§ 257.5 through 257.30 of this chapter; or

(vi) A facility which:

(A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation.

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

7. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 8905, 8912(a), and 8926.

8. In § 271.1, paragraph (j), Table 1 is amended by adding the following entry in chronological order by publication date:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
•	•	•	•
[Insert date of publication of the final rule in FR].	Revisions to Criteria applicable to solid waste disposal facilities that may accept CESQG hazardous wastes, excluding MSWLFs.	[Insert publication citation of the final rule].	[Insert date 18 months after date of publication in *FR* of the final rule].

[FR Doc. 95–14065 Filed 6–9–95; 8:45 am]
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federal register

Monday
June 12, 1995

Part IV

Department of Agriculture

Agricultural Marketing Service

7 CFR Parts 916 and 917

Nectarines and Peaches Grown in California; Revision of Handling Requirements for Fresh Nectarines and Peaches; Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV95–916–1FIR]

Nectarines and Peaches Grown in California; Revision of Handling Requirements for Fresh Nectarines and Peaches

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, with appropriate modifications, the provisions of an interim final rule which revised the handling requirements for California nectarines and peaches by modifying the size, maturity, container, and pack requirements for fresh shipments of these fruits, beginning with 1995 season shipments. This rule enabled handlers to continue shipping fresh nectarines and peaches meeting consumer needs in the interest of producers, handlers, and consumers of these fruits.

EFFECTIVE DATE: June 12, 1995.

FOR FURTHER INFORMATION CONTACT: Kenneth Johnson, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456; telephone: (202) 720–2861; or Terry Vawter, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California, 93721; telephone: (209) 487–5901.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Marketing Order Nos. 916 and 917 [7 CFR parts 916 and 917] regulating the handling of nectarines and peaches grown in California, hereinafter referred to as the orders. The orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 300 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 1,800 producers of these fruits in California. All of the handlers sell peaches, while three out of four handlers sell nectarines. Small agricultural service firms have been defined by the Small Business Administration [13 CFR 121.601] as those whose annual receipts from all sources are less than $5,000,000 and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of handlers have sales of less than $5,000,000 and may be classified as small entities. In recent seasons, only about ten handlers had combined peach and nectarine sales of $5,000,000 or more. In recent years, average combined sales of peaches and nectarines per handler have been about $600,000. Typically, about three-fourths of peach and nectarine handlers have sales of less than the average for the industry.

The Nectarine Administrative Committee (NAC) and the Peach Commodity Committee (PCC) met on December 7, 1994, and unanimously recommended that the handling requirements for California nectarines and peaches be revised, respectively. These committees meet prior to and during each season to review the rules and regulations effective on a continuous basis for California nectarines and peaches under the orders. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews committee recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the rules and regulations would tend to effectuate the declared policy of the Act.

Container and Pack Requirements (Nectarines)

Section 916.350 specifies container and pack requirements for fresh nectarine shipments. Paragraph (a)(4)(iv) of § 916.350 specifies the tray-pack size designations which must be marked on loose-filled or tight-filled containers, depending on the size of the fruit. The size designations specify the maximum number of nectarines in a 16-pound sample for each tray-pack size designation. This rule revises paragraph (a)(4)(iv) of § 916.350 by modifying two size designations for the weight-count standards in Column B of TABLE I for early-season and mid-season nectarine varieties. This table was added prior to the 1994 season. Research conducted by the NAC indicated that early-season and mid-season fruit weigh less than late-season fruit and therefore different weight-count standards were established for late-season fruit. Results from further research during the 1994 season suggest that some minor modifications of TABLE I are necessary to provide for more accurate weight-count standards for early-season and mid-season nectarines.

The NAC unanimously recommended these revised weight-count standards for nectarines after a comprehensive review of the relationships between the tray-pack containers and loose-filled or tight-filled containers for early-season and mid-season nectarine varieties. Specifically, the NAC's recommendation provides that the maximum number of nectarines of size 80 in a 16-pound sample of early-season and mid-season fruit is more appropriately 75 rather than 76. Also, the maximum number of nectarines of size 64 in a 16-pound sample of early-season and mid-season fruit is more appropriately 55 rather than 56.

Pack regulations provide for uniform packing practices. In particular, weight-count standards provide for comparability between fruit packed in loose-filled or tight-filled containers and fruit packed in tray-pack containers.

According to the NAC, packers occasionally moved fruit from tray-pack containers to loose-filled or tight-filled containers. This activity has led to an awareness, in regard to early-season and mid-season varieties, that fruit which was of proper size when tray-packed exceeded the maximum number of nectarines for the 16-pound sample for corresponding loose-filled or tight-filled containers. In some instances, these samples would need additional pieces of fruit to meet the 16-pound weight requirement, thus causing the pack to be marked smaller than its equivalent tray-pack size. When packs are marked with a smaller size, the container is generally sold for a lower price. Revised and refined weight-count standards for early-season and mid-season varieties should provide for more accurate marking of size when packed in loose-filled or tight-filled containers compared to equivalent sizes that are tray packed. These regulations provide for uniformly packed containers of nectarines. The NAC's recommendations were also thoroughly discussed at a nectarine size subcommittee meeting held on November 22, 1994, that involved members of the industry and USDA staff.

Currently, under the marketing order the minimum maturity requirement for nectarines grown in California is U.S. Mature, which means that the nectarine has reached the stage of growth which will insure a proper completion of the ripening process. A higher maturity standard is defined as California "Well Matured," which is a condition distinctly more advanced than mature.

This rule adds a definition of "tree ripe" to paragraph (b) of section 916.350. According to the NAC, "tree ripe" is an optional marking without regard to maturity that is stamped on containers of nectarines. Currently there is no definition of "tree ripe". As a result of inquiries from the industry and the trade, the NAC recommended defining "tree ripe" so that it has a standard meaning. In the past, there has been no definition of "tree ripe" although fruit boxes marked "tree ripe" had to meet the minimum marketing order maturity standard of U.S. Mature. Handlers have been able to stamp any maturity level, including U.S. Mature, as "tree ripe" due to a lack of any definition for this nomenclature. The NAC stated that in some instances, handlers have stamped "tree ripe" on every box of fruit they packed all season. There is growing concern within the industry that fruit packed at the lower level of acceptable maturity do not represent what is most commonly perceived as tree ripe. By requiring that fruit must be at a minimum California Well Matured maturity standard in order to be marked "tree ripe" will help ensure that buyer expectations are met.

Maturity Requirements (Nectarines)

Section 916.356 specifies maturity requirements for fresh nectarines in paragraph (a)(1)(i), including TABLE I, for fruit being inspected and certified as meeting the maturity requirements for "well matured" fruit. Such maturity requirements are based on maturity measurements which are generally recognized in terms of maturity guides (e.g., color chips) specified in paragraph (a)(1)(i) and TABLE I of § 916.356 for nectarines. This rule revises TABLE I of paragraph (a)(1)(i) of § 916.356 for nectarines to change the maturity guide for one nectarine variety.

Specifically, a change in color standard was recommended for Alshir Red from L to J. In a corresponding action, the tolerance for the Alshir Red variety that states "except not less than an aggregate area of 95% of fruit surface shall meet the color standard established for the variety" is deleted.

These changes for this nectarine variety are based on a continuing review of its individual maturity characteristics, and the identification of the appropriate color chip corresponding to the "well matured" level of maturity for such variety.

Size Requirements (Nectarines)

Section 916.356 specifies size requirements for fresh nectarines in paragraphs (a)(2) through (a)(9). This rule revises § 916.356 to establish variety-specific size requirements for fourteen nectarine varieties that were produced in commercially significant quantities of more than 10,000 packages for the first time during the 1994 season.

Size regulations are put in place to improve fruit quality by allowing fruit to stay on the tree for a greater length of time which not only improves maturity and therefore the quality of the product but also size and increases the number of packed boxes of nectarines per acre. This provides greater consumer satisfaction, more repeat purchases and therefore increases returns to growers. Varieties recommended for specific size regulation have been reviewed and recommendations are based on the characteristics of the variety to attain minimum size. Paragraph (a)(4) is revised to include the Arctic Glo, May Jim, Red Glo, and Royal Glo varieties; and paragraph (a)(6) of § 916.356 is revised to include the Arctic Queen, How Red, La Pinta, Red Fred, Royal Red, Ruby Diamond, Spring Bright, Summer Blush, 424–195, and Nectarine 23 varieties.

This rule also revises § 916.356 to remove six nectarine varieties from the variety-specific size requirements specified in the section because less than 5,000 packages of each of these varieties were produced during the 1994 season. Paragraph (a)(2) of that section is revised to remove the Aurelio Grand and Maybelle nectarine varieties; paragraph (a)(4) is revised to remove the Grand Stan variety; and paragraph (a)(6) is revised to remove the Autumn Grand, Le Grand, and Super Red nectarine varieties. Nectarine varieties removed from the nectarine variety-specific list become subject to the non-listed variety size requirements specified in paragraphs (a)(7), (a)(8), and (a)(9) of § 916.356.

The NAC recommended these changes in the minimum size requirements based on a continuing review of the sizing and maturity relationships for these nectarine varieties, and consumer acceptance levels for various sizes of fruit. This rule is designed to establish minimum size requirements for fresh nectarines consistent with expected crop and market conditions.

This rule also corrects an error in the minimum size requirements for Royal Glo variety nectarines from size 80 to size 88. The 1995 seasonal regulations list a minimum size of 80 for the Royal Glo nectarine variety. Royal Glo variety nectarines are an early season variety and are usually harvested in mid to late May. Nectarines are assigned minimum sizes, based on the time of harvest and size characteristics of specific nectarine varieties. Nectarines harvested in mid to late May are usually smaller, therefore the minimum size 88 category is more responsive to market needs. Based on this criterion, the Royal Glo variety nectarine should have been in the minimum size 88 category. As such, the reference to the Royal Glo variety nectarine is added to § 916.356 paragraph (a)(4) and removed from paragraph (a)(6) under that section.

Container and Pack Requirements (Peaches)

Section 917.442 currently specifies container and pack requirements for fresh peach shipments. Paragraph (a)(4)(iv) of § 917.442 specifies the tray-pack size designations which must be marked on loose-filled or tight-filled containers, depending on the size of the fruit. The

size designations specify the maximum number of peaches in a 16-pound sample for each tray pack size designation. This rule revises paragraph (a)(4)(iv) of § 917.442 by modifying three size designations for the weight-count standards in Column B of TABLE I for early-season and mid-season peach varieties. Research conducted by the PCC indicated that early-season and mid-season fruit weighs less than late-season fruit and the weight-count standards were, therefore, modified based on that consideration. Results from the 1994 season suggest that some minor modifications of TABLE I are necessary to further correct the weight-count differences between early-season and mid-season peaches, and late-season peaches.

The PCC unanimously recommended the revised container marking requirement changes for peaches after a comprehensive review of the appropriate size pack-count relationships between the tray-pack containers and loose-filled or tight-filled containers for early-season and mid-season peach varieties prior to the 1995 season. Specifically, the PCC's recommendation provides that the maximum number of peaches of size 84 in a 16-pound sample of early-season and mid-season fruit is more appropriately 83 rather than 85. Also, the maximum number of peaches of size 70 in a 16-pound sample of early-season and mid-season fruit is more appropriately 64 rather than 66. The maximum number of peaches of size 60 in a 16-pound sample of early-season to mid-season fruit is more appropriately 50 rather than 47.

In making this revision, a conforming change is required in § 917.459 (a)(4)(iii) which is referenced in TABLE I. Section 917.459 (a)(4)(iii) currently provides a maximum number of 85 peaches in a 16-pound sample of early-season and mid-season fruit. This revision will modify the maximum number of peaches in a 16-pound sample of early-season and mid-season fruit to 83 pieces of fruit from the current 85 pieces of fruit.

Pack regulations provide for uniform packing practices. In particular, weight-count standards provide for equality between packs of loose-filled or tight-filled sizes to fruit sizes packed in tray-pack styles. Varieties harvested early in the season and packed in loose-filled or tight-filled pack styles have had more difficulty being equal in size to tray-pack style of packing.

According to the PCC, packers occasionally moved fruit from tray-pack styles of pack to loose-filled or tight-filled pack styles. This activity has led to an awareness, especially in regard to early-season varieties, that fruit which was of proper size when tray-packed exceeded the maximum number of nectarines for the 16-pound sample for corresponding loose-filled or tight-filled pack size. In some instances, these samples would need as many as 10 additional pieces of fruit to meet the 16-pound weight requirement, thus causing the pack to be "marked" smaller than its equivalent tray-pack size. When packs are "marked" smaller this causes the container to be sold for a lower price. During the 1994 season new weight-count assignments for early varieties were in place. Research continued with the purpose of possible refinement of those weight-count assignments.

Revised and refined weight-count standards for early varieties should provide for more accurate marking size when packed in loose-filled or tight-filled pack styles compared to equivalent sizes that are tray packed. These regulations provide for uniformly packed containers of peaches. The PCC's recommendations were also thoroughly discussed at a peach size subcommittee meeting held on November 22, 1994, that involved members of the industry and USDA staff.

Currently, under the marketing order the minimum maturity requirement for peaches grown in California is U.S. Mature, which means that the peach has reached the stage of growth which will insure a proper completion of the ripening process. A higher maturity standard is defined as California "Well Matured," which is a condition distinctly more advanced than mature.

This rule adds a definition of "tree ripe" to section 917.442 paragraph (b). According to the PCC, "tree ripe" is an optional marking without regard to maturity that is stamped on containers of peaches. Currently there is no definition of "tree ripe". As a result of inquiries from the industry and the trade, the PCC wants to define "tree ripe" so that its interpretation is consistent with other descriptive markings. In the past there has been no definition of tree ripe although fruit boxes marked "tree ripe" had to meet minimum marketing order standards. Handlers have been able to stamp any maturity level, including U.S. Mature, as "tree ripe" due to a lack of any definition for this nomenclature. The PCC states that in some instances in the past, it is known that some handlers have stamped "tree ripe" on every box of fruit they packed all season. There is growing concern among the industry that fruit packed at the lowest levels of maturity do not represent what is most commonly perceived as tree ripe. By requiring fruit be at a minimum California "Well Matured" maturity standard in order to be marked "tree ripe" will help ensure that buyer expectations are met.

Maturity Requirements (Peaches)

Section 917.459 specifies maturity requirements for fresh peaches in paragraphs (a)(1)(i) and (ii), including TABLE I, for fruit being inspected and certified as meeting the maturity requirements for "well matured" fruit. Such maturity requirements are based on maturity measurements which are generally recognized in terms of maturity guides (e.g., color chips) specified in paragraphs (a)(1)(i) and (ii), including TABLE I of § 917.459 for peaches. This rule revises TABLE I of paragraph (a)(1)(ii) of § 917.459 for peaches to change the maturity guide for the David Sun, King's Red, Crimson Lady and Johnny's White peach varieties. The reference to TABLE I of paragraph (a)(1)(ii) is a change from the interim final rule which incorrectly cited the revisions in TABLE I under paragraph (a)(2)(ii).

The SPI recommended these changes for these peach varieties based on a continuing review of their individual maturity characteristics, and the identification of the appropriate color chip corresponding to the "well matured" level of maturity for such varieties.

Size Requirements (Peaches)

Section 917.459 specifies size requirements for fresh peaches in paragraphs (a)(2) through (a)(6), and paragraphs (b) and (c). This rule revises § 917.459 to establish variety-specific size requirements for eight peach varieties that were produced in commercially significant quantities of more than 10,000 packages for the first time during the 1994 season.

Size regulations are put in place to improve fruit quality by allowing fruit to stay on the tree for a greater length of time which not only improves maturity and therefore the quality of the product but also size and increases the number of packed boxes of peaches per acre. This provides greater consumer satisfaction, more repeat purchases and therefore increases returns to growers. Varieties recommended for specific size regulation have been reviewed and recommendations are based on the characteristics of the variety to attain minimum size. In § 917.459 paragraph (a)(5) is revised to include the Snow Brite and Sugar May peach varieties; and paragraph (a)(6) is revised to include the August Delight, Autumn Rose, Red Boy, Royal Lady, September Snow, and Summer Sweet peach varieties.

This rule also revises § 917.459 to remove two peach varieties from the variety-specific size requirements specified in that section, because less than 5,000 packages of each of these varieties were produced during the 1994 season. In § 917.459 paragraph (a)(4) is revised to remove the Morning Sun peach variety; and paragraph (a)(6) is revised to remove the Golden Lady peach variety. Peach varieties removed from the variety-specific list become subject to the non-listed variety size requirements specified in paragraphs (b) and (c) of § 917.459.

The removal of the Morning Sun variety from paragraph (a)(4) results in there being no varieties regulated within size 84 for the 1995 season. Since the variety-specific list is subject to change from one season to another, the Department wishes to reserve paragraph number § 916.459 (a)(4) for future regulation of peaches at size 84. The PCC unanimously recommended these changes in the minimum size requirements based on a continuing review of the sizing and maturity relationships for these peach varieties, and the consumer acceptance levels for various sizes of fruit. This rule is designed to establish minimum size requirements for fresh peaches consistent with expected crop and market conditions. This rule reflects the committees' and the Department's appraisal of the need to revise the handling requirements for California nectarines and peaches, as specified. The Department's determination is that this rule will have a beneficial impact on producers, handlers, and consumers of California nectarines and peaches.

This rule establishes handling requirements for fresh California nectarines and peaches consistent with expected crop and market conditions, and will help ensure that all shipments of these fruits made each season will meet acceptable handling requirements established under each of these orders. This rule will also help the California nectarine and peach industries provide fruit desired by consumers. This rule is designed to establish and maintain orderly marketing conditions for these fruits in the interest of producers, handlers, and consumers.

The interim final rule concerning this action was published in the March 21, 1995, **Federal Register** (60 FR 14891), with a 30-day comment period ending April 20, 1995. Two comments were received.

One comment was received from Mr. Jonathan Field, manager of the NAC and PCC, in support of the committees' recommendations. Another comment was received from Chief Counsel for Advocacy of the United States Small Business Administration (SBA). The SBA contended that the Department failed to follow its own procedures for informal rulemaking by not publishing the votes on the committees' recommendations. The SBA further stated that the interim final rule does not relate how the committees determined what the impact of the rule would be on growers, handlers and consumers. SBA further stated that the interim final rule provides no evidence of the impact that these rule changes will have on small businesses.

In response to the SBA concerns, the Department followed its informal rulemaking procedures in reviewing the committees' recommendations. The Department reviewed and considered the information received from the NAC and PCC as it relates to alternative recommendations and the impact of this rule on small businesses (i.e., growers and handlers).

The Department disagrees with SBA's assertion that the interim final rule fails to follow the Department's informal rulemaking procedures and the requirements for the Regulatory Flexibility Act. The SBA's concerns regarding this action have been properly addressed in this document and the interim final rule.

The revision of the handling requirements for fresh peaches and nectarines adopted by this final rule will apply uniformly to all handlers in the industry, whether small or large, and there are no known additional costs incurred by small handlers. The stabilizing effects of the handling regulation impact both small and large handlers positively by helping them maintain their markets by meeting consumer demand.

Based on the above, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matters presented, the information and recommendations submitted by the committees, and other information, it is found that the rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 916 and 917 are amended as follows:

1. The authority citation for 7 CFR parts 916 and 917 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 916—NECTARINES GROWN IN CALIFORNIA

The interim amendments to 7 CFR part 916 which were published at 60 FR 14891 on March 21, 1995, are adopted as a final rule with the following change:

§ 916.356 [Amended]

2. In § 916.356, paragraph (a)(4) is amended by adding the name "Royal Glo," immediately following the name "Rose Diamond," and paragraph (a)(6) is amended by removing the name "Royal Glo,".

* * * * *

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

The interim amendments to 7 CFR part 917 which were published at 60 FR 14891 on March 21, 1995, are adopted as a final rule with the following change:

§ 917.459 [Corrected]

3. On page 14896, first column, in the amendatory instruction number 5, the reference to paragraph "(a)(2)(ii)" is corrected to "(a)(1)(ii)" and in the second column, under paragraph designated § 917.459, the reference to "(a)(2)(ii)" is corrected to read "(a)(1)(ii)".

Dated: June 6, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–14276 Filed 6–9–95; 8:45 am]

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federal register

Monday
June 12, 1995

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Two Tidal Marsh Plants—the Suisun Thistle and the Soft Bird's-Beak From the San Francisco Bay Area; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD14

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Two Tidal Marsh Plants—Cirsium hydrophilum var. hydrophilum (Suisun Thistle) and Cordylanthus mollis ssp. mollis (Soft Bird's-Beak) from the San Francisco Bay Area

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for two plants—*Cirsium hydrophilum* var. *hydrophilum* (Suisun thistle) and *Cordylanthus mollis* ssp. *mollis* (soft bird's-beak). These species are restricted to salt or brackish tidal marshes within the San Francisco Bay area in northern California. Habitat conversion, water pollution, changes in salinity, indirect effects of urbanization, stochastic events, mosquito abatement activities (including off-road vehicle use), competition with non-native vegetation, insect predation, erosion, inadequate regulatory mechanisms, and other human-caused actions variously imperil these two species. This proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Act for these plants.

DATES: Comments from all interested parties must be received by August 11, 1995. Public hearing requests must be received by July 27, 1995.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Sacramento Field Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E-1803, Sacramento, California 95825-1846. Comments and materials received, as well as the supporting documentation used in preparing the rule, will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Kirsten Tarp, Sacramento Field Office (see **ADDRESSES** section) (telephone 916/978-5801; facsimile 916/978-5056).

SUPPLEMENTARY INFORMATION:

Background

Cirsium hydrophilum var. *hydrophilum* (Suisun thistle) and *Cordylanthus mollis* ssp. *mollis* (soft bird's-beak) occur in either salt water or brackish tidal marshes fringing San Pablo and Suisun Bays in the San Francisco Bay area of northern California. Since 1850, this habitat has been drastically curtailed. Approximately 15 percent, 12,142 hectares (ha) (30,002 acres), of the historical tidal marshland habitat within the San Francisco Bay area remains (Dedrick 1989).

With the exception of the San Francisco Bay area, the mountainous coast of California and the narrow continental shelf provide few areas that are suitable for tidal marsh development (MacDonald 1990). Coastal salt marshes are found along sheltered margins of shallow bays, estuaries, or lagoons, in low lying areas that are subject to periodic inundation by salt water. Brackish marshes occur at the interior margins of coastal bays, estuaries, or lagoons where fresh water sources (streams and rivers) enter salt marshes. Brackish marshes are similar to salt marshes but differ in the degree of water and soil salinities. Brackish marshes are less saline than salt marshes. Salinity levels vary with time and space, depending on the height of the tides or on the amount of freshwater inflow. Vegetation communities in salt and brackish marshes often occur in distinct zones, depending on the frequency and length of tidal flooding. Both proposed plants are restricted to a narrow tidal band, typically in higher elevational zones within larger tidal marshes that have fully developed tidal channel networks. They usually do not occur in smaller fringe tidal marshes that are generally less than 100 meters (m) (300 feet (ft)) in width, or in nontidal areas.

Discussion of the Two Species Proposed for Listing

Asa Gray (1888) originally described *Cirsium hydrophilum* var. *hydrophilum* as *Cnicus breweri* var. *vaseyi*. Subsequent authors treated the taxon as *Carduus hydrophilus* (Greene 1892), *Cirsium hydrophilum* (Jepson 1901), and *Cirsium vaseyi* var. *hydrophilum* (Jepson 1925). John Thomas Howell (1959) concluded that Jepson's *Cirsium hydrophilum* and *Cirsium vaseyi* of the Mt. Tamalpais area in Marin County, California are varieties of a single species, *Cirsium hydrophilum*. According to the rules for botanical nomenclature, when a new variety is described in a species not previously divided into infraspecific taxa, an autonym (automatically created name) is designated. In this case, the autonym is *Cirsium hydrophilum* var. *hydrophilum*.

Cirsium hydrophilum var. *hydrophilum* is a perennial herb in the aster family (Asteraceae). Slender, erect stems 1.0 to 1.5 m (3.0 to 4.5 ft) tall are well branched above. The spiny leaves are deeply lobed. The lower leaves have ear-like basal lobes; the upper leaves are reduced to narrow strips with strongly spine-toothed margins. Pale lavender-rose flower heads, 2.0 to 2.5 centimeters (cm) (1 inch (in.)) long, occur singly or in loose groups. The bracts of the flower heads have a distinct green, glutinous ridge on the back that distinguishes *C. hydrophilum* var. *hydrophilum* from other *Cirsium* species in the area. *Cirsium hydrophilum* var. *hydrophilum* flowers between July and September. *Cirsium hydrophilum* var. *hydrophilum* is restricted to Suisun Marsh in Solano County. In 1975, the plant was reported as possibly extinct because it had not been collected for about 15 years. Extensive surveys, however, relocated the thistle at two locations within Suisun Marsh (Brenda Grewell, California Department of Water Resources (CDWR), pers. comm. 1993). Collectively, the occurrences of *C. hydrophilum* var. *hydrophilum* total a few thousand individuals (Brenda Grewell, pers. comm. 1993). *Cirsium hydrophilum* var. *hydrophilum* grows in the upper reaches of tidal marshes associated with *Typha angustifolia, Scirpus americanus, Juncus balticus,* and *Distichlis spicata*. One occurrence is on California Department of Fish and Game (CDFG) lands and a second occurrence is on Solano County Farmland and Open Space Foundation lands. No active management is occurring at either location (Neil Havlik, Solano County Farmland and Open Space Foundation, pers. comm. 1993; Ann Howald, CDFG, pers. comm. 1993). Its highly restricted distribution increases its susceptibility to catastrophic events such as disease or pest outbreak, severe drought, oil spills, or other natural or human caused disasters. Habitat conversion, habitat fragmentation, indirect effects from urban development, increased salinity, projects that alter natural tidal regime, mosquito abatement activities, competition with non-native plants, and inadequate regulatory mechanisms also threaten this taxon.

Charles Wright collected the type specimen of *Cordylanthus mollis* ssp. *mollis* in November 1855, on Mare Island in San Francisco Bay. Asa Gray (1868) published the original description, using the name *C. mollis*. Later botanists treated the taxon as Adenostegia mollis (Greene 1891) and *Chloropyron molle* (Heller 1907). Tsan-

lang Chuang and Larry Heckard (1973) treated *C. mollis* and *C. hispidus* as subspecies of a single species (*C. mollis*) with *Cordylanthus mollis* ssp. *mollis* recognized as the autonym.

Cordylanthus mollis ssp. *mollis* is an annual herb of the snapdragon family (Scrophulariaceae) that grows 25 to 40 cm (10 to 16 in.) tall. It is sparingly branched from the middle and above. *Cirsium mollis* ssp. *mollis* is a hemiparasite that extracts water and nutrients by attaching enlarged root structures to the roots of other plants (Chuang and Heckard 1971). The foliage is grayish-green (often tinged a deep red) and hairy. The oblong to lance-shaped leaves are 1.0 to 2.5 cm (0.4 to 1.0 in.) long, the lower leaves entire and the upper with one to three pairs of leaf lobes. The inflorescence consists of spikes 5 to 15 cm (2 to 6 in.) long. A floral bract with two to three pairs of lobes occurs immediately below each inconspicuous white or yellowish-white flower. The flowers have only two functional stamens. The narrowly ovoid seed capsule is 6 to 10 millimeters (mm) (0.2 to 0.4 in.) long and bears 20 to 30 dark brown seeds. *Cordylanthus mollis* ssp. *mollis* flowers between July and September. *Cordylanthus mollis* ssp. *mollis* is distinguished from another *Cordylanthus* found nearby (*C. maritimus* ssp. *palustris*) by its two functional stamens (*C. maritimus* ssp. *palustris* has four) and by its bracts with two to three pairs of lateral lobes (*C. maritimus* ssp. *palustris* has a pair of short teeth on the floral bracts).

Cordylanthus mollis ssp. *mollis* is found predominantly in the upper reaches of salt grass-pickleweed marshes at or near the limits of tidal action (Stromberg 1986). It is associated with *Salicornia virginica, Distichlis spicata, Jaumea carnosa, Frankenia salina,* and *Triglochin maritima* (Stromberg 1986). Of 18 reported occurrences of *C. mollis* ssp. *mollis*, 2 have been extirpated; 6 have been surveyed for and not relocated and possibly have been extirpated; and 10 are presumed extant (California Natural Diversity Data Base (CNDDB) 1994; Jake Ruygt, California Native Plant Society (CNPS), *in litt.* 1993). The type locality at Mare Island for *C. mollis* ssp. *mollis* was destroyed by development and is now a dredge disposal site (CNDDB 1994). A second occurrence, last seen in 1981 near Martinez in Contra Costa and Solano Counties, was dredged, filled, diked, and is now a marina (Stromberg 1986, CNDDB 1994). Limited suitable habitat remains for two occurrences, which have not been relocated, in Napa, Sonoma, and Solano Counties (Stromberg 1986, CNDDB 1994). Although suitable habitat exists for three historical occurrences in Marin, Solano, and Sonoma Counties, the occurrences have not been relocated after repeated surveys (Stromberg 1986, CNDDB 1994). A fourth occurrence reported from Sacramento County in 1972 has not been relocated (Jake Ruygt, *in litt.* 1993).

The remaining ten disjunct occurrences are widely scattered throughout coastal salt or brackish tidal marshes fringing San Pablo and Suisun Bays, in Contra Costa, Napa, and Solano Counties (CNDDB 1994; Brenda Grewell, *in litt.* 1993). The entire distribution of *Cordylanthus mollis* ssp. *mollis* currently is restricted to about 8 ha (20 acres) of habitat (Jake Ruygt, *in litt.* 1993). The total number of individuals reported among populations varies from 1 at the smallest site to 141,000 plants at the largest site. Most sites have between 1,000 and 6,000 individuals (Jake Ruygt, *in litt.* 1993; CNDDB 1994). Individual populations fluctuate in size from year to year, as is typical of annual plants. *Cordylanthus mollis* ssp. *mollis* occurs primarily on private or non-Federal land; one occurrence is found on Department of Defense (U.S. Navy) land. Habitat conversion, water pollution, increases in salinity of tidal marshes due to upstream withdrawals of fresh water, habitat fragmentation, indirect effects of urbanization, competition with non-native vegetation, insect predation, projects that alter natural tidal regime, mosquito abatement activities (including off-road vehicle use), inadequate regulatory mechanisms, erosion, and stochastic events variously threaten the remaining occurrences of *C. mollis* ssp. *mollis*.

Previous Federal Action

Federal government actions on the two plants began as a result of section 12 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975, and listed *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* as possibly extinct. The Service published a notice on July 1, 1975 (40 FR 27823), of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) (petition provisions now are found in section 4(b)(3) of the Act) and its intention thereby to review the status of the plant taxa named therein. The above two taxa were included in the July 1, 1975, notice. On June 16, 1976, the Service published a proposal (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* were included in the June 16, 1976, **Federal Register** proposal.

General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, notice (43 FR 17909). The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. In a December 10, 1979, notice (44 FR 70796), the Service withdrew the June 16, 1976, proposal, along with four other proposals that had expired.

The Service published an updated notice of review for plants on December 15, 1980 (45 FR 82480). The two taxa were listed as category 1 candidates for Federal listing in this document. Category 1 taxa are those that the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals. On November 28, 1983, the Service published a supplement to the Notice of Review (48 FR 53640); there were no changes to these taxa in this supplement.

The plant notice was revised again on September 27, 1985 (50 FR 39526), February 21, 1990 (55 FR 6184), and September 30, 1993 (58 FR 51144). In these three notices *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* were included as category 1 candidate species.

Section 4(b)(3)(B) of the Act requires the Secretary to make certain findings on petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis*, because the 1975 Smithsonian report had been accepted as a petition. On October 13, 1982, the Service found that the petitioned listing of these species was warranted, but precluded by other pending listing

actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). The finding was reviewed annually in October of 1983 through 1994, pursuant to section 4(b)(3)(C)(i) of the Act. Publication of this proposal constitutes the final finding for the petitioned action.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (Act) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists of endangered and threatened species. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Cirsium hydrophilum* (Greene) Jepson var. *hydrophilum* (Suisun thistle) and *Cordylanthus mollis* Gray ssp. *mollis* (soft bird's-beak) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Their Habitat or Range

Habitat for *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* has been severely curtailed by past human activities. Hydraulic mining, diking and filling involved in agricultural land conversion and urbanization, waste disposal, port and industrial development, railroad construction, dredging, salt production, and sedimentation have drastically reduced the amount of tidal marsh in California (Atwater 1979, MacDonald 1990, Association of Bay Area Governments (ABAG) 1991). Changes in freshwater inflow, pollution, habitat conversion, habitat fragmentation, and alteration of the natural tidal regime continue to threaten the habitat of both species.

In San Pablo Bay, historical tidal wetlands have been diked and converted to agricultural lands that were farmed for oat hay. In addition, approximately 4,050 ha (10,000 acres) also were converted to salt ponds. In Suisun Bay, most of the 28,780 ha (71,100 acres) of tidal marshes that existed in 1850 were converted originally to agricultural land, and then to diked seasonal wetlands used for waterfowl management. Only 3,780 ha (9,340 acres) within Suisun Marsh remain as tidal marsh (Dedrick 1989). Most of the remaining tidal marshes are backed by steep levees, allowing for little or no transitional wetland habitat—the habitat required by *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis*.

The change of freshwater inflow has modified the habitat for these two taxa. Agricultural and municipal uses have diverted over 50 percent of the historical annual inflow of freshwater from the Suisun Marsh and Delta (ABAG 1991). During the past 40 years, significant portions of the tidally-influenced brackish marsh within Suisun Bay have become more saline due to decreased freshwater flows (Pavlik 1992). Increased salt levels within the Suisun Marsh may threaten *Cordylanthus mollis* ssp. *mollis* and *Cirsium hydrophilum* var. *hydrophilum*. Salt stress causes decreased plant growth and lower reproduction. When salinity levels remain high during extended drought conditions, population viability may be greatly impaired to the extent they lose their ability to maintain themselves as components of a healthy wetlands ecosystem (Pavlik 1992). When salinity increases in the root zone, salt stress reduces plant abundance and causes shifts in plant distribution. This has occurred even in common salt-tolerant plants (Pavlik 1992). *Cordylanthus mollis* ssp. *mollis* and *C. hydrophilum* var. *hydrophilum* may be especially vulnerable to increased salt levels due to the limited number of individuals and their restricted distribution.

The two plant species also face threats from habitat fragmentation associated with commercial and residential development, road construction, and effects of historical fragmentation by activities associated with clearing for agriculture, railroad construction, dredging, and conversion to salt ponds. These activities have split habitat into smaller, more isolated units. Habitat fragmentation may alter the physical environment, changing the amount of incoming solar radiation, water, wind, or nutrients for the remnant vegetation (Saunders *et al.* 1991). In addition, a higher proportion of the area of these fragmented natural areas is subject to the influences from external factors (e.g., additional development, off-road vehicular use, competition with non-native vegetation, human intrusion, and numerous other human influences) that disrupt natural ecosystem processes. Further effects of habitat fragmentation on the two plant species are discussed in Factor E.

Projects that convert habitat from tidal marsh to diked seasonal wetlands potentially threaten both *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis*. Within Suisun Marsh, the conversion of tidal marsh to diked seasonal wetlands, a practice common in the development of waterfowl managements areas, is a potential threat for both species (Randall Brown, *in litt.* 1993). The planned conversion of 40 ha (100 acres) of salt grass (*Distichlis spicata*), an associated species for both *C. hydrophilum* var. *hydrophilum* and *C. mollis* ssp. *mollis*, in Hill Slough as enhancement of habitat for wildlife (California Department of Water Resources (CDWR) 1984) will further diminish the amount of suitable habitat for these two plant species.

Habitat conversion for planned future urbanization threatens both species. In ABAG's analysis of the San Francisco Bay Estuary, over 4,856 ha (12,000 acres) of wetlands in the Bay will be subject to moderate to high development uses over the next 12 years (ABAG 1991). Highway expansion projects within the San Francisco Bay Estuary during the next 20 years are expected to fill 146 wetland ha (362 acres) (ABAG 1991). Some of the expansion projects will threaten *Cordylanthus mollis* ssp. *mollis* by eliminating additional habitat. Widening of California Highway 37 will threaten wetlands that occur along the Napa River (ABAG 1991) and may adversely affect habitat for *C. mollis* ssp. *mollis*. Proposed widening of Highway 12 near the Suisun Marsh would threaten the habitat of both plants (Brenda Grewell, pers. comm. 1993), either due to habitat fragmentation as discussed above or by runoff.

Projects that alter the natural tidal regime also threaten both taxa. The Western Suisun Marsh Salinity Control Project (CDWR and U.S. Bureau of Reclamation (USBR) 1991, CDWR and USBR 1993) is proposed to lower channel salinity in the western portion of Suisun Marsh to comply with water quality standards specified by the State Water Resources Control Board's Water Right Decision 1485. Project alternatives initially proposed for this project include the Cutoff Slough Water Delivery System, Cordelia-Goodyear Ditch, and the Boynton-Cordelia Ditch. The proposed Cutoff Slough Water Delivery System includes tide gates that would threaten tidal marsh by subjecting it to higher water elevations and converting the area to a natural water storage reservoir (Randall Brown, CDWR, *in litt.* 1993). Although this proposed alternative initially has been eliminated, this project is still in the proposed stage and has not been finalized.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization currently is not known to be a factor for these two plants. Increased collecting for scientific or horticultural purposes or excessive visits by individuals interested in seeing rare plants could result, however, from increased publicity resulting from publication of this proposal.

C. Disease or Predation

The health of one of the largest occurrences of *Cordylanthus mollis* ssp. *mollis* is declining due to insect predation (Brenda Grewell, pers. comm. 1993). Intense insect seed predation has been observed in the population at Joice Island and Hill Slough within Suisun Marsh in Solano County (Randall Brown, *in litt.* 1993). Neither disease nor predation is known to be a factor for *Cirsium hydrophilum* var. *hydrophilum*.

D. The Inadequacy of Existing Regulatory Mechanisms

Section 404 of the Clean Water Act represents the primary Federal law that affords some protection for these two plants. Under section 404 of the Clean Water Act, nationwide permits may be issued for certain activities that are considered to have minimal impacts, including oil spill cleanup, minor dredging, maintenance dredging of existing basins, and minor bank stabilization. Activities that do not qualify for authorization under a nationwide permit, including projects that would result in more than minimal adverse environmental effects, either individually or cumulatively, may be authorized by an individual or regional general permit, which are subject to more extensive review. Regardless of the type of permit deemed necessary under section 404, candidate species may receive no special consideration.

The Army Corps of Engineers (Corps) is the Federal agency responsible for administering the section 404 program. The Service, as part of the section 404 review process, provides comments on both pre-discharge notices for nationwide permits and public notices for individual permits. The Service's comments are only advisory, although procedures exist for elevation when disagreements between the agencies arise. In practice, the Corps' actions under section 404 are insufficient to protect these candidate plants.

CDFG has listed *Cordylanthus mollis* ssp. *mollis* as rare under the California Endangered Species Act (chapter 1.5 sec. 2050 *et seq.* of the California Fish and Game Code and title 14, California Code of Regulations 670.2). Listing by the State of California requires individuals to obtain a memorandum of understanding with the CDFG to possess or "take" a listed species. Although the "take" of State-listed plants is prohibited (California Native Plant Protection Act, chapter 10 sec. 1908 and California Endangered Species Act, chapter 1.5 sec. 2080), State law exempts the taking of such plants via habitat modification or land use changes by the owner. After CDFG notifies a landowner that a State-listed plant grows on his or her property, State law requires only that the land owner notify the agency "at least 10 days in advance of changing the land use to allow salvage of such a plant" (Native Plant Protection Act, chapter 10 sec. 1913).

Under the California Environmental Quality Act (CEQA), the public agency with primary authority or jurisdiction over the project (the lead agency) is responsible for conducting a review of the project and consulting with the other agencies concerned with the resources affected by the project. However, the lead agency may approve projects that cause significant environmental damage, such as the destruction of State-listed threatened and rare species, and does not always require adequate mitigation for the replacement or protection of the affected resources. The protection of species under CEQA is, therefore, dependent upon the discretion of the lead agency.

Legislation enacted by the State of California in 1977 provided for the preservation of Suisun Marsh. This legislation established primary and secondary management areas. The secondary management areas were established to provide a buffer against development. In 1982, the Preservation Act was amended to exclude, in the primary management area, land proposed for the Lawlor Ranch development. Exclusion of this land has reduced the buffer between urbanization and Suisun Marsh. The indirect effects of urbanization are discussed further in Factors A and E.

E. Other Natural or Manmade Factors Affecting Their Continued Existence

Both occurrences of *Cirsium hydrophilum* var. *hydrophilum* are adversely affected by non-native plants. *Lepidium latifolium* (perennial peppergrass), a rated noxious weed (California Department of Food and Agriculture 1993), has "moved in especially in the last 5 years" (Brenda Grewell, pers. comm. 1993). *Cirsium hydrophilum* var. *hydrophilum* is out-competed by *L. latifolium*. Hybridization with *C. vulgare* (bull thistle), a non-native, also is a potential threat. *Cirsium vulgare* hybridizes readily with other *Cirsium*. Hybridization with *C. vulgare* was suggested as a possible explanation for the previously presumed extinction of *C. hydrophilum* var. *hydrophilum* (Smith and Berg 1988).

Chronic pollution from petroleum products is an ongoing threat to the habitat of both plants within San Pablo Bay and southern Suisun Bay. Oil spills can result in severe and long lasting destruction of salt marsh vegetation. Studies on mangroves, seagrasses, salt marsh grasses, and algae have shown that petroleum causes death, reduced growth, and impaired reproduction in large plants (Albers 1992). The effects of a petroleum spill to plants depends on several factors including the time of year, the type of petroleum product (crude or refined), and the degree of coverage (Hershner and Moore 1977; Rob Ricker, CDFG, pers. comm. 1993). A plant entirely covered by oil will die. Oil that seeps into sediments can affect the roots or rhizomes of plants as well. Oil spills may also affect plants by decreasing the amount of plant biomass (either above or below ground), or by decreasing the reproductive capacity of the plant (Rob Ricker, pers. comm. 1993).

Four hundred to 800 oil spills occur annually within California (Rob Ricker, pers. comm. 1993). Within northern California, 309 reported spills affecting marine or estuarine habitats within the jurisdiction of the Service's Sacramento Field Office occurred between March 1992 and March 1993 (Office of Environmental Services (OES) 1992 and 1993). Most of these spills occurred in the San Francisco Bay Estuary.

In 1988, an oil spill in Martinez, California, flowed as far as Suisun Bay. Although these plants are found within the northern part of the Suisun Marsh and may not be threatened directly by an oil spill in San Francisco Bay, the potential for oil spills exists from vessels operating within the marsh, as well as from an accidental spill from railroads that bisect the marsh. Oil spills also are an ever present threat to *Cordylanthus mollis* ssp. *mollis* occurring near Point Pinole (Pat O'Brien, General Manager, East Bay Regional Parks District, *in litt.* 1994).

Chronic pollution from other sources also may threaten the habitat of both plants. It is unknown, however, what effects heavy metals in industrial discharges have on these two taxa. In 1978, 52 municipal treatment facilities and 42 industrial facilities continuously discharged wastewater into San Francisco Bay (Western Ecological

Services Company (WESCO) 1986). By 1982, over 200 permits for industrial discharges had been granted (WESCO 1986).

The amounts of heavy metals in the San Francisco Bay Estuary are projected to increase during the next 10 years. The San Francisco Bay Conservation and Development Commission, Center for Environmental Design Research, and the Greenbelt Alliance (1992) collectively modelled plausible land use changes and their impact to the health of the San Francisco Bay Estuary. Several methods were used to determine the effects of land use change including two future land use models. The model projecting the highest increase in heavy metal was based on a composite of the general plan maps for all of the counties in the estuary. Amounts of heavy metals including lead, nickel, and cadmium were projected to increase under both future land use models in all the watersheds that include habitat for these two plants.

As discussed in Factor A, habitat fragmentation may alter the physical environment. In addition, habitat fragmentation increases the risks of extinction due to chance events such as pest or disease outbreaks, reproductive failure, or other natural or human-caused disasters. The small, isolated nature of *Cirsium hydrophilum* var. *hydrophilum*, which has only two occurrences, makes extinction from stochastic (random) events more likely. Chance events, such as disease outbreak, oil spills, extended drought, or a combination of several such events, could destroy part of a single population or entire populations. The risk of extirpation due to genetic and demographic problems associated with small populations is a threat to at least the two occurrences of *Cordylanthus mollis* ssp. *mollis* that have fewer than 25 individuals.

Increases in foot traffic and mosquito abatement also will result from increased urbanization (Brenda Grewell, pers. comm. 1993). Mosquito abatement activities threaten *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis*. Within Suisun Marsh, both species grow along or near either first order channels or mosquito abatement drainage ditches. Cleaning or dredging along these channels may adversely impact individual plants due to their proximity to the mosquito abatement drainage ditches. Vehicular damage to plant populations parallel to these channels has been noted (Randall Brown, *in litt.* 1993).

Foot traffic is a threat to *Cordylanthus mollis* ssp. *mollis*. A trail runs through the occurrence located on East Bay Regional Park's Point Pinole Regional Seashore. Foot traffic also is a potential threat to the largest occurrence of *C. mollis* ssp. *mollis* due to the increased urbanization occurring within ¼ mile. Although foot traffic may create opportunities for *C. mollis* ssp. *mollis* to become established by reducing competition from *Salicornia*, this disturbance cannot be considered beneficial because *C. mollis* ssp. *mollis* plants have shallow roots, are very brittle, and can be easily damaged (Stromberg 1986).

Erosion is a threat to *Cordylanthus mollis* ssp. *mollis* located on the Point Pinole Regional Seashore. The main population of *C. mollis* ssp. *mollis* is immediately adjacent to a slough that is undergoing bank slumping (Stromberg 1986). Individual plants are threatened by the slumping and subsequent undercutting of the bank.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. *Cirsium hydrophilum* var. *hydrophilum*, limited to only two occurrences, is threatened variously by indirect effects of urbanization, vulnerability to extinction due to chance environmental events including oil spills; competition with non-native vegetation, projects that alter natural tidal regime, stochastic events, and inadequate regulatory mechanisms across all of its current range. Urbanization, industrial development, and agricultural land conversion have extirpated or potentially extirpated nearly 45 percent of known occurrences of *Cordylanthus mollis* ssp. *mollis*. The species currently is restricted to about 8 ha (20 acres) of habitat. Indirect effects of urbanization including habitat fragmentation, habitat conversion, alteration in water and salinity levels, inadequate regulatory mechanisms, mosquito abatement activities (including off-highway vehicle use), water pollution, insect predation, projects that alter natural tidal regimes, erosion, foot traffic, and extirpation due to genetic and demographic problems variously continue to threaten most occurrences of *C. mollis* ssp. *mollis* across its remaining range. Because *C. hydrophilum* var. *hydrophilum* and *C. mollis* ssp. *mollis* are in danger of extinction throughout all or a significant part of their respective ranges, they fit the definition of endangered species in the Act. The preferred action, therefore, is to list *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* as endangered. Other alternatives to this action were considered but not preferred because not listing them at all or listing them as threatened would not provide adequate protection and would not be in keeping with the Act.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is listed. The Service finds that designation of critical habitat is not prudent for *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* at this time. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

The listing of these species under the Act publicizes the rarity of these plants and, thus, can make these plants attractive to researchers or collectors of rare plants. Incidents of collection or vandalism could contribute to the decline of the species.

Critical habitat designation for *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* is not prudent due to lack of benefit. Most populations of the two taxa occur on private or State lands. Because both plant species occur at very few locations, any activity that would adversely modify critical habitat would likely jeopardize the continued existence of the species as well. The designation of critical habitat on private or State lands affords no additional benefit for these species over that provided as a result of listing.

Protection of the habitat of these species will be addressed through the section 4 recovery process and the section 7 consultation process. The Service believes that Federal involvement in the areas where these plants occur can be identified without the designation of critical habitat. For the reasons discussed above, the Service finds that the designation of critical habitat for these plants is not prudent.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery plans be developed all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

One occurrence of *Cordylanthus mollis* ssp. *mollis* occurs on land that is managed by the U.S. Navy. The USBR and the Corps would become involved with these plants through their funding of projects that may directly impact the plants' habitat or support development of areas that contain suitable salt or brackish marshes. The Corps also would be involved as an authorizing agency for permits to dredge or fill wetlands and navigable waters of the United States. The Corps regulates dredging and filling of jurisdictional wetlands and navigable waters, including salt water marshes, under section 404 of the Clean Water Act. By regulation, nationwide permits may not be issued where a federally listed endangered or threatened species may be affected by the proposed project without first completing consultation pursuant to section 7 of the Act. The presence of a listed species would highlight the national importance of these resources. Highway construction and maintenance projects that receive funding from the Department of Transportation (Federal Highway Administration) also would be subject to review under section 7 of the Act.

Listing *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* as endangered would provide for development of a recovery plan (or plans) for them. Such plan(s) would bring together both State and Federal efforts for conservation of the plants. The recovery plan(s) would establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan(s) would set recovery priorities and estimate costs of various tasks necessary to accomplish them. It also would describe site-specific management actions necessary to achieve conservation and survival of the two species. Additionally, pursuant to section 6 of the Act, the Service could grant funds to affected States for management actions promoting the protection and recovery of these species.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. Most occurrences of both plants are either on private or non-Federal lands. One population of *Cordylanthus mollis* ssp. *mollis* occurs on land managed by the Department of Defense (U.S. Navy). Collection, damage or destruction of this species on public lands is prohibited, although in appropriate cases a Federal endangered species permit may be issued to allow collection. Removal, cutting, digging up, damaging or destroying endangered plants on non-Federal lands would constitute a violation of section 9 if conducted in knowing violation of State law or regulations or in violation of State criminal trespass law. The Service is not aware of any otherwise lawful activities being conducted or proposed by the public that will be affected by this listing and result in a violation of section 9.

The Act and its implementing regulations found at 50 CFR parts 17.61, 17.62, and 17.63 for endangered plant species set forth a series of general prohibitions and exceptions that apply to all endangered or threatened plants. With respect to the two plants from the San Francisco Bay area, all prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. Activities that would violate section 9 of the Act include the import, export, delivery, receipt, carrying, transporting, or shipping such species in interstate or foreign commerce in the course of a commercial activity; the sale or offer for sale of such species in interstate or foreign commerce; removal and reduction to possession of federally listed plant species from areas under Federal jurisdiction; the malicious damage or destruction of any such plant species on any area under Federal jurisdiction; or the removal, cutting, digging up, damage, or destruction of any such plant species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Activities that are unlikely to violate section 9 of the Act include animal grazing, waterfowl hunting, bird watching, and fishing. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR parts 17.62, 17.63, and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered or threatened plant species under certain circumstances. The Service anticipates few permits would ever be sought or issued for the two species because the plants are not common in cultivation or in the wild.

Requests for copies of the regulations on listed plants and inquiries regarding them may be addressed to U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 NE 11th Avenue, Portland, Oregon 97232–4181 ((503) 231–2063 or FAX (503) 231–6243).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any

other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial, or other relevant data concerning any threat (or lack thereof) to *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis;*

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these species; and

(4) Current or planned activities in the subject areas and their possible impacts on these species.

The Service particularly solicits expert opinion from independent specialists regarding pertinent scientific or commercial data and assumptions relating to taxonomy, population models, and supportive biological and ecological information. Any final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Sacramento Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Field Supervisor, Sacramento Field Office (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Kirsten Tarp, U.S. Fish and Wildlife Service, Sacramento Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.12(h) is amended by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants, to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
Cirsium hydrophilum var. *hydrophilum.*	Suisun thistle	U.S.A. (CA)	Asteraceae	E		NA	NA
Cordylanthus mollis ssp. *mollis.*	Soft bird's-beak	U.S.A. (CA)	Scrophulariaceae	E		NA	NA

Dated: February 8, 1995.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 95–14144 Filed 6–9–95; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Monday
June 12, 1995

Part VI

Department of Transportation

Federal Highway Administration

23 CFR Part 655

National Standards for Traffic Control Devices; Revision of the Manual on Uniform Traffic Control Devices; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. 95–8]

RIN 2125–AD57

National Standards for Traffic Control Devices; Revision of the Manual on Uniform Traffic Control Devices

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed amendments to the Manual on Uniform Traffic Control Devices (MUTCD); request for comments.

SUMMARY: The MUTCD is incorporated by reference in 23 CFR part 655, subpart F, and recognized as the national standard for traffic control on all public roads. After the current 1988 Edition of the MUTCD was published, a decision was made by the FHWA on January 6, 1988, at 53 FR 236, to postpone rulemaking on all requests for revisions to the MUTCD except those changes which would signficantly impact safety. The FHWA announced its intent to rewrite and reformat the MUTCD on January 10, 1992, at 57 FR 1134. This effort is still underway and as work progresses, many changes and modifications are being identified. The FHWA is inviting comments on proposed changes which have been received to date. As other changes are received, they will be published in a future rulemaking. These changes affect various parts of the MUTCD and are intended to expedite traffic, promote uniformity, improve safety and traffic control device application, and provide a clearer understanding of the principles contained in the MUTCD.

DATES: Submit comments on or before September 11, 1995.

ADDRESSES: Submit written, signed comments to FHWA Docket No. 95–8, Federal Highway Administration, Room 4232, HCC–10, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: For information regarding this notice of proposed amendments or a copy of the proposed text contact Mr. Ernest Huckaby, Office of Highway Safety, (202) 366–9064, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Room 3419, Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday except Federal holidays.

SUPPLEMENTARY INFORMATION: The MUTCD is available for inspection and copying as prescribed in 49 CFR Part 7, appendix D. It may be purchased for $44.00 from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, Stock No. 050–001–00308–2.

The FHWA both receives and initiates requests for amendments to the MUTCD. Each request is assigned an identification number which indicates, by Roman numeral, the organizational part of the MUTCD affected and, by Arabic numeral, the order in which the request was received.

This notice is being issued to provide an opportunity to comment on the desirability of proposed amendments to the MUTCD. Based on comments submitted in response to this notice and upon its own experience, the FHWA will issue a final rule concerning these requests.

Index of Requests

General Provisions (Part I)

(1) Request I–10(C)—Standardization of Traffic Control Devices on Private Property.
(2) Request I–12(C)—Add New Highway Classification for Special Purpose Roads.

Signs (Part II)

(3) Request II–118(C)—Standard Motorcycle Warning Sign.
(4) Request II–120(C)—Standard Warning Sign for Substandard Vertical Curves Over Railroad Crossing.
(5) Request II–138(C)—Stop Sign Placement.
(6) Request II–179(C)—Don't Drink and Drive Symbol Sign.
(7) Request II–193(C)—Logos on Specific Service Signs.
(8) Request II–194(C)—Recycling Collection Center Sign.
(9) Request II–199(C)—Reclassify Reduced Speed Signs from Regulatory to Warning.
(10) Request II–204(C)—Golf Cart Crossing Symbol.
(11) Request II–205(C)—Mandatory Turn Sign Alternatives.
(12) Request II–209(C)—Signing for the Disabled.
(13) Request II–211(C)—Non-Carrier Airport Symbol.
(14) Request II–212(C)—Increased Letter Size of Street Name Signs.
(15) Request II–214(C)—Golf Course Recreational Area Symbol.
(16) Request II–215(C)—Regulatory and Street Name Signs on Same Post.
(17) Request II–218(C)—Reduce Number of Panels Shown on Directional Assemblies.
(18) Request II–224(C)—Cellular Phone Signing for Emergency Situations.
(19) Request II–225(C)—Local Transit Logo and Carpool Symbol.
(20) Request II–226(C)—General Motorist Service Signing for Alternative Fuels.
(21) Request II–228(C)—"Share The Road" Warning Signs.
(22) Request II–229(C)—General Service Sign (Truck Parking Symbol).
(23) Request II–241(C)—Overhead Guide Sign Arrows.
(24) Request II–246(C)—Adopt-a-Highway Signs.

Markings (Part III)

(25) Request III–54(C)—Variation of Line Width and Spacing for Crosswalks.
(26) Request III–68(C)—Lane Drop Marking Pattern.

Signals (Part IV)

(27) Request IV–47(C)—Use of Steady and Flashing Downward Yellow Arrows in Lane Control Signals.
(28) Request IV–95(C)—Intersection Control Beacon.
(29) Request IV–118(C)—Relocate MUTCD Section 4C, Signal Warrants.
(30) Request IV–122(C)—Disabled Pedestrians.
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(32) Request VI–88(C)—Emergency Flashers

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(33) Request VII–2(C)—School Bus Stop Ahead Symbol Sign.

Railroad Crossings (Part VIII)

(34) Request VIII–26(C)—Maximum Flash Rate at Railroad Highway Grade Crossings.
(35) Request VIII–29(C)—Symbol for Railroad Advance Warning Sign.
(36) Request VIII–30(C)—Symbol for Number of Tracks Sign.
(37) Request VIII–36(C)—Signs and Markings for No Lane Change Zones at Railroad Crossings.
(38) Request VIII–37(C)—Fast Train Signs.
(39) Request VIII–38(C)—Supplementary Plaques on STOP and YIELD Signs Used at Railroad-Highway Grade Crossings.
(40) Request VIII–39(C)—Warrants for Warning Devices at Railroad-Highway Grade Crossings with High Speed Train Operations.

(41) Request VIII–40(C)—Placement of the Crossing Identification Number Tag.

Bicycle Facilities (IX)

(42) Request IX–6(I)—Marking Hazardous Bicycle Conditions.

Discussion of Requests

The FHWA proposes to act on the above requests as follows:

General Provisions (Part I)

(1) Request I–10(C)—Standardization of Traffic Control Devices on Private Property

In October 1989, the American Association of State Highway and Transportation Officials (AASHTO) submitted a policy resolution to the FHWA recommending that each State be encouraged to adopt section 15–117 of the Uniform Vehicle Code (UVC). This section of the UVC states that traffic control devices used on private property open to the public shall be installed and maintained pursuant to the standards contained in the MUTCD.

The FHWA concurs with and supports the AASHTO resolution because it would extend the provisions contained in the MUTCD to all streets and highways open to public travel, regardless of ownership. The FHWA proposes to add language to MUTCD section 1A–3 encouraging each State to adopt section 15–117 of the UVC.

(2) Request I–12(C)—Add New Highway Classification for Special Purpose Roads

An interagency task force comprised of representatives from the U.S. Forest Service, the National Park Service, the Bureau of Land Management, the Bureau of Indian Affairs, and the Federal Highway Administration conducted a study under the Coordinated Federal Lands Highway Technology Implementation Program (CTIP) to examine the MUTCD and identify those standards which should be revised to provide more reasonable and prudent application standards for roads with very low traffic volumes in remote rural areas.

The major thrust of the proposed change is to add a new highway classification to the MUTCD for special purpose roads and a new set of standards to address the special signing needs of these low volume, low speed roads. The recommendations in the report are to allow 18" x 18" signs for these special purpose roads. The CTIP committee did not define either low speed or low volume. However, the intent of the study was to address special purpose roads as defined in the AASHTO Policy on Geometric Design of Highways and Streets. These roads include recreation roads, resource development roads, and local service roads. The FHWA solicits comments on this proposal.

Signs (Part II)

(3) Request II–118(C)—Standard Motorcycle Warning Sign

The American Motorcycle Association requested that the MUTCD be amended to include a sign to warn motorcyclists of hazardous road conditions. The FHWA conducted an evaluation of seven possible designs to warn motorcyclists of grooved pavements, five which incorporated a motorcycle symbol with the words "grooved pavement" and two which used word messages only. Although symbolic signs are usually preferable because they can be understood more quickly than words, the motorcycle symbol signs in this study did poorly in the motorist comprehension test. The evaluation study indicated that this may be because the concept is a difficult one to portray based on typical usage of warning signs. Generally the hazard of which drivers are warned is portrayed within the diamond sign. Many of the test group subjects saw the signs as a warning to drivers of "something" and motorcycles ahead. An example of an incorrect response given was, "Warning: Grooved Pavement and Motorcycles Ahead."

Therefore, the FHWA recommends that in areas where road conditions may be particularly hazardous for motorcyclists, the State highway agencies should develop appropriate word message signs. The FHWA recommends using a rectangular warning panel with a word message such as "Motorcycles: Watch for Grooved Pavements." Since MUTCD section 2C–40 already contains provisions which allow the design of warning signs for special conditions, the FHWA believes a change to the MUTCD is not required.

(4) Request II–120(C)—Standard Warning Signs for Substandard Vertical Curves Over Railroad Crossings.

At certain locations, there is a need to alert drivers, especially those that drive vehicles with low under clearance, of differences in elevation between an approach roadway and a railroad track bed. Low profile vehicles have the potential of getting stalled at these types of railroad crossings. This could lead to an accident with a train, or at the very least, disrupt traffic. In other instances, motorists could possibly lose control of their cars when traversing such crossings without sufficient advance warning.

The National Committee on Uniform Traffic Control Devices (NCUTCD) has proposed a new MUTCD section 8B–11, Humped Crossings, which the FHWA proposes to include in the next edition of the manual. The NCUTCD is also developing an appropriate sign for this special situation. After the sign is developed, the FHWA will include both the text and the sign in a future notice of proposed rulemaking.

(5) Request II–138(C)—Stop Sign Placement

The current MUTCD Figure 2–2 shows a typical example for placement of Stop Signs at wide throat intersections. This figure represents an intersection that usually is designed for heavier than normal volumes of long wheelbase vehicles which require larger turning radii. A Stop line pavement marking is also shown with the Stop Sign. The Stop Sign can be appropriately placed a maximum of 50 feet from the stop line.

The NCUTCD and the City of Phoenix propose that this maximum distance be deleted so that intersections with greater radii are also covered.

The FHWA does not recommend placing the Stop Sign back more than 50 feet. Placing the Stop Sign at a maximum of 50 feet from the stop line keeps the sign well within the driver's cone of vision. Installing it back farther may place the sign so far from the stop line and the cross street that the intended operation may present confusion to the general motorist. Raised or marked islands and/or channelized intersections are alternative applications which may be used at these special locations.

(6) Request II–179(C)—Don't Drink and Drive Symbol Sign

The FHWA has received requests from concerned citizens and Mothers Against Drunk Driving (MADD) to include a symbol sign in the MUTCD to deter the drinking public from driving while intoxicated. The FHWA Office of Research and Development collected recognition and comprehension data for several variations of this sign. As a result of this research, the FHWA proposes to add the proposed symbol (as shown below) into MUTCD section 2B–44 "Other Regulatory Signs," because it performed very well in the evaluation study and its message of "drive sober" covers both drivers under the influence of alcohol and drivers under the influence of illicit drugs. As proposed, the sign's legend and border would be black, the circle green, and the background white.

BILLING CODE 4910–22–P



Figure 1

BILLING CODE 4910-22-C

(7) Request II–193(C)—Logos on Specific Service Signs

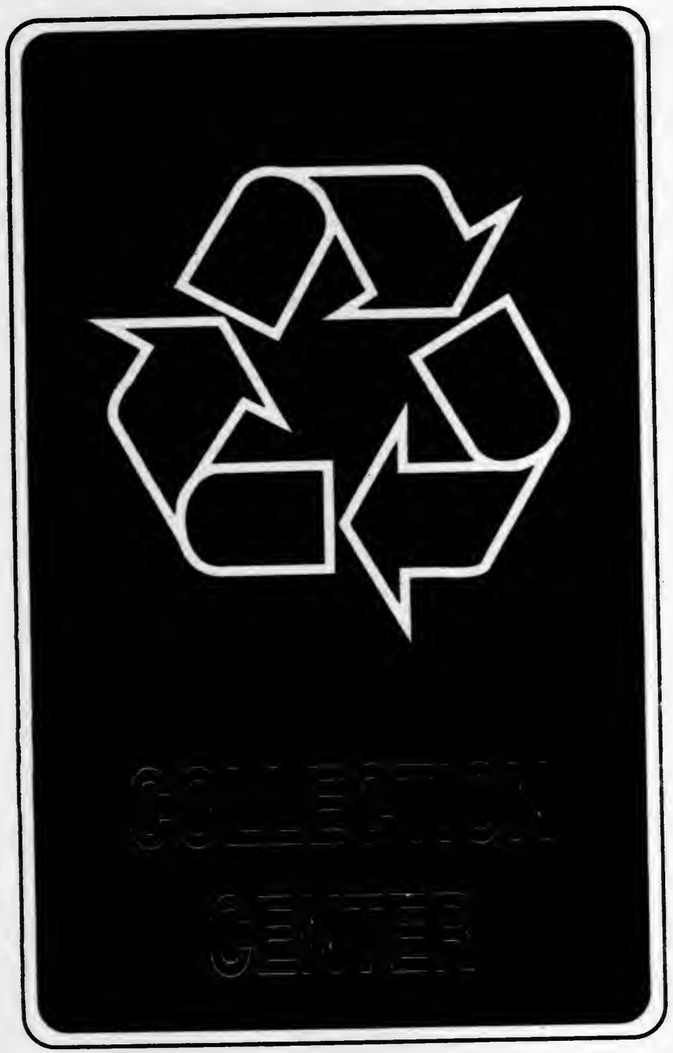
The NCUTCD has requested that the following sentence in MUTCD section 2G–5.2 be deleted: "Logos should have a blue background with a white legend and border." Because of the way it is written, it seems to control corporate logo designs. It was not the intent of the FHWA to control corporate logo designs. The sentence is correct and should not be deleted, although the FHWA agrees that it could be more clearly written. Therefore, the following additional sentence is proposed: "A business LOGO can be either a business identification symbol/trademark or a word message. If the business LOGO is a word message, then it should have a blue background with a white legend and border." This clarification will be included in the MUTCD rewrite effort.

(8) Request II–194(C)—Recycling Collection Center Sign

The Florida Department of Transportation recommended that the MUTCD include a Recycling Collection Center Sign in view of new State laws and initiatives to prevent waste and protect the environment. The purpose of the sign is to direct motorists to recycling collection centers. The recycling symbol suggested by Florida is the one developed for use by the Recycled Paperboard Division of the American Paper Institute of New York.

Since this symbol is already in use and recognized by the public, the FHWA proposes to include this symbol in MUTCD section 2D–48, "General Information Signs." These signs should not be used on freeways and expressways. If used on these facilities, the recycling center sign should be considered as one of the supplemental sign destinations.

BILLING CODE 4910-22-P



COLORS
WHITE REFLECTIVE LEGEND AND BORDER
ON REFLECTIVE GREEN BACKGROUND

Figure 2

BILLING CODE 4910-22-C

(9) Request II-199(C)—Reclassify Reduced Speed Ahead Sign Series

Florida's Palm Beach County Department of Engineering and Public Works submitted a request to the FHWA to consider reclassifying the R2-5 series of signs as warning rather than regulatory signs. As presently worded, the R2-5 series signs convey an advance warning to motorists that there is a change in the regulatory speed limit ahead. Palm Beach County's proposed change would make the relationship between the "Reduced Speed Ahead" and "Speed Limit" signs similar to the relationship between the "Stop Ahead" and "Stop" signs.

The FHWA proposes to deny this request since, from a traffic operational standpoint, these signs perform adequately as regulatory signs. To change the present signs from black on white to black on yellow signs would impose an unnecessary cost burden to the State and local highway agencies.

(10) Request II-204(C)—Golf Cart Crossing Symbol

The FHWA received a request from both Virginia Beach, Virginia, and Palm Desert, California, to develop a warning symbol for golf cart crossings. The information received from Palm Desert's Public Works Department indicates that the golf cart is used in this area as an alternate, non-polluting source of transportation. They have indicated a need for not only a golf cart crossing symbol but also for a sign to warn motorists to share the roadway with these slower moving vehicles.

The FHWA is conducting a research effort to determine what type of signing is appropriate for safely accommodating these special-use vehicles along the roadway. The FHWA is also interested in receiving public comments and suggestions regarding this proposal.

(11) Request II-205(C)—Mandatory Turn Sign Alternatives

The FHWA received a request from a citizen in Florida who suggests that the Mandatory Movement Sign (R3-5) be optionally permitted as a post-mounted sign because the symbol appears to be more understandable than the mandatory turn word message sign (R3-7), particularly for persons speaking foreign languages.

The R3-5 symbol sign as discussed in MUTCD section 2B-17 is intended for overhead mounting and the R3-7 word message sign is intended for post mounting. These mandatory movement signs are included in a series of lane use control signs for the purpose of communicating lane designation information to the driver. These signs help position the motorist in the appropriate lane for the desired traffic movement.

The FHWA proposes to make the present requirements of the MUTCD less restrictive and allow either of the designated overhead and post-mounted signs to be used interchangeably. Such a change would impose no additional financial costs or burden on the State highway agency.

(12) Request II-209(C)—Signing for the Disabled

On July 26, 1991, the United States Architectural and Transportation Barriers Compliance Board published accessibility guidelines at 56 FR 35408 (36 CFR part 1191) which require that at least one in eight reserved parking spaces for the disabled be designed to accommodate vans. These parking spaces are required to be identified by a parking sign showing the international symbol of access (wheel-chair symbol) with a supplemental "Van Accessible" sign mounted below.

The MUTCD already contains a standard reserved parking sign (R7-8) for the disabled. However, it does not contain any discussion on the design and application of the new "Van Accessible" sign. Therefore, the FHWA proposes to include the "Van Accessible" sign as a supplement to the standard R7-8 regulatory sign. When used, this word message sign should have a white background with black or green legend. Reverse background and legend colors may be used as an alternate. Where a guide sign is needed to direct motorists to special van-accessible parking facilities, the proposed "Van Accessible" sign should have a white legend on blue background with an appropriate directional arrow.

The FHWA proposes to add the design dimensions for this sign to the Standard Highway Signs Book and to add appropriate text to the MUTCD section 2B-31, "Urban Parking and Stopping Signs." The FHWA believes that this proposed amendment would impose no significant financial burden on State and local highway agencies because the "Van Accessible Sign" is intended for use only at parking locations where traffic laws and statutes apply.

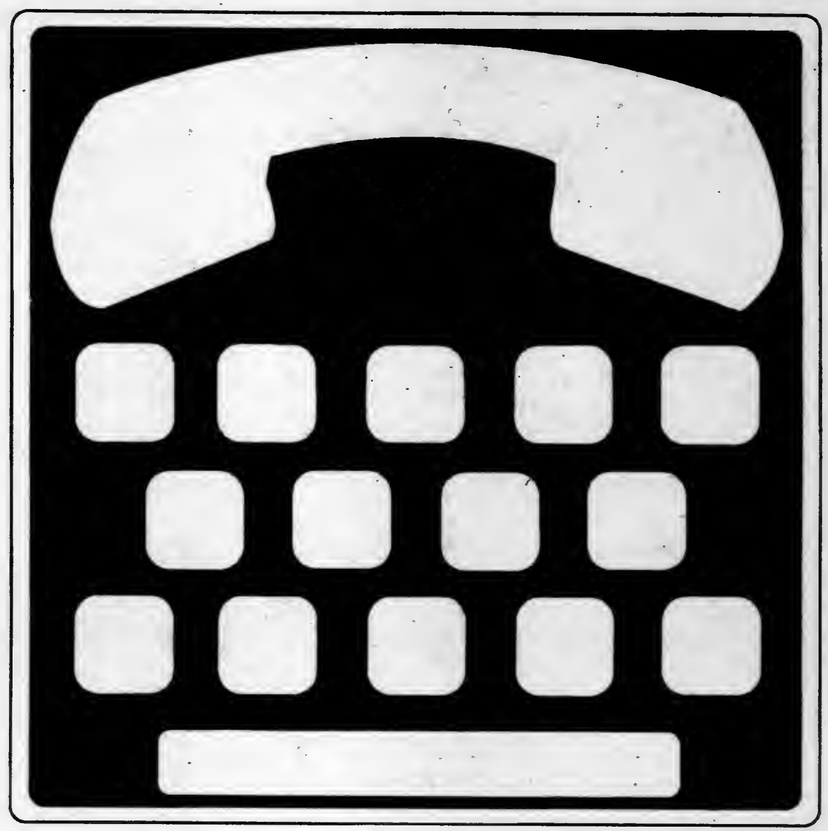
The accessibility guidelines at 36 CFR part 1191 also contain construction requirements for accessible buildings or facilities. The guidelines identify facilities and elements thereof which are required to be signed as accessible. Buildings required to be accessible shall use the international symbol of accessibility as shown in figure (a) below. In addition, building requirements are also provided for signing facilities which have public text telephones and assistive listening systems. The symbol for text telephones is shown in figure (b) and the symbol for assistive listening systems is shown in figure (c).

BILLING CODE 4910-22-P



(a)
International Symbol of Accessibility

FIGURE 3A



(b)
International TDD Symbol

FIGURE 3B



(c)
International Symbol of Access for Hearing Loss

Figure 3C

BILLING CODE 4910-22-C

The FHWA received a request from a citizen to install the telephone symbols along the Interstate system to direct motorists to the buildings and facilities which are accessible for the hearing impaired. The FHWA is soliciting public input as to whether or not this request has merit and can be practically implemented. Should such signs be used in conjunction with General Service signs and/or Specific Service signs, or could they stand alone? Once motorists were directed to the appropriate freeway exit, they would still need to be guided to the appropriate building or facility. Does a series of confirming sign assemblies need to be installed to reassure the traveler that they are headed in the right direction? Are the proposed sign designs legible to the motorist at high speeds? Will the motorist comprehend the intended sign message? What effect will this proposed change have on the local level? How is information of this nature currently made available to the hearing-impaired community?

Your response to these questions or any other comments which you may be able to provide will help us to reach an appropriate decision regarding this request.

(13) Request II–211(C)—Non-Carrier Airport Symbol

The AASHTO submitted a resolution to the FHWA recommending a new symbol sign in the MUTCD to identify non-carrier airports. Non-carrier airports are airports which do not provide commercial or scheduled air service.

The MUTCD section 2D–48, "General Information Signs," contains provisions for signing routes leading to a transportation facility, including a symbol for airports. Rather than adopting a different symbol sign for non-carrier airports, the FHWA prefers the use of the standard airport symbol (I–5) along with a supplemental plaque to indicate the specific name of the non-carrier airport. The FHWA believes that this would be easier for the motorist to recognize and comprehend as opposed to trying to distinguish the difference between two airplane symbols. From a distance and at high speeds, the two airplane symbols could appear very similar to the motorist.

Although the FHWA does not intend to adopt a new symbol sign for non-carrier airports, it does propose to include a discussion in the MUTCD on these two types of airport signing. When used, these signs will be considered supplemental guide signs which are appropriate for use on the Interstate, other freeways, and conventional State highways. However, adequate trailblazing signs would have to be in place prior to installing these airport signs.

(14) Request II–212(C)—Increased Letter Size of Street Name Signs

The NCUTCD submitted a request to the FHWA to improve the visibility of street name signs by increasing the minimum letter size from 4 inches to 6 inches. If uppercase and lowercase letters are used, then the uppercase letters would be 6 inches with 4½ inch lowercase letters. Abbreviated lettering to indicate the type of street or section of city (e.g., Ave., N.W., etc.) would be at least 3 inches instead of 2 inches. The NCUTCD also recommends that retroreflectivity be required on all street name signs.

The FHWA recognizes the need to improve sign visibility and legibility, particularly for the older driver population. The Transportation Research Board (TRB) Special Report No. 218, "Transportation in an Aging Society," identified highway and street name signs as a major concern for older drivers. The FHWA proposes to increase the letter size of signs and include the recommended dimensions in MUTCD section 2D–39. Since this proposed amendment would impose some additional costs on State and local highway officials, the FHWA would establish an implementation period.

(15) Request II–214(C)—Golf Course Recreational Area Symbol

The Montana Department of Transportation (MTDOT) submitted a request to the FHWA to include a symbol in the Recreational and Cultural Interest Area Signs (MUTCD section 2H) to direct motorists to golf courses. This symbol would be white on a brown background and it would be included in the RG or RL series.

The proposed symbol submitted by the MTDOT and shown below needs to be evaluated along with other possible designs to determine if they can be safely seen, read, and comprehended by the motorists without creating any traffic operational problems. The FHWA is soliciting comments on the proposed design. The FHWA is also interested in receiving other possible designs for evaluation purposes. The FHWA does not have any conclusive evaluation data at this time to make an informed decision concerning the proposed sign.

BILLING CODE 4910-22-P



Figure 4

BILLING CODE 4910-22-C

(16) Request II-215(C)—Regulatory and Street Name Signs on Same Post.

The Public Works Department in Cary, North Carolina, submitted a request to the FHWA to include the installation of a Street Name Guide Sign on the same post with a Regulatory Sign as a standard traffic control device application. After reviewing the evaluation report submitted by the North Carolina State University's Department of Civil Engineering, the FHWA finds that the proposal has merit as an alternate application and makes the following recommendations: (1) If the two signs are placed on one sign post, the proper location of the Regulatory Sign should not be compromised by the Street Name Sign; and (2) there should be vertical separation between the top and the bottom of both signs. This separation should not be less than 6 inches. This would make it clearer to the motorist that these are two distinct signs with two distinct messages.

The FHWA proposes to adopt this arrangement as an alternate application since its use may simplify the sign installation process and improve motorist guidance information. Since this amendment would impose no requirements or additional costs on highway agencies, the FHWA believes an implementation period would not be necessary.

(17) Request II-218(C)—Reduce Number of Panels Displayed on Directional Assemblies.

A citizen from Richmond, Virginia, has requested a change to directional assembly installations to reduce the amount of information displayed. Instead of displaying a route shield and route number for each direction of travel, the route marker assembly would display only one route shield and route number with appropriate cardinal directions and arrows.

BILLING CODE 4910-22-P

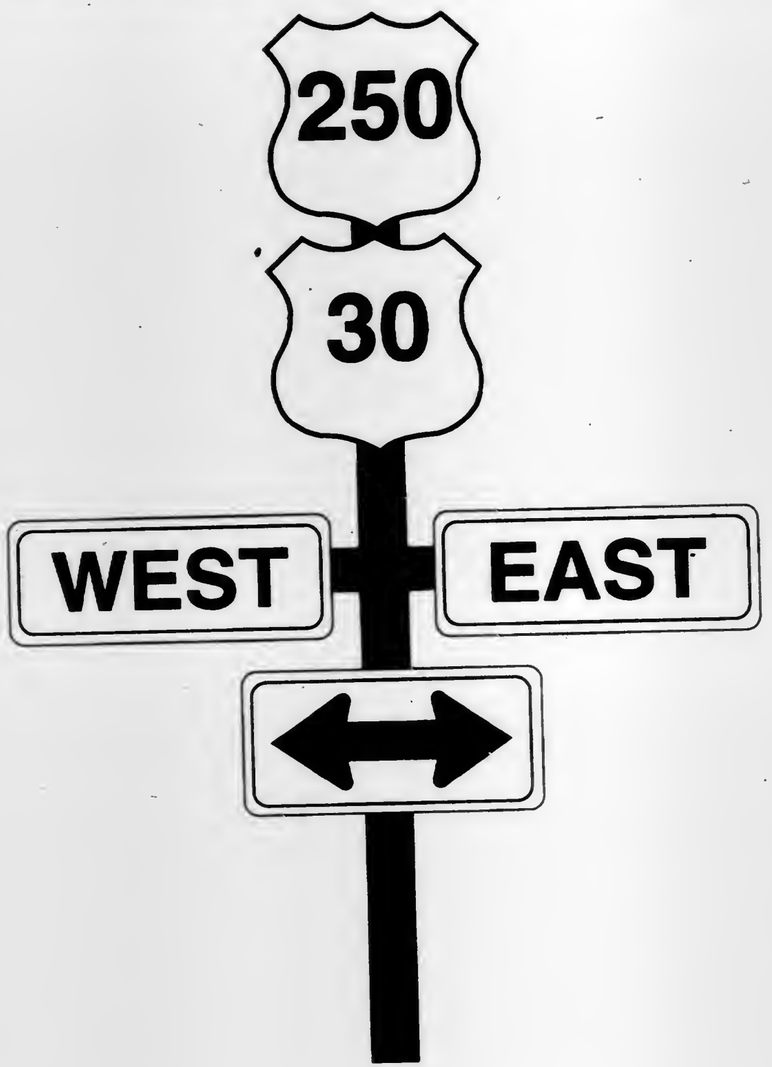


Figure 5

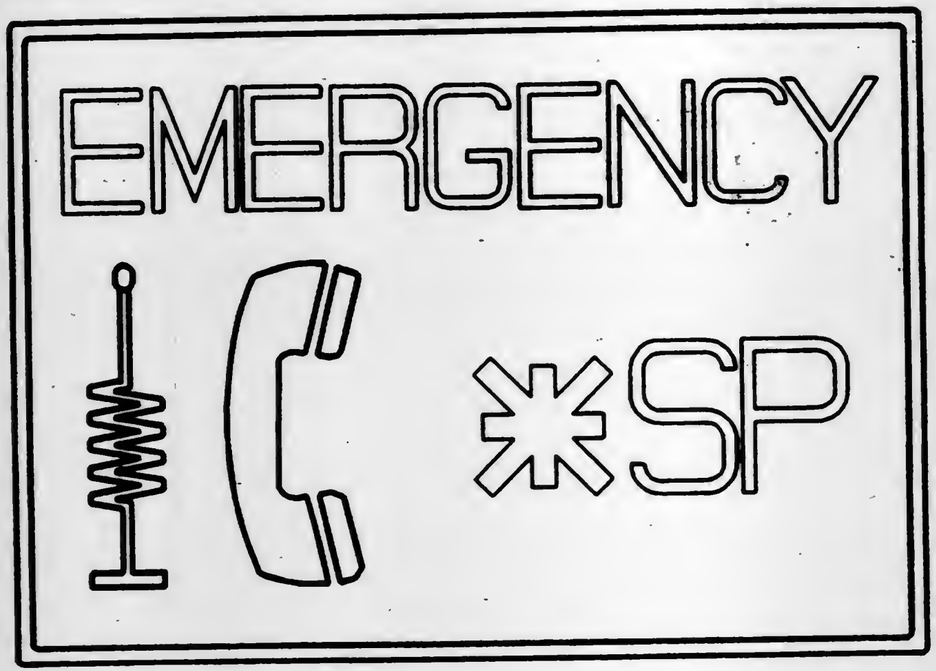
BILLING CODE 4910-22-C

The FHWA proposes to adopt this request for change as an optional application for use in situations where an engineering study determines that motorist confusion would not result. This proposal would impose no additional requirements or costs on highway agencies; therefore, an implementation period would not be necessary.

(18) Request II–224(C)—Cellular Phone Signing for Emergency Situations.

The Massachusetts Highway Department has submitted a request to include a State Police Cellular Phone Sign into the MUTCD. The proposed sign (as shown below) contains the standard telephone symbol (D9–1) and the standard police sign (D9–14). One of the prerequisites for adopting any proposed sign is that the sign message must be uniformly understood by motorists and not create traffic safety or operational problems. Consideration is given to the sign's target value, conspicuity, and legibility. The FHWA is concerned that the antenna shown in the proposed sign drawing may not be legible to the motorist at certain distances and speeds. The FHWA is also concerned that some motorists may not comprehend the sign's intended message.

BILLING CODE 4910–22–P



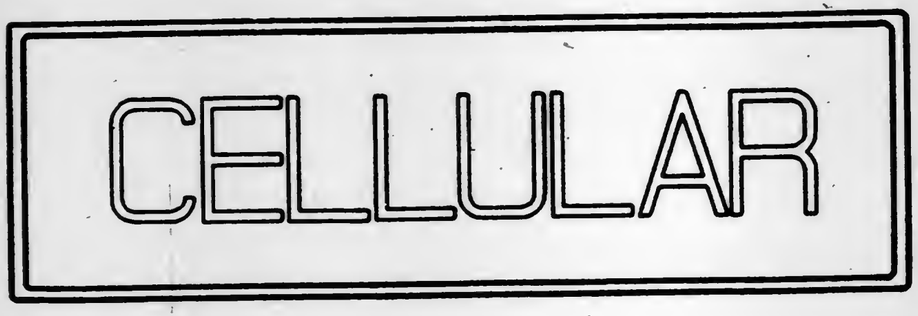


Figure 6

Therefore, the FHWA recommends using a word message sign similar to the standard D12–3 sign. The sign would read, "Police Monitor Cellular Phone" along with the appropriate number to dial (which may vary from region to region). This proposal would impose no requirements or additional costs on highway agencies.

(19) Request II–225(C)—Local Transit Logo and Carpool Symbol

The Texas Department of Transportation (TXDOT) submitted a request to the FHWA to allow the maximum vertical dimension of transit system logos on Park and Ride Signs to be increased to 36 inches for freeways and expressways. Currently, MUTCD section 2D–41 specifies a maximum logo size of 18 inches.

The FHWA concurs in this request. Larger signs provide greater legibility on high speed facilities such as freeways and expressways. Therefore, the FHWA proposes to change the last sentence in the second paragraph of MUTCD section 2D–41 to read, "The maximum vertical dimension of the local transit logo and/or carpool symbol is 36 inches." This amendment would impose no additional requirements or costs on highway agencies.

(20) Request II–226(C)—General Motorist Service Signing for Alternative Fuels

The FHWA has received a second request from the TXDOT asking us to expand the provisions for General Motorist Services Signs to include an additional category of "Alternative Fuels." This signing would include the following fuels: propane, compressed natural gas, ethanol, and methanol. The TXDOT proposal recommended installing a separate, stand-alone service sign dedicated to alternative fuels. This service sign would be separate from the conventional general motorist services.

The FHWA agrees that the increasing number of vehicles using alternative fuels (in response to, among other things, the Clean Air Act Amendments of 1990) warrants consideration of additional signs meant to provide availability information to motorists, particularly on freeways. The FHWA solicits public comments and suggestions concerning this proposal. The FHWA is also interested in receiving any typical application drawings to show how these signs may be installed, if adopted.

(21) Request II–228(C)—"Share the Road" Warning Signs

A citizen from Rudolph, Ohio, supported by a number of Farm Bureaus in the State of Ohio requested that the FHWA improve the standard highway farm machinery symbol sign (W11–5) to more accurately depict modern farm equipment. In addition, the sign should warn motorists to watch for slow moving farm machinery not only crossing the roadway but also traveling along the roadway.

The FHWA agrees that there is a need for a series of signs to warn motorist to "share the road" with various roadway transportation modes. "Share the road" signs have been requested for not only farm machinery but, also for golf carts and bicycles.

The FHWA is conducting a research study to develop an appropriate sign for these situations. Public comments and suggestions are welcomed. Our goal is to find a method of communicating to the driver these two related but different warning messages: (1) crossing the roadway and (2) traveling along the roadway.

(22) II–229(C)—General Service Sign (Truck Parking Symbol)

This request from the Michigan Department of Transportation (MDOT) is to include "TRUCK PARKING" as an eligible message which can be included on General Service Signs as discussed in MUTCD sections 2D–45, 2E–37, and 2F–33. This sign is only to be used where public or private parking facilities are provided near a freeway or expressway interchange.

The MDOT has experimentally used these signs since 1990 and has found the number of illegally parked trucks on shoulders and ramp acceleration/deceleration lanes has dropped, with a substantial reduction in accidents and fatalities. In addition, truck use of rest areas has decreased while use of privately managed truck stops has increased.

While symbol signing is used for other General Service Signs, this request is to use the word message "TRUCK PARKING" above these symbols as shown in the diagram below. The FHWA supports the overall concept of this proposal and invites comments on the concept of using the word message "TRUCK PARKING" with other general service symbol signs. We also welcome suggestions for a "TRUCK PARKING" symbol.

BILLING CODE 4910–22–P



34

Figure 7

(23) Request II–241(C)—Overhead Guide Sign Arrows

The FHWA received a request from a citizen in Hartsdale, New York, concerning improving overhead guide signs by using consistent directional arrows which point upwards and which indicate if the roadway turns to the left or to the right. This suggestion is based on the belief that the current downward pointing arrows are misleading and confusing to the motorist. In MUTCD sections 2D–8 and 2E–15 downward pointing arrows are currently classified as pull-through arrows for the purpose of assigning proper lanes for traffic continuing along a specified route. However, the citizen suggests that this intended message is neither helpful nor even understood by many motorists.

The FHWA is considering this request for change, since it has the potential to provide more consistent, timely, and useful information to the motorist. The FHWA is soliciting comments on the feasibility and effect of implementing this proposed change to the MUTCD.

(24) Request II–246(C)—Adopt-A-Highway Signs

The Adopt-A-Highway Program provides free litter removal to the jurisdiction responsible for roadway maintenance in exchange for the right to display a small sign recognizing the group removing the litter. Since the program's inception in the fall of 1985, at least 34 States now have implemented Adopt-A-Highway Programs. Some of the States using the program limit participation to civic groups, while others allow display of commercial messages. There is also a wide variance in the size of the recognition signs allowed to be displayed within the highway right-of-way, varying from 2 feet by 4 feet to 6 feet by 12 feet. In addition, the background and letter color of these signs varies from State to State. There is also variance in the lateral placement and the frequency of placement of these signs.

The FHWA proposes to include standards for the Adopt-A-Highway sign in MUTCD section 2D–48, General Information Signs. We are interested in recommendations regarding maximum and minimum sizes, background and message colors, and sign placement criteria, including lateral placement and frequency of placement.

Markings (Part III)

(25) Request III–54(C)—Variation of Line Width and Spacing for Crosswalks

The Kansas Department of Transportation (KSDOT) and the NCUTCD have requested a change to section 3B–18 of the MUTCD. The last paragraph of this section of the MUTCD currently states that the longitudinal crosswalk lines should be spaced 12 to *24* inches apart. This proposed change would increase the maximum spacing from 24 to *48* inches with a maximum spacing not to exceed twice the line width.

Presently, we have no statistical data to show that the proposed maximum spacing of 48 inches will not adversely affect visibility. The possibility exists that a crosswalk area could end up with only one longitudinal marking on a 12-foot roadway. The FHWA agrees that from an installation and maintenance standpoint the use of wider spacings is more economical. However, the FHWA does not wish to see pedestrian safety compromised. The current maximum longitudinal spacing of 24 inches is so the crossing area will be highly visible and recognizable both for the motorist and for the pedestrian.

The FHWA hesitates to change the MUTCD without evaluation data which supports the design safety of the proposed crosswalk configuration. Since there are no operational problems relative to the standard 24-inch maximum spacing, the FHWA intends to deny this request for change.

(26) Request III–68(C)—Lane Drop Marking Pattern.

The Montgomery County Department of Transportation in Rockville, Maryland, has requested that MUTCD section 3A–6 be modified to include the lane drop marking pattern since this section of the MUTCD contains descriptions for various widths and patterns of longitudinal lines. Lane drop marking patterns are currently described in the fourth paragraph of MUTCD section 3B–11. Since section 3A–6 describes widths and patterns of longitudinal lines, the FHWA agrees that the lane drop marking pattern should also be included in this section of the MUTCD.

Additionally, Montgomery County suggested that the term "special marking" as used in the fourth paragraph of section 3B–11 should be changed to "lane drop marking" and that the use of this marking pattern should not be restricted to interchange ramps, but should also be available for use with mandatory lane drops on arterial streets and highways.

In order to further consistency and clarity in traffic operation messages, the FHWA proposes to adopt the above changes to the MUTCD. These amendments would impose no additional requirements or costs on highway agencies.

Signals (Part IV)

(27) Request IV–47(C)—Use of Steady and Flashing Yellow Arrows in Lane Control Signals

The Minnesota and Texas Departments of Transportation (MNDOT and TXDOT) have proposed MUTCD changes to the YELLOW lane-use control signal indication used on freeways. The MNDOT also proposed changing the MUTCD to allow darkening of lane control signals that are used for non-reversible freeway lane operation.

MUTCD Section 4E–9 provides the following meanings for YELLOW lane-use control signal indications:

1. A steady YELLOW X means that a driver should prepare to vacate, in a safe manner, the lane over which the signal is located because a lane control change is being made. The driver should avoid occupying that lane when a steady RED X is displayed.

2. A flashing YELLOW X over a lane means that a driver is permitted to use that lane for a left turn. The driver is cautioned that he may be sharing that lane with opposite flow left-turning vehicles.

The MNDOT identified a need to provide an additional signal message when incidents, maintenance activities, or congestion require drivers using these reversible lanes to exercise caution. MNDOT conducted an experimentation with two new lane use control signal indications:

1. A steady Downward YELLOW ARROW meaning the same as a steady YELLOW X.

2. A Flashing Downward YELLOW ARROW meaning that a driver is permitted to cautiously use the freeway lane over which the signal is located.

The research showed that 84% of the respondents interpreted the proposed steady YELLOW ARROW as meaning the driver may use this lane, but should use extra caution. The intended meaning should have been the same as the steady YELLOW X definition above. The understanding rate for the proposed Flashing Downward YELLOW ARROW was 50% which means that one-half of the respondents incorrectly interpreted its meaning.

In order to not mislead drivers, the MNDOT also proposed darkening the lane control signals when they were not in operation.

The TXDOT provided an alternate proposal to keep the MUTCD meanings for lane-use control signals and add a new lane control indication—a steady

Downward YELLOW ARROW. The meaning of this new lane control indication would be that the driver can use this lane with caution. However, because of the lack of understanding of the Flashing and Steady Downward YELLOW ARROWS FHWA does not support this proposed change to the MUTCD.

The FHWA proposes the following:

1. To revise MUTCD section 4E–12 to allow darkening of lane control signals that are used on non-reversible freeway lanes;

2. To deny the MNDOT's request for change in the MUTCD relative to the use of steady and flashing YELLOW ARROW lane control signals;

3. To deny the TXDOT's request for a change to allow the use of steady YELLOW ARROW lane control signals; and

4. To permit the MNDOT and the TXDOT to conduct further experimentation in the use of steady and flashing yellow arrow lane control signals.

The NCUTCD concurs with the FHWA's position. The proposed change to allow darkening of lane control signals on non-reversible freeway lanes would impose no additional cost on highway agencies.

(28) Request IV–95(C)—Intersection Control Beacons

The Military Traffic Management Command, Department of the Army, suggested that two beacons and a stop sign should be required on each intersection approach controlled by a "RED" Intersection Control Beacon. An Intersection Control Beacon consists of one or more sections of a standard traffic signal head, having flashing CIRCULAR YELLOW or CIRCULAR RED indications in each face.

The FHWA believes that in the majority of situations, one signal indication would provide adequate visibility. However, for added visibility the first paragraph of section 4E–3 already allows the use of supplemental beacons.

To provide a back-up for the Intersection Control Beacon in the event of a bulb burn out, the NCUTCD proposed that a mandatory requirement for a STOP sign is necessary. The FHWA agrees, and proposes to amend the MUTCD to require a STOP sign as backup for the Intersection Control Beacon. This amendment would impose no significant increase in costs to highway agencies.

(29) Request IV–118(C)—Relocate Section 4C, Signal Warrants

The NCUTCD has requested that MUTCD section 4C, "Warrants for Traffic Signals," be relocated before section 4B, "Traffic Control Signals." This text relocation will allow a user of the MUTCD to determine if signals are justified before looking at the text that describes signals and their design.

The FHWA supports this proposed amendment. This amendment would impose no additional costs on highway agencies.

(30) Request IV–122(C)—Disabled Pedestrians

A citizen in Marysville, California, suggested that the MUTCD be revised to better address the needs of older and disabled pedestrians. It was suggested that pedestrian detectors (usually push button) be easily activated for pedestrians with physical disability. It was also suggested that a system, known as the "Turtle Crosswalk" and developed at the University of Alberta, be implemented at intersections where pedestrian signals are installed. This system provides a second push button that allows additional time for slower walking pedestrians to cross the roadway. The second button would only be activated by pedestrians needing additional time to cross the roadway.

The FHWA agrees with this amendment and proposes to add the following paragraph after the first paragraph in section 4B–29:

Pedestrian detectors (push buttons) should be easily activated. At signalized intersections with demonstrated need, a second detector with instructional signing may be installed to provide additional crossing time for slower walking pedestrians.

This amendment may impose some additional costs on highway agencies; therefore, an implementation period would be established.

(31) Request IV–124(C)—Educational Plaque for Pedestrian Signals

The City of San Buenaventura, California, developed a sign to improve pedestrian understanding of the WALK and DONT WALK indications at signalized intersections. The sign is proposed to be used at locations with either word or symbol pedestrian crossing messages. The signs would be installed where at least 10 pedestrians an hour use the crosswalk and at other high traffic-generating areas, such as, hospitals and schools.

The FHWA does not feel that the sign should be mandatory at all intersections where pedestrian indications are located. The location for these signs should be left to engineering judgment. The sign design and wording is shown below. Alternative designs or wording are welcome.

BILLING CODE 4910–22–P

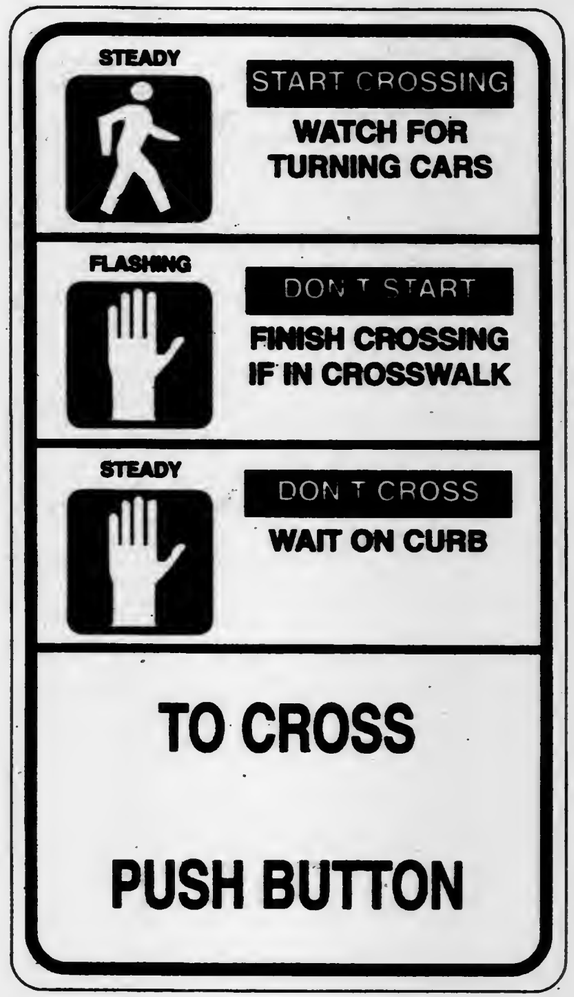


Figure 8

BILLING CODE 4910–22–C

The FHWA is soliciting public comments and suggestions concerning this proposal.

(32) Request VI–88(C)—Emergency Flashers

Southern Bell requested that section 6F–7c of Revision 3 to the MUTCD be amended to allow the use of emergency flashers on maintenance vehicles during normal daytime maintenance operations.

Southern Bell operates a large number of small service vehicles that provide telecommunication services to businesses and residential homes. Southern Bell feels that the operation of emergency flashers, in addition to rotating domes and strobe lights, are appropriate for these vehicles.

After review of this matter, the FHWA has found no research or operational experience that shows emergency flashers create an unsafe condition. Accordingly, the FHWA proposes to allow the use of emergency flashers on maintenance vehicles during normal daytime maintenance operations. This would give public agencies an alternative method for displaying flashing beacons.

(33) Request VII–2(C)—School Bus Stop Ahead Symbol Sign

The North Carolina Department of Transportation has submitted a symbol sign for use as an alternate to the "School Bus Stop Ahead" word messsage sign. The proposed warning sign depicts a bus with the extended signal arm with the Stop Sign as shown below.

BILLING CODE 4910–22–P



Figure 9

BILLING CODE 4910–22–C

Since the MUTCD does not contain a symbol for the school bus sign, the FHWA proposes to adopt the symbol sign shown above and include it as an option in MUTCD section 7B–11. This proposal would not impose any additional financial burden on the State and local highway agencies.

(34) Request VIII–26(C)—Maximum Flash Rate at Railroad Highway Grade Crossings

This request is from the NCUTCD. The MUTCD currently requires that flashing light units at railroad-highway grade crossings shall flash alternately. Each incandescent lamp shall flash between a minimum of 35 and a maximum of 55 flashes per minute. The AAR Signal Manual of Recommended Practices has recommended flash rates of 45 minimum and 65 maximum per minute. The Railroad-Highway Grade Crossing Handbook discusses flash rates between a minimum of 45 and a maximum of 65. These higher flash rates are supported by research. Some railroads are already reportedly using equipment that provides flash rates up to 60 per minute.

In order to insure that all three of the above documents are compatible, it is recommended that the MUTCD be revised to provide for a flash rate of 35 minimum and 65 maximum. This change will impose no additional requirements or additional costs. The FHWA supports this change.

(35) Request VIII–29(C)—Symbol for Railroad Advance Warning Sign

This request from a private citizen in Chelterham, Pennsylvania, is to replace the standard round Railroad Advance Warning Sign (W10–1) with diamond shaped sign(s) as shown below. The rational for this change is that the proposed warning signs are similar to other standard warning sign "crossing" messages as contained in the MUTCD.

The FHWA is not in favor of this proposal. The round Advance Warning Sign is intentionally unique from other warning signs and is intended to convey to motorists the special attention they need to apply when approaching a railroad-highway grade crossing.

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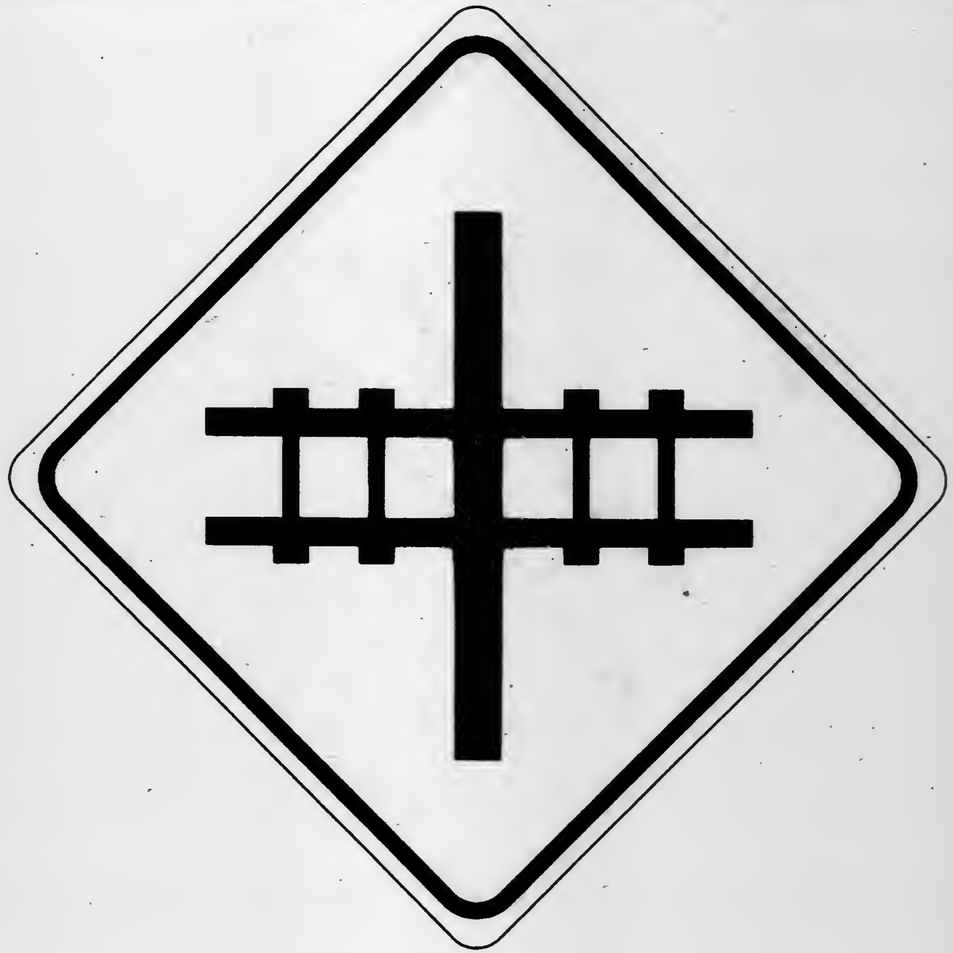


Figure 10

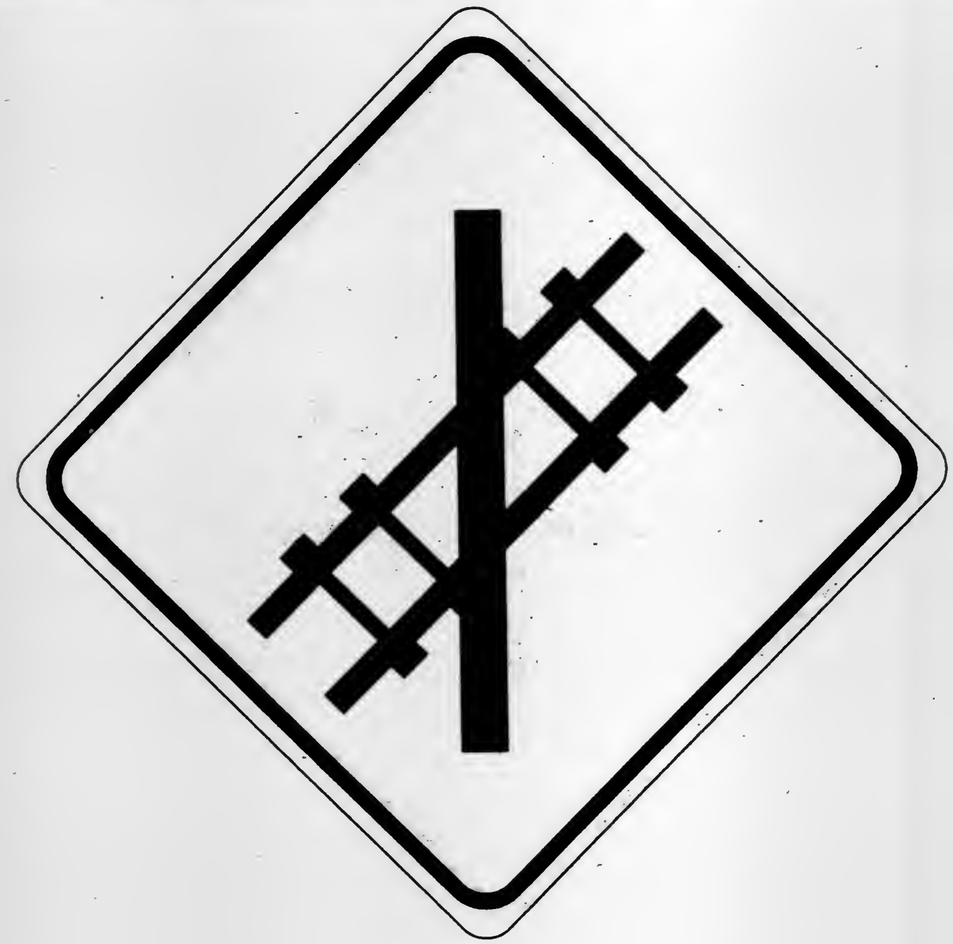


Figure 11

(36) Request VIII–30(C)—Symbol for Number of Tracks Sign

This request from a private citizen in Chelterham, Pennsylvania, is to replace the standard Number of Tracks Sign (R15–2) with a symbol sign showing tracks instead of the word "TRACKS." The symbol is shown below. The purpose stated for this request is to provide better understanding of traffic control signs for non-English speaking drivers.

The FHWA proposes to deny this request. The FHWA does not have any data to indicate that the standard Number of Tracks Sign is misunderstood by drivers.

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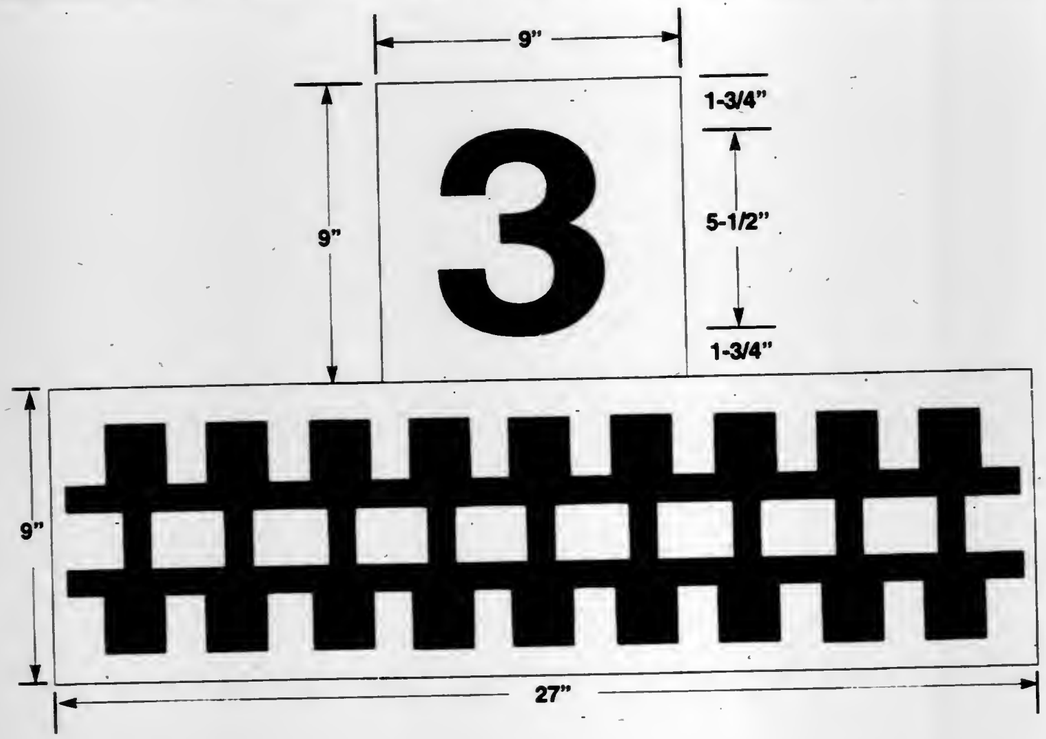


Figure 12

BILLING CODE 4910-22-C

(37) Request VIII–36(C)—Signs and Markings for No Lane Change Zones at Railroad Crossings

The FHWA received a request from a private citizen in Pompano Beach, Florida, to require markings at railroad-highway grade crossings to prohibit vehicle lane changing on the tracks when there are two or more lanes in one direction. It was also recommended that longitudinal markings be placed 75 feet before a crossing and 75 feet beyond a crossing. These markings would designate a "safety zone" where no lane changing would be permitted.

The FHWA does not support adopting this as a MUTCD requirement because it believes that the implementation of "no passing zones" should be determined at each specific crossing based on an engineering study of that crossing.

(38) Request VIII–37(C)—Fast Train Signs

This request, from the Federal Railroad Administration (FRA), is for the development of a warning sign and warrants for use on approaches to high speed rail crossings that may or may not be already equipped with automatic warning devices. This warning sign would be a yellow diamond or circle and contain a message such as: "LOOK FOR HIGH SPEED TRAINS;" or "BEWARE FAST TRAINS." A supplemental plaque indicating the number of tracks is also proposed. This sign would only be used at crossings where high speed trains (80 to 110 mph) operate. The FHWA invites comments on the shape, message, and criteria for application of this proposed sign.

(39) Request VIII–38(C)—Supplementary Plaques on STOP and YIELD Signs Used at Railroad-Highway Grade Crossings

This second request from the FRA is to permit the use of a supplementary plaque with STOP or YIELD Signs at railroad-highway grade crossings. The supplementary plaque would have a red background and white lettering with messages such as: 2–TRACKS; or WATCH FOR SECOND TRAIN; etc. The FHWA invites comments on the appropriateness of the proposed supplementary plaques. The FHWA is concerned that a lengthy message will result in a supplemental sign which may detract from the regulatory message of STOP or YIELD.

(40) Request VIII–39(C)—Warrants for Warning Devices at Railroad-Highway Grade Crossings With High Speed Train Operations

This third request from the FRA is to include in Part VIII of the MUTCD recommended application criteria (warrants) for the use of warning devices, i.e., signs, active advance warning signs, flashers, gates, four-quadrant gates, gates with median barriers, constant warning time circuitry and/or means (loops) for vehicle detection at crossings hosting high speed trains (80 to 110 mph). The FHWA supports this proposal, as it is important that applications be standardized and uniform. Highway users should encounter similar warning systems for similar railroad-highway grade crossing situations throughout the country. The FHWA invites comments on the warrants which should be applied for warning devices at railroad-highway grade crossings where high speed train operations are present.

(41) Request VIII–40(C)—Placement of the Crossing Identification Number Tag

This fourth request from the FRA is to include in Part VIII of the MUTCD the standards for the design and placement of the U.S. DOT/AAR National Rail-Highway Crossing Inventory number plate. This proposal would specify the sign size, material used, and the location of the plate at the crossing. The FHWA supports this proposal for the uniformity of location and durability of this tag.

BILLING CODE 4910-22-P

WSS

836 597 H

U S DOT – AAR CROSSING INVENTORY NUMBER

Figure 13

BILLING CODE 4910–22–C

(42) Request IX–6(I)—Marking Hazardous Bicycle Conditions

The FHWA received an inquiry from a consulting engineer in Salem, Oregon, concerning whether or not the discussion in MUTCD section 9C–6 and the accompanying figure 9–7 is intended for bicycle facilities only. The diagram and discussion apply to any roadway situation where a hazardous drain, grate, or any other roadway condition may be hazardous to the bicyclist. The FHWA intends to include this clarification in the next edition of the MUTCD.

Rulemaking Analyses and Notices; Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal. Most of the changes proposed in this notice provide additional guidance, clarification, and optional applications for traffic control devices. The FHWA expects that application uniformity will improve at little additional expense to public agencies or the motoring public. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposed action on small entities, including small governments. This notice of proposed rulemaking adds some alternative traffic control devices and only a very limited number of new or changed requirements. Most of the proposed changes are expanded guidance and clarification information. Based on this evaluation, the FHWA hereby certifies that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The MUTCD is incorporated by reference in 23 CFR part 655, subpart F, which requires that changes to the national standards issued by the FHWA shall be adopted by the States or other Federal agencies within two years of issuance. These proposed amendments are in keeping with the Secretary of Transportation's authority under 23 U.S.C. 109(d), 315, and 402(a) to promulgate uniform guidelines to promote the safe and efficient use of the highway. To the extent that these amendmends override any existing State requirements regarding traffic control devices, they do so in the interests of national uniformity.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR 655

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference, Signs, Traffic regulations.

(23 U.S.C. 109(d), 114(a), 315, and 402(a); 23 CFR 1.32, 655.601, 655.602, and 655.603; 49 CFR 1.48)

Issued on: June 1, 1995.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 95–14310 Filed 6–9–95; 8:45 am]

BILLING CODE 4910–22–P

federal register

Monday
June 12, 1995

Part VII

Department of the Interior

Bureau of Indian Affairs

Plan for the Distribution of the Confederated Tribes of the Colville Reservation Indian Judgment Funds Before the United States Court of Federal Claims; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Plan for the Distribution of the Confederated Tribes of the Colville Reservation Indian Judgment Funds in Docket No. 181–D Before the United States Court of Federal Claims

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

EFFECTIVE DATE: This plan was effective as of April 5, 1995.

FOR FURTHER INFORMATION CONTACT: Terry Lamb, Historian, Bureau of Indian Affairs, Division of Tribal Government Services, MS 2611–MIB, 1849 C Street, N.W., Washington, D.C. 20240.

SUPPLEMENTARY INFORMATION: The Act of November 2, 1994, (Pub. L. 103–436, 108 Stat. 4577), requires that a plan be prepared and submitted to Congress for the distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Federal Claims to the Confederated Tribes of the Colville Reservation. Funds were appropriated pursuant to section 1304 of title 31, United States Code, in satisfaction of the Settlement Agreement entered into between the United States and the Tribe on April 16, 1994. The plan for the use of the funds was submitted to Congress with a letter dated January 17, 1995, and was received (as recorded in the Congressional Record) by the Senate on January 26, 1995, and by the House of Representatives on January 19, 1995. The plan became effective April 5, 1995, as provided by the Act, since a joint resolution disapproving it was not enacted. The plan reads as follows:

Plan—For the Use of Judgment Funds Awarded to the Confederated Tribes of the Colville Reservation Docket 181–D Before the United States Court of Federal Claims

The funds appropriated in satisfaction of the award entered on behalf of the Confederated Tribes of the Colville Reservation in Docket 181–D before the United States Court of Federal Claims, (less attorney fees, litigation and related expenses, and including all interest and investment income accrued), shall be distributed to all enrolled tribal members, born on or prior to and living as of February 15, 1995.

Per Capita Aspect: The Confederated Tribes of the Colville Reservation shall make a per capita distribution of one hundred percent (100%) of the principal, interest, and investment income accrued, in a sum as equal as possible, to each member of the Confederated Tribes of the Colville Reservation, born on or prior to and living on February 15, 1995, whose names appear on the tribal roll, as approved by the Secretary. Any remaining amount, after the per capita payment to the eligible members, shall revert to the tribe for use in tribal administration programs.

General Provisions

The per capita shares of living, competent adults shall be paid directly to them. The per capita shares of deceased individual beneficiaries shall be determined and distributed in accordance with 43 CFR part 4, subpart D. Per capita shares of legal incompetents and minors shall be handled as provided in the Act of October 19, 1973, 87 Stat. 466, as amended January 12, 1983, 96 Stat. 2512. Minors' shares will be held in trust until the minor reaches 18 or his/her high school class graduates from high school, whichever is the latter.

Dated: May 23, 1995.

Ada E. Deer,

Assistant Secretary-Indian Affairs.

[FR Doc. 95–14359 Filed 6–9–95; 8:45 am]

BILLING CODE 4310–02–P

federal register

Monday
June 12, 1995

Part VIII

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming; Pueblo of San Ildefonso of New Mexico

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal/State Compact.

SUMMARY: Pursuant to 25 U.S.C. § 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal/State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Compact Between The Pueblo of San Ildefonso of New Mexico and the State of New Mexico, which was executed on April 17, 1995.

DATES: This action is effective June 12, 1995.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4070.

Dated: June 2, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–14355 Filed 6–9–95; 8:45 am]

BILLING CODE 4310–02–P

federal register

Monday
June 12, 1995

Part IX

Department of the Interior

Bureau of Indian Affairs

Mission Indian Judgment Funds; Plan for Use; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Plan for the Use of the Mission Indian Judgment Funds in Docket No. 80 A–2 Before the United States Court of Federal Claims

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

EFFECTIVE DATE: This plan was effective as of March 9, 1995.

FOR FURTHER INFORMATION CONTACT: Terry Lamb, Historian, Bureau of Indian Affairs, Division of Tribal Government Services, MS 2611–MIB, 1849 C Street, N.W., Washington, D.C. 20240.

SUPPLEMENTARY INFORMATION: The Act of October 19, 1973, (Pub.L. 93–134, 87 Stat. 466), as amended, requires that a plan be prepared and submitted to Congress for the use and distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian tribe. Funds were appropriated on October 26, 1993, in satisfaction of the award granted to the Mission Indians before the United States Court of Federal Claims in Docket 80 A–2. The plan for the use of the funds was submitted to Congress with a letter dated October 20, 1994, and was received (as recorded in the Congressional Record) by the Senate on December 1, 1994, and by the House of Representatives on December 1, 1994. The plan became effective March 9, 1995, as provided by the 1973 Act, as amended by Pub.L. 97–458, since a joint resolution disapproving it was not enacted. The plan reads as follows:

PLAN—for the Use and Distribution of the Cuyapaipe Band of Mission Indians, et al. in Docket 80–A–2 before the United States Court of Federal Claims

The funds appropriated October 26, 1993, in satisfaction of the award granted in Docket 80–A–2, granted to the Cuyapaipe Band of Mission Indians, et al. before the United States Court of Federal Claims, less attorney fees and litigation expenses, and including all interest and investment income accrued, shall be used and distributed as follows.

The Secretary of the Interior (Secretary) shall divide the funds between the six respective Mission Bands of Indians of California, according to the settlement and judgment in Docket 80–2–A. The division of the funds is as follows: Cuyapaipe, $257,995; Santa Rosa, $517,880; Morongo Band, $6,066,375; Pechanga Band, $439,420; La Posta $118,330; and San Luis Rey $100,000. Interest and investment income accrued shall be proportionately divided in accordance with the appropriate investments made prior to the effective date of the plan.

Cuyapaipe Band

The Cuyapaipe Band of Mission Indians share of the award in Docket 80–A–2 shall be distributed and used as follows.

Per Capita Aspect

The Secretary shall make per capita distributions in sums as equal as possible of thirty percent (30%) of the Band's share. The membership roll of the Cuyapaipe Band shall be brought current, pursuant to the Band's Constitution and By-Laws, to include all band members born on or prior to and living on the effective date of this Plan. The per capita distributions shall be made in accordance with the wishes of the General Council. Any remaining amount after the per capita payments have been distributed to the members shall revert to the tribe for use in the programming aspect of this plan.

Programming Aspect

Seventy percent (70%) of the funds allocated to the Cuyapaipe Band shall be invested by the Cuyapaipe General Council in a permanent investment program. Until such time as the Cuyapaipe Council presents an investment plan to the Secretary for approval, the Secretary shall continue to invest the funds of this aspect. Should the Council undertake to invest the funds in the future it shall present an investment plan to the Secretary for approval.

The investment plan will contain or be subject to the requirements of sound investments, responsible accounting and adequate controls to obtain maximum benefit for the Cuyapaipe Band of Mission Indians.

Upon the Secretary's approval of the investment plan, the invested funds will be transferred to the Cuyapaipe Band at a mutually agreed upon time. All responsibility of the United States for the judgment funds or the investment or use of the funds so transferred shall cease at the time the funds are transferred.

La Posta Band

The La Posta Band of Mission Indians share of the award in Docket 80–A–2 shall be distributed and used as follows.

Programming Aspect

Seventy percent (70%) of the funds allocated to the La Posta Band, including principal, interest and investment income accrued shall be invested by the Secretary, to be used by the tribal governing body on a budgetary basis on programs which may include, but are not limited to: tribal administrative costs, economic development, tribal educational and burial fund priorities.

Tribal Investment and Dividend Aspect

Thirty percent (30%) of the funds allocated to the La Posta Band shall be transferred to the Band to be invested by the Band in an investment program. Until such time as the La Posta Band presents an investment plan to the Secretary for approval, the Secretary shall continue to invest the funds of this aspect.

The investment plan will contain or be subject to the requirements of sound investments, responsible accounting and adequate controls to obtain maximum benefit for the La Posta Band.

Upon the Secretary's approval of the investment plan, the invested funds will be transferred to the La Posta Band at a mutually agreed upon time. All responsibility of the United States for the judgment funds or the investment or use of the funds so transferred shall cease at the time the funds are transferred.

The principal of the investment plan will remain continually invested until such time as the governing body of the La Posta Band authorizes the use of the principal for tribal programs. The interest on the principal shall be distributed by the Band in the form of dividend payments to all eligible tribal members born on or prior to and living on the dates such dividend payments are declared by the tribal governing body.

Morongo Band

Per Capita Aspect

The Secretary of the Interior (Secretary) shall make a per capita distribution of eighty percent (80%) of the Band's share of the principal, interest, and investment income accrued, in sums as equal as possible, pursuant to the custom and tradition practices of the Band. The membership roll of the Morongo Band shall be brought current, pursuant to Amended Ordinance No. 3 of the Morongo Band. Such per capita payments shall include all eligible Band members born on or prior to and living on the effective date of this Plan.

Any remaining amount after the per capita payments to the members shall revert to the band for use in the programming aspect of this plan.

Programming

Twenty percent (20%) of the Band's share shall be invested by the Secretary and utilized by the governing body on a budgetary basis for purposes which may include, but not be limited to, water system expansion, water system repairs, water system services and aquifer recharge.

Pechanga Band

The Pechanga Band of Mission Indians share of the award in Docket 80–A–2 shall be used in the following manner.

The Band's share will be invested by the Secretary for tribal program and investment purposes, until such time as the General Council determines the use of the funds, through the normal administrative process. The Band's share will be used for activities which may include, but not be limited to: land acquisition, fire department, cemetery burial fund, recreation and youth programs, Pechanga Creek embankment improvements, a convalescent home for the elderly, tribal administration and operations.

If at any future date the Pechanga Band presents an investment plan to the Secretary for approval, the Secretary shall determine that the investment plan contains and is subject to the requirements of sound investments, responsible accounting and adequate controls, to obtain maximum benefit for the Pechanga Band. Upon the Secretary's approval of the investment plan, the invested funds will be transferred to the Pechanga Band, at a mutually agreed upon time. All responsibility of the United States for the judgment funds or the investment or use of the funds so transferred shall cease at the time the funds are transferred.

No part of these funds shall be used for a per capita payment distribution.

Santa Rosa

The Santa Rosa Band of Mission Indians share of the award in Docket 80–A–2 shall be used in the following manner.

Investment Aspect

Twenty percent (20%) of the Band's share shall be invested by the Secretary in a permanent investment program. The funds invested under this aspect shall be subject to review periodically by the governing body of the Santa Rosa Band to determine whether continued investment is in the best interest of the tribe. The governing body shall submit a proposal to the Secretary for use of the investment, interest and investment income accrued.

Programming

Eighty percent (80%) of the Band's share of the funds, shall be invested by the Secretary, to be used by the tribal governing body on a budgetary basis for programming purposes, which may include, but are not limited to: land acquisition, sewage facilities, fire department needs, an alcoholism treatment fund, a youth day care center, the tribal cemetery, and tribal recreation facilities.

San Luis Rey

The share of the award in Docket 80–A–2 made to the San Luis Rey Band of Mission Indians shall be invested by the Secretary, until such time as a specific plan for the use of the funds is approved by Congress.

General Provisions

The per capita shares of living competent adults shall be paid directly to them. The per capita shares of deceased individual beneficiaries shall be determined and distributed in accordance with 43 CFR, part 4, subpart D. Per capita shares of legal incompetents and minors shall be handled pursuant to 25 CFR 115.4 and 115.5, as appropriate, as provided in the Act of October 19, 1973, 87 Stat. 466, as amended January 12, 1983, 96 Stat. 2512.

None of the funds made available under this plan for programming or per capita distribution shall be subject to Federal or State income taxes, nor shall such funds nor their availability be considered as income or resources, nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act or, except for any per capita shares in excess of $2,000, any Federal or federally assisted programs.

Dated: May 23, 1995.

Ada E. Deer,

Assistant Secretary - Indian Affairs.

[FR Doc. 95–14360 Filed 6–9–95; 8:45 am]

BILLING CODE 4310–02–P

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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Presidential Documents

Title 3—

The President

Presidential Determination No. 95–23 of June 2, 1995

Determination Under Subsection 402(d)(1) of the Trade Act of 1974, as Amended—Continuation of Waiver Authority

Memorandum for the Secretary of State

Pursuant to the authority vested in me under the Trade Act of 1974, as amended, Public Law 93–618, 88 Stat. 1978 (hereinafter "the Act"), I determine, pursuant to subsection 402(d)(1) of the Act, 19 U.S.C. 2432(d)(1), that the further extension of the waiver authority granted by subsection 402(c) of the Act will substantially promote the objectives of section 402 of the Act. I further determine that the continuation of the waiver applicable to the People's Republic of China will substantially promote the objectives of section 402 of the Act.

You are authorized and directed to publish this determination in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, June 2, 1995.

[FR Doc. 95–14589
Filed 6–9–95; 3:26 pm]
Billing code 4710–10–M

Presidential Documents

Presidential Determination No. 95–24 of June 2, 1995

Determination Under Subsection 402(d)(1) of the Trade Act of 1974, as Amended—Continuation of Waiver Authority

Memorandum for the Secretary of State

Pursuant to subsection 402(d)(1) of the Trade Act of 1974, as amended (the "Act"), I determine that the further extension of the waiver authority granted by subsection 402(c) of the Act will substantially promote the objectives of section 402 of the Act. I further determine that the continuation of the waivers applicable to Albania, Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Mongolia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan will substantially promote the objectives of section 402 of the Act.

You are authorized and directed to publish this determination in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, June 2, 1995.

[FR Doc. 95–14590
Filed 6–9–95; 3:27 pm]
Billing code 4710–10–M

Presidential Documents

Presidential Determination No. 95–25 of June 5, 1995

Assistance Program for New Independent States of the Former Soviet Union

Memorandum for the Secretary of State

Pursuant to section 577 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1994 (Titles I–V of Public Law 103–87), I hereby certify that Russia and the Commonwealth of Independent States continue to make substantial progress toward the withdrawal of their armed forces from Latvia and Estonia.

You are authorized and directed to notify the Congress of this certification and to publish it in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, June 5, 1995.

[FR Doc. 95–14591
Filed 6–9–95; 3:28 pm]
Billing code 4710–10–M

Rules and Regulations

Federal Register
Vol. 60, No. 113
Tuesday, June 13, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL RESERVE SYSTEM

12 CFR Part 215

[Regulation O; Docket No. R–0875]

Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks; Loans to Holding Companies and Affiliates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is adopting an amendment to Regulation O to conform the definition of unimpaired capital and unimpaired surplus used in calculating a bank's Regulation O lending limit to the definition of capital and surplus recently adopted by the Office of the Comptroller of the Currency in calculating the limit on loans by a national bank to a single borrower. The final rule will reduce the regulatory burden for member banks monitoring lending to their insiders.

EFFECTIVE DATE: Effective July 1, 1995.

FOR FURTHER INFORMATION CONTACT: Gregory Baer, Managing Senior Counsel (202/452–3236), or Gordon Miller, Attorney (202/452–2534), Legal Division; or William G. Spaniel, Assistant to the Director (202/452–3469), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

Background

The Board's Regulation O (12 CFR Part 215) implements the insider lending prohibitions of section 22(h) of the Federal Reserve Act. Section 215.2(i) of the regulation (12 CFR 215.2(i)) defines the limit for loans to any insider of a member bank and insider of the bank's affiliates as an amount equal to the limit on loans to a single borrower established by the National Bank Act (12 U.S.C. 84). That amount is 15 percent of the bank's unimpaired capital and unimpaired surplus for loans that are not fully secured, and an additional 10 percent of the bank's unimpaired capital and unimpaired surplus for loans that are fully secured by certain readily marketable collateral.[1]

Although Regulation O adopts the percentage limits used in the National Bank Act, Regulation O provides its own definition of what constitutes unimpaired capital and unimpaired surplus. Unimpaired capital and unimpaired surplus have been defined as the sum of (i) "total equity capital" as reported on the bank's most recent consolidated report of condition, (ii) any subordinated notes and debentures that comply with requirements of the bank's primary regulator for inclusion in the bank's capital structure and are reported on the bank's most recent consolidated report of condition, and (iii) any valuation reserves created by charges to the bank's income and reported on the bank's most recent consolidated report of condition. 12 CFR 215.2(i).

The Office of the Comptroller of the Currency (OCC) has recently revised its regulatory definition of unimpaired capital and unimpaired surplus for purposes of implementing the single borrower limit of the National Bank Act. *See* 60 FR 8,533, February 15, 1995. Under that revised definition, a national bank's "capital and surplus" are equal to Tier 1 and Tier 2 capital included in the calculation of the bank's risk-based capital together with the amount of the bank's allowance for loan and lease losses not included in this calculation. 12 CFR 32.2(b).

On April 20, 1995 (60 FR 19,689), the Board proposed to amend Regulation O to conform its definition of unimpaired capital and unimpaired surplus to the OCC's revised definition of capital and surplus. As stated in the notice of proposed rulemaking, the Board believes that in substantially all cases calculating the insider lending limits of Regulation O using the revised definition would not significantly increase or decrease a bank's insider lending limit. The elimination of the separate definition of unimpaired capital and unimpaired surplus in Regulation O therefore is expected to create minimal disruption in lending by member banks to their insiders and to insiders of their affiliates, while eliminating confusion and duplication of effort caused by requiring banks to calculate capital two different ways for two regulations.

The Board received 24 written comments, including comments from 11 banks, 3 bank holding companies, 6 Federal Reserve Banks, and 4 trade associations. Twenty-three commenters supported the Board's amendment. All commenters in support felt that the amendment would make recordkeeping simpler and more consistent, and several also noted that the amendment would not significantly change their lending level. Two commenters noted that the amendment would both greatly reduce its recordkeeping burden and help its compliance.

One commenter opposed the amendment and expressed concern that a bank's Tier 1 and Tier 2 capital did not include certain intangible assets, and that eliminating these assets could harm some community banks by effectively reducing their lending limits. One bank holding company supporting the amendment also noted that some of its affiliated banks would have their lending limits reduced because of the goodwill on their books. The Board believes, however, that few small community banks have a sufficient amount of intangible assets, such as goodwill or purchased mortgage servicing rights, on their books to cause a significant reduction of their insider lending limits from their current levels. Accordingly, after reviewing the public comments, the Board is adopting the amendment as proposed.

Determination of Effective Date

Because the final rule adjusts a requirement on insured depository institutions, the final rule will become effective July 1, 1995, the first day of the calendar quarter after the date of the final rule's publication. *See* 12 U.S.C. 4802(b). For the foregoing reason, the final rule will become effective without regard for the 30-day period provided for in 5 U.S.C. 553(d).

[1] The lending limit also includes any higher amounts that are permitted by the exceptions included in 12 U.S.C. 84. Where state law establishes a lower lending limit for a state member bank, that lower lending limit is the lending limit for the state member bank.

Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to publish a final regulatory flexibility analysis when the agency publishes a final rule. Two of the requirements of an initial regulatory flexibility analysis (5 U.S.C. 604(b))—a succinct statement of the need for, and the objectives of, the rule, and a summary of the issues raised by the public comments received, the agency assessment thereof, and any changes made in response thereto—are contained in the supplementary information above. No significant alternatives to the final rule were considered by the agency.

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board certifies that the amendment to Regulation O will not have a significant economic impact on a substantial number of small entities, and that any impact on those entities should be positive. The amendment will reduce the regulatory burden for most banks by simplifying the calculation of lending limits without significantly changing the amount of the limit, and will have no effect in other cases.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the Board reviewed the information collection requirements of its amendment to Regulation O under authority delegated to the Board by the Office of Management and Budget (5 CFR Part 1320, Appendix A) after considering comments received during the public comment period.

The recordkeeping requirements are authorized by 12 U.S.C. 375a(6) and (10), 375b(7), and 1972(2)(G). This information is required to prevent preferential lending by a member bank to its executive officers, directors, principal shareholders, and their related interests. The amendment is not estimated to change the annual burden of recordkeeping associated with Regulation O for state member banks, which is estimated to be 6,255 hours.

List of Subjects in 12 CFR Part 215

Credit, Federal Reserve System, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board is amending 12 CFR part 215 as follows:

PART 215—LOANS TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS OF MEMBER BANKS (REGULATION O)

1. The authority citation for part 215 is revised to read as follows:

Authority: 12 U.S.C. 248(i), 375a(10), 375b(9) and (10), 1817(k)(3) and 1972(2)(G)(ii); Pub. L. 102–242, 105 Stat. 2236.

2. Section 215.2 is amended as follows:

a. The last sentence of paragraph (i) introductory text is revised;

b. Paragraphs (i)(1) and (i)(2) are revised; and

c. Paragraph (i)(3) is removed.

The revisions read as follows:

§ 215.2 Definitions.

* * * * *

(i) * * * A member bank's unimpaired capital and unimpaired surplus equals:

(1) The bank's Tier 1 and Tier 2 capital included in the bank's risk-based capital under the capital guidelines of the appropriate Federal banking agency, based on the bank's most recent consolidated report of condition filed under 12 USC 1817(a)(3); and

(2) The balance of the bank's allowance for loan and lease losses not included in the bank's Tier 2 capital for purposes of the calculation of risk-based capital by the appropriate Federal banking agency, based on the bank's most recent consolidated report of condition filed under 12 U.S.C. 1817(a)(3).

* * * * *

By order of the Board of Governors of the Federal Reserve System, June 7, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–14413 Filed 6–12–95; 8:45 am]

BILLING CODE 6210–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 130

Small Business Development Centers

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) is promulgating regulations governing the Small Business Development Center (SBDC) Program. Since enactment of Pub. L. 96–302 establishing the SBDC Program in 1980, the Program has been operating under direct statutory authority, without regulations. This rule will establish a framework for more efficient operation.

EFFECTIVE DATE: This rule is effective on June 13, 1995.

FOR FURTHER INFORMATION CONTACT: Hardy Patten, Program Manager, (202) 205–6766.

SUPPLEMENTARY INFORMATION: On November 28, 1994, SBA proposed a rule (59 FR 60723) to establish a regulatory framework for the SBDC Program, which is administered pursuant to Section 21 of the Small Business Act, 15 U.S.C. § 648 (the "Act"). In this Program, SBA and the SBDC networks provide managerial advice and technical assistance to enhance the growth, innovation, and productivity of small businesses. The issuance of regulations will clarify Program procedures.

During a 30-day public comment period on the proposed rule, SBA received four comment letters raising 24 individual concerns. After analyzing these comments, SBA has decided to make appropriate changes to the rule.

In addition, in accordance with its policy to streamline existing and proposed regulations, SBA scrutinized its proposed rule for duplication and excess verbiage, eliminating more than 25% of the body of the rule, without altering its substance. The following summary of issues raised does not discuss streamlining revisions, unless a comment pertained to a portion of the proposed rule which has been deleted or otherwise revised.

Summary of Issues Raised by Public Comment

Section 130.100(b) of the proposed rule, providing an overview of the Program, has been merged into section 130.100(a). The portion of the section which referred to SBA consultation with SBDC Directors and recognized organizations representing SBDCs in the formulation of the annual Program Announcement and the development of Program guidelines was duplicated in section 130.350(a) and was deleted from section 130.100.

Several comments were received regarding the consultation provision. One comment correctly pointed out that section 21(a)(3)(A) of the Act only requires SBA to recognize and consult with the organization of which more than a majority of SBDCs are members. SBA has revised the proposed rule to refer in section 130.350(a) to "the Recognized Organization", instead of recognized organizations, and to add a definition of Recognized Organization at new section 130.110(y).

Two other comments suggested that the regulation describe the timing and means of obtaining the consultation.

SBA rejected these suggestion, finding no reason why consultation with SBDC Directors or the Recognized Organization should be limited or restricted in any manner. Another comment proposed that Program guidelines not be developed outside of the regulations. SBA disagrees and has deleted the reference to Program guidelines from this final rule. SBA will continue to provide guidance and interpretive materials, consistent with these regulations, for use by SBDCs and SBA field offices.

Section 130.110 defines terms used in the regulation. Section 130.100(e) states that Cash Match must be non-Federal funds equal to no less than fifty percent of the Federal funds. Section 130.450(e)(4) (previously misnumbered as section 130.450(6)(iv)) provides that Matching Funds may not be from any other Federal source. With respect to both sections, a comment suggested that funds from other Federal sources be allowed as Cash Match if the source of the fund specifically authorized such use. SBA disagrees, since section 21(a)(4) of the Act clearly requires matching funds to be provided from sources other than the Federal government.

One comment warned that the proposed definitions of "Conflict" and "Dispute" created potential for misunderstanding. SBA has eliminated the definition of "Conflict", distinguishing in section 130.630 between financial and non-financial Disputes by the different procedures provided for resolution.

The same commenter viewed the definition of "Key SBDC Employee" in section 130.110(q) as vague and unnecessary. Agreeing with the comment, SBA has deleted the section.

SBA has not adopted another comment requesting that the definition of the Grants and Cooperative Agreement Appeals Committee in section 130.110(l) be revised so that the President of the Recognized Organization (or a designee) serve as an ex officio member of the Committee. The Committee can still obtain the benefit of the Recognized Organization's views and comments whenever required or appropriate.

Comments alerted SBA to several sections where language in the proposed rule referred only to States instead of "States, Territories or the District of Columbia". SBA has added a definition of "Area of Service" as section 130.110(c) and revised sections 130.310(a), 130.310(b) and 130.410(b) as required.

One comment suggested that section 130.360(a) require representation of States or territories on State advisory boards. SBA notes that the statutory provision establishing a National SBDC Advisory Board designated the number and general composition of the board, while the provision establishing the State and regional boards was silent as to these matters. Accordingly, SBA has concluded that Congress intended that SBDCs have maximum flexibility in composing State boards.

Section 130.340(b) of the proposed rule prohibited SBDCs from making loans, servicing loans, making credit decisions regarding the award of loans, or making credit recommendations (unless authorized to do so by the Administrator). One commenter objected that SBDCs have not been making credit recommendations, since they are beyond the responsibility of an SBDC. SBA agreed and deleted the reference to credit recommendations.

Under section 130.410, an application for initial funding must include a letter from the Governor, or his or her designee, of the State or Territory in which the SBDC will operate. A comment suggested that such a letter be required to accompany each renewal application as well. Since such a requirement would impose a condition upon renewal beyond what is required by the statute, SBA rejected the suggested change.

Section 130.430, describing factors to be considered in reviewing applications, generated no comments. To implement section 404 of P.L. 103–403, amending section 21(k) of the Act, SBA has added two factors: the results of any examination conducted under § 130.810(b) and the pertinent results of any certification process conducted pursuant to any certification program developed by the Recognized Organization.

Section 130.450 delineates the requirements concerning Matching Funds. A comment objected that the phrase "any Cooperative Agreement" implied that there could be more than one between an SBDC and the SBA. The sentence was deleted in its entirety as part of the streamlining effort.

Section 130.460 lists the information to be included in the budget justification portion of a proposal. Under section 130.460(g) (formerly section 130.460(b)(2)(iii)(D)), unplanned out-of-State travel which exceeds the approved budgeted amount must be approved by the Project Officer. The proposed rule required a written budget revision and a written narrative explaining the need for such travel. A commenter objected to the paperwork, since approval still rests in the Project Officer's discretion. SBA agrees and has deleted the paperwork requirement.

Section 130.470 describes the activities and services for which an SBDC may charge a fee. The proposed rule allowed SBDCs to charge a fee to cover costs in connection with training activities or specialized services. A comment correctly pointed out that specialized services were not defined in the proposed rule and that SBDCs often pass through to clients the costs of services from third parties. SBA has revised the section to include costs of third parties passed through to clients and has added a definition of specialized services at § 130.110(cc).

Proposed sections 130.630 and 130.640, respectively, set forth Dispute and Conflict resolution procedures (now consolidated as section 130.630). One comment objected that the proposed procedures did not offer neutral decision-making and separation of functions, suggesting that the Dispute resolution procedures include a hearing conducted pursuant to Section 554 of the Administrative Procedure Act. Since neither financial Disputes nor programmatic (non-financial) Disputes involve suspension, termination or failure to renew or extend, SBA considered the procedures to be consistent with the statutory provisions, reflecting reasonable exercise of administrative discretion without adding undue administrative complexity. Therefore, no changes were made to either section.

Section 130.700 generally explains the grounds and procedures for suspending, terminating or failing to renew a recipient organization. SBA relocated proposed section 130.650 (dealing with procedures for not renewing an SBDC) as section 130.700(c) in the final rule. SBA also has deleted the reference in section 130.700(a) to former § 130.630 and § 130.640 (regarding Dispute and Conflict resolutions), finding it to be misleading because Disputes do not involve the suspension, termination or failure to renew a Cooperative Agreement.

Section 130.700(b) sets forth the causes which might lead to suspension, termination or failure to renew, including the failure to suspend or terminate an SBDC Director, subcenter Director or key SBDC employee promptly upon learning that such individual has a criminal conviction for a felony, a criminal conviction for a misdemeanor involving a variety of listed offenses, or a civil judgment which reflects adversely upon his or her business integrity. A comment objected that the provisions were so broad that

nearly any conviction or judgment might trigger the cause. SBA agrees and has revised the guidelines.

SBA made one revision in section 130.700(c)(7) (proposed section 130.650(g)), changing from 60 days to 120 days the time permitted an SBDC to conclude operations and submit close-out documents when its application for renewal has been denied.

Section 130.810 sets forth mechanisms that SBA may use to oversee and monitor the SBDC program, including site visits, on-site examinations and audits. In order to comply with section 404 of P.L. 103–403, SBA has made the following changes to the section: (a) § 130.810(b) in the proposed rule, providing for required on-site reviews, has been deleted in its entirety and has been replaced by a new section 130.810(b), requiring SBA examiners to perform biannual programmatic and financial examinations of each SBDC; (b) § 130.810(d)(1) in the proposed rule, providing for limited scope reviews, has been deleted; and (c) a new section 130.810(c) has been added permitting SBA to provide financial support to the Recognized Organization to develop and implement an SBDC certification program.

Section 130.830 describes audit procedures. In response to a comment, SBA has revised the language to clarify that pre-award audits will be conducted by or coordinated with the SBA Office of Inspector General according to *Government Auditing Standards*.

Compliance With Executive Orders 12612, 12778 and 12866; Regulatory Flexibility Act, 5 U.S.C. 601 et seq.; and the Paperwork Reduction Act, 44 U.S.C. ch. 35.

SBA certifies that this rule is not a significant rule within the meaning of Executive Order 12866 because it does not have an annual economic effect in excess of $100 million, result in a major increase in costs for individuals or governments, or have a significant adverse effect on competition. The rule conforms to existing parameters under which the Program is functioning.

For purposes of Executive Order 12612, SBA certifies that this rule has federalism implications. As such, SBA offers the following Federalism Assessment.

This rule is designed to allow the States participating in the Program maximum policy-making and administrative discretion within the requirements of the law and sound Program management. In formulating and implementing the policies set forth in this rule, SBA has encouraged State participants to develop their own methods of achieving program objectives and has limited the number of uniform national requirements.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted in accordance with the standards set forth in section 2 of that Order.

For purposes of the Regulatory Flexibility Act, SBA certifies that this rule does not have a significant economic effect on a substantial number of small entities because it does not impose material changes on the existing program.

For purposes of the Paperwork Reduction Act, SBA certifies that this rule imposes no new reporting or recordkeeping requirements. The rule does, however, codify, at sections 130.800 through 130.830, paperwork requirements previously cleared by the Office of Management and Budget.

List of Subjects in 13 CFR Part 130

Business development, small businesses, Small Business Development Center (SBDC), technical assistance.

Title 13 of Code of Federal Regulations, Chapter 1 shall be amended by adding a new Part 130 as follows:

PART 130—SMALL BUSINESS DEVELOPMENT CENTERS

Sec.

130.100 Introduction.
130.110 Definitions.
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130.830 Audits and investigations.

Authority: Sections 5(b)(6) and 21 of the Small Business Act, as amended, 15 U.S.C. 634(b)(6) and 648; Pub. L. 101–515, 101 Stat. 2101; Pub. L. 101–574, 104 Stat. 2814; Pub. L. 102–366, 106 Stat. 986; and Pub. L. 102–395, 106 Stat. 1828.

§ 130.100 Introduction.

(a) *Objective.* The SBDC Program creates a broad-based system of assistance for the small business community by linking the resources of Federal, State and local governments with the resources of the educational community and the private sector. Although SBA is responsible for the general management and oversight of the SBDC Program, a partnership exists between SBA and the recipient organization for the delivery of assistance to the small business community.

(b) *Incorporation of amended references.* All references in these regulations to OMB Circulars, other SBA regulations, Standard Operating Procedures, and other sources of SBA policy guidance incorporate all ensuing changes or amendments to such sources.

§ 130.110 Definitions.

Application. The written submission by a new applicant organization or an existing recipient organization explaining its projected SBDC activities for the upcoming budget period and requesting SBA funding for use in its operations.

Applicant organization. An entity, described in § 130.200(a), which applies to establish and operate an SBDC network.

Area of Service. The State or territory, or portion of a State or territory (when there is more than one SBDC in a State or territory), or the District of Columbia, in which an applicant organization proposes to provide services or in which a recipient organization provides services.

Budget period. The 12-month period in which expenditure obligations are incurred by an SBDC network, coinciding with either the calendar year or the Federal fiscal year.

Cash Match. Non-Federal funds allocated specifically to the operation of the SBDC network equalling no less than fifty percent of the Federal funds. Cash Match includes direct costs committed by the applicant or recipient organization and sponsoring SBDC organizations, to the extent that such costs are committed as part of the verified, specific, line item direct costs prior to funding. Cash Match does not include indirect costs, overhead costs or in-kind contributions.

Cognizant Agency. The Federal agency, other than SBA, from which a recipient organization or sponsoring SBDC organization receives its largest grant or greatest amount of Federal funding, and from which it obtains an indirect cost rate for budgetary and funding purposes, applicable throughout the Federal government.

Cooperative Agreement. The written contract between SBA and a recipient organization, describing the conditions under which SBA awards Federal funds and recipient organizations provide services to the small business community.

Cosponsorship. A "Cosponsorship" as defined in and governed by § 8(b)(1)(A) of the Act and SBA's Standard Operating Procedures.

Counseling. Individual advice, guidance or instruction given to a small business person or entity.

Direct costs: "Direct costs" as defined in Office of Management and Budget (OMB) Circulars A–21, A–87 and A–122. Recipient organizations must allocate at least 80 percent of the Federal funds provided through the Cooperative Agreement to the direct costs of program delivery.

Dispute. Dispute means a program or financial disagreement which the recipient organization requests be handled with SBA in a formal manner.

Grants and Cooperative Agreement Appeals Committee. The SBA committee, appointed by the SBA Administrator, which resolves appeals arising from financial Disputes between a recipient organization and SBA.

Grants Management Specialist. An SBA employee designated by the AA/SBDCs who is responsible for the financial review, award, and administration of one or more SBDC Cooperative Agreements.

Indirect costs. "Indirect costs" as defined in Office of Management and Budget (OMB) Circular A–21, A–87 or A–122.

In-kind contributions. Property, facilities, services or other non-monetary contributions from non-federal sources. *See* OMB Circular A–87, A–102, or A–110, as appropriate.

Lead Center. The entity which administers and operates the SBDC network.

Lobbying. Lobbying as described in OMB Circulars A–21, A–87 and A–122, and Pub. L. 101–121, section 319.

Overmatched Amount. Non-Federal Contributions to SBDC project costs, including cash, in-kind contributions and indirect costs, in excess of the statutorily required amount.

Program Announcement. SBA's annual publication of requirements which an applicant or recipient organization must address in its initial or renewal application.

Program income. Income earned or received by the SBDC network from any SBDC supported activity as defined in Attachment D of OMB Circular A–110 and Attachment E of OMB Circular A–102.

Program manager. An SBA employee responsible for overseeing the operations of one or more SBDCs.

Project officer. An SBA employee who negotiates the annual Cooperative Agreement and monitors the ongoing operations of an SBDC.

Project period. The period of time, usually in twelve (12) month increments, during which the SBDC network operates, beginning on the day of award and continuing over a number of budget periods.

Recipient organization. The name given to an applicant organization after funding is approved and the applicant organization enters into a Cooperative Agreement. The recipient organization receives the Federal funds and is responsible for establishing the Lead Center.

Recognized Organization. The organization whose members include a majority of SBDCs and which is recognized as an SBDC representative by SBA in accordance with § 21(a)(3)(A) of the Small Business Act, 15 U.S.C. 648(a)(3)(A).

SBDC Director. The full-time senior manager designated by each recipient organization and approved by SBA.

SBDC network. The Lead Center and SBDC service providers.

SBDC service providers. SBDC network participants, including the Lead Center, subcenters (at times referred to as regional centers), satellite locations, and any other entity authorized by the recipient organization to perform SBDC services.

Specialized Services. SBDC services other than Counseling and Training.

Sponsoring SBDC organizations. Organizations or entities which establish one or more SBDC service providers as part of the SBDC network under a contract or agreement with the recipient organization.

Training. The provision of advice, guidance and instruction to groups of prospective and existing small business persons and entities, whether by in-person group sessions or by such communication modes as teleconferences, videos, publications and electronic media.

§ 130.200 Eligible entities.

(a) *Recipient Organization.* The following entities are eligible to operate an SBDC network:

(1) A public or private institution of higher education;

(2) A land-grant college or university;

(3) A college or school of business, engineering, commerce or agriculture;

(4) A community or junior college;

(5) An entity formed by two or more of the above entities; or

(6) Any entity which was operating as a recipient organization as of December 31, 1990.

(b) *SBDC Service Providers.* SBDC service providers are not required to meet the eligibility requirements of a recipient organization.

§ 130.300 Small Business Development Centers (SBDCs). [Reserved]

§ 130.310 Area of service.

The AA/SBDC shall designate in writing the Area of Service of each recipient organization, consistent with the State plan. More than one recipient organization may be located in a State or Territory if the AA/SBDC determines it is necessary or beneficial to implement the Program effectively and to provide services to all interested small businesses.

§ 130.320 Location of lead centers and SBDC service providers.

(a) The recipient organization must locate its Lead Center and SBDC service providers so that services are readily accessible to small businesses in the Area of Service.

(b) The locations of the Lead Center and the SBDC service providers will be reviewed by SBA as part of the application review process for each budget period.

§ 130.330 Operating requirements.

(a) The Lead Center must be an independent entity within the recipient organization, having its own staff, including a full-time SBDC Director.

(b) A Lead Center must provide administrative services and coordination for the SBDC network, including program development, program management, financial management, reports management, promotion and public relations, program assessment and evaluation, and internal quality control.

(c) The Lead Center shall be open to the public throughout the year during the normal business hours of the recipient organization. Anticipated closures shall be included in the annual renewal application. Emergency closures shall be reported to the SBA Project Officer as soon as is feasible. Other SBDC service providers shall be open during the normal business hours of their sponsoring SBDC organizations.

(d) The Lead Center and other SBDC service providers must have a conflict of interest policy applicable to their SBDC

consultants, employees, instructors and volunteers.

(e) The SBDC network shall comply with 13 CFR parts 112, 113 and 117, which require that no person shall be excluded on the grounds of age, color, handicap, marital status, national origin, race, religion or sex from participation in, be denied that benefits of, or otherwise be subjected to discrimination under, any program or activity for which the recipient organization received Federal financial assistance from SBA.

§ 130.340 SBDC services and restrictions on service.

(a) *Services.* The SBDC network must provide prospective and existing small business persons and entities with Counseling, Training and Specialized Services, concerning the formation, financing, management and operation of small business enterprises, reflecting local needs. The recipient organization shall primarily utilize institutions of higher education to provide services to the small business community. To the extent possible, SBDCs shall use other Federal, State, and local government programs that assist small business. Services periodically should be assessed and improved to keep pace with changing small business needs.

(b) *Access to Capital.* (1) SBDCs are encouraged to provide counseling services that increase a small business concern's access to capital, such as business plan development, financial statement preparation and analysis, and cash flow preparation and analysis.

(2) SBDCs should help prepare their clients to represent themselves to lending institutions. While SBDCs may attend meetings with lenders to assist clients in preparing financial packages, the SBDCs may not take a direct role in representing clients in loan negotiations.

(3) SBDCs should inform their clients that financial packaging assistance does not guarantee receipt of a loan.

(4) SBDCs may not make loans, service loans or make credit decisions regarding the award of loans.

(5) With respect to SBA guaranty programs, SBDCs may assist clients to formulate a business plan, prepare financial statements, complete forms which are part of a loan application, and accompany an applicant appearing before SBA. Unless authorized by the SBA Administrator with respect to a specific program, an SBDC may not advocate, recommend approval or otherwise attempt in any manner to influence SBA to provide financial assistance to any of its clients. An SBDC cannot collect fees for helping a client to prepare an application for SBA financial assistance.

(c) *Special emphasis initiatives.* From time to time, SBA may identify portions of the general population to be targeted for assistance by SBDCs. Support of SBA special emphasis initiatives will be negotiated each year as part of the application process and included in the Cooperative Agreement when appropriate.

§ 130.350 Specific program responsibilities.

(a) *Policy development.* SBA will establish Program policies and procedures to improve the delivery of services by SBDCs to the small business community, and to enhance compliance with applicable laws, regulations, OMB Circulars and Executive Orders. In doing so, SBA should consult, to the extent practicable, with the Recognized Organization.

(b) *Responsibilities of SBDC Directors.* The SBDC Director shall direct and monitor program activities and financial affairs of the SBDC network to deliver effective services to the small business community, comply with applicable laws, regulations, OMB Circulars and Executive Orders, and implement the Cooperative Agreement. The SBDC Director has authority to control expenditures under the Lead Center's budget. SBDC Directors may manage other programs in addition to the SBDC Program if the programs serve small businesses and do not duplicate the services provided by the SBDC network. However, SBDC Directors may not receive additional compensation for managing these programs. The SBDC Director shall serve as the principal contact point for all matters involving the SBDC network.

§ 130.360 SBDC advisory boards.

(a) *State/Regional Advisory Boards.* (1) The Lead Center must establish an advisory board to advise, counsel, and confer with the SBDC Director on matters pertaining to the operation of the SBDC network.

(2) The advisory board shall be referred to as a State SBDC Advisory Board in an Area of Service having only one recipient organization, and a Regional SBDC Advisory Board in an Area of Service having more than one recipient organization.

(3) These advisory boards must include small business owners and other representatives from the entire Area of Service.

(4) New Lead Centers must establish a State or Regional SBDC Advisory Board no later than the second budget period.

(5) A State or Regional SBDC Advisory Board member may also be a member of the National SBDC Advisory Board.

(6) The reasonable cost of travel of any Board member for official Board activities may be paid out of the SBDC's budgeted funds.

(b) *National SBDC Advisory Board.* (1) SBA shall establish a National SBDC Advisory Board consisting of nine members who are not Federal employees, appointed by the SBA Administrator. The Board shall elect a Chair. Three members of the Board shall be from universities or their affiliates and six shall be from small businesses or associations representing small businesses. Board members shall serve staggered three year terms, with three Board members appointed each year. The SBA Administrator may appoint successors to fill unexpired terms.

(2) The National SBDC Advisory Board shall advise and confer with SBA's AA/SBDCs on policy matters pertaining to the operation of the SBDC program. The Board shall meet with the AA/SBDCs at least semiannually.

§ 130.400 Application procedure. [Reserved]

§ 130.410 New applications.

(a) If SBA declines to renew an existing recipient organization or the recipient organization declines to reapply, SBA may accept applications from other organizations interested in becoming a recipient organization. An eligible entity may apply by submitting an application to the SBA District Office in the Area of Service in which the applicant proposes to provide services.

(b) An application for initial funding of a new SBDC network must include a letter by the Governor, or his or her designee, of the Area of Service in which the SBDC will operate, or other evidence, confirming that the applicant's designation as an SBDC would be consistent with the plan adopted by the State government and approved by SBA. No such requirement is imposed on subsequent applications from existing recipient organizations.

(c) The application must set forth the eligible entity or entities proposing to operate the SBDC network; a list of the Lead Center and other SBDC service providers by name, address and telephone number; the geographic areas to be serviced; the resources to be used; the services that will be provided; the method for delivering the services, including a description of how and to what extent academic, private and public resources will be used; a budget; a listing of the proposed members of the

State or Regional Advisory Board and other relevant information set forth in the Program Announcement.

(d) SBA officials may request supplemental information or documentation to revise or complete an application.

(e) Upon written recommendation for approval by the SBA District Director, the proposal shall be submitted to the AA/SBDCs for review.

§ 130.420 Renewal applications.

(a) SBDCs shall comply with the requirements in the annual Program Announcement, including format and due dates, to receive consideration of their renewal applications. The SBA Project Officer, with the concurrence of the Program Manager, may grant an extension. The recipient organization shall submit the renewal application to the SBA office in the District in which the recipient organization is located. The annual Program Announcement will include a timetable for SBA review.

(b) After review by the SBA Project Officer and written recommendation for approval by the District Director, the Program Manager and Grants Management Specialist shall review the renewal application for conformity with the Program Announcement, OMB Circulars and all other statutory, financial and regulatory requirements. SBA officials may request supplemental information and documentation prior to issuing the Cooperative Agreement.

§ 130.430 Application decisions.

(a) The AA/SBDCs may approve, conditionally approve, or reject any application. In the event of a rejection, the AA/SBDCs shall communicate the reasons for rejection to the applicant and the appropriate SBA field office. If the approval is conditional, the conditions and applicable remedies shall be specified as special terms and conditions in the Cooperative Agreement. Upon approval or conditional approval, the Grants Management specialist may issue a Cooperative Agreement.

(b) In considering the application, significant factors shall include:

(1) The applicant's ability to contribute Matching Funds;

(2) For renewal Proposals, the quality of prior performance;

(3) The results of any examination conducted pursuant to § 130.810(b) of these regulations; and

(4) Any certification resulting from any certification program developed by the Recognized Organization.

(c) In the event of a conditional approval, SBA may conditionally fund a recipient organization for one or more specified periods of time up to a maximum of one budget period. If the recipient organization fails to resolve the specified matters to the AA/SBDCs' satisfaction within the allotted time period, SBA has the right to discontinue funding the SBDC, subject to the provisions of § 130.700.

§ 130.440 Maximum grant.

No recipient shall receive an SBDC grant exceeding the greater of the minimum statutory amount, or its pro rata share of all SBDC grants as determined by the statutory formula set forth in section 21(a)(4) of the Act.

§ 130.450 Matching funds.

(a) The recipient organization must provide total Matching Funds equal to the total amount of SBA funding. At least 50% of the Matching Funds must be Cash Match. The remaining 50% may be provided through any allowable combination of additional cash, in-kind contributions, or indirect costs.

(b) All sources of Matching Funds must be identified as specifically as possible in the budget proposal. Cash sources shall be identified by name and account. All applicants must submit a Certification of Cash Match and Program Income executed by an authorized official of the recipient organization or any sponsoring SBDC organization providing Cash Match through a subcontract agreement. The account containing such cash must be under the direct management of the SBDC Director, or, if provided by a sponsoring SBDC organization, its subcenter Director. If a political entity is providing such cash and the funds have not been appropriated prior to issuance of the Cooperative Agreement, the recipient organization must certify that sufficient funds will be available from the political entity prior to the use of Federal dollars.

(c) The Grants Management Specialist is responsible for determining whether Matching Funds or Cash Match meet the requirements of the Act and appropriate OMB circulars.

(d) *Overmatched Amounts.* (1) SBDC are encouraged to furnish Overmatched Amounts.

(2) An Overmatched Amount can be applied to additional Matching Funds requirements necessitated by any supplemental funding increase received by the SBDC during the budget period, as long as the total Cash Match provided by the SBDC is 50% or more of the total SBA funds provided during the budget period.

(3) If used in the manner described in paragraph (d)(2) of this section, such Overmatched Amount is reclassified as committed Matching Funds.

(4) Allowable Overmatched Amounts which have not been used in the manner described in paragraph (d)(2) of this section may, with the approval of the AA/SBDCs, be used as a credit to offset any confirmed audit disallowances applicable only to the budget period in which the Overmatched Amount exists and the two previous budget periods. Such offsetting funds shall be considered Matching Funds.

(e) *Impermissible sources of Matching Funds.* Under no circumstances may the following be used as sources of the Matching Funds of the recipient organization:

(1) Uncompensated student labor;

(2) SCORE, ACE, or SBI volunteers;

(3) Program income or fees collected from small businesses receiving assistance;

(4) Funds or indirect or in-kind contributions from any other Federal source.

§ 130.460 Budget justification.

The SBDC Director, as a part of the renewal application, or the applicant organization's authorized representative in the case of a new SBDC application, shall prepare and submit to the SBA Project Officer the budget justification for the upcoming budget period. The budget shall be reviewed annually upon submission of a renewal application.

(a) *Direct costs.* Unless otherwise provided in applicable OMB circulars, at least eighty percent (80%) of SBA funding must be allocated to direct costs of Program delivery.

(b) *Indirect costs.* If the applicant organization waives all indirect costs to meet the Matching Funds requirement, one hundred percent (100%) of SBA funding must be allocated to program delivery. If some, but not all, indirect costs are waived to meet the Matching Funds requirement, the lesser of the following may be allocated as indirect costs of the Program and charged against the Federal contribution:

(1) Twenty percent (20%) of Federal contribution, or

(2) The amount remaining after the waived portion of indirect costs is subtracted from the total indirect costs.

(c) *Separate SBDC service provider budgets.*

(1) The applicant organization shall include separate budgets for all subcontracted SBDC service providers in conformity with OMB requirements. Applicable direct cost categories and indirect cost base/rate agreements shall be included for the Lead Center and all SBDC service providers, using a rate

equal to or less than the negotiated predetermined rate. If no such rate exists, the sponsoring SBDC organization or SBDC service provider shall negotiate a rate with its Cognizant Agency. In the event the sponsoring SBDC organization or SBDC service provider does not have a Cognizant Agency, the rate shall be negotiated with the SBA Project Officer in accordance with OMB guidelines (see OMB Circular A–21).

(2) The amount of cash, in-kind contributions and indirect costs for the Lead Center and all sub-contracted SBDC service providers shall be indicated in accordance with OMB requirements.

(d) *Cost principles.* Principles for determining allowable costs are contained in OMB Circulars A–21 (cost principles for grants, contracts, and other agreements with educational institutions), A–87 (cost principles for programs administered by State and local governments), and A–122 (cost principles for nonprofit organizations).

(e) *Costs associated with lobbying.* No portion of the Federal contribution received by an SBDC may be used for lobbying activities, either directly by the SBDC or indirectly through outside organizations, except those activities permitted by OMB. Restrictions on and reports of lobbying activities by the SBDC shall be in accordance with OMB requirements, Section 319 of Public Law No. 101–121, and the annual Program Announcement.

(f) *Salaries.* (1) If a recipient organization is an educational institution, the salaries of the SBDC Director and the subcenter Directors must approximate the average annualized salary of a full professor and an assistant professor, respectively, in the school or department in which the SBDC is located. If a recipient organization is not an educational institution, the salaries of the SBDC Director and the subcenter Directors must approximate the average salaries of parallel positions within the recipient organization. In both cases, the recipient organization should consider the Director's longevity in the Program, the number of subcenters and the individual's experience and background.

(2) Salaries for all other positions within the SBDC should be based upon level of responsibility, and be comparable to salaries for similar positions in the area served by the SBDC.

(3) Recruitment and salary increases for SBDC Directors, subcenter Directors and staff members should conform to the administrative policy of the recipient organization.

(g) *Travel.* All travel must be separately identified in the proposed budget as planned in-State, planned out-of-State, unplanned in-State or unplanned out-of-State. All proposed travel must use coach class, apply directly to specific work of the SBDC or be incurred in the normal course of Program administration, and conform to the written travel policies of the recipient organization or the sponsoring SBDC organization. (Per diem rates, including lodging, shall not exceed those authorized by the recipient organization.) Transportation costs must be justified in writing, including the estimated cost, number of persons traveling, and the benefit to be derived by the small business community from the proposed travel. A specific projected amount, based on the SBDC's past experience, where appropriate, must also be included in the budget for unplanned travel. A more detailed justification must be given for unplanned out-of-State travel. Any proposed unplanned out-of-State travel exceeding the approved budgeted amount for travel must be submitted to the Project Officer for approval on a case-by-case basis. Travel outside the United States must have prior approval by the AA/SBDCs on a case-by-case basis.

(h) *Dues.* Costs of memberships in business, technical, and professional organizations shall be allowable expenses. The use of Federal funds to pay dues for business, technical and professional organizations shall be permitted, provided that the payments are included in the budget proposal, are approved by the SBA and comply with § 130.460(e).

§ 130.470 Fees.

An SBDC may charge clients a reasonable fee to cover the costs of Training sponsored or cosponsored by the SBDC, costs of services provided by or obtained from third parties, or the costs of providing Specialized Services. Fees may not be imposed for Counseling.

§ 130.480 Program income.

(a) Program income for recipient organizations or SBDC service providers based in universities or nonprofit organizations shall be subject to OMB requirements (see OMB Circular A–110). Program income for recipient organizations or SBDC service providers based in State or local governments shall be subject to OMB requirements (see the provisions of § 7.e and Attachment E of OMB Circular A–102) and 13 CFR 143.25.

(b) Program income, including any interest earned on Program income, must be used to expand the quantity or quality of services, resources or outreach provided by the SBDC network. It cannot be used to satisfy the requirements for Matching Funds. The Project Officer shall monitor the use of Program income. Any unused Program income will be carried over to a subsequent budget period.

(c) SBDCs must report in detail on standard SBA forms receipts and expenditures of program income, including any income received through cosponsored activities. A narrative description of how Program income was used to accomplish Program objectives shall be included.

§ 130.500 Funding.

The SBA funds Cooperative Agreements through its internal Letter of Credit Replacement System (LORS), using SBA standard forms to establish and modify letters of credit. SBDCs must use SBA standard forms to draw down funds required to meet their estimated or actual expenses and to submit quarterly cash transactions reports used by SBA to monitor the frequency of drawdowns and the cash-on-hand balance. Repeated drawdowns in excess of immediate cash needs may result in the cancellation of the letter of credit. If interest results from the deposit of any drawdowns in an interest-bearing account, SBDCs, other than State government sponsored SBDCs, must report and return such interest annually to SBA.

§ 130.600 Cooperative agreement. [Reserved]

§ 130.610 General terms.

Upon approval of the initial or renewal application, SBA will enter into a Cooperative Agreement with the recipient organization, setting forth the programmatic and fiscal responsibilities of the recipient organization and SBA, the scope of the project to be funded, and the budget of the program year covered by the Cooperative Agreement. Administrative requirements are contained in 13 CFR 143 and applicable OMB Circulars.

§ 130.620 Revisions and amendments to cooperative agreement.

(a) *Requests for revisions.* The recipient organization may request at any time one or more revisions to the Cooperative Agreement on an appropriate SBA form signed by the recipient organization's authorized representative (including a revised budget and budget narrative, if applicable). Revisions will normally relate to changes in scope, work or funding during the specified budget year.

(b) *Revisions which require amendment to Cooperative Agreement.* The Cooperative Agreement shall list the revisions which require Project Officer concurrence, review by the Program Manager and the Grants Management Specialist, approval of the AA/SBDCs and amendment of the Cooperative Agreement. No application for an amendment shall be effective until it is approved and incorporated into the Cooperative Agreement. Revisions which require amendments shall include:

(1) any change in project scope or objectives;

(2) the addition or deletion of any subgrants or contracts;

(3) the addition of any new budget line items;

(4) Budget revisions and fund reallocations exceeding the limit established by applicable administrative regulations or OMB Circulars, either individually or in the aggregate (see paragraphs (c)(1) and (c)(2) of this section);

(5) any proposed sole-source or one-bid contracts exceeding the limits established by applicable regulations or OMB Circulars; and

(6) the carryover from one budget period to the next budget period of unobligated, unexpended SBA funds allocable under the Cooperative Agreement to nonrecurring, nonseverable bona fide needs of the SBDC network as provided in applicable OMB Circulars and the annual Program Announcement.

(c) *Revisions which do not require amendments to the Cooperative Agreement*—(1) *Budget revisions.* Any budget revision, except those which are covered by paragraph (b)(4) of this section. Budget revisions require approval of the SBA Project Officer and the AA/SBDCs as prescribed by applicable OMB Circulars or 13 CFR 143.30.

(2) *Reallocation of funds.* Reallocation of funds must be conducted in accordance with applicable OMB Circulars or 13 CFR 143.30. Additional guidance on this matter may be included in the annual Program Announcement.

§ 130.630 Dispute resolution procedures.

(a) *Financial Disputes.* (1) A recipient organization wishing to resolve a financial Dispute formally must submit a written statement describing the subject of the Dispute, together with any relevant documents or other evidence bearing on the Dispute, to the Grants Management Specialist, with copies to the Project Officer. The Grants Management Specialist shall respond in writing to the recipient organization within 30 calendar days of receipt of the descriptive statement.

(2) If the recipient organization receives an unfavorable decision from the Grants Management Specialist, it may file an appeal with the AA/SBDCs within 30 calendar days of issuance of the unfavorable decision. The AA/SBDCs shall respond in writing to the recipient organization within 15 calendar days of receipt of the appeal.

(3) If the recipient organization receives an unfavorable decision from the AA/SBDCs, it may make a final appeal to the SBA Grants and Cooperative Agreements Appeals Committee (the "Committee") within 30 calendar days of the date of issuance of the AA/SBDCs' written decision. Copies of the appeal shall also be sent to the Grants Management Specialist and the Project Officer.

(4) Appeals must be in writing. Formal briefs and other technical forms of pleading are not required. Requests for a hearing will not be granted unless there are material facts substantially in dispute. Appeals must contain at least the following:

(i) Name and address of the recipient organization;

(ii) The SBA field office;

(iii) The Cooperative Agreement;

(iv) A statement of the grounds for appeal, with reasons why the appeal should be sustained;

(v) The specific relief desired on appeal; and

(vi) If a hearing is requested, a statement of the material facts which are substantially in dispute.

(5) The AA/SBDCs or the Committee may request from the SBDC or the District Office additional information or documentation at any stage in the proceedings.

(6) If a request for a hearing is granted, the Committee will provide the recipient organization with written instructions, and will afford the parties an opportunity to present their positions to the Committee.

(7) The Committee will reach a decision on the merits of the appeal within 30 days of the hearing date.

(8) The Chairperson, with advice from the Office of General Counsel, shall prepare and transmit a written final decision to the recipient organization with copies to the Grants Management Specialist and the Project Officer.

(9) *Expedited Dispute appeal process.* By an affirmative vote constituting a majority of its total membership, the Committee may shorten response times to attain final resolution of a Dispute before the issuance date of a new Cooperative Agreement. At any time within 120 days of the end of the budget period, the recipient organization may submit a written request to use an expedited process. If a Dispute affects refunding, the Committee must meet to consider the matter prior to the end of the budget period, provided that the recipient organization has supplied the Committee with all requested documentation.

(b) *Programmatic (non-financial) Disputes.* (1) If a programmatic Dispute is not resolved at the SBA District Office level, the recipient organization may request its submission to the next SBA administrative level having authority to review such matter. The Project Officer shall refer the Dispute in writing, including comments of the SBDC Director, within 15 calendar days of receipt of the request.

(2) If the programmatic Dispute is not resolved at an intermediate SBA administrative level within 15 calendar days of receipt thereof, it shall be forwarded, in writing, to the AA/SBDCs for final resolution. All comments of the SBDC Director must be included in any package forwarded to the AA/SBDCs.

(3) The AA/SBDCs shall transmit a final, written decision to the recipient organization, the SBDC Director, the SBA Project Officer and other appropriate SBA field office personnel within 30 calendar days of receipt of such documentation, unless an extension of time is mutually agreed upon by the recipient organization and the AA/SBDCs.

§ 130.700 Suspension, termination and non-renewal.

(a) *General.* After SBA has entered into a Cooperative Agreement with a recipient organization, it shall not suspend, terminate or fail to renew the agreement unless SBA gives the recipient organization written notice setting forth the reasons and affording the recipient organization an opportunity for a hearing. Subject to this requirement and the provisions of § 130.700(c) regarding non-renewal procedures for non-performance, the applicable general procedures for suspension and termination are contained in 13 CFR 143.43 and 143.44, and in OMB Circular A–110, Attachment L.

(b) *Causes.* Causes which may lead to suspension, termination, or failure to renew include non-performance, poor performance, unwillingness to implement changes to improve

performance, or any of the following reasons:

(1) Disregard or material violation of these regulations;

(2) A willful or material failure to perform under the Cooperative Agreement or under these regulations;

(3) Conduct reflecting a lack of business integrity or honesty;

(4) A conflict of interest causing real or perceived detriment to a small business concern, a contractor, the SBDC or SBA;

(5) Improper use of Federal funds;

(6) Failure of a Lead Center or its subcenters to consent to audits or examination or to maintain required documents or records;

(7) Failure of the SBDC Director to work at the SBDC Lead Center on a full-time basis;

(8) Failure promptly to suspend or terminate the employment of an SBDC Director, subcenter Director or other key employee upon receipt of knowledge by the recipient organization and/or SBA that such individual is engaging in or has engaged in conduct resulting in a criminal conviction or civil judgment which would cause the public to question the SBDC's business integrity, taking into consideration such factors as the magnitude, repetitiveness, harm caused and remoteness in time of the activity or activities underlying the conviction or judgment.

(9) Violation of the SBDC's standards of conduct as specified in these rules and as established by the SBDC pursuant to these rules; or

(10) Any other cause not otherwise specified which materially and adversely affects the operation or integrity of an SBDC or the SBDC program.

(c) *Non-Renewal Procedure.* (1) Subject to § 130.700(a), when an SBA District Director believes there is sufficient evidence of SBDC nonperformance, poor performance or unwillingness to implement changes to improve performance, under the terms of the Cooperative Agreement or these regulations, the District Director shall notify the SBDC Director and any other appropriate official of the recipient organization of an intention not to approve its renewal application.

(2) Notice can be submitted at any time during the budget period, but normally should be sent no later than 3 months prior to the due date for renewal applications at the District Office.

(3) The notice shall specifically cite the reasons for the intention not to renew. It must allow the recipient organization 60 days within which to change its operations to correct the problems cited in the notice, and to report to the Project Officer, in writing, regarding the results of such changes.

(4) If the recipient organization is unwilling or unable to address the specific problem areas to the satisfaction of the SBA District Office within the 60-day period, the SBA Project Officer shall have ten (10) calendar days after expiration of the 60 days to submit to the AA/SBDCs a written description of the unresolved issues, a summary of the positions of the District Office on the issues, and any supportive documentation.

(5) The AA/SBDCs shall transmit a written, final decision to the recipient organization, the SBDC Director, the SBA Project Officer and other appropriate SBA field office personnel within 30 calendar days of receipt of such documentation, unless an extension of time is mutually agreed upon by the recipient organization and the AA/SBDCs.

(6) The AA/SBDCs shall consider written documentation of the issues to be resolved, including all relevant correspondence between the Project Officer, District Director and any other SBA personnel and the affected recipient organization. At a minimum, such documentation shall commence with the first written notice of issues invoking the non-renewal procedure. In addition, the AA/SBDCs also may communicate with the recipient organization and appropriate SBA personnel.

(7) If the AA/SBDCs determines that the evidence submitted establishes nonperformance, ineffective performance or an unwillingness to implement suggested changes to improve performance, the AA/SBDCs shall have full discretion to order non-renewal of the SBDC. The SBA District Office shall then pursue proposals from other organizations interested in applying for SBDC designation. The incumbent SBDC shall have until the end of the budget period or 120 days, whichever is longer, to conclude operations and to submit close-out documents to the SBA District Office. Close-out procedures shall conform with applicable OMB Circulars.

(d) *Effect of action on subcenter.* If competing applications are being accepted, a subcenter of the previously funded recipient organization may apply for designation as the recipient organization, so long as the subcenter was not involved in the conduct leading to non-renewal or termination of the former recipient organization.

§ 130.800 Oversight of the SBDC program.

SBA shall monitor and oversee the Cooperative Agreement and ongoing operations of the SBDC network to ensure the effective and efficient use of Federal funds for the benefit of the small business community.

§ 130.810 SBA review authority.

(a) *Site visits.* The AA/SBDCs, or a representative, on notice to the SBDC Director, is authorized to make programmatic and financial review visits to SBDC service providers to inspect records and client files, and to analyze and assess SBDC activities.

(b) *SBA examinations.* SBA examiners shall perform a biannual programmatic and financial examination of each SBDC.

(c) *Certification program.* SBA may provide financial support to the Recognized Organization to develop and implement an SBDC certification program.

(d) *Audits.* The examinations by SBA examiners shall not substitute for audits required of Federal grantees under the Single Audit Act of 1984 or applicable OMB guidelines (see Circulars A–110, A–128 and A–133), nor shall such internal review substitute for audits to be conducted by the SBA Office of Inspector General under authority of the Inspector General Act of 1978, as amended (see § 130.830(b)).

§ 130.820 Reports and recordkeeping.

(a) *Records.* The recipient organization shall maintain the records required for a Lead Center audit and SBA reports. Lead Centers and other SBDC service providers shall maintain detailed, complete and accurate client activity files, specifying counseling, training and other assistance provided.

(b) *Reports.* The recipient organization shall submit client service evaluations and performance and financial reports for SBA review to determine the quality of services provided by the SBDC, the completeness and accuracy of SBDC records, and actual SBDC network accomplishments compared to performance objectives.

(1) *Performance reports.* For recipient organizations in the Program for more than three years, interim reports shall be due 30 days after completion of six months of operation each year; for those recipient organizations in the Program three years or less, reports shall be due 30 days after completion of each of the first three quarters. The annual report shall include the second semiannual or the fourth quarter report and shall be due December 30 for fiscal year and March 30 for calendar year SBDCs. These reports shall reflect accurately the activities, accomplishments and deficiencies of the SBDC network.

(d) *Financial reports.* The recipient organization shall provide three quarterly and one annual financial report to the SBA Project Officer as set forth in the Program Announcement and the Cooperative Agreement, in compliance with OMB Circulars.

(e) *Availability of records.* As required by OMB (see Circular A–133), all SBDC service provider records shall be made available to SBA for review upon request.

§ 130.830 Audits and investigations.

(a) *Access to records.* Applicable OMB Circulars set forth the requirements concerning record access and retention.

(b) *Audits.* (1) *Pre-award audit.* Applicant organizations that propose to enter the Program for the first time may be subject to a pre-award audit conducted by or coordinated with the SBA Office of Inspector General. The purpose of a pre-award audit is to verify the adequacy of the accounting system, the suitability of posed costs and the nature and source of proposed Matching Funds.

(2) *Interim or final audits.* The recipient organization or SBA may conduct SBDC network audits. All audits will be conducted according to *Government Auditing Standards*, promulgated by the Comptroller General of the United States.

(i) The recipient organization will conduct its audits as a single audit of a recipient organization pursuant to OMB Circulars A–102, A–110, A–128, and A–133, as applicable.

(ii) The SBA Office of Inspector General or its agents will conduct, supervise, or coordinate SBA's audits, which may, at SBA's discretion, be audits of the SBDC network, even though single audits may have been performed. In such instances, SBA will conduct such audits in compliance with *Government Auditing Standards* and all applicable OMB Circulars.

(c) *Investigations.* SBA may conduct investigations as it deems necessary to determine whether any person or entity has engaged in acts or practices constituting a violation of the Act, any rule, regulation or order issued under that Act, or any other applicable Federal law.

Dated: May 9, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–14371 Filed 6–12–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–104–AD; Amendment 39–9262; AD 95–12–12]

Airworthiness Directives; de Havilland Model DHC–8–102, –103, and –106 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain de Havilland Model DHC–8–102, –103, and –106 series airplanes. This action requires repetitive operational testing of the stall warning computers to ensure activation of the associated stick shakers, and replacement of non-operational stall warning computers with new or serviceable units. This action also provides an optional terminating action for the repetitive operational tests. This amendment is prompted by a report that, during a routine test, the stick shakers of the stall warning system did not activate, due to contamination of the weight-on-wheels contacts in the stall warning computer. The actions specified in this AD are intended to ensure that such contamination is detected. Contamination of the stall warning computers could lead to incorrect logic detection of the weight-on-wheels signal, and subsequent loss of the stick shaker function.

DATES: Effective on June 28, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 28, 1995.

Comments for inclusion in the Rules Docket must be received on or before August 14, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–104–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Peter Cuneo, Aerospace Engineer, Systems and Equipment Branch, ANE–172, FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7506; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain de Havilland Model DHC–8–102, –103, and –106 series airplanes equipped with Safe Flight stall warning computers having part number (P/N) 3605–4, –5, or –6, and on which Modification 8/2072 has not been installed. Transport Canada Aviation advises that, during a routine "air mode" test of the stall warning system, the stick shakers did not activate. Investigation revealed that the weight-on-wheels relay contacts within the stall warning computer had become contaminated. This condition, if not corrected, could lead to incorrect logic detection of the weight-on-wheels signal, and subsequent loss of the stick shaker function.

Bombardier has issued Alert Service Bulletin S.B. A8–27–73, dated November 25, 1993, which describes procedures for repetitive operational testing to ensure activation of the stick shakers of the No. 1 and No. 2 stall warning computers, and replacement of non-operational stall warning computers with new or serviceable units. Transport Canada Aviation classified the alert service bulletin as mandatory and issued Canadian airworthiness directive CF–95–06, dated April 10, 1995, in order to assure the continued airworthiness of these airplanes in Canada.

Bombardier has also issued Service Bulletin S.B. 8–27–76, dated October 31, 1994, which describes procedures for replacing Safe Flight stall warning computers having P/N 3506–5, –6, or –7 with new stall warning computers having P/N 3506–8 (Modification 8/2072). The new stall warning computers have additional internal monitoring; installation of the new computers will increase reliability. Accomplishment of this replacement would eliminate the need for the repetitive operational tests.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the

provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to detect contamination of the weight-on-wheels relay contacts in the stall warning computer; such contamination could lead to incorrect logic detection of the weight-on-wheels signal, and subsequent loss of the stick shaker function. This AD requires repetitive operational testing of the No. 1 and No. 2 stall warning computers to ensure activation of the associated stick shaker, and replacement of non-operational stall warning computers with new units. This AD also provides an optional terminating action for the repetitive operational test requirements. The actions are required to be accomplished in accordance with the service bulletins described previously.

The FAA is considering further rulemaking action to require the replacement of Safe Flight stall warning computers with units having P/N 3506–8. However, the proposed compliance time (6 months) for this replacement is sufficiently long so that notice and time for public comment would be practicable.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this rule to clarify this long-standing requirement.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–104–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–12–12 de Havilland, Inc.: Amendment 39–9262. Docket 95–NM–104–AD.

Applicability: Model DHC–8–102, –103, and –106 series airplanes, serial numbers 003 and subsequent; equipped with Safe Flight stall warning computers having part number (P/N) 3605–4, –5, or –6; and on which Modification 8/2072 has not been installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent incorrect logic detection of the weight-on-wheels signal, and subsequent loss of the stick shaker function, accomplish the following:

(a) Within 50 hours time-in-service after the effective date of this AD, unless previously accomplished within the last 400 hours time-in-service: Perform an operational test to determine activation of the stick shakers of the No. 1 and No. 2 stall warning computers, in accordance with Bombardier Alert Service Bulletin S.B. A8–27–73, dated November 25, 1993. Thereafter, repeat the operational test at intervals not to exceed 450 hours time-in-service. If any stick shaker does not activate, prior to further flight, replace the non-operational stall warning computer with a new or serviceable unit in accordance with the alert service bulletin.

(b) Replacement of stall warning computers having part number (P/N) 3605–5, –6, or –7 with new stall warning computers having P/N 3605–8, in accordance with Bombardier Service Bulletin S.B. 8–27–76, dated October 31, 1994, constitutes terminating action for the repetitive operational test requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The operational test and replacement shall be done in accordance with Bombardier Alert Service Bulletin S.B. A8–27–73, dated November 25, 1993, and Bombardier Service Bulletin 8–27–76, dated October 31, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(f) This amendment becomes effective on June 28, 1995.

Issued in Renton, Washington, on June 2, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–14050 Filed 6–12–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–60–AD; Amendment 39–9258; AD 95–12–08]

Airworthiness Directives; Aerospatiale Model ATR72–101, –102, and –202 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR72 series airplanes. This action requires repetitive inspections to detect displacement of the rear hinge bush, and to detect cracking or rupture of the rear hinge pin on the main landing gear (MLG) leg; and the correction of any discrepancies. This amendment is prompted by a report of the failure of this hinge pin on an in-service airplane. The actions specified in this AD are intended to prevent failure of the hinge pin, which can lead to failure of the MLG leg or MLG attachment assembly.

DATES: Effective June 28, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 28, 1995.

Comments for inclusion in the Rules Docket must be received on or before August 14, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–65–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sam Grober, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1187; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Aerospatiale Model ATR72–101, –102, and –202 series airplanes. The DGAC advises that there has been a report of the failure (rupture) of the rear hinge pin on the main landing gear (MLG) leg of one in-service airplane. The cause of the failure is associated with a quality problem during the manufacture of these hinge pins, which apparently causes the pin to be susceptible to cracking. The suspect pins have part number (P/N) D 61000. Failure of the hinge pin could lead to the failure of the MLG leg or the MLG attachment assembly.

Avions de Transport Regional (ATR) has issued Service Bulletin ATR72–32–1028, dated September 1, 1994, which describes procedures for performing the following actions:

1. repetitive visual inspections of the MLG rear hinge pin bush to ensure that the bush has not moved and that the sealant at the level of the bush does not show any cracks, and correction of discrepancies; and

2. repetitive boroscope inspections to detect cracks of the MLG leg-to-aircraft rear hinge pin, and replacement of the pin, if necessary (This ATR service bulletin references Messier-Eram Service Bulletin 631–32–110, dated August 31, 1994, for additional inspection instructions.)

ATR has also issued Service Bulletin ATR72–32–1029, dated November 4, 1994, which describes procedures for performing an ultrasonic inspection of the MLG aft hinge pins to ensure that the pin is free of material defects, and replacement of the pin with new pin, if necessary. (This service bulletin references Messier-Eram Service Bulletin 631–32–111, dated October 14, 1994, for additional inspection instructions.)

The DGAC classified these service bulletins as mandatory and issued French Airworthiness Directive (CN) 94–197–023(B), dated August 31, 1994, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to

this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent failure of the rear hinge pin on the MLG leg, which could lead to failure of the MLG leg or the MLG attachment assembly. This AD requires, initially, repetitive visual inspections off the MLG rear hinge pin bush to ensure that the bush has not moved and that the sealant at the level of the bush does not show any cracks, and correction of discrepancies. It also requires repetitive boroscope inspections to detect cracks of the MLG leg-to-aircraft rear hinge pin, and replacement of the pin, if necessary. As terminating action for those inspections, this AD requires an ultrasonic inspection of the MLG aft hinge pins to ensure that the pin is free of material defects, and replacement of the pin with new pin, if necessary. These actions are required to be accomplished in accordance with the service bulletins described previously.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this AD to clarify this long-standing requirement.

There currently are no affected Model ATR72–101, –102, or –202 series airplanes on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, the following costs would apply:

Accomplishment of a required repetitive visual inspections would require approximately .5 work hour per bush, at an average labor charge of $60 per work hour. Based on these figures, the total cost impact of this requirement would be $30 per bush per inspection.

Accomplishment of a required repetitive boroscope inspections would require approximately 3 work hours per pin, at an average labor charge of $60 per work hour. Based on these figures, the total cost impact of this requirement would be $180 per pin per inspection.

Accomplishment of a required one-time ultrasonic inspection would require approximately 11 work hours per pin, at an average labor charge of $60 per work hour. Based on these figures, the total cost impact of this requirement would be $180 per pin.

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register.**

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–60–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–12–08 Aerospatiale: Amendment 39–9258 Docket 95–NM–60–AD.

Applicability: Model AT472–101, –102, and –202 series airplanes, as listed in ATR Service Bulletin ATR72–32–1028, dated September 1, 1994; equipped with main landing gear hinge pins having part number (P/N) D 61000 with serial numbers MN 76 through MN 86 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration; or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the rear hinge pin on the main landing gear (MLG) leg, which can lead to failure of the MLG leg or attachment assembly, accomplish the following:

(a) Within 90 days after the effective date of this AD, perform a detailed visual inspection of the MLG rear hinge pin bush to determine if the bush has moved or if the sealant at the level of the bush shows any cracks, in accordance with ATR Service Bulletin ATR72–32–1028, dated September 1, 1994.

Note 2: ATR Service Bulletin ATR72–32–1028 references Messier-Eram Service Bulletin 631–32–110, dated August 31, 1994, for additional inspection instructions.

(1) If no discrepancies are detected, repeat this inspection at intervals not to exceed 7 days.

(2) If any discrepancies are detected, prior to further flight, correct them in accordance with the service bulletin.

(b) Within 300 hours time-in-service after the effective date of this AD, perform a boroscope (endoscope) inspection to detect cracks of the MLG leg-to-aircraft rear hinge pin, in accordance with ATR Service Bulletin ATR72–32–1028, dated September 1, 1994.

Note 3: ATR Service Bulletin ATR72–32–1028 references Messier-Eram Service Bulletin 631–32–110, dated August 31, 1994, for additional inspection instructions.

(1) If no crack is detected, repeat this inspection at intervals not to exceed 300 hours time-in-service.

(2) If any crack is detected, prior to further flight, replace the hinge pin in accordance with the service bulletin.

(c) Within 6 months after the effective date of this AD, perform a one-time ultrasonic inspection of the MLG aft hinge pins to determine if the pin is free of material defects, in accordance with ATR Service Bulletin ATR72–32–1029, dated November 4, 1994.

Note 4: ATR Service Bulletin ATR72–32–1029 references Messier-Eram Service Bulletin 631–32–111, dated October 14, 1994, for additional inspection instructions.

(1) If the results of the inspection (echo percentage) are within the limits specified in the service bulletin, no further action is required by this AD, and the inspections required by paragraph (a) and (b) of this AD may be terminated.

(2) If the results of the inspection are outside the limits specified in the service bulletin, prior to further flight, replace the pin with a new pin in accordance with the service bulletin. After such replacement, no further action is required by this AD, and the inspections required by paragraph (a) and (b) of this AD may be terminated.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspections and replacement shall be done in accordance with ATR Service Bulletin ATR72–32–1028, dated September 1, 1994; and ATR Service Bulletin ATR72–32–1029, dated November 4, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(g) This amendment becomes effective on June 28, 1995.

Issued in Renton, Washington, on June 1, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–13891 Filed 6–12–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–65–AD; Amendment 39–9261; AD 95–12–11]

Airworthiness Directives; Airbus Model A340–211 and –311 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A340 series airplanes. This action requires a one-time inspection of the fuel flow from the main fuel supply hose/tube assembly, and repair, if necessary. This amendment is prompted by a report of a low pressure fuel valve found with the internal thermal relief valve assembled in the wrong position on one airplane. The actions specified in this AD are intended to prevent overpressurization of the fuel supply line due to the incorrect positioning of the internal thermal relief valve. Such overpressurization could cause the fuel pipe coupling to separate and allow fuel to leak into the engine pylon, thus posing a fire hazard.

DATES: Effective June 28, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 28, 1995.

Comments for inclusion in the Rules Docket must be received on or before August 14, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–65–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness

authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A340–211 and -311 series airplanes. The DGAC advises that there has been a report indicating that a low pressure (LP) fuel valve, part number HTE 900212, has been found on one test airplane with the internal thermal relief valve assembled in the wrong position. Additionally, an internal seal associated with this valve assembly was found to be installed in the wrong position.

The LP fuel valve is installed in the LP fuel supply line for each engine. Each LP fuel valve isolates its respective engine from the fuel supply at the front spar. The internal thermal relief valve is installed in the LP fuel valve to give protection against overpressurization of the supply line. This relief valve is set to release fuel from the engine side of the fuel supply line whenever overpressurization occurs and the LP fuel valve is in the closed position.

If the thermal relief valve and/or the internal seal is not installed in the correct position, overpressurization can occur when the engine is shut down. In the worst case, an overpressurization condition can lead to separation of a fuel pipe coupling and a subsequent leakage of fuel in the engine pylon. This situation would pose a fire hazard.

Investigation has revealed that the incorrect installation of the thermal relief valve and associate sealant occurred during production of certain airplanes. Production procedures have now been changed to ensure that all future LP valve assemblies are correctly installed.

Airbus Industrie has issued Service Bulletin A340–28–4029, Revision 1, dated September 14, 1994, which describes procedures for a one-time inspection to determine if the internal thermal relief valve is installed correctly. The inspection consists of a detailed visual inspection of the flow of fuel from the main fuel supply hose/tube assembly. If the flow of fuel is continuous, the LP fuel valve and/or the internal seal must be replaced, and additional repairs performed if fuel pipes have been damaged. The DGAC classified this service bulletin as mandatory and issued French Airworthiness Directive (CN) 94–210–011(B), dated September 14, 1994, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent overpressurization of the fuel supply line due to the incorrect positioning of the internal thermal relief valve. Such overpressurization could cause the fuel pipe coupling to separate and allow fuel to leak into the engine pylon, thus posing a fire hazard.

This AD requires a detailed visual inspection of the flow of fuel from the main fuel supply hose/tube assembly and, if necessary, replacement of the LP fuel valve and/or the internal seal and additional repairs. The actions are required to be accomplished in accordance with the service bulletin described previously.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this AD to clarify this long-standing requirement.

There currently are no Model A340 series airplanes on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 6 work hours to accomplish the required inspection, at an average labor charge of $60 per work hour. Based on these figures, the total cost impact of this AD would be $360 per airplane.

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register.**

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–65–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–12–11 Airbus: Amendment 39–9261. Docket 95–NM–65–AD.

Applicability: Model A340–211 and –311 series airplanes; having manufacturer's serial number (MSN) 005 through 019 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent overpressurization of the fuel supply line due to the incorrect positioning of the internal thermal relief valve, which could cause the fuel pipe coupling to separate and allow fuel to leak into the engine pylon, thus posing a fire hazard, accomplish the following:

(a) Within 450 hours time-in-service after the effective date of this AD, perform a detailed visual inspection of the flow of fuel from the main fuel supply hose/tube assembly, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A340–28–4029, Revision 1, dated September 14, 1994.

(b) If the flow of fuel is not continuous, no further action is required by this AD.

Note 2: Single drops of fuel are acceptable.

(c) If the flow of fuel is continuous, prior to further flight, perform the applicable replacement and repair procedures specified in Paragraph 2.C., "Repair," of the Accomplishment Instructions of Airbus Service Bulletin A340–28–4029, Revision 1, dated September 14, 1994.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspection, replacement, and repair procedures shall be done in accordance with Airbus Service Bulletin A340–28–4029, Revision 1, dated September 14, 1994, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1–5, 7–11, 40–45, 47–50.	1	September 14, 1994.
6, 12–39, 46, 51–54.	Original	August 12, 1994.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on June 28, 1995.

Issued in Renton, Washington, on June 1, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–13868 Filed 6–12–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–64–AD; Amendment 39–9260; AD 95–12–10]

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A330 and A340 series airplanes. This action requires a one-time inspection to ensure the proper installation of the electrical cable wiring of the evacuation slide system on the passenger and crew doors. This amendment is prompted by a report of incorrect installation of this wiring on two airplanes. The actions specified in this AD are intended to ensure that the electrical cable wiring is installed correctly so that it will not restrain the slide pack and prevent proper deployment of the slide. This condition, if not corrected, could impede the successful egress of passengers from the airplane during an emergency evacuation.

DATES: Effective June 28, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 28, 1995.

Comments for inclusion in the Rules Docket must be received on or before August 14, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–64–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane

Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A330 and A340 series airplanes. The DGAC advises that, during a test of the evacuation slide/raft system on a Model A340 series airplane, one operator noticed that the slide/raft emergency lights were inoperative. Examination revealed that the electrical wiring connecting the slide/raft to the door was holding the full weight of the slide pack. This resulted in the deformation of the electrical connector. Additionally, further investigation revealed that the electrical cable wiring was incorrectly routed through the transportation handles of the slide/raft pack. This same operator found a similar incorrect installation during a maintenance check of another airplane.

During the slide deployment process, the slide pack has to release fully from the airplane in order to allow the gas reservoir to be actuated. If the electrical cable wiring is incorrectly routed through the transportation handles of the slide/raft pack, it can restrain the slide pack and prevent proper deployment of the slide. This condition, if not corrected, could impede the successful egress of passengers from the airplane during an emergency evacuation.

Since the evacuation slide systems on both the Model A330 and the Model A340 are similar, both airplane models are subject to the identified unsafe condition.

Airbus Industrie has issued All Operators Telex (AOT) 25–08, dated April 25, 1994, which describes procedures for performing a one-time inspection to ensure the correct installation of the evacuation slide/raft electrical cable wiring on the passenger/crew doors. The DGAC classified this service bulletin as mandatory and issued French Airworthiness Directives (CN) 94–141–062(B) (applicable to Model A330's) and 94–142–008(B) (applicable to Model A340's), both dated June 22, 1994, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to ensure the correct installation of the slide/raft electrical wiring on the passenger/crew doors. This AD requires a one-time inspection to determine if this wiring is correctly installed, and correction of any discrepancies identified. The actions are required to be accomplished in accordance with the Airbus AOT described previously.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this AD to clarify this long-standing requirement.

There currently are no affected Model A330 or A340 series airplanes on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 2 work hours to accomplish the required actions, at an average labor charge of $60 per work hour. Based on these figures, the total cost impact of this AD would be $120 per airplane. Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register.**

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–64–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–12–10 Airbus Industrie: Amendment 39–9260. Docket 95–NM–64–AD.

Applicability: Model A330 series airplanes having manufacturer's serial number (MSN) 030, 037, and 045; and Model A340 series airplanes having MSN 005 through 031 inclusive, and 038; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously. To prevent the electrical cables in the crew/passenger door from restraining the evacuation slide/raft pack and preventing proper deployment of the slide/raft, accomplish the following:

(a) Within 450 hours time-in-service after the effective date of this AD, conduct a one-time inspection to determine the correct installation of the electrical cable wiring on the right- and left-hand escape slide rafts, in accordance with Airbus All Operators Telex (AOT) 25–08, dated April 25, 1994. Prior to further flight, correct any discrepancies identified in the electrical cable wiring installation in accordance with the Airbus AOT.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspection and correction of discrepancies shall be done in accordance with Airbus All Operators Telex (AOT) 25–08, dated April 25, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on June 28, 1995.

Issued in Renton, Washington, on June 1, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–13887 Filed 6–12–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–142–AD; Amendment 39–9257; AD 95–12–07]

Airworthiness Directives; Airbus Model A340–211 and –311 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A340–211 and –311 airplanes. This action requires replacement of the inboard and outboard aileron servo controls associated with hydraulic systems with new units that contain an improved seal installation. This amendment is prompted by reports of external leakage of hydraulic fluid on the inboard and/or outboard aileron servo controls on in-service airplanes. The actions specified in this AD are intended to prevent loss of hydraulic fluid, which may lead to the loss of the corresponding hydraulic system and its associated functions, and reduced controllability of the airplane.

DATES: Effective on June 28, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 28, 1995.

Comments for inclusion in the Rules Docket must be received on or before August 14, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–142–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified

the FAA that an unsafe condition may exist on certain Airbus Model A340–211 and –311 airplanes. The DGAC advises that it has received reports of external leakage of hydraulic fluid on the inboard and/or outboard aileron servo controls on several in-service airplanes. Investigation has revealed that the cause of this leakage is attributed to a partly extruded static seal located between the tailstock and the barrel of the aileron servo control. This condition, if not corrected, could result in loss of hydraulic fluid, which may lead to the loss of the corresponding hydraulic system and its associated functions, and reduced controllability of the airplane.

Airbus has issued Service Bulletin A340–27–4013, dated October 27, 1993, which describes procedures for replacement of the left- and right-hand inboard and outboard aileron servo controls associated with the green, yellow, and blue hydraulic systems with new units that contain an improved seal installation. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 94–010–005(B), dated January 19, 1994, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent loss of hydraulic fluid, which may lead to the loss of the corresponding hydraulic system and its associated functions, and reduced controllability of the airplane. This AD requires replacement of the left- and right-hand inboard and outboard aileron servo controls associated with the green, yellow, and blue hydraulic systems with new units that contain an improved seal installation. The actions are required to be accomplished in accordance with the service bulletin described previously.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this rule to clarify this long-standing requirement.

There currently are no Model A340–211 and –311 airplanes on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 33 work hours to accomplish the required actions, at an average labor charge of $60 per work hour. Based on these figures, the total cost impact of this AD would be $1,980 per airplane.

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–142–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–12–07 Airbus Industrie: Amendment 39–9257. Docket 94–NM–142–AD.

Applicability: Model A340–211 and –311 airplanes on which Airbus Modification 42247 has not been installed (reference Airbus Service Bulletin A340–27–4013, dated October 27, 1993), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of hydraulic fluid, which may lead to the loss of the corresponding hydraulic system and its associated functions, and reduced controllability of the airplane, accomplish the following:

(a) Within 3 months after the effective date of this AD, replace the left- and right-hand inboard and outboard aileron servo controls associated with the green hydraulic system with new units that contain an improved seal installation, in accordance with Airbus Service Bulletin A340–27–4013, dated October 27, 1993.

(b) Within 6 months after the effective date of this AD, replace the left- and right-hand inboard and outboard aileron servo controls associated with the yellow and blue hydraulic systems with new units that contain an improved seal installation, in accordance with Airbus Service Bulletin A340–27–4013, dated October 27, 1993.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The replacements shall be done in accordance with Airbus Service Bulletin A340–27–4013, dated October 27, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(f) This amendment becomes effective on June 28, 1995.

Issued in Renton, Washington, on June 1, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–13889 Filed 6–12–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–45–AD; Amendment 39–9259; AD 95–12–09]

Airworthiness Directives; Airbus Model A300 B4–1C, B4–2C, B4–203 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300 series airplanes. This action requires repetitive inspections to detect cracking in the hinge fittings of the nose landing gear (NLG) aft doors, and replacement of cracked fittings. This amendment is prompted by several reports of loss of an NLG aft door during landing, due to failure of the door's hinge fittings. The actions specified in this AD are intended to prevent the loss of an NLG aft door due to the failure of the hinge fittings; such loss of a door can result in damage to the surrounding aircraft structure or injury to persons on the ground.

DATES: Effective on June 28, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 28, 1995.

Comments for inclusion in the Rules Docket must be received on or before August 14, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–45–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A300 B4–1C, B4–2C, and B4–203 series airplanes. The DGAC advises that there have been four incidents in which an aft (secondary) door of the nose landing gear (NLG) on in-service airplanes was lost during landing. The doors separated from the airplanes due to rupture of the doors' forward hinge fitting. The cause of the fitting failures has been attributed to fatigue cracking. Such cracking, if not detected and corrected in a timely manner, can lead to separation of the NLG aft door from the airplane. Loss of a door can result in damage to the surrounding aircraft structure or injury to persons on the ground.

Airbus Industrie has issued Service Bulletin A300–52–0161, dated October 3, 1994, which describes procedures for performing repetitive eddy current inspections of the NLG aft door hinge fittings. This service bulletin also describes procedures for replacing cracked fittings. The DGAC approved this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the

Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent the loss of an NLG aft door due to the failure of the door's hinge fittings. This AD requires repetitive eddy current inspections to detect cracking of the hinge fittings, and replacement of any hinge fitting found to be cracked. Inspections continue after replacement of a hinge fitting is accomplished. The actions are required to be accomplished in accordance with the service bulletin described previously.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this AD to clarify this long-standing requirement.

There currently are no affected Model A300 B4–C, B4–2C, or B4–203 series airplanes on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 3 work hours to accomplish the required actions, at an average labor charge of $60 per work hour. Based on these figures, the total cost impact of this AD would be $180 per airplane per inspection cycle.

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–45–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–12–09 Airbus Industrie: Amendment 39–9259. Docket 95–NM–45–AD.

Applicability: Model A300 B4–1C, B4–2C and B4–203 series airplanes; having serial numbers 002 through 019, inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of a nose landing gear (NLG) aft door due to the failure of the door's hinge fittings, which can result in damage to the surrounding aircraft structure or injury to persons on the ground, accomplish the following:

(a) Prior to the accumulation of 8,000 total flight cycles, or within 500 flight cycles after the effective date of this AD, whichever occurs later, perform an eddy current inspection to detect cracks in the hinge fitting of the NLG left- and right-hand aft doors, in accordance with Airbus Service Bulletin A300–52–0161, dated October 3, 1994.

(b) If no crack(s) is found during the inspection required by paragraph (a) of this AD, repeat the eddy current inspection thereafter at intervals not to exceed 700 flight cycles.

(c) If any crack is found during the inspection required by paragraph (a) of this AD, prior to further flight, replace the hinge fittings in accordance with Airbus Service Bulletin A300–52–0161, dated October 3, 1994. Within 8,000 flight cycles after this replacement, and thereafter at intervals not to exceed 700 flight cycles, perform an eddy current inspection to detect cracking of the hinge fittings, in accordance with the service bulletin.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspection and replacement actions shall be done in accordance with Airbus Service Bulletin A300–52–0161, dated October 3, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(g) This amendment becomes effective on June 28, 1995.

Issued in Renton, Washington, on June 1, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–13890 Filed 6–12–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–ANE–44; Amendment 39–9271; AD 94–01–03 R2]

Airworthiness Directives; Teledyne Continental Motors (Formerly Bendix) S–20, S–200, S–600, and S–1200 Series Magnetos

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to Teledyne Continental Motors (TCM) (formerly Bendix) S–20, S–200, S–600, and S–1200 series magnetos, that currently requires replacing Bendix ignition coils and rotating magnets, regardless of total time in service (TIS), with improved TCM ignition coils, rotating magnets and marking magnetos to indicate compliance, except for the S–1200 series magnetos on which the AD requires replacing only the ignition coils as that series magneto already incorporates rotating magnets with the improved TCM design. This amendment removes several notes after the applicability paragraph and inserts these as paragraphs into the applicability itself and into the compliance section to clarify that these actions are mandatory. In addition, this amendment allows installation of replacement serviceable Parts Manufacturer Approval (PMA) parts in addition to TCM parts. Also, this amendment clarifies that Bendix magnetos replaced with Slick magnetos satisfy the requirements of the AD, and that operators must perform the requirements of the AD on magnetos with Bendix magneto data plates that have been replaced with an overhaul facility's data plate. This amendment is prompted by comments that request clarification of the compliance notes and by the request to install replacement serviceable PMA parts. The actions specified by this AD are intended to prevent magneto failure and subsequent engine failure.

DATES: Effective on June 28, 1995.

The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the Federal Register as of September 6, 1994 (59 FR 43029, August 22, 1994).

Comments for inclusion in the Rules Docket must be received on or before August 14, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–44, 12 New England Executive Park, Burlington, MA 01603–5299.

The service information referenced in this AD may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, AL 36601; telephone (205) 438–3411. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jerry Robinette, Aerospace Engineer, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, Campus Building, 1701 Columbia Ave., Suite S–160, College Park, GA 30337–2748; telephone (404) 305–7371; fax (404) 305–7348.

SUPPLEMENTARY INFORMATION: On December 29, 1993, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 94–01–03, Amendment 39–8785 (59 FR 4555, February 1, 1994), to require replacing certain Bendix ignition coils and rotating magnets, regardless of time in service (TIS), with improved serviceable Teledyne Continental Motors (TCM) ignition coils and rotating magnets at either the next 100-hour inspection, the next annual inspection, the next progressive inspection, or the next 100 hours TIS after the effective date of the AD, whichever occurs first. For S–1200 series magnetos, the AD requires replacing only the ignition coils as the rotating magnets on that series magneto already incorporates the improved TCM design. Additionally, the AD requires re-marking magnetos to indicate compliance. That action was prompted by reports of accidents caused by failures of magnetos incorporating older Bendix components that had not been replaced in accordance with superseded AD 73–07–04, Amendment 39–1731 (38 FR 27600, October 5, 1973). That condition, if not corrected, could result in magneto failure and subsequent engine failure.

On August 11, 1994, the FAA issued AD 94–17–11, Amendment 39–9006 (59 FR 43029, August 22, 1994), that revised AD 94–01–03, and notes that an error in

the serial number listing in TCM Service Bulletin (SB) No. 637, dated December 1992, resulted in too many affected magnetos requiring AD compliance. The AD applies only to certain magnetos manufactured by Bendix in Sidney, New York, and not to any Bendix magnetos built in either Jacksonville, Florida, or Atlanta, Georgia. In addition, the S–600 series magnetos require replacement of only the rotating magnets and not the ignition coils. Finally, the FAA received reports that there is some confusion as to how the S–20, S–200, S–600, and S–1200 series magnetos are referenced in the TCM SB and the AD and clarified the applicability paragraph by adding additional identification information.

On November 3, 1994, the FAA issued a correction to Docket No. 93–ANE–44, Amendment 39–9006 (59 FR 55955, November 10, 1994), which changes the AD number to AD 94–01–03 R1, as it was a revision to the previous AD and should not have been assigned a new AD number.

Since the issuance of that AD, the FAA received comments requesting clarification of the compliance notes and the option of installing replacement serviceable Parts Manufacturer Approval (PMA) parts.

The FAA has reviewed and approved the technical contents of TCM Mandatory Service Bulletin (MSB) No. MSB644, dated April 4, 1994, that describes procedures for replacing certain Bendix ignition coils and rotating magnets with improved serviceable TCM ignition coils and rotating magnets and marking magnetos to indicate compliance with this MSB.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, this AD revises AD 94–01–03 R1 to insert the text of several notes appearing after the applicability paragraph as compliance paragraphs to clarify that these actions are mandatory. In addition, this amendment allows installation of replacement serviceable PMA parts in addition to TCM parts. Also, this amendment clarifies that Bendix magnetos replaced with Slick magnetos satisfy the requirements of this AD, and that operators must perform the requirements of this AD on magnetos with Bendix magneto data plates that have been replaced with an overhaul facility's data plate. The actions are required to be accomplished in accordance with the MSB described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93—ANE–44." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39—9006 (59 FR 43029, August 22, 1994), corrected (59 FR 55955, November 10, 1994), and by adding a new airworthiness directive, Amendment 39–9271, to read as follows:

94–01–03 R2 Teledyne Continental Motors: Amendment 39—9271. Docket 93–ANE–44. Revises AD 94–01–03 R1, Amendment 39–9006.

Applicability: Teledyne Continental Motors (TCM), formerly Bendix magnetos:

S–20, S–200, and S–600 series magnetos with red or black Bendix (not TCM) data plates having serial numbers (S/N's): lower than 2000000 without any letter prefix; or S/N's lower than A16058 having the letter "A" prefix.

S–20, S–200, and S–600 series magnetos with blue Bendix (not TCM) data plates marked "REMANUFACTURED" having S/N's lower than 901001.

S–1200 series magnetos with red Bendix (not TCM) data plates having S/N's: lower than 2000000 without any letter prefix; or S/N's lower than A132844 having the letter "A" prefix.

S–1200 series magnetos with blue Bendix (not TCM) data plates marked "REMANUFACTURED" having S/N's lower than 901001.

These magnetos are installed on but not limited to reciprocating engine powered aircraft manufactured by Beech, Cessna, Maule, Mooney, and Piper.

Note 1: The FAA has received reports of some confusion as to what is meant by S–20, S–200, S–600, and S–1200 series magnetos as referenced in TCM Mandatory Service Bulletin (MSB) No. MSB644, dated April 4, 1994, and this AD. A typical example is S6RN–25, where the S designates single type ignition unit, the 6 designates the number of engine cylinders, the R designates right hand rotation, the N is the manufacturer designator (this did not change when TCM purchased the Bendix magneto product line), and the number after the dash indicates the series (a –25 is a S–20 series magneto, while a –1225 is a S–1200 series magneto).

Note 2: This AD applies to each magneto identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For magnetos that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (k) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any magneto from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent magneto failure and subsequent engine failure, accomplish the following:

(a) No action is required for those magnetos in compliance with AD 94–01–03 or 94–01–03 R1.

(b) An optional method of compliance with this AD is to replace the Bendix magnetos with Slick magnetos where FAA approval has been granted for that application.

(c) If a Bendix magneto data plate has been replaced with an overhaul facility's data plate, this AD is still applicable to that magneto since the magneto is a Bendix magneto.

(d) Yellow Bendix or TCM service spare data plates may have been installed during a field overhaul; use model and S/N to determine applicability.

(e) Magnetos built by Bendix in Jacksonville, Florida, and Magnetos built by TCM in Atlanta, Georgia, as indicated on the data plate, are not affected by this AD.

(f) The paint on some early data plates may have been obliterated and the data plate will appear silver in color; use model and serial number to determine applicability.

(g) For Bendix S–20 and S–200 series magnetos, replace Bendix ignition coils and rotating magnets identified in the Detailed Instructions of TCM MSB No. MSB644, dated April 4, 1994, with serviceable TCM or Parts Manufacturer Approval (PMA) ignition coils and rotating magnets at the next 100 hour inspection, the next annual inspection, the next progressive inspection, or the next 100 hours time in service (TIS) after the effective date of this AD, whichever occurs first.

(h) For the Bendix S–600 series magnetos, replace Bendix rotating magnets identified in the Detailed Instructions of TCM MSB No. MSB644, dated April 4, 1994, with serviceable TCM or PMA rotating magnets at the next 100 hour inspection, the next annual inspection, the next progressive inspection, or the next 100 hours TIS after the effective date of this AD, whichever occurs first.

Note: The ignition coils on the S–600 series magnetos already incorporate the improved design.

(i) For the Bendix S–1200 series magneto, replace Bendix ignition coils identified in the Detailed Instructions of TCM MSB No. MSB644, dated April 4, 1994, with serviceable TCM or PMA ignition coils at the next 100 hour inspection, the next annual inspection, the next progressive inspection, or the next 100 hours TIS after the effective date of this AD, whichever occurs first.

Note: The rotating magnets on the S–1200 series magnetos already incorporate the improved design.

(j) After compliance with paragraphs (d), (e), or (f) of this AD, as applicable, and prior to further flight, mark the magneto in accordance with the Identification Instructions of TCM MSB No. MSB644, dated April 4, 1994.

(k) An alternative method of compliance or adjustment of the initial compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

(l) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(m) The actions required by this AD shall be done in accordance with the following service document:

Document No.	Pages	Revision date
TCM SB No. MSB644. Total pages: 3.	1–3	April 4, 1994.

This incorporation by reference was previously approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of September 6, 1994 (59 FR 43029, August 22, 1994). Copies may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, AL 36601; telephone (205) 438–3411. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(n) This amendment becomes effective on June 28, 1995.

Issued in Burlington, Massachusetts, on June 5, 1995.

Ronald L. Vavruska,

Acting Manager, Engine and Propeller Directorate, Aircraft Certificotion Service.

[FR Doc. 95–14496 Filed 6–9–95; 2:50 pm]

BILLING CODE 4910–13–U

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act ("Appliance Labeling Rule")

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission ("Commission") issues final amendments to the Appliance Labeling Rule ("Rule") to allow manufacturers of general service incandescent lamps (including incandescent reflector lamps) with a design voltage other than 120 volts an option as to where on product labels specific disclosures must be made, to clarify the light output measure that manufacturers of incandescent reflector lamps must disclose on lamp labels, to delete the requirement that the lumen disclosure for incandescent reflector lamps be followed by the term "at beam spread," and to allow manufacturers of incandescent reflector lamps the option of adding a reference to "beam spread" to the Advisory Statement about saving energy costs.

EFFECTIVE DATE: June 13, 1995.

FOR FURTHER INFORMATION CONTACT: Kent C. Howerton, Attorney, Federal Trade Commission, Bureau of Consumer Protection, Division of Enforcement, Room S–4302, Washington, D.C. 20580, telephone 202/326–3013 (voice), 202/326–3259 (fax).

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission issues final amendments to the lamp labeling requirements of the Appliance Labeling Rule ("Rule"), 16 CFR part 305. The Commission proposed these amendments and solicited comments on them in a notice published on March 22, 1995, 60 FR 15200 (1995), in response to a petition dated January 31, 1995 ("Petition") and a letter dated January 30, 1995 ("January 30 letter") from the

Lamp Section of The National Electrical Manufacturers Association ("NEMA").[1]

The Petition requested that the Commission allow manufacturers of incandescent lamp products with a design voltage other than 120 volts an option as to where on product labels the required disclosures must be made under the lamp labeling requirements of the Appliance Labeling Rule ("lamp labeling rules").[2] The January 30 letter requested clarification of the light output disclosure required for incandescent reflector lamp products (spot lights and flood lights) and acceptance of minor changes to the disclosures required for incandescent reflector lamps.

In response to the Petition and the January 30 letter, the Commission proposed amending the Rule to: (a) Allow manufacturers of incandescent lamps that have a design voltage of other than 120 volts the option of making required disclosures at 120 volts on a label panel other than the primary display panel under specific conditions; (b) clarify the measure of light output that must be disclosed for incandescent reflector lamps; (c) eliminate a required reference to "at beam spread" in connection with the disclosure of light output for incandescent reflector lamps; and (d) allow manufacturers of incandescent reflector lamps the option of adding a reference to selecting an incandescent reflector lamp with the "beam spread" the purchaser needs to a required Advisory Statement that explains how purchasers can save energy costs.

II. Background

On May 13, 1994 the Commission published final labeling rules ("lamp labeling rules") for various types of lamp products ("light bulbs"), including general service fluorescent lamps, general service incandescent lamps (including reflector incandescent lamps), and medium base compact fluorescent lamps,[3] as mandated by Energy Policy Act of 1992 ("EPA 92")[4] amendments to the Energy Policy and Conservation Act of 1975 ("EPCA").[5] The Commission issued the lamp labeling rules as amendments to the Appliance Labeling Rule, 16 CFR part 305. The lamp labeling rules became effective on May 15, 1995.[6]

These rules require disclosures on the primary display panel of package labels of light output (in lumens), energy used (in watts), and life (in hours), plus an Advisory Statement that explains how purchasers can save energy costs. For incandescent reflector lamps (used to focus or spread light on a particular object or objects), the rules additionally require that the disclosure of light output (in lumens) be for the lamp's "beam spread," and that the disclosure of lumens be followed clearly and conspicuously by the phrase "at beam spread." Based on the statutory directive that the Commission promulgate these labeling rules and that labeling information for incandescent lamps be based on performance at 120 volts,[7] the lamp labeling rules require that the disclosures of light output, energy used, and life for general service incandescent lamps (including incandescent reflector lamps) appear on the primary display panel of the package label based on operation at 120 volts, regardless of the lamp's design voltage. The lamp labeling rules, however, allow manufacturers the option of adding disclosures based on operation at a different design voltage, either on the primary display panel or on a separate panel on the package.

The lamp labeling rules in the Appliance Labeling Rule overlap certain disclosures already required on packages of non-reflector general service incandescent bulbs by the Commission's Light Bulb Rule.[8] The Light Bulb Rule, unlike the lamp labeling rules in the Appliance Labeling Rule, requires that package labels clearly and conspicuously disclose average initial wattage, light output expressed in average initial lumens, and average laboratory life expressed in hours, based on operation at the bulb's "stated design voltage."[9] Under the Light Bulb Rule, the disclosures must appear on at least two panels of the outer sleeve or container in which bulbs are displayed and additionally on all panels of the inner and the outer sleeve that contain any reference to wattage, lumens, life, or voltage.[10]

The Commission published a request for comments on the Light Bulb Rule as part of its regulatory review program on April 6, 1995, 60 FR 17491 (1995). This notice specifically solicits comments on whether the rule should be amended to reduce or eliminate any overlap it may have with the lamp labeling rules under the Appliance Labeling Rule. In addition, it seeks comments on several other questions, including whether the Light Bulb Rule is still needed, the benefits and costs of the Rule to consumers, the burdens and benefits to manufacturers, any proposed changes to the Rule, and the effect of any recent changes in technology or economic conditions. The comment period ends June 6, 1995.

III. Proposed Amendments

A. Disclosures at Design Voltage Other Than 120 Volts

In response to NEMA's Petition, the Commission proposed amending the lamp labeling rules in the Appliance Labeling Rule, as NEMA requested, to approve an optional labeling scheme for manufacturers of incandescent lamp products with a design voltage other than 120 volts. Under the proposed amendments, manufacturers could choose to limit disclosures of light output, energy used, and life on the primary display panel of the package to operation of the lamp at the lamp's design voltage if:

- The disclosures of light output, energy used, and life when operated at 120 volts appeared elsewhere on the package.
- The following explanatory statement appeared clearly and conspicuously on the primary display panel:

This product is designed for (125/130) volts. When used on the normal line voltage of 120 volts, the light output and efficiency are noticeably reduced. See (side/back) panel for 120 volt ratings.[11]

- All panels of the package that contained a claim about light output, energy used, or life clearly and conspicuously identified the lamp as "(125 volt/130 volt)."

B. Light Output Disclosures for Reflector Lamps

In response to NEMA's January 30 letter, the Commission proposed amending the Appliance Labeling Rule to clarify that the required light output disclosure for incandescent reflector lamps is of "total forward lumens" instead of lumens "at beam spread."[12] The Commission also proposed amending the Rule to delete the requirement that the lumen light output disclosure be followed by the phrase "at beam spread." Lastly, the Commission proposed amending the Rule to allow manufacturers, at their option, to insert in the required Advisory Statement a reference to selecting a lamp with the "beam spread," as well as the light output, purchasers need.

IV. Comments and Final Amendments

A. Comments Received

The Commission received eight comments in response to the notice soliciting comments on the proposed amendments.[13] Four comments specifically support both sets of proposed amendments.[14] None of the comments object to the proposed amendments. Six comments pertain to issues the Commission addressed in the original rulemaking proceeding and do not contain new evidence to support their positions.[15] One comment requests that the Commission exempt small producers and suppliers from the labeling requirements.[16] The Commission does not have the authority under EPCA to grant such relief. Two comments address the definition of incandescent reflector lamps "designed for rough or vibration service applications." These lamps are exempted by EPCA from the Commission's labeling rules and the minimum efficiency standards.[17] DOE currently is addressing the issue of what lamps qualify for that exemption.[18]

Lastly, one comment requests that the Commission require the first annual report from lamp manufacturers no earlier than March 1, 1997 because imposing a new reporting requirement immediately after changing the substantial number of labels affected would be unfair and unduly burdensome.[19] This reporting requirement is mandated directly by EPCA, although the Commission has authority to specify the date on which the annual reports are required. The Commission has stayed this reporting requirement under the lamp labeling rules until DOE adopts final test procedures for lamp products under the EPA 92 amendments to EPCA.[20] Although DOE has published interim final testing rules, DOE has not yet issued its final rules. The Commission will address the issue of when the first annual report will be due under the Rule after DOE takes final action on its testing rules.

B. Final Amendments

Based on NEMA's Petition, NEMA's January 30 letter, and the comments the Commission received in response to the March 22 notice, the Commission has determined to adopt the amendments to the Appliance Labeling Rule it proposed in the notice.[21] The amended Rule will give manufacturers of incandescent lamp products with a design voltage other than 120 volts greater flexibility in designing packages to make the required labeling disclosures and will clarify that the light output disclosure for incandescent reflector lamps is total forward lumens, which is the lumen measurement used to determine whether those lamps meet EPCA's minimum efficiency standards. The amended Rule thus will reduce the regulatory burden imposed by the Rule. At the same time, the amended Rule will ensure that purchasers are provided with accurate information they need to select the most energy efficient lamps that meet their requirements, and it will meet the statutory standard that required disclosures for incandescent lamps be based on operation at 120 volts.

1. Disclosures at Design Voltage Other Than 120 Volts

The EPA 92 amendments to EPCA and its legislative history are silent about the specific purpose and meaning of the mandate that labeling information shall be based on operation at 120 volts. The Commission, therefore, has analyzed the record evidence

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[1] NEMA is a trade association representing the nation's largest manufacturers of lamp products. Its members produce more than 90 percent of the lamp products subject to the lamp labeling requirements of the Appliance Labeling Rule.

[2] The Petition also requested that the Commission stay, through November 30, 1995, "compliance against manufacturers who, in good faith and despite the exercise of due diligence, are unable to change all of their lamp packages prior to the May 15, 1995 effective date of the Lamp Labeling Rule." In response to the Petition, the Commission, on March 22, 1995, exercised its prosecutorial discretion and issued an Enforcement Policy Statement ("Statement"), 60 FR 15198 (1995). The Statement explained that the Commission had determined to avoid taking law enforcement actions until December 1, 1995 against manufacturers of general service incandescent lamp products for labeling not in compliance with the disclosure requirements of the Appliance Labeling Rule. The Statement remains in effect until December 1, 1995.

[3] Final rule (including Statement of Basis and Purpose ("SBP")), 59 FR 25176 (1994). On December 29, 1994, the Commission published minor, technical amendments to resolve certain inconsistencies in paragraph numbering and language that had arisen during the course of four separate proceedings amending the Rule's requirements concerning other products. 59 FR 67524 (1994). The specific lamp products covered by the lamp labeling rules are described in § 305.3(k)–(m) of the Appliance Labeling Rule, 16 CFR 305.3(k)–(m) (1995).

[4] Pub. L. No. 102–486, 106 Stat. 2776, 2817–2832 (Oct. 24, 1992).

[5] 42 U.S.C. 6201, 6291–6309.

[6] The EPA amendments to EPCA required that the lamp labeling rules become effective 12 months after the rules' publication in the **Federal Register**. Because May 13, 1995, was a Saturday, the effective date was Monday, May 15. 42 U.S.C. 6294(a)(2)(C)(i). *But see* note 2, *supra*.

[7] Under section 324(a)(2)(C)(i) of EPCA, as amended by EPA 92: "Labeling information for incandescent lamps shall be based on performance when operated at 120 volts input, regardless of the rated lamp voltage." 42 U.S.C. 6294(a)(2)(C)(i).

[8] 16 CFR part 409. The Light Bulb Rule, issued in 1970, was intended to prevent deceptive or unfair practices in the sale of incandescent light bulbs. Other types of lamps covered by the Appliance Labeling Rule amendments (including incandescent reflector lamps) are not covered by the Light Bulb Rule. In this notice, references to "lamp labeling rules" refer to the lamp labeling requirements of the Appliance Labeling Rule, 16 CFR part 305, and references to the "Light Bulb Rule" refer to the Light Bulb Rule, 16 CFR part 409.

[9] *Id.* at 409.1 n. 1.

[10] *Id.* at n. 4.

[11] NEMA proposed the use of a shorter explanatory statement: "(125/130) volt design. At 120 v., light output and efficiency are noticeably reduced. See (side/back) panel for data at 120 v." Petition at 6. NEMA stated that it would accept a more detailed version of the explanatory statement. *Id.* at note 6. The Commission proposed requiring the more detailed explanatory statement that NEMA suggested.

[12] The proposed amendments would clarify that the lumen disclosure for incandescent reflector lamps is consistent with the light output measurement used by the Department of Energy ("DOE") in determining the efficiency of these products under the minimum efficiency standards set by the EPA 92 amendments to EPCA. *See* Interim final rule, 59 FR 49468 (1994). DOE published its interim final rule for testing to comply with the minimum efficiency standards on September 28, 1994, after the Commission published the lamp labeling rule amendments to the Appliance Labeling Rule.

[13] Arkalite Manufacturing Co., Inc. ("Arkalite"), General Electric Company ("GE"), Hytron Electric Products ("Hytron"), Lawrence Berkeley Laboratory ("LBL"), Maintenance Engineering ("ME"), Marvel Lighting Corporation ("Marvel"), the National Electrical Manufacturers Association ("NEMA"), and Rensselaer Polytechnic Institute ("Rensselaer").

[14] LBL (agrees with proposed amendments for lamps with a design voltage other than 120 volts; concurs with proposed clarification of incandescent reflector lamp lumens and labeling changes); Marvel (supports greater flexibility in disclosures and any changes that would clarify labeling requirements proposed by NEMA); NEMA (supports proposed amendments); Rensselaer (supports NEMA's proposal for alternative disclosure format for lamps with a design voltage other than 120 volts and FTC's proposal to require the more detailed explanatory statement; agrees with use of total forward lumens for reflector lamps, consistent with light output definition in EPA 92).

[15] Arkalite (comparison 120 volt/130 volt information on packages of 130 volt A-bulbs sold as long life is confusing and consumers do not know how many lumens to look for); Hytron (long-life lamps may be more efficient for fixtures not readily accessible when comparing lumen-per-watt cost to lamp replacement cost); LBL (preferable to use term "power" to describe wattage because term "energy used" is technically incorrect and misleading); Marvel (new labeling requirements will be confusing and meaningless to consumers); ME (laboratory-measured life ratings under ideal conditions are misleading because lab conditions have little correlation to actual use); Rensselaer (marketing "long life" 130 volt lamps for use on 120 volt circuits will mislead consumers if long-life claims are on package with data at 130 volts).

[16] Marvel (exempt small producers and suppliers from labeling requirements to alleviate tremendous cost imposed and allow them to survive financially; cumulative sales of small distributors and manufacturers with probably less than 2% of total lamp sales will not have much effect on energy consumption for country as a whole).

[17] Hytron (multiple support filament, long-life incandescent lamps should be considered to be rough/vibration service lamps); ME (lamps with multiple supports designed for rough service last much longer under actual operating conditions than those with no filament supports; exclude lamps with four or more filament supports from labeling requirements to keep consumers from comparing lab life ratings of lamps that may have different actual ratings).

[18] Notice of Proposed Rule and Public Hearing, 59 FR 49478 (1994).

[19] GE.

[20] 59 FR at 25176, 25201–02.

[21] Although the amendments are effective today, the Commission's Enforcement Policy Statement published on March 22, 1995, applies to the amendments. *See* note 2, *supra*.

concerning the methods of sales distribution and the uses of these lamp products, as well as the manner in which purchasers could best be provided with accurate and important information to enable them "to select the most energy efficient lamps which meet their requirements."

According to the original rulemaking record, the majority of the electric service voltage supplied by local utilities in the United States for lighting is 120 volts. The rest is supplied at 125 volts, primarily in the Pacific Northwest and the Tennessee Valley. No evidence was presented that any local utility supplies electricity at 130 volts, or at service voltage other than 120 or 125 volts. The lamp manufacturers who participated in the proceeding stated that they distribute incandescent lamps with a design voltage of 120 volts for sale in 120 voltage service regions. They also stated, however, that they cannot guarantee that lamps with a design voltage of 125 volts are only offered for sale in 125 voltage service regions. Manufacturers that distribute incandescent lamps with a design voltage of 130 volts stated that they distribute these lamps, which are marketed as long-life lamps, in both 120 and 125 voltage service regions.

In light of the statutory standard and the rulemaking record, the Commission originally determined to require the disclosure on the primary display panel of specific lamp performance information based on operation of lamps at 120 volts. Otherwise, purchasers in most parts of the country who purchase lamps with a design voltage of 125 or 130 volts might be misled by exaggerated light output claims. Although the EPA 92 amendments to EPCA state that labeling information for incandescent lamps shall be based on operation at 120 volts, regardless of the rated (or design) lamp voltage, the statute does not prohibit the Commission from allowing additional disclosures based on operation of the lamp at a different design voltage. EPCA also leaves to the Commission's discretion both the specific disclosures that should be required and the manner and format in which the disclosures should be made. Thus, in order to ensure that purchasers in 125-volt service regions are provided accurate performance information, and to allow manufacturers flexibility in marketing longer-life, 130-volt design voltage lamps, the Commission determined to allow manufacturers, at their option, to disclose performance information at an additional design voltage. This information could be included on the primary display panel, or on a different panel on the package.

NEMA, however, asserted in its Petition that marketing considerations may lead manufacturers to put design voltage information on the primary display panel (along with the required data at 120 volts). A review of sample labels with dual 120 volt and 125 volt/130 volt disclosures on the primary display panel indicates that this disclosure format may be confusing to consumers. The Commission, therefore, is amending the Rule to allow manufacturers the option of limiting disclosures of light output, energy used, and life on the primary display panel of the package to operation of the lamp at its design voltage if: (a) The disclosures of light output, energy used, and life when operated at 120 volts appear elsewhere on the package; (b) a specific explanatory statement about the effect of the lamp's design voltage on light output and efficiency when the lamp is operated at 120 volts and the location of performance information for operation at 120 volts appears clearly and conspicuously on the primary display panel; and (c) all panels of the package that contain a claim about light output, energy used, or life clearly and conspicuously identify the lamp as "(125 volt/130 volt)."

The amendments adopted today comply with the statutory mandate because they require clear and conspicuous disclosures on labels of specific performance information for the lamps when they are operated at 120 volts. In addition, the amendments ensure that purchasers are provided with accurate information they need when they make purchase decisions.

2. Light Output Disclosures for Reflector Lamps

Not all light produced by an incandescent reflector lamp is reflected forward as useable light.[22] Some light output may escape around the base of the lamp and be lost into the lamp fixture. Some light may be reflected back and forth inside the cone of the lamp and not be emitted as useable light output. Thus, in an attempt to ensure that only useable light output would be disclosed, the original lamp labeling amendments to the Appliance Labeling Rule required that the labeled light output for incandescent reflector lamps be for the lamp's "beam spread," and be followed clearly and conspicuously by the phrase "at beam spread."

The Commission now concludes that there has been confusion about the use of terms such as "beam spread," "beam angle," "total lumens," and "total forward lumens" for incandescent reflector lamps. Accordingly, the Commission amends the Appliance Labeling Rule to state that the required light output disclosure for incandescent reflector lamps is of "total forward lumens," instead of lumens "at beam spread." With this amendment, the Commission believes the Rule will state more clearly that the light output disclosure required by the Appliance Labeling Rule is for the useable light output reflected forward, and not merely of forward light focused within the more narrow "beam spread" of the particular lamp. By use of the term "total forward lumens," the amended Rule also will more clearly state that the light output disclosure required by the Appliance Labeling Rule for incandescent reflector lamps is the same as the light output measurement used by DOE in determining whether these products meet the minimum efficiency standards under EPCA.[23]

Because of the confusion that has resulted from the reference to "beam spread," the Commission also amends the Rule to delete the requirement that the lumen disclosure for incandescent reflector lamps be followed by the phrase "at beam spread." Further, because the amended Rule clarifies that the measurement method for determining light output for all reflector lamps is the same, regardless of the particular lamp's beam spread or beam angle, it is unnecessary for the Rule to require a disclosure that the measurement is of "total forward lumens."

Lastly, the Commission amends the Rule to allow manufacturers of incandescent reflector lamps, at their option, to insert in the Advisory Statement the reference to selecting a lamp with the "beam spread," as well as the light output, that purchasers need. The amended Advisory Statement thus will better assist purchasers in selecting the most efficient lamp that meets their needs, after they first select the type of reflector lamp (e.g., spotlight or floodlight) that they desire.

List of Subjects in 16 CFR Part 305

Advertising, Consumer protection, Energy conservation, Household applicanes, Labeling, Lamp products, Penalties, Reporting and recordkeeping requirements.

[22] Incandescent reflector lamps (also known as reflectorized incandescent lamps) are cone-shaped with a reflectorized coating applied to the cone-shaped part of the bulb. Incandescent reflector lamps thus allow light output to be directed and focused forward through the face of the lamp. They may be used, for example, to provide lighting from recessed ceiling fixtures or as spotlights or floodlights.

[23] See note 12, supra.

V. Text of Final Amendments

Accordingly, the Commission amends 16 CFR part 305 as follows:

PART 305—RULE CONCERNING DISCLOSURES REGARDING ENERGY CONSUMPTION AND WATER USE OF CERTAIN HOME APPLIANCES AND OTHER PRODUCTS REQUIRED UNDER THE ENERGY POLICY AND CONSERVATION ACT ("APPLIANCE LABELING RULE")

1. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

2. Section 305.11 is amended by revising paragraphs (e)(1)(iii), (e)(1)(iv), and (e)(1)(vi) to read as follows:

§ 305.11 Labeling for covered products.

* * * * *

(e) *Lamps*—

(1)(i) * * *

(iii) The light output, energy usage and life ratings of any covered product that is a medium base compact fluorescent lamp or general service incandescent lamp (including an incandescent reflector lamp), shall be measured at 120 volts, regardless of the lamp's design voltage. If a lamp's design voltage is 125 volts or 130 volts, the disclosures of the wattage, light output and life ratings shall in each instance be:

(A) At 120 volts and followed by the phrase "at 120 volts." In such case, the labels for such lamps also may disclose the lamp's wattage, light output and life at the design voltage (*e.g.*, "Light Output 1710 Lumens at 125 volts"); or

(B) At the design voltage and followed by the phrase "at (125 volts/130 volts)" if the ratings at 120 volts are disclosed clearly and conspicuously on another panel of the package, and if all panels of the package that contain a claimed light output, wattage or life clearly and conspicuously identify the lamp as "(125 volt/130 volt)," and if the principal display panel clearly and conspicuously discloses the following statement:

This product is designed for (125/130) volts. When used on the normal line voltage of 120 volts, the light output and energy efficiency are noticeably reduced. See (side/back) panel for 120 volt ratings.

(iv) For any covered product that is an incandescent reflector lamp, the required disclosure of light output shall be given for the lamp's total forward lumens.

* * * * *

(vi) For any covered product that is a compact fluorescent lamp or a general service incandescent lamp (including an incandescent reflector lamp), there shall be clearly and conspicuously disclosed on the principal display panel the following statement:

To save energy costs, find the bulbs with the (beam spread and) light output you need, then choose the one with the lowest watts."

* * * * *

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 95–14440 Filed 6–12–95; 8:45 am]

BILLING CODE 6750–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA63–1–7032a; FRL–5220–4]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania: Withdrawal of Determination of Attainment of Ozone Standard by the Pittsburgh-Beaver Valley and Reading Ozone Nonattainment Areas and Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: On May 26, 1995, EPA published a final rule determining the applicability of certain reasonable further progress and attainment demonstration requirements, along with certain other related requirements, of Part D of Title I of the Clean Air Act (CAA) for the Pittsburgh/Beaver Valley and Reading ozone nonattainment areas. This action was published without prior proposal. Because EPA received adverse comments on this action, EPA is withdrawing the May 26, 1995, final rulemaking action pertaining to the Pittsburgh/Beaver Valley and Reading nonattainment areas.

EFFECTIVE DATE: June 13, 1995.

FOR FURTHER INFORMATION CONTACT: Kathleen Henry, (215) 597–0545.

SUPPLEMENTARY INFORMATION: On May 26, 1995, EPA published a final rule determining that certain reasonable further progress and attainment demonstration requirements, along with certain other related requirements, of Part D of Title I of the Clean Air Act (CAA) for the Pittsburgh/Beaver Valley and Reading ozone nonattainment areas no longer apply. This determination was based on these areas having attained the National Ambient Air Quality Standard (NAAQS) for ozone based on three years of air quality monitoring data (60 FR 27893). The final rule was published, without prior proposal, in the **Federal Register** with a provision for a 30 day comment period. At the same time, EPA published a proposed rule which announced that this final rule would convert to a proposed rule in the event that adverse comments were submitted to EPA within 30 days of publication of the rule in the **Federal Register** (60 FR 27945). By publishing a notice announcing withdrawal of the final rulemaking action, this action would be withdrawn. EPA received adverse comment within the prescribed comment period. Therefore, EPA is withdrawing the May 26, 1995, final rulemaking action pertaining to the Pittsburgh/Beaver Valley and Reading nonattainment areas. All public comments received will be addressed in a subsequent rulemaking action based on the proposed rule.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone.

Dated: June 5, 1995.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

[FR Doc. 95–14388 Filed 6–12–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[CA–140–2–6993a; FRL–5211–9]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Mojave Desert Air Quality Management District and South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan (SIP). The revisions concern rules from the following districts: Mojave Desert Air Quality Management District (MDAQMD) and South Coast Air Quality Management District (SCAQMD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic

compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In addition, the final action on these rules serves as a final determination that the deficiencies in these rules have been corrected and that on the effective date of this action, any sanction or Federal Implementation Plan (FIP) clock is stopped. The revised rules control VOC emissions from metal container, closure, and coil coating operations, magnet wire coating operations, and automotive coating operations. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This action is effective on August 14, 1995 unless adverse or critical comments are received by July 13, 1995. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the rules and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 M Street SW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 L Street, Sacramento, CA 92123–1095.

Mojave Desert Air Quality Management District, 15428 Civic Drive, Victorville, CA 92392.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765.

FOR FURTHER INFORMATION CONTACT: Nikole Reaksecker, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1187.

SUPPLEMENTARY INFORMATION:

Applicability

The rules being approved into the California SIP include: SCAQMD Rule 1151, Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations; SCAQMD Rule 1125, Metal Container, Closure, and Coil Coating Operations; SCAQMD Rule 1126, Magnet Wire Coating Operations; and MDAQMD Rule 1116, Automotive Refinishing Operations. These rules were submitted by the California Air Resources Board (CARB) to EPA on January 24, 1995, February 24, 1995 (Rules 1125 and 1126), and March 31, 1995, respectively.

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the Los Angeles-South Coast Air Basin (South Coast) and the Southeast Desert Area.[1] 43 FR 8964, 40 CFR 81.305. Because these areas were unable to meet the statutory attainment date of December 31, 1982, California requested under section 172 (a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. (40 CFR 52.222). On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[2] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The Southeast Desert Area is classified as severe and South Coast is classified as extreme;[3] therefore, these areas were subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on January 24, 1995, February 24, 1995, and March 31, 1995, including the rules being acted on in this document. This document addresses EPA's direct-final action for SCAQMD Rule 1125, Metal Container, Closure, and Coil Coating Operations; SCAQMD Rule 1126, Magnet Wire Coating Operations; SCAQMD Rule 1151, Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations; and MDAQMD Rule 1116, Automotive Refinishing Operations. SCAQMD adopted Rules 1125 and 1126 on January 13, 1995, and Rule 1151 on December 9, 1994. MDAQMD adopted Rule 1116 on February 22, 1995. These submitted rules were found to be complete on February 24, 1995, March 10, 1995, and May 2, 1995, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 appendix V[4] and are being finalized for approval into the SIP.

SCAQMD Rule 1125 controls volatile organic compound (VOC) emissions from metal container, closure, and coil coating operations. SCAQMD Rule 1126 limits the VOC content of magnet wire coatings. SCAQMD Rule 1151 and MDAQMD Rule 1116 limit the emissions of VOCs from the finishing or refinishing of motor vehicles, mobile equipment, and their parts and components. VOCs contribute to the production of ground level ozone and smog. These rules were originally adopted as part of the SCAQMD's and the MDAQMD's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and final action for these rules.

[1] The Mojave Desert Air Quality Management District (MDAQMD) was created by Assembly Bill AB 2522 signed into law by the Governor of California on September 12, 1992. It includes all of the County of San Bernardino which is not included within the boundaries of the South Coast Air Quality Management District, and may include contiguous areas situated in the Southeast Desert Air Basin upon request for inclusion. The Mojave Desert District commenced operations on July 1, 1993, and on that date assumed the authority, duties and employees of the San Bernardino County Air Pollution Control District, which ceased to exist as of that date.

[2] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[3] The South Coast and Southeast Desert Areas retained their designations of nonattainment and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[4] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

EPA Evaluation and Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 2. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to SCAQMD Rule 1125 is entitled, "Control of Volatile Organic Emissions from Existing Stationary Sources—Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks", EPA–450/2–77–032. The CTG applicable to SCAQMD Rule 1126 is entitled, "Control of Volatile Organic Emissions from Existing Stationary Sources—Volume IV: Surface Coating of Magnet Wire", EPA–450/2–77–033. SCAQMD Rule 1151 and MDAQMD Rule 1116 control emissions from a source category for which EPA has not yet issued a CTG. However, EPA has issued a guidance document called an Alternative Control Techniques (ACT). The ACT applicable to SCAQMD Rule 1151 and MDAQMD Rule 1116 is entitled, "Alternative Control Techniques Document: Automobile Refinishing", EPA–453/R–94–031. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 2. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

SCAQMD submitted Rule 1125, Metal Container, Closure, and Coil Coating, includes the following significant changes from the current SIP:

- adds applicability section,
- clarifies and/or updates several definitions,
- removes reference to unspecified test methods,
- specifies collection and destruction efficiencies for emission control systems and includes an equation for determining control device equivalency,
- removes language allowing Executive Officer discretion,
- includes test methods for determining VOC content, exempt compound content, collection and control device efficiencies, and transfer efficiency,
- states what constitutes a violation of the rule,
- requires the most recently approved version of a test method to be used to determine compliance, and
- exempts aerosol coating products.

SCAQMD submitted Rule 1126, Magnet Wire Coating Operations, includes the following significant changes from the current SIP:

- adds applicability section,
- clarifies and/or updates several definitions,
- allows use of an emission control system as an alternative means of complying,
- specifies an overall capture and control efficiency of 90 percent,
- includes test methods for determining collection and control efficiencies,
- provides an equation for determining equivalency,
- states what constitutes a violation of the rule,
- requires the most recently approved version of a test method to be used to determine compliance, and
- exempts aerosol coating products.

SCAQMD submitted Rule 1151, Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations, includes the following significant changes from the current SIP:

- expands applicability section,
- revises list of exempt compounds and adds their phase-out dates,
- increases maximum solid content of pretreatment coatings,
- deletes precoat and extreme performance topcoat categories,
- adds multi-color coating category,
- revises VOC limits and compliance dates for Group I and Group II single-stage metallic topcoats, Group II single-stage solid and multistage topcoats, and Group II primer sealer,
- deletes 5% usage limitation for specialty coatings,
- prohibits use of coatings containing hexavalent chromium and cadmium,
- revises transfer efficiency requirements,
- provides an equation for determining equivalency,
- adds prohibition of sales clause,
- clarifies and/or updates several definitions,
- adds recordkeeping requirements for add-on control systems,
- revises test method section and clarifies language to improve rule enforceability and effectiveness, and
- adds a de minimis exemption for coatings used at training centers.

MDAQMD Rule 1116, Automotive Refinishing Operations, includes the following significant changes from the current SIP:

- revises VOC limits and compliance dates to represent currently achievable technology,
- establishes more stringent VOC limits which will take effect on July 1, 1997,
- changes the effective date of the "prohibition of sale" clause,
- exempts facilities emitting less than 3 lbs. of VOC per hour or 15 lbs. of VOC per day, or which have a theoretical potential to emit less than 10 tons of VOC per year,
- deletes the precoat category, and
- adds a definition for multistage topcoats.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, SCAQMD Rule 1125, Metal Container, Closure, and Coil Coating Operations; SCAQMD Rule 1126, Magnet Wire Coating Operations; SCAQMD Rule 1151, Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations; and MDAQMD Rule 1116, Automotive Refinishing Operations, are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D. The final action on these rules serves as a final determination that the deficiencies in these rules have been corrected. Therefore, if this direct final action is not withdrawn, on August 14, 1995, any sanction or FIP clock is stopped.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this notice without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register**

publication, the EPA states its intention to convert the direct final to a proposal should adverse or critical comments be filed. Thus, this direct final action will be effective August 14, 1995, unless, by July 13, 1995, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that the direct final action will be effective August 14, 1995.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over population of less than 50,000.

SIP approvals under sections 110 and 301(a) and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410 (a)(2).

The OMB has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: May 19, 1995.

Alexis Strauss,

Acting Regional Administrator.

Subpart F of part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(214), (215), and (216) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(214) New and amended regulations for the following APCDs were submitted on January 24, 1995, by the Governor's designee.

(i) Incorporation by reference.

(A) South Coast Air Quality Management District.

(*1*) Rule 1151, adopted on December 9, 1994.

(215) New and amended regulations for the following APCDs were submitted on February 24, 1995, by the Governor's designee.

(i) Incorporation by reference.

(A) South Coast Air Quality Management District.

(*1*) Rules 1125 and 1126, adopted on January 13, 1995.

(216) New and amended regulations for the following APCDs were submitted on March 31, 1995, by the Governor's designee.

(i) Incorporation by reference.

(A) Mojave Desert Air Quality Management District.

(*1*) Rule 1116, adopted on February 22, 1995.

[FR Doc. 95–14391 Filed 6–12–95; 8:45 am]

BILLING CODE 6560–50–W

40 CFR Part 52

[CA–140–2–6993c; FRL 5212–2]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Interim Final Determination that State has Corrected the Deficiency

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final determination.

SUMMARY: Elsewhere in today's **Federal Register**, EPA is publishing a direct final rulemaking fully approving revisions to the California State Implementation Plan. The revisions concern rules from South Coast Air Quality Management District (SCAQMD) and Mojave Desert Air Quality Management District (MDAQMD): SCAQMD Rules 1125, 1126, and 1151, and MDAQMD Rule 1116. EPA is also publishing in today's **Federal Register** a proposed rulemaking to provide the public with an opportunity to comment on EPA's action. If a person submits adverse comments on EPA's proposed action within 30 days of publication of the proposed and direct final actions, EPA will withdraw its direct final action and will consider any comments received before taking final action on the State's submittal. Based on the proposed full approval, EPA is making an interim final determination by this action that the State has corrected the deficiencies for which sanctions clocks began on December 20, 1993 and April 14, 1994. This action will defer the application of the offset sanctions and defer the application of the highway sanctions. Although this action is effective upon publication, EPA will take comment. If no comments are received on EPA's proposed approval of the State's submittal, the direct final action published in this **Federal Register** will also finalize EPA's determination that the State has corrected the deficiencies that started the sanctions clocks. If comments are received on EPA's proposed approval and this interim final action, EPA will publish a final notice taking into consideration any comments received.

DATES: This interim final determination is effective June 13, 1995. Comments must be received by July 13, 1995.

ADDRESSES: Comments should be sent to: Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

The state submittal and EPA's analysis for that submittal, which are the basis for this action, are available for public review at the above address and at the following locations:

Environmental Protection Agency, Air Docket (6102), 401 M Street SW., Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 L Street, Sacramento, CA 92123–1095

Mojave Desert Air Quality Management District, 15428 Civic Drive, Victorville, CA 92392

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765

FOR FURTHER INFORMATION CONTACT: Nikole Reaksecker, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1187.

SUPPLEMENTARY INFORMATION:

I. Background

On June 19, 1992, September 14, 1992, and May 13, 1993, the State submitted MDAQMD Rule 1116, SCAQMD Rule 1126, and SCAQMD Rule 1151 for which EPA published limited disapprovals in the **Federal Register** on December 20, 1993. 58 FR 66285, 58 FR 66283. On May 13, 1993, the State submitted SCAQMD Rule 1125 for which EPA published a limited disapproval in the **Federal Register** on April 14, 1994. 59 FR 17697. EPA's disapproval actions started 18-month clocks for the application of one sanction (followed by a second sanction 6 months later) under section 179 of the Clean Air Act (Act), and 24-month clocks for promulgation of a Federal Implementation Plan (FIP) under section 110(c) of the Act. The State subsequently submitted revised rules on January 24, 1995, February 24, 1995, and March 31, 1995. EPA has taken direct final action on these submittals pursuant to its modified direct final policy set forth at 59 FR 24054 (May 10, 1994). In the Rules section of this **Federal Register** EPA is issuing a direct final full approval of the State of California's submittal of SCAQMD Rule 1125, Metal Container, Closure, and Coil Coating Operations; SCAQMD Rule 1126, Magnet Wire Coating Operations; SCAQMD Rule 1151, Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations; and MDAQMD Rule 1116, Automotive Refinishing Operations. In addition, in the Proposed Rules section of this **Federal Register** EPA is proposing full approval of the State's submittals.

Based on the proposed and direct final approval, EPA believes that it is more likely than not that the State has corrected the original disapproval deficiencies. Therefore, EPA is taking this final rulemaking action, effective on publication, finding that the State has corrected the deficiencies. However, EPA is also providing the public with an opportunity to comment on this final action. If, based on any comments on this action and any comments on EPA's proposed full approval of the State's submittals, EPA determines that the State's submittals are not fully approvable and this final action was inappropriate, EPA will either propose or take final action finding that the State has not corrected the original disapproval deficiencies. As appropriate, EPA will also issue an interim final determination or a final determination that the deficiencies have not been corrected. Until EPA takes such an action, the application of sanctions will continue to be deferred and/or stayed.

This action does not stop the sanctions clocks that started for these areas on December 20, 1993 and April 14, 1994. However, this action will defer the application of the offsets sanctions and will defer the application of the highway sanctions. 59 FR 39832 (Aug. 4, 1994). If EPA's direct final action fully approving the State's submittals becomes effective, such action will permanently stop the sanctions clocks and will permanently lift any applied, stayed or deferred sanctions. If EPA must withdraw the direct final action based on adverse comments and EPA subsequently determines that the State, in fact, did not correct the disapproval deficiencies, EPA will also determine that the State did not correct the deficiencies and the sanctions consequences described in the sanctions rule will apply. 59 FR 39832, to be codified at 40 CFR 52.31.

II. EPA Action

EPA is taking interim final action finding that the State has corrected the disapproval deficiencies that started the sanctions clocks. Based on this action, application of the offset sanctions will be deferred and application of the highway sanctions will be deferred until EPA's direct final action fully approving the State's submittals becomes effective or until EPA takes action proposing or finally disapproving in whole or part the State submittals. If EPA's direct final action fully approving the State submittals becomes effective, at that time any sanctions clocks will be permanently stopped and any applied, stayed or deferred sanctions will be permanently lifted.

Because EPA has preliminarily determined that the State has an approvable plan, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect.[1] 5 U.S.C. 553(b)(B). EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. EPA has reviewed the State's submittals and, through its proposed and direct final action is indicating that it is more likely than not that the State has corrected the deficiencies that started the sanctions clocks. Therefore, it is not in the public interest to initially impose sanctions or to keep applied sanctions in place when the State has most likely done all that it can to correct the deficiencies that triggered the sanctions clocks. Moreover, it would be impracticable to go through notice and comment rulemaking on a finding that the State has corrected the deficiencies prior to the rulemaking approving the State's submittals. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to temporarily stay or defer sanctions while EPA completes its rulemaking process on the approvability of the State's submittals. Moreover, with respect to the effective date of this action, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction. See 5 U.S.C. 553(d)(1).

The Office of Management and Budget (OMB) has exempted this action from review under Executive Order 12866.

Under the Regulatory Flexibility Act, 5 U.S.C. Section 600 *et. seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This action temporarily relieves sources of an additional burden potentially placed on them by the sanctions provisions of the Act. Therefore, I certify that it does not have an impact on any small entities.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental regulations, Reporting and recordkeeping

[1] As previously noted, however, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date and EPA will consider any comments received in determining whether to reverse such action.

requirements, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 19, 1995.

Alexis Strauss,

Acting Regional Administrator.

[FR Doc. 95–14392 Filed 6–12–95; 8:45 am]

BILLING CODE 6560–50–W

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40 CFR Part 52

[CA 95–4–6981; FRL–5209–2]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on January 9, 1995. The revisions concern rules from the following district: San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules control VOC emissions from polystyrene foam, polyethylene, and polypropylene manufacturing and polyester resin operations. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

EFFECTIVE DATE: This action is effective on July 13, 1995.

ADDRESSES: Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street SW., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

San Joaquin Valley Unified Air Pollution Control District 1999 Tuolumne Street, Fresno, CA 93721.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Section, Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1197.

SUPPLEMENTARY INFORMATION:

Background

On January 9, 1995 in 60 FR 2367, EPA proposed to approve the following rules into the California SIP: SJVUAPCD's Rule 4682, Polystyrene Foam, Polyethylene, and Polypropylene Manufacturing; and SJVUAPCD's Rule 4684, Polyester Resin Operations. Rule 4682 was adopted by SJVUAPCD on June 16, 1994 and Rule 4684 was adopted by SJVUAPCD on May 19, 1994. Both rules were submitted by the California Air Resources Board (CARB) to EPA on July 13, 1994. These rules were submitted in response to EPA's 1988 SIP-Call and the CAA sections 182(b)(2) (B) and (C) requirements that nonattainment areas submit reasonably available control technology (RACT) rules for all major sources of VOCs by November 15, 1992 (the RACT catch-up requirements). A detailed discussion of the background for each of the above rules and nonattainment area is provided in the NPRM cited above.

EPA has evaluated all of the above rules for consistency with the requirements of the CAA and EPA regulations and EPA interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the NPRM cited above. EPA has found that the rules meet the applicable EPA requirements. A detailed discussion of the rule provisions and evaluations has been provided in 60 FR 2367 and in technical support documents (TSDs) available at EPA's Region IX office (TSDs dated August 8, 1994—Rule 4682 and August 3, 1994—Rule 4684).

Response to Public Comments

A 30-day public comment period was provided in 60 FR 2367. No comments were received.

EPA Action

EPA is finalizing action to approve the above rules for inclusion into the California SIP. EPA is approving the submittal under section 110(k)(3) as meeting the requirements of section 110(a) and Part D of the CAA. This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of VOCs in accordance with the requirements of the CAA.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

The OMB has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: May 10, 1995.

David P. Howekamp,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c) (198)(i)(C)(2) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(198) * * *

(i) * * *

(C) * * *

(*2*) Rule 4682 adopted on June 16, 1994 and Rule 4684 adopted on May 19, 1994.

* * * * *

[FR Doc. 95–14452 Filed 6–12–95; 8:45 am]

BILLING CODE 6560–50–W

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40 CFR Part 52

[KY–88–6956a; FRL–5207–9]

Approval and Promulgation of Implementation Plans State: Approval of Revisions to Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On January 27, 1995, the Commonwealth of Kentucky, through the Natural Resources and Environmental Protection Cabinet (Cabinet), submitted revisions to the State Implementation Plan (SIP) correcting deficiencies in the definition of volatile organic compounds (VOCs). These revisions ensue from a commitment made by the Cabinet to the EPA to revise the definition of VOCs. The commitment was made in order for EPA to conditionally approve revisions to the VOC definition in a document dated June 23, 1994.

DATES: This final rule will be effective on July 28, 1995 unless adverse or critical comments are received by July 13, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Scott Southwick, at the EPA Regional Office listed below.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

Division of Air Quality, Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet, 803 Schenkel Lane, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Scott Southwick, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555, x4207. Reference file KY–88–6956a.

SUPPLEMENTARY INFORMATION: On October 20, 1992, the Cabinet submitted a SIP revision which included the definition of a VOC. The VOC definition is found in rules 50:010, 51:001, 59:001, 61:001, and 63:001. The VOC definition met all federal guidelines except for a provision that stated, "* * * VOCs shall be measured by test methods that have been approved by the cabinet. Approval by the cabinet shall not constitute or imply approval by the USEPA. The cabinet will not approve a test method that has been disapproved for use by the USEPA." EPA stated that the VOC definition was not approvable until the above language was revised to state that all test methods used must be approved by the EPA. On March 25, 1994, Kentucky committed to correct this deficiency. EPA then conditionally approved the VOC definition in the October 20, 1992, SIP revision on June 23, 1994 (59 FR 32343).

On January 27, 1995, Kentucky submitted a revision to the SIP that corrected the deficiency outlined above by revising the VOC definition to state that test methods must be approved by the EPA. The submittal also included minor revisions to rules 50:010, 51:001, 59:001, 61:001, and 63:001 which both clarify the intent of the rule and change the address of a Division for Air Quality regional office. This submittal also revised the SIP to include rule 65:001—Definitions and abbreviations of terms used in 401 KAR Chapter 65. This rule is identical to the rules 50:010 through 63:001.

Final Action

EPA is approving this Kentucky SIP submittal because the revisions are consistent with EPA guidelines. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective on July 28, 1995 unless, by July 13, 1995, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the separate proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on July 28, 1995.

Under section 307(b)(1) of the Act, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 14, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Act, 42 U.S.C. 7607(b)(2).)

The OMB has exempted these actions from review under Executive Order 12866.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2) and 7410(k)(3).

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this State implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section 110 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: May 8, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401–7671q.

Subpart S—Kentucky

2. Section 52.920, is amended by adding paragraph (c)(79) to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

(79) Revisions to the Commonwealth of Kentucky State Implementation Plan (SIP) regarding the definition of volatile organic compound (VOC) submitted on January 27, 1995.

(i) Incorporation by reference.

(A) 401 KAR 50:010. Definitions and abbreviations of terms used in 401 KAR Chapters 50, 51, 53, 55, 57, 59, 61, 63, and 65, effective April 6, 1995.

(B) 401 KAR 51:001. Definitions and abbreviations of terms used in 401 KAR Chapter 51, effective April 6, 1995.

(C) 401 KAR 59:001. Definitions and abbreviations of terms used in 401 KAR Chapter 59, effective April 6, 1995.

(D) 401 KAR 61:001. Definitions and abbreviations of terms used in 401 KAR Chapter 61, effective April 6, 1995.

(E) 401 KAR 63:001. Definitions and abbreviations of terms used in 401 KAR Chapter 63, effective April 6, 1995.

(F) 401 KAR 65:001. Definitions and abbreviations of terms used in 401 KAR Chapter 65, effective April 6, 1995.

(ii) Other material.

(A) May 4, 1995, letter from Phillip J. Shepherd, Secretary, Natural Resources and Environmental Protection Cabinet to John H. Hankinson, Regional Administrator, U.S. EPA, Region IV.

[FR Doc. 95–14447 Filed 6–12–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[MN37–1–6901a; FRL–5212–6]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: Minnesota requested minor amendments to several previously approved administrative orders addressing emissions of particulate matter and sulfur. The amendments included deleting an order for a facility that no longer has significant emissions, eliminating reporting requirements for unscheduled startups and shutdowns, clarifying and enhancing dust control practices at one facility, and changing facility names. USEPA is approving this request. USEPA is also correcting the codification for a previous approval action.

DATES: This action will be effective on August 14, 1995 unless adverse or critical comments are received by July 13, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE–17J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the SIP revision request and USEPA's analysis are available for public inspection during normal business hours at the following addresses: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard (AE–17J), Chicago, Illinois 60604; and Office of Air and Radiation (OAR), Docket and Information Center (Air Docket 6102), Room M1500, United States Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Air Enforcement Branch, Regulation Development Section (AE–17J), United States Environmental Protection, Region 5, Chicago, Illinois 60604, (312) 886–6067.

SUPPLEMENTARY INFORMATION:

I. Summary of State Submittal

On February 15, 1994, USEPA approved State Implementation Plan (SIP) revisions for particulate matter for the Saint Paul and Rochester, Minnesota, areas. On April 14, 1994, and September 9, 1994, USEPA approved SIP revisions for sulfur dioxide (SO_2) for much of the Minneapolis-Saint Paul area. The regulatory portion of these revisions consisted of administrative orders limiting emissions from affected facilities. On December 22, 1994, Minnesota submitted amendments to the administrative orders for 12 of these facilities. For six administrative orders in the particulate matter SIP for Saint Paul, namely for Ashbach Construction, Commercial Asphalt, Great Lakes Coal and Dock, Harvest States Cooperatives, Lafarge, and North Star Steel, the administrative orders were amended to (1) revise the statement of air quality standards to reflect revisions in the underlying State rules, (2) reduce opacity reading requirements typically to an as requested basis, and (3) eliminate the requirement to report scheduled startups and shutdowns. Administrative orders for J.L. Shiely and the Metropolitan Council were revised the same way except that the order for J.L. Shiely was also revised to incorporate more frequent and more effective road treatment, and the order for the Metropolitan Council was revised to delete reference to the Metropolitan Waste Control Commission. The order for PM Ag Products was revoked because the relevant sources have shut down. For the one administrative order in the particulate matter SIP for Rochester, i.e. for Rochester Public Utilities, the administrative order was amended to (1) revise the statement of air quality standards to reflect revisions in the underlying State rules, (2) reduce opacity reading requirements to an as requested basis, and (3) to require reporting of startups and shutdowns only if they are unscheduled and cause exceedances of the applicable limitations. (The company is required to operate continuous opacity monitors to identify periods of excessive emissions.) For SO_2 in the Twin Cities area, the administrative order for Northern States Power was amended to authorize the company to burn natural gas at six oil-fired gas turbines, and the administrative order for FMC Corporation was amended to show ownership now by United Defense, LP.

II. Analysis of State Submittal

USEPA reviewed each of the various amendments submitted by Minnesota. The revision of the statement of air quality standards is an administrative improvement that makes the orders better reflect new air quality standards in the underlying State rules. The elimination of the requirement for opacity testing according to preset schedules is a reasonable revision because these sources now have compliance histories to indicate the needed frequency of compliance testing. In any case, the orders provide that MPCA or USEPA can require opacity readings at any time, which is sufficient to assure enforceability of these limits. The elimination of requirements to report scheduled startups and shutdowns to MPCA does not eliminate the requirement that the sources record this information, and thus does not reduce MPCA's or USEPA's ability to obtain this information when necessary. For the special case of Rochester Public Utilities, because this facility uses electrostatic precipitators that routinely have unscheduled startups and shutdowns, and because this facility is required to operate continuous opacity monitors, it is reasonable to require this company to report only those startups and shutdowns that are unscheduled and cause exceedances of applicable limits. The name revisions obviously have no environmental impact. The enhancement of the road cleaning requirements for J.L. Shiely clearly will have beneficial environmental impacts. The order for the nonexistent equipment at the PM Ag Products facility is superfluous and may therefore be revoked without impact. The allowance for Northern States Power to burn natural gas at six gas turbines at its Inver Hills Station has no effect on legally allowable emissions but allows an operational alternative that in practice will reduce emissions. In summary, all of the amendments requested by Minnesota are approvable.

III. Rulemaking Action

USEPA is approving the amendments to 12 administrative orders as requested by the State. All of these amendments were adopted and effective at the State on December 21, 1994. Specifically, for particulate matter in Saint Paul, USEPA is approving amendments to the administrative orders for the following facilities: (1) The Ashbach Construction Company facility at University Avenue and Omstead Street, (2) the Commercial Asphalt, Inc., facility at Red Rock Road, (3) the Great Lakes Coal & Dock Company facility at 1031 Childs Road, (4) the Harvest States Cooperatives facility at 935 Childs Road, (5) the LaFarge Corporation facility at 2145 Childs Road, (6) the Metropolitan Council facility at 2400 Childs Road, (7) the North Star Steel Company facility at 1678 Red Rock Road, and (8) the J.L. Shiely Company facility at 1177 Childs Road. USEPA is revoking the previously approved administrative order for the PM Ag Products, Inc., facility at 2225 Childs Road. For particulate matter in Rochester, USEPA is approving amendments to the administrative order for the Rochester Public Utilities facility at 425 Silver Lake Drive. For sulfur dioxide in the Minneapolis-Saint Paul area, USEPA is approving amendments to the administrative orders for the Northern States Power Inver Hills Station, and the United Defense, LP facility (formerly the FMC/U.S. Navy facility) in Fridley.

For convenience, USEPA is also using this rulemaking to correct the codification of its prior approval of Minnesota's offset rule. Rule 7005.3050 was included as an approved rule, and yet Minnesota had repealed this rule. Therefore, USEPA is amending the codification of approved Minnesota submittals to delete reference to this rule.

The USEPA is publishing this action without prior proposal because USEPA views this action as a noncontroversial revision and anticipates no adverse comments. However, USEPA is publishing a separate document in this **Federal Register** publication, which constitutes a "proposed approval" of the requested SIP revision and clarifies that the rulemaking will not be deemed final if timely adverse or critical comments are filed. The "direct final" approval shall be effective on August 14, 1995, unless USEPA receives adverse or critical comments by July 13, 1995.

If USEPA receives comments adverse to or critical of the approval discussed above, USEPA will withdraw this approval. All public comments received will then be addressed in a subsequent rulemaking notice. Any parties interested in commenting on this action should do so at this time.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, USEPA must undertake various actions in association with proposed or

final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of the State implementation plan or plan revisions approved in this action, the State has elected to adopt the program provided for under section 110 of the Clean Air Act. The rules and commitments being approved in this action may bind State, local and tribal governments to perform certain actions and also may ultimately lead to the private sector being required to perform certain duties. To the extent that the rules and commitments being approved by this action will impose or lead to the imposition of any mandate upon the State, local or tribal governments either as the owner or operator of a source or as a regulator, or would impose or lead to the imposition of any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. The USEPA has also determined that this action does not include a mandate that may result in estimated costs or $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 14, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Note.—Incorporation by reference of the State Implementation Plan for the State of Minnesota was approved by the Director of the Federal Register on July 1, 1982.

Dated: May 15, 1995.

Valdas V. Adamkus,

Regional Administrator.

Title 40 of the Code of Federal Regulations, chapter I, part 52, subpart Y, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.1220 is amended by revising paragraph (c)(33)(i)(A) and by adding paragraph (c)(41) to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

(33) * * *

(i) * * *

(A) Rules 7005.3020, 7005.3030, and 7005.3040, with amendments effective August 24, 1992.

* * * * *

(41) On December 22, 1994, Minnesota submitted miscellaneous amendments to 11 previously approved administrative orders. In addition, the previously approved administrative order for PM Ag Products (dated August 25, 1992) is revoked.

(i) Incorporation by reference.

(A) Amendments, all effective December 21, 1994, to administrative orders approved in paragraph (c)(29) of this section for: Ashbach Construction Company; Commercial Asphalt, Inc.; Great Lakes Coal & Dock Company; Harvest States Cooperatives; LaFarge Corporation; Metropolitan Council; North Star Steel Company; Rochester Public Utilities; and J.L. Shiely Company.

(B) Amendments, effective December 21, 1994, to the administrative order approved in paragraph (c)(30) of this section for United Defense, LP (formerly FMC/U.S. Navy).

(C) Amendments, effective December 21, 1994, to the administrative order approved in paragraph (c)(35) of this section for Northern States Power-Inver Hills Station.

[FR Doc. 95–14450 Filed 6–12–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 52 and 62

[IA–13–1–6572a; FRL–5210–7]

Approval and Promulgation of Implementation Plans and Section 111(d) Plans; State of Iowa, Polk County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This final action approves the State Implementation Plan (SIP) revision submitted by the state of Iowa on behalf of Polk County, and approves the addition of an emissions limit for sulfuric acid mist from sulfuric acid manufacturing to Iowa's section 111(d) plan.

The state's revision involves modifications to the Polk County air pollution control rules. Polk County is an attainment area for all criteria pollutants. The Polk County air rules were revised to make them consistent with the state of Iowa's rules contained in the Iowa Administrative Code (IAC), which have been previously approved by EPA as meeting the requirements of the Clean Air Act.

DATES: This final rule is effective August 14, 1995 unless by July 13, 1995 adverse or critical comments are received.

ADDRESSES: Copies of the state submittal and the EPA-prepared technical support document (TSD) are available for public inspection during normal business hours at the Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and EPA Air and Radiation Docket and Information Center, 401 M Street, S.W., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Christopher D. Hess at (913) 551–7213.

SUPPLEMENTARY INFORMATION: Beginning with its initial submission in 1972, the state of Iowa has operated a Federally approved SIP pursuant to the requirements of the Clean Air Act (CAA). During the past two decades, numerous revisions and updates have been made to the SIP in response to new Federal requirements.

The state of Iowa's section 111(d) plan for the control of sulfuric acid mist emissions from existing sulfuric acid production plants and for the control of fluoride emissions from existing phosphate fertilizer plants was approved by EPA in a **Federal Register** notice, under the Code of Federal Regulations Part 62 (50 FR 52920), published December 27, 1985.

REVIEW OF STATE SUBMITTAL: On May 5, 1994, the state of Iowa submitted to EPA Polk County Ordinance No. 132, which modifies the Polk County Board of Health regulation Chapter 5, Air Pollution. Polk County Ordinance No. 132, which was adopted by the Polk County Board of Supervisors on October 26, 1993, and became effective December 2, 1993, made a number of revisions to the Polk County air pollution control regulations. The state has provided evidence of control regulations. The state has provided evidence of the lawful adoption of regulations, public notice, and public hearing requirements.

The state has requested that these revisions be approved as a modification of the SIP, with the exception of the following articles and sections: Chapter V, Article VI, Section 5–16 (n) and (p) (Specific Emissions Standards); Chapter V, Article VIII (Emission of Odors; Slaughterhouses; Reduction of Animal Matter); and Chapter V, Article XIII (Variances). The revisions include air pollution control definitions that parallel those in the IAC and in various Federal requirements for state programs; for example, definitions relating to new source permitting.

Other revisions that were made in the Polk County air pollution control regulations include the following items.

1. Visible Emission Measurement. In Chapter V, Articles III and IV, Sections 5–6, 5–8, and 5–9, references to the Ringelmann Chart as a measure of visible emissions were deleted, leaving opacity as the standard by which visible emissions are measured. The opacity standard by which visible emissions are measured has not been modified from that in the approved SIP. The deletion of the Ringelmann Chart as a measure of visible emissions makes the requirements consistent with the EPA-approved, state rules, in chapter 23, sections 3(d) and 4(12).

2. Stack Testing. In Chapter V, Article VII, Section 5–18, the conditions that must be satisfied when stack emission tests are required were revised to include earlier notification of stack testing by equipment owners. The revisions make the requirements consistent with the state rule in chapter 25, section 1(7).

3. Fuel-Burning Permit Exemptions. In Chapter V, Article X, Sections 5–33 and 5–39, the capacity of fuel-burning equipment that is exempt from needing a permit was reduced from equipment with a capacity of less than 50 million Btu per hour input (in the previously approved SIP) to equipment with a capacity of less than 10 million Btu per hour input.

Additionally, the exemption from needing a permit for fuel-burning equipment for indirect heating with a capacity less than one million Btu per hour input when burning No. 1 or No. 2 fuel, exclusively, was deleted. These revisions expand the coverage of emission-control requirements for fuel-burning sources. In addition, the revisions make these local requirements consistent with the state rule in chapter 22, section 1(2).

4. Sulfuric Acid Emissions Limits. Polk County Ordinance No. 132 also sets emissions limits for sulfuric acid mist from sulfuric acid manufacturing. The sulfuric acid mist emissions limit, as set in the ordinance, is 0.5 pounds of sulfuric acid mist per ton of acid produced. This is identical to the limit contained in EPA's "Final Guideline Document: Control of Sulfuric Acid Mist Emissions from Existing Sulfuric Acid Production Units" (EPA–450/2–77–019).

For additional information on revisions made in the Polk County air pollution control regulations, the reader may refer to EPA's TSD prepared for this Iowa SIP revision.

EPA Action: EPA is taking final action to approve the revisions to the SIP and 111(d) plan submitted on May 5, 1994, for the state of Iowa, Polk County. As discussed previously, this does not include the rules contained in Chapter V, Article VI, Section 5–16(n) and (p); Chapter V, Article VIII; and Chapter V, Article XIII.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP or 111(d) plan. Each request for a revision to the SIP or 111(d) plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA, and 111(d) plan approvals under section 111 of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval and 111(d) plan approval do not impose any new requirements, EPA certifies that they do not have a significant impact on any small entities affected.

Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

The Office of Management and Budget has exempted these actions from review under Executive Order 12866.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 14, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in the **Federal Register** publication, the EPA is proposing to approve the SIP revisions and 111(d) plan revision should adverse or critical comments be filed.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

List of Subjects in 40 CFR Parts 52 and 62

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 2, 1995.

Dennis Grams,

Regional Administrator.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart Q—Iowa

2. Section 52.820 is amended by adding paragraph (c)(60) to read as follows:

§ 52.820 Identification of plan.

* * * * *

(c) * * *

(60) On May 5, 1994, the Director of the Iowa Department of Natural Resources submitted revisions to the State Implementation Plan (SIP) to update the state's incorporation by reference and conformity to various Federally approved regulations.

(i) Incorporation by reference.

(A) Revised rules, "Polk County Ordinance No. 132—Polk County Board of Health Rules and Regulations," effective December 2, 1993. This revision approves all articles in Chapter V, except for Article VI, Section 5–16(n) and (p), Article VIII, and Article XIII.

(ii) Additional material.

(A) None.

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart Q—Iowa

2. Section 62.3850 is amended by adding paragraph (b)(3) to read as follows:

§ 62.3850 Identification of plan.

* * * * *

(b) * * *

(3) Control of sulfur dioxide and sulfuric acid mist from sulfuric acid manufacturing plants in Polk County were adopted on October 26, 1993, and submitted on March 23, 1994.

* * * * *

[FR Doc. 95–14389 Filed 6–12–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 82

[FRL–5219–1]

RIN 2060–AF99

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This final rule restricts or prohibits substitutes for ozone depleting substances (ODSs) under the U.S. Environmental Protection Agency (EPA) Significant New Alternatives Policy (SNAP) program. SNAP implements section 612 of the amended Clean Air Act of 1990 which requires EPA to evaluate and regulate substitutes for the ODSs to reduce overall risk to human health and the environment. Through these evaluations, SNAP generates lists of acceptable and unacceptable substitutes for each of the major industrial use sectors. The intended effect of the SNAP program is to expedite movement away from ozone depleting compounds while avoiding a shift into high-risk substitutes posing other environmental problems.

In this final rule, EPA is issuing decisions on the acceptability of certain substitutes proposed by the Agency on September 26, 1994 (59 FR 49108). To arrive at determinations on the acceptability of substitutes, the Agency completed a cross-media evaluation of risks to human health and the environment by sector end-use.

Public comments received regarding this rulemaking have been fully summarized and responded to in the relevant sector sections of this rule. Therefore, no separate comment response document has been developed to accompany this rulemaking. Copies of the eleven public comments received on the NPRM are available in the public docket supporting this final rule.

EFFECTIVE DATE: This rule is effective on July 13, 1995.

ADDRESSES: Materials relevant to the rulemaking are contained in Air Docket A–91–42, Central Docket Section, South Conference Room 4, U.S. Environmental Agency, 401 M Street, SW., Washington, DC 20460. The docket may be inspected between 8 a.m. and 5:30 p.m. weekdays. Telephone (202) 260–7549. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: The Stratospheric Ozone Information Hotline at 1–800–296–1996 between 10 a.m. and 4 p.m. Eastern Time or Sally Rand at (202) 233–9739 or fax (202) 233–9577, Substitutes Analysis and Review Branch, Stratospheric Protection Division, 401 M Street, SW (6205J), Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. Background
II. Section 612 Program
A. Statutory Requirements
B. Regulatory History
III. Listing of Substitutes
IV. Administrative Requirements
V. Administrative Information

I. Background

On March 18, 1994, EPA promulgated a final rulemaking setting forth its plan for administering the SNAP program (59 FR 13044), and issued its initial list of decisions on the acceptability and unacceptability of a number of substitutes. Since the March 1994 rulemaking, EPA has continued to evaluate and approve substitutes as they are submitted to the program.

II. Section 612 Program

A. Statutory Requirements

Section 612 of the Clean Air Act authorizes EPA to develop a program for evaluating alternatives to ozone-depleting substances. EPA is referring to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

- *Rulemaking*—Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, methyl bromide, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.
- *Listing of Unacceptable/Acceptable Substitutes*—Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses. EPA must publish a corresponding list of acceptable alternatives for specific uses.
- *Petition Process*—Section 612(d) grants the right to any person to petition EPA to add a substitute to or delete a substitute from the lists published in accordance with section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, EPA must publish the revised lists within an additional 6 months.
- *90-day Notification*—Section 612(e) requires EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's unpublished health and safety studies on such substitutes.
- *Outreach*—Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.
- *Clearinghouse*—Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. Regulatory History

On March 18, 1994, EPA published the Final Rulemaking (FRM) (59 FR 13044) which described the process for administering the SNAP program and issued EPA's first acceptability lists for substitutes in the major industrial use sectors. These sectors include: refrigeration and air conditioning; foam blowing; solvent cleaning; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings and inks; and tobacco expansion. These sectors comprise the principal industrial sectors that historically consume large volumes of ozone-depleting compounds.

The Agency defines a "substitute" as any chemical, product, substitute, or alternative manufacturing process, whether existing or new, that could replace a class I or class II substance. Anyone who produces a substitute must provide the Agency with health and safety studies on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. This requirement applies to chemical manufacturers, but may include importers, formulators or end-users when they are responsible for introducing a substitute into commerce.

III. Listing of Substitutes

To develop the lists of unacceptable and acceptable substitutes, EPA conducts screens of health and environmental risks posed by various substitutes for ozone-depleting compounds in each use sector. The outcome of these risks screens can be found in the public docket, as described above in the **ADDRESSES** portion of this FRM.

Under section 612, the Agency has considerable discretion in the risk management decisions it can make in SNAP. The Agency has identified five possible decision categories: acceptable, acceptable subject to use conditions; acceptable subject to narrowed use limits; unacceptable; and pending. Acceptable substitutes can be used with no limits for all applications within the relevant sector end-use. Conversely, it is illegal to replace an ODS with a substitute listed by SNAP as unacceptable. A pending listing includes substitutes for which the Agency has not received complete data or has not completed its review of the data.

After reviewing a substitute, the Agency may determine that a substitute is acceptable only if conditions of use are met to minimize risks to human health and the environment. Use of such substitutes in ways that are inconsistent with such use conditions renders these substitutes unacceptable.

Even though the Agency can restrict the use of a substitute based on the potential for adverse effects, it may be necessary to permit a narrowed range of use within a sector end-use because of the lack of alternatives for specialized applications. Users intending to adopt a substitute acceptable with narrowed use limits must ascertain that other acceptable alternatives are not technically feasible. Companies must document the results of their evaluation, and retain the results on file for the purpose of demonstrating compliance. This documentation shall include descriptions of substitutes examined and rejected, processes or products in which the substitute is needed, reason for rejection of other alternatives, e.g., performance, technical or safety standards, and the anticipated date other substitutes will be available and projected time for switching to other available substitutes. Use of such substitutes in applications and end-uses which are not specified as acceptable in the narrowed use limit renders these substitutes unacceptable.

As described in the final rule for the SNAP program (59 FR 13044), EPA believes that notice-and-comment rulemaking is required to place any alternative on the list of prohibited substitutes, to list a substitute as acceptable only under certain use conditions or narrowed use limits, or to remove an alternative from either the list of prohibited or acceptable substitutes.

EPA does not believe that rulemaking procedures are required to list alternatives as acceptable with no limitations. Such listings do not impose any sanction, nor do they remove any prior license to use a substitute. Consequently, EPA adds substitutes to the list of acceptable alternatives without first requesting comment on new listings. Updates to the acceptable and pending lists are published as separate notices in the **Federal Register**.

Parts A. through C. below present a detailed discussion of the substitute listing determinations by major use sector. Tables summarizing listing decisions in this final rule are in the Appendix A. The comments contained in the Appendix A provide additional information on a substitute. Since comments are not part of the regulatory decision, they are not mandatory for use of a substitute. Nor should the comments be considered comprehensive with respect to other legal obligations pertaining to the use of the substitute. However, EPA encourages users of acceptable substitutes to apply all comments in their use of these substitutes. In many instances, the comments simply describe sound operating practices that have already been identified in existing industry and/or building-code standards. Thus, many of the comments, if adopted, would not require significant changes in existing operating practices for the affected industry.

A. Refrigeration and Air Conditioning

1. Overview

The refrigeration and air conditioning sector includes all uses of class I and class II substances to produce cooling, including mechanical refrigeration, air conditioning, and heat transfer. Please refer to the final SNAP rule (59 FR 13044) for a more detailed description of this sector.

The refrigeration and air conditioning sector is divided into the following end-uses:

- Commercial comfort air conditioning;
- Industrial process refrigeration systems;
- Industrial process air conditioning;
- Ice skating rinks;
- Uranium isotope separation processing;
- Cold storage warehouses;
- Refrigerated transport;
- Retail food refrigeration;
- Vending machines;
- Water coolers;
- Commercial ice machines;
- Household refrigerators;
- Household freezers;
- Residential dehumidifiers;
- Motor vehicle air conditioning;
- Residential air conditioning and heat pumps;
- Heat transfer;

and

- Very low temperature refrigeration.

In addition, each end-use is divided into retrofit and new equipment applications. EPA has not necessarily reviewed substitutes in every end-use for this FRM.

EPA has modified the list of end-uses for this sector for this SNAP update. EPA added a new end-use, very low temperature refrigeration. Substitutes

for this end-use had been reviewed since the final rule, and therefore were added to the August 26, 1994 Notice. Please refer to the final SNAP rule (59 FR 13044) for a detailed description of end-uses other than these. EPA may continue to add other end-uses in future SNAP updates.

a. Heat Transfer

As discussed above, this end-use includes all cooling systems that rely on a fluid to remove heat from a heat source to a cooler area, rather than relying on mechanical refrigeration to move heat from a cool area to a warm one. Generally, there are two types of systems: systems with fluid pumps, referred to as recirculating coolers, and those that rely on natural convection currents, known as thermosyphons.

b. Very Low Temperature Refrigeration

Medical freezers, freeze-dryers, and other small appliances require extremely reliable refrigeration cycles. These systems must meet stringent technical standards that do not normally apply to refrigeration systems. They usually have very small charges. Because they operate at very high vapor pressures, and because performance is critically affected by any charge loss, standard maintenance for these systems tends to reduce leakage to a level considerably below that for other types of refrigeration and air conditioning equipment.

c. CFC–13, R–13B1, and R–503 Industrial Process Refrigeration

This end-use differs from other types of industrial refrigeration only in that extremely low temperature regimes are required. Although some substitutes may work in both these extremely low temperatures and in systems designed to use R–502, they may be acceptable only for this end-use because of global warming and atmospheric lifetime concerns. These concerns are discussed more fully below.

2. Response to Comments

a. Use conditions for automotive refrigerants. Two commenters requested changes in the information proposed for labels to be placed on automobiles retrofitted to use alternative refrigerants. They explained that label space is constrained and requested that the statements related to the ozone-depleting nature of automotive refrigerants be deleted. EPA agrees that the proposed statements were too cumbersome. This FRM shortens the relevant phrase for ozone-depleting refrigerants and eliminates the phrase for non-ozone-depleting refrigerants.

One commenter stated that EPA does not have the authority to require unique fittings and labels for automotive retrofits. In fact, EPA believes its broad mandate under SNAP does provide the authority. One important goal of the SNAP program is to ease the transition away from ozone-depleting substances. As the number of acceptable alternatives increases, the likelihood of contaminating the supply of recycled CFC–12 increases. EPA believes the fitting and label requirements will help protect consumers and the environment by preserving the purity of recycled CFC–12. The requirements will also help ensure that clear information exists about the contents of motor vehicle air conditioning systems. In addition, EPA has received a petition requesting a requirement for fittings and labels. Several commenters strongly supported EPA's efforts to reduce the risks of cross-contamination of various alternatives. Therefore, this FRM retains the fitting and label provisions from the NPRM.

Several commenters expressed concern that listing a refrigerant acceptable or acceptable subject to use conditions implies that it is effective in all systems, that it is compatible with existing equipment, and that it will not affect system life. EPA believes the purpose of the SNAP program is to review the human health and environmental implications of alternatives and not to ensure the effectiveness of new refrigerants or the long-term viability of equipment. Certainly the SNAP lists should serve as a useful reference to the user community. However, one of the guiding principles of the SNAP program is to let the market decide whether there exists a "best" alternative.

Several commenters asked EPA to require a label for flammable non-automotive refrigerants. EPA will consider this idea when reviewing future submissions.

b. HCFC Blend Beta and R–401C. Several commenters expressed concern that these blends contain flammable substances. As discussed in the NPRM, testing has shown that HCFC Blend Beta and R–401C are not flammable and do not become flammable through fractionation. Several other acceptable refrigerants contain hydrocarbons and other flammable components, which can add to a blend's effectiveness. If these components are present in small enough amounts, the blends are nonflammable.

Several commenters raised the issue of selective absorption of flammable components by the lubricant. They are concerned that over time, the oil will concentrate the flammable hydrocarbon, possibly yielding a flammable mixture in the system. EPA is not aware of any data validating this claim. However, should information become available, EPA invites a petition to review its decision on HCFC Blend Beta.

Several commenters expressed concern that HCFC Blend Beta and R–401C contain class II compounds, HCFC–22 and HCFC–124, respectively. While these compounds do contribute to ozone depletion, EPA controls their production under the accelerated phaseout. As in the stationary end-uses, EPA believes the HCFCs have a role as transitional refrigerants. Until the end of production, HCFCs can help ease the switch away from the CFCs by providing additional alternatives.

Several commenters suggest that using blend refrigerants will not reduce the cost of retrofitting existing cars to use HFC–134a. Using other refrigerants may help reduce these costs for some range of models. However, even if it were possible to devise a reliable measure of cost reductions for individual cars, EPA's primary interest is the human health and environmental issues associated with a refrigerant. The market will determine any substitute's success based on cost.

c. R–403B and R–405A. Several commenters requested that EPA consider other factors besides global warming potential (GWP) and lifetime and approve R–403B and R–405A, which contain high concentrations of perfluorocarbons (PFCs), as substitutes for R–502 and CFC–12, respectively. EPA considers energy savings, flammability, and toxicity, in addition to ozone depletion potential and global warming potential, in its SNAP review. The PFCs as a class have extremely long lifetimes and very high GWPs. In addition to potential global warming caused by PFCs, their lifetimes mean that any unanticipated effects would be irreversible. These factors are significantly higher than those of any other class of refrigerants. Although the average GWP of a blend may be lower than that of the individual components, when released to the atmosphere the components act independently. Thus, the PFCs' high GWP and long lifetime will have the same impact as if they had been released as pure substances. In accordance with the SNAP guiding principles, EPA does not intend to make fine distinctions. However, the lifetime and GWP of PFCs pose higher overall risk than the other available substitutes.

Several commenters point out that because R–403B contains HCFC–22, intentional venting is already prohibited under section 608, and therefore emissions would be minimal. This claim ignores the substantial leakage emissions from nearly all refrigeration equipment, and especially retail food and industrial refrigeration systems.

One commenter expressed concern that EPA was forcing industry to use R–402A, another refrigerant deemed acceptable under SNAP. EPA disagrees, as it has already listed several other alternatives for R–502, including R–404A, R–407A, R–407B, R–408A, and R–507. The commenter also stated that using refrigerants other than R–403B would result in the production of an untenable amount of contaminated oil requiring special handling under RCRA. Exemptions exist for CFC-contaminated oil, and the volumes involved would be absorbed easily into the existing used oil infrastructure.

One commenter stated that EPA had departed from its usual listing of PFCs as acceptable subject to narrowed use limits, and requested that EPA include R–403B in the same category. However, EPA has only found PFCs acceptable where no other alternative is feasible from a technical or safety perspective. A large number of other acceptable substitutes exist for R–502 that contain substances with much lower GWPs and shorter lifetimes. Thus, this FRM promulgates the unacceptability determinations for R–403B and R–405A.

However, two commenters requested that EPA consider grandfathering existing uses of R–403B. In two specific cases, EPA determined that grandfathering is appropriate: Industrial process refrigeration and refrigerated transport. These cases are explained in detail in the section discussing R–403B.

d. Perfluorocarbons (PFCs). One commenter requests that EPA not impose a narrowed use limit on PFCs used in heat transfer applications. The commenter further suggests that this designation is inconsistent with previous narrowed use limits imposed in other sectors. The commenter also indicated that EPA has already received ample proof of several applications where PFCs are the only viable alternatives.

EPA believes the PFCs may be the only viable substitutes for specific types of existing heat transfer equipment. For example, as listed in the SNAP FRM, uranium enrichment plants are already an acceptable use for PFCs. This user has already demonstrated that no other substitute would work. EPA agrees with the commenter that for existing equipment, sufficient evidence exists that no substitutes other than PFCs exist. Thus, EPA is allowing the use of PFCs in retrofit and existing system designs only.

For new equipment designs, however, EPA believes other alternatives may well exist. Therefore, for new equipment designs, users must conduct a study to determine that no other alternative is feasible. Note that users need only retain the analysis for their own records; no submission of information to EPA is required.

If EPA were to grant unconditional acceptability, there would be no requirement for users to examine other substitutes before adopting PFCs. EPA has articulated the view that, because of their high GWPs and very long lifetimes, PFCs must remain alternatives of last resort; in other words, their use should be limited to those areas where no other means exist to replace ODS. While the niche market for PFCs in heat transfer applications may be small, EPA has a strong interest in restricting its growth. As discussed above, PFCs have extremely long lifetimes and high GWPs. EPA strongly encourages manufacturers to devise other means of replacing the ODS used in heat transfer.

The commenter also objects to EPA's description of PFCs as agents of last resort. EPA maintains that for new heat transfer equipment, systems should use PFCs only where no other alternatives will work. For the reasons described in the paragraph above, this FRM retains the original language.

However, EPA agrees with the commenter's request to provide additional guidance about the types of systems that may require PFCs. EPA has included specific examples in the listing for PFCs.

The commenter also objected to EPA's reference to future rulemakings under section 608 of the Clean Air Act. EPA agrees and has removed the reference.

The commenter further believes EPA should grant acceptance to the use of PFCs in several specific end-uses, rather than issuing a narrowed use limit determination for heat transfer as a whole. The commenter cites as an example the listing of PFCs as acceptable for use in uranium enrichment plants. EPA believes that heat transfer systems bear enough similarity to be included under one end-use. The substitutes list should not be complicated by too many subcategories which would result in significant redundancy. The distinction between retrofit and new use will allow existing equipment to use non-ODS substitutes while still restricting the design of new systems that would use PFCs. For the reasons stated above, EPA believes it is important to place such a restriction on the design of new systems. However, even within new use, the narrowed use limit is intended to allow the use of an otherwise unacceptable substitute in cases where nothing else is feasible from a safety or technical perspective.

The commenter also expresses a belief that EPA should not include heat transfer systems within the refrigeration and air conditioning sector. EPA disagrees and has already issued a final applicability determination that Vaportran transformers are appliances that fall under regulations issued under section 608 of the Clean Air Act. While heat transfer is not refrigeration in the thermodynamic sense of moving heat from a cool area to a warm one, it is a process aimed at temperature control.

The commenter further notes that EPA indicated that the refrigeration and air conditioning sector includes all mechanical and non-mechanical refrigeration, air conditioning, and heat transfer. The commenter believes this statement causes confusion by neglecting to define "non-mechanical refrigeration." EPA's intention was to include alternative processes that do not use a refrigerant in the strictest sense, such as evaporative cooling or absorption cycle machinery. The term "mechanical" is intended to refer to compressor-drive vapor compression cycle systems. However, EPA agrees that the statement in the NPRM was confusing and has removed the reference to non-mechanical refrigeration in this FRM.

e. Hydrocarbon Blend B. One commenter requested that EPA find Hydrocarbon Blend B acceptable based on several reports. EPA had previously reviewed the bulk of these reports and found them insufficient to demonstrate the safety of this substitute. In addition, the statement that Hydrocarbon Blend B has a high ignition point is misleading. This blend readily ignites at room temperature in the presence of a spark or a flame. No report has supported the notion that this blend must be heated to very high temperatures before it will propagate a flame. As stated in the SNAP FRM on March 18, 1994, EPA requires a comprehensive, scientifically valid risk assessment if a refrigerant is flammable, and no such study has been performed. EPA therefore maintains its position that Hydrocarbon Blend B is unacceptable as a substitute for CFC–12 in automobiles and several other end-uses.

3. Substitutes for Refrigerants

Substitutes fall into eight broad categories. Seven of these categories are chemical substitutes used in the same vapor compression cycle as the ozone-depleting substances being replaced. They include hydrochlorofluorocarbons (HCFCs), hydrofluorocarbons (HFCs),

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hydrocarbons, refrigerant blends, ammonia, perfluorocarbons (PFCs), and chlorine systems. The eighth category includes alternative technologies that generally do not rely on vapor compression cycles. Please refer to the final SNAP rule (59 FR 13044) for more discussion of these broad categories.

4. Listing Decisions

a. Acceptable. CFC–11, CFC–12, CFC–113, CFC–114, CFC–115 Heat Transfer, Retrofit and Existing Equipment Designs.

(a) Perfluorocarbons.

Perfluorocarbons are acceptable as substitutes for CFC–11, CFC–12, CFC–113, CFC–114, and CFC–115 in retrofitted heat transfer systems and in existing designs. Although EPA normally discusses acceptable substitutes in its Notices, this decision is the result of comments received on the proposal. PFCs covered by this determination are C_3F_8, C_4F_{10}, C_5F_{12}, $C_5F_{11}NO$, C_6F_{14}, $C_6F_{13}NO$, C_7F_{16}, $C_7F_{15}NO$, C_8F_{18}, $C_8F_{16}O$, and $C_9F_{21}N$. PFCs offer high dielectric resistance, noncorrosivity, thermal stability, materials compatibility, chemical inertness, low toxicity, and nonflammability. In addition, they do not contribute to ground-level ozone formation or stratospheric ozone depletion. The principal characteristic of concern for PFCs is that they have long atmospheric lifetimes and have the potential to contribute to global climate change. For instance, C_5F_{12} has a lifetime of 4,100 years and a 100-year GWP of 5,600. PFCs are also included in the Climate Change Action Plan, which broadly instructs EPA to use section 612 of the CAA, as well as voluntary programs, to control emissions. Despite these concerns, EPA is listing PFCs as acceptable in heat transfer applications because they may be the only substitutes that can satisfy safety or performance requirements. For example, a transformer may require very high dielectric strength, or a heat transfer system for a chlorine manufacturing process could require compatibility with the process stream.

In cases where users must adopt PFCs, they should make every effort to:

- Recover and recycle these fluids during servicing;
- Adopt maintenance practices that reduce leakage as much as is technically feasible;
- Recover these fluids after the end of the equipment's useful life and either recycle them or destroy them; and
- Continue to search for other long-term alternatives.

Users of PFCs should note that if other alternatives become available, EPA could be petitioned to list PFCs as unacceptable due to the availability of other suitable substitutes. If such a petition were granted, EPA may grandfather existing uses upon consideration of cost and timing of testing and implementation of new substitutes. EPA urges industry to develop new alternatives for this end-use that do not contain substances with such high GWPs and long lifetimes.

b. Acceptable Subject to Use Conditions. (1) CFC–12 Automobile and Non-automobile Motor Vehicle Air Conditioners, Retrofit and New.

EPA is concerned that the existence of several substitutes in this end-use may increase the likelihood of significant refrigerant cross-contamination and potential failure of both air conditioning systems and recovery/recycling equipment. In addition, a smooth transition to the use of substitutes strongly depends on the continued purity of the recycled CFC–12 supply. In order to prevent cross-contamination and preserve the purity of recycled refrigerants, EPA is imposing several conditions on the use of all motor vehicle air conditioning refrigerants. For the purposes of this rule, no distinction is made between "retrofit" and "drop-in" refrigerants; retrofitting a car to use a new refrigerant includes all procedures that result in the air conditioning system using a new refrigerant. It should be noted that EPA primarily reviews refrigerants based on environmental and health factors. Issues related to performance and durability fall outside the scope of SNAP review.

To meet the requirements under section 612, when retrofitting a CFC–12 system to use any substitute refrigerant, the following conditions must be met:

- Each refrigerant may only be used with a set of fittings that is unique to that refrigerant. These fittings (male or female, as appropriate) must be used with all containers of the refrigerant, on can taps, on recovery, recycling, and charging equipment, and on all air conditioning system service ports. These fittings must be designed to mechanically prevent cross-charging with another refrigerant. A refrigerant may only be used with the fittings and can taps specifically intended for that refrigerant. Using an adapter or deliberately modifying a fitting to use a different refrigerant will be a violation of this use condition. In addition, fittings shall meet the following criteria, derived from Society of Automotive Engineers (SAE) standards and recommended practices:

—When existing CFC–12 service ports are to be retrofitted, conversion assemblies shall attach to the CFC–12 fitting with a thread lock adhesive and/or a separate mechanical latching mechanism in a manner that permanently prevents the assembly from being removed.

—All conversion assemblies and new service ports must satisfy the vibration testing requirements of sections 3.2.1 or 3.2.2 of SAE J1660, as applicable, excluding references to SAE J639 and SAE J2064, which are specific to HFC–134a.

—In order to prevent discharge of refrigerant to the atmosphere, systems shall have a device to limit compressor operation before the pressure relief device will vent refrigerant. This requirement is waived for systems that do not feature such a pressure relief device.

—All CFC–12 service ports shall be retrofitted with conversion assemblies or shall be rendered permanently incompatible for use with CFC–12 related service equipment by fitting with a device attached with a thread lock adhesive and/or a separate mechanical latching mechanism in a manner that prevents the device from being removed.

- When a retrofit is performed, a label must be used as follows:

—The person conducting the retrofit must apply a label to the air conditioning system in the engine compartment that contains the following information:

* The name and address of the technician and the company performing the retrofit;
* The date of the retrofit;
* The trade name, charge amount, and, when applicable, the ASHRAE numerical designation of the refrigerant;
* The type, manufacturer, and amount of lubricant used;
* If the refrigerant is or contains an ozone-depleting substance, the phrase "ozone depleter"; and
* If the refrigerant displays flammability limits as blended, measured according to ASTM E681, the statement "This refrigerant is FLAMMABLE. Take appropriate precautions."

—This label must be large enough to be easily read and must be permanent.

—The background color must be unique to the refrigerant.

—The label must be affixed to the system over information related to the previous refrigerant, in a location not normally replaced during vehicle repair.

—Information on the previous refrigerant that cannot be covered by the new label must be permanently rendered unreadable.

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- No substitute refrigerant may be used to "top-off" a system that uses another refrigerant. The original refrigerant must be recovered in accordance with regulations issued under section 609 of the CAA prior to charging with a substitute.

Since these use conditions necessitate unique fittings and labels, it will be necessary for developers of automotive refrigerants to consult with EPA about the existence of other alternatives. Such discussions will lower the risk of duplicating fittings already in use.

No SNAP determination guarantees satisfactory performance from a refrigerant. Consult the original equipment manufacturer or service personnel for further information on using a refrigerant in a particular system.

(a) HFC–134a. *HFC–134a is acceptable as a substitute for CFC–12 in retrofitted and new motor vehicle air conditioners, subject to the use conditions applicable to motor vehicle air conditioning described above.* HFC–134a does not contribute to ozone depletion. HFC–134a's GWP and atmospheric lifetime are close to those of other alternatives which have been determined to be acceptable for this end-use. However, HFC–134a's contribution to global warming could be significant in leaky end-uses such as motor vehicle air conditioning systems (MVACS). EPA has determined that the use of HFC–134a in these applications is acceptable because industry continues to develop technology to limit emissions. In addition, the number of substitutes available for use in MVACS is currently limited. HFC–134a is not flammable and its toxicity is low. While HFC–134a is compatible with most existing refrigeration and air conditioning equipment parts, it is not compatible with the mineral oils currently used in such systems. An appropriate ester-based, polyalkylene glycol-based, or other type of lubricant should be used. Consult the original equipment manufacturer or the retrofit kit manufacturer for further information.

(b) R–401C.

R–401C, which consists of HCFC–22, HFC–152a, and HCFC–124, is acceptable as a substitute for CFC–12 in retrofitted and new motor vehicle air conditioners, subject to the use conditions applicable to motor vehicle air conditioning described above. HCFC–22 and HCFC–124 contribute to ozone depletion, but to a much lesser degree than CFC–12. The production of HCFC–22 will be phased out according to the accelerated phaseout schedule (published 12/10/93, 58 FR 65018). The GWP of HCFC–22 is somewhat higher than other alternatives for this end-use. Experimental data indicate that HCFC–22 may leak through flexible hosing in mobile air conditioners at a high rate. In order to preserve the blend's composition and to reduce its contribution to global warming, EPA strongly recommends using barrier hoses when hose assemblies need to be replaced during a retrofit procedure. The GWPs of the other components are low. Although this blend does contain one flammable constituent, the blend itself is not flammable. Leak testing demonstrated that the blend never becomes flammable.

(c) HCFC Blend Beta. *HCFC Blend Beta, which consists of HCFC–124, HFC–134a, and isobutane, is acceptable as a substitute for CFC–12 in retrofitted and new motor vehicle air conditioners, subject to the use conditions applicable to motor vehicle air conditioning described above.* The composition of this blend has been claimed confidential by the manufacturer. This blend contains at least one HCFC, and therefore contributes to ozone depletion, but to a much lesser degree than CFC–12. Regulations regarding recycling and reclamation issued under section 609 of the Clean Air Act apply to this blend. Its production will be phased out according to the accelerated schedule (published 12/10/93, 58 FR 65018). The GWPs of the components are moderate to low. This blend is nonflammable, and leak testing has demonstrated that the blend never becomes flammable.

c. Acceptable Subject to Narrowed Use Limits

(1) CFC–11, CFC–12, CFC–113, CFC–114, CFC–115 Heat Transfer, New. (a) Perfluorocarbons. *Perfluorocarbons are acceptable as substitutes for CFC–11, CFC–12, CFC–113, CFC–114, and CFC–115 in heat transfer systems only where no other alternatives are technically feasible due to safety or performance requirements.* PFCs covered by this determination are C_3F_8, C_4F_{10}, C_5F_{12}, $C_5F_{11}NO$, C_6F_{14}, $C_6F_{13}NO$, C_7F_{16}, $C_7F_{15}NO$, C_8F_{18}, $C_8F_{16}O$, and $C_9F_{21}N$. The principal characteristic of concern for PFCs is that they have very long atmospheric lifetimes and have the potential to contribute to global climate change. For instance, C_5F_{12} has a lifetime of 4,100 years and a 100-year GWP of 5,600.

Despite concerns about high global warming potential, EPA is listing PFCs as acceptable in certain limited applications because a PFC may be the only substitute that can satisfy safety or performance requirements. These requirements might include very high dielectric strength, noncorrosivity, thermal stability, materials compatibility, and chemical inertness. In addition, PFCs do not contribute to stratospheric ozone depletion. Examples of applications where PFCs may represent the only alternative to ODS include uranium isotope separation, chemical processing, electrical inverters, ozone generation for water purification, space simulators, air purification, and integrated chip manufacturing.

Users should note, however, that use of a PFC should be an ODS substitute of last resort. As the determination states, PFCs should be used "only where no other alternatives are technically feasible due to safety or performance requirements." Potential users are required to conduct a thorough review of other more environmentally acceptable substitutes. Although EPA does not require users to submit the results of their substitute evaluation, companies must keep the results on file for future reference.

In cases where users must adopt PFCs, they should make every effort to:

- Recover and recycle these fluids during servicing;
- Adopt maintenance practices that reduce leakage as much as is technically feasible;
- Recover these fluids after the end of the equipment's useful life and either recycle them or destroy them; and
- Continue to search for other long-term alternatives.

Users of PFCs should note that if other alternatives become available, EPA could be petitioned to list PFCs as unacceptable due to the availability of other suitable substitutes. If such a petition were granted, EPA would determine whether to grandfather existing uses based upon consideration of cost and timing of testing and implementation of new substitutes.

d. Unacceptable Substitutes. (1) R–403B. *R–403B, which consists of HCFC–22, R–218, and propane, is unacceptable as a substitute for R–502 in the following new and retrofitted end-uses:*

- Industrial process refrigeration;
- Cold storage warehouses;
- Refrigerated transport;
- Retail food refrigeration;
- Commercial ice machines; and
- Household freezers.

R–218, perfluoropropane, has an extremely high GWP and lifetime, which pose additional risk beyond that of other acceptable substitutes for these end-uses. In particular, the lifetime of R–218 is over 2000 years, which means that global warming effects would be essentially irreversible. While other substitutes may have high GWPs, they do not exhibit such long lifetimes.

In addition to direct global warming effects, EPA considers indirect impacts associated with changes in energy efficiency. Many manufacturers, including that of R–403B, claim energy efficiency gains associated with their products. Such gains are highly dependent on equipment type, ambient conditions, optimization of the system, and other factors. No data demonstrate, however, that R–403B would produce such large indirect benefits as to overcome the direct impact of its use as compared to the use of other already acceptable substitutes. Thus, EPA performed no detailed analysis of the indirect global warming impacts of R–403B.

As discussed in the SNAP FRM, the Agency is authorized to grandfather existing uses from a prohibition where appropriate under the four-part test established in *Sierra Club* v. *EPA*, 719 F.2d 436 (D.C. Cir. 1983). As requested by two commenters, the Agency has conducted the four analyses required under this test, and has concluded that the balance of equities favors the grandfathering of two current uses of R–403B. Within industrial process refrigeration, use of R–403B is permitted until supplies purchased prior to September 26, 1994, the date EPA proposed to list R–403B as unacceptable, are exhausted. Within refrigerated transport, R–403B may be used in systems converted to its use as of September 26, 1994 for the lifetime of that particular equipment. No use outside these two specific cases is allowed.

Under the first prong of the *Sierra Club* analysis, the prohibition set forth in this action clearly represents a departure from previously established practice, as use of this substitute was not previously restricted. However, through the proposed action on September 26, 1994 EPA provided notice that it was considering a change to this previous practice. Therefore, existing users of R–403B who, prior to September 26, 1994, switched from class I substances and invested in this substitute on the assumption that it would be a sufficient improvement over the class I used, relied on the fact that use of R–403B was unrestricted. Prohibiting their use of the substitute immediately would impose a severe economic burden on these users. Although there is a substantial interest in applying this requirement immediately, this interest is balanced by the fact that the restriction will apply immediately to new equipment using R–403B. Therefore, the requirement will apply immediately to a substantial number of systems and there will be no incentive for future investment in R–403B equipment. These factors taken together outweigh any statutory interest in applying the new rule immediately to existing users who had invested in R–403 prior to September 26, 1994.

(2) R–405A. *R–405A, which is composed of HCFC–22, HFC–152a, HCFC–142b, and R–c318, is unacceptable as a substitute for CFC–12, R–500, and R–502 in the following new and retrofitted end-uses:*

- Commercial comfort air conditioning;
- Industrial process refrigeration;
- Ice skating rinks;
- Cold storage warehouses;
- Refrigerated transport;
- Retail food refrigeration;
- Vending machines;
- Water coolers;
- Commercial ice machines;
- Household refrigerators;
- Household freezers;
- Residential dehumidifiers; and
- Motor vehicle air conditioning.

R–405A was listed as HCFC/HFC/fluoroalkane Blend A in previous notices. R–405A contains a high proportion of R–c318, cycloperfluorobutane, which has an extremely high GWP and lifetime. In particular, the lifetime of R–c318 is over 3000 years, which means that global warming effects would be essentially irreversible. While other substitutes may have high GWPs, they do not exhibit such long lifetimes.

In addition to direct global warming effects, EPA considers indirect impacts associated with changes in energy efficiency. Many refrigerant manufacturers claim energy efficiency gains associated with their products. Such gains are highly dependent on equipment type, ambient conditions, optimization of the system, and other factors. No data demonstrate, however, that R–405A would produce such large indirect benefits as to overcome the direct impact of its use as compared to the use of other already acceptable substitutes. Thus, EPA performed no detailed analysis of the indirect global warming impacts of R–405A.

(3) Hydrocarbon Blend B.— *Hydrocarbon Blend B is unacceptable as a substitute for CFC–12 in the following new and retrofitted end-uses:*

- Commercial comfort air conditioning;
- Ice skating rinks;
- Cold storage warehouses;
- Refrigerated transport;
- Retail food refrigeration;
- Vending machines;
- Water coolers;
- Commercial ice machines;
- Household refrigerators;
- Household freezers;
- Residential dehumidifiers; and
- Motor vehicle air conditioning.

Flammability is the primary concern. Use of this substitute in very leaky end-uses like motor vehicle air conditioning may pose a high risk of fire. EPA requires that a risk assessment be conducted to demonstrate this blend may be safely used in any CFC–12 end-uses. The manufacturer of this blend has not submitted such a risk assessment, and EPA therefore finds it unacceptable.

(4) Flammable Substitutes.— *Flammable substitutes, defined as having flammability limits as measured according to ASTM E–681 with modifications included in Society of Automotive Engineers Recommended Practice J1657, including blends which become flammable during fractionation, are unacceptable as substitutes for CFC–12 in retrofitted motor vehicle air conditioning systems.*

Flammable refrigerants differ from traditional substances in several ways: Potential gains in energy efficiency, reductions in direct contribution to global warming, and additional risks from fire. Flammable refrigerants may be good substitutes in systems designed with fire risks in mind. In addition, in certain circumstances, they may serve well as substitutes in retrofit uses. EPA encourages research into the use of flammable refrigerants, but remains concerned about the dangers. Because of these concerns, EPA has established the requirement that manufacturers of flammable refrigerants conduct detailed risk assessments in all end-uses. The risks from flammability are extremely sensitive to the end-use and charge size.

In motor vehicle air conditioning systems (MVACS), flammable refrigerants pose risks not found in stationary equipment, including the potential for explosions in collisions, potential punctures of the condenser because of its placement directly behind the grille, potential punctures of flexible hoses, the hazard to technicians who are not expecting to handle flammable fluids, the danger to passengers from evaporator leaks, and the dangers to personnel involved in disposal of old automobiles. Due to the length of SNAP review, certain substitutes have been marketed which may pose risk to users. The intent of the 90-day review process was not to allow manufacturers to market risky substitutes, but rather to ensure a thorough review. Because of potential risks to users and service personnel, EPA finds it necessary to find all flammable substitutes unacceptable in retrofitted automotive air conditioning to prevent hazardous substitutes from being sold without a thorough risk assessment.

EPA continues to encourage investigation of all substitute refrigerants, including flammable substances. This unacceptable determination only applies to retrofitted MVACS. If a manufacturer wishes an acceptable determination for a flammable substitute in MVACS, this risk assessment must be conducted in a scientifically valid manner. EPA will consider such a risk assessment in any determination on the substitute.

B. Solvents

1. Acceptable Subject to Use Conditions

a. Electronics Cleaning. (1) HCFC–225 ca/cb. *HCFC–225 is an acceptable substitute for CFC–113 and MCF in electronics cleaning subject to a 25 ppm occupational exposure level for the ca-isomer.* The use condition is based on the toxicity of this chemical. The Agency's analysis of this substitute found that the exposure limit indicated is sufficient to protect worker health and that this limit can be met with exposure controls. The exposure limit of the HCFC–225 cb isomer is 250 ppm. The new limit for the ca-isomer should be readily achievable since HCFC–225 is only sold commercially as a (45%/55%) blend of ca- and cb-isomers. In addition, the cleaning equipment where HCFC–225 is used is characterized by low emissions, and the manufacturer of HCFC–225 is currently conducting personal monitoring to corroborate the projected emission levels.

These workplace standards are designed to protect worker safety until the Occupational Safety and Health Administration (OSHA) sets its own standards under P.L. 91–596. The existence of the EPA standards in no way bars OSHA from standard-setting under OSHA authorities as defined in P.L. 91–596.

b. Precision Cleaning. (1) HCFC–225 ca/cb. *HCFC–225 is an acceptable substitute for CFC–113 and MCF in precision cleaning subject to a 25 ppm occupational exposure level for the ca-isomer.* The reasons for this decision are described in the preceding section.

2. Unacceptable Substitutes

a. Metals Cleaning. (1) Dibromomethane. *Dibromomethane (DBM) is an unacceptable substitute for CFC–113 and MCF in metals cleaning.* Dibromomethane has a comparatively high ODP (.17), and EPA's analysis of use of this chemical in cleaning processes revealed correspondingly high ozone depletion effects. In the case of DBM, the Agency's concern for high ODP is compounded by the fact that DBM can in some cases be used as a drop-in replacement, which could result in greater probability of uncontrolled venting to the atmosphere. Since other alternatives with lower overall environmental impacts exist for the cleaning processes in question, EPA elected to ban use of DBM as a cleaning substitute.

b. Electronics Cleaning. (2) Dibromomethane. *Dibromomethane is an unacceptable substitute for CFC–113 and MCF in electronics cleaning.* Reasons for this decision are described in the preceding section.

c. Precision Cleaning. (3) Dibromomethane. *Dibromomethane is an unacceptable substitute for CFC–113 and MCF in precision cleaning.* Reasons for this decision are described in the preceding section.

c. Fire Suppression and Explosion Protection

1. Response to Comments

One commenter believes that CF_3I should not be acceptable for use in any fire protection applications until two-year chronic testing is done, and should be treated as a suspect carcinogen as defined by OSHA regulations, along with appropriate warnings for handlers.

The commenter bases his belief on two points. First, the commenter suggests that the cardiosensitization test resulting in death of a test animal is not like the results from Halon 1211, CFC–11 or HCFC–123, which resulted in heart arrhythmias followed by recovery when the test animal was removed from exposure.

Second, the commenter states that the results of the genotoxicity tests give positive indications that CF_3I is potentially a carcinogen. The commenter states that the structural relationship of CF_3I to CH_3I, which the commenter states is a known skin carcinogen, increases the likelihood that CF_3I is a carcinogen.

The cardiosensitization protocol incorporates simulation of a worse-case response by injecting the test animal with epinephrine prior to administering the test agent. The standard protocol interpretation requires observation of at least five life-threatening ventricular arrhythmias in order to conclude that the LOAEL has been attained. This response is a precursor to the imminent death of the animal.

In addition, the response of an animal to a cardiosensitizing agent is somewhat random. Whereas one animal may experience heart arrhythmias, another animal might experience immediate death by the same dose. Thus, the observations of ventricular arrhythmias are considered to be the same as observations of death and both are considered valid indicators of the LOAEL value.

Regarding the commenters' concern that CF_3I is a carcinogen, EPA conducts a risk assessment of an agent by initially asking qualitative questions such as: "Is the structure of the compound likely to be carcinogenic, and does the agent test positive in a mutagenesis assay? If so, how potent is the reaction, in other words, what dosage level gives a positive reaction?"

CF_3I is not a known carcinogen, although it tested positive in a mutagenicity screening assay to determine which are potential candidates for further testing. The Ames mutagenicity test used as a predictor of carcinogenicity is accurate as a predictor approximately 50 per cent of the time. The ability of this assay to predict for carcinogenicity, even given the positive finding, is questionable in the case of halogenated compounds.

Even should it be determined in a two-year carcinogenicity bioassay that the agent is a carcinogen, its use under the particular conditions representative of fire suppression applications in which could be expected only one or a few exposures in a life time, is likely not to constitute a cancer risk. A cancer risk usually requires long term exposure to the agent.

If the agent is a very good fire agent, on balance, the risk to protect lives overrides the remote concern of carcinogenicity from the agent. In such a case, for those situations where a manufacturing or service worker or fire fighter would be repeatedly exposed, appropriate precautions would be taken. A firefighter is not training in an environment where he is not already protected. And in industrial settings, the acceptable exposure limits are set using the subchronic and chronic data that is available and due precautions are taken, as in any other industrial chemical use.

One commenter requested that the use restrictions on SF_6 be altered to allow its use as a discharge test agent for all civilian as well as military aircraft fire suppression systems. The commenter reported that research efforts by private companies, the U.S. Navy, and the National Institute for Standards and Technology have identified SF_6 as the preferred test agent for simulating halon 1301 in aircraft fire suppression systems. The commenter indicated that the amount of SF_6 released in developing and certifying new commercial aircraft will be approximately 1,000 pounds per year or less.

EPA concurs with the commenter's request. EPA is aware that the airline industry is conducting a strategic research effort to identify new agents for use in new aircraft. Meanwhile, airlines and aircraft manufacturers are maintaining banks of recycled halon to service existing aircraft as well as new aircraft being built before the new systems and aircraft design can be developed and implemented. To preserve the stock of recycled halon for critical onboard use, and to minimize emission of halon during testing, EPA is broadening the language in this final rulemaking to allow the use of SF_6 as a discharge test agent in commercial as well as military aircraft fire suppression systems.

One commenter took issue with the use of the EPA's statement that PFCs are agents of "last resort" and that "in most total flooding applications, the Agency believes that alternatives to C_3F_8 exist." The commenter cited cases where confusion resulted in no action being taken by the user to move into an alternative. The commenter took no issue with the use conditions or the narrowed use limits imposed on PFCs in previous SNAP rulemakings. The commenter requested that EPA issue guidance on the 'narrowed use limits' evaluation.

EPA's use of the term 'agent of last resort' is intended to further explain, in simple terms, EPA's intention to the end-user. Further, EPA cannot agree to eliminate the statement "in most total flooding applications, the Agency believes that alternatives to C_3F_8 exist." This same language was used in the original SNAP rulemaking (59 FR 13109, 13110), and conveys to the user that most applications can be served by non-PFC technology and should be evaluated as such.

The narrowed use restriction imposed on PFCs was developed with the input of users and industry. EPA was requested to leave the technical evaluations to end-users and fire protection engineers, as each use scenario presented its own challenges and requirements. It was felt that specific guidance by EPA would limit the ability of the fire protection community to select and design the most appropriate system for each application. Thus, EPA requires that end-users conduct an evaluation of the alternatives, and maintain documentation in the event a PFC is selected. EPA regrets there is some confusion in the market concerning the determination that other alternatives are not technically feasible, but to be more specific may inadvertently limit a user's choices. EPA is expressly leaving technical evaluations to the user community.

2. Listing Decisions

a. Acceptable Subject to Use Conditions

(1) Total Flooding Agents. (a) C_3F_8. *C_3F_8 is acceptable as a Halon 1301 substitute where other alternatives are not technically feasible due to performance or safety requirements: (a) Due to their physical or chemical properties or (b) where human exposure to the agents may approach cardiosensitization levels or result in other unacceptable health effects under normal operating conditions.* This agent is subject to the same use conditions stipulated for all total flooding agents, that is:

- Where egress from an area cannot be accomplished within one minute, the employer shall not use this agent in concentrations exceeding its NOAEL.
- Where egress takes longer than 30 seconds but less than one minute, the employer shall not use the agent in a concentration greater than its LOAEL.
- Agent concentrations greater than the LOAEL are only permitted in areas not normally occupied by employees provided that any employee in the area can escape within 30 seconds. The employer shall assure that no unprotected employees enter the area during agent discharge.

Cup burner tests in heptane indicate that C_3F_8 can extinguish fires in a total flood application at concentrations of 7.30 per cent and therefore has a design concentration of 8.8 per cent. The cardiotoxic NOAEL of 30 per cent for this agent is well above its extinguishment concentration and therefore this agent is safe for use in occupied areas. This agent can replace Halon 1301 by a ratio of 2 to 1 by weight:

Using agents in high concentrations poses a risk of asphyxiation by displacing oxygen. With an ambient oxygen level of 21 per cent, a design concentration of 22.6 per cent may reduce oxygen levels to approximately 16 per cent, the minimum level considered to be required to prevent impaired judgement or other physiological effects. Thus, the oxygen level resulting from discharge of this agent must be at least 16 per cent.

C_3F_8 has no ozone depletion potential, and is nonflammable, essentially non-toxic, and is not a VOC. However, this agent has an atmospheric lifetime of 3,200 years and a 100-year GWP of 6100. Due to the long atmospheric lifetime of C_3F_8, the Agency is finding this chemical acceptable only in those limited instances where no other alternative is technically feasible due to performance or safety requirements. In most total flooding applications, the Agency believes that alternatives to C_3F_8 exist. EPA intends that users select C_3F_8 out of need and that this agent be used as the agent of last resort. Thus, a user must determine that the requirements of the specific end-use preclude use of other available alternatives.

Users must observe the limitations on C_3F_8 acceptability by undertaking the following measures: (i) Conduct an evaluation of foreseeable conditions of end use; (ii) determine that human exposure to the other alternative extinguishing agents may approach or result in cardiosensitization or other unacceptable toxicity effects under normal operating conditions; and (iii) determine that the physical or chemical properties or other technical constraints of the other available agents preclude their use.

EPA recommends that users minimize unnecessary emissions of this agent by limiting testing of C_3F_8 to that which is essential to meet safety or performance requirements; recovering C_3F_8 from the fire protection system in conjunction with testing or servicing; and destroying or recycling C_3F_8 for later use. EPA encourages manufacturers to develop aggressive product stewardship programs to help users avoid such unnecessary emissions.

(b) CF_3I *CF_3I is acceptable as a Halon 1301 substitute in normally unoccupied areas.* Any employee that could possibly be in the area must be able to escape within 30 seconds. The employer shall assure that no unprotected employees enter the area during agent discharge.

CF_3I (Halon 13001) is a fluoroiodocarbon with an atmospheric lifetime of only 1.15 days due to its rapid photolysis in the presence of light. The resulting GWP of this agent is less than one, and its ODP when released at ground level is likely to be extremely low, with current conservative estimates ranging from .008 to .01. Complete analysis of the ozone depleting potential of this agent will be available in the near future.

Anticipating EPA's concern about releases of CF_3I from aircraft, and the associated likelihood of increased ozone-depleting effectiveness when released at higher altitudes, the military has conducted an analysis of historical releases of Halon 1301 from both military and commercial aircraft. Initial assessment indicates that emissions from U.S. military aircraft appear to have averaged about 56 pounds annually, of which 2 pounds were emitted above 30,000 feet. Commercial aircraft worldwide released an estimated average of 933 pounds of Halon 1301 annually, of which 158 pounds was released above 30,000 feet. While EPA is awaiting the results of the ODP calculations of CF_3I, it is unlikely that such low emissions at high altitude will pose a significant threat to the ozone layer.

Interest in this agent is very high because it may constitute a drop-in replacement to Halon 1301 on a weight and volume basis. Initial tests have shown its weight equivalence for fire extinguishment to be 1.36, and its volume equivalence to be 1.0, while for explosion inertion it is 1.42 and 1.04 respectively. The research community is continuing to qualify the properties of this agent, including its materials compatibility, its storage stability and its effectiveness. While the manufacturer's SNAP submission only requests listing in normally unoccupied areas, preliminary cardiosensitization data received by the Agency indicate that CF_3I has a NOAEL of 0.2 per cent and a LOAEL of 0.4 per cent, and thus this agent would not be suited for use in normally occupied areas.

(c) Gelled Halocarbon/Dry Chemical Suspension. *Gelled Halocarbon/Dry Chemical Suspension is acceptable as a Halon 1301 substitute in normally unoccupied areas.* Any employee who could possibly be in the area must be able to escape within 30 seconds. The employer shall assure that no unprotected employees enter the area during agent discharge.

The manufacturer is proposing to blend either of two halocarbons (HFC–125 or HFC–134a) with either ammonium polyphosphate (which is not corrosive) or monoammonium phosphate (which is corrosive on hard surfaces). An initial assessment of inhalation toxicology of fine particulates indicates that some risk exists of inhalation exposure when the particles are below a certain size compared to the mass per cubic meter in air. Particle sizes less than 10 to 15 microns and a mass above the ACGIH nuisance dust levels raise concerns which need to be further studied. In a total flooding application, the exposure levels may be of concern. In addition, because the discharge of powders obscures vision, evacuation could be impeded. EPA is asking manufacturers of total flooding systems using powdered aerosols to submit to the Agency a review of the medical implications of inhaling atmospheres flooded with fine powder particulates. While the manufacturer requested a SNAP listing for unoccupied areas only, EPA would not consider its use in occupied areas until the requested peer review is complete. Meanwhile, EPA is finding this technology acceptable for use in normally unoccupied areas.

For further discussion of this agent, including a review of particle size distributions, see the listing under "Streaming Agents—Acceptable."

(d) Inert Gas/Powdered Aerosol Blend. *Inert Gas/Powdered Aerosol Blend is acceptable as a Halon 1301 substitute in normally unoccupied areas.* In areas where personnel could possibly be present, as in a cargo area, the employer shall provide a pre-discharge employee alarm capable of being perceived above ambient light or noise levels for alerting employees before system discharge. The pre-discharge alarm shall provide employees time to safely exit the discharge area prior to system discharge.

This alternative agent is formulated from a mixture of dry powders pressed together into pill form. Upon exposure to heat from a fire, a pyrotechnic charge initiates a series of exothermic, gas-producing reactions composed mainly of a mixture of nitrogen, carbon dioxide and water vapor, with small amounts of carbon monoxide, nitrous oxide, nitrogen dioxide, and solid residues. The oxygen level in the room is largely depleted, thus extinguishing the fire.

The manufacturer has proposed this technology for use in normally unoccupied areas only, such as engine nacelles and engine compartments, aircraft dry bay areas and unoccupied cargo areas. Comparing agents alone, deployment of 2.0 pounds of this agent at 400°F has an equivalent fire suppression effectiveness to 1.0 pound of Halon 1301 at 70°F.

This agent has no ODP. The carbon dioxide generated in the combustion of this agent has a GWP of 1.

b. Acceptable Subject to Narrowed Use Limits

(1) Total Flooding Agents. (a) C_3F_8. *C_3F_8 is acceptable as a Halon 1301 substitute where other alternatives are not technically feasible due to performance or safety requirements: a) due to their physical or chemical properties or b) where human exposure to the agents may approach cardiosensitization levels or result in other unacceptable health effects under normal operating conditions.* This agent is subject to the use conditions stipulated for all total flooding agents, that is:

- Where egress from an area cannot be accomplished within one minute, the employer shall not use this agent in concentrations exceeding its NOAEL.
- Where egress takes longer than 30 seconds but less than one minute, the employer shall not use the agent in a concentration greater than its LOAEL.
- Agent concentrations greater than the LOAEL are only permitted in areas not normally occupied by employees provided that any employee in the area can escape within 30 seconds. The employer shall assure that no unprotected employees enter the area during agent discharge.

Cup burner tests in heptane indicate that C_3F_8 can extinguish fires in a total flood application at concentrations of 7.30 per cent and therefore has a design concentration of 8.8 per cent. The cardiotoxic NOAEL of 30 per cent for this agent is well above its extinguishment concentration; therefore, it is safe for use in occupied areas. This agent has a weight equivalence of two-to-one by weight compared to Halon 1301.

Using agents in high concentrations poses a risk of asphyxiation by displacing oxygen. With an ambient oxygen level of 21 per cent, a design concentration of 22.6 per cent may reduce oxygen levels to approximately 16 per cent, the minimum level considered to be required to prevent impaired judgment or other physiological effects. Thus, the oxygen level resulting from discharge of this agent must be at least 16 per cent.

This agent has an atmospheric lifetime of 3,200 years and a 100-year GWP of 6,100. Due to the long atmospheric lifetime of C_3F_8, the Agency is finding this chemical acceptable only in those limited instances where no other alternative is technically feasible due to performance or safety requirements. In most total flooding applications, the Agency believes that alternatives to C_3F_8 exist. EPA intends that users select C_3F_8 out of need and that this agent be used as the agent of last resort. Thus, a user must determine that the requirements of the specific end-use preclude use of other available alternatives.

Users must observe the limitations on C_3F_8 acceptability by undertaking the following measures: (i) Conduct an evaluation of foreseeable conditions of end use; (ii) determine that human exposure to the other alternative extinguishing agents may approach or result in cardiosensitization or other unacceptable toxicity effects under normal operating conditions; and (iii) determine that the physical or chemical properties or other technical constraints of the other available agents preclude their use.

EPA recommends that users minimize unnecessary emissions of this agent by

limiting testing of C_3F_8 to that which is essential to meet safety or performance requirements; recovering C_3F_8 from the fire protection system in conjunction with testing or servicing; and destroying or recycling C_3F_8 for later use. EPA encourages manufacturers to develop aggressive product stewardship programs to help users avoid such unnecessary emissions.

(b) Sulfur Hexafluoride (SF_6). *SF_6 is acceptable for use as a discharge test agent in military uses and civilian aircraft uses only.* Sulfur Hexafluoride is a nonflammable, nontoxic gas which is colorless and odorless. With a density of approximately five times that of air, it is one of the heaviest known gases. SF_6 is relatively inert, and has an atmospheric lifetime of 3,200 years, with a 100-year, 500-year, and 1,000-year GWP of 16,500, 24,900 and 36,500 respectively.

This agent has been developed by the U.S. Navy as a test gas simulant in place of halon in new halon total flooding systems on ships which have been under construction prior to identification and qualification of substitute agents. Halon systems are no longer included in designs for new ships. The Navy estimates its annual usage to be less than 10,000 pounds annually, decreasing over time. Similarly, the airline industry has an interest in using SF_6 as a discharge test agent simulating Halon 1301 in aircraft system certification testing to ensure aircraft inflight fire safety. During the period of development, FAA certification, and implementation of suitable substitutes for aircraft, the airlines will continue to build new aircraft with halon systems. The amount of SF_6 released in developing and certifying these critical systems for commercial aircraft will be approximately 1,000 pounds per year or less. EPA believes that the quantities involved in these two use sectors are moderate, and avoiding the discharge of halon to test new halon systems is an immediate priority.

While SF_6 is not currently used in other commercial sector testing regimes, EPA is imposing a narrowed use limit to ensure that emissions of this agent remain minimal. The NFPA 12a and NFPA 2001 standards recommend that halon or other total flooding gases not be used in discharge testing, but that alternative methods of ensuring enclosure and piping integrity and system functioning be used. Alternative methods can often be used, such as the "door fan" test for enclosure integrity, UL 1058 testing to ensure system functioning, pneumatic test of installed piping, and a "puff" test to ensure against internal blockages in the piping network. These stringent design and testing requirements have largely obviated the need to perform a discharge test for total flood systems containing either Halon 1301 or a substitute agent.

c. Unacceptable

(1) Total Flooding. (a) *HFC–32. HFC–32 is unacceptable as a total flooding agent.* HFC–32 has been determined to be flammable, with a large flammability range, and is therefore inappropriate as a halon substitute when used as a pure agent. This agent was proposed acceptable in the first SNAP proposed rulemaking (58 FR 28093, May 12, 1993) but public comment received indicated agreement about the flammability characteristics of this agent. EPA is not aware of any interest in commercializing this agent as a fire suppression agent.

IV. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, (58 FR 51735; October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the "Executive Order."

Pursuant to the terms of Executive Order 12866, OMB notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order and EPA submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations have been documented in the public record.

B. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires EPA to prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing any small governments that may be significantly or uniquely affected by the rule. Section 205 requires that regulatory alternatives be considered before promulgating a rule for which a budgetary impact statement is prepared. The Agency must select the least costly, most cost-effective, or least burdensome alternative that achieves the rule's objectives, unless there is an explanation why this alternative is not selected or this alternative is inconsistent with law.

Because this final rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments. However, the rule has the net effect of reducing burden from part 82, Stratospheric Protection regulations, on regulated entities.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 604(a), applies to any rulemaking that is subject to public notice and comment requirements. The Act requires that a regulatory flexibility analysis be performed or the head of the Agency certifies that a rule will not have a significant economic effect on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

The Agency believes that this final rule will not have a significant effect on a substantial number of small entities and has therefore concluded that a formal RFA is unnecessary. Because costs of the SNAP requirements as a whole are expected to be minor, the rule is unlikely to adversely affect businesses, particularly as the rule exempts small sectors and end-uses from reporting requirements and formal agency review. In fact, to the extent that information gathering is more expensive and time-consuming for small companies, this rule may well provide benefits for small businesses anxious to examine potential substitutes to any ozone-depleting class I and class II substances they may be using, by requiring manufacturers to make information on such substitutes available.

D. Paperwork Reduction Act

The EPA has determined that this final rule contains no information requirements subject to the Paperwork Reduction Act 44 S.S.C. 3501 et seq.

V. Additional Information

For copies of the comprehensive SNAP lists or additional information on SNAP contact the Stratospheric Protection Hotline at 1–800–296–1996, Monday-Friday, between the hours of 10:00 a.m. and 4:00 p.m. (EST).

For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the SNAP final rulemaking published in the **Federal Register** on March 18, 1994 (59 FR 13044). **Federal Register** notices can be ordered from the Government Printing Office Order Desk (202) 783–3238; the citation is the date of publication.

Notices and rulemaking under the SNAP program can also be retrieved electronically from EPA's Protection of Stratospheric Ozone Technology Transfer Network (TTN), Clean Air Act Amendment Bulletin Board. The access number for users with a 1200 or 2400 bps modem is (919) 541–5742. For users with a 9600 bps modem the access number is (919) 541–1447. For assistance in accessing this service, call (919) 541–5384 during normal business hours (EST).

List of Subjects in 40 CFR Part 82

Environmental protection, administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: June 2, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR part 82 is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

2. Section 82.180 is amended by revising paragraph (a)(8)(ii) to read as follows:

§ 82.180 Agency review of SNAP submissions.

(a) * * *

(8) * * *

(ii) *Communication of Decision to the Public.* The Agency will publish in the **Federal Register** on a quarterly basis a complete list of the acceptable and unacceptable alternatives that have been reviewed to date. In the case of substitutes proposed as acceptable with use restrictions, proposed as unacceptable or proposed for removal from either list, a rulemaking process will ensue. Upon completion of such rulemaking, EPA will publish revised lists of substitutes acceptable subject to use conditions or narrowed use limits and unacceptable substitutes to be incorporated into the Code of Federal Regulations. (See Appendices to this subpart.)

* * * * *

4. Subpart G is amended by adding appendix B to read as follows:

Subpart G—Significant New Alternatives Policy Program

* * * * *

Appendix B to Subpart G—Substitutes Subject to Use Restrictions and Unacceptable Substitutes

Listed in the June 13, 1995 final rule, effective July 13, 1995.

REFRIGERANTS—ACCEPTABLE SUBJECT TO USE CONDITIONS

Application	Substitute	Decision	Conditions	Comments
CFC–12 Automobile Motor Vehicle Air Conditioning (Retrofit and New Equipment/NIKS).	HFC–134a, R–401C, HCFC Blend Beta.	Acceptable	—must be used with unique fittings. —must be used with detailed labels. —all CFC–12 must be removed from the system prior to retrofitting. Refer to the text for a full description.	EPA is concerned that the existence of several substitutes in this end-use may increase the likelihood of significant refrigerant cross-contamination and potential failure of both air conditioning systems and recovery/recycling equipment. For the purposes of this rule, no distinction is made between "retrofit" and "drop-in" refrigerants; retrofitting a car to use a new refrigerant includes all procedures that result in the air conditioning system using a new refrigerant.

REFRIGERANTS—ACCEPTABLE SUBJECT TO NARROWED USE LIMITS

End-use	Substitute	Decision	Comments
CFC–11, CFC–12, CFC–113, CFC–114, CFC–115 Non-Mechanical Heat Transfer, New.	C_3F_8, C_4F_{10}, C_5F_{12}, $C_5F_{11}NO$, C_6F_{14}, $C_6F_{13}NO$, C_7F_{16}, $C_7F_{13}NO$, C_8F_{18}, $C_8F_{16}O$, and $C_9F_{21}N$.	Acceptable only where no other alternatives are technically feasible due to safety or performance requirements.	Users must observe the limitations on PFC acceptability by determining that the physical or chemical properties or other technical constraints of the other available agents preclude their use. Documentation of such measures must be available for review upon request. The principal environmental characteristic of concern for PFCs is that they have high GWPs and long atmospheric lifetimes. EPA strongly recommends recovery and recycling of these substitutes.

REFRIGERANTS—UNACCEPTABLE SUBSTITUTES

End-use	Substitute	Decision	Comments
CFC–11, CFC–12, CFC–113, CFC–114, R–500 Centrifugal Chillers (Retrofit and New Equipment/NIKs).	R–405A	Unacceptable	R–405A contains R–c318, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	Hydrocarbon Blend B	Unacceptable	Flammability is a serious concern. Data have not been submitted to demonstrate it can be used safely in this end-use.
CFC–12 Reciprocating Chillers (Retrofit and New Equipment/NIKs).	R–405A	Unacceptable	R–405A contains R–c318, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	Hydrocarbon Blend B	Unacceptable	Flammability is a serious concern. Data have not been submitted to demonstrate it can be used safely in this end-use.
CFC–11, CFC–12, R–502 Industrial Process Refrigeration (Retrofit and New Equipment/NIKs).	R–403B	Unacceptable	R–403B contains R–218, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	R–405A	Unacceptable	R–405A contains R–c318, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
CFC–12, R–502 Ice Skating Rinks (Retrofit and New Equipment/NIKs).	R–405A	Unacceptable	R–405A contains R–c318, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	Hydrocarbon Blend B	Unacceptable	Flammability is a serious concern. Data have not been submitted to demonstrate it can be used safely in this end-use.
CFC–12, R–502 Cold Storage Warehouses (Retrofit and New Equipment/NIKs).	R–403B	Unacceptable	R–403B contains R–218, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	R–405A	Unacceptable	R–405A contains R–c318, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	Hydrocarbon Blend B	Unacceptable	Flammability is a serious concern. Data have not been submitted to demonstrate it can be used safely in this end-use.
CFC–12, R–500, R–502 Refrigerated Transport (Retrofit and New Equipment/NIKs).	R–403B	Unacceptable	R–403B contains R–218, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	R–405A	Unacceptable	R–405A contains R–c318, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	Hydrocarbon Blend B	Unacceptable	Flammability is a serious concern. Data have not been submitted to demonstrate it can be used safely in this end-use.
CFC–12, R–502 Retail Food Refrigeration (Retrofit and New Equipment/NIKs).	R–403B	Unacceptable	R–403B contains R–218, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	R–405A	Unacceptable	R–405A contains R–c318, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	Hydrocarbon Blend B	Unacceptable	Flammability is a serious concern. Data have not been submitted to demonstrate it can be used safely in this end-use.
CFC–12, R–502 Commercial Ice Machines (Retrofit and New Equipment/NIKs).	R–403B	Unacceptable	R–403B contains R–218, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	R–405A	Unacceptable	R–405A contains R–c318, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	Hydrocarbon Blend B	Unacceptable	Flammability is a serious concern. Data have not been submitted to demonstrate it can be used safely in this end-use.
CFC–12 Vending Machines (Retrofit and New Equipment/NIKs).	R–405A	Unacceptable	R–405A contains R–c318, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	Hydrocarbon Blend B	Unacceptable	Flammability is a serious concern. Data have not been submitted to demonstrate it can be used safely in this end-use.
CFC–12 Water Coolers (Retrofit and New Equipment/NIKs).	R–405A	Unacceptable	R–405A contains R–c318, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	Hydrocarbon Blend B	Unacceptable	Flammability is a serious concern. Data have not been submitted to demonstrate it can be used safely in this end-use.

REFRIGERANTS—UNACCEPTABLE SUBSTITUTES—Continued

End-use	Substitute	Decision	Comments
CFC–12 Household Refrigerators (Retrofit and New Equipment/NIKs).	R–405A	Unacceptable	R–405A contains R–c318, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	Hydrocarbon Blend B	Unacceptable	Flammability is a serious concern. Data have not been submitted to demonstrate it can be used safely in this end-use.
CFC–12, R–502 Household Freezers (Retrofit and New Equipment/NIKs).	R–403B	Unacceptable	R–403B contains R–218, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	R–405A	Unacceptable	R–405A contains R–c318, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	Hydrocarbon Blend B	Unacceptable	Flammability is a serious concern. Data have not been submitted to demonstrate it can be used safely in this end-use.
CFC–12, R–500 Residential Dehumidifiers (Retrofit and New Equipment/NIKs).	R–405A	Unacceptable	R–405A contains R–c318, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	Hydrocarbon Blend B	Unacceptable	Flammability is a serious concern. Data have not been submitted to demonstrate it can be used safely in this end-use.
CFC–12 Motor Vehicle Air Conditioners (Retrofit and New Equipment/NIKs).	R–405A	Unacceptable	R–405A contains R–c318, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	Hydrocarbon Blend B	Unacceptable	Flammability is a serious concern. Data have not been submitted to demonstrate it can be used safely in this end-use.
	Flammable Substitutes	Unacceptable	The risks associated with using flammable substitutes in this end-use have not been addressed by a risk assessment.

SOLVENT CLEANING SECTOR—ACCEPTABLE SUBJECT TO USE CONDITIONS SUBSTITUTES

Application	Substitute	Decision	Conditions	Comments
Electronics Cleaning w/CFC–113, MCF.	HCFC–225 ca/cb	Acceptable	Subject to the company set exposure limit of 25 ppm of the -ca isomer.	HCFC–225 ca/cb blend is offered as a 45%-ca/55%-cb blend. The company set exposure limit of the -ca isomer is 25 ppm. The company set exposure limit of the -cb isomer is 250 ppm. It is the Agency's opinion that with the low emission cold cleaning and vapor degreasing equipment designed for this use, the 25 ppm limit of the HCFC–225 ca isomer can be met. The company is submitting further exposure monitoring data.
Precision Cleaning w/CFC–113, MCF.	HCFC–225 ca/cb	Acceptable	Subject to the company set exposure limit of 25 ppm of the -ca isomer.	HCFC–225 ca/cb blend is offered as a 45%-ca/55%-cb blend. The company set exposure limit of the -ca isomer is 25 ppm. The company set exposure limit of the -cb isomer is 250 ppm. It is the Agency's opinion that with the low emission cold cleaning and vapor degreasing equipment designed for this use, the 25 ppm limit of the HCFC–225 ca isomer can be met. The company is submitting further exposure monitoring data.

SOLVENT CLEANING SECTOR—UNACCEPTABLE SUBSTITUTES

End use	Substitute	Decision	Comments
Metals cleaning w/CFC–113	Dibromomethane	Unacceptable	High ODP; other alternatives exist.
Metals cleaning w/MCF	Dibromomethane	Unacceptable	High ODP; other alternatives exist.
Electronics cleaning w/CFC–113	Dibromomethane	Unacceptable	High ODP; other alternatives exist.
Electronics cleaning w/MCF	Dibromomethane	Unacceptable	High ODP; other alternatives exist.

SOLVENT CLEANING SECTOR—UNACCEPTABLE SUBSTITUTES—Continued

End use	Substitute	Decision	Comments
Precision cleaning w/CFC–113	Dibromomethane	Unacceptable	High ODP; other alternatives exist.
Precision cleaning w/MCF	Dibromomethane	Unacceptable	High ODP; other alternatives exist.

FIRE SUPPRESSION AND EXPLOSION PROTECTION—ACCEPTABLE SUBJECT TO USE CONDITIONS: TOTAL FLOODING AGENTS

Application	Substitute	Decision	Conditions	Comments
Halon 1301 Total Flooding Agents.	C_3F_8	Acceptable where other alternatives are not technically feasible due to performance or safety requirements:. a. due to their physical or chemical properties, or. b. where human exposure to the extinguishing agents may approach cardiosensitization levels or result in other unacceptable health effects under normal operating conditions.	Until OSHA establishes applicable workplace requirements:. For occupied areas from which personnel cannot be evacuated in one minute, use is permitted only up to concentrations not exceeding the cardiotoxicity NOAEL of 30%. Although no LOAEL has been established for this product, standard OSHA requirements apply, i.e. for occupied areas from which personnel can be evacuated or egress can occur between 30 and 60 seconds, use is permitted up to a concentration not exceeding the LOAEL. All personnel must be evacuated before concentration of C_3F_8 exceeds 30%. Design concentration must result in oxygen levels of at least 16%.	The comparative design concentration based on cup burner values is approximately 8.8%. Users must observe the limitations on PFC acceptability by making reasonable efforts to undertake the following measures: (i) conduct an evaluation of foreseeable conditions of end use; (ii) determine that human exposure to the other alternative extinguishing agents may approach or result in cardiosensitization or other unacceptable toxicity effects under normal operating conditions; and (iii) determine that the physical or chemical properties or other technical constraints of the other available agents preclude their use; Documentation of such measures must be available for review upon request. The principal environmental characteristic of concern for PFCs is that they have high GWPs and long atmospheric lifetimes. Actual contributions to global warming depend upon the quantities of PFCs emitted. For additional guidance regarding applications in which PFCs may be appropriate, users should consult the description of potential uses which is included in the March 18, 1994 Rulemaking (59 FR 13043). See additional comments 1, 2, 3, 4.
	CF_3I	Acceptable in normally unoccupied areas.	EPA requires that any employee who could possibly be in the area must be able to escape within 30 seconds. The employer shall assure that no unprotected employees enter the area during agent discharge.	Manufacturer has not applied for listing for use in normally occupied areas. Preliminary cardiosensitization data indicates that this agent would not be suitable for use in normally occupied areas. EPA is awaiting results of ODP calculations. See additional comments 1, 2, 3, 4.
	Gelled Halocarbon/Dry Chemical Suspension.	Acceptable in normally unoccupied areas.	EPA requires that any employee who could possibly be in the area must be able to escape within 30 seconds. The employer shall assure that no unprotected employees enter the area during agent discharge.	The manufacturer's SNAP application requested listing for use in unoccupied areas only. See additional comment 2.
	Inert Gas/Powdered Aerosol Blend.	Acceptable as a Halon 1301 substitute in normally unoccupied areas.	In areas where personnel could possibly be present, as in a cargo area, EPA requires that the employer shall provide a pre-discharge employee alarm capable of being perceived above ambient light or noise levels for alerting employees before system discharge. The pre-discharge alarm shall provide employees time to safely exit the discharge area prior to system discharge.	The manufacturer's SNAP application requested listing for use in unoccupied areas only. See additional comment 2.

Additional Comments
1—Must conform with OSHA 29 CFR 1910 Subpart L Section 1910.160 of the U.S. Code.
2—Per OSHA requirements, protective gear (SCBA) must be available in the event personnel must enter/reenter the area.
3—Discharge testing should be strictly limited only to that which is essential to meet safety or performance requirements.

4—The agent should be recovered from the fire protection system in conjunction with testing or servicing, and recycled for later use or destroyed.

FIRE SUPPRESSION AND EXPLOSION PROTECTION—ACCEPTABLE SUBJECT TO NARROWED USE LIMITS: TOTAL FLOODING AGENTS

Application	Substitute	Decision	Conditions	Comments
Halon 1301, Total Flooding Agents.	C_3F_8	Acceptable where other alternatives are not technically feasible due to performance or safety requirements:. a. due to their physical or chemical properties, or. b. where human exposure to the extinguishing agents may approach cardiosensitization levels or result in other unacceptable health effects under normal operating conditions.	Until OSHA establishes applicable workplace requirements:. For occupied areas from which personnel cannot be evacuated in one minute, use is permitted only up to concentrations not exceeding the cardiotoxicity NOAEL of 30%. Although no LOAEL has been established for this product, standard OSHA requirements apply, i.e. for occupied areas from which personnel can be evacuated or egress can occur between 30 and 60 seconds, use is permitted up to a concentration not exceeding the LOAEL. All personnel must be evacuated before concentration of C_3F_8 exceeds 30%. Design concentration must result in oxygen levels of at least 16%.	The comparative design concentration based on cup burner values is approximately 8.8%. Users must observe the limitations on PFC acceptability by making reasonable efforts to undertake the following measures: (i) conduct an evaluation of foreseeable conditions of end use; (ii) determine that human exposure to the other alternative extinguishing agents may approach or result in cardiosensitization or other unacceptable toxicity effects under normal operating conditions; and (iii) determine that the physical or chemical properties or other technical constraints of the other available agents preclude their use; Documentation of such measures must be available for review upon request. The principal environmental characteristic of concern for PFCs is that they have high GWPs and long atmospheric lifetimes. Actual contributions to global warming depend upon the quantities of PFCs emitted. For additional guidance regarding applications in which PFCs may be appropriate, users should consult the description of potential uses which is included in the March 18, 1994 Final Rulemaking (58 FR 13043).
	Sulfurhexa-fluoride (SF_6).	Acceptable as a discharge test agent in military uses and in civilian aircraft uses only.	.....	This agent has an atmospheric lifetime greater than 1,000 years, with an estimated 100-year, 500-year, and 1,000-year GWP of 16,100, 26,110 and 32,803 respectively. Users should limit testing only to that which is essential to meet safety or performance requirements. This agent is only used to test new Halon 1301 systems.

FIRE SUPPRESSION AND EXPLOSION PROTECTION—UNACCEPTABLE SUBSTITUTES

Application	Substitute	Decision	Comments
Halon 1301 Total Flooding Agents.	HFC–32	Unacceptable	Data indicate that HFC–32 is flammable and therefore is not suitable as a halon substitute.

[FR Doc. 95–14337 Filed 6–12–95; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 261

[SW–FRL–5219–5]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a petition submitted by Conversion Systems, Inc. ("CSI") to exclude from hazardous waste control (or "delist") certain solid wastes. The wastes being delisted consist of electric arc furnace dust ("EAFD") that has been treated by a specific chemical stabilization process. This action responds to CSI's petition to delist these treated wastes on a "generator-specific" basis from the hazardous waste lists. After careful analysis, the Agency has concluded that the petitioned waste is not hazardous waste when disposed of in Subtitle D landfills. This exclusion applies to chemically stabilized EAFD generated at CSI's Sterling, Illinois facility as well as to similar wastes that CSI may generate at future facilities. Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when disposed of in Subtitle D landfills, but imposes testing conditions to ensure that the future-generated waste remains qualified for delisting.

EFFECTIVE DATE: June 13, 1995.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, and is available for viewing [Room M2616] from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 260–9327 for appointments. The reference number for this docket is "F–95–CSEF–FFFFF." The public may copy material from any regulatory docket at no cost for the first 100 pages and at a cost of $0.15 per page for additional copies.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424–9346, or at (703) 412–9810. For technical information concerning this notice, contact Chichang Chen, Office of Solid Waste (Mail Code 5304), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (202) 260–7392.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 265 and 268 of title 40 of the Code of Federal Regulations; and § 260.22 provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Petitioners must provide sufficient information to EPA to allow the Agency to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the Administrator must determine, where he has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste.

B. History of This Rulemaking

Conversion Systems, Inc., (CSI), Horsham, Pennsylvania, petitioned the Agency to exclude from hazardous waste control its stabilized waste generated at electric arc furnace dust (EAFD) treatment facilities across the nation. After evaluating the petition, EPA proposed, on November 2, 1993 to exclude CSI's waste from the lists of hazardous wastes under §§ 261.31 and 261.32 (see 58 FR 58521). Subsequently, in response to a commenter's request, the Agency published a notice extending the comment period until January 3, 1994 (see 58 FR 67389, December 21, 1993).

This rulemaking addresses public comments received on the proposal and finalizes the proposed decision to grant CSI's petition.

II. Disposition of Petition

Conversion Systems, Inc., Horsham, Pennsylvania

A. Proposed Exclusion

CSI petitioned the Agency for a multiple-site exclusion for chemically stabilized electric arc furnace dust (CSEAFD) resulting from the Super Detox™ treatment process as modified by CSI. (The original Super Detox™ treatment process was developed by Bethlehem Steel Corporation and used at its Johnstown and Steelton, Pennsylvania facilities.) Specifically, CSI requested that the Agency grant a multiple-site exclusion for CSEAFD generated by CSI using its modified Super Detox™ process at the existing Sterling, Illinois facility at Northwestern Steel and future facilities to be constructed (CSI initially is planning to construct 12 other facilities nationwide). The resulting CSEAFD is classified as a K061 hazardous waste by virtue of the "derived from" rule (§ 261.3(c)(2)(i)), because it is generated from the treatment of a hazardous waste (electric arc furnace dust) which is currently listed as EPA Hazardous Waste No. K061—"Emission control dust/sludge from the primary production of steel in electric furnaces." The listed constituents of concern for EPA Hazardous Waste No. K061 are cadmium, hexavalent chromium, and lead. CSI petitioned to exclude Super Detox™ treatment residues because it does not believe that the CSEAFD meets the criteria for which K061 was listed. CSI also believes that the Super Detox™ process, as modified by CSI, generates a non-hazardous waste because the constituents of concern, although present in the waste, are in an essentially immobile form. CSI further believes that the waste is not hazardous for any other reason (i.e., there are no additional constituents or factors that could cause the waste to be hazardous). Lastly, CSI believes that a multiple-site delisting will save both EPA and CSI the cost and administrative burden of multiple petitions each providing essentially the same, duplicative information of a process already well known and accepted by the Agency as effective in treating EAFD wastes [see final exclusions for Bethlehem Steel Corporation's Johnstown and Steelton, Pennsylvania facilities in 54 FR 21941, May 22, 1989). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)–(4).

In support of its petition, CSI submitted: (1) Detailed descriptions and schematics of the Super Detox™ treatment process for both wet and dry electric arc furnace dust [1]; (2) total constituent analyses results for the eight Toxicity Characteristic (TC) metals listed in § 261.24 and six other metals from representative samples of the untreated (non-stabilized) EAFD; (3) Toxicity Characteristic Leaching Procedure (TCLP, SW–846 Method 1311) results for the eight TC metals from a representative sample of untreated EAFD; (4) TCLP results for the eight TC metals and six other metals from representative samples of the uncured CSEAFD; (5) Multiple Extraction Procedure (MEP, SW–846 Method 1320) results for the TC metals and six other metals from representative samples of the uncured CSEAFD; (6) total oil and grease (TOG), total cyanide, and total sulfide results from representative samples of the untreated EAFD; (7) information and test results regarding the hazardous waste characteristics of ignitability, corrosivity, and reactivity for the CSEAFD; and (8) ground-water monitoring data from the landfill containing the CSEAFD generated from CSI's Sterling, Illinois Super Detox™ facility.

B. Request for Public Hearing

During the comment period, Horsehead Resource Development Company, Inc. ("HRD") and one Congressman requested a formal public hearing to allow interested parties a sufficient opportunity to comment on the November 2, 1993 proposed rulemaking. HRD also indicated its desire to cross-examine EPA and CSI witnesses. Following review of the issues raised by the commenters, the Agency found no compelling need for a public hearing and, therefore, notified the commenters of its decision not to hold a hearing. See the docket for proposed notice for the related correspondences. In its comments on the proposed rule, HRD claimed that FPA's denial of its hearing request violates the Administrative Procedure Act.

The Agency notes that the applicable regulations (40 CFR § 260.20(d) and § 25.5) specify only that EPA hold an informal hearing at its discretion. The Agency believes that given the highly technical nature of the proposal, written documentation is a more appropriate medium for the issues raised. In addition, even if a hearing were held, such process would not encompass the formal testimony of EPA staff and expert witnesses HRD was seeking; the Agency would merely use this procedure to gather oral comments for the record. The Agency believes a hearing was unnecessary, and that the Agency's procedures were consistent with the Administrative Procedure Act. In any event, the Agency has met with HRD, the primary commenter opposing this delisting, a number of times since the time of the proposal to hear its views in person.

[1] CSI has claimed some treatment process descriptions, including information on how they improved the original Super Detox™ treatment process, as confidential business information (CBI). This information, therefore, is not available in the RCRA public docket for today's notice.

C. Summary of Responses to Public Comments

The Agency received public comments on the November 2, 1993 proposal from 18 interested parties. Eight of these commenters, consisting chiefly of steelmaking concerns, clearly supported the Agency's proposed decision to grant CSI's petition. One commenter had questions about the RCRA permit requirements for CSI's future facilities, and about the effective date of the proposed delisting in a State not authorized to administer the Federal delisting program. Of the nine remaining commenters, one commenter (HRD) strongly opposed the Agency's proposed decision, and presented discussions on a variety of issues. The remaining eight out of these nine commenters consisted of Congressmen and Senators reiterating concerns about the proposed delisting. Detailed Agency responses to all significant comments are provided in a "Response to Comments" document, which is in the public docket for today's rule. The following discussion is a summary of both the most significant issues raised by HRD and EPA's responses.

Impact of This Delisting Upon Recycling of K061

Comment: A number of commenters, including HRD, claimed that the proposed delisting would inappropriately and illegally allow for the landfilling of chemically stabilized K061 that is currently being recycled by high-temperature metals recovery ("HTMR") facilities. The commenters' assertions on this issue can be summarized as follows: (1) Both RCRA and the Pollution Prevention Act of 1990 express a general preference for resource recovery and reclamation over conventional waste treatment and disposal. Accordingly, EPA is required by law to promulgate regulations that encourage recycling over treatment and disposal whenever possible. The CSI delisting violates these statutory requirements because it encourages the landfilling of otherwise recoverable materials. (2) EPA's delisting regulations require compliance with these RCRA and PPA mandates. Specifically, the regulations require EPA to consider factors in addition to those for which the waste was originally listed as a hazardous waste if such factors could cause the waste to be listed as a hazardous waste (40 CFR 260.22(a)(2) and 261.11(a)(3)(xi)). EPA must consider, as one of these factors, the impact of the CSI delisting on the overarching mandates of RCRA and the PPA, and must conclude that the CSI delisting is inconsistent with these statutes. (3) The delisting would violate EPA's own regulatory strategy and prior policies and rulemaking precedents favoring resource conservation and recovery over stabilization. These policies and precedents appear in the Agency's RCRA implementation strategy, land disposal regulations and waste minimization guidance. (4) The CSI delisting would also violate the Administration's stated policy to encourage recycling technologies and a "green" economy.

On the other hand, one commenter supporting the proposed delisting stated that the delisting must be granted as a matter of law because EPA has determined that the chemically stabilized EAFD residues do not "pose a substantial hazard to human health or the environment" and therefore are not "hazardous wastes" subject to RCRA regulation, citing RCRA section 1004(5) and 40 CFR 260.22 (a), (b) and 261.11(a). This commenter claimed that the delisting is consistent with the waste management objectives of RCRA and the PPA, which encourage EPA to promote various alternatives to the untreated land disposal of hazardous waste.

Response: After careful evaluation of the characteristics and nature of the K061 residues produced by CSI's stabilization process, EPA is today finalizing a determination that these residues do not constitute RCRA hazardous waste. Specifically, EPA has found that these chemically stabilized K061 wastes do not meet any of the criteria for which K061 wastes were listed as hazardous and that there is no reason to believe that any factors other than those for which K061 wastes were listed (including additional constituents) could cause these CSI wastes to be hazardous. See 40 CFR 260.22(a) and RCRA section 3001(f).

In light of EPA's determination that CSI's treated K061 waste is not hazardous, the Agency has no authority to retain this waste as a listed hazardous waste simply because doing so would effectively promote HTMR recycling and reclamation of K061 wastes over the treatment and disposal of CSI's chemically stabilized, non-hazardous waste. RCRA's general statements of Congressional findings, objectives and national policy addressing the subject of minimizing hazardous waste generation and disposal do not supersede the specific hazardous waste listing and delisting scheme established under RCRA. Here, under that scheme, EPA has determined that CSI's treated waste does not meet the criteria for being considered hazardous waste. Nothing in the general objectives and policy provisions of RCRA generally favoring resource recovery over conventional waste treatment and disposal requires, or indeed authorizes, EPA to forego or reverse this determination. See *Hazardous Waste Treatment Council* v. *EPA*, 861 F.2d 270, 276–77 (D.C. Cir. 1988).

Similarly, EPA cannot agree with the commenter's conclusion that this delisting conflicts with the mandates of the Pollution Prevention Act of 1990 ("PPA"). Section 6602(b) of the PPA (42 U.S.C. 13101(b)) declares it to be the national policy that pollution control should follow a hierarchy which prefers pollution prevention at the source over recycling and prefers recycling over treatment and disposal in an environmentally safe manner. EPA fully supports this hierarchy and believes it sets forth a desirable general order of preferences for pollution control. Again, however, this policy is not a statutory or regulatory mandate. Nothing in the PPA requires or even contemplates that EPA must retain on the list of hazardous wastes materials that the Agency finds to be non-hazardous simply because there exists an ability to perform resource recovery on these materials.

EPA also disagrees with the commenter's claim that the delisting regulations require this delisting to be denied. 40 CFR 260.22(a)(2) focuses on factors that "could cause the waste to be a hazardous waste". The factor cited by the commenter does not fit this description. In addition, EPA finds that

today's delisting decision is fully consistent with the Agency's and the Administration's own regulatory strategy and policies, as explained in the Response to Comments document.

In any event, EPA believes that today's delisting decision does harmonize with the overall intent and purposes of RCRA and the PPA. While these two statutes generally encourage resource recovery where appropriate, they do not require it in every conceivable case, regardless of the nature of the waste. Indeed, the commenter's interpretation would have the effect of contravening Congressional intent to allow for delistings where appropriate.

EPA also notes that the effect of this delisting on K061 recycling practices is speculative in any event. As explained in the Response to Comments document, the extent to which steelmakers may stop using recycling technologies upon today's delisting in favor of managing EAFD through CSI's Super Detox™ process is unclear.

EPA's response on these issues is further explained in the Response to Comments document for this rulemaking.

Multiple Site Nature of the Delisting

Comment: One commenter (HRD) stated that the multiple-site nature of the delisting for CSI is precedent-setting but the Agency has offered no legal justification for it. The commenter believed that 40 CFR 260.22 and RCRA section 3001(f) limit the scope of delisting petitions to wastes generated at a single facility. This commenter also claimed that this delisting violates the notice and comment requirements of the Administrative Procedure Act because there will be no opportunity for comment on any of the CSEAFD delistings at future CSI sites.

Another commenter, however, believed that the multiple-site nature of the delisting would avoid duplicative delisting petitions and save the steel industry the unnecessary costs and administrative burdens of multiple petitions.

Response: The statute and regulations do not limit the availability of delisting decisions to wastes generated at a single facility. The commenter has misinterpreted the language of section 3001(f) of RCRA and 40 CFR 260.22, which both provide that parties may seek delistings for wastes generated at a "particular facility." The term "particular facility" refers to a specific qualifying facility and there is no bar to a delisting covering more than one particular, and qualifying, facility. The language limits delistings to an identified and qualifying facility or facilities; it does not limit them to a "single" facility. The intent of this language is to indicate that, because delistings are granted only to specific qualifying facilities, a facility may not manage its waste as non-hazardous based solely on a delisting granted to another facility for the same listed waste.

Today's multiple-site delisting is fully consistent with the purposes of RCRA's listing and delisting scheme. If CSI has more than one facility treating the same wastes with the same process, and EPA is assured (through verification testing) that these wastes meet the requirements for being nonhazardous, the statute, its legislative history and the regulations support their removal from the list of hazardous wastes. No part of the statute or regulations purports to limit the number of facilities that a delisting may cover. As to the "up-front" nature of this delisting, the Agency in fact has a long-standing policy and practice of granting delistings to facilities not yet constructed, provided that their waste, once produced, meets specified criteria.

In any event, today's delisting decision appears to be consistent even with the commenter's incorrect interpretation of the statute and regulations. Today's action does not automatically grant a delisting to a multiple number of CSI's facilities. Instead, although EPA has reviewed the Super Detox™ treatment process itself on a generic basis, EPA is requiring verification testing at each specific facility before the Agency grants a delisting. Thus, the Agency is, in fact, considering each CSEAFD facility separately. The focus of the commenter's criticism would seem to be that EPA is not requiring the company to submit a separate delisting petition for each new facility. It would make no sense to require a company to submit multiple individual petitions for similar wastes generated from similar process and feed materials when the only difference between petitions is the name and location of the specific facility; to do so would be an unnecessary administrative burden and waste of resources for both EPA and the petitioner.

The commenter also alleged an inconsistency with EPA's 1993 publication, "Petitions to Delist Hazardous Wastes: A Guidance Manual" (second edition). The Manual states that "separate petitions must be submitted for wastes generated at different facility locations, even if the contributing processes and raw materials are similar. This requirement is necessary because an amendment to 40 CFR part 261 for an exclusion only applies to a waste produced at a particular facility." This provision was originally included in the draft of the Manual at a point before EPA contemplated the type of multiple-site delisting requested by CSI, and it has been inadvertently carried over in later revisions of the guidance document. EPA has accepted CSI's petition for a multiple-site delisting because of the efficiencies created and in light of the protections afforded by future verification testing. To the extent this provision in the guidance document is viewed as inconsistent with today's delisting, the guidance document should be considered superseded by the notice of proposed rulemaking and this final rulemaking for the CSI delisting to permit appropriate multiple-site petitions here and in the future. In any event, EPA's practice has evolved beyond the provision originally included in this non-binding guidance document and today's action is fully consistent with that practice.

EPA also disagrees with the commenter's claim that today's delisting violates the notice and comment requirements of the Administrative Procedure Act ("APA") since there will be no opportunity for comment on additional CSI facilities producing CSEAFD that may be added to the scope of this delisting in the future. There has been sufficient opportunity for meaningful comment on the current and potential future delistings of CSI facilities producing CSEAFD since all issues the Agency will possibly consider in granting the future delistings have already been aired for comment.

EPA's response on these issues is further explained in the Response to Comments document for this rulemaking.

Executive Order 12866

Comment: One commenter (HRD) alleged that EPA did not conduct the complete regulatory review required by Executive Order 12866 for significant regulatory actions having an annual effect on the economy of $100 million or more. By HRD's account, the economic impact of this delisting would exceed $100 million/year because electric arc furnace ("EAF") steelmakers will choose to abandon the existing high temperature metals recovery (HTMR) operations and give all K061 waste treatment business to CSI. The commenter also alleged that EPA failed to consider the other principles of regulatory development stipulated in the Executive Order.

Response: The Agency determined that the effect of the proposed rule, unlike regulations imposing tighter control requirements, would be to *reduce* the overall costs and economic impact of the RCRA regulations. Therefore, this rule is unlikely to have an adverse annual effect on the economy of $100 million or more. The extent to which EAF steelmakers may change from one waste management alternative such as recycling to other methods after today's delisting is speculative in any event.

In addition, the Agency did not fail to consider the other principles of regulatory development stipulated in the Executive Order. See the Response to Comments document for a further discussion of these issues.

Waste Management

Comment: One commenter (HRD) noted that CSI may develop products from CSEAFD, that the delisted waste may be delivered to a facility that beneficially uses or reuses the material and that the waste may be disposed of in any acceptable manner under Federal or State law. As such, this commenter believed that the assumption of disposal in a Subtitle D landfill is not the reasonable worst-case disposal scenario for CSI's petitioned waste. In support of its argument, the commenter submitted an excerpt of a paper presented by a CSI employee at a trade meeting held in February 1995. This excerpt reflects two alternative concepts that are being developed" for recycling EAFD, including use of stabilized EAFD as ingredients in the production of Portland cement.

Response: CSI indicated in its petition that the CSEAFD will be disposed of at non-hazardous waste landfills. EPA does not have any specific information that CSI has developed its CSEAFD into any viable product that would allow for use or reuse of this material instead of disposal. Therefore, it is unclear if, when, or how potential CSEAFD-derived products may be used in the future. EPA's assumption that CSI's petitioned waste, if delisted, will be disposed of in a Subtitile D landfill is conservative and represents a reasonable worst-case management scenario for this delisting for the decision that CSI's CSEAFD may safely be disposed of as a non-hazardous "waste".

Nevertheless, as the commenter pointed out and as the petition also indicates, CSI is working on different ways to reuse the CSEAFD as a feedstock or product (see Page 17 of CSI's petition). It is unclear if the effectiveness of CSI's stabilization process could be somewhat compromised as a result of certain product-use applications; or if the levels of total constituents in the CSEAFD could become a concern due to certain exposure scenarios not considered in the delisting evaluation. Because EPA was not provided with any detailed information and data from CSI on how its waste might be used in products, EPA believes it is appropriate to limit the scope of today's final rule to exclude CSI's CSEAFD only where it is disposed of in Subtitle D landfills. EPA does not reach a decision today on whether CSI's CSEAFD that is not disposed of in Subtitile D landfills qualifies for exclusion from the list of hazardous wastes. In the future, if CSI has successfully developed uses for CSEAFD and seeks an exclusion for such uses, it must submit pertinent information in a petition to EPA and await further decision by the Agency on that matter.

Potential Deterioration of CSI's Stabilized K061

Comment: One commenter (HRD) stated that the petition relied on the TCLP and MEP chemical testing procedures to determine the efficacy of CSI's stabilization process, but largely failed to address the long-term physical durability (or structural integrity) of the stabilized EAFD. The commenter believed that the stabilized EAFD will deteriorate over time once disposed of in landfills or elsewhere, which could result in airborne or waterborne exposure which was not evaluated. The commenter presented a list of applicable physical test methods, and suggested that at a minimum, freeze-thaw and wet-dry durability tests be performed, and that EPA should apply "deterioration models."

Response: This rulemaking adequately addresses the potential deterioration of CSI's CSEAFD and the resulting leachability of the material. The MEP was developed to predict the long-term leachability of stabilized wastes, consisting of ten sequential extractions that simulate approximately 1,000 years of acid rainfall. This method requires that the sample of stabilized material be first crushed and ground so that the sample material can pass through a 9.5-mm sieve (as part of the TCLP extraction incorporated in the MEP). The use of particles less than 9.5 mm is comparable to a worst-case assumption of degradation of the stabilized material. EPA also conservatively assumed that the total constituents in the waste would be readily available for release into air (ignoring that they are contained in the solidified waste matrix). Therefore, this evaluation also addressed the potential deterioration and airborne transmission of the waste.

Use of EPA's Composite Model for Landfills (EPACML)

Comment: One commenter (HRD) claimed that the EPACML model was not adequate for evaluating CSI's petitioned waste for several reasons. First, more accurate models, such as MINTEQ, must be used to quantify the migration and mobility of metals from land disposal units. Second, the Monte Carlo simulation mode implemented in the model is inappropriate for multiple site delistings because it does not account for site-specific variability. The commenter felt that only numerical models can account for such variability. Third, the model does not check for unrealistic combinations of input parameters, thereby resulting in inaccurate dilution and attenuation factors (DAFs). The commenter felt that the combination of input parameters should have been made public to allow for review and comment. Lastly, the commenter stated that the Agency did not clearly identify and justify the specific options used in the EPACML model for the delisting evaluation.

Response: The Agency disagrees with the commenter's contention that the EPACML model is inadequate for evaluating CSI's petitioned waste. First, the EPACML fate and transport model consists of an unsaturated zone module and a saturated zone module, both of which were reviewed and endorsed by EPA's Science Advisory Board for use for regulatory purposes. See 56 FR 32993 (July 18, 1991) and the EPACML Background Document [2] for a complete discussion of the EPACML model, assumptions and input parameters, and their use in delisting decision-making. EPA believes that the EPACML reasonably estimates the subsurface fate and transport of metals from land disposal units.

For prior cases, the MINTEQ model has not been found appropriate for use for delisting evaluations. To use it would require a large amount of additional information regarding the speciation of the metals present in the waste and the disposal site. EPA has discussed its finding that the EPACML model is adequate and conservative for delistings. Indeed, incorporation of results of MINTEQ in the EPACML model would only be *less* conservative if anything—*i.e.*, it would likely serve only to increase the output DAFs

[2] "Background Document for EPA's Composite Model for Landfills (EPACML)", available in the RCRA public docket for the November 2, 1993 proposed rule.

because speciation reactions between metallic ions in the leachate and the soil particles may cause further attenuation of metal concentrations in the subsurface. These higher DAFs would result in even higher allowable leachable levels of metals in CSI's waste.

In addition, the Agency disagrees with the commenter's claim that the Monte Carlo simulation mode implemented in the EPACML is inappropriate for multiple site delistings and disagrees with the commenter's remaining contentions regarding the use of the EPACML model. See the Response to Comment document for a further discussion of all of these issues.

Verification Testing Conditions

Comment: One commenter (HRD) stated that the proposed initial and subsequent testing conditions are insufficient. The commenter believed that these testing conditions will result in over-compositing of the samples collected from each batch, as they require only a minimum of four composite samples during the 20-day initial verification testing period and thereafter a minimum of one monthly composite sample.

Response: Although the concentrations of metals in the CSEAFD are expected to be somewhat variable over time (*e.g.*, as the source and type of scrap charged to the EAF changes over time), EPA does not expect these variations to be significant on a day-to-day basis (*i.e.*, most steel mills procure large volumes of scrap and their EAF operations do not vary widely on a daily basis). Also, at any given facility, the daily variations in EAFD metals concentrations are dampened where the EAFD is mixed together within the pneumatic EAFD transport system, baghouse, electrostatic precipitator, and/or storage silos. The Agency, therefore, believes that the proposed initial verification testing requirement is sufficient.

In addition, the data demonstrate that CSI's Super Detox™ process can effectively immobilize the constituents of concern, and justify the Agency's proposal to require less frequent, but long-term, verification testing (monthly or more frequently at CSI's discretion) subsequent to the initial verification testing.

Delisting Levels

In the proposed rule EPA solicited comments on the proposed maximum allowable leachable concentrations for a specific set of inorganic constituents (the "delisting levels") that CSI would need to meet during verification testing. In this respect, the Agency also requested comments on the option of applying the generic exclusion levels for K061 HTMR nonwastewater residues set under § 261.3(c)(2)(ii)(C) to CSI's CSEAFD for the sake of national consistency. No comments were received on which of these two approaches should be chosen. The Agency has now concluded that the delisting levels applying to CSI's CSEAFD should be at least as stringent as the K061 HTMR generic exclusion levels. Therefore, the Agency is finalizing the delisting levels by using the lesser of the proposed levels for CSI's CSEAFD and the respective generic exclusion levels for HTMR residues, as shown below (in ppm): Antimony—0.06; arsenic—0.50; barium—7.6; beryllium—0.010; cadmium—0.050; chromium—0.33; lead—0.15; mercury—0.009; nickel—1; selenium—0.16; silver—0.30; thallium—0.020; vanadium—2; and zinc—70.

Economics and Related Issues

Comment: A number of commenters raised issues concerning the economic and related implications of this delisting. First, the Steel Manufacturers Association ("SMA") claimed that this delisting is necessary in order to increase the number of cost-effective alternatives for managing K061 waste. Because of the high cost of HTMR, SMA stated, steelmakers ultimately may be forced to substitute greater tonnages of direct reduced iron as feedstock instead of using scrap metal. Direct reduced iron contains only pure iron, so any EAFD generated from it would not contain hazardous metals (obviating the need to use HTMR processes). By granting the delisting, EPA will be promoting the continued resource recovery of iron and other valuable metals from scrap metal (of which, SMA claimed, about 40 million tons per year are currently used as EAF steelmaking feedstock).

Another commenter (HRD) disagreed with the above claims. It pointed out that the cost of managing EAFD by either HTMR or chemical stabilization and disposal is less than one percent of the steel production cost, and that the savings from switching to chemical stabilization would amount to only cents per ton of production. HRD claimed that direct reduced iron is much more expensive than scrap metal, affecting the cost of steelmaking 10 times as much as the cost of EAF dust management. Hence, HRD disputed the claim that steel makers might discontinue the use of scrap feedstock if this delisting is not granted. HRD also stated that the steel industry in fact has a number of EAFD management options, including HTMR processing by HRD and other firms, treatment and disposal as a hazardous waste, use as a fertilizer ingredient, and export for processing.

Response: The focus of today's delisting decision is on whether or not CSI's stabilized EAFD should continue to be listed as hazardous waste in light of the relevant statutory and regulatory criteria. As explained above, EPA has found that CSI's chemically stabilized K061 wastes do not meet any of the criteria for which K061 wastes were listed as hazardous and there is no reason to believe that any factors other than those for which K061 wastes were listed (including additional constituents) could cause these wastes to be hazardous. Therefore, today's rule finalizes EPA's determination to exclude these residues from the RCRA Subtitle C regulatory regime. See 40 CFR § 260.22(a) and RCRA Section 3001(f).

EPA explained above that the effect of today's delisting decision on K061 recycling (*i.e.*, whether granting this delisting effectively promotes treatment and disposal of K061 wastes over HTMR recycling of these wastes) is irrelevant to the delisting determination. Similarly, the economic and related issues that have been raised by the commenters are not relevant to today's delisting decision because they bear no nexus to the issue of whether the stabilized K061 wastes remain hazardous. See the Response to Comments document for a further discussion of these issues.

D. Final Agency Decision

For the reasons stated in both the proposal and this notice, the Agency believes that CSI's chemically stabilized electric arc furnace dust, upon meeting certain verification testing requirements, should be excluded from hazardous waste control. The Agency, therefore, is granting a final conditional exclusion to Conversion Systems, Inc., Horsham, Pennsylvania, for its treatment residue (CSEAFD) generated at its Sterling, Illinois facility and other facilities yet to be constructed nationwide, described in its petition as EPA Hazardous Waste No. K061.

This exclusion applies initially to only CSI's Super Detox™ treatment facility located at Northwestern Steel in Sterling, Illinois. As stated in Condition (5), CSI must notify EPA at least one month prior to operation of a new Super Detox™ treatment facility in order to provide EPA with sufficient time to initiate the process to amend CSI's exclusion. CSEAFD generated from a new Super Detox™ treatment facility will not be excluded until the Agency publishes a notice amending CSI's exclusion as specified in Condition (1)(B). CSI will require a new exclusion if the treatment process specified for any Super Detox™ treatment facility is significantly altered beyond the changes in operating conditions described in Condition (4). Accordingly, the facility would need to file a new petition for a changed process. The facility must manage wastes generated from a changed process as hazardous until a new exclusion is granted.

Although the CSEAFD wastes covered by this petition are excluded from regulation as listed hazardous wastes under Subtitle C upon today's final exclusion, this exclusion applies only where these wastes are disposed of in Subtitle D landfills.

III. Limited Effect of Federal Exclusion

The final exclusion being granted today is issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Because a petitioner's waste may be regulated under a dual system (*i.e.*, both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact State regulatory authority to determine the current status of their wastes under State law.

Furthermore, some States (*e.g.*, Georgia, Illinois) are authorized to administer a delisting program in lieu of the Federal program, *i.e.*, to make their own delisting decisions. Therefore, this exclusion does not apply in those authorized States. If the petitioned CSEAFD will be transported to and managed in any State with delisting authorization, CSI must obtain delisting authorization from that State before the CSEAFD may be managed as non-hazardous in the State.

IV. Effective Date

This rule is effective on June 13, 1995. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date of six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of Section 3010, EPA believes that this rule should be effective immediately upon publication. These reasons also provide a basis for making this rule effective immediately, upon publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

V. Regulatory Impact

Under Executive Order 12866, EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions. The effect of this rule is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. The reduction is achieved by excluding waste from EPA's lists of hazardous wastes, thereby enabling a facility to treat its waste as non-hazardous. As discussed in the Agency response to public comments, this rule is unlikely to have an adverse annual effect on the economy of $100 million or more. Therefore, this rule does not represent a significant regulatory action under the Executive Order, and no assessment of costs and benefits is necessary. The Office of Management and Budget (OMB) has exempted this rule from the requirement for OMB review under section (6) of Executive Order 12866.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on any small entities.

This regulation will not have an adverse impact on any small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 et seq.) and have been assigned OMB Control Number 2050–0053.

VIII. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("UMRA"), Pub. L. 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the UMRA EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon State, local, or tribal governments or the private sector. EPA finds that today's delisting decision is deregulatory in nature and does not impose any enforceable duty on any State, local, or tribal governments or the private sector. In addition, today's delisting decision does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

Lists of Subjects in 40 CFR Part 261

Hazardous Waste, Recycling, Reporting and recordkeeping requirements.

Dated: May 30, 1995.

Michael H. Shapiro,

Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 2 of Appendix IX, Part 261 add the following wastestream in alphabetical order by facility to read as follows: Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
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Conversion Systems, Inc.	Horsham, Pennsylvania.	Chemically Stabilized Electric Arc Furnace Dust (CSEAFD) that is generated by Conversion Systems, Inc. (CSI) (using the Super Detox™ treatment process as modified by CSI to treat EAFD (EPA Hazardous Waste No. K061)) at the following sites and that is disposed of in Subtitle D landfills: Northwestern Steel, Sterling, Illinois after June 13, 1995. CSI must implement a testing program for each site that meets the following conditions for the exclusion to be valid: (1) *Verification Testing Requirements:* Sample collection and analyses, including quality control procedures, must be performed according to SW–846 methodologies. (A) *Initial Verification Testing:* During the first 20 operating days of full-scale operation of a newly constructed Super Detox™ treatment facility, CSI must analyze a minimum of four (4) composite samples of CSEAFD representative of the full 20-day period. Composites must be comprised of representative samples collected from every batch generated. The CSEAFD samples must be analyzed for the constituents listed in Condition (3). CSI must report the operational and analytical test data, including quality control information, obtained during this initial period no later than 60 days after the generation of the first batch of CSEAFD. (B) *Addition of New Super Detox™ Treatment Facilities to Exclusion:* If the Agency's review of the data obtained during initial verification testing indicates that the CSEAFD generated by a specific Super Detox™ treatment facility consistently meets the delisting levels specified in Condition (3), the Agency will publish a notice adding to this exclusion the location of the new Super Detox™ treatment facility and the name of the steel mill contracting CSI's services. If the Agency's review of the data obtained during initial verification testing indicates that the CSEAFD generated by a specific Super Detox™ treatment facility fails to consistently meet the conditions of the exclusion, the Agency will not publish the notice adding the new facility. (C) *Subsequent Verification Testing:* For the Sterling, Illinois facility and any new facility subsequently added to CSI's conditional multiple-site exclusion, CSI must collect and analyze at least one composite sample of CSEAFD each month. The composite samples must be composed of representative samples collected from all batches treated in each month. These monthly representative samples must be analyzed, prior to the disposal of the CSEAFD, for the constituents listed in Condition (3). CSI may, at its discretion, analyze composite samples gathered more frequently to demonstrate that smaller batches of waste are nonhazardous. (2) *Waste Holding and Handling:* CSI must store as hazardous all CSEAFD generated until verification testing as specified in Conditions (1)(A) and (1)(C), as appropriate, is completed and valid analyses demonstrate that Condition (3) is satisfied. If the levels of constituents measured in the samples of CSEAFD do not exceed the levels set forth in Condition (3), then the CSEAFD is non-hazardous and may be disposed of in Subtitle D landfills. If constituent levels in a sample exceed any of the delisting levels set in Condition (3), the CSEAFD generated during the time period corresponding to this sample must be retreated until it meets these levels, or managed and disposed of in accordance with Subtitle C of RCRA. CSEAFD generated by a new CSI treatment facility must be managed as a hazardous waste prior to the addition of the name and location of the facility to the exclusion. After addition of the new facility to the exclusion, CSEAFD generated during the verification testing in Condition (1)(A) is also non-hazardous, if the delisting levels in Condition (3) are satisfied. (3) *Delisting Levels:* All leachable concentrations for those metals must not exceed the following levels (ppm): Antimony—0.06; arsenic—0.50; barium—7.6; beryllium—0.010; cadmium—0.050; chromium—0.33; lead—0.15; mercury—0.009; nickel—1; selenium—0.16; silver—0.30; thallium—0.020; vanadium—2; and zinc—70. Metal concentrations must be measured in the waste leachate by the method specified in 40 CFR 261.24. (4) *Changes in Operating Conditions:* After initiating subsequent testing as described in Condition (1)(C), if CSI significantly changes the stabilization process established under Condition (1) (*e.g.,* use of new stabilization reagents), CSI must notify the Agency in writing. After written approval by EPA, CSI may handle CSEAFD wastes generated from the new process as non-hazardous, if the wastes meet the delisting levels set in Condition (3).

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(5) *Data Submittals:* At least one month prior to operation of a new Super Detox™ treatment facility, CSI must notify, in writing, the Chief of the Waste Identification Branch (see address below) when the Super Detox™ treatment facility is scheduled to be on-line. The data obtained through Condition (1)(A) must be submitted to the Branch Chief of the Waste Identification Branch, OSW (Mail Code 5304), U.S. EPA, 401 M Street, SW, Washington, DC 20460 within the time period specified. Records of operating conditions and analytical data from Condition (1) must be compiled, summarized, and maintained on site for a minimum of five years. These records and data must be furnished upon request by EPA, or the State in which the CSI facility is located, and made available for inspection. Failure to submit the required data within the specified time period or maintain the required records on site for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted: Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.
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[FR Doc. 95–14338 Filed 6–12–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 261

[SW–FRL–5220–5]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a petition submitted by the U.S. Department of Energy (DOE), Richland, Washington, to exclude certain wastes to be generated by a treatment process at its Hanford facility from being listed as hazardous wastes. This action responds to DOE's petition to exclude these treated wastes on a "generator-specific" basis from the hazardous waste lists.

Based on careful analyses, the Agency has concluded that the disposal of these wastes, after treatment, will not adversely affect human health and the environment. This final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA), but imposes testing conditions to ensure that the future-generated waste remains qualified for delisting.

This final rule will also allow DOE to proceed with critical cleanup at the Hanford site. The primary goal of cleanup is to protect human health and the environment by reducing risks from unintended releases of hazardous wastes that are currently stored at the site.

EFFECTIVE DATE: June 13, 1995.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, and is available for viewing (room M2616) from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 260–9327 for appointments. The reference number for this docket is "F–95–HNEF–FFFFF". The public may copy material from any regulatory docket at no cost for the first 100 pages, and at $0.15 per page for additional copies.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424–9346, or at (703) 412–9810. For technical information concerning this notice, contact Shen-yi Yang, Office of Solid Waste (5304), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 260–1436.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under §§ 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the administrator must determine, where he has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste.

B. History of This Rulemaking

DOE's Hanford site, located in Richland, Washington, petitioned the Agency to exclude from hazardous waste control the effluents to be generated from its proposed 200 Area Effluent Treatment Facility (ETF). The effluents are presently listed as EPA Hazardous Waste Nos. F001 through F005, and F039 derived from F001 through F005. After evaluating the petition, EPA proposed, on February 1,

1995, to exclude Hanford's waste from the lists of hazardous wastes under §§ 261.31 and 261.32 (see 60 FR 6054).

This rulemaking addresses public comments received on the proposal and finalizes the Agency's proposed decision to grant DOE's petition.

II. Disposition of Delisting Petition

U.S. Department of Energy's Hanford Facility, Richland, Washington

A. Proposed Exclusion

On October 30, 1992, DOE petitioned the Agency to exclude from hazardous waste control its treated wastes to be generated from the proposed 200 Area Effluent Treatment Facility (ETF). The ETF is designed to treat process condensate (PC) from the 242–A Evaporator. The untreated PC is a low-level radioactive waste as defined in DOE Order 5820.2A and a RCRA listed hazardous waste (EPA Hazardous Waste Nos. F001 through F005 and F039 derived from F001 through F005) as defined in 40 CFR § 261.31(a).

While the constituents of concern in listed wastes F001 through F005 wastes include a variety of solvents (see Part 261, Appendix VII), the constituents (based on PC sampling data and process knowledge) that serve as the basis for characterizing DOE's petitioned wastes as hazardous were limited to 1,1,1-trichloroethane (F001), methylene chloride (F002), acetone and methyl isobutyl ketone (F003), cresylic acid (F004), and methyl ethyl ketone (F005).

In support of its petition, DOE submitted:

(1) Detailed descriptions of the waste generation and waste management history at the Hanford site;

(2) An inventory of chemicals used in Hanford's production plants and supporting operations;

(3) Detailed descriptions of various waste streams to be fed into the 242–A Evaporator;

(4) Detailed descriptions and schematic drawings of the generation of untreated PC from the 242–A Evaporator;

(5) Information quantifying concentrations of hazardous constituents of untreated 242–A Evaporator PC, including metals and other inorganic constituents, organic constituents, and radioactive constituents;

(6) Detailed descriptions and schematic drawings of its proposed Effluent Treatment Facility and primary steps of its treatment processes;

(7) Results from the analysis of liquid wastes generated by pilot-scale treatability studies, showing concentrations of inorganic and organic compounds in samples of untreated and treated surrogate test solutions and percent removal; and

(8) Information regarding the hazardous characteristics of ignitability, corrosivity, and reactivity.

The Agency evaluated the information and analytical data provided by DOE in support of the petition and determined that the disposal of the DOE effluents, after treatment, would not adversely affect human health or the environment. Specifically, the Agency used the modified EPA Composite Model for Landfills (EPACML) to predict the potential mobility of the hazardous constituents found in the petitioned waste. The Agency also evaluated additional modeling information, submitted by DOE, concerning transport of hazardous constituents in ground water. Based on these modeling evaluations, the Agency determined that the concentrations of constituents in groundwater from DOE's petitioned waste would not exceed delisting levels of concern. See 60 FR 6054, February 1, 1995, for a detailed explanation of why EPA proposed to grant DOE's petition for its treated effluents generated from the ETF located at the Hanford site.

B. Response to Public Comments

The Agency received public comments on the February 1, 1995 proposal from three interested parties. These three commenters either expressed support or did not have any negative comments on the Agency's proposed decision to grant DOE's petition. One commenter, the U.S. Nuclear Regulatory Commission, believed that the Agency's consideration of the unique circumstances surrounding the management of the mixed waste generated at the Hanford facility was appropriate and the concepts the Agency used in formulating the proposed rule should be incorporated in developing management strategies for other commercial mixed wastes. The two remaining commenters wanted clarification and expansion of the language contained in the proposed rule. The following sections address their specific comments.

Comment: One commenter requested that zinc be removed as a "hazardous constituent" from the proposed rule. The commenter stated that zinc is not listed as a hazardous constituent of F001 through F005 wastes, nor is zinc listed as a hazardous constituent in 40 CFR Part 261, Appendix VIII. The commenter also stated that the Agency recently noted that zinc was not an "underlying hazardous constituent" under the new land disposal restrictions, 40 CFR 268.2(i) (see 59 FR 48106, September 19, 1994). Therefore, the commenter does not believe that zinc can be listed as a "hazardous constituent" in the proposed addition to Appendix IX of Part 261 as set forth in the proposal.

Response: The Agency agrees that zinc is not listed as a hazardous constituent of F001 through F005 wastes, nor is zinc listed as a hazardous constituent in 40 CFR 261, Appendix VIII. However, the statute (§ 3001(f)) requires the Agency, as part of its delisting evaluation, to consider any factors (including additional constituents) other than those for which the waste was listed if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous.

Accordingly, in addition to addressing the criteria for which the wastes were listed, a petitioner must demonstrate that the wastes do not exhibit any of the hazardous waste characteristics and must present sufficient information for the Agency to determine whether the wastes contain any other toxicants at hazardous levels. See 42 USC § 6921(f) and 40 CFR 260.22(a). Because zinc was detected in DOE's petitioned waste and is a constituent with an established health-based level (10 ppm), it is a constituent of regulatory concern for DOE's petitioned waste for delisting purposes (see Docket Report on Health-Based Levels and Solubilities Used in the Evaluation of Delisting Petitions, Submitted Under 40 CFR 260.20 and 260.22, December 1994). As such, zinc will remain on the list of constituents for verification testing. However, consistent with the commenter's request, EPA acknowledges that zinc remains on the list as an additional constituent of concern for delisting purposes and not as a designated "hazardous constituent". In the proposal, EPA did not intend to indicate otherwise. Also, the September 19, 1994 rulemaking cited by the commenter states that zinc is not an "underlying hazardous constituent" in characteristic wastes, according to the definition at 268.2(i). (See § 268.48 Table UTS, note 5, 59 FR 48107). As above, that issue is not determinative of the issue here concerning EPA's decision to retain zinc on the list of constituents for verification testing as an additional constituent of concern for delisting purposes.

Comment: One commenter felt that if the Agency believes the ETF can provide adequate treatment to delist F039 leachates derived from sources other than F001 through F005 wastes, then EPA should add language to the first sentence of Hanford's waste description found in Table 2 of 40 CFR 261 Appendix IX to reflect that. The commenter believed that the additional language would provide the maximum operational flexibility to DOE in their mixed waste disposal planning and would not require regulatory changes to 40 CFR 261 if and when DOE disposes of non-F001–F005 wastes in Hanford's landfills. The commenter also wanted this comment withdrawn if it would result in the delay of the final delisting.

Response: The Agency proposed to exclude the liquid wastes covered by DOE's petition, which consist of F001 through F005 wastes and F039 wastes derived from F001 through F005. The commenter believes it would be useful to expand the scope of this delisting because the ETF is capable of treating a wider variety of wastes. The Agency acknowledges, as noted in the proposal, that the treatment data show the ETF to be extremely effective for all classes of inorganic species, and the data also demonstrate that organic constituents can be effectively treated by the UV/OX process (see 60 FR 6060). However, obtaining a request to expand this delisting decision to cover other waste codes and evaluating specific data and information accompanying that request, which would be likely to require an opportunity for public notice and comment, would result in delays in the promulgation of this delisting. Therefore, consistent with the commenter's request not to delay this delisting, today's final exclusion has not been expanded to include non-F001 through F005 wastes.

C. Final Agency Decision

For the reasons stated in the proposal and in this final rule, the Agency is granting a final exclusion to DOE–RL, located in Richland, Washington for the liquid wastes, described in its petition as EPA Hazardous Waste No. F001, F002, F003, F004, F005, and F039 derived from F001 through F005.

This exclusion only applies to the treatment processes and waste volume (a maximum of 19 million gallons generated annually) covered by the original demonstration. The facility would need to petition for a new or amended exclusion if there is a change in composition of the treated waste such that the levels of hazardous constituents increase significantly (e.g., from changes to the waste streams or treatment processes). (Note, however, that changes in operating conditions are allowed as described in Condition (4).) Until a new or amended exclusion is granted, the facility must treat as hazardous all such wastes as well as effluents generated in excess of 19 million gallons per year. As to the wastes covered by today's exclusion, continued evaluation for levels of hazardous constituents will be achieved by the verification testing specified in Condition (1).

Although management of the wastes covered by this petition is relieved from Subtitle C jurisdiction by this final exclusion, the generator of a delisted waste must either treat, store or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste.

III. Limited Effect of Federal Exclusion

The final exclusion being granted today is being issued under the federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a federally-issued exclusion from taking effect in the State. Because a petitioner's waste may be regulated under both Federal and State programs, petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under State law.

IV. Effective Date

This rule is effective June 13, 1995. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date of six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this rule should be effective immediately upon publication. These reasons also provide a basis for making this rule effective immediately, upon publication, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

V. Regulatory Impact

Under Executive Order 12866, EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions. This rule to grant an exclusion is not significant, since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its waste as non-hazardous. There is no additional economic impact due to today's rule. Therefore, this rule is not a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under section (6) of Executive Order 12866.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on any small entities.

This amendment will not have any adverse economic impact on any small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations and it is limited to one facility. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 USC § 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

VIII. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a written statement to accompany any rules that have "Federal mandates" that may result in the expenditure by the private sector of $100 million or more in any one year.

Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of such a rule and that is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly and uniquely affected by the rule.

Unfunded Mandates Act defines a "Federal private sector mandate" for regulatory purposes as one that "would impose an enforceable duty upon the private sector." EPA finds that today's delisting decision is deregulatory in nature and does not impose any enforceable duties upon the private sector. Therefore, today's rulemaking is not subject to the requirements of sections 202 or 205 of the Unfunded Mandates Act. As to Section 203 of this Act, EPA finds that small governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 40 CFR Part 261

Hazardous Waste, Recycling, and Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

Dated: June 2, 1995.

Michael Shapiro,

Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C 6905, 6912(a), 6921, 6922, and 6938.

2. In Part 261, table 2 of Appendix IX add the following wastestream in alphabetical order by facility to read as follows: Appendix IX—Wastes Excluded Under § 260.20 and § 260.22.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
DOE–RL	Richland, Washington	Effluents (EPA Hazardous Waste Nos. F001, F002, F003, F004, F005, and F039 derived from F001 through F005) generated from the 200 Area Effluent Treatment Facility (ETF) located at the Hanford site (at a maximum generation rate of 19 million gallons per year) after June 13, 1995. To ensure that hazardous constituents are not present in the wastes at levels of regulatory concern while the treatment facility is in operation, DOE must implement a testing program. This testing program must meet the following conditions for the exclusion to be valid: (1) *Testing:* Sample collection and analyses (including quality control (QC) procedures) must be performed according to SW–846 (or other EPA-approved) methodologies. If EPA judges the treatment process to be effective under the operating conditions used during the initial verification testing, DOE may replace the testing required in Condition (1)(A) with the testing required in Condition (1)(B). DOE must continue to test as specified in Condition (1)(A) until notified by EPA in writing that testing in Condition (1) (A) may be replaced by Condition (1)(B). (A) *Initial Verification Testing:* During the period required to fill the first three verification tanks (each designed to hold approximately 650,000 gallons) with effluents generated from an on-line, full-scale Effluent Treatment Facility (ETF), DOE must monitor the range of typical operating conditions for the ETF. DOE must collect a representative sample from each of the first three verification tanks filled with ETF effluents. The samples must be analyzed, prior to disposal of ETF effluents, for all constituents listed in Condition (3). DOE must report the operational and analytical test data, including quality control information, obtained during this initial period no later than 90 days after the first verification tank is filled with ETF effluents. (B) *Subsequent Verification Testing:* Following notification by EPA, DOE may substitute the testing conditions in this condition for (1)(A). DOE must continue to monitor operating conditions, and collect and analyze representative samples from every tenth verification tank filled with ETF effluents. These representative samples must be analyzed, prior to disposal of ETF effluents, for all constituents listed in Condition (3). If all constituent levels in a sample do not meet the delisting levels specified in Condition (3), DOE must analyze representative samples from the following two verification tanks generated prior to disposal. DOE may also collect and analyze representative samples more frequently. (2) *Waste Holding and Handling:* DOE must store as hazardous all ETF effluents generated during verification testing (as specified in Conditions (1)(A) and (1)(B)), that is until valid analyses demonstrate that Condition (3) is satisfied. If the levels of hazardous constituents in the samples of ETF effluents are equal to or below all of the levels set forth in Condition (3), then the ETF effluents are not hazardous and may be managed and disposed of in accordance with all applicable solid waste regulations. If hazardous constituent levels in any representative sample collected from a verification tank exceed any of the delisting levels set in Condition (3), the ETF effluents in that verification tank must be re-treated until the ETF effluents meet these levels. Following re-treatment, DOE must repeat analyses in Condition (3) prior to disposal. (3) *Delisting Levels:* All total constituent concentrations in the waste samples must be measured using the appropriate methods specified in "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA Publication SW–846 (or other EPA-approved methods). All total constituent concentrations must be equal to or less than the following levels (ppm): *Inorganic Constituents* Ammonium—10.0 Antimony—0.06 Arsenic—0.5

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		Beryllium—0.04 Cadmium—0.05 Chromium—1.0 Cyanide—2.0 Fluoride—40.0 Lead—0.15 Mercury—0.02 Nickel—1.0 Selenium—0.5 Silver—2.0 Vanadium—2.0 Zinc—100.0 *Organic Constituents* Acetone—40.0 Benzene—0.05 Benzyl alcohol—100.0 1-Butyl alcohol—40.0 Carbon tetrachloride—0.05 Chlorobenzene—1.0 Chloroform—0.1 Cresol—20.0 1,4-Dichlorobenzene—0.75 1,2-Dichloroethane—0.05 1,1-Dichloroethylene—0.07 Di-n-octyl phthalate—7.0 Hexachloroethane—0.06 Methyl ethyl ketone—200.0 Methyl isobutyl ketone—30.0 Naphthalene—10.0 Tetrachloroethylene—0.05 Toluene—10.0 Tributyl phosphate—0.2 1,1,1-Trichloroethane—2.0 1,1,2-Trichloroethane—0.05 Trichloroethylene—0.05 Vinyl Chloride—0.02 (4) *Changes in Operating Conditions:* After completing the initial verification testing in Condition (1)(A), if DOE significantly changes the operating conditions established in Condition (1), DOE must notify the Agency in writing. After written approval by EPA, DOE must re-institute the testing required in Condition (1)(A). DOE must report the operations and test data, required by Condition (1)(A), including quality control data, obtained during this period no later than 60 days after the changes take place. Following written notification by EPA, DOE may replace testing Condition (1)(A) with (1)(B). DOE must fulfill all other requirements in Condition (1), as appropriate. (5) *Data Submittals:* At least two weeks prior to system start-up, DOE must notify, in writing, the Chief of the Waste Identification Branch (see address below) when the Effluent Treatment Process will be on-line and waste treatment will begin. The data obtained through Condition (1)(A) must be submitted to the Branch Chief, Waste Identification Branch, OSW (Mail Code 5304), U.S. EPA, 401 M Street, S.W., Washington, DC 20460 within the time period specified. Records of operating conditions and analytical data from Condition (1) must be compiled, summarized, and maintained on site for a minimum of three years. These records and data must be furnished upon request by EPA or the State of Washington and made available for inspection. Failure to submit the required data within the specified time period or to maintain the required records on site for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted: Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 USC 1001 and 42 USC 6928), I certify that the information contained in or accompanying this document is true, accurate, and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate, and complete.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate, or incomplete, and upon conveyance of this fact to DOE, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the DOE will be liable for any actions taken in contravention of its RCRA and CERCLA obligations premised upon DOE's reliance on the void exclusion.

[FR Doc. 95–14428 Filed 6–12–95; 8:45 am]
BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 60, No. 113
Tuesday, June 13, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 123

Disaster—Physical Disaster and Economic Injury Loans

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) is proposing to amend its regulations governing both physical and economic injury disaster assistance to make clear that businesses primarily engaged in agriculture are not eligible for such assistance and that such assistance may not be used to further the alleviation of physical or economic injury to property associated with agricultural enterprise caused by a disaster.

DATES: SBA will accept public comments on this proposal through July 13, 1995.

ADDRESSES: Comments should be submitted to Bernard Kulik, Associate Administrator for Disaster Assistance, Small Business Administration, 409 Third Street, SW., 6th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Bernard Kulik, Office of Disaster Assistance, (202) 205–6734.

SUPPLEMENTARY INFORMATION: In 1986 section 7(b) of the Small Business Act (Act) (15 U.S.C. 636(b)) was amended to provide that physical and economic injury disaster loan assistance provided by the Small Business Administration (SBA) under that section should not be available to agricultural enterprises. The term agricultural enterprise is defined elsewhere in the Act to mean a business engaged in the production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural related industries. See section 18(b)(1) of the Act, 15 U.S.C. 647(b)(1). SBA has historically interpreted this provision in a manner that contemplates that this definition is intended to cover small businesses primarily engaged in the prescribed activities. This position is consistent with SBA's size standards related definition of a small business for purpose of eligibility for disaster assistance. (See 13 CFR 121.802). However, the word "primarily" is absent from the present regulatory definition of agricultural enterprise in the SBA regulations governing disaster assistance. (See 13 CFR 123.17). This proposed rule, if adopted, would conform the definition of agricultural enterprise with existing policy and with regulations governing size standards by requiring that a concern be primarily engaged in the prescribed activities in order to be construed as an agricultural enterprise.

The effect of this change would be to make clear that a small business which is engaged in multiple activities, including those relevant to agricultural enterprise would be ineligible for disaster assistance under section 7(b) of the Act if its primary activity as judged under the criteria imposed by 13 CFR 123, *et seq.*, is agricultural enterprise. If its primary activity as judged under this standard is an eligible activity and is not agricultural activity, a business would be eligible for disaster assistance.

This proposed regulation, if adopted, would also amend 13 CFR §§ 123.3 and 123.41 to make clear that it is SBA's position that the proceeds of disaster assistance made to eligible small businesses may not be used in conjunction with repair or replacement or alleviation of economic injury relevant to real or personal property used in the production of food and fiber, ranching and raising of livestock, aquaculture and all other farming and agricultural related industries. This change would literally prohibit proceeds of SBA disaster assistance made to otherwise eligible businesses from being used for purposes associated with agricultural enterprise with which it might be secondarily engaged. Thus a business eligible for disaster assistance which is primarily engaged in eligible activity and secondarily engaged in agricultural enterprise would be prohibited under this regulation, if adopted, from using the proceeds of such assistance for purposes relevant to the agricultural enterprise.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act and the Paperwork Reduction Act

For purposes of Executive Order 12866, SBA certifies that this rule will not have an annual economic effect in excess of $100 million, result in a major increase in costs for individuals or governments, or have a significant adverse effect on competition and, therefore, would not constitute a major or significant rule.

For purposes of Executive Order 12612, SBA certifies that this rule will not have federalism implications warranting the preparation of a Federalism assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that Order.

For purposes of the Regulatory Flexibility Act, SBA certifies that this rule will not have a significant economic effect on a substantial number of small entities for the same reason that it is not a major or significant rule.

For purposes of the Paperwork Reduction Act, SBA certifies that this rule will not impose a new recordkeeping or reporting requirement.

(Catalogue of Federal Domestic Assistance Programs, Nos. 59.002, 59.008)

Lists of Subjects in 13 CFR Part 123

Disaster assistance, Loan programs—business, Small businesses.

For the reasons set out above, pursuant to sections 5(b)(6), 7(b)(1), and 7(c)(6) of the Small Business Act, Title 13, Part 123 of the Code of Federal Regulations, is amended to read as follows:

1. The authority citation for Part 123 would continue to read as follows:

Authority: Sections 5(b)(6), 7(b), (c), (f) of the Small Business Act; Pub. L. 102–395, 106 Stat. 1828, 1864; and Pub. L. 103–75, 107 Stat. 739 (15 U.S.C. 634(b)(6), 636(b), (c), (f).

2. Section 123.17 would be amended by inserting the term "primarily" before the term "engaged" in the first sentence.

3. Section 123.3 would be amended by adding a new paragraph (b)(8) in the definition of "eligible physical loss" to read as follows:

§ 123.3 Definitions.

* * * * *

Eligible Physical Loss:

* * * * *

(b) * * *

(8) If the property damaged is property used in the production of food and fiber, ranching and raising livestock, aquaculture and all other farming and agricultural related industries.

* * * * *

4. Section 123.41 would be amended by adding the following sentence at the end of paragraph (g)(1) to read as follows:

§ 123.41 General provisions.

* * * * *

(g) **Use of Proceeds.** (1) * * * Proceeds of loans under this subpart shall not be used for the purpose of alleviating economic injury or providing working capital in conjunction with real or personal property used in the production of food and fiber, ranching and raising livestock, aquaculture and all other farming and agricultural related industries.

* * * * *

Dated: May 2, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–14372 Filed 6–12–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–55–AD]

Airworthiness Directives; Boeing Models 727, 737, and 747 Series Airplanes; McDonnell Douglas Model DC–8 and DC–9 Series Airplanes, Model MD–88 Airplanes, and Models MD–11 and MD–90–30 Series Airplanes; Lockheed Models L–1011–385 Series Airplanes; Fokker Models F28 Mark 1000, 2000, 3000, 4000, and 0100 Series Airplanes; and British Aerospace Model Avro 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of two existing airworthiness directives (AD), that are applicable to certain transport category airplanes equipped with certain Honeywell Standard Windshear Detection Systems (WSS). Those AD's currently require a revision to the FAA-approved Airplane Flight Manual (AFM) to alert the flight crew of the potential for significant delays in the WSS detecting windshear when the flaps of the airplane are in transition. Those AD's were prompted by a report of an accident during which an airplane encountered severe windshear during a missed approach. This action would require that the currently-installed line replaceable unit (LRU) be replaced with a modified LRU having new software that eliminates delays in the WSS detecting windshear when the flaps of the airplane are in transition. The actions specified by the proposed AD are intended to prevent significant delays in the WSS detecting hazardous windshear, which could lead to the loss of flight path control.

DATES: Comments must be received by August 8, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–55–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712.

FOR FURTHER INFORMATION CONTACT: J. Kirk Baker, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5345; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–55–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–55–AD, 1601 Lind Avenue, SW,, Renton, Washington 98055–4056.

Discussion

On February 14, 1995, the FAA issued AD 95–04–01, amendment 39–9153 (60 FR 9619, February 2, 1995), which is applicable to various transport category airplanes equipped with certain Honeywell Standard Windshear Detection and Recovery Guidance Systems (WSS). Additionally, on April 21, 1995, the FAA issued AD 95–09–05, amendment 39–9208 (60 FR 20887, April 28, 1995), which is applicable to British Aerospace Model Avro 146–RJ70A, –RJ85A, and –RJ100A airplanes, equipped with a similar Honeywell WSS. [A correction of AD 95–09–05 was published in the **Federal Register** on May 19, 1995 (60 FR 26824).]

Those AD's require a revision to the FAA-approved airplane flight manual (AFM) to alert the flightcrew of the potential for significant delays in the WSS detecting windshear when the flaps of the airplane are in transition. Those actions were prompted by a report of an accident during which an airplane encountered severe windshear during a missed approach. The requirements of those AD's are intended to ensure that the flightcrew is aware that there may be significant delays in the WSS detecting windshear when the flaps of the airplane are in transition.

In the preambles to those AD's, the FAA stated that the requirements of each of the AD's were considered to be interim action, and that additional rulemaking action was being considered to permit removal of the AFM limitation.

The FAA now has determined that replacement of the currently-installed line replaceable unit (LRU) with a modified LRU, having new software that eliminates delays in the WSS detecting windshear when the flaps of the airplane are in transition, will positively address the unsafe condition. The unsafe condition has been identified as significant delays in the WSS detecting windshear, which could lead to the loss of flight path control. Based on this determination, the FAA finds that additional rulemaking action is indeed necessary, and this proposed rule follows from that determination.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 95–04–01 and AD 95–09–05. The proposed AD would require replacement of the currently-installed LRU with a modified LRU having new software that eliminates delays in the WSS detecting windshear when the flaps of the airplane are in transition. Replacement would be required to be accomplished in accordance with a method approved by the FAA.

The proposed compliance time of 24 months for replacement is based on the time estimated to be necessary to obtain a modified LRU, plus the time necessary to install that modified LRU on the airplane. Consequently, the FAA has determined that it is appropriate to permit the installation of unmodified LRU's for up to 12 months after the effective date of the rule, provided that the AFM limitation required by the existing AD's continues to remain in effect. This will allow operators to use unmodified LRU's, that may be held as spares, as replacement items is necessary during the 12-month period.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long-standing requirement.

There are approximately 2,320 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,618 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 10 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Honeywell would incur the costs for the software upgrade for the LRU's. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $970,800, or $600 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9153 (60 FR 9619, February 21, 1995) and amendment 39–9208 (60 FR 20887, April 28, 1995), and by adding a new airworthiness directive (AD), to read as follows:

Boeing; McDonnell Douglas; Lockheed; Fokker; and British Aerospace Regional Aircraft Limited, Avro International Aerospace Division (Formerly British Aerospace, plc; British Aerospace Commercial Aircraft, Limited): Docket 95–NM–55–AD. Supersedes AD 95–04–01, Amendment 39–9153; and AD 95–09–05, Amendment 39–9208.

Applicability: The following models and series of airplanes, certificated in any category, equipped with Honeywell Standard Windshear Detection Systems (WSS):

Manufacturer and model of airplane	Type of computer	Part numbers
Boeing 727–100 and –200	Standard Windshear (Honeywell STC)	4061048–902, –903, and –904, 4068054–901, 4068060–901.
Boeing 737–100 and –200	Standard Windshear (Honeywell STC)	4061048–903, –904, and –905, 4068058–903.
Boeing 737–200	Performance Management (Honeywell STC)	4050730–904 through –911, 4051819–906.
Boeing 737–300	Standard Windshear (Honeywell STC)	4068060–901.
Boeing 747–100 and –200	Standard Windshear (Honeywell STC)	4061048–904.
McDonnell Douglas DC–8–50, –60, and –70	Standard Windshear (Honeywell STC)	4068046–903.

Manufacturer and model of airplane	Type of computer	Part numbers
McDonnell Douglas DC–9–10, –21, –31 –41, and –51	Standard Windshear (Honeywell STC)	4068046–901, –902, 4068048–901, –902.
McDonnell Douglas DC–9–80 and MD–88	Windshear (OEM TC)	4059845–902.
McDonnell Douglas MD–90–30	Windshear (OEM TC)	4059845–910.
McDonnell Douglas MD–11	Flight Control (OEM TC)	4059001–901 through –905 (with windshear option selected).
Lockheed L–1011–385–1, –385–1–14, –385–1–15, and –385–3.	Standard Windshear (OEM TC)	4068044–901.
Fokker F28 Mark 1000, 2000, 3000, and 4000	Standard Windshear (Honeywell STC)	4068052–901.
Fokker F28 Mark 0100	Flight Management (OEM TC)	4052502–951 (with windshear option selected).
British Aerospace Avro 146–RJ70A, –RJ85A, and –RJ100A.	Flight Control (OEM TC)	4068300–902.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent significant delays in the Honeywell Standard Windshear Detection Systems (WSS) detecting hazardous windshear, which could lead to the loss of flight path control, accomplish the following:

(a) Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement, at the time specified in either paragraph (a)(1) or (a)(2) of this AD, as applicable. This may be accomplished by inserting a copy of this AD in the AFM.

"During sustained banks of greater than 15 degrees or during flap configuration changes, the Honeywell Windshear Detection and Recovery Guidance System (WSS) is desensitized and alerts resulting from encountering windshear conditions will be delayed."

(1) For all Boeing, McDonnell Douglas, Lockheed, and Fokker airplanes specified in the applicability statement of this AD: Within 14 days after March 8, 1995 (the effective date of AD 95–04–01, amendment 39–9153).

(2) For British Aerospace Model Avro airplanes specified in the applicability statement of this AD: Within 14 days after May 15, 1995 (the effective date of AD 95–09–05, amendment 39–9208).

(b) Within 24 months after the effective date of this AD, replace the currently-installed line replaceable unit (LRU) with a modified LRU having new software that eliminates delays in the WSS detecting windshear when the flaps of the airplane are in transition, in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Accomplishment of this replacement constitutes terminating action for the requirements of paragraph (a) of this AD; after the replacement has been accomplished, the AFM limitation required by paragraph (a) of this AD may be removed.

(c) As of 12 months after the effective date of this AD, no person shall install on any airplane an LRU that has not been modified in accordance with paragraph (b) of this AD. An unmodified LRU may be installed up to 12 months after the effective date of this AD, provided that, during that time, the AFM limitation required by paragraph (a) of this AD remains in effect.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 7, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–14402 Filed 6–12–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–49–AD]

Airworthiness Directives; McDonnell Douglas Model DC–10–10, –30, and –40 Series Airplanes, and KC–10 (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10, –30, and –40 series airplanes, and KC–10 (military) airplanes. This proposal would require inspections to detect corrosion or cracking of the lower front spar cap and the skin panel of the horizontal stabilizer, and repair of corroded or cracked parts. This proposal would also require eventual modification of the horizontal stabilizer, which would terminate the inspection requirements. This proposal is prompted by reports indicating that corrosion, caused by water entrapment, was found on the horizontal stabilizer. The actions specified by the proposed AD are intended to prevent water entrapment and subsequent damage to the horizontal stabilizer, which could result in reduced controllability of the airplane.

DATES: Comments must be received by August 8, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–49–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: John Cecil, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (310) 627–5322; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–49–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–49–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received several reports indicating that corrosion was found on the aft tang of the lower front spar cap of the horizontal stabilizer on McDonnell Douglas Model DC–10 series airplanes. Additionally, the FAA has received several reports indicating that corrosion was found on the lower skin panel of the horizontal stabilizer on these airplanes. Investigation has revealed that the corrosion was caused by water entrapment in the horizontal stabilizer. Such corrosion, if not detected and corrected in a timely manner, could result in damage to the spar cap and/or lower skin panel of the horizontal stabilizer, which could lead to reduced controllability of the airplane.

The FAA has reviewed and approved McDonnell Douglas Service Bulletin 55–14, Revision 6, dated January 11, 1993, which describes procedures for repetitive visual inspections for corrosion of the lower front spar cap and skin panel of the horizontal stabilizer, and repair of corroded or cracked parts. The service bulletin also describes procedures for modifications of the lower front spar cap and the lower front skin panel of the horizontal stabilizer, which, if accomplished, would eliminate the need for repetitive inspections. The modification involves drilling a drain hole in the horizontal stabilizer to allow drainage of entrapped water, which will minimize the possibility of corrosion.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require repetitive visual inspections to detect corrosion or cracking of the lower front spar cap and the skin panel of the horizontal stabilizer, and repair of corroded or cracked parts. This proposed AD would also require the eventual modification of the lower front spar cap and the lower front skin panel of the horizontal stabilizer, which would terminate the repetitive inspection requirements. The actions would be required to be accomplished in accordance with the service bulletin described previously.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long-standing requirement.

There are approximately 286 Model DC–10–10, DC–10–30, and DC–10–40 airplanes, and KC–10 (military) airplanes of the affected design in the worldwide fleet. Approximately 142 airplanes of U.S. registry would be affected by this proposed AD.

The FAA estimates that it would take approximately 26 work hours per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $221,520, or $1,560 per airplane, per inspection cycle.

The FAA estimates that it would take approximately 241 work hours per airplane to accomplish the proposed terminating modification, at an average labor rate of $60 per work hour. Required parts would cost approximately $124,906 per airplane. Based on these figures, the total cost impact of the proposed terminating modification is estimated to be $19,789,972, or $139,366 per airplane.

Based on these figures, the estimated total cost impact of the proposed requirements of this AD would be $20,011,492, or $140,926 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Additionally, the FAA recognizes that the proposed modification would require a large number of work hours to accomplish. However, the 5-year compliance time specified in paragraph (b) of this proposed AD should allow ample time for the terminating modification to be accomplished coincidentally with scheduled major airplane inspection and maintenance activities, thereby minimizing the costs associated with special airplane scheduling.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and

the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 95–NM–49–AD.

Applicability: Model DC–10–10, –30, and –40 airplanes, and KC–10 (military) airplanes; as listed in McDonnell Douglas Service Bulletin 55–14, Revision 6, dated January 11, 1993; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane, due to a damaged horizontal stabilizer, accomplish the following:

(a) Within one year after the effective date of this AD, perform a visual inspection to detect corrosion or cracking of the lower front spar cap and skin panel of the horizontal stabilizer, in accordance with McDonnell Douglas DC–10 Service Bulletin 55–14, Revision 5, dated August 24, 1990, or Revision 6, dated January 11, 1993.

(1) If no corrosion or cracking is found during this inspection, repeat this inspection thereafter at intervals not to exceed one year, until the modification required by paragraph (b) of this AD is accomplished.

(2) If any corrosion or cracking is found during this inspection, prior to further flight, repair the corrosion and/or cracking, and add drain holes, in accordance with Table 1 of the service bulletin. Accomplishment of these repairs and modification constitutes terminating action for the repetitive inspection requirements of this AD.

(b) Perform the modification of the lower front spar cap and the skin panel of the horizontal stabilizer in accordance with McDonnell Douglas Service Bulletin 55–14, Revision 5, dated August 24, 1990, or Revision 6, dated January 11, 1993, at the applicable time specified in paragraph (b)(1) or (b)(2) of this AD. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements of this AD.

(1) For Model DC–10–10 airplanes: Prior to the accumulation of 42,000 total landings, or within five years after the effective date of the AD, whichever occurs later.

(2) For Model DC–10–30 and DC–10–40 airplanes: Prior to the accumulation of 30,000 total landings, or within five years after the effective date of this AD, whichever occurs later.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 7, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–14399 Filed 6–12–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Chapter II

Meetings of the Federal Gas Valuation Negotiated Rulemaking Committee

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of meetings.

SUMMARY: The Federal Gas Valuation Negotiated Rulemaking Committee (Committee) was established by the Secretary of the Department of the Interior (Department) to develop specific recommendations regarding Federal gas valuation pursuant to the Department's responsibilities imposed by the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. 1701 *et seq.* (FOGRMA). The Committee completed its deliberations and final report in March 1995.

DATES: The Committee will meet to review the draft proposed rulemaking on Wednesday and Thursday, June 28 and 29, 1995, 8:00 a.m. to 5:00 p.m. each day.

ADDRESSES: The meetings will be held at the Golden Hill Office Complex, 12600 West Colfax Avenue, Suite B–200, Lakewood, CO 80215–3735.

Written statements may be submitted to Ms. Deborah Gibbs Tschudy, Chief, Valuation and Standards Division, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS–3150, Denver, CO 80225–0165.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Gibbs Tschudy, Chief, Valuation and Standards Division, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS–3920, Denver, CO 80225–0165, telephone number (303) 275–7200, fax number (303) 275–7227.

SUPPLEMENTARY INFORMATION: The location and dates of future meetings will be published in the **Federal Register.**

The meetings will be open to the public without advanced registration and public attendance will be limited to the space available. Participation by the public will be limited to written statements for the Committee's consideration. The public will have an opportunity to comment on the proposed rulemaking during the public comment period.

Written statements should be submitted to the address listed above or at the meeting. Minutes of Committee meetings will be available for public inspection and copying 10 days following the meetings at the same address. In addition, the materials received to date during the input sessions are available for inspection and copying at the same address.

Dated: June 6, 1995.

James W. Shaw,

Associate Director for Royalty Management.

[FR Doc. 95–14443 Filed 6–12–95; 8:45 am]

BILLING CODE 4310–MR–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–140–2–6993b; FRL–5212–1]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Mojave Desert Air Quality Management District and South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from automobile refinishing operations, magnet wire coating, and metal container, closure, and coil coating operations.

The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by July 13, 1995.

ADDRESSES: Written comments on this action should be addressed to: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Divison, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Mojave Desert Air Quality Management District, 15428 Civic Drive, Victorville, CA 92392.

South Coast Air Quality Management District, 21865 E. Copley, Diamond Bar, CA 91765.

FOR FURTHER INFORMATION CONTACT: Nikole Reaksecker, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1187.

SUPPLEMENTARY INFORMATION: This document concerns South Coast Air Quality Management District (SCAQMD) Rules 1125, 1126, and 1151, and Mojave Desert Air Quality Management District (MDAQMD) Rule 1116, submitted by the California Air Resources Board to EPA on February 24, 1995 (Rules 1125 and 1126), January 24, 1995, and March 31, 1995, respectively. For further information, please see the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register.**

Authority: 42 U.S.C. 7401–7671q.

Dated: May 19, 1995.

Alexis Strauss,

Acting Regional Administrator.

[FR Doc. 95–14393 Filed 6–12–95; 8:45 am]

BILLING CODE 6560–50–W

40 CFR Part 52

[MN37–1–6901b; FRL–5212–7]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: USEPA proposes to approve miscellaneous amendments to previously approved administrative orders that are part of Minnesota's particulate matter and sulfur dioxide SIPs. These amendments make minor modifications such as reducing requirements for reporting operating information, updating certain rule citations, changing owner names, revoking an administrative order for a facility that no longer has significant emissions, and approving two revisions that will somewhat reduce emissions. USEPA also proposes to correct the codification of Minnesota's approved offset rules.

In the final rules section of this **Federal Register**, the USEPA is approving these revisions as a direct final rule without prior proposal, because USEPA views the action as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposal of that action. If USEPA receives adverse public comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this action must be received by July 13, 1995.

ADDRESSES: Written comments should be addressed to: William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE–17J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Air Enforcement Branch, Regulation Development Section (AE–17J), United States Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6067.

SUPPLEMENTARY INFORMATION: Supplementary information is provided in the rules section of this **Federal Register.**

Authority: 42 U.S.C. 7401–7671q.

Dated: May 15, 1995.

Valdas Adamkus,

Regional Administrator.

[FR Doc. 95–14451 Filed 6–12–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[KY–88–6956b; FRL–5208–1]

Approval and Promulgation of Implementation Plans; State Approval of Revisions to Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Kentucky for the purpose of correcting deficiencies in the definition of volatile organic compounds (VOCs). In the final rules section of this **Federal Register**, the EPA is approving the Kentucky's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by July 13, 1995.

ADDRESSES: Written comments on this action should be addressed to Scott Southwick, at the EPA Regional Office listed below.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Environmental Protection Agency, Region 4, Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

Division of Air Quality, Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet, 803 Schenkel Lane, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Scott Southwick, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4, Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555, x4207. Reference file KY–88–6956a.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: May 8, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–14448 Filed 6–12–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 52 and 62

[IA–13–1–6572b; FRL–5210–8]

Approval and Promulgation of Implementation Plans and Section 111(d) Plans; State of Iowa, Polk County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the state of Iowa on behalf of Polk County. The state's request for a revision to the SIP includes provisions to make Polk County's rules consistent with the state's Iowa Administrative Code. This revision also includes provisions to fulfill the requirements of section 111(d) of the Act, standards of performance for existing sources. These revisions fulfill federal regulations which strengthen maintenance of established air quality standards.

In the Final Rules Section of the **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal, because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this notice. Any parties interested in commenting on this notice should do so at this time.

DATES: Comments must be received on or before July 13, 1995.

ADDRESSES: Comments may be mailed to Christopher D. Hess, Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Christopher D. Hess at (913) 551–7213.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final notice which is located in the rules section of the **Federal Register**.

Dated: May 2, 1995.

Dennis Grams,

Regional Administrator.

[FR Doc. 95–14390 Filed 6–12–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 55

[FRL–5221–1]

Outer Continental Shelf Air Regulations; Consistency Update for California

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Notice of proposed rulemaking; consistency update.

SUMMARY: EPA is proposing to update a portion of the Outer Continental Shelf ("OCS") Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area ("COA"), as mandated by section 328(a)(1) of the Clean Air Act ("the Act"), the Clean Air Act Amendments of 1990. The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the South Coast Air Quality Management District (South Coast AQMD) and the Ventura County Air Pollution Control District (Ventura County APCD) are the designated COAs. The OCS requirements for the above Districts, contained in the Technical Support Document, are proposed to be incorporated by reference into the Code of Federal Regulations and are listed in the appendix to the OCS air regulations. Proposed changes to the existing requirements are discussed below.

DATES: Comments on the proposed update must be received on or before July 13, 1995.

ADDRESSES: Comments must be mailed (in duplicate if possible) to: EPA Air Docket (A–5), Attn: Docket No. A–93–16 Section IX, Environmental Protection Agency, Air and Toxics Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

Docket: Supporting information used in developing the proposed notice and copies of the documents EPA is proposing to incorporate by reference are contained in Docket No. A–93–16 (Section IX). This docket is available for public inspection and copying Monday–Friday during regular business hours at the following locations:

EPA Air Docket (A–5), Attn: Docket No. A–93–16 Section IX, Environmental Protection Agency, Air and Toxics Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

EPA Air Docket (LE–131), Attn: Air Docket No. A–93–16 Section IX, Environmental Protection Agency, 401 M Street SW, Room M–1500, Washington, DC 20460.

A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Air and Toxics Division (A–5–3), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1197.

SUPPLEMENTARY INFORMATION:

Background

On September 4, 1992, EPA promulgated 40 CFR part 55,[1] which established requirements to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. Part 55 applies to all OCS sources offshore of the States except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the Act requires that for such sources located within 25 miles of a state's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to § 55.12 of the OCS rule, consistency reviews will occur (1) at least annually; (2) upon receipt of a Notice of Intent under § 55.4; or (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in part 55. This notice of proposed rulemaking is being promulgated in response to the submittal of rules by two local air pollution control agencies. Public comments received in writing within 30 days of publication of this notice will be considered by EPA before publishing a notice of final rulemaking.

Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the Act. Consistency updates may result in the inclusion of state or local rules or regulations into part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

EPA Evaluation and Proposed Action

In updating 40 CFR part 55, EPA reviewed the state and local rules submitted for inclusion in part 55 to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules,[2] and requirements that regulate toxics which are not related to the attainment and maintenance of federal and state ambient air quality standards.

A. After review of the rules submitted by South Coast AQMD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following rules applicable to OCS sources for which the South Coast AQMD is designated as the COA. The following rules were submitted as revisions to existing requirements:

Rule 1106 Marine Coating Operations (Adopted 1/13/95)
Rule 1110.2 Emissions From Gaseous and Liquid-Fueled Internal Combustion Engines (Adopted 12/9/94)

The following rules were submitted but will not be included:

Rule 1102.1 Perchloroethylene Dry Cleaning Systems (Adopted 12/9/94)
Rule 1124 Aerospace Assembly and Component Manufacturing Operations (Adopted 1/13/95)
Rule 1126 Magnet Wire Coating Operations (Adopted 1/13/95)
Rule 1151 Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations (Adopted 12/9/94)
Rule 1153 Commercial Bakery Ovens (Adopted 1/13/95)
Rule 1164 Semiconductor Manufacturing (Adopted 1/13/95)
Rule 1421 Control of Perchloroethylene Emissions from Dry Cleaning Operations (Adopted 12/9/94)

B. After review of the rules submitted by Ventura County APCD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following rules applicable to OCS sources for which Ventura County APCD is designated as the COA. None of the existing OCS requirements was deleted.

The following rules were submitted as revisions to existing requirements:

Rule 23 Exemptions from Permit (Adopted 12/13/94)
Rule 71 Crude Oil and Reactive Organic Compound Liquids (Adopted 12/13/94)
Rule 74.12 Surface Coating of Metal Parts and Products (Adopted 12/13/94)
Rule 74.15 Boilers, Steam Generators and Process Heaters (5MM BTUs and greater) (Adopted 11/8/94)

The following rules were submitted to be added as new requirements:

Rule 34 Acid Deposition Control (Adopted 3/14/95)
Rule 71.5 Glycol Dehydrators (Adopted 12/13/94)
Rule 74.23 Stationary Gas Turbines (Adopted 3/14/95)
Rule 74.26 Crude Oil Storage Tank Degassing Operations (Adopted 11/8/94)
Rule 74.27 Gasoline and ROC Liquid Storage Tank Degassing Operations (Adopted 11/8/94)

The following rule was submitted but will not be included:

Rule 3 Advisory Committee (Adopted 3/14/95)

Executive Order 12291 (Regulatory Impact Analysis)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291. This exemption continues

[1] The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

[2] After delegation, each COA will use its administrative and procedural rules as onshore. In those instances where EPA does not delegate authority to implement and enforce part 55, EPA will use its own administrative and procedural requirements to implement the substantive requirements. 40 CFR 55.14(c)(4).

in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires each federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a "significant impact on a substantial number of small entities." Small entities include small businesses, organizations, and governmental jurisdictions.

As was stated in the final regulation, the OCS rule does not apply to any small entities, and the structure of the rule averts direct impacts and mitigates indirect impacts on small entities. This consistency update merely incorporates onshore requirements into the OCS rule to maintain consistency with onshore regulations as required by section 328 of the Act and does not alter the structure of the rule.

The EPA certifies that this notice of proposed rulemaking will not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 2, 1995.

David P. Howekamp,

Acting Regional Administrator.

Title 40 of the Code of Federal Regulations, part 55, is proposed to be amended as follows:

PART 55—[AMENDED]

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended by Public Law 101–549.

2. Section 55.14 is proposed to be amended by revising paragraphs ((e)(3)(ii)(G) and (e)(3)(ii)(H) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of states' seaward boundaries, by state.

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(G) *South Coast Air Quality Management District Requirements Applicable to OCS Sources.*

(H) *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources.*

* * * * *

3. Appendix A to 40 CFR Part 55 is amended by revising paragraph (b) (7) and (8) under the heading "California" to read as follows:

Appendix A to 40 CFR Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

* * * * *

California

* * * * *

(b) * * *

* * * * *

(7) The following requirements are contained in *South Coast Air Quality Management District Requirements Applicable to OCS Sources:*

Rule 102 Definition of Terms (Adopted 11/4/88)
Rule 103 Definition of Geographical Areas (Adopted 1/9/76)
Rule 104 Reporting of Source Test Data and Analyses (Adopted 1/9/76)
Rule 108 Alternative Emission Control Plans (Adopted 4/6/90)
Rule 109 Recordkeeping for Volatile Organic Compound Emissions (Adopted 3/6/92)
Rule 201 Permit to Construct (Adopted 1/5/90)
Rule 201.1 Permit Conditions in Federally Issued Permits to Construct (Adopted 1/5/90)
Rule 202 Temporary Permit to Operate (Adopted 5/7/76)
Rule 203 Permit to Operate (Adopted 1/5/90)
Rule 204 Permit Conditions (Adopted 3/6/92)
Rule 205 Expiration of Permits to Construct (Adopted 1/5/90)
Rule 206 Posting of Permit to Operate (Adopted 1/5/90)
Rule 207 Altering or Falsifying of Permit (Adopted 1/9/76)
Rule 208 Permit for Open Burning (Adopted 1/5/90)
Rule 209 Transfer and Voiding of Permits (Adopted 1/5/90)
Rule 210 Applications (Adopted 1/5/90)
Rule 212 Standards for Approving Permits (8/12/94) except (c)(3) and (e)
Rule 214 Denial of Permits (Adopted 1/5/90)
Rule 217 Provisions for Sampling and Testing Facilities (Adopted 1/5/90)
Rule 218 Stack Monitoring (Adopted 8/7/81)
Rule 219 Equipment Not Requiring a Written Permit Pursuant to Regulation II (Adopted 8/12/94)
Rule 220 Exemption—Net Increase in Emissions (Adopted 8/7/81)
Rule 221 Plans (Adopted 1/4/85)
Rule 301 Permit Fees (Adopted 6/10/94) except (e)(3) and Teble IV
Rule 304 Equipment, Materials, and Ambient Air Analyses (Adopted 6/10/94)
Rule 304.1 Analyses Fees (Adopted 6/10/94)
Rule 305 Fees for Acid Deposition (Adopted 10/4/91)
Rule 306 Plan Fees (Adopted 6/10/94)
Rule 309 Fees for Regulation XVI (Adopted 6/10/94)
Rule 401 Visible Emissions (Adopted 4/7/89)
Rule 403 Fugitive Dust (Adopted 7/9/93)
Rule 404 Particulate Matter—Concentration (Adopted 2/7/86)
Rule 405 Solid Particulate Matter—Weight (Adopted 2/7/86)
Rule 407 Liquid and Gaseous Air Contaminants (Adopted 4/2/82)
Rule 408 Circumvention (Adopted 5/7/76)
Rule 409 Combustion Contaminants (Adopted 8/7/81)
Rule 429 Start-Up and Shutdown Provisions for Oxides of Nitrogen (Adopted 12/21/90)
Rule 430 Breakdown Provisions, (a) and (e) only. (Adopted 5/5/78)
Rule 431.1 Sulfur Content of Gaseous Fuels (Adopted 10/2/92)
Rule 431.2 Sulfur Content of Liquid Fuels (Adopted 5/4/90)
Rule 431.3 Sulfur Content of Fossil Fuels (Adopted 5/7/76)
Rule 441 Research Operations (Adopted 5/7/76)
Rule 442 Usage of Solvents (Adopted 3/5/82)
Rule 444 Open Fires (Adopted 10/2/87)
Rule 463 Storage of Organic Liquids (Adopted 3/11/94)
Rule 465 Vacuum Producing Devices or Systems (Adopted 11/1/91)
Rule 468 Sulfur Recovery Units (Adopted 10/8/76)
Rule 473 Disposal of Solid and Liquid Wastes (Adopted 5/7/76)
Rule 474 Fuel Burning Equipment-Oxides of Nitrogen (Adopted 12/4/81)
Rule 475 Electric Power Generating Equipment (Adopted 8/7/78)
Rule 476 Steam Generating Equipment (Adopted 10/8/76)
Rule 480 Natural Gas Fired Control Devices (Adopted 10/7/77)
Addendum to Regulation IV (Effective 1977)
Rule 701 General (Adopted 7/9/82)
Rule 702 Definitions (Adopted 7/11/80)
Rule 704 Episode Declaration (Adopted 7/9/82)
Rule 707 Radio—Communication System (Adopted 7/11/80)
Rule 708 Plans (Adopted 7/9/82)
Rule 708.1 Stationary Sources Required to File Plans (Adopted 4/4/80)
Rule 708.2 Content of Stationary Source Curtailment Plans (Adopted 4/4/80)
Rule 708.4 Procedural Requirements for Plans (Adopted 7/11/80)
Rule 709 First Stage Episode Actions (Adopted 7/11/80)
Rule 710 Second Stage Episode Actions (Adopted 7/11/80)
Rule 711 Third Stage Episode Actions (Adopted 7/11/80)
Rule 712 Sulfate Episode Actions (Adopted 7/11/80)
Rule 715 Burning of Fossil Fuel on Episode Days (Adopted 8/24/77)

Regulation IX—New Source Performance Standards (Adopted 4/8/94)
Rule 1106 Marine Coatings Operations (Adopted 1/13/95)
Rule 1107 Coating of Metal Parts and Products (Adopted 8/2/91)
Rule 1109 Emissions of Oxides of Nitrogen for Boilers and Process Heaters in Petroleum Refineries (Adopted 8/5/88)
Rule 1110 Emissions from Stationary Internal Combustion Engines (Demonstration) (Adopted 11/6/81)
Rule 1110.1 Emissions from Stationary Internal Combustion Engines (Adopted 10/4/85)
Rule 1110.2 Emissions from Gaseous and Liquid-Fueled Internal Combustion Engines (Adopted 12/9/94)
Rule 1113 Architectural Coatings (Adopted 9/6/91)
Rule 1116.1 Lightering Vessel Operations-Sulfur Content of Bunker Fuel (Adopted 10/20/78)
Rule 1121 Control of Nitrogen Oxides from Residential-Type Natural Gas-Fired Water Heaters (Adopted 12/1/78)
Rule 1122 Solvent Cleaners (Degreasers) (Adopted 4/5/91)
Rule 1123 Refinery Process Turnarounds (Adopted 12/7/90)
Rule 1129 Aerosol Coatings (Adopted 11/2/90)
Rule 1134 Emissions of Oxides of Nitrogen from Stationary Gas Turbines (Adopted 8/4/89)
Rule 1136 Wood Products Coatings (Adopted 8/12/94)
Rule 1140 Abrasive Blasting (Adopted 8/2/85)
Rule 1142 Marine Tank Vessel Operations (Adopted 7/19/91)
Rule 1146 Emissions of Oxides of Nitrogen from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 5/13/94)
Rule 1146.1 Emission of Oxides of Nitrogen from Small Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 5/13/94)
Rule 1148 Thermally Enhanced Oil Recovery Wells (Adopted 11/5/82)
Rule 1149 Storage Tank Degassing (Adopted 4/1/88)
Rule 1168 Control of Volatile Organic Compound Emissions from Adhesive Application (Adopted 12/10/93)
Rule 1173 Fugitive Emissions of Volatile Organic Compounds (Adopted 5/13/94)
Rule 1176 Sumps and Wastewater Separators (Adopted 5/13/94)
Rule 1301 General (Adopted 6/28/90)
Rule 1302 Definitions (Adopted 5/3/91)
Rule 1303 Requirements (Adopted 5/3/91)
Rule 1304 Exemptions (Adopted 9/11/92)
Rule 1306 Emission Calculations (Adopted 5/3/91)
Rule 1313 Permits to Operate (Adopted 6/28/90)
Rule 1403 Asbestos Emissions from Demolition/Renovation Activities (Adopted 4/8/94)
Rule 1610 Old-Vehicle Scrapping (Adopted 1/14/94)
Rule 1701 General (Adopted 1/6/89)
Rule 1702 Definitions (Adopted 1/6/89)
Rule 1703 PSD Analysis (Adopted 10/7/88)
Rule 1704 Exemptions (Adopted 1/6/89)
Rule 1706 Emission Calculations (Adopted 1/6/89)
Rule 1713 Source Obligation (Adopted 10/7/88)
Regulation XVII—Appendix (effective 1977)
Rule 1901 General Conformity (Adopted 9/9/94)
Rule 2000 General (Adopted 10/15/93)
Rule 2001 Applicability (Adopted 10/15/93)
Rule 2002 Allocations for oxides of nitrogen (NO_X) and oxides of sulfur (SO_X) (Adopted 10/15/93)
Rule 2004 Requirements (Adopted 10/15/93) except (l) (2 and 3)
Rule 2005 New Source Review for RECLAIM (Adopted 10/15/93) except (i)
Rule 2006 Permits (Adopted 10/15/93)
Rule 2007 Trading Requirements (Adopted 10/15/93)
Rule 2008 Mobiles Source Credits (Adopted 10/15/93)
Rule 2010 Administrative Remedies and Sanctions (Adopted 10/15/93)
Rule 2011 Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (SO_X) Emissions (Adopted 9/9/94)
Appendix A Volume IV—(Protocol for oxides of sulfur) (Adopted 10/93)
Rule 2012 Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen (NO_X) Emissions (Adopted 9/9/94)
Appendix A Volume V—(Protocol for oxides of nitrogen) (Adopted 10/93)
Rule 2015 Backstop Provisions (Adopted 10/15/93) except (b)(1)(G) and (b)(3)(B)

(8) The following requirements are contained in *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources:*

Rule 2 Definitions (Adopted 12/15/92)
Rule 5 Effective Date (Adopted 5/23/72)
Rule 6 Severability (Adopted 11/21/78)
Rule 7 Zone Boundaries (Adopted 6/14/77)
Rule 10 Permits Required (Adopted 7/5/83)
Rule 11 Application Contents (Adopted 8/15/78)
Rule 12 Statement by Application Preparer (Adopted 6/16/87)
Rule 13 Statement by Applicant (Adopted 11/21/78)
Rule 14 Trial Test Runs (Adopted 5/23/72)
Rule 15.1 Sampling and Testing Facilities (Adopted 10/12/93)
Rule 16 Permit Contents (Adopted 12/2/80)
Rule 18 Permit to Operate Application (Adopted 8/17/76)
Rule 19 Posting of Permits (Adopted 5/23/72)
Rule 20 Transfer of Permit (Adopted 5/23/72)
Rule 21 Expiration of Applications and Permits (Adopted 6/23/81)
Rule 23 Exemptions from Permits (Adopted 12/13/94)
Rule 24 Source Recordkeeping, Reporting, and Emission Statements (Adopted 9/15/92)
Rule 26 New Source Review (Adopted 10/22/91)
Rule 26.1 New Source Review—Definitions (Adopted 10/22/91)
Rule 26.2 New Source Review—Requirements (Adopted 10/22/91)
Rule 26.3 New Source Review—Exemptions (Adopted 10/22/91)
Rule 26.6 New Source Review—Calculations (Adopted 10/22/91)
Rule 26.8 New Source Review—Permit To Operate (Adopted 10/22/91)
Rule 26.10 New Source Review—PSD (Adopted 10/22/91)
Rule 28 Revocation of Permits (Adopted 7/18/72)
Rule 29 Conditions on Permits (Adopted 10/22/91)
Rule 30 Permit Renewal (Adopted 5/30/89)
Rule 32 Breakdown Conditions: Emergency Variances, A., B.1., and D. only. (Adopted 2/20/79)
Rule 33 Part 70 Permits—General (Adopted 10/12/93)
Rule 33.1 Part 70 Permits—Definitions (Adopted 10/12/93)
Rule 33.2 Part 70 Permits—Application Contents (Adopted 10/12/93)
Rule 33.3 Part 70 Permits—Permit Content (Adopted 10/12/93)
Rule 33.4 Part 70 Permits—Operational Flexibility (Adopted 10/12/93)
Rule 33.5 Part 70 Permits—Timeframes for Applications, Review and Issuance (Adopted 10/12/93)
Rule 33.6 Part 70 Permits—Permit Term and Permit Reissuance (Adopted 10/12/93)
Rule 33.7 Part 70 Permits—Notification (Adopted 10/12/93)
Rule 33.8 Part 70 Permits—Reopening of Permits (Adopted 10/12/93)
Rule 33.9 Part 70 Permits—Compliance Provisions (Adopted 10/12/93)
Rule 33.10 Part 70 Permits—General Part 70 Permits (Adopted 10/12/93)
Rule 34 Acid Deposition Control (Adopted 3/14/95)
Appendix II–A Information Required for Applications to the Air Pollution Control District (Adopted 12/86)
Appendix II–B Best Available Control Technology (BACT) Tables (Adopted 12/86)
Rule 42 Permit Fees (Adopted 7/12/94)
Rule 44 Exemption Evaluation Fee (Adopted 1/8/91)
Rule 45 Plan Fees (Adopted 6/19/90)
Rule 45.2 Asbestos Removal Fees (Adopted 8/4/92)
Rule 50 Opacity (Adopted 2/20/79)
Rule 52 Particulate Matter-Concentration (Adopted 5/23/72)
Rule 53 Particulate Matter-Process Weight (Adopted 7/18/72)
Rule 54 Sulfur Compounds (Adopted 6/14/94)
Rule 56 Open Fires (Adopted 3/29/94)
Rule 57 Combustion Contaminants-Specific (Adopted 6/14/77)
Rule 60 New Non-Mobile Equipment-Sulfur Dioxide, Nitrogen Oxides, and Particulate Matter (Adopted 7/8/72)
Rule 62.7 Asbestos—Demolition and Renovation (Adopted 6/16/92)
Rule 63 Separation and Combination of Emissions (Adopted 11/21/78)
Rule 64 Sulfur Content of Fuels (Adopted 6/14/94)

Rule 66 Organic Solvents (Adopted 11/24/87)
Rule 67 Vacuum Producing Devices (Adopted 7/5/83)
Rule 68 Carbon Monoxide (Adopted 6/14/77)
Rule 71 Crude Oil and Reactive Organic Compound Liquids (Adopted 12/13/94)
Rule 71.1 Crude Oil Production and Separation (Adopted 6/16/92)
Rule 71.2 Storage of Reactive Organic Compound Liquids (Adopted 9/26/89)
Rule 71.3 Transfer of Reactive Organic Compound Liquids (Adopted 6/16/92)
Rule 71.4 Petroleum Sumps, Pits, Ponds, and Well Cellars (Adopted 6/8/93)
Rule 71.5 Glycol Dehydrators (Adopted 12/13/94)
Rule 72 New Source Performance Standards (NSPS) (Adopted 6/28/94)
Rule 74 Specific Source Standards (Adopted 7/6/76)
Rule 74.1 Abrasive Blasting (Adopted 11/12/91)
Rule 74.2 Architectural Coatings (Adopted 08/11/92)
Rule 74.6 Surface Cleaning and Degreasing (Adopted 5/8/90)
Rule 74.6.1 Cold Cleaning Operations (Adopted 9/12/89)
Rule 74.6.2 Batch Loaded Vapor Degreasing Operations (Adopted 9/12/89)
Rule 74.7 Fugitive Emissions of Reactive Organic Compounds at Petroleum Refineries and Chemical Plants (Adopted 1/10/89)
Rule 74.8 Refinery Vacuum Producing Systems, Waste-water Separators and Process Turnarounds (Adopted 7/5/83)
Rule 74.9 Stationary Internal Combustion Engines (Adopted 12/21/93)
Rule 74.10 Components at Crude Oil Production Facilities and Natural Gas Production and Processing Facilities (Adopted 6/16/92)
Rule 74.11 Natural Gas-Fired Residential Water Heaters-Control of NO_x (Adopted 4/9/85)
Rule 74.12 Surface Coating of Metal Parts and Products (Adopted 12/13/94)
Rule 74.15 Boilers, Steam Generators and Process Heaters (5MM BTUs and greater) (Adopted 11/8/94)
Rule 74.15.1 Boilers, Steam Generators and Process Heaters (1–5MM BTUs) (Adopted 5/11/93)
Rule 74.16 Oil Field Drilling Operations (Adopted 1/8/91)
Rule 74.20 Adhesives and Sealants (Adopted 6/8/93)
Rule 74.23 Stationary Gas Turbines (Adopted 3/14/95)
Rule 74.24 Marine Coating Operations (Adopted 3/8/94)
Rule 74.26 Crude Oil Storage Tank Degassing Operations (Adopted 11/8/94)
Rule 74.27 Gasoline and ROC Liquid Storage Tank Degassing Operations (Adopted 11/8/94)
Rule 74.28 Asphalt Roofing Operations (Adopted 5/10/94)
Rule 74.30 Wood Products Coatings (Adopted 5/17/94)
Rule 75 Circumvention (Adopted 11/27/78)
Appendix IV–A Soap Bubble Tests (Adopted 12/86)
Rule 100 Analytical Methods (Adopted 7/18/72)
Rule 101 Sampling and Testing Facilities (Adopted 5/23/72)
Rule 102 Source Tests (Adopted 11/21/78)
Rule 103 Stack Monitoring (Adopted 6/4/91)
Rule 154 Stage 1 Episode Actions (Adopted 9/17/91)
Rule 155 Stage 2 Episode Actions (Adopted 9/17/91)
Rule 156 Stage 3 Episode Actions (Adopted 9/17/91)
Rule 158 Source Abatement Plans (Adopted 9/17/91)
Rule 159 Traffic Abatement Procedures (Adopted 9/17/91)

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[FR Doc. 95–14421 Filed 6–12–95; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74–14; Notice 95]

RIN 2127–AF66

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.
ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the agency's safety belt requirements for forward-facing rear outboard seating positions of police cars and other law enforcement vehicles. This action was initiated in response to a petition for rulemaking submitted by Laguna Manufacturing, Inc. Believing that the considerations governing the design of safety belts for use by prisoners are different from those applicable to safety belts for the general public, Laguna requested that Standard No. 208 be amended to provide greater flexibility to design safety belt systems that are better suited for restraining prisoners being transported in the rear seats of law enforcement vehicles.

DATES: Comment Date: Comments must be received by August 14, 1995.

Effective Date: If adopted, the proposed amendments would become effective 30 days following publication of the final rule.

ADDRESSES: Comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket Room hours are 9:30 a.m.–4 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Ms. Linda McCray, Frontal Crash Protection Division, Office of Vehicle Safety Standards, NPS–12, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–4793.

SUPPLEMENTARY INFORMATION: Standard No. 208, *Occupant Crash Protection*, requires an integral Type 2 (lap and shoulder) safety belt assembly at all forward-facing rear outboard seating positions in passenger cars and other light vehicles. The standard also requires that each of these safety belt assemblies be equipped with an emergency locking retractor. The emergency locking retractor allows the belt webbing to unwind from the spool when the belt user leans forward or to the side and rewinds it when the user leans back against the seat. However, in the event of a sudden stop or crash, the retractor locks up. This type of retractor serves several purposes. By providing a comfortable belt fit and allowing the belt user some freedom of movement, this type of retractor makes it more likely that the typical vehicle occupant will use safety belts. It also reduces the likelihood of excessive slack in safety belts during use.

Believing that the considerations governing the design of safety belts for use by prisoners being transported in police cars and other law enforcement vehicles are different from those applicable to safety belts for the general public, Laguna Manufacturing, Inc. submitted to NHTSA a petition for rulemaking requesting that Standard No. 208 be amended. Laguna sought an amendment that would provide greater flexibility to design safety belt systems that are better suited for restraining prisoners being transported in forward-facing rear outboard seating positions in these vehicles. That company argued that the requirement for an emergency locking retractor is inappropriate for safety belt systems used by prisoners, since it allows too much slack in non-emergency situations. This is because these retractors spool out webbing and thus allow safety-belted prisoners too much range of movement. Laguna stated that some police departments refrain altogether from safety belting a prisoner and instead use a "hog tie restraint" and lay the prisoner down on the rear seat. In these situations, the prisoner does not have any safety belt protection.

More specifically, Laguna requested that Standard No. 208 be amended to permit the use of a manual tightening system instead of an emergency locking retractor for safety belts intended for use by prisoners. That company stated that such a system would afford the occupant all of the crash protection provided by the standard and only exclude a feature intended to provide comfort and convenience. Laguna argued that a prisoner who's handcuffed behind his/her back would be unable to fasten the safety belts. Therefore, in such a situation, a feature intended to provide comfort and convenience would not make the occupant more likely to fasten the safety belt.

In support of its petition, Laguna provided information about a special rear seat and safety belt system it has designed for police cars. The design includes two outboard integral lap and shoulder belt systems which use the same anchor point locations as conventional belt systems in the forward-facing rear outboard seats in current cars.

However, there are two significant differences between the Laguna belt system and a conventional safety belt system. First, the Laguna system includes a manual belt tightening system instead of an emergency locking retractor. Second, the Laguna system uses two buckles instead of one and buckles in a different location than a conventional safety belt system. The ends of the lap and shoulder belt portions of the conventional safety belt system are permanently attached to the outboard anchorages. The end of the lap belt portion is attached to the lower anchorage and the end of shoulder belt portion is attached to the upper anchorage. The buckle is mounted at the anchorage near the center of the vehicle. The permanent attachment points and buckling points are reversed for the Laguna system. The middle of the Laguna belt system is permanently anchored at the anchorage near the center of the vehicle. The end of the lap belt portion buckles at the lower anchorage and the end of the shoulder belt buckles at the upper anchorage.

Laguna stated that its design eliminates the need for police officers to lean over a prisoner in the rear seat of the police car. This is partly attributable to the fact that both the lap belt and shoulder belt portions buckle at the outboard anchorages. Therefore, an officer need not lean over a prisoner to buckle the belt at an anchorage in the center of the vehicle, as would be the case with conventional belt systems. In addition, a large magnet is mounted on a floating sleeve that slides along the lap and shoulder belt portions. When the belts are not in use, the magnet attaches the belts to the metal cage partition that typically separates the front and rear portions of police cars. When the magnet is released from the metal cage partition, the sleeve falls to the center mounting position which allows the belt to properly separate into the lap/shoulder portions. When a prisoner is placed in the rear seat, the officer can use his or her forearm to remove the magnetically attached belts from the metal cage partition and buckle the belts around the prisoner, without at any time leaning over the prisoner.

After considering the issues raised by Laguna, NHTSA has tentatively concluded that Standard No. 208 should be amended to provide more flexibility with respect to the design and performance of safety belts installed at forward-facing rear outboard seating positions of law enforcement vehicles. The agency recognizes that the use of vehicles by law enforcement officers to transport prisoners creates special problems.

As requested by Laguna, NHTSA is proposing to permit the use of a manual tightening system instead of an emergency locking retractor in law enforcement vehicles. The agency believes that there is the need to limit the movement of a safety belted prisoner. Further, as noted by the petitioner, while the comfort and convenience benefits of an emergency locking retractor normally have the effect of helping to induce belt use, they do not have that effect on handcuffed or otherwise bound prisoners who are being involuntarily transported in law enforcement vehicles. The agency notes that a safety belt system incorporating a manual tightening system may result in an increase in the number of prisoners who are safety belted while being transported.

NHTSA is also proposing to exclude safety belts installed at forward-facing rear outboard seating positions of law enforcement vehicles from a requirement in Standard No. 208 which specifies that lap and shoulder belts must release at a single point. That requirement provides increased convenience and quicker release. The Laguna design, however, would not meet the requirement since it has two buckles. As discussed above, the Laguna system incorporates two buckles so that the belt system can be operated from the outboard side of the prisoner. This design feature eliminates the need for police officers to lean over the prisoner to either buckle or unbuckle a prisoner's belt. The agency believes that the special need for police officers to avoid leaning over a prisoner to operate the prisoner's safety belt buckle outweighs the benefits of having only a single buckle.

NHTSA recognizes that forward-facing rear outboard seating positions of law enforcement vehicles may be used by non-prisoners as well as prisoners. In addition, law enforcement vehicles are typically sold to the general public after their use as law enforcement vehicles. The agency notes, however, that under the proposal, occupants of the seats would continue to have the same three-point belt protection as occupants of non-law enforcement vehicles. The only differences would relate to comfort, convenience and quickness of release. The agency believes that these differences do not outweigh the special needs of law enforcement officers. However, NHTSA does request comments on whether a label should be required to advise rear seat passengers to adjust the safety belt for a snug fit. Commenters are asked to address the wording of such a label and its potential effectiveness. Depending on the comments, the agency may, or may not, include a requirement for such a label in a final rule.

While NHTSA would not have the authority to require law enforcement agencies to replace the special rear seat safety belt systems with conventional Type 2 safety belts when a vehicle was subsequently sold to the public, the agency would strongly recommend that law enforcement agencies do so. Installation of conventional Type 2 safety belt systems, with an emergency locking retractor and a single point of release, would afford subsequent owners all of the crash protection provided by the agency's crash protection standards. In addition, these safety belt systems would meet the comfort and convenience requirements of those standards, increasing the likelihood that the safety belts would be used.

While the special Laguna design is for "police cars," that company requested that its recommended exclusion be provided for "police and/or public safety vehicles used, exclusively or not, for the transport of persons handcuffed or restrained and in the custody, care, and control of a law enforcement officer." NHTSA believes that the proposed exclusions should apply to law enforcement vehicles generally, rather than to police "cars," since the rationale is not dependent on vehicle type, i.e., passenger car or multipurpose passenger vehicle.

The proposed regulatory text defines "law enforcement vehicle" as any vehicle manufactured primarily for use by the United States or by a State or local government for police or other law enforcement purposes. This definition is derived from the definition of "emergency vehicle," set forth at 49 U.S.C. 32902(e), for purposes of the

corporate average fuel economy program. The agency notes that vehicles which are manufactured for police or other law enforcement purposes can ordinarily be identified by special features such as sirens, decals, a metal cage partition, removed interior rear-door release handles, or special handling features. The agency requests comments concerning whether all law enforcement vehicles include at least some of these (or other) special features, and on whether a more detailed definition, identifying vehicle attributes, can be developed that would be appropriate for all law enforcement vehicles.

NHTSA is proposing to make the proposed amendments effective 30 days after publication of a final rule. NHTSA believes that there would be good cause for such an effective date since the amendments would not impose any new requirements but instead relieve a restriction.

Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." This action has been determined to be "non-significant" under the Department of Transportation's regulatory policies and procedures. The proposed amendments would not impose any new requirements but simply remove a restriction. Therefore, the impacts of the proposed amendments would be so minor that a full regulatory evaluation is not required. There would be slight cost savings, on the order of $5.00 or less per belt system, associated with not being required to provide an emergency locking retractor. For the Laguna system, these cost savings would be offset by the costs associated with some of the special features of its belt system, i.e., the extra buckle and the magnets. NHTSA notes, however, that these special features would not be required by the standard.

B. Regulatory Flexibility Act

NHTSA has also considered the impacts of this notice under the Regulatory Flexibility Act. I hereby certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. As explained above, the rule would not impose any new requirements but would instead relieve a restriction for law enforcement vehicles. Any economic impact would be in the nature of slight cost savings for small government organizations which purchase law enforcement vehicles. For these reasons, small businesses, small organizations and small governmental units which purchase motor vehicles would not be significantly affected by the proposed requirements.

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no requirements for information collection associated with this proposed rule.

D. National Environmental Policy Act

NHTSA has also analyzed this proposed rule under the National Environmental Policy Act and determined that it would not have a significant impact on the human environment.

E. Executive Order 12612 (Federalism)

NHTSA has analyzed this proposal in accordance with the principles and criteria contained in E.O. 12612, and has determined that this proposed rule would not have significant federalism implications to warrant the preparation of a Federalism Assessment.

F. Civil Justice Reform

This proposed rule would not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Submission of Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, it is proposed that 49 CFR part 571 be amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 of title 49 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.208 would be amended by revising sections S7, S7.1.1.2, S7.1.1.3 and S7.2 to read as follows:

§ 571.208 Standard No. 208, Occupant Crash Protection.

* * * * *

S7. *Seat belt assembly requirements.* As used in this section, a law enforcement vehicle means any vehicle manufactured primarily for use by the United States or by a State or local government for police or other law enforcement purposes.

* * * * *

S7.1.1.2(a) A seat belt assembly installed in a motor vehicle other than a forward control vehicle at any designated seating position other than the outboard positions of the front and second seats shall adjust either by a retractor as specified in S7.1.1 or by a manual adjusting device that conforms to § 571.209.

(b) A seat belt assembly installed in a forward control vehicle at any designated seating position other than the front outboard seating positions shall adjust either by a retractor as specified in S7.1.1 or by a manual adjusting device that conforms to § 571.209.

(c) A seat belt assembly installed in a forward-facing rear outboard seating position in a law enforcement vehicle shall adjust either by a retractor as specified in S7.1.1 or by a manual adjusting device that conforms to § 571.209.

S7.1.1.3 A Type 1 lap belt or the lap belt portion of any Type 2 seat belt assembly installed at any forward-facing outboard designated seating position of a vehicle with a gross vehicle weight rating of 10,000 pounds or less to comply with a requirement of this standard, except walk-in van-type vehicles and school buses, and except in rear seating positions in law enforcement vehicles, shall meet the requirements of S7.1 by means of an emergency locking retractor that conforms to Standard No. 209 (49 CFR 571.209).

* * * * *

S7.2 *Latch mechanism.* Except as provided in S7.2(e), each seat belt assembly installed in any vehicle shall have a latch mechanism that complies with the requirements specified in S7.2(a) through (d).

(a) The components of the latch mechanism shall be accessible to a seated occupant in both the stowed and operational positions;

(b) The latch mechanism shall release both the upper torso restraint and the lap belt simultaneously, if the assembly has a lap belt and an upper torso restraint that require unlatching for release of the occupant;

(c) The latch mechanism shall release at a single point; and;

(d) The latch mechanism shall release by a pushbutton action.

(e) The requirements of S7.2 do not apply to any automatic belt assembly. The requirements specified in S7.2(a) through (c) do not apply to any safety belt assembly installed at a forward-facing rear outboard seating position in a law enforcement vehicle.

Issued on June 7, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–14401 Filed 6–12–95; 8:45 am]

BILLING CODE 4910–59–P

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49 CFR Part 571

[Docket No. 90–3; Notice 5]

RIN 2127–AF63

Federal Motor Vehicle Safety Standards; Air Brake Systems Air Compressor Cut-In

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: In response to a petition for rulemaking submitted by the Truck Trailer Manufacturers Association (TTMA), this notice proposes to amend the requirement for the minimum air compressor cut-in pressure in Standard No. 121, *Air Brake Systems*, to require the automatic activation of the air compressor whenever the pressure in the air brake system drops below 100 psi. The agency has tentatively concluded that the proposed amendment would ensure that new truck tractors provide trailers with sufficient air pressure for release of the trailer parking brakes and provide adequate service braking.

DATES: *Comments.* Comments must be received on or before August 14, 1995.

Proposed Effective Date. The proposed amendment in this notice would become effective 30 days after publication of a final rule in the **Federal Register**.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Carter, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. (202–366–5274).

SUPPLEMENTARY INFORMATION:

I. Background

Standard No. 121, *Air Brake Systems*, specifies performance and equipment requirements for braking systems on vehicles equipped with air brakes, including a requirement specifying the minimum air pressure at which a towing vehicle's air compressor governor must automatically activate. The governor maintains reservoir air pressure between predetermined minimum and maximum pressures. Under the current requirement in S5.1.1.1, the governor must automatically activate the air compressor when air pressure in the reservoir falls to 85 psi. Currently manufactured air brake systems typically operate between 100 psi and 120 psi.

NHTSA adopted the air compressor governor minimum cut-in requirement in S5.1.1.1 on October 8, 1991. (56 FR 50666) The agency explained that, under this requirement, the air compressor on a tractor will be activated to restore or maintain pressure in the brake supply system until the air leak is detected and corrected. The agency further stated that since most vehicles already comply with this requirement, it would not result in an undue burden for manufacturers.

The October 1991 final rule also simplified requirements applicable to air brake systems by amending Standard No. 121 to delete the requirement for each trailer to have a separate protected reservoir for the purpose of releasing the parking brake. Under the rule, air pressure from the tractor supply lines may be used to release the trailer parking brakes rather than air from a separate reservoir. The final rule also specified requirements for a minimum air pressure of 70 p.s.i. in the trailer's supply line in the event of pneumatic failure and for prevention of the automatic application of the trailer parking brakes while the minimum trailer supply line air pressure is maintained.

II. Rulemaking Petition

On August 2, 1994, the Truck Trailer Manufacturers Association (TTMA) submitted a petition for rulemaking to amend Standard No. 121 to increase the minimum air pressure governor cut-in requirement in S5.1.1.1 from 85 psi to 100 psi. The petitioner stated that its requested amendment is necessary to assure that new truck tractors provide air braked trailers with sufficient

pressure for release of the trailer parking brakes and to provide adequate service braking. TTMA said that the current 85 psi air pressure governor cut-in requirement may not supply adequate pressure to a trailer being towed by a tractor. TTMA also stated that higher truck or tractor air pressures increase the speed at which trucks or tractors can resupply trailers with air and these higher pressures will store more air for use by the braking systems. It further stated that "all tractor manufacturers are now building tractors whose nominal compressor cut-in pressure is at least 100 psi."

III. NHTSA Proposal

After reviewing TTMA's petition, NHTSA has decided to propose increasing the minimum air compressor cut-in pressure requirement from 85 psi to 100 psi. There are several reasons for increasing the cut-in air pressure above the current 85 psi level. First, the agency has tentatively determined that the proposed amendment would enhance safety by better ensuring that new truck tractors are capable of providing trailers with sufficient pressure for release of the trailer parking brakes and provide adequate service braking. Specifically, by raising the cut-in pressure, this amendment would allow the storage of an additional volume of compressed air that would be available for an air brake system. This is important since the 1991 final rule eliminated the requirement for a separate protected reservoir with a stored volume of air used for releasing the trailer parking brakes. Second, the proposal to maintain an overall higher system air pressure would allow a better "match up" of protection valve settings between the tractors and trailers. Third, long stroke brake chambers, which need more compressed air, would have available an additional volume of air at higher pressure. This would provide a greater margin of safety.

NHTSA has tentatively concluded that increasing the air pressure to a 100 psi minimum would not result in any safety problems. The agency invites comments about the effect of this proposed amendment on safety.

NHTSA's analysis of current manufacturing practices confirms TTMA's statement that tractor manufacturers are now building tractors with a cut-in pressure of at least 100 psi. The docket includes a memorandum summarizing the agency's discussions with vehicle manufacturers and the American Trucking Associations in which they indicate that new truck tractors are typically equipped with governors that activate the air compressor when air pressure drops to 100 psi. In addition, NHTSA has discussed the issue of air pressure cut-in with Midland-Grau and AlliedSignal, which together produce over 95 percent of the air compressors and governors in the United States. Midland-Grau sets their air compressors and governors at 105 psi, while AlliedSignal sets their air compressors and governors at 100 psi. NHTSA knows of no company that manufactures these devices with a cut-on pressure between 85 and 100 psi nor of any purchaser that requests a cut-on pressure in this lower range. Accordingly, NHTSA believes the proposed amendment would codify existing industry practice, since equipment on new vehicles are being built with the proposed settings.

The statute requires that each order shall take effect no sooner than 180 days from the date the order is issued unless good cause is shown that an earlier effective date is in the public interest. NHTSA has tentatively concluded that there would be good cause not to provide the 180 day lead-in period given that this amendment will have no adverse effect on manufacturers since all manufacturers currently comply with the proposed requirements. Based on the above, the agency has tentatively concluded that there is good cause for an effective date 30 days after publication of the final rule. NHTSA requests comments about whether a 30 day effective date is appropriate or whether more lead time is necessary.

Rulemaking Analyses and Notices

1. Executive Order 12866 (Federal Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This proposal was not reviewed under E.O. 12866. NHTSA has analyzed this proposal and determined that it is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. A full regulatory evaluation is not required because the rule, if adopted, would have a minimal effect on costs or benefits of the existing requirements. In large part, today's proposed amendment merely codifies an existing industry practice.

2. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the proposed amendment would not have a significant economic impact on a substantial number of small entities. Vehicle and brake manufacturers typically would not qualify as small entities. Vehicle manufacturers, small businesses, small organizations, and small governmental units which purchase motor vehicles would not be significantly affected by the proposed requirements. Accordingly, no regulatory flexibility analysis has been prepared.

3. Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule would not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. No State laws would be affected.

4. National Environmental Policy Act

Finally, the agency has considered the environmental implications of this proposed rule in accordance with the National Environmental Policy Act of 1969 and determined that the proposed rule would not significantly affect the human environment.

5. Civil Justice Reform

This proposed rule would not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (49 U.S.C. 30111), whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (49 U.S.C. 30161) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Public Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, the agency proposes to amend Standard No. 121, *Air Brake Systems*, in Title 49 of the Code of Federal Regulations at Part 571 as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 would be revised to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. In § 571.121, S5.1.1.1 would be revised to read as follows:

§ 571.121 Standard No. 121; Air brake systems.

* * * * *

S5.1.1.1 Air compressor cut-in pressure. The air compressor governor cut-in pressure shall be greater than 100 p.s.i.

* * * * *

Issued on: June 8, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–14461 Filed 6–12–95; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-day Finding for a Petition To List the Comal Springs Salamander

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: The Fish and Wildlife Service (Service) announces a 90-day finding for a petition to list the Comal Springs salamander (*Eurycea* sp.) under the Endangered Species Act of 1973, as amended. The Service finds that the petition did not present substantial information indicating that listing this species may be warranted. The Service is continuing its status review of the species.

DATES: The finding announced in this document was made on June 6, 1995.

ADDRESSES: Data, information, comments, or questions concerning this petition finding should be submitted to the Field supervisor, U.S. Fish and Wildlife Service, Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758. The petition finding, supporting data, and comments will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Lisa O'Donnell, Biologist, at the above address (512/490–0057).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the date the petition was received, and notice of the finding is to be published promptly in the **Federal Register**. If the finding is that substantial information was presented, the Service is also required to promptly commence a status review of the species.

The Service has made a negative 90-day finding on the petition to list the Comal Springs salamander (*Eurycea* sp.). The Service finds that the petitioner has not presented substantial information indicating that the requested action for this species may be warranted, as required under section 4(b)(3)(A) of the Act. The Service has been assessing the status of this taxon since its designation as a category 2 candidate. The Comal Springs salamander is currently included in the *Eurycea neotenes* species group, which has been a category 2 candidate species in the Service's candidate notices of review since December 30, 1982 (47 FR 58454). No new information was presented in the petition beyond that used by the Service to assign *Eurycea neotenes* to category 2. Thus, the Service has determined that the Comal Springs salamander shall retain the Category 2 classification currently assigned to the *Eurycea neotenes* species group. Category 2 means that information now in possession of the Service indicates a proposal to determine endangered or threatened status is possibly appropriate, but conclusive data on biological vulnerability and threats are not currently available to support such a proposal.

On June 6, 1994, the Service received a petition from Mr. David Whatley, Director of Parks and Recreation for the City of New Braunfels, Texas, to add the Comal Springs salamander to the list of Threatened and Endangered Wildlife. The letter, dated June 3, 1994, was clearly identified as a petition and contained the name, signature, institutional affiliation, and address of the petitioner. The petition stated that the Comal Springs salamander is generally found in the Comal Springs in Landa Park and Landa Lake, and is among the several unique species in the Comal Springs ecosystem faced with the loss of its habitat due to groundwater withdrawal from the Edwards Aquifer. Although the Service concurs that the Comal Springs ecosystem, as well as other spring ecosystems of the Edwards Aquifer, faces threats from increased groundwater withdrawals and groundwater contamination, many uncertainties still exist regarding the taxonomic status of the Comal Springs salamander (including whether or not it represents a distinct population segment) and its distribution. Until these uncertainties are resolved, the Service believes the Comal Springs

salamander should remain a category 2 candidate.

If additional data become available in the future, the Service will reassess the need for listing the Comal Springs salamander. As part of our continuing review of species on the Notice of Review, the Service would appreciate any additional data, information, or comments from the public, government agencies, the scientific community, industry, or any other interested party concerning the status of the Comal Springs salamander. In particular, the Service needs additional information to determine the Comal Springs salamander's taxonomic status and relationship to other *Eurycea* populations (for example, whether or not the Comal Springs salamander represents a distinct species or a distinct population segment) and if it is restricted to the Comal Springs ecosystem.

References Cited

Chippindale, P., D. Hillis, and A. Price. 1990. Central Texas Salamander Studies. Section 6 report submitted by Texas Parks and Wildlife Department to U.S. Fish and Wildlife Service. Federal Aid Project No: E–1–2, Job No. 3.4.

Chippindale, P., D. Hillis, and A. Price. 1992. Central Texas Salamander Studies. Section 6 report submitted by Texas Parks and Wildlife Department to U.S. Fish and Wildlife Service. Federal Aid Project No: E–1–3, Job No. 3.4.

Chippindale, P., D. Hillis, and A. Price. 1993. Central Texas Salamander Studies. Draft Section 6 report submitted by Texas Parks and Wildlife Department to U.S. Fish and Wildlife Service. Federal Aid Project No: E–1–4, Job No. 3.4.

Chippindale, P., D. Hillis, and A. Price. 1994. Central Texas Salamander Studies. Draft Section 6 report, Part I, submitted by Texas Parks and Wildlife Department to U.S. Fish and Wildlife Service. Federal Aid Project No: E–1–4, Job No. 3.4.

Sweet, S. 1978. The Evolutionary Development of the Texas *Eurycea*. Unpublished Ph.D. Diss. Univ. of California Berkeley. 450 pp.

Sweet, S. 1982. A Distributional Analysis of Epigean Populations of *Eurycea neotenes* in central Texas, with comments on the origin of troglobitic populations. Herpetologica 38: 430–444.

Author. The primary author of this document is Lisa O'Donnell, Austin Ecological Services Field Office (See **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. *et seq.*).

Dated: June 6, 1995.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 95–14394 Filed 6–12–95; 8:45 am]

BILLING CODE 4310–55–W

Notices

Federal Register

Vol. 60, No. 113

Tuesday, June 13, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 95–042–1]

Receipt of Petition for Determination of Nonregulated Status for Genetically Engineered Tomato Line

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from the Monsanto Company seeking a determination of nonregulated status for a tomato line designated as 8338 that has been genetically engineered for delayed ripening. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether this tomato line presents a plant pest risk.

DATES: Written comments must be received on or before August 14, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95–042–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1237. Please state that your comments refer to Docket No. 95–042–1. A copy of the petition and any comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing access to that room to inspect the petition or comments are asked to call in advance of visiting at (202) 690–2817.

FOR FURTHER INFORMATION CONTACT: Dr. Susan Koehler, Biotechnologist, Biotechnology Permits, BBEP, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1237; (301) 734–7612. To obtain a copy of the petition, contact Ms. Kay Peterson at (301) 734–7601.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles."

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for determination of nonregulated status must take and the information that must be included in the petition.

On February 22, 1995, APHIS received a petition (APHIS Petition No. 95–053–01p) from the Monsanto Company (Monsanto) of St. Louis, MO, requesting a determination of nonregulated status under 7 CFR part 340 for a tomato line designated as 8338 that has been genetically engineered for delayed ripening. The Monsanto petition states that the subject tomato line shall not be regulated by APHIS because it does not present a plant pest risk.

As described in the petition, tomato line 8338 has been genetically engineered to express the enzyme 1-aminocyclopropane-1-carboxylic acid deaminase (ACCd), which catalizes deamination of ACC, an essential precursor for ethylene biosynthesis. Levels of ethylene control the rate of fruit ripening, and removal of ACC in the subject tomato line reduces ethylene production and delays ripening. The *accd* gene, which confers the delayed-ripening trait, was isolated from the soil bacterium *Pseudomonas chloroaphis*, strain 6G5. Tomato line 8338 also contains the neomycin phosphotransferase (*nptII*) selectable marker gene which encodes the enzyme NPTII. The presence of the NPTII protein in the plant genome confers tolerance to the antibiotic kanamycin and allows selection of the transformed cells in the presence of kanamycin. Expression of the *accd* gene and the *nptII* gene is driven by constitutive 35S promoters derived from the plant pathogenic caulimoviruses figwort mosaic virus and cauliflower mosaic virus, respectively. The subject tomato line was transformed through the use of disarmed vectors from a common soil-borne bacterium, the plant pathogen *Agrobacterium tumefaciens*.

Tomato line 8338 is currently considered a regulated article under the regulations in 7 CFR part 340 because it contains the 35S promoters and 3' regulatory gene sequences derived from the plant pathogens mentioned above, and because *A. tumefaciens* was used as the plant transformation vector. Tomato line 8338 was evaluated in field trials conducted under APHIS permits or notifications since 1992. In the process of reviewing the applications for those field trials, APHIS determined that the vectors and other elements were disarmed and that the trials, which were conducted under conditions of reproductive confinement, would not present a risk of plant pest introduction or dissemination.

In the Federal Plant Pest Act, as amended (7 U.S.C. 150aa *et seq.*), "plant pest" is defined as "any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants." APHIS views this definition very broadly. The definition covers direct or indirect injury, disease, or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

Food or animal feed uses of the subject tomato line may be subject to

regulation by the Food and Drug Administration (FDA) under the authority of the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 301 *et seq.*). The FDA published a statement of policy on foods derived from new plant varieties in the **Federal Register** on May 29, 1992 (57 FR 22984–23005). The FDA statement of policy includes a discussion of the FDA's authority for ensuring food safety under the FFDCA, and provides guidance to industry on the scientific considerations associated with the development of foods derived from new plant varieties, including those plants developed through the techniques of genetic engineering. Monsanto has completed its consultation with the FDA on the food safety of the subject tomato line.

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the Petition for Determination of Nonregulated Status from any interested person for a period of 60 days from the date of this notice. The petition and any comments received are available for public review, and copies of the petition may be ordered (see the **ADDRESSES** section of this notice).

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. Based on the available information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of Monsanto's tomato line 8338 and the availability of APHIS' written decision.

Authority: 7 U.S.C. 150aa–150jj, 151–167, and 1622n; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 5th day of June 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–14382 Filed 6–12–95; 8:45 am]

BILLING CODE 3410–34–M

Forest Service

Bennett-Cottonwood Oil and Gas Development EIS; Custer National Forest, McKenzie County, ND

AGENCY: Forest Service, USDA.

ACTION: Notice; withdrawl of intent to prepare an environmental impact statement.

SUMMARY: A Notice of Intent was published in the **Federal Register** [60 FR 1765] on Thursday, January 5, 1995, indicating that an environmental impact statement (EIS) would be prepared on the proposal to develop thirteen additional oil wells in the Bennett-Cottonwood area by Meridian Oil, Inc. and Apache Corporation. That Notice of Intent is hereby withdrawn.

The development of the thirteen proposed wells was contingent upon the successful production of oil from approved wells approved and drilled since 1993. In March 1995, Meridian Oil, Inc. and Apache Corporation withdrew their proposals because of four unsuccessful wells drilled in the area the last two years and for other corporate reasons.

Originally the draft environmental impact statement was scheduled to be released to the public on May 1, 1995 with the final statement to be filed by July 1, 1995. A letter was mailed on March 24, 1995 to all who commented during the scoping period, as well as all other individuals or groups on the project scoping mailing list, notifying them of the withdrawl of this project.

DATES: This action is effective on June 13, 1995.

ADDRESSES: Lesley W. Thompson, District Ranger, McKenzie Ranger District, Little Missouri National Grassland, Custer National Forest, HC02 Box 8, Watford City, ND 58854.

FOR FURTHER INFORMATION CONTACT: Lesley W. Thompson, District Ranger, McKenzie Ranger District. Telephone number: (406) 657–6361.

Dated: June 2, 1995.

Lesley W. Thompson,

Acting Forest Supervisor.

[FR Doc. 95–14418 Filed 6–12–95; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Current Population Survey—October 1995 School Enrollment Supplement.

Agency Approval Number: 0607–0464.

Type of Request: Reinstatement, without change.

Burden: 7,200 hours.

Number of Respondents: 54,000.

Avg Hours Per Response: 8 minutes.

Needs and Uses: The School Enrollment Supplement is the only source of data on enrollment in all schools by demographic, social, and economic characteristics. This annual supplement to the Current Population Survey provides school enrollment data for persons 3 years old or older who are enrolled in elementary school, high school, college, and vocational/technical schools, as well as for children enrolled in nursery schools and kindergarten. It also provides higher education data for adults and computer usage data for adults and children. The data are used by Federal agencies; state, county, and city governments; and private organizations responsible for education to formulate and implement education policy. They are also used by employers and analysts to anticipate the composition of the labor force in the future.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: June 8, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–14455 Filed 6–12–95; 8:45 am]

BILLING CODE 3510–07–F

Bureau of Export Administration

[Docket Nos. 3108–01, 3108–02]

Amancio J. Abelairas, et al.; Decision and Order

In the Matter of: Amancio J. Abelairas, also known as Jesus Gonzalez, individually with an address at 6486 S.W. 9th Street, Miami, Florida 33144, and doing business as Estrella Del Caribe Import and Export Inc., with an address at 5529 S.W. 9th Street, Miami, Florida 33144, Respondents.

On May 17, 1995, the Administrative Law Judge (ALJ) entered his Recommended Decision and Order in the above-referenced matter. The Recommended Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. After describing the facts of the case and his findings based on those facts, the ALJ found that the respondent had violated Sections 787.2 and 787.4(a) of the Export Administration Regulations by causing, aiding or abetting the export of U.S.-origin microelectronic and fingerprint equipment from the United States to Cuba without obtaining from the Department of Commerce the validated export license that the Respondent knew, or had reason to know, was required by Section 772.1(b) of the Regulations. The ALJ also found that the appropriate penalty for the violations should be that Respondent, Amancio J. Abelairas, also known as Jesus Gonzalez, individually and doing business as Estrella Del Caribe Import and Export, Inc., and all successors, assignees, officers, representatives, agents and employees be denied for a period of ten years from this date all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving commodities or technical data exported or to be exported from the United States and subject to the Export Administration Regulations.

Based on my review of the entire record, I affirm the Recommended Decision and Order of the Administrative Law Judge.

This constitutes final agency action in this matter.

Dated: June 5, 1995.

William A. Reinsch,

Under Secretary for Export Administration.

Recommended Decision and Order

On September 21, 1993, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), issued a charging letter against Amancio J. Abelairas, also known as Jesus Gonzalez, individually, and doing business as Esrella del Caribe Import and Export, Inc. (hereinafter collectively referred to as Abelairas). The charging letter alleged that Belairas committed two violations of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 768–799 (1994)) (the Regulations),[1] issued pursuant to the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. §§ 2401–2420 (1991, Supp. 1993, and Pub. L. No. 103–277, July 5, 1994)) (the Act).[2]

The charging letter alleged that, on September 30, 1988, Abelairas caused, aided or abetted the export of U.S.-origin microelectronic and fingerprint identification equipment from the United States to Cuba without obtaining from the Department the validated export license Abelairas knew or had reason to know was required by Section 772.1(b) of the Regulations. Accordingly, the Department charged that Abelairas violated Section 787.2 and Section 787.4(a) of the Regulations, for a total of two violations.

Upon receiving the Department's charging letter, Abelairas sent a letter indicating why he believed that he had not violated the Regulations. However, that letter did not constitute an "answer" to the charging letter in accordance with the requirements of Section 788.7 of the Regulations governing answers to charging letters. After Abelairas failed to perfect his filing, the Department, on May 3, 1995, filed supporting evidence for a default judgment against Abelairas.

On the basis of the Department's submission and all of the supporting evidence presented, I have determined that Abelairas violated Sections 787.2 and 787.4(a) of the Export Administration Regulations by causing, aiding or abetting the export of U.S.-origin microelectronic and fingerprint equipment from the United States to Cuba without obtaining from the Department the validated export license Abelairas knew or had reason to know was required by Section 772.1(b) of the Regulations.

For those violations, the Department urged as a sanction that Abelairas's export privileges be denied for 10 years. In light of the nature of the violations, I concur in the Department's recommendation.

Accordingly, it is therefore ordered,

First, that all outstanding individual validated licenses in which Amancio Abelairas, also known as Jesus Gonzalez, individually with an address at 6486 S.W. 9th Street, Miami, Florida 33144, and doing business as Estrella del Caribe Import and Export, Inc., with an address at 5529 S.W. 8th Street, Miami, Florida 33144, appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Exporter Services for cancellation. Further, all of Abelairas's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

Second, that Amancio Abelairas, also known as Jesus Gonzales, individually with an address at 6486 S.W. 9th Street, Miami, Florida 33144, and doing business as Estrella del Caribe Import and Export, Inc., with an address at 5529 S.W. 8th Street, Miami, Florida 33144 (collectively referred to as Abelairas), and all successors, assigns, officers, representatives, agents, and employees, shall, for a period of 10 years from the date of final agency action, be denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, and subject to the Regulations.

A. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization, or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

B. After notice and opportunity for comment as provided in Section 788.3(c) of the Regulations, any person, firm, corporation, or business organization related to Abelairas by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

[1] The alleged violations occurred during 1988. The Regulations governing the violations are found in the 1988 version of the Code of Federal Regulations, codified at 15 CFR Parts 368–399 (1988). Effective October 1, 1988, the Export Administration Regulations were redesignated as 15 CFR Parts 768–799 (53 FR 37751, September 28, 1988). The transfer merely changed the first number of each Part from "3" to "7". To the degree to which the 1988 version of the Regulations pertains to this matter, it is substantially the same as the 1994 version.

[2] The Act expired on August 20, 1994. Executive Order 12924 (59 FR 43437, August 23, 1994) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701–1706 (1991)).

C. As provided by Section 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Exporter Services, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) in any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

Third, that a copy of this Order shall be served on Abelairas and on the Department.

Fourth, that this Order, as affirmed or modified, shall become effective upon entry of the final action by the Under Secretary for Export Administration, in accordance with the Act (50 U.S.C.A. app. § 2412(c)(1)) and the Regulations (15 CFR 788.23).

Edward J. Kuhlmann,

Administrative Law Judge.

Entered this 17th day of May, 1995.

To be considered in the 30 day statutory review process which is mandated by Section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th and Constitution Ave., N.W., Room 3898B, Washington, D.C., 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 788.23(b), 50 FR 53134 (1985). Pursuant to Section 13 (c)(3) of the Act, the order of the final order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

[FR Doc. 95–14396 Filed 6–12–95; 8:45 am]

BILLING CODE 3510–DT–M

Foreign-Trade Zones Board

[Docket 29–95]

Foreign-Trade Zone 40—Cleveland, OH, Application for Subzone, Ben Venue Laboratories (Pharmaceutical Products) Bedford, OH

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Cleveland-Cuyahoga County Port Authority, grantee of FTZ 40, requesting special-purpose subzone status for the pharmaceutical manufacturing facility of Ben Venue Laboratories, Inc. (BVL), in Bedford, Ohio. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 31, 1995.

BVL is a privately-owned company whose primary business is the contract manufacture of sterile, injectable pharmaceutical products for major U.S. and foreign pharmaceutical companies. BVL also develops and manufactures products for many small, primarily biotechnology-based firms, and manufactures its own line of generic oncology products and injectable pharmaceuticals.

BVL's plant (7 bldgs. totalling 200,000 sq. ft. on 10 acres) is located at 300 Northfield Road, Bedford, Ohio, some 17 miles south of Cleveland. The facility is primarily used to produce sterile, injectable pharmaceutical products, such as antibiotics, antivirals, biologicals, cardiovasculars, diagnostics and oncologics. Bulk active ingredients for certain oncologic products are sourced abroad. The company may also purchase from abroad other bulk, active ingredients and materials in the following general categories: hydrocarbons and derivatives, alcohols and derivatives, phenols, ethers, acetals, aldehydes and derivatives, ketones, quinones, mono- and polycarboxylic acids and derivatives, amine-function compounds, oxygen function compounds, ammonium salts, carboxyimide-function compounds, nitrile-function compounds, hydrazine/hydroxylamine derivatives, nitrogen function compounds, organo-sulfur compounds, heterocyclic compounds, sulfonamides, vitamins, hormones, glycosides, vegetable alkaloids, sugars, antibiotics, and other organic compounds. Some 10 percent of production is exported.

Zone procedures would exempt BVL from Customs duty payments on foreign materials used in production for export. On domestic shipments, the company or its customers (in the case of sales to plants operating under zone procedures) would be able to choose the duty rates that apply to the finished products (duty-free). The duty rates on foreign-sourced items range from duty-free to 18.6 percent. At the outset, zone savings would primarily involve choosing the finished product duty rate (duty-free) for a customer's product (HTSUS 3004.90.9015), instead of the rate (6.8%) otherwise applicable to the foreign active ingredient (HTSUS 2934.90.3000). The application indicates that the savings from zone procedures will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 14, 1995. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to August 28, 1995).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, Bank One Center, Suite 700, 600 Superior Avenue, Cleveland, Ohio 44114

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th and Pennsylvania Avenue, NW., Washington, DC 20230

Dated: June 5, 1995.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–14460 Filed 6–12–95; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–428–801, A–475–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Germany and Italy; Amended Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative reviews.

SUMMARY: On February 28, 1995, the Department of Commerce (the Department) published the final results of its administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs) from Germany and Italy (60 FR 10900, 10959). On May 10, 1995, the Court of International Trade (CIT) ordered the Department to correct four ministerial errors in the final results with respect to AFBs from Germany sold by FAG and one ministerial error in the final results with respect to AFBs from Italy sold by FAG. Accordingly, we are amending our final results of administrative review of the antidumping duty orders on AFBs from Germany and Italy with respect to FAG. The reviews cover the period May 1, 1992, through April 30, 1993. The "classes or kinds" of merchandise covered by these reviews are ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs).

EFFECTIVE DATE: June 13, 1995.

FOR FURTHER INFORMATION CONTACT: Kris Campbell or Michael Rill, Office of Antidumping Compliance, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On February 28, 1995, the Department published the final results of antidumping duty administrative review, partial termination, and revocation in part of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, et al. (60 FR 10900), and from Italy (60 FR 10959). The review period is May 1, 1992, through April 30, 1993. The classes or kinds of merchandise covered by these reviews are BBs, CRBs, and SPBs. For a detailed description of the products covered under these classes or kinds of merchandise, including a compilation of all pertinent scope determinations, see the "Scope Appendix" of the final results referenced above.

One respondent, FAG, challenged the final results before the CIT, alleging ministerial errors in the final results for AFBs from Germany and Italy. On May 10, 1995, the CIT ordered the Department to correct the errors and publish the amended final results in the **Federal Register**.

Amended Final Results of Review

The CIT ordered the Department to make the following corrections to its analysis for FAG Germany: (1) Calculate the profit on home market sales to related parties, and, where the profit is not significantly less than the profit on sales to unrelated parties, use the profit for the class or kind as reported by FAG; (2) in the calculation of profit for constructed value, deduct certain home market expenses from the net unit price; (3) make an addition of other revenue to the unit price prior to applying the best information available (BIA) rate to unit price; and (4) with respect to both FAG Germany and FAG Italy, remove sales FAG made to one U.S. customer for whom rebates were correctly reported prior to applying the BIA rebate rate. We have corrected the ministerial errors in FAG's margin calculations for the amended final results of review for the period May 1, 1992, through April 30, 1993.

Based on the correction of the ministerial errors in our calculations for FAG, we have determined that the following percentage weighted-average margins exist for the period May 1, 1992, through April 30, 1993:

Manufacturer/exporter	Country	BBs	CRBs	SPBs
FAG	Germany	11.85	16.25	18.98
FAG	Italy	2.70	(*)	.....

*No U.S. sales during the review period.

Based on these results, the Department will instruct the Customs Service to collect cash deposits of estimated antidumping duties on all appropriate entries in accordance with the procedures discussed in the final results of these reviews. These deposit requirements are effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping occurred and the subsequent assessment of double antidumping duties.

This amendment of final results of review and notice are in accordance with section 751(f) of the Tariff Act (19 U.S.C. 1673(d)) and 19 CFR 353.28(c).

Dated: June 6, 1995.

Paul L. Joffe,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 95–14459 Filed 6–12–95; 8:45 am]

BILLING CODE 3510–DS–P

University of Illinois et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 95–016. *Applicant:* Jersey City State College, Jersey City, NJ 07305. *Instrument:* Electron Microscope, Model JEM 1010. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 60 FR 16619, March 31, 1995. *Order Date:* September 22, 1994.

Docket Number: 95–022. *Applicant:* University of Illinois at Urbana-Champaign, Urbana, IL 61801. *Instrument:* Electron Microscope, Model CM200. *Manufacturer:* Philips, The Netherlands. *Intended Use:* See notice at 60 FR 20967, April 28, 1995. *Order Date:* November 29, 1994.

Docket Number: 95–023. *Applicant:* Department of Veteran Affairs, San Juan, PR 00927-5800. *Instrument:* Electron Microscope, Model CM100. *Manufacturer:* Philips, The Netherlands. *Intended Use:* See notice at 60 FR 20968, April 28, 1995. *Order Date:* September 14, 1994.

Docket Number: 95–025. *Applicant:* John L. McClellan Memorial Hospital, Little Rock, AR 72205. *Instrument:* Electron Microscope, Model JEM-1010. *Manufacturer:* JEOL Ltd., Japan.

Intended Use: See notice at 60 FR 20968, April 28, 1995. *Order Date:* September 9, 1994.

Docket Number: 95–027. *Applicant:* Samuel S. Stratton Department of Veterans Affairs Medical Center, Albany, NY 12208. *Instrument:* Electron Microscope, Model CM100. *Manufacturer:* Philips, The Netherlands. *Intended Use:* See notice at 60 FR 20968, April 28, 1995. *Order Date:* September 30, 1994.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 95–14458 Filed 6–12–93; 8:45 am]

BILLING CODE 3510–DS–F

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC.

Docket Number: 95–038. *Applicant:* University of California, Berkeley, Department of Integrative Biology, 3060 Valley Life Science Bldg., #3140, Berkeley, CA 94720-3140. *Instrument:* Mass Spectrometer. *Manufacturer:* Europa Scientific Ltd., United Kingdom. *Intended Use:* The instrument will be used to measure the heavy isotopes ^{15}N and ^{13}C and therefore trace the source and sink for N and C containing compounds during the study of the cycling of nitrogen and carbon through the natural ecosystem. *Application Accepted by Commissioner of Customs:* April 26, 1995.

Docket Number: 95–040. *Applicant:* University of Kentucky, Department of Physics and Astronomy, Lexington, KY 40506-0055. *Instrument:* Electron-Electron Coincidence Apparatus. *Manufacturer:* University of Southhampton, United Kingdom. *Intended Use:* The instrument will be used to study the electron-impact ionization of helium using the technique of electron-electron coincidence spectrometry. *Application Accepted by Commissioner of Customs:* May 5, 1995.

Docket Number: 95–041. *Applicant:* University of South Florida, Department of Marine Sciences, 140 Seventh Avenue, South, St. Petersburg, FL 33701. *Instrument:* ICP Mass Spectrometer, Model PlasmaQuad. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* The instrument will be used for studies of rare earth elements and transition metals. Experiments will consist of the study of the complexation behaviors of trivalent rare earth ions (e.g. La^{3+}) with carbonate ions (Co_3^{2-}) in solution and the study of precipitation of metals ions with phosphate (PO_4^{3-}) in seawater. In addition, the instrument will be used for educational purposes in an instrument methods course which will train students in the measurement of solute concentrations in seawater. *Application Accepted by Commissioner of Customs:* May 8, 1995.

Docket Number: 95–042. *Applicant:* University of California, Santa Cruz, Institute of Marine Sciences, 1156 High Street, Santa Cruz, CA 95064. *Instrument:* Mass Spectrometer System. *Manufacturer:* Europa Scientific, United Kingdom. *Intended Use:* The instrument will be used for studies of nitrogen and carbon cycling in seawater and sediments. These studies will involve measurements of the rates of nitrogen assimilation, nitrification and denitrification in various aquatic environments The measurements involve addition of tracer and subsequent analysis of the C or N isotopic content of various nitrogen and carbon compounds in seawater. The instrument will also be used in support of graduate research in oceanography. *Application Accepted by Commissioner of Customs:* May 8, 1995.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 95–14457 Filed 6–12–95; 8:45 am]

BILLING CODE 3510–DS–F

National Oceanic and Atmospheric Administration

[I.D. 060595C]

Mid-Atlantic Fishery Management Council; Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council and its Habitat Committee, Large Pelagics/Sharks Committee, and Demersal Species Committee will hold public meetings.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director; telephone 302–674–2331.

DATES: The meetings will be held on June 27–29, 1995.

ADDRESSES: The meetings will be held at the Radisson Hotel Islandia, 3635 Express Drive North, Hauppauge, Long Island, NY 11788; telephone: 516–232–3000.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19901.

SUPPLEMENTARY INFORMATION: On June 27, the Habitat Committee will meet from 1:00 p.m. until 3:00 p.m. and the Large Pelagics/Sharks Committee will meet from 3:00 p.m. until 5:00 p.m. On June 28, the Council will meet from 8:00 a.m. until 12:00 p.m., followed by the Demersal Species Committee meeting from 1:30 p.m. until 4:30 p.m. On June 29, the Council will meet from 8:00 a.m. until approximately noon.

The following topics may be discussed:

(1) Artificial Reef Policy.

(2) Bluefin tuna management.

(3) Review of public comments on Amendment 7 to the Summer Flounder Fishery Management Plan (FMP).

(4) Review hearing material for Amendment 7 to the Summer Flounder FMP.

(5) Possible adoption of Amendment 7 to the Summer Flounder FMP for Secretarial approval.

(6) Other fishery management matters.

The Council meeting may be revised, lengthened or shortened based on the progress of the meeting. The Council may go into closed session to discuss personnel or national security matters.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis on (302) 674–2331, at least 5 days prior to the meeting date.

Dated: June 7, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–14426 Filed 6–12–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 052695B]

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings; request for comments.

SUMMARY: The Pacific Fishery Management Council (Council) will hold public meetings.

DATES: The meetings will be held on June 26–29, 1995.

ADDRESSES: The meetings will be held at the Monarch Hotel and Conference Center, 12566 SE 93rd Avenue, Clackamas, OR 97015; telephone: (503) 652–1515.

Submit comments to: Lawrence D. Six, Executive Director, Pacific Fishery Management Council; 2130 SW Fifth Avenue, Suite 224; Portland, OR 97201; telephone: (503) 326–6352.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to take a comprehensive look at the groundfish fishery, goals and objectives of the fishery management plan, and problems identified by the industry, other interested public, and management agencies. The Council is referring to this as a "scoping session" to identify issues that may or may not lead to preparation of a Federal environmental impact statement. The Council believes the public process of problem identification, open discussion, and consideration of alternative solutions is appropriate for this review of the groundfish management program.

The format of these meetings will be a departure from the typical Council meeting format.

June 26, 1995

The Council will convene at 1:30 p.m., to address some non-groundfish issues.

June 27, 1995

The Council will recess and three discussion groups (trawl, nontrawl and sport) will convene at 8:00 a.m., to address groundfish management issues. Each group will have an impartial, but knowledgeable, facilitator and a recorder. These sessions are open to the public.

June 28, 1995

The Council will reconvene at 8:00 a.m., to address non-groundfish issues while the facilitators and recorders prepare their reports.

June 29, 1995

Beginning at 8:00 a.m., the Council will address groundfish agenda items, including scoping, and the discussion group reports will be presented for Council consideration and action. The meetings may continue each day into the evening hours, if necessary, to complete business.

Pacific whiting allocation will not be considered at the June meeting. As the 3-year whiting agreement carries through the 1996 season, whiting allocation will be addressed in late 1995 and early 1996.

The following items are on the Council agenda:

A. Call to Order

1. Opening remarks, introductions, roll call;
2. Approve March and April 1995 minutes; and
3. Approve agenda.

B. Administrative and Other Matters

1. Report of the Budget Committee;
2. Status of legislation;
3. Appointments; and
4. Approve August 1995 agenda.

C. Salmon Management

1. Status of regulations and fisheries;
2. Salmon Methodology Review: Columbia River Chinook Abundance Predictor; and
3. Update on NMFS request for escapement goal review.

D. Pacific Halibut Management

1. Annual management schedule/process; and
2. Estimate of halibut bycatch.

E. Groundfish Management

1. Scoping process;
2. Status of Federal regulations implementing Council actions;
3. Status of fisheries and inseason adjustments;
4. Requirements for fish tickets on vessels, sorting of species and shrimp pot trip limits;
5. Status of the Oregon Trawl Fishery Data Collection Program;
6. Report of the Observer/Data Collection Program Steering Committee; and
7. Scoping session on groundfish management.

F. Coastal Pelagic Species Management

1. Anchovy spawning biomass and quotas for 1995–96 season; and
2. Final action on coastal pelagic species fishery management plan.

G. Dungeness Crab Management—Determining if a Federal Plan Should Be Developed

Oral public comments on action items on the agenda will be accepted prior to action on each item. Public comments on fishery issues not on the agenda will be accepted on June 28 at 4:00 p.m.

Other Meetings

The Groundfish Management Team will meet on June 26, at 8:00 a.m., to address groundfish management items on the Council agenda.

The Scientific and Statistical Committee will meet on June 26, at 10:00 a.m., to address scientific issues on the Council agenda.

The Budget Committee will meet on June 26, at 10:00 a.m., to review the status of the fiscal year 1995 budget and discuss funding priorities for fiscal year 1996.

The Groundfish Advisory Subpanel will meet on June 26, at 1:00 p.m., and on June 28, from 8:00 a.m. until noon, if necessary, to address groundfish management items on the Council agenda.

The Observer/Data Collection Program Steering Committee will meet on June 26, at 7:00 p.m., to review the proposed Oregon State Data Collection Program and related issues.

The Enforcement Consultants will meet on June 26, at 7:00 p.m., to address enforcement issues related to Council agenda items.

The Groundfish Permit Review Board will meet on June 28, at 2:00 p.m., to hear appeals.

Detailed agendas for the above advisory meetings will be available from the Council after June 16, 1995.

In addition, on June 28, at 7:00 p.m., NMFS scientists will discuss the results of the 1994 slope trawl survey.

The Scientific and Statistical Committee, which meets June 26, will accept public comments at 4:00 p.m.

Written public comments are accepted by the Council at any time (see **ADDRESSES**); however, the public is encouraged to submit written comments as far in advance of meetings as possible. Written comments received in the office by June 21, 1995, will be copied and distributed to Council members and advisory entities. After that date, individuals wishing to present written comments should bring 35 copies to the Council meeting.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Michelle Sailer at (503) 326–6352, at least 5 days prior to the meeting date.

Dated: June 7, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–14427 Filed 6–12–95; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Bilateral Textile Consultations With the Government of the Former Yugoslav Republic of Macedonia on Certain Wool Textile Products

June 6, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on categories for which consultations have been requested, call (202) 482–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On May 26, 1995, under the terms of Section 204 of the Agricultural Act of 1956, as amended, the Government of the United States requested consultations with the Government of the Former Yugoslav Republic of Macedonia with respect to wool textile products in Category 434, produced or manufactured in the Former Yugoslav Republic of Macedonia.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of the Former Yugoslav Republic of Macedonia, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of wool textile products in Category 434, produced or manufactured in the Former Yugoslav Republic of Macedonia and exported during the twelve-month period which began on May 26, 1995 and extends through May 25, 1996, at a level of not less than 8,226 dozen.

A statement of serious damage concerning Category 434 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 434, or to comment on domestic production or availability of products included in Category 434, is invited to submit 10 copies of such comments or information to Rita D. Hayes, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of the Former Yugoslav Republic of Macedonia.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Category 434. Should such a solution be reached in consultations with the Government of the Former Yugoslav Republic of Macedonia, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Statement of Serious Damage

Macedonia

Men's and Boys' Wool Coats Other Than Suit Type—Category 434

May 1995

Import Situation and Conclusion

U.S. imports of men's and boys' wool coats other than suit type, Category 434, from the Former Yugoslav Republic of Macedonia reached 8,226 dozen for the year ending February 1995, 79 percent above the 4,602 dozen imported in the year ending February 1994. Imports from were 4.4 percent of total U.S. imports of Category 434 for the year ending February 1995, and were equivalent to 5.4 percent of U.S. production of Category 434 in calendar year 1994.

U.S. imports men's and boys' non-suit type wool coats, Category 434, from during 1994 entered the U.S. at an average landed duty-paid value of $658.37 per dozen, 39 percent below U.S. producers' average price for men's and boys' wool coats other than suit type.

The sharp and substantial increase of low priced imports from the Former Yugoslav Republic of Macedonia is causing serious damage to the U.S. market for men's and boys' wool coats other than suit type.

U.S. Production, Import Penetration, and Market Share

U.S. production of men's and boys' wool coats other than suit type, Category 434, declined in 1994, falling to 151,000 dozen, 4 percent below the 1993 production level. In contrast imports of Category 434 surged to 190,000 dozen in 1994, 42 percent above the 134,000 dozen imported in 1993.

The ratio of imports to domestic production increased from 85 percent in 1993 to 125 percent in 1994 The share of this market held by domestic manufacturers fell from 54 percent in 1993, to 44 percent in 1994, a ten percentage point decline.

[FR Doc. 95–14364 Filed 6–12–95; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of the Record of Decision on the Final Environment Impact Statement for Disposal and Reuse of Fort Benjamin Harrison, Indiana

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Record of Decision (ROD) documents the Army's decisions regarding the primary Army action of disposal of Fort Benjamin Harrison, Indiana. The ROD was developed in accordance with the Council of Environmental Quality Regulation and Army Regulation 200–2. The Final Environmental Impact Statement (FEIS) for Fort Benjamin Harrison Disposal and Reuse was filed with the U.S. Environmental Protection Agency on January 31, 1995, and its Notice of Availability was published in the **Federal Register** on February 10, 1995.

Based on the analysis contained in the FEIS for Fort Benjamin Harrison Disposal and Reuse, and all public and agency comments and ongoing coordination, the Army has determined that the FEIS adequately addresses the impacts of the Army's actions relating to the disposal of excess property at Fort Benjamin Harrison on the biological, physical and cultural environment. As a result of this ROD, the Army will proceed to dispose of excess property at Fort Benjamin Harrison.

Furthermore, the Army has determined that the Encumbered Disposal Alternative is the preferred Army action, and that the Army will begin the action of preparing for disposal: i.e. placing excess land in caretaker status: initiating interim leases and outgrants where appropriate; and proceeding with remediation of environmental contamination and disposal of excess property parcels as soon as they are available and all applicable environmental laws and regulations relating to the disposal process have been satisfied. Implementation of this action will result in disposal that achieves a responsible balance among the primary goals of disposing of property in a timely manner, supporting Army requirements, protecting the environment, and supporting the affected communities in their effort to develop productive uses of the property for economic recovery.

The Army will seek fair market value for property where appropriate. As required by the 1990 Base Closure Act, proceeds from this process are placed in the base closure account to pay for the cost of closure, replacement facilities, and remediation of closing facilities.

The ROD has been distributed to interested agencies and the public prior to or simultaneously with filing of this Notice of Availability.

ADDRESSES: Questions regarding the ROD, or a request for copies of the document may be directed to Mr. William Ray Haynes, U.S. Army Corps of Engineers, Louisville District, P.O. Box 59, Louisville, Kentucky 40201–0059, or call (502) 582–6475.

Dated: June 7, 1995.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA (IL&E).

[FR Doc. 95–14365 Filed 6–12–95; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Financial Assistance: State of Alaska

AGENCY: Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.7(b)(2)(i)(C) it plans to negotiate Grant DE–FC07–95ID13368 with the State of Alaska.

FOR FURTHER INFORMATION CONTACT: Marshall C. Garr, Contract Specialist, (208) 526–1536; U.S. Department of Energy, 850 Energy Drive, MS 1221, Idaho Falls, ID 893401–1563.

SUPPLEMENTARY INFORMATION: The proposed grant with the State of Alaska would provide funds for completing engineering design, construction, and construction project management activities for the Tazimina Hydroelectric Project near Iliamna, Alaska. This grant would augment the State's funds associated with the construction of a hydroelectric project by the Iliamna-Newhalen-Nondalton Electric Cooperative, which is to provide electrical service to Native Americans who reside near the project. The Office of Utility Technologies has provided $3,370,000 to the DOE Idaho Operations Office for support of this project. The total estimated cost for this project is $10,500,000 with the cooperative partners and the State of Alaska sharing the remaining $7,100,000. The applicant represents a unit of government and the activity to be supported is related to the performance of a government function within the subject jurisdiction. The State of Alaska is the appropriate lead agency for this project. The statutory authority for the proposed award is Section 2603 of the Energy Policy Act of 1992, Public Law 102–486, codified at 42 U.S.C. 13525. The Federal Domestic Catalog Number is 81.087.

Dated: May 25, 1995.

J.O. Lee,

Acting Director, Procurement Services Division.

[FR Doc. 95–14456 Filed 6–12–95; 8:45 am]

BILLING CODE 6450–01–M

Golden Field Office; Notice of Federal Assistance Award to Black Clawson Company, Inc.

AGENCY: Department of Energy.

ACTION: Notice of financial assistance award in response to an unsolicited financial assistance application.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.14, is announcing its intention to enter into a cooperative agreement with Black Clawson Company, Inc. (BCC), to develop new equipment and processes to better liberate contaminants from waste paper fibers for more efficient separation. The BCC project represents an innovative, commercially viable technology that will result in waste reduction and decreased energy usage.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: John Lewis, Contract Specialist. The telephone number is 303–275–4739.

SUPPLEMENTARY INFORMATION: The DOE has evaluated the unsolicited application according to paragraph 600.14 of the DOE Assistance Regulations, 10 CFR part 600, and the criteria for selection in paragraph 600.14(e)(1). Based on this evaluation, it is recommended that the unsolicited application for Federal Assistance entitled, "Improved Removal of Light and Sticky Contaminants From Waste Paper," submitted by BCC, be accepted for support. This award will not be made for at least 14 days, to allow for public comment.

Under this cooperative agreement, BCC will develop new equipment and processes to better liberate contaminants from waste paper fibers for more efficient separation. The project will be conducted through four simultaneous development efforts over a period of two years. The four developments, which are interdependent to various extents, include: An Improved Contaminant Liberation Unit (Development A), Vortex Separation Unit (Development

B), Develop High Air Rate Flotation to Separate Stickies and Light Contaminants (Development C), and Wax Removal by Washing (Development D).

The objective of Development A is to demonstrate the feasibility of a virtually dry initial dispersion step for the waste paper. Existing systems do not use dry dispersion and process waste paper in three steps. With this innovation, sticky contaminants will be peeled off from the paper, by paper-to-paper/fiber-to-fiber rubbing. Also, fines and ash particles from the paper are expected to cover the sticky particles effectively making them less sticky and, therefore, enhancing the effectiveness of the one-step process. Development B involves production and testing of three approaches. These are: (1) Small diameter cyclones, extra long, for multiple unit installations (CSL), (2) Large diameter cyclone, long unit, for single unit installation (CLL), and (3) Forced vortex unit, with external drive (FVE). The goals of this development are higher consistency operation and longer treatment times. The main focus of this development is the large cyclone separator that industry has not yet achieved. BCC's exploratory tests suggest this development can be undertaken and a highly efficient innovative CLL design is expected. Thirdly, Development C proposes a completely new separation approach similar to deinking flotation. The idea is high air rate flotation that provides much shorter retention time, 20 seconds as opposed to 10 minutes using existing technology, and smaller operation units. Lastly, Development D involves an efficiency improvement over current systems that remove 2–5% of wax contaminants. BCC proposes to wash wax out of the pulp by displacement hot water washing or intensity turbulence washing.

The proposal has been found to be meritorious, and it is recommended that the unsolicited application be accepted for support. The BCC program represents an innovative, commercially viable technology that will result in waste reduction and decreased energy usage. BCC has demonstrated capabilities in the technologies directly related to the proposed project and personnel that should provide a basis for a successful project. The proposed project is not eligible for financial assistance under a recent, current, or planned solicitation.

The project cost over two years is estimated to be $2,170,000 total, with the DOE share being $1,200,000.

Issued in Golden, Colorado, on May 31, 1995.

John W. Meeker,

Chief, Procurement, GO.

[FR Doc. 95–14453 Filed 6–12–95; 8:45 am]

BILLING CODE 6350–01–P

Federal Energy Regulatory Commission

[Docket No. CP95–531–000]

Columbia Gas Transmission Corporation; Notice of Application

June 7, 1995.

Take notice that on May 31, 1995, Columbia Gas Transmission Corporation (Columbia), P.O. Box 1273, 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 26031, filed in an abbreviated application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing Columbia to construct and operate certain natural gas facilities and permission to abandon the facilities being replaced.

Columbia proposes to construct and operate approximately 5.8 miles of 16-inch pipeline to replace approximately 0.5 mile of 12-inch and 5.2 miles of 16-inch pipeline in nine sections located in Ashland, Medina and Wayne Counties, Ohio. The replacement will result in an increase in capacity of 340 Dth/d which Columbia will retain for additional operating flexibility. Columbia states that the pipeline condition requires replacement in order to assure continued service to its customers and the integrity of the line. Columbia does not request authorization for any new or additional service. The estimated cost of the proposed construction is $4,371,000 and will be financed with funds generated from internal sources.

Any person desiring to be heard or make any protest with reference to said application should on or before June 28, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14374 Filed 6–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–333–000]

CNG Transmission Corporation; Notice of Section 4 Filing

June 7, 1995.

Take notice that on May 25, 1995, CNG Transmission Corporation (CNG) tendered for filing pursuant to Section 4 of the Natural Gas Act, a notice of termination of gathering service on Line No. LN–1662, its uncertificated gathering line in Jefferson County, Pennsylvania.

CNG claims that the uncertificated line is being sold, in part, and abandoned in place, in part, since it is uneconomic to repair or relocate. CNG states that although no contract for transportation service with CNG will be canceled or terminated, meter receipt points on Line No. LN–1662 will be eliminated under some or all of the related Pool Operating Agreements.

CNG indicates that copies of this filing were sent to the parties involved in either the transportation agreement or the pooling agreement at the time of filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14379 Filed 6–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–335–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

June 7, 1995.

Take notice that on June 5, 1995, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets with a proposed effective date of July 6, 1995:

Fourth Revised Sheet No. 375
Third Revised Sheet No. 376
Fourth Revised Sheet No. 377
Second Revised Sheet No. 378
First Revised Sheet No. 380

Northwest states that the purpose of the filing is to update the Index of Shippers. Northwest notes that the substantive changes fall within one of the following five categories: (1) Shipper has undergone a name change; (2) shipper has permanently assigned contract demand ("CD") to another shipper; (3) a contract has terminated (in some instances, such capacity has been subsequently acquired by another shipper); (4) shipper has extended the term for a portion of its CD; or (5) shipper has transferred CD between agreements to allow for service to new delivery points.

Northwest states that a copy of this filing has been served upon all Northwest's jurisdictional customers and upon relevant state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14380 Filed 6–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–311–000]

Selkirk Cogen Partners, L.P. v. Tennessee Gas Pipeline Company; Notice of Complaint

June 7, 1995.

Take notice that on May 31, 1995, Selkirk Cogen Partners, L.P. (Selkirk) filed with the Commission a complaint against Tennessee Gas Pipeline Company (Tennessee).

Selkirk argues that Tennessee implemented a new "capacity path" tariff restriction, which it proposed as part of its December 30, 1994 general section 4 rate filing, during the Commission-imposed suspension period and before the Commission approved the change. Selkirk states that Tennessee has characterized this action as a clarification of its tariff, but Selkirk asserts Tennessee has illegally changed the priority provided in its currently effective tariff without Commission authority.

Selkirk also argues that it has attempted over the last four months to resolve the subject of this complaint on an informal basis with Tennessee officials. Tennessee refuses to acknowledge that it has changed the priorities established in its currently-effective tariff.

Selkirk requests that the Commission order Tennessee to apply the provisions of its currently effective tariff until such time as the Commission rules on Tennessee's capacity path proposal in its general rate case.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214, 385.211. All such motions or protests should be filed on or before July 7, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to this complaint shall be due on or before July 7, 1995.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14378 Filed 6–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–540–000]

South Georgia Natural Gas Company; Notice of Application

June 7, 1995.

Take notice that on June 2, 1995, South Georgia Natural Gas Company, (South Georgia), P.O. 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP95–540–000 an application pursuant to the provisions of Section 7 of the Natural Gas Act (NGA) for a certificate of public convenience and necessity authorizing the construction and operation of certain main line looping facilities and related appurtenant facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

South Georgia requests authorization to construct, install an operate approximately 7.1 miles of 16-inch pipeline looping on its existing 12-inch main line located between mile post 27.858 in Russell County, Alabama, and mile post 34.917 in Stewart County, Georgia. These facilities will provide the necessary capacity to enable South Georgia to increase firm service. South Georgia estimates the cost of the proposed facilities to be $2.9 million.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 28, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C., 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing herein must file a motion to intervene in accordance with the Commission's Rules.

If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, and if the Commission on its own review of the matter finds that a grant of the petition is required by the public convenience and necessity.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appeal or be represented at the hearing.

Lous D. Cashell,

Secretary.

[FR Doc. 95–14376 Filed 6–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–538–000]

Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

June 7, 1995.

Take notice that on June 2, 1995, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP95–538–000 a request pursuant to Section 157.205 of the Commission's Regulations to abandon by removal certain meter facilities located in Kanawha County, West Virginia under Tennessee's blanket certificate issued in Docket No. CP82–413–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to abandon by removal the facilities at Charleston Sales Meter Station No. 2–0027 and the facilities at Frame Sales Meter Station No. 2–0043 located in Kanawha County, West Virginia. Tennessee states the sales meter stations were completed in early 1951 to deliver sales gas to United Fuel Gas Company which was part of the Columbia Gas System. These stations are inactive and the measurement equipment has deteriorated beyond repair, it is indicated. Tennessee states that Columbia Gas Transmission Corporation, the only customer served by the facilities prior to the meters becoming inactive, has consented to the abandonment.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14375 Filed 6–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP94–423–000 and RP94–119–000, et al.]

Texas Gas Transmission Corp.; Notice of Informal Settlement Conferences

June 7, 1995.

Take notice that an informal settlement conference will be convened in the above-captioned proceedings commencing at 10:00 am on June 14, 1995, continuing through June 15, 1995, at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE, Washington, DC, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information please contact Michael D. Cotleur, (202) 208–1076, or Russell B. Mamone (202) 208–0744.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14377 Filed 6–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP91–1897–004]

Williston Basin Interstate Pipeline Company; Notice of Refund Report

June 7, 1995.

Take notice that on May 19, 1995, Williston Basin Interstate Pipeline Company (Williston Basin), filed its refund report made in compliance with the Commission's order issued March 30, 1992 in Docket No. CP91–1897–000 and Article V of Amendment No. 1 to the Rate Schedule X–13 Service Agreement between Williston Basin and Northern States Power Company (NSP).

Williston Basin stated that on May 19, 1995, a total refund of $173,572.72 consisting of $158,863.04 of principal and $14,709.68 of interest was sent to NSP. Williston Basin states that the refund covers the period from November 1, 1992 through February 28, 1995, with interest through May 19, 1995.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before June 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14373 Filed 6–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1074–000, et al.]

Commonwealth Edison Co., et al.; Electric Rate and Corporate Regulation Filings

June 6, 1995.

Take notice that the following filings have been made with the Commission:

1. Commonwealth Edison Company

[Docket No. ER95–1074–000]

Take notice that on May 19, 1995, Commonwealth Edison Company (ComEd) submitted a Service Agreement, dated May 3, 1995, establishing PECO Energy Company (PECO) as a customer under the terms of ComEd's Power Sales Tariff FS–1 (FS–1 Tariff). The Commission has previously designated the PS–1 Tariff as FERC Electric Tariff, Original Volume No. 2.

ComEd requests an effective date of May 3, 1995, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon PECO and the Illinois Commerce Commission.

Comment date: June 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Carolina Power & Light Company

[Docket No. ER95–1075–000]

Take notice that on May 19, 1995, Carolina Power & Light Company (Carolina), tendered for filing separate Service Agreements executed between Carolina and the following Eligible Entities; AES Power, Inc.; InterCoast Power Marketing Company; PECO Energy Company; Central Virginia Electric Cooperative; Old Dominion Electric Cooperative; Big Rivers Electric Corporation; Wisconsin Electric Power Company; and NorAm Energy Services, Inc. Service to each Eligible Entity will be in accordance with the term and conditions of Carolina's Tariff No. 1 for Sales of Capacity and Energy.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: June 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Arizona Public Service Company

[Docket No. ER95–1077–000]

Take notice that on May 22, 1995, Arizona Public Service Company (APS), tendered for filing Amendment No. 2 to the Transmission Service Agreement (Amendment) between Arizona Public Service Company and the Department of the Air Force. This Amendment provides for a change in delivery points of the preference power received from the Western Area Power Administration.

A copy of this filing has been served on the Department of the Air Force and the Arizona Corporation Commission.

Comment date: June 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Illinois Power Company

[Docket No. ER95–1078–000]

Take notice that on May 22, 1995, Illinois Power Company (IP), tendered for filing a change to the Interconnection Agreement between Central Illinois Light Company (CIL) and Illinois Power Company. The change provides for a new point of interconnection between CIL and IP, CIL-IP Connection 8–St. Joseph to replace CIL–IP Connection 6–Homer. IP proposes an effective date of May 26, 1995, and, therefore, requests waiver of the Commission's notice requirement.

Copies of the filing have been served on CIL and the Illinois Commerce Commission.

Comment date: June 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Consumers Power Company

[Docket No. ER95–1080–000]

Take notice that on May 22, 1995, Consumers Power Company (Consumers), tendered for filing a Wholesale for Resale Electric Service Agreement with Wolverine Power Supply Cooperative, Inc. (Wolverine). The filed Service Agreement makes available firm wholesale service to Wolverine in Resort Township in Emmet County, Michigan. A copy of the filing was served upon Wolverine and the Michigan Public Service Commission.

Comment date: June 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Central Illinois Public Service Company

[Docket No. ER95–1081–000]

Take notice that on May 22, 1995, Central Illinois Public Service Company (CIPS), submitted two Service Agreements each, dated May 10, 1995, establishing Catex Vitol Electric, L.L.C. and Kimball Power Company as customers under the terms of CIPS' Coordination Sales Tariff CST–1 (CST–1 Tariff).

CIPS requests an effective date of May 10, 1995, for each service agreement, and, accordingly, seeks waiver of the Commission's notice requirements. Copies of this filing were served upon Catex Vitol Electric, L.L.C., Kimball Power Company, and the Illinois Commerce Commission.

Comment date: June 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Tampa Electric Company

[Docket No. ER95–1082–000]

Take notice that on May 22, 1995, Tampa Electric Company (Tampa Electric), tendered for filing an agreement to provide non-firm transmission service for the Orlando Utilities Commission (Orlando).

Tampa Electric proposes that the agreement be made effective on the earlier of the date it is accepted for filing or July 22, 1995, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on Orlando and the Florida Public Service Commission.

Comment date: June 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. PacifiCorp

[Docket No. ER95–1083–000]

Take notice that on May 23, 1995, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a Power Sales Agreement dated December 28, 1994 (Agreement) between PacifiCorp and Public Utility District No. 1 of Clark County, Washington (Clark).

PacifiCorp requests that an effective date of August 1, 1995, be assigned to the Agreement. This date corresponds to the date service is scheduled to commence under the Agreement.

Copies of this filing were supplied to Clark, the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission.

Comment date: June 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Electric Power Company

[Docket No. ER95–1084–000]

Take notice that on May 23, 1995, Wisconsin Electric Power Company, tendered for filing an unexecuted service agreement with The Wisconsin Public Power Inc. SYSTEM (WPPI) pursuant to which WPPI will take Network Contract Demand Transmission Service from the Company commencing June 1, 1995. Wisconsin Electric also has tendered for filing a tariff providing for comprehensive transmission service from Wisconsin Electric. Wisconsin Electric also requests that the docket be consolidated with Docket Nos. ER95–264–000 and ER94–1625–000.

Comment date: June 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Southwestern Electric Power Company

[Docket No. ER95–1085–000]

Take notice that on May 23, 1995, Southwestern Electric Power Company (SWEPCO) submitted service agreements establishing twenty-nine new customers under SWEPCO's umbrella Coordination Sales Tariff (CST–1 Tariff).

SWEPCO requests an effective date of April 28, 1995, for the service agreement with Jonesboro Water & Light Plant and an effective date of May 16, 1995 for the other twenty-eight agreements. Accordingly, SWEPCO seeks waiver of the Commission's notice requirements. Copies of this filing were served upon the twenty-nine customers, the Arkansas Public Service Commission, the Louisiana Public Service Commission and the Public Utility Commission of Texas.

Comment date: June 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Destec Power Services, Inc.

[Docket No. ER95–1087–000]

Take notice that on May 24, 1995, Destec Power Services, Inc. (DPS) tendered for filing confirmation from the Executive Committee of the Western Systems Power Pool (WSPP) acknowledging approval of DPS's application for membership in the WSPP. DPS requests that the Commission amend the WSPP Agreement to include it as a member.

DPS requests an effective date of one day after filing for the proposed amendment. Accordingly, DPS requests waiver of the Commissions notice requirements for good cause shown.

Copies of the filing were served upon the WSPP Executive Committee.

Comment date: June 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Public Service Company of Oklahoma

[Docket No. ER95–1088–000]

Take notice that on May 24, 1995, Public Service Company of Oklahoma (PSO) submitted service agreements establishing nineteen new customers under PSO's umbrella Coordination Sales Tariff CST–1 (CST–1 Tariff).

PSO requests an effective date of May 16, 1995, for the nineteen agreements. Accordingly, PSO seeks waiver of the Commission's notice requirements. Copies of this filing were served upon the nineteen customers and the Oklahoma Corporation Commission.

Comment date: June 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Wisconsin Power and Light Company

[Docket No. ER95–1089–000]

Take notice that on May 25, 1995, Wisconsin Power and Light Company (WP&L) tendered for filing a signed Service Agreement under WP&L's Bulk Power Sales Tariff between itself and Howard Energy Company, Inc. WP&L respectfully requests a waiver of the Commission's notice requirements, and an effective date of May 15, 1995.

Comment date: June 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Wisconsin Power and Light Company

[Docket No. ER95–1090–000]

Take notice that on May 25, 1995, Wisconsin Power and Light Company (WP&L) tendered for filing a signed Service Agreement under WP&L's Bulk Power Sales Tariff between itself and Kimball Power Company. WP&L respectfully requests a waiver of the Commission's notice requirements, and an effective date of May 15, 1995.

Comment date: June 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Wisconsin Power and Light Company

[Docket No. ER95–1091–000]

Take notice that on May 25, 1995, Wisconsin Power and Light Company (WP&L) tendered for filing a signed Service Agreement under WP&L's Bulk Power Sales Tariff between itself and Central Illinois Public Service Company. WP&L respectfully requests a waiver of the Commission's notice requirements, and an effective date of May 5, 1995.

Comment date: June 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Commonwealth Edison Company

[Docket No. ER95–1092–000]

Take notice that on May 25, 1995, Commonwealth Edison Company (ComEd) submitted Service Agreements, dated April 21, 1995, establishing AES Power, Inc. (AES), Enron Power Marketing, Inc. (Enron), Wisconsin Public Power Inc. System (WPPI), and Rainbow Energy Marketing Corporation (Rainbow) as customers under the terms of ComEd's Transmission Service Tariff FTS–1 (FTS–1 Tariff). The commission has previously designated the FTS–1 Tariff as FERC Electric Tariff, Original Volume No. 4.

ComEd requests an effective date of April 21, 1995, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon AES, Enron, WPPI, Rainbow, and the Illinois Commerce Commission.

Comment date: June 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Central Hudson Gas & Electric Corporation

[Docket No. ER95–1093–000]

Take notice that on May 25, 1995, Central Hudson Gas & Electric Corporation (Central Hudson) tendered for filing a Notice of Cancellation of Central Hudson's Rate Schedule Agreement between Central Hudson and the County of Orange, New York, Municipal Distribution Agency.

Comment date: June 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. Entergy Services, Inc.

[Docket No. ER95–1094–000]

Take notice that on May 25, 1995, Entergy Services, Inc. (Entergy Services), on behalf of Arkansas Power & Light Company, Gulf States Utilities Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service Inc., tendered for filing a Transmission Service Agreement (TSA) between Entergy Services and Enron Power Marketing, Inc. (Enron). Entergy Services states that the TSA sets out the transmission arrangements under which the Entergy Operating Companies will provide Enron non-firm transmission service under their Transmission Service Tariff.

Comment date: June 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

19. New England Power Company

[Docket No. ER95–1100–000]

Take notice that on May 25, 1995, New England Power Company filed Service Agreements and Certificate of Concurrence with CMEX Energy, Inc. and Catex-Vitol Electric, L.L.C. under NEP's FERC Electric Tariff, Original Volume No. 5.

Comment date: June 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

20. CINergy Services, Inc.

[Docket No. ER95–1101–000]

Take notice that on May 25, 1995, CINergy Services, Inc. (CIN), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated April 1, 1995, between CIN, CG&E, PSI and Stand Energy Corporation (STAND).

The Interchange Agreement provides for the following service between CIN and STAND.

1. Exhibit A—Power Sales by STAND
2. Exhibit B—Power Sales by CIN

CIN and STAND have requested an effective date of June 1, 1995.

Copies of the filing were served on Stand Energy Corporation, the Kentucky Public Service Commission, Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: June 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

21. Northern States Power Company (Minnesota)

[Docket No. ER95–1103–000]

Take notice that on May 26, 1995, Northern States Power Company (Minnesota) (NSP) tendered for filing a revised Service Schedule E to the Municipal Interconnection and Interchange Agreements between NSP and the City of Ada, City of Kasota and City of Kasson. Service Schedule E of each City's Agreement contains a Distribution Substation Facilities Charge Rider. The revised Service Schedule E modifies the monthly facilities charge to be paid by each city to reflect only the FERC accepted charges.

NSP requests that the Commission accept the revised Service Schedule E of the Municipal Interconnection and Interchange Agreement effective May 30, 1995, for each city and requests waiver of the Commission's notice requirements in order for the revisions to be accepted for filing on the date requested.

Comment date: June 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

22. CINergy Services, Inc.

[Docket No. ER95–1102–000]

Take notice that on May 25, 1995, CINergy Services, Inc. (CIN), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated April 1, 1995, between CIN, CG&E, PSI and InterCoast Power Marketing Company (COAST).

The Interchange Agreement provides for the following service between CIN and COAST.

1. Exhibit A—Power Sales by COAST
2. Exhibit B—Power Sales by CIN

CIN and COAST have requested an effective date of June 1, 1995.

Copies of the filing were served on InterCoast Power Marketing Company, the Iowa State Utilities Board, the Kentucky Public Service Commission, Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: June 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

23. The Cleveland Electric Illuminating Company and The Toledo Edison Company

[Docket No. ER95–1104–000]

Take notice that on May 25, 1995, The Cleveland Electric Illuminating Company (CEI) and The Toledo Edison Company (TE) tendered for filing the following non-discriminatory open-access transmission tariffs:

1. FERC Network Integration Service Transmission Tariff—Cleveland Area.
2. FERC Network Integration Service Transmission Tariff—Toledo Area.
3. FERC Point-to-Point Transmission Service Tariff—Toledo Area.
4. FERC Point-to-Point Transmission Service Tariff—Toledo Area.

CEI and TE state that these tariffs were submitted pursuant to this Commission's decision in *El Paso Electric Company and Central and South West Services, Inc.*, 68 FERC ¶ 61,181 (1994) and the deficiency letter issued in this proceeding on December 8, 1994, and have requested that these tariffs be permitted to become effective upon consummation of the merger of CEI and TE for which authorization is sought in the captioned proceeding. CEI and TE further state that these tariffs comply with the guidance provided by the Commission in *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities*, 70 FERC ¶ 61,357 (1995), and that the proposed rates for transmission service are "conforming" rates in accordance with the policy established in *Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act*, FERC Regulations Preambles ¶ 31,1005 (1994).

Comment date: June 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14425 Filed 6–12–95; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5220–6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before July 13, 1995.

For further information or to obtain a copy of this ICR contact Sandy Farmer at EPA, (202) 260–2740, please refer to ICR #1158.05.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

TITLE: Reporting and Recordkeeping Requirements for the New Source Performance Standards (NSPS) for Rubber Tire Manufacturing Industry (ICR No. 1158.05; OMB No. 2060–0156).

ABSTRACT: This ICR is for an extension of an existing information collection in support of the Clean Air Act, as described under the general NSPS at 40 CFR Part 60.7–60.8 and the specific NSPS, for volatile organic compound (VOC) emissions from the rubber tire manufacturing industry, at 40 CFR Part 60.540–60.546. The information will be used by the EPA to direct monitoring, inspection, and enforcement efforts, thereby ensuring compliance with the NSPS.

Owners and operators of affected facilities must provide EPA with: (1) Notification of construction, reconstruction, or modification; (2) anticipated and actual dates of facility startup; (3) initial and, where appropriate, monthly performance test data and results; (4) physical and operational changes; (5) initial performance test results; (6) initial and annual formulation data or Method 24 results to verify VOC content of water-based sprays; and (7) a semiannual report of any monitored operating parameter or emission rate that falls outside a specified limit.

All affected facilities must maintain records on the facility operation that document: (1) The occurrence and duration of any startups, shutdowns,

and malfunctions; (2) VOC use and emission reduction system operating data; (3) monthly performance test results; (4) formulation data or results of Method 24 analysis of water-based sprays containing less than 1.0 percent of VOC; and (5) number of tires processed or the number of beads cemented if affected facility elects to comply with a g/tire or g/bead limitation. All subject facilities must maintain records related to compliance for two years.

BURDEN STATEMENT: Public reporting burden for facilities subject to this collection of information is estimated to average 31 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining data, and completing and reviewing the collection of information. Public recordkeeping burden is estimated to average 352 hours annually.

RESPONDENTS: Owners or operators of subject rubber tire manufacturing facilities which commenced construction, reconstruction, or modification after January 20, 1983.

Estimated Number of Respondents: 31.

Estimated Number of Responses Per Respondent: 2.

Estimated Total Annual Burden on Respondents: 10,914 hours.

Frequency of Collection: One-time notifications for new facilities; annual and semiannual reporting, as appropriate, for subject facilities.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing burden, (please refer to EPA ICR #1158.05 and OMB #2060–0156) to:

Sandy Farmer, EPA ICR #1158.05, U.S. Environmental Protection Agency, Regulatory Information Division, 401 M Street, S.W., Washington, D.C. 20460.

and

Chris Wolz, OMB #2060–0156, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, N.W., Washington, D.C. 20530.

Dated: June 1, 1995.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 95–14430 Filed 6–8–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5220–8]

Gulf of Mexico Program Management Committee Meeting

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of Meeting of the Management Committee of the Gulf of Mexico Program.

SUMMARY: The Gulf of Mexico Program's Management Committee will hold a meeting at the Navy Building Conference Room, Building 1005, Stennis Space Center, Mississippi.

FOR FURTHER INFORMATION CONTACT: Dr. Douglas Lipka, Acting Director, Gulf of Mexico Program Office, Building 1003, Room 202, John C. Stennis Space Center, Stennis Space Center, MS 39529–6000, at (601) 688–3726.

SUPPLEMENTARY INFORMATION: A meeting of the Management Committee of the Gulf of Mexico Program will be held July 12, 1995, at the Navy Building Conference Room, Building 1005, Stennis Space Center, Mississippi. The Committee will meet from 8:30 a.m. to 4:30 p.m. Agenda items will include: Symposium Evaluation and Recommendations; Leadership Conference Action Items; Effects of the Federal Participation Agreement on the Program; and June 21–22, 1995 Joint Issue and Operating Committee Meetings' Action Items.

The meeting is open to the public.

Fred C. Kopfler,

Acting Director, Gulf of Mexico Program.

[FR Doc. 95–14422 Filed 6–12–95; 8:45 am]

BILLING CODE 6560–50–M

[OPPTS–42185; FRL–4960–3]

RIN 2070–033

Testing Consent Agreement Development for Alkyl Glycidyl Ethers; Solicitation of Interested Parties and Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is soliciting "interested parties" to monitor or participate in negotiations on an enforceable consent agreement (ECA) for alkyl glycidyl ethers. In addition, EPA invites all interested parties to attend a public meeting on the ECA for alkyl glycidyl ethers.

DATES: To be designated an "interested party" for alkyl glycidyl ethers, written notice must be received by EPA on or before July 13, 1995.

ADDRESSES: Submit a written request to be an interested party, in triplicate, to TSCA Document Receipts Office (7407), Rm. East Tower G–99, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. All submissions should bear the document control number OPPTS–42185; FRL–4960–3. The public docket supporting this action, including comments, is available for public inspection at the TSCA Nonconfidential Information Center, Rm. NE–B607, USEPA, 401 M St. SW., Washington, DC 20460, from 12 noon to 4 p.m., Monday through Friday, except legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number (OPPTS–42185; FRL–4960–3). No CBI should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in section IV of this document.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Rm. East Tower 543B, Office of Pollution Prevention and Toxics, USEPA, 401 M St. SW., Washington, DC 20460; telephone: (202) 554–1404, TDD: (202) 554–0551. For specific information regarding this action or related matters, contact Keith J. Cronin, Project Manager, Chemical Testing and Information Branch (7405), Rm. East Tower 201E, Office of Pollution Prevention and Toxics, USEPA, 401 M St. SW., Washington, DC 20460, telephone: (202) 260–8157.

SUPPLEMENTARY INFORMATION:

I. Background

On November 7, 1991, EPA published a proposed test rule for the category glycidol and its derivatives (56 FR 57144). The proposal contained testing requirements for, among others, the following six chemical substances: lauryl glycidyl ether (CAS No. 2461–18–9); hexadecyl glycidyl ether (CAS No. 15965–99–8); *n*-octadecyl glycidyl ether (CAS No. 16245–97–9); tetradecyl glycidyl ether (CAS No. 38954–75–5); alkyl (C_{10}–C_{16}) glycidyl ether (CAS No. 68081–84–5); and alkyl (C_{12}–C_{14}) glycidyl ether (CAS No. 68609–97–2). The proposal designated these six chemical substances as subcategory II–A.

On July 17, 1992, EPA published a **Federal Register** notice (57 FR 31714) establishing an "open season." The open season was a period of time during which industry and other interested parties could submit to EPA proposals for enforceable consent agreements (ECAs) to test chemical substances for which the Agency had not issued final test rules. In the July 17, 1992 notice, EPA indicated that it would review these submissions and select candidates for negotiation of ECAs pursuant to 40 CFR 790.22. EPA also indicated that it would, at a future date, publish a **Federal Register** notice soliciting persons interested in participating in or monitoring negotiations for the development of ECAs on the chemical substances selected, to notify the Agency in writing.

On August 18, 1993, EPA published a **Federal Register** notice (58 FR 43893) that solicited all "interested parties" who wished to monitor or participate in ECA negotiations for testing the above-named six chemical substances contained in the proposed test rule (subcategory II–A) to identify themselves in writing to the Agency.

II. Testing Proposal

In response to the open season initiative, a testing proposal for alkyl glycidyl ethers was submitted. Alkyl (C_{12}–C_{13}) glycidyl ether (CAS No. 120547–52–6) was recommended as the test substance. This mixture, also known as oxirane, monol[(C_{12}–C_{13}-alkyloxy)menthyl]-derivatives, is subsumed within alkyl (C_{12}–C_{14}) glycidyl ether (CAS No. 68609–97–2) and alkyl (C_{10}–C_{16}) glycidyl ether (CAS No. 68081–84–5), and, therefore, within subcategory II–A of the proposed test rule.

III. Identification of Interested Parties

Since alkyl (C_{12}–C_{13}) glycidyl ether (CAS No. 120547–52–6) is subsumed within subcategory II–A of the proposed test rule, EPA believes that the August 18, 1993 **Federal Register** notice provides sufficient notice to parties that may be interested in monitoring or participating in ECA negotiations to test the six chemical substances specifically named in subcategory II–A and alkyl (C_{12}–C_{13}) glycidyl ether. However, to ensure that all potentially interested parties have an opportunity to identify themselves to the Agency, EPA is soliciting interested parties to monitor or participate in ECA negotiations on the following substances: lauryl glycidyl ether (CAS No. 2461–18–9); hexadecyl glycidyl ether (CAS No. 15965–99–8); *n*-octadecyl glycidyl ether (CAS No. 16245–97–9); tetradecyl glycidyl ether (CAS No. 38954–75–5); alkyl (C_{10}–C_{16}) glycidyl ether (CAS No. 68081–84–5); alkyl (C_{12}–C_{14}) glycidyl ether (CAS No. 68609–97–2); and alkyl (C_{12}–C_{13}) glycidyl ether (CAS No. 120547–52–6).

These negotiations will be conducted pursuant to the procedures described in 40 CFR 790.22. Submitters of testing proposals in response to the **Federal Register** notices of July 17, 1992, and August 13, 1993, are already considered interested parties and do not need to respond to this notice. Any persons who respond to this notice on or before July 13, 1995 will be given the status of interested parties and will be afforded an opportunity to monitor or participate in the negotiation process. Interested parties will not incur any obligations by being so designated.

Negotiations will be conducted in one or more meetings open to the public. Interested parties will have an opportunity at the public meeting(s) to make comments concerning the possible inclusion of alkyl (C_{12}–C_{13}) glycidyl ether in the ECA, and any other relevant subject. If EPA and the interested parties are not able to agree upon the terms of an ECA, negotiations will be terminated and testing will be required under a test rule.

IV. Notice of Public Meeting

A public meeting is scheduled for July 26, 1995, to initiate negotiations on an ECA to test the seven chemical substances identified in section III., paragraph one of this notice, for which the Agency is soliciting interested parties. The public meeting will be held in Rm. East Tower 217 at USEPA Headquarters, 401 M St. SW., Washington, DC 20460, from 9 a.m. to 12 noon. EPA will use its best efforts to send copies of a draft ECA to interested parties prior to the public meeting.

Those persons who identify themselves as interested parties may submit written comments to EPA by July 13, 1995. Submit written comments in triplicate, to TSCA Document Receipts Office (7407), Rm. East Tower G-99, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. All submissions should bear the document control number OPPTS–42185; FRL–4960–3. EPA will address these comments at the public meeting. A transcript of the public meeting will be made available as part of the public docket.

EPA believes that generally under 40 CFR 790.22(b)(3), the Agency need only inform interested parties of a public meeting to negotiate an ECA and is not obligated to announce the meeting in the **Federal Register**. The Agency is announcing this public meeting in the **Federal Register** to ensure that all parties interested in ECA negotiations on any of the seven chemical substances identified in section III., paragraph one of this notice, as opposed to the six specifically named in subcategory II–A of the proposed test rule, will have notice and the opportunity to be designated interested parties.

A record has been established for this notice under docket control number OPPTS–42185, FRL–4960–3 (including comments and data submitted electronically as described below). A public version of this docket, including printed, paper versions of electronic comments, which does not include any information claimed as confidential business information (CBI), is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public docket is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St. SW., Washington, DC 20460. Written requests for copies of documents contained in this docket may be sent to the above address or faxed to (202) 260–9555.

Electronic comments can be sent directly to EPA at:

ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official notice record which will also include all comments submitted directly in writing. The official notice record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

Dated: June 6, 1995.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 95–14431 Filed 6–12–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and

approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review of the information collection system described below.

Type of Review: Extension of the expiration date of a currently approved collection without any change in the substance or method of collection.

Title: Application for Waiver of Prohibition on Receipt of Brokered Deposits by Adequately Capitalized Depository Institutions/Registration of Deposit Brokers.

Form Number: N/A.

OMB Number: 3064–0099.

Expiration Date of OMB Clearance: July 31, 1995.

Frequency of Response: On occasion.

Respondents: Insured depository institutions wishing to accept brokered deposits.

Number of Respondents: 175.

Annual Hours per Respondent: 2.2.

Total Annual Hours: 385.

OMB Reviewer: Milo Sunderhauf, (202) 395–7316, Office of Management and Budget, Paperwork Reduction Project (3064–0099), Washington, D.C. 20503.

FDIC Contact: Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, Room F–400, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429.

Comments: Comments on this collection of information are welcome and should be submitted before August 14, 1995.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: Section 29 of the Federal Deposit Insurance Act prohibits undercapitalized institutions from accepting, renewing, or rolling over any brokered deposits. Adequately capitalized institutions may do so with a waiver from the FDIC, while well capitalized institutions may accept, renew, or roll over brokered deposits without restriction. Section 29A requires notification by deposit brokers of their activity and authorizes the imposition of certain recordkeeping and reporting requirements.

Dated: June 7, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 95–14416 Filed 6–12–95; 8:45 am]

BILLING CODE 6714–01–M

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review of the information collection system described below.

Type of Review: Extension of the expiration date of a currently approved collection without any change in the substance or method of collection.

Title: Recordkeeping and Confirmation requirements for Securities Transactions.

Form Number: N/A.

OMB Number: 3064–0028.

Expiration Date of OMB Clearance: July 31, 1995.

Frequency of Response: On occasion.

Respondents: Insured state nonmember banks which effect securities transactions.

Number of Respondents: 6,087.

Annual Hours per Respondent: 19.36.

Total Annual Hours: 117,866.

OMB Reviewer: Milo Sunderhauf, (202) 395–7316, Office of Management and Budget, Paperwork Reduction Project (3064–0028), Washington, D.C. 20503.

FDIC Contact: Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, Room F–400, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429.

Comments: Comments on this collection of information are welcome and should be submitted before August 14, 1995.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: The FDIC requires insured state nonmember banks to provide their securities customers with adequate information concerning their securities transactions. Banks are also required to maintain adequate records and controls for securities transactions.

Dated: June 7, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 95–14435 Filed 6–12–95; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

AmeriGroup, Incorporated; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 27, 1995.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. AmeriGroup, Incorporated, Minnetonka, Minnesota; to engage *de novo* in purchasing loans in a participation arrangement from AmeriBank, a subsidiary, and in limited situations, directly originate loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 7, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–14411 Filed 6–12–95; 8:45 am]

BILLING CODE 6210–01–F

William E. Hathorn; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than June 27, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. William E. Hathorn, Tylertown, Mississippi; to acquire an additional 1.2 percent, for a total of 25.3 percent of the voting shares of Walthall Capital Group, Ltd., Tylertown, Mississippi, and thereby indirectly acquire Walthall Citizens Bank, Tylertown, Mississippi.

Board of Governors of the Federal Reserve System, June 7, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–14412 Filed 6–12–95; 8:45 am]

BILLING CODE 6210–01–F

Societe Generale; Notice to Engage in Nonbanking Activities; Correction

This notice corrects a notice (FR Doc. 95-13212) published on page 28,412 of the issue for Wednesday, May 31, 1995.

The entry for Societe Generale, Paris, France (Notificant), is revised to include engaging in certain foreign exchange-related activities through FIMAT Futures USA, Inc., Chicago, Illinois (Company). In 1994, Company received authority to act as agent in executing and provide investment advice in connection with certain foreign exchange transactions. *See Societe Generale,* 80 Federal Reserve Bulletin 646 (1994). In approving that application the Board relied, in part, on Notificant's commitments that Company would not:

(1) engage in any foreign exchange activities for its own account,

(2) charge its advisory customers a separate fee for executing transactions in foreign exchange, or

(3) provide foreign exchange services to customers other than sophisticated institutional customers.

In connection with its proposal that Company act as riskless principal in connection with certain foreign exchange transactions, Notificant proposes that Company be permitted to purchase foreign exchange for its own account to hedge financial statement translations of income for its French parent, Fimat International Bank, or as may be necessary for the payment of invoices denominated in foreign currencies. Notificant also proposes that Company be permitted to charge its advisory customers an execution fee (but not an advisory fee) for transactions in which Company acts as riskless principal, and to execute foreign currency transactions for noninstitutional commercial hedger customers to whom Company would provide futures commission merchant services. Notificant has stated that Company would not provide foreign exchange-related advisory services to noninstitutional commercial hedger customers and would observe the standards of care and conduct applicable to a fiduciary with respect to its foreign exchange advisory activities.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than July 7, 1995. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, June 7, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–14410 Filed 6–12–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Cooperative Agreement Program for Prevention Center for Occupational Safety and Health in the Construction Industry—Program Announcement 528: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Disease, Disability, and Injury Prevention and Control SEP: Cooperative Agreement Program for Prevention Center for Occupational Safety and Health in the Construction Industry—Program Announcement 528.

Time and Dates: 8:30 a.m.–5:30 p.m., July 13–14, 1995.

Place: Corporate Square, Building 11, Room 2320, Corporate Square Boulevard, Atlanta, Georgia 30329.

Status: Closed.

Matters to be discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement 528.

The meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Pub. L. 92–463.

Contact Person For More Information: Marie Haring Sweeney, Assistant Chief, Special Projects, Industrywide Studies Branch, Division of Surveillance, Hazard Evaluations, and Field Studies, National Institute for Occupational Safety and Health, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513/841–4207.

Dated: June 6, 1995.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–14398 Filed 6–12–95; 8:45 am]

BILLING CODE 4163–19–M

Health Care Financing Administration

[ORD–075–N]

New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: February and March 1995

AGENCY: Health Care Financing Administration (HCFA).

ACTION: Notice.

SUMMARY: This notice lists new proposals for demonstration projects submitted to the Department of Health and Human Services during the months of February and March 1995 under the authority of section 1115 of the Social Security Act. This notice also lists approved, disapproved, pending, and withdrawn proposals. (This notice can also be accessed on the Internet at HTTP://WWW.SSA.GOV/HCFA/HCFAHP2.HTML.)

COMMENTS: We will accept written comments on these proposals. We will, if feasible, acknowledge receipt of all comments, but we will not provide written responses to comments. We will, however, neither approve nor disapprove any new proposal for at least 30 days after the date of this notice to allow time to receive and consider comments. Direct comments as indicated below.

ADDRESSES: Mail correspondence to: Susan Anderson, Office of Research and Demonstrations, Health Care Financing Administration, 2230 Oak Meadows, 6325 Security Boulevard, Baltimore, MD 21207.

FOR FURTHER INFORMATION CONTACT: Susan Anderson (410) 966–3996.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 1115 of the Social Security Act (the Act), the Department of Health and Human Services (HHS) may consider and approve research and demonstration proposals with a broad range of policy objectives. These demonstrations can lead to improvements in achieving the purposes of the Act.

In exercising her discretionary authority, the Secretary has developed a number of policies and procedures for reviewing proposals. On September 27, 1994, we published a notice in the **Federal Register** (59 FR 49249) that specified (1) the principles that we ordinarily will consider when approving or disapproving demonstration projects under the authority in section 1115(a) of the Act; (2) the procedures we expect States to use in involving the public in the development of proposed demonstration projects under section 1115; and (3) the procedures we ordinarily will follow in reviewing demonstration proposals. We are committed to a thorough and expeditious review of State requests to conduct such demonstrations.

II. Listing of New, Pending, Approved, and Withdrawn Proposals for the Months of February and March 1995

As part of our procedures, we publish a notice in the **Federal Register** with a monthly listing of all new submissions, pending proposals, approvals, disapprovals, and withdrawn proposals. Proposals submitted in response to a grant solicitation or other competitive process are reported as received during the month that such grant or bid is awarded, so as to prevent interference with the awards process. We have added a new category in this notice entitled "Withdrawn Proposals" to identify project proposals that the States have withdrawn from consideration for approval under section 1115.

A. Comprehensive Health Reform Programs

1. New Proposals

Demonstration Title/State: Arizona Health Care Cost Containment System (AHCCCS)—Arizona.

Description: Arizona proposes to expand eligibility under its current section 1115 AHCCCS program to persons with incomes up to 100 percent of the Federal poverty level.

Date Received: March 17, 1995

State Contact: Mabel Chen, M.D., Director, Arizona Health Care Cost Containment System, 801 East Jefferson, Phoenix, Arizona 85034, (602) 271–4422.

Federal Project Officer: Ron Lambert, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: Community Care of Kansas—Kansas.

Description: Kansas proposes to implement a "managed cooperation demonstration project" in four predominantly rural counties, and to assess the success of a non-competitive managed care model in rural areas. The demonstration would enroll recipients currently eligible in the AFDC and AFDC-related eligibility categories, and expand Medicaid eligibility to children ages 5 and under with family incomes up to 200 percent of the Federal poverty level.

Date Received: March 23, 1995.

State Contact: Karl Hockenbarger, Kansas Department of Social and Rehabilitation Services, 915 SW Harrison Street, Topeka, Kansas 66612, (913) 296–4719.

Federal Project Officer: Jane Forman, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: Health Access Plan Demonstration—Vermont.

Description: Vermont proposes to integrate Medicaid recipients into managed care plans and expand coverage to uninsured individuals up to 150 percent of the Federal poverty level. The State also proposes to provide pharmacy coverage to low income Medicare beneficiaries.

Date Received: February 24, 1995.

State Contact: Veronica Celani, Health Policy Director, Vermont Agency of Human Services, 103 State Street, Waterbury, Vermont 05671, (802) 828–2949.

Federal Project Officer: Sherrie Fried, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

2. Pending Proposals

Demonstration Title/State: The Diamond State Health Plan—Delaware.

Description: Delaware proposes to expand eligibility for Medicaid to persons with incomes up to 100 percent of the Federal poverty level and require that the Medicaid population enroll in managed care delivery systems. The State's current section 1115 demonstration project, the Delaware Health Care Partnership for Children, would be incorporated into the statewide program as an optional provider for eligible children.

Date Received: July 29, 1994.

State Contact: Kay Holmes, DSHP Coordinator, DHSS Medicaid Unit, Biggs Building, P.O. Box 906, New Castle, Delaware 19720, (302) 577–4900.

Federal Project Officer: Rosana Hernandez, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: MediPlan Plus—Illinois.

Description: Illinois seeks to develop a managed care delivery system using a series of networks, either local or statewide, to tailor its Medicaid delivery system to the needs of local urban neighborhoods or large rural areas.

Date Received: September 15, 1994.

State Contact: Tom Toberman, Manager, Federal/State Monitoring, 201 South Grand Avenue East, Springfield, Illinois 62763, (217) 782–2570.

Federal Project Officer: Gina Clemons, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: Louisiana Health Access—Louisiana.

Description: Louisiana proposes to implement a fully capitated statewide managed care program. A basic benefit package and a behavioral health and pharmacy wrap-around would be administered through the managed care plans. The State intends to expand eligibility of persons with incomes up to 250 percent of the Federal poverty level (FPL), with persons with incomes above 133 percent of the FPL paying all or a portion of premiums. To fund the demonstration, the State is seeking a waiver of Federal Medical Assistance Payments (FMAP) requirements, which would effectively create a block grant whereby the Federal share of the demonstration would be fixed over the course of the demonstration and the State would assume the cost of increases as they occurred.

Date Received: January 3, 1995.

State Contact: Carolyn Maggio, Executive Director, Bureau of Research and Development, Louisiana Department of Health and Hospitals, Post Office 2870, Baton Rouge, Louisiana 70821–2871, (504) 342–2964.

Federal Project Officer: Gina Clemons, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: MassHealth—Massachusetts.

Description: Massachusetts proposes a range of strategies that would extend Medicaid coverage to its low-income and uninsured citizens, including the employed, the short-term unemployed, and the long-term unemployed. The proposed program would employ direct provision of health services as well as indirect strategies that would promote market forces to address the needs of the uninsured, by providing subsidies to employers and low-income employees with incomes up to 200 percent of the Federal poverty level.

Date Received: April 15, 1994.

State Contact: Laurie Burgess, Director, Managed Care Program, Development, Division of Medical Assistance, 600 Washington Street, Boston, Massachusetts 02111, (617) 348–5695.

Federal Project Officer: Ed Hutton, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: MinnesotaCare—Minnesota.

Description: Minnesota proposes to expand its use of managed care service delivery and to extend Medicaid eligibility to families and children with incomes up to 275 percent of the Federal poverty level. The State would also integrate Medicaid with other public entities that deliver health services.

Date Received: July 28, 1994.

State Contact: Maria Gomez, Commissioner, Health Care Services Delivery , Minnesota Department of Human Services, 444 Lafayette Road N, St. Paul, Minnesota 55155, (612) 297–4113.

Federal Project Officer: Penny Pine, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: Missouri.

Description: Missouri proposes to require that beneficiaries enroll in managed care delivery systems, and extend Medicaid eligibility to persons with incomes below 200 percent of the Federal poverty level. As part of the program, Missouri would create a fully capitated managed care pilot program to serve non-institutionalized persons with permanent disabilities on a voluntary basis.

Date Received: June 30, 1994.

State Contact: Donna Checkett, Director, Division of Medical Services, Missouri Department of Social Services, PO Box 6500, Jefferson City, Missouri 65102–6500, (314) 751–6922.

Federal Project Officer: Nancy Goetschius, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: The Granite State Partnership for Access and Affordability in Health Care—New Hampshire.

Description: New Hampshire proposes to extend Medicaid eligibility to adults with incomes below the AFDC cash standard and to create a public insurance product for low income workers. The State also seeks to implement a number of pilot initiatives to help redesign its health care delivery system.

Date Received: June 14, 1994.

State Contact: Barry Bodell, New Hampshire Department of Health and Human Services, Office of the Commissioner, 6 Hazen Drive, Concord, New Hampshire 03301–6505, (603) 271–4332.

Federal Project Officer: Maria Boulmetis, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: SoonerCare—Oklahoma.

Description: Oklahoma proposes to implement a 5-year statewide managed care demonstration using both fully and partially capitated delivery systems. The emphasis of the program is to address access problems in rural areas by encouraging the development of rural-based managed care initiatives. The State will employ traditional fully capitated managed care delivery models for urban areas and will introduce a series of partial capitation models in the rural areas of the State. All currently eligible, non-institutionalized individuals will be enrolled during the first 2 years of the project.

Date Received: January 6, 1995.

State Contact: Dr. Garth Splinter, Oklahoma Health Care Authority, Lincoln Plaza, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105, (405) 530–3439.

Federal Project Officer: Helaine I. Fingold, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

3. Approved Conceptual Proposals (Awards of Waivers Pending)

No conceptual proposals were approved during the months of February and March.

4. Approved Grant Proposals (Award of Waivers Pending)

No grant proposals were awarded during the months of February and March.

5. Approved Proposals

No comprehensive health reform proposals were approved during the months of February and March.

6. Disapproved Proposals

No comprehensive health reform proposals have been disapproved since January 1, 1993.

7. Withdrawn Proposals

No comprehensive health reform proposals were withdrawn during the months of February and March.

B. Other Section 1115 Demonstration Proposals

1. New Proposals

Demonstration Title/State: Family Planning Services Section 1115 Waiver Request—Michigan.

Description: Michigan seeks to extend Medicaid coverage for family planning services to all women of childbearing age living in families with incomes at or below 185 percent of the Federal poverty level, and provide an additional benefit package consisting of home visits, outreach services to identify eligibility, and reinforced support for utilization of services. The duration of the project is 5 years.

Date Received: March 27, 1995.

State Contact: Gerald Miller, Director, Department of Social Services, 235 South Grand Avenue, Lansing, Michigan 48909, (517) 335–5117.

Federal Project Officer: Suzanne Rotwein, Ph.D., Health Care Financing Administration, Office of Research and Demonstrations, 2306 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

2. Pending Proposals

Demonstration Title/State: Georgia's Children's Benefit Plan—Georgia.

Description: The State of Georgia submitted a Section 1115 proposal entitled "Georgia Children's Benefit Plan" that provides preventive and primary care services for children 1 through 5 years of age who are between 133 and 185 percent of the Federal poverty level. The duration of the waiver is 5 years with proposed project dates of July 1, 1995 to June 30, 2000.

Date Received: December 12, 1994.

State Contact: Jacquelyn Foster-Rice, Georgia Department of Medical Assistance, 2 Peachtree Street NW., 201 South Grand Avenue East, Atlanta, Georgia 30303–3159, (404) 651–5785.

Federal Project Officer: Maria Boulmetis, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: High Cost User Initiative—Maryland.

Description: Maryland proposes to implement an integrated case management system for high-cost, high-risk Medicaid recipients.

Date Received: July 8, 1994.

State Contact: John Folkemer, Maryland Department of Health and Mental Hygiene, Office of Medical Assistance Policy, 201 West Preston Street, Baltimore, Maryland 21201, (410) 225–5206.

Federal Project Officer: Rosana Hernandez, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: Minnesota Long-Term Care Options Project—Minnesota.

Description: The State proposes to integrate long-term care and acute care services under combined Medicare and Medicaid capitation payments for elderly dual eligibles.

Date Received: April 18, 1994.

State Contact: Pamela Parker, Minnesota Department of Human Services, Human Services Building, 444 Lafayette Road North, St. Paul, Minnesota 55155, (612) 296–2140.

Federal Project Officer: Melissa McNiff, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: Family Planning Proposal—New Mexico.

Description: New Mexico proposes to extend Medicaid eligibility for family planning services to all women of childbearing age with incomes at or below 185 percent of the Federal poverty level.

Date Received: November 1, 1994.

State Contact: Bruce Weydemeyer, Director, Division of Medical Assistance, PO Box 2348, Santa Fe, New Mexico 87504–2348, (505) 827–3106.

Federal Project Officer: Alisa Adamo, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: CHOICES—Citizenship, Health, Opportunities, Interdependence, Choices and Supports—Rhode Island.

Description: Rhode Island proposes to consolidate all current State and Federal funding streams for adults with developmental disabilities under one program using managed care/managed competition.

Date Received: April 5, 1994.

State Contact: Susan Babin, Department of Mental Health, Retardation, and Hospitals, Division of Developmental Disabilities, 600 New London Avenue, Cranston, Rhode Island 02920, (401) 464–3234.

Federal Project Officer: Melissa McNiff, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: Virginia.

Description: Virginia proposes to expand Medicaid eligibility to children in the State-funded KIDS CARE program, and provide them with a limited Medicaid benefit restricted to ambulatory services.

Date Received: May 18, 1994.

State Contact: Janet Kennedy, Suite 1300, 600 East Broad Street, Richmond, Virginia 23219, (804) 371–8855.

Federal Project Officer: Maria Boulmetis, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: Wisconsin.

Description: The State proposes to limit the amount of exempt funds that may be set aside as burial and related expenses for SSI-related Medicaid recipients.

Date Received: March 9, 1994.

State Contact: Jean Sheil, Division of Economic Support, Wisconsin Department of Health and Social Services, 1 West Wilson Street, Room 650, P.O. Box 7850, Madison, Wisconsin 53707, (608) 266–0613.

Federal Project Officer: J. Donald Sherwood, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

3. Approved Conceptual Proposals (Award of Waivers Pending)

No conceptual proposals were awarded during the months of February and March.

4. Approved Proposals

No proposals were approved during the months of February and March.

5. Disapproved Proposals

No proposals were disapproved during the months of February and March.

6. Withdrawn Proposals

The following proposals were withdrawn from consideration by their respective States.

Demonstration Title/State: Pay-in Spenddown Pilot—Ohio.

Description: Ohio proposed to implement a one-county pilot program to allow the medically needy to pay in spenddown amounts in order to qualify for Medicaid to simplify eligibility administration.

Date Received: April 28, 1994.

Date Withdrawn: February 15, 1995.

State Contact: Jeanne Carroll, Ohio Department of Human Services, 30 East Broad Street, Columbus, Ohio 43266, (614) 466–6024.

Federal Project Officer: David Walsh, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: Family Planning Demonstration—Washington.

Description: The State proposed to provide family planning services to low-income women for an additional 10 months postpartum, extending total coverage for such services to one year.

Date Received: April 21, 1994.

Date Withdrawn: January 20, 1995.

State Contact: Claudia Lewis, Medical Assistance Administration, Division of Client Services, P.O. Box 45530, Olympia, Washington 98504–5530, (206) 586–2751.

Federal Project Officer: Maria Boulmetis, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

III. Requests for Copies of a Proposal

Requests for copies of a specific Medicaid proposal should be made to the State contact listed for the specific proposal. If further help or information is needed, inquiries should be directed to HCFA at the address above.

(Catalog of Federal Domestic Assistance Program, No. 93.779; Health Financing Research, Demonstrations, and Experiments)

Dated: May 22, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 95–14434 Filed 6–12–95; 8:45 am]

BILLING CODE 4120–01–P

Health Resources and Services Administration Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of June 1995.

Name: National Advisory Council on the National Health Service Corps

Date and Time: June 23–26, 1995

Place: Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Crystal City, Virginia, (703) 418–1234.

The meeting is open to the public.

Purpose: The Council will advise and make appropriate recommendations on the National Health Service Corps (NHSC) program as mandated by legislation. It will also review and comment on proposed regulations promulgated by the Secretary under provision of the legislation.

Agenda: The agenda will include updates on the Bureau of Primary Health Care, National Health Service Corps and testimony on papers prepared for the June 24 and 25 conference entitled "NHSC: Creating a Road Map for the Future". The papers address the following: "Preparing Students to Become Student-Oriented Clinicians"; "Preparing Communities for Service-Oriented Clinicians" "Matching Service-Oriented Clinicians and Communities"; and "Assuring Clinicians Positive Community Experiences". The Council will also participate in this conference at the Hyatt Regency.

The meetings will begin at 8:00 a.m. and adjourn at 5:00 p.m. on June 23–25. The Council will reconvene Monday June 26, at 8:00 a.m. to discuss further business and adjourn at 12:00 noon.

Anyone requiring information regarding the subject Council should contact Ms. Nada Schnabel, National Advisory Council on the National Health Service Corps, 8th floor, 4350 East West Highway, Rockville, Maryland 20857, Telephone (301) 594–4147.

Agenda Items are subject to change as priorities dictate.

Dated: June 8, 1995.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 95–14405 Filed 6–12–95; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Central and Western Gulf of Mexico, Oil and Gas Lease Sales 166 and 168

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Call for Information and Nominations, and Notice of Intent (Call/NOI) to Prepare an Environmental Impact Statement (EIS).

1. *Authority.* This Call is published pursuant to the Outer Continental Shelf (OCS) Lands Act as amended (43 U. S. C. 1331–1356, (1988)) (OCSLA), and the regulations issued thereunder (30 CFR Part 256).

The NOI is published pursuant to the regulations (40 CFR 1501.7) implementing the provisions of the National Environmental Policy Act of 1969 as amended (42 U. S. C. 4321 et seq. (1988))(NEPA)

2. *Purpose of Call.* The purpose of the Call is to gather information for Outer Continental Shelf (OCS) Lease Sale 166 in the Central Gulf of Mexico (CGOM) Planning Area, tentatively scheduled for March 1997, and OCS Lease Sale 168 in the Western Gulf of Mexico (WGOM) Planning Area, tentatively scheduled for August 1997.

Information and nominations on oil and gas leasing, exploration, and development and production within the Central Gulf of Mexico and Western Gulf of Mexico Planning Areas are sought from all interested parties. This early planning and consultation step is important for ensuring that all interests and concerns are communicated to the Department of the Interior for future decisions in the leasing process pursuant to the OCSLA, and regulations at 30 CFR 256. This Call does not indicate a preliminary decision to lease in the area described below. Final delineation of the area for possible leasing will be made at a later date and in compliance with applicable laws including all requirements of the NEPA and the OCSLA. Established departmental procedures will be employed.

3. *Description of Area.* The general area of this Call covers the entire central and western portions of the Gulf of Mexico between approximately 88 degrees W. longitude on the east and approximately 97 degrees W. longitude on the west and extends from the Federal-State boundaries seaward to the provisional maritime boundary between the United States and Mexico. The entire Call area is offshore the States of Texas, Louisiana, Mississippi, and Alabama and is divided into two planning areas.

The Central Gulf Planning Area is bounded on the east by approximately 88 degrees W. longitude. Its western boundary begins at the offshore boundary between Texas and Louisiana and proceeds southeasterly to approximately 28 degrees N. latitude, thence east to approximately 92 degrees W. longitude, thence south to the provisional maritime boundary with Mexico which constitutes the southern boundary of the area. The northern part of the area is bounded by the Federal-State boundary offshore Louisiana, Mississippi, and Alabama. The area available for nominations and comments at this time consists of approximately 47.8 million acres.

The Western Gulf Planning Area is bounded on the west and north by the Federal-State boundary and on the east by the Central Gulf Planning Area. It extends south to the provisional maritime boundary with Mexico. It is offshore Texas and, in deeper water, offshore Louisiana. The area available for nominations and comments consists of about 35.9 million acres.

A standard Call for Information Map depicting each planning area on a block-by-block basis is available without charge from: Minerals Management Service, Public Information Unit (MS 5034), 1201 Elmwood Park Boulevard,

New Orleans, Louisiana 70123–2394, Telephone: 1–800–200–GULF.

4. *Areas Deferred from this Call.* High Island Area, East Addition, South Extension, (Flower Gardens), Block A–375 and Block A–398 (WGOM).

Mustang Island Area, Blocks 793, 799 and 816 (offshore Corpus Christi) are excluded from this Call.

5. *Instructions on Call.* Indications of interest and comments must be received no later than 45 days following publication of this document in the **Federal Register** in envelopes labeled "Nominations for Proposed 1997 Lease Sales in the Gulf of Mexico" or "Comments on the Call for Information and Nominations for Proposed 1997 Lease Sales in the Gulf of Mexico." The standard Call for Information Map and indications of interest and/or comments must be submitted to the Regional Supervisor, Leasing and Environment, Gulf of Mexico OCS Region, at the above address.

The standard Call for Information Map delineates the Call area, all of which has been identified by the MMS as having potential for the discovery of accumulations of oil and gas. Respondents are requested to indicate interest in and comment on any or all of the Federal acreage within the boundaries of the Call area that they wish to have included in proposed Sale 166 in the Central Gulf and proposed Sale 168 in the Western Gulf.

Although individual indications of interest are considered to be privileged and proprietary information, the names of persons or entities indicating interest or submitting comments will be of public record. Those indicating such interest are required to do so on the standard Call for Information Map by outlining the areas of interest along block lines.

Respondents should rank areas in which they have expressed interest according to priority of their interest (e.g., priority 1 [high], 2 [medium], or 3 [low]). Respondents are encouraged to be specific in indicating blocks by priority, as blanket nominations on large areas are not useful in the analysis of industry interest. Areas where interest has been indicated but on which respondents have not indicated priorities will be considered priority 3 [low].

Respondents may also submit a detailed list of blocks nominated (by Official Protraction Diagram and Leasing Map designations) to ensure correct interpretation of their nominations. Specific questions may be directed to the Chief, Leasing Activities Section at (504) 736–2761. Official Protraction Diagrams and Leasing Maps can be purchased from the Public Information Unit referred to above.

Comments are sought from all interested parties about particular geological, environmental, biological, archaeological and socioeconomic conditions or conflicts, or other information that might bear upon the potential leasing and development of particular areas. Comments are also sought on possible conflicts between future OCS oil and gas activities that may result from the proposed sales and State Coastal Management Programs (CMP's). If possible, these comments should identify specific CMP policies of concern, the nature of the conflict foreseen, and steps that the MMS could take to avoid or mitigate the potential conflict. Comments may either be in terms of broad areas or restricted to particular blocks of concern. Those submitting comments are requested to list block numbers or outline the subject area on the standard Call for Information Map.

6. *Use of Information from Call.* Information submitted in response to this Call will be used for several purposes. First, responses will be used to identify the areas of potential for oil and gas development. Second, comments on possible environmental effects and potential use conflicts will be used in the analysis of environmental conditions in and near the Call area. This information will be used to make a preliminary determination of the potential advantages and disadvantages of oil and gas exploration and development to the region and the Nation. A third purpose for this Call is to use the comments collected to initiate the scoping process for the Environmental Impact Statement (EIS) and to develop a proposed action and alternatives. Fourth, comments may be used in developing lease terms and conditions to ensure safe offshore operations. And, fifth, comments may be used to assess potential conflicts between offshore gas and oil activities and a State CMP.

7. *Existing Information.* Prior to the Call, the sale planning process includes an Information Base Review (IBR), a documented MMS assessment of the status of information acquisition efforts and the quality of the information base for potential decisions on a specific leasing proposal.

The Information Transfer Meeting in November 1994 served as the initial forum for soliciting information enhancements for the IBR. In February-March 1995, an internal review of available data and planned studies was conducted by the Gulf of Mexico Region to obtain a comprehensive assessment of the status of the information base. The information base, in part, is documented in the Long-Range Strategic Plan for Environmental Studies in the Gulf of Mexico, 1995–1999.

Appropriate study proposals and research plans will be incorporated into the environmental studies planning and evaluation process, the direction of the Technology Assessment, and Research Program, and other mechanisms in MMS (reviews and Industry Standards Committees). No comments were received from parties outside the MMS.

As a result, it has been determined that the status of the existing data available for planning, analysis, and decisionmaking is adequate and extensive. In accordance with the relevant statutes and regulations which govern OCS oil and gas leasing, no informational needs were identified which would provide a legal basis for the delay or cancellation of the leasing process. Therefore, the lease sale process should continue with the next step, a Call for Information and Nominations.

An extensive environmental studies program has been underway in this area since 1973. The emphasis, including continuing studies, has been on environmental characterization of biologically sensitive habitats, physical oceanography, ocean-circulation modeling, and ecological effects of oil and gas activities. A complete listing of available study reports, and information for ordering copies, can be obtained from the Public Information Unit referenced above. The reports may also be ordered, for a fee, from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, or telephone (703) 487–4650. In addition, a program status report for continuing studies in this area can be obtained from the Chief, Environmental Studies Section, Gulf of Mexico OCS Region (see address under "Description of Area"), or telephone (504) 736–2896.

Summary Reports and Indices and technical and geological reports are available for review at the MMS, Gulf of Mexico OCS Region. Copies of the Gulf of Mexico OCS Regional Summary Reports may be obtained from the OCS Information Program, Office of Offshore Information and Publications, Minerals Management Service, at 381 Elden Street, Herndon, Virginia 22070.

8. *Tentative Schedule.* The following is a list of tentative milestone dates preceding Sale 166 and Sale 168:

	CGOM sale 166	WGOM sale 168
Comments due on Call and Notice Of Intent (Scoping)	July 1995	July 1995.
Area Identification	Aug. 1995	Aug. 1995.
Draft EIS published	Mar. 1996	Mar. 1996.
Proposed Notice Issued	Mar. 1996	Mar. 1996.
Public Hearings	May 1996	May 1996.
Governors' Comments Due on Proposed Notice	June 1996	June 1996.
Final EIS published	Nov. 1996	Nov. 1996.
Consistency Determination	Nov. 1996	Apr. 1996.
Final Notice of Sale	Feb. 1997	July 1997.
Sale Date	Mar. 1997	Aug. 1997.

9. *Purpose of Notice of Intent.* Pursuant to the regulations implementing the procedural provisions of the NEPA, the MMS is announcing its intent to prepare an EIS on the oil and gas leasing proposals known as Sale 166 in the Central Gulf, and Sale 168 in the Western Gulf, off the States of Texas, Louisiana, Mississippi, and Alabama. The NOI also serves to announce the scoping process that will be followed for this EIS. Throughout the scoping process, Federal Agencies and State and local governments and other interested parties have the opportunity to aid the MMS in determining the significant issues and alternatives to be analyzed in the EIS.

The EIS analysis will focus on the potential environmental effects of leasing, exploration, and development of the blocks included in the areas defined in the Area Identification procedure as the proposed areas of the Federal actions. Alternatives to the proposal which may be considered for each sale are to delay the sale, cancel the sale, or modify the sale.

10. *Instructions on NOI to Prepare an EIS.* Federal Agencies and State and local governments and other interested parties are requested to send their written comments on the scope of the EIS, significant issues which should be addressed, and alternatives that should be considered to the Regional Supervisor, Leasing and Environment, Gulf of Mexico OCS Region, at the address stated under "Description of Area." Comments should be enclosed in an envelope labeled "Comments on the NOI to Prepare an EIS on the proposed 1997 Lease Sales in the Gulf of Mexico." Comments on the NOI should be submitted no later than 45 days from publication of this Notice. Scoping meetings will be held in appropriate locations to obtain additional comments and information regarding the scope of the EIS.

Approved: June 6, 1995.

Cynthia Quarterman,

Director, Minerals Management Service.

Sylvia V. Baca,

Deputy Assistant Secretary—Land and Minerals Management.

[FR Doc. 95–14441 Filed 6–12–95; 8:45 am]

BILLING CODE 4310–MR–P

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 3, 1995. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by June 28, 1995.

Carol D. Shull,

Keeper of the National Register.

ALABAMA

Mobile County

Lower Dauphin Street Commercial District (Boundary Increase), Roughly, Dauphin St. from Jefferson St. to Dearborn St. and St. Francis St. S side from Bayou St. to Lawrence St., Mobile, 95000779

ARKANSAS

Boone County

Haggard Ford Swinging Bridge (Historic Bridges of Arkansas MPS), Over Bear Cr. at Cottonwood Rd., 8 mi. N of Harrison, Harrison vicinity, 95000790

Logan County

First Christian Church, 120 E. Walnut St., Paris, 95000791

Miller County

Lightfoot, Dr. J. A., House, 422 Pecan St., Texarkana, 95000792

Ouachita County

Umsted, Sidney A., House, 404 Washington St., Camden, 95000789

CALIFORNIA

Napa County

Smith, Williams, House, 1929 First St., Napa, 95000786

Ventura County

St. Thomas Aquinas Chapel, 130 W. Ojai Ave., Ojai, 95000785

COLORADO

Douglas County

Daniels Park (Denver Mountain Parks MPS), Along Douglas Co. Rd. 67 NE of Sedalia, Sedalia vicinity, 95000795

Jefferson County

Craig, Katherine, Park (Denver Mountain Parks MPS), Along US 40/I–70 NW of Morrison, Morrison vicinity, 95000797

Starbuck Park (Denver Mountain Parks MPS), CO 74 through Bear Creek Canyon, S of Idledale, Idledale vicinity, 95000796

Rio Grande County

Monte Vista Library, 110 Jefferson St., Monte Vista, 95000782

Routt County

Perry—Mansfield School of Theatre and Dance, 40755 Routt Co. Rd. 36, Steamboat Springs vicinity, 95000794

MISSISSIPPI

Harrison County

Brielmaier House (Biloxi MRA), 710 Beach Blvd., Biloxi, 84002170

Marion County

Superintendent's Home at Columbia Training School, 1730 MS 44, Columbia, 95000787

Neshoba County

U.S. Post Office (Philadelphia), Old, 523 Main St., Philadelphia, 95000788

MISSOURI

Callaway County

Bell, M. Fred, Speculative Cottage, 304 E. Fifth St., Fulton, 95000780

Mercer County

Casteel, Herbert Cain and Corah Brantley, House, Address Restricted, Princeton, 95000781

NEBRASKA

Fillmore County

Stockholm Swedish Lutheran Church and Cemetery, 2.5 mi. W and 0.5 mi. S of Shickley, Shickley vicinity, 95000798

Lancaster County

Ehlers Round Barn, S of NE 2, NE of Roca, Roca vicinity, 95000799
Woods, Frank and Nelle Cochrane, House, 2501 Sheridan Blvd., Lincoln, 95000793

NORTH CAROLINA

Wake County

Crabtree Creek Recreational Demonstration Area (Wake County MPS), Roughly bounded by I–40, US 70 and the Raleigh-Durham Airport, Raleigh, 95000783

SOUTH DAKOTA

Brown County

Herron, Anna, Farm (Rural Resources of Brown County MPS), 1.5 mi. E of SD 18 on Co. Hwy. 21, West Hanson Township, Groton vicinity, 95000778

TEXAS

Navarro County

Mills Place Historic District (Corsicana MPS), Roughly bounded by W. 2nd Ave., Mills Place Dr. and W. Park Ave., Corsicana, 95000800

WASHINGTON

Clark County

Kiggins, John P. and Mary, House, 411 E. Evergreen Blvd., Vancouver, 95000804

Douglas County

Gallaher House, 600 12th St., Mansfield vicinity, 75001848

King County

Lyon Building, 607 Third Ave., Seattle, 95000806

Okanogan County

Okanogan County Courthouse, 149 N. Third Ave., Okanogan, 95000805

Snohomish County

Naval Auxiliary Air Station—Arlington, 18204 59th Dr. NE., Arlington Municipal Airport, Arlington, 95000802

Stevens County

Colville Flour Mill, 466 W. First St., Colville, 95000809
Meyers Falls Power Plant Historic District (Hydroelectric Power Plants in Washington State, 1890—1938 MPS),0.5 mi. S of Kettle Falls at Colville R., on either side of Juniper St., Kettle Falls vicinity, 95000808
Rickey Block, 230 S. Main St., Colville, 95000807

Thurston County

Chamber's Prairie—Ruddell Pioneer Cemetery, Jct. of Ruddell and Mullen Rds., NW corner, Lacey, 95000803
Schmidt, F. W., House (Olympia Residential Architecture MPS), 2831 Orange, Olympia, 95000801

[FR Doc. 95–14397 Filed 6–12–95; 8:45 am]
BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a request for approval of a questionnaire to the Office of Management and Budget for review.

PURPOSE OF INFORMATION COLLECTION: The forms are for use by the Commission in connection with investigation No. 332–361, Global Competitiveness of U.S. Environmental Technology Industries: Air Pollution Prevention and Control, instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

SUMMARY OF PROPOSAL:

(1) Number of forms submitted: one
(2) Title of form: Global Competitiveness of U.S. Environmental Technology Industries: Air Pollution Prevention and Control
(3) Type of request: new
(4) Frequency of use: Producer questionnaire, single data gathering, scheduled for 1995.
(5) Description of respondents: U.S. firms which produce equipment or provide services for air pollution prevention and control.
(6) Estimated number of respondents: 300
(7) Estimated total number of hours to complete the forms: 6,000
(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

ADDITIONAL INFORMATION OR COMMENT: Copies of the forms and supporting documents may be obtained from David Ingersoll (USITC, telephone no. (202) 205–2218). Comments about the proposals should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503, Attention: Desk Officer for the U.S. International Trade Commission (telephone no. 202–395–7340). All comments should be specific, indicating which part of the questionnaire is objectionable, describing the concern in detail, and including specific suggested revisions or language changes. Copies of any comments should be provided to Robert Rogowsky, Director, Office of Operations, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TTD terminal (telephone no. 202–205–1810).

List of Subjects: Environmental protection, environmental technology, export promotion, air pollution.

Issued: June 7, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–14419 Filed 6–12–95; 8:45 am]
BILLING CODE 7020–02–P

[Investigation No. 337–TA–365]

Certain Audible Alarm Systems for Divers; Notice of Issuance of Limited Exclusion Order and Cease and Desist Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order and a cease and desist order in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Anjali K. Singh, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–3117.

SUPPLEMENTARY INFORMATION: The authority for the Commission's determinations is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.58 of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.58).

The Commission instituted this investigation on May 31, 1994, based upon a complaint filed on April 28, 1994, by David A. Hancock and Ideations Design Inc. ("complainants") alleging that IHK International Group of Torrance, California ("IHK") and Duton Industry Co., Ltd. of Taipei, Taiwan ("Duton") (collectively referred to as "respondents") had violated section 337 in the sale for importation, the importation, and the sale after importation of certain audible alarm devices for divers, by reason of infringement of claim 6 of U.S. Letters Patent 4,950,107 ('107 patent) and claim 1 of U.S. Letters Patent 5,106,236 ('236 patent) owned by Mr. Hancock. 59 FR 29615 (June 8, 1994).

On October 25, 1994, the presiding administrative law judge (ALJ) issued an initial determination (ID) (Order No. 23) finding that respondent Duton was in default. The ALJ also issued evidentiary sanctions in the form of adverse findings against Duton. On November 21, 1994, the Commission determined not to review the ID. 59 FR 61342 (November 30, 1994).

On February 2, 1995, the ALJ issued her final ID finding that: (1) claim 6 of the '107 patent and claim 1 of the '236 patent are valid and enforceable; (2) there is a domestic industry manufacturing and selling products protected by those two patent claims; (3) respondent IHK has imported products that infringe claim 6 of the '107 patent and claim 1 of the '236 patent; and (4) respondent Duton has exported to the United States products that infringe claim 6 of the '107 patent and claim 1 of the '236 patent. No petitions for review or agency comments were filed. On March 13, 1995, the Commission determined not to review the ALJ's final ID, and requested written submissions on the issues of remedy, the public interest, and bonding. 60 FR 14960 (March 21, 1995).

Submissions on remedy, the public interest, and bonding were received from complainants and the Commission investigative attorney (IA), both of whom also filed reply submissions on those issues.

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission made its determinations on the issues of remedy, the public interest, and bonding. The Commission determined that the appropriate form of relief is a limited exclusion order prohibiting the unlicensed entry for consumption of infringing audible alarm devices manufactured and/or imported by or on behalf of IHK and Duton. In addition, the Commission issued a cease and desist order directed to IHK requiring IHK to cease and desist from the following activities in the United States: importing, selling, marketing, distributing, offering for sale, or otherwise transferring (except for exportation) in the United States infringing imported audible alarm devices.

The Commission also determined that the public interest factors enumerated in 19 U.S.C. 1337 (d) and (f) do not preclude the issuance of the limited exclusion order and the cease and desist orders, and that the bond during the Presidential review period shall be in the amount of 152 percent of the entered value of the articles in question.

Copies of the Commission orders, the Commission opinion in support thereof, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: June 6, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–14420 Filed 6–12–95; 8:45 am]
BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on June 1, 1995 a proposed Consent Decree in *United States* v. *Grand Trunk Western Railroad Co.*, Civil Action No. 1:94 CV 530 was lodged with the United States District Court for the Western District of Michigan. This consent decree represents a settlement of claims against Grand Trunk Western Railroad Co. for violations of the Clean Water Act.

Under this settlement between the United States and Grand Trunk Western Railroad Co., Grand Trunk will construct a re-routing and pretreatment system to re-route its process wastewater to the Battle Creek, Michigan, publicly owned treatment works. In addition, Grand Trunk will pay the United States a civil penalty of $535,000. Stipulated penalties may be imposed in the event Grant Trunk does not comply with the requirements of the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Grand Trunk Western Railroad Co.*, D.J. Ref. 90–5–1–1–5037.

The proposed Amendment may be examined at the Office of the United States Attorney, Western District of Michigan, 399 Federal Building, 110 Michigan St. NW, Grand Rapids, Michigan, and at U.S. EPA Region 5, Office of Regional Counsel, 200 West Adams, Chicago, Illinois, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $5.50 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Acting Chief, Environment and Natural Resources Division.

[FR Doc. 95–14368 Filed 6–12–95; 8:45 am]
BILLING CODE 4410–01–M

Notice of Lodging a Joint Stipulation of Settlement Pursuant to the Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 CFR 50.7, and 42 U.S.C. 6973(d), notice is hereby given that on June 2, 1995, a proposed joint stipulation of settlement in *United States* v. *Dale Valentine, et al.*, Civil Action No. 93CV1005J, was lodged with the United States District Court for the District of Wyoming.

The complaint filed by the United States on February 19, 1993, seeks injunctive relief and civil penalties under Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973. The complaint alleges that an abandoned oil reprocessing facility near Glenrock, Wyoming, commonly known as Powder River Crude processors or Big Muddy Oil Processors (the "Site"), may present an imminent and substantial endangerment to human health or the environment. The complaint seeks injunctive relief and civil penalties for violations of administrative orders issued by EPA under Section 7003 of RCRA for a cleanup of the Site.

Under this stipulation, one of the ten defendants named in the action, Jim's Water Service, Inc., will pay a civil penalty of $90,000 to the United States for violations of the administrative order issued by EPA to it on October 3, 1991. The stipulation provides that the penalty claim alleged in the Complaint will be dismissed with prejudice, and all other claims alleged in the Complaint, which include the claims for injunctive relief, will be dismissed without prejudice. This settlement is based in part on information provided to the United States by Defendant Jim's Water Service, Inc. indicating that its financial ability to pay a civil penalty is

limited. Five other defendants in this action are performing work pursuant to a consent decree entered by the Court on June 21, 1994, designed to address conditions at the Site which may present an imminent and substantial endangerment to health or the environment.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed stipulation of settlement. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044, and should refer to *United States* v. *Dale Valentine, et al.*, DOJ Ref. #90–7–1–692. In accordance with Section 7003(d) of RCRA, commenters can also request a public meeting in the affected area.

The proposed stipulation may be examined at the Office of the United States Attorney for the District of Wyoming, 3rd Floor, Federal Building, 111 South Wolcott, Casper, Wyoming 82601; the United States Environmental Protection Agency, Region 8, 999 18th Street—Suite 500, Denver, Colo. 80202–2466; and at the Consent Decree Library, 1120 "G" Street NW., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed stipulation may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and number, and enclose a check in the amount of $1.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–14367 Filed 6–12–95; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

[Docket No. 93–74]

Richard C. Matzkin, M.D. Grant of Continued Registration

On July 27, 1993, the Deputy Assistant Administrator (then-Director), Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Richard C. Matzkin, M.D. of Bethesda, Maryland (Respondent), proposing to revoke his DEA Certificate of Registration, AM2532631, and deny any pending applications for such registration. The statutory basis for the Order to Show Cause was that Respondent's continued registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

Respondent, through counsel, requested a hearing on the issues raised in the Order to Show Cause, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held in Arlington, Virginia on March 14, 1994.

On November 3, 1994, the administrate law judge issued her opinion and recommended ruling, findings of fact, conclusions of law and decision, recommending that Respondent's DEA Certificate of Registration not be revoked subject to his compliance with several requirements. No exceptions to Judge Bittner's decision were filed by either party.

On December 6, 1994, the administrative law judge transmitted the record of the proceeding to the Deputy Administrator. After careful consideration of the record in its entirety, the Deputy Administrator enters his final order in this matter, in accordance with 21 CFR 1316.67, based on findings of fact and conclusions of law as set forth herein.

The administrative law judge found that Respondent obtained a license to practice medicine in Maryland in 1984 and maintained a practice in Bethesda. Respondent subsequently became licensed in Virginia and the District of Columbia. In the summer of 1989, Respondent began a general practice in Virginia, but continued to maintain a practice in Bethesda which, by Respondent's testimony, was limited to treating members of his immediate family and three close friends.

The administrative law judge found that, in 1986, a detective from the Pharmaceutical Unit of the Montgomery County, Maryland, Police Department was informed by several pharmacists that they had received prescriptions written by Respondent which they felt were not within a legitimate prescribing pattern, and that most of the prescriptions were for Percocet, a Schedule II controlled substance. The detective further testified that he found approximately 50 prescriptions for Percocet issued by Respondent at various area pharmacies, and that most of these prescriptions had been issued for five individuals, several of whom had been targets of prior investigations and/or had been arrested on drug charges.

The administrative law judge further found that a former investigator for the Virginia Department of Health (the Virginia investigator) investigated a complaint that Respondent was prescribing controlled substances to persons living outside of the state. The investigator found that most of these prescriptions were written for Percocet and that they had been written for Respondent's father, brother and then-wife, as well as two of the individuals identified by the Montgomery County, Maryland investigation.

The Virginia investigator testified that Respondent had prescribed controlled substances, primarily Percocet, to a number of individuals without a legitimate medical need and without conducting medical examinations prior to issuing controlled substances prescriptions. In one such instance, Respondent prescribed controlled substances to an individual who he knew to be drug and alcohol dependent.

The Virginia investigator further testified that several of the pharmacists who filled Respondent's prescriptions had complained that he often picked up the filled prescriptions for his out-of-state patients, and subsequently mailed the drugs to these patients. The Virginia investigator acknowledged that this practice was not unlawful.

The Virginia investigator also interviewed Respondent who informed her that he did not perform physical examinations on these patients prior to issuing prescriptions for them, and that his mother had disposed of the medical records that he had maintained on these patients. She further testified that, although Respondent had stated that all of the people who received the prescriptions at issue had complained of some type of pain or medical condition, Respondent's conduct was in violation of Virginia law because he did not maintain medical records for these patients, nor conduct physical examinations prior to prescribing controlled substances.

The administrative law judge found that on March 29, 1991, the Virginia Board of Medicine notified Respondent that it would conduct an informal conference on allegations that he had violated provisions of Virginia law pertaining to the practice of medicine. On June 21, 1991, Respondent entered into a consent order pursuant to which he voluntarily surrendered his Virginia license in lieu of further administrative proceedings.

The administrative law judge further found that, on January 20, 1992, the Montgomery County state's attorney office executed information charging Respondent with two counts of unlawfully prescribing Schedule II drugs and that Respondent was arrested on these charges on January 30, 1992. The charges against Respondent eventually were nolle-prossed.

The administrative law judge found that the Maryland State Board of Physician Quality Assurance (the Board) initiated an investigation of Respondent in November 1991 after the Maryland Division on Drug Control notified the Board that Responent had surrendered his Virginia license. In February 1992, the Board summarily suspended Respondent's medical license in Maryland based upon the surrender of his Virginia license, his January 1992 arrest and the charges that he had improperly prescribed controlled substances. As a result of the criminal case against Respondent being nolle-prossed, the Board executed a consent order on June 2, 1992, lifting the summary suspension and placing Respondent on a three year probationary period with conditions. Judge Bittner also noted testimony that, at the time of the hearing in this proceeding, Respondent remained in full compliance with the conditions of his probation.

The Government argued that Respondent's DEA Certificate of Registration should be revoked because Respondent: (1) violated 21 CFR 1306.04(b) by prescribing controlled substances to individuals without first conducting physical examinations; (2) had violated 21 U.S.C. 822(e) and 21 CFR 1301.23 by having prescriptions filled for controlled substances and mailing them to individuals; (3) prescribed controlled substances to an individual who was drug and alcohol dependent; and (4) voluntarily surrendered his Virginia medical license because of his inappropriate prescribing of controlled substances.

Respondent argued that: (1) he was never convicted of any criminal activity; (2) he voluntarily surrendered his Virginia license in lieu of further administrative proceedings; (3) his failure to maintain adequate medical records for certain patients was not his usual practice; (4) the patients to whom he mailed controlled substances were longtime friends or family and he acted with good intentions; (5) he has been in good standing with the Maryland State Board of Physician Quality Assurance since he signed the consent order; and (6) he continues to maintain a medical practice in the State of Maryland.

Pursuant to 21 U.S.C. 824(a)(4) the Deputy Administrator of the DEA may revoke the registration of a practitioner upon a finding that the registrant has committed such acts as would render his registration inconsistent with the public interest as that term is used in 21 U.S.C. 823(f). In determining the public interest, the following factors will be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The [registrant]'s experience in dispensing, or conducting research with respect to controlled substances.

(3) The [registrant]'s conviction record under Federal or State laws relating to the manufacture, distribution or dispensing of controlled substances.

(4) Compliance with applicable State, Federal or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

It is well established that these factors are to be considered in the disjunctive, i.e. the Deputy Administrator may properly rely on any one or a combination of factors, and give each factor the weight he deems appropriate in assessing the public interest. *See Mukand Lal Arora, M.D.*, 60 FR 4447 (1995); *Henry J. Schwartz, Jr., M.D.*, 54 FR 16422 (1989). The administrative law judge found that factors (1), (2), (4), and (5) were relevant in considering whether Respondent's DEA registration should be revoked.

The administrative law judge found that testimony by two patients that Respondent had used cocaine and traded other controlled substances for-cocaine, were statements made by acknowledged drug abusers who, themselves, were under investigation at the time they raised their allegations against Respondent, and, therefore, their hearsay statements were not sufficiently reliable to warrant a finding that Respondent had engaged in the alleged conduct. Judge Bittner further found that it was not disputed that Respondent had picked up filled prescriptions and mailed the medication to patients, but that such conduct was not illegal in Virginia, the jurisdiction in which Respondent was practicing at that time, and that there was no evidence of any other state or Federal regulation of such practice. Judge Bittner found no merit to the Government's contention that Respondent's practice of retrieving filled prescriptions for certain patients violated 21 CFR 1306.04(b).

The administrative law judge additionally found that it was not disputed that Respondent had prescribed medication to certain patients without first performing a physical examination. It was further undisputed that Respondent did not keep charts on the patients he treated out of his Bethesda location after December 1989, when, as Respondent contended, his mother disposed of his patient records. Judge Bittner found that Respondent's failure to maintain records on those patients constitutes grounds for revoking his DEA registration. However, the administrative law judge found that the evidence did not establish that revocation of Respondent's registration would be in the public interest and recommended that Respondent's DEA Certificate of Registration not be revoked subject to his compliance with the following conditions for two years from the effective date of the Deputy Administrator's final order: (1) Respondent shall not dispense directly or administer any controlled substances except in a hospital setting; (2) Respondent shall use triplicate forms for all controlled substance prescriptions and shall maintain at his registered location one copy of each form and arrange for another copy to be received by the Special Agent in Charge of DEA's Baltimore District Office or his designee; and (3) Respondent shall consent to inspections of his registered premises pursuant to notices of inspection as described in 21 U.S.C. 880.

The Deputy Administrator adopts the opinion and recommended ruling, findings of fact, conclusions of law and decision of the administrative law judge in its entirety. Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, AM2432631, issued to Richard C. Matzkin, M.D., be, and it hereby is, continued subject to the conditions enumerated by the administrative law judge. This order is effective on July 13, 1995.

Dated: June 6, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95–14369 Filed 6–12–95; 8:45 am]

BILLING CODE 4410–09–M

Immigration and Naturalization Service

[INS No. 1722–95]

Discontinuation of the Nicaraguan Review Process

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: this notice announces the termination of the special review procedures under which the files of Nicaraguan nationals subject to final deportation orders were subject to

mandatory review by the Immigration and Naturalization Service (INS) and the Office of the Deputy Attorney General. Changes in country conditions in Nicaragua coupled with improvements in the asylum adjudications process have rendered these special procedures unnecessary. Cases of affected individuals will be handled individually under normal procedures to decide whether any factors permit them to remain in the United States.

EFFECTIVE DATE: June 13, 1995.

FOR FURTHER INFORMATION CONTACT: Robert A. Jacobson, Director, Policy Development and Special Programs Branch, Detention and Deportation Division, Immigration and Naturalization Service, 425 I Street NW., Room 3008, Washington, D.C. 20536, telephone (202) 514–2871.

SUPPLEMENTARY INFORMATION:

Background

In 1987, then Attorney General Meese initiated the Nicaraguan Review Program (NRP). Under these special procedures, the INS and Department of Justice (DOJ) reviewed the case of each Nicaraguan who had received a final deportation order to ensure that no Nicaraguan with a well founded fear of persecution was deported unless it was determined that the person had engaged in serious criminal activity or posed a danger to the national security.

The INS reviewed the country conditions in Nicaragua and considered the need for continued specialized review. The INS concluded that the political situation in Nicaragua and the United States government's asylum adjudications procedures had improved to such an extent that it was no longer necessary to have a special review of every final order of deportation involving a Nicaraguan national. Therefore, the INS requested that the Attorney General discontinue the NRP. Attorney General Janet Reno approved the termination of the NRP. Accordingly, all DOJ and INS implementing and procedural NRP memoranda and wires are hereby rescinded. The INS Headquarters is issuing a directive notifying its field offices that Nicaraguans are no longer subject to special review under the NRP.

Future Consideration of Cases

Cases of Nicaraguan nationals under deportation or exclusion proceedings will receive no further special review. Nicaraguan cases will be handled under normal procedures, on a case-by-case basis. Each case will receive all appropriate consideration consistent with applicable law and regulations. Due regard will be given to any existing equities or immigration benefits which might accrue to the specific alien involved.

Nicaraguan nationals affected by the termination of the NRP may be eligible to apply for suspension of deportation pursuant to section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254 if they (1) have been present in the United States for at least 7 years (10 years in the case of certain criminal aliens), (2) are persons of good moral character, and (3) are persons whose deportation would pose an extreme hardship to themselves or to their spouse, parent, or child who is either a United States citizen or a lawful permanent resident. To apply for such relief, aliens with final orders must file a motion to reopen with the immigration judge pursuant to 8 CFR 3.23 and 242.22 or the Board of Immigration Appeals (BIA) pursuant to citations 8 CFR 3.2 and 3.8.

Nicaraguans have no need to fear immediate expulsion from the United States as a group. Discontinuation of the NRP will not cause Nicaraguans to be targeted as a group or treated as a special class for any enforcement activity.

Work Authorization

As the work authorization of individual Nicaraguans with final deportation orders expires, the INS will review requests for renewal on a case-by-case basis. Work authorization will not be extended automatically due to the termination of the NRP. Moreover, the regulatory authority under which many Nicaraguans whose cases were under review by the NRP received employment authorization, 8 CFR 274a.12(c)(13), was eliminated as a result of new asylum regulations which became effective on January 4, 1995.

Nicaraguans and other persons who now have work authorization and who filed asylum applications *before* January 4, 1995, may obtain extensions of this authorization while their applications are pending adjudication or review by the INS, an immigration judge, the BIA, or a Federal court. Those who file asylum applications after January 4, 1995, must wait 150 days after their applications are filed to apply for work authorization.

Transitional criteria, however, will apply for 1 year from the date of this notice to some employment authorization requests from Nicaraguans affected by termination of the NRP. Specifically, the INS will treat the filing of a motion to reopen deportation proceedings accompanied by an application for suspension of deportation as a sufficient basis upon which such a person may apply for work authorization. In such cases, work authorization may be granted upon a finding that the alien has met the physical presence requirement for suspension of deportation.

Dated: June 6, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–14386 Filed 6–8–95; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Women's Bureau; Commission on Family and Medical Leave; Notice of Public Hearing

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of public hearing.

SUMMARY: Pursuant to Title III of the Family Medical Leave Act (FMLA) of 1993 (P.L. 103–3) this is to announce a hearing on the experience of family and temporary medical leave policies for the Commission which is to take place on Monday, June 26, 1995. The purpose of the Commission is to, among other things, study the effects of existing and proposed policies relating to family and medical leave. The Commission has the practical task of conducting a comprehensive study of: (a) Existing and proposed mandatory and voluntary policies relating to family and temporary medical leave, including policies provided by employers not covered under the Act; (b) the potential costs, benefits, and impact on productivity, job creation and business growth of such policies on employers and employees; (c) possible differences in costs, benefits, impact on productivity, job creation and business growth of such policies on employers based on business type and size; (d) the impact of family and medical leave policies on the availability of employee benefits provided by employers, including employers not covered under this Act; (e) alternative and equivalent State enforcement of Title I with respect to employees described in section 108(a); (f) methods used by employers to reduce administrative costs of implementing family and medical leave policies; (g) the ability of the employers to recover, under section 104(c)(2), the premiums described in such section; and (h) the impact on employers and employees of policies that provided temporary wage replacement during periods of family and medical leave.

TIME AND PLACE: The hearing will be held on Monday, June 26, 1995, from 9:00 am until 12:00 pm, at the St. Mary's Medical Center, 450 Stanyan Street, San Francisco, California 94117.

AGENDA: The agenda for the hearing is as follows: three panels of witnesses will give testimony on their experiences with family and temporary medical leave policies.

STATEMENTS: Interested persons may submit, in writing, data, information or views on employer or employee experiences with family and temporary medical leave policies prior to or at the hearing.

PUBLIC PARTICIPATION: The hearing will be open to the public. Seating will be available on a first-come, first-served basis. Seats will be reserved for the media. Persons with disabilities should contact the Commission no later than June 19, 1995, if special accommodations are needed.

FOR FURTHER INFORMATION CONTACT: Susan King, Executive Director, Commission on Leave, U.S. Department of Labor, 200 Constitution Avenue NW., Room S–3002, Washington, D.C. 20210, telephone: (202) 219–4526, Ext. 102.

Signed at Washington, D.C. this 5th day of June, 1995.

Susan King,

Executive Director, Commission on Leave.

[FR Doc. 95–14432 Filed 6–12–95; 8:45 am]

BILLING CODE 4510–23–M

Employment and Training Administration

National Skill Standards Board; Notice of Open Meeting

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of open meeting.

SUMMARY: The National Skill Standards Board was established by an Act of Congress, the Goals 2000: Educate America Act of 1994, Title V, Pub. L. 103–227. The 28-member National Skill Standards Board will serve as a catalyst and be responsible for the development and implementation of a national system of voluntary skill standards and certification through voluntary partnerships which have the full and balanced participation of business, industry, labor, education, and other key groups.

TIME AND PLACE: The meeting will be held from 8:00 a.m. to 12:00 noon on Monday, June 26, 1995, at the Main Conference Room of the International Brotherhood of Electrical Workers (IBEW), International Office, 1125 15th Street NW., Washington, D.C.

AGENDA: The agenda for the Board meeting will include presentations on existing skill standards efforts by industries and States.

PUBLIC PARTICIPATION: The meeting from 8:00 a.m. to 12:00 noon, is open to the public. Seating is limited and will be available on a first-come, first-served basis. Seats will be reserved for the media. Disabled individuals should contact Daniel Burkitt at 202/208–7018, no later than June 19, 1995, if special accommodations are needed.

FOR FURTHER INFORMATION CONTACT: Daniel Burkitt at 202/208–7018.

Signed at Washington, D.C. this 7th day of June, 1995.

Tim Barnicle,

Acting Assistant Secretary for Employment and Training, Department of Labor.

[FR Doc. 95–14423 Filed 6–12–95; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 95–039]

Government-Owned Inventions; Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions below are owned by the U.S. Government and are available for domestic, and possibly, foreign licensing.

Copies of patent applications cited are available from the National Technical Information Service, Springfield, VA 22161. Requests for copies of patent applications must include the patent application serial number. Claims are deleted from the patent applications sold to avoid premature disclosure.

DATES: June 13, 1995.

FOR FURTHER INFORMATION CONTACT: National Aeronautics and Space Administration, Harry Lupuloff, Director of Patent Licensing, Code GP, Washington, DC 20546, telephone (202) 358–2041, fax (202) 358–4341.

Patent Application 07/973,592: Composite Flexible Blanket Insulation; filed November 9, 1992

Patent Application 08/014,584: Aerodynamic Surface Distention System for High Angle of Attack Forebody Vortex Control; filed February 8, 1993

Patent Application 08/014,581: Lift Enhancing Tab for Airfoils; filed February 8, 1993

Patent Application 08/018,128: A Current Loop Measuring System; filed February 16, 1993

Patent Application 08/032,067: Aircraft Maneuver Envelope Warning System; filed March 1, 1993

Patent Application 08/024,133: Optical Poterial Field Mapping System; filed March 1, 1993

Patent Application 08/031,972: Liquid Crystal Flow Direction Indicator; filed March 16, 1993.

Dated: June 6, 1995.

Edward A. Frankle,

General Counsel.

[FR Doc. 95–14433 Filed 6–12–95; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–382]

Entergy Operations, Inc.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Entergy Operations, Inc. (the licensee) to withdraw its October 15, 1993, application for proposed amendment to Facility Operating License No. NPF–38 for the Waterford Steam Electric Station, Unit No. 3, located in St. Charles Parish, Louisiana.

The proposed amendment would have revised the Technical Specifications by removing the requirement to maintain operational and test the containment hydrogen recombiners.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on December 22, 1993, (58 FR 67845). However, by letter dated May 19, 1995, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated October 15, 1993, and the licensee's letter dated May 19, 1995, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at the University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122.

Dated at Rockville, Maryland, this 5th day of June 1995.

For the Nuclear Regulatory Commission.

Chandu P. Patel,

Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–14406 Filed 6–12–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–348 and 50–364]

Southern Nuclear Operating Company and Alabama Power Company, Joseph M. Farley Nuclear Plant Units 1 and 2; Exemption

I

The Southern Nuclear Operating Company, et al. (SNC or the licensee) is the holder of Facility Operating License Nos. NPF–2 and NPF–8 for the Joseph M. Farley Nuclear Plant, Units 1 and 2 (Farley). The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission in effect now and hereafter.

The facility consists of two pressurized water reactors at Farley, located in Houston County, Alabama.

II

Title 10 CFR 73.55, "Requirements for Physical Protection of Licensed Activities in Nuclear Power Reactors Against Radiological Sabotage," paragraph (a), in part, states that "The licensee shall establish and maintain an onsite physical protection system and security organization which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety."

Section 73.55(d), "Access Requirements," paragraph (1), specifies that "The licensee shall control all points of personnel and vehicle access into a protected area." Section 73.55(d)(5) requires that "A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort." Section 73.55(d)(5) also states that an individual not employed by the licensee (i.e., contractors) may be authorized access to protected areas without escort provided the individual "receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area * * *"

The licensee has proposed to implement an alternative unescorted access control system that would eliminate the need to issue and retrieve badges at each entrance/exit location and would allow all individuals with unescorted access to keep their badges when departing the site.

An exemption from 10 CFR 73.55(d)(5) is required to allow contractors who have unescorted access to take their badges offsite instead of returning them when exiting the site. By letter dated April 3, 1995, SNC requested an exemption from the requirements of 10 CFR 73.55(d)(5) for this purpose.

III

Pursuant to 10 CFR 73.5, "Specific exemptions," the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest. Pursuant to 10 CFR 73.55, the Commission may authorize a licensee to provide alternative measures for protection against radiological sabotage provided the licensee demonstrates that the alternative measures have "the same high assurance objective" and meet "the general performance requirements" of the regulation, and "the overall level of system performance provides protection against radiological sabotage equivalent" to that which would be provided by the regulation.

Currently, unescorted access into the protected areas at the SNC plants is controlled through the use of a photograph on a badge/keycard (hereafter, referred to as "badge"). The security officers at each entrance station use the photograph on the badge to visually identify the individual requesting access. The licensee's employees and contractor personnel who have been granted unescorted access are issued badges upon entrance at each entrance/exit location and are returned upon exit. The budges are stored and are retrievable at each entrance/exit location. In accordance with 10 CFR 73.55(d)(5), contractors are not allowed to take these badges offsite.

Under the proposed biometric system, each individual who is authorized unescorted entry into protected areas would have the physical characteristics of his/her hand (i.e., hand geometry) registered, along with his/her badge number, in the access control system. When a registered user enters his/her badge into the card reader and places his/her hand onto the measuring surface, the system detects that the hand is properly positioned, and records the image. The unique characteristics of the hand image are then compared with the previously stored template in the access control computer system corresponding to the badge to verify authorization for entry.

Individuals, including SNC employees and contractors, would be allowed to keep their badges when they depart the site and, thus, eliminate the need to issue, retrieve, and store badges at the entrance stations to the plant. Badges do not carry any information other than a unique identification number.

All other access processes, including search function capability, would remain the same. This system would not be used for persons requiring escorted access (i.e., visitors).

Based on the Sandia report, "A Performance Evaluation of Biometrics Identification Devices," SAND91–0276•UC–906, Unlimited Release, June 1991, that concluded hand geometry equipment possesses strong performance and high detection characteristics, and on its own experience with the current photo-identification system SNC determined that the proposed hand geometry system would provide the same high level of assurance as the current system that access is only granted to authorized individuals. The biometric system has been in use for a number of years at several sensitive Department of Energy facilities and, recently, at nuclear power plants.

The licensee will implement a process for testing the proposed system to ensure continued overall level of performance equivalent to that specified in the regulation. When the changes are implemented, the respective Physical Security Plan will be revised to include implementation and testing of the hand geometry access control system and to allow SNC employees and contractors to take their badges offsite.

When implemented, SNC will control all points of personnel access into a protected area under the observation of security personnel through the use of a badge and a hand geometry verification system. The numbered picture badge identification system will continue to be used for all individuals who are authorized unescorted access to protected areas. Badges will continue to be displayed by all individuals while inside the protected areas.

Since both the badge and hand geometry would be necessary for access into the protected areas, the proposed system would provide a positive verification process. The potential loss of a badge by an individual as a result of taking the badge offsite would not enable an unauthorized entry into protected areas.

IV

For the foregoing reasons, pursuant to 10 CFR 73.55, the NRC staff has determined that the proposed alternative measures for protection against radiological sabotage meet "the same high assurance objective," and "the general performance requirements" of the regulation and that "the overall level of system performance provides protection against radiological sabotage equivalent" to that which would be provided by the regulation.

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, this exemption is authorized by law and will not endanger life or property or common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the requested exemption from the requirements of 10 CFR 73.55(d)(5) to allow individuals not employed by SNC (i.e., contractors) to take their photo identification badges offsite in conjunction with the use of hand geometry biometrics system to control access into protected areas at the Farley Nuclear plant.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant adverse environmental impact (60 FR 29718).

For further details with respect to this action, see the request for exemption dated April 3, 1995, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Houston-Love Memorial Library, 212 W. Burnshaw Street, Post Office Box 1369 Dothan, Alabama.

This exemption is effective upon issuance and is expected to be implemented when modifications, procedures, and training are completed.

Dated at Rockville, Maryland, this 5th day of June 1995.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–14408 Filed 6–12–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–382]

Entergy Operations Inc.; Waterford Steam Electric Station, Unit 3 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–38, issued to Entergy Operations, Inc., (the licensee), for operation of the Waterford Steam Electric Station, Unit 3, located in St. Charles Parish, Louisiana.

Environmental Assessment

Identification of the Proposed Action

The proposed action would change the technical specifications (TSs) to increase the maximum enrichment for the spent fuel pool and containment temporary storage rack from 4.1 to 4.9 weight percent U–235 when fuel assemblies contain fixed poisons.

The proposed action is in accordance with the licensee's application for amendment dated January 27, 1995.

The Need for the Proposed Action

The proposed action is needed so that the licensee can use higher fuel enrichment to meet cycle energy requirements and to permit future operation with longer fuel cycles.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the TSs. The proposed revisions would permit storage of fuel enriched to a nominal 4.9 weight percent U–235. The safety considerations associated with storing new and spent fuel of a higher enrichment have been evaluated by the NRC staff. The staff has concluded that such changes would not adversely affect plant safety. The proposed changes have no adverse effect on the probability of any accident. No changes are being made in the types or amounts of any radiological effluents that may be released offsite. There is no significant increase in the allowable individual or cumulative occupational radiation exposure.

The environmental impacts of transportation resulting from the use of higher enrichment fuel and extended irradiation (an enveloping case for Waterford Unit 3) were published and discussed in the staff assessment entitled, "NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation," dated July 7, 1988, and published in the **Federal Register** (53 FR 30355) on August 11, 1988, as corrected on August 24, 1988 (53 FR 32322) in connection with Shearon Harris Nuclear Power Plant, Unit 1, Environmental Assessment and Finding of No Significant Impact. As indicated therein, the environmental cost contribution of the proposed increase in the fuel enrichment and irradiation limits are either unchanged or may, in fact, be reduced from those summarized in Table S–4 as set forth in 10 CFR 51.52(c). Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment.

With regard to potential nonradiological impacts, the proposed action involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Waterford Unit 3.

Agencies and Persons Consulted

In accordance with its stated policy, on May 23, 1995, the staff consulted with the Louisiana State official, Prosanta Chowdhury of the Louisiana Radiation Protection Division, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated January 27, 1995, which is available for public inspection at the Commission's Public Document Room, The Gelman 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of New Orleans Library,

Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Dated at Rockville, Maryland, this 7th day of June 1995.

For the Nuclear Regulatory Commission.

Chandu P. Patel,

Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–14409 Filed 6–12–95; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–21112; International Series Release No. 818; File No. 812–9556]

Creditanstalt-Bankverein; Notice of Application

June 7, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Creditanstalt-Bankverein ("Creditanstalt").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) of the Act from section 17(f) of the Act.

SUMMARY OF APPLICATION: Applicant requests an order to permit Creditanstalt a.s., in Prague, the Czech Republic ("Creditanstalt (Czech Republic)"), Bank Creditanstalt S.A., in Warsaw, Poland ("Creditanstalt (Poland)"), Creditanstalt a.s., in Bratislava, Slovakia ("Creditanstalt (Slovakia)"), and Banka Creditanstalt d.d., in Ljubljana, Slovenia ("Creditanstalt Slovenia)") (collectively, the "Foreign Subsidiaries") to act as custodians or subcustodians for investment company assets.

FILING DATE: The application was filed on March 28, 1995, and amended on May 11, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 3, 1995 and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, D.C. 20549. Applicant, Schottengasse 6, A–1010 Vienna, Austria; c/o Bruce E. Clubb, Esq., Baker & McKenzie, 815 Connecticut Avenue NW., Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Special Counsel, at (202) 942–0582, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Creditanstalt is an Austrian commercial bank that provides a broad range of banking and financial services, including custody services. Creditanstalt currently holds assets belonging to registered investment companies. It is regulated in Austria by the Banking Supervisory Authority, the government authority that regulates banks in Austria. As of December 31, 1993, Creditanstalt had shareholders' equity in excess of the equivalent of U.S. $2 billion.

2. Creditanstalt (Czech Republic) was established in Prague in March 1991, having been granted a full banking license by the former State Bank of Czechoslovakia on February 5, 1991. It is a wholly-owned direct subsidiary of Creditanstalt. It is authorized to engage in the business of commercial banking and is supervised by the Czech National Bank.[1] It provides comprehensive banking services to its customers, including custody services.

3. Creditanstalt (Poland) was established in Warsaw in early 1991, following Decision No. 5 of the President of the National Bank of Poland dated January 17, 1991. It is a wholly-owned direct subsidiary of Creditanstalt. It is authorized to engage in the business of commercial banking and is supervised by the National Bank of Poland.[2] It is one of the few foreign-owned banks in Poland to offer a comprehensive range of banking services to its customers, including custody services.

4. Prior to the division of the former Czechoslovakia in 1993 into the Czech Republic and Slovakia, Creditanstalt operated a number of branches in Bratislava, now the capital of the Slovak Republic. In 1994, Creditanstalt separately incorporated its Bratislava branch into Creditanstalt (Slovakia). Creditanstalt (Slovakia) is a wholly-owned direct subsidiary of Creditanstalt.

It is authorized to engage in the business of commercial banking and is supervised by the National Bank of Slovakia.[3] It provides comprehensive banking services to its customers, including custody services.

5. Creditanstalt (Slovenia) was established in Ljubljana in early 1990. It is a wholly-owned direct subsidiary of Creditanstalt. It is authorized to engage in the business of commercial banking and is supervised by the Bank of Slovenia, the Republic Secretariat of Finance, and the bank-deposit insurance agency.[4] It provides comprehensive banking services to its customers, including custody services. Slovenian law currently prohibits banks in that country from providing custody services for customers that are non-residents of that country. This prohibition is expected to be lifted, however, as the Government of Slovenia adopts measures to encourage foreign investment in that country.

6. Creditanstalt requests an order under section 6(c) to (a) permit Creditanstalt, as custodian or subcustodian for any management investment company registered under the Act, other than an investment company registered under section 7(d) of the Act (a "U.S. Investment Company"), to deposit, or cause or permit a U.S. Investment Company to deposit, its Foreign Securities, cash, and cash equivalents ("Assets") with the Foreign Subsidiaries as delegates for Creditanstalt, or (b) permit the Foreign Subsidiaries (as custodians or subcustodians) to receive the Assets of a U.S. Investment Company directly from the U.S. Investment Company or its custodian or subcustodian (other than Creditanstalt). As used herein, "Foreign Securities" includes: (a) securities issued and sold primarily outside the United States by a foreign government, a national of any foreign country, or a corporation or other organization incorporated or organized under the laws of any foreign country; and (b) securities issued or guaranteed by the government of the United States

[1] The Czeh National Bank is the central bank of the Czech Republic and is an agency of the government of that country.

[2] The National Bank of Poland is the central bank of Poland and is an agency of the government of that country.

[3] The National Bank of Slovakia is the central Bank of Slovakia and is an agency of the government of that country.

[4] All three of these entities are agencies of the government of Slovenia.

or by any state or any political subdivision thereof or by any agency thereof or by any entity organized under the laws of the United States or any state thereof which have been issued and sold primarily outside the United States.

7. The Foreign Subsidiaries will accept deposits of Assets pursuant to a written, three-party agreement between (a) a Foreign Subsidiary, (b) Creditanstalt, and (c) a U.S. Investment Company or its custodian. The agreement will provide that Creditanstalt will assume liability for any loss arising out of or in connection with the performance by the Foreign Subsidiary of its responsibilities under the agreement to the same extent as if Creditanstalt had itself been required to provide custody services under the agreement. There will be no difference in the nature or extent of Creditanstalt's liability based on whether such services are provided by the Foreign Subsidiaries directly or as Creditanstalt's delegates.

Applicant's Legal Analysis

1. Section 17(f) of the Act requires a registered investment company to maintain its securities and similar investments in the custody of a bank meeting the requirements of section 26(a) of the Act, a member firm of a national securities exchange, the investment company itself, or a system for the central handling of securities established by a national securities exchange. Section 2(a)(5) of the Act defines "bank" to include banking institutions organized under the laws of the United States, member banks of the Federal Reserve System, and certain banking institutions or trust companies doing business under the laws of any state or of the United States. The Foreign Subsidiaries do not fall within the definition of "bank" as defined in the Act and, under section 17(f), may not act as custodians for registered investment companies.

2. Rule 17f–5 under the Act permits certain entities located outside the United States to serve as custodians for investment company assets. One such entity is a banking institution or trust company that is incorporated or organized under the laws of a country other than the United States, that is regulated as such by that country's government or an agency thereof, and that has shareholders' equity in excess of U.S. $200 million. Creditanstalt qualifies as an eligible foreign custodian under rule 17f–5. The Foreign Subsidiaries, however, do not qualify as eligible foreign custodians because they do not meet the minimum shareholders' equity requirement.

3. The purpose of section 17(f) of the Act is to insure that U.S. Investment Companies hold securities in a safe manner that protects the interests of their shareholders. The purpose of rule 17f–5 is to relieve U.S. Investment Companies of the expense and inconvenience of moving assets to a United States bank away from their primary trading market, while at the same time reducing to the extent practicable the risks inherent in maintaining assets outside the United States. The requested exemption is consistent with these purposes and with the protection of investors because, under the proposed custody arrangements, Creditanstalt will be liable for the performance of custody services by each Foreign Subsidiary.

Applicant's Conditions

Creditanstalt agrees that any order granting the requested relief shall be subject to the following conditions:

1. The foreign custody arrangements proposed regarding each Foreign Subsidiary will satisfy the requirements of rule 17f–5 in all respects other than the Foreign Subsidiary's level of shareholders' equity.

2. Creditanstalt, any U.S. Investment Company, and any custodian for a U.S. Investment Company, will deposit Assets with a Foreign Subsidiary only in accordance with an agreement (the "Agreement") required to remain in effect at all times during which the Foreign Subsidiary fails to satisfy the requirements of rule 17f–5 (and during which such Assets remain deposited with the Foreign Subsidiary). Each Agreement will be a three-party agreement among Creditanstalt, the Foreign Subsidiary, and the U.S. Investment Company or the custodian for a U.S. Investment Company pursuant to which Creditanstalt or the Foreign Subsidiary, as the case may be, will undertake to provide specified custody services. If Creditanstalt is to provide such services, the Agreement will authorize Creditanstalt to delegate to the Foreign Subsidiary such of the duties and obligations of Creditanstalt as will be necessary to permit the Foreign Subsidiary to hold in custody the U.S. Investment Company's Assets. If the Foreign Subsidiary is to provide services directly, no such delegation will be necessary. However, in either case, the Agreement will provide that Creditanstalt will be liable for any loss, damage, cost, expense, liability, or claim arising out of or in connection with the performance by the Foreign Subsidiary of its responsibilities under the Agreement to the same extent as if Creditanstalt had itself been required to provide custody services under the Agreement. Further, the Agreement will provide that, in the event of loss, a U.S. Investment Company may pursue a claim for recovery against Creditanstalt, regardless of whether the Foreign Subsidiary acted as Creditanstalt's delegate or as direct custodian or subcustodian.

3. Creditanstalt currently satisfies and will continue to satisfy the minimum shareholders' equity requirement set forth in rule 17f–5(c)(2)(i).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–14437 Filed 6–12–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21111; 812–9584]

Dean Witter Select Equity Trust

June 6, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Dean Witter Select Equity Trust.

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act that would exempt applicant from section 12(d)(3) of the Act.

SUMMARY OF APPLICATION: Applicant requests an order on behalf of its series (the "Series") to permit each Series to invest up to twenty percent of its total assets in securities of issuers that derived more than fifteen percent of their gross revenues in their most recent fiscal year from securities related activities.

FILING DATE: The application was filed on May 2, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 3, 1995 and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, D.C. 20549. Applicant c/o Dean Witter Reynolds Inc., Unit Trust Department, Two World Trade Center, New York, NY 10048, Attn: Thomas Hines.

FOR FURTHER INFORMATION CONTACT: Sarah A. Buescher, Staff Attorney, at (202) 942–0573, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Each Series will be a series of applicant, a unit investment trust registered under the Act. Dean Witter Reynolds Inc. is applicant's depositor (the "Sponsor"). The Sponsor currently intends to offer a new Series four times a year at about the beginning of each calendar quarter.

2. Each Series will invest approximately 20%, but in no event more than 20.5%,[1] of the value of its total assets in each of the five lowest dollar price per share stocks of the ten common stocks in the Dow Jones industrial Average ("DJIA") with the highest dividend yields either on or shortly before the initial date of deposit (the "Select Five"), and hold those stocks over the life of the Series (presently anticipated to be approximately one year).

3. The DJIA comprises 30 common stocks chosen by the editors of The Wall Street Journal. The DJIA is the property of Dow Jones & Company, Inc., which is not affiliated with any Series or the Sponsor and does not participate in any way in the creation of any Series or the selection of its stocks.

4. The portfolio securities deposited in each Series will be chosen solely according to the formula described above, and will not necessarily reflect the research opinions or buy or sell recommendations of the Sponsor. The Sponsor will have no discretion as to which securities are purchased. Securities deposited in a Series may include securities of issuers that derived more than fifteen percent of their gross revenues in their most recent fiscal year from securities related activities.

5. During the 90-day period following the initial date of deposit, the Sponsor may deposit additional securities while maintaining to the extent practicable the original proportionate relationship among the number of shares of each stock in the portfolio. Deposits made after this 90-day period generally must replicate exactly the proportionate relationship among the face amounts of the securities comprising the portfolio at the end of the initial 90-day period, whether or not a stock continues to be among the Select Five.

6. A Series' portfolio will not be actively managed. Sales of portfolio securities will be made in connection with redemptions of units issued by a Series and at termination of the Series. The Sponsor has no discretion as to when securities will be sold except that it is authorized to direct the trustee to sell securities in extremely limited circumstances, namely, upon failure of the issuer of a security in a Series to declare or pay anticipated cash dividends, institution of certain materially adverse legal proceedings, default under certain documents materially and adversely affecting future declaration or payment of dividends, or the occurrence of other market or credit factors that, in the opinion of the Sponsor, would make the retention of such securities in a Series detrimental to the interests of the unitholders. The adverse financial condition of an issuer will not necessarily require the sale of its securities from a Series' portfolio.

Applicant's Legal Analysis

1. Section 12(d)(3) of the Act, with limited exceptions, prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter, or investment adviser. Rule 12d3–1(b) under the Act exempts the purchase of securities of an issuer that derived more than fifteen percent of its gross revenues in its most recent fiscal year from securities related activities, provided that, among other things, immediately after such acquisition, the acquiring company has invested not more than five percent of the value of its total assets in securities of the issuer. Section 6(c) of the Act provides that the SEC may exempt a person from any provision of the Act or any rule thereunder, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Applicant requests an exemption under section 6(c) from section 12(d)(3) to permit any Series to invest up to approximately 20%, but in no event more than 20.5%, of the value of its total assets in securities of an issuer that derives more than fifteen percent of its gross revenues from securities related activities. Applicant and each Series will comply with all provisions of rule 12d3–1, except for the five percent limitation in paragraph (b)(3) of the rule.

3. Section 12(d)(3) was intended to prevent investment companies from exposing their assets to the entrepreneurial risks of securities related businesses, to prevent potential conflicts of interest, and to eliminate certain reciprocal practices between investment companies and securities related business. One potential conflict could occur if an investment company purchased securities or other interests in a broker-dealer to reward that broker-dealer for selling fund shares, rather than solely on investment merit. Applicant believes that this concern does not arise in connection with its application because neither applicant nor the Sponsor has discretion in choosing the portfolio securities or percentage amount purchased. The security must first be included in the DJIA, which is unaffiliated with the Sponsor and applicant, and must also qualify as one of the five lowest dollar price per share stocks of the ten highest dividend yielding securities in the DJIA.

4. Applicant also believes that the effect of a Series' purchase on the stock of parents of broker-dealers would be *de minimis*. Applicant asserts that the common stocks of securities related issuers represented in the DJIA are widely held, have active markets, and that potential purchases by any Series would represent an insignificant amount of the outstanding common stock and the trading volume of any of these issues. Accordingly, applicant believes that it is highly unlikely that Series purchases of these securities would have any significant impact on the securities' market value.

5. Another potential conflict of interest could occur if an investment company brokerage to a broker-dealer in which the company has invested to enhance the broker-dealer's profitability or to assist it during financial difficulty, even though that broker-dealer may not offer the best price and execution. To preclude this type of conflict, applicant and each Series agree, as a condition of this application, that no company held in the portfolio of a Series nor any affiliate thereof will act as a broker for any Series in the purchase or sale of any security for its portfolio. In light of the above, applicant believes that its proposal meets the section 6(c) standards.

[1] The Sponsor will attempt to purchase equal values of each of the five common stocks in a Series' portfolio and may choose to purchase the securities in odd lots in order to achieve this goal. However, it is more efficient if securities are purchased in 100 share lots and 50 share lots. As a result, the Sponsor may choose to purchase securities of a securities related issuer which represent over 20%, but in no event more than 20.5% percent, of a Series' assets on the initial date of deposit to the extent necessary to enable the Sponsor to meet its purchase requirements and to obtain the best price for the securities.

Condition

The Applicant and each Series agree that any order granted under this Application may be conditioned upon no company held in the Series' portfolio nor any affiliate thereof acting as broker for any Series in the purchase or sale of any security for the Series' portfolio.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–14438 Filed 6–12–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21118; No. 812–9488]

Maxim Series Fund, Inc.

June 7, 1995.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: Maxim Series Fund, Inc. ("Fund").

RELEVANT 1940 ACT SECTION: Order requested under Sections 6(c) and 17(b) for an exemption from Sections 17(a)(1) and 17(a)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicant seeks an order that would permit the exchange of shares between certain Fund portfolios.

FILING DATE: The application was filed on February 21, 1995, and amended on June 5, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 28, 1995, and should be accompanied by proof of service on Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Applicant, Maxim Series Fund, Inc., c/o Beverly A. Byrne, Esq., 8515 East Orchard Road, Englewood, Colorado 80111.

FOR FURTHER INFORMATION CONTACT: Yvonne M. Hunold, Assistant Special Counsel, or Wendy Friedlander, Deputy Chief, at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicant's Representations

1. The Fund is a Maryland corporation registered under the 1940 Act as an open-end, diversified management investment company. The Fund consists of twenty-one investment portfolios, three of which are the subject of this application: (a) Growth Index Portfolio; (b) Value Index Portfolio; (c) and Small-Cap Index Portfolio (collectively, "Portfolios"). Great West Life Assurance Company ("Adviser") serves as the investment adviser to the Fund.

2. Shares of the Portfolios currently are sold in connection with certain tax-qualified insurance contracts to: (a) Future Funds Series Account II, a separate account of Great-West Life & Annuity Insurance Corporation ("GWL&A); and (b) TNE Series (K) Account, a separate account of The New England Life Insurance Company. Shares of the Portfolio may be offered in the future to other separate accounts of GWL&A or of other insurance companies.

3. The investment objectives of the Portfolios are related to corresponding indices of the Frank Russell Company ("Russell"). The investment objectives of the Value Index Portfolio, the Growth Index Portfolio and the Small-Cap Index Portfolio are to provide investment results, before fees, that correspond, respectively, to the total return of the Russell 1000 Value index, the Russell 1000 Growth Index, and the Russell 2000 Index. Under normal circumstances, a minimum of 65% of each of the Portfolio's net assets will be invested in securities included in the corresponding Russell Index.

4. On May 31, of each year, the Russell 1000 Index (of which the Russell 1000 Growth Index and Russell 1000 Value Index are subsets) and the Russell 2000 Index are reconstituted to reflect changes in the marketplace.[1] Consequently, some stocks previously included in one Russell index, or its subset index, may thus become part of the other Russell index, or its subset. Following the reconstitution of the Russell indices, a corresponding reconstitution of the Portfolios occurs, on or about June 30 of each year, consistent with each Portfolio's respective investment objectives.

5. The Portfolios thus propose to directly purchase from and sell to each other their respective portfolio securities in private transactions ("Reconstitution Transactions"),[2] as follows:[3]

a. *Growth Index Portfolio:* As a direct result of the reconstitution of the Russell 1000 Growth Index, the Growth Index Portfolio proposes to sell specific portfolio securities, and the Value Index Portfolio or the Small-Cap Index Portfolio simultaneously propose to purchase those same securities, as a direct result of the reconstitution of the Russell 1000 Value Index or the Russell 2000 Index, respectively;

b. *Value Index Portfolio:* As a direct result of the reconstitution of the Russell 1000 Value Index, the Value Index Portfolio proposes to sell specific portfolio securities, and the Growth Index Portfolio or the Small-Cap Index Portfolio simultaneously propose to purchase those same portfolio securities as a direct result of the reconstitution of the Russell 1000 Growth Index or the Russell 2000 Index, respectively; and

c. *Small-Cap Index Portfolio:* As a direct result of the reconstitution of the Russell 2000 Index, the Small-Cap Index Portfolio proposes to sell specific portfolio securities, and the Value Index Portfolio or the Growth Index Portfolio simultaneously propose to purchase those same portfolio securities as a direct result of the reconstitution of the Russell 1000 Value Index or the Russell 1000 Growth Index, respectively.

6. Applicant proposes that cash consideration be paid by one Portfolio to another Portfolio only to the extent of the net difference in the aggregate purchase price of the securities bought or sold between two Portfolios. The remaining consideration will be paid

[1] The Russell 100 Index and the Russell 2000 Index are subsets of the Russell 3000 Index.

[2] Applicant represents that the Reconstitution transactions will not include any purchases or sales in which any of the Portfolios are both buyers and sellers of the same Portfolio securities.

[3] Applicant statutes that the Portfolios also may purchase or sell Portfolio securities as a direct result of the reconstitution of the respective Russell indices that are not being simultaneously sold to or purchased by another Portfolio because either: (i) the newly reconstituted Russell Index contains different stocks than previously were included, or (ii) the Portfolios do not exactly match their corresponding Russell indices. Applicants represent that these sales and purchases are not deemed to be Reconstitution Transactions and, therefore, are not the subject of this application.

with the prompt delivery of securities valued at current market prices.[4] Applicant states that the Reconstitution Transactions will avoid unnecessary brokerage commissions and other transaction costs of market transactions.

Applicant's Legal Analysis

1. Section 17(a) of the 1940 Act prohibits affiliates of a registered investment company, or affiliates of such affiliates acting as principal, from knowingly selling to or purcashing from the registered investment company any security or other property, except under certain circumstances. Applicant states that the Reconstitution Transactions may be prohibited by Section 17(a) because the Fund and each Fund Portfolio may be deemed to be an affiliate of a registered investment company, or an affiliate of such an affiliate, as defined in Section 2(a)(3) of the 1940 Act.

2. Section 17(b) of the 1940 Act provides exemptive relief from Section 17(a) if: (a) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company concerned, as recited in its registration statement and reports filed under the 1940 Act; and (c) the proposed transaction is consistent with the general purposes of the 1940 Act. Rule 17a–7 under the 1940 Act also provides exemptive relief from Section 17(a), provided certain specified conditions are met.

3. Applicant submits that the terms of the proposed transactions satisfy Section 17(b). Applicant represents that the Reconstitution Transactions will be made at the respective portfolio securities' "Current Market Prices," as defined in Rule 17a–7 under the 1940 Act, with the consideration to be paid or received being cash and/or the delivery of portfolio securities of an equivalent value (based upon those portfolio securities' Current Market Prices).

4. Applicant states that no brokerage commission, fee (except for customary transfer fees), or other remuneration will be paid in connection with any of the Reconstitution Transactions. Applicant further states that the purpose of the Reconstitution Transactions is to enable the Portfolios to avoid incurring unnecessary brokerage expenses and other transaction costs to the ultimate detriment of Contract owners. By effecting the Reconstitution Transactions through exchanges of securities between Portfolios (instead of market transactions through broker-dealers), the Portfolios will enjoy a net cost savings equal to: (a) the amount of brokerage commissions that otherwise would have been paid to such broker-dealers, and (b) any differences in the price paid or received on the purchase or sale of the portfolio securities through a broker-dealer (which would be based on bid and asked prices for reported securities) and the "Current Market Price" that Applicant would use in effecting the Reconstitution Transactions.

5. Applicant states that the amount of savings for 1994 (or any year thereafter can not be estimated with any degree of certainty because the extent to which the Russell indices will be reconstituted on May 31, 1995 (or any year thereafter) is not yet known. Applicant represents, however, that brokerage commission savings to the Portfolios would be $0.04 per share for each share transferred in the Reconstitution Transactions (as opposed through a broker-dealer).

6. Applicant represents that each purchase and sale comprising the Reconstitution Transactions will be consistent with the policy of each Portfolio, as recited in the Fund's registration statement and reports filed under the 1940 Act.

7. Applicant states that the Reconstitution Transactions will be effected only when the respective Portfolios independently determine which securities it will purchase and sell, and independently decide: (a) to purchase and sell the same portfolio securities; and (b) that it is more advantageous to that Portfolio to purchase or sell the Portfolio security from or to the other Portfolio, as compared with an open market purchase or sale.

8. Applicant states that the Reconstitution Transactions are consistent with the general purposes of the 1940 Act and do not present any of the issues or abuses that the Act is designed to prevent. Moreover, Applicant submits that the Reconstitution Transactions will be effected in a manner consistent with the public interest and the protection of investors.

9. Applicant represents that the Reconstitution Transactions will be made in compliance with all of the requirements of Rule 17a–7, except for one element of subparagraph (a) of the Rule. Rule 17a–7(a) requires in connection with certain purchase and sale transactions that there be "no consideration other than cash payment against prompt delivery of a security for which market quotations are readily available." In the Reconstitution Transactions, a portion of the consideration will be Portfolio securities rather than cash. Applicant proposes that cash consideration be paid to a Portfolio from another Portfolio only to the extent the aggregate price of the portfolio securities acquired by a Portfolio from another Portfolio exceeds the aggregate price of the portfolio securities sold by that Portfolio to such other Portfolio. The remaining consideration would be the prompt delivery of Portfolio securities, valued at Current Market Prices, to such other Portfolio.

10. Applicant states that the nature of the proposed transactions does not give rise to the type of potential abuse Rule 17a–7 was designed to guard against. Applicant submits that Rule 17a–7 was designed to permit investment companies to sell securities between themselves at Current Market Prices without necessary incurring costs, including brokerage costs, to the detriment of investors. Applicant states that the Reconstitution Transactions will be effected at Current Market Prices and thus will avoid unnecessary brokerage costs.

11. Applicant represents that the Fund's board of directors, including a majority of the directors who are not interested persons of the Fund, will (i) adopt procedures pursuant to which the Reconstitution Transactions may be effected, which are reasonably designed to provide that all the conditions in paragraphs (a) through (d) of Rule 17a–7 have been complied with, except the condition set forth in paragraph (a) that requires the transaction to be effected for no consideration other than cash, (ii) make and approve such changes as the board deems necessary, and (iii) determine no less frequently than quarterly that all such purchases or sales made during the preceding quarter were effected in compliance with such procedures. Additionally, the Fund will (i) maintain and preserve permanently, in an easily accessible place, a written copy of the procedures (and any modifications thereto) described in paragraph (e) of Rule 17a–7, and (ii) maintain and preserve for a period not less than six years from the end of the fiscal year in which any transactions occurred, the first two years, in an easily accessible place, a written record of each such transaction setting forth a description of the security purchased or sold, the identity of the person [portfolio] on the other side of the transaction, the terms of the purchase or sale transaction, and the information or materials upon which the determinations described in paragraph (e)(3) of Rule 17a–7 were made.

12. Applicant therefore submits that the Reconstitution Transactions are, in substance, the type of transactions ordinarily exempted by Rule 17a–7.

13. Applicant also requests relief pursuant to Section 6(c) of the 1940 Act, because the Commission has interpreted Section 17(b) of the 1940 Act as authorizing the granting of exemptive relief from Section 17(a) on a transaction-by-transaction basis only. Applicant requests relief pursuant to Section 6(c) exempting Applicant from Section 17(a) to the extent necessary to permit Applicant to engage in the Reconstitution Transactions each year.

14. Section 6(c) of the 1940 Act provides that the Commission "by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of [the Act] or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the Act]."

15. Applicant submits that the exemptions requested under Section 6(c) are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Applicant's Conditions

Applicant represents and agrees to the following conditions:

1. Each of the Reconstitution Transactions will be: (a) a purchase or sale, for no consideration other than the delivery of portfolios securities valued at the independent "Current Market Price" (as defined in Rule 17a–7 under the 1940 Act), or, (b) to the extent the aggregate price of the portfolio securities acquired by one Portfolio from another Portfolio exceeds the aggregate price of the portfolio securities sold by that Portfolio to such other Portfolio, a cash payment for the difference, against prompt delivery of a security for which market quotations are readily available.

2. Each of the Reconstitution Transactions will be effected at the security's independent "Current Market Price," as defined in Rule 17a–7 under the 1940 Act.

3. Each of the Reconstitution Transactions will be consistent with the policy of each of the Portfolios participating in such transactions, as recited in the Fund's registration statement and reports filed under the 1940 Act.

4. No brokerage commission, fee (except for customary transfer fees), or other remuneration will be paid in connection with any of the Reconstitution Transactions.

5. The Fund's board of directors, including a majority of the directors who are not interested persons of the Fund, shall (a) review the terms of the Reconstitution Transactions, the composition of the investment portfolios of the affected Portfolios, and the value (and valuation method) of the investment securities comprising the purchase price in the Reconstitution Transactions; (b) adopt a resolution determining that each of the Reconstitution Transactions are reasonable and fair to the affected portfolios, that the Reconstitution Transactions would not subject any of the affected Portfolios to overreaching, and that each of the Reconstitution Transactions are consistent with the policy of each of the Portfolios participating in such transactions, as recited in the Fund's registration statement and reports filed under the 1940 Act; (c) make and approve such changes as the board deems necessary; and (d) determine at the board meeting next following any Reconstitution Transactions that such Reconstitution Transactions were effected in compliance with such procedures.

6. The Fund agrees that it will maintain and preserve (a) permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition "5", and (b) for a period not less than six years from the end of the fiscal year in which any Reconstitution transactions occurred, the first two years in an easily accessible place, a written record of each such transaction setting forth a description of the securities purchased or sold in such transaction, and the information or materials upon which the determinations described in condition "5(d)" were made.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–14439 Filed 6–13–95; 8:45 am]

BILLING CODE 8010–01–M

[4] For example, on June 30, 1995, the Growth Index Portfolio purchases portfolio securities from the Value Index Portfolio with an aggregate purchase price of $1 million based on "Current Market Prices," as defined in Rule 17a–7. Simultaneously, the Value Index Portfolio purchases different portfolio securities from the Growth Index Portfolio with an aggregate purchase price of $1.2 million based on Current Market Prices. Under these circumstances, Applicants propose that the transactions be settled by: (a) the prompt delivery by the Growth Index Portfolio to the Value Index Portfolio of portfolio securities with the aggregate Current Market Value of $1.2 million, and (b) the prompt delivery by the Value Index Portfolio to the Growth Index Portfolio of the portfolio securities with the aggregate Current Market Value of $1 million together with $200,000 in cash.

[Release No. 34–35807; File No. SR–NSCC–95–03]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change Relating to Implementation of a Three-Day Settlement Standard

June 5, 1995.

On March 1, 1995, National Securities Clearing Corporation ("NSCC") filed a proposed rule change (File No. SR–NSCC–95–03) with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] On March 27, 1995, NSCC filed an amendment to the proposed rule change.[2] Notice of the proposal was published in the **Federal Register** on April 14, 1995, to solicit comments from interested persons.[3] No comments were received. As discussed below, this order approves the proposed rule change.

I. Description

In October 1993, the Commission adopted Rule 15c6–1 under the Act which will become effective June 7, 1995.[4] Rule 15c6–1 establishes three business days after the trade date ("T+3"), instead of five business days ("T+5"), as the standard settlement cycle for most securities transactions. The purpose of NSCC's proposed rule change is to amend NSCC's rules to be consistent with Rule 15c6–1 and with a T+3 settlement standard for most securities transactions.

In order to accommodate a T+3 settlement cycle, many of the time frames contained in NSCC's rules are being shortened. These changes include such things as all references to a five day settlement time frame being changed to reflect a three day settlement

[1] 15 U.S.C. § 78s(b) (1988).

[2] Letter from John P. Barry, Associate Counsel, NSCC, to Christine Sibille, Senior Counsel, Division of Market Regulation, Commission (March 27, 1995).

[3] Securities Exchange Act Release No. 35577 (April 6, 1995), 60 FR 19104.

[4] Securities Exchange Act Release Nos. 33023 (October 6, 1993), 58 FR 52891 (adopting Rule 15c6–1) and 34952 (November 9, 1994), 59 FR 59137 (changing effective date from June 1, 1995, to June 7, 1995).

time frame.[5] Trades compared after such time as established on T+2 will not be included in the normal settlement cycle.[6] All transactions entered into NSCC's balance order accounting operation or into the foreign security accounting on T+2 or thereafter will be processed on a trade-for-trade basis.[7] The proposed rule change will amend NSCC Rules to provide dividend protection to an "as of" trade entered at least two business days prior to the payable date.[8] Only trades in balance order securities executed on the New York Stock Exchange ("NYSE"), American Stock Exchange ("Amex"), and over-the-counter ("OTC") compared on T and T+1 will be netted, and the net balance orders will be issued on T+2.[9] Continuous Net Settlement ("CNS") eligible items will be entered into the CNS accounting operation for transfers through NSCC's Automated Customer Account Transfer ("ACAT") Service on T+1.[10] All time frames relating to voluntary corporate reorganizations processed through NSCC's CNS Reorganization Processing System will be shortened by two days.[11] NSCC's Procedures will require that the adjustment contract totals represent the combined input for T through T+2 that is compared.[12] Trades reported on the Consolidated Trade Summary will include trades compared through T+1.[13] As-of-trades submitted two days prior to payable date will be included in the dividend activity report.[14] A member will be informed of its potential liability from a short position on T+2.

The proposed rule change also makes a certain ancillary modifications to NSCC's Rules and Procedures in order to delete references to obsolete services, procedures, forms, and methods of communications. All references to the SCC Division of the NSCC are being eliminated.[15] Cross-references to specific rules which contain timing provisions are being changed to refer to the rules generally. Furthermore, the clauses beginning with "up to and including" in the definitions of "Comparison Operation", Foreign Security Accounting Operation", and "Balance Order Accounting Operation" also are being eliminated.[16]

The definitions of "Basket Trade" and "Mini Basket" contained in Rule 1 are being deleted because NYSE no longer offers these types of products, and therefore, NSCC does not clear it. Accordingly, references to Basket Trades and Mini Baskets contained in NSCC's Procedures and fees for processing these trades are being deleted.[17]

References to nonmembers' ability to use NSCC's New York State Transfer Taxes service are being eliminated because no nonmember has requested the use of NSCC's facility to pay these taxes in over ten years.[18] NSCC is limiting the number of banks which can hold securities pledged by members for the NSCC clearing fund by providing that these banks will be chosen by NSCC and not by the members.[19]

There are several places in NSCC's rules where changes are being made to reflect the continuing automation of systems and the elimination of paper intensive processes. These include the elimination of the use of certain forms, changing references to data received rather than tickets delivered, and the elimination of the requirement of acknowledging transactions through paper submission.[20]

NSCC is amending rules to clarify that NSCC has the right to deny access to additional services to members that are not currently using the service if NSCC does not have adequate capability to perform that service.[21] NSCC is amending its rules to reflect the current practice of NSCC preparing all checks sent to members.[22]

The exchanges and the NASD have rules concerning good delivery of physical securities.[23] NSCC is amending its rules to require that deliveries must meet such good delivery requirements.[24] NSCC's rules on good delivery are being deleted.[25]

Pursuant to Addendum F, members who have failed to pay timely amounts due have been required to settle amounts greater than $100,000 in Federal Funds. NSCC's settlement rule is being amended to reflect this longstanding practice.[26]

NSCC is eliminating the ability of members to charge an amount to their account at NSCC.[27] Members may use NSCC's Funds Only Settlement Service to achieve the same objective. NSCC is deleting references to the Signature Distribution Service because the service was never implemented and has been made obsolete with the introduction of current Medallion Program.[28] NSCC will require that close outs be completed promptly when NSCC ceases to act for a member.[29]

NSCC is amending its rules to provide that only the board of directors, the chairman of the board, the president, executive vice president, and certain designated officers of NSCC may suspend the rules when necessary or expedient.[30] NSCC will inform the Commission of any change in the officers designated to suspend the rules.[31] Similarly, NSCC rules now will provide that except where action of the board of directors is specifically required, only the chairman, the president, any executive vice president, the secretary, and certain designated officers may take action on behalf of NSCC.[32]

NSCC's Procedures now will include references to when-distributed transactions, which result from stock splits and are treated in the same manner as when-issued transactions.[33] NSCC's Procedures will state that the settlement date for corporate debt new issues now will be established by the appropriate regulatory authority.[34]

NSCC's Reconfirmation and Pricing Service ("RECAPS") now will be run from time to time to provide flexibility in the event of operational necessities.[35] The CNS Accounting Operation will no longer use subaccounts for the settlement of option exercises.[36] NSCC is eliminating its Delivery to Clearing Service.[37]

NSCC is amending its Procedures to conform to the practice that Net CNS Money Settlement Amounts calculated by members may be verified against the Settlement Activity Statement but are not required to be verified.[38] NSCC is eliminating the ability of members to select an alternate clearing corporation on an item-by-item basis.[39] NSCC is amending its procedures to provide that it may require members to submit certain securities to NSCC before those securities are deposited with DTC on behalf of such member.[40]

NSCC is eliminating its P&S service for direct clearing.[41] References to the New Jersey City office will be deleted because that office no longer exists.[42] NSCC is amending its rules to delete fees for hard copy output.[43] NSCC is amending its Automated Stock Borrow Procedures to reflect that NSCC will no longer borrow physical securities for the settlement of non-DTC eligible items.[44]

II. Discussion

The Commission believes the proposal is consistent with the requirements of Section 17A of the Act.[45] Specifically, Section 17A(b)(3)(F)[46] states that the rules of a clearing agency must be designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds which are in the clearing agency's custody or control or for which it is responsible, and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

Several of NSCC rules are based on the standard time frame for settlement of securities transactions. On June 7, 1995, as mandated by the Commission's Rule 15c6–1, the new settlement cycle of T+3 will be established. As a result, many of NSCC's current rules will be inconsistent with this rule. This proposal amends NSCC's rules to harmonize them with a T+3 settlement cycle. By enabling trades to settle in the shortened settlement cycle, the proposal should promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that the proposal should ensure safeguarding of securities and funds by eliminating obsolete services and streamlining NSCC's processes. The proposed rule change also should foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions by conforming NSCC's rules on settlement time frames with the rules of other self-regulatory organizations.

III. Conclusion

For the reasons stated above, the Commission finds that NSCC's proposal is consistent with Section 17A of the Act.[47]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–95–03) be and hereby is approved for effectiveness on June 7, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–14436 Filed 6–12–95; 8:45 am]

BILLING CODE 8010–01–M

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[5] Procedures III.D, VII.B., VII.C., XIII, and Addendum K. In addition, the time frame for NSCC's guarantee of trades contained in Addendums K and M will begin on T+2. References to a five day settlement time frame contained in Procedures II.I.2 and 3 and III.C will be deleted.

[6] Procedures II.B.1(c), II.C.2(f), II.D.2(i), and III.E.

[7] Procedures V.B and VI.B.

[8] Rule 11, Section 8(d).

[9] Procedure V.C.

[10] Rule 50, Section 10.

[11] Procedure VII.H.4(b).

[12] Procedure II.B.1(c).

[13] Procedure VI.A.

[14] Procedure VII.G.2.

[15] The SCC was one of the predecessors of NSCC, and its rules were incorporated into NSCC's rules. To ease the transition at the time of NSCC's formation, NSCC retained the reference to the SCC by indicating that the rules were for the SCC Division.

[16] Rule 1.

[17] Procedures II.A and H and Addendum A, Section 1.E.

[18] Rule 3, Section 2 and Rules 14 and 26.

[19] Rule 4, Section 1.

[20] Such changes can be found in the following sections.

Rule 5, Section 1

Rule 7, Sections 3 (eliminates need of member to confirm to NSCC contract lists)

Rule 12, section 1

Rule 18, Sections 2 and 3 (eliminates return of tickets when NSCC ceases to act for a member)

Procedure VII.D.2(c)

Procedure VII.I

Procedures VIII.A and B (eliminates clearance/settlement statement)

Procedure X.B

Procedure XIV

Addendum A, Sections IV.S and V.B

Addendum C, Section 1

[21] Rule 2, Section 3 and Procedure IV.D.

[22] Rule 5, Section 2.

[23] *See, e.g.*, NYSE Rules 17S–226.

[24] Rule 9, Section 1.9 and Rule 44, Section 7.

[25] Rule 44, Sections 8–39.

[26] Rule 12, Section 1.

[27] Rule 13.

[28] Rule 17.

[29] Rule 16, Section 2.

[30] Rule 22.

[31] Letter from John P. Barry, Associate Counsel, NSCC, to Jonathan Kallman, Associate Director, Division of Market Regulation, Commission (March 27 1995).

[32] Rule 23.

[33] Procedures II.A and E.

[34] Procedure II.E.2.

[35] Procedure II.G. NSCC intends to run RECAPS on a quarterly basis.

[36] Procedure II.G.

[37] Procedures VII.C.5, G.3, and H.7. Members usually deliver securities to The Depository Trust Company ("DTC") to cover short positions instead of NSCC.

[38] Procedure VII.F.2.

[39] Procedure IX.A.

[40] Procedure IX.B.

[41] Procedure IX.D. Conforming amendments will be reflected in Procedure IX.E, Addendum A, Section IV (to eliminate fees for Remote Trade Comparison Handling and Preparation of T+1 input), and Addendum B, Section V.B. (to eliminate fees for options cage processing and stock loan rebate payment service).

[42] Addendum A, Section III.

[43] Addendum A, Section V.B.

[44] Addendum C.

[45] 15 U.S.C. § 78q–1 (1988).

[46] 15 U.S.C. § 78q–1(b)(3)(F) (1988).

[47] 15 U.S.C. § 78q–1 (1988).

SMALL BUSINESS ADMINISTRATION

[Application No. 99000160]

Blue Ridge Investors Limited Partnership; Notice of Filing of an Application for a License to Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the regulations governing small business investment companies (13 CFR 107.102 (1994)) by Blue Ridge Investors Limited Partnership, 300 N. Greene Street, Suite 2100, Greensboro, North Carolina 27401, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 et seq.), and the rules and regulations promulgated thereunder. Blue Ridge Investors Limited Partnership is a limited partnership formed under North Carolina law. The applicant will be managed by its General Partner, Blue Ridge Investors Group, Inc., and Blue Ridge Management Co., Inc. (the "Management Company"). Edward K. Crawford, F. James Becher, Jr., Edward C. McCarthy and Russell R. Myers are the principals of the Management Company. No individual or entity owns more than 10 percent of the proposed SBIC.

The applicant will begin operations with capitalization in excess of $3.5 million and will be a source of equity and debt financings for qualified small business concerns. The applicant will focus its investments in the Southeastern United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Greensboro, North Carolina.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies)

Dated: June 6, 1995.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 95–14444 Filed 6–12–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

National Transportation System (NTS) Initiative: Refinements to the Development Process

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of refinements in the development of the NTS.

SUMMARY: The Department of Transportation is modifying the process through which the NTS initiative will be developed and the proposed products of that process. These refinements are in response to the Department's extensive public outreach and comments to the docket last fall.

DATES: Comments on the refinements are welcomed. To be most useful, comments on these issues should be submitted no later than July 31, 1995.

ADDRESSES: Three copies of comments for the public docket on the NTS should be sent to: Office of the Secretary, Documentary Services Division, C–55, Attn: NTS Public Docket #49617, Room PL 401, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Questions on the NTS initiative also can be directed to the Departmental Offices designated as leads for the NTS outreach and planning initiatives:

Mr. Michael P. Huerta, Associate Deputy Secretary, Room 10200, 400 Seventh Street, SW., Washington, DC 20590, Phone: (202) 366–5781.

Mr. Frank Kruesi, Assistant Secretary for Transportation Policy, Room 10228, 400 Seventh Street, SW., Washington, DC 20590, Phone: (202) 366–4450.

Mr. Stephen Palmer, Assistant Secretary for Governmental Affairs, Room 10408, 400 Seventh Street, SW., Washington, DC 20590, Phone: (202) 366–4573.

SUPPLEMENTARY INFORMATION: On December 9, 1993, Secretary of Transportation Federico Peña invited Congress, other Federal agencies, state and local officials, private businesses and citizen groups to participate in the development of the National Transportation System initiative. Officials from the Department of Transportation spent the next several months meeting with individuals and groups noted above to discuss all aspects of the NTS.

The **Federal Register** Notice laying out the basic concept and framework for the NTS was published on June 23, 1994 (59 FR 32481). A supplemental Notice on the proposed process and criteria for designating the NTS was published in the **Federal Register** on August 24, 1994 (59 FR 43610). The Department received over 350 comments to the docket. In addition to soliciting public comments on the NTS concept through **Federal Register** notices, the Department received input from meetings held in Washington, DC, and around the country, that were attended by representatives of transportation interest groups, state and local agencies, and the private sector.

The key purposes of the NTS initiative were to conduct a dialogue with our customers and partners on the future of Federal transportation policy, improve transportation investment decisions, make DOT policy and programs more outcome-oriented and less modally driven, and draw attention to the state of the national transportation system and its implications for other goals.

Interim Results of the NTS Outreach

A number of strong and recurrent themes emerged from the outreach process. Across the spectrum of users, operators and interest groups, there is strong support for the NTS concept of an integrated, multimodal transportation system. These groups and individuals recognize the need to shift from looking at single mode solutions toward an intermodal, customer-oriented approach that looks at results in terms of mobility, congestion, and a variety of economic, social and environmental impacts.

There was consensus that the focus of the NTS should be on developing a better understanding of transportation demands and constraints and their implications for attaining national social, economic and environmental goals which would help all levels of government identify impediments to the efficient functioning of the system. Many felt that the Federal Government—working closely with state and local governments, the transportation industry and interested members of the public—should set a strategic agenda for achieving progress on these various fronts. There was little support for identifying current, high volume facilities through a mapping process. Thus the Department does not plan to develop an NTS map.

The outreach discussions and comments to the docket indicated widespread support for the NTS concept but recommended changes in the NTS evaluative framework to consider work being done at the state and local level and by the private sector. Recommended revisions to the initial NTS approach included giving more emphasis to building upon the planning processes required by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), developing the analytical capability to evaluate the performance of the system and developing performance measures to facilitate outcome-oriented, multimodal decisionmaking.

Refinements to the NTS: Products

In response to these comments, the Department is refining the NTS to focus on the following three major products:

1. Transportation Performance Measurement System: A recurring theme in the Department's outreach efforts to date has been that existing performance measures for the transportation system are incomplete. Specifically, we heard that there is a need for performance measures that consider more than simply traffic flows or transportation efficiency; they should consider effects on the economic, environmental and social outcomes which we, as a Nation, are pursuing.

To respond, the Department will initiate a performance measurement effort. The purpose is to bring about a better understanding of how transportation performs as an integrated system in meeting national goals. We intend to develop specific examples of performance measures that consider the broader transportation impacts discussed above. These measures will be developed to illustrate cause and effect relationships between transportation decisions, the external demand factors that lead to them, and their broader impacts on the system overall.

Data needed for this effort will be derived, for the most part, from existing state, local and national data collection efforts. This is to minimize any additional burdens on state and local governments. Where appropriate, we will also draw upon the state and local planning processes established by ISTEA.

The emphasis of the Department's work will be on the national system. However, this effort also will provide an analytic base for future discussions with state and local officials about how national goals of the transportation system, performance objectives, and tools necessary for achieving these objectives are linked with state and local objectives.

2. National and Regional Transportation Analytical Capability: A strategic analysis capability will be developed, using a national intermodal GIS database and performance measures, which could be used to identify how the existing transportation system is performing, identify problems, and analyze implications of alternative national transportation policies. As initial activities, the Department expects to have some capability to undertake problem identification, define issues, and conduct tradeoff analysis within a year. The next steps will be to relate the transportation system to broader goals and other considerations such as economic activity, population trends, mobility issues and environmental measures, and to tie forecasting capability to transportation resource management and investment. This will begin to provide a framework for undertaking prospective policy and program tradeoff analysis. While intermediate products will begin to be available within the year, this work will require a significant investment and several years to complete.

3. State of the Transportation System Report: A report will be completed early in 1996 that would summarize outreach findings and apply initial research, performance measurement, and system analytical capability to describe the functioning of the transportation system now and policy implications for the future. It will include a vision for the Nation's future transportation system, a discussion of the performance and evaluation process, a description of the condition of the national transportation system and its relationship to the national economy, and an analysis of the national transportation network.

In developing these three products, the Department will continue its consultation with representatives of the public and private sectors to assure that the NTS is customer driven.

Public Outreach and Comment

In its initial presentation of the NTS concept in the June 23, 1994, **Federal Register**, the Department expressed its commitment to an incremental and evolving evaluation and goal-setting process for national transportation. It continues to be the Department's intent that the products resulting from this process will incorporate—and be improved by—input from the public and private sectors. Throughout the development of the NTS, the Department will continue to consult with state and local officials, at relevant meetings and conferences, and draw upon the products resulting from the metropolitan and statewide planning processes and management systems required by ISTEA.

To ensure that the NTS products are relevant to public and private sector transportation decision makers and users, the Department would find advice and input on its revised course of action for the NTS useful.

Issued this 6th day of June, 1995, in Washington, DC.

Michael P. Huerta,

Associate Deputy Secretary and Director, Office of Intermodalism.

[FR Doc. 95–14462 Filed 6–12–95; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE TREASURY

Customs Service

Tariff Classification of Water Resistant Garments With Non-Water Resistant Hoods

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Withdrawal of proposed change of practice.

SUMMARY: Pursuant to the Customs Regulations, on December 5, 1994, Customs published notice in the **Federal Register** advising the public that Customs proposed a change of practice in regard to the classification of certain imported merchandise consisting of water resistant jackets with non-water resistant hoods, under the Harmonized Tariff Schedule of the United States (HTSUS). In response to that notice Customs received comments which were unanimous in opposition to the proposed change in practice. This document advises the public that Customs, after analyzing those comments, has decided not to change the practice in regard to these garments.

EFFECTIVE DATE: Withdrawal effective June 13, 1995.

FOR FURTHER INFORMATION CALL: Josephine Baiamonte, Commercial Rulings Division, U.S. Customs Service, (202) 482–7050.

SUPPLEMENTARY INFORMATION:

Background

Classification of merchandise under the Harmonized Tariff Schedule of the United States is in accordance with the General Rules of Interpretation (GRI 1). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes.

Heading 6201, HTSUS, provides for, among other things, men's or boys' anoraks (including ski-jackets), windbreakers and similar articles (including padded, sleeveless jackets). In Additional U.S. Note 2 to chapter 62, HTSUS, wherein the term "water resistant" is defined, it states that the "water resistant" requirement refers to the garment. Based on a review of that U.S. Note, Customs was of the opinion that Additional U.S. Note 2 had not been applied to its proper effect. Customs believed that the language of that Note did not suggest that only a portion of a garment be made water resistant in order for the entire garment to be classifiable as water resistant. Thus, the test as written, was interpreted to apply to the complete garment.

Accordingly, on December 5, 1994, Customs published a document in the **Federal Register** (59 FR 62452) proposing a change of practice pursuant to § 177.10(c)(1) of the Customs Regulations (19 CFR 177.10(c)(1)). Customs proposed that if the permanently attached hood of a water resistant garment is not similarly coated, the garment is precluded from classification as a water resistant garment.

Discussion of Comments

All of the comments received were in opposition to the change of practice. Consistently, the argument was made that the essential function of the water resistant garment is to provide protection from inclement weather, regardless of the presence of a hood. Furthermore, it was stated that Additional U.S. Note 2 is silent as to the "coverage issue", i.e., the portion of the garment which must be coated to render it properly classified as a water resistant garment, and that any restriction in that language was based solely on Customs interpretation.

Conclusion

Water resistant garments are specifically provided for in Chapter 62, HTSUS. Customs has consistently held that when the outer shell of a garment is coated, this has been sufficient to impart to the garment, per se, a water resistant classification. In addition to water resistance, many garments have characteristic features which distinguish them from other water resistant garments. For example, some may have rib knit cuffs and collars, and other decorative trim which are not water resistant. In other cases, as is the case with the garments at issue here, the garments feature hoods which may or may not be permanently attached to the garment, or may be "tuck away" hoods which fold into the collar. In most cases these hoods are not coated.

Regardless of these additional features, the garment itself remains water resistant. Thus, a water resistant garment with no hood is no less water resistant than a garment with a hood, particularly when one considers that

even on a garment with a permanently attached hood or "tuck away" hood, the wearer may decide not to exercise the hood option.

After a careful review of all the comments, it is our decision that the current practice in regard to these water resistant garments is correct. That is to say, water resistant garments with non-water resistant hoods (whether or not attached, or tuck-away) are properly classifiable within the appropriate provisions of Chapter 62, HTSUS, for water resistant garments.

Samuel H. Banks,

Acting Commissioner of Customs.

Approved: May 19, 1995.

Timothy G. Skud,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 95–14385 Filed 6–12–95; 8:45 am]

BILLING CODE 4820–02–P

OFFICE OF THE UNITED STATES REPRESENTATIVE

Request for Public Comment Regarding Proposed Change to Threshold Under Chapter 10 of the North American Free Trade Agreement (NAFTA)

AGENCY: Office of the United States Trade Representative.

ACTION: The Trade Policy Staff Committee (TPSC) requests public comment regarding a proposed increase in threshold to $100,000 for coverage of government procurement contracts by federal government entities under Chapter 10 of the NAFTA.

SUMMARY: NAFTA Chapter 10 sets forth obligations of the United States, Canada and Mexico on government procurement. The scope and coverage of Chapter 10 is specified in Article 1001, which refers to entities and to goods, services and construction definitions, as set out in the annexes to the Chapter. Article 1001 also specifies value thresholds for determining coverage of individual contracts. Article 1001:1(c)(i) specifies that contracts for goods and services procured by federal government entities are covered if they exceed the threshold of $50,000. The parties to the NAFTA have discussed increasing this threshold to $100,000 to reduce the administrative burden associated with implementation of Chapter 10 and to allow for simplification of acquisition procedures for contracts between $100,000.

DATES: Comments are requested by June 30, 1995.

FOR FURTHER INFORMATION: Contact Mark Linscott, Director, International Procurement Policy, Office of the U.S. Trade Representative, (202).395–3063, or Bill Craft, Director, Multilateral Trade Affairs, Economic Bureau, State Department, (202) 647–3696.

SUPPLEMENTARY INFORMATION: The parties to the NAFTA expect to amend Article 1001:1(c)(i) to increase the threshold from $50,000 to $100,000 for coverage of goods and services (excluding construction services) procured by federal government entities. The threshold for construction services procured by federal entities will remain at $6.5 million. Additionally, the thresholds specified in Article 1001:1(c)(ii) for government-owned enterprises would remain at $250,000 for goods and services and $8 million for construction services. NAFTA Chapter 10 does not yet apply to subcentral governments.

Application of the thresholds specified in Article 1001:1(c) are subject to the considerations referred to in Article 1002, regarding valuation of contracts. Article 1002:5 applies to an individual requirement resulting in multiple contracts or contracts being awarded in separate parts and requires that the method for valuation be either the total actual value of similar recurring contracts over the previous 12 month period or the estimated value of recurring contracts in the fiscal year or 12-month period subsequent to the initial contract. Article 1002:6 applies to contracts that do not specify a total contract price, such as requirement contracts, and requires that the method for valuation be the total estimated value for the duration of fixed term contracts or the estimated monthly installment multiplied by 48 for contracts for an indefinite period.

Comments from interested parties regarding the proposed increase in threshold should be submitted by noon, Friday, June 30, 1995. Comments must be in English and provided in eight copies to Carolyn Frank, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, 600 Seventeenth Street, NW, Washington, DC 20506. Comments will be available for public inspection by appointment with the staff of the USTR Reading Room (202–395–6186), except for information granted "business confidential" status pursuant to 15 CFR 2003.6. Any business confidential material must be clearly marked as such at the top of the cover page or letter and each succeeding page of each copy and must be accompanied by a nonconfidential summary.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 95–14403 Filed 6–12–95; 8:45 am]

BILLING CODE 3190–01–M

Sunshine Act Meetings

Federal Register

Vol. 60, No. 113

Tuesday, June 13, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 2:00 p.m., Wednesday, June 14, 1995.

LOCATION: Room 724, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

1. Directive on Clearance Procedures

The Commission will consider a revision to its internal clearance procedures for providing information to the public (CPSC Order 1450.2).

2. Enforcement Matter OS #3094

The Commission will consider issues related to enforcement matter OS #3094.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: June 8, 1995.

Sadye E. Dunn,

Secretary.

[FR Doc. 95–14481 Filed 6–9–95; 8:45 am]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Thursday, June 15, 1995, 10:00 a.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

Protocol Revisions

The Commission will consider issuance of a final rule revising the child-resistant packaging test protocols under the Poison Prevention Packaging Act.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: June 8, 1995.

Sadye E. Dunn,

Secretary.

[FR Doc. 95–14482 Filed 6–9–95; 8:45 am]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Friday, June 16, 1995, 10:00 a.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

Multiple Tube Mine and Shell Fireworks

The staff will brief the Commission on a Notice of Proposed Rulemaking (NPR) for multiple tube mine and shell fireworks.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: June 8, 1995.

Sadye E. Dunn,

Secretary.

[FR Doc. 95–14483 Filed 6–9–95; 8:45 am]

BILLING CODE 6355–01–M

FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

DATE AND TIME: June 15, 1995, 10:00 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone, (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 632nd Meeting—June 15, 1995; Regular Meeting (10:00 a.m.)

CAH–1.
Docket# P–5456–003, Nekoosa Packaging Corporation

CAH–2.
Docket# P–6879–017 Southeastern Hydro-Power, Inc.

CAH–3.
Omitted

CAH–4.
Docket# P–460–006 City of Tacoma, Washington

CAH–5.
Docket# P–1403–017 Pacific Gas and Electric Company

CAH–6.
Docket# P–2804–013 Goose River Hydro, Inc.

CAH–7.
Omitted

CAH–8.
Docket# P–4797–036 Cogeneration, Inc.
Other#S P–4797–038 Cogeneration, Inc.
P–4797–039 Cogeneration, Inc.

CAH–9.
Docket# P–11213–000 Thomas Hohman

Consent Agenda—Electric

CAE–1.
Docket# ER95–188–000 Midamerican Energy Company

CAE–2.
Docket# ER95–735–000 Central Maine Power Company

CAE–3.
Docket# EC95–4–000 Midwest Power Systems, Inc. and Iowa-Illinois Gas and Electric Company

CAE–4.
Docket# ER93–465–015 Florida Power & Light Company
Other#S EL93–28–006 Seminole Electric Cooperative, Inc.
EL93–40–006 Florida Municipal Power Agency v. Florida Power & Light Company
EL94–12–006 Florida Power & Light Company
EL94–28–004 Seminole Electric Cooperative, Inc.
EL94–47–004 Florida Municipal Power Agency v. Florida Power & Light Company
ER93–922–010 Florida Power & Light Company

CAE–5.
Docket# QF86–529–003 University Cogeneration, Inc.
Other#S EL94–76–000 University Cogeneration, Inc.

CAE–6.
Omitted

CAE–7.
Omitted

CAE–8.
Docket# EC93–6–003 Cincinnati Gas & Electric Company and PSI Energy, Inc.

Other#S ER94–1015–002 Cincinnati Gas & Electric Company and PSI Energy, Inc.
CAE–9.
Docket# EG95–49–000 Southern Electric Wholesale Generators, Inc.
CAE–10.
Docket# EG95–46–000 The Hub Power Company Limited
CAE–11.
Docket# EG95–47–000 Entergy Power Asia Ltd.
CAE–12.
Docket# EG95–48–000 Entergy Power Operations Corporation
CAE–13.
Docket# EG95–45–000 Burney Forest Products
CAE–14.
Docket# EG95–50–000 Southern Energy Marketing, Inc.
CAE–15.
Docket# EG95–51–000 CNG Power Services Corporation
CAE–16.
Docket# EG95–44–000 North American Energy Services Company
CAE–17.
Omitted
CAE–18.
Docket# ER94–1450–004 Coastal Electric Services Company
CAE–19.
Docket# ER94–1348–000 Southern Company Services, Inc.
Other#S EL94–85–000 Southern Company Services, Inc.
CAE–20.
Docket# ER95–941–000 Florida Power Corporation

Consent Agenda—Gas and Oil

CAG–1.
Docket# RP94–296–000 Williams Natural Gas Company
Other#S RP94–296–001 Williams Natural Gas Company
RP94–296–002 Williams Natural Gas Company
RP94–296–003 Williams Natural Gas Company
CAG–2.
Docket# RP95–302–000 Young Gas Storage Company, Ltd.
CAG–3.
Docket# GP94–2–003 Columbia Gas Transmission Corporation
Other#S CP94–720–001 Natural Gas Pipeline Company of America
CP94–724–001 Trailblazer Pipeline Company
CP95–173–001 Wyoming Interstate Company Ltd.
RP90–107–024 Columbia Gas Transmission Corporation
RP94–315–001 Columbia Gas Transmission Corporation
RP94–316–001 Columbia Gas Transmission Corporation
RP94–317–001 Columbia Gas Transmission Corporation
RP95–204–000 Columbia Gas Transmission Corporation
CAG–4.
Docket# RP91–203–050 Tennessee Gas Pipeline Company
Other#S RP94–309–005 Tennessee Gas Pipeline Company
CAG–5.
Docket# RP93–192–007 Texas Eastern Transmission Corporation
Other#S RP93–192–000 Texas Eastern Transmission Corporation
RP93–192–001 Texas Eastern Transmission Corporation
RP93–192–006 Texas Eastern Transmission Corporation
CAG–6.
Docket# RP95–90–000 Tennessee Gas Pipeline Company
CAG–7.
Docket# RP95–105–000 Florida Gas Transmission Company
Other#S RP95–105–001 Florida Gas Transmission Company
CAG–8.
Omitted
CAG–9.
Docket# PR94–3–000 Kansok Partnership
CAG–10.
Omitted
CAG–11.
Docket# TM94–2–30–001 Trunkline Gas Company
CAG–12.
Docket# RP95–197–002 Transcontinental Gas Pipe Line Corporation
CAG–13.
Docket# RP95–141–001 Pacific Gas Transmission Company
CAG–14.
Docket# RP95–191–001 Williston Basin Interstate Pipeline Company
CAG–15.
Docket# RP95–193–002 Williston Basin Interstate Pipeline Company
CAG–16.
Docket# CP92–182–011 Florida Gas Transmission Company
Other#S RP95–103–002 Florida Gas Transmission Company
CAG–17.
Omitted
CAG–18.
Omitted
CAG–19.
Docket# IS95–30–000 Williams Pipe Line Company
Other#S IS92–26–000 Williams Pipe Line Company
CAG–20.
Docket# IS92–27–000 Lakehead Pipe Line Company, Limited Partnership
Other#S IS93–4–000 Lakehead Pipe Line Company, Limited Partnership
IS93–33–001 Lakehead Pipe Line Company, Limited Partnership
CAG–21.
Docket# RP94–72–004 Iroquois Gas Transmission System, L.P.
Other#S FA92–59–004 Iroquois Gas Transmission System, L.P.
RP94–72–005 Iroquois Gas Transmission System, L.P.
CAG–22.
Omitted
CAG–23.
Docket# CP93–613–003 Northwest Pipeline Corporation
Other#S CP93–673–003 Northwest Pipeline Corporation
CAG–24.
Docket# CP94–260–001 Algonquin Gas Transmission Company
CAG–25.
Docket# CP94–342–002 Crossroads Pipeline Company
CAG–26.
Docket# CP94–775–001 Tennessee Gas Pipeline Company
CAG–27.
Docket# CP89–1525–007 Northwest Pipeline Corporation
CAG–28.
Docket# CP95–116–002 Natural Gas Pipeline Company of America v. Northern Border Pipeline Company
CAG–29.
Docket# CP95–188–000 El Paso Natural Gas Company
CAG–30.
Docket# CP95–331–000 CMS Gas Transmission and Storage Company
CAG–31.
Docket# CP95–43–000 Northern Natural Gas Company
CAG–32.
Docket# CP95–152–000 Natural Gas Pipeline Company of America
CAG–33.
Docket# CP93–672–001 Natural Gas Pipeline Company of America
CAG–34.
Docket# CP95–206–000 Columbia Gas Transmission Corporation
CAG–35.
Docket# CP90–1050–004 Panhandle Eastern Pipe Line Company
Other#S CP94–151–001 Panhandle Eastern Pipe Line Company
CAG–36.
Docket# CP95–304–000 Shell Western E&P Inc.
CAG–37.
Docket# MG88–2–008 Algonquin Gas Transmission Company
Other#S MG88–26–007 Texas Eastern Transmission Corporation
MG90–3–005 Trunkline LNG Company
MG95–1–002 Algonquin LNG, Inc.
CAG–38.
Docket# CP95–168–000 Sea Robin Pipeline Company

Hydro Agenda

H–1.
Reserved

Electric Agenda

E–1.
Docket# RM94–14–000 Nuclear Plant Decommissioning Trust Fund Guidelines Final Rule.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
Reserved

II. Pipeline Certificate Matters

PC–1.
Reserved

Dated: June 8, 1995.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14507 Filed 6–9–95; 11:06 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting Thursday June 15, 1995

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, June 15, 1994, which is scheduled to commence at 1:30 p.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Item No. and Bureau	Subject
1. Mass Media	*Title:* Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service (MM Docket No. 94–131) and Implementation of Section 309(j) of the Communications Act—Competitive Bidding (PP Docket No. 93–253). *Summary:* The Commission will consider action concerning filing procedures and auction rules for licensing the remaining channels in the Multipoint Distribution Service.
2. Mass Media	*Title:* Amendment of Parts 21, 43, 74, 78 and 94 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands Affecting: Private Operational—Fixed Microwave Service, Multipoint Distribution Service, Multichannel Multipoint Distribution Service, Instructional Television Fixed Service and Cable Television Relay Service (GEN Docket Nos. 90–54 and 80–113). *Summary:* The Commission will consider three issues examined in the previous reconsideration order: (1) the definition of protected service areas for existing Multipoint Distribution Service (MDS) stations; (2) the deadlines for service of MDS applications on authorized Instructional Television Fixed Service (ITFS) stations and for ITFS petitions to deny of MDS applications; and (3) demonstrations required when MDS applications propose transmitter frequency offset.
3. Mass Media	*Title:* Twenty-Two Items regarding 728 Applications for Authority to Construct and Operate Multipoint Distribution Service Stations. *Summary:* The Commission will consider reconsideration petitions regarding 728 applications for new MDS stations.
4. Mass Media	*Title:* Review of the Commission's Regulations Governing Programming Practices of Broadcast Television Networks and Affiliates: 47 C.F.R. Section 73.658. *Summary:* The Commission will consider initiating review of network rules relating to programming.
5. Wireless Telecommunications	*Title:* Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing them and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Radio Services (PR Docket No. 92–235). *Summary:* The Commission will consider ways to increase channel capacity in the frequency bands below 512 MHz allocated to the private land mobile radio services.
6. International	*Title:* Preparation for International Telecommunication Union World Radiocommunication Conferences (IC Docket No. 94–31). *Summary:* The Commission will consider a Report containing recommended U.S. Proposals for the 1995 World Radiocommunication Conference (WRC–95).

Additional information concerning this meeting may be obtained from Audrey Spivack or Maureen Peratino, Office of Public Affairs, telephone number (202) 418–0500.

Dated: June 8, 1995.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–14506 Filed 6–9–95; 11:05 am]

BILLING CODE 6712–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, June 19, 1995.

PLACE: William McChesney Martin, Jr. Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 9, 1995

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–14607 Filed 6–9–95; 3:48 pm]

BILLING CODE 6210–01–P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of June 12, 19, 26, and July 3, 1995.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of June 12

Wednesday, June 14
11:30 a.m. Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of June 19—Tentative

Wednesday, June 21
9:00 a.m. Discussion of Management Issues (Closed—Ex. 2 and 6)
10:30 a.m. Briefing on NRC Use of Expert Elicitation in HLW Performance Assessments (Public Meeting) (Contact: Janet Kotra, 301–415–6674)

Thursday, June 22
9:00 a.m. Briefing on Results of Senior Management Review of Operating Reactors, Fuel Facilities, and Related Activities (Public Meeting) (Contact: Victor McCree, 301–415–1711)
10:30 a.m. Affirmation/Discussion and Vote (Public Meeting) *(Please Note: These items will be affirmed immediately following the conclusion of the preceding meeting.)
a. Final Rule on "Clarification of Decommissioning Funding Assurance Requirements" (Tentative)
b. Final Rule Revising 10 CFR Part 110, Import and Export of Radioactive Waste (Tentative)
c. Georgia Power Company's Motion for Order Preserving the Licensing Board's Jurisdiction (Docket Nos. 50–424–OLA–3, 50–425–OLA–3) (Tentative) (Contact: Andrew Bates, 301–415–1963)

Week of June 26—Tentative

Thursday, June 29
3:30 p.m. Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of July 3—Tentative

There are no meetings scheduled for the Week of July 3.

ADDITIONAL INFORMATION: By a vote of 4–0 on June 7, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Louisiana Energy Services (Claiborne Enrichment Center); Atomic Safety and Licensing Board March 3, 1995 Memorandum and Order (Docket No. 70–3070–ML)" (PUBLIC MEETING) be held on June 8, and on less than one week's notice to the public.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

*The schedule for commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301–415–1963).

In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

* * * * *

Dated: June 9, 1995.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 95–14569 Filed 6–9–95; 2:45 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of June 12, 1995.

An open meeting will be held on Wednesday, June 14, 1995, at 10:00 a.m. Closed meetings will be held on Wednesday, June 14, 1995, following the 10:00 a.m. open meeting, and Thursday, June 15, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 56 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at closed meetings.

Commissioner Wallman, as duty officer, voted to consider the items listed for the closed meetings in closed sessions.

The subject matter of the open meeting scheduled for Wednesday, June 14, 1995, at 10:00 a.m., will be:

The Commission will hear oral argument on appeals by Ivan D. Jones, Jr. and Roy P. Akers from an administrative law judge's initial decision.

The subject matter of the closed meeting scheduled for Wednesday, June 14, 1995, following the 10:00 open meeting, will be:

Post oral argument discussion.

The subject matter of the closed meeting scheduled for Thursday, June 15, 1995, at 2:00 p.m., will be:

Institution of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Settlement of injunctive actions.

Settlement of administrative proceedings of an enforcement nature.

Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Office of the Secretary (202) 942–7070.

Dated: June 8, 1995.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–14519 Filed 6–9–95; 12:07 pm]

BILLING CODE 8010–01–M

Federal Register

Tuesday
June 13, 1995

Part II

Department of Agriculture

Food and Consumer Service

7 CFR Parts 210 and 220
Child Nutrition Programs: School Meal Initiatives for Healthy Children; Final Rule

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Parts 210 and 220

National School Lunch Program and School Breakfast Program: School Meals Initiative for Healthy Children

AGENCY: Food and Consumer Service, USDA.

ACTION: Final rule

SUMMARY: This final rule amends the regulations governing the nutrition standards for the National School Lunch and School Breakfast Programs. It is part of an integrated, comprehensive plan for promoting the health of the Nation's school children by updating the nutrition standards for school meals and by providing State agencies and local food service operators with the technical assistance and tools to meet these standards. On June 10, 1994, the Department proposed improvements, including a provision to incorporate the *Dietary Guidelines for Americans* into the program regulations. The *Dietary Guidelines for Americans* set forth medical and scientific consensus on proper nutrition as a vital element in disease prevention and long-term health promotion. That proposal would have also established a method of meal planning and preparation based on computerized nutrient analysis. On January 27, 1995, the Department published a supplemental proposal to provide local food authorities with an additional meal planning option—a food-based menu system. This final rule implements provisions of both proposals and reflects the Department's review of the comments received on those proposals. The foundation of this final rule is the requirement that, by School Year 1996/1997, school lunches and breakfasts comply with the recommendations of the *Dietary Guidelines for Americans*. This rule also establishes specific minimum standards for key nutrients and calories which school meals must meet. To facilitate implementation of the updated standards, the regulation provides schools with three meal planning options and streamlines some administrative requirements to enhance flexibility for schools and State agencies. This rule also incorporates some provisions of the Healthy Meals for Healthy Americans Act of 1994. The effect of this rule will be to provide more healthful and nutritious meals to the Nation's school children.

EFFECTIVE DATE: July 13, 1995

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302; telephone: 703–305–2620.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). The Administrator of the Food and Consumer Service (FCS) has certified that this rule will not have a significant economic impact on a substantial number of small entities. In the interest of furthering efforts to reinvent government, this rule reduces current State agency administrative burdens and makes a technical adjustment in the recordkeeping burdens. In addition, the Department of Agriculture (the Department or USDA) does not anticipate any adverse fiscal impact on local schools. Analyses by FCS and the Department's Economic Research Service found that the menu planning aspects can be met at the current cost of food in the National School Lunch and School Breakfast Programs. Further, these analyses indicate that the reimbursement structure of the Programs, along with student payments for meals served, provide sufficient subsidy.

Catalog of Federal Assistance

The National School Lunch Program and the School Breakfast Program are listed in the Catalog of Federal Domestic Assistance under Nos. 10.555 and 10.553, respectively, and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V and final rule-related notice at 48 **Federal Register** (FR) 29112, June 24, 1983.)

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This final rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This final rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** section of this preamble. Prior to any judicial challenge to the provisions of this final rule or the application of the provisions, all applicable administrative procedures must be exhausted. In the National School Lunch Program and School Breakfast Program, the administrative procedures are set forth under the following regulations: (1) School food authority appeals of State agency findings as a result of an administrative review must follow State agency hearing procedures as established pursuant to 7 CFR 210.18(q); (2) school food authority appeals of FCS findings as a result of an administrative review must follow FCS hearing procedures as established pursuant to 7 CFR 210.30(d)(3); and (3) State agency appeals of State Administrative Expense fund sanctions (7 CFR 235.11(b)) must follow the FCS Administrative Review Process as established pursuant to 7 CFR 235.11(f).

Information Collection

This final rule contains information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35). The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting and recordkeeping burdens. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: National School Lunch Program and School Breakfast Program: School Meals Initiative for Healthy Children.

Description: Under this final rule, some existing recordkeeping activities contained in 7 CFR parts 210 and 220 would be affected. The OMB control numbers are 0584–0006 and 0584–0012, respectively.

Description of Respondents: State agencies, school food authorities and schools doing on-site preparation of meals.

ESTIMATED ANNUAL RECORDKEEPING BURDEN

7 CFR 210.8 (a)(3)	Annual number of respondents	Annual frequency	Average burden per response (hours)	Annual burden hours
Existing	20,249	12	2	485,976
New	*3,442	12	2	82,608
Difference				−403,368

*These respondents represent the 17% of school food authorities which are found through administrative reviews conducted under §210.18 to have counting and claiming deficiencies and therefore must continue using the current edit checks.

7 CFR 210.10/nutrient analysis menu planning	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
Existing				
New	*14,235	180	.333	853,246
Difference				+853,246

*This estimate uses approximately 20% of schools. Please note that the current OMB approved burden is based on 70,455 schools. However, for the purposes of a more accurate comparison, the current burden has been adjusted here to include the same number of schools used to determine the new burden.

7 CFR 210.10/ food-based menu planning	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
Existing	*71,176	180	.25	3,202,920
New	**56,941	180	.25	2,562,345
Difference				−640,575

*Please note that the current OMB approved burden is based on 70,455 schools. However, for the purposes of a more accurate comparison, the current burden has been adjusted here to include the same number of schools used to determine the new burden.
**This estimate uses approximately 80% of schools.

7 CFR 210.15(b)(4)	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
Existing	20,249	12	52.333	12,716,291
New				
Difference				−12,716,291

7 CFR 220.8/nutrient analysis	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
Existing				
New	*12,117	180	.117	255,184
Difference				+255,184

*This estimate uses approximately 20% of schools. Please note that the current OMB approved burden is based on 49,962 schools. However, for the purposes of a more accurate comparison, the current burden has been adjusted here to include the same number of schools used to determine the new burden.

7 CFR 220.8/food-based menu planning	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
Existing	*60,585	180	.083	905,140
New	**48,468	180	.083	724,112
Difference				−181,028

*Please note that the current OMB approved burden is based on 49,962 schools. However, for the purposes of a more accurate comparison, the current burden has been adjusted here to include the same number of schools used to determine the new burden.
**This estimate uses approximately 80% of schools.

7 CFR 220.13(i)	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
Existing	5,658	12	34	2,308,464
New				
Difference				−2,308,464

As required by section 3504(h) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3504(h), FCS has submitted a copy of this final rule to OMB for review of these information collection requirements. Other organizations and individuals desiring to submit comments regarding this burden estimate or any aspects of these information collection requirements, including suggestions for reducing the burdens, should direct them to the Policy and Program Development Branch, Child Nutrition Division, (address above) and to the Office of Information and Regulatory Affairs, OMB, Room 3208, New Executive Office Building, Washington, DC 20503, Attention: Laura Oliven, Desk Officer for FCS.

Background

The primary purpose of the National School Lunch Program (NSLP), as instituted by Congress in 1946, was "to safeguard the health and well-being of the Nation's children. * * *" (Section 2 of the National School Lunch Act (NSLA), 42 U.S.C. 1751). At that time, nutritional concerns in the United States centered on nutrient deficiencies and issues of underconsumption. Therefore, over time, meal requirements for the NSLP (7 CFR 210.10) were designed to provide foods sufficient to approximate one-third of the National Academy of Sciences' Recommended Dietary Allowances (RDA). Participating schools were required to offer meals that complied with general patterns established by the Department. These patterns were developed to provide balanced meals by focusing on minimum amounts of specific components (meat/meat alternate, bread/bread alternate, vegetables, fruits and milk) rather than on the nutrient content of the entire meal. Virtually no substantive changes have been made to these patterns since the program's inception.

Over the past 50 years, an array of scientific knowledge has been developed which documents that excesses in consumption are a major concern because of their relationship to the incidence of chronic disease. The typical diet in the United States is high in fat, saturated fat and sodium and low in complex carbohydrates and fiber. As a result of this accumulating body of scientific research, dietary recommendations for the population of the United States were developed in the late 1970's. These recommendations were followed in 1980 by the *Dietary Guidelines for Americans* (or Dietary Guidelines), issued jointly by the Department of Agriculture and the Department of Health and Human Services. These Dietary Guidelines were subsequently updated in 1985 and again in 1990. Also in that year, Title III of the National Nutrition Monitoring and Related Research Act of 1990 (Public Law (Pub. L.) 101–445, 7 U.S.C. 5301, *et. seq.*) was enacted. This law requires that the Dietary Guidelines be reviewed by a panel of experts every five years to determine whether the existing standards need to be altered and, if so, to recommend changes. As a result of this process, the Dietary Guidelines are based on the best available scientific and medical knowledge. (Readers wishing a more detailed discussion of the development of the Dietary Guidelines should refer to the preamble of the June 10, 1994, proposal at 59 FR 30219.)

The current Dietary Guidelines recommend that people eat a variety of foods; maintain a healthy weight; choose a diet with plenty of vegetables, fruits, and grain products; and use sugar and sodium in moderation. The Dietary Guidelines also recommend diets that are low in fat, saturated fat, and cholesterol so that over time, fat comprises 30 percent or less of caloric intake and saturated fat less than 10 percent of total calories for persons two years of age and older.

Information available to the Department consistently shows that children's diets, including meals served in schools, do not conform to the recommendations of the Dietary Guidelines. Especially significant were the findings of a nationally representative USDA study entitled the *School Nutrition Dietary Assessment (SNDA)* study. Released in October, 1993, the SNDA study presented findings on the nutrients and foods provided in school meals and described the dietary intakes of students on a typical school day. The study compared nutrients provided in school meals with the recommendations of the Dietary Guidelines on fat and saturated fat, the National Research Council's (NRC) *Diet and Health* recommendations on sodium, cholesterol and carbohydrate intake, and the current objectives that the nutrients provided in the NSLP meet one-third of the RDA and that the School Breakfast Program (SBP) meet one-fourth of the RDA.

The findings from the SNDA study showed that school lunches meet the nutrition standards established at the start of the NSLP in the late 1940's, but the study also showed that school lunches exceed the recommended levels of fat and saturated fat established by the Dietary Guidelines. Specifically, the average percentage of calories from total fat was 38 per cent compared with the recommended goal of 30 per cent or less; and the percentage from saturated fat was 15 per cent, compared with the recommended goal of less than 10 per cent. The study also found that children who ate the school lunch consumed a significantly higher amount of calories from fat than children who brought their lunch from home or obtained a lunch from vending machines or elsewhere at school. The SNDA study also showed that while school meals met the NRC recommendation on cholesterol, the meals did not meet the NRC recommendations on sodium or carbohydrate levels. In fact, the level for sodium, at 1,479 milligrams, was nearly two times the NRC lunch target of 800 milligrams. Even though the SBP did meet most of the recommendations in the Dietary Guidelines, the number of lunches served in schools far exceeds the number of breakfasts served. It is clear, therefore, that school meals do not conform overall to current scientific knowledge of what constitutes a healthful diet.

The SNDA study underscored the fact that the meal patterns have not kept up over the years with scientific knowledge about diet. This situation is cause for concern because it demonstrates the need for significant improvement if the school nutrition programs are to meet the objective of the NSLA to safeguard the health and well-being of the nation's children.

As the first step toward achieving meaningful improvement in children's diets and, thus, their health and future well being, the Department considers it necessary to update the regulations by setting specific nutrition criteria for reimbursable school meals including incorporating the RDA for key nutrients, energy allowances for calories, and the most current nutritional standards as outlined in the Dietary Guidelines as requirements for the NSLP and SBP. Before proceeding with a rulemaking, however, the Department recognized the importance of public input. To obtain this input, the Department solicited comments on nutrition objectives for school meals through public hearings and written comments. In a notice published in the **Federal Register** (58 FR 47853, September 13, 1993), the Department announced a series of four public hearings. Any person who was interested could register to speak at any of the hearings. Persons unable to testify in person were invited to submit written comments.

A total of 363 witnesses testified at the hearings, and an additional 2,013 written comments were received by the Department, representing medical professionals, nutritionists or dietitians, public health, nutrition or food organizations (21%); the general public (21%); parents and students (21%); school food service personnel, school food service organizations and State education/child nutrition agencies (16%); teachers, school officials and school associations (11%); food industry (7%); and other State or Federal agencies or members of Congress.

In general, commenters voiced support for the goal of more nutritious meals which meet the current Dietary Guidelines. However, the comments also raised some concerns about paperwork burden, the quality of USDA donated commodities and the need for enhanced training and education. (Readers wishing a complete analysis of the themes and concerns raised by commenters should refer to the preamble of the June 10, 1994, proposal at 59 FR 30221–30225.)

From the testimony and written comments, the Department developed Guiding Principles and a Framework for Action to address the need for a comprehensive, integrated plan to improve school meals. The five Guiding Principles are:

Healthy children—Our goal is to provide our Nation's children with access to school meal programs that promote their health, prevent disease, and meet the *Dietary Guidelines for Americans*.

Customer appeal—We understand that if food doesn't look good or taste good, children will not eat it. We must involve students, parents, teachers and the food and agriculture community in any change through a national nutrition education campaign, using the media that children and parents understand and the language that they speak.

Flexibility—We have to reduce paperwork, streamline reporting systems, recognize regional and economic differences and offer schools different approaches to designing menus that meet the Dietary Guidelines. To do this, we must use technology more effectively.

Investing in people—We must provide schools and school food service directors with the training and technical assistance they need to bring about nutrition changes in the school meal programs and build the nutrition skills of our nation's children, and thereby improve their health.

Building partnerships—To meet our national health responsibility to American children and to increase cost effectiveness, we must forge partnerships throughout the public and private sectors. This includes continuing collaborative efforts with our Federal partners at the Departments of Education and Health and Human Services and building bridges to consumer and industry groups.

Guided by these five principles, USDA constructed a comprehensive, integrated framework for action:

I. Eating for Health: Meeting the Dietary Guidelines. School meals' nutrition standards will be updated and expanded to include the *Dietary Guidelines for Americans* with standards for fat and saturated fat as well as required nutrients.

II. Making Food Choices: Nutrition Education, Training and Technical Assistance. It is not enough to change the food on the plate. We must also provide the knowledge and the skills that enable children to make choices that lead to a nutritious diet and improved health. It also is vital that local meal providers receive training on how to improve meal quality. This dual initiative to educate children and assist meal providers offers many opportunities to influence both what foods are offered by schools and what foods are eaten by children.

III. Maximizing Resources: Getting the Best Value. By marshalling all available resources and strengthening partnerships with our State and local cooperators, we will stretch food dollars and cut costs while improving the nutritional profile of commodities. We will enhance access to locally grown commodities and better use regional agricultural resources. And we will provide assistance, training and the power of Federal purchases to help school administrators manage school meal programs in a more cost-effective way.

IV. Managing for the Future: Streamlined Administration. It is necessary to reduce the paperwork and administrative burdens of local administrators. We will streamline procedures and emphasize administrative flexibility to free State and local food program managers to concentrate on nutrition.

June 10, 1994, Proposed Rulemaking

As an important part of this overall initiative, the Department published a proposed rule on June 10, 1994, to update and expand the nutrition standards for the school meal programs, to incorporate the Dietary Guidelines into the NSLP and SBP regulations and to require that school meals meet the applicable recommendations of the Dietary Guidelines, including the quantified standards established for fat and saturated fat. This proposal also sought to establish new menu planning systems that would facilitate compliance with the proposed updated nutrition standards, and it included proposals to reduce paperwork and streamline program administration at both the State and local levels.

Under this proposal, school lunches would be required to provide, over a school week's menu cycle, one-third of the RDA for protein, vitamin A, vitamin C, iron and calcium as well as one-third of the energy allowances for calories for the appropriate age/grade group. Breakfasts would be required to provide one-fourth of the RDA for the same nutrients and for calories over a school week's menu cycle. In addition, under the June 10th proposal, by School Year 1998/1999, at the latest, both breakfasts and lunches would have been required to comply with the recommendations of the Dietary Guidelines, including the limitations on fat (30% of total calories) and saturated fat (less than 10% of total calories).

To provide local food service directors with flexibility to meet these nutrition goals, the Department proposed to replace the current rigid meal patterns with a method of menu planning and preparation called Nutrient Standard Menu Planning (NuMenus). Under NuMenus, a nutrient analysis is conducted on all foods offered as part of reimbursable meals over a school week, and appropriate adjustments are made to ensure that the meals meet the nutrition standards. In recognition of the fact that some school food authorities may not have the computer capability or the access to technical support necessary to conduct NuMenus independently, the proposal allowed school food authorities to use a modified form of NuMenus, called Assisted NuMenus, under which schools could arrange for menu development and nutrition analysis by other entities, such as State agencies, consortiums of school food authorities or consultants.

Since meals would no longer have had to conform to the traditional five-item meal pattern structure, the Department proposed that a reimbursable lunch must include a minimum of three menu items, one of which had to be an entree and another which had to be fluid milk. (Fluid milk is required by section 9(a)(2)(A) of the NSLA, 42 U.S.C. 1758(a)(2)(A).) Moreover, if a school participates in "offer-versus-serve" (defined in current regulations at 7 CFR 210.10(e) and 220.8(a)(3)), the child must select at least two menu items, one of which would be an entree. (The Department did not propose to extend the requirement concerning entrees to the breakfast program.) Under the proposed

rule, the nutrients in all menu items or other foods offered as part of the reimbursable meal would be analyzed to determine whether or not the nutrition standards were being met. However, the nutrient analysis would have to be weighted to reflect the nutrient and calorie levels that each menu item or food offered actually contributed to the meals. Weighting is necessary to indicate the proportion the menu items and foods actually represent in the meal service offered, rather than simply being an average of the nutrients in all of the items listed on the menu.

The Department also proposed to establish a nutrition monitoring system for State agencies which would be coordinated with other oversight activities. Under this system, State agency reviewers would assess the school's nutrient analysis for the last completed school week to determine if the school was applying the correct methodology and was properly conducting the analysis. If the State agency's review indicated that the school was not conducting NuMenus accurately or was not applying Assisted NuMenus properly, or if the meals, as offered, did not comply with nutrition standards, the school food authority would be required to take appropriate corrective action to achieve compliance. The State agency would monitor the school's corrective action efforts to ensure that progress was being made toward compliance. The State agency would be required to impose fiscal sanctions *only* if the school's violation was intentional or the school refused to comply with the corrective action plan.

Finally, the Department proposed three provisions to streamline program administration. The first of these would extend the Coordinated Review Effort (CRE) review cycle from four to five years, thereby providing State agencies with additional flexibility to undertake technical assistance and corrective action efforts. The second provision would eliminate the regulatory requirement for a specific type of edit check on daily meal counts if no meal counting or claiming problems were identified on the most recent CRE review. Instead, a school food authority could develop and implement its own system of internal controls to ensure the accuracy of claims. Lastly, the Department proposed removing the regulatory requirement that school food authorities maintain records specifically to document the nonprofit status of their food service. Rather, the records kept as a normal part of operating a business would suffice.

The Department established a 90-day comment period on this proposal, which expired on September 8, 1994. During this period, the Department received over 14,000 comments. The following shows the number of commenters by class which were received on the June 10, 1994, proposed rule as well as those received on the January 27, 1995, proposal which is discussed in more detail below:

	June 10, 1994, proposed rule	January 27, 1995, proposed rule
General public/others	1,112	9
Parents/Grandparents/students	1,967	0
School food service	9,894	199
Medical/Registered dieticians/Public health/Food organizations	262	26
Teachers/Professors/School organizations	661	79
Food industry/Chefs	180	50
Federal agencies/Congress	16	0
Totals	14,092	363

All of these comments were considered, and a detailed discussion of the major issues and concerns raised by commenters occurs later in this preamble.

Public Law 103–448 and the January 27, 1995, Proposed Rulemaking

Before the Department could finalize the June 10, 1994, proposal, Pub. L. 103–448, the Healthy Meals for Healthy Americans Act of 1994, was enacted on November 2, 1994. This law essentially codified the major provisions of the June 10th proposed rule. However, the law did mandate compliance with the Dietary Guidelines by School Year 1996/1997—two years earlier than the Department had proposed—although State agencies are authorized to waive implementation on a case-by-case basis until School Year 1998/1999. Public Law 103–448 also provided that schools could elect to use a "food-based" system of menu planning and preparation in lieu of NuMenus or Assisted NuMenus. The law further directed the Department to hold a public meeting with affected parties within 45 days of publication of a proposed rule to implement the nutrition-related provisions of Pub. L. 103–448. Because of the need to expedite the rulemaking activity, the law (section 112(c) of Pub. L. 103–448, 42 U.S.C. 1760(k)(2)) specifically exempted this meeting from the procedures normally required under the Administrative Procedure Act.

On January 27, 1995, the Department published a rule (60 FR 5514) proposing to incorporate the statutory requirement of section 106(b) of Pub. L. 103–448 (42 U.S.C. 1758(f)(1)) that school meals conform to the Dietary Guidelines by School Year 1996/1997, unless a waiver of up to two years is authorized by the State agency. The rule also proposed revisions to the existing meal pattern to enable schools using a "food-based" menu planning system to comply with the updated nutrition standards including the recommendations of the Dietary Guidelines. Finally, the proposal included a provision for State agency monitoring of food-based menu planning systems to ensure compliance with the nutrition standards, similar to the monitoring provisions proposed for NuMenus and Assisted NuMenus.

In developing the proposed food-based menu planning system, the Department retained the component structure of the current meal patterns for lunches and breakfasts because their familiarity would facilitate implementation at the local level. However, the Department proposed revisions to the age/grade groups: Two mandatory age/grade groupings: kindergarten through grade 6, and grade 7 through grade 12, with an optional grouping for kindergarten through grade 3. These groups are designed to reflect the need to distinguish the nutrient and caloric needs of younger and older children while also accommodating the grade structures of the majority of schools.

Moreover, the Department did not propose any reductions to the current minimum quantity requirements for any components. The principal differences between the proposed food-based menu planning system and the current meal patterns reflect increases in the quantities of vegetables/fruits and breads/grains products for reimbursable lunches. This change was intended to maintain calories while reducing fat. For children in kindergarten through grade 6, the Department proposed that the serving of fruits/vegetables be three-quarters of a cup per lunch *plus* an additional one-half cup served over a *five-day period*. The proposal set the minimum quantity of vegetables/fruits to one cup per lunch for children in grades 7 through 12.

With respect to grains/breads, the proposal would require that the number of lunch period servings per week for children in kindergarten through grade 6 be increased from the current 8 to 12. For children in grades 7 through 12, the number of servings would be increased from 8 (10 recommended) to 15 per week. To provide schools with flexibility in meeting this requirement, the proposal further allowed one serving per day to be in the form of a grain-based dessert, such as rice pudding.

The Department proposed no changes to the quantity and component requirements for breakfasts. However, the proposal encouraged school food authorities to offer children in grades 7 through 12 an additional serving of the grains/breads component each day. This optional increase was intended to provide sufficient calories to meet the needs of adolescent children, especially males, when the fat content was modified to conform to the Dietary Guidelines.

Finally, to provide sufficient State agency oversight of meal services employing a food-based menu planning system, the Department proposed to have State agencies conduct a nutrient analysis of one week's meals using the school's menus and supporting production records. Under the proposal, the State agency would be required to do the nutrient analysis once every five years and could combine the analysis with administrative review activity. As noted above, all school food authorities will be required, beginning with School Year 1996/1997, unless the requirement is temporarily waived, to comply with the Department's nutrition standards, including the Dietary Guidelines. Since schools using a food-based planning system will not generally be conducting routine analyses of their meals and, therefore, will have no records documenting compliance, it will be necessary for the State agency to determine whether or not the way the school is using the food-based menu planning system actually produces meals that meet the nutrition standards. In the interests of flexibility, however, the proposal also would have authorized the Department to approve alternative review methodologies proposed by a State agency if they provided the same degree of assurance that school meals are in compliance with all nutrition standards.

The Department allowed a 45-day comment period, during which 363 comment letters were received. (See chart earlier in this preamble for a detailed list of the number of commenters by type.) Moreover, on February 17, 1995, the Department conducted a public meeting and invited representatives of the health, nutrition, education, food service and food industry communities to participate. Members of the general public were also invited to attend and address the meeting. Twenty-six persons spoke at this meeting, and their comments were also analyzed and considered in developing this final regulation.

Development of the Final Rule

This final rule incorporates provisions from both the June 10, 1994, and the January 27, 1995, proposed rules. In finalizing the two proposals, the Department established the same nutrition standards for all menu planning approaches, including the key nutrients that must be met. In essence, this rule provides an array of menu planning methods for school food authorities to choose from to meet the Dietary Guidelines. The remainder of this preamble addresses the key issues raised by commenters on both proposals.

Nutrition Standards: Dietary Guidelines, RDA and Calories

As mentioned earlier, both proposals would have incorporated the Dietary Guidelines as well as specific standards for RDA and calories into the NSLP and SBP regulations. Under the proposals, school lunches would be required to meet one-third of the RDA for protein, vitamin A, vitamin C, iron and calcium as well as one-third of the Recommended Energy Intake (calories). School breakfasts would be required to provide one-fourth of the RDA for the same nutrients and calories. Moreover, in the June 10, 1994, rulemaking, the Department proposed incorporation of the recommendations of the 1990 Dietary Guidelines appropriate for school meals and announced its intention to review modifications or additions in subsequent issues of the Dietary Guidelines for possible future inclusions in the applicable program regulations. The proposed rulemaking also would have required full implementation by School Year 1998/1999.

However, section 106(b) of Pub. L. 103–448, the Healthy Meals for Healthy Americans Act of 1994, amended section 9 of the NSLA, 42 U.S.C. 1758(f)(2)(C), to *require* that school meals meet the recommendations of the Dietary Guidelines in School Year 1996/97. The January 27, 1995, proposal, therefore, included this requirement along with the statutory authority for State agencies (provided by section 106(b) (42 U.S.C. 1758(f)(2)(B)) to waive implementation on a case-by-case basis until no later than School Year 1998/1999. Section 106(b) of Pub. L. 103–448 (42 U.S.C. 1758(f)(1)(B)) also requires compliance with the Dietary Guidelines as they evolve. That is, the Department will adjust the nutritional standards of the NSLP and SBP if and when changes are made to the Dietary Guidelines.

Over 2,000 of the more than 14,000 commenters on the June 10, 1994, proposal addressed the Dietary Guidelines; of these, nearly 1,800 supported their use as the basis for the nutrition standards for school meals. In addition, over 900 commenters from the school food service community felt that the Dietary Guidelines could be implemented faster if they had the option to plan and prepare meals using a food-based menu planning system. Also, these commenters felt that a food-based menu planning system would support the goal of the Dietary Guidelines to increase consumption of fruits and vegetables. The basis for this latter comment was a perception that nutrient analysis seemed to focus on the nutrient content of individual foods rather than emphasizing the food groups, especially as depicted by the Food Guide Pyramid, jointly issued by the Department of Health and Human Services and USDA. The Department wishes to note that both proposals, as well as this final rule, reflect the Dietary Guidelines which the Food Guide Pyramid presents visually. The Department fully intends to continue using the Pyramid to promote nutritionally sound diets for the American people, and the Department expects the Pyramid to continue making a major contribution to nutrition education in the school meal programs and among the general public.

In view of the support by commenters, the scientific consensus recommending the Dietary Guidelines and the subsequent statutory provisions, the Department is incorporating the appropriate recommendations of the Dietary Guidelines into this final rule at § 210.10(b) (3) and (b)(4) and § 220.8(a) (3) and (4), and is requiring compliance with these recommendations by School Year 1996/97 unless a waiver not to exceed two years (to School Year 1998/99 at the latest) is authorized by the State agency (§ 210.10(o) and § 220.8(m)). The law does provide the Department with the authority to establish a later date for compliance (42 U.S.C. 1758(f)(2)(B)), but the Department does not consider a general extension appropriate given the importance of implementing the Dietary Guidelines as expeditiously as possible. As noted above, the statute (42 U.S.C. 1758(f)(1)(B)) also requires compliance with the most recent Dietary Guidelines. Therefore, this final regulation specifies compliance with the *1990* Dietary Guidelines, the most recent version to date. The Department will revise the school nutrition standards as necessary in the future to incorporate any

appropriate updates to the Dietary Guidelines.

Over 1,700 commenters specifically addressed the proposed provisions to implement the Dietary Guidelines' recommendation on limiting the levels of calories from fat and saturated fat. The majority of these commenters were parents and students. Many parents were concerned that the levels established by the Dietary Guidelines were too low for children and that overemphasizing the need to limit fat would lead to eating disorders. Other commenters suggested that the level for fat be set at 32 per cent, not 30 per cent, because they believed that student participation might decline if fat is reduced too much. The Department notes, however, that approximately three-quarters of the comments received from the public health sector agreed with the proposed levels.

The final regulation includes the current recommendations of the Dietary Guidelines for fat and saturated fat as proposed because the Dietary Guidelines represent the best scientific knowledge on nutrition currently available for everyone above the age of two. Moreover, Congress mandated that school meals comply with the Dietary Guidelines in recognition of the fact that they represent scientific consensus. Given this statutory mandate, the Department has no authority to alter the current recommendations regarding limits on fat and saturated fat.

The Department recognizes the importance of encouraging children to accept meals with reduced fat content. Merely enacting policies will not accomplish change. That is why USDA established Team Nutrition to implement "Making Food Choices," our nutrition education, training and technical assistance effort. The mission of Team Nutrition is to improve the health of children by creating innovative public and private partnerships that promote healthy food choices through the media, schools, at home and the community.

As part of this overall effort, the Department has established the Children's Nutrition Campaign—a multi-faceted education program delivered through the media, in schools and at home that builds skills and motivates children to make healthy food choices. The campaign will bring proven, focused, science-based nutrition messages to children in a language that they understand while strengthening social support for children's healthy food choices among parents, educators and food service professionals. To accomplish this goal, the Department is building partnerships with public and private sector organizations, such as the Walt Disney Company, Scholastic Inc. and the National PTA to name only a few.

The Department is also promoting a Training Plan for Healthy School Meals—a strategic plan for "change-driven" training to provide support to school food service personnel implementing the Dietary Guidelines. Through this plan, the Department will ensure that school nutrition and food service personnel have the education, motivation, training, and skills necessary to provide healthy meals that are appealing to the children and meet the nutrition standards established by this rule. As initial steps in this approach, the Department has developed improved recipes for schools and is working with the American Culinary Federation to share recipes and techniques in food preparation with the school food service community.

In Fiscal Year 1995, the Department is also awarding $4.4 million in Team Nutrition Grants to enable States to start or expand training and technical assistance activities for local food service personnel. The Department expects these grants to result in more expeditious compliance with the Dietary Guidelines.

The Department considers that providing accurate information about nutrition through the Children's Nutrition Campaign, as well as assistance with meal planning and preparation offered through the Training Plan for Healthy School Meals, will go far toward maintaining, or even increasing, participation in more healthful school meal programs.

To comply with the Dietary Guidelines, schools will also need to decrease the levels of sodium and cholesterol and increase the amount of dietary fiber and total carbohydrates in school meals. The Department did not propose specific levels for these components because numeric targets are not established by the current Dietary Guidelines. However, progress in this area will be assessed in a variety of ways including gradual reductions in sodium, and if necessary, cholesterol levels, and increased use of vegetables, fruits and grain products.

In addition, the Department did not propose measuring sugar or carbohydrate levels or the school's success in offering a variety of foods. As stated in the June 10th proposal, specific levels are not established by the current Dietary Guidelines for these components. The Department believes, however, that the provisions of this final rule actively promote an increase in the amount and variety of fruits, vegetables and grain products in school meals.

Approximately 2,600 comments addressed one or more of the above issues. The large majority of these were from school food service personnel, although more than 250 were from the public health community, with the majority of these agreeing with the Department's decision not to establish numeric levels. With respect to the recommendations on sodium, dietary fiber, and cholesterol, the number who supported including the recommendations without specific limits was about the same as the number who wanted a specific limit. For sugar and other carbohydrates, the majority suggested that the Department establish numeric levels. At this time, the Dietary Guidelines do not recommend quantitative levels of sodium, fiber, cholesterol, sugar or carbohydrates. Therefore, the final rule does not establish any numeric standards for any of these nutrients or dietary components. The provisions on the Dietary Guidelines are found at § 210.10(b) and § 220.8(a).

Additional RDA/Tolerances for RDA

Over 300 commenters, approximately half from the school food service community, addressed the minimum standards for RDA and calories. Some commenters recommended additional nutrients that should be measured such as: potassium, thiamine, riboflavin, copper, magnesium, zinc and B vitamins. Others asked that tolerance levels for meeting the required nutrients and calorie levels be established. As stated in the June 10th proposal, the included nutrients were chosen because they are the key nutrients that promote growth and development. Moreover, the presence of some of these nutrients is an indication that other important nutrients such as those suggested by commenters are present as well. Further, they are consistent with those required in the Nutrition Labeling and Education Act of 1990 (Pub. L. 101–535) and, thus, are clearly identified on labels or food specifications. The Department considers that measurement of nutrients would be too complex and burdensome if they are not included on labels. Therefore, the Department does not intend to add any other nutrients to those already proposed. Finally, with respect to tolerances, the Department does not consider it appropriate to include them as part of the regulatory standards, since those standards represent minimums which school food authorities should always strive to meet. The Department also notes that, as will be discussed later in this preamble,

schools which are making good faith efforts to comply will not be held fiscally accountable if they do not meet the standard precisely. The RDA requirements are found at § 210.10(b) and § 220.8(a).

Menu Planning Systems

As discussed above, the June 10, 1994, proposal would have required all school food authorities to plan and prepare meals using Nutrient Standard Menu Planning (NuMenus) or its corollary, Assisted Nutrient Standard Menu Planning (Assisted NuMenus). Over 8,600 commenters addressed the concept of NuMenus. The large majority were from school food service personnel. Many of these comments stated that the NuMenus concept was too complex and inflexible and that it, and Assisted NuMenus, should just be options for menu planning. Some commenters felt that the proposed system would have the effect of reducing choices for students and would lower the quality of meals served because of perceived increases in costs associated with implementation and training.

Further, over 2,500 commenters addressed the concept of Assisted NuMenus. Approximately half of these commenters were from the school food service area, while more than 700 were students or their families, over 250 were teachers or other school officials, and over 300 from other sources. Nearly 900 commenters believed Assisted NuMenus was inflexible, and about 450 found the system too complex. More than 200 commenters specifically recommended that schools without the resources for NuMenus be allowed to continue using a meal pattern. Other significant issues involved concerns about costs, possible outside control over menus and lack of responsiveness to local needs. Finally, a few commenters requested that the Department provide a set of menus, recipes, procurement specifications and preparation techniques.

In addition to the issues raised about menu choices and costs, the Department notes that many commenters were primarily concerned about being *required* to adopt NuMenus or Assisted NuMenus. The Department would like to point out that many commenters underestimated the flexibility of nutrient standard menu planning. In fact, this system is inherently flexible since meals would no longer be restricted to specific components and quantities. In addition, nutrient standard menu planning supports accommodation of ethnic, regional, and vegetarian choices. The concern about limiting menu planning options was addressed by the January 27, 1995, proposal that allows schools to elect a food-based menu planning system in lieu of NuMenus or Assisted NuMenus. The Department is retaining NuMenus and Assisted NuMenus in this final regulation (at § 210.10 (i) and (j) and § 220.8 (e) and (f)) because it continues to believe that these two systems can be valuable menu planning options in that they allow maximum flexibility. In fact, these are the only systems that the Department has identified which allow menu planners to assess their actual compliance with the quantified recommendations of the Dietary Guidelines and the other nutrition standards. The Department also notes that section 9(f)(2)(C)(i)(II) of the NSLA, as amended by section 106(b) of Pub. L. 103–448, requires that these two systems be available to local school food authorities. The Department acknowledges that Assisted NuMenus may be less responsive to local conditions than NuMenus, but it still provides a viable option for schools which are unable to conduct nutrient analysis themselves, but do not wish to continue with a more rigid meal pattern approach. Furthermore, unlike the food-based system, Assisted NuMenus will provide schools with accurate analyses of the nutrient content of the meals they are serving so that schools will be better able to determine their level of compliance with the Dietary Guidelines and other nutrition standards, thus alerting schools to needed menu adjustments. A more detailed discussion of the proposed methodology occurs later in this preamble.

National Nutrient Database for the Child Nutrition Programs

Successful conduct of nutrient analysis requires accurate information about the nutrient content of foods. To meet this need, the Department has developed a centralized National Nutrient Database that provides standard reference information on the foods and recipes used in the NSLP and SBP. As described in the preamble to the June 10, 1994, proposal (59 FR at 30229–30), this database contains information on the nutritional composition of (1) commodities supplied by the Department, (2) standard reference food items used in the NSLP and SBP, (3) Quantity Recipes for School Food Service developed by the Department and (4) commercial products for which the manufacturer has submitted nutrient analysis. The proposal, at § 210.10(k)(1) and § 220.8(j)(1), required that this database be incorporated into all software systems used to support NuMenus and Assisted NuMenus, and the Department gave assurance that the database would be made available free of charge to software companies and would be regularly updated to ensure that the database is as accurate and current as possible.

The Department received about 150 comments specifically on the database, primarily from school food service personnel. Most of the commenters were concerned that it might be too difficult to add local recipes to the database, while a few believed it would prove difficult to add locally available processed foods. Finally, there was some concern that food processors might be required to pay a fee to have their products included in the database.

The Department recognizes that the effectiveness of this database is partially dependent on the willingness of the food industry to submit data about their processed products. To ensure that processed foods are well represented in the database, the Department has met with food industry representatives to resolve issues related to the submission of processed food information. As a result of these meetings, the Department has taken a number of actions to improve the submission process. For example, the data submission disk has been revised to make data entry easier, and the Department is accepting unrounded data generated by the food industry and some provisional data. The Department has also reduced the details which must be reported for quality control purposes and has given industry greater flexibility in submitting samples of their laboratory results. The Department will continue to work with the food industry to improve the system for including processed foods in the database. The Department also wishes to emphasize that, while processors may pay to have their products analyzed, there is no fee for having the product included in the database. Finally, while the Department's database will not include local recipes and locally available processed foods, the software being developed for schools to use in nutrient analysis will have a feature allowing the incorporation of local recipes and products.

School Food Service Software Systems

The Department acknowledges that computer software is essential to NuMenus and Assisted NuMenus, since without effective software it would be nearly impossible for school food authorities to conduct the mathematical and analytical tasks associated with nutrient analysis. Therefore, the June 10, 1994, proposal required school food

authorities to use a software system that FCS had determined met a set of minimum requirements. The Department is undertaking software evaluation as a means of providing technical assistance to local schools seeking to implement NuMenus or Assisted NuMenus. While the determination would not constitute an endorsement by either FCS or the Department, it would ensure that the software used by local school food authorities has been proven to support the program requirements for NuMenus and Assisted NuMenus. All approved software will perform the following specific operations: (1) Compute a weighted nutritional analysis of meals, (2) weight and average the RDA to establish new nutrient standards, (3) convert the nutritional analysis information on any label to 100 grams, (4) create and analyze recipes and (5) print a calendar format. Also, the software will provide for a local database into which local recipes and locally available processed foods can be loaded for analysis. The Department intends to continue working with the computer software industry to develop and improve software applications for nutrient analysis. The Department is also currently working with the software industry to modify their packages to allow for a combined weighted breakfast/lunch analysis for those schools wishing to take advantage of this menu planning option. The database requirements are found at § 210.10(i)(4) and § 220.8(e)(4).

The Department received approximately 4,800 comments on the software requirements. Nearly 3,700 commenters, primarily from those in school food service, raised concerns about the cost of computers and software needed for NuMenus and Assisted NuMenus. Over 950 commenters believed the Department should provide or pay for the software, while over 2,700 maintained that the equipment and software would be too costly for local schools. The remainder raised concerns about the complexity of these systems and the need for adequate training.

The Department appreciates these concerns but does not believe it would be appropriate or practical for the Department to develop software because local schools must have flexibility to select the software that is best for their particular circumstances. If the Department were to provide a specific package, it would not be compatible with the variety of computer systems currently in use, and in many cases would not include additional applications which the local school might want. The Department notes that the price of computer hardware and software will vary widely, depending on several factors, including the ability of the software to perform additional functions such as maintaining inventory. Nevertheless, some approved software is already available at nominal cost. The Department anticipates that, as competition in this field increases, market forces will make approved software even more affordable. It also must be recognized that, when averaged over the life of the software and the number of meals being served, the acquisition cost should be quite modest.

Finally, given the range of software which the Department anticipates being available for local schools to choose from, it would not be possible for the Department to provide uniform training. However, software companies routinely provide detailed training as part of the cost of software, so local schools should not experience any significant extra cost for training.

Weighted Averages

Sections 210.10(k)(2) and 220.8(j)(2) of the June 10, 1994, proposal would have required school food authorities to determine compliance with the nutrition standards by conducting a *weighted* analysis of all foods served to children as part of their reimbursable meals. Thus, if children are offered a choice of more than one entree (e.g., pizza and fish sticks) the analysis would give more weight to the nutrients in the more popular item and correspondingly less weight to those in the less popular item. For example, if 75 percent of the children select pizza and 25 percent select fish sticks, the nutrients, calories and other components of the pizza would count for three times as much as those in the fish sticks. The purpose of this procedure is to ensure that the menu planner receives an accurate picture of the entire food service's compliance with the nutrition standards and to avoid situations in which token items on a menu could make the meal service appear to be in compliance even though these items are rarely selected.

The Department received nearly 3,000 comments on this provision, over 2,700 from school food service personnel. While a few commenters agreed with the proposal, nearly 1,300 maintained that the procedure would be too complex, and nearly 100 specifically cited the difficulty of separating out the a la carte service of items that are also part of a reimbursable meal. Approximately 1,000 commenters raised concerns about potential increases in paperwork and meal costs as well as the possibility that schools would limit choices, thereby reducing participation. Many commenters contended that school food authorities would be held accountable for children's food preferences, but that children frequently do not select foods that are best for them. Some commenters recommended alternatives to weighted analysis, such as averaging the nutrients in all of the menu items regardless of whether or not the items are routinely selected or averaging the nutrients in the most popular entrees (up to a maximum of three if more than three are offered), the method employed in a Nutrient Standard Menu Planning demonstration project in California.

The Department appreciates commenters concerns and recommendations. With respect to concerns about cost and complexity, the Department notes that the software designed to accommodate NuMenus and Assisted NuMenus will have the capacity to perform a weighted nutrient analysis just as it performs other calculations. Food service personnel, therefore, should experience much less difficulty with weighted nutrient analyses than they predicted in their comments. Moreover, while it may be necessary in some cases for schools to account for menu and a la carte items separately, in most cases school food service personnel will be able to make reliable *estimates* of the proportion of menu items that will be sold a la carte based on their experience. The Department does acknowledge that menu planners in centralized food services may experience some complexity in dealing with different preference patterns in different schools. The Department is confident, however, that school districts will be able to work out appropriate procedures that will not be overly burdensome to individual schools.

In addition, the Department stresses that the value of nutrient analysis is that it provides a tool for accurately measuring the degree to which the meals provided to children meet the nutrition standards. This measurement does not, in itself, penalize the schools. In fact, the Department believes that it is in the school's interest to have an accurate picture of its meal service. Without a weighted average, schools will be unable to track the relationship between what they offer and what is accepted, or the effects of introducing new foods or using modified cooking techniques. In the absence of the complete picture that weighted analysis provides, there is little incentive for the school to make changes in its menus or to know how best to undertake nutrition education.

Finally, the Department does not consider that the alternatives proposed by commenters would represent improvements over the proposed methodology. While a straight average of the nutrient values of all menu items would measure the nutrients in the foods available to the children, there would be little, if any, correlation between the nutrient analysis and the actual nutrition value of the meals consumed by the children. The Department's experience with the Nutrient Standard Menu Planning pilot project conducted during School Years 1983–1985 suggests that an unweighted analysis can, in fact, bias the results. Although that project did not track fat or saturated fat, certain foods with high iron content were sometimes offered but were rarely taken by students. Consequently, an unweighted analysis of menu items made it appear that children were receiving meals that met the standards for iron when, in fact, they were not.

These disadvantages apply equally to an analysis which averages the three most popular entrees. While on the surface, this method appears to provide a middle ground between weighting everything that is produced and averaging everything that is on the menu, in fact it does not provide accurate information about the overall meal service. For example, if a school served 100 helpings of pizza, 25 helpings of fish sticks and 5 chef salads, a simple averaging of the three items would not accurately reflect the actual meal service. Moreover, schools using this method would need to develop a way of accounting for the nutrients in side dishes and milk. Finally, it would not enable schools to track changes in children's food habits and would provide no incentive for introducing new foods or modifying cooking methods.

Nutrition analysis is significantly weakened without a weighting component. It is only through weighting that schools can develop more healthful and nutritious meals and track improvements in children's diets. The Department believes approved software packages will alleviate many of the concerns of local personnel, especially as they become more familiar with the software applications over time. Therefore, this final rule incorporates, at § 210.10(i)(5) for the NSLP and § 220.8(e)(5) for the SBP, the proposed requirements that NuMenus and Assisted NuMenus be based upon a weighted analysis of the foods produced.

Menu Adjustments Under Assisted NuMenus

The Department also wishes to address a proposed provision of Assisted NuMenus which was widely misunderstood. This provision (§ 210.10(l)(4) and § 220.8(k)(4) of the proposed rule) required a reanalysis of the Assisted NuMenus cycles when adjustments to menu offerings are needed to reflect changes in student preferences and participation or increased emphasis on meeting nutrition standards. It is important that the school food authority be alert to shifts in participation trends, as well as such factors as modifications to USDA commodities or food purchased in the market, since these changes can affect the degree to which menus continue to meet the nutrition standards. This information must be conveyed to whomever prepares the menus so that the recipes and menus can be reanalyzed and appropriate adjustments made. In accepting a set of menus from an outside source, the school food authority needs to confirm that there is a ready mechanism for making the necessary adjustments to the menu cycle and its accompanying segments. The Department emphasizes, however, that such adjustments do not have to be made routinely to reflect minor changes in participation or preference. On the contrary, the Department believes that adjustments would be necessary only when the school experiences significant fluctuations in student consumption patterns or as the school continues to improve meal quality by changing its menus. Therefore, this proposed provision is retained at § 210.10(j)(4) and § 220.8(f)(4).

Finally, the Department recognizes that Assisted NuMenus may not be suitable for all schools. However, for those schools whose circumstances lend themselves to this menu planning option, the Department will be providing technical assistance materials. In accordance with section 9(f)(2)(C)(i)(II) of the NSLA (as amended by section 106(b) of Pub. L. 103–448), the Department is developing a cycle menu with accompanying recipes, food product specifications and recommended food preparation methods. These guidance materials will enable local schools to prepare meals which meet the nutrition standards.

Combining Analysis of Breakfasts and Lunches

The June 10, 1994, proposal would have required school food authorities to conduct separate analyses of lunches and breakfasts. This requirement was based on the fact that breakfasts, as documented by the SNDA study, are generally in compliance with the Dietary Guidelines. A combined analysis, therefore, might tend to disguise situations in which no significant improvements were being made to the nutritional quality of lunches. Moreover, since the number of children participating in the breakfast program is a fraction of the children eating school lunches, a straight average of the two meal services would not provide an accurate reflection of the food service for the majority of children.

The Department received nearly 900 comments on this proposed provision. Over two-thirds came from school food service professionals, although more than 130 of the comments were from the general public. All but three comments recommended combining the analyses of breakfast and lunch, generally on the grounds that the Dietary Guidelines are intended to apply to total consumption rather than to individual meals.

The Department agrees that it can be useful to measure the compliance of the entire food service. Therefore, the final rule is being revised to give schools *the option* of conducting a combined analysis provided the meal services are properly weighted for participation (§ 210.10(i)(5)(iii) and § 220.8(e)(5)(iii)). The Department notes, however, that even though the software will handle the additional calculations, menu planners may find that this method does not have any significant practical effect on their ability to achieve the required nutrition standards, since breakfast represents a relatively small portion of the overall meal service.

Reimbursable Meals Under NuMenus and Assisted NuMenus

Currently, school food authorities receive reimbursement for each meal served to children that meets the meal pattern requirements for lunch or breakfast. Basically, the minimum quantity of all the required components (meat/meat alternate, bread/bread alternate, two different fruits/vegetables and fluid milk) must be offered, and a minimum number of items (at least three if the school employs "offer-versus-serve" (OVS)) must be selected. In order to determine if the meal chosen by the child is reimbursable, the cashier observes, at the point of service, if the proper number of components has been taken.

Under NuMenus and Assisted NuMenus, however, schools will have the flexibility to vary the amounts and quantities of individual foods as needed to achieve compliance with the nutrition standards. Nevertheless, it will

still be important that each reimbursable meal include a minimum number of food items for the following reasons. First, there needs to be a reasonable standard for Federal reimbursement. Secondly, a reimbursable meal must be easily recognizable at the point of service so that it can be counted accurately. Finally, it is preferable that children receive a minimum amount of nutrients from every meal rather than experiencing large fluctuations from day to day.

Therefore, the Department proposed that under NuMenus and Assisted NuMenus, a lunch would be reimbursable if at least three menu items (one must be an entree and one fluid milk) were offered, and, if the school does not participate in OVS, all menu items are taken. If the school participates in OVS, a lunch would be reimbursable if at least three menu items were offered (again, one must be an entree and one must be fluid milk), and at least two menu items (including the entree) were selected. For the SBP, at least three menu items had to be offered and at least two taken under OVS. The entree requirement was not extended to the SBP. The proposal ensured that children would receive appropriate daily levels of nutrition and that cashiers would continue to be able to determine easily if the meal selected by the child was reimbursable.

The Department received nearly 1,300 comments stating that a minimum of two items for OVS was not adequate. About 700 of these commenters were concerned that allowing children to take as few as two items would not support nutrition education efforts or provide sufficient calories. Further, they felt that only two items under OVS would undermine efforts to have meals comply with the Dietary Guidelines.

The Department agrees that the number of items which children may decline should be limited. Therefore, this final rule revises the proposed definition of a reimbursable lunch when schools using NuMenus or Assisted NuMenus also participate in OVS. For lunches in these situations (at § 210.10(i)(2)(ii)), the child must select at least two items (the entree and one other) *and* may decline no more than two items. Thus, when a school offers a meal with five or more items, the student may decline only two items and must take three or more. Under the proposal, the student would have been required to accept only two items and could have declined three or four items in a five or six item meal. The entree, of course, could not have been declined. For the SBP, the current requirement that the child may decline only one item is retained at § 220.8(e)(2)(ii). Consequently, the amount of food taken by the child under NuMenus and Assisted NuMenus will at least equal, and in many cases will exceed, the amount taken under the old meal pattern requirements.

The Department does wish to address what appears to be a misunderstanding on the part of some commenters regarding the term "menu item" as it is used in NuMenus and Assisted NuMenus. Under a meal pattern system, food items are generally viewed as satisfying one or more components. For example, a helping of spaghetti and meatballs will supply the meat/meat alternate and grain/bread components of the meal as well as one of the fruit/vegetable components. The same holds true for many popular foods, such as lasagna, pizza or chef salads. If schools use a meal pattern menu system and participate in OVS, the child would have to take the spaghetti and meatballs, since collectively that dish includes three components, but could decline the second vegetable/fruit item or the milk.

Under a system of nutrient analysis, however, spaghetti and meatballs is a single menu item (in this case, an entree) which contributes specific nutrients. If, therefore, the school offered this dish along with two other items (e.g., milk and fruit), the meal would actually provide more nutrients than under OVS in schools using a meal pattern, since the child would have to select the entree and at least one other item. If the school offered this dish along with three other items (e.g., green beans, fruit and milk), the child would also receive a more substantial meal than under the meal pattern since s/he could decline only two of the remaining three items.

The proposed requirement (at § 210.10(e)(4)(ii)) that the child select the entree stemmed from the Department's concern that the school lunches children consume provide an adequate amount of calories and other essential nutrients. Traditionally, the most significant nutrition contribution in a school lunch has come from the entree. Therefore, this provision was proposed as a way of ensuring that children participating in OVS receive the most nutritious lunch possible.

The Department recognized that the proposal deviated from current requirements which do not stipulate any particular item that the child must select. Therefore, the Department specifically solicited comments on this requirement. Only about 30 commenters supported the requirement, while 644 commenters expressed some objection. Some commenters were concerned that requiring students to select an entree would lead to reduced participation since students would have less opportunity for personal choice. Others thought that fewer fruits and vegetables would be selected. Finally there was concern that requiring selection of the entree would increase meal service costs.

The Department appreciates the concerns expressed by the commenters but continues to believe that it is necessary to require that the entree be selected for lunch in order for the meal to be reimbursable. Because the meal is built around the entree, that dish will generally make the most significant calorie contribution to the meal and also will be likelier than other items to provide a variety of nutrients. The Department also notes that schools have considerable flexibility in determining what the entree will be. For example, a school could serve a chef's salad or a vegetable and fruit platter as an entree. The Department emphasizes that the final provisions on NuMenus and Assisted NuMenus require the child to take the entree *and* at least one other item. Therefore, the child may actually receive more food than would necessarily be the case under the former meal pattern. Finally, data from the SNDA study shows that children overwhelmingly select entrees under the current system. Therefore, the Department does not believe that requiring children to select the entree will result in greater plate waste. For these reasons, this final regulation, at § 210.10(i)(2)(ii), requires that one of the items selected by the child under OVS be an entree.

While the Department believes that the OVS requirement for an entree is necessary to ensure that children receive proper nutrition from school meals, it is concerned about the possibility of plate waste. Consequently, the Department requests that school food service personnel submit comments based on their operational experience with OVS under NuMenus and Assisted NuMenus. If operational experience with OVS as required by this rule indicates an increase in plate waste, the Department will consider future rulemaking, including issuance of a proposed rule, to change the regulatory requirement.

Complexity/Inflexibility of NuMenus/ Assisted NuMenus

Over 2,200 commenters maintained that NuMenus and Assisted NuMenus were too complex, and more than 3,400 believed these menu planning systems would be inflexible. The Department notes that, since NuMenus is not bound by the component and quantity requirements of a food-based menu planning system, it gives schools more flexibility to vary their menus and to introduce different foods than they have under a meal pattern. The Department does agree that some additional effort will be necessary when NuMenus is initially implemented. As schools acquire more experience with the software and learn to take full advantage of NuMenus, this alternative can actually reduce the amount of time spent on menu planning.

Many commenters were specifically concerned about what they viewed as the inflexibility of Assisted NuMenus. Most of these commenters believed that Assisted NuMenus would impose outside controls over local menus, would be unresponsive to local preferences and would result in limited food choices which, in turn, would lead to reduced participation. The Department agrees that Assisted NuMenus is less flexible than NuMenus because the basic analysis is not performed on site, but that Assisted NuMenus still provides a better method to determine compliance with the Dietary Guidelines and other nutrition standards *and* provides more flexibility than the current meal pattern approach. This option was proposed in response to concerns that some schools may not have the resources to conduct NuMenus themselves. The Department notes, however, that schools electing to use Assisted NuMenus will still be able to control the kinds and variety of foods they serve. To account for local preferences or the purchase of local foods, schools will provide the appropriate information or specifications to whomever conducts the analysis. Subsequent modifications also would need to be referred to the analyst for adjustments. Thus, under Assisted NuMenus, local schools will continue to exercise latitude over the meals they serve and will not be subject to the analyst's decisions unless they choose to be.

Food-Based Menu Systems

A total of 363 commenters addressed one or more aspects of the January 27, 1995, proposed rule, either at the public hearing or in writing. About 200 comments were submitted by State and local food service professionals, and 79 were from other school personnel not connected with the food service. Fifty representatives of the food industry commented as did 26 nutritionists and food advocates or groups. Of these, 95 commenters generally approved of the proposed food-based system, while 78 generally disagreed. The remainder tended to approve of some aspects of the rule and disapprove of others. The chief areas addressed by commenters were the quantities specified for each of the four components, the age/grade groupings, and the monitoring requirements.

Before discussing these issues, however, the Department wishes to address a widespread misperception that the State agency would decide which menu planning alternative (food-based or nutrient analysis) would be used by local schools. Section 9(f)(2)(D) of the NSLA, as amended by section 106(b) of Pub. L. 103–448, specifically makes the choice of a menu planning system a local school option. While the State agency can (and, in the Department's view, should) provide advice on which system might prove to be most effective for an individual school food authority, the final decision rests with the local school food authority.

Component and Quantity Requirements

Eleven commenters gave general approval to the proposed meal patterns, while 13 disagreed completely with the proposal. For the most part, however, commenters discussed specific issues without entirely approving or disapproving. The most prevalent concern was that increased servings of vegetables/fruits and grains/breads would lead to increased plate waste (69 comments) and cost (115 comments). With respect to the meat/meat alternate component, 58 comments recommended reducing the quantity but were not specific. Another 64 commenters recommended specific reductions, and about the same number recommended crediting various alternatives, including yogurt. The Department received 142 comments on the proposed vegetables/ fruits portions. Forty of these were concerned with increased plate waste and costs. The remainder generally raised technical questions or proposed revisions to the quantity requirements. The Department received 232 comments on the proposed grains/breads requirements. About half of these recommended revisions to the quantity requirements (80 comments) or raised crediting issues (47 comments). The remaining comments were concerned with a variety of technical issues, the most important of which was the proposed provision to allow one serving of dessert per day to be credited toward meeting the grains/breads requirement. Finally, 73 comments addressed the milk component. Most of these comments (52) recommended that yogurt be credited as meeting the milk requirement.

The Department appreciates commenters' recommendations for adjustments to the proposed quantity requirements. The Department did not propose to reduce the quantity requirement for the meat/meat alternate component because, while it is true that this component will generally be higher in fat than the other components, the meat/meat alternate contributes a substantial portion of the calories and protein in the meal. If this component were to be reduced, the quantities of fruits/vegetables and grains/breads would need to be significantly greater than was proposed in order to replace the calories lost from this source. The proposed food-based menu planning alternative was designed to enable schools to comply with all of the meal standards, including the requirement that lunches provide one-third of the calories needed by growing children. Therefore, the Department does not believe it is feasible to reduce the meat/ meat alternate component without a correspondingly large increase in the other components. The Department continues to recommend, however, that schools use lower-fat protein sources and employ preparation techniques that will minimize the levels of fat and saturated fat.

As noted above, the Department proposed to increase the quantities of fruits/ vegetables and grains/bread to increase dietary fiber and calories from low-fat or nonfat sources. The Department appreciates commenters' concerns about possible increases in food costs. However, it would not be possible to reduce the servings of these components and still have a meal pattern that meets the Dietary Guidelines. Moreover, in designing the proposed patterns, the Department considered the cost ramifications. As discussed elsewhere in this preamble, the Department compared the costs currently incurred by school food authorities with the costs of items in the meal pattern and concluded that the current cost-per-component-serving for food can be maintained through the selection of lower-cost grains/breads. For a complete discussion of the nutrition basis and cost implications of the proposed revisions to the meal pattern, readers should refer to the preamble and regulatory assessment for the proposed rule at 60 FR 5514.

The Department also shares commenters' concerns about plate waste. However, as noted elsewhere in this preamble, the Department is undertaking a major initiative to educate children and their families about good nutrition and to provide school food authorities with recipes and techniques

that can make more healthful meals that are also appealing to children. The Department continues to believe that there is no inherent reason why fruits/vegetables and grains/breads should not be appealing if they are properly prepared and presented.

In the January 27th proposed rule, the Department sought to include the crediting of one dessert per day to provide schools with flexibility in meeting the enhanced grains/breads requirement in the proposed rule. The Department appreciates commenters' concerns about possible sugar content of desserts. The Department emphasizes, however, that if desserts are served as part of the reimbursable meal service, all of the elements in these food items will be analyzed by the State agency as part of its review of the school's compliance with the nutrition standards. To assist schools in preparing desserts that make a balanced contribution to the meal, the Department has developed modified dessert recipes which reduce fat content and increase the use of whole grain products. Such popular desserts as orange rice pudding, whole grain cookies and fruit-filled items will provide many of the children's other needs, such as dietary fiber, without overemphasizing sugar and fat. For the above reasons, the Department is adopting in this final rule, at § 210.10(k) and § 220.8(g), the proposed food-based menu planning meal patterns.

Age/Grade Groupings

One concern cited by commenters to the January 27th proposed rule was the difference between the age/grade groups for NuMenus and those for the food-based menu planning systems. In the June 10, 1994, proposal, the Department advocated establishing minimum levels of calories and nutrients for four age groups: (1) Ages 3–6, (2) ages 7–10, (3) ages 11–13 and (4) ages 14–17. These groupings were designed to take into account the ages at which children tend to need greater amounts of nutrients and calories to ensure proper growth. The specific levels represented weighted averages of the levels of nutrients and calories needed by children in those groups with the greatest increase coming at approximately age 11. Under a system of nutrient analysis, such as NuMenus or Assisted NuMenus, the computer software enables the menu planner to calculate the required nutrient levels easily and to adjust the menu and portion sizes to reflect the nutrient profile of the children when more than one age group is being served.

With a food-based menu planning system, however, the components and portion sizes are prescribed for menu planners to ensure that sufficient food is provided to meet the children's calorie and nutrient needs. Consequently, this system, which is not as flexible as nutrient analysis, does not allow for the tailoring that is possible under a system of nutrient analysis. In recognition of this limitation, the Department proposed to establish minimum portion sizes (accompanied by the appropriate levels of calories and nutrients for these grade levels) for two grade groupings in the January 27, 1995, rulemaking: Kindergarten-grade 6 and grades 7–12 for the NSLP while retaining the current single grade group of kindergarten-grade 12 for the SBP. In addition, optional levels were established in the NSLP for kindergarten-grade 3 and in the SBP for grades 7–12. These groups were selected because they reflect the age breakouts commonly used for individual schools and because they recognize the need for significant increases in nutrients and calories for adolescents.

The Department received over 500 comments on the age/grade groupings proposed in the June 10, 1994, rule, the vast majority of which were from school food service personnel. While a few commenters agreed with the four age groupings for nutrient analysis, most raised questions or concerns. About a third of the commenters asserted that the groupings were too complicated and too costly and would require too much paperwork. Some commenters were concerned that the groupings did not reflect the actual age/grade groups in some schools, and some maintained that these groupings would not work in schools with kindergarten-grade 12. A small number recommended that a single generic standard be established for all ages/grades. Over half of the commenters, again mainly representing school food service, addressed miscellaneous concerns about applying these groupings in different local situations and recommended modifications such as applying one age category based upon the majority of students or establishing standards for pre-school, elementary, middle and high schools.

The Department received 53 comments addressing the age/grade groupings of the January 27, 1995, proposed rule for the food-based menu planning system. Three commenters agreed with the proposed groupings, while eight disagreed without raising specific issues. Over forty commenters suggested changes to the groupings because of concerns about the applicability of the two groupings to their particular situations.

The Department does recognize that no set of age/grade groupings will apply precisely to every school's structure, nor will they satisfy the nutrition and calorie needs of every child. Moreover, it recognizes that not all systems will be able to tailor meals to the optimum. Therefore, the final rule adopts the same grade groups for both NuMenus and Assisted NuMenus as were proposed for the food-based menu planning alternative as the minimum requirement. In addition, the regulation also provides a number of alternatives for age/grade groupings for the nutrient analysis alternatives. Schools may use the age levels provided in the January 27, 1995, proposed regulation (ages 3–6, 7–10, 11–13 and 14 and above) as an option or may develop their own age/grade groupings. The Department continues to believe it is important to recognize the age related nutrient needs of children and provides the option of these more age appropriate levels for schools that are able to implement them. The software will readily allow for these variations, and FCS will be providing guidance on how to develop individual groupings and levels. The age/grade groupings for NuMenus and Assisted NuMenus may be found at § 210.10(c) and (i)(1) and at § 220.8(b) and (k)(1).

The January 27, 1995, proposal was structured to take into account that, in many cases, school food authorities using the food-based menu planning alternative would not have access to computer technology and would, therefore, need a simpler pattern. Consequently, as noted above, the Department proposed two grade groupings for both the nutrition standards and portion sizes which essentially overlap the four age groupings of the June 10, 1994, proposal. Since these groupings generally reflect the grade structures of most schools, the Department considers that school food authorities using these patterns should experience little, if any, difficulty in complying with the requirements. In fact, the grade groups in this rule conform more closely to the standard structures of elementary and secondary schools than did the groupings in the existing patterns (kindergarten-grade 3 and grades 4–12). Finally, the Department notes that school food authorities may always increase the portion sizes to accommodate older children, but to require schools to do so would introduce an unreasonable complexity into the system. For these reasons, the age/grade groupings of the January 27th proposal are adopted without change at

§ 210.10(d) and (k)(2) and at § 220.08(c) and (g)(2).

Monitoring Compliance With Nutrition Standards

In both proposals, the Department proposed modifications to the review requirements so that compliance with the updated nutrition standards would be monitored properly. Currently, State agencies monitor compliance with meal pattern components and quantities on a per-meal basis through observation of the meal service. If there is reason to believe that a school is consistently offering meals which are deficient, State agencies may examine menus and production records to ensure that all components were available, and that sufficient quantities were offered.

Under both the June 10, 1994, and the January 27, 1995, proposals, reimbursable meals offered over a school week must collectively meet the updated nutrition standards, including the Dietary Guidelines, as well as provide the minimum number of food items required for a reimbursable meal. Therefore, both proposals would have continued to require reviewers to determine that, on the day of review, the minimum number of menu items (NuMenus or Assisted NuMenus) or components (the food-based alternative) are offered and accepted. Meals lacking the required items or components would be disallowed. To determine compliance with the overall nutrition standards, the Department proposed to implement a review mechanism outside of the administrative review procedure set forth in § 210.18(g).

In the June 10, 1994, proposal, the Department sought to establish a separate nutrition analysis review requirement to supplement the administrative review requirements. Under this requirement (proposed at § 210.19(a)(1)), the State agency would review the school's nutrient analysis to determine that NuMenus or Assisted NuMenus are being properly conducted and that the meals provided do, in fact, comply with the program's nutrition standards. Under food-based systems, however, there generally would be no local nutrition analysis records to review. Therefore, the January 27, 1995, proposal would have required the State agency to conduct a nutrient analysis of one week's meals using the school's production records. That proposal (again § 210.19(a)(1)) also permitted State agencies to develop an alternate review methodology to nutrient analysis, subject to Departmental approval, or to examine local records of nutrient analysis should there be any. Nutrient analysis is needed because, even with a food-based system that incorporates enhanced meal pattern requirements, there is no guarantee that meals will comply with the Dietary Guidelines. Food selection, preparation techniques and student choices will have a significant effect. Periodic nutrient analysis, even if only at five-year intervals, will be the only way of gauging the school's compliance with the nutrition standards or of identifying ways to improve performance.

Both proposals stressed the Department's commitment to technical assistance and corrective action in non-compliance situations as an alternative to taking fiscal action. In both proposals, State agencies would require corrective action when meals collectively fail to meet the nutrition standards. However, reimbursement for those meals would not be disallowed. School food authorities would be required to develop an acceptable corrective action plan in collaboration with the State agency. For school food authorities making good faith efforts to comply with the terms of the corrective action plan, the State agency would provide technical assistance and training to help them meet the nutrition standards. However, if the school food authority had not been acting in good faith to meet the terms of the corrective action plan and refused to renegotiate the plan, the State agency would be required to determine if a disallowance of reimbursement was warranted.

Over 800 commenters addressed the monitoring requirements in the June 10, 1994, proposal. Most of these were parents/students (350), school food service personnel (316) and teachers and other school officials (101). In general, commenters agreed with the proposed compliance procedure; 140 commenters expressed overall approval, while only 36 completely disapproved. Commenters were concerned, however, about the provision requiring school food authorities to develop corrective action plans with the concurrence of the State agency and the provision requiring disallowance of funds if the school food authority does not act in good faith to achieve corrective action. For the most part, these concerns were technical in nature and involved such issues as defining "intentional" failure to take corrective action or requesting a methodology for calculating a fiscal penalty. Some commenters believed there should be no fiscal penalties, while others believed the State agency should have greater authority to take fiscal action for non-compliance.

The Department received 148 comments on the proposed monitoring requirement for school food authorities electing to use food-based menu planning systems. The principal concern was with the proposed requirement that State agencies conduct a nutrient analysis of one week's food service using the school's menus and supporting production records. Thirty commenters opposed the provision, while most of the others raised technical concerns or suggested alternate methodologies such as analyzing only menus.

The Department proposed to monitor compliance with the nutrition standards outside of the normal CRE process because of the belief that State agencies should have maximum flexibility to provide training and technical assistance to their schools. Therefore, both proposals stressed corrective action over automatic disallowances (except when the State agency observes that meals are not complete) because the Department does not wish to penalize school food authorities which are making good faith efforts to move toward compliance.

The Department believes that State agencies are in the best position to determine what corrective actions must be taken, what the time frames for completion will be and whether or not the school food authority is making a good faith effort to comply. Because circumstances will vary from one situation to another, the Department does not believe rigid criteria can adequately determine a "good faith" effort, although progress toward compliance with the nutrition standards would certainly be one major indicator. Moreover, the Department does not envision that disallowances would occur routinely. The timing and amount of any disallowances are entirely at the State agency's discretion, but the Department intends that they would be imposed only when the school is not taking the agreed upon corrective action and is not making progress toward compliance.

Finally, the Department proposed to have State agencies conduct a nutrient analysis as part of the review of schools using food-based menu systems because there is no other way to demonstrate that these school food authorities are actually meeting the nutrition standards, including the Dietary Guidelines. As noted elsewhere in this preamble, section 9(f) of the NSLA now requires that all schools comply with the Dietary Guidelines, and the Department's proposed meal patterns will allow schools using a food-based menu planning system to achieve these goals. However, there is a wide variation in the foods schools select to meet the component requirements. Consequently,

without nutrient analysis of the foods produced, it is impossible to document that the meals do, in fact, meet the Dietary Guidelines and the standards for RDA and calories.

By law (42 U.S.C. 1758(f)(2)(D)), schools electing to use a food-based menu planning system are not required to conduct such an analysis. Consequently, unlike schools using NuMenus or Assisted NuMenus, these schools will have no records of nutrient analysis for the State agency to review. Therefore, the State agency must conduct such an analysis to determine compliance. Moreover, the State agency must analyze the school's production records in conjunction with the menus. As discussed elsewhere in this preamble, a weighted analysis which takes into account the actual production trends is the only reliable method for determining the quality of the meal service. Simply averaging the items offered without regard to their acceptance would provide results which have little, if any, correlation to the overall meal service.

Finally, as with reviews of schools using the nutrient based system, the Department is emphasizing technical assistance and corrective action rather than fiscal action. While State agencies would continue to disallow meals which are incomplete at the point of service, the school's failure to meet the overall nutrition standards would not automatically result in disallowances. Instead, the State agency would work with schools to develop a corrective action plan and would monitor the school's progress toward the nutrition standards. Fiscal sanctions would need to be imposed *only* if the school does not make a good faith effort to work toward improvement. For these reasons, this final rule adopts the monitoring requirements at § 210.19(a)(1) as proposed in the June 10, 1994, and January 27, 1995, rules.

Streamlining: Paperwork Reduction/ Nonprofit Status

As part of the Department's continuing efforts to streamline the administration of Child Nutrition Programs, the June 10, 1994, proposal also offered State agencies and local school food authorities flexibility and reduced administrative burden in three important areas. The first provision would have extended the CRE cycle from 4 to 5 years. This change, which would result in a 20 percent decrease in annual reviews, would provide State agencies with additional flexibility and resources to enable them to work with schools to improve meals. The second provision would have eliminated the current requirement for a specific daily edit check on meal counts for those school food authorities that have been found through CRE reviews to have accurate meal counts and claims. These school food authorities would have the option of establishing their own systems of internal controls without the Department's specified edits. Finally, the Department's proposal would have removed the requirement in § 210.15(b)(4) that distinct records be maintained to document the nonprofit status of the school food service. The Department determined that it was not necessary for the program regulations to mandate this recordkeeping requirement because these records (e.g., receipts, expenditures, etc.) are the accounts which any enterprise needs to maintain in the normal course of conducting business. These kinds of records are a necessary part of a school food authority's own accountability system and, in many cases, are required by State laws. It is important to emphasize that the school food authority would still have to be operated on a nonprofit basis; the proposed amendment would have only eliminated the requirements for *documentation* of nonprofit status. It is still incumbent upon the school food authority to demonstrate that the school food service is being operated on a nonprofit basis if a question arises during an audit or other oversight activity.

Slightly over 500 of the more than 14,000 commenters discussed the change in the administrative review cycle. Of these, 430 agreed with the extension to 5 years, although 23 commenters stated that the new cycle would not make much difference to the State agencies and a few opposed the change altogether. The Department continues to believe that the proposed reduction in the number of annual reviews will not compromise program accountability, but will enable State agencies to increase their commitments to training and technical assistance so necessary to the efficient implementation of the nutrition standards and is, therefore, adopting this amendment to § 210.18(c) as proposed. State agencies are, of course, encouraged to exceed the regulatory requirements when resources permit, and they will continue to be required to conduct follow-up reviews of school food authorities which are found to exceed error thresholds on the initial reviews.

Slightly fewer than 500 commenters addressed the proposal to eliminate specific edit checks for school food authorities found to have accurate counting and claiming systems. Essentially, commenters tended to assert that this change would not really reduce paperwork or that it could impose an additional burden on State agencies to approve alternative systems. Several commenters recommended other areas such as elimination of verification requirements of free and reduced-price applications or the process of determining "severe need" status in the SBP.

When the Department proposed to require edit checks several years ago, many commenters stated that school food authorities should have the flexibility of devising their own systems of internal controls. However, at that time, the Department believed that school food authorities must, at a minimum, compare their meal counts, by type, to the number of eligible children in each category multiplied by an attendance factor. A few years later, in the regulation implementing CRE, the Department broadened State agencies' authority to authorize alternative systems of edits. The Department now believes that States and local school food authorities have had several years of experience with internal controls and are in the best position to modify these systems to meet their own needs. Therefore, this final rule adopts the amendment to § 210.8 (a)(2) and (a)(3) as proposed.

Only 150 commenters addressed the issue of documentation of nonprofit status. Most of these were from those in school food service. While over 30 commenters agreed with the proposed provision, about 100 commenters stated that it was not a real reduction in paperwork at the local level. Some commenters felt "real" reduction in paperwork could be accomplished through elimination of the verification procedures, on-site reviews and other requirements. However, the Department continues to believe that this provision will reduce the paperwork burden on schools because they will no longer need to maintain records using Federal specifications; records would be maintained in the manner preferred by the school district or required by State laws. Therefore, the proposed amendments to § 210.14(c) and § 210.15(b) are adopted as final without change. It is not possible for the Department to implement other changes suggested by commenters at this time since they were not a part of the original proposal. The Department will, however, retain them for future consideration.

Related Topics of Concern

Competitive Foods

Approximately 640 commenters addressed the sale of foods in competition with school meals. Nearly 400 commenters recommended that all foods sold in the cafeteria, including a la carte items, be included in the analysis to determine whether or not the food service meets the Dietary Guidelines. More than 500 commenters recommended that the Department go even further and regulate the food items that may be sold in vending machines throughout the school or ban vending machines altogether.

The Department appreciates and shares many of these concerns. Currently, the program regulations (§ 210.11(a) and § 220.12(a)) prohibit the sale of certain foods of minimal nutritional value in the food service area between the start of school and the last lunch period of the day. Other foods may be sold in competition with reimbursable meals provided that the proceeds inure to the benefit of the schools or of student organizations. These items would include foods sold a la carte.

The Department has no authority to regulate the sale of foods *outside* the food service area. The current regulations governing the sale of competitive foods result from a Federal court's ruling in a lawsuit filed against the Department by a soft drink manufacturers' association. In that ruling, the court found that the Department had no authority to regulate the sale of competitive foods beyond the food service area. The court also limited the Department's jurisdiction over the food service area after the meal service has ended. Therefore, the Department cannot address the issue of vending machines elsewhere in the school in this rulemaking. The Department notes, however, that State agencies and local school food authorities have complete authority to impose more stringent limitations on the sale of competitive foods. This authority is underscored in Pub. L. 103–448, which directs the Department to provide States with a copy of the current regulations dealing with competitive foods and to provide States with model language prohibiting the sale of foods of minimal nutritional value anywhere on elementary school grounds between the start of the school day and the last lunch period. The Department intends to provide these materials to States for distribution to school food authorities in the near future.

The Department shares commenters' concerns about a la carte items. The Department notes that these items are generally not intended to be part of a complete, balanced meal. A la carte sales can range from a second helping of a food item prepared as part of a reimbursable meal to items from a separate salad bar. Consequently, an analysis which includes a la carte items would shift the focus to individual foods, something which the Dietary Guidelines do not intend. Moreover, in the case of prepackaged items, the school would need to establish a separate system of records to track their selection and would need to identify their nutrient content. The Department believes, therefore, that requiring schools to apply the principles of the Dietary Guidelines to these items would greatly increase the complexity and burden of nutrient analysis.

Fortification

The preamble to the June 10, 1994, proposal solicited comments regarding the use of fortified foods in school meal programs. The Department was particularly interested in whether there are practical ways to control excessive use of fortification, the degree to which this should be a concern, and the potential impact on the character of school meals.

No regulatory proposals were made on this subject because the Department was unaware of any practical method for controlling the use of highly fortified foods. It was our understanding at the time of the proposal that it was virtually impossible to distinguish those nutrients that have been added to a product from those that are naturally occurring, especially for food items with numerous ingredients. Nevertheless, the Department was committed to the principle that meals be comprised of a variety of conventional foods, as recommended in the Dietary Guidelines, rather than ones containing formulated fortified foods.

More than 2,300 commenters responded to our request for comments, some of whom recommended adoption of the fortification policy developed by USDA and employed in the USDA nutrient standard pilots in the mid-1980's. This method, which is also a part of pilot projects currently operating in California, permits nutrients which are added to foods to be counted toward the nutrient standards only if they were added in accord with one of the following criteria: (1) a standard of identity or standard for enrichment issued by the Food and Drug Administration (FDA), (2) a USDA purchase specification for a donated commodity, (3) a standard for an Alternative Food for Meals under Appendix A of Parts 210 and 220, excluding formulated grain/fruit products, and (4) in a breakfast cereal available on the commercial market.

The Department had seriously considered adopting this policy as a part of the June 10, 1994, proposal. However, following discussions with the FDA, the food industry, the nutrient data laboratory of the USDA's Agriculture Research Service and local school food service personnel, the Department concluded that it could not be implemented at the local level for several reasons.

First, there is no simple way to distinguish between the amount of synthetic nutrients added to a food and the level which occurs naturally because FDA does not require such distinctions to be made on food labels. Moreover, the Department has found that FDA standards of identity are not a particularly helpful source of information because they are only available for a limited number of products (under 40). Standards do not exist, for example, for many fruit juices commonly fortified and sold on the market. It would be difficult and costly to require the food industry to identify the primary source of nutrients on the label because such a requirement would exceed the requirements of the Nutrition Labeling and Education Act. It should be noted that further inquiries to the California State agency concerning this policy confirmed that it had not been successfully implemented in the pilot sites.

Some commenters also suggested that USDA use the fortification standards established by FDA. These standards (21 CFR 101.14) only apply to those instances in which a health claim is being made in connection with the use of a particular food product. Therefore, such standards would have little applicability to the school meal programs. Since commenters did not provide new information that could be used to fashion a practical method for regulating the use of fortified products in the school meal programs, this final regulation contains no new regulatory proscriptions. The Department does wish to stress its continued commitment to the principle that school meals should be comprised of a variety of foods which provide naturally occurring nutrients rather than formulated foods which have been artificially fortified. The training and technical assistance the Department plans to provide on implementing the Dietary Guidelines will stress the importance of serving a variety of foods as well as the potential dangers of serving highly fortified foods.

The Department also wishes to reiterate that the nutrition standards for school meals include standards for calories as well as for key nutrients. Moreover, the nutrient analysis alternatives continues to require that a minimum of three food items, one of which must be an entree, be available as part of every reimbursable meal. Finally, the Department notes that engineered foods generally cost more than foods that are not artificially fortified. All these factors are disincentives to the use of heavily fortified foods and should serve to minimize their use. The Department will be monitoring the implementation of the nutrient analysis menu planning alternatives and will continue to consider this issue should a feasible method of monitoring fortification levels become available in the future.

Alternate Foods for Meals

The regulations governing Alternate Foods for Meals for the school lunch program are found in Appendix A of 7 CFR Part 210. This Appendix sets forth the requirements for enriched macaroni products with fortified protein, cheese alternate products and vegetable protein products. These regulations were developed to define and clarify the use of new products in the Child Nutrition Programs. Advances in food processing have allowed food producers to engineer ingredients into fabricated or formulated foods, usually in answer to a specific need or problem. Cheese alternate products, for example, were developed to supplement the natural cheese supply at a time when the availability of natural cheese had decreased and the price had increased. The alternate foods regulations were designed to maintain nutritional quality in school meals while providing schools with flexibility in menu planning, convenience in food preparation and an economic advantage. Because the Department proposed no changes to these regulations, the current requirements for alternative foods in Appendix A will remain in effect. However, the Department recognizes that more recent developments in food processing may necessitate revisions and that some products not currently allowable may provide schools with additional low-fat options. Therefore, the Department is considering proposing changes to these regulations in the near future. Prior to making any decisions, however, the Department will be consulting with an expert panel, as appropriate, to develop options.

Lunch Periods

In the June 10, 1994, proposal, the Department indicated its concern that schools have an adequate number of lunch periods to accommodate all of their students and that the lunch periods provide sufficient time for children to eat the entire meal. Therefore, the Department proposed a recommendation at § 210.10(i) that school food authorities make every effort to provide adequate meal service times and periods to ensure that children can effectively participate in the school lunch program.

Nine hundred and forty-five commenters addressed this provision; over 850 were from school food service personnel, teachers, other school officials, parents and teachers. Overwhelmingly, they asserted that lunch periods need to be longer, especially if additional foods are served, and nearly 600 maintained that the Department should regulate this aspect of the food service. The Department appreciates these concerns. However, as noted in the preamble to the proposed rule, the Department has no authority to regulate meal times. Nevertheless, we intend to continue working with our partners in the Department of Education to solicit support in the education community to ensure that educators and school administrators understand the importance of giving students adequate time to eat. The Department also emphasizes that this is an issue that can be dealt with effectively at the local level, and the Department strongly encourages school food service directors to work with other school officials. Therefore, this final rule adopts the recommendation included in the proposed rule at § 210.10(f).

Nutrition Disclosure

The June 10, 1994, proposal included a provision at § 210.10(n) encouraging school authorities to make a public disclosure of the nutrients contained in their meals. The Department intended that such a provision would promote an increased awareness on the part of students and their families of the nutrients in their meals, enhance the ability of children and their parents to make healthful food choices and increase support for school meals through public recognition of improved meal quality. However, in recognition of the differing needs of school food authorities, the Department did not mandate disclosure, nor was a particular method of making the disclosure prescribed, although the proposal did indicate that the information should be readily available to children and their families.

The Department received over 260 comments on this issue, over 200 of them from school food service personnel. Approximately 190 commenters agreed that nutrition disclosure should be optional, and only 15 believed the Department should require disclosure. The remaining comments addressed narrower issues, such as suggesting that information be sent home with elementary students. Because the Department did not propose mandatory disclosure, the Department is adopting the provision as it was proposed at § 210.10(h) and § 220.8(l). The Department appreciates the overall support for voluntary disclosure. However, section 9(f)(1)(A) of the NSLA, as amended by section 106(b) of Pub. L. 103–448, 42 U.S.C. 1758(f)(1), includes a provision requiring schools to make a public disclosure of the nutrient content of their meals. The Department is assessing various methods of disclosure and intends to issue a proposed rule on this subject at a later time.

Compliance Over a School Week

The June 10, 1994, proposal would have required nutrient analysis of the reimbursable meals served over the course of a school week, as defined in proposed § 210.2 as a period of three to seven days. The normal school week would, of course, be five consecutive days. To accommodate situations when school is not in session for a complete week, the Department intended that weeks in which school lunches are offered fewer than three times would be combined with either the previous or the following week. The Department's proposal for weekly compliance and the proposed definition of "school week" were repeated in the January 27, 1995, rule, in keeping with a provision of Pub. L. 103–448 (section 106(a), 42 U.S.C. 1758(a)(1)(A)(ii)) requiring that, at a minimum, compliance with the nutrition standards be based on the weekly average of the nutrient content of school lunches. This proposal was intended to provide schools with a manageable time period in which to vary menus and make meaningful calculations and adjustments. The range of three to seven days was intended to provide school food authorities with flexibility in planning menus when the school is not in session for an entire week.

The Department received over 600 comments on this provision in the June 10, 1994, proposal. Nearly 400 of the comments were from school food service personnel, and approximately 130 were from parents and students.

Over half of the comments agreed with weekly analyses. Those who disagreed generally suggested a different length of time, although some believed there should be no specific time period at all, since the Dietary Guidelines have none. Generally commenters recommended that planning and analysis be done on a daily, bi-weekly or monthly basis, although some commenters recommended averaging over the length of the menu cycle or even the entire school year. Approximately 50 commenters were also concerned that requiring weekly compliance could result in less variety in meals overall, since schools might tend simply to repeat a qualifying menu every week.

The Department received 25 comments on this provision as applied to the proposed food-based menu planning system in the January 27, 1995, rulemaking. The largest number of these came from persons in school food service. Generally, these commenters recommended that the school week be defined strictly as five days or raised technical concerns about shorter periods.

The Department appreciates commenters' suggestions for changing the length of the planning cycle. The Department continues to believe, however, that a school week represents the optimum length of time for determining nutrient content, as long as flexibility is built in to accommodate days when schools are not in session. A school week allows enough time for schools to vary menus but still ensures that nutrients are reasonably concentrated. Moreover, since the law now mandates compliance with the nutrition standards over the school week, the Department is adopting this provision as proposed at § 210.2 and § 220.2(w–1).

Operational Obstacles

Over 9,000 commenters addressed perceived operational obstacles to implementation of the June 10, 1994, proposal. Nearly 7,000 commenters were from those in school food service, and more than 100 others were teachers or school officials. Commenters were chiefly concerned about the potential for increased administrative and paperwork burdens, the possibility that schools would drop out of the program because of the complexity of the requirements, the need for additional staff to conduct nutrient analysis and the difficulty in balancing good nutrition with student acceptance.

The Department has given due consideration to these concerns. The Department believes, however, that the complexities of NuMenus and Assisted NuMenus are not as great as commenters have represented them to be. While it is true that nutrition analysis will measure nutrients and calories more precisely than in the past, this analysis will be done entirely by computer. Once the information has been entered, there is little additional burden on the school. Much the same is true of menu adjustments. Creating the initial menu may require more time than is currently the case with the meal pattern. However, once the recipe and product data has been entered and the menu cycle has been adjusted to comply with the nutrition standards, wholesale changes with resulting new analysis should not generally be needed. The Department also notes that the computer software approved for NuMenus will have the capability of searching for food sources of high nutrient density when a particular nutrient must be provided.

The Department also believes that the amount of paperwork resulting from NuMenus will not be as great as commenters have stated. The nutrient analysis, itself, will remain in the computer unless a report is generated by the school or at the request of the State agency. The Department also wishes to emphasize that the analysis need not be performed individually by every school. If the school food authority wishes, the analysis can be performed centrally. For these reasons, it will not be necessary for schools' food authorities to add additional personnel to conduct NuMenus.

Also, the Department does not consider appealing meals as incompatible with good nutrition. The Department has undertaken Team Nutrition—a comprehensive initiative to help meal planners produce meals that are appealing as well as nutritious and to foster an awareness on the part of children that good meals do taste good. The Department is promoting an array of technical assistance programs among State and local school food agencies. One prominent example is our partnership with the American Culinary Federation and others to develop recipes and provide information on how to make the meal presentation more appealing. In addition, the Department believes that the Children's Nutrition Campaign, which concentrates on bringing the message of good nutrition to children and their parents, will make nutritious foods more popular. Thus, the Department anticipates that these efforts to assist and educate will lead to increased participation.

Cost Implications

Over 5,500 commenters, many from school food service personnel, were concerned that the changes set forth in the June 10, 1994, proposal would significantly increase the cost of their food operations. These concerns were based on the perception that they would need to purchase more expensive lower-fat foods and employ costlier preparation techniques along with the expense of acquiring computer equipment and software for NuMenus. Approximately 145 commenters raised cost concerns about the January 27, 1995, proposal because of the increased quantity requirements for fruits/vegetables and grains/breads.

The Department extensively studied the cost implications of both proposals as part of the Regulatory Assessments published with the proposals. The analysis published on June 10, 1994, found that the nutrient requirements of NuMenus can be met at about the current cost of food in the National School Lunch Program. Moreover, the Department does not anticipate the need for significant changes in meal preparation practices that would affect the cost of meals. While schools without computer resources might experience one-time acquisition costs, these costs must be considered in light of the length of time the schools will be using that equipment. Moreover, software to conduct NuMenus can have other food service applications as well, thereby providing some administrative efficiencies. For a complete discussion of the cost analysis, readers should refer to the June 10, 1994, issue of the **Federal Register** (59 FR 30250).

In the cost/benefit analysis for the January 27, 1995, proposed rule, the Department noted that its school lunch model did experience slight increases in costs for leaner meat and for fruits/vegetables. These increases, however, can be effectively offset by selecting less expensive items from the grains/breads component. In fact, the analysis found that the nutrient requirements of the food-based menu planning system can be met at about the current cost of food in the program. Again, readers wishing a complete discussion of costs should refer to the January 27, 1995, issue of the **Federal Register** (60 FR 5525–26).

General Comments on Meal Content

The Department received over 4,200 comments on various issues related to the content of school meals. More than 2,500 were from persons in school food service, while nearly 800 were from students or their families and over 250 were from the medical, public health and food advocacy communities. Some of these comments were general observations on the quality of existing meal services or reflected concerns

about plate waste. For the most part, however, commenters discussed increasing or decreasing specific food components. Approximately 1,000 commenters recommended increasing the amounts of fruits and vegetables, and another 500 wanted more breads and grain products. On the other hand, approximately 400 commenters recommended using either lower fat meats or meat substitutes such as soy, while over 1,200 opposed the milk requirement.

The Department appreciates commenters' concerns. The Department agrees that it is important for children to receive plenty of fruits and vegetables as well as grain products. Although there are no component or quantity requirements under NuMenus and Assisted NuMenus, the Department believes that menu planners will use more of these food groups since they are prime sources of low-fat, nutrient-dense foods needed to meet the recommendations of the Dietary Guidelines. The Department's January 27, 1995, proposal did, in fact, significantly increase the quantity requirements for both fruits/vegetables and grains/breads. In addition, the Department believes that the nutrition standards established for school meals will ensure that a wide variety and ample amount of these items will be served.

With respect to meats, the Department reiterates that it is important to obtain essential nutrients from a variety of foods. The Department agrees that foods, particularly those high in fat, must be eaten in moderation, but the Department does not share the view that any given foods are necessarily "good" or "bad." For this reason, the January 27, 1995, proposal retained the quantity requirements for meats/meat alternates currently in effect, and the Department does not plan to limit or eliminate items from this food group in any future rulemakings. It is also important to note that meat is a significant source of iron, a nutrient that was not adequately met for some participants in the school meal programs reviewed in the 1993 SNDA study. As one final note, the Department is aware that yogurt can be a useful meat alternate, and the Department is considering a future action which would allow meal planners to substitute yogurt for meat.

The Department also appreciates commenters' suggestions to eliminate the whole milk requirement or permit alternatives to milk. The requirement that schools offer fluid milk as part of a reimbursable lunch is statutory (42 U.S.C. 1758(a)(2)(A)(i)). The Department notes, however, that section 107 of Pub. L. 103–448 did modify this requirement. In the past, schools were required to offer fluid whole milk and fluid unflavored low-fat milk. Schools now are required to offer a variety of fluid milk consistent with children's preferences in the prior year. Schools also may cease offering any variety which constituted less than one percent of the total milk consumed in the prior year (42 U.S.C 1758(a)(2)(A)(ii)). Therefore, while schools must still make milk available as part of all reimbursable lunches, they will have somewhat more flexibility than in the past to reflect their children's changing preferences. This provision is found at § 210.10(l)(1).

NuMenus and Assisted NuMenus for Meals Served Under the Child and Adult Care Food Program and the Summer Food Service Program

A few commenters recommended that schools using NuMenus or Assisted NuMenus should be allowed to use these systems when the school is providing meals under the Child and Adult Care Food Program (CACFP) or the Summer Food Service Program (SFSP). Otherwise, the school food service could be placed in the position of following multiple sets of meal requirements. The Department agrees that schools should be able to use the same menu planning system for all meals it prepares and serves. Moreover, once the analysis has been properly completed and appropriate adjustments made, meals served under NuMenus or Assisted NuMenus will generally be more healthful and nutritious than meals planned and prepared under the old meal patterns. Therefore, although NuMenus and Assisted NuMenus has not yet been proposed for the CACFP or the SFSP, the Department is providing in this final rule (§ 210.10 (i)(12) and (j)(7); § 220.8 (e)(12) and (f)(7)) that schools, with State agency approval, may use, in addition to the food-based menu planning systems, nutrient analysis for all of the meal programs receiving USDA reimbursement that they operate. These exceptions are consistent with the current requirements in the regulations governing the CACFP and the SFSP. The Department emphasizes, however, that schools would still be required to follow the existing meal patterns for snacks and for meals served to children under two years of age.

Implementation Schedules

The June 10, 1994, proposal would have required all schools to comply with the Dietary Guidelines and nutrition standards established by that proposal by School Year 1998. Over 750 commenters agreed with the proposed implementation schedule, although 40 commenters believed implementation should be sooner. Over 200 commenters, however, believed that School Year 1998 would be too early for full implementation or requested that waivers be authorized for schools unable to comply. Subsequently, Congress amended the NSLA to require that school meals comply with the Dietary Guidelines by School Year 1996/97, unless a waiver not to exceed two years is authorized by the State agency. This provision (42 U.S.C. 1758 (f)(2)) affirms the importance of having school meals that comply with the best scientific research regarding nutrition, and the Department appreciates Congressional support on this issue. Therefore, this final regulation, at § 210.10(o) and § 220.8(m), will require implementation by School Year 1996, although State agencies may authorize schools to delay implementation on a case by case basis until a later date, but not later than School Year 1998/1999. This provision of the law will accommodate schools that have training or resource needs that require delayed implementation. However, State agencies and school food authorities may implement the provisions in this rule, such as the streamlining/paperwork reduction provisions including the extension of the CRE review period, prior to that date. Nonetheless, while the revised menu planning alternatives may be implemented early, they must be implemented in their entirety.

List of Subjects

7 CFR Part 210

Children, Commodity School Program, Food assistance programs, Grants programs-social programs, National School Lunch Program, Nutrition, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 220

Children, Food assistance programs, Grant programs-social programs, Nutrition, Reporting and recordkeeping requirements, School Breakfast Program.

Accordingly, 7 CFR Parts 210 and 220 are amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for 7 CFR Part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

2. In § 210.2:

a. the definition of "*Food component*" is revised;

b. the definition of "*Food item*" is revised;

c. the definition of "*Lunch*" is revised;

d. a new definition of "*Menu item*" is added;

e. a new definition of "*Nutrient Standard Menu Planning/Assisted Nutrient Standard Menu Planning*" is added;

f. the definition of "*Reimbursement*" is amended by adding the words "or § 210.10a, whichever is applicable," after "§ 210.10"; and

g. a new definition of "*School Week*" is added.

The revisions and additions read as follows:

§ 210.2 Definitions.

* * * * *

Food component means one of the four food groups which compose the reimbursable school lunch, i.e., meat or meat alternate, milk, grains/breads and vegetables/fruits for the purposes of § 210.10(k) or one of the four food groups which compose the reimbursable school lunch, i.e., meat or meat alternate, milk, bread or bread alternate, and vegetable/fruit under § 210.10a.

Food item means one of the five required foods that compose the reimbursable school lunch, i.e., meat or meat alternate, milk, grains/breads, and two (2) servings of vegetables, fruits, or a combination of both for the purposes of § 210.10(k) or one of the five required foods that compose the reimbursable school lunch, i.e., meat or meat alternate, milk, bread or bread alternate, and two (2) servings of vegetables, fruits, or a combination of both for the purposes of § 210.10a.

* * * * *

Lunch means a meal which meets the nutrition standards and the appropriate nutrient and calorie levels designated in § 210.10. In addition, if applicable, a lunch shall meet the requirements by age/grade groupings in § 210.10(k)(2) or the school lunch pattern for specified age/grade groups of children as designated in § 210.10a.

Menu item means, under Nutrient Standard Menu Planning or Assisted Nutrient Standard Menu Planning, any single food or combination of foods. All menu items or foods offered as part of the reimbursable meal may be considered as contributing towards meeting the nutrition standards provided in § 210.10, except for those foods that are considered as foods of minimal nutritional value as provided for in § 210.11(a)(2) which are not offered as part of a menu item in a reimbursable meal. For the purposes of a reimbursable lunch, a minimum of three menu items must be offered, one of which must be an entree (a combination of foods or a single food item that is offered as the main course) and one of which must be fluid milk. Under offer versus serve, a student shall select, at a minimum, an entree and one other menu item. If more than three menu items are offered, the student may decline up to two menu items; however, the entree cannot be declined.

* * * * *

Nutrient Standard Menu Planning/Assisted Nutrient Standard Menu Planning mean ways to develop menus based on the analysis for nutrients in the menu items and foods offered over a school week to determine if specific levels for a set of key nutrients and calories were met. Such analysis is based on averages weighted in accordance with the criteria in § 210.10(i)(5). Such analysis is normally done by a school or a school food authority. However, for the purposes of Assisted Nutrient Standard Menu Planning, menu planning and analysis are completed by other entities and shall incorporate the production quantities needed to accommodate the specific service requirements of a particular school or school food authority.

* * * * *

School week means the period of time used to determine compliance with the nutrition standards and the appropriate calorie and nutrient levels in § 210.10. Further, if applicable, school week is the basis for conducting Nutrient Standard Menu Planning or Assisted Nutrient Standard Menu Planning for lunches as provided in § 210.10(i) and § 210.10(j). The period shall be a normal school week of five consecutive days; however, to accommodate shortened weeks resulting from holidays and other scheduling needs, the period shall be a minimum of three consecutive days and a maximum of seven consecutive days. Weeks in which school lunches are offered less than three times shall be combined with either the previous or the coming week.

* * * * *

§ 210.4 [Amended]

3. In § 210.4, paragraph (b)(3) introductory text is amended by removing the words "§ 210.10(j)(1) of this part" and adding in their place the words "§ 210.10(n)(1) or § 210.10a(j)(1), whichever is applicable".

§ 210.7 [Amended]

4. In § 210.7:

a. paragraph (c)(1)(v) is amended by removing the reference to "§ 210.10(b) of this part" and adding in its place the words "§ 210.10(a)(2) or § 210.10a(b), whichever is applicable,"; and

b. paragraph (d) is amended by removing the reference to "§ 210.10(j)(1) of this part" and adding in its place the words "§ 210.10(n)(1) or § 210.10a(j)(1), whichever is applicable".

5. In § 210.8:

a. the third sentence of paragraph (a)(2) is removed and new paragraphs (a)(2)(i) and (a)(2)(ii) are added at the end;

b. Paragraph (a)(3) is revised;

c. the first sentence of paragraph (a)(4) is revised;

d. the first sentence of paragraph (b)(2)(i) is amended by removing the reference to "paragraph (a)(2)" and adding in its place a reference to "paragraph (a)(3)" and by adding at the end of the sentence the words "or the internal controls used by schools in accordance with paragraph (a)(2)(i) of this section." The revisions and additions read as follows:

§ 210.8 Claims for reimbursement.

(a) *Internal controls.* * * *

(2) *School food authority claims review process.* * * *

(i) Any school food authority that was found by its most recent administrative review conducted in accordance with § 210.18, to have no meal counting and claiming violations may:

(A) Develop internal control procedures that ensure accurate meal counts. The school food authority shall submit any internal controls developed in accordance with this paragraph to the State agency for approval and, in the absence of specific disapproval from the State agency, shall implement such internal controls. The State agency shall establish procedures to promptly notify school food authorities of any modifications needed to their proposed internal controls or of denial of unacceptable submissions. If the State agency disapproves the proposed internal controls of any school food authority, it reserves the right to require the school food authority to comply with the provisions of paragraph (a)(3) of this section; or

(B) Comply with the requirements of paragraph (a)(3) of this section.

(ii) Any school food authority that was identified in the most recent administrative review conducted in accordance with § 210.18, or in any other oversight activity, as having meal counting and claiming violations shall comply with the requirements in paragraph (a)(3) of this section.

(3) *Edit checks.* (i) The following procedure shall be followed for school

food authorities identified in paragraph (a)(2)(ii) of this section, by other school food authorities at State agency option, or, at their own option, by school food authorities identified in paragraph (a)(2)(i) of this section: the school food authority shall compare each school's daily counts of free, reduced price and paid lunches against the product of the number of children in that school currently eligible for free, reduced price and paid lunches, respectively, times an attendance factor.

(ii) School food authorities that are identified in subsequent administrative reviews conducted in accordance with § 210.18 as not having meal counting and claiming violations and that are correctly complying with the procedures in paragraph (a)(3)(i) of this section have the option of developing internal controls in accordance with paragraph (a)(2)(i) of this section.

(4) *Follow-up activity.* The school food authority shall promptly follow-up through phone contact, on-site visits or other means when the internal controls used by schools in accordance with paragraph (a)(2)(j) of this section or the claims review process used by schools in accordance with paragraphs (a)(2)(ii) and (a)(3) of this section suggest the likelihood of lunch count problems.

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§ 210.9 [Amended]

6. In § 210.9:

a. paragraph (b)(5) is amended by adding the words "or § 210.10a, whichever is applicable" at the end of the paragraph;

b. paragraph (c) introductory text is amended by removing the reference to "§ 210.10(j)(1) of this part" and adding in its place the words "§ 210.10(n)(1) or § 210.10a(j)(1), whichever is applicable"; and

c. paragraph (c)(1) is amended by adding the words "or § 210.10a, whichever is applicable" after the reference to "§ 210.10."

7. Section 210.10 is redesignated as § 210.10a.

8. A new § 210.10 is added to read as follows:

§ 210.10 Nutrition standards for lunches and menu planning methods.

(a) *General requirements for school lunches.*

(1) In order to qualify for reimbursement, all lunches served to children age 2 and older, as offered by participating schools, shall, at a minimum, meet the nutrition standards provided in paragraph (b) of this section and the appropriate level of calories and nutrients provided for in either paragraph (c) or paragraph (i)(1) of this section for nutrient standard menu planning and assisted nutrient standard menu planning or in paragraph (d) of this section for food-based menu planning, whichever is applicable. Compliance with the nutrition standards and the nutrient and calorie levels shall be determined by averaging lunches offered over a school week. Except as otherwise provided herein, school food authorities shall ensure that sufficient quantities of foods are planned and produced to meet, at a minimum, the nutrition standards in paragraph (b) of this section, the appropriate nutrient and calorie levels in paragraphs (c), (d), or (i)(1) of this section, whichever is applicable, and to either contain all the required food items in at least the amounts indicated in paragraph (k) of this section or to supply sufficient quantities of menu items and foods as provided in paragraphs (i) or (j) of this section.

(2) School food authorities shall ensure that each lunch is priced as a unit and that lunches are planned and produced on the basis of participation trends, with the objective of providing one reimbursable lunch per child per day. Any excess lunches that are produced may be offered, but shall not be claimed for general or special cash assistance provided under § 210.4. The component requirements for meal supplements served under the Child and Adult Care Food Program authorized under part 225 of this chapter shall also apply to meal supplements served by eligible school food authorities in afterschool care programs under the NSLP.

(3) Production and menu records shall be maintained to demonstrate that the required number of food components and food items or menu items are offered on a given day. Production records shall include sufficient information to evaluate the menu's contribution to the requirements on nutrition standards in paragraph (b) of this section and the appropriate levels of nutrients and calories in paragraphs (c), (d) or (i)(1) of this section, whichever is applicable. If applicable, schools or school food authorities shall maintain nutritional analysis records to demonstrate that lunches meet, when averaged over each school week, the nutrition standards provided in paragraph (b) of this section and the nutrient and calorie levels for the appropriate age or grade group as provided for in paragraphs (c) or (i)(1) of this section, whichever is applicable.

(b) *Nutrition standards for reimbursable lunches.* School food authorities shall ensure that participating schools provide nutritious and well-balanced meals to children. In addition, for children ages 2 and above meals shall be provided based on the nutrition standards provided in this section.

(1) Provision of one-third of the Recommended Dietary Allowances (RDA) of protein, calcium, iron, vitamin A and vitamin C to the applicable age or grade groups in accordance with the appropriate levels provided in paragraph (c), (d) or (i)(1) of this section, whichever is applicable;

(2) Provision of the lunchtime energy allowances for children based on the appropriate age or grade groups in accordance with the levels provided in paragraphs (c), (d) or (i)(1) of this section, whichever is applicable;

(3) The applicable recommendations of the *1990 Dietary Guidelines for Americans* which are:

(i) Eat a variety of foods;

(ii) Limit total fat to 30 percent of calories;

(iii) Limit saturated fat to less than 10 percent of calories;

(iv) Choose a diet low in cholesterol;

(v) Choose a diet with plenty of vegetables, fruits, and grain products; and

(vi) Use salt and sodium in moderation.

(4) The following measures of compliance with the applicable recommendations of the *1990 Dietary Guidelines for Americans:*

(i) A limit on the percent of calories from total fat to 30 percent based on the actual number of calories offered;

(ii) A limit on the percent of calories from saturated fat to less than 10 percent based on the actual number of calories offered;

(iii) A reduction of the levels of sodium and cholesterol; and

(iv) An increase in the level of dietary fiber.

(5) School food authorities have three alternatives for menu planning in order to meet the requirements of this paragraph and the appropriate nutrient and calorie levels in paragraphs (c), (d) or (i)(1) of this section, whichever is applicable: nutrient standard menu planning as provided for in paragraph (i) of this section, assisted nutrient standard menu planning as provided for in paragraph (j) of this section, or food-based menu planning as provided for in paragraph (k) of this section. The actual minimum calorie levels vary depending upon the alternative followed due to differences in age/grade groupings of each alternative.

(c) *Nutrient levels for school lunches/nutrient analysis.* (1) For the purposes of nutrient standard and assisted nutrient standard menu planning, as provided for in paragraphs (i) and (j), respectively, of this section, schools shall, at a minimum, provide calorie and nutrient levels for school lunches (offered over a school week) for the required grade groups specified in the chart following:

MINIMUM REQUIREMENTS FOR NUTRIENT LEVELS FOR SCHOOL LUNCHES/NUTRIENT ANALYSIS (SCHOOL WEEK AVERAGES)

Nutrients and energy allowances	Minimum requirements			Optional
	Preschool	Grades K–6	Grades 7–12	Grades K–3
Energy allowance/calories	517	664	825	633
Total fat (as a percent of actual total food energy)	(1)	(1)	(1)	(1)
Saturated fat (as a percent of actual total food energy)	(2)	(2)	(2)	(2)
RDA for protein	7	10	16	9
RDA for calcium (mg)	267	286	400	267
RDA for iron (mg)	3.3	3.5	4.5	3.3
RDA for vitamin A (RE)	150	224	300	200
RDA for vitamin C (mg)	14	15	18	15

[1] Not to exceed 30 percent over a school week.
[2] Less than 10 percent over a school week.

(2) At their option, schools may provide for the calorie and nutrient levels for school lunches (offered over a school week) for the age groups specified in the following chart or may develop their own age groups and their corresponding levels in accordance with paragraph (i)(1) of this section.

OPTIONAL MINIMUM NUTRIENT LEVELS FOR SCHOOL LUNCHES/NUTRIENT ANALYSIS (SCHOOL WEEK AVERAGES)

Nutrients and energy allowances	Ages 3–6	Ages 7–10	Ages 11–13	Ages 14 and above
Energy allowance/calories	558	667	783	846
Total fat (as a percent of actual total food energy)	(1)	(1)	(1)	(1)
Saturated fat (as a percent of actual total food energy)	(2)	(2)	(2)	(2)
RDA for protein (g)	7.3	9.3	15.0	16.7
RDA for calcium (mg)	267	267	400	400
RDA for iron (mg)	3.3	3.3	4.5	4.5
RDA for vitamin A (RE)	158	233	300	300
RDA for vitamin C (mg)	14.6	15.0	16.7	19.2

[1] Not to exceed 30 percent over a school week.
[2] Less than 10 percent over a school week.

(d) *Minimum nutrient levels for school lunches/food-based menu planning.* For the purposes of food-based menu planning, as provided for in paragraph (k) of this section, the following chart provides the minimum levels, by grade group, for calorie and nutrient levels for school lunches offered over a school week:

MINIMUM NUTRIENT LEVELS FOR SCHOOL LUNCHES/FOOD-BASED MENU PLANNING (SCHOOL WEEK AVERAGES)

	Preschool	Grades K–6	Grades 7–12	Grades K–3 option
Energy allowances (Calories)	517	664	825	633
Total fat (as a percentage of actual total food energy)	(1)	(1)	(1)	(1)
Total saturated fat (as a percentage of actual total food energy)	(2)	(2)	(2)	(2)
Protein (g)	7	10	16	9
Calcium (mg)	267	286	400	267
Iron (mg)	3.3	3.5	4.5	3.3
Vitamin A (RE)	150	224	300	200
Vitamin C (mg)	14	15	18	15

[1] Not to exceed 30 percent over a school week.
[2] Less than 10 percent over a school week.

(e) *Choice.* To provide variety and to encourage consumption and participation, schools should, whenever possible, offer a selection of menu items and foods from which children may make choices. When a school offers a selection of more than one type of lunch or when it offers a variety of menu items, foods or milk for choice within a reimbursable lunch, the school shall offer all children the same selection regardless of whether the children are eligible for free or reduced price lunches or pay the school food authority's designated full price. The school may establish different unit prices for each type of lunch offered provided that the benefits made available to children eligible for free or reduced price lunches are not affected.

(f) *Lunch period.* At or about mid-day schools shall offer lunches which meet the requirements of this section during a period designated as the lunch period by the school food authority. Such lunch periods shall occur between 10:00 a.m. and 2:00 p.m., unless otherwise exempted by FCS. With State agency approval, schools that serve children 1–5 years old are encouraged to divide the

service of the meal into two distinct service periods. Such schools may divide the quantities, and/or menu items, foods or food items offered between these service periods in any combination that they choose. Schools are also encouraged to provide an adequate number of lunch periods of sufficient length to ensure that all students have an opportunity to be served and have ample time to consume their meals.

(g) *Exceptions.* Lunches claimed for reimbursement shall meet the nutrition requirements for reimbursable meals specified in this section. However, lunches served which accommodate the exceptions and variations authorized under this paragraph are also reimbursable. Exceptions and variations are restricted to the following:

(1) *Medical or dietary needs.* Schools shall make substitutions in foods listed in this section for students who are considered to have a disability under 7 CFR part 15b and whose disability restricts their diet. Schools may also make substitutions for students who do not have a disability but who are unable to consume the regular lunch because of medical or other special dietary needs. Substitutions shall be made on a case by case basis only when supported by a statement of the need for substitutions that includes recommended alternate foods, unless otherwise exempted by FCS. Such statement shall, in the case of a student with a disability, be signed by a physician or, in the case of a student who is not disabled, by a recognized medical authority.

(2) *Ethnic, religious or economic variations.* FCS encourages school food authorities to consider ethnic and religious preferences when planning and preparing meals. For the purposes of the food-based menu planning alternative as provided for in paragraph (k) of this section, FCS may approve variations in the food components of the lunch on an experimental or on a continuing basis in any school where there is evidence that such variations are nutritionally sound and are necessary to meet ethnic, religious, or economic needs.

(3) *Natural disaster.* In the event of a natural disaster or other catastrophe, FCS may temporarily allow schools to serve lunches for reimbursement that do not meet the requirements of this section.

(h) *Nutrition disclosure.* School food authorities are encouraged to make information available indicating efforts to meet the nutrition standards in paragraph (b) of this section.

(i) *Nutrient standard menu planning.* (1) *Adjusted nutrient levels.* (i) At a minimum, schools with children age 2 that choose the nutrient standard menu planning alternative shall ensure that the nutrition standards in paragraph (b) and the required preschool level in paragraph (c)(1) of this section are met over a school week except that, such schools have the option of either using the nutrient and calorie levels for preschool children in paragraph (c)(2) of this section or developing separate nutrient and calorie levels for this age group. The methodology for determining such levels will be available in menu planning guidance material provided by FCS.

(ii) At a minimum, schools shall offer meals to children based on the required grade groups in the table, *Minimum Nutrient Levels for School Lunches/ Nutrient Analysis*, in paragraph (c)(1) of this section. However, schools may, at their option, offer meals to children using the age groups and their corresponding calorie and nutrient levels in paragraph (c)(2) of this section or, following guidance provided by FCS, develop their own age or grade groups and their corresponding nutrient and calorie levels. However, if only one age or grade is outside the established levels, schools may use the levels for the majority of children regardless of the option selected.

(2) *Contents of reimbursable meal and offer versus serve.* (i) *Minimum requirements.* For the purposes of this menu planning alternative, a reimbursable lunch shall include a minimum of three menu items as defined in § 210.2; one menu item shall be an entree and one shall be fluid milk as a beverage. An entree may be a combination of foods or a single food item that is offered as the main course. All menu items or foods offered as part of the reimbursable meal may be considered as contributing towards meeting the nutrition standards in paragraph (b) of this section and the appropriate nutrient and calorie levels in paragraph (c) or (i)(1) of this section, whichever is applicable, except for those foods that are considered foods of minimal nutritional value as provided for in § 210.11(a)(2) which are not offered as part of a menu item in a reimbursable meal. Such reimbursable lunches, as offered, shall meet the established nutrition standards in paragraph (b) and the appropriate nutrient and calorie levels in paragraphs (c) or (i)(1) of this section, whichever is applicable, when averaged over a school week.

(ii) *Offer versus serve.* Each participating school shall offer its students at least three menu items as required by paragraph (i)(2)(i) of this section. Under offer versus serve, senior high students must select at least two menu items and may decline a maximum of two menu items; one menu item selected must be an entree. At the discretion of the school food authority, students below the senior high level may also participate in offer versus serve. The price of a reimbursable lunch shall not be affected if a student declines a menu item or requests smaller portions. State educational agencies shall define "senior high."

(3) *Nutrient analysis under Nutrient Standard Menu Planning.* School food authorities choosing the nutrient analysis alternative shall conduct nutrient analysis on all menu items or foods offered as part of the reimbursable meal. However, those foods that are considered as foods of minimal nutritional value as provided for in § 210.11(a)(2) which are not offered as part of a menu item in a reimbursable meal shall not be included. Such analysis shall be over the course of each school week.

(4) *The National Nutrient Database and software specifications.* (i) Nutrient analysis shall be based on information provided in the National Nutrient Database for Child Nutrition Programs. This database shall be incorporated into software used to conduct nutrient analysis. Upon request, FCS will provide information about the database to software companies and others that wish to develop school food service software systems.

(ii) Any software used to conduct nutrient analysis shall be evaluated by FCS or by an FCS designee beforehand and, as submitted, has been determined to meet the minimum requirements established by FCS. However, such review does not constitute endorsement by FCS or USDA. Such software shall provide the capability to perform all functions required after the basic data has been entered including calculation of weighted averages and the optional combining of analysis of the lunch and breakfast programs as provided in paragraph (i)(5) of this section.

(5) *Determination of weighted averages.* (i) Menu items and foods offered as part of a reimbursable meal shall be analyzed based on portion sizes and projected serving amounts and shall be weighted based on their proportionate contribution to the meals. Therefore, in determining whether meals satisfy nutritional requirements, menu items or foods more frequently offered will be weighted more heavily than menu items or foods which are less frequently offered. Such weighting shall be done in accordance with guidance issued by FCS as well as that provided by the software used.

(ii) An analysis of all menu items and foods offered in the menu over each school week shall be computed for calories and for each of the following nutrients: protein; vitamin A; vitamin C; iron; calcium; total fat; saturated fat; and sodium. The analysis shall also include the dietary components of cholesterol and dietary fiber.

(iii) At its option, a school food authority may combine analysis of the National School Lunch and School Breakfast Programs. Such analysis shall be proportionate to the levels of participation in the two programs in accordance with guidance issued by FCS.

(6) *Comparing average nutrient levels.* Once the appropriate procedures of paragraph (i)(5) of this section have been completed, the results shall be compared to the appropriate nutrient and calorie levels, by age/grade groups, in paragraph (c)(1) or (c)(2) of this section or to the levels developed in accordance with paragraph (i)(1) of this section, whichever is applicable, to determine the school week's average. In addition, comparisons shall be made to the nutrition standards provided in paragraph (b) of this section in order to determine the degree of conformity over the school week.

(7) *Adjustments based on students' selections.* The results obtained under paragraph (i)(5) and (i)(6) of this section shall be used to adjust future menu cycles to accurately reflect production and the frequency with which menu items and foods are offered. Menus may require further analysis and comparison, depending on the results obtained in paragraph (i)(6) of this section, when production and selection patterns of students change. The school food authority may need to consider modifications to the menu items and foods offered based on student selections as well as modifications to recipes and other specifications to ensure that the nutrition standards provided in paragraph (b) of this section and paragraphs (c) or (i)(1) of this section, whichever is applicable, are met.

(8) *Standardized recipes.* Under Nutrient Standard Menu Planning, standardized recipes shall be developed and followed. A standardized recipe is one that was tested to provide an established yield and quantity through the use of ingredients that remain constant in both measurement and preparation methods. USDA/FCS standardized recipes are included in the National Nutrient Database for the Child Nutrition Programs. In addition, local standardized recipes used by school food authorities shall be analyzed for their calories, nutrients and dietary components, as provided in paragraph (i)(5)(ii) of this section, and added to the local databases by school food authorities in accordance with guidance provided by FCS.

(9) *Processed foods.* Unless already included in the National Nutrient Database, the calorie amounts, nutrients and dietary components, as provided in paragraph (i)(5)(ii) of this section, of purchased processed foods and menu items used by the school food authority shall be obtained by the school food authority or State agency and incorporated into the database at the local level in accordance with FCS guidance.

(10) *Menu substitutions.* If the need for serving a substitute food(s) or menu item(s) occurs at least two weeks prior to serving the planned menu, the revised menu shall be reanalyzed based on the changes. If the need for serving a substitute food(s) or menu item(s) occurs two weeks or less prior to serving the planned menu, no reanalysis is required. However, to the extent possible, substitutions should be made using similar foods.

(11) *Compliance with the nutrition standards.* If the analysis conducted in accordance with paragraphs (i)(1) through (i)(10) of this section shows that the menus offered are not meeting the nutrition standards in paragraph (b) of this section and the appropriate levels of nutrients and calories in paragraph (c)(1) or (c)(2) of this section or the levels developed in accordance with paragraph (i)(1) of this section, whichever is applicable, actions, including technical assistance and training, shall be taken by the State agency, school food authority, or school, as appropriate, to ensure that the lunches offered to children comply with the nutrition standards established by paragraph (b) and the appropriate levels of nutrients and calories in paragraphs (c) or (i)(1) of this section, whichever is applicable.

(12) *Other programs.* Any school food authority that operates the Summer Food Service Program authorized under part 225 of this chapter and/or the Child and Adult Care Food Program under part 226 of this chapter may, at its option and with State agency approval, prepare meals provided for those programs using the nutrient standard menu planning alternative, except for children under two years of age. For school food authorities providing meals for adults, FCS will provide guidance on the level of nutrients and calories needed. Meal supplements shall continue to be provided based on the appropriate program's meal pattern.

(j) *Assisted Nutrient Standard Menu Planning.*

(1) School food authorities without the capability to conduct Nutrient Standard Menu Planning, as provided in paragraph (i) of this section, may choose an alternative which uses menu cycles developed by other sources. Such sources may include, but are not limited to the State agency, other school food authorities, consultants, or food service management companies. This alternative is Assisted Nutrient Standard Menu Planning.

(2) Assisted Nutrient Standard Menu Planning shall establish menu cycles that have been developed in accordance with paragraphs (i)(1) through (i)(10) of this section as well as local food preferences and local food service operations. These menu cycles shall incorporate the nutrition standards in paragraph (b) of this section and the appropriate nutrient and calorie levels in paragraphs (c) or (i)(1) of this section, whichever is applicable. In addition to the menu cycle, recipes, food product specifications and preparation techniques shall also be developed and provided by the entity furnishing Assisted Nutrient Standard Menu Planning to ensure that the menu items and foods offered conform to the nutrient analysis determinations of the menu cycle.

(3) At the inception of any use of Assisted Nutrient Standard Menu Planning, the State agency shall approve the initial menu cycle, recipes, and other specifications to determine that all required elements for correct nutrient analysis are incorporated. The State agency shall also, upon request by the school food authority, provide assistance with implementation of the chosen system.

(4) After initial service of the menu cycle under the Assisted Nutrient Standard Menu Planning, the nutrient analysis shall be reassessed and appropriate adjustments made in accordance with paragraph (i)(7) of this section.

(5) Under Assisted Nutrient Standard Menu Planning, the school food authority retains final responsibility for ensuring that all nutrition standards established in paragraph (b) and the appropriate nutrient and calorie levels in paragraphs (c) or (i)(1) of this section, whichever are applicable, are met.

(6) If the analysis conducted in accordance with paragraphs (i)(1) through (i)(10) and paragraph (j)(4) of this section shows that the menus offered are not meeting the nutrition standards in paragraph (b) of this

section and the appropriate nutrient and calorie levels in paragraphs (c) or (i)(1) of this section, whichever is applicable, actions, including technical assistance and training, shall be taken by the State agency, school food authority, or school, as appropriate, to ensure that the lunches offered to children comply with the nutrition standards established by paragraph (b) and the appropriate nutrient and calorie levels in paragraphs (c) or (i)(1) of this section, whichever is applicable.

(7) Any school food authority that operates the Summer Food Service Program authorized under part 225 of this chapter and/or the Child and Adult Care Food Program under part 226 of this chapter may, at its option and with State agency approval, prepare meals provided for those programs using the assisted nutrient standard menu planning alternative, except for children under two years of age. For school food authorities providing meals for adults, FCS will provide guidance on the level of nutrients and calories needed. Meal supplements shall continue to be provided based on the appropriate program's meal pattern.

(k) *Food-based menu planning.* (1) *Menu planning alternative.* School food authorities may choose to plan menus using the food-based menu planning alternative. Under the food-based menu planning alternative, specific food components in minimum quantities must be served as provided in paragraphs (k)(2) through (k)(5) of this section.

(2) *Minimum quantities.* At a minimum, school food authorities choosing to plan menus using the food-based menu planning alternative shall offer all five required food items in the quantities provided in the following chart:

Meal component	Minimum quantities required for			
	Ages 1–2	Preschool	Grades K–6	Grades 7–12
Milk (as a beverage)	6 ounces	6 ounces	8 ounces	8 ounces.
Meat or meat alternate (quantity of the edible portion as served):.				
Lean meat, poultry or fish	1 oz	1½ oz	2 oz	2 oz
Cheese	1 oz	1½ oz	2 oz	2 oz.
Large egg	½	¾	1	1.
Cooked dry beans or peas	¼ cup	⅜ cup	½ cup	½ cup.
Peanut butter or other nut or seed butters	2 tbsp	3 tbsp	4 tbsp	4 tbsp.
The following may be used to meet no more than 50% of the requirement and must be used in combination with any of the above:				
Peanuts, soynuts, tree nuts, or seeds, as listed in program guidance, or an equivalent quantity of any combination of the above meat/meat alternate (1 ounce of nuts/seeds=1 ounce of cooked lean meat, poultry or fish.).	½ oz.=50%	¾ oz.=50%	1 oz.=50%	1 oz.=50%.
Vegetables/Fruits (2 or more servings of vegetables or fruits or both)	½ cup	½ cup	¾ cup plus additional ½ cup over a week [1].	1 cup.
Grains/Breads Must be enriched or whole grain. A serving is a slice of bread or an equivalent serving of biscuits, rolls, etc., or ½ cup of cooked rice, macaroni, noodles, other pasta products or cereal grains.	5 servings per week—minimum of ½ per day [1].	8 servings per week—minimum of 1 per day [1].	12 servings per week—minimum of 1 per day [1 2].	15 servings per week—minimum of 1 per day. [1 2].

[1] For the purposes of this chart, a week equals five days.
[2] Up to one grains/breads serving per day may be a dessert.

(3) Meat or meat alternate component. The quantity of meat or meat alternate shall be the quantity of the edible portion as served. When the school determines that the portion size of a meat alternate is excessive, it shall reduce the portion size of that particular meat alternate and supplement it with another meat/meat alternate to meet the full requirement. To be counted as meeting the requirement, the meat or meat alternate shall be served in a main dish or in a main dish and only one other of the items offered. The Department recommends that if schools do not offer children choices of meat or meat alternates each day, they serve no one meat alternate or form of meat (e.g., ground, diced, pieces) more than three times in a single week.

(i) Vegetable protein products, cheese alternate products, and enriched macaroni with fortified protein defined in appendix A of this part may be used to meet part of the meat or meat alternate requirement when used as specified in appendix A of this part. An enriched macaroni product with fortified protein as defined in appendix A of this part may be used as part of a meat alternate or as a grain/bread item, but not as both food components in the same meal.

(ii) Nuts and seeds and their butters listed in program guidance are nutritionally comparable to meat or other meat alternates based on available nutritional data. Acorns, chestnuts, and coconuts shall not be used as meat alternates due to their low protein and iron content. Nut and seed meals or flours shall not be used as a meat alternate except as defined in this part under appendix A: Alternate Foods for Meals. Nuts or seeds may be used to meet no more than one-half of the meat/meat alternate requirement. Therefore, nuts and seeds must be used in the meal with another meat/meat alternate to fulfill the requirement.

(4) *Vegetables and fruits.* Full strength vegetable or fruit juice may be counted to meet not more than one-half of the vegetable/fruit requirement. Cooked dry beans or peas may be used as a meat alternate or as a vegetable, but not as both food components in the same meal. For children in kindergarten through grade six, the requirement for this component is based on minimum daily servings plus an additional ½ cup in any combination over a five day period.

(5) *Grains/breads.* (i) All grains/breads such as bread, biscuits, muffins or rice, macaroni, noodles, other pastas or cereal grains such as bulgur or corn grits, shall be enriched or whole grain or made with enriched or whole grain meal or flour.

(ii) Unlike the other component requirements, the grains/breads requirement is based on minimum daily servings and total servings per week. The requirement for this component is based on minimum daily servings plus total servings over a five day period. The servings for biscuits, rolls, muffins, and other grain/bread varieties are specified in the Food Buying Guide for Child Nutrition Programs (PA 1331), an FCS publication.

(6) *Offer versus serve.* Each school shall offer its students all five required food items as set forth in the table presented under paragraph (k)(2) of this section. Senior high students shall be permitted to decline up to two of the five required food items. At the discretion of the school food authority, students below the senior high level may be permitted to decline one or two of the required five food items. The price of a reimbursable lunch shall not be affected if a student declines food items or accepts smaller portions. State educational agencies shall define "senior high."

(7) *Outlying areas.* Schools in American Samoa, Puerto Rico and the Virgin Islands may serve a starchy vegetable such as yams, plantains, or sweet potatoes to meet the grain/bread requirement. For the Commonwealth of the Northern Mariana Islands, FCS has established a menu consistent with the food-based menu alternative and with local food consumption patterns and which, given available food supplies and food service equipment and facilities, provides optimum nutrition consistent with sound dietary habits for participating children. The State agency shall attach to and make a part of the written agreement required under § 210.9 the requirements of that menu option.

(l) *Milk.* (1) *Varieties.* Regardless of the menu planning alternative chosen, schools shall offer students fluid milk. The selection of the types of milk offered shall be consistent with the types of milk consumed in the prior year. This requirement does not preclude schools from offering additional kinds of milk. However, in the event that a particular type of milk represents less than one (1) percent of the total amount of milk consumed in the previous year, a school may elect not to make this type of milk available. All milk served shall be pasteurized fluid types of milk which meet State and local standards for such milk; except that, in the meal pattern for infants under 1 year of age, the milk shall be unflavored types of whole fluid milk or an equivalent quantity of reconstituted evaporated milk which meets such standards. All milk shall contain vitamins A and D at levels specified by the Food and Drug Administration and be consistent with State and local standards for such milk.

(2) *Insufficient milk supply.* The inability of a school to obtain a supply of milk shall not bar it from participation in the Program and is to be resolved as follows:

(i) If emergency conditions temporarily prevent a school that normally has a supply of fluid milk from obtaining delivery of such milk, the State agency may approve the service of lunches during the emergency period with an available alternate form of milk or without milk.

(ii) If a school is unable to obtain a supply of any type of fluid milk on a continuing basis, the State agency may approve the service of lunches without milk if the school uses an equivalent amount of canned or dry milk in the preparation of the lunch. In Alaska, Hawaii, American Samoa, Guam, Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands, if a sufficient supply of fluid milk cannot be obtained, "milk" shall include reconstituted or recombined milk, or as otherwise provided under written exception by FCS.

(m) *Infant lunch pattern.* (1) *Definitions for infant meals.* For the purpose of this section:

(i) Infant cereal means any iron-fortified dry cereal especially formulated and generally recognized as cereal for infants and that is routinely mixed with formula or milk prior to consumption.

(ii) Infant formula means any iron-fortified formula intended for dietary use solely as a food for normal, healthy infants; excluding those formulas specifically formulated for infants with inborn errors of metabolism or digestive or absorptive problems. Infant formula, as served, must be in liquid state at recommended dilution.

(2) *Infants under the age of one.* Infants under 1 year of age shall be served an infant lunch as specified in this paragraph when they participate in the Program. Foods within the infant lunch pattern shall be of texture and consistency appropriate for the particular age group being served, and shall be served to the infant during a span of time consistent with the infant's eating habits. For infants 4 through 7 months of age, solid foods are optional and should be introduced only when the infant is developmentally ready. Whenever possible the school should consult with the infant's parent in making the decision to introduce solid foods. Solid foods should be introduced one at a time on a gradual basis with the intent of ensuring health and nutritional well-being. For infants 8 through 11 months of age, the total amount of food authorized in the meal patterns set forth below must be provided in order to qualify for reimbursement. Additional foods may be served to infants 4 months of age and older with the intent of improving their overall nutrition. Breast milk, provided by the infant's mother, may be served in place of infant formula from birth through 11 months of age. However, meals containing only breast milk do not qualify for reimbursement. Meals containing breast milk served to infants 4 months of age or older may be claimed for reimbursement when the other meal component or components are supplied by the school. Although it is recommended that either breast milk or iron-fortified infant formula be served for the entire first year, whole milk may be served beginning at 8 months of age as long as infants are consuming one-third of their calories as a balanced mixture of cereal, fruits, vegetables, and other foods in order to ensure adequate sources of iron and vitamin C. The infant lunch pattern shall contain, as a minimum, each of the following components in the amounts indicated for the appropriate age group:

(i) Birth through 3 months—4 to 6 fluid ounces of iron-fortified infant formula.

(ii) 4 through 7 months:

(A) 4 to 8 fluid ounces of iron-fortified infant formula;

(B) 0 to 3 tablespoons of iron-fortified dry infant cereal (optional); and

(C) 0 to 3 tablespoons of fruit or vegetable of appropriate consistency or a combination of both (optional).

(iii) 8 through 11 months:

(A) 6 to 8 fluid ounces of iron-fortified infant formula or 6 to 8 fluid ounces of whole milk;

(B) 2 to 4 tablespoons of iron-fortified dry infant cereal and/or 1 to 4 tablespoons meat, fish, poultry, egg yolk, or cooked dry beans or peas, or ½ to 2 ounces (weight) of cheese or 1 to 4 ounces (weight or volume) of cottage cheese, cheese food or cheese spread of appropriate consistency; and

(C) 1 to 4 tablespoons of fruit or vegetable of appropriate consistency or a combination of both.

(n) *Supplemental food.* Eligible schools operating afterschool care programs may be reimbursed for one meal supplement served to an eligible child (as defined in § 210.2) per day.

(1) Eligible schools mean schools that:

(i) Operate school lunch programs under the National School Lunch Act;
(ii) Sponsor afterschool care programs as defined in § 210.2; and
(iii) Were participating in the Child and Adult Care Food Program as of May 15, 1989.

(2) Meal supplements shall contain two different components from the following four:

(i) A serving of fluid milk as a beverage, or on cereal, or used in part for each purpose;

(ii) A serving of meat or meat alternate. Nuts and seeds and their butters listed in program guidance are nutritionally comparable to meat or other meat alternates based on available nutritional data. Acorns, chestnuts, and coconuts are excluded and shall not be used as meat alternates due to their low protein content. Nut or seed meals or flours shall not be used as a meat alternate except as defined under appendix A: Alternate Foods for Meals of this part;

(iii) A serving of vegetable(s) or fruit(s) or full-strength vegetable or fruit juice, or an equivalent quantity of any combination of these foods. Juice may not be served when milk is served as the only other component;

(iv) A serving of whole-grain or enriched bread; or an equivalent serving of cornbread, biscuits, rolls, muffins, etc., made with whole-grain or enriched meal or flour; or a serving of cooked whole-grain or enriched pasta or noodle products such as macaroni, or cereal grains such as rice, bulgur, or corn grits; or an equivalent quantity of any combination of these foods.

(3) Infant supplements shall contain the following:

(i) Birth through 3 months: 4–6 fluid ounces of infant formula.

(ii) 4 through 7 months: 4–6 fluid ounces of infant formula.

(iii) 8 through 11 months: 2–4 fluid ounces of infant formula or whole fluid milk or full strength fruit juice; 0–½ slice of crusty bread or 0–2 cracker type products made from whole-grain or enriched meal or flour that are suitable for an infant for use as a finger food when appropriate. To improve the nutrition of participating children over one year of age, additional foods may be served with the meal supplements as desired.

(iv) The minimum amounts of food components to be served as meal supplements as set forth in paragraph (n)(3) of this section are as follows. Select two different components from the four listed. (Juice may not be served when milk is served as the only other component.)

MEAL SUPPLEMENT CHART FOR CHILDREN

Snack (supplement) for children	Children 1 and 2	Children 3 through 5	Children 6 through 12
(Select two different components from the four listed)			
Milk, fluid	½ cup	½ cup	1 cup.
Meat or meat alternate[4]	½ ounce	½ ounce	1 ounce.
Juice or fruit or vegetable	½ cup	½ cup	¾ cup.
Bread and/or cereal: Enriched or whole grain bread or	½ slice	½ slice	1 slice.
Cereal: Cold dry or	¼ cup[1]	⅓ cup[2]	¾ cup[3].
Hot cooked	¼ cup	¼ cup	½ cup.

[1] ¼ cup (volume) or ⅓ ounce (weight), whichever is less.
[2] ⅓ cup (volume) or ½ ounce (weight), whichever is less.
[3] ¾ cup (volume) or 1 ounce (weight), whichever is less.
[4] Yogurt may be used as meat/meat alternate in the snack only. You may serve 4 ounces (weight) or ½ cup (volume) of plain, or sweetened and flavored yogurt to fulfill the equivalent of 1 ounce of the meat/meat alternate component. For younger children, 2 ounces (weight) or ¼ cup (volume) may fulfill the equivalent of ½ ounce of the meat/meat alternate requirement.
Caution: Children under five years of age are at the highest risk of choking. USDA recommends that nuts and/or seeds be served to them ground or finely chopped in a prepared food.

SUPPLEMENTS FOR INFANTS

Birth through three months	Four months through seven months	Eight months through eleven months
4–6 fluid ounces formula[1]	4–6 fluid ounces formula[1]	2–4 fluid ounces formula,[1] breast milk,[4] whole milk or fruit juice.[2] 0–½ slice bread or 0–2 crackers (optional).[3]

[1] Shall be iron-fortified infant formula.
[2] Shall be full-strength fruit juice.
[3] Shall be from whole-grain or enriched meal or flour.
[4] Breast milk provided by the infant's mother may be served in place of formula from birth through 11 months. Meals containing only breast milk are not reimbursable. Meals containing breast milk served to infants 4 months or older may be claimed when the other meal component(s) is supplied by the school.

(o) *Implementation of the nutrition standards.* School food authorities shall comply with the *1990 Dietary Guidelines for Americans* as provided in paragraph (b) of this section no later than School Year 1996–97 except that State agencies may grant waivers to postpone implementation until no later than School Year 1998–99. Such waivers shall be granted by the State agency using guidance provided by the Secretary.

9. In the newly redesignated § 210.10a:

a. the section heading is revised and

b. the table in paragraph (c) is amended by revising the "Milk" description under "Food Components and Food Items."

The revisions read as follows:

§ 210.10a Lunch components and quantities for the meal pattern.

* * * * *

(c) *Minimum required lunch quantities.* * * *

SCHOOL LUNCH PATTERN—PER LUNCH MINIMUMS

Food components and food items	Minimum quantities				Recommended quantities: group V, 12 years and older (7–12)
	Group I, ages 1–2, (preschool)	Group II, ages 3–4 (preschool)	Group III, ages 5–8 (K–3)	Group IV, age 9 and older (4–12)	
Milk (as a beverage): Fluid whole milk and fluid unflavored lowfat milk must be offered; (Flavored fluid milk, skim milk or buttermilk optional)	. . .	. . .	. . .	. . .	. . .
. . .	.	.	.	.	.

* * * * *

10. In § 210.14, paragraph (c) is revised to read as follows:

§ 210.14 Resource management.

* * * * *

(c) *Financial assurances.* The school food authority shall meet the requirements of the State agency for compliance with § 210.19(a) including any separation of records of nonprofit school food service from records of any other food service which may be operated by the school food authority as provided in paragraph (a) of this section.

* * * * *

11. In § 210.15:

a. Paragraph (b)(2) is revised;

b. Paragraph (b)(3) is amended by removing the reference to "210.10(b) of this part" and adding in its place the words "§ 210.10(a)(2) or § 210.10a(b), whichever is applicable;" and

c. Paragraph (b)(4) is removed and paragraph (b)(5) is redesignated as (b)(4).

The revision reads as follows:

§ 210.15 Reporting and recordkeeping.

* * * * *

(b) *Recordkeeping summary.* * * *

(2) Production and menu records as required under § 210.10a and production and menu records and, if appropriate, nutrition analysis records as required under § 210.10, whichever is applicable.

* * * * *

12. In § 210.16:

a. paragraph (b)(1) is amended by adding the words "developed in accordance with the provisions of § 210.10 or § 210.10a, whichever is applicable," after the words "21-day cycle menu" whenever they appear; and

b. the first sentence of paragraph (c)(3) is revised to read as follows:

§ 210.16 Food service management companies.

* * * * *

(c) * * *

(3) No payment is to be made for meals that are spoiled or unwholesome at time of delivery, do not meet detailed specifications as developed by the school food authority for each food component or menu item as specified for the appropriate menu planning alternative in § 210.10 or for each food component in § 210.10a, whichever is applicable, or do not otherwise meet the requirements of the contract. * * *

* * * * *

§ 210.18 [Amended]

13. In § 210.18:

a. Paragraph (c) introductory text is amended by removing the number "4" in the phrase "4-year review cycle" wherever it appears and adding in its place the number "5";

b. the first sentence of paragraph (c)(1) is amended by removing the number "4" in the phrase "4-year review cycle" and adding in its place the number "5" and by removing the number "5" in the phrase "every 5 years" and adding in its place the number "6";

c. paragraph (c)(2) is amended by removing the number "4" in the phrase "4-year cycle" and adding in its place the number "5";

d. paragraph (c)(3) is amended by removing the number "5" in the phrase "5-year review interval" and adding the number "6" in its place;

e. paragraph (d)(3) is amended by removing the reference to "210.19(a)(4)" and adding in its place a reference to "210.19(a)(5)"; and

f. paragraph (h)(2) is amended by removing the words "210.10 of this part" and adding in their place the words "§ 210.10 or § 210.10a, whichever is applicable."

§ 210.19 [Amended]

14. In § 210.19:

a. paragraphs (a)(1) through (a)(5) are redesignated as paragraphs (a)(2) through (a)(6), respectively, and a new paragraph (a)(1) is added;

b. newly redesignated paragraph (a)(2) is revised;

c. the last sentence in newly redesignated paragraph (a)(3) is revised;

d. the number "4" in the second sentence of newly redesignated paragraph (a)(6) is removed and the number "5" is added in its place;

e. the second sentence of paragraph (c) introductory text is revised;

f. a new sentence is added at the end of paragraph (c)(1);

g. the reference to "§ 210.10" in paragraph (c)(6)(i) is removed and the words "§ 210.10a or the food-based menu planning alternative in § 210.10(k), whichever is applicable;" are added in its place;

h. paragraph (c)(6)(ii) is amended by removing the period at the end and adding in its place the word "; or"; and

i. a new paragraph (c)(6)(iii) is added.

The additions and revisions read as follows:

§ 210.19 Additional responsibilities.

(a) General Program management.

* * *

(1) *Compliance with nutrition standards.* Beginning with School Year 1996–1997 (unless the school food authority has an implementation waiver as provided in § 210.10(o)), State agencies shall evaluate compliance, over the school week, with the nutrition standards in § 210.10(b) and § 210.10(c) or (d), whichever is applicable. At a minimum, these evaluations shall be conducted once every 5 years and may be conducted at the same time a school food authority is scheduled for an administrative review in accordance with § 210.18. State agencies may also conduct these evaluations in conjunction with technical assistance visits, other reviews, or separately. The type of evaluation conducted by the State agency shall be determined by the menu planning alternative chosen by the school food authority.

(i) For school food authorities choosing the nutrient standard menu planning or assisted nutrient standard menu planning options provided in § 210.10(i) and § 210.10(j), respectively, the State agency shall assess the nutrient analysis for the last completed school week prior to the review period

to determine if the school food authority is applying the methodology in § 210.10(i) or § 210.10(j), as appropriate. Part of this assessment shall be an independent review of menus and production records to determine if they correspond to the analysis conducted by the school food authority and if the menu, as offered, over a school week, corresponds to the nutrition standards set forth in § 210.10(b) and § 210.10(c).

(ii) For school food authorities choosing the food-based menu planning alternative in § 210.10(k), the State agency shall conduct nutrient analysis on the menu(s) served during the review period to determine if the nutrition standards set forth in § 210.10(b) and § 210.10(d) are met, except that, the State agency may:

(A) Use the nutrient analysis of any school or school food authority that offers meals using the food-based menu planning alternative provided in § 210.10(k) and/or § 220.8(e) or § 220.8(f) of this chapter and that conducts its own nutrient analysis under the criteria for nutrient analysis established in § 210.10 and § 220.8 for nutrient standard menu planning and assisted nutrient standard menu planning of those meals; or

(B) Develop its own method for compliance review, subject to USDA approval.

(iii) If the menu for the school week fails to comply with the nutrition standards specified in § 210.10(b) and/or § 220.8(a) and the appropriate nutrient levels in either § 210.10(c), § 210.10(d), or § 210.10(i)(1) whichever is applicable, and/or § 220.8(b), § 220.8(c) or § 220.8(e)(1) of this chapter, whichever is applicable, the school food authority shall develop, with the assistance and concurrence of the State agency, a corrective action plan designed to rectify those deficiencies. The State agency shall monitor the school food authority's execution of the plan to ensure that the terms of the corrective action plan are met.

(iv) If a school food authority fails to meet the terms of the corrective action plan, the State agency shall determine if the school food authority is working in good faith towards compliance and, if so, may renegotiate the corrective action plan, if warranted. However, if the school food authority has not been acting in good faith to meet the terms of the corrective action plan and refuses to renegotiate the plan, the State agency shall determine if a disallowance of reimbursement funds as authorized under paragraph (c) of this section is warranted.

(2) *Assurance of compliance for finances.* Each State agency shall ensure that school food authorities comply with the requirements to account for all revenues and expenditures of their nonprofit school food service. School food authorities shall meet the requirements for the allowability of nonprofit school food service expenditures in accordance with this part and, as applicable, 7 CFR part 3015. The State agency shall ensure compliance with the requirements to limit net cash resources and shall provide for approval of net cash resources in excess of three months' average expenditures. Each State agency shall monitor, through review or audit or by other means, the net cash resources of the nonprofit school food service in each school food authority participating in the Program. In the event that net cash resources exceed 3 months' average expenditures for the school food authority's nonprofit school food service or such other amount as may be approved in accordance with this paragraph, the State agency may require the school food authority to reduce the price children are charged for lunches, improve food quality or take other action designed to improve the nonprofit school food service. In the absence of any such action, the State agency shall make adjustments in the rate of reimbursement under the Program.

(3) *Improved management practices.* * * * If a substantial number of children who routinely and over a period of time do not favorably accept a particular item that is offered; return foods; or choose less than all food items/components or foods and menu items, as authorized under § 210 10 or § 210.10a, whichever is applicable, poor acceptance of certain menus may be indicated.

* * * * *

(c) *Fiscal action.* * * * State agencies shall take fiscal action against school food authorities for Claims for Reimbursement that are not properly payable under this part including, if warranted, the disallowance of funds for failure to take corrective action in accordance with paragraph (a)(1) of this section. * * *

(1) *Definition.* * * * Fiscal action also includes disallowance of funds for failure to take corrective action in accordance with paragraph (a)(1) of this section.

* * * * *

(6) *Exceptions.* * * *

(iii) when any review or audit reveals that a school food authority's failure to meet the nutrition standards of § 210.10 is unintentional and the school food authority is meeting the requirements of a corrective plan developed and agreed to under paragraph (a)(1)(iii) of this section.

* * * * *

[Appendix A—Amended]

15. In Appendix A, Alternate Foods for Meals; Enriched Macaroni Products with Fortified Protein, the first sentence of paragraph 1(a) is amended by adding the words "or § 210.10a, whichever is applicable," after the reference to "§ 210.10".

16. In Appendix A, Alternate Foods for Meals; Cheese Alternate Products:

a. the introductory text of paragraph 1 is amended by adding the words "or § 210.10a, whichever is applicable," after the reference to "§ 210.10"; and

b. paragraph 1(d) is amended by adding the words "or § 210.10a, whichever is applicable," after the reference to "§ 210.10".

17. In Appendix A, Alternate Foods for Meals; Vegetable Protein Products:

a. the introductory text of paragraph 1 is amended by adding the words "or § 210.10a, whichever is applicable," after the reference to "§ 210.10";

b. the second sentence of paragraph 1(d) is amended by adding the words "or § 210.10a, whichever is applicable," after the reference to "§ 210.10";

c. the first sentence of paragraph 1(e) is amended by adding the words "§ 210.10a, whichever is applicable," after the reference to "§ 210.10"; and

d. the first sentence of paragraph 3 is amended by adding the words "or § 210.10a, whichever is applicable," after the reference to "§ 210.10".

Appendix C—[Amended]

18. In Appendix C, Child Nutrition Labeling Program:

a. paragraph 2(a) is amended by adding the words "or 210.10a, whichever is applicable," after the reference to "210.10"; and

b. the first sentence of paragraph 3(c)(2) is amended by adding the words "or 210.10a, whichever is applicable," after the reference to "§ 210.10" and by adding the words "or 220.8a, whichever is applicable," after the reference to "§ 220.8"; and

c. the second sentence of paragraph 6 is amended by adding the words "or 210.10a, whichever is applicable," after the reference to "§ 210.10" and by adding the words "or 220.8a, whichever is applicable," after the reference to "§ 220.8".

PART 220—SCHOOL BREAKFAST PROGRAM

1. The authority citation continues to read as follows:

Authority: 42 U.S.C. 1773, 1779, unless otherwise noted.

2. In § 220.2:

a. paragraph (b) is amended by adding the words "or § 220.8a, whichever is applicable," after the reference to "§ 220.8;"

b. paragraph (m), previously reserved, is added;

c. a new paragraph (p–1) is added;

d. paragraph (t) is amended by adding the words "or § 220.8a, whichever is applicable," after the reference to "§ 220.8"; and

e. a new paragraph (w–1) is added.

The additions read as follows:

§ 220.2 Definitions.

* * * * *

(m) *Menu item* means, under Nutrient Standard Menu Planning or Assisted Nutrient Standard Menu Planning, any single food or combination of foods. All menu items or foods offered as part of the reimbursable meal may be considered as contributing towards meeting the nutrition standards provided in § 220.8, except for those foods that are considered as foods of minimal nutritional value as provided for in § 220.2(i–1) which are not offered as part of a menu item in a reimbursable meal. For the purposes of a reimbursable breakfast, a minimum of three menu items must be offered, one of which shall be fluid milk served as a beverage or on cereal or both; under the offer versus serve, a student may decline only one menu item.

* * * * *

(p–1) *Nutrient Standard Menu Planning/Assisted Nutrient Standard Menu Planning* mean ways to develop menus based on the analysis of nutrients in the menu items and foods offered over a school week to determine if specific levels for a set of key nutrients and calories were met. Such analysis is based on averages weighted in accordance with the criteria in § 220.8(e)(5). Such analysis is normally done by a school or a school food authority. However, for the purposes of Assisted Nutrient Standard Menu Planning, menu planning and analysis are completed by other entities and shall incorporate the production quantities needed to accommodate the specific service requirements of a particular school or school food authority.

* * * * *

(w–1) *School week* means the period of time used to determine compliance with the nutrition standards and the appropriate calorie and nutrient levels in § 220.8. Further, if applicable, school week is the basis for conducting Nutrient Standard Menu Planning or Assisted Nutrient Standard Menu Planning for breakfasts as provided in § 220.8(e) and § 220.8(f). The period shall be a normal school week of five consecutive days; however, to accommodate shortened weeks resulting from holidays and other scheduling needs, the period shall be a minimum of three consecutive days and a maximum of seven consecutive days. Weeks in which school breakfasts are offered less than three times shall be combined with either the previous or the coming week.

* * * * *

§ 220.7 [Amended]

3. In § 220.7, paragraph (e)(2) is amended by adding the words "or § 220.8a, whichever is applicable," after the reference to "§ 220.8".

4. Section 220.8 is redesignated as 220.8a and a new section 220.8 is added to read as follows:

§ 220.8 Nutrition standards for breakfast and menu planning alternatives.

(a) *Nutrition standards for breakfasts for children age 2 and over.* School food authorities shall ensure that participating schools provide nutritious and well-balanced breakfasts. For children age 2 and over, breakfasts shall be offered based on the nutrition standards provided in this section when averaged over a school week. For the purposes of this section, the nutrition standards are:

(1) Provision of one-fourth of the Recommended Dietary Allowances (RDA) of protein, calcium, iron, vitamin A and vitamin C to the applicable age or grade groups in accordance with the appropriate levels provided in paragraphs (b), (c), or (e)(1) of this section, whichever is applicable;

(2) Provision of the breakfast energy allowances for children based on the age or grade groups in accordance with the appropriate levels provided in paragraphs (b), (c) or (e)(1) of this section, whichever is applicable;

(3) The applicable recommendations of the *1990 Dietary Guidelines for Americans* which are:

(i) Eat a variety of foods;

(ii) Limit total fat to 30 percent of calories;

(iii) Limit saturated fat to less than 10 percent of calories;

(iv) Choose a diet low in cholesterol;

(v) Choose a diet with plenty of vegetables, fruits, and grain products; and

(vi) Use salt and sodium in moderation.

(4) The following measures of compliance with the applicable recommendations of the *1990 Dietary Guidelines for Americans:*

(i) A limit on the percent of calories from total fat to 30 percent based on the actual number of calories offered;

(ii) A limit on the percent of calories from saturated fat to less than 10 percent based on the actual number of calories offered;

(iii) A reduction of the levels of sodium and cholesterol; and

(iv) An increase in the level of dietary fiber.

(5) School food authorities have three alternatives for menu planning in order to meet the requirements of this paragraph and the appropriate nutrient and calorie levels in paragraphs (b), (c) or (e)(1) of this section, whichever is applicable: nutrient standard menu planning as provided in paragraph (e) of this section, assisted nutrient standard menu planning as provided for in paragraph (f) of this section, or food-based menu planning as provided for in paragraph (g) of this section. The actual minimum calorie and nutrient levels vary depending upon the alternative followed due to the differences in age/grade groupings of each alternative.

(6) Production and menu records shall include sufficient information to evaluate the menu's contribution to the requirements on nutrition standards in paragraph (a) of this section and the appropriate levels of nutrient and calorie levels in paragraphs (b), (c) or (e)(1) of this section, whichever is applicable. If applicable, schools or school food authorities shall maintain nutritional analysis records to demonstrate that breakfasts meet, when averaged over each school week, the nutrition standards provided in paragraph (a) of this section and the nutrient and calorie levels for children for each age or grade group in accordance with paragraphs (b) or (e)(1) of this section.

(b) *Nutrient levels/nutrient analysis.* (1) For the purposes of nutrient standard and assisted nutrient standard menu planning, as provided for in paragraphs (e) and (f), respectively, of this section, schools shall, at a minimum, provide the calorie and nutrient levels for school breakfasts (offered over a school week) for required grade groups specified in the following chart:

MINIMUM REQUIREMENTS FOR NUTRIENT AND CALORIE LEVELS FOR SCHOOL BREAKFAST

[School week averages]

	Preschool	Grades K–12	Option for grades 7–12
Energy Allowances (calories)	388	554	618
Total Fat (as a Percentage of Actual Total Food Energy)	(1)	(1)	(1)
Total Saturated Fat (as a Percentage of Actual Total Food Energy)	(2)	(2)	(2)
Protein (g)	5	10	12
Calcium (mg)	200	257	300
Iron (mg)	2.5	3.0	3.4
Vitamin A (RE)	113	197	225
Vitamin C (mg)	11	13	14

[1] Not to exceed 30 percent over a school week.
[2] Less than 10 percent over a school week.

(2) At their option, schools may provide for calorie and nutrient levels for school breakfasts (offered over a school week) for the age groups specified in the following chart or may develop their own age groups and their corresponding levels in accordance with paragraph (e)(1) of this section.

OPTIONAL MINIMUM NUTRIENT LEVELS FOR SCHOOL BREAKFASTS/NUTRIENT ANALYSIS

[School week averages]

Nutrients and energy allowances	Ages 3–6 years	Ages 7–10 years	Ages 11–13 years	Ages 14 and above
Energy Allowances/Calories	419	500	588	625
Total Fat (as a percent of actual total food energy)	(1)	(1)	(1)	(1)
Saturated Fat (as a percent of actual total food energy)	(2)	(2)	(2)	(2)
RDA for Protein (g)	5.50	7.00	11.25	12.50
RDA for Calcium (mg)	200	200	300	300
RDA for Iron (mg)	2.5	2.5	3.4	3.4
RDA for Vitamin A (RE)	119	175	225	225
RDA for Vitamin C (mg)	11.00	11.25	12.50	14.40

[1] Not to exceed 30 percent over a school week.
[2] Less than 10 percent over a school week.

(c) *Nutrient levels/food-based menu planning.* For the purposes of the food-based menu planning alternative as provided for in paragraph (g) of this section, the following chart provides the minimum levels, by grade group, for calorie and nutrient levels for school breakfasts offered over a school week:

CALORIE AND NUTRIENT LEVELS FOR SCHOOL BREAKFAST

[School week averages]

	Preschool	Grades K–12	Option for grades 7–12
Energy Allowances (Calories)	388	554	618
Total Fat (as a percentage of actual total food energy)	[1]	[1]	[1]
Total Saturated Fat (as a percentage of actual total food energy)	[2]	[2]	[2]
Protein (g)	5	10	12
Calcium (mg)	200	257	300
Iron (mg)	2.5	3.0	3.4
Vitamin A (RE)	113	197	225
Vitamin C (mg)	11	13	14

[1] Not to Exceed 30 Percent Over a School Week
[2] Less Than 10 Percent Over a School Week

(d) *Exceptions.* Breakfasts claimed for reimbursement shall meet the nutrition requirements for reimbursable meals specified in this section. However, breakfasts served which accommodate the exceptions and variations authorized under this paragraph are also reimbursable. Exceptions and variations are restricted to the following:

(1) *Medical or dietary needs.* Schools shall make substitutions in the foods or menu items offered in accordance with this section for students who are considered to have a disability under 7 CFR part 15b and whose disability restricts their diet. Schools may also make substitutions for students who do not have a disability but who are unable to consume the regular breakfast because of medical or other special dietary needs. Substitutions shall be made on a case-by-case basis only when supported by a statement of the need for substitutions that includes recommended alternate foods, unless otherwise exempted by FCS. Such statement shall, in the case of a disabled student, be signed by a physician or, in the case of a student who is not disabled, by a recognized medical authority.

(2) FCS encourages school food authorities to consider ethnic and religious preferences when planning and preparing meals. For the purposes of the food-based menu planning alternative, FCS may approve variations in the food components of the breakfast on an experimental or on a continuing basis in any school where there is evidence that such variations are nutritionally sound and are necessary to meet ethnic, religious, or economic needs.

(e) *Nutrient-Standard Menu Planning.* (1) *Adjusted nutrient levels.* (i) At a minimum, schools that choose the nutrient standard menu planning alternative and that have children age 2 enrolled shall ensure that the nutrition standards in paragraph (a) of this section and the required preschool levels for nutrients and calories in paragraph (b)(1) of this section are met except that, such schools have the option of either using the nutrient and calorie levels for preschool children in paragraph (b)(2) of this section, or developing separate nutrient levels for this age group. The methodology for determining such levels will be available in menu planning guidance material provided by FCS.

(ii) At a minimum, schools shall offer meals to children based on the required grade groups in paragraph (b)(1) of this section. However, schools may, at their option, offer meals to children using the age groups and their corresponding nutrient and calorie levels in paragraph (c)(2) of this section or, following guidance provided by FCS, develop their own age or grade groups and their corresponding nutrient and calorie levels. However, if only one age or grade is outside the established levels, schools may use the levels for the majority of children regardless of the option selected.

(2) *Contents of reimbursable meal and offer versus serve.* (i) *Minimum requirements.* For the purposes of this menu planning alternative, a reimbursable breakfast shall include a minimum of three menu items as defined in § 220.2. All menu items or foods offered as part of the reimbursable meal may be considered as contributing towards meeting the nutrition standards in paragraph (a) of this section and the appropriate nutrient and calorie levels in paragraphs (b) or (e)(1) of this section, whichever is applicable, except for those foods that are considered foods of minimal nutritional value as provided for in § 220.2(i–1) which are not offered as part of a menu item in a reimbursable meal. Such reimbursable breakfasts, as offered, shall meet the established nutrition standards in paragraph (a) of this section and the appropriate nutrient and calorie levels in paragraphs (b) or (e)(1) of this section, whichever is applicable, when averaged over a school week.

(ii) *Offer versus serve.* Each participating school shall offer its students at least three menu items as required by paragraph (e)(2)(i) of this section. Under offer versus serve, senior high students must select at least two menu items and may decline a maximum of one menu item offered. At the discretion of the school food authority, students below the senior high level may also participate in offer versus serve. The price of a reimbursable breakfast shall not be affected if a student declines a menu item or requests smaller portions. State educational agencies shall define "senior high."

(3) *Nutrient analysis under Nutrient Standard Menu Planning.* School food authorities choosing the nutrient analysis alternative shall conduct nutrient analysis on all menu items or foods offered as part of the reimbursable meal. However, those foods that are considered as foods of minimal nutritional value as provided for in § 220.2(i–1) which are not offered as part of a menu item in a reimbursable meal shall not be included. Such analysis shall be over the course of each school week.

(4) *The National Nutrient Database and software specifications.* (i) Nutrient analysis shall be based on information provided in the National Nutrient Database for Child Nutrition Programs. This database shall be incorporated into software used to conduct nutrient analysis. Upon request, FCS will provide information about the database to software companies that wish to develop school food service software systems.

(ii) Any software used to conduct nutrient analysis shall be evaluated beforehand by FCS or by an FCS designee and, as submitted, has been determined to meet the minimum requirements established by FCS. However, such review does not constitute endorsement by FCS or USDA. Such software shall provide the capability to perform all functions required after the basic data has been entered including calculation of weighted averages and the optional combining of analysis of the breakfast and lunch programs as provided in paragraph (e)(5) of this section.

(5) *Determination of weighted averages.* (i) Menu items and foods offered as part of a reimbursable meal shall be analyzed based on portion sizes and projected serving amounts and shall be weighted based on their proportionate contribution to the meals. Therefore, in determining whether meals satisfy nutritional requirements, menu items or foods more frequently offered will be weighted more heavily than menu items or foods which are less frequently offered. Such weighting shall be done in accordance with guidance issued by FCS as well as that provided by the software used.

(ii) An analysis of all menu items and foods offered in the menu over each school week shall be computed for calories and for each of the following nutrients: protein; vitamin A; vitamin C; iron; calcium; total fat; saturated fat; and sodium. The analysis shall also include the dietary components of cholesterol and dietary fiber.

(iii) At its option, a school food authority may combine analysis of the National School Lunch and School Breakfast Programs. Such analysis shall be proportionate to the levels of participation in the two programs in accordance to guidance issued by FCS.

(6) *Comparing average nutrient levels.* Once the appropriate procedures of paragraph (e)(5) of this section have been completed, the results shall be compared to the appropriate nutrient and calorie levels, by age/grade group, in paragraphs (b)(1) or (b)(2) of this section or the levels developed in accordance with paragraph (e)(1) of this section, whichever is applicable to determine the school week's average. In addition, comparisons shall be made to the nutrition standards provided in paragraph (a) of this section in order to determine the degree of conformity over the school week.

(7) *Adjustments based on students' selections.* The results obtained under paragraph (e)(5) and (e)(6) of this section shall be used to adjust future menu cycles to accurately reflect production and the frequency with which menu items and foods are offered. Menus may require further analysis and comparison, depending on the results obtained in paragraph (e)(6) of this section when production and selection patterns of students change. The school food authority may need to consider modifications to the menu items and foods offered based on student selections as well as modifications to recipes and other specifications to ensure that the nutrition standards provided in paragraph (a) of this section and the appropriate calorie and nutrient levels in paragraphs (b) or (e)(1) of this section, whichever is applicable, are met.

(8) *Standardized recipes.* Under Nutrient Standard Menu Planning, standardized recipes shall be developed and followed. A standardized recipe is one that was tested to provide an established yield and quantity through

the use of ingredients that remain constant in both measurement and preparation methods. USDA/FCS standardized recipes are included in the National Nutrient Database for the Child Nutrition Programs. In addition, local standardized recipes used by school food authorities shall be analyzed for their calories, nutrients and dietary components, as provided for in paragraph (e)(5)(ii) of this section, and added to the local databases by school food authorities in accordance with guidance issued by FCS.

(9) *Processed foods.* Unless already included in the National Nutrient Database, the calorie amounts, nutrients and dietary components, as provided in paragraph (e)(5)(ii) of this section, of purchased processed foods and menu items used by the school food authority shall be obtained by the school food authority or State agency and incorporated into the database at the local level in accordance with FCS guidance.

(10) *Menu substitutions.* If the need for serving a substitute food(s) or menu item(s) occurs at least two weeks prior to serving the planned menu, the revised menu shall be reanalyzed based on the changes. If the need for serving a substitute food(s) or menu item(s) occurs two weeks or less prior to serving the planned menu, no reanalysis is required. However, to the extent possible, substitutions should be made using similar foods.

(11) *Compliance with the nutrition standards.* If the analysis conducted in accordance with paragraphs (e)(1) through (e)(10) of this section shows that the menus offered are not meeting the nutrition standards in paragraph (a) of this section and the appropriate levels of nutrients and calories in paragraphs (b)(1) or (b)(2) of this section or the levels developed in accordance with paragraph (e)(1), whichever is applicable, actions, including technical assistance and training, shall be taken by the State agency, school food authority, or school, as appropriate, to ensure that the breakfasts offered to children comply with the nutrition standards established by paragraph (a) of this section and the appropriate levels of nutrient sand calories in paragraphs (b) or (e)(1) of this section, whichever is applicable.

(12) *Other programs.* Any school food authority that operates the Summer Food Service Program under Part 225 of this chapter and/or the Child and Adult Care Food Program under Part 226 of this chapter may, at its option and with State agency approval, prepare meals provided for those programs using the nutrient standard menu planning alternative, except for children under two years of age. For school food authorities providing meals for adults, FCS will provide guidance on the level of nutrients and calories needed.

(f) *Assisted Nutrient Standard Menu Planning.* (1) School food authorities without the capability to conduct Nutrient Standard Menu Planning, as provided in paragraph (e) of this section may choose an alternative which uses menu cycles developed by other sources. Such sources may include but are not limited to the State agency, other school food authorities, consultants, or food service management companies. This alternative is Assisted Nutrient Standard Menu Planning.

(2) Assisted Nutrient Standard Menu Planning shall establish menu cycles that have been developed in accordance with paragraphs (e)(1) through (e)(10) of this section as well as local food preferences and local food service operations. These menu cycles shall incorporate the nutrition standards in paragraph (a) of this section and the appropriate nutrient and calorie levels in paragraph (b) or (e)(1) of this section, whichever is applicable. In addition to the menu cycle, recipes, food product specifications and preparation techniques shall also be developed and provided by the entity furnishing Assisted Nutrient Standard Menu Planning to ensure that the menu items and foods offered conform to the nutrient analysis determinations of the menu cycle.

(3) At the inception of any use of Assisted Nutrient Standard Menu Planning, the State agency shall approve the initial menu cycle, recipes, and other specifications to determine that all required elements for correct nutrient analysis are incorporated. The State agency shall also, upon request of the school food authority, provide assistance with implementation of the chosen system.

(4) After initial service of the menu cycle under the Assisted Nutrient Standard Menu Planning, the nutrient analysis shall be reassessed and appropriate adjustments made in accordance with paragraph (e)(7) of this section.

(5) Under Assisted Nutrient Standard Menu Planning, the school food authority retains final responsibility for ensuring that all nutrition standards established in paragraph (a) of this section and the appropriate nutrient and calorie levels in paragraphs (b) or (e)(1) of this section, whichever is applicable, are met.

(6) If the analysis conducted in accordance with paragraphs (e)(1) through (e)(10) and paragraph (f)(4) of this section shows that the menus offered are not meeting the nutrition standards in paragraph (a) of this section and the appropriate nutrient and calorie levels in paragraph (b) of this section or the levels developed in accordance with paragraph (e)(1) of this section, whichever is applicable, actions, including technical assistance and training, shall be taken by the State agency, school food authority, or school, as appropriate, to ensure that the breakfasts offered to children comply with the nutrition standards established by paragraph (a) of this section and the appropriate nutrient and calorie levels in paragraphs (b) or (e)(1) of this section, whichever is applicable.

(7) Any school food authority that operates the Summer Food Service Program under Part 225 of this chapter and/or the Child and Adult Care Food Program under Part 226 of this chapter may, at its option and with State agency approval, prepare meals provided for those programs using the assisted nutrient standard menu planning alternative, except for children under two years of age. For school food authorities providing meals for adults, FCS will provide guidance on the level of nutrients and calories needed.

(g) *Food-based menu planning.* (1) *Food components.* Except as otherwise provided in this paragraph and in any appendix to this part to be eligible for Federal cash reimbursement, a breakfast planned using the food-based menu planning alternative shall contain, at a minimum, the following food components in the quantities specified in the table in paragraph (g)(2) of this section:

(i) A serving of fluid milk served as a beverage or on cereal or used in part for each purpose;

(ii) A serving of fruit or vegetable or both, or full-strength fruit or vegetable juice; and

(iii) Two servings from one of the following components or one serving from each:

(A) Grains/breads;

(B) Meat/Meat alternate.

(2) *Minimum quantities.* At a minimum, schools shall serve meals in the quantities provided in the following chart:

Meal component	Minimum quantities required for			
	Ages 1–2	Preschool	Grades K–12	Option for grades 7–12
Milk (Fluid) (As a beverage, on cereal or both).	½ Cup	¾ Cup	8 Ounces	8 Ounces
Juice/Fruit/Vegetable: Fruit and/or vegetable; or full-strength fruit juice or vegetable juice.	¼ Cup	½ Cup	½ Cup	½ Cup
SELECT ONE SERVING FROM EACH OF THE FOLLOWING COMPONENTS OR TWO FROM ONE COMPONENT:				
Grains/Breads–One of the following or an equivalent combination:				
Whole-Grain or Enriched Bread.	½ Slice	½ Slice	1 Slice	1 Slice.
Whole-Grain or Enriched Biscuit, Roll, Muffin, Etc.	½ Serving	½ Serving	1 Serving	1 Serving.
Whole-Grain, Enriched or Fortified Cereal.	¼ Cup or ⅓ Ounce	⅓ Cup or ½ Ounce	¾ Cup or 1 Ounce	¾ Cup or 1 Ounce. Plus an Additional Serving of one of the Grains/Breads Above.
Meat or Meat Alternates:				
Meat/poultry or fish	½ Ounce	½ Ounce	1 Ounce	1 Ounce.
Cheese	½ Ounce	½ Ounce	1 Ounce	1 Ounce.
Egg (large)	½	½	½	½.
Peanut butter or other nut or seed butters.	1 Tablespoon	1 Tablespoon	2 Tablespoons	2 Tablespoons.
Cooked dry beans and peas	2 Tablespoons	2 Tablespoons	4 Tablespoons	4 Tablespoons
Nut and/or seeds (as listed in program guidance) [1].	½ Ounce	½ Ounce	1 Ounce	1 Ounce.

[1] No more than 1 ounce of nuts and/or seeds may be served in any one meal.

(3) *Offer Versus Serve.* Each school shall offer its students all four required food items as set forth under paragraph (g)(1) of this section. At the option of the school food authority, each school may allow students to refuse *one* food item from any component that the student does not intend to consume. The refused food item may be any of the four items offered to the student. A student's decision to accept all four food items or to decline one of the four food items shall not affect the charge for breakfast.

(4) *Outlying areas.* Schools in American Samoa, Puerto Rico and the Virgin Islands may serve a starchy vegetable such as yams, plantains, or sweet potatoes to meet the grain/bread requirement. For the Commonwealth of the Northern Mariana Islands, FCS has established a menu consistent with the food-based menu alternative and with local food consumption patterns and which, given available food supplies and food service equipment and facilities, provides optimum nutrition consistent with sound dietary habits for participating children. The State agency shall attach to and make a part of the written agreement required under § 210.9 of this chapter the requirements of that menu option.

(h) *Milk requirement for children ages 2–17.* (1) A serving of milk as a beverage or on cereal or used in part for each purpose shall be offered for school breakfasts.

(2) If emergency conditions prevent a school normally having a supply of milk from temporarily obtaining delivery thereof, the State agency, or FCSRO where applicable, may approve reimbursement for breakfast served without milk during the emergency period.

(3) If a school is unable to obtain a supply of any type of fluid milk on a continuing basis, the State agency may approve the service of breakfasts without milk if the school uses an equivalent amount of canned or dry milk in the preparation of breakfasts. In Alaska, Hawaii, American Samoa, Guam, Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands, if a sufficient supply of fluid milk cannot be obtained, "milk" shall include reconstituted or recombined milk, or as otherwise provided under written exception by FCS.

(i) *Infant meal pattern.* When infants from birth through 11 months of age participate in the Program, an infant breakfast shall be offered. Foods within the infant breakfast pattern shall be of texture and consistency appropriate for the particular age group being served, and shall be served to the infant during a span of time consistent with the infant's eating habits. For infants 4 through 7 months of age, solid foods are optional and should be introduced only when the infant is developmentally ready. Whenever possible, the school should consult with the infant's parent in making the decision to introduce solid foods. Solid foods should be introduced one at a time on a gradual basis with the intent of ensuring health and nutritional well-being. For infants 8 through 11 months of age, the total amount of food authorized in the meal patterns set forth below must be provided in order to qualify for reimbursement. Additional foods may be served to infants 4 months of age and older with the intent of improving their overall nutrition. Breast milk, provided by the infant's mother, may be served in place of infant formula from birth through 11 months of age. However, meals containing only breast milk do not qualify for reimbursement. Meals containing breast milk served to infants 4 months or older may be claimed for reimbursement when the other meal component or components are supplied by the school. Although it is recommended that either breast milk or iron-fortified infant formula be served for the entire first year, whole milk may be served beginning at 8 months of age as long as infants are consuming one-third of their calories as a balanced mixture of cereal, fruits, vegetables, and other foods in order to ensure adequate

sources of iron and vitamin C. The infant breakfast pattern shall contain, at a minimum, each of the following components in the amounts indicated for the appropriate age groups:

(1) *Birth through 3 months.* 4 to 6 fluid ounces of iron-fortified infant formula.

(2) *4 through 7 months.* 4 to 8 fluid ounces of iron-fortified infant formula; and 0 to 3 tablespoons of iron-fortified dry infant cereal (optional).

(3) *8 through 11 months.* 6 to 8 fluid ounces of iron-fortified infant formula or 6 to 8 fluid ounces of whole milk; 2 to 4 tablespoons of iron-fortified dry infant cereal; and 1 to 4 tablespoons of fruit or vegetable of appropriate consistency or a combination of both.

(j) *Additional foods.* Additional foods may be served with breakfasts as desired to participating children over 1 year of age.

(k) *Choice.* To provide variety and to encourage consumption and participation, schools should, whenever possible, provide a selection of menu items and foods from which children may make choices. When a school offers a selection of more than one type of breakfast or when it offers a variety of menu items and foods and milk for choice as a reimbursable breakfast, the school shall offer all children the same selection regardless of whether the children are eligible for free or reduced price breakfasts or pay the school food authority designated full price. The school may establish different unit prices for each type of breakfast offered provided that the benefits made available to children eligible for free or reduced price breakfasts are not affected.

(l) *Nutrition disclosure.* School food authorities are encouraged to make information available indicating efforts to meet the nutrition standards in paragraph (a) of this section.

(m) *Implementation of nutrition standards.* School food authorities shall comply with the *1990 Dietary Guidelines for Americans* as provided in paragraph (a) of this section no later than School Year 1996–97 except that State agencies may grant waivers to postpone implementation until no later than School Year 1998–99. Such waivers shall be granted by the State agency using guidance provided by the Secretary.

5. The section heading of newly redesignated § 220.8a is revised to read as follows:

§ 220.8a Breakfast components and quantities for the meal pattern.

* * * * *

§ 220.9 [Amended]

6. In § 220.9, the first sentence of paragraph (a) is amended by adding the words "or § 220.8a, whichever is applicable," after the reference to "§ 220.8".

7. In § 220.13, paragraphs (f)(3) and (f)(4) are redesignated as paragraphs (f)(4) and (f)(5), respectively and a new paragraph (f)(3) is added to read as follows:

§ 220.13 Special responsibilities of State agencies.

* * * * *

(f) * * *

(3) For the purposes of compliance with the *1990 Dietary Guidelines for Americans* and the calorie and nutrient levels specified in § 220.8, the State agency shall follow the provisions specified in § 210.19(a)(1) of this chapter.

* * * * *

§ 220.14 [Amended]

8. In § 220.14, paragraph (h) is amended by removing the reference to "§ 220.8 (a)(1), (b)(1), and (b)(3)" and adding in its place the words "§ 220.8 (g), § 220.8 (i)(2) and (i)(3) or § 220.8a (a)(1), (b)(2), and (b)(3), whichever is applicable."

Appendix A—[Amended]

9. In Appendix A, Alternate Foods for Meals, Formulated Grain-Fruit Products, paragraph 1(a) is amended by adding the words "or § 220.8a, whichever is applicable" after the reference to "§ 220.8."

Appendix C—[Amended]

10. In Appendix C, Child Nutrition (CN) Labeling Program:

a. paragraph 2(a) is amended by adding the words "or 210.10a, whichever is applicable," after the reference to "210.10";

b. the first sentence of paragraph 3(c)(2) is amended by adding the words "or 210.10a, whichever is applicable," after the reference to "210.10" and by adding the words "or 220.8a, whichever is applicable," after the reference to "220.8"; and

c. the second sentence of paragraph 6 is amended by adding the words "or 210.10a, whichever is applicable," after the reference to "210.10" and by adding the words "or 220.8a, whichever is applicable," after the reference to 220.8".

Dated: June 6, 1995.

Ellen Haas,

Under Secretary for Food, Nutrition, and Consumer Services.

[FR Doc. 95–14292 Filed 6–12–95; 8:45 am]

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federal register

Tuesday
June 13, 1995

Part III

Department of Education

Bilingual Education: Evaluation Activities, Benchmark Study; Final Priority and Cooperative Agreement Award Applications for Fiscal Year 1995; Notices

DEPARTMENT OF EDUCATION

[1885-ZA00]

Bilingual Education: Evaluation Activities, Benchmark Study

AGENCY: Department of Education.

ACTION: Notice of final priority and selection criteria for fiscal year (FY) 1995.

SUMMARY: The Secretary announces a priority and selection criteria for FY 1995 for program evaluation activities authorized by title VII of the Elementary and Secondary Education Act of 1965, as amended (ESEA). The Secretary takes this action to conduct program evaluation activities for the purpose of improving the education of limited English proficient (LEP) students. The priority limits this competition to evaluation activities that investigate the dynamics of school change over time in school districts serving LEP students.

EFFECTIVE DATE: This priority takes effect July 13, 1995.

FOR FURTHER INFORMATION OR APPLICATIONS CONTACT: Milagros E. Lanauze, U.S. Department of Education, 600 Independence Avenue SW., room 5623, Switzer Building, Washington, DC 20202–6510. Telephone: (202) 205–9475. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

Title VII of the ESEA was recently reauthorized and now promotes coherent and comprehensive educational programs for limited English proficient students based on the principle that all children can to achieve to high standards. The ESEA and the Goals 2000: Educate America Act (Goals 2000) will now aim at fostering school reform and changing the manner in which all students, including LEP students, receive educational services. Title VII's new grants programs, authorized by subpart 1 of part A, will assist the Nation's school reform efforts for the education of LEP students.

Section 7131 of the ESEA authorizes the Secretary to conduct evaluation activities to improve bilingual education and special alternative instruction programs for LEP children and youth.

In order to examine how school reform efforts are affecting the education of LEP students, the Secretary is establishing an absolute priority under section 7131 to fund a five-year "Benchmark Study" to evaluate the dynamics of school change in schools that serve LEP students and are undergoing the process of school reform.

Objectives

The priority limits the competition to applications that cover the three objectives listed below.

(a) To evaluate the effectiveness of the Comprehensive School Grants program, which is authorized by supart 1 of part A of title VII of the ESEA. This program is expected to play a key role in promoting education reform for LEP students.

(b) To study the dynamics of school change in schools that serve LEP students, including:

(1) Establishing salient benchmarks in the process of school reform in schools serving LEP students and in the changes in instruction for LEP students.

(2) Examining how school instructional and organizational changes affect LEP students.

(c) To link or coordinate with other Department of Education evaluation activities.

Selection Criteria

The Secretary has established selection criteria to evaluate the quality of applications for this competition. In awarding a cooperative agreement, the Secretary will consider the technical soundness of the project, the quality of key personnel involved in the project, the quality of the plan of operation and adequacy of resources, the quality of the dissemination plan, and the adequacy of the proposed budget and cost-effectiveness.

The Secretary has included a criterion regarding the quality of the dissemination plan. Yearly dissemination activities that forge links and promote communication between researchers and practitioners will assist in promoting the purpose of this priority:

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this program only an application that meets this absolute priority:

An application that—

(a) Proposes a five-year evaluation study to investigate the dynamics of school change over time in school districts serving LEP students through the Comprehensive School Grants program;

(b) Proposes to establish benchmarks reflecting the status of the schools being studied at the beginning of the school reform process and towards the end of the project period; and

(c) Provides an assurance that the study will link or coordinate with other Department of Education evaluation activities, particularly evaluation activities conducted under title I of the ESEA.

Selection Criteria

(a) The maximum score for all of the criteria in this section is 100 points.

(b) The maximum score for each criterion is indicated in parentheses following the heading of the criterion.

(c) The Secretary evaluates each application for a cooperative agreement under this competition by using the following selection criteria:

(1) *Technical soundness* (40 points).

The Secretary reviews each application to determine the technical soundness of the proposed activities, by examining—

(i) The adequacy and quality of the project's design, methodology, instrumentation, and data analysis plan, as applicable;

(ii) The extent to which the application demonstrates a thorough knowledge of current research and development concepts, theories, and outcomes and relates these to the proposed activity;

(iii) If appropriate, the extent to which the perspectives of a variety of disciplines are used;

(iv) The proposed plan for addressing:

(A) Which variables have been selected for study, and which ones will be studied at what level of analysis.

(B) Which educational levels (i.e., elementary, middle, secondary) , if any specific levels, will be included in the design.

(C) Which geographical regions, if any specific regions will be used, will be included in the project design.

(D) How the evaluation study will examine LEP students and former LEP students who were reclassified during the project period as proficient in English, to consider the impact of changes in instruction for LEP students.

(E) How the evaluation study will use data from schools receiving title VII grants under the Comprehensive School Grants program and schools not receiving grants under that program.

(v) The extent to which the application demonstrates knowledge of issues relating to the education of LEP students.

(2) *Quality of key personnel* (20 points).

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director;

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (i) (A) and (B) of this section will commit to the project; and

(D) The process by which the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (i) (A) and (B) of this section, the Secretary considers—

(A) Experience and training in fields related to the project objectives, including expertise relating to education of LEP students; and

(B) Any other qualifications that pertain to the quality of the project.

(3) *Plan of operation and adequacy of resources* (20 points).

The Secretary reviews each application to determine the quality of the plan of operation for the project and adequacy of resources for the project, including—

(i) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(ii) The quality of the applicant's plan to use its resources and personnel (both those federally funded and those not federally funded) to achieve each objective;

(iii) Adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies; and

(iv) The extent to which the plan establishes sound fiscal procedures that ensure proper and efficient administration of project funds.

(4) *Quality and reasonableness of the dissemination plan* (10 points).

The Secretary reviews each application to consider—

(i) The quality of the dissemination plan;

(ii) The extent to which the project's dissemination plan includes activities in each year of the project that—

(A) Inform the educational community, including practitioners, researchers, and administrators, of project findings; and

(B) Disseminate documents prepared by the recipient, such as technical and research reports, to the educational community; and

(iii) The extent to which proposed dissemination activities are reasonable for each year of the project.

(5) *Budget and cost-effectiveness* (10 points).

The Secretary reviews each application to determine the extent to which—

(i) Each year's budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives, design, and potential significance of the project.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Department of Education to offer interested parties the opportunity to comment on proposed priorities. However, in order to make timely grant awards in FY 1995, the Director, in accordance with section 437(d)(1) of the General Education Provisions Act, has decided to issue this final notice of priority and selection criteria, which will apply only to this competition.

Executive Order 12866

This notice of final priority has been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of final priority are those resulting from statutory requirements and those determined by the Secretary as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of final priority, the Secretary has determined that the benefits of the proposed final priority justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the order is to foster an intergovernmental partnership and a strengthened federalism by relying on the processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Program Authority: 20 U.S.C. 7451.

Dated: May 5, 1995.

(Catalog of Domestic Assistance Number 292A Bilingual Education: General Research Programs)

Eugene E. García,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 95–14384 Filed 6–12–95; 8:45 am]

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DEPARTMENT OF EDUCATION

(CFDA No.: 84.292A)

Bilingual Education: Evaluation Activities, Benchmark Study Notice Inviting Applications for New Cooperative Agreement Award for Fiscal Year (FY) 1995

Purpose of Program: To provide assistance to conduct evaluation activities for the purpose of improving bilingual education and special alternative instruction programs for limited English proficient (LEP) children and youth.

Eligible Applicants: Institutions of higher education, nonprofit organizations, State educational agencies, and local educational agencies.

Deadline for Transmittal of Applications: July 28, 1995.

Deadline for Intergovernmental Review: September 28, 1995.

Applications Available: June 13, 1995.

Available Funds: In fiscal year 1995, $450,000 is available for the first year of funding. The following list indicates the estimated funding levels over the five-year project period. The funding levels for years 1 through 5 are estimates. Actual funding will depend upon the availability of funds, needs as reflected in the approved application, and demonstration of substantial progress on the part of the recipient towards meeting the goals and objectives of the application.

First Year Funding—up to $450,000.

Second Year Funding—up to $650,000.

Third Year Funding—up to $850,000.

Fourth Year Funding—up to $650,000.

Fifth Year Funding—up to $500,000.

Five Year Total: $3,100,000.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: 60 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Priority

The absolute priority in the notice of final priority for this program, as published elsewhere in this part of this issue of the **Federal Register**, applies to this competition. This priority limits the competition to applications proposing to conduct an evaluation study to investigate the dynamics of school change over time in school districts serving LEP students.

Selection Criteria

In evaluating applications for grants under this program, the Secretary uses the selection criteria established in the notice of final priority as published elsewhere in this part of this issue of the **Federal Register**.

SUPPLEMENTARY INFORMATION: This project will be awarded as a cooperative agreement. The nature of the cooperative agreement allows Government involvement in project activities. Under this program, the recipient must inform the Office of Bilingual Education and Minority Languages Affairs (OBEMLA) of project activities. OBEMLA, as appropriate, will be involved in those activities. The exact nature and extent of OBEMLA's involvement will be negotiated with the award recipient. OBEMLA's involvement is likely to include activities such as the following:

(1) Participation in the development of the project's evaluation design.

(2) If necessary, redirection of project activities as promising lines of inquiry appear during the course of the study.

(3) Assistance to the grantee in obtaining, from this Department and other sources, information and technical assistance needed for conducting the study.

(4) Participation in the review and approval of documents or reports slated for publication.

(5) Assistance to the recipient in designing project activities that link with other Department of Education evaluation activities.

Available Documents: OBEMLA has made available two documents relevant to this evaluation study. The documents are (1) "Literature Review and Synthesis Report on Institutional Change and Its Implications for Schools Serving Limited English Proficient Students;" (1994) and (2) "Research Designs for Measuring Institutional Change Affecting the Education of Limited English Proficient Students" (1995). These documents may be obtained from the National Clearinghouse on Bilingual Education (NCBE), Telephone: 1–800–321–NCBE.

FOR APPLICATIONS OR INFORMATION CONTACT: Milagros E. Lanauze, U.S. Department of Education, 600 Independence Avenue SW., room 5623, Switzer Building, Washington, DC, 20202–6510. Telephone: (202) 205–9475. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

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Program Authority: 20 U.S.C. 7451.

Dated: May 5, 1995.

Eugene E. Garcia,

Director, Office of Bilinguol Educotion ond Minority Languages Affairs.

[FR Doc. 95–14383 Filed 6–12–95; 8:45 am]

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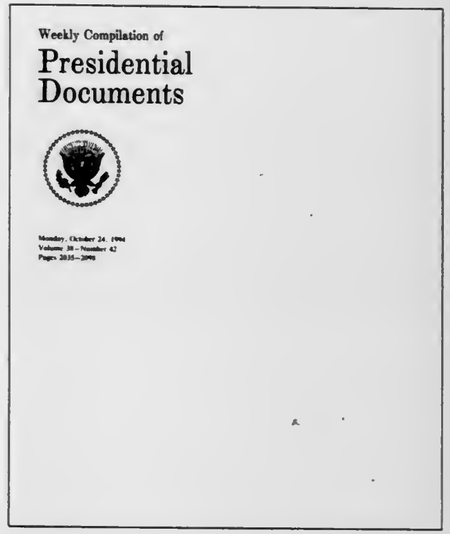
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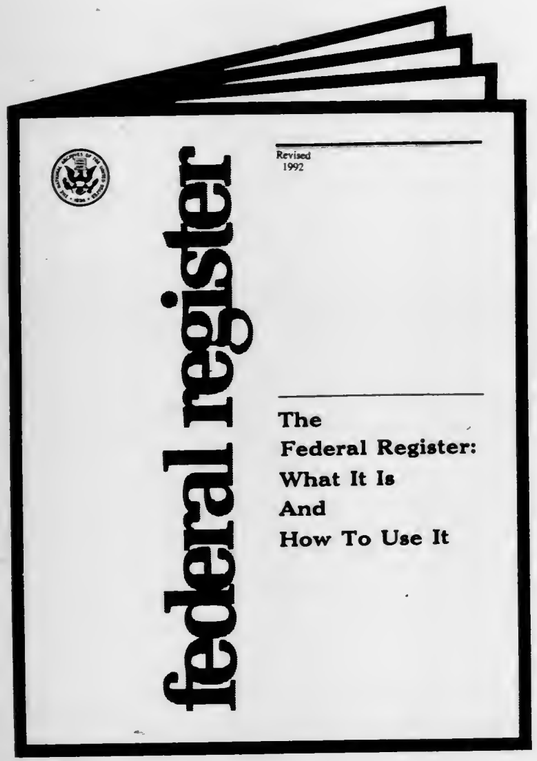
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Wednesday
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WASHINGTON, DC

WHEN: June 28 at 9:00 am
WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street NW., Washington, DC (3 blocks north of Union Station Metro)
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Electronic Bulletin Board
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Presidential Documents

Title 3—

The President

Proclamation 6808 of June 9, 1995

Flag Day and National Flag Week, 1995

By the President of the United States of America

A Proclamation

This week, Americans celebrate the Flag of the United States, which for more than two centuries has brought our people together in a common bond of citizenship. We reaffirm our allegiance to freedom's banner—"Old Glory"—and to the proud history it has inspired. We honor the valor and sacrifices of all who have defended it—in public service and on battlegrounds around the world. And we rededicate ourselves to the democratic ideals stitched forever into the fabric of America.

In towns and cities across the country, public buildings fly the Stars and Stripes as a symbol of our Nation's spirit of community. That spirit was never more evident than this past April in Oklahoma, where the flag appeared on the sleeves of rescue workers, emergency personnel, and volunteers from throughout the land. A shining badge of honor, it reminded all who mourned that we Americans have seen countless trials and have emerged from each one stronger than ever.

Earlier this year, in expressing our gratitude to the men and women who served in uniform during the Second World War, the Nation observed the fiftieth anniversary of the Battle of Iwo Jima. We recalled the day, immortalized in sculpture, when a team of brave Americans beat all odds and hoisted aloft the American flag. May we, the heirs of the freedom they fought to defend, always remember their courage and serve as loyal standard-bearers for the cause of liberty.

To commemorate the adoption of our flag, the Congress, by a joint resolution approved August 3, 1949 (63 Stat. 492), designated June 14 of each year as "Flag Day" and requested the President to issue an annual Proclamation calling for its observance and for the display of the Flag of the United States on all Government buildings. The Congress also requested the President, by joint resolution approved June 9, 1966 (80 Stat. 194), to issue annually a Proclamation designating the week in which June 14 occurs as "National Flag Week," and calling upon all citizens of the United States to display the flag during that week.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim June 14, 1995, as Flag Day and the week beginning June 11, 1995, as National Flag Week. I direct the appropriate officials of the Government to display the Flag of the United States on all Government buildings during that week. I urge Americans to observe Flag Day, June 14, and Flag Week by flying the Stars and Stripes from their homes and other suitable places.

I also call upon the American people to observe with pride and all due ceremony those days from Flag Day through Independence Day, also set aside by the Congress (89 Stat. 211), as a time to honor America and to celebrate our heritage in public gatherings and activities and to publicly recite the Pledge of Allegiance to the Flag of the United States of America.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of June, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

[FR Doc. 95–14731
Filed 6–12–95; 3:12 pm]
Billing code 3195–01–P

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 971

[Docket No. FV95–971–1FR]

Termination of Marketing Order 971; Lettuce Grown in the Lower Rio Grande Valley in South Texas

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination order.

SUMMARY: This action terminates the Federal marketing order for lettuce grown in the Lower Rio Grande Valley in South Texas (order) and the rules and regulations issued thereunder. The Secretary of Agriculture (Secretary) has determined that the order no longer tends to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937 (Act). In recent years, this industry has declined significantly in numbers of producers and handlers. In 1980, there were 42 producers and 11 handlers. In 1992, there were three producers and one handler. All known commercial production and handling of South Texas lettuce has ceased since 1992 and there are no indications that the industry will be revived.

EFFECTIVE DATE: July 14, 1995.

FOR FURTHER INFORMATION CONTACT: Jim Wendland, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–2170, or Belinda G. Garza, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, Texas, 78501, telephone 210–682–2833.

SUPPLEMENTARY INFORMATION: This action is governed by the provisions of section 8c(16)(A) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this action in conformance with Executive Order 12866.

This termination order has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This termination order will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has a principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

In recent years, this industry has declined significantly in numbers of producers and handlers. During the first year the order was in effect, there were 68 producers and 31 handlers. In 1980, there were 42 producers and 11 handlers. In 1992, there were three producers and one handler. All known commercial production and handling of South Texas lettuce has since ceased. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of the former South Texas lettuce producers and handlers had been classified as small entities.

The South Texas Lettuce Committee (committee) met on May 29, 1991, and unanimously recommended that the order's handling regulation that was currently in effect be suspended for the 1991–92 lettuce marketing period. The recommendation was made to eliminate the continued expense of administering the order. The Department issued an interim final rule, which was published in the October 31, 1991, issue of the **Federal Register** (56 FR 55986). The rule suspended the 1991–92 handling regulation in effect under the order and invited public comment through December 2, 1991. No comments were received.

On July 13, 1992, the Department issued a suspension order, which was published in the July 17, 1992, issue of the **Federal Register** (57 FR 31631). The action suspended all of the provisions of and established pursuant to the order from July 17, 1992, through July 17, 1995, because the Secretary determined that the order no longer tended to effectuate the declared policy of the Act. The action also indicated that, during this period, the Department would monitor lettuce production and the number of active producers and handlers in the production area. At the end of that period an evaluation would be made by the Secretary on whether there was a revival in lettuce production and whether to reactivate the order or begin termination proceedings.

As an interim step in this evaluation, in December 1992, the Department conducted a survey of former industry handlers to determine whether they expected a revival of South Texas lettuce production in the next two years, and if not, whether they wanted a refund of excess reserve funds prior to the end of the evaluation period.

The overwhelming consensus of the respondents was that they did not plan to resume lettuce production and the

handlers wanted all but $3,000 of the reserve fund to be refunded to them as soon as practicable. On February 26, 1993, the Department issued refund checks totaling approximately $25,000 to handlers based on their pro rata share of assessments paid during the 1988–89 through 1990–91 marketing seasons. The remaining $3,000 reserve was considered sufficient to cover unforeseen expenses during the period of suspension and to cover necessary expenses of liquidation in the event the marketing order would be terminated.

Commercial production and handling of South Texas lettuce ceased in 1992; there are currently no indications that the industry will be revived. Without a sufficient number of producers and handlers, it is impossible for the Secretary to appoint the required committee or otherwise continue the operation of the order.

Therefore, based on the foregoing considerations, pursuant to section 8c(16)(A) of the Act and § 971.84 of the order, it is found that Marketing Order No. 971, covering lettuce grown in the Lower Rio Grande Valley in South Texas, does not tend to effectuate the declared policy of the Act and is hereby terminated. The trustees appointed by the Secretary shall continue in the capacity of concluding and liquidating the affairs of the former committee, until discharged by the Secretary.

Section 8c(16)(A) of the Act requires the Secretary to notify Congress 60 days in advance of the termination of a Federal marketing order. Congress was so notified on March 15, 1995.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give additional preliminary notice, or to engage in further procedure with respect to this action, because: (1) This action relieves all restrictions on handlers by terminating the provisions of part 971; (2) in 1992, the Department issued a rule suspending all provisions of the order for two years to allow sufficient time for a possible revival of the lettuce industry before termination of the order; and (3) such commercial lettuce production and handling cease in 1992 and when former industry members were polled, they did not expect a revival of the industry, and the consensus was that the order should be terminated.

List of Subjects in 7 CFR Part 971

Lettuce, Marketing agreements, Reporting and recordkeeping requirements.

PART 971—[REMOVED]

1. The authority citation for 7 CFR part 971 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Accordingly, 7 CFR part 971 is removed.

Dated: June 6, 1995.

David R. Shipman,

Acting Deputy Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95–14473 Filed 6–12–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–63–AD; Amendment 39–9272; AD 95–12–20]

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A330 and A340 series airplanes. This action requires a one-time inspection to determine the torque value of all wing slat track stop pins, and correction of discrepancies. This amendment is prompted by a report of a fuel leak that was caused by an incorrectly torqued slat track stop pin that punctured the slat canister. The actions specified in this AD are intended to prevent such fuel leakage conditions, which could result in inadequate fuel for completing a flight and could pose a fire hazard.

DATES: Effective June 29, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 29, 1995.

Comments for inclusion in the Rules Docket must be received on or before August 14, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–63–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A330 and A340 series airplanes. The DGAC advises that, during preflight refueling of a Model A340–300 airplane, a fuel leak was discovered in slat canister number 11 on the left wing of the airplane. Closer inspection revealed that the two parts of the slat track stop pin assembly at the end of the slat track had become loose and had separated from each other. This caused the length of the pin to increase by more than the width of the canister, thus puncturing the side of the slat canister close to the front of the spar attachment flange. The stop pin was found to be bent and detached from the slat track.

A subsequent visual inspection of the pins at the other slat track positions on both the left and right wings of the incident airplane revealed excess lateral movement. A certain amount of lateral movement of the pins in the slat track is normal (0.2 mm to 0.3 mm, or 0.0079 inch to 0.0118 inch). However, the pins that were inspected indicated lateral movement up to 12 mm (0.472 inch). A torque check of the pins revealed zero torque. No additional damage to the slat canister was found.

The slat track stop pin assembly consists of two parts (male and female), which are installed at the end of each of the slat tracks. Their purpose is to provide a positive stop in case of over-extension of the slats. The torque loading applied during installation of this two-part assembly provides the primary locking feature; a five-point internal circlip ring provides a secondary locking feature. Incorrect installation of these items may have contributed to the pins coming loose on the incident airplane. The installation procedure was corrected on all airplanes delivered after June 15, 1994.

Excessive lateral movement of the stop pins can result in damage to the slat canister during extension or retraction of the slats. Excessive damage to the canister could lead to a running

fuel leak. Such a fuel leak could result in inadequate fuel for completing a flight and could pose a fire hazard.

Airbus Industrie has issued All Operators Telex (AOT) 57–08, Revision 1, dated June 28, 1994, which describes procedures for a one-time torque check of all wing slat track stop pins (32 positions), and retorquing, as necessary. The AOT also describes procedures for conducting a borescope inspection for signs of damage or wear in situations where more than five complete turns of the pin are needed to reach the required torque value. The AOT contains procedures for an alternative inspection procedure in which the more critically positioned pins are inspected initially, and the remainder of the pins are inspected no later than the airplane's next scheduled "C" check. The DGAC classified this service bulletin as mandatory and issued French airworthiness directives 97–146–003(B) (applicable to Model A330 series airplanes) and 94–147–009(B) (applicable to Model A340 series airplanes), both dated July 6, 1994, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent fuel leakage caused by incorrectly torqued slat track stop pins puncturing the slat canister. This condition could result in inadequate fuel for completing a flight and could pose a fire hazard. This AD requires a one-time torque check of all wing slat track stop pins, and retorquing, as necessary. It also requires a borescope inspection for signs of damage or wear in situations where more than five complete turns of the pin are needed to reach the required torque value. The AD provides for an alternative inspection procedure in which inspection of the pins is conducted in two stages. The actions are required to be accomplished in accordance with the service bulletin described previously.

There currently are no affected Model A330 or A340 series airplanes on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 20 work hours to accomplish the required actions, at an average labor charge of $60 per work hour. Based on these figures, the total cost impact of this AD would be $1,200 per airplane.

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register.**

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–63–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–12–20 Airbus Industrie: Amendment 39–9272. Docket 95–NM–63–AD.

Applicability: Model A330–301 series airplanes that were delivered prior to June

15, 1994; and Model A340–211, –311, –212, and –312 series airplanes that were delivered prior to June 15, 1994; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent fuel leaks caused by an incorrectly torqued slat track stop puncturing the slat canister, which can result in inadequate fuel for completing a flight and can pose a fire hazard, accomplish the following:

(a) Except as provided by paragraph (b) of this AD: Within 10 days after the effective date of this AD, perform an inspection to determine the torque value of all wing slat track stop pins (32 positions), in accordance with Airbus All Operators Telex (AOT) 57–08, Revision 1, dated June 28, 1994.

(1) If the torque value of all wing slat track stop pins is within the acceptable range specified in the AOT, no further action is required by this AD.

(2) If any slat track stop pin is loose, or there is excessive axial movement (in excess of 0.3 mm or 0.118 inch), prior to further flight, retorque the pin in accordance with the AOT.

(3) If a slat track stop pin is loose, and requires more than five complete turns of the pin to reach the required torque value, prior to further flight, perform a borescope inspection to detect damage or wear of the internal sides of the slat canisters, in accordance with the AOT.

(i) If the borescope inspection reveals no signs of damage or wear, no further action is required by this AD.

(ii) If the borescope inspection reveals evidence of damage or wear, but the canister is not perforated, repair the canister in accordance with paragraph 4.1.3(B) of the AOT within 450 flight cycles after the borescope inspection.

(iii) If the borescope inspection reveals that the canister is perforated, prior to further flight, either repair in accordance with PMS 01–04–02 or replace the canister in accordance with the AOT.

(b) As an alternative to the requirements of paragraph (a) of this AD, operators may accomplish the following: Within 10 days after the effective date of this AD, perform an inspection to determine the torque value of the slat track stop pins at positions 4, 5, 10, and 11 (immediately inboard and outboard of the pylons), in accordance with Airbus AOT 57–08, Revision 1, dated June 28, 1994.

(1) If the torque value of each of the slat track stop pins at positions 4, 5, 10, and 11 is found to be is within the acceptable range specified in the AOT, within 450 flight cycles, perform an inspection to determine the torque value of the remainder of the slat track stop pins on both wings, in accordance with the AOT.

(2) If any of the slat track stop pins at positions 4, 5, 10, and 11 is found to be loose, prior to further flight, perform an inspection to determine the torque value of the remainder of the slat track stop pins on both wings, in accordance with the AOT.

(3) If any slat track stop pin is found to be loose during any inspection required by this paragraph, or if there is excessive axial movement (in excess of 0.3 mm or 0.118 inch), prior to further flight, retorque the pin in accordance with the AOT.

(4) If any slat track stop pin is loose during any inspection required by this paragraph, and requires more than five complete turns of the pin to reach the required torque value, prior to further flight, perform a borescope inspection to detect damage or wear of the internal sides of the slat canisters, in accordance with the AOT.

(i) If the borescope inspection reveals no signs of damage or wear, no further action is required by this AD.

(ii) If the borescope inspection reveals evidence of damage or wear, but the canister is not perforated, repair the canister in accordance with paragraph 4.1.3(B) of the AOT within 450 flight cycles after the borescope inspection.

(iii) If the borescope inspection reveals that the canister is perforated, prior to further flight, either repair in accordance with PMS 01–04–02, or replace the canister in accordance with the AOT.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspections, retorquing procedures, and replacement actions shall be done in accordance with Airbus All Operators Telex 57–08, Revision 1, dated June 28, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on June 29, 1995.

Issued in Renton, Washington, on June 6, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–14315 Filed 6–13–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–61–AD; Amendment 39–9274; AD 95–12–22]

Airworthiness Directives; Airbus Model A340–211, –212, –311, and –312 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A340 series airplanes. This action requires installation of a reinforcement modification on the structure of the left- and right-hand cowls of the thrust reversers. This amendment is prompted by the results of a full-scale fatigue test, conducted by the manufacturer, which indicated that fatigue cracks can occur between the 3 and 9 o'clock thrust reverser beams and the forward frame/"J"-ring. The actions specified in this AD are intended to prevent loss of the use of the thrust reversers as a result of the problems associated with fatigue cracking in their cowling structure.

DATES: Effective June 29, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 29, 1995.

Comments for inclusion in the Rules Docket must be received on or before August 14, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–61–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A340–211, –212, –311, and –312 series airplanes. The DGAC advises that results of a full-scale fatigue test, which was conducted by Airbus Industrie, indicate that fatigue cracking can occur between the 3 and 9 o'clock thrust reverser beams and the forward frame/"J"-ring in the thrust reversers' cowling structure. This condition, if not corrected, could result in loss of the use of the thrust reversers as a result of the problems associated with fatigue cracking in their cowling structure.

Airbus Industrie has issued Service Bulletin A340–78–4002, Revision 2, dated October 14, 1994, which describes procedures for installing a reinforcement modification on the structure of the left- and right-hand cowls of the thrust reversers. This modification consists of the installation of modified fittings between the forward frame and the 3 and 9 o'clock thrust reverser beams, and between the 3 and 9 o'clock beams and the internal fixed structure of the thrust reverser. This modification is intended to improve the load transfer between the 3 and 9 o'clock thrust reverser beams and the forward frame/"J"-ring. The DGAC classified this service bulletin as mandatory and issued French Airworthiness Directive (CN) 94–055–006(B)(R1), dated April 13, 1994, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent loss of the use of the thrust reversers as a result of the problems associated with fatigue cracking in their cowling structure. This AD requires installation of a reinforcement modification on the structure of the left- and right-hand cowls of the thrust reversers. The actions are required to be accomplished in accordance with the service bulletin described previously.

The modification of the right-hand cowl of the thrust reverser unit having serial number 3062, which is installed on the affected airplane having manufacturer's serial number (MSN) 011, is required at an interval sooner than the modification of the other cowls. That particular cowl section is required to be modified at 900 landings, whereas, the other cowl sections are required to be modified at 4,000 landings. This difference in these compliance times is due to the fact that the right-hand thrust reverser cowl section having serial number 3062 has an established life-limit of 900 cycles. In order to maintain the structural integrity of that part, it is necessary that it be modified before its currently-established life-limit is attained.

There currently are no Model A340–211, –212, –311, or –312 series airplanes on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 92 work hours to accomplish the required actions, at an average labor charge of $60 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the total cost impact of this AD would be $5,520 per airplane.

Since this AD action does not affect any airplane that is currently on the U.S. Register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–61–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–12–22 Airbus: Amendment 39–9274. Docket 95–NM–61–AD.

Applicability: Model A340–211, –212, –311, and –312 series airplanes; as listed in Airbus Service Bulletin A340–78–4002, Revision 2, dated October 14, 1994; on which Modification No. 42445 has not been installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the use of the thrust reversers as a result of the problems associated with fatigue cracking in their cowling structure, accomplish the following:

(a) Except as required by paragraph (b) of this AD: Prior to the accumulation of 4,000 total flight cycles or within 48 months after the effective date of this AD, whichever occurs later, install the reinforcement modification on the structure of the left- and right-hand thrust reverser cowls in accordance with Airbus Service Bulletin A340–78–4002, Revision 2, dated October 14, 1994.

(b) This paragraph applies to the right-hand cowl of the thrust reverser installed on the affected airplane having manufacturer's serial number (MSN) 011: Prior to the accumulation of 900 total flight cycles or within 12 months after the effective date of this AD, whichever occurs later, install the reinforcement modification on the structure of the right-hand cowl of the thrust reverser unit, serial number 3062, in accordance with Airbus Service Bulletin A340–78–4002, Revision 2, dated October 14, 1994.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The installation of the modification shall be done in accordance with Airbus Service Bulletin A340–78–4002, Revision 2, dated October 14, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on June 29, 1995.

Issued in Renton, Washington, on June 6, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–14317 Filed 6–13–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–62–AD; Amendment 39–9273; AD 95–12–21]

Airworthiness Directives; Airbus Model A340–211 and –311 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A340–211 and –311 series airplanes. This action requires the installation of doublers on certain stringers located in the center fuselage. This amendment is prompted by the results of the manufacturer's full-scale fatigue test which indicate that fatigue cracking can occur at these stringer locations. The actions specified in this AD are intended to prevent reduced structural integrity of the fuselage due to the problems associated with fatigue cracks in the subject stringers.

DATES: Effective June 29, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 29, 1995.

Comments for inclusion in the Rules Docket must be received on or before August 14, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–62–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A340–211 and –311 series airplanes. The DGAC advises that the results of a full-scale fatigue test, conducted by Airbus Industrie, indicate that fatigue cracks were found on stringer 39 at frame 53–2 (left and right sides). These stringers are located in the center fuselage area of the airplane. Such fatigue cracking, if not detected and corrected in a timely manner, could result in reduced structural integrity of the fuselage.

Airbus Industrie has issued Service Bulletin A340–53–4009, dated August 2, 1994, which describes procedures for installing a doubler on stringer 39 at frame 53–2 (left and right sides). This doubler is intended to reinforce the frame, and prevent the initiation and propagation of damage due to fatigue cracking in this area. The DGAC classified this service bulletin as mandatory and issued French Airworthiness Directive (CN) 94–209–010(B), dated September 14, 1994, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent reduced structural integrity of the fuselage due to the problems associated with fatigue cracking at stringer 39. This AD requires the installation of a doubler on stringer 39 at frame 53–2 (left and right sides). The actions are required to be accomplished in accordance with the service bulletin described previously.

There currently are no Model A340–211 and –311 series airplanes on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 8 work hours to accomplish the required actions, at an average labor charge of $60 per work hour. Required parts would be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of this AD would be $480 per airplane.

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register.**

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–62–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–12–21 Airbus: Amendment 39–9273. Docket 95–NM–62–AD.

Applicability: Model A340–211 and –311 series airplanes; as listed in Airbus Service Bulletin A340–53–4009, dated August 2, 1994; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different

actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the fuselage due to the problems associated with fatigue cracks at stringer 39, accomplish the following:

(a) Prior to the accumulation of 1,700 flight cycles after the effective date of this AD, or within 36 months after the effective date of this AD, whichever occurs first, install a doubler on stringer 39 at frame 53–2, left and right sides, in accordance with Airbus Service Bulletin A340–53–4009, dated August 2, 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The installation shall be done in accordance with Airbus Service Bulletin A340–53–4009, dated August 2, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on June 29, 1995.

Issued in Renton, Washington, on June 6, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–14318 Filed 6–13–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–SW–27–AD; Amendment 39–9276; AD 95–06–03]

Airworthiness Directives; Robinson Helicopter Company Model R22 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 95–06–03 which was sent previously to all known U.S. owners and operators of Robinson Helicopter Company (Robinson) Model R22 helicopters by individual letters. This AD requires an inspection and modification of the main rotor (M/R) gearbox. This amendment is prompted by a report of an incident involving a Model R22 helicopter in which the two M/R mast spanner nuts (nuts) became loose, resulting in failure of the M/R mast support structure. The actions specified by this AD are intended to prevent M/R separation and subsequent loss of control of the helicopter.

DATES: Effective on June 29, 1995, to all persons except those persons to whom it was made immediately effective by priority letter AD 95–06–03, issued on March 8, 1995, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before August 14, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–SW–27–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Bumann, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712, telephone (310) 627–5265, fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: On March 8, 1995, the FAA issued priority letter AD 95–06–03, applicable to Robinson R22 helicopters, which requires, within 25 hours time-in-service (TIS) after the effective date of this AD, removal and disassembly of the M/R gearbox; measurement of the break-loose torque value of the upper spanner nut; replacement of the lock washers; increasing the torque values of the two spanner nuts; reassembly and reinstallation of the M/R gearbox; and verification of the M/R balance in accordance with the applicable maintenance manual. That action was prompted by an incident reported by the Civil Aviation Authority (CAA) of New Zealand involving failure of the main rotor (M/R) mast support structure. An investigation revealed that the two M/R mast spanner nuts (nuts) became loose and allowed the M/R shaft to pull through the retention bearing in the M/R gearbox. As the loads transferred from the M/R gearbox bearing to the top of the mast, the rivets that attach the mast bearing outer housing to the M/R shaft sheared, resulting in failure of the M/R mast support structure.

Prior to June 15, 1992, the M/R gearbox assembly, P/N A006–1 Revisions A through Z, may have been assembled with paint on the clamping surface of the M/R shaft, preventing a good clamping surface for the nuts. Two earlier incidents in Australia prompted the Commonwealth of Australia CAA to issue CAA AD/R22/35, dated September 1992, to inspect the nuts for looseness and increase the nut torque values. The FAA did not issue an AD at that time due to inconclusive information from the two isolated incidents. The compliance procedure of this AD differs from CAA AD/R22/35 by requiring replacement of the lock washer, part number (P/N) A269–1, located between the mast bearing and the upper nut, with a different lock washer, P/N A269–2. The torque values on both nuts have also been increased. The FAA has determined that under-torqued nuts may become loose and create an unsafe condition. Due to the criticality of ensuring that the nuts are properly torqued, this AD is being issued immediately to correct an unsafe condition. That condition, if not corrected, could result in M/R separation and subsequent loss of control of the helicopter.

Since the unsafe condition described is likely to exist or develop on other Robinson Model R22 helicopters of the same type design, the FAA issued priority letter AD 95–06–03 to prevent M/R separation and subsequent loss of control of the helicopter. The AD requires, within 25 hours time-in-service (TIS), removal and disassembly of the M/R gearbox; measurement of the break-loose torque value of the upper spanner nut; replacement of the lock washers; increasing the torque values of the two spanner nuts; reassembly and reinstallation of the M/R gearbox; and verification of the M/R balance in accordance with the applicable maintenance manual.

Since the issuance of that AD, the FAA has received information that Robinson Helicopter Company may not

be providing to all individuals the MT–124 tool required to remove and install the nuts. The relevant AD Note has been revised to state that individuals may request an alternative method of compliance to use a different nut socket in lieu of the MT–124 tool. Also, Note 1 has been added to the AD clarifying the applicability to helicopters that have been modified, altered, or repaired in the area subject to the requirements of this AD. The addition of this note changed the numbering of the subsequent notes. Paragraph (a) of the AD has also been changed to allow use of an unserviceable M/R hub bolt or ⅝-inch diameter bolt to counteract torque when removing the nuts. Finally, nomenclature and part numbers have been added throughout the AD for clarification. The FAA has determined that these minor changes will neither change the meaning or scope of the AD nor increase any burden on any operator.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on March 8, 1995, to all known U.S. owners and operators of Robinson Model R22 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 94–SW–27–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

95–06–03 Robinson Helicopter Company: Amendment 39–9276. Docket No. 94–SW–27–AD.

Applicability: Model R22 helicopters with main rotor gearbox (gearbox), part number (P/N) A006–1, Revisions A through Z, manufactured or overhauled prior to June 15, 1992, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Note 2: The revision level (revision letter) of the gearbox can be found on the data plate next to the sight glass.

Compliance: Required as indicated, unless accomplished previously. To prevent main rotor (M/R) separation and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 25 hours time-in-service after the effective date of this AD, inspect and modify the gearbox in accordance with the following:

(1) Remove the gearbox in accordance with the applicable maintenance manual.

(2) Drain the gearbox by removing the chip detector housing.

(3) Perform the following inspection and torquing of the shaft retaining nuts.

Note 3: A special tool, a spanner nut socket, P/N MT124–1, may be obtained from Robinson Helicopter Company. If that tool is not available, individuals may propose using a different nut socket in accordance with paragraph (b) of this AD.

(i) Lay the gearbox on its side using care to prevent damage to the slider tube. Remove the eight NAS1291–4 nuts and two MS20074–04–10 hex head cap screws holding the sump in place.

(ii) Gently remove the sump and discard the O-ring, using care to keep all washer-shims on their respective bolts. With the bolts still attached to the sump, replace the sump nuts on the bolts to retain the washer-shims (the washer-shim stack is the same at each location). Hand-tighten the nuts.

(iii) Bend back the two lock washer tabs locking the lower nut, P/N A153–1. Insert an

unserviceable M/R hub bolt or a 5/8-inch diameter bolt through the teeter hinge bolt hole in the M/R shaft to counteract torque. Clamp the unserviceable M/R hub bolt or the 5/8-inch diameter bolt in a vise or otherwise fasten it to a workbench. Do not clamp the M/R shaft. Remove the lower nut from the M/R shaft using a socket, P/N MT124–1, or an FAA-approved equivalent tool. Remove and discard the lower lock washer, P/N A269–1.

(iv) Bend back the two lock washer tabs locking the upper nut, P/N A153–1. Remove the upper nut, measuring the torque required to break the nut loose. Remove and discard the upper lock washer, P/N A269–1.

(v) If the upper nut required more than 10 ft.-lb. torque to break loose, proceed to paragraph (a)(3)(vi). If the upper nut required 10 ft.-lb. torque or less to break loose, report within 5 days the M/R gearbox P/N and break-loose torque value to the Propulsion Manager, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056. Remove the gear carrier from the M/R shaft. Inspect the splines and clamping surfaces on both the shaft and gear carrier for pitting, galling, or scoring of surfaces. Replace any unairworthy parts. If the inspection revealed no pitting, galling, or scoring of surfaces, remove any paint from the clamping surface on the shaft using either paint remover or a plastic or wooden scraper, and ensure the surface is smooth and clean. Reassemble the gear carrier to the shaft.

(vi) Inspect the two dowels or roll pins in the gear carrier for damaged surfaces. Dowels or roll pins must protrude 0.045 to 0.055 inches for proper engagement with the lock washer, P/N A269–2. Also clean the nuts, M/R shaft threads, and sump, using methyl-ethyl-ketone (MEK) or Trichlorethane (1,1,1, TCE) before reassembly.

(vii) Install a lock washer, P/N A269–2. Apply anti-seize (Loctite Anti-seize 767), P/N A257–9, to the M/R shaft threads and to the chamfered-side face and threads of one nut and install the nut with the chamfered side against the lock washer. Verify that the dowels or roll pins are aligned with the holes in the lock washer. Torque the nut to between 170 and 200 ft.-lb., as required to align two lock washer tabs (tabs) with the nut. Do not untorque the nut to align the lock washer tabs with the nut. For the two tabs that are aligned with the recessed areas, bend down the tabs into the recessed areas of the nut and inspect the edges of the bent tabs for cracks.

(viii) Before installing the lock washer, P/N A269–1, note that the edges are sharp on one side and rounded on the other. De-burr the sharp edges on two opposite tabs (see figure 1). This will reduce the chance of cracking when these tabs are bent up. Install the lock washer with the rounded edges toward the installed nut.

(ix) Apply anti-seize, P/N A257–9, to the chamfered-side face and threads of the lower nut. Align the two de-burred tabs with the upper nut and install the lower nut with the chamfered side against the lock washer. Hand-tighten the nut to hold the washer in place. Bend the two de-burred tabs up to lock with the upper nut. Torque the lower nut to between 90 and 120 ft.-lb., as required to align the two additional tabs. Do not untorque the nut to align the lock washer tabs with the nut. For the two tabs that are aligned with the recessed areas, bend down the tabs into the recessed areas of the nut to lock the lower nut.

(x) Verify that all six bent tabs properly engage the nuts (four tabs to the upper nut and two to the lower nut), and inspect the edges of the bent tabs for cracks. Replace any cracked lock washers. Remove excess anti-seize compound.

(xi) Lubricate the O-ring, P/N A215–271, with oil, P/N A257–2, and install the O-ring on the sump. Clean and inspect the sealing surface of the gearbox housing for smoothness. Lightly lubricate the sealing surface with oil, P/N A257–2.

(xii) Reinstall the sump onto the gearbox housing using the same washer-shim stacks that were removed in accordance with paragraph (a)(3)(ii) of this AD. Torque the sump bolts and chip detector as follows:

(A) For the eight NAS1291–4 nuts on the AN4 bolts for the sump: 90 in.-lb. of torque (includes nut self-locking torque);

(B) For the two cap screws, P/N MS20074: 60 in.-lb. of torque and install safety wire;

(C) For the chip detector, P/N A7260, (large nut): 150 in.-lb. of torque and install safety wire;

(D) For the chip detector, P/N A7260, (small nut): 75 in.-lb. of torque and install safety wire.

Note 4: Be sure to install ground wires under the nut located aft of the forward right-hand mount.

(4) Reinstall the gearbox in accordance with the applicable maintenance manual.

(5) Fill the gearbox with oil, P/N A257–2, to the middle of the sight glass.

(6) Verify the M/R balance in accordance with the applicable maintenance manual.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

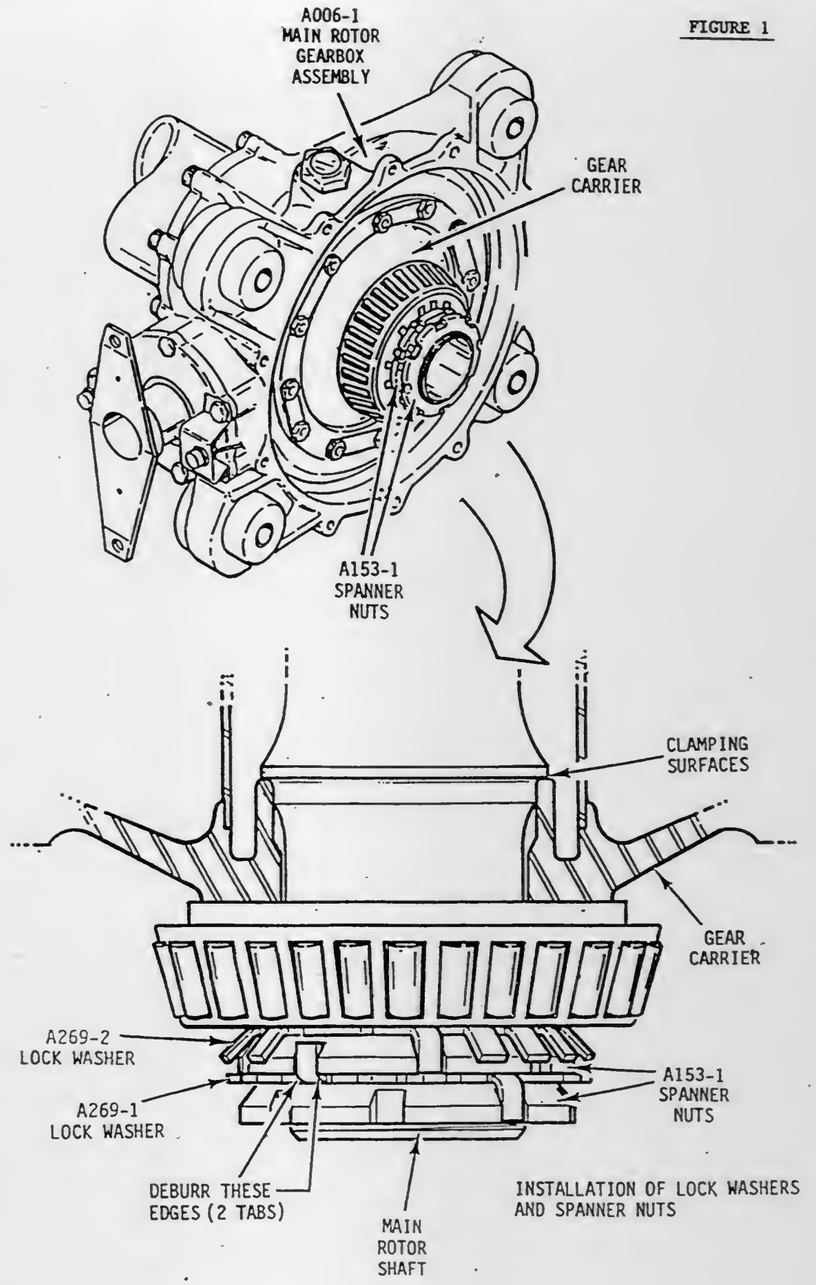
Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on June 29, 1995, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 95–06–03, issued March 8, 1995, which contained the requirements of this amendment.

BILLING CODE 4910–13–P

FIGURE 1



BILLING CODE 4910–13–C

Issued in Fort Worth, Texas, on June 7, 1995.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 95–14445 Filed 6–13–95; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 95–CE–24–AD; Amendment 39–9267; AD 95–12–16]

Airworthiness Directives; Mooney Aircraft Corporation Model M20R Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes priority letter Airworthiness Directive (AD) 95–07–04, which currently requires the following on certain Mooney Aircraft Corporation (Mooney) Model M20R airplanes: repetitively inspecting the exhaust system for cracks, replacing the exhaust system if any cracks are found, and reporting to the Federal Aviation Administration (FAA) any cracks found. This action retains the repetitive inspection requirement of AD 95–07–04 until the exhaust system is modified, and requires eventual modification of the exhaust system on the affected airplanes. Several reports of exhaust system cracks on Mooney Model M20R airplanes prompted this action. The actions specified by this AD are intended to prevent an airplane engine fire that could result from exhaust system cracks.

DATES: Effective June 22, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 22, 1995. Comments for inclusion in the Rules Docket must be received on or before August 14, 1995.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–24–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from the Mooney Aircraft Corporation, Louis Schreiner Field, Kerrville, Texas 78028. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–24–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Alma Ramirez-Hodge, Aerospace Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone (817) 222–5147; facsimile (817) 223–5960.

SUPPLEMENTARY INFORMATION: On March 24, 1995, the FAA issued priority letter AD 95–07–04, which currently requires the following on certain Mooney Model M20R airplanes:

- Repetitively inspecting the exhaust system for cracks;
- Replacing the exhaust system if any cracks are found; and
- Reporting to the FAA any cracks found.

Accomplishment of this action is in accordance with section 5 and section 81 of the Mooney Model M20R Service and Maintenance Manual (section 78 in Service and Maintenance Manual revisions issued after April 1995).

Several (13) reports of exhaust system cracks on the affected airplanes prompted priority letter AD 95–07–04. The service time of the airplanes with cracks found was as low as 8 hours time-in-service. Investigation of the cracked exhaust systems revealed that these cracks formed in the exhaust header assembly, the muffler assembly, and the exhaust tailpipe assembly, specifically at the spot welds.

The exhaust system header assembly on the Model M20R airplanes is located near the fuel lines. The high temperatures emanating from exhaust system cracks could cause an airplane fire with this close proximity to the fuel lines.

Mooney issued Service Bulletin M20–257, Revision A, dated March 21, 1995, which references repetitive inspections of the exhaust system on the affected Model M20R airplanes. The exhaust system on the affected airplanes consists of the following parts:

- Exhaust Header Assembly: part number 630079–501/–502
- Muffler Assembly: part number 630088–501; and
- Exhaust Tail Pipe Assembly: part number 630087–501/–502

Since the FAA issued priority letter AD 95–07–04, Mooney has developed an exhaust system modification that, when incorporated, would eliminate the need for the repetitive inspections required by the current AD. Mooney issued Instructions—Retrofit Kit, part number (P/N) 940095–501–1, dated March 31, 1995, and Special Letter 95–1, dated April 20, 1995, which specify instructions for incorporating this exhaust system modification on Mooney Model M20R airplanes. In addition, Mooney incorporated the instructions of both the above documents in Instructions–Retrofit Kit, P/N 940095–501–1, Revised April 21, 1995. This modification is referenced in Mooney Service Bulletin M20–257, Revision B, dated April 5, 1995.

After examining the circumstances and reviewing all available information related to the accidents described above, the FAA has determined that the modification described above should be incorporated on certain Mooney Model M20R airplanes, and that AD action should be taken in order to prevent an airplane engine fire that could result from exhaust system cracks.

Since an unsafe condition has been identified that is likely to exist or develop in other Mooney M20R airplanes of the same type design, this AD supersedes priority letter AD 95–07–04 with a new AD that (1) retains the requirement of repetitively inspecting the exhaust system for cracks until the exhaust system is modified; and (2) requires modifying the exhaust system if cracks are found and at a certain time period if cracks aren't found. This exhaust system modification eliminates the repetitive inspection requirement. Accomplishment of the exhaust system modification is in accordance with either (1) Mooney Instructions-Retrofit Kit, P/N 940095–501–1, Revised April 21, 1995; or (2) both Mooney Instructions—Retrofit Kit, P/N 940095–501–1, dated March 31, 1995, and Mooney Special Letter 95–1, dated April 20, 1995.

Since a situation exists (possible exhaust leaks near the fuel lines) that requires the immediate adoption of this regulation, it is found that notice and opportunity for public prior comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95–CE–24–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

95–12–16 Mooney Aircraft Corporation: Amendment 39–9267; Docket No. 95–CE–24–AD. Supersedes priority letter AD 95–07–04.

Applicability: Model M20R Airplanes, serial numbers 29–0002 through 29–0035, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent an airplane engine fire that could result from exhaust system cracks, accomplish the following:

(a) Within the next 5 hours time-in-service (TIS) after the effective date of this AD, unless the modification specified in paragraph (b) of this AD is incorporated, and thereafter at intervals not to exceed 5 hours TIS until compliance with paragraph (b) of this AD, inspect the exhaust system for cracks in accordance with section 5 and section 81 of the Mooney Model M20R Service and Maintenance Manual (section 78 in Service and Maintenance Manual revisions issued after April 1995). The original exhaust system consists of the following:

(1) Exhaust Header Assembly: part number 630079–501/–502;

(2) Muffler Assembly: part number 630088–501; and

(3) Exhaust Tail Pipe Assembly: part number 630087–501/–502.

Note 2: The inspections required by this AD are also referenced in Mooney Service Bulletin M20–257, Revision A, dated March 21, 1995, and Revision B, dated April 5, 1995.

(b) Prior to further flight on any airplane with a cracked exhaust system or within the next 25 hours TIS after the effective date of this AD on any airplane without a cracked exhaust system, whichever occurs first, modify the exhaust system in accordance with the documents specified in either paragraph (b)(1) or (b)(2) below:

(1) Mooney Instructions—Retrofit Kit, part number (P/N) 940095–501–1, dated March 31, 1995, and Mooney Special Letter 95–1, dated April 20, 1995; or

(2) Mooney Instructions–Retrofit Kit, P/N 940095–501–1, Revised April 21, 1995.

(c) The repetitive inspections required by paragraph (a) of this AD are no longer required after the incorporation of the modification required by paragraph (b) of this AD.

(d) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, ACO, FAA, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth ACO.

(e) The modification required by this AD shall be done in accordance with Mooney Instructions-Retrofit Kit, part number 940095–501–1, Revised April 21, 1995; or both Mooney Instructions-Retrofit Kit, part number 940095–501–1, dated March 31, 1995, and Mooney Special Letter 95–1, dated April 20, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Mooney Aircraft Corporation, Louis Schreiner Field, Kerrville, Texas 78028. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

(f) This amendment (39–9267) supersedes priority letter AD 95–07–04.

(g) This amendment (39–9267) becomes effective on June 22, 1995.

Issued in Kansas City, Missouri, on June 2, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–14041 Filed 6–13–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–CE–29–AD; Amendment 39–9275; AD 95–12–23]

Airworthiness Directives; Twin Commander Aircraft Corporation Models 690C and 695 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Twin Commander Aircraft Corporation (Twin Commander) Models 690C and 695 airplanes. This action requires initially inspecting the wing structure for cracks, modifying any cracked wing structure, and, if not cracked, either repetitively inspecting or modifying the wing structure. Results of full-scale fatigue testing that indicated areas in the wing that are subject to fatigue cracks prompted this action. The actions specified by this AD are intended to prevent wing damage caused by fatigue cracking, which, if not detected and corrected, could progress to the point of structural failure.

DATES: Effective July 30, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 30, 1995.

ADDRESSES: Service information that applies to this AD may be obtained from the Twin Commander Aircraft Corporation, 19010 59th Drive, NE., Arlington, Washington 98223. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. David D. Swartz, Aerospace Engineer, FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2624; facsimile (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Twin Commander Models 690C and 695 airplanes was published in the **Federal Register** on February 10, 1995 (60 FR 6459). The action proposed to require initially inspecting the wing structure for cracks, modifying any cracked wing structure, and, if not cracked, either repetitively inspecting or modifying the wing structure. Accomplishment of the proposed action would be in accordance with Twin Commander Service Bulletin No. 213, dated July 29, 1994.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

The FAA established the compliance time of the initial and first repetitive inspection to coincide with the 6,000-hour Major Inspection Guide I and 7,500-hour Major Inspection Guide II inspections, respectively.

The FAA estimates that 86 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 66 workhours per airplane to accomplish the required inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $340,560. This figure does not take into account the cost of repetitive inspections or the cost of any modifications that may be needed based on the inspection results. The FAA has no way of determining how many wing structures may be cracked and need modification, or how many repetitive inspections each owner/operator may incur over the life of the airplane.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new AD to read as follows:

95–12–23 Twin Commander Aircraft Corporation: Amendment 39–9275; Docket No. 94–CE–29–AD.

Applicability: The following airplane models and serial numbers, certificated in any category:

Model	Serial Nos.
690C	11600 through 11735.
695	95000 through 95084.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (g) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required upon the accumulation of 6,000 hours time-in-service (TIS) or within the next 50 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished, and thereafter as indicated in the body of this AD.

To prevent wing damage caused by fatigue cracking, which, if not detected and corrected, could progress to the point of structural failure, accomplish the following:

(a) For all affected serial number Model 695 airplanes, and any Model 690C airplane incorporating a serial number in the 11600 through 11730 range, inspect the wing structure for cracks in accordance with the PART I ACCOMPLISHMENT INSTRUCTIONS (INSPECTIONS) section of Twin Commander Service Bulletin (SB) No. 213, dated July 29, 1994.

(b) For any Model 690C airplane incorporating a serial number in the 11731 through 11735 range, inspect the wing structure for cracks in accordance with Item 10 of the PART I ACCOMPLISHMENT INSTRUCTIONS (INSPECTIONS) section of Twin Commander SB No. 213, dated July 29, 1994.

(c) If, during the inspections required in paragraphs (a) and (b) of this AD, cracks are found in the areas referenced in Figures 1 through 5 and the instructions of the service information referenced above, prior to further flight, replace the damaged structure and modify the wing structure in accordance with the PART II ACCOMPLISHMENT INSTRUCTIONS (MODIFICATIONS) section of Twin Commander SB No. 213, dated July 29, 1994.

(d) If no cracks are found, accomplish one of the following:

(1) For all airplanes, upon the accumulation of 7,500 hours TIS or within 1,000 hours TIS after the initial inspection, whichever occurs later, reinspect the structure in accordance with either paragraph (a) or (b) of this AD, as applicable, and reinspect thereafter at intervals not to exceed 1,000 hours TIS, and, if applicable, replace any damaged part or modify the wing structure as specified in paragraph (c) of this AD; or

(2) For Model 695 airplanes and any Model 690C airplane incorporating a serial number in the 11600 through 11730 range, prior to further flight, modify the wing structure in accordance with the PART II ACCOMPLISHMENT INSTRUCTIONS (MODIFICATIONS) section of Twin Commander SB No. 213, dated July 29, 1994.

(e) For all affected Model 695 airplanes and any Model 690C airplane incorporating a serial number in the 11600 through 11730 range, the modification referenced in paragraphs (c) and (d)(2) of this AD may be accomplished any time after the initial inspection as terminating action for the repetitive inspection requirement of this AD, except for the inspection of the doublers at the wing attach fittings located in the Fuselage Station 144 frame (Item 10 of PART I ACCOMPLISHMENT INSTRUCTIONS section of the Twin Commander SB No. 213, dated July 29, 1994). All affected model and serial number airplanes must inspect in this area at every 1,000 hours TIS.

Note 2: For those airplanes that have not accumulated 6,000 hours TIS, the initial and first repetitive inspection required by this AD were established to coincide with the 6,000-hour Major Inspection Guide I and 7,500-hour Major Inspection Guide II inspections, respectively, so that the operator may schedule the required action in accordance with these major inspections.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Northwest Mountain Region, 1601 Lind Avenue S.W., Renton, Washington 98055–4056. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(h) The inspections and modification required by this AD shall be done in accordance with Twin Commander Service Bulletin No. 213, dated July 29, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Twin Commander Aircraft Corporation, 19003 59th Drive, NE., Arlington, Washington 98223. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment (39–9275) becomes effective on July 30, 1995.

Issued in Kansas City, Missouri, on June 7, 1995.

Gerald W. Pierce,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–14404 Filed 6–13–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 94F–0451]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of copper chromite black spinel as a colorant for all polymers intended to contact food. This action is in response to a petition filed by The Shepherd Color Co.

DATES: Effective June 14, 1995; written objections and request for a hearing by July 14, 1995.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of January 12, 1995 (60 FR 2976), FDA announced that a food additive petition (FAP 5B4446) had been filed by The Shepherd Color Co., 4539 Dues Dr., Cincinnati, OH 45246. The petition proposed to amend the food additive regulations in § 178.3297 *Colorants for polymers* (21 CFR 178.3297) to provide for the safe use of copper chromite black spinel (C.I. Pigment Black 28) as a colorant in all polymers intended to contact food.

FDA has evaluated the data in the petition and other relevant material. The agency concludes that the proposed use of the additive is safe and that the regulations in § 178.3297 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before July 14, 1995, file with the Dockets Management Branch (address above) written objections

thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 178.3297 is amended in the table in paragraph (e) by alphabetically adding a new entry under the headings "Substances" and "Limitations" to read as follows:

§ 178.3297 Colorants for polymers.

* * * * *

(e) * * *

Substances	Limitations
. . .	. . .
Copper chromite black spinel (C.I. Pigment Black 28, CAS Reg. No. 68186–91–4).	For use at levels not to exceed 5 percent by weight of polymers. The finished articles are to contact food only under conditions of use A through H as described in Table 2 of § 176.170(c) of this chapter.
. . .	. . .

Dated: May 26, 1995.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–14464 Filed 6–13–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

28 CFR Part 0

[Tax Division Directive No. 105]

Redelegation of Authority To Compromise and Close Civil Claims

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This directive increases the settlement authority of the Chiefs of the Civil Trial Sections, the Court of Federal Claims Section, the Appellate Section, the Office of Review, the Deputy Assistant Attorneys General, and the United States Attorneys to compromise and close civil claims. In addition, this directive provides for discretionary redelegation of limited authority by a section chief to his or her assistant chiefs and reviewers. This latter redelegation is subject to the limitation that the assistant chief or reviewer may not be the attorney-of-record in the case. This directive also eliminates the separate redelegation to the Attorney-in-Charge of the Dallas Field Office as that office, now the Southwestern Civil Trial Section, is covered under the general redelegation of authority to Chiefs of Civil Trial Sections. This directive supersedes Directive No. 95.

EFFECTIVE DATE: June 14, 1995.

FOR FURTHER INFORMATION CONTACT: Milan Karlan, Tax Division, Department of Justice, Washington, DC 20530 (202) 307–6567.

SUPPLEMENTARY INFORMATION: This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comments are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register.** This regulation is not a major rule within the meaning of Executive Order 12291. Therefore, a regulatory impact analysis has not been prepared. Finally, this regulation does not have an impact on small entities and, therefore, is not subject to the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 0

Authority Delegations (Government Agencies), Government Employees, Organization and Functions (Government Agencies).

Accordingly, 28 CFR Part 0 is amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–19.

2. The Appendix to subpart Y of part 0 is amended by removing Tax Division Directive No. 95.

3. Tax Division Directive No. 105 is added to read as follows:

[Directive No. 105]

By virtue of the authority vested in me by Part 0 of Title 28 of the Code of Federal Regulations, particularly Sections 0.70, 0.160, 0.162, 0.164, 0.166, and 0.168, It Is Hereby Ordered As Follows:

Section 1. The Chiefs of the Civil Trial Sections, the Court of Federal Claims Section, and the Appellate Section are authorized to reject offers in compromise, regardless of amount, provided that such action is not opposed by the agency or agencies involved.

Section 2. Subject to the conditions and limitations set forth in Section 8 hereof, the Chiefs of the Civil Trial Sections and the Court of Federal Claims Section are authorized to:

(A) Accept offers in compromise in all civil cases, other than:

(i) Cases involving liability under Section 6672 of the Internal revenue Code; and

(ii) Cases in which judgments in favor of the United States have been entered, in which the amount of the Government's concession, exclusive of statutory interest, does not exceed $300,000;

(B) Approve administrative settlements of civil claims against the United States in all cases, other than cases involving liability under Section 6672 of the Internal Revenue Code, in which the amount of the Government's concession, exclusive of statutory interest, does not exceed $200,000;

(C) Approve concessions (other than by compromise) of civil claims asserted by the United States in all cases, other than cases involving liability under Section 6672 of the Internal Revenue Code, in which the gross amount of the original claim does not exceed $200,000;

(D) In civil cases involving liability under Section 6672 of the Internal Revenue Code, (i) accept offers in compromise in which the amount of the Government's concession, exclusive of statutory interest, does not exceed $500,000; (ii) approve administrative settlements of claims against the United States in which the amount of the Government's concession, exclusive of statutory interest, does not exceed $350,000; and (iii) approve concessions (other than by compromise) of claims asserted by the United States in which the gross amount of the original claim does not exceed $350,000;

(E) Accept offers in compromise of judgments in favor of the United States in all civil cases in which the amount of the Government's concession, exclusive of statutory interest, does not exceed $500,000;

(F) Accept offers in compromise in injunction or declaratory judgment suits against the United States in which the principal amount of the related liability, if any, does not exceed $300,000; and

(G) Accept offers in compromise in all other nonmonetary cases;

provided that such action is not opposed by the agency or agencies involved, and provided further that the proposed compromise, administrative settlement, or concession is not subject to reference to the Joint Committee on Taxation.

Section 3. The Chiefs of the Civil Trial Sections and the Court of Federal Claims Section are authorized on a case-by-case basis to redelegate in writing to their respective Assistant Section Chiefs or Reviewers the authority delegated to them in Section 1 hereof to reject offers, and in Section 2 hereof,

(A) to accept offers in compromise in which the amount of the Government's concession, exclusive of statutory interest, does not exceed $100,000;

(B) to approve administrative settlements of civil claims against the United States in which the amount of the Government's concession, exclusive of statutory interest, does not exceed $100,000; and

(C) to approve concessions (other than by compromise) of civil claims asserted by the United States in which the gross amount of the original claim does not exceed $100,000;

provided that such redelegation is not made to the attorney-of-record in the case. The redelegations pursuant to this section shall be by memorandum signed by the Section Chief, which shall be placed in the Department of Justice file for the applicable case.

Section 4. Subject to the conditions and limitations set forth in Section 8 hereof, the Chief of the Appellate Section is authorized to:

(A) Accept offers in compromise with reference to litigating hazards of the issues on appeal in all civil cases in which the amount of the Government's concession, exclusive of statutory interest, does not exceed $300,000;

(B) Accept offers in compromise in declaratory judgment suits against the United States in which the principal amount of the related liability, if any, does not exceed $300,000; and

(C) Accept offers in compromise in all other nonmonetary cases which do not involve issues concerning collectibility;

provided that (i) such acceptance is not opposed by the agency or agencies involved or the chief of the section in which the case originated, and (ii) the proposed compromise is not subject to reference to the Joint Committee on Taxation.

Section 5. Subject to the conditions and limitations set forth in Section 8 hereof, the Chief of the Office of Review is authorized to:

(A) Accept offers in compromise of claims against the United States in all civil cases in which the amount of the Government's concession, exclusive of statutory interest, does not exceed $1,500,000;

(B) Accept offers in compromise of claims on behalf of the United States in all civil cases in which the difference between the gross amount of the original claim and the proposed settlement does not exceed $1,500,000 or 15 percent of the original claim, whichever is greater;

(C) Approve administrative settlements of civil claims against the United States in all cases in which the amount of the Government's concession, exclusive of statutory interest, does not exceed $1,000,000;

(D) Approve concessions (other than by compromise) of civil claims asserted by the United States in all cases in which the gross amount of the original claim does not exceed $1,000,000;

(E) Accept offers in compromise in all nonmonetary cases; and

(F) Reject offers in compromise or disapprove administrative settlements or concessions, regardless of amount,

provided that such action is not opposed by the agency or agencies involved or the chief of the section to which the case is assigned, and provided further that the proposed compromise, administrative settlement, or concession is not subject to reference to the Joint Committee on Taxation.

Section 6. Subject to the conditions and limitations set forth in Section 8 hereof, each of the Deputy Assistant Attorneys General is authorized to:

(A) Accept offers in compromise of claims against the United States in all civil cases in which the amount of the Government's concession, exclusive of statutory interest, does not exceed $2,000,000;

(B) Accept offers in compromise of claims on behalf of the United States in all civil cases in which the difference between the gross amount of the original claim and the proposed settlement does not exceed $2,000,000 or 15 percent of the original claim, whichever is greater;

(C) Approve administrative settlements of civil claims against the United States in all cases in which the amount of the Government's concession does not exceed $1,500,000, exclusive of statutory interest;

(D) Approve concessions (other than by compromise) of civil claims asserted by the United States in all cases in which the gross amount of the original claim does not exceed $1,500,000;

(E) Accept offers in compromise in all nonmonetary cases; and

(F) Reject offers in compromise or disapprove administrative settlements or concessions, regardless of amount,

provided that such action is not opposed by the agency or agencies involved and the proposed compromise, administrative settlement, or concession is not subject to reference to the Joint Committee on Taxation.

Section 7. Subject to the conditions and limitations set forth in Section 8 hereof, United States Attorneys are authorized to:

(A) Reject offers in compromise of judgments in favor of the United States, regardless of amount;

(B) Accept offers in compromise of judgments in favor of the United States

where the amount of the judgment does not exceed $300,000; and

(C) Terminate collection activity by his or her office as to judgments in favor of the United States which do not exceed $300,000 if the United States Attorney concludes that the judgment is uncollectible;

provided that such action has the concurrence in writing of the agency or agencies involved, and provided further that this authorization extends only to judgments which have been formally referred to the United States Attorney for collection.

Section 8. The authority redelegated herein shall be subject to the following conditions and limitations:

(A) When, for any reason, the compromise, administrative settlement, or concession of a particular claim, as a practical matter, will control or adversely influence the disposition of other claims totalling more than the respective amounts designated in Sections 2, 3, 4, 5, 6, and 7 hereof, the case shall be forwarded for review at the appropriate level for the cumulative amount of the affected claims;

(B) When, because of the importance of a question of law or policy presented, the position taken by the agency or agencies or by the United States Attorney involved, or any other considerations, the person otherwise authorized herein to take final action is of the opinion that the proposed disposition should be reviewed at a higher level, the case shall be forwarded for such review;

(C) If the Department has previously submitted a case to the Joint Committee on Taxation leaving one or more issues unresolved, any subsequent compromise, administrative settlement, or concession in that case must be submitted to the Joint Committee, whether or not the overpayment exceeds the amount specified in Section 6405 of the Internal Revenue Code;

(D) Nothing in this Directive shall be construed as altering any provision of Subpart Y of Part O of Title 28 of the Code of Federal Regulations requiring the submission of certain cases to the Attorney General, the Associate Attorney General, or the Solicitor General.

(E) Authority to approve recommendations that the Government confess error or make administrative settlements in cases on appeal is excepted from the foregoing redelegations; and

(F) The Assistant Attorney General, at any time, may withdraw any authority delegated by this Directive as it relates to any particular case or category of cases, or to any part thereof.

Section 9. This Directive supersedes Tax Division Directive No. 95, effective February 21, 1992.

Section 10. This Directive is effective on June 14, 1995.

Dated: November 22, 1994.

Loretta C. Argrett,

Assistant Attorney General.

Approved:

Dated: June 8, 1995.

Jamie Gorelick,

Deputy Attorney General.

[FR Doc. 95–14442 Filed 6–13–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–95–023]

RIN 2115–AE47

Drawbridge Operation Regulations; York River, Yorktown, VA

AGENCY: Coast Guard, DOT.

ACTION: Interim rule with request for comments.

SUMMARY: At the request of the Virginia Department of Transportation, the Coast Guard is changing the regulations that govern the operation of the drawbridge across York River, mile 7.0, at Yorktown, Virginia, by extending the periods of restricted bridge openings during the morning and evening rush hours. This is intended to provide relief to highway traffic during the extended rush hours on the roads and highways linked by this drawbridge, while still providing for the reasonable needs of navigation.

EFFECTIVE DATES: This rule is effective on June 14, 1995. Comments must be received on or before September 12, 1995.

ADDRESSES: Comments may be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or may be delivered to Room 109 at the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (804) 398–6222. Comments will become part of this docket and will be available for inspection at Room 109, Fifth Coast Guard District.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (804) 398–6222.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD5–95–023) and the specific section of this rule to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Commander (ob) at the address under **ADDRESSES.** The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information. The principal persons involved in drafting this document are Linda L. Gilliam, Project Manager, Bridge Section, and LCDR C. A. Abel, Project Counsel, Fifth Coast Guard District Legal Office.

Regulatory Information

This rule is being published as an interim rule and is being made effective on the date of publication. Under 5 U.S.C. 553(b), this rule is being promulgated without an NPRM because the need to relieve highway traffic congestion due to current circumstances is immediate, and vessel traffic will not be unduly burdened. Further, this rule should be made effective in less than 30 days after publication under 5 U.S.C. 553(d) because to delay the effective date would further exacerbate already serious highway traffic problems, and the Coast Guard believes it is in the overall public interest to do so. For these reasons, the Coast Guard for good cause finds, under 5 U.S.C. 553 (b)(B) and (d)(3), that notice, and public procedure on the notice, before the effective date of this rule are unnecessary and that this rule should be made effective in less than 30 days after publication.

Background and Purpose

The Virginia Department of Transportation has requested that openings of the George P. Coleman Memorial Bridge across York River, mile 7.0 at Yorktown, Virginia, be further limited by extending the morning and evening rush hour closure periods to all vessel traffic, while continuing to open on signal at all other times.

Currently, the Coleman Bridge is closed to vessel traffic from 6 a.m. to 8 a.m. and 3 p.m. to 6 p.m. Monday through Friday, except Federal holidays, year round. The draw opens on signal at all other times. This rule will extend the morning and evening rush hour restrictions by requiring the bridge to remain closed from 5 a.m. to 8 a.m. and from 3 p.m. to 7 p.m., Monday through Friday, except Federal holidays, year round. Vessels in distress, or in an emergency situation will be allowed passage through the bridge at any time.

The Virginia Department of Transportation's request is based on traffic problems associated with current construction of a new bridge at this location, as well as on an increase in highway traffic crossing the bridge since the Park Service recently closed access to Route 17 at the Colonial Parkway. Finally, Newport News Shipbuilding and Drydock has changed its hours of operation, resulting in motorists crossing the bridge earlier in the morning and later in the evening. The Virginia Pilots Association was informed of the Coast Guard's decision to further restrict openings of the Coleman Bridge. They stated that although they do not support bridge closures in general, they understand the need to extend the hours of restriction for this bridge. The U.S. Navy was contacted and supports the extended periods of restrictions during rush hours.

The Coast Guard believes these restrictions will not unduly restrict vessel passage through the bridge, as vessel operators can plan transits around the interim schedule. The interim rule will remain in effect until three months after completion of construction and renovation of the Coleman bridge. Leaving this rule in effect three months after the work is completed will allow for an evaluation period to gather highway traffic data with the four-lane structure in service. This evaluation period will give VDOT and the Coast Guard information needed to determine if the extended hours of restriction should be made a permanent part of the regulations. The Coast Guard believes it is in the public interest to further limit openings of the Coleman Bridge and that vessel traffic will not be unduly burdened.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the U.S. Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). This rule does not require a general notice of proposed rulemaking and, therefore, is exempt from the regulatory flexibility requirements. Although exempt, the Coast Guard has reviewed this rule for potential impact on small entities. Because it expects the impact of this rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business qualifies as a small entity and that this rule will have a significant economic impact on your business, please submit a comment (see **ADDRESSES**) explaining why you think your business qualifies and in what way and to what degree this rule will affect your business economically.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principals and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2.e.(32)(e) of Commandant Instruction M16475.1B, (as amended, 59 FR 38654, 29 July 1994), this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement and checklist has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard is amending Part 117 of Title 33, Code of Federal Regulations to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); Section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.1025(a) is revised to read as follows:

§ 117.1025 York River.

(a) The Coleman Memorial bridge, mile 7.0, at Yorktown, shall open on signal; except from 5 a.m. to 8 a.m. and 3 p.m. to 7 p.m., Monday through Friday, except Federal holidays, the bridge shall remain closed to navigation.

(b) * * *

Dated: May 22, 1995.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 95–14555 Filed 6–13–95; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP St. Louis 95–007]

RIN 2115–AA97

Safety Zone; Upper Mississippi River, Mile 167.0 to 241.0

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Upper Mississippi River between mile 167.0 and 241.0. This regulation is needed to protect vessels from the hazards

associated with operating in high water conditions. This regulation will restrict general navigation in the regulated area for the safety of vessel traffic and the protection of life and property along the shore.

EFFECTIVE DATES: This regulation is effective on May 25, 1995 and will remain in effect until June 24, 1995 unless terminated sooner by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LT Robert Siddall, Operations Officer, Captain of the Port, St. Louis, Missouri at (314) 539–3823.

SUPPLEMENTARY INFORMATION: Drafting Information. The drafters of this regulation are LTJG A. B. Cheney, Project Officer, Marine Safety Office, St. Louis, Missouri and LT S.M. Moody, Project Attorney, Second Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, recent heavy rainfall on already saturated ground in portions of the Upper Mississippi River Basin has caused tributaries and the southern portion of the Upper Mississippi River to approach and exceed flood stages, leaving insufficient time to publish a proposed rulemaking. The Coast Guard deems it to be in the public's interest to issue a regulation without waiting for comment period since high water conditions present immediate hazard.

Background and Purpose

The Upper Mississippi River in the vicinity of St. Louis Harbor has seen a rapid rise in the water level and has been above flood stage since May 13, 1995. Recent torrential downpours, predominately in Missouri and southern Illinois, caused a very rapid rise in river stages. Water conditions that cause rapid and sharp rises in river stages also cause treacherous currents in the vicinity of bridges within St. Louis Harbor. These currents make the approach to the bridges more critical since the time to impose course corrections are diminished. Additionally, the high water conditions reduce both the vertical and horizontal clearances available to the navigating tow.

This rule is required for the safety and protection of vessels transiting the safety zone and for the protection of levees and property along the Upper Mississippi River.

Regulatory Evaluation

This regulation is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979), it will not have a significant economic impact on a substantial number of small entities, and it contains no collection of information requirements.

The Coast Guard expects the impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary. The imposed restrictions are anticipated to be of short duration. Captain of the Port, St. Louis, Missouri will monitor river conditions and will authorize entry into the closed area as conditions permit. Changes will be announced by Marine Safety Information Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHZ). Mariners may also call the Port Operations Officer, Captain of the Port, St. Louis, Missouri at (314) 539–3823 for current information.

Small Entities

The Coast Guard finds that the impact on small entities, if any, is not substantial. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism Assessment

Under the principles and criteria of Executive Order 12612, this rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.g.[5] of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation as an action to protect public safety. A Categorical Exclusion Determination has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (Water), Records and recordkeeping, Security measures, Vessels, Waterways.

Temporary Regulation

In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5

2. A temporary section 165.T02–040 is added, to read as follows:

§ 165.T02–040 Safety Zone: Upper Mississippi River.

(a) *Location.* The Upper Mississippi River between mile 167.0 and 241.0 is established as a safety zone.

(b) *Effective Dates.* This section is effective on May 25, 1995 and will terminate on June 24, 1995, unless terminated sooner by the Captain of the Port.

(c) *Regulations.* The general regulations under § 165.23 of this part which prohibit vessel entry within the described zone without authority of the Captain of the Port apply. The Captain of the Port, St. Louis, Missouri will authorize entry into and operations within the described zone under certain conditions and limitations as announced by Marine Safety Information Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHZ).

Dated: May 25, 1995.

S.P. Cooper,

Commander, U.S. Coast Guard, Captain of the Port, St. Louis, Missouri.

[FR Doc. 95–14560 Filed 6–13–95; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP St. Louis 95–008]

RIN 2115–AA97

Safety Zone; Upper Mississippi River, Mile 110.0 to 130.0

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Upper Mississippi River between mile 110.0 and 130.0. The regulation is required for the prevention of damage to levees and protection of flooded areas. This regulation will restrict general navigation in the regulated area for the protection of life and property along the shore.

EFFECTIVE DATES: This regulation is effective on May 22, 1995 and will remain in effect until June 21, 1995 unless terminated sooner by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LT Robert Siddall, Operations Officer, Captain of the Port, St. Louis, Missouri at (314) 539–3823.

SUPPLEMENTARY INFORMATION: Drafting Information. The drafters of this regulation are LTJG A.B. Cheney, Project Officer, Marine Safety Office, St. Louis, Missouri and LT S.M. Moody, Project Attorney, Second Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this rule and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, recent heavy rainfall on already saturated ground in portions of the Upper Mississippi River Basin has caused portions of the Upper Mississippi River to approach and exceed flood stages, leaving insufficient time to publish a proposed rulemaking. The Coast Guard deems it to be in the public's interest to issue a rule without waiting for comment period since high water conditions present an immediate hazard.

Background and Purpose

The Upper Mississippi River from the mouth, mile 110.0 to mile 130.0, has seen a rapid rise in the water level and is above flood stage. This rule is required to protect saturated levees, therefore, all vessels are restricted from the regulated area.

Regulatory Evaluation

This regulation is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979), it will not have a significant economic impact on a substantial number of small entities, and it contains no collection of information requirements.

The Coast Guard expects the impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary. The imposed restrictions are anticipated to be of short duration. Captain of the Port, St. Louis, Missouri will monitor river conditions and will authorize entry into the closed area as conditions permit. Changes will be announced by Marine Safety Information Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHZ). Mariners may also call the Port Operations Officer, Captain of the Port, St. Louis, Missouri at (314) 539–3823 for current information.

Small Entities

The Coast Guard finds that the impact on small entities, if any, is not substantial. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism Assessment

Under the principles and criteria of Executive Order 12612, this rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.g.[5] of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation as an action to protect public safety. A Categorical Exclusion Determination has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (Water), Records and recordkeeping, Security measures, Vessels, Waterways.

Temporary Regulation

In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A temporary section 165.102–041 is added, to read as follows:

§ 165.T02–041 Safety Zone: Upper Mississippi River.

(a) *Location.* The Upper Mississippi River between mile 110.0 and 130.0 is established as a safety zone.

(b) *Effective Dates.* This section is effective on May 22, 1995 and will terminate on June 21, 1995, unless terminated sooner by the Captain of the Port.

(c) *Regulations.* The general regulations under § 165.23 of this part which prohibit vessel entry within the described zone without authority of the Captain of the Port apply. The Captain of the Port, St. Louis, Missouri will authorize entry into and operations within the described zone under certain conditions and limitations as announced by Marine Safety Information Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHZ).

Dated: May 22, 1995.

S.P. Cooper,

Commander, U.S. Coast Guard, Captain of the Port, St. Louis, Missouri.

[FR Doc. 95–14559 Filed 6–13–95; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP St. Louis 95–009]

RIN 2115–AA97

Safety Zone; Illinois River, Mile 0.0 to 187.3

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Illinois River between mile 0.0 and 187.3. This regulation is required for the prevention of damage to levees and protection of flooded areas. This regulation will restrict general navigation in the regulated area for the protection of life and property along the shore.

EFFECTIVE DATES: This regulation is effective on May 25, 1995 and will remain in effect until June 24, 1995 unless terminated sooner by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LT Robert Siddall, Operations Officer, Captain of the Port, St. Louis, Missouri at (314) 539–3823.

SUPPLEMENTARY INFORMATION: Drafting Information. The drafters of this regulation at LTJG A.B. Cheney, Project Officer, Marine Safety Office, St. Louis, Missouri and LT S.M. Moody, Project Attorney, Second Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this rule and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, recent heavy rainfall on already saturated ground in portions of the Illinois River Basin has caused portions of the Illinois River to approach and exceed flood stages, leaving insufficient time to publish a proposed rulemaking. The Coast Guard deems it to be in the public's interest to issue a rule without waiting for comment period since high water conditions present an immediate hazard.

Background and Purpose

The Illinois River from the mouth, mile 0.0, to mile 187.3, has seen a rapid rise in the water level and is above flood stage. This rule is required to protect saturated levees, therefore, all vessels are restricted from the regulated area.

Regulatory Evaluation

This regulation is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979), it will not have a significant economic impact on a substantial number of small entities, and it contains no collection of information requirements.

The Coast Guard expects the impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary. The imposed restrictions are anticipated to be of short duration. Captain of the Port, St. Louis, Missouri will monitor river conditions and will authorize entry into the closed area as conditions permit. Changes will be announced by Marine Safety Information Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHZ). Mariners may also call the Port Operations Officer, Captain of the Port, St. Louis, Missouri at (314) 539–3823 for current information.

Small Entities

The Coast Guard finds that the impact on small entities, if any, is not substantial. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism Assessment

Under the principles and criteria of Executive Order 12612, this rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.g[5] of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation as an action to protect public safety. A Categorical Exclusion Determination has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Records and recordkeeping, Security measures, Vessels, Waterways.

Temporary Regulation

In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A temporary section 165.T02–042 is added, to read as follows:

§ 165.T02–042 Safety Zone: Illinois River.

(a) *Location.* The Illinois River between mile 0.0 and 187.3 is established as a safety zone.

(b) *Effective Dates.* This section is effective on May 25, 1995 and will terminate on June 24, 1995, unless terminated sooner by the Captain of the Port.

(c) *Regulations.* The general regulations under § 165.23 of this part which prohibit vessel entry within the described zone without authority of the Captain of the Port apply. The Captain of the Port, St. Louis, Missouri will authorize entry into and operations within the described zone under certain conditions and limitations as announced by Marine Safety Information Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHZ).

Dated: May 25 1995.

S.P. Cooper,

Commonder, U.S. Coast Guord, Captain of the Port, St. Louis, Missouri.

[FR Doc. 95–14558 Filed 6–13–95; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AH04

Disease Subject to Presumptive Service Connection (Radiation Risk Activity)

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends Department of Veterans Affairs (VA) adjudication regulations concerning diseases presumed to be the result of exposure to ionizing radiation. This amendment is necessary to implement Public Law 103–446, the Veterans' Benefits Improvements Act, which provides that the term "radiation risk activity" includes the onsite participation in a test involving the atmospheric detonation of a nuclear device by the United States and by other governments. The intended effect of this amendment is to extend the presumption of service connection for radiogenic disabilities to those veterans exposed to radiation during active military service due to onsite participation in atmospheric nuclear tests conducted by nations other than the United States.

EFFECTIVE DATE: This amendment is effective November 2, 1994, the date of enactment of Public Law 103–446.

FOR FURTHER INFORMATION CONTACT: Lorna Weston, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue NW., Washington, DC 20420, telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: The Radiation-Exposed Veterans Compensation Act of 1988, Public Law 100–321, which was enacted May 20, 1988, established a presumption of service connection for specific radiogenic diseases arising in veterans who had been present at the occupation of Hiroshima or Nagasaki, who had potentially been exposed to ionizing radiation as prisoners of war in Japan during World War II, or who had participated onsite in a test involving the atmospheric detonation of a nuclear device.

On June 21, 1989, VA published regulations at 38 CFR 3.309 to implement the provisions of Pub. L. 100–321. The introductory language of the statute had indicated that it was to apply to veterans "who participated in atmospheric or underwater nuclear tests as part of the United States nuclear weapons testing program." In formulating the regulations, therefore, VA defined radiation risk activity as including onsite participation in a test involving the atmospheric detonation of a nuclear device by the United States. The effect of that rulemaking was to exclude those veterans exposed to ionizing radiation during atmospheric nuclear testing by governments other than the United States from the presumption of service connection.

The Secretary determined that this rule should be revised to allow consideration of service connection on the same presumptive basis for these veterans as for veterans exposed to ionizing radiation due to atmospheric nuclear detonations conducted as a part of the U.S. testing program. Accordingly, on September 8, 1994, VA published a proposal in the **Federal Register** (59 FR 46379–46380) to amend its adjudication regulations at 38 CFR 3.309(d)(3) to extend the presumption that specified diseases are the result of in-service exposure to ionizing radiation to veterans who were present at atmospheric nuclear tests conducted by any government allied with the United States during World War II. Interested persons were invited to submit written comments, suggestions or objections on or before November 7, 1994.

On November 2, 1994, the President signed Pub. L. 103–446, the Veterans' Benefits Improvements Act. Section 501(a) of that law clarified Congressional intent on this issue by amending 38 U.S.C. 1112(c)(3)(B) to define the term "radiation-risk activity" to include onsite participation in a test involving the atmospheric detonation of a nuclear device "without regard to whether the nation conducting the test was the United States or another nation."

We received two comments in response to the proposed rule published September 8, 1994. Both comments suggested that the amendment should apply to any nuclear tests to which military personnel were assigned and that the phrases "any government allied with the United States during World War II" and "atmospheric nuclear tests conducted by allied governments" are therefore too restrictive.

We not only agree, but the suggestion is consistent with section 501 of Public Law 103–446, the Veterans' Benefits Improvements Act of 1994. We have revised the regulation accordingly.

One comment expressed concern that literal interpretation of the phrase "onsite participation" could disqualify those veterans involved in aerial sampling, ground support and decontamination activities and suggested we expand the term "atmospheric nuclear test" to include "test activities" without requiring that the veteran had literally been present at the test site itself.

The term "onsite participation" is a statutory term (See 38 U.S.C. 1112 (c)(3)(B)(i)) that VA has interpreted to mean presence at a test site, performance of official military duties in direct support of the nuclear test during the operational period of the test itself, and duties performed during the six-month period following a test in connection with test-related projects, including decontamination activities. (See 38 CFR 3.309(d)(3)(iii)) This definition clearly precludes the possibility that veterans engaged in aerial sampling, ground support or decontamination activities would be ineligible for consideration under this regulation. In our judgment, that definition of the term "onsite participation" is sufficiently broad to assure inclusion of all veterans engaged in test activities including support, clean up, decontamination and follow-up duties, and no change in the current language of the regulation is warranted.

One comment stated that dosimeter records are not available for all tests and suggested that we revise the regulation to include an alternate method for reconstructing radiation exposure.

The statute and this implementing regulation establish the presumption that specific radiogenic diseases arising in veterans who participated in specific radiation risk activities are service-connected regardless of the amount of radiation to which the veteran was exposed. For this reason, inclusion of dose reconstruction methods in this regulation would be both unnecessary and inappropriate.

One comment recommended that we add language to the regulation setting out evidentiary requirements for establishing a veteran's participation in a test, to include review of military orders, unit history and the veteran's affidavit supported by adequate lay testimony.

Neither 38 U.S.C. 1112(c) nor 38 CFR 3.309(d) set forth specific evidentiary requirements for establishing a veteran's presence at Hiroshima, Nagasaki or an atmospheric nuclear test. Eligibility for VA benefits is determined based on the preponderance of evidence. Any evidence that the veteran offers, whether it is documentary, testimonial or in some other form, is included in the record and considered (See 38 CFR 3.103(d)) and a veteran's statement is clearly evidence which VA must consider along with service records and all other evidence of record. In addition, by regulation VA must resolve reasonable doubt as to service origin or any other point in favor of the claimant. (See 38 CFR 3.102.) In our judgment, these provisions adequately address the concerns expressed in the comment and there is therefore no need to add language to this regulation setting forth specific evidentiary requirements.

VA appreciates both comments received in response to the proposed regulatory amendment, which is now adopted with changes as noted above. The effective date of the amendment is November 2, 1994, the date Public Law 103–446 was enacted.

The Secretary certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This amendment will directly affect VA beneficiaries but will not directly affect small business. Therefore, pursuant to 5 U.S.C. 606(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

This regulatory action has been reviewed by the Office of Management and Budget under Executive Order 12866.

The Catalog of Federal Domestic Assistance program numbers are 64.101, 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Health care, Individuals with disabilities, Pensions, Veterans.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended to read as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 3.309 Disease subject to presumptive service connection. [Amended]

2. In § 3.309, paragraph (d)(3)(ii)(A) is amended by removing the words "by the United States".

3. In § 3.309, paragraph (d)(3)(v) is amended by removing the word "The" at the beginning of the sentence, and adding in its place the words "For tests conducted by the United States, the".

4. The authority citation following § 3.309(d)(3)(vii)(D) is revised to read as follows:

Authority: 38 U.S.C. 1110, 1112, 1131.

[FR Doc. 95–14480 Filed 6–13–95; 8:45 am]
BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300384A; FRL–4955–6]

RIN 2070–AB78

Oleyl Alcohol; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document exempts oleyl alcohol (CAS Reg. No. 143-28-2) from the requirement of a tolerance when used as a cosolvent in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest. Henkel Corp., Emery Group, requested this regulation pursuant the Federal Food, Drug and Cosmetic Act (FFDCA).

EFFECTIVE DATE: This regulation becomes effective June 14, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [OPP-300384A], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP-300384A]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Amelia M. Acierto, Registration Support Branch, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, 2800 Crystal Drive, North Tower, Arlington, VA 22202, (703)-308-8375; e-mail: acierto.amelia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 12, 1995 (60 FR 18557), EPA issued a proposed rule that gave notice that Henkel Corp., Emery Group, 4900 Este Ave., Cincinnati, OH 45232-1491, had submitted pesticide petition (PP) 4E4335 to EPA requesting that the Administrator, pursuant to section 408(e) of the FFDCA, 21 U.S.C. 346a(e), amend 40 CFR 180.1001(c) by establishing an exemption from the requirement of a tolerance for oleyl alcohol when used as an inert ingredient (cosolvent) in pesticide formulations applied to growing crops or raw agricultural commodities after harvest.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceouse earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted with the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance exemption will protect the public health. Therefore, the tolerance exemption is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [OPP-300384A] (including any objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [OPP-300384A], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 22, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(c) is amended in the table therein by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirements of a tolerance.

* * * * *

(c) * * *

Inert ingredient	Limits	Uses
. . .	. . .	. . .
Oleyl alcohol (CAS Reg. No. 143-28-2)	15%	Cosolvent
. . .	. . .	. . .

* * * * *

[FR Doc. 95–14061 Filed 6–13–95; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 180

[PP 3E4241/R2130; FRL–4952–4]

RIN 2070–AB78

Imazethapyr; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes tolerances with regional registration for the sum of the residues of the herbicide imazethapyr, as its ammonium salt, and its metabolite in or on the raw agricultural commodities lettuce and endive. The Interregional Research Project No. 4 (IR-4) requested this regulation pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA).

EFFECTIVE DATE: This regulation becomes effective June 14, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 3E4241/R2130], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to EPA's Office of Pesticide Programs at: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

An electronic copy of objections and hearing requests may also be submitted to OPP electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII

file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket number [PP 3E4241/R2130]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783; e-mail: jamerson.hoyt@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 22, 1995 (60 FR 15110), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition (PP) 3E4241 to EPA on behalf of the vegetable growers of Florida. The petition requests that the Administrator, pursuant to section 408(e) of the FFDCA, 21 U.S.C. 346a(e), amend 40 CFR 180.447 by establishing tolerances with regional registration for residues of the herbicide imazethapyr, 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-ethyl-3-pyridine carboxylic acid, as its ammonium salt, and its metabolite, 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-(1-hydroxyethyl-3-pyridine carboxylic acid), free and conjugated, in or on the raw agricultural commodities lettuce (head and leaf) and endive (escarole) at 0.1 part per million (ppm). The petitioner proposed that use of imazethapyr on lettuce and endive be limited to Florida based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted with the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 3E4241/R2130] (including any comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to OPP at:

opp-Docket@epamail.epa.gov.

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 26, 1995.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.447, by adding new paragraph (d), to read as follows:

§ 180.447 Imazethapyr; tolerances for residues.

* * * * *

(d) Tolerances with regional registration, as defined in § 180.1(n) of this chapter, are established for the sum of residues of the herbicide imazethapyr, 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-ethyl-3-pyridine carboxylic acid, as its ammonium salt, and its metabolite, 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-(1-hydroxyethyl)-3-pyridine carboxylic acid, both free and conjugated, in or on the following raw agricultural commodities:

Commodity	Parts per million
Endive (escarole)	0.1
Lettuce (head and leaf)	0.1

[FR Doc. 95–14062 Filed 6–13–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[OPP–300388; FRL–4958–1]

RIN 2070–AB78

Diphenylamine; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: EPA is issuing a technical amendment to a regulation on diphenylamine to change its designation from a "fungicide" to a "plant regulator." EPA is making this technical amendment to better characterize the chemical.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Tompkins, Fungicide/Herbicide Branch (7505C), Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 239, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-305-6250; e-mail: tompkins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Diphenylamine is currently registered for use on apples to prevent the appearance of the skin discoloration known as "storage scald." Storage scald is an abiotic disorder not caused by fungus, bacterium, or living agent. The most widely accepted theory is that a substance known as alpha-farnescene is given off by the apple which when combined with oxygen leads to the formation of free radicals resulting in the destruction of cell substance compartmentalization and death of the skin cells. Diphenylamine applied to the skin of the apple acts as an antioxidant to prevent the combination of alpha-farnescene with oxygen. The term "plant regulator" is a better descriptive term than "fungicide" to describe the use of diphenylamine on apples to prevent the appearance of storage scald.

This document contains a technical amendment only and does not require notice and comment, 5 U.S.C. 553.

List of Subjects in 40 CFR Part 180

Environmental protection, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 25, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, a technical amendment is made in 40 CFR part 180 as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.190 [Amended]

2. In § 180.190, by making a technical amendment to the introductory text by changing "fungicide" to read "plant regulator".

[FR Doc. 95–14063 Filed 6–13–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[FCC 95–112]

Delegation of Authority to Issue Subpoenas

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document delegates authority to the Chief, Compliance and Information Bureau to issue subpoenas for the production of documents and testimony in support of Commission investigations of all types. This action is necessary to empower the Compliance and Information Bureau to obtain evidence in all situations involving violations of the Commission's Rules. The effect of this action is better informed Commission actions.

EFFECTIVE DATE: June 14, 1995.

FOR FURTHER INFORMATION CONTACT: Wayne T. McKee, Compliance and Information Bureau, (202) 418–1100.

SUPPLEMENTARY INFORMATION: The complete text of the Commission's Order, Adopted March 14, 1995, and released April 6, 1995, follows:

1. Section 409(e) of the Communications Act of 1934 (Act), as amended, 47 U.S.C. 409(e), grants the Commission express authority to issue subpoenas to require, among other things, the production of information relating to any matter under investigation. In this connection, the courts have held that the Commission may issue subpoenas to, among others, private entities not subject to the agency's jurisdiction.[1]

2. Section 5(c)(1) of the Act, 47 U.S.C. 155(c)(1), affords the Commission authority to delegate the subpoena power conferred by Section 409(e). In accordance with Section 5(c)(1), we previously delegated to the Chief, Compliance and Information Bureau (formerly the Field Operations Bureau) authority to issue administrative subpoenas in connection with investigation of cases involving violations of Sections 301 (unlicensed operation) or 302(a) (illegal marketing of radio frequency devices capable of

[1] *See* FCC v. Cohn, 154 F. Supp. 899 (S.D.N.Y. 1957).

causing harmful interference) of the Act.[2] *See* 47 U.S.C. 301 and 302(a). We believe that the mission and proper functioning of the Compliance and Information Bureau will be enhanced by a broader delegation of our subpoena authority to that Bureau.

3. Accordingly, it is ordered that, pursuant to Section 5(c)(1) of the Communications Act of 1934, as amended, 47 U.S.C. 155(c)(1), authority is delegated to the Chief, Compliance and Information Bureau, to require by administrative subpoena the attendance and testimony of witnesses and the production of books, papers, correspondence, and any other records relating to any matter under investigation.

4. It is further ordered that Section 0.311(f) of the Commission's rules, 47 CFR 0.311(f), is amended to reflect the foregoing delegation of authority to the Chief, Compliance and Information Bureau. This amendment to the Commission's rules is contained below. The requirements set forth in 5 U.S.C. 553(b) pertaining to notice and comment and effective date in rule making proceedings do not apply to this amendment because it concerns matters of agency organization, procedure, or practice. *See* 5 U.S.C. 553(b)(A), 553(d).

5. It is further ordered that this amendment of Section 0.311(f) as set forth below is effective upon the date of publication in the **Federal Register**.

List of Subjects in 47 CFR Part 0

Organization and functions (Government agencies)

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Title 47 of the Code of Federal Regulations, part 0, is amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.311(f) and its preceding center heading are revised to read as follows:

Compliance and Information Bureau

§ 0.311 Authority delegated.

* * * * *

(f) The Chief of the Compliance and Information Bureau is authorized to issue subpoenas for the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records relating to investigations under authority of the Communications Act of 1934, as amended.

* * * * *

[FR Doc. 95–14511 Filed 6–13–95; 8:45 am]

BILLING CODE 6712–01–M

[2] *See* Authority to Issue Subpoenas, 8 FCC Rcd 8763 (1993).

47 CFR Part 73

[MM Docket No. 93–229; RM–8296, RM–8463]

Radio Broadcasting Services; Midway, Panacea, and Quincy, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 264C3 for Channel 264A at Quincy, Florida, reallots Channel 264C3 from Quincy to Midway, Florida, and modifies the construction permit for Station WTPS(FM) to specify Channel 264C3, Midway, Florida, as its community of license, at the request of Bitner-James Partnership. *See* 58 FR 42923, August 12, 1993. The allotment of Channel 264C3 to Midway, Florida, will provide that community with its first local transmission service, in accordance with Section 1.420(i) of the Commission's Rules. Channel 264C3 can be allotted to Midway in compliance with the Commission's minimum distance separation requirements at petitioner's specified transmitter site. The coordinates for Channel 264C3 at Midway, Florida, are North Latitude 30–32–22 and West Longitude 84–21–54. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 24, 1995.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 93–229, adopted June 2, 1995, and released June 9, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 264A at Quincy, and by adding Midway, Channel 264C3.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–14516 Filed 6–13–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 94–41; RM–8443; RM–8504; RM–8505]

Radio Broadcasting Services; Cordova and Dora, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 237A for Channel 223A at Cordova, Alabama, and modifies the authorization of New Century Radio, Inc. for Station WFFN(FM), as requested. Additionally, in response to counterproposals filed on behalf of New Century Radio, Inc. (RM–8504) and Goodling Broadcasting Company (RM–8505), Channel 223A is allotted to Dora, Alabama, as that community's first local FM service. Coordinates used for Channel 237A at Cordova are 33–49–01 and 87–11–55 and for Channel 223A at Dora, Alabama, 33–40–26 and 87–06–55. With this action, the proceeding is terminated.

DATES: Effective July 24, 1995. The window period for filing applications on Channel 223A at Dora, Alabama, will open on July 24, 1995, and close on August 24, 1995.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the window application filing process for Channel 223A at Dora, Alabama, should be addressed to the Audio Services Division, FM Branch, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 94–41, adopted June 1, 1995, and released June 9, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by removing Channel 223A and adding Channel 237A at Cordova; and by adding Dora, Channel 223A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–14517 Filed 6–13–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 93–228; RM–8295]

Radio Broadcasting Services; Tawas City, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: The Commission dismisses the petition filed by Patricia Mason for reconsideration of the *Report and Order* in MM Docket 93–228, 59 FR 46932, September 13, 1994. In that proceeding, Ives Broadcasting, Inc., licensee of Station WHST-FM, Tawas City, Michigan, was modified to operate on Channel 291A in lieu of Channel 297A. In response to Patricia Mason's interest in Channel 291A, Channel 277A was allotted to Tawas City as an additional channel. Mason's petition for reconsideration argues that Channel 277A is not an equivalent channel, and, therefore, Channel 291A should be made available for application to all parties. The Commission considers channels of the same class to be equivalent unless showings have been made that a station cannot be constructed for reasons such as environmental consequences or hazard to air navigation. Since no showings were made, we have dismissed the petition for reconsideration.

EFFECTIVE DATE: June 14, 1995.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–14518 Filed 6–13–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 89–500; RM–6070]

Radio Broadcasting Services; Stephenson, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: The Commission dismisses a Petition for Reconsideration filed by Value Radio Corporation (Value). Value sought reconsideration of the action taken by the Chief, Allocations Branch in MM Docket No. 89–500 on the basis that the action precluded its proposal, in another proceeding, for amendment of the Commission's FM Table of Allotments. *See* 56 FR 19039 (April 25, 1991). The Commission dismissed Value's petition as moot in light of the fact that Value's rulemaking proposal was subsequently approved and was not precluded by the action taken in MM Docket 89–500.

EFFECTIVE DATE: June 14, 1995.

FOR FURTHER INFORMATION CONTACT: Alan E. Aronowitz, Mass Media Bureau, (202) 776–1653.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order*, MM Docket No. 89–500, adopted June 1, 1995, and released on June 9, 1995. The full text of this Commission decision is available for public inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–14522 Filed 6–13–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 89–497; RM–6877 and RM–7269]

Radio Broadcasting Services; Apalachicola and Carrabelle, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This document denies the petition for reconsideration filed by Richard L. Plessinger of the *Report and Order* in MM Docket No. 89–497, 56 FR 64209, December 2, 1991, which allotted Channel 293C1 to Carrabelle, Florida, as that community's first local transmission service. The Commission has determined that Plessinger has not presented any new arguments or facts in this proceeding. Therefore, we will deny the petition for reconsideration. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 14, 1995.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order*, MM Docket No. 89–497, adopted June 2, 1995, and released June 9, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–14523 Filed 6–13–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 93–311; RM–8382]

Radio Broadcasting Services; Bagdad, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 276C3 to Bagdad, Arizona, as that community's second local aural transmission service, in response to a petition for rule making filed by Chris Sarros. *See* 59 FR 43, January 3, 1994. Bagdad is located within 320 kilometers (199 miles) of the United States-Mexico border and therefore, concurrence of the Mexican government in this proposal was obtained. Coordinates used for Channel 276C3 at Bagdad are 34–28–50 and 113–20–08. With this action, the proceeding is terminated.

DATES: Effective July 24, 1995. The window period for filing applications on Channel 276C3 at Bagdad, Arizona, will open on July 24, 1995, and close on August 24, 1995.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the window application filing process for Channel 276C3 at Bagdad should be addressed to the Audio Services Division, FM Branch, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 93–311, adopted June 2, 1995, and released June 9, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona is amended by adding Channel 276C3 at Bagdad.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–14524 Filed 6–13–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 92–246, RM–8091]

Television Broadcasting Services; Ridgecrest, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This document denies the petition for reconsideration filed by Valley Public Television of the *Report and Order*, 58 FR 58833 (November 4, 1993), in which the Commission dismissed Valley's proposal either to substitute Channel *41 for Channel *25 or place a site restriction on Channel *25 at Ridgecrest, California, after Valley requested and was granted dismissal of the application which it intended to accommodate. The Commission determined that the reason given in support of the petition for reconsideration, to accommodate Valley's future plan to apply for Channel *39 at Bakersfield, California, was speculative and did not warrant reconsideration of its action dismissing the Ridgecrest proposal. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 14, 1995.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 776–1653.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order*, MM Docket No. 92–246. adopted June 1, 1995 and released June 9, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–14525 Filed 6–13–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

RIN 1018–AD21

Marine Mammals; Incidental Take During Specified Activities

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) hereby extends for an additional 60 days through August 15, 1995, the final regulations that authorize and govern the incidental, unintentional take of small numbers of polar bear and walrus during year-around oil and gas industry operations (exploration, development, and production) in the Beaufort Sea and adjacent north coast of Alaska.

DATES: This rule will be effective on June 14, 1995. It extends the effective period of regulations that appear at 50 CFR Part 18, Subpart J, for 60 days through August 15, 1995.

FOR FURTHER INFORMATION CONTACT: David McGillivary, Supervisor, Office of Marine Mammals Management, Anchorage, AK, at (907) 786–3800; or Jeff Horwath, U.S. Fish and Wildlife Service, at (703) 385–1718.

SUPPLEMENTARY INFORMATION: Under provisions of section 101(a)(5)(A) of the Marine Mammal Protection Act of 1972, as amended (MMPA), the taking of small numbers of marine mammals may be allowed incidental to specified activities other than commercial fishing if the Director of the Service finds, based on the best scientific evidence available, that the cumulative total of such taking over a five-year period will have negligible effect on these species and will not have an unmitigable adverse impact on the availability of these species for subsistence uses by Alaskan Natives. If these findings are made, the Service is required to establish specific regulations for the

activity that set forth: permissible methods of taking; means of effecting the least practicable adverse impact on the species and their habitat and on the availability of the species for subsistence uses; and requirements for monitoring and reporting.

On December 17, 1994, BP Exploration (Alaska), Inc., for itself and on behalf of 14 other energy related entities (hereafter collectively referred to as "Industry") petitioned the Service to promulgate regulations pursuant to section 101(a)(5)(A) of the MMPA. A proposed rule was published by the Service on December 30, 1992 (57 FR 62283), with a 75-day comment period that expired on March 15, 1993.

The proposed rule announced that the Service had prepared a draft Environmental Assessment in conjunction with the rulemaking action; and that when a final decision was made on the Industry applications for incidental take authority, the Service would decide whether this was a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). On April 26, 1993, following the close of the proposed rule's comment period, the Service concluded in a Finding of No Significant Impact (FONSI) that this was not a major Federal action under the NEPA and preparation of an Environmental Impact Statement was not required.

Subsequently, on November 16, 1993, the Service published final regulations in the **Federal Register** (58 FR 60402) effective December 16, 1993, to authorize and govern the incidental, unintentional take of small numbers of polar bear and walrus during Industry operations (exploration, development, and production) year-round in the Beaufort Sea and adjacent northern coast of Alaska. The Service concluded in the final rule, based on the best scientific evidence available, that the cumulative total of such taking by Industry over a five-year period would have a negligible effect on these species and would not have an unmitigable adverse impact on the availability of these species for subsistence used by Alaskan Natives.

However, although the MMPA authorizes regulations to be used for periods of up to five years, the Service's final regulations were initially effective only for an 18-month period through June 16, 1995, as a result of additional provisions in the final regulations. These provisions stipulate that extension of the final regulations for an additional 42 months for the full five-year term authorized by the MMPA (through December 15, 1998) is contingent upon the following: (1) Within a period of 18 months from the effective date of this rulemaking, the Service must develop and begin implementing a Polar Bear Habitat Conservation Strategy (Strategy), pursuant to the management planning process in section 115 of the MMPA, and in furtherance of the goals of Article II of the 1973 International Agreement on the Conservation of Polar Bears (1973 Agreement); (2) the identification and designation of special considerations of closures of any polar bear habitat components to be further protected; (3) public notice and comment on those considerations of closures; (4) affirmative findings of the Secretary of the Interior; and (5) public notice and comment on the Secretary's intention to extend the term of the incidental take regulations for a period not to exceed a total of five years.

The final rule explained the additional requirement to develop a Strategy as follows:

> In addition to its responsibilities under the [MMPA], the Department of the Interior has further responsibilities under the 1973 multilateral Polar Bear Agreement. Specifically, Article II of the Agreement requires that:
>
> Each contracting Party shall take appropriate action to protect the ecosystems of which polar bears are a part, with special attention to habitat components such as denning and feeding sites and migration patterns * * *
>
> In comport with, and to meet more fully the intent of the Agreement, under this final rulemaking, within 18 months of its effective date, the Service has been directed by the Secretary of the Interior to develop and begin implementing a strategy for the identification and protection of important polar bear habitats. Development of such strategy will be done as part of the Service's management plan process pursuant to Section 115 of the [MMPA], and in cooperation with signatories to the Polar Bear Agreement, the Department of State, the State of Alaska, Alaskan Natives, Industry, conservation organizations, and academia.

The Service has developed a draft Strategy, published notice of its availability in the **Federal Register** (February 28, 1995, at 60 FR 10868), and sought review and comment on it. The draft Strategy was developed with the involvement and input of Alaskan Natives, Industry, the National Biological Service, that State of Alaska, conservation organizations, academia, and others. Its includes Native traditional knowledge on polar bear behavior and habitat use.

The draft Strategy identifies and designates important polar bear feeding and denning areas and proposes measures for enhanced consideration of these areas from oil and gas exploration, development, and production. It also proposes additional measures for polar bear habitat protection in furtherance of the goals of the 1973 Agreement. These measures consist of a proposed Native Village Communication Plan, creation and support of a Polar Bear Advisory Council, and development of International Conservation Initiatives. The draft Strategy also identifies research needs related to habitat use and relative importance of habitat types, and effects of contaminants and industrial activities on polar bears.

The original 60-day period to comment on the draft Strategy would have expired on May 1, 1995. However, on May 8, 1995, the Service announced in the **Federal Register** (60 FR 22584) that it had extended the comment period for an additional 15 days through May 16, 1995. It was extended in response to several April 28, 1995 letters that requested a 30-day extension; those requests stated that additional time was needed to complete a review of the draft Strategy.

While the Service agreed to extend the comment period, it was determined that a 30-day extension would not allow us adequate time to analyze comments and to make a decision on the draft Strategy and on the associated proposed rule that was published in the **Federal Register** on March 17, 1995, (60 FR 14408) to extend the effective period of incidental take regulations at 50 CFR Part 18, Subpart J. Because of the short timeframes involved, it was determined that the draft Strategy's comment period could only be extended for 15 days through May 16, 1995. This deadline also coincided with the close of the comment period on the proposed rule to extend the incidental take regulations at 50 CFR Part 18, Subpart J for an additional 42 months.

For the reasons set out in the Service's proposed rule of March 17, 1995, (as identified in the previous paragraph) to extend the effective period of incidental take regulations, and in the final Beaufort Sea rule published on November 16, 1993, the Service proposed to extend the regulations in 50 CFR Part 18, Subpart J for the full five-year term authorized by the MMPA. Thus, the regulations currently in effect from December 16, 1993, through June 16, 1995, would not expire but rather would be extended through December 15, 1998. The proposal to extend the final Beaufort Sea regulations was made on the basis that the Service's draft Strategy, if adopted, would meet the stipulations in those regulations. The Service believes that the total expected

takings of polar bear and walrus during energy operations will have a negligible impact on these species, and there will be no unmitigable adverse impacts on the availability of these species for subsistence uses by Alaskan Natives. If the provisions of the draft Strategy are adopted, and its implementation is initiated, the requirements of the Beaufort Sea regulations will have been met, and they can extend for an additional 42 months.

However, the Service has determined that completion of the final Strategy cannot be achieved by June 16, 1995, because of extensive public interest and the substantial number of comments received concerning the draft Strategy. Under current circumstances, which indicate that Beaufort Sea oil and gas activities continue to pose no more than a negligible impact to polar bear and walrus, a short-term extension of the incidental take regulations is in order so that a full and fair review of all public comments on the draft Strategy can be made. The Service finds that an extension of 60 days will not affect its "negligible impact" finding or its finding that oil and gas activities in the Beaufort Sea will not have an unmitigable adverse effect on the availability of polar bear and walrus for subsistence uses. The Service therefore is extending the effective period of the Beaufort Sea regulations for an additional 60 days through August 15, 1995. This is a prudent and justifiable action that will allow time to adequately review comments, finalize the Strategy, and begin its implementation.

This final rule action neither reopens the comment period on either the draft Strategy or the proposed rule to extend the period of effectiveness of the Beaufort Sea regulations through December 15, 1998, nor does it complete the Service's decision making on the March 17, 1995, proposed rule to extend the effective date of those final regulations through December 15, 1998. It merely extends for 60 days the effectiveness of the Beaufort Sea regulations during which time the Service will analyze public comments and make final decisions on the Strategy and the March 17, 1995, proposed rule. The new final decision date of August 15, 1995, will be the same for both documents (i.e., the Strategy and the proposed rule).

This 60-day extension of the Beaufort Sea regulations is effective immediately. The Service believes there is good cause to take this immediate action because of extensive public interest, the need to thoroughly consider the substantial number of comments that were submitted and to make any necessary and appropriate changes to the draft Strategy prior to making final decisions on both the draft Strategy and proposed rule to extend the Beaufort Sea regulations, and because to do otherwise would cause the Beaufort Sea regulations to lapse, thereby denying Industry the basic protections afforded by the MMPA's section 101(a)(5)(A). While prudent policy calls for further deliberation on the draft Strategy, there is no biological justification for allowing the Beaufort Sea regulations to expire.

Required Determinations

During the rulemaking process to develop Beaufort Sea regulations, the Service prepared an Environmental Assessment with a FONSI on Industry's proposed actions. This rule was not subject to review by the Office of Management and Budget under Executive Order 12866. Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it was also determined the rule would not have a significant economic effect on a substantial number of small entities. Furthermore, the final rule was not expected to have a potential takings implication under Executive Order 12630 because it authorized incidental, but not intentional, take of polar bear and walrus by Industry and thereby exempts them from civil and criminal liability. The rule also did not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612. The above identified required determinations associated with the Service's original rulemaking process associated with the Beaufort Sea are still valid for this current final rule.

The collections of information associated with this final rule have been approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and assigned clearance number 1018–0070.

List of Subjects in 50 CFR Part 18

Administrative practice and procedure, Imports, Indians, Marine mammals, Transportation.

For the reasons set forth in the preamble, Part 18, Subchapter B of Chapter 1, Title 50 of the Code of Federal Regulations is amended as set forth below:

PART 18—MARINE MAMMALS

1. The authority citation for 50 CFR Part 18 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. Section 18.122 of Subpart J is revised to read as follows:

§ 18.122 Effective dates.

Regulations in this subpart, originally effective for an 18-month period from December 16, 1993, through June 16, 1995, will continue in effect for an additional 60-day period through August 15, 1995, for oil and gas exploration, development, and production activities.

Dated: June 5, 1995.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–14512 Filed 6–13–95; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 950106003–5070–02; I.D. 060895A]

Pacific Halibut Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason action; non-treaty commercial fishing period limits in Area 2A.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission (IPHC), publishes this inseason action pursuant to IPHC regulations approved by the U.S. Government to govern the Pacific halibut fishery. This action is intended to enhance the conservation of the Pacific halibut stock in order to help sustain it at an adequate level in the northern Pacific Ocean and Bering Sea.

EFFECTIVE DATE: 8:00 a.m. through 6:00 p.m., July 5, 1995.

FOR FURTHER INFORMATION CONTACT: Steven Pennoyer, 907–586–7221; William W. Stelle, Jr., 206–526–6140; or Donald McCaughran, 206–634–1838.

SUPPLEMENTARY INFORMATION: The IPHC, under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has issued this inseason action pursuant to IPHC regulations governing the Pacific halibut fishery. The regulations have been approved by NMFS (60 FR 14651, March 20, 1995).

On behalf of the IPHC, this inseason action is published in the **Federal Register** to provide additional notice of its effectiveness, and to inform persons subject to the inseason action of the restrictions and requirements established therein.

Inseason Action

1995 Halibut Landing Report Number 2

Non-Treaty Commercial Fishing Period Limits in Area 2A

The IPHC has determined that fishing period limits will be required during the 10-hour, July 5, 1995, non-treaty directed commercial fishing period in Area 2A to avoid exceeding the 91,052 pounds (41.30 metric tons) catch limit. Fishing period limits as indicated in the following table will be in effect for this opening. Note that the fishing period limits for the three smallest vessel classes have all been set at the same level.

Vessel class		Fishing period limit (pounds)	
Length	Letter	Dressed, head on	Dressed, head off *
0–25	A	225	200
26–30	B	225	200
31–35	C	225	200
36–40	D	530	465
41–45	E	570	500
46–50	F	675	595
51–55	G	755	665
56+	H	1,135	1,000

*Weights are after 2 percent has been deducted for ice and slime if fish are not washed prior to weighing.

The appropriate vessel length class and letter is printed on each halibut license.

The fishing period limit is shown in terms of dressed, head-off weight as well as dressed, head-on weight although fishermen are reminded that regulations require that all halibut from Area 2A be landed with the head on.

The fishing period limit applies to the vessel, not the individual fisherman, and any landings over the vessel limit will be subject to forfeiture and fine.

Dated: June 9, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–14552 Filed 6–13–95; 8:45 am]

BILLING CODE 3510–22–W

Proposed Rules

Federal Register
Vol. 60, No. 114
Wednesday, June 14, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 357 and 382

[Docket No. RM95–12–000]

Minimum Filing Requirements for FERC Form No. 6, Annual Report for Oil Pipelines

June 8, 1995.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Commission is proposing to revise the filing requirements for FERC Form No. 6, Annual Report of Oil Pipeline Companies, and to exempt certain oil pipeline companies with minimal jurisdictional revenues from paying annual charges. The proposed rule would exempt from filing Form No. 6 those pipelines whose jurisdictional operating revenues are at or below $100,000 for each of the three preceding calendar years. Those companies that will be exempt from filing Form No. 6 must nevertheless prepare and file page 700 of Form No. 6. The Commission also proposes to relieve those companies not required to file Form No. 6 from the obligation to pay annual charges to the Commission.

DATES: Comments are due on or before July 14, 1995.

ADDRESSES: An original and 14 copies of written comments on this proposed rule must be filed in Docket No. RM95–12–000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Harris S. Wood, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, Telephone: (202) 208–0224.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3104, 941 North Capitol Street, NE., Washington, DC 20426. The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400 or 1200 bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS for 60 days from the date of issuance in ASCII and WordPerfect 5.1 format. After 60 days the document will be archived, but still accessible.

The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

Notice of Proposed Rulemaking

The Federal Energy Regulatory Commission (Commission) proposes to revise the filing requirements for FERC Form No. 6, Annual Report of Oil Pipeline Companies (Form No. 6), and exempt certain oil pipeline companies with minimal jurisdictional revenues from the requirement for paying annual charges. These changes are proposed to become effective 30 days after the publication of a final rule in this proceeding in the **Federal Register**.

The Commission proposes to exempt from the requirements to prepare and file Form No. 6, those pipelines whose jurisdictional operating revenues are at or below $100,000 for each of the three preceding calendar years.[1] For the reasons appearing below, those companies that will be exempt from filing Form No. 6 must nevertheless prepare and file page 700 of Form No. 6.

The Commission also proposes to relieve those companies not required to file Form No. 6 from the obligation to pay annual charges to the Commission.

I. Background

Order No. 561 [2] was issued on October 22, 1993, to comply with the Energy Policy Act of 1992 (Act of 1992),[3] which required that the Commission establish a simplified and generally applicable method of oil pipeline rate regulation. Thereafter, on October 28, 1994, the Commission issued Order No. 571, which established certain filing requirements for oil pipelines seeking cost-of-service rate treatment and promulgated changes to Form No. 6.[4]

The Commission's regulations currently require each jurisdictional oil pipeline company to submit Form No. 6 annually, reflecting the operating results and the financial condition of the company involved, irrespective of the size of the company.[5]

II. Public Reporting Burden

The Commission estimates the public reporting burden for the collections of information under the proposed rule will be reduced for Form No. 6 by about 14 percent. These estimates include the time for reviewing instructions, researching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The current annual reporting burden associated with these information collection requirements is as follows: Form No. 6: 22,572 hours, 148 responses, and 148 respondents.[6]

The proposed rule will reduce the existing reporting burden associated with Form No. 6 by an estimated 2,838 hours annually, or an average of 129 hours per response based on an estimated 22 oil pipelines who will be exempt from the filing requirements of Form No. 6 but not from the filing requirements of page 700.

Comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing this burden, can be sent to the Federal Energy Regulatory Commission, 941 North Capitol Street, N.E., Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415]; and to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer for Federal Energy Regulatory Commission), FAX: (202) 395–5167.

III. Discussion

A. Form No. 6

Form No. 6 provides the Commission with financial and operational data for the proper administration of the Commission's responsibilities for rate regulation of oil pipelines under the Interstate Commerce Act, as amended,[7] and the Act of 1992. In a like manner, the Commission requires the other entities it regulates to submit annual financial and operational data. However, the Commission has established minimum filing thresholds for submission of annual reports for both electric utilities and natural gas companies.[8] For example, a natural gas pipeline is only required to submit an annual report if its total gas sales or volumes transported exceeds 200,000 Mcf in each of the three previous calendar years. This has allowed the Commission to maintain data on the more significant pipelines and yet has allowed those whose operations are minimal to avoid the regulatory expense and burden of filing reports which would be of limited statistical importance to the Commission. The Commission here intends to provide the same type of relief from the annual filing burden and expense for oil pipelines with limited jurisdictional activity.

The Commission proposes to establish a filing threshold for Form No. 6 based on the annual jurisdictional operating revenues of an oil pipeline company. While the filing thresholds for electric utilities and natural gas companies are stated in volumes, the Commission believes that a volumetric threshold is not appropriate for oil pipelines.[9]

Analysis of the 146 oil pipelines that filed Form No. 6 for the 1993 reporting year indicates three natural breaks in jurisdictional operating revenues that could be used to establish a minimum filing threshold:

$100,000 level—22 oil pipelines, or 15 percent of the 1993 total, had jurisdictional operating revenues at or below this level.

$300,000 level—32 oil pipelines, or 22 percent of the 1993 total, had jurisdictional operating revenues at or below this level.

$1,000,000 level—38 oil pipelines, or 26 percent of the 1993 total, had jurisdictional operating revenues at or below this level.

The Commission proposes to establish the minimum reporting threshold for oil pipeline companies to file Form No. 6 at the $100,000 level of jurisdictional operating revenues. This level will exempt companies with minimal jurisdictional transactions from the burdens associated with preparation of the annual report, yet the Commission should continue to have statistically valid data for its use in oil pipeline rate regulation.

For both electric utilities and natural gas companies, the Commission's regulations require a company to look to its three immediately preceding reporting years to determine, *inter alia*, whether it is exempt from filing an annual report with the Commission.[10] If a regulated company had been exempt from reporting and exceeds the minimum filing threshold for each of the three immediately preceding calendar years, it would be required to file an annual report for the current reporting year. Thereafter, the company would be required to file an annual report until the level of its operations falls below the established threshold for the three immediately preceding calendar years, at which time it would again become exempt from the annual report requirement. This three-year approach was established to guard against anomalies in the operations of a regulated company and to provide some measure of stability in the annual reports, while not imposing an undue burden on companies which were clearly showing a pattern of operations below the established minimum thresholds.

The Commission proposes to require the same three-year test for oil pipelines to see if they meet the minimum exemption. That is, a pipeline will be exempt from preparing and filing FERC Form No. 6 if its jurisdictional operating revenues for the three calendar years immediately preceding the current reporting year were $100,000 or less per reporting year. For a newly established pipeline without three years of operations, the company, as is now required for electric utilities and natural gas companies, would use projected data to determine whether Form No. 6 needs to be filed.

Order No. 571 amended Form No. 6 by requiring, *inter alia*, that a new page 700 be incorporated into Form No. 6. This page requires an oil pipeline to report its total annual cost of service as calculated under the Opinion No. 154–B methodology,[11] its operating income, and its throughput in barrels and barrel-miles. This page is an integral part of the Commission's data collection efforts to ensure that the index prescribed by Order No. 561 properly tracks industry costs. Page 700 provides shippers with the necessary information to serve as a preliminary screening tool for pipeline rate filings. It is designed to enable shippers to compare proposed changes in rates against the change in the level of a pipeline's cost of service, to compare the change in a shipper's individual rate with the change in a pipeline's average company-wide barrel-mile rate, and to determine whether to challenge a pipeline's indexed rate increase filings. As such, page 700 provides the Commission and the public with information beyond the financial and accounting data found in the rest of Form No. 6. Because the information found on page 700 is not readily available elsewhere, the Commission proposes to require those pipelines that would be exempt from filing Form No. 6 to prepare and file page 700 at the time that other pipelines are required to

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[1] Notwithstanding the Commission's proposal to establish a threshold exemption from filing FERC Form No. 6, all jurisdictional oil pipelines will continue to be subject to the Commission's accounting and recordkeeping requirements (e.g., 18 CFR Parts 351, 352, and 356).

[2] Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992, Order No. 561, III FERC Stats. & Regs. ¶ 30,985 (1993); Order on Rehearing, Order No. 561–A, III FERC Stats. & Regs. ¶ 31,000 (1994).

[3] 42 U.S.C. 7172 note (West Supp. 1993).

[4] Cost-of-Service Reporting and Filing Requirements for Oil Pipelines, III FERC Stats. & Regs. ¶ 31,006 (1994).

[5] 18 CFR 357.2.

[6] These numbers are based on an average of respondents expected to file Form No. 6. The number of respondents actually filing the Form No. 6 may vary slightly each year.

[7] 49 App. U.S.C. 1 (1988).

[8] For electric utilities and licensees, see 18 CFR 141.1 and 141.2 and General Instruction 1, Classification of Utilities of the Uniform System of Accounts Prescribed for Public Utilities and Licensees, 18 CFR Part 101.

For natural gas companies, see 18 CFR 260.1 and 260.2 and General Instruction 1, Classification of Utilities of the Uniform System of Accounts Prescribed for Natural Gas Companies, 18 CFR Part 201.

[9] In establishing annual charges for the companies it regulates, the Commission considered the use of a volumetric standard in setting annual charges for oil pipelines, but rejected such an approach. It found, for the reasons stated in that proceeding, that the operating revenue approach for setting annual fees would most fairly and equitably distribute the oil program cost. See Annual Charges Under the Omnibus Budget Reconciliation Act of 1986, FERC Stats. & Regs., Preambles (1986–1990) ¶ 30,746 (1987) at pp. 30,631–30,634. For the reasons stated in that proceeding, the Commission believes that jurisdictional operating revenues is the appropriate basis for exemption of filing Form No. 6.

[10] In the case of a newly established jurisdictional entity, the projected data of the company would be the basis for determining whether an annual report would be required for its first year of operations. See 18 CFR Parts 101 and 201, General Instruction 1, Classification of Utilities, paragraph C.

[11] The Opinion No. 154–B methodology is derived from the Commission's opinions in Williams Pipe Line Company, Opinion No. 154–B, 31 FERC ¶ 61,377 (1985), on rehearing, Opinion No. 154–C, Williams Pipeline Company, 33 FERC ¶ 61,327 (1985); and ARCO Pipe Line Company, Opinion No. 351, 52 FERC ¶ 61,055 (1990), on rehearing, Opinion No. 351–A, ARCO Pipe Line Company, 53 FERC ¶ 61,398 (1990).

file Form No. 6 (*i.e.*, on or before March 31st of each year for the previous calendar year).

B. Annual Charges

Annual charges are assessed on all jurisdictional companies who file annual reports with the Commission to assist in defraying the cost of regulation of those companies. For public utilities and natural gas companies, those companies who fall below the reporting thresholds for those industries are not required to file annual reports, and therefore they do not pay annual charges to the Commission. Currently, all oil pipelines reporting jurisdictional operating revenues in Form No. 6 are subject to annual charges.[12] The Commission proposes to provide the same type of relief from annual charges as it provides with respect to other entities it regulates, by exempting from the requirement to pay annual charges those oil pipelines whose annual jurisdictional revenues are at or below the $100,000 threshold.

Annual charges for oil pipelines are calculated on the basis of jurisdictional operating revenues. If an oil pipeline company has no jurisdictional operating revenues, it pays no annual charge. For the 1993 reporting year, 22 of the 146 oil pipeline companies filing Form No. 6 either had no jurisdictional operating revenues, or their jurisdictional operating revenues were under $100,000. The remaining 124 oil pipelines with jurisdictional operating revenues over $100,000 paid annual charges with the smallest annual charge amount being $132. If the proposed change in filing requirements for Form No. 6 had been in effect for that reporting year, 22 companies would have been exempted from paying annual charges. The total annual charges involved based on 1993 jurisdictional operating revenues would amount to $77 for those companies, a *de minimis* amount.

Based on the foregoing, the Commission proposes to require annual charges only of those oil pipelines that are required to file Form No. 6. This would be consistent with the treatment accorded public utilities and natural gas companies.

IV. Environmental Analysis

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[13] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[14] The action proposed here is procedural in nature and therefore falls within the categorical exclusions provided in the Commission's regulations.[15] Therefore, neither an environmental impact statement nor an environmental assessment is necessary and will not be prepared in this rulemaking.

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act[16] generally requires the Commission to describe the impact that a proposed rule would have on small entities or to certify that the rule will not have a significant economic impact on a substantial number of small entities. An analysis is not required if a proposed rule will not have such an impact.[17]

Pursuant to section 605(b), the Commission certifies that the proposed rules and amendments, if promulgated, will not have a significant adverse economic impact on a substantial number of small entities. Rather, the proposed rules will relieve small entities of the burden of preparing and filing annual reports and of paying annual charges to the Commission.

VI. Comment Procedures

Copies of this notice of proposed rulemaking can be obtained from the Office of Public Information, Room 3104, 941 North Capitol Street, N.E., Washington, D.C. 20426. Any person desiring to file comments should submit an original and fourteen (14) copies of such comments to the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, not later than 30 days after the date of publication in the **Federal Register**.

The full text of this notice of proposed rulemaking also is available through the Commission Issuance Posting System (CIPS), an electronic bulletin board service, which provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, communications software should be set to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this notice will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3104, 941 North Capitol Street, N.E., Washington, D.C. 20426.

VII. Information Collection Requirements

Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rules.[18] While these proposed rules and amendments contain no new information collection requirements, we expect the proposed rule will revise and reduce the reporting requirements under existing Form No. 6.

The Commission uses the data collected under Form No. 6 to monitor the financial and operating data of oil pipeline companies subject to its jurisdiction, and to assist in determining the reasonableness of rates.

Because of the proposed revisions and expected reduction in public reporting burden under Form No. 6, the Commission is submitting a copy of the proposed rule to OMB for its review and approval. Interested persons may obtain information on these reporting requirements by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street NE, Washington, D.C. 20426 (Attention: Michael Miller), Information Policy and Standards Branch, (202) 208–1415, FAX (202) 208–2425; and to the Office of Information and Regulatory Affairs, Office of Management and Budget (Attention: Desk Officer for Federal Energy Regulatory Commission), Washington, D.C. 20503.

List of Subjects

18 CFR Part 357

Pipelines, Reporting and recordkeeping requirements, Uniform System of Accounts.

18 CFR Part 382

Annual Charges.

By direction of the Commission.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, the Commission gives notice of its proposal to amend Parts 357 and 382, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

[12] However, on a case by case basis, certain oil pipelines have been granted waiver of the Form 6 filing requirements.

[13] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Statutes and Regulations, Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[14] 18 CFR 380.4.

[15] See 18 CFR 380.4(a)(2)(ii).

[16] 5 U.S.C. 601–612.

[17] 5 U.S.C. 605(b).

[18] 5 CFR 1320.13.

PART 357—ANNUAL SPECIAL OR PERIODIC REPORTS: CARRIERS SUBJECT TO PART I OF THE INTERSTATE COMMERCE ACT

1. The authority citation for Part 357 is revised to read as follows:

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

2. Section 357.2 is revised to read as follows:

§ 357.2 FERC Form No. 6, Annual Report of Oil Pipeline Companies.

Each pipeline carrier subject to the provisions of section 20 of the Interstate Commerce Act whose annual jurisdictional operating revenues has been more than $100,000 for each of the three previous calendar years must prepare and file with the Commission copies of FERC Form No. 6, "Annual Report of Oil Pipeline Companies," pursuant to the General Instructions set out in that form. This report must be filed on or before March 31st of each year for the previous calendar year. Newly established entities must use projected data to determine whether FERC Form No. 6 must be filed. One copy of the report must be retained by the respondent in its files. The conformed copies may be produced by any legible means of reproduction. Notwithstanding the exemption provided above, those carriers exempt from filing Form No. 6 must prepare and file page 700 of FERC Form No. 6 on or before March 31st of each year for the previous calendar year, beginning with the year ending December 31, 1995, including the subscription required by § 385.2005(a) of this chapter.

PART 382—ANNUAL CHARGES

1. The authority citation for Part 382 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w; 3301–3432; 16 U.S.C. 791a-825r, 2601–2645; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

2. Section 382.102(c) is revised to read as follows:

§ 382.102 Definitions.

* * * * *

(c) *Oil pipeline company* means any person engaged in the transportation of crude oil and petroleum products subject to the Commission's jurisdiction under the Interstate Commerce Act with annual operating revenues greater than $100,000 in any of the three calendar years immediately preceding the fiscal year for which the Commission is assessing annual charges.

* * * * *

[FR Doc. 95–14532 Filed 6–13–95; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

Wyoming Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Wyoming regulatory program (hereinafter, the "Wyoming program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the Wyoming Environmental Quality Act pertaining to procedures for providing public notice for coal mining permit applications. The amendment is intended to reduce costs to the Wyoming program and retain consistency with the corresponding Federal regulations and SMCRA.

DATES: Written comments must be received by 4:00 p.m., m.d.t., July 14, 1995. If requested, a public hearing on the proposed amendment will be held on July 10, 1995. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.d.t., on June 29, 1995.

ADDRESSES: Written comments should be mailed or hand delivered to Guy V. Padgett, Casper Field Office Director at the address listed below.

Copies of the Wyoming program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy V. Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, Rm. 2128, 100 East "B" Street, Casper, Wyoming 82601–1918

Dennis Hemmer, Director, Department of Environmental Quality, Herschler Building—4th Floor West, 125 West 25th Street, Cheyenne, Wyoming 82002, Telephone: (307) 777–7938

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Telephone: (307) 261–5824.

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program

On November 26, 1980, the Secretary of the Interior conditionally approved the Wyoming program. General background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Wyoming program can be found in the November 26, 1980, **Federal Register** (45 FR 78637). Subsequent actions concerning Wyoming's program and program amendments can be found at 30 CFR 950.11, 950.12, 950.15 and 950.16.

II. Proposed Amendment

By letter dated June 2, 1995, Wyoming submitted a proposed amendment to its program pursuant to SMCRA (revision to the public notice procedures, Administrative Record No. WY–30–01). Wyoming submitted the proposed amendment at its own initiative. The provision of Environmental Quality Act that Wyoming proposes to revise is section Wyoming Statute (W.S.) 35–11–406(j) [public notice procedures for permit applications).

Specifically, Wyoming proposes to revise subsection (j) as follows: (1) By adding to the beginning of the third sentence "[f]or initial applications or additions of new lands * * *;" (2) by removing from the end of the third sentence the language "* * * and to the operator of any oil and gas well within the permit area or, if there is no oil and gas well, to the lessee of record of any oil and gas lease within the permit area * * *; (3) by adding, prior to the last sentence, the sentence "[t]he applicant shall mail a copy of the application mining plan map within five (5) days after first publication to the Wyoming oil and gas commission;" and (4) by adding to the last sentence the language "* * * sworn statement of * * *."

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Wyoming program.

1. Written Comments

Written comments should be specific, pertain only to the issues proposed in

this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.d.t. on June 29, 1995. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.** The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 8, 1995.

Russell F. Price,

Acting Regional Director, Western Regional Coordinating Center.

[FR Doc. 95–14531 Filed 6–13–95; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 311

Privacy Program

AGENCY: Office of the Secretary, DOD.

ACTION: Proposed rule.

SUMMARY: The Office of the Secretary of Defense proposes to exempt a system of records identified as DWHS 29, entitled Personnel Security Adjudications File, from certain provisions of 5 U.S.C. 552a. Exemption is needed to comply with prohibitions against disclosure of information provided the government under a promise of confidentiality and to protect privacy rights of individuals identified in the system of records.

DATE(S): Comments must be received no later than August 14, 1995, to be considered by the agency.

ADDRESSES: Send comments to the OSD Privacy Act Officer, Washington Headquarter Services, Correspondence and Directives Division, Records Management Division, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cragg at (703) 695–0970.

SUPPLEMENTARY INFORMATION: Executive Order 12866. The Director, Administration and Management, Office of the Secretary of Defense has determined that this proposed Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act of 1980. The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act

The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act proposed rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

List of Subjects in 32 CFR part 311

Privacy.

Accordingly, 32 CFR part 311 is amended as follows:

1. The authority citation for 32 CFR part 311 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat 1896 (5 U.S.C.552a).

2. In Section 311.7, add a new paragraph (c)(8) as follows:

§ 311.7 Procedures for exemptions.

* * * * *

(c) *Specific exemptions.* * * *

(8) *System identifier and name.*DWHS P29, Personnel Security Adjudications File.

Exemption. Portions of this system of records that fall within the provisions of 5 U.S.C. 552a(k)(5) may be exempt from the following subsections (d)(1) through (d)(5).

Authority. 5 U.S.C. 552a(k)(5).

Reasons. From (d)(1) through (d)(5) because the agency is required to protect the confidentiality of sources who furnished information to the Government under an expressed promise of confidentiality or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. This confidentiality is needed to maintain the Government's continued access to information from persons who otherwise might refuse to give it. This exemption is limited to disclosures that would reveal the identity of a confidential source. At the time of the request for a record, a determination will be made concerning whether a right, privilege, or benefit is denied or specific information would reveal the identity of a source.

* * * * *

Dated: June 1, 1995.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense

[FR Doc. 95–14582 Filed 6–13–95; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 1

[CGD 94–105]

RIN 2115–AE99

Coast Guard Rulemaking Procedures

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to revise the regulations describing its rulemaking procedures to provide for a "direct final rule" process for use with noncontroversial rules. Under the direct final rule procedure, a rule would become effective 60 days after publication in the **Federal Register** unless the Coast Guard receives written adverse comment within thirty days. This new procedure should expedite the promulgation of routine, noncontroversial rules by reducing the time necessary to develop, review, clear, and publish separate proposed and final rules.

DATES: Comments must be received on or before July 14, 1995.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 94–105), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT R. Goldberg, Staff Attorney, Regulations and Administrative Law Division, Office of Chief Counsel, U.S. Coast Guard Headquarters, (202) 267–6004.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 94–105) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

This rulemaking informs the public of the Coast Guard's intention to use direct final rulemaking in appropriate cases. Since this rulemaking would not impose any substantive requirements on the public, a comment period of 30 days is considered sufficient. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES.** The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information: The principal persons involved in drafting this document are LT R. Goldberg, Project Manager, Office of Chief Counsel, and CDR T. Cahill, Project Counsel, Office of Chief Counsel.

Discussion of Proposed Rules

The Coast Guard is proposing to establish a new direct final rulemaking procedure for noncontroversial rules. This process is consistent with the goals of the National Performance Review, a recent Presidential initiative to reorganize and streamline the Federal government. The process is also consistent with recommendations of the Administrative Conference of the United States and meets the requirements for providing an opportunity for public notice and comment under the Administrative Procedure Act (APA) (5 U.S.C. 553).

Under this procedure, the Coast Guard would publish direct final rules in the final rule section of the **Federal Register.** The preamble to a direct final rule would indicate that no adverse

comment is anticipated and that the rule would become effective not less than 60 days after publication unless written adverse comment or written intent to submit adverse comment is received within a specified time, usually not less than 30 days. This procedure would ensure that, as required by the APA, the public will be given notice of Coast Guard rulemaking actions and will have an opportunity to participate in the rulemaking by submitting comments.

If no written adverse comment or written notice of intent to submit an adverse comment is received in response to the publication of a direct final rule, the Coast Guard would then publish a notice in the **Federal Register** stating that no adverse comment was received and confirming that the rule will become effective as scheduled. However, if the Coast Guard receives any written adverse comment or any written notice of intent to submit an adverse comment, then the Coast Guard would publish a notice in the final rule section of the **Federal Register** to announce withdrawal of the direct final rule. If adverse comments clearly apply to only part of a rule, and that part is severable from the remaining portions, as for example, a rule that deletes several unrelated regulations, the Coast Guard may adopt as final those parts of the rule on which no adverse comments were received. The part of the rule that was the subject of adverse comment would be withdrawn. If the Coast Guard decides to proceed with a rulemaking following receipt of adverse comments, a separate Notice of Proposed Rulemaking (NPRM) would be published, unless an exception to the APA requirement for notice and comment applies.

A comment would be considered "adverse" if it objects to the rule as written. A comment submitted in support of a rule would obviously not be considered adverse. Additionally, a comment suggesting that the policy or requirements of the rule should or should not be extended to other Coast Guard programs outside the scope of the rule would not be considered as adverse.

Rules for which the Coast Guard believes that the direct final rulemaking procedures may be appropriate include, but are not limited to, noncontroversial rules that (1) affect internal procedures of the Coast Guard, (2) are nonsubstantive clarifications or corrections to existing rules, (3) govern the internal organization of the Coast Guard, such as spheres of responsibilities, organizational structure, lines of authority and delegation of powers and duties, (6) make changes to the rules implementing the Privacy Act, (7) adopt technical standards set by outside organizations, (8) are statements of Coast Guard policy, (9) waive navigation and vessel inspection laws and regulations, (10) implement Bridge to Bridge Radiotelephone regulations, (11) govern the regulations of aids to navigation, (12) set out international or inland navigation rules, (13) govern individual regattas and marine parades, (14) regulate or describe anchorage areas, (15) regulate or prescribe shipping safety fairways, (16) regulate or describe offshore traffic separation schemes, (17) delete unnecessary and obsolete regulations, (18) set boundary lines of Coast Guard authority, (19) regulate the compatibility of cargoes, and (20) describe or regulate safety or security zones.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedure of DOT is unnecessary. The proposed change in procedure will not impose any costs on the public. In cases where the rule would result in cost savings, the cost savings would occur sooner with the use of direct final rule procedure.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. The Coast Guard has evaluated this proposal under the Regulatory Flexibility Act. If adopted, this proposal will not have substantive impact on the public. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B (as revised by 59 FR 38654, July 29, 1994), this proposal is categorically excluded from further environmental documentation as a regulation of a procedural nature. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 1

Administrative practice and procedures, Authority delegations (Government agencies), Coast Guard, Freedom of Information, Penalties.

For the reasons set out in the preamble, the Coast Guard proposes to amend Subpart 1.05 of Part 1 of Title 33, Code of Federal Regulations follows:

PART 1—GENERAL REVISIONS

Subpart 1.05—[Amended]

1. The authority citation for Subpart 1.05 is revised to read as follows:

Authority: 5 U.S.C. 552, 553, App. 2; 14 U.S.C. 2, 631, 632, and 633; 33 U.S.C. 471, 499; 49 U.S.C. 101, 322; 49 CFR 1.4(b), 1.45(b), and 1.46.

2. Section 1.05–35 is added to read as follows:

§ 1.05–35 Direct final rule.

(a) A direct final rule may be issued to allow speedier finalization of noncontroversial rules that are unlikely to result in adverse public comment.

(b) A direct final rule will be published in the **Federal Register** with an effective date that is generally at least 60 days after the date of publication.

(c) The public will usually be given at least 30 days from the date of publication in which to submit adverse comments or a notice of intent to submit adverse comments. A comment is considered adverse if it objects to adoption of the rule as written.

(d) If not adverse comments or notice of intent to submit adverse comments are received within the specified period, the Coast Guard will publish a notice in the **Federal Register** to confirm that the rule will go into effect as scheduled.

(e) If the Coast Guard receives written adverse comment or written notice of intent to submit adverse comment, the Coast Guard will publish a notice in the final rule section of the **Federal Register** to announce withdrawal of the direct final rule. If adverse comments clearly apply to only part of a rule, and it is possible to remove that part without affecting the remaining portions, the Coast Guard may adopt as final those parts of the rule on which no adverse comments were received. The part of the rule that is the subject of adverse comment will be withdrawn. If the Coast Guard decides to proceed with a rulemaking following receipt of adverse comments, a separate Notice of Proposed Rulemaking (NPRM) will be published unless an exception to the Administrative Procedure Act requirements for notice and comment applies.

Dated: June 2, 1995.

J.E. Shkor,

Rear Admiral, U.S. Coast Guard, Chief Counsel.

[FR Doc. 95–14554 Filed 6–13–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–5219–4]

Request for Opt-Out of the Reformulated Gasoline Program: Jefferson County, Albany and Buffalo, New York; Twenty-Eight Counties in Pennsylvania; and Hancock and Waldo Counties in Maine, General Procedures for Future Opt-Outs and Extension of Stay

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: In today's action, EPA is proposing to remove Jefferson County and the Albany and Buffalo areas in New York; twenty-eight counties in Pennsylvania; and Hancock and Waldo counties in Maine from the list of covered areas identified in section 80.70 of the reformulated gasoline rule. This is based on requests from the Governors of New York, Pennsylvania and Maine that these areas opt out of this federal program. In a separate action signed by the EPA Administrator on December 29, 1994, EPA stayed the application of the reformulated gasoline regulations in Jefferson County and the Albany and Buffalo areas of New York; the twenty-eight opt-in counties in Pennsylvania; and Hancock and Waldo counties in Maine effective January 1, 1995 until July 1, 1995, to allow finalization of this rulemaking. Today's notice also proposes to extend this stay during the pendency of this rulemaking, until the agency takes final action on the proposed opt-out for these areas. This action does not affect the necessity for these areas to comply with the requirements of the anti-dumping program.

EPA is also proposing general rules establishing the criteria and procedures for states to opt-out of the RFG program.

DATES: Regarding the proposal to extend the stay of the reformulated gasoline regulations in the designated New York, Pennsylvania, and Maine counties, no public hearing will be held. Comments must be received by June 28, 1995.

If a public hearing is held on the opt-out of the designated New York, Pennsylvania, and Maine counties or on the general procedures for future opt-outs, comments must be received by August 4, 1995. If a hearing is not held, comments must be received by July 14, 1995. Please direct all correspondence to the addresses shown below.

The Agency will hold a public hearing on the proposed opt-out of the designated New York, Pennsylvania, and Maine counties or on the general procedures for future opt-outs if one is requested by June 21, 1995. If a public hearing is held, it will take place on July 5, 1995. To request a hearing, or to find if and where a hearing will be held, please call Mark Coryell at (202) 233–9014.

ADDRESSES: Comments should be submitted (in duplicate, if possible) to Air Docket Section, Mail Code 6102, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. A copy should also be sent to Mr. Mark Coryell at U.S. Environmental Protection Agency, Office of Air and Radiation, 401 M Street, SW (6406J), Washington, DC 20460.

Materials relevant to this notice have been placed in Docket A–94–68. The docket is located at the Air Docket Section, Mail Code 6102, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, in room M–1500 Waterside Mall. Documents may be inspected from 8:00 a.m. to 4:00 p.m. A reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Coryell, U.S. Environmental Protection Agency Office of Air and Radiation, 401 M Street, SW (6406J), Washington, DC 20460, (202) 233–9014.

SUPPLEMENTARY INFORMATION: A copy of this action is available on the OAQPS Technology Transfer Network Bulletin Board System (TTNBBS). The TTNBBS can be accessed with a dial-in phone line and a high-speed modem (PH# 919–541–5742). The parity of your modem should be set to none, the data bits to 8, and the stop bits to 1. Either a 1200, 2400, or 9600 baud modem should be used. When first signing on, the user will be required to answer some basic informational questions for registration purposes. After completing the registration process, proceed through the following series of menus:

(M) OMS
(K) Rulemaking and Reporting
(3) Fuels
(9) Reformulated gasoline

A list of ZIP files will be shown, all of which are related to the reformulated gasoline rulemaking process. Today's action will be in the form of a ZIP file and can be identified by the following title: OPTOUT.ZIP. To download this file, type the instructions below and transfer according to the appropriate software on your computer:

<D>ownload, <P>rotocol, <E>xamine, <N>ew, <L>ist, or <H>elp Selection or <CR> to exit: D filename.zip

You will be given a list of transfer protocols from which you must choose one that matches with the terminal software on your own computer. The software should then be opened and directed to receive the file using the same protocol. Programs and instructions for de-archiving compressed files can be found via <S>ystems Utilities from the top menu, under <A>rchivers/de-archivers. Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

I. Introduction

This notice describes EPA's proposed action to remove Jefferson County and the Albany and Buffalo areas in New York (a total of nine counties in New York); the twenty-eight opt-in counties in Pennsylvania; and Hancock and Waldo counties in Maine from the list of covered areas defined by § 80.70 of the reformulated gasoline rule per the request of the States of New York, Pennsylvania and Maine. It also

describes the Agency's proposal for general rules concerning criteria and procedures for states to opt out of the reformulated gasoline program. Finally, today's notice also proposes to extend the stay of application of the reformulated gasoline regulations in the designated counties during the pendency of this rulemaking, until the agency takes final action on the proposed opt-out for these areas.

II. Background

The reformulated gasoline (RFG) program is designed to reduce ozone levels in the largest metropolitan areas of the U.S. with the worst ground level ozone problems by reducing vehicle emissions of the ozone precursors, specifically volatile organic compounds (VOC), through fuel reformulation. Reformulated gasoline also achieves a significant reduction in air toxics. In Phase II of the program nitrogen oxides (NO_X), another precursor of ozone, are also reduced. The 1990 Amendments to the Clean Air Act requires reformulated gasoline in the nine cities with the highest levels of ozone. In section 211(k)(6), Congress provided the opportunity for states to choose to opt-in to the RFG program for their other nonattainment areas. Opting in under this provision is relatively straightforward. The only area of discretion for EPA involves establishing an appropriate effective date for the start of the program in the opt-in area. To date, EPA has acted under this provision on a case-by-case basis, given that the lead time needed to supply a new area is often dependent on the specific refineries that would supply the area and the specific distributional infrastructure available between the refineries and the local retail stations. While EPA is not now proposing regulations that would establish the effective date for an opt-in area, EPA is interested in receiving comment on the need and benefit of having such regulatory provisions, as well as the most appropriate provisions.

EPA recognizes that there is considerable interest in allowing attainment areas to participate in the federal reformulated gasoline program. The Ozone Transport Commission, established under section 184 of the Act to assess the degree of interstate transport of ozone throughout the ozone transport region,[1] is reviewing the viability of a region-wide reformulated gasoline program. Other areas which are currently classified attainment for the ozone air quality standard but which have ozone monitoring data close to the federal ozone standard are considering various ozone control measures to mitigate the risk of future ozone violations. One such control measure is the reformulated gasoline program. In light of the expressed interest in allowing attainment areas to participate in the reformulated gasoline program, EPA is soliciting comment on the feasibilty of and need for attainment area opt-in.

EPA questions whether section 211(k) of the Act provides the Agency with the discretion to allow attainment areas to opt-in to this federal program. For example, section 211(k)(6) specifies that EPA shall extend the prohibition of section 211(k)(5) to ozone nonattainment areas upon the request of a governor. In addition, section 211(k)(1) authorizes EPA to establish requirements for reformulated gasoline to be used in specified nonattainment areas. EPA invites comment on its authority under section 211(k). EPA also invites comment on whether the Agency has authority under section 211(c) of the Act to establish a requirement that federally certified RFG be sold in attainment areas that "opt-in" under such a program.

EPA issued final rules establishing requirements for reformulated gasoline on December 15, 1993. 59 FR 7716 (February 16, 1994). During the development of the RFG rule a number of States inquired as to whether they would be permitted to opt-out of the RFG program at a future date, or opt-out of certain of the requirements. This was based on their concern that the air quality benefits of RFG, given their specific needs, might not warrant the cost of the program, specifically focusing on the more stringent standards in Phase II of the program (starting in the year 2000). Such States wished to retain their ability to opt-out of the program. Other States indicated they viewed RFG as an interim strategy to help bring their nonattainment areas into attainment sooner than would otherwise be the case.

The regulation issued on December 15, 1993 did not include procedures for opting out of the RFG program because EPA had not proposed and was not ready to adopt such procedures. However, the Agency did indicate that it intended to propose such procedures in a separate rule.

Jefferson County and the other eight New York counties affected by this proposal were included as covered areas in EPA's reformulated gasoline regulations based on Governor Mario Cuomo's request of October 28, 1991, that these areas be included under the Act's opt-in provision for ozone nonattainment areas (57 FR 7926, March 5, 1992). See 40 CFR 80.70(j)(10)(vi). On November 29, 1994, EPA received a petition from the Commissioner of New York's Department of Environmental Conservation, Mr. Langdon Marsh, to remove Jefferson County from the list of areas covered by the requirements of the reformulated gasoline program. EPA understands that Commissioner Marsh is acting for Governor Cuomo in this matter. The Administrator responded to the State's request in a letter to Commissioner Marsh dated December 12, 1994, stating EPA's intention to grant New York's request, and conduct rulemaking to implement this. In the letter of December 12, addressing the opt-out request for Jefferson County, the Administrator also indicated that effective January 1, 1995, and until the rulemaking to remove Jefferson County from the list of covered areas is completed, EPA would not enforce the reformulated gasoline requirements in Jefferson County for reformulated gasoline violations arising after January 1, 1995. This was based on the particular circumstances in Jefferson County.

On December 23, 1994, Commissioner Marsh of New York's Department of Environmental Conservation wrote to further request the opt-out of the Albany and Buffalo areas which include the counties of Albany, Greene, Montgomery, Rennsselaer, Saratoga, Schenectady, Erie and Niagara. EPA Assistant Administrator for Air and Radiation, Mary Nichols, responded to the state's request in a letter to Commissioner Marsh dated December 28, 1994, stating EPA's intention to grant New York's request, and conduct rulemaking to implement this. The December 28 letter also indicated EPA's intent to stay the reformulated gasoline regulations from January 1, 1995, until July 1, 1995, in the specified counties while the Agency completes rulemaking to appropriately change the regulations. The letter stated, however, that the requirements of the reformulated gasoline program would apply in these areas until the stay becomes effective January 1, 1995.

Twenty-eight counties in Pennsylvania were included as covered areas in EPA's reformulated gasoline regulations based on Governor Robert P. Casey's request dated September 25, 1991. See 40 CFR 80.70(j)(11) (i) through (xxviii). The counties referred to are listed as follows: Adams, Allegheny, Armstrong, Beaver, Berks, Blair, Butler, Cambria, Carbon, Columbia, Cumberland, Dauphin, Erie, Fayette, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Mercer, Monroe, Somerset, Northhampton, Perry, Washington, Westmoreland, Wyoming and York. On December 1, 1994, EPA received a petition from Governor Casey to remove these twenty-eight counties from the list of covered areas defined by § 80.70 of the reformulated gasoline rule. As with New York's request, the Administrator responded to the State's request in a letter to Governor Casey dated December 12, 1994, stating EPA's intention to grant Pennsylvania's request, and conduct rulemaking to implement this. Effective January 1, 1995, and until formal rulemaking to remove the twenty-eight counties from the list of covered areas is completed, EPA would not enforce the reformulated gasoline requirements in these twenty-eight counties for reformulated gasoline violations arising after January 1, 1995. This was based on the particular circumstances in Pennsylvania. EPA has reserved its authority to enforce the reformulated gasoline program for violations that may have occurred prior to January 1, 1995.

Hancock and Waldo Counties in Maine were included as covered areas in EPA's reformulated gasoline regulation based on Governor John R. McKernan's request of June 26, 1991, that these counties be included under the Act's opt-in provision for ozone nonattainment areas. (56 FR 46119, September 10, 1991) See 40 CFR 80.70(j)(5) (viii) and (ix). On December 27, EPA received a petition from the Acting Commissioner of Maine's Department of Environmental Protection, Ms. Deborah Garrett, to remove Hancock and Waldo Counties in Maine from the list of areas covered by the requirements of the reformulated gasoline program. EPA understands that Commissioner Garrett is acting for Governor McKernan in this matter. EPA Assistant Administrator for Air and Radiation, Mary Nichols, responded to the state's request in a letter to Commissioner Garrett, dated December 28, 1994, stating EPA's intention to grant Maine's request, and conduct rulemaking to implement this. The December 28 letter also stated EPA's intent to stay the reformulated gasoline regulations from January 1, 1995 until July 1, 1995, in the specified counties while the Agency completes rulemaking to appropriately change the regulations. However, EPA has reserved its authority to enforce the reformulated gasoline program for violations that may have occurred prior to January 1, 1995.

III. EPA's Proposal To Grant New York's, Pennsylvania's and Maine's Requests To Remove Selected Opt-In Areas From the Requirements of the Reformulated Gasoline Program and Extension of the Stay of Application of the Reformulated Gasoline Regulations

EPA believes that it is reasonable to construe section 211(k) as authorizing the Agency to establish procedures and requirements for states to opt out of the reformulated gasoline program. This would only apply to areas that have previously opted in under section 211(k)(6); the mandatory covered areas would not be allowed to opt out of the program.

In section 211(k)(6), Congress expressed its clear intention regarding state opt-in to this program. That paragraph establishes that "upon the application of the Governor of a State, the Administrator shall apply the prohibition set forth in paragraph (5) in any (ozone nonattainment) area in the State * * * The Administrator shall establish an effective date for such prohibition * * *."[2] However, with respect to opting out, "the statute is silent or ambiguous with respect to the specific issue" and the question is whether EPA's interpretation "is based on a permissible construction of the statute." *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 (1984). In addition, "[i]f Congress has explicitly left a gap for the Agency to fill, there is an express delegation of authority to the Agency to elucidate a specific provision of the statute by regulation." *Id.* at 843–44. If the delegation is implicit, the Agency may adopt a reasonable interpretation of the statute. *Id.* at 844.

Section 211(k)(1) provides that EPA is to promulgate "regulations establishing requirements for reformulated gasoline." This provision therefore delegates to EPA the authority to define the requirements for reformulated gasoline. Clean Air Act section 301(a)(1) also delegates to EPA the general authority to promulgate "such regulations as are necessary" for EPA to carry out its function under the Act. Given these delegations of legislative rulemaking authority, EPA's interpretation of section 211(k) with respect to opting out should be upheld unless manifestly contrary to the Act. *Chevron*, 467 U.S. at 843–44.

EPA believes that it is appropriate to interpret section 211(k) as authorizing states to opt-out of this program, provided that a process is established for a reasonable transition out of the program.[3] There are really two aspects to this, the first being whether states should be allowed to opt out at all, the second being what conditions, if any, should be placed on opting out. With respect to the former, the ability to opt out is consistent with the Act's recognition that states have the primary responsibility to develop a mix of appropriate control strategies needed to reach attainment with the NAAQS. While various mandatory control strategies were established under the Clean Air Act, the Act still evidences a clear commitment to allowing states the flexibility to determine the appropriate mix of other measures needed to meet their air pollution goals. Section 211(k)'s opt-in provision reflects this deference to state choice, providing that opt-in will occur upon application by the governor. The only discretion EPA retains regarding opt-in is in setting or extending the effective date. Allowing states the ability to opt-out is a logical extension of these considerations of deference to state decision making.

Given such deference, it follows that opting out should be accomplished through application of the governor. It also follows that the conditions on opting out should be geared towards achieving a reasonable transition out of the reformulated gasoline program, as compared to requiring a state to justify its decision. EPA has identified two principal areas of concern in this regard. The first involves coordination of air quality planning. For example, reformulated gasoline in opt-in areas has been relied upon by several states in their State Implementation Plan submissions or in their redesignation requests. The second involves appropriate lead time for industry to transition out of the program.

With respect to air quality planning, EPA believes there is no reason to delay the removal of the 39 affected counties, or portions of counties, in New York, Pennsylvania and Maine. The 39 counties have not had an ozone exceedance over a consecutive three-year period. Certain of these thirty-nine

[1] The ozone transport region is comprised of the following states: Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and the District of Columbia.

[2] Paragraph 5 of section 211(k) prohibits the sale of conventional, or non-reformulated gasoline, in covered areas.

[3] The preamble to the December 15, 1993, final regulations failed to provide a clear discussion of EPA's views on this issue. While EPA noted that it "may pursue a separate action in the future that would allow states to opt out of the RFG program, provided sufficient notice is given," the preamble also indicated there were concerns over whether EPA had authority to allow states to opt-out. 59 FR 7808 (February 16, 1994). The context for these statements, however, makes it clear that EPA's concerns were based on issues surrounding questions of opting-in for only Phase I of the reformulated gasoline program. See 59 FR 7809. As noted above, EPA believes that it does have authority to establish requirements that allow states to opt-out of this program.

counties have pending requests with EPA for redesignation to attainment status, and the remaining areas intend to seek such redesignation. The State Implementation Plans for these areas do not include or rely on reformulated gasoline as a control measure. For the moderate areas in Pennsylvania, reformulated gasoline is included in the redesignation plan as a contingency measure in the maintenance plan. Allowing the areas to opt-out now would not interfere with implementing that contingency. The areas could opt into the reformulated gasoline program in the future, if necessary.

EPA's letters of December 12 and 28, 1994, to the States of New York, Pennsylvania and Maine state that reformulated gasoline will no longer be required in the specified areas effective January 1, 1995, pending completion of the rulemaking to remove the affected counties. These letters, combined with the requests from New York, Pennsylvania and Maine to opt-out, have given the industries involved in the supply, distribution and sale of reformulated gasoline to these areas notice of the Agency's intent to remove these areas from the reformulated gasoline program. This has provided time for industry to plan for the transition from reformulated gasoline to conventional gasoline in the affected areas. In a separate notice signed by the EPA Administrator on December 29, 1994, and for the reasons described therein, EPA has stayed the program in these thirty-nine counties, or portions thereof, effective January 1, 1995, until July 1, 1995. Based on this chronology, EPA proposes that these areas be removed from the reformulated gasoline program effective upon the issuance of final action in this rulemaking.

As mentioned above, on December 29, 1994, EPA issued a final rule staying the application of the reformulated gasoline regulations for certain areas that had opted in to the reformulated gasoline program. 60 FR 2696 (January 11, 1995). This stay applied to Jefferson County and the Albany and Buffalo areas of New York, the twenty eight opt-in counties in Pennsylvania, and Hancock and Waldo counties in Maine. It stayed the regulations in these areas effective January 1, 1995 until July 1, 1995. EPA now proposes to extend this stay during the pendency of this rulemaking, until the agency takes final action on the proposed opt-out for these areas. This extension of the stay is based on the reasons described in the December 29, 1994 rule, and the fact that EPA will not be able to complete the opt-out rulemaking for these areas prior to July 1, 1995.

EPA intends to take final action on the proposed extension of the stay before July 1, 1995, to avoid the serious disruption to the gasoline distribution system, the regulated industry and the public that would be caused by a temporary imposition of the reformulated gasoline requirements in these areas. Based on this potential for serious disruption, and the reasons noted by EPA when it issued the stay in December 29, 1994 (60 FR 2698, January 11, 1995), EPA has determined that there is good cause under 5 U.S.C. 553(b) and Clean Air Act section 307(d)(1) to limit the public comment period on the proposed extension of the stay to June 28, 1995, and to not provide an opportunity for a public hearing on this proposed extension. EPA finds that additional notice and public procedure would be impracticable, unnecessary, and contrary to the public interest.

IV. General Procedures for EPA's Processing of Future Opt-Out Requests

EPA is also proposing general rules to cover future opt-out requests by states. EPA's proposal would authorize the Administrator to approve a petition to opt-out all or a portion of an opt-in area. Such a petition would have to be submitted by the governor, or their authorized representative, and would need to include information describing how, if at all, reformulated gasoline has been relied upon by the state in its State Implementation Plans, revisions to such plans, or redesignation requests, both pending or already approved. This would include, for example, attainment as well as maintenance plans.

If a state did rely on reformulated gasoline as a control measure in such plans or requests, then the state would have to describe if and how it intended to replace reformulated gasoline as a control measure. In addition, the state would need to identify whether it intended to submit a revision to its Plan or request for redesignation, the current schedule for submitting any revised submission, and the current status of state action on such revised submission, and if not, the reasons for not submitting a revision. This would include, for example, the status of any legislative or administrative action, including notice and comment on such a revision.

The Administrator would have authority to establish an appropriate effective date for removal of an area from the list of covered areas defined in § 80.70 of the reformulated gasoline rule, subject to certain important limitations. For example, if reformulated gasoline was relied upon as a control measure in an approved plan, then the opt-out would not become effective until 30 days after the Agency had approved an appropriate revision to the state plan. Likewise, if reformulated gasoline was not relied upon in an approved or pending SIP, SIP revision, or redesignation request, then the opt-out would become effective 30 days from receipt of a complete opt-out petition. If reformulated gasoline was relied upon as a control measure in a plan that had been submitted to the Agency but is still pending, and the Agency has found the plan to be complete and/or made a protectiveness finding under 40 CRF 51.448 and 93.128; then the opt-out would become effective 120 days from the date a complete petition is received. When the state has a pending plan that the Agency has determined complete and/or for which the Agency has made a protectiveness finding and the state has decided to withdraw the submission or has indicated to the Agency the state's intention to submit a revision, then the opt-out would become effective 30 days from receipt of a complete petition from the state, as described above and specified in the proposed regulatory language.

Under this proposal, the regulated community would typically have thirty days lead time to transition out of the program for that area, from the point a complete opt-out petition had been received by EPA. Where a state's approved SIP includes reformulated gasoline as a control measure, there would typically be a longer period of notice, as the opt-out would not be effective until 30 days from the effective date for EPA approval of a revised SIP which removes reformulated gasoline as a control measure. EPA's experience to date with the current opt-out requests indicates that the regulated community can, in most cases, act relatively quickly to reroute supplies and change plans. It also is clear that a short transition period will avoid problems of market uncertainty and market disruptions. Some representatives of industry have communicated to EPA their concern for sufficient lead time for affected industries to make adjustments to their infrastructure and the need for a period of public comment on each reformulated gasoline program covered area opt-out request. Some have suggested that opt-out not be effective until 90 days after a governor's request is received by EPA, while others have suggested that the opt-out timeframe be dealt with on a case-by-case basis. EPA will consider this suggestion and specifically requests comments on these issues and other suggestions.

The proposal is structured so that the effective date for opting out is based on coordination with the state's air quality planning. Where no state SIP or redesignation request relies on reformulated gasoline, no further coordination is needed. Where a submission pending before the Agency contains reformulated gasoline as a control measure, and the Agency has not taken final action on the submission, it would be appropriate to allow opt-out to occur quickly where the state either withdraws the pending SIP submission or indicates its intention to make a substitute for RFG at some future date. This would provide flexibility for the states and allow for orderly state planning, as the state's planning would be consistent with the use of RFG in the area. On the other hand, where the Agency has taken final action approving a SIP, it is appropriate for the Agency to maintain the status quo until the state submits and EPA approves a revision removing RFG as a control measure in the approved SIP. This recognizes the requirement that states implement an approved plan until such time EPA approves its revision. Finally, where a plan submission is pending before EPA, and EPA has made a protectiveness finding for purposes of conformity and/or the submission has been found or deemed complete, then opt-out should be delayed for 120 days to provide the Agency an adequate opportunity to review the current completeness determination and/or protectiveness finding on the SIP submission without the use of RFG as a control measure and to communicate to the state any potential change in SIP status.

EPA believes that it is important that a state choosing to opt-out of the reformulated gasoline program should plan to make any appropriate revisions to its SIP, if necessary, to replace the reformulated gasoline program as a control measure. Careful planning is needed by the state as EPA analysis indicates that reductions from other sources are often much less practicable. Reformulated gasoline is one of the most cost-effective measures for ozone control available and also yields significant air toxic benefits.

EPA specifically reserves its authority to monitor compliance with the reformulated gasoline program and to take appropriate action to address violations that may occur prior to the effective date for any opt-out.

V. Environmental Impact

If an area opts out of the reformulated gasoline program, it will not receive the reductions in volatile organic compounds, oxides of nitrogen (NO_X), and air toxics that are expected from this program. Instead, the areas would be subject to the federal controls on Reid vapor pressure for gasoline in the summertime, and would receive control of NO_X and air toxics through the requirements of the conventional gasoline anti-dumping program. These latter requirements are designed to ensure that gasoline quality does not degrade from the levels found in 1990. The specific areas covered by this rule have data showing compliance with the National Ambient Air Quality Standard (NAAQS) for ozone for three or more consecutive years. With regard to the general rule for opt-out, EPA is proposing that before opt-out is allowed, States requesting opt-out must provide information on substitutes for the reformulated gasoline program or in some cases have substitutes approved, depending on the status of EPA's processing of the SIP. EPA expects that this and the SIP process will ensure that our air quality is maintained. However, these areas would be foregoing the additional air quality benefits obtained from the use of reformulated gasoline.

VI. Economic Impact

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant impact on a substantial number of small entities. This proposed rule is not expected to result in any additional compliance cost to regulated parties and in fact is expected to decrease compliance costs and decrease costs to consumers in the affected areas.

VII. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the Agency must determine whether a regulation is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, EPA must obtain Office of Management and Budget (OMB) clearance for any activity that will involve collecting substantially the same information from 10 or more non-Federal respondents. While this proposed rule does require information from a state requesting opt-out, EPA does not believe it will receive more than nine opt-out requests per year. If EPA determines that 10 or more states will be affected in any year, EPA will prepare an Information Collection Request and make it available for public review and comment.

Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

VIII. Statutory Authority

The statutory authority for the action in this rule is granted to EPA by sections 211 (c) and (k) and section 301(a) of the Clean Air Act as amended, 42 U.S.C. 7545 (c) and (k) and 7601(a).

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Gasoline, Motor vehicle pollution.

Dated: June 2, 1995.

Carol M. Browner,

Administrator.

40 CFR part 80 is proposed to be amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Sections 114, 211 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

2. Section 80.2 is amended by adding paragraph (vv) to read as follows:

§ 80.2 Definitions.

* * * * *

(vv) *Opt-in area.* An area which becomes a covered area under § 80.70 pursuant to section 211(k)(6) of the Clean Air Act.

3. Section 80.70 is amended by revising the first sentence of paragraph (j) introductory text to read as follows:

§ 80.70 Covered areas.

* * * * *

(j) The ozone nonattainment areas listed in this paragraph (j) of this section are covered areas beginning on January 1, 1995, except that those areas listed in paragraphs (j)(5)(viii) and (ix), (j)(10)(i), (iii) and (v) through (xi) and (j)(11) of this section shall not be covered areas until EPA takes final action on the proposal to remove these areas as covered areas. * * *

* * * * *

§ 80.70 [Amended]

4. Section 80.70 is amended by removing paragraphs (j)(5)(viii) and (ix).

5. Section 80.70 is amended by removing paragraphs (j)(10)(i), (iii) and (v) through (xi), and redesignating paragraphs (j)(10)(ii) and (iv) as (j)(10)(i) and (ii).

6. Section 80.70 is amended by removing paragraph (j)(11) and redesignating paragraphs (j)(12) through (15) as (11) through (14).

7. Section 80.70 is amended by adding paragraph (l) to read as follows:

§ 80.70 Covered areas.

* * * * *

(l) Upon the effective date for removal under § 80.72(a), the geographic area covered by such approval shall no longer be considered a covered area for purposes of subparts D, E and F of this part.

8. Section 80.72 is added to read as follows:

§ 80.72 Procedures for opting out of the covered areas.

(a) In accordance with paragraph (b) of this section, the Administrator may approve a petition from a state asking for removal of any opt-in area, or portion of an opt-in area, from inclusion as a covered area under § 80.70. In approving any such petition, the Administrator shall establish an appropriate effective date for such removal, pursuant to paragraph (c) of this section.

(b) To be approved under paragraph (a) of this section, a petition must be signed by the governor of a state, or his or her authorized representative, and must include the following:

(1) A geographic description of each opt-in area, or portion of each opt-in area, which is covered by the petition;

(2) A description of all ways in which reformulated gasoline is relied upon as a control measure in any approved state or local implementation plan or plan revision, or in any submission to the Agency containing any proposed plan or plan revision (and any associated request for redesignation) that is pending before the Agency when the petition is submitted; and

(3) For any opt-in areas covered by the petition for which reformulated gasoline is relied upon as a control measure as described under paragraph (b)(2) of this section, the petition shall include the following information:

(i) Identify whether the state is withdrawing any such pending plan submission;

(ii)(A) Identify whether the state intends to submit a revision to any such approved plan provision or pending plan submission that does not rely on reformulated gasoline as a control measure, and describe the alternative air quality measures, if any, that the state plans to use to replace reformulated gasoline as a control measure;

(B) A description of the current status of any proposed revision to any such approved plan provision or pending plan submission, as well as a projected schedule for submission of such proposed revision;

(C) If the state is not withdrawing any such pending plan submission and does not intend to submit a revision to any such approved plan provision or pending plan submission, describe why no revision is necessary;

(D) If reformulated gasoline is relied upon in any pending plan submission, other than as a contingency measure consisting of a future opt-in, and the Agency has found such pending plan submission complete or made a protectiveness finding under 40 CFR 51.448 and 93.128, demonstrate whether the removal of the reformulated gasoline program will affect the completeness and/or protectiveness determinations;

(4) Upon request by the Adminstrator, the Governor of a State, or his or her authorized representative, shall submit additional information upon request of the Administrator

(c) (1) Except as provided in paragraph (c)(2) and (3) of this section, the Administrator shall set an effective date for removal of an area under paragraph (a) of this section of 30 days from receipt of a complete petition by EPA.

(2) If reformulated gasoline is contained as an element of any plan or plan revision that has been approved by the Agency, other than as a contingency measure consisting of a future opt-in, then the effective date under paragraph (a) of this section shall be 30 days from the effective date for Agency approval of a revision to the plan that removes reformulated gasoline as a control measure.

(3) Unless the state has withdrawn the submission or indicated its intention to submit a revision, if reformulated gasoline is contained as an element in any plan or plan revision that has been submitted to and is pending approval by the Agency, other than as a contingency measure consisting of a future opt-in, and where such pending plan or plan revision has been found or deemed to be complete and/or the Agency has made a protectiveness finding under 40 CFR 51.448 and 93.128 concerning such submission, then the effective date under paragraph (a) of this section shall be 120 days from the date a complete petition is received by the Agency.

(d) The Administrator shall publish a notice in the **Federal Register** of any petition approved under paragraph (a) of this section, announcing the effective date for removal.

[FR Doc. 95–14573 Filed 6–13–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket No. 95–72; FCC95–212]

End User Common Line Charges

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice of Proposed Rulemaking seeks comment on the application of End User Common Line Charges, hereinafter referred to as Subscriber Line Charges (SLCs), to local loops used with Integrated Services Digital Network (ISDN) and other services that permit the provision of multiple voice-grade-equivalent channels to a customer over a single facility. This proceeding was instituted to give the Commission an opportunity to reexamine existing rules and make changes in light of new technologies and services.

DATES: Comments are to be filed on or before June 29, 1995, and replies are to be filed on or before July 14, 1995.

FOR FURTHER INFORMATION CONTACT: Claudia Pabo, (202) 418–1595, Common Carrier Bureau, Policy and Program Planning Division.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking in CC Docket No. 95–72, adopted May 24, 1995 and released May 30, 1995.

The complete text of this Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M St. NW., Washington, D.C. 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, Inc., at (202) 857–3800, 1919 M Street NW., room 246, Washington, D.C. 20554.

Synopsis of Notice of Proposed Rulemaking

I. Introduction

1. In this Notice of Proposed Rulemaking, we seek comment on the application of End User Common Line Charges, hereinafter referred to as Subscriber Line Charges (SLCs), to local loops used with Integrated Services Digital Network (ISDN) and other services that permit the provision of multiple voice-grade-equivalent channels to a customer over a single facility. We believe that the question of SLCs for ISDN and similar services must be considered in the broader context of competitive developments in the interstate access market, and the resulting pressure to reduce unnecessary support flows in order to ensure fair competition and preserve universal service.

II. Background

A. ISDN and Other Derived Channel Technology and Services

2. ISDN permits digital transmission over ordinary local loops and T–1 facilities through the use of advanced central office equipment and customer premises equipment (CPE). Currently, LECs offer two basic types of ISDN service. Basic Rate Interface (BRI) Service allows a subscriber to obtain two voice-grade-equivalent channels and a signalling/data channel over an ordinary local loop, which is generally provided over a single twisted pair of copper wires. Primary Rate Interface (PRI) Service allows subscribers to obtain 23 voice-grade-equivalent channels and one signalling/data channel over a single T–1 facility with two pairs of twisted copper wires.

3. There are services in addition to ISDN that use derived channel technology to provide multiple channels over a single facility. The LECs also use derived channel technologies within their networks to provide customers with individual local loops, as opposed to BRI or PRI ISDN. In such situations, the end user would not be aware that the LEC was using this technology to provide their local loop.

B. Subscriber Line Charges

4. In the 1983 Access Charge Order, 48 FR 10319, March 11, 1983, the Commission adopted rules prescribing a comprehensive system of tariffed access charges for the recovery of LEC costs associated with the origination and termination of interstate calls. The access charge rules called for recovery of a major portion of the local loop costs assigned to the interstate jurisdiction through SLCs. The remainder of local loop costs are recovered from interexchange carriers (IXCs) through the per minute CCL charge. The CCL charges paid by the IXCs are reflected in the charges paid by interstate toll users.

5. Multiline business SLCs are currently capped at $6.00 per line per month. Residential and single line business SLCs are capped at $3.50 per line per month. The basic interstate toll rate decreased approximately 34% between 1984 and the end of 1992, much of this due to the shift in the recovery of common line costs from CCL rates to SLCs and the resulting stimulation in demand.

C. Recent Decisions on SLCs for ISDN

6. The Commission first addressed the application of SLCs to ISDN and other technologies that permit the provision of multiple voice grade channels over a two- or four-wire facility in 1992 when the Common Carrier Bureau adopted an order concluding the local exchange carriers must apply a SLC to each derived channel even when the channels were provided over a single facility. The Commission subsequently affirmed the Bureau's order. At the same time, the Commission recognized that this question involved policy issues best considered in the context of a rulemaking proceeding.

D. Competition

7. The interstate access market has changed since the Commission adopted the access charge rules at issue here. Alternative service providers such as Teleport, which is owned by a group of large cable companies, and MFS have deployed fiber optic networks in core business areas of many large cities, providing interstate access services, and, in some areas, local exchange service as well. Cable television companies, in addition to those with an ownership interest in Teleport, have also entered the local telephone and/or interstate access market in certain areas, and have expressed an intention to enter the telephone market on a broader basis. Interexchange carriers, such as MCI and AT&T, have also entered the market or announced an intention to do so. In addition, the Commission has required expanded interconnection for the provision of special access service and switched transport. New York State has also required LECs to unbundle their local loops in order to permit the competitive provision of local exchange service, and a number of other states are considering similar measures.

8. The developments tend to bring pressure to bear on support flows in the current access charge structure. LEC rates that significantly exceed cost will tend to attract new entrants who may be able to offer service at lower rates. As a result, it may be necessary to reduce support flows that are not specifically tailored to produce social benefits.

III. Discussion

A. Overview

9. In this proceeding, we seek comment on the proper application of SLCs to BRI and PRI ISDN service provided to residential and business customers as well as to other services that permit the provision of multiple derived channels over a single facility.

B. Analytical Framework

10. We believe that several basic principles should guide our resolution of these issues. While these considerations are sometimes in potential conflict with one another, we believe that they all must be considered to assure a sound, principled resolution of the issues before us in this proceeding.

11. This rulemaking proceeding gives the Commission an opportunity to reexamine existing rules, and make changes in light of new technologies and services. We must be careful to

avoid erecting regulatory barriers to the development of beneficial new technologies. This is particularly important when these services and technologies can facilitate access to the benefits of the National Information Infrastructure. At the same time, we should not amend our rules to favor new technologies and services simply because they are new. Any difference in the regulatory treatment of new technologies and services must have a sound basis in public policy.

12. We also believe that it is desirable to avoid measures that could reduce the level of nontraffic sensitive (NTS) local loop costs now recovered through flat charges. Any reduction in SLC revenues will tend to increase interstate toll rates because lower SLC revenues will cause LECs to seek to recover additional revenues through the per minute CCL charge. We also believe that policies that would appear to reduce dramatically SLC charges to large business customers, but not to residential customers, must be carefully examined.

13. Resolution of the issues in this proceeding should also take into account competitive developments in the interstate access market, and the accompanying need to identify and reduce unnecessary support flows. In light of competitive developments in the interstate access market, rule changes that could result in lower SLC revenues and higher CCL rates, thus potentially increasing support flows, must be carefully examined. Increasingly, IXCs and large business customers have alternatives to use of LEC facilities and can avoid support flows inherent in the current access charge rate structure, including the CCL charge. In the long run, inefficient bypass of the LEC networks by high volume toll customers could threaten to undermine the support flows that foster universal service.

C. Options

1. Overview

14. There are potentially many ways that the number of SLCs for ISDN and similar derived channel services could be computed. At one extreme, we might require customers to pay one SLC for each physical facility serving a given customer, such as a standard local loop or T–1 facility. At the other extreme, we could maintain the current rule under which an SLC is applied to each derived communications channel.

15. There are also intermediate options. For example, the number of SLCs to be applied to ISDN facilities could be based on a ratio of the average LEC cost of providing a derived channel service, such as a BRI or PRI ISDN connection, to the average cost of providing an ordinary local loop or T–1 connection, including the line or trunk card costs in both cases. Under this option, a PRI customer would, for example, pay six SLCs if the average LEC cost of providing an ISDN T–1 connection, including line cards, is six times the average cost of providing an ordinary T–1 facility. It would also be possible to apply one SLC for every two derived channels, an option that would reduce by 50 percent the SLC revenues that would be generated under the current requirement that one SLC be assessed for each derived channel.

16. Another set of options would focus on the increasingly competitive interstate access market in determining how to compute the SLC to be paid by customers of derived channel services. One possibility is to combine a reduction in the currently required level of SLC charges for derived channel services with a small increase in the per-channel SLC for all local loops. Another option involves giving the LECs some flexibility in setting SLC rates for derived channel services, but modifying the price cap rules so that any reduction in SLC flat rate recovery does not increase the CCL rate.

2. The Per-Facility Approach

17. Under this approach, customers pay a single SLC per derived channel service connection. Thus, under this option, both BRI and PRI ISDN customers would pay a single SLC. Under a variation on this option, an ISDN BRI customer with one copper pair would pay a single SLC, and a PRI customer with two copper pairs would pay two SLCs.

3. Intermediate Options

18. An option that may represent a potential middle ground between the per facility and the per derived channel approaches would be to charge SLCs based on a ratio of the average LEC cost of providing a derived channel service, including line or trunk cards, to the average LEC cost of providing an ordinary local loop or T–1 facility. Under this approach, a PRI customer, for example, would pay six SLCs if the LEC cost of providing an ISDN T–1 connection, including line or trunk cards, is six times the cost of providing an ordinary T–1 facility. This approach also includes the cost of the line cards in developing the cost relationship between ISDN connections and non-ISDN connections even though line cards are treated as switching, not local loop facilities for jurisdictional separations and Part 69 cost allocation purposes.

19. Reducing SLCs for derived channel connections to 50 percent of the level required by the current rules is another intermediate option between the per-facility and per-derived channel approaches. Under this approach, the LECs would charge one SLC for every two derived channels.

4. The Per-Derived Channel Approach

20. The existing rules require that the LECs charge a SLC for each derived channel in the case of ISDN and other similar services.

5. Additional Options

21. There are also several other options that combine reductions in the number of SLCs that our current rules impose on derived channel services with measures to ensure that this does not increase per minute CCL charges, putting upward pressure on interstate toll rates. One such option would be to permit the LECs to impose a reduced number of SLCs for derived channel services, accompanied by a small increase in SLC rates. For example, the current caps on SLCs could be increased by $.25 per month for all subscribers. A second approach would be to permit, but not require, the LECs to apply fewer SLCs for derived channel services than the current rules require, but to adjust the price cap rule to prevent a reduction in SLC revenues from causing an increase in CCL rates.

6. Request for Comments

22. We ask interested parties to comment on the analytical framework and options for defining the SLCs that subscribers to ISDN and other derived channel services must pay. We also seek comment on our analysis of the various options described in this Notice. Commenting parties are urged to suggest additional or different policy goals as part of the analytical framework for evaluating options as well as to present additional options for the Commission's consideration. We also seek comment on whether any new rules for the application of SLCs for ISDN and similar derived channel services should apply to all local loops provisioned by the telephone company through the use of derived channel technology, regardless of whether the use of derived channel technology in the provisioning of the loop is apparent to the subscriber or not.

23. In addition, we note that it would be helpful if interested parties provide us with specific information concerning the perceived elasticity of demand for ISDN services, the various ISDN service options available in the marketplace, the total intrastate charges for each of these service options, as well as the advantages and disadvantages of alternative service and equipment configurations that offer communications capabilities comparable to those of ISDN. Moreover, certain of the options for applying SLCs under our part 69 access charge rules described above would use a definition of the term "line" that differs from the current separations definition in Part 36.[1] We seek comment on whether we should initiate the process of considering conforming separations changes through a referral to a Joint Board in the event that we adopt such an approach. In light of competitive developments in the interstate access market, interested parties may also wish to take this opportunity to comment more generally on the need for additional changes to the way carriers can recover the interstate assignment of local loop costs and local switching or other costs that the parties view as NTS.

IV. Ex Parte Presentations

24. This proceeding is a non-restricted notice and comment rulemaking. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules.

V. Regulatory Flexibility Analysis

25. We certify that the Regulatory Flexibility Act is not applicable to the rule changes we are proposing in this proceeding. The Secretary shall send a copy of the Notice to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

VI. Comment Filing Dates

26. Interested parties may file comments with the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554 on or before June 29, 1995, and reply comments on or before July 14, 1995. Parties are to provide a copy of any filings in this proceeding to Peggy Reitzel of the Policy and Program Planning Division, Common Carrier Bureau, Room 544, 1919 M Street, N.W., Washington, D.C. 20554. Parties are also to file one copy of any documents in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

[1] See para. 11 *supra.*

VII. Ordering Clauses

27. Accordingly, *it is ordered* That, pursuant to the authority contained in Sections 1, 4, and 201–205 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, & 201–205, a *Notice of Proposed Rulemaking is Hereby Adopted.*

List of Subjects in 47 CFR Part 69

Communications common carriers, Reporting and record keeping requirements, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–14509 Filed 6–13–95; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 95–78, RM–8619]

Radio Broadcasting Services; Stonewall, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Mary C. Glass proposing the allotment of Channel 295A to Stonewall, Mississippi, as the community's first local aural transmission service. Channel 295A can be allotted to Stonewall in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.1 kilometers (8.7 miles) northeast in order to avoid a short-spacing conflict with the licensed site of Station WSTZ(FM), Channel 294C, Vicksburg, Mississippi. The coordinates for Channel 295A at Stonewall are 32–11–37 and 88–39–48.

DATES: Comments must be filed on or before July 31, 1995, and reply comments on or before August 15, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Mary C. Glass, P.O. Box 848, Stonewall, Mississippi 39363 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–78, adopted June 2, 1995, and released June 9, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–14514 Filed 6–13–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 95–79, RM–8620]

Radio Broadcasting Services; De Kalb, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Choctaw Broadcasting, proposing the allotment of Channel 289C2 to De Kalb, Mississippi, as the community's first local FM service. Channel 289C2 can be allotted to De Kalb in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 289C2 at De Kalb are 32–46–03 and 88–39–03.

DATES: Comments must be filed on or before July 31, 1995, and reply comments on or before August 15, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Thomas L. Goldman, Choctaw Broadcasting, P.O. Box 3160,

Meridian, Mississippi 39302 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–79, adopted June 1, 1995, and released June 9, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–14515 Filed 6–13–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 95–76, RM–8611]

Radio Broadcasting Services; Homestead and North Miami Beach, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by New Age Broadcasting, Inc., licensee of Station WXDJ(FM), Channel 239C1, Homestead, Florida, proposing to downgrade Station WXDJ(FM) from Channel 239C1 to Channel 239C2, and the reallotment of Channel 239C2 from Homestead to North Miami Beach, Florida, and the modification of its license to specify North Miami Beach as its community of license, in accordance with Section 1.420(i) of the Commission's rules. Channel 239C2 can be allotted to North Miami Beach in compliance with the Commission's minimum distance separation requirements with a site restriction of 23.8 kilometers (14.8 miles) south of the community. The coordinates for Channel 239C2 at North Miami Beach are North Latitude 25–42–55 and West Longitude 80–09–17.

DATES: Comments must be filed on or before July 31, 1995, and reply comments on or before August 15, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Carl R. Ramey, Todd M. Stansbury, Wiley, Rein & Fielding, 1776 K Street, NW., Washington, DC 20006 (Attorneys for Petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–76, adopted May 30, 1995, and released June 9, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–14521 Filed 6–13–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 95–77, RM–8616]

TV Broadcasting Services; Virginia Beach, VA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Lockwood Broadcasting, Inc., proposing the allotment of Channel 21 to Virginia Beach, Virginia. Channel 21 can be allotted to Virginia Beach consistent with the minimum distance separation requirements of Sections 73.610 and 73.698 of the Commission's Rules with a site restriction of 4.0 kilometers (2.5 miles) south to avoid the freeze zone surrounding Washington, DC. The coordinates for UHF Channel 21 at Virginia Beach are 36–48–38 and 75–58–30.

DATES: Comments must be filed on or before July 31, 1995, and reply comments on or before August 15, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Mark J. Prak, Esq., Brooks, Pierce, McLendon, Humphrey & Leonard, P.O. Box 1800, Raleigh, North Carolina 27602 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–77, adopted June 2, 1995, and released June 9, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–14520 Filed 6–13–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[I.D. 060195F]

Mid-Atlantic Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public hearings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold public hearings to allow for input on Amendment 7 to the Fishery Management Plan for the Summer Flounder Fishery (FMP).

DATES: Written comments will be accepted until June 22, 1995. All hearings will begin at 7 p.m. except the New York hearing, which begins at 7:30 p.m., as follows:

1. June 19, 1995, in Virginia Beach, VA.
2. June 21, 1995, in Ronkonkoma, NY.
3. June 21, 1995, in Toms River, NJ.

ADDRESSES: Send comments to David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 South New Street, Dover, DE 19904–6790.

The hearings will be held at the following locations:

1. Virginia Beach—Days Inn, 5807 Northampton Boulevard, Virginia Beach, VA.
2. Ronkonkoma—Holiday Inn, 3845 Veterans Memorial Highway, Ronkonkoma, NY.
3. Toms River—Holiday Inn, 290 Highway 37 East, Toms River, NJ.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, (302) 674–2331; fax (302) 674–5399).

SUPPLEMENTARY INFORMATION: The FMP currently contains a fishing mortality rate reduction strategy that requires a reduction to a fishing mortality rate of 0.23 beginning in 1996. The purpose of Amendment 7 is to revise that schedule to require a fishing mortality rate of 0.41 in 1996, 0.30 in 1997, and 0.23 in 1998 and thereafter. In addition, the total coastwide quota (commercial and recreational) in 1996 and 1997 may not exceed 18.51 million pounds (8.40 m. kg) unless such a higher quota would result in a fishing mortality rate of 0.23 or less.

All hearings will be tape recorded and the tapes will be filed as the official transcript of the hearings.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at 302–674–2331 at least 5 days prior to the hearing dates.

Dated: June 8, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–14475 Filed 6–13–95; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 60, No. 114
Wednesday, June 14, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Yakima Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Yakima PIEC Advisory Committee will meet on June 28, 1995 at the Yakima Public Schools Administration Office located at 104 N. Fourth Avenue, Yakima, Washington. The meeting will begin at 9 a.m. and continue until 4 p.m. This meeting will focus on areas of the President's Forest Plan implementation which agencies are finding most challenging to implement. Agenda items to be covered include: (1) Any problems we are having in implementing the Plan, (2) update on Snoqualmie Pass Management Area planning, (3) update on legislation that may influence implementation of the Plan. All Yakima Province Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, P.O. Box 811, Wenatchee, Washington 98807, 509–662–4335.

Dated: June 7, 1995.

Sonny J. O'Neal,

Forest Supervisor, Wenatchee National Forest.

[FR Doc. 95–11485 Filed 6–13–95; 8:45 am]

BILLING CODE 3410–11–M

Eastern Washington Cascades Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Eastern Washington Cascades PIEC Advisory Committee will meet on June 29, 1995 in Campbell's Conference Center (Ballroom #3), 104 W. Wooden, Chelan, Washington. The meeting will begin at 9 a.m. and continue until 4 p.m. This session will focus on areas of the President's Forest Plan implementation which agencies are finding most challenging to implement. Agenda items to be covered include: (1) Clarify the role of the Committee, (2) President's Forest Plan implementation strategy, (3) identify challenges the agencies see in implementing the President's Forest Plan. All Eastern Washington Cascades Province Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, P.O. Box 811, Wenatchee, Washington 98807, 509–662–4335.

Dated: June 7, 1995.

Sonny J. O'Neal,

Forest Supervisor, Wenatchee National Forest.

[FR Doc. 95–14486 Filed 6–13–95; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration.

Title: U.S–Japan Semiconductor Arrangement Data Collection Program.

Agency Form Number: ITA–4115P.

OMB Approval Number: 0625–0211.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 1,476 hours.

Number of Respondents: 41 respondents submitting 492 responses.

Avg Hours Per Response: 1 hour for reporting requirements and 24 hours for recordkeeping requirements.

Needs and Uses: Under the terms of the U.S.–Japan Semiconductor Arrangement, the Department of Commerce is required to gather information on U.S. semiconductor sales in Japan. The information provided by the respondents will allow for calculation of market share in the Japanese semiconductor market.

Affected Public: Businesses or other for–profit organizations.

Frequency: Monthly and recordkeeping.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration.

Title: Coast Pilot Report.

Agency Form Number: NOAA 77–6.

OMB Approval Number: 0648–0007.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 50 hours.

Number of Respondents: 100.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The National Ocean Service Coast Pilot is a series of nine books that supplement the marine nautical charts. The Coast Pilot contains essential marine information important to navigators of U.S. coastal and intracoastal waters, but which cannot be graphically displayed on charts. Without this form, it would be difficult for the public to voluntarily provide information to assist in keeping the publications current.

Affected Public: Individuals.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Don Arbuckle, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: June 5, 1995.

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–14484 Filed 6–13–95; 8:45 am]

BILLING CODE 3510–CW–F

International Trade Administration

[A–570–840]

Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Manganese Metal From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 14, 1995.

FOR FURTHER INFORMATION CONTACT: David Boyland or Sue Strumbel, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–4198 or (202) 482–1442.

Preliminary Determination

We preliminarily determine that manganese metal from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930 ("the Act"), as amended. The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on November 28, 1994 (59 FR 61869, December 2, 1994), the following events have occurred: On December 23, 1994, the United States International Trade Commission (ITC) issued an affirmative preliminary injury determination (see ITC Investigation No. 731–TA–724). On December 30, 1994, we sent a letter to the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) and to the China Chamber of Commerce for Metals, Minerals, and Chemical Products (CCCMMCP) requesting names and addresses of PRC producers and exporters of manganese metal sold in the United States. On February 13, 1995, we received a list of producers and exporters of manganese metal from the Beijing Foreign Economic Relations and Trade Commission. This list indicated the number of exporters of manganese metal during the period of investigation.

On February 15, 1995, we postponed the preliminary determination until June 6, 1995 (60 FR 10065, February 23, 1995). On February 6 and 23, 1995, responses to the Department's questionnaire were received from the following exporters of manganese metal: China Hunan International Economic Development Corporation (HIED), China Metallurgical Import and Export Hunan Corporation (CMIECHN), China National Electronic Import and Export Hunan Company (CEIEC), Great Wall Industry Import and Export Corporation (GWIIEC), Hunan Golden Globe Import and Export Company (HGG), and Minmetal Precious and Rare Minerals Import and Export Company (Minmetals). On April 14, 1995, we sent supplemental questionnaires to the respondents, as well as questionnaires regarding sales to intermediate countries. Responses to the intermediate and supplemental questionnaires were received on April 24 and May 10, 1995, respectively. Based on the April 24, 1995 responses to the Department's intermediate country questionnaires, the Department sent out questionnaires on May 15, 1995, to those companies in third countries that purchased subject merchandise from respondent companies during the POI. To date the Department has received three responses from these third-country purchasers.

Postponement of Final Determination

Pursuant to section 735(a)(2)(A) of the Act, on June 2, 1995, the PRC respondents in this investigation requested that, in the event of an affirmative preliminary determination in these proceedings, the Department postpone the final determination in these proceedings to 135 days after the date of publication of the affirmative determination in the **Federal Register**. Given that there is no compelling reason not to do so, we are postponing the final determination.

Scope of the Investigation

The subject merchandise in this investigation is manganese metal, which is composed principally of manganese, by weight, but also contains some impurities such as carbon, sulfur, phosphorous, iron and silicon. Manganese metal contains by weight not less than 95 percent manganese. All compositions, forms and sizes of manganese metal are included within the scope of this investigation, including metal flake, powder, compressed powder, and fines. The subject merchandise is currently classifiable under subheadings 8111.00.45.00 and 8111.00.60.00 of the Harmonized Tariff schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (POI) is June 1 through November 30, 1994.

Nonmarket Economy Country Status

The Department has treated the PRC as a nonmarket economy country (NME) in all past antidumping investigations (see Notice of Final Determination of Sales at Less than Fair Value: Saccharin from the PRC (59 FR 58818, November 15, 1994)). No information has been provided in this proceeding that would lead us to overturn our former determinations. Therefore, in accordance with section 771(18)(C) of the Act, we have treated the PRC as an NME for purposes of this investigation.

Where the Department is investigating imports from an NME, section 773(c)(1) of the Act directs us when possible to base foreign market value (FMV) on the NME producers' factors of production, valued in a market economy that is at a level of economic development comparable to that of the NME under investigation and that is a significant producer of comparable merchandise. We have done so in this preliminary determination. The sources of individual factor prices are discussed in the FMV section below.

Intermediate Country Resellers

Based on the responses to the Department's May 5, 1995 questionnaires to third-country purchasers of subject merchandise from the PRC, none of the subject merchandise that such parties purchased from the PRC during the POI was subsequently sold to the United States.

Separate Rates

All six respondent companies have requested separate antidumping duty rates. For the reasons indicated in the June 6, 1995, concurrence memorandum to the Deputy Assistant Secretary, the Department does not consider HGG to be the seller of subject merchandise for the sales activity reported by that company. Accordingly, HGG's request for a separate rate is not considered below. Its exports will be subject to the PRC-wide margin.

In cases involving nonmarket economies, the Department's policy is to assign a separate rate only when an exporter can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities. In determining whether companies should receive separate rates, we focus our attention on the exporter rather than the manufacturer, as our concern is the manipulation of export prices.

HIED is "owned by all the people." It is the parent company of China Hunan International Economic Development Corporation, Zhuhai Corporation (Zhuhai) and China Hunan International Economic Development Ming Hua Trading Corporation (Ming Hua). Both Zhuhai and Ming Hua reportedly exported subject merchandise during the POI. Although Zhuhai and Ming Hua have been identified individually as being "owned by all the people," HIED states that it consolidates the financial statements of these companies into its own financial statements. Additionally, the higher level management of both companies are assigned and approved by HIED.

GWIIEC is an exporter of subject merchandise. The corporate structure provided by GWIIEC identifies the company as a "subsidiary" of a larger holding company. This holding company (the first tier-holding company) is in turn a "subsidiary" of another company (the second-tier holding company) which reportedly received its initial capital from a government ministry. GWIIEC and the first-tier holding company have been identified as being "owned by all the people." The submissions do not state whether the second-tier holding company is "owned by all the people."

CMIECHN and "Hunan Nonferrous Metals Import & Export Associated Co. (CNIECHN) exported the subject merchandise during the POI. Although each is individually "owned by all the people" and has its own business license, CMIECHN and CNIECHN reportedly share the same high level management, business address, and accounting department.

Minmetals is the exporter of subject merchandise and was identified in its response as being "owned by all the people." The president and vice president of Minmetals hold these same positions at another company which is reportedly a separate business entity and which is not involved in the manufacture or sale of subject merchandise.

CEIEC is the exporter of subject merchandise and is reportedly "owned by all people." This company claims to have three subsidiaries which are not involved in the manufacture or sale of subject merchandise.

In the Final Determination of Sales at Less than Fair Value: Silicon Carbide from the PRC (Silicon Carbide) (59 FR 22585, May 2, 1994), the Department stated that "ownership of a company by all the people does not require the application of a single rate." Accordingly, these companies are eligible for consideration for a separate rate under our criteria. However, as discussed below, the business structures of the respondent companies, as well as the manner in which they have requested separate rates, raises certain issues concerning which company should be considered the recipient of the separate rate.

To establish whether a firm is entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the Final Determination of Sales at Less Than Fair Value: Sparklers from the PRC (Sparklers) (56 FR 20588, May 6, 1991) and amplified in Silicon Carbide. Under the separate rates criteria, the Department assigns separate rates only where respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. Absence of De Jure Control

The respondents submitted a number of documents to demonstrate the absence of *de jure* control of their business activities by the PRC central government. The documents include the following:

- *Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People* (April 13, 1988) This law granted autonomy to state-owned enterprises by separating ownership and control (Article 2). It also granted enterprises the right to set prices and the right to decide what type of commodity to produce (Article 22–26).
- *Excerpts from PRC's States Council Decree: Provisions on Changing the System of Business Operation for States Owned Enterprises* (December 31, 1992) This decree superseded the April 13, 1988 law and codified existing practice. It also gave state-owned enterprises the right to establish "production, management, and operation[al] policies;" the right to set prices, sell products, purchase production inputs, make investment decisions, and dispose of profits and assets. These rights apply specifically to an enterprise's import and export activities (Provision 12).
- *Order from MOFERT, No. 4, 1992* and *Temporary Provision for Administration of Export Commodities (Export Provisions)* (December 21, 1992) The *Export Provisions* indicate those products subject to direct government control. Electrolytic manganese metal does not appear on the *Export Provisions* list and hence, the subject merchandise under investigation is not subject to export constraints. We note that the *Emergent Notice on Changes in Issuing Authority for Export Licenses Regarding Public Bidding Quota for Certain Commodities* (MOFTEC #140) (Effective April 1994) cancelled previous export licenses for certain commodities. Manganese metal was not among these commodities.

Consistent with *Silicon Carbide* and subsequent PRC determinations, we determine that the existence of the laws cited to above demonstrates that the respondent companies are not subject to *de jure* central government control with respect to export sales and pricing decisions. In addition to the above laws, and regulations, respondents provided the following documents.

- *PRC's Enterprise Legal Person Registration Administrative Regulations* (June 13, 1988) This regulation sets forth the procedure for registering enterprises as legal persons.
- *Law of the People's Republic of China on Enterprise Bankruptcy* (December 2, 1986) This law sets forth bankruptcy procedures for state-owned enterprises.
- *GATT Document Concerning Transparency of China's Foreign Trade Regime* (February 12, 1992) This document listed the PRC central government's response to questions by a GATT committee regarding the PRC's foreign trade regime.

We note that there is some evidence that the provisions of the above-cited laws and regulations have not been implemented uniformly among different sectors and/or jurisdictions within the PRC (see "PRC Government Findings on Enterprise Autonomy," in Foreign Broadcast Information Service-China-93–133 (July 14, 1993)). As such, the Department has determined that a *de facto* analysis is necessary to determine whether HIED, GWIIEC, CMIECHN/CNIECHN, Minmetals, and CEIEC are subject to central government control over export sales and pricing decisions.

2. Absence of De Facto Control

The Department typically considers four factors when evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices are set by, or subject to the approval of, a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses (see Silicon Carbide).

Normally, to determine whether a respondent is entitled to a separate rate,

we apply the separate rate test to individual companies "owned by all the people." However, in this case, groups of individual companies "owned by all the people" are presenting themselves as single business units. The relationship between these companies (*i.e.*, CMIECHN and CNIECHN, and HIED and its "subsidiaries" Zhuhai and Ming Hua) appears to be "corporate " in nature. We are uncertain of what significance we should attach to these corporate relationships in the PRC. Thus, for purposes of the preliminary determination, when the facts presented to the Department indicate that respondents are operating as individual business units, we have applied the Department's separate rates analysis to the business unit (*i.e.*, two or more "owned by all the people" companies operating in unison), as opposed to the individual companies "owned by all the people."

HIED and its subsidiaries, Zhuhai and Ming Hua, are treated as one business entity in HIED's response. Similarly, the responses of CMIECHN/CNIECHN characterize these two companies as a single business entity. The information provided in the questionnaire and supplemental questionnaire responses appears to support these characterizations. Accordingly, the Department considers HIED and its subsidiaries (Zhuhai and Ming Hua), and CMIECHN/CNIECHN to be single business entities for purposes of the preliminary determination.

In response to our questionnaires, HIED, GWIIEC, CMIECHN/CNIECHN, MINMETALS, and CEIEC have each asserted that they: (1) Are allowed to retain the proceeds from export sales; (2) maintain their own unrestricted bank accounts, including foreign exchange earnings which have been converted into remninbi (RMB); (3) are able to sell assets; (4) set prices independently of government direction; (5) base the prices charged customers on arm's length negotiations without governmental interference; (6) are not subject to foreign exchange targets set by either the central or provincial governments; and (7) select their own management without outside interference.

Based on these claims and information regarding their operations, we have determined that HIED, CMIECHN/CNIECHN, MINMETALS, and CEIEC, have preliminarily met the criteria for the application of separate rates. With respect to HIED and its subsidiaries (Zhuhai and Ming Hua), and CMIECHN/CNIECHN, we will examine at verification the extent to which these companies operate as single business entities.

For this preliminary determination, we have denied GWIIEC's claim for a separate rate. The standard for a separate rate claim requires that respondent demonstrate, inter alia, that the company has autonomy from the government in making decisions regarding selection of management. In its response, GWIIEC asserted that the government does not exercise control over the company's decision making either directly or indirectly through its first and second tier holding companies. GWIIEC's response indicates that the company's president is selected internally. However, the response also indicates that the president is appointed by one or both of the first and second tier holding companies. Moreover, GWIIEC's response indicates that the senior management of the first and second tier holding companies is "selected under the auspices" of a government ministry. Although the Department requested that this statement be clarified, the role of the government in the selection process remains unclear at this time. Further, the nature and function of the appointment process for GWIIEC's president is unclear. Accordingly, GWIIEC has not demonstrated to the Department's satisfaction that the company has autonomy from the government in making decisions regarding selection of management, and thus has not met the standard for the Department to grant a separate rate for purposes of this preliminary determination.

Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the NME producers' factors of production, to the extent possible, in one or more market economies that (1) Are at a level of economic development comparable to that of the NME country and (2) are significant producers of comparable merchandise. The Department has determined that India is the most suitable surrogate for purposes of this investigation. Based on available statistical information, India is at a level of economic development comparable to that of the PRC, and Indian export statistics indicate that the country is a significant producer of comparable merchandise.

Fair Value Comparisons

To determine whether sales of manganese metal from the PRC by HIED, GWIIEC, CMIECHN/CNIECHN, MINMETALS, and CEIEC were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the United States Price and Foreign Market Value sections of the notice.

United States Price

For all respondents, we based USP on purchase price, in accordance with section 772(b) of the Act, because manganese metal was sold directly to unrelated parties in the United States prior to importation into the United States, and because exporter's sales price (ESP) methodology was not indicated by other circumstances. Where appropriate, we calculated purchase price based on packed, FOB-port, C&F, and CIF prices to unrelated purchasers in the United States. We made deductions to these prices for foreign inland freight, containerization, loading, port handling expenses, and marine insurance, as appropriate. Generally, costs for these items were valued in the surrogate country. However, where transportation services were purchased from market economy suppliers and paid for in a market economy currency, we used the cost actually incurred by the exporter.

Foreign Market Value

In accordance with section 773(c) of the Act, we calculated FMV based on factors of production reported by the factories in the PRC which produced the subject merchandise for the five exporters analyzed in this determination. The factors used to produce manganese metal include materials, labor and energy. To calculate FMV, the reported factor quantities were multiplied by the appropriate surrogate values from India for those inputs purchased domestically from PRC suppliers. Where a respondent failed to provide certain factor information in a usable form, we have relied upon publicly available information from the petition as best information available in valuing these factors.

In determining which surrogate value to use for each factor of production, we selected, where possible, an average non-export value, which was representative of a range of prices within the POI, or most contemporaneous with the POI, specific to the input in question, and tax-exclusive.

With the exception of the manganese ore and one other input, the identity of which is business proprietary, we obtained surrogate material values from the following sources: the *Monthly Trade Statistics of Foreign Trade of India, Volume II—Imports*, August 1994, *(Indian Import Statistics); The Analyst: Import Reference 1993, Chemical and Pharmaceutical Products*; and the *Indian Chemical Weekly* (July–November 1993). For the business proprietary input referenced above, we relied upon information submitted by the petitioners (taken from the June–October 1994 Chemical Marketing Report) for a similar input.

To value the manganese ore, we used a 1992 contract price for low-grade manganese ore (26–28% Mn content) between an Indian mine and Japanese purchasers, as published in the July 7, 1992, TEX Report. Although it is our normal practice to apply an inflation adjustment to prices predating the period of investigation, in this case, we have information which indicates that prices for this product have fallen over time. Therefore, we adjusted this price to account for declining manganese ore prices between 1992 and our POI.

To value electricity, we used the April 1992 through March 1993 average tax-exclusive price for industrial electricity in India, as provided by the World Bank. To value labor amounts, we used labor rates in *Investing, Licensing, and Technology November 1994* (India) as published by the Economist Intelligence Unit. We adjusted the factor values, when necessary, to the POI using wholesale price indices (WPI's) published by the International Monetary Fund (IMF).

To value factory overhead, we calculated the ratio of factory overhead expenses to the cost of material, labor, and energy for industries involved in "Processing and Manufacture—Metals, Chemicals and products thereof," as reported in the September 1994 Reserve Bank of India Bulletin's (RBI Bulletin). This same source was used to calculate expense (SG&A) as a percentage of cost of manufacturing. Because the RBI percentage was greater than the minimum 10 percent required by the statute, we used the SG&A percentage calculated from the RBI Bulletin. With respect to profit, we used the statutory minimum of 8 percent of materials, labor, energy, overhead, and SG&A costs calculated for each factory.

Best Information Available

Potential exporters identified by MOFTEC failed to respond to our questionnaire. In the absence of responses from these and other PRC exporters during the POI, we are basing the PRC-wide rate on the best information available (BIA). When a company refuses to provide information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to the company the higher of (a) the highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation (*see Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Belgium (Belgium Steel)* 58 FR 37083, July 9, 1993). Since some PRC exporters failed to respond to our questionnaire, we are assigning any exporter not granted a separate rate the highest margin alleged in the November 8, 1994 petition.

Verification

As provided in section 776(b) of the Act, we will verify information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of manganese metal from the PRC, as defined in the "Scope of the Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated dumping margins, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacture/producer/exporter	Margin percent
CEIEC	132.22
CMIECHN/CNIECHN	82.44
HIED	148.82
Minmetals	148.24
PRC-Wide Rate	148.82

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry within 75 days after our final determination.

Public Comment

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than September 27, 1995, and rebuttal briefs no later than September 29, 1995. A hearing, if requested, will be held on October 3, 1995, at 2:00 p.m. at the U.S. Department of Commerce in Room 1815. Parties should confirm by telephone the time, date, and place of the hearing 48 hours prior to the scheduled time. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs. We will make our final determination not later than 135 days after the publication of this preliminary determination in the **Federal Register**. This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a).

Dated: June 5, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–14567 Filed 6–13–95; 8:45 am]

BILLING CODE 3510–DS–P

Department of Energy, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 95–008. *Applicant:* U.S. Department of Energy, Washington, DC 20585. *Instrument:* Fuel Cell. *Manufacturer:* Fuji Electric Company, Japan. *Intended Use:* See notice at 60 FR 13699, March 14, 1995. *Reasons:* The foreign instrument, the last of three ordered on July 13, 1992, provides a liquid cooled phosphoric acid fuel cell with a net power output of 47.5kW that is suitable for propulsion of a passenger bus prototype. *Advice Received From:* The Jet Propulsion Laboratory, November 10, 1993.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, was being manufactured in the United States at the time the foreign instrument was ordered.

The Jet Propulsion Laboratory advises that (1) this capability is pertinent to the

applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which was being manufactured in the United States at the time it was ordered.

Frank W. Creel,

Director, Stotutory Import Programs Staff.

[FR Doc. 95–14568 Filed 6–13–95; 8:45 am]

BILLING CODE 3510–DS–F

COMMODITY FUTURES TRADING COMMISSION

Coffee, Sugar & Cocoa Exchange: Proposed Amendments to the Sugar No. 11 (World Raw Sugar) Futures Contract Increasing the Minimum Daily Loading Rate for Futures Delivery Sugar and Increasing the Minimum Depth of Berths or Anchorages Required at Delivery Ports

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Proposed Contract Market Rule Changes.

SUMMARY: The Coffee, Sugar & Cocoa Exchange ("CSCE") has submitted proposed amendments to its Sugar No. 11 (world raw sugar) futures contract that would increase the minimum daily loading rate for sugar delivered against the futures contract and increase the minimum depth of berths or anchorages required at delivery ports. In accordance with Section 5a(a)(12) of the Commodity Exchange Act, and acting pursuant to the authority delegated by Commission Regulation 140.96, the Acting Director of the Division of Economic Analysis ("Division") of the Commodity Futures Trading Commission ("Commission") has determined, on behalf of the Commission, that the proposed amendments are of major economic significance and that publication of the proposed amendments would be in the public interest. On behalf of the Commission, the Division is requesting comment on this proposal.

DATES: Comments must be received on or before July 14, 1995.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW, Washington, D.C. 20581. Reference should be made to the proposed amendments increasing the minimum loading rate and the minimum depth of berths or anchorages that must be provided at delivery ports for sugar No. 11 futures contract deliveries.

FOR FURTHER INFORMATION CONTACT: Frederick V. Linse, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW, Washington, D.C. 20581, telephone (202) 254–7303.

SUPPLEMENTARY INFORMATION: The existing terms of the sugar No. 11 futures contract provide that raw sugar is to be loaded into the receiver's vessel at a port nominated by the deliverer that is customarily used for shipping the particular growth of sugar being delivered.[1] The contract's terms require that deliverers load at least 750 long tons of raw sugar per weather working day (stevedoring holidays excluded) for despatch and demurrage purposes; provided the vessel being loaded is capable of receiving at this rate, and provided that the vessel has a minimum of four hatches available and accessible. If less than four hatches are available and accessible, or if the vessel is otherwise incapable of being loaded at the aforesaid loading rate, the loading rate is reduced proportionately. The current terms of the contract also require that the port nominated by the deliverer must be capable of providing a berth or anchorage that will enable vessels drawing 28 feet of water to proceed to and depart from such berth or anchorage always safely afloat.

The proposed amendments would increase to 1,500 from 750 long tons the minimum amount of raw sugar that a deliverer would be required to load per weather working day (stevedoring holidays excluded). The proposed amendments would also increase to 30 from 28 feet the minimum depth of berths or anchorages that ports nominated by a deliverer must be capable of providing.

In support of the proposed amendments, the CSCE indicated that increased use of mechanical loading at most of the delivery ports used for the delivery of sugar has made the proposed loading rate of 1,500 long tons of sugar per weather working day the commonly used loading rate in the sugar industry. The CSCE also indicated that the proposed minimum depth of berths or anchorages required at delivery ports is necessary to accommodate the larger vessels now generally being built and chartered for the transportation of raw sugar.

The CSCE proposes to make the proposed amendment increasing the minimum loading rate effective following Commission approval with respect to the May 1996 contract month and all delivery months listed thereafter. The CSCE proposes to make the proposed amendment increasing the minimum depth of berths or anchorages required at delivery ports effective upon Commission approval beginning with the first contract month following the last contract month in which there is an open position and for all contract months listed thereafter.

On behalf of the Commission, the Division is requesting comment on the proposed amendments. In particular, the Division is seeking comment regarding the extent to which the proposed amendments reflect cash market practices. In addition, commenters are requested to address the effect that the proposed amendments may have on the number of ports eligible for futures delivery purposes and the availability of economically deliverable supplies of raw sugar for the futures contract.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW, Washington, D.C. 20581. Copies of the amended terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by telephone at (202) 254–6314.

The materials submitted by the CSCE in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW, Washington, D.C. 20581 by the specified date.

Issued in Washington, D.C. on June 8, 1995.

Blake Imel,

Acting Director.

[FR Doc. 95–14530 Filed 6–13–95; 8:45 am]

BILLING CODE 6351–01–P

[1] The futures contract provides for the delivery of raw sugar produced in 29 countries.

DEPARTMENT OF DEFENSE

Department of the Air Force

Cost Comparison Studies

The Air Force is conducting the following cost comparison studies in accordance with OMB Circular A–76, Performance of Commercial Activities.

Installation	Cost comparison study
Maxwell AFB, Alabama.	Fuels Management.
Maxwell AFB, Alabama.	Grounds Maintenance.
Maxwell AFB, Alabama.	Refuse Collection.
Little Rock AFB, Arkansas.	Transient Aircraft Maintenance.
Davis Monthan AFB, Arizona.	Military Family Housing Maintenance.
Travis AFB, California.	Military Family Housing Maintenance.
Buckley ANG Base, Colorado.	Airfield Management.
Tyndall AFB, Florida.	Multi-Functional Study: Base Operating Support & Backshop Aircraft Maintenance.
Andersen AFB, Guam.	Refuse Collection.
Andrews AFB, Maryland.	Administrative Support.
Columbus AFB, Mississippi.	Base Operating Support.
Keesler AFB, Mississippi.	Grounds Maintenance.
Altus AFB, Oklahoma.	Aircraft Maintenance.
Tinker AFB, Oklahoma.	Grounds Maintenance.
Goodfellow AFB, Texas.	Grounds Maintenance.
Kelly AFB, Texas.	Environmental.
Lackland AFB, Texas.	Trainer Fabrication.
Laughlin AFB, Texas.	Base Operating Support.
Hill AFB, Utah	Child Care Center.
Bolling AFB, Washington, DC.	Military Family Housing Maintenance.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–14469 Filed 6–13–95; 8:45 am]

BILLING CODE 3910–01–M

Air Force Academy Board of Visitors Meeting

Pursuant to Section 9355, Title 10, United States Code, the Air Force Academy Board of Visitors will meet at the US Air Force Academy, Colorado, 22–23 July 1995. The purpose of the meeting is to consider morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy.

A portion of the meeting will be open to the public on Saturday morning, 22 July 1995. Other portions of the meeting will be closed to the public to discuss matters listed in Subsections (2), (4), and (6) of Section 552b(c), Title 5, United States Code. These closed sessions will include attendance at cadet training programs and discussions with cadets, military staff, and faculty officers which include personal information, financial information, and information relating solely to internal personnel rules and practices of the Board of Visitors and the Academy. Meeting sessions will be held in various facilities throughout the cadet area.

For further information, contact Lt. Col. David O. DiMarchi, Policy, Plans, and Programs, HQ USAFA/XPP, 2304 Cadet Drive, Suite 350, USAF Academy, CO 80840–5002, at (719) 472–3933.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–14468 Filed 6–13–95; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Privacy Act of 1974; Add a system of records

AGENCY: Department of the Army, DOD.

ACTION: Add a System of Records.

SUMMARY: The Department of the Army proposes to add a new record system to its existing inventory of systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on July 10, 1995, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to U.S. Army Information Systems Command, ATTN: ASOP-MP, Fort Huachuca, AZ 85613–5000.

FOR FURTHER INFORMATION CONTACT: Ms. Pat Turner at (602) 538–6856 or DSN 879–6856.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

A new system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, was submitted on May 30, 1995, to the House Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4b of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated July 15, 1994 (59 FR 37906, July 25, 1994)

Dated: June 2, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0040–57aDASG

SYSTEM NAME:

DOD DNA Registry.

SYSTEM LOCATION:

Primary location: Armed Forces Institute of Pathology, Building No. 54, Walter Reed Army Medical Center, 6825 16th Street, NW, Washington, DC 20306–6000.

Secondary location: Service members's medical record. Civilian family member's or other's medical records.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Defense military personnel (active and reserve).

Civilian family members of Department of Defense military personnel (active and reserve) who voluntarily provide specimens for DNA typing for purpose of identifying the human remains of family members.

DoD civilian personnel deploying with the armed forces.

Other individuals may also be included in this system when the Armed Forces Institute of Pathology (AFIP) is requested by Federal, state, local and foreign authorities to identify human remains.

CATEGORIES OF RECORDS IN THE SYSTEM:

Specimen collections (oral swabs, blood and blood stains, bone, and tissue) from which a DNA typing can be obtained, and the DNA typing results. Accession number, specimen locator information, collection date, place of collection, individual's name, Social Security Number, right index fingerprint, signature, branch of service, sex, race and ethnic origin, address, place and date of birth, and relevant kindred information, past and present.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 176, 177, and 3012; E.O. 9397; Deputy Secretary of Defense memo dated December 16, 1991; and Assistant Secretary of Defense

(Health Affairs) memo dated January 5, 1993.

PURPOSE(S):

Information in this system of records will be used for the identification of human remains.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To Federal, state, local and foreign authorities when the Armed Forces Institute of Pathology (AFIP) is requested to identify human remains.

The Army's 'Blanket Routine Uses' *do not* apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored manually and electronically.

RETRIEVABILITY:

By individual's surname, sponsor's Social Security Number, date of birth, and specimen reference or AFIP accession number.

SAFEGUARDS:

Access to the Armed Forces Institute of Pathology and DNA Registry is controlled. Computerized records are maintained in controlled areas accessible only to authorized personnel. Entry to these areas is restricted to those personnel with a valid requirement and authorization to enter. All personnel whose duties require access to, or processing and maintenance of personnel information are trained in the proper safeguarding and use of the information. Any DNA typing information obtained will be handled as confidential medical information.

RETENTION AND DISPOSAL:

Primary location: Records are maintained 75 years and then destroyed by shredding or incineration. Statistical data used for research and educational projects are destroyed after end of project.

Secondary location: Records are destroyed when no longer needed for reference.

SYSTEM MANAGER(S) AND ADDRESS:

The Surgeon General, Headquarters, Department of the Army, 5109 Leesburg Pike, Falls Church, VA 22041–3258.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Administrator, Repository and Research Services, ATTN: DOD DNA Registry, Armed Forces Institute of Pathology, Walter Reed Army Medical Center, Washington, DC 20306–6000.

Requesting individual must submit full name, Social Security Number and date of birth of military member and branch of military service, if applicable, or accession/reference number assigned by the Armed Forces Institute of Pathology, if known. For requests made in person, identification such as military ID card or valid driver's license is required.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves or deceased family members contained in this system should address written inquiries to the Administrator, Repository and Research Services, ATTN: DOD DNA Registry, Armed Forces Institute of Pathology, Walter Reed Army Medical Center, Washington, DC 20306–6000.

Requesting individual must submit full name, Social Security Number and date of birth of military member and branch of military service, if applicable, or accession/reference number assigned by the Armed Forces Institute of Pathology, if known.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual, family member, diagnostic test, other available administrative or medical records obtained from civilian or military sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 95–14583 Filed 6–13–95; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before July 14, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: June 9, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Special Education and Rehabilitative Services

Type of Review: Revision

Title: State plan under Part B of the Individuals With Disabilities Education Act (IDEA)

Frequency: Annually

Affected Public: State or Local or Tribal Governments

Reporting Burden:
Responses: 1
Burden Hours: 475

Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: State educational agencies are required to submit a State Plan to the U.S. Department of Education in order to receive funds under Part B of the Individuals with Disabilities.

[FR Doc. 95–14528 Filed 6–13–95; 8:45 am]

BILLING CODE 4000–01–M

Proposed Information Collection Request

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Request.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection request as required by the Paperwork Reduction Act of 1980.

DATES: An emergency review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by June 23, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer: Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J: Sherrill, Department of Education, 7th & D Streets, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Resources Group, publishes this notice with attached proposed information collection requests prior to submission to OMB. For each proposed information collection request, grouped by office, this notice contains the following information: (1) Type of review requested, e.g., new, revision, extension, existing, or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting and/or Recordkeeping burden; and (6) Abstract. Because an emergency review is requested, the additional information to be requested in this collection is included in the section on "Additional Information" in this notice.

Dated: June 9, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: Emergency

Title: Notice inviting applications for new awards for fiscal year FY 1995 academic excellence awards

Abstract: The Department needs and uses this information to make grants. The respondents are State and local educational agencies, institutions of higher education, and nonprofit organizations. The respondents are required to provide this information in applying for grants.

Additional Information: The Department requests a ninety-day emergency approval of the application package to enable grants to be awarded with available FY 1995 funds before the end of the fiscal year. The lateness of this request is due to the fact that a proposed rescission of FY 1995 funds that would have eliminated funds for new grants under the Academic Excellence Awards program was not modified by Congress until late May. OMB approval of the application package is needed by June 23 to enable the Department to publish the notice containing the application in the **Federal Register** by June 30. The deadline date for transmittal of applications must be no later than July 31 to enable the Department to evaluate them and make grant awards be the end of the fiscal year.

Frequency: One Time

Affected Public: Not for Profit Institutions & State, Local or Tribal government

Reporting Burden:
Responses: 50
Burden Hours: 5,000

Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

[FR Doc. 95–14527 Filed 6–13–95; 8:45 am]

BILLING CODE 4000–01–M

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of arbitration panel decision under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on November 13, 1992, an arbitration panel rendered a decision in the matter of *James E. Waldie* v. *Alabama Division of Rehabilitation Services (Docket No. R–S/89–8).* This panel was convened by the Secretary of the U.S. Department of Education pursuant to 20 U.S.C. 107d–1(a), upon receipt of a complaint filed by petitioner, James E. Waldie, on April 12, 1989. The Randolph-Sheppard Act provides a priority for blind individuals to operate vending facilities on Federal property. Under this section of the Randolph-Sheppard Act (the Act), a blind licensee dissatisfied with the State's operation or administration of the vending facility program authorized under the Act may request a full evidentiary fair hearing from the State licensing agency (SLA). If the licensee is dissatisfied with the State agency's decision, the licensee may file a complaint with the Secretary of the U.S. Department of Education, who then is required to convene an arbitration panel to resolve the dispute.

FOR FURTHER INFORMATION CONTACT: A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 600 Independence Avenue, SW., Room 3230, Switzer Building, Washington, DC 20202–2738. Telephone: (202) 205–9317. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8298.

SUPPLEMENTARY INFORMATION: Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d–2(c)), the Secretary publishes a synopsis of arbitration panel decisions affecting the administration of vending facilities on Federal property.

Background

The complainant, James E. Waldie, is a blind vendor licensed by the

respondent, the Alabama Division of Rehabilitation Services (ADRS), pursuant to the Randolph-Sheppard Act. ADRS is the SLA responsible for the operation of the Alabama vending facility program for blind individuals. The purpose of the program is to establish and support blind vendors operating vending facilities on Federal property. Beginning in May of 1985, Mr. Waldie operated a vending facility located in the Lyster Army Hospital, Fort Rucker, Alabama (Lyster Facility). Mr. Waldie alleged in his complaint that there was a problem with excessively high temperatures in the Lyster Facility. He also raised two other issues regarding facility safety and the sale of tobacco products. In addition, sometime late in 1985 or early in 1986, Mr. Waldie expressed a desire to expand into three buildings that were located near the Lyster Army Hospital building.

Because these issues were not resolved by ADRS to Mr. Waldie's satisfaction, the complainant initiated administrative proceedings under ADRS regulations. On April 11, 1988, pursuant to ADRS rules and regulations, a fair hearing was conducted at Mr. Waldie's request. The decision rendered after the hearing was unfavorable to the complainant who subsequently requested a full evidentiary hearing, which was held on May 26, 1988. The State hearing officer upheld the administrative decision of ADRS in his opinion of August 2, 1988. The hearing officer stated that (1) the record did not indicate that Mr. Waldie had been denied the opportunity to expand his facility; (2) the determination of which product lines are to be sold at a vending facility is a decision to be made by the SLA and the Federal property manager; and (3) the ventilation and air circulation problems are the result of new product lines requiring machines that generate heat. Further, the hearing officer stated that the permit was not violated by the Federal agency, that ADRS had not violated its rules and regulations, and that evidence presented failed to establish a violation of any rule or regulation governing the Business Enterprise Program and did not prove any erroneous application of that program. The SLA's decision was affirmed.

Mr. Waldie requested that the Secretary of Education convene an arbitration panel to review the issues. The arbitration hearing was held on June 27, 1991 and January 28, 1992. Two of the issues, the facility security and sale of tobacco products, were resolved during pre-hearing negotiations.

Arbitration Panel Decision

The panel found that the main issue in this case concerned the question of whether the SLA had improperly dealt with the air circulation and ventilation at the Lyster Facility. After hearing testimony, the panel found that, in fact, the Lyster Facility did not provide proper ventilation. In determining whose responsibility it was to rectify the problem, the panel turned to the concept of satisfactory site as used in the Act and the regulations. Satisfactory site is defined in the Act in 20 U.S.C. 107a(d)(3) and in the regulations in 34 CFR 395.1(q).

The panel set out the two different circumstances under which a vending facility can be established. First, the panel considered 34 CFR 395.30(a), which requires that Federal property managers take all steps necessary to assure that, wherever feasible, one or more vending facilities for operation by blind licensees shall be located on all Federal property. The second circumstance in which the establishment of a vending facility is discussed is in 34 CFR 395.31, which requires that, when a Federal property owner acquires or substantially renovates a property, the Federal property owner is required to provide a satisfactory site for the operation of a vending facility by a blind vendor.

Because the Act and the regulations use the term "satisfactory site" only in the latter circumstance, the panel concluded that, if the Lyster Facility was established under the first circumstance, the definition of satisfactory site would not apply. While the panel found that no evidence was submitted at the hearing as to the circumstances under which the Lyster Facility was established, the panel reasoned that, even if the Lyster Facility was established under 34 CFR 395.30, the definition of satisfactory site found in the regulations would apply for two reasons. First, the parties have proceeded since the outset on the assumption that this language applies to the Lyster Facility. Second, the panel noted that both the SLA and the Federal property manager agreed, at the time the permit was issued, that the Lyster Facility constituted a satisfactory site.

The panel concluded that there is a general ongoing obligation on the part of the Federal property manager to provide a satisfactory site. The panel further determined that the Lyster Facility must be properly cooled in order to be considered a satisfactory site.

In recognizing that the Federal agency was not a party to the arbitration proceeding, the panel turned to the responsibilities of the ADRS in ensuring that the vending facility was a satisfactory site. The panel determined that, although the ADRS was not responsible for providing an air conditioning unit, it was obligated to urge the Federal agency to rectify the problem. Consequently, ADRS was directed to use vigorous means, including the use of arbitration under the Act, to compel the Federal property manager to provide sufficient cooling for the Lyster Facility.

In considering the action of ADRS in responding to Mr. Waldie's request for expansion, the panel determined that ADRS has the obligation to reasonably pursue expansion sites for blind vendors and to use reasonable judgment in distributing any of those locations among qualified blind vendors. The panel concluded that ADRS acted reasonably in response to Mr. Waldie's request even though no expansion occurred, notwithstanding the plans to move the vending facility at some future date. Consequently, the panel delayed remedy on the matter for a period of time to determine whether a move of the facility would rectify the situation.

Finally, the panel addressed the issue of retroactive damages and an award of attorney's fees raised by Mr. Waldie. The panel concluded, based on reasoning of the majority opinion in *McNabb* v. *U.S. Department of Education*, 862 F.2d 681 (8th Cir., 1988), that Mr. Waldie was not entitled to retroactive damages under the Act. The panel determined, as well, based on the decision in *Alyeska Pipeline Service* v. *Wilderness Society*, 421 U.S. 240 (1975), that an express provision in the Act was required to award attorney's fees to Mr. Waldie and that no such provision existed in the Randolph-Sheppard Act.

One panel member dissented from the opinion of the majority as to the temperature issue. A second panel member dissented with respect to the expansion issue and the issue of the right of the blind vendor to seek retroactive damages and attorney's fees.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the United States Department of Education.

Dated: June 8, 1995.

Judith E. Heumann,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 95–14474 Filed 6–13–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Stockpile Stewardship and Management Programmatic Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Notice of intent.

SUMMARY: The Department of Energy (DOE) announces its intent to prepare a Stockpile Stewardship and Management Programmatic Environmental Impact Statement (SSM PEIS). The end of the Cold War has brought about significant changes in the requirements for the nation's nuclear deterrent, including substantial reductions in the nuclear weapons stockpile. To fulfill its responsibilities for ensuring the safety and reliability of the stockpile without underground nuclear testing, DOE proposes the Stockpile Stewardship and Management Program.

Stockpile Stewardship includes activities required to maintain a high level of confidence in the safety and reliability of nuclear weapons in the absence of underground nuclear testing, and to be prepared to resume nuclear testing if so directed by the President. Stockpile Management activities include dismantlement, maintenance, evaluation, and repair or replacement of weapons and their components in the existing stockpile.

This Notice of Intent, the initial step in the National Environmental Policy Act (NEPA) process, informs the public of the PEIS proposal, announces the schedule for scoping meetings, and solicits public input. Following the scoping period, the Department will prepare and issue an Implementation Plan (IP) to describe the scope of the PEIS, the alternatives that will be analyzed, and the schedule for completing the PEIS.

DATES: Comments on the proposed scope of the SSM PEIS are invited from the public. To ensure consideration in the preparation of the IP, comments must be postmarked by August 11, 1995. Late comments will be considered to the extent practicable. DOE will hold interactive public scoping meetings at sites that may be affected by the proposed action to discuss issues and receive oral and written comments on the scope of the PEIS. These meetings will provide the public with an opportunity to present comments, ask questions, and discuss concerns with DOE officials regarding SSM activities. The locations, dates, and times for these public meetings are included in the Supplementary Information section of this notice, and will be announced by additional appropriate means.

The Department is also requesting federal agencies that desire to be designated as cooperating agencies on the SSM PEIS to contact the Office of Reconfiguration at the address listed below by August 11, 1995.

ADDRESSES: General questions concerning the SSM program can be asked by calling the toll-free telephone number at 1–800–776–2765, or by writing to: Stephen M. Sohinki, Director, Office of Reconfiguration, U.S. Department of Energy, P.O. Box 3417, Alexandria, VA 22302.

As an alternative, comments can also be submitted electronically by using the Federal Information Exchange bulletin board and following the instructions listed below:

Modem: Dial Toll Free (800) 783–3349. Local (301) 258–0953. (Modem parameters set at: '8' data bits, '1' stop bit and 'N' parity at 1200, 2400 or 9600 baud.)
InterNet: Telnet or Gopher to: fedix.fie.com or 192.111.228.33
Hours: Available 24 hours a day. A Help Line, (301) 975–0103, is available weekdays between 8:30 a.m. and 5:00 p.m. EST, except Federal holidays.
Costs: Free, no cost to users. No telephone, registration, access, or downloading fees.

FOR FURTHER INFORMATION CONTACT: For general information on the DOE NEPA process, please contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–4600 or 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

Background

In January 1991, the then-Secretary of Energy announced that the Department would prepare a PEIS examining alternatives for the reconfiguration of the Department's nuclear weapons complex (the Complex). The framework for the Reconfiguration PEIS was described in the January 1991 Nuclear Weapons Complex Reconfiguration Study (Reconfiguration Study), a detailed examination of alternatives for the future Complex. Because of significant changes in the world since January 1991, especially with regard to projected future requirements for the United States' nuclear weapons stockpile, the Department concluded in October 1994 that the framework described in the Reconfiguration Study no longer fit current circumstances or supported any realistic proposal for reconfiguration of the Complex (59 FR 54175, October 28, 1994). Contributing factors to that conclusion included public comments at the September-October 1993 Reconfiguration PEIS scoping meetings, the fact that no production of new nuclear weapons types was required for the foreseeable future, budget constraints, and the Department's decision to prepare a separate PEIS on Storage and Disposition of Weapons-Usable Fissile Nuclear Materials (Notice of Intent published June 21, 1994, 59 FR 17344).

As a result of these changed circumstances, the Department separated the previously planned Reconfiguration PEIS into two new PEISs: (1) a Tritium Supply and Recycling PEIS; and (2) a Stockpile Stewardship and Management PEIS. The Draft PEIS for Tritium Supply and Recycling was issued in March 1995 (60 FR 14433, March 17, 1995), public hearings were held in April 1995, and a Final PEIS for Tritium Supply and Recycling is expected in October 1995.

With regard to the SSM PEIS, during the past six months the Department has been developing the new framework to support the SSM program. That resulting framework, described in a DOE report entitled "The Stockpile Stewardship and Management Program" (May 1995), is available on the Internet under DOE's Home Page for Defense Programs (www.dp.doe.gov). That document was mailed to individuals who had previously requested information on the SSM program. Other individuals who would like to receive that document can contact the Office of Reconfiguration at the address listed above or by calling the program's toll free number at 1–800–776–2765.

On May 19, 1995, the Department held a pre-scoping workshop with interested members of the public to discuss the framework of the SSM program and the information contained in "The Stockpile Stewardship and Management Program". While a wide range of specific issues were discussed during that meeting, general concerns centered on: Future stockpile planning, including the basis for selecting the baseline stockpile size of the future; whether the Department would evaluate a range of stockpile sizes in the PEIS; the relationship between the SSM PEIS and the Department's other Programmatic and Site-Wide EISs; and whether the Department would evaluate underground nuclear testing in the PEIS. Comments received from that pre-scoping workshop have been taken into account in developing this NOI.

Purpose and Need for the SSM Program. Under the Atomic Energy Act of 1954, as amended (42 USC 2011 *et seq.*), DOE is charged with providing

nuclear weapons to support the United States' nuclear deterrent policy. The mission of the DOE nuclear weapons complex is to provide the nation with safe and reliable nuclear weapons and components so that an effective nuclear deterrent can be maintained into the foreseeable future, and to accomplish this in a way that protects the environment and the health and safety of workers and the public.

Recent changes in national security needs have necessitated corresponding changes in the way the Department must meet its responsibilities regarding the nation's nuclear weapons. As a result of international arms-control agreements (the START I treaty and the START II protocol) and unilateral decisions by the United States, the nation's stockpile will be significantly reduced by the year 2003. Consequently, the nation has halted the development of new nuclear weapons, has begun closing portions of the Complex, and is considering further consolidation or downsizing of the remaining elements in the Complex. In addition, the nation is observing a moratorium on nuclear testing and is pursuing a Comprehensive Test Ban Treaty.

However, international dangers remain and, as the President has emphasized, nuclear deterrence will continue to be a cornerstone of the United States' national security policy. Thus, the Department's responsibilities for ensuring the safety and reliability of the nation's nuclear weapons stockpile will also continue for the foreseeable future.

Because of the moratorium on nuclear testing, the termination of new nuclear weapons development and production, and the closure of several production facilities, a new approach to ensure confidence in the stockpile is needed. In announcing the indefinite extension of the nuclear testing moratorium (July 1993), President Clinton reaffirmed the importance of maintaining confidence in the enduring United States nuclear stockpile and the need to ensure that the nation's nuclear deterrent remains unquestioned during a test ban. By Presidential Decision Directive and Act of Congress (Pub. L. 103–160), the Department of Energy was directed to establish a stewardship program to ensure the preservation of the core intellectual and technical competencies of the United States in nuclear weapons in the absence of nuclear testing.

Without nuclear testing, this new approach must rely on scientific understanding and expert judgment to predict, identify, and correct problems affecting the safety and reliability of the stockpile. This program is essential if the nation is to properly safeguard its nuclear weapons and maintain an unquestioned nuclear deterrent.

The SSM program is being developed to meet the challenges involved in ensuring the safety and reliability of the stockpile. Three particular challenges must be met:

- Fully supporting, at all times, the nation's nuclear deterrent with safe and reliable nuclear weapons, while transforming the nuclear weapons complex (laboratories and production facilities) to one that is more appropriate for the smaller stockpile.
- Preserving the core intellectual and technical competencies of the weapons laboratories. Without nuclear testing, confidence in the nation's nuclear deterrent will depend largely on the continued competency of the people who must make the scientific and technical judgments related to the safety and reliability of nuclear weapons.
- Ensuring that the activities needed to maintain the nation's nuclear deterrent are consistent with the nation's arms-control and nonproliferation objectives.

DOE Nuclear Weapons Complex: The current DOE nuclear weapons complex consists of 8 major facilities located in 7 states. Currently, the Complex maintains a limited capability to design and manufacture nuclear weapons; provides surveillance of and maintains nuclear weapons in the stockpile; and retires and disposes of nuclear weapons. Major facilities and their primary responsibilities within the Complex are listed below:

Pantex Plant (Amarillo, Texas)—Dismantles retired weapons; fabricates high explosives components; assembles high explosives, nuclear components, and nonnuclear components into nuclear weapons; repairs and modifies weapons; evaluates and performs nonnuclear testing of nuclear weapons.

Savannah River Site (SRS) (Aiken, South Carolina)—Tritium loading/unloading and surveillance of tritium reservoirs.

Y–12 Plant (Oak Ridge, Tennessee)—Maintains the capability to produce and assemble uranium and lithium components; recovers uranium and lithium materials from the component fabrication process and retired weapons; produces nonnuclear weapon components.

Kansas City Plant (KCP) (Kansas City, Missouri)—Manufactures nonnuclear weapons components.

Lawrence Livermore National Laboratory (LLNL) (Livermore, California)—Conducts research and development of nuclear weapons; designs and tests advanced technology concepts; maintains a weapons design program; maintains a limited capability to fabricate plutonium components; provides safety and reliability assessments of the stockpile.

Los Alamos National Laboratory (LANL) (Los Alamos, New Mexico)—Conducts research and development of nuclear weapons; designs and tests advanced technology concepts; maintains a weapons design program; maintains a limited capability to fabricate plutonium components; provides safety and reliability assessments of the stockpile.

Sandia National Laboratories (SNL) (Albuquerque, New Mexico)—Conducts system engineering of nuclear weapons; designs and develops nonnuclear components; conducts field and laboratory nonnuclear testing; manufactures nonnuclear weapons components; and provides safety and reliability assessments of the stockpile.

Nevada Test Site (NTS) (Las Vegas, Nevada)—Maintains capability to conduct underground nuclear testing and nonnuclear experiments.

SSM Program Foundational Framework. In the SSM program and SSM PEIS, DOE will:

- Emphasize compliance with applicable laws and regulations, and accepted practices regarding industrial and weapons safety; safeguarding the health of Complex workers and the general public; protecting the environment; and ensuring the security of nuclear materials and weapons components.
- Safely and reliably maintain the nuclear weapons stockpile as directed by the President and mandated by Congress.
- Analyze alternatives for configuration of the nuclear weapons complex that are reflective of, and consistent with, policy direction from the Nuclear Posture Review.
- Maximize efficiency and minimize costs associated with the maintenance of the weapons stockpile.
- Maximize the transfer of nonnuclear materials production activities to the private sector.
- Maintain core intellectual and technical competencies in nuclear weapons.
- Sustain confidence in safety and reliability of the stockpile in the absence of underground nuclear testing.
- Minimize the use of hazardous materials and the number and volume of waste streams.

PEIS Decisions. In addition to the PEIS, supporting cost, technical, and schedule studies will be prepared for the SSM program. The PEIS and these other studies will be balanced with

policy and strategic objectives to support the Record of Decision (ROD). The ROD will:

- Identify the future missions of the SSM program; and
- Determine the configuration (facility locations) of the nuclear weapons complex to accomplish the SSM program missions.

Project-specific NEPA documents will be prepared as necessary to implement any programmatic alternatives chosen in the ROD.

An analysis of the sensitivity of the proposed SSM program configuration to a range of hypothetical stockpile sizes will also be performed. DOE expects to use the stockpile size consistent with the START II protocol (approximately 3,500 weapons) as the baseline for the PEIS analysis since this is the current planning guidance for the Department and is consistent with the recently completed Nuclear Posture Review. Upper and lower excursion cases are also expected to be analyzed.

The SSM Program

Stockpile Management. Stockpile Management activities include dismantlement, maintenance, evaluation, and repair or replacement of weapons and weapons components in the existing stockpile. In the past, a large weapons production complex provided the capability and capacity to rapidly fix any problems found in the stockpile. However, the existing production complex may be inefficient and ineffective for a much smaller stockpile. Therefore, one of the primary goals of the Stockpile Management proposal will be to downsize and/or consolidate functions to provide an effective and efficient production capability for the smaller stockpile. The capabilities needed by the Department to carry out its Stockpile Management responsibilities are described below:

Weapons Assembly/Disassembly. Provides the capability to: dismantle retired weapons; assemble high explosives, nuclear components, and nonnuclear components into nuclear weapons; repair and modify weapons; perform weapons surveillance; and store strategic reserves of nuclear components (pits and secondaries).

Nonnuclear Components. Provides the capability to: fabricate nonnuclear components and perform nonnuclear component surveillance.

Nuclear Components. Provides the capability to: fabricate nuclear components; perform nuclear component surveillance; stage and store nuclear materials and components. Alternatives will be assessed for:

Pit Reuse (minor). Nonintrusive modification and recertification of existing pits.

Replacement Pit Fabrication and Reuse (major). Fabrication of replacement pits and/or intrusive modification and recertification of existing pits.

Secondaries and Cases. Fabrication of replacement secondaries and cases.

High Explosives. Provides the capability to fabricate high explosives components and perform high explosives component surveillance.

Stockpile Stewardship. Stockpile Stewardship includes activities required to maintain a high level of confidence in the safety and reliability of nuclear weapons in the absence of underground nuclear testing, and to be prepared to resume testing if so directed by the President. While the nation's nuclear weapons stockpile is currently judged to be safe, secure, and reliable, the average age of the stockpile has never significantly exceeded the current age of 12 to 13 years. Furthermore, very few data exist for weapons older than 25 years. Because the Department cannot predict with certainty when age-related changes affecting weapon safety or reliability will occur, a conservative assumption would be that problems will arise more frequently as the weapons age beyond their original 20- to 25-year design lifetimes.

Historically, nuclear testing has provided unambiguous confidence in the safety and performance of weapons in the stockpile. Without underground nuclear testing, the Department must rely on experimental and computational capabilities, especially in weapons physics, to predict the consequences of the complex problems that are likely to occur in an aging stockpile.

Enhanced aboveground experimental and computational capabilities are needed to assess and predict the consequences of these problems. An improved science-based program with enhanced experimental and computational capabilities is necessary to maintain confidence in the safety and reliability of the nation's stockpile without nuclear testing. This program must be of sufficient technical challenge to attract the high-quality scientific and technical talent needed for future stewardship of the stockpile.

Substantial advances in experimental and computational capabilities are needed to fill in those areas of nuclear weapon science that are incomplete, particularly gaps in our understanding of physics and gaps in the data needed for computational simulations of weapons performance and model-based assessments of safety and reliability. Upgraded or new experimental capabilities are required to validate improved or new computational models.

Without these enhanced capabilities, the Department will lack the ability to evaluate some safety and reliability issues, which could significantly affect the stockpile. It is also possible that, without these enhanced capabilities, the Department would not be able to certify the acceptability of weapons components that had been repaired or modified to address future safety or reliability issues.

The capabilities needed by the Department to carry out its Stockpile Stewardship responsibilities are described below, along with a brief description of proposed facilities for each capability.

Primary Physics Issues. The study of issues related to the safety and reliability of the primary portion of nuclear weapons. Issues include physics validation, material behavior, improved understanding of implosion, and ability to assess age-related defects. The facilities proposed or under consideration are:

Contained Firing Facility. An addition to the Flash X-Ray hydrodynamic test facility at LLNL, this facility would provide hydrodynamic test capabilities and new diagnostics for improved studies of the behavior of weapons material. The PEIS will contain a full evaluation for site-specific construction and operational impacts.

Advanced Hydrotest Facility. If proposed, this facility would provide up to eight radiographic views of the primary's implosion symmetry. In the longer term, this facility may be essential for assuring weapon reliability and safety without nuclear testing.

Secondary Physics Issues. The study of issues related to the safety and reliability of the secondary portion of nuclear weapons. Issues include physics validation, material behavior, improved understanding of thermonuclear ignition, and ability to assess age-related defects. Some of these facilities may also investigate physics phenomena that relate to primaries. The facilities proposed or under consideration are:

National Ignition Facility (NIF). This facility would make it possible in the laboratory, for the first time ever, to study radiation physics in a regime close to that of nuclear weapon detonations. The PEIS will contain a full evaluation for site selection, and for site-specific construction and operational impacts.

High Explosive Pulsed-Power Facility (HEPPF). If proposed, the HEPPF would provide experimental capabilities for

studying secondary physics issues at shock pressures and velocities approaching those of actual weapon conditions.

Atlas Facility. The Atlas Facility at LANL would be used for hydrodynamic experiments to resolve issues related to boost-gas mixing and other primary physics, and improving the predictive capabilities related to the aging, reliability, and performance of secondaries. The facility builds on special existing equipment at LANL. The PEIS will contain a full evaluation for site-specific construction and operational impacts.

X-Ray Hardness. The study of radiation-effects science and materials certification. The facility under consideration is:

Jupiter Facility. If proposed, Jupiter would provide an x-ray environment to enhance the ability to certify that critical weapon components meet military requirements for x-ray hardness.

Computational Capabilities. To handle simulations of weapon performance and assessments of weapons safety without underground nuclear testing, improved computational capabilities are needed. However, because there are not expected to be any environmental impacts from this activity, the PEIS is not expected to provide any assessment of these capabilities.

PEIS Alternatives. Preliminary Stockpile Management and Stockpile Stewardship alternatives have been developed for public comment and are described below.

Stockpile Management. The PEIS will assess the alternatives for conducting the Stockpile Management mission. Based upon the capabilities and facilities that already exist in the Complex, no major new production facilities are currently proposed. Instead, the PEIS will evaluate upgrading and/or downsizing facilities at the sites where the Stockpile Management capabilities are currently located, as well as transferring the functions to other sites which have existing facilities that could be modified to perform the capability. Based upon an evaluation of the existing capabilities and facilities at the sites in the Complex, the following matrix of proposed alternatives has been developed for Stockpile Management:

Capability	Site alternatives							
	KCP	LANL	LLNL	NTS	Y–12	PX	SNL	SRS
Weapons assembly/disassembly				X		X		
Nonnuclear components	X	X	X				X	
Nuclear components:								
—Pit reuse (minor)		X		X		X		X
—Replacement pit fabrication and reuse (major)		X						X
—Secondaries and cases		X	X		X			
High explosives components		X	X			X		

In addition, the PEIS will also evaluate the no action alternative. For Stockpile Management, no action is described by the following matrix:

Capability	Sites							
	KCP	LANL	LLNL	NTS	Y–12	PX	SNL	SRS
Weapons assembly/disassembly						X		
Nonnuclear components	X	X					X	
Nuclear components:								
—Replacement pit fabrication and reuse (major)		X	X					
—Secondaries and cases					X			
High explosives components						X		

Stockpile Stewardship. The PEIS will assess the alternatives for conducting the Stockpile Stewardship mission. New facilities and upgraded facilities that will enable the Department to maintain confidence in the safety and reliability of the stockpile in the absence of underground nuclear testing will be assessed in the PEIS. Because the nuclear weapons testing mission has always been a primary responsibility of the weapons laboratories and the NTS, the Department does not believe it is reasonable to expand the stockpile stewardship mission to other sites. Therefore, only the three weapons laboratories (LANL, LLNL, and SNL) and the NTS are expected to be considered for new Stockpile Stewardship facilities. This is also consistent with one of the Stockpile Stewardship program's main purposes to preserve the core intellectual and technical competencies of the weapons laboratories. Because there is currently a moratorium on underground nuclear testing, and because the nation is pursuing a Comprehensive Test Ban Treaty, the Department has not made a decision whether it is reasonable to include underground nuclear testing as an alternative in the SSM PEIS to fulfill the Stockpile Stewardship mission. Comments on this issue are specifically invited during the scoping period.

The following matrix of proposed alternatives and facilities under consideration for proposal has been developed for Stockpile Stewardship:

Capability	Facility	Site alternatives			
		LANL	LLNL	NTS	SNL
Primary physics issues	Contained firing facility		X		
Primary physics issues	Advanced hydrotest facility	X	X	X	X
Secondary physics issues	National ignition facility	X	X	X	X
Secondary physics issues	High explosive pulsed-power facility	X	X	X	X
Secondary physics issues	Atlas facility	X			
X-Ray hardness	Jupiter facility	X	X	X	X

Of these facilities, the Advanced Hydrotest Facility, the High Explosive Pulsed-Power Facility, and the Jupiter Facility are under consideration for proposal in the SSM PEIS. The Department may elect to proceed with only some of the facilities in this matrix.

The PEIS will also evaluate the no action alternative of not constructing new facilities or upgrading existing facilities. For Stockpile Stewardship, no action is described by the following matrix:

Capability	Facility	Sites			
		LANL	LLNL	NTS	SNL
Primary physics issues	Hydrotest facilities	X	X	X	
Secondary physics issues	NOVA		X		
Secondary physics issues	Pegasus	X			
Radiation hardness	Test facilities				X

Site-Specific NEPA Reviews. The SSM PEIS will provide a programmatic assessment of environmental impacts to support programmatic decisions to: (1) identify the future missions of the SSM program; and (2) determine the facility locations. More detailed project-specific and site-specific NEPA analyses for individual activities and facilities generally would tier from the PEIS as necessary to implement the PEIS decisions. However, for the NIF, the Contained Firing Facility (CFF), and the Atlas Facility, the PEIS will include both a programmatic assessment, and a site-specific assessment of the construction and operation impacts at the reasonable candidate sites. The programmatic assessment will consider the cumulative and synergistic impacts associated with siting these facilities, and will provide a basis for deciding whether to proceed with the facilities. For NIF, the programmatic assessment will also provide a basis for selecting a site for NIF since there are four candidate sites for that facility. However, for the CFF at LLNL, which is an upgrade to an existing facility, and for the Atlas Facility at LANL, which builds on special existing equipment at LANL, there are no alternative sites. If a decision is made to proceed with the NIF, CFF, or the Atlas Facility, the site-specific analyses in the SSM PEIS would provide the necessary NEPA analysis to decide where on the selected site to construct the facility, if relevant, and how to operate it.

Relationship to Other DOE NEPA Activities. In addition to the SSM PEIS, the Department is currently conducting NEPA reviews of other activities. The relationship between the SSM PEIS and other relevant major NEPA documents is discussed below.

Site-Wide EISs. DOE is currently preparing site-wide EISs for the Pantex Plant, NTS, and LANL. The site-wide EISs will address continued operations for current and reasonably foreseeable program missions at these sites. Programmatic issues such as what long-term capabilities are required to carry out DOE's Stockpile Stewardship and Management program, and the location for these long-term capabilities, will be addressed in the SSM PEIS.

Waste Management PEIS. This PEIS is analyzing alternatives for the long-term management and safe treatment, storage, and disposal of radioactive, hazardous, and mixed wastes. The SSM PEIS will assure that all wastes generated as a result of SSM activities are compatible with treatment, storage, and disposal decisions resulting from the Waste Management PEIS.

Storage and Disposition of Weapons Usable Fissile Material PEIS. This PEIS is analyzing alternatives for the long-term storage of all weapons-usable fissile materials, primarily plutonium and highly enriched uranium (HEU), and the disposition of excess plutonium. There is a potential overlap with the SSM PEIS regarding storage of strategic reserves of plutonium and HEU. Preparation of these PEISs will be closely coordinated to prevent conflicting analysis and to ensure that an appropriate decision on strategic reserve storage is reached.

Interim Actions. Two proposals that are within the scope of the SSM PEIS will proceed to separate Records of Decision, in accordance with Council on Environmental Quality regulations for interim actions (40 CFR 1506.1). These are the Dual-Axis Radiographic Hydrodynamic Test (DARHT) Facility EIS, and the Tritium Supply and Recycling PEIS. In the case of the DARHT EIS, DOE will continue with its ongoing hydrodynamic testing program and has proposed to provide an enhanced hydrodynamic test capability in the near term regardless of the decisions to be made following this SSM PEIS. In the case of the Tritium Supply and Recycling PEIS, DOE needs to establish a long-term tritium supply regardless of the decisions to be made following this SSM PEIS. Thus, the DOE's decisions regarding these two proposals would not prejudice the outcome of the SSM PEIS.

Scoping Meetings. Public scoping meetings will be held at each site that may be affected by the proposed action. The interactive scoping meetings will provide the public with an opportunity to present comments, ask questions, and discuss concerns regarding SSM activities with DOE officials, and for the Department to receive oral and written comments on the scope of the PEIS. Input from the scoping meetings will assist DOE in formulating the Implementation Plan for the SSM PEIS and refining PEIS alternatives. The locations, dates, and starting times for these public meetings are as follows:

Lawrence Livermore National Laboratory—June 29, 12:00 noon and 6:00 p.m., Villa

Tassajara, 6363 Tassajara Road, Pleasanton, CA 94566.
Sandia National Laboratory—July 11, 12:00 noon and 6:00 p.m., Albuquerque Convention Center, 401 Second Street, N.W., Albuquerque, NM 87102.
Los Alamos National Laboratory—July 13, 12:00 noon and 6:00 p.m., Fuller Lodge, 2132 Central Avenue, Los Alamos, NM 87544.
Kansas City Plant—July 18, 9:00 a.m. and 6:00 p.m., Rockhurst College, Massman Hall, 1100 Rockhurst Road, 53rd & Troost, Kansas City, MO 64110.
Pantex—July 20, 12:00 noon and 7:00 p.m., Sunset Convention Center, 3601 West 15th, Amarillo, TX 79102.
Y-12, Oak Ridge—July 25, 12:00 noon and 6:00 p.m., Pollard Auditorium, Badger Avenue, Oak Ridge, TN 37830.
Savannah River Site—July 27, 12:00 noon and 6:00 p.m., The Aiken Municipal Center, 214 Park Avenue, S.W., Aiken, SC 29801.
Nevada Test Site—August 3 & 4, August 3: 6:00 p.m. and August 4: 8:30 a.m., Community College of Southern Nevada/ Cheyenne Campus, 3200 East Cheyenne Avenue, North Las Vegas, NV 89030.

Scoping Meeting Format. The Department intends to hold a plenary session at the beginning of each scoping hearing in which DOE officials will more fully explain the framework for the proposed SSM program, including preliminary alternatives for Stockpile Management, Stockpile Stewardship, and the NIF project. Following the plenary session, the Department intends to discuss relevant issues in more detail. Each scoping meeting is expected to last approximately three to four hours.

Issued in Washington, D.C. this 9th day of June 1995, for the United States Department of Energy.

Peter N. Brush,

Principal Deputy Assistant Secretary Environment, Safety and Health.

[FR Doc. 95–14544 Filed 6–13–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. EG95–54–000, et al.]

Entergy Power Holding I, Ltd., et al.; Electric Rate and Corporate Regulation Filings

June 7, 1995.

Take notice that the following filings have been made with the Commission:

1. Entergy Power Holding I, Ltd.

[Docket No. EG95–54–000]

Take notice that on June 1, 1995, Entergy Power Holding I, Ltd., Three Financial Centre, Suite 210, 900 South Shackleford Road, Little Rock, Arkansas 72211, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended by Section 711 of the Energy Policy Act of 1992.

According to its application, Entergy Power Holding I, Ltd. (Applicant) is a corporation that seeks wholesale generator status with regard to its investment in eligible facilities in Pakistan and India. The Pakistani facilities consist of four 323 MW oil-fired generating units located in the province of Balochistan, approximately 40 kilometers northwest of Karachi. The Indian facilities consist of an approximately 695 MW distillate oil-fired electric generating facility located in the State of Maharashtra. Applicant states that it also seeks assurances that it may engage in various project development activities and may acquire interests in additional project companies and operating companies.

Comment date: June 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. United States Department of Energy—Bonneville Power Administration

[Docket No. EF95–2101–000]

Take notice that on June 5, 1995, the Bonneville Power Administration (BPA) tendered for filing proposed rate adjustments for its charges under the Pacific Northwest Coordination Agreement (PNCA) pursuant to Section 7(a)(2) of the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839e(a)(2). BPA seeks interim approval of its proposed revised PNCA rates effective August 4, 1995, pursuant to § 300.20 of the Commission's regulations, 18 CFR 300.20. BPA seeks interim approval of the revised PNCA rates pending review of BPA's 1995 Wholesale Power and Transmission Rates to be filed on or before August 1, 1995. BPA will then request final approval of the revised PNCA rates pursuant to § 300.21 of the Commission's regulations, 18 CFR 300.21, and continuing until such time as a party to the PNCA requests Commission approval of revised charges.

The proposed increases to the respective charges under the PNCA are uniform charges for all parties to the PNCA. All of the charges are based on negotiations among all parties to the PNCA, held under Section 14(j) of the Coordination Agreement.

Comment date: June 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Allegheny Generating Company

[Docket Nos. ER92–242–001, EL92–10–001, and EL94–24–002]

Take notice that on May 2, 1995, Allegheny Generating Company tendered for filing its refund report in the above-referenced dockets.

Comment date: June 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER95–276–001]

Take notice that on April 5, 1995, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: June 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Peak Energy, Inc.

[Docket No. ER95–379–001]

Take notice that on May 22, 1995, Peak Energy, Inc. (Peak Energy) filed certain information as required by the Commission's letter order issued February 24, 1995, in Docket No. ER95–379–000. Copies of Peak Energy's informational filing are on file with the Commission and are available for public inspection.

6. Boston Edison Company

[Docket Nos. ER95–773–000, ER95–774–000 and ER95–775–000]

Take notice that on June 2, 1995, Boston Edison Company (Edison) tendered for filing First Revised Page No. 1 to Schedule III of its Original Volume No. 6, Power Sales and Exchange Tariff (Tariff). Boston Edison also filed Certificates of Concurrence for Electric Clearinghouse, Inc., ENRON Power Marketing, Inc., and Louis Dreyfus Electric Power Inc. The Revised Page No. 1 updates the cost informational originally filed with the Tariff.

Edison states that it has served a copy of this filing on all parties with Service Agreements under the Tariff and with the Massachusetts Department of Public Utilities.

Comment date: June 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Idaho Power Company

[Docket No. ER95–821–000]

Take notice that on May 22, 1995, Idaho Power Company tendered for filing an amendment to its March 30, 1995, filing in the above-referenced docket.

Comment date: June 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Atlantic City Electric Company

[Docket No. ER95–881–000]

Take notice that on June 2, 1995, Atlantic City Electric Company (ACE) tendered for filing supplemental material in Docket No. ER95–881–000.

Copies of the filing were served on the New Jersey Board of Regulatory Commissioners.

Comment date: June 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Northern Indiana Public Service Company

[Docket No. ER95–902–000]

Take notice that on May 24, 1995, Northern Indiana Public Service Company (Northern) tendered for filing Revised Exhibits A and B and an Addendum to the Interchange Agreement Between Northern and Wisconsin Electric Power Company.

The Revised Exhibit A to the Interchange Agreement clarifies certain provisions for General Purpose transactions or Negotiated Capacity transactions. Revised Exhibits A and B clarify that the rates for energy from Northern's system shall not exceed $48.00 per megawatt, and provides a cap on seven consecutive daily purchases of capacity by Northern at the others weekly capacity purchase rate. The Addendum specifies the treatment of the emissions allowance costs included as out-of-pocket costs for sales by Northern.

Copies of this filing have been sent to Wisconsin Electric Power Company and the Indiana Utility Regulatory Commission.

Comment date: June 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Northern Indiana Public Service Company

[Docket No. ER95–903–000]

Take notice that on May 24, 1995, Northern Indiana Public Service Company (Northern) tendered for filing Revised Exhibit A and an Addendum to the Interchange Agreement Between Northern and Wisconsin Electric Power Company.

The Revised Exhibit A to the Interchange Agreement clarifies certain provisions for General Purpose transactions and Negotiated Capacity transactions. Revised Exhibits A clarifies that the rates for energy shall not be less than Northern's out-of-pocket costs, provides a cap on seven consecutive daily purchases of capacity at the weekly capacity purchase rate, provides that the rate for energy associated with purchased power, if any, shall be the cost of such energy to Northern plus on mill and states that third party purchase-resale transactions are not anticipated for General Purpose transactions. The Addendum specifies the treatment of emissions allowance costs included as out-of-pocket costs for sales by Northern.

Copies of this filing have been sent to LG&E Power Marketing, Inc. and the Indiana Utility Regulatory Commission.

Comment date: June 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Florida Power & Light Company

[Docket No. ER95–1095–000]

Take notice that on May 25, 1995, Florida Power & Light Company (FPL) tendered for filing proposed Service Agreements with the City of Key West for transmission service under FPL's Transmission Tariff Nos. 2 and 3.

FPL requests that the proposed Service Agreements be permitted to become effective on June 1, 1995, or as soon thereafter as practicable.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: June 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. PacifiCorp Power Marketing, Inc.

[Docket No. ER95–1096–000]

Take notice that on May 25, 1995, PacifiCorp Power Marketing, Inc. (PPM), tendered for filing pursuant to Rule 205, 18 CFR 385.205, an Application for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective the earlier of July 25, 1995 or the date the Commission issues an Order in this Docket.

PPM intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where PPM sells electric energy outside of the Western Systems Coordinating Council, it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. PPM is not in the business of generating, transmitting, or distributing electric power.

Comment date: June 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. West Texas Utilities Company

[Docket No. ER95–1097–000]

Take notice that on May 25, 1995, West Texas Utilities Company (WTU), tendered for filing a Letter Agreement between WTU and the City of Coleman, Texas (Coleman). Under the Letter Agreement, WTU will make additional energy available to Coleman during the on-peak hours of the summer months of 1995, pursuant to a Supplemental Sales Agreement between WTU and Coleman, previously filed with the Commission.

WTU requests waiver of the notice requirements in order that the Letter Agreement may become effective as of June 1, 1995.

Comment date: June 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Portland General Electric Company

[Docket No. ER95–1098–000]

Take notice that on May 24, 1995, Portland General Electric Company (PGE), tendered for filing revisions to FERC Rate Schedule No. 185 to allow the integration of the Coyote Springs Generating Project.

Comment date: June 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Oklahoma Gas and Electric Company

[Docket No. ER95–1099–000]

Take notice that on May 25, 1995, Oklahoma Gas and Electric Company (OG&E), tendered for filing a modification to its Fuel Cost Adjustment provisions that are included in its Rate Schedule WM–1, Firm Power (Municipalities); Rate Schedule WC–1, Firm Power (Cooperatives); and Rate Schedule WM–2, Supplemental Service (Municipalities) all of which is included in the Oklahoma Gas and Electric Company FERC Electric Tariff, 1st Revised Volume No. 1, as well as modification to the fuel cost adjustment provisions contained in contracts with AES Power, Inc.; City Water & Light of Jonesboro, Arkansas; Oklahoma Municipal Power Authority; and Southwestern Power Administration.

The proposed modification to the Fuel Cost Adjustment provisions on the above referenced Rate Schedule Sheets is necessary due the possibility that OG&E may purchase fuel from its wholly-owned subsidiary, ENOGEX, Inc. to provide electricity to its customers and because ENOGEX, Inc. transports natural gas to OG&E. The purchase price and related costs of fuel purchased from ENOGEX, Inc. are subject to review and approval by the Oklahoma Corporation Commission.

Copies of this filing have been sent to the Oklahoma Corporation Commission and the Arkansas Public Service Commission and to the affected customers.

Comment date: June 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. PECO Energy Company

[Docket No. ER95–1105–000]

Take notice that on May 26, 1995, PECO Energy Company (PECO), tendered for filing an Agreement between PECO and PEPCO Services, Incorporated (PEPCO) dated June 1, 1995.

PECO states that the Agreement sets forth the terms and conditions for the sale of system energy which it expects to have available for sale from time to time and the purchase of which will be economically advantageous to PEPCO. In order to optimize the economic advantage to both PECO and PEPCO, PECO requests that the Commission waive its customary notice period and permit the agreement to become effective on June 1, 1995.

PECO states that a copy of this filing has been sent to PEPCO and will be furnished to the Pennsylvania Public Utility Commission.

Comment date: June 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Southern Company Services, Inc.

[Docket No. ER95–1106–000]

Take notice that on May 26, 1995, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as "Southern Companies") filed a Service Agreement dated as of May 5, 1995 between Catex Vitol Electric, L.L.C. and SCS (as agent for Southern Companies) for service under the Short-Term Non-Firm Transmission Service Tariff of Southern Companies.

Comment date: June 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. LTV Steel Mining Company A Limited Partnership

[Docket No. ER95–1107–000]

Take notice that on May 26, 1995, LTV Steel Mining Company (LTV Mining), a limited partnership organized under the laws of Minnesota, tendered for filing proposed changes in its FERC Electric Service, Tariff No. 0001. The proposed changes modify the rate for the sale of capacity and associated energy, as well as inadvertent power flows, from LTV Mining to Minnesota Power & Light.

The proposed changes are being made in order to update the pricing and operating procedures governing the sale of capacity and associated energy from LTV Mining to Minnesota Power & Light, thus providing an efficient solution to meet the long term needs of both LTV Mining and Minnesota Power & Light.

Copies of the filing were served upon Minnesota Power & Light.

Comment date: June 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

18a. Louisville Gas and Electric Company

[Docket No. ER95–1108–000]

Take notice that on May 30, 1995, Louisville Gas and Electric Company, tendered for filing a copy of a service agreement between Louisville Gas and Electric Company and Rainbow Energy Marketing Corporation under Rate GSS.

Comment date: June 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

19. Madison Gas and Electric Company

[Docket No. ER95–1109–000]

Take notice that on May 30, 1995, Madison Gas and Electric Company (MGE), tendered for filing a service agreement with Citizens Lehman Power Sales under MGE's Power Sales Tariff. MGE requests an effective date 60 days from the filing date.

Comment date: June 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

20. Madison Gas and Electric Company

[Docket No. ER95–1110–000]

Take notice that on May 30, 1995, Madison Gas and Electric Company (MGE), tendered for filing a service agreement with CNG Power Services Corporation under MGE's Power Sales Tariff. MGE requests an effective date 60 days from the filing date.

Comment date: June 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

21. Madison Gas and Electric Company

[Docket No. ER95–1111–000]

Take notice that on May 30, 1995, Madison Gas and Electric Company (MGE), tendered for filing a service agreement with Imprimis Corporation under MGE's Power Sales Tariff. MGE requests an effective date 60 days from the filing date.

Comment date: June 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

22. Central Vermont Public Service Corporation

[Docket No. ER95–1112–000]

Take notice that on May 30, 1995, Central Vermont Public Service Corporation (CVPS), tendered for filing a service agreement for provision of transmission service under FERC Electric Tariff, Original Volume No. 3 to New Hampshire Electric Cooperative, Inc. (NHEC) effective May 1, 1995.

Comment date: June 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

23. Central Vermont Public Service Corporation

[Docket No. ER95–1113–000]

Take notice that on May 30, 1995, Central Vermont Public Service Corporation (CVPS), tendered for filing the Actual 1994 Cost Report in accordance with Article IV, Section A(2) of the North Hartland Transmission Service Contract (Agreement) between Central Vermont Public Service Corporation (CVPS or Company) and the Vermont Electric Generation and Transmission Cooperative, Inc. (VG&T) under which CVPS transmits the output of the VG&T's 4.0 MW hydroelectric generating facility located in North Hartland, Vermont via a 12.5 kV circuit owned and maintained by CVPS to CVPS's substation in Quechee, Vermont. The North Hartland Transmission Service Contract was filed with the Commission on September 6, 1984 in Docket No. ER84–674–000 and was designated as Rate Schedule FERC No. 121.

Under Article IV, Section A(2) of the Agreement, the annual charges to VG&T are based on estimated data which are subject to a reconciliation or "true-up", after the year is over, using actual data as reported in the Company's FERC Form No. 1.

Comment date: June 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

24. Central Vermont Public Service Corporation

[Docket No. ER95–1114–000]

Take notice that on May 30, 1995, Central Vermont Public Service Corporation (CVPS) tendered for filing the Actual 1994 Cost Report required under Article 2.4 on Second Revised Sheet No. 18 of FERC Electric Tariff, Original Volume No. 3, of Central Vermont under which Central Vermont provides transmission and distribution services to the following Customers:

Vermont Electric Cooperative, Inc.
Lyndonville Electric Department
Village of Ludlow Electric Light Department
Village of Johnson Water and Light Department
Village of Hyde Park Water and Light Department
Rochester Electric Light and Power Company
Woodsville Fire District Water and Light Department

Comment date: June 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

25. Central Vermont Public Service Corporation

[Docket No. ER95–1115–000]

Take notice that on May 30, 1995, Central Vermont Public Service Corporation (CVPS), tendered for filing the Actual 1994 Cost Report required under Paragraph Q–1 on Original Sheet No. 18 of the Rate Schedule FERC No. 135 (RS–2 rate schedule) under which Central Vermont Public Service Corporation (Company) sells electric power to Connecticut Valley Electric Company Inc. (Customer). The Company states that the Cost Report reflects changes to the RS–2 rate schedule which were approved by the Commission's June 6, 1989 order in Docket No. ER88–456–000.

Comment date: June 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

26. PECO Energy Company

[Docket No. ER95–1116–000]

Take notice that on May 30, 1995, PECO Energy Company (PECO) tendered for filing an Agreement between PECO and TVA Services, Incorporated (TVA) dated April 26, 1995.

PECO states that the Agreement sets forth the terms and conditions for the sale of system energy which it expects to have available for sale from time to time and the purchase of which will be economically advantageous to TVA. In order to optimize the economic advantage to both PECO and TVA, PECO requests that the Commission waive its customary notice period and permit the agreement to become effective on June 1, 1995.

PECO states that a copy of this filing has been sent to TVA and will be furnished to the Pennsylvania Public Utility Commission.

Comment date: June 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

27. Birchwood Power Partners, L.P.

[Docket No. QF93–126–001]

On May 26, 1995, Birchwood Power Partners, L.P. (Applicant) submitted for filing an amendment to its filing in this docket.

The amendment provides additional information pertaining to the ownership and location of its cogeneration facility. No determination has been made that the submittal constitutes a complete filing.

Comment date: June 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14533 Filed 6–13–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP95–334–000]

Georgia-Pacific Corp. v. NorAm Gas Transmission Co.; Complaint

June 8, 1995.

Take notice that on June 5, 1995, Georgia-Pacific Corporation (Georgia-Pacific) submitted for filing with the Commission a Complaint and Emergency Motion concerning NorAm Gas Transmission Company's (NorAm) charging Georgia-Pacific market lateral fees.

Georgia-Pacific argues that: (1) NorAm has no authority under its FERC Gas Tariff to charge Georgia-Pacific a market lateral fee for firm transportation service performed since February 1, 1995; (2) NorAm has no authority under its FERC Gas Tariff to charge Georgia-Pacific a market lateral fee prospectively; and (3) NorAm must make a rate filing pursuant to Section 4 of the Natural Gas Act before it may seek to charge Georgia-Pacific (and any transportation customer) a market lateral fee.

Georgia-Pacific also contends that its nonpayment of NorAm's charged market lateral fees does not authorize NorAm to suspend service to Georgia-Pacific under its FERC Gas Tariff. Georgia-Pacific, therefore moves the Commission to expeditiously issue an order forbidding NorAm to suspend or terminate service to Georgia-Pacific during the pendency of this complaint.

Georgia-Pacific states that it has served a copy of the complaint to NorAm.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's rules of practice and procedure 18 CFR 385.214, 385.211. All such motions or protests should be filed on or before June 29, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to this complaint shall be due on or before June 29, 1995.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14479 Filed 6–13–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–4–49–000]

Williston Basin Interstate Pipeline Co.; Annual Supply Realignment Reconciliation Filing

June 8, 1995.

Take notice that on May 31, 1995, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing its Annual Gas Supply Realignment Reconciliation Filing pursuant to § 39.3.3 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1. More specifically, Williston Basin filed the following tariff sheets:

Twelfth Revised Sheet No. 15
Fifteenth Revised Sheet No. 16
Twelfth Revised Sheet No. 18

Williston Basin has requested that the Commission accept the filing to become effective July 1, 1995.

Williston Basin states that the revised tariff sheets reflect the annual reconciliation of the latest GSR cost recovery period and establishment of new reservation charge surcharge applicable to service under Rate Schedules FT–1 and ST–1 and a new

base rate unit cost applicable to service under Rate Schedule IT–1.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's rules and regulations. All such motions or protests should be filed on or before June 15, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14478 Filed 6–13–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5221–2]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 14, 1995.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 0226.12.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: Applications for the National Pollutant Discharge Elimination System (NPDES) Permit and the Sewage-Sludge Management Permit (OMB Control No. 2040–0086; EPA ICR No. 0226.12). This is a request for extension of a currently approved information collection.

Abstract: Under the Clean Water Act, EPA or a delegated State regulatory authority issues permits to facilities discharging pollutants into the waters of the United States under the National Pollutant Discharge Elimination System (NPDES) program. The Act also authorizes EPA to issue permits for the use and disposal of sewage sludge. Most information is supplied on standard application forms, with different forms corresponding to different types of applicants. This ICR includes justification for all the information requirements relating to facilities applying for such permits.

Burden Statement: The public reporting and recordkeeping burden for this collection of information is estimated to average 7 hours per respondent. This estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information.

Respondents: Facilities that discharge wastewater or use or dispose of sewage sludge.

Estimated No. of Respondents: 101,988.

Estimated Total Annual Burden on Respondents: 622,628 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to the following addresses. Please refer to EPA ICR No. 0226.12 and OMB Control No. 2040–0086 in any correspondence.

Ms. Sandy Farmer, EPA ICR No. 0226.12, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2136), 401 M Street SW., Washington, DC 20460

and

Mr. Tim Hunt, OMB Control No. 2040–0086, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20503.

Dated: June 1, 1995.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 95–14547 Filed 6–13–95; 8:45 am]

BILLING CODE 6560–50–M

[OPPTS–00171; FRL–4961–8]

Uniform Reporting of Environmental Data; Facility Key Identifiers Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Open Meeting.

SUMMARY: EPA has established the Facility Key Identifiers Project to streamline access to and development of a uniform reporting structure for environmental data. The Facility Key Identifiers Project Staff of the Office of Pollution Prevention and Toxics, is announcing a public meeting to discuss the scope of the project and anticipated proposed regulations.

DATES: The meeting will be held on June 23, 1995. The first session will be held from 9 a.m. to 11 a.m. and the second session will be held from 1 p.m. to 3 p.m. The agenda for both sessions will be the same, although the first will be focussed more on environmentalist and public access issues, while the second will be focussed on industry reporting issues.

ADDRESSES: The meeting will be held at the Environmental Protection Agency, 401 M St., SW., Washington, DC in the Washington Information Center, room North 3.

FOR FURTHER INFORMATION CONTACT: Diane Sheridan, Office of Pollution Prevention and Toxics (7407), US Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, telephone: (202) 260–3435. E-mail, sheridan.diane@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has established the Facility Key Identifiers Project to streamline access to and develop a uniform reporting structure for environmental data by establishing a uniform set of "place-based" identifier information for use by EPA, State environmental agencies, and the public. The scope of the project, proposed structure of the Key Identifiers, anticipated proposed regulations and the infrastructure needed to make the system operational will be discussed at the meeting.

List of Subjects

Environmental protection.

Dated: June 9, 1995.

Steven D. Newburg-Rinn,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 95–14678 Filed 6–13–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–260055; FRL–4944–2]

Pesticide Tolerances; Partial Response to Petition to Modify EPA Policy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; Response to Petition.

SUMMARY: This notice responds in part to a petition filed with EPA by the National Food Processors Association and other food and grower trade associations. That petition sought the repeal or revision of several EPA policies and interpretations related to how EPA coordinated actions under its various statutory authorities over pesticide residues in food. EPA regulates pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act and sections 408 and 409 of the Federal Food, Drug, and Cosmetic Act. Although EPA has not resolved all of the policy questions raised by the NFPA petition, EPA has concluded that changes are warranted to its policy concerning when FFDCA section 409 is applicable to a pesticide use and several related legal interpretations.

FOR FURTHER INFORMATION CONTACT: By mail: Niloufar Nazmi, Special Review and Reregistration Division (7508W) or Jean Frane, Policy and Special Projects Staff (7501C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Telephone numbers: 703-308-8028 or 703-305-5944; e-mail: nazmi.niloufar@epamail.epa.gov. or frane.jean@epamail.epa.gov.

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I. Introduction

In *Les v. Reilly*, 968 F.2d 985 (9th Cir. 1992), *cert. denied*, 113 S.Ct. 1361 (1993), the Ninth Circuit U.S. Court of Appeals held that the Delaney anti-cancer clause in the food additives provision of the Federal Food, Drug, and Cosmetic Act was not subject to an exception for pesticide uses which pose a *de minimis* cancer risk. Prior to the decision becoming final, food processors and growers filed a petition with EPA challenging a number of policies and interpretations relating to how EPA implements its authority under the FFDCA. The petition proposes policies and interpretations that would reduce the impact of the *Les* decision. This notice responds to the petition in part.

II. Background

A. Statutory Background

Pesticide residues in human and animal food in the United States are regulated under provisions of the Federal Food, Drug and Cosmetic Act (FFDCA) and the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). The interplay between sections 402, 408 and 409 of the FFDCA and, to a more limited extent, between the FFDCA and FIFRA, have created a complex, and sometimes contradictory, statutory framework underlying residue regulation in food.

Before a pesticide may be sold or distributed, it must be registered under the FIFRA. 7 U.S.C. 136 et seq. To qualify for registration, a pesticide must, among other things, perform its intended function without causing "unreasonable adverse effects on the environment." 7 U.S.C. 136a(c)(5). The term "unreasonable adverse affects on the environment" is defined as "any unreasonable risk to man or the environment taking into account the economic, social and environmental costs and benefits of the use of any pesticide." 7 U.S.C. 136(bb).

The FFDCA, 21 U.S.C. 301 *et seq.*, authorizes the establishment by regulation of maximum permissible levels of pesticides in foods. Such regulations are commonly referred to as "tolerances." Without such a tolerance or an exemption from the requirement of a tolerance, a food containing a pesticide residue is "adulterated" under section 402 of the FFDCA and may not be legally moved in interstate commerce. 21 U.S.C. 331, 342. EPA was authorized to establish pesticide tolerances under Reorganization Plan No. 3 of 1970. 5 U.S.C. App at 1343 (1988). Monitoring and enforcement of pesticide tolerances are carried out by the U.S. Food and Drug Administration (FDA) and the United States Department of Agriculture (USDA).

The FFDCA has separate provisions for tolerances for pesticide residues on raw agricultural commodities (RACs) and for residues on processed food. For pesticide residues in or on RACs, EPA establishes tolerances, or exemptions from tolerances when appropriate, under section 408. 21 U.S.C. 346a. EPA regulates pesticide residues in processed foods under section 409 which pertains to "food additives." 21 U.S.C. 348. Maximum residue regulations established under section 409 are commonly referred to as food additive tolerances or food additive regulations (FARs). Section 409 FARs are needed, however, only for certain pesticide residues in processed food. Under section 402(a)(2) of the FFDCA, a pesticide residue in processed food generally will not render the food adulterated if the residue results from application of the pesticide to a RAC and the residue in the processed food when "ready to eat" is below the RAC tolerance set under section 408. This exemption in section 402(a)(2) is commonly referred to as the "flow-through" provision because it allows the section 408 raw food tolerance to flow through to the processed food form. Thus, a section 409 FAR is only necessary to prevent foods from being deemed adulterated when the concentration of the pesticide residue in a processed food when "ready to eat" is greater than the tolerance prescribed for the RAC, or if the processed food itself is treated or comes in contact with a pesticide.

To establish a tolerance regulation under section 408, EPA must find that the regulation would "protect the public health." 21 U.S.C. 346a(b). In reaching this determination, EPA is directed to consider, among other things, the "necessity for the production of an adequate, wholesome, and economical food supply." *Id.* Prior to establishing a food additive tolerance under section 409, EPA must determine that the "proposed use of the food additive [pesticide], under the conditions of use to be specified in the regulation, will be safe." 21 U.S.C. 348(c)(3). Section 409 specifically addresses the safety of carcinogenic substances in the so-called Delaney clause which provides that "no additive shall be deemed safe if it has been found to induce cancer when ingested by man or animal or if it is found, after tests which are appropriate for the evaluation of the safety of food additives, to induce cancer in man or animal * * *." *Id.* Although EPA has interpreted the general standard under section 408 to require a balancing of risks and benefits, where a pesticide which is an animal or human carcinogen is involved, the section 409

Delaney clause, in contrast to section 408 and FIFRA, explicitly bars such balancing no matter how infinitesimal the potential human cancer risk. *Les* v. *Reilly*, 968 F.2d at 989.

B. EPA Coordination of the Statutory Provisions Governing Pesticides

In its administration of FIFRA and FFDCA sections 408 and 409, EPA has specified that FIFRA registrations for food-use pesticides will not be approved until all necessary tolerances and food additive tolerances have been obtained. 40 CFR 152.112(g). As a policy matter, EPA has taken a similar approach to FFDCA sections 408 and 409, not granting section 408 tolerances until needed section 409 FARs have been granted.

This linkage of its statutory authorities has been described by EPA as its coordination policy. Basically, EPA's coordination policy is an expression of EPA's intent to take into account all of the applicable provisions governing pesticides in taking action under any one of the three. EPA's view has been that it should not be approving pesticide uses under one of the three provisions if an approval needed under one of the other provisions cannot be obtained.

EPA's concentration policy establishes the criterion as to when approval is needed for food-use pesticides under FFDCA section 409, and hence when the Delaney clause applies. Generally, EPA has used a "concentration in fact" standard as the test of whether a use needs a section 409 FAR. The concentration in fact standard focuses on the level of the pesticide residue in the processed food, measured on a weight to weight basis, compared to the level of the residue in the precursor raw agricultural commodity. If a processing study shows that the level of pesticide residue in the processed food exceeds the level of residue in the precursor raw agricultural commodity, EPA would conclude there has been a concentration in fact of the pesticide residues in the processed food.

EPA believes the concentration in fact test is relevant to the inquiry of whether a section 409 FAR is needed because residues in the raw crop may be at or near the section 408 tolerance level. Residues in the raw crop may be close to the section 408 tolerance level because section 408 tolerance levels are established based on actual field trials and designed to be set no higher than necessary given approved usage directions for the pesticide established in the FIFRA registration. Under EPA regulations, the section 408 tolerance level should "reasonably reflect the amount of residue likely to result when the pesticide chemical is used in the manner proposed." 40 CFR 180.4. If residue levels in the raw crop are at or near the section 408 tolerance level and concentration in fact occurs during processing, the residue level in the processed food is likely to exceed the section 408 tolerance. The National Academy of Sciences (NAS) has acknowledged the logic behind EPA's reliance on a concentration in fact standard:

> In determining whether a section 409 food additive tolerance is required, the EPA focuses on whether residues in any processed product exceed those found on the unprocessed crop, not whether residues concentrate above some hypothetical section 408 tolerance.
>
> The logic of the EPA's practice is clear. A section 408 tolerance represents a residue level that may in some cases be realized. A section 409 tolerance must reflect the possible residue levels in processed foods derived from that raw commodity.

National Research Council, Regulating Pesticides in Food: Delaney Paradox 28 (1987).

III. The NFPA Petition

On September 11, 1992, the National Food Processors Association (NFPA), the United Fresh Fruit and Vegetable Association, the Florida Fruit and Vegetable Association, the Northwest Horticultural Council, and the Western Growers Association filed a petition with EPA challenging the policies followed by EPA in linking its regulatory activities under the various pesticide provisions of FIFRA and FFDCA. (Petition to the Environmental Protection Agency, Office of Pesticide Programs, Concerning EPA's Pesticide Concentration Policy (1992)) (hereinafter cited as "NFPA petition"). The NFPA petition explicitly attacks what it calls EPA's "concentration policy." In actuality, the petition is a challenge to two interrelated policies described by EPA as its coordination and concentration policies. The NFPA petition argues that the coordination and concentration policies are both unlawful and unnecessary. The petition requests that the EPA coordination policy be repealed so that section 408 tolerances can remain in effect (or can be established) for pesticide uses even if, under the *Les* decision, the associated section 409 FARs have to be revoked (or cannot be established). The petition asks that the concentration policy be modified so that it takes into account factors beyond the concentration in fact test. Additionally, the petition requests that EPA apply the term "ready to eat" in the flow-through provision according to what NFPA asserts is its plain meaning.

EPA sought public comment on the petition (58 FR 7470, Feb. 5, 1993). Extensive public comment was received, and significant comments are discussed in this notice. Several more narrowly focused comments are discussed in a separate document that has been included in the docket.

IV. Summary of EPA's Partial Response to NFPA Petition

Sections V through VII below set forth EPA's partial response to the NFPA petition. EPA has not reached a decision on NFPA's challenge to the coordination policy. EPA, however, has completed evaluation of NFPA's contentions regarding the concentration policy and EPA's interpretation of the term "ready to eat." This document responds to the NFPA petition on these two issues. In brief, EPA agrees with NFPA and many of the commenters that modifications should be made to its concentration policy so that it is a better predictor of the likelihood that residues in processed food may exceed the applicable section 408 tolerance. EPA, however, cannot accept all of NFPA's suggested changes to the concentration policy. As to interpretation of the phrase "ready to eat," EPA agrees that such term must be given its common-sense meaning.

V. Concentration Policy

A. General Issues

EPA's concentration policy is the trigger for when a pesticide use needs a section 409 FAR. EPA has treated a pesticide use as needing a section 409 FAR generally whenever a processing study shows that pesticide residues are greater in the processed food than in the raw agricultural commodity before processing. In other words, EPA looks to see if the pesticide "concentrates in fact." EPA has used concentration in fact as the trigger for when a food additive regulation is needed because, in theory, RAC tolerances are set at levels no higher than necessary to cover maximum legal usage under the FIFRA registration. RAC tolerances are established based on field trial data showing the range of residues likely to result from maximum legal application of the pesticide. Generally, the RAC tolerance level is set just slightly above the maximum residue value found in the field trials. Thus, if concentration in fact occurs during processing, overtolerance residues in processed food can result if the RACs used for processing contain pesticide residues reflecting maximum legal usage.

NFPA challenges EPA's concentration policy on two grounds. First, NFPA claims that all available data support the view that food additive regulations are unnecessary to avoid adulterated processed food. Second, NFPA argues that EPA has ignored the "ready to eat" requirement in the flow-through provision. EPA's interpretation of the term "ready to eat" will be addressed in the following section.

B. Monitoring Data and the Concentration Policy

NFPA cites various data sources which it claims show residues on both raw and processed foods generally to be well below the level of the RAC tolerance. NFPA argues that residues in processed foods generally fall below RAC tolerances because of the careful attention paid to the flow-through provision by food processors.

> When the flow-through provision was adopted and as it operated for a number of years, processors clearly understood that it was their obligation to produce a processed product that stayed within the raw product tolerance. This obligation could be met through any number of steps, including supervision of growers' pesticide practices, careful and informed buying practices, analysis of raw product, handling, cleaning and treatment of the raw product, and testing of the finished produce to assure that it would be in compliance with the Act * * *. [T]hey recognized that if their process involved some degree of concentration [and the food is consumed in the concentrated form], they were well advised to use raw product that at the time of processing was below the prescribed tolerance levels, and that failure to take such steps could possibly result in adulteration and a costly enforcement action.

(Comments of NFPA at 37–38).

NFPA asserts that the steps taken by processors to avoid overtolerance residues show that EPA's reliance on processing studies to require food additive regulations is unwarranted.

The data relied upon by NFPA do show that pesticide residues in raw and processed food generally are below section 408 tolerance levels. On the other hand, EPA is often presented with processing studies by pesticide manufacturers that demonstrate that particular pesticides concentrate in processed food to levels 2 times, 10 times, or even 50 times above the level found in the raw crop. EPA has examined carefully the factors cited by NFPA and commenters as an explanation for the low levels of residues to determine whether any adjustments to the concentration policy are appropriate. Although EPA has concluded that some adjustment to the concentration policy is warranted, EPA believes that the basic rationale of the concentration policy with its focus on concentration in fact is sound. As the National Academy of Sciences has found:

> The logic of EPA's practice is clear. A section 408 tolerance represents a residue level that may in some cases be realized. A section 409 tolerance must reflect the possible residue levels in processed foods derived from that commodity.

National Research Council, Regulating Pesticides in Food: Delaney Paradox 28 (1987)

At the same time, EPA recognizes that reliance solely on processing studies may not, in some circumstances, accurately "reflect the possible residue levels in processed foods."

In challenging the concentration policy, some commenters argue that EPA's policy is a theoretical exercise with no basis on actual data and that this is confirmed by EPA's description of its policy in its request for comment on the NFPA petition. EPA did not mean to suggest in that notice that its concentration policy focuses on theoretical possibilities. EPA's policy has always sought to determine whether residues greater than the section 408 tolerance can occur in processed food. EPA makes this determination based on hard data— actual processing studies involving, in most cases, the pesticide and crop in question. EPA's revisions to its policy do not change the basic focus of the concentration policy. Rather, as explained below, EPA has expanded the range of data and other information it will consider in determining whether residues greater than the section 408 tolerance can occur in processed food.

It is worth noting that the same data relied upon by NFPA to show that most food, whether raw or processed, is well below section 408 tolerance levels also reinforces EPA's judgment that many section 408 tolerances may currently be set higher than necessary and may need to be lowered so that they reasonably reflect actual residues. If section 408 tolerances are lowered, the chances of residues over the section 408 tolerance in processed foods where residues concentrate in fact would be greater.

C. Revisions to the Concentration Policy

1. *Introduction and summary.* EPA's concentration policy is designed to evaluate when residues in processed food may exceed the raw food tolerance due to concentration during processing. Generally, in implementing its concentration policy, EPA has used a test of concentration in fact as an indicator that residues over the section 408 tolerance may occur because residue levels in the RAC may exist at the tolerance level. EPA, however, also has historically considered, to a limited extent, at least two other factors in evaluating whether a processing study showing concentration of residues indicates there is a real possibility of residues over the section 408 tolerance. Below, EPA discusses those factors and other factors that may prevent the occurrence of residues over the section 408 tolerance.

EPA concludes that it has too rigidly applied its concentration in fact test. EPA continues to believe that information from processing studies is generally the most important single piece of information is assessing the likelihood that residues in processed food could exceed the section 408 tolerance. EPA will also continue to consider factors such as the variability of the analytical method and the degree of rounding used in establishing the section 408 tolerance. In a departure from past practice, EPA will, as explained below, take into account, where appropriate, information pertaining to the averaging of residues during processing. EPA will also, where appropriate, consider information obtained from properly designed market basket surveys. EPA, however, is not convinced at this time by the NFPA suggestion that, despite data showing residues concentrate during processing, processors can insure residue levels stay below section 408 tolerance levels.

2. *Factors relied upon by EPA in determining whether a pesticide which concentrates in fact is likely to produce residues in exceedance of the section 408 tolerance.* As noted, EPA follows a concentration in fact test to determine if section 409 FARs are necessary. For the most part, EPA's concentration in fact test is applied based on the results from data from processing studies. Historically, EPA has also occasionally considered two other factors in determining whether a processing study which shows concentration in fact does show that residues in processed food can exceed the appropriate section 408 tolerance.

The first of these factors is the degree of rounding that was used in setting the RAC tolerance. To a limited extent, EPA has considered the degree of rounding in past decisions on whether a section 409 FAR is needed. Generally, the highest value obtained from field trials is rounded up in selecting the tolerance level. For example, if the highest value from field trials was 8 parts per million (ppm), that data point might be rounded to 10 ppm for the tolerance value. Where rounding increases the observed residue level by 25 percent, the pesticide would have to concentrate by

a factor of greater than 25 percent (1.25X) to produce residues over the section 408 tolerance.

The second factor currently relied upon by EPA is the degree of variability in the analytical method used to measure residue levels in the field and processing studies and for enforcement of the tolerance. If residues do not concentrate to a greater degree than the variability in the methods, no residues over the section 408 tolerance could be reliably detected.

3. *Other factors potentially relevant to whether residues exceed the section 408 tolerance.* In the past, EPA has generally not taken into consideration various other factors that may explain why, despite the fact that a processing study suggests there is a possibility of residues greater than the RAC tolerance, that event seems to occur infrequently. One factor that lessens the possibility of residues over the section 408 tolerance in processed food is that EPA's judgment concerning whether such residues could occur assumes that the pesticide will be used at the maximum label rate and applied the maximum number of times permitted, and that the crop will be harvested at the shortest preharvest interval allowed. Frequently, however, these maximum application and harvest practices are not followed resulting in residues far below tolerance levels in the raw crop, with correspondingly lower levels in the processed food.

A second factor that serves to result in lower residue levels is that tolerance values are set to reflect the maximum residue level that could result from maximum legal application and harvest practices but field trials generally show a wide range of residue levels even when maximum legal application and harvest practices used in each trial. Thus, average residue values from such field trials tend generally to be significantly below the maximum residue level found in field trials and, thus, also significantly below the tolerance level.

A third factor that may explain lower observed residues in processed foods is that the processing of many crops involves mixing or blending of large amounts of the raw crop. Oftentimes this can result in significant lowering of residue values as untreated crop is blended with treated crop. Further, this blending accentuates the above two factors as lightly treated crops are mixed with crops having received maximum treatment and high and low level residues from crops receiving maximum treatment are mixed.

Another reason why residues over the section 408 tolerance may not occur in processed food is that pesticides often degrade significantly during the time in which the crop is transported and stored prior to processing. Thus, even if crops bearing tolerance level residues at harvest were the only ingredient used in food processing, any concentration of residues might be offset by normal degradation of residues.

NFPA suggests additionally that the chance of residues over the section 408 tolerance is not great because of various steps taken by food processors. NFPA cites "supervision of growers' pesticide practices, careful and informed buying practices, [and] analysis of raw product" as actions which serve to reduce residues. Further, various commenters have contended that residues over the section 408 tolerance in some processed foods could be avoided by restrictions on pesticide use to crops grown for the fresh market.

4. *Evaluation of factors.* Below, EPA evaluates its concentration policy including EPA's use of processing studies, the factors considered by EPA in evaluating whether processing studies show the possibility of residues over the section 408 tolerance, and the relevance of the various reasons noted above why overtolerance residues infrequently occur.

Processing studies. EPA guidelines on residue data specify that processing studies should "simulate commercial processing as closely as possible." Pesticide Assessment Guidelines, Subdivision O at 21 (1982). Data from such studies, EPA believes, remain the most relevant information in determining whether residues over the section 408 tolerance may occur. Because section 408 tolerance values represent a level of residues which field trial studies show can occur, data from a processing study showing concentration can be a good indicator regarding the possibility of overtolerance residues in processed food. EPA has not issued extensive industry-by-industry guidance on what constitutes "commercial processing" but rather has left it to the pesticide manufacturer to insure that modern commercial processing is reflected in the processing studies. Thus, EPA disagrees with comments by NFPA and other commenters which suggest it is EPA which is at fault for not taking into account practices such as washing and peeling that routinely occur during processing. If those practices are a part of commercial processing for certain foods and are not reflected in the processing studies designed and submitted by pesticide manufacturers, the pesticide manufacturers need to provide EPA with data that are truly representative of the industry practice.

Rounding. To a limited extent, EPA has considered the rounding up that occurs in the selection of the section 408 tolerance value in making concentration determinations. EPA believes the degree of rounding remains a legitimate consideration in determining the likelihood that processing may produce residues in processed food greater than the section 408 tolerance. Moreover, as noted below, EPA believes it is appropriate to consider the difference between residue levels that can occur on crops and the section 408 tolerance level in evaluating the possibility of residues over the section 408 tolerance in processed food.

But EPA is concerned that its past practice of rounding up has resulted in section 408 tolerances being set at a level higher than is necessary to cover legally treated crops. EPA is currently examining whether older section 408 tolerances have been set at inappropriately high levels owing to rounding or for other reasons. EPA is also exploring whether there might not be statistical techniques for better assigning section 408 tolerance levels. To the extent EPA alters its approach to selecting section 408 tolerance levels, these revised section 408 levels will need to be considered in making determinations under the concentration policy.

Variability of methods. EPA continues to believe that the variability of the analytical method should be evaluated in determining whether residues over the section 408 tolerance are likely to be reliably detected despite a processing study showing concentration in fact. The aim of the concentration policy is to identify those uses which can produce residues over the section 408 tolerance in processed food. If any possible concentration is so low that it could not be clearly identified by the relevant analytical method, then, in fact, instances of residues over the section 408 tolerance in processed food would not be expected. The degree of variability in analytical methods must be assessed on a case-by-case basis. Generally, the variability in analytical methods suggests that residues over the section 408 tolerance are not likely to be reliably detected where processing studies show concentration factors in the range of 1.1X to 1.5X.

Treotment rates and processor control. EPA believes that it is appropriate to assume that some growers will treat a portion of their crop at the maximum treatment rate allowed by the label. EPA's experience has shown that due to unexpected weather and pest pressures it is unrealistic to assume that no grower will treat his or her crop with a pesticide in the manner that yields the highest lawful residues.

Moreover, where residues do concentrate during processing, EPA questions the ability of the processor or grower to manage pesticide residue levels so as not to produce over-tolerance residues in processed food. Although processors may know the concentration factor of residues from processing studies, the concentration factor does not suggest with any precision how processors could instruct growers to change their pesticide application procedures so that residues over the section 408 tolerance will not result in processed food. Levels of residues in raw crops are dependent not only on how much pesticide is applied but on when and how the pesticide is applied. Little data exist that describe the effect of varying any of these procedures on residue levels. Similarly, EPA believes little information is available concerning how changes in their manufacturing processes affect residue levels in processed food. Finally, as discussed below, the comments received on the NFPA petition reinforce EPA's experience that farmers often do not know the ultimate destination of their crop. Therefore, EPA believes it would be very difficult for growers or processors to manipulate residue levels in processed food.

EPA would be open to considering further industry proposals laying out a potential policy framework that more specifically delineates how processor practices could be taken into account in determining the likelihood that residues in processed food would exceed the applicable section 408 tolerance. It would be helpful if such policy proposals contained criteria for evaluating whether specific processor claims regarding pesticide/commodity combinations are reasonable. Among other things, these criteria should address (1) what data would be submitted to EPA to verify residue levels, (2) how the practicality of the proposed scheme would be evaluated (e.g., degree of concentration of processing operations and ability to separate raw food streams), and (3) whether processor control of residue levels for a specific pesticide/commodity combination could be feasibly enforced. If such further policy proposals are received, EPA would seek public input before making any decision on the merits of the proposals and using the proposed criteria in evaluating specific pesticide uses.

Mixing and blending. EPA believes that in many instances it would be appropriate to take into account mixing and blending in determining the likelihood that residues over the section 408 tolerance could result. This change in practice is warranted, EPA believes, because EPA's prior assumption, i.e., that all raw food have the potential to have residues at or near the section 408 tolerance level, does not adequately take into account the realities of food processing. Because of the way EPA sets section 408 tolerances, individual raw commodities do have the potential of having residues at or near the tolerance level. The data from field residue trials show, however, that residue values even from a single field can vary significantly. When individual raw commodities are mixed in processing operations, it is realistic to expect that there will be an averaging effect on the residues in the processed food.

Accordingly, if EPA determines that there is a sufficient degree of mixing or blending during processing such that the normal variation among individual samples from a field will be substantially evened out, EPA will consider comparing some "average" residue value from field trials times the concentration factor to the RAC tolerance level in determining the likelihood of residues over the section 408 tolerance. EPA generally believes that the most relevant "average" residue value from crop field trials is the highest average residue value from the series of individual field trials. Using an average of all samples from all field trials in all regions of the U.S. would tend to suppress the variability in residue values to a greater extent than can be expected by mixing or blending. Generally, crops grown in different regions of the U.S. are not mixed prior to processing. Rather, crops are often processed field-by-field as they are harvested by the grower.

There are a number of constraints EPA thinks are critical here. First, considering average field trial residues is only appropriate where the values being averaged are from field trials involving maximum treatment rates. In other words, averaging may be used to take into account the variation in residues which occurs in crops receiving maximum treatment and minimum preharvest intervals but not residue variations as result of different levels of treatment. As laid out above, EPA has no basis on which to make assumptions about whether crops in specific instances would be treated at rates lower than the maximum permitted on the pesticide label or what residues those lower rates would produce. Second, whether considering blending would be appropriate would depend on the quality of the data base. Consideration of any "average value" would be less appropriate where adequate data from all representative regions of the country are not available. Finally, even where it would be appropriate to consider average residues, EPA believes a simple calculation showing that the average residue multiplied by the concentration factor from a processing study is less than the RAC tolerance alone may not conclusively show that residues over the section 408 tolerance could not result. In appropriate circumstances, EPA may need to consider a number of other factors, such as the variability in the field trial data, in determining the likelihood of residues over the section 408 tolerance.

Degradation of residues. Although EPA recognizes that degradation of residues frequently occurs, it is not apparent how EPA could take that phenomenon into account in its concentration policy other than to the extent the effects of degradation are captured in processing studies. EPA would need detailed data on the degradation rates of pesticides as well as on the minimum time between the harvesting of crops and when such crops are manufactured into ready-to-eat processed foods. Without such information, it would be difficult to establish a tolerance level that would assure that legally treated crops did not result in illegal food.

Some comments filed in response to the NFPA petition suggest that marketplace survey or FDA monitoring data would be relevant to whether there is a likelihood of residues over the section 408 tolerance. Certainly, data from marketplace studies have some degree of relevance to the question of whether residues in processed food may exceed the section 408 tolerance. The relevance of marketplace studies, however, depends on how the marketplace study was performed. For example, the principal reason marketplace studies have been conducted in the past is to obtain better data concerning actual residue values close to the point at which food is consumed. Thus, marketplace studies generally involve sampling commodities in retail grocery stores. A tolerance for processed food would not only apply to food in retail stores but at all prior points at which the food moved in interstate commerce. This fact would have to be taken into account in assessing the relevance of a marketplace study in determining the likelihood of residues in processed food in excess of the section 408 tolerance. Monitoring data can also be relevant to determining

the likelihood of residues in processed food exceeding the section 408 tolerance. However, FDA monitoring data, especially monitoring data on processed foods, generally has been limited and thus may not be a reliable predictor of the level of residues of a particular pesticide in a particular processed food.

Market segregation. Several commenters contend that, even where residues could be expected to concentrate in processed food above the section 408 tolerance, if EPA were to permit pesticides to be labeled solely for crops grown for fresh market, no section 409 FAR would be needed for such pesticide uses. These commenters claim that certain crops are so specialized that they are grown specifically for the fresh or processed market, and, in some instances, that even different pesticides are used on crops depending on whether they are intended for the fresh or processed market. Thus, these commenters argue that allowing pesticides to be labeled for crops grown only for the fresh market where a specialized crop has been developed solely for the fresh market would not pose an enforcement problem. On the other hand, EPA received other comments stating that placing such label restrictions on pesticides would subject growers to a form of "Russian Roulette." EPA's observations indicate that it is difficult to achieve total market segregation; however, if a party can show that a market for a specific crop can be segregated and that such segregation can be feasibly monitored, EPA will not require a section 409 FAR for a pesticide on that crop.

5. *Conclusion.* In sum, EPA's concentration policy will continue to focus on "possible residues" in the processed food. EPA will place primary emphasis on whether processing studies show that the processing of a commodity results in a level of residues in the processed food which is greater than the level of residues in the raw food. EPA will also consider the variability of the analytical method, the degree of rounding involved in establishing the section 408 tolerance, and, where circumstances permit, information concerning blending of crops and average field trial values, and market basket surveys. EPA will consider information concerning potential market segregation and pesticide segregation, but such segregation must be established by clear evidence. But EPA remains unconvinced at this time that it should give much weight at all to degradation information or the possibility that farmers are applying pesticides at lower application rates or that processors will control whether residues over the section 408 tolerance occur.

VI. Ready To Eat

A. NFPA's Argument and Views of Commenters

The NFPA petition argues that EPA has failed to take into account language in the flow-through provision of FFDCA section 402 specifying that processed food is to be evaluated at the "ready-to-eat" stage in determining whether the food exceeds the relevant section 408 tolerance. According to NFPA, the "ready to eat" language was added to the statute to "take care of any particular problem that might be raised with respect to a product that was concentrated or dehydrated." (NFPA Petition at 34). In its comments, NFPA proposed a definition of not ready-to-eat food as food "customarily reconstituted by the consumer or food manufacturer, or [food] sold for use as an ingredient in the preparation of finished foods." (Comments of NFPA at 12). Further, NFPA cites several examples from the Code of Federal Regulations and the **Federal Register** in which Federal agencies have used the term "ready to eat" to distinguish between various foods.

Except for two comments from State agencies (Florida Department of Agriculture and North Dakota Department of Agriculture), most of the commenters on the NFPA petition assert that EPA's approach of treating any food available for sale as "ready to eat" is violative of the plain words of the statute. Many of these commenters also contend that EPA overstated the enforcement difficulties of construing the term "ready to eat" more narrowly.

As to the definitional issue, numerous commenters contend that the literal or plain meaning of the term "ready to eat" food is food consumed "as is." One commenter quotes the dictionary definitions of "ready" and "eat" to derive a definition of "ready to eat" food as "prepared for immediate taking through the mouth as food." (Comments of Catherine Clay at 1). Many commenters mention specific foods and assert that they were not consumed "as is." In their comments, fruit growers are particularly adamant that juice concentrates are not "ready to eat." (See, e.g., comments of Sun-Diamond Growers at 7 ("People simply do not consume a quart of prune juice concentrate or even a cup of concentrate.")). Another commenter contends that EPA should focus on what the usual practice was as to foods:

> We suggest that for those food items that are never or seldom consumed in their concentrated forms (e.g., tomato paste, oils, flour, and juice concentrates), Section 402 should be followed * * *. Those few situations in which product might be consumed in the concentrated form do not present an imminent hazard and will not add significantly to the risk calculation.

(Comments of Del Monte Foods at 1).

As to potential enforcement difficulties with following a consumed "as is" approach to "ready to eat," several commenters argue that EPA could adopt action levels to determine if processed not ready-to-eat food is adulterated. (Comments of Monsanto; Grocery Manufacturers Association; NFPA). Such action levels would be established using dilution factors that take into account the dilution of pesticide residues as a food is mixed with other foods in processing operations. The dilution factors, these commenters urge, should be based on the most concentrated form of ready-to-eat food that the not- ready-to-eat food was used to produce.

Finally, several commenters claim that commodities such as fruit pomaces and seed hulls which are commonly used as animal feeds are not "ready to eat." According to these commenters, most animal feeds are a blend of different ingredients because commodities such as pomaces and hulls are both nutritionally deficient and unpalatable.

B. EPA's Response

1. *The definitional issue.* EPA has considered NFPA's arguments and the comments received and has examined the previous uses of the term "ready to eat" by EPA and other Federal agencies. EPA agrees that the term "ready to eat" food has a common-sense meaning of food which is consumed without further preparation. EPA intends to apply that interpretation in future actions. Basically, EPA believes that food should be considered "ready to eat" if it is consumed "as is" or is added to other ready-to-eat foods (e.g., condiments). Use of this interpretation, of course, will not clarify all issues regarding "ready to eat" foods. EPA envisions that this definition may be difficult to apply in many instances.

Some foods will be easier to classify than others. EPA has, in the past, established section 409 FARs for some foods that clearly do not meet a common-sense interpretation of "ready to eat", and EPA did so without closely considering what level of residue would occur in derivative foods which are "ready to eat." Examples would include dried hops, mint oil, citrus oil, and guar gum. These foods are not generally available to consumers in grocery stores and, even if a consumer could purchase such a food, it would not be consumed "as is" but would be further processed (e.g., dried hops used in brewing beer) or used as an ingredient in a food product. Other foods for which EPA has set food additive regulations, such as raisins, olives, and potato chips, clearly are "ready to eat."

EPA generally believes that foods that are mixed prior to consumption are not "ready to eat." Mixing generally involves the combining of foods with the intent of creating a different food product. For example, combining a tea bag with hot water is intended to create a new food product, the beverage tea. Thus, the dried tea in the tea bag would not be considered "ready to eat." On the other hand, EPA does not believe this mixing principle applies to condiments. Condiments are consumed as a supplement to other "ready to eat" food. A condiment is also consumed "as is."

There remain, however, many commodities for which EPA has traditionally set food additive regulations which are not so easily characterized under the "ready to eat" standard and which will require a case-by-case inquiry. One of the reasons for the fact-intensive nature of this inquiry is that foods have many uses and eating habits vary widely in the United States. Thus, determining whether a food is "ready to eat" involves identifying all significant uses of a food and then determining if any of those uses meets the definition of "ready to eat." For example, perhaps the most common use of vegetable oil is as a cooking medium or as an ingredient in baked products. However, another use of vegetable oil is as a "dressing" for a green salad. When used in this manner, oil is directly added to the salad as a condiment, and thus oil generally would qualify as "ready to eat." Additionally, EPA will need to explore whether some foods which have traditionally not been consumed without further preparation, are actually being consumed on an "as is" basis. Comments submitted by DuPont Agricultural Products support this approach:

> We appreciate that some concentrated products can be consumed without mixing. The likelihood of occurrence of this consumption pattern is a factor which should be considered in determining which form is best viewed as the ready-to-eat stage. In our view, a reasonable approach would be to weigh such a consumption pattern based on the frequency of occurrence. If the consumption of the concentrate occurs with great infrequency, the appropriate ready-to-eat food would still be the diluted product.

(Comments of DuPont Agricultural Products at 8).

In circumstances where EPA's revised approach to the term "ready to eat" results in particular food forms of a commodity being dropped from the category of "ready to eat," EPA will need to explore whether there is a possibility of concentration of residues above the section 408 tolerance in any other, ready-to-eat forms of that commodity. In many instances further preparation of a not-ready-to-eat commodity will so significantly reduce residues that, even if the not-ready-to-eat precursor processed food contained residues over the section 408 tolerance, the ready-to-eat commodity will not. Use of citrus oil as a flavoring in ice cream may be an example of this phenomenon. Citrus oil may be such a small proportion of the total product that any residues over the section 408 tolerance in the oil would be diluted below the section 408 tolerance in the ice cream. However, in other instances, the dilution involved in further preparation of a not-ready-to-eat processed food is not so dramatic. For example, flour, assuming it is found to be a not-ready-to-eat food, is prepared into commodities such as crackers or tortillas in which the dilution factor may be fairly modest. In situations such as this, EPA will have to determine whether it should be setting section 409 FARs on different commodities than has been EPA's traditional practice.

2. *Enforcement approach.* EPA's revised approach to the term "ready to eat" will make enforcement of the FFDCA more challenging as regards foods no longer considered "ready to eat." EPA does not view as satisfactory NFPA's suggestion that for enforcement purposes EPA should develop dilution tables and from such tables promulgate action levels to evaluate the legality of not-ready-to-eat processed food. Although this is a possibility, EPA regards it as cumbersome and lacking the enforcement ease of binding tolerances. An action level is not binding on anyone and thus even though use of a dilution table may suggest that a food is adulterated, FDA could only successfully proceed against the food if it could prove in court that the level of residue found in the not-ready-to-eat food would render ready-to-eat food adulterated.

Instead, EPA has decided to use its general rule-writing authority under FFDCA section 701 to establish maximum residue levels for not-ready-to-eat processed food. Section 701 grants EPA the authority "to promulgate regulations for the efficient enforcement of this Act." 21 U.S.C. 371. These maximum residue levels would be set no higher than the levels which could result in the processed food assuming legal residues in the raw food and that good manufacturing practices were followed.

EPA's authority to set such maximum residue levels arises from the flow-through provision. The flow-through provision does not legalize residues in ready-to-eat processed food unless three criteria are met: (1) the residues are at or below the applicable section 408 tolerance; (2) the precursor raw food had residues within the section 408 tolerance; and (3) good manufacturing practices were followed in preparing the processed food. The maximum residue levels set under section 701 would establish binding regulations as to when the two latter criteria of the flow-through provision are met for a specific pesticide use. If such a maximum residue level were exceeded in a processed food, then as a matter of law the flow-through provision would not apply to the food (whatever the residues in the food when it is "ready to eat"), and thus the food would be adulterated as a matter of law under FFDCA section 402(a)(2)(C).

3. *Animal feeds.* As noted, a number of commenters claimed that food processing byproducts such as grape pomace, soybean hulls, etc. are not "ready to eat" either because they are unpalatable or nutritionally deficient or because they are not a significant portion of the diet of animals. EPA generally intends to apply a similar approach to processing byproducts used as animal feeds as it will to human foods in determining whether the byproducts are "ready to eat" and will also use section 701 maximum residue levels, as described above, where appropriate. Determinations on specific processing byproducts will have to be made on a case-by-case basis. To the extent it can be shown that any individual processing byproduct is unpalatable when fed "as is" or that for other reasons the processing byproduct is generally not fed absent further processing or mixing, EPA would not categorize that particular byproduct as "ready to eat." EPA believes this showing probably can be made for a substantial number of processing byproducts.

In response to comments stating that EPA required examination of processing byproducts not currently used as animal feeds (e.g., apple pomace), EPA would note that it has recently revised its guidelines on what processing byproducts are used as animal feeds. This revision followed a comprehensive survey of animal feed practices. EPA has

also sought public comment on those guideline revisions and will continue to consider comments on this issue.

4. *Future actions.* EPA intends to apply its revised approach to the term "ready to eat" in all future tolerance actions. When any action is taken based on EPA's revised approach, EPA will seek public comment on designations for specific commodities prior to making any final determinations.

VII. Are EPA's Policies Rules That Have Not Been Properly Promulagted?

NFPA contends in its petition that EPA's coordination and concentration policies are not in compliance with the Administrative Procedure Act (APA) because they have not been promulgated as a binding regulation through notice and comment procedures. As to the concentration policy, EPA has in this notice announced a revised concentration policy that EPA believes is fully consistent with the requirements of the APA. This revised policy is not intended to be of controlling effect either on EPA or regulated parties. Rather, it is intended as guidance for EPA in administering its authority under FFDCA. For example, EPA has explained in some detail in its revised concentration policy what types of data it intends to place primary reliance upon in determining whether section 409 FARs are needed. However, EPA has noted its willingness to consider other information and arguments. Thus, because the revised concentration policy is not intended as a binding regulation, it need not be promulgated through notice and comment rulemaking.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests.

Dated: June 9, 1995.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 95–14683 Filed 6–12–95; 12:20 pm]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2078]

Petition for Reconsideration of Actions in Rulemaking Proceedings

June 9, 1995.

Petition for reconsideration have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to this petition must be filed on or before June 29, 1995. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Price Cap Performance Review for Local Exchange Carries. (CC Docket No. 94–1)

Number of Petitions Filed: 3.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–14510 Filed 6–13–95; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1054–DR]

Missouri; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Missouri (FEMA–1054–DR), dated June 2, 1995, and related determinations.

EFFECTIVE DATE: June 2, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 2, 1995, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Missouri, resulting from severe storms, hail, tornadoes and flooding on May 13, 1995, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Missouri.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation Assistance in the designated areas. Individual Assistance may be provided at a later date, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation measures will be limited to 75 percent of the total eligible and reasonable costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date for this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Warren M. Pugh of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Missouri to have been affected adversely by this declared major disaster:

Benton, Boone, Cole, Gasconade, Franklin, Jefferson, Johnson, Miller, St. Charles, St. Clair, Ste. Genevieve and St. Louis Counties.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 95–14542 Filed 6–13–95; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MEDIATION AND CONCILIATION SERVICE

Grants Program Review and Advisory Committee; Notice of Postponing Meeting

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Notice of postponing meeting.

SUMMARY: The Federal Mediation and Conciliation Service announces the postponing of the Grants Program Review and Advisory Committee meeting. The meeting was originally scheduled for June 19, 1995 through June 23, 1995 in Washington, DC. The new meeting date for the Committee is to be announced.

FOR FURTHER INFORMATION CONTACT: Peter Regner, Grants Program Manager, Federal Mediation and Conciliation, 2100 K Street NW., Washington, DC 20427, (202) 606–8181.

Dated: June 8, 1995.

John Calhoun Wells,

Director.

[FR Doc. 95–14570 Filed 6–13–95; 8:45 am]

BILLING CODE 6372–01–M

FEDERAL RESERVE SYSTEM

Bank South Corporation, Notice to engage de novo in certain nonbanking activities

Bank South Corporation, Atlanta, Georgia (Applicant), has filed notice pursuant to § 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.21 of the Board's Regulation Y (12 CFR 225.21(a)(2)), to engage *de novo* through Bank South Securities Corporation, Atlanta, Georgia (Company), a subsidiary of Applicant, in underwriting, to a limited extent, certain "private ownership" industrial development revenue bonds, which are issued for the provision of the following governmental services: water facilities, sewer facilities, solid waste disposal facilities, electric energy and gas facilities, and local district heating or cooling facilities. Applicant previously has received Board approval to engage through Company in, among other things, underwriting and dealing in municipal revenue bonds pursuant to the prudential limitations and other conditions set forth in *Citicorp, J.P. Morgan & Co. Incorporated, and Bankers Trust New York Corporation*, 73 Federal Reserve Bulletin 473 (1987) as modified by *Order Approving Modifications to Section 20 Orders*, 75 Federal Reserve Bulletin 751 (1989). *Bank South Corporation*, 79 Federal Reserve Bulletin 716 (1993) ("*Bank South*").

Applicant also has requested limited relief from a condition in *Bank South* to allow Company to underwrite certain unrated municipal revenue bonds. Applicant has committed that Company will comply with the limitations and conditions previously relied on by the Board (*Letter Interpreting Section 20 Orders, 81 Federal Reserve Bulletin 198 (1995)*) except that Applicant proposes that any single issue of unrated municipal revenue bonds underwritten by Company will not exceed $10 million.

Among the conditions to which Applicant is subject pursuant to *Bank South* is that any industrial development bonds underwritten by Company will be limited to "public ownership" industrial development bonds (i.e., those tax exempt bonds where the issuer, or the governmental unit on behalf of which the bonds are issued, is the sole owner, for federal income tax purposes, of the financed facility). Applicant is now seeking approval to engage through Company in underwriting "private ownership" industrial development revenue bonds issued for the provision of the governmental services noted above, pursuant to the same prudential limitations and other conditions that Applicant agreed to in *Bank South*.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, closely related to banking. Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 Federal Register 806 (1984).

Applicant maintains that the Board previously has determined that underwriting private ownership industrial development bonds to a limited extent is closely related to banking. *J.P. Morgan & Co. Incorporated, et al.*, 75 Federal Reserve Bulletin 192 (1989) (1989 Section 20 Order), *as modified by* Order dated September 21, 1989, 75 Federal Reserve Bulletin 751 (1989) (Modification Order). Applicant has stated, however that it will conduct the activity using the methods and procedures, and subject to the prudential limitations to which it agreed in *Bank South*. This includes the Board's 10 percent revenue limitation on such activities, and for this reason, Applicant contends that approval of the application would not be barred by section 20 of the Glass-Steagall Act (12 U.S.C. 377), which prohibits the affiliation of a state member bank with any company principally engaged in the underwriting, public sale, or distribution of securities.

In order to satisfy the proper incident to banking test, section 4(c)(8) of the BHC Act requires the Board to find that the performance of the activity by Company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices.

In this regard, Applicant believes that "private ownership" industrial development bonds issued for projects that provide the governmental services listed above are substantially the same from a risk analysis standpoint as "public ownership" industrial development bonds. Applicant notes that the revenue streams that pay debt service in the case of both types of bonds are derived from fees collected for providing services traditionally provided by governmental entities or through a contract between a private company and a governmental entity. Accordingly, Applicant believes that the prudential limitations and other conditions to which it is subject pursuant to *Bank South* are adequate to mitigate any potential adverse effects that may arise from the proposed activity. Applicant also believes that approval of this proposal will promote competition and enable Company to provide a wider range of services and added convenience to its customers.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the notice and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than June 30, 1995. Any request for a hearing on this

application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This notice may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Atlanta.

Board of Governors of the Federal Reserve System, June 8, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–14499 Filed 6–13–95; 8:45 am]

BILLING CODE 6210–01–F

Commercial Bancgroup, Inc, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 28, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Commercial Bancgroup, Inc., Harrogate, Tennessee; to engage *de novo* through its subsidiary, Tennessee Finance Company, Inc., Harrogate, Tennessee, in consumer finance activities, pursuant § 225.25(b)(1)(i) of the Board's Regulation Y.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Guaranty Bancshares, Inc., Oklahoma City, Oklahoma; to engage *de novo* through its subsidiary, First Oklahoma Finance Company, Inc., Bethany, Oklahoma, in making and servicing consumer finance loans, pursuant to § 225.25(b)(1)(ii) of the Board's Regulation Y; and, in the sale of credit related life, accident, health and property/casualty insurance, directly related to financing by a finance company subsidiary pursuant to § 225.25(b)(8)(ii)(A),(B), and (C) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 8, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–14498 Filed 6–13–95; 8:45 am]

BILLING CODE 6210–01–F

Hibernia Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 7, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Hibernia Corporation, New Orleans, Louisiana; to acquire 100 percent of the voting shares of Delta Bank & Trust Company, Belle Chasse, Louisiana.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Davis Bancshares, Inc., McClusky, North Dakota; to become a bank holding company by acquiring at least 74.7 percent of the voting shares of First National Bank of McClusky, McClusky, North Dakota.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Southwestern Bancshares, Inc., Glen Rose, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Southwestern Delaware Financial Corporation, Dover, Delaware, and thereby indirectly acquire First National Bank, Glen Rose, Texas.

In connection with this application, Southwestern Delaware Financial Corporation, Dover, Delaware, also has applied to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank, Glen Rose, Texas.

Board of Governors of the Federal Reserve System, June 8, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–14497 Filed 6–13–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Ad Hoc Advisory Committee on Creutzfeldt-Jakob Disease; Establishment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the establishment by the Secretary of Health and Human Services (the Secretary), of the Ad Hoc Advisory Committee on Creutzfeldt-Jakob Disease.

DATES: Authorization for the Committee being established will end on June 9, 1996.

FOR FURTHER INFORMATION CONTACT: Donna M. Combs, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2765.

SUPPLEMENTARY INFORMATION: Under the Federal Advisory Committee Act of October 6, 1972, Pub. L. 92–463, as amended (5 U.S.C. app. 2), and 21 CFR 14.40(b), FDA is announcing the establishment by the Secretary of the Ad Hoc Advisory Committee on Creutzfeldt-Jacob Disease.

The Ad Hoc Advisory Committee on Creutzfeldt-Jakob Disease will review and evaluate available data concerning the safety of blood products obtained from, a donor who, after donation, was diagnosed with Creutzfeldt-Jakob Disease, and make recommendations regarding the disposition of such blood products to the Commissioner of Food and Drugs.

Dated: June 12, 1995.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 95–14654 Filed 6–12–95; 10:56 am]

BILLING CODE 4160–01–F

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETINGS: The following advisory committee meeting is announced:

Ad Hoc Advisory Committee on Creutzfeldt-Jakob Disease

Date, time, and ploce. June 22, 1995, 8 a.m., Marriott Hotel—Bethesda, Congressional Salons I, II, and III, 5151 Pooks Hill Rd., Bethesda, MD.

Type of meeting and contact person. Open committee discussion, 8 a.m. to 11:50 p.m.; open public hearing, 11:50 a.m. to 12:50 p.m., unless public participation does not last that long; open committee discussion, 12:50 p.m. to 5 p.m.; Linda A. Smallwood, Office of Blood Research and Review, Center for Biologics Evaluation and Research (HFM–350), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–6700, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Ad Hoc Advisory Committee on Creutzfeldt-Jakob Disease code 12388.

General function of the committee. The Committee will review and evaluate available data concerning the safety of blood products obtained from, or prepared from one or more donations from, a donor who, after donation, was diagnosed with Creutzfeldt-Jakob Disease and make appropriate recommendations to the Commissioner of Food and Drugs regarding the appropriate disposition of such blood products.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 16, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee reviews and provides recommendations on the public health issue of Creutzfeldt-Jakob Disease concerning blood products, especially those derived from pooled plasma.

FDA is giving less than 15 days public notice of this Ad Hoc Advisory Committee meeting because of the urgent need to address the potential risk of this disease to public health safety. The agency decided that it was in the public interest to hold this scientific discussion on June 22, 1995, even if there was not sufficient time for the customary 15-day public notice.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the

beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

Dated: June 12, 1995.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 95–14655 Filed 6–12–95; 10:56 am]

BILLING CODE 4160–01–F

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made final findings of scientific misconduct in the following case:

Barbara Jones, St. Mary's Hospital, Montreal: The Office of Research Integrity (ORI) conducted an investigation into possible scientific misconduct on the part of Ms. Barbara Jones while a data coordinator at St. Mary's Hospital, Montreal, Quebec. ORI concluded that Ms. Jones committed scientific misconduct by falsifying and fabricating the dates of tests or examinations required prior to study entry for two women entered on the Breast Cancer Prevention Trial (BCPT). The BCPT is coordinated by the National Surgical Adjuvant Breast and Bowel Project (NSABP) and supported by the National Cancer Institute and the National Heart, Lung, and Blood Institute. Because the BCPT is still in progress, no conclusions or results have been published and no clinical recommendations have been based on the results of the study.

Ms. Jones did not contest the ORI findings or administrative actions which require that, for a period of three years, any institution which proposes Ms. Jones' participation in PHS-supported research must submit a supervisory plan designed to ensure the scientific integrity of her contribution. Ms. Jones is also prohibited from serving in any advisory capacity to the PHS for a period of three years.

FOR FURTHER INFORMATION, CONTACT: Director, Division of Research Investigations, Office of Research Integrity, 301–443–5330.

Lyle W. Bivens,

Director, Office of Research Integrity.

[FR Doc. 95–14505 Filed 6–13–95; 8:45 am]

BILLING CODE 4160–17–M

Administration for Children and Families

New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: May 1995

AGENCY: Administration for Children and Families, HHS.

ACTION: Notice.

SUMMARY: This notice lists new proposals for welfare reform and combined welfare reform/Medicaid demonstration projects submitted to the Department of Health and Human Services for the month of May, 1995. Federal approval for the proposals has been requested pursuant to section 1115 of the Social Security Act. This notice also lists proposals that were previously submitted and are still pending a decision and projects that have been approved since May 1, 1995. The Health Care Financing Administration is publishing a separate notice for Medicaid only demonstration projects.

COMMENTS: We will accept written comments on these proposals. We will, if feasible, acknowledge receipt of all comments, but we will not provide written responses to comments. We will, however, neither approve nor disapprove any new proposal for at least 30 days after the date of this notice to allow time to receive and consider comments. Direct comments as indicated below.

ADDRESSES: For specific information or questions on the content of a project contact the State contact listed for that project.

Comments on a proposal or requests for copies of a proposal should be addressed to: Howard Rolston, Administration for Children and Families, 370 L'Enfant Promenade, SW., Aerospace Building, 7th Floor West, Washington, DC 20447. FAX: (202) 205–3598 PHONE: (202) 401–9220

SUPPLEMENTARY INFORMATION:

I. Background

Under Section 1115 of the Social Security Act (the Act), the Secretary of Health and Human Services (HHS) may approve research and demonstration project proposals with a broad range of policy objectives.

In exercising her discretionary authority, the Secretary has developed a number of policies and procedures for reviewing proposals. On September 27, 1994, we published a notice in the **Federal Register** (59 FR 49249) that specified (1) The principles that we ordinarily will consider when approving or disapproving demonstration projects under the authority in section 1115(a) of the Act; (2) the procedures we expect States to use in involving the public in the development of proposed demonstration projects under section 1115; and (3) the procedures we ordinarily will follow in reviewing demonstration proposals. We are committed to a thorough and expeditious review of State requests to conduct such demonstrations.

II. Listing of New and Pending Proposals for the Month of May, 1995

As part of our procedures, we are publishing a monthly notice in the **Federal Register** of all new and pending proposals. This notice contains proposals for the month of May, 1995.

Project Title: California—Work Pays Demonstration Project (Amendment).

Description: Would amend Work Pays Demonstration Project by adding provisions to: reduce benefit levels by 10% (but retaining the need level); reduce benefits an additional 15% after 6 months on assistance for cases with an able-bodied adult; time-limit assistance to able-bodied adults to 24 months, and not increase benefits for children conceived while receiving AFDC.

Date Received: 3/14/94.

Type: AFDC.

Current Status: Pending.

Contact Person: Glen Brooks, (916) 657–3291.

Project Title: California—Assistance Payments Demonstration Project (Amendment).

Description: Would amend the Assistance Payments Demonstration Project by: exempting certain categories of AFDC families from the State's benefit cuts; paying the exempt cases based on grant levels in effect in California on November 1, 1992; and renewing the waiver of the Medicaid maintenance of effort provision at section 1902(c)(1) of the Social Security Act, which was vacated by the Ninth Circuit Court of Appeals in its decision in *Beno* v. *Shalala.*

Date Received: 8/26/94.

Type: Combined AFDC/Medicaid.

Current Status: Pending.

Contact Person: Michael C. Genest, (916) 657–3546.

Project Title: California—Work Pays Demonstration Project (Amendment).

Description: Would amend the Work Pays Demonstration Project by adding provisions to not increasing AFDC benefits to families for additional children conceived while receiving AFDC.

Date Received: 11/9/94.

Type: AFDC.

Current Status: Pending.

Contact Person: Eloise Anderson, (916) 657–2598.

Project Title: California—School Attendance Demonstration Project.

Description: In San Diego County, require AFDC recipients ages 16–18 to attend school or participate in JOBS.

Date Received: 12/5/94.

Type: AFDC.

Current Status: Pending.

Contact Person: Michael C. Genest (916) 657–3546.

Project Title: California—Incentive to Self-Sufficiency Demonstration.

Description: Statewide, would require 100 hours CWEP participation per month for JOBS mandatory individuals who have received AFDC for 22 of the last 24 months and are working fewer than 15 hours per week after two years from JOBS assessment and: have failed to comply with JOBS without good cause, have completed CWEP or are in CWEP less than 100 hours per month, or have completed or had an opportunity to complete post-assessment education and training; provide Transitional Child Care and Transitional Medicaid to families who become ineligible for AFDC due to increased assets or income resulting from marriage or the reuniting of spouses; increase the duration of sanctions for certain acts of fraud.

Date Received: 12/28/94.

Type: Combined AFDC/Medicaid.

Current Status: Pending.

Contact Person: Michael C. Genest (916) 657–3546.

Project Title: Georgia—Work for Welfare Project.

Description: Work for Welfare Project. In 10 pilot counties would require every non-exempt recipient and non-supporting parent to work up to 20 hours per month in a state, local government, federal agency or nonprofit organization; extends job search; and increases sanctions for JOBS noncompliance. On a statewide basis, would increase the automobile exemption to $4,500 and disregard earned income of children who are full-time students.

Date Received: 6/30/94.

Type: AFDC.

Current Status: Pending.

Contact Person: Nancy Meszaros, (404) 657–3608.

Project Title: Hawaii—Families Are Better Together

Description: Statewide, would eliminate 100-hour, attachment to the work force, 30 day unemployment and principal wage earner criteria for AFDC-UP families.

Date Received: 5/22/95.

Type: AFDC.

Current Status: New.

Contact Person: Patricia Murakami, (808) 586–5230.

Project Title: Kansas—Actively Creating Tomorrow for Families Demonstration

Description: Would, after 30 months of participation in JOBS, make adults ineligible for AFDC for 3 years; replace $30 and ⅓ income disregard with continuous 40% disregard; disregard lump sum income and income and resources of children in school; count income and resources of family members who receive SSI; exempt one vehicle without regard for equity value if used to produce income; allow only half AFDC benefit increase for births of a second child to families where the parent is not working and eliminate increase for the birth of any child if families already have at least two children; eliminate 100-hour rule and work history requirements for UP cases; expand AFDC eligibility to pregnant women in 1st and 2nd trimesters; extend Medicaid transitional benefits to 24 months; eliminate various JOBS requirements, including those related to target groups, participation rate of UP cases and the 20-hour work requirement limit for parents with children under 6; require school attendance; require minors in AFDC and NPA Food Stamps cases to live with a guardian; make work requirements and penalties in the AFDC and Food Stamp programs more uniform; and increase sanctions for not cooperating with child support enforcement activities.

Date Received: 7/26/94.

Type: Combined AFDC/Medicaid.

Current Status: Pending.

Contact Person: Faith Spencer, (913) 296–0775.

Project Title: Maine—Project Opportunity.

Description: Increase participation in Work Supplementation to 18 months; use Work Supplementation for any opening; use diverted grant funds for vouchers for education, training or support services; and extend transitional Medicaid and child care to 24 months.

Date Received: 8/5/94.

Type: Combined AFDC/Medicaid.

Current Status: Pending.

Contact Person: Susan L. Dustin, (207) 287–3106.

Project Title: Maryland—Welfare Reform Project.

Description: Statewide, require minor parents to reside with a guardian; eliminate increased AFDC benefit for additional children conceived while receiving AFDC, with provision for third party payment or voucher/vendor payment for amount of the difference make rent vendor payments to local housing authority when delinquency exceeds 30 days; and issue AFDC benefits 14 days after date of application. In pilot sites, eliminate JOBS exemptions for having a child under age 3 and for having a medical disability of more than 12 months, unless the recipient applies for SSI; require able-bodied recipients who have received AFDC for 3 months to meet a work requirement (unless there is good cause) which will consist of full-time unsubsidized employment, 30 hours of subsidized employment, or a total of at least 20 hours of community service and employment; impose full-family sanction when JOBS non-exempt parent fails to comply with JOBS for 6 months and require parent to comply with JOBS for 30 days before reopening case; provide three more months of aid through a third party payment after full-family sanction is imposed; eliminate work supplementation program restriction from filling unfilled positions; eliminate work history and 100-hour rule requirements for AFDC-UP; require minimum of 20 hours of CWEP after three months of benefit receipt; disregard stepparent income if below 100% of poverty, reduce grant by 50 percent of need standard if income is between 100 and 150% of poverty, and make case ineligible if income is

above 150% of poverty; base grant for families with earnings at 85 percent of difference between need standard and earnings; increase both auto and resource limits to $5000; disregard income of dependent children; provide one-time payment in lieu of AFDC benefits; require teen parents to attend family health and parenting classes; extend JOBS services to unemployed non-custodial parents; and cash-out food stamps for work supplementation cases.

Date Received: 3/1/94 and 5/16/95 (Amendments).

Type: AFDC.

Current Status: New (Amendments).

Contact Person: Katherine L. Cook, (410) 767–7338.

Project Title: Massachusetts—Welfare Reform '95.

Description: Statewide, would limit AFDC assistance to 24 months in a 60-month period, with provisions for extensions, for all non-exempt recipients; reduce benefits for non-exempt recipients by 2.75 percent, while increasing earned income disregard to $30 and one-half indefinitely; establish the Work Program designed to end cash assistance to non-exempt families, requiring recipients who cannot find at least 20 hours per week of paid employment after 60 days of AFDC receipt to do community service and job search to earn a cash "subsidy" that would make family income equal to applicable payment standard; fund subsidized jobs from value of AFDC grant plus cash value of Food Stamps for limited number of volunteer recipients; sanction individuals who fail to comply with the Work Program by a reduction in assistance equal to the parent's portion of the grant; establish an Employment Development Plan (EDP) for non-exempt participants not required to participate in the Work Program, requiring community service for second failure to comply with EDP and full-family sanction for second failure to comply with community service; require teen parents to live with guardian or in supportive living arrangements and attend school; require children under age 14 to attend school; eliminate grandparent-deeming; strengthen paternity establishment requirements and allow the IV–D agency to determine if participants are cooperating; allow courts to order parents unable to pay child support to community service programs; exclude from the grant calculation children born to mothers while on AFDC; require child immunization; pay rent directly to landlords where caretaker has fallen behind six weeks in payments; increase asset level to $2,500; increase equity value of a vehicle to $5,000; establish wage assignment in cases of fraud or other overpayments; increased penalties for individuals who commit fraud, release AFDC fraud conviction information to Department of Revenue and the Social Security Administration for cross-check, and deny benefits to individuals with an outstanding default warrant issued by a State court; allow State to issue a clothing allowance voucher for each child; disregard the first $600 of lump sum income; require direct deposit of benefits for recipients with bank accounts; and disregard the 100-hour rule for eligibility for two-parent families.

Date Received: 4/4/95.

Type: AFDC.

Current Status: Pending.

Contact Person: Valerie Foretra, (617) 348–5508.

Project Title: Mississippi—A New Direction Demonstration Program—Amendment.

Description: Statewide, would amend previously approved New Direction Demonstration Program by adding provision that a family's benefits would not increase as a result of additional children conceived while receiving AFDC.

Date Received: 2/17/95.

Type: AFDC.

Current Status: Pending.

Contact Person: Larry Temple, (601) 359–4476.

Project Title: New Hampshire—Earned Income Disregard Demonstration Project.

Description: AFDC applicants and recipients would have the first $200 plus ½ the remaining earned income disregarded.

Date Received: 9/20/93.

Type: AFDC.

Current Status: Pending.

Contact Person: Avis L. Crane, (603) 271–4255.

Waiver Title: New Mexico—Untitled Project.

Description: Would increase vehicle asset limit to $4,500; disregard earned income of students; develop an AFDC Intentional Program Violation procedure identical to Food Stamps; and allow one individual to sign declaration of citizenship for entire case.

Date Received: 7/7/94.

Type: AFDC.

Current Status: Pending.

Contact Person: Scott Chamberlin, (505) 827–7254.

Project Title: North Dakota—Training, Education, Employment and Management Project.

Description: Would require families to develop a social contract specifying time-limit for becoming self-sufficient; combine AFDC, Food Stamps and LIHEAP into single cash payment with simplified uniform income, expense and resource exclusions; increase income disregards and exempt stepparent's income for six months; increase resource limit to $5,000 for one recipient and $8,000 for families with two or more recipients; exempt value of one vehicle; eliminate 100-hour rule for AFDC–UP; impose a progressive sanction for non-cooperation in JOBS or with child support; require a minimum of 32 hours of paid employment and non-paid work; require participation in EPSDT; and eliminate child support pass-through.

Date Received: 9/9/94.

Type: AFDC.

Current Status: Pending.

Contact Person: Kevin Iverson, (701) 224–2729.

Project Title: Oregon—Expansion of the Transitional Child Care Program.

Description: Provide transitional child care benefits without regard to months of prior receipt of AFDC and provide benefits for 24 months.

Date Received: 8/8/94.

Type: AFDC.

Current Status: Pending.

Contact Person: Jim Neely, (503) 945–5607.

Waiver Title: Oregon—Increased AFDC Motor Vehicle Limit.

Description: Would increase automobile asset limit to $9,000.

Date Received: 11/12/93.

Type: AFDC.

Current Status: Pending.

Contact Person: Jim Neely, (503) 945–5607.

Project Title: Pennsylvania—School Attendance Improvement Program.

Description: In 7 sites, would require school attendance as condition of eligibility.

Date Received: 9/12/94.

Type: AFDC.

Current Status: Pending.

Contact Person: Patricia H. O'Neal, (717) 787–4081.

Project Title: Pennsylvania—Savings for Education Program.

Description: Statewide, would exempt as resources college savings bonds and funds in savings accounts earmarked for vocational or secondary education and disregard interest income earned from such accounts.

Date Received: 12/29/94.

Type: AFDC.

Current Status: Pending.

Contact Person: Patricia H. O'Neal, (717) 787–4081.

Project Title: Texas—Promoting Child Health in Texas.

Description: Statewide, would require that children age 5 and under be immunized.

Date Received: 4/11/95.

Type: AFDC.

Current Status: Pending.

Contact Person: Kent Gummerman (512) 450–3743.

Project Title: Utah—Single Parent Employment Demonstration Program (Amendments).

Description: In designated pilot sites, would amend previously approved Single Parent Employment Demonstration Project by applying full-family sanction for repeated non-participation in JOBS; and, for two years after leaving AFDC, provide transitional JOBS support services, expanded income disregards and auto equity limits for Food Stamps, and optional Food Stamp cash-out.

Date Received: 5/17/95.

Type: AFDC.

Current Status: New.

Contact Person: Bill Biggs, (801) 538–4337.

Project Title: Virginia—Virginia Independence Program.

Description: Statewide, would provide one-time diversion payments to qualified applicants instead of AFDC; change first time JOBS non-compliance sanction to at least one month continuing until compliance and remove conciliation requirement; make paternity establishment within 6 months a condition of eligibility; suspend grant if mother is not cooperating in paternity establishment; require minor parents to live with adult guardian; eliminate benefit increase for children born while a family receives AFDC; require AFDC caretakers without a high school diploma, aged 24 and under, and children, aged 18 and under, to attend school; require child immunization; allow $5,000 resource exemption for savings for starting business; increase Transitional Child Care and Transitional Medicaid eligibility; and eliminate deeming requirement for aliens when their sponsor receives food stamps. Also, VIP would phase in statewide over 4 years a work component (VIEW) that will require participants to sign an Agreement of Personal Responsibility as a condition of eligibility; assign participants to a work activity within 90 days of benefit receipt; time-limit AFDC benefits to 24 consecutive months; increase earned income disregards for continued eligibility up to the federal poverty level; disregard value of one vehicle up to $7,500; provide 12 months transitional transportation assistance; modify current JOBS participation exemption criteria; eliminate limitation on job search; assign participants involuntarily to subsidized work placements; apply full-family sanction for refusal to cooperate with work programs; subject unemployed parents to same work requirements as single recipients; and provide employer subsidies from AFDC plus the value of Food Stamps.

Date Received: 12/2/94 and 3/28/95 (Amendments).

Type: Combined AFDC/Medicaid.

Current Status: Pending.

Contact Person: Barbara Cotter, (804) 692–1811.

Project Title: Washington—Success Through Employment Program.

Description: Statewide, would eliminate the 100-hour rule for AFDC–UP families; impose a 10 percent grant reduction for AFDC recipients who have received assistance for 48 out of 60 months, and impose an additional 10 percent grant reduction for every additional 12 months thereafter, and budget earnings against the original payment standard; and hold the food stamp benefit level constant for cases whose AFDC benefits are reduced due to length of stay on assistance.

Date Received: 2/1/95.

Type: AFDC.

Current Status: Pending.

Contact Person: Liz Begert Dunbar, (206) 438–8350.

Project Title: West Virginia—Joint opportunities for independence (JOIN).

Description: Statewide, would require one parent in an unemployed AFDC–UP applicant or recipient case, with exceptions, to participate 38 hours per week in work and job search activities; sanction the entire family when an individual does not comply; deny Food Stamps to sanctioned families and deny Medicaid to sanctioned adults, except for pregnant women; and freeze the level of Food Stamps benefits for sanctioned families at the pre-sanction level.

Date Received: 4/11/95.

Type: Combined AFDC/Medicaid.

Current Status: Pending.

Contact Person: Sharon Paterno (304) 558–3186.

Project Title: Wisconsin—Self Sufficiency First (SSF).

Description: Statewide, would require applicant adults, as a condition of eligibility, to meet with a financial planning resource specialist prior to completing an application to examine alternatives to welfare; with some exceptions. If the applicant still wants to apply for assistance, as a condition of eligibility, individual must engage in at least 60 hours of JOB search activities during the 30 day application period. Would also limit JOBS exemptions.

Date Received: 4/18/95.

Type: AFDC.

Current Status: Pending.

Contact Person: Jean Sheil (608) 266–0613.

Project Title: Wisconsin—Pay for Performance (PFP).

Description: Statewide, adult recipients will be required to participate in JOBS up to 40 hours per week; for each hour of non-participation the AFDC grant will be reduced by the federal minimum wage rate; if the AFDC grant is fully exhausted then the remaining sanction will be taken against the Food Stamp (FS) allotment; FS allotments will not be adjusted to account for AFDC reductions resulting from not participating in JOBS activities; if hours of participation fall below 25% of assigned hours without good cause then no AFDC grant will be awarded and the FS amount will be $10. Would also limit JOBS exemptions.

Date Received: 4/18/95.

Type: AFDC.

Current Status: Pending.

Contact Person: Jean Sheil (608) 266–0613.

III. Listing of Approved Proposals Since May 1, 1995

Project Title: Arizona—Employing and Moving People Off Welfare and Encouraging Responsibility Program.

Contact Person: Elliot Hibbs, (602) 542–4702.

Project Title: Delaware: A Better Chance.

Contact Person: Elaine Archangelo, (302) 577–4400.

IV. Requests for Copies of a Proposal

Requests for copies of an AFDC or combined AFDC/Medicaid proposal should be directed to the Administration for Children and Families (ACF) at the address listed above. Questions concerning the content of a proposal should be directed to the State contact listed for the proposal.

(Catalog of Federal Domestic Assistance Program, No. 93562: Assistance Payments—Research.)

Dated: June 7, 1995.

Howard Rolston,

Director, Office of Policy and Evaluation.

[FR Doc. 95–14571 Filed 6–13–95; 8:45 am]

BILLING CODE 4184–01–P

Centers for Disease Control and Prevention

[Announcement 557]

Cooperative Agreement for Occupational Safety and Health Silicosis Prevention Partnership

Introduction

The Centers for Disease Control and Prevention (CDC), National Institute for Occupational Safety and Health (NIOSH), announces the availability of funds for fiscal year (FY) 1995 for a cooperative agreement program for occupational safety and health silicosis prevention partnership.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering Healthy People 2000 see the Section Where To Obtain Additional Information.)

Authority

This program is authorized under Sections 20(a) and 22(e)(7) of the Occupational Safety and Health Act of 1970 [29 U.S.C. 669(a) and 671(e)(7)].

Smoke-Free Workplace

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the nonuse of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Applications may be submitted by public and private, non-profit and for-profit organizations and governments and their agencies. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, State and local health departments or their bona fide agents, federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations, and small, minority- and/or women-owned businesses are eligible to apply.

Availability of Funds

Approximately $250,000 is available in FY 1995 to fund one to two awards. It is expected that the award(s) will begin on or about September 30, 1995, for a 12-month budget period within a project period of up to three years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of this agreement is to conduct a program of applied research to identify barriers to the successful application of recognized prevention methods and identify effective measures that will promote the prevention of silicosis.

Potential areas of exploration include, but are not limited to: (1) Work organization and behavioral factors which influence the acceptance of (or resistance to) occupational exposure to silica dust; (2) economic incentives and disincentives for silicosis prevention, especially those which are built into existing or alternative systems for controlling dust exposures, providing health care, purchasing insurance, and compensating disabled workers; (3) educational materials and technical manuals available to workers, employers, and design engineers with roles in preventing silicosis; and (4) successes and shortcomings of current inspection and enforcement activities. Exploration of these areas will require a variety of approaches which might include scientific comparisons of the effectiveness of alternative prevention strategies, including lessons learned from the control of other hazardous materials; statistical analyses of existing data; focus groups; and theoretical and observational studies by behavioral and other social scientists, engineers, and educators.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for conducting activities under A.(Recipient Activities), and CDC/NIOSH will be responsible for conducting activities under B.(CDC/NIOSH Activities).

A. Recipient Activities

1. Identify existing barriers to implementation of known effective silicosis prevention methods based on available information and on data collected as a part of this agreement, when necessary.
2. Identify potential promotion strategies to test for their effectiveness in removing the barriers to successful prevention of silicosis.
3. Develop and carry out protocols for implementing and evaluating the effectiveness of the selected promotion methods in various exposure situations for which they were designed.
4. Based on the results of testing the promotion strategies and available data from any sources deemed appropriate, recommend effective measures or programs (sets of measures) available and applicable for use and that others can take for improved, broad implementation of silicosis preventions. These measures should be comprised of the most effective job- and industry-specific actions, based on their ability to remove the barriers to silicosis prevention, actually result in a reduction of silica exposure, and prevent silicosis.

B. CDC/NIOSH Activities

1. Participate in selection of strategies most appropriate for testing;
2. Assist in the development of the overall plan of study design for this project; lending technical expertise on industrial hygiene, control technology engineering, education, information dissemination, behavioral and social science, human factors, intervention (i.e., program) evaluation, both qualitative and quantitative research methods; and
3. Provide assistance on the methods for the collection of data, including participating in field studies, as well as in the analysis and publication of data related to the project.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. Responsiveness to the application content specified above, as well as demonstration of an understanding of the objectives of the proposed cooperative agreement, and the relevance of the proposal to the objectives. (40%)
2. Feasibility of meeting the proposed objectives of the cooperative agreement, including a proposed schedule for initiating and accomplishing each of the objectives of the cooperative agreement, and a proposed method for evaluating the accomplishments. (20%)
3. Training and experience of the proposed Program Director and staff, demonstrating that the Program Director is a recognized technical expert appropriate to the task and staff has training or experience sufficient to accomplish the proposed objectives. (20%)
4. The extent to which the institution has a program of recognized, documented expertise in publication, information collection, and information dissemination in the area of preventing occupational disease. (10%)

5. Efficiency of resources and uniqueness of program including the efficient use of existing and proposed personnel with assurance of a major time commitment of the Program Director to the program. Evidence of partnership or collaboration with outside organizations (e.g., universities, industries, or government agencies) using shared resources toward common goals. (10%)
6. The extent to which the program budget is reasonable, clearly justified, and consistent with the intended use of funds. (Not Scored)

Executive Order 12372

This program is not subject to the Executive Order 12372 review.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number for this program is 93.262.

Other Requirements

Paperwork Reduction Act

Programs that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the program will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

In addition to other applicable committees, Indian Health Service (IHS) institutional review committees also must review the project if any component of IHS will be involved or will support the research. If any American Indian community is involved, its tribal government must also approve that portion of the project applicable to it.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (Revised 7/92, OMB Number 0937–0189) must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Mailstop E–13, 255 East Paces Ferry Road, NE, Room 300, Atlanta, GA 30305, on or before July 26, 1995.

1. *Deadline:* Applications will be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing).

2. *Late Applications:* Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information, call (404) 332–4561. You will be asked to leave your name, address, and telephone number and will need to refer to Announcement Number 557. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Oppie Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Atlanta, GA 30305, telephone (404) 842–6546. Programmatic technical assistance may be obtained from Michael A. McCawley, Ph.D., Environmental Investigations Branch, Division of Respiratory Disease Studies, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), 1095 Willowdale Road, Morgantown, WV 26505–2888, telephone (304) 285–5744.

Please refer to Announcement 557 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the **Introduction** Section through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: June 8, 1995.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–14491 Filed 6–13–95; 8:45 am]

BILLING CODE 4163–19–P

[Announcement 571]

Prevention of Silicosis in Surface Miners

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1995 funds for a cooperative agreement program for prevention of silicosis in surface miners.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health (Objective 10.11). (For ordering a copy of Healthy People 2000, see the Section Where to Obtain Additional Information.)

Authority

This program is authorized under sections 20(a) and 22(e)(7) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669(a) and 671(e)(7)) and Section 501(g) of the Federal Mine Safety and Health Act (30 U.S.C. 951(g)).

Smoke-Free Workplace

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the nonuse of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Applications may be submitted by public and private, non-profit and for-profit organizations and governments

and their agencies. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, State and local governments or their bona fide agents, federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations, and small, minority- and/or women-owned businesses are eligible to apply.

Availability of Funds

Approximately $85,000 is available in FY 95 to fund one award. It is expected that the awards will begin on or about September 30, 1995, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of this project is to contribute to silicosis prevention efforts as follows:

1. Identification of high silicosis-risk metal/nonmetal and coal surface mine drilling workers/operations and development of a plan to assess the effectiveness of the 1970 engineering control-based metal-nonmetal surface mine drilling standard in preventing silicosis. (Phase I)

2. Assessment of training effectiveness in a limited number of metal/nonmetal and coal surface mine drilling operations for purposes of targeting operations for intervention surveillance (e.g., work practices, maintenance, engineering controls). (Phase II)

3. Follow-up surveillance to evaluate the effectiveness of the interventions. (Phase III)

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and CDC/NIOSH will be responsible for the activities listed under B. (CDC/NIOSH Activities).

A. Recipient Activities

1. Design a study to identify high silicosis-risk populations of metal/nonmetal and coal surface mine drillers; including small and large employers, contractors, unionized and nonunionized operations.

2. Identify a sample of present or former surface mine drillers who have been diagnosed with silicosis; provide "case study" reports.

3. Evaluate current work practices and exposure conditions at a variety of operations. This evaluation should include an assessment of the effectiveness of current training efforts, maintenance programs, engineering controls and driller work practices.

4. Recommend new or modified training efforts, maintenance programs, engineering controls or driller work practices which will reduce worker exposures to silica.

5. Evaluate the effectiveness of interventions which are implemented.

6. Publish results of the study.

B. CDC/NIOSH Activities

1. Provide scientific, epidemiologic, engineering, environmental, and clinical technical assistance (as needed) to the recipient for successful completion of this project.

2. Assist in the development of the overall plan or study design for this project.

3. Collaborate with the recipient on the methods for collection, tabulation, analysis, and publication of data related to the project.

4. In consultation with Mine Safety and Health Administration (MSHA) obtain and provide available information on MSHA sampling results, MSHA survey data, training videos, etc.

5. May provide (within the limits of available funding, manpower restraints and privacy/regulatory considerations) health screening (chest radiographs) for a limited number of targeted surface miners.

6. Assist in the design and implementation of the evaluation plan for the project.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. The qualifications and efficient use of current and proposed project personnel, with assurance of a major time commitment of the program director to the program. Technical qualifications of importance include, but are not limited to, experience in conducting investigations of the mining industry, knowledge of the technical aspects of drilling, and experience with worker education and training (to include evaluations of worker training program effectiveness). (35%)

2. The adequacy of the applicant's facilities and resources for purposes of evaluating surface mine driller training. Important qualifications include program/facility history of developing and implementing worker training programs. (10%)

3. The adequacy of the project plan or methodology. The proposed plan and methods should demonstrate a clear understanding and application of the goals and objectives for this program. Novel approaches and ideas that contribute to attainment of the program's goals and objectives are encouraged. Important components include the method of identification of high silicosis-risk surface mine drilling operations and the plan for assessment of effectiveness of the intervention strategies being used. How closely the project's objectives fit the objectives for which applications were invited. (40%)

4. Efficient use of resources and uniqueness of program. Evidence of collaboration with outside organizations (e.g., labor, universities, government agencies) using shared resources towards common goals and the demonstrated ability to solicit and receive financial resources from outside the organization. (15%)

5. Budget and justification. (not scored)

The budget will be evaluated to the extent that it is reasonable, clearly justified, and consistent with the intended use of the funds.

Executive Order 12372 Review

This program is not subject to the Executive Order 12372, Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number for this program is 93.283.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from ten or more individuals and funded by this cooperative agreement will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

In addition to other applicable committees, Indian Health Service (IHS) institutional review committees also must review the project if any component of IHS will be involved or will support the research. If any American Indian community is involved, its tribal government must also approve that portion of the project applicable to it.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (Revised 7/92, OMB Number 0937–0189) must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305, on or before July 26, 1995.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications: Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description and information on application procedures are contained in the application package. Business management technical assistance may be obtained from Oppie Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305, telephone (404) 842–6546.

Programmatic technical assistance may be obtained from Joseph Cocalis, National Institute for Occupational Safety and Health, Centers for Disease and Control Prevention (CDC), 1095 Willowdale Road, Mailstop H–120, Morgantown, WV 26505–2888, telephone (304) 285–5754.

Please refer to Announcement 571 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction Section through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: June 8, 1995.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–14492 Filed 6–13–95; 8:45 am]

BILLING CODE 4163–19–P

Electronic Filing of Part 84 Respirator Approval and Certification Applications; Meetings

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Electronic Filing of Part 84 Respirator Approval and Certification Applications.

Date: Thursday, June 29, 1995; Friday, June 30, 1995. 8–a.m.–3:30 p.m., NIOSH Facility, 1095 Willowdale Road, Room 138, Morgantown, West Virginia 26505.

Time: 8 a.m.–3:30 p.m.

Ploce: Lakeview Resort & Conference Center, Governor's Ball, Rooms 1–3, Morgantown, West Virginia 26505.

Status: Open to the public, limited only by the space available.

Purpose: NIOSH has authority to certify respiratory protective equipment under 42 CFR 84. The purpose of this meeting is to review recent program improvements to initiate electronic application procedures for respirator certification and to demonstrate NIOSH software and requirements for electronic filing.

NIOSH has determined that savings and improved efficiency will be achieved by both NIOSH and manufacturers when an electronic application submittal process is available. Changes in the new 42 CFR Part 84 respirator approval application requirements also will be reviewed and program developments related to approval labels and engineering drawings required in the approval application will be discussed.

Contact Person for Additional Information: John M. Dower, NIOSH, CDC, 1095 Willowdale Road, Mailstop P04/1138, Morgantown, West Virginia 26505–2888, telephone 304/285–5954 or 5907.

Dated: June 8, 1995.

Julia M. Fuller,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–14493 Filed 6–13–95; 8:45 am]

BILLING CODE 4163–19–M

Injury Research Grant Review Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Injury Research Grant Review Committee (IRGRC).

Time and Date: 9 a.m.–5 p.m., July 10, 1995.

Place: Hotel Sofitel Chicago, 5550 North River Road, Rosemont, Illinois 60018.

Status: Open: 9 a.m.–9:20 a.m., July 10, 1995. Closed: 9:20 a.m.–5 p.m., July 10, 1995.

Purpose: This committee is charged with advising the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the scientific merit and technical feasibility of grant applications relating to the support of injury control research program projects.

Matters To Be Discussed: Agenda items for the meeting will include announcements, discussion of review procedures, future meeting dates, and review of grant applications.

Beginning at 9:20 a.m., through 5 p.m., July 10, the committee will meet to conduct a review of grant applications. This portion of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Agenda items are subject to change as priorities dictate.

Contact Person For More Information: Richard W. Sattin, M.D., Executive Secretary, IRGRC, National Center for Injury Prevention and Control, CDC, 4770 Buford Highway, NE, Mailstop K58, Atlanta, Georgia 30341–3724, telephone 404/488–4580.

Dated June 8, 1995.

Julia M. Fuller,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–14494 Filed 6–13–95; 8:45 am]

BILLING CODE 4163–18–M

Food and Drug Administration

[Docket No. 95F–0111]

Lonza, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Lonza, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a mixture of 1-bromo-3-chloro-5,5-dimethylhydantoin; 1,3-dichloro-5,5-dimethylhydantoin; and 1,3-dichloro-5-ethyl-5-methylhydantoin as a slimicide in the manufacture of paper and paperboard intended to contact food.

DATES: Written comments on the petitioner's environmental assessment by July 14, 1995.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mitchell A. Cheeseman, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3083.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 3B4382) has been filed by Lonza, Inc., c/o Delta Analytical Corp., 7910 Woodmont Ave., Bethesda, MD 20814. The petition proposes to amend the food additive regulations in § 176.300 *Slimicides* (21 CFR 176.300) to provide for the safe use of a mixture of 1-bromo-3-chloro-5,5-dimethylhydantoin; 1,3-dichloro-5,5-dimethylhydantoin; and 1,3-dichloro-5-ethyl-5-methylhydantoin as a slimicide in the manufacture of paper and paperboard intended to contact food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4 (b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before July 14, 1995, submit to the Docket Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: May 24, 1995.

Alan M. Rulis,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–14463 Filed 6–13–95; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications

Name of SEP: Clinical Sciences.

Date: June 25, 1995.

Time: 1:00 p.m.

Place: NIH, Rockledge II, Room 4140 Telephone Conference.

Contact Person: Dr. Larry Pinkus, Scientific Review Administrator, 6701 Rockledge Drive, Room 4140, Bethesda, MD 20892, (301) 435–1214.

Name of SEP: Clinical Sciences.

Date: June 26, 1995.

Time: 1:30 p.m.

Place: NIH, Rockledge II, Room 4140 Telephone Conference.

Contact Person: Dr. Larry Pinkus, Scientific Review Administrator, 6701 Rockledge Drive, Room 4140, Bethesda, MD 20892, (301) 435–1214.

Purpose/Agenda: To review Small Business Innovation Research Program grant applications.

Name of SEP: Multidisciplinary Sciences.

Date: July 10–11, 1995.

Time: 1:00 p.m.

Ploce: Crowne Plaza, Rockville, MD.

Contact Person: Dr. Harish Chopra, Scientific Review Admin., 6701 Rockledge Drive, Room 5112, Bethesda, MD 20892, (301) 435–51160.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 7, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–14535 Filed 6–13–95; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health; National Cancer Institute; Notice of Closed Meetings

Pursuant to Sec. 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings:

Purpose/Agenda: Review, discussion and evaluation of individual grant applications.

Committee Name: Subcommittee B of the Cancer Research Manpower and Education Review Committee.

Contact Person: Dr. Neil B. West, Room 611D, Executive Plaza North, 6130 Executive Blvd., Bethesda, MD 20892, Telephone: (301) 402–2785.

Date of Meeting: June 20–21, 1995.

Place of Meeting: The Georgetown Inn, 1310 Wisconsin Avenue, NW., Washington, DC 20007.

Time: 8 a.m.

Committee Name: Subcommittee D of the Cancer Centers and Research Programs Review Committee.

Contact Person: Dr. John Abrell, Room 635B, Executive Plaza North , 6130 Executive Blvd., Bethesda, MD 20892, Telephone: (301) 496–9767.

Date of Meeting: July 31–August 1, 1995.

Place of Meeting: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Time: 8 a.m.

Committee Name: Subcommittee A of the Cancer Centers and Research Programs Review Committee.

Contact Person: Dr. David E. Maslow, Room 643A, Executive Plaza North, 6130 Executive Blvd., Bethesda, MD 20892, Telephone: (301) 496–2330.

Date of Meeting: August 3–4, 1995.

Place of Meeting: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Time: 8 a.m.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93,396, Cancer Biology Research; 93.397, Cancer Centers Support, 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: June 7, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–14534 Filed 6–13–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of a Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meeting:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Behavioral and Neurosciences.

Date: June 13, 1995.

Time: 7:00 p.m.

Place: Georgetown Inn, Washington, DC.

Contact Person: Dr. Carole Jelsema, Scientific Review Admin., 6701 Rockledge Drive, Room 5176, Bethesda, MD 20892, (301) 435–1248.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 7, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–14536 Filed 6–13–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–803337

Applicant: Thomas J. Moore, III, Ingram, TX

The applicant requests a permit to authorize interstate and foreign commerce, export, and cull of excess male barasingha (*Cervus duvauceli*) from his captive herd for the purpose of enhancement of survival of the species.

PRT–803105

Applicant: New England Regional Primate Research, Southborough, MA

The applicant request a permit to take from Cotton-top Tamarins (*Saquinus oedipus*) (1) 2ml of blood every two weeks, and (2) obtain a single lymph node when required by using usual anesthetic and surgical procedures. The applicant intends to enhance the survival of the species through scientific research.

PRT–694123

Applicant: National Institute of Health, National Cancer Institute, Frederick, MD

The applicant requests a renewal of their permit to take, import and purchase in interstate and foreign commerce blood, semen, skin biopsy, organ and other tissue samples from many endangered and threatened mammals held in captivity for scientific genetic research. Live animals will be purchased occasionally in interstate commerce. No animals will be intentionally captured or harmed during any part of the research; all tissue sampling techniques are non-life threatening. This permit will be valid for five (5) years.

PRT–803553

Applicant: John Hocking, Marietta, GA

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from the captive herd maintained by Mr. Austin, "Spitzkop", Grahamstown, Republic of South Africa, for the purpose of enhancement of survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: June 9, 1995.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 95–14543 Filed 6–13–95; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[CA–066–00–5440–10–ZBBB; CACA–30070; CACA–25594; CACA–31926]

Proposed Land Exchange and Rights-of-Way for Eagle Mountain Non-Hazardous Municipal Solid Waste Landfill and Recycling Center; Correction

In notice document 95–11645, beginning on page 25243, in the issue of Thursday, May 11, 1995, make the following correction:

1. On page 25243, in the third column, third line, "CACA–30079" should read "CACA–30070".

2. On page 25243, in the third column, fourth line, "CACA–3192]" should read "CACA–31926]".

Dated: June 6, 1995.

Julia Dougan,

Area Manager.

[FR Doc. 95–14495 Filed 6–13–95; 8:45 am]

BILLING CODE 4310–40–U

[AZ–933–95–5410–A105, A122, & A124; AZA 29074, AZA 27532, AZA 29036]

Realty Actions; Sales, Leases, etc.: Arizona

AGENCY: Bureau of Land Management.

ACTION: Notice of minerals segregation.

SUMMARY: The mineral interests in the private lands described below, are segregated and made unavailable for filings under the general mining laws and the mineral leasing laws to determine their suitability for conveyance of the reserved mineral

interest pursuant to section 209 of the Federal Land Policy and Management Act of 1976.

AZA 29074 Gila and Salt River Meridian, Arizona

T. 17 N., R. 1 W.,
Sec. 7, lots 9 and 10;
Sec. 8, lot 3, SW¼NW¼, SW¼;
Sec. 17, W½;
Sec. 18, All;
Sec. 19, All;
Sec. 20, NW¼, W½SW¼;

Excepting any portion within the right-of-way of the Atchison, Topeka and Santa Fe Railroad.

T. 17 N., R. 2 W.,
Sec. 13, E½, E½W½, NW¼NW¼;
Sec. 23, SW¼NE¼, S½NW¼, SW¼, W½SE¼, SE¼SE¼;
Sec. 24, E½, E½W½, W½SW¼;
Sec. 25, All;
Sec. 26, N½N½, SE¼NE¼, SE¼SW¼; SE¼SE¼SE¼;
Sec. 35, NE¼, E½NW¼, SW¼SW¼, N½SE¼, SE¼SE¼;

Excepting any portion within the right-of-way of the Atchison, Topeka and Santa Fe Railroad.

Containing 4,871.88 acres.

AZA 27532 Gila and Salt River Meridian, Arizona

T. 11 N., R. 5 W.,
Sec. 27, W½NW¼;
Sec. 28, lots 1, 4, portion of W½NE¼.

Containing 153.12 acres.

AZA 29036 Gila and Salt River Meridian, Arizona

T. 11 N., R. 6 W.,
Sec. 8, E½, SW¼;
Sec. 9, lots 1, 6–7, 12, E½, E½W½;
Sec. 17, E½E½, NW¼;
Sec. 19, lots 3,4, E½SW¼, W½SE¼;
Sec. 20, lots 1, 8, 9;
Sec. 21, lots, 1–6, 8–9, E½, NE¼NW¼;
Sec. 28, lots 1–2, 4–12, E½;
Sec. 29, lots 2–17;
Sec. 30, 11–12;
Sec. 33, lots 1–3, NE¼, SE¼NW¼.

Containing 4001.48 acres.

Upon publication of this notice in the **Federal Register**, the mineral interests owned by the United States in the private lands shall be segregated to the extent that they will not be subject to appropriation under the mining and mineral leasing laws. The segregation will terminate upon (a) issuance of a patent for the mineral interests (b) rejection of the application, or (c) two years from the date of this publication, whichever occurs first.

ADDRESSES: Bureau of Land Management, Arizona State Office, P.O. Box 16563, Phoenix, AZ 85011.

FOR FURTHER INFORMATION CONTACT: Laura Rowdabaugh, Bureau of Land Management, Arizona State Office, (602) 650–0360.

Dated: June 7, 1995.

Mary Jo Yoas,

Chief, Lands and Minerals Operations Section.

[FR Doc. 95–14487 Filed 6–13–95; 8:45 am]

BILLING CODE 4310–32–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32711]

Ohio & Pennsylvania Railroad Company—Lease and Operation Exemption—P&LE Properties, Inc.

Ohio & Pennsylvania Railroad Company (OPRC), a noncarrier, has filed a verified notice under 49 CFR part 1150, Subpart D—*Exempt Transactions* to lease from P&LE Properties, Inc., 39.24 miles of rail line between milepost 0.0, at Youngstown, OH, and milepost 35.7, at Darlington, PA, including short segments of line in Youngstown (1.9 miles) and Negley (1.0 mile), OH, and between Youngstown and Struthers, PA (0.64 mile). OPRC will transport local traffic and will interchange overhead traffic with CSX Transportation, Inc., or Consolidated Rail Corporation at Youngstown. The transaction was to have been consummated promptly upon the exemption's May 29, 1995, effective date.

This proceeding is related to *Summit View Corporation—Continuance in Control Exemption—Ohio & Pennsylvania Railroad Company*, Finance Docket No. 32712, wherein Summit View Corporation has concurrently filed a verified notice to continue to control Ohio & Pennsylvania Railroad Company upon its becoming a rail carrier.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of appetition to reopen will not stay the exemption's effectiveness. An original and 10 copies of all pleadings, referring to Finance Docket No. 32711, must be filed with the Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423. In addition, a copy of each pleading must be served on Kelvin J. Dowd, SLOVER & LOFTUS, 1224 Seventeenth Street, N.W., Washington, DC 20036.

Decided: June 8, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–14466 Filed 6–13–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32686 (Sub-No. 1)]

Richard D. Robey—Continuance in Control Exemption—Union County Industrial Railroad Company

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 11343–11344 the continuance in control by Richard D. Robey of Union County Industrial Railroad Company (Union) upon its becoming a class III rail carrier. Union's acquisition and operation of a 3.9-mile rail line, between milepost 169.7, at or near New Columbia, and milepost 173.6, at or near Milton, in Union County, PA, owned by Consolidated Rail Corporation, was exempted in *Union County Industrial Railroad Company—Acquisition and Operation Exemption—Consolidated Rail Corporation, Finance Docket No. 32686 (ICC served Apr. 20, 1995). The continuance in control exemption is subject to employee protective conditions.*

DATES: This exemption will be effective on July 14, 1995. Petitions for stay must be filed by June 26, 1995. Petitions to reopen must be filed by July 5, 1995.

ADDRESSES: Send pleadings referring to Finance Docket No. 32686 (Sub-No. 1) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Washington, DC 20423; and (2) Richard R. Wilson, VUONO, LAVELLE & GRAY, 2310 Grant Building, Pittsburgh, PA 15219.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: June 2, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–14465 Filed 6–13–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32712]

Summit View Corporation—Continuance and Control Exemption—Ohio & Pennsylvania Railroad Company

Summit View Corporation (Summit), a noncarrier, has filed a verified notice under 49 CFR 1180.2(d)(2) to continue to control Ohio & Pennsylvania Railroad Company (OPRC) on OPRC's becoming a class III rail carrier. Summit already controls four class III rail carriers: Ohio Central Railroad, Inc., Ohio Southern Railroad, Inc., Youngstown & Austintown Railroad, Inc., and Warren & Trumbull Railroad. The transaction was to have been consummated on or after the exemption's May 29, 1995, effective date.

OPRC has concurrently filed a verified notice in *Ohio & Pennsylvania Railroad Company—Lease and Operation Exemption—P&LE Properties, Inc.*, Finance Docket No. 32711, to lease from P&LE Properties, Inc., and operate 39.24 miles of line between Youngstown, OH, and Darlington, PA.

The transaction is exempt from the prior approval requirements of 49 U.S.C. 11343 because: (1) The properties of OPRC will not connect with any other railroad in the Summit corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect OPRC with any other railroad in the Summit corporate family; and (3) the transaction does not involve a class I carrier.

As a condition to this exemption, any employees adversely affected by the transaction will be protected under *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to reopen will not stay the exemption's effectiveness. An original and 10 copies of all pleadings, referring to Finance Docket No. 32712, must be filed with the Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423. In addition, a copy of each pleading must be served on Kelvin J. Dowd, Slover & Loftus, 1224 Seventeenth Street, NW., Washington, DC 20036.

Decided: June 8, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–14467 Filed 6–13–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;
(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.
(3) Who will be asked or required to respond, as well as a brief abstract;
(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;
(5) An estimate of the total public burden (in hours) associated with the collection; and,
(6) An indication as to whether Section 3504(h) of Public Law 95–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Application for Individual Manufacturing Quota for a Basic Class of Controlled Substance.
(2) DEA Form 189. Drug Enforcement Administration, United States Department of Justice.
(3) Primary: Business or other for Profit. Others: None. Title 21, CFR, 1303.21 requires registered bulk manufacturers who wish to manufacture controlled substances in Schedule I or II to apply on a Drug Enforcement Administration Form 189 for an individual manufacturing quota in order to limit the extent of manufacture. The information collected is used for establishing the individual manufacturing quotas and controlling manufacture thereof.
(4) 175 annual respondents at 0.5 hours per response.
(5) 87.5 annual burden hours.
(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: June 8, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–14476 Filed 6–13–95; 8:45 am]

BILLING CODE 4410–09–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;
(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.
(3) Who will be asked or required to respond, as well as a brief abstract;
(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;
(5) An estimate of the total public burden (in hours) associated with the collection; and,
(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this

notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Revision of a Currently Approved Collection

(1) Application for Naturalization—Supplement A (Attached).

(2) INS Form N–400 Supplement A. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals or households. Others: None. The N–400 is provided to the public by the Immigration and Naturalization Service (INS) for use by an applicant for naturalization. Lawful permanent residents seeking to become naturalized United States Citizens must file INS Form N–400. The proposed supplement of seven yes or no questions will allow the INS to fast track qualifying persons seeking this benefit, saving time for the Government and the applicant.

(4) 580,632 annual respondents at 4.5 hours per response.

(5) 2,612,884 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: June 8, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

BILLING CODE 4410–10–M

U.S. Department of Justice
Immigration and Naturalization Service

DRAFT

N-400, Application for Naturalization
Supplement A

PART A. INSTRUCTIONS

Please complete this supplement and file it with your application *(Form N-400)* to help us better process your request. If you have already filed your application, you may complete and submit this supplement to the Office where your application is pending.

If you are submitting this supplement with your application, sign your name in ink on the side of your photographs, but DO NOT write over your face. Sign your name as shown on your green card unless you are seeking to change your name, in which case please sign your full name as you indicated it in question 7.

Public Report Burden for this supplement is estimated to average 10 minutes per response. *(See Form N-400 for more information on reporting burden hours.)*

This supplement is considered part of your application for naturalization. All the information provided must be true and correct.

PART B. ADDITIONAL INFORMATION ABOUT YOU. *(The applicant for naturalization.)*

Last Name	First Name		Middle Name
Daytime Phone # ( ) _____ - _____	Alien Registration #	Date of Birth *(Month/Day/Year)*	Date you became a permanent resident *(Month/Day/Year)*

1. A. Did you graduate from an accredited college in the U.S.? ☐ Yes ☐ No
   B. Did you graduate from college outside the U.S.? ☐ Yes ☐ No
   •If Yes to either question, check the highest level of college degree you received: ☐ Associate's ☐ Bachelor's ☐ Master's ☐ Doctorate
   (Attach a copy of your highest degree to this supplement.)

2. Did you graduate from high school in the U.S.? ☐ Yes ☐ No
   •If Yes, how many years of high school did you attend in the U.S.? ☐ Less than 1 ☐ One ☐ Two ☐ Three ☐ Four or more
   (Attach a copy of your high school diploma to this supplement or complete the following.)
   Name of School _____ Year Graduated _____
   Location *(City, State)* _____

3. Have you already passed an INS approved citizenship test? ☐ Yes ☐ No
   (If Yes, attach a copy of the test results.)

4. Have you completed an INS approved Adult Education Course? ☐ Yes ☐ No
   (If Yes, attach a copy of the certificate of completion.)

5. Within the past 5 years have you been required to pay child support through a separation agreement, divorce decree or other court order? ☐ Yes ☐ No *(If No, skip to question 6)*

   If YES:
   - At any time during the past 5 years were you more than 2 weeks behind in these payments? ☐ Yes ☐ No
   - Are you currently more than 2 weeks behind? ☐ Yes ☐ No

6. Naturalization involves a formal ceremony. This ceremony can be conducted by INS or by certain courts. In many parts of the country both INS and the courts conduct ceremonies. However, you may request that you only be naturalized in a court ceremony. This would mean you would not be scheduled for an INS ceremony even if one were available.
   - Would you like to be scheduled only for a court ceremony? ☐ Yes ☐ I have no preference

7. Your name as shown on your green card will normally be used when you naturalize. However, if you have changed your name through divorce or marriage since receiving your last green card, we will update our records and issue your certificate in your current name. Any applicant also has the option of requesting a change of name when naturalizing; however. If you do request a name change, we will schedule you for a court ceremony since only the court can grant a change of name.
   - Do you want to change your name as a result of your marriage or divorce? ☐ Yes ☐ No
     (If Yes, attach a copy of the marriage or divorce decree.)
   - Do you otherwise want to change your name when you naturalize? ☐ Yes ☐ No

   If you want to use a name other than the one on your current green card, clearly write it below:

Last Name	First Name	Middle Name

Form N-400 Supplement A (06-02-95) OMB No. 1115-0009

[FR Doc. 95–14477 Filed 6–13–95; 8:45 am]

BILLING CODE 4410–10–C

NUCLEAR REGULATORY COMMISSION

Proposed Generic Communication; 10 CFR 50.54(p) Process for Changes to Security Plans Without Prior NRC Approval

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to issue a generic letter to clarify the process for changes to security plans under the provisions of Section 54(p) of Part 50 of Title 10 of the Code of Federal Regulations (10 CFR 50.54(p)). The NRC is seeking comment from interested parties regarding both the technical and regulatory aspects of the proposed generic letter presented under the Supplementary Information heading. This proposed generic letter was endorsed by the Committee to Review Generic Requirements (CRGR) to be published for comment. The relevant information that was sent to the CRGR to support their review of the proposed generic letter will be made available in the NRC Public Document Room. The NRC will consider comments received from interested parties in the final evaluation of the proposed generic letter. The NRC's final evaluation will include a review of the technical position and, when appropriate, an analysis of the value/impact on licensees. Should this generic letter be issued by the NRC, it will become available for public inspection in the NRC Public Document Room.

DATES: Comment period expires on July 14, 1995. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Submit written comments to Chief, Rules Review and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Written comments may also be delivered to 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m., Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Skelton at (301) 415–3208.

SUPPLEMENTARY INFORMATION:

NRC Generic Letter 95–XX: 10 CFR 50.54(p) Process for Changes to Security Plans Without Prior NRC Approval

Addressees

All holders of operating licenses and construction permits for nuclear power plants.

Purpose

The U.S. Nuclear Regulatory Commission (NRC) is issuing this generic letter to notify you of a clarification of the procedures used by licensees to process 10 CFR 50.54(p) changes to security plans. It is expected that recipients will review the information for applicability to their facilities and consider actions, as appropriate. However, suggestions contained in this generic letter are not NRC requirements; therefore, no specific actions or written response is required.

Description of Circumstances

On January 4, 1993, the Executive Director for Operations established a Regulatory Review Group (RRG). The RRG conducted a review of power reactor regulations and related processes, programs, and practices. One RRG recommendation was to change the current practice to enable licensees to make changes to their security plans without prior NRC approval (i.e., using the provisions of 10 CFR 50.54(p)). The plan developed by the staff for implementing RRG recommendations (SECY 94–003, January 4, 1994) was not to change the regulations, but to clarify the process by providing a screening criterion that would ensure consistency of security plan changes without prior NRC approval.

Discussion

Some confusion and inconsistencies have apparently occurred in the past regarding implementation of 10 CFR 50.54(p) by licensees without NRC approval. This generic letter restates the original criterion for judging the acceptability of changes made pursuant to 10 CFR 50.54(p). That criterion has allowed that the "test" for determining if a change decreases the effectiveness of the plan has been the determination that the overall effectiveness of the plan is not decreased. This generic letter clarifies the language in 10 CFR 50.54(p) that licensees shall "make no change which would decrease the effectiveness of a security plan, or guard training and qualification, * * * or safeguards contingency plan."

The following is a clarification of this language. Changes that meet the following screening criteria may be made without prior NRC approval.

- A change in any of the three security plans is deemed not to decrease the effectiveness of the plan if the change does not decrease the ability of the onsite physical protection system and security organization, as described in paragraphs (b) through (h) of 10 CFR 73.55, or equivalent measures approved under 10 CFR 73.55(a), to protect with high assurance against the design basis threat as stated in 10 CFR 73.1(a). The change cannot delete or replace any of the regulatory capabilities, as described in paragraphs (b) through (h) or in Appendixes B and C to 10 CFR Part 73.
- A change that increases the effectiveness of any plan.

Use of these screening criteria would allow licensees to reduce certain commitments that have exceeded regulatory requirements or published guidance if the overall effectiveness of the plan is not reduced. Each issue is reviewed against the overall assurance levels contained in the plan and not against the specific individual changes. Latitude has always existed in that improvements in one area of the program may offset reductions in other areas. Overall assurance levels of the plans must be maintained, and this clarification is not intended to reduce plan commitments to levels less than the overall high-assurance objectives stated in 10 CFR 73.55(a).

NRC has expected that licensees would judiciously make the proper determination regarding 10 CFR 50.54(p) changes and implement those changes as permitted by the regulations. This position was the original intent of the Commission and remains so today. The NRC believes that, with the use of these screening criteria and expertise of the licensee staff, licensees should implement changes made pursuant to 10 CFR 50.54(p) without prior NRC approval.

Licensees should note that some of the safeguards-related regulatory guidance has become dated and superseded in recent years, and caution should be exercised by licensees when screening changes, particularly regarding specific guidance issues. The original intent of 10 CFR 50.54(p) has been to screen changes in terms of their overall impact on the security program. Guidance specified in NRC publications are not requirements and should not be interpreted as the only possible method for satisfying regulatory requirements. The screening criteria contained herein are the fundamental criteria necessary for determining the acceptability of a change made pursuant to 10 CFR 50.54(p). NUREG–0908, "Acceptance Criteria for the Evaluation of Nuclear Power Reactor Security Plans," is an example of a document that should not be used verbatim to make individual acceptability determines.

The screening criteria presented herein are not applicable to plan changes that would eliminate or replace security plan commitments to specific security measures stated in 10 CFR 73.55 (b) through (h). NRC approval of such changes may need to be submitted as exemption or license amendment (i.e., 10 CFR 50.90) requests.

A suggested outline for applying the screening criteria for the evaluation of a proposed security plan change is presented in Attachment 1. An evaluation of any proposed security plan change using the suggested outline should lead to a determination as to whether or not the change can be made without prior NRC approval.

Changes made pursuant to 10 CFR 50.54(p) and this generic letter may be made to physical security plans, guard training and qualification plans, and contingency plans. Licensees that successfully meet the screening criteria in Attachment 1 should conclude that a particular change would be acceptable without NRC approval. Use of the screening criteria format, while strictly voluntary, would document the licensees determination of no decrease in effectiveness as described in 10 CFR 50.54(p)(2). The burden for the submittal of information associated with the use of 10 CFR 50.54(p) is included in OMB Clearance 3150–0011. This generic letter does not increase that burden.

Changes must be appropriate for particular site programs, and use of the screening criteria does not guarantee acceptance by the NRC or applicability to all sites. The licensee bears the responsibility for changes made without NRC approval.

The three security plans remain the "enforceable documents," and inspections will be based upon the commitments contained within those plans. It is incumbent upon licensees to keep their plans accurate and meet the timing requirements for updating plans as stated in 10 CFR 50.54(p).

As in the past, the NRC regional staff will continue to screen all changes and will refer policy-related changes to the Office of Nuclear Reactor Regulation (NRR). In the future the NRC regional staff will forward all questionable changes to NRR for review and disposition to ensure staff consistency.

Attachment 2 contains 10 examples of previously accepted changes made by licensees without NRC approval pursuant to 10 CFR 50.54(p), and Attachment 3 contains a list of 10 changes that have been found to be unacceptable for inclusion in security related plans unless approved by the NRC on a case by case basis pursuant to 10 CFR 50.90 or as an exemption request to 10 CFR 73.55.

Attachment 1—Screening Criteria Outline (Assessment of Acceptability of 10 CFR 50.54(p) Plan Change)

Section/Title

List the section and title of where the change is proposed.

Proposed Commitment

Specify the relevant existing and revised commitments. Address any offsetting provisions.

Impact on Effectiveness on a Generic Plan

This section of the outline asks a series of questions. If the response to each question is "no" and the rationale supports a "no" response, the change may be processed using the provisions of 10 CFR 50.54(p) without NRC prior approval. The questions are as follows:

1. ☐ Yes ☐ No Does this change delete or contradict any regulatory requirement?
2. ☐ Yes ☐ No Would the change decrease the overall level of security system performance as described in paragraphs (b) through (h) of 10 CFR 73.55 to protect with the objective of high assurance against the design basis threat of radiological sabotage as stated in 10 CFR 73.1(a)?

   Rationale: Explain the rationale.
3. ☐ Yes ☐ No Does this change any unique site-specific commitments?

   Rationale: (Explain why the change does not decrease the overall effectiveness of the plan while taking into consideration existing unique site-specific security features. Consider historical reasons why specific commitments were included in the security plans. Were there specific counterbalancing commitments and has that counterbalance been changed negatively?)

Attachment 2—Acceptable 10 CFR 50.54(p) Changes

Screening Criteria Form

(Assessment of Acceptability of 10 CFR 50.54(p) Plan Change)

Example I

Weapons Training

Section/Title

This is an example. In an actual 50.54(p) determination, this section would give specific references to the parts of the security plan the licensee proposes to change.

Proposed Commitment

Currently, some licensees train each security officer on all types of weapons maintained at their site. The licensee would now require individual security officer training only for the specific weapon types (i.e., shotguns and handguns or rifles and handguns) that individual security officers would use for assigned duties. Weapons training would be more specific to weapons used to carry out the specific assigned duties which would reduce training costs. Training of security officers on weapons that are not assigned to or used by them in routine or response duties wastes training resources and funding that could be used for additional training on assigned weapons. Response weaponry and training would remain unchanged.

Impact on Effectiveness on a Generic Plan

1. ☐ Yes ☐ No Does this change delete or contradict any regulatory requirement?
2. ☐ Yes ☐ No Would the change decrease the overall level of security system performance as described in paragraphs (b) through (h) of 10 CFR 73.55 to protect with the objective of high assurance against the design basis threat of radiological sabotage as stated in 10 CFR 73.1(a)?

   Rationale: Training security officers in use of weapons not deployed in routine or response activities provides no benefit to their responsive capability.
3. ☐ Yes ☐ No Does this change any unique site-specific commitments?

   Rationale: (Explain why the change does not decrease the overall effectiveness of the plan while taking into consideration existing unique site-specific security features. Consider historical reasons why specific commitments were included in the security plans. Were there specific counterbalancing commitments and has that counterbalance been changed negatively?)

Screening Criteria Form

(Assessment of Acceptability of 10 CFR 50.54(p) Plan Change)

Example II

Vehicle Entry and Search

Section/Title

This is an example. In an actual 50.54(p) determination, this section would give specific references to the parts of the security plan the licensee proposes to change.

Proposed Commitment

Currently, two armed security officers are required by the security plan to be present when a protected area barrier is opened. Allow one armed officer to open the protected area barrier for vehicle access and search of that vehicle. This would be acceptable if that portal is under observation by closed circuit television (CCTV) from the central alarm station (CAS) or secondary alarm station (SAS). If CCTV is not available, two security officers are required, but only one of the two needs to be armed. This change would allow more efficient use of security force resources. If the CAS or SAS were to witness an incident at the vehicle gate, they would be in the best position to dispatch armed responders.

Impact on Effectiveness on a Generic Plan

1. ☐ Yes ☐ No Does this change delete or contradict any regulatory requirement?
2. ☐ Yes ☐ No Would the change decrease the overall level of security system performance as described in paragraphs (b) through (h) of 10 CFR 73.55 to protect with the objective of high assurance against the

design basis threat of radiological sabotage as stated in 10 CFR 73.1(a)?

Rationale: This change would allow better utilization of security force resources and would help maintain current levels of assurance. Having a second armed security officer present during a vehicle search provides little, if any, additional deterrence to a potential adversary. CCTV coverage of vehicle access control and searches has a deterrence similar to the presence of the second officer.

3. ☐ Yes ☐ No Does this change any unique site-specific commitments?

Rationale: (Explain why the change does not decrease the overall effectiveness of the plan while taking into consideration existing unique site-specific security features. Consider historical reasons why specific commitments were included in the security plans. Were there specific counterbalancing commitments and has that counterbalance been changed negatively?)

Screening Criteria Form

(Assessment of Acceptability of 10 CFR 50.54(p) Plan Change)

Example III

Safeguards Information

Section/Title

This is an example. In an actual 50.54(p) determination, this section would give specific references to the parts of the security plan the licensee proposes to change.

Proposed Commitment

Currently, all lists of vital equipment are controlled as safeguards information (SGI). The following criterion defines what information needs to be controlled as SGI.

The following three elements must be present before "documents or other matter" are designated SGI in accordance with 10 CFR 73.21(b)(1)(vii):

(1) the safety-related equipment must be designated as vital equipment or be specified as being located in a vital area in either the licensee's physical security plan (PSP), the safeguards contingency plan (SCP) or, if applicable, any licensee-generated plant-specific safeguards analyses; and

(2) the equipment or area must be specifically designated as "vital" in the "documents or other matter" being reviewed; and

(3) the physical protection measures (other than any general regulatory requirement stated in 10 CFR 73.55) afforded the equipment or area, as described in either a licensee's PSP, a SCP, or a plant-specific safeguards analysis,* must also be specifically described in the "documents or other matter."

*Plant-specific sabotage scenarios or vulnerabilities in the physical protection system are considered SGI.

Impact on Effectiveness on a Generic Plan

1. ☐ Yes ☐ No Does this change delete or contradict any regulatory requirement?
2. ☐ Yes ☐ No Would the change decrease the overall level of security system performance as described in paragraphs (b) through (h) of 10 CFR 73.55 to protect with the objective of high assurance against the design basis threat of radiological sabotage as stated in 10 CFR 73.1(a)?

Rationale: This change allows the licensee to include a list of vital areas in training documents for licensee operations personnel without treating the documents as SGI. This change would also reduce the amount of SGI generated, handled, and stored. A non-SGI list does not decrease the effectiveness of the plan due to the absence of the above criteria and the fact that safety equipment lists are available from other sources.

3. ☐ Yes ☐ No Does this change any unique site-specific commitments?

Rationale: (Explain why the change does not decrease the overall effectiveness of the plan while taking into consideration existing unique site-specific security features. Consider historical reasons why specific commitments were included in the security plans. Were there specific counterbalancing commitments and has that counterbalance been changed negatively?)

Screening Criteria Form

(Assessment of Acceptability of 10 CFR 50.54(p) Plan Change)

Example IV

Protected Area Patrols

Section/Title

This is an example. In an actual 50.54(p) determination, this section would give specific references to the parts of the security plan the licensee proposes to change.

Proposed Commitment

Reduce frequency of protected area (PA) patrols. Patrol frequency would be reduced to a minimum of two patrols per shift (8 hours) or no less than once every 4 hours. Additional patrols contribute minimally to security effectiveness. Reduction of number of patrols would provide for more effective use of personnel resources. The consideration that all employees, as well as security force members, are trained to report any suspicious individuals or materials in the protected area decreases the importance of more frequent patrols.

Impact on Effectiveness on a Generic Plan

1. ☐ Yes ☐ No Does this change delete or contradict any regulatory requirement?
2. ☐ Yes ☐ No Would the change decrease the overall level of security system performance as described in paragraphs (b) through (h) of 10 CFR 73.55 to protect with the objective of high assurance against the design basis threat of radiological sabotage as stated in 10 CFR 73.1(a)?

Rationale: Previously issued guidance states that a patrol at least every 4 hours meets the performance requirements of the regulation.

☐ Yes ☐ No Does this change any unique site-specific commitments?

Rationale: (Explain why the change does not decrease the overall effectiveness of the plan while taking into consideration existing unique site-specific security features. Consider historical reasons why specific commitments were included in the security plans. Were there specific counterbalancing commitments and has that counterbalance been changed negatively?)

Screening Criteria Form

(Assessment of Acceptability of 10 CFR 50.54(p) Plan Change)

Example V

Security Organizational Changes

Section/Title

This is an example. In an actual 50.54(p) determination, this section would give specific references to the parts of the security plan the licensee proposes to change.

Proposed Commitment

Two levels of management would be eliminated, reducing the number of vertical layers of security staff organization. The change provides for more efficient management and possible savings in manpower resources. The number of guards for each shift directly involved in implementing the security plan would not be affected. Historically the NRC staff has not specified organizational or managerial structures. Published guidance is silent on the number of managers and the type of organizational structure for the security operation. Security management is judged by its performance and not by the number or type of managers.

Impact on Effectiveness on a Generic Plan

1. ☐ Yes ☐ No Does this change delete or contradict any regulatory requirement?
☐ Yes ☐ No Would the change decrease the overall level of security system performance as described in paragraphs (b) through (h) of 10 CFR 73.55 to protect with the objective of high assurance against the design basis threat of radiological sabotage as stated in 10 CFR 73.1(a)?

Rationale: With the actual number of on-duty security force members remaining unchanged, the implementation of the security plan should remain unchanged.

3. ☐ Yes ☐ No Does this change any unique site-specific commitments?

Rationale: (Explain why the change does not decrease the overall effectiveness of the plan while taking into consideration existing unique site-specific security features. Consider historical reasons why specific commitments were included in the security plans. Were there specific counterbalancing commitments and has that counterbalance been changed negatively?)

Screening Criteria Form

(Assessment of Acceptability of 10 CFR 50.54(p) Plan Change)

Example VI

Armed Responder Duties

Section/Title

This is an example. In an actual 50.54(p) determination, this section would give specific references to the parts of the security plan the licensee proposes to change.

Proposed Commitment

Assign duties other than armed response to security officers designated as members of the response team. Armed responders would be assigned additional duties that would not interfere with their contingency response. Assigned duties would be only ones that could be immediately abandoned for response purposes. This change allows for more efficient resource management. This change should not affect the security officers' ability to perform their duties as members of the response team. Use of response officers to perform additional duties has been an acceptable practice under current guidance. What has not been acceptable, as discussed in IN 86–88, is assigning responders to routine duties that cannot be abandoned during a security event when response is necessary.

Impact on Effectiveness on a Generic Plan

1. ☐ Yes ☐ No Does this change delete or contradict any regulatory requirement?
2. ☐ Yes ☐ No Would the change decrease the overall level of security system performance as described in paragraphs (b) through (h) of 10 CFR 73.55 to protect with the objective of high assurance against the design basis threat of radiological sabotage as stated in 10 CFR 73.1(a)?

Rationale: Ability to abandon duties and respond will be demonstrated and documented. The number of armed responders is not reduced and their ability to respond is not affected.

3. ☐ Yes ☐ No Does this change any unique site-specific commitments?

Rationale: (Explain why the change does not decrease the overall effectiveness of the plan while taking into consideration existing unique site-specific security features. Consider historical reasons why specific commitments were included in the security plans. Were there specific counterbalancing commitments and has that counterbalance been changed negatively?)

Screening Criteria Form

(Assessment of Acceptability of 10 CFR 50.54(p) Plan Change)

Example VII

Requalification Schedule

Section/Title

This is an example. In an actual 50.54(p) determination, this section would give specific references to the parts of the security plan the licensee proposes to change.

Proposed Commitment

The current plan specifies that security audits and weapons training (required by Appendix B to 73.55) be completed 1 year or less after the audit or training was last accomplished. This results in the due date of audits and training being adjusted each year and the audits and training, over a period of years, being completed more than once each 12 months. This change provides scheduling latitude in performing annually required security audits and weapons training. It allows use of a "tech spec" formula to provide flexibility in meeting audit and weapons training commitments. The revised commitment would allow fixed dates in the plan with a provision for extending the audit or training interval beyond 1 year (e.g., a maximum allowable extension not to exceed 25% of the surveillance interval, but the combined time interval for any 3 consecutive surveillance intervals shall not exceed 3.25 time the specific surveillance interval).

Impact on Effectiveness on a Generic Plan

1. ☐ Yes ☐ No Does this change delete or contradict any regulatory requirement?
2. ☐ Yes ☐ No Would the change decrease the overall level of security system performance as described in paragraphs (b) through (h) of 10 CFR 73.55 to protect with the objective of high assurance against the design basis threat of radiological sabotage as stated in 10 CFR 73.1(a)?

Rationale: There would be no impact on performance capabilities of the security program or security officer weapons proficiency. Audits and security training would still be conducted on an annual basis with only minor variations.

3. ☐ Yes ☐ No Does this change any unique site-specific commitments?

Rationale: (Explain why the change does not decrease the overall effectiveness of the plan while taking into consideration existing unique site-specific security features. Consider historical reasons why specific commitments were included in the security plans. Were there specific counterbalancing commitments and has that counterbalance been changed negatively?)

Screening Criteria Form

(Assessment of Acceptability of 10 CFR 50.54(p) Plan Change)

Example VIII

Guard/Watchmon Duties

Section/Title

This is an example. In an actual 50.54(p) determination, this section would give specific references to the parts of the security plan the licensee proposes to change.

Proposed Commitment

Some security plans list numerous positions within the security organization and specifically identify whether a position is filled by an armed guard or unarmed watchman. For example, a plan may specify that operators of search equipment in the gatehouse and SAS/CAS officers will be armed. This change would allow certain security officer positions to be filled by unarmed watchmen rather than armed guards. Watchmen would be allowed to operate search equipment in the gatehouse, to man the CAS and SAS, and to escort individuals in the protected and vital areas.

Impact on Effectiveness on a Generic Plan

1. ☐ Yes ☐ No Does this change delete or contradict any regulatory requirement?
2. ☐ Yes ☐ No Would the change decrease the overall level of security system performance as described in paragraphs (b) through (h) of 10 CFR 73.55 to protect with the objective of high assurance against the design basis threat of radiological sabotage as stated in 10 CFR 73.1(a)?

Rationale: This change does not involve any of the armed response force members. Consequently the response to security contingencies would remain the same.

3. ☐ Yes ☐ No Does this change any unique site-specific commitments?

Rationale: (Explain why the change does not decrease the overall effectiveness of the plan while taking into consideration existing unique site-specific security features. Consider historical reasons why specific commitments were included in the security plans. Were there specific counterbalancing commitments and has that counterbalance been changed negatively?)

Screening Criteria Form

(Assessment of Acceptability of 10 CFR 50.54(p) Plan Change)

Example IX

Vital Area Door Controls

Section/Title

This is an example. In an actual 50.54(p) determination, this section would give specific references to the parts of the security plan the licensee proposes to change.

Proposed Commitment

Some licensees have committed to placement of vital areas within vital areas. This arrangement results in doors, identified as vital area doors, being located within other vital areas. This change would allow the number of doors controlled as vital to be reduced. Vital area doors located within vital areas (with the exception of the control room and the alarm stations) would no longer be designated as vital.

Impact on Effectiveness on a Generic Plan

1. ☐ Yes ☐ No Does this change delete or contradict any regulatory requirement?
2. ☐ Yes ☐ No Would the change decrease the overall level of security system performance as described in paragraphs (b) through (h) of 10 CFR 73.55 to protect with the objective of high assurance against the design basis threat of radiological sabotage as stated in 10 CFR 73.1(a)?

Rationale: Unless the current response strategy to an external threat relies on delay or detection at internal vital area doors, elimination of their vital designation would not affect licensee response to a design basis external threat.

3. ☐ Yes ☐ No Does this change any unique site-specific commitments?

Rationale: (Explain why the change does not decrease the overall effectiveness of the plan while taking into consideration existing unique site-specific security features. Consider historical reasons why specific commitments were included in the security plans. Were there specific counterbalancing commitments and has that counterbalance been changed negatively?)

Screening Criteria Form

(Assessment of Acceptability of 10 CFR 50.54(p) Plan Change)

Example X

Security Vehicles

Section/Title

This is an example. In an actual 50.54(p) determination, this section would give specific references to the parts of the security plan the licensee proposes to change.

Proposed Commitment

Eliminate a requirement that a 4-wheel drive vehicle be used as a patrol and response vehicle. This reduction would need to be balanced by a commitment to verify that the response strategy to address the design basis threat did not rely on the use of a 4-wheel drive vehicle. This change would eliminate the costs of purchasing and maintaining 4-wheel drive vehicles that are not required for protection against the design basis external threat.

Impact on Effectiveness on a Generic Plan

1. ☐ Yes ☐ No Does this change delete or contradict any regulatory requirement?
2. ☐ Yes ☐ No Would the change decrease the overall level of security system performance as described in paragraphs (b) through (h) of 10 CFR 73.55 to protect with the objective of high assurance against the design basis threat of radiological sabotage as stated in 10 CFR 73.1(a)?

Rationale: The demonstration of protective strategies that do not require the use of a 4-wheel drive vehicle would confirm the ability of a site's protection strategy to protect the facility against the design basis threat.

3. ☐ Yes ☐ No Does this change any unique site-specific commitments?

Rationale: (Explain why the change does not decrease the overall effectiveness of the plan while taking into consideration existing unique site-specific security features. Consider historical reasons why specific commitments were included in the security plans. Were there specific counterbalancing commitments and has that counterbalance been changed negatively?)

Attachment 3—Unacceptable 10 CFR 50.54(p) Changes

The following is a listing of 10 CFR 50.54(p) changes that have been proposed or submitted but were determined to decrease the effectiveness of their respective plans. Changes would be reviewed on a case-by-case basis if submitted as noted for amendments or exemptions.

1. A change was submitted that would allow a "designated vehicle" to be stored outside the protected area in an unsecured manner. This change is considered to be decrease in overall effectiveness of the plan and would require an exemption request since it is contrary to the provisions of 10 CFR 73.55(d)(4).

2. A change was submitted by which any vehicle entering the protected area that is driven by an individual with unescorted access would not have to be escorted by an armed member of the security force. This change would decrease the overall effectiveness of the plan and require an exemption request since it is contrary to the provisions of 10 CFR 73.55(d)(4) and specific implementation guidance provided to the staff in SECY 93–326.

3. A change was submitted that would allow materials destined for the protected area to be searched and stored in an unsecured, owner-controlled warehouse. This change is considered a decrease in overall effectiveness of the plan and would require an exemption request since it is contrary to the provisions of 10 CFR 73.55(d)(3).

4. A change was submitted that requested that security officers be qualified on other than assigned weapons or "duty" ammunition. The change would be considered a decrease in overall effectiveness of the plan. This change could be submitted pursuant to 10 CFR 50.90.

5. A generic change was proposed during public meetings that would eliminate the secondary alarm station. This change would decrease the overall effectiveness of the plan and require an exemption request since it is contrary to the provisions of 10 CFR 73.55(e)(1).

6. A generic change was proposed during public meetings that would reduce the number of armed responders below the minimum required by the regulation. This change would decrease that overall effectiveness of the plan and require an exemption request since it is contrary to the provisions of 10 CFR 73.55(h)(3).

7. A change was submitted that did not specify which positions within the security organization would be armed or unarmed. As written, the staff had to assume the overall effectiveness of the plan was decreased. The licensee would need to resubmit this change to clarify which positions would be armed to confirm that regulatory requirements were being met.

8. A generic change was proposed during public meetings that would allow visitor escorting to be determined at the licensee's discretion. No specifics were provided regarding how this change was to be implemented. This change would decrease the overall effectiveness of the plan and require an exemption request since it is contrary to the provisions of 10 CFR 73.55(d)(6).

9. A generic change was proposed during public meetings that would give an alarm station operator the discretion to determine the need for compensatory measures for failed intrusion detection equipment. This change would decrease the overall effectiveness of the plan and require an exemption request since it is contrary to the provisions of 10 CFR 73.55(g)(1). Compensatory measures for vital area doors are contained in proposed rulemaking currently being processed by the staff.

10. A generic change was proposed during public meetings that would not require compensatory measures for 72 hours on a vital area door that had only a functional lock. This change would decrease the overall effectiveness of the plan and require an exemption request since it is contrary to the provisions of 73.55(g)(1).

Dated at Rockville, Maryland, this 7th day of June 1995.

For the Nuclear Regulatory Commission.

Brian K. Grimes,

Director, Division of Project Support, Office of Nuclear Reactor Regulation.

[FR Doc. 95–14501 Filed 6–13–95; 8:45 am]

BILLING CODE 7590–01–M

Commonwealth Edison Company, Zion Nuclear Power Station, Units 1 and 2; Correction to Director's Decision Under 10 CFR 2.206 (DD–95–09)

In the Notice beginning on page 28808 in the issue of Friday, June 2, 1995, make the following correction:

On page 28811, Section *E. Potential Threats*, in the second paragraph, the fourth sentence should read:

On a daily basis, the staff evaluates threat-related information to ensure the design basis threat statements in the regulations remain a valid basis for safeguards system design.

For the Nuclear Regulatory Commission,

Clyde Y. Shiraki,

Project Manager, Project Directorate III–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–14500 Filed 6–13–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No 50–458 (License No. NPF–47)]

Gulf States Utilities Entergy Corporation, Entergy Operations, Inc., (River Bend Station, Unit 1); Order Approving Transfers and Notice of Issuance of License Amendments

I

On November 20, 1985, pursuant to 10 CFR part 50, License No. NPF–47 was issued, under which Gulf States Utilities Company (GSU) is authorized to operate and hold a 70 percent ownership share in River Bend Station, Unit 1 (River Bend), which is located in West Feliciana Parish, Louisiana.

II

In June 1992, GSU and Entergy Corporation (Entergy) entered into an agreement providing for the combination of the businesses of their companies. In accordance with the merger plan, GSU, following the merger, will continue to operate as an electric utility, but as a subsidiary of a new holding company to be named Entergy Corporation, with its electric operations fully intergrated with those of the Entergy System. Upon consummation of the proposed business combination and subject to the receipt of the ncessary approvals, Entergy Operations Inc. (EOI), on behalf of the owners, will assume operations and managerial responsibility for River Bend.

III

To implement the business combination, GSU appled to the U.S. Nuclear Regulatory Commission (NRC) for two license amendments to license NPF–47, by two letters dated January 13, 1993, as supplemented by later filings. Under these requested license amendment, the license would reflect the transfer of ownership of GSU to become a wholly-owned susbisdiary of Entergy as a result of a merger between GSU and Entergy, and control over the operation of River Bend would be transferred from GSU to EOI, another wholly-owned subsidiary of Entergy. Notice of these applications for transfer and proporsed no significant hazards consideration determinations were published in the **Federal Register** on July 7, 1993 (58 FR 36435 and 58 FR 36436).

IV

This Order was originally issued on December 16, 1993. By other dated March 14, 1995, the Court of Appeals for the D.C. Circuit ordered that the two orders for (1) the merger of Gulf States Utilities and Entergy and (2) the operation of River Bend Station by EOI be vacted and the case remanded to the NRC.

V

The transfer of rights under license NPF–47 is subject to the NRC's approval under 10 CFR 50.80. Based on information provided by GSU and Entergy, and other information before the Commission, it is determined that the proposed transfer of the control of operations of River Bend from GSU to EOI, and the proposed transfer of ownership of GSU to Entergy, subject to the conditions set forth herein, are in the public interest and are consistent with the applicable provisions of law, regulations and orders issued by the Commission. These actions were evaluated by the staff as documented in Safety Evaluations, dated December 16, 1993, which contain final no significant hazards consideration determinations. The conditions of the transfer, to which GSU has not objected, are:

2.C.(3) Antitrust Conditions

a. GSU shall comply with the antitrust license conditions set forth in Appendix C, attached hereto and incorporated in this license.

b. EOI shall not market or broker power or energy from River Bend Station, Unit 1. GSU is responsible and accountable for the actions of its agent, EOI, to the extent said agent's actions affect the marketing or brokering of power or energy from River Bend Station, Unit 1 and; in any way, contravene the antitrust conditions of this paragraph or Appendix C of this license.

2.C.(16) Merger Related Reports

GSU shall inform the Director, NRR:

a. Sixty days prior to a transfer (excluding grants of security interests or liens) from GSU to Entergy or any other entity of facilities for the production, transmission or distribution of electric energy having a depreciated book value exceeding one percent (1%) of GSU's consolidated net utility plant, as recorded on GSU's books of account.

b. Of an award of damages in litigation initiated against GSU by Cajun Electric Power Cooperative regarding River Bend within 30 days of the award.

VI

Accordingly, pursuant to sections 103, 105, 161b, 161i, and 187 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201 et seq. and 10 CFR part 50, *it is hereby ordered* That the transfers to Entergy Corporation and Entergy Operations Inc., discussed above, are approved, and notice is given that license amendments providing for the transfer of control of operation of River Bend to EOI, subject to the license conditions set our and herein, and the transfer of ownership of GSU to Entergy are issued, effective immediately.

Dated at Rockville, MD., this 8th day of June 1995.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 95–14502 Filed 6–13–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–267; License No. DPR–34]

Public Service Company of Colorado, (Fort St. Vrain Nuclear Generating Station); Exemption

I

The Public Service Company of Colorado (PSC or the licensee) is the holder of Possession-Only License (POL) No. DPR–34, which authorized possessions and maintenance of the Fort St. Vrain Nuclear Generating Station (FSV). The license provides, among other things, that the plant is subject to all rules, regulations, and Orders of the Nuclear Regulatory Commission (NRC) now or hereafter in effect.

FSV is a high-temperature, gas-cooled reactor that is located at the licensee's site in Weld County, Colorado. FSV operated from January 31, 1974, to August 18, 1989. PSC shut down FSV because of control rod drive failures and subsequently made the shutdown permanent because of a discovery of degradation of the steam generator ring headers. On November 5, 1990, PSC submitted a Decommissioning Plan (DP) pursuant to § 50.82 of title 10, Code of Federal Regulations (10 CFR 50.82) that proposed the dismantling of FSV. On May 21, 1991, the NRC revised License No. DPR–34 to a POL, which allows possession but not operation of FSV. The DP was approved by NRC Order dated, November 23, 1993. PSC is actively dismantling FSV and decommissioning is approximately 65 percent complete. In addition, FSV has been defueled and all fuel was transferred to the PSC independent spent fuel storage installation (ISFSI). The ISFSI (Materials License No. SNM–2504) is licensed under 10 CFR part 72.

II

By letter dated February 16, 1995, PSC requested an exemption in accordance with 10 CFR 50.12 from the requirements of 10 CFR 50.54(w) to maintain onsite property damage insurance. This rule states the following:

> * * * Each electric utility licensee under this part for a production or utilization facility of the type described in 10 CFR 50.21(b) and 10 CFR 50.22 shall take reasonable steps to obtain insurance available at reasonable costs and on reasonable terms from private sources or to demonstrate to the satisfaction of the Commission that it possesses an equivalent amount of protection covering the licensee's obligation in the event of an accident at the licensee's reactor, to stabilize and decontaminate the reactor and the reactor station site at which the reactor experiencing the accident is located, provided that: * * *.

III

The justification presented by the licensee for the exemption request is that FSV is not authorized to operate, all nuclear fuel has been removed from the reactor facility and transferred to the ISFSI, decommissioning of FSV is approximately 65 percent complete, and the risk of accident resulting in a radiological release is now considerably less than during plant operation. The licensee contends that with all nuclear fuel removed from the reactor facility, and with the activated graphite blocks removed from the reactor building and disposed of at an authorized low-level waste disposal facility, the potential accidents as evaluated in the FSV DP only involve events such as fires, electrical power outages, and the dropping of activated or contaminated materials during dismantling. PSC concludes that any events at the facility would only result in doses to individuals located at the emergency planning zone boundary. In addition, PSC concludes these doses would be orders of magnitude below 10 CFR part

100 guidelines and are a small fraction of the U.S. Environmental Protection Agency's (EPA) "Protection Action Guidelines" (PAG). The NRC staff's Safety Evaluation of the FSV DP (NRC Decommissioning Order dated November 23, 1992) confirmed PSC's conclusion. Because the risk of an accident requiring reactor stabilization or extensive decontamination of the reactor facility does not exist at FSV, the annual cost of $250,000 per year for insurance is unwarranted and poses an undue hardship on FSV.

The NRC will not consider granting an exemption unless special circumstances warrant it. In the licensee's letter of August 2, 1993, these special circumstances were addressed as follows:

* * * (ii) Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule; or (iii) Compliance would result in undue hardship or other costs that are significantly in excess of those incurred by others similarly situated * * *.

In addition, for the FSV worst-case accident previously analyzed in Section 3.4.10 of the NRC approved Decommissioning Plan, the radiological release from the accident would result in a whole-body dose to an individual of 8.30 mrem. This dose is considerably less than 1 percent of the EPA PAG dose of 1000 mrem that requires protective action.

IV

The staff has reviewed the licensee's requests and finds that sufficient bases have been presented for NRC's approval of the request for exemption from 10 CFR 50.54(w) requirements to continue to maintain onsite property insurance.

The staff finds that the special circumstances presented by PSC satisfy the requirements of 10 CFR 50.12(a)(2)(ii) and (iii), and it would serve no purpose to meet a requirement that relates primarily to an operating reactor, where costs to stabilize and decontaminate a facility are significant in contrast to a defueled reactor such as FSV that is 65 percent decommissioned. To continue to maintain onsite property insurance would result in undue hardship to the licensee and costs in excess of those contemplated when the regulation was adopted.

Based on the above evaluation, the NRC has determined that pursuant to 10 CFR 50.12(a)(1), this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security.

Accordingly, NRC hereby grants an exemption from 10 CFR 50.54(w). The exemption deletes the requirement to continue to maintain onsite property damage insurance.

Pursuant to 10 CFR 51.32, NRC has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (May 22, 1995, 60 FR 27140).

A copy of the licensee's request for the exemption and supporting documentation dated February 16, 1995, and the NRC staff's Safety Evaluation, included in the exemption, are available for public inspection at the NRC's Public Document Room, 2120 L Street, NW., Washington, DC 20037, and at the Weld Library District—Downtown Branch, 919 7th Street, Greeley, CO 80631.

This exemption will become effective on issuance.

Dated at Rockville, MD, this 7th day of June, 1995.

For the Nuclear Regulatory Commission,

John T. Greeves,

Director, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95–14503 Filed 6–13–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 30–32493–CivP EA 93–072; ASLBP No. 95–709–02–CivP]

Radiation Oncology Center at Marlton (ROCM) Marlton, NJ, (Byproduct Materials License No. 29–28685–01); Notice of Hearing

June 7, 1995.

Notice is hereby given that, by Memorandum and Order dated June 7, 1995, the Atomic Safety and Licensing Board has granted the request of Radiation Oncology Center of Marlton (Licensee or ROCM) for a hearing in the above-titled proceeding. The hearing concerns the Order Imposing a Civil Monetary Penalty, issued by the NRC Staff on April 24, 1995 (published at 60 FR 21570, May 2, 1995). The parties to the proceeding are the Licensee and the NRC Staff.

The issues to be considered at the hearings are (a) whether the Licensee was in violation of the Commission's requirements as set forth in the violation in the Notice of Violation and Proposed Imposition of Civil Penalty, dated May 31, 1994, and the following specific examples given with the violation: Examples A.1, A.2, A.4, B.1, B.2, C and D; and (b) whether, on the basis of the violation set forth in the Notice of Violation, this Order should be sustained.

Materials concerning this proceeding are on file at the Commission's Public Document Room, 2120 L St. NW., Washington, DC 20555, and at the Commission's Region I Office, 475 Allendale Road, King of Prussia, Pennsylvania 19406–1415.

During the course of this proceeding, the Licensing Board, as necessary, will conduct one or more prehearing conferences and evidentiary hearing sessions. The time and place of these sessions will be announced in later Licensing Board Orders. Members of the public will be invited to attend any such in-person sessions.

Rockville, MD, June 7, 1995.

For the Atomic Safety and Licensing Board,

Charles Bechhoefer,

Chairman, Administrative Judge.

[FR Doc. 95–14504 Filed 6–13–95; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP); Notice of an "Emergency" Review to Consider Requests for "De Minimis" Waivers of the Competitive Need Limits for Buffalo Leather From Thailand and for Aluminum Conductor From Venezuela; Request for Comments

AGENCY: Office of the United States Trade Representative.

ACTION: Initiation of an "emergency" review and solicitation of public comments with respect to requests for "de minimis" waivers of the competitive need limits for buffalo leather from Thailand and for aluminum conductor from Venezuela.

SUMMARY: This notice initiates an expedited review and solicits public comments with respect to requests for "de minimis" waivers for the competitive need limits for buffalo leather from Thailand and for aluminum conductor from Venezuela.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW., Room 518, Washington, DC 20506. The telephone number is (202) 395–6971.

SUPPLEMENTARY INFORMATION: Section 504(d)(2) of the Trade Act of 1974, as amended ("Trade Act") (19 U.S.C. 2464(d)(2)) authorizes the President to disregard the 50-percent competitive need limit, which is provided for in section 504(c)(1)(B) of the Trade Act (19 U.S.C. 2464(c)(1)(b)), with respect to any eligible GSP article from any beneficiary country if the value of total imports of the article during the most recent calendar year did not exceed $5 million, adjusted annually to reflect the nominal growth in U.S. GNP since 1979. The so-called adjusted "de minimis" limit for 1994 is $13,346,358.

In 1994, imports of buffalo leather from Thailand and imports of aluminum conductor cable from Venezuela each exceeded the competitive need limits because they accounted for more than 50 percent of total U.S. imports. However, total imports of each article were below the "de minimis" limit for 1994. Therefore, they are each eligible to be granted a "de minimis" waiver of the competitive need limits.

On April 17, 1995, the Lackawanna Leather Company filed a request for urgent consideration with the GSP Subcommittee, pursuant to 15 CFR 2007.3(b), requesting a "de minimis" waiver of the competitive need limits for buffalo leather from Thailand that is classified in subheading 4104.39.20 of the Harmonized Tariff Schedule of the United States (HTS). On May 3, 1995, the General Cable Corporation filed a request for urgent consideration with the GSP Subcommittee, pursuant to 15 CFR 2007.3(b), requesting a "de minimis" wavier of the competitive need limits for aluminum conductor from Venezuela that is classified in HTS subheading 7614.90.20.

The GSP Subcommittee has decided to accept these requests for urgent consideration. Accordingly, this notice initiates an expedited review to consider these requests. The GSP Subcommittee invites submission in support of, or in opposition to, the requests that are the subject of this notice. All such submissions should conform to 15 CFR part 2007 *et seq.* Interested parties must submit an original and fourteen (14) copies of a written statement, in English, with respect to the articles under consideration. This will be the only opportunity to submit written comments.

All submissions should be sent to the Chairman of the GSP Subcommittee, 600 17th Street, NW., Room 518, Washington, DC 20506. Comments must be received no later than 5 p.m. on Wednesday, July 19, 1995. Information submitted will be subject to public inspection by appointment only with the staff of the USTR Public Reading Room, except for information granted "business confidential" status pursuant to 15 CFR 2003.6 and other qualifying information submitted in confidence pursuant to 15 CFR 2007.7. If the petition contains business confidential information, an original and fourteen (14) copies of a nonconfidential version of the submission along with an original and fourteen (14) copies of the confidential version must be submitted. In addition, each copy of the submission containing confidential information should be clearly marked "confidential" at the top and bottom of each page of the submission. Each copy of the version that does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of each page (either "public version" or "nonconfidential").

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 95–14572 Filed 6–13–95; 8:45 am]

BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35777; File No. SR–PSE–95–10]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to Proposed Rule Change by the Pacific Stock Exchange, Incorporated, Relating to its Procedure for Evaluating Options Trading Crowd Performance

May 30, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 7, 1995, the Pacific Stock Exchange, Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange subsequently filed Amendment No. 1 on May 25, 1995.[1] The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE is proposing to change its procedure for evaluating options trading crowd performance by specifying that floor broker questionnaires will be distributed semi-annually rather than quarterly.[2] The text of the proposed rule change is available at the Office of the Secretary, PSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Options Floor Procedure Advice ("OFPA") B–13 requires the Options Allocation Committee ("Committee") of the Exchange to evaluate periodically the options trading crowds[3] to determine whether each has fulfilled performance standards relating to, among other things, quality of markets, competition among market makers, observance of ethical standards, and administrative factors.[4] In conducting its evaluation, the Committee may consider any relevant information, including but not limited to, the results of a trading crowd evaluation questionnaire. The questionnaires are distributed to and completed by floor brokers on the Options Trading Floor on

[1] In Amendment No. 1, the Exchange proposes to amend Rule 6.82(b)(4)(i) to provide that the Lead Market Maker ("LMM") Appointment Committee shall review LMM appointments at least semi-annually. The rule currently provides that the LMM Appointment Committee must review LMM appointments at least quarterly. See Letter from Michael D. Pierson, Senior Attorney, Market Regulation, PSE, to James McHale, Attorney, Division of Market Regulation, Commission, dated May 23, 1995 ("Amendment No. 1").

[2] While PSE's Options Floor Procedure Advice B–13 currently requires the trading crowd evaluation questionnaire to be distributed to and completed by the floor brokers on a three-month periodic basis, the Commission staff understands that the Exchange began distributing the questionnaire on a semi-annual basis, beginning with the questionnaire dated October 17, 1994, covering the six (6) month period between April and September 1994. Telephone conversation between Michael D. Pierson, Senior Attorney, Market Regulation, PSE, and James T. McHale, Staff Attorney, Division of Market Regulation, Commission, on May 9, 1995.

[3] Pursuant to Rule 6.82, the program is also used to conduct evaluations of LMMs on the Options Trading Floor. The Exchange, through Amendment No. 1, also proposes to amend Rule 6.82(b)(4)(i) to require the LMM Appointment Committee to review LMM appointments on a semi-annual basis. See Amendment No. 1, *supra* note 1.

[4] The Commission approved the Exchange's Options Trading Crowd Performance Evaluation Pilot Program on a permanent basis on December 30, 1993. See Exchange Act Release No. 33407, 59 FR 1043 (January 7, 1994).

a "three-month periodic basis" pursuant to OFPA B–13.

The Exchange is proposing to amend OFPA B–13 to provide that trading crowds will be evaluated by questionnaire semi-annually rather than quarterly. At this time, the Exchange believes that floor brokers who respond to the surveys will pay greater attention and care in responding if the evaluation were conducted on a semi-annual basis. This is based on the Exchange's belief that quarterly evaluations are overly repetitive. Consequently, the Exchange believes that the proposed change would result in better measurements of trading crowd and Lead Market Maker performance. The Exchange further believes that the proposed change would result in a better allocation of Exchange resources, and that it will serve to enhance the Options Trading Crowd Evaluation Program.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(5) in particular, in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–95–10 and should be submitted by July 5, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–14537 Filed 6–13–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35822; File No. SR–PHLX–95–33]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Automatic Execution of National Over-the-Counter Index Options

June 8, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 11, 1995, the Philadelphia Stock Exchange, Inc., ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[5] 17 CFR 200.30–3(a)(12) (1994).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX proposes to limit the eligibility of National Over-the-Counter Index ("XOC") options for execution through the automatic execution ("AUTO–X") feature of the PHLX's Automated Options Market ("AUTOM") system. Specifically, the PHLX proposes to limit the AUTO–X eligibility of XOC options to XOC series where the bid is $10 or less. XOC series where the bid is greater than $10 will no longer be AUTO–X eligible and any such AUTOM-delivered orders will be subject to manual execution.

The text of the proposed rule change is available at the Office of the Secretary, PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Bosis for, the Proposed Rule Change

AUTOM, which has operated on a pilot basis since 1988 and was most recently extended through December 31, 1995,[1] is the PHLX's electronic order routing, delivery, execution and reporting system for equity and index options. AUTOM is an on-line system that allows electronic delivery of options orders from member firms directly to the appropriate specialist on the Exchange's trading floor.

Certain orders are eligible for AUTOM's automatic execution feature, AUTO–X.[2] AUTO–X orders are executed automatically at the disseminated quotation price on the Exchange and reported to the originating firm. Orders that are not eligible for AUTO–X are handled manually by the specialist.

The Commission approved the use of AUTO–X as part of the AUTOM pilot program in 1990.[3] In 1991, the Commission approved a PHLX proposal to extend AUTO–X to all equity options.[4] According to the PHLX, the Exchange initially implemented AUTO–X for all equity options and index options. The PHLX notes that in its order approving the extension of AUTO–X to all equity options, the Commission noted that the proposal would enable all PHLX equity options to be eligible for AUTO–X.[5] Accordingly, the Exchange believes that because extending AUTO–X to all options was not required nor was it filed as mandatory, the Exchange retains the ability to limit its implementation, consistent with the Act. Similarly, the Exchange states that orders for up to 25 contracts are eligible for AUTO–X, but this number is a maximum, such that different PHLX options are subject to a different AUTO–X order size cap.

Notwithstanding this ability, as part of an effort to extend the benefits of automatic execution floor-wide, the Exchange implemented Floor Procedure Advice ("Advice") A–13, "Auto–X Engagement/Disengagement Responsibility."[6] The PHLX states that in Advice A–13 the Exchange adopted an affirmative obligation, punishable by a fine administered pursuant to the PHLX's minor rule plan, that AUTO–X be implemented floor-wide. In that proposal, the Exchange cited the goal of maximizing floor-wide use of AUTO–X and ensuring specialist activity during adverse market conditions. The PHLX does not believe that these goals are eroded by the proposal at hand, which is limited to certain series in one index option.

In direct contrast to the Commission's concerns with options exchanges limiting the availability of execution systems to out-of-the-money call series,[7] The PHLX is limiting AUTO–X to the most active around-the-money series. The Exchange also included in Advice A–13 the ability to disengage AUTO–X in extraordinary circumstances with Floor Official approval. Thus, the Exchange recognized that conditions may exist which warrant the limitation of AUTO–X.

At this time, the PHLX proposes to limit the use of AUTO–X for XOC orders. Under the proposal, only those XOC series where the bid is at or below $10 at the end of the trading day will be eligible for AUTO–X, effective the next trading day. The PHLX states that these lower-priced XOC series generally receive the most interest from public customers. Accordingly, the Exchange believes that these series are most appropriate for automatic execution.[8] The Exchange intends to clearly communicate to its membership and AUTOM users the proposed AUTO–X limitation for XOC options through an information circular.

The proposal is also in response to recent volatility in the over-the-counter ("OTC") markets, which has made it increasingly difficult for specialists and market makers to monitor quotations to reflect changes in the markets for the underlying securities. The PHLX states that sufficient time is necessary for such adjustments, particularly because participation in AUTOM and AUTO–X is obligatory.

In addition to volatility, the Exchange believes that a specialist's obstacles in hedging XOC positions with underlying OTC securities, which is particularly relevant to the XOC, also warrants the proposed AUTO–X limitation. For example, in order to hedge XOC exposure, positions in OTC securities are typically purchased and sold. The PHLX states that the aggregate bid/ask differential for the XOC's component securities is often greater than $5 wide, reflecting the volatility of those markets as well as the relatively high value of the XOC itself.[9] The PHLX states that in recognition of these circumstances, the Commission recently approved an Exchange proposal to widen the quotation spread parameters applicable to the XOC.[10]

Exchange By-Law Article X, "Standing Committee," Section 10–18, "Options Committee," grants authority over all connections and communications on the options floor, such as AUTOM, to be Options Committee, which has authorized the proposed AUTO–X limitation. Pursuant to this authority, the Options Committee has determined, in the interest of maintaining fair and orderly markets, to amend the eligibility of XOC orders for automatic execution.

The Exchange notes that AUTOM users will continue to be afforded the advantages of automatic execution for XOC series priced at low or moderate levels. According to the PHLX, public customers (*i.e.*, "customers" who are not associated with broker-dealer organizations or subject to discretionary authorization by associated persons of broker-dealers) most often choose XOC series priced at $10 or less for investment.[11] The proposal does not affect the AUTO–X eligibility of any other equity or index option.

In addition, the PHLX notes that it is consistent with the practices of other options exchanges to limit automatic execution eligibility to certain series, such as near-term, at-the-money

[1] *See* Securities Exchange Act Release No. 35183 (December 30, 1994), 60 FR 2420 (January 9, 1995) (order approving File No. SR–PHLX–94–41). *See also* Securities Exchange Act Release Nos. 25540 (March 31, 1988), 53 FR 11390 (order approving AUTOM on a pilot basis); 25868 (June 30, 1988), 53 FR 25563 (order approving File No. SR–PHLX–88–22, extending pilot through December 31, 1988); 26354 (December 13, 1988), 53 FR 51185 (order approving File No. SR–PHLX–88–33, extending pilot program through June 30, 1989); 26522 (February 3, 1989), 54 FR 6465 (order approving File No. SR–PHLX–89–1, extending pilot through December 31, 1989); 27599 (January 9, 1990), 55 FR 1751 (order approving File No. SR–PHLX–89–03, extending pilot through June 30, 1990); 28625 (July 26, 1990), 55 FR 31274 (order approving File No. SR–PHLX–90–16, extending pilot through December 31, 1990); 28978 (March 15, 1991), 56 FR 12050 (order approving File No. SR–PHLX–90–34, extending pilot through December 31, 1991); 29662 (September 9, 1991), 56 FR 46816 (order approving File No. SR–PHLX–91–31, permitting AUTO–X orders up to 20 contracts in Duracell options only); 29782 (October 3, 1991), 56 FR 55146 (order approving File No. SR–PHLX–91–33, permitting AUTO–X for all strike prices and expiration months); 29837 (October 18, 1991), 56 FR 36496 (order approving File No. SR–PHLX–90–03, extending pilot through December 31, 1993); 32906 (September 15, 1993), 58 FR 15168 (order approving File No. SR–PHLX–92–38, permitting AUTO–X orders up to 25 contracts in all options); and 33405 (December 30, 1993), 59 FR 790 (order approving File No. SR–PHLX–93–57, extending pilot through December 31, 1994).

[2] Orders for up to 100 contracts are eligible for AUTOM and public customer orders for up to 25 contracts are eligible for AUTO–X. See Securities Exchange Act Release No. 32000 (March 15, 1993), 58 FR 15168 (March 19, 1994) (order approving File No. SR–PHLX–92–38).

[3] See Securities Exchange Act Release No. 27599 (January 9, 1990), 55 FR 1751 (January 18, 1990) (order approving File No. SR–PHLX–89–03).

[4] See Securities Exchange Act Release No. 28978 (March 15, 1991), 56 FR 12050 (March 21, 1991) (order approving File No. SR–PHLX–90–34).

[5] See Securities Exchange Act Release No. 28978, *supra* note 4.

[6] See Securities Exchange Act Release No. 29575 (August 16, 1991), 56 FR 41715 (August 22, 1994) (order approving File No. SR–PHLX–91–16). Advice A–13 states that options specialists are responsible for engaging AUTO–X for an assigned option within three minutes of completing the opening or reopening rotation of that option. In addition, the Advice indicates that, under extraordinary circumstances, a specialist may be provided with an exemption from receiving orders through AUTO–X and may disengage the system upon approval by two floor officials.

[7] See The Division of Market Regulation, The October 1987 Market Break (February 1988).

[8] For example, the PHLX states that on trade date January 25, 1995, 40 XOC transactions occurred, 38 of which involved a customer. Only two of these trades involved execution prices greater than $20, while 10 trades were above $10 but less than $20; 28 customer trades were below $10. The 28 customer trades represented 439 contracts out of a total of 531 contracts.

[9] The bid/ask differential in the underlying securities is determined by adding the bids for such securities and dividing by 100 (the number of securities comprising the XOC) to arrive at the composite bid; and then similarly adding the offers and dividing by 100 to arrive at a composite, or average, offer.

[10] See Securities Exchange Act Release No. 34781 (October 3, 1994), 59 FR 51467 (October 11, 1994) (order approving File No. SR–PHLX–94–28).

[11] See note 7, *supra*. The Exchange notes similar results on trade date February 7, 1995.

series.[12] Thus, for competitive reasons, the Exchange seeks to create a level playing field with respecting automatic execution parameters.

The PHLX believes that the proposal is consistent with Section 6(b) of the Act, in general, and, in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade and to prevent fraudulent and manipulative acts and practices. Specifically, the Exchange believes that the aforementioned circumstances (volatility and hedging) respecting the XOC warrant an AUTO–X limitation in the interest of maintaining fair and orderly markets. The PHLX notes that option series where the bid is more than $10 may represent a premium of $1,000 ($10 multiplied by 100); accordingly, expensive errors may result from the automatic execution of a high-priced option series before the option quote has been updated to reflect a change in the price of an underlying security. According to the PHLX, in certain cases such trades occur by way of orders from professional investors, which undercut the use of market making capital, and, in turn, detrimentally affect liquidity.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

[12] For example, on the Chicago Board Options Exchange, Inc. ("CBOE"), only the four most active puts and calls in the two near-term months in Nasdaq 100 Index options are eligible for the CBOE's Retail Automated Execution System.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 5, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–14538 Filed 6–13–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35827; File No. SR–Phlx–95–36]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Restrictions on Exercise and the Definition of a European Style Option Respecting Index Options

June 8, 1995.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 6, 1995, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the time period in Phlx Rule 1006A during which restrictions on the exercise of index options may be in effect, making Rule 1006A consistent with a joint circular issued by the options exchanges in 1991.[3] Rule 1006A would be amended to substitute the words "business day" for the words "trading day". The Exchange also proposes to delete the remainder of Rule 1006A, which references restrictions on exercise respecting specific index options, namely the Bank Index, Big Cap Index and Value Line Index. Lastly, the Phlx proposes to amend Rule 1000A(b)(12) to correct the definition of "European style option" to state that such option contracts can be exercised only on the day it expires. The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend Phlx Rule 1006A to make it consistent with a joint circular issued by the options exchanges in 1991 regarding exercise restrictions, and similar provisions imposed by the other options exchanges and the Options Clearing Corporation ("OCC"). The Exchange proposes to amend Rule 1006A to state that restrictions on exercise may be in effect until the opening of business on the last business day (generally Friday) prior to expiration (Saturday). As a result of this proposed rule change, restrictions on exercise would be permissible on the last trading day (Thursday) for expiring Am-settled options.

Currently, Rule 1006A provides that restrictions on exercise may be in effect until the opening of business on the last trading day before the expiration date. The last trading day before expiration is generally Friday, for PM-settled options and Thursday for AM-settled options. Thus, the current language would permit restrictions on exercise to remain in effect until the opening of business on Friday for PM-settled options, but only until Thursday for AM-settled options. The Exchange proposes to amend Rule 1006A to state that restrictions on exercise may be in effect until the opening of business on the last business day before expiration, which is generally Friday for all index options, whether AM or PM-settled. As a result, restrictions on exercise would be permissible for all index options on Thursday, but not Friday.

In support of this proposal, the Exchange notes that OCC Rules permit such restrictions on Thursday, because OCC provisions refer to the last "business" day.[4] Additionally, the proposed rule change is consistent with a recent proposal by the Chicago Board Options Exchange, Incorporated ("CBOE").[5]

The Exchange also proposes to delete the remainder of Rule 1006A, which references restrictions on exercise respecting specific index options, namely the Bank Index, Big Cap Index and Value Line Index. These index options are European style, such that exercise is prohibited, by definition, until its expiration date. Any restrictions on exercise which may be imposed cannot be in effect on expiration (Saturday), because Rule 1006A would only permit such restriction until the opening on Friday. Thus, the restrictions on exercise in Rule 1006A have no effect on the ability to exercise a European style index option, which by definition, cannot be exercised until Saturday.

Following a review of index rules, the Phlx has determined that Rule 1000A requires an amendment to correct the definition of "European style option" to correspond to the comparable equity option provision in Rule 1000(b)(35), as well as the rules of the other options exchanges and the OCC.[6] Specifically, a European style option can only be exercised on its expiration date.

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade, and protect investors and the public interest, by coordinating the Exchange's ability to impose restrictions on the exercise of index options with the provisions of other options exchanges and the OCC.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change constitutes a stated policy, practice or interpretation with respect to the meaning, administration or enforcement of an existing rule of the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to SR–Phlx–95–36 and should be submitted by July 5, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–14539 Filed 6–13–95; 8:45 am]

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[13] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.29b–4.

[3] See *e.g.*, CBOE Regulatory Circular RG91–11, dated January 14, 1991.

[4] SEE OCC By-Laws, Article VI, Section 17, Exercise Restrictions.

[5] See Securities Exchange Act, Release No. 35307 (January 31, 1995), 60 FR 7606 (February 8, 1995).

[6] See OCC By-Laws, Article XVII, Section 2(b), General Rights and Obligations of Holders and Writers of Index Options.

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[Release No. 34–35821; File No. SR–NYSE–95–11]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Adoption of Rule 440A ("Telephone Solicitation—Recordkeeping") and an Interpretation With Respect to Proposed Rule 440A

June 7, 1995.

On March 22, 1995, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new Rule 440A ("Telephone Solicitation-Recordkeeping") and to add an interpretation with respect to the meaning and administration of proposed Rule 440A.

The proposed rule change was published for comment in Securities Exchange Act Release No. 35597 (April 12, 1995), 60 FR 19427. No comments were received on the proposal.

I. Description of the Proposal

The proposed rule would require members and member organizations that engage in telephone solicitations to maintain a centralized list of persons who do not wish to receive telephone solicitations. The Exchange also proposes to add an interpretation concerning the meaning and administration of proposed Rule 440A with respect to compliance with the Federal Communications Commission ("FCC") and SEC rules relating to telemarketing practices. The Exchange proposes to publish the interpretation as an Interpretation Memorandum for

inclusion in the Exchange Interpretation Handbook.

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[3] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirement that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices in that it addresses the practices of Exchange members and member organizations who make telemarketing calls. Proposed Rule 440A and the interpretation concerning the meaning and administration of proposed Rule 440A, require a specific practice, the maintenance of a "do-not-call" list. The purpose of maintaining a "do-not-call" list is to prevent such manipulative acts by members and member organizations, such as persistent calls to investors who have expressed their desire not to receive telephone solicitations.

The Commission also believes the proposal is consistent with the Section 6(b)(5) requirement to protect investors and the public interest. Proposed Rule 440A and the interpretation thereto, protects investors and the public interest by enforcing members' and member organizations' compliance with investors' desire not to receive such calls. In addition, the proposed interpretation reminds members and member organizations that they are subject to the requirements of the rules of the FCC and the SEC relating to telemarketing practices and the rights of telephone consumers. For example, the FCC requires persons or entities making telephone solicitations to maintain a do-not-call list for the purpose of any future telephone solicitations.[4]

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[5] that the proposed rule change (SR–NYSE–95–11) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–14470 Filed 6–13–95; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. 78f(b).
[4] 47 CFR 64.1200.
[5] 15 U.S.C. 78s(b)(2).
[6] 17 CFR 200.30–3(a)(12).

[Rel. No. IC–21119; File No. 812–9456]

IL Annuity and Insurance Company, et al.

June 7, 1995.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice of application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: IL Annuity and Insurance Company ("IL Annuity"), IL Annuity and Insurance Company Separate Account 1 ("IL Annuity Account"), and IL Securities, Inc.

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act granting exemptions from the provisions of Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of a mortality and expense risk charge from the assets of the IL Annuity Account and other separate accounts established by IL Annuity in the future ("Other Separate Accounts") in connection with the issuance and sale of certain flexible premium deferred variable annuity contracts ("Contracts") and any contracts that are similar in all material respects to the Contracts ("Other Contracts"). Applicants also request that the exemptive relief extend to certain other broker-dealers which may serve in the future as a principal underwriter of the Contracts or Other Contracts ("Future Underwriters").

FILING DATE: The application was filed on January 31, 1995, and amended on May 22, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 3, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, Margaret H. McKinney, Esq., Associate General Counsel and Secretary, Indianapolis Life Insurance Company, 2960 North Meridian Street, Indianapolis, IN 46208.

FOR FURTHER INFORMATION CONTACT: Mark C. Amorosi, Attorney, or Wendy Finck Friedlander, Deputy Chief, at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. IL Annuity, formerly known as Sentry Investors Life Insurance Company, is a stock life insurance company organized under the laws of the Commonwealth of Massachusetts in 1966. IL Annuity is a wholly-owned subsidiary of the Indianapolis Life Group of Companies, Inc., which is a wholly-owned subsidiary of the Indianapolis Life Insurance Company ("ILICO"). ILICO is a mutual life insurance company chartered under Indiana law. IL Annuity is authorized to conduct life insurance and annuity business in 40 states and the District of Columbia. IL Annuity is the depositor and sponsor of the IL Annuity Account.

2. The IL Annuity Account was established by IL Annuity as a separate account under the laws of Indiana on November 1, 1994 as a funding medium for variable annuity contracts. The IL Annuity Account meets the definition of a "separate account" under the federal securities laws and is registered under the 1940 Act as a unit investment trust. The IL Annuity Account is divided into fifteen subaccounts (the "Variable Accounts") each of which will invest solely in the shares of a designated series (each a "Portfolio") of The Alger American Fund, the Fidelity Variable Insurance Products Fund, the Fidelity Variable Insurance Products Fund II, the Quest for Value Accumulation Trust, the T. Rowe Price International Series, Inc., the T. Rowe Price Fixed Income Series, Inc., and the Van Eck Investment Trust (the "Funds"). Each of the Funds is registered as a diversified, open-end management investment company under the 1940 Act.

3. IL Securities, Inc. ("ILS"), a broker-dealer registered under the Securities Exchange Act of 1934 and a member of the National Association of Securities Dealers, Inc., will serve as the distributor and principal underwriter for the Contracts. ILS is a wholly-owned subsidiary of the Indianapolis Life Group of Companies, Inc. Any Future Underwriter will be registered as a broker-dealer under the Securities Exchange Act of 1934 and will be a member of the National Association of Securities Dealers, Inc.

4. The Contracts are flexible premium deferred variable annuity contracts which may be sold on a non-tax qualified basis ("Non-Qualified Contracts") or offered in connection with retirement plans which qualify for favorable federal income tax treatment ("Qualified Contracts"). The Contracts provide for, among other things: (a) Minimum initial and subsequent premium payments of $1,000; (b) several annuity payment options beginning on the annuity commencement date; and (c) if the annuitant dies during the accumulation phase, the payment of a death benefit equal to the greater of (1) the aggregate premium payments made under the Contract, less partial withdrawals, as of the date IL Annuity receives due proof of death and payment instructions, or (2) the Contract value as of the date IL Annuity receives due proof of death and payment instructions; and less applicable premium taxes not previously deducted (and less any outstanding loan amount on the date the death benefit is paid, if the Contract is a Qualified Contract).

The Contract also provides for a maturity benefit payment if the value of a particular Variable Account is less than the sum of the premium payments which were initially allocated to that Variable Account and which have remained continuously in that Variable Account for a minimum of ten years. The maturity benefit payment is equal to (a) the sum of the premium payments which have remained in a Variable Account from the time of initial payment until the maturity benefit date, provided ten years have elapsed from the time of payment until the maturity benefit date; minus (b) the value of the Variable Account on the maturity benefit date.

The Contract also provides transfer privileges, a dollar cost averaging program, an interest sweep program and an automatic account balancing program.

5. Various fees and charges are deducted under the Contracts. A quarterly contract maintenance fee of $7.50 will be deducted from Contract value at the end of each three month period measured from the date of issue until the annuity commencement date and upon a full withdrawal to reimburse IL Annuity for certain administrative expenses. A daily asset-based administration charge equal to an effective annual rate of 0.15% of the average daily separate account value will be deducted to reimburse IL Annuity for certain administrative services provided to Contract owners. These administrative fees are guaranteed not to increase for the duration of the Contract. IL Annuity permits twelve free transfers among the Variable Accounts per Contract year; however, a $25 charge will be assessed on the thirteenth and each subsequent transfer within the Contract year. IL Annuity represents that these charges will be deducted in reliance upon Rule 26a–1 under the 1940 Act and that each charge represents reimbursement only for administrative costs expected to be incurred.

6. IL Annuity will deduct premium taxes paid on behalf of a particular Contract either (a) from premium payments as received or (b) from the Contract proceeds upon (i) a partial or full surrender, (ii) application of the proceeds to a payment option or (iii) upon payment of a death benefit. Premium taxes currently range up to 3.5%.

7. No sales charge is deducted from premium payments. However, certain full or partial surrenders will be subject to a contingent deferred sales charge ("Withdrawal Charge") of up to 8% during the first nine Contract years. Amounts subject to the Withdrawal Charge will be deemed to be first from premium payments, then from earnings. In any Contract year, a Contract owner may withdraw 10% of the Contract value as of the beginning of the Contract year without incurring a Withdrawal Charge. IL Annuity may also waive the Withdrawal Charge under other circumstances permitted under the 1940 Act.

The Withdrawal Charge covers expenses relating to the distribution and sale of the Contracts, including commissions to registered representatives, preparation of sales literature and other promotional expenses. IL Annuity does not anticipate that the Withdrawal Charge will generate sufficient revenues to pay the cost of distributing the Contracts. To the extent that the Withdrawal Charge is insufficient to cover all sales and distribution expenses, the deficiency will be met from IL Annuity's general account, which may include profits derived from the mortality and expense risk charge.

8. Shares of the Portfolios are sold to the Variable Accounts at net asset value. Each Portfolio pays its investment adviser a fee for managing its investments and business affairs. Each Portfolio is responsible for all of its operating expenses.

9. A daily charge equal to an effective annual rate of 1.25% of the average daily net assets in the IL Annuity Account will be deducted to compensate IL Annuity for bearing certain mortality and expense risks under the Contracts. Of that amount, approximately 0.90% is for mortality risks and approximately 0.35% is for the expense risk. The mortality risks arise from IL Annuity's contractual obligations (1) to make annuity payments (determined in accordance with the annuity tables and other provisions provided in the Contract) regardless of how long any individual annuitant or all annuitants may live and (2) to provide a death benefit if the annuitant dies prior to annuitization. Applicants represent that the mortality risk charge may not be increased under the Contract. The expense risk assumed by IL Annuity is the risk that IL Annuity's actual administrative costs will exceed the amount recovered through the administrative and policy maintenance charges. If the expense risk charge is insufficient to cover the actual cost of administering the Contracts and the IL Annuity Account, IL Annuity will bear the loss.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission to grant an exemption from any provision, rule or regulation of the 1940 Act to the extent that it is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

2. Applicants request exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of the 1.25% charge from the assets of the IL Annuity Account to compensate IL Annuity for the assumption of mortality and expense risks. Applicants further request that such exemptive relief extend to any Other Contracts which may be issued in the future by the IL Annuity Account or any Other Separate Account established by IL Annuity. Applicants assert that the requested exemptions are necessary and appropriate in the public interest and consistent with the protection of

investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. IL Annuity represents that the 1.25% mortality and expense risk charge is within the range of industry practice for comparable annuity contracts. This representation is based upon IL Annuity's analysis of publicly available information about comparable industry products, taking into consideration such factors as annuity purchase rate guarantees, death benefit guarantees, other contract charges, the frequency of charges, the administrative services performed by IL Annuity with respect to the Contracts, the means of promotion, the market for the Contracts, investment options under the Contracts, purchase payment, transfer, dollar cost averaging and automatic account balancing features, and the tax status of the Contracts. IL Annuity represents that it will maintain at its home office, a memorandum, available to the Commission, setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative review.

4. Prior to issuing any Other Contracts, Applicants will determine that the mortality and expense risk charge under any Other Contracts is within the range of industry practice for comparable contracts. IL Annuity represents that the basis for this conclusion will be set forth in a memorandum which will be maintained at its home office and will be available to the Commission upon request.[1]

5. IL Annuity acknowledges that, if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be available to pay distribution expenses not reimbursed by the Withdrawal Charge. IL Annuity represents that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the IL Annuity Account and Contract owners. IL Annuity represents that the basis for that conclusion is set forth in a memorandum which will be maintained at its home office and will be available to the Commission upon request.

6. Prior to issuing any Other Contracts, Applicants will determine that there is a reasonable likelihood that the proposed distribution financing arrangement for any Other Contracts will benefit the IL Annuity Account or any Other Separate Account and Contract owners. IL Annuity represents that the basis for this conclusion will be set forth in a memorandum which will be maintained at its home office and will be available to the Commission upon request.[2]

7. Applicants assert that the terms of the future relief requested with respect to Other Separate Accounts, Other Contracts and Future Underwriters are consistent with the standards set forth in Section 6(c) of the 1940 Act. Applicants submit that, if IL Annuity were to repeatedly seek exemptive relief with respect to the same issues addressed in this application, investors would not receive additional protection or benefit. Applicants assert that the requested relief is appropriate in the public interest because the relief will promote competitiveness in the variable annuity market by eliminating the need for the filing of redundant exemptive applications, thereby reducing administrative expenses and maximizing efficient use of resources. Applicants represent that both the delay and the expense of repeatedly seeking exemptive relief would impair IL Annuity's ability to effectively take advantage of business opportunities as they arise.

8. IL Annuity also represents that the IL Annuity Account or any Other Separate Accounts will invest only in management investment companies which undertake, in the event they should adopt a plan under Rule 12b–1 of the 1940 Act to finance distribution expenses, to have a board of directors or trustees, a majority of whom are not "interested persons" of the company within the meaning of Section 2(a)(19) of the 1940 Act, formulate and approve any such plan.

Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–14471 Filed 6–13–95; 8:45 am]

BILLING CODE 8010–01–M

[1] Applicants represent that, during the Notice Period, the application will be amended to reflect this representation.

[2] Applicants represent that, during the Notice Period, the application will be amended to reflect this representation.

[Release No. IC–21124; 813–138]

Merrill Lynch KECALP L.P. 1994 and KECALP Inc.; Notice of Application

June 8, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Merrill Lynch KECALP L.P. 1994 (the "1994 Partnership") and KECALP Inc. (the "General Partner").

RELEVANT ACT SECTIONS: Order requested under sections 6(b) and 17(b) from section 17(a).

SUMMARY OF APPLICATION: Applicants request an order which would let the General Partner sell to future partnerships certain investments that were purchased and held by the General Partner on behalf of a future partnership prior to the closing of such partnership's initial offering. The order also would let the General Partner sell to the 1994 Partnership four investments that the General Partner has purchased and is holding as nominee for the 1994 Partnership.

FILING DATES: The application was filed on November 10, 1994, and was amended on February 22, 1995, May 31, 1995, and June 7, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 3, 1995 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's request, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street N.W., Washington, D.C. 20549. Applicants, South Tower, World Financial Center, 225 Liberty Street, New York, New York 10080–6123.

FOR FURTHER INFORMATION CONTACT: Sarah A. Wagman, Staff Attorney, at (202) 942–0654, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application

may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The 1994 Partnership is a Delaware limited partnership registered under the Act as a closed-end management investment company. The 1994 Partnership is an "employees' securities company," as defined in section 2(a)(13) of the Act, and operates under the terms of an order issued in 1982 (the "1982 Order") that exempts under section 6(b) of the Act the Merrill Lynch KECALP Ventures Limited Partnership 1982, and future similar limited partnerships in which Merrill Lynch & Co., Inc. ("ML & Co.") is a general partner, from certain provisions of the Act to the extent necessary to permit the partnerships to function as employees securities companies.[1] Interests in the 1994 Partnership were offered to certain employees of ML & Co. and its subsidiaries, and to non-employee directors of ML & Co. The General Partner may organize additional limited partnerships for employees of ML & Co. and its subsidiaries. Applicants request that the relief sought herein apply to these future KECALP partnerships, which will operate under the terms of the 1982 Order (each, a "Future Partnership;" together with the 1994 Partnership, the "Partnerships").

2. The General Partner is an indirect, wholly-owned subsidiary of ML & Co. The General Partner is registered as an investment adviser under the Investment Advisers Act of 1940. All investments and dispositions of investments by the Partnerships are approved by the board of directors of the General Partner.

3. Applicants request an amendment to the 1982 Order to allow the General Partner, ML & Co., and direct or indirect wholly-owned subsidiaries of ML & Co. (together, "ML") to acquire and hold certain investments ("Warehoused Investments") on behalf of a Future Partnership pending the closing of the Partnership's initial offering. An investment will only qualify as a Warehoused Investment where (a) ML acquires an investment on behalf of a Future Partnership with the intention of selling such investment to the Future Partnership following the completion of its initial offering, and (b) the board of directors of the General Partner approves such investment. ML may sell a Warehoused Investment to a Partnership only during the lesser of (a) one year from the time ML purchases the Warehoused Investment, or (b) 30 days from the date of closing of a Partnership's initial offering.

4. The purchase price to be paid by the Partnership to ML for a Warehoused Investment will be the lesser of (a) the fair value of the Warehoused Investment on the date it is acquired by the Partnership or (b) the cost to ML of purchasing the Warehoused Investment. ML may only charge the Partnership carrying costs to the extent the fair value of the Warehoused Investment exceeds the cost, and such costs will accrue from the date ML acquires the Warehoused Investment on behalf of the Partnership. Carrying costs will consist of interest charges computed at the lower of (a) the prime commercial lending rate charged by Citibank, N.A. during the period for which carrying costs are being paid or (b) the effective cost of borrowings by ML & Co. during such period. The effective cost of borrowings by ML & Co. is its actual "Average Cost of Funds," which it calculates on a monthly basis by dividing its consolidated financing expenses by the total amount of borrowings during the period.

5. Applicants are subject to an order issued in 1991 (the "1991 Order")[2] that, in relevant part, allows ML to acquire "Merrill Lynch Investments"[3] on behalf of a KECALP partnership, and sell such investments to the partnership within 30 days of ML's acquisition of such investments. To the extent ML acquires on behalf of a KECALP partnership investments that are not Merrill Lynch investments, and that are not sold to the partnership within 30 days of ML's purchase, the partnership must obtain exemptive relief from the Commission prior to acquiring the Warehoused Investment.

6. Applicants also request an order under section 17(b) of the Act exempting them from section 17(a) in order to permit the General Partner to sell to the 1994 Partnership four investments that the General Partner has purchased and is holding as nominee for the 1994 Partnership. Applicants also request that the General Partner be permitted to recover carrying costs related to such investments, to the extent that the fair value of a Warehoused Investment on the date it is acquired by the 1994 Partnership exceeds the cost to the General Partner of purchasing and holding such investment. Each of the four Warehoused Investments was acquired by the General Partner, and upon receipt of the requested order, will be acquired by the 1994 Partnership, in accordance with the conditions to the requested order, as described below.

A. ZML Partners Limited Partnership III ("Zell III")

1. Zell III is a limited partnership formed to act as the managing general partner of Zell/Merrill Lynch Real Estate Opportunity Partners Limited Partnership III (the "Zell Fund"). The Zell Fund is a limited partnership formed to acquire a high quality, geographically diversified portfolio of real estate assets. Zell III has committed to invest up to $25 million in the Zell Fund. The Zell Fund closed its initial offering in March 1994 with aggregate capital commitments of approximately $680 million. On March 10, 1994, the General Partner funded $600,000 of its $2.0 million commitment in return for an 8% limited partnership interest in Zell III, held on behalf of the 1994 Partnership, pending the closing of the 1994 Partnership's initial offering and receipt of the requested order. Upon its acquisition of the investment in Zell III, the 1994 Partnership will be allocated generally its proportional share of all items of income, loss and gain, and its proportional share of distributions, received by Zell III from its investment in the Zell Fund.

2. The proposed investment in Zell III involves a joint transaction under section 17(d) of the Act, and rule 17d–1 thereunder, that is permitted by the 1982 Order. Because the 1982 Order does not provide relief to allow the General Partner to sell Warehoused Investments to the Partnerships, and because the investment in Zell III is not a Merrill Lynch Investment within the meaning of the 1991 Order, applicants seek an exemption from section 17(a) to allow the General Partner to sell the Warehoused Investment to the 1994 Partnership.

B. Gemini Holdings, Inc. ("Gemini")

1. PCA Holding Corporation ("Holding") is an acquisition vehicle created to acquire PC Accessories, Inc. ("PCA"), a distributor of computer accessory products. On July 28, 1994, the General Partner acquired 119,000 shares of Holding's common stock at

[1] Merrill Lynch KECALP Ventures Limited Partnership 1982, KECALP Inc., Investment Company Act Release Nos. 12290 (Mar. 11, 1982) (notice) and 12363 (Apr. 8, 1982) (order).

[2] Merrill Lynch KECALP Growth Investments Limited Partnership 1983, Investment Company Act Release Nos. 18082 (Apr. 8, 1991) (notice) and 18137 (May 7, 1991) (order).

[3] "Merrill Lynch Investments" consist of equity and equity-related transactions in (a) companies that are the subject of transactions commonly referred to as "leveraged" or "management" buyouts ("Buyouts") structured by ML & Co. or an affiliate, or Buyouts with respect to which ML & Co. or an affiliate assisted in the transaction and/or (b) companies that are the subject of other transactions structured by ML & Co.'s investment banking group. In either case, ML & Co. or an affiliate must hold a long-term equity or equity-related investment as part of the transaction.

$10 per share for an aggregate of $1.19 million on behalf of the 1994 Partnership, pending the closing of the 1994 Partnership's initial offering and the receipt of the requested order. At the same time, Merrill Lynch KECALP L.P. 1991 ("KECALP 1991") also acquired 119,000 shares of Holding's common stock at $10 per share for an aggregate of $1.19 million.

2. PCA was subsequently merged into Gemini, a producer and marketer of accessories for home electronic and entertainment systems. As a result of the merger, shares of PCA held by the General Partner on behalf of the 1994 Partnership were converted into 52,479 shares of Gemini's cumulative convertible preferred stock. At such time, KECALP 1991's shares of Holding were likewise converted into 52,479 shares of Gemini's cumulative convertible preferred stock.

3. The proposed investment in Holding involves a joint transaction under section 17(d) of the Act, and rule 17d–1 thereunder, that is permitted by the 1991 Order. Applicants seek an exemption from section 17(a) to allow the General Partner to sell the Warehoused Investment to the 1994 Partnership. The 1991 Order does not provide the necessary relief from section 17(a) because the 1994 Partnership will acquire the Warehoused Investment more than 30 days after its purchase by the General Partner.

C. Mail-Well Holdings, Inc. ("Mail-Well")

1. Mail-Well is a manufacturer of customized envelopes and related packaging products. In February 1994, the General Partner acquired 84,112 shares of Mail-Well's common stock at a cost of $10.70 per share for an aggregate of $899,998 on behalf of the 1994 Partnership, pending the closing of the 1994 Partnership's initial offering and the receipt of the requested order. At the same time, KECALP 1991 likewise acquired 84,112 shares of Mail-Well's common stock at a cost of $10.70 per share for an aggregate of $899,998.

2. The proposed investment in Mail-Well involves a joint transaction under section 17(d) of the Act, and rule 17d–1 thereunder, that is permitted by the 1991 Order. Applicants seek an exemption from section 17(a) to allow the General Partner to sell the Warehoused Investment to the 1994 Partnership. The 1991 Order does not provide the necessary relief from section 17(a) because the 1994 Partnership will acquire the Warehoused Investment more than 30 days after its purchase by the General Partner.

D. Westlink Holdings, Inc. ("Westlink")

1. Westlink is a telephone paging company formed in 1994 to acquire the Westlink Company. In July, 1994, the General Partner acquired 200,000 shares of Westlink's common stock for $10 per share for an aggregate of $2.0 million on behalf of the 1994 Partnership, pending the closing of the 1994 Partnership's initial offering and the receipt of the requested order. At the same time, KECALP 1991 acquired 100,000 shares of Westlink's common stock for $10 per share for an aggregate of $1.0 million.

2. The proposed investment in Westlink under section 17(d) involves a joint transaction under section 17(d) of the Act, and rule 17d–1 thereunder, that is permitted by the 1991 Order. Applicants seek an exemption from section 17(a) to allow the General Partner to sell the Warehoused Investment to the 1994 Partnership. The 1991 Order does not provide the necessary relief from section 17(a) because the 1994 Partnership will acquire the Warehoused Investment more than 30 days after its purchase by the General Partner.

Applicant's Legal Analysis

1. Section 6(b) authorizes the Commission, upon application, to exempt an employees' securities company from provisions of the Act if, and to the extent that, the exemption is consistent with the protection of investors. Section 17(a) makes it unlawful for an affiliated person of a registered investment company to sell securities to, or purchase securities, from the company.

2. The General Partner is an indirect, wholly-owned subsidiary of ML & Co. Thus, ML & Co. and each of its direct or indirect wholly-owned subsidiaries is an "affiliated person" of the General Partner, within meaning of section 2(a)(3)(C). In addition, the General Partner is an "affiliated person" of the Partnerships, within the meaning of section 2(a)(3)(D). As a result of these affiliations, ML is prohibited from selling securities to the Partnerships, and the Partnerships are prohibited from buying such securities, unless applicants obtain an exemptive order.

3. Applicants believe that the terms of the requested order are consistent with the standards set forth in sections 6(b) and 17(b). Applicants submit that the conditions to the requested order are designed to insure that sales of Warehoused Investments by ML to the Partnerships are consistent with the protection of the Partnerships' limited partners. Applicants are aware of the policies underlying section 17(a), and the potential conflicts that could arise in connection with the Partnerships' purchase of Warehoused Investments from ML. Applicants submit that the conditions to the requested order effectively address these concerns.

Applicant's Conditions

Applicants agree that the terms of relief are subject to the following conditions:

1. In order for an investment to qualify as a Warehoused Investment to be purchased pursuant to the requested relief, (a) the board of directors of the General Partner must approve such investment for the Future Partnership in the same manner in which the board would approve an investment for such Partnership prior to the time the investment is acquired by ML and (b) such investment must be acquired by ML with the intention of acquiring the Warehoused Investment for the Future Partnership and selling it to such Partnership after the completion of its initial offering. The General Partner will maintain at the Partnerships' office written records stating the General Partner's intention in acquiring such security, and stating the factors considered by the General Partner's board of directors in approving the investment.

2. Once the limited partners have contributed their capital to a Partnership, prior to the acquisition of a Warehoused Investment by the Partnership, (a) the board of directors must make the following findings: (i) The terms of the Warehoused Investment, including the consideration to be paid, are reasonable and fair and do not involve overreaching of the Partnership or its Partners on the part of any person concerned, (ii) the proposed transaction is consistent with the policy of the Partnership as indicated in its filings under the Securities Act of 1933 and its reports to Partners, and (iii) participation by the Partnership in the proposed transaction is in the best interest of the Partners of the Partnership; and (b) with respect to any Warehoused Investment that is part of a co-investment with an affiliate, the board of directors must approve the investment in accordance with the terms of any orders issued by the Commission that are applicable to such co-investment, including the required findings by the board of directors of the General Partner. The General Partner will maintain at the Partnerships' office written records of the factors considered in any decision regarding a Warehoused Investment.

3. The purchase price to be paid by the Partnership for a Warehoused Investment shall be the lesser of (a) the fair value of the securities on the date acquired by the Partnership as determined by the General Partner or (b) the cost to ML of purchasing the Warehoused Investment ("Cost"). Carrying costs may be paid by the Partnership to ML to the extent such fair value exceeds Cost. To the extent the value of the securities is determined to be less than Cost, ML may determine not to sell the Warehoused Investment to the Partnership. The General Partner will maintain at the Partnerships' office written records of the factors considered in any determination regarding the value of a Warehoused Investment.

4. Carrying costs shall be calculated from the date ML acquired the proposed investment on behalf of the Partnership to the date of the acquisition of the proposed investment by the Partnership from ML, and shall consist of interest charges computed at the lower of (a) the prime commercial lending rate charged by Citibank, N.A., during the period for which carrying costs are permitted to be paid until the Partnership acquires the securities or (b) the effective cost of borrowings by ML & Co. during such period. The effective cost of borrowings by ML & Co. is its actual "Average Cost of Funds," which it calculates on a monthly basis by dividing its consolidated financing expenses by the total amount of borrowings during this period.

5. The Partnership may only acquire a Warehoused Investment from ML during the lesser of (a) one year from the time ML purchases the Warehoused Investment or (b) 30 days from the date of closing of the Partnership's initial offering.

6. The General Partner will maintain the records required by section 57(f)(3) of the Act and will comply with the provisions of section 57(h) of the Act as if each Partnership were a business development company. All records referred to or required under these conditions will be available for inspection by the limited partners of each Partnership and the Commission.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–14472 Filed 6–13–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21125; 811–5513]

Vision Fiduciary Funds, Inc.; Notice of Application

June 8, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Vision Fiduciary Funds, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on March 7, 1995, and amended on May 26, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 3, 1995, and should be accompanied by proof of service on applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, Federated Investors Tower, Pittsburgh, PA 15222–3779.

FOR FURTHER INFORMATION CONTACT: James M. Curtis, Senior Counsel, at (202) 942–0563, or C. David Messman, Branch Chief, (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company that was organized as a corporation under the laws of Maryland. On March 14, 1988, applicant filed a notice of registration on Form N–8A pursuant to section 8(a) of the Act. Also on March 14, 1988, applicant filed a registration statement under section 8(b) of the Act and under the Securities Act of 1933 on Form N–1A to issue an indefinite number of shares. Applicant's registration statement was declared effective on May 26, 1988, and applicant commenced its initial public offering on June 1, 1988. Manufacturers and Traders Trust Company is applicant's investment adviser (the "Bank").

2. Applicant was created as a separate investment vehicle for fiduciary accounts of the Bank. The Bank later determined that, under certain circumstances, banking law permitted the joint investment of the Bank's fiduciary accounts with its non-fiduciary accounts in a portfolio of Vision Group of Funds, Inc., that was created for the general public rather than in a separate investment company portfolio.

3. On November 8, 1994, applicant's board of directors authorized the dissolution of applicant, conditioned on the redemption of all applicant's shares.

4. As of December 27, 1994, applicant had 88,342,953.98 shares outstanding at a net asset value of $1.00 per share. Applicant's portfolio securities were sold to the Vision Group Money Market Fund pursuant to rule 17a–7 on or before December 28, 1994, and no brokerage commissions were paid. On December 28, 1994, all shares were voluntarily redeemed by applicant's shareholders. Each shareholder received his or her proportionate share of applicant's net assets.

5. On December 30, 1994, Federated Services Company, as applicant's sole shareholder, authorized applicant's dissolution by unanimous written consent.

6. Applicant's distributor paid all liquidation expenses incurred. Applicant believes that these costs, which included legal fees, record keeping expenses, and custodian fees, were immaterial.

7. Applicant has no security holders, assets, debts, or other liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged and does not propose to engage in any business activity other than those necessary for the winding up of its affairs.

8. On March 21, 1995, the Maryland Department of Assessments and Taxation received and accepted applicant's Articles of Dissolution.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–14540 Filed 6–13–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of Reporting Requirements Submitted for Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before July 14, 1995. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Bridget Bean (Acting), Small Business Administration, 409 3rd Street, S.W., 5th Floor, Washington, D.C. 20416, Telephone: (202) 205–6629

OMB Reviewer: Donald Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503

Title: Application for Certificate of Competency

Form No.: SBA Forms 74, 74A, 74B, 183

Frequency: On occasion

Description of Respondents: Small businesses

Annual Responses: 1,088

Annual Burden: 11,769.

Dated: June 7, 1995.

Calvin Jenkins,

Assistant Administrator for Administration.

[FR Doc. 95–14549 Filed 6–13–95; 8:45 am]

BILLING CODE 8025–01–M

[License No. 02/02–5538]

Notice of Revocation of License First Pacific Capital Corp.

Notice is hereby given that the license of First Pacific Capital Corporation, 273 Wyckoff Avenue, Brooklyn, New York 11237, to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (Act), has been revoked. First Pacific Capital Corporation was licensed by the Small Business Administration on May 10, 1991.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the license was revoked on April 24, 1995. Accordingly, all rights, privileges and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 8, 1995.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 95–14551 Filed 6–13–95; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 99000163]

Bay Partners SBIC, L.P.; Notice of Filing of an Application for a License to Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) by Bay Partners SBIC, L.P. at 10600 North De Anza Boulevard, Suite 100, Cupertino, California 95014 for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended (15 U.S.C. *et seq.*), and the Rules and Regulations promulgated thereunder. Its principal area of operation will generally be in Northern California and the Pacific Northwest. In addition, the Fund will consider investment opportunities in other parts of the United States including Southern California and New England.

Bay Partners SBIC, L.P., a California limited partnership, will be managed by Bay Management Company 1995, a California general partnership and sole general partner of the Partnership. The individual General Partners of Bay Management Company 1995 are: John Freidenrich, Neal Dempsey III and Marcella Tamaki Yano. Skills possessed by the General Partners include sales and marketing, financial management, strategic planning, research and development, investment banking, legal and portfolio management. In addition, each of these General Partners has had experience with severely troubled companies.

The following limited partners will own 10 percent or more of the proposed SBIC:

Name	Percentage of ownership
The Freidenrich Family Partnership, 10600 North De Anza Blvd., Suite 100, Cupertino, California 95014	50.00
J.F. Shea & Company, Inc., 655 Brea Canyon Road, Walnut, California 91789	20.00
The Clumeck Family Trust, P.O. Box 1557, Ross, California 94957	10.00
The Gerson Bakar 1984 Trust, 201 Filbert Street, 7th Floor, San Francisco, California 94133	10.00

The applicant will begin operations with Regulatory Capital of $10 million and will primarily be a source of start-up and early stage equity investments in technology-based small companies with significant growth potential. The applicant's typical client will need funds to develop or complete development of a product or service, ramp up production, recruit personnel and execute its sales and marketing strategy.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW, Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in San Francisco, California.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies).

Dated: June 7, 1995.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 95–14550 Filed 6–13–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

[Docket 37554]

Order Adjusting the Standard Foreign Fare Level Index

Section 41509(e) of Title 49 of the United States Code requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile (ASM). Order 80–2–69 established the first interim SFFL, and Order 95–4–2 established the currently effective two-month SFFL applicable through May 31, 1995.

In establishing the SFFL for the two-month period beginning June 1, 1995, we have projected non-fuel costs based on the year ended December 31, 1994 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 95–6–7 fares may be increased by the following adjustment factors over the October 1979 level:

Atlantic	1.4235
Latin America	1.4368
Pacific	1.5657

For further information contact: Keith A. Shangraw (202) 366–2439.

By the Department of Transportation: June 7, 1995.

Robert S. Goldner,

Special Counsel.

[FR Doc. 95–14489 Filed 6–13–95; 8:45 am]

BILLING CODE 4910–62–P

Notice of Order Adjusting International Cargo Rate Flexibility Level

Policy Statement PS–109, implemented by Regulation ER–1322 of the Civil Aeronautics Board and adopted by the Department, established geographic zones of cargo pricing flexibility within which certain cargo rate tariffs filed by carriers would be subject to suspension only in extraordinary circumstances.

The Standard Foreign Rate Level (SFRL) for a particular market is the rate in effect on April 1, 1982, adjusted for the cost experience of the carriers in the applicable ratemaking entity. The first adjustment was effective April 1, 1983. By Order 95–4–1, the Department established the currently effective SFRL adjustments.

In establishing the SFRL for the two-month period beginning June 1, 1995, we have projected non-fuel costs based on the year ended December 31, 1994 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 95–6–8 cargo rates may be adjusted by the following adjustment factors over the April 1, 1982 level:

Atlantic	1.1524
Western Hemisphere	1.0715
Pacific	1.2305

For further information contact: Keith A. Shangraw (202) 366-2439.

By the Department of Transportation: June 7, 1995.

Robert S. Goldner,

Special Counsel.

[FR Doc. 95–14490 Filed 6–13–95; 8:45 am]

BILLING CODE 4910–62–P

Coast Guard

[CGD8–95–010]

Houston/Galveston Navigation Safety Advisory Committee Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC) will meet to discuss waterway improvements, aids to navigation, current meters, and various other navigation safety matters affecting the Houston/Galveston area. The meeting will be open to the public.

DATES: The meeting will be held from 9 a.m. to approximately 1 p.m. on Thursday, July 20, 1995.

ADDRESSES: The meeting will be held in the conference room of the Houston Pilots Office, 8150 South Loop East, Houston, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. M. M. Ledet, Recording Secretary, Commander, Eighth Coast Guard District (oan), Room 1211, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone (504) 589–4686.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 § 1 et seq. The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

The tentative agenda for the meeting will consist of the following items:

(1) Various Coast Guard aid to navigation improvement initiatives and waterway analysis studies.

(2) Updates from the U.S. Army Corps on various waterway improvement projects.

(3) Discussion on deployment of NOAA real-time current meters.

(4) Update from NOAA on the Hydrographic Survey of the area.

(5) Discussion and recommendation on NAVSAC Federal Register Notice regarding barge lighting requirements.

Dated: May 24, 1995.

R.C. North,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 95–14556 Filed 6–13–95; 8:45 am]

BILLING CODE 4910–14–M

National Highway Traffic Safety Administration

[Docket No. 95–11; Notice 2]

Ford Motor Company; Grant of Application for Decision of Inconsequential Noncompliance

Ford Motor Company (Ford) of Dearborn, Michigan, has determined that some of its windows fail to comply with the light transmittance requirements of 49 CFR 571.205, Federal Motor Vehicle Safety Standard (FMVSS) No. 205, "Glazing Materials," and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." Ford has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published on March 10, 1995 (60 FR 13204). This notice grants the application.

Standard No. 205 incorporates by reference the American National Standards Institute's (ANSI) "Safety Code for Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways," Z–26.1–1977, January 26, 1977, as supplemented by Z26.1a, July 3, 1980 (ANS Z–26.1). Standard No. 205 specifies that automotive glazing materials used in front, side and rear windows of passenger cars shall have a regular luminous transmittance of not less than 70 percent of the light, at normal incidence, when measured in accordance with "Light Transmittance, Test 2" of ANSI Z–26.1–1980.

From the beginning of model year 1995 production in October 1994, through January 21, 1995, Ford manufactured approximately 8,250 1995 Continental vehicles on which the front door windows had a luminous transmittance of approximately 68 percent. According to Ford, miscommunication between Ford Glass production and fabrication plants concerning the properties and intended use of the glass resulted in its being used in the fabrication of windows for Continental production. Beginning with vehicle production on January 23, 1995, front door windows with a luminous

transmittance of greater than 70 percent have been installed.

Ford supports its application for inconsequential noncompliance with the following:

In Ford's judgement, the condition is inconsequential as it relates to motor vehicle safety. Computer modeling studies and in-car evaluations previously conducted by Ford to assess the effect of reduced light transmittance windshields showed that even a 5 point reduction in the percentage of light transmittance, from 65 to 60 percent, resulted in a reduction in seeing distance of only 1 to 2 percent during night time driving, and little or no reduction in seeing distance during dusk and daytime driving. Based on these studies, the subject Continental front door windows with 68 percent light transmittance (67.5 percent at the door window installed angle) would be expected to result in no significant reduction (less than 1 percent) in seeing distance during night time driving, and virtually no reduction during dusk and daytime driving, compared to glass with a 70 percent transmittance. Reductions in seeing distances 2 percent or less have no practical or perceivable effect on driver visibility based on observers" reports in vehicle evaluations by Ford of windshields with line-of-sight transmittance in the 60 to 65 percent range.

The stated purpose of FMVSS No. 205 to which the light transmittance requirements are directed is "to ensure a necessary degree of transparency in motor vehicle windows for driver visibility." NHTSA, in its March, 1991 "Report to Congress on Tinting of Motor Vehicle Windows," concluded that the light transmittance of windows of the then new passenger cars that complied with Standard No. 205 did not present an unreasonable risk of accident occurrence. The "new passenger cars" that were considered to not present an unreasonable risk had effective line-of-sight light transmittances through the windshields as low as approximately 63 percent (determined by a 1990 agency survey, the results of which were included in the report). While light transmittance and driver visibility through front door windows is important to safe operation of motor vehicles, it is not as important as driver visibility through vehicle windshields. It follows that if light transmittance levels as low as 63 percent through windshields do not present an unreasonable risk to safety, then the side window glass in the subject Continentals also presents no unreasonable risk to safety.

Therefore, while the use of front window glazing with luminous transmittance less than 70 percent is technically a noncompliance, we believe the condition presents no risk to motor vehicle safety.

No comments were received on the application.

In assessing the effect of reduced light transmittance in windshields via computer modeling and in-car evaluations, Ford found that a five point reduction in the percentage of light transmittance in windshields, from 65 to 60 percent, resulted in a reduction in seeing distance of one to two percent at night and little to no reduction in daylight. NHTSA concurs with Ford that these test data show that a two point reduction in the percentage of light transmittance, from 70 to 68 percent in the side windows, would reduce seeing distance negligibly.

In addition, Ford cites a 1991 NHTSA report to Congress in which the agency concluded that the light transmittance of windows in new passenger cars that comply with FMVSS No. 205 did not present an unreasonable risk of accident occurrence. While the windshields in these vehicles had 70 percent or greater light transmittance when tested according to the FMVSS No. 205 compliance test, they had effective line-of-sight light transmittances as low as 63 percent. The light transmittance values obtained when testing in the line-of-sight direction are generally lower than those obtained using the FMVSS No. 205 compliance test because the windows are tested at the angle at which they are installed. The FMVSS No. 205 compliance test specifies that the light transmittance be tested perpendicularly to the surface of the window. When tested at the installation angle, less light is transmitted. The subject windows have a line-of-sight light transmittance of 67.5 percent. NHTSA agrees with Ford that this information supports granting its petition.

In consideration of the foregoing, NHTSA finds that the applicant has met its burden of persuasion that the noncompliance herein described is inconsequential to safety. Accordingly, its application is granted, and the applicant is exempted from providing the notification of the noncompliance that is required by 49 U.S.C. 30118, and from remedying the noncompliance, as required by 49 U.S.C. 30120.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: June 8, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–14488 Filed 6–13–95; 8:45 am]

BILLING CODE 4910–59–P

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods; Public Meeting

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that RSPA will conduct a public meeting to exchange views on proposals submitted to the tenth session of the United Nation's Sub-Committee of Experts on the Transport of Dangerous Goods.

DATES: July 6, 1995 at 9:30 a.m.

ADDRESSES: Room 6200, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Frits Wybenga, International Standards Coordinator, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590; (202) 366–0656.

SUPPLEMENTARY INFORMATION: This meeting will be held in preparation for the tenth session of the Sub-Committee of Experts on the Transport of Dangerous Goods to be held July 10 to 21, 1995 in Geneva, Switzerland. During this public meeting U.S. positions on proposals submitted to the tenth session of the Sub-Committee will be discussed. Topics to be covered include matters related to explosives including the United Nations (UN) External Fire (Bonfire) Test, restructuring the UN Recommendations on the Transport of Dangerous Goods into a model rule, criteria for environmentally hazardous substances, review of intermodal portable tank requirements, review of the requirements applicable to small quantities of hazardous materials in transport (limited quantities), classification of individual substances, requirements for bulk and non-bulk packagings used to transport hazardous materials, infectious substances international harmonization of classification criteria.

The public is invited to attend without prior notification.

Documents

Copies of documents submitted to the tenth session of the UN Sub-Committee meeting may be obtained from RSPA. A listing of these documents is available on the Hazardous Materials Information Exchange (HMIX), RSPA's computer bulletin board. Documents may be ordered by filling out an on-line request form on the HMIX or by contacting RSPA's Dockets Unit (202–366–5046). For more information on the use of the HMIX system, contact the HMIX information center; 1–800–PLANFOR (752–6367); in Illinois, 1–800–367–9592; Monday through Friday, 8:30 a.m. to 5 p.m. Central time. The HMIX may also be accessed via the Internet at hmix.dis.anl.gov.

After the meeting, a summary of the public meeting will also be available from the Hazardous Materials Advisory Council, Suite 250, 1110 Vermont Ave., NW., Washington, DC 20005; telephone number (202) 289–4550.

Issued in Washington, DC, on June 9, 1995.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 95–14563 Filed 6–13–95; 8:45 am]

BILLING CODE 4910–60–M

[Docket No. HM–208; Notice No. 95–8]

Hazardous Materials Transportation; Registration and Fee Assessment Program

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of filing requirements.

SUMMARY: The Hazardous Materials Registration Program will enter Registration Year 1995–96 on July 1, 1995. Persons who transport or offer for transportation certain hazardous materials are required to annually file a registration statement and pay a fee to the Department of Transportation. Persons who registered for the 1994–95 Registration Year were mailed a Registration Statement form and informational brochure.

FOR FURTHER INFORMATION CONTACT: David W. Donaldson, Office of Hazardous Materials Planning and Analysis (202–366–4109), Hazardous Materials Safety, 400 Seventh Street SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: This notice is intended to notify persons who transport or offer for transportation certain hazardous materials of an annual requirement to register with the Department of Transportation. Each person, as defined by the Federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*), who engages in any of the specified activities relating to the transportation of hazardous materials is required to register annually with the Department of Transportation and pay a $250 registration fee (plus a separate $50 processing fee). The regulations implementing this program are in Title 49, Code of Federal Regulations, § § 107.601–107.620.

Proceeds are used to fund grants to State and Indian tribal governments for emergency response training and planning. Grants were awarded to all states, five territories, and 11 Native American tribes during FY 1994. By law, 75 percent of the Federal grant monies is further distributed to local emergency response and planning agencies. The FY 1993 funds helped to provide (1) over 500 commodity flow studies and hazard analyses, (2) over 1,000 emergency response plans updated or written for the first time, (3) assistance to over 1,200 local emergency planning committees, (4) over 600 emergency exercises, and (5) training for over 200,000 emergency response personnel.

The persons affected by these requirements are those who offer or transport in commerce any of the following materials:

A. Any highway route-controlled quantity of a Class 7 (radioactive) material;

B. More than 25 kilograms (55 pounds) of a Division 1.1, 1.2, or 1.3 (explosive) material in a motor vehicle, rail car, or freight container;

C. More than one liter (1.06 quarts) per package of a material extremely toxic by inhalation (Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A);

D. A hazardous material in a bulk packaging having a capacity equal to or greater than 13,248 liters (3,500 gallons) for liquids or gases or more than 13.24 cubic meters (468 cubic feet) for solids; or

E. A shipment, in other than a bulk packaging, of 2,268 kilograms (5,000 pounds) gross weight or more of a class of hazardous materials for which placarding of a vehicle, rail car, or freight container is required for that class.

The 1994–95 registration year ends on June 30, 1995. The 1995–96 Registration Year will begin on July 1, 1995, and end on June 30, 1996. Any person who engages in any of the specified activities during that period must file a Registration Statement and pay the associated fee of $300.00 before July 1, 1995, or before engaging in any of the activities, whichever is later. All persons who registered for the 1994–95 Registration Year have been mailed a Registration Statement form and an informational brochure. Other persons wishing to obtain the form and any other information relating to this program should contact the program number given above.

The Registration Statement has not been revised for the 1995–96 Registration Year. The informational brochure has been revised to be more customer oriented and to provide some information that was not previously included in the brochure. Registrants should file a registration statement and pay the associated fee in advance of July 1, 1995, in order to ensure that a 1995–96 Certificate of Registration has been provided by that date to comply with the recordkeeping requirements, including the requirement that the registration number be made available on board each truck and truck tractor (not including trailers and semi-trailers) and each vessel used to transport hazardous materials subject to the registration requirements. A Certificate of Registration is generally mailed within three weeks of RSPA's receipt of a Registration Statement.

Persons who engage in any of the specified activities during a Registration Year are required to register for that year. Persons who engaged in these activities during Registration Year 1992–93 (September 16, 1992, through June 30, 1993), 1993–94 (July 1, 1993, through June 30, 1994), or 1994–95 (July 1, 1994, through June 30, 1995) and have not filed a registration statement and paid the associated fee of $300.00 for each year for which registration is required should contact RSPA to obtain the required form (DOT F 5800.2). A copy of the form being distributed for the 1995–96 Registration Year may be used to register for previous years. Persons who fail to register for any registration year in which they engaged in such activities are subject to civil penalties for each day a covered activity is performed. The legal obligation to register for a year in which any specified activity was conducted does not end with the registration year. Registration after the completion of a registration year may also involve the imposition of a late fee and interest in addition to a civil penalty.

During the 1995–96 Registration Year, RSPA is continuing to participate with the Public Utilities Commission of Ohio (PUCO) in a pilot test of an alternate procedure for filing the Federal Registration Statement for motor carriers who are also subject to the State of Ohio's registration program. Ohio Revised Code Section 4905.80 requires that motor carriers transporting in or through Ohio hazardous materials that must be placarded, require the display of vehicle markings, or must be manifested register with PUCO. Motor carriers who are subject to both the Federal registration requirements and the PUCO requirements may obtain further information from the PUCO at 614–466–7232.

On January 30, 1995, RSPA published a notice of proposed rulemaking in the **Federal Register** requesting comments on several proposed changes to the registration program. Over 350 comments were submitted in response. After reviewing the comments and evaluating the options available to the Department, RSPA decided to maintain the total fee for registration and processing at $300 rather than to implement a graduated fee schedule

based on measurements of involvement in the transportation of hazardous materials. Two minor changes will be adopted for the 1996–97 Registration Year: (1) Foreign offerors will be permanently excepted from the registration requirement as long as the country in which they are domiciled does not impose a registration or a fee upon U.S. companies for offering hazardous materials into that country, and (2) the definition of "materials extremely toxic by inhalation" will be expanded to include all materials poisonous by inhalation that meet the criteria for hazard zone A. For more information, see the Final Rule on Docket HM–208B published in the **Federal Register** on May 23, 1995 (60 FR 27231).

Dated: June 9, 1995.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 95–14565 Filed 6–13–95; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Customs Service

Dates and Draft Agenda of the Ninth Session of the Scientific Subcommittee of the World Customs Organization

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Publication of the dates and draft agenda of the ninth session of the Scientific Subcommittee of the World Customs Organization.

SUMMARY: This notice sets forth the dates and draft agenda for the next session of the Scientific Subcommittee of the World Customs Organization.

DATES: June 7, 1995.

FOR FURTHER INFORMATION CONTACT: Ira Reese, Office of Laboratories and Scientific Services, U.S. Customs Service (202–927–1060).

SUPPLEMENTARY INFORMATION:

Background

The United States is a contracting party to the International Convention on the Harmonized Commodity Description and Coding System ("Harmonized System Convention"). The Harmonized Commodity Description and Coding System ("Harmonized System"), an international nomenclature system, forms the core of the U.S. tariff, the Harmonized Tariff Schedule of the United States. The Harmonized System Convention is under the jurisdiction of the World Customs Organization ("WCO") (established as the Customs Cooperation Council).

Article 6 of the Harmonized System Convention establishes a Harmonized System Committee ("HSC"). The HSC is composed of representatives from each of the contracting parties to the Harmonized System Convention. The HSC's responsibilities include issuing classification decisions on the interpretation of the Harmonized System. Those decisions may take the form of published tariff classification opinions concerning the classification of an article under the Harmonized System or amendments to the Explanatory Notes to the Harmonized System. The HSC also considers amendments to the legal text of the Harmonized System. The HSC meets twice a year in Brussels, Belgium.

The HSC is often assisted in its technical work by the Scientific Subcommittee ("SSC"). The SSC is an advisory body of the WCO on questions involving technical matters. Generally, its members are representatives from the customs laboratories of WCO members. The SSC assists the HSC by providing technical advice on questions referred to it by the HSC. The SSC usually meets once a year in Brussels, Belgium. This year, however, it will meet twice (as it already met last January). The next session of the SSC will be its ninth, and it will be held from June 26 to June 30, 1995.

The U.S. Department of the Treasury, represented by the U.S. Customs Service, will represent the U.S. government at the sessions of the SSC.

Set forth below is the draft agenda for the next session of the SSC. Copies of available agenda-item documents may be obtained from the above-listed individual. Comments on agenda items may be directed to that same individual.

Lyal V.S. Hood,

Acting Director, Office of Laboratories and Scientific Services.

Attachment: Attachment A

Draft Agenda for the Ninth Session of the Scientific Sub-Committee

From: Monday, 26 June 1995 (10 a.m.)
To: Friday, 30 June 1995

I. *Adoption of the Agenda*
- Draft Agenda ..... Doc. 39.433

II. *Technical Questions*
1. Classification of quartz derived from acid- and heat-treated alaskite ores ..... Doc. 39.453
2. Possible amendments to the Nomenclature to clarify the classification of butyl titanate ..... Doc. 39.435
3. Scope of the term "sugars" ..... Doc. 39.436
4. Classification of certain vitamin-based preparations ..... Doc. 39.438
5. Possible amendments to the Explanatory Note to heading 29.22 ..... Doc. 39.439
6. Analytical methods and criteria for distinguishing between concentrated and normal fruit juices ..... Doc. 39.440
7. Possible amendments to the Explanatory Note to heading 29.38: glycosides ..... Doc. 39.441
8. Classification of "Gamma Grip" and "Gamma Hi-Tech" ..... Doc. 39.452
9. Divergent classification concerning certain INN products and pharmaceutical intermediates ..... Doc. 39.379
10. Classification and chemical nomenclature of certain toxic/dangerous chemicals controlled by the Chemical Weapons Convention. ..... Doc. 39.446
11. Scope of the term "derivatives" ..... Doc. 39.444
12. Draft Recommendation and possible amendments to the Explanatory Notes concerning narcotic drugs, and psychotropic substances and their precursors. ..... Doc. 39.445
13. Amendments to the Explanatory Notes concerning the chemical names ..... Doc. 39.454

III. *General Questions*
1. Draft Sections of the Customs Laboratory Guide:
   - a. Operation activities (I) of a standard Customs laboratory ..... Doc. 39.359
   - b. Operation activities (II) of a standard Customs laboratory ..... Doc. 39.448
   - c. Laboratory equipment, instruments and apparatus ..... Doc. 39.449
   - d. Illicit Drug analysis ..... Doc. 39.450
2. Technical Assistance regarding the Establishment or Improvement of Customs Laboratories in Developing Countries: Demand for Technical Assistance by Developing Countries ..... Doc. 39.451

[FR Doc. 95–14548 Filed 6–13–95; 8:45 am]

BILLING CODE 4820–02–P

Sunshine Act Meetings

Federal Register
Vol. 60, No. 114
Wednesday, June 14, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NATIONAL SCIENCE FOUNDATION

National Science Board

DATE AND TIME:

June 22, 1995, 9:00 a.m., Open Session
June 22, 1995, 2:00 p.m., Closed Session
June 23, 1995, 9:00 a.m., Closed Session
June 23, 1995, 9:45 a.m., Open Session

PLACE: National Science Foundation, 4201 Wilson Boulevard, Room 1235, Arlington, Virginia 22230.

STATUS:

Part of this meeting will be open to the public.

Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Thursday, June 22, 1995

Open Session (9:00 a.m.–12:30 p.m.)

—Forefront Science Examples
—Integration of Research and Education
—International Presentation

Thursday, June 22, 1995

Closed Session (2:00 p.m.–3:00 p.m.)

—Facilities Planning

Friday, June 23, 1995

Closed Session (9:00 a.m.–9:45 a.m.)

—Minutes, May 1995 Meeting
—NSB Nominees
—Budget
—Grants and Contracts

Friday, June 23, 1995

Open Session (9:45 a.m.–12:00 p.m.)

—Minutes, May 1995 Meeting
—Closed Session Agenda Items for July 1995 Meeting
—Chairman's Report
—Director's Report
—Director's Merit Review Report
—Reports from Committees
—Briefing: COSEPUP Graduate Education Report
—Electronic Scientific Journal on Mosiac
—Other Business/Adjourn

[FR Doc. 95–14622 Filed 6–12–95; 8:45 am]

BILLING CODE 7555–01–M

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

Board of Directors Meeting

ACTION: The Pennsylvania Avenue Development Corporation announces the date of their forthcoming quarterly meeting of the Board of Directors.

DATES: A regular open meeting will be held Wednesday, June 28, 1995, at 10:00 a.m., followed by a closed Executive Session.

ADDRESSES: The meeting will be held at the Pennsylvania Avenue Development Corporation, Suite 1220 North, 1331 Pennsylvania Avenue, NW., Washington, DC.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with 36 Code of Federal Regulations Part 901, and is open to the public, with the exception of the Executive Session.

Dated: June 6, 1995.

Lester M. Hunkele III,

Executive Director.

[FR Doc. 95–14623 Filed 6–12–95; 8:45 am]

BILLING CODE 7630–01–M

Corrections

Federal Register
Vol. 60, No. 114
Wednesday, June 14, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMODITY FUTURES TRADING COMMISSION

Membership of the Commission's Performance Review Board

Correction

In notice document 95–13119 appearing on page 28089 in the issue of Tuesday, May 30, 1995, make the following correction:

On page 28089, in the second column, under **SUMMARY**, in the third paragraph, in the fifth line, "Elisse Water" should read "Elisse Walter".

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

Correction

In rule document 95–12475 beginning on page 27025 in the issue of Monday, May 22, 1995 make the following correction:

§706.2 [Corrected]

On page 27025, in the third column, in the table, under the heading "Obstruction angle relative ship's headings" in the first line, "1.05.06 thru" should read "105.06 thru".

BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 95-69 FCC 95-202]

Auctionable Services

Correction

In proposed rule document 95–12462 beginning on page 26860 in the issue of Friday, May 19, 1995 make the following correction:

On page 26860, in the third column, under **DATES:**, in the last line, "June 6, 1995." should read "June 5, 1995."

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-050-1220-00]

Shooting Closure on Public Lands in Fremont County, Colorado

Correction

In notice document 95–12168, appearing on page 26452, in the issue of Wednesday, May 17, 1995, make the following correction:

In the first column, under **EFFECTIVE DATE**, "May 22, 1955" should read "May 22, 1995".

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-920-05-1320-01; WYW136447]

Invitation for Coal Exploration License; Campbell County, WY

Correction

In notice document 95–12701 beginning on page 27545, in the issue of Wednesday, May 24, 1995, make the following correction:

On page 27545, in the third column, in the land description, in T. 41 N., R. 71 W., 6th P.M., Wyoming, "Containing approximately 33.60 acres." should read "Containing approximately 333.60 acres.".

BILLING CODE 1505–01–D

Federal Register

Wednesday
June 14, 1995

Part II

Department of Education

The National Assessment of Educational Progress Program; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.999G]

The National Assessment of Educational Progress (NAEP) Program Notice Inviting Applications for New Awards for Fiscal Year 1995

Purpose of Program: To conduct scoring, analysis, and reporting for the national and State components of NAEP in 1996 and 1998; to conduct scoring, analysis, and reporting for the national assessment in 1997; and to develop the assessment instruments for the national and State components of the 1998 assessment. It is anticipated that the 1996 NAEP will be conducted at the national level in reading, mathematics, and science in grades 4, 8 and 12 and at the State level in mathematics and science in grades 4 and 8. The 1997 NAEP will be a national assessment of the arts (dance, theater, music, visual arts) conducted in grade 8 only, with a smaller than normal sample of students. (However, increases in the scope of the arts assessment are possible.) It is anticipated that the 1998 NAEP will assess reading, writing, and civics at the national level, and reading and writing at the State level in grades 4, 8, and 12. NAEP supports the National Education Goals by providing measures of progress toward student competency over challenging subject matter.

Eligible Applicants: Public, private, for-profit, and non-profit institutions, agencies, and other qualified organizations or consortia of such institutions, agencies, and organizations.

Deadline for Transmittal of Applications: July 24, 1995.

Applications Available: June 15, 1995.

Available Funds: The Department estimates that about $1,000,000 can be made available in fiscal year 1995 for this project.

Estimated Number of Awards: 1.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, 86; and (b) The regulations in 34 CFR Part 98 (Students Rights in Research, Experimental Activities, and Testing).

Supplementary Information: The National Assessment of Educational Progress is authorized by Section 411 of the National Education Statistics Act of 1994, Title IV of the Improving America's Schools Act (20 U.S.C. 9010). Section 412 (20 U.S.C. § 9011) of this law provides for the establishment of the National Assessment Governing Board (NAGB). The law requires NAGB, among other responsibilities, to formulate the policy guidelines for the National Assessment and select the subject areas to be assessed. Copies of these guidelines are available from the Department. One cooperative agreement is currently in effect to develop, field test, revise, and prepare for the national and State components of NAEP in 1996. There was a separate announcement for the collection of data from the 1996, 1997, and 1998 assessments. This notice is limited to seeking applications for scoring, analysis and reporting activities in connection with the 1996, 1997, and 1998 NAEP assessments, as well as development activities for the 1998 assessment.

Priorities

Absolute Priority: Under 34 CFR 75.105(c)(3) and 20 U.S.C. 9010–9011, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary, under 20 U.S.C. 9010–9011, funds under this competition only applications that meet this absolute priority:

Scoring, analysis and reporting of data for the national and State components of the 1996 and 1998 assessments, scoring, analysis and reporting of the national assessment in 1997, and developing instruments for the 1998 assessment.

The grantee must perform these activities in accordance with guidelines developed by the NAGB.

Selection Criteria: Applications are evaluated according to the selection criteria in 34 CFR 75.210. Under 34 CFR 75.210(c), the Secretary is authorized to distribute an additional 15 points among the selection criteria to bring the total possible points to a maximum of 100 points. For the purpose of this competition, the Secretary will distribute the additional points as follows:

Plan of operation (34 CFR 75.210(b)(3)). Fifteen (15) additional points will be added for a possible total of 30 points for this criterion.

For Applications or Information Contact: Steven Gorman, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 402g, Washington, DC 20208–5653. Telephone: (202) 219–1761. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 9010, 9011.

Dated: June 9, 1995.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 95–14529 Filed 6–13–95; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Wednesday
June 14, 1995

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Decision on the Conditional Approval of Bismuth-Tin Shot as Nontoxic for the 1995–96 Season; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AC66

Migratory Bird Hunting; Decision on the Conditional Approval of Bismuth-Tin Shot as Nontoxic for the 1995–96 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is publishing this proposed rule to amend Section 20.21(j) and provide for the conditional approval of bismuth-tin shot for the 1995–96 migratory bird hunting season. Concluded acute toxicity studies, ongoing toxicity reproductive studies undertaken by the Bismuth Cartridge Company, and other pertinent materials indicate that bismuth-tin shot is nontoxic when ingested by waterfowl.

DATES: Comments on this proposal must be received by July 14, 1995.

ADDRESSES: Written comments should be sent to: Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, ms 634 ARLSQ, 1849 C Street NW., Washington D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, or Keith Morehouse and Pete Poulos, Staff Specialists, Office of Migratory Bird Management, (703/358–1714).

SUPPLEMENTARY INFORMATION: The Service published a final regulation in the January 3, 1995, **Federal Register** (60 FR 61) to provide for conditional approval of bismuth-tin shot (in a mixture of [nominally] 97–3 percent, respectively) as nontoxic for the taking of waterfowl and coots during the 1994–1995 hunting season. This action was in response to a petition for rulemaking from the Bismuth Cartridge Company received June 24, 1994. The petition requested that the Service modify the provisions of 50 CFR section 20.21(j), to legalize the use of bismuth-tin shot on an interim, conditional basis for both the 1994–95 and the 1995–96 seasons. The petition cited the following reasons in support of the proposal: (a) Bismuth is nontoxic; (b) the proposed rule is conditional; and (c) the evidence presented in the record, i.e., the application from the Bismuth Cartridge Company. This petition acknowledged responsibility by the Bismuth Cartridge Company to complete all the nontoxic shot approval tests as outlined in 50 CFR section 20.134. The Service granted conditional approval (effective December 30, 1994) of the use of bismuth-tin shot for the 1994–95 hunting season only. For a complete review of the bismuth-tin shot application and review process, refer to the Supplementary Information Section of the January 3, 1995, **Federal Register** (60 FR 61).

This proposed regulatory action is now taken to further amend Section 20.21(j) to extend the conditional approval for bismuth-tin shot to the 1995–96 hunting season. This is based on a request made to the Fish and Wildlife Service by the Bismuth Cartridge Company on March 20, 1995. Results of the concluded 30-day acute toxicity test and progress made by the Bismuth Cartridge Company in their current reproductive toxicity testing are viewed as justification for extending conditional approval into the next hunting season.

The reproductive toxicity test is being conducted by Dr. Glenn Sanderson and follows a testing protocol reviewed and approved by the Service, with technical assistance provided by the Branch of Environmental Contaminants Research of the Patuxent Environmental Service Center. The general outline of the reproductive toxicity test given below is not a complete description of the testing protocol, but gives the basic outline of the test procedures being conducted:

The test consists of 60 male and 60 female mallards and uses No. 4 lead, steel, and candidate (bismuth-tin) shot. Males and females will be paired randomly and divided into four groups that will be dosed with lead, steel, bismuth-tin, and sham dosed. After diet and light manipulation, birds will be brought into breeding condition. Nests will be checked twice daily with recorded data including clutch initiation, number of eggs laid, egg fertility, egg hatchability, and number of ducklings produced. Eggs collection will continue until 21 uncracked eggs have been collected or until 150 days have elapsed. Eggs will be place in an incubator and after hatching, ducklings will be examined for signs of intoxication and illness. Blood will be collected with hematocrits determined and the blood analyzed. Livers, kidneys, and gonads from adults will be examined for gross and microscopic lesions, and analyzed for major elements found in the candidate shot and for major essential and trace elements. Livers and kidneys will be collected from ducklings and will be examined for gross and microscopic lesions, and analyzed for major elements contained in the candidate shot and for major essential and trace elements. Blood, liver, kidneys, and gonads will be analyzed by ICP for calcium, potassium, magnesium, zinc, copper, tin, iron, and any metal other than Bismuth or lead. Bismuth and lead in the livers, kidneys, and gonads, and blood will be analyzed by graphite furnace atomic absorption spectrometry.

Since the mid-1970s, the Service has sought to identify shot that, when spent, does not pose a significant hazard to migratory birds and other wildlife. Currently, only steel shot has been approved by the Service Director as nontoxic. The Service believes, however, that there may be other suitable candidate shot materials that could be approved for use as nontoxic shot. The Service is eager to consider these other materials for approval as nontoxic, and does not feel constrained to limit nontoxic shot options.

Resistance to the use of steel shot, however, is undoubtedly creating an unknown level of noncompliance with the requirement to use nontoxic shot for waterfowl and coot hunting. Although compliance with the use of nontoxic shot has increased moderately over the last few years, the Service believes that this level of compliance may continue to increase with the use of bismuth-tin shot in conjunction with the use of adequate field testing equipment by law enforcement personnel.

In summary, this rule extends conditional approval for the use of bismuth-tin shot for waterfowl and coot hunting to the 1995–96 season. Additionally, the applicant, wishing to obtain final unconditional approval for bismuth-tin shot as nontoxic, is required to obtain season-by-season approval until successfully completing the remaining tests required by 50 CFR section 20.134.

One additional standard will be applied to the unconditional approval of bismuth-tin shot. Since bismuth is a by-product of the smelting of iron, copper, and tin, it is not surprising that traces of lead may be present in bismuth-tin shot. The Service has initiated discussion with the Branch of Environmental Contaminants Research at the Patuxent Environmental Science Center to determine the maximum environmentally acceptable level of lead in bismuth-tin shot. Once this maximum level is determined, it will be stated in any regulation granting unconditional approval for the use of bismuth-tin shot. It will be the Service's position that any bismuth-tin shot manufactured with lead levels exceeding those stated in the regulation will be considered toxic and therefore, illegal.

We are encouraged by the progress that has been made to develop a noninvasive field testing device to assist law enforcement personnel in detecting the use of illegal shot. However, those devices currently available still appear to need refinement. We are hopeful that additional development and testing is planned since noninvasive enforcement is an important component in the approval of any alternative shot material. Service law enforcement personnel will be asked to assess any noninvasive field testing equipment on the market to determine their utility and accuracy. Final unconditional approval, if otherwise proper, would be contingent upon the development and availability of a noninvasive field testing shot device.

NEPA Consideration

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C), and the Council on Environmental Quality's regulation for implementing NEPA (40 CFR 1500–1508), an Environmental Assessment has been prepared and is available to the public at the Office of Migratory Bird Management at the address indicated under the caption **ADDRESSES.** Based on review and evaluation of the information contained in the Environmental Assessment, the Service determined that the proposed action to amend 50 CFR 20.21(j) to allow conditional use of bismuth-tin an nontoxic shot for the 1995–96 waterfowl hunting season would not be a major Federal action that would significantly affect the quality of the human environment.

Endangered Species Act Considerations

Section 7 of the Endangered Species Act (ESA), as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (and) shall "ensure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of (critical) habitat * * *."

Consequently, the Service will initiate Section 7 consultation under the ESA for this proposed rulemaking to legalize, on a conditional basis, the use of bismuth-tin shot for hunting waterfowl and coots during the 1995–96 seasons. When completed, the results of the Service's consultation under Section 7 of the ESA may be inspected by the public in, and will be available to the public from, the Office of Migratory Bird Management, at the address in the **ADDRESSES** section.

Regulatory Flexibility Act, Executive Order 12866, and the Paperwork Reduction Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which includes small businesses, organizations and/or governmental jurisdictions. The Service has determined, however, that this rule will have no effect on small entities since the shot to be approved will merely supplement nontoxic shot already in commerce and available throughout the retail and wholesale distribution systems. No dislocation or other local effects, with regard to hunters and others, are apt to be evidenced. This rule was not subject to Office of Management and Budget (OMB) review under Executive Order 12866. This rule does not contain any information collection efforts requiring approval by the OMB under 44 U.S.C. 3504.

Authorship: The primary author of this proposed rule is Peter G. Poulos, Office of Migratory Bird Management.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Accordingly, Part 20, Subchapter B, Chapter 1 of Title 50 of the Code of Federal Regulations is proposed to be amended as follows:

PART 20—[AMENDED]

1. The authority citation for Part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act (July 3, 1918), as amended (16 U.S.C. 701–711); the Fish and Wildlife Improvement Act of 1978 (November 8, 1978); as amended, (16 U.S.C. 712); and the Fish and Wildlife Act of 1956 (August 8, 1956), as amended, (16 U.S.C. 742 a–d and e–j).

2. Section 20.21 is amended by revising paragraphs (j) introductory text and (j)(2) to read as follows:

§ 20.21 Hunting methods.

* * * * *

(j) While possessing shot (either in shotshells or as loose shot for muzzleloading) other than steel shot, bismuth-tin ([nominally] 97–3 percent, respectively) shot or such shot approved as nontoxic by the Director pursuant to procedures set forth in § 20.134.

Provided that:

(1) * * *

(2) Bismuth-tin shot is legal as nontoxic shot only during the 1995–96 season.

Dated: June 5, 1995.

George T. Frampton,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–14513 Filed 6–13–95; 8:45 am]

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Federal Register

Wednesday
June 14, 1995

Part IV

Federal Emergency Management Agency

Offer To Assist Insurers in Underwriting Flood Insurance Using the Standard Flood Insurance Policy; Notices

FEDERAL EMERGENCY MANAGEMENT AGENCY

Offer To Assist Insurers in Underwriting Flood Insurance Using the Standard Flood Insurance Policy

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Notice.

SUMMARY: The Federal Insurance Administration is publishing in this notice the Financial Assistance/Subsidy Arrangement for 1995–1996 governing the duties and obligations of insurers participating in the Write Your Own Program (WYO) of the National Flood Insurance Program (NFIP). The Financial Assistance/Subsidy Arrangement sets forth the responsibilities of the Government to provide financial and technical assistance to the insurers. It is verbatim with what is set out as appendix A to 44 CFR part 62 and is republished for information and convenience.

This notice relates to the final rule which was published in the **Federal Register** regarding changes in the National Flood Insurance Program's regulations dealing with the issuance of flood insurance policies and the adjustment of claims and the establishment of a program of assistance to private sector property insurance companies in underwriting flood insurance using the Standard Flood Insurance Policy. In 1985, a copy of the offer to participate in the Arrangement was incorporated in a final rule and, this year, as in the years since, a copy of the offer is being published as a Notice.

DATES: The offer is effective June 14, 1995. The Financial Assistance/Subsidy Arrangement is effective with respect to flood insurance policies written under the Arrangement with an effective date of October 1, 1995, and later.

SUPPLEMENTARY INFORMATION: By way of background, the Federal Insurance Administration (FIA), working with insurance company executives, FEMA's Office of Financial Management and FEMA's Office of the Inspector General, addressed the operating and financial control procedures for the Write Your Own Program. The Transaction Record Reporting and Processing Plan, Accounting Procedures, and the Financial Control Plan were specifically referenced in the final rule, as amended, and, in addition, procedural manuals have been issued by the FIA in aid of implementation by the WYO companies of the procedures published in the final rule, as amended, such as the Flood Insurance Manual, Flood Insurance Adjuster's Manual, and FEMA Letter of Credit Procedures, all of which comprise the operating framework for the WYO Program.

The purposes of this Notice are:

(1) To offer, publicly, financial assistance to protect against underwriting losses resulting from floods on Standard Flood Insurance Policies written by private sector insurers;

(2) To provide a method by which the offer may be accepted; and

(3) To provide notice of the duties and obligations under the Financial Assistance/Subsidy Arrangement for the Arrangement year 1995–96.

Method of Acceptance of Offer

1. Acceptance of this offer shall be by telegraphed or mailed notice of acceptance or signed Arrangement to the Administrator prior to midnight EDT September 30, 1995.

2. The telegraphed or mailed notice of acceptance to the Administrator must be authorized by an official of the insurance company who has the authority to enter into such arrangements.

3. A duly signed original copy of the Notice of Acceptance must be on file with the Administrator by November 16, 1995.

4. If 1., 2., or 3. above are not satisfied, the acceptance will be considered by the Administrator as conditional and the commitment of NFIP resources to fulfill the "Undertakings of the Government" under Article IV of the Arrangement will take a lower priority than those needed to fulfill the requirement of the other participating insurance companies.

5. Send all acceptances of this offer to: Federal Emergency Management Agency, Attn: Federal Insurance Administrator, WYO Program, Washington, DC 20472.

Offer To Provide Financial Assistance

Pursuant to the provisions of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329, and Executive Order 12127 of March 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376, Federal Emergency Management Agency, subject to all regulations promulgated thereunder, and to the duties, obligations and rights set forth in the Financial Assistance/Subsidy Arrangement as printed below, the Federal Insurance Administrator, herein the "Administrator," offers to enter into the Financial Assistance/Subsidy Arrangement with any individual private sector property insurance company. This offer is effective only in a State in which such private sector insurance company is licensed to engage in the business of property insurance. *Federal Emergency Management Agency, Federal Insurance Administration, Financial Assistance/Subsidy Arrangement.*

Purpose: To assist the company in underwriting flood insurance using the Standard Flood Insurance Policy.

Accounting Data: Pursuant to section 1310 of the Act, a Letter of Credit shall be issued for payment as provided for herein from the National Flood Insurance Fund.

Effective Date: October 1, 1995.

Issued By: Federal Emergency Management Agency, Federal Insurance Administration, Washington, DC 20472.

Article I—Findings, Purpose, and Authority

Whereas, the Congress in its "Finding and Declaration of Purpose" in the National Flood Insurance Act of 1968, as amended, ("the Act") recognized the benefit of having the National Flood Insurance Program (the Program) "carried out to the maximum extent practicable by the private insurance industry"; and

Whereas, the Federal Insurance Administration (FIA) recognizes this Arrangement as coming under the provisions of section 1345 of the Act; and

Whereas, the goal of the FIA is to develop a program with the insurance industry where, over time, some risk-bearing role for the industry will evolve as intended by the Congress (section 1304 of the Act); and

Whereas, the Program, as presently constituted and implemented, is subsidized, and the insurer (hereinafter the "Company") under this Arrangement shall charge rates established by the FIA; and

Whereas, this Arrangement will subsidize all flood policy losses by the Company; and

Whereas, this Financial Assistance/Subsidy Arrangement has been developed to involve individual Companies in the Program, the initial step of which is to explore ways in which any interested insurer may be able to write flood insurance under its own name; and

Whereas, one of the primary objectives of the Program is to provide coverage to the maximum number of structures at risk and because the insurance industry has marketing access through its existing facilities not directly available to the FIA, it has been concluded that coverage will be extended to those who would not otherwise be insured under the Program; and Whereas, flood insurance policies issued subject to this Arrangement shall be only that insurance written by the Company in its own name pursuant to the Act; and

Whereas, over time, the Program is designed to increase industry participation, and, accordingly, reduce or eliminate Government as the principal vehicle for delivering flood insurance to the public; and

Whereas, the direct beneficiaries of this Arrangement will be those Company policyholders and applicants for flood insurance who otherwise would not be covered against the peril of flood.

Now, therefore, the parties hereto mutually undertake the following:

Article II—Undertakings of the Company

A. In order to be eligible for assistance under this Arrangement the Company shall be responsible for:

1.0 Policy Administration, including
1.1 Community Eligibility/Rating Criteria
1.2 Policyholder Eligibility Determination
1.3 Policy Issuance
1.4 Policy Endorsements
1.5 Policy Cancellations
1.6 Policy Correspondence
1.7 Payment of Agents Commissions

The receipt, recording, control, timely deposit and disbursement of funds in connection with all the foregoing, and correspondence relating to the above in accordance with the Financial Control Plan requirements.

2.0 Claims processing in accordance with general Company standards and the Financial Control Plan. The Write Your Own Claims Manual, the Federal Emergency Management Agency Adjuster Manual, the FIA National Flood Insurance Program Policy Issuance Handbook, the Write Your Own Operational Overview, and other instructional material also provide guidance to the Company.

3.0 Reports

3.1 Monthly Financial Reporting and Statistical Transaction Reporting shall be in accordance with the requirements of National Flood Insurance Program Transaction Record Reporting and Processing Plan for the Write Your Own (WYO) Program and the Financial Control Plan for business written under the WYO Program. These data shall be validated/edited/audited in detail and shall be compared and balanced against Company financial reports.

3.2 Monthly financial reporting shall be prepared in accordance with the WYO Accounting Procedures.

3.3 The Company shall establish a program of self audit acceptable to the FIA or comply with the self audit program contained in the Financial Control Plan for business written under the WYO Program. The Company shall report the results of this self-audit to the FIA annually.

B. The Company shall use the following time standards of performance as a guide:

1.0 Application Processing - 15 days (Note: If the policy cannot be mailed due to insufficient or erroneous information or insufficient funds, a request for correction or added monies shall be mailed within 10 days);

1.1 Renewal Processing—7 days;

1.2 Endorsement Processing—7 days;

1.3 Cancellation Processing—15 days;

1.4 Correspondence, Simple and/or Status Inquiries—7 days;

1.5 Correspondence, Complex Inquiries—20 days;

1.6 Supply, Materials, and Manual Requests—7 days;

1.7 Claims Draft Processing—7 days from completion of file examination;

1.8 Claims Adjustment—45 days average from receipt of Notice of Loss (or equivalent) through completion of examination.

1.9 For the elements of work enumerated above, the elapsed time shown is from the date of receipt through the date of mail out. Days means working, *not* calendar days.

In addition to the standards for timely performance set forth above, all functions performed by the Company shall be in accordance with the highest reasonably attainable quality standards generally utilized in the insurance and data processing industries.

These standards are for guidance. Although no immediate remedy for failure to meet them is provided under this Arrangement, nevertheless, performance under these standards and the marketing guidelines provided for in Section G. below can be a factor considered by the Federal Insurance Administrator (the Administrator) in requiring corrective action by the Company, in determining the continuing participation of the Company in the Program, or in taking other action, e.g., limiting the Company's authority to write new business.

C. To ensure maximum responsiveness to the National Flood Insurance Program's (NFIP) policyholders following a catastrophic event, e.g., a hurricane, involving insured wind and flood damage to policyholders, the Company shall agree to the adjustment of the combined flood and wind losses utilizing one adjuster under an NFIP-approved Single Adjuster Program in the following cases and under procedures issued by the Administrator:

1.0 Where the flood and wind coverage is provided by the Company;

2.0 Where the flood coverage is provided by the Company and the wind coverage is provided by a participating State Property Insurance Plan, Windpool Association, Beach Plan, Joint Underwriting Association, FAIR Plan, or similar property insurance mechanism;

3.0 Where the flood coverage is provided by the Company and the wind coverage is provided by another WYO Company and the necessary information on the dual coverage is part of the Claims Coordinating Office (CCO) system; and

4.0 Where the flood coverage is provided by the Company and the wind coverage is provided by another property insurer and the State Insurance Regulator has determined that such property insurer shall, in the interest of consumers, facilitate the adjustment of its wind loss by the adjuster engaged to adjust the flood loss of the Company.

The Government shall provide for the direct business flood losses to be adjusted by a single adjuster where the wind damage coverage is insured by a state market mechanism described in 2.0, above, or by a WYO Company as described in 3.0 above, or by a property insurer, as described in 4.0 above.

Except for 1.0, above, the Company shall submit its flood losses that are reasonably believed to involve wind damage to the Single Adjuster Program's Stationary CCO in Lanham, Maryland at the following address: National Flood Insurance Program, Stationary Claims Coordinating Office, 10115 Senate Drive, Lanham, Maryland 20706.

Such flood losses shall be reported on the ACORD Notice of Loss form, "ACORD 1 (1/93)," or a like form calling for the reporting of losses involving both flood and wind damage arising out of a single hurricane event under the following procedures:

- Where flood losses reasonably believed to involve wind damage are reported by property insurance agents of brokers, the Company shall instruct its agents or brokers to mail or preferably send by facsimile the ACORD Notice of Loss form, with complete details regarding flood and, if available, wind insurance policies covering the property, to the Single Adjuster Program Stationary CCO for assignment to a

single adjuster. The Stationary CCO will also accept loss information directly from the agent by modem in CCO format where the Company has arranged for its agents to provide the information in this fashion.

• Where flood losses reasonably believed to involve wind damage are reported directly to the Company by its policyholders or agents, by telephone, the Company shall report the flood loss, with the wind property insurer information, if available, to the Single Adjuster Program Stationary CCO, by modem transfer in CCO format as such flood losses are reported to the Company. Transfer by facsimile from the Company can also be arranged where circumstances warrant it.

Upon receipt of the Notice of Loss, the Stationary CCO shall effect immediate entry of all relevant data into the stand-alone CCO System (i.e., not part of the NFIP mainframe computer system) for instantaneous relay to the Catastrophe CCO established in the field. At the Catastrophe CCO, which will be sited and fully operational within 24 hours of landfall, in coordination with the State Insurance Regulator, a qualified loss adjustment organization shall be promptly selected for each loss, and participating insurers shall be promptly advised of the selection for their assignment of the loss to that organization.

In respect to the foregoing, the Administrator will continue to implement existing and future CCO Arrangements with State Insurance Regulators and their State Property Insurance Plans, Windpool Associations, Beach Plans, Joint Underwriting Associations, FAIR Plans, or similar property insurance mechanisms, for example, as has been done with the Insurance Department of the State of South Carolina.

D. Policy Issuance.

1.0 The flood insurance subject to this Arrangement shall be only that insurance written by the Company in its own name pursuant to the Act.

2.0 The Company shall issue policies under the regulations prescribed by the Administrator in accordance with the Act;

3.0 All such policies of insurance shall conform to the regulations prescribed by the Administrator pursuant to the Act, and be issued on a form approved by the Administrator;

4.0 All policies shall be issued in consideration of such premiums and upon such terms and conditions and in such States or areas or subdivisions thereof as may be designated by the Administrator and only where the Company is licensed by State law to engage in the property insurance business;

5.0 The Administrator may require the Company to immediately discontinue issuing policies subject to this Arrangement in the event Congressional authorization or appropriation for the National Flood Insurance Program is withdrawn.

E. The Company shall establish a bank account, separate and apart from all other Company accounts, at a bank of its choosing for the collection, retention and disbursement of funds relating to its obligation under this Arrangement, less the Company's expenses as set forth in Article III, and the operation of the Letter of Credit established pursuant to Article IV. All funds not required to meet current expenditures shall be remitted to the United States Treasury, in accordance with the provisions of the WYO Accounting Procedures Manual.

F. The Company shall investigate, adjust, settle and defend all claims or losses arising from policies issued under this Arrangement. Payment of flood insurance claims by the Company shall be binding upon the FIA.

G. The Company shall market flood insurance policies in a manner consistent with the marketing guidelines established by the Federal Insurance Administration.

Article III—Loss Costs, Expenses, Expense Reimbursement, and Premium Refunds

A. The Company shall be liable for operating, administrative and production expenses, including any taxes, dividends, agent's commissions or any board, exchange or bureau assessments, or any other expense of whatever nature incurred by the Company in the performance of its obligations under this Arrangement.

B. The Company shall be entitled to withhold, on a provisional basis, as operating and administrative expenses, including agents' or brokers' commissions, an amount from the Company's written premium on the policies covered by this Arrangement in reimbursement of all of the Company's marketing, operating and administrative expenses, except for allocated and unallocated loss adjustment expenses described in C. of this Article, which amount shall be 32.6% of the Company's written premium on the policies covered by this Arrangement. The final amount retained by the Company shall be determined by an increase or decrease depending on the extent to which the Company meets the marketing goals for the combined 1994–1995 and 1995–1996 Arrangement years contained in marketing guidelines established pursuant to Article II. G.

The decrease or increase in the amount retained by the Company shall be made after the end of the 1995–1996 Arrangement year. Any decrease from 32.6% made as a result of a Company not meeting its marketing goals shall be directly related to the extent to which the Company's goal was not achieved, but shall not exceed two (2) percentage points (providing for a minimum of 30.6%). The amount of any decrease shall be calculated for each month, and each month's decrease shall be subject to interest compounded at rates provided for by 31 U.S.C. 3717(a)(1). Upon notice of the cumulative monthly decreases and interest, the Company agrees to promptly remit to the Government the total amount due.

The increase, which shall be distributed among the Companies exceeding their marketing goals, shall be drawn from a pool composed of the difference between 32.6% of all WYO Companies' written premium in Arrangement years 1994–1995 and 1995–1996, and the total amount, prior to the increase, provided to the Companies on the basis of the extent to which they have met their marketing goals. A distribution formula will be developed and distributed to WYO Companies which will consider the extent to which the Company has exceeded its goal and the size of the Company's book of business in relation to the total number of WYO policies. The amount of any increase shall be paid promptly to the Company after the end of the 1995–1996 Arrangement year.

If the Company does not enter into the Arrangement for 1995–1996, the extent to which the Company met its goals shall be based upon its Arrangement year 1994–1995 performance, and the final amount retained shall be determined after the end of the 1994–1995 Arrangement year, but the Company shall not be entitled to any increase above the provisional amount.

Premium income net of provisional reimbursement (net premium income) and Federal Policy Fee shall be deposited in a special account for the payment of losses and loss adjustment expenses (see Article II, Section E).

The Company, with the consent of the Administrator as to terms and costs, shall be entitled to utilize the services of a national rating organization, licensed under state law, to assist the FIA in undertaking and carrying out such studies and investigations on a community or individual risk basis, and in determining more equitable and accurate estimates of flood insurance risk premium rates as authorized under the National Flood Insurance Act of 1968, as amended. The Company shall be reimbursed in accordance with the provisions of the WYO Accounting Procedures Manual for the charges or fees for such services.

C. Loss Adjustment Expenses shall be reimbursed as follows:

1. Unallocated loss adjustment shall be an expense reimbursement of 3.3% of the incurred loss (except that it does not include "incurred but not reported").

2. Allocated loss adjustment expense shall be reimbursed to the Company pursuant to Exhibit A, entitled "Fee Schedule."

3. Special allocated loss expenses shall be reimbursed to the Company for only those expenses the Company has obtained prior approval of the Administrator to incur.

D.1. Loss payments under policies of flood insurance shall be made by the Company from funds retained in the bank account established under Article II, Section E and, if such funds are depleted, from funds derived by drawing against the Letter of Credit established pursuant to Article IV.

2. Loss payments will include payments as a result of awards or judgments for damages arising under the scope of this Arrangement, policies of flood insurance issued pursuant to this Arrangement, and the claims processing standards and guides set forth at Article II, Section A, 2.0 of this Arrangement. Prompt notice of any claim for damages as to claims processing or other matters arising outside the scope of this section (D)(2) shall be sent to the Assistant Administrator of the FIA's Office of Insurance Policy Analysis and Technical Services (OIPATS), along with a copy of any material pertinent to the claim for damages arising outside of the scope of the matters set forth in this section (D)(2).

Following receipt of notice of such claim, the General Counsel (OGC), FEMA, shall review the cause and make a recommendation to FIA as to whether the claim is grounded in actions by the Company which are significantly outside the provisions of this section (D)(2). After reviewing the General Counsel's recommendation, the Administrator will make her decision and the Company will be notified, in writing, within thirty (30) days of the General Counsel's recommendation, if the decision is that any award or judgment for damages arising out of such actions will not be recognized under Article III of this Arrangement as a reimbursable loss cost, expense or expense reimbursement. In the event that the Company wishes to petition for reconsideration of the notification that it will not be reimbursed for the award or judgment made under the above circumstances, it may do so by mailing, within thirty days of the notice declining to recognize any such award or judgment as reimbursable under Article III, a written petition to the Chairman of the WYO Standards Committee established under the Financial Control Plan. The WYO Standards Committee will, then, consider the petition at its next regularly scheduled meeting or at a special meeting called for that purpose by the Chairman and issue a written recommendation to the Administrator, within thirty days of the meeting. The Administrator's final determination will be made, in writing, to the Company within thirty days of the recommendation made by the WYO Standards Committee.

E. Premium refunds to applicants and policyholders required pursuant to rules contained in the National Flood Insurance Program (NFIP) "Flood Insurance Manual" shall be made by the Company from funds retained in the bank account established under Article II, Section E and, if such funds are depleted, from funds derived by drawing against the Letter of Credit established pursuant to Article IV.

Article IV—Undertakings of the Government

A. Letter(s) of Credit shall be established by the Federal Emergency Management Agency (FEMA) against which the Company may withdraw funds daily, if needed, pursuant to prescribed procedures as implemented by FEMA. The amounts of the authorizations will be increased as necessary to meet the obligations of the Company under Article III, Sections (C), (D), and (E). Request for funds shall be made only when net premium income has been depleted. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for allowable Letter of Credit expenses.

Request for payment on Letters of Credit shall not ordinarily be drawn more frequently than daily nor in amounts less than $5,000, and in no case more than $5,000,000 unless so stated on the Letter of Credit. This Letter of Credit may be drawn by the Company for any of the following reasons:

1. Payment of claim as described in Article III, Section D; and

2. Refunds to applicants and policyholders for insurance premium overpayment, or if the application for insurance is rejected or when cancellation or endorsement of a policy results in a premium refund as described in Article III, Section E; and

3. Allocated and unallocated Loss Adjustment Expenses as described in Article III, Section C.

B. The FIA shall provide technical assistance to the Company as follows:

1. The FIA's policy and history concerning underwriting and claims handling.

2. A mechanism to assist in clarification of coverage and claims questions.

3. Other assistance as needed.

Article V—Commencement and Termination

A. Upon signature of authorized officials for both the Company and the FIA, this Arrangement shall be effective for the period October 1 through September 30. The FIA shall provide financial assistance only for policy applications and endorsements accepted by the Company during this period pursuant to the Program's effective date, underwriting and eligibility rules.

B. By June 1, of each year, the FIA shall publish in the **Federal Register** and make available to the Company the terms for the re-subscription of this Financial Assistance/Subsidy Arrangement. In the event the Company chooses not to re-subscribe, it shall notify the FIA to that effect by the following July 1.

C. In the event the Company elects not to participate in the Program in any subsequent fiscal year, or the FIA chooses not to renew the Company's participation, the FIA, at its option, may require (1) The continued performance of this entire Arrangement for one (1) year following the effective expiration date only for those policies issued during the original term of this Arrangement, or any renewal thereof, or (2) the transfer to the FIA of:

a. All data received, produced, and maintained through the life of the Company's participation in the Program, including certain data, as determined by FIA, in a standard format and medium; and

b. A plan for the orderly transfer to the FIA of any continuing responsibilities in administering the policies issued by the Company under the Program including provisions for coordination assistance; and

c. All claims and policy files, including those pertaining to receipts and disbursements which have occurred during the life of each policy. In the event of a transfer of the services provided, the Company shall provide the FIA with a report showing, on a policy basis, any amounts due from or

payable to insureds, agents, brokers, and others as of the transition date.

D. Financial assistance under this Arrangement may be cancelled by the FIA in its entirety upon 30 days written notice to the Company by certified mail stating one of the following reasons for such cancellation: (1) Fraud or misrepresentation by the Company subsequent to the inception of the contract, or (2) nonpayment to the FIA of any amount due the FIA. Under these very specific conditions, the FIA may require the transfer of data as shown in Section C., above. If transfer is required, the unearned expenses retained by the Company shall be remitted to the FIA.

E. In the event the Act is amended, or repealed, or expires, or if the FIA is otherwise without authority to continue the Program, financial assistance under this Arrangement may be cancelled for any new or renewal business, but the Arrangement shall continue for policies in force which shall be allowed to run their term under the Arrangement.

F. In the event that the Company is unable to, or otherwise fails to, carry out its obligations under this Arrangement by reason of any order or directive duly issued by the Department of Insurance of any Jurisdiction to which the Company is subject, the Company agrees to transfer, and the Government will accept, any and all WYO policies issued by the Company and in force as of the date of such inability or failure to perform. In such event the Government will assume all obligations and liabilities owed to policyholders under such policies arising before and after the date of transfer and the Company will immediately transfer to the Government all funds in its possession with respect to all such policies transferred and the unearned portion of the Company expenses for operating, administrative and loss adjustment on all such policies.

Article VI—Information and Annual Statements

The Company shall furnish to the FIA such summaries and analyses of information in its records as may be necessary to carry out the purposes of the National Flood Insurance Act of 1968, as amended, in such form as the FIA, in cooperation with the Company, shall prescribe. The Company shall be a property/casualty insurer domiciled in a State or territory of the United States. Upon request, the Company shall file with the FIA a true and correct copy of the Company's Fire and Casualty Annual Statement, and Insurance Expense Exhibit or amendments thereof, as filed with the State Insurance Authority of the Company's domiciliary State.

Article VII—Cash Management and Accounting

A. FEMA shall make available to the Company during the entire term of this Arrangement and any continuation period required by FIA pursuant to Article V, Section C., the Letter of Credit provided for in Article IV drawn on a repository bank within the Federal Reserve System upon which the Company may draw for reimbursement of its expenses as set forth in Article IV which exceed net written premiums collected by the Company from the effective date of this Arrangement or continuation period to the date of the draw.

B. The Company shall remit all funds not required to meet current expenditures to the United States Treasury, in accordance with the provisions of the WYO Accounting Procedures Manual.

C. In the event the Company elects not to participate in the Program in any subsequent fiscal year, the Company and FIA shall make a provisional settlement of all amounts due or owing within three months of the termination of this Arrangement. This settlement shall include net premiums collected, funds drawn on the Letter of Credit, and reserves for outstanding claims. The Company and FIA agree to make a final settlement of accounts for all obligations arising from this Arrangement within 18 months of its expiration or termination, except for contingent liabilities which shall be listed by the Company. At the time of final settlement, the balance, if any, due the FIA or the Company shall be remitted by the other immediately and the operating year under this Arrangement shall be closed.

Article VIII—Arbitration

A. If any misunderstanding or dispute arises between the Company and the FIA with reference to any factual issue under any provisions of this Arrangement or with respect to the FIA's non-renewal of the Company's participation, other than as to legal liability under or interpretation of the standard flood insurance policy, such misunderstanding or dispute may be submitted to arbitration for a determination which shall be binding upon approval by the FIA. The Company and the FIA may agree on and appoint an arbitrator who shall investigate the subject of the misunderstanding or dispute and make a determination. If the Company and the FIA cannot agree on the appointment of an arbitrator, than two arbitrators shall be appointed, one to be chosen by the Company and one by the FIA.

The two arbitrators so chosen, if they are unable to reach an agreement, shall select a third arbitrator who shall act as umpire, and such umpire's determination shall become final only upon approval by the FIA.

The Company and the FIA shall bear in equal shares all expenses of the arbitration. Findings, proposed awards, and determinations resulting from arbitration proceedings carried out under this section, upon objection by FIA or the Company, shall be inadmissible as evidence in any subsequent proceedings in any court of competent jurisdiction.

This Article shall indefinitely succeed the term of this Arrangement.

Article IX—Errors and Omissions

The parties shall not be liable to each other for damages caused by ordinary negligence arising out of any transaction or other performance under this Arrangement, nor for any inadvertent delay, error, or omission made in connection with any transaction under this Arrangement, provided that such delay, error, or omission is rectified by the responsible party as soon as possible after discovery.

However, in the event that the Company has made a claim payment to an insured without including a mortgagee (or trustee) of which the Company had actual notice prior to making payment, and subsequently determines that the mortgagee (or trustee) is also entitled to any part of said claim payment, any additional payment shall not be paid by the Company from any portion of the premium and any funds derived from any Federal Letter of Credit deposited in the bank account described in Article II, section E. In addition, the Company agrees to hold the Federal Government harmless against any claim asserted against the Federal Government by any such mortgagee (or trustee), as described in the preceding sentence, by reason of any claim payment made to any insured under the circumstances described above.

Article X—Officials Not To Benefit

No Member or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this Arrangement, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this Arrangement if made with a corporation for its general benefit.

Article XI—Offset

At the settlement of accounts the Company and the FIA shall have, and may exercise, the right to offset any balance or balances, whether on account of premiums, commissions, losses, loss adjustment expenses, salvage, or otherwise due one party to the other, it successors or assigns, hereunder or under any other Arrangements heretofore or hereafter entered into between the Company and the FIA. This right of offset shall not be affected or diminished because of insolvency of the Company.

All debts or credits of the same class, whether liquidated or unliquidated, in favor of or against either party to this Arrangement on the date of entry, or any order of conservation, receivership, or liquidation, shall be deemed to be mutual debts and credits and shall be offset with the balance only to be allowed or paid. No offset shall be allowed where a conservator, receiver, or liquidator has been appointed and where an obligation was purchased by or transferred to a party hereunder to be used as an offset. Although a claim on the part of either party against the other may be unliquidated or undetermined in amount on the date of the entry of the order, such claim will be regarded as being in existence as of the date of such order and any credits or claims of the same class then in existence and held by the other party may be offset against it.

Article XII—Equal Opportunity

The Company shall not discriminate against any applicant for insurance because of race, color, religion, sex, age, handicap, marital status, or national origin.

Article XIII—Restriction on Other Flood Insurance

As a condition of entering into this Arrangement, the Company agrees that in any area in which the Administrator authorizes the purchase of flood insurance pursuant to the Program, all flood insurance offered and sold by the Company to persons eligible to buy pursuant to the Program for coverages available under the Program shall be written pursuant to this Arrangement.

However, this restriction applies solely to policies providing only flood insurance. It does not apply to policies provided by the Company of which flood is one of the several perils covered, or where the flood insurance coverage amount is over and above the limits of liability available to the insured under the Program.

Article XIV—Access to Books and Records

The FIA and the Comptroller General of The United States, or their duly authorized representatives, for the purpose of investigation, audit, and examination shall have access to any books, documents, papers and records of the Company that are pertinent to this Arrangement. The Company shall keep records which fully disclose all matters pertinent to this Arrangement, including premiums and claims paid or payable under policies issued pursuant to this Arrangement. Records of accounts and records relating to financial assistance shall be retained and available for three (3) years after final settlement of accounts, and to financial assistance, three (3) years after final adjustment of such claims. The FIA shall have access to policyholder and claim records at all times for purposes of the review, defense, examination, adjustment, or investigation of any claim under a flood insurance policy subject to this Arrangement.

Article XV—Compliance with Act and Regulations

This Arrangement and all policies of insurance issued pursuant thereto shall be subject to the provisions of the National Flood Insurance Act of 1968, as amended, the Flood Disaster Protection Act of 1973, as amended, and Regulations issued pursuant thereto and all Regulations affecting the work that are issued pursuant thereto, during the term hereof.

Article XVI—Relationship Between the Parties (Federal Government and Company) and the Insured

Inasmuch as the Federal Government is a guarantor hereunder, the primary relationship between the Company and the Federal Government is one of a fiduciary nature, i.e., to assure that any taxpayer funds are accounted for and appropriately expended.

The Company is not the agent of the Federal Government. The Company is solely responsible for its obligations to its insured under any flood policy issued pursuant hereto.

In witness whereof, the parties hereto have accepted this Arrangement on this _____ day of _____, 1995.

_____
Company
by _____
(Title) _____
The United States of America
Federal Emergency Management Agency
by _____
(Title) _____

EXHIBIT A—FEE SCHEDULE

Range (by covered loss)	Fee
Erroneous assignment	$40.00
Closed without payment	125.00

EXHIBIT A—FEE SCHEDULE—Continued

Range (by covered loss)	Fee
Minimum for Upton-Jones claims	800.00
$0.01 to $600.00	150.00
$600.01 to $1,000.00	175.00
$1,000.01 to $2,000.00	225.00
$2,000.01 to $3,500.00	275.00
$3,500.01 to $5,000.00	350.00
$5,000.01 to $7,000.00	425.00
$7,000.01 to $10,000.00	500.00
$10,000.01 to $15,000.00	550.00
$15,000.01 to $25,000.00	600.00
$25,000.01 to $35,000.00	675.00
$35,000.01 to $50,000.00	750.00
$50,000.01 to $100,000.00	1,000.00
$100,000.01 to $150,000.00	1,300.00
$150,000.01 to $200,000.00	1,600.00
$200,000.01 to limits	2,000.00

Allocated fee schedule entry value is the covered loss under the policy based on the standard deductibles ($500 and $500) and limited to the amount of insurance purchased.

Notice of Acceptance Form 1995–1996; Federal Emergency Management Agency; Federal Insurance Administration; Financial Assistance/Subsidy Arrangement (Arrangement)

Whereas, in 1995, there was published a Notice of Offer by the Federal Emergency Management Agency to enter into a Financial Assistance/Subsidy Arrangement (hereafter the Arrangement).

Whereas, the above cited Arrangement, as published in and reprinted from the **Federal Register**, does not provide sufficient space to type in the name of the Company.

Whereas, the Arrangement may include several individual companies within a Company Group and the Arrangement as published in and reprinted from the **Federal Register** does not provide sufficient space to type in a list of companies.

Therefore, the parties hereby agree that this Notice of Acceptance form is incorporated into and is an integral part of the entire Arrangement and is substituted in place of the signature block contained in the **Federal Register** under Article XVI of the Arrangement. The above mentioned Arrangement is effective in the States in which the insurance company (ies) listed below is (are) duly licensed to engage in the business of property insurance:

_____
_____
_____
_____
_____
_____

In witness whereof, the parties hereto have accepted this Arrangement on this _____ day of _____, 1995.

Company
By: _____
Title: _____
The United States of America
Federal Emergency Management Agency
By: _____
Title: Federal Insurance Administrator
Dated: June 6, 1995.

Elaine A. McReynolds,

Administrator, Federal Insurance Administration.

[FR Doc. 95–14541 Filed 6–13–95; 8:45 am]
BILLING CODE 6718–05–P

Wednesday
June 14, 1995

Part V

The President

Proclamation 6809—Father's Day, 1995

Federal Register
Vol. 60, No. 114
Wednesday, June 14, 1995

Presidential Documents

Title 3—

The President

Proclamation 6809 of June 12, 1995

Father's Day, 1995

By the President of the United States of America

A Proclamation

As children finish the school year and families begin to enjoy the long days of summer, Americans across the country reach out to their fathers in thanks. Every year, Father's Day gives us a chance to spend time with our families and to honor the bond between parent and child. It is a moment for dads to find joy in the blessings that fatherhood brings. And it is a day for remembering that children can grow up immeasurably stronger with the gift of a father's love.

The most fortunate among us can claim warm memories of our fathers' lessons—times when dads can be models of energy and patience. Whether encouraging their children in taking their first steps, riding a bike or meeting other challenges in life, fathers teach us the importance of balance and stand behind us until we're steady. Through the scrapes and self-doubts that every young person confronts, fathers can be our role models and heroes, soothing childhood fears and instilling the steady values of hard work and fair play. They are our guidance counselors and our best friends. Their faith inspires us to try again when we fail and fills us with pride when we succeed. As coaches and caregivers, teachers and workers, fathers who make parenthood a priority earn their families' lasting respect.

We Americans rely on our fathers for courage and compassion, and the security of having them with us gives us confidence in all of our endeavors. On this special day, let America's sons and daughters show their fathers that they care. Let us continue to strive for a world in which every child grows up safe—a world in which every child knows that though they may feel sometimes unsteady, their fathers are behind them always.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, in accordance with a joint resolution of the Congress approved April 24, 1972 (36 U.S.C. 142a), do hereby proclaim Sunday, June 18, 1995, as "Father's Day." I invite the States, communities, and citizens of the United States to observe this day with appropriate ceremonies and activities that demonstrate our deep appreciation and affection for our fathers.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of June, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

[FR Doc. 95–14778
Filed 6–13–95; 11:02 am]
Billing code 3195–01–P

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in the Code of Federal Regulations (CFR)

Revised January 1, 1994

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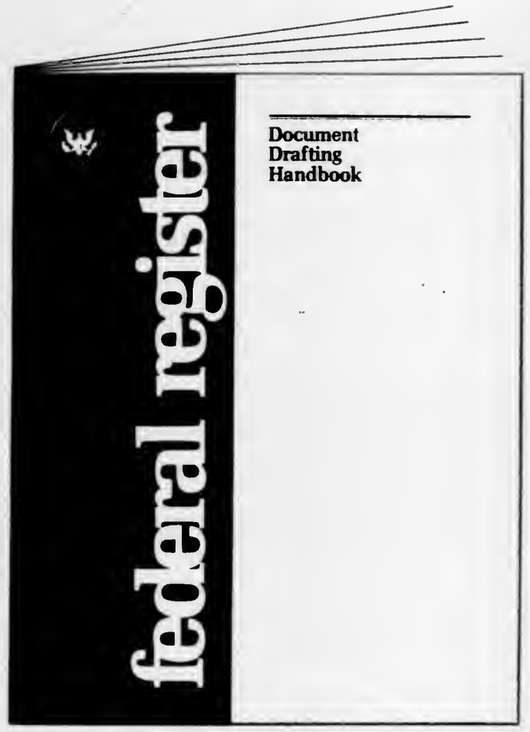
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104th Congress, 1st Session, 1995

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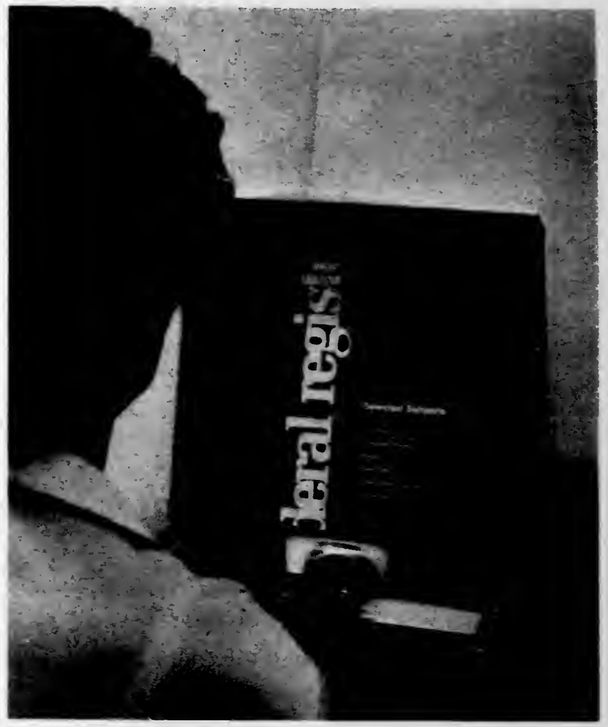
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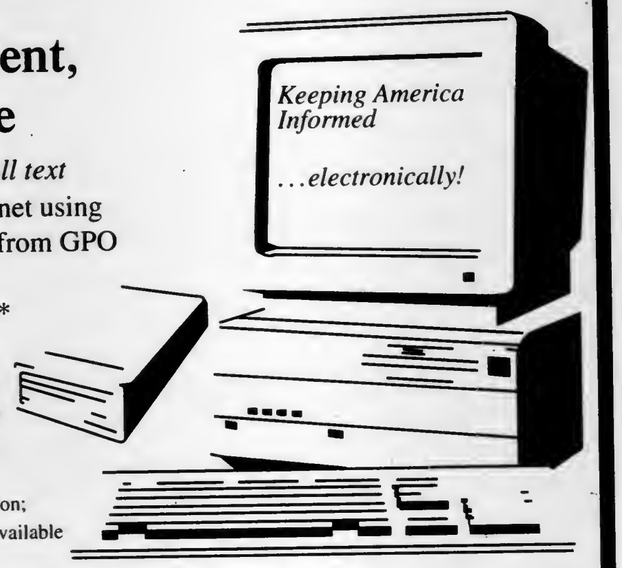
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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 870, 871, 872, 873, and 874

RIN 3206–AG79

Federal Employees' Group Life Insurance Program: Living Benefits

AGENCY: Office of Personnel Management.

ACTION: Interim regulations with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to implement the "FEGLI Living Benefits Act" of 1994. This law requires OPM to issue regulations which state: that under the Federal Employees' Group Life Insurance (FEGLI) Program, basic life insurance may be elected to be paid to an insured individual who is certified as terminally ill with a life expectancy of 9 months or less; that an employee may elect that the basic benefit be paid in total or, in part in multiples of $1,000; that annuitants may elect only the total amount of basic; that there will be no increase in the actuarial value of the benefit; that OPM will have an Open Season of at least 8 weeks duration beginning prior to the effective date of the law, during which employees who are not currently enrolled in basic may elect it; and that define an application process.

DATES: These interim regulations are effective June 15, 1995. Comments must be received on or before August 14, 1995.

ADDRESSES: Send written comments to Lucretia F. Myers, Assistant Director for Insurance Programs, Retirement and Insurance Service, Office of Personnel Management, P.O. Box 57, Washington, DC 20044; or deliver to OPM, Room 3451, 1900 E Street NW., Washington, DC; or FAX to (202) 606–0633.

FOR FURTHER INFORMATION CONTACT: Faith M. Hannon, (202) 606–0004.

SUPPLEMENTARY INFORMATION: Public Law 103–409, the "FEGLI Living Benefits Act", requires OPM to regulate a FEGLI Open Season in 1995 of at least 8 weeks duration prior to the effective date of the law, July 25, 1995. The law also requires OPM to regulate provisions for: the election by a terminally ill individual covered by FEGLI basic insurance of a lump sum payment of basic insurance as a Living Benefit; the reduction of the Living Benefit so that it is actuarially equivalent to the basic insurance benefit that would have been paid in the absence of a Living Benefit election; and an application process. These interim regulations allow OPM to implement the statutory requirements of the law prior to its effective date.

Open Season

The interim regulations provide that OPM will hold a 9-week FEGLI Open Season from May 22, 1995, through July 21, 1995. The Open Season will be of 9 weeks duration to allow for the 2 legal holidays during this period. During this Open Season, employees who have waived or cancelled basic insurance and who are not excluded from eligibility by law or regulation, may enroll in basic insurance only. Optional insurance may not be elected or increased during this Open Season. This Open Season is limited to election of basic insurance because its purpose is to implement the Living Benefits Act which only applies to basic insurance.

Employees who have been on Leave Without Pay for 12 or more months, compensationers who have been on Leave Without Pay for 12 or more months, and annuitants, may not participate in this Open Season. The law specifically limits participation in the Open Season to employees as defined by section 8701(a) of title 5, United States Code.

The effective date of basic insurance elected during this Open Season will be the first day of the first pay period beginning on or after the date the employing office received the enrollment form. Unlike in previous Open Seasons, there will be no requirement for the employee to be in a pay and duty status for the enrollment elected during this Open Season to become effective. The legislative intent of this law clearly was to make a Living Benefit available to the greatest number of eligible employees possible. It would be contrary, therefore, to the intent of the law to require that employees be in a pay and duty status before the Open Season election becomes effective. However, we must emphasize that it is OPM's firm intent to have a pay and duty status requirement for coverage elections to be effective in any and all future FEGLI Open Seasons.

An election during this Open Season will not be considered a first opportunity to enroll for purposes of meeting the requirements to carry life insurance into retirement. In order to carry coverage elected during this Open Season into retirement, the coverage must be in effect for the 5 years of service immediately preceding the date of retirement, or for the entire period(s) of service during which it was available, if less than 5 years.

Living Benefits

Public Law 103–409 requires that terminally ill employees who have FEGLI basic insurance be allowed to elect as a Living Benefit either a lump-sum payment of the total amount of their basic insurance or a partial payment of their basic insurance in a multiple of $1,000. Eligible compensationers and annuitants may only elect to receive a lump-sum payment of the total amount of their basic insurance. The law also defines a terminally ill individual as one who has been certified as having a life expectancy of 9 months or less. The Living Benefits Act does not apply to and has no effect on Optional Insurance.

This interim regulation specifies the parameters of the total/partial requirements of the law and also explains that a Living Benefit election will either reduce the accidental death and dismemberment coverage upon an effective election of a partial Living Benefit or terminate the accidental death and dismemberment coverage upon an effective election of a total Living Benefit. In addition, this regulation describes how the Basic Insurance Amount (BIA) will be reduced in proportion to the amount elected for a partial Living Benefit. The remaining BIA, or post-election BIA, will not change after the computation of the partial Living Benefit regardless if there is a change in other circumstances, e.g., salary, or age. When the insured

dies, the remaining BIA will be multiplied by the age factor that was in effect at the time the completed Living Benefit application was received by the Office of Federal Employees' Group Life Insurance (OFEGLI) in order to compute the final payment of basic insurance benefits.

Once an insured has made an effective Living Benefit election, that election is irrevocable. In addition, an insured may make only one Living Benefit election. That is to say, the insured who has made a partial Living Benefit election may not make a subsequent Living Benefit election for any portion of the remaining basic insurance.

Assignments

This regulation stipulates that individuals who have assigned their insurance under the authority of 5 U.S.C. 8706(e) may not elect a Living Benefit and that those individuals who have elected a Living Benefit may not assign their insurance.

Actuarial Reduction

OPM is required by law to assure that there is not an increase in the actuarial value of the benefit paid. This is accomplished by regulating that the amount of Living Benefit payment is actuarially reduced to account for the amount of interest lost to the Employees' Life Insurance Fund (Fund) and the time difference between when the Living Benefit payment is made and when the death benefits would have been paid in the absence of a Living Benefit election. The actuarial reduction will be based on an assumption of the interest rate and the time period that reflects the earlier payment date. Initially, the actuarial reduction will be 4.9 percent of the benefit. This 4.9 percent actuarial reduction factor will change, if necessary, after Living Benefits have been in effect long enough to analyze the experience. Any change in the actuarial reduction factor will be published in the **Federal Register**.

Withholdings and Contributions

This interim regulation specifies that the withholdings and contributions for basic insurance will terminate at the end of the pay period in which a total Living Benefit election is effective. The withholdings and contributions for basic insurance after a partial Living Benefit has been elected will be based on the remaining BIA (post-election BIA) in effect at the end of the pay period in which the Living Benefit election is effective. A Living Benefit election is effective on the date the Living Benefit payment check is cashed or deposited.

Application Process

OPM is required by law to regulate the application process. Therefore, this regulation provides how an insured individual may apply for the Living Benefit through OFEGLI and the subsequent steps that need to occur in order for a Living Benefit to be paid. Only the insured individual may make a Living Benefit election. No one else, e.g., a spouse, a guardian, or someone with a power of attorney, may make a Living Benefit election on the insured's behalf. It also explains that, if the physician's certification of the nature of the illness and the life expectancy of the insured are not sufficient for OFEGLI to approve or disapprove the application, OFEGLI may request additional medical evidence from the attending physician. If necessary, OFEGLI may then also request a medical examination of the insured at OFEGLI's expense.

Additional Information

Detailed guidance will be provided to agencies and employing offices through Benefits Administration Letters (BAL's) and Payroll Office Letters. This information and guidance will address the obligations of the agencies and employing offices in the administration of the Living Benefit.

OPM believes that, at this time, it is required to withhold 10% of the Living Benefit payment for Federal and/or State taxes unless the insured requests on the application that the amount for taxes not be withheld. This policy is subject to change if applicable tax law or regulations change.

Waiver of Notice of Proposed Rulemaking

Pursuant to section 553(b)(3)(B) of title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of proposed rulemaking. OPM must issue regulations to implement Public Law 103–409, which is effective July 25, 1995. In addition, employing offices need a certain amount of lead time in order to implement the regulations by the effective date. These concerns make it impractical to publish proposed regulations.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulations primarily affect individuals currently enrolled under the Federal Employees' Group Life Insurance Program and those Federal employees who would enroll during this mandated Open Season.

List of Subjects

5 CFR Part 870

Administrative practice and procedure, Government employees, Hostages, Iraq, Kuwait, Lebanon, Life insurance, Retirement.

5 CFR Part 871

Administrative practice and procedure, Government employees, Life insurance, Retirement.

5 CFR Part 872

Administrative practice and procedure, Government employees, Life insurance, Retirement.

5 CFR Part 873

Administrative practice and procedure, Government employees, Life insurance, Retirement.

5 CFR Part 874

Government employees, Life insurance, Retirement.

Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending 5 CFR parts 870, 871, 872, 873, and 874 as follows:

PART 870—FEDERAL EMPLOYEES' GROUP LIFE INSURANCE PROGRAM

1. The authority citation for part 870 is revised to read as follows:

Authority: 5 U.S.C. 8716; § 870.202(c) also issued under 5 U.S.C. 7701(b)(2); subpart J is also issued under section 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; subpart K is also issued under Pub. L. 103–409.

2. In § 870.203, paragraph (e) is added to read as follows:

§ 870.203 Effective dates of insurance.

* * * * *

(e) An open enrollment election of basic life insurance filed during the period from May 22, 1995, through July 21, 1995, is effective on the 1st day of the first pay period beginning on or after the date the employing office received the enrollment form. There is no requirement to be in a pay and duty status for the enrollment to be effective.

3. In § 870.204, paragraph (h) is added to read as follows:

§ 870.204 Waiver and cancellation of waiver of insurance coverage.

* * * * *

(h)(1) An Open Season will be held from May 22, 1995, through July 21, 1995, during which time employees otherwise eligible for coverage may

cancel their existing waivers of coverage by affirmatively electing to be insured on a form designated by OPM.

(2) An employing office may make a determination, within 6 months after the May 22, 1995, through July 21, 1995, Open Season, that an employee was unable, for cause beyond his/her control, to cancel his/her then existing waiver of coverage by affirmatively electing to be insured during the 1995 Open Season. The employee will be permitted to submit an affirmative election of coverage within 31 days after he/she is advised of that determination. Basic life insurance coverage in that case is retroactive to the 1st day of the first pay period beginning on or after July 21, 1995.

4. In § 870.301, paragraph (c) is added to read as follows:

§ 870.301 Basic insurance amount (BIA).

* * * * *

(c) The post-election BIA of an employee who elected a partial Living Benefit is the BIA as of the date OFEGLI received the completed Living Benefit application reduced by the percentage which the partial lump-sum payment represents of the pre-election BIA multiplied by the age factor as stated in § 870.301(b)(rounded up or down to the nearest multiple of $1,000 or, if midway between multiples, to the next higher multiple of $1,000). The post-election BIA will not change after the effective date of the partial Living Benefit election. For purposes of computing the payment of benefits upon the death of the insured individual who elected a partial Living Benefit, the BIA will be multiplied by the age factor in effect as of the date OFEGLI received the completed Living Benefit application.

5. Section 870.402 is added to read as follows:

§ 870.402 Withholdings and contributions following a Living Benefits election.

(a) The basic insurance withholding for an insured individual who has elected a total payment of basic insurance for a Living Benefit will cease the end of the pay period in which the election of Living Benefits is effective.

(b) The amount withheld for basic insurance from the pay of an insured employee who has elected a partial Living Benefit will be based on the amount of BIA remaining after the partial Living Benefit election is effective.

(c) The amount withheld for basic insurance from the annuity of an annuitant who elected a partial Living Benefit as an employee will be based on the amount of BIA remaining after the partial Living Benefit election is effective.

(d) The amount withheld for basic insurance from the compensation of a compensationer who elected a partial Living Benefit as an employee will be based on the amount of BIA remaining after the partial Living Benefit election is effective.

6. In § 870.501, paragraph (a) is revised to read as follows:

§ 870.501 Termination and conversion of insurance coverage.

(a) Except as provided in §§ 870.601 and 870.701, the basic insurance of an insured employee stops on the date of his/her separation from the service, subject to a 31-day extension of basic life insurance coverage, or on the effective date of a full Living Benefits election.

* * * * *

7. In § 870.601, paragraphs (c) introductory text and (c)(4) are revised to read as follows:

§ 870.601 Eligibility for life insurance.

* * * * *

(c) An individual who makes an election under paragraph (b) of this section must select one of the following options, except that those individuals who have elected a partial Living Benefit must select the option under paragraphs (c)(1) or (c)(4) of this section:

* * * * *

(4) Continuation or reinstatement of basic life insurance coverage with no reduction after age 65, and with continuous premiums withheld from annuity. An insured individual may cancel an election under paragraphs (c)(3) or (c)(4) of this section at any time, except for those individuals who have elected a partial Living Benefit as an employee. An insured individual who has elected a partial Living Benefit may only cancel an election under paragraph (c)(4) of this section if he/she is electing to terminate the insurance under paragraph (c)(1) of this section.

* * * * *

8. In § 870.602 the current paragraph is redesignated as paragraph (a) and paragraph (b) is added to read as follows:

§ 870.602 Amount of life insurance.

* * * * *

(b) The post-election BIA of an annuitant who elected a partial Living Benefit as an employee is the BIA as of the date OFEGLI received the completed Living Benefit application reduced by the percentage which the partial lump-sum payment represents of the pre-election BIA multiplied by the age factor as stated in § 870.301(b) (rounded up or down to the nearest multiple of $1,000 or, if midway between multiples, to the next higher multiple of $1,000). For the purpose of computing the payment of benefits upon the death of an insured annuitant who elected a partial Living Benefit as an employee, the BIA will be multiplied by the age factor in effect as of the date OFEGLI received the completed Living Benefit application.

9. In § 870.701, paragraphs (c) introductory text and (c)(4) are revised to read as follows:

§ 870.701 Eligibility for life insurance.

* * * * *

(c) An individual who makes an election under paragraph (b) of this section must select one of the following options, except that those individuals who have elected a partial Living Benefit must select the option under paragraphs (c)(1) or (c)(4) of this section:

* * * * *

(4) Continuation or reinstatement of basic life insurance coverage with no reduction after age 65, and with continuous premiums withheld from compensation. An insured individual may cancel an election under paragraphs (c)(3) or (c)(4) of this section at any time, except for those individuals who have elected a partial Living Benefit as an employee. An insured individual who has elected a partial Living Benefit may only cancel an election under paragraph (c)(4) of this section if he/she is electing to terminate the insurance under paragraph (c)(1) of this section.

* * * * *

10. In § 870.702 the current paragraph is redesignated as paragraph (a) and paragraph (b) is added to read as follows:

§ 870.702 Amount of life insurance.

* * * * *

(b) The post-election BIA of a compensationer who elected a partial Living Benefit as an employee is the BIA as of the date OFEGLI received the completed Living Benefit application reduced by the percentage which the partial lump-sum payment represents of the pre-election BIA multiplied by the age factor as stated in § 870.301(b) (rounded up or down to the nearest multiple of $1,000 or, if midway between multiples, to the next higher multiple of $1,000). For the purpose of computing the payment of benefits upon the death of an insured compensationer who elected a partial Living Benefit as an employee, the BIA will be multiplied by the age factor in effect as of the date OFEGLI received the completed Living Benefit application.

11. In § 870.801 the current paragraph is redesignated as paragraph (a) and paragraph (b) is added to read as follows:

§ 870.801 Assignments.

* * * * *

(b) If an individual has assigned his/her insurance, he/she may not elect a Living Benefit and if an individual has elected a Living Benefit, he/she may not assign his/her insurance.

12. In part 870, subpart K is added to read as follows:

Subpart K—FEGLI Living Benefits

Sec.
870.1101 Purpose.
870.1102 Definitions.
870.1103 Open season.
870.1104 Living benefits.
870.1105 Actuarial reduction.
870.1106 Withholdings and contributions for basic insurance.
870.1107 Application procedures.

Subpart K—FEGLI Living Benefits

§ 870.1101 Purpose.

This subpart sets forth the circumstances under which employees may enroll in basic insurance during the 1995 Open Season and terminally ill individuals enrolled in basic insurance may elect to receive a payment of their basic insurance as a Living Benefit on or after July 25, 1995.

§ 870.1102 Definitions.

In this subpart—

Effective date of Living Benefits election means the date on which the Living Benefits payment is cashed or deposited.

Terminally ill means the individual has a medical prognosis of a life expectancy of 9 months or less.

§ 870.1103 Open season.

(a) An Open Season will be held from May 22, 1995, through July 21, 1995, during which time an employee who has waived or cancelled basic insurance and is not excluded from eligibility by law or under § 870.202 of subpart B, may enroll in basic insurance only. Optional insurance may not be elected or increased during this Open Season. Employees who have been on Leave Without Pay for 12 or more months, compensationers who have been on Leave Without Pay for 12 or more months, and annuitants, may not participate in this Open Season.

(b) The effective date of basic insurance elected during this Open Season is the 1st day of the first pay period beginning on or after the date the employing office received the enrollment form. There is no requirement to be in a pay and duty status for the enrollments elected during this Open Season to become effective.

§ 870.1104 Living benefits.

(a) An individual who is covered by basic insurance and who is certified as terminally ill, as defined in § 870.1102, may elect to receive a lump-sum payment of basic insurance on or after July 25, 1995. Only the insured individual may make a Living Benefits election.

(b)(1) An employee may elect to receive the basic insurance in total or in part, in a multiple of $1,000.

(2) A compensationer or an annuitant may only elect to receive a lump-sum payment of the total amount of basic insurance.

(c) If the employee elects to receive a partial payment of basic insurance, the remaining BIA, the post-election BIA, will be reduced in proportion to the amount of basic insurance elected as a Living Benefit, as prescribed by Pub. L. 103–409. The post-election BIA will not change after the effective date of the partial Living Benefit election. Only the basic benefits remaining will be payable at death.

(d)(1) If the employee receives the total amount of basic insurance as a Living Benefit, accidental death and dismemberment coverage will terminate as of the effective date of election.

(2) If the employee receives a partial payment of basic insurance as a Living Benefit, accidental death and dismemberment coverage will be reduced to equal the post-election BIA.

(e) Once an election of Living Benefits has become effective, the election may not be revoked and no further election of Living Benefits may be made.

(f) If an individual has assigned his/her insurance, he/she may not elect a Living Benefit and if an individual has elected a Living Benefit, he/she may not assign his/her insurance.

§ 870.1105 Actuarial reduction.

The amount of basic insurance elected as a Living Benefit will be reduced in order to produce a basic insurance benefit that is actuarially equivalent, to the extent practicable, to the basic insurance benefit of those who do not elect to receive a Living Benefit. The actuarial reduction will be based on assumptions of the amount of interest lost to the Fund because of the early payment and the time difference between when the Living Benefit payment is made and when the death benefits would have been paid in the absence of a Living Benefits election.

§ 870.1106 Withholdings and contributions for basic insurance.

(a) Withholdings and contributions for basic insurance for those individuals who receive a lump-sum payment of their total basic insurance as a Living Benefit will terminate at the end of the pay period in which the Living Benefit election is effective.

(b) Withholdings and contributions for basic insurance for those employees who receive a lump-sum payment of a partial amount of their basic insurance as a Living Benefit will be reduced in proportion to the amount of benefit elected and will be based on the post-election BIA in effect at the end of the pay period in which the Living Benefit election is effective.

§ 870.1107 Application procedures.

(a) The insured individual must request information on Living Benefits and an application form directly from OFEGLI.

(b) The insured individual must complete the first part of the application (General Information) and have his/her physician complete the second part of the application (Physician's Statement). The insured then submits the completed application directly to OFEGLI.

(c)(1) OFEGLI will review the application and the certification by the physician of the nature of the illness and that the insured is terminally ill, with a life expectancy of 9 months or less.

(2) If additional information is needed, OFEGLI will contact the insured or the insured's physician.

(3) Under certain circumstances, OFEGLI may require a medical examination prior to making an approval decision. In these cases, OFEGLI will be financially responsible for the cost of the medical examination.

(d)(1) If the application is approved, OFEGLI will send the insured a check for the Living Benefit payment and an explanation of benefits. In addition, once the payment has been cashed or deposited, OFEGLI will send explanations of benefits to the insured's employing office and payroll office so that they will change basic insurance withholdings and contributions in accordance with § 870.1106.

(2) If the application is not approved, OFEGLI will notify the insured individual and the employing office. The decision will not be subject to administrative review. However, the insured individual may reapply at a later date if future circumstances warrant.

PART 871—STANDARD OPTIONAL LIFE INSURANCE

13. The authority citation for part 871 continues to read as follows:

Authority: 5 U.S.C. 8716.

14. In § 871.501, paragraph (a) is revised to read as follows:

§ 871.501 Termination and conversion of insurance.

(a) The standard optional insurance of an insured person stops when his/her basic insurance stops as provided in § 870.501 of this chapter, subject to a 31-day extension of standard optional life insurance coverage, except when the basic insurance stops due to a full Living Benefits election, in which case the standard optional insurance will continue unless voluntarily cancelled by the insured.

* * * * *

PART 872—ADDITIONAL OPTIONAL LIFE INSURANCE

15. The authority citation for part 872 continues to read as follows:

Authority: 5 U.S.C. 8716.

16. In § 872.501, paragraph (a) is revised to read as follows:

§ 872.501 Termination and conversion of insurance.

(a) The additional optional insurance of an insured person stops when his/her basic insurance stops as provided in § 870.501 of this chapter, subject to a 31-day extension of additional optional insurance coverage, except when the basic insurance stops due to a full Living Benefits election, in which case the additional optional insurance will continue unless voluntarily cancelled by the insured.

* * * * *

PART 873—FAMILY OPTIONAL LIFE INSURANCE

17. The authority citation for part 873 continues to read as follows:

Authority: 5 U.S.C. 8716.

18. In § 873.501, paragraph (a) is revised to read as follows:

§ 873.501 Termination and conversion of insurance.

(a) The family optional insurance of an insured person stops when his/her basic insurance stops as provided in § 870.501 of this chapter, subject to a 31-day extension of family optional insurance coverage, except when the basic insurance stops due to a full Living Benefits election, in which case the family optional insurance will continue unless voluntarily cancelled by the insured.

* * * * *

PART 874—ASSIGNMENT OF LIFE INSURANCE

19. The authority citation for part 874 continues to read as follows:

Authority: 5 U.S.C. 8716.

20. In § 874.201, paragraph (g) is added to read as follows:

§ 874.201 Assignments permitted.

* * * * *

(g) An insured individual who has elected a Living Benefit may not assign his/her insurance and an insured individual who has assigned his/her insurance may not elect a Living Benefit.

[FR Doc. 95–14574 Filed 6–14–95; 8:45 am]
BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AA96

Common Crop Insurance Regulations; Nursery Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby adopts regulations for specific crop provisions to insure nursery plants. These provisions will supplement the Common Crop Insurance Policy Basic Provisions which contains standard terms and conditions common to most crops. The intended effect of this rule is to move specific crop provisions for insuring nursery from the Nursery Crop Insurance Regulations (7 CFR part 406) to the Common Crop Insurance Policy (§ 457.8) for ease of use by the public and conformance among policy terms, and to add a nursery frost, freeze, and cold damage exclusion option to better meet the needs of the insured.

EFFECTIVE DATE: June 15, 1995.

FOR FURTHER INFORMATION CONTACT: Diana Moslak, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250. Telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under United States Department of Agriculture ("USDA") procedures established by Executive Order 12866 and Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is June 1, 2000.

This rule has been determined to be "not significant" for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget ("OMB").

The information collection or record-keeping requirements contained in these regulations (7 CFR part 457) were submitted to OMB in accordance with the provisions of 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 0563–0050.

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The policies and procedures contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

This regulation will not have a significant impact on a substantial number of small entities. This action reduces the paperwork burden on the insured and the reinsured company. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in subsections (2)(a) and 2(b)(2) of Executive Order 12778. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions located at 7 CFR part 400, subpart J or promulgated by the National Appeals Division, whichever is applicable, must be exhausted before judicial action may be brought.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an

Environmental Assessment nor an Environmental Impact Statement is needed.

By separate rule, FCIC will amend 7 CFR part 406 to restrict the crop years of application to those prior to the crop year for which this rule will be effective. FCIC will terminate the provisions of the present policy at the end of the crop year and later remove that part.

On Friday, January 27, 1995, FCIC published a notice of proposed rulemaking in the **Federal Register** at 60 FR 5339 proposing to revise the Common Crop Insurance Regulations by adding new provisions for nursery crop insurance.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments, data, and opinions. The comments received and FCIC responses are as follows:

Comment: One comment received from an insurance company disagreed with using the insured's wholesale price list in determining the insurance coverage rather than using the projected market price because:

(1) The proposed rule ties price levels (i.e., "monthly market value") to growers' wholesale price lists, while the Federal Crop Insurance Reform Act of 1994 (Act) ties price levels to projected market prices. Wholesale price lists represent offers; however, market prices represent offers and acceptance. It was questioned whether FCIC had the authority to determine that wholesale price lists are the "projected market prices" when: (a) FCIC has never seen and never validated such price lists; (b) they are not the product of independent economic forces or analysis; and (c) they are the estimates of insureds who have an economic interest in inflating the prices on their wholesale price lists. The company believes that allowing each grower to define his or her own market price by quoting an offering price invites fraud; and

(2) The Act requires FCIC, not individual growers, to determine "projected market price". The company acknowledged that FCIC has the authority to determine that a grower's wholesale price list is the "projected market price" but questions whether this is a lawful exercise of that authority. It was recommended that FCIC base the price level for nursery crops on the actual market price at the time of harvest (as determined by the Corporation).

Response: FCIC believes using the growers' wholesale price lists to establish the projected market prices does not violate the Act because the Act authorizes the Corporation to determine the wholesale market price as the projected market price. Due to numerous varieties of nursery plants eligible for insurance, FCIC believes that it is impractical to establish a price for each insured plant in the various states prior to the crop year. FCIC will determine whether the wholesale market price of the plant is reasonable before accepting it as the projected market price. The Federal Crop Insurance Corporation will investigate options on how nursery prices should be established for the 1997 crop year. Therefore, FCIC does not believe that it is necessary to change these provisions at this time.

Comment: One comment received from an insurance company disagreed with the elimination of the 10 percent reduced valuation in subsection 1.(a) (definition of "Amount of insurance"). The company stated that the 10 percent value reduction must remain in the policy to account for salvage valuation because many damaged plants can be restored to marketability or the Standard Reinsurance Agreement should be amended to reimburse insurance companies for this change. A concern was raised that deletion of the 10 percent reduction would result in increased premiums to insureds.

Response: The 10 percent reduction was originally incorporated to eliminate costs for packing, shipping, sales commissions and other expenses that would not be incurred due to the loss. The proposal to eliminate this 10 percent reduction was made to offset the expense of disposing of the destroyed inventory. However, eliminating the 10 percent factor would increase premium by 10% to cover the additional liability. No data is available at this time to determine if the costs of inventory disposal approximates the amount of 10%. Therefore, FCIC agrees that the 10 percent reduced valuation should remain in the nursery provisions and has amended the provisions accordingly.

Comment: One comment received from an insurance company requested the term "Annual loss deductible" contained in subsection 1.(b) be changed to "Crop year loss deductible".

Response: FCIC agrees with the comment and has adopted this change.

Comment: One comment received from an insurance company suggested that the word "unit" be removed from the definition of "Field market value A" in subsection 1.(e) and from the definition of "Field market value B" in subsection 1.(f) because it is redundant and invites the unintended interpretation that field market value A and field market value B include both insured and uninsured plants.

Response: FCIC agrees with this comment. FCIC has added "insurable plants" or "insured plants" to the term to clarify these provisions.

Comment: One comment received from an insurance company suggested the definition of "Standard nursery containers" contained in subsection 1.(n) be changed to read as follows: "Rigid containers not less than three (3) inches across the smallest dimension which are commercially sold to nurseries, and for the plant contained, are appropriate in size with the proper drainage holes and used in conjunction with an appropriate growing medium". Justification for this change was that too often growers permit plants to become root bound or use containers with drainage holes that are too high or too low for the plant or use an inappropriate growing medium. The company stated that FCIC should make clear that insurance does not attach unless all of these conditions are satisfied.

Response: FCIC agrees with the comment and has modified the provisions with language similar to that recommended.

Comment: One comment received from a national trade organization for the nursery industry strongly disagreed with the proposed definition of "Standard Nursery Containers" which excludes trays and cellpacks. This organization stated that trays and cell packs are indeed standard containers for a large segment of the nursery industry and that many trays, flats, and cell packs are larger than three inches across the smallest dimension. FCIC was urged to reconsider the proposed definition to explicitly incorporate flats, trays, and cell packs.

Response: FCIC disagrees with this comment. These types of containers are not insurable under the nursery policy. The nursery policy is based on plants grown in standard nursery containers not less than three (3) inches across the largest dimension at the top of the container. FCIC will study the feasibility of insuring nursery plants grown in other types of containers for the 1997 crop year. Therefore, FCIC does not believe that it is necessary to amend these provisions at this time.

Comment: One comment received from an insurance company suggested that subsection 6.(d) be amended to specify that insurers have no duty or contractual obligation to consent to a revision of the nursery plant inventory summary. The company also recommended that paragraphs 6.(d)(1) and 6.(d)(2) be deleted. The company stated that an inspection should be made before insurance attaches on any proposed increase in inventory and that because an insurer has no duty to accept a proposed increase, it should have no duty to inspect it. The company stated that the policy should state that a refusal to inspect constitutes a refusal to accept a proposed increase.

Response: FCIC disagrees with the comment. The proposed provisions do not require an insurer to make an inspection in some cases. However, an inspection is necessary for insurance to attach if the conditions of paragraphs 6(f)(1) and 6(f)(2) apply. FCIC believes removing paragraphs 6(f)(1) and 6(f)(2) would require the insured to request an inspection for any inventory increase. Therefore, FCIC does not believe that it is necessary to amend these provisions.

Comment: One comment received from an insurance company stated that the proposed nursery regulations do not contain provisions for the inclusion of an amount for operating and administrative expenses in the calculation of premium and, therefore, are in violation of the Federal Crop Insurance Corporation Reform Act of 1994.

Response: FCIC disagrees with this comment. All information concerning subsidies, including the producer premium subsidy and administrative expenses, is contained in the actuarial table. Therefore, FCIC does not believe that it is necessary to amend these provisions.

Comment: One comment received from an FCIC Regional Service Office suggested that subsection 8.(a), paragraph (4) be amended to read as follows: "Are grown in standard nursery containers (not planted in the ground), at least three (3) inches across the smallest dimension unless provided for on the actuarial table." Justification for this change was that many requests to insure trays or "flatted stock" containers with multiple plantings have been received. To alleviate the time and personnel needed to process the number of written agreements, the actuarial table could authorize such coverage.

Response: FCIC disagrees with this comment. The nursery policy does not allow insuring trays or "flatted stock" containers with multiple plantings. Only plants grown in standard nursery containers that are at least three (3) inches across the largest dimension at the top of the container are insurable. FCIC will study the feasibility of providing insurance coverage for nursery plants not grown in standard nursery containers for the 1997 crop year. Therefore, FCIC has amended the proposed provisions to delete the availability of written agreements for such plants.

Comment: One comment from a national trade organization for the nursery industry expressed concern that as many of 5,000 or more plant species are commercially produced by nursery growers, yet the Nursery Eligible Plant Listing for the 1994 crop year contained only 494 species. The organization urged FCIC to expand the Nursery Eligible Plant Listing as soon as possible and stated that until the listing is more inclusive, the nursery program will remain unattractive to a sizable segment of the industry.

Response: The Nursery Eligible Plant Listing was amended for the 1995 crop year and will be amended for the 1996 crop year to include additional plant species. FCIC is continuing to work with nursery experts to evaluate additional plant species that may be added to this listing.

Comment: One comment was received from an insurance company regarding paragraphs 10.(a) (3) and (4) which specify that insects and plant disease are insured causes of loss. The company stated that: (a) the only insect and plant disease that should be insured against are those determined by a state department of agriculture or an accredited agriculture college in the state to be an unprecedented affliction in that state to that plant and for which no effective control is available, because most insect and plant-disease losses are the result of poor nursery practices; and (b) paragraphs 10.(a) (3) and (4) should make it clear that policyholders have an obligation to keep all receipts for purchases of sprays and maintain spraying records.

Response: FCIC disagrees with the comment. The crop provisions already exclude damage due to insufficient or improper application of pest and disease control measures. The Common Crop Insurance Policy Basic Provisions, to which the Nursery Crop Provisions attach, exclude losses due to failure to follow recognized good practices, and also require policyholders to maintain records. Therefore, FCIC does not believe that it is necessary to amend these provisions.

Comment: One comment received from an insurance company disagreed with providing coverage specified in paragraph 10.(a)(9) for failure or breakdown of frost/freeze protection equipment or facilities due to direct damage to such equipment or facilities from an insurable cause of loss. The company questioned how the loss adjuster is to determine: that "direct damage" caused the loss if protection equipment or facilities were not properly maintained; whether the proximate cause of the loss was from owner negligence or insurable causes, or if from both, how the adjuster makes allowance for contributory negligence; and that the plants are damaged within 72 hours after the failure of the equipment or facilities. For the reasons stated above, it was recommended that paragraph 10.(a)(9) be deleted in its entirety and paragraph 10.(b)(5) be amended to delete the clause "unless due to an insured cause of loss."

Response: FCIC disagrees with this comment. The intent of the Nursery Crop Provisions is to protect the producer from unavoidable causes of loss. Therefore, failure or breakdown of the frost/freeze protection equipment or facilities due to an unavoidable insurable cause of loss will be covered. It is the loss adjuster's responsibility to determine whether an insurable cause of loss directly caused the damage in accordance with loss adjustment procedure approved by FCIC.

Comment: One comment received from an insurance company stated that because nursery plants are portable, section 11 should require that the insurer's permission to dump be in writing and signed by a loss adjuster and should require the insured to identify, in advance, the location where plants will be dumped and require the insured to keep dumping records.

Response: Section 11 requires the insured to obtain written consent from the insurer prior to destroying, selling or otherwise disposing of any plant inventory that is damaged. Further, the Common Crop Insurance Policy Basic Provisions already require the insured to keep records of the disposition of the crop. FCIC will study and address this issue for the 1997 crop year. Therefore, for the reasons stated, FCIC does not believe that it is necessary to amend these provisions.

Comment: Two comments were received requesting that insurance be allowed to attach to nursery inventory that produce edible berries, fruits, or nuts as follows:

(1) One comment received from a national trade organization for the nursery industry stated that the production and irrigation practices for nursery plants that are produced as entire plants for subsequent sale to others, where the purchaser's intent is to use the plants to produce edible berries, fruits, and nuts for market are similar to the production and irrigation practices for ornamental plant types. The organization strongly urged FCIC to allow insurance coverage for nursery plants that are produced for the wholesale market as entire plants, and not for berry, fruit, or nut sales; and

(2) One comment received from an FCIC Regional Service Office requested that insurance be allowed to attach to plants that produce edible berries, fruits, or nuts due to numerous requests to insure such plants.

Response: FCIC disagrees with these comments. These plants are primarily hardwoods with tap roots. The roots are usually severed or otherwise constricted and stressed when the tree is placed into a container. These trees are usually grafted as well. When stressed, disease can more easily attack these trees through the roots or the graft. Nursery operators cannot assess the quality of the merchandise and may not be aware of the tree condition if the trees are purchased from a supplier, nor can the insurer who accepts the risk. FCIC will study the feasibility of providing insurance on these types of plants for the 1997 crop year. Therefore, FCIC does not believe that it is necessary to amend these provisions at this time.

Comment: One comment received from a national trade organization for the nursery industry questioned the reasoning for and disagreed with the proposed clarification that stock plants used for reproduction, growing cuttings, air layering or propagating will not be insured.

Response: The intent of the nursery crop insurance policy is to provide coverage for nursery plants that are grown to be sold as entire plants. Premium rates have been established on this basis. Therefore, FCIC does not believe that it is necessary to amend subsection 8.(h).

Comment: One comment from a national trade organization for the nursery industry expressed concern regarding the requirement that the insured must report monthly market values of nursery inventory. The organization perceived this as excessively burdensome and, thus, a strong disincentive to the purchase of crop insurance.

Response: FCIC agrees that this requirement is time consuming and costly for all parties. However, since indemnity payments are based on the monthly market values, the insured must continue to provide the reports until an alternative method is derived. FCIC will study alternative methods to offer nursery insurance coverage that may eliminate this requirement. Therefore, FCIC does not believe that it is necessary to delay implementation of these provisions at this time.

In addition to the changes indicated in the responses to comments, FCIC has determined that:

1. Subsections 1. (d), (e), (f), and (i), subsection 7.(a) paragraph (3), subsection 7.(a) paragraph (3), and subsection 12.(a) paragraph (1)(ii) reference the 10% reduced valuation due to the comment above regarding subsection 1.(a). FCIC has amended these provisions accordingly.

2. Subsection 1. (h) and (n), definitions of "Largest dimension" and "Standard nursery containers" is amended to clarify that standard nursery containers must be at least three (3) inches across the largest dimension at the top of the container. This will be consistent with the nursery industry definition of the largest dimension and standard nursery containers.

3. Section 6 is amended to: (1) Allow an insured to revise the Nursery Plant Inventory Summary after the sales closing date to add plants not listed on the Nursery Plant Listing, if the insured requested a written agreement to insure such plants by the sales closing date and it has been offered and accepted; (2) allow the insured to revise the Nursery Plant Inventory Summary to correct or change the value of the insurable inventory if a new plant species is being added which was not originally reported on the nursery plant inventory summary without regard to the 10%/$25,000 limitation; and (3) remove the restriction requiring that the increase in inventory value must have been due to a quantity change.

4. Subsection 9.(b) is amended to clarify that the date of final adjustment of a loss on the unit, when the total indemnities paid for the unit equal the amount of insurance for that unit is one of the events that ends the insurance period.

Accordingly, the rule, "Common Crop Insurance Regulations; Nursery Crop Insurance Provisions and Nursery Frost, Freeze, and Cold Damage Exclusion Option" published at 60 FR 5339 as revised and set out below is hereby adopted as final rule.

List of Subjects in 7 CFR Part 457

Crop insurance, nursery crop.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Common Crop Insurance Regulations (7 CFR part 457), effective for the 1996 and succeeding crop years, to read as follows:

PART 457—[AMENDED]

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1).

2. 7 CFR part 457 is amended by adding §§ 457.114 and 457.115 to read as follows:

§ 457.114 Nursery Crop Insurance Provisions.

The Nursery Crop Insurance Provisions for the 1996 and succeeding crop years are as follows:

United States Department of Agriculture

Federal Crop Insurance Corporation

Nursery Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), these crop provisions, and the Special Provisions, the Special Provisions will control these crop provisions and the Basic Provisions; and these crop provisions will control the Basic Provisions.

1. Definitions

(a) *Amount of insurance*—The result of multiplying the highest monthly market value reported on the nursery plant inventory summary (including inventory reported by you and accepted by us on a revised nursery plant inventory summary) by .9, multiplied by the percentage for the coverage level you elect.

(b) *Brownout*—A reduction in electric power that affects the unit.

(c) *Crop year*—The 12 month period beginning October 1 and extending through September 30 of the next calendar year, designated by the year in which it ends. (The 1996 crop year begins October 1, 1995, and ends September 30, 1996).

(d) *Crop year loss deductible*—The value calculated by multiplying the highest monthly market value reported on the nursery plant inventory summary by .9 and subtracting from this product the amount of insurance.

(e) *Field market value A*—Ninety percent (90%) of the wholesale market value for the insured plants in the unit immediately prior to the occurrence of the loss.

(f) *Field market value B*—Ninety percent (90%) of the wholesale market value remaining for the insurable plants in the unit immediately following the occurrence of the loss as determined by our appraisal conducted as soon as reasonably possible after the loss is reported.

(g) *Irrigated practice*—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to maintain the amount of insurance on the nursery plant inventory.

(h) *Largest dimension*—The distance measured at the top of the standard nursery container from one side directly across to the opposite at the widest point.

(i) *Monthly loss deductible*—The smaller of: (1) The highest monthly market value reported on the nursery plant inventory summary multiplied by .9; or (2) field market value A; multiplied by the number derived by subtracting the coverage level percent from one hundred percent (100%), not to exceed the crop year loss deductible.

(j) *Monthly market value*—The dollar amount determined by multiplying the quantity of each insurable plant by its wholesale market value for that month, less the maximum discount (stated in dollar terms) granted to any buyer, and totalling the resulting values for all insurable plants in the unit.

(k) *Nursery*—A business enterprise that produces ornamental plants in standard nursery containers for the wholesale market.

(l) *Nursery eligible plant listing*—A listing contained in the Actuarial Table that specifies the plants eligible for insurance and any mandatory or recommended storage required for such plants in each hardiness zone defined by the United States Department of Agriculture.

(m) *Nursery plant inventory summary*—A report that specifies the numbers, growing locations, and wholesale prices of plants included in the nursery inventory.

(n) *Standard nursery containers*—Rigid containers not less than three (3) inches across the largest dimension at the top of the container, and which are appropriate in size and with proper drainage holes for the plant contained. Grow bags, trays, cellpacks, and burlap are not standard nursery containers under these crop provisions.

(o) *Stock plants*—Plants used for reproduction, for growing cuttings, for air layering or for propagating.

(p) *Wholesale market value*—The total dollar valuation of the insurable plants actually contained within the unit at any time. The values used will be based on your wholesale price list if properly supported by your records, less the maximum discount (stated in dollar terms) granted to any buyer.

(q) *Written agreement*—Designated terms of this policy may be altered by written agreement. Each agreement must be applied for by the insured in writing no later than the sales closing date and is valid for one year only. If not specifically renewed the following year, continuous insurance will be in accordance with the printed policy. All variable terms including, but not limited to, plant type and premium rate must be contained in the written agreement. Notwithstanding the sales closing date restriction contained herein, in specific instances, a written agreement may be applied for after the sales closing date and approved if, after a physical inspection of the nursery plant inventory, there is a determination that the inventory has the expectancy of meeting the amount of insurance. All applications for written agreements as submitted by the insured must contain all variable terms of the contract between the company and the insured that will be in effect if the written agreement is disapproved. A written agreement will not be approved for other than standard nursery containers.

2. Unit Division

In lieu of the definition of "unit" contained in section 1 (Definitions) of the Basic Provisions (§ 457.8), a unit consists of all growing locations in the county within a five mile radius of the named insured locations designated on your nursery plant inventory summary. Any growing location more than five miles from any other growing location, but within the county, may be designated as a separate basic unit or be included in the closest unit listed on your nursery plant inventory summary.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

The production reporting requirements contained in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8) are not applicable to the Nursery Crop Provisions.

4. Contract Changes

The contract change date is June 30 preceding the crop year (see the provisions of section 4 (Contract Changes) of the Basic Provisions (§ 457.8)).

5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§ 457.8), the cancellation and termination dates are September 30 preceding the crop year.

6. Nursery Plant Inventory Summary

(a) Section 6 (Report of Acreage) of the Basic Provisions (§ 457.8) is not applicable to the Nursery Crop Provisions.

(b) You must submit a nursery plant inventory summary to us on or before September 30 preceding the crop year.

(c) The nursery plant inventory summary is a projection of the expected inventory for the following 12 months. This summary must include, by unit and by month for each type of plant in the inventory, the:

(1) Container sizes, as measured at the largest dimension at the top of the container;

(2) Number of plants;

(3) Wholesale price for each month of the crop year; and

(4) Your share.

If your inventory usually changes within a specific month, report the largest inventory that you expect to have for that month.

(d) Your annual nursery plant inventory summary will be used to determine your premium and the amount of insurance for each unit. If you do not submit the summary by the reporting date, we may elect to determine the nursery plant inventory for each unit or we may deny liability on any unit. Errors in reporting units may be corrected by us at the time of loss adjustment.

(e) Your wholesale price list may be examined to determine whether the prices listed are reasonable. If the prices are determined to be unreasonable, the previous acceptable wholesale price list will be used or we may establish the wholesale price for each type of plant.

(f) With our consent, you may revise your reported nursery plant inventory summary to correct or change the value of the insurable inventory if the amount of the revision is at least ten percent (10%) of the highest monthly market value reported on the nursery plant inventory summary or $25,000, whichever is smaller, or if a new plant species is being added that was not originally reported on your nursery plant inventory summary or was approved by written agreement. If you wish to revise the nursery plant inventory summary, you must notify us in writing at least 14 days before a change in inventory value. We must inspect and accept the nursery before insurance attaches on any proposed increase in inventory if:

(1) The storage facilities have changed in any way since our previous inspection; or

(2) The revision includes plants that have specific over-wintering storage requirements and that were not previously reported on your nursery plant inventory summary.

(g) You may not revise your nursery plant inventory summary after the sales closing date to add plants not listed on the Nursery Eligible Plant Listing unless a request for a written agreement to add such plants has been submitted by the sales closing date.

(h) Insurable plants that are not reported on your nursery plant inventory summary will not be insured, but the value of such plants after a loss will be included as production to count. Such unreported inventory may reduce the amount of any indemnity payable to you.

(i) You must designate separately any plant inventory that is not insurable.

7. Annual Premium

We will determine your premium as follows:

(a) The annual premium for each unit will be calculated by:

(1) Determing the total value of each plant type and container size designated on your nursery plant inventory summary for each month by multiplying the number of plants by the price for that type and container size shown on your accepted wholesale price list for that month, less the maximum discount (stated in dollar terms) granted to any buyer, and totalling the resulting values for each separate classification shown on the actuarial table;

(2) Adding the total values of all plant types and container sizes (determined in (1) above) for each month separately to determine the monthly market values. Then compare the resulting twelve (12) monthly market values to determine the highest monthly market value for the crop year;

(3) Taking the total value of each plant type and container size obtained in (1) above for the month having the highest monthly market value for the crop year (determined in (2) above) for each classification specified in the actuarial table and multiplying these values by .9, then multiplying the results by the percentage coverage level you have elected;

(4) Multiplying each product obtained in (3) above by the appropriate premium rate listed on the actuarial table;

(5) Adding the products obtained in (4) above; and

(6) Multiplying the total obtained in (5) above by your share.

(b) The annual premium will be earned in full when insurance attaches. It is due and payable as follows:

(1) Forty percent (40%) on the later of September 30 preceding each crop year or the date we accept the inventory for insurance;

(2) Thirty percent (30%) on January 1 of the crop year; and

(3) Thirty percent (30%) on April 1 of the crop year.

(c) Additional premium earned from an increase in the nursery plant inventory summary is due and payable when the revised nursery plant inventory summary is approved by us.

(d) Premium will not be reduced due to a decrease in the nursery plant inventory summary, unless such decrease results from the deletion of uninsurable inventory from the summary that was erroneously reported as insurable.

8. Insured Plants

In lieu of the provisions of section 8 (Insured Crop) and section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8), the insured nursery plant inventory will be all nursery plants in the county reported by you or determined by us for which an application is accepted, a premium rate is provided by the actuarial table, and that:

(a) Are grown under an irrigated practice for which you have adequate facilities and water at the time coverage begins in order to carry out a good irrigation practice;

(b) Are classified as woody, herbaceous, or foliage landscape plants;

(c) Do not include plants that produce edible berries, fruits, or nuts;

(d) Are grown in standard nursery containers;

(e) Are grown in an appropriate growing medium;

(f) Are inspected by us and determined to be acceptable;

(g) Are listed on the Nursery Eligible Plant Listing unless a written agreement provides otherwise;

(h) Are not stock plants;

(i) Are grown in accordance with the production practices for which premium rates have been established; and

(j) Meet the "mandatory" or "recommended" storage requirements, unless you have applied for and received the Frost/Freeze, and Cold Damage Exclusion Option for those nursery plants.

9. Insurance Period

In lieu of the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8), coverage begins on each unit or part of a unit the later of October 1 or the date we accept the inventory for insurance, provided you have complied with the terms of paragraph 7.(b)(1). Coverage will not attach for plant inventory added due to a revised nursery plant inventory summary until any additional premium is paid in full. Insurance ends for each unit at the earliest of:

(a) The date all plant inventory within the unit is sold or otherwise removed unless that inventory is replaced and additional earned premium is paid (If a portion of the plants are sold or otherwise removed from inventory, and are not replaced, insurance only ends on that part of the unit.);

(b) The date of final adjustment of a loss on the unit when the total indemnities paid for the unit equal the amount of insurance for that unit; or

(c) September 30 of the crop year.

10. Causes of Loss

(a) In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided for unavoidable damage caused only by the following causes of loss which occur within the insurance period:

(1) Adverse weather conditions;

(2) Fire, except as specified in (b)(4);

(3) Insects, but not damage due to insufficient or improper application of pest control measures;

(4) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption;

(8) Failure of the irrigation water supply, due to an unavoidable cause of loss occurring within the insurance period; or

(9) Frost or freeze if there is a failure or breakdown of frost/freeze protection equipment or facilities and the failure or breakdown is directly caused by an insurable cause of loss, provided the insured nursery plants are damaged by freezing temperatures within 72 hours after the failure of such equipment or facilities and you establish that repair or replacement was not possible between the time of failure or breakdown and the time the freezing temperatures occurred.

(b) In addition to the causes of loss excluded in section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), we do not insure against any loss caused by:

(1) Brownout;

(2) Failure of the power supply unless such failure is due to an insurable cause of loss;

(3) The inability to market the nursery plants as a direct result of quarantine, boycott, or refusal of a buyer to accept production;

(4) Fire, where weeds and other forms of undergrowth in the vicinity of the building and on your property have not been controlled; or

(5) Collapse or failure of buildings or structures.

11. Duties in the Event of Damage or Loss

In addition to your duties contained under section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), you must:

(a) Obtain our written consent prior to:

(1) Destroying, selling or otherwise disposing of any plant inventory that is damaged; or

(2) Changing or discontinuing your normal growing practices with respect to care and maintenance of the insured plant inventory.

(b) Upon our request, provide complete copies of your nursery plant inventory wholesale price list for the 12 month period immediately preceding the loss and your marketing records including plant shipping invoices for the same period.

(c) Submit a claim for indemnity to us on our form, not later than 60 days after the earliest of:

(1) The date of your loss; or

(2) The end of the insurance period.

12. Settlement of Claim

(a) The indemnity will be the amount calculated by us for each unit as follows:

(1) Subtracting field market value B from the lesser of:

(i) Field market value A; or

(ii) The highest monthly market value for the unit reported on the nursery plant inventory summary multiplied by .9;

(2) Subtracting the monthly loss deductible (not to exceed the remaining crop year loss deductible) from the product obtained in (1) above; and

(3) Multiplying the result by your share.

(b) Individual insured losses occurring on the same unit during the crop year may be accumulated if each loss is reported and valued by us to satisfy the crop year loss deductible. Paragraph 12.(a)(2) will not apply to any subsequent individual loss determinations when the total amount of accumulated monthly loss deductibles is equal to or greater than the crop year loss deductible. Total indemnities for a unit will not exceed the amount of insurance for the unit.

(c) The value of any insured plant inventory may be determined on the basis of our appraisals conducted after the end of the insurance period.

§ 457.115 Nursery Frost, Freeze, and Cold Damage Exclusion Option.

This is not a continuous option. Application for this option must be made on or before the sales closing date for each crop year this Option is to be in effect (see exception in item 2 below).

Insured's Name _____

Address _____

Contract Number _____

Identification Number _____

SSN/EIN _____

Tax I.D. _____

Crop Year _____

Unit Number _____

Hardiness Zone _____

For the crop year designated above, the Nursery Crop Provisions (§ 457.114) are amended in accordance with the following terms and conditions:

1. You must have the Common Crop Insurance Policy Basic Provisions and Nursery Crop Provisions in force.

2. This option must be submitted to us on or before the final date for accepting applications for the crop year in which you wish to insure your nursery plant inventory under this option. If the provisions of paragraph 6.(f)(2) of the Nursery Crop Provisions apply, we may accept this option after the sales closing date, or we may allow additional plants to be added to this option after such date.

3. Executing this option does not reduce the premium rate for nursery crop insurance.

4. All provisions of the Basic Provisions (§ 457.8) and Nursery Crop Provisions (§ 457.114) not in conflict with this option are applicable.

5. Upon execution of this option, the following plant varieties will not have frost, freeze, or cold damage coverage on this unit because the mandatory (Risk Group A) or recommended (Risk Group B) over-wintering requirements will not be met.

Scientific name	Common name	Over-wintering requirements to be excluded

Insured's Signature

Date

Insurance Company Representative's Signature and Code Number

Date

Done in Washington, DC, on June 9, 1995.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 95–14710 Filed 6–14–95; 8:45 am]

BILLING CODE 3410–08–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 104, 110, and 114

[Notice 1995–8]

Repeal of Obsolete Rules

AGENCY: Federal Election Commission.

ACTION: Final rule with request for comments.

SUMMARY: The Commission is repealing three obsolete provisions of its regulations. The repealed provisions involve contributions to retire pre-1975 debts; certain 1976 payroll deductions for separate segregated funds; and an alternative reporting option for candidates in presidential elections held prior to January 1, 1981.

DATES: Comments must be received on or before July 17, 1995. If no adverse comments are received, the rules will be sent to Congress for a 30 legislative day review period pursuant to 2 U.S.C. 438(d) at the close of this comment period. Further action, including the announcement of an effective date, will be taken at the close of the legislative review period. A document announcing the effective date will be published in the **Federal Register.**

ADDRESSES: Comments must be in writing and addressed to: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, D.C. 20463.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, N.W., Washington, D.C. 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is repealing three obsolete provisions in its rules. All regulate activity that has now been concluded and that cannot recur.

The Commission is issuing these rules as final rules subject to a 30 day public comment period. If no adverse comments are received, the rules will be sent to Congress at the close of this comment period, for a 30 legislative day review period pursuant to 2 U.S.C. 438(d). Further action, including the announcement of an effective date, will take place following this 30 legislative day review period.

If adverse comments are received during the public comment period, the Commission will withdraw these final rules, and publish a Notice of Proposed Rulemaking addressing these issues.

Explanation and Justification

Part 104—Reports by Political Committees

Section 104.17 Content of Reports; Presidential and Vice Presidential Committees

The Commission is repealing 11 CFR 104.17, which established alternative filing procedures for authorized committees of candidates for President and Vice President for elections occurring prior to January 1, 1981. The last committees following these procedures were administratively terminated by the Commission on May 25, 1995. No such committees are currently operating under these provisions.

Part 110—Contribution and Expenditure Limitations and Prohibitions

Section 110.1 Contributions by Persons Other Than Multicandidate Political Committees

The Commission is repealing 11 CFR 110.1(g), *Contributions to retire pre-1975 debts.* This paragraph exempts contributions made to retire debts resulting from elections held prior to January 1, 1975, from the 11 CFR part 110 contribution limits as long as certain requirements are met. The last committee with pre-1975 debts has resolved these obligations. There are currently no committees registered with the Commission that are paying off pre-1975 election debts.

Part 114—Corporate and Labor Organization Activity

Section 114.12 Miscellaneous Provisions

The Commission is repealing 11 CFR 114.12(d). That paragraph allowed a corporation that offered all of its employees a payroll deduction plan prior to May 11, 1976, for contributions made to the corporation's separate segregated fund to continue to make such deductions for those employees who were not executive or administrative personnel, or stockholders, until December 31, 1976.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]

The attached final rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that these rules repeal obsolete provisions of the Commission's rules and thus have no impact on any current activity.

List of Subjects

11 CFR Part 104

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 110

Campaign funds, Political committees and parties.

11 CFR Part 114

Business and industry, Elections, Labor.

For reasons set out in the preamble, chapter I of title 11 of the Code of Federal Regulations is amended to read as follows:

PART 104—REPORTS BY POLITICAL COMMITTEES

1. The authority citation for part 104 continues to read as follows:

Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8), 438(b).

§ 104.17 [Removed]

2. Section 104.17 is removed.

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

3. The authority citation for part 110 continues to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d(a)(8), 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g and 441h.

§ 110.1 [Amended]

4. Section 110.1 is amended by removing and reserving paragraph (g).

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

5. The authority citation for part 114 continues to read as follows:

Authority: 2 U.S.C. 431(8)(B), 431(9)(B), 432, 437d(a)(8), 438(a)(8), and 441b.

(c) Additional premium earned from an increase in the nursery plant inventory summary is due and payable when the revised nursery plant inventory summary is approved by us.

(d) Premium will not be reduced due to a decrease in the nursery plant inventory summary, unless such decrease results from the deletion of uninsurable inventory from the summary that was erroneously reported as insurable.

8. Insured Plants

In lieu of the provisions of section 8 (Insured Crop) and section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8), the insured nursery plant inventory will be all nursery plants in the county reported by you or determined by us for which an application is accepted, a premium rate is provided by the actuarial table, and that:

(a) Are grown under an irrigated practice for which you have adequate facilities and water at the time coverage begins in order to carry out a good irrigation practice;

(b) Are classified as woody, herbaceous, or foliage landscape plants;

(c) Do not include plants that produce edible berries, fruits, or nuts;

(d) Are grown in standard nursery containers;

(e) Are grown in an appropriate growing medium;

(f) Are inspected by us and determined to be acceptable;

(g) Are listed on the Nursery Eligible Plant Listing unless a written agreement provides otherwise;

(h) Are not stock plants;

(i) Are grown in accordance with the production practices for which premium rates have been established; and

(j) Meet the "mandatory" or "recommended" storage requirements, unless you have applied for and received the Frost/Freeze, and Cold Damage Exclusion Option for those nursery plants.

9. Insurance Period

In lieu of the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8), coverage begins on each unit or part of a unit the later of October 1 or the date we accept the inventory for insurance, provided you have complied with the terms of paragraph 7.(b)(1). Coverage will not attach for plant inventory added due to a revised nursery plant inventory summary until any additional premium is paid in full. Insurance ends for each unit at the earliest of:

(a) The date all plant inventory within the unit is sold or otherwise removed unless that inventory is replaced and additional earned premium is paid (If a portion of the plants are sold or otherwise removed from inventory, and are not replaced, insurance only ends on that part of the unit.);

(b) The date of final adjustment of a loss on the unit when the total indemnities paid for the unit equal the amount of insurance for that unit; or

(c) September 30 of the crop year.

10. Causes of Loss

(a) In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided for unavoidable damage caused only by the following causes of loss which occur within the insurance period:

(1) Adverse weather conditions;

(2) Fire, except as specified in (b)(4);

(3) Insects, but not damage due to insufficient or improper application of pest control measures;

(4) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption;

(8) Failure of the irrigation water supply, due to an unavoidable cause of loss occurring within the insurance period; or

(9) Frost or freeze if there is a failure or breakdown of frost/freeze protection equipment or facilities and the failure or breakdown is directly caused by an insurable cause of loss, provided the insured nursery plants are damaged by freezing temperatures within 72 hours after the failure of such equipment or facilities and you establish that repair or replacement was not possible between the time of failure or breakdown and the time the freezing temperatures occurred.

(b) In addition to the causes of loss excluded in section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), we do not insure against any loss caused by:

(1) Brownout;

(2) Failure of the power supply unless such failure is due to an insurable cause of loss;

(3) The inability to market the nursery plants as a direct result of quarantine, boycott, or refusal of a buyer to accept production;

(4) Fire, where weeds and other forms of undergrowth in the vicinity of the building and on your property have not been controlled; or

(5) Collapse or failure of buildings or structures.

11. Duties in the Event of Damage or Loss

In addition to your duties contained under section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), you must:

(a) Obtain our written consent prior to:

(1) Destroying, selling or otherwise disposing of any plant inventory that is damaged; or

(2) Changing or discontinuing your normal growing practices with respect to care and maintenance of the insured plant inventory.

(b) Upon our request, provide complete copies of your nursery plant inventory wholesale price list for the 12 month period immediately preceding the loss and your marketing records including plant shipping invoices for the same period.

(c) Submit a claim for indemnity to us on our form, not later than 60 days after the earliest of:

(1) The date of your loss; or

(2) The end of the insurance period.

12. Settlement of Claim

(a) The indemnity will be the amount calculated by us for each unit as follows:

(1) Subtracting field market value B from the lesser of:

(i) Field market value A; or

(ii) The highest monthly market value for the unit reported on the nursery plant inventory summary multiplied by .9;

(2) Subtracting the monthly loss deductible (not to exceed the remaining crop year loss deductible) from the product obtained in (1) above; and

(3) Multiplying the result by your share.

(b) Individual insured losses occurring on the same unit during the crop year may be accumulated if each loss is reported and valued by us to satisfy the crop year loss deductible. Paragraph 12.(a)(2) will not apply to any subsequent individual loss determinations when the total amount of accumulated monthly loss deductibles is equal to or greater than the crop year loss deductible. Total indemnities for a unit will not exceed the amount of insurance for the unit.

(c) The value of any insured plant inventory may be determined on the basis of our appraisals conducted after the end of the insurance period.

§ 457.115 Nursery Frost, Freeze, and Cold Damage Exclusion Option.

This is not a continuous option. Application for this option must be made on or before the sales closing date for each crop year this Option is to be in effect (see exception in item 2 below).

Insured's Name _____

Address _____

Contract Number _____

Identification Number _____

SSN/EIN _____

Tax I.D. _____

Crop Year _____

Unit Number _____

Hardiness Zone _____

For the crop year designated above, the Nursery Crop Provisions (§ 457.114) are amended in accordance with the following terms and conditions:

1. You must have the Common Crop Insurance Policy Basic Provisions and Nursery Crop Provisions in force.

2. This option must be submitted to us on or before the final date for accepting applications for the crop year in which you wish to insure your nursery plant inventory under this option. If the provisions of paragraph 6.(f)(2) of the Nursery Crop Provisions apply, we may accept this option after the sales closing date, or we may allow additional plants to be added to this option after such date.

3. Executing this option does not reduce the premium rate for nursery crop insurance.

4. All provisions of the Basic Provisions (§ 457.8) and Nursery Crop Provisions (§ 457.114) not in conflict with this option are applicable.

5. Upon execution of this option, the following plant varieties will not have frost, freeze, or cold damage coverage on this unit because the mandatory (Risk Group A) or recommended (Risk Group B) over-wintering requirements will not be met.

Scientific name	Common name	Over-wintering requirements to be excluded

Insured's Signature _____

Date _____

Insurance Company Representative's Signature and Code Number _____

Date _____

Done in Washington, DC, on June 9, 1995.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 95–14710 Filed 6–14–95; 8:45 am]

BILLING CODE 3410–08–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 104, 110, and 114

[Notice 1995–8]

Repeal of Obsolete Rules

AGENCY: Federal Election Commission.

ACTION: Final rule with request for comments.

SUMMARY: The Commission is repealing three obsolete provisions of its regulations. The repealed provisions involve contributions to retire pre-1975 debts; certain 1976 payroll deductions for separate segregated funds; and an alternative reporting option for candidates in presidential elections held prior to January 1, 1981.

DATES: Comments must be received on or before July 17, 1995. If no adverse comments are received, the rules will be sent to Congress for a 30 legislative day review period pursuant to 2 U.S.C. 438(d) at the close of this comment period. Further action, including the announcement of an effective date, will be taken at the close of the legislative review period. A document announcing the effective date will be published in the **Federal Register**.

ADDRESSES: Comments must be in writing and addressed to: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, D.C. 20463.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, N.W., Washington, D.C. 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is repealing three obsolete provisions in its rules. All regulate activity that has now been concluded and that cannot recur.

The Commission is issuing these rules as final rules subject to a 30 day public comment period. If no adverse comments are received, the rules will be sent to Congress at the close of this comment period, for a 30 legislative day review period pursuant to 2 U.S.C. 438(d). Further action, including the announcement of an effective date, will take place following this 30 legislative day review period.

If adverse comments are received during the public comment period, the Commission will withdraw these final rules, and publish a Notice of Proposed Rulemaking addressing these issues.

Explanation and Justification

Part 104—Reports by Political Committees

Section 104.17 Content of Reports; Presidential and Vice Presidential Committees

The Commission is repealing 11 CFR 104.17, which established alternative filing procedures for authorized committees of candidates for President and Vice President for elections occurring prior to January 1, 1981. The last committees following these procedures were administratively terminated by the Commission on May 25, 1995. No such committees are currently operating under these provisions.

Part 110—Contribution and Expenditure Limitations and Prohibitions

Section 110.1 Contributions by Persons Other Than Multicandidate Political Committees

The Commission is repealing 11 CFR 110.1(g), *Contributions to retire pre-1975 debts*. This paragraph exempts contributions made to retire debts resulting from elections held prior to January 1, 1975, from the 11 CFR part 110 contribution limits as long as certain requirements are met. The last committee with pre-1975 debts has resolved these obligations. There are currently no committees registered with the Commission that are paying off pre-1975 election debts.

Part 114—Corporate and Labor Organization Activity

Section 114.12 Miscellaneous Provisions

The Commission is repealing 11 CFR 114.12(d). That paragraph allowed a corporation that offered all of its employees a payroll deduction plan prior to May 11, 1976, for contributions made to the corporation's separate segregated fund to continue to make such deductions for those employees who were not executive or administrative personnel, or stockholders, until December 31, 1976.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]

The attached final rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that these rules repeal obsolete provisions of the Commission's rules and thus have no impact on any current activity.

List of Subjects

11 CFR Part 104

Campaign funds, Politica) committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 110

Campaign funds, Political committees and parties.

11 CFR Part 114

Business and industry, Elections, Labor.

For reasons set out in the preamble, chapter I of title 11 of the Code of Federal Regulations is amended to read as follows:

PART 104—REPORTS BY POLITICAL COMMITTEES

1. The authority citation for part 104 continues to read as follows:

Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8), 438(b).

§ 104.17 [Removed]

2. Section 104.17 is removed.

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

3. The authority citation for part 110 continues to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d(a)(8), 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g and 441h.

§ 110.1 [Amended]

4. Section 110.1 is amended by removing and reserving paragraph (g).

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

5. The authority citation for part 114 continues to read as follows:

Authority: 2 U.S.C. 431(8)(B), 431(9)(B), 432, 437d(a)(8), 438(a)(8), and 441b.

§ 114.12 [Amended]

6. Section 114.12 is amended by removing paragraph (d).

Dated: June 9, 1995.

Danny Lee McDonald,

Chairman.

[FR Doc. 95–14592 Filed 6–14–95; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303, 304, 308, 309, 324, 337, 341, 343, 346, 361 and 362

Applications, Requests, Submittals, Delegations of Authority, and Notices Required To Be Filed by Statute or Regulation; Forms, Instructions and Reports; Rules of Practice and Procedure; Disclosure of Information; Agricultural Loan Loss Amortization; Unsafe and Unsound Banking Practices; Registration of Securities Transfer Agents; Insured State Nonmember Banks Which Are Municipal Securities Dealers; Foreign Banks; Minority and Women Outreach Program—Contracting; Activities and Investments of Insured State Banks

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is adopting final amendments concerning delegations of authority and other technical amendments to its regulations in order to reflect a recent internal reorganization. Under the revised organizational structure, which becomes effective June 18, 1995, the FDIC's divisions and offices will report to one of three deputies to the Chairman. As part of the restructuring, a new Division of Insurance is being established to identify and assess risks to the deposit insurance funds, which the FDIC administers. In addition, a new Division of Administration is being created by abolishing the Offices of Personnel Management, Corporate Services, and Training and Educational Services and transferring their functions to the new division. As a result of the reorganization, the position of Executive Director for Compliance, Resolutions, and Supervision is being abolished as no longer necessary. The intended effect of these amendments is to provide the Director of the Division of Supervision with appropriate delegated authority and to make other technical and conforming amendments to implement the agency's reorganization.

EFFECTIVE DATE: June 18, 1995.

FOR FURTHER INFORMATION CONTACT: Joseph A. DiNuzzo, Acting Senior Counsel, Legal Division (202–898–7349), or Lori J. Sommerfeld, Attorney, Legal Division (202–898–8515).

SUPPLEMENTARY INFORMATION:

Background

On May 16, 1995, the FDIC's Board of Directors adopted a resolution approving an internal reorganization of the agency, which will result in several organizational and management changes that become effective June 18, 1995. Under the revised organizational structure, the FDIC's divisions and offices will report to one of three deputies to the Chairman: the Deputy to the Chairman/Chief Operating Officer (Deputy/COO), the Deputy to the Chairman for Finance/Chief Financial Officer (Deputy/CFO), and the Deputy to the Chairman for Policy (Deputy/Policy). Specifically, the Divisions of Supervision, Compliance and Consumer Affairs, Research and Statistics, and Information Resources Management, as well as the Offices of the Executive Secretary and Equal Employment Opportunity, will report to the Chairman through the Deputy/COO. The Deputy/CFO will provide general oversight over the operations of the Divisions of Resolutions, Depositor and Asset Services, and Finance, and the Deputy/Policy will serve the same function with respect to the Offices of Corporate Communications, Legislative Affairs, and Ombudsman. The General Counsel and the Inspector General, however, will continue to report directly to the Chairman.

As part of the reorganization, a new Division of Insurance is being established to identify and assess existing and emerging risks to the deposit insurance funds, which the FDIC administers. Furthermore, a new Division of Administration is being created by abolishing the Offices of Personnel Management, Corporate Services, and Training and Educational Services and transferring their functions to the new division. As a result of the reorganization, the position of Executive Director for Compliance, Resolutions, and Supervision (Executive Director), which provided general oversight for the Divisions of Compliance and Consumer Affairs, Resolutions and Supervision, is being abolished as no longer necessary. Other management changes are being made as part of the restructuring, but those do not require regulatory amendments.

Discussion

The FDIC has identified portions of its regulations that will be directly affected by the aforementioned corporate reorganization and thus require modification. The first set of technical changes amend Parts 303, 337, 346 and 362 to delete all references to the position of Executive Director and to provide the Director of the Division of Supervision (DOS) with appropriate delegated authority. The second set of amendments involve conforming changes to reflect the new names of a division affected by the reorganization and to conform obsolete names of divisions found throughout the FDIC's regulations to their current nomenclature. Specifically, most references to the Division of Accounting and Corporate Services (DACS) are being changed to either the Division of Administration, which will assume part of the duties and functions of DACS as part of the restructuring, or the Division of Finance (DOF), which already assumed a portion of DACS' duties and functions during a prior reorganization. Two references to DACS are being changed to DOS to reflect the availability of forms from the latter division. Further, references to the obsolete terms "Division of Liquidation" and "Division of Bank Supervision" are being amended to reflect their current names, the Division of Depositor and Asset Services (DDAS) and DOS, respectively.

A. Technical Amendments to Parts 303, 337, 346 and 362

1. Part 303 (Applications, Requests, Submittals, Delegations of Authority, and Notices Required To Be Filed by Statute or Regulation)

Part 303 of the FDIC's regulations generally describes the procedures to be followed by both the FDIC and applicants with respect to applications, requests, or notices required to be filed by statute or regulation. Part 303 also sets forth delegations of authority from the FDIC's Board of Directors to the Directors of DOS and the Division of Compliance and Consumer Affairs (DCA) and, in some cases, their designees to act on certain applications and other matters. Section 303.0(c)(1) of the FDIC's regulations (12 CFR 303.0(c)(1)) provides that, for purposes of Part 303, the Executive Director may exercise any authority delegated to the Director of DOS or the Director of DCA or, in the event the title Executive Director becomes obsolete, an official of equivalent of authority. Since the title of Executive Director has been abolished and an "official of equivalent authority" does not exist, this provision is no longer necessary. Accordingly, § 303.0(c)(1) is removed.

2. Part 337 (Unsafe and Unsound Banking Practices)

Part 337 of the FDIC's regulations governs certain banking practices which are likely to have adverse effects on the safety and soundness of insured state nonmember banks or which are likely to result in violations of law or regulations. Sections 337.6(e) and 337.6(h)(3) of the FDIC regulations (12 CFR 337.6(e), (h)(3)) provide delegated authority to both the Executive Director and the Director of DOS in connection with brokered deposits. Section 337.6(e) provides that the Executive Director, the Director of DOS and, when confirmed in writing by the Director, an associate director or appropriate regional director or deputy regional director may approve waiver applications to accept, renew or roll over brokered deposits. Section 337.6(h)(3) provides that the Executive Director or the Director of DOS or any of their designees may request, from time to time, quarterly written reports from deposit brokers regarding the volume of brokered deposits placed with a specific insured depository institution and the maturities, rates and costs associated with such deposits. These sections are amended only to delete the reference to Executive Director; the Director of DOS or designee will retain this delegated authority.

3. Part 346 (Foreign Banks)

The activities and operations of branches of foreign banks (both insured and uninsured) are governed by Part 346 of the FDIC's regulations. Section 346.101(g) (12 CFR 346.101(g)) delegates authority to the Executive Director and the Director of DOS and, where confirmed in writing by the Director, to an associate director or appropriate regional director or deputy regional director to approve divestiture and cessation plans submitted by insured state branches of foreign banks. This section is amended to delete the reference to Executive Director. Again, the Director of DOS or designee will retain this delegated authority.

4. Part 362 (Activities and Investments of Insured State Banks)

Part 362 implements section 24 of the Federal Deposit Insurance Act (12 U.S.C. 1831a), which sets forth certain restrictions and prohibitions on the activities and investments of insured state banks and their subsidiaries. Section 362.6 of the FDIC's regulations (12 CFR 362.6) delegates to the Executive Director the authority to act on applications by state banks to engage in activities or make equity investments not permissible for national banks and to take related actions. The Executive Director may then subdelegate this authority in writing to the Director of DOS or designee. Since the position Executive Director has been abolished, this section is being amended to delegate such authority directly from the Board of Directors to the Director of DOS, who may then subdelegate the authority in writing to appropriate officials within DOS.

B. Conforming Amendments: Division Names

Several conforming amendments are being made to reflect the new names of a division directly affected by the reorganization. Specifically, most references to DACS are being changed to either the "Division of Administration" or the "Division of Finance" in order to reflect the names of the divisions to which DACS' duties and functions have been transferred. Two references to DACS are being changed to DOS to indicate the availability of certain forms (Form 8020/05 [Summary of Deposits] and FFIEC Form 001 [Annual Report of Trust Assets]) from the latter division.

In addition, the FDIC is taking this opportunity to correct obsolete references to two divisions within the Corporation that are found throughout the agency's regulations. All references to the Division of Liquidation and the Division of Bank Supervision are being changed to "Division of Depositor and Asset Services" and "Division of Supervision," respectively, to reflect the current names of those divisions.

Exemption From Public Comment

Rules of agency organization, procedure or practice are exempt from the public comment requirements of section 553 of the Administrative Procedure Act (5 U.S.C. 553(b)(A)). The FDIC believes that it is unnecessary to seek public comment in this case because these amendments clearly concern rules of agency organization, procedure or practice which fall within this exemption. Therefore, the amendments are being issued as a final, rather than proposed, rule.

Effective Date of Amendments

Section 553 of the Administrative Procedure Act (5 U.S.C. 553) generally requires that a final rule be published 30 days prior to its effective date, subject to certain exceptions. One such exception is that if an agency finds good cause for making a rule immediately effective and publishes the basis for its determination, then the rule need not be published 30 days before it becomes effective. 5 U.S.C. 553(d)(3). These amendments merely pertain to internal organization and delegations of authority and do not affect any substantive rights of entities regulated by the FDIC. Accordingly, the FDIC Board of Directors finds good cause to waive the 30-day delayed effective date in order to quickly effectuate the corporate reorganization and to reflect the name of the newly created Division of Administration.

Regulatory Flexibility Act

The Board of Directors hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It will not impose burdens on depository institutions of any size and will not have the type of economic impact addressed by the Act. Therefore, the Act's requirements regarding an initial and final regulatory flexibility analysis (*Id.* at 603 & 604) do not apply.

Paperwork Reduction Act

This rulemaking does not require any collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Accordingly, no information has been submitted to the Office of Management and Budget for review.

Authority

These amendments are promulgated under the FDIC's general authority to prescribe, through its Board of Directors, such rules and regulations as it may deem necessary to carry out the provisions of the Federal Deposit Insurance Act or any other law which the FDIC has the responsibility of administering or enforcing (except to the extent that authority to issue such rules and regulations has been expressly and exclusively granted to any other regulatory agency). 12 U.S.C. 1819(a)(Tenth).

List of Subjects

12 CFR Part 303

Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Insured depository institutions, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 337

Banks, banking, Reporting and recordkeeping requirements, Securities.

12 CFR Part 346

Bank deposit insurance, Foreign banking, Reporting and recordkeeping requirements.

12 CFR Part 362

Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Insured depository institutions, Investments.

The Board of Directors of the Federal Deposit Insurance Corporation, under the authority of 12 U.S.C. 1819(a)(Tenth), hereby amends Parts 303, 304, 308, 309, 324, 337, 341, 343, 346, 361 and 362 of title 12 of the Code of Federal Regulations as follows:

PART 303—APPLICATIONS, REQUESTS, SUBMITTALS, DELEGATIONS OF AUTHORITY, AND NOTICES REQUIRED TO BE FILED BY STATUTE OR REGULATION

1. The authority citation for Part 303 continues to read as follows:

Authority: 12 U.S.C. 378, 1813, 1815, 1816, 1817(a)(2)(b), 1817(j), 1818, 1819 ("Seventh," "Eighth" and "Tenth"), 1828, 1831e, 1831o, 1831p–1(a); 15 U.S.C. 1607.

§ 303.0 [Amended]

2. In § 303.0, the heading for paragraph (c) and paragraph (c)(1) are removed and paragraph (c)(2) is redesignated as paragraph (c).

PART 337—UNSAFE AND UNSOUND BANKING PRACTICES

1. The authority citation for Part 337 continues to read as follows:

Authority: 12 U.S.C. 375a(4), 375b, 1816, 1818(a), 1818(b), 1819, 1821(f), 1828(j)(2), 1831f, 1831f–1.

2. Section 337.6 is amended by revising the first sentence of paragraph (e)(1) and paragraph (h)(3) to read as follows:

§ 337.6 Brokered deposits.

* * * * *

(e) *Decision.* (1) The Director of the Division of Supervision and, when confirmed in writing by the Director, an associate director or the appropriate regional director or deputy regional director, shall each have the authority to approve any waiver application properly filed. * * *

* * * * *

(h) * * *

(3) The Director of the Division of Supervision or designee may request, from time to time, quarterly written reports from any deposit broker regarding the volume of brokered deposits placed with a specified insured depository institution and the maturities, rates and costs associated with such deposits.

* * * * *

PART 346—FOREIGN BANKS

1. The authority citation for Part 346 continues to read as follows:

Authority: 12 U.S.C. 1813, 1815, 1817, 1819, 1820, 3103, 3104, 3105, 3108.

2. Section 346.101 is amended by revising paragraph (g) to read as follows:

§ 346.101 Applications.

* * * * *

(g) *Delegation of authority.* Authority is hereby delegated to the Director of the Division of Supervision and, when confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to approve plans of divestiture and cessation submitted pursuant to paragraph (f) of this section.

PART 362—ACTIVITIES AND INVESTMENTS OF INSURED STATE BANKS

1. The authority citation for Part 362 continues to read as follows:

Authority: 12 U.S.C. 1816, 1818, 1819(Tenth), 1831a.

2. Section 362.6 is revised to read as follows:

§ 362.6 Delegation of authority.

The authority to review and act upon divestiture plans submitted pursuant to § 362.3(c)(2); the authority to approve or deny notices filed pursuant to § 362.3(d); the authority to approve or deny applications pursuant to § 362.3(b)(7)(ii); and the authority to approve or deny requests for consent pursuant to § 362.4(d) as well as to take any other action authorized by § 362.4(d) is delegated to the Director of the Division of Supervision or the Director's designee.

PARTS 304, 308, 309, 324, 341, 343, 346 AND 361—[AMENDED]

§ 304.5 [Amended]

1. In § 304.5(a) and (c), by removing the words "Bank Financial Reporting Section, Division of Accounting and Corporate Services" and adding in lieu thereof the words "Division of Supervision" each place they appear.

§ 309.4 [Amended]

2. In § 309.4(e) introductory text, by removing the words "Information Center Unit, Bank Systems Section, Management Information Services Branch, Division of Accounting and Corporate Services" and adding in lieu thereof the words "Division of Finance" and by removing the semicolon at the end of the paragraph and adding a colon in its place.

§ 361.7 [Amended]

3. In § 361.7(b), by removing the words "Corporate Services Branch, Division of Accounting and Corporate Services" and adding in lieu thereof the words "Division of Administration".

§§ 308.145, 309.4, 309.5 [Amended]

4. By removing the words "Division of Liquidation" and adding in lieu thereof the words "Division of Depositor and Asset Services" where they appear in the following places:

a. § 308.145
b. § 309.4(g)
c. § 309.5(h)

§§ 324.2, 324.7, 341.3, 341.5, 343.3, 346.20 [Amended]

5. By removing the words "Division of Bank Supervision" and adding in lieu thereof the words "Division of Supervision" where they appear in the following places:

a. § 324.2(d)
b. § 324.7(a)
c. § 341.3(c)
d. § 341.5(b)
e. § 343.3(e)
f. § 346.20(a)

By Order of the Board of Directors.

Dated at Washington, D.C. this 8th day of June, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 95–14661 Filed 6–14–95; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–110; Special Conditions No. 25–ANM–100]

Special Conditions: Modified Gulfstream American Corporation Model 1159 Airplane; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Gulfstream American Corporation (GAC) Model 1159 airplane, modified by Learjet, Inc., of Denver, Colorado. This airplane will be equipped with a digital Electronic Flight Instrument System (EFIS) that will perform critical functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of the EFIS from the effects of high-intensity radiated fields (HIRF). These special conditions provide the additional safety standards that the Administrator considers necessary to ensure that the critical functions performed by this system are maintained when the airplane is exposed to HIRF.

DATES: The effective date of these special conditions is May 26, 1995. Comments must be received on or before July 31, 1995.

ADDRESSES: Comments on these final special conditions, request for comments, may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7), Docket No. NM–110, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked "Docket No. NM–110." Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Quam, FAA, Standardization Branch, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2145.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM–110." The postcard will be date stamped and returned to the commenter.

Background

On March 27, 1995, Learjet, Inc., of Denver, Colorado, applied for a supplemental type certificate to modify the Gulfstream American Corporation (GAC) Model 1159 airplane. The GAC Model 1159 airplane is a business jet with two aft-mounted turbofan engines. The airplane can carry two pilots and 19 passengers, depending on the exit and interior configuration, and is capable of operating to an altitude of 45,000 feet. The original equipment installed in these airplanes presented the required flight information in the form of analog displays. The proposed modification incorporates the installation of a five tube digital Electronic Flight Instrument System (EFIS) that displays required flight critical information and critical functions. The installation of the EFIS system displaying critical functions is potentially vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Supplemental Type Certification Basis

Under the provisions of § 21.101 of the Federal Aviation Regulations (FAR), Learjet, Inc., must show that the altered GAC Model 1159 airplane continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A12EA, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis."

The regulations incorporated by reference in Type Certificate No. A12EA include the following for the GAC Model 1159 airplanes: Civil Aviation Regulation (CAR) 4b dated December 31, 1953, including Amendments 4b–1 through 4b–14, Special Regulations SR422B and SR450A. In addition, under § 21.101(b)(1), the following sections of the FAR apply to the EFIS installation: 25.1301(d), 25.1303, and 25.1322, as amended by Amendment 25–38; and 25.1309, 25.1321(a)(b)(d), and (e), 25.1331, 25.1333, and 25.1335, as amended by Amendment 25–41. These special conditions will form an additional part of the supplemental type certification basis.

If the Administrator finds that the applicable airworthiness regulations (i.e., CAR 4b or part 25, as amended) do not contain adequate or appropriate safety standards for the GAC Model 1159 airplane because of a novel of unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Discussion

There is no specific regulation that addresses protection requirements for electrical and electric systems from high-intensity radiated fields (HIRF). Increased power levels from ground-based radio transmitters, and the growing use of sensitive electrical and electronic systems to command and control airplanes, have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the modified GAC Model 1159 airplanes that would require that the EFIS be designed and installed to preclude component damage and interruption of function due to the effects of HIRF.

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as the EFIS, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplanes will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The treat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated:

Frequency	Peak (V/M)	Average (V/M)
10 KHz–100 KHz	50	50
100 KHz–500 KHz	60	60
500 KHz–2000 KHz	70	70
2 MHz–30 MHz	200	200
30 MHz–70 MHz	30	30
70 MHz–100 MHz	30	30
100 MHz–200 MHz	150	33
200 MHz–400 MHz	70	70
400 MHz–700 MHz	4,020	935
700 MHz–1000 MHz	1,700	170
1 GHz–2 GHz	5,000	990
2 GHz–4 GHz	6,680	840
4 GHz–6 GHz	6,850	310
6 GHz–8 GHz	3,600	670
8 GHz–12 GHz	3,500	1,270
12 GHz–18 GHz	3,500	360
18 GHz–40 GHz	2,100	750

As discussed above, these special conditions are applicable to the GAC Model 1159 airplane, modified by Learjet, Inc. Should Learjet, Inc. apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A12EA to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well, under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain unusual or novel design features on GAC Model 1159 airplanes modified by Learjet, Inc. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of this feature on this airplane.

The substance of these special conditions has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. Therefore these special conditions are being made effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority. 49 U.S.C. app. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the GAC Model 1159 airplane, as modified by Learjet, Inc.:

1. *Protection from Unwanted Effects of High-Intensity Radioted Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields external to the airplane.

2. The following definition applies with respect to this special condition: *Critical Function.* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on May 26, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certificotion Service.

[FR Doc. 95–14660 Filed 6–14–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–NM–98–AD; Amendment 39–9254; AD 95–12–04]

Airworthiness Directives; Airbus Industrie Model A320–231 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Model A320–231 series airplanes, that requires repetitive functional checks to detect leakage of the distribution piping of the engine fire extinguishing system, and repair, if necessary; and modification of the piping, which would terminate the inspection requirements. This amendment is prompted by reports of cracking of the engine fire extinguisher pipe, which resulted in leakage of the fire extinguisher agent. The actions specified by this AD are intended to prevent leakage of the fire extinguishing agent, which could prevent the proper distribution of the agent within the nacelle in the event of a fire.

DATES: Effective July 17, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 17, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington, 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A320–231 series airplanes was published in the **Federal Register** on January 30, 1995 (60 FR 5599). That action proposed to require repetitive visual inspections to detect leakage of the distribution piping of the engine fire extinguishing system, and repair, if necessary; and modification of the piping, which would terminate the inspection requirements.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air

safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 14 airplanes of U.S. registry will be affected by this AD, that it will take approximately 48 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $40,320, or $2,880 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–12–04 Airbus Industrie: Amendment 39–9254. Docket 94–NM–98–AD.

Applicability: Model A320–231 series airplanes; manufacturer's serial numbers (MSN) 028, 035, 037, 038, 043, 045 through 058 inclusive, 064 through 067 inclusive, 074 through 077 inclusive, 080 through 082 inclusive, 089 through 092 inclusive, 095, and 096; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent leakage of the fire extinguishing agent, which could prevent the proper distribution of the agent within the nacelle in the event of a fire, accomplish the following:

(a) Within 500 flight hours after the effective date of this AD, perform a functional check to detect leakage of fire extinguishing agent from the distribution piping of the engine fire extinguishing system, in accordance with either Airbus All Operators Telex (AOT) 26–11, dated January 3, 1994, or Airbus Service Bulletin A320–26–1032, dated March 31, 1994.

(1) If no leakage is found, or if leakage is within the limits specified in the AOT or the service bulletin, repeat the functional check thereafter at intervals not to exceed 500 flight hours.

(2) If any leakage is beyond the limits specified in the AOT or the service bulletin, prior to further flight, modify the piping in accordance with either the AOT or Airbus Service Bulletin A320–26–1031, dated March 31, 1994.

(b) Within 4,000 flight hours after the effective date of this AD, modify the piping in accordance with either Airbus AOT 26–11, dated January 3, 1994, or Airbus Service Bulletin A320–26–1031, dated March 31, 1994. Accomplishment of this modification constitutes terminating action for the repetitive functional check requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The functional checks and modification shall be done in accordance with either Airbus AOT 26–11, dated January 3, 1994, or Airbus Service Bulletin A320–26–1031, dated March 31, 1994; or Airbus Service Bulletin A320–26–1032, dated March 31, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on July 17, 1995.

Issued in Renton, Washington, on May 26, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–13506 Filed 6–14–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–96–AD; Amendment 39–9246; AD 95–11–13]

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes Equipped With Pratt & Whitney Model PW4460 and PW4462 Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a typographical error that appeared in paragraph (c) of the above-captioned airworthiness directive (AD) that was published in the Federal Register June 1, 1995 (60 FR 28527). A typographical error in paragraph (c) of the AD resulted in a reference to a part number that is inaccurate.

DATES: Effective June 16, 1995.

The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the Federal Register as of June 16, 1995 (60 FR 28527, June 1, 1993).

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5324; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: Airworthiness Directive (AD) 95–11–13, amendment 39–9246, applicable to certain McDonnell Douglas Model MD–11 series airplanes, was published as a final rule in the **Federal Register** on June 1, 1995 (60 FR 28527). As published, that final rule contained a typographical error in paragraph (c). Paragraph (c) indicated that no person shall install an aft mount beam assembly, part number (P/N) 221–021–501. However, the correct P/N is 221–0261–501, which is cited correctly throughout the rest of the final rule.

This document corrects the reference to the P/N cited in the paragraph (c) of AD 95–11–13, to read as follows:

"(c) As of the effective date of this AD, no person shall install an aft mount beam assembly, P/N 221–0261–501, on any airplane, unless it has been previously inspected and re-identified in accordance with the paragraph 3.B., Phase 2, of the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin MD11–71A073, Revision 1, dated May 16, 1995."

Since no other part of the regulatory information has been changed, the final rule is not being republished.

Issued in Renton, Washington, on June 9, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–14629 Filed 6–14–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–ANE–20; Amendment 39–9270; AD 95–12–19]

Airworthiness Directives; Pratt & Whitney JT8D–200 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Pratt & Whitney (PW) JT8D–200 series turbofan engines. This action requires periodic inspection of fan blades for locked fan blade shrouds and foreign object damage (FOD); unlocking of fan blade shrouds, if necessary; and lubrication of fan blade shrouds. This amendment is prompted by reports of six recent fan blade failures, two of which resulted in the separation of the engine nose cowl from the aircraft. The actions specified in this AD are intended to prevent fan blade failure, which can result in damage to the aircraft.

DATES: Effective June 30, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 30, 1995.

Comments for inclusion in the Rules Docket must be received on or before August 14, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–ANE–20, 12 New England Executive Park, Burlington, MA 01803–5299.

The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark A. Rumizen, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7137, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has received six recent reports of engine failures due to fan blade failures on Pratt & Whitney (PW) JT8D–200 series turbofan engines. Fan blade failures can have serious secondary effects such as inlet cowl penetration or liberation, engine flange separation, fuel leaks, or impact damage to the aircraft. Most of these failures result from fractures that originate in the leading edge of the blade just above the platform. The FAA has determined that the primary cause of the failures is high cycle fatigue (HCF) cracking that is initiated by foreign object damage (FOD) to this area of the blade. Other factors have been found to increase the blade stresses such that the blade is more susceptible to FOD induced HCF cracking. These factors include locked fan blade shrouds, which increase blade stresses, and leading edge erosion, which can produce blade flutter. This condition, if not corrected, could result in fan blade failure, which can result in damage to the aircraft.

The FAA has reviewed and approved the technical contents of PW All Operators Wire (AOW) No. JT8D/72–33/CTS: CRC–5–4–5–1, dated April 5, 1995, that describes procedures for periodic inspection of fan blades for locked rotors and FOD; unlocking of fan blade shrouds, if necessary; and lubrication of fan blade shrouds.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design, this airworthiness directive (AD) is being issued to prevent fan blade failure, which can result in damage to the aircraft. This AD requires periodic inspection of fan blades for locked rotors and FOD; unlocking of fan blade shrouds, if necessary; and lubrication of fan blade shrouds. The actions are required to be accomplished in accordance with the AOW described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–ANE–20." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–12–19 Pratt & Whitney: Amendment 39–9270. Docket 95–ANE–20.

Applicability: Pratt & Whitney (PW) Models JT8D–209, –217, –217A, –217C, and –219 turbofan engines that have installed fan blades, Part Numbers 798821, 798821–001, 808121, 808121–001, 809221, 811821, 851121, 851121–001, 5000021–02, 5000021–022, and 5000021–032. These engines are installed on but not limited to McDonnell Douglas MD–80 series aircraft.

Note: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any engine from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent fan blade failure, which can result in damage to the aircraft, accomplish the following:

(a) Inspect fan blades and shrouds, unlock fan blade shrouds, and lubricate fan blade shrouds, in accordance with the intervals and procedures described in Parts 1 and 2 of PW All Operators Wire (AOW) No. JT8D/72–33/CTS: CRC–5–4–5–1, dated April 5, 1995.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(d) The requirements of this AD shall be done in accordance with the following service document:

Document no.	Pages	Date
PW AOW No. JT8D/72–33/CTS: CRC–5–4–5–1. Total pages: 5.	1–5	April 5, 1995.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(e) This amendment becomes effective on June 30, 1995.

Issued in Burlington, Massachusetts, on June 5, 1995.

Ronald L. Vavruska,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–14638 Filed 6–13–95; 9:16 am]

BILLING CODE 4910–13–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 381

[Docket No. RM95–11–000]

Annual Update of Filing Fees

June 9, 1995.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: In accordance with the Commission's regulations, the Commission issues this update of its filing fees. This document provides the yearly update using data in the Commission's Payroll Utilization Reporting System to calculate the new fees. The purpose of updating is to adjust the fees on the basis of the Commission's costs for Fiscal Year 1994.

EFFECTIVE DATE: July 17, 1995.

FOR FURTHER INFORMATION CONTACT: Maria Bondarenko, Office of the Executive Director and Chief Financial Officer, Federal Energy Regulatory Commission, 810 First Street, N.E., Room 631, Washington, D.C. 20426, (202) 219–2877.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of

this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3308, 941 North Capitol Street, N.E., Washington, D.C. 20426.

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The Federal Energy Regulatory Commission (Commission), by its designee the Executive Director and Chief Finanical Officer [1] is issuing this document to update filing fees the Commission assesses for specific services and benefits provided to identifiable beneficiaries. Pursuant to § 381.104 of the Commission's regulations, the Commission is establishing updated fees on the basis of the Commission's Fiscal Year 1994 costs. The adjusted fees announced in this document are effective July 17, 1995. The new fee schedule is as follows:

Fees Applicable to the Natural Gas Policy Act	
1. Review of jurisdictional agency determinations. (18 CFR 381.402)	$100
2. Petitions for rate approval pursuant to 18 CFR 284.123(b)(2). (18 CFR 381.403)	5,740
3. Initial or extension reports for Title III transactions. (18 CFR 381.404)	120
Fees Applicable to General Activities	
1. Petition for issuance of a declaratory order (except under Part I of the Federal Power Act). (18 CFR 381.302)	11,550
2. Review of a Department of Energy remedial order:	
Amount in Controversy	
$0–9,999. (18 CFR 381.303(b))	100
$10,000–29,999. (18 CFR 381.303(b))	600
$30,000 or more. (18 CFR 381.303(a))	16,860
3. Review of a Department of Energy denial of adjustment:	
Amount in Controversy	
$0–9,999. (18 CFR 381.304(b))	100
$10,000–29,999. (18 CFR 381.304(b))	600
$30,000 or more. (18 CFR 381.304(a))	8,840
4. Written legal interpretations by the Office of the General Counsel. (18 CFR 381.305(a))	3,310
Fees Applicable to Natural Gas Pipelines	
1. Pipeline certificate applications pursuant to 18 CFR 284.224. (18 CFR 381.207(b))	1,000
Fees Applicable to Cogenerators and Small Power Producers	
1. Certification of qualifying status as a small power production facility. (18 CFR 381.505(a))	9,930
2. Certification of qualifying status as a cogeneration facility. (18 CFR 381.505(a))	11,240
3. Applications for exempt wholesale generator status. (18 CFR 381.801)	1,020

List of Subjects in 18 CFR Part 381

Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

Christie McGue,

Executive Director and Chief Financial Officer.

In consideration of the foregoing, the Commission amends Part 381, Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

[1] 18 CFR 375.313(a)

PART 381—FEES

1. The authority citation for Part 381 continues to read as follows:

Authority: 15 U.S.C. 717–717w; 16 U.S.C. 791–828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

§ 381.302 [Amended]

2. In § 381.302, paragraph (a) is amended by removing "$10,930" and inserting "$11,550" in its place.

3. In § 381.303, paragraph (a) is amended by removing "$15,960" and inserting "$16,860" in its place.

§ 381.304 [Amended]

4. In § 381.304, paragraph (a) is amended by removing "$8,370" and inserting "$8,840" in its place.

§ 381.305 [Amended]

5. In § 381.305, paragraph (a) is amended by removing "$3,130" and inserting "$3,310" in its place.

§ 381.403 [Amended]

6. Section 381.403 is amended by removing "$5,440" and inserting "$5,740" in its place.

§ 381.505 [Amended]

7. In § 381.505, paragraph (a) is amended by removing "$9,400" and inserting "$9,930" in its place and by removing "$10,640" and inserting "$11,240" in its place.

§ 381.801 [Amended]

8. Section 381.801 is amended by removing "$1,350" and inserting "$1,020" in its place.

[FR Doc. 95–14595 Filed 6–14–95; 8:45 am]

BILLING CODE 6717–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

18 CFR Parts 803, 804 and 805

Review and Approval of Projects; Special Regulations and Standards; Hearings/Enforcement Actions

AGENCY: Susquehanna River Basin Commission (SRBC)

ACTION: Final rule.

SUMMARY: This action finalizes adoption of a reorganized and revised set of regulations and procedures for review of projects. These regulations implement the commission's general project review authority set forth in Section 3.10 of the Susquehanna River Basin Compact and its authority under other portions of the compact to set standards for the operation of projects and to enforce its regulations. Other regulations cover registration of water withdrawals and water conservation.

EFFECTIVE DATE: May 11, 1995.

ADDRESSES: 1721 N. Front Street, Harrisburg, Pa. 17102–2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo or John D. Graham, 717–238–0422.

SUPPLEMENTARY INFORMATION:

History

These regulations were first proposed on May 12, 1994 and appeared in the **Federal Register** on June 8, 1994 at p. 29563. They replace the commission's existing project review regulations found in Part 803 of the Code of Federal Regulations. Their purpose is to improve the overall precision and clarity of the regulations; to reorganize the regulations into an integrated format that is more readily understood by the regulated community; and to address subject matter not addressed or inadequately addressed in the existing regulations.

A series of eight public hearings were held throughout the river basin during the summer of 1994. The hearings produced a large number of comments, most of which were directed to the revised consumptive use regulation. Agriculture and public water suppliers provided most of these comments. After considering these comments and making a number of changes in the originally proposed regulation, the commission held a final hearing on March 9, 1995. Additional changes were made in response to the comments received at this hearing. A copy of a document showing all of these changes may be obtained upon request to the commission at the above address or phone.

Due to the many comments and questions raised on the consumptive use portion of the regulations, and because of the complexity and potential regulatory impacts of that particular regulation, the Commission determined that further consultations and discussions with the regulated community will be needed before final action. At the same time, the Commission feels that the remaining portion of the regulations will greatly improve the Commission's regulations and procedures for review of projects and should be adopted as soon as possible. Therefore, the Commission is proceeding with final rulemaking on these regulations, except for the proposed revisions to the regulation on the consumptive use of water which are deferred. The current consumptive use regulation found at 18 CFR 803.61 is substantially retained and renumbered as § 803.42. The Commission will continue the consultation process with the regulated community in an effort to develop a future strategy for the management of agricultural and public water supply uses. The current suspension of the consumptive use regulation with respect to agricultural consumptive uses under Commission Resolution 94–05 also remains in effect.

The comments relating to the non-consumptive use portion of the regulations are summarized below and responses provided.

Comments/Responses

1. Public water suppliers do not have the legal authority to enforce water conservation requirements.

Response: The water conservation standards which are set forth in the omnibus package have been in effect since 1979 without burdening public water suppliers on the issue of enforcement of conservation measures. The regulation says that such measures shall be implemented "as circumstances warrant." We see no real difficulty for water suppliers to distribute literature to customers describing water conservation techniques and implementing a water pricing structure that encourages conservation. As for requiring installation of conservation devices, at least this could be implemented as a requirement for hookups to the system if not directly mandated.

2. The duration of approvals should be the same as that of accompanying permits issued by the state. If no state permit duration is specified, the SRBC approval should be perpetual. Making the approval duration retroactive to projects already approved by SRBC is unfair and perhaps an unconstitutional taking of a vested right. Twenty-five years may not enough time to amortize investments some in big, complex plants where large sums of money were invested.

Response: The proposed regulation does tie permit duration to any accompanying permit issued by a signatory party. We feel that 25 years is a reasonable duration to otherwise give to a project sponsor so that the investment he has made in the project can be sufficiently amortized. To cover those situations where, for some good reason, 25 years is not appropriate, we propose to add a sentence to § 803.30(a) stating, "The Commission, upon its own motion or that of a project sponsor, may modify this duration in consideration of such factors as the time needed to amortize a project investment, the time needed to secure project financing, the potential risks of interference with an existing project, and other equitable factors." To address the concern over the retroactive application of the 25 year duration to projects already approved by the Commission, we propose to now add five years to this permit duration from the time of the Commission's initial approval. This will help to mitigate the effects of the retroactive application of the permit duration and stagger the time periods when these previously approved projects come up for renewal.

3. Three years is not enough time for a project sponsor to implement an approved project. This should be extended to four years.

Response: The proposed regulation (§ 803.3(b)) already allows the extension or renewal of an approval upon the request of the applicant. The Commission is not likely to refuse any reasonable request for an extension.

4. Hydroelectric projects should be specifically exempted from § 803.44,

and electric generating plants in general should be exempted from § 804.20. Such plants do not properly fit into the category of projects covered by these sections.

Response: In most cases, run of river hydroelectric projects, by their very process of passing water through, will not be considered a withdrawal of water. But what if there is a scenario wherein a hydroelectric facility is somehow conveying water that would normally pass directly into the tail race to supply another water use? The commission needs to be able to deal with such an eventuality.

We therefore propose to add a provision exempting hydroelectric projects from § 803.44 except to the extent that such projects constitute a withdrawal as defined in § 803.3. Hydroelectric sponsors should keep in mind the fact that, while hydro projects will generally be exempt under § 803.44, they may still be subject to commission approval under the general project review requirements of Section 3.10 of the Compact and these regulations.

With respect to § 804.20 on water conservation standards, electric generating (fossil-nuclear) facilities are basically industrial type activities. The current proposal does allow sufficient flexibility for the calculations in lieu of metering if indeed metering is impractical for an electric generating station. We recognize that the utilities have undertaken practices such as recirculation which have contributed to water conservation efforts. The commission is willing to work with the utilities to identify other conservation techniques that would be considered unique to utility operations.

5. Under §§ 803.43 & 803.44, the commission should not require metering for water use by electric generating facilities and should require only monthly reporting.

Response: We agree that more flexibility is needed on surface withdrawals, so we would propose to add the words "or other suitable methods of measurement" to § 803.44 (c). We also agree to allow the commission to designate, on an ad hoc basis, whether daily, weekly, or monthly records shall be kept. (§ 803.44 (d).

With respect to § 803.43, the commission has the ability to waive any requirements of the regulations so long as the purposes of the regulations are not violated. If there are good reasons for not doing the normal metering or for having only monthly data reported, the commission will listen and is not likely to refuse any reasonable request. Meanwhile, the commission generally feels that some interval more frequent than one month is desirable for ground water management.

6. The regulations should not be applied on a retroactive basis. This may even be illegal and is unfair to the owners of existing facilities.

Response: The consumptive use regulation has been retroactive since 1976. The only new retroactive application in proposed revisions to Part 803 is the approval durations. However, we are not proposing to revise it at this time. The ground water and conservation regulation effective dates, which were previously established, are simply preserved. The surface water regulation is made only prospectively effective. There is nothing inherently illegal with a retroactive effective date so long as proper safeguards are included.

7. In Section 803.3, a better definition of trigger flow is needed to provide clarification of the intent and purpose of trigger flow, relative to what becomes triggered.

Response: The definition of trigger flow relates to Section 803.42 and has been removed for the present time.

8. SRBC should not place the onus of responsibility for notifying the public of an application on the applicant. The regulation calling for notification of municipalities needs clarified. It sounds like an applicant must notify every municipality in the county.

Response: Agree that the wording on municipal notification needs revised to make clear that SRBC is not requiring that every municipality in the county be notified, only those in which the project is situated. As for notification responsibilities, agree that the portion of the regulation requiring project sponsor to notify other interested parties known to the project sponsor and SRBC is a vague requirement and we would agree to delete it.

9. In Subpart D—Standards for Review and Approval of Projects, the factors for disapproval of a project by the SRBC are too broad and allow too much discretion on the part of the Commission. Approval/disapproval should be based on evidentiary standards.

Response: The standards for review and approval of projects set forth in Subpart D come directly from the Susquehanna River Basin Compact, Section 3.10.

10. Water conservation standards need to be strengthened. For example, the type of water conservation devices mentioned in § 804.20 could be specified.

Response: We agree that the water conservation requirement could be made more specific. As an interim measure, we will retain the existing language and develop more specific criteria for future consideration.

11. Ten days notice in a state bulletin, as required in § 805.1 is not sufficient time before a public hearing regarding rulemaking.

Response: The notices in state bulletins will not be the only means of publishing such hearings. There will be a 20-day notice in the **Federal Register**, a publication that is distributed generally throughout all three signatory states. Such hearings will also be announced in various Commission news releases, the Guardian newsletter and the meeting minutes. The news releases alone receive widespread dissemination throughout the basin to media and other interested parties who have expressed an interest in Commission activities. Staff has found that, unlike the **Federal Register**, the state bulletins and registers appear only weekly and are slower in publishing hearing notices. The lead times for publishing in the state bulletins 20 days in advance of hearings can be difficult to meet; hence, the 10-day requirement for state registers and bulletins.

12. The project review procedures set forth in Part 803 are too closely tied to the project review authority under Section 3.10 of the compact. There needs to be a clearer statement that this part is also intended to implement the Commission's authority under Section 3.4 of the compact to set standards for the operation of projects and facilities.

Response: Staff agrees and is inserting language to make it clear that Part 803 also covers the setting of standards under Section 3.4 of the compact and that neither Section 3.10 of the compact nor anything else in the proposed regulations should be construed as a limitation on the exercise of Section 3.4 powers.

13. The Commission's authority to set standards for the operation of projects under § 3.4 (2) of the Compact does not give the commission authority to "approve" such projects unless they also fall into the category of projects listed in § 3.10—Review and Approval.

Response: We disagree. Both sections 3.4 (9) and 15.2 provide authority to the commission to make rules and regulations to implement, effectuate and enforce the compact. If an agency sets standards for the operation of projects, it may adopt procedures whereby it can review the project and confirm that the project sponsor has complied with the standards set for the project. We would also point to § 3.10 (2) which states that "(a)pproval of the commission shall be required for, but not limited to, the following * * *"

14. There are no specific provisions in the proposed rules pertaining to wetlands.

Response: While there are no specific references to wetlands in the proposed regulations, § 803.41—General Standards for Review of Projects, stipulates that: (a) A project shall not be detrimental to the proper conservation, development, management or control of the water resources of the basin; and (b) The Commission may modify and approve as modified, or may disapprove, a project if it determines that the project is not in the best interest of the conservation, development, management or control of the basin's water resources, or is in conflict with the comprehensive plan. The comprehensive plan does call for the avoidance of dredging and other human alterations of wetlands. All applicants must also obtain applicable federal and state approvals, in addition to SRBC approvals. Thus, the Commission is adequately equipped to deal with threats to wetlands within the project review process.

15. In proposed § 803.5, projects which may require review and approval, there are no objective standards or methodologies to determine whether a project falls into one of the categories that "may" need approval and thus a request for determination. An example is the reference to "projects that have a significant effect upon the comprehensive plan." Such specific standards might allow an applicant to by-pass the "request for determination" procedure outlined in § 803.22 and apply directly to the Commission for approval.

Response: The compact itself uses this language and does not attempt to define it, leaving it to the discretion and judgment of the Commission. As long as the Commission does not act arbitrarily or abuse its discretion, it seems appropriate for the Commission to make this judgment on a case-by-case basis. Hard and fast definitions of what constitutes a significant effect on the comprehensive plan would detract from the flexibility and discretion accorded the Commission by the compact.

16. Under § 803.22, a project sponsor cannot rely on the Executive Director's determination on whether a project requires commission approval.

Response: The commission feels that there ought to be some method of appeal of the Director's determination to the full commission. This is not unlike the appeal that is always available to the town council or zoning hearing board on a decision made by the local zoning officer. This proposed procedure is patterned after a similar and very successful regulation of the Delaware River Basin Commission.

17. The form of certification of the giving of notice of an application under § 803.25 is not clear. The Commission should provide the form of certification.

Response: Agreed. Wording is added providing that notice shall be given on a form provided by the Commission.

18. § 803.26(5) states that the staff will determine the appropriate application fee. The regulations should state how and on what basis the application fee will be determined.

Response: Agreed. Wording is added indicating that the fee will be determined in accordance with SRBC's project review fee schedule, which has been adopted under separate resolution.

19. Under § 803.32—Reopening/Modifications, it is not prudent to allow any "interested party" to reopen a project docket at any time. Once a project docket is reopened by any "interested party," it may set an undesirable precedent. If any party can request a reopening, it undermines the reliance that a project sponsor can place on an approval granted by the Commission. Considerable resources may have already been expended by the project sponsor in reliance on such an approval.

Response: Since it is the Commission which ultimately decides whether a reopening of a docket has merit, we are not alarmed at the use of the term "interested party." We feel that broad public participation in the project review process is to be encouraged, not discouraged by stringent limits placed on those who can and cannot come before the Commission. The Commission is an administrative forum where projects affecting the public interest are evaluated, not a judicial forum where there is a specific controversy involving defined parties who must have standing to participate. We have further concerns about trying to differentiate between those persons who are "interested parties" under § 803.21(e) and those persons who would, under the utilities' proposal, be "affected parties." Nevertheless, we do understand the need for a project sponsor to be able to rely on an approval given by the Commission. We are therefore adding language to § 803.32 requiring an interested party to show by a preponderance of the evidence that an impact or a threat to public health, safety and welfare exists and giving the executive director the authority to determine whether an interested party has made out a prime facie case favoring reeopening of the docket.

20. The Commission should clarify whether a project subject to renewed approval under § 803.30(c) is to be considered a "proposed project" for purposes of the approval standards set forth in subpart D of Part 803.

Response: Agreed. Wording is added to § 803.30(c) clarifying this point.

21. In § 805.2, it is unfair to assess all of the adjudicatory hearing costs to the project sponsor.

Response: The regulation states that the hearing officer shall assess these costs to the project sponsors or others, *as deemed equitable.* The hearing officer will be able to weigh the equities and then assess costs accordingly. Costs will not necessarily be wholly assessed against a sponsor in each and every case. There is room for the officer to use his/her discretion to be fair to all parties. This regulation is based on procedures successfully implemented by the Delaware River Basin Commission.

22. A joint permitting process with the signatory agencies should be developed as part of or concurrent with this rulemaking process.

Response: § 803.6 of the proposed regulation allows for such cooperation with the signatory parties. Staff will attempt to work out such cooperative arrangement once the rulemaking package is in place.

23. Definition of "diversion" should be broadened to include transfers between subbasins.

Response: The definition of "diversion" comes from the compact. The Commission cannot broaden its scope, though certainly the effects of a trans-subbasin withdrawal can be considered as part of the project review evaluation process.

24. The costs of an adjudicatory hearing should not be assessed against a signatory party.

Response: This should be left to the discretion of the hearing officer as he/she deems equitable.

25. § 803.24(b)(4) should include the word "estimated" before the words "completion date" and "construction schedule."

Response: Agreed.

26. Water is not owned by any single person. It may be used by individuals, but it is a resource belonging to all the people of the basin. Water must be managed comprehensively by the SRBC. All users must contribute in some fashion to wise management of the basin's waters.

Response: Agreed, though in managing the basin's waters, the Commission understands the need to consider the special needs and challenges facing various users.

27. Some farmers, particularly those in New York State, expressed opposition to water use registration as increasing their paper work loads and setting them up for future regulation. It was suggested that the commission either withdraw the registration regulation or apply it only in the signatory states who desired such registration.

Response: The Commission believes that registration will give farmers equitable standing with the SRBC and perhaps with the courts if use conflicts develop with another water user. Registration will also help the Commission do a better job of managing the resource. The State of Maryland's experience with registering agricultural water uses has been very positive and has won the support of Maryland farmers. Pennsylvania farmers also support registration for this reason. Because support for registration does not appear universal, however, the commission is adding language to § 804.1 making the requirement for the registration of water withdrawals exceeding 10,000 gpd subject to the consent of the affected signatory state.

28. With respect to § 803.24 (b)(2)(vi) and § 803.43, the PF&B believes that the use of the word "substantial" before "adverse impact" in each of these sections introduces potentially unintended ambiguity to the regulations. No where is the term "substantial" defined.

Response: The use of the word "substantial" is intended to prevent the application of these sections to the most deminimus effects. The word "substantial," though not defined, is used to describe the level of evidence that must be present for an administrative agency to justify a regulatory action. Under the "substantial evidence" criteria, only a relatively small amount of evidence is needed to justify agency action. Thus, we do not believe that the word "substantial" introduces ambiguity anymore than the widespread use in thousands of statutes and judicial decisions of the word "reasonable."

29. With respect to § 803.44(d), new subsection should be added which would require the immediate reporting of violations of release or flow-by conditions along with documentation of the reasons for the violations.

Response: The commission does not wish to suggest to such users that it may be acceptable to violate the flow by requirements. If they do so, there are sanctions available to deal with such violations.

30. The commission should permit an applicant to by pass a request for determination under § 803.22 when it is fairly certain that approval will ultimately be required. The need for a project to submit a "request for determination" and an application for approval is duplicative.

Response: In fact, the Commission would not require that an applicant submit a "request for determination" in all cases. If an applicant's project falls into one of the categories listed in § 803.4 (Projects requiring review and approval), the applicant then submits an application directly to the commission.

The "request for determination" proceeding is provided largely for the benefit of potential applicants whose projects fall into the category of projects listed in § 803.5 (Projects which may require review and approval). The "request for determination" procedure could possibly remove the need for them to make a formal application.

The level of information to be provided to the Executive Director in a request for determination will be far less than that required for an application so that duplication should be minimal. Nevertheless, to accommodate applicants who feel that their projects are likely to be classified as requiring the commission's approval, the commission is adding a clause allowing the Executive Director, at an applicant's request, to waive the "request for determination" and proceed directly to the filing of an application for approval.

31. The definition for "withdrawal" in § 803.3 is inconsistent with the definition of withdrawal in the Susquehanna River Basin Compact.

Response: Agreed. The definition of "withdrawal" in the compact should be substituted for the proposed definition of withdrawal.

32. A phrase should be added to § 803.28, Application/monitoring fees, indicating that a public hearing shall be held prior to the imposition of such fees.

Response: Under Section 3.9 of the compact, such hearings are already required.

List of Subjects

18 CFR Part 803

Administrative practice and procedure, water resources.

18 CFR Part 804

Water resources.

18 CFR Part 805

Administrative practice and procedure.

Dated: June 9, 1995.

Paul O. Swartz,

Executive Director.

Accordingly, Chapter VIII of title 18 of the Code of Federal Regulations is amended as set forth below:

1. Part 803 is revised to read as follows:

PART 803—REVIEW AND APPROVAL OF PROJECTS

Subpart A—General Provisions

Sec.
803.1 Introduction.
803.2 Purposes.
803.3 Definitions.
803.4 Projects requiring review and approval.
803.5 Projects which may require review and approval.
803.6 Concurrent project review by signatory parties.
803.7 Waiver/modification.

Subpart B—Application Procedure

803.20 Purpose of this subpart.
803.21 Preliminary consultations.
803.22 Request for determination.
803.23 Submission of application.
803.24 Contents of application.
803.25 Notice of application.
803.26 Staff review/action/recommendations.
803.27 Emergencies.
803.28 Application/monitoring fees.

Subpart C—Terms and Conditions of Approval

803.30 Duration of approvals.
803.31 Transferability of approvals.
803.32 Reopening/modification.
803.33 Waiver/modification.
803.34 Interest on fees.

Subpart D—Standards for Review and Approval/Special Standards

803.40 Purpose of this subpart.
803.41 General standards.
803.42 Standards for consumptive uses of water.
803.43 Standards for ground-water withdrawals.
803.44 Standards for surface-water withdrawals.

Authority: Secs. 3.4, 3.8, 3.10 and 15.2, Pub. L. 91–575, 84 Stat. 1509 *et seq.*

Subpart A—General Provisions

§ 803.1 Introduction.

(a) This part establishes the scope and procedures for review and approval of projects under Section 3.10 of the Susquehanna River Basin Compact, Public Law 91–575, 84 Stat. 1509 et seq., (the compact) and establishes special standards under Section 3.4 (2) of the compact governing water withdrawals and the consumptive use of water. The special standards established pursuant to Section 3.4 (2) shall be applicable to all water withdrawals and consumptive uses in accordance with the terms of those standards, irrespective of whether such withdrawals and uses are also subject to project review under Section 3.10.

(b) Except for activities relating to site evaluation, no person or governmental entity shall begin construction or operation of any project subject to commission review and approval until such project is approved by the commission.

(c) When projects subject to commission review and approval are sponsored by governmental entities, the commission shall submit recommendations and findings to the sponsoring agency which shall be included in any report submitted by such agency to its respective legislative body or to any committee thereof in connection with any request for authorization or appropriation therefor. The commission review will ascertain the project's compatibility with the objectives, goals, guidelines and criteria set forth in the comprehensive plan. If determined compatible, the said project will also be incorporated into the comprehensive plan if so required by the compact. This part, and every other part of 18 CFR chapter VIII, shall also be incorporated into and made a part of the comprehensive plan.

(d) If any portion of this part, or any other part of 18 CFR chapter VIII, shall, for any reason, be declared invalid by a court of competent jurisdiction, all remaining provisions shall remain in full force and effect.

(e) Except as otherwise stated in this part this part shall be effective on May 11, 1995; provided, however, that nothing in this paragraph shall be deemed to exempt:

(1) Any project which has been or could have been subject to review and approval by the commission under the authority set forth in Section 3.10 of the compact or any prior regulations of the commission; or

(2) Any withdrawal or consumptive use which has been or could have been subject to special standards adopted pursuant to Section 3.4 (2) of the compact.

(f) When any period of time is referred to in this part, such period in all cases shall be so computed as to exclude the first and include the last day of such period. Whenever the last day of any such period shall fall on Saturday or Sunday, or on any day made a legal holiday by the law of the United States, such day shall be omitted from the computation.

(g) Any forms or documents referenced in this part may be obtained from the commission at 1721 N. Front Street, Harrisburg, PA 17102–2391.

§ 803.2 Purposes.

(a) The general purposes of this part are to advance the purposes of the compact and include but are not limited to:

(1) The promotion of interstate comity;

(2) The conservation, utilization, development, management, and control of water resources under comprehensive, multiple purpose planning; and

(3) The direction, supervision and coordination of water resources efforts and programs of federal, state and local governments and of private enterprise.

(b) In addition, §§ 803.42, 803.43 and 803.44 contain the following specific purposes: Protection of public health, safety and welfare; stream quality control; economic development; protection of fisheries and aquatic habitat; recreation; dilution and abatement of pollution; the regulation of flows and supplies of surface and ground waters; the avoidance of conflicts among water users; the prevention of undue salinity; and protection of the Chesapeake Bay.

(c) The objective of all interpretation and construction of this part is to ascertain and effectuate the purposes and the intention of the commission set out in paragraph (b) of this section.

§ 803.3 Definitions.

For purposes of this part, the words listed in this section are defined as follows:

Agricultural water use. A water use associated primarily with the raising of food or forage crops, trees, flowers, shrubs, turf, aquaculture and livestock.

Application. A request for action by the commission in written form including without limitation thereto a letter, referral by any agency of a signatory party, or an official form prescribed by the commission.

Basin. The Susquehanna River basin.

Commission. The Susquehanna River Basin Commission, a body politic created under Article 2, Section 2.1 of the compact.

Compensation. Water utilized or provided from storage as makeup for a consumptive use.

Comprehensive plan. The "Comprehensive Plan for Management and Development of the Water Resources of the Susquehanna River Basin" prepared and adopted by the commission pursuant to Article 3, Section 3.3 of the compact.

Construction. Clearing or excavation of the site or installation of any portion of the project on the site.

Consumptive use. Consumptive use is the loss of water from a ground-water or surface water source through a manmade conveyance system (including such water that is purveyed through a public water supply system), due to transpiration by vegetation, incorporation into products during their manufacture, evaporation, diversion from the Susquehanna River basin, or any other process by which the water withdrawn is not returned to the waters of the basin undiminished in quantity. Deep well injection shall not be considered a return to the waters of the basin.

Dedicated augmentation. Release from an upstream storage facility which is required for any other instream or withdrawal use.

Deep well injection. Injection of waste or wastewater substantially below aquifers containing fresh water.

Diversion. The transfer of water into or from the basin.

Executive Director. The chief executive officer of the commission appointed pursuant to Article 15, Section 15.5 of the compact.

Facility. Any real or personal property, within or without the basin, and improvements thereof or thereon, and any and all rights of way, water, water rights, plants, structures, machinery, and equipment acquired, constructed, operated, or maintained for the beneficial use of water resources or related land uses or otherwise including, without limiting the generality of the foregoing, any and all things and appurtenances necessary, useful, or convenient for the control, collection, storage, withdrawal, diversion, release, treatment, transmission, sale, or exchange of water; or for navigation thereon, or the development and use of hydroelectric energy and power, and public recreational facilities; or to the propagation of fish and wildlife; or to conserve and protect the water resources of the basin or any existing or future water supply source, or to facilitate any other uses of any of them. For purposes of this part and every other part contained in this chapter, a facility shall be considered a project (see definition of project in this section).

Governmental entity. The federal government, the signatory states, their political subdivisions, public corporations, public authorities and special purpose districts.

Ground-water source. (1) Pumped wells or well fields;

(2) Flowing wells;

(3) Pumped quarries, pits, and underground mines having no significant surface water inflow

(significant meaning that any surface water inflow is greater than the withdrawal); or

(4) A spring in which the water level is sufficiently lowered by pumping to eliminate the surface flow. All other springs will be considered to be surface water.

Person. An individual, corporation, partnership, unincorporated association, and the like and shall have no gender and the singular shall include the plural.

Pre-compact use. The maximum average quantity or volume of water consumptively used over any consecutive 30 day period prior to January 23, 1971 expressed in "gallons per day" (gpd).

Project. Any work, service, activity, or facility undertaken which is separately planned or financed for the conservation, utilization, control, development, or management of water resources which can be established and utilized independently, or as an addition to an existing facility, and can be considered as a separate entity for purposes of evaluation.

Signatory party. The States of Maryland and New York, the Commonwealth of Pennsylvania, and the United States of America.

Signatory state. The States of Maryland and New York, the Commonwealth of Pennsylvania.

Sponsor. Any person or governmental entity proposing to undertake a project. The singular shall include the plural.

Surface water source. Any river, perennial stream, natural lake or pond, spring, wetland or other body of surface water situated in the basin.

Susquehanna River basin. The area of drainage of the Susquehanna River and its tributaries into the Chesapeake Bay to the southern edge of the former Pennsylvania Railroad Bridge between Havre de Grace and Perryville, Maryland.

Water(s). Surface and ground water(s) contained within the Susquehanna River basin either before or after withdrawal.

Withdrawal. A taking or removal of water from any source within the basin for use within the basin.

§ 803.4 Projects requiring review and approval.

(a) The following projects are subject to review and approval by the commission and require an application to be submitted to the commission in accordance with the procedures outlined in § 803.23:

(1) Projects on or crossing the boundary between two signatory states;

(2) Projects involving the diversion of water;

(3) Projects resulting in a consumptive use of water exceeding an average of 20,000 gallons per day (gpd) for any consecutive thirty-day period or such other amounts as stipulated in § 803.42;

(4) Projects withdrawing in excess of an average of 100,000 gpd for any consecutive thirty-day period from a ground-water or surface water source or such other amounts as stipulated in §§ 803.43 and 803.44; and

(5) Projects which have been included by the commission in its comprehensive plan.

(b) Sponsors of projects who feel that their projects are likely to be classified as requiring the commission's approval may request that the executive director waive the "request for determination" procedure and may thereafter proceed directly to the filing of an application for approval.

§ 803.5 Projects which may require review and approval.

The following projects, if not already covered under § 803.4, may be subject to commission review and approval and require, in accordance with the procedures outlined in § 803.22, a "request for determination" to be submitted to the executive director:

(a) Projects which may change interstate water quality standards or criteria.

(b) Projects within a signatory state that have the potential to affect waters within another signatory state. This includes but is not limited to projects which have the potential to alter the physical, biological, chemical or hydrological characteristics of water and related natural resources of interstate streams designated by the commission under separate resolution.

(c) Projects which may have a significant effect upon the comprehensive plan.

(d) Projects not included in paragraphs (a) through (c) of this section, but which could have an adverse, adverse cumulative, or interstate effect on the water resources of the basin; provided that the project sponsor is notified in writing by the executive director that it shall submit a "request for determination".

§ 803.6 Concurrent project review by signatory parties.

(a) The commission recognizes that agencies of the signatory parties will exercise their review authority and evaluate many proposed projects in the basin. The commission will adopt procedures to assure compatibility between signatory review and commission review.

(b) To avoid duplication of work and to cooperate with other government agencies, the commission may develop agreements of understanding, in accordance with the procedures outlined in this part, with appropriate agencies of the signatory parties regarding joint review of projects. These agreements may provide for joint efforts by staff, delegation of authority by an agency or the commission, or any other matter to support cooperative review activities. Permits issued by a signatory agency shall be considered commission approved if issued pursuant to an agreement of understanding with the commission specifically providing therefor.

§ 803.7 Waiver/modification.

The commission may, in its discretion, waive or modify the requirements of this part if the essential purposes set forth in § 803.2 continue to be served.

Subpart B—Application Procedure

§ 803.20 Purpose of this subpart.

The purpose of this subpart is to set forth procedures governing applications required by §§ 803.4 and 803.5.

§ 803.21 Preliminary consultations.

(a) Any sponsor of a proposed project that is or may be subject to the commission's review jurisdiction under § 803.4 or § 803.5 is encouraged, prior to making application for commission review, to request a preliminary consultation with the commission staff for an informal discussion of preliminary plans for the proposed project. To facilitate preliminary consultations, it is suggested that the sponsor provide a general description of the proposed project, a map showing its location and, to the extent available, data concerning dimensions of any proposed structures and the environmental impacts.

(b) Preliminary consultations shall be optional with the project sponsor and shall not relieve the sponsor from complying with the requirements of the compact or with this part.

§ 803.22 Request for determination.

(a) Sponsors of projects which may require review and approval, as described in § 803.5, shall submit a "request for determination" to the executive director with such accompanying information and data as the executive director shall prescribe.

(b) If a project sponsor is uncertain whether a "request for determination" should be filed with the commission, the sponsor may ask for and, within thirty days after submission of information in such form and manner as will allow the executive director to make a decision, receive from the executive director a letter stating whether a "request for determination" should be filed. The executive director may also direct a project sponsor to submit a "request for determination."

(c) Within thirty days of the receipt of such "request for determination," the executive director shall determine whether the said project must be reviewed and approved by the commission. In making such determination, the executive director shall be guided primarily by his/her findings as to the following factors:

(1) Whether the proposed project will have a significant interstate effect on water supply, stream flows, aquifers, water quality, flooding, sensitive land areas, aquatic or terrestrial forms of plant or animal life, historical or cultural resources, or any other water-related resource.

(2) Whether the proposed project will have a significant impact upon the goals, objectives, guidelines, plans, or projects included in the comprehensive plan.

(3) Whether the proposed project may have an adverse or adverse cumulative effect on the water resources of the basin.

(d) The executive director shall notify the sponsor of the project, the agency of the signatory party, if any, reviewing the project, the governing body of each municipality and the planning agency of each county in which the project is located of his/her initial determination under this section. Notice to the sponsor shall be by certified mail, and to all other interested parties by regular, first class mail. At a cost to be assessed to the project sponsor, the executive director shall also publish in a newspaper of general circulation in that municipality, at least once, a notice of such determination. If no objection is made to the executive director's initial determination, it shall become final ten days after publication as set forth in this paragraph.

(e) Any interested party objecting to the determination may, within ten days of the newspaper publication, object to such determination and appeal to the executive director by letter for reconsideration. Following such reconsideration, if requested, the executive director shall serve notice upon the agency of the signatory party, the applicant and each such objector of his/her determination. Any such party may appeal such final determination to the commission by notice in writing served upon the executive director within 14 days after the service of the executive director's decision upon reconsideration. The commission will determine such appeal at a regular meeting thereafter.

§ 803.23 Submission of application.

(a) Sponsors of projects requiring the review and approval of the commission under § 803.4, or determined to require the approval of the commission under § 803.22, shall, prior to the time the project is undertaken, submit an application to the commission. The application shall be submitted to the commission at its headquarters, 1721 N. Front Street, Harrisburg, Pennsylvania 17102–2391, and shall contain the information prescribed in § 803.24.

(b) An application shall not be deemed to be pending before the commission until such time as the information required under § 803.24 has been provided and any applicable fee has been paid.

(c) As determined from applications or otherwise, the commission shall review and either approve, approve with conditions or modifications, or disapprove such projects.

§ 803.24 Contents of application.

(a) Applications shall be submitted on forms prescribed by the commission.

(b) If no forms are prescribed by the commission for a particular type of project, the sponsor shall submit an application addressing the following items applicable to the project:

(1) Identification of sponsor and name of person authorized to speak for the sponsor.

(2) Description of project and site in terms of:

(i) Water use and availability.

(ii) Engineering feasibility.

(iii) Ability of sponsor to fund the project or action.

(iv) Project location.

(v) Project purpose.

(vi) Identification and description of reasonable alternatives, the extent of their economic and technical investigation, and an assessment of their potential environmental impact. In the case of a proposed diversion, the sponsor should include information:

(A) Detailing the efforts that have been made to develop its own in-basin sources of water; and

(B) Demonstrating that the proposed diversion will not have substantial adverse effects on the ability of the Susquehanna River basin to meet its own water needs.

(vii) Supporting studies, reports and other information upon which assumptions and assertions have been based.

(viii) Compatibility of proposed project with existing and anticipated uses.

(ix) Plans for avoiding or compensating for consumptive use during low flow periods.

(x) Anticipated impact of the proposed project on:

(A) Flood damage potential considering the location of the project with respect to the flood plain and flood hazard zones;

(B) Surface water characteristics (quality, quantity, flow regimen, other hydrologic characteristics);

(C) Recreation potential;

(D) Fish and wildlife (habitat quality, kind and number of species);

(E) Natural environment uses (scenic vistas, natural and manmade travel corridors, wild and wilderness areas, wild, scenic and recreation rivers);

(F) Site development considerations (geology, topography, soil characteristics, adjoining and nearby land uses, adequacy of site facilities); and

(G) Historical, cultural and archaeological impacts.

(3) Governmental considerations:

(i) Need for governmental services or finances.

(ii) Commitment of government to provide services or finances.

(iii) Status of application with other governmental regulatory bodies.

(4) Project estimated completion date and estimated construction schedule.

(c) A report about the project prepared for any other purpose, or an application for approval prepared for submission to a signatory party, may be accepted by the commission *provided* the said report or application addresses the applicable items listed in paragraph (b) of this section.

§ 803.25 Notice of application.

(a) The project sponsor shall, within ten days of the submission of an application to the commission, notify area and regional news media, the municipality(ies) in which the project is situated, the county planning agency of the county(ies) in which the project is situated, and contiguous property owners that an application has been submitted to the commission. The commission shall compile a list of additional interested parties who comment on the application, request a hearing or make inquiries concerning the application. The project sponsor shall also publish at least once in a newspaper of general circulation in that municipality a notice of the submission of the application which contains a sufficient description of the project, its purpose and its location. Both the notification and the notice shall contain the address and phone number of the commission.

(b) The project sponsor shall provide the commission with a copy of the return receipt for the required municipal notification and a proof of publication for the required newspaper notice. The project sponsor shall also provide certification on a form provided by the commission that it has made such other notifications as required under paragraph (a) of this section. Until these items are provided to the commission, processing of the application will not proceed.

§ 803.26 Staff review/action/recommendations.

(a) The commission's staff shall review the application, and if necessary, request the sponsor to provide any additional information that is deemed pertinent for proper evaluation of the project. The staff review shall include:

(1) Determination of completeness of the application. An application deemed incomplete will not be processed.

(2) Identification of the issues pertinent to commission review.

(3) Assessment of the project's compatibility with the compact, comprehensive plan, and with the other requirements of this part.

(4) Consultation with the project sponsor if requested or deemed necessary.

(5) Determination of the appropriate application fee in accordance with the commission's project review fee schedule and the transmission of a billing to the project sponsor for that fee. Applications will not be presented to the commission for review and action until such application fee has been paid.

(6) Formal docketing of the project and, within 90 days of receipt of a complete application, presentation to the commission along with the recommendations of the staff for disposition of the application. The executive director may, for good cause, extend this review period for up to an additional 60 days. Any further extension must be approved by the commission.

(b) If the project sponsor fails to respond to the commission's request for additional information, the commission may notify the project sponsor that the application process has been terminated. To reactivate the closed file, the project sponsor shall reapply and may be required to submit new or updated evaluations.

§ 803.27 Emergencies.

In the event of an emergency requiring immediate action to protect the public health, safety and welfare or to avoid substantial and irreparable injury to any person, property, or natural resources and the circumstances do not permit a review and determination in the regular course of the regulations in this part, the executive director, with the concurrence of the chairperson of the commission and the member from the affected signatory state, may issue an emergency certificate authorizing a project sponsor to take such action as the executive director may deem necessary and proper in the circumstances, pending review and determination by the commission as otherwise required by this part.

§ 803.28 Application/monitoring fees.

The commission may, by separate resolution, establish and modify fees for the submission and processing of applications and for the monitoring of project compliance with this part.

Subpart C—Terms and Conditions of Approval

§ 803.30 Duration of approvals.

(a) Approvals issued under this part shall have a duration equal to the term of any accompanying signatory license or permit regulating the same subject matter. If there is no such accompanying license or permit or if no term is specified in such accompanying license or permit, the duration of a commission approval issued under this part shall be 25 years. The commission, upon its own motion or that of a project sponsor, may modify this duration in consideration of such factors as the time needed to amortize a project investment, the time needed to secure project financing, the potential risks of interference with an existing project, and other equitable factors. Unless there is an accompanying signatory license or permit regulating the same subject matter and specifying a duration, the 25 year duration for projects previously approved by the commission under this part shall commence five years from the date on which such projects were initially approved.

(b) For projects that have been approved by the commission but not implemented, approval by the commission under this part shall expire three years from the date of commission action. Likewise, if the use of a project is discontinued for such a period of time and under such circumstances that an abandonment of the project may reasonably be inferred, the commission may rescind a prior approval for such abandoned project. In either case, an approval may be extended or renewed by the commission upon request.

(c) The sponsors of projects previously approved by the commission should apply for renewal of their approvals no later than six months prior to the expiration of their previous approval. Such applications for renewal shall be reviewed under the same procedures and standards as for newly proposed projects.

§ 803.31 Transferability of approvals.

Approvals by the commission are transferable to new owners of projects, provided that the transferors or the transferees notify the commission of the transfer either before or within 60 days after the date of the transfer and that the new owners, within 30 days of being requested to do so by the commission, submit in writing their intention to comply with all conditions of the project's docket approval and assume all other associated obligations. The commission may waive or extend any of these deadline periods for good cause.

§ 803.32 Reopening/modification.

Once approved, the commission, upon its own motion, or upon application of the project sponsor or any interested party, may at any time reopen any project docket and make additional orders that may be necessary to mitigate or avoid adverse impacts or to otherwise protect the public health, safety, and welfare or natural resources. Whenever an application for reopening is filed by an interested party, the burden shall be upon that interested party to show, by a preponderance of the evidence, that a substantial adverse impact or a threat to the public health, safety or welfare exists that warrants reopening of the docket. Before such application may be submitted to the commission for action, the executive director shall first determine that an interested party has made out a prima faci case favoring the reopening of the docket. The executive director shall inform the commission of any negative finding in this regard so that the commission is afforded the opportunity to over-rule his/her decision.

§ 803.33 Interest on fees.

The commission may, by resolution, establish interest to be paid on all overdue or outstanding fees of any nature that are payable to the commission.

Subpart D—Standards for Review and Approval/Special Standards

§ 803.40 Purpose of this subpart.

The purpose of this subpart is to set forth standards that shall be used by the commission to evaluate proposed projects pursuant to §§ 803.4 and 803.5, and to establish special standards applicable to certain water withdrawals and consumptive uses irrespective of whether such withdrawals and consumptive uses are subject to project review pursuant to Section 3.10 of the compact. General standards applying to all projects and special standards applying to certain types of projects are set forth in this subpart. This subpart does not identify all the aspects of a proposed project that will be evaluated, nor should it be construed as a self-imposed limitation upon the commission's authority and scope of review. The special standards established pursuant to Section 3.4 (2) of the compact shall be applicable to all water withdrawals and consumptive uses in accordance with the terms of those standards, irrespective of whether such withdrawals and uses are also subject to project review under Section 3.10 of the compact.

§ 803.41 General standards.

(a) A project shall not be detrimental to the proper conservation, development, management, or control of the water resources of the basin.

(b) The commission may modify and approve as modified, or may disapprove, a project if it determines that the project is not in the best interest of the conservation, development, management, or control of the basin's water resources, or is in conflict with the comprehensive plan.

§ 803.42 Standards for consumptive uses of water.

(a) *Requirement.* (1) Compensation shall be required for consumptive uses of water during periods of low flow. Compensation is required during periods of low flow for the purposes set forth in § 803.2.

(i) *Surface water source.* Compensation in an amount equal to the project's total consumptive use shall be required when the streamflow at the point of taking equals or is anticipated to equal the low flow criterion which is the 7-day 10-year low flow plus the project's total consumptive use and dedicated augmentation. The commission reserves the right to apply a higher low flow criterion for a particular stream reach when it finds, as the result of evidence presented at a public hearing that it is needed to serve the purposes outlined in paragraph (b) (1) of this section.

(ii) *Ground-water source.* Compensation for the project's consumptive use of ground water shall be required when the stream flow is less than the applicable low flow criterion. For the purposes of implementing this regulation, the commission will identify the appropriate stream gaging station for determining the applicable low flow.

(2) Consumptive uses by a project not exceeding an average of 20,000 gpd for any consecutive thirty-day period from surface or groundwaters are exempt from the requirement unless such uses adversely affect the purposes outlined in paragraph (b) (1) of this section.

(b) *Method of Compensation.* (1) Methods of compensation acceptable to the commission will depend upon the character of the project's source of water supply and other factors noted in this paragraph (b) (1).

(i) The required amount of compensation shall be provided by the applicant or project sponsor at the point of taking (for a surface source) or another appropriate site as approved by the commission to satisfy the purposes outlined in this paragraph (b) (1). If compensation for consumptive use from a surface source is to be provided upstream from the point of taking, such compensation shall reasonably assure no diminution of the flow immediately downstream from the point of taking which would otherwise exist naturally, plus any other dedicated augmentation.

(ii) Compensation may be provided by one, or a combination of the following:

(A) Construction or acquisition of storage facilities.

(B) Purchase of available water supply storage in existing public or private storage facilities, or in public or private facilities scheduled for completion prior to completion of the applicant's project.

(C) Purchase of water to be released as required from a water purveyor.

(D) Releases from an existing facility owned and operated by the applicant.

(E) Use of water from a public water supplier utilizing raw water storage that maintains a conservation release or flow-by, as applicable, of Q7–10 or greater at the public water supplier's point of taking.

(F) Ground water.

(G) Purchase and release of waters stored in other subbasins or watersheds.

(H) Other alternatives.

(2) Alternatives to compensation may be appropriate such as discontinuance of that part of the project's operation that consumes water, imposition of conservation measures, utilization of an alternative source that is unaffected by the compensation requirement, or a monetary payment to the commission in an amount to be determined by the commission from time-to-time.

(3) The commission shall, in its sole discretion, determine the acceptable manner of compensation or alternatives to compensation, as applicable, for consumptive uses by a project. Such a determination will be made after considering the project location, anticipated amount of consumptive use and its effect on the purposes set forth in § 803.2 of this part, and any other pertinent factors.

(c) *Quantity of consumptive use.* For purposes of evaluating a proposed project, the commission shall require estimates of anticipated consumptive use from the project sponsor. The commission, as part of the project review, shall evaluate the proposed methodology for monitoring consumptive losses and compensating flows including flow metering devices, stream gages, and other facilities used to measure the consumptive use of the project or the rate of streamflow. If the commission determines that additional flow measuring devices are required, these shall be provided at the expense of the project sponsor and shall be subject to inspection by the commission at any time. When the project is operational, the commission shall be responsible for determining when compensation is required and shall notify the project sponsor accordingly. The project sponsor shall provide the commission with periodic reports in the time and manner as it requires showing actual consumptive uses associated with the project. The commission may use this data to modify, as appropriate, the magnitude and timing of the compensating releases initially required when the project was approved.

(d) *Quality of compensation water.* The physical, chemical and biological quality of water used for compensation shall at all times meet the quality requirements for the purposes listed in § 803.2, as applicable.

(e) *Effective date.* Notwithstanding the overall effective date for other portions of this part set forth in § 803.1(e), this section shall apply to all consumptive uses initiated on or after January 23, 1971, the effective date of the compact.

(f) Public water suppliers, except to the extent that they are diverting the waters of the basin, shall be exempt from the requirements of this section; provided, however, that nothing in this section shall be construed to exempt individual consumptive users connected to any such public water supply system from the requirements of this section.

§ 803.43 Standards for ground-water withdrawals.

(a) *Requirement.* (1) With respect to projects coming into existence on or after the effective date of this section, any project sponsor proposing to withdraw from a ground-water source in excess of an average of 100,000 gpd for any consecutive thirty-day period, proposing to increase a withdrawal to more than an average of 100,000 for any

consecutive thirty-day period or proposing to increase a withdrawal above that amount which was previously approved by the commission, shall apply for approval pursuant to subpart B of this part. These withdrawals may be denied or may be limited by the commission to the amount (quantity and rate) of ground water that is needed to meet the reasonably foreseeable needs of the project sponsor and that can be withdrawn from an aquifer or aquifer system without causing adverse lowering of ground-water levels, rendering competing supplies unreliable, causing water quality degradation that may be injurious to any existing or potential ground or surface water use, causing permanent loss of aquifer storage capacity, or having a substantial adverse impact on low flow of perennial streams.

(2) With respect to projects withdrawing any quantity of water prior to the effective date of this section, any project sponsor proposing to increase the said withdrawal in excess of 100,000 gpd above that which such project was withdrawing prior to the said effective date, shall apply for approval pursuant to subpart B of this part.

(3) After obtaining approval for the withdrawal pursuant to this paragraph, the sponsor shall also comply with metering, monitoring and reporting requirements as set forth in this section.

(b) *Withdrawal application.* Information required by the commission is specified in the commission's ground-water withdrawal application and includes but is not limited to the results of a constant rate pumping test. Review and approval by SRBC staff of the test procedures to be used by the applicant are necessary before the test is started.

(c) *Metering.* Projects approved under this section shall meter all approved ground-water withdrawals. The meters shall be accurate to within 5 percent of the actual flow.

(d) *Monitoring and reporting.* (1) Monitoring and periodic reporting of water levels, well production, and ground-water quality are required of all approved ground-water withdrawals. The required information is listed in Form SRBC #30 (Ground-water Withdrawal Reporting Form) and includes but is not limited to the following:

(i) Ground-water levels shall be measured weekly in all approved production wells and reported to the commission annually. Additional water level measurements may be required in one or more observation wells as determined by the commission.

(ii) Production from approved ground-water sources shall be recorded weekly and reported to the commission annually.

(iii) Samples of ground water for water quality analysis shall be obtained and the results reported to the commission every three years. The required chemical constituents to be included in the analysis are listed in Form SRBC #30.

(2) The information in paragraph (d)(1) of this section may be provided to the commission either on Form SRBC #30 or other similar document containing all of the required information.

(e) *Planning.* If projections indicate that a project's ground-water supply will be constrained in the future by either the quantity or quality of available ground water, the commission may, in its discretion, require the submission of a water resource development plan prior to accepting any new withdrawal applications for the same or related projects.

(f) *Interference with existing withdrawals.* If review of the application or substantial data demonstrates that operation of a proposed ground-water withdrawal will significantly affect or interfere with an existing ground-water or surface water withdrawal, the project may be denied or the project sponsor may be required to provide, at its expense, an alternate water supply or other mitigating measures.

(g) *Effective date.* Notwithstanding the overall effective date for other portions of this part set forth in § 803.1(e), this section shall apply to all ground-water withdrawals initiated on or after July 13, 1978.

§ 803.44 Standards for surface water withdrawals.

(a) *Requirement.* (1) With respect to projects coming into existence on or after the effective date of this section, any project sponsor proposing to withdraw either directly or a public water supplier proposing to withdraw indirectly (through another user) from a surface source in excess of an average of 100,000 gpd for any consecutive thirty-day period, proposing to increase a withdrawal to more than an average of 100,000 gpd for any consecutive thirty-day period or proposing to increase a withdrawal above that amount which was previously approved by the commission, shall obtain commission approval of the withdrawal. These withdrawals may be denied or may be limited by the commission to the amount (quantity and rate) of water that is needed to meet the reasonably foreseeable needs of the project sponsor and that can be withdrawn without causing adverse lowering of streamflow levels, rendering competing supplies unreliable, causing water quality degradation that may be injurious to any existing or potential water use, adversely affecting fish, wildlife or other living resources or their habitat, or having a substantial adverse impact on the low flow of perennial streams.

(2) With respect to projects withdrawing any quantity of water prior to the effective date of this section, any project sponsor proposing to increase the said withdrawal in excess of 100,000 gpd above that which such project was withdrawing prior to the said effective date, shall apply for approval pursuant to subpart B of this part.

(3) Any sponsor of a project subject to this section shall complete a surface water withdrawal application. After obtaining approval under this section, the sponsor shall comply with metering, monitoring, and conservation requirements as set forth in this section.

(b) *Withdrawal application.* Information required by the commission is specified in the commission's application for withdrawal from surface water sources.

(c) *Metering.* Project sponsors shall meter or use other suitable methods of measuring surface withdrawals approved under this section. The meters shall be accurate to within 5 percent of the actual flow.

(d) *Monitoring and reporting.* Monitoring and periodic reporting of surface water withdrawals approved under this section is required. The required information includes but is not limited to the following:

(1) Daily, weekly, or monthly records of withdrawals by source, as specified by the commission, and reported annually;

(2) Description of conservation activity; and

(3) Records of releases or flowby for instream protection reported annually.

(e) *Planning.* If projections indicate that a project's surface water supply will be constrained in the future by either the quantity or quality of available surface water, the commission may, in its discretion, require the submission of a water resource development plan prior to accepting any new withdrawal applications for the same or related projects.

(f) *Interference with existing withdrawals.* If review of the application or substantial data demonstrates that operation of a proposed surface water withdrawal will significantly affect or interfere with an existing ground-water or surface water withdrawal, the project may be denied or the project sponsor may be required to provide, at its expense, an alternate water supply or other mitigating measures.

(g) *Effective date.* This section shall be effective six months after the effective date set forth in § 803.1(e), except for projects previously reviewed and approved by the commission under the general authority of section 3.10 of the compact. Commission authority shall continue over such previously approved projects.

(h) *Hydroelectric projects.* Hydroelectric projects, except to the extent that such projects constitute a withdrawal, shall be exempt from the requirements of this section; provided, however, that nothing in this paragraph shall be construed as exempting hydroelectric projects from review and approval under any other category of project requiring review and approval as set forth in §§ 803.4 and 803.5.

2. Parts 804 and 805 are added to read as follows:

PART 804—SPECIAL REGULATIONS AND STANDARDS

Subpart A—Water Withdrawal Registration

Sec.
804.1 Requirement.
804.2 Time limits.
804.3 Administrative agreements.
804.4 Effective date.
804.5 Definitions.

Subpart B—Water Conservation Requirements

804.20 Requirement.
804.21 Effective date.
804.22 Definitions.

Authority: Secs. 3.4(2) and (9), 3.8, 3.10 and 15.2, Pub. L. 91–575, 84 Stat. 1509 *et seq.*

Subpart A—Water Withdrawal Registration

§ 804.1 Requirement.

In addition to any other requirements of commission regulations, and subject to the consent of the affected signatory state to this requirement, all persons withdrawing or diverting in excess of an average of 10,000 gpd for any consecutive thirty-day period, from surface or ground-water sources, as defined in Part 803 of this chapter, shall register the amount of this withdrawal with the commission and provide such other information as requested on forms prescribed by the commission.

§ 804.2 Time limits.

(a) Except for agricultural water use projects, all registration forms shall be submitted within one year after May 11, 1995, or within six months of their initiation, whichever is later; provided, however, that nothing in this section shall limit the responsibility of an applicant to apply for and obtain an approval as may be required under part 803 of this chapter. All registered withdrawals shall re-register with the commission within five years of their initial registration, and at five-year intervals thereafter, unless sooner discontinued.

(b) Sponsors of existing agricultural water use projects (i.e. projects coming into existence prior to March 31, 1997) withdrawing or diverting in excess of an average of 10,000 gpd for any consecutive 30-day period from a surface or ground-water source shall register their use no later than March 31, 1997. Thereafter, the sponsors of new projects proposing to withdraw or divert in excess of 10,000 gpd for any consecutive 30-day period from a surface or ground-water source shall be registered prior to project initiation.

§ 804.3 Administrative agreements.

The commission may complete appropriate administrative agreements or informal arrangements to carry out this registration requirement through the offices of signatory agencies. Forms developed by the commission shall apprise registrants of any such agreements or arrangements and provide appropriate instructions to complete and submit the form. Permits issued by a signatory party agency shall be considered a registration with the commission if issued pursuant to an agreement of understanding with the commission specifically providing therefor.

§ 804.4 Effective date.

This subpart shall be effective on May 11, 1995 and shall apply to all present and future withdrawals or diversions irrespective of when such withdrawals or diversions were initiated.

§ 804.5 Definitions.

Terms used in this subpart shall be defined as set forth in § 803.3 of this chapter.

Subpart B—Water Conservation Requirements

§ 804.20 Requirement.

Any project sponsor whose project is subject to commission approval under this part or part 803 of this chapter proposing to withdraw water either directly or indirectly (through another user) from surface or ground-water sources or both shall comply with the following requirements:

(a) *Public water suppliers.* As circumstances warrant, the public water supplier shall:

(1) Reduce distribution system losses to a level not exceeding 20 percent of the gross withdrawal.

(2) Install meters for all users.

(3) Establish a program of water conservation that will:

(i) Require installation of water conservation devices, as applicable, by all classes of users;

(ii) Prepare and distribute literature to customers describing available water conservation techniques;

(iii) Implement a water pricing structure which encourages conservation; and

(iv) Encourage water reuse.

(b) *Industrial water users.* Industrial users shall:

(1) Designate a company representative to manage plant water use.

(2) Install meters or other suitable devices or utilize acceptable flow measuring methods for accurate determination of water use by various parts of the company operation.

(3) Install flow control devices which match the needs of the equipment being used for production.

(4) Evaluate and utilize applicable recirculation and reuse practices.

(c) *Agricultural and other irrigation.* Water users for irrigation purposes shall utilize irrigation systems properly designed for the user's respective soil characteristics, topography and vegetation.

§ 804.21 Effective date.

Notwithstanding the effective date for other portions of this part, this subpart shall apply to all surface and ground-water withdrawals initiated on or after January 11, 1979.

§ 804.22 Definitions.

Terms used in this subpart shall be defined as set forth in § 803.3 of this chapter.

PART 805—HEARINGS/ ENFORCEMENT ACTIONS

Subpart A—Conduct of Hearing

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805.2 Adjudicatory hearing.
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Authority: Secs. 3.4(9), 3.5(5), 3.10, 15.2 and 15.17, Pub. L. 91–575, 84 Stat. 1509 *et seq.*

Subpart A—Conduct of Hearing

§ 805.1 Public hearings.

(a) A public hearing shall be conducted in the following instances:

(1) Addition of projects or adoption of amendments to the comprehensive plan except as otherwise provided by Section 14.1 of the compact.

(2) Rulemaking.

(3) Approval of projects.

(4) Hearing requested by a signatory party.

(5) When in the opinion of the commission, a hearing is necessary to give adequate consideration to issues relating to public safety, protection of the environment, or other important societal factors.

(6) To decide factual disputes.

(7) At all other times required by the compact or commission regulations in this chapter.

(b) *Notice of public hearing.* At least 20 days before any public hearing required by the compact, notices stating the date, time, place and purpose of the hearing including issues of interest to the commission shall be published at least once in a newspaper or newspapers of general circulation in the area affected. Occasions when public hearings are required by the compact include, but are not limited to, amendments to the comprehensive plan, drought emergency declarations, and review and approval of diversions. In all other cases, at least 10 days prior to the hearing, notice shall be posted at the office of the commission, mailed by first class mail to the parties who, to the commission's knowledge, will participate in the hearing, and mailed by first class mail to persons, organizations, news media and governmental entities who have made requests to the commission for notices of hearings or of a particular hearing. In the case of hearings held in connection with rulemaking, notices need only be forwarded to the directors of the New York Register, the Pennsylvania Bulletin, the Maryland Register, and the **Federal Register**, and it is sufficient that this notice appear only in the **Federal Register** at least 20 days prior to the hearing and in each individual state publication at least 10 days prior to any hearing scheduled in that state.

(c) *Participants to a public hearing.* (1) Hearings shall be open to the public. Participants to a public hearing shall be the project sponsor and the commission staff. Participants may also be any person or governmental entity wishing to appear at the hearing and make an oral or written statement. Statements may favor or oppose the project/proposal or may simply express a position without specifically favoring or opposing the project/proposal. Statements shall be made a part of the record of the hearing, and written statements may be received up to and including the last day on which the hearing is held, or within a reasonable time thereafter as may be specified by the presiding officer, which time shall be not less than ten days nor more than 30 days, except that a longer time may be specified if requested by a participant.

(2) Participants (except the project sponsor and the commission staff) are encouraged to file with the commission at its headquarters written notice of their intention to appear at the hearing. The notice should be filed at least three days prior to the opening of the hearing.

(d) *Representative capacity.* Participants wishing to be heard at a public hearing may appear in person or be represented by an attorney or other representative. A governmental entity may be represented by one of its officers, employees or by a designee of the governmental entity. Any person intending to appear before the commission in a representative capacity on behalf of a participant shall give the commission written notice of the nature and extent of his/her authorization to represent the person or governmental entity on whose behalf he/she intends to appear.

(e) *Description of project.* When notice of a public hearing is issued, there shall be available for inspection at the commission offices such plans, summaries, maps, statements, orders or other supporting documents which explain, detail, amplify, or otherwise describe the project the commission is considering. Instructions on where and how the documents may be obtained will be included in the notice.

(f) *Presiding officer.* A public hearing shall be conducted by the commission, the executive director, or any member or designee of the commission. The presiding officer shall have full authority to control the conduct of the hearing and make a record of the same.

§ 805.2 Adjudicatory hearing.

(a) *Generally.* The commission, upon application by any interested party or upon its own motion, may determine that, due to outstanding issues of fact, an adjudicatory hearing shall be conducted. If, for any reason, the commission determines that there are not sufficient issues of fact to schedule an adjudicatory hearing, it may still require briefs or oral argument on any issues of law.

(b) *Hearing procedure.* (1) The presiding officer shall have the power to rule upon offers of proof and the admissibility of evidence, to regulate the course of the hearings, to hold conferences for the settlement or simplification of issues, to determine the proper parties to the hearing, to determine the scope of any discovery procedures, and to delineate the issues to be adjudicated.

(2) The presiding officer shall cause each witness to be sworn or to make affirmation.

(3) Any party to a hearing shall have the right to present evidence and to examine and cross-examine witnesses.

(4) When necessary, in order to prevent undue prolongation of the hearing, the presiding officer may limit the number of times any witness may testify, the repetitious examination or cross-examination of witnesses, or the extent of corroborative or cumulative testimony.

(5) The presiding officer shall exclude irrelevant, immaterial or unduly repetitious evidence, but the parties shall not be bound by technical rules of evidence, and all relevant evidence of reasonably probative value may be received.

(6) Any party may appear and be heard in person or be represented by an attorney at law.

(7) Briefs and oral argument may be required by the presiding officer and shall be permitted upon request made prior to the close of the hearing by any party. They shall be part of the record unless otherwise ordered by the presiding officer.

(c) *Staff and other expert testimony.* The executive director shall arrange for the presentation of testimony by the commission's technical staff and other experts, as he/she may deem necessary or desirable, to incorporate in the record or support the administrative action, determination or decision which is the subject of the hearing.

(d) *Written testimony.* If the direct testimony of an expert witness is expected to be lengthy or of a complex, technical nature, the presiding officer may order that such direct testimony be submitted to the commission in sworn, written form. Copies of said testimony shall be served upon all parties appearing at the hearing at least ten days prior to said hearing. Such written testimony, however, shall not be admitted whenever the witness is not present and available for cross-examination at the hearing unless all parties have waived the right of cross-examination.

(e) *Assessment of costs.* (1) Whenever an adjudicatory hearing is required, the costs thereof, as herein defined, shall be assessed by the presiding officer to the project sponsor or such other party as the hearing officer deems equitable. For the purposes of this section, costs include all incremental costs incurred by the commission, including, but not limited to, hearing examiner and expert consultants reasonably necessary in the matter, stenographic record, rental of the hall and other related expenses.

(2) Upon the scheduling of a matter for adjudicatory hearing, the commission secretary shall furnish to the applicant a reasonable estimate of the costs to be incurred under this section. The applicant may be required to furnish security for such costs either by cash deposit or by a surety bond of a corporate surety authorized to do business in a signatory state.

(f) *Findings and report.* The presiding officer shall prepare a report of his/her findings and recommendations. The report shall be served by personal service or certified mail (return receipt requested) upon each party to the hearing or its counsel unless all parties have waived service of the report. Any party may file objections to the report within 20 days after the service upon the party of a copy of the report. A brief shall be filed together with objections and briefs shall be promptly submitted to the commission. The commission may require or permit oral argument upon such submission prior to its decision.

(g) *Action by the commission.* The commission will act upon the findings and recommendations of the presiding officer pursuant to law. The determination of the commission will be in writing and shall be filed together with any transcript of the hearing, report of the hearing officer, objections thereto, and all plans, maps, exhibits and other papers, records or documents relating to the hearing.

§ 805.3 Consolidation of hearing.

The commission may order any two or more public hearings involving a common or related question of law or fact to be consolidated for hearing on any or all the matters at issue in such hearings.

§ 805.4 Joint hearings.

The commission may conduct public hearings in concert with any other agency of a signatory party.

§ 805.5 Transcript.

A verbatim transcript of the adjudicatory hearings shall be kept by the commission. Other public hearings may be electronically recorded and a transcript made only if deemed necessary by the executive director or general counsel. A certified copy of the transcript and exhibits shall be available for review during business hours at the commission's headquarters to anyone wishing to examine them. Persons wishing to obtain a copy of the transcript of any hearing shall make arrangements to obtain it directly from the recording stenographer at their expense.

§ 805.6 Continuance.

The sponsor and all other persons wishing to be heard should be prepared to proceed on the date of the hearing. Applications for continuances will not be granted, except when good cause is shown.

§ 805.7 Effective date.

This subpart shall be effective on May 11, 1995.

§ 805.8 Definitions.

Terms used in this subpart shall be defined as set forth in 803.3 of this chapter.

Subpart B—Enforcement Actions and Settlements

§ 805.20 Scope of subpart.

This subpart shall be applicable where the commission has information indicating that a person or governmental entity (hereafter referred to as alleged violator) has violated or attempted to violate any provision of the compact or any of the commission's rules, regulations or orders

§ 805.21 Notice to possible violators.

Upon direction of the commission, the executive director shall, and in all other instances, the executive director may require an alleged violator to show cause before the commission why a penalty should not be assessed in accordance with the provisions of this chapter and Section 15.17 of the compact. The notice to the alleged violator shall:

(a) Set forth the date on which the alleged violator shall respond;

(b) Set forth any information to be submitted or produced by the alleged violator; and

(c) Specify the violation that is alleged to have occurred.

§ 805.22 The record for decision-making.

(a) *Written submission.* In addition to the information required by the commission, any alleged violator shall be entitled to submit in writing any other information that it desires to make available to the commission before it shall act. The executive director may require documents to be certified or otherwise authenticated and statements to be verified. The commission may also receive written submissions from any other persons as to whether a violation has occurred and the adverse consequences resulting from a violation of the compact or the commission's rules, regulations and orders.

(b) *Presentation to the commission.* On the date set in the notice, the alleged violator shall have the opportunity to supplement its written presentation before the commission by any oral statement it wishes to present and shall be prepared to respond to any questions from the commission or its staff or to the statements submitted by persons affected by the alleged violation.

§ 805.23 Adjudicatory hearings/alleged violations.

(a) An adjudicatory hearing (which may be in lieu of or in addition to proceedings pursuant to §§ 805.21 and 805.22) shall not be scheduled unless the executive director or the commission determines that a hearing is required to have an adequate record for the commission, or the commission directs that such a hearing be held.

(b) If an adjudicatory hearing is scheduled, the alleged violator shall be given at least 14 days written notice of the hearing date unless waived by consent. Notice of such a hearing shall be given to the general public and the press in the manner provided in § 805.1(b).

(c) Except to the extent inconsistent with the provisions of this subpart, adjudicatory hearings shall be conducted in accordance with the provisions of §§ 805.2 through 805.6.

§ 805.24 Assessment of a penalty/abatement or remedial action.

The executive director may recommend to the commission the amount of the penalty to be imposed or the abatement and remedial actions to be required. Such a recommendation shall be in writing and shall set forth the basis for the penalty amount proposed. Based upon the record submitted to the commission, the commission shall decide whether a violation has occurred that justifies the imposition of a penalty

pursuant to Section 15.17 of the compact or the requirement of abatement or remedial action. If it is found that such a violation has occurred, the commission shall determine the amount of the penalty to be paid and the nature of the abatement or remedial action to be undertaken.

§ 805.25 Factors to be applied in fixing penalty amount.

(a) Consideration shall be given to the following factors in deciding the amount of any penalty or any settlement:

(1) Previous violation, if any, of the compact, commission regulations or orders;

(2) The intent of the alleged violator;

(3) The extent to which the violation caused adverse environmental consequences;

(4) The costs incurred by the commission or any signatory party relating to the failure to comply with the compact, commission regulations or orders;

(5) The extent to which the violator has cooperated with the commission in correcting the violation and remediating any adverse consequences or harm that has resulted therefrom;

(6) The extent to which the failure to comply with the commission's compact and regulations was economically beneficial to the violator; and

(7) The length of time over which the violation occurred and the amount of water used during that time period.

(b) The commission retains the right to waive any penalty or reduce the amount of the penalty should it determine that, after consideration of the factors in paragraph (a) of this section, extenuating circumstances justify such action.

§ 805.26 Enforcement of penalties/ abatement or remedial orders.

Any penalty imposed or abatement or remedial action ordered by the commission shall be paid or completed within such time period as shall be fixed by the commission. The executive director and commission counsel are authorized to take such action as may be necessary to assure enforcement of this subpart. If a proceeding before a court becomes necessary, the action of the commission in determining a penalty amount shall constitute the penalty amount recommended by the commission to be fixed by the court pursuant to Section 15.17 of the compact.

§ 805.27 Settlement by agreement.

An alleged violator may request settlement of an enforcement proceeding by agreement. If the executive director determines that settlement by agreement is in the best interest of the commission, he/she may submit to the commission a proposed settlement agreement. No settlement will be considered by the commission unless the alleged violator has indicated in writing to the commission acceptance of the terms of the agreement and the intention to comply with all requirements of the settlement agreement including payment of any settlement amount or completion of any abatement or remedial action within the time period provided. If the commission determines not to approve a settlement agreement, the commission may proceed with an enforcement action in accordance with this subpart.

§ 805.28 Effective date.

This subpart shall be effective on May 11, 1995.

§ 805.29 Definitions.

Terms used in this subpart shall be defined as set forth in § 803.3 of this chapter.

[FR Doc. 95–14675 Filed 6–14–95; 8:45 am]
BILLING CODE 7040–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2619 and 2676

Valuation of Plan Benefits in Single-Employer Plans; Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Amendments Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulations on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal. The former regulation contains the interest assumptions that the PBGC uses to value benefits under terminating single-employer plans. The latter regulation contains the interest assumptions for valuations of multiemployer plans that have undergone mass withdrawal. The amendments set out in this final rule adopt the interest assumptions applicable to single-employer plans with termination dates in July 1995, and to multiemployer plans with valuation dates in July 1995. The effect of these amendments is to advise the public of the adoption of these assumptions.

EFFECTIVE DATE: July 1, 1995.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005, 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: This rule adopts the July 1995 interest assumptions to be used under the Pension Benefit Guaranty Corporation's regulations on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619, the "single-employer regulation") and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676, the "multiemployer regulation").

Part 2619 sets forth the methods for valuing plan benefits of terminating single-employer plans covered under title IV of the Employee Retirement Income Security Act of 1974, as amended. Under ERISA section 4041(c), all single-employer plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities," *i.e.*, all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619, subpart C. (Plans terminating in a standard termination may, for purposes of the Stantard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart C Formulas to determine the amount of the plan's underfunding. Part 2676 prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of ERISA.

Appendix B to part 2619 sets forth the interest rates and factors under the single-employer regulation. Appendix B to part 2676 sets forth the interest rates and factors under the multiemployer regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The PBGC issues two sets of interest rates and factors, one set to be used for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. The same assumptions apply to terminating single-employer plans and to multiemployer plans that have undergone a mass withdrawal. This amendment adds to appendix B to parts 2619 and 2676 sets of interest rates and factors for valuing benefits in single-employer plans that have termination dates during July 1995 and multiemployer plans that have undergone mass withdrawal and have valuation dates during July 1995.

For annuity benefits, the interest rates will be 6.30% for the first 20 years following the valuation date and 5.75% thereafter. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 4.75% for the period during which benefits are in pay status and 4.00% during the period preceding the benefit's placement in pay status. The above annuity interest assumptions represent a decrease (from those in effect for June 1995) of .50 percent for the first 20 years following the valuation date and are otherwise unchanged. The lump sum interest assumptions represent a decrease (from those in effect for June 1995) of .75 percent for the period during which benefits are in pay status and the seven years directly preceding that period; they are otherwise unchanged.

Generally, the interest rates and factors under these regulations are in effect for at least one month. However, the PBGC publishes its interest assumptions each month regardless of whether they represent a change from the previous month's assumptions. The assumptions normally will be published in the Federal Register by the 15th of the preceding month or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on these amendments are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates and factors can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in single-employer plans whose termination dates fall during July 1995, and in multiemployer plans that have undergone mass withdrawal and have valuation dates during July 1995, the PBGC finds that good cause exists for making the rates and factors set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866, because it will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does no apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

29 CFR Part 2676

Employee benefit plans and Pensions.

In consideration of the foregoing, parts 2619 and 2676 of chapter XXVI, title 29, Code of Federal Regulations, are hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. In appendix B, Rate Set 21 is added to Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2619—Interest Rates Used To Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form $v^{0:n}$ (as defined in § 2619.49(b)(1)) for purposes of applying the formulas set forth in § 2619.49 (b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums (including the return of accumulated employee contributions upon death), the PBGC shall employ the values of i_t set out in Table I hereof as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (y is an integer and $0 < y \leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y - n_1 - n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

TABLE I.—LUMP SUM VALUATIONS

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
•	•	•	•	•	•	•	•	•
21	7–1–95	8–1–95	4.75	4.00	4.00	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form $v^{0:n}$ (as defined in § 2619.49(b)(1)) for purposes of applying the formulas set forth in § 2619.49 (b) through (i) and in determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of i_t prescribed in Table II hereof.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by i_1, i_2, * * *, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLE II.—ANNUITY VALUATIONS

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
July 1995	.0630	1–20	.0575	>20	N/A	N/A

PART 2676—[AMENDED]

3. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), 1441(b)(1).

4. In appendix B, Rate Set 21 is added to Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2676—Interest Rates Used to Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form $v^{y:n}$ (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13 (b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums, the PBGC shall use the values of i_t prescribed in Table I hereof. The interest rates set forth in Table I shall be used by the PBGC to calculate benefits payable as lump sum benefits as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (y is an integer and $0<y\leq n_1$), interested rate i_1 shall apply for the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $n_1<y\leq n_1+n_2$), interest rate i_2 shall apply from the valuation date for a period of $y-n_1$ years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y>n_1+n_2$), interest rate i_3 shall apply from the valuation date for a period of $y-n_1-n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

TABLE I.—LUMP SUM VALUATION

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
21	7–1–95	8–1–95	4.75	4.00	4.00	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form $v^{0:n}$ (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13 (b) through (i) and in determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of i_t prescribed in the table below.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by i_1, i_2, * * *, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLE II.—ANNUITY VALUATIONS

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t=	i_t	for t=	i_t	for t=γ
July 1995	.0630	1–20	.0575	>20	N/A	N/A

Issued in Washington, DC, on this 12th day of June 1995.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 95–14699 Filed 6–14–95; 8:45 am]

BILLING CODE 7708–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–95–012]

RIN 2115–AA97

Safety Zone: Annual Burlington Independence Day Celebration Fireworks Display, Burlington Bay, Vermont

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent safety zone for the annual Burlington Independence Day Celebration fireworks display located in Burlington Bay, Burlington, Vermont. The safety zone is in effect annually on the third of July from 7:45 p.m. until 10:15 p.m. The safety zone temporarily closes all waters of Burlington Bay within a 250 yard radius of the fireworks platform anchored approximately 250 yards west of Burlington, Vermont, at or near 44°28′33″N latitude and 073°13′33″W longitude (NAD 1983).

EFFECTIVE DATE: This rule is effective on July 3, 1995.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) K. Messenger, Maritime Planning Staff Chief, Coast Guard Group New York (212) 668–7934.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LTJG K. Messenger, Project Manager Coast Guard Group New York and LCDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

Regulatory History

On March 22, 1995, the Coast Guard published a notice of proposed rulemaking (NPRM) in the **Federal Register** (60 FR 15102). Interested persons were requested to submit comments on or before May 22, 1995. No comments were received. A public hearing was not requested and one was not held. The Coast Guard is promulgating this final rule as proposed with a minor correction. The NPRM contained incorrect coordinates due to a publishing error. The coordinates were published as 44°29′33″N latitude, 073°13′33″W longitude. The coordinates should have been published as 44°28′33″N, 073°13′33″W longitude. This final rule states the coordinates correctly.

Due to the NPRM comment period deemed necessary to give adequate public notice, there was insufficient time to publish this final rule 30 days prior to the event. Good cause exists for making this rule effective less than 30 days after publication. Adequate measures are being taken to ensure mariners are made aware of this regulation. This rule will be locally published in the First Coast Guard District's Local Notice to Mariners, and announced via Safety Marine Information Broadcasts.

Background and Purpose

For the last several years, the Burlington Department of Parks and Recreation has submitted an application to hold a fireworks program on Burlington Bay. This regulation establishes a permanent safety zone on all waters of Burlington Bay within a 250 yard radius of the fireworks platform anchored approximately 250 yards west of Burlington, Vermont, at or near 44°28′33″N latitude and 073°13′33″W longitude (NAD 1983). The safety zone is in effect annually on the third of July from 7:45 p.m. until 10:15 p.m., unless extended or terminated sooner by the Captain of the Port New York. The safety zone precludes all vessels from transiting this portion of Burlington Bay and is needed to protect mariners from the hazards associated with fireworks exploding in the area. The effective period of the safety zone will be announced annually via Safety Marine Information Broadcasts and by locally issued notices.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. The safety zone closes a portion of Burlington Bay to all vessel traffic annually on the third of July from 7:45 p.m. until 10:15 p.m., unless extended or terminated sooner by the Captain of the Port New York. Although this regulation prevents traffic from transiting this area, the effect of this regulation is not significant for several reasons: the limited duration of the event; the late hour of the event; that traffic can safely transit to the west of the safety zone; the event has been held annually for the past several years without incident or complaint; and the extensive, advance advisories that will be made. Accordingly, the Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under Section 3 of the Small Business Act (15 U.S.C. 632).

For reasons set forth in the Regulatory Evaluation, the Coast Guard expects the impact of this regulation to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2.e. of Commandant Instruction M16475.1B, revised 59 FR 38654, it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist are included in the docket. An appropriate environmental analysis of the fireworks program under the

National Environmental Policy Act will be conducted in conjunction with the marine event permitting process each year.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Final Regulation

For reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Section 165.166, is added to read as follows:

§ 165.166 Safety Zone; Annual Burlington Independence Day Celebration Fireworks Display, Burlington Bay, Vermont.

(a) *Location.* All waters of Burlington Bay within a 250 yard radius of a fireworks platform anchored approximately 250 yards west of Burlington, Vermont, at or near 44°28′33″N latitude and 073°13′33″W longitude (NAD 1983).

(b) *Effective period.* The safety zone is in effect annually on the third of July from 7:45 p.m. until 10:15 p.m., unless extended or terminated sooner by the Captain of the Port New York. The effective period will be announced annually via Safety Marine Information Broadcasts and locally issued notices.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: June 2, 1995.

T.H. Gilmour,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 95–14557 Filed 6–14–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[COTP St. Louis 95–006]

RIN 2115–AA97

Safety Zone; Meramec River, Mile 0.0 to 21.0

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Meramec River between mile 0.0 and 21.0. This regulation is required for the prevention of damage to property and protection of flooded areas. This regulation will restrict general navigation in the regulated area for the protection of life and property along the shore.

EFFECTIVE DATES: This regulation is effective on May 20, 1995 and will remain in effect until June 19, 1995 unless terminated sooner by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LT Robert Siddall, Operations Officer, Captain of the Port, St. Louis, Missouri at (314) 539–3823.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are LTJG A.B. Cheney, Project Officer, Maine Safety Office, St. Louis, Missouri and LT S.M. Moody, Project Attorney, Second Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this rule and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, recent heavy rainfall on already saturated ground in portions of the Meramec River Basin has caused portions of the Meramec River to approach and exceed flood stages, leaving insufficient time to publish a proposed rulemaking. The Coast Guard deems it to be in the public's interest to issue a rule without waiting for comment period since high water conditions present an immediate hazard.

Background and Purpose

The Meramec River from the mouth, mile 0.0, to mile 21.0, has seen a rapid rise in the water level and is above flood stage. This rule is required to protect property along the Meramec River, therefore, all vessels are restricted from the regulated area.

Regulatory Evaluation

This regulation is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979), it will not have a significant economic impact on a substantial number of small entities, and it contains no collection of information requirements.

The Coast Guard expects the impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary. The imposed restrictions are anticipated to be of short duration. Captain of the Port, St. Louis, Missouri will monitor river conditions and will authorize entry into the closed area as conditions permit. Changes will be announced by Marine Safety Information Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHZ). Mariners may also call the Port Operations Officer, Captain of the Port, St. Louis, Missouri at (314) 539–3823 for current information.

Small Entities

The Coast Guard finds that the impact on small entities, if any, is not substantial. Therefore, the Coast Guard certifies under section 605(b) to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism Assessment

Under the principles and criteria of Executive Order 12612, this rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.g.[5] of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation as an action to protect public safety. A Categorical Exclusion Determination has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (Water), Records and recordkeeping, Security measures, Vessels, Waterways.

Temporary Regulation

In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A temporary section 165.T02–039 is added, to read as follows:

§ 165.T02–039 Safety Zone: Meramec River.

(a) *Location.* The Meramec River between mile 0.0 and 21.0 is established as a safety zone.

(b) *Effective Dates.* This section is effective on May 20, 1995 and will terminate on June 19, 1995, unless terminated sooner by the Captain of the Port.

(c) *Regulations.* The general regulations under § 165.23 of this part which prohibit vessel entry within the described zone without authority of the Captain of the Port apply. The Captain of the Port, St. Louis, Missouri will authorize entry into and operations within the described zone under certain conditions and limitations as announced by Marine Safety Information Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHZ).

Dated: May 20, 1995.

S.P. Cooper,

Commander, U.S. Coast Guard, Captain of the Port, St. Louis, Missouri.

[FR Doc. 95–14561 Filed 6–14–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[COTP St. Louis 95–005]

RIN 2115–AA97

Safety Zone; Osage River, mile 0.0 to 6.0

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Osage River between mile 0.0 and 6.0. This regulation is required for the prevention of damage to levees and protection of flooded areas. This regulation will restrict general navigation in the regulated area for the protection of life and property along the shore.

EFFECTIVE DATES: This regulation is effective on May 19, 1995 and will remain in effect until June 18, 1995 unless terminated sooner by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LT Robert Siddall, Operations Officer, Captain of the Port, St. Louis, Missouri at (314) 539–3823.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are LTJG A.B. Cheney, Project Officer, Marine Safety Office, St. Louis, Missouri and LT S.M. Moody, Project Attorney, Second Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this rule and good cause exist for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, recent heavy rainfall on already saturated ground in portions of the Osage River Basin has caused portions of the Osage River to approach and exceed flood stages, leaving insufficient time to publish a proposed rulemaking. The Coast Guard deems it to be in the public's interest to issue a rule without waiting for comment period since high water conditions present an immediate hazard.

Background and Purpose

The Osage River from the mouth, mile 0.0, to mile 6.0, has seen a rapid rise in the water level and is above flood stage. This rule is required to protect saturated levees, therefore, all vessels are restricted from the regulated area.

Regulatory Evaluation

This regulation is not major under Executive Order 122291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979), it will not have a significant economic impact on a substantial number of small entities, and it contains no collection of information requirements.

The Coast Guard expects the impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary. The imposed restrictions are anticipated to be of short duration. Captain of the Port, St. Louis, Missouri will monitor river conditions and will authorize entry into the closed area as conditions permit. Changes will be announced by Marine Safety Information Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHZ). Mariners may also call the Port Operations Officer, Captain of the Port, St. Louis, Missouri at (314) 539–3823 for current information.

Small Entities

The Coast Guard finds that the impact on small entities, if any, is not substantial. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism Assessment

Under the principles and criteria of Executive Order 12612, this rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.g.[5] of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation as an action to protect public safety. A Categorical Exclusion Determination has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (Water), Records and recordkeeping, Security measures, Vessels, Waterways.

Temporary Regulation

In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160–5.

2. A temporary section 165.T02–031 is added, to read as follows:

§ 165.T02–031 Safety Zone: Osage River.

(a) *Location.* The Osage River between mile 0.0 and 6.0 is established as a safety zone.

(b) *Effective Dates.* This section is effective on May 19, 1995 and will terminate on June 18, 1995, unless

terminated sooner by the Captain of the Port.

(c) *Regulations.* The general regulations under § 165.23 of this part which prohibit vessel entry within the described zone without authority of the Captain of the Port apply. The Captain of the Port, St. Louis, Missouri will authorize entry into and operations within the described zone under certain conditions and limitations as announced by Marine Safety Information Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHZ).

Dated: May 19, 1995.

S.P. Cooper,

Commander, U.S. Coast Guard, Captain of the Port, St. Louis, Missouri.

[FR Doc. 95–14562 Filed 6–14–95; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF EDUCATION

34 CFR Part 674

RIN 1840–AB71

Federal Perkins Loan Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Federal Perkins Loan Program to add the Office of Management and Budget (OMB) control number to § 674.34(e) of the regulations. The section contains information collection requirements approved by OMB. The Secretary takes this action to inform the public that these requirements have been approved, and therefore affected parties must comply with them.

EFFECTIVE DATE: These regulations are effective on July 1, 1995.

FOR FURTHER INFORMATION CONTACT: Sylvia R. Ross, Federal Perkins Loan Program, U.S. Department of Education, 600 Independence Avenue SW., (Room 4018, ROB–3), Washington, D.C. 20202–5447. Telephone (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Final regulations for the Federal Perkins Loan Program were published in the **Federal Register** on November 30, 1994 (59 FR 61392). Compliance with information collection requirements in § 674.34(e) of these regulations was delayed until those requirements were approved by OMB under the Paperwork Reduction Act of 1980. OMB approved the information collection requirements in the regulations on May 19, 1995. The information collection requirements in § 674.34(e) will therefore become effective with the other provisions of the regulations on July 1, 1995.

Waiver of Proposed Rulemaking

It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the publication of OMB control numbers is purely technical and does not establish substantive policy. Therefore, the Secretary has determined under 5 U.S.C. 553(b)(B), that public comment on the regulations is unnecessary and contrary to the public interest.

List of Subjects in 34 CFR Part 674

Loan programs—education, Reporting and recordkeeping requirements, Student aid.

Dated: June 9, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

The Secretary amends part 674 of title 34 of the Code of Federal Regulations as follows:

PART 674—FEDERAL PERKINS LOAN PROGRAM

1. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1087aa–1087–ii, and 421–429, unless otherwise noted.

§ 674.34 [Amended]

2. Section 674.34(e) is amended by adding the OMB control number following the section to read as follows:

(Approved by the Office of Management and Budget under control number 1840–0535)

[FR Doc. 95–14666 Filed 6–14–95; 8:45 am]

BILLING CODE 4000–01–P

34 CFR Part 682

RIN 1840–AC09

Federal Family Education Loan Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Federal Family Education Loan Program to add the Office of Management and Budget (OMB) control number to certain sections of the regulations. Those sections contain information collection requirements approved by OMB. The Secretary takes this action to inform the public that these requirements have been approved, and therefore affected parties must comply with them.

EFFECTIVE DATE: The information collection requirements included in the regulations published on November 30, 1994 become effective on July 1, 1995.

FOR FURTHER INFORMATION CONTACT: Pamela Moran, Loans Branch, Division of Policy Development, Policy, Training, and Analysis Service, U.S. Department of Education, 600 Independence Avenue, S.W., (Room 3053, ROB–3), Washington, D.C. 20202. Telephone (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Final regulations for the Federal Family Education Loan Program were published in the **Federal Register** on November 30, 1994 (59 FR 61424). Compliance with information collection requirements in certain sections of these regulations was delayed until those requirements were approved by OMB under the Paperwork Reduction Act of 1980. OMB approved the information collection requirements in the regulations on December 5, 1994. The information collection requirements in these regulations will therefore become effective with all of the other provisions of the regulations on July 1, 1995.

Waiver of Proposed Rulemaking

It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the publication of OMB control numbers is purely technical and does not establish substantive policy. Therefore, the Secretary has determined under 5 U.S.C. 553(b)(B), that public comment on the regulations is unnecessary and contrary to the public interest.

List of Subjects in 34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: June 9, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

The Secretary amends part 682 of Title 34 of the Code of Federal Regulations as follows:

PART 682—FEDERAL FAMILY EDUCATION LOAN PROGRAM

1. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

§§ 682.305, 682.401, 682.404, 682.603 [Amended]

2. Sections 682.305, 682.401, 682.404, and 682.603 are amended by republishing the OMB control number following each section to read as follows:

"(Approved by the Office of Management and Budget under control number 1840–0538)"

[FR Doc. 95–14665 Filed 6–14–95; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ50–1–6966a; FRL–6187–8]

Clean Air Act Approval and Promulgation of Title V, Section 507, Small Business Stationary Source Technical and Environmental Compliance Assistance Program for Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the Arizona State Implementation Plan. On June 23, 1994 EPA published the Notice of Proposed Rulemaking to partially approve and partially disapprove the State Implementation Plan (SIP) revision submitted by the State of Arizona for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM). The cause of the proposed disapproval has since been corrected by the State. Thus, EPA is finalizing approval of these revisions into the Arizona SIP under provisions of the CAA regarding EPA action on SIP submittals and plan requirements for establishing a PROGRAM.

DATES: This action is effective on August 14, 1995 unless adverse or critical comments are received by July 17, 1995. If the effective date is delayed, a timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105

U.S. Environmental Protection Agency, Air Docket 6102, 401 "M" Street, S.W. Washington, D.C. 20460

Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, Arizona 85012.

FOR FURTHER INFORMATION CONTACT: R. Michael Stenburg, A–1, U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1102.

SUPPLEMENTARY INFORMATION:

1. Background

Implementation of the provisions of the Clean Air Act (CAA), as amended in 1990, will require regulation of many small businesses so that areas may attain and maintain the national ambient air quality standards (NAAQS) and reduce the emission of air toxics. Small businesses frequently lack the technical expertise and financial resources necessary to evaluate such regulations and to determine the appropriate mechanisms for compliance. In anticipation of the impact of these requirements on small businesses, the CAA requires that States adopt a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM), and submit this PROGRAM as a revision to the Federally approved SIP. In addition, the CAA directs the Environmental Protection Agency (EPA) to oversee these small business assistance programs and report to Congress on their implementation. The requirements for establishing a PROGRAM are set out in Section 507 of Title V of the CAA. In February 1992, EPA issued *Guidelines for the Implementation of Section 507 of the 1990 Clean Air Act Amendments,* in order to delineate the Federal and State roles in meeting the new statutory provisions and as a tool to provide further guidance to the States on submitting acceptable SIP revisions.

On November 13, 1992, the State of Arizona submitted a SIP revision to EPA in order to satisfy the requirements of Section 507. In order to gain full approval, the State submittal must provide for each of the following PROGRAM elements: (1) The establishment of a Small Business Assistance Program (SBAP) to provide technical and compliance assistance to small businesses; (2) the establishment of a State Small Business Ombudsman to represent the interests of small businesses in the regulatory process; and (3) the creation of a Compliance Advisory Panel (CAP) to determine and report on the overall effectiveness of the SBAP. A detailed discussion of the background for each of the above PROGRAM elements is provided in the June 23, 1994 **Federal Register** Notice of Proposed Rulemaking (NPR). EPA proposed to partially disapprove the November 13, 1992 submittal for not satisfying the Small Business Assistance Program requirement to develop procedures for consideration of requests from a small business stationary source for modification of: (A) Any work practice or technological method of compliance; or (B) the schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date, based on the technological and financial capability of any such small business stationary source. On September 12, 1994 the State held a public hearing which adopted the aforementioned procedure for considering modification requests. On February 1, 1995 the State submitted the procedure which became effective on February 1, 1995, for approval as a SIP revision.

EPA has evaluated all of the above PROGRAM elements for consistency with the requirements of the CAA and the EPA policy guidance document. EPA has found that all the PROGRAM elements now meet the applicable EPA requirements. A detailed discussion of the background for each of the above PROGRAM elements is provide both in this **Federal Register** and in the June 23, 1994 **Federal Register** Notice of Proposed Rulemaking (NPR).

II. Response to Public Comments

A 30-day public comment period was provided in the June 23, 1994 **Federal Register** NPR. EPA received no public comments.

III. Final Action

EPA is approving the SIP revisions submitted by the State of Arizona. The revisions were made to satisfy the requirements of Section 507 of the CAA.

EPA is publishing this notice without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective August 14, 1995 unless, by July 17, 1995, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective August 14, 1995.

The OMB has exempted this action from review under Executive Order 12866.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

By this action, EPA is approving a State program created for the purpose of assisting small businesses in complying with existing statutory and regulatory requirements. The program being approved today does not impose any new regulatory burden on small businesses; it is a program under which small businesses may elect to take advantage of assistance provided by the state. Therefore, because the EPA's approval of this program does not impose any new regulatory requirements on small businesses, I certify that it does not have a significant economic impact on any small entities affected.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations.

Note: Incorporation by reference of the State Implementation Plan for the State of Arizona was approved by the Director of the Federal Register on July 1, 1982.

Dated: March 27, 1995.

Felicia Marcus,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart D—Arizona

2. Section 52.120 is amended by adding paragraphs (c) (72) and (76) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(72) Program elements were submitted on November 13, 1992 by the Governor's designee.

(i) Incorporation by reference.

(A) Small Business Stationary Source Technical and Environmental Compliance Assistance Program, adopted on November 13, 1993.

* * * * *

(76) Program elements were submitted on February 1, 1995 by the Governor's designee.

(i) Incorporation by reference.

(A) Small Business Stationary Source Technical and Environmental Compliance Assistance Program, adopted on February 1, 1995.

* * * * *

[FR Doc. 95–14625 Filed 6–14–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[IN32–2–7011; FRL–5208–4]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: On March 31, 1995, the USEPA proposed approval of a State Implementation Plan (SIP) request for Lake County, Indiana. The request was submitted by the State of Indiana for the purpose of bringing about the attainment of the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM). Public comments were solicited on the proposed SIP revision, and on USEPA's proposed rulemaking action. The public comment period ended on May 1, 1995, and no public comments were received. This rulemaking action approves, in final, the PM SIP revision request for Lake County, Indiana as requested by Indiana.

EFFECTIVE DATE: This final rule is effective on July 17, 1995.

ADDRESSES: Copies of the State's submittal, and other materials relating to this rulemaking are available at the following address for review: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

The docket may be inspected between the hours of 8:30 a.m. and 12 noon and from 1:30 p.m. until 3:30 p.m. Monday through Friday. A reasonable fee may be charged by the USEPA for copying docket material.

A copy of this SIP revision is available for inspection at: Office of Air and Radiation (OAR), Docket and Information Center (Air Docket 6102), Room 1500, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: David Pohlman, Regulation Development Branch, Regulation Development Section (AR–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–3299. Anyone wishing to visit the Region 5 offices should first contact David Pohlman.

SUPPLEMENTARY INFORMATION:

Background

Under section 107(d)(4)(B) of the Clean Air Act (Act), as amended on November 15, 1990 (amended Act), certain areas ("initial areas") were designated nonattainment for PM. Under section 188 of the amended Act these initial areas were classified as "moderate". The initial areas include the Lake County, Indiana, nonattainment area. (See 40 CFR 81.314 for a complete description of these areas.) Section 189 of the amended Act required State submission of a PM SIP for the initial areas by November 15, 1991.

Section 110(k) of the Act sets out provisions governing USEPA's review of SIP submittals (see 57 FR 13565–13566). In this final rule, USEPA is approving the SIP revision request submitted to USEPA on June 16, 1993, and supplemented on December 9, 1993, September 8, 1994, and November 17, 1994, for the Lake County nonattainment area. The submittal repeals rules 326 Indiana Administrative Code (IAC) 5–1–6, 6–1–10, and 6–1–11. The submittal contains the following new or revised rules:

326 IAC 1–2–32.1 *	"Gooseneck cap" definition.
326 IAC 1–2–34.1 *	"Jumper pipe" definition.
326 IAC 1–2–62.1 *	"Quench car" definition.
326 IAC 1–2–63.1 *	"Quench reservoir" definition.
326 IAC 1–2–63.2 *	"Quench tower" definition.
326 IAC 5–1–1 *	Applicability of rule.
326 IAC 5–1–2 *	Visible emission limitations.
326 IAC 5–1–3 *	Temporary exemptions.
326 IAC 5–1–4 *	Compliance determination.
326 IAC 5–1–5 *	Violations.
326 IAC 5–1–7 *	State implementation plan revisions.
326 IAC 6–1–10.1 (a–k)	Lake County PM10 emissions requirements.
326 IAC 6–1–10.2	Lake County PM10 coke battery emissions requirements.
326 IAC 6–1–11.1	Lake County fugitive particulate matter control requirements.
326 IAC 11–3–2 (a–f and i) *	Emission limitations.
326 IAC 11–3–4 *	Compliance determination.

While some of these rules apply strictly to Lake County, others (marked above with an asterisk) are intended to have state-wide applicability. The USEPA is approving the rules marked above with an asterisk for the entire state of Indiana. The other rules are being approved for sources in Lake County only.

The limitations on point sources in Lake County include source-specific emissions limits in terms of pounds per ton (lb/ton), pounds per hour (lbs/hr), pounds per Million British Thermal Units (lb/MMBTU), and grains per dry standard cubic foot (gr/dscf). There are also source-specific opacity limits ranging from 5–20 percent on certain sources in the nonattainment area. Other limitations on point sources include emission limits on coke ovens located in Lake County and a general 20 percent opacity limit for all sources in the nonattainment area. Limitations on sources of fugitive emissions in Lake County include a 10 percent opacity limit for paved roads and parking lots, unpaved roads and parking lots, and wind erosion from storage piles.

Indiana also submitted air quality modeling which shows that the Lake County PM nonattainment area will attain the 24-hour PM standard. The highest sixth high predicted 24-hour concentration is 149.9 $\mu g/m^3$ (the 24-hour PM standard is 150 $\mu g/m^3$). The final modeling also predicts attainment of the annual PM standard. The highest 5-year average predicted PM concentration is 47.7 $\mu g/m^3$ (the standard is 50 $\mu g/m^3$). In addition, a preliminary review of the available monitored air quality data for the Lake County area shows that this area is attaining the NAAQS.

The USEPA proposed approval of and solicited public comments on this SIP revision request on March 31, 1995. The public comment period ended on May 1, 1995, and no comments were received.

Final Rulemaking Action

The USEPA is approving the plan revision submitted to USEPA by the State of Indiana on June 16, 1993, and supplemented on December 9, 1993, September 8, 1994, and November 17, 1994, for the Lake County PM nonattainment area. Among other things, the State of Indiana has demonstrated through modeling that the Lake County moderate PM nonattainment area will attain the PM NAAQS. In addition, a preliminary review of the monitored air quality data for the Lake County area shows that this area is attaining the NAAQS.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from Executive Order 12866 review.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 14, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2) of the Act.)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: May 8, 1995.

David A. Ullrich,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart P—Indiana

2. Section 52.770 is amended by adding paragraph (c)(99) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(99) On June 16, 1993, December 9, 1993, September 8, 1994, and November 17, 1994, Indiana submitted a part D particulate matter (PM) nonattainment area plan for the Lake County moderate nonattainment area.

(i) Incorporation by reference.

(A) Indiana Administrative Code Title 326: Air Pollution Control Board, Article 1: General Provisions, Rule 2: Definitions, Section 32.1: "Gooseneck cap" definition, Section 34.1: "Jumper pipe" definition, Section 62.1: "Quench car" definition, Section 63.1: "Quench reservoir" definition, and Section 63.2: "Quench tower" definition. Added at 16 *Indiana Register* 2363, effective June 11, 1993.

(B) Indiana Administrative Code Title 326: Air Pollution Control Board, Article 5: Opacity Regulations, Rule 1: Opacity Limitations, Section 1: Applicability of rule, Section 2: Visible emissions limitations, Section 3:

Temporary exemptions, Section 4: Compliance determination, Section 5: Violations, and Section 7: State implementation plan revisions. Amended at 16 *Indiana Register* 2363, effective June 11, 1993.

(C) Indiana Administrative Code Title 326: Air Pollution Control Board, Article 6: Particulate Rules, Rule 1: Nonattainment Area Limitations, Opacity Limitations, Section 10.1: Lake County PM10 emissions requirements (subsections a through k), Section 10.2: Lake County PM10 coke battery emissions requirements, and Section 11.1: Lake County fugitive particulate matter control requirements. Added at 16 *Indiana Register* 2363, effective June 11, 1993.

(D) Indiana Administrative Code Title 326: Air Pollution Control Board, Article 11: Emissions Limitations for Specific Types of Operations, Rule 3: Coke Oven Batteries, Section 2: Emissions limitations (subsections a through f, and i), and Section 4: Compliance determination. Amended at 16 *Indiana Register* 2363, effective June 11, 1993.

[FR Doc. 95–14627 Filed 6–14–95; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 300

[FRL–5220–7]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Koch Refining Company Superfund Site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the Koch Refining Company site in Minnesota from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of Minnesota have determined that all appropriate Fund-financed responses under CERCLA have been implemented and that no further response by responsible parties is appropriate. Moreover, EPA and the State of Minnesota have determined that remedial actions conducted at the site to date remain protective of public health, welfare, and the environment.

EFFECTIVE DATE: June 15, 1995.

FOR FURTHER INFORMATION CONTACT: Gladys Beard at (312) 886–7253, Associate Remedial Project Manager, Office of Superfund, U.S. EPA—Region V, 77 West Jackson Blvd., Chicago, IL 60604. Information on the site is available at the local information repository located at: Minnesota Pollution Agency, Public Library, 520 Laffayette Rd. St Paul, MN 55155–4194.

Requests for comprehensive copies of documents should be directed formally to the Regional Docket Office. The point of contact for the Regional Docket Office is Jan Pfundheller (H–7J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–5821.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: The Koch Refining Company located in Rosemount, Minnesota. A Notice of Intent to Delete was published March 23, 1995 (60 FR 15273) for this site. The closing date for comments on the Notice of Intent to Delete was April 24, 1995. EPA received no comments and therefore has not prepared a Responsiveness Summary.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund-) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL in the unlikely event that conditions at the site warrant such action. Deletion of a site from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: April 28, 1995.

Valdas V. Adamkus,

Regional Administrator, U.S. EPA, Region V.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

Appendix B—[Amended]

2. Table 1 of appendix B to part 300 is amended by removing the Site "Koch Refining Co./N-Ren Corp., Pine Bend, Minnesota".

[FR Doc. 95–14545 Filed 6–14–95; 8:45 am]
BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 60, No. 115
Thursday, June 15, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2635

RIN 3209–AA04

Widely Attended Gatherings Gifts Exception Under the Standards of Ethical Conduct for Employees of the Executive Branch

AGENCY: Office of Government Ethics (OGE).

ACTION: Proposed rule.

SUMMARY: The Office of Government Ethics proposes to revise the gift exception contained in the Standards of Ethical Conduct for Employees of the Executive Branch to permit employees to accept invitations to certain widely attended gatherings from persons other than the sponsors of those events and to clarify that only those events attended by large number of persons qualify as widely attended gatherings. The Office of Government Ethics also proposes to permit authorization for a guest, other than the employee's spouse, to accompany the employee to a widely attended gathering or to an event at which the employee is assigned to participate as a speaker, panelist or other information presenter at which other guests will be in attendance. These proposed changes would provide more flexibility in attendance at such events while preserving agencies' ability to monitor compliance by their employees.

DATES: Comments by agencies and the public are invited and are due by August 14, 1995.

ADDRESSES: Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917, Attention: Mr. Gressman.

FOR FURTHER INFORMATION CONTACT: William E. Gressman, Office of Government Ethics; telephone: 202–523–5757; FAX: 202–523–6325.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, the Office of Government Ethics published the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) for codification at 5 CFR part 2635. See 57 FR 35006–35067, as corrected at 57 FR 48557 and 57 FR 52583, with additional grace period extensions for certain existing agency provisions at 59 FR 4779–4780 and 60 FR 6390–6391. The Standards, which took effect on February 3, 1993, set uniform ethical conduct standards applicable to all executive branch personnel. They include regulations implementing the gift restrictions contained in 5 U.S.C. 7353 and section 101(d) of Executive Order 12674 as modified by Executive Order 12731. In accordance with those authorities, § 2635.204 sets forth exceptions to § 2635.202(a), which provides that, in the absence of an exception, an employee shall not directly or indirectly solicit or accept a gift from a prohibited source or a gift that is given because of the employee's official position.

One of several exceptions set forth in § 2635.204 is the exception at § 2635.204(g)(2) by which an employee may accept a sponsor's unsolicited gift of free attendance at all or part of a widely attended gathering. Unlike the de minimis exception at § 2635.204(a) for unsolicited gifts having a market value of $20 or less per occasion (with a calendar year aggregate limit of $50), § 2635.204(g)(2) imposes no limitation on the market value of the gifts of free attendance that may be accepted. While the tickets or other fees for attendance at such gatherings ordinarily cost much less, this exception would permit acceptance of free attendance at events for which the ticket price exceeds even $1,000. In part to ensure that prohibited sources do not use this exception to provide lavish entertainment to employees of the agencies with which they do business or otherwise interact, § 2635.204(g)(2) specifies that an invitation to a widely attended gathering can be accepted only if it is from the sponsor of the event.

On March 9, 1993, shortly after the Standards first took effect, the White House declared a six-month suspension of application to press dinners of that portion of § 2635.204(g)(2) that limits acceptance of invitations to widely attended gatherings to those issued by the sponsor of the event. During that six-month period, executive branch officials were authorized to attend press dinners as guests of individuals or organizations other than the sponsor of the event, if the event otherwise met the conditions of the widely attended gathering exception. On December 21, 1993, with another round of press association events in the offing, the White House issued a memorandum to all agency heads once again temporarily suspending administrative enforcement of the rule affecting widely attended gatherings solely as it relates to dinners sponsored by news associations for which admission for executive branch officials is paid by news organizations.

In a letter of December 21, 1993 addressed to OGE, the White House asked OGE to consider a revision to § 2635.204(g)(2) to provide that an employee may accept an invitation received directly from a news organization to attend a widely attended gathering sponsored by a news association where there has been a determination that the employee's attendance is in the interest of the agency. In the alternative, the White House suggested that OGE might wish to consider revising § 2635.204(g)(2) to provide an exemption for invitations to a broader range of widely attended gatherings from persons other than the sponsors of those events. The White House specified in its memorandum of the same date that the suspension was to extend until August 1, 1994, or until such later date as OGE responded to its request for revision of § 2635.204(g)(2). This proposed rule is the first step in OGE's response to the White House request. Thus, the suspension effected by the White House's most recent memorandum of December 21, 1993 will extend until OGE has issued an interim or final rule determination as to this matter after receiving and reviewing comments in response to this notice of proposed rulemaking.

In asking that OGE treat the press differently than others for purposes of permitting employees to attend press association events, the White House expressed the view that the press is not like other individuals, organizations or entities. The press, it suggested, provides the public with access to the institution of Government and, thus, functions on behalf of the greater public

good in seeking to gather, record and disseminate information about current events. In the view of the White House, members of the press and press organizations do not seek to do business with, nor do they seek official action from, the Government officials about whom they report. The White House suggested that this provides a justification for treating invitations from press organizations differently than invitations from others who are prohibited sources or who invite Government employees because of their official positions.

It may be true that members of the press, in some instances, do not seek to do business with or seek official action from the particular Government official about whom they are reporting. More often than not, however, those who report about the actions of Government officials or about Government programs do interview, or seek to interview, those who are the subject of their reporting or who have official knowledge about the subject. When that occurs they and the press organizations they represent often are seeking official information from Government officials and are seeking to occupy their official time. They are "prohibited sources" within the meaning of 5 CFR 2635.203(d)(1) to the same extent as are others who seek official action from the employees of a Federal agency. How successful they are in obtaining that official information impacts upon their work product and redounds to their benefit or detriment and, ultimately, to the benefit or detriment of the news organizations they serve. Members of the press and press organizations have interests that may be substantially affected by the performance or nonperformance of the official duties of the Government officials of whom they seek information and, thus, also meet the definition of prohibited sources in 5 CFR 2635.203(d)(4). See OGE informal advisory memorandum 87x13 issued October 23, 1987, as published in the "Informal Advisory Letters and Memoranda and Formal Opinions of the United States Office of Government Ethics" (at pp. 743–755 of the 1979–1988 bound volume), which is available from the U.S. Government Printing Office. We agree with the White House view that reporting by the press often serves the public good. Whether the product or service is a new cancer medication approved by the Food and Drug Administration or a blockbuster documentary on World War I funded, in part, by a grant from the National Endowment for the Humanities, the same can be said of the products or services of many others who are prohibited sources.

For the reasons stated above, we cannot concur in the White House view that invitations from the press to widely attended gatherings should be treated differently than invitations from other prohibited sources or from others who invite Government officials because of their official positions. We do agree with the White House view, however, that § 2635.204(g)(2) may be unnecessarily restrictive in prohibiting acceptance of invitations to all widely attended gatherings from a person other than the sponsor of the event. By this notice, OGE proposes to adopt the White House's alternative suggestion to modify § 2635.204(g)(2) to permit acceptance of invitations to widely attended gatherings from persons other than the sponsors of those events where more than 100 will be in attendance and where the gift of free attendance has a market value of $250 or less. The Office of Government Ethics also proposes to modify § 2635.204(g)(2) to clarify that events attended by a few, rather than many, are not widely attended gatherings. In addition, OGE is proposing to amend § 2635.204(g)(6) to permit authorization for a person other than a spouse to accompany an employee to a widely attended gathering or to an event at which the employee is assigned to participate as a speaker, panel participant or other presenter of information (pursuant to § 2635.204(g)(1)), where an invitation has been extended to the spouse or a guest and where others in attendance will generally be accompanied by a spouse or a guest.

The proposed amendments to § 2635.204(g) are incorporated in this notice of proposed rulemaking after consultation with the Department of Justice and the Office of Personnel Management.

II. Analysis of the Proposed Changes

As an exception to the gift prohibitions set forth in 5 CFR 2635.202(a), § 2635.204(g)(2) now permits an employee to accept an unsolicited gift of free attendance at a widely attended gathering where the agency makes a determination that the employee's attendance is in the interest of the agency, provided that the gift is from the sponsor of the event. One of the two changes to § 2635.204(g)(2) proposed by this rule would permit an employee to accept an unsolicited gift of free attendance at a widely attended gathering from a person other than the sponsor of the event where there has been a determination of agency interest, provided that more than 100 persons are expected to attend the event and provided that the gift of free attendance has a market value of $250 or less. The requirement that attendance be expected to exceed 100 persons is proposed to limit the use of this exception to events which, by their larger, more public nature are unlikely to prompt questions regarding the appropriateness of their characterization as widely attended. The $250 ceiling on the value of free attendance that may be accepted from a person other than the event's sponsor coincides generally with the public financial disclosure reporting exclusion at 5 U.S.C. app. § 102(a)(2)(A) of the Ethics in Government Act (and 5 CFR 2634.304(a) of OGE's implementing regulations) for gifts of less than $250 and, thus, comports with legislative consensus that gifts below that amount are of a value that need not be subjected to public scrutiny. Together, the two limitations reduce the possibility that the exception for widely attended gatherings might be used to provide lavish entertainment for Government employees.

To accommodate the proposed change to § 2635.204(g)(2), a conforming change to § 2635.204(g)(3)(i) is proposed to require a written finding of agency interest where the person who has extended the invitation may be substantially affected by performance or nonperformance of the employee's duties. The phrase "person who has extended the invitation" means the person who is the donor of the gift of free attendance. A conforming change to § 2635.204(g)(4) is proposed to clarify that the market value of free attendance by an accompanying spouse or other guest, when authorized under § 2635.204(g)(6), is to be added to the market value of the employee's own free attendance in determining the market value of the gift of free attendance for the purpose of applying the $250 limit and for the purpose of considering the relevant factors under § 2635.204(g)(3)(i). A new example 2 is proposed to be added following § 2635.204(g) to illustrate this modification. Example 1 would be modified to incorporate a free attendance value in excess of $250 so that the example will continue to illustrate that higher value gifts of free attendance may be accepted with agency approval only from the sponsor of the event.

The other change proposed to § 2635.204(g)(2) is to add language to clarify that widely attended gatherings are only those attended by a large number of persons. As presently in effect, the paragraph states that a gathering "is widely attended if, for example, it is open to members from throughout a given industry or profession or if those in attendance represent a range of persons interested in a given matter." This sentence was intended to help describe the types of events that would qualify as widely attended gatherings and was not intended to alter the normal meaning of the phrase "widely attended" as encompassing those attended by many. It has been read otherwise by some who have argued that small gatherings of fewer even than 20 qualify if the few in attendance represent the range of persons interested in a given matter. Proposed new example 3 would help to illustrate the meaning of the phrase widely attended gathering.

The Office of Government Ethics also proposes to revise § 2635.204(g)(6) so that an employee who has received an invitation to a widely attended gathering that includes an invitation to bring a guest may be authorized by the agency designee to accept on behalf of an accompanying guest, without regard to whether that guest is the employee's spouse. Under paragraph (g)(6) as presently in effect, an agency may only authorize an employee to accept a sponsor's invitation to an accompanying spouse. The Office of Government Ethics agrees with those who have observed that it is unfair to an employee who is not married or whose spouse is unable or does not wish to attend an event to restrict acceptance to spouses only. The expanded authority for an accompanying guest would extend to an employee who, under § 2635.204(g)(1), is assigned to participate as a speaker, panel participant or other presenter of information at a conference or other event where others in attendance will generally be accompanied by a spouse or other guest. The change proposed would include language clarifying that the invitation to bring an accompanying spouse or other guest may be accepted only if it is unsolicited. The expanded authority could not be used for more than one accompanying guest.

In the last sentence of § 2635.204(g)(3)(i) the phrase "monetary value" is proposed to be changed to "market value" to comport with the definition at § 2635.203(c). Other language changes to § 2635.204(g)(2)–(g)(6) are proposed simply to conform to the proposed substantive changes discussed above.

III. Matters of Regulatory Procedure

Executive Order 12866

In promulgating this proposed rule, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. These proposed amendments have also been reviewed by the Office of Management and Budget under that Executive Order.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this proposed amendatory rule will not have a significant economic impact on a substantial number of small businesses because it primarily affects Federal executive branch employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to this proposed amendment because it does not contain information collection requirements that require approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2635

Conflict of interests, Executive branch standards of conduct, Government employees.

Approved: April 5, 1995.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics proposes to amend part 2635 of subchapter B of chapter XVI of title 5 of the Code of Federal Regulations as follows:

PART 2635—[AMENDED]

1. The authority citation for part 2635 continues to read as follows:

Authority: 5 U.S.C. 7351, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

Subpart B—Gifts From Outside Sources

2. Section 2635.204 is amended as set forth below:

A. Revising paragraphs (g)(2) through (g)(6);

B. Republishing the note following paragraph (g)(4);

C. Revising example 1 following paragraph (g)(6);

D. Redesignating examples 2, 3 and 4 following paragraph (g)(6) as examples 4, 5 and 6, respectively; and

E. Adding new examples 2 and 3 following paragraph (g)(6).

The revisions, republication and addition read as follows:

§ 2635.204 Exceptions.

* * * * *

(g) * * *

(1) * * *

(2) *Widely attended gatherings.* When there has been a determination that his attendance is in the interest of the agency because it will further agency programs and operations, an employee may accept an unsolicited gift of free attendance at all or appropriate parts of a widely attended gathering of mutual interest to a number of parties from the sponsor of the event or, if more than 100 persons are expected to attend the event and the gift of free attendance has a market value of $250 or less, from a person other than the sponsor of the event. A gathering is widely attended if it is attended by a large number of persons and if, for example, it is open to members from throughout the interested industry or profession or if those in attendance represent a range of persons interested in a given matter. For employees subject to a leave system, attendance at the event shall be on the employee's own time or, if authorized by the employee's agency, on excused absence pursuant to applicable guidelines for granting such absence, or otherwise without charge to the employee's leave account.

(3) *Determination of agency interest.* The determination of agency interest required by paragraph (g)(2) of this section shall be made orally or in writing by the agency designee.

(i) If the person who has extended the invitation has interests that may be substantially affected by the performance or nonperformance of an employee's official duties or is an association or organization the majority of whose members have such interests, the employee's participation may be determined to be in the interest of the agency only where there is a written finding by the agency designee that the agency's interest in the employee's participation in the event outweighs the concern that acceptance of the gift of free attendance may or may appear to improperly influence the employee in the performance of his official duties. Relevant factors that should be considered by the agency designee include the importance of the event to the agency, the nature and sensitivity of any pending matter affecting the interests of the person who has extended the invitation, the significance of the employee's role in any such matter, the purpose of the event, the identity of other expected participants and the market value of the gift of free attendance.

(ii) A blanket determination of agency interest may be issued to cover all or

any category of invitees other than those as to whom the finding is required by paragraph (g)(3)(i) of this section. Where a finding under paragraph (g)(3)(i) of this section is required, a written determination of agency interest, including the necessary finding, may be issued to cover two or more employees whose duties similarly affect the interests of the person who has extended the invitation or, where that person is an association or organization, of its members.

(4) *Free attendance.* For purposes of paragraphs (g)(1) and (2) of this section, free attendance may include waiver of all or part of a conference or other fee or the provision of food, refreshments, entertainment, instruction and materials furnished to all attendees as an integral part of the event. It does not include travel expenses, lodgings, entertainment collateral to the event, or meals taken other than in a group setting with all other attendees. Where the invitation has been extended to an accompanying spouse or other guest (see paragraph (g)(6) of this section), the market value of the gift of free attendance includes the market value of free attendance by the spouse or other guest as well as the market value of the employee's own attendance.

Note: There are statutory authorities implemented other than by part 2635 under which an agency or an employee may be able to accept free attendance or other items not included in the definition of free attendance, such as travel expenses.

(5) *Cost provided by sponsor of event.* The cost of the employee's attendance will not be considered to be provided by the sponsor, and the invitation is not considered to be from the sponsor of the event, where a person other than the sponsor designates the employee to be invited and bears the cost of the employee's attendance through a contribution or other payment intended to facilitate that employee's attendance. Payment of dues or a similar assessment to a sponsoring organization does not constitute a payment intended to facilitate a particular employee's attendance.

(6) *Accompanying spouse or other guest.* When others in attendance will generally be accompanied by a spouse or other guest, and where the invitation is from the same person who has invited the employee, the agency designee may authorize an employee to accept an unsolicited invitation to an accompanying spouse or to another accompanying guest to participate in all or a portion of the event at which the employee's free attendance is permitted under paragraph (g) (1) or (2) of this section. The authorization required by this paragraph may be provided orally or in writing.

Example 1. An aerospace industry association that is a prohibited source sponsors an industry-wide, two-day seminar for which it charges a fee of $400 and anticipates attendance of approximately 400. An Air Force contractor pays $2,000 to the association so that the association can extend free invitations to five Air Force officials designated by the contractor. The Air Force officials may not accept the gifts of free attendance. Because the contractor specified the invitees and bore the cost of their attendance, the gift of free attendance is considered to be provided by the company and not by the sponsoring association. Had the contractor paid $2,000 to the association in order that the association might invite any five Federal employees, an Air Force official to whom the sponsoring association extended one of the five invitations could attend if his participation were determined to be in the interest of the agency. The Air Force official could not in any event accept an invitation directly from the contractor because the market value of the gift exceeds $250.

Example 2. An employee of the Department of Transportation is invited by a news organization to an annual press dinner sponsored by an association of press organizations. Tickets for the event cost $250 per person and attendance is limited to 400 representatives of press organizations and their guests. If the employee's attendance is determined to be in the interest of the agency, she may accept the invitation from the news organization because more than 100 persons will attend and the cost of the ticket does not exceed $250. However, if the invitation were extended to the employee and an accompanying guest, her guest could not be authorized to attend since the market value of the gift of free attendance would be $500 and the invitation is from a person other than the sponsor of the event.

Example 3. An employee of the Department of Energy and his wife have been invited by a major utility to a dinner party for 20 people. Others invited include eight officials of the utility and their spouses and a representative of a consumer group concerned with utility rates and her husband. The DOE official believes the dinner party will provide him an opportunity to socialize with and get to know those in attendance. The employee may not accept, even if his attendance could be determined to be in the interest of the agency. The dinner party is not a widely attended gathering; twenty is not a large number of persons and, notwithstanding the presence of another person who is not an official of the utility, those in attendance do not represent a range of persons interested in any identifiable matter.

* * * * *

[FR Doc. 95–14611 Filed 6–14–95; 8:45 am]
BILLING CODE 6345–01–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1046

[DA–95–18]

Milk in the Louisville-Lexington-Evansville Marketing Area; Proposed Suspension/Termination of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension/termination of rule.

SUMMARY: This document invites written comments on a proposal to suspend or terminate the base-excess plan of the Louisville-Lexington-Evansville Federal milk marketing order, effective September 1, 1995. The proposed suspension/termination was submitted by Holland Dairies, Inc., which contends the action is necessary to allow handlers in the area to compete equally for a supply of milk and to ensure that producers will continue to have their milk priced and pooled under the Order.

DATES: Comments are due on or before July 17, 1995.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, PO Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, PO Box 96456, Washington, DC 20090–6456 (202) 690–1932.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

The Department is issuing this proposed rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. If adopted, this proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act, the suspension or termination of the following provisions of the order regulating the handling of milk in the Louisville-Lexington-Evansville marketing area is being considered:

1. Section 1046.32(d).
2. In the heading of § 1046.61, the words "and uniform prices for base and excess milk"; in § 1046.61(a), the words "for each month" and "of July and February"; in § 1046.61(a)(5), the words "for each month", the "s" on the end of the word "months", and the words "for the months of July through February"; and § 1046.61(b) in its entirety.
3. In §§ 1046.62(b) and 1046.71(a)(2)(i), the letter "(s)" on the end of the word "prices".
4. In § 1046.73(a), the last sentence.
5. In § 1046.73(b), the letter "(s)" on the end of the word "prices" and the words "or base milk and excess milk".
6. In § 1046.73, paragraphs (d)(3) and (e)(3).
7. In § 1046.73(d)(4), the letter "(s)" on the end of the word "rate(s)".
8. In § 1046.73(d)(5), the letter "(s)" on the end of the word "rate(s)" wherever it appears.
9. In § 1046.75(a), the words "and the uniform price" and the word "base".
10. Sections 1046.90 through 1046.94.

All persons who want to send written data, views, or arguments about the proposed suspension/termination should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 30th day after the publication of this notice in the **Federal Register.**

The comments that are received will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed rule would suspend or terminate the base-excess plan of the Louisville-Lexington-Evansville Federal milk marketing order (Order 46), effective September 1, 1995, the first month of the base-forming period. Holland Dairies, Inc. (Holland), a fully regulated distributing plant under Order 46 that procures its milk from over 100 nonmember producers and Associated Milk Producers, Inc., states that the Order's base-excess plan has created significant milk procurement problems in the area in recent years.

Holland claims that the base-excess plan limits its ability to obtain milk from new producers because these producers have no base. As a result, the handler states that it has been forced to purchase supplemental milk during the summer months from producers located outside the region at an additional cost.

According to Holland, the cooperatives in the southern Indiana area which compete with it for producers do not pay their member-producers base and excess prices. Additionally, Holland states that the Indiana and Ohio Valley Federal milk orders, which border Order 46 to the north, do not contain a producer base-excess plan. Holland contends that both of these factors place it at a competitive disadvantage in procuring milk and are unreasonable and detrimental to its long-term ability to retain nonmember producers.

Therefore, comments are sought to determine whether the aforementioned provisions should be suspended or terminated.

List of Subjects in 7 CFR Part 1046

Milk marketing orders.

The authority citation for 7 CFR Part 1046 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: June 9, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–14694 Filed 6–14–95; 8:45 am]
BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–01–AD]

Airworthiness Directives; Fairchild Aircraft SA226 and SA227 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Fairchild Aircraft SA226 and SA227 series airplanes. The proposed action would require installing foreign object damage (FOD) barriers in the floorboards of the cockpit between the pedestal and floor from Fuselage Station (FS) 79.38 to FS 88.06 and on the outboard forward edge of the left-hand and right-hand cockpit forward floorboards at FS 79.38. Two incidents of objects falling through openings of the cockpit floor and jamming the elevator controls and the yoke prompted the proposed action. The actions specified by the proposed AD are intended to prevent airplane flight control jammings caused by objects falling through the cockpit floor openings.

DATES: Comments must be received on or before August 21, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–01–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490; telephone

(210) 824–9421. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Werner Koch, Aerospace Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone (817) 222–5133; facsimile (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95–CE–01–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–01–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received reports of two incidents of flight control jammings on Fairchild Aircraft SA227 series airplanes caused by objects falling through openings of the cockpit floor.

In one instance, the air vent in the cockpit broke and the ball section of the vent fell through one of the openings in the floor and lodged in the elevator control linkage. The airplane crew experienced a momentary restriction in elevator control during a pre-flight control check. In the other instance, a bottle (Coca-Cola) fell through one of the floor openings and jammed the yoke until the crew overcame the jam by breaking the bottle.

These openings are located in the floorboards of the cockpit of Fairchild Aircraft SA226 and SA227 series airplanes between the pedestal and floor from Fuselage Station (FS) 79.38 to FS 88.06 and on the outboard forward edge of the left-hand and right-hand cockpit forward floorboards at FS 79.38.

Fairchild Aircraft has issued Service Bulletin (SB) 226–53–012, SB 227–53–005, and SB CC7–53–002, all Issued: September 22, 1994. These service bulletins contain procedures for installing cockpit floorboard foreign object damage (FOD) barriers on Fairchild Aircraft SA226 and SA227 series airplanes in the areas referenced above.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent airplane flight control jammings caused by objects falling through the cockpit floor openings.

Since an unsafe condition has been identified that is likely to exist or develop in other Fairchild Aircraft SA226 and SA227 series airplanes of the same type design, the proposed AD would require installing FOD barriers in the floorboards of the cockpit between the pedestal and floor from FS 79.38 to FS 88.06 and on the outboard forward edge of the left-hand and right-hand cockpit forward floorboards at FS 79.38. Accomplishment of the proposed action would be in accordance with Fairchild SB 226–53–012, Fairchild SB 227–53–005, or Fairchild SB CC7–53–002, all Issued: September 22, 1994, as applicable.

The FAA estimates that 855 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 4 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $50 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $247,950. This figure is based on the assumption that no affected airplane owner/operator has incorporated the proposed modification. Parts have not been distributed to any owner/operator of the affected airplanes.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new AD to read as follows:

Fairchild Aircraft: Docket No. 95–CE–01–AD.

Applicability: The following airplane models and serial numbers, certificated in any category:

Model	Serial numbers
SA226–T	All serial numbers.
SA226–T(B)	All serial numbers.
SA226–AT	All serial numbers.
SA226–TC	All serial numbers.
SA227–AT	All serial numbers.
SA227–AC	All serial numbers.
SA227–BC	All serial numbers.
SA227–TT	All serial numbers.
SA227–CC	CC784 and CC790 through CC863.
SA227–DC	DC784 and DC790 through DC863.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required within the next 600 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent airplane flight control jammings caused by objects falling through the cockpit floor openings, accomplish the following:

(a) Install foreign object damage (FOD) barriers in the floorboards of the cockpit between the pedestal and floor from Fuselage Station (FS) 79.38 to FS 88.06 and on the outboard forward edge of the left-hand and right-hand cockpit forward floorboards at FS 79.38. Accomplish this action in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of either Fairchild Service Bulletin (SB) 226–53–012, Fairchild SB 227–53–005, or Fairchild SB CC7–53–002, all Issued: September 22, 1994, as applicable.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Airplane Certification Office (ACO), FAA, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth ACO.

(d) All persons affected by this directive may obtain copies of the service bulletins referred to herein upon request to Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490; or may examine these service bulletins at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on June 9, 1995.

Gerald W. Pierce,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–14637 Filed 6–14–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–ANE–53]

Airworthiness Directives; Teledyne Continental Motors and Rolls-Royce, plc O–200 Series Reciprocating Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Teledyne Continental Motors (TCM) O–200 series reciprocating engines, that currently requires resetting engine timing to 24° Before Top Center (BTC). This action would return to the 28° BTC engine timing for those engines equipped with improved cylinders that have strengthened heads. This action would also add license-built Rolls-Royce, plc O–200 series engines to the AD's applicability and drop the TCM O–200C model which never went into production. This proposal is prompted by the availability of improved cylinders. The actions specified by the proposed AD are intended to prevent possible cylinder cracking with subsequent loss of engine power.

DATES: Comments must be received by August 14, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–ANE–53, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, AL 36601; telephone (334) 438–3411. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Jerry Robinette, Aerospace Engineer, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, Campus Building, 1701 Columbia Ave., Suite 2–160, College Park, GA 30337–2748; telephone (404) 305–7371, fax (404) 305–7348.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–ANE–53." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–ANE–53, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On June 9, 1977, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 77–13–03, Amendment 39–2925 (42 FR 31770, June 23, 1977), applicable to Teledyne Continental Motors (TCM) O–200A, O–200B, and O–200C series reciprocating engines, to require resetting engine timing to 24° Before Top Center (BTC). That action was prompted by reports of cylinder cracking. Reduction of engine timing reduced cylinder head stress and lowered cylinder head temperature for

any given cooling air flow, thereby substantially reducing the likelihood of cylinder head problems. Reducing engine timing results in a power loss of approximately 1.5% at full power during an engine calibration test. That condition, if not corrected, could result in possible cylinder cracking with subsequent loss of engine power.

Since the issuance of that AD, TCM has redesigned the cylinder head for additional strength. Cylinder, Part Number (P/N) 641917, and subsequent (higher) numbers (the P/N is stamped on the cylinder barrel flange) have the strengthened head. Accordingly, any O–200A or B engine with P/N 641917 cylinders or any combination of 641917 and subsequent (higher) part number cylinders installed can return the timing to 28° BTC. Airworthiness directive 77–13–03 applies to the TCM O–200C engine as well as the O–200A and B engines; since there was never a production TCM O–200C engine built, that engine model has been dropped from this proposed AD. The current AD also does not apply to the Rolls-Royce, plc O–200 series engines that were built under a licensing agreement with TCM. Teledyne Continental Motors now has the continuing airworthiness responsibility for these engines and they have been included in this proposed AD.

The FAA has reviewed and approved the technical contents of TCM Service Bulletin (SB) No. SB94–8, dated September 14, 1994, that lists the magneto to engine timing for each TCM engine and specifically addresses the O–200A and B engines in Note 5.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 77–13–03 to retain the 24° BTC engine timing for engines with cylinders that have P/N lower than 641917; allow the return to 28° BTC engine timing for those engines with cylinder P/N 641917 and subsequent (higher) part numbers, restamp the engine data plate to indicate engine timing of 28° BTC; adds the Rolls-Royce, plc O–200A, O–200B, and O–200C series engines to the AD's applicability; and drops the TCM O–200C series engines from the AD's applicability.

The FAA estimates that 23,500 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. This AD adds no additional requirements; the resetting of engine timing for engines with the improved cylinders is option. Therefore, there would be no cost imposed by the proposed actions. However, if the timing was reset on all applicable engines, based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,820,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–2925 (42 FR 31770, June 23, 1977) and by adding a new airworthiness directive to read as follows:

Teledyne Continental Motors and Rolls-Royce, plc.: Docket No. 94–ANE–53. Supersedes AD 77–13–03, Amendment 39–2925.

Applicability: Teledyne Continental Motors (TCM) Model O–200A and O–200B and Rolls-Royce, plc. Model O–200A, O–200B, and O–200C reciprocating engines. These engines are installed on but not limited to American Champion Models 7ECA and 402; Cessna Model 150, 150A through 150M, A150K through A150M; Reims Models F–150G through F–150M, FA–150K and FA–150L; and Taylorcraft Model F19 aircraft.

Note: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (g) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any engine from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent possible cylinder cracking with subsequent loss of engine power, accomplish the following:

(a) For engines that have one or more cylinders with part numbers (P/N) lower than 641917, within the next 50 hours time in service (TIS) after the effective date of this airworthiness directive (AD), reset the engine timing to 24° (+1°, −0°) Before Top Center (BTC) on both magnetos in accordance with the magneto to engine timing procedure for direct drive engines in TCM Service Bulletin (SB) No. SB94–8, dated September 14, 1994.

(b) For engines that have all four cylinders with P/N 641917 or higher, the engine timing may be reset to 28° (±1°, −0°) BTC on both magnetos in accordance with the magneto engine timing procedure for direct drive engines in TCM SB No. SB94–8, dated September 14, 1994.

(c) Subsequent installation of cylinders must be of the P/N listed in paragraph (b) of this AD to retain the 28° BTC timing.

Note: The P/N is stamped on the cylinder barrel flange.

(d) This AD supersedes AD 77–13–03.

(e) When paragraph (a) is accomplished, restamp the engine data plate to indicate magneto timing of 24° BTC.

(f) When paragraph (b) is accomplished, restamp the engine data plate to indicate magneto timing of 28° BTC.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Atlanta Aircraft Certification Office.

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on June 7, 1995.

Ronald L. Vavruska,

Acting Monager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–14639 Filed 6–14–95; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 71

[Airspace Docket No. 95–AWP–16]

Proposed Establishment of Class D Airspace Area, Chandler Municipal Airport, AZ

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a Class D airspace area at Chandler Municipal Airport, AZ. The intent of this proposal is to provide adequate airspace for instrument flight rules (IFR) operations at Chandler Municipal Airport, Chandler, AZ.

DATES: Comments must be received on or before July 31, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, System Management Branch, AWP–530, Docket No. 95–AWP–16, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California, 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California, 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, System Management Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT:

Scott Speer, System Management Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 297–0010.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Comments wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–AWP–16." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawdale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing a Class D airspace area to Chandler Municipal Airport, AZ. The intended effect of this proposal is to provide adequate Class D airspace for aircraft executing instrument approach procedures at Chandler Municipal Airport, Chandler, AZ. Class D airspace designations are published in paragraph 5000 of FAA Order 7400.9B, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended follows:

Paragraph 5000 Class D Airspace

* * * * *

AWP AZ D Chandler Municipal Airport, AZ [New]

Chandler Municipal Airport, AZ
(Lat. 33°16'09" N, long. 111°48'40" W)

That airspace extending upward from the surface to and including 3700 feet MSL within a 4-mile radius of Chandler Municipal Airport, excluding the portion within the Chandler Williams-Gateway Airport, AZ, Class D airspace area. The Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on June 5, 1995.

Dennis T. Koehler,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 95–14651 Filed 6–14–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 92–ASW–35]

Proposed Establishment of Class E Airspace; Osceola, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace extending upward from 700 feet above ground level (AGL) at Osceola Municipal Airport, Osceola, AR. The development of a new nondirectional radio beacon (NDB) standard instrument approach procedure (SIAP) to Runway (RWY) 19 has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace to contain Instrument Flight Rules (IFR) operations at Osceola, AR.

DATES: Comments must be received on or before August 1, 1995.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 92–ASW–35, Fort Worth, TX 76193–0530. The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Federal Aviation Administration, Sowthwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, System Management Branch, Air Traffic Division, Federal Aviation Administration, Forth Worth, TX 76193–0530; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES**. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 92–ASW–35." The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, Air Traffic Division, Federal Aviation Administration, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace, controlled airspace extending upward from 700 feet AGL, a transition area, at Osceola Municipal Airport, Osceola, AR. The development of a NDB RWY 19 SIAP has made this proposal necessary. Designated airspace extending upward from 700 feet above the ground (AGL) is now Class E airspace. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the NDB RWY 19 SIAP as well as to provide adequate Class E airspace for departing aircraft at Osceola Municipal Airport, Osceola, AR.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, *Airspace Designations and Reporting Points*, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ASW TX E5 Osceola, AR [New]

Osceola Municipal Airport, AR
(lat. 35°41'28" N., long. 090°00'36" W.)
Osceola NDB
(lat. 35°41'34" N., long. 090°00'47" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Osceola Municipal Airport and within 8 miles west and 4 miles east of the 021° bearing from the Osceola NDB to 9.9 miles.

* * * * *

Issued in Fort Worth, TX on June 5, 1995.

Helen Fabian Parke,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 95–14652 Filed 6–14–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 73

[Airspace Docket No. 93–AWP–8]

Proposed Modification of Restricted Areas R–2303A and R–2303B, and Establishment of R–2303C, Fort Huachuca, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: This supplemental notice proposes to amend special use airspace at Fort Huachuca, AZ, as proposed in a prior notice of proposed rulemaking (NPRM). In the NPRM, the FAA proposed to amend Restricted Area R–2303A to exclude the Fort Huachuca/Libby AAF/Sierra Vista Municipal Airport from the restricted area and provide airspace for visual flight rules (VFR) access to the airport when R–2303A is in use. Based upon comments received in response to the NPRM the FAA is considering increasing the airport exclusion and VFR access to the airport by increasing the ceiling from 1,500 feet above ground level (AGL) to 7,000 feet mean sea level (MSL) (2,284 AGL). These changes are proposed to accommodate increased training requirements and to return unneeded special use airspace to the National Airspace System (NAS).

DATES: Comments must be received on or before June 30, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AWP–500, Docket No. 93–AWP–8, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: James R. Robinson, Military Operations Program Office (ATM–420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 493–4050.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–AWP–8." The postcard will be date/time stamped and returned to the commenter. Send comments on environmental and land use aspects to: Commander, U.S. Army Garrison, Attn: Mr. John Murray ATZS-EHB, Fort Huachuca, AZ 85613–6000. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Supplemental Notice of Proposed Rulemaking (SNPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this SNPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

Background

The FAA previously published an NPRM proposing to amend R–2303B by relocating the northern boundary 3 miles south of its existing position. This would better accommodate hang gliding activity that takes place just outside of the northwest corner of existing R–2303B. R–2303B would also be subdivided to designate the southeastern section as a separate restricted area, R–2303C. This NPRM also proposed to lower the floor of R–2303B from 15,000 feet MSL to 8,000 feet MSL, excluding that airspace within R–2303A when activated, in order to accommodate unmanned aerial vehicle training profiles. This amendment of R–2303B prevents the airspace between 8,000 and 15,000 feet within the lateral confines of R–2303A from simultaneously being reflected in both restricted areas, R–2303A and R–2303B. The ceiling of R–2303B would be lowered from FL 450 to FL 300. The U.S. Army has determined that there is no longer a requirement for restricted airspace above FL 300, therefore, that airspace would be returned to the NAS. Lastly, the times of designation for R–2303A and R–2303B would be reduced from "Monday–Saturday, 0700–1600 local time; other times by NOTAM at least 24 hours in advance," to "Monday–Friday, 0700–1600 local time; other times by NOTAM at least 24 hours in advance."

Activation of R–2303C would be intermittent by NOTAM at least 24 hours in advance. Designation of R–2303C is proposed to accommodate hang gliding activities that occur just outside of the southeastern corner of existing R–2303B.

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

The Proposal

The FAA is considering an amendment to part 73 of the Federal Aviation Regulations (14 CFR part 73) to amend R–2303A, R–2303B, and establish R–2303C at Fort Huachuca, AZ. The FAA published an earlier NPRM concerning these restricted areas on July 21, 1994 (59 FR 37188). As a result of comments received in response to the NPRM, the FAA is considering increasing the ceiling of the airport exclusion and VFR access corridor at the Libby AAF/Sierra Vista Municipal Airport. R–2303A would be amended to exclude from the restricted area the airspace from the surface to 7,000 feet MSL, within a 3-nautical-mile radius of the Fort Huachuca/Libby AAF/Sierra Vista Municipal Airport. The airspace from the surface to 7,000 feet MSL within 1-nautical-mile either side of U.S. Highway 90 would also be excluded. This would provide VFR access to the airport when R–2303A is in use. Comments received in response to the NPRM and this SNPRM will be addressed in the final disposition of the rule. The coordinates for this airspace docket are based on North American Datum 83. Section 73.23 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8B dated March 9, 1994.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

An environmental review of the proposal will be conducted by the U.S. Army and the FAA prior to an FAA final decision on the proposal. The results of the review will be addressed in any subsequent rulemaking action.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as proposed in the **Federal Register** on July 21, 1994, (59 FR 37188; July 21, 1994) as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

2. Section 73.23 is amended as follows:

§ 73.23 [Amended]

R–2303A Fort Huachuca, AZ [Revised]

Boundaries. Beginning at lat. 31°40'40" N., long. 110°11'02" W.; to lat. 31°34'00" N., long. 110°08'32" W.; to lat. 31°34'00" N., long. 110°22'02" W.; to lat. 31°33'00" N., long. 110°23'02" W.; to lat. 31°29'00" N., long. 110°23'02" W.; to lat. 31°29'00" N., long. 110°41'32" W.; to lat. 31°34'00" N., long. 110°43'32" W.; to lat. 31°38'30" N., long. 110°42'02" W.; to lat. 31°38'30" N., long. 110°39'32" W.; to lat. 31°41'00" N., long. 110°33'32" W.; to lat. 31°41'00" N., long. 110°12'02" W.; to the point of beginning.
Altitudes. Surface to 15,000 feet MSL, excluding the airspace from the surface to 7,000 feet MSL within a 3-nautical-mile radius of the Fort Huachuca/Libby AAF/Sierra Vista Municipal Airport, AZ, and excluding the airspace from the surface to 7,000 feet MSL within 1-nautical-mile either side of U.S. Highway 90.
Time of designation. Monday–Friday, 0700–1600 local time; other times by NOTAM at least 24 hours in advance.
Controlling agency. FAA, Albuquerque ARTCC.
Using agency. U.S. Army Intelligence Center, Fort Huachuca, AZ.

R–2303B Fort Huachuca, AZ [Revised]

Boundaries. Beginning at lat. 31°45'00" N., long. 110°20'02" W.; to lat. 31°41'00"N., long. 110°12'02" W.; to lat. 31°40'40" N., long. 110°11'02" W.; to lat. 31°34'00" N., long. 110°08'32" W.; to lat. 31°34'00" N., long. 110°22'02" W.; to lat. 31°33'00" N., long. 110°23'02" W.; to lat. 31°29'00" N., long. 110°23'02" W.; to lat. 31°29'00" N., long. 110°25'02" W.; to lat. 31°24'00" N., long. 110°25'02" W.; to lat. 31°24'00" N., long. 110°45'02" W.; to lat. 31°45'00" N., long. 110°45'52" W.; to the point of beginning.
Altitudes. 8,000 feet MSL to FL 300, excluding that airspace within R–2303A when activated.
Time of designation. Monday-Friday, 0700–1600 local time; other times by NOTAM at least 24 hours in advance.
Controlling agency. FAA, Albuquerque ARTCC.
Using agency, U.S. Army Intelligence Center, Fort Huachuca, AZ.

R–2303C Fort Huachuca, AZ [New]

Boundaries. Beginning at lat. 31°35'00" N., long. 110°00'02" W.; to lat. 31°24'00" N., long. 110°00'02" W.; to lat. 31°24'00" N., long. 110°25'02" W.; to lat. 31029'00" N., long. 110°25'02" W.; to lat. 31°29'00" N., long. 110°23'02" W.; to lat. 31°33'00" N., long. 110°23'02" W.; to lat. 31°34'00" N., long. 110°22'02" W.; to lat. 31°34'00" N., long. 110°08'32" W.; to lat. 31°40'40" N., long. 110°11'02" W.; to the point of beginning.
Altitudes. 15,000 feet MSL to FL 300.
Time of designation. Intermittent by NOTAM at least 24 hours in advance.
Controlling agency. FAA, Albuquerque ARTCC. Using agency. U.S. Army Intelligence Center, Fort Huachuca, AZ.

Issued in Washington, DC, on June 7, 1995.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 95–14653 Filed 6–14–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 73

[Airspace Docket No. 94–ASO–18]

Proposed Establishment of Restricted Areas, Camp Lejeune, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes the establishment of restricted areas at Camp Lejeune, NC. The United States Marine Corps (USMC) has determined that the existing ranges at Camp Lejeune are inadequate to meet both current and projected Marine Corps training requirements. The proposed restricted areas would accommodate an expansion of the Camp Lejeune facilities to improve range training capabilities.

DATES: Comments must be received on or before July 31, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASO–500, Docket No. 94–ASO–18, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Military Operations Program Office (ATM–420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9361.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.
Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–ASO–18." The postcard will be date/time stamped and returned to the commenter. Send comments on environmental and land-use aspects to: Commanding General, Operations, MCAS, PSC Box 8011, Cherry Point, NC 28533, ATTN: Lt. Col. Clark. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3485.
Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 73 of the Federal Aviation Regulations (14 CFR part 73) to establish restricted areas at Camp Lejeune, NC. The USMC requested that the FAA establish these restricted areas because the existing facilities at Camp Lejeune do not have adequate firing ranges, maneuver areas, and impact areas to accommodate the expanded, complex training requirements that have evolved over the years. These documented range shortfalls preclude Camp Lejeune from satisfying a number of basic Fleet Marine Force training requirements, forcing the USMC to conduct periodic, multi-million dollar deployments of personnel and equipment to other locations to complete essential training events. The proposed restricted areas are necessary to accommodate the training facilities at Camp Lejeune. The proposed restricted areas would be designated over a Government-purchased tract of land contiguous to Camp Lejeune, known as the Greater Sandy Run Area. The restricted areas, designated R–5303 and R–5304, would extend from the surface up to but not including Flight Level (FL) 180. R–5303 and R–5304 would each be subdivided vertically into three sections (A, B, and C) to facilitate the real-time activation of the restricted areas, and to enable release of the airspace to accommodate nonparticipating air traffic. These subdivisions would be configured as follows: R–5303A and R–5304A would extend from the surface to but not including 7,000 feet MSL; R–5303B and R–5304B would extend from 7,000 feet MSL to but not including 10,000 feet MSL; and R–5303C and R–5304C would extend from 10,000 feet MSL to but not including FL 180. The activities to be conducted in the restricted areas would include the firing of various surface weapons and air-delivered ordnance. Aerial ordnance delivery would be limited to helicopters only. Most training activities would be conducted in the lowest portion of the restricted areas (i.e., R–5303A and R–5304A, below 7,000 feet MSL). The proposed time of designation for R–5303A and R–5304A would be 0600 to 1800 local time, Monday through Friday; with a provision for activation at other times by a Notice To Airmen (NOTAM) at least 6 hours in advance. R–5303B, R–5303C, R–5304B, and R–5304C would be activated by NOTAM at least 6 hours in advance when required for training. It is estimated that the highest altitude strata of the restricted areas would be required approximately 10 percent of the time. An estimated 75 percent of the total training activities would take place during daylight hours. On a yearly basis, it is projected that the restricted areas would be used on 30- to 40-week nights. Training would also be conducted on 30- to 40-weekend days, which may include additional night-time operations. Peak firing periods are expected to occur between the hours of 0800–1600, Tuesday, Wednesday, and Thursday; with March through October projected as the peak firing months. The proposed restricted areas were configured to maximize training flexibility, and to facilitate the activation of only those portions of the restricted areas actually needed for training operations. The proposed restricted areas would affect the utilization of the segment of V–139 between Wilmington, NC (ILM) and New Bern, NC (EWN). In order to minimize the affect on air traffic utilizing V–139, the restricted areas would be subject to real-time activation procedures. The lowest subareas (R–5303A and R–5304A, extending from the surface to but not including 7,000 feet MSL) would be the most frequently used portions of the restricted areas. Normally, V–139 above 7,000 feet MSL would remain available for transit by nonparticipating aircraft. Procedures for real-time use of the restricted areas would be specified in a joint-use letter of procedure (LOP) between the using agency and the appropriate ATC facilities. The LOP also would include provisions to give ATC priority for use of the areas when necessary during periods of severe weather, or other emergency situations. The coordinates for this airspace docket are based on North American Datum 83. Section 73.53 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8B dated March 9, 1994.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subjected to appropriate environmental impact analysis by the proponent and the FAA prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—[AMENDED]

1. The authority citation for 14 CFR part 73 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 73.53 [Amended]

2. Section 73.53 is amended as follows:

R–5303A Camp Lejeune, NC [New]

Boundaries. Beginning at lat. 34°41'40" N., long. 77°33'09" W.; to lat. 34°39'16" N., long. 77°28'31" W.; to lat. 34°36'51" N., long. 77°29'01" W.; to lat. 34°36'13" N., long. 77°31'51" W.; to lat. 34°37'03" N., long. 77°35'25" W.; to lat. 34°38'49" N., long. 77°37'31" W.; to point of beginning.
Designated altitudes. Surface to but not including 7,000 feet MSL, excluding the airspace 1,500 feet AGL and below within a 3NM radius of Sky Manor Airport.
Time of designation. 0600–1800 Monday–Friday; other times by NOTAM at least 6 hours in advance.
Controlling agency. USMC, Cherry Point Approach Control.
Using agency. USMC, Commanding General, U.S. Marine Corps Air Station, Cherry Point, NC.

R–5303B Camp Lejeune, NC [New]

Boundaries. Beginning at lat. 34°41'40" N., long. 77°33'09" W.; to lat. 34°39'16" N., long. 77°28'31" W.; to lat. 34°36'51" N., long. 77°29'01" W.; to lat. 34°36'13" N., long. 77°31'51" W.; to lat. 34°37'03" N., long. 77°35'25" W.; to lat. 34°38'49" N., long. 77°37'31" W.; to point of beginning.
Designated altitudes. 7,000 feet MSL to but not including 10,000 feet MSL.
Time of designation. By NOTAM at least 6 hours in advance.
Controlling agency. USMC, Cherry Point Approach Control.
Using agency. USMC, Commanding General, U.S. Marine Corps Air Station, Cherry Point, NC.

R–5303C Camp Lejeune, NC [New]

Boundaries. Beginning at lat. 34°41'40" N., long. 77°33'09" W.; to lat. 34°39'16" N., long. 77°28'31" W.; to lat. 34°36'51" N., long. 77°29'01" W.; to lat. 34°36'13" N., long. 77°31'51" W.; to lat. 34°37'03" N., long. 77°35'25" W.; to lat. 34°38'49" N., long. 77°37'31" W.; to point of beginning.
Designated altitudes. 10,000 feet MSL to but not including FL 180.
Time of designation. By NOTAM at least 6 hours in advance.
Controlling agency. FAA, Washington ARTCC.
Using agency. USMC, Commanding General, U.S. Marine Corps Air Station, Cherry Point, NC.

R–5304A Camp Lejeune, NC [New]

Boundaries. Beginning at lat. 34°37'03" N., long. 77°35'25" W.; to lat. 34°36'13" N., long. 77°31'51" W.; to lat. 34°36'51" N., long. 77°29'01" W.; to lat. 34°32'16" N., long. 77°30'13" W.; to lat. 34°29'43" N., long. 77°33'15" W.; to lat. 34°32'42" N., long. 77°34'54" W.; to point of beginning.
Designated altitudes. Surface to but not including 7,000 feet MSL, excluding the airspace 1,500 feet AGL and below within a 3NM radius of Holly Ridge airport.
Time of designation. 0600–1800, Monday–Friday; other times by NOTAM at least 6 hours in advance.
Controlling agency. USMC, Cherry Point Approach Control.
Using agency. USMC, Commanding General, U.S. Marine Corps Air Station, Cherry Point, NC.

R–5304B Camp Lejeune, NC [New]

Boundaries. Beginning at lat. 34°37'03" N., long. 77°35'25" W.; to lat. 34°36'13" N., long. 77°31'51" W.; to lat. 34°36'51" N., long. 77°29'01" W.; to lat. 34°32'16" N., long. 77°30'13" W.; to lat. 34°29'43" N., long. 77°33'15" W.; to lat. 34°32'42" N., long. 77°34'54" W.; to point of beginning.
Designated altitudes. 7,000 feet MSL to but not including 10,000 feet MSL.
Time of designation. By NOTAM at least 6 hours in advance.
Controlling agency. USMC, Cherry Point Approach Control.
Using agency. USMC, Commanding General, U.S. Marine Corps Air Station, Cherry Point, NC.

R–5304C Camp Lejeune, NC [New]

Boundaries. Beginning at lat. 34°37'03" N., long. 77°35'25" W.; to lat. 34°36'13" N., long. 77°31'51" W.; to lat. 34°36'51" N., long. 77°29'01" W.; to lat. 34°32'16" N., long. 77°30'13" W.; to lat. 34°29'43" N., long. 77°33'15" W.; to lat. 34°32'42" N., long. 77°34'54" W.; to point of beginning.
Designated altitudes. 10,000 feet MSL to but not including FL 180.
Time of designation. By NOTAM at least 6 hours in advance.
Controlling agency. FAA, Washington ARTCC.
Using agency. USMC, Commanding General, U.S. Marine Corps Air Station, Cherry Point, NC.

Issued in Washington, DC, on June 7, 1995.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–14656 Filed 6–14–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 141 and 388

[Docket No. RM95–9–000]

Real-Time Information Networks; Order on Motions for Extension of Time for Filing Preliminary Comments

May 26, 1995.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order on motions for extension of time for filing preliminary comments.

SUMMARY: On March 29, 1995, the Federal Energy Regulatory Commission issued a notice of technical conference and request for comments (60 FR 17726, Apr. 7, 1995) to announce a technical conference to be scheduled at a later date, and, in preparation for that conference, to request comments on: Whether real-time information networks (RINS) or some other option is the best method to ensure that potential purchasers of transmission services receive access to information to enable them to obtain open access transmission service on a non-discriminatory basis from public utilities that own and/or control facilities used for the transmission of electric energy in interstate commence; and what standards should be adopted if the Commission requires such public utilities to institute RINS systems. By this order, the Commission grants an extension of time for filing preliminary comments.

DATES: The time for filing preliminary comments is extended to July 6, 1995.

ADDRESSES: Office of the Secretary, 825 North Capitol Street NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Gary D. Cohen, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 208–0321.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

Introduction

For the reasons stated below, we will allow a 30-day extension of time, until July 6, 1995, for the filing of preliminary comments in this proceeding.

Background

On March 29, 1995, the Commission issued *Real-Time Information Networks*, Notice of Technical Conference and Request for Comments, 60 FR 17726 (Apr. 7, 1995), 70 FERC ¶61,360 (1995) (Notice), that initiated this proceeding and invited comments in preparation for a forthcoming technical conference. The Notice invited interested persons to file preliminary comments on or before June 6, 1995, and to participate in a technical conference where they can make oral presentations on their positions.

On May 4, 1995, New England Power Pool (NEPOOL) participants filed a motion that requested a 60-day extension, until August 7, 1995, for the filing of comments in response to the Notice. This same request was made in a similar motion filed by members of the Pennsylvania-New Jersey-Maryland Interconnection (PJM) on May 5, 1995, in a letter from the Northeast Power Coordinating Council (NPCC) filed on May 8, 1995, and in a joint motion by the Edison Electric Institute (EEI) and the American Public Power Association (APPA) filed on May 19, 1995. Additionally, the member systems of the New York Power Pool filed a letter in support of the NEPOOL request on May 16, 1995.

Discussion

We will allow a 30-day extension of time—until July 6, 1995—to file preliminary comments. In granting this extension, we have balanced the nature and complexity of the issues presented and the efforts that interested persons need to exert in order to respond to these issues, against the need to take final action in this proceeding no later than the time that we take final action on our notice of proposed rulemaking on open access non-discriminatory transmission service.[1] We emphasize that the two proceedings need to run on parallel tracks if we are to successfully implement non-discriminatory open access and minimize uncertainty to utilities who will be required to comply with the Commission's final requirements in both proceedings. We believe a 30-day extension of time properly balances these competing concerns.

Additionally, we emphasize that we are requesting parties to file *preliminary* comments. The Notice describes a process—of which the preliminary comments, now due on or before July 6, 1995, are just the first step. These comments are being solicited to help the Commission prepare for the forthcoming technical conference, by identifying the issues important to the participants, how far along the participants are in identifying possible means to accomplish the Commission's objectives, or possible obstacles to particular approaches that the Commission needs to consider. Following the technical conference, there will be other opportunities for participants to comment. Moreover, participants will not be limited to the issues, approaches, arguments, and concerns that they present at this stage of the proceeding. We fully expect that participants' recommendations may change as the proceeding progresses.

We are now only at the beginning of what we hope will be an iterative, consensus-building process. Given the important and complex work yet to be done, it is imperative that we avoid any additional delay at this early stage of the process. We, therefore, will grant only a 30-day extension of time, and will deny the requested 60-day extension of time.

The Commission Orders

The motions filed by NEPOOL, PJM, EEI, APPA, and NPCC for extensions of time to file comments are hereby granted in part, to allow a 30-day extension of time. All preliminary comments will now be due on or before July 6, 1995.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14662 Filed 6–14–95; 8:45 am]

BILLING CODE 6717–01–P

[1] *See* Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Notice of Proposed Rulemaking and Supplemental Notice of Proposed Rulemaking, 60 FR 17662 (Apr. 7, 1995), IV FERC Stats. & Regs. ¶ 32,514 (1995).

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Part 401

Seaway Regulations and Rules: Miscellaneous Amendments

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Saint Lawrence Seaway Development Corporation and the St. Lawrence Seaway Authority of Canada publish joint Seaway Regulations. As a result of discussions with the Authority, it has been determined that a number of existing regulations need to be amended for clarification or simplification. In addition, several substantive changes are being proposed, specifically: changing the maximum allowable beam from 23.16 m (76 feet) to 23.8 m (78 feet), with certain, practical conditions applied; reducing the security deposit for certain vessels; and requiring permanent fenders, with a phase-in period. The first two of these proposals are intended to encourage increased usage of the Seaway while the third is intended to increase the safety for both the Corporation's and the Authority's locks and the vessels transiting.

DATES: Any party wishing to present views on the proposed amendments may file comments with the Corporation on or before July 17, 1995.

ADDRESSES: Send comments to Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street SW., Washington, DC 20590, (202) 366–6823.

SUPPLEMENTARY INFORMATION: As a result of discussions with the Saint Lawrence Seaway Authority of Canada, the Saint Lawrence Seaway Development Corporation proposes to amend the Seaway Regulations and Rules in 33 CFR Part 401 as described in the following summary.

Section 401.3, "Maximum vessel dimensions", would be amended by revising paragraph (a), removing paragraph (d)(1), and adding a new paragraph (e) to change the maximum allowable beam from 23.16 m (76 feet) to 23.8 m (78 feet) and simplify the approval process for vessels exceeding 23.2 m., with practical conditions applied for such things as vessel configuration and weather conditions.

Section 401.6, "Markings", would be amended by revising paragraphs (a) and (b) to round off the length requirements from 19.8 m to 20.0 m and from 117 m to 110 m, respectively, for simplification and consistency with the international collision regulations. To alleviate safety problems caused by portable fender usage, § 401.7, "Fenders", would be revised to require, as a rule, permanent fenders of a specified type, with only occasional deployment of portable fenders allowed on a single transit basis,

with a phase-in period until the beginning of the 1997 navigation season to ease transition.

Section 401.9, "Radiotelegraph equipment", would be amended by revising paragraph (a) to round off the length requirement for self-propelled vessels from 19.8 m to 20.0 m for simplification.

Section 401.10, "Mooring lines", would be amended by revising paragraphs (b) and (c) to routinely allow synthetic lines since vessels now use them routinely and safely worldwide.

Section 401.13, "Hand lines", would be amended by revising paragraph (b) to require hand lines to have a diameter of between 12 and 20 mm and a minimum length of 35 m with uniform thickness throughout to avoid jamming on the car haulers and bollards that has occurred because of splicing of uneven pieces.

Section 401.26, "Security for tolls", would be amended by revising paragraph (d) to reduce the security required where a number of vessels, for each of which a preclearance application has been approved, are owned or controlled by the same individual or company and have the same representative. Security for tolls for these vessels would not be required if every toll account received in the preceding five years has been paid within forty-five days after the vessel enters the Seaway.

Section 401.42, "Passing hand lines", would be amended by revising paragraph (a)(1) to change "linesmen" to "linehandlers" for gender neutrality.

Section 401.43, "Mooring table", would be amended by deleting the unnecessary references to specific locations for simplification.

Section 401.45, "Emergency procedure", would be amended to requiring the Master to be responsible for giving the signal in an emergency upon entering the locks to make the practice consistent in both Canadian and U.S. locks and, for safety purposes, by requiring mooring lines to be put out as quickly as possible.

Section 401.52,"Limit of approach to a bridge", would be amended by revising paragraph (b) to change "Caughnawaga" to "Kahnawake", as it is now commonly known.

Section 401.64, "Calling in", would be amended by revising paragraph (e) to make the master solely responsible because it is his or hers, not the pilot's responsibility.

Section 401.65,"Communication—ports, docks, and anchorages", would be amended by revising paragraph (a)(1) to round off 0.87 of a nautical mile to 1 nautical mile for simplification and by removing that part of paragraph (c) that refers to dangerous cargo reporting and placing its substance in § 401.66, which is a more appropriate location.

Section 401.66, "Applicable laws", would be amended by redesignating the current text as paragraph (a) and adding a new paragraph (b), which would be the text removed from § 401.65(c) amended to change the dangerous cargo reporting and filing requirements to reflect the practice instituted by the Canadian Authority under Seaway Notice No. 2 of 1993.

Section 401.71, "Signals—explosive or hazardous cargo vessels", would be amended by deleting paragraph (b) and revising current paragraph (a) to combine the requirements for explosive and hazardous vessels into one to be consistent with the international collision regulations.

Section 401.72, "Reporting—explosive and hazardous cargo vessels", would be amended by adding new paragraphs (e), (f), (g), and (h) to require certain information on load plans concerning dangerous cargo to ensure enhanced safety, reflecting the practice instituted by the Authority under Seaway Notice No. 2 of 1993.

Section 401.75, "Payment of tolls", would be amended to provide that every toll invoice shall be paid in Canadian or American funds within forty-five days after the vessel enters the Seaway and any adjustment of the amount payable shall be provided for in a subsequent invoice, which is consistent with the proposed new policy on reduced security as proposed for § 401.26(d).

Section 401.84, "Reporting of impairment or other hazard by vessels transiting within the Seaway", would be amended by revising paragraph (c) to reflect that the reporting requirements cover the equipment listed in Schedule I as well.

Section 401.89, "Transit refused", would be amended by revising paragraph (a)(1) to transit refusal may be based upon the equipment requirements in Schedule I as well when transiting Canadian waters.

Section 401.91, "Removal of obstructions", would be amended to remove the words "take such action * * * as the Corporation or the Authority deem necessary" as superfluous.

Section 401.94, "Keeping copy of regulations", would be amended to require that, in addition to a copy of the Regulations, a copy of the vessel's latest Ship Inspection Report, and Seaway Notices for the navigation year shall be kept on board each vessel, which reflects the routine requirement for this documentation for inspection and reference purposes.

Schedule I, "VESSELS TRANSITING U.S. WATERS", would be amended by revising paragraph (d)(3) to require, for each vessel with a fixed propeller, a table of shaft revolutions per minute, for a representative range of speeds, and a notice showing any critical range of revolutions at which the engine designers recommend that the engine not be operated on a continuous basis because this information is necessary for officers or pilots having conduct of the vessel.

Schedule II, "Table of Speeds", would be amended by revising item 4 to reduce the allowable speeds in the area covered, by revising item 6 to reduce the allowable speeds the area covered and include the areas now covered by items 7 through 10 under item 6's allowable speed limits to eliminate varying speed areas, reduce speeding violations, and reduce vessel wake damages. Current items 7 through 10 would be removed and current items 11 through 15 would be renumbered accordingly.

Appendix I, "Vessel Dimensions", would be amended by revising the second undesignated paragraph after paragraph (b) to round off "23.16 m" to "23.2 m" for simplification and conformity with the proposed amendment to § 401.3.

Regulatory Evaluation

This proposed regulation involves a foreign affairs function of the United States, and therefore, Executive Order 12866 does not apply. This proposed regulation has also been evaluated under the Department of Transportation's Regulatory Policies and Procedures and the proposed regulation is not considered significant under those procedures and its economic impact is expected to be so minimal that a full economic evaluation is not warranted.

Regulatory Flexibility Act Determination

The Saint Lawrence Seaway Development Corporation certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The St. Lawrence Seaway Regulations and Rules primarily relate to the activities of commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne mostly by foreign vessels.

Environmental Impact

This proposed regulation does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, *et seq.*) because it is not a major federal action significantly affecting the quality of human environment.

Federalism

The Corporation has analyzed this proposal under the principles and criteria in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 401

Hazardous materials transportation, Navigation (water), Radio reporting and record keeping requirements, Vessels, Waterways.

Accordingly, the Saint Lawrence Seaway Development Corporation proposes to amend Part 401—Seaway Regulations and Rules (33 CFR part 401) as follows:

PART 401—[AMENDED]

1. The authority citation for part 401 continues to read as follows:

Authority: 68 Stat. 93–96 (33 U.S.C. 981–990), as amended; Sec. 104, Pub. L. 92–340, 86 Stat 424 (49 CFR 1.50a) (37 FR 21943), unless otherwise noted.

2. Section 401.3 would be amended by revising paragraphs (a) and (d) and adding a new paragraph (e) to read as follows:

§ 401.3 Maximum vessel dimensions.

(a) Subject to paragraph (e) of this section, no vessel of more than 222.5 m in overall length or 23.8 m in extreme breadth shall transit.

* * * * *

(d) No vessel's hull or superstructure when alongside a lock wall shall extend beyond the limits of the lock wall, as illustrated in Appendix I of this part.

(e) A vessel having a beam width in excess of 23.2 m and having dimensions that do not exceed the limits set out in the block diagram in Appendix I of this part:

(1) Shall, upon application to the Authority, be considered for transit after review of the vessels drawings; and

(2) If accepted, shall transit in accordance with directions issued by the Authority or Corporation.

3. Section 401.6 would be amended by revising paragraphs (a) and (b) to read as follows:

§ 401.6 Markings.

(a) Vessels of more than 20.0 m in overall length shall be correctly and distinctly marked and equipped with draft markings on both sides at the bow and stern.

(b) In addition to the markings required by paragraph (a) of this section, vessels of more than 110 m in overall length shall be marked on both sides with midship draft markings.

* * * * *

4. Section 401.7 would be revised to read as follows:

§ 401.7 Fenders.

(a) Where any structural part of a vessel protrudes so as to endanger Seaway installations, the vessel shall be equipped with fenders—

(1) That are made of steel, hardwood, or teflon or a combination of two or all of these materials, are of a thickness not exceeding 15 centimeters, with well tapered ends, and are located along the hull, close to the main deck level; and

(2) That by no later than the beginning of the 1997 navigation season are permanently attached to the vessel, except that portable fenders, other than rope hawsers, are allowed for a single transit basis if the portable fenders are—

(i) Made of a material that will float; and

(ii) Securely fastened and suspended from the vessel in a horizontal position by a steel cable or a fiber rope in such a way that they can be raised or lowered in a manner that does not damage Seaway installations.

5. Section 401.9 would be amended by revising paragraph (a) to read as follows:

§ 401.9 Radiotelephone equipment.

(a) Self-propelled vessels, other than pleasure craft of less than 20.0 m in overall length, shall be equipped with VHF (very high frequency) radiotelephone equipment.

* * * * *

6. Section 401.10 would be amended by revising paragraphs (b) and (c) to read as follows:

§ 401.10 Mooring lines.

* * * * *

(b) Unless otherwise permitted by an officer, only wire rope mooring lines with a breaking strength that complies with the minimum specifications set out in the table in this section shall be used for securing a vessel in lock chambers.

(c) Synthetic lines may be used for mooring at approach walls, tie-up walls and docks within the Seaway.

* * * * *

7. Section 401.13 would be amended by revising paragraph (b) to read as follows:

§ 401.13 Hand lines.

* * * * *

(b) be of uniform thickness and have a diameter of not less than 12 mm and not more than 20 mm and a minimum length of 35 m.

8. Section 401.26 would be amended by revising paragraph (d) to read as follows:

§ 401.26 Security for tolls.

* * * * *

(d) Notwithstanding paragraph (c) of this section, where a number of vessels, for each of which a preclearance has been given, are owned or controlled by the same individual or company and have the same representative, the security for tolls is not required if the individual, company, or representative has paid every toll account received in the preceding five years within the period set out in § 401.75.

* * * * *

9. Paragraphs (a)(1) and (2) of section 401.42 would be amended by removing the word "linesmen" and adding, in its place, the word "linehandlers".

10. Section 401.43 would be amended by revising the introductory text as follows:

§ 401.43 Mooring table.

Unless otherwise directed by an officer, vessels passing through the locks shall moor at the side of the tie-up wall or lock as shown in the table to this section.

* * * * *

11. Section 401.45 would be revised to read as follows:

§ 401.45 Emergency procedure.

When the speed of a vessel entering a lock chamber has to be checked in an emergency, a signal consisting of five blasts on a horn shall be given by the master and all mooring lines shall be put out as quickly as possible.

§ 401.52 [Amended]

12. Paragraph (b) of § 401.52 would be amended by removing the word "Caughnawaga" and adding, in its place, the word "Kahnawake".

§ 401.64 [Amended]

13. Paragraph (e) of § 401.64 would be amended by removing the words "or pilot".

14. Section 401.65 would be amended by revising paragraphs (a)(1) and (2) and paragraph (c) to read as follows:

§ 401.65 Communication—ports, docks and anchorages.

(a) * * *

(1) For the lake ports of Toronto and Hamilton, 1 nautical mile outside the harbor limits; and

(2) For other lake ports, when crossing the harbor entrance.

* * * * *

(c) Every vessel departing from a port, dock or anchorage, shall report to the

appropriate Seaway station its destination and the expected time of arrival at the next check point.

15. Section 401.66 would be amended by redesignating the current text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 401.66 Applicable laws.

* * * * *

(b) Every vessel carrying dangerous cargo, as described in §§ 401.66 through 401.73, and all tankers carrying liquid cargo in bulk, shall, before transiting any part of the Seaway, file with the Corporation and the Authority a copy of the current load plan as described in § 401.72(e).

16. Section 401.71 would be revised to read as follows:

§ 401.71 Signals—explosive or hazardous cargo vessels.

An explosive or hazardous cargo vessel shall display at the masthead or at an equivalent conspicuous position a "B" flag.

17. Section 401.72 would be amended by adding new paragraphs (e), (f), (g), and (h) to read as follows:

§ 401.72 Reporting—explosive and hazardous cargo vessels.

* * * * *

(e) Every vessel carrying dangerous cargo, as defined in § 401.66, and all tankers carrying liquid cargo in bulk shall, before transiting any part of the Seaway, file with the Corporation and the Authority a copy of the current load plan that includes the following information:

(1) The name of the cargo, its IMO class and UN number as set out in the IMO Code, if applicable, or, if the cargo is not classed by the IMO and does not have a UN number, the words "NOT CLASSED";

(2) The weight in metric tonnes and the stowage location of each commodity;

(3) The approximate weight in metric tonnes or the approximate volume in cubic meters in each hold or tank;

(4) The flashpoint of the cargo, if applicable; and

(5) The estimated date of entry into the Seaway and the date and time that the load plan was last issued or amended.

(f) For tankers, the information required under this section 401.72 shall be detailed on a plan showing the general layout of the tanks and, if a tanker is so fitted, a midship cross-section showing double bottom tanks and ballast side tanks.

(g) If a Material Safety Data Sheet (MSDS) on a hazardous cargo that a vessel is carrying is not available in a Seaway Traffic Control Center, the vessel shall provide one.

(h) Every vessel shall submit its load plan to the nearest Seaway Traffic Control Center and, if there are subsequent changes in stowage including loading and discharging during a transit, the vessel shall submit an updated plan before departing from any port between St. Lambert and Long Point.

18. Section 401.75 would be revised to read as follows:

§ 401.75 Payment of tolls.

Every toll invoice shall be paid in Canadian or American funds, as indicated on the invoice, within forty-five days after the vessel enters the Seaway, and any adjustment of the amount payable shall be provided for in a subsequent invoice.

19. Section 401.84 would be amended by revising paragraph (c) to read as follows:

§ 401.84 Reporting of impairment or other hazard by vessels transiting within the Seaway.

* * * * *

(c) Any malfunction on the vessel of equipment required by § 401.5 to 401.21 and subsections (e) through (j) of Schedule I of subpart A of this part;

* * * * *

20. Section 401.89 would be amended by revising paragraph (a)(1) to read as follows:

§ 401.89 Transit refused.

(a) * * *

(1) The vessel is not equipped in accordance with §§ 401.6 to 401.21 and subsections (e) to (j) of Schedule I of subpart A of this part when transiting the Canadian waters of the Saint Lawrence Seaway;

* * * * *

21. Section 401.91 would be revised to read as follows:

§ 401.91 Removal of obstructions.

The Corporation or the Authority may, at the owner's expense, move any vessel, cargo, or thing that obstructs or hinders transit on any part of the Seaway.

22. Section 401.94 would be revised to read as follows:

§ 401.94 Keeping copy of regulations.

A copy of these regulations (subpart A of Part 401), a copy of the vessel's latest Ship Inspection Report, and Seaway Notices for the current navigation year shall be kept on board every vessel in transit.

Subpart A to Part 401 [Amended]

23. Schedule I to subpart A, part 401 would be amended by revising paragraph (d)(3) to read as follows:

Schedule I—Vessels Transiting U.S. Waters

* * * * *

(d) * * *

(3) For each vessel with a fixed propeller, a table of shaft revolutions per minute, for a representative range of speeds, and a notice showing any critical range of revolutions at which the engine designers recommend that the engine not be operated on a continuous basis.

* * * * *

24. Schedule II to subpart A, part 401 would be amended by removing items 7 through 10 and redesignating items 11 through 15 as new items 7 through 11 respectively, and by revising item 4 and item 6 to read as follows:

SCHEDULE II.—TABLE OF SPEEDS [1]

From—	To—	Maximum speed over the bottom, knots	
		Col. III	Col. IV
. . .	. . .		.
4. Lake St. Francis Buoy D3	Lake St. Francis Buoy D49	12	12
. . .	. . .		.
6. Eisenhower Lock	Deer Island Lt. 186	11.5	10.5
. . .	. . .		.

[1] Maximum speeds at which a vessel may travel in identified areas in both normal and high water conditions are set forth in this schedule. The Corporation and the Authority will, from time to time, designate the set of speed limits which is in effect.

25. Appendix I to subpart A, part 401 would be amended by revising the first sentence of the second undesignated paragraph after paragraph (b) to read as follows:

Appendix I—Vessel Dimensions

* * * * *

The limits in the block diagram are based on vessels with a maximum allowable beam of 23.2 m. * * *

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Issued at Washington, D.C. on June 6, 1995.

Saint Lawrence Seaway Development Corporation.

Marc C. Owen,

Chief Counsel.

[FR Doc. 95–14366 Filed 6–14–95; 8:45 am]

BILLING CODE 4910–61–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ50–1–6966b; FRL–5187–9]

Clean Air Act Approval and Promulgation of Title V, Section 507, Small Business Stationary Source Technical and Environmental Compliance Assistance Program for Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Arizona State Implementation Plan (SIP) which concern the Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM).

The implementation plan was submitted by the State to satisfy the Federal mandate of the Clean Air Act (CAA) to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the CAA. In the final rules Section of this **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without additional proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by July 17, 1995.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105

U.S. Environmental Protection Agency, Air Docket 6102, 401 "M" Street, S.W. Washington, D.C. 20460

Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, Arizona 85012.

FOR FURTHER INFORMATION CONTACT: R. Michael Stenburg, A–1, U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1102.

SUPPLEMENTARY INFORMATION: This document concerns the Arizona Small Business Stationary Source Technical and Environmental Compliance Assistance Program, submitted to EPA on November 13, 1992 and February 1, 1995 by the Arizona Department of Environmental Quality. For further information, please see the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 27, 1995.

Felicia Marcus,

Regional Administrator.

[FR Doc. 95–14626 Filed 6–14–95; 8:45 am]

BILLING CODE 6560–60–P

40 CFR Parts 52 and 81

[OH79–1–6970; FRL–5221–8]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Ohio

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The Ohio Environmental Protection Agency has requested the redesignation of the Cleveland/Akron/Lorain metropolitan area (consisting of the Ohio counties of Lorain, Cuyahoga, Lake, Ashtabula, Geauga, Medina, Summit and Portage) from moderate nonattainment to attainment for ozone. Before the request can be approved through final rulemaking, several State Implementation Plan (SIP) revisions must be approved. The USEPA is rulemaking, or has rulemade, separately on Ohio SIP revisions involving volatile organic compounds (VOC) Reasonable Available Control Technology (RACT) rules, the 1990 Base-year Inventory, the section 182(f) nitrogen oxides (NO_X) RACT waiver request, the 182(b)(1) reasonable further progress plan, the 182(b)(4) inspection and maintenance plan, and the attainment demonstration. Upon final approval of the required plan elements, the CAL nonattainment area will have met all of the requirements for redesignation specified under section 107(d)(3)(E). Therefore, the USEPA is proposing approval of the redesignation request and maintenance plan for the CAL area of Ohio.

DATES: Comments on this redesignation and on the proposed USEPA action must be received by July 17, 1995.

ADDRESSES: Written comments should be addressed to: William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE–17J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State's submittal and other information are available for inspection during normal business hours at the following location. Regulation Development Section, Air Enforcement Branch (AE–17J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randy Robinson, Air Enforcement Branch, Regulation Development Section (AE–17J), United States Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 353–6713.

SUPPLEMENTARY INFORMATION:

I. Summary of State Submittal

The Ohio Environmental Protection Agency (OEPA) has requested the redesignation of the Cleveland/Akron/Lorain (CAL) area of Ohio (consisting of the counties of Lorain, Ashtabula, Cuyahoga, Geauga, Lake, Medina, Portage, and Summit) from nonattainment to attainment for ozone. The USEPA received the request for redesignation to attainment on November 15, 1994.

On November 15, 1990, the Clean Air Act Amendments of 1990 (CAAA) were enacted. Pursuant to Section 107(d)(4)(A), the CAL was designated as a moderate ozone nonattainment area. As explained below, the CAL area had been designated nonattainment prior to the enactment of the 1990 CAAA. A review of the CAL area redesignation request is presented below.

II. Redesignation Review Criteria

The Clean Air Act provides the requirements for redesignating a nonattainment area to attainment. Specifically, Section 107(d)(3)(E) provides for redesignation if: (i) The Administrator determines that the area has attained the National Ambient Air Quality Standard (NAAQS); (ii) The Administrator has fully approved the applicable implementation plan for the area under Section 110(k); (iii) The Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (iv) The Administrator has fully approved a maintenance plan for the area as meeting the requirements of Section 175(A); and (v) The State containing such area has met all requirements applicable to the area under Section 110 and Part D.

The USEPA provided guidance on redesignation in the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, 57 FR 13498 (April 16, 1992), supplemented at 57 FR 18070 (April 28, 1992). Three key memoranda provide further guidance with respect to section 107(d)(3)(E) of the amended Act. The first, dated September 4, 1992, was issued by John Calcagni, Director, Air Quality Management Division, Subject: Procedures for Processing Requests to Redesignate Areas to Attainment (Calcagni Memorandum). The second, dated September 17, 1993, was issued by Michael Shapiro, Acting Assistant Administrator for Air and Radiation, Subject: State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) NAAQS on or after November 15, 1992 (Shapiro Memorandum). The third, dated October 14, 1994, was issued by Mary Nichols, Assistant Administrator for Air and Radiation, Subject: Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment (Nichols Memorandum).

Analysis of CAL Area Redesignation Request

A. The Area Must Have Attained the Ozone National Ambient Air Quality Standard (NAAQS)

For ozone, an area may be considered attaining the NAAQS if there are no violations, as determined in accordance with 40 CFR 50.9, based on three complete, consecutive calendar years of quality assured monitoring data. The data that are used should be the product of ambient monitoring that is representative of the area believed to have the highest concentration. A violation of the NAAQS occurs when the annual average number of expected daily exceedances is equal to or greater than 1.05 at any site under consideration. A daily exceedance occurs when the maximum hourly ozone concentration during a given day exceeds 0.124 parts per million (ppm). The data should be collected and quality-assured in accordance with 40 CFR § 58, and recorded in the Aerometric Information Retrieval System (AIRS). The monitors should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

The OEPA submitted ozone monitoring data from the CAL area for the April through October ozone season from 1976 to 1994. The majority of recent exceedances occurred during 1988. To demonstrate monitored attainment with the standard, the OEPA submitted ozone air quality data for the three most recent years, 1992 through 1994. This data has been quality assured and is recorded in AIRS. No violations were recorded during this three-year time period.

The CAL moderate nonattainment area contains ten monitors measuring ambient concentrations of ozone. The monitors and the number of exceedances for 1992 through 1994 are detailed in the technical support document. The site with the greatest number of expected exceedances for the three year period is in Cuyahoga County and has an annual average exceedance value of 1.00. The only other exceedance recorded during the three year period was in 1994 at a monitor in Medina County. This was a monitor that was relocated in 1993 due to operational problems. The CAL moderate nonattainment area is currently attaining the standard.

B. The Area Must Have a Fully Approved State Implementation Plan (SIP) Under Section 110(k)

The counties of the CAL moderate nonattainment area were designated nonattainment for ozone in March 1978, based on monitored violations. Additional monitored violations in 1983 caused USEPA to propose to disapprove the nonattainment SIP submitted in 1982 by OEPA and to require a revised SIP and attainment demonstration by 1987. Monitored violations occurred again in the CAL area during the summer of 1988.

The CAAA provided that any area designated nonattainment as of November 15, 1990, would remain nonattainment and would be classified in one of five categories, based on the severity of the monitored design concentration value. The CAL area was classified as a moderate nonattainment area and as a result was required to submit a revised SIP which meets the requirements of the Clean Air Act Amendments and demonstrates attainment with the ozone standards.

The Shapiro memorandum, cited above, provides guidance on programs that must be in the SIP before the redesignation request can be approved. The memorandum states that for redesignation, the States must adopt and provide for implementation of all the programs that were due by the date of the redesignation request. Exceptions to this policy apply to only four program areas: Basic inspection and maintenance; annual updates of vehicle miles traveled forecasts and annual estimates of actual vehicle miles traveled for Carbon Monoxide (CO) nonattainment areas; nitrogen oxide reasonably available control technology (RACT), and small business assistance programs.

Section E of this notice discusses the requirements under section 110 and Part D of Title 1 of the CAAA. As discussed in that section, USEPA is rulemaking, or has rulemade, separately on the Volatile Organic Compounds (VOC) RACT rules, the emissions inventory, NO_X RACT waiver, and I/M plan. Final approval of the required submittals will provide the area with a fully approved SIP at the time of final rulemaking on the redesignation request. The CAL area was also required to submit a 15 percent Rate of Progress Plan and an attainment demonstration. However, a May 10, 1995, memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, entitled "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard", states that upon a determination made by USEPA that an area has attained the NAAQS for ozone, that area need not submit SIP revisions concerning

reasonable further progress (15% plan) and attainment demonstrations for as long as the area continues to meet the standard. It is expected that such a determination will soon be made, in separate rulemaking, for the CAL area. If such a determination is made, the final approval of the CAL redesignation request will no longer be contingent upon USEPA approval of the 15% plan or the attainment demonstration.

C. The Improvement in Air Quality Must Be Due to Permanent and Enforceable Reductions in Emissions Resulting From the SIP, Federal Measures, and Other Permanent and Enforceable Reductions

The State must be able to reasonably attribute the improvement in air quality to emission reductions which are permanent and enforceable. To satisfy this requirement, the State should estimate the percent reduction from the year that was used to determine the design value for designation and classification achieved from Federal measures and control measures that have been adopted and implemented by the State. Emission rates, production capacities and other information should be used in the estimation. Sources should be assumed to operate at permitted or historic peak levels unless evidence is presented that such an assumption is unrealistic.

The OEPA submittal documents reductions in emission from 1990 to 1993. The year 1988 was the year which determined the design value and should have been the year from which reductions were calculated. This comment was made to OEPA in a January 6, 1995, letter from William L. MacDowell, Section Chief, Regulation Development Section, Region 5, to Mary Cavin, Hearing Clerk, OEPA. The OEPA responded that the result of using 1988 instead of 1990 as the base year would be that a greater reduction of emissions would have been calculated. The USEPA agrees that the use of 1988 data would not have affected the conclusion that the reductions in emissions from permanent and enforceable programs have resulted in improved air quality in the area and therefore accepts the reductions as calculated.

The OEPA submittal states that the 1993 emissions inventory is reflective of attainment conditions. The OEPA states that the reductions in emissions from the base year are achieved from the implementation of two federal programs; lower fuel volatility and the Federal Motor Vehicle Control Program (FMVCP). These programs are permanent and federally enforceable. The motor fuel volatility Phase I standards became effective nationwide in the summer of 1989, and established a volatility limit in the CAL area of 10.5 pounds per square inch Reid Vapor Pressure (RVP). The RVP was further lowered in 1992 to 9.0 pounds per square inch. The total reduction in mobile source VOC emissions from 1990 to 1993 was 66 tons per day. These reductions were quantified using the MOBILE5A model.

From the years 1990 to 1993, point source VOC emissions increased by 2.7 tpd, while area source emissions decreased by 1.8 tpd. Area sources were assumed to change, based on historical population information as interpolated by Bureau of Economic Analysis (BEA) data for the years 1988 to 1995, on industrial employment data, and on gasoline sale trends. Point source emissions for 1990 were developed from reports submitted to the local air agencies by facilities with actual combined VOC emissions of 10 tons per year or more. The following table shows VOC emissions for area, point, and mobile sources from 1990 to 1993.

	1990	1993
Area (TPD)	147.7	145.9
Point	74.7	77.4
Mobile	248.4	182.3
Total	470.8	405.6

The State has shown that actual total VOC emissions were reduced by 14 percent or about 65 tons per day from 1990 to 1993; due primarily to mobile source reductions. Although the State did not calculate reductions based on a design year (i.e., 1988) emissions inventory, the demonstration that was submitted is adequate to show that actual reductions of VOC emissions have occurred in the area. The reduction in emissions shown in the submittal has been reasonably attributed to two programs: lower fuel volatility and the Federal Motor Vehicle Control Program. Both of the programs result in permanent and enforceable reductions in VOC emissions, and, therefore, the requirement of section 107(d)(3)(E)(iii) is satisfied.

D. The Area Must Have a Fully Approved Maintenance Plan Meeting the Requirements of Section 175A

Section 175A of the CAA defines requirements for maintenance plans. The maintenance plan is a SIP element which provides for maintenance of the relevant NAAQS in the area for at least 10 years after redesignation. There are five core provisions which the maintenance plan should address: the attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. The attainment inventory should identify the level of emissions in the area which is sufficient to attain the ozone NAAQS and should include the emissions during the time period associated with the monitoring data showing attainment. Maintenance is demonstrated by showing that future emissions will not exceed the level of the attainment inventory. Modeling may also be used to show that the future combination of sources and emission rates will not cause a violation of the NAAQS. The maintenance plan must also provide for continued operation of an appropriate air quality monitoring network to verify the attainment status of the area. The plan must indicate how the State will track the progress of the maintenance plan. Finally, the maintenance plan must include contingency measures to promptly correct any violation of the ozone NAAQS that occurs after redesignation of the area to attainment.

Attainment Inventory

The CAL area submittal contained inventories of 1990 actual VOC emissions from stationary, area, and mobile sources. The year 1990 was selected as the base year and used to project emissions to future years. The 1993 emissions inventory is considered as the attainment year inventory because no ozone violations have occurred since 1991, and the 1993 projections were performed per USEPA guidance. The approvability of the emission inventories will be addressed in a separate rulemaking. Final approval of the CAL nonattainment region emission inventories is needed before the redesignation request can be approved.

Maintenance Demonstration

The CAL area submittal shows projected VOC, NO_X, and CO emissions from the 1990 base year for the years 1993, 1996, 2000, and 2006. The projections show that the level of emissions established for the attainment year inventory will not be exceeded. The following tables list the VOC and NO_X emissions for the base year, final year and interim years.

SUMMARY OF VOC EMISSIONS (TONS/DAY)

	1990 Base	1993 Attain	1996 Proj.	2000 Proj.	2006 Proj.
Point	74.7	77.4	80.2	84.1	90.5
Area	147.7	145.9	144.6	143.0	140.6
Mobile	248.4	181.4	131.2	78.4	48.8
Totals	470.8	404.7	356.0	305.5	279.9

SUMMARY OF NO_X Emissions (TONS/DAY)

	1990 Base	1993 Attain	1996 Proj.	2000 Proj.	2006 Proj.
Point	244.7	242.6	240.0	236.0	232.3
Area	55.1	54.7	54.4	54.1	53.2
Mobile	176.6	159.9	142.2	95.57	75.4
Totals	476.4	457.2	436.6	385.7	360.9

The OEPA is revising the base year emission and projected year inventory numbers in response to comments made by USEPA. Although the revisions will change the emission totals, the changes are not expected to affect the results of the maintenance demonstration. The revised base year, attainment year, and projected emissions will be presented in the final rule.

Emission Projections

Projections of stationary source emissions through the year 2006 were developed based on data provided by the Bureau of Economic Analysis (BEA), United States Department of Commerce, showing manufacturing earnings by industry. An annual growth factor was derived from this data and that growth factor was used to determine future year inventories. The base year inventory was developed through reports submitted by facilities with actual combined VOC emissions of 10 tons per year or more. The 1990 base year inventory reflects tons per typical summer day emissions as well as an 80 percent rule effectiveness assumption.

The area source emissions inventory includes sources too small to be handled individually in the point source inventory. The emissions in the area source inventory were reported in tons per typical summer day. Projections of area source emissions for most source categories were based on population data supplied by the Ohio Data Users Center: Ohio Department of Development. Some source categories (such as degreasing operations, construction and industrial equipment, and auto painting/traffic lines) used industrial employment, from BEA data, as the growth indicator. State gasoline consumption was used as a growth indicator to project emissions from gasoline distribution.

Mobile source emissions inventories were generated by applying the emission factors from USEPA's Mobile5A emissions model to the projected Vehicle Miles Travelled (VMT) in the CAL area counties. The VMTs for the 1990 base year were based on the TRANPLAN model, which utilizes actual traffic counting. Forecasts of VMTs to the year 2006 relied on the development of future highway networks, future forecasts of socio-economic data, and travel patterns in the CAL area. VMTs are projected to increase 9.6 percent by the year 2006 from the 1990 base year. The mobile source emissions budget for the year 2006 for VOC and NO_X for purposes of transportation conformity is 48.8 tons/day and 75.4 tons/day, respectively.

Several programs account for the significant reductions in mobile emissions predicted through the year 2006. These programs, which are Federally approved or in the process of being approved, include the enhanced inspection and maintenance, State II vapor recovery, on-board vapor recovery, FMVCP, and lower fuel volatility. Incorporation of enhanced inspection and maintenance into the Mobile5A modeling is initiated in 1996. The Stage II vapor recovery system (VRS) is fully implemented and Federally enforceable in 1995, while the on-board vapor recovery system begins in 1998. The on-board vapor recovery system applies to the four possible vehicle types; light duty gasoline, light duty truck 1 and 2, and heavy duty gasoline.

Monitoring Network

There are currently ten monitors measuring ozone in the CAL area. The monitors are operated by the local air agencies and the data is recorded in AIRS. The CAL local air agencies commit to continue operating and maintaining the ozone monitor network consistent with the requirements of Federal and State monitoring guidelines in order to continue to verify the attainment status of the area.

Contingency Plan

The contingency plan for the CAL area contains three major components: attainment tracking, contingency measures to be implemented in the event that a violation of the ozone NAAQS occurs in the CAL area, and a mechanism with which to trigger the implementation of the contingency measures.

Two methods of attainment tracking will be utilized: (1) air quality monitoring using the existing ozone monitoring network, and (2) inventory updates on a regular schedule. Stationary, mobile, and area source inventories will be updated at a minimum of once every three years beginning with 1996. Annual progress reports will summarize available VOC emissions data during years when area and mobile source inventories are not developed.

The contingency measures to be considered for implementation are listed below.

1. Lower Reid Vapor Pressure for gasoline
2. Reformulated gasoline program
3. Broader geographic coverage of existing regulations
4. Application of RACT on sources covered by new control technology guidelines issued in response to the 1990 Act Amendments
5. Application of RACT to smaller existing sources
6. Implementation of one or more transportation control measures sufficient to achieve at least a 0.5 percent reduction in actual areawide VOC emissions. The transportation control measures to be considered would include: (1) Trip reductions programs, including but not limited to employer-based transportation management programs, areawide rideshare programs, work schedule change, and telecommuting; (2) transit improvements; (3) traffic flow improvements; and (4) other measures
7. Alternative fuel programs for fleet vehicle operations
8. Controls on consumer products consistent with those adopted elsewhere in the United States
9. VOC offsets for new or modified major sources
10. VOC offsets for new or modified minor sources
11. Increased ratio of VOC offsets required for new sources
12. Requirement of VOC controls on new minor sources.

Selection of one or more of the contingency measures will be based on various considerations including cost-effectiveness, VOC reduction potential, economic and social consideration, and other factors the State determines to be appropriate.

Consideration and selection of one or more of the contingency measures will take place in the event the ozone NAAQS is violated in the CAL area. Initially, the State, in cooperation with NOACA, AMATS, and the local air agencies, will conduct an analysis to determine the level of control measures needed to assure expedient future attainment. If a subsequent violation of the ozone NAAQS occurs after implementation of the VOC control measures, NO_X RACT will be implemented. Contingency measures will be implemented according to the following schedule:

Activity	Completion time after triggering event (monitored violation)
Verify a violation has occurred.	1 month.
Identify VOC plan and submit schedule for implementation.	3 months.
Implement VOC control program.	12 months.
	Completion time after second triggering event/post VOC control plan
Verify a violation has occurred.	1 month.
Submit schedule for implementation of NO_X RACT.	3 months.
Implement NO_X RACT.	18 months.

Reformulated gasoline and low RVP gasoline would not be able to be implemented as contingency measures by the State of Ohio unless the State first requested and received from EPA a waiver of Federal preemption under section 211(c)(4) of the CAA. However, in light of the State's listing of other potential contingency measures and the State's commitment to implement contingency measures within 12 months of a violation, the identification of reformulated gasoline and low RVP gasoline does not detract from the approvability of the contingency plan.

The Ohio submittal adequately addresses the five basic components which comprise a maintenance plan (attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan) and therefore, satisfies the maintenance plan requirement in section 107(d)(3)(E)(iv).

E. The Area Must Have Met All Applicable Requirements Under Section 110 and Part D

Section 107(d)(3)(E) requires that, for an area to be redesignated, an area must have met all applicable requirements under section 110 and Part D. The USEPA interprets section 107(d)(3)(E)(v) to mean that for a redesignation to be approved, the State must have met all requirements that applied to the subject area prior to or at the time of the submission of a complete redesignation request. Requirements of the Act that come due subsequently continue to be applicable to the area at those later dates (see section 175A(c)) and, if the redesignation of the area is disapproved, the State remains obligated to fulfill those requirements.

Section 110: General Requirements for Implementation Plans

Section 110(a)(2) of Title I of the CAAA lists the elements to be included in each SIP after adoption by the State and reasonable notice and public hearing. The elements include, but are not limited to, provisions for establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor ambient air quality; implementation of a permit program, provisions for Part C (PSD) and D (NSR) permit programs, criteria for stationary source emission control measures, monitoring, and reporting, provisions for modeling, and provisions for public and local agency participation. For purposes of redesignation, the CAL area SIP was reviewed to ensure that all requirements under the amended Act were satisfied. USEPA has determined that the CAL area SIP is consistent with the requirements of section 110 of the amended Act.

Part D: General Provisions for Nonattainment Areas

Before the CAL area may be redesignated to attainment, it must have fulfilled the applicable requirements of part D. Under part D, an area's classification determines the requirements to which it is subject. Subpart 1 of part D sets forth the general requirements applicable to all nonattainment areas. Subpart 2 of part D establishes additional requirements for nonattainment areas classified under table 1 of section 181(a). As described in the General Preamble for the Implementation of Title 1, specific requirements of subpart 2 may override subpart 1's general provisions (57 FR 13501 (April 16, 1992)). The CAL area was classified as moderate. Therefore, in order to be redesignated, the State must meet the applicable requirements of subpart 1 of part D—specifically section 172(c), as well as the applicable requirements of subpart 2 of part D.

Section 172(c) Requirements

The State redesignation request for the CAL area has satisfied all of the relevant submittal requirements under section 172(c) necessary for the area to be redesignated to attainment. Some components have not yet completed regulatory review. Approval of all required SIP revisions is necessary before the redesignation request can be approved. The reasonable further progress (RFP) requirement under section 172(c)(2) is defined as progress that must be made toward attainment. In accordance with the General Preamble (57 FR 13564), this requirement is not relevant because the CAL area has already demonstrated monitored attainment of the ozone NAAQS. Likewise, because the area has already attained the NAAQS, the contingency measures required under section 172(c)(9) are not applicable.

Section 172(c)(3) requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions. The State has submitted such an inventory under section 182(a)(1). It is currently being reviewed for approvability.

Section 172(c)(5) requires permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. The USEPA has determined that areas being redesignated need not comply with the requirement that a New Source Review (NSR) program be approved prior to redesignation provided that the

area demonstrates maintenance of the standard without part D NSR in effect. The rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment". The State of Ohio has demonstrated that the CAL area will be able to maintain the standard without part D NSR in effect, and, therefore, the State need not have a fully approved part D NSR program prior to approval of the redesignation request for the area. The State's Prevention of Significant Deterioration (PSD) program will become effective in the CAL area upon redesignation to attainment.

Section 176 Conformity Plan Provisions

Section 176(c) of the Act requires States to revise their SIPs to establish criteria and procedures to ensure that, before they are taken, Federal actions conform to the air quality planning goals in the applicable State SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. or the Federal Transit Act ("transportation conformity"), as well as to all other Federal actions ("general conformity").

The USEPA promulgated final transportation conformity regulations on November 24, 1993 (58 FR 62188) and general conformity regulations on November 30, 1993 (58 FR 63214). Pursuant to section 51.396 of the transportation conformity rule and section 51.851 of the general conformity rule, the State of Ohio is required to submit a SIP revision containing transportation conformity criteria and procedures consistent with those established in the Federal rule by November 25, 1994, and November 30, 1994, respectively. Because the redesignation request was submitted before these SIP revisions came due, they are not applicable requirements under section 107(d)(3)(E)(v) and, thus, do not affect approval of this redesignation request.

Subpart 2 Section 182 Requirements

The CAL area is classified moderate nonattainment; therefore, part D, subpart 2, section 182(b) requirements apply. In accordance with guidance presented in the Shapiro memorandum, the requirements which came due prior to the submission of the request to redesignate the CAL area must be fully approved into the SIP before the request to redesignate the area to attainment can be approved. Those requirements are discussed below:

(a) 1990 Base Year Inventory

The 1990 base year emission inventory was due on November 15, 1992. It was submitted to USEPA on March 14, 1994. USEPA is currently reviewing the base year inventory. Approval of the redesignation request is contingent upon approval of the 1990 base year inventory.

(b) Emission Statements

The emission statements SIP was due on November 15, 1992. It was submitted to the USEPA on March 18, 1994. The USEPA approved this SIP revision through a direct final rulemaking action published on October 13, 1994 (59 FR 51863). This approval became effective on December 12, 1994.

(c) 15% Plan

The 15% Rate of Progress plan for VOC reductions was required to be submitted by November 15, 1993, and, therefore, is applicable to the CAL Moderate Nonattainment area. The 15% plan was submitted to USEPA on March 14, 1994, and is currently under review. Additionally, an attainment demonstration was required for the CAL area which must show that the reductions are adequate to show attainment with the NAAQS by 1996. The OEPA submitted an attainment demonstration on March 14, 1994. It is currently under review. However, as mentioned previously, the May 10, 1995, memorandum from John S. Seitz states that upon a determination made by USEPA that an area has attained the NAAQS for ozone, that area need not submit SIP revisions concerning reasonable further progress (15% plan) and attainment demonstrations for as long as the area continues to meet the standard. It is expected that such a determination will soon be made, in separate rulemaking, for the CAL area. If such a determination is made, the final approval of the CAL redesignation request will no longer be contingent upon USEPA approval of the 15% plan or the attainment demonstration.

(d) RACT Requirements

SIP revisions requiring RACT for three classes of VOC sources are required under section 182(b)(2). The categories are:

(i) All sources covered by a CTG document issued between November 15, 1990 and the date of attainment. The USEPA has issued a CTG document in which it lists 11 CTG's that are planned to be issued in accordance with section 183. The USEPA has also promulgated a CTG document entitled "Control of Volatile Organic Compound Emissions from Reactor Processes and Distillation Operations Processes in the Synthetic Organic Chemical Manufacturing Industry", August 1993. However, the CAL redesignation request was submitted before the November 15, 1994 (57 FR 18070), due date for RACT rule submission for the 11 CTG's and the March 23, 1995 (59 FR 13717), due date for the more recent CTG. Therefore, this requirement is not applicable.

(ii) All sources covered by a Control Technology Guideline (CTG) issues prior to November 15, 1990. The State has stated that it has adopted rules requiring RACT for sources for which a CTG has been issued. A direct final rule approving the revision was published on March 23, 1995.

(iii) All other major non-CTG stationary sources. The non-CTG rules were due by November 15, 1992, and apply to the Ohio submittal. The USEPA is currently reviewing non-CTG rules submitted by Ohio. Approval of the redesignation request is contingent upon approval of the non-CTG rules.

(e) Stage II Vapor Recovery

Section 182(b)(3) requires States to submit Stage II rules. The Ohio Stage II rules were submitted as a SIP revision on June 7, 1993. On October 20, 1994, the USEPA partially approved and partially disapproved Ohio's SIP revision for implementation of Stage II (58 FR 52911). As stated in that rulemaking action, with the exception of paragraph 3745–21–09 (DDD)(5), USEPA considers Ohio's Stage II program to fully satisfy the criteria set forth in the USEPA guidance document for such programs entitled "Enforcement Guidance for Stage II Vehicle Refueling Control Programs." Only those Stage II provisions previously approved by USEPA are part of the CAL area maintenance plan.

The Shapiro Memorandum states that once onboard regulations (FMVCP) are promulgated, the Stage II regulations are no longer applicable for moderate ozone nonattainment areas. The USEPA promulgated onboard rules on April 6, 1994 (59 FR 16262), therefore, pursuant to section 202(a)(6) of the CAAA, Stage II is no longer required. However, the State has opted to include reductions in VOCs from the Stage II program as part of the maintenance plan and the 15% Rate of Progress plan.

(f) Vehicle Inspection and Maintenance (I/M)

The OEPA submitted the I/M rules on May 26, 1994. The USEPA published a direct final rule approving the rules on April 4, 1995. The direct final rule becomes effective on June 3, 1995.

The legislation authorizing the State to establish an I/M program also allows the State to implement an enhanced I/M program into an area's maintenance plan. The State is including enhanced I/M as a part of the maintenance plan and 15% plan for all of the counties in the CAL area except Ashtabula. Ashtabula was excluded because it was not required to have a vehicle I/M program under the pre-1990 CAA.

(g) 1.15 to 1.0 Offset

Section 182(b)(5) requires all major new sources or modifications in a moderate nonattainment area to achieve offsetting reductions of VOCs at a ratio of at least 1.15 to 1.0. The Mary Nichols memorandum states that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation so as they have an approved Prevention of Significant Deterioration (PSD) SIP or delegated PSD authority. The State has demonstrated that maintenance can be achieved without NSR offsets in effect, therefore, this requirement is not applicable. Upon redesignation to attainment, the sources will become subject to PSD requirements and offsets will no longer apply. Emissions will continue to be tracked on an annual basis.

(h) NO_x Requirement

Section 182(f) establishes NO_x requirements for ozone nonattainment areas. However, it provides that these requirements do not apply to an area if the Administrator determines that NO_x reductions would not contribute to attainment. The Administrator has proposed such a determination for the CAL nonattainment area as requested by the State of Ohio (60 FR 3361). If the NO_x waiver is approved as a final rule, the State of Ohio need not impose the NO_x control measures in section 182(f) for the CAL area to be redesignated. However, if the NO_x waiver is not approved, the NO_x requirements must be met for the area to be redesignated from nonattainment to attainment. If a violation is monitored in the CAL area, the State has committed (as required) to adopt and implement NO_x RACT rules as a contingency measure to be implemented upon any violation of the ozone NAAQS which occurs after initial contingency measures are in place.

Transport of Ozone Precursors to Downwind Areas

Preliminary modeling results utilizing USEPA's regional oxidant model (ROM) indicate that ozone precursor emissions from various States west of the ozone transport region (OTR) in the northeastern United States contribute to increases in ozone concentrations in the OTR. The State of Ohio has provided documentation that VOC and NO_x emissions in the CAL nonattainment area are predicted to remain below attainment levels for the next ten years. Should emissions exceed attainment levels, the contingency plan will be triggered. In addition, eight years after redesignation to attainment, Ohio is required to submit a revision to the maintenance plan which demonstrates that the NAAQS will be maintained until the year 2015. The USEPA is currently developing policy which will address long range impacts of ozone transport. The USEPA is working with the States and other organizations to design and complete studies which consider upwind sources and quantify their impacts. The USEPA intends to address the transport issue through Section 110 based on a domain-wide modeling analysis.

III. Proposed Rulemaking Action and Solicitation of Public Comment

The State of Ohio has met the submission requirements of the CAAA for revising the Ohio ozone SIP. The USEPA is proposing approval of the redesignation of the CAL moderate nonattainment area, consisting of the counties of Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage, and Summit, to attainment for ozone. The USEPA is also proposing approval of the maintenance plan into the ozone SIP. As noted earlier, final approval of the CAL area request is contingent upon final approval of the required VOC RACT rules, Ohio's I/M SIP revision, the 15 percent Rate of Progress Plan, the attainment demonstration, the CAL base-year emissions inventory, and the NO_x waiver for the CAL area. However, as mentioned above, publication of a final rule determining that the CAL area has attained the NAAQS for ozone will remove the 15% plan and the attainment demonstration as requirements for final approval of the request for redesignation to attainment for ozone for the CAL area.

Public comments are solicited on USEPA's proposed rulemaking action. Public comments received by July 17, 1995 will be considered in the development of USEPA's final rulemaking action.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, USEPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of the state implementation plan or plan revisions approved in this action, the State and any affected local or tribal governments have elected to adopt the program provided for under section 175A of the Clean Air Act. The rules and commitments being proposed for approval in this action may bind State,

local and tribal governments to perform certain actions and also may ultimately lead to the private sector being required to perform certain duties. To the extent that the rules and commitments being proposed for approval by this action will impose or lead to the imposition of any mandate upon the State, local or tribal governments either as the owner or operator of a source or as a regulator, or would impose or lead to the imposition of any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. Therefore, the USEPA has determined that this action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

List of Subjects

40 CFR Part 52

Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Air pollution control.

Authority: 42 U.S.C. 7401–7671(q).

Dated: June 7, 1995.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 95–14685 Filed 6–14–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 300

[FRL–5220–9]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to delete flowood site from the National Priorities List (NPL): Request for comments.

SUMMARY: EPA, Region IV (EPA) announces its intent to delete the Flowood Site from the NPL and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR Part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). EPA and the State of Mississippi (State) have determined that all appropriate CERCLA actions have been implemented and that no further cleanup by responsible parties is appropriate. Moreover, EPA and the state have determined that remedial activities conducted at the site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning the proposed deletion of this Site will be accepted until July 17, 1995.

ADDRESSES: Comments may be mailed to: Lt. Mark A. Marshall, USPHS, Remedial Project Manager, South Superfund Remedial Branch, Waste Management Division, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, GA 30365.

Comprehensive information on this Site is available through the EPA Region IV public docket, which is located at EPA's Region IV office and is available for viewing by appointment only from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays. Requests for appointments or copies of the background information from the regional public docket should be directed to the EPA Region IV Docket Office.

The address for the Regional Docket Office is: Ms. Debbie Jourdan, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, Telephone No.: (404) 347–2930.

Background information from the regional public docket is also available for viewing at the Site information repository located at the following address: Pearl Public Library, 3470 Highway 80 East, Pearl, Mississippi 39208, telephone No.: (601) 932–2562.

FOR FURTHER INFORMATION CONTACT: Lt. Mark A. Marshall, USPHS, Remedial Project Manager, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, (404) 347–2643 ext. 6271.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletions

I. Introduction

EPA announces its intent to delete the Flowood Site in Rankin County, Mississippi from the National Priorities List (NPL) which constitutes Appendix B on the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), and requests comments on this proposed deletion. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Superfund Response Trust Fund (Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed Remedial Actions in the event that conditions at the site warrant such action. EPA will accept comments concerning this Site for thirty (30) calendar days after publication of this notice in the **Federal Register**.

Section II of this notice explains the criteria for the deletion of sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how the Site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), releases may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

(iii) The remedial investigation has determined that the release poses no significant threat to public health or the environment and, therefore, taking or remedial measures is not appropriate.

Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed Remedial Actions in the event that conditions at the site warrant such action.

III. Deletion Procedures

EPA will accept and evaluate public comments before making a final decision to delete. Comments from the local community may be the most pertinent to deletion decisions. The following procedures were used for the intended deletion of this Site:

(1) EPA has recommended deletion and has prepared the relevant documents.

(2) The State has concurred with the deletion decision.

(3) A local notice has been published in local newspapers and has been distributed to appropriate federal, state, and local officials, and other interested parties.

(4) EPA has made all relevant documents available in the Regional Office and local site information repository.

Deletion of a site from the NPL does not itself, create, alter, or revoke any individual rights or obligations. The NPL is designated primarily for information purposes and to assist EPA management. As mentioned in Section II of this Notice, 40 C.F.R. 300.425(e)(3) states that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions.

Any comments received during the notice and comment period will be evaluated before the final decision to delete. EPA will prepare a Responsiveness Summary, if necessary, which will address any comments received during the public comment period.

A deletion occurs after the EPA Region IV Regional Administrator places a notice in the **Federal Register**. The NPL will reflect any deletions in the next final update. Public notices and copies of the Responsiveness Summary will be made available to local residents by Region IV.

IV. Basis for Intended Site Deletion

The Flowood Superfund Site ("Site") is located in the town of Flowood, Rankin County, Mississippi along Highway 468 on the east side of the Pearl River, east of Jackson, Mississippi. The site encompasses approximately 225 acres and consists mostly of wetlands and lowlands in the alluvial plain of the Pearl River. The Site is separated from the river by two levees. Two manufacturing facilities have operated at the Flowood site since the 1940's or longer. The Continental Forest Company owned the northern part of the property from 1956 to 1983 when the facility was purchased by the present owner, the Stone Container Corporation. The facility to the south, currently the Rival Manufacturing Company, has been used to manufacture stoneware cooking pots since the 1970's. The past owner, The Marmon Group, used the facility from the 1950's through the early 1970's to manufacture ceramic tiles. The United Gas Pipe Line Company also owns a portion of the Site. The Site consisted of wastewater discharge areas and downstream areas adjacent to the two manufacturing facilities. The immediate area of the site included a borrow pit (Lake Marie), a canal used as a discharge area, and other undeveloped land areas adjacent to the plant sites.

State environmental officials became aware of the presence of hazardous substances in an on-site canal during a routine industrial waste water inspection in the fall of 1982. In January 1983, the state reported the Site to EPA. EPA's investigation indicated that soils and sediments in five areas around the Site contained lead: the slough/canal area, the small drainage ditch, the wash area, the drainage ditch/Lake Marie area, and the cow pasture pond area. At the request of the Mississippi Department of Environmental Quality (MDEQ), the Site was placed on the NPL in September 1983. The Marmon Group entered into a consent Agreement with EPA in 1986 to conduct the Remedial Investigation (RI) and Feasibility Study (FS) for the site to determine the nature and extent of lead contamination and evaluated various remedial alternatives to reduce any risks posed by the contamination.

After reviewing the results of the RI/FS, EPA selected a remedy to address lead contamination at the Site and issued a Record of Decision (ROD) for the Site on September 30, 1988. The selected remedy included the following components: excavating and solidifying/stabilizing 6,000 cubic yards of lead-contaminated soils sediments; no remedial action for groundwater; backfilling treated materials into the slough/canal area; covering, regrading, and reseeding the area; and, groundwater monitoring. EPA and the Potentially Responsible Parties (PRP), The Marmon Corporation, Rival Manufacturing Company, United Gas Pipe Line Company and Kiewit Continental Inc. entered into a Consent Decree in February 1990 for the PRP to design and implement the cleanup remedy. The PRP began remedial design in February 1990 and EPA approved the final design of the remedy on August 9, 1991.

Based on design data developed by the PRP prior to the final design, EPA found that changes to the selected remedy were necessary. EPA implemented an Explanation of Significant Differences (ESD) in September 1990 which included two modifications to EPA's selected remedy based on treatability studies and confirmatory sampling conducted during the Remedial Design. The first modification required a change in the location of the on-site disposal area (the Material Placement Area) due to the discovery of additional volumes of contaminated material in the Rival Plant backyard and other areas. The additional volumes required location of a new on-site disposal area to accommodate the volume. The second modification required the use of an interim measures waiver of Applicable or Relevant and Appropriate Requirements (ARARs) which temporarily waives the RCRA requirement that hazardous waste must be contained in a Subtitle C facility. This waiver was necessary because treatability testing during the design revealed that the treatment process might not render the final product non-RCRA characteristic until after a period of time.

A community relations program was implemented during the course of the RI/FS. In June 1985, the community relations plan was finalized. An information repository was established in June at the Pearl Public Library. A press release providing an opportunity for a public meeting and information on the opening of the public comment period was issued in May 1988. The public comment for the proposed plan was held from May 18, 1988 through June 22, 1988. There was no public meeting because the public did not show an interest in having a public meeting.

The Remedial Action objective for the site was to eliminate potential health hazards due to the presence of lead at the Site. Current and potential routes of exposure at the Site include ingestion of contaminated soil, fish and groundwater by humans and ingestion of contaminated surface waters by cattle. Based on the risks associated with exposure to soil in the pathways identified, a protective level of 500 mg/kg of lead was established. Groundwater sampling did not show impact to groundwater for the waste material; therefore, cleanup goals for the groundwater were not established. EPA determined that groundwater monitoring in the stabilized material placement area would measure the effectiveness of the stabilization. The remediation of the contaminated soil and contaminated sediments to 500 mg/kg would alleviate future impacts to surface water.

The Remedial Design was approved on August 9, 1991. As part of the design, a treatability study was conducted. The results of the treatability study are contained in the Remedial Design report.

Additional work was required for the excavation of lake sediments in Lake Marie; therefore, the completion of the remedial construction activities were implemented in two phases. On April 2, 1993, EPA, MDEQ, and the PRP conducted a Prefinal Construction Inspection for Phase I of the Remedial Action. A Prefinal Inspection for the Phase II Remedial Action was conducted on July 20, 1993. Neither the Phase I nor Phase II Prefinal Inspections revealed any significant items remaining to be completed or corrected.

To prevent a future use of the property which could disturb the integrity of the containment of contamination provided by the building slabs, institutional controls have been imposed on those areas of concern. These institutional controls take the form of deed restrictions which are in addition to those imposed on the Material Placement Area (MPA). These deed restrictions will insure that the remedy remains protective of human health and the environment. Remedial activities were conducted as planned. No additional areas of contamination were identified beyond the discovery of contained contaminated soils beneath structures in the Rival Back Yard (RBY) and the expansion of other areas containing lead contaminated soils and sediments, and the sediments in Lake Marie. The remedial action which was finalized in accordance with the ROD and the Consent Decree put into place deed restrictions in the areas of concern in the RBY and the Material Placement Area.

The Remedial Design and the Remedial Action were carefully reviewed by EPA and MDEQ for compliance with all requirements of the ROD and with all applicable Quality Assurance/Quality Control (QA/QC) procedures and protocol.

All procedures and protocols followed for soil and sediment sampling analysis during the Post-remediation verification sampling are documented in the Post Remediation Verification Sampling Plan. This sampling plan is contained in the Construction Management Plan dated May 8, 1992, as was modified in the field. A Quality Assurance Project Plan (QAPP) was prepared, consistent with the requirements of EPA's Interim Guidelines and Specifications for preparing Quality Assurance Project Plans (QAM–005/80), and in conjunction with the design documents. This QAPP was later modified and used to implement the Remedial Action.

The QA/QC program utilized throughout the Remedial Action was acceptable and enabled EPA and MDEQ to determine that the testing results reported were accurate to the degree needed to assure satisfactory execution of the Remedial Action and consistent with the ROD.

The verification sampling performed across the site have indicated that all cleanup levels have been achieved and the construction was completed consistent with the ROD and design plans and specifications. Throughout the construction, the U.S. Army Corps of Engineers (COE) provided oversight of the Remedial Action on behalf of EPA. The COE conducted frequent inspections of all site construction activities and submitted written monthly reports that described the results of its inspections.

Laboratory results have indicated that the remedy has achieved performance standards and met the cleanup levels established in the ROD. Interpretation of this analytical data indicate that the remedy has been constructed in accordance with the Remedial Design plans and specifications and is achieving the primary purpose of preventing human health risks from contamination of on-site soils and sediments.

As required by the Consent Decree (CD), the Settling Parties submitted the final Operation and Maintenance (O&M) Plan to EPA on November 12, 1993. The ROD requires that groundwater monitoring be performed quarterly for the first year. EPA will review the data and a decision will be made on the frequency of monitoring for the subsequent years.

Four groundwater monitoring wells were installed in and around the MPA. These wells will be used to monitor the long-term performance of the Material Placement Area on the quality of the groundwater. Samples from each monitoring well will be collected and analyzed for the lead (total lead). Statistical analysis will be employed to determine if the MPA is having an adverse affect on the area groundwater.

In accordance with EPA guidance, a five year review of this project is necessary to ensure continued protection of human health and the environment. The statutory five-year review will be conducted pursuant to guidance contained in OSWER Directive 9355.7–02, Structure and Components of the Five-Year Review. The five year time frame began on June 22, 1992, the Remedial Action contract award date. Therefore, the five year review should be completed on or before June 22, 1997.

EPA, with concurrence of the State, has determined that all appropriate Fund-financed responses under CERCLA at the Site have been completed, and that no further cleanup by responsible parties is appropriate. Therefore, it proposes to delete the Site from the NPL and requests public comments on the proposed deletion.

Dated: June 1, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–14546 Filed 6–14–95; 8:45 am]

BILLING CODE 6560–60–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

RIN 3067–AC38

Review of Determinations for Required Purchase of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: FEMA proposes to establish the procedures and process for its review of determinations of whether a building or mobile home is located in an identified Special Flood Hazard Area. The review process will provide an opportunity for borrowers and lenders of loans secured by improved real estate to resolve disputes regarding contested determinations.

DATES: We invite your comments on this proposed rule, which should be submitted on or before August 14, 1995.

ADDRESSES: Please send written comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (facsimile) (202) 646–4536.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2756, (facsimile) (202) 646–4596 (not toll-free calls).

SUPPLEMENTARY INFORMATION: Section 102(e) of the Flood Disaster Protection Act of 1973, as amended by the National Flood Insurance Reform Act of 1994 (NFIRA) (42 U.S.C. 4012a(e)(3), states that the borrower and lender for a loan secured by improved real estate or a mobile home may jointly request FEMA to review a determination of whether the building or mobile home is located in an identified Special Flood Hazard Area (SFHA). Within 45 days after receiving the request, if all required supporting technical information is provided, FEMA would review the determination and provide to the borrower and the lender a letter stating, based on the information supplied, whether the building or mobile home is in an identified Special Flood Hazard Area. These procedures would be available to the borrower and the lender during the 45-day period after the borrower is notified that flood insurance is required. Only joint requests by both the lender and the borrower (requests accompanied by a letter signed by both parties) would be accepted under these procedures. Requests submitted more than 45 days after borrower notification be not be reviewed and would be returned.

Background

Section 102(b) of the Flood Disaster Protection Act of 1973, as amended by the National Flood Insurance Reform Act of 1994 (NFIRA), 42 U.S.C. 4012a(b), requires that federally regulated lending institutions and federal agency lenders review the National Flood Insurance Program (NFIP) map for the community in which they are contemplating making, increasing, extending, or renewing any loan secured by improved real estate to determine whether the building or mobile home is located in an identified Special Flood Hazard Area, and if so, require the purchase of flood insurance for the building or mobile home. Section 524(e)(3)(A) of the NFIRA provides for the borrower and lender jointly to request that FEMA review the determination. There may be cases in which there is a disagreement regarding the accuracy of a determination, and this procedure will confirm or disprove the accuracy of the original determination. In many cases, a third party performs these determinations for lenders. The NFIRA states that a lender may provide for the acquisition or determination of information regarding special flood hazards to be made by a person other than the lender only to the extent such person guarantees the accuracy of the information. Because lenders rely on information provided by these third parties to ensure compliance with mandatory flood insurance purchase requirements, lenders have ample incentives to ensure the quality of this information. Therefore, FEMA expects that these determinations would be done correctly and FEMA's review of these determinations will be necessary only in unusual cases. If additional information (such as a property survey) becomes available after the initial determination was performed, FEMA would expect that this additional information would be presented to the party making the determination for consideration before asking FEMA to review the determination.

Standard Hazard Determination Form

As mandated by Section 528 of the NFIRA (42 U.S.C. 4104b), FEMA is developing a Standard Hazard Determination Form to be used by all regulated lenders and federal agency lenders making flood hazard determinations for improved property used to secure loans. The Standard Hazard Determination Form was published as a proposed rule in the **Federal Register** on April 7, 1995, 60 FR 17758. We propose that when the borrower and lender ask FEMA to make a flood hazard determination review, they would provide to FEMA the completed Standard Hazard Determination Form together with all other technical information used in making the flood hazard determination. After reviewing that technical information, FEMA would issue a written determination concurring with or disagreeing with the original determination, and stating whether the National Flood Insurance Program map indicates the subject building or mobile home is in the SFHA.

Fee for Review by FEMA

FEMA would initiate cost recovery procedures for its review of determinations. This action would reduce expenses to the flood insurance policyholders and would contribute to maintaining the NFIP as self-supporting. We anticipate that a flat fee of $60 would cover a majority of the costs associated with reviewing, recording, processing, and dispatching FEMA determinations. This fee would also apply to a finding of insufficient information. This fee would be reviewed on an annual basis and would be changed, if necessary, by publishing a notice in the **Federal Register**.

Effect on Existing Letter of Map Amendment (LOMA)/Letter of Map Revision (LOMR) Procedures

The procedures proposed under this part would not result in a revision to an NFIP map and are not intended to replace those procedures already provided in 44 CFR Parts 65 and 70. If additional technical data, such as elevation information about the building or mobile home, are provided with the request for review of a determination, FEMA would not automatically initiate the LOMA or LOMR process for the property. A request for a LOMA or LOMR may be submitted at any time and must be presented following the procedures established under 44 CFR parts 70 and 65 for those requests.

National Environmental Policy Act

This proposed rule would be categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Deputy Director certifies that this rule would not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because it would not be expected (1) to have significant secondary or incidental effects on a substantial number of small entities, nor (2) to create any additional burden on small entities. Moreover, establishing a procedure for FEMA's review of determinations is required by the National Flood Insurance Reform Act of 1994, 42 U.S.C. 4012a. A regulatory flexibility analysis has not been prepared.

Regulatory Planning and Review

This proposed rule would not be a significant regulatory action under Executive Order 12866 of September 30, 1994, Regulatory Planning and Review, 58 FR 51735. To the extent possible this proposed rule adheres to the principles of regulation as set forth in Executive Order 12866. This proposed rule has not been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866.

Paperwork Reduction Act

This proposed rule would not involve any collection of information for the purposes of the Paperwork Reduction Act.

Executive Order 12612, Federalism

This proposed rule would involve no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule would meet the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is proposed to be amended to read as follows:

PART 65—IDENTIFICATION AND MAPPING OF SPECIAL HAZARD AREAS

1. The authority citation for part 65 is proposed to be revised to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. Section 65.17 is proposed to be added to read as follows:

§ 65.17 Review of determinations.

This section describes the procedures that shall be followed and the types of information required by FEMA to review a determination of whether a building or mobile home is located within an identified Special Flood Hazard Area (SFHA).

(a) *General Conditions.* The borrower and lender of a loan secured by improved real estate or a mobile home may jointly request that FEMA review a determination that the building or mobile home is located in an identified SFHA. Such a request must be submitted within 45 days of the lender's notification to the borrower that the building or mobile home is in the SFHA and that flood insurance is required. Such a request must be submitted jointly by the lender and the borrower and shall include the required fee and technical information related to the building or mobile home.

(b) *Data and Other Requirements.* Items required for FEMA's review of a determination shall include the following:

(1) Payment of the required fee by credit card, check, or money order, payable in U.S. funds, to the National Flood Insurance Fund;

(2) A request for FEMA's review of the determination, signed by both the borrower and the lender;

(3) A copy of the lender's notification to the borrower that the building or mobile home is in an SFHA and that flood insurance is required (the request for review of the determination must be postmarked within 45 days of borrower notification);

(4) A completed Standard Hazard Determination Form for the building or mobile home, together with a legible copy of all technical data used in making the determination; and

(5) A copy of the effective Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM) panel for the community in which the building or mobile home is located, with the building or mobile home location indicated. Portions of the map panel may be submitted but shall include the area of the building or mobile home in question together with the map panel title block, including effective date, bar scale, and north arrow.

(c) *Review and Response by FEMA.* Within 45 days after receipt of a request to review a determination, FEMA will notify the applicants in writing of one of the following:

(1) Request submitted more than 45 days after borrower notification; no review will be performed and all materials are being returned;

(2) Insufficient information was received to review the determination; therefore, the determination is upheld until a complete submittal is received; or

(3) The results of FEMA's review of the determination, which shall include the following:

(i) The name of the NFIP community in which the building or mobile home is located;

(ii) The property address or other identification of the property and building or mobile home to which the determination applies;

(iii) The NFIP map panel number and effective date upon which the determination is based;

(iv) A statement indicating whether the building or mobile home is within the Special Flood Hazard Area;

(v) The time frame during which the determination is effective (generally until the next map revision occurs for the map panel involved).

Dated: June 9, 1995.

Harvey G. Ryland,

Deputy Director.

[FR Doc. 95–14690 Filed 6–14–95; 8:45 am]

BILLING CODE 6718–03–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD 22

Endangered and Threatened Wildlife and Plants; Reopening of the Comment Period on Proposed Critical Habitat Determination for Woundfin, Virgin River Chub, and Virgin Spinedace

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of the comment period.

SUMMARY: The Fish and Wildlife Service (Service) provides notice that the comment period is reopened on the proposal to designate critical habitat for woundfin (*Plagopterus argentissimus*) and Virgin River chub (*Gila seminuda* = *G. robusta seminuda*), two species of fish federally listed as endangered pursuant to the Endangered Species Act (Act), and for Virgin spinedace (*Lepidomeda mollispinis mollispinis*), a species proposed for listing as threatened under the Act. All three species of fish are endemic to the Virgin River Basin of southwestern Utah, northwestern Arizona, and southeastern Nevada. Comments received during the entire comment period, April 5 to June 20, 1995, will be considered before finalizing the designation of critical habitat.

DATES: The comment period, which originally closed on June 5, 1995, will now close on June 20, 1995. The comment period has been extended due to several requests from the public.

ADDRESSES: Written comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Salt Lake City Field Office, 145 East 1300 South, Suite 404, Lincoln Plaza, Salt Lake City, Utah 84115. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address. Copies of comments and materials received also will be available for public inspection at the Washington County Public Library in St. George, Utah.

FOR FURTHER INFORMATION CONTACT: Mr. Robert D. Williams, Assistant Field Supervisor, at the above address, telephone (801) 524–5001.

SUPPLEMENTARY INFORMATION:

Background

The woundfin, Virgin River chub and Virgin spinedace are endemic to the Virgin River Basin. The Virgin River originates in south-central Utah, running in a southwest direction from Utah, to northwestern Arizona, and southeastern Nevada for approximately 320 kilometers (km) (200 miles (mi)) before emptying into Lake Mead. The Virgin River populations of these fishes have declined due to the cumulative effects of environmental impacts that resulted in habitat loss including: Dewatering from numerous diversions, proliferation of nonactive fishes, alterations to natural flow, temperature, and sediment regimes.

There is considerable overlap in critical habitat proposed for the three species, and the proposed designation includes 330.8 km (206.8 mi) of the Virgin River in portions of Utah, Arizona, and Nevada. The Service proposes 151.7 km (94.8 mi) of critical habitat for the woundfin (approximately 13.5 percent of its historical range); 151.7 km (94.8 mi) for the Virgin River chub (70.8 percent of its historical range, excluding the range historically occupied by the Muddy River form); and 201.9 km (126.2 mi) for the Virgin spinedace (87.3 percent of its historical range).

The proposed rule to designate critical habitat for the three fishes was published on April 5, 1995 (60 FR 17296). A public hearing was held on

May 8, 1995, in St. George, Utah. No further public hearings will be held.

Author

The primary authors of this notice are Susan C. Linner and Robert D. Williams of the Service's Salt Lake City Field Office (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: June 8, 1995.

Terry T. Terrell,

Deputy Regional Director, Region 6, Denver, Colorado, Fish and Wildlife Service.

[FR Doc. 95–14634 Filed 6–14–95; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 60, No. 115
Thursday, June 15, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ARCTIC RESEARCH COMMISSION

Meeting

June 5, 1995.

Notice is hereby given that the Arctic Research Commission will hold its 39th Meeting in Cambridge, U.K. at the Scott Polar Research Institute, Cambridge University. On Monday, July 3, a Business Session open to the public will convene at 9:00 a.m. Agenda items include (1) Opening remarks by the Director, SPRI, and the Chairman, ARC; (2) Scott Polar Research Activities briefing; and (3) British Antarctic Survey briefing. On Tuesday, July 4, an Executive Session will be held at 9:00 a.m. after which the Commission will depart for Bremerhaven. On Wednesday, July 5 the Commission will visit the Alfred Wegener Institute for Polar Research for briefings and a tour of the WRI facilities followed by a tour of the research icebreaker *Polarstar*.

Any person planning to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs.

Contact Person for More Information: Dr. Garrett W. Brass, Executive Director, Arctic Research Commission, 703–525–0111 or TDD 703–306–0090.

Garrett W. Brass,

Executive Director.

[FR Doc. 95–14676 Filed 6–14–95; 8:45 am]

BILLING CODE 7555–01–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1996 Continuous Measurement Survey.

Form Number(s): CMS–1, CMS–10, CMS–12, CMS–13, CMS–14, CMS–15, CMS–16, CMS–20, CMS–30.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 108,500 hours.

Number of Respondents: 217,000.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The Census Bureau is developing and evaluating a design to continuously measure the long–form data that has traditionally been collected once a decade as part of the decennial census. Continuously collecting the long–form data will provide more timely data. Under Continuous Measurement (CM) a long–form questionnaire is mailed to a national sample of different housing units each month. Follow–up for nonresponse is conducted on a sample basis using a combination of telephone and personal visit. A small test of CM procedures was conducted in 1995 in approximately 2,000 households. The 1996 CM Survey will be a full–scale implementation in 6 sites throughout the country selected to represent typical urban and rural cities and counties. Data will be collected over a 14–month period in approximately 10,500 housing units each month. A separate national sample of 5,000 housing units will be selected each month to participate in a mail response rate test. The objectives of the 1996 CM Survey are to test all phases of the proposed CM process, obtain real–time cost and productivity data, and evaluate the CM data quality and coverage.

Affected Public: Individuals or households.

Frequency: Monthly.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: June 9, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–14628 Filed 6–14–95; 8:45 am]

BILLING CODE 3510–07–F

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with May anniversary dates. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: June 15, 1995.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 353.22(a) and 355.22(a) (1994), for administrative reviews of various antidumping and countervailing duty orders and findings with May anniversary dates.

Initiation of Reviews:

In accordance with sections 19 CFR 353.22(c) and 355.22(c), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. The Department is not initiating an administrative review of any exporters and/or producers who were not named in a review request because such exporters and/or producers were not specified as required under section 353.22(a) (19 CFR 353.22)). We intend to

issue the final results of these reviews not later than May 31, 1996.

Antidumping duty proceedings	Period to be reviewed
Brazil:	
Frozen Concentrated Orange Juice	
A–351–605	
Branco Peres Citrus, S.A.	05/01/94–04/30/95
CTM Citrus, S.A.	
Korea:	
Dynamic Random Access Memory Semiconductors (DRAMS) of One Megabit	
A–580–812	
Goldstar Electron Co., Ltd., Hyundai Electronics Co., Ltd., Samsung Electronics Co., Ltd., LG Semicon Co., Ltd	05/01/94–04/30/95
Certain Small Business Telephone Systems and Subassemblies Thereof *	
A–580–803	
Ssangbangwool International Inc .	02/01/94–2/31/95

*Inadvertenly omitted from a previous initiation notice.

Antidumping duty proceedings	Period to be reviewed
Turkey:	
Circular Welded Carbon Steel Pipe and Tube Products	
A–489–501	
Borusan Group, Mannesmann-Sumerbank Boru Industrisi T.A.S. Yucelboru Ihracat, Ithalat ve Pazarlama A.S./ Cayirova Boru Sanayi ve Ticaret A.S., Erbosan Erviyas Boru Sanayii ve Ticaret A.S	05/01/94–04/30/95
Countervailing Duty Proceedings	
Singapore:	
Ball Bearings *	
C–559–802	01/01/94–12/31/94
Cylindrical Roller Bearings *	
C–559–802	01/01/94–12/31/94
Needle Roller Bearings *	
C–559–802	01/01/94–12/31/94
Spherical Roller Bearings *	
C–559–802	01/01/94–12/31/94
Spherical Plane Bearings *	
C–559–802	01/01/94–12/31/94
Thailand:	
Ball Bearings and Parts Thereof	
C–549–802	01/01/94–12/31/94

*Four related companies, NMB Sinagapore, Ltd., Pelmec Industries (Pte.) Ltd., Minebea Trading (Pte.) Ltd., and Minebea Company Ltd., Singapore (collectively the "Minebea Group") have submitted a request for partial revocation of the order under 19 CFR 355.25(a)(3). The Department will examine the request for revocation to determine whether the Minebea Group meets the threshold requirements for revocation under 19 CFR 355.25(a)(3).

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b) and 355.34(b).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (18 U.S.C. 1675(a)) and 19 CFR 353.22(c)(1) and 355.22(c)(1).

Dated: June 13, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–14816 Filed 6–14–95; 8:45 am]

BILLING CODE 3510–DS–M

North American Free-Trade Agreement (NAFTA) Article 1904 Binational Panel Reviews; Notice of Decision of Panel

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of decision of panel on May 30, 1995.

SUMMARY: On May 30, 1995, a Binational Panel issued its decision in the review of the final countervailing duty determination made by the International Trade Administration (ITA) in the administrative review respecting Live Swine from Canada, Secretariat File No. USA–94–1904–01. The Binational Panel remanded the final determinations to the International Trade Administration for further action on two issues and affirmed the determination in all other respects. A copy of the complete panel decision is available from the Binational Secretariat.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a binational panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The Panel review in this matter has been conducted in accordance with these Rules.

BACKGROUND: A first Request for Panel Review was filed with the U.S. Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on March 30, 1994. P. Quintaine & Son Ltd, of Brandon, Manitoba, Pryme Pork Ltd., of St. Malo, Manitoba and Earle Baxter Trucking LQ., of Millbank, Ontario requested panel review of the final countervailing duty administrative review described above.

PANEL DECISION: In its May 30, 1995 decision, the panel remanded the determination and instructed the ITA to:

(1) Reinstate the Sows and Boars subclass and determine a separate CVD rate for it; and

(2) Consider Pryme Pork's application for a subclass for Weanlings, employing the same criteria used in creating the Sows and Boars subclass, explaining in detail any reasons that may be found to preclude the establishment of a Weanling subclass or the calculation of a separate CVD rate for such subclass.

The panel also affirmed the final determination findings that Sows and Boars and also Weanlings are within the scope of the CVD order.

In a separate Order, the panel instructed the ITA to file its determination on remand by July 31, 1995.

Dated: June 9, 1995.

James R. Holbein,

United States Secretary, NAFTA Secretariat.

[FR Doc. 95–14712 Filed 6–14–95; 8:45 am]

BILLING CODE 3510–GT–M

National Oceanic and Atmospheric Administration

[I.D. 060595C]

Mid-Atlantic Fishery Management Council; Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council and its Habitat Committee, Large Pelagics/Sharks Committee, and Demersal Species Committee will hold public meetings.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director; telephone 302–674–2331.

DATES: The meetings will be held on June 27–29, 1995.

ADDRESSES: The meetings will be held at the Radisson Hotel Islandia, 3635 Express Drive North, Hauppauge, Long Island, NY 11788; telephone: 516–232–3000.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19901.

SUPPLEMENTARY INFORMATION: On June 27, the Habitat Committee will meet from 1:00 p.m. until 3:00 p.m. and the Large Pelagics/Sharks Committee will meet from 3:00 p.m. until 5:00 p.m. On June 28, the Council will meet from 8:00 a.m. until 12:00 p.m., followed by the Demersal Species Committee meeting from 1:30 p.m. until 4:30 p.m. On June 29, the Council will meet from 8:00 a.m. until approximately noon.

The following topics may be discussed:

(1) Artificial Reef Policy.

(2) Bluefin tuna management.

(3) Review of public comments on Amendment 7 to the Summer Flounder Fishery Management Plan (FMP).

(4) Review hearing material for Amendment 7 to the Summer Flounder FMP.

(5) Possible adoption of Amendment 7 to the Summer Flounder FMP for Secretarial approval.

(6) Other fishery management matters.

The Council meeting may be revised, lengthened or shortened based on the progress of the meeting. The Council may go into closed session to discuss personnel or national security matters.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis on (302) 674–2331, at least 5 days prior to the meeting date.

Dated: June 7, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–14715 Filed 6–14–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 060695B]

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) and its Committees will hold public meetings.

DATES: The meetings will be held on June 19–23, 1995.

ADDRESSES: The meetings will be held at the Palm Beach Gardens Marriott, 4000 RCA Boulevard, Palm Beach Gardens, FL 33410; telephone: (407) 622–8888.

Council address: South Atlantic Fishery Management Council; One Southpark Circle, Suite 306; Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Sharon Coste, telephone: (803) 571–4366; fax: (803) 769–4520.

SUPPLEMENTARY INFORMATION:

June 19

1:00 p.m. - 2:00 p.m.; The Advisory Panel (AP) Selection Committee will hold a closed meeting to consider new appointments to the Golden Crab, Mackerel, Shark, Spiny Lobster, and Sea Scallop APs.

2:00 p.m. - 3:00 p.m.; The Finance Committee will meet to discuss the budget for FY 1996 (part of meeting closed).

3:00 p.m. - 5:30 p.m.; Joint meeting of the Highly Migratory Species Committee and the Billfish AP to discuss International Commission for the Conservation of Atlantic Tunas research and management objectives and review the results of the public scoping meetings on options to amend the Fishery Management Plan (FMP) for Atlantic Billfish. The AP will be developing recommendations for the Billfish Plan. Both groups will hear a report on how reauthorization of the Magnuson Fishery Conservation and Management Act will affect highly migratory species.

7:00 p.m.; The Council will hold public scoping meetings to receive comments on the sale of bag limit (recreational) caught fish, bycatch in the shrimp fishery, developing an FMP for the calico scallop fishery, and wreckfish recreational catch and commercial bycatch. These scoping meetings will be announced separately in the **Federal Register**.

June 20

8:30 a.m. - 12:00 p.m.; The Shrimp Committee will meet to finalize recommendations for Amendment 1 (Rock Shrimp) to the Shrimp FMP. It will also be choosing options for Amendment 2 (Bycatch) to the Shrimp FMP to be taken to public hearings.

1:30 p.m. - 5:00 p.m.; The Council will be participating in a U.S. Coast Guard law enforcement flight over southeastern Florida to learn how the Coast Guard patrols offshore waters.

June 21

8:30 a.m. - 12:00 p.m.; The Mackerel Committee will meet to discuss recommendations on options for Amendment 8 to the Mackerel FMP and approve the options for public hearings. It will also discuss the legality of net gear being used to harvest king mackerel in the exclusive economic zone off Florida and the mackerel quota adjustment proposed by NMFS.

1:30 p.m. - 5:30 p.m.; The Snapper Grouper Committee will meet to discuss recommendations on options for Amendment 8 to the Snapper Grouper FMP and approve the options for public hearings. It will also review snapper grouper assessment related reports.

June 22

8:30 a.m. - 12:00 p.m.; The Snapper Grouper Committee meeting will continue.

1:30 p.m. - 6:00 p.m.; The full Council will convene to hear Committee reports and recommendations. It will make appointments to the APs and finalize the budget for FY 96. It will finalize recommendations to NMFS on the Billfish FMP, take final action on Amendment 1 (Rock Shrimp) to the Shrimp FMP, and approve options for Amendment 2 (Bycatch) to the Shrimp FMP to be taken to public hearings. It will also approve options for Mackerel Amendment 8 and Snapper Grouper Amendment 8 for public hearings.

Beginning at 1:45 p.m., the full Council will be present for a final public hearing on Amendment 1 (Rock Shrimp). Public hearings will be announced separately in the **Federal Register**.

June 23

8:30 a.m. - 12:00 p.m.; The full Council meeting will continue.

Except for scheduled public hearings and scoping meetings this agenda is subject to change.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Sharon Coste at the Council (see **ADDRESSES**) by June 5, 1995.

Dated: June 9, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–14716 Filed 6–14–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 052395A]

North Pacific Fishery Management Council; Statement of Organization, Practices and Procedures

Pursuant to section 302(f)(6) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. 1801 *et seq.*, each Regional Fishery Management Council (Council) is responsible for carrying out its functions under the Magnuson Act, in accordance with such uniform standards as are prescribed by the Secretary of Commerce (Secretary). Further, each Council must make available to the public a statement of its organization, practices and procedures (SOPP).

Secretarial guidelines for the organization, practices, procedures, and operations of the Councils established by the Magnuson Act are set forth in 50 CFR part 601 and 605. Section 605(g)(2)(i) allows Councils to establish in their SOPPs the maximum number of days and contribution per day of unused sick leave a Council will pay to an employee's retirement fund upon their retirement or death.

The North Pacific Fishery Management Council (NPFMC) approved a revision to the NPFMC's SOPP, which was originally published on March 1, 1977 (42 FR 11858). The revision specifies that a maximum of 100 days of unused sick leave may be converted into retirement benefits upon an employee's retirement or death. Interested parties may obtain a copy of the NPFMC's revised SOPP by contacting Clarence G. Pautzke, Executive Director, North Pacific Fishery Management Council, P.O. Box 102136, Anchorage, AK 99501; telephone (907) 271–2809.

Dated: May 24, 1995.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–14714 Filed 6–14–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 060795C]

Marine Mammals

AGENCY: National Marine Fisheries Service, (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of scientific research permit (P532B).

SUMMARY: Notice is hereby given that Dr. Randall W. Davis, Department of Marine Biology, Texas A&M University, Galveston, TX 77553–1675, (Co-Investigators: Drs. Michael A. Castellini, Institute of Marine Science, University of Alaska, and Terrie M. Williams, Naval Ocean Systems Center) has been issued a permit to take Steller sea lions (*Eumetopias jubatus*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment, in the following office(s):

Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Alaska Region, NMFS, Federal Annex, P.O. Box 21668, Juneau, AK 99802 (907/586–7221); and

Director, Alaska Fisheries Science Center, NMML, 7600 Sand Point Way, NE, BIN C15700, Seattle, WA 98115 (206/526–4047).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: On March 16, 1995, notice was published in the **Federal Register** (60 FR 14271) that a request for a scientific research permit to take Steller sea lions had been submitted by the above-named individuals. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Issuance of this permit as required by the Endangered Species Act of 1973 was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the Endangered Species Act.

Dated: June 8, 1995.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–14717 Filed 6–14–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 060795A]

Marine Mammals and Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of modification request for a scientific research permit (P537).

SUMMARY: Notice is hereby given that Mr. Fred Sharpe, Behavioral Ecology Research Group, Simon Fraser University, Burnaby, British Columbia V5A 1S6 has requested a modification to permit 866 to take the marine mammals listed below for the purpose of scientific research.

DATES: Written comments must be received on or before July 17, 1995.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221);

Written data or views, or requests for a public hearing on this request, should be submitted to the Chief, Permits Division, F/PR1, Office of Protected Resources, Silver Spring, MD 20910 within 30 days of the publication of this notice.

FOR FURTHER INFORMATION CONTACT: Gary Barone (301–713–2289).

SUPPLEMENTARY INFORMATION: Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

The subject modification is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 as amended (16 U.S.C. 1531 *et seq*) and the Regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

The applicant seeks to attach time depth recorders (TDR) to 18 humpback whales (*Megaptera novaeangliae*) per year over a 3-year period. The TDRs will be attached using suction cups designed to release before 10 hours elapse.

Dated: June 8, 1995.

Ann D. Terbush,

Chief, Permits & Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–14718 Filed 6–14–95; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review.

ACTION: Notice

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Control Number: DoD FAR Supplement, Appendix I, Policy and Procedures for the DoD Pilot Mentor-Protégé Program; OMB Control Number 0704–0332

Type of Request: Reinstatement

Number of Respondents: 110

Responses Per Respondent: 2

Annual Responses: 220

Average Burden Per Response: 1 hour

Annual Burden Hours(Including Recordkeeping): 440

Needs and Uses: DoD FAR Supplement, Appendix I, requires contractors, who voluntarily participate in the Pilot Mentor-Protégé Program to report semiannually on the progress made under active mentor-protégé agreements. This is accomplished by including additional data with the submission of their SF 295, —Summary Contract Report.— The information collected hereby, will be utilized in evaluating the Pilot Mentor-Protégé Program, and is included in the semiannual report to Congress

Affected Public: Businesses or other for-profit

Frequency: Semiannually

Respondent's Obligation: Required to obtain or retain benefits

OMB Desk Officer: Mr. Peter N. Weiss. Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. William Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 9, 1995.

Patricia L. Toppings

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–14584 Filed 6–14–95; 8:45 am]

BILLING CODE 5000–04–P

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and OMB Control Number: Report of Medical History; Standard Form 93 (with overprint); OMB Control Number 0704–0337

Type of Request: Revision

Number of Respondents: 400,000

Responses per Respondent: 1

Annual Responses: 400,000

Average Burden per Response: 40 minutes

Annual Burden Hours: 266,667

Needs and Uses: 10 USC 505 and 12102 establish minimum standards for enlistment, appointment, and induction into the Armed Forces. Medical standards were developed which address the acceptability of persons and define deviations from those standards. All applicants complete a SF 93, "Report of Medical History," during a medical history orientation briefing at the appropriate Military Entrance Processing Station. The information collected hereby, details the medical history of applicants and provides appropriate authorities with data to determine if further medical treatment or additional evaluation is required. It additionally enables them to make an expeditious determination whether the applicant is medically qualified or disqualified for entrance into the Armed Forces

Affected Public: Individuals or households

Frequency: On occasion

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503

DoD Clearance Officer: Mr. William Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 9, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–14585 Filed 6–14–95; 8:45 am]

BILLING CODE 5000–04–P

Office of the Secretary

Ballistic Missile Defense Advisory Committee

ACTION: Notice of advisory committee meeting.

SUMMARY: The Ballistic Missile Defense (BMD) Advisory Committee will meet in closed session in Moorestown, NJ, on June 28–29, 1995.

The mission of the BMD Advisory Committee is to advise the Secretary of Defense and Deputy Secretary of Defense, through the Under Secretary of Defense (Acquisition and Technology), on all matters relating to BMD acquisition, system development, and technology.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended by 5 U.S.C., Appendix II, it is hereby determined that this BMD Advisory Committee meeting concerns matters listed in 5 U.S.C., 552b(c)(1), and that accordingly this meeting will be closed to the public.

Dated: June 9, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–14577 Filed 6–14–95; 8:45 am]

BILLING CODE 5000–04–M

Government-Industry Advisory Committee on the Operation and Modernization of the National Defense Stockpile

ACTION: Notice of meeting.

SUMMARY: The third meeting of this committee will be held on June 28–29, 1995, at the Omni Inner Harbor Hotel, 101 West Feyette Street, Baltimore, MD. The meeting is open to the public. This committee was established under Pub. L. 102–484. The meeting times and agenda are as follows:

Time: June 28, 1 pm to 4 pm.

Agenda: The Committee will tour the National Defense Stockpile storage facility at Curtis Bay, Maryland.

Time: June 29, 9 am to 3:30 pm.

Agenda: The Committee will meet as two working groups. one group will discuss possible changes in the sales practices of the Stockpile, and the second group will discuss the options and alternatives for the modernization of the Stockpile.

For additional information contact Mr. Tom Meeker at 703–607–3203.

Dated: June 9, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–14581 Filed 6–14–95; 8:45 am]

BILLING CODE 5000–04–M

Retirement Board of Actuaries; Meeting

AGENCY: Department of Defense Retirement Board of Actuaries.

ACTION: Notice of meeting.

SUMMARY: A meeting of the board has been scheduled to execute the provisions of Chapter 74, Title 10, United States Code (10 U.S.C. 1464 et. seq.). The Board shall review DoD actuarial methods and assumptions to be used in the valuation of the Military Retirement System. Persons desiring to (1) attend the DoD Retirement Board of Actuaries meeting of (2) make an oral presentation or submit a written statement for consideration at the meeting must notify Patricia Robertson at (703) 696–6336 by July 28, 1995.

Notice of this meeting is required under the Federal Advisory Committee Act.

DATES: August 3, 1995, 1:00 pm to 5:00 pm.

ADDRESSES: Room 1E801 #4.

FOR FURTHER INFORMATION CONTACT: Benjamin I. Gottlieb, Executive Secretary, DoD Office of the Actuary, 4th floor, 1600 Wilson Boulevard, Arlington, VA 22209–2593, (703) 696–5869.

Board of Advisors

Retirement Board

Don Musselman (Pentagon, Rm 3D961)
Bob Dorosz (Pentagon, Rm 3D868)
Thomas Tower (Pentagon, Rm 2B279)
Wayne Spruell (Pentagon, Rm 2D517)

Education Benefits Board

Faye Tavernier (Pentagon, Rm 3D883)
Don Musselman (Pentagon, Rm 3D961)
LTC Pat Forest, USAR (Pentagon, Rm 2D517)
Lt Col Bob Clark (Pentagon, Rm 2B271)

Dated: June 12, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–14671 Filed 6–14–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Breakthrough Technologies

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Breakthrough Technologies will meet in closed session on June 29–30 and July 11–12, 1995 at the New York Academy of Sciences, New York, New York. In order for the Task Force to obtain time sensitive proprietary briefings, critical to the understanding of the issues, this meeting is scheduled on short notice.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense (Acquisition & Technology) on research, scientific, technical, and manufacturing matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will examine a cross section of scientific areas with an eye to identifying potentially high payoff research that should be pursued by the Advanced Research Projects Agency (ARPA) directly, or in collaboration with other elements of the Department of Defense.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II (1988)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. § 552b(c)(4)(1988), and that accordingly these meetings will be closed to the public.

Dated: June 12, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–14670 Filed 6–14–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board 1995 Summer Study Task Force on Technology Investments for 21st Century Military Superiority, Industrial Base Team

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board 1995 Summer Study Task Force on Technology Investments for 21st Century Military Superiority, Industrial Base Team will meet in closed session on June 27–28, 1995 at Science Applications International Corporation, McLean, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense (Acquisition and Technology) on research, scientific, technical, and manufacturing matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will focus on those R&D investments that must be made now so as to assure a technology base in the year 2000 capable of providing U.S. military superiority in the 21st century.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(4) (1988), and that accordingly this meeting will be closed to the public.

Dated: June 9, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–14580 Filed 6–14–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Joint Technology Issues

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the Defense Science Board Task Force on Joint Technology Issues scheduled for June 14, 1995 as published in the **Federal Register** (Vol. 60, No. 91, Page 25204, Thursday, May 11, 1995, FR Doc 95–11569) has been cancelled.

Dated: June 9, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–14578 Filed 6–14–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Quality of Life

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Quality of Life will meet in open session on June 27, 1995 at the Sheraton Crystal City Hotel, 1800 Jefferson David Highway, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense.

Persons interested in further information should call Lt. Col. Dave Witkowski at (703) 697–7191.

Dated: June 9, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–14579 Filed 6–14–95; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 6 July 1995.

Time of Meeting: 0800–1630.

Place: USASSDC–Huntsville, AL.

Agenda: The Army Science Board's Missile Defense Subgroup will meet for discussions focused on Kinetic Energy Hit-To-Kill (HTK) interceptor technology and performance against weapons of mass destruction. The meeting will consist a review of the 1993 Missile Defense Study HTK recommendations and the implications to National Missile Defense. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of these meetings. For further information, please contact Michelle Diaz at (703) 695–0781.

Michelle P. Diaz,

Acting Administrative Officer, Army Science Board.

[FR Doc. 95–14673 Filed 6–14–95; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

[Docket No. EA–105]

Application to Export Electricity; NorAm Energy Services, Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: NorAm Energy Services, Inc. (NorAm) has submitted an application to export electric energy to Canada and Mexico pursuant to section 202(e) of the Federal Power Act. NorAm is both a broker and a marketer of electric power. It does not own or control any electric generation or transmission facilities.

DATES: Comments, protests or requests to intervene must be submitted on or before July 17, 1995.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE–52), Office of Fuels Programs, Office of Fossil Energy, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585 (FAX 202–586–0678).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA).

On June 2, 1995, NorAm filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE) for authorization to export electric energy to Canada and Mexico pursuant to section 202(e) of the Federal Power Act. NorAm owns no generation or transmission facilities but has been certified by the Federal Energy Regulatory Commission (FERC) as a power marketer. NorAm proposes to export, on either a firm or interruptible basis, electric power that will be surplus to the system of the generator thereof. NorAm further proposes to export the electric energy through the following transmission facilities for which Presidential permits have been issued:

Presidential permit holder	Permit Number	Voltage	Location
Basin Electric Coop	PP–64	230 kV	Tioga, ND.
Bonneville Power Admin	PP–10	2–500 kV	Blaine, WA.
	PP–36	230 kV	Nelway, BC.
	PP–46	230 kV	Nelway, BC.
Bradfield Electric	PP–87	69 kV	Tyee Lake.
Citizens Utilities	PP–66	120 kV	Derby Line, VT.
Detroit Edison	PP–38	345 kV	St Clair, MI.
	PP–21	230 kV	Marysville, MI.
		230 kV	Detroit, MI.
	PP–58	345 kV	St Clair, MI.
Eastern Maine Electric Coop	PP–32	69 kV	Calais, ME.
Fraser Paper Ltd	PP–11	69 kV	Madawaska, ME.
Joint Owners of Highgate	PP–82	345 kV	Franklin, VT.
Long Sault	PP–24	2–115 kV	Massena, NY.
Maine Electric Power Company	PP–43	345 kV	Houlton, ME.
Maine Public Service	PP–12	69 kV	Limestone, ME.
		69 kV	Ft Fairfield, ME.
	PP–29	138 kV	Aroostock, ME.
		2–69 kV	Madawaska, ME.
Minnesota Power & Light	PP–78	115 kV	Intnl Falls, MN.
Minnkota Power	PP–61	230 kV	Roseau County, MN.
New York Power Authority	PP–30	230 kV	Devil's Hole, NY.
	PP–74	2–345 kV	Niagara Falls, NY.

Presidential permit holder	Permit Number	Voltage	Location
	PP–56	765 kV	Fort Covington, NY.
	PP–25	2–230 kV	Massena, NY.
Niagara Mohawk Power Corp	PP–31	230 kV	Devil's Hole, NY.
		2–69 kV	
		2–69 kV	Queenstown, NY.
Northern States Power	PP–45	230 kV	Red River, ND.
	PP–63	500 kV	Roseau County, MN.
Vermont Electric Trans. Co	PP–76	450 kV DC	Norton, VT.
		345 kV	Sandy Pond to Millbury #3.
		345 kV	Millbury #3 to West Medway.
Washington Water Power	PP–86	230 kV	Northport, WA.
Comision Federal de Electricidad	PP–50	138 kV	Eagle Pass, TX.
	PP–57	138 kV	Loredo, TX.
		138 kV	Falcon Dam, TX.
Central Power & Light	PP–94	138 kV	Brownsville, TX.
		69 kV	
El Paso Electric	PP–48	115 kV	Ascarate, TX.
	PP–92	115 kV	Diablo, NM.
San Diego Gas & Electric	PP–49	69 kV	San Ysidro, CA.
	PP–68	230 kV	Miguel, CA.
	PP–79	2–230 kV	Imperial Valley, CA.
So. California Edison	PP–27	161 kV	Andrade, CA.

This is the third application for export that FE has accepted from an individual entity that does not own or operate physical facilities. The FE decision to accept applications from power marketers, as opposed to the "traditional" electric power entities which own and/or operate physical facilities, is based on the marketer taking possession of the electric energy inside the United States. This situation is distinguished from the power broker which simply facilitates a sale of electric energy without ever taking ownership of the commodity.

Procedural Matters

Any person desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Rules of Practice and Procedures (18 CFR 385.211, 385.214).

Any such petitions and protests should be filed with DOE on or before the date listed above. Additional copies of such petitions to intervene or protest also should be filed directly with: Michael L. Wallace, General Counsel, NorAm Energy Services, Inc., PO Box 4455, Houston, TX 77210 (FAX 713–654–5513) *AND* MaryJane Reynolds, Morrison & Reynolds, Suite 405, 1110 Vermont Avenue, NW, Washington, DC 20005 (FAX 202–466–3502).

Pursuant to 18 CFR 385.211, protests and comments will be considered by the DOE in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene under 18 CFR 385.214. Section 385.214 requires that a petition to intervene must state, to the extent known, the position taken by the petitioner and the petitioners interest in sufficient factual detail to demonstrate either that the petitioner has a right to participate because it is a State Commission; that it has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a consumer, customer, competitor, or a security holder of a party to the proceeding; or that the petitioner's participation is in the public interest.

A final decision will be made on this application after the DOE determines whether the proposed action would impair the sufficiency of electric supply within the United States or would impede or tend to impede the coordination in the public interest of facilities as required by Section 202(e) of FPA.

Before an export authorization may be issued, the environmental impacts of the proposed DOE action (i.e., granting the export authorization, with any conditions and limitations, or denying it) must be evaluated pursuant to the National Environment Policy Act of 1969 (NEPA).

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, D.C., June 8, 1995.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Fossil Energy

[FR Doc. 95–14700 Filed 6–14–95; 8:45 am]

BILLING CODE 6450–01–P

Advisory Committee on Human Radiation Experiments

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463,86 Stat. 770), notice is hereby given of the following meeting of the Advisory Committee on Human Radiation Experiments.

DATES AND TIMES:

June 21, 1995, 9:00 a.m.–5:00 p.m.
June 22, 1995, 9:00 a.m.–5:00 p.m.
June 23, 1995, 8:30 a.m.–3:30 p.m.

PLACE: The Madison, 15th and M Streets, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Steve Klaidman, Advisory Committee on Human Radiation Experiments, 1726 M Street, NW., Suite 600, Washington, DC 20036, Telephone: (202) 254–9795, Fax: (202) 254–9828.

SUPPLEMENTARY INFORMATION: *Purpose of the Committee:* The Advisory Committee on Human Radiation Experiments was established by the President, Executive Order No. 12891, January 15, 1994, to provide advice and recommendations on the ethical and scientific standards applicable to human radiation experiments carried out or sponsored by the United States Government. The Advisory Committee on Human Radiation Experiments reports to the Human Radiation Interagency Working Group, the members of which include the Secretary of Energy, the Secretary of Defense, the Secretary of Health and Human Services, the Secretary of Veterans Affairs, the Attorney General, the Administrator of the National Aeronautics and Space Administration, the Director of Central Intelligence, and the Director of the Office of Management and Budget.

Tentative Agenda

Wednesday, June 21, 1995

9:00 a.m. Call to Order and Opening Remarks
9:05 a.m. Approval of Minutes
9:10 a.m. Public Comment
10:30 a.m. Discussion of Report Draft and Recommendations
12:00 p.m. Lunch
1:15 p.m. Discussion, Committee Strategy and Direction (continued)
5:00 p.m. Meeting Adjourned

Thursday, June 22, 1995

9:00 a.m. Opening Remarks
9:10 a.m. Discussion of Report Draft and Recommendations
12:00 a.m. Lunch
1:15 p.m. Discussion of Report Draft and Recommendations (continued)
5:00 p.m. Meeting Adjourned

Friday, June 23, 1995

8:30 a.m. Opening Remarks
8:35 a.m. Discussion of Report Draft and Recommendations
12:00 p.m. Lunch
1:15 p.m. Discussion of Report Draft and Recommendations (continued)
3:30 p.m. Meeting Adjourned

A final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. The chairperson is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make a five-minute oral statement should contact Steve Klaidman of the Advisory Committee at the address or telephone number listed above. Requests must be received at least five business days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. This notice is being published less than 15 days before the date due to programmatic issues that had to be resolved prior to publication.

Transcript: Available for public review and copying at the office of the Advisory Committee at the address listed above between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on June 12, 1995

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–14704 Filed 6–14–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 95–40–NG]

Centra Manitoba Gas, Inc.; Order Granting Blanket Authorization To Import and Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Centra Manitoba Gas, Inc. authorization to import up to 54 Bcf of natural gas from Canada and to export up to 54 Bcf of natural gas to Canada over a two-year term beginning on the date of the first import or export after May 31, 1995.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, May 25, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–14707 Filed 6–14–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 95–29–NG]

Dartmouth Power Associates Limited Partnership; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Dartmouth Power Associates Limited Partnership blanket authorization to import up to 11.68 Bcf of natural gas from Canada over a period of two years beginning on the date of first delivery. This order is available for inspection and copying in the Office of Fuels Programs Docket Room, Room 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, May 30, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–14701 Filed 6–14–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 95–39–NG]

Howard Energy Co., Inc.; Order Granting Blanket Authorization To Import and Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Howard Energy Co., Inc. authorization to import up to 18 Bcf of natural gas from Canada and to export up to 18 Bcf of natural gas to Canada over a two-year term beginning on the date of the first import or export delivery.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on May 25, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–14706 Filed 6–14–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 95–42–NG]

Mock Resources, Inc.; Order Granting Blanket Authorization To Import Natural Gas From and Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Mock Resources, Inc. blanket authorization to import up to 100 Bcf of natural gas from Canada and to export up to 100 Bcf of natural gas to Canada over a two-year term beginning on the date of first import or export delivery.

This order is available for inspection and copying in the Office of Fuels Programs docket room, 3F–056,

Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., June 1, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–14702 Filed 6–14–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Fossil Energy

[FE Docket No 95–31–NG]

Northwest Natural Gas Company; Order Granting Blanket Authorization To Import and Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Northwest Natural Gas Company (NNG) authorization to import up to 100 Bcf and to export up to 100 Bcf of natural gas from and to Canada. The term of the authorization is for a period of two years, beginning on the date of first import or export delivery.

NNG's order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., May 23, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–14708 Filed 6–14–95; 8:45 am]

BILLING CODE 6450–01–P

DOE Response to Recommendation 94–5 of the Defense Nuclear Facilities Safety Board, Integration of DOE Safety Rules, Orders, and Other Requirements

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Defense Nuclear Facilities Safety Board published Recommendation 94–5, concerning the Integration of DOE Safety Rules, Orders, and Other Requirements, in the **Federal Register** on January 6, 1995 (60 FR 2089). Section 315(e) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(e) requires the Department of Energy to transmit an implementation plan to the Defense Nuclear Facilities Safety Board by June 5, 1995, or submit a notification of extension for an additional 45 days. The Secretary's notification of extension for an additional 45 days follows.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's notification to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Dr. Tara O'Toole, M.D., M.P.H., Assistant Secretary for Environment, Safety, and Health, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Issued in Washington, D.C., on June 5, 1995.

Mark B. Whitaker,

Departmental Representative to the Defense Nuclear Facilities Safety Board.

June 5, 1995.

The Honorable John T. Conway,

Chairman, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, N.W., Suite 700, Washington, D.C. 20004

Dear Mr. Chairman: Please be advised that, pursuant to 42 U.S.C. 2286d(e), the Department of Energy requires an additional 45 days to respond to the Defense Nuclear Facilities Safety Board Recommendation 94–5, Integration of DOE Safety Rules, Orders, and Other Requirements.

The Department Standards Committee has assigned a focus group of Department senior management to develop an Integrated Standards Management Plan. The Management Plan will be approved by the Department Standards Committee and will provide an integrated and coordinated approach for all standards activities in the transition from the old orders system to the new, revised orders or rules. A 45-day extension is required to define more clearly the order-to-rule transition process and to develop the Standards Management Plan that will provide input for the Implementation Plan. The Implementation Plan for Recommendation 94–5 will be provided by July 20, 1995.

Sincerely,

Hazel R. O'Leary.

[FR Doc. 95–14705 Filed 6–14–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Efficiency and Renewable Energy

Appliance and Equipment Energy Efficiency Standards: Evaluation Criteria for the Voluntary Program To Provide Energy Efficiency Information for Luminaires

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of evaluation criteria and call for program description.

SUMMARY: The Energy Policy Act of 1992 requires the Department of Energy (DOE or Department) to support the development of a voluntary national testing and information program by an appropriate organization of interested parties for those types of luminaires that are widely used, and show potential for significant energy savings. Not later than October 24, 1995, DOE must determine whether the voluntary program, thus created, is consistent with the objectives set forth in the legislation. After consulting with stakeholders in two public meetings to discuss the progress and evaluation of the program, the Department has developed a set of criteria that will be used as the basis for making the determination on the effectiveness of the luminaire testing and information program. With the support of the Department, the National Lighting Collaborative has developed such a program, and the Department requests that it, or any other appropriate organization that has participated in developing the program, submit a program description before July 14, 1995, for evaluation by DOE, by means of the criteria published in this notice. The submitted report should describe the voluntary national testing and information program for luminaires in detail, specifying how the program meets each of the evaluation criteria listed in this notice. The report should also provide a comprehensive status update on the different components of the program.

DATES: Description and status report of the voluntary national testing and information program for luminaires must be received by the Department of Energy by July 14, 1995.

ADDRESSES: Five copies of the reports on the status of the voluntary national testing and information program for luminaires should be submitted to: Ms. Sandy Cooper, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Telephone: (202) 586–7574.

Copies of reports submitted will be available in the DOE Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room E–190, 1000 Independence Avenue, SW, Washington, DC, (202) 586–6020, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Barbara Twigg, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–431, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–8714

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–72, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION:

1. Authority

Part B of Title III of the Energy Policy and Conservation Act, Public Law 94–163, created the Energy Conservation Program for Consumer Products other than Automobiles. The most recent amendment, the Energy Policy Act of 1992 (EPACT), Public Law 102–486, identified several new categories of products and equipment for inclusion in various required and voluntary testing and information programs to promote energy efficiency. Voluntary programs were specified for commercial office equipment, windows, and luminaires. A luminaire is a complete lighting unit consisting of a fluorescent lamp(s), together with parts designed to distribute the light, to position and protect such lamps, and to connect such lamps to the power supply through the ballast.

Section 126 of EPACT directed the Secretary of Energy, after consulting with industry associations and other interested organizations, to provide technical and financial assistance to support a voluntary national testing and information program for those types of luminaires that are widely used, and for which there is a potential for significant energy savings as a result of such programs. Under section 126, such program would provide information that, when conveyed to consumers, will enable purchasers of the equipment to make more informed decisions about the energy efficiency and costs of competing products.

The voluntary program would determine the luminaires to be covered; include specifications for testing procedures; and include information which may be disseminated through catalogs, trade publications, labels, or other mechanisms, that will allow consumers to assess the energy consumption and potential cost savings of competing products. Such program would be developed by an appropriate organization (composed of interested persons), according to commonly accepted procedures for the development of national testing procedures and labeling programs.

Not later than three years after the date of enactment of EPACT (October 24, 1995), the Secretary shall make a determination as to whether the voluntary program is positioned to achieve the objectives established for the testing and rating of luminaires. If the Secretary determines that the voluntary program is not consistent with the objectives of the legislation, the Secretary shall, after consultation with the National Institute of Standards and Technology, develop test procedures for luminaires. One year later, the Federal Trade Commission would prescribe labeling rules.

2. Background

Since the passage of EPACT, the Department of Energy has monitored the efforts of the luminaire industry to develop a testing and information program through the National Lighting Collaborative (NLC or Collaborative), a working group composed of the National Electrical Manufacturers Association (NEMA), the American Lighting Association, lighting manufacturers, environmental organizations, designers, national laboratories, and other lighting professionals. The Department has provided technical and financial assistance to the Collaborative to help launch and publicize the program. On May 24, 1994, DOE held a public meeting, at which interested persons were invited to offer suggestions concerning methods of evaluation, and to obtain updates on the progress of the Collaborative's voluntary program. A transcript of the meeting was made available to the public, and comments were invited.

Comments submitted at the meeting focused on several areas. Regarding the specifications for testing procedures, it was proposed by the National Lighting Collaborative that NEMA Standard LE5, the "Procedure for Determining Luminaire Efficacy Ratings for Fluorescent Luminaires," be accepted as the standard testing and rating method for the program. This Luminaire Efficacy Rating known as "LER" is expressed in lumens per watt (the ratio of light output from the luminaire in lumens, to the energy input to the luminaire in watts), and is proposed to be reported in the voluntary consumer information program. The Collaborative reported that the selection of the Luminaire Efficacy Rating test procedure has received consensus support within the luminaire industry, having been balloted according to the formal standards-making balloting procedures per the by-laws of NEMA, as accredited by the American National Standards Institute (ANSI). Based on that consensus, the Department of Energy will accept the efficacy rating known as the "LER" as the fundamental comparative measure of the voluntary luminaire program.

NEMA Standard LE5 also contains a suggested format for other information related to the luminaire and its photometric data, including luminaire efficiency (the percentage of light output from the luminaire compared with the light output from the lamp(s) without the luminaire). As noted by the New York State Energy Office, NEMA Standard LE5 will also permit the alternative of separate reporting of the luminaire lumen output by its components (luminaire efficiency, total lamp lumens, and ballast factor). Manufacturers will continue to report luminaire efficiency as part of their photometric reports.

In addition to including an indicator for the luminaire category and the LER in lumens per watt, the International Association of Lighting Designers proposed that the LE5 reporting format be modified to include a measure for the quality of light. The Collaborative agreed, but since the quality of light metric needs to be developed, the LE5 will at first include an acknowledgement in the foreword that a numerical value for lighting quality will accompany the LER after the development of the measure is completed and balloted. The reporting format also provides information on the estimated annual lighting energy cost per 1,000 lumens of light output, assuming 3,000 luminaire operating hours per year, and 8 cents per kilowatt-hour electricity cost (the 1993 average commercial sector electricity rate).

It was recommended by the Collaborative that luminaires be tested according to prescribed test procedures in laboratories that are accredited through the National Voluntary Laboratory Accreditation Program of the National Institute of Standards and Technology.

The Collaborative identified the following luminaires as widely used, with a potential for significant energy

savings for inclusion in the program: (1) Recessed Lensed 2'x4' (4 lamps); (2) Recessed Lensed 2'x4' (3 lamps); (3) Recessed 2'x4' (2 lamps); (4) Recessed Parabolic Louvered 2'x4' (4 lamps); (5) Recessed Parabolic Louvered 2'x4' (3 lamps); (6) Recessed Parabolic Louvered 2'x4' (2 lamps); (7) Wraparound (2 and 4 lamps); (8) Strip (1 lamp); (9) Strip (2 lamps); and (10) Industrial (2 lamps). The Department supports the Collaborative's suggestion that the covered luminaires should collectively represent approximately 80 percent of the fluorescent luminaire market to satisfy EPACT's requirement to cover luminaires that are "widely used." If the data submitted to the Department in the program description support previous claims that these categories represent 80 percent of the fluorescent luminaire market, and show potential for significant energy savings, their selection appears to provide a reasonable base for the initial phase of the program.

The American Council for an Energy-Efficient Economy (Council) addressed issues concerning the long-term operation of the voluntary program, and the ability to confirm market targets and percentages. With respect to the information to be provided to consumers, it said that information in catalogs and other marketing materials should explain that the use of lower-efficacy lamps as replacements in luminaires would lower the energy efficiency. Regarding the selection of luminaires to be included in the program, the Council urged that a mechanism be established to add new luminaire types that gain market share in the future. The Council also brought up data collection and tracking energy efficiency trends as possible areas of information needed. Finally, it urged that the voluntary program meet specified percentage targets of manufacturer participation over time: 25 percent of luminaires covered by the program after the first year, 50 percent the second year, and 75 percent the third year. The Department agrees that participation levels should be included in the report on the voluntary luminaire program. These issues are addressed in the evaluation criteria, *infra*.

Other public meeting comments centered on how to verify that 80 percent of the fluorescent luminaire market is covered by the 10 categories selected for the program, and how to evaluate whether the new energy efficiency information is reaching its target audiences. To address these issues, the Collaborative submitted a revised program description on July 28, 1994. It proposed that NEMA would collect data on luminaire market shares from manufacturers to verify that the categories selected for the program represent 80 percent of the market. Regarding future data collection on sales of LER-rated luminaires, it was suggested that manufacturers provide sales data to the Bureau of Census. NEMA would also inform DOE of the number of companies whose catalogs show the new energy information. The International Association of Lighting Designers, a member of the Collaborative, would be responsible for tracking press coverage, and would develop a survey on awareness of the program to be used by manufacturers' representatives, distributors, and specifiers. The Department views these data collection methods as appropriate for tracking the development of the program.

On January 5, 1995, DOE held another public meeting to discuss the Department's proposed evaluation criteria with persons interested in the development of the voluntary program. Members of the National Lighting Collaborative asked that the means by which manufacturer participation would be measured be clarified in the evaluation criteria. That section has been changed to reflect the suggestions of the Collaborative that manufacturer participation be measured as a percentage of the sales of LE5-tested fixtures (measured in dollars) to the total sales of listed products covered by the program.

3. Evaluation Criteria and Procedures

The Department of Energy will evaluate voluntary consumer information programs for luminaires against the following criteria. In order to make its determination, the Department is requesting that any program description be submitted to the Department no later than July 14, 1995. The submitted description should include information explaining how the voluntary national testing and information program for luminaires addresses each of the elements described below.

a. Program Organization: Since the Energy Policy Act specifies that the voluntary program should be developed by an "appropriate organization (composed of interested parties)," the Department will assess the composition and procedures of the group developing the program to determine if it reflects a consensus position within a broad spectrum of the lighting community.

b. Coverage: In order to determine which luminaires are widely used and show a potential for significant energy savings, the Department will require data supporting the selection of the specific luminaire categories to be included in the initial phase of the voluntary program, and for verifying the stated market coverage with documented data sources. Those luminaires selected shall comprise approximately 80 percent of the fluorescent luminaire market. In anticipation of new products gaining market share and replacing some of those included in the initial phase of the program, a plan should be shown for including new products in the future.

c. Testing and Rating: In order to evaluate the program's testing procedures, the Department will compare the proposed test procedures to existing test procedures, such as those published by the Illuminating Engineering Society (IES), and the American National Standards Institute (ANSI), to verify the accuracy and validity of the procedures. The proposed testing and rating program should provide consumers with a consistent standard of measurement for comparing the energy efficiency of the luminaires covered by the program.

d. Information Program: In order to assess the effectiveness of the energy efficiency information provided to consumers, the Department will evaluate the implementation plan to determine how different audiences, such as managerial, technical, and procurement, have been targeted. Provisions in the program for the use of catalogs, labels, or other materials shall be explained. Concerns over the possible substitution of lower-efficacy replacement lamps and other components shall be addressed. Examples of new energy efficiency information materials shall be submitted.

e. Manufacturer Participation: In order to assess whether the voluntary program proposed is a broad-based, national program, the Department will require some indication of manufacturer participation. Recognizing that a national program takes both time and resources to achieve its objective, it is reasonable to establish targets of manufacturer participation, which would gradually increase as the program expands over time. Expectations are that approximately 25 percent of the industry wide shipments (measured in dollars) of the listed products (total) will have energy efficiency information published in the supporting sales literature by one year from the date of publication of this notice. The percentage would become approximately 50 percent in 2 years, and approximately 75 percent in 3 years. A plan for documenting the participation levels shall be submitted by July 14, 1995.

f. Publicity: If the voluntary program is to be effective, a companion effort must be made to inform a wide range of lighting decision-makers of the new energy efficiency rating for luminaires. The Department will assess what strategies have been developed and launched to promote the program. A plan for evaluating professional awareness of the program shall be submitted.

g. Market Data: To establish a baseline and provide a means to track luminaire efficacy over time, a system for data collection and reporting, such as reporting to the Bureau of Census, should be established. A plan for this data collection and reporting shall be submitted, along with recommendations for ways DOE might evaluate energy savings and energy efficiency trends in the industry.

h. Continuation of the Program: A plan should be established that will enable the luminaire testing and information program to be self-perpetuating, and to include new products as they become significant in the marketplace. A second evaluation by DOE in 1 to 2 years may be necessary to monitor the progress of the program.

Issued in Washington, DC, on June 12, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 95–14703 Filed 6–14–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. EL95–50–000, et al.]

Carolina Power & Light Company, et al.; Electric Rate and Corporate Regulation Filings

June 8, 1995.

Take notice that the following filings have been made with the Commission:

1. Carolina Power & Light Company

[Docket No. EL95–50–000]

Take notice that on May 31, 1995, Carolina Power & Light Company (CP&L) filed a request under 18 CFR 35.14(a)(10) and Rule 207 for a waiver of the Commission's fuel adjustment clause regulations to permit the recovery of the costs of buying out a coal contract. CP&L requests that the revised fuel clause, which provides for the buyout, be made effective on June 1, 1995.

Comment date: June 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. PSI Energy, Inc.

[Docket No. ER95–626–001]

Take notice that on May 26, 1995, PSI Energy, Inc. tendered for filing its compliance filing in the above-referenced docket.

Comment date: June 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)

[Docket No. ER95–1117–000]

Take notice that on May 30, 1995, Northern States Power Company—Minnesota (NSP–M) and Northern States Power Company—Wisconsin (NSP–W) jointly tender and request the Commission to accept a Transmission Service Agreement which provides for Reserved Transmission Service to Heartland Energy Services, Inc.

NSP requests that the Commission accept for filing the Transmission Service Agreement effective on June 1, 1995. NSP requests a waiver of the Commission's notice requirements pursuant to Part 35 so the Agreement may be accepted for filing effective on the date requested.

Comment date: June 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Arizona Public Service Company

[Docket No. ER95–1118–000]

Take notice that on May 30, 1995, Arizona Public Service Company (APS) tendered for filing a Service Agreement under APS–FERC Electric Tariff Original Volume No. 1 (APS Tariff) with the Town of Wickenburg.

A copy of this filing has been served on the above-listed entity and the Arizona Corporation Commission.

Comment date: June 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Wisconsin Electric Power Company

[Docket No. ER95–1119–000]

Take notice that on May 30, 1995, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing an Electric Service Agreement and a Transmission Service Agreement between itself and Kimball Power Company (Kimball). The Electric Service Agreement provides for service under Wisconsin Electric's Coordination Sales Tariff. The Transmission Service Agreement allows Kimball to receive transmission service under Wisconsin Electric's FERC Electric Tariff, Original Volume 1, Rate Schedule T–1.

Wisconsin Electric requests an effective date of sixty days from date of filing. Copies of the filing have been served on Kimball, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: June 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. American Electric Power Service Corporation

[Docket No. ER95–1121–000]

Take notice that on May 30, 1995, the American Electric Power Service Corporation (AEPSC) tendered for filing, as an Initial Rate Schedule, an Agreement dated April 1, 1995, between AEPSC, an agent for the AEP System Operating Companies and Stand Energy Corporation (Stand).

The Agreement provides Stand access to the AEP System for short-term transmission service. The parties request an effective date of June 1, 1995.

A copy of the filing was served upon Stand and the state regulatory commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: June 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. The Dayton Power and Light Company

[Docket No. ER95–1122–000]

Take notice that on May 26, 1995, The Dayton Power and Light Company (Dayton) tendered, in compliance with the order issued May 12, 1995 in the above-referenced docket, for filing an amendment to the Power Service Agreements (PSAs) made effective in such dockets.

Dayton requests the Commission accept the amendment as a supplement to the PSAs to become effective on the same date as the PSAs in accordance with the May 12th order.

Comment date: June 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Premier Enterprises, Inc.

[Docket No. ER95–1123–000]

Take notice that on May 31, 1995, Premier Enterprises, Inc. (Premier) tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective July 30, 1995.

Premier intends to engage in electric power and energy transactions as a

marketer and a broker. In transactions where Premier sells electric energy it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Neither Premier nor any of its affiliates are in the business of generating, transmitting, or distributing electric power.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices. Rate Schedule No. 1 also provides that no sales may be made to affiliates.

Comment date: June 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Southern Indiana Gas and Electric Company

[Docket No. ER95–1125–000]

Take notice that on May 31, 1995, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing to a proposed Interchange Agreement with Enron Power Marketing, Inc. (Enron).

The proposed revised Interchange Agreement will provide for the purchase, sale, and transmission of capacity and energy by either party under the following Service Schedules: (a) SIGECO Power Sales, (b) Enron Power Sales, and (c) Transmission Service.

Waiver of the Commission's Notice Requirements is requested to allow for an effective date of May 26, 1995.

Comment date: June 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. New York State Electric & Gas Corporation

[Docket No. ER95–1126–000]

Take notice that on May 31, 1995, New York State Electric & Gas Corporation (NYSEG), tendered for filing, as an initial rate schedule, an agreement with Rainbow Energy Marketing Corporation (Rainbow). The agreement provides a mechanism pursuant to which the parties can enter into separately scheduled transactions under which NYSEG will sell to Rainbow and Rainbow will purchase from NYSEG either capacity and associated energy or energy only as the parties may mutually agree.

NYSEG requests that the agreement become effective on June 1, 1995, so that the parties may, if mutually agreeable, enter into separately scheduled transactions under the agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission and Rainbow.

Comment date: June 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. New York State Electric & Gas Corporation

[Docket No. ER95–1127–000]

Take notice that on May 31, 1995, New York State Electric & Gas Corporation (NYSEG) tendered for filing, as an initial rate schedule, an agreement with CNG Power Services Corporation (CNG). The agreement provides a mechanism pursuant to which the parties can enter into separately scheduled transactions under which NYSEG will sell to CNG and CNG will purchase from NYSEG either capacity and associated energy or energy only as the parties may mutually agree.

NYSEG requests that the agreement become effective on June 1, 1995, so that the parties may, if mutually agreeable, enter into separately scheduled transactions under the agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission and Rainbow.

Comment date: June 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Portland General Electric Company

[Docket No. ER95–1128–000]

Take notice that on May 31, 1995, Portland General Electric Company (PGE), tendered for filing a Power Sale Agreement with Canby Utility Board.

Comment date: June 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Southwestern Public Service Company

[Docket No. ER95–1129–000]

Take notice that on May 31, 1995, Southwestern Public Service Company (SPS) tendered for filing pursuant to Section 205 of the Federal Power act and Part 35 of the Commission's Regulations, an application to implement market based sales rates. SPS makes this application in conjunction with its filing of comparable "Transmission Tariffs," pursuant to which SPS will offer Network Integration Service, Firm and Non-Firm Point-to-Point Transmission Service, as well as a variety of Ancillary Services. SPS states that the proposed market based rates are justified under its circumstances where it does not hold market power in relevant markets and has agreed to provide comparable transmission service.

Comment date: June 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Public Service Company of Colorado

[Docket No. ER95–1130–000]

Take notice that on May 31, 1995, Public Service Company of Colorado (Public Service), tendered for filing a letter agreement with Tri-State Generation and Transmission Association, Inc. and Poudre Valley Rural Electric Association, Inc. (PVREA) pursuant to which Public Service and PVREA will each provide emergency back-up service to the other at specified delivery points. Public Service has requested waiver of the Commission's Regulations to the extent necessary for the letter agreement to be made effective on June 1, 1995.

Comment date: June 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Maine Public Service Company

[Docket No. ER95–1131–000]

Take notice that on May 31, 1995, Maine Public Service Company (Maine Public), tendered for filing a service agreement providing for transmission for Central Maine Power Company.

Comment date: June 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Commonwealth Edison Company

[Docket No. ER95–1133–000]

Take notice that on May 31, 1995, Commonwealth Edison Company (ComEd) submitted for filing a revision to its Negotiated Capacity service schedule under ComEd's umbrella Power Sales Tariff ("PS–1 Tariff"). ComEd proposes to offer additional types of coordination sales transactions under the revised service schedule, including options, diversity exchanges, fixed rate per megawatt hour sales and fuel for electricity exchanges.

ComEd requests an effective date of June 1, 1995 and, accordingly, seeks waiver of the Commission's notice requirements.

Copies of this filing were served upon current customers under the PS–1 Tariff and the Illinois Commerce Commission.

Comment date: June 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Northeast Utilities Service Company

[Docket No. ER95–1137–000]

Take notice that on May 31, 1995, Northeast Utilities Service Company (NUSCO) tendered for filing, on behalf of the Northeast Utilities System Companies, a change in rate schedule for sales of system power to Princeton Municipal Light Department (Princeton). NUSCO requests that the changes in rate schedules become effective on June 1, 1995 and that such rate schedule changes (i) provide for system power sales, (ii) replace the Unit Power Sales Agreement between The Connecticut Light and Power Company, Holyoke Water Power Company, Holyoke Power and Electric Company and Princeton (FERC Rate Schedule Nos. CL&P 356 and HP&E 29) with an amended unit agreement, (iii) replace and terminate the Unit Power Sales Agreement between Public Service Company of New Hampshire and Princeton (FERC Rate Schedule No. 163) and (iv) makes the appropriate NU Transmission Tariff No. 1 service agreement additions and changes all on June 1, 1995.

NUSCO states that copies of its submission have been mailed or delivered to the Princeton Municipal Light Department and the Massachusetts Department of Public Utilities.

Comment date: June 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. Arizona Public Service Company

[Docket No. ER95–1143–000]

Take notice that on June 1, 1995, Arizona Public Service Company (APS) tendered for filing a revised Exhibit A applicable under the Citizens Power Sale Agreement, FERC Rate Schedule No. 225.

Current rate and revenue levels are unaffected, and no other changes in service to this or any other customer results from the revision proposed herein. No new or modifications to existing facilities are required as a result of these revisions.

A copy of this filing has been served on the Citizens Utilities Company and the Arizona Corporation Commission.

Comment date: June 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

19. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER95–1144–000 Company]

Take notice that on June 1, 1995, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the "GPU Operating Companies"), filed an executed Service Agreement between GPU and Citizens Lehman Power Sales, dated May 25, 1995. This Service Agreement specifies that Citizens Lehman Power Sales has agreed to the rates, terms and conditions of the GPU Operating Companies' Operating Capacity and/or Energy Sales Tariff ("Sales Tariff") designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in *Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co.*, Docket No. ER95–276–000 and allows GPU and Citizens Lehman Power Sales to enter into separately Scheduled transactions under which the GPU Operating Companies will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than the GPU Operating Companies' cost service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of May 25, 1995 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: June 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14663 Filed 6–14–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–52–000]

Granite State Gas Transmission, Inc.; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Granite State LNG Project and Request for Additional Comments on Environmental Issues

June 9, 1995.

On March 16, 1995, the Federal Energy Regulatory Commission (FERC) issued a Notice of Intent to Prepare an Environmental Assessment for the proposed Granite State LNG Project and Request for Comments on Environmental Issues. One of the specific comments sought was whether an environmental assessment (EA) was the proper environmental document or whether an environmental impact statement (EIS) was necessary. On May 15, 1995, the Commission staff conducted a site visit and a public scoping meeting in Wells, Maine. Given the number of written requests and oral requests at the public scoping meeting for an EIS versus an EA, the Commission herein gives notice that an EIS will be prepared for the Granite State LNG Project. If anyone wishes to file additional comments, please follow the instructions below. If you have already submitted comments on the March 16, 1995, notice or at the May 15, 1995, public scoping meeting, you do not have to resubmit them; they will be considered as comments to this notice.

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426.
- Reference Docket No. CP95–52–000
- Send a *copy* of your letter to: Mr. Chris Zerby, EIS Project Manager, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Room 7312, Washington, DC 20426; and
- Mail your comments so that they are received in Washington, D.C. on or before July 7, 1995.

The staff intends to conduct additional site visits and meetings with the public during various phases of the environmental process, e.g., public meetings to receive comments on the future Draft Environmental Impact Statement once it is prepared and circulated for public comment. Such site visits and public meetings will be noticed prior to their occurrence.

For further information on the EIS process, call Chris Zerby, EIS Project Manager, at (202) 208–0111.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14664 Filed 6–14–95; 8:45 am]

BILLING CODE 6717–01–M

Federal Energy Regulatory Commission

[Docket No. ER95–940–000]

Delhi Energy Services, Inc.; Notice of Issuance of Order

June 9, 1995.

On April 19, 1995, Delhi Energy Services, Inc. (Delhi) submitted for filing a rate schedule under which Delhi will engage in wholesale electric power and energy transactions as a marketer. Delhi also requested waiver of various Commission regulations. In particular, Delhi requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Delhi.

On June 1, 1995, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Delhi should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Delhi is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Delhi's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 3, 1995.

Copies of the full text of the order are available form the Commission's Public Reference Branch, Room 3308, 941 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14606 Filed 6–14–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG95–6–000]

Young Gas Storage Co., Ltd.; Notice of Filing

June 9, 1995.

Take notice that on June 1, 1995, Young Gas Storage Co., Ltd. (Young) filed standards of conduct under Order Nos. 497 *et seq.*[1]

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before June 26, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14606 Filed 6–14–95; 8:45 am]

BILLING CODE 6717–01–M

[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,820 (1988); Order No. 497–A, *order on rehearing*, 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. 30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F. 2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date*, III FERC Stats. & Regs. ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,996 (June 17, 1994).

[Docket No. RP94–229–004]

Granite State Gas Transmission, Inc.; Notice of Filing of Refund Report

June 9, 1995.

Take notice that on June 7, 1995, Granite State Gas Transmission, Inc. (Granite State) filed a report of refunds made to its firm and interruptible transportation customers in compliance with Article III of the Stipulation and Agreement settling the rate proceeding in Docket No. RP94–229–000 which was approved by the Commission on April 13, 1995.

Granite State further states that it filed revised rates on April 25, 1995, reflecting the terms of the rate settlement for effectiveness on May 1, 1995. According to Granite State, the motion rates in the proceeding were made effective on November 1, 1994 and accordingly, the refund report covers the period that the motion rates were effective from November 1, 1994 through April 30, 1995.

Granite State also states that copies of the refund report were served on its transportation customers and the regulatory commissions of the State of Maine, New Hampshire and Massachusetts.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protest should be filed on or before June 16, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14597 Filed 6–14–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–869–000]

K N Marketing, Inc.; Notice of Issuance of Order

June 9, 1995.

On April 4, 1995, K N Marketing, Inc. (KNM) submitted for filing a rate schedule under which KNM will engage in wholesale electric power and energy transactions as a marketer. KNM also requested waiver of various Commission regulations. In particular, KNM requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by KNM.

On May 26, 1995, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by KNM should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, KNM is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of KNM's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 26, 1995.

Copies of the full text of the order are available from the Commission's Public Reference Branch, Room 3308, 941 North Capitol Street NE., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14599 Filed 6–14–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–288–001]

Pacific Gas Transmission Company; Notice of Withdrawal of Proposed Tariff Sheets

June 9, 1995.

Take notice that on June 7, 1995, Pacific Gas Transmission Company (PGT) tendered for filing a Notice of Withdrawal of certain revised tariff sheets to be a part of its Ferc Gas Tariff, First Revised Volume No. 1–A.

PGT states that the tariff sheets which it is withdrawing were submitted to conform the Capacity Release provisions of its Transportation General Terms and Conditions to the capacity release provisions in Order No. 577. PGT further states that further changes in these sheets to conform with Order No. 577–A will be proposed under separate cover.

PGT further states it has served a copy of this filing upon all interested state regulatory agencies and PGT's jurisdictional customers as well as the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's rules of Practice and Procedure. All such protests should be filed on or before June 16, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14600 Filed 6–14–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–319–002]

TCP Gathering Company; Notice of Proposed Changes in FERC Gas Tariff

June 9, 1995.

Take notice that on June 5, 1995, TCP Gathering Company (TCP) tendered for filing Original Volume No. 1 to its FERC Gas Tariff in compliance with the Commission's May 3, 1995 Letter Order in Docket No. CP94–319–000. TCP requests that the tendered sheets be accepted for filing and permitting to become effective on June 2, 1995.

TCP states that a copy of its filing was served on all parties to Docket No. CP94–319–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 19 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 19, 1995. Protests will be considered by the Commission in determining the appropriate actions to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14601 Filed 6–14–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–336–000]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

June 9, 1995.

Take notice that on June 5, 1995, pursuant to and in compliance with the Commission's Final Rule (Order No. 577–A) issued May 31, 1995 in Docket No. RM95–5 001, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets:

Second Revised Sheet No. 464
Second Revised Sheet No. 465
Second Revised Sheet No. 467

Texas Eastern states that the tariff sheets submitted herewith reflect the revisions in the term and character of capacity releases that are exempt from advance posting and bidding requirements.

Texas Eastern requests waiver of the notice requirement of Section 154.22 of the Regulations to permit the tendered tariff sheets to become effective on July 1, 1995, which is the date Order No. 577–A will become effective.

Texas Eastern states that copies of the filing were served on firm customers of Texas Eastern and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 16, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14602 Filed 6–14–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11213–000]

Thomas Hohman; Notice of Filing

June 9, 1995.

Please take notice that on August 3, 1992, Mr. Thomas Hohman, applicant, filed with the Commission a videotape of the project site for the proposed Barberville Hydroelectric Project, to be located on Poestenkill Creek in Rennselaer County New York.[1] The tape depicts the reaches of Poestenkill Creek along which project facilities would be located, a range of flows over the waterfall and the surrounding landscape.

The videotape is available for viewing upon request by contacting the Commission's Public Reference Room in 941 North Capitol Street, NE., Washington, DC 20426, telephone (202) 208–1371.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14598 Filed 6–14–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG88–51–009]

Transcontinental Gas Pipe Line Corporation; Notice of Filing

June 9, 1995.

Take notice that on June 5, 1995, Transcontinental Gas Pipe Line Company (Transco) filed a revised Code of Conduct pursuant to Order Nos. 566 *et seq.*[1] Transco states that the purpose of the filing is to reflect certain changes in accordance with the Order No. 566–A and the Commission's May 4, 1995, order directing Transco to revise its standards of conduct with respect to Standard K, to be codified at 18 CFR 161.3(k). 71 FERC ¶ 61,140 (1995).

Transco states that copies of this filing have been mailed to all parties to Docket No. MG88–51.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before June 26, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14603 Filed 6–14–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT95–11–000]

Williams Natural Gas Company; Notice of Distribution of Refunds

June 9, 1995.

Take notice that on December 14, 1995, Williams Natural Gas Company (Williams) submitted worksheets reflecting the distribution of refunds paid to jurisdictional sales customers on December 14, 1994. Williams states that these refunds are being made pursuant to Commission's order in Colorado Interstate Gas Company, Docket Nos. GP83–11–002 and RI83–9–003 issued December 1, 1993.

The Commission ordered that "any first seller that collected revenues in excess of the applicable maximum lawful price established by the NGPA as a result of the reimbursement of the Kansas ad valorem taxes for sales on or after June 28, 1988, shall refund any such excess revenues to the purchaser. * * *" The Interstate pipelines were then required to make lump-sum cash payments of the Kansas ad valorem tax refunds to the customers who were actually overcharged. Included with Williams' payments is interest covering the period from the date Williams received the refund from the producer until December 14, 1994.

Williams states that a copy of this report is being mailed to each of Williams' affected jurisdictional sales customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 16, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14604 Filed 6–14–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT95–42–000]

Williston Basin Interstate Company; Notice of Filing

June 9, 1995.

Take notice that on June 7, 1995, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, revised tariff sheets.

Williston Basin states that the revised tariff sheets are being filed to update its Master Delivery Point List.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 16, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14605 Filed 6–14–95; 8:45 am]

BILLING CODE 6717–01–M

Southwestern Power Administration

Integrated System

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of proposed extension of integrated system power rates and opportunities for public review and comment.

SUMMARY: The Current Integrated System Rates were approved by the Federal Energy Regulatory Commission (FERC) on September 18, 1991, Docket No. EF91–4011–000 (56 FERC ¶61,398). These rates were effective October 1, 1990, through September 30, 1994. Effective October 1, 1994, these rates were extended on an interim basis by the Deputy Secretary of Energy, for one year ending September 30, 1995 (59 FR 47860, Sept. 19, 1994). The Administrator, Southwestern, has prepared Current and Revised 1995 Power Repayment Studies for the Integrated System which show the need for a minor rate adjustment of $1,008,285 (1.07 percent increase) in annual revenues. In accordance with Southwestern's rate adjustment threshold, dated June 23, 1987, the Administrator, Southwestern, may determine, on a case by case basis, that for a revenue decrease or increase in the magnitude of plus-or-minus two percent, deferral of a formal rate filing is in the best interest of the Government. Also, the Deputy Secretary of Energy has the authority to extend rates, previously confirmed and approved by FERC, on an interim basis, pursuant to 10 CFR 903.22(h) and 903.23(a)(3). In accordance with DOE rate extension authority and Southwestern's rate adjustment threshold, the Administrator is proposing that the rate adjustment be deferred and that the current rates be extended for a one-year period effective through September 30, 1996.

DATES: Written comments are due on or before June 30, 1995.

ADDRESSES: Written comments should be submitted to the Administrator, Southwestern Power Administration, U.S. Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101.

FOR FURTHER INFORMATION CONTACT: George C. Grisaffe, Assistant Administrator, Office of Administration and Rates, Southwestern Power Administration, Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101, (918) 581–7419.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy was created by an Act of the U.S. Congress, Department of Energy Organization Act, P.L. 95–91, dated August 4, 1977, and Southwestern's power marketing activities were transferred from the Department of the Interior to the Department of Energy, effective October 1, 1977.

Southwestern markets power from 24 multiple-purpose reservoir projects with power facilities constructed and operated by the U.S. Army Corps of Engineers. These projects are located in the States of Arkansas, Missouri, Oklahoma and Texas. Southwestern's marketing area includes these states plus Kansas and Louisiana. Of the total, 22 projects comprise an Integrated System and are interconnected through Southwestern's transmission system and exchange agreements with other utilities. The other two projects (Sam Rayburn and Robert Douglas Willis) are not interconnected with Southwestern's Integrated System. Instead, their power is marketed under separate contracts through which two customers purchase the entire power output of each of the projects at the dams.

Following Department of Energy Order Number RA 6120.2, the Administrator, Southwestern, prepared a 1995 Current Power Repayment Study (PRS) using existing Integrated System rate schedules. The PRS shows the actual status of repayment through FY 1994 at $319,846,125 on a total investment of $982,356,193. The FY 1995 Revised PRS indicates the need for an increase in annual revenues of $1,008,285, or 1.07 percent, over and above the present annual revenues.

As a matter of practice, Southwestern would defer an indicated rate adjustment that falls within Southwestern's plus-or-minus two percent rate adjustment threshold. The threshold, which was established in 1987, was developed to add efficiency to the process of maintaining adequate rates and is consistent with cost recovery criteria within DOE Order Number RA 6120.2 regarding rate adjustment plans. The Integrated System's FY 1994 (last year's) PRS concluded that the annual revenues needed to be increased by 0.8 percent. At that time, it was determined prudent to defer the increase in accordance with the established threshold and extend the rates on an interim basis for one year. As previously cited, the FY 1995 (this year's) PRS indicates that revenues would need to be increased by 1.07 percent, or $1,008,285 per year. It once again seems prudent to defer a rate adjustment in accordance with Southwestern's rate adjustment threshold and reevaluate the ability of the existing rate to provide sufficient revenues to satisfy costs projected in the FY 1996 (next year's) PRS.

On September 18, 1991, the current rate schedules for the Integrated System were confirmed and approved by the FERC on a final basis for a period that ended on September 30, 1994. In accordance with 10 CFR 903.22(h) and 903.23(a)(3), the Deputy Secretary may extend existing rates on an interim basis beyond the period specified by the FERC. On September 19, 1994, the Deputy Secretary approved an extension of the Integrated System power rates on an interim basis for the period October 1, 1994, through September 30, 1995. As a result of the benefits obtained by a rate adjustment deferral (reduced Federal expense and rate stability) and the Deputy Secretary's authority to extend a previously approved rate, Southwestern's Administrator is proposing to again extend the current Integrated System rate schedules for the one-year period beginning October 1, 1995, and extending through September 30, 1996.

Opportunity is presented for customers and interested parties to receive copies of the study data for the Integrated System. If you desire a copy of the Repayment Study Data Package for the Integrated System, please submit your request to: Mr. George Grisaffe, Assistant Administrator, Office of Administration and Rates, P.O. Box 1619, Tulsa, OK 74101, (918) 581–7419.

Following review of the written comments, the Administrator will submit the rate extension proposal for the Integrated System to the Deputy Secretary of Energy for confirmation and approval.

Issued in Tulsa, Oklahoma, this 5th day of June 1995.

Forrest E. Reeves,

Acting Administrator.

[FR Doc. 95–14709 Filed 6–14–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[PF–626; FRL–4955–4]

Pesticide Tolerance Petitions; Filings, Amendments, and a Withdrawal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces initial filings, amendments, and a withdrawal of pesticide petitions (PP) and food and feed additive petitions (FAP) proposing the establishment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential

[1] The videotape was submitted as part of the applicant's response to staff's March 6, 1992 request for additional information.

[1] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994); Order No 566–A, *order on rehearing*, 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing*, 59 FR 65707 (December 21, 1994), 69 FERC ¶ 61,334 (December 14, 1994); *appeal docketed sub nom. Conoco, Inc. v. FERC*, D.C. Cir. No. 94–1745 (December 13, 1994).

Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF-626; FRL 4955-4]. No CBI should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, contact the PM named in each petition at the following office location/ telephone number:

Product Manager	Office location/telephone number/e-mail	Address
Richard Keigwin (PM-10)	Rm. 210, CM #2, 703-305-6596, e-mail: keigwin.richard@epamail.epa.gov.	1921 Jefferson Davis Hwy., Arlington, VA.
George LaRocca (PM-13)	Rm. 204, CM #2, 703-305-6100, e-mail: larocca.george@epamail.epa.gov.	Do.
Dennis Edwards, Jr. (PM-19)	Rm. 207, CM #2, 703-305-6386, e-mail: edwards.dennis@epamail.epa.gov..	Do.
Connie Welch (PM-21)	Rm. 227, CM #2, 703-305-6226, e-mail: welch.connie@epamail.epa.gov..	Do.
James Stone (Acting PM-22)	Rm. 247, CM #2, 703-305-7391, e-mail: stone.james@epamail.epa.gov..	Do
Joanne Miller (PM-23)	Rm. 237, CM #2, 703-305-6224, e-mail: miller.joanne@epamail.epa.gov..	Do.
Robert Taylor (PM-25)	Rm. 241, CM #2, 703-305-6027, e-mail: taylor.robert@epamail.epa.gov..	Do.
Phil Hutton (PM-90)	5th Floor, CS #1, 703-308-8260, e-mail: hutton.phillip@epamail.epa.gov..	2805 Jefferson Davis Hwy., Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions and food/ feed additive petitions as follows proposing the amendment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

Initial Filings

1. *PP 4F4391.* E.I. DuPont de Nemours & Co., Inc., Barley Mill Plaza, Walker's Mill, P.O. Box 80083, Wilmington, DE 19880-0038, proposes amending 40 CFR part 180 to establish tolerances for the herbicide sodium 2-chloro-6-(4,6-dimethoxypyrimidin-2-ylthio)benzoate in or on cotton, undelinted seed at 0.02 ppm. The proposed method for determining residues is high-pressure liquid chromatography. (PM–22).

2. *PP 5F4426.* Rhone-Poulenc AG Co., P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, proposes amending 40 CFR part 180 by establishing tolerances for fipronil (5-amino-1-(2,6-dichloro-4-(trifluoromethyl)phenyl]-4-[(1R,S)-(trifluoromethyl)sulfinyl]-1H-pyrazole-3-carbonitrile) or its metabolites MB46136 (5-amino-1-[2,6-dichloro-4-(trifluoromethyl]phenyl]-4-[(trifluoromethyl]sulfonyl]-1H-pyrazole-3-carbonitrile) or MB45950 (5-amino-1-[2,6-dichloro-4-(trilfuoromethyl)phenyl)-4-[(trifluoromethyl)thio)-1H-pyrazole-3-carbonitrile) in or on corn, grain at 0.02 part per million (ppm), corn, fodder at 0.15 ppm, and corn, forage at 0.15 ppm; poultry eggs, liver, and muscle at 0.02 ppm and skin/fat at 0.03 ppm; dairy cow milk, liver, kidney, and muscle at 0.02 ppm, and fat at 0.08 ppm. (PM–10)

3. *PP 5F4480.* Miles, Inc., 8400 Hawthorn Rd., P.O. Box 4913, Kansas City, MO 64120-0013, proposes amending 40 CFR 180.472 by establishing a regulation permitting residues of imidacloprid (1-[(chloro-3-pyridinyl)methyl-N-nitro-2-imidazolidinimine, in or on pecan, nut at 0.05 ppm and citrus, fruit at 0.7 ppm. (PM–19)

4. *PP 5F4483.* Troy Biosciences, Inc., 2620 North 37th Drive, Phoenix, AZ 85009, proposes amending 40 CFR part 180 by establishing a regulation to exempt from the requirement of a tolerance residues of the insecticide *Beauvaria bassiana* ATCC 74040 in or on all raw agricultural commodities. (PM–90)

5. *PP 5F4485* FMC Corp., 1735 Market St., Philadelphia, PA 19103, proposes amending 40 CFR 180.442 by establishing a regulation permitting residues of bifenthrin (2-methyl[1,1'-biphenyl)-3-yl)methyl-3-(2-chloro-3,3,3-trifluoro-1-propenyl-2,2-dimethylcyclopropanecarboxylate) in or on strawberries at 3.0 ppm. A tolerance for bifenthrin on strawberries and other agricultural commodities was proposed in a previous notice that appeared in the **Federal Register** of November 19, 1986 (51 FR 41828), but the commodity strawberries is hereby separated from that notice and placed in this filing. (PM–13)

6. *FAP 5H5714.* E.I. du Pont de Nemours & Co., Inc., Agricultural Products, Wilmington, DE 29880-0038, proposes amending 40 CFR 180.3575 by establishing tolerances for the combined residues of the herbicide hexazinone (3-cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4-(1H,3H)-dione) and its metabolites calculated as hexazinone in or on alfalfa seed at 2.0 ppm. The proposed analytical method for determining residues is gas chromatography with nitrogen phosphorous detection (GC/NPD). (PM–23)

7. *FAP 5H5718.* Miles, Inc., 8400 Hawthorn Rd., P.O. Box 4913, Kansas City, MO 64120-0013, proposes amending 40 CFR part 186 by establishing a regulation permitting residues of imidacloprid (1-[(chloro-3-pyridinyl)methyl-N-nitro-2-imidazolidinimine]) in or on citrus, pulp, dried at 5.5 ppm; and citrus, molasses at 4.8 ppm. (PM–19)

Amended Filings

8. *PP 2F4063.* EPA gave notice in the **Federal Register** of March 11, 1992 (57 FR 8659), that Ciba Corp. Protection, Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419-8300, had submitted the petition to amend 40 CFR 180.408 by establishing tolerances for combined residues of the fungicide metalaxyl [N-(2,6-dimethylphenyl)-N-(methoxyacetyl) alanine methyl ester] and its metabolites containing the 2,6-dimethylaniline moliety, and N-(2-hydroxymethyl-6-methyl)-N-(methoxyacetyl)-alanine methylester, each expressed as metalaxyl equivalents, in or on grass forage at 10.0 ppm and grass hay at 20.0 ppm. Ciba-Geigy has amended the petiton to propose tolerances for grass, forage at 10.0 ppm and grass, hay at 25.0 ppm. (PM–21)

9. *PP 2F4072.* EPA gave notice in the **Federal Register** of June 10, 1992 (57 FR 24645), that Ciba Corp. Protection, Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419-8300, had submitted the petition to amend 40 CFR 180.408 by establishing tolerances for combined residues of the fungicide metalaxyl [N-(2,6-dimethylphenyl)-N-(methoxyacetyl) alanine methyl ester] and its metabolites containing the 2,6-dimethylaniline moliety, and N-(2-hydroxymethyl-6-methyl)-N-(methoxyacetyl)-alanine methylester, each expressed as metalaxyl equivalents, in or on Brassica (cole) leafy vegetables crop grouping at 5.0 ppm. Ciba-Geigy has amended the petition to propose tolerances for Brassica (cole) leafy vegetables group (except broccoli, cabbage, cauliflower, Brussels sprouts, and mustard greens) at 0.1 ppm, Brussels sprouts at 2.0 ppm, cabbage at 1.0 ppm, cauliflower at 1.0 ppm, and mustard greens at 5.0 ppm. (PM–21)

10. *PP 2F4086.* EPA gave notice in the **Federal Register** of June 10, 1992 (57 FR 24645), that Ciba Corp. Protection, Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419-8300, had submitted the petition to amend 40 CFR 180.434 by establishing tolerances for combined residues of the fungicide propiconazole (1-((2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl)methyl)-1H-1,2,4-triazole) and its metabolites determined as 2,4-dichlorobenzoic acid and expressed as parent compound in or on oat grain at 0.1 ppm and oat straw at 1.0 ppm. Ciba-Geigy has amended the petition to propose tolerances for oat grain at 0.1 ppm, oat straw at 1.0 ppm, and oat forage at 10.0 ppm. (PM–21)

11. *PP 2F4105.* EPA gave notice in the **Federal Register** of June 10, 1992 (57 FR 24646), that Ciba Corp. Protection, Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419-8300, had submitted the petition to amend 40 CFR 180.408 by establishing tolerances for combined residues of the fungicide metalaxyl [N-(2,6-dimethylphenyl)-N-(methoxyacetyl) alanine methyl ester] and its metabolites containing the 2,6-dimethylaniline moliety, and N-(2-hydroxymethyl-6-methyl)-N-(methoxyacetyl)-alanine methylester, each expressed as metalaxyl equivalents, in or on nongrass animal feed forage at 6.0 ppm and nongrass animal feed hay at 20.0 ppm. Ciba-Geigy has amended the petition to propose tolerances for clover, forage at 1.0 ppm and clover, hay at 2.5 ppm. (PM–21)

12. *PP 4F4337.* EPA gave notice in the **Federal Register** of November 2, 1994 (59 FR 54907), that Gustafson, Inc., P.O. Box 660065, Dallas, TX 75266-0065, had submitted the petiiton to amend 40 CFR part 180 by establishing a regulation to permit residues of imidacloprid, 1-[(chloro-3-pyridinyl)methyl]-N-nitro-2-imidazolidinimine, and its metabolites (calculated as imidacloprid), in or on wheat, forage at 7.0 ppm, wheat, straw at 0.3 ppm, wheat, grain at 0.1 ppm, barley, forage at 1.2 ppm, barley, straw at 0.2 ppm, barley, grain at 0.1 ppm, sorghum, forage at 0.2 ppm, sorghum, straw at 0.1 ppm, sorghum, grain at 0.1 ppm, beets, sugar (roots) at 0.1 ppm, and beets, sugar (tops) at 0.1 ppm. Gustafson has amended the petition to request a feed additive tolerance of 0.5 ppm for beets, sugar, molasses. (PM–19)

13. *PP 6F3454.* FMC Corp., 1735 Market St., Philadelphia, PA 19103, proposes amending 40 CFR part 180 by establishing a regulation permitting residues of bifenthrin (2-methyl[1,1'-biphenyl]-3-yl)methyl-3-(2-chloro-3,3,3-trifluoro-1-propenyl-2,2-dimethylcyclopropanecarboxylate) in or on various agricultural commodities; among those was strawberries with a proposed tolerance of 3.0 ppm. PP 5F4485 appearing elsewhere in this document under "initial filings" separates strawberries from PP 6F3454. (PM–13)

14. *PP 9F3818.* EPA gave notice in the **Federal Register** of January 9, 1990 (55 FR 779), that Mobay Corp., P.O. Box 4913, Hawthorn Rd., Kansas City, MO 64120-0013, had submitted the petition to amend 40 CFR part 180 by estabishing a regulation to permit residues of the fungicide tebuconazole, alpha-(2-(4-(chlorophenyl)ethyl)-alpha-(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol, in or on various agricultural commodities. The company has changed names, now Bayer Corp. (with the same address), and the petition has been amended to propose amending 40 CFR part 180 by establishing tolerances for the fungicide tebuconazole in or on the following raw agricultural commodities: Barley, grain at 0.05 ppm, barley, forage at 0.10 ppm, barely, hay at 0.10 ppm, barley, straw at 0.10 ppm; oat, grain at 0.05 ppm, oat, forage at 0.10 ppm, oat, hay at 0.10 ppm, oat, straw at 0.10 ppm; wheat, grain at 0.05 ppm, wheat, forage at 0.10 ppm, wheat, hay at 0.10 ppm, and wheat straw at 0.10 ppm. The proposed analytical method for determining residues is high-performance liquid chromatography. (PM–21)

Withdrawn Petition

15. *PP 2F2746.* DuPont Agricultural Products, Walker's Mill, Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 19880-0038, has requested that the petition be withdrawn without prejudice to future filing since DuPont plans to generate data on both soybean and peanut forages for tolerances proposed for esfenvalerate under PP 4F4329 (59 FR 35719, July 13, 1994). (PM–13)

A record has been established for this notice document under docket number [PF-626; FRL 4955-4] (including any comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:
opp-Docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all

comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping

Authority: 7 U.S.C. 136a.

Dated: June 8, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–14798 Filed 6–13–95; 12:27 pm]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public; Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Cunard Line Limited and Partrederei t Norske Cruise, 555 Fifth Avenue, New York, NY 10017–2453

Vessels: SEA GODDESS I and SEA GODDESS II

Dated: June 12, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95–14679 Filed 6–14–95; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Megatrans International, Inc., 5115 Rio Vista Avenue, Tampa, FL 33634, Officers: William J. Donovan, President, Julie Donovan, Vice President

Earth Customs, Inc. d/b/a Earth Cargo, 9920 La Cienega Blvd., Suite 816, Inglewood, CA 90301, Officers: Karen L. West, President, Vice President, Louise Marie West, Director

Cargo Forwarders International Corp., 101–111 NE. 23rd Street, Miami, FL 33137, Officers: Wilfred Agusti, President, Rosa Benitez, Secretary

Air Cargo Centralam, Inc., 8001 SW. 157th Court, Miami, FL 33193, Officer: Arelys E. Crespo, President

Ideal Consolidators, Ltd., 5230 Pacific Concourse, Suite 105, Los Angeles, CA 90045, Officer: Alfred Yau, President

Coldwell Banker Moving Services, Inc., 27271 Las Ramblas, Mission Viego, CA 92691, Officers: Stephen C. Roney, President, Leonard P. Troutner, Exec. Vice President

Dated: June 12, 1995.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–14680 Filed 6–14–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Deposit Guaranty Arkansas Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than July 10, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Deposit Guaranty Arkansas Corp., Fort Smith, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of Merchants National Bank, Fort Smith, Arkansas.

Board of Governors of the Federal Reserve System, June 9, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–14646 Filed 6–14–95; 8:45 am]

BILLING CODE 6210–01–F

Lincoln Bancorp; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing,

identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 10, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Lincoln Bancorp, Reinbeck, Iowa; to acquire 100 percent of the voting shares Garwin Bancorporation, Garwin, Iowa, and thereby indirectly acquire Farmers Saving Bank, Garwin, Iowa.

In connection with this application, Lincoln Bancorp has also applied to acquire the insurance business that is conducted directly at Garwin Bancorporation and engage in the sale of insurance in a town of less than 5,000 in population pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 9, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–14648 Filed 6–14–95; 8:45 am]

BILLING CODE 6210–01–F

Clinton J. Theriot; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than June 29, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Clinton J. Theriot, Chauvin, Louisiana; to acquire an additional 19.6 percent, for a total of 34.8 percent, of the voting shares of Lafourche Bancshares, Inc., Larose, Louisiana, and thereby indirectly acquire South Lafourche Bank & Trust Company, Larose, Louisiana.

Board of Governors of the Federal Reserve System, June 9, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–14647 Filed 6–14–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[Docket No. C–3581]

Gateway Educational Products, Ltd., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a California-based corporation and two officers from making reading and comprehension claims for their "Hooked on Phonics" reading program or any other educational program or product without possessing and relying upon competent and reliable substantiating evidence. In addition, it prohibits them from representing that any endorsement represents the typical or ordinary experience of consumers with any educational program or product without possessing and relying upon competent and reliable substantiating evidence.

DATES: Complaint and Order issued June 1, 1995.[1]

FOR FURTHER INFORMATION CONTACT: FTC/S–4002, Division of Advertising Practices, Washington, DC 20580. (202) 326–3131.

SUPPLEMENTARY INFORMATION: On Monday, December 19, 1994, there was published in the **Federal Register**, 59 FR 65361, a proposed consent agreement with analysis In the Matter of Gateway Educational Products, Ltd., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 95–14691 Filed 6–14–95; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

[Docket No. C–3580]

Montedison S.p.A., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, the Royal Dutch Petroleum Company and the Shell Group of Companies to divest all of Shell Oil's polypropylene assets to Union Carbide Corporation, or to another Commission approved acquirer, within six months, requires Montedision to relinquish revenues under the profit sharing agreement from future U.S. licenses by Mitsui Petrochemical Industries Ltd., and requires the respondents, for ten years, to obtain Commission approval before acquiring any interest in such a company or before entering into similar agreements.

DATES: Complaint and Order issued May 25, 1995.[1]

FOR FURTHER INFORMATION CONTACT: Howard Morse or Rhett Krulla, FTC/S–3627, Washington, DC 20580. (202) 326–2949 or 326–2608.

SUPPLEMENTARY INFORMATION: On Friday, January 27, 1995, there was published in the **Federal Register**, 60 FR 5414, a proposed consent agreement with analysis In the matter of Montedison S.p.A., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat 731, as amended; 15 U.S.C. 45, 18)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 95–14692 Filed 6–14–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 951 0056]

The Scotts Co.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, Scotts, an Ohio-based corporation, to divest its Peters Consumer Water Soluble Fertilizer Business and related assets to Alljack & Company or another Commission-approved buyer by no later than December 31, 1995. If the divestiture is not completed on time, the consent agreement would permit the Commission to appoint a trustee to complete the transaction. In addition, the consent agreement would require the respondent to obtain Commission approval, for a period of ten years, before acquiring any consumer water soluble fertilizer business in the United States.

DATES: Comments must be received on or before [Insert date 60 days after **Federal Register** publication date].

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Howard Morse or Robert Cook, FTC/S–3627, Washington, DC 20580, (202) 326–2949 or 326–2771.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

In the matter of The Scotts Company, a corporation.

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed acquisition by the Scotts Company ("Scotts") of Stern's Miracle-Gro Products, Inc. ("Miracle-Gro"), and it now appearing that Scotts, hereinafter sometimes referred to as "proposed respondent," is willing to enter into an agreement containing an order to divest certain assets and to cease and desist from making certain acquisitions, and providing for other relief:

It is hereby agreed by and between proposed respondent, by its duly authorized officers and attorney, and counsel for the Commission that:

1. Proposed respondent Scotts is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principle place of business located at 14111 Scottslawn Road, Marysville, Ohio 43041.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to the proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to divest and to cease and desist in disposition of the proceeding and (2) make information public with respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. Proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that, as used in this order, the following definitions shall apply:

A. "Respondent" or "Scotts" means the Scotts Company, its directors, officers, employees, agents and representatives, predecessors, successors and assigns, its subsidiaries, divisions, groups and affiliates controlled by the Scotts Company, and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

B. "Miracle-Gro" means Stern's Miracle-Gro Products, Inc., its predecessors, successors and assigns, its subsidiaries, divisions, groups and affiliates controlled by Stern's Miracle-Gro Products, Inc.

C. "Alljack" means Alljack & Company and Celex Corporation, their predecessors, successors and assigns, subsidiaries, divisions, groups, and affiliates.

D. "Commission" means the Federal Trade Commission.

E. The term "Water Soluble Fertilizer" means fertilizer that is sold as a powder, composed principally of nitrogen, phosphorous and potash, to be dissolved in water prior to application for use principally on houseplants, gardens, shrubs and flowers.

F. The term "Consumer Water Soluble Fertilizer" means Water Soluble Fertilizer packaged for sale in containers of less than 20 pounds.

G. The term "Peters Consumer Water Soluble Fertilizer" means Consumer Water Soluble Fertilizer sold under the Peters brand name.

H. The term "Peters Consumer Water Soluble Fertilizer Business" means all assets, properties, business and goodwill, tangible and intangible, relating to the manufacture or sale of Peters Consumer Water Soluble Fertilizer in the United States, including, without limitation, the following:

1. All Peters trademarks;

2. Inventory;

3. The right to use the same packaging and trade dress that Peters has used for Consumer Water Soluble Fertilizer, provided that the right to use the Scotts trademark is limited to the right to sell existing inventory;

4. All customer lists, distribution agreements, vendor lists, catalogs, sales promotion literature, advertising materials, research materials, technical information, inventions, trade secrets, intellectual property, patents, technology, know-how (including, but not limited to manufacturing know-how), specifications, designs, drawings, processes, quality control data, and formulas;

5. All rights, titles and interests in and to the contracts entered into in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;

6. All rights under warranties and guarantees, express or implied;

7. All books, records, and files; and

8. All items of prepaid expense.

The term "Peters Consumer Water Soluble Fertilizer Business" does not include accounts receivable, the Peters production facilities located at Allentown, Pennsylvania, the use of intangible assets (including the use of the Peters trademarks on Water Soluble Fertilizer in containers of 20 pounds or more) for the production or sale of agricultural or commercial products, or the use of the Peters trademarks on potting soil, perlite, or vermiculite.

I. The term "Peters Business" means all assets, properties, business and goodwill, tangible and intangible, relating to the manufacture or sale of all products that Scotts has sold under the Peters trademarks during the five (5) years preceding the date on which this agreement is accepted by the Commission, including, without limitation, the Allentown, Pennsylvania plant where Peters products are manufactured and including, without limitation, the following:

1. The Peters Consumer Water Soluble Fertilizer Business;

2. All machinery, fixtures, equipment, vehicles, transportation facilities, furniture, tools and other tangible personal property;

3. All customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, research materials, technical information, management information systems, software, inventions, trade secrets, intellectual property, patents, technology, know-how, specifications, designs, drawings, processes, quality control data, and assets relating to research and development;

4. Inventory and storage capacity;

5. All rights, titles and interests in and to owned or leased real property, together with appurtenances, licenses and permits;

6. All rights, titles and interests in and to the contracts entered into in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;

7. All rights under warranties and guarantees, express or implied;

8. All books, records, and files; and

9. All items of prepaid expense.

II

It is further ordered that:

A. Scotts shall divest, through sale or exclusive perpetual license, absolutely and in good faith, no later than December 31, 1995, the Peters Consumer Water Soluble Fertilizer Business as an ongoing business and shall also, at the time of such divestiture, divest such additional ancillary assets and ancillary businesses and effect such arrangements as are necessary to assure the marketability and the viability and competitiveness of the Peters Consumer Water Soluble Fertilizer Business.

B. The divestiture shall be made either—

1. No later than ten (10) days from the date this order becomes final, to Alljack, pursuant to the agreements between Scotts and Alljack, which are Confidential Appendices II and III, or

2. To an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

The purpose of the divestiture of the Peters Consumer Water Soluble Fertilizer Business is to ensure that the Peters Consumer Water Soluble Fertilizer Business continues to operate as an ongoing business in the same business in which it is engaged at the time this Agreement is accepted by the Commission and to remedy the lessening of competition resulting from the acquisition, as alleged in the Commission's complaint.

C. Pending divestiture of the Peters Consumer Water Soluble Fertilizer Business, respondent shall take such actions as are necessary to maintain the viability and marketability of the Peters Consumer Water Soluble Fertilizer Business, and to prevent the destruction, removal, wasting, deterioration, or impairment of any part of the Peters Consumer Water Soluble Fertilizer Business.

D. Unless the acquirer has its own source of supply, the devestiture shall include an agreement by Scotts (the "Supply Agreement") to supply Water Soluble Fertilizer for a period of two (2) years from the date of the divestiture required by this Paragraph II. The Water Soluble Fertilizer supplied pursuant to the Supply Agreement shall, at the option of the acquirer, be of the same chemical composition as, and of a quality equal to or greater than, the Water Soluble Fertilizer marketed by the Peters Consumer Water Soluble Fertilizer Business at the time this agreement is accepted by the Commission for comment. The Supply Agreement shall obligate Scotts to supply such Water Soluble Fertilizer at a price equal to direct cash cost of raw materials, packaging, and labor (based on expenses during the previous fiscal year), plus ten (10) percent. The Supply

Agreement shall obligate Scotts to supply annually, at a minimum, at the option of the acquirer, an amount of Water Soluble Fertilizer, in containers ready for sale or in bulk, equal to the greatest unit amount of Peters Consumer Water Soluble Fertilizer produced by or on behalf of the Peters Consumer Water Soluble Fertilizer Business during:

1. The twelve (12) months prior to the divestiture required by this Paragraph II, and

2. Each of the five (5) calendar years preceding the divestiture required by this Paragraph II.

E. The divestiture shall include a non-exclusive perpetual license, with no continuing royalty, to manufacture Peters Consumer Water Soluble Fertilizer for sale in the United States as it has been manufactured at any time during the twelve (12) months preceding the date on which this Agreement Containing Consent Order is accepted by the Commission for public comment, as well as a royalty-free license for all improvements to Peters' Water Soluble Fertilizer technology that have been made up to the time of the divestiture required by this Paragraph II. Such license shall give the acquirer the right to make any improvements to the licensed technology; provided, however, that such license need not give the acquirer rights in Scotts intellectual property that Scotts has not used in connection with Peters Consumer Water Soluble Fertilizer.

F. Respondent shall not offer Consumer Water Soluble Fertilizer (including, but not limited to, Consumer Water Soluble Fertilizer bearing the Miracle-Gro trademark) for sale using the Scotts trademark for a period of two (2) years following the divestiture required by this Paragraph II; provided, however, during that two (2) year period, Scott may continue to sell the following products using the Scotts trademark:

1. Scotts Water-Soluble Plant Food Powder, All Purpose Formula (8 ounce and 16 ounce sizes);

2. Scotts Water-Soluble Plant Food Powder, Houseplant/Foliage Formula (8 ounce and 16 ounce sizes); and

3. Scotts Water-Soluble Plant Food Powder, African Violet/Flowering Formula (8 ounce size).

G. At the time of the execution of a divestiture agreement between Scotts and a proposed acquirer of the Peters Consumer Water Soluble Fertilizer Business, Scotts shall provide the acquirer with a complete list of all Scotts employees who have spent the majority of their time on the development, distribution, marketing, or sale of Peters Consumer Water Soluble Fertilizer during the twelve (12) months prior to the date on which this agreement is accepted by the Commission. Such list shall state each such individual's name, position, address, telephone number, and a description of the duties of and work performed by the individual in connection with the Peters Consumer Water Soluble Fertilizer Business.

H. Scotts shall provide the individuals identified pursuant to Paragraph II.G. of this order with financial incentives to continue in their employment positions during the period covered by the Hold Separate Agreement, hereto attached, and to accept employment with the Commission-approved acquirer, if such employment is offered, at the time of the divestiture. Such incentives shall include:

1. Continuation of all employee benefits offered by Scotts until the date of the divestiture; and

2. A bonus equal to 25 percent of the total annual compensation of any employee who agrees to employment with the Commission-approved acquirer, payable upon the beginning of such employee's employment by the Commission-approved acquirer.

I. The divestiture agreement may protect Scott's interest in the Scotts trademark on inventory acquired by the acquirer of the Peters Consumer Water Soluble Fertilizer Business and may provide for the continued use by Scotts of the Peters trademarks for agricultural and commercial products an consumer soil products.

J. Respondent shall comply with all terms of the Agreement to Hold Separate, attached to this order and made a part hereof as Appendix I. The Agreement to Hold Separate shall continue in effect until such time as respondent has made the divestiture required by this order.

III

It is further ordered that:

A. If Scotts has not divested, absolutely and in good faith and with the Commission's prior approval, the Peters Consumer Water Soluble Fertilizer Business by December 31, 1995, the Commission may appoint a trustee to divest the Peters Consumer Water Soluble Fertilizer Business. If the trustee has not divested the Peters Consumer Water Soluble Fertilizer Business within six (6) months after the trustee's appointment, then the trustee may divest either the Peters Consumer Water Soluble Fertilizer Business or the Peters Business. In the event the Commission or the Attorney General brings an action pursuant to section 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. 45(*l*), or any other statute enforced by the Commission, Scotts shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to section 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the respondent to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III.A. of this order, respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to respondent of the identity of any proposed trustee, respondent shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Peters Consumer Water Soluble Fertilizer Business or the Peters Business.

3. Within ten (10) days after appointment of the trustee, respondent shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture of the Peters Consumer Water Soluble Fertilizer Business or the Peters Business required by this order.

4. The trustee shall have six (6) months from the date the Commission approves the trust agreement described in Paragraph III.B.3. to accomplish the divestiture of the Peters Consumer Water Soluble Fertilizer Business, which shall be subject to the prior approval of the Commission. If no acquirer of the Peters Consumer Water Soluble Fertilizer Business is approved by the Commission by the end of the six (6) month period (or at the end of any extensions to that period pursuant to this Paragraph III.B4.), then the trustee shall have twelve (12) additional months to accomplish the divestiture of the Peters Consumer Water Soluble Fertilizer Business or the Peters Business, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records, and facilities related to the Peters Consumer Water Soluble Fertilizer Business or the Peters Business, or to any other relevant information, as the trustee may request. Respondent shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by the respondent shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission, or, in the case of a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to the respondent's absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner and to the acquirer or acquirers as set out in Paragraph II of this order; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by respondent from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to employ, at the cost and expense of respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of respondent and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement (based on sales price) contingent on the trustee's divesting the Peters Consumer Water Soluble Fertilizer Business or the Peters Business.

8. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III.A. of this order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture of the Peters Consumer Water Soluble Fertilizer Business or the Peters Business required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the Peters Consumer Water Soluble Fertilizer Business or the Peters Business.

12. The trustee shall report in writing to respondent and the Commission every sixty (60) days concerning the trustee's efforts to accomplish the divestiture.

IV

It is further ordered that, for a period of ten (10) years from the date this order becomes final, respondent shall not without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any stock, share capital, equity, or other interest in any concern, corporate or non-corporate, engaged in at the time of such acquisition, or within the two years preceding such acquisition engaged in the sale of Consumer Water Soluble Fertilizer in the United States; or

B. Acquire any assets used for or previously used for (and still suitable for) the sale of Consumer Water Soluble Fertilizer in the United States; provided, however, that prior approval shall not be necessary for the acquisition of assets used to manufacture Consumer Water Soluble Fertilizer, the acquisition of assets in the ordinary course of business, or the acquisition of assets valued at less than $100,000 from the same person within any twelve (12) month period.

V

It is further ordered that within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until respondent has fully complied with the divestiture provisions of Paragraphs II and III of this order, respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraphs II and III of this order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II and III of the order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Respondent shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture; provided, however, that respondent is not obligated to produce copies of documents subject to any legally recognized privilege.

VI

It is further ordered that one (1) year from the date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order becomes final, and at such other times as the Commission may require, respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with Paragraphs II and IV of this order.

VII

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed

change in the corporate respondent such as dissolution, assignment sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the order.

VIII

It is further ordered that, for the purpose of determining or securing compliance with this order, and subject to any legally recognized privilege, upon request, respondent shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this order; and

B. Upon five (5) days notice to respondent, with respondent's counsel present, and without restraint or interference, to interview officers, employees, or agents of respondent.

AGREEMENT TO HOLD SEPARATE

In the matter of The Scotts Company, a corporation.

[File No. 951–0056]

This Agreement to Hold Separate ("Hold Separate") is by and between the Scotts Company ("Scotts"), a corporation organized, existing, and doing business under and by virtue of the laws of Ohio, with its office and principal place of business at 14111 Scottslawn Road, Marysville, Ohio 43041 and the Federal Trade Commission ("the Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (collectively the "Parties").

Premises

Whereas, on January 26, 1995, Scotts entered into an Agreement and Plan of Merger with Stern's Miracle-Gro Products, Inc. ("Miracle-Gro") to acquire all of the voting securities of Miracle-Gro in exchange for voting securities of Scotts (hereinafter the "Acquisition");I21*Whereas,* Scotts is a leading producer and marketer of consumer lawn care products, including consumer water soluble fertilizer under the Peters brand name;

Whereas, Miracle-Gro, with its principal office and place of business located at 800 Port Washington Blvd., Port Washington, New York 11050 is the leading marketer of water soluble fertilizer in the United States;

Whereas, the Commission is now investigating the Acquisition to determine whether it would violate any of the statutes enforced by the Commission;

Whereas, if the Commission accepts the Agreement Containing Consent Order ("Consent Order"), the Commission must place it on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules;

Whereas, the Commission is concerned that if an understanding is not reached, preserving the status quo ante of the Peters Consumer Water Soluble Fertilizer Business (as defined in Paragraph I of the Consent Order) and Miracle-Gro during the period prior to the final acceptance of the Consent Order by the Commission (after the 60-day public comment period), divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy;

Whereas, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of the Peters Consumer Water Soluble Fertilizer Business, the Peters Business, or Miracle-Gro and the Commission's right to have the Peters Consumer Water Soluble Fertilizer Business, the Peters Business, and Miracle-Gro continue as viable competitors;

Whereas, the Commission is concerned that the exchange of competitively sensitive information between persons operating and managing Miracle-Gro, the Peters Business, and the Peters Consumer Water Soluble Fertilizer Business may lessen the competitive viability of any divestiture if the Commission accepts the proposed Consent Order and makes it final;

Whereas, the purposes of the Hold Separate and the Consent Order are:

1. To preserve the Peters Consumer Water Soluble Fertilizer Business, the Peters Business, and Miracle-Gro as viable, independent businesses pending the Commission's final approval of the Consent Order and the divestiture of a viable and ongoing enterprise,

2. To remedy any anticompetitive effects of the Acquisition,

3. To preserve the Peters Consumer Water Soluble Fertilizer Business, the Peters Business, and Miracle-Gro as ongoing and competitive entities engaged in the same business in which they are presently employed until the Commission gives final approval to the Consent Order and the divestiture is achieved, and

4. To protect the competitive viability of Miracle-Gro, the Peters Business, and the Peters Consumer Water Soluble Fertilizer Business by preventing the exchange of competitively sensitive information among persons managing or operating those businesses;

Whereas, Scotts' entering into this Hold Separate shall in no way be construed as an admission by Scotts that the Acquisition is illegal;

Whereas, Scotts understands that no act or transaction contemplated by this Hold Separate shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Hold Separate:

Now, Therefore, the parties agree, upon the understanding that the Commission has not yet determined whether the acquisition will be challenged, and in consideration of the Commission's agreement that it will not seek further relief from Scotts with respect to the Acquisition if the Consent Order is made final, except that the Commission may exercise any and all rights to enforce this Hold Separate, the Consent Order to which it is annexed and made a part thereof and the Order, once it becomes final, and in the event that the required divestiture is not accomplished, to appoint a trustee to seek divestiture of the Peters Consumer Water Soluble Fertilizer Business or the Peters Business pursuant to the Consent Order, as follows:

1. Scotts agrees to execute and be bound by the Consent Order.

2. To ensure the complete independence and viability of the Peters Consumer Water Soluble Fertilizer Business, the Peters Business, and Miracle-Gro and to assure that no competitive information is exchanged between Miracle-Gro and either the Peters Consumer Water Soluble Fertilizer Business or the Peters Business, Scotts shall hold Miracle-Gro separate and apart as it is presently constituted, from the date this Hold Separate is accepted until the earlier of the completion of the divestiture obligations required by the Consent Order or three (3) days after the Commission withdraws its acceptance of the Consent Order pursuant to § 2.34 of the Commission's rules, on the following terms and conditions:

a. Except as required by law, and except to the extent that necessary information is exchanged in defending investigations or litigation, obtaining legal advice, or complying with this Hold Separate or the Consent Order, Scotts (including, but not limited to, any officer, director, employee, or agent of Scotts) shall not receive or have access to, or the use of, any material confidential information of Miracle-Gro or the activities of the board of directors of Miracle-Gro (the "Miracle-Gro Board") not in the public domain that relates to Water Soluble Fertilizer, nor shall Miracle-Gro (including, but not limited to, any officer, director, employee or agent of Miracle-Gro) receive or have access to, or the use of, any material confidential information of Scotts or the activities of the board of directors of Scotts (the "Scotts Board") not in the public domain that relates to Water Soluble Fertilizer; provided, however, after the Consent Order is made final, Scotts and Miracle-Gro may exchange information concerning Water Soluble Fertilizer sold outside the United States. Scotts may receive on a regular basis from Miracle-Gro aggregate financial and other information necessary to allow Scotts to file financial reports, tax returns, personnel reports, and reports with the Securities and Exchange Commission. Any such information that is obtained pursuant to this subparagraph shall be used only for the purpose set forth in this subparagraph. ("Material confidential information," as used herein, means competitively sensitive or proprietary information not independently known to Scotts from sources other than Miracle-Gro or the Miracle-Gro Board and includes but is not limited to customer lists, price lists, prices, marketing methods, advertising plans,

patents, technologies, processes, or other trade secrets.)

b. Except as expressly provided in this Hold Separate, all manufacturing, sales, licensing, and other business relationships relating to Water Soluble Fertilizer between Scotts and Miracle-Gro shall be conducted at arm's length and on commercial terms available to other persons. Furthermore, Scotts and Miracle-Gro may not integrate or coordinate the marketing of the products of Scotts and Miracle-Gro.

c. Scotts shall circulate a notice of this Hold Separate and Consent Order, in the form attached hereto as Attachment A, to the management employees (including, but not limited to, officers) of Scotts and Miracle-Gro (including, but not limited to, members of the board of directors of Scotts (the "Scotts Board") and members of board of directors of Miracle-Gro (the "Miracle-Gro Board"), as well as to any employees or agents of Scotts or Miracle-Gro who participate directly or indirectly in managing or operating any business affected by this Hold Separate or the Consent Order. Scotts shall also appropriately display a notice of this Hold Separate and Consent Order in the form attached hereto as Attachment A.

d. Scotts shall report in writing to the Commission every sixty (60) days concerning Scott's efforts to accomplish the purposes of this Hold Separate.

e. Scotts shall maintain the marketability, viability, and competitiveness of the Peters Consumer Water Soluble Fertilizer Business and the Peters Business, and shall not cause or permit the destruction, removal, wasting, deterioration, or impairment of any assets or business it may have to divest except in the ordinary course of business and except for ordinary wear and tear, and Scotts shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair the marketability, viability or competitiveness of the Peters Consumer Water Soluble Fertilizer Business or the Peters Business.

f. Scotts shall continue to provide to the Peters Business and the Peters Consumer Water Soluble Fertilizer Business such support services as it provided during the twelve (12) months and the calendar year prior to the acceptance of the Consent Order by the Commission. The Peters Business and the Peters Consumer Water Soluble Fertilizer Business shall be staffed with sufficient employees to maintain the viability and competitiveness of the Peters Business and the Peters Consumer Water Soluble Fertilizer Business, which employees shall be the employees of the Peters Business or Peters Consumer Water Soluble Fertilizer Business that have managed and operated the Peters Business and the Peters Consumer Water Soluble Fertilizer Business during the twelve (12) months prior to the Commission's acceptance of Consent Order by the Commission and may also be hired from sources other than the Peters Business or the Peters Consumer Water Soluble Fertilizer Business. The compensation of the management employees of the Peters Business and the Peters Consumer Water Soluble Fertilizer Business shall be based in significant part on the sales of the Peters Business or the Peters Consumer Water Soluble Fertilizer Business, as applicable. Scotts shall facilitate the efforts of the Peters Business and the Peters Consumer Water Soluble Fertilizer Business to promote Peters products (including, but not limited to Peters Consumer Water Soluble Fertilizer products) to retailers, both at trade shows and otherwise, pending the divestiture required by the Consent Order. Scotts' obligation to facilitate those efforts shall include, without limitation, permitting the Peters Business and the Peters Consumer Water Soluble Fertilizer Business to participate either with Scotts or independently in all industry trade shows. Scotts shall provide the Peters Business and the Peters Consumer Water Soluble Fertilizer Business with any funds to accomplish the foregoing.

g. Scotts shall cause the Peters Consumer Water Soluble Fertilizer Business to expend in 1995 at an annual rate at least equal to the funds expended for 1993 or 1994 (whichever is greater) for advertising and promotion of Peters Consumer Water Soluble Fertilizer during 1995 and shall cause the Peters Consumer Water Soluble Fertilizer Business to increase such spending as reasonably necessary in light of competitive conditions. If the Peters Consumer Water Soluble Fertilizer Business is not divested by December 31, 1995, then Scotts shall thereafter cause the Peters Consumer Water Soluble Fertilizer Business to expend for advertising and promotion of Peters Consumer Water Soluble Fertilizer at an annual rate of no less than 200 percent of the amount expended for 1995 for that purpose until such time as divestiture has been accomplished.

h. The Peters Business shall be staffed with sufficient employees to maintain the viability and competitiveness of the Peters Business, which employees shall be the employees of the Peters Business that have managed and operated the Peters Business during the twelve (12) months prior to the Commission's acceptance of Agreement by the Commission and may also be hired from sources other than the Peters Business. Each Peters Business management employee shall execute a confidentiality agreement prohibiting the disclosure of any confidential information of the Peters Business.

3. Scotts agrees that it will comply with the provisions of this Paragraph 3 of this Hold Separate, in addition to the terms and conditions in Paragraph 2, from the date this Hold Separate is accepted until the earlier of the Commission's final approval of the Consent Order or three (3) days after the Commission withdraws its acceptance of the Consent Order pursuant to Section 2.34 of the Commission's Rules:

a. All earnings and profits of Miracle-Gro shall be retained separately by Miracle-Gro. Miracle-Gro shall be held separate and apart and shall be operated independently of Scotts except to the extent that Scotts must exercise direction and control over Miracle-Gro to assure compliance with this Agreement or the Consent Order. Except as expressly provided in this Hold Separate, all manufacturing, sales, licensing, and other business relationships between Scotts and Miracle-Gro shall be conducted at arm's length and on commercial terms available to other persons.

b. Except as required by law, and except to the extent that necessary information is exchanged in defending investigations or litigation, obtaining legal advice, or complying with this Hold Separate or the Consent Order, Scotts (including, but not limited to, any officer, director, employee, or agent of Scotts) shall not receive or have access to, or the use of, any material confidential information of Miracle-Gro or the activities of the Miracle-Gro Board not in the public domain, nor shall Miracle-Gro (including, but not limited to, any officer, director, employee or agent of Miracle-Gro) receive or have access to, or the use of, any material confidential information about the Peters Consumer Water Soluble Fertilizer Business or the Peters Business not in the public domain. Scotts may receive on a regular basis from Miracle-Gro aggregate financial and other information necessary to allow Scotts to file financial reports, tax returns, personnel reports, and reports with the Securities and Exchange Commission. Any such information that is obtained pursuant to this subparagraph shall be used only for the purpose set forth in this subparagraph.

c. Scotts shall not change the composition of the Miracle-Gro Board and, except as expressly provided in this Hold Separate, Scotts shall not change the composition of the management of Miracle-Gro (except that the Miracle-Gro Board shall have the power to remove management employees for cause) and members of the Miracle-Gro Board shall not serve as officers, directors, employees, or agents of Scotts. Scotts shall not exercise direction or control over, or influence directly or indirectly, Miracle-Gro or the Miracle-Gro Board; provided, however, Scotts may exercise only such direction and control as is necessary to assure compliance with this Hold Separate, the order and with all applicable laws. Meetings of the Scotts Board and meetings of the Miracle-Gro Board shall be audio recorded and the recording retained for two (2) years after the termination of the Hold Separate. Notwithstanding, in order to maintain Miracle-Gro's value, Scotts may direct the management of Miracle-Gro with regard to the following matters: investment decisions relating to Miracle-Gro's cash, decisions relating to the handling of claims and litigation, proposed acquisitions and divestitures outside of the ordinary course of business, and changes in Miracle-Gro's corporate structure.

d. The Chairman of the Miracle-Gro Board shall have the power to remove members of the Miracle-Gro Board for cause and to require Scotts to appoint replacement members to the Miracle-Gro Board who are not officers, directors, employees, or agents of Scotts. If the Chairman of the Miracle-Gro Board ceases to act or fails to act diligently, a substitute chairman shall be appointed from among the members of the Miracle-Gro Board.

e. If necessary, Scotts shall provide Miracle-Gro with sufficient working capital to maintain the same level of sales as during the twelve (12) months preceding the date of the Hold Separate.

f. All material transactions of Miracle-Gro, out of the ordinary course of business and not precluded by this Hold Separate, shall be subject to a majority vote of the Miracle-Gro Board. The Miracle-Gro Board shall serve at the cost and expense of Scotts. Scotts shall indemnify the Miracle-Gro Board against any losses or claims of any kind that might arise out of its involvement under this Hold Separate, except to the extent that such losses or claims result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Miracle-Gro Board directors.

g. Scotts shall take all reasonable steps, consistent with the other provisions of this Hold Separate, to maintain the marketability, viability, and competitiveness of Miracle-Gro, and not to cause or permit the destruction, removal, wasting, deterioration, or impairment of any assets or business it may have to divest except in the ordinary course of business and except for ordinary wear and tear, and Scotts shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair the marketability, viability or competitiveness of Miracle-Gro.

4. Should the Federal Trade Commission seek in any proceeding to compel Scotts to divest itself of the Peters Consumer Water Soluble Fertilizer Business, the Peters Business, Miracle-Gro, or any additional assets, or to seek any other equitable relief, Scotts shall not raise any objection based on the expiration of the applicable Hart-Scott-Rodino Antitrust Improvement Act waiting period or the fact that the Commission has permitted the Acquisition. Scotts also shall waive all rights to contest the validity of this Hold Separate.

5. For the purpose of determining or securing compliance with this Hold Separate, subject to any legally recognized privilege, and upon written request with reasonable notice to Scotts made to its General Counsel, Scotts, the Peters Consumer Water Soluble Fertilizer Business, the Peters Business, and Miracle-Gro shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of Scotts, the Peters Consumer Water Soluble Fertilizer Business, the Peters Business, or Miracle-Gro and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Scotts, the Peters Consumer Water Soluble Fertilizer Business, the Peters Business, or Miracle-Gro relating to compliance with this Hold Separate;

b. Upon five (5) days notice to Scotts, the Peters Consumer Water Soluble Fertilizer Business, the Peters Business, or Miracle-Gro and without restraint or interference from it, to interview officers or employees of Scotts, the Peters Consumer Water Soluble Fertilizer Business, the Peters Business, or Miracle-Gro, which officers or employees may have counsel present, regarding any such matters.

6. This Hold Separate shall not be binding until approved by the Commission.

Attachment A—Notice of Divestiture and Requirement for Confidentiality

The Scotts Company ("Scotts") has entered into an Agreement Containing Consent Order ("Consent Order") and an Agreement to Hold Separate with the Federal Trade Commission ("Commission") relating to the divestiture of the Peters Consumer Water Soluble Fertilizer Business or the Peters Business. Until after the Commission's order becomes final and the Peters Consumer Water Soluble Fertilizer Business or the Peters Business is divested, Stern's Miracle-Gro Products, Inc. ("Miracle-Gro") must be managed and maintained as a separate, ongoing business, independent of all other Scotts businesses. All competitive information relating to Miracle-Gro must be retained and maintained on a confidential basis by the persons involved in Miracle-Gro, and such persons are prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any other Scotts business, including the Peters Consumer Water Soluble Fertilizer Business or the Peters Business.

Any violation of the Agreement Containing Consent Order or the Agreement to Hold Separate, incorporated by reference as part of the Agreement to Hold Separate, incorporated by reference as part of the Agreement Containing Consent Order, may subject Scotts to civil penalties and other relief as provided by law.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Order ("Agreement") from the Scotts Company ("Scotts").

The proposed Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the Agreement and the comments received and will decide whether it should withdraw from the Agreement or make final the Agreement's proposed Order.

Scotts has proposed to acquire the outstanding voting securities of Stern's Miracle-Gro Products, Inc. ("Miracle-Gro") in exchange for voting securities of Scotts. Scotts and Miracle-Gro value the transaction at approximately $200 million. The proposed complaint alleges that the merger, if consummated, would violate section 7 of Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

The complaint alleges that Scotts and Miracle-Gro compete in the market for water soluble fertilizer for United States consumer use. Scotts sells consumer water soluble fertilizer under the Peters brand name, while Miracle-Gro sells consumer water soluble fertilizer under the Miracle-Gro brand name. The proposed complaint alleges that the merger would significantly increase concentration in an already highly concentrated market, combining a firm with a 70 percent market share and a firm with a six to seven percent market share. The proposed complaint also alleges that timely entry on a competitively meaningful scale would require a significant sunk investment in advertising. Entry is likely to require a significant amount of time because of the seasonal nature of the consumer lawn and garden industry and consumer reluctance to try new fertilizer brands. The proposed complaint concludes that the merger would increase the likelihood of unilateral anticompetitive behavior by the merged firm, because Miracle-Gro consumer water soluble fertilizer is the closest substitute for Peters consumer water soluble fertilizer. In addition, the complaint alleges that the merger would increase the likelihood of coordinated interaction among marketers of consumer water soluble fertilizer.

The proposed Order would remedy the alleged violation by replacing the lost competition that would result from the merger of Scotts and Miracle-Gro. The proposed Order would require Scotts to divest the Peters consumer water soluble fertilizer business, including the exclusive right to sell products to consumers under the Peters brand name. The divestiture is to be made either (1) to Alljack & Co. or (2) to an acquirer approved by the Commission. In order to ensure that the acquirer would be able to step quickly into Scotts' shoes in marketing Peters water soluble fertilizer, the proposed Order requires Scotts to divest its inventory and to enter into an interim year supply agreement with the acquirer. After the expiration of the supply agreement, the acquirer will be able to either manufacture or to have a supplier manufacture water soluble fertilizer identical to the water soluble fertilizer supplied by Scotts under the supply agreement. The proposed Order prohibits Scotts from putting the Scotts brand name on water soluble fertilizer for consumer use for a period of two (2) years to prevent activity that might undermine the Peters brand for a reasonable transition period after the divestiture.

A Hold Separate Agreement signed by Scotts provides that Miracle-Gro will be operated independently of Scotts, pending the Commission's final approval of the proposed Order. The Hold Separate Agreement also requires Scotts to maintain the viability of the Peters consumer water soluble fertilizer business and limits the exchange of certain information pending divestiture.

The proposed Order provides that Scotts shall divest the Peters consumer water soluble fertilizer business no later than December 31, 1995. If Scotts does not divest the Peters consumer water soluble fertilizer business during the allotted time period, then a trustee may be appointed to divest the business. If the trustee does not divest the business within six (6) months, then the trustee may divest the entire Peter business (consisting of all consumer and professional horticultural products sold under the Peters brand name, as well as the assets needed to manufacture and sell those products) within a twelve (12) month period. The proposed Order requires Scotts to submit a report of compliance with the proposed Order's divestiture requirements within sixty (60) days following the date the proposed Order becomes final, and every sixty (60) days thereafter until Scotts has completed the divestiture.

Finally, the proposed Order prohibits Scotts from acquiring any interest in any other company engaged in the sale of water soluble fertilizer for consumer use, without prior approval from the Commission, for a period of ten (10) years.

The purpose of this analysis is to facilitate public comment on the proposed Order. This analysis is not intended to constitute an official interpretation of the Agreement or the proposed Order or in any way to modify the terms of the Agreement or the proposed Order.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 95–14693 Filed 6–14–95; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Intent To Prepare an Environmental Impact Statement for the Development of a Clifton Road Campus Annex for the Centers for Disease Control and Prevention, Atlanta, Georgia

Pursuant to the requirements of the National Environmental Policy Act (NEPA) of 1969, and the President's Council on Environmental Quality Regulations (40 CFR 1500–1508), as implemented by General Services Administration (GSA) Order PBS P 1095.4B, GSA announces its intent to prepare an Environmental Impact Statement (EIS) for the long-term development of a campus annex (West Campus) to house the Centers for Disease Control and Prevention (CDC).

The EIS will examine the short and long term impacts on the natural and built environments of developing and operating a mix of laboratory, office, and support space at the proposed West Campus. Potential impact assessment areas include but are not limited to air, water, public facilities & infrastructure, plant & animal life, transportation systems, parking, and community & economic issues.

The EIS will also examine measures to mitigate unavoidable adverse impacts of the proposed action. Concurrent with NEPA implementation, GSA will also implement its consultation requirements under Section 106 of the National Historic Preservation Act to determine the potential impacts of the proposed action on historic & cultural resources.

CDC's existing Main Campus occupies 27.6 acres, and is bounded by Clifton Road to the north, Michael Street to the south and east, and Clifton Way to the west.

CDC currently occupies approximately 884,000 gross square feet in 17 buildings, housing some 1,900 personnel. Approximately 60 percent of gross square footage consists of laboratory space, the remainder being office, administrative, and facility support space. There are approximately 1,800 parking spaces on site.

To meet CDC's known facility replacement needs, and to provide future expansion space, GSA proposes to acquire and develop approximately 16.8 acres bounded by Clifton Road to the north, Clifton Way to the east, and Michael Street to the south and west (West Campus). The maximum anticipated development over a twenty year planning horizon is approximately 633,000 additional gross square feet of laboratory, office, and support space, and 2,300 parking spaces.

GSA has identified the following alternatives to be examined in the EIS:

- "No Action," that is, undertake no site acquisition and development at all.
- Development of the proposed West Campus Site, previously described in this Notice. This is the GSA/CDC preferred alternative.
- Development of the proposed West Campus housing requirements on the Main Campus.

GSA may examine alternative levels of development based on CDC's known and projected requirements in response to public comments received during the NEPA analysis period.

As part of the public scoping process, GSA encourages you to contact us in writing at the following address with your concerns regarding the proposed action: Mr. George Chandler, Technical Services Team Leader, PBS Portfolio Management—4PT, 401 West Peachtree Street, NW, Suite 3000, Atlanta, GA 30365, or, FAX your comments to Mr. Chandler at 404–331-4540. Comments should be postmarked no later than July 9, 1995.

GSA intends to conduct a Public Scoping Meeting to solicit comments, and to address general questions concerning the proposed action and NEPA. GSA will place a Notice of this and all subsequent public meetings and document releases concerning the proposed action in the Atlanta Journal-Constitution approximately two weeks prior to the event. GSA will notify persons and organizations on our mailing list by mail. Persons who wish to be added to the mailing list should write or FAX GSA as indicated in this Notice.

Dated: June 1, 1995.

Jimmy H. Bridgeman,

Assistant Regional Administrator, Public Buildings Service.

[FR Doc. 95–14613 Filed 6–14–95; 8:45 am]

BILLING CODE 6820–23–M

Intent To Prepare an Environmental Impact Statement for the Fresno United States Courthouse, CA

AGENCY: General Services Administration.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) for a new United States Courthouse.

SUMMARY: The action to be evaluated by this EIS is the construction of a new United States Courthouse in Fresno, California. The facility will be located on an approximately 4.5 acre site and includes construction of 392 subterranean and surface parking spaces.

ALTERNATIVES: The EIS will evaluate four alternative sites. Three of the sites are located in the downtown area of the city while the fourth is located in north Fresno. In addition, as required by the National Environmental Policy Act (NEPA), the EIS will also analyze the "No Action" alternative as a baseline for gauging the impacts of not building a new courthouse.

PUBLIC INVOLVEMENT: The public will be invited to participate in reviewing the Draft EIS and a public meeting that will be held at the City of Fresno Council's Chambers, 2600 Fresno Street in Fresno, California from 4:30 p.m. to 7:00 p.m. on June 16, 1995. A copy of the DEIS is available for public review at the Fresno County Library, 2420 Mariposa Street in Fresno, and at GSA's Field Office at the B.F. Sisk Federal Building—United

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

States Courthouse, 1130 'O' Street in Fresno.

POINT OF CONTACT: Mr. Javad Soltani, Asset Manager, United States General Services Administration, The Pacific Rim Region, at (415) 744–5255.

Dated: June 6, 1995.

Aki K. Nakao,

Deputy Regional Administrator.

[FR Doc. 95–14614 Filed 6–14–95; 8:45 am]

BILLING CODE 4820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Child Welfare Waiver Demonstrations Pursuant to Section 1130 of the Social Security Act (the Act); Titles IV–E and IV–B of the Act; Public Law 103–432

AGENCY: Administration on Children, Youth and Families (ACYF), ACF, DHHS.

ACTION: Public notice.

SUMMARY: This public notice announces that the Department of Health and Human Services (Department) is seeking proposals on child welfare demonstration projects and informs interested parties of (1) the principles the Department will consider in exercising its discretion to approve or disapprove demonstration projects under the authority in section 1130 (b) (of Part A of title XI) of the Social Security Act, added by Pub. L. 103–432; (2) the procedures the Department expects States to employ in involving the public in the development of proposed demonstration projects under section 1130; and (3) the procedures the Department will follow in receiving demonstration proposals. The principles and procedures described in the public notice are being provided for the information of interested parties and are not legally binding on the Department. This notice does not create any right or benefit, substantive or procedural, enforceable at law or equity, by any person or entity, against the United States, its agencies or instrumentalities, the States, or any other person.

FOR FURTHER INFORMATION CONTACT: Michael W. Ambrose, Children's Bureau, Administration on Children, Youth and Families, HHS at (202) 205–8740.

SUPPLEMENTARY INFORMATION:

I. Introduction

Demonstration Proposals Pursuant to Section 1130 of the Social Security Act—General Policies and Procedures

Under section 1130, the Department of Health and Human Services is given authority to permit as many as ten States to conduct demonstration projects which involve the waiver of certain requirements of titles IV–B and IV–E, the sections of the Social Security Act which govern foster care, adoption assistance, independent living, child welfare services, family preservation and support, and related expenses for program administration, training, and automated systems.

The Department desires to facilitate the testing of new approaches to the delivery of a broad range of child welfare services. Such demonstrations can provide valuable knowledge that will help lead to improvements in the delivery, effectiveness and efficiency of services. The Department is committed to both a thorough and an expeditious review of State requests to conduct such demonstrations.

In exercising her discretionary authority, the Secretary has developed a number of policies and procedures for reviewing proposals. In order to ensure a sound, expeditious and open decision-making process, the Department will be guided by the policies and procedures described in this statement in accepting and reviewing proposals submitted pursuant to Section 1130.

II. Background

The child welfare system is in a period of great crisis and great challenge. Current social and economic forces are placing enormous pressures and stresses on children and families and on the professionals and agencies that serve them. Rising rates of child and family poverty, a greater number of teen pregnancies, the substance abuse and AIDS epidemics and the increasing levels of interpersonal and community violence have resulted in a loss of family strength and unity and increasing multiple challenges to very fragile families. These issues have resulted in increasing caseloads, consisting of much more complex family problems. Community and State agencies with limited resources are struggling to address these issues.

New, creative efforts are needed to stimulate meaningful changes in the delivery of child welfare services and foster more effective methods of service delivery to children and families. Throughout the country, local and State child welfare agency administrators are developing innovative responses to these circumstances. Knowledgeable child welfare professionals are developing new solutions to these challenges even when faced with insufficient resources. In order to meet the existing service needs of families with diminishing resources, more flexibility is needed in devising service programs.

In addition, a wide range of efforts is underway to foster more effective working relationships among Federal, State and local governments which will strengthen Federal-State partnerships in developing a responsive child welfare service delivery system. This new partnership is an integral part of several programs administered by the Administration for Children and Families (ACF). For example, the Family Preservation and Support Services program (Subpart 2 of title IV–B of the Social Security Act) provides funds to assist States in assessing the needs of children and families, re-examining the States' systems for meeting such needs, and developing a five-year plan for the implementation of family preservation and support services and for the accomplishment of systems change. The Family Preservation and Support planning process is designed to involve all the stakeholders and other appropriate parties in an effort to improve services for children and families.

Another aspect of the Family Preservation and Support effort provides funds for State Courts to assess their role in responding to the needs of children and families, and develop improvement plans based on these self-assessments. The Statewide Automated Child Welfare Information System (SACWIS) provides funds, at the rate of 75 percent Federal share, for the development or expansion of child welfare information systems which will help States link child welfare program data and operations with other programs, especially AFDC and child abuse and neglect programs.

Another key example of the Department's efforts to foster more effective working relationships is the development of a new outcomes-based approach to child welfare monitoring. Several States have agreed to participate with ACF in the conduct of monitoring pilot tests during fiscal year 1995.

General Considerations

Principles

The implementation of the Child Welfare Waiver Demonstration Project will be guided by the principles

enumerated below. Projects conducted under this waiver authority must according to statute:

- Be consistent with the purposes of titles IV-B and IV-E of the Social Security Act in providing child welfare services, including foster care and adoption, that is:

—Assure the safety of children and protect the rights of children and their families; and

—Ensure permanency for children through intensive family preservation and support or through reunification or adoption efforts;

- Be cost neutral to the federal government for the duration of the project period; and
- Ensure that benefit eligibility to a qualified child or family will not be impaired.

In addition, the demonstration project should also be guided by the following principles:

- Focus on improving outcomes for children and families and the efficacy with which services are provided;
- Be open to public scrutiny at the local, State and Federal levels, and be based upon broad consultation and full opportunity for public comment;
- Provide services in which the level of State intrusion into family life is consistent with the seriousness of the risks to family members;
- Comply with appropriate civil rights statutes and regulations; and
- Present a policy-relevant hypothesis that is testable by a well-designed evaluation plan.

Objectives

In implementing the waiver demonstrations, the Administration for Children and Families proposes to encourage States to test programmatic hypotheses which accomplish certain service delivery program goals. Some of the general objectives to be considered by the States in developing their demonstration projects may include the following:

- Development of family focused, strengths-based, community-based service delivery networks that enhance the child-rearing abilities of families to enable them to remain safely together in their homes whenever possible;
- Better results for children and families, such as: Better assuring the safety and protection of children; enhancing and enriching child development; strengthening family functioning and averting family crises; providing early intervention to avoid out-of-home placement; reducing the time that children are separated from their families; speeding the process by which children who cannot return home are freed for adoption and adopted; or preparing young people in foster care for independent living;
- Knowledge which, when confirmed by rigorous evaluation, can be employed by other States and Federal policymakers to improve outcomes for children and families or increase efficiency or both;
- Innovation and State demonstrations of the benefits available from thoughtful initiatives developed at the State or local level; and
- Information and experience on which to base legislative changes.

Also, in the testing of new program approaches to the delivery of child welfare services, the Department will consider proposals which involve parallel projects of title IV-A (AFDC) waivers. Associated title IV-A waiver requests must be included in the proposal for titles IV-B and E waivers. However, cost neutrality must be measured for titles IV-B and E separately from the cost neutrality calculations associated with other waivers.

While the Department expects to review a range of proposals, it may disapprove or limit proposals on policy grounds or because the proposal creates potential constitutional problems or violations of civil rights laws or equal protection requirements. The Department seeks proposals which enhance the quality of and access to services. Within this overall policy framework, the Department is prepared to:

—Grant waivers to test the same or related policy innovations in multiple States (replication is a valid mechanism by which changes can be assessed); and

—Approve waiver demonstration projects ranging in scale from reasonably small to statewide.

Because this waiver authority must be limited to ten States, the Department will give preference to proposals which would test policy alternatives which are unique; which differ in their approach to serving families and children; and which differ in significant ways from other proposals. However, the Department encourages States which may be planning to propose demonstration projects which are similar to each other, to consider collaborating on the design of the projects and their evaluations, to produce a test of the same demonstration project in diverse settings.

Provisions Not Subject To Waiver

Section 1130 (b)(1) excludes certain provisions of titles IV–E and IV–B from waiver. They are:

A. Certain protections for children in foster care and their families, formerly required by section 427 of the Social Security Act (now section 422(b)(9), which will become effective April 1, 1996, will make those protections an element of a State's Child Welfare Services State Plan). These protections are fully explained in section 475 of the Act. This excludes from waiver: (1) All the protections having to do with periodic reviews of the status and progress of foster care cases; (2) dispositional hearings to determine or confirm the future plan for the child and to determine whether an independent living plan is needed for older children in care; (3) requirements that certain information be contained in a child's case plan; (4) protections for the child such as requirements that the placement be the most family-like setting and in close proximity to the parents' home; and (5) protections for the family such as procedural safeguards to assure that parental rights are respected.[1]

B. Section 479 which establishes the Adoption and Foster Care Data collection requirements.

C. Any provision of title IV–E to the extent that a waiver would impair the entitlement of any qualified child or family to benefits including the provisions of sections 471 (a)(8) and (12) which provide for confidentiality and fair hearings, respectively.

All other provisions are available to be waived. (See Appendix I for a brief listing of possible waivable provisions. This listing should be considered only as a list of possible suggestions and not an all-encompassing list of possible waivers.)

III. Duration

Section 1130 (d) of the Social Security Act limits the duration of the waiver demonstration to not more than five years. The Department will consider demonstrations with a duration of less than five years, and will work with States to:

- Approve waivers of sufficient duration to give new approaches a fair test. The duration of waiver approval should be commensurate with the magnitude and complexity of the

[1] While the *documentation* often associated with section 427 protections is not a statutory requirement, and therefore needs no waiver, some States may be interested in proposing alternative, less burdensome methods of assuring compliance with the law. The Department would entertain such alternative methods, even if no formal waiver is required.

project. For example, a large-scale statewide program may require the full five years. Smaller projects, for example a one-to several county demonstration effort, may demonstrate their effectiveness and utility in a shorter timeframe;

♦ Provide reasonable time for the preparation of meaningful evaluation results of the demonstration project; and

♦ Determine a reasonable start date for the project recognizing that new approaches often involve considerable start-up time.

Prior to final approval, negotiated agreements will be established between the State and the Department which include provisions to cancel/suspend/modify the demonstration project: (1) If it is determined that, in the conduct of the project, appropriate and sufficient services cannot be provided to eligible participants or the safety and protection of children would be jeopardized; or (2) for any other reason deemed adequate and sufficient for suspension/cancellation by the State or the Department.

IV. Evaluation

Section 1130 (f) requires that each State authorized to conduct a waiver demonstration project obtain an evaluation by an independent contractor to assess the effectiveness of the project. The evaluation plan, at a minimum, must provide for:

(1) A comparison of outcomes for children and families, and groups of children and families, under the project and such outcomes under an existing State plan or plans, for purposes of assessing the effectiveness of the project in achieving program goals; and

(2) A comparison of methods of service delivery under the project and such methods under a State plan or plans, with respect to efficiency, economy and any other appropriate measures of program management.

Section 1130 (e)(1) requires the proposal to describe both the children and families who would be served by the waiver demonstration project and the services which would be provided. The Department is committed to testing a range of program strategies. The Department encourages, where appropriate, that the proposal provide for random assignment of children and families to groups served under the project and control groups, but is open to various other evaluation techniques. For example, in a proposed demonstration effort that would necessarily affect 100% of the population to be served, a random assignment methodology would not be appropriate.

The Department is also eager to ensure that the evaluation process be as unintrusive as possible to the clients in terms of implementing and operating the approach to be demonstrated, while ensuring that critical lessons are learned from the demonstration effort.

If the State proposes an alternative to random assignment, the proposal must include a justification explaining why random assignment is not appropriate and how the alternative methodology will meet evaluation needs.

The evaluation design must include a clear statement of the evaluation questions.

The State demonstration project managers must meet with Department staff within 30 days after project approval to finalize the evaluation design and reporting schedule and make changes, as necessary. In general, the Department will require an evaluation update report at 12 months; an Interim Evaluation Report to be submitted within 30 months after project start-up; another update report at 48 months; and a Final Evaluation Report to be submitted 90 days after the project ends.

The costs of the required independent evaluation of each State's demonstration project will be excluded from the cost-neutrality calculation. In addition, the costs for the development of the proposal and the evaluation design as well as the costs of the evaluation itself, may be charged to title IV–E administrative costs without cost allocation, so that States may claim a full fifty percent of these costs as title IV–E administrative costs.

Subject to the availability of funding, a national contract will be awarded to collect information from the approved demonstration projects; produce annual reports for the Department and the general public; collect, analyze and report the results of each demonstration project; and prepare a national summary of the Child Welfare Waiver Demonstrations at the completion of the project period. All approved applicants must provide an assurance that they will agree to cooperate and collaborate in this evaluation effort. Periodic meetings between the national contractor and the ten evaluators will be held in order to coordinate the evaluation of the waiver demonstration project. It is anticipated that there will be one coordination meeting annually in addition to the other required meetings indicated in this Public Notice.

V. Cost Neutrality

Section 1130 (g) requires that the waiver demonstration project be cost-neutral, that is, the total amount of federal funds used to support the demonstration project, over the approved project period, will not exceed the amount of federal funds that would have been expended by the State under the State plans approved under Parts B and E of title IV if the waiver demonstration project were not conducted. The Department will monitor demonstration projects, as outlined in this section and elsewhere in this Announcement, to track interim results and spending, and to assure federal cost neutrality, where needed, as the demonstration project progresses. The Department will work with a State to maintain cost neutrality throughout the period of the demonstration project, by modifying the project or taking other appropriate action.

The Department will allow States to project cost neutrality over the life of a demonstration project, rather than on a year by-year basis, since many demonstrations involve making "up-front" investments in order to achieve out-year savings. The Department will set a cap on the total "up-front" federal dollar amount associated with any demonstration project. The determination of cost-neutrality will be completed before the demonstration project begins, and fiscal effects will be carefully monitored, along with other project results, as the demonstration project progresses and the State submits the required fiscal and programmatic reports.

Waivers will not be granted if the Department determines that up-front costs present too great a risk to the maintenance of cost neutrality over the life of the project. Should added federal costs attributable to the demonstration project exceed projections or a cap on up-front costs, continuation of the demonstration project will be conditioned on modification of the project or other action that will maintain federal cost neutrality.

The Department encourages, where appropriate, the use of random assignment of individuals for evaluation and as a method for determining the fiscal effects of the demonstration project but recognizes that this method may not be appropriate for certain demonstration projects. In randomly assigning individuals to experimental and control groups, the costs associated with the control group (foster care rates and administrative costs) become the baseline for cost neutrality (i.e., the average cost for a control group case is assumed to be the amount that would have been spent on each experimental case). If an alternative method is proposed, then other methods of measuring cost neutrality should be used. In the proposal, States should outline the projected costs for the demonstration project and detail:

—The method by which current costs have been derived, and their basis;
—The method for projecting costs of the demonstration, and for projecting the costs which would have been incurred in the absence of a demonstration, and their bases;
—Any factors the State may propose for adjusting cost estimates over the life of the demonstration project, and their bases; and
—The method the State proposes for measuring costs during the demonstration, including actual costs of the demonstration, and the frequency, nature, and specific cost elements of proposed fiscal reports.

The Department recognizes the difficulty of projecting and measuring title IV-E and title IV-B expenditures, and is open to methodology(ies) the State(s) may propose. However, the Department favors random assignment, where appropriate, as the methodology for the evaluation component, and as a method for determining the fiscal effects of a demonstration as well. The Department will work with States in measuring actual fiscal experience against cost projections. Fiscal reports on the demonstration project will be due on a quarterly or at least a semi-annual basis.

States may be required to conform, within a reasonable period of time, relevant aspects of the demonstrations to changes in Federal legislation.

VI. Technical Assistance

Pre-approval technical assistance will be provided by Children's Bureau staff or Regional Office staff to any State which requests assistance in applying for a waiver demonstration project. Pre-approval consultation with the State can include answering specific questions, providing assistance with cost neutrality and cost allocation issues, reviewing draft proposals and referring States to sources of non-federal assistance for the formulation of evaluation plans.

Federal staff will not participate in determining the basic nature of a State's demonstration project, but will provide assistance related to preparing a proposal. The Department will provide technical assistance to all interested States, upon request, in order to speed approvals and improve the quality of the review process.

After approval, Federally-provided third-party technical assistance will be available, to a limited extent, to support approved demonstration projects. In addition, the Department will consider proposals from interested States for other partnership roles which the Department might assume (the conduct of a targeted program review, for example) and which would be memorialized in the waiver approval document.

The Department is committed to minimizing the administrative burden on the States, and the processing time for waiver proposals.

VII. Proposal Review

The proposals will be evaluated by a panel of federal officials, who will also consider any comments received from outside experts and the general public. Regional Office staff will be asked to complete an independent review of proposals submitted by States in their respective Regions; these reviews will be included in the final decision-making process. If the review discloses questions or issues with a proposal, Regional Office staff will be asked to contact the State for more information or to resolve the problem so that the process can continue. The State(s) will be permitted a reasonable period of time to address the issues raised by the review.

Deadlines

Deadlines are established to provide a fair and orderly process for review and approval. It is anticipated that proposals will be received on a "rolling" basis. *The deadline for the initial set of proposals, Round One, is July 31, 1995.* Proposals received by that date will be reviewed first and will be given priority for consideration. However, if there are not ten proposals in Round One, or there are not ten proposals approved after completion of the review, then additional proposals will be accepted and considered for approval. *Additional proposals will be received any time after the initial due date until September 30, 1995 (Round Two).* If the Department has not already approved ten child welfare waiver demonstration projects, additional proposals will be reviewed quarterly until ten proposals are approved. Once ten projects have been approved, all States will be notified and all proposals not approved will be returned.

Approvals will be announced as decisions are made. If a State can make a compelling argument for an expedited review, the Department will try to accommodate such a request.

If necessary, an agreement can be negotiated between the State and the Department to start the demonstration project at some date in the future. For example, if some action of the State legislature is required as an integral element of a demonstration, the five year period for that demonstration would not start until the legislature had acted.

Public comments will be solicited in the course of the review process. (See Section VIII.) The States will be asked to demonstrate that their proposals are based on broad consultation, such as focus groups and public forums, or legislative hearings.

VIII. State Notice Procedures

The Department recognizes that individuals who may be affected by a demonstration project have a legitimate interest in learning about proposed projects and having input into the decision-making process prior to the time a proposal is approved by the Department. The Department requires that States provide notification to the public that a waiver demonstration effort is being proposed.

A process that facilitates public involvement and input promotes sound decision-making. There are many ways that States can provide for such input. In order to allow for public input into the proposal, the Department will accept any process that:

♦ Includes the holding of one or more public hearings, at which the most recent working proposal is described and made available to the public, and time is provided during which comments can be received; or

♦ Uses a commission or other similar process, where meetings are open to members of the public, in the development of the proposal; or

♦ Results from enactment of a proposal by the State legislature prior to submission of the demonstration proposal, where the legislature holds one or more public hearings and the outline of such proposal is contained in the legislative enactment; or

♦ Provides for formal notice and comment in accordance with the State's administrative procedures act; provided that such notice must be given at least 30 days prior to submission; or

♦ Includes notice of the intent to submit a demonstration proposal in newspapers of general circulation, and provides a mechanism for receiving a copy of the working proposal and an opportunity, which shall not be less than 30 days, to comment on the proposal; or

♦ Includes any other similar process for public input that would afford an interested party the opportunity to learn about the contents of the proposal, and to comment on its contents.

The State shall include in the demonstration proposal it submits to the Department a description of the process that was used in the State to obtain

public input. If the Department determines that the process was inadequate to meet the standards set forth above, the State can resolve the inadequacy by posting a notice in the newspaper of widest circulation in each city with a population of 100,000 or more, or in the newspaper of widest circulation in the State if there is no city with a population of 100,000, indicating that a demonstration proposal has been submitted. Such notice shall describe the major elements of the proposed demonstration and any changes in benefits, payments, responsibilities, or provider selection requested in the proposal. The notice shall indicate how an interested person can obtain copies of the proposal and shall specify that written comments will be accepted by the State for a period of thirty days. If a State follows such a procedure, the State should respond to requests for copies of the proposal within seven days. The State should maintain a record of all comments received through this process.

The States must advise the public that comments regarding the proposed child welfare demonstration project can be made directly to ACF. Written comments can be submitted to Michael W. Ambrose, Children's Bureau, ACF, PO Box 1182, Washington, DC 20013.

All HHS commitments with respect to times for responding to demonstration proposals shall be delayed until this process in completed.

IX. Proposal Requirements

Any State seeking to conduct a waiver demonstration must submit a proposal which, at a minimum, must include:

(a) A description of the proposed project with an explanation of its purpose (for example, if the project is intended to overcome barriers to services, a statement to that effect, a description of the barriers, and a description of the process that will be used to overcome the barriers to service provision).

(b) Demographic information, including the geographic area(s) in which the proposed project will be conducted; and a description and an estimate of the number of children or families who would be served by the proposed project.

(c) A description of the services which will be provided by the proposed project.

(d) A copy of letters of agreement between the State and any county, municipality, foundation, private agency or any other governmental organization that is to be a participant in the waiver demonstration project.

(e) A statement of the period during which the proposed project will be conducted.

(f) A discussion of the benefits that are expected from the project as compared to the continuation of current service delivery activities, including a statement of the State's vision or overall purpose for the waiver demonstration; a statement explaining how the State expects service provision will be improved for children and families or any anticipated changes in the service delivery mechanism(s); and a statement explaining what goals/purposes/aims/outcomes the State expects to realize at the end of the demonstration effort and how service provision will have changed for children and families.

(g) An estimate of the costs or savings of the project, along with a description of the basis and methodology for cost estimates or projections and the proposed method for measuring actual costs.

(h) A statement of program requirements for which waivers will be needed to permit the proposed project to be conducted.

(i) A description of the proposed evaluation design.

(j) A description of the State's efforts to encourage and support linkages and coordination among existing planning bodies, for example, the family preservation/family support planning or an Empowerment Zone/Enterprise Community (EZ/EC) planning body to be involved in the monitoring, oversight or support of the proposed waiver demonstration.

(k) A description of any similar project already underway in the State that is supported by State or foundation funds and/or a statement on the State's ability to successfully implement the waiver demonstration project.

(l) A specific proposal, if any is needed, to waive provisions of title IV–A (AFDC) in order to support or enhance the efforts of the title IV–B or IV–E waiver demonstration. (In any event, cost neutrality must be maintained for title IV–B and E funds separately from title IV–A funds.)

X. Federal Notice

The Department intends to publish a periodic summary in the **Federal Register** of all new and pending proposals submitted pursuant to section 1130. The notice will indicate that the Department accepts written comments regarding all child welfare waiver demonstration project proposals.

The Department will maintain a list of organizations that have requested notice that a demonstration proposal has been received and will notify such organizations when a proposal is received.

XI. Comments

The Department will not approve or disapprove a proposal for at least 30 days after the proposal has been received, in order to receive and consider comments. The Department will attempt, if feasible, to acknowledge receipt of all comments, but the Department will not provide written responses to comments.

XII. Federal Role

Because of the special nature of this effort and the critical national implications, the overall management of the waiver demonstration project will be the responsibility of the Children's Bureau in Washington, DC. ACF Regional Office staff will have the principal responsibility for on-site liaison.

State program managers for the demonstration projects will be required annually to attend a four day meeting in Washington, DC, to be held in conjunction with the Children's Bureau National Child Welfare Conference, to discuss the demonstration projects' developments and progress. The cost of attendance will be excluded from the cost-neutrality calculation, and will be chargeable to title IV–E administrative costs without cost allocation.

XIII. Administrative Record

The Department will maintain an administrative record which will generally consist of: The formal demonstration application from the State; correspondence sent to the State regarding issues/problems with the application and the State's response; public and Congressional comments sent to the Department and any Department responses; the Department's decision memorandum regarding the granting or denial of a proposal; and the final terms and conditions, and waivers, sent to the State and the State acceptance of them.

XIV. Sub-State Demonstration

When a demonstration is to be implemented in only part of a State, the State will be required to provide information on the likely demographic composition of populations subject to and not subject to the demonstration in the State. When relevant, the Department will require that the evaluation component of a project address the impact of the project on particular subgroups of the population.

XV. Implementation Reviews

As part of the terms and conditions of any demonstration proposal that is granted, the Department may require periodic assessments of how the project is being implemented. The Department will review, and when appropriate investigate, documented complaints that a State is failing to comply with requirements specified in the terms and conditions and implementing waivers of any approved demonstration.

XVI. Legal Effect

This notice is intended to inform the public and the States regarding procedures the Department ordinarily will follow in exercising the Secretary's discretionary authority with respect to State demonstration proposals under section 1130. This notice does not create any right or benefit, substantive or procedural, enforceable at law or equity, by any person or entity, against the United States, its agencies or instrumentalities, the States, or any other person.

(Catalog of Federal Domestic Assistance Program Numbers 93.645, Child Services—State Grants; 93.658, Foster Care Maintenance; 93.659, Adoption Assistance)

Dated: June 12, 1995.

Mary Jo Bane,

Assistant Secretary for Children and Families.

Appendix I

This is a list of program ideas that have been suggested by States or others in response to the Department's requests for suggestions. They are listed only as a means of outlining, for States interested in proposing a child welfare waiver demonstration project, the broad range of possible demonstrations that the Department would consider. Whether these sample ideas would be cost-neutral would depend, of course, on how a State proposes to implement them. Similarly, the method of implementation could affect whether a waiver demonstration project would meet the statutory requirement that it not "impair the entitlement of any qualified child or family to benefits under a State" title IV-E Plan.

This list should not be regarded as limiting a State in any way in conceiving demonstration ideas.

♦ To meet the need for specialized foster care, and to reduce the amount spent on institutional care, train AFDC recipients or other low income persons to be professional, paid foster parents for specialized foster home placements; ensure appropriate licensing and possibly provide housing subsidies or homeownership assistance to assure the stability of the specialized foster home as a long-term resource.

♦ Broaden the use of title IV-E to fund services for children, their parents, and foster families, and to fund preventive services for families at risk, with the expectation that total time in out-of-home care would be reduced, and in some cases foster placements could be avoided.

♦ Provide better services at lower cost by, where appropriate, returning children, especially adolescents, from out-of-State institutional placements. Such a demonstration might include both foster care youth and youth who are in the juvenile justice system. The expectation is that placing them in community-based specialized family foster homes, or community-based group homes, will reduce the total time in out-of-home care.

♦ Provide subsidized guardianship or other arrangements which would allow children to stay or be placed in a familial setting that is more cost-effective than continuing them in foster care.

♦ For older adolescents in independent living, allow title IV-E funds to be used for the cost of an apartment for a period of time before the youth leaves foster care, and a short period thereafter, to achieve more stable placements for youth.

♦ Expand the availability of in-home respite care for foster families, with the expectation that administrative costs, including the costs of recruiting foster families, will be controlled, and more stable placements will result in shortened stays in out-of home care.

♦ Provide State-funded parental visitation for parents whose children are in institutional care, including the costs of telephone calls, transportation, and other expenses associated with maintaining or improving contact. The expectation is that more contact between parents/families and children in care can shorten stays in institutional placements.

♦ Enter into agreements with private providers to test a managed care concept, with clearly specified and measurable outcomes to be achieved for each family, at a fixed cost negotiated in advance, with the expectation that fiscal incentives would produce a better result with no increase in cost.

♦ Enter into agreements with Indian Tribes to permit full access to all aspects of title IV-E funding, with the expectation that services for tribal children and families will improve, while State costs of providing or managing those services will decline.

♦ Where court processes are unduly delaying adoptions, enter into agreements with courts to fund adoption-related work as if it were an administrative cost under title IV-E, with the expectation that the courts would then be able to speed adoptions, producing permanency for children earlier, and reducing foster care and case management costs.

♦ Seek a waiver of some provision(s) of title IV-A (AFDC), possibly in combination with a title IV-E or IV-B waiver, which might help achieve child welfare objectives. For example, a waiver which allowed a State to continue AFDC payments (in whole or in part) for a period of time, for a family from which the children had been removed, but where reunification is the goal and the loss of AFDC benefits would likely result in homelessness, thus frustrating reunification efforts.

[FR Doc. 95–14711 Filed 6–14–95; 8:45 am]

BILLING CODE 4184–01–P

Food and Drug Administration

[Docket No. 95N–0165]

Drug Export; COMBIVENT® (Ipratropium Bromide and Albuterol Sulfate) Inhalation Aerosol 20 Micrograms (µg)/120 µg/Metered Dose

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Boehringer Ingelheim Pharmaceuticals, Inc., has filed an application requesting conditional approval for the export of the human drug COMBIVENT® (ipratropium bromide and albuterol sulfate) Inhalation Aerosol 20 µg/120 µg/metered dose to Canada.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Center for Drug Evaluation and Research (HFD–310), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20857, 301–594–3150.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Boehringer Ingelheim Pharmaceuticals,

Inc., 900 Ridgebury Rd., P.O. Box 368, Ridgefield, CT 06877, has filed an application requesting conditional approval for the export of the human drug COMBIVENT® (ipratropium bromide and albuterol sulfate) Inhalation Aerosol 20 µg/120 µg/ metered dose to Canada. This product is used as a bronchodilator for the treatment of bronchospasm associated with chronic obstructive pulmonary disease in patients who require more than a single bronchodilator. The application was received and filed in the Center for Drug Evaluation and Research on May 10, 1995, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by June 26, 1995, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: June 6, 1995.

Betty L. Jones,

Deputy Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 95–14722 Filed 6–14–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95D–0148]

Guidance for Labeling Reusable Medical Devices for Reprocessing in Health Care Facilities; Draft; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled "Labeling Reusable Medical Devices for Reprocessing in Health Care Facilities: FDA Reviewer Guidance." The draft guidance is intended to provide direction to the agency's personnel who are responsible for premarket evaluation of medical devices and to provide criteria for the labeling instructions for reprocessing reusable devices.

DATES: Written comments by August 14, 1995.

ADDRESSES: Submit written requests for single copies of the draft guidance entitled "Labeling Reusable Medical Devices for Reprocessing in Health Care Facilities: FDA Reviewer Guidance" to the Division of Small Manufacturers Assistance, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–0806 (outside MD 1–800–638–2041). Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Chiu S. Lin, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8913.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance entitled "Labeling Reusable Medical Devices for Reprocessing in Health Care Facilities: FDA Reviewer Guidance." The draft guidance is primarily directed to FDA personnel who are responsible for the evaluation of premarket notification submissions (510(k)'s) and premarket approval (PMA) applications. The draft guidance will also assist persons preparing 510(k)'s and PMA's for submission to FDA.

Under the Federal Food, Drug, and Cosmetic Act, and FDA labeling regulations (21 CFR 801.5), a device is required to bear adequate directions for use. In reprocessing a reusable device (e.g., clean, disinfect, or sterilize), adequate instructions are important in preparing the device for the next patient. The draft guidance provides criteria for the labeling instructions on reprocessing reusable medical devices. The criteria are also applicable to initial processing of single use only and reusable devices that are supplied nonsterile, and reprocessing of certain sterile, single use only implantable devices if they become contaminated before implantation (e.g., orthopedic implants).

The document does not provide in-depth guidance on design and testing factors related to infection control. It is essential that the manufacturer consider infection control requirements during product design and testing to facilitate cleaning and sterilization or disinfection. Design and testing factors are addressed in device specific FDA guidance and FDA's good manufacturing practices guidance.

FDA staff and persons preparing submissions should also refer to the Technical Information Report (TIR), developed by the Association for the Advancement of Medical Instrumentation (AAMI), entitled "Designing, Testing, and Labeling Reusable Medical Devices for Reprocessing in Health Care Facilities: A Guide for Device Manufacturers," AAMI TIR No. 12–1994. The AAMI TIR provides comprehensive technical information for manufacturers and user perspectives on this topic.

Guidances have generally been issued under § 10.90(b) (21 CFR 10.90(b)), which provides for the use of guidances to state procedures or standards of general applicability that are not legal requirements but that are acceptable to FDA. The agency is now in the process of revising § 10.90(b). Therefore, the draft guidance is not being issued under the authority of current § 10.90(b), and it does not create or confer any rights, privileges, or benefits for or on any person, nor does it operate to bind FDA in any way.

Interested persons may, on or before (*insert date 60 days after date of publication in the* **Federal Register**), submit to the Dockets Management Branch (address above) written comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the Docket Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 6, 1995.

D.B. Burlington

Director, Center for Devices and Radiological Health.

[FR Doc. 95–14588 Filed 6–14–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94D–0123]

International Memoranda of Understanding; New Compliance Policy Guide; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a new Compliance Policy Guide (CPG) 7150.19 entitled "International Memoranda of Understanding." The text of the CPG is published in this document. The guide sets forth policy for initiating, developing, and monitoring agreements such as memoranda of understanding (MOU's) between FDA and foreign governments.

ADDRESSES: CPG 7150.19 is available for public examination in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Richard M. Garwood, Office of Regulatory Affairs (HFC–10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2175.

SUPPLEMENTARY INFORMATION: The FDA International Harmonization Task Force recommended in December 1992 that guidance be developed that describes the agency's objectives, and promotes uniformity, in developing MOU's with foreign government agencies or with international organizations. MOU's enhance FDA's ability to carry out its mission and promote harmonization of laws and regulations, compliance activities, and enforcement actions. Harmonization facilitates the efficient and effective execution of FDA's programs and promotes international trade.

It is the policy of FDA to pursue the development of MOU's that will further the agency's domestic public health mission. MOU's between FDA and an agency of a foreign government or an international organization should be designed to:

(1) Enhance FDA's ability to ensure that regulated products are safe, effective, of good quality, and properly labeled;

(2) Allow FDA to utilize its resources more effectively or efficiently, without compromising its ability to carry out its responsibilities; and

(3) Improve communications between FDA and foreign officials concerning FDA-regulated products.

This policy is detailed in the new CPG 7150.19, entitled "International Memoranda of Understanding," the text of which is provided below. FDA MOU's are negotiated in accordance with the Department of State's Circular 175 procedures.

In order to facilitate future reorganization of the CPG manual system, the entire contents of CPG 7150.19 will be duplicated, assigned a second number, 7156.00, and carried in a second location in the CPG manual system. This fact will be cross-referenced and notated in the CPG manual system.

The text of CPG 7150.19 entitled "International Memoranda of Understanding" follows:

Compliance Policy Guide, Food and Drug Administration, International Memoranda of Understanding

SUBJECT:

This guide sets forth policy for initiating, developing, and monitoring agreements such as memoranda of understanding (MOU's) between the Food and Drug Administration (FDA) and foreign governments. The general principles herein may also be applicable to MOU's with international organizations.

BACKGROUND:

The FDA International Harmonization Task Force recommended in December 1992 that guidance be developed that describes the agency's objectives and promotes uniformity in developing MOU's with foreign government agencies. MOU's promote harmonization of laws, regulations, and enforcement activities. Further, MOU's, if negotiated and implemented properly, enhance FDA's ability to carry out its mission. Attachment A to this Compliance Policy Guide (CPG) sets forth the agency's criteria for setting priorities for international MOU's.

The three categories of MOU's described in the following paragraphs are merely examples. These categories are not mutually exclusive, and the concepts may be altered or combined as necessary. Because officials of sovereign nations have different approaches to regulation, FDA needs to maintain flexibility in its discussions with these officials.

Reciprocal Agreements with Countries Having the Same or Similar Systems

MOU's may provide for the mutual assessment of the comparability of specific FDA programs or activities with those of a foreign regulatory authority. These MOU's are similar to mutual recognition agreements (MRA's), referred to in recent trade agreements, and include equivalence agreements. FDA MOU's that provide for the mutual assessment of the comparability of a foreign regulatory system or measure are suitable when it can be determined that FDA's controls and the foreign regulatory authority's controls are comparable and are designed to provide the same level of protection. Under one form of such agreements, mutual acceptance of data and information, such as analytical findings and inspection results, may ordinarily be considered adequate for regulatory decisions. The MOU's now in place for the exchange of results of good manufacturing practices and good laboratory practices inspections are examples. Under another form of such agreements, FDA and another country may agree that their regulatory systems governing certain products are the same or similar and are designed to provide the needed level of protection, enabling each country to consider reducing the rate of inspection or sampling of imports from the other country that would otherwise be necessary.

Certification of Import/Exports

MOU's may establish certification criteria for products regulated by FDA. Historically, these MOU's have concerned products exported to the United States with inherent or consistent quality or safety problems. However, they may also involve products with a good compliance history (see Attachment A of this CPG). They may identify controls to be employed by the exporting country to assure the validity and reliability of certification. Such agreements should be designed with the intent of reducing the FDA rate of inspection or sampling that would otherwise be necessary and with the intent of providing a basis for assurance that the consumer protection objectives of FDA are being met. Certification may be shown by marks on the product, container, or entry documents or by other paper or electronic communication. An MOU based on the controls to be employed and maintained by the exporting country to ensure that articles exported comply with FDA laws and regulations may render such certifying marks, documents, or other communication unnecessary.

Communications

Formalizing communication links facilitates the exchange of technical, scientific, and regulatory information. Technical cooperation leads to better understanding of safety and quality standards for products traded between the United States and other countries and promotes harmonization. Improved communications with foreign officials may improve FDA decisionmaking and reduce resource expenditures for monitoring foreign made products.

POLICY:

It is the policy of FDA to pursue the development of MOU's that will further the agency's public health mission. FDA intends to enter into an MOU only with an agency of a foreign government or an international organization. The MOU should be designed to meet the following goals:

(1) To enhance FDA's ability to ensure that regulated products are safe, effective, of good quality, and properly labeled;

(2) To allow FDA to utilize its resources more effectively or efficiently, without compromising its ability to carry out its responsibilities; and

(3) To improve communications between FDA and foreign officials concerning FDA regulated products.

Further, before accepting the procedures and activities, including enforcement methods, of foreign governments as equivalent to its own, FDA will seek assurance that such activities provide the same level of product quality, safety and efficacy that is provided under the Federal Food, Drug, and Cosmetic Act (the act); the Fair Packaging and Labeling Act; the Public Health Service Act; and any other relevant law of the United States. FDA may find it necessary to confirm by on-site review or other appropriate means that the foreign government agency has the necessary authorities, product standards, capabilities, and infrastructure to successfully achieve the proposed terms of the MOU, and, therefore, that a determination of equivalence can be made. Where appropriate, FDA will publish a proposed equivalence determination for comment.

FDA's criteria for deciding when to initiate consideration of developing MOU's are set forth in Attachment A of this CPG. FDA intends to review and update these criteria periodically.

Affected agency units will review the proposal for a new or revised MOU for consistency with the agency's international policy objectives and priorities before an FDA component begins substantive discussions with foreign officials about the MOU.

FDA auditing may be necessary to assure that the circumstances supporting the basis for an agreement continue to exist, whether or not the foreign government intends to conduct audits. The liaison office identified in the MOU is responsible for preparing a written evaluation. Participating FDA components will be queried by the responsible liaison office as to the overall effectiveness of the agreement, whether provisions should be added or deleted, and whether the MOU should be terminated.

Countersigned agreements are commonly referred to by FDA as "Memoronda of Understanding." However, some foreign governments have requested that such documents be titled as "Notes Verbale," "Arrangements," or "Mutual Recognition Agreements." Regardless of title, such agreements will be filed in chapter 56 of the Compliance Policy Guides Manual, and a notice of availability will be published in the **Federal Register**.

An "exchange of letters" should be used in lieu of a formal agreement when the actions contemplated require only a limited resource expenditure and do not rise to the significance of a formal agreement. For example, an exchange of letters could formalize an understanding that each agency will provide the other with documents that are available upon request to any member of the public. Each letter should set out only the actions to be carried out by the agency signing the letter and not mutual considerations. Clearance of exchange of letters will be by the same process as used for MOU's except that, after clearance, the FDA letter may be signed by the appropriate Center or Office Director. Copies of the letters exchanged should be placed in the cooperative agreements portion of the Compliance Policy Guide Manual.

FDA's practice is to enter into MOU's for a period of 5 years. Each existing MOU should be evaluated at least once during the 5 year period of the agreement to determine whether the MOU should be modified, continued, or canceled. As part of the evaluation of an MOU, the agency may conduct independent or joint inspections or analyze imported products to evaluate the effectiveness of the MOU.

DEVELOPMENT GUIDANCE:

Developing an MOU with a foreign government requires coordination between the sponsoring center or office, the Office of Regulatory Affairs (ORA), the International Affairs Staff/Office of Health Affairs (IAS/OHA), and the Office of Policy (OP). Generally, there are three phases in the process as described below:

Stage I—Exploring Feasibility

a. The sponsoring Center or Office makes a preliminary assessment whether the proposed MOU is in line with FDA policy goals. If the sponsoring Center or Office believes that the MOU should be pursued, the Center or Office informs ORA (HFC–10) in writing and explain why it believes that the MOU should be pursued.

b. The initiating agency component provides a general description of the agreement it wishes to develop, e.g., mutual recognition of a quality assurance program, product certification, information exchange, etc.

c. The parties exchange information on laws, standards, and other requirements for subject products, inspection and sampling abilities, and analytical methodology, as appropriate.

d. On-site review of facilities, operations, and controls may be arranged.

e. If the foreign government appears not to be, and in FDA's opinion is not, capable of developing an adequate infrastructure to carry out the intended program, the sponsoring agency component will explain FDA's position in writing and suspend further action until FDA's concerns are adequately addressed. The letter addressing this issue should be reviewed by OP and IAS/OHA.

Stage II—Determining Effectiveness

a. If discussions are to continue, IAS/OHA should be notified so that appropriate notification to the Department of State (DOS) can be made.

b. The parties may consider an informal trial to gain confidence in the planned agreement. A draft MOU may be prepared along with a protocol that may provide a basis for the trial. Together these documents may include:

(1) A complete description of the trial program.

(2) Information regarding roles and capabilities of involved government and private organizations.

(3) Certificate issuance and use procedure, if any.

(4) Audit frequency and measures to be applied.

(5) Description of training or information needs.

c. Whether or not there is a trial, FDA may conduct as appropriate independent or joint inspections with the foreign government, or analyze imported products to evaluate the effectiveness of the program.

Stage III—Finalizing an MOU

a. The MOU should be prepared for clearance after the substance of the MOU has been finalized, including after rulemaking, where appropriate.

b. If appropriate, instructions for auditing the agreement should be issued to field offices by the sponsoring center or office, through ORA.

Attachment A

Food and Drug Administration Criteria for Memoranda of Understanding

In deciding whether to begin discussions that could lead to the development of an MOU, an agency component should consider the factors that are listed below.

Health Benefits (Including Risk Reduction) Associated With Products or Programs

FDA should consider the benefits to public health (particularly for the United States population) when it sets priorities for its international activities.

Products Imported into the United States

FDA should place a higher priority on international activities that are directed toward improving the quality, safety, or efficacy of products offered to consumers in the United States. For example, FDA should give a low priority to investing resources in developing a memorandum of understanding with a foreign country that covers a product where there is little likelihood of significant exports to the United States or significant risk to the public.

History of Compliance Problems

FDA should place a higher priority on international activities directed toward remedying product defects that have been demonstrated to be previous compliance problems or where there is a demonstrated scientific basis for increased surveillance.

Comparative Costs of Alternative Programs

FDA should pursue international programs and activities that provide the greatest benefit in relation to the resources required to administer them. For example, the costs of developing, implementing, and monitoring an agreement should be weighed against the costs of higher sampling levels to obtain the same degree of confidence in rates of compliance in the absence of an agreement.

Regulatory Burden on Industry

FDA should consider the regulatory burden on industry that could be diminished by harmonization efforts. However, these activities need to be compatible with FDA's primary public health mission, the act, and other laws and regulations that FDA enforces.

U.S. Foreign Policy Objectives and Priorities of Other U.S. Government Agencies

FDA should be knowledgeable of U.S. foreign policy objectives and international programs and policies of other U.S. Government agencies and appropriately balance these interests with those of FDA's primary mission.

The statements made herein are not intended to bind the courts, the public, or FDA, or to create or confer any rights, privileges, immunities, or benefits on or for any private person, but are intended merely for internal FDA guidance.

Dated: June 7, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–14587 Filed 6–14–95; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects. To request more information on the proposed project, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Projects

1. Study of Physicians' Educational Preparation for Practice in Managed Care Settings—New—A mail survey will be conducted of primary care physicians and medical directors in managed care organizations to assess their views of the adequacy of their preparation for practice in that setting. The survey of physicians will be limited to those who graduated between 1986 and 1990. The information will be used by the Bureau of Health Professions to formulate recommendations for curriculum changes. Because this is a mail survey, automated collection techniques will not be used. Burden estimates are as follows:

	No. of respondents	No. of responses per respondent	Avg. burden/response (in hours)
Physicians	1800	1	.25
Medical directors	200	1	.25

2. Study of the Dissemination of the Maternal and Child Assistance Programs Model Application Form—New—A telephone survey will be conducted of (1) governor's offices in 59 states and territories, (2) the leadership of state-level maternal and child assistance programs in 59 states and territories, and (3) the leadership of local maternal and child assistance programs in 10 carefully selected jurisdictions across the country. The survey will provide data on the effectiveness of the federal dissemination of the maternal and child assistance programs Model Application Form, and on the use and impact of the Model Application Form or other similar consolidated application forms on maternal and child assistance programs and clients. The data collected will inform Members of Congress, which mandated the development and dissemination of the Model Application Form, and state and federal maternal and child assistance program leaders about the effectiveness of the federal dissemination process, the extent of Model Application Form and other consolidated application form implementation, and their impact on agency operations and program clients. Because this is a targeted telephone survey with limited numbers, automated collection techniques will not be used. Burden estimates are as follows:

	No. of respondents	No. of responses per respondent	Avg. burden/response (in hours)
Governors office	59	1	.5
State level officials	236	1	.5
Local level officials	50	1	.5

3. Evaluation of Special Projects of National Significance: Adolescent Focussed Grantees—Under the Ryan White Comprehensive AIDS Resources Emergency Act of 1990, Special Projects of National Significance are supported to evaluate and disseminate innovative models of care. In order to fulfill the evaluation requirements of the Act, grantees collect, on an ongoing basis, information on numbers of clients served, characteristics of those clients, services provided, and outcomes of those services. The information will be used to identify models of care with promise for national replication and dissemination. Most data are collected by care providers who complete very brief (one page or less) forms to document each client contact, and some data will be collected directly from volunteering care recipients. Burden estimates follow:

	No. of respondents	No. of responses per respondent	Avg. burden/response (in hours)
Care providers (nurses, case managers, counselors)	232	407	2.4 hours (2.8 minutes per form).
Care recipients	495	1	1 hour.

4. Evaluation of the Interdisciplinary Generalist Curriculum—New—The Interdisciplinary Generalist Curriculum (IGC) Project awards funds to Schools of Medicine that change their curricula to include preclinical generalist primary care training directed toward influencing medical students to select primary care medical careers. The evaluation of this project will include two surveys. A survey of faculty members of the schools funded by this project will assess the faculty attitudes and beliefs about the innovations in the curriculum one year after the project began and three years after the project began. The funded schools were selected through a request for proposal (RFP) process. All 141 allopathic and osteopathic Schools of Medicine received the RFP. The second survey will be sent to the Deans of these schools. This RFP survey will assess the extent to which the RFP process itself generated changes in curricula.

	No. of Respondents	No. of responses per respondent	Avg burden/response (in hours)
Faculty survey	3104	2	.25
RFP Survey	141	1	.50

5. Bureau of Primary Health Care (BPHC) Facility and Equipment Survey—New—Under the Capital Improvement Program, the Bureau of Primary Health Care provides additional funds to grantees supported under the BPHC primary health care delivery programs for renovations, repair, modernization or construction/replacement of health care facilities to correct fire and life-safety hazards and overcrowding conditions. In order to understand the nature and extent of such problems, the BPHC is planning to conduct a mail survey of all grantee facilities to collect information on their facility and equipment problems and on estimated costs to correct the problems. The information will be used to set program priorities and to target technical assistance to grantees in greatest need.

	No. of respondents	No. of responses per respondent	Avg. burden/ response (in hours)
Grantee facilities	1880	1	.6

Send comments to Patricia Royston, HRSA Reports Clearance Officer, Room 14–36, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: June 12, 1995.

Ciro V. Sumaya,

Administrator.

[FR Doc. 95–14723 Filed 6–14–95; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–015–95–1430–01; AZA–27081]

Application for Conveyance of Land, Mohave County, Arizona; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction

SUMMARY: In notice document 95–3811 beginning on page 8728 in the issue of Wednesday, February 15, 1995, make the following correction:

On page 8729, the legal description should read:

Gila and Salt River Meridian, Arizona

T. 40 N., R. 6 W.,
sec. 4, Lots 3 and 4, S½NW¼;
sec. 5, Lots 1 and 2, S½NE¼.
Containing 270.170 acres.

Dated: May 22, 1995.

Raymond D. Mapston,

Acting Arizona Strip District Manager.

[FR Doc. 95–14617 Filed 6–14–95; 8:45 am]

BILLING CODE 4310–32–P

[OR–120–95–6350–00–G5–108; 5–00151]

Coos Bay District, Oregon; Availability of the Approved Resource Management Plan and Record of Decision

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Approved Resource Management Plan and Record of Decision for the Coos Bay BLM District, Oregon.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (40 CFR 1550.2), and the Federal Land Policy and Management Act of 1976, (43 CFR 1610.2 (g)), the Department of the Interior, Bureau of Land Management (BLM), Coos Bay District provides notice of availability of the Approved Resource Management Plan (ARMP) and Record of Decision (ROD) for the Coos Bay District. In addition to describing the decisions, the ARMP will provide the framework to guide land and resource allocations and management direction for the next 10 to 20 years in the Coos Bay District. This ARMP supersedes the existing South Coast—Curry Management Framework Plan, the North Spit Plan Amendment, and other related documents for managing approximately 329,700 acres of mostly forested public land and 12,150 acres of non-federal surface ownership with federal mineral estate administered by the Bureau of Land Management in Coos, Curry, Douglas, and Lane counties in southwestern Oregon.

ADDRESSES: Copies of the ARMP/ROD are available upon request by contacting the Coos Bay District Office, Bureau of Land Management, 1300 Airport Lane, North Bend, Oregon 97459. This document has been sent to all those individuals and groups who were on the mailing list for the Proposed Coos Bay District Resource Management Plan/Final Environmental Impact Statement. The full supporting record for the ARMP is available for inspection in the Coos Bay District Office at the address shown above. Copies of draft RMP/EIS and proposed RMP/final EIS are also available for inspection in the public room on the 7th floor of the BLM Oregon/Washington State Office, 1515 SW Fifth Street, Portland, Oregon; and public libraries in Brookings, Gold Beach, Bandon, Myrtle Point, Coquille, Coos Bay, North Bend, Reedsport, and Powers during normal office hours.

FOR FURTHER INFORMATION CONTACT: Bob Gunther, Planning Team Leader, Coos Bay District Office, Bureau of Land Management. He can be reached by telephone number at 503–756–0100 or by FAX at 503–756–9303.

SUPPLEMENTARY INFORMATION: The Coos Bay District ARMP/ROD is essentially the same as the Coos Bay District Proposed Resource Management Plan and Final Environmental Impact Statement (PRMP/FEIS). Virtually no changes to the proposed decisions have been made, except for some clarifying language in response to the five protests BLM received on the Coos Bay District PRMP/FEIS and as a result of ongoing staff review. The clarifying language concerns:

—Revisions intended to strengthen the link between the ARMP and the 1994 Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl and Standards and Guidelines for Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl (or Northwest Forest Plan/ROD).

—Revisions that incorporate guidelines issued by the Regional Ecosystem Office since the issuance of the 1994 Record of Decision named above. Such guidelines may clarify or interpret the 1994 Record of Decision.

Seven alternatives that encompass a spectrum of realistic management options were considered in the planning process. The final plan is a mixture of the management objectives and actions that, in the opinion of the BLM, best resolve the issues and concerns that originally drove the preparation of the plan and also meet the plan elements or adopt decisions made in the Northwest Forest Plan/ROD. The Northwest Forest Plan/ROD was signed by the Secretary of the Interior who directed the BLM to adopt it in its Resource Management Plans for western Oregon. Further, those decisions were upheld by the United States District Court for the Western District of Washington on December 21, 1994.

Ecosystem Management and Forest Product Production: The ARMP/ROD responds to the need for a healthy forest ecosystem with habitat that will support populations of native species (particularly those associated with late-successional and old-growth forests). It also responds to the need for a sustainable supply of timber and other forest products that will help maintain the stability of local and regional economies, and contribute valuable resources to the national economy on a predictable and long-term basis. BLM-administered lands are primarily allocated to Riparian Reserves, Late-Successional Reserves, General Forest Management Areas, and Connectivity/Diversity Blocks. An Aquatic Conservation Strategy will be applied to all lands and waters under BLM jurisdiction.

Approximately 61,900 acres will be managed for timber production. The allowable sale quantity will be 5.3 million cubic feet (32.1 million board feet). To contribute to biological diversity, standing trees, snags, and down dead woody material will be retained. A process for monitoring, evaluating and amending or revising the plan is described.

Areas of Critical Environmental Concern (ACEC): The ARMP/ROD would continue the designation of one Area of Critical Environmental Concern (ACEC), one Research Natural Area (RNA), and will designate nine new ACECs. The ARMP/ROD designates or redesignates the following ACECs and RNA with the noted restrictions.

Area name	Approx. acres	Veg. harv.	OHV use	Min. loc.	Min. lease	R/W
Cherry Creek RNA/ACEC	570	NC	NC	NC	NC	NC
New River ACEC	860	NA	R	P	P	P
Wassen Creek ACEC	3,440	R	R	P	R	P
North Spit ACEC	580	NA	R	P	P	P
North Fork Coquille River ACEC	290	P	R	P	R	P
Tioga Creek ACEC	40	P	P	P	R	P
China Wall ACEC	240	P	P	P	R	P
North Fork Hunter Creek ACEC	1,730	R	R	P	R	P
Hunter Creek Bog ACEC	570	P	R	P	R	P
North Fork Chetco River ACEC	600	P	R	P	R	P
Upper Rock Creek ACEC	460	P	R	P	R	P

NC=No change from existing situation.
P=Use is prohibited.
R=Use is allowed but with restrictions.
NA=Use is not applicable to this area.

No potential ACEC areas were identified that met the Bureau ACEC criteria of relevance and importance that are not included in whole or in part in the ARMP/ROD described above.

Wild and Scenic Rivers: Approximately 184 miles of river found eligible for designation and studied by BLM are found not suitable for designation. Four river segments (involving approximately 168 miles) have been determined to be administratively eligible for further consideration for designation as a component of the National Wild and Scenic Rivers System under recreational river classifications, pending other interagency suitability studies. All eligible (pending further study) river segments will be managed under BLM interim management guidelines pending further administrative consideration. The supporting records for the ARMP/ROD document those river or stream segment analyses.

Off-Highway-Vehicle (OHV) Use: The ARMP/ROD makes the following designations for OHV management in the District: approximately 80 acres will be open; 326,600 acres will be restricted to designated existing roads and trails and/or seasonally closed; and 3,000 acres will be closed to all use, except for specified administrative or emergency uses. The closed areas include wilderness or wilderness study areas, administratively withdrawn areas such as seed orchards and progeny test sites, and various ACECs. In addition, the ARMP/ROD provides for road closures to meet ecosystem management objectives. Such closures may be permanent or seasonal, and will be effected by use of signs, gates, barriers or total road deconstruction and site restoration.

Land Tenure Adjustment: The ARMP/ROD identifies approximately 4,600 acres of BLM-administered lands that will be retained in public ownership; 324,000 acres of BLM lands that may be

considered for exchange under prescribed circumstances; and 1,100 acres of BLM lands that may be available for sale or disposal under other authorized processes. The ARMP also provides criteria for the acquisition of lands, or interests in lands, where such acquisition would meet objectives of the various resource programs. The plan allocates approximately 600 acres as right-of-way exclusion areas and 146,700 acres as right-of-way avoidance areas.

Special Recreation and Visual Resource Management Areas: The ARMP/ROD identifies seven Special Recreation Management Areas (SRMA), including four existing (Loon Lake/East Shore, Dean Creek Elk Viewing, Coos Bay Shorelands, and New River) and three new (Tioga, Gregory Point (Bal'diyaka), and Sixes River). The existing SRMAs total approximately 3,700 acres and the new SRMAs total approximately 25,700 acres. The ARMP/ROD allocates approximately 2,065 acres of BLM-administered lands for 23 existing or potential recreation sites. The plan also allocates lands for 12 existing or potential trails, totaling between 42 and 56 miles. The plan also identifies management objectives for four visual resource management classifications.

Mineral and Energy Resource Management: Most BLM-administered lands will remain available for mineral leasing and location of mining claims, but 1,600 acres will be closed to leasing for oil and gas and geothermal resources, and 12,500 acres will be closed to location of claims.

Dated: June 5, 1995.

Michael R. Crouse,

Acting Coos Boy District Manager.

[FR Doc. 95–14677 Filed 6–14–95; 8:45 am]

BILLING CODE 4310–33–P

[AZ–020–00–1210–00; AZA–25486, 25487, 25489, 25490]

Notice of Approval of the Maricopa Complex Wilderness Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: The Maricopa Complex Wilderness Management Plan is approved. In accordance with 43 CFR part 4, this action is subject to appeal for a period of 30 days from the date of this notice. Barring appeal, the plan will be implemented.

SUMMARY: (1) Scope of the Approved Plan: The plan prescribes actions and policies for the management of four Wilderness Areas: the Sierra Estrella, the North Maricopa Mountains, South Maricopa Mountains and the Table Top for a period of ten years. An environmental assessment document was prepared describing the impacts of the plan along with three other alternatives.

(2) Geographic Areas Involved: Four separate wilderness areas, totaling 172,100 acres in the Sonoran Desert of Southwestern Arizona, southern Maricopa and western Pinal Counties, and 12 to 45 miles south of the metropolitan Phoenix. Other nearby towns are Gila Bend, Maricopa, Casa Grande, and Buckeye, Arizona.

(3) Summary of Plan Actions: Seventy nine miles of former vehicle ways reclaimed; 16 miles converted to pedestrian and/or equestrian trails. Three access routes may be shortened slightly. Twenty five vehicle barriers constructed. Four new trails and seven trailheads established and one existing trail and trailhead improved and maintained. Signs, defined parking areas, and minimal camping facilities provided at some trailheads. Maps and other information provided. Two vehicle safety shoulders may be created along Interstate 8. Commercial recreation outfitters may be permitted. Six wildlife water catchments and associated fencing modified, and along with two others, maintained. One wildlife well pump replaced. Transplants of desert bighorn sheep and aircraft telemetry following sanctioned. Installation of future wildlife catchments evaluated on a case-by-case basis. Non-mechanized animal damage control allowed. Five earthen livestock water tanks abandoned. Thirteen livestock control fences maintained. No new livestock watering facilities constructed. Coordination with multi-jurisdictional law enforcement and search and rescue agencies and organizations improved. Five thousand seven hundred and sixty two acres of State of Arizona surface and subsurface inholdings identified for acquisition plus some access easements. All wildfire suppressed; protocol for fire suppression activities established. Reduction in low-level civilian aircraft flights encouraged. Thirty three instances of motorized/mechanized use allowed annually over 9 years dropping to 22 per year thereafter, to: maintain 8 livestock fences, modify 6 wildlife catchments, maintain and haul water to these and two other catchments, pump one well for wildlife, census or track wildlife, check wildlife water levels in wildlife catchments, respond to life-threatening emergencies, rescue sick livestock, and pursue felons or major game violators. Monitoring standards adopted and response actions described.

(4) Proposed Restrictions: Campfires, charcoal fires, wood gathering or wood cutting, and other surface disturbances are prohibited. Dogs are prohibited on one trail; horses on another. Camping within 200 feet or within sight of established trails is prohibited; camping at some trailheads will be limited to a five day period. Pack stock associated with permitted activities confined to naturally hardened areas during long rest periods. Pack stock feed provided by outfitters.

(5) Summary of Alternatives Analyzed: A visitor use and wildlife enhancement alternative with additional hiking and/or riding trails and wildlife developments; a naturalness enhancement alternative without maintained trails, with mostly non-mechanized maintenance of developments, and 15 instances of low level aircraft use occurring yearly for wildlife census, checking water levels of wildlife water catchments and hauling water; and a no action alternative.

(6) Extent of Public Comment: A draft plan with an environmental assessment document was distributed for public review and comment for a 45 day period on September 13, 1994. Availability notice was via the **Federal Register** and local media. More than 400 copies of the draft plan were mailed to a wide spectrum of publics, governing bodies, organizations, and institutions expressing interest or directly affected. Two public meetings, in Gila Bend and Phoenix, Arizona, were held. A total of 14 individuals participated in these meetings and providing comments; eight written comments were also received. Comments were analyzed and appear in the final plan. Some changes were made due to the comments. Most notable are: The addition of a management action to disallow the construction of future livestock watering facilities within the wilderness; the addition of some mechanized wildlife management activities; and changes to the Naturalness Alternative and associated impact analysis.

NEXT STEP IN THE PLANNING PROCESS: The decision to adopt this plan is subject to appeal for a period of 30 days following the publication of this notice. Barring appeal, implementation will follow. Appeals must be filed in accordance with the procedures found in 43 CFR 4.4110 through 4.415.

FOR FURTHER INFORMATION CONTACT: John Jamrog, Bureau of Land Management, Phoenix District Office, Lower Gila Resource Area, 2015 West Deer Valley Road, Phoenix, Arizona 85027, telephone 602–780–8090.

Date June 8, 1995.

Gordon L. Cheniae,

District Manager.

[FR Doc. 95–14643 Filed 6–14–95; 8:45 am]

BILLING CODE 4310–32–P

[CO–956–95–1420–00]

Colorado; Filing of Plats of Survey

May 26, 1995.

The plats of survey of the following described land are officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m. on May 31, 1995.

The plat representing the dependent resurvey of a portion of the subdivisional lines, certain mineral surveys and the subdivision of certain sections, T. 14 S., R. 100 W., Sixth Principal Meridian, Colorado, Group No. 1000, was accepted April 18, 1995.

The plat representing the dependent resurvey of a portion the Twelfth Standard Parallel North (south boundary, T. 49 N., R. 10 W.), east and west boundaries, and subdivisional lines and the subdivision of certain sections, T. 48 N., R. 10 W., New Mexico Principal Meridian, Colorado, Group No. 879, was accepted April 5, 1995.

The plat representing the dependent resurvey of the north and east boundaries, portions of the south and west boundaries, subdivisional lines, and certain mineral claims, and the subdivision of sections, T. 46 N., R. 10 E., New Mexico Principal Meridian, Colorado, Group No. 860, was accepted December 29, 1994.

The plat representing the dependent resurvey of the north and west boundaries of lot 1, sections 13, T. 7 N., R. 87 W., Sixth Principal Meridian, Colorado, Group No. 1083, was accepted March 29, 1995.

The plat representing the dependent resurvey of a portion of the east boundary, a portion of the subdivisional lines and mineral survey number 13952, Diamond Placer, T. 19 S., R. 71 W., Sixth Principal Meridian, Colorado, Group No. 996, was accepted March 9, 1995.

The supplemental plat amending the acreage of lots 2, 6, 9 and Tract A and clarifying the bearing and distance of certain claim lines, in section 10, T. 4 S., R. 73 W., Sixth Principal Meridian, Colorado, was accepted April 7, 1995.

The supplemental plat creating new lots 78 and 79 from previous lotting and portions of cancelled Mineral Survey No. 5370, John Welch lode, and amending the acreage of Lot 3 in the N 1/2 of the NE 1/4 of section 20, T. 3 S., R. 73 W., Sixth Principal Meridian, Colorado, was accepted March 17, 1995.

The supplemental plat creating new lots 5, 6 and 7 from previous lotting and areas in section 10, T. 8 N., R. 75 W. Sixth Principal Meridian, Colorado, was accepted March 29, 1995.

The supplemental plat creating new lots 13, 14 and 15 from original lots 3, 7, and 8 in section 21, T. 49 N., R. 11 E., New Mexico Principal Meridian, Colorado, was accepted March 31, 1995.

These surveys were executed to meet certain administrative needs of this Bureau.

The plat representing the limited corrective dependent resurvey of a portion of the subdivisional line between sections 8 and 9, T. 9 N., R. 69 W., Sixth Principal Meridian, Colorado, Group No. 628, was accepted January 20, 1995.

This survey was executed to meet certain administrative needs of the Larimer County Engineering Department, Fort Collins, Colorado.

The plat representing the dependent resurvey of portions of the New Mexico Principal Meridian (east boundary), north boundary, and subdivisional lines, and the subdivision of certain sections, T. 35 N., R. 1 W., New Mexico Principal Meridian, Colorado, Group No. 1043, was accepted April 17, 1995.

The plat representing the dependent resurvey of a portion of the east boundary (west boundary T. 22 S., R. 73 W., Sixth Principal Meridian, Colorado), certain mineral claims, and the metes-and-bounds surveys in section 24, T. 45 N., R. 12 E., New Mexico Principal Meridian, Colorado, Group No. 1059, was accepted March 24, 1995.

The plat representing the dependent resurvey of a portion of the west boundary, a portion of the subdivisional lines and the subdivision of certain sections, T. 34 N., R. 6 W., South of the Ute Line, Sixth Principal Meridian, Colorado, Group No. 1003, was accepted March 8, 1995.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service.

Darryl A. Wilson,

Chief Cadastral for Colorado.

[FR Doc. 95–14616 Filed 6–14–95; 8:45 am]

BILLING CODE 4310–JB–P

Fish and Wildlife Service

Receipt of Application(s) for Permit

The following Applicant(s) have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*)

PRT–800897

Applicant: Ms. Cornelia Pasche, Phase One Technologies, L.L.C., Houston, TX.

The Applicant requests a permit amendment to expand the area previously permitted to take the red-cockaded woodpecker (*Picoides borealis*) in Texas, for the purpose of scientific research, recovery actions, and survival of the species as prescribed by Service recovery documents.

ADDRESSES: Written data or comments should be submitted to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, and must be received by the Assistant Regional Director within 30 days for the date of this publication.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the above office within 30 days of the date of publication of this notice. (See **ADDRESSES** above.)

James A. Young,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 95–14635 Filed 6–14–95; 8:45 am]

BILLING CODE 4310–55–M

Receipt of Application(s) for Permit

The following Applicant(s) have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.)

PRT–803472

Applicant: Mr. Steven Ray Votaw, Owasso, Oklahoma.

The Applicant requests a permit to take the American burying beetle (*Nicrophorus americanus*) in Oklahoma, for the purpose of scientific research, recovery actions, and survival of the species as prescribed by Service recovery documents.

ADDRESSES: Written data or comments should be submitted to the Assistant

Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, and must be received by the Assistant Regional Director within 30 days for the date of this publication.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the above office within 30 days of the date of publication of this notice. (See **ADDRESSES** above.)

James A. Young,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 95–14636 Filed 6–14–95; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Draft General Management Plan for Cabrillo National Monument, California; Notice of Management Proposals and Notice of Availability of Draft Environmental Impact Statement

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (P.L. 91–190 as amended), the National Park Service has prepared an environmental impact statement (EIS) and General Management Plan for Cabrillo National Monument, California.

This Draft General Management Plan and Environmental Impact Statement presents a proposal and three other alternatives for the management, use, and development of Cabrillo National Monument. The Proposal (Alternative B) would add staff and facilities to more adequately protect and interpret the monument's significant resources. Resource management programs would be increased to protect the tidepool ecosystem and coastal sage scrub habitat and to open safe military defense structures to public use and enjoyment. The Proposal would result in a broader range of visitor choices and experiences within the monument than is available now. A new location for the entrance station would provide better orientation to the monument, allow entrance fees to be collected from those who use the tidepools, and include the tidepools and western part of the monument in the visitors' perception of the monument. An interpretive building would be constructed at the lighthouse. The Navy Marine Science facility near the tidepools would be converted to an intertidal interpretive center, if the Navy declares the facility excess to its needs and it is transferred to the monument. Outdoor educational facility seating would be improved at the Ballast View rest area. The Whale Overlook would be replaced to accommodate more visitors and improve its aesthetic quality. The Bayside Trail would be extended to form a loop trail. Administrative and storage space would be added to increase staff efficiency and effectiveness and to better care for museum artifacts and resources.

Alternatives described in this document, in addition to the Proposal, include No Action (Alternative A), Minimum Requirements (Alternative C), and Enhanced Visitor Use (Alternative D). Alternative C would improve resource management, relocate the entrance station, improve the outdoor educational facility, and open some defense structures to the public, but would not include adding interpretive facilities at the lighthouse or the tidepools or extending the Bayside Trail. Administrative or storage needs would only be partially met. Alternative D is similar to the Proposal but includes construction of an amphitheater at the Ballast View rest area as the outdoor educational facility and considers an alternative location for the lighthouse interpretive facility.

The environmental consequences of the proposed action and other alternatives are documented.

SUPPLEMENTARY INFORMATION: The public review period for this document will end 60 days after the publication of a notice of availability in the **Federal Register**. Comments will be accepted until August 18, 1995. All review comments must be received by that time and should be addressed to Regional Director, Western Region, Attention Meredith Kaplan, National Park Service, 600 Harrison Street, Suite 600, San Francisco, CA 94107–1372. For further information, write to the above address or telephone at 415–744–3968. For copies of the document, please contact the Superintendent of Cabrillo National Monument by writing to P.O. Box 6670, San Diego, CA 92166–0670 or by telephoning to 619–557–5450. Copies of the documents are also available at libraries in San Diego, California.

Dated: June 6, 1995.

Patricia L. Neubacher,

Acting Regional Director, Western Region.

[FR Doc. 95–14594 Filed 6–14–95; 8:45 am]

BILLING CODE 4310–70–P

National Park Service

AGENCY: Big Cypress National Preserve, Florida, National Park Service.

ACTION: Notice of availability of Plan of Operations.

SUMMARY: In accordance with section 9.52 of Title 36 of the Code of Federal Regulations, the National Park Service has received a Plan of Operations from Calumet Florida, Inc. for oil and gas operations in Big Cypress National Preserve. The public is invited to review and comment on the Plan of Operations, copies of which are available for review during normal business hours at the following locations.

ADDRESSES: Superintendent, Big Cypress National Preserve, Star Route, Box 110, Ochopee, Florida 33943, telephone (813) 695–2000 (ext 33 or 39); National Park Service, Southeast Field Office, 75 Spring Street, SW., Atlanta, Georgia 30303, telephone (404) 331–4916.

FOR FURTHER INFORMATION CONTACT: The Superintendent at the above address.

SUPPLEMENTARY INFORMATION: Comments received within 30 days of the publication of this notice will become part of the official record.

Dated: May 30, 1995.

Robert Deskins,

Acting Field Director, Southeast Region.

[FR Doc. 95–14593 Filed 6–12–95; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Public Information Collection Requirements Submitted to OMB for Review

The U.S. Agency for International Development (USAID) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, (44 U.S.C. Chapter 35). Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry. Comments may also be addressed to, and copies of the submissions obtained from the Records Management Officer, Renee Roehls, (202) 736–4743, M/AS/ISS Room 930B, N.S., Washington, DC 20523.

Date Submitted: May 30, 1995

Submitting Agency: U.S. Agency for International Development

OMB Number: 0412–0003

Form Number: AID 1550–3

Type of Submission: Renewal

Title: Title II, P.L. 480 Commodities—Annual Estimate of Requirements—Fiscal Year _____

Purpose: The Annual Estimate of Requirements (AER) is used by the Office of Food for Peace to obtain information critical for the planning and budgeting cycle of P.L. 480, Title II Program. The AERs include planned recipient and ration levels, number of distributions; operating reserves that are needed and inventories on hand

Annual Reporting Burden: Respondents: 19, Annual responses: 56; Annual burden hours: 1,344

Reviewer: Jeffery Hill (202) 395–7340; Office of Management and Budget, Room 3201 New Executive Office Building, Washington DC 20503

Dated: May 31, 1995.

Genease E. Pettigrew,

Chief, Information Support Services Division, Office of Administrative Service, Bureau of Management.

[FR Doc. 95–14609 Filed 6–14–95; 8:45 am]

BILLING CODE 6116–01–M

Notice of Request for Proposals in Democracy and Governance

The U.S. Agency for International Development's (USAID's) Center for Democracy and Governance has the goal of promoting sustainable development by providing technical and intellectual leadership services in democracy and governance. The purpose of the activities that constitute the Democracy Center's program is to enhance the Agency's capacity to support the growth and sustainability of (1) legal and judicial systems which promote a rule of law consistent with respect for human rights and democratic principles; (2) civil societies capable of participating in governance decision making and implementation at the national and local levels; (3) improved public sector governance performance and particularly its ability to manage public affairs accountably, transparently, responsively, and efficiently; and (4) electoral and political process development in transition and sustainable development countries, and non-presence countries.

To assist in achieving these objectives, the Democracy Center anticipates awarding several Indefinite Quantity Contracts (IQCs) in each of the four program areas mentioned above as well as general democracy and governance analytical services. One contract will be reserved for a small business under the Governance activities; and one contract will be reserved for a Gray Amendment entity under the Rule of Law activity.

Subcontracting With Disadvantaged Enterprises: Unless the offeror is a disadvantaged enterprise (Gray Amendment entity), no less than 10 percent of the total value of the contract will have to be subcontracted to Gray Amendment entities (U.S. socially and economically disadvantaged, including women-owned businesses: Historically Black Colleges and Universities; U.S. colleges and universities with at least 40 percent Hispanic American students; and U.S. Private Voluntary Organizations controlled by socially and economically disadvantaged individuals including women). To help identify potential subcontractors, a list of all organizations requesting a cop of the solicitation will be sent with each solicitation document. Organizations are encouraged to indicate whether they are Gray Amendment entities when requesting the solicitation and may indicate if they do not wish to be included on the list. By providing the list, USAID does not endorse the listed. What is the effect of preferring one to the other? Organization as being capable of carrying out the activity, nor does USAID verify the claimed status of the organizations. Necessarily the list will contain the names of only those organizations known prior to the issuance of the solicitation document.

Subcontracting With Small and Small Disadvantaged Business Concerns: In addition to the above requirement, in accordance with FAR 52.219, a small business/small disadvantaged business subcontracting plan must be submitted unless the offeror is a small business or small disadvantaged business.

The RFP will be issued no less than 15 days after publication of this synopsis and will close 45 days after issuance. Those interested in receiving a Request for Proposal should send a letter referencing solicitation OP/B/AEP 95–006 along with 3 self-addressed mailing labels. Telephone or fax requests for the solicitation will NOT be honored. All RFP's will be mailed through the U.S. postal service. RFP's will not be expressed mailed. Address requests to:

United States Agency for International Development, M/OP/B/AEP, Ms. Anne Quinlan, SA–14, Room 1543, Washington DC 20523–1429

This CBD notice can be viewed and downloaded using the Agency Gopher. The RFP can be downloaded from the Agency Gopher. The Gopher address is GOPHER.INFO.USAID.GOV. Select USAID Procurement and Business Opportunities from the Gopher menu. The RFP text can be downloaded via Anonymous File Transfer Protocol (FTP). The FTP address is FTP.INFO.USAID.GOV. Log on using the user identification of "anonymous" and the password is your e-mail address. Look under the following directory for the RFP: pub/OP/RFP/BAEP506/baep506.rfp. Receipt of this RFP through Internet must be confirmed by written notification to the contact person noted above. This will ensure that you will receive amendments to the solicitation. It is the responsibility of the recipient of this solicitation document to ensure that it has been received from Internet in its entirety and USAID bears no responsibility for data errors resulting from transmission or conversion processes.

United States Agency for International Development, M/OP/B/AEP, Ms. Anne Quinlan, SA–14, Room 1543, Washington, DC 20523–1429

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Dated: June 9, 1995.

Charles Costello,

Deputy Assistant Administrator, Center for Democracy and Governance, Bureou for Global Programs, Field Support and Research.

[FR Doc. 95–14608 Filed 6–14–95; 8:45 am]

BILLING CODE 6116–01–M

Meeting of Advisory Committee on Voluntary Foreign Aid

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA).

Date: June 21, 1995 (8:30 a.m. to 5:00 p.m.)

Location: State Department, Loy Henderson Auditorium, 23rd Street Entrance

The purposes of the meeting are: to be briefed on, and provide nongovernmental

input regarding USAID's New Partnerships Initiative; to examine USAID's re-engineering process and its implications for private voluntary organizations; and to discuss the status of USAID procurement reforms.

The meeting is free and open to the public. However, notification by June 19, 1995, through the advisory committee headquarters is required. Persons wishing to attend the meeting must call Lisa Douglas-Watson (703) 351–0243 or Susan Saragi (703) 351–0244 or FAX (703) 351–0228/0212. Persons attending must include their name, organization, birthdate and social security number for security purposes.

Dated: May 31, 1995.

Louis C. Stamberg,

Office Director, Office of Private and Voluntary Cooperation, Bureau for Humonitorian Response.

[FR Doc. 95–14615 Filed 6–14–95; 8:45 am]

BILLING CODE 6116–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–705 (Final)]

Furfuryl Alcohol from Thailand

AGENCY: International Trade Commission.

ACTION: Notice of cancellation of public hearing.

SUMMARY: On June 7, 1995, the Commission received a letter from counsel for petitioner in the subject investigation (QO Chemicals, Inc., West Lafayette, IN) withdrawing its request to appear at the hearing, provided that such withdrawal would result in a determination by the Commission not to hold a hearing. No other party has filed a request to appear at the hearing, which was scheduled for June 13, 1995 (60 FR 27554, May 24, 1995). Accordingly, the Commission has determined to cancel its public hearing in this investigation, and that no earlier announcement of this cancellation was possible.

EFFECTIVE DATE: June 9, 1995.

FOR FURTHER INFORMATION CONTACT: Fred Fischer (202–205–3179), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

Authority: This notice is published pursuant to §§ 201.10 and 201.35 of the Commission's rules (19 CFR 201.10 and 201.35).

Issued: June 12, 1995.

By order of the Commission.

Donna R. Koehnke ,

Secretary.

[FR Doc. 95–14696 Filed 6–14–95; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32705]

Glenwood and Southern Railroad Company—Acquisition and Operation Exemption—Arkansas Midland Railroad Company, Inc.

Glenwood and Southern Railroad Company (GSR) has filed a notice of exemption to acquire by lease (pending the exercise of its option to purchase) and to operate the northern segment of Arkansas Midland Railroad Company, Inc.'s (AMR) Norman Branch between milepost 430.0 near Gurdon and milepost 479.2 at Birds Mill, AR. GSR also seeks limited overhead trackage rights over the southern segment of AMR's line between milepost 426.3 and milepost 430.0 to interchange with the Union Pacific Railroad Company at Gurdon.[1] The portion of AMR's rail line to be leased is approximately 49.2 miles and the incidental trackage rights cover 3.7 miles, totaling 52.9 miles of rail line in Pike, Clark, and Montgomery Counties, AR.

Consummation of the transaction was scheduled to take place on or after the May 24, 1995 effective date.

Any comments must be filed with the Commission and served on: Fritz R. Kahn, Suite 750 West, 1100 New York Avenue, NW., Washington, DC 20005–3934.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time.[2] The filing of a petition to revoke will not automatically stay the transaction.

Decided: June 9, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–14688 Filed 6–14–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32547]

Kansas City Southern Railway Company—Construction and Operation Exemption—to Exxon Corporation's Plastics Plant Near Baton Rouge and Baker, Louisiana

AGENCY: Interstate Commerce Commission.

ACTION: Notice of conditional exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission conditionally exempts from the prior approval requirements of 49 U.S.C. 10901 Kansas City Southern Railway Company's (KCS) construction and operation of a line of railroad. The proposed line would be about .375 miles long, beginning at KCS milepost 40 + 07.2 on the KCS Stupp lead, located near the intersection of U.S. Highway 61 and Thomas Road (LA Hwy 423), near Baker, LA, and connecting with the industry track facilities of the Exxon Corporation's Baton Rouge Plastics Plant (Baton Rouge Plant or BRP) located south of Thomas Road (LA Hwy 423) near Baker, LA. (milepost 17 + 99.8 of the Stupp lead). This decision will become effective, if appropriate, only upon completion of the Commission's environmental review concerning construction of the proposed rail line and issuance of a further decision.

DATES: Petitions to reopen must be filed by July 5, 1995.

ADDRESSES: Send pleadings referring to Finance Docket No. 32547, to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue NW., Washington, DC 20423; and (2) Petitioner's representative: John R. Molm, Troutman Sanders, 601 Pennsylvania Avenue NW., Suite 640, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Interstate Commerce Commission Building, 1201 Constitution Avenue NW., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359.

Decided: June 2, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–14689 Filed 6–14–95; 8:45 am]

BILLING CODE 7035–01–P

[1] This is GSR's second such filing. Its first was rejected by the Commission because of the pendency of a feeder line application filed by Caddo Antoine and Little Missiouri Railroad Company (CALM). In *Caddo Antoine and Little Missouri Railroad Company—Feeder Line Acquisition—Arkonsas Midland Railroad Company Line Between Gurdon and Birds Mill, AR*, Finance Docket No. 32479 (ICC served Apr. 18, 1995), the Commission approved CALM's feeder line application for the acquisition of AMR's northern segment of the Norman Branch. Acquisition of the southern segment was not approved. No effort has been made to consummate the transaction. A petition by CALM seeking judicial review of the Commission's decision is pending before the United States Court of Appeals for the Eighth Circuit.

The northern segment is currently being operated by Dardanelle & Russellville Railroad Company (DRRC/CALM). By decision served May 16, 1995, DRRC/CALM, pursuant to Commission Service Order No. 1516, was granted an extension of 30 days, until June 15, 1995, to continue its operation over the line. On May 31, 1995, CALM and various shippers filed a petition seeking a further extension of the service order. That request will be handled in a separate decision.

[2] A petition to revoke the exemption notice was filed May 31, 1995, by CALM and various shippers located on the Norman Branch. The revocation request will be handled in a separate decision.

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7 notice is hereby given that a proposed consent decree in *United States and State of Ohio v. City of Akron, Ohio*, Case No. 88–CV–2279A, was lodged with the United States District Court for the Northern District of Ohio on May 24, 1995. The proposed consent decree resolves civil Clean Water Act claims brought by the United States and the State relating to the operation of Akron's wastewater treatment plant and its discharges to the Cuyahoga River. The decree requires Akron to perform plant and sewer system improvements valued at over $20 million, to pay a civil penalty of $290,000 and to perform three supplemental environmental projects valued together at $3.325 million. The supplemental environmental projects require Akron to extend sewer service to areas now served by private septic tanks, to install an advanced radio control system for its combined sewer overflow and pump stations, and to study odor problems at its wastewater treatment plant.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States and State of Ohio v. City of Akron, Ohio*, Case No. 88–CV–2279A and the Department of Justice Reference No. 90–5–1–1–3144.

The proposed consent decree may be examined at the Office of the United States Attorney, Northern District of Ohio, 1800 Bank One center, 600 Superior Avenue East, Cleveland, Ohio 44114–2600; the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $9.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–14618 Filed 6–14–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Settlement Agreement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Settlement Agreement in *In re: Big Four Metals, Inc.*, Case No. 93 04010–B–V 11, was lodged on May 3, 1995, with the United States Bankruptcy Court for the Southern District of Indiana.

This Settlement Agreement resolves the claims asserted by the United States on behalf of the Environmental Protection Agency ("EPA") against Big Four Metals, Inc. ("Debtor") pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 et seq., for response costs incurred and to be incurred at the Interstate Lead Company, Inc., Superfund Site located in Leeds, Alabama (the "ILCO Site").

The Debtor filed a Petition for Reorganization under Chapter 11 of the Bankruptcy Code on November 22, 1994. EPA filed a Proof of Claim on February 3, 1995. EPA and the Debtor have agreed that the Debtor shall pay EPA $10,000, or approximately one-half of the proceeds available for distribution to general unsecured creditors, in settlement of EPA's claim. In return, EPA will agree not to sue the Debtor for CERCLA claims related to the ILCO Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Settlement Agreement. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to In Re: Big Four Metals, Inc., DOJ Ref. # 90–11–2–108E.

The proposed Settlement Agreement may be examined at the Office of the United States Attorney, Southern District of Indiana, 5th Floor United States Courthouse, 46 East Ohio Street, Indianapolis, Indiana 46204; the Region 4 Office of the Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Settlement Agreement may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $2.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Acting Section Chief, Environment and Natural Resources Division.

[FR Doc. 95–14619 Filed 6–14–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Privacy Act of 1974; Publication of a New System of Records; Amendment of an Existing System

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of a new system of records; amendment of an existing system of records.

SUMMARY: The Privacy Act of 1974 requires that each agency publish notice of all of the systems of records that it maintains. This document adds a new system of records to this Department's current systems of records. With the addition of this new system of records, the Department will be maintaining 142 systems of records. This document also proposes an amendment to one of the Department's existing system of records. The amended system will permit the

Department to track the time spent litigating court cases and for providing legal services.

DATES: Persons wishing to comment on this new systems of records may do so by July 25, 1995.

EFFECTIVE DATE: Unless there is a further notice in the **Federal Register**, this new system of records and the amendment to the existing system will become effective on August 9, 1995.

ADDRESSES: Written comments may be mailed or delivered to Robert A. Shapiro, Associate Solicitor, Division of Legislation and Legal Counsel, 200 Constitution Avenue, NW., Room N–2428, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Miriam McD. Miller, Co-Counsel for Administrative Law, Office of the Solicitor, Department of Labor, 200 Constitution Avenue, NW., Room N–2428, Washington, DC 20210, telephone (202) 219–8188.

SUPPLEMENTARY INFORMATION: Pursuant to section three of the Privacy Act of 1974 (5 U.S.C. 552a(e)(4)), hereinafter referred to as the Act, the Department hereby publishes notice of a new system of records currently maintained pursuant to the Act. This document supplements this Department's last publication in full of all of its Privacy Act systems of records. On September 23, 1993, in volume 58 at page 49548 of the **Federal Register**, we published a notice of all 138 systems of records which were maintained under the Act. Of those 138 systems, there were 37 new systems. On April 15, 1994 (59 FR 18156) the Department published two new systems, which brings the total of system of records to 140. On May 10, 1995 (60 FR 24897) the Department published one new system, which brings the total of systems of records to 141.

1. The new system presented herein is entitled DOL/ILAB–2, Senior Technical Assistance Register (STAR). The system contains the names, addresses and related information of individuals who are offering unpaid assistance to ILAB in carrying out technical assistance in developing counties. The purpose of the system is to provide for the collection and maintenance of information on these individuals who can offer expert advice to developing nations.

2. The Department also hereby proposes to amend an existing system of records, DOL/SOL–7, Solicitor's Legal Activity Recordkeeping System, in order to revise a number of categories, such as Categories of Individuals Covered, Categories of Records, Purpose and Routine Uses. The purpose and effect of the revisions will enable the Department to track the time spent on litigating court cases and for providing other legal services. This tracking will assist the Department to prepare budget submissions and to assist in allocating resources within the Office of the Solicitor. In a related matter, the revision will add paralegal specialists as a newly covered group of employees. The revision will also make certain non-substantive revisions to the Categories for System Manager and System Location.

Universal Routine Uses

In its September 23, 1993 publication, the Department gave notice of eleven paragraphs containing routine uses which apply to all of its systems of records, except for DOL/OASAM–5 and DOL/OASAM–7. There eleven paragraphs were presented in the General Prefatory Statement for that document, and it appeared at pages 49554–49555 of volume 58 of the **Federal Register**. Those eleven paragraphs were republished in an April 15, 1994 document in order to correct grammatical mistakes in the September 23, 1993 version. In the May 10, 1995 publication the General Prefatory Statement was again republished as a convenience to the reader of the document. At this time we are again republishing the May 10, 1995 version of the General Prefatory Statement as a convenience to the reader of this document.

The public, the Office of Management and Budget (OMB), and the Congress are invited to submit written comments on this new system. A report on this new system has been provided to OMB and to the Congress as required by OMB Circular A–130, Revised, and 5 U.S.C. 552a(r).

General Prefatory Statement

The following routine uses apply to and are incorporated by reference into each system of records published below unless the text of a particular notice of a system of records indicates otherwise. These routine uses do not apply to DOL/OASAM–5 Rehabilitation and Counseling File nor to DOL/OASAM–7 Employee Medical Records.

1. It shall be a routine use of the records in this system of records to disclose them to the Department of Justice when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity where the Department of Justice has agreed to represent the employee; or (c) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

2. It shall be a routine use of the records in this system of records to disclose them in a proceeding before a court or adjudicative body, when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

3. When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, disclosure may be made to the appropriate agency, whether Federal, foreign, State, local, or tribal, or other public authority responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative or prosecutive responsibility of the receiving entity, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

4. A record from this system of records may be disclosed to a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

5. Records from this system of records may be disclosed to the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

6. Disclosure may be made to agency contractors, or their employees, consultants, grantees, or their employees, or volunteers who have been engaged to assist the agency in the performance of a contract, service, grant, cooperative agreement or other activity related to this system of records and who need to have access to the records in order to perform the activity. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a; see also 5 U.S.C. 552a(m).

7. The name and current address of an individual may be disclosed from this system of records to the parent locator service of the Department of HHS or to other authorized persons defined by Pub. L. 93–647 for the purpose of locating a parent who is not paying required child support.

8. Disclosure may be made to any source from which information is requested in the course of a law enforcement or grievance investigation, or in the course of an investigation concerning retention of an employee or other personnel action, the retention of a security clearance, the letting of a contract, the retention of a grant, or the retention of any other benefit, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

9. Disclosure may be made to a Federal, State, local, foreign, or tribal or other public authority of the fact that this system of records contains information relevant to the hiring or retention of an employee, the granting or retention of a security clearance, the letting of a contract, a suspension or debarment determination or the issuance or retention of a license, grant, or other benefit.

10. A record from any system of records set forth below may be disclosed to the Office of Management and Budget in connection with the review of private relief, legislative coordination and clearance process.

11. Disclosure may be made to a debt collection agency that the United States has contracted with for collection services to recover debts owed to the United States.

I. Publication of a New System of Records

DOL/ILAB–2

SYSTEM NAME:

Senior Technical Assistance Register (STAR).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Foreign Relations, Bureau of International Labor Affairs (ILAB), U.S. Department of Labor, Room S–5006, 200 Constitution Ave., NW., Washington, DC 20210.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals offering unpaid assistance to ILAB in carrying out technical assistance in developing countries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, telephone number, area(s) of expertise, statement of related experience in and outside the United States, foreign language fluency, availability for travel, any additional information provided by covered individual, information on assistance opportunities offered to the individual, and on any assignments undertaken.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSES:

This system provides for the collection and maintenance of information on individuals who can offer expert advice to developing nations.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those universal routine uses listed in the General Prefatory Statement, last published in the **Federal Register** on May 10, 1995 (60 FR 24897–24898) records from this system may be disclosed to the U.S. Agency for International Development to assist that agency in identifying individuals to whom an opportunity to lend technical assistance can be offered.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS ON THE SYSTEM:

STORAGE:

Records are stored in manual files, computer databases, a document imaging system, and archive disks. Information from the paper documents provided by the applicant is transferred to a computer database and electronic images.

RETRIEVABILITY:

Records are retrieved by any record element, including name.

SAFEGUARDS:

Paper files, magnetic disks and optical disks are maintained in a locked storage cabinet. Computer files are password protected.

RETENTION AND DISPOSAL:

Records will be held in ILAB for either one year after completion of overseas assignment or, if not selected, for two years after date of application. Records are then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

(1) Director, Office of Foreign Relations, Bureau of International Labor Affairs, U.S. Department of Labor, Room S–5006, 200 Constitution Avenue, NW, Washington, DC 20210 or

(2) STAR Project Coordinator; same address.

NOTIFICATION PROCEDURE:

Individuals wishing to access this system of records should contact the System Manager or the STAR Project Coordinator as indicated above. Individuals must furnish the following information for their inquiries to be honored: Full name, address most recently furnished the STAR project, current telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individuals wishing to inquire whether this system of records contains information about them should contact the one of the System Managers indicated above. Individuals must furnish the following information for their inquiries to be honored: Full name, address most recently furnished the STAR project, current telephone number, and signature.

CONTESTING RECORD PROCEDURES:

Individuals wishing to change, augment, or remove their records from this system of records should write to one of the System Managers indicated above. Include full name, address most recently furnished to STAR, current telephone number, and signature.

RECORD SOURCE CATEGORIES:

Applicants; Office of Foreign Relations, ILAB

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

II. Publication of a Revised System of Records

DOL/SOL–7, Solicitor's Legal Activity Recordkeeping System, is amended by revising several categories, including Categories of Individuals Covered, Categories of Records, Purpose and Routine Uses. The categories for System Manager and System Location are being updated but these are non-substantive changes.

For the convenience of the reader, the entire system is being republished, in full, in its proposed form.

DOL/SOL–7

SYSTEM NAME:

Solicitor's Legal Activity Recordkeeping System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

The central database is maintained in the Office of the Solicitor (SOL), Office of Administration, Management, and Litigation Support, Washington, DC. Computer access terminals are located in SOL Divisional Offices in Washington, DC, and in all SOL Regional Officer and their branches.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Attorneys and paralegal specialists employed by SOL, judges assigned to DOL cases, and individuals and/or parties involved in the cases.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual attorney and paralegal specialist assignments, records which identify pending cases and opinions requested, status of assignments, cases and options, statutes enforced, client agencies served, and time spent on assignments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE:

To track the status of cases and other legal work, to manage attorney and paralegal specialist assignments, to track the time spent litigating cases and providing other legal services, to prepare budget submissions and to assist in allocating resources among Divisional and Regional Offices.'

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Those universal routine uses listed in the General Prefatory Statement last published in the **Federal Register** on May 10, 1995 (60 FR 24897–24898). In addition, selected data may be shared with the Office of Management and budget (OMB) and Congress as part of the budget submission process.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual and computer files.

RETRIEVABILITY:

By initials of the SOL attorney or paralegal specialist, name of the judge, name or social security number of the individual involved, and/or the name of the party involved in a case.

SAFEGUARDS:

Manual and computer files are accessible only by authorized persons, in accordance with SOL operating procedures.

RETENTION AND DISPOSAL:

Records are retained permanently.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Administration, Management and Litigation, Support/ Office of the Solicitor, 200 Constitution Avenue NW., Room N2414, Washington, DC 20210.

NOTIFICATION PROCEDURES:

Inquiries should be mailed or presented to the system manager at the address listed above.

RECORD ACCESS PROCEDURE:

A request for access shall be mailed or presented to the system manager at the address listed above. Individuals must furnish the following information for their records to be identified: (a) Name and (b) verification of identity as required by the regulations implementing the Privacy Act of 1974 at 29 CFR 70a.4.

CONTEST RECORD PROCEDURES:

A request for amendment should be addressed to the system manager noted above and must meet the requirements of 29 CFR 70a.7.

RECORD SOURCE CATEGORIES:

Covered individuals, case files, correspondence files, opinion files and miscellaneous files.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Signed at Washington, DC, this 12th day of June, 1995.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 95–14682 Filed 6–14–95; 8:45 am]

BILLING CODE 4510–23–M

Employment and Training Administration

Native American Employment and Training Council; Renewal

In accordance with the provisions of the Federal Advisory Committee Act, the Secretary of Labor has determined that the renewal of the Native American Employment and Training Council is in the public interest consistent with the requirements of title IV, Section 410(k)(1) of the Job Training Partnership Act.

The Council will provide advice to the Assistant Secretary for Employment and Training regarding the overall operation and administration of native American programs authorized under Title IV, Section 401, as amended, as well as the implementation of other programs providing services to Native American youth and adults under this Act. The Assistant Secretary views the Council as the primary vehicle to accomplish the Department's commitment to work in partnership with the Indian and Native American community on employment and training concerns.

The Council shall consist of no less than 17 Indians, Alaskan Natives and Hawaiian Natives appointed by the Secretary from among individuals nominated by Indian tribes or Indian, Alaskan Native or Hawaiian Native organizations. An equitable geographic distribution will be sought in addition to appropriate representation of both tribes and non-tribal organizations. The members shall not be compensated and shall not be deemed to be employees of the United States.

The Council will function solely as an advisory body, and in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under the Act 15 days from this publication.

Interested persons are invited to submit comments regarding the renewal of the Native American Employment and Training Council.

Such comments should be addressed to: Mr. Thomas M. Dowd, Chief, Division of Indian and Native American Programs, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., Room N–4641, Washington, D.C. 20210, Telephone: (202) 219–8502 (this is not a toll free number).

Signed at Washington, D.C. this 1st day of June, 1995

Robert B. Reich,

Secretary of Labor.

[FR Doc. 95–14681 Filed 6–14–95; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. R. & D. Coal Company

[Docket No. M–95–78–C]

R. & D. Coal Company, 214 Vaux Avenue, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.332(b)(1) & (b)(2) (working sections and working places) to its Buck Mountain Slope (I.D. No. 36–02053) located in Schuylkill County, Pennsylvania. The petitioner proposes to use air passing through inaccessible abandoned workings and additional areas by mixing with the air in the intake haulage slope to ventilate the only active workings section, to ensure air quality by sampling intake air during preshift and on-shift examinations, and to suspend mine production when air quality fails to meet specified criteria. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

2. Jericol Mining, Inc.

[Docket No. M–95–79–C]

Jericol Mining, Inc., General Delivery, Holmes Mill, Kentucky 40843 has filed a petition to modify the application of 30 CFR 75.1710 (canopies or cabs; electric face equipment) to its No. 2 Darby Mine (I.D. No. 15–16627) located in Harlan County, Kentucky. Due to the fluctuating height of the seam, the petitioner proposes to operate the Simmons Rand Model 828 battery powered coal haulers and the Simmons Rand 488 scoop without canopies. The petitioner asserts that compliance with the mandatory standard would diminish the safety of miners.

3. Andalex Resources, Inc.

[Docket No. M–95–80–C]

Andalex Resources, Inc., P.O. Box 711, Madisonville, Kentucky 42431 has filed a petition to modify the application of 30 CFR 75.325(b) (air quantity) to its Island Mine No. 1 (I.D. No. 15–17515) located in Hopkins County, Kentucky. The petitioner requests a modification of the standard to determine the volume of air at alternate locations on a working section and in areas where mechanized mining equipment is being installed or removed. The petitioner proposes to mine panels by driving a set of entries a specified distance and then drive another set of entries parallel and adjoining the first set; and to measure the air volume in the panels at the location indicated on the diagram accompanying the petition. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. Andalex Resources, Inc.

[Docket No. M–95–81–C]

Andalex Resources, Inc., P.O. Box 711, Madisonville, Kentucky 42431 has filed a petition to modify the application of 30 CFR 75.360(c)(1) (preshift examination) to its Island Mine No. 1 (I.D. No. 15–17515) located in Hopkins County, Kentucky. The petitioner requests a modification of the standard to determine the volume of air at alternate locations on a working section and in areas where mechanized mining equipment is being installed or removed. The petitioner proposes to mine panels by driving a set of entries a specified distance and then drive another set of entries parallel and adjoining the first set; and to measure the air volume in the panels at the location indicated on the diagram accompanying the petition. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

5. Andalex Resources, Inc.

[Docket No. M–95–82–C]

Andalex Resources, Inc., P.O. Box 711, Madisonville, Kentucky 42431 has filed a petition to modify the application of 30 CFR 75.362 (on-shift examination) to its Island Mine No. 1 (I.D. No. 15–17515) located in Hopkins County, Kentucky. The petitioner requests a modification of the standard to determine the volume of air at alternate locations on a working section and in areas where mechanized mining equipment is being installed or removed. The petitioner proposes to mine panels by driving a set of entries a specified distance and then drive another set of entries parallel and adjoining the first set; and to measure the air volume in the panels at the location indicated on the diagram accompanying the petition. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 17, 1995. Copies of these petitions are available for inspection at that address.

Dated: June 7, 1995.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 95–14672 Filed 6–14–95; 8:45 am]

BILLING CODE 4510–43–P

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 94–45; Exemption Application No. D–09841, et al.]

Grant of Individual Exemptions; Bank of Ashland, Inc., et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for

a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Bank of Ashland, Inc. (the Bank) Located in Ashland, Kentucky

[Prohibited Transaction Exemption 95–45; Application Nos. D–09841 thru D–09843]

Exemption

The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply as of December 23, 1994, to the cash sale of certain collateralized mortgage obligations (CMOs) by six employee benefit plans for which the Bank acts as trustee (the Plans) to Ashland Bankshares, Inc. (the Holding Company), a party in interest with respect to the Plans, provided that the following conditions were met:

(a) Each sale was a one-time transaction for cash;

(b) Each Plan received an amount which was equal to the greater of (i) the outstanding principal balance for the CMOs owned by the Plan, plus accrued but unpaid interest, at the time of sale, (ii) the amortized cost for the CMOs owned by the Plan, plus accrued but unpaid interest, as determined by the Bank based on the outstanding principal balance for each CMO on the date of sale, or (iii) the fair market value of the CMOs owned by the Plan as determined by an independent, qualified appraiser at the time of the sale;

(c) The Plans did not pay any commissions or other expenses with respect to the sale;

(d) The Bank, as trustee of the Plans, determined that the sale of the CMOs is in the best interests of each Plan and their participants and beneficiaries at the time of the transaction;

(e) The Bank took all appropriate actions necessary to safeguard the interests of the Plans and their participants and beneficiaries in connection with the transactions; and

(f) Each Plan received a reasonable rate of interest on the CMOs during the period of time it held the CMOs.

EFFECTIVE DATE: This exemption is effective as of December 23, 1994.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 14, 1995, at 60 FR 19090.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Simplex Time Recorder Co., Employee Savings Plan (the Plan), Located in Gardner, Massachusetts

[Prohibited Transaction Exemption 95–46; Exemption Application No. D–09935]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) the extension of credit (the Loan) to the Plan by Simplex Time Recorder Co., a party in interest with respect to the Plan, with regard to a group annuity contract (the GAC) issued by Executive Life Insurance Company of California (ELIC), and (2) the Plan's potential repayment of the Loan (the Repayment); provided the following conditions are satisfied:

(A) No interest or expenses are paid by the Plan in connection with the transaction;

(B) The Loan will be repaid only out of amounts paid to the Plan by ELIC, its successors, or any other responsible third party making payment with respect to ELIC's obligations under the GAC (the GAC Proceeds); and

(C) Repayment of the Loan is waived with respect to the amount by which the Loan exceeds GAC proceeds.

For a more complete statement of the facts and representations supporting this exemption, refer to the notice of proposed exemption published on April 27, 1995 at 60 FR 20769.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, D.C., this 9th day of June, 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 95–14575 Filed 6–14–95; 8:45 am]

BILLING CODE 4510–29–P

[Application No. D–09500, et al.]

Proposed Exemptions; Fidelity Management Trust Company (FMTC) and its Affiliates, et al

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Fidelity Management Trust Company (FMTC) and its Affiliates (collectively, Fidelity) Located in Boston, Massachusetts; Proposed Exemption

[Application No. D–09500]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Exemption for Payment of Certain Fees to Fidelity

The restrictions of section 406(b)(1) and (b)(2) of the Act and the taxes imposed by section 4975 of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply to the payment of certain performance fees (the Performance Fee) to Fidelity by employee benefit plans for which Fidelity provides investment management or discretionary trustee services (the Client Plans) pursuant to an investment management or trust agreement (the Agreement) entered into between Fidelity and the Client Plans either individually, through the establishment of a single client separate account (Single Client Account), or collectively as participants in a multiple client commingled account (Multiple Client Account), provided that the conditions set forth below in Section III are satisfied. (Single Client Accounts and Multiple Client Accounts are collectively referred to herein as Accounts.)

Section II—Exemption for Investments in a Multiple Client Account

The restrictions of section 406(a)(1)(A) through (D) of the Act and the taxes imposed by section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to any investment by a Client Plan in a Multiple Client Account managed by Fidelity, provided that the conditions set forth below in Section III are satisfied.

Section III—General Conditions

(a) The investment of plan assets in a Single or Multiple Client Account, including the terms and payment of any Performance Fee, shall be approved in writing by a fiduciary of a Client Plan which is independent of Fidelity (the Independent Fiduciary). Notwithstanding the foregoing, Fidelity may authorize the transfer of cash from a Single Client Account to a Multiple Client Account provided that: (1) The Multiple Client Account has similar investment objectives and the identical fee structure as the Single Client Account; (2) the Agreement governing the Single Client Account authorizes Fidelity to invest in a Multiple Client Account; (3) Fidelity receives no additional fees from the Single Client Account for cash invested in the Multiple Client Account; (4) a binding commitment to make the transfer to the Multiple Client Account occurs within six months of the Independent Fiduciary's decision to allocate assets to the Single Client Account or, in the event Fidelity's binding commitment to make the transfer occurs more than six months after such fiduciary's decision, Fidelity obtains an additional authorization from the Independent Fiduciary; and (5) each transfer of assets from the Single Client Account to the Multiple Client Account occurs within sixty (60) days of the actual transfer of such assets to the Single Client Account.

(b) The terms of any investment in an Account and of any Performance Fee shall be at least as favorable to the Client Plans as those obtainable in arm's-length transactions between unrelated parties.

(c) At the time any Account is established and at the time of any subsequent investment of assets (including the reinvestment of assets) in such Account:

(1) Each Client Plan shall have total net assets with a value in excess of $50 million; and

(2) No Client Plan shall invest, in the aggregate, more than five percent (5%) of its total assets in any Account or more than ten percent (10%) of its assets in all Accounts established by Fidelity.

(d) Prior to making an investment in any Account, the Independent Fiduciary of each Client Plan investing in an Account shall receive offering materials from Fidelity which disclose all material facts concerning the purpose, structure, and operation of the Account, including any fee arrangements.

(e) With respect to its ongoing participation in an Account, the Independent Fiduciary of each Client Plan shall receive the following written information from Fidelity:

(1) Audited financial statements of the Account prepared by independent public accountants selected by Fidelity no later than ninety (90) days after the end of the fiscal year of the Account;

(2) Quarterly and annual reports prepared by Fidelity relating to the overall financial position of the Account and, in the case of a Multiple Client Account, the value of such Client Plan's interest in the Account. Each such report shall include a statement regarding the amount of fees paid to Fidelity during the period covered by such report;

(3) Annual reports indicating the fair market value of the Account's assets determined using market sources and valuation methodologies acceptable to the Independent Fiduciary of the Client Plan for a Single Client Account or the responsible independent fiduciaries of Client Plans and other authorized persons acting for investors in a Multiple Client Account (the Responsible Independent Fiduciaries, as defined in Section IV(c) below), or if market sources are not available, values determined by a qualified appraiser independent of Fidelity which has been approved by the Independent Fiduciary or Responsible Independent Fiduciaries. However, no independent appraisals shall be required for assets acquired for the Account within the twelve (12) months preceding the end of the period covered by the report, unless such appraisals are necessary for purposes of determining any compensation due to Fidelity based on the value of the assets in the Account for that period; and

(4) In the case of any Multiple Client Account, a list of all other investors in the Account.

(f) The total fees paid to Fidelity shall constitute no more than reasonable compensation.

(g) The Performance Fee shall be payable after the Client Plan has received distributions from the Account in excess of an amount equal to 100% of its invested capital plus a pre-specified annual compounded cumulative rate of return (the Threshold Amount), except that in the case of Fidelity's removal or resignation, Fidelity shall be entitled to receive a Performance Fee payable either at the time of removal, or in the event of Fidelity's resignation, on the scheduled termination date of the Account, subject to the requirements of paragraph (j) below, as determined by a deemed distribution of the assets of the Account based on an assumed sale of such assets at their fair market value (in accordance with market sources or independent appraisals as described in paragraph (k) below), only to the extent that the Client Plan would receive distributions from the Account in excess of an amount equal to the Threshold Amount at the time of Fidelity's removal or resignation. Both the Threshold Amount and the amount of the Performance Fee, expressed as a percentage of the amount distributed (or deemed distributed) from the Account in excess of the Threshold Amount, shall be established by the Agreement and agreed to by the Independent Fiduciary of the Client Plan.

(h) The Threshold Amount for any Performance Fee shall include at least a minimum rate of return to the Client Plan, as defined below in Section IV(d). The Independent Fiduciary acting for a Client Plan shall specifically agree in writing with Fidelity, prior to any investment in the Account, that it would be appropriate for the minimum rate of return applicable to the Account to be based upon the rate of change in the consumer price index (CPI) during the period specified in the Agreement, as described in Section IV(d).

(i) For any sale of an asset in an Account which shall give rise to the payment of a Performance Fee to Fidelity prior to the termination of the Account, the sale price of the asset shall be at least equal to a target amount (the Target Amount), as defined in Section IV(e), in order for Fidelity to sell the asset and receive its Performance Fee without further approvals. If the proposed sale price of the asset is less than the Target Amount, the proposed sale shall be disclosed to and approved by the Independent Fiduciary for a Single Client Account or the Responsible Independent Fiduciaries for a Multiple Client Account, in which event Fidelity will be entitled to sell the asset and receive its Performance Fee. If the proposed sale price is less than the Target Amount and the Independent Fiduciary's or Responsible Independent Fiduciaries' approval is not obtained, Fidelity shall still have the authority to sell the asset, if the Agreement provides Fidelity with complete investment discretion for the Account, provided that the Performance Fee that would have been payable to Fidelity by reason of the sale of the asset is paid only at the termination of the Account.

(j) In the event Fidelity resigns as investment manager or trustee of an Account, the Performance Fee shall be calculated at the time of resignation based upon a deemed distribution of the assets of the Account at their fair market value (determined using market sources or independent appraisals as described in paragraph (k) below). The amount arrived at by this calculation shall be multiplied by a fraction, the numerator of which shall be the sum of the disposition proceeds of all assets in the Account received prior to the termination date plus the fair market value of the assets remaining in the Account on the termination date and the denominator of which shall be the aggregate value of the assets in the Account used in determining the amount of the Performance Fee as of the date of resignation, provided that this fraction shall never exceed 1.0. The resulting amount shall be the Performance Fee payable to Fidelity on the scheduled termination date of the Account.

(k) With respect to the valuation of the assets in an Account for purposes of determining any Performance Fee based on a deemed distribution of such assets, Fidelity shall establish the fair market value for the assets using market sources and valuation methodologies disclosed to, and approved in writing by, the Independent Fiduciary for a Single Client Account or the Responsible Independent Fiduciaries for a Multiple Client Account. In the event market sources are not available for the valuation of assets in the Account, the fair market value of such assets shall be determined by an independent qualified appraiser approved by either the Independent Fiduciary for a Single Client Account or the Responsible Independent Fiduciaries for a Multiple Client Account prior to any valuation of the assets. If a new appraiser for an asset is chosen by Fidelity, the appraiser shall be approved by such Fiduciaries prior to any valuation of the asset. In any event, the fair market value of all assets involved in any deemed distribution shall be based on the current market value of such assets as of the date of the transactions giving rise to the payment of the Performance Fee.

(l) Fidelity shall maintain, for a period of six years, the records necessary to enable the persons described in paragraph (m) of this Section III to determine whether the conditions of this exemption have been met, except that: (1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Fidelity, the records are lost or destroyed prior to the end of the six year period, and (2) no party in interest, other than Fidelity, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (m) below.

(m)(1) Except as provided in paragraph (m)(2) and notwithstanding any provisions of sections 504(a)(2) and (b) of the Act, the records referred to in paragraph (l) of this Section III shall be unconditionally available at their customary location for examination during normal business by:

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(ii) Any fiduciary of a Client Plan or any duly authorized employee or representative of such fiduciary;

(iii) Any contributing employer to any Client Plan or any duly authorized employee or representative of such employer; and

(iv) Any participant or beneficiary of any Client Plan, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described above in paragraph (m)(1)(ii)–(iv) shall be authorized to examine the trade secrets of Fidelity or any commercial or financial information which is privileged or confidential.

Section IV—Definitions

(a) An "affiliate" of a person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative of, or partner of any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(b) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term "Responsible Independent Fiduciaries" means with respect to a Multiple Client Account the Independent Fiduciary of Client Plans invested in the Account and other authorized persons acting for investors in the Account which are not employee benefit plans as defined under section 3(3) of the Act (such as governmental plans, university endowment funds, etc.) that are independent of Fidelity and that collectively hold at least 50% of the interests in the Account.

(d) The term "Threshold Amount" means with respect to any Performance Fee an amount which equals all of a Client Plan's capital invested in an Account plus a pre-specified annual compounded cumulative rate of return that is at least a minimum rate of return determined as follows:

(1) A non-fixed rate which is at least equal to the rate of change in the CPI during the period from the deposit of the Client Plan's assets in the Account until distributions of the Client Plan's assets from the Account equal or exceed the Threshold Amount; or

(2) A fixed rate which is at least equal to the average annual rate of change in the CPI over some period of time specified in the Agreement, which shall not exceed 10 years.

(e) The term "Target Amount" means a value assigned to each asset in the Account established by Fidelity either (1) at the time the asset is acquired, by mutual agreement between Fidelity and the Independent Fiduciary for a Single Client Account or the Responsible Independent Fiduciaries for a Multiple Client Account, or (2) pursuant to an objective formula approved by such fiduciaries at the time the Account is established. However, in no event will such value be less than the acquisition price of the asset.

(f) The term "Account" means any Single Client Account or Multiple Client Account established with Fidelity, under a written investment management or trust agreement, that is invested primarily (i.e. more than 50%) in securities or other assets which are not publicly-traded equity securities or publicly-traded, investment grade debt securities, pursuant to written instructions and guidelines established and approved by an Independent Fiduciary for the Client Plan prior to any investment by the Client Plan in the Account. For purposes of an "Account" meeting the 50% test for assets which are *not* "publicly-traded equity securities" or "publicly-traded, investment grade debt securities", any private market securities held by the Account that become publicly-traded securities shall not be considered as such for a period of thirty (30) months following the date such securities become publicly-traded so as to allow Fidelity sufficient time to dispose of such securities in order for the Account to remain primarily invested in assets which are not publicly-traded securities, including for such purposes any publicly-traded debt securities which are not investment grade.[1]

The availability of this exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions which are the subject of this exemption.

Summary of Facts and Representations

1. FMTC is a Massachusetts trust company with its principal office located in Boston, Massachusetts, and is a "bank" as defined under the Investment Advisers Act of 1940. FMTC manages approximately $24 billion worth of assets for a variety of clients, virtually all of which are employee benefit plans. FMTC's client accounts consist of either separate accounts for a single client or commingled accounts for multiple clients.

2. Fidelity will offer the investment arrangement described below involving the payment of a Performance Fee to Client Plans that seek to invest primarily in securities and have aggregate net plan assets with a fair market value in excess of $50 million.[2] Fidelity will serve such Client Plans as the investment manager or discretionary trustee of either a Single Client Account or a Multiple Client Account. In general, Fidelity will have complete discretion for identifying appropriate investments, making investment decisions, and managing and disposing of the securities or other assets acquired for the Accounts. However, with respect to certain Single Client Accounts, Fidelity will not exercise absolute investment discretion and will be required to obtain approval for certain investment

[1] As noted above in Section III(f), an Independent Fiduciary must specifically agree in writing with Fidelity that it would be appropriate for the minimum rate of return applicable to the Account to be based upon the rate of change in the CPI during the period specified in the Agreement. However, with respect to any Account with an investment strategy designed to invest in distressed, defaulted or other non-performing debt instruments that may be publicly-traded securities at the time they are acquired by the Account, the Department encourages Client Plan fiduciaries to determine whether or not any of the published indices for publicly- traded debt securities would be a more appropriate performance benchmark to measure a minimum rate of return for such securities.

[2] In the case of multiple plans maintained by a single employer or a single controlled group of employers, the assets of which are invested on a commingled basis (e.g. through a master trust), this $50 million threshold will be applied to the aggregate assets of all such plans.

decisions from the Independent Fiduciary of the Client Plan. Such approvals will typically be obtained from the Client Plan sponsor or an investment committee appointed by the Client Plan sponsor.

3. Single Client Accounts will be established pursuant to Agreements negotiated with the Independent Fiduciaries of the Client Plans. The terms of Fidelity's compensation will be established in the Agreements governing the Single Client Account and will be fully disclosed to the Independent Fiduciary prior to the investment of assets of the Client Plan in the Single Client Account. If agreed to by the Independent Fiduciary, the compensation arrangement involving the payment of the Performance Fee (as described in Item 5 below) will be included in the Agreement.[3] The term of each Account will be predetermined in the Agreement and approved by the Independent Fiduciary of the Client Plan (see Item 8 below).

A Multiple Client Account typically will be organized either as a common law trust or a group trust as defined in IRS Revenue Ruling 81–100 (as to which Fidelity would serve as discretionary trustee), or as a limited partnership (as to which Fidelity would be general partner).[4] For any Multiple Client Account, various decisions regarding the Account other than investment management decisions for the Account (such as the initial decision to allocate Client Plan assets to the Account, decisions with respect to the removal of Fidelity or the termination of the Account) will be made by the Responsible Independent Fiduciaries. Fidelity represents that in all instances the Responsible Independent Fiduciaries will be acting for Account investors that collectively hold at least 50% of the interests in the Account. The exact percentage required for such decisions will be specified in the governing documents of the Account.

The decision to invest assets of a Client Plan in any Multiple Client Account will be made by the Independent Fiduciary of such Client Plan, based upon full written disclosure of the Performance Fee prior to such investment. Notwithstanding the foregoing, Fidelity may authorize the transfer of cash from a Single Client Account to a Multiple Client Account where: (i) The Multiple Client Account has similar investment objectives and the identical fee structure as the Single Client Account; (ii) the Agreement governing the Single Client Account authorizes Fidelity to invest in a Multiple Client Account; (iii) Fidelity receives no additional fees from the Single Client Account for cash invested in the Multiple Client Account; (iv) a binding commitment to make the transfer to the Multiple Client Account is made within six months of the Independent Fiduciary's decision to allocate assets to the Single Client Account or, in the event Fidelity's binding commitment to make the transfer occurs more than six months after such fiduciary's decision, Fidelity obtains an additional authorization from the Independent Fiduciary; and (v) each transfer of assets from the Single Client Account to the Multiple Client Account occurs within sixty (60) days of the actual transfer of such assets to the Single Client Account. Fidelity represents that its commitment to invest the cash would normally occur within six months of the Independent Fiduciary's decision to allocate assets to the Single Client Account. However, if more than six months has transpired since the Independent Fiduciary's decision to invest the assets in the Single Client Account, Fidelity will obtain an additional authorization from such fiduciary. Such authorization will occur following written disclosure to the Independent Fiduciary of Fidelity's binding commitment to make a cash transfer to the Multiple Client Account which will be deemed approved unless such fiduciary objects within a reasonable time.

After a transfer of cash, the fee structure for the Multiple Client Account will govern all fees received by Fidelity for such Client Plan assets. The precise terms of Fidelity's compensation arrangement will be established as part of the documents pursuant to which the Multiple Client Account is organized and can be amended only with the affirmative approval of the Responsible Independent Fiduciaries.

4. The applicant represents that, in general, the investment objectives of each Account will be to obtain current income and/or capital appreciation through investments primarily in various types of private market securities and real estate related investments. Fidelity represents that it offers a wide range of investment services and utilizes a wide variety of investment approaches. While the bulk of Fidelity's business entails investing Client Plan assets in publicly-traded securities which are readily valued or easily liquidated, other aspects of its investment business entail, at least in part, investing Client Plan assets in non-publicly-traded securities and other property.

Fidelity's objective with respect to the requested exemption is to achieve sufficient flexibility to respond to client demands and preferences for utilization of a Performance Fee arrangement of the type described below. Fidelity believes that such a fee arrangement may be attractive to Client Plans in situations involving Accounts which are to be invested primarily (i.e. more than 50%) in certain types of assets other than publicly-traded equity securities or publicly-traded, investment grade debt securities. For purposes of an Account meeting the 50% test for assets which are *not* "publicly-traded equity securities" or "publicly-traded, investment grade debt securities", any private market securities held by the Account that become publicly-traded securities shall not be considered as such for a period of thirty (30) months following the date such securities become publicly-traded so as to allow Fidelity sufficient time to dispose of such securities in order for the Account to remain primarily invested in assets which are not publicly-traded securities, including for such purposes any publicly-traded debt securities which are not investment grade.[5]

An Account could entail a wide range of types of investments, including privately placed debt and equity securities, high-yield fixed income securities, publicly-traded debt securities issued by distressed companies, partnership interests in venture capital operating companies, various real estate or real estate-related interests, and other "alternative investments" which have greater risk but potentially greater returns than traditional classes of equity or debt securities.[6] Fidelity states that it would not necessarily enter into a Performance Fee arrangement for all Accounts which are invested in the these types of assets. However, Fidelity wishes to have the opportunity to do so in circumstances where an Independent Fiduciary has specifically approved the particular investment objectives and fee arrangements for the Account, as being appropriate for the payment of such a Performance Fee. The Accounts may be designed as either "blind" accounts for which Fidelity will select the investments after the Client Plans have invested therein or "pre-identified asset" accounts for which Fidelity identifies particular securities or other assets for investment prior to the Client Plans' investments in the Accounts.

5. Fidelity proposes to have the Client Plans pay for investment management or discretionary trustee services rendered to the Accounts based upon a two-part fee structure which will be approved in advance by the Independent Fiduciaries of the Client Plans. In addition to an on-going investment management or trustee fee (the Base Fee) paid to Fidelity by the Client Plan, the fee structure may include the Performance Fee, a fee payable upon a distribution (or deemed distribution) of the assets from the Account after the Client Plan has received (or would receive) a return of all its invested capital plus a certain pre-specified rate of return on its investments in the Account. Fidelity requests an exemption for the payment by Client Plans of the Performance Fee under circumstances described below.

With respect to the Base Fee, such fee will be paid throughout the term of the Account on a pre-specified periodic basis. The amount of the Base Fee will be based on either (i) a percentage of the net fair market value of the Client Plan assets in the Account (i.e. without regard to any leveraged amounts) as of the last day of each period or (ii) a percentage of the assets allocated to the Account (i.e. the invested capital) less any amounts thereof which have been distributed from the Account. In either event, the Base Fee will be pro-rated for any partial periods. The exact percentage to be used in determining the Base Fee will be negotiated between Fidelity and the Independent Fiduciary of the Client Plan prior to the initial investment of any Plan assets in the Account.

If the Base Fee is calculated based upon the fair market value of the assets in the Account as of a specified determination date, the fee will be based upon values determined using market sources approved in writing by the Independent Fiduciary of the Client Plan (or specified in the documents establishing the Account, in the case of a Multiple Client Account).[7] If market sources are not available, the fee will be based upon values determined immediately prior to the payment of such fee by an appraiser independent of Fidelity. For any appraisal used to determine the Base Fee, Fidelity will initially notify in writing the Independent Fiduciary for a Single Client Account or the Responsible Independent Fiduciaries for a Multiple Client Account regarding the identity of the appraiser whom Fidelity proposes to retain to value the asset. The Independent Fiduciary or the Responsible Independent Fiduciaries will have an opportunity to approve or disapprove the suggested appraiser with an approval being deemed to have occurred unless such fiduciaries object to the appraiser within a reasonable time. Once approved, the appraiser could perform all future valuations of the particular asset unless either (i) the Independent Fiduciary or Responsible Independent Fiduciaries affirmatively withdraw the prior approval of the appraiser, or (ii) Fidelity suggests a different appraiser, in which case an approval by such fiduciaries would again be required.

In lieu of the Base Fee described above, Fidelity and the Independent Fiduciaries of the Client Plans may agree to an alternative fee arrangement for an Account (the Alternative Fee) which is based upon either a fixed amount or amounts or an objective formula to be negotiated (in either case) between Fidelity and the Independent Fiduciary of the Client Plan prior to the initial investment of any Client Plan assets in the Account. Neither the Base Fee nor any such Alternative Fees will be covered by the requested exemption.[8]

The Performance Fee will be payable either (i) after the Client Plan has actually received distributions from the Account, or (ii) in the case of the removal or resignation of Fidelity, based on deemed distributions from the Account (as discussed in Item 7 below), which in each case must be at least equal to such Plan's invested capital plus a pre-specified annual compounded cumulative rate of return (i.e. the Threshold Amount). The Performance Fee will be equal to a fixed percentage (or several fixed percentages) of all amounts distributed from an Account in excess of the Threshold Amount (or several Threshold Amounts). In this regard, Fidelity represents that there is a possibility that several Threshold Amounts may be established with different percentages being utilized to determine the Performance Fee depending upon which Threshold Amount has been exceeded.[9] Fidelity states that this structure will allow a Client Plan to negotiate an arrangement pursuant to which the

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[3] Section 404 of the Act requires, among other things, that a plan fiduciary act prudently and solely in the interest of the plan's participants and beneficiaries. Thus, the Department expects a plan fiduciary, prior to entering into any performance-based compensation arrangement with an investment manager, to fully understand the risks and benefits associated with the compensation formula following disclosure by the investment manager of all relevant information pertaining to the proposed arrangement. In addition, a plan fiduciary must be capable of periodically monitoring the actions taken by the investment manager in the performance of its duties and must consider, prior to entering into the arrangement, whether such plan fiduciary is able to provide oversight of the investment manager during the course of the arrangement.

[4] With respect to any Multiple Client Account organized by Fidelity as a limited partnership, Fidelity represents that its interest as a general partner will not exceed 1% of the aggregate outstanding partnership interests of such limited partnership at any time.

[5] The Department notes that a "publicly-traded security" would include any security that is a "publicly-offered security" as described in the Department's regulations relating to the definition of "plan assets" in the context of certain plan investments (see 29 CFR 2510.3–101(b) (2)–(4)).

[6] In this regard, Fidelity represents that an Account will not invest in or use any swap transactions (including caps, floors, collars, or options relating thereto), forward contracts, exchanged-traded futures transactions, or options (other than covered call options). The Department notes that no relief is being provided in this proposed exemption for any underlying investments made by an Account which may involve parties in interest with respect to the Client Plans invested in the Account.

In addition, the Department is expressing no opinion as to whether the investment of "plan assets" by an Account in any particular type of asset would violate any provision of Part 4 of Title I of the Act. Thus, the Department is not providing an opinion regarding whether any particular category of investments or investment strategy would be considered prudent or in the best interests of a Client Plan as required by section 404 of the Act.

However, the Department notes that in order to act prudently in making investment decisions, plan fiduciaries must consider, among other factors, the availability, risks and potential return of alternative investments for the plan. A particular investment by a plan, which is selected in preference to other available investments, would generally not be prudent if such investment involves a greater risk to the security of "plan assets" than other comparable investments offering a similar return.

The Department notes further that Client Plan fiduciaries must thoroughly understand the risks involved with any investment course of action and must be capable of monitoring at appropriate intervals the investment course of action taken by Fidelity, particularly with respect to any period when the payment of a Performance Fee to Fidelity would be applicable. In this regard, section 405(a) of the Act states, among other things, that a plan fiduciary shall be liable for a breach of fiduciary responsibility of another fiduciary for the same plan if, by his failure to comply with section 404(a)(1) in the administration of his specific duties which give rise to his status as a fiduciary, he has enabled such other fiduciary to commit a breach.

[7] Fidelity states that in instances where the Base Fee is determined based on the amount of capital invested in the Account, rather than on the value of the assets in the Account, no such market valuations will be utilized to determine the Base Fee. Thus, the independent valuation requirements discussed herein, including any independent appraisal of assets in an Account, will be limited to situations where such valuations are used to calculate either the Base Fee or the Performance Fee.

[8] Fidelity represents that both the Base Fee and the Alternative Fee would be covered by section 408(b)(2) of the Act and the regulations thereunder (see 29 CFR 2550.408b–2). However, the Department expresses no opinion as to whether the payment of such fees, as described herein, would meet the conditions of section 408(b)(2) of the Act.

[9] For example, a Client Plan could negotiate a Performance Fee whereby Fidelity would receive 10% of all distributions from the Account once an initial Threshold Amount (e.g. return of all invested capital plus an 8% annual return) has been achieved and 20% of all distributions once a second Threshold Amount (e.g. return of all invested capital plus a 12% annual return) has been achieved.

amount of the Performance Fee will increase as the level of investment performance increases. Both the annual rate(s) of return used in determining the Threshold Amount(s) and the percentage(s) used to determine the amount of the Performance Fee will be negotiated between, and agreed to by, Fidelity and the Independent Fiduciary of the Client Plan prior to the Client Plan's initial investment in the Account.

With respect to the determination of the Threshold Amount, Fidelity represents that all amounts invested by a Client Plan in an Account will have to earn a pre-specified rate of return, which is at least equal to the minimum rate of return specified in Section IV(d) above,[10] for the entire period such assets are in the Account and must actually be distributed (or deemed distributed) back to the Client Plan in order for the Threshold Amount to be reached. Fidelity states that a bookkeeping account will be maintained for each Client Plan which will show the amount required to be distributed from the Account to satisfy the Threshold Amount. When a certain amount is invested in the Account on a particular date, this bookkeeping account will be reduced by the full amount of the distribution. Thereafter, the required return will be added to this reduced amount until the next distribution is made when the bookkeeping account will be reduced to reflect the amount of that distribution. Only when this bookkeeping account is reduced to zero will the Threshold Amount be satisfied. At this time, the Performance Fee will be payable to Fidelity on all further distributions (or any deemed distribution) from the Account.

Fidelity states that for any sale of an asset in an Account which causes the payment of a Performance Fee and which occurs prior to the termination of the Account, the sale price for the asset must be at least equal to a Target Amount (as defined in Section IV(e) above), in order for Fidelity to be able to sell the asset and receive its Performance Fee without any further approvals. The Target Amount will be established by Fidelity either at the time the asset is acquired, by mutual agreement between Fidelity and the Independent Fiduciary for a Single Client Account or the Responsible Independent Fiduciaries for a Multiple Client Account, or pursuant to a formula approved by such fiduciaries at the time the Account is established. If the proposed sale price of the asset is less than the Target Amount, the proposed sale will be disclosed to the Independent Fiduciary or Responsible Independent Fiduciaries for approval in order for Fidelity to receive its Performance Fee as a result of the sale. Such approval will be deemed to have occurred unless the Independent Fiduciary or Responsible Independent Fiduciaries object to the sale within a reasonable time after notice of the proposed transaction. If the proposed sale price is less than the Target Amount and the Independent Fiduciary's or Responsible Independent Fiduciaries' approval is not obtained, Fidelity will still have the authority to sell the asset in situations where the Agreement provides Fidelity with complete investment discretion for the Account. However, in such instances and in all other circumstances where the sale price is less than the Target Amount and the Independent Fiduciary's or Responsible Independent Fiduciaries' approval is not obtained, the Performance Fee which would have been payable to Fidelity by reason of the sale of such asset will be paid only at the termination of the Account. In this regard, Fidelity states that any Performance Fee which is not paid currently to Fidelity because of the Target Amount rule will be segregated within the Account and invested until the termination of the Account with Fidelity to receive any income (or loss) earned by such investment.

6. All realized income, and proceeds from the sale of the assets of the Account, net of expenses (including reasonable reserves), will be either (i) distributed from the Account to the applicable investors in such Account, including Client Plan(s), or (ii) if the documents pursuant to which the Account is maintained so provide, reinvested until a specified date, with any income and proceeds (net of expenses, including reasonable reserves) of the Account after such date to be distributed to the applicable investors. All distributions from the Account shall be included in calculating whether the Threshold Amount has been reached. Only actual distributions from an Account, and not any amounts reinvested as described above, will be included in calculating whether the Threshold Amount has been reached for purposes of the payment of the Performance Fee.

7. Fidelity may be removed as investment manager or trustee for an Account at any time, without cause, upon the delivery of a notice of removal to Fidelity by the Independent Fiduciary for a Single Client Account or by the Responsible Independent Fiduciaries of a Multiple Client Account. Fidelity may resign as investment manager or trustee of an Account at any time, without cause, upon written notice to the Independent Fiduciary for a Single Client Account or the Responsible Independent Fiduciaries for a Multiple Client Account.

With respect to a Single Client Account, such removal or resignation will not become effective until a successor investment manager or trustee is appointed by the Independent Fiduciary for the Account.

With respect to a Multiple Client Account, the removal of Fidelity will become effective when either: (i) A successor investment manager or trustee is appointed by the Responsible Independent Fiduciaries; or (ii) sixty (60) days (or such greater number of days as may be specified by the Responsible Independent Fiduciaries) elapse, whichever is sooner. Any resignation by Fidelity for a Multiple Client Account will become effective when either: (i) A successor investment manager or trustee is appointed by the Responsible Independent Fiduciaries; or (ii) 180 days elapse, whichever is sooner.

Upon removal of Fidelity as investment manager or trustee, Fidelity will be entitled to receive a Performance Fee if the Client Plans would receive distributions from the Account in excess of an amount equal to the Threshold Amount at the time of Fidelity's removal. Such Performance Fee will be determined by a deemed distribution of the assets of the Account based on an assumed sale of such assets at their fair market value using market sources approved by the Independent Fiduciary of the Client Plan (or specified in the documents establishing the Account, in the case of a Multiple Client Account). If market sources are not available, the fair market value of the assets will be determined by an independent appraiser mutually agreed upon by Fidelity and the Independent Fiduciary of each Client Plan in the case of a Single Client Account or the Responsible Independent Fiduciaries in the case of a Multiple Client Account. If Fidelity and such fiduciaries cannot agree on an appraiser, then the fair market value of such assets will be equal to the average of the two closest appraisals generated by three independent appraisers—one selected by Fidelity, one selected by such fiduciaries, and the third selected by the two appraisers chosen by the parties.

Upon Fidelity's resignation as investment manager or trustee, Fidelity will not receive a Performance Fee until the scheduled termination date for the Account. The amount of the Performance Fee will be based upon a deemed distribution of the assets of the Account at their fair market value at the time of Fidelity's resignation, as determined using market sources approved by the Independent Fiduciary of the Client Plan (or specified in the documents establishing the Account, in the case of a Multiple Client Account). If such market sources are not available, the fair market value of the assets will be determined by an independent appraiser mutually agreed to by Fidelity and the Independent Fiduciary of the Client Plan in the case of a Single Client Account or the Responsible Independent Fiduciaries in the case of a Multiple Client Account. However, if Fidelity and such fiduciaries cannot agree on an appraiser, the procedure described above will be followed.

The Performance Fee will be calculated at the time of resignation based upon the total value of the assets in the Account. The amount of the Performance Fee for such assets will be multiplied by a fraction, the numerator of which will be the sum of the disposition proceeds of all assets in the Account received prior to the termination date plus the fair market value of the assets remaining in the Account on the termination date and the denominator of which will be the aggregate value of the assets in the Account used in determining the amount of the Performance Fee as of the date of resignation, provided that this fraction will never exceed 1.0. The resulting amount will be the Performance Fee payable to Fidelity on the scheduled termination date of the Account. Thus, even if the value of the assets declines after Fidelity's resignation, Fidelity will still receive the Performance Fee for the period of time that it acted as an investment manager or discretionary trustee for the Account if the Client Plans would have received distributions from the Account in excess of an amount equal to the Threshold Amount at the time of Fidelity's resignation, subject to the operation of the fraction discussed above. The fraction ensures that an appropriate reduction in the Performance Fee will be made upon termination of the Account if the value of the assets in the Account declines after Fidelity resigns as the investment manager or discretionary trustee of the Account, based on the valuation of such assets at the time of resignation.

8. A Single Client Account will terminate upon expiration of the period of years specified as the term for the Account in the Agreement or upon the removal or resignation of Fidelity. However, the period of years specified in the Agreement may be extended by the Independent Fiduciary of the Client Plan. In addition, a Single Client Account may be terminated at any time by the Independent Fiduciary upon ninety (90) days written notice to Fidelity.

A Multiple Client Account will terminate upon the occurrence of any of the following events: (i) The affirmative decision of the Responsible Independent Fiduciaries; (ii) the failure of the Responsible Independent Fiduciaries to appoint a successor investment manager or trustee; (iii) expiration of the period of years specified as the term of the Account in the Agreement, provided that the period of years is not extended by the Responsible Independent Fiduciaries; (iv) the distribution of all assets of the Account; or (v) such other circumstances as may be specified in the documents governing the Accounts.

Upon termination of a Single Client Account, the assets in the Account will be distributed to the Client Plan in cash or in kind as agreed to by Fidelity and the Independent Fiduciary. In case of a Multiple Client Account, such distributions (i.e., cash or in-kind) will be agreed to by Fidelity and the Responsible Independent Fiduciaries for the Account.

Fidelity will be entitled to the Performance Fee upon termination of the Account for all remaining distributions made from the Account if the Threshold Amount has been or would be reached at such time. In the case of an in kind distribution of assets of the Account, the Performance Fee will be based on the fair market value of the assets of the Account as determined using market sources approved by the Independent Fiduciary of the Client Plan (or specified in the documents establishing the Account, in the case of a Multiple Client Account). If market sources are unavailable, the fair market value of the assets will be determined by an independent appraiser mutually agreed to by Fidelity and the Independent Fiduciary of the Client Plan in the case of a Single Client Account or the Responsible Independent Fiduciaries in the case of a Multiple Client Account. If Fidelity and such fiduciaries cannot agree on an appraiser, then the same procedure described in Item 7 above will be followed.

9. Each Client Plan will receive throughout the term of an Account the following information:

(a) Quarterly and annual reports prepared by Fidelity relating to the overall financial position of the Account and, in the case of a Multiple Client Account, the balance of such Client Plan's interest in the Account. In addition, such reports will include a statement regarding the amount of all fees paid to Fidelity during the period covered by the report.

(b) Annual reports indicating the current fair market value of all assets in the Account as established by using market sources or independent appraisals (provided that no such appraisals will be required for assets acquired for the Account within twelve (12) months preceding the end of the period covered by the report unless such appraisals are necessary for purposes of determining any compensation due to Fidelity based on the value of the assets in the Account for that period).

(c) In the case of a Multiple Client Account, a list of the investors in the Multiple Client Account.

(d) Audited financial statements prepared by independent public accountants selected by Fidelity, within ninety (90) days of the end of the Account fiscal year.

The Independent Fiduciary for the Client Plan, as well as other authorized persons described above in paragraph (m)(1) of Section III, will have access during normal business hours to Fidelity's records for the Accounts in which the Client Plan has an interest.

10. In summary, the applicant represents that the proposed transactions satisfy the statutory criteria of section 408(a) of the Act because, among other things:

(a) Each investment in any Account will be authorized in writing by an Independent Fiduciary of a Client Plan;

(b) No Client Plan may establish a Single Client Account or invest in a Multiple Client Account unless the Client Plan has total net assets with a value in excess of $50 million. In addition, a Client Plan may not invest, in the aggregate, more than five percent (5%) of its total assets in any one Account or more than ten percent (10%)

[10] Fidelity represents that the Independent Fiduciary acting for a Client Plan shall specifically agree in writing with Fidelity, prior to any investment in the Account, that it would be appropriate for the performance benchmark used to measure the minimum rate of return applicable to the Account to be based upon the rate of change in the CPI over the period specified in the Agreement. However, the Department notes that a Client Plan fiduciary should thoroughly scrutinize the performance objectives for the Account prior to agreeing with Fidelity that such a performance benchmark is appropriate to measure the required minimum rate of return. In this regard, the Department encourages Client Plan fiduciaries to analyze whether any performance benchmarks other than a minimum rate of return based on changes in the CPI, such as an index of publicly-traded equity or debt securities, would be more appropriate to measure the Account's performance.

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

of its total assets in all Accounts established by Fidelity;

(c) Prior to making an investment in any Account, an Independent Fiduciary for each Client Plan will receive offering materials disclosing all material facts concerning the purpose, structure and operation of the Account, including any fee arrangements;

(d) Fidelity will provide each Independent Fiduciary of a Client Plan with periodic written disclosures with respect to the financial condition of the Account, the fees paid to Fidelity, the balance of each Client Plan's interest in the Account, the fair market value of the Account's assets using market sources or independent appraisals approved by the Independent Fiduciary where the value of such assets was used to calculate Fidelity's compensation and, in the case of a Multiple Client Account, a list of other investors in the Account;

(e) The total fees paid to Fidelity will constitute no more than reasonable compensation; and

(f) The timing and formula for determining the Performance Fee will be established and agreed to by the Independent Fiduciary for each Client Plan prior to the Client Plan's investment in the Account and will be based on pre-specified percentages of the Client Plan's assets distributed (or deemed distributed) from the Account in excess of an agreed upon Threshold Amount.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Bankers Trust Company (Bankers Trust) Located in New York, NY; Proposed Exemption

[Application No. D–09869]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c) (1)(A) through (E) of the Code, shall not apply as of October 28, 1994, to the cash sale of certain structured notes (the Notes) for $432,131,250 by three collective investment funds for which Bankers Trust acts as trustee (the Funds) to Bankers Trust New York Corporation (BTNY), a party in interest with respect to employee benefit plans invested in the Funds, provided that the following conditions were met:

(a) Each sale was a one-time transaction for cash;

(b) Each Fund received an amount which was equal to the greater of either (i) the par value of the Notes owned by the Fund at the time of sale, (ii) the purchase price paid by the Fund for its interest in each of the Notes, or (iii) the fair market value of the Notes owned by the Fund, as determined by bid quotations for the Notes obtained from independent broker-dealers at the time of sale;

(c) The Funds did not pay any commissions or other expenses with respect to the sale;

(d) Bankers Trust, as trustee of the Funds, determined that the sale of the Notes was in the best interests of each Fund, and the employee benefit plans invested in the Fund, at the time of the transactions;

(e) Bankers Trust took all appropriate actions necessary to safeguard the interests of the Funds, and the employee benefit plans invested in the Funds, in connection with the transactions; and

(f) The Funds received a reasonable rate of return during the period of time that the Funds held the Notes.

EFFECTIVE DATE: The proposed exemption, if granted, will be effective as of October 28, 1994.

Summary of Facts and Representations

1. Bankers Trust, a New York banking corporation, is a leading commercial bank which provides a wide range of banking, fiduciary, recordkeeping, custodial and investment services to corporations, institutions, governments, employee benefit plans, governmental retirement plans and private investors worldwide. Bankers Trust is wholly owned by BTNY, which is a bank holding company established in 1965 under the laws of the State of New York. As of December 31, 1993, BTNY and its affiliates had consolidated assets in excess of $92 billion and capital of approximately $4.5 billion.

2. Bankers Trust is one of the largest providers of trust and other services to employee benefit plans. Many of these plans also engage BTNY or an affiliate to provide investment advice or to be the plan's investment manager, within the meaning of the Act. Bankers Trust maintains more than 80 collective investment funds for employee benefit plan investment.

3. The Funds are the Bankers Trust Pyramid Aggressive Cash Fund (the BT Aggressive STIF), the Bankers Trust Pyramid Cash Plus Fund (the BT Cash Plus Fund), and the Bankers Trust Pyramid Super Cash Fund (the BT Super Cash Fund).

These three Funds are actively managed, market valued money market vehicles which endeavor to provide a rate of return in excess of traditional par valued short-term money market funds by extending eligible maturities, modifying credit restrictions, and taking advantage of trading opportunities in the money markets. The applicant represents that there are certain differences in the investment strategies used by each Fund, including the duration of average maturities and, in the case of the BT Aggressive STIF, the permitted use of equities and equity equivalents. Bankers Trust states that the Notes were permissible investments under the investment guidelines for each Fund and initially paid above market returns. However, unexpected increases in interest rates during 1994 adversely affected the market value of the Notes. Therefore, the Funds sold the Notes to BTNY on October 28, 1994, for an amount equal to the par value of the Notes owned by each Fund. The Funds had purchased the Notes for an amount which equalled the par value of the Notes, except for Note #2 which was purchased at a slight discount (see Paragraph 5 below).

4. The Notes consisted of U.S. Government Constant Maturity Treasury (CMT) Notes issued by various U.S. Government agencies, and Index Amortizing Notes (IANs) issued by various private sector corporations (as described in Paragraph 5 below). All of the issuers were parties unrelated to the Funds and employee benefit plans invested in the Funds (the Plans) as well as BTNY or any affiliate. In addition, the Notes were purchased by the Funds from broker-dealers that were independent of the Funds, the Plans, BTNY and its affiliates.

The CMT Notes were debt instruments which initially paid a premium rate of interest monthly based on changes in a specified index, such as the London Interbank Offered Rate (LIBOR), the U.S. Treasury Bill Rate or the U.S. Federal Reserve's Cost of Funds Index (COFI). However, under the terms of CMT Notes at the time of issuance, the formula for interest rate payments, and the index upon which such payments were based, was scheduled to change on a specified future date to a different formula based on the U.S. Treasury CMT Rate. Bankers Trust states that the formulas for the interest rate payments made the market value of CMT Notes particularly sensitive to certain changes in the U.S. Treasury CMT Rate. In this regard, Bankers Trust represents that the CMT Notes paid a rate of return that was higher than the existing rates for U.S. Treasury securities of comparable maturity as long as the yield curve for such securities was "steep"—with interest rates falling based on the specified index. However, Bankers Trust states that once the yield curve became "flat" (i.e. with short-term interest rates rising faster than long-term interest rates) or "climbed" (i.e. with a general rise in both short-term and long-term rates), the relative yield on the CMT Notes fell and their market value was below par.

The IANs were debt instruments which initially paid a premium rate of interest monthly based on LIBOR, pursuant to certain formulas used to calculate such rates at various specified times. However, the IANs risked a maturity extension if short-term interest rates, as measured by LIBOR, rose above a certain level. Under such circumstances, once the maturity on the IANs was extended, the IANs would stop paying interest and the outstanding principal balance would be paid down over the remaining term pursuant to certain specified schedules.

5. The terms of the Notes, and the circumstances relating to their yield as investments for the Funds, are described as follows:

Note #1 was a five-year CMT note issued by the Federal National Mortgage Association (FNMA or "Fannie Mae"), which was purchased by the Funds on February 15, 1994 from McDonald & Company for $95 million, with final maturity on March 2, 1999. Note #1 paid interest monthly at a rate equal to one-month LIBOR plus 20 basis points for the first and second years, .65 times the two-year CMT rate plus 129 basis points for the third through fifth years. At the time of the sale of Note #1 by the Funds to BTNY, the note was paying a coupon of LIBOR plus 20 basis points. Bankers Trust states that at the time of sale, the forward curve (i.e. a measurement of future interest rates based on yields for U.S. Treasury securities of comparable duration) suggested that the performance of Note #1 would be significantly impaired once the LIBOR-based coupon payment period ended. According to the forward curve determined by Bankers Trust on October 28, 1994, the comparable investment rate for the time horizon of February 15, 1996 through March 15, 1999 was 7.55%. Bankers Trust represents that Note #1 would have had a market value greater than par if the "time weighted average" of the expected coupons had been greater than or equal to 7.55%. However, at the time of sale, Bankers Trust did not expect that the coupons to be received on Note #1 would be greater than the comparable investment rate for the duration of Note #1. Therefore, Bankers Trust determined that it was appropriate to sell the security.

Note #2 was a three-year CMT note issued by the Federal Home Loan Bank (FHLB), which was purchased by the BT Cash Plus Fund on October 27, 1993 from McDonald & Company for $26,831,250, with a final maturity on November 12, 1996. The par value of Note #2 was $27 million. Thus, the BT Cash Plus Fund purchased Note #2 at a discounted price. Note #2 paid interest quarterly at a rate equal to the three-month U.S. Treasury Bill Rate plus 25 basis points for the first year and .4 times the two-year CMT rate plus 205 basis points for the second and third years. At the time of the sale of Note #2 by the BT Cash Plus Fund to BTNY, the period for the note to pay the three-month U.S. Treasury Bill Rate plus 25 basis points had ended. Bankers Trust states that once this payment period ended, the forward curve suggested that the performance of Note #2 would be significantly impaired. According to the forward curve determined by Bankers Trust on October 28, 1994, since the remaining life of Note #2 was two years, the comparable investment rate was equal to the then current two-year CMT rate which was 6.82%. Bankers Trust represents that Note #2 would have had a market value greater than par if the "time weighted average" of the expected coupons had been greater than 6.82%. However, at the time of sale, Bankers Trust did not expect that the coupons to be received on Note #2 would be greater than the comparable investment rate for the duration of Note #2. Therefore, Bankers Trust determined that it was appropriate to sell the security.

Note #3 was a five-year CMT note issued by Fannie Mae, which was purchased by the BT Cash Plus Fund on February 7, 1994 from McDonald & Company for $95 million, with final maturity on February 17, 1999. Note #3 paid interest monthly at a rate equal to the COFI rate plus 10 basis points for the first and second years, .4 times the two-year CMT rate plus 245 basis points for the third through fifth years. At the time of the sale of Note #3 by the BT Cash Plus Fund to BTNY, the note was paying the COFI rate plus 10 basis points. However, Bankers Trust states that once this COFI-based coupon payment ended, the forward curve suggested that the performance of the note would be significantly impaired. According to the forward curve determined by Bankers Trust on October 28, 1994, the comparable investment rate for the period February 17, 1996 to February 1, 1999 was 7.53%. Bankers Trust represents that Note #3 would have had a market value greater than par if the "time weighted average" of the expected coupons had been greater than 7.53%. At the time of sale, Bankers Trust did not expect that the coupons to be received on Note #3 would be greater than the comparable investment rate for the duration of Note #3. Therefore, Bankers Trust determined that it was appropriate to sell the security.

Note #4 was a five-year CMT note issued by the Federal Home Loan Mortgage Corporation (FHLMC or "Freddie Mac"), which was purchased by the BT Cash Plus Fund and the BT Super Cash Fund on February 16, 1994 from Nikko Securities for $71 million, with final maturity on March 2, 1999. Note #4 paid interest monthly at a rate equal to .5 times the two-year CMT rate plus 209 basis points. According to the forward curve determined by Bankers Trust on October 28, 1994, the comparable investment rate for the period October 28, 1994 through March 2, 1999 was 7.4%. Bankers Trust represents that Note #4 would have had a market value greater than par if the "time weighted average" of the expected coupons had been greater than 7.4%. However, at the time of sale, Bankers Trust did not expect that the coupons to be received on Note #4 would be greater than the comparable investment rate for the duration of Note #4. Therefore, Bankers Trust determined that it was appropriate to sell the security.

Note #5 was a three-year CMT note issued by the Student Loan Marketing Association (SLMA or "Sallie Mae"), which was purchased on February 10, 1994 from Nikko Securities for $95 million, with final maturity on February 24, 1997. Note #5 paid interest monthly at a rate equal to one-month LIBOR plus 20 basis points for the first year and .65 times the two-year CMT rate plus 75 basis points for the second and third years. At the time of the sale of Note #5 by the Funds to BTNY, the note was paying LIBOR plus 20 basis points. However, Bankers Trust states that once this LIBOR-based coupon payment ended, the forward curve suggested that the performance of the note would be significantly impaired. According to the forward curve determined by Bankers Trust on October 28, 1994, the comparable investment rate was equal to the then current two-year CMT rate which was 6.82%. Bankers Trust represents that Note #5 would have had a market value greater than par if the "time weighted average" of the expected coupons had been greater than 6.82%. At the time of sale, Bankers Trust did not expect that the coupons to be received on Note #5 would be greater

than the comparable investment rate for the duration of Note #5. Therefore, Bankers Trust determined that it was appropriate to sell the security.

Note #6 was an IAN issued by Rabobank, which was purchased by the Funds on November 9, 1993 from Lehman Brothers for $14 million, with initial maturity on November 17, 1994. Note #6 paid interest quarterly at a rate equal to three-month LIBOR plus 50 basis points until November 17, 1994 and paid 4.33% thereafter. Bankers Trust states that Note #6 was subject to the risk of a maturity extension if short-term rates rose above a certain level on a specified date. Under the terms of Note #6, if three-month LIBOR was less than 4.9% on November 15, 1994, the note would mature and the principal would be repaid in full on November 17, 1994. However, if three-month LIBOR was above 4.9% on November 15, 1994, the term of Note #6 would be extended for three years with a fixed coupon rate of 4.33% and principal would be repaid according to a pre-set amortization schedule. On October 28, 1994, three-month LIBOR was 5.69%, approximately 79 basis points above Note #6's trigger rate of 4.9%. Thus, it appeared highly probable that the note's maturity would be extended until November 1997. Bankers Trust considered the fixed coupon rate of 4.33% on Note #6 to be significantly below the comparable investment rate for the duration of the note, which was calculated to be 7.14%. Therefore, Bankers Trust determined that the security should be sold.

Note #7 was an IAN issued by Prudential Funding, which was purchased by the Funds on September 24, 1993 from Lehman Brothers for $34 million, with initial maturity on October 18, 1994. Note #7 paid interest quarterly at a fixed rate of 4.75% until October 18, 1994. Like Note #6 described above, Bankers Trust states that Note #7 was subject to the risk of a maturity extension if short-term rates rose above a certain level on a specified date. Under the terms of Note #7, if three-month LIBOR was above 5.04% on October 16, 1994, the maturity of the note extended for three years at a 0% coupon rate with quarterly payments of principal in amounts based on a pre-set amortization schedule. If three-month LIBOR was below 5.04% on October 16, 1994, Note #7 would mature in full on that date. However, Bankers Trust states that three-month LIBOR was above 5.04% on October 16, 1994. At the time of sale, Note #7 was scheduled to pay a 0% coupon and its maturity had been extended. Thus, Bankers Trust determined that the security should be sold.

Note #8 was an IAN issued by E.I. du Pont, which was purchased by the BT Super Cash Fund on September 24, 1993 from Morgan Stanley for $1.3 million, with initial maturity on October 14, 1994. Note #8 paid interest quarterly at a fixed rate of 4.75%. Like Note #7 described above, Bankers Trust states that Note #8 was subject to the risk of a maturity extension if short-term rates rose above a certain level on a specified date. Under the terms of Note #8, if three-month LIBOR was above 5.04% on October 12, 1994, the maturity of the note extended for three years at a 0% coupon rate with quarterly payments of principal in amounts based on a pre-set amortization schedule. If three-month LIBOR was below 5.04% on October 12, 1994, Note #8 would mature in full on October 14, 1994. Since three-month LIBOR was above 5.04% on October 12, 1994, the maturity of Note #8 extended for three years paying a 0% coupon. Thus, Bankers Trust determined that the security should be sold.

6. Bankers Trust had the Funds sell their respective interests in the Notes to BTNY on October 28, 1994, for the par value of the Notes, which in each case was greater than the fair market value of the Notes owned by the Fund (see table below). At the time of the transaction, the par value of the Notes was equal in each case to the outstanding principal balance of the Notes because no principal payments had been made on any of the Notes (see charts in Paragraph 7 below). In addition, Bankers Trust states that the par value of the Notes was either greater than or equal to the initial purchase price paid by the Fund for its interest in the Notes.

Bankers Trust obtained bids from independent broker-dealers to establish the fair market value of the Notes at the time of the transaction. The most recent bids obtained by Bankers Trust prior to the sale of the Notes were as of October 21, 1994. Bankers Trust states that bids for the Notes obtained on October 31, 1994 showed no significant change had occurred over the ten-day period, thereby confirming that the fair market value of the Notes was significantly less than the par value of the Notes on the transaction date of October 28, 1994. Bankers Trust represents that on both October 21, 1994 and October 31, 1994, the bids for Note #1 through Note #5 were quoted by Nikko Securities, for Note #6 and Note #7 by Lehman Brothers, and for Note #8 by Morgan Stanley. The bids for the Notes were quoted by the broker-dealers as a percentage of the outstanding principal balance of each Note. These bids, in comparison with the par value of the Notes, were as follows:

Note	Price quoted		Price received (par value)
	10/21/94	10/31/94	
#1	[11] 96.06	96.00	100 ($95,000,000)
#2	96.10	96.05	100 (27,000,000)
#3	91.15	91.08	100 (95,000,000)
#4	94.08	94.00	100 (71,000,000)
#5	96.00	95.27	100 (95,000,000)
#6	90.29	90.25	100 (14,000,000)
#7	79.25	80.21	100 (34,000,000)
#8	80.38	80.50	100 (1,300,000)

[11] Bankers Trust states that the prices quoted are per $100 of principal. To determine the total price quoted, the face value of each Note is multiplied by the quote, expressed as a percentage of 100. Thus, for example, since the par value of Note #1 is $95,000,000, the quoted price on October 21, 1994 would have been $91,257,000 since $95,000,000 × .9606 = $91,257,000.

In addition, Duff & Phelps Capital Markets Co. (D&P) in Chicago, Illinois, provided an opinion letter to Bankers Trust on October 27, 1994, which stated that the fair market value of each Note was less than its par value at that time. In providing this opinion, D&P used a valuation methodology which was based on a predicted stream of cash flows for each Note, discounted at a rate that reflected each Note's credit risk and average life. D&P established the predicted stream of cash flows based on implied forward interest rates for each Note adjusted according to the terms of the Note. In doing this analysis, D&P states that it attempted to apply conservative assumptions whenever possible such that the analysis would tend to overvalue rather than undervalue the Notes. Bankers Trust states that D&P's opinion letter helped confirm that the market value of the Notes was less than par at the time of sale because D&P's conclusions were consistent with the bid quotations received by Bankers Trust for each Note as well as Bankers Trust's own analysis of the Notes.

7. The Funds' holdings regarding each Note, including the percentage of the Fund that the Note represented and the interest earnings on the Note as of October 28, 1994, are shown on the tables below: [12]

BT AGGRESSIVE STIF

Note	Purchase price/basis	Outstanding balance	Approx. % of fund	Interest earnings
#1	$10,000,000	$10,000,000	19.95	$295,965
#2	0	0	0.00	0
#3	0	0	0.00	0
#4	0	0	0.00	0
#5	5,000,000	5,000,000	9.97	120,617
#6	2,500,000	2,500,000	4.99	162,556
#7	3,000,000	3,000,000	5.98	146,458
#8	0	0	0.00	0
	20,500,000	20,500,000	40.89	725,596

BT CASH PLUS FUND

Note	Purchase price/basis	Outstanding balance	Approx. % of fund	Interest earnings
#1	$70,000,000	$70,000,000	5.44	$2,071,758
#2	26,831,250	27,000,000	2.08	383,229
#3	95,000,000	95,000,000	7.38	2,572,424
#4	55,000,000	55,000,000	4.27	1,803,636
#5	70,000,000	70,000,000	5.44	1,688,635
#6	5,500,000	5,500,000	0.43	939,705
#7	26,000,000	26,000,000	2.02	960,555
#8	0	0	0.00	0
	348,331,250	348,500,000	27.06	10,419,942

BT SUPER CASH FUND

Note	Purchase price/basis	Outstanding balance	Approx. % of fund	Interest earnings
#1	$15,000,000	$15,000,000	5.32	$295,376
#2	0	0	0.00	0
#3	0	0	0.00	0
#4	16,000,000	16,000,000	5.67	524,694
#5	20,000,000	20,000,000	7.09	482,467
#6	6,000,000	6,000,000	2.13	369,828
#7	5,000,000	5,000,000	1.77	244,097
#8	1,300,000	1,300,000	0.46	46,313
	63,300,000	63,300,000	22.43	1,962,775

Bankers Trust represents that the Notes paid the Funds a reasonable rate of interest during the period of time that the Funds held the Notes. For example, Bankers Trust states that the annualized rate of interest for each Note at the time of the transaction was as follows: (i) 5.2% for Note #1; (ii) 5.34% for Note #2; (iii) 4.05% for Note #3; (iv) 5.39% for Note #4; (v) 5.26% for Note #5; (vi) 5.44% for Note #6; (vii) 4.75% for Note #7; and (viii) 4.75% for Note #8.

[12] With respect to the figures shown for each Note in the tables, if a Fund did not own an interest in the particular Note a zero dollar amount is shown.

8. Bankers Trust, as trustee of the Funds, believed that the sale of the Notes to BTNY was in the best interests of each Fund, and the employee benefit plans invested in the Fund, at the time of the transaction. Bankers Trust states

that any sale of the Notes on the open market would have produced significant losses for the Funds and for the individual employee benefit plan investors involved.[13]

9. Bankers Trust represents that it took all appropriate actions necessary to safeguard the interests of the Funds, and the employee benefit plans invested therein, in connection with the transactions. Bankers Trust ensured that each Fund received the appropriate amount of cash from BTNY in exchange for such Fund's interests in the Notes at the time of the transactions. Bankers Trust reviewed the latest information regarding the fair market value of the Notes, based on bid quotations received from independent broker-dealers. Bankers Trust also ensured that the Funds did not pay any commissions or other expenses for the sale of the Notes to BTNY.

10. In summary, the applicant represents that the transactions satisfied the statutory criteria of section 408(a) of the Act and section 4975 of the Code because: (a) Each sale of the Notes by the Funds was a one-time transaction for cash; (b) each Fund received an amount which was equal to the greater of either (i) the par value of the Notes owned by the Fund at the time of sale, (ii) the purchase price paid by the Fund for its interest in each of the Notes, or (iii) the fair market value of the Notes owned by the Fund as determined by bid quotations for the Notes obtained by Bankers Trust from independent broker-dealers at the time of sale; (c) the Funds did not pay any commissions or other expenses with respect to the sale; (d) Bankers Trust, as trustee of the Funds, determined that the sale of the Notes was in the best interests of each Fund; and the employee benefit plans invested in the Fund, at the time of the transaction; (e) Bankers Trust took all appropriate actions necessary to safeguard the interests of the Funds in connection with the transactions; and (f) the Funds received a reasonable rate of return during the period of time that the Funds held the Notes.

[13] The Department is expressing no opinion in this proposed exemption regarding whether the acquisition and holding of the Notes by the Funds violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act.

The Department notes that section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan. Section 404(a) of the Act also states that a plan fiduciary should diversify the investments of a plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

In this regard, the Department is not providing any opinion as to whether a particular category of investments or investment strategy would be considered prudent or in the best interests of a plan as required by section 404 of the Act. The determination of the prudence of a particular investment or investment course of action must be made by a plan fiduciary after appropriate consideration to those facts and circumstances that, given the scope of such fiduciary's investment duties, the fiduciary knows or should know are relevant to the particular investment or investment course of action involved, including a plan's potential exposure to losses and the role the investment or investment course of action plays in that portion of the plan's portfolio with respect to which the fiduciary has investment duties (see 29 CFR 2550.404a–1). The Department also notes that in order to act prudently in making investment decisions, a plan fiduciary must consider, among other factors, the availability, risks and potential return of alternative investments for the plan. Thus, a particular investment by a plan, which is selected in preference to other alternative investments, would generally not be prudent if such investment involves a greater risk to the security of a plan's assets than other comparable investments offering a similar return or result.

Notice to Interested Persons

The applicant states that notice of the proposed exemption shall be made by first class mail to the appropriate Plan fiduciaries for each employee benefit plan participating in the Funds at the time of the transactions. Notice to the plan fiduciaries shall be made within fifteen (15) days following the publication of the proposed exemption in the **Federal Register**. This notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and a supplemental statement (see 29 CFR 2570.43(b)(2)) which informs interested persons of their right to comment on and/or request a hearing with respect to the proposed exemption. Comments and requests for a public hearing are due within forty-five (45) days following the publication of the proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

General Electric Pension Trust (the Trust) Located in Fairfield, Connecticut; Proposed Exemption

[Application No. D–09880]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply effective August 3, 1994, to the past and continued lease (the Lease) by the Trust of office space in a commercial office building located at 201 Mission Street in San Francisco, California (the Property), to GE Capital Aviation Services, Inc. (GE Aviation), a party in interest with respect to employee benefit plans participating in the Trust, provided the following conditions are met:

(a) All terms and conditions of the Lease are at least as favorable to the Trust as those which the Trust could have obtained in an arm's-length transaction with an unrelated party at the time the Lease was executed;

(b) The rent paid by GE Aviation to the Trust under the Lease is not less than the fair market rental value of the office space, as established by an independent qualified real estate appraiser;

(c) David P. Rhoades (Mr. Rhoades), acting as a qualified, independent fiduciary for the Trust reviewed all terms and conditions of the Lease prior to the transaction, as well as any subsequent modifications to the Lease, and determined that such terms and conditions would be in the best interests of the Trust at the time of the transaction; and

(d) Mr. Rhoades represents the interests of the Trust for all purposes under the Lease as a qualified, independent fiduciary for the Trust, monitors the performance of the parties under the terms and conditions of the Lease and the exemption, and takes whatever action is necessary to safeguard the interests of the Trust throughout the duration of the Lease.

EFFECTIVE DATE: This proposed exemption, if granted, will be effective for the period from August 3, 1994, until the scheduled termination date of the Lease (i.e. September 16, 1999) or, if earlier, the date the Lease is actually terminated by the parties.

Summary of Facts and Representations

1. The Trust holds assets of the General Electric Company Pension Plan (the GE Pension Plan), the Knolls Atomic Laboratories Pension Plan, ERC Retirement Plan, GE Components Pension Plan For Puerto Rico, and Neutron Devices Department Pension Plan (collectively, the Plans). The Plans are all defined benefit plans that cover employees of General Electric Company (GE) and various GE subsidiaries. There are a total of over 488,000 participants and beneficiaries under the Plans. As of December 31, 1993, the Trust held approximately $27.3 billion in assets.

The trustees of the Trust are five individuals (the Trustees) who are officers of GE and its subsidiaries. The Trustees are appointed by the GE Benefit Plans Investment Committee, an oversight committee that determines the investment policies of the Trust. The Trustees maintain overall responsibility for investment of the Trust's assets. The Trustees have delegated specific responsibility for investment management of most of the Trust's assets to the General Electric Investment Corporation (GEIC).

GEIC, a Delaware corporation and a wholly-owned subsidiary of GE, is a registered investment adviser under the Investment Advisers Act of 1940. GEIC provides investment management services to a variety of GE-affiliated entities. As of January 1, 1994, GEIC managed approximately $40.4 billion in assets.

2. GE Aviation, a Delaware corporation formerly known as the Polaris Corporation, is a wholly-owned subsidiary of General Electric Capital Corporation. The primary business of GE Aviation is airplane equipment leasing. GE Aviation's employees are participants in the GE Pension Plan.

3. The transaction for which an exemption is requested involves the leasing of office space between the Trust, as landlord, and GE Aviation, as tenant, in the office building located at 201 Mission Street in San Francisco, California (the Property).

The Property is a 30-story office building located in the southern financial district of San Francisco. The Property is part of a series of high-rise buildings developed during the 1980s on the fringes of the city's traditional financial district. The ground floor is leased to retail businesses and the other floors are leased as office space. The rentable area of the Property is approximately 475,675 square feet. The current value of the Property is approximately $40 million.

Construction of the Property was completed in 1981. The Trust financed the acquisition of the Property by an unrelated party that subsequently went into receivership. The Trust acquired the Property by deed in lieu of foreclosure in April 1993. The Trust currently owns the Property through a real estate title holding company, Pacific Gateway Realty Corporation.

Most of the office space in the Property was originally rented by Bank of America. Bank of America subsequently decided to relocate and consolidate its offices, and vacated one-half of the office space it occupied in the Property in 1991. At that time, the vacated area was leased on a short-term basis to Pacific Gas & Electric (PG&E), which was making repairs to its existing offices as a consequence of earthquake damage. While there were negotiations in 1993 for PG&E to extend its existing lease and to lease additional space, PG&E's board of directors ultimately decided against remaining in the Property. PG&E intends to vacate the Property in January 1996, when the repairs to its original offices are expected to be completed.

Bank of America vacated the other half of the office space it occupied in the Property in late 1993 upon completing its relocation. As a result, about 34 percent (i.e. 160,014 square feet) of the rentable area in the Property was vacant as of early 1994, compared to a general vacancy rate in San Francisco-area office buildings of around 12 percent at that time.

In the months after Bank of America vacated, the managers of the Property actively searched for tenants, in an effort to lease the vacant space as quickly as possible before PG&E leaves. As of June 1994, tenants had been found for approximately 77,000 square feet of space, or about 16 percent of rentable area, leaving around 18 percent of the Property vacant. One of the tenants was GE Aviation.

4. The applicant represents that in early 1994 GE Aviation had its offices at Four Embarcadero Center in San Francisco's main business district. However, GE Aviation was in the process of downsizing its operations and was looking for smaller space in a less expensive part of San Francisco. In the course of its search for office space, GE Aviation contacted Sentre Partners (Sentre), the independent property manager retained by the Trust to manage the Property. GE Aviation decided that it was interested in leasing space in the Property and entered into negotiations with Sentre.

The Lease was executed by GE Aviation in July 1994, after which the documents were sent to Sentre. The Lease was executed by Pacific Gateway Realty Corporation as landlord on August 3, 1994, following receipt of the report by Mr. Rhoades, the independent fiduciary acting for the Trust in connection with the subject transaction. The applicant states that once the Lease was signed by all of the parties, the landlord began making extensive improvements to the space in order to accommodate a planned occupancy date for GE Aviation of September 1, 1994.

5. Under the Lease, GE Aviation has leased approximately 9,376 square feet of space located on the eastern and southern portions of the 27th floor of the Property. This space constitutes approximately two percent of the rentable square footage in the Property. The term of the Lease is five years, which commenced on September 16, 1994, the date that work on the premises was substantially completed. The annual rent is $20 per square foot of rentable area, or $187,520, for the first three years of the Lease, and $21 per square foot of rentable area, or $196,896, for the fourth and fifth years, payable monthly. The Lease requires that GE Aviation pay its proportionate share of the Trust's real estate taxes and expenses relating to the Property for years after 1995, to the extent these taxes and expenses exceed those for 1995 (the "base" year) or to the extent any additional taxes or expenses are properly chargeable solely to GE Aviation in connection with its activities with the leased space.

Late payments are subject to a 5% late payment charge after written notice is given. If the late payment becomes an event of default, or in the event of any failure by GE Aviation to perform its obligations under the Lease, GE Aviation will be obligated for interest charges and other amounts necessary to compensate the Trust for damages caused by GE Aviations' failure to perform.

GE Aviation does not have any options or rights to expand or extend the Lease, nor has it received any period of free rent. Any assignments or subleases by GE Aviation are void unless the Trust has provided prior written consent and, if consented to, are subject to additional charges.

6. The Trust has provided agreed-upon improvements to the space which, prior to the Lease, contained only nominal improvements. The total cost of the improvements shall not exceed $42.50 per rentable square foot ($398,480), with any additional costs to be paid by GE Aviation.[14] The Trust is responsible to repair any defects in this work of which it is notified by GE Aviation within one year, other than defects resulting from compliance with the specifications provided by GE Aviation's architect or engineer. GE Aviation is responsible at its expense for any additional work it needs or desires that is not part of the agreed-upon

[14] The Department expresses no opinion in this proposed exemption as to whether the expenses incurred by the Trust relating to the tenant improvements provided for GE Aviation would violate any provision of Part 4 of Title I of the Act. In this regard, the Department notes that section 404(a) of the Act requires, among other things, that plan fiduciaries act prudently and solely in the interest of the plan's participants and beneficiaries when making investment decisions on behalf of a plan. In addition, section 404(a) of the Act requires that plan fiduciaries act for the exclusive purpose of providing benefits to participants and beneficiaries and to defray reasonable expenses of administering the plan.

improvements. Any alterations to be made during the term of the Lease are subject to the Trust's written consent. Alterations generally become the property of the Trust and remain at the expiration of the Lease, except that the Trust may require the alterations to be removed at GE Aviation's expense.

7. Mr. Rhoades was retained by GEIC to act as an independent fiduciary for the Trust in connection with the Lease. Mr. Rhoades is president of the real estate appraisal and consulting firm of David P. Rhoades & Associates, Inc., of San Francisco, California. Mr. Rhoades represents that he and his firm are independent of, and unrelated to, GE and its affiliates. Mr. Rhoades states that he is a Member of the Appraisal Institute (MAI) and has 22 years experience as a real estate appraiser dealing with the valuation and analysis of all types of property, including urban office buildings similar to the Property. Mr. Rhoades has acknowledged in writing that he is a fiduciary for the Trust and that he understands his duties, responsibilities, and liabilities as a fiduciary under the Act.

8. Mr. Rhoades reviewed the Lease and inspected the Property prior to the transaction. In an appraisal dated July 6, 1994, Mr. Rhoades concluded that the market rent for the space covered by the Lease would be in the range of $19.00 to $21.00 per square foot. Thus, Mr. Rhoades determined that the proposed average rental rate under the Lease of $20.22 per square foot would be at the upper end of the range of rents for comparable leases in the San Francisco area and would not be less than the fair market rental value for the space. Mr. Rhoades states that the terms of the Lease are comparable to the terms that would have been negotiated in arm's-length transactions between unrelated parties. Mr. Rhoades concluded that the Lease would be in the best interest of the Trust because it would yield the Trust a market rate of return, would avoid additional leasing efforts, and would avoid the lost revenue and associated costs of having the space remain vacant.

Mr. Rhoades represents that the tenant improvement allowance for the Lease of $42.50 per square foot was necessary because of the unimproved condition of the particular space. Mr. Rhoades states that the space on the 27th floor leased by GE Aviation was previously demolished in connection with work that was done for another tenant, who currently occupies part of the 27th floor and the two floors above the 27th floor. In this regard, the applicant represents that the 27th floor space previously was occupied by Bank of America, which had been a major tenant in the Building from 1981 through 1991. The entire 27th floor, when occupied by the Bank of America, was primarily open space with movable partitions. At the time the Bank of America vacated the 27th floor space, substantial work on the space was needed to satisfy applicable legal requirements, such as current fire and safety codes. In addition, the Bank of America's use of the space was not readily adaptable to a new tenant desiring up-to-date conventional office space and was functionally obsolete. Consequently, the applicant states that it was cost effective to demolish the entire floor when work was being done for a new tenant that would occupy half of the 27th floor and to re-build sufficiently to meet the minimum requirements for the entire floor, including the part that was not yet being leased. As a result, when the other half of the floor was leased to GE Aviation, it was in unimproved condition. Thus, prior to the Lease, the space was effectively "first generation" or unimproved space which required relatively high outlays for tenant improvements.

Mr. Rhoades states that the improvements made to the space leased by GE Aviation are functional and reusable by a wide range of tenants without major costs, and are typical of the types of improvements landlords usually build for such tenants. Mr. Rhoades maintains that the residual value of the tenant improvements at the end of the Lease (i.e. 5 years) will be about 50 percent of the original cost of the tenant improvements, or approximately $21.25 per square foot.

9. With respect to the overall rate of return to the Trust under the terms of the Lease, Mr. Rhoades conducted an analysis of both the "internal rate of return" (IRR) and the "net present value" (NPV) to the Trust from the Lease.

Mr. Rhoades represents that the "rate of return" on a real estate investment is the ratio of income to the original investment and the "IRR" is the *annualized* rate of return on capital that is generated within an investment over a period of ownership.[15] Thus, the IRR measures the returns from an investment in relation to the original capital outlay. In this case, Mr. Rhoades states that the "returns" consist of the rental income over the Lease term and the pass-through of certain expenses after the first year, as well as the residual value of the tenant improvements at the end of the Lease. The "original capital outlay" consists of expenses relating to the leased space, including the tenant improvements, operating expenses, brokerage fees, parking, and taxes. This "original capital outlay" was approximately $421,920.

In addition, Mr. Rhoades states that the "NPV" is the difference between the present value of all expected investment benefits, or positive cash flows, and the present value of capital outlays, or negative cash flows, over the entire period of the investment. The present value calculation involved in determining NPV requires the use of a specific discount rate, which operates as the annual rate of return objective. In this regard, Mr. Rhoades used the standard real estate industry rate of 9 percent for the NPV calculation, which provided a basis for comparing the rate of return on the Lease to different leasing arrangements in the Property.

Mr. Rhoades states that his approach to evaluating leases and leasing costs is customary in the real estate industry. Mr. Rhoades states further that he was consistent in using this approach to evaluate the comparable leases in the Building and other comparable properties for purposes of determining the fair market rental value of the space under the Lease as well as the IRR and NPV of the Lease to the Trust. However, Mr. Rhoades notes that his approach did not consider the original cost or value of the Building in evaluating the specific leases. In this regard, Mr. Rhoades has confirmed that it is not customary to consider the cost or value of a building for this purpose because the focus in valuing a lease is on the incremental costs and income of the lease and the ongoing costs relating to the space.

Based on an extensive analysis and comparison of the terms of the Lease to all other leases in the Property at the time of the transaction, Mr. Rhoades concluded that the Lease had a greater NPV and would yield a higher IRR than any other lease of a comparable term in the Property. Mr. Rhoades represents that the Lease will yield an IRR to the Trust of approximately 10.83 percent on an annual basis and has a NPV of $4.87 per square foot based on a discount rate of 9 percent, when taking into account the residual value of the tenant improvements. Therefore, Mr. Rhoades states that it is unlikely that the Trust would have obtained a lease for the space on more favorable terms from other tenants in the market at the time of the transaction.[16]

10. Mr. Rhoades, as independent fiduciary for the Trust, will monitor the Lease on an ongoing basis. Mr. Rhoades will determine GE Aviation's compliance with the terms of the Lease and has the authority to take any action necessary to enforce the rights of the Trust under the Lease, including the termination of the Lease. Any renewals of the Lease will be subject to the oversight, review and approval of Mr. Rhoades. Such a renewal will not be executed in the absence of Mr. Rhoades' opinion that the proposed renewal would be in the best interests of the Trust.

11. In summary, the applicant states that the transaction meets the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because: (a) the terms of the Lease are at least as favorable to the Trust as the terms which would exist in an arm's-length transaction with an unrelated party; (b) the Trust will receive rental amounts under the Lease equal to the fair market rental value for the space, as determined by a qualified, independent appraiser; (c) an independent fiduciary (i.e. Mr. Rhoades) acting for the Trust reviewed the terms and conditions of the Lease and determined that the transaction would be in the best interests of the Trust; (d) Mr. Rhoades, as the independent fiduciary, will monitor the Lease on behalf of the Trust and take whatever actions are necessary to protect the interests of the Trust; and (e) the Lease only involves a small percentage of the Trust's total assets.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

The Amended and Restated Profit Sharing Retirement Plan for Employees of 84 Lumber Company (the Profit Sharing Plan) and The Amended and Restated Savings Fund Plan for Employees of 84 Lumber Company (the Savings Plan; together, the Plans) Located in Eighty Four, Pennsylvania; Proposed Exemption

[Application Nos. D–09945 and D–09946]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) The proposed extension of credit by 84 Lumber Company (Lumber) to the Plans in the form of loans (the Loans) with respect to Guaranteed Investment Contract, Number CG0124601A issued by Executive Life Insurance Company (ELIC) to the Profit Sharing Plan and Guaranteed Investment Contract No. CG0124701A (both Contracts together, the GICs) issued by ELIC to the Savings Plan; and (2) the Plans' potential repayment of the Loans (the Repayments), provided: (a) all terms of such transactions are no less favorable to the Plans than those which the Plans could obtain in arm's-length transactions with an unrelated party; (b) no interest and/or expenses are paid by the Plans; (c) the Loans are made with respect to amounts invested by the Plans in the GICs; (d) the Repayments are restricted to the amounts, if any, paid to the Plans after the date of the Loans by ELIC or other responsible third parties with respect to the GICs (the GIC Proceeds); (e) the Repayments under each Loan will not exceed the total amount of the Loan; and (f) the Repayments are waived with respect to the amount by which any Loan exceeds the GIC Proceeds.

Summary of Facts and Representations

1. Lumber is a Pennsylvania general partnership engaged in the retail lumber and building products business. As of January 1, 1995, Lumber operated 374 individual store locations in 31 states. The headquarters of Lumber are in Eighty Four, Pennsylvania. The managing general partner of Lumber is Pierce-Hardy Real Estate, Inc., a Pennsylvania business trust. Lumber is the sponsor of both Plans, each of which covers the employees of Lumber. The Profit Sharing Plan also covers employees of the Trusty Building Components Company, an affiliate of Lumber.

2. Each of the Plans is a defined contribution plan that is qualified under section 401(a) of the Code. The Savings Plan is intended to constitute a qualified cash or deferred arrangement in accordance with section 401(k) of the Code. The Savings Plan is a participant-directed individual account plan under which the participants may direct the investment of their accounts in one or more investment funds. As of December 31, 1994, (i) the Profit Sharing Plan had 3,018 active and terminated vested participants and total assets of approximately $24,718,415; and (ii) the Savings Plan had 2,080 active and terminated vested participants and total assets of approximately $17,187,503.

3. On September 25, 1987, ELIC issued the GICs to the Plans. The Profit Sharing Plan's GIC was in the principal amount of $2 million, and the Savings Plan's GIC was in the principal amount of $1 million. Each GIC guaranteed an annual interest rate of 9.92% from the issue date to the September 25, 1992 maturity date. Interest accrued under the GICs was payable yearly, and each Plan received interest payments for 1988, 1989 and 1990. The final interest payments made by ELIC were received by the Plans on September 25, 1990. No interest accrued under the GICs was paid in 1991.

4. On April 11, 1991 (the Conservation Date), ELIC was placed in conservatorship by the Commissioner of Insurance for the State of California. As of that date, payments under the GICs were suspended, and no payments were made to the Plans.[17] As of the Conservation Date, the accumulated book values of the GICs (Accumulated Book Value), defined as the amount of deposits, plus interest at the contract rate, less interest paid, were $2,051,440 for the Profit Sharing Plan and $1,049,923 for the Savings Plan. Effective June 30, 1991, the Plans' Administrative Committees (the Committees) froze the GICs and a proportionate share of the accounts of participants with account balances invested in the GICs. The Plans have not permitted distributions or withdrawals from the respective plans with respect to the frozen portion of a participant's account. Moreover, the Savings Plan has not allowed participants to receive a loan from or reallocate the frozen portion of their accounts to any other investment option under the Savings Plan.

5. On August 13, 1993, the Los Angeles Superior Court approved the terms of the Rehabilitation/Liquidation Plan for ELIC effective September 3,

[15] Mr. Rhoades cites *The Dictionary of Real Estate Appraisal* (3rd edition) as his source for the definition of these terms.

[16] Mr. Rhoades states in his letter dated August 12, 1994, that the NPV of leaving the space vacant for the five year term of the Lease would have been a negative $19.45 per square foot due to the operational and tax expenses related to the space. Mr. Rhoades notes that while it is unlikely that the space would have remained vacant for the entire five year period, it would have taken about six months for the Trust to have obtained a lease on terms at least as favorable to the Trust, with the same IRR and NPV values, as the terms of the Lease.

[17] The Department notes that the decisions to acquire and hold the GICs are governed by the fiduciary responsibility provisions of Part 4, Subtitle B, of Title I of the Act. In this regard, the Department is not herein proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the GICs by the Plans.

1993 (the Rehab Plan). On or about December 1, 1993, each ELIC contract holder was provided with an election form and a summary of the Rehab Plan. Under the Rehab Plan, ELIC guaranteed investment contracts were reduced in value to approximately 79% of the Accumulated Book Value as of the Conservation Date and each holder of such contracts was paid an amount for accumulated interest and fees for the period between the Conservation Date and September 3, 1993 (the Interim Payments). Each contract holder, including the Plans, was informed that it could elect by February 12, 1994 to "opt in" or "opt out" of the Rehab Plan. By opting in, a contract holder would have been issued a new 5-year guaranteed investment contract issued by Aurora National Life Assurance Company (Aurora), the successor to ELIC, in an amount equal to the restructured percentage of the Accumulated Book Value as of the Conservation Date, plus the right to receive possible distributions from certain trusts and settlements that may occur in the liquidation of ELIC. Opting out of the Rehab Plan would have resulted in a cash settlement, payment of which would be made by immediate payments and future payments from an Allocation Holdback Trust, plus the right to receive possible distributions from certain trusts and settlements that may occur in the liquidation of ELIC.

6. After reviewing the Rehab Plan materials supplied by ELIC, Lumber elected to "opt in" with respect to the GICs. As a result, the Plans' GICs were replaced, effective February 27, 1994, with the Aurora GICs in accordance with the approved Rehab Plan. A comparison of the terms of the ELIC GICs and the Aurora GICs is set forth below:

	ELIC GIC	Aurora GIC
1. Profit sharing plan:		
Contract number	CG0214601A	CG01246A1A
Maturity date	9/25/92	9/3/98
Account value	$2,000,000	$1,280,487
Guaranteed interest rate	9.92%	5.61%
2. Savings Plan:		
Contract number	CG0214701A	CG01247A1A
Maturity date	9/25/92	9/3/98
Account value	$1,000,000	$640,243
Guaranteed interest rate	19.92%	5.61%

7. As the chart indicates, the present account value of the Aurora GICs is substantially less than the pre-conservatorship book values of the ELIC GICs. In addition, the interest rate on the Aurora GICs is substantially less than the stated interest under the ELIC GICs. Interest received by the Plans during ELIC's conservatorship and prior to the consummation of the Rehab Plan was also substantially less than the ELIC contract rate. The foregoing factors have resulted in a significant reduction in value and yield of the contracts held by the Plans.

8. The extended maturity date of the Aurora GICs has also had a significant impact on participants in the Plans and their beneficiaries. Under the terms of the Aurora GICs, the only payments that may be made prior to maturity are semi-annual interest payments. The only other benefit withdrawals permitted are the annuitization of benefits under the contract, which is not permitted under the Plans (which provide only a lump sum form of benefit).[18] As a result, participants who terminate their employment with Lumber are not able to have their lump sum distributions paid out of the respective Aurora GICs at this time.

9. In order to permit the Plans to resume full funding of all Plan events, including distributions, withdrawals, loans, interfund transfers and fund investments, Lumber proposes to make the Loans to each of the Plans and has requested an exemption to permit the Loans under the terms and conditions described herein. The Loans will be made (i) pursuant to written agreements and (ii) as a single lump sum cash payment to each Plan (the Loan Amount).[19] It is contemplated that the Loan Amount to the Profit Sharing Plan will be $1,378,000, representing the original $2,000,000 principal amount of that Plan's ELIC GIC, less an Interim Payment received by the Profit Sharing Plan of $405,852, and less payments of $93,416 under the Aurora Replacement GIC characterized as return of principal, and certain Rehab Plan adjustments attributable to distributions from various trusts (see rep. 5, above) in the amount of $123,033. It is contemplated that the Loan Amount to the Savings Plan will be $689,000, representing the original principal amount of that Plan's ELIC GIC, less an Interim Payment received by the Savings Plan of $202,925, and less payments of $46,708 under the Aurora Replacement GIC characterized as return of principal, and certain Rehab Plan adjustments attributable to distributions from various trusts (see rep. 5, above) in the amount of $61,516.[20] The Loans will be made as soon as practicable after the granting of the exemption proposed herein, and a closing agreement with respect thereto has been entered into between Lumber and the Internal Revenue Service. The Repayments will be limited to the cash proceeds of any payments received by the respective Plans as GIC Proceeds after the date of the Loans. Repayments are due only when GIC Proceeds are received by the Plans. No interest will be paid on the Loans. Under no circumstances will Repayments exceed the Loan Amounts, even if GIC Proceeds should exceed such amounts. At such time that Lumber learns that no further GIC Proceeds will be received, Repayments of any outstanding Loan Amounts will be waived by Lumber.

10. If the exemption proposed herein is granted, the Committees intend to value the Aurora GICs at the original principal amount of the ELIC GICs. Each frozen account would then be adjusted to reflect this new value, and the freeze placed on each participant's account would be removed. The Plans would then resume distributions and withdrawals under the Plans with respect to frozen account balances. Loans and interfund transfers under the Savings Plan would also resume with respect to amounts that had been frozen.

11. In summary, the applicant represents that the proposed transactions satisfy the criteria contained in section 408(a) of the Act because: (a) All terms of the transactions will be no less favorable to the Plans than those obtainable in arm's-length transactions with unrelated parties; (b) the Loans will enable the Plans to resume normal operations with respect to distributions, withdrawals, loans, interfund transfers and fund investments; (c) the Plans will pay no interest or other expenses in connection with the Loans; (d) Repayments will be made only out of any cash proceeds of any amounts received by the Plans as GIC Proceeds after the date of the Loans; (e) the Repayments will not exceed the principal amount of the Loans; and (f) the Repayments will be waived to the extent the Loan Amounts exceed the GIC Proceeds.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Warburg Investment Management International Ltd. (Warburg International) Located in London, England; Proposed Exemption

[Application No. D–09998]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a)(1)(A) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) of the Code, shall not apply to the proposed cross-trading of securities between various accounts managed by Warburg International or its Affiliates (the Accounts) where at least one Account involved in any cross-trade is an employee benefit plan account (Plan Account) for which Warburg International acts as a fiduciary; provided that both the General Conditions of Section I and the Specific Conditions of Section II below are met.

Section I—General Conditions

(a) Each employee benefit plan comprising a Plan Account participating in Warburg International's cross-trading program has total assets equal to at least $25 million. In the case of multiple employee benefit plans maintained by a single employer or controlled group of employers, the $25 million requirement may be met by aggregating the assets of such plans if the assets are commingled for investment purposes in a single master trust.

(b) A Plan's participation in the cross-trade program is subject to a written authorization executed in advance by a qualified Plan Fiduciary which is independent of Warburg International and its Affiliates (the Independent Fiduciary).

(c) The authorization referred to in paragraph (b) above is terminable at will without penalty to the Plan Account, upon receipt by Warburg International of written notice of termination.

(d) Before an authorization is made for any Plan Account, the Independent Fiduciary is furnished with any reasonably available information necessary for the Independent Fiduciary to determine whether the authorization should be made, including (but not limited to) a copy of the final exemption (if granted), an explanation of how the authorization may be terminated, a description of Warburg International's cross-trade practices, and any other reasonably available information regarding the matter that the independent Fiduciary requests.

(e) Each cross-trade transaction involves only equity or debt securities for which there is a generally recognized market. With respect to any non-U.S. securities, only those securities traded on a recognized foreign securities exchange for which market quotations are readily available shall be covered by the exemption.[21]

(f) Each cross-trade transaction is effected at the current market value for the security on the date of the transactions. For equity securities, this shall be the closing price for the security on the date of the transaction. The "closing price" shall be the last trade price on exchanges where dealing is order-driven and the closing mid-market price (i.e. the average of the closing bid and offer prices) where dealing is quote-driven. For debt securities, the current market value shall be the fair market value determined in accordance with paragraph (b) of Rule 17a-7 issued by the Securities and Exchange Commission (SEC) under the Investment Company Act of 1940.

(g) Neither Warburg International nor its Affiliates charges a Plan Account affected by a cross-trade transaction any fee or commission for such transaction.

(h) At least every three months, and not later than 45 days following the period to which it relates, Warburg International furnishes the Independent Fiduciary with a report disclosing: (1) a list of all cross-trade transactions engaged in on behalf of the Plan Account, and (2) with respect to each cross-trade transaction, the prices at which the securities involved in the transaction were traded on the date of such transaction.

(i) The Independent Fiduciary is furnished with a summary of certain additional information at least once per year. The summary must be furnished within 45 days after the end of the period to which it relates, and must contain the following: (1) A description of the total amount of the Plan Account's assets involved in cross-trade transactions during the period, (2) a description of Warburg International's cross-trade practices, if such practices have changed materially during the period covered by the summary, (3) a statement that the Independent Fiduciary's authorization of cross-trade transactions may be terminated upon receipt by Warburg International of written notice to that effect, and (4) a statement that the Independent Fiduciary's authorization of the Plan Account's participation in the cross-trade program will continue in effect unless it is terminated.

(j) For all Accounts participating in the cross-trading program, if the number of shares of a particular security which any Accounts need to sell on a given day is less than the number of shares of such security which any Accounts need to buy, or vice versa, the direct cross-trade opportunity is allocated among the buying or selling Accounts on a pro rata basis.

(k) The Accounts involved in cross-trade transactions do not include assets of any Plan established or maintained by Warburg International or its Affiliates.

Section II—Specific Conditions

(a) An Independent Fiduciary of each Plan specifically authorizes each cross-trade transaction in accordance with the following procedure:

(1) No more than three business days prior to the execution of any cross-trade transaction, Warburg International shall inform an Independent Fiduciary of each Plan Account involved in the

[18] The applicant represents that pursuant to section 401(a)(11) of the Code, the Plans are not required to provide joint and survivor annuities. The Department expresses no opinion with respect to the applicant's representation.

[19] The Department notes that this exemption, if granted, will not affect the rights of any participant or beneficiary with respect to any civil action against Plan fiduciaries for breaches of section 404 of the Act in connection with any aspect of the GIC transactions.

[20] The Loan Amounts have been rounded to $1,378,000 and $689,000 for the Profit Sharing Plan and the Savings Plan, respectively.

[21] With respect to all non-U.S. securities that are "plan assets" managed by Warburg or an Affiliate, the applicant represents that the requirements of section 404(b) of the Act and the regulations thereunder will be met (see 29 CFR 2550.404b-1). In this regard, section 404(b) of the Act states that no fiduciary may maintain the indicia of ownership of any assets of a plan outside the jurisdiction of the district courts of the United States, except as authorized by regulation by the Secretary of Labor. The Department is providing no opinion herein as to whether such requirements will be met.

cross-trade transaction that Warburg International proposes to buy or sell specified securities in a cross-trade transaction if an appropriate opportunity is available, the current trading price for such securities, and the total number of shares to be acquired or sold by each such Plan Account;

(2) Prior to each cross-trade transaction, the transaction shall be authorized either orally or in writing by the Independent Fiduciary of each Plan Account involved in the cross-trade transaction;

(3) If a cross-trade transaction is authorized orally by an Independent Fiduciary, Warburg International shall provide written confirmation of such authorization in a manner reasonably calculated to be received by such Independent Fiduciary within one business day from the date of such authorization;

(4) The authorization referred to in this Section II shall be effective for a period of three business days; and

(5) No more than ten days after the completion of a cross-trade transaction, the Independent Fiduciary shall be provided with a written confirmation of the transaction and the price at which the transaction was executed.

(b) A cross-trade transaction is effected only where the transaction involves less than five (5) percent of the aggregate average daily trading volume for the securities involved in the transaction for the week immediately preceding the authorization of the transaction. A cross-trade transaction may exceed this limit only by express authorization of Independent Fiduciaries on behalf of Plan Accounts affected by the transaction, prior to the execution of the cross-trade.

(c) The cross-trade transaction is effected at a price which is within ten (10) percent of the closing price of the security on the day before the date on which Warburg International received authorization by the Independent Fiduciary to engage in the cross-trade transaction.

Section III—Definitions

For purposes of this proposed exemption:

(a) "Account" means a Plan Account or Non-Plan Account;

(b) "Affiliate" means any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Warburg International;

(c) "Buying Account" means the Account which seeks to purchase securities in a cross-trade transaction;

(d) "Cross-trade transaction" means a purchase and sale of securities between Accounts for which Warburg International or an Affiliate is acting as investment manager;

(e) "Plan Account" means an Account managed by Warburg International consisting of assets of one or more employee benefit plans which are subject to the Act;

(f) "Non-Plan Account" means an Account managed by Warburg International consisting of assets of clients which are not employee benefit plans subject to the Act; and

(g) "Selling Account" means the Account which seeks to sell its securities in a cross-trade transaction.

Summary of Facts and Representations

1. Warburg International is a wholly-owned subsidiary of Mercury Asset Management plc (MAM), a public limited company organized under the laws of the United Kingdom. As of September 30, 1994, MAM and its subsidiaries had over $90 billion of assets under management. Warburg International is registered as an investment adviser under the U.S. Investment Advisers Act of 1940 (the 1940 Act) and is a member of the Investment Management Regulatory Organization Limited (IMRO) in the United Kingdom. Warburg International's clients are primarily U.S. institutional investors, such as qualified pension funds and registered investment companies. As of December 31, 1994, Warburg International had more than $3 billion in assets under management, of which approximately $2 billion consisted of assets of Plan Accounts and governmental plan accounts for which it had agreed to act as a fiduciary.

2. The Accounts for which an exemption is requested are those Plan Accounts for which Warburg International provides active portfolio management. Investment decisions are generally subject to the investment manager's discretion, subject to general written guidelines as to which types of securities to acquire or sell for the Accounts. For some Accounts, investment selections are based in part on the corresponding decisions made for registered investment companies or other institutional accounts for which Warburg International or an Affiliate serves as the investment adviser. Thus, Accounts with the same or similar investment guidelines or objectives often will be acquiring or selling the same securities on the same day.

3. Warburg International states that the acquisition or disposition of any particular security for an Account would be unrelated to the fact that an opportunity for a cross-trade transaction may be available. Under the cross-trade program, if Warburg International or an Affiliate sells securities to another Account it manages, or acquires such securities from another Account it manages, it would have an opportunity to save commissions for both the selling or acquiring Account. Under current procedures, all securities transactions are effected by an independent broker which may be dealing with a second broker acting for the party on the other side of the transaction. If Warburg International effects a transaction through a broker on the open market, the client would ordinarily be charged a commission at the market rate (normally about 0.2 percent, but commissions vary according to the country where the transaction is effected). However, under the cross-trade program, Warburg International states that no commission would be charged where the transaction is effected by Warburg International or an Affiliate, and in certain markets, transfer or registration taxes would also not be charged. Warburg International states that even if a broker is involved, matching the buy and sell orders for a particular day through a single broker in an off-market transaction would still result in lower commission charges for the Accounts.

4. Warburg International represents that the Plan Accounts would also benefit under the cross-trade program by not incurring the cost (in terms of price) of dealing with a person or a firm acting as "market-maker" for the specific security involved in the transaction. This cost is generally measured by the spread between the asking and the bidding price for the securities. In normal trading by Warburg International, the Selling Account receives a lower "bid" price, while the Buying Account pays a higher "ask" price. By contrast, in a direct cross-trade, the price received by the Selling Account would be the same as the price paid by the Buying Account, based on an average of the "bid" and "ask" prices, without any dealer mark-ups. In addition, if permitted to direct a cross-trading of securities from one Account to another, Warburg International would be able to implement its investment strategies at the earliest possible point in time. Finally, the trading of some securities may be "thin", that is there are limited numbers of shares available. In such cases, the spread may be particularly wide. Matched sales would essentially provide the Accounts with early opportunities to acquire or sell such thinly-traded securities without paying the spread.

5. Participation by Plan Accounts in Warburg International's cross-trade program will be subject to several conditions. Each cross-trade transaction will involve only securities for which there is a generally recognized market. With respect to any non-U.S. securities, only those securities traded on a recognized foreign securities exchange for which market quotations are readily available will be involved in the cross-trade program. Each cross-trade transaction will be effected at the current market value for the security on the date of the direct cross-trade. For equity securities, the current market value will be the closing price for the security on the date of the transaction. The "closing price" will be the last trade price on exchanges where dealing is order-driven and the closing mid-market price (i.e. the average of the closing bid and offer prices) where dealing is quote-driven. For all domestic or foreign debt securities, the current market value will be the fair market value of the security as determined pursuant to paragraph (b) of SEC Rule 17a–7 under the 1940 Act. In this regard, SEC Rule 17a–7(b) contains four possible means of determining "current market value" depending on such factors as whether the security is a reported security and whether its principal market is an exchange. This Rule is also applicable to registered investment companies for which Warburg International or an Affiliate acts as an investment advisor.

Warburg International will receive no fees or other incremental compensation (other than its previously agreed upon investment management fee) with respect to any direct cross-trade transaction.

6. A fiduciary of a Plan Account independent of Warburg International and its Affiliates (i.e. the Independent Fiduciary) will provide written authorization allowing for the Plan Account's participation in Warburg International's cross-trading program, before any specific cross-trades for such Account are effected. This authorization will be terminable at will without penalty to the Plan Account upon written notice to Warburg International of such termination. In addition, before any such general authorization is granted, Warburg International will provide the Independent Fiduciary with all materials necessary to permit an evaluation of the cross-trade program. These materials will include (but not be limited to) a copy of the proposed and final exemptions, an explanation of how the authorization may be terminated, a description of Warburg International's cross-trade practices, and any other reasonably available information regarding the matter which the Independent Fiduciary may request.

7. After a Plan Account's participation in Warburg International's cross-trading program is authorized, Warburg International will furnish periodic reports to the Independent Fiduciary, at least once every three months, and no later than 45 days following the period to which it relates, disclosing: (a) A list of all cross-trade transactions engaged in on behalf of the Plan Account; and (b) with respect to each cross-trade transaction, the prices at which the securities involved in the transaction were traded on the date of such transaction. The Independent Fiduciary will also be furnished with a summary of certain additional information at least once per year. The summary will be furnished within 45 days after the end of the period to which it relates, and will contain the following: (a) A description of the total amount of the Plan Account's assets involved in cross-trade transactions during the period, (b) a description of Warburg International's cross-trade practices, if such practices have changed materially during the period covered by the summary, (c) a statement that the Independent Fiduciary's authorization of cross-trade transactions may be terminated upon receipt by Warburg International of written notice to that effect, and (d) a statement that the Independent Fiduciary's authorization of the Plan Account's participation in the cross-trade program will continue in effect unless it is terminated.

8. The Accounts involved in cross-trade transactions will not include assets of any Plan established or maintained by Warburg International or its Affiliates to provide income to its employees or to result in a deferral of income by employees for periods extending to the termination of covered employment or beyond.

Each employee benefit plan comprising a Plan Account participating in Warburg International's cross-trading program will have total assets equal to at least $25 million. In the case of multiple employee benefit plans maintained by a single employer or controlled group of employers, the $25 million requirement may be met by aggregating the assets of such plans if the assets are commingled for investment purposes in a single master trust.

9. Warburg International states that a Plan Account's participation in its cross-trade program will also be subject to certain special conditions. In addition to requiring a general authorization of a Plan Account's participation in the cross-trade program, an Independent Fiduciary will specifically authorize each cross-trade transaction. Any such authorization will be effective only for a period of three business days and will be subject to certain pricing and volume limitations (as discussed in Paragraph 10 below). The authorization to proceed with the cross-trade transaction will be either oral or written. If a cross-trade transaction is authorized orally by an Independent Fiduciary, Warburg International will provide a written confirmation of the authorization in a manner reasonably calculated to be received by the Independent Fiduciary within one business day from the date of such authorization. The Independent Fiduciary will be sent a written confirmation of the cross-trade transaction, including the price at which it was executed, within ten days of the completion of the transaction.

10. Warburg International states that a cross-trade transaction will be effected only where the trade involves less than five (5) percent of the aggregate average daily trading volume for the securities involved in the transaction for the week immediately preceding the authorization of the transaction. A cross-trade will exceed this limit only by express written or oral authorization of an Independent Fiduciary for each Plan Account involved, prior to the execution of the cross-trade. With respect to pricing, a cross-trade transaction will not be made at a price which differs by more than ten (10) percent from the price at the close on the day before specific authorization was provided by the Independent Fiduciary.

11. Warburg International represents that it is conceivable that situations will arise in which it will be necessary to allocate cross-trade opportunities among several Accounts. Warburg International will make these decisions pursuant to a non-discretionary pro-rata allocation system. For example, in the event that the number of shares of a particular security which a Selling Account needs to sell on a given day is less than the number of shares of such security which other Buying Accounts need to buy on that date, the cross-trade opportunity will be allocated among potential Buying Accounts on a pro-rata basis. A similar procedure would apply where the number of shares of a particular security to be sold by Selling Accounts is more than the number of such shares which any Buying Accounts need to buy on that date. Thus, the Accounts participating in Warburg International's cross-trade program will have the opportunity to participate on a proportional basis in cross-trade

transactions during the operation of the program. Warburg International states that this aspect of the cross-trading program will be part of the information disclosed in writing to the fiduciaries of the Plan Accounts prior to their authorization for participation in the program.

12. In summary, Warburg International represents that the proposed transactions will satisfy the statutory criteria of section 408(a) of the Act because, among other things: (a) An Independent Fiduciary will provide written authorization, which will be terminable at will, to Warburg International to permit the Plan Account to participate in the cross-trading program; (b) cross-trades will always be executed at the current market price of the security on the date of the transaction, as determined by an independent, third party source; (c) specific oral or written authorization will be provided by the Independent Fiduciary to Warburg International prior to each cross-trade transaction; (d) all securities involved in cross-trades will be securities for which there is a generally recognized market; (e) Warburg International will provide periodic reporting of the cross-trade transactions to the Independent Fiduciary; (f) the Plan Accounts will realize significant cost savings due to reduced brokerage commissions and avoidance of the bid and offer spread and will benefit from more efficient implementation of investment strategies; (g) each employee benefit plan comprising a Plan Account participating in the cross-trade will have total assets of at least $25 million or must be part of a master trust of plans maintained by a single employer or controlled group of employers which has at least $25 million in assets; (h) the cross-trade transactions will not include any assets of a Plan established or maintained by Warburg International or its Affiliates; and (i) neither Warburg International nor its Affiliates will receive any additional fees or other compensation as a result of the proposed cross-trade transactions.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act; which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 9th day of June, 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 95–14576 Filed 6–14–95; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 95–040]

NASA Advisory Council (NAC), Life and Microgravity Sciences Advisory Committee, Space Station Utilization and Applications Advisory Subcommittee; Meeting.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Life and Microgravity Science and Applications Advisory Committee, Space Station Science Utilization Advisory Subcommittee.

DATES: July 10, 1995, 8 a.m. to 9 p.m.; July 11, 1995, 8 a.m. to 9 p.m.; July 12, 1995, 8 a.m. to 6 p.m.; July 13, 1995, 8 a.m. to 10 p.m.; July 14, 1995, 8 a.m. to 3:00 p.m.

ADDRESSES: US Air Force Academy, Colorado Springs, CO 80914.

FOR FURTHER INFORMATION CONTACT: Dr. Edmond M. Reeves, Code US, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–2560.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Other Topics Related to the Scientific Technologies and Commercial Utilization of the Space Station may be included in the Meeting Discussions

—Station Capabilities Program Update

—Science Utilization Plans

—Institute Concepts for Space Station

—International Utilization Coordination

—Operations Scheduling

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dennis C. Bridge,

Chief, Budget Office.

[FR Doc. 95–14713 Filed 6–14–95; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Public Information Collection Requirements Submitted to OMB for Review

Dated: June 2, 1995.

The National Credit Union Administration submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission may be obtained by calling the NCUA Clearance Officer listed. Comments regarding information collections should be addressed to the OMB reviewer listed and to the NCUA Clearance Officer, NCUA, Office of Administration, Room 4009, 1775 Duke Street, Alexandria, VA 22314–3428.

National Credit Union Administration

OMB Number: 3133–0061.
Form Number: CLF 8703.
Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.
Title: Central Liquidity Repayment Agreement—Regular Member.
Description: The form is a contract which is necessary to document loans made by or on behalf of the CLF and establishes an enforceable legal right to repayment of such loans, create a security interest in specified assets in case of non-payment, and establishes reporting requirements. Financial condition of the credit union can be monitored via the reporting requirement.
Respondents: Credit unions with a loan from CLF.
Estimated Number of Respondents: 25.
Estimated Burden Hours per Response: 1 hour.
Frequency of Response: Once per year.
Estimated Total Reporting Burden: 25 hours.

OMB Number: 3133–0064.
Form Number: NCUA 7000, 7001, 7002, 7003, and 7004.
Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.
Title: Forms and Instructions for CLF Loans.
Description: The information provided in the request for funds, statement of cash receipts and disbursements, cash flow projections and the seasonal flow computations will be used to assist in an analysis of the credit union's request for credit and in determining the applicant's ability to repay the advance requested.
Respondents: Credit unions that request a loan from the CLF.
Estimated Number of Respondents: 25.
Estimated Burden Hours per Response: 1 hour.
Frequency of Response: Once per application.
Estimated Total Reporting Burden: 25 hours.

OMB Number: 3133–0063.
Form Number: CLF 8702.
Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.
Title: Central Liquidity Facility Membership Application.
Description: In order to gain access to CLF loans, credit unions must join the CLF. This collection provides for membership application. The information requested is necessary to establish a creditor-debtor relationship between the CLF and the credit union.
Respondents: Credit unions that apply for loans from the CLF and credit unions with loans from the CLF.
Estimated Number of Respondents: 25.
Estimated Burden Hours per Response: .50 hours.
Frequency of Response: One time.
Estimated Total Reporting Burden: 18.5.

OMB Number: New Collection.
Form Number: CLF 8704.
Type of Review: New collection.
Title: Central Liquidity Facility Repayment Agreement—Agent Member.
Description: The loan agreement requires the borrowing credit union to submit to the CLF a copy of its month-end financial report each month while the loan is outstanding.
Respondents: Credit unions with a loan from the CLF.
Estimated Number of Respondents: 15.
Estimated Burden Hours per Response: 6 hours.
Frequency of Response: Monthly.
Estimated Total Reporting Burden: 90 hours.

OMB Number: 3133–0067.
Form Number: NCUA 5310.
Type of Review: Extension of currently approved collection.
Title: Corporate Credit Union Monthly Report.
Description: Section 202(a)(1) of the Federal Credit Union Act requires federally insured credit unions to make reports of condition to the NCUA Board upon dates selected by it. Each corporate credit union completes a monthly financial statement. The information is electronically transmitted to a central corporate credit union. The information is collected on a disk and forwarded to NCUA. The information is collected and used by NCUA to monitor financial and statistical trends in corporate credit unions and to allocate examination and supervision resources.
Respondents: Federally insured corporate credit unions.
Estimated Number of Respondents: 44.
Estimated Burden Hours per Response: 1.
Frequency of Response: Monthly.
Estimated Total Reporting Burden: 528.

OMB Number: 3133–0116.
Form Number: NCUA 4221, 4401, 4506, 4506 and 9600.
Type of Review: Extension of currently approved collection.
Title: 12 U.S.C. 1771—Conversion From Federal to State Credit Union and From State to Federal Credit Union.
Description: The information collection makes up the application for a credit union's conversion from federal to state charter and from state to federal charter. In addition the package contains an application for approval of federal insurance of member accounts in credit unions.
Respondents: Credit unions.
Estimated Number of Respondents: 50.
Estimated Burden Hours per Response: 2 hours.
Frequency of Response: Once.
Estimated Total Reporting Burden: 200.

Clearance Officer: Wilmer A. Theard (703) 518–6410, National Credit Union Administration, Room 4009, 1775 Duke Street, Alexandria, VA 22314–3428.
OMB Reviewer: Milo Sunderhauf (202) 395–5167, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Becky Baker,

Secretary of the NCUA Board.

[FR Doc. 95–14620 Filed 6–14–95; 8:45 am]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–295 and 50–304]

Commonwealth Edison Company; Zion Nuclear Power Station, Unit Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is

considering issuance of amendments to Facility Operating License Nos. DPR–39 and DPR–48, issued to Commonwealth Edison Company (the licensee), for operation of Zion Nuclear Power Station, Units 1 and 2, located in Lake County, Illinois.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow the storage of fuel in the new fuel storage vault with an enrichment up to and including 4.65 weight percent U–235, revise the description of the enrichment of the fuel in the reactor core, and add references to three previously approved documents in the Technical Specifications (TSs).

The Need for the Proposed Action

The proposed action is needed since future core designs will incorporate fuel enrichments up to 4.65 weight percent U–235. Use of the higher enrichment fuel will permit increased flexibility in planning fuel cycles, with the potential for longer fuel cycles or higher burnup rates.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the TSs. The proposed revisions would permit storage of fuel enriched to a nominal 4.65 weight U–235. The safety considerations associated with storing new and spent fuel of a higher enrichment have been evaluated by the NRC staff. The staff has concluded that such changes would not adversely affect plant safety. The proposed changes have no adverse effect on the probability of any accident. No changes are being made in the types or amounts of any radiological effluents that may be released offsite. There is no significant increase in the allowable individual or cumulative occupational radiation exposure.

The environmental impacts of transportation resulting from the use of higher enrichment fuel and extended irradiation were published and discussed in the staff assessment entitled, "NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation," dated July 7, 1988, and published in the **Federal Register** (53 FR 30355) on August 11, 1988, as corrected on August 24, 1988 (53 FR 32322) in connection with Shearon Harris Nuclear Power Plant, Unit 1: Environmental Assessment and Finding of No Significant Impact. As indicated therein, the environmental cost contribution of the proposed increase in the fuel enrichment and irradiation limits are either unchanged or may, in fact, be reduced from those summarized in Table S–4 as set forth in 10 CFR 51.52(c). Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment.

With regard to potential nonradiological impacts of reactor operation with the higher enrichment fuel, the proposed changes to the TS involve systems located entirely within the restricted area, as defined in 10 CFR Part 20. They do not affect nonradiological plant effluents and have no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for Zion Nuclear Power Station, Units 1 and 2.

Agencies and Persons Consulted

In accordance with its stated policy, on May 31, 1995, the staff consulted with the Illinois State official, Mr. Frank Niziolek; Head, Reactor Safety Section; Division of Engineering; Illinois Department of Nuclear Safety; regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare and environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 23, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Dated at Rockville, Maryland, this 8th day of June 1995.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate III–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–14669 Filed 6–14–95; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Mediation of Disputes

[Release No. 34–35830; File No. SR–NASD–95–25]

June 9, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 6, 1995,[1] the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend the Code of Arbitration Procedure ("Code") by adding a new Part IV to set forth rules to govern the administration of mediations. The NASD is also proposing to amend Sections 37, 43 and 44 of the Code[2] to add fee and other provisions relating to the administration of

[1] The NASD amended the proposed rule change subsequent to its original filing on May 19, 1995. Amendment No. 1 was a minor technical amendment, the text of which may be examined in the Commission's Public Reference Room. *See* Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Mark P. Barracca, Branch Chief, Over-the-Counter Regulation, Division of Market Regulation, SEC (June 2, 1995).

[2] *NASD Manual*, Code of Arbitration Procedure, Part III, Secs. 37, 43 and 44, (CCH) ¶¶3737, 3743, 3744.

mediations. Below is the text of the proposed rule change. Proposed new language is in italics.

Code of Arbitration Procedure

* * * * *

Record of Proceedings

Sec. 37. *(a)* A verbatim record by stenographic reporter or tape recording of all arbitration hearings shall be kept. If a party or parties to a dispute elect to have the record transcribed, the cost of such transcription shall be borne by the party or parties making the request unless the arbitrators direct otherwise. The arbitrators may also direct that the record be transcribed. If the record is transcribed at the request of any party, a copy shall be provided to the arbitrators.

(b) A verbatim record of mediation conducted pursuant to Part IV of this Code shall not be kept.

* * * * *

Schedule of Fees for Customer Disputes

Sec. 43.

* * * * *

(i) Each party to a matter submitted to a mediation administered by the Association where there is no Association arbitration proceeding pending shall pay an administrative fee of $150.

(j) The parties to a mediation administered by the Association shall pay all of the mediator's charges, including the mediator's travel and other expenses. The charges shall be specified in the Submission Agreement and shall be apportioned equally among the parties unless they agree otherwise. Each party shall deposit with the Association their proportional share of the anticipated mediator charges and expenses, as determined by the Director of Mediation, prior to the first mediation session. Mediator charges, except travel and other expenses, are as follows:

(1) Initial Mediation Session: $600 or four (4) times the mediator's hourly rate agreed to by the parties and the mediator; and

(2) Additional Mediation Sessions: $150 per hour, or such other hourly rate agreed to by the parties and the mediator, per hour or portion thereof.

Schedule of Fees for Industry and Clearing Controversies

Sec. 44.

* * * * *

(j) Each party to a matter submitted to a mediation administered by the Association where there is no Association arbitration proceeding pending shall pay an administrative fee of $250.

(k) The parties to a mediation administered by the Association shall pay all of the mediator's charges, including the mediator's travel and other expenses. The charges shall be specified in the Submission Agreement and shall be apportioned equally among the parties unless they agree otherwise. Each party shall deposit with the Association their proportional share of the anticipated mediator charges and expenses, as determined by the Director of Mediation, prior to the first mediation session. Mediator charges, except travel and other expenses, are as follows:

(1) Initial Mediation Session: $600 or four (4) times the mediator's hourly rate agreed to by the parties and the mediator; and

(2) Additional Mediation Sessions: $150 per hour, or such other hourly rate agreed to by the parties and the mediator, per hour or portion thereof.

* * * * *

Sec. 47 Reserved.[3]
Sec. 48 Reserved.
Sec. 49 Reserved.

PART IV—MEDIATION RULES

Scope and Authority

Sec. 50. (a) The NASD Mediation Procedures ("Procedures") set forth in this Part shall apply to the mediation of any dispute, claim or controversy ("matter") administered by the Association.

(b) A Director of Mediation shall be designated by the Association to administer mediations under these Procedures. The Director will consult the Association's National Arbitration Committee on the administration of mediations and the Committee shall, as necessary, make recommendations to the Director and recommend to the Board of Governors amendments to the Procedures. The duties and functions of the Director may be delegated as appropriate. For purposes of this Part, the term "Director" refers to the Director of Mediation.

(c) Neither the NASD nor any mediator appointed to mediate a matter pursuant to these Procedures shall have any authority to compel a party to participate in a mediation or to settle a matter.

Submission of Eligible Matters

Sec. 51. Any matter eligible for arbitration under this Code, any part thereof, or any issue related to the matter, including procedural issues, may be submitted for mediation under these Procedures upon the agreement of all parties. A matter will be deemed submitted when the Director has received an executed Submission Agreement for each party. The Director shall have the sole authority to determine if a matter is eligible to be submitted for mediation.

Arbitration Proceedings

Sec. 52. Unless the parties agree otherwise, the submission of a matter for mediation shall not stay or otherwise delay the arbitration of a matter pending under this Code.

Mediator Selection

Sec. 53. (a) A mediator may be selected: (1) by the parties from a list supplied by the Director; (2) by the parties from a list or other source of their own choosing; or (3) by the Director if the parties do not act to select a mediator after submitting a matter to mediation.

(b) With respect to any mediator assigned or selected from a list provided by the Association, the parties will be provided with information relating to the mediator's employment, education, and professional background, as well as information on the mediator's experience, training, and credentials as a mediator. Any mediator selected or assigned to mediate a matter shall comply with the provisions of Sections 23(a), (b) and (c) of the Code, unless, with respect to a mediator selected from a source other than the Association's list, the parties elect to waive such disclosure.

(c) No mediator shall be permitted to serve as an arbitrator of any matter pending in NASD arbitration in which he served as mediator, marshall the mediator be permitted to represent any party or participant to the mediation in any subsequent NASD arbitration proceeding relating to the subject matter of the mediation.

Limitation on Liability

Sec. 54. The Association, its employees, and any mediator named to mediate a matter under this Part, shall not be liable for any act or omission in connection with a mediation administered pursuant to these Procedures.

Mediation Ground Rules

Sec. 55. (a) The following Ground Rules are established to govern the mediation of a matter. The parties to a mediation may agree to amend any or all of the Ground Rules at any time. The Ground Rules are intended to be standards of conduct for the parties and the mediator.

[3] These new "reserved" sections are being added to provide room for additional new provisions of the Code that should precede the mediation provisions.

(b) Mediation is voluntary and any party may withdraw from mediation at any time prior to the execution of a written settlement agreement by giving notice of withdrawal to the mediator, the other parties, and the Director.

(c) The mediator shall act as a neutral, impartial, facilitator of the mediation process and shall not have any authority to determine issues, make decisions or otherwise resolve the matter.

(d) Following the selection of a mediator, the mediator, all parties and their representatives will meet in person or by conference call for all mediation sessions, as determined by the mediator or by mutual agreement of the parties. The mediator shall facilitate, through joint sessions, caucuses and/or other means, discussions between the parties, with the goal of assisting the parties in reaching their own resolution of the matter. The mediator shall determine the procedure for the conduct of the mediation. The parties and their representatives agree to cooperate with the mediator in ensuring that the mediation is conducted expeditiously, to make all reasonable efforts to be available for mediation sessions, and to be represented at all scheduled mediation sessions either in person or through a person with authority to settle the matter.

(e) The mediator may meet with and communicate separately with each party on their representative. The mediator shall notify all other parities of any such separate meetings or other communications.

(f) The parties agree to attempt, in good faith, to negotiate a settlement of the matter submitted to mediation. Notwithstanding that a matter is being mediated, the parties may engage in direct settlement discussions and negotiations separate from the mediation process.

(g) Mediation is intended to be private and confidential. The parties and the mediator agree not to disclose, transmit, introduce, or otherwise use opinions, suggestions, proposals, offers, or admissions obtained or disclosed during the mediation by any party or the mediator as evidence in any action at law, or other proceeding, including a lawsuit or arbitration, unless authorized in writing by all other parties to the mediation or compelled by law, except that the fact that a mediation has occurred shall not be considered confidential.

Notwithstanding the foregoing, the parties agree and acknowledge that the provisions of this subsection shall not operate to shield from disclosure to the Association or any other regulatory authority, documentary or other information that the Association or other regulatory authority would be entitled to obtain or examine in the exercise of its regulatory responsibilities.

The mediator will not transmit or otherwise disclose confidential information provided by one party to any other party unless authorized to do so by the party providing the confidential information.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Introduction

The NASD is the premier securities industry arbitration forum. The more than 5,500 cases filed with the NASD in calendar year 1994 represented 82 percent of all securities arbitrations filed in all forums combined (including the American Arbitration Association) and 86 percent of all arbitrations filed with self-regulatory organizations. The volume of arbitration cases has been growing dramatically since the U.S. Supreme Court in 1987 recognized the enforceability of predispute arbitration agreements with respect to securities law claims.

Coincidentally with the growth in volume, the NASD has noted that arbitration has become increasingly complex, costly, time-consuming and resembling of court litigation to the point that some of the advantages of arbitration as a low cost, swift, alternative to judicial resolution of disputes are disappearing. The result of this trend has been renewed interest in other forms of alternative dispute resolution that would recapture the low cost and time saving that arbitration once provided. To that end, the NASD has determined that mediation could serve as a valuable alternative to arbitration for all parties. The goal of mediation is to explore and come to a settlement of an outstanding dispute without resort to adversarial adjudication. Accordingly, the NASD is proposing to adopt a new Part IV to the Code setting forth rules to govern the mediation of disputes administered by the NASD.

Description of Proposed Mediation Rules

The NASD published Notice to Members 95–01 ("NTM 95–01") in January 1995 requesting comment on proposed Mediation Rules. The comments received by the NASD are discussed below and a copy of NTM 95–01 is attached to the NASD's filing as Exhibit 2. The proposed Mediation Rules, as revised in response to the comment letters received and as a result of further internal NASD review, have been drafted to preserve the elements of the procedural structure envisioned in the rules published in NTM 95–01, while eliminating those portions that were educational in nature. The proposed Mediation Rules have been structured, by subject, as follows:

1. General Scope and Authority
2. Submission of Eligible Matters
3. Stay or Delay of Arbitration Pending Mediation
4. Mediator Selection
5. Liability Limitation
6. Ground Rules

The Mediation Rules are proposed to be incorporated into the Code as a new Part IV, with provisions matching the structure referred to above, and numbered consecutively with the current provisions of the Code. This structure permits reference in the proposed Mediation Rules to both the subject matter jurisdiction of the Code and the arbitrator disclosure provisions as they apply to mediators.

Record of Sessions. The NASD is proposing to amend Section 37 of the Code to add a new paragraph (b) to prohibit the keeping of a verbatim record of any mediation session conducted pursuant to the proposed rules. The NASD believes that a verbatim record is not consistent with the goals or methods of mediation; a free-flowing and confidential exchange of views, opinions, proposals and admissions.

Fees. The fees for mediations are set forth as amendments to Sections 43 and 44 of the Code. The NASD is proposing that the administrative fees of the NASD for administering a mediation set forth in proposed Subsections 43(i) and 44(j) will only be charged when there is no Association arbitration pending. Where there is no arbitration pending, under proposed Subsection 43(i) the NASD will charge each party $150 to administer the mediation of a public customer matter and, under proposed Subsection 44(j), the NASD will charge each party $250 to administer the mediation of an industry matter.

The fees will be assessed for each matter submitted to mediation. Pursuant to proposed Section 5, discussed below, a matter is deemed submitted to mediation when the Director has received an executed mediation Submission Agreement from all parties.[4]

In addition, proposed Subsections 43(j) 44(k) provide that the parties shall pay all of the mediator's charges, including travel and other expenses. The NASD proposes to set forth the mediator's charges in the Submission Agreement and they will be apportioned equally among the parties unless they agree otherwise. The NASD also will make an initial estimate the mediator's charges based on the anticipated length of the session or sessions The parties will be required to deposit their proportional share of such estimated charges with the NASD prior to the first mediation session.

The NASD's standard mediator charges will be $150 per hour, although the parties may agree to pay different charges for a particular mediator. While the NASD intends to make its best efforts to make mediators available at the specified hourly rate, some qualified mediators may decline to serve unless compensated at a higher rate.

Finally, the NASD intends that the mediator's hourly fee for both joint sessions (except for the first session) and separate sessions will be assessed for each half hour or portion thereof. In addition, the mediator's hourly rate for separate meetings will be apportioned equally among all parties without regard to the actual amount of time each party has spent with the mediator. The NASD believes that all parties benefit equally from the mediator's efforts in meeting with each party even if the mediator spends more time with one than the other.

General Scope and Authority. The NASD is proposing to adopt new Section 50 to establish the scope and authority of the rules. Proposed Section 50 provides that the rules apply to mediations administered by the Association and calls for the designation of a Director of Mediation to administer mediations. Section 50 also specifies that the Director of Mediation will consult the National Arbitration Committee ("Committee") on administering the Mediation program and the Committee, as necessary, may make recommendations concerning the administration of the Mediation Program to the Director and recommend amendments to the rules to the Board. Finally, Section 50 states that neither any mediator nor the NASD shall have any authority to compel a party to submit to mediation or to settle a matter. This last provision is intended to clarify the voluntary nature of mediation.[5]

Submission of Eligible Matters. Proposed Section 51 provides that any matter, or part of a matter (such as procedural issues), eligible for arbitration under the NASD's Code may be mediated. Any ambiguities about the eligibility of a matter for mediation will be decided by the Director. Proposed Section 51 also states a matter will be deemed submitted when the Director has received an executed mediation Submission Agreement from each party. The submission of a matter triggers the obligation to pay applicable fees and initiates the NASD's activities in finding a mediator and making arrangements for facilities for the mediation.

The NASD anticipates that indications of interest in mediation will be solicited by the Director, as well as expressed informally by parties. When an indication of interest is expressed, the Director will seek commitments to participate from other parties. Once those commitments are obtained, either orally or in writing, the Director will forward a mediation Submission Agreement to the parties for execution.

Stay or Delay of Arbitration Pending Mediation. Proposed Section 52 provides that any arbitration pending at the time of a mediation will not be stayed or delayed unless the parties agree. The NASD believes this provision is important to prevent gamesmanship through the use of mediation as a delaying tactic.

Mediator Selection. Proposed Section 53 provides for the appointment of mediators and permits the parties to select a mediator from a list supplied by the Director, or to obtain, on their own, a non-NASD mediator. If the parties do not act to select a mediator, the Director will assign a mediator. The parties will also be provided with information relating to the mediator's employment, education, and professional background, as well as information on the mediator's comply with the same background disclosure requirements as arbitrators.

Finally, proposed Subsection 53(c) prohibits a mediator from serving as an arbitrator or from representing any party to a mediation in any subsequent arbitration proceeding relating to the subject matter of the mediation. The NASD does not believe that mediators, having served as a neutral in a position of trust and confidence with the parties, should be permitted to serve either as an arbitrator or as an advocate of on party with respect to matters that the has knowledge of due to his involvement with both parties. The NASD also believes that state law, attorney codes of ethics, and mediator cods of conduct[6] provide sufficient protection for parties in judicial forums.

Liability Limitation. Proposed Section 54 provides for the limitation of liability of mediators, the Association, and its employees, for any act or omission in connection with a mediation administered by the NASD under the rules.

Ground Rules. Proposed Subsection 55(a) states that the Section sets forth standard Ground Rules government mediations and permits the parties to amend any of the Ground Rules at any time. The Subsection also provides that the Ground Rules are intended to be standards of conduct for the parties and for the mediation. The NASD intends that the parties be able to tailor the ground rules governing their mediation to meet their needs.

Proposed Subsection 55(b) states that mediation is voluntary and that parties may withdraw from a mediation at any time prior to the execution of a settlement agreement by giving written notice of withdrawal to the mediator, the other parties, and the Director. This provision is intended to clarify that, while the goal of mediation is to explore and settle outstanding disputes, if possible, the proposed rules are process oriented, not result oriented. The NASD does not intend that any party will be subject to any compulsion or coercion to come to a particular conclusion of a mediation. The process is completely voluntary and any party may withdraw from a mediation at any time and for any reason, or for no reason at all. If at any time a party feels that continuing

[4] The NASD is developing a standard form mediation Submission Agreement containing terms essential to the NASD. A copy of the Submission Agreement will be provided to all parties.

[5] The NASD intends to solicit participation in mediation by approaching parties to arbitration cases to advise them about mediation, explain the program and its merits and explore whether mediation might meet the needs of the parties. The NASD believes an outreach program such as this will increase the utilization of mediation and reduce the number of cases going to hearing.

[6] The American Bar Association ("ABA") is considering draft mediator standards of conduct. It is anticipated that the ABA will approve the draft standards at its next meeting. Draft Standard III states in pertinent part that "[w]ithout the consent of all parties, a mediator shall not subsequently establish a professional relationship with one of the parties in a related matter, or in an unrelated matter under circumstances which would raise legitimate questions about the integrity of the mediation process."

with a mediation is not in his interests he is free to terminate the mediation.

Proposed Subsection 55(c) establishes that the mediator's role is to act as a neutral, impartial, facilitator, without authority to impose decisions or a settlement on the parties.

Proposed Subsection 55(d) requires that the parties and their representatives meet jointly with the mediator, in person or by conference call as determined by the mediator or by mutual agreement of the parties. The mediator will facilitate through joint sessions, caucuses and/or other means, discussions between the parties on the subject matter of the mediation.

Proposed Subsection 55(d) also provides that the mediator will determine the procedure for the mediation and the parties agree to cooperate with the mediator in conducting the mediation expeditiously, to make reasonable efforts to be available for mediation sessions, and to be represented at all sessions either in person or by someone with authority to settle the matter. This subsection is intended to ensure that common obstacles to expeditious, effective mediation are avoided and it sets forth rules that will discourage dilatory conduct and prevent gamesmanship. Parties failing to adhere to these standards send a strong signal that they are not interested in mediating in good faith.

Proposed Subsection 55(e) permits the mediator to meet with and communicate separately with each party, provided the mediator notifies the other parties. This is intended to permit the mediator to take steps to keep the mediation on track, if necessary, by initiating separate communications. These private caucuses are intended to provide the mediator with an opportunity to explore candidly each party's underlying interests and the strengths and weaknesses of their positions; however, the mediator will not disclose confidential information in violation of the confidentiality provisions. Subsection 55(g), discussed below, bars the mediator from disclosing one party's confidential information to another party without authorization.

Proposed Subsection 55(f) sets forth the goal of mediation—to negotiate a settlement in good faith. The Subsection also permits direct negotiations between the parties outside of the mediation process.

Proposed Subsection 55(g) provides that mediation is intended to be private and confidential. The Subsection obligates the parties and the mediator not to disclose or otherwise communicate anything disclosed during the mediation in any other proceeding, unless authorized by all other parties to the mediation. The Subsection permits disclosure if compelled by law, which provides for situations where a party is subpoenaed or where there are regulatory requirements, such as the disclosures required in Form U–4 or under Article IV, Section 5 of the Rules of Fair Practice. This Subsection also provides expressly that the fact that a mediation occurred is not confidential.

Proposed Subsection 55(g) also makes clear that the confidentiality provisions will not operate to shield from disclosure documentary or other information that the Association or other regulatory authority would be entitled to obtain or examine in the exercise of its regulatory responsibilities. Thus, a party could not refuse to disclose that information to the NASD or an opposing party in civil litigation under the confidentiality clause by disclosing documentary or other information during the course of a mediation and then claiming that it is confidential.

In addition, the Subsection bars the mediator from disclosing one party's confidential information to another party without authorization, which memorializes a standard practice of mediators.

The NASD is requesting that the proposed rule change be effective within 45 days of SEC approval.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[7] in that the proposed rule change will facilitate the dispute resolution process for all participants by providing an alternative to adversarial adjudication of disputes resulting in lower-cost, quicker resolution of disputes.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The proposed rule change was published for comment by the NASD in Notice to Members 95–01 (January 1995). Five comments were received in response thereto. Of the 5 comment letters received, all generally were in favor of the proposed rule change.

As noted above, the proposed rules as published for comment in Notice to Members 95–01 are substantially different in structure from those being submitted for approval in this proposed rule change. The proposed rule change described in this filing represents modifications that respond to the comments received and to other considerations developed following the publication of Notice to Members 95–01.

The *Securities Industry Association (SIA)* urged the NASD to seek experienced mediators, but said that the amount of detail sought by the Mediation Profile Questionnaire could limit the size of the mediator pool. The SIA also expressed concern about the meaning of paragraph (4)(B)[8] of the Ground Rules which provides that the mediator will decide when to hold "separate meetings with the parties." The SIA said that the typical mediation begins with a joint session at which all parties are given an opportunity to express their positions, after which the parties retire to separate rooms and the mediator shuttles back and forth between them trying to resolve the controversy. The SIA said it is not concerned about paragraph 4(b) unless it is contemplated that a mediator would hold separate sessions on separate days with the involved parties. The SIA believes this would not be productive. The SIA would prefer that paragraph 4(b) state simply "[t]he mediator will decide when to hold meetings with the parties."

The SIA also asks that the proposed rules provide "the mediator shall destroy all notes and other records of the mediation once the matter is concluded whether by settlement or by decision of the parties not to proceed further." The SIA said that destruction of notes and records is a general practice of mediators and should be included in the Ground Rules.

The SIA also expressed concern that the mediator session fees contemplate the parties agreeing to more than one mediator. The SIA believes that the introduction of additional mediators will only prolong the process by introducing potential complexity, confusion and disagreement over the appropriate course of action for the mediators, and recommends that any suggestion of multiple mediators be eliminated.

[7] 15 U.S.C. § 78o–3.

[8] The citations of the commenters to subsections of the proposed rules correspond to the proposed rules in Notice to Members 95–01. They do not correspond to the proposed rule contained herein because the proposed rules as published for comment by the Association were substantially different in structure.

The SIA also suggests the confidentiality provisions of the proposed rules be amended to require the parties to keep confidential any refusal by any party to submit to mediation. The SIA argues that there can be any number of reasons for a party deciding not to mediate and no inference should be drawn from such a decision. The SIA also asks that a party seeking mediation should agree that the refusal of the other party to mediate will not be introduced as evidence into any arbitral, judicial or other proceeding.

The SIA also asks for further consideration about who is the proper party to initiate mediation and whether mediation can be initiated after the first hearing in an arbitration. Finally, the SIA asks that, in order to prevent breaches of the agreement and forestall future litigation on the same issues, a mechanism be created to reduce the agreement to an arbitration award at the request of a party.

The Association believes that the changes in the proposed rules are responsive to the SIA's concerns. Specifically, with respect to the SIA's suggested language, "[t]he mediator will decide when to hold meetings with the parties," the NASD has determined not to adopt the SIA's proposed language. While the NASD understands the SIA's concern about "separate meetings," the NASD believes nevertheless that such separate meetings may be necessary and productive and that the rules should provide for such meetings. The NASD has, however, modified the proposed rules to eliminate any suggestion that such separate meetings would occur prior to the first joint meeting of the parties. In addition, the NASD has determined to eliminate any references to multiple mediators in response to the concerns raised by the SIA.

Associated Securities Corp. (ASC), an NASD member firm, expressed support for the proposed mediation program. ASC also said that mediation by teleconference should not be allowed because personal contacts are important to the mediation process. ASC also said that the mediators should not make enforcement referrals in order to facilitate frank and open discussion with the mediator, during the course of the mediation sessions.

The Association believes that teleconference sessions by the agreement of the parties may be an effective option that should be available to the parties. With respect to disciplinary referrals, mediators as a matter of course do not make such referrals; however, the NASD does not believe it is necessary to specify such a prohibition.

Robert Burke of the San Francisco law firm of Pettit & Martin commented favorably on the proposed mediation rules, but had two suggestions. First, Mr. Burke believes mediators should disclose their association with the NASD as an NASD arbitrator because the mediator's history as an arbitrator could have an adverse effect on the public customer's willingness to accept the mediator's neutrality. Moreover, the NASD should consider whether to include arbitrators in its mediator pool because good arbitrators do not generally make good mediators. Second, Mr. Burke believes the mediator should not draft settlement agreements as the proposed rules permit because in mediation the settlement is the parties', not the mediator's. Moreover, the mediator could inadvertently or by design fail to include a term that had been part of the parties' understanding, potentially resulting in liability for the mediator and the sponsoring organization.

The Association believes that Mr. Burke's comments with respect to arbitrator selection are addressed in the background information acquisition and disclosure process specified in the proposed rule change. With respect to Mr. Burke's second comment the NASD has eliminated that provision from the proposed rule change.

Joan Protess & Associates suggested that the proposed Mediation Program could be made more accommodating by (1) subsidizing some of the mediator's charges, and (2) designating a mediator to invite the parties and their counsel to mediation.

The NASD believes this commenter's comments are related to the NASD's internal management decisions related to the administration of the program and do not require a response. The issues raised, however, remain under continuing consideration.

Lawyers Mediation Service Corporation (LMSC) commented that the proposed Mediation Program should be administered separately from the arbitration program because the two are different in their functions and in their goals.

The mediation and arbitration programs are being administered separately under the single management umbrella of the Arbitration Department.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submission should refer to File No. SR–NASD–95–25 and should be submitted by July 6, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–14686 Filed 6–14–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35831; File No. SR–NASD–95–13]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Cold Calling Requirements

June 9, 1995.

On April 10, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule

[1] 15 U.S.C. 78s(b)(1).

19b–4 thereunder.[2] The proposed rule change amends Article III, Section 21 of the Rules of Fair Practice[3] to include a provision relating to cold calling. Under the rule as amended, each member who engages in telephone solicitation to market its products and services will be required to make and maintain a centralized do-not-call list of persons who do not wish to receive telephone solicitations from such member or its associated persons.

Notice of the proposed rule change, together with its terms of substance, was provided by issuance of a Commission release[4] and by publication in the **Federal Register**.[5] This order approves the proposed rule change.

Pursuant to the Telephone Consumer Protection Act ("TCPA"), which became law in 1991, the Federal Communications Commission ("FCC") developed rules to protect the rights of telephone consumers while allowing legitimate telemarketing practices. The FCC rules include a requirement that a person or entity making telephone solicitations must maintain a do-not-call list.

In addition, the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Prevention Act") became law in August 1994, and requires the Federal Trade Commission ("FTC") to adopt rules on abusive cold calling within twelve months. The Prevention Act also requires the SEC to engage in its own rulemaking or, alternatively, to require the self-regulatory organizations ("SROs") to promulgate telemarketing rules consistent with the legislation.

In August 1994, SEC Chairman Arthur Levitt wrote a letter urging the NASD and the other SROs to adopt rules similar to the cold calling rule established by the FCC. Since then, there have been ongoing discussions between the Commission and SROs on the structure of a rule or rules to apply pursuant to the Prevention Act.

The Commission has determined to approve the NASD's proposal. The Commission believes that the rule change is a good first step in the effort to protect against abusive cold calling. In fact, the Commission has recently approved a substantially similar proposal filed by the New York Stock Exchange.[6] The Commission believes that the proposed rule change is consistent with the Prevention Act as well as the FCC rules concerning restrictions on telephone solicitations.

The Commission finds that the rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, including the requirements of Section 15A(b)(6) of the Act.[7] Section 15A(b)(6) requires, in part, that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; and, in general, to provide for the protection of customers and the public interest. The proposed rule change addresses the practices of members that make telemarketing calls. Members will be required to maintain centralized do-not-call lists. The maintenance of such lists is a first step toward establishing standards designed to protect persons against abusive telemarketing practices.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR–NASD–95–13 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–14687 Filed 6–14–95; 8:45 am]

BILLING CODE 8010–01–M

[2] 17 CFR 240.19b–4.

[3] *NASD Manual*, Rules of Fair Practice, Article III, Sec. 21, (CCH) ¶ 2171.

[4] Securities Exchange Act Release No. 35657 (May 1, 1995).

[5] 60 FR 22529 (May 8, 1995).

[6] Securities Exchange Act Release No. 35821 (June 7, 1995).

[7] 15 U.S.C. 78o–3(b)(6).

[8] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 2222]

Bureau of Oceans and International Environmental and Scientific Affairs; U.S. National Committee for the Man and the Biosphere Program (U.S. MAB) Requests for Proposals for an Environmental Project

The United States Man and the Biosphere Program hereby announces its request for proposals for a Coordinator for the Integration of Youth and Environmental Projects including Biodiversity Conservation, Global Climate Change, Desertification, and Environmental Education to assist in development of Peace Corps Worldwide Environmental Projects by providing technical assistance including but not limited to the following description.

U.S. MAB will accept proposals of a maximum length of six (6) pages that outline how the objectives described below could be accomplished.

A curriculum vitae (C.V.) of a maximum length of four (4) pages for each principal(s), that clearly demonstrates a history of competency in the implementation of such tasks, must accompany the proposal.

Proposals may not request more than the sum of sixty-four thousand, six hundred and twelve ($64,612) dollars to implement this initiative.

All proposals must specify that all tasks will be completed at the headquarters of the U.S. Peace Corps and field offices during the period of July 31, 1995 through July 30, 1996.

Payments will be made on a quarterly basis.

All proposals and accompanying documents must be received by the U.S. MAB Secretariat no later than the close of business (COB) on July 24, 1995. Proposals and C.V.'s will be evaluated on the criteria noted in the following section.

Selection will be made no later than July 31, 1995.

Objectives

• Provide technical support to Peace Corps Volunteers (PCVs) who are taking part in environment and youth projects as primary or secondary assignments including, but not limited to:

—Taking part in approximately 6–9 consultancies in response to requests from Peace Corps posts for technical assistance in project development, training activities, project evaluation, and other activities.

—Developing In-Service Training (IST), Pre-Service Training (PST) and Monitoring and Evaluation models for PCVs and their host country counterparts working in youth and environmental education projects. Assist with country implementation of ISTs based on these models.

—Assisting with other environmental education activities including collaboration with other governmental and private agencies offering assistance to Peace Corps in project development and training.

• Provide technical support to Associate Peace Corps Directors (APCDs) responsible for youth and Environment programs by:

—Planning, designing, and implementing regional and subregional workshops for APCDs and their host country counterparts aimed at strengthening their ability to develop and manage quality youth projects;

—Responding to individual APCD requests for technical assistance in the design and management of environment projects.

• Assist with the ongoing collaboration between the Youth Sector and other sectors within the Office of Training and Program Support (education, small business, agriculture, health and water/sanitation) in the design of Youth project components. As part of this effort, develop and coordinate country assessments, project designs, reviews, and evaluations, in-service training workshops, and other related programming and training activities for Peace Corps Volunteers and their counterparts in countries requesting this assistance.

• Take primary responsibility for identifying appropriate resource materials for PCVs working in the Youth Sector and work closely with Peace Corps' Information Collection and Exchange (ICE) to maintain a current Youth resource library for Washington staff, field staff, and Volunteers.

• Support Peace Corps in the implementation of the Programming and Training System (PATS), including project design, monitoring, and evaluation assistance. In addition, collaborate with incumbent Sector Specialists in the following tasks:

—Participate in project plan reviews for youth projects;

—Undertake annual reviews of country program and technical assistance requests.

• Work with other OTAPS Sector Specialists in regular sector activities, including, but not limited to:

—Initiating and maintaining collaborative relationships with private organizations and other governmental agencies;

—Preparing documentation of sector activities;

—Maintaining computerized files used to plan, monitor, and evaluate youth projects;

—Collaborating with other sectors in the Office of Training and Program Support (OTAPS); for example, incorporating Women and Youth Issues into Youth Sector projects and activities, and working with other offices in Peace Corps.

• Develop and assist implementation of new Youth projects and initiatives which will strengthen Peace Corps' ability to undertake activities addressing biodiversity conservation, global climate change, and desertification;

• Assist, on occasion, Area Recruitment Offices in their effort to recruit applicants for Youth assignments;

• Represent the Youth Sector in various domestic and international workshops, conferences, and symposia;

Selection Criteria

• Demonstrated ability of the proposer to plan, design, manage, monitor, and evaluate Peace Corps Youth projects.

• Demonstrated ability of the proposer to design and deliver Youth workshops for both formal and nonformal audiences. National and international workshop experience preferred.

• Demonstrated ability of the proposer to conduct needs assessments and development project designs.

• Demonstrated ability of the proposer to write reports, conduct research, and handle administrative responsibilities as needed.

• Fluency in Spanish or French preferred.

For further information concerning technical or grant performance-related inquiries, please contact: George Mahaffey, Director, Office of Training and Program Support, U.S. Peace Corps, Room 8624, 1990 K Street NW., Washington, DC 20526, Tel. (202) 606–3101 FAX (202) 606–3024.

Proposals must be submitted by July 24, 1995 to: Roger E. Soles, Executive Director U.S. MAB, OES/EGC/MAB, SA–44C, U.S. Department of State, Washington, DC 20522–4401, Tel. (202) 466–1935 FAX (202) 466–2106.

Dated: June 9, 1995.

Roger E. Soles,

Executive Director, U.S. Man and the Biosphere Program, Office of Ecology and Terrestrial Conservation.

[FR Doc. 95–14586 Filed 6–14–95; 8:45 am]

BILLING CODE 4710–09–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 95–049]

Consolidation of U.S. Coast Guard Training Centers; Environmental Assessment and Proposed Finding of No Significant Impact

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability.

SUMMARY: The Coast Guard has prepared a Programmatic Environmental Assessment (PEA) for the proposed consolidation of U.S. Coast Guard training centers. This may result in transfer of training activities from one training center to other centers. One or more of the five training centers may be closed or partially closed. Based on the information presented in the PEA, the Coast Guard finds that no significant impacts to the environment will result from the proposed implementation of several alternatives consolidating the training functions at the five facilities, and a proposed Finding of No Significant Impact (FONSI) has been prepared. The Coast Guard seeks comments from the public on the PEA and proposed FONSI. It will also hold a number of public meetings.

DATES: Written comments on the PEA and proposed FONSI should be received not later than July 17, 1995. Public meetings will be held as indicated below under **SUPPLEMENTARY INFORMATION.**

ADDRESSES: Copies of the PEA and proposed FONSI are available for public review at the following libraries: Petaluma Library, 100 Fairgrounds Drive, Petaluma, CA; Cape May Public Library, 110 Ocean Street, Cape May, NJ; Pasquotank-Camden Library, 205 East Main Street, Elizabeth City NC; Newport News Public Library, 2400 Washington Avenue, Newport News VA; and the New London Public Library, 63 Huntington Street, New London, CT. Written comments should be mailed to, and copies of the PEA and proposed FONSI may be obtained from, Ms. Susan Boyle, NEPA Branch Chief, U.S. Coast Guard Maintenance and Logistics Command Pacific, Coast Guard Island, Building #54D, Alameda, CA 94501–5100, at (510) 437–3626. Comments may also be submitted by facsimile to Ms. Boyle at (510) 437–5753.

FOR FURTHER INFORMATION CONTACT: Contact LT Jan Proehl, Public Affairs Staff, at (202) 267–2304. Persons requiring assistance for the public meetings described in **Public Meetings** below should call Ms. Boyle, at (510) 437–3626, by June 19, 1995.

SUPPLEMENTARY INFORMATION:

Background

The Coast Guard is proposing to consolidate training activities throughout the United States to reduce operational expenditures and achieve long-term savings. A PEA has been prepared which evaluates the potential environmental and socioeconomic impacts from consolidation alternatives.

Five Coast Guard training centers may be directly affected by the proposed action: Training Center (TRACEN) Petaluma, California; TRACEN Cape May, New Jersey; Aviation Technical Training Center (ATTC) Elizabeth City, North Carolina; Reserve Training Center (RTC) Yorktown, Virginia; and the Coast Guard Academy in New London, Connecticut. Under the consolidation proposals, some installations may be expanded, some may be downsized, and some may be closed.

Alternatives

Based on a detailed feasibility and streamlining study, the Coast Guard developed and considered three consolidation alternatives, in addition to a no action alternative. Under all consolidation alternatives, the Coast Guard Academy would experience minor expansion, receiving about 40 new staff members and 13000 square feet of new construction. This expansion represents a small change in the operational size of the academy that would be absorbed by refurbishing existing structures in developed areas. The action is not expected to result in any significant environmental impacts, therefore, the impact on the Academy is not analyzed in detail in the PEA.

The four alternatives evaluated are summarized below. The Coast Guard has not yet identified a preferred alternative.

1. Consolidate East Coast: TRACEN Petaluma would close and most of its training functions would be relocated to RTC Yorktown. ATTC Elizabeth City and TRACEN Cape May would not be significantly affected by this alternative.

2. Consolidate Tidewater Area: TRACEN Petaluma and TRACEN Cape May would close and their functions would be relocated to RTC Yorktown and ATTC Elizabeth City.

3. Consolidate to a DOD Facility: TRACEN Petaluma, TRACEN Cape May, and ATTC Elizabeth City would be closed and their functions relocated to an undetermined closed Department of Defense (DOD) military base. The impacts at TRACEN Petaluma and TRACEN Cape May for this alternative are the same as those under Alternative 2.

4. No Action: The Coast Guard would continue to operate the training centers as they currently exist. However, this alternative would not achieve the Coast Guard's goal of long-term cost savings.

The PEA evaluates the environmental impacts of each alternative, including: Land use; infrastructure/transportation; hazardous materials and waste management; biological resources; cultural resources; air quality; noise; water resources; and socioeconomics. Other environmental impacts, including impacts on geology, soils, and bathymetry, are not expected to be affected from the action and are not evaluated in detail. Environmental impacts related to potential reuse and disposal of facilities will be the subject of subsequent NEPA analyses.

The PEA identifies no significant biophysical impacts under alternatives 1, 2, and 4, because the proposed action is relatively small in scale and is not expected to adversely affect sensitive resources. If a DOD facility is identified and alternative 3 is selected, an appropriate NEPA analysis will be conducted to address environmental impacts at the DOD facility.

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality Regulations (40 CFR Part 15); and the Coast Guard Implementing Procedures and Policies (COMDTINST M16475.1B), and based on this analysis, the Coast Guard finds that Alternatives 1, 2, and 4 will have no significant environmental effects and concludes that an EIS is not required.

The Coast Guard recognizes that there may be potentially significant socioeconomic impacts. For example, closure of TRACEN Petaluma could have a significant socioeconomic impact on Two Rock Elementary School because the closure would reduce federal and state funding that is provided to the school on a per pupil basis. However, because there are no significant environmental impacts, the presence of a potential significant socioeconomic impact does not require the preparation of an Environmental Impact Statement (EIS).

Public Meetings

Public meetings to discuss the proposed consolidation of training facilities and alternatives considered, present findings of the PEA, and to receive public comments have been scheduled for the following times and locations:

June 22, 1995 (7 to 10pm) at the Petaluma Community Center, 320 North McDowell Blvd., Petaluma, CA;

June 26, 1995 (7 to 10pm) at the City Hall, 643 Washington Street, Cape May, NJ;

June 27, 1995 (7 to 10pm) at the Base Auditorium, Coast Guard Reserve Training Center, Yorktown, VA;

June 28, 1995 (7 to 10pm) at the Kerman E. White Grad Center, Elizabeth City State University, 1704 Weeksville Road, Elizabeth City, NC; and

June 29, 1995 (6:30 to 9pm) at the New London Public Library, 63 Huntington Street, New London, CT.

All interested persons will be given opportunity to express their views by making an oral statement or filing a written comment. The meetings will be recorded to help ensure that all comments will be considered.

Request for Comments

Copies of the PEA and proposed FONSI are available as described under **ADDRESSES**. The Coast Guard encourages interested persons to comment on these documents. The Coast Guard will consider these comments prior to making a decision to implement a consolidation proposal.

Dated: June 8, 1995.

Kent H. Williams,

Chief of Staff.

[FR Doc. 95–14695 Filed 6–12–95; 1:26 pm]

BILLING CODE 4910–14–M

Federal Aviation Administration

Civil Tiltrotor Development Advisory Committee; Meeting

Pursuant to section 10(A) (2) of the Federal Advisory Committee Act Public Law (72–362); 5 U.S.C. (App. I), notice is hereby given of a meeting of the Federal Aviation Administration (FAA) sponsored Civil Tiltrotor Development Advisory Committee (CTRDAC) to be held June 29 at 10:00 a.m. The meeting will take place at the U.S. Department of Transportation, 400 7th Street, SW., Washington, D.C. in rooms 8236–8240.

The agenda for the third meeting of the CTRDAC will include:

(1) A review of the October 6 meeting minutes

(2) Discussion of subcommittee executive summaries

(3) Discussion of subcommittee reports

(4) Review of work plans/schedule

(5) Other business.

Since access to the DOT building is controlled, all persons who plan to attend the meeting must notify Ms. Lenora Harris, Staff Assistant to the Designated Federal Official on (202) 267–8787 prior to June 22. Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Noncommittee members wishing to present oral statements, obtain information, or who plan to access the building to attend the meeting should also contact Ms. Harris.

Members of the public may present a written statement to the Committee at any time.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Ms. Karen Braxton 9202) 267–9451 at least seven days prior to the meeting.

Issued in Washington, D.C. on June 7, 1995.

Paul S. Erway,

Acting Designated Federal Official, Civil Tiltrotor Development Advisory Committee.

[FR Doc. 95–14658 Filed 6–14–95; 8:45 am]

BILLING CODE 4910–13–M

Research, Engineering and Development Advisory Committee, Subcommittee on Human Factors; Meeting

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Public Law 92–463; 5 U.S.C. app. 2), notice is hereby given of a meeting of the Subcommittee on Human Factors of the Federal Aviation Administration (FAA) Research, Engineering and Development (R, E&D) Advisory Committee to be held on Wednesday, June 28, 1995, from 9 a.m. to 5 p.m. and continuing on Thursday, June 29, 1995, from 9 a.m. to 5 p.m. The meeting will take place in Washington, DC, at the Capital Gallery Building, 600 Maryland Avenue, Fifth Floor, Suite 500.

The agenda for this meeting will include discussion of the role of human factors in the acquisition of systems in the FAA and the operation of systems in the national airspace system.

Attendance is open to the interested public but limited to the space available. With the approval of the subcommittee chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements, obtain information, or attend the meeting should contact Dr. Mark Hofmann, AAR–100, 800 Independence Avenue, SW., Washington, DC at (202) 267–7125, the FAA designated federal official to the subcommittee.

Members of the public may present a written statement to the subcommittee at any time.

Issued in Washington, DC, on June 8, 1995.

Lee A. Olson,

Coordinator for the R, E&D Advisory Committee.

[FR Doc. 95–14657 Filed 6–14–95; 8:45 am]

BILLING CODE 4310–13–M

Notice of Intent To Rule on Application to Impose and Use the Revenues From a Passenger Facility Charge (PFC) at Charlottesville-Albermarle Airport, Charlottesville, Virginia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Charlottesville-Albermarle Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before July 17, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Washington Airports District Office, 101 West Board Street, Suite 300, Falls Church, Virginia 22046

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bryan Elliot, Director of Aviation, Charlottesville-Albermarle Airport Authority, at the following address: Charlottesville-Albermarle Airport Authority, 201 Bowen Loop, Charlottesville, Virginia 22901

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Charlottesville-Albermarle Airport Authority under Section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Robert Mendez, Manager, Washington Airports District Office 101 West Broad Street, Suite 300 Falls Church, Virginia 22046. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Charlottesville-Albermarle Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158)

On May 30, 1995, the FAA Determined that the application to impose and use the revenue from a PFC submitted by the Charlottesville-Albermarle Airport Authority was substantially complete within the requirements of Section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 16, 1995

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: April 1, 1995

Proposed charge expiration date: June 15, 2001

Total estimated PFC revenue: $2,697,646

Brief description of proposed project(s):

—Debt Financing for Acquisition of Snow Removal and ARFF Vehicle approved by FAA PFC eligible Projects (Impose & Use)

—Construct Air Carrier Ramp (Impose Only)

—Reconstruct Taxiway A (Impose Only)

Class or classes of air carriers which the public agency has requested not be required to collect PFC: Air Taxi/commercial operators filing FAA Form 1800–31 and foreign air carriers.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Charlottesville-Albermarle Airport Authority.

Issued in Jamaica, New York, on June 6, 1995.

Anthony P. Spera,

Acting Manager, Airports Division, Eastern Region.

[FR Doc. 95–14668 Filed 6–14–95; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenues From a Passenger Facility Charge (PFC) at John F. Kennedy International Airport, Jamaica, NY; LaGuardia Airport (LGA), Flushing, NY, and Newark International Airport (EWR), Newark, NJ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to notice of intent to rule on application to impose and use the revenues from a Passenger Facility Charge (PFC) at JFK, LGA and EWR Airports.

SUMMARY: This correction incorporates information from the public agency's application which was omitted from the previously published notice.

In notice document FR 95–1754 beginning on Page 27592 in the issue of Wednesday, May 24, 1995, on the Third column, under the heading of EWR Projects the last 7 paragraphs should read as follows:

EWR Projects

—EWR Monorail

To Impose and Use an additional $50 million, also use $50 million in PFC already imposed, for the construction of a monorail linking various areas within the airport.

—Landside Access—Phase 1A

To impose and use $50 million for on-airport roadway improvements and

modifications to reduce congestion.
—EWR I–78 Flyover
To amend previously PFC to withdraw this project.
—EWR Monorail—Northeast Corridor Connection
To Impose $250 million for the construction of a monorail linking the on airport monorail system and the new rail station on the Amtrak's Northeast Corridor (NEC).

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi, except commuter air carriers.

Any person may inspect the applications in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the applications, notice and other documents germane to the application in person at the Port Authority of New York & New Jersey.

Issued in Jamaica, New York on June 6, 1995.

William DeGraaff,

Manager, Planning and Programming Branch, Eastern Region.

[FR Doc. 95–14659 Filed 6–14–95; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. 95–25; Notice 2]

Decision That Nonconforming 1994 and 1995 Ford Escort RS Cosworth Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1994 and 1995 Ford Escort RS Cosworth passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1994 and 1995 Ford Escort RS Cosworth passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they have safety features that comply with, or are capable of being altered to comply with, all such standards.

DATES: The decision is effective on June 15, 1995.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards. Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) (formerly section 108(c)(3)(A)(i)(II) of the Act, 15 U.S.C. 1397(c)(3)(A)(i)(II)) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register.**

Sun International Racing of Manhattan Beach, California (Registered Importer R–95–050) petitioned NHTSA to decide whether 1994 and 1995 Ford Escort RS Cosworth passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on April 12, 1995 (60 FR 18659) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligible number indicating that the vehicle is eligible for entry. VCP–09 is the vehicle eligibility number assigned to vehicles admissible under this determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby decides that 1994 and 1995 Ford Escort RS Cosworth passenger cars are eligible for importation into the United States because they have safety features that comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141 (a)(1)(B) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: June 12, 1995.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–14720 Filed 6–14–95; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 95–24; Notice 2]

Decision That Nonconforming 1994 Porsche 964 Turbo Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1994 Porsche 964 Turbo passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1994 Porsche 964 Turbo passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the 1994 Porsche 911 Turbo), and they are capable of being readily altered to conform to the standards.

DATES: The decision is effective June 15, 1995.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas, (Registered Importer R–90–005) petitioned NHTSA to decide whether 1994 Porsche 964 Turbo passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on April 12, 1995 (60 FR 18660) to afford an opportunity for public comment. The reader is referred to that notice for at thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–116 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that a 1994 Porsche 964 Turbo is substantially similar to a 1994 Porsche 911 Turbo originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. 30115, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 490 CFR 1.50 and 501.8.

Issued on: June 12, 1995.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–14719 Filed 6–14–95; 8:45 am]

BILLING CODE 4910–59–M

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applicants for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before July 17, 1995.

ADDRESS COMMENTS TO: Dockets Units, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11464–N	Zeneca Inc., Wilmington, DE ..	49 CFR 174.67(i) & (j)	To authorize rail cars to remain attached to connectors without the physical presence of an unloader. (mode 2)
11465–N	Monsanto Co., St. Louis, MO .	49 CFR 173.240(c)	To authorize the transportation in commerce of solid hazardous waste, Class 9, to be transported in non-DOT specification bulk fiberboard boxes. (mode 1)
11466–N	Monsanto Co., St. Louis, MO .	49 CFR 177.837(a)	To authorize the engine of a motor vehicle to remain running while loading or unloading Class 3 material at temperature below 10 degrees F to prevent engine starting problems. (mode 1)
11468–N	Dept. of Energy, Richland, VA	49 CFR 173.211	To authorize the transportation of test equipment containing residual amounts of sodium metal, Division 4.3, inside a Type 304 stainless steel piping overpacked with a non-specification plywood box. (mode 1)
11470–N	North East Chemical Corp., Cleveland, OH.	49 CFR 172.301	To authorize the transportation in commerce of aerosol containers meeting the requirements of 49 CFR 173.306(h), described and marked as Consumer Commodity ORM–D to be transported without required markings. (modes 1, 2)

NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11472–N	American Pyrotechnics Assoc. et al., Chestertown, MD.	49 CFR 177.848(f)	To authorize the transportation in commerce of pyrotechnic articles classed as Division 1.4G explosives on the same vehicle and in the same storage area that contains other 1.4 explosive articles. (mode 1)
11473–N	FMC Corp., Philadelphia, PA	49 CFR 179.101–1, 179.103–3, 179.103–4.	To authorize the transportation in commerce of elemental phosphorus, Division 4.2, in non-DOT Specification 114A340W tank cars except for top fitting protection and safety relief valve setting built to 340 psi design, with 850 psi burst pressure. (mode 2)
11476–N	Schrupp Industries Inc., Parker, PA.	49 CFR 173.302(a)(1), 173.306(f), 173.5.	To authorize the manufacture, mark and sale of hydraulic accumulators for use in transporting nitrogen, Division 2.2. (modes 1, 2, 3, 5)
11477–N	MTI Analytical Instruments Inc., Fremont, CA.	49 CFR 1, 2, 3	To authorize the transportation in commerce of analytical equipment which contains a cylinder equipped with a pressure regulator for use in transporting helium, Division 2.2. (mode 4)

Note: Notice of Application No. 11441–N Radian Corp., Research Triangle Park, NC appeared at page 18663 of the Federal Register for April 12, 1995, should have appeared 11441–N United Technologies Carrier, Syracuse, NY.

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on June 9, 1995.

J. Suzanne Hedgepeth,

Chief, Exemption Programs, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 95–14645 Filed 6–14–95; 8:45 am]

BILLING CODE 4910–01–M

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applications for Modification of Exemptions or Applications to Become a Party to an Exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application number with the suffix "M" denote a modification request. Application numbers with the suffix "p" denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before June 30, 1995.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street SW, Washington, DC.

Application	Applicant	Renewal of exemption
8757–M	YZ Industries Inc., Snyder, TX (See Footnote 1)	8757
9421–M	Taylor-Wharton, Harrisburg, PA (See Footnote 2)	9421
9778–M	Western Atlas Int., Houston, TX (See Footnote 3)	9778
10963–M	SGL Carbon Group, Union, NJ (See Footnote 4)	10963
11055–M	Rollis Chempak, Inc., Wilmington, DE (See Footnote 5)	11055
11239–M	ABS Industrial Verification, Inc., Houston, TX (See Footnote 6)	11239
11329–M	Degesch America, Inc., Weyers Cave, VA (See Footnote 7)	11329
11391–M	DHE (Fabrication and Machining), Vereeniging 1930, SA (See Footnote 8)	11391

(1) To modify exemption to provide for additional non-DOT specification cylinders constructed of 316 or SA 340 type 304 stainless steel.
(2) To modify the exemption to provide for various technical changes to non–DOT specification cylinders for use in transporting certain Division 2.1 and 2.2 material.
(3) To modify exemption to provide for additional non-DOT specification tanks and tubes, for shipment of sulfur hexafluoride, Division 2.2.
(4) To modify exemption for the transportation of Chlorosilanes, Division 4.3, in non-DOT specification fully-removable head carbon steel salvage cylinder of welded construction.
(5) To modify the exemption to authorize Division 6.1, Zone A material to be transported in the same vehicle with other hazardous materials.
(6) To modify exemption to provide for additional non-DOT specification steel portable tank mounted in an ISO frame for use in transporting Division 2.1 and 2.2 material.
(7) To modify exemption to provide for additional combination packaging and delete the requirement to label inside containers with Dangerous When Wet and poison labels.

(8) To modify exemption to provide for manufacturing of alternative tank design similar to DOT Specification 51, equipped with openings in various location on the same end for use in transporting various materials classed as Division 2.1, 2.2 and 2.3.

Application	Applicant	Parties to exemption
6743–P	Green Mountain Explosives, Inc., Auburn, NH	6743
7991–P	Paducah & Louisville Railway, Inc., Paducah, KY	7991
9346–P	Freeport Sulphur Co., New Orleans, LA	9346
9491–P	BOC Gases, Riverton, NJ	9491
9929–P	McDonnell Douglas, Huntington Beach, CA	9929
10307–P	SCM Chemicals, Inc., Baltimore, MD	10307
10441–P	Findly Chemical Disposal, Inc., Fontana CA	10441
10441–P	Hazpak, Inc., Fontana, CA	10441
10798–P	BioLab, Inc., Westlake, LA	10798
10802–P	BOC Gases, Riverton, NJ	10802
10898–P	Gulf Controls Corporations, Tampa, FL	10898
11043–P	Findly Chemical Disposal, Inc., Fontana, CA	11043
11055–P	Findly Chemical Disposal, Inc., Fontana, CA	11055
11230–P	Conex, Inc., Derby, IN	11230
11230–P	Dama, Inc., Roanoke, VA	11230
11230–P	IRECO of Florida, Inc., Miramar, FL	11230
11230–P	Winchester Building Supply Co., Inc., Winchester, VA	11230
11230–P	W.H. Burt Explosives, Inc., Moab, UT	11230
11230–P	Buckley Powder Co. of Oklahoma, Inc., Mill Creek, OK	11230
11230–P	St. Lawrence Explosives Corp., Adams Center, NY	11230
11230–P	Boren Companies, Inc., Birmingham, AL	11230
11230–P	SCM Chemicals, Inc., Baltimore, MD	11230
11230–P	Cherokee Explosives, Inc., Plainville, CT	11230
11230–P	Econex North, Inc., Standish, MI	11230
11230–P	ECONEX, Inc., Pittsfield, IL	11230
11230–P	Binns & Stevens Explosives, Inc., Oskaloosa, IA	11230
11230–P	Alaska-Pacific Powder Co., Olympia, WA	11230
11230–P	Buckley Powder Co., Englewood, CO	11230
11294–P	Findly Chemical Disposal, Inc., Fontana, CA	11294
11346–P	Schlumberger Well Services, Rosharon, TX	11346

This notice of receipt of applications for modification of exemptions and for party to an exemption is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on June 8, 1995.

J. Suzanne Hedgepeth,

Chief, Exemption Programs, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 95–14644 Filed 6–14–95; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Public Information Collection Requirements Submitted to OMB for Review

June 8, 1995.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–11. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552.

OMB Number: 1550–0018

Form Number: Not Applicable

Type of Review: Extension

Title: Amendment of a Savings Association's Charter

Description: Parts 544 and 552 of the OTS Regulations require Federally-chartered savings associations to obtain agency approval of any change in its Charter that is not preapproved by regulations.

Respondents: Savings and Loan Associations and Savings Banks

Estimated Number of Respondents: 43

Estimated Burden Hours Per Respondent: 10 Hrs. Avg

Frequency of Response: On Occasion

Estimated Total Recordkeeping Burden: 430 Hrs.

Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 Street, N. W., Washington, D.C. 20552.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, D.C. 20503.

Cora Prifold Beebe,

Director of Administration.

[FR Doc. 95–14697 Filed 6–14–95; 8:45 am]

BILLING CODE 6720–01–P

Public Information Collection Requirements Submitted to OMB for Review

June 8, 1995.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–11. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, N. W., Washington, D.C. 20552.

OMB Number: 1550–0017

Form Number: Not Applicable

Type of Review: Extension

Title: Amendment of a Savings Associations Bylawsr

Description: Parts 544 and 552 of the OTS Regulations require Federally-

chartered savings associations to obtain agency approval of any change in its bylaws that is not preapproved by regulation.

Respondents: Savings and Loan Associations and Savings Banks

Estimated Number of Respondents: 20

Estimated Burden Hours Per Respondent: 8 Hrs. Avg

Frequency of Response: On Occasion

Estimated Total Recordkeeping Burden: 160 Hrs.

Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 Street, N. W., Washington, D.C. 20552

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, D.C. 20503.

Cora Prifold Beebe,

Director of Administration.

[FR Doc. 95–14698 Filed 6–14–95; 8:45 am]

BILLING CODE 6720–01–P

UNITED STATES INFORMATION AGENCY

International Creative Arts Exchanges for Public and Private Non-Profit Organizations

ACTION: Notice request for proposals.

SUMMARY: The Office of Arts America Creative Arts Exchanges Division of the U.S. Information Agency's [USIA] Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. Public and non-profit organizations that demonstrate disciplinary expertise in the arts and meet the provisions described in IRS regulation 26 CFR 1.501(c)(3)–(1) may apply to develop projects for artists and arts administrators. These will consist of residences and/or exchange programs in which artists from the United States and other countries work and learn together. Interested applicants are invited to request and read the complete Solicitation Package before submitting their proposals.

Overall grant making and funding authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world."

Programs and projects must conform with requirements and guidelines outlined in the Solicitation Package. A Solicitation Package consists of the **Federal Register** Request For Proposals (RFP); a Project Objectives, Goals, and Implementation (POGI) statement; and Proposal Submission Instructions (PSI). USIA projects and programs are subject to the availability of funds. Individuals interested in other USIA programs can access information via the USIA Internet gopher site: Gopher. USIA.GOV

ANNOUNCEMENT NAME & NUMBER: All communications concerning this announcement should refer to the title and reference number—E/DE–96–06.

DATES: All proposal materials must be received at USIA by 5:00 p.m. Washington, DC time on Thursday, September 7, 1995. Faxed documents will not be accepted, nor will documents postmarked on September 7, 1995, but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline. Projects should begin between February 1, 1996 and July 31, 1996. For projects that begin after July 31, 1996, proposals should be submitted under the next award competition. The next competition will be announced in the **Federal Register** on or about December 7, 1995.

FOR FURTHER APPLICATION INFORMATION: Please contact the Office of Arts America, Creative Arts Exchanges Division, Room 568, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547 (Phone: 202–619–5338, Fax: 202–619–6315, Internet: JDorsey@USIA.gov) to request a Solicitation Package, which includes more detailed award criteria; all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please specify Christopher Paddack on all inquiries and correspondences. Interested applicants should read the complete **Federal Register** announcement before submitting their proposals. Creative Arts staff are available to answer any programmatic or technical questions applicants may have prior to submission of applications. Once the RFP deadline has passed, staff may not discuss this competition with applicants until after the proposal review process has been completed.

Proposal Submission Instructions

Applicants must follow all instructions given in the Solicitation Package and send an original and two (2) copies of the full package plus nine (9) additional copies of Tabs A–E to: U.S. Information Agency, REF: E/DE–96–01, Office of Grants Management, E/XE, Room 326, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit to E/EX the "Executive Summary," "Proposal Narrative," and "Budget" sections of each proposal on a 3.5" diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

Guidelines

The Creative Arts Exchanges Division works with U.S. non-profit organizations to develop cooperative international group projects that introduce American and foreign participants to each other's cultural and artistic life and traditions. The Division seeks projects with organizations that have disciplinary expertise in the arts as well as broad outreach and networking capabilities into American arts activities nationwide. International projects in the United States or overseas may involve composers, choreographers, playwrights, theater designers, writers and poets, filmmakers, visual artists, and arts administrators. Arts administration programs can include topics such as arts management, institutional development, community outreach, fundraising, tour management, and organizational structure.

Organizations interested in museum/curatorial projects should contact the American Association of Museums (AAM) International Partnerships Among Museums (IPAM) program: Office of International Programs, American Association of Museums, 1225 Eye Street, NW., Washington, DC 20005; telephone: (202) 289–1818; FAX: (202) 289–6578. We will not accept direct applicants from museums for international projects.

Projects should involve the following components:

1. An international exchange of professionals in the fields listed above;
2. The development of institutional linkages between American organizations and their counterparts in other countries;
3. Travel to or from the United States, preferably in both directions;

4. Assurances of quality, fairness, balance and openness in the selection of project participants.

Proposed projects should involve U.S. Information Service (USIS) posts worldwide to carry out activities supportive of the USIA mission to increase mutual understanding between the United States and other countries and to promote international cooperation in educational and cultural fields. USIS' role in such projects should be substantive and integral and not purely facilitative.

Proposals including performances and/or exhibitions will be considered only if the performance or exhibition is integral to the creative process. Projects in which exhibitions and/or performances are the main focus will not be supported.

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including but not limited to race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle.

Drafts of all printed materials developed for this program using USIA funds should be submitted to the Agency for review and approval. USIA must receive a royalty-free, non-exclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so. Funded projects must acknowledge USIA sponsorship in all printed project materials and official project documents.

Special conditions and exclusions:

1. USIS Posts should be given the option of nominating foreign program participants, while the U.S. grantee organization will make final selection decisions.

2. Proposals involving more than one country are preferred. However, single-country projects that have strong USIS Post support and clearly demonstrate the potential for creating and strengthening linkages between foreign and U.S. institutions are also welcome.

3. Proposals involving foreign organizations should identify them and clearly define their role in the project. Letters of commitment from these organizations should be included in the proposal package. Prospective applicants should consult with USIS Posts regarding such organizations prior to submitting their proposals.

4. Proposals centering on films or videos must deal with the creative aspects of film or video making. Projects may include story development, other aspects of the creative processes, or management issues like funding and distribution. They should not include installations, screenings, competitions, full scale film production or distribution, or any other type of project prohibited in this announcement.

The following types of projects are ineligible for support:

1. Vocational and technical training projects;

2. Scholarly programs, long-term academic study or training programs, and student and/or faculty exchanges (Organizations interested in programs of this nature should contact USIA's Office of Academic Programs—202–619–6409);

3. Speaking tours, conferences, research projects, research for project development purposes, publications;

4. Youth or youth-related activities (participants' age under 25) or projects for the exchange of amateurs or semi-professionals;

5. International arts competitions, community-level arts presentations or festivals for general audiences;

6. Study tours and observerships;

7. Projects in the fields of historical and cultural conservation and preservation.

USIA is a major supporter of Sister Cities International and Partners of the Americas. It has agreed to fund administrative expenses of these organizations' national offices, but will not fund projects arising from sister city and partner state relationships once they are established.

Geographic guidelines:

Proposals which address themselves to various geographic regions of the world, and allow across-the-board participation from all areas are preferred. In addition, preferences for specific geographic areas are:

1. Africa, East Asia and the Pacific, the Near/Middle East, and South Asia: Proposals are especially encouraged for projects in these regions. There are no specific preferences in terms of thematic fields.

2. American Republics (South America, Central America and the Caribbean): Proposals are invited in all appropriate areas. Preference will be given to proposals that focus on ethnic and indigenous arts.

3. Eastern Europe and the Newly Independent States of the former Soviet Union: Proposals should clearly demonstrate knowledge of the host country environment and the institutional partner in that country and provide evidence of long-term commitment to project goals.

4. Western Europe and Canada: Only proposals that are multi-country, address arts financing in the U.S., and invite arts administrators as participants will be considered.

Visa/Insurance/Tax Requirements

Programs must comply with J–1 visa regulations. Please refer to program specific guidelines in Solicitation Package for further details. Administration of the program must be in compliance with reporting and withholding regulations for federal, state, and local taxes as applicable. Recipient organizations should demonstrate tax regulation adherence in the proposal narrative and budget.

Budgetary Requirements

Detailed budgetary requirements and guidelines are included in the Solicitation Package. Creative Arts discretionary awards are on average approximately $58,000 with many successful proposals coming in at well below this level. Organizations may request up to $100,000 for single-country projects. In exceptional cases awards of up to $200,000 dollars are available for multi-country projects. Organizations with less than four years of experience in conducting international exchange programs are eligible for awards up to $60,000. Please note that proposal budgets must include a minimum of 33% cost sharing of the total project cost. Administrative costs must be no more than 20% of the total amount requested from USIA.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines in the Solicitation Package. Eligible proposals will be reviewed by the Office of Arts America, USIA geographic area policy offices, and USIA Posts overseas. Panels of USIA officers will make funding recommendations. Proposals may also be reviewed by the Office of the General Counsel or by other USIA elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA Office of Contracts.

Review Criteria

Technically eligible applications will be competitively reviewed according to

the criteria stated below. These criteria are not rank ordered:

1. Quality of the program idea: Proposals should exhibit originality, substance, precision, and relevance to USIA's mission and the goals of the Creative Arts Exchanges Program as stated under the Summary and Guidelines sections of this document.

2. Program planning: Detailed agenda and relevant work plan should demonstrate substantive artistic/organizational undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. Ability to achieve program objectives: Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. Institutional capacity/ability: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past USIA grants ad determined by USIA's Office of Contracts. USIA will consider the past performance of prior recipients and the demonstrated potential of new applicants.

5. Multiplier effect/impact: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

6. Follow-on activities: Proposals should provide a plan for continued follow-on activity (without USIA support) which insures that USIA supported programs are not isolated events.

7. Support diversity: Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity as defined under the *Guidelines* section of this document.

8. Project evaluation: Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. USIA recommends that the proposal include a draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives. Award-receiving organizations/institutions will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

9. Cost-effectiveness: The overhead and administrative components of the proposals, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

10. Cost-sharing: Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

11. Value to U.S.-partner country relations: Proposed programs should receive positive assessments by USIA's geographic area desk and overseas USIS officers of program need, potential impact, and significance in the partner country(ies).

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by USIA that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. USIA reserves the right to reduce, revise, or increase proposed budgets in accordance with the needs of the program. Final awards cannot be made until funds have been appropriate by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about January 1, 1996. Awards made will be subject to periodic reporting and evaluation requirements.

Dated: June 5, 1995.

Dell Pendergrast,

Deputy Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 95–14248 Filed 6–14–95; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Wage Committee, Notice of Meetings

The Department of Veterans Affairs (VA), in accordance with Pub. L. 92–463, gives notice that meetings of the VA Wage Committee will be held on: Wednesday, July 19, 1995, at 2:00 p.m., Wednesday, August 16, 1995, at 2:00 p.m., Wednesday, August 30, 1995, at 2:00 p.m., Wednesday, September 27, 1995, at 2:00 p.m.

The meetings will be held in Room 1225, Department of Veterans Affairs, Tech World Plaza, 801 I Street, NW, Washington, DC 20001.

The Committee's purpose is to advise the Under Secretary for Health on the development and authorization of wage schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

All portions of the meetings will be closed to the public because the matters considered are related solely to the internal personnel rules and practices of the Department of Veterans Affairs and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a guarantee that the data will be held in confidence. Closure of the meetings is in accordance with subsection 10(d) of Pub. L. 92–463, as amended by Pub. L. 94–409, and as cited in 5 U.S.C. 552b(c)(2) and (4).

However, members of the public are invited to submit material in writing to the Chairperson for the Committee's attention.

Additional information concerning these meetings may be obtained from the Chairperson, VA Wage Committee, Room 1225, 801 I Street, NW., Washington, DC 20001.

Dated: June 7, 1995.

By direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 95–14612 Filed 6–14–95; 8:45 am]

BILLING CODE 8320–01

Sunshine Act Meetings

Federal Register

Vol. 60, No. 115

Thursday, June 15, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

AFRICAN DEVELOPMENT FOUNDATION

Board of Directors Meeting

TIME: 11:00 a.m.–2:00 p.m.

PLACE: ADF Headquarters.

DATE: Monday, 20 June 1995.

STATUS: Open.

Agenda

11:00 a.m.—Chairman's Report
11:15 a.m.—President's Report
11:30 a.m.—Other
12:00 noon—Lunch
1:00 p.m.—Executive Session (Closed)

If you have any questions or comments, please direct them to Ms. Janis McCollim, Executive Assistant to the President, who can be reached at (202) 673–3916.

William R. Ford,

President.

[FR Doc. 95–14765 Filed 6–13–95; 8:45 am]

BILLING CODE 6116–01–P

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m.—June 20, 1995.

PLACE: Room 100 (Hearing Room)—800 North Capitol Street, N.W., Washington, D.C. 20573–0001.

STATUS: Part of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTER(S) TO BE CONSIDERED: Portion open to the public:

1. Docket No. 94–07—*Financial Reporting Requirements and Rate of Return Methodology in the Domestic Offshore Trades*—Access to annual Reports

Portion closed to the public:

1. Transpacific Stabilization Agreement and Westbound Transpacific Stabilization Agreement

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 95–14824 Filed 6–13–95; 2:18 pm]

BILLING CODE 6730–01–M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of June 19, 1995.

An open meeting will be held on Tuesday, June 20, 1995, at 10:00 a.m. A closed meeting will be held on Tuesday, June 20, 1995, following the 10:00 a.m. open meeting.

Commissioners, Counsel to the Commissioner, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a close session.

The subject matter of the open meeting scheduled for Tuesday, June 20, 1995, at 10:00 a.m., will be:

The Division of Investment Management will present its conclusions and recommendations regarding its year-long study of the Public Utility Holding Company Act of 1935. In addition, the Division will recommend that the Commission (1) amend rule 52 under the Act to exempt certain types of securities of subsidiary companies of a registered holding company, subject to certain terms and conditions; (2) amend rule 45(b)(4) under the Act to exempt all capital contributions and open account advances by a parent company to its subsidiary company; (3) seek public comment on a further proposal to amend rule 52 to permit a subsidiary of a registered holding company to issue and sell any security without the need to apply for Commission approval, where the conditions of the rule are otherwise met; and (4) seek public comment on proposed rule 58 that would exempt from prior Commission approval the acquisition by a registered holding company or any subsidiary company of securities of an energy-related company. For further information, please contact William Weeden at (202) 942–0545.

The subject matter of the closed meeting scheduled for Tuesday, June 20, 1995, following the 10:00 open meeting, will be:

Institution of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Settlement of injunctive actions.
Settlement of administrative proceedings of an enforcement nature.
Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: June 12, 1995.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–14797 Filed 6–13–95; 2:17 p.m.]

BILLING CODE 8010–01–M

federal register

Thursday
June 15, 1995

Part II

Department of Agriculture

Forest Service
36 CFR Part 242

Department of the Interior

Fish and Wildlife Service
50 CFR Part 100

1995–1996 Subsistence Taking of Fish and Wildlife Regulations; Final Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AC82

Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—1995–1996 Subsistence Taking of Fish and Wildlife Regulations

AGENCY: Forest Service, Agriculture; and Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule republishes the customary and traditional use determinations and establishes regulations for seasons, bag limits, methods, and means related to taking of fish and wildlife for subsistence uses during the 1995–1996 regulatory year. The rulemaking is necessary because there have been numerous changes to Subpart C; and, Subpart D is subject to an annual public review cycle. This rulemaking replaces the wildlife regulations included in the "Subsistence Management Regulations for Public Lands in Alaska, Subpart D—1994–1995 Subsistence Taking of Fish and Wildlife Regulations", which expire on June 30, 1995. This rule also revises Section _____.24 of Subpart C, the Customary and Traditional Use Determinations of the Federal Subsistence Board in a more orderly form and with various recent amendments. This rule also revises Sections _____.26 (Subsistence taking of fish) and _____.27 (Subsistence taking of shellfish), including correcting amendments.

EFFECTIVE DATES: Section _____.24 becomes effective July 1, 1995. Section _____.25 becomes effective July 1, 1995, and remains effective through June 30, 1996. Sections _____.26 and _____.27 become effective July 1, 1995, and remain effective through December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Richard S. Pospahala, Office of Subsistence Management, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786–3447. For questions specific to National Forest System lands, contact Ken Thompson, Regional Subsistence Program Manager, USDA, Forest Service, Alaska Region, P.O. Box 21628, Juneau, Alaska 99802–1628, telephone (907) 586–7921.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands, unless the State of Alaska enacts and implements laws of general applicability which are consistent with ANILCA, and which provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in *McDowell* v. *State of Alaska* that the rural preference in the State subsistence statute violated the Alaska Constitution. The Court's ruling in *McDowell* required the State to delete the rural preference from the subsistence statute, and therefore, negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990.

As a result of the *McDowell* decision, the Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. On June 29, 1990, the Temporary Subsistence Management Regulations for Public Lands in Alaska were published in the **Federal Register** (55 FR 27114–27170). Consistent with Subparts A, B, and C of these regulations, a Federal Subsistence Board (Board) was established to administer the Federal subsistence management program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, U.S. National Park Service; the Alaska State Director, U.S. Bureau of Land Management; the Alaska Area Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies have participated in development of regulations for Subparts A, B, and C, and the annual Subpart D regulations. All Board members have reviewed this final rule and agree with its substance. Because this final rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text will be incorporated into 36 CFR Part 242 and 50 CFR Part 100.

Applicability of Subparts A, B, and C

Subparts A, B, and C of the Subsistence Management Regulations for Public Lands in Alaska, 50 CFR §§ 100.1 to 100.24 and 36 CFR §§ 100.1 to 100.24, remain effective and apply to this rule for subpart D. Therefore, all definitions located at 50 CFR § 100.4 and 36 CFR § 100.4 apply to regulations found in this subpart. The identified sections include definitions for the following terms:

"*Federal lands* means lands and waters and interests therein title to which is in the United States"; and

"*public land* or *public lands* means lands situated in Alaska which are Federal lands, except—

(1) land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act and lands which have been confirmed to, validly selected by, or granted to the Territory of Alaska or the State under any other provision of Federal Law;

(2) land selections of a Native Corporation made under the Alaska Native Claims Settlement Act which have not been conveyed to a Native Corporation, unless any such selection is determined to be invalid or is relinquished; and

(3) lands referred to in Section 19(b) of the Alaska Native Claims Settlement Act."

Navigable Waters

At this time, Federal subsistence management program regulations apply to all non-navigable waters located on public lands and to navigable waters located on the public lands identified at 50 CFR § 100.3(b) and 36 CFR § 242.3(b) of the Subsistence Management Regulations for Public Lands in Alaska, subparts A, B, and C (57 FR 22940–22964) published May 29, 1992. Nothing in these regulations is intended to enlarge or diminish authorities of the Departments to manage submerged lands, title to which is held by the United States government.

The Board recognizes Judge Holland's order granting preliminary relief to the plaintiffs in the case of the *Native Village of Quinhagak et al.* v. *United States of America et al.* Therefore, to the extent that the proposed regulations would continue any existing restrictions on the taking of rainbow trout by the residents of Quinhagak and Goodnews Bay in the Kanektok, Arolik, and Goodnews Rivers, those regulations will not be enforced pending completion of proceedings in that case. However, in light of the 9th Circuit decision in *Katie John, et al.* v. *U.S.*, the Secretaries are developing amendments to parts of subpart A dealing with the definitions of navigable waters and public lands. Once that final determination is made by the Secretaries, the regulations in subparts C and D will likely be modified.

Federal Subsistence Regional Advisory Councils

Pursuant to the Record of Decision, Subsistence Management Regulations for Federal Public Lands in Alaska, April 6, 1992, and the Subsistence Management Regulations for Federal Public Lands in Alaska, 36 CFR § 242.11 (1992) and 50 CFR 100 § 242.11 (1992), and for the purposes identified therein, Alaska has been divided into ten subsistence resource regions, each of which is represented by a Federal Subsistence Regional Advisory Council (Regional Council). The Regional Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Alaska pubic lands. The Regional Council members represent varied geographical, cultural, and user diversity within each region.

The Regional Councils have had a substantial role in reviewing the proposed rule and making recommendations for the final rule. Moreover, the Council Chairs, or their designated representatives, presented their Council's recommendations at the Board meeting in April 1995.

Summary of Changes

Section _____.24 (Customary and traditional use determinations) was published in the **Federal Register** (57 FR 22940) on May 29, 1992. Since that time, the Board has made a number of Customary and Traditional Use Determinations at the request of affected subsistence users. Those modifications, along with some administrative corrections, were published in the **Federal Register** (59 FR 27462, published May 27, 1994; 59 FR 51855, published October 13, 1994; and 60 FR 10317, published February 24, 1995.) During its April 10–14, 1995, meeting, the Board made additional determinations in conjunction with various annual season and harvest limit changes. The public has had extensive opportunity to review and comment on all changes. Additional details on the recent Board modifications are contained in the section on Analysis of Proposals Adopted by the Board.

Section _____.25 (Subpart D) regulations are subject to an annual cycle and require development of an entire new rule each year. Proposed Subpart D regulations for the 1995–1996 seasons and bag limits, and methods and means were published on September 2, 1994, in the **Federal Register** (59 FR 45924–45961). A 60-day comment period providing for public review of the proposed rule and calling for proposals was advertised by mail, radio, and newspaper. During that period the Regional Councils met and, in addition to other Regional Council business, received suggestions for proposals from the public. Overall, the Board received a total of 80 proposals, 71 within the scope of authority under Subpart D. Of the other nine, four were withdrawn by the originator, four were deferred for further study within the customary and traditional use determination process, and one was resolved by an earlier Board action. Subsequent to the 60-day review period, the Board prepared a booklet describing the 71 proposals for change to Subpart D and distributed it to the public. The public then had an additional 30 days in which to comment on the proposals for changes to the regulations. The ten Regional Councils met again, received public comments, and formulated their recommendations to the Board on proposals for their respective regions. These final regulations reflect Board review and consideration of Regional Council recommendations and public comments submitted to the Board.

Section _____.26 (Subsistence taking of fish) and Section _____.27 (Subsistence taking of shellfish) were last published on June 1, 1993, (58 FR 31252). Fish and shellfish regulations are effective from January 1 through December 31 each year. Due to a pending appeal of litigation and petitions to the Secretaries of the Interior and Agriculture, both relating to extended jurisdiction to navigable waters, the 1994 fish and shellfish regulations were not revised for 1995 but, rather, were extended through December 31, 1995 by interim regulation, published June 27, 1994 (59 FR 32923.)

Analysis of Proposals Rejected by the Board

The Board rejected 18 proposals based on recommendations from the respective Regional Council and additional factors. Except in one instance as indicated, the Board actions to reject the proposals reflect Regional Council recommendations.

The Board addressed and rejected five proposals to institute or increase seasons and harvest limits on black bears and brown bears. These proposals were for the purpose of reducing the bear population in an area or rid an area of "problem" bears. The Seward Peninsula Regional Council did recommend adoption of one of these proposals relating to brown bear in Unit 22. The Board has determined that the removal of problem animals or the take of animals in defense of life and property is properly addressed under State regulations; but based on the concerns expressed by the Seward Peninsula Regional Council, will study whether the taking bears in defense of life and property should be covered as part of the Federal Subsistence Management Program.

Four proposals requested that public lands on the Alaska Peninsula be closed to hunting by non-Federally qualified users. The Board determined that the biological data did not support a need to close the areas in order to protect the subsistence user's opportunity to harvest wildlife.

Four proposals requested that season dates or harvest limits be changed. These proposals were rejected because the requests were accommodated by the adoption of other proposals.

Two proposals requested opening antlerless moose hunting in certain areas; one proposal asked that a spike/fork-50 inch antler restriction be removed; and one proposal asked that a caribou season be instituted. In all of these cases, examination of the biological data indicated that the target population could not withstand the proposed harvest.

The Board rejected a proposal that would have reduced the harvest limit for coyote. There was no biological justification to limit the subsistence take in the area.

The Board also deferred action on five proposals in order to collect additional data, examine jurisdictional issues, or allow communities or the Regional Council to provide additional needed regulatory information.

Analysis of Proposals Adopted by the Board

The Board adopted 48 proposals for the 1995–1996 regulatory year. Some of these proposals were adopted as submitted and others were adopted with modifications suggested by the respective Regional Council or developed during the Board's public deliberations.

All of the adopted proposals were recommended for adoption by the respective Regional Councils and were based on meeting customary and traditional harvest practices or protecting wildlife populations. Detailed information relating to justification on each proposal may be found in the Board meeting transcripts, available for review at the Office of Subsistence Management at the address listed previously.

Southeast Region

Four proposals affecting the Southeast Region were acted on by the Board resulting in changes to the regulations found in § _____.25. The following Board actions affect the Southeast Region and have been incorporated in this final rule:

- Added an antlerless deer season in Unit 2 to accommodate local customary and traditional use patterns.
- Instituted a designated hunter system for deer in Units 1–5 to accommodate local customary and traditional use patterns.
- Instituted a designated hunter system for moose in Unit 5 to accommodate local customary and traditional use patterns.
- Opened a trapping season for marten, mink, and weasel in a portion of Unit 4 to accommodate local customary and traditional use patterns, but prohibited the use of motorized vehicles for trapping access to prevent overharvest and protect the viability of the populations.

Southcentral Region

Five proposals affecting the Southcentral Region were acted on by the Board resulting in changes to the regulations found in § _____.25. The following Board actions affect the Southcentral Region and have been incorporated in this final rule:

- Extended the caribou season in Unit 13 to accommodate local customary and traditional use patterns.
- Closed the goat season in a small hunt area in Unit 6(D) to protect the viability of the population.
- Opened the moose season in Unit 13 earlier to accommodate local customary and traditional use patterns.
- Closed the red fox and lynx hunting seasons in Unit 6 to protect the viability of the populations.

Kodiak/Aleutians Region

Two proposals affecting the Kodiak/Aleutians Region were acted on by the Board resulting in changes to the regulations found in § _____.25 and § _____.27. The following Board actions affect the Kodiak/Aleutians Region and have been incorporated in this final rule:

- Instituted a designated hunter system for deer in Unit 8 to accommodate local customary and traditional use patterns.
- Limited the capacity of king crab pots to protect the viability of the population.

Bristol Bay Region

Eight proposals affecting the Bristol Bay Region were acted on by the Board resulting in changes to the regulations found in § _____.25. The following Board actions affect the Bristol Bay Region and have been incorporated in this final rule:

- Changed the harvest regime for caribou for Unit 9(C) to accommodate local customary and traditional use patterns and to protect the viability of the population.
- Closed a portion of Unit 9(E) to the hunting of caribou to protect the viability of the population.
- Provided for the harvest by five villages of moose for ceremonial purposes to accommodate local customary and traditional use patterns.
- Opened the moose season in Unit 9(C) earlier to accommodate local customary and traditional use patterns.
- Changed the season dates and instituted a spike/fork-50 inch antler restriction to accommodate local customary and traditional use patterns and to protect the viability of the population.
- Extended the season and changed other portions of the regulations for Unit 9(B) sheep (two proposals) to accommodate local customary and traditional use patterns.
- Lengthened the season for beaver in Unit 9, increased the harvest limit, and allowed firearms to be used to take beaver to accommodate local customary and traditional use patterns.

Yukon-Kuskokwim Delta Region

Two proposals affecting the Yukon-Kuskokwim Delta Region were acted on by the Board resulting in changes to the regulations found in § _____.25. The following Board actions affect the Yukon-Kuskokwim Delta Region and have been incorporated in this final rule:

- Revised the way the harvest quota is set for the Kilbuck caribou herd in Unit 18.
- Instituted a caribou season in a portion of Unit 18 to accommodate local customary and traditional use patterns.

Western Interior Region

Three proposals affecting the Western Interior Region were acted on by the Board resulting in changes to the regulations found in § _____.25. The following Board actions affect the Western Interior Region and have been incorporated in this final rule:

- Increased the harvest limit for caribou in Unit 19(A) to accommodate local customary and traditional use patterns.
- Changed the season dates for moose in Units 21(A) and 21(E) to accommodate local customary and traditional use patterns.
- Added a closure zone along the Innoko River during the February moose season to protect the viability of the population.

Seward Peninsula Region

Eight proposals affecting the Seward Peninsula Region were acted on by the Board resulting in changes to the regulations found in § _____.24 and § ____.25. The following Board actions affect the Seward Peninsula Region and have been incorporated in this final rule:

- Extended the moose season in Unit 22(A) for the residents of that unit only to accommodate local customary and traditional use patterns.
- Established a positive customary and traditional use determination for muskox for some residents of Units 22 and 23.
- Established a muskox hunt for portions of Units 22 and 23 to accommodate local customary and traditional use patterns and closed Federal lands to non-Federally qualified subsistence users.
- Closed the coyote hunting season in Unit 22 to protect the viability of the population.
- Reduced the hare season in Unit 22 to protect the viability of the population.
- Reduced the wolf hunting season to protect the viability of the population and to accommodate local customary and traditional use patterns.
- Recognized that nets may be legally used to harvest ptarmigan.
- Increased the harvest limit for ptarmigan in portions of Unit 22 to accommodate local customary and traditional use patterns.

Northwest Arctic Region

Two proposals affecting the Northwest Arctic Region were acted on by the Board resulting in changes to the regulations found in § _____.24 and § _____.25. The following Board actions affect the Northwest Arctic Region and have been incorporated in this final rule:

- Expanded and revised the description of the Noatak Controlled Use Area in Unit 23 to provide a consistent description with the Alaska Department of Fish and Game.
- Increased the harvest limit for caribou in Unit 23 to accommodate local customary and traditional use patterns.
- Established a muskox hunt for portions of Unit 23 (See Seward Peninsula Region above.)

Eastern Interior Region

Seven proposals affecting the Eastern Interior Region were acted on by the Board resulting in changes to the regulations found in § _____.25. The following Board actions affect the Eastern Interior Region and have been incorporated in this final rule:

- Permitted the use of boats and snowmachines to take caribou and moose in Unit 25 to accommodate local customary and traditional use patterns.
- Increased the size of the Arctic Village Sheep Management Area to protect the opportunity for subsistence harvest.
- Changed the season for caribou in Unit 20(E) to accommodate local customary and traditional use patterns.
- Lengthened the moose season and revised subarea boundaries for Units 20(E) and 25(B) to accommodate local customary and traditional use patterns.
- Converted a November moose hunt to a registration hunt to aid in protecting the viability of the population.
- Closed the sheep season in a portion of Unit 25(A) where no subsistence hunting occurs.
- Established a beaver hunting season in a portion of Unit 25 to accommodate local customary and traditional use patterns.

North Slope Region

Seven proposals affecting the North Slope Region were acted on by the Board resulting in changes to the regulations found in § xxx.24 and § xxx.25. The following Board actions affect the North Slope Region and have been incorporated in this final rule:

- Closed a portion of the Federal lands in Units 26(A) and 26(B) to caribou hunting by non-Federally qualified users in order to protect the opportunity for subsistence users to harvest caribou.
- Revised the seasons and harvest limits for brown bear in Unit 26 to accommodate local customary and traditional use patterns.
- Increased the harvest limit for caribou in Unit 26 to accommodate local customary and traditional use patterns.
- Included Nuiqsut in the list of communities having a customary and traditional use determination for sheep in Unit 26(C).
- Established customary and traditional use determinations for muskox for communities in Units 26(A) and 26(B).
- Increased the hunting harvest limits for wolf and wolverine (two proposals) in Unit 26 to accommodate local customary and traditional use patterns.

Two additional items were also adopted. The first action rectified a customary and traditional use determination that had split the community of Chickaloon. The Board indicated that a community should be treated as a whole without regard for a line that happens to bisect that community. The Southcentral Regional Council supported this action. The second action confirmed a season opening in a portion of Denali National Park that had been instituted last year and was intended to continue in future years. This was also supported by the affected Regional Councils.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Draft Environmental Impact Statement (DEIS) that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments and staff analysis and examined the environmental consequences of the four alternatives. Proposed regulations (Subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (Subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comment received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, it was the decision of the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture-Forest Service, to implement Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992) implements the Federal Subsistence Management Program and includes a framework for an annual cycle for subsistence hunting and fishing regulations.

Compliance With Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appears in the April 6, 1992, ROD which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but it does not appear that the program may significantly restrict subsistence uses.

Paperwork Reduction Act

These rules contain information collection requirements subject to Office of Management and Budget (OMB) approval under 44 U.S.C. 3501–3520. They apply to the use of public lands in Alaska. The information collection requirements described above are approved by the OMB under 44 U.S.C. 3501 and have been assigned clearance number 1018–0075.

Public reporting burden for this form is estimated to average .1382 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments on the burden estimate or any other aspect of this form to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 224 ARLSQ, Washington, D.C. 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018–0075), Washington, D.C. 20503. Additional information collection requirements may be imposed if Local Advisory Committees subject to the Federal Advisory Committee Act are established under Subpart B. Such requirements will be submitted to OMB for approval prior to their implementation.

This rule was not subject to OMB review under Executive Order 12866.

Economic Effects

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions. The Departments have determined that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This rulemaking will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities. The number of small entities affected is unknown; but, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that they will not be significant.

These regulations do not meet the threshold criteria of "Federalism Effects" as set forth in Executive Order 12612. Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no significant takings implication relating to any property rights as outlined by Executive Order 12630.

Drafting Information

These regulations were drafted by William Knauer under the guidance of Richard S. Pospahala, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional guidance was provided by Thomas H. Boyd, Alaska State Office, Bureau of Land Management; Sandy Rabinowitch, Alaska Regional Office, National Park Service; John Borbridge, Alaska Area Office, Bureau of Indian Affairs; and Ken Thompson, USDA-Forest Service.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National Forests, Public Lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, Public Lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, Title 36, Part 242, and Title 50, Part 100, of the Code of Federal Regulations, are amended as set forth below.

PART _____—SUBSISTENCE MANAGEMENT REGULATIONS FOR FEDERAL PUBLIC LANDS IN ALASKA

1. The authority citation for both 36 CFR Part 242 and 50 CFR Part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

2. In Subpart C of 36 CFR part 242 and 50 CFR part 100, § _____.24 is revised to read as follows:

§ _____.24 Customary and traditional use determinations.

(a) Rural Alaska residents of the listed communities and areas have been determined to have customary and traditional subsistence use of the specified species on Federal public lands in the specified areas:

(1) Wildlife determinations.

Area	Species	Determination
Unit 1(C)	Black Bear	Rural residents of Unit 1(C) and Haines, Gustavus, Klukwan, and Hoonah.
1	Brown Bear	No determination, except no subsistence for residents of Wrangell, Klukwan, Haines and Skagway.
1(A)	Deer	Rural residents of 1(A) and 2.
1(B)	Deer	Rural residents of Unit 1(A), residents of 1(B), 2 and 3.
1(C)	Deer	Rural residents of 1(C) and (D), and residents of Hoonah and Gustavus.
1(D)	Deer	No subsistence.
1(B)	Goat	No determination, except no subsistence for residents of Petersburg, Kupreanof and outlying areas.
1(C)	Goat	Residents of Haines, Klukwan, and Hoonah.
1(B) The Stikine River drainages only	Moose	No determination.
1(B) North of the LeConte Glacier and 1(C) Berner's Bay.	Moose	No subsistence.
1(D)	Moose	Residents of Unit 1(D).
Unit 2	Brown Bear	No subsistence.
2	Deer	Rural residents of Unit 1(A) and residents of Units 2 and 3.
Unit 3	Deer	Residents of Unit 1(B) and 3, and residents of Port Alexander, Port Protection, Pt. Baker, and Meyer's Chuck.
Unit 4	Brown Bear	Residents of Unit 4 and Kake.
4	Deer	Residents of Unit 4 and residents of Kake, Gustavus, Haines, Petersburg, Pt. Baker, Klukwan, Port Protection, and Wrangell.
Unit 5	Brown Bear	Residents of Yakutat.
5	Deer	Residents of Yakutat.
5	Moose	Residents of Unit 5(A).
Unit 6(A)	Black Bear	Residents of Yakutat.
6(B) and (C)	Black Bear	Residents of Unit 6(B) and (C), except Cordova.
6(D)	Black Bear	Residents of Chenega Bay and Tatilek.
6	Brown Bear	No subsistence.

Area	Species	Determination
6(C) and (D)	Goat	Rural residents of Unit 6(C) and (D).
6	Moose	No subsistence.
6	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 7	Brown Bear	No subsistence.
7	Caribou	No subsistence.
7, Brown Mountain hunt area	Goat	Residents of Port Graham and English Bay.
7	Moose	No subsistence.
7	Sheep	No subsistence.
Unit 8	Brown Bear	No subsistence.
8	Deer	Residents of Unit 8.
8	Elk	No subsistence.
8	Goat	No subsistence.
9(A), (C) and (D)	Brown Bear	No subsistence.
9(B)	Brown Bear	Residents of Unit 9(B).
9(E)	Brown Bear	Residents of Chignik Lake, Ivanof Bay and Perryville.
Unit 9(D)	Bison	No subsistence.
9(A) and (B)	Caribou	Residents of Units 9(B), 9(C) and 17.
9(C)	Caribou	Residents of Unit 9(B), 9(C), 17 and residents of Egegik.
9(D)	Caribou	Residents of Unit 9(D), and residents of False Pass.
9(E)	Caribou	Residents of Units 9(B), (C), (E), 17, and residents of Nelson Lagoon and Sand Point.
9(A), (B), (C) and (E)	Moose	Residents of Unit 9(A), (B), (C) and (E).
9(D)	Moose	No subsistence.
9	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chicakaloon and 16–26.
Unit 10 Unimak Island	Caribou	Residents of False Pass.
10 Remainder	Caribou	No determination.
10	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 11	Bison	No subsistence.
11	Brown Bear	No subsistence.
11	Caribou	Mentasta Herd—residents of Units 11, 12 (along Nabesna Road) and 13 (A)–(D) and the residents of Chickaloon.
11	Goat	No Subsistence.
11	Moose	Residents of Unit 11, residents of Unit 12 (along Nabesna Road) and Unit 13 (A)–(D) and the residents of Chickaloon.
11	Sheep	Residents of Chisana, Chistochina, Chitina, Cooper Center, Gakona, Glennallen, Gulkana, Kenny Lake, McCarthy Road, Mentasta Lake, Mentasta Pass (milepost 79–110) Nabesna Road, Slana, McCarthy/South Wrangell/South Park, Tazlina, and Tonsina. However no subsistence for Cantwell, east Glenn Highway (milepost 110–180) and to milepost 14 on the Lake Louise Road, Homestead North, Homestead South, Lake Louise, Paxson, Sourdough, Tanacross, Tok, and west Glenn Highway (milepost 78–110).
11	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
11	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
11	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 12	Brown Bear	No subsistence.
12	Caribou—Nelchina Herd	Residents of Northway and Tetlin.
12	Caribou—40 Mile Herd	Residents of Unit 12, north of Wrangell Park Preserve and rural residents of Unit 20(D) and (E).
12 South of a line from Noyes Mountain, southeast of the confluence of Tatschunda Creek to Nabesna River.	Moose	Residents of Unit 11 north of 62nd parallel and excluding BLM parcels of north and south Slana; and residents of Unit 12, 13(A)–(D) and the residents of Chickaloon and residents of Dot Lake.
12 East of the Nabesna River, south of the Winter Trail from Pickerel Lake to the Canadian Border.	Moose	Residents of Unit 12.
12 Remainder of Unit 12	Moose	Residents of Unit 12 and residents of Dot Lake and Mentasta Lake.
12 Tok Management area	Sheep	No subsistence.
12 Remainder of Unit 12	Sheep	No determination.
12	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 13	Brown Bear	No Subsistence.

Area	Species	Determination
13	Caribou Nelchina Herd	Residents of Units 11, 13 and the residents of Chickaloon, and 12 (along Nabesna Road).
13(D)	Goat	No subsistence.
13	Moose	Residents of Unit 13 and the residents of Chickaloon.
13(E)	Moose	No subsistence for residents of McKinley Village and the area along the Parks Highway between milepost 216 and 239 and households of the Denali National Park Headquarters.
13 Tok and Delta Management Areas	Sheep	No subsistence.
13(D)	Sheep	No subsistence.
13	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and 16–26.
13	Grouse (Spruce, Blue, Ruffed & Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 & 23.
13	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 & 23.
Unit 14(B) and (C)	Brown Bear	No subsistence.
14	Goat	No subsistence.
14	Moose	No subsistence.
14(A) and (C)	Sheep	No subsistence.
15	Brown Bear	No subsistence.
15(C), Port Dick and English Bay hunt areas	Goat	Residents of Port Graham and English Bay.
15(C), Seldovia hunt area	Goat	Residents of Seldovia area.
15 (A) and (B)	Moose	No subsistence.
15(C), that portion southwest of a line from Point Pogibshi to the point of land between Rocky Bay and Windy Bay.	Moose	Residents of Port Graham and English Bay.
15(C), Port Dick and English Bay hunt areas	Moose	No subsistence.
15	Sheep	No subsistence.
15	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
15	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 16	Brown Bear	No subsistence.
16(A)	Moose	No subsistence.
16(B)	Moose	Residents of Unit 16(B).
16	Sheep	No subsistence.
16	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and 16–26.
16	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
16	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 17(A)	Brown Bear	Residents of Unit 17, and residents of Goodnews Bay and Platinum.
17 (A) and (B) Those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills.	Brown Bear	Residents of Kwethluk.
17 (B) and (C)	Brown Bear	Residents of Unit 17.
17	Caribou	Residents of Units 9(B), 17 and residents of Lime Village and Stony River.
17 (A) and (B) Those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills.	Caribou	Residents of Kwethluk.
17 (A) and (B) Those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills.	Moose	Residents of Kwethluk.
17(A)	Moose	Residents of Unit 17 and residents of Goodnews Bay and Platinum.
17(B) and (C)	Moose	Residents of Unit 17, and residents of Nondalton, Levelock, Goodnews Bay and Platinum.
17	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and 16–26.

Area	Species	Determination
Unit 18	Brown Bear	Residents of Akiachak, Akiak, Eek, Goodnews Bay, Kwethluk, Mt. Village, Napaskiak, Platinum, Quinhagak, St. Mary's, and Tuluksak.
18	Caribou (Kilbuck caribou herd only).	INTERIM DETERMINATION BY FEDERAL SUBSISTENCE BOARD (12/18/91): residents of Tuluksak, Akiak, Akiachak, Kwethluk, Bethel, Oscarville, Napaskiak, Napakiak, Kasigluk, Atmanthluak, Nunapitchuk, Tuntutliak, Eek, Quinhagak, Goodnews Bay, Platinum, Togiak, and Twin Hills.
18 North of the Yukon River	Caribou (except Kilbuck caribou herd).	Residents of Alakanuk, Andreafsky, Chevak, Emmonak, Hooper Bay, Kotlik, Kwethluk, Marshall, Mountain Village, Pilot Station, Pitka's Point, Russian Mission, St. Mary's, St. Michael, Scammon Bay, Sheldon Point, and Stebbins.
18 Remainder	Caribou (except Kilbuck caribou herd).	Residents of Kwethluk.
18	Moose	Residents of Unit 18 and residents of Upper Kalskag.
18	Muskox	No subsistence.
18	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 19(C), (D)	Bison	No subsistence.
19(A)	Brown Bear	Residents of Unit 19(A), (D), and Residents of Tuluksak, Lower Kalskag and Kwethluk.
19(B)	Brown Bear	Residents of Kwethluk.
19(C)	Brown Bear	No subsistence.
19(D)	Brown Bear	Residents of Unit 19(A) and (D), and residents of Tulusak and Lower Kalskag.
19(A) and (B)	Caribou	Residents of Unit 19(A) and (B) and Kwethluk; and residents of Unit 18 in Kuskokwim Drainage and Kuskokwim Bay during the winter season.
19(C)	Caribou	Residents of Unit 19(C), and residents of Lime Village, McGrath, Nikolai, and Telida.
19(D)	Caribou	Residents of Unit 19(D), and residents of Lime Village, Sleetmute and Stony River.
19(A) and (B)	Moose	Residents of Unit 18 within Kuskokwim River drainage upstream from and including the Johnson River, and Unit 19.
19(C)	Moose	Residents of Unit 19.
19(D)	Moose	Residents of Unit 19 and residents of Lake Minchumina.
19	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 20(D)	Bison	No subsistence.
20(E)	Brown Bear	No subsistence.
20(A), (C) (Delta, Yanert, and 20(C) herds) and (D)	Caribou	No determination, except no subsistence for residents of McKinley Village, the area along the Parks Highway between mileposts 216 and 239 and households of the Denali National Park Headquarters.
20(D) and 20(E)	Caribou 40-mile Herd	Residents of Unit 12 north of Wrangell Park-Preserve, rural residents of 20(D) and residents of 20(E).
20(A)	Moose	Residents of Cantwell, Minto, and Nenana. No subsistence for residents of McKinley Village, the area along the Parks Highway between mileposts 216 and 239 and households of the Denali National Park Headquarters.
20(B)	Moose	Minto Flats Management Area—residents of Minto and Nenana.
20(B)	Moose	Remainder—rural residents of Unit 20(B), and residents of Nenana and Tanana.
20(C)	Moose	Rural residents of Unit 20(C) (except that portion within Denali National Park and Preserve and that portion east of the Teklanika River), and residents of Cantwell, Manley, Minto, Nenana, the Parks Highway from milepost 300–309, Nikolai, Tanana and Telida. No subsistence for residents of McKinley Village, the area along the Parks Highway between mileposts 216 and 239 and households of the Denali National Park Headquarters.
20(D)	Moose	Rural residents of Unit 20(D) and residents of Tanacross.
20(F)	Moose	Residents of Unit 20(F), Manley, Minto and Stevens Village.
20 Tok and Delta Management Areas	Sheep	No subsistence.

Area	Species	Determination
20	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
20(D)	Grouse, (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13, 15, 16, 20(D), 22 and 23.
20(D)	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13, 15, 16, 20(D), 22 and 23.
Unit 21	Brown Bear	Rural residents of Unit 21 and 23.
21	Caribou, Western Arctic Caribou Herd only.	Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, and residents of 22(A), (B), 23, 24, and 26(A).
21(A) and (E)	Caribou	Residents of Unit 21(A) and Aniak, Chuathbaluk, Crooked Creek, Grayling, Holy Cross, McGrath, Shageluk and Takotna.
21(A)	Moose	Residents of Unit 21(A), (E), Takotna, McGrath, Aniak and Crooked Creek.
21(B) and (C)	Moose	Residents of Unit 21(B) and (C), residents of Tanana and Galena.
21(D)	Moose	Residents of Unit 21(D), and residents of Huslia and Ruby.
21(E)	Moose	Residents of Unit 21(E) and residents of Russian Mission.
21	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and 16–26.
Unit 22	Brown Bear	Residents of Units 22.
22	Caribou, Western Arctic Caribou Herd only.	Residents of Units 21(D) west of the Koyukuk and Yukon Rivers, and residents of Units 22(A), (B), 23, 24, and 26(A).
22	Moose	Residents of Unit 22.
22(B)	Muskox	Residents of Unit 22(B).
22(C)	Muskox	Residents of Unit 22(C).
22(D)	Muskox	Residents of Unit 22(D) excluding St. Lawrence Island.
22(E)	Muskox	Residents of Unit 22(E) excluding Little Diomede Island.
22	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
22	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
22	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 23	Brown Bear	Rural residents of Units 21 and 23.
23	Caribou Western Arctic Caribou Herd only.	Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, and residents of Unit 22(A), (B), 23, 24, and 26(A).
23	Moose	Residents of Unit 23.
23 South of Kotzebue Sound and west of and including the Buckland River draingage.	Muskox	Residents of Unit 23 South of Kotzebue Sound and west of and including the Buckland River drainage.
23 Remainder	Muskox	No subsistence.
23	Sheep	Residents of Unit 23 north of the Arctic Circle.
23	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and 16–26.
23	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13, and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
23	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13, and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 24	Brown Bear	Residents of Unit 24 and Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area.
24	Moose	Residents of Unit 24, and residents of Anaktuvuk Pass, Koyukuk and Galena.
24	Sheep	Residents of Unit 24 residing north of the Arctic Circle and residents of Allakaket, Atatna and Anaktuvuk Pass.
24	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 25	Brown Bear	No subsistence.
25(A)	Moose	Residents of Unit 25(A) and residents of Venetie only.
25(D) West	Moose	Residents of Beaver, Birch Creek and Stevens Village.
25(D) Remainder	Moose	Residents of Remainder of Unit 25.
25(A)	Sheep	Residents of Arctic Village, Chalkytsik, Fort Yukon, Kaktovik and Venetie.
25(B) and (C)	Sheep	No subsistence.
25	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.

Area	Species	Determination
Unit 26	Brown Bear	Residents of Unit 26 (except the Prudhoe Bay-Deadhorse Industrial Complex) and residents of Anaktuvuk Pass and Point Hope.
26	Caribou Western Arctic Caribou Herd only.	Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, and 23, 24, and 26(A).
26(B)	Caribou Central Arctic Herd	Residents of Anaktuvuk Pass, Kaktovik, Nuiqsut and Wiseman.
26	Moose	Residents of Unit 26, (except the Prudhoe Bay-Deadhorse Industrial Complex), and residents of Point Hope and Anaktuvuk Pass.
26(A)	Muskox	Residents of Anaktuvuk Pass, Atqasuk, Barrow, Nuiqsut, Point Hope, Point Lay, and Wainwright.
26(B)	Musk Oxen	Residents of Anaktuvuk Pass, Nuiqsut, and Kaktovik.
26(C)	Musk Oxen	Residents of Kaktovik.
26(A) and (B)	Sheep	Residents of Anaktuvuk Pass, Kaktovik, Nuiqsut and Wiseman.
26(C)	Sheep	Residents of Arctic Village, Chalkytsik, Fort Yukon, Kaktovik, Nuiqsut and Venetie.
26	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.

(2) Fish and shellfish determinations.

Area	Species	Determination
KOTZEBUE—NORTHERN AREA—Northern District	All finfish	Residents of the Northern District, except for those domiciled in State of Alaska Unit 26–B.
Kotzebue District	Salmon, sheefish, char	Residents of the Kotzebue District.
NORTON SOUND—PORT CLARENCE AREA	Salmon	Residents of the Norton Sound—Port Clarence Area.
YUKON AREA	Salmon	Residents of the Yukon Area, including the community of Stebbins.
	Yukon River, Fall chum, salmon.	Residents of the Yukon River drainage, including the communities of Stebbins, Scammon Bay, Hooper Bay, and Chevak.
	Freshwater fish species, including sheefish, whitefish, lamprey, burbot, sucker, grayling, pike, char, and blackfish.	Residents of the Yukon Area.
KUSKOKWIM AREA	Salmon	Residents of the Kuskokwim Area, except those persons residing on the United States military installation located on Cape Newenham, Sparevohn USAFB, and Tatalina USAFB.
	Rainbow trout	Residents of the communities of Quinhagak, Goodnews Bay, Kwethluk, Eek, Akiak, and Platinum.
	Pacific cod	Residents of the communities of Chevak, Newtok, Tununak, Toksook Bay, Nightmute, Chefornak, Kipnuk, Mekoryuk, Kwigillingok, Kongiganak, Eek, and Tuntutuliak.
Waters adjacent to the western-most tip of the Naskonant Peninsula and the terminus of the Ishowik River and around Nunivak Island.	Herring and herring roe	Residents within 20 miles of the coast between the westernmost tip of the Naskonant Peninsula and the terminus of the Ishowik River and on Nunivak Island.
BRISTOL BAY AREA—Nushagak District, including drainages flowing into the district.	Salmon	Residents of the Nushagak District and freshwater drainages flowing into the district.
Naknek-Kvichek District—Naknek River drainage	Salmon	Residents of the Naknek and Kvichak River drainages.
Naknek-Kvichek District—Iliamna-Lake Clark drainage	Salmon	Residents of the Iliamna-Lake Clark drainage.
Togiak District, including drainages flowing into the district.	Salmon and other freshwater finfish.	Residents of the Togiak District, freshwater drainages flowing into the district, and the community of Manokotak.
KODIAK AREA—except the Mainland District, all waters along the southside of the Alaska Peninsula bounded by the latitude of Cape Douglas (58°52′ North latitude) mid-stream Shelikof Strait, and west of the longitude of the southern entrance of Kmuya Bay near Kilokak Rocks (57°11′22″ North latitude, 156°20′30″ W longitude).	Salmon	Residents of the Kodiak Island Borough, except those residing on the Kodiak Coast Guard Base.
KODIAK AREA—except the Semidi Island, the North Mainland, and the South Mainland Sections.	King crab	Residents of the Kodiak Island Borough except those residents on the Kodiak Coast Guard base.
COOK INLET AREA—Port Graham Subdistrict	Dolly Varden	Residents of Port Graham and English Bay.
Port Graham Subdistrict and Koyuktolik Subdistrict	Salmon	Residents of Port Graham and English Bay.
Tyonek Subdistrict	Salmon	Residents of the village of Tyonek.

Area	Species	Determination
PRINCE WILLIAM SOUND AREA—South-Western District and Green Island.	Salmon	Residents of the Southwestern District which is mainland waters from the outer point on the north shore of Granite Bay to Cape Fairfield, and Knight Island, Chenega Island, Bainbridge Island, Evans Island, Elrington Island, Latouche Island and adjacent islands.
PRINCE WILLIAM SOUND AREA—North of a line from Porcupine Point to Granite Point, and south of a line from Point Lowe to Tongue Point.	Salmon	Residents of the villages of Tatitlek and Ellamar.
YAKUTAT AREA—Freshwater upstream from the terminus of streams and rivers of the Yakutat Area from the Doame River to the Tsiu River.	Salmon	Residents of the area east of Yakutat Bay, including the islands within Yakutat Bay, west of the Situk River drainage, and south of and including Knight Island.
Freshwater upstream from the terminus of streams and rivers of the Yakutat Area from the Doame River to Point Manby.	Dolly Varden char, steelhead trout, and smelt.	Residents of the area east of Yakutat Bay, including the islands within Yakutat Bay, west of the Situk River drainage, and south of and including Knight Island.
SOUTH-EASTERN ALASKA AREA—District 1—Section 1–E in waters of the Naha River and Roosevelt Lagoon.	Salmon and Dolly Varden char.	Residents of the City of Saxman.
District 1—Section 1–F in Boca de Quadra in waters of Sockeye Creek and Hugh Smith Lake within 500 yards of the terminus of Sockeye Creek.	Salmon and Dolly Varden char.	Residents of the City of Saxman.
District 2—North of the latitude of the northern-most tip of Chasina Point and west of a line from the northern-most tip of Chasina Point to the eastern-most tip of Grindall Island to the eastern-most tip of the Kasaan Peninsula.	Salmon and Dolly Varden Char.	Residents of the City of Kasaan and in the drainage of the southeastern shore of the Kasaan Peninsula west of 132°20′ W. long. and east of 132°25′ W. long.
District 3—Section 3–A	Salmon and Dolly Varden char.	Residents of the townsite of Hydaburg.
District 3—Section 3–B in waters east of a line from Point Ildefonso to Tranquil Point.	Salmon, Dolly Varden char, and steelhead trout.	Residents of the City of Klawock and on Prince of Wales Island within the boundaries of the Klawock Heenya Corporation land holdings as they exist in January 1989, and those residents of the City of Craig and on Prince of Wales Island within the boundaries of the Shan Seet Corporation land holdings as they exist in January 1989.
District 3—Section 3–C in waters of Sarkar Lakes	Salmon, Dolly Varden char, and steelhead trout.	Residents of the City of Klawock and on Prince of Wales Island within the boundaries of the Klawock Heenya Corporation land holdings as they exist in January 1989, and those residents of the City of Craig and on Prince of Wales Island within the boundaries of the Shan Seet Corporation land holdings as they exist in January 1989.
District 5—North of a line from Point Barrie to Boulder Point.	Salmon and Dolly Varden char.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 9—Section 9–A	Salmon and Dolly Varden char.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 9—Section 9–B north of the latitude of Swain Point.	Salmon and Dolly Varden char.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 10—West of a line from Pinta Point to False Point Pybus.	Salmon and Dolly Varden char.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 12—South of a line from Fishery Point to south Passage Point and north of the latitude of Point Caution.	Salmon and Dolly Varden char.	Residents of the City of Angoon and along the western shore of Admiralty Island north of the latitude of Sand Island, south of the latitude of Thayer Creek, and west of 134°30′ W. long., including Killisnoo Island.
District 13—Section 13–A south of the latitude of Cape Edward.	Sockeye salmon	Residents of the City and Borough of Sitka in drainages which empty into Section 13–B north of the latitude of Dorothy Narrows.
District 13—Section 13–B north of the latitude of Redfish Cape.	Sockeye salmon	Residents of the City and Borough of Sitka in drainages which empty into Section 13–B north of the latitude of Dorothy Narrows.
District 13—Section 13–C	Sockeye salmon	Residents of the City and Borough of Sitka in drainages which empty into Section 13–B north of the latitude of Dorothy Narrows.
District 13—Section 13–C east of the longitude of Point Elizabeth.	Salmon and Dolly Varden char.	Residents of the City of Angoon and along the western shore of Admiralty Island north of the latitude of Sand Island, south of the latitude of Thayer Creek, and west of 134°30′ W. long., including Killisnoo Island.

Area	Species	Determination
District 14—Section 14–B and 14–C	Salmon, smelt and Dolly Varden char.	Residents of the City of Hoonah and in Chichagof Island drainages on the eastern shore of Port Frederick from Gartina Creek to Point Sophia.
District 15—Chilkat and Chilkoot Rivers	Salmon and smelt	Residents west of the Haines highway between Mile 20 and Mile 24 and east of the Chilkat River, but not elsewhere in Klukwan; and, those residents of other areas of the city and borough of Haines, excluding residents in the drainage of Excursion Inlet.

3. In Subpart D of 36 CFR 36 part 242 and 50 CFR part 100, § ———.25 is added to read as follows:

Subpart D—Subsistence Taking of Fish and Wildlife

§ ___.25 Subsistence taking of wildlife.

(a) *Definitions.* The following definitions shall apply to all regulations contained in this section.

ADF&G means the Alaska Department of Fish and Game.

Aircraft means any kind of airplane, glider, or other device used to transport people or equipment through the air, excluding helicopters.

Airport means an airport listed in the Federal Aviation Administration, Alaska Airman's Guide and chart supplement.

Animal means those species with a vertebral column (backbone).

Antler means one or more solid, horn-like appendages protruding from the head of a caribou, deer, or moose.

Antlered means any caribou, deer, or moose having at least one visible antler.

Antlerless means any caribou, deer, or moose not having visible antlers attached to the skull.

Bear means black bear, or brown or grizzly bear.

Bow means a longbow, recurve bow, or compound bow, excluding a crossbow, or any bow equipped with a mechanical device that holds arrows at full draw.

Broadhead means an arrowhead that is not barbed and has two or more steel cutting edges having a minimum cutting diameter of not less than seven-eighths inch.

Brow tine means a tine on the front portion of a moose antler, typically projecting forward from the base of the antler toward the nose.

Buck means any male deer.

Bull means any male moose, caribou, or musk oxen.

Closed season means the time when wildlife may not be taken.

Cub bear means a brown or grizzly bear in its first or second year of life, or a black bear (including cinnamon and blue phases) in its first year of life.

Designated hunter means a Federally qualified, licensed hunter who may take all or a portion of another Federally qualified, licensed hunter's harvest limit(s) only under situations approved by the Board.

Edible meat means the breast meat of ptarmigan and grouse, and, those parts of black bear, brown and grizzly bear, caribou, deer, mountain goat, moose, musk oxen, and Dall sheep that are typically used for human consumption which are: the meat of the ribs, neck, brisket, front quarters as far as the juncture of the humerus and radius-ulna (elbow), hindquarters as far as the distal joint (bottom) of the tibia-fibula (hock) and that portion of the animal between the front and hindquarters; however, edible meat of species listed above does not include: meat of the head, meat that has been damaged and made inedible by the method of taking, bones, sinew, and incidental meat reasonably lost as a result of boning or close trimming of the bones, or viscera.

Federally-qualified subsistence user means a rural Alaska resident qualified to harvest fish or wildlife on Federal public lands in accordance with these Federal Subsistence Management Regulations.

Fifty-inch (50-inch) moose means a bull moose with an antler spread of 50 inches or more.

Full curl horn means the horn of a Dall sheep ram; the tip of which has grown through 360 degrees of a circle described by the outer surface of the horn, as viewed from the side, or that both horns are broken, or that the sheep is at least 8 years of age as determined by horn growth annuli.

Furbearer means a beaver, coyote, arctic fox, red fox, lynx, marten, mink, weasel, muskrat, river (land) otter, red squirrel, flying squirrel, ground squirrel, marmot, wolf or wolverine.

Grouse collectively refers to all species found in Alaska, including spruce grouse, ruffed grouse, blue grouse and sharp-tailed grouse.

Hare or hares collectively refers to all species of hares (commonly called rabbits) in Alaska and includes snowshoe hare and tundra hare.

Harvest limit means the number of any one species permitted to be taken by any one person in a Unit or portion of a Unit in which the taking occurs.

Highway means the driveable surface of any constructed road.

Household means that group of people residing in the same residence.

Hunting means the taking of wildlife within established hunting seasons with archery equipment or firearms, and as authorized by a required hunting license.

Marmot collectively refers to all species of marmot that occur in Alaska including the hoary marmot, Alaska marmot, and the woodchuck.

Motorized vehicle means a motor-driven land, air or water conveyance.

Open season means the time when wildlife may be taken by hunting or trapping; an open season includes the first and last days of the prescribed season period.

Otter means river or land otter only, excluding sea otter.

Permit hunt means a hunt for which State or Federal permits are issued by registration or other means.

Poison means any substance which is toxic, or poisonous upon contact or ingestion.

Possession means having direct physical control of wildlife at a given time or having both the power and intention to exercise dominion or control of wildlife either directly or through another person or persons.

Ptarmigan collectively refers to all species found in Alaska, including white-tailed ptarmigan, rock ptarmigan, and willow ptarmigan.

Ram means a male Dall sheep.

Registration permit means a permit which authorizes hunting and is issued to a person who agrees to the specified hunting conditions. Hunting permitted by a registration permit begins on an announced date and continues throughout the open season, or until the season is closed by Board action. Registration permits are issued in the order applications are received and/or are based on priorities as determined by 50 CFR 100.17 and 36 CFR 242.17.

Sealing means placing a mark or tag on a portion of a harvested animal by an authorized representative of the ADF&G; *sealing* includes collecting and

recording information about the conditions under which the animal was harvested, and measurements of the specimen submitted for sealing, or surrendering a specific portion of the animal for biological information.

Seven-eighths curl horn means the horn of a male Dall sheep, the tip of which has grown through seven-eighths (315 degrees) of a circle, described by the outer surface of the horn, as viewed from the side, or with both horns broken.

Skin, hide, pelt or fur mean any tanned or untanned external covering of an animal's body; excluding bear. The skin, hide, fur or pelt of a bear shall mean the entire external covering with claws attached.

Spike-fork moose means a bull moose with only one or two tines on either antler; male calves are not spike-fork bulls.

Take or *Taking* means to pursue, hunt, shoot, trap, net, capture, collect, kill, harm, or attempt to engage in any such conduct.

Tine or *antler point* refers to any point on an antler, the length of which is greater than its width and is at least one inch.

Transportation means to ship, convey, carry or transport by any means whatever, and deliver or receive for such shipment, conveyance, carriage, or transportation.

Trapping means the taking of furbearers within established trapping seasons and with a required trapping license.

Unclassified wildlife or unclassified species means all species of animals not otherwise classified by the definitions herein, or regulated under other Federal law as listed in § _____.25(i).

Ungulate means any species of hoofed mammal, including deer, caribou, moose, mountain goat, Dall sheep, and musk oxen.

Unit means one of the 26 geographical areas in the State of Alaska known as Game Management Units, or GMU, and collectively listed in § _____.25 as Units.

Wildlife means any hare (rabbit), ptarmigan, grouse, ungulate, bear, furbearer, or unclassified species and includes any part, product, egg, or offspring thereof, or carcass or part thereof.

(b) Wildlife may be taken for subsistence uses by any method, except as prohibited below or by other Federal statute. Taking wildlife for subsistence uses by a prohibited method is a violation of this subpart. Seasons are closed unless opened by Federal regulation. Hunting or trapping during a closed season or in an area closed by this subpart is prohibited.

(1) Except for special provisions found at § _____.25(k) (1) through (26), the following methods and means of taking wildlife for subsistence uses are prohibited:

(i) Shooting from, on, or across a highway;

(ii) Using any poison;

(iii) Using a helicopter in any manner, including transportation of individuals, equipment or wildlife; however, this prohibition does not apply to transportation of an individual, gear, or wildlife during an emergency rescue operation in a life threatening situation;

(iv) Taking wildlife from a motorized vehicle, except from a motor-driven boat if the motor has been completely shut off, and the boat's progress from the motor's power has ceased;

(v) Using a motorized vehicle to drive, herd, or molest wildlife;

(vi) Using or being aided by use of a machine gun, set gun, or a shotgun larger than 10 gauge;

(vii) Using a firearm other than a shotgun, muzzle-loaded rifle, rifle or pistol using center-firing cartridges, for the taking of ungulates, bear, wolves or wolverine, except that—

(A) An individual in possession of a valid trapping license may use a firearm that shoots rimfire cartridges to take wolves and wolverine.

(B) A muzzle-loading rifle of .54-caliber or larger, or a .45-caliber muzzle-loading rifle with a 250-grain, or larger, elongated slug may be used to take brown bear, black bear, moose, musk oxen and mountain goat;

(viii) Using or being aided by use of a pit, fire, artificial light, radio communication, artificial salt lick, explosive, barbed arrow, bomb, smoke, chemical, conventional steel trap with a jaw spread over nine inches, or conibear style trap with a jaw spread over 11 inches;

(ix) Using a snare, except that an individual in possession of a valid hunting license may use nets and snares to take unclassified wildlife, ptarmigan, grouse, or hares; and, individuals in possession of a valid trapping license may use snares to take furbearers;

(x) Using a trap to take ungulates or bear;

(xi) Using hooks to physically snag, impale or otherwise take wildlife; however, hooks may be used as a trap drag;

(xii) Using a crossbow in any area restricted to hunting by bow and arrow only to take ungulates, bear, wolf or wolverine;

(xiii) Taking of ungulates, bear, wolf, or wolverine with a bow, unless the bow is capable of casting a 7/8 inch wide broadhead-tipped arrow at least 175 yards horizontally, and the arrow and broadhead together weigh at least one ounce (437.5 grains);

(xiv) Using bait for taking ungulates, bear, wolf, or wolverine; except, bait may be used to take wolves and wolverine with a trapping license, and, bait may be used to take black bears with a hunting license as authorized in Unit-specific regulations at § _____.25(k) (1) through (26). Baiting of black bears is subject to the following restrictions:

(A) No person may establish a black bear bait station unless he or she first registers the site with ADF&G;

(B) A person using bait shall clearly mark the site with a sign reading "black bear bait station" that also displays the person's hunting license number and ADF&G assigned number;

(C) Only biodegradable materials may be used for bait; only the head, bones, viscera, or skin of legally harvested fish and wildlife may be used for bait;

(D) No person may use bait within one-quarter mile of a publicly maintained road or trail;

(E) No person may use bait within one mile of a house or other permanent dwelling, or within one mile of a developed campground, or developed recreational facility;

(F) A person using bait shall remove litter and equipment from the bait station site when hunting is completed;

(G) No person may give or receive remuneration for the use of a bait station, including barter or exchange of goods;

(H) No person may have more than two bait stations with bait present at any one time;

(xv) Taking swimming ungulates, bear, wolves or wolverine;

(xvi) Taking or assisting in the taking of ungulates, bear, wolves, wolverine, or other furbearers before 3:00 a.m. following the day in which airborne travel occurred (except for flights in regularly scheduled commercial aircraft); however this restriction does not apply to subsistence taking of deer;

(xvii) Taking a bear cub or a sow accompanied by cub(s).

(2) Wildlife taken in defense of life or property is not a subsistence use; wildlife so taken is subject to State regulations.

(3) The following methods and means of trapping furbearers, for subsistence uses pursuant to the requirements of a trapping license are prohibited, in addition to the prohibitions listed at § _____.25(b)(1):

(i) Disturbing or destroying a den, except that any muskrat pushup or feeding house may be disturbed in the course of trapping;

(ii) Disturbing or destroying any beaver house;

(iii) Taking beaver by any means other than a steel trap or snare, except that firearms may be used in certain Units with established seasons as identified in Unit-specific regulations found in this subpart;

(iv) Taking otter with a steel trap having a jaw spread of less than five and seven-eighths inches during any closed mink and marten season in the same Unit;

(v) Using a net, or fish trap (except a blackfish or fyke trap);

(vi) Taking beaver in the Minto Flats Management Area with the use of an aircraft for ground transportation, or by landing within one mile of a beaver trap or set used by the transported person;

(vii) Taking or assisting in the taking of furbearers by firearm before 3:00 a.m. on the day following the day on which airborne travel occurred; however, this does not apply to a trapper using a firearm to dispatch furbearers caught in a trap or snare;

(c) *Possession and transportation of wildlife.* (1) Except as specified in § _____.25(c)(3)(ii) or (c)(4), or as otherwise provided, no person may take a species of wildlife in any Unit, or portion of a Unit, if that person's total statewide take of that species has already been obtained under Federal and State regulations in other Units, or portions of other Units.

(2) An animal taken under Federal or State regulations by any member of a community with an established community harvest limit for that species counts toward the community harvest limit for that species. Except for wildlife taken pursuant to § _____.6(f)(3), an animal taken by an individual as part of a community harvest limit counts toward that individual's harvest limit for that species taken under Federal or State regulations for areas outside of the community harvest area.

(3) *Individual harvest limits.* (i) Harvest limits authorized by § _____.25 and bag limits established in State regulations may not be accumulated.

(ii) Wildlife taken by a designated hunter for another person pursuant to § _____.6(f)(2), counts toward the individual harvest limit of the person for whom the wildlife is taken.

(4) The harvest limit specified for a trapping season for a species and the harvest limit set for a hunting season for the same species are separate and distinct. This means that a person who has taken a harvest limit for a particular species under a trapping season may take additional animals under the harvest limit specified for a hunting season or vice versa.

(5) A brown/grizzly bear taken in a Unit or portion of a Unit having a harvest limit of one brown/grizzly bear per year counts against a one brown/grizzly bear every four regulatory years harvest limit in other Units; an individual may not take more than one brown/grizzly bear in a regulatory year.

(6) A harvest limit applies to the number of animals that can be taken during a regulatory year; however, harvest limits for grouse, ptarmigan, and caribou (in some Units) are regulated by the number that may be taken per day. Harvest limits of grouse and ptarmigan are also regulated by the number that can be held in possession.

(7) Unless otherwise provided, any person who gives or receives wildlife shall furnish, upon a request made by a Federal or State agent, a signed statement describing the following: names and addresses of persons who gave and received wildlife, the time and place that the wildlife was taken, and identification of species transferred. Where a qualified subsistence user has designated another qualified subsistence user to take wildlife on his or her behalf in accordance with § _____.6, the permit shall be furnished in place of a signed statement.

(8) A rural Alaska resident who has been designated to take wildlife on behalf of another rural Alaska resident in accordance with § _____.6, shall promptly deliver the wildlife to that rural Alaska resident.

(9) No person may possess, transport, give, receive or barter wildlife that was taken in violation of Federal or State statutes or a regulation promulgated thereunder.

(10) *Evidence of sex and identity.* (i) If subsistence take of Dall sheep is restricted to a ram, no person may possess or transport a harvested sheep unless both horns accompany the animal.

(ii) If the subsistence taking of an ungulate, except sheep, is restricted to one sex in the local area, no person may possess or transport the carcass of an animal taken in that area unless sufficient portions of the external sex organs remain attached to indicate conclusively the sex of the animal; however, § _____.25(c)(10)(ii) does not apply to the carcass of an ungulate that has been butchered and placed in storage or otherwise prepared for consumption upon arrival at the location where it is to be consumed.

(iii) If a moose harvest limit includes an antler size or configuration restriction, no person may possess or transport the moose carcass or its parts unless both antlers accompany the carcass or its parts. A person possessing a set of antlers with less than the required number of brow tines on one antler shall leave the antlers naturally attached to the unbroken, uncut skull plate; however, § _____.25(c)(10)(iii) does not apply to a moose carcass or its parts that have been butchered and placed in storage or otherwise prepared for consumption after arrival at the place where it is to be stored or consumed.

(d) A person who takes an animal that has been marked or tagged for scientific studies must, within a reasonable time, notify the ADF&G or the agency identified on the collar or marker, when and where the animal was taken. Any ear tag, collar, radio, tattoo, or other identification must be retained with the hide until it is sealed, if sealing is required; in all cases, any identification equipment must be returned to the ADF&G or to an agency identified on such equipment.

(e) *Sealing of bear skins and skulls.* (1) Sealing requirements for bear shall apply to brown bears taken in all Units, except as specified in this paragraph (e), and black bears of all color phases taken in Units 1–7, 11–16, and 20.

(2) No person may possess or transport from Alaska, the untanned skin or skull of a bear unless the skin and skull have been sealed by an authorized representative of ADF&G in accordance with State or Federal regulations, except that the skin and skull of a brown bear taken under a registration permit in the Western Alaska Brown Bear Management Area, the Northwest Alaska Brown Bear Management Area, Unit 5, or Unit 9(B) need not be sealed unless removed from the area.

(3) A person who possesses a bear shall keep the skin and skull together until a representative of the ADF&G has removed a rudimentary premolar tooth from the skull and sealed both the skull and the skin; however, this provision shall not apply to brown bears taken within the Western Alaska Brown Bear Management Area, the Northwest Alaska Brown Bear Management Area, Unit 5, or Unit 9(B) which are not removed from the Management Area or Unit.

(i) In areas where sealing is required by Federal regulations, no person may possess or transport the hide of a bear which does not have the penis sheath or vaginal orifice naturally attached to indicate conclusively the sex of the bear.

(ii) If the skin or skull of a bear taken in the Western Alaska Brown Bear Management Area is removed from the

area, it must first be sealed by an ADF&G representative in Bethel, Dillingham, or McGrath; at the time of sealing, the ADF&G representative shall remove and retain the skin of the skull and front claws of the bear.

(iii) If the skin or skull of a bear taken in the Northwestern Alaska Brown Bear Management Area is removed from the area, it must be first be sealed by an ADF&G representative in Barrow, Fairbanks, Galena, or Kotzebue; at the time of sealing, the ADF&G representative shall remove and retain the skin of the skull and front claws of the bear.

(iv) If the skin or skull of a bear taken in Unit 5 is removed from the area, it must first be sealed by an ADF&G representative in Yakutat; at the time of sealing, the ADF&G representative shall remove and retain the skin of the skull and front claws of the bear.

(v) If the skin or skull of a bear taken in Unit 9(B) is removed from the area, it must first be sealed by an ADF&G representative in Port Alsworth or King Salmon; at the time of sealing, the ADF&G representative shall remove and retain the skin of the skull and front claws of the bear.

(4) No person may falsify any information required on the sealing certificate or temporary sealing form provided by the ADF&G in accordance with State regulations.

(f) *Sealing of beaver, lynx, marten, otter, wolf, and wolverine.* No person may possess or transport from Alaska the untanned skin of a marten taken in Units 1–5, 7, 13(E), and 14–16 or the untanned skin of a beaver, lynx, otter, wolf, or wolverine, whether taken inside or outside the state, unless the skin has been sealed by an authorized representative of ADF&G in accordance with State regulations.

(g) A person who takes a species listed in § _____.25(f) but who is unable to present the skin in person, must complete and sign a temporary sealing form and ensure that the completed temporary sealing form and skin are presented to an authorized representative of ADF&G for sealing consistent with requirements listed in § _____.25(f).

(h) *Utilization of wildlife.* (1) No person may use wildlife as food for a dog or furbearer, or as bait, except for the following:

(i) The hide, skin, viscera, head, or bones of wildlife;

(ii) The skinned carcass of a furbearer;

(iii) Squirrels, hares (rabbits), grouse and ptarmigan; however, the breast meat of grouse and ptarmigan may not be used as animal food or bait;

(iv) Unclassified wildlife.

(2) A person taking wildlife for subsistence shall salvage the following parts for human use:

(i) The hide of a wolf, wolverine, coyote, fox, lynx, marten, mink, weasel or otter;

(ii) The hide and edible meat of a brown bear, except that the hide of brown bears taken in the Western and Northwestern Alaska Brown Bear Management Areas and Units 5 and 9(B) need not be salvaged;

(iii) The hide and edible meat of a black bear;

(iv) The hide or meat of squirrels, hares (rabbits), marmots, beaver, muskrats, or unclassified wildlife.

(3) Failure to salvage edible meat of ungulates, bear, or grouse and ptarmigan is prohibited.

(4) Failure to salvage the edible meat may not be a violation if such failure is caused by circumstances beyond the control of a person, including theft of the harvested wildlife, unanticipated weather conditions, or unavoidable loss to another animal.

(i) The regulations found in § _____.25 do not apply to the subsistence taking and use of wildlife regulated pursuant to the Fur Seal Act of 1966 (80 Stat. 927, 16 U.S.C. 1187), the Endangered Species Act of 1973 (87 Stat. 884, 16 U.S.C. 1531–1543), the Marine Mammal Protection Act of 1972 (86 Stat. 1027; 16 U.S.C. 1361–1407), and the Migratory Bird Treaty Act (40 Stat. 755; 16 U.S.C. 703–711), or any amendments to these Acts. The taking and use of wildlife, covered by these Acts, will conform to the specific provisions contained in these Acts, as amended, and any implementing regulations.

(j) Rural residents, non-rural residents, and nonresidents not specifically prohibited by Federal regulations from hunting or trapping on public lands in an area, may hunt or trap on public lands in accordance with the appropriate State regulations.

(k) *Unit regulations.* Subsistence taking of unclassified wildlife, all squirrel species, and marmots is allowed in all Units, without harvest limits, for the period of July 1–June 30. Subsistence taking of wildlife outside established Unit seasons, or in excess of the established Unit harvest limits, is prohibited unless otherwise modified by subsequent regulation. Taking of wildlife under State regulations on public lands is permitted, except as otherwise restricted at § _____.25(k)(1) through (26). Additional Unit-specific restrictions or allowances for subsistence taking of wildlife are identified at § _____.25(k)(1) through (26).

(1) Unit 1. Unit 1 consists of all mainland drainages from Dixon Entrance to Cape Fairweather, and those islands east of the center line of Clarence Strait from Dixon Entrance to Caamano Point, and all islands in Stephens Passage and Lynn Canal north of Taku Inlet:

(i) Unit 1(A) consists of all drainages south of the latitude of Lemesurier Point including all drainages into Behm Canal, excluding all drainages of Ernest Sound;

(ii) Unit 1(B) consists of all drainages between the latitude of Lemesurier Point and the latitude of Cape Fanshaw including all drainages of Ernest Sound and Farragut Bay, and including the islands east of the center lines of Frederick Sound, Dry Strait (between Sergief and Kadin Islands), Eastern Passage, Blake Channel (excluding Blake Island), Ernest Sound and Seward Passage;

(iii) Unit 1(C) consists of that portion of Unit 1 draining into Stephens Passage and Lynn Canal north of Cape Fanshaw and south of the latitude of Eldred Rock including Berners Bay, Sullivan Island, and all mainland portions north of Chichagof Island and south of the latitude of Eldred Rock, excluding drainages into Farragut Bay;

(iv) Unit 1(D) consists of that portion of Unit 1 north of the latitude of Eldred Rock, excluding Sullivan Island and the drainages of Berners Bay;

(v) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Public lands within Glacier Bay National Park are closed to all taking of wildlife for subsistence uses;

(B) Unit 1(A)—in the Hyder area, the Salmon River drainage downstream from the Riverside Mine, excluding the Thumb Creek drainage, is closed to the taking of bear;

(C) Unit 1(B)—the Anan Creek drainage is closed to the taking of black bear;

(D) Unit 1(C):

(1) The area within one-fourth mile of Mendenhall Lake, the U.S. Forest Service Mendenhall Glacier Visitor's Center, and the Center's parking area, is closed to hunting;

(2) The area of Mt. Bullard bounded by the Mendenhall Glacier, Nugget Creek from its mouth to its confluence with Goat Creek, and a line from the mouth of Goat Creek north to the Mendenhall Glacier, is closed to the taking of mountain goat;

(vi) In Unit 1(C), Juneau area, the trapping of furbearers for subsistence uses is prohibited on the following public lands:

(A) A strip within one-quarter mile of the mainland coast between the end of Thane Road and the end of Glacier Highway at Echo Cove;

(B) That area of the Mendenhall Valley bounded on the south by the Glacier Highway, on the west by the Mendenhall Loop Road and Montana Creek Road and Spur Road to Mendenhall Lake, on the north by Mendenhall Lake, and on the east by the Mendenhall Loop Road and Forest Service Glacier Spur Road to the Forest Service Visitor Center;

(C) That area within the U.S. Forest Service Mendenhall Glacier Recreation Area;

(D) A strip within one-quarter mile of the following trails as designated on U.S. Geological Survey maps: Herbert Glacier Trail, Windfall Lake Trail, Peterson Lake Trail, Spaulding Meadows Trail (including the loop trail), Nugget Creek Trail, Outer Point Trail, Dan Moller Trail, Perseverance Trail, Granite Creek Trail, Mt. Roberts Trail and Nelson Water Supply Trail, Sheep Creek Trail, and Point Bishop Trail.

(vii) Unit-specific regulations;

(A) Bait may be used to hunt black bear in Units 1(A), 1(B), and 1(D) between April 15 and June 15;

(B) Boats may not be used to take ungulates, bear, wolves, or wolverine, except for persons certified as disabled.

(C) A federally qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
Hunting:	
Black Bear:	
2 bears, no more than one may be a blue or glacier bear	Sept. 1–June 30.
Brown Bear:	
1 bear every four regulatory years by State registration permit only	Sept. 15–Dec. 31. Mar. 15–May 31.
Deer:	
Unit 1(A)–4 antlered deer	Aug. 1–Dec. 31.
Unit 1(B)–2 antlered deer	Aug. 1–Dec. 31.
Unit 1(C)–4 deer; however, antlerless deer may be taken only from Sept. 15–Dec. 31	Aug. 1–Dec. 31.
Goat:	
Unit 1(A)—Revillagigedo Island only	No open season.
Unit 1(B)—that portion north of the Bradfield Canal and the North Fork of the Bradfield River. 1 goat by State registration permit only; that portion between LeConte Bay and the North Fork of Bradfield River/Canal will require a Federal registration permit for the taking of a second goat; the taking of kids or nannies accompanied by kids is prohibited.	Aug. 1–Dec. 31.
Unit 1(A) and Unit 1(B)—Remainder—2 goats by State registration permit only	Aug. 1–Dec. 31.
Unit 1(C)—that portion draining into Lynn Canal and Stephens Passage between Antler River and Eagle Glacier and River—1 goat by State registration permit only.	Oct. 1–Nov. 30.
Unit 1(C)—that portion draining into Stephens Passage and Taku Inlet between Eagle Glacier and River and Taku Glacier, and all drainages of the Chilkat Range south of the Endicott River.	No open season.
Remainder of Unit 1(C)—1 goat by State registration permit only	Aug. 1–Nov. 30.
Unit 1(D)—that portion lying north of the Katzehin River and northeast of the Haines highway—1 goat by State registration permit only.	Sept. 15–Nov. 30.
Unit 1(D)—that portion lying between Taiya Inlet and River and the White Pass and Yukon Railroad	No open season.
Remainder of Unit 1(D)—1 goat by State registration permit only	Aug. 1–Dec. 31.
Moose:	
Unit 1(A)—1 antlered bull	Sept. 15–Oct. 15.
Unit 1(B)—south and east of LeConte Bay and Glacier—1 antlered bull with spike-fork or 50-inch antlers or 3 or more brow tines on either antler, by Federal registration permit only. Public lands within the Stikine River drainage are closed to the taking of moose, except in accordance with these regulations by qualified rural residents during seasons identified above.	Sept. 15–Oct. 15.
Remainder of Unit 1(B)	No open season.
Unit 1(C)—excluding drainages of Berners Bay—1 antlered bull by State registration permit only	Sept. 15–Oct. 15.
Unit 1(D)	No open season.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases):	
2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra):	
5 hares per day	Sept. 1–Apr. 30.
Lynx:	
2 lynx	Dec. 1–Feb. 15.
Wolf:	
5 wolves	Aug. 1–Apr. 30.
Wolverine:	
1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 1–May 15.
Trapping:	
Beaver:	
Unit 1(A), (B), and (C)—No limit	Dec. 1–May 15.

Harvest limits	Open season
Coyote:	
No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases):	
No limit	Dec. 1–Feb. 15.
Lynx:	
No limit	Dec. 1–Feb. 15.
Marten:	
No limit	Dec. 1–Feb. 15.
Mink and Weasel:	
No limit	Dec. 1–Feb. 15.
Muskrat:	
No limit	Dec. 1–Feb. 15.
Otter:	
No limit	Dec. 1–Feb. 15.
Wolf:	
No limit	Nov. 10–Apr. 30.
Wolverine:	
No limit	Nov. 10–Apr. 30.

(2) Unit 2. Unit 2 consists of Prince of Wales Island and all islands west of the center lines of Clarence Strait and Kashevarof Passage, south and east of the center lines of Sumner Strait, and east of the longitude of the westernmost point on Warren Island.

(i) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15;

(B) Boats may not be used to take ungulates, bear, wolves, or wolverine, except for persons certified as disabled.

(C) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

(ii) [Reserved].

Harvest limits	Open season
Hunting:	
Black Bear:	
2 bears, no more than one may be a blue or glacier bear	Sept. 1–June 30.
Deer:	
4 deer; however, no more than one may be an antlerless deer. Antlerless deer may be taken only during the period Oct. 15–Dec. 31.	Aug. 1–Dec. 31.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases):	
2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra):	
5 hares per day	Sept. 1–Apr. 30.
Lynx:	
2 lynx	Dec. 1–Feb. 15.
Wolf:	
5 wolves	Aug. 1–Apr. 30.
Wolverine:	
1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 1–May 15.
Trapping:	
Beaver:	
No limit	Dec. 1–May 15.
Coyote:	
No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases):	
No limit	Dec. 1–Feb. 15.
Lynx:	
No limit	Dec. 1–Feb. 15.
Marten:	
No limit	Dec. 1–Feb. 15.
Mink and Weasel:	
No limit	Dec. 1–Feb. 15.
Muskrat:	
No limit	Dec. 1–Feb. 15.
Otter:	
No limit	Dec. 1–Feb. 15.

Harvest limits	Open season
Wolf:	
No limit	Nov. 10–Apr. 30.
Wolverine:	
No limit	Nov. 10–Apr. 30.

(3) Unit 3. (i) Unit 3 consists of all islands west of Unit 1(B), north of Unit 2, south of the center line of Frederick Sound, and east of the center line of Chatham Strait including Coronation, Kuiu, Kupreanof, Mitkof, Zarembo, Kashevarof, Woronkofski, Etolin, Wrangell, and Deer Islands;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) In the Petersburg vicinity, a strip one-fourth mile wide on each side of the Mitkof Highway from Milepost 0 to Crystal Lake campground is closed to the taking of ungulates, bear, wolves and wolverine;

(B) The Petersburg Creek drainage on Kupreanof Island is closed to the taking of black bears;

(C) Blind Slough draining into Wrangell Narrows and a strip one-fourth mile wide on each side of Blind Slough, from the hunting closure markers at the southernmost portion of Blind Island to the hunting closure markers one mile south of the Blind Slough bridge, are closed to all hunting.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15;

(B) Boats may not be used to take ungulates, bear, wolves, or wolverine, except for persons certified as disabled.

(C) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
Hunting:	
Black Bear:	
2 bears, no more than one may be a blue or glacier bear	Sept. 1–June 30.
Deer:	
Unit 3—Mitkof Island, Woewodski Island, Butterworth Islands, and that portion of Kupreanof Island which includes Lindenburg Peninsula east of the Portage Bay/Duncan Canal Portage—1 antlered deer by State registration permit only; however, the city limits of Petersburg and Kupreanof are closed to hunting.	Oct. 15–Oct. 31.
Remainder of Unit 3—2 antlered deer	Aug. 1–Nov. 30.
Moose:	
Unit 3—Mitkof and Wrangell Islands—1 antlered bull with spike-fork or 50-inch antlers or 3 or more brow tines on either antler by State registration permit only.	Oct. 1–Oct. 15.
Remainder of Unit 3	No open season.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases):	
2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra):	
5 hares per day	Sept. 1–Apr. 30.
Lynx:	
2 lynx	Dec. 1–Feb. 15.
Wolf:	
5 wolves	Aug. 1–Apr. 30.
Wolverine:	
1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 1–May 15.
Trapping	
Beaver:	
Unit 3—Mitkof Island No limit	Dec. 1–Apr. 15.
Unit 3—except Mitkof Island No limit	Dec. 1–May 15.
Coyote:	
No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases):	
No limit	Dec. 1–Feb. 15.
Lynx:	
No limit	Dec. 1–Feb. 15.
Marten:	
No limit	Dec. 1–Feb. 15.
Mink and Weasel:	
No limit	Dec. 1–Feb. 15.
Muskrat:	
No limit	Dec. 1–Feb. 15.
Otter:	
No limit	Dec. 1–Feb. 15.

Harvest limits	Open season
Wolf:	
No limit	Nov. 10–Apr. 30.
Wolverine:	
No limit	Nov. 10–Apr. 30.

(4) Unit 4. (i) Unit 4 consists of all islands south and west of Unit 1(C) and north of Unit 3 including Admiralty, Baranof, Chichagof, Yakobi, Inian, Lemesurier, and Pleasant Islands;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) The Seymour Canal Closed Area (Admiralty Island) including all drainages into northwestern Seymour Canal between Staunch Point and the southernmost tip of the unnamed peninsula separating Swan Cove and King Salmon Bay including Swan and Windfall Islands, is closed to the taking of bears;

(B) The Salt Lake Bay Closed Area (Admiralty Island) including all lands within one-fourth mile of Salt Lake above Klutchman Rock at the head of Mitchell Bay, is closed to the taking of bears;

(C) Port Althorp (Chichagof Island), that area within the Port Althorp watershed south of a line from Point Lucan to Salt Chuck Point (Trap Rock), is closed to the taking of brown bears;

(D) Northeast Chichagof Controlled Use Area (NECCUA) consisting of all portions of Unit 4 on Chichagof Island north of Tenakee Inlet and east of the drainage divide from the northwest point of Gull Cove to Port Frederick Portage, including all drainages into Port Frederick and Mud Bay, is closed to the use of any motorized land vehicle for brown bear hunting, or for the taking of marten, mink, or weasel.

(iii) Unit-specific regulations;

(A) Boats may not be used to take bear, wolves, or wolverine, except for persons certified as disabled.

(B) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

(C) Chichagof Island is closed to the use of any motorized land vehicle for the taking of marten, mink, and weasel.

Harvest limits	Open season
Hunting:	
Brown Bear:	
Unit 4—Chichagof Island south and west of a line that follows the crest of the island from Rock Point (58° N. lat., 136° 21′ W. long.), to Rodgers Point (57° 35′ N. lat., 135° 33′ W. long.) including Yakobi and other adjacent islands; Baranof Island south and west of a line which follows the crest of the island from Nismeni Point (57° 34′ N. lat., 135° 25′ W. long.), to the entrance of Gut Bay (56° 44′ N. lat., 134° 38′ W. long.) including the drainages into Gut Bay and including Kruzof and other adjacent islands—1 bear every four regulatory years by State registration permit only.	Sept. 15–Dec. 31. Mar. 15–May 31.
Unit 4—that portion in the Northeast Chichagof Controlled Use Area—1 bear every four regulatory years by State registration permit only.	Mar. 15–May 20.
Remainder of Unit 4—1 bear every four regulatory years by State registration permit only	Sept. 15–Dec. 31. Mar. 15–May 20.
Deer:	
6 deer; however, antlerless deer may be taken only from Sept. 15–Jan. 31	Aug. 1–Jan. 31.
Goat:	
1 goat by State registration permit only	Aug. 1–Dec. 31.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases):	
2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra):	
5 hares per day	Sept. 1–Apr. 30.
Lynx:	
2 lynx	Dec. 1–Feb. 15.
Wolf:	
5 wolves	Aug. 1–Apr. 30.
Wolverine:	
1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 1–May 15.
Trapping:	
Beaver:	
Unit 4—that portion east of Chatham Strait—No limit	Dec. 1–May 15.
Remainder of Unit 4	No open season.
Coyote:	
No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases):	
No limit	Dec. 1–Feb. 15.
Lynx:	
No limit	Dec. 1–Feb. 15.

Harvest limits	Open season
Marten:	
Unit 4—Chichagof Island—No limit	Dec. 1–Dec. 31.
Remainder of Unit 4—No limit	Dec. 1–Feb. 15.
Mink and Weasel:	
Unit 4—Chichagof Island—No limit	Dec. 1–Dec. 31.
Remainder of Unit 4—No limit	Dec. 1–Feb. 15.
Muskrat:	
No limit	Dec. 1–Feb. 15.
Otter:	
No limit	Dec. 1–Feb. 15.
Wolf:	
No limit	Nov. 10–Apr. 30.
Wolverine:	
No limit	Nov. 10–Apr. 30.

(5) Unit 5. (i) Unit 5 consists of all Gulf of Alaska drainages and islands between Cape Fairweather and the center line of Icy Bay, including the Guyot Hills;

(A) Unit 5(A) consists of all drainages east of Yakutat Bay, Disenchantment Bay, and the eastern edge of Hubbard Glacier, and includes the islands of Yakutat and Disenchantment Bays;

(B) Unit 5(B) consists of the remainder of Unit 5;

(ii) Public lands within Glacier Bay National Park are closed to all taking of wildlife for subsistence uses.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15;

(B) Boats may not be used to take ungulates, bear, wolves, or wolverine, except for persons certified as disabled.

(C) Unit 5 is open to brown bear hunting by Federal registration permit in lieu of a State metal locking tag; no State metal locking tag is required for taking a brown bear in Unit 5, provided that the hunter has obtained a Federal registration permit prior to hunting.

(D) The taking by residents of Unit 5(A) of up to 10 moose per regulatory year in Unit 5(A), except Nunatak Bench, is allowed for ceremonial potlatches and other ceremonial uses, under the terms of a Federal registration permit. Moose may be taken from August 1 through December 31. Permits will be issued to individuals only at the request of a local organization. This 10 moose limit is not cumulative with any potlatch moose permitted by the State.

(E) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer or moose on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
Hunting:	
Black Bear:	
2 bears, no more than one may be a blue or glacier bear	Sept. 1–June 30.
Brown Bear:	
1 bear by Federal registration permit only	Sept. 1–May 31.
Deer:	
Unit 5(A)—1 buck	Nov. 1–Nov. 30.
Unit 5(B)	No open season.
Goat:	
1 goat by State registration permit only	Aug. 1–Dec. 31.
Moose:	
Unit 5(A), except Nunatak Bench—1 antlered bull by State registration permit only. The season will be closed when 60 antlered bulls have been taken from the Unit. The season will be closed in that portion west of the Dangerous River when 30 antlered bulls have been taken in that area. From Oct. 15–Oct. 21, public lands will be closed to taking of moose, except by rural Alaska residents of Unit 5(A).	Oct. 15–Nov. 15.
Unit 5(B)—1 antlered bull by State registration permit only. The season will be closed when 25 antlered bulls have been taken from the entirety of Unit 5(B).	Sept. 1–Dec. 15.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra):	
5 hares per day	Sept. 1–Apr. 30.
Lynx:	
2 lynx	Dec. 1–Feb. 15.
Wolf:	
5 wolves	Aug. 1–Apr. 30.
Wolverine:	
1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 1–May 15.
Trapping:	

Harvest limits	Open season
Beaver:	
No limit	Nov. 10–May 15.
Coyote:	
No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Dec. 1–Feb. 15.
Lynx:	
No limit	Dec. 1–Feb. 15.
Marten:	
No limit	Nov. 10–Feb. 15.
Mink and Weasel:	
No limit	Nov. 10–Feb. 15.
Muskrat:	
No limit	Dec. 1–Feb. 15.
Otter:.	
No limit	Nov. 10–Feb. 15.
Wolf:	
No limit	Nov. 10–Apr. 30.
Wolverine:	
No limit	Nov. 10–Apr. 30.

(6) Unit 6. (i) Unit 6 consists of all Gulf of Alaska and Prince William Sound drainages from the center line of Icy Bay (excluding the Guyot Hills) to Cape Fairfield including Kayak, Hinchinbrook, Montague, and adjacent islands, and Middleton Island, but excluding the Copper River drainage upstream from Miles Glacier, and excluding the Nellie Juan and Kings River drainages:

(A) Unit 6(A) consists of Gulf of Alaska drainages east of Palm Point near Katalla including Kanak, Wingham, and Kayak Islands;

(B) Unit 6(B) consists of Gulf of Alaska and Copper River Basin drainages west of Palm Point near Katalla, east of the west bank of the Copper River, and east of a line from Flag Point to Cottonwood Point;

(C) Unit 6(C) consists of drainages west of the west bank of the Copper River, and west of a line from Flag Point to Cottonwood Point, and drainages east of the east bank of Rude River and drainages into the eastern shore of Nelson Bay and Orca Inlet;

(D) Unit 6(D) consists of the remainder of Unit 6;

(ii) For the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) The Goat Mountain goat observation area, which consists of that portion of Unit 6(B) bounded on the north by Miles Lake and Miles Glacier, on the south and east by Pleasant Valley River and Pleasant Glacier, and on the west by the Copper River, is closed to the taking of mountain goat;

(B) The Heney Range goat observation area, which consists of that portion of Unit 6(C) south of the Copper River Highway and west of the Eyak River, is closed to the taking of mountain goat.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15;

(B) Coyotes may be taken in Units 6(B) and 6(C) with the aid of artificial lights.

Harvest limits	Open season
Hunting:	
Black Bear:	
1 bear	Sept. 1–June 30.
Deer:	
4 deer; however, antlerless deer may be taken only from Nov. 1–Dec. 31	Aug. 1–Dec. 31.
Goats:	
Unit 6(A), (B)—1 goat by State registration permit only	Aug. 20–Jan. 31.
Unit 6(C)	No open season.
Unit 6(D) (subareas RG242, RG244, RG249, RG266 and RG252 only)—1 goat by Federal registration permit only	Aug 20–Jan. 31.
In each of the Unit 6(D) subareas, goat seasons will be closed when harvest limits for that subarea are reached. Harvest quotas are as follows: RG242—2 goats, RG244—2 goats, RG249—2 goats, RG266—4 goats, RG252—1 goat.	
Unit 6(D) (subareas RG243 and RG245)—The taking of goats is prohibited on all public lands	No open season.
Coyote:	
Unit 6(A) and (D)—2 coyotes	Sept. 1–Apr. 30.
Unit 6(B)—No limit	July 1–June 30.
Unit 6(C)—South of the Copper River Highway and east of the Heney Range—No limit	July 1–June 30.
Remainder of Unit 6(C)—No limit	July 1–June 30.
Fox, Red (including Cross, Black and Silver Phases)	No open season.
Hare (Snowshoe and Tundra)	
No limit	July 1–June 30.
Lynx	No open season.
Wolf:	
5 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
5 per day, 10 in possession	Aug. 1–May 15.

Harvest limits	Open season
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 1–May 15.
Trapping:	
Beaver:	
Trapping—20 beaver per season	Dec. 1–Mar. 31.
Coyote:	
Unit 6(A), (B) and (D)—No limit	Nov. 10–Mar. 31.
Unit 6(C)—South of the Copper River Highway and east of the Heney Range—No limit	Nov. 10–Apr. 30.
Remainder of Unit 6(C)—No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10–Feb. 28.
Marten:	
No limit	Nov. 10–Jan. 31.
Mink and Weasel:	
No limit	Nov. 10–Jan. 31.
Muskrat:	
No limit	Nov. 10–June 10.
Otter:	
No limit	Nov. 10–Mar. 31
Wolf:	
No limit	Nov. 10–Mar. 31.
Wolverine:	
No limit	Nov. 10–Feb. 28.

(7) Unit 7. (i) Unit 7 consists of Gulf of Alaska drainages between Gore Point and Cape Fairfield including the Nellie Juan and Kings River drainages, and including the Kenai River drainage upstream from the Russian River, the drainages into the south side of Turnagain Arm west of and including the Portage Creek drainage, and east of 150° W. long., and all Kenai Peninsula drainages east of 150° W. long., from Turnagain Arm to the Kenai River;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Kenai Fjords National Park is closed to all subsistence uses;

(B) The Portage Glacier Closed Area in Unit 7, which consists of Portage Creek drainages between the Anchorage-Seward Railroad and Placer Creek in Bear Valley, Portage Lake, the mouth of Byron Creek, Glacier Creek and Byron Glacier, is closed to hunting; however, grouse, ptarmigan, hares, and squirrels may be hunted with shotguns after September 1.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15; except Resurrection Creek and its tributaries.

(B) [Reserved].

Harvest limits	Open season
Hunting:	
Black Bear:	
Unit 7—3 bears	July 1–June 30.
Coyote:	
No limit	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Wolf:	
Unit 7—that portion within the Kenai National Wildlife Refuge—2 wolves	Aug. 10–Apr. 30.
Unit 7—Remainder—5 wolves	Aug. 10–Apr. 30
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 10–Mar. 31.
Trapping:	
Beaver:	
20 Beaver per season	Dec. 1–Mar. 31.
Coyote:	
No limit	Nov. 10–Feb. 28.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10–Feb. 28.
Marten:	
No limit	Nov. 10–Jan. 31.
Mink and Weasel:	
No limit	Nov. 10–Jan. 31.
Muskrat:	
No limit	Nov. 10–May 15.

Harvest limits	Open season
Otter:	
No limit	Nov. 10–Feb. 28.
Wolf:	
No limit	Nov. 10–Feb. 28.
Wolverine:	
No limit	Nov. 10–Feb. 28.

(8) Unit 8. Unit 8 consists of all islands southeast of the centerline of Shelikof Strait including Kodiak, Afognak, Whale, Raspberry, Shuyak, Spruce, Marmot, Sitkalidak, Amook, Uganik, and Chirikof Islands, the Trinity Islands, the Semidi Islands, and other adjacent islands.

(i) A firearm may be used to take beaver with a trapping license in Unit 8 from Nov. 10–Apr. 30.

(ii) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
Hunting:	
Deer:	
Unit 8—that portion of Kodiak Island north of a line from the head of Settlers Cove to Crescent Lake (57° 52′ N. lat., 152° 58′ W. long.), and east of a line from the outlet of Crescent Lake to Mount Ellison Peak and from Mount Ellison Peak to Pokati Point at Whale Passage, and that portion of Kodiak Island east of a line from the mouth of Saltery Creek to the mouth at Elbow Creek, and adjacent small islands in Chiniak Bay—1 deer; however, antlerless deer may be taken only from Oct. 25–Oct. 31.	Aug. 1–Oct. 31.
Unit 8—that portion of Kodiak Island and adjacent islands south and west of a line from the head of Terror Bay to the head of the south-western most arm of Ugak Bay—5 deer; however, antlerless deer may be taken only from Oct. 1–Dec. 31.	Aug. 1–Dec. 31.
Remainder of Unit 8—5 deer; however, antlerless deer may be taken only from Oct. 1–Dec. 31; no more than 1 antlerless deer may be taken from Oct. 1–Nov. 30.	Aug. 1–Dec. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10–Mar. 31.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping:	
Beaver:	
30 beaver per season	Nov. 10–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10–Mar. 31.
Marten:	
No limit	Nov. 10–Jan. 31.
Mink and Weasel:	
No limit	Nov. 10–Jan. 31.
Muskrat:	
No limit	Nov. 10–June 10.
Otter:	
No limit	Nov. 10–Jan. 31.

(9) Unit 9. (i) Unit 9 consists of the Alaska Peninsula and adjacent islands including drainages east of False Pass, Pacific Ocean drainages west of and excluding the Redoubt Creek drainage; drainages into the south side of Bristol Bay, drainages into the north side of Bristol Bay east of Etolin Point, and including the Sanak and Shumagin Islands:

(A) Unit 9(A) consists of that portion of Unit 9 draining into Shelikof Strait and Cook Inlet between the southern boundary of Unit 16 (Redoubt Creek) and the northern boundary of Katmai National Park and Preserve;

(B) Unit 9(B) consists of the Kvichak River drainage;

(C) Unit 9(C) consists of the Alagnak (Branch) River drainage, the Naknek River drainage, and all land and water within Katmai National Park and Preserve;

(D) Unit 9(D) consists of all Alaska Peninsula drainages west of a line from the southernmost head of Port Moller to the head of American Bay including the Shumagin Islands and other islands of Unit 9 west of the Shumagin Islands;

(E) Unit 9(E) consists of the remainder of Unit 9;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Katmai National Park is closed to all subsistence uses;

(B) The use of motorized vehicles, excluding aircraft, boats, or snowmobiles used for hunting and transporting a hunter or harvested animal parts, is prohibited from Aug. 1–Nov. 30 in the Naknek Controlled Use Area, which includes all of Unit 9(C) within the Naknek River drainage upstream from and including the King Salmon Creek drainage; however, this restriction does not apply to a motorized vehicle on the Naknek-King Salmon, Lake Camp, and Rapids Camp roads and on the King Salmon Creek trail, and on frozen surfaces of the Naknek River and Big Creek.

(C) A firearm may be used under a trapping license to take beaver in Unit 9(B) from April 1–May 31 and in the remainder of Unit 9 from April 1–April 30.

(D) Unit 9(B) (Nondalton residents only) is open to brown bear hunting by Federal registration permit in lieu of a resident tag; no resident tag is required for taking a brown bear in Unit 9(B), provided that the hunter has obtained a Federal registration permit prior to hunting.

(E) The taking in Unit 9(B) by residents of Newhalen, Nondalton, Iliamna, Pedro Bay, and Port Alsworth of up to a total per regulatory year of 10 bull moose among the communities is allowed for ceremonial purposes, under the terms of a Federal registration permit. Bull moose may be taken from July 1 through June 30. Permits, available to all 5 communities, will be issued until all 10 permits are used to individuals only at the request of a local organization. This 10 moose limit is not cumulative with that permitted for potlatches by the State.

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1–June 30.
Brown Bear:	
Unit 9(B)—Rural residents of Nondalton only—1 bear by Federal registration permit only	Oct. 1–Oct. 21 May 10–May 25.
Unit 9(B)—1 bear every four regulatory years	Oct. 1–Oct. 21 (odd years only); May 10–May 25 (even years only).
Unit 9(E)—1 bear by Federal registration permit only	Oct. 1–Dec. 31. May 10–May 25.
Caribou:	
Unit 9(A)—4 caribou; however, no more than 2 caribou may be taken Aug. 10–Sept. 30 and no more than 1 caribou may be taken Oct. 1–Nov. 30.	Aug. 10–Mar. 31.
Unit 9(C)—4 caribou; however, no more than 1 may be a cow, no more than 2 caribou may be taken Aug. 10–Nov. 30, and no more than 1 caribou may be taken per calendar month between Dec. 1–Mar. 31.	Aug. 10–Mar. 31.
Unit 9(B)—5 caribou; however no more than 2 may be bulls	Aug. 1–Apr. 15.
Unit 9(D)—closed to all hunting of caribou	No open season.
Unit 9(E)—that portion southwest of the headwaters of Fireweed and Blueberry Creeks (north of Mt. Veniaminof) to and including the Sandy River drainage on the Bristol Bay side of the Alaska Peninsula; and that portion south of Seal Cape to Ramsey Bay on the Pacific side of the Alaska Peninsula divide is closed to all hunting of caribou.	No open season.
Remainder of Unit 9(E)—4 caribou	Aug. 10–Apr. 30.
Sheep:	
Unit 9(B)—Residents of Iliamna, Newhalen, Nondalton, Pedro Bay, and Port Alsworth only—1 ram with 7/8 curl horn by Federal registration permit only.	Aug. 10–Oct. 10.
Remainder of Unit 9—1 ram with 7/8 curl horn	Aug. 10–Sept. 20.
Moose:	
Unit 9(A)—1 antlered bull	Sept. 1–Sept. 15.
Unit 9(B)—1 antlered bull	Aug. 20–Sept. 15 Dec. 1–Dec. 31.
Unit 9(C)—that portion draining into the Naknek River from the north—1 antlered bull	Sept. 1–Sept. 15 Dec. 1–Dec. 31.
Unit 9(C)—that portion draining into the Naknek River from the south—1 antlered bull. However, during the period Aug. 20–Aug. 31, bull moose may be taken by Federal registration permit only. During the December hunt, antlerless moose may be taken by Federal registration permit only. The antlerless season will be closed when 5 antlerless moose have been taken. Public lands are closed during December for the hunting of moose, except by eligible rural Alaska residents during seasons identified above..	Aug. 20–Sept. 15. Dec. 1–Dec. 31.
Remainder of Unit 9(C)—1 moose; however, antlerless moose may be taken only from Dec. 1–Dec. 31.	Sept. 1–Sept. 15. Dec. 1–Dec. 31.
Unit 9(E)—1 antlered bull	Sept. 1–Sept. 20. Dec. 1–Dec. 31.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Artic (Blue and White):	
No limit	Dec. 1–Mar. 15.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Lynx:	
2 lynx	Nov. 10–Feb. 28.
Wolf:	
5 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping:	

Harvest limits	Open season
Beaver:	
Unit 9(B)—40 beaver per season; however, no more than 20 may be taken between Apr. 1–May 31	Jan. 1–May 31.
Remainder of Unit 9—40 beaver per season; however, no more than 20 may be taken between Apr. 1–Apr. 30	Jan. 1–Apr. 30.
Coyote:	
No limit	Nov. 10–Mar. 31.
Fox, Arctic (Blue and White):	
No limit	Nov. 10–Feb. 28.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10–Feb. 28.
Lynx:	
No limit	Nov. 10–Feb. 28.
Marten:	
No limit	Nov. 10–Feb. 28.
Mink and Weasel:	
No limit	Nov. 10–Feb. 28.
Muskrat:	
No limit	Nov. 10–June 10.
Otter:	
No limit	Nov. 10–Mar. 31.
Wolf:	
No limit	Nov. 10–Mar. 31.
Wolverine:	
No limit	Nov. 10–Feb. 28.

(10) Unit 10. (i) Unit 10 consists of the Aleutian Islands, Unimak Island and the Pribilof Islands;

(ii) On Otter Island in the Pribilof Islands the taking of any wildlife species for subsistence uses is prohibited.

Harvest limits	Open season
Hunting:	
Caribou:	
Unit 10—Unimak Island only	No open season.
Remainder of Unit 10—No limit	July 1–June 30.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase):	
No limit	July 1–June 30.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Wolf:	
5 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping:	
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase):	
No limit	July 1–June 30.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Sept. 1–Feb. 15.
Mink and Weasel:	
No limit	Nov. 10–Feb. 28.
Muskrat:	
No limit	Nov. 10–June 10.
Otter:	
No limit	Nov. 10–Mar. 31.
Wolf:	
No limit	Nov. 10–Mar. 31.
Wolverine:	
No limit	Nov. 10–Feb. 28.

(11) Unit 11. Unit 11 consists of that area draining into the headwaters of the Copper River south of Suslota Creek and the area drained by all tributaries into the east bank of the Copper River between the confluence of Suslota Creek with the Slana River and Miles Glacier.

(i) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15.

(B) [Reserved].

(ii) [Reserved].

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1–June 30.
Caribou:	
Closed to all hunting of caribou	No open season.
Sheep:	
1 sheep	Aug. 10–Sept. 20.
Moose:	
1 antlered bull	Aug. 25–Sept. 20.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Lynx:	
2 lynx	Dec. 15–Jan. 15.
Wolf:	
5 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Jan. 31.
Public lands are closed to the taking of wolverine except by eligible rural Alaska residents during seasons identified above.	
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 10–Mar. 31.
Trapping:	
Beaver:	
30 beaver per season	Nov. 10–Apr. 30.
Coyote:	
No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10–Feb. 28.
Lynx:	
No limit	Dec. 1–Jan. 15.
Marten:	
No limit	Nov. 10–Jan. 31.
Mink and Weasel:	
No limit	Nov. 10–Jan. 31.
Muskrat:	
No limit	Nov. 10–June 10.
Otter:	
No limit	Nov. 10–Mar. 31.
Wolf:	
No limit	Nov. 10–Mar. 31.
Wolverine:	
2 wolverine	Nov. 10–Jan. 31.
Public lands are closed to the taking of wolverine except by eligible rural Alaska residents during seasons identified above.	

(12) Unit 12. Unit 12 consists of the Tanana River drainage upstream from the Robertson River, including all drainages into the east bank of the Robertson River, and the White River drainage in Alaska, but excluding the Ladue River drainage.

(i) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 30;

(B) Trapping of wolves in Unit 12 during April and October with a steel trap, or with a snare using cable smaller than 3/32 inch diameter, is prohibited.

(ii) [Reserved].

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1–June 30.
Caribou:	
Unit 12—that portion west of the Nabesna River within the drainages of Jack Creek, Platinum Creek, and Totschunda Creek—The taking of caribou is prohibited on public lands.	No open season.

Harvest limits	Open season
Unit 12—that portion lying east of the Nabesna River and south of the Winter Trail running southeast from Pickerel Lake to the Canadian border—The taking of caribou is prohibited on public lands.	No open season.
Remainder of Unit 12—1 bull	Sept. 1–Sept. 20.
1 bull caribou may be taken by a Federal registration permit during a winter season to be announced for the rural Alaska residents of Tetlin and Northway only.	Winter season to be announced by the Board.
Sheep:	
1 ram with full curl horn or larger	Aug. 10–Sept. 20.
Moose:	
Unit 12—that portion drained by the Tanana, Nabesna, and Chisana Rivers within the Tetlin National Wildlife Refuge and those lands within the Wrangell-St. Elias National Preserve north and east of a line formed by the Pickerel Lake Winter Trail from the Canadian border to the southern boundary of the Tetlin National Wildlife Refuge—1 antlered bull. The November season is open by Federal registration permit only.	Sept. 1–Sept. 15. Nov. 20–Nov. 30.
Unit 12—that portion lying east of the Nabesna River and south of the Winter Trail running southeast from Pickerel Lake to the Canadian border—1 antlered bull.	Sept. 1–Sept. 30.
Unit 12—Remainder—1 antlered bull	Sept. 1–Sept. 15.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Lynx:	
2 lynx	Nov. 1–Jan. 31.
Wolf:	
5 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping:	
Beaver:	
15 beaver per season	Nov. 1–Apr. 15.
Coyote:	
No limit	Nov. 1–Feb. 28.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1–Feb. 28.
Lynx:	
No limit	Dec. 1–Jan. 15.
Marten:	
No limit	Nov. 1–Feb. 28.
Mink and Weasel:	
No limit	Nov. 1–Feb. 28.
Muskrat:	
No limit	Sept. 20–June 10.
Otter:	
No limit	Nov. 1–Apr. 15.
Wolf:	
No limit	Oct. 1–Apr. 30.
Wolverine:	
No limit	Nov. 1–Feb. 28.

(13) Unit 13. (i) Unit 13 consists of that area westerly of the east bank of the Copper River and drained by all tributaries into the west bank of the Copper River from Miles Glacier and including the Slana River drainages north of Suslota Creek; the drainages into the Delta River upstream from Falls Creek and Black Rapids Glacier; the drainages into the Nenana River upstream from the southeast corner of Denali National Park at Windy; the drainage into the Susitna River upstream from its junction with the Chulitna River; the drainage into the east bank of the Chulitna River upstream to its confluence with Tokositna River; the drainages of the Chulitna River (south of Denali National Park) upstream from its confluence with the Tokositna River; the drainages into the north bank of the Tokositna River upstream to the base of the Tokositna Glacier; the drainages into the Tokositna Glacier; the drainages into the east bank of the Susitna River between its confluences with the Talkeetna and Chulitna Rivers; the drainages into the north bank of the Talkeetna River; the drainages into the east bank of the Chickaloon River; the drainages of the Matanuska River above its confluence with the Chickaloon River:

(A) Unit 13(A) consists of that portion of Unit 13 bounded by a line beginning at the Chickaloon River bridge at Mile 77.7 on the Glenn Highway, then along the Glenn Highway to its junction with the Richardson Highway, then south along the Richardson Highway to the foot of Simpson Hill at Mile 111.5, then east to the east bank of the Copper River, then northerly along the east bank of the Copper River to its junction with the Gulkana River, then northerly along the west bank of the Gulkana River to its junction with the West Fork of the Gulkana River, then westerly along the west bank of the West Fork of the Gulkana River to its source, an unnamed lake, then across the divide into the Tyone River drainage, down an unnamed stream into the Tyone River, then down the Tyone River to the Susitna River, then down the southern bank of the Susitna River to the mouth of Kosina Creek, then up Kosina Creek to its headwaters, then across the divide and down Aspen Creek to the Talkeetna River, then southerly along the boundary of Unit 13 to the Chickaloon River bridge, the point of beginning;

(B) Unit 13(B) consists of that portion of Unit 13 bounded by a line beginning at the confluence of the Copper River and the Gulkana River, then up the east bank of the Copper River to the Gakona River, then up the Gakona River and Gakona Glacier to the boundary of Unit 13, then westerly along the boundary of Unit 13 to the Susitna Glacier, then southerly along the west bank of the Susitna Glacier and the Susitna River to the Tyone River, then up the Tyone River and across the divide to the headwaters of the West Fork of the Gulkana River, then down the West Fork of the Gulkana River to the confluence of the Gulkana River and the Copper River, the point of beginning;

(C) Unit 13(C) consists of that portion of Unit 13 east of the Gakona River and Gakona Glacier;

(D) Unit 13(D) consists of that portion of Unit 13 south of Unit 13(A);

(E) Unit 13(E) consists of the remainder of Unit 13;

(ii) Within the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Lands within Mount McKinley National Park as it existed prior to December 2, 1980 are closed to subsistence. Subsistence uses as authorized by § _____.25(k)(13) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980;

(B) Use of motorized vehicles or pack animals for hunting is prohibited from Aug. 5–Aug. 25 in the Delta Controlled Use Area, the boundary of which is defined as: a line beginning at the confluence of Miller Creek and the Delta River, then west to vertical angle bench mark Miller, then west to include all drainages of Augustana Creek and Black Rapids Glacier, then north and east to include all drainages of McGinnis Creek to its confluence with the Delta River, then east in a straight line across the Delta River to Mile 236.7 Richardson Highway, then north along the Richardson Highway to its junction with the Alaska Highway, then east along the Alaska Highway to the west bank of the Johnson River, then south along the west bank of the Johnson River and Johnson Glacier to the head of the Cantwell Glacier, then west along the north bank of the Cantwell Glacier and Miller Creek to the Delta River;

(C) Except for access and transportation of harvested wildlife on Sourdough and Haggard Creeks, Meiers Lake trails, or other trails designated by the Board, the use of motorized vehicles for subsistence hunting, is prohibited in the Sourdough Controlled Use Area. The Sourdough Controlled Use Area consists of that portion of Unit 13(B) bounded by a line beginning at the confluence of Sourdough Creek and the Gulkana River, then northerly along Sourdough Creek to the Richardson Highway at approximately Mile 148, then northerly along the Richardson Highway to the Meiers Creek Trail at approximately Mile 170, then westerly along the trail to the Gulkana River, then southerly along the east bank of the Gulkana River to its confluence with Sourdough Creek, the point of beginning.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15.

(B) [Reserved].

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1–June 30.
Caribou:	
2 caribou by Federal registration permit only. Hunting within the Trans-Alaska Oil Pipeline right-of-way is prohibited. The right-of-way is identified as the area occupied by the pipeline (buried or above ground) and the cleared area 25 feet on either side of the pipeline.	Aug. 10–Sept. 30. Jan. 5–Mar. 31.
Sheep:	
Unit 13—excluding Unit 13(D) and the Tok and Delta Management Areas—1 ram with 7/8 curl horn	Aug. 10–Sept. 20.
Moose:	
1 antlered bull moose by Federal registration permit only; only 1 permit will be issued per household	Aug. 1–Sept. 20.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Sept. 1–Feb. 15
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30
Lynx:	
2 lynx	Dec. 15–Jan. 15.
Wolf:	
5 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Jan. 31.
Public lands are closed to the taking of wolverine, except by eligible rural Alaska residents during seasons identified above.	
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 10–Mar. 31.
Trapping:	
Beaver:	
30 beaver per season	Oct. 10–Apr. 30.
Coyote:	
No limit	Nov. 10–Mar. 31.

Harvest limits	Open season
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10–Feb. 28.
Lynx:	
No limit	Dec. 1–Jan. 15.
Marten:	
No limit	Nov. 10–Jan. 31.
Mink and Weasel:	
No limit	Nov. 10–Jan. 31.
Muskrat:	
No limit	Nov. 10–June 10.
Otter:	
No limit	Nov. 10–Mar. 31.
Wolf:	
No limit	Nov. 10–Mar. 31
Wolverine:	
2 wolverine	Nov. 10–Jan. 31.
Public lands are closed to the taking of wolverine, except by eligible rural Alaska residents during seasons identified above.	

(14) Unit 14. (i) Unit 14 consists of drainages into the north side of Turnagain Arm west of and excluding the Portage Creek drainage, drainages into Knik Arm excluding drainages of the Chickaloon and Matanuska Rivers in Unit 13, drainages into the north side of Cook Inlet east of the Susitna River, drainages into the east bank of the Susitna River downstream from the Talkeetna River, and drainages into the south bank of the Talkeetna River:

(A) Unit 14(A) consists of drainages in Unit 14 bounded on the west by the Susitna River, on the north by Willow Creek, Peters Creek, and by a line from the head of Peters Creek to the head of the Chickaloon River, on the east by the eastern boundary of Unit 14, and on the south by Cook Inlet, Knik Arm, the south bank of the Knik River from its mouth to its junction with Knik Glacier, across the face of Knik Glacier and along the north side of Knik Glacier to the Unit 6 boundary;

(B) Unit 14(B) consists of that portion of Unit 14 north of Unit 14(A);

(C) Unit 14(C) consists of that portion of Unit 14 south of Unit 14(A);

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) The Fort Richardson Management Area, consisting of the Fort Richardson Military Reservation, is restricted to the subsistence taking of ungulates, bear, wolves, or wolverine by permit only;

(B) The Anchorage Management Area, consisting of all drainages south of Elmendorf and Fort Richardson military reservations and north of and including Rainbow Creek is closed to subsistence taking of wildlife for subsistence uses.

(iii) Unit-specific regulations;

(A) In Unit 14(A), bait may be used to hunt black bear between April 15 and May 25;

(B) [Reserved].

Harvest limits	Open season
Hunting:	
Black Bear:	
Unit 14 (A) and (C)—1 bear	July 1–June 30.
Brown Bear:	
Unit 14(A)—1 bear every four regulatory years	Sept. 15–Oct. 10. May 1–May 25.
Coyote:	
Unit 14 (A) and (C)—2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
Unit 14—2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra):	
Unit 14(A)—5 hares per day	July 1–June 30.
Unit 14(C)—5 hares per day	Sept. 8–Apr. 30.
Lynx:	
2 lynx	Dec. 15–Jan. 15.
Wolf:	
5 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
Unit 14(A)—15 per day, 30 in possession	Aug. 10–Mar. 31.
Unit 14(C)—5 per day, 10 in possession	Sept. 8–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
Unit 14(A)—10 per day, 20 in possession	Aug. 10–Mar. 31.
Unit 14(C)—10 per day, 20 in possession	Sept. 8–Mar. 31.
Remainder of Unit 14—20 per day, 40 in possession	Aug. 10–Mar. 31.
Trapping:	
Beaver:	
Unit 14(A)—30 beaver per season	Nov. 10–Apr. 30.
Unit 14(C)—that portion within the drainages of Glacier Creek, Kern Creek, Peterson Creek, the Twentymile River and the drainages of Knik River outside Chugach State Park—20 beaver per season.	Dec. 1–Apr. 15.
Coyote:	

Harvest limits	Open season
Unit 14(A)—No limit	Nov. 10–Mar. 31.
Unit 14(C)—No limit	Nov. 10–Feb. 28.
Fox, Red (including Cross, Black and Silver Phases):	
Unit 14(A)—No limit	Nov. 10–Feb. 28.
Unit 14(C)—1 fox	Nov. 10–Feb. 28.
Marten:	
No limit	Nov. 10–Jan. 31.
Mink and Weasel:	
No limit	Nov. 10–Jan. 31.
Muskrat:	
No limit	Nov. 10–May 15.
Otter:	
Unit 14(A)—No limit	Nov. 10–Mar. 31.
Unit 14(C)—No limit	Nov. 10–Feb. 28.
Wolf:	
Unit 14(A)—No limit	Nov. 10–Mar. 31.
Unit 14(C)—No limit	Nov. 10–Feb. 28.
Wolverine:	
No limit	Nov. 10–Feb. 28.

(15) Unit 15. (i) Unit 15 consists of that portion of the Kenai Peninsula and adjacent islands draining into the Gulf of Alaska, Cook Inlet and Turnagain Arm from Gore Point to the point where longitude line 150° 00′ W. crosses the coastline of Chickaloon Bay in Turnagain Arm, including that area lying west of longitude line 150° 00′ W. to the mouth of the Russian River, then southerly along the Chugach National Forest boundary to the upper end of Upper Russian Lake; and including the drainages into Upper Russian Lake west of the Chugach National Forest boundary:

(A) Unit 15(A) consists of that portion of Unit 15 north of the Kenai River and Skilak Lake;

(B) Unit 15(B) consists of that portion of Unit 15 south of the Kenai River and Skilak Lake, and north of the Kasilof River, Tustumena Lake, Glacier Creek, and Tustumena Glacier;

(C) Unit 15(C) consists of the remainder of Unit 15;

(ii) The Skilak Loop Management Area, which consists of that portion of Unit 15(A) bounded by a line beginning at the eastern most junction of the Sterling Highway and the Skilak Loop (milepost 76.3), then due south to the south bank of the Kenai River, then southerly along the south bank of the Kenai River to its confluence with Skilak Lake, then westerly along the north shore of Skilak Lake to Lower Skilak Lake Campground, then northerly along the Lower Skilak Lake Campground Road and the Skilak Loop Road to its western most junction with the Sterling Highway, then easterly along the Sterling Highway to the point of beginning, is closed to the taking of wildlife, except that grouse and ptarmigan may be taken only from October 1–March 1 by bow and arrow only;

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15;

(B) The Skilak Loop Wildlife Management Area is closed to subsistence trapping of furbearers;

(C) That portion of Unit 15(B) east of the Kenai River, Skilak Lake, Skilak River, and Skilak Glacier is closed to the trapping of marten;

(D) Taking a red fox in Unit 15 by any means other than a steel trap or snare is prohibited.

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1–June 30.
Coyote:	
No limit	Sept. 1–Apr. 30.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Wolf:	
Unit 15—that portion within the Kenai National Wildlife Refuge—2 Wolves	Aug. 10–Apr. 30.
Unit 15—Remainder—5 Wolves	Aug. 10–Apr. 30.
Wolverine:	
1 Wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
Unit 15 (A) and (B)—20 per day, 40 in possession	Aug. 10–Mar. 31.
Unit 15(C)—20 per day, 40 in possession	Aug. 10–Dec. 31.
Unit 15(C)—5 per day, 10 in possession	Jan. 1–Mar. 31.
Trapping:	
Beaver: 20 Beaver per season	Dec. 1–Mar. 31.
Coyote:	
No limit	Nov. 10–Feb. 28.
Fox, Red (including Cross, Black and Silver Phases):	
1 Fox	Nov. 10–Feb. 28.
Marten:	
Unit 15(B)—that portion east of the Kenai River, Skilak Lake, Skilak River and Skilak Glacier	No open season.

Harvest limits	Open season
Remainder of Unit 15—No limit	Nov. 10–Jan. 31.
Mink and Weasel:	
No limit	Nov. 10–Jan. 31.
Muskrat:	
No limit	Nov. 10–May 15.
Otter:	
Unit 15 (A), (B)—No limit	Nov. 10–Jan. 31.
Unit 15(C)—No limit	Nov. 10–Feb. 28.
Wolf:	
No limit	Nov. 10–Feb. 28.
Wolverine:	
Unit 15 (B) and (C)—No limit	Nov. 10–Feb. 28.

(16) Unit 16. (i) Unit 16 consists of the drainages into Cook Inlet between Redoubt Creek and the Susitna River, including Redoubt Creek drainage, Kalgin Island, and the drainages on the west side of the Susitna River (including the Susitna River) upstream to its confluence with the Chulitna River; the drainages into the west side of the Chulitna River (including the Chulitna River) upstream to the Tokositna River, and drainages into the south side of the Tokositna River upstream to the base of the Tokositna Glacier, including the drainage of the Kahiltna Glacier:

(A) Unit 16(A) consists of that portion of Unit 16 east of the east bank of the Yentna River from its mouth upstream to the Kahiltna River, east of the east bank of the Kahiltna River, and east of the Kahiltna Glacier;

(B) Unit 16(B) consists of the remainder of Unit 16; (ii) The Mount McKinley National Park, as it existed prior to December 2, 1980, is closed to subsistence uses. Subsistence uses as authorized by _____.25(k)(16) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15.

(B) [Reserved].

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1–June 30.
Caribou:	
1 caribou	Aug. 10–Oct. 31.
Moose:	
Unit 16(B)—Redoubt Bay Drainages south and west of, and including the Kustatan River drainage—1 antlered bull	Sept. 1–Sept. 15.
Remainder of Unit 16(B)—1 moose; however, antlerless moose may be taken only from Sept. 25–Sept. 30 and from Dec. 1–Feb. 28 by Federal registration permit only.	Sept. 1–Sept. 30. Dec. 1–Feb. 28.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Lynx:	
2 lynx	Dec. 15–Jan. 15.
Wolf:	
5 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 10–Mar. 31.
Trapping:	
Beaver:	
30 beaver per season	Nov. 10–Apr. 30.
Coyote:	
No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10–Feb. 28.
Marten:	
No limit	Nov. 10–Jan. 31.
Mink and Weasel:	
No limit	Nov. 10–Jan. 31.
Muskrat:	
No limit	Nov. 10–June 10.
Otter:	
No limit	Nov. 10–Mar. 31.
Wolf:	
No limit	Nov. 10–Mar. 31.

Harvest limits	Open season
Wolverine:	
No limit	Nov. 10–Feb. 28.

(17) Unit 17. (i) Unit 17 consists of drainages into Bristol Bay and the Bering Sea between Etolin Point and Cape Newenham, and all islands between these points including Hagemeister Island and the Walrus Islands:

(A) Unit 17(A) consists of the drainages between Cape Newenham and Cape Constantine, and Hagemeister Island and the Walrus Islands;

(B) Unit 17(B) consists of the Nushagak River drainage upstream from, and including the Mulchatna River drainage, and the Wood River drainage upstream from the outlet of Lake Beverley;

(C) Unit 17(C) consists of the remainder of Unit 17; (ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Except for aircraft and boats and in legally permitted hunting camps, the Upper Mulchatna Controlled Use Area consisting of Unit 17(B), is closed from Aug. 1–Nov. 1 to the use of any motorized vehicle for hunting ungulates, bear, wolves and wolverine, including transportation of hunters and parts of ungulates, bear, wolves or wolverine;

(B) The Western Alaska Brown Bear Management Area which consists of Unit 17(A), that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake, Unit 18, and that portion of Unit 19(A) and (B) downstream of and including the Aniak River drainage, is open to brown bear hunting by State registration permit in lieu of a resident tag; no resident tag is required for taking brown bears in the Western Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15.

(B) [Reserved].

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1–June 30.
Brown Bear:	
Unit 17(A) and that portion of Unit 17(B) draining into the Nuyakuk Lake and Tikchik Lake—1 bear	Sept. 1–May 31.
Remainder of Unit 17(B)—1 bear every four regulatory years	Sept. 20–Oct. 10. May 10–May 25.
Unit 17(C)—1 bear every four regulatory years	Sept. 10–Oct. 10. Apr. 10–May 25.
Caribou:	
Unit 17(A) and (C)—that portion of 17(A) and (C) consisting of the Nushagak Peninsula south of the Igushik River, Tuklung River and Tuklung Hills, west to Tvativak Bay—1 caribou by Federal registration permit. Public lands are closed to the taking of caribou except by the residents of Togiak, Twin Hills, Manokotak, Aleknagik, Dillingham, Clark's Point, and Ekuk during seasons identified above.	Jan. 1–Mar. 31.
Unit 17(B) and (C)—that portion of 17(C) east of the Nushagak River—5 caribou; however, no more than 2 caribou may be bulls.	Aug. 1–Apr. 15.
Sheep:	
1 ram with full curl horn or larger	Aug. 10–Sept. 20.
Moose:	
Unit 17(B)—that portion that includes all the Mulchatna River drainage upstream from and including the Chilchitna River drainage—1 bull by State registration permit only; however, during the period Sept. 1–Sept. 15 a spike/fork bull or a bull with 50-inch antlers or with 3 or more brow tines on one side may be taken with a State harvest ticket.	Aug. 20–Sept. 15.
Remainder of Unit 17(B)—1 bull by State registration permit only; however, during the period Sept. 1–Sept. 15 a spike/fork bull or a bull with 50-inch antlers or with 3 or more brow tines on one side may be taken with a State harvest ticket.	Aug. 20–Sept. 15. Dec. 1–Dec. 31.
Unit 17(C)—that portion that includes the Iowithla drainage and Sunshine Valley and all lands west of Wood River and south of Aleknagik Lake—1 bull by State registration permit only; however, during the period Sept. 1–Sept. 15 a spike/fork bull or a bull with 50-inch antlers or with 3 or more brow tines on one side may be taken with a State harvest ticket.	Aug. 20–Sept. 15.
Remainder of Unit 17(C)—1 bull by State registration permit only; however, during the period Sept. 1–Sept. 15 a spike/fork bull or a bull with 50-inch antlers or with 3 or more brow tines on one side may be taken with a State harvest ticket.	Aug. 20–Sept. 15. Dec. 1–Dec. 31.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase):	
No limit	Dec. 1–Mar. 15.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Lynx:	
2 lynx	Nov. 10–Feb. 28.
Wolf:	
5 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	

Harvest limits	Open season
15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping:	
Beaver:	
Unit 17(A)—20 beaver per season	Jan. 1–Feb. 28.
Unit 17(B) and (C)—20 beaver per season	Jan. 1–Feb. 28.
Coyote:	
No limit	Nov. 10–Mar. 31.
Fox, Arctic (Blue and White Phase):	
No limit	Nov. 10–Feb. 28.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10–Feb. 28.
Lynx:	
No limit	Nov. 10–Feb. 28.
Marten:	
No limit.	Nov. 10–Feb. 28.
Mink and Weasel:	
No limit	Nov. 10–Feb. 28.
Muskrat:	
No limit	Nov. 10–June 10.
Otter:	
No limit	Nov. 10–Mar. 31.
Wolf:	
No limit.	Nov. 10–Mar. 31.
Wolverine:	
No limit	Nov. 10–Feb. 28.

(18) Unit 18. (i) Unit 18 consists of that area draining into the Yukon and Kuskokwim Rivers downstream from a straight line drawn between Lower Kalskag and Paimiut and the drainages flowing into the Bering Sea from Cape Newenham on the south to and including the Pastolik River drainage on the north; Nunivak, St. Matthew, and adjacent islands between Cape Newenham and the Pastolik River;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) The Kalskag Controlled Use Area which consists of that portion of Unit 18 bounded by a line from Lower Kalskag on the Kuskokwim River, northwesterly to Russian Mission on the Yukon River, then east along the north bank of the Yukon River to the old site of Paimiut, then back to Lower Kalskag is closed to the use of aircraft for hunting any ungulate, bear, wolf, or wolverine, including the transportation of any hunter and ungulate, bear, wolf, or wolverine part; however, this does not apply to transportation of a hunter or ungulate, bear, wolf, or wolverine part by aircraft between publicly owned airports in the Controlled Use Area or between a publicly owned airport within the Area and points outside the Area;

(B) The Western Alaska Brown Bear Management Area which consists of Unit 17(A), that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake, Unit 18, and that portion of Unit 19(A) and (B) downstream of and including the Aniak River drainage, is open to brown bear hunting by State registration permit in lieu of a resident tag; no resident tag is required for taking brown bears in the Western Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting.

(iii) Unit-specific regulations;

(A) A firearm may be used to take beaver under a trapping license in Unit 18 from Apr. 1–Jun. 10.

(B) [Reserved].

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1–June 30.
Brown Bear:	
1 bear	Sept. 1–May 31.
Caribou:	
Unit 18—that portion south of the Yukon River—Kilbuck caribou herd; rural Alaska residents domiciled in Tuluksak, Akiak, Akiachak, Kwethluk, Bethel, Oscarville, Napaaskiak, Napakiak, Kasigiuk, Atmauthluak, Nunapitchuk, Tuntutuliak, Eek, Quinhagak, Goodnews Bay, Platinum, Togiak, and Twin Hills, only. A Federal registration permit is required. The number of permits available for these hunts will be determined at a later date. The season will be closed when the total harvest reaches guidelines as described in the approved "Oavilnguut (Kilbuck) Caribou Herd Cooperative Management Plan.	Dec. 15–Jan. 9. Feb. 23–Mar. 15.
Unit 18—that portion north of the Yukon River—5 caribou per day	Aug. 1–Mar. 31.
Remainder of Unit 18	No open season.
Moose:	
Unit 18—that portion north and west of a line from Cape Romanzof to Kuzilvak Mountain, and then to Mountain Village, and west of, but not including, the Andreafsky River drainage—1 antlered bull.	Sept. 5–Sept. 25.
Unit 18—Goodnews River and Kanektok River drainages	No open season.

Harvest limits	Open season
Unit 18—Kuskokwim River drainage—1 antlered bull. A 10-day hunt (1 bull, evidence of sex required) will be opened by announcement sometime between Dec. 1 and Feb. 28.	Aug. 25–Sept. 25. Winter season to be announced.
Remainder of Unit 18—1 antlered bull. A 10-day hunt (1 bull, evidence of sex required) will be opened by announcement sometime between Dec. 1 and Feb. 28.	Sept. 1–Sept. 30. Winter season to be announced.
Public lands in Unit 18 are closed to the hunting of moose, except by rural Alaska residents of Unit 18 and Upper Kalskag during seasons identified above.	
Coyote:	
2 coyotes	Sept. 1–Apr. 30
Fox, Arctic (Blue and White Phase):	
2 foxes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Lynx:	
2 lynx	Nov. 10–Mar. 31.
Wolf:	
5 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 10–May 30.
Trapping:	
Beaver:	
No limit	Nov. 1–June 10.
Coyote:	
No limit	Nov. 10–Mar. 31.
Fox, Arctic (Blue and White Phase):	
No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10–Mar. 31.
Lynx:	
No limit	Nov. 10–Mar. 31.
Marten:	
No limit	Nov. 10–Mar. 31.
Mink and Weasel:	
No limit	Nov. 10–Jan. 31.
Muskrat:	
No limit	Nov. 10–June 10.
Otter:	
No limit	Nov. 10–Mar. 31.
Wolf:	
No limit	Nov. 10–Mar. 31.
Wolverine:	
No limit	Nov. 10–Mar. 31.

(19) Unit 19. (i) Unit 19 consists of the Kuskokwim River drainage upstream from Lower Kalskag:

(A) Unit 19(A) consists of the Kuskokwim River drainage downstream from and including the Moose Creek drainage on the north bank and downstream from and including the Stony River drainage on the south bank, excluding Unit 19(B);

(B) Unit 19(B) consists of the Aniak River drainage upstream from and including the Salmon River drainage, the Holitna River drainage upstream from and including the Bakbuk Creek drainage, that area south of a line from the mouth of Bakbuk Creek to the radar dome at Sparrevohn Air Force Base, including the Hoholitna River drainage upstream from that line, and the Stony River drainage upstream from and including the Can Creek drainage;

(C) Unit 19(C) consists of that portion of Unit 19 south and east of a line from Benchmark M#1.26 (approximately 1.26 miles south of the northwest corner of the original Mt. McKinley National Park boundary) to the peak of Lone Mountain, then due west to Big River, including the Big River drainage upstream from that line, and including the Swift River drainage upstream from and including the North Fork drainage;

(D) Unit 19(D) consists of the remainder of Unit 19;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) Lands within Mount McKinley National Park as it existed prior to December 2, 1980, are closed to subsistence uses. Subsistence uses as authorized by §_____.25(k)(19) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980;

(B) The Upper Kuskokwim Controlled Use Area, which consists of that portion of Unit 19(D) upstream from the mouth of Big River including the drainages of the Big River, Middle Fork, South Fork, East Fork, and Tonzona River, and bounded by a line following the west bank of the Swift Fork (McKinley Fork) of the Kuskokwim River to 152°50′ W. long., then north to the boundary of Denali National Preserve, then following

the western boundary of Denali National Preserve north to its intersection with the Minchumina-Telida winter trail, then west to the crest of Telida Mountain, then north along the crest of Munsatli Ridge to elevation 1,610, then northwest to Dyckman Mountain and following the crest of the divide between the Kuskokwim River and the Nowitna drainage, and the divide between the Kuskokwim River and the Nixon Fork River to Loaf bench mark on Halfway Mountain, then south to the west side of Big River drainage, the point of beginning, is closed during moose hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the Controlled Use Area, or between a publicly owned airport within the area and points outside the area;

(C) The Western Alaska Brown Bear Management Area, which consists of Unit 17(A), that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake, Unit 18, and that portion of Unit 19(A) and (B) downstream of and including the Aniak River drainage, is open to brown bear hunting by State registration permit in lieu of a resident tag; no resident tag is required for taking brown bears in the Western Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 30.

(B) [Reserved].

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1–June 30.
Brown Bear:	
Unit 19(A) and (B) that portion which is downstream of and including the Aniak River drainage—1 bear	Sept. 1–May 31.
Remainder of Unit 19(A), (B), and (D)—1 bear every four regulatory years	Sept. 10–May 25.
Caribou:	
Unit 19(A) north of Kuskokwim River—1 caribou	Aug. 10–Sept. 30. Nov. 1–Feb. 28.
Unit 19(A) south of the Kuskokwim River, and Unit 19(B) (excluding rural Alaska residents of Lime Village)—5 caribou	Aug. 1–Apr. 15.
Unit 19(C)—1 caribou	Aug. 10–Oct. 10.
Unit 19(D) south and east of the Kuskokwim River and North Fork of the Kuskokwim River—1 caribou	Aug. 10–Sept. 30. Nov. 1–Jan. 31.
Remainder of Unit 19(D)—1 caribou	Aug. 10–Sept. 30.
Unit 19—Rural Alaska residents domiciled in Lime Village only; no individual harvest limit but a village harvest quota of 200 caribou; cows and calves may not be taken from Apr. 1–Aug. 9. Reporting will be by a community reporting system.	July 1–June 30.
Sheep:	
1 ram with 7/8 curl	Aug. 10–Sept. 20.
Moose:	
Unit 19—Rural Alaska residents of Lime Village only—No individual harvest limit, but a village harvest quota of 40 moose (including those taken under the State Tier II system); either sex. Reporting will be by a community reporting system.	July 1–June 30.
Unit 19(A)—that portion north of the Kuskokwim River upstream from, but not including the Kolmakof River drainage and south of the Kuskokwim River upstream from, but not including the Holokuk River drainage—1 moose; however, antlerless moose may be taken only during the Feb. 1–Feb. 10 season.	Sept. 1–Sept. 20. Nov. 20–Nov. 30. Jan. 1–Jan. 10. Feb. 1–Feb. 10.
Remainder of Unit 19(A)—1 bull	Sept. 1–Sept. 20. Nov. 20–Nov. 30. Jan. 1–Jan. 10. Feb. 1–Feb. 10.
Unit 19(B)—1 antlered bull	Sept. 1–Sept. 30.
Unit 19(C)—1 antlered bull	Sept. 1–Oct. 10.
Unit 19(D)—that portion of the Upper Kuskokwim Controlled Use Area within the North Fork drainage upstream from the confluence of the South Fork to the mouth of the Swift Fork—1 antlered bull.	Sept. 1–Sept. 30.
Unit 19(D)—remainder of the Upper Kuskokwim Controlled Use Area—1 bull	Sept. 1–Sept. 30. Dec. 1–Feb. 28.
Remainder of Unit 19(D)—1 antlered bull	Sept. 1–Sept. 30. Dec. 1–Dec. 15.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Lynx:	
2 lynx	Nov. 1–Feb. 28.
Wolf:	
5 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):.	
20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping:	

Harvest limits	Open season
Beaver:	
No limit	Nov. 1–Apr. 15.
Coyote:	
No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1–Mar. 31.
Lynx:	
No limit	Nov. 1–Feb. 28.
Marten:	
No limit	Nov. 1–Feb. 28.
Mink and Weasel:	
No limit	Nov. 1–Feb. 28.
Muskrat:	
No limit	Nov. 1–June 10.
Otter:	
No limit	Nov. 1–Apr. 15.
Wolf:	
No limit	Nov. 1–Mar. 31.
Wolverine:	
No limit	Nov. 1–Mar. 31.

(20) Unit 20. (i) Unit 20 consists of the Yukon River drainage upstream from and including the Tozitna River drainage to and including the Hamlin Creek drainage, drainages into the south bank of the Yukon River upstream from and including the Charley River drainage, the Ladue River and Fortymile River drainages and the Tanana River drainage north of Unit 13 and downstream from the east bank of the Robertson River;

(A) Unit 20(A) consists of that portion of Unit 20 bounded on the south by the Unit 13 boundary, bounded on the east by the west bank of the Delta River, bounded on the north by the north bank of the Tanana River from its confluence with the Delta River downstream to its confluence with the Nenana River, and bounded on the west by the east bank of the Nenana River;

(B) Unit 20(B) consists of drainages into the north bank of the Tanana River from and including Hot Springs Slough upstream to and including the Banner Creek drainage;

(C) Unit 20(C) consists of that portion of Unit 20 bounded on the east by the east bank of the Nenana River and on the north by the north bank of the Tanana River downstream from the Nenana River;

(D) Unit 20(D) consists of that portion of Unit 20 bounded on the east by the east bank of the Robertson River and on the west by the west bank of the Delta River, and drainages into the north bank of the Tanana River from its confluence with the Robertson River downstream to, but excluding the Banner Creek drainage;

(E) Unit 20(E) consists of drainages into the south bank of the Yukon River upstream from and including the Charley River drainage, and the Ladue River drainage;

(F) Unit 20(F) consists of the remainder of Unit 20;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) Lands within Mount McKinley National Park as it existed prior to December 2, 1980, are closed to subsistence uses. Subsistence uses as authorized by § _____.25(k)(20) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980;

(B) Use of motorized vehicles or pack animals for hunting is prohibited from Aug. 5–Aug. 25 in the Delta Controlled Use Area, the boundary of which is defined as: a line beginning at the confluence of Miller Creek and the Delta River, then west to vertical angle bench mark Miller, then west to include all drainages of Augustana Creek and Black Rapids Glacier, then north and east to include all drainages of McGinnis Creek to its confluence with the Delta River, then east in a straight line across the Delta River to Mile 236.7 Richardson Highway, then north along the Richardson Highway to its junction with the Alaska Highway, then east along the Alaska Highway to the west bank of the Johnson River, then south along the west bank of the Johnson River and Johnson Glacier to the head of the Canwell Glacier, then west along the north bank of the Canwell Glacier and Miller Creek to the Delta River;

(C) The Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, is closed to the use of motorized vehicles, except aircraft and boats, and to licensed highway vehicles, snowmobiles, and firearms except as provided below. The use of snowmobiles is authorized only for the subsistence taking of wildlife by residents living within the Dalton Highway Corridor Management Area. The use of licensed highway vehicles is limited only to designated roads within the Dalton Highway Corridor Management Area. The use of firearms within the Corridor is authorized only for the residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor;

(D) The Glacier Mountain Controlled Use Area, which consists of that portion of Unit 20(E) bounded by a line beginning at Mile 140 of the Taylor Highway, then north along the highway to Eagle, then west along the cat trail from Eagle to Crooked Creek, then from Crooked Creek southwest along the west bank of Mogul Creek to its headwaters on North Peak, then west across North Peak to the headwaters of Independence Creek, then southwest along the west bank of Independence Creek to its confluence with the North Fork of the Fortymile River, then easterly along the south bank of the North Fork of the Fortymile River to its confluence with Champion Creek, then across the North Fork of the Fortymile River to the south bank of Champion Creek and easterly along the south bank of Champion Creek to its confluence with Little Champion Creek, then northeast along the east bank of Little Champion Creek to its headwaters, then northeasterly in a direct line to Mile 140 on the Taylor Highway, is closed to the use of any motorized vehicle for hunting from August 5–September 20; however, this

does not prohibit motorized access via, or transportation of harvested wildlife on, the Taylor Highway or any airport;

(E) The Minto Flats Management Area, which consists of that portion of Unit 20 bounded by the Elliot Highway beginning at Mile 118, then northeasterly to Mile 96, then east to the Tolovana Hotsprings Dome, then east to the Winter Cat Trail, then along the Cat Trail south to the Old Telegraph Trail at Dunbar, then westerly along the trail to a point where it joins the Tanana River three miles above Old Minto, then along the north bank of the Tanana River (including all channels and sloughs except Swan Neck Slough), to the confluence of the Tanana and Tolovana Rivers and then northerly to the point of beginning, is open to moose hunting by permit only;

(F) The Fairbanks Management Area, which consists of the Goldstream subdivision 0SE ¼ SE ¼, Section 28 and Section 33, Township 2 North, Range 1 West, Fairbanks Meridian) and that portion of Unit 20(B) bounded by a line from the confluence of Rosie Creek and the Tanana River, northerly along Rosie Creek to the divide between Rosie Creek and Cripple Creek, then down Cripple Creek to its confluence with Ester Creek, then up Ester Creek to its confluence with Ready Bullion Creek, then up Ready Bullion Creek to the summit of Ester Dome, then down Sheep Creek to its confluence with Goldstream Creek, then easterly along Goldstream Creek to its confluence with First Chance Creek, then up First Chance Creek to Tungsten Hill, then southerly along Steele Creek to its intersection with the Trans-Alaska Pipeline, then southerly along the pipeline right-of-way to the Chena River, then along the north bank of the Chena River to the Moose Creek dike, then southerly along Moose Creek dike to its intersection with the Tanana River, and then westerly along the north bank of the Tanana River to the point of beginning, is open to moose hunting by bow and arrow only;

(G) The Ferry Trail Management Area, which consists of that portion of Unit 20(A) bounded on the north by the Rex Trail; on the west by the east bank of the Nenana River from its intersection with the Rex Trail south to the divide forming the north boundary of the Lignite Creek drainage; on the south by that divide easterly and southerly to the headwaters of Sanderson Creek at Usibelli Peak, then along a southwesterly line to the confluence of Healy Creek and Coal Creek, then upstream easterly along the south bank of Healy Creek to the north fork of Healy Creek, then along the north fork of Healy Creek to its headwaters; on the east by a straight line from the headwaters of Healy Creek to the headwaters of Dexter Creek, then along Dexter Creek to the Totatlanika River, then down the east bank of the Totatlanika River to the Rex Trail is open to caribou hunting by permit only.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 30;

(B) Trapping of wolves in Unit 20(E) during April and October with a steel trap, or with a snare using cable smaller than 3/32 inch diameter, is prohibited;

(C) The taking of up to three moose per regulatory year by the residents of Unit 20 and 21 is allowed for the celebration known as the Nuchalawoyya Potlatch, under the terms of a Federal registration permit. Permits will be issued to individuals only at the request of the Native Village of Tanana. This three moose limit is not cumulative with that permitted by the State.

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1–June 30.
Brown Bear:	
Unit 20—except Unit 20(E)—1 bear every four regulatory years	Sept. 1–May 31.
Caribou:	
Unit 20(E)—1 bull by Federal registration permit only; the season will close when a harvest quota of 150 for the Fortymile herd has been reached.	Aug. 10–Sept. 30. Nov. 15–Feb. 28.
Unit 20(F)—Tozitna River drainage—1 caribou; however, only bull caribou may be taken Aug. 10–Sept. 30	Aug. 10–Sept. 30. Nov. 26–Dec. 10. Mar. 1–Mar. 15.
Unit 20(F)—south of the Yukon River	No open season.
Remainder of Unit 20(F)—1 bull	Aug. 10–Sept. 30.
Moose:	
Unit 20(A)—the Ferry Trail Management Area—1 bull with spike-fork or 50-inch antlers or antlers with 4 or more brow tines on one side.	Sept. 1–Sept. 20.
Remainder of Unit 20(A)—1 antlered bull	Sept. 1–Sept. 20.
Unit 20(B)—that portion within the Minto Flats Management Area—1 bull by Federal registration permit only	Sept. 1–Sept. 20. Jan. 10–Feb. 28.
Unit 20(B)—the drainage of the Middle Fork of the Chena River and that portion of the Salcha River Drainage upstream from and including Goose Creek—1 antlered bull.	Sept. 1–Sept. 20.
Remainder of Unit 20(B)—1 antlered bull	Sept. 1–Sept. 20.
Unit 20(C)—that portion within Denali National Park and Preserve west of the Toklat River, excluding lands within Mount McKinley National Park as it existed prior to December 2, 1980—1 antlered bull; however, white-phased or partial albino (more than 50 percent white) moose may not be taken.	Sept. 1–Sept. 30. Nov. 15–Dec. 15.
Remainder of Unit 20(C)—1 antlered bull; however, white-phased or partial albino (more than 50 percent white) moose may not be taken.	Sept. 1–Sept. 30.
Unit 20(E)—that portion drained by the Ladue, Sixty-mile, and Forty-mile Rivers (all forks) from Mile 9½ to Mile 145 Taylor Highway, including the Boundary Cutoff Road—1 antlered bull.	Sept. 1–Sept. 15.
Remainder of Unit 20(E)—that portion draining into the Yukon River upstream from and including the Charley River drainage to and including the Boundary Creek drainages and the Taylor Highway from mile 145 to Eagle—1 antlered bull.	Sept. 5–Sept. 30.
Unit 20(F)—that portion within the Dalton Highway Corridor Management Area—1 antlered bull by Federal registration permit only.	Sept. 1–Sept. 25.
Remainder of Unit 20(F)—1 antlered bull	Sept. 1–Sept. 25.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.

Harvest limits	Open season
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Lynx:	
Unit 20(E)—2 lynx	Nov. 1–Jan. 31.
Remainder of Unit 20—2 lynx	Dec. 1–Jan. 31.
Wolf:	
10 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
Unit 20(D)—that portion south of the Tanana River and west of the Johnson River—15 per day, 30 in possession, provided that not more than 5 per day and 10 in possession are sharp-tailed grouse.	Aug. 25–Mar. 31.
Unit 20—Remainder—15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
Unit 20—those portions within five miles of Alaska Route 5 (Taylor Highway, both to Eagle and the Alaska-Canada boundary) and that portion of Alaska Route 4 (Richardson Highway) south of Delta Junction—20 per day, 40 in possession.	Aug. 10–Mar. 31.
Unit 20—Remainder—20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping:	
Beaver:	
Unit 20(A), 20(B), Unit 20(C), Unit 20(E), and 20(D)—that portion draining into the north bank of the Tanana River, including the islands in the Tanana River—25 beaver.	Nov. 1–Apr. 15.
Remainder of Unit 20(D)—15 beaver	Feb. 1–Apr. 15.
Unit 20(F)—50 beaver	Nov. 1–Apr. 15.
Coyote:	
Unit 20(E)—No limit	Nov. 1–Feb. 28.
Remainder Unit 20—No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1–Feb. 28.
Lynx:	
No limit	Dec. 1–Jan. 15.
Marten:	
No limit	Nov. 1–Feb. 28.
Mink and Weasel:	
No limit	Nov. 1–Feb. 28.
Muskrat:	
Unit 20(E)—No limit	Sept. 20–June 10.
Remainder of Unit 20—No limit	Nov. 1–June 10.
Otter:	
No limit	Nov. 1–Apr. 15.
Wolf:	
Unit 20(E)—No limit	Oct. 1–Apr. 30
Remainder of Unit 20—No limit	Nov. 1–Mar. 31.
Wolverine:	
No limit	Nov. 1–Feb. 28.

(21) Unit 21. (i) Unit 21 consists of drainages into the Yukon River upstream from Paimiut to, but not including the Tozitna River drainage on the north bank, and to, but not including the Tanana River drainage on the south bank; and excluding the Koyukuk River upstream and including from the Dulbi River drainage:

(A) Unit 21(A) consists of the Innoko River drainage upstream from and including the Iditarod River drainage, and the Nowitna River drainage upstream from the Little Mud River;

(B) Unit 21(B) consists of the Yukon River drainage upstream from Ruby and east of the Ruby-Poorman Road, downstream from and excluding the Tozitna River and Tanana River drainages, and excluding the Nowitna River drainage upstream from the Little Mud River, and excluding the Melozitna River drainage upstream from Grayling Creek;

(C) Unit 21(C) consists of the Melozitna River drainage upstream from Grayling Creek, and the Dulbi River drainage upstream from and including the Cottonwood Creek drainage;

(D) Unit 21(D) consists of the Yukon River drainage from and including the Blackburn Creek drainage upstream to Ruby, including the area west of the Ruby-Poorman Road, excluding the Koyukuk River drainage upstream from the Dulbi River drainage, and excluding the Dulbi River drainage upstream from Cottonwood Creek;

(E) Unit 21(E) consists of the Yukon River drainage from Paimiut upstream to, but not including the Blackburn Creek drainage, and the Innoko River drainage downstream from the Iditarod River drainage;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Koyukuk Controlled Use Area, which consists of those portions of Units 21 and 24 bounded by a line from the north bank of the Yukon River at Koyukuk, then northerly to the confluences of the Honhosa and Kateel Rivers, then northeasterly to the confluences of Billy Hawk Creek and the Huslia River (65° 57′ N. lat., 156° 41′ W. long.), then easterly to the south end of Solsmunket Lake, then east to Hughes, then south to Little Indian River, then southwesterly to the crest of Hochandochtla Mountain, then southwest to the mouth of Cottonwood Creek then southwest to Bishop Rock,

then westerly along the north bank of the Yukon River (including Koyukuk Island) to the point of beginning, is closed during moose-hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area; all hunters on the Koyukuk River passing the ADF&G operated check station at Ella's Cabin (15 miles upstream from the Yukon on the Koyukuk River) are required to stop and report to ADF&G personnel at the check station;

(B) The Paradise Controlled Use Area, which consists of that portion of Unit 21 bounded by a line beginning at the old village of Paimiut, then north along the west bank of the Yukon River to Paradise, then northwest to the mouth of Stanstrom Creek on the Bonasila River, then northeast to the mouth of the Anvik River, then along the west bank of the Yukon River to the lower end of Eagle Island (approximately 45 miles north of Grayling), then to the mouth of the Iditarod River, then down the east bank of the Innoko River to its confluence with Paimiut Slough, then south along the east bank of Paimiut Slough to its mouth, and then to the old village of Paimiut, is closed during moose hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or part of moose; however, this does not apply to transportation of a moose hunter or part of moose by aircraft between publicly owned airports in the Controlled Use Area or between a publicly owned airport within the area and points outside the area.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 30.

(B) A firearm may be used to take beaver with a trapping license in Unit 21(E) from Apr. 1–June 1.

(C) The taking of up to three moose per regulatory year by the residents of Units 20 and 21 is allowed for the celebration known as the Nuchalawoyya Potlatch, under the terms of a Federal registration permit. Permits will be issued to individuals only at the request of the Native Village of Tanana. This three moose limit is not cumulative with that permitted by the State.

(D) The taking of up to three moose per regulatory year by the residents of Unit 21 is allowed for the celebration known as the Kaltag/Nulato Stickdance, under the terms of a Federal registration permit. Permits will be issued to individuals only at the request of the Native Village of Kaltag or Nulato. This three moose limit is not cumulative with that permitted by the State.

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1–June 30.
Brown Bear:	
1 bear every four regulatory years	Sept. 1–May 31.
Caribou:	
Unit 21(A), (B), (C), and (E)—1 caribou	Aug. 10–Sept. 30.
Unit 21(D)—North of the Yukon River and east of the Koyukuk River—1 caribou; however, 2 additional caribou may be taken during a winter season to be announced.	Aug. 10–Sept. 30. Winter season to be announced.
Unit 21(D)—Remainder (Western Arctic Caribou herd)—5 caribou per day; however, cow caribou may not be taken May 16–June 30.	July 1–June 30.
Moose:	
Unit 21(A)—1 bull	Aug. 20–Sept. 25. Nov. 1–Nov. 30.
Unit 21(B) and (C)—1 antlered bull	Sept. 5–Sept. 25. Sept. 5–Sept. 25.
Unit 21(D)—1 moose; however, antlerless moose may be taken only from Sept. 21–Sept. 25 and Feb. 1–Feb. 5; moose may not be taken within one-half mile of the Yukon River during the February season.	Feb. 1–Feb. 5.
Unit 21(E)—1 moose; however, only bulls may be taken from Aug. 20–Sept. 25; moose may not be taken within one-half mile of the Innoko or Yukon River during the February season.	Aug. 20–Sept. 25. Feb. 1–Feb. 10.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Lynx:	
2 lynx	Nov. 1–Feb. 28.
Wolf:	
5 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping:	
Beaver:	
Unit 21(E)—No Limit	Nov. 1–June 1.
Remainder of Unit 21—No Limit	Nov. 1–Apr. 15.
Coyote:	
No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1–Feb. 28.
Lynx:	
No limit	Nov. 1–Feb. 28.
Marten:	
No limit	Nov. 1–Feb. 28.
Mink and Weasel:	
No limit	Nov. 1–Feb. 28.
Muskrat:	
No limit	Nov. 1–June 10.
Otter:	
No limit	Nov. 1–Apr. 15.
Wolf:	
No limit	Nov. 1–Mar. 31.
Wolverine:	
No limit	Nov. 1–Mar. 31.

(22) Unit 22. (i) Unit 22 consists of Bering Sea, Norton Sound, Bering Strait, Chukchi Sea, and Kotzebue Sound drainages from, but excluding, the Pastolik River drainage in southern Norton Sound to, but not including, the Goodhope River drainage in Southern Kotzebue Sound, and all adjacent islands in the Bering Sea between the mouths of the Goodhope and Pastolik Rivers:

(A) Unit 22(A) consists of Norton Sound drainages from, but excluding, the Pastolik River drainage to, and including, the Ungalik River drainage, and Stuart and Besboro Islands;

(B) Unit 22(B) consists of Norton Sound drainages from, but excluding, the Ungalik River drainage to, and including, the Topkok Creek drainage;

(C) Unit 22(C) consists of Norton Sound and Bering Sea drainages from, but excluding, the Topkok Creek drainage to, and including, the Tisuk River drainage, and King and Sledge Islands;

(D) Unit 22(D) consists of that portion of Unit 22 draining into the Bering Sea north of, but not including, the Tisuk River to and including Cape York, and St. Lawrence Island;

(E) Unit 22(E) consists of Bering Sea, Bering Strait, Chukchi Sea, and Kotzebue Sound drainages from Cape York to, but excluding, the Goodhope River drainage, and including Little Diomede Island and Fairway Rock.

(ii) Unit-specific regulations;

(A) A firearm may be used to take beaver with a trapping license in Unit 22 during the established seasons.

(B) Snowmachines may be used to take caribou and moose in Unit 22 during established seasons; however, shooting from a snowmachine in motion is prohibited.

(C) Coyote, incidentally taken with a trap or snare intended for red fox or wolf, may be used for subsistence purposes.

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1–June 30.
Brown Bear:	
Unit 22(C)—1 bear every four regulatory years	Sept. 1–Oct. 31. May 10–May 25.
Remainder of Unit 22—1 bear every four regulatory years	Sept. 1–Oct. 31. Apr. 15–May 25.
Caribou:	
Unit 22(A) and (B)—5 caribou per day; however, cow caribou may not be taken May 16–June 30.	July 1–June 30.
Moose:	
Unit 22(A)—1 antlered bull; however the period of Oct. 1–Oct. 10 is restricted to residents of Unit 22(A) only	Aug. 1–Oct. 10. Dec. 1–Jan. 31.
Unit 22(B)—1 moose; however, antlerless moose may be taken only from Dec. 1–Dec. 31; no person may take a cow accompanied by a calf.	Aug. 1–Jan. 31.
Unit 22(C)—1 antlered bull	Sept. 1–Sept. 14.
Unit 22(D)—1 moose; however, antlerless moose may be taken only from Dec. 1–Dec. 31; no person may take a cow accompanied by a calf.	Aug. 1–Jan. 31.
Unit 22(E)—1 moose; no person may take a cow accompanied by a calf	Aug. 1–Mar. 31.
Muskox:	
Unit 22(D) and (E)—1 bull by Federal registration permit only. Federal public lands are closed to the taking of muskox except by Federally-qualified subsistence users.	Sept. 1–Jan. 31.
Remainder of Unit 22	No open season.
Coyote:	
Federal public lands are closed to the taking of coyotes	No open season.
Fox, Arctic (Blue and White Phase):	
2 foxes	Sept. 1–Apr. 30.
Fox Red (including Cross, Black and Silver Phases):	
10 foxes	Nov. 1–Apr. 15.
Hare (Snowshoe and Tundra):	
No limit	Sept. 1–Apr. 15.
Lynx:	
2 lynx	Nov. 1–Apr. 15.
Wolf:	
No limit	Nov. 1–Apr. 15.
Wolverine:	

Harvest limits	Open season
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
Unit 22(A) and 22(B) east of and including the Niukluk River drainage—40 per day, 80 in possession	Aug. 10–Apr. 30.
Unit 22 Remainder—20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping:	
Beaver:	
Unit 22(A) and (B)—50 beaver	Nov. 1–June 10.
Unit 22(C), (D), and (E)—50 beaver	Nov. 1–Apr. 15.
Coyote:	
Federal public lands are closed to the taking of coyotes	No open season.
Fox, Arctic (Blue and White Phase):	
No limit	Nov. 1–Apr. 15.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1–Apr. 15.
Lynx:	
No limit	Nov. 1–Apr. 15.
Marten:	
No limit	Nov. 1–Apr. 15.
Mink and Weasel:	
No limit	Nov. 1–Jan. 31.
Muskrat:	
No limit	Nov. 1–June 10.
Otter:	
No limit	Nov. 1–Apr. 15.
Wolf:	
No limit	Nov. 1–Apr. 15.
Wolverine:	
No limit	Nov. 1–Apr. 15.

(23) Unit 23. (i) Unit 23 consists of Kotzebue Sound, Chukchi Sea, and Arctic Ocean drainages from and including the Goodhope River drainage to Cape Lisburne;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Noatak Controlled Use Area, which consists of that portion of Unit 23 in a corridor extending five miles on either side of the Noatak River beginning at the mouth of the Noatak River, and extending upstream to the mouth of Sapun Creek, is closed for the period August 25–September 15 to the use of aircraft in any manner either for hunting of ungulates, bear, wolves, or wolverine, or for transportation of hunters or harvested species. This does not apply to the transportation of hunters or parts of ungulates, bear, wolves, or wolverine by regularly scheduled flights to communities by carriers that normally provide scheduled air service;

(B) The Northwest Alaska Brown Bear Management Area, which consists of those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24 west of the Dalton Highway Corridor Management Area, and Unit 26(A) is open to brown bear hunting by State registration permit in lieu of a resident tag; no resident tag is required for taking brown bears in the Northwest Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting; aircraft may not be used in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears or parts of bears; however, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iii) Unit-specific regulations;

(A) Motor-driven boats or snowmachines may be used to take caribou; however, shooting from a snowmachine in motion is prohibited.

(B) Swimming caribou may be taken with a firearm using rimfire cartridges;

(C) A firearm may be used to take beaver with a trapping license in all of Unit 23 from Nov. 1–Jun. 10.

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1–June 30.
Brown Bear:	
Unit 23—except the Baldwin Peninsula north of the Arctic Circle—1 bear	Sept. 1–May 31.
Remainder of Unit 23—1 bear every four regulatory years	Sept. 1–Oct. 10.
	Apr. 15–May 25.
Caribou:	
15 caribou per day; however, cow caribou may not be taken May 16–June 30	July 1–June 30.
Sheep:	
Unit 23—that portion west of Howard Pass and the Aniuk, Cutler and Redstone Rivers	No open season.
Remainder of Unit 23—1 ram with 7/8 curl horn or larger.	Aug. 10–Sept. 20.
Remainder of Unit 23—1 sheep.	Oct. 1–Apr. 30.

Harvest limits	Open season
Moose:	
Unit 23—that portion north and west of and including the Singoalik River drainage, and all lands draining into the Kukpuk and Ipewik Rivers—1 moose; no person may take a cow accompanied by a calf.	July 1–Mar. 31.
Unit 23—that portion lying within the Noatak River drainage—1 moose; however, antlerless moose may be taken only from Nov. 1–Mar. 31; no person may take a cow accompanied by a calf.	Aug. 1–Sept. 15.
	Oct. 1–Mar. 31.
Remainder of Unit 23—1 moose; no person may take a cow accompanied by a calf	Aug. 1–Mar. 31.
Muskox:	
Unit 23 South of Kotzebue Sound and west of and including the Buckland River drainage—1 bull by Federal registration permit only. Federal public lands are closed to the taking of muskox except by Federally-qualified subsistence users.	Sept. 1–Jan. 31.
Remainder of Unit 23	No open season.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase):	
2 foxes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1	Sept. 1–Mar. 15.
Hare: (Snowshoe and Tundra)	
No limit	July 1–June 30.
Lynx:	
2 lynx	Dec. 1–Jan. 15.
Wolf:	
5 wolves	Nov. 10–Mar. 31.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping:	
Beaver:	
Unit 23—the Kobuk and Selawik River drainages—50 beaver	Nov. 1–June 10.
Remainder of Unit 23—30 beaver	Nov. 1–June 10.
Coyote:	
No limit	Nov. 1–Apr. 15
Fox, Arctic (Blue and White Phase):	
No limit	Nov. 1–Apr. 15.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1–Apr. 15.
Lynx:	
3 lynx	Dec. 1–Jan. 15.
Marten:	
No limit	Nov. 1–Apr. 15.
Mink and Weasel:	
No limit	Nov. 1–Jan. 31.
Muskrat:	
No limit	Nov. 1–June 10.
Otter:	
No limit	Nov. 1–Apr. 15.
Wolf:	
No limit	Nov. 10–Mar. 31.
Wolverine:	
No limit	Nov. 1–Apr. 15.

(24) Unit 24. (i) Unit 24 consists of the Koyukuk River drainage upstream from but not including the Dulbi River drainage;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, is closed to the use of motorized vehicles, except aircraft and boats, and to licensed highway vehicles, snowmobiles, and firearms except as follows: The use of snowmobiles is authorized only for the subsistence taking of wildlife by residents living within the Dalton Highway Corridor Management Area. The use of licensed highway vehicles is limited only to designated roads within the Dalton Highway Corridor Management Area. The use of firearms within the Corridor is authorized only for the residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor;

(B) The Kanuti Controlled Use Area, which consists of that portion of Unit 24 bounded by a line from the Bettles Field VOR to the east side of Fish Creek Lake, to Old Dummy Lake, to the south end of Lake Todatonten (including all waters of these lakes), to the northernmost headwaters of Siruk Creek, to the highest peak of Double Point Mountain, then back to the Bettles Field VOR, is closed during moose-hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a

publicly owned airport within the area and points outside the area;

(C) The Koyukuk Controlled Use Area, which consists of those portions of Units 21 and 24 bounded by a line from the north bank of the Yukon River at Koyukuk, then northerly to the confluences of the Honhosa and Kateel Rivers, then northeasterly to the confluences of Billy Hawk Creek and the Huslia River (65° 57' N. lat., 156° 41' W. long.), then easterly to the south end of Solsmunket Lake, then east to Hughes, then south to Little Indian River, then southwesterly to the crest of Hochandochtla Mountain, then southwest to the mouth of Cottonwood Creek, then southwest to Bishop Rock, then westerly along the north bank of the Yukon River (including Koyukuk Island) to the point of beginning, is closed during moose-hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area; all hunters on the Koyukuk River passing the ADF&G operated check station at Ella's Cabin (15 miles upstream from the Yukon on the Koyukuk River) are required to stop and report to ADF&G personnel at the check station;

(D) The Northwest Alaska Brown Bear Management Area, which consists of those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24 west of the Dalton Highway Corridor Management Area, and Unit 26(A), is open to brown bear hunting by State registration permit in lieu of a resident tag. No resident tag is required for taking brown bears in the Northwest Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting. Aircraft may not be used in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears or parts of bears. However, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 30.

(B) Arctic fox, incidentally taken with a trap or snare intended for red fox, may be used for subsistence purposes.

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1–June 30.
Brown Bear:	
Unit 24—that portion west of the Dalton Highway Corridor Management Area—1 bear	Sept. 1–May 31.
Remainder of Unit 24—1 bear every four regulatory years	Sept. 1–May 31.
Caribou:	
Unit 24—the Kanuti River drainage upstream from Kanuti, Chalatna Creek, the Fish Creek drainage (including Bonanza Creek)—1 bull.	Aug. 10–Sept. 30.
Remainder of Unit 24—5 caribou per day; however, cow caribou may not be taken May 16–June 30	July 1–June 30.
Sheep:	
Unit 24—that portion within the Gates of the Arctic National Park—3 sheep	Aug. 1–Apr. 30.
Unit 24—that portion within the Dalton Highway Corridor Management Area; except, Gates of the Arctic National Park—1 ram with 7/8 curl horn or larger by Federal registration permit only.	Aug. 10–Sept. 20.
Remainder of Unit 24—1 ram with 7/8 curl horn or larger	Aug. 10–Sept. 20.
Moose:	
Unit 24—that portion within the Koyukuk Controlled Use Area—1 moose; however, antlerless moose may be taken only during the periods of Sept. 21–Sept. 25, Dec. 1–Dec. 10, and Mar. 1–Mar. 10.	Sept. 5–Sept. 25. Dec. 1–Dec. 10. Mar. 1–Mar. 10.
Unit 24—that portion that includes the John River drainage within the Gates of the Arctic National Park—1 moose	Aug. 1–Dec. 31.
Unit 24—all drainages to the north of the Koyukuk River upstream from and including the Alatna River to and including the North Fork of the Koyukuk River, except that portion of the John River within the Gates of the Arctic National Park—1 moose; however, antlerless moose may be taken only from Sept. 21–Sept. 25 and Mar. 1–Mar. 10.	Aug. 25–Sept. 25. Mar. 1–Mar. 10.
Unit 24—that portion within the Dalton Highway Corridor Management Area; except, Gates of the Arctic National Park—1 antlered bull by Federal registration permit only.	Aug. 25–Sept. 25.
Remainder of Unit 24—1 antlered bull. Public lands in the Kanuti Controlled Use Area are closed to taking of moose, except by eligible rural Alaska residents during seasons identified above.	Aug. 25–Sept. 25.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Lynx:	
2 lynx	Nov. 1–Feb. 28.
Wolf:	
5 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping:	
Beaver:	
No limit	Nov. 1–Apr. 15.

Harvest limits	Open season
Coyote:	
No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1–Feb. 28.
Lynx:	
No limit	Nov. 1–Feb. 28.
Marten:	
No limit	Nov. 1–Feb. 28.
Mink and Weasel:	
No limit	Nov. 1–Feb. 28.
Muskrat:	
No limit	Nov. 1–June 10.
Otter:	
No limit	Nov. 1–Apr. 15.
Wolf:	
No limit	Nov. 1–Mar. 31.
Wolverine:	
No limit	Nov. 1–Mar. 31.

(25) Unit 25. (i) Unit 25 consists of the Yukon River drainage upstream from but not including the Hamlin Creek drainage, and excluding drainages into the south bank of the Yukon River upstream from the Charley River:

(A) Unit 25(A) consists of the Hodzana River drainage upstream from the Narrows, the Chandalar River drainage upstream from and including the East Fork drainage, the Christian River drainage upstream from Christian, the Sheenjek River drainage upstream from and including the Thluichohnjik Creek, the Coleen River drainage, and the Old Crow River drainage;

(B) Unit 25(B) consists of the Little Black River drainage upstream from but not including the Big Creek drainage, the Black River drainage upstream from and including the Salmon Fork drainage, the Porcupine River drainage upstream from the confluence of the Coleen and Porcupine Rivers, and drainages into the north bank of the Yukon River upstream from Circle, including the islands in the Yukon River;

(C) Unit 25(C) consists of drainages into the south bank of the Yukon River upstream from Circle to the Subunit 20(E) boundary, the Birch Creek drainage upstream from the Steese Highway bridge (milepost 147), the Preacher Creek drainage upstream from and including the Rock Creek drainage, and the Beaver Creek drainage upstream from and including the Moose Creek drainage;

(D) Unit 25(D) consists of the remainder of Unit 25;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, is closed to the use of motorized vehicles, except aircraft and boats, and to licensed highway vehicles, snowmobiles, and firearms except as follows: The use of snowmobiles is authorized only for the subsistence taking of wildlife by residents living within the Dalton Highway Corridor Management Area. The use of licensed highway vehicles is limited only to designated roads within the Dalton Highway Corridor Management Area. The use of firearms within the Corridor is authorized only for the residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor;

(B) The Arctic Village Sheep Management Area; that portion of Unit 25(A) north and west of Arctic Village, which is bounded on the east by the East Fork Chandalar River beginning at the confluence of Red Sheep Creek and proceeding southwesterly downstream past Arctic Village to the confluence with Crow Nest Creek, continuing up Crow Nest Creek, through Portage Lake, to its confluence with the Junjik River; then down the Junjik River past Timber Lake and a larger tributary, to a major, unnamed tributary, northwesterly, for approximately 6 miles where the stream forks into two roughly equal drainages; the boundary follows the easternmost fork, proceeding almost due north to the headwaters and intersects the Continental Divide; the boundary then follows the Continental Divide easterly, through Carter Pass, then easterly and northeasterly approximately 62 miles along the divide to the head waters of the most northerly tributary of Red Sheep Creek then follows southerly along the divide designating the eastern extreme of the Red Sheep Creek drainage then to the confluence of Red Sheep Creek and the East Fork Chandalar River. Sheep hunting in this area is restricted to residents of Arctic Village, Venetie, Fort Yukon, Kaktovik and Chalkytsik.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 30.

(B) Motor-driven boats or snowmachines may be used to take caribou and moose; however, shooting from a snowmachine in motion is prohibited.

Harvest limits	Open season
Hunting:	
Black bear:	
3 bears	July 1–June 30.
Caribou:	
Unit 25(A), (B), and the remainder of Unit 25(D)—10 caribou; however, no more than 5 caribou may be transported from these units per regulatory year.	July 1–Apr. 30.
Unit 25(C)—that portion south and east of the Steese Highway—1 bull by Federal registration permit only; the season will close when a harvest quota for the Fortymile herd has been reached. The harvest quota will be determined by the Board after consultation with ADF&G and announced before the season opening.	Aug. 10–Sept. 30. Dec. 1–Feb. 28.

Harvest limits	Open season
25(C)—that portion north and west of the Steese Highway—1 caribou; however, only bull caribou may be taken during the Aug. 10–Sept. 20 season. During the winter season, caribou may be taken only with a Federal registration permit.	Aug. 10–Sept. 20. Feb. 15–Mar. 15.
Unit 25(D)—that portion of Unit 25(D) drained by the west fork of the Dall River west of 150° W. long.—1 bull	Aug. 10–Sept. 30.
Sheep:	
Unit 25(A)—that portion within the Dalton Highway Corridor Management Area	No open season.
Units 25(A)—Arctic Village Sheep Management Area—2 rams by Federal registration permit only. Public lands are closed to the taking of sheep except by rural Alaska residents of Arctic Village, Venetie, Fort Yukon, Kaktovik and Chalkytsik during seasons identified above.	Aug. 10–Apr. 30.
Remainder of Unit 25(A)—3 sheep by Federal registration permit only	Aug. 10–Apr. 30.
Moose:	
Unit 25(A)—1 antlered bull	Aug. 25–Sept. 25. Dec. 1–Dec. 10.
Unit 25(B)—that portion within the Porcupine River drainage upstream from, but excluding the Coleen River drainage—1 antlered bull.	Aug. 25–Sept. 30. Dec. 1–Dec. 10.
Unit 25(B)—that portion draining into the north bank of the Yukon River upstream from and including the Kandik River drainage, including the islands in the Yukon River—1 antlered bull.	Sept. 5–Sept. 30. Dec. 1–Dec. 15.
Remainder of Unit 25(B)—1 antlered bull	Aug. 25–Sept. 25. Dec. 1–Dec. 15.
Unit 25(C)—1 antlered bull	Sept. 1–Sept. 15.
Unit 25(D) (West)—that portion lying west of a line extending from the Unit 25(D) boundary on Preacher Creek, then downstream along Preacher Creek, Birch Creek and Lower Mouth Birch Creek to the Yukon River, then downstream along the north bank of the Yukon River (including islands) to the confluence of the Hadweenzik River, then upstream along the west bank of the Hadweenzik River to the confluence of Forty and One-Half Mile Creek, then upstream along Forty and One-Half Mile Creek to Nelson Mountain on the Unit 25(D) boundary—1 bull by a Federal registration permit. Alternate permits allowing for designated hunters are available to qualified applicants who reside in Beaver, Birch Creek, or Stevens Village. Moose hunting on public land in this portion of Unit 25(D) (West) is closed at all times except for residents of Beaver, Birch Creek and Stevens Village during seasons identified above. The moose season will be closed when 30 antlered moose have been harvested in the entirety of Unit 25(D) (West).	Aug. 25–Feb. 28.
Remainder of Unit 25(D)—1 antlered moose	Aug. 25–Sept. 25. Dec. 1–Dec. 20.
Beaver:	
Unit 25, excluding Unit 25(C)—1 beaver per day; 1 in possession	Apr. 16–Oct. 31.
Unit 25(C)	No open season.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Lynx:	
Unit 25(C)—2 lynx	Dec. 1–Jan. 31.
Remainder of Unit 25—2 lynx	Nov. 1–Feb. 28.
Wolf:	
Unit 25(A)—No limit	Aug. 10–Apr. 30.
Remainder of Unit 25—10 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
Unit 25(C)—15 per day, 30 in possession	Aug. 10–Mar. 31.
Remainder of Unit 25—15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
Unit 25(C)—those portions within 5 miles of Route 6 (Steese Highway)—20 per day, 40 in possession	Aug. 10–Mar. 31.
Remainder of Unit 25—20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping:	
Beaver:	
Unit 25(C)—25 beaver	Nov. 1–Apr. 15.
Remainder of Unit 25—50 beaver	Nov. 1–Apr. 15.
Coyote:	
No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1–Feb. 28.
Lynx:	
Unit 25(C)—No limit	Dec. 1–Jan. 15.
Remainder of Unit 25—No limit	Nov. 1–Feb. 28.
Marten:	
No limit	Nov. 1–Feb. 28.
Mink and Weasel:	
No limit	Nov. 1–Feb. 28.
Muskrat:	
No limit	Nov. 1–June 10.
Otter:	
No limit	Nov. 1–Apr. 15.

Harvest limits	Open season
Wolf:	
No limit	Nov. 1–Mar. 31.
Wolverine:	
Unit 25(C)—No limit	Nov. 1–Feb. 28.
Remainder of Unit 25—No limit	Nov. 1–Mar. 31.

(26) Unit 26. (i) Unit 26 consists of Arctic Ocean drainages between Cape Lisburne and the Alaska-Canada border including the Firth River drainage within Alaska:

(A) Unit 26(A) consists of that portion of Unit 26 lying west of the Itkillik River drainage and west of the east bank of the Colville River between the mouth of the Itkillik River and the Arctic Ocean;

(B) Unit 26(B) consists of that portion of Unit 26 east of Unit 26(A), west of the west bank of the Canning River and west of the west bank of the Marsh Fork of the Canning River;

(C) Unit 26(C) consists of the remainder of Unit 26;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Unit 26(A) Controlled Use Area, which consists of Unit 26(A), is closed to the use of aircraft in any manner for moose hunting, including transportation of moose hunters or parts of moose from Aug. 1–Aug. 31 and from Jan. 1–Mar. 31. No hunter may take or transport a moose, or part of a moose in Unit 26(A) after having been transported by aircraft into the unit. However, this does not apply to transportation of moose hunters or moose parts by regularly scheduled flights to and between villages by carriers that normally provide scheduled service to this area, nor does it apply to transportation by aircraft to or between publicly owned airports;

(B) The Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, is closed to the use of motorized vehicles, except aircraft and boats, and to licensed highway vehicles, snowmobiles, and firearms except as follows: The use of snowmobiles is authorized only for the subsistence taking of wildlife by residents living within the Dalton Highway Corridor Management Area. The use of licensed highway vehicles is limited only to designated roads within the Dalton Highway Corridor Management Area. The use of firearms within the Corridor is authorized only for the residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor;

(C) The Northwest Alaska Brown Bear Management Area, which consists of those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24 west of the Dalton Highway Corridor Management Area, and Unit 26(A), is open to brown bear hunting by State registration permit in lieu of a resident tag. No resident tag is required for taking brown bears in the Northwest Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting. Aircraft may not be used in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears or parts of bears. However, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iii) Unit-specific regulations;

(A) Motor-driven boats and snowmachines may be used to take caribou; however, shooting from a snowmachine in motion is prohibited.

(B) Swimming caribou may be taken with a firearm using rimfire cartridges;

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1–June 30.
Brown Bear:	
Unit 26(A)—1 bear by Federal registration permit only	May 1–Oct. 31.
Unit 26(B)—1 bear	May 1–Oct. 31.
Unit 26(B)—1 bear	Sept. 1–May 31.
Caribou:	
Unit 26(A)—10 caribou per day; however, cow caribou may not be taken May 16–June 30. Federal lands south of the Colville River and east of the Killik River are closed to the taking of caribou by non-Federally qualified subsistence users from Aug. 1–Sept. 30.	July 1–June 30.
Unit 26(B)—10 caribou per day; however, cow caribou may be taken only from Oct. 1–Apr. 30. Federal lands within the Gates of the Arctic National Preserve and the Dalton Highway Corridor are closed to the taking of caribou by non-Federally qualified subsistence users from Aug. 1–Sept. 30.	July 1–June 30.
Unit 26(C)—10 caribou per day	July 1–Apr. 30.
Not more than 5 caribou per regulatory year may be transported from Unit 26 except to the community of Anaktuvuk Pass.	
Sheep:	
Unit 26(A)—those portions within the Gates of the Arctic National Park—3 sheep.	Aug. 1–Apr. 30.
Unit 26(A)—that portion west of Howard Pass and the Etivluk River	No open season.
Unit 26(B)—that portion within the Dalton Highway Corridor Management Area—1 ram with 7/8 curl horn or larger by Federal registration permit only.	Aug. 10–Sept. 20.
Remainder of Unit 26(A) and (B)—including the Gates of the Arctic National Preserve—1 ram with 7/8 curl horn or larger.	Aug. 10–Sept. 20.

Harvest limits	Open season
Unit 26(C)—3 sheep per regulatory year; the Aug. 10–Sept. 20 season is restricted to 1 ram with 7/8 curl horn or larger. A Federal registration permit is required for the Oct. 1–Apr. 30 season. Kaktovik residents may harvest sheep in accordance with a Federal community harvest strategy for Unit 26(C) which provides for take of up to two harvest limits of 3 sheep by designated hunter.	Aug. 10–Sept. 20. Oct. 1–Apr. 30.
Moose:	
Unit 26(A)—that portion of the Colville River drainage upstream from and including the Chandler River drainage—1 moose; however, no person may take a cow accompanied by a calf.	Aug. 1–Mar. 31.
Remainder of Unit 26(A)—1 moose; however, no person may take a cow accompanied by a calf	Aug. 1–Dec. 31.
Unit 26(B)—that portion within two miles of the Dalton Highway	No open season.
Unit 26(B) Remainder and (C)—1 moose	Aug. 1–Dec. 31.
Musk Oxen:	
Unit 26(C)—1 bull by Federal registration permit only; up to 10 permits may be issued to rural Alaska residents of the village of Kaktovik only. Public lands are closed to the taking of musk oxen, except by rural Alaska residents of the village of Kaktovik during seasons identified above.	Oct. 1–Nov. 15. Mar. 1–Mar. 31.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase):	
2 foxes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
Unit 26(A) and (B)—10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1	Sept. 1–Mar. 15.
Unit 26(C)—10 foxes	Nov. 1–Apr. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Lynx:	
2 lynx	Nov. 1–Apr. 15.
Wolf:	
15 wolves	Aug. 10–Apr. 30.
Wolverine:	
5 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping:	
Coyote:	
No limit	Nov. 1–Apr. 15.
Fox, Arctic (Blue and White Phase):	
No limit	Nov. 1–Apr. 15.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1–Apr. 15.
Lynx:	
No limit	Nov. 1–Apr. 15.
Marten:	
No limit	Nov. 1–Apr. 15.
Mink and Weasel:	
No limit	Nov. 1–Jan. 31.
Muskrat:	
No limit	Nov. 1–June 10.
Otter:	
No limit	Nov. 1–Apr. 15.
Wolf:	
No limit	Nov. 1–Apr. 30.
Wolverine:	
No limit	Nov. 1–Apr. 15.

4. In Subpart D of 36 CFR 36 part 242 and 50 CFR part 100, §§ _____.26 and _____.27 are revised to read as follows:

§ _____.26 Subsistence taking of fish.

(a) *Applicability.* (1) Regulations in § _____.26 apply to the taking of finfish, excluding halibut, or their parts for subsistence uses.

(2) Finfish, excluding halibut, may be taken for subsistence uses at any time by any method unless restricted by the subsistence fishing regulations found in § _____.26.

(b) *Definitions.* The following definitions shall apply to all regulations contained in § _____.26 and § _____.27.

Abalone Iron means a flat device which is used for taking abalone and which is more than one inch (24 mm) in width and less than 24 inches (610 mm) in length, with all prying edges rounded and smooth.

ADF&G means the Alaska Department of Fish and Game.

Anchor means a device used to hold a salmon fishing vessel or net in a fixed position relative to the beach; this includes using part of the seine or lead, a ship's anchor, or being secured to another vessel or net that is anchored.

Bag Limit means the maximum legal take per person or designated group, per specified time period, even if part or all of the fish are preserved.

Beach seine means a floating net which is designed to surround fish and is set from and hauled to the beach.

Char means the following species: Arctic char (*Salvelinus alpinis*); lake trout (*Salvelinus namaycush*); and Dolly Varden (*Salvelinus malma*).

Crab means the following species: red king crab (*Paralithodes camshatica*); blue king crab (*Paralithodes platypus*); brown king crab (*Lithodes aequispina*); *Lithodes couesi*; all species of tanner or snow crab (*Chionoecetes* spp.); and Dungeness crab (*Cancer magister*).

Dip net means a bag-shaped net supported on all sides by a rigid frame; the maximum straight-line distance between any two points on the net frame, as measured through the net opening, may not exceed five feet; the depth of the bag must be at least one-half of the greatest straight-line distance, as measured through the net opening; no portion of the bag may be constructed of webbing that exceeds a stretched measurement of 4.5 inches; the frame must be attached to a single rigid handle and be operated by hand.

Diving Gear means any type of hard hat or skin diving equipment, including SCUBA equipment.

Drainage means all of the waters comprising a watershed including tributary rivers, streams, sloughs, ponds and lakes which contribute to the supply of the watershed.

Drift gill net means a drifting gill net that has not been intentionally staked, anchored or otherwise fixed.

Federal lands means lands and waters and interests therein the title to which is in the United States.

Fishwheel means a fixed, rotating device for catching fish which is driven by river current or other means of power.

Freshwater of streams and rivers means the line at which freshwater is separated from saltwater at the mouth of streams and rivers by a line drawn between the seaward extremities of the exposed tideland banks at the present stage of the tide.

Fyke net means a fixed, funneling (fyke) device used to entrap fish.

Gear means any type of fishing apparatus.

Gill net means a net primarily designed to catch fish by entanglement in a mesh that consists of a single sheet of webbing which hangs between cork line and lead line, and which is fished from the surface of the water.

Grappling hook means a hooked device with flukes or claws, which is attached to a line and operated by hand.

Groundfish—bottomfish means any marine finfish except halibut, osmerids, herring and salmonids.

Hand purse seine means a floating net which is designed to surround fish and which can be closed at the bottom by pursing the lead line; pursing may only be done by hand power, and a free-running line through one or more rings attached to the lead line is not allowed.

Herring pound means an enclosure used primarily to contain live herring over extended periods of time.

Hung measure means the maximum length of the cork line when measured wet or dry with traction applied at one end only.

Jigging gear means a line or lines with lures or baited hooks, drawn through the water by hand, and which are operated during periods of ice cover from holes cut in the ice.

Lead means either a length of net employed for guiding fish into a seine, set gill net, or other length of net, or a length of fencing employed for guiding fish into a fishwheel, fyke net or dip net.

Long line means either a stationary, buoyed, or anchored line, or a floating, free-drifting line with lures or baited hooks attached.

Possession limit means the maximum number of fish a person or designated group may have in possession if the fish have not been canned, salted, frozen, smoked, dried, or otherwise preserved so as to be fit for human consumption after a 15 day period.

Pot means a portable structure designed and constructed to capture and retain live fish and shellfish in the water.

Public lands or *public land* means lands situated in the State of Alaska which are Federal lands, except—

(i) Land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act and lands which have been confirmed to, validly selected by, or granted to the Territory of Alaska or the State under any other provision of Federal law;

(ii) Land selections of a Native Corporation made under the Alaska Native Claims Settlement Act which have not been conveyed to a Native Corporation, unless any such selection is determined to be invalid or is relinquished; and

(iii) Lands referred to in Section 19(b) of the Alaska Native Claims Settlement Act.

Purse seine means a floating net which is designed to surround fish and which can be closed at the bottom by means of a free-running line through one or more rings attached to the lead line.

Ring net means a bag-shaped net suspended between no more than two frames; the bottom frame may not be larger in perimeter than the top frame; the gear must be nonrigid and collapsible so that free movement of fish or shellfish across the top of the net is not prohibited when the net is employed.

Rockfish means all species of the genus *Sebastes*.

Rod and reel means either a device upon which a line is stored on a fixed or revolving spool and is deployed through guides mounted on a flexible pole, or a line that is attached to a pole.

Salmon means the following species: pink salmon (*Oncorhynchus gorbusha*); sockeye salmon (*Oncorhynchus nerka*); chinook salmon (*Oncorhynchus tshawytscha*); coho salmon (*Oncorhynchus kisutch*); and chum salmon (*Oncorhynchus keta*).

Salmon stream means any stream used by salmon for spawning or for travelling to a spawning area.

Salmon stream terminus means a line drawn between the seaward extremities of the exposed tideland banks of any salmon stream at mean lower low water.

Set gill net means a gill net that has been intentionally set, staked, anchored, or otherwise fixed.

Shovel means a hand-operated implement for digging clams or cockles.

Spear means a shaft with a sharp point or fork-like implement attached to one end which is used to thrust through the water to impale or retrieve fish and which is operated by hand.

Take or *Taking* means to pursue, hunt, shoot, trap, net capture, collect, kill, harm, or attempt to engage in any such conduct.

To operate fishing gear means any of the following: the deployment of gear in the waters of Alaska; the removal of gear from the waters of Alaska; the removal of fish or shellfish from the gear during an open season or period; or the possession of a gill net containing fish during an open fishing period, except that a gill net which is completely clear of the water is not considered to be operating for the purposes of minimum distance requirement.

Trawl means a bag-shaped net towed through the water to capture fish or shellfish.

Trout means the following species: cutthroat trout (*Oncorhynchus clarki*) and rainbow trout or steelhead trout (*Oncorhynchus mykiss*).

(c) *Methods, means, and general restrictions.* (1) No person may buy or sell fish, their parts, or their eggs which have been taken for subsistence uses, unless, prior to the sale, the prospective buyer or seller obtains a determination from the Federal Subsistence Board that the sale constitutes customary trade.

(2) No person may take fish for subsistence uses within 300 feet of any dam, fish ladder, weir, culvert or other artificial obstruction.

(3) No person may use explosives or chemicals to take fish for subsistence uses.

(4) Each person shall plainly and legibly inscribe his or her first initial, last name, and address on any fish wheel, keg, buoy, stakes attached to gill nets, and on any other unattended fishing gear which the person has employed to take fish for subsistence uses.

(5) All pots used to take fish must contain an opening on the webbing of a sidewall of the pot which has been laced, sewn, or secured together by untreated cotton twine or other natural fiber no larger than 120 thread which upon deterioration or parting of the twine produces an opening in the web with a perimeter equal to or exceeding one-half of the tunnel eye opening perimeter.

(6) Persons licensed by the State of Alaska to engage in a fisheries business may not receive for commercial purposes or barter or solicit to barter for subsistence taken salmon or their parts.

(7) Except as provided elsewhere in this subpart, the taking of rainbow trout and steelhead trout is prohibited.

(8) Fish taken for subsistence use or under subsistence regulations may not be subsequently used as bait for commercial or sport fishing purposes.

(9) The use of live non-indigenous fish as bait is prohibited.

(10) Any fishing gear used to take fish for subsistence uses may not obstruct more than one-half the width of any stream. A stationary fishing device may obstruct not more than one-half the width of any stream.

(11) Kegs or buoys attached to any permitted gear may be any color but red.

(12) Bag limits authorized in §_____.26 or §_____.27 may not be accumulated with bag limits authorized in State seasons.

(13) Unless specified otherwise in §_____.26, use of a rod and reel to take fish is permitted without a subsistence fishing permit. Bag limits applicable to the use of a rod and reel to take fish for subsistence uses shall be as follows:

(i) Where a subsistence fishing permit issued by the ADF&G is required by §_____.26, that permit is not required to take fish for subsistence uses with rod and reel. The bag and possessions limits for taking fish for subsistence uses with a rod and reel in those areas are the same as indicated on the ADF&G permit issued for subsistence fishing with other gear types;

(ii) Where a subsistence fishing permit is not required by §_____.26, the bag and possession limits for taking fish for subsistence uses with a rod and reel is the same as for taking fish under State of Alaska sport fishing regulations in those same areas.

(14) Unless restricted in §_____.26, or unless restricted under the terms of a required subsistence fishing permit, gear specified in definitions in §_____.26(b) are legal types of gear for subsistence fishing.

(15) Unless restricted in §_____.26, or unless restricted under the terms of a subsistence fishing permit, fish may be taken at any time.

(16) Gill nets used for subsistence fishing for salmon may not exceed 50 fathoms in length, unless otherwise specified by regulations for particular areas set forth in §_____.26.

(17) Each fishwheel must have the first initial, last name, and address of the operator plainly and legibly inscribed on the side of the fishwheel facing midstream of the river.

(18) *Unlawful possession of subsistence finfish.* Fish or their parts taken in violation of Federal or State regulations may not be possessed, transported, given, received or bartered.

(d) *Fishery Management Area restrictions.* For detailed descriptions of Fishery Management Areas, see State of Alaska Fishing Regulations.

(1) Kotzebue-Northern Area. (i) Salmon may be taken only by gill nets, beach seines, or a rod and reel;

(ii) Fish may be taken for subsistence purposes without a subsistence fishing permit.

(2) Norton Sound-Port Clarence Area. (i) Salmon may be taken only by gill nets, beach seines, fishwheel, or a rod and reel;

(ii) Except as provided in §_____.26(e)(2), fish may be taken for subsistence purposes without a subsistence fishing permit. A subsistence fishing permit issued by ADF&G is required, except for use of rod and reel, as follows:

(A) Pilgrim River drainage including Salmon Lake;

(B) For net fishing in all waters from Cape Douglas to Rocky Point;

(iii) Only one subsistence fishing permit will be issued to each household per year.

(3) Yukon Area. (i) Salmon may be taken only by set gill nets, beach seines, fishwheels, or rod and reel;

(ii) Except as provided in §_____.26(e)(3), fish may be taken for subsistence purposes without a subsistence fishing permit;

(iii) A subsistence fishing permit issued by the ADF&G is required, except for the use of rod and reel, as follows:

(A) For the Yukon River drainage from the mouth of Hess Creek to the mouth of the Dall River;

(B) For the Yukon River drainage from the ADF&G regulatory markers placed near the upstream mouth of 22 Mile Slough upstream to the United States—Canada border;

(C) For the Tanana River drainage above the mouth of the Wood River;

(D) For whitefish and suckers in the waters listed;

(E) For the taking of pike in waters of the Tolovana River drainage upstream of its confluence with the Tanana River;

(F) For the taking of salmon in Subdistricts 6–A and 6–B;

(iv) Except as otherwise provided, and except as may be provided by the terms of a subsistence fishing permit issued by the ADF&G, there is no closed season on fish other than salmon;

(v) Only one subsistence fishing permit will be issued to each household per year;

(vi) Birch Creek of the upper Yukon drainage, and waters within 500 feet of its mouth, is closed to subsistence fishing June 10 through September 10, except that whitefish and suckers may be taken by rod and reel or under the authority of a subsistence fishing permit issued by the ADF&G;

(vii) The following drainages located north of the main Yukon River are closed to subsistence fishing:

(A) Kanuti River, upstream from a point five miles downstream of the State highway crossing;

(B) Fish Creek, upstream from the mouth of Bonanza Creek;

(C) Bonanza Creek;

(D) Jim River, including Prospect Creek and Douglas Creek;

(E) South Fork of the Koyukuk River system upstream from the mouth of Jim River;

(F) Middle Fork of the Koyukuk River system upstream from the mouth of the North Fork;

(G) North Fork of the Chandalar River system upstream from the mouth of Quartz Creek;

(viii) The main Tanana River and its adjoining sloughs are closed to subsistence fishing between the mouth of the Salcha River and the mouth of the Gerstle River, except that salmon may be taken in the area upstream of the Richardson Highway bridge to the mouth of Clearwater Creek after November 20;

(ix) Waters of the Tanana River drainage are closed to the subsistence taking of pike between the mouth of the Kantishna River and Delta River at Black Rapids on the Richardson Highway and Cathedral Rapids on the Alaska Highway, except that pike may be taken for subsistence purposes in the Tolovana River drainage upstream from its confluence with the Tanana River;

(x) The Delta River is closed to subsistence fishing, except that salmon may be taken after November 20;

(xi) The following locations are closed to subsistence fishing:

(A) The following rivers and creeks and within 500 feet of their mouths: Delta Clearwater River (Clearwater Creek at 64° 06′ N. lat., 145° 34′ W. long), Richardson Clearwater Creek (Clear Creek at 64° 14′ N. lat., 146° 16′ W. long), Goodpaster River, Chena River, Little Chena River, Little Salcha River, Blue Creek, Big Salt River, Shaw Creek, Bear Creek, McDonald Creek, Moose Creek, Hess Creek, and Beaver Creek;

(B) Ray River and Salcha River upstream of a line between the ADF&G regulatory markers located at the mouth of the rivers;

(C) Deadman, Jan, Boleo, Birch, Lost, Harding, Craig, Fielding, Two-Mile, Quartz, and Little Harding lakes;

(D) Piledriver and Badger (Chena) sloughs;

(xii) The following waters are closed to the taking of chum salmon from August 15–December 31:

(A) Toklat River;

(B) Kantishna River from the mouth of the Toklat River to its confluence with the Tanana River;

(xiii) Salmon may be taken only by set gill nets in those locations described below after July 19:

(A) Waters of the Black River including waters within one nautical mile of its terminus;

(B) Waters of Kwikluak Pass downstream of Agmulegut and the waters of Kwemeluk Pass;

(C) Waters of Alakanuk Pass downstream from the mouth of Kuiukpak Slough;

(D) Waters of Kwiguk Pass downstream to the mouth of Kawokhawik Slough;

(E) Waters of Kawanak Pass downstream from Sea Gull Point;

(F) Waters of Apoon Pass downstream from the mouth of the Kotlik River and waters of Okwega Pass downstream from its confluence with Apoon Pass;

(G) Waters within one nautical mile seaward from any grassland bank in District 1;

(xiv) Pike may not be taken with gill nets in the waters of the Tolovana River drainage from October 15–April 14;

(xv) A commercial salmon fisherman who is registered for Districts 1, 2, or 3 may not take salmon for subsistence purposes in any other district located downstream from Old Paradise Village;

(xvi) In District 4, commercial fishermen may not take salmon for subsistence purposes during the commercial salmon fishing season by gill nets larger than 6-inch mesh after a date specified by emergency order issued between July 10–July 31;

(xvii) In Subdistricts 5–A, 5–B, 5–C, and that portion of Subdistrict 5–D downstream from Long Point, no person may possess salmon taken for subsistence purposes during a commercial fishing period, unless the dorsal fin has been immediately removed from the salmon; a person may not sell or purchase salmon from which the dorsal fin has been removed;

(xviii) Subsistence fishermen taking salmon in Subdistrict 6–C shall report their salmon catches at designated ADF&G check stations by the end of each weekly fishing period; immediately after salmon have been taken, catches must be recorded on a harvest form provided by the ADF&G;

(xix) The annual possession limit for the holder of a Subdistrict 6–C subsistence salmon fishing permit is 10 king salmon and 75 chum salmon for periods through August 15, and 75 chum and coho salmon for periods after August 15;

(xx) Subsistence salmon harvest limits in Subdistrict 6–C are 750 king salmon and 5,000 chum salmon taken through August 15 and 5,200 chum and coho salmon combined taken after August 15; when either the king or chum salmon harvest limit for periods before August 16 has been taken, the subsistence salmon fishing season in Subdistrict 6–C will close; a later season will open after August 15 to allow the taking of the harvest limit for periods after August 15; if the chum salmon harvest limit has not been obtained through August 15, the remaining harvest will not be added to the chum salmon harvest level for periods after August 15;

(xxi) The annual harvest limit for the holder of a Subdistrict 6–A or 6–B subsistence salmon fishing permit is 60 chinook salmon and 500 chum salmon for the period through August 15 of a year, and 2,000 chum and coho salmon combined for the period after August 15; upon request, permits for additional salmon may be issued by the ADF&G;

(xxii) In the Kantishna River drainage, the open subsistence salmon fishing periods are seven days per week.

(4) Kuskokwim Area. (i) Salmon may only be taken by gill net, beach seine, fishwheel, or by a rod and reel, subject to the restrictions set forth in this §_____.26(e)(4), except that salmon may also be taken by spear in the Holitna River drainage;

(ii) Fish may be taken for subsistence purposes without a subsistence fishing permit;

(iii) Each subsistence gill net operated in tributaries of the Kuskokwim River must be attached to the bank, fished substantially perpendicular to the bank and in a substantially straight line;

(iv) The aggregate length of set gill nets or drift gill nets in use by any individual for taking salmon may not exceed 50 fathoms;

(v) Rainbow trout may be taken by residents of Goodnews Bay, Platinum, Quinhagak, Eek, Kwethluk, Akiachak, and Akiak from those non-navigable drainages tributary to the Kuskokwim River downstream from the confluence of the Kuskokwim and Holitna Rivers and from those non-navigable drainages to Kuskokwim Bay north of the community of Platinum, subject to the following restrictions:

(A) Rainbow trout may be taken only by the use of gill nets, rod and reel, or jigging through the ice;

(B) The use of gill nets for taking rainbow trout is prohibited from March 15–June 15.

(5) Bristol Bay Area. (i) Salmon and char may only be taken by rod and reel or under authority of a subsistence fishing permit issued by the ADF&G;

(ii) Only one subsistence fishing permit may be issued to each household per year;

(iii) Each gill net must be staked and buoyed;

(iv) No person may operate or assist in operating subsistence salmon net gear while simultaneously operating or assisting in operating commercial salmon net gear;

(v) Salmon, herring, and capelin may only be taken by set gill nets and by a rod and reel, except that salmon may also be taken by spear in the Togiak River including its tributaries;

(vi) Subsistence fishing is not permitted within the boundaries of Katmai National Park;

(vii) Except for the western shore of the Newhalen River, waters used by salmon are closed to the subsistence taking of fish within 300 feet of a stream mouth;

(viii) Subsistence salmon fishing permits for the Naknek River drainage will be issued only through the ADF&G King Salmon office;

(ix) Subsistence fishing with nets is prohibited in the following waters and within one-fourth mile of the terminus of those waters during the period from September 1 through June 14: Lower Talarik Creek, Roadhouse Creek, Nick G. Creek, Middle Talarik Creek, Alexi Creek, Copper River, Upper Talarik Creek, Tazimina River, Kakhonak River, Pete Andrew Creek, Young's Creek, Gibralter River, Zacker Creek, Chekok Creek, Dennis Creek, Newhalen River, Tomokok Creek, Belinda Creek;

(x) Gill nets are prohibited in that portion of the Naknek River upstream from Sovonaski;

(xi) After August 20, no person may possess coho salmon for subsistence purposes in the Togiak River Section and the Togiak River drainage unless the head has been immediately removed from the salmon. It is unlawful to purchase or sell coho salmon from which the head has been removed.

(6) Aleutian Islands Area.

(i) Salmon may be taken by seine and gill net, with gear specified on a subsistence fishing permit issued by the ADF&G, or by a rod and reel;

(ii) The Adak District is closed to the taking of salmon;

(iii) Salmon and char may be taken only by rod and reel or under the terms of a subsistence fishing permit issued by the ADF&G, except that a permit is not required in the Akutan, Umnak and Adak Districts; not more than 250 salmon may be taken for subsistence purposes unless otherwise specified on the subsistence fishing permit; a record of subsistence-caught fish must be kept on the reverse side of the permit; the record must be completed immediately upon taking subsistence-caught fish and must be returned to the local representative of the ADF&G no later than October 31.

(7) Alaska Peninsula Area. (i) Salmon may be taken by seine, gill net, gear specified on a permit issued by the ADF&G, or rod and reel;

(ii) The following waters are closed to subsistence fishing for salmon:

(A) Russell Creek and Nurse Lagoon;

(B) Trout Creek;

(C) Humbolt Creek;

(iii) Salmon and char may only be taken by rod and reel or under the authority of a subsistence fishing permit issued by the ADF&G; a record of subsistence-caught fish must be kept on the reverse side of the permit; the record must be completed immediately upon taking subsistence-caught fish and must be returned to the local representative of the ADF&G no later than October 31.

(8) Chignik Area. (i) Salmon may be taken by seines and gill nets, or with gear specified on a subsistence fishing permit issued by the ADF&G, or by a rod and reel, except that in Chignik Lake, salmon may not be taken with purse seines;

(ii) Salmon may not be taken in the Chignik River, upstream from the ADF&G weir site or counting tower, in Black Lake, or any tributary to Black and Chignik Lakes;

(iii) Salmon and char may only be taken by rod and reel or under the authority of a subsistence fishing permit issued by the ADF&G. A record of subsistence-caught fish must be kept on the reverse side of the permit. The record must be completed immediately upon taking subsistence-caught fish and must be returned to the local representative of the ADF&G no later than October 31;

(iv) From June 10–September 30, commercial fishing license holders may not subsistence fish for salmon.

(9) Kodiak Area. (i) Salmon may be taken 24 hours a day from January 1 through December 31 except as provided below:

(A) From June 1–September 15, salmon seine vessels may not be used to take subsistence salmon for 24 hours before, during, and for 24 hours after any open commercial salmon fishing period;

(B) From June 1–September 15, purse seine vessels may be used to take salmon only with gill nets and no other type of salmon gear may be on board the vessel;

(C) Salmon may be taken only by gill net, seine, or by a rod and reel;

(D) Subsistence fishermen must be physically present at the net at all times the net is being fished;

(ii) The following locations are closed to the subsistence taking of salmon:

(A) All waters of Mill Bay and all those waters bounded by a line from Spruce Cape to the northernmost point of Woody Island, then to the northernmost point of Holiday Island, then to a point on Near Island opposite the Kodiak small boat harbor entrance and then to the small boat harbor entrance;

(B) All freshwater systems of Little Afognak River and Portage Creek drainage in Discoverer Bay;

(C) All water closed to commercial salmon fishing in the Barbara Cove, Chiniak Bay, Saltery Cove, Pasagshak Bay, Monashka Bay and Anton Larsen Bay, and all waters closed to commercial salmon fishing within 100 yards of the terminus of Selief Bay Creek and north and west of a line from the tip of Las Point to the tip of River Mouth Point of Afognak Bay;

(D) All waters 300 yards seaward of the terminus of Monks Creek;

(E) From August 15 through September 30, all waters 500 yards seaward of the terminus of Little Kitoi Creek;

(F) All freshwater systems of Afognak Island;

(G) All waters of Ouzinkie Harbor north of a line from 57°55′10″ N. lat., 152°36′ W. long. to 57°55′03″ N. lat., 152°29′20″ W. long.;

(iii) A subsistence fishing permit issued by the ADF&G is required for taking salmon, trout and char, except by rod and reel, for subsistence purposes; a subsistence fishing permit issued by the ADF&G is required for taking herring and bottomfish for subsistence purposes during the commercial herring sac roe season from May 1–June 30; all subsistence fishermen shall keep a record of the number of subsistence fish taken each year; the number of subsistence fish shall be recorded on the reverse side of the permit. The record must be completed immediately upon landing subsistence caught fish and must be returned to the local representative of the ADF&G by February 1 of the year following the year the permit was issued.

(10) Cook Inlet Area.

(i) Salmon may be taken only by rod and reel, or under the authority of a subsistence fishing permit issued by the ADF&G; only one permit may be issued to a household each year; a subsistence fishing permit holder shall record daily salmon catches on forms provided by the ADF&G;

(ii) Trout, grayling, char, and burbot may not be taken in fresh water;

(iii) All public waters on the Kenai Peninsula are closed to subsistence fishing;

(iv) Smelt may be taken only with gill nets and dip nets. Gill nets used to take smelt may not exceed 50 feet in length and two inches in mesh size;

(v) Gill nets may not be used.

(11) Prince William Sound Area. (i) Salmon and freshwater fish species may be taken only by rod and reel or under the authority of a subsistence fishing permit issued by the ADF&G;

(ii) Only one subsistence fishing permit will be issued to each household per year;

(iii) Use of fishwheels:

(A) Fishwheels used for subsistence fishing may not be rented, leased, or otherwise used for personal gain;

(B) Subsistence fishwheels must be removed from the water at the end of the permit period;

(C) Each permittee may operate only one fishwheel at any one time;

(D) No person may set or operate a fishwheel within 75 feet of another fishwheel;

(E) No fishwheel may have more than two baskets;

(F) The permit holder must personally operate the fishwheel or dip net. A subsistence fishwheel or dip net permit may not be loaned or transferred except;

(G) A wood or metal plate at least 12 inches high by 12 inches wide, bearing the permit holder's name and address in letters and numerals at least one inch high, must be attached to each fishwheel so that the name and address are plainly visible;

(iv) Salmon may not be taken in any area closed to commercial salmon fishing unless otherwise permitted;

(v) In locations open to commercial salmon fishing and in conformance with commercial salmon fishing regulations, the annual subsistence salmon limit is as follows:

(A) 15 salmon for a household of one person;

(B) 30 salmon for a household of two persons;

(C) 10 salmon for each additional person in a household over two;

(D) No more than five king salmon may be taken per permit;

(vi) All tributaries of the Copper River and waters of the Copper River are closed to the taking of salmon;

(vii) Crosswind Lake is closed to all subsistence fishing;

(viii) Salmon may be taken for subsistence purposes in the waters of the Southwestern District only as follows:

(A) Only pink salmon may be taken;

(B) Pink salmon may be taken by dipnets or by a rod and reel;

(C) Pink salmon may be taken only from May 15–September 30;

(D) Fishing periods are from May 15 until two days before the commercial opening of the Southwestern District, seven days per week; during the commercial salmon fishing season, only during open commercial salmon fishing periods; and from two days following the closure of the commercial salmon season until September 30, seven days per week;

(E) There are no bag and possession limits for this fishery;

(F) ADF&G permits may be issued only at Chenega Bay village;

(ix) Salmon may be taken for subsistence purposes in the waters north of a line from Porcupine Point to Granite Point, and south of a line from Point Lowe to Tongue Point, only as follows:

(A) Only pink salmon may be taken;

(B) Pink salmon may be taken by dipnets or by a rod and reel;

(C) Pink salmon may be taken only from May 15–September 30;

(D) Fishing periods are from May 15 until two days before the commercial opening of the Southwestern District, seven days per week; during the commercial salmon fishing season, only during open commercial salmon fishing periods; and from two days following the closure of the commercial salmon season until September 30, seven days per week;

(E) Reserved.

(F) There are no bag and possession limits for this fishery;

(G) ADF&G permits may be issued only at Tatitlek village;

(12) Yakutat Area. (i) Salmon, trout, and char may be taken only by rod and reel or under authority of a subsistence fishing permit issued by the ADF&G;

(ii) Salmon, trout, or char taken incidentally by gear operated under the terms of a subsistence permit for salmon are legally taken and possessed for subsistence purposes; the holder of a subsistence salmon permit must report any salmon, trout, or char taken in this manner on his or her permit calendar;

(iii) Subsistence fishermen must remove the dorsal fin from subsistence-caught salmon when taken.

(13) Southeastern Alaska Area. (i) Salmon, trout, char and herring spawn on kelp may be taken only by rod and reel or under authority of a subsistence fishing permit issued by the ADF&G;

(ii) No person may possess subsistence-taken and sport-taken salmon on the same day;

(iii) Salmon, trout or char taken incidentally by gear operated under the terms of an ADF&G subsistence permit for salmon are legally taken and possessed for subsistence purposes; the holder of a subsistence salmon permit must report any salmon, trout, or char taken in this manner on his or her permit calendar;

(iv) Subsistence fishermen shall immediately remove the dorsal fin of all salmon when taken.

§ _____.27 Subsistence taking of shellfish.

(a) Regulations in § _____.27 apply to subsistence taking of dungeness crab, king crab, tanner crab, shrimp, clams, abalone, and other shellfish or their parts.

(b) Shellfish may be taken for subsistence uses at any time in any area of the public lands by any method unless restricted by the subsistence fishing regulations of § _____.26 or § _____.27.

(c) *Methods, means, and general restrictions.* (1) The bag limit specified in this section for a subsistence season for a species and the State bag limit set for a State season for the same species are not cumulative. This means that a person or designated group who has taken the bag limit for a particular species under a subsistence season specified in this section may not after that, take any additional shellfish of that species under any other bag limit specified for a State season.

(2) Unless otherwise provided in § _____.27, gear as specified in the definitions of § _____.26 is legal for subsistence taking of shellfish.

(3) It is prohibited to buy or sell subsistence-taken shellfish, their parts, or their eggs, unless otherwise specified.

(4) The use of explosives and chemicals is prohibited, except that chemical baits or lures may be used to attract shellfish.

(5) Each subsistence fisherman shall plainly and legibly inscribe their first initial, last name and address on a keg or buoy attached to unattended subsistence fishing gear. Subsistence fishing gear may not display a permanent ADF&G vessel license number. The keg or buoy may be any color except red.

(6) A side wall of all subsistence shellfish pots must contain an opening with a perimeter equal to or exceeding one-half of the tunnel eye opening perimeter. The opening must be laced, sewn, or secured together by untreated cotton twine or other natural fiber no larger than 120 thread. Dungeness crab and shrimp pots may have the pot lid tiedown straps secured to the pot at one end by untreated cotton twine no larger than 120 thread, as a substitute for the above requirement.

(7) No person may mutilate or otherwise disfigure a crab in any manner which would prevent determination of the minimum size restrictions until the crab has been processed or prepared for consumption.

(8) In addition to the marking requirements in § _____.27(c)(5), kegs or buoys attached to subsistence crab pots must also be inscribed with the name or U.S. Coast Guard number of the vessel used to operate the pots.

(9) No more than five pots per person and 10 pots per vessel may be used to take crab, except as specified in § _____.27(f).

(10) In the subsistence taking of shrimp in the Glacier Bay National Preserve, no person may use more than 10 pots, and no more than 20 pots may be operated from a vessel. In the subsistence taking of shellfish other than shrimp in the Glacier Bay National Preserve, no person may operate more than five pots of any type, and no more than 10 pots of any type may be operated from a vessel.

(d) *Subsistence take by commercial vessels.* No fishing vessel which is commercially licensed and registered for shrimp pot, shrimp trawl, king crab, tanner crab, or dungeness crab fishing may be used for subsistence take during the period starting 14 days before an opening until 14 days after the closure of a respective open season in the area or areas for which the vessel is registered.

(e) *Unlawful possession of subsistence shellfish.* Shellfish or their parts taken in violation of Federal or State regulations may not be possessed, transported, given, received or bartered.

(f) *Subsistence shellfish areas and pertinent restrictions.*

(1) Southeastern Alaska-Yakutat Area. Shellfish may be taken for subsistence purposes in the Glacier Bay National Preserve only under the authority of a subsistence shellfish fishing permit.

(2) Cook Inlet Area. All waters within the boundaries of the Kenai National Wildlife Refuge are closed to the taking of shellfish for subsistence purposes.

(3) Kodiak Area. (i) Shellfish may be taken for subsistence purposes only under the authority of a subsistence shellfish fishing permit issued by the ADF&G;

(ii) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the ADF&G before subsistence shrimp fishing during a closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section or subsection. The permit shall specify the area and the date the vessel operator intends to fish. No more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel;

(iii) The daily bag and possession limit is 12 male dungeness crab per person;

(iv) In the subsistence taking of king crab:

(A) The daily bag and possession limit is six male crab per person;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a two-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) No more than five crab pots may be used to take king crab; each pot can be no more than 75 cubic feet in capacity;

(D) King crab may be taken only from June 1–January 31, except that the subsistence taking of king crab is prohibited in waters 25 fathoms or greater in depth during the period 14 days before and 14 days after open commercial fishing seasons for red king crab, blue king crab, or tanner crab in the location;

(E) The waters of the Pacific Ocean enclosed by the boundaries of Womans Bay, Gibson Cove, and an area defined by a line ½ mile on either side of the mouth of the Karluk River, and extending seaward 3,000 feet, and all waters within 1,500 feet seaward of the shoreline of Afognak Island are closed to the harvest of king crab except by Federally-qualified subsistence users;

(v) In the subsistence taking of tanner crab:

(A) No more than five crab pots may be used to take tanner crab;

(B) From July 15–February 10, the subsistence taking of tanner crab is prohibited in waters 25 fathoms or greater in depth, unless the commercial tanner crab fishing season is open in the location;

(C) The daily bag and possession limit is 12 male crab per person.

(4) Alaska Peninsula-Aleutian Islands Area. (i) Shellfish may be taken for subsistence purposes only under the authority of a subsistence shellfish fishing permit issued by the ADF&G;

(ii) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the ADF&G prior to subsistence shrimp fishing during a closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section, or subsection; the permit shall specify the area and the date the vessel operator intends to fish; no more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel;

(iii) The daily bag and possession limit is 12 male dungeness crab per person;

(iv) In the subsistence taking of king crab:

(A) The daily bag and possession limit is six male crab per person;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a two-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) Crab may be taken only from June 1–January 31;

(v) The daily bag and possession limit is 12 male tanner crab per person.

(5) Bering Sea Area. (i) In waters South of 60° North latitude, shellfish may be taken for subsistence purposes only under the authority of a subsistence shellfish fishing permit issued by the ADF&G;

(ii) In that portion of the area north of the latitude of Cape Newenham, shellfish may only be taken by shovel, jigging gear, pots and ring net;

(iii) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the ADF&G prior to subsistence shrimp fishing during a closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section or subsection; the permit shall specify the area and the date the vessel operator intends to fish; no more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel;

(iv) In waters south of 60° N. lat., the daily bag and possession limit is 12 male dungeness crab per person;

(v) In the subsistence taking of king crab:

(A) In waters south of 60° N. lat., the daily bag and possession limit is six male crab per person;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a two-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) In waters south of 60° N. lat., crab may be taken only from June 1–January 31;

(vi) In waters south of 60° N. lat., the daily bag and possession limit is 12 male tanner crab.

Dated: May 22, 1995.

Mitch Demientieff,

Chair, Federal Subsistence Board.

Dated: May 23, 1995.

Fred O. Walk,

Acting Regional Forester, USDA-Forest Service.

[FR Doc. 95–14328 Filed 6–14–95; 8:45 am]

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federal register

Thursday
June 15, 1995

Part III

Department of Education

Office of Elementary and Secondary Education; Preliminary Consolidated State Plans Under Section 14302 of the Elementary and Secondary Education Act; Notice

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; Preliminary Consolidated State Plans Under Section 14302 of the Elementary and Secondary Education Act

AGENCY: Department of Education.

ACTION: Responses to public comments on proposed guidance for preliminary consolidated State plans.

SUMMARY: The Department of Education provides responses to public comments submitted on proposed guidance for the submission of optional preliminary consolidated State plans under section 14302 of the Elementary and Secondary Education Act.

FOR FURTHER INFORMATION CONTACT: William Wooten, Office of Elementary and Secondary Education, U.S. Department of Education, 600 Independence Ave, SW., Washington, DC 20202–6100. Telephone (202) 260-1922. The Internet address is consolidated—plan@ed.gov. The fax number is 202–205–0303. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 14302 of the ESEA, as reauthorized by the Improving America's Schools Act, provides for the establishment of criteria under which any SEA may obtain Federal funds under certain programs through a single consolidated plan rather than through separate funding applications or plans. As explained in section 14301 of the ESEA, this consolidated plan option is intended to enhance cross-program coordination, planning and service delivery, as well as the integration of Federal program services with services offered by States and localities as keys to increased student achievement.

On January 13, 1995, the Department published proposed guidance and criteria for optional consolidated State plans under section 14302 (60 FR 3306). After considering public comment on these criteria, the Department issued forms and instructions, together with a supplementary guidance document, to State educational agencies (SEAs) on April 20, 1995. Appendix A to this notice contains the relevant portions of this guidance document. Except as provided in the guidance document, the instructions that SEAs received reflect the criteria published in the January 13 notice. The Department is treating these criteria as nonbinding. Appendix B to this notice contains the Department's response to substantive comment received on its proposals for submission of consolidated State plans.

Dated: June 9, 1995.

Thomas W. Payzant,

Assistant Secretary for Elementary and Secondary Education.

Appendix A—Consolidated State Plans Supplementary Information

April 20,1995.

On January 13, 1995, the Department published in the **Federal Register** proposed criteria to govern submission of consolidated State plans under section 14302 of the Elementary and Secondary Education Act (ESEA), as amended by the Improving America's Schools Act (IASA). The Department received comments from State educational agencies (SEAs), nonprofit private organizations, and other interested persons. These constructive and thoughtful comments were part of a process of collaboration with the public about the content of consolidated State plans that began with the Department's distribution of preliminary guidance at the December, 1994 IASA conference in Baltimore, Maryland.

These comments are addressed throughout this package [. . .]

I. Preliminary Consolidated Plans

1. *Overall Approach.* The January 13 notice continues to provide the basic framework for the submission of both preliminary consolidated State plans in May of this year, and final consolidated plans in the spring of 1996. Except for the need to address equitable participation in State-level programs, as is now required by section 427 of the General Education Provisions Act, instructions for the preliminary consolidated plan contain only relatively minor adjustments to those proposed in the January 13 **Federal Register** notice. As suggested in comments on the proposal, these changes include the need for States to include pupil services personnel among the key individuals who will participate in development of the final consolidated State plan.

A few SEAs have indicated a desire to submit consolidated State plans in one stage rather than two. Those SEAs should review the information on final consolidated State plans contained in the January 13 notice and Part II of this guidance, which provides a framework for submission of their plans. However, because collaboration with the public on the criteria for the final plan is still continuing and the final criteria may differ from the criteria provided in this guidance, an SEA submitting a final plan in the next few months could be asked to provide additional information that the Department decides is needed in final plans.

2. *Inclusion of Additional Programs.* Section 14302 authorizes the Secretary to designate programs in addition to those specified in the statute as programs that a State may include in its consolidated plan. In the January 13 notice, the Secretary specified several such additional programs. Commenters on the January 13 notice suggested that the Secretary should designate a number of other programs (not listed in the January 13 notice) for possible inclusion in consolidated State plans. Among the programs suggested for designation were the Individuals with Disabilities Education Act (IDEA), the Adult Education Act (AEA), and the Bilingual Education Act.

The Department has determined that none of these programs should be designated at this time for inclusion in consolidated plans. Both the IDEA and the AEA will be subject to reauthorization during the coming year. (While the Perkins Act is also subject to reauthorization, Congress, in section 14302, specifically designated the Part A Perkins Act program for optional inclusion in a consolidated State plan.) A State's funding level under the State-level Bilingual Education program authorized in section 7134 of the ESEA is dependent upon the receipt of competitive grant awards by LEAs in the State. The Emergency Immigrant Education Program has a distinctive relationship to other Federal initiatives for addressing immigrant-related issues. Therefore, these programs are not appropriate for inclusion.

Accordingly, at this time an SEA may choose to include in a consolidated State plan the thirteen programs proposed in the January 13 notice for purposes of obtaining FY 1995 funds.

The Secretary's designation of programs affects only a State's ability to receive program funding on the basis of a consolidated plan. However, the scope of a State's consolidated planning is in no way limited to those included programs. States are encouraged to focus their consolidated plans on how funds provided under *all* Federal programs can be used in conjunction with State and local resources to enhance the academic achievement of all students.

3. *Coverage of the Corl D. Perkins Vocational and Applied Technology Education Act.* A State may include the following Perkins Act programs in a preliminary consolidated State plan: programs under Title II, Parts A–C and Title III, Parts A, B, and E. For funds that become available on July 1, 1995, the current State plans under the Perkins Act are in effect. Accordingly, to receive these funds under that Act, a State need not submit additional plan descriptions or information unless program changes warrant the submission of amendments pursuant to section 113(c) of the Perkins Act.

Nevertheless, a State may wish to include one or more of the Perkins Act programs in its consolidated State plan for the period beginning July 1, 1995, in order to encourage and facilitate coordination of these programs with ESEA and other programs included in the plan. In this case, a State is encouraged to include in its description of the processes for developing the final plan the involvement of the State agency designated as the State board of vocational education under section 111(a)(1) of the Perkins Act, even though the SEA submits the preliminary consolidated plan.

The Secretary has transmitted the Administration's legislative proposal for restructuring the Perkins Act for the grant cycle beginning on July 1, 1996, and subsequent fiscal years. This proposal contemplates close coordination between the Perkins Act and other Federal assistance programs. Inclusion of Perkins Act programs in a preliminary consolidated State plan can constitute a significant first step toward these goals. See Part II, Final Consolidated Plans.

4. *Certifications.* Commenters requested the consolidation of the standard certifications regarding matters such as construction, Drug-Free Workplace Act, and lobbying. In response, the forms and instructions for the preliminary consolidated State plan include a consolidated certification format.

5. *The General Assurances that Accompany a Consolidated Plan.* Consistent with section 14303 of the ESEA, the application for consolidated plans will include an assurance that the State agrees to "the assurances contained in section 14303(a) of the [ESEA]." Under section 14303(a)(1), these assurances include the SEA's agreement that "each program will be administered in accordance with all applicable statutes, regulations, program plans, and applications."

While submission of a satisfactory consolidated plan permits the Secretary to award funds under programs that the plan covers, requirements governing the operation of programs are not affected. Absent a waiver, the assurance contained in section 14303(a)(1) does not eliminate any of a program's underlying operational requirements, including those that the program statute may express as application or plan descriptions or assurances (although it does eliminate a requirement to prepare a program application or plan). The January 13 **Federal Register** notice gives several examples of the effect of the general assurance on requirements expressed as program plan or application requirements. Therefore, for each program that a State includes in its preliminary consolidated plan, the requirements underlying statutory application or plan provisions mentioned in the following sections of the authorizing statute continue to apply to the State's use of program funds:

(1) Title I, Part A, of the ESEA (Improving Basic Programs Operated by Local Educational Agencies).

—Section 1111(b) and (c) of the ESEA.

(2) Title I, Part B, of the ESEA (Even Start).

—None; no statutory application or plan requirements.

(3) Title I, Part C, of the ESEA (Migrant Education).

—Sections 1304(b) and (c); 1306(a).

(4) Title I, Part D, of the ESEA (Neglected, Delinquent or At-Risk Children).

—Section 1414(a) of the ESEA.

(5) Title II of the ESEA (State and Local Programs) (Professional Development).

—Section 2205 of the ESEA.

(6) Title IV, Part A, Subpart 1 (other than the Governor's Programs in section 4114), of the ESEA (Safe and Drug-Free Schools and Communities).

—Section 4112(a) and (b) of the ESEA.

(7) Title VI of the ESEA (Innovative Education Program Strategies).

—Section 6202(a) of the ESEA.

(8) Title VII, Subtitle B of the Stewart B. McKinney Homeless Assistance Act (the Education for Homeless Children and Youth program) enacted in Title III, Part B of the IASA.

—Section 722(g) of the McKinney Act.

While the Goals 2000, School-to-Work, and the Title III, ESEA Technology programs may be included in the preliminary consolidated plan, submission of a consolidated State plan, in either preliminary or final form, does not alter planning or application requirements under these programs. As indicated above, many Perkins Act programs also may be included in the consolidated plan, but a State's grant from funds that become available on July 1, 1995, already is authorized under its previously approved plan. States review the content of the approved plans that have been submitted under these programs in determining their obligations under the general assurance in section 14303(a)(1).

6. *Public Participation; Peer Review.* Section 14303(a)(7) of the ESEA provides that, before a consolidated State plan is submitted to the Secretary, the State must afford a reasonable opportunity for public comment on the plan and consider the comment. Commenters on the January 13 notice requested guidance on the manner in which this requirement could be satisfied.

States have wide latitude in determining how best to involve the public in a meaningful process of commenting on the proposed content of a preliminary (or final) consolidated State plan. Among the procedures that SEAs might use are (1) public comment sessions in regional workshops; (2) regional hearings; (3) dissemination of proposals through Statewide publications or similar widely-disseminated documents; and (4) any methods that, under State procedures, must be used to obtain comment on comparable State actions. In selecting the most appropriate methods, States may want to consider both the expected public interest in how the consolidated plan will be prepared, and any expected public reaction to development of a consolidated plan rather than individual program plans and applications.

The Department interprets section 14303(a)(7) as permitting an SEA to request and consider comment on the substance, rather than the precise text, of a consolidated State plan.

Furthermore, if an SEA believes that it has insufficient time to meet the public participation requirement before the due date for submission of preliminary consolidated plans, it may submit to the Department a draft preliminary consolidated plan before completing the public comment process. In this case, prior to the Secretary's approval of the plan, and the issuance of a grant award, the SEA would be expected to submit any revisions to the draft plan that are needed in view of public comment.

As proposed in the January 13 notice, the Department will approve preliminary consolidated State plans without peer review.

II. Final Consolidated Plans

1. *Inclusion of Information on Standards and Assessments Under Section 1111(b) of the ESEA.* The January 13 **Federal Register** notice proposed criteria for inclusion in a consolidated State plan of information regarding standards and assessment under Title I of the ESEA. Some clarification regarding these criteria may be helpful. The Department intends to ask SEAs to include information regarding (1) content and performance standards, (2) assessments, and (3) adequate yearly progress, called for in section 1111(b) of the ESEA, that the SEA would submit if it prepared an individual State plan under Title I, Part A.

Section 1111(b) of the ESEA requires that a State plan under the Title I, Part A program must include certain specified information on developing State content and performance standards, assessments, ways of measuring adequate yearly progress and other matters.

Under the Department's approach, if a State is participating in Title III of the Goals 2000: Educate America Act, and has an approved State Goals 2000 plan, which adequately addresses the elements contained in section 1111(b) of the ESEA, a State's final consolidated plan would not need to contain any supplemental information relating to this section. On the other hand, if the State is not participating in Goals 2000, its Goals 2000 plan has not been approved, or its Goals 2000 plan does not address these elements sufficiently, the Department would request further information relevant to section 1111(b). These information requests would, of course, take into account the process of transition to standards, assessments and other section 1111(b) factors that States are undertaking.

2. *Perkins Act.* The authorization for the Perkins Act programs expires on September 30, 1996. As indicated above, the Secretary has transmitted a reauthorization proposal, the Career Preparation Education Reform Act of 1995. The information or descriptions that a State would be asked to include in a final consolidated plan with respect to the Perkins programs will depend upon the content of the reauthorized legislation.

4. *Peer Review.* Some commenters expressed concern that the Department's proposed use of peer review to evaluate a State's final consolidated plan could unnecessarily burden the approval process with activities that duplicate the peer review process under Goals 2000.

For final consolidated plans, the Department is developing procedures for peer review in collaboration with SEAs and others. However, if an SEA has had its Goals 2000 State improvement plan approved through peer review, and the Goals 2000 plan encompasses the content needed for final consolidated State plans, the Department does not believe that a further peer review process should be necessary. If Goals 2000 is included in the consolidated plan, a single peer review should be conducted.

5. *Other Considerations.* As with the preliminary consolidated State plans, final plans will need to address efforts to promote

equitable participation in State-level programs, as required by section 427 of the General Education Provisions Act. In addition, as with the preliminary plans, the final plans will need to be developed through a public participation process that comports with section 14303(a)(7) of the ESEA.

In all other respects, the criteria proposed in the January 13 notice continue to reflect the framework and content that the Department is considering for final consolidated State plans.

III. Other Issues

1. *Consolidated Local Plans.* Commenters on the Department's January 13 proposal requested further information on submission of consolidated local plans under section 14305 of the ESEA. The Department issued and distributed such guidance under a March 24, 1995 letter from the Assistant Secretary [* * *.]

2. *Consolidation of State Administrative Funds.* Commenters requested clarification on the consolidation of State administrative funds under section 14201 of the ESEA. Under this provision, an SEA may consolidate funds available under certain programs for State administration without regard to whether the State submits a consolidated State plan under section 14302. To take advantage of this flexibility, the SEA must be able to demonstrate that a majority of its resources comes from non-Federal sources.

3. *Participation by Private School Children.* SEAs that submit consolidated State plans are encouraged to review the requirements in the ESEA regarding participation of children in private schools, including those contained in sections 1120 and 14503 of the ESEA. An SEA that submits a preliminary or final consolidated State plan is subject to these requirements for the programs covered in the plan to the same extent that it would be if it were submitting separate State plans or applications.

4. *Goals 2000; School-to-Work.* A State that includes the Goals 2000 or School-to-Work programs in its final consolidated plan may be asked to describe how activities conducted as part of planning, developing, and implementing these programs may be integrated into or coordinated with other activities conducted under the consolidated State plan.

5. *Duration.* Subject to any change in the law, the Department intends that approval of a State's final consolidated plan would be the basis for providing a grant to the State for all remaining years of each program authority under which the State requests funding in its plan.

Appendix B—Response to Public Comment on Proposed Guidance

This appendix contains the Department's response to major substantive comments on the proposed guidance published on January 13, 1995, on the submission of consolidated State plans under section 14302 of the ESEA, as amended by the IASA.

1. *General.* Comments from State educational agencies were generally strongly favorable to the Secretary's proposed criteria for consolidated State plans. These commenters affirmed that the flexibility afforded SEAs was consistent with the intent of section 14302, and constituted an important and appropriate means of encouraging SEAs to carry out cross-program coordination and integration. A number of SEAs further indicated that the overall approach reflected in the proposed guidance would result in improved program administration and a greater focus on higher student achievement.

For example, one State superintendent observed: "Your proposal to provide a two-stage approach for states to follow in their planning is 'right on target' with the approach our workgroup has been following. We have found the proposed criteria quite workable and easy to follow* * *. [T]he criteria proposed will facilitate the linkages and coordination needed between IASA and [Goals 2000 and School-to-Work.]" Another State superintendent commented: "[W]e believe consolidated planning will serve as a catalyst for closer linkages between federal and state educational programs." On behalf of another SEA, a commenter observed: "[The SEA] is very supportive of the concept of a consolidated state plan as it will facilitate the delivery of programs and services designed to improve student achievement. A consolidated plan offers new opportunities for state and local educators to develop and implement a vision of seamless service delivery." Yet another SEA representative commented, with respect to the guidance, "We do not believe that flexibility is granted at the expense of accountability, but rather refocuses the accountability on school districts to produce students that are capable of succeeding at future endeavors."

The Department agrees with these comments. The guidance for the submission of preliminary consolidated State plans retains the thrust, flexibility, and basic content of the criteria proposed in the January 13 notice. In response to various requests to clarify limited aspects of the proposed criteria, the Department has made relatively minor changes in the guidance to ensure accountability and adherence to core provisions in the ESEA. These changes include an SEA's inclusion of pupil services personnel among the key individuals with whom it will consult on the State's final consolidated plan, and identification of programs under the Perkins Vocational and Applied Technology Act that may be included in a consolidated State plan.

2. *Scope of plan; reduction of descriptions.* One commenter observed that, in failing to require all substantive descriptions contained in program-specific plans or applications under individual program statutes, proposed criteria for the consolidated State plan were not consistent with, or supported by, section 14302. The commenter stated that the approach taken in the proposed criteria would impair program accountability. The commenter urged that the criteria retain the specific content of individual program plans and applications, while eliminating unnecessary duplication among common plan and application elements.

The Department believes that the guidance for submission of preliminary consolidated State plans is consistent with section 14302 and carries out its intent. Section 14302(a) provides the Secretary with broad authority to tailor the criteria and procedures to govern a consolidated State plan so as to reduce burden and to encourage the meaningful cross-program coordination, integration of services, and overall focus on increased student achievement that section 14301 anticipates. Indeed, section 14302(b)(3) specifically provides that "[t]he Secretary shall require only *descriptions*, information, assurances, and other materials that are *absolutely necessary* for the consideration of the consolidated State plan * * *" (emphasis added).

The Department has observed this direction in providing guidance regarding criteria for the optional, preliminary consolidated State plan. These criteria acknowledge that States would have insufficient time to submit well-considered final consolidated plans this year, and so focus on the most essential elements that the Department believes should guide State thinking. The criteria therefore contemplate preparation, during the coming year and with the active involvement of all interested stakeholders, of a final consolidated State plan that will focus all of the resources of Federal programs included in the plan on a thorough, coordinated and integrated effort to provide the intended beneficiaries of those programs with services in ways that will contribute to an increased level of student achievement. Moreover, the Department believes that the results that Congress wanted to encourage by its enactment of sections 14301–07 are more likely to be achieved through the decreased burdens offered by the Department's approach than through continued use of the individual program-specific plan and application provisions that the commenter would prefer.

The Department emphasizes that, absent a waiver, submission of a consolidated State plan neither relieves a State nor any of its grantees of the obligation to comply with all requirements governing the use of funds provided for programs included in the plan. Moreover, these requirements extend to those that the individual program statute include as elements of program-specific plans or applications. Preparation and submission of a consolidated plan merely permits the State, as a condition of receiving funds for the Federal programs that the plan includes, to prepare a plan that addresses cross-program coordination, service integration and student achievement rather than the various elements in the program-specific applications and plans. Rather than use program-specific applications to secure information on how these programs might be implemented, the Department intends to focus on pertinent aspects of program implementation through other means, including integrated program monitoring and State-by-State collaboration.

3. *Section 1111(a):* Some commenters suggested that criteria for the final consolidated State plan include information, particularly with regard to standards and assessments, specified in section 1111(b) of the Title I, ESEA, statute. The commenters urged that this information was a core aspect of the statutory requirements, applicable

across-the-board to all programs, and thus should be an integral part of the process of developing a consolidated State plan. In response, the guidance on final consolidated plans provided to SEAs on April 20, 1995 (Appendix A to this document) clarifies the Department's intent that final consolidated plans contain adequate information, consistent with section 1111(b), about content and performance standards, assessments, and adequate yearly progress. The Department will provide further information on this issue when it provides additional guidance on the content of final consolidated State plans.

4. *Other comments.* The Department's response to other substantive comments or requests for clarification is contained in the April 20 guidance document (Appendix A to this notice).

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Part IV

Department of Transportation

Coast Guard

46 CFR Parts 67, 68, and 69
Centralization of Vessel Documentation Offices; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 67, 68, and 69

[CGD 95-014]

RIN 2115-AF05

Centralization of Vessel Documentation Offices

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule revokes the designation of 14 ports as ports of record for vessel documentation, and reflects that the Coast Guard has moved the performance of all vessel documentation services to the National Vessel Documentation Center. The centralization of vessel documentation services will permit the Coast Guard to provide more efficient and effective service to the public by enhancing uniformity, specialization, and expertise. A centralized vessel documentation office will also enable the Coast Guard to operate within budgetary constraints in concert with efforts to reduce the Federal Budget.

EFFECTIVE DATE: This rule is effective on August 1, 1995.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G-LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593-0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Don M. Wrye, Vessel Documentation and Tonnage Survey Branch, (202) 267-1492.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Lieutenant Commander Don M. Wrye, Project Manager, and Lieutenant R. Goldberg, Project Counsel, Office of Chief Counsel.

Regulatory Information

This rule is being published as a final rule without being preceded by a notice of proposed rulemaking and opportunity for comment. This rule addresses matters of internal Coast Guard organization and pursuant to 5 U.S.C. 553(b) is exempt from the requirement to publish a general notice of proposed rulemaking. Since this rule addresses matters of agency organization, public comment would not be beneficial to the rulemaking process. Notwithstanding the fact that the subject matter of this rule—centralization of vessel documentation services—is a matter of agency organization, the Coast Guard did conduct a series of public meetings in September through November 1994, in which it announced to the public its plans for the consolidation of existing vessel documentation offices. For these reasons, under 5 U.S.C. 553(b)(B) the Coast Guard for good cause finds that notice, and public procedure on the notice, before the effective date of this rule are unnecessary. The effective date of this final rule, August 1, 1995, is the date that the National Vessel Documentation Center will open and the date that the regional vessel documentation offices will close.

Background and Purpose

Documentation of vessels under Federal law acts as a national registration system which, among other things, serves to establish a vessel's nationality and qualification to be employed in a specified trade. A Certificate of Documentation serves as evidence of nationality. One or more endorsements on a vessel's Certificate of Documentation is evidence of that vessel's qualification to engage in a specified trade. The Coast Guard is the agency responsible for issuing Certificates of Documentation to eligible vessels. When a vessel owner applies for documentation, the Coast Guard determines whether the vessel is eligible for documentation generally, and whether it is eligible specifically for the endorsement or endorsements requested. Since July 1982, the Coast Guard's vessel documentation regulations have permitted applications to be submitted by mail. Today, most vessel documentation transactions are conducted in this manner.

The Coast Guard began consolidating its vessel documentation field offices in July 1983. That early effort resulted in the formation of 15 regional vessel documentation offices. One of those regional offices was closed in 1992, leaving the current 14 offices. During September through November 1994, the Coast Guard conducted a series of public meetings held at various locations to announce the further consolidation of its vessel documentation functions. In those meetings, the Coast Guard announced the availability of its implementation plan for centralization and sought input from the public on methods to make a centralized vessel documentation office operate more efficiently.

One of the suggestions which developed from those public meetings was the notion of permitting certain instruments to be submitted by facsimile for filing purposes. That suggestion has been developed into a separate rulemaking project. A notice of proposed rulemaking amending the Coast Guard's vessel documentation regulations to permit various instruments to be submitted by facsimile for filing purposes, and explaining the procedures for facsimile submission, was published in the **Federal Register** on February 6, 1995 (60 FR 12188). After completion of the consolidation effort, the Coast Guard will continue to review its vessel documentation procedures with a view toward further efforts to streamline the process.

Discussion of Regulations

In various locations in 46 CFR parts 67, 68, and 69, references are made to the "port of documentation," to the "port of record," to variations of "the documentation officer at the port where application for documentation is made," and to the "documentation office nearest where the vessel is located." With consolidation of the regional vessel documentation offices into one location, these references are no longer relevant. Therefore, all of these various references, wherever they appear, are being replaced with an appropriate reference to the National Vessel Documentation Center. Those sections requiring submission of materials to Commandant (G-MVI-5) for decision have also been amended to direct submission of the materials to the Manager, National Vessel Documentation Center. While most of the sections affected are being amended with the simple removal and addition of certain words, a few sections required revision to maintain readability. In addition, the definitions of "Commandant", "Port of documentation", and "Port of record" in § 67.3 are removed, and a definition and address for the "National Vessel Documentation Center" is added. No substantive changes are made to the regulations.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Currently, most vessel documentation transactions are conducted by mail. Therefore, the primary effect of this rule upon the affected public will be that vessel documentation materials will now be mailed to the National Vessel Documentation Center rather than a regional vessel documentation office. Furthermore, the consolidation will permit the Coast Guard to implement aggressive management measures, including the internal shifting of documentation resources to address potential backlogs, the use of office automation technology, and the expansion of electronic submission of documentation materials, to further minimize any economic impact.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. This rule does not require a general notice of proposed rulemaking and, therefore, is exempt from the requirements of the Act.

Although this rule is exempt, the Coast Guard has reviewed it for potential impact on small entities. The Coast Guard is mindful that a number of vessel documentation transactions submitted to it are submitted by vessel documentation services that qualify as small business entities. With these entities specifically in mind, the Coast Guard conducted a series of public meetings during September through November 1994. These public meetings were held at various locations around the country, primarily in port cities where a Coast Guard regional vessel documentation office was located, so that attendance would be convenient. The purpose of these meetings was to announce the pending consolidation of vessel documentation functions. In those meetings, the Coast Guard also sought input from the public, particularly lending institutions and small business entity vessel documentation services, on methods to make a centralized vessel documentation office operate more efficiently, with emphasis on the delivery of services. One of the suggestions which developed from those public meetings was the notion of permitting certain instruments to be submitted by facsimile for filing purposes. That suggestion developed into a rulemaking project and will be in place when the National Vessel Documentation Center opens for business. Other suggestions referred to the elimination of delays between the time of submission of documentation materials and the delivery of the related service.

Most of the small business entity vessel documentation services deal largely with recreational vessels. These kinds of vessels tend to be concentrated in certain locations. As a result, some of the regional documentation offices were required to service large recreational vessel fleets, while other offices had a much smaller number of recreational vessels in their fleet of responsibility. In those ports with large recreational vessel fleets, service backlogs developed. Through use of an aggressive backlog management program, these backlogs have been eliminated.

With consolidation will come a number of benefits that will assist the Coast Guard to better manage its work flow. No longer will one port, with limited personnel resources, have to service a recreational vessel fleet that may be many times larger than that serviced by another port. The consolidation of all vessel documentation billets in the Coast Guard will permit documentation materials submitted from all areas of the country to be handled in one workflow process. The economies of scale that will be achieved, the ability to shift internal resources to meet fluctuations in work, the application of office automation technology, and the ability to establish consistent work practices will address the concerns of the small business entity vessel documentation services. As a result, the Coast Guard's position is that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.lB, as revised (59 FR 38654; July 29, 1994), this rule is categorically excluded from further environmental documentation. This rule has been determined to be categorically excluded because the changes made to the regulations are administrative in nature and clearly have no environmental impact. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subjects

46 CFR Part 67

Fees, Incorporation by reference, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 68

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 69

Measurement standards, Penalties, Reporting and recordkeeping requirements, Vessels.

For the reasons set out in the preamble, the Coast Guard amends 46 CFR parts 67, 68, and 69 as follows:

PART 67—[Amended]

1. The authority citation for part 67 continues to read as follows:

Authority: 14 U.S.C. 664; 31 U.S.C. 9701; 42 U.S.C. 9118; 46 U.S.C. 2103, 2107, 2110; 46 U.S.C. app. 841a, 876; 49 CFR 1.46.

2. Section 67.3 is amended by removing the note following the definition "Commandant", removing the definitions "Port of documentation" and "Port of record", and adding in alphabetical order the definition "National Vessel Documentation Center" to read as follows:

§ 67.3 Definitions.

* * * * *

National Vessel Documentation Center means the organizational unit designated by the Commandant to process vessel documentation transactions and maintain vessel documentation records. The address is:

National Vessel Documentation Center, 2039 Stonewall Jackson Drive, Falling Waters, WV 25419.

* * * * *

§ 67.15 [Amended]

3. In § 67.15, paragraph (b) is amended by removing the words "documentation officer with whom the application is filed" and adding in their place the words "Manager, National Vessel Documentation Center".

§ 67.63 [Amended]

4. In § 67.63, paragraph (b)(1) is amended by removing the word "Commandant" and adding in its place the words "Manager, National Vessel Documentation Center".

§ 67.89 [Amended]

5. In § 67.89, paragraph (a) is amended by removing the words "documentation officer at the port where application for documentation, exchange, or redocumentation is made" and adding in their place the words "Manager, National Vessel Documentation Center".

§ 67.101 [Amended]

6. In § 67.101, paragraph (a) is amended by removing the words "documentation officer at the port where application for documentation is made" and adding in their place the words "Manager, National Vessel Documentation Center".

§ 67.111 [Amended]

7. In § 67.111, paragraph (a) introductory text is amended by removing the words "documentation officer at the port of record of the vessel assigned in accordance with § 67.115, or the documentation office nearest where the vessel is located," and adding in their place the words "National Vessel Documentation Center"; paragraph (b) is amended by removing the words "documentation officer at the port where application for documentation is made" and adding in their place the words "Manager, National Vessel Documentation Center".

§ 67.113 [Amended]

8. In § 67.113, paragraph (e) is amended by removing the words "documentation officer at the port of record of the vessel" and adding in their place the words "National Vessel Documentation Center".

§ 6.117 [Removed]

9. Section 67.115 is removed.

10. In § 67.117, paragraph (a) introductory text is amended by removing the words "documentation officer at the port of record of the vessel assigned in accordance with § 67.115, or the documentation office nearest where the vessel is located" and adding in their place the words "National Vessel Documentation Center"; paragraph (c) is amended by removing the words "documentation officer at the port where application for name change is made" and adding in their place the words "Manager, National Vessel Documentation Center".

11. In § 67.119, paragraphs (d) and (e) are revised to read as follows:

§ 67.119 Hailing port designation.

* * * * *

(d) The Manager, National Vessel Documentation Center has final authority to settle disputes as to the propriety of the hailing port designated.

(e) Until such time as the vessel owner elects to designate a new hailing port, the provisions of paragraph (c) of this section do not apply to vessels which were issued a Certificate of Documentation before July 1, 1982.

12. Section 67.130 is revised to read as follows:

§ 67.130 Submission of applications.

All applications made under this subpart and all subsequent filings to effect documentation, except as provided in § 67.133(b), must be submitted to the National Vessel Documentation Center.

§ 67.133 [Amended]

13. In § 67.133, the introductory text of paragraph (a) and paragraph (a)(1) are amended by removing the word "Commandant" and adding in its place the words "Manager, National Vessel Documentation Center"; paragraph (b) is amended by removing the word "Commandant's determination" and adding in their place the words "determination of the Manager, National Vessel Documentation Center"; the note following the section is amended by removing the word "Commandant" and adding in its place the words "Manager, National Vessel Documentation Center".

§ 67.141 [Amended]

14. In § 67.141, paragraph (a) introductory text is amended by removing the words "documentation officer at the port of record of the vessel assigned in accordance with § 67.115 or at the documentation office nearest where the vessel is located" and adding in their place the words "National Vessel Documentation Center".

§ 67.145 [Amended]

15. In § 67.145, paragraph (a) is amended by removing the reference "67.167(b) (1) through (6)" and adding in its place the reference "67.167(b) (1) through (5)"; paragraph (c) is amended by removing the words "documentation officer at the port where application for exchange is made" and adding in their place the words "National Vessel Documentation Center"; paragraph (d) is removed.

§ 67.147 [Amended]

16. Section 67.147 and the note following the section are removed.

§ 67.149 [Amended]

17. In § 67.149, paragraph (b) is amended by removing the words "port of record of the vessel" and adding in their place the words "National Vessel Documentation Center".

§ 67.151 [Amended]

18. In § 67.151, paragraph (a) is amended by removing the words "Commandant, via the documentation officer at the port of record of the vessel assigned in accordance with § 67.115, or at the documentation office nearest where the vessel is located" and adding in their place the words "Manager, National Vessel Documentation Center"; paragraph (b) is amended by removing the words "Commandant's finding" and adding in their place the words "finding of the Manager, National Vessel Documentation Center".

§ 67.163 [Amended]

19. In § 67.163, paragraph (b) is amended by removing the words "documentation officer at any port of documentation" and adding in their place the words "National Vessel Documentation Center".

§ 67.165 [Amended]

20. In § 67.165, paragraph (a) is amended by removing the words "documentation officer at the vessel's port of record assigned in accordance with § 67.115" and adding in their place the words "National Vessel Documentation Center"; paragraph (b) introductory text is amended by removing the words "documentation officer at the vessel's port of record" and adding in their place the words "National Vessel Documentation Center".

§ 67.167 [Amended]

21. In § 67.167, paragraph (a) is amended by removing the words "documentation officer at the port of record of the vessel assigned in accordance with § 67.115 or at the documentation office nearest where the vessel is located" and adding in their place the words "National Vessel Documentation Center"; paragraph (b)(3) is removed and paragraphs (b)(4) through (b)(7) are redesignated as paragraphs (b)(3) through (b)(6), respectively.

§ 67.169 [Amended]

22. In § 67.169, paragraph (b) is amended by removing the words "documentation officer to whom application is made" and adding in their place the words "National Vessel Documentation Center".

§ 67.171 [Amended]

23. In § 67.171, paragraph (b) is amended by removing the words "any documentation officer" and adding in their place the words "the National Vessel Documentation Center"; paragraph (d) is amended by removing the words "vessel's port of record" and adding in their place the words "National Vessel Documentation Center".

§ 67.173 [Amended]

24. Section 67.173 is amended by removing the words "Commandant or a documentation officer" and adding in their place the words "Manager, National Vessel Documentation Center", by removing the words "to a documentation officer at any port of documentation" and adding in their place the words "to the National Vessel Documentation Center", and by removing the note at the end of the section.

§ 67.175 [Amended]

25. In § 67.175, paragraph (b) introductory text is amended by removing the word "Commandant" and adding in its place the words "Manager, National Vessel Documentation Center".

§ 67.177 [Amended]

26. In § 67.177, paragraph (b) introductory text is amended by removing the word "Commandant" and adding in its place the words "Manager, National Vessel Documentation Center".

§ 67.203 [Amended]

27. In § 67.203, paragraph (a)(2) is amended by removing the words "at the port where the filing is made" and adding in their place the words "to the National Vessel Documentation Center".

§ 67.211 [Amended]

28. In § 67.211, paragraph (b) is amended by removing the words "all Coast Guard documentation offices" and adding in their place the words "the National Vessel Documentation Center".

29. Section 67.213 is revised to read as follows:

§ 67.213 Place of filing and recording.

(a) All instruments submitted for filing and recording must be submitted to the National Vessel Documentation Center.

(b) All instruments are recorded at the National Vessel Documentation Center.

§ 67.215 [Amended]

30. In § 67.215, paragraph (a) is amended by removing the words "documentation officer at the port of documentation where submitted for filing" and adding in their place the words "National Vessel Documentation Center"; paragraph (b) is amended by removing the words "documentation officer at the port of documentation where the original instrument was filed" and adding in their place the words "National Vessel Documentation Center".

§ 67.217 [Amended]

31. In § 67.217, paragraph (b) introductory text is amended by removing the words "documentation officer at the port where the filing was made" and adding in their place the words "Manager, National Vessel Documentation Center".

32. Subpart T is revised to read as follows:

Subpart T—Abstracts of Title and Certificates of Ownership

Sec.
67.301 Issuance of Abstract of Title.
67.303 Issuance of Certificate of Ownership.

§ 67.301 Issuance of Abstract of Title.

Any person may request the National Vessel Documentation Center to issue a General Index or Abstract of Title (form CG–1332) for a vessel.

§ 67.303 Issuance of Certificate of Ownership.

Any person may request the National Vessel Documentation Center to issue a Certificate of Ownership (form CG–1330) for a vessel.

§ 67.313 [Amended]

33. In § 67.313, paragraph (b)(2) is amended by removing the words "a documentation officer" and adding in their place the words "the National Vessel Documentation Center".

§ 67.315 [Amended]

34. In § 67.315, paragraph (b)(2) is amended by removing the words "a documentation officer" and adding in their place the words "the National Vessel Documentation Center".

§ 67.319 [Amended]

35. Section 67.319 is amended by removing the words "a documentation officer at any port of documentation" and adding in their place the words "the National Vessel Documentation Center".

§ 67.32 [Amended]

36. Section 67.321 is amended by removing the words "documentation officer at the port of record of the vessel" and adding in their place the words "National Vessel Documentation Center".

§ 67.500 [Amended]

37. In § 67.500, paragraph (b) is amended by removing the words "or renewal is at a port other than the port of record"; paragraph (d) is amended by removing the words "Commandant (G-MVI)" and adding in its place the words "Manager, National Vessel Documentation Center".

§ 67.515 [Removed]

38. Section 67.515 is removed and reserved.

§ 67.550 [Amended]

39. In § 67.550, Table 67.550 is amended by removing the entry "Renewal at port other than port of record" under the category "Applications:" in the "Activity" column, by removing the corresponding entry "Subpart L" in the "Reference" column, and by removing the corresponding entry "15.00" in the "Fee" column.

Appendix A to Part 67 [Amended]

40. Appendix A to Part 67.—Ports of Documentation is removed.

PART 68—[AMENDED]

41. The authority citation for part 68 continues to read as follows:

Authority: 46 U.S.C. 2103; 49 CFR 1.46. Subpart 68.01 also issued under 46 U.S.C. app. 876; subpart 68.05 also issued under 46 U.S.C. 12106(d).

§ 68.01–7 [Amended]

42. In § 68.01–5, paragraphs (a) and (b) are amended by removing the word "Commandant" and adding in its place the words "Manager, National Vessel Documentation Center".

§ 65.01–7 [Amended]

43. In § 68.01–7, paragraphs (a), (b), and (c) are amended by removing the word "Commandant" and adding in its place the words "Manager, National Vessel Documentation Center".

§ 68.01–9 [Amended]

44. In § 68.01–9, paragraphs (a) and (b) are amended by removing the word "Commandant" and adding in its place the words "Manager, National Vessel Documentation Center".

45. Section 68.01–17 is revised to read as follows:

§ 68.01–17 Application by an 883–1 corporation to document a vessel.

(a) An application by an 883–1 corporation to document a vessel must comply with the applicable requirements in subparts A, D, E, F, G, H, I, K, and L of part 67 of this chapter.

(b) An application by an 883–1 corporation to document a vessel must include a copy of the Certificate of Compliance issued under § 68.01–5.

§ 68.05–11 [Amended]

46. In § 68.05–11, paragraphs (a) and (b) are amended by removing the word "Commandant" and adding in its place the words "Manager, National Vessel Documentation Center"; paragraph (c) is amended by removing the words "documentation officer where application is made" and adding in their place the words "National Vessel Documentation Center"; paragraph (d) is amended by removing the words "documentation officer where application is made" and adding in their place the words "National Vessel Documentation Center"; paragraph (e) is removed.

§ 68.05–13 [Amended]

47. In § 68.05–13, paragraphs (a) and (b) are amended by removing the word "Commandant" and adding in its place the words "Manager, National Vessel Documentation Center".

PART 69—[AMENDED]

48. The authority citation for part 69 is revised to read as follows:

Authority: 46 U.S.C. 2301, 14103; 49 CFR 1.46.

49. Section 69.9 is amended by adding in alphabetical order the definition "National Vessel Documentation Center" to read as follows:

§ 69.9 Definitions.

* * * * *

National Vessel Documentation Center means the organizational unit designated by the Commandant to process vessel documentation transactions and maintain vessel documentation records. The address can be found in § 67.3 of this subchapter.

* * * * *

§ 69.15 [Amended]

50. In § 69.15, paragraph (b) is amended by removing the words "any Coast Guard documentation office" and adding in their place the words "the National Vessel Documentation Center".

51. In § 69.55, paragraph (b) is revised to read as follows:

§ 69.55 Application for measurement services.

* * * * *

(b) Vessel's name and official number (if assigned).

* * * * *

52. In § 69.105, paragraph (b) is revised to read as follows:

§ 69.105 Application for measurement services.

* * * * *

(b) Vessel's name and official number (if assigned).

* * * * *

53. Section 69.205 is revised to read as follows:

§ 69.205 Application for measurement services.

To apply for measurement under the Simplified Measurement System, the owner of the vessel must complete either an Application for Simplified Measurement (form CG–5397), or a Builder's Certification and First Transfer of Title (form CG–1261) which has the information in Part III "Dimensions" completed, and submit it to the National Vessel Documentation Center.

Dated: May 26, 1995.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

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June 15, 1995

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 91 and 135

Special Flight Rules in the Vicinity of the Grand Canyon National Park; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91 and 135

[Docket No. 25149, Special Federal Aviation Regulation (SFAR) No. 50–2]

RIN 2120–AF60

Special Flight Rules in the Vicinity of the Grand Canyon National Park

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action continues, for an additional 2 years, the effectiveness of SFAR No. 50–2, which contains procedures governing the operation of aircraft in the airspace above Grand Canyon National Park. SFAR No. 50–2, which originally established the flight regulations for a period of 4 years, had previously been extended to allow the National Park Service (NPS) time to complete studies concerning aircraft overflight impacts on the Grand Canyon, and to forward its recommendations to the FAA. The NPS study, completed in September 1994, recommended alternatives, such as use of quiet aircraft, additional flight-free zones, altitude restrictions, operating specifications, noise budgets, and time limits. This rule allows the FAA sufficient time to review thoroughly the NPS recommendations as to their impact on the safety of air traffic over the Grand Canyon National Park, and to initiate and complete any appropriate rulemaking action.

DATES: *Effective date.* June 15, 1995. *Expiration date.* SFAR 50–2 expires June 15, 1997.

FOR FURTHER INFORMATION CONTACT: Mrs. Ellen Crum, Air Traffic Rules Branch, ATP–230, Airspace Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Services, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On March 26, 1987, the FAA issued SFAR No. 50 (subsequently amended on June 15, 1987; 52 FR 22734) establishing flight regulations in the vicinity of the Grand Canyon. The purpose of the SFAR was to reduce the risk of midair collision, reduce the risk of terrain contact accidents below the rim level, and reduce the impact of aircraft noise on the park environment.

On August 18, 1987, Congress enacted legislation that required a study of aircraft noise impacts at a number of national parks and imposed flight restrictions at three parks: Grand Canyon National Park in Arizona, Yosemite National Park in California, and Haleakala National Park in Hawaii (Pub. L. 100–91).

Section 3 of Pub. L. 100–91 required that the Department of the Interior (DOI) submit to the FAA recommendations to protect resources in the Grand Canyon from adverse impacts associated with aircraft overflights. The law mandated that the recommendations (1) provide for substantial restoration of the natural quiet and experience of the Grand Canyon; (2) with limited exceptions, prohibit the flight of aircraft below the rim of the Canyon; and (3) designate zones that were flight free except for purposes of administration of underlying lands and emergency operations.

Further, Pub. L. 100–91 required the FAA to prepare and issue a final plan for the management of air traffic above the Grand Canyon. It also required that the plan establish a means to implement the recommendations of the DOI without change unless the FAA determined that executing the recommendations would adversely affect aviation safety. In that event, the FAA was required to revise the DOI recommendations to resolve the safety concerns and to issue regulations implementing the revised recommendations in the plan.

In December 1987, the DOI transmitted to the FAA preliminary recommendations for an aircraft management plan at the Grand Canyon. The recommendations included both rulemaking and nonrulemaking actions.

On May 27, 1988, the FAA issued SFAR No. 50–2 revising the procedures for operation of aircraft in the airspace above the Grand Canyon (53 FR 20264, June 2, 1988). The rule implemented DOI's preliminary recommendations for an airspace management plan with some modifications that the FAA initiated in the interest of aviation safety.

Pub. L. 100–91 also required the DOI to conduct a study, with DOT technical assistance, to determine the proper minimum altitude to be maintained by aircraft when flying over units of the National Park System. The research was to include an evaluation of the noise levels associated with overflights. It required that, before submission to Congress, the DOI provide a draft report (containing the results of its studies) and recommendations for legislative and regulatory action to the FAA for review. The FAA is to notify the DOI of any adverse effects these recommendations may have on the safety of aircraft operations. Additionally, section 3 of Pub. L. 100–91, required the DOI to submit a Report to Congress regarding the success of the Grand Canyon airspace management plan, and any necessary revisions, within 2 years of the effective date of the plan. The FAA was to report whether any of these recommendations would have an adverse effect on safety. On June 15, 1992, because of a delay in the completion of the DOI study, the FAA promulgated a final rule to extend the expiration date to SFAR No. 50–2 to June 15, 1995 (57FR 26766).

On September 12, 1994, the DOI submitted its final report and recommendations to Congress. The report recommends numerous revisions to the current flight restrictions contained in SFAR 50–2. In addition, the report recommends the use of quiet aircraft, additional flight-free zones, altitude restrictions, operating specifications, noise budgets, and time limits for flight in the vicinity of the Grand Canyon.

Upon completing a review of the NPS congressional report, the FAA may amend SFAR 50–2 through the rulemaking process. On April 12, 1995, the FAA published a notice of proposed rulemaking (NPRM) that proposed to extend the provisions of SFAR No. 50–2 for 2 years from the June 15, 1995, expiration date (60 FR 18700). This action extends the effectiveness of the rule, allowing the FAA sufficient time to determine if there is a need to adjust SFAR No. 50–2 in accordance with the NPS recommendations and to make any necessary changes.

Discussion of Comments

The FAA received nine comments in support of, and one comment in opposition to, this action. Commenters included the Aircraft Owners and Pilots Association (AOPA); the Las Vegas Department of Aviation; the National Transportation Safety Board (NTSB); the U.S. Department of Interior, Bureau of Indian Affairs (BIA); environmental associations and air tour operators.

AOPA supports extension of the rule; however, it states that the rule is "inherently discriminatory" to many general aviation (GA) aircraft due to their operating characteristics. AOPA contends that this rule restricts many GA overflights to a narrow corridor and strongly opposes any similar overflight restrictions at any other national parks.

The Las Vegas Department of Aviation supports extension of the rule in order to allow the FAA sufficient time to study the NPS report. However, the commenter is concerned with several recommendations in the report and encourages the Department of Transportation to carefully consider the evidence, believing that there can be a balance among the air tour industry, the NPS, the FAA, and environmental groups.

The NTSB supports extending the SFAR for 2 years. However the NTSB believes that a permanent nationwide policy for air tour operators should be implemented.

The BIA states that, if the FAA extends the SFAR, it should consult with various Indian tribes residing within or having ties to the Grand Canyon area during the 2-year extension period concerning potential impact to their reservation environment.

Several commenters support extension of the current rule; however, they request an adjustment to the tour route known as the Dragon Corridor. The commenters believe that adjustment to this corridor would lessen the noise impact on visitors to the heavily used Hermit's Rest overlook and trail.

One commenter "strongly opposes" the SFAR in its present form, given the NPS report. The commenter recommends prohibiting an increase in the number of Grand Canyon tour flights from 1988 levels and requiring tour operators to provide the FAA with sufficient information to monitor the number of tour operations.

The FAA has determined that comments requesting amendments to the current rule are beyond the scope of the NPRM. The NPRM did not recommend any changes to the current SFAR; it merely proposed extending the rule in its existing form. The FAA is currently reviewing and analyzing the NPS report and recommendations as to the impact on the safety of air traffic at the Grand Canyon. The FAA has determined that any substantive change at this point will be inappropriate. Upon completing the review and analysis of the NPS report, the FAA may amend SFAR No. 50–2 through the rulemaking process.

The Rule

This rule amends the expiration date of the current SFAR 50–2 from June 15, 1995, to June 15, 1997. The airspace restrictions and operating procedures for the airspace over the Grand Canyon are not altered by this action. In consideration of the need to avoid confusion on the part of pilots operating in the vicinity of the Grand Canyon, the FAA finds good cause, pursuant to 5 U.S.C. § 553(d), for making this action effective in less than 30 days to promote the safe and efficient operation of aircraft in the airspace above the Grand Canyon.

Environmental Review

As discussed above, Pub. L. 100–91 required the DOI to submit a report to Congress with 2 years of implementation regarding the success of the final airspace management plan for the Grand Canyon, including possible revisions. Now that this report has been forwarded to both Congress and the FAA, the FAA is required to comment on whether any of these revisions would have an adverse effect on aircraft safety.

Pub. L. 100–91 essentially reflects a decision by Congress that a final airspace management plan, currently set forth in SFAR No. 50–2, should continue permanently with any appropriate modifications developed as a result of the follow-on study. The statue and its legislative history show that Congress considered the environmental and economic concerns inherent in regulating the navigable airspace over the Grand Canyon. Since Congress, and not the FAA, determined to make permanent an airspace management plan as delineated in SFAR No. 50–2, this extension of SFAR No. 50–2 does not require compliance with the National Environmental Policy Act of 1969 (NEPA).

Assuming, for the sake of argument, that the FAA has discretion to terminate SFAR No. 50–2, this action to extend its effectiveness for 2 more years is categorically excluded from the requirements of the NEPA. (See FAA Order 1050.1D, Par. 31(a)(4), "Policies and Procedures for Considering Environmental Impacts.") A documented categorical exclusion has been placed in the docket.

Alternatively, the analysis in the 1988 Environmental Assessment (EA) and the Finding of No Significant Impact remain valid and support a determination that this extension is not likely to significantly impact the environment. The extension will not cause significant environmental impacts because it will not change the volume of traffic, the altitude of flight routes, or the noise characteristics of the aircraft typically used in canyon flights between now and 1997.

This extension will enable the FAA to consider recommendations that the DOI forwarded in September 1994 to enhance the effectiveness of the SFAR. Based upon its studies, the DOI has concluded that the SFAR has significantly reduced noise impacts in areas of the Grand Canyon. However, the DOI believes the benefits may be lost unless additional restrictions are adopted.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule is not a "significant regulatory action" as defined in the Executive Order and the Department of Transportation Regulatory Policies and Procedures. This rule will not have a significant impact on a substantial number of small entities and will not constitute a barrier to international trade.

SFAR No. 50–2 was justified based on the DOI's December 1987 benefit-cost analysis. This analysis stated that 40 to 45 operators conducted air tours over the Grand Canyon with an estimated revenue of $30 to $50 million per year. The number of operations over the Grand Canyon was growing, with operations at Grand Canyon National Park Airport increasing 300 percent from 1974 to 1980.

The establishment of large flight-free zones was expected to roughly double the time for Tusayan-based operators to reach the canyon rim. The DOI analysis assumed that these operators could adjust for the increased travel time by increasing the overall tour length and passing on any additional costs to the consumer. While the percent of tour time spent over the canyon would decrease, small price increases or slightly decreased flight time over the canyon was not expected to result in a decreased ridership. In addition, even though Tusayan-based companies would incur costs to modify advertising literature and tour narrations due to route change requirements, the DOI analysis assumed that these costs would likely be part of the normal operating program. The benefits to the park resources (natural quiet, wildlife, archeological features, etc.) and the more than 3,315,000 visitors (about 3 million front-country users and over 90 percent of the 350,000 back-country, below rim users each year) would accrue primarily from the increased quiet resulting from noise reduction. Thus, DOI concluded that this NPRM would be cost-beneficial because cost to air tour operators would be minimal and

the benefits to park resources and visitors would be significant.

For the purpose of this rule, the FAA updated the DOI's December 1987 data as follows: (1) There are still 40 to 45 air tour operators; (2) the estimated revenue generated by the industry is now over $100 million each year; and (3) the number of ground visitors has increased to almost 5 million. The FAA believes that extending the current SFAR No. 50–2 will not alter current industry practices in the Grand Canyon special flight rules area and will not affect growth in air traffic. Additionally, the rule will not cause significant economic impact because it will not change the volume of traffic, the altitude of flight routes, or the noise characteristics of the aircraft typically used in canyon flights between now and 1997. Therefore, the FAA has determined that the extension will not result in additional costs to the air tour operators.

Since the rule was first promulgated in 1987, the number of ground visitors increased by 50 percent. During this period, the estimated number of air tour operators remained unchanged, while the estimated revenue generated by the air tour industry has doubled. Therefore, the FAA has determined that any costs incurred by the air tour operators are not overly burdensome.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by Federal regulations. The RFA requires a Regulatory Flexibility Analysis if a rule will have "a significant economic impact on a substantial number of small entities." FAA Order 2100.14A outlines the FAA's procedures and criteria for implementing the RFA. Small entities are independently owned and operated small businesses and small, not-for-profit organizations. A substantial number of small entities is defined as a number that is 11 or more and which is more than one-third of the small entities subject to this direct final rule. The FAA determined that this rule will not result in a significant economic impact on a substantial number of small entities.

International Trade Impact Analysis

This action is expected to have neither an adverse impact on the trade opportunities for U.S. firms doing business abroad nor on foreign firms doing business in the United States. This assessment is based on the fact that part 135 air tour operators potentially impacted by this rule do not compete with similar operators abroad. That is, their competitive environment is confined to the Grand Canyon National Park.

Federalism Implications

This action will not have substantial effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this action will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

International Civil Aviation Organization and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization Standards and Recommended Practices (SARP) to the maximum extent practicable. For this action, the FAA has reviewed the SARP of Annex 10. The FAA has determined that this amendment will not present any differences.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no requirements for information collection associated with this rule.

Conclusion

For the reasons set forth above, the FAA has determined that this rule is not a significant regulatory action under Executive Order 12866. In addition, the FAA certifies that this action will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This rule is not considered significant under DOT Regulatory Policies and Procedures.

List of Subjects in 14 CFR Parts 91 and 135

Aircraft, Air taxis, Air traffic control, Aviation safety.

The Amendment

For the reasons set forth above, the Federal Aviation Administration is amending SFAR No. 50–2 (14 CFR parts 91 and 135) as follows:

PART 91—[AMENDED]

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180), 42 U.S.C. 4321 et seq., E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970 Comp., p. 902; 49 U.S.C. 106(g).

PART 135—[AMENDED]

2. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40105, 44113, 44701–44705, 44707–44717, 44722, and 45303.

3. In parts 91 and 135, Special Federal Aviation Regulation No. 50–2, the text of which appears at the beginning of part 91, is amended by revising section 9 to read as follows:

SFAR No. 50–2—Special Flight Rules in the Vicinity of the Grand Canyon National Park, AZ

* * * * *

Sec. 9. *Termination date.* This Special Federal Aviation Regulation expires on June 15, 1997.

* * * * *

Issued in Washington, D.C. on June 9, 1995.

David R. Hinson,

Administrator.

[FR Doc. 95–14649 Filed 6–14–95; 8:45 am]

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federal register

Thursday
June 15, 1995

Part VI

Department of Health and Human Services

Administration for Children and Families

45 CFR Part 1310
Head Start Program; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1310

RIN 0970–AB24

Head Start Program

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Administration for Children and Families is issuing this Notice of Proposed Rulemaking to implement the statutory provision for establishing requirements for the safety features, and the safe operation, of vehicles used by Head Start agencies to transport children participating in Head Start programs.

DATES: In order to be considered, comments on this proposed rule must be received on or before August 14, 1995.

ADDRESSES: Please address comments to the Associate Commissioner, Head Start Bureau, Administration for Children, Youth and Families, P.O. Box 1182, Washington, D.C. 20013.

Beginning 14 days after close of the comment period, comments will be available for public inspection in Room 2217, 330 C Street, SW., Washington, DC. 20201, Monday through Friday, between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Bill Wilson, Head Start Bureau, (202) 205–8913.

SUPPLEMENTARY INFORMATION:

I. Program Purpose

The Head Start program is authorized under the Head Start Act (the Act), section 635 of Pub. L. 97–35, the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 9801 *et seq.*). It is a national program providing comprehensive child development services primarily to low-income children, predominantly age three to the age of compulsory school attendance, and their families. To help enrolled children achieve their full potential, Head Start provides comprehensive health, nutritional, educational, social and other services. In addition, Head Start programs are required to provide for the direct participation of the parents of enrolled children. Parents receive training and education that fosters their understanding of and involvement in the development of their children. They also become involved in the development, conduct, and direction of local programs. Also, the Head Start program provides services to children below the age of three and their families. These services are designed to promote the development of the children and to enable their parents to fulfill their roles as parents and move toward self sufficiency.

In fiscal year 1993, Head Start served 713,903 children through a network of 1,395 grantees and 575 delegate agencies. Delegate agencies have approved written agreements with grantees to operate Head Start programs.

While Head Start is intended to serve primarily children from low-income families, Head Start's regulations permit up to 10 percent of the children to be from families who are not low-income. The Head Start regulations also require that a minimum of 10 percent of enrollment opportunities in each grantee be made available to children with disabilities. Such children are expected to participate in the full range of Head Start activities with their non-disabled peers, and to receive needed special education and related services.

The Head Start Improvement Act of 1992 contains a new provision which authorizes the Head Start Bureau to develop regulations for the safe transportation of Head Start children. In addition, the Final Report of the Advisory Committee on Head Start Quality and Expansion includes in its recommendations the development of "* * * regulations to assure that safe and effective transportation services are available." The development of these "Performance Standards" for Head Start transportation support the goal of ensuring that children and families receive high quality Head Start services.

II. Background

The authority of this Notice of Proposed Rulemaking is sections 640(i) and 644 (a) and (c) of the Head Start Act (42 U.S.C. 9801 *et seq.*). Section 640(i) directs the Secretary to issue regulations establishing requirements for the safety features and the safe operation of vehicles used by Head Start agencies to transport children participating in Head Start programs. Section 644 (a) and (c) requires the issuance of regulations setting standards for organization, management, and administration of Head Start programs.

Since the inception of the program, most Head Start agencies have routinely provided transportation for Head Start children to and from the classroom when needed, although there has never been a requirement to do so. To date, information on transportation provided to Head Start programs has been limited to a series of Information Memoranda which provided guidance to programs on issues around transportation safety, but which did not require any action on the part of Head Start agencies. The following is a summary of that information:

- *ACYF–IM–82–01, "Transportation Safety", issued on January 19, 1982.* This Information Memorandum provided the first notification to Head Start programs with a Highway Accident Report prepared by the National Transportation Safety Board (NTSB) of an accident involving a Head Start vehicle. As a result of their investigation of this accident, the NTSB recommended that ACYF advise all Head Start programs of the circumstances of the accident in hopes that the report would draw attention to the importance of transportation safety. The Information Memorandum also notified programs of the NTSB's recommendation that ACYF adopt and emphasize the need for adherence to the policies and guidelines provided by the National Highway Traffic Safety Administration's (NHTSA) Pupil Transportation Safety Standards, Highway Safety Program Standard Number 17 (now Guideline 17). A copy of Standard 17 was included and programs were "urged" to use the Standard to assess the adequacy of their transportation systems.
- *ACYF–IM–93–10. "Transportation", issued on March 18, 1993.* This Information Memorandum replaced ACYF–IM–82–01 and ACYF–IM–83–06, since both the FMVSS and NHTSA's Pupil Transportation Safety Standards had been revised. The Information Memorandum provided Head Start programs with a copy of the new Guideline 17 and again encouraged programs to purchase only vehicles which meet the FMVSS. The Information Memorandum also provided Head Start programs with new information regarding the Federal Highway Administration's (FHWA) Commercial Motor Vehicle Safety Act and the Commercial Driver's License (CDL) program.

As these issuances have been advisory and not legally binding, there have been differing degrees of implementation. Not all Head Start agencies offer transportation services and, among the agencies that do provide transportation, there are varying degrees of quality and safety.

Because of its impact on the quality of services provided to children and families, we strongly believe that the transportation "component" of Head Start should be on a par with the other components of education, health, social services and parent involvement in terms of budgeting, training and overall integration of the transportation services into the day-to-day activities of the program. For example, in a typical rural Head Start program where children are transported over long distances, it is possible for children to spend from ¼ to ⅓ of their day en route to and from the classroom. It is imperative, therefore, that the time children spend on the vehicle is treated with the same level of importance as the time the children spend in the classroom and in other program activities.

We know from experience that significant variation exists among the States in terms of whether or not Head Start vehicles and Head Start drivers are included under the purview of State school bus requirements.

In preparing for this NPRM, a survey was conducted of the States to determine whether and the extent to which, the requirements in the State's pupil transportation safety plan applied to Head Start programs. Of the 48 States that responded to the survey, 14 of them stated that their Head Start programs are covered by the regulations governing pupil transportation, 22 States responded that their Head Start programs are not covered, 10 States gave a conditional response and 1 State did not know. The survey also indicated significant variation among the States themselves in the amount of training required for school bus drivers. Of the 45 States that responded to this question, 39 have some mandated training requirements for school bus drivers, 3 States reported that driver training was handled at the local level, and 3 States reported no mandated training requirements for school bus drivers. More significantly perhaps, only 13 States reported mandated driver training for Head Start bus drivers.

This variation, both in the way Head Start programs are viewed by the States as well as the differing requirements among the States, precluded reliance on the States as the sole source for transportation safety standards for Head Start programs and was one of the primary determinants in our decision to develop minimum standards which would apply to all Head Start programs, regardless of the State in which they operate.

In the development of this proposed rule, we have with only minor variations, adopted the recommendations contained in Guideline 17. As such, this proposed rule was developed through ongoing consultation with the Federal Highway Administration, specifically with NHTSA's Safety Counter Measures Division, on the application of the FMVSS and Guideline 17 to Head Start programs. It should be noted that we do not wish to place Head Start programs in conflict with State requirements. On the contrary, it is our intention to continue to work with the States beyond the implementation of the rule to enhance the relationship between Head Start programs and the State agencies responsible for pupil transportation safety. Toward that end, we have consulted with the National Association of State Directors of Pupil Transportation throughout the development of this proposed rule and we welcome the identification of any actual or potential problems that may be identified during the review of this NPRM.

Where Guideline 17 lacked specificity or was silent on some aspect that was considered important, we have relied on other resources, such as the National Standards for School Bus Operations, in determining, for example, the minimum hours of pre-service and in-service training for drivers, the content requirements for driver training and the rules for trip routing. The NTSB's Special Report 222 provided valuable information regarding the use of seat belts on school buses, other special equipment, such as crossing control arms, the need for strict rules for trip routing, and the need to train children in safe riding practices both on and off the bus.

The NTSB's examination of the use of seat belts on school buses in Special Report 222, along with NHTSA's recommendation in Guideline 17 that passengers in vehicles with a gross vehicle weight rating of under 10,000 pounds (which is the class of vehicle most in use by Head Start programs) use occupant restraints, raises an issue of special importance to the safe transportation of Head Start children. The use of standard Type I and Type II seat belts is inappropriate for children who weigh 50 pounds or less, because of the potential for injury from the seat belt itself. Children weighing 50 pounds or less should be seated in child restraint systems designed in accordance with FMVSS No. 213, "Child Restraint Systems." Since almost all Head Start children fall into this lower weight category, we have included such a requirement in the proposed rule. Our decision to include this requirement is based on consultation with such organizations as the American Academy of Pediatrics, the Children's National Medical Center in Washington, DC and the Riley Hospital for Children, Automotive Safety for Children Program in Indianapolis, Indiana. We are particularly interested in comments addressing age mixes of children with respect to child restraints (infants and toddlers).

III. Summary of the Proposed Regulation

The proposed rule:

- Applies to all Head Start grantees and delegate agencies that provide transportation services to and from the classroom and to special events, such as field trips and other group events, which take place away from the classroom but are an integral part of the scheduled activities for children.
- Requires that Head Start vehicles meet the Federal Motor Vehicle Safety Standards (FMVSS) for school buses and prohibits the use of small vans in the transporting of Head Start children;
- Describes the minimum qualifications for operators of Head Start vehicles;
- Describes the pre-service and in-service training requirements for operators of Head Start vehicles;
- Describes the training requirements for parents and children in vehicle and pedestrian safety;
- Describes the requirements for transportation of children with disabilities; and
- Defines the role of Head Start agencies in local efforts to plan and implement coordinated transportation systems in order to achieve greater cost effectiveness in the overall cost of providing transportation.

The contents of this proposed rule are adopted from the following sources of information:

- 23 CFR, part 1204—Highway Safety Program Guideline No. 17, "Pupil Transportation Safety," referred to in this text as Guideline 17;
- 49 CFR, part 383—Commercial Driver's License Standards: Requirements and Penalties;
- 49 CFR, part 391—Qualifications of Drivers;
- 1990 National Standards for School Buses and School Bus Operations, National Safety Council; and
- Special Report 222, "Improving School Bus Safety," Transportation Research Board, National Research Council, 1989.

IV. Section-by-Section Discussion of the NPRM

Subpart A—General

Section 1310.1—Purpose

This section describes the purpose of the regulation and references the section of the Head Start Act upon which the regulation is based.

Section 1310.2—Applicability

This section states that the new rule applies to all Head Start grantees and delegate agencies that provide transportation services. It also includes a phase in period of three years from the effective date of the rule with certain exceptions. This phase-in period should not become a disincentive to agencies to implement requirements as early as possible but rather be a means by which agencies can carry out their implementation responsibilities with time for careful planning. We considered allowing waivers but decided against this approach given the many waiver requests this provision would have precipitated and the fact that we envision all affected Head Start agencies fully meeting all of the requirements no later than 3 years from its effective date. We welcome comments on whether the phase-in period provides enough time (or gives too much time) for a Head Start agency to fully comply with part 1310. Also we welcome comments on whether we should provide for waivers on certain requirements which are believed to be too difficult for all affected agencies to meet in the three year period and which do not compromise the safety of Head Start children.

Section 1310.3—Definitions

This section provides the definition of terms used throughout the proposed rule. Key words and phrases defined include "transportation" (which is defined as the regular transporting of children to and from the classroom, on field trips or other events which are an integral part of the daily activities for children), "vehicle" (which is a "school bus" as defined in the National Highway Traffic Safety Administration's (NHTSA) Guideline 17), "trip routing" (which means the process for determining the fixed routes to be traveled on a daily basis), "child restraint system" (which means a device designed to restrain children weighing 50 pounds or less); certain school bus equipment, including "stop signal arm" (which is a traffic control device) and "crossing control arm" (which is a device to keep children within the line of sight of the driver when crossing in front of the bus), and such terms as "training," "driver qualifications," "Transportation Supervisor" and "Bus Monitor," which define the staffing requirements for the transportation component.

Subpart B—Transportation Requirements

Section 1310.10—General

This section contains the general requirements for the provision of transportation services for Head Start families.

Paragraph (a) of this section requires that all Head Start agencies that provide transportation services either directly, through agency owned or leased vehicles, or through contract with a public or private provider must meet the requirements of this part. (Please note that the definition of "transportation" deliberately excludes the transporting of small groups of children to and from medical appointments or other program services, and other "incidental" transportation, such as transporting a sick child home, which are outside of the scope of this regulation.)

Paragraph (b) requires Head Start agencies to document their decision not to provide transportation to all or a portion of their enrollment. It also requires that such a decision must be reviewed and updated annually. This documentation is needed in order to have on file evidence of compliance. We expect that the regular oversight of the Policy Council in matters relating to the proper functioning of a Head Start program will serve as a review of the agency's decision not to provide transportation. Since the work of the Policy Council is already a part of the operation of each Head Start Program, we did not reference the Policy Council in this rule.

We realize the difficulties some programs, especially rural programs, will face in making the decision of whether or not to provide transportation. There are cases where a single child needs transportation for a long distance or where several children's homes are widely scattered. These cases raise issues both about the cost of providing transportation and about the desire not to keep a Head Start eligible child out of the program for lack of transportation. We are particularly interested in comments on these problems and potential solutions. For example, should there be a "reasonableness exception clause" for individual cases such as the single child a living long distance from the center? And if there is a reasonableness clause, what transportation requirements should be in effect (e.g., age-appropriate restraints and placement in the vehicle)?

Paragraph (c) requires Head Start agencies which do not offer transportation to offer assistance in arranging for transportation services to Head Start families.

Paragraph (d) requires each Head Start program to have a Transportation Supervisor. In most Head Start programs, this responsibility is currently with the Head Start Director who, in some cases, lacks the expertise and the time to deal with the many facets of transportation. Therefore, we believe it is essential to have a staff person assigned specifically to this function so that funds are set aside in each program's budget for hiring such a person, if necessary.

Paragraph (e) requires that every Head Start vehicle have a bus monitor (more, if necessary for disabled children), either a paid staff member or a volunteer, on the vehicle at all times when children are on board. A bus monitor is essential to assuring the safe transport of this age group of children and will assist with the seating and unseating of children in the child restraint systems, managing the behavior of the children while the bus is in motion and for assisting the driver in case of emergency. In some instances it may be necessary to have more than one monitor. While we did not specifically regulate in this area, we invite comment on the appropriate ratio of monitor to child.

Paragraph (f) requires Head Start agencies to report all accidents involving Head Start vehicles with or without children on board in accordance with State procedures. Accident reporting is a critical part of improving school bus safety, both in terms of vehicle safety and vehicle operations.

Paragraph (g) requires that Head Start vehicles be equipped with communications equipment, such as a citizen band radio, to call for assistance in case of an emergency.

Paragraph (h) requires that Head Start vehicles which operate in areas with extreme heat or cold be equipped with air conditioning, "winter packs" or other specialized equipment as appropriate to ensure the safety and comfort of the passengers.

Paragraph (i) provides the requirements for release of the children at the end of the day, either from the classroom or at the vehicle stop, to a duly authorized adult. Since the Head Start program is responsible for the care and safety of the children from the time they first enter the custody of the Head Start staff until they are returned to the custody of the parent or guardian, this provision is included to ensure that children are released only to duly authorized persons. This provision is extended to the non-transported child because it does not appear anywhere else in the Head Start regulations.

Section 1310.11—Vehicles

This section specifies the minimum requirements for all Head Start vehicles used to transport groups of children to and from the classroom, to home-based socializations, to group health screening and on field trips or other group activities scheduled by the Head Start staff.

The requirements in this provision come from three sources. The Federal Motor Vehicle Safety Standards (FMVSS) (49 CFR part 571), set performance standards applicable to motor vehicles as defined in 49 U.S.C. 30102(a)(6) and include standards specifically applicable to school buses. These regulations are binding on Head Start grantees operating transportation programs by virtue of their issuance by the National Highway Traffic Safety Administration (NHTSA).

Head Start vehicles seating more than 10 persons are considered school buses by NHTSA for purposes of compliance with the FMVSS. It is a violation of 49 U.S.C. 30112 for a vendor to sell a vehicle which does not comply with the FMVSS. Another source is Highway Safety Guideline 17 (23 CFR Part 1204) issued by NHTSA and the Federal Highway Administration (FHWA). This document is a set of recommendations to States concerning their policies on the operation of school buses. The proposed regulations would make these recommendations binding on Head Start grantees, except for certain requirements which are only binding "to the extent allowable under State law." Finally, there are also requirements in the regulations on the design and operation of vehicles which are imposed by ACF and are in addition to the requirements in Highway Safety Guideline 17 and the FMVSS.

Paragraph (a) requires that all Head Start vehicles comply with recommendations regarding "school buses," as contained in Guideline 17, except as provided otherwise in this regulation. The National Highway Traffic Safety Administration (NHTSA) has implemented the statutory definition of "school bus" which reads in part "a passenger motor vehicle which is designed to carry more than 10 passengers * * *" (Motor Vehicle and Schoolbus Safety Amendments of 1974, Pub. L. 93–492, 88 Stat. 1470).

We have included this requirement for two reasons. First, experts agree that school bus transportation is one of the safest forms of transportation of school-age children. According to the National Safety Council's "Accident Facts (1991), in 1989, fatality rates per hundred million passenger miles were 1.12 for passenger cars and 0.04 for school buses. Also in 1989, passenger cars were involved in 72.3 percent of all traffic crashes and 61.2 percent of all fatal crashes; whereas school buses were involved in only .2 percent of all traffic crashes and in .2 percent of all fatal crashes. Therefore, in addition to the requirement regarding the use of school buses, we have explicitly prohibited the use of small vans and the use of passenger cars in transporting Head Start children.

Secondly, NHTSA, in its interpretation of Guideline 17, has consistently maintained, from the inception of the FMVSS's for school buses, that Head Start programs are "schools" under the National Traffic and Motor Vehicle Safety Act and that Head Start children should only be transported on school buses that meet the FMVSS.

Paragraph (b) reiterates the requirement under 49 CFR part 571 as interpreted by NHTSA that Head Start vehicles seating more than 10 persons be constructed in compliance with the Federal Motor Vehicle Safety Standards (FMVSS) applicable to school buses. It also establishes minimum requirements for equipment on these vehicles, including emergency equipment and supplies, and requirements on the arrangement of exterior mirrors and specialized equipment including equipment for persons with disabilities as necessary. The latter requirements are imposed by ACF and are in addition to the recommendations in Highway Safety Guideline 17 and requirements in the FMVSS.

Paragraph (c) contains additional requirements for vehicle marking (such as color and lettering) and equipment (such as a stop signal arm and signal lamps) which were taken from Guideline 17 and are applicable, if permissible within State law. It is our intent to have every Head Start vehicle qualify to operate as a school bus, which means being marked and equipped as a school bus and having all the rights and privileges of a school bus on the streets and highways, including stopping traffic to load and unload children. However, we are aware that some States do not permit Head Start programs to operate school bus-like buses since they are not "schools" by State definition. This potential for variation among the States is, therefore, taken into account in the separate requirements contained in paragraphs (a) and (b). To assist Head Start programs in this regard, the Head Start Bureau has written to each of the State Directors of Pupil Transportation requesting information about their State pupil transportation requirements, and this information is being analyzed to determine where barriers to this goal exist and to develop plans, State by State, for overcoming these barriers.

Paragraph (d) contains a process for grantees to follow to assure that manufacturers and vendors of vehicles comply with the FMVSS, including a clear statement of the intended use of the vehicle in the bid announcement and a prescribed procedure for examining the vehicle at the time of delivery. Therefore, it is a violation of Federal law for a vendor to knowingly sell a vehicle seating more than 10 persons to a Head Start program that does not meet the FMVSS when the intended use of that vehicle is made clear at the beginning of the transaction. (49 U.S.C. 30112)

Paragraph (e) specifies that vehicles in use which do not comply with the FMVSS must be replaced as soon as possible. We believe this can be accomplished within the three year phase-in period (§ 1310.2) now that, in accordance with 42 U.S.C. 9839(g)(2)(C), Head Start funds may be used for capital expenditures (including paying the cost of amortizing the principal and paying interest on loans) to purchase vehicles used for programs at Head Start facilities. This new authorization makes it possible for Head Start programs to plan more effectively and spread out their expenses over several funding periods. It also substantially reduces the amount of funds necessary to be allocated to transportation in the fiscal year in which these regulations become a Final Rule.

Paragraphs (f) through (j) prescribe specific passenger safety requirements while the vehicle is in motion. They require that all persons be seated while the vehicle is in motion, that baggage and other transported items be properly stored, and prohibit the use of auxiliary seating of any kind. Most importantly, paragraph (h) requires the use of seat belts by drivers and bus attendants and paragraph (i) requires the use of child restraints for all children. These requirements are being imposed by ACF.

The Highway Safety Program Guideline No. 17 recommends that "Passengers in school buses and school-chartered buses with a gross vehicle weight rating (GVWR) of 10,000 pounds or less should be required to wear occupant restraints (where provided) while the vehicle is in motion." (Citation: Guideline 17, Section C.2.e.(5)) We believe that properly installed and properly used child restraints provide the maximum safety for Head Start children. It is our understanding that the bus

manufacturers have recently begun to test new designs specifically for transporting pre-school children. Therefore, going beyond the recommendations of Guideline 17, we are requiring the use of child restraint systems on all Head Start vehicles and that they meet the performance standards in the FMVSS, 49 CFR 571.213.

Paragraph (k) contains the requirements for safety inspection and routine maintenance of vehicles. They require the establishment of procedures for routine preventive maintenance, daily pre-trip inspections by the driver, and third party inspections at least once a year. These requirements are adapted from the recommendations in the National Standards for School Buses and School Bus Operations.

Section 1310.12—Driver Qualifications

Paragraph (a) of this section prescribes the minimum qualifications for drivers of Head Start vehicles, which include a minimum age of 21, a Commercial Driver's License (CDL), and all other screening requirements (e.g. physical, mental, moral, drug and alcohol abuse, etc.) established by their respective State. All drivers who operate a vehicle designed to carry 16 or more passengers were required by the Federal Highway Administration's (FHWA) Commercial Driver License Standards to have a valid commercial driver license by April 1962, and most Head Start drivers fall into this category. However, it is possible that some Head Start programs may operate vehicles that carry less than 16 passengers, since the definition of a bus includes smaller vehicles that carry 10 or more passengers. We believe that the screening procedures and the knowledge and skills tests required for obtaining a CDL are an important step in assuring that only the most qualified people are employed as Head Start drivers. Therefore, we are including the CDL as a requirement here in order to extend the requirement to all Head Start drivers, regardless of the size of the vehicle.

Paragraph (b) requires programs to establish their own applicant screening procedures. Paragraph (c) (1)–(4) provides a list of the elements which should be included in each agency's screening process, such as an application with educational background, employment history and personal references, an interview procedure, a check of the applicant's driving record through the National Driver Registry and the State Department of Motor Vehicles, a physical examination, and a test of visual acuity.

Under the CDL program, drivers of vehicles involved in purely intrastate commerce (as is the case for almost all Head Start drivers): (1) Are only required to pass the knowledge and skills test for the particular vehicle they will be operating; and (2) are exempt from the age and physical qualifications requirements contained in 49 CFR part 391, "Qualifications of Drivers." This means that drivers of Head Start vehicles need only comply with their respective State standards in these two areas, which vary considerably from State to State. In some States the minimum age to drive a school bus is 16. We have chosen to adopt the minimum age requirement (21) contained in 49 CFR part 391 as the minimum age for drivers of Head Start vehicles. Some States have minimal or no physical qualifications standards for school bus drivers. Therefore, we are proposing to require that a physical examination, performed by a licensed doctor of medicine or osteopathy, be included in the screening procedures. We believe this is necessary to assure that Head Start vehicles are operated by mature and physically able individuals.

Section 1310.13—Driver Training

This section contains the pre-service and in-service training requirements for Head Start drivers.

The number of hours of training are the same as those recommended in the National Standards for School Buses and School Bus Operations. It specifies that Head Start drivers must have a minimum of 40 hours of skills training (a combination of classroom and behind-the-wheel instruction) prior to transporting children. The content areas include safe operation of the vehicle, how to run a fixed route, first aid, handling emergencies, operating special equipment, conducting routine maintenance and keeping accurate records. In addition to the skills training requirements, drivers must receive an orientation to the goals and objectives of Head Start, instruction on the role of the Head Start driver as part of the Head Start team, and specific instruction on the Head Start Performance Standards for Children with Disabilities as they relate to the provision of transportation services.

The proposed rule also requires a minimum of 8 hours of in-service training annually to maintain driver skills, enhance the driver's ability to perform daily tasks, and assist the transportation staff in staying abreast of information and/or developments in transportation technology.

The proposed rule requires Head Start agencies to be knowledgeable of driver training requirements in their respective State and to take whatever steps are necessary for their drivers to qualify to operate Head Start vehicles as school buses. The requirement in this section, along with § 1310.11 (b) and (c), reflect our belief that the ability to operate Head Start vehicles as school buses, from the standpoint of the driver as well as the vehicle, adds significantly to the level of safety.

As with the driver qualifications requirements discussed in the previous section, we know that there is significant variation among the States in their driver training requirements. Some States, in fact, have no training requirements, while other States have comprehensive training programs which reflect the recommendations in Guideline 17 and the National Standards for School Bus Operations. Paragraph (e) of this section, therefore, requires Head Start agencies, in the absence of an appropriate State or local training program, to obtain the necessary training from other sources or develop their own training programs using the National Standards for School Bus Operations and/or the NHSTA driver training curriculum as a guide. We are aware of the difficulties this may present for some programs in the short term and believe the phase in period will be helpful. We are also aware of the need to assist Head Start programs in this area, and will be providing technical assistance, as needed, and further guidance in the future.

The remaining paragraphs of this section require current drivers of Head Start vehicles to meet the same training requirements as new drivers within three months of the effective date of this rule, require drivers to be evaluated annually by the Transportation Supervisor, and require bus monitors to receive the same classroom training as drivers.

Subpart C—Special Requirements

Section 1310.20—Trip Routing

This section prescribes the minimum requirements for determining and traveling the fixed routes to be used on a daily basis to transport children to and from the classroom. In its Special Report 222, "Improving School Bus Safety," the Transportation Research Board, National Research Council stated: "The principles of school bus routing are well known. They should be consciously applied and should not be sacrificed for operational efficiency, student convenience, or political expediency." Paragraph (a) of this proposed section requires that the primary consideration in the determination of the fixed routes be the safety of the children. The basic principles included in paragraph (a)(2)–(6) are adopted from the National Standards for School Bus Operations and Special Report 222. They include such requirements as locating stops to minimize traffic disruptions and to minimize the need for children to cross in front of the bus. Where children are required to cross the street to board or exit the bus, there are strict procedures for escorting children across the street or highway. Loading of vehicles beyond their capacity is prohibited, as is arrangement of routes such that vehicles would be required to back up or negotiate "U" turns.

Finally, paragraph (a)(1) of this section limits the amount of time children may be in transit to and from the classroom to one hour in each direction. Anything beyond one hour is considered in terms of "best practice" to be detrimental to the quality of the pre-school experience for the children.

Section 1310.21—Safety Education

According to Special Report 222, most child deaths in school bus-related accidents occur off the bus in school bus loading zones, resulting in the need for safety education programs that specifically address appropriate behavior in school bus loading zones. Likewise, Guideline 17 includes the recommendation that "All children should be instructed in safe transportation practices for walking to and from school."

This section prescribes the safety training to be provided to children and their parents in both pedestrian safety and safe riding practices. It requires that the initial transportation and pedestrian safety training for children and parents occur within the first five days of the program year. It requires Head Start agencies to teach the parents what is being taught to the children so that safe pedestrian behavior can be reinforced in the home and during non-school hours.

This section also requires Head Start agencies to instruct children in safe riding practices (including the use of the child restraint system), safety procedures for boarding and leaving the bus and in crossing the street in front of the bus, and in recognizing the danger zones around the bus. Children must be instructed in emergency evacuation procedures and participate in at least three emergency evacuation drills over the course of the year.

Finally, this section requires classroom teachers to develop activities to remind children of the safety procedures prior to departing the classroom at the end of the day.

Section 1310.22—Children With Disabilities

This section cross-references the proposed rules for transportation with the Head Start Program Performance Standards on Services for Children with Disabilities. It places joint responsibility for compliance on the Disabilities Coordinator and the Transportation Supervisor and requires that any special transportation requirements for children with disabilities, such as special pick-up and drop-off locations, special seating requirements, special equipment, etc., be specified in the Individual Education Plan for the child.

Section 1310.23—Coordinated Transportation

The Administration for Children and Families is a participant in the Joint Department of Health and Human Services/Department of Transportation Coordinating Council on Human Services Transportation, which was formed in October 1986 through a Memorandum of Understanding between the Department of Health and Human Services and the Department of Transportation. One of the goals of the Council is to achieve the most cost effective use of Federal, State and local resources for specialized and human services transportation. The requirements in this section are designed to promote this goal.

This section requires Head Start agencies, whenever possible and to the extent feasible, to coordinate transportation resources with other human services transportation agencies in the community in order to control costs and to maximize the quality and extent of transportation services provided to Head Start families.

This section also requires Head Start agencies to determine the true cost of providing transportation services in their locality so that they can make knowledgeable choices between transportation options. Additionally, it requires Head Start agencies to be proactive in serving on local transportation councils, or in forming a local council where none exists, in order to promote the concept of coordinated transportation.

We acknowledge that the degree and manner to which Head Start programs participate in coordinated systems may, to some extent, depend upon whether or not the services provided by the coordinated system comply with these standards. As drafted, this proposed rule requires that if a Head Start agency is using a coordinated system, they have to be sure that the system is operating the way the rule proposes. We want to continue to support coordination as much as possible without undermining concerns for the safety of Head Start children. However, we are concerned that there are now children, especially geographically isolated children, being served through coordinated systems which may not meet the safety standards contained in this proposed rule. Therefore, we are especially interested in soliciting comments on this issue. For example, should there be a "reasonableness exception clause" for individual cases in which a child might otherwise remain unserved by Head Start? If so, what rules should apply?

V. Impact Analysis

Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in this Executive Order. The Department has determined that this rule is consistent with these priorities and principles. This Notice of Proposed Rulemaking implements the statutory authority to promulgate regulations for the safe transportation of Head Start children. Congress made no additional appropriation to fund this new authority, however, and so any money spent toward the purchase of vehicles, additional personnel, training or other purposes related to this regulation is money that would have been spent otherwise by the program or other programs from the same appropriation amount. We believe that we have focused these proposed rules in ways that encourage maximum cost-effectiveness in transportation spending decisions. We request comments on possible improvements.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities" an analysis must be prepared describing the rule's impact on small entities.

Small entities are defined by the Act to include small businesses, small non-profit organizations and small governmental entities. These regulations would affect small entities. However, it should be noted that many grantees already provide transportation services in accordance with State and local requirements. We believe meeting these

proposed requirements would not be burdensome to them because we are providing a three year phase-in period for compliance with one exception pertaining to training for current Head Start drivers, for which we propose a 90 day compliance period. The financial burden on grantees who acquire vehicles that meet the standards in these proposed regulations will be eased by a new provision in the Head Start Act which authorizes the Secretary to allow Head Start grantees to use grant funds to pay the cost of amortizing the principal and the interest on loans to finance the purchase of vehicles (42 U.S.C 9839(g)(2)(C)). We also believe that as grantees become more familiar with these requirements, there will be no ongoing burden. For these reasons, the Secretary certifies that these rules will not have a significant impact on substantial numbers of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, Pub. L. 96–511, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or record-keeping requirement inherent in a proposed or final rule. This NPRM contains new information collection requirements at § 1310.10(b). We will submit this section to OMB for review and approval.

Organizations and individuals desiring to submit comments on this NPRM's compliance with the Paperwork Reduction Act should direct them to the agency official designated for this purpose, whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3002), Washington, DC. 20503, Attention: Desk Officer for the Administration for Children and Families, HHS.

List of Subjects in 45 CFR Part 1310

Driver qualifications, Driver training, Head Start, Safety education, Transportation, Vehicles.

(Catalog of Federal Domestic Assistance Program Number 93.600, Project Head Start)

Dated: June 9, 1995.

Mary Jo Bane,

Assistant Secretary for Children and Families.

For the reasons set forth in the preamble, a new part 1310 is proposed to be added to 45 CFR chapter XIII to read as follows:

PART 1310—HEAD START TRANSPORTATION

Subpart A—General

Sec.
1310.1 Purpose.
1310.2 Applicability.
1310.3 Definitions.

Subpart B—Transportation Requirements

1310.10 General
1310.11 Vehicles.
1310.12 Driver qualifications.
1310.13 Driver training.

Subpart C—Special Requirements

1310.20 Trip routing.
1310.21 Safety education.
1310.22 Children with disabilities.
1310.23 Coordinated transportation.

Authority: 42 U.S.C. 9801 *et seq.*

Subpart A—General

§ 1310.1 Purpose.

This part prescribes regulations implementing section 640(i) of the Head Start Act (42 U.S.C. 9801 *et seq.*) as it applies to grantees and delegate agencies operating Head Start programs under the Act. It prescribes new requirements for the transportation of Head Start children to and from the classroom and to special events, such as field trips and other group events, which take place away from the classroom but are an integral part of the scheduled activities for children. It describes the safety standards for vehicles used in the regular transportation of Head Start children, as well as the qualifications and training requirements for operators of those vehicles. It includes general training requirements for drivers in their overall responsibilities regarding children and parents in the daily operation of the program. It also defines the role of Head Start agencies in achieving greater cost effectiveness in the overall cost of providing transportation through participation in local efforts to develop coordinated transportation systems under the authority provided by section 644 (a) and (c).

§ 1310.2 Applicability.

(a) This rule applies to all Head Start grantees and delegate agencies that provide transportation services to enrolled children.

(b) Except for § 1310.13(f) which becomes effective 90 days from final publication, Head Start grantees and delegate agencies have up to three years from the effective date of this part to comply with all of the requirements of this part.

§ 1310.3 Definitions.

Crossing control arm means a device installed in the right side of the front bumper of the bus such that, when the door of the bus is opened to admit or discharge passengers, the control arm swings out for a distance of several feet and becomes an obstacle that children must walk around in crossing in front of the bus.

Stop signal arm means a device installed in the left side of the bus, octagonal in shape with white letters and border and a red background, and with a flashing lamp which is connected to the alternately flashing signal lamp circuits.

Reverse beeper means a device which automatically sounds an intermittent alarm whenever the bus is engaged in reverse.

Type I seat belt means a lap belt for pelvic restraint.

Type II seat belt means a combination of belts for pelvic and upper torso restraint.

Driver means a person authorized by the responsible Head Start program official to operate a school bus, including a paid employee, a volunteer or a substitute for the person regularly assigned to operate the vehicle.

Guideline 17 means the National Highway Traffic Safety Administration (NHTSA)/Federal Highway Administration (FHWA) Highway Safety Program Guideline 17, "Pupil Transportation Safety" (23 CFR Part 1204).

Commercial Driver's License (CDL) means a license issued by a State or other jurisdiction, in accordance with the standards contained in 49 CFR part 383, to an individual which authorized the individual to operate a class of a commercial motor vehicle.

Bus monitor means a person with specific responsibilities for assisting the driver in insuring the safety of the children on and off the bus and for assisting the driver during emergencies.

National Standards for School Buses and School Bus Operations means the recommendations resulting from the Eleventh National Conference on School Transportation, May 1990, published by the National Safety Council, Chicago, Illinois. The conference reconvenes every five years to update the standards.

Winter packs are devices that are available from vehicle manufacturers as extra equipment on vehicles that operate in areas of extreme cold temperatures. These devices help maintain the ambient temperature of the engine compartment in order to protect the engine oil and coolant from the effects of extreme cold and to facilitate starting of the vehicle.

Driver qualifications means the minimum health, education, code of conduct and other similar requirements that must be demonstrated in order to be eligible for employment as a Head Start driver.

National Driver Register, also called the Problem Driver Pointer System, means the National Highway Traffic Safety Administration's automated system for assisting State driver license officials in obtaining information regarding the driving records of certain individuals. Participation by the States is voluntary.

Fixed route means the established routes to be traveled on a daily basis by Head Start vehicles to transport children to and from the Head Start classroom, and which include specifically designated stops for loading and unloading children.

Trip routing means the determination of the fixed routes to be traveled on a daily basis for the purpose of transporting children to and from the classroom.

Federal Motor Vehicle Safety Standards (FMVSS) means the National Highway and Traffic Safety Administration's standards for motor vehicles and motor vehicle equipment established under section 103 of the Motor Vehicle Safety Act of 1966 (49 CFR Part 571) as they apply to school buses.

Transportation Supervisor means a staff person who has overall responsibility for the safe and efficient operation of the transportation component as outlined in these requirements.

Child restraint system means any device except Type I and Type II seat belts designed to restrain, seat, or position children who weigh 50 pounds or less as described in the FMVSS, 49 CFR 571.213.

Training means a prescribed course of instruction for drivers of vehicles provided by persons certified to provide such instruction and which includes a combination of classroom instruction and behind-the-wheel instruction on a vehicle of the same type and same size the driver will be operating. It also means instruction by qualified professionals in the areas of vehicle maintenance, first aid and emergency procedures.

Transportation means the transporting of children to and from the classroom and to home-based socialization where children are picked up and discharged at pre-arranged locations and at regularly scheduled times. It also means the transporting of children on field trips, health screening, or other activities scheduled by the Head Start staff. Incidental transportation, such as might be required to transport small groups of children to and from services or to transport a sick child home before the end of the day, is excluded from these regulations.

Coordinated transportation means the consolidation of transportation resources within a community in order to eliminate duplication, while providing the same, or increasing, the level of transportation services or reducing unnecessary spending on transportation services.

Vehicle means a school bus as defined in Guideline 17.

School bus loading zone means the designated pick and drop off location at the Head Start center and any stop along the fixed route.

Subpart B—Transportation Requirements

§ 1310.10 General.

(a) All Head Start grantees and delegate agencies that provide transportation services regardless of whether such transportation is provided directly on agency owned or leased vehicles or through contract with a private or public provider must meet the requirements of this part.

(b) Head Start agencies that do not provide transportation services, or that provide such services to only a portion of their enrolled children, must document the reasons why they have decided not to provide transportation, or to provide transportation to some children and not to others. In addition agencies must review and update this documentation annually.

(c) When the Head Start agency has decided not to provide transportation services, either for all or part of the children, the Head Start agency must provide whatever assistance is reasonable to help families arrange transportation for their children to and from the classroom. The specific types of assistance being offered must be made clear to all prospective families in the program's recruitment announcements.

(d) Each Head Start program must have either a full-time or part-time Transportation Supervisor, or a staff person (with the time and expertise to devote to this area) designated as the Transportation Supervisor who is responsible for ensuring compliance with regulations in this part.

(e) In addition to the vehicle's driver, each Head Start vehicle must have a Bus Monitor on board at all times when transporting Head Start children on a regular basis. Additional Bus Monitors also must be provided as necessary to accommodate the needs of children with disabilities.

(f) All accidents involving Head Start vehicles, with or without children on board, must be reported in accordance with the State procedures for reporting school bus accidents.

(g) Head Start vehicles must be equipped with a citizen band radio or similar communication system to call for assistance in case of an emergency.

(h) Head Start vehicles that operate in areas of extreme climatic conditions should include such equipment as is necessary, such as air conditioning, winter packs, or other specialized equipment as appropriate to ensure the safe operation of the vehicle and the safety and comfort of the passengers.

(i) At the end of the day, either at the classroom or at the vehicle stop, children may only be released to the parent or legal guardian, or other individual identified in writing by the parent or legal guardian. Head Start programs should advise parents accordingly at the time of enrollment, and maintain the names of authorized persons, including alternates in case of emergency, in the case record for the family. Child rosters must be maintained at all times to ensure that no child is left behind, either at the classroom or on the bus at the end of the route.

§ 1310.11 Vehicles.

(a) All vehicles used for the purpose of transporting Head Start children (as defined in § 1310.3 of this part) must comply with recommendations regarding "school buses," as contained in Guideline 17, except where provided otherwise in this regulation. (23 CFR part 1204, Highway Safety Guideline 17.) The use of small vans designed to carry ten or fewer persons, including the driver, and the use of passenger cars for the purpose of transporting children are prohibited by this regulation.

(b) At a minimum, all vehicles used to transport Head Start children to and from the classroom, to home-based socialization, to group health screening, and on field trips or other activities scheduled by the Head Start staff must:

(1) Comply with the Federal Motor Vehicle Safety Standards (FMVSS) applicable to school buses;

(2) Be equipped with safety equipment for use in an emergency, including a charged fire extinguisher that is properly mounted near the driver's seat, and a first aid kit with signs indicating the location of such equipment;

(3) Have a system of mirrors that conforms to the school bus requirements

of FMVSS No. 111 (49 CFR 571.111) and provides the seated driver with a view to the rear along both sides of the bus and a view of the front bumper and the area in front of the bus;

(4) Be equipped with a lower step panel at the primary point of access to enable small children to step on and off the bus safely and unassisted;

(5) Be equipped with reverse beepers; and

(6) Have specialized equipment, such as wheel chair lifts or other assistance devices as necessary to guarantee equal access to disabled children.

(c) To the extent allowable within State requirements, vehicles owned, leased, or operated by Head Start must comply with the following additional recommendations for identification and equipment of a school bus contained in Guideline 17, as follows:

(1) Be identified with the words "School Bus" printed in letters not less than eight inches high, located between the warning signal lamps as high as possible without impairing visibility of the lettering from both front and rear, and have no other lettering on the front or rear of the vehicle except as required by Federal Motor Vehicle Safety Standards (FMVSS), 49 CFR part 571;

(2) Be painted National School Bus Glossy Yellow, in accordance with the colorimetric specification of National Institute of Standards and Technology (NIST) Federal Standard No. 595a, Color 13432, except that the hood should be either that color or lusterless black, matching NIST Federal Standard No. 595a, Color 37038;

(3) Have bumpers of glossy black, matching NIST Federal Standard No. 595a., Color 17038, unless, for increased visibility, they are covered with a reflective material;

(4) Be equipped with a stop signal arm as specified in FMVSS No. 131(49 CFR 571.131) and a crossing control arm; and

(5) Be equipped with a system of signal lamps that conforms to the performance requirements of FMVSS No. 108 (49 CFR 571.108).

(d) In order to insure that the manufacturers of Head Start vehicles comply with the applicable FMVSS standards, Head Start agencies must:

(1) Assure that bid announcements contain the correct specifications for the vehicle(s) to be purchased, including a clear statement of the intended use of the vehicle; and

(2) Have a prescribed procedure for examining new vehicles at the time of delivery to assure that they are equipped in accordance with the bid specifications and that the manufacturer's certification of compliance with the FMVSS is in place.

(e) Head Start vehicles in use which do not comply with the FMVSS and the minimum capacity requirement must be replaced or retired within the three year period authorized by this regulation. (In accordance with 42 U.S.C. 9839(g)(2)(C), with the permission of the Secretary, Head Start funds may be used for capital expenditures (including paying the cost of amortizing the principal and paying interest on loans) to purchase vehicles used for programs conducted at Head Start facilities.)

(f) All passengers on a Head Start vehicle must be seated while the vehicle is in motion.

(g) Auxiliary seating, such as temporary or folding jump seats, is prohibited.

(h) Drivers of Head Start vehicles, Bus Monitors, and other passengers must wear seat belts while the vehicle is in motion.

(i) While the vehicle is in motion, all children must be seated in a child restraint system appropriate to the height and weight of the child as set forth in the performance requirements in FMVSS (49 CFR 571.213).

(j) Baggage and other items transported in the passenger compartment must be properly stored and secured so that the aisles remain clear and the doors and emergency exits remain unobstructed at all times.

(k) Head Start vehicles must be maintained in safe operating condition at all times. Procedures must be established for:

(l) A thorough safety inspection of each vehicle on at least an annual basis through an inspection program licensed or operated by the State;

(2) Performing systematic preventive maintenance on Head Start vehicles; and

(3) Daily pre-trip inspection of the vehicle by the Head Start driver.

§ 1310.12 Driver qualifications.

(a) In order to qualify to drive a Head Start vehicle, a person must, at a minimum:

(1) Be at least 21 years old;

(2) Have a Commercial Driver's License (CDL) as granted by a State pursuant to FHWA's Commercial Driver's License Standards (49 CFR part 383); and

(3) Meet all the physical, mental, moral and other requirements established by Federal and State regulations, including requirements regarding drug and/or alcohol misuse or abuse.

(b) Each Head Start program must establish its own applicant screening procedure. Applicants must be advised of the specific background checks required at the time application is made, and Head Start agencies must have established criteria for the rejection of unacceptable applicants.

(c) At a minimum, applicant screening procedures must include:

(1) An application which provides employment history, educational background and personal references;

(2) An interview and screening procedure which, among other things, is designed to determine that the person is of good moral character, does not use intoxicating beverages to excess and does not use narcotic and other illegal drugs;

(3) A check of the applicant's driving record through the State Department of Motor Vehicles, including a check of the applicant's record through the National Driver Register, if available in the State; and

(4) A physical examination, performed by a licensed doctor of medicine or osteopathy, to determine that the person possesses the physical ability to operate a school bus based on the requirements in their respective State.

§ 1310.13 Driver training.

(a) Driver training plans must include both pre-service and annual in-service training programs.

(b) Pre-service training.

(1) All Head Start drivers must receive a minimum of 40 hours of skills training prior to transporting children. Skills training should encompass a combination of classroom instruction and behind-the-wheel instruction sufficient to enable the driver to:

(i) Operate the vehicle in a safe and efficient manner;

(ii) Safely run a fixed route, including loading and unloading children, stopping at railroad crossings and other specialized driving requirements;

(iii) Administer basic first aid in case of injury;

(iv) Handle emergency situations, including school bus evacuation procedures;

(v) Operate any special equipment, such as wheel chair lifts, assistance devices or special occupant restraints;

(vi) Conduct routine maintenance and safety checks of the vehicle; and

(vii) Maintain accurate records.

(2) In addition to the skills training, pre-service training should include:

(i) An orientation to the goals and objectives of Head Start with an emphasis on the educational and developmental needs of children;

(ii) The role of the Head Start Driver in providing a supportive social and emotional climate for children and in supporting the role of parents in the Head Start program; and

(iii) An overview of the Head Start Program Performance Standards for Children with Disabilities as they relate to the provision of transportation services for disabled children.

(c) In-service training.

(1) Head Start drivers should receive a minimum of 8 hours of in-service training per year.

(2) In-service training plans should be designed to maintain driver skills, enhance the driver's ability to perform day-to-day duties and, generally, assist the transportation staff in keeping abreast of new information and/or new developments in transportation technology.

(d) Head Start programs must be knowledgeable about the driver training requirements in their respective State and must take whatever steps are necessary in order for Head Start drivers to qualify to operate Head Start vehicles as school buses on the streets and highways in their respective State.

(e) In those States with driver training requirements that do not meet the minimum requirement set forth in § 1310.13 (b) and (c) of this part, Head Start programs must obtain the additional training from other sources or establish their own training programs. In such cases, it is recommended that the National Standards for School Buses and School Bus Operations be used as a guide in the selection and/or development of driver training programs.

(f) Drivers of Head Start vehicles who are employed at the effective date of this regulation are required to meet the same pre-service training requirements as new drivers, within three months of the effective date of this regulation.

(g) Head Start drivers must be evaluated on an annual basis by the Transportation Supervisor, including an on-board observation of road performance.

(h) Bus Monitors should receive the same pre-service and in-service training as bus drivers, with the exception of the behind the wheel instruction.

Subpart C—Special Requirements

§ 1310.20 Trip routing.

(a) In planning routes for the transporting of children to and from the classroom, maximum safety of the children must be the primary consideration. Safety principles may not be sacrificed for operational efficiency.

(b) At a minimum, the following basic principles of trip routing must be adhered to at all times:

(1) The time a child is in transit to and from the Head Start classroom may not exceed one hour each way, unless specifically approved in writing by the respective Regional Office.

(2) The number of children to be picked up or discharged on a given route may not exceed the capacity of the vehicle. Vehicles may not be loaded beyond their capacity at any time.

(3) Vehicles should not be required to back up on their routes or to negotiate "U" turns.

(4) Stops should be located to minimize traffic disruptions and to afford the driver a good field of view in front of and behind the vehicle.

(5) Stops should be located to minimize the need for children to cross the street or highway to board or leave the vehicle.

(6) If children must cross the street or highway to board the bus or after exiting the vehicle, they must be escorted across the street by the driver, bus monitor or another adult. Before escorting children across the street, the driver must turn on the flashing lights, set the emergency brake, turn the engine off, and remove the key from the ignition. Under no circumstances may bus stops be located such that children must cross the street or highway unless the vehicle is properly equipped to stop traffic as described in § 1310.11(c)(1)–(5) of this Part.

(7) Specific procedures must be established for use of alternate routes in the case of hazardous weather conditions or other situations which may arise that could effect the safety of the children en route.

§ 1310.21 Safety education.

(a) In walk-in areas, the parent or other designated individual is ultimately responsible for the safety of their own child en route to and from the classroom. However, Head Start programs must provide training for parents and children in pedestrian safety. All Head Start children should be taught, by explanation and by example, the proper procedure for street crossing and the use of traffic and pedestrian signal lights, except that, under no circumstances, should such training encourage pre-school children to cross the street alone.

(b) Each child transported from home to the classroom in a school bus must receive instruction in:

(1) Safe riding practices;

(2) Safety procedures for boarding and leaving the bus;

(3) Safety procedures in crossing the street to and from the bus at bus stops;

(4) Recognizing the danger zones around the bus; and

(5) Emergency evacuation procedures, including an emergency evacuation drill conducted on the bus the child will be riding.

(c) Training for parents must emphasize the importance of escorting their child(ren) to the bus stop and the importance of reinforcing the training provided to children regarding school bus safety.

(d) The training provided to parents must compliment the training provided to children so that safety practices can be reinforced both in the classroom and at home by the parent.

(e) Initial transportation and pedestrian safety education for both children and parents must occur within the first five days of the program year.

(f) At least two additional bus evacuation drills must be conducted during the program year.

(g) Activities should be developed by the classroom teachers to remind children of the safety procedures prior to departing the classroom at the end of each day.

§ 1310.22 Children with disabilities.

(a) The Transportation Supervisor, in conjunction with the Disabilities Coordinator, must ensure compliance with the Head Start Program Performance Standards on Services for Children with Disabilities (45 CFR part 1308) as they relate to transportation services.

(b) Any special transportation requirements for children with disabilities must be specified in the Individual Education Plan (IEP), including:

(1) Special pick-up and drop-off requirements;

(2) Special seating requirements;

(3) Special equipment needs;

(4) Any special assistance that may be required; and

(5) Any special training for bus drivers and monitors.

§ 1310.23 Coordinated transportation.

(a) Whenever possible and to the extent feasible, Head Start agencies and their delegates must coordinate transportation resources with other human services agencies in the community in order to control costs and to maximize the quality and extent of the transportation services provided to Head Start families. At a minimum, Head Start agencies must coordinate transportation services as follows:

(1) Identify the true costs of providing transportation in order to knowledgeably compare the costs of providing transportation directly versus contracting for the service;

(2) Where a coordinated public or private transportation system(s) exists in

the community, serve on the local transportation council or committee and fully explore coordination as a viable transportation option;

(3) Where no coordinated public or private non-profit transportation system exists in the community, make every effort to identify other human services agencies also providing transportation services and, where feasible, to provide the impetus for establishing a local transportation coordinating council; and

(4) Maintain such records as are necessary to document compliance with the coordination requirements and efforts to address transportation needs in the community.

(b) [Reserved]

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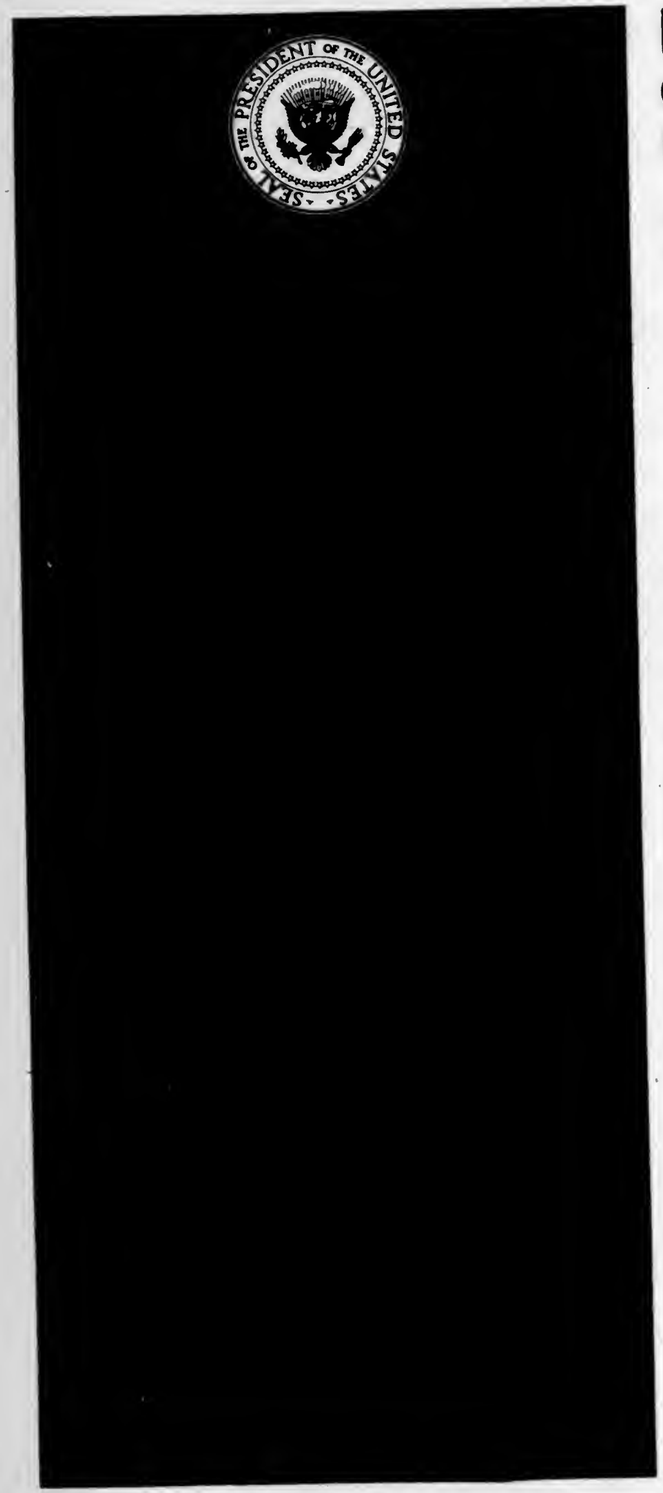
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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Rules and Regulations

Federal Register
Vol. 60, No. 116
Friday, June 16, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Parts 1413 and 1427

RIN 0560–AD39

1995 Upland Cotton Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: On September 27, 1994, the Commodity Credit Corporation (CCC) issued a proposed rule with respect to the 1995 Upland Cotton Production Adjustment Program, which is conducted by CCC in accordance with the Agricultural Act of 1949, as amended (1949 Act). The 1995 Upland Cotton Acreage Reduction Program (ARP) percentage has been determined to be zero percent. This final rule amends the regulations to set forth the ARP and the price support rate for the 1995 crop of upland cotton. No paid land diversion (PLD) program will be implemented for the 1995 crop of upland cotton. These actions are required by section 103B of the 1949 Act.

EFFECTIVE DATE: June 16, 1995.

FOR FURTHER INFORMATION CONTACT: Wayne E. Bjorlie, Consolidated Farm Service Agency, United States Department of Agriculture, room 3754–S, PO Box 2415, Washington, DC 20013–2415 or call 202–720–7954.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be economically significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the catalog of Federal Domestic Assistance, to which this rule applies are: Cotton Production Stabilization—10.052.

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of the final rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The amendments to 7 CFR parts 1413 and 1427 set forth in this final rule do not contain information collections that require clearance by OMB under the provisions of 44 U.S.C. 35.

Final Regulatory Impact Analysis

The Final Regulatory Impact Analysis describing the options considered in developing this final rule and the impact of the implementation of the selected option is available on request from the above-named individual.

Background

This final rule amends 7 CFR part 1413 to set forth determinations on the 1995 ARP and PLD programs, and 7 CFR part 1427 to set forth the determination of the 1995 upland cotton price support level. General descriptions of the statutory basis for the 1995 upland cotton ARP percentage determination in this final rule were set forth at 59 FR 49214 (September 27, 1994).

Nineteen comments were received regarding the 1995 ARP level. Twelve respondents recommended that the ARP level be set at zero percent, and one requested that a zero-percent ARP be considered. Another respondent requested that the ARP be set at the lowest possible percentage which would result in a stocks-to-use ratio of 29.5 percent. One respondent requested that the ARP level be set no higher than 5 percent and another recommended 5 percent. One respondent requested the ARP be set no higher than 8 percent. One commented that the ARP be set at 10 percent, and another recommended the ARP be set at no less than 15 percent.

After considering these comments, the Secretary of Agriculture (Secretary) on October 31, 1994, announced a 7.5-percent ARP level and a price support level of 51.92 cents per pound for the 1995 marketing year. The Secretary also announced that no PLD program will be offered. On December 21, 1994, a final ARP requirement of zero percent was announced for the 1995 crop of upland cotton. The Secretary determined that, based upon the most recent projections of carryover and total disappearance, a zero-percent ARP would result in a ratio of carryover to total disappearance of 29.5 percent.

Acreage Reduction Program

In accordance with section 103B(e)(1) of the 1949 Act, an ARP of zero percent has been established for the 1995 crop of upland cotton.

Paid Land Diversion

In accordance with section 103B(e)(5)(A) of the 1949 Act, a PLD program will not be made available to producers of 1995-crop upland cotton.

Price Support Rate

In accordance with section 103B(a)(1)(3) of the 1949 Act, the price support rate has been established with respect to the 1995 crop of upland cotton at 51.92 cents per pound.

List of Subjects

7 CFR Part 1413

Acreage allotments, Cotton, Disaster assistance, Feed grains, Price support programs, Reporting and recordkeeping requirements, Rice, Soil conservation, Wheat.

7 CFR Part 1427

Cotton, Loan programs/agriculture, Packaging and containers, Price support programs, Reporting and recordkeeping requirements, Surety bonds, Warehouses.

Accordingly, 7 CFR parts 1413 and 1427 are amended as follows:

PART 1413—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, WHEAT AND RELATED PROGRAMS

1. The authority citation for 7 CFR part 1413 continues to read as follows:

Authority: 7 U.S.C. 1308, 1308a, 1309, 1441–2, 1444–2, 1444f, 1445b–3a, 1461–1469; 15 U.S.C. 714b and 714c.

2. Section 1413.54 is amended to read as follows by:

A. Revising paragraphs (a)(3)(iii) and (a)(3)(iv),

B. Adding paragraph (a)(3)(v), and

C. Adding paragraph (d)(5)(iii):

§ 1413.54 Acreage reduction program provisions.

(a) * * *

(3) * * *

(iii) 1993 upland cotton, 7.5 percent;

(iv) 1994 upland cotton, 11.0 percent; and

(v) 1995 upland cotton, 0 percent.

* * * * *

(d) * * *

(5) * * *

(iii) Shall not be made available to producers of the 1995 crop upland cotton.

* * * * *

PART 1427—COTTON

3. The authority citation for 7 CFR part 1427 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1444, and 1444–2; 15 U.S.C. 714b and 714c.

4. Section 1427.8 is amended to read as follows by:

A. Revising paragraphs (a)(1)(iii) and (a)(1)(iv); and

B. Adding paragraph (a)(1)(v):

§ 1427.8 Amount of loan.

(a) * * *

(1) * * *

(iii) 1993 upland cotton, 52.35 cents per pound;

(iv) 1994 upland cotton, 50.00 cents per pound; and

(v) 1995 upland cotton, 51.92 cents per pound.

* * * * *

Signed at Washington, DC, on June 8, 1995.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 95–14752 Filed 6–15–95; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–103–AD; Amendment 39–9277; AD 95–12–24]

Airworthiness Directives; Lockheed Model L–1011–385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Lockheed Model L–1011–385 series airplanes. This action requires an inspection to detect cracking of the bulkhead at fuselage station (FS) 1363 at butt line (BL) 42.5, and repair or additional inspections, if necessary. This amendment is prompted by reports indicating that fatigue cracking was found in the rear bulkhead at FS 1363. The actions specified in this AD are intended to prevent reduced structural integrity of the fuselage due to fatigue cracking of the pressure bulkhead.

DATES: Effective July 3, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 3, 1995.

Comments for inclusion in the Rules Docket must be received on or before August 15, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–103–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Lockheed Aeronautical Systems Support Company (LASSC), Field Support Department, Dept: 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, Flight Test Branch, ACE–116A, FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7367; fax (404) 305–7348.

SUPPLEMENTARY INFORMATION: The FAA has received reports indicating that cracking was found in the rear bulkhead of the center section pressure deck at fuselage station (FS) 1363 on a Lockheed Model L–1011–385 series airplane. The cracking extended approximately 30 inches downward along butt line (BL) 42.5 and through the frame at the lower edge of the bulkhead. At that point, the cracking extended aft an additional 26 inches through a skin panel on the lower fuselage. The cause of this cracking appears to be fatigue. Such fatigue cracking, if not detected and corrected in a timely manner, could result in reduced structural integrity of the fuselage.

Lockheed has issued L–1011 Service Bulletin 093–53–268, dated April 15, 1993, which describes procedures for certain inspections to detect cracking of the bulkhead at FS 1363 in the area of the stiffeners at left and right BL 42.5, and repair, if necessary. The repair involves installing web doublers and a splice.

The Lockheed service bulletin specifies that repair of cracking may be delayed if the cracking falls within certain parameters described in the service bulletin. For these cases, the service bulletin specifies procedures for accomplishing repetitive visual and eddy current inspections until the repair is accomplished. The FAA has reviewed and approved the procedures specified in this Lockheed service bulletin.

The FAA also has reviewed and approved a second document issued by Lockheed: LCC–7622–373, dated May 9, 1995. This document describes procedures for additional inspections to detect cracking of the frame cap for airplanes on which cracking of the bulkhead is found below waterline (WL) 117. Those inspections include the following:

—A bolt hole eddy current inspection to detect cracking of the eight fastener holes at the intersection of the vertical stiffener at BL 42.5 and the frame cap vertical flange;

—A bolt hole eddy current inspection to detect cracking at eight fastener locations in the frame cap lower flange that connect the lower fuselage skin panel to the frame at the BL 42.5 vertical stiffener; and

—A visual inspection to detect stress corrosion cracking of the accessible portions of the fillet radius of the frame cap.

A third document issued by Lockheed, LCC–7622–374, dated May 9, 1995, is referenced in LCC–7622–373. LCC–7622–374 describes procedures for repair of any cracking of the frame cap that is found during the inspections described previously. The repair involves a bolt hole eddy current inspection to detect cracking of the fastener holes (where the fastener holes are removed to perform the repair), and removal of cracks. The FAA has reviewed and approved Lockheed documents LCC–7622–373 and LCC–7622–374.

Since an unsafe condition has been identified that is likely to exist or develop on other Lockheed Model L–1011–385 series airplanes of the same type design, this AD is being issued to prevent reduced structural integrity of the fuselage due to fatigue cracking of the pressure bulkhead. This AD requires a visual inspection to detect cracking of the bulkhead at FS 1363 in the area of the stiffeners at left and right BL 42.5, and repair, if necessary. For airplanes on which cracking of the bulkhead is found below WL 117, this AD requires additional inspections to detect cracking at certain fastener locations and fastener holes and to detect stress corrosion of the frame cap, and repair, if necessary. The actions are required to be accomplished in accordance with the procedures specified in the service bulletin and in the Lockheed documents described previously.

This AD contains provisions specifying that flight with cracking in the bulkhead, within certain parameters, is allowed provided that repetitive visual and eddy current inspections are performed until a repair is accomplished.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this rule to clarify this long-standing requirement.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–103–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–12–24 Lockheed Aeronautical Systems Company: Amendment 39–9277. Docket 95–NM–103–AD.

Applicability: All Model L–1011–385 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the

owner/operator must use the authority provided in paragraph (f) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the fuselage due to fatigue cracking of the pressure bulkhead, accomplish the following:

(a) Prior to the accumulation of 18,000 total landings, or within 30 days after the effective date of this AD, whichever occurs later, perform a visual inspection to detect cracking of the bulkhead at fuselage station (FS) 1363 in the area of the stiffeners at left and right butt line (BL) 42.5, in accordance with the procedures specified in paragraphs 2.A. and 2.B. of the Accomplishment Instructions of Lockheed L–1011 Service Bulletin 093–53–268, dated April 15, 1993.

Note 2: This AD does not require that the eddy current inspection referenced in paragraph 2.B. of the Accomplishment Instructions of Lockheed L–1011 Service Bulletin 093–53–268, dated April 15, 1993, be accomplished as a requirement of paragraph (a) of this AD.

(b) If no cracking of the bulkhead is detected, no further action is required by this AD.

(c) Except as provided by paragraph (e) of this AD, if any cracking of the bulkhead is detected below waterline (WL) 117: Prior to further flight, perform the inspections required by paragraphs (c)(1), (c)(2), and (c)(3) of this AD, in accordance with LCC–7622–373, dated May 9, 1995. Prior to further flight, repair any cracking of the frame cap found during these inspections, in accordance with Lockheed document LCC–7622–374, dated May 9, 1995.

(1) Perform a bolt hole eddy current inspection to detect cracking of the eight fastener holes at the intersection of the vertical stiffener at BL 42.5 and the frame cap vertical flange; and

(2) Perform a bolt hole eddy current inspection to detect cracking at eight fastener locations in the frame cap lower flange that connect the lower fuselage skin panel to the frame at the BL 42.5 vertical stiffener; and

(3) Perform a visual inspection to detect stress corrosion cracking of the accessible portions of the fillet radius of the frame cap.

(d) Except as provided by paragraph (e) of this AD, if any cracking of the bulkhead is detected at or above WL 117: Prior to further flight, repair the bulkhead cracking in accordance with the procedures specified in Part II of the Accomplishment Instructions of Lockheed L–1011 Service Bulletin 093–53–268, dated April 15, 1993.

(e) Continued flight with cracking of the bulkhead is permitted, provided that the conditions specified in paragraph 1.C. of the Planning Information of Lockheed L–1011 Service Bulletin 093–53–268, dated April 15, 1993, are met. For flight with cracking, both the visual and eddy current inspections specified in paragraphs 2.B. and 2.C. of the Accomplishment Instructions of the service bulletin must be accomplished prior to returning the aircraft to service. These visual and eddy current inspections must be repeated within 900 landings. Prior to the accumulation of 1,800 total landings, these inspections must be terminated by the installation of the repair specified in Part II of the Accomplishment Instructions of the service bulletin.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The inspections and repair shall be done in accordance with Lockheed L–1011 Service Bulletin 093–53–268, dated April 15, 1993; Lockheed document LCC–7622–373, dated May 9, 1995; and Lockheed document LCC–7622–374, dated May 9, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Lockheed Aeronautical Systems Support Company (LASSC), Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on July 3, 1995.

Issued in Renton, Washington, on June 9, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–14633 Filed 6–15–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–250–AD; Amendment 39–9269; AD 95–12–18]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that requires a visual inspection to verify proper clearance between the engine fuel supply-line and the hydraulic line in certain areas, and replacement of damaged fuel lines. This amendment would also require installation of additional clamps on the out line of the lift-dumper in certain cases. This amendment is prompted by a report indicating that fuel was found leaking from the right-hand wheel bay on one airplane due to chafing of the fuel supply line. The actions specified by this AD are intended to prevent such chafing, which could result in fuel leakage, and, subsequently, lead to a possible fire hazard and engine fuel depravation.

DATES: Effective July 17, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 17, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes was published in the **Federal Register** on January 17, 1995 (60 FR 3358). That action proposed to require a one-time visual inspection to verify proper clearance between the engine fuel supply-line and the hydraulic line in zones 631 and 531. It also proposed to require an inspection to detect damage of fuel lines, and replacement of damaged fuel lines. That action also proposed to require installation of two additional clamps on the out line of the lift-dumper in cases where clearance is less than 3mm (0.118 inch) and no damage is detected on the fuel lines.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

One commenter requests that the FAA revise paragraphs (a)(3) and (a)(4) of the proposed rule to remove the phrase "in accordance with the service bulletin." The commenter recommends describing the clamping procedures in general terms, such as "addition of clamps as required to provide the prerequisite clearance," instead of mandating that these procedures be accomplished in accordance with a specific service document. The FAA does not concur. The FAA has determined that the commenter's request to require "addition of clamps * * *" is too vague to provide adequate guidance as to what is required of operators, and for the FAA to perform proper surveillance of these operators to ensure that the objectives of the AD are being fulfilled. Under provisions of paragraph (b) of the final rule, however, operators may apply for approval of an alternative method of compliance, such as different clamping procedures.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 83 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $4,980, or $60 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–12–18 Fokker: Amendment 39–9269. Docket 94–NM–250–AD.

Applicability: Model F28 Mark 0100 series airplanes, serial numbers 11244 through 11438 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of the fuel supply line, which could result in fuel leakage, and, subsequently, lead to a possible fire hazard and engine fuel depravation, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform a visual inspection to verify proper clearance between the engine fuel supply-line and the hydraulic line in zones 631 and 531 and to detect damage of the fuel supply-line, in accordance with Fokker Service Bulletin SBF100–28–026, dated March 12, 1993.

(1) If the clearance is found to be 3mm (0.118 inch) or more and no damage is found, no further action is required by this AD.

(2) If the clearance is found to be 3mm or more and damage is found, prior to further flight, replace the damaged fuel line in accordance with the service bulletin.

(3) If the clearance is found to be less than 3mm and no damage is found, within 6 months after the effective date of this AD, install 2 additional clamps on the out line of the lift-dumper, in accordance with the service bulletin.

(4) If the clearance is found to be less than 3mm and damage is found, prior to further flight, replace the damaged fuel line, and install 2 additional clamps on the out line of the lift-dumper, in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspection, replacement, and installation shall be done in accordance with Fokker Service Bulletin SBF100–28–026, dated March 12, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal

Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on July 17, 1995.

Issued in Renton, Washington, on June 5, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–14166 Filed 6–15–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–17–AD; Amendment 39–9266; AD 95–12–15]

Airworthiness Directives; Jetstream Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Jetstream Model 4101 airplanes, that requires replacement of a certain pressure switch with a certain new pressure switch in the fuel system for the engines. This amendment is prompted by a report indicating that the current design of a certain pressure switch in the fuel system for the engines does not meet current fire resistant properties, which could result in the failure of the pressure switch during a fire in the engine compartment. The actions specified by this AD are intended to prevent failure of the existing pressure switch in the fuel system for the engines, which, during an engine fire, could result in fuel leakage that could add fuel to the fire.

DATES: Effective July 17, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 17, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Jetstream Model 4101 airplanes was published in the **Federal Register** on March 16, 1995 (60 FR 14237). That action proposed to require replacement of a certain pressure switch with a certain new pressure switch in the fuel system of the left and right engine.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 15 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,700, or $180 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–12–15 Jetstream Aircraft Limited: Amendment 39–9266. Docket 95–NM–17–AD.

Applicability: Model 4101 airplanes, constructors numbers 41004 through 41046 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously. To prevent failure of the existing pressure switch in the fuel system of the left and right engine, which, during an engine fire, could result in fuel leakage that could add fuel to the fire, accomplish the following:

(a) Within 60 days after the effective date of this AD, replace pressure switch having part number (P/N) 1153P0073 with a new pressure switch having P/N 1153P0094 in the fuel system of the left and right engine, in accordance with Jetstream Service Bulletin J41–73–007, dated November 22, 1994.

(b) As of the effective date of this AD, no person shall install a pressure switch, P/N 1153P0073, on any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The replacement shall be done in accordance with Jetstream Service Bulletin J41–73–007, dated November 22, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on July 17, 1995.

Issued in Renton, Washington, on June 2, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–14054 Filed 6–17–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–05–AD; Amendment 39–9264; AD 95–12–14]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that requires an inspection to determine the adequacy of clearance between the normal maximum (second) detent for the reverse thrust control and the surrounding moving parts, and to detect chafing or damage of the detent. This amendment also requires eventual replacement of the normal maximum detent with an improved detent. This amendment is prompted by a report indicating that an inadequate level of clearance between the normal maximum detent and the surrounding parts may exist on earlier production Model F28 Mark 0100 series airplanes. The actions specified by this AD are intended to ensure proper operation of the normal maximum detent for reverse thrust control.

DATES: Effective July 17, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 17, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes was published in the **Federal Register** on March 3, 1995 (60 FR 11945). That action proposed to require a one-time inspection to determine the adequacy of clearance between the normal maximum detent for the reverse thrust control and the surrounding moving parts, and to detect chafing or damage of the normal maximum detent. It also proposed to require the eventual replacement of the normal maximum detent with a new normal maximum detent.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 5 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $400 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $5,000, or $1,000 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–12–14 Fokker: Amendment 39–9264. Docket 95–NM–05–AD.

Applicability: Model F28 Mark 0100 series airplanes; having serial numbers 11244 through 11261 inclusive, 11263, and 11268 through 11283 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To ensure proper operation of the normal maximum detent for reverse thrust control, accomplish the following:

(a) For airplanes on which Fokker Service Bulletin SBF100–76–008, dated May 8, 1991, has been accomplished: Within 1,500 flight cycles after the effective date of this AD, perform an inspection to determine the adequacy of clearance between the normal maximum (second) detent for the reverse thrust control and the surrounding moving parts and to detect chafing or damage of the normal maximum detent, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–76–010, dated October 31, 1993.

(1) If any chafing or damage is found (regardless of clearance), prior to further flight, replace the normal maximum detent with an improved normal maximum detent, in accordance with Part 2 of the Accomplishment Instructions of the service bulletin.

(2) If the clearance is found to be inadequate, but no chafing or damage is found, within 250 flight cycles following the inspection required by paragraph (a) of this AD, replace the normal maximum detent with an improved normal maximum detent, in accordance with Part 2 of the Accomplishment Instructions of the service bulletin.

(3) If the clearance is found to be adequate and no damage or chafing is found, within 3,000 flight cycles following the inspection required by pararaph (a) of this AD, replace the detent with an improved normal maximum detent, in accordance with Part 2 of the Accomplishment Instructions of the service bulletin.

(b) For airplanes on which Fokker Service Bulletin SBF100–76–008, dated May 8, 1991, has not been accomplished: Within the next 500 flight cycles after the effective date of this AD, replace the normal maximum detent for reverse thrust control with an improved normal maximum detent, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–76–010, dated October 31, 1993.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspection and replacement shall be done in accordance with Fokker Service Bulletin SBF100–76–010, dated October 31, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on July 17, 1995.

Issued in Renton, Washington, on June 2, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplone Directorate, Aircraft Certification Service.

[FR Doc. 95–14052 Filed 6–15–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 95–ASO–7]

Establishment of Class D Airspace; Jackson, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes Class D airspace at Jackson, TN. A non-federal control tower has been commissioned at the McKeller-Sipes Regional Airport. Class D airspace is required when the control tower is open to accommodate current Standard Instrument Approach Procedures (SIAPs) and for instrument flight rules (IFR) operations at the airport. This action also modifies the Class E2 airspace designation to clarify the airspace as part-time when the control tower is closed.

EFFECTIVE DATE: 0901 u.t.c., September 14, 1995.

FOR FURTHER INFORMATION CONTACT: Stanley Zylowski, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

History

On March 28, 1995 the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class D airspace at Jackson, TN, (60 FR 15884). This action would provide adequate Class D airspace for IFR operations at the McKellar-Sipes Regional Airport. This action would also modify the Class E2 airspace designation to clarify the airspace as part-time when the control tower is closed.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class D airspace designations and Class E airspace areas designated as a surface area for an airport are published in Paragraphs 5000 and 6002 respectively of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class D airspace at Jackson, TN, to accommodate current SIAPs and for IFR operations at the McKellar-Sipes Regional Airport, as a result of a non-federal control tower commissioned at the airport. This action also modifies the Class E2 airspace designation to clarify the airspace as part-time when the control tower is closed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6005 Class D Airspace

* * * * *

ASO TN D Jackson, TN [New]

McKellar-Sipes Regional Airport, TN
(Lat. 35°36'13" N, long. 88°54'38" W)
McKellar VOR/DME
(Lat. 35°36'13" N, long. 88°54'38" W)

That airspace extending upward from the surface to and including 2900 feet MSL within a 4.2-mile radius of the McKellar-Sipes Regional Airport and within 3.1 miles each side of the McKellar VOR/DME 206° radial, extending from the 4.2-mile radius to 7 miles southwest of the VOR/DME. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area for an Airport

* * * * *

ASO TN E2 Jackson, TN [Revised]

McKellar-Sipes Regional Airport, TN
(Lat. 35°35'59" N, long. 88°54'56" W)
McKellar VOR/DME
(Lat. 35°36'13" N, long. 88°54'38" W)

Within a 4.2-mile radius of the McKellar-Sipes Regional Airport and within 3.1 miles each side of the McKellar VOR/DME 206° radial, extending from the 4.2-mile radius to 7 miles southwest of the VOR/DME. This Class E Airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on June 8, 1995.

Stanley Zylowski,

Acting Manager, Air Traffic Division Southern Region.

[FR Doc. 95–14788 Filed 6–15–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ANM–4]

Amendment to Class E Airspace; Worland, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule published on May 9, 1995, that inadvertently changed the Worland, Wyoming, Class E5 airspace designation. This action corrects the final rule by reflecting the proper and continuous operation of the Worland, Wyoming, Class E airspace area.

EFFECTIVE DATE: 0901 u.t.c., June 23, 1995.

FOR FURTHER INFORMATION CONTACT: James Riley, System Management Branch, ANM–530, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone number: (206) 227–2537.

SUPPLEMENTARY INFORMATION: On May 9, 1995, the FAA published a final rule that changed the Worland, Wyoming, Class E5 airspace designation (60 FR 24556). However, that action was an inadvertent error. This action corrects the final rule by reflecting the proper and continuous operation of the Worland, Wyoming, Class E airspace area.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the Class E airspace description at Worland, Wyoming, as published in the **Federal Register** on May 9, 1995 (60 FR 24556), (Federal Register Document No. 95–11275; page 24557, column 1), is corrected as follows:

§ 71.1 [Corrected]

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ANM WY E5 Worland, WY [Corrected]

Worland Municipal Airport , WY
(Lat. 43°57'56" N, long. 107°57'01" W)
Worland VOR/DME
(Lat. 43°57'51" N, long. 107°57'03" W)

That airspace extending upward from 700 feet above the surface within 4 miles east and 8.3 miles west of the Worland VOR/DME 352° and 172° radials extending from 16.1 miles north to 5.3 miles south of the VOR/DME; that airspace extending upward from 1,200 feet above the surface, within a 20.1-mile radius of the VOR/DME, and that airspace extending upward from 10,500 feet MSL bounded on the north by lat. 44°00'00" N, on the east by the 20.1-mile radius of the Worland VOR/DME, on the south by V–319, and on the west by V–85.

* * * * *

Issued in Seattle, Washington, on June 6, 1995.

Richard E. Prang,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 95–14786 Filed 6–15–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Departmental Office

31 CFR Part 1

Freedom of Information Act and Privacy Act of 1974; Implementation

AGENCY: Departmental Offices, Treasury.

ACTION: Final Rule.

SUMMARY: The Department of the Treasury is amending its regulations implementing the Freedom of Information Act (FOIA) and the Privacy Act (PA) to add the Office of Thrift Supervision as a component of the Department and to include instructions on gaining access to information maintained by the Office of Thrift Supervision.

EFFECTIVE DATE: June 16, 1995.

ADDRESSES: Comments may be submitted to the Department of the Treasury, Disclosure Services, Room 1054–MT, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Dale Underwood, Privacy Act Officer, Disclosure Services, Department of the Treasury. Telephone (202) 622–0874.

SUPPLEMENTARY INFORMATION: The Office of Thrift Supervision (OTS), as a component of the Department of the Treasury (Department), is subject to the Department's FOIA regulations at 31 CFR part 1, subpart A. The amendment adds the OTS to the list of components of the Department by inserting new language at 31 CFR 1.1(d)(13). This amendment also removes language identifying the office of the Assistant Secretary for Tax Policy as a distinct component because it is a part of the Departmental Offices and therefore, subject to appendix A of this subpart. The amendment adds language in appendix M to reflect the inclusion of OTS' FOIA appendix covering the OTS FOIA program as part of the Departmentwide regulations. The amended appendix covering the OTS FOIA program identifies the location of the public reading room. It also describes how to make a request under 31 CFR 1.5(g), administrative appeals under 31 CFR 1.5(h), and where each request or appeal should be addressed and where a request can be delivered.

The Department's Privacy Act regulations at 31 CFR part 1, Subpart C, refer to the Department's Privacy Act program as part of the Departmentwide disclosure program. The appendices to subpart C apply to all records which are contained in systems of records maintained by the Department of the Treasury, or any one of its components, and which are retrieved by an individual's name or personal identifier.

The amendment to Subpart C adds the OTS to the list of components of the Department by inserting new language at 31 CFR 1.20(m). Appendix M is being added to include the OTS' implementation of provisions of the Privacy Act of 1974 (5 U.S.C. 552a). Appendix M sets forth the procedures by which individuals may request notification of whether the OTS maintains or has disclosed a record pertaining to them, or seek access to such records maintained in any nonexempt system of records, request correction of such records, appeal any initial adverse determination of any request for amendment.

The rules being published amending 31 CFR 1.1(d)(2), 1.20 and the appendices are not substantial rules, nor do they have an adverse effect on an individual's rights or benefits. In addition, the appendices are not substantially different from the existing departmentwide regulations implementing the Freedom of Information Act and Privacy Act.

The appendices identify particular offices and addresses for the public to contact when making a request under either act, or for service of process, and are applicable to OTS only. The immediate adoption of the appendices is warranted as they are the best means of informing the public of the procedures which should be used to gain access to the records of OTS pursuant to the FOIA and PA. Such rules and regulations are required by FOIA and PA to be published by an agency pursuant to 5 U.S.C. 552(3)(B) and 5 U.S.C. 552a(f).

Accordingly, pursuant to the administrative procedures provisions of 5 U.S.C. 553, the Department of the Treasury finds good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary; and finds good cause for making this rule effective less than 30 days after publication of this document in the **Federal Register**.

As required by Executive Order 12866, it has been determined that this rule does not constitute a "significant regulatory action."

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601–612, do not apply.

In accordance with the provisions of the Paperwork Reduction Act of 1980, the Department of the Treasury has determined that this rule would not impose new recordkeeping, application, reporting, or other types of information collection requirements.

List of Subjects in 31 CFR Part 1

Freedom of information, Privacy.

Part 1 of Title 31 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 1 continues to read as follows:

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552, as amended. Subpart C also issued under 5 U.S.C. 552a.

PART 1—[AMENDED]

Subpart A—Freedom of Information Act

2. Section 1.1 is amended by adding paragraph (d)(13) to read as follows:

* * * * *

(d) * * *

(13) The Office of Thrift Supervision.

* * * * *

3. Appendix M of Subpart A is revised to read as follows:

Appendix M—Office of Thrift Supervision

1. *In general.* This appendix applies to the Office of Thrift Supervision. It identifies the location of the public reading room at which the following documents are available for public inspection and copying: Description of the central and field offices; the established places where the public may obtain information, decisions, statements of the general course and method by which functions are channeled and determined; rules of procedure, descriptions of forms and where they may be obtained; final adjudications of cases; instructions to staff that affect a member of the public; filings under the Security Exchange Act of 1934; consent agreements in enforcement matters; pleadings, opinions and decisions in administrative adjudications; Regulatory and Thrift Bulletins; Chief Counsel Opinions, substantive rules and statements of general policy and interpretations adopted by the agency, and each amendment, revisions, or repeal of the foregoing, including those which have not been published in the **Federal Register**; draft rules and comment letters, and final Orders of the Director. Office of Thrift Supervision (OTS) regulatory handbooks and other publications are available for sale. Information may be obtained by calling the OTS Order Department at (301) 645–6264. OTS regulatory handbook and other publications may be purchased by forwarding a request, along with a check to: OTS Order Department, P.O. Box 753, Waldorf, MD 20604 or by calling (301) 645–6264. to pay the VISA or MASTERCARD. In addition, the appendix identifies the officers designated to make the initial and appellate determinations to FOIA requests, the officers designated to receive service of process, and the addresses for delivery of requests, appeals and service of process.

2. *Public reading room.* The public reading room for the Office of Thrift Supervision is maintained at the following location: Public Reading Room, 1700 G Street, NW., Washington, DC 20552.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(g) as to whether to grant requests for records of the Office of Thrift Supervision will be made by the Director, Information Services Division. Requests for records should be addressed to: Freedom of Information Request, Chief, Disclosure Branch, Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Requests may be delivered in person to: Office of Thrift Supervision, Information, Services Division, 1700 G Street, NW., Washington, DC.

4. *Administrotive appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(h) with respect to records of the Office of Thrift Supervision will be made by the Director, Public Affairs, Office of Thrift Supervision or the delegate of such officer. Appeals made by mail should be addressed to: Freedom of Information Appeal, Chief, Disclosure Branch, Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Appeals may be delivered in person to: Office of Thrift Supervision, Information Services Division, 1700 G Street, NW., Washington, DC.

5. *Delivery of process.* Service of process will be received by the Corporate Secretary of the Office of Thrift Supervision or the delegate of such officer and shall be delivered to the following location: Corporate Secretary, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

* * * * * *

Subpart C—Privacy Act

4. Section 1.20 is amended by adding paragraph (m) to read as follows:

* * * * *

(m) The Office of Thrift Supervision.

* * * * *

5. Subpart C of 31 CFR part 1 is amended by adding Appendix M:

Appendix M—Office of Thrift Supervision

1. *In general.* This appendix applies to the Office of Thrift Supervision. It sets forth specific notification and access procedures with respect to particular systems of records, and identifies the officers designated to make the initial determinations with respect to notification and access to records, the officers designated to make the initial and appellate determinations with respect to requests for amendment of records, the officers designated to grant extensions of time on appeal, the officers with whom "Statement of Disagreement" may be filed, the officer designated to receive services of process and the addresses for delivery of requests, appeals, and service of process. In addition, it references the notice of systems of records and notices of the routine uses of the information in the system required by 5 U.S.C. 552a(e) (4) and (11) and published biennially by the Office of the Federal Register in "Privacy Act Issuances."

2. *Requests for notification and access to records and accounting of disclosures.* Initial determinations under 31 CFR 1.26, whether to grant requests for notification and access to records and accountings of disclosures for the Office of Thrift Supervision, will be made by the head of the organizational unit having immediate custody of the records requested, or the delegate of such official. This information is contained in the appropriate system notice in the "Privacy Act Issuances," published biennially by the Office of the Federal Register. Requests for information and specific guidance on where to send requests for records should be addressed to: Privacy Act Request, Chief, Disclosure Branch, Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Requests may be delivered in person to: Office of Thrift Supervision, Information Services Division, 1700 G Street, NW., Washington, DC.

3. *Requests for amendments of records.* Initial determinations under 31 CFR 1.27 (a) through (d) with respect to requests to amend records maintained by the Office of Thrift Supervision will be made by the head of the organization or unit having immediate custody of the records or the delegates of such official. Requests for amendment of records should be addressed as indicated in the appropriate system notice in "Privacy Act Issuances" published by the Office of the Federal Register. Requests for information and specific guidance on where to send these requests should be addressed to: Privacy Act Amendment Request, Chief, Disclosure Branch, Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Privacy Act Amendment Requests may be delivered in person to: Office of Thrift Supervision, Information Services Division, 1700 G Street, NW., Washington, DC.

4. *Administrative appeal of initial determination refusing to amend record.* Appellate determination under 31 CFR 1.27(e) with respect to records of the Office of Thrift Supervision, including extensions of time on appeal, will be made by the Director, Public Affairs, Office of Thrift Supervision, or the delegate of such official, as limited by 5 U.S.C. 552a(d) (2) and (3). Appeals made by mail should be addressed as indicated in the letter of initial decision or to: Privacy Act Amendment Request, Chief, Disclosure Branch, Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Appeals may be delivered in person to: Office of Thrift Supervision, Information Services Division, 1700 G Street, NW., Washington, DC.

5. *Statements of Disagreement.* "Statements of Disagreement" as described in 31 CFR 1.27(e)(4) shall be filed with the official signing the notification of refusal to amend at the address indicated in the letter of notification within 35 days of the date of notification and should be limited to one page.

6. *Service of process.* Service of process will be received by the Corporate Secretary of the Office of Thrift Supervision or the delegate of such official and shall be delivered to the following location: Corporate Secretary, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

7. *Annual notice of systems of record.* The annual notice of systems of records required to be published by the Office of the Federal Register is included in the publication entitled "Privacy Act Issuances," as specified in 5 U.S.C. 552a(f). Any specific requirements for access, including identification requirements, in addition to the requirements set forth in 31 CFR 1.26 and 1.27 and (8) below, and locations for access are indicated in the notice for the pertinent system.

8. *Verification of identity.* An individual seeking notification or access to records, or seeking to amend a record, must satisfy one of the following identification requirements before action will be taken by the Office of Thrift Supervision on any such request:

(i) An individual seeking notification or access to records in person, or seeking to amend a record in person, may establish identity by the presentation of a single official document bearing a photograph (such as a passport or identification badge) or by the presentation of two items of identification which do not bear a photograph but do bear both a name and signature (such as a driver's license or credit card).

(ii) An individual seeking notification or access to records by mail, or seeking to amend a record by mail, may establish identity by a signature, address, and one other identifier such as a photocopy of a driver's license or other official document bearing the individual's signature.

(iii) Notwithstanding subdivisions (i) and (ii) of this subparagraph, an individual seeking notification or access to records by mail or in person, or seeking to amend a record by mail or in person, who so desires, may establish identity by providing a notarized statement, swearing or affirming to such individual's identity and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining access to records under false pretenses. Alternatively, an individual may provide a statement that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining access to records under false pretenses which is subscribed by the individual as true and correct under penalty of perjury pursuant to 28 U.S.C. 1746. Notwithstanding subdivision (i), (ii), or (iii) of this subparagraph, a designated official may require additional proof of an individual's identity before action will be taken on any request, if such official determines that it is necessary to protect against unauthorized disclosure of information in a particular case. In addition, a parent of any minor or a legal guardian of any individual will be required to provide adequate proof of legal relationship before such person may act on behalf of such minor or such individual.

* * * * *

Dated: May 16, 1995.

Alex Rodriguez,

Deputy Assistant Secretary (Administration).

[FR Doc. 95–14807 Filed 6–15–95; 8:45 am]

BILLING CODE 4810–25–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–5222–1]

Air Quality: Revision to Definition of Volatile Organic Compounds—Exclusion of Acetone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action revises the definition of volatile organic compounds (VOC) for purposes of preparing State implementation plans (SIP's) to attain the national ambient air quality standards (NAAQS) for ozone under title I of the Clean Air Act (Act) and for the Federal implementation plan for the Chicago ozone nonattainment area. This action adds acetone to the list of compounds excluded from the definition of VOC on the basis that these compounds have been determined to have negligible photochemical reactivity.

EFFECTIVE DATE: This rule is effective June 16, 1995.

ADDRESSES: This action is subject to the procedural requirements of section 307(d)(1)(B), (J), and (U) of the Act, and 42 U.S.C. 7607(d)(1)(B), (J), and (U). Therefore, EPA has established a public docket for this action, A–94–26, which is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at the U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (6102), 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. William Johnson, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division (MD–15), Research Triangle Park, NC 27711, phone (919) 541–5245.

SUPPLEMENTARY INFORMATION:

I. Background

Three petitions were received by the EPA asking that acetone be added to the list of negligibly-reactive compounds in the definition of VOC at 40 CFR 51.100(s). These petitions were submitted by Eastman Chemical Company and Hoechst Celanese Corporation on April 26, 1993; Hickory Springs Manufacturing Company on May 6, 1993; and the Chemical Manufacturers Association on May 14, 1993. Along with their petitions and in supplemental submissions, these organizations submitted a variety of scientific materials which support the assertion that acetone is of negligible photochemical reactivity. These materials have been added to the docket for this rulemaking. The petitioners based their request for the exclusion of acetone on a demonstration that the photochemical reactivity of acetone is not appreciably different from that of ethane, which is the most reactive compound on the current list of compounds which are named in the definition of VOC as being of negligible reactivity.

The petitioners point out that if acetone is accepted as having negligible photochemical reactivity, exempting acetone from regulation as an ozone precursor could contribute to the achievement of several important environmental goals and would support EPA's pollution prevention efforts. For example, acetone can be used as a substitute for several compounds that are listed as hazardous air pollutants (HAP) under section 112 of the Act. Methylene chloride and methyl chloroform are HAP that are used for metal cleaning and for flexible polyurethane foam blowing. Other HAP, such as toluene, are often used as solvents in paints and coatings. Acetone can substitute for these substances in some circumstances.

Acetone can also be used as a substitute for ozone depleting substances (ODS) which are active in depleting the stratospheric ozone layer. Allowing wider use of acetone will facilitate the transition away from ODS without adversely affecting efforts to control ground level ozone concentrations. For example, chlorofluorocarbon-11 (CFC–11) and methyl chloroform have been used as foam-blowing agents in the manufacture of polyurethane foam. These compounds are also used in metal cleaning in the aircraft manufacturing industry. Both CFC–11 and methyl chloroform are listed as Class I substances under title VI of the Act, i.e., as substances that have the highest stratospheric ozone-depleting potential. Acetone may be able to be used as a foam-blowing agent and cleaning agent in place of these chemicals.

The EPA has already listed acetone as an acceptable ozone-depleting substance substitute for certain uses under the program known as the Significant New Alternatives Policy (SNAP) program (59 FR 13044, March 18, 1994). Within the context of the SNAP rule, substitutes are "acceptable" if they are technically feasible to be used as an alternative to an ODS for particular uses and provide a reduced overall risk to human health and the environment compared to the ODS they replace. In the SNAP rule, EPA listed acetone as an acceptable substitute for flexible polyurethane foam blowing (59 FR 13132). The SNAP rule lists ketones (which include acetone) as an acceptable substitute for solvent cleaning in metal cleaning, electronics cleaning, and precision cleaning (59 FR 13134). Ketones are also listed in the SNAP rule as an acceptable substitute solvent for aerosols and for adhesives, coatings, and inks (59 FR 13145).

Based on a review of the scientific material submitted by the petitioners, EPA published a notice in the **Federal Register** on September 30, 1994 (59 FR 49877) which proposed to revise EPA's definition of VOC to add acetone to the list of compounds which are considered to be negligibly photochemically reactive. In the proposal, EPA summarized the technical basis for its preliminary decision to add acetone to this list. This notice asked for comments from the public on the proposal and provided a 60-day comment period which ended November 29, 1994.

II. Comments on Proposal and EPA Responses

In accordance with section 307(d) of the Act, today's action is accompanied by a response to the significant comments, criticisms, and new data submitted in written or oral presentations during the public comment period. During the comment period, written comments were received from 52 individuals or organizations (including several manufacturing companies, seven trade associations, two States and a local air pollution agency) in response to EPA's September 30, 1994 proposal. Copies of these comments are located in the docket (A–94–26) for this action. Significant comments and EPA's responses are summarized below. In the proposal for today's action, EPA indicated that interested persons could request that EPA hold a public hearing on the proposed action (see section 307(d)(5)(ii) of the Act). During the comment period, one company requested a public hearing, but later withdrew its request. Since no one else requested a hearing, none was held.

About 80 percent of the letters received during the comment period were in favor of the proposal. These comments listed a variety of benefits that would result if acetone is deregulated for industrial use. Other substantial comments and EPA's responses are listed below.

Comment: Several commenters pointed out that removal of restrictions on use of acetone would have a detrimental effect on companies which have invested in research efforts to develop low solvent processes. As an example, some companies have developed low solvent cleaners which reduce the amount of VOC emitted into the air when used. Another example is processes for manufacture of polyurethane foam which do not rely on organic solvent blowing agents. Manufacturers have developed these low polluting processes for making polyurethane foam in order to avoid emission limitations on methylene chloride, methyl chloroform and other regulated organic compounds. Such low emitting polyurethane foam manufacturing processing may not be able to compete effectively if acetone is allowed unrestricted use as a foam-blowing agent. The companies that have developed these low-polluting processes say that they relied on past EPA policy which restricted emissions of acetone as a VOC when deciding to make a financial commitment to develop the processes or products. They now face loss of their research investments and future profits if acetone is no longer regarded as a VOC and, therefore, no longer restricted in use.

Response: The EPA recognizes that some companies which have developed low solvent products may find that their products face increased competition when acetone is deregulated. It is true that companies which have spent funds in developing these products may not gain the expected financial return if these products are not able to compete successfully against acetone. However, these products are not prohibited by this action and may still compete in the market place. The EPA does not think it is good public policy to continue to restrict acetone use as an ozone precursor when current evidence indicates that it is of negligible photochemically reactivity. Acetone is a useful substance and a wide cross section of American industry stands to benefit from removal of restrictions on its use.

Comment: Some commenters assert that the scientific evidence presented in the docket for this action does not support the contention that acetone is of comparable reactivity to ethane, which is already regarded as negligibly photochemically reactive. One commenter, for example, cited a paper written by Dr. William P. L. Carter, who is the author of much of the background material in the docket. The July 1994 paper entitled "Development of Ozone Reactivity Scales for Volatile Organic Compounds" was published in the Journal of the Air and Waste Management Association. Table III in this paper gives a list of organic compounds ranked by a maximum incremental reactivity (MIR) scale. This scale shows that ethane has a MIR value of 0.25 while acetone has a value of 0.56. These values are expressed in units of grams of ozone per gram of test compound added. Since the higher value would indicate higher ozone formation potential, the commenter concluded that this is evidence that acetone is more reactive than ethane.

Response: The MIR values of 0.25 for ethane and 0.56 for acetone are also given in Table 4 in "An Experimental and Modeling Study of the Photochemical Ozone Reactivity of Acetone" by Dr. Carter, et al., which is included in the docket for this action. This journal article explains that the MIR scale is based on a scenario derived by adjusting the nitrogen oxide (NO_X) emissions in a base case scenario to yield the highest incremental reactivity of the base reactive organic gas (ROG) mixture. Ozone yield for a VOC depends significantly on the conditions within the polluted atmosphere in which it reacts, such as VOC to NO_X ratio, VOC composition, and sunlight intensity. The MIR value presented in these studies relies on a set of conditions adjusted for maximum ozone incremental reactivity.

In addition to calculating this value, Dr. Carter also calculated values for conditions actually occurring in 39 cities in the United States. His calculations showed that the reactivity of acetone, relative to that of ethane, varied widely with conditions, ranging from substantially higher to substantially lower than that of ethane, although the 39-city study indicated that on average acetone is less reactive on a weight basis that ethane for conditions found in these cities. In the face of such variation, Dr. Carter reasonably concluded that his results did not support a higher acetone reactivity relative to that of ethane. After examining these data, EPA continues to believe that, based on currently existing evidence, a "negligibly reactive" rating for acetone is justified.

Comment: One commenter stated that general principles of organic photochemistry support the conclusion that acetone will be more reactive that ethane. Two commenters point out that acetone undergoes photolysis to form free radicals which would cause an increase in photochemical reactivity of acetone as compared to ethane.

Response: It has been recognized that acetone, unlike ethane, undergoes photodecomposition, or photolysis, in the atmosphere to form radicals which tend to cause increased rates of ozone formation. Total reactivity of acetone, considering both reactivity rate constant with hydroxyl radicals and photolysis, was the subject of a study (Carter, W.P.L., et al., "An Experimental and Modeling Study of the Photochemical Ozone Reactivity of Acetone," December 10, 1993) which is included in the docket for this action. The findings of this report take into account the potential for acetone to undergo photolysis, and this information has been included in comparisons of acetone with ethane. The 39-city study which is included in this report shows that acetone reactivity is on average lower than that of ethane for the conditions in these cities. This study indicates that situations represented by conditions typically found in these cities do not support the contentions made in the comments. Therefore, although acetone may undergo photolysis, in these conditions, its reactivity is not dissimilar to ethane's.

Comment: One commenter stated that some experimental values reported in "An Experimental and Modeling Study of the Photochemical Ozone Reactivity of Acetone" indicate that the incremental photochemical reactivity of acetone is up to 10 times that of ethane.

Response: The referenced data are in Table 2 of that report, "Summary of Conditions and Results of the Incremental Reactivity and Direct Reactivity Comparison Experiments," in the column labeled IR for incremental reactivity. One value of 0.059 is given for acetone and a value of 0.006 for ethane. The units of these values are moles of ozone per mole of test compound added. A mole of acetone weighs almost twice as much as a mole of ethane. If the results are reported on a basis of grams of ozone per gram of test compound added, the difference between the two values is about half the difference indicated above. The EPA has chosen to use the weight basis rather than a mole basis for comparing results since emissions are regulated on a weight basis.

In addition, the report adds that it should be emphasized that since incremental reactivities are dependent on environmental conditions and since it is not practical to duplicate in the chamber all the environmental factors which might affect magnitudes of incremental reactivities, incremental reactivities measured in chamber experiments should not be assumed to be quantitatively the same as incremental reactivities in the atmosphere. According to the report, the latter can only be estimated using computer airshed model calculations. The 39-city study is such a study which predicts that acetone will be less reactive on a weight basis than ethane for most conditions found in these cities. Averages from this 39-city study give a reactivity value (in grams of ozone/gram of VOC) for ethane of 0.166 and for acetone of 0.126. The value for a typical urban mix of reactive organic gases is 1.13. These values are reported in Table 5 of the report.

Comment: One commenter stated that the photochemical reactivity of acetone was as much as 48 percent of the photochemical reactivity of other VOC.

Response: The commenter reported that he derived the value based on calculations he performed using the data in Table 2 of the report referred to in the previous comment. He did not submit the calculation, however. The EPA calculations using these data have not yielded as high a value. It should be noted that, as reported before, the data in Table 2 are in moles of ozone per mole of test compound. The report also compares acetone reactivity with the base ROG mixture on a gram of ozone per gram of test compound basis. Page

71 of the report summarizes this comparison, stating that acetone is no more than 20 percent as reactive as the base ROG mixture in terms of peak ozone, or 15 percent as reactive in terms of integrated ozone.

Comment: A commenter noted that the report "An Experimental and Modeling Study of the Photochemical Ozone Reactivity of Acetone" reports laboratory measurements of photochemical reactivities of acetone and ethane in "side by side" laboratory experiments in which it was found that the photochemical reactivity was slightly higher for acetone. This commenter went on to complain that when this report studied the photochemical reactivity of acetone in 39 urban areas, the results were based on use of computer models derived from experimental data. This commenter believed that results should be based on direct experimental data and not on computer models which might contain assumptions and uncertainties.

Response: The EPA agrees that direct experimental data are desirable, provided that direct experimental comparison data exist for a variety of ambient conditions. Existing data, however, are very limited. Such data, for example, were obtained by Dr. H. Jeffries at the University of North Carolina, in a study referenced in the Carter report. Through a direct "side by side" experimental comparison of the reactivities of acetone and ethane, Dr. Jeffries observed no measurable difference in the amount of ozone formed in the acetone and ethane sides of the chamber. These experimental data confirm that, essentially, the difference in reactivity between ethane and acetone is not significant. In regard to the use of computer models to predict ozone formation, this is a common, well justified practice in reactivity work, and EPA sees no reason to doubt the approach taken in this analysis.

Comment: One commenter states that the Derwent and Jenkins study shows that acetone produces 12 percent more ozone that does ethane.

Response: Dr. R.G. Derwent reported to EPA, in a January 27, 1994 letter which is contained in the docket, that a comparison of the photochemical ozone creation potential (POCP) for ethane and acetone gives 8.2±4.0 for ethane and 9.2±2.0 for acetone. The commenter is apparently referring to the difference between 8.2 and 9.2, which is 12 percent. The commenter does not appear to consider the measure of variability of the data, expressed as a standard deviation for each number. The difference between these numbers is not considered to be statistically significant, considering the standard deviation of each value.

Comment: One commenter said that EPA has previously stated that "* * * EPA has found that almost all non-methane VOC are photochemically reactive and that low reactivity VOC eventually form as much ozone as highly reactive VOC," 40 CFR Subpart 51 (Appendix S, Section IV(C)(4)). Another commenter said that because acetone is not nonreactive, excluding acetone from the definition of VOC would reduce the ability of States to attain the national ambient air quality standard for ozone in a timely manner.

Response: The CFR section quoted above is part of a discussion of credit for VOC substitution. The above quote is followed by the statement that no emission credit may be allowed for replacing one VOC with another of lesser reactivity, except for those listed in Table I of the policy statement "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314, July 8, 1977). In that 1977 policy statement, EPA recognized a class of organic compounds that has been determined to have negligible photochemical reactivity and is not required to be controlled under State implementation plans (SIP). Ethane was one of the four compounds on the negligibly reactive list in the 1977 policy statement. Over the years, several other compounds have been recognized as being negligibly reactive and have been added to the list. This list of negligibly reactive compounds was incorporated into EPA's definition of volatile organic compounds which apears in 40 CFR 51.100(s). Today's action adds acetone to that list.

Comment: Two commenters stated that the docket materials show that the photochemical reactivity of acetone is increased by the presence of NO_X and other VOC. If the proposal to exempt acetone from the VOC list is accepted, the urban areas with the worst pollution would be the areas to suffer most from that decision.

Response: Under high NO_X conditions, the modeling results predict that acetone is slightly more reactive that ethane, though the reactivity on the MIR scale is quite low when compared to the reactivity of the weighted average of all emitted VOC and especially when compared to more reactive solvents such as xylene. Under the type of NO_X conditions occurring in most cities, the modeling results indicate the reactivity of acetone is comparable to or less than that of ethane (Table 5 in the Carter report). The 39 cities examined in the modeling studies exhibit air quality ranging from ozone attainment to extreme nonattainment. The modeling results as a whole do not demonstrate an appreciable difference between acetone and ethane in terms of their respective potential to contribute to tropospheric ozone levels. Modeling results for those 39 cities show that acetone reactivity is on average lower than ethane for the actual conditions existing in them and much lower than for the typical urban mix of reactive organic gases.

Comment: Three commenters were concerned that the proposal stated that when this action is made final, acetone may not be used for emission netting, offsetting, or trading with reactive VOC emissions. Two of these commenters supported acetone being reclassified as negligibly reactive, but were concerned that past emission reduction credits be retained in the future. There are two aspects of concern. First, would permits obtained in the past that are based on netting transactions involving acetone still be valid? Secondly, could acetone reductions that have been made in the past, with the expectation that they would be available for future netting, still be used? The commenters say they could suffer financial damages if they are not allowed to use or sell emission reduction credits for past reductions of acetone.

Response: The EPA is currently developing an open market trading rule which will deal with issues of netting, offsetting, and trading transactions. The EPA is deferring its decision concerning whether credits for acetone, which were banked prior to today's action, may be used in future netting, offsetting or trading transactions with reactive VOC. Because of the potential impact that banked emissions could have on attainment demonstrations and reasonable further progress showings, EPA needs to conduct further discussions with States on this issue.

III. Final Action

The EPA concludes that acetone is not appreciably different from ethane in terms of photochemical reactivity. Today's final action is based upon the material in Docket A–94–26 and EPA's review and consideration of all comments received during the public comment period. As proposed in EPA's September 30, 1994 notice, EPA hereby amends its definition of VOC at 40 CFR 51.100(s) to add acetone to the list of compounds that have been determined to have negligible photochemical reactivity. This will have the effect of excluding acetone as a VOC for ozone control purposes. The revised definition will also apply in the Chicago ozone nonattainment area pursuant to the 40 CFR 52.741(a)(3) definition of volatile organic material or VOC compound. States are not obligated to exclude from control as a VOC those compounds that EPA has found to be negligibly reactive. However, after the effective date of this final action, EPA will not enforce measures controlling acetone as part of a federally-approved ozone SIP. In addition, once this proposal is made final, States may not include acetone in their VOC emissions inventories for determining reasonable further progress under the Act (e.g., section 182(b)(1)) and may not take credit for controlling acetone in their ozone control strategies.

This action is effective on the date of publication rather than the more usual date 30 days after publication. There is good cause to choose this earlier effective date; this action relieves a restriction on users of acetone (42 U.S.C. section 553 (d)(1)).

Pursuant to 5 U.S.C. 605(b), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities because it relaxes current regulatory requirements rather than imposing new ones. The EPA has determined that this rule is not "significant" under the terms of Executive Order 12866 and is, therefore, not subject to Office of Management and Budget (OMB) review. This action does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local and/or tribal government(s) in the aggregate. Since today's action is deregulatory in nature and does not impose any mandate upon any source, the cost of such mandates will not result in estimated annual costs of $100 million or more.

Assuming this rulemaking is subject to section 317 of the Act, the Administrator concludes, weighing the Agency's limited resources and other duties, that it is not practicable to conduct an extensive economic impact assessment of today's action since this rule will relax current regulatory requirements. Accordingly, the Administrator simply notes that any costs of complying with today's action, any inflationary or recessionary effects of the regulation, and any impact on the competitive standing of small businesses, on consumer costs, or on energy use, will be less than or at least not more than the impact that existed before today's action.

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 7, 1995.

Carol M. Browner,

Administrator.

For reasons set forth in the preamble, part 51 of chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7410(a)(2), 7475(e), 7502 (a) and (b), 7503, 7601(a)(1), and 7620.

2. Section 51.100 is amended by revising paragraph (s)(1) introductory text to read as follows:

§ 51.100 Definitions.

* * * * *

(s) * * *

(1) This includes any such organic compound other than the following, which have been determined to have negligible photochemical reactivity: methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC–113); trichlorofluoromethane (CFC–11); dichlorodifluoromethane (CFC–12); chlorodifluoromethane (HCFC–22); trifluoromethane (HFC–23); 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC–114); chloropentafluoroethane (CFC–115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC–123); 1,1,1,2-tetrafluoroethane (HFC–134a); 1,1-dichloro 1-fluoroethane (HCFC–141b); 1-chloro 1,1-difluoroethane (HCFC 142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC–124); pentafluoroethane (HFC–125); 1,1,2,2-tetrafluoroethane (HFC–134); 1,1,1-trifluoroethane (HFC–143a); 1,1-difluoroethane (HFC–152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; acetone; and perfluorocarbon compounds which fall into these classes:

* * * * *

[FR Doc. 95–14804 Filed 6–15–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[AD–FRL–5221–9]

Clean Air Act Final Interim Approval of Operating Permits Program; Minnesota Pollution Control Agency

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim approval.

SUMMARY: The EPA is promulgating interim approval of the Operating Permits Program submitted by the Minnesota Pollution Control Agency (MPCA) for purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources.

EFFECTIVE DATE: July 17, 1995.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the final interim approval are available for inspection during normal business hours at the following location: EPA Region 5, Air and Radiation Division (AE–17J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Rachel Rineheart, Permits and Grants Section (AE–17J), EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7017.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act ("the Act")), and implementing regulations at 40 Code of Federal Regulations (CFR) part 70 require that States develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by

the end of an interim program, the Agency must establish and implement a Federal program.

On September 13, 1994, EPA proposed interim approval of the operating permits program for the MPCA. See 59 FR 46948. The EPA received public comment on the proposal and compiled a Technical Support Document (TSD) which describes the operating permits program in greater detail. In this notice EPA is taking final action to promulgate interim approval of the operating permits program for the MPCA.

II. Final Action and Implications

A. Analysis of State Submission and Response to Public Comments

The EPA received comments on a total of 9 topics from 9 organizations. The EPA's response to these comments is summarized in this section. Comments supporting EPA's proposal are not addressed in this notice; however, EPA's TSD responding to all comments is available in the docket at the address noted in the **ADDRESSES** section above.

1. Criminal Enforcement Authority

EPA proposed as a condition for full approval of the Minnesota permit program the removal of Subdivision 14 of Section 609.671 of the Minnesota Criminal Code (Subdivision 14). Subdivision 14 provides that "*except for intentional violations*, a person is not guilty of a crime * * * if the person notified the pollution control agency of the violation as soon as the person discovered the violation and took steps to promptly remedy the violation." (Emphasis added.) EPA has subsequently determined that the definition of "intentional" used by the State of Minnesota in the context of this defense is equivalent to the definition of "knowledge." Therefore, EPA no longer requires that Minnesota remove Subdivision 14 for full approval of the Minnesota permit program.

Specifically, a letter dated April 21, 1995, from Hubert H. Humphrey III, Attorney General for the State of Minnesota, to Valdas Adamkus, Regional Administrator of Region 5, EPA, clarifies the definition of "intentional" as follows:

> "Intentional violations" do not mean the state must show a violation was committed with specific intent. *See State* v. *Orsello*, 1995 WL 141748 (Minn. Ct. App.) * * *. "Intentional violations" require only the same type of intent as is required for a general intent crime in Minnesota; namely, an intent to do the act prohibited by the statute. The phrase "intentional violations" in this context is thus used to distinguish criminal conduct from the accidental. *See State* v. *Lindahl*, 309 N.W.2d 763, 767 (Minn. 1981) * * *.

EPA had proposed the removal of Subdivision 14 as a condition for full approval of the Minnesota permit program because 40 CFR 70.11(a)(ii) requires that a state have the authority to seek criminal remedies, including, among other things, fines against "any person who knowingly violates any applicable requirement * * *." With the clarification of the definition of "intentional" by Minnesota, it is clear that Minnesota does have the authority to seek criminal remedies for knowing violations. Further, this clarification of the definition of "intentional" also satisfies EPA's other concern that Subdivision 14 required the State to meet a higher degree of proof than that required by the Clean Air Act. 40 CFR 70.11(b).

2. Monitoring Reports

EPA received one comment from the MPCA on its proposal to require Minnesota to revise Minnesota Rules 7007.0800, subpart 6, to require submittal of semi-annual monitoring reports from all part 70 sources. EPA based its proposal on 40 CFR 70.6(a)(3)(iii)(A), which requires the "submittal of reports of required monitoring at least every 6 months." MPCA believes that it is reasonable to interpret this provision to only require a report if there is required monitoring during the 6 month period. Furthermore, MPCA asserts that "it would be pointless and wasteful for a part 70 source to be required to submit a semi-annual report when there is nothing to report."

While EPA agrees with this comment, a revision to this rule is still necessary for full program approval. Minnesota Rules 7007.0800, subpart 6(B), requires submittal of reports at least every six months for "any stationary source that is required to monitor * * * *more frequently than every six months.*" (Emphasis added.) Part 70 requires semi-annual reports from sources required to monitor every 6 months. In addition, it is not clear from this provision that a source required to monitor less frequently than every six months is ever required to submit a monitoring report. Therefore, to receive full program approval, MPCA must revise Minnesota Rules 7007.0800, subpart 6 to require at least a semi-annual monitoring report from sources required to monitor at least every 6 months, and to require annual reports from sources required to monitor less frequently than every 6 months.

3. Administrative Permit Amendment Procedures

EPA received 2 adverse comments regarding EPA's proposal to require MPCA to revise Minnesota Rules 7007.1400. This rule allows the use of the administrative amendment procedures to "clarify" a permit term. In the proposal, EPA states this ambiguous provision may result in the implementation of permit modifications through the administrative amendment procedures, rather than through the permit modification procedures, in contravention of 40 CFR 70.7 (d) and (e). Because this provision is inconsistent with the requirements of 40 CFR 70.7(d), Minnesota must revise this rule for full program approval.

The American Forest & Paper Association (American Forest) and the National Environmental Development Association (NEDA) are concerned that the "removal" of this provision will require MPCA, as a condition for full approval, "to disapprove environmentally insignificant permitting modifications that otherwise should be approvable through the administrative amendments." These commenters also feel that EPA's concerns are "unwarranted, since EPA would retain, under its proposed rule changes, an adequate opportunity to object to administrative amendments." According to 40 CFR 70.1(c), EPA will approve State programs "to the extent that they are not inconsistent with the Act and these regulations." Section 70.7(d) sets forth those matters that may be corrected through administrative permit amendments. Section 70.7(e) sets forth the criteria for permit modifications. Because a broad interpretation of Minnesota Rules 7007.1400 would allow permit modifications to be implemented as administrative permit amendments, the rule expands the scope of those matters which may be corrected pursuant to 40 CFR 70.7(d), in contravention of the Act and part 70 regulations. Therefore, the ambiguity in the rule must be clarified. With respect to EPA's ability to object to administrative amendments, the current part 70 regulations do not provide for EPA review and objection.

4. Incorporation by Reference

EPA proposed as a condition for full approval of MPCA's program that Minnesota Rules 7007.0800, subpart 16 be revised to require that all conditions required by section 70.6(a) contained in that subpart be expressly stated in the part 70 permits. EPA received one comment from MPCA opposing this change. MPCA argues that the inclusion of this language is not necessary and would draw attention away from the specific requirements that the source must comply with on a day-to-day basis. MPCA feels that inclusion of this language could lead to "confusion" at the source as to what conditions actually apply. Finally, MPCA is concerned that EPA intends to require the State to include provisions of 70.6(a) that would not apply to all part 70 sources, such as the provisions at 70.6(a)(4) which would apply only to acid rain sources, in all part 70 permits.

EPA's September 13, 1994, proposal only requires the State to expressly state in every permit those provisions of section 70.6(a) which are found in Minnesota Rules 7007.0800, subpart 16. Specifically, these are the provisions of sections 70.6(a) (5) and (6), which are found in 7007.0800, subpart 16 (A)–(F) of Minnesota's rules. These general provisions apply to all part 70 sources. Therefore, the State's concern that it would be required to include permit terms that do not apply to certain sources in the sources' part 70 permit is unwarranted. Further, EPA fails to see how the express statement of general requirements applicable to all permittees will result in confusion. In fact, it is EPA's position that the express statement of all applicable permit conditions in the permit assists the source in understanding all permit requirements, assures the enforceability of the permit, and is not burdensome.

The State's plan to incorporate by reference general permit conditions may actually hamper the enforceability of those conditions. Because EPA will not incorporate Minnesota's rules by reference for part 70 program approvals, only the part 70 permit, and not the actual rules, would be federally enforceable. Therefore, EPA would only be able to enforce those conditions that are expressly stated in the permit. Further, EPA is concerned that the failure to clearly state permit conditions precludes "fair warning" of the permit requirements, and could be the basis for a dismissal.

5. Fees

In the September 13, 1994, notice, EPA proposed to require the State of Minnesota to "revise the definition of regulated pollutant at Minnesota Rules 7002.0035 to include 'any regulated pollutant for presumptive fee calculation' as defined at 40 CFR 70.2, or submit a detailed fee demonstration." One comment was received from the MPCA. MPCA agrees that the fee rule does not collect the presumptive minimum; however, MPCA pointed out that the presumptive minimum can be met without charging for all "regulated pollutants" under the Federal definition. EPA agrees with MPCA. 40 CFR 70.9(b)(2) only requires the collection of an amount equivalent to $25 + consumer price index per ton of "regulated pollutant for presumptive fee calculation," to meet the presumptive minimum. Therefore, this requirement will be revised to reflect this comment.

6. Timelines for Permit Issuance

EPA received one comment from MPCA on the proposal to require MPCA to change its deadline for permit issuance on minor and moderate permit amendments from 180 days to 90 days after receipt of an application. In the proposal EPA stated that both types of permit amendments seemed to fall under the minor modification procedures of part 70, which requires final action within 90 days after receipt of an application. MPCA argues that 40 CFR 70.7(e)(1) allows States to "develop different procedures for different types of modifications depending on the significance and complexity of the requested modification" provided that the procedures do not provide for less permitting authority or review by EPA and affected States, and that this is what it has done by creating minor and moderate permit amendment categories. In addition, MPCA argues that by increasing the review time from 90 days to 180 days, the State has increased the likelihood of meaningful State and Federal review of permit applications.

According to 40 CFR 70.7(e)(1), a State must "provide adequate, streamlined, and reasonable procedures for expeditiously processing permit modifications." The State may meet this requirement by adopting the procedures set forth in 40 CFR 70.7(e), or procedures that are "substantially equivalent." EPA does not consider the State's minor permit amendments to be substantially equivalent to the minor modification procedures of part 70 because of the timeline for acting on minor permit amendment applications. Although additional time might allow the State to have a more meaningful review, it would also allow a source that had applied for a minor permit amendment, but did not qualify for a minor permit amendment, an extra 90 days of operation before submitting the proper application. For this reason, EPA is requiring MPCA to take action on minor permit amendments within 90 days of receipt of a complete application.

Part 70 does allow a State to develop additional procedures for different types of modifications as long as the procedures do not provide for less permitting authority, EPA or affected State review, or public participation, than is provided for in part 70. Minnesota has done this with its moderate permit amendment procedures. MPCA has allowed 180 days to take final action on moderate permit amendment applications; however, the source is not allowed to operate under that change until the State has approved the change. Therefore, EPA has decided that this type of change does meet all requirements of part 70, and EPA will not require a change with respect to moderate permit amendments as proposed in the September 13, 1994 notice.

7. Section 112(g) of the Clean Air Act

In its proposed approval of Minnesota's part 70 program, EPA also proposed to approve Minnesota's preconstruction review program for the purpose of implementing section 112(g) during the transition period before a Federal rule had been promulgated implementing that section 112(g). This proposal was based in part on an interpretation of the Act that would require sources to comply with section 112(g) beginning on the date of approval of the title V program, regardless of whether EPA had completed its section 112(g) rulemaking. The EPA has since revised this interpretation of the Act in a **Federal Register** notice published on February 14, 1995. 60 FR 8333. The revised interpretation postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The revised notice sets forth in detail the rationale for the revised interpretation.

The section 112(g) interpretive notice explains that EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule so as to allow States time to adopt rules implementing the Federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), Minnesota must be able to implement section 112(g) during the period between promulgation of the Federal section 112(g) rule and adoption of implementing State regulations.

For this reason, EPA is finalizing its approval of Minnesota's preconstruction review program. This approval clarifies that the preconstruction review program is available as a mechanism to implement section 112(g) during the transition period between promulgation of the section 112(g) rule and adoption

by Minnesota of rules established to implement section 112(g). However, since the approval is for the single purpose of providing a mechanism to implement section 112(g) during the transition period, the approval itself will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State regulations are adopted. The EPA is limiting the duration of this proposal to 18 months following promulgation by EPA of the section 112(g) rule.

The EPA believes that, although Minnesota currently lacks a program designed specifically to implement section 112(g), Minnesota's preconstruction review program will serve as an adequate implementation vehicle during a transition period because it will allow Minnesota to select control measures that would meet MACT, as defined in section 112, and incorporate these measures into a federally enforceable preconstruction permit. Minnesota should be able to impose federally enforceable measures reflecting MACT for most if not all changes qualifying as a modification, construction, or reconstruction under section 112(g). This is because most section 112(b) HAPs are also criteria pollutants, and moreover because measures designed to limit criteria pollutant emissions will often have the incidental effect of limiting non-criteria pollutant HAPs.

Another consequence of the fact that Minnesota lacks a program designed specifically to implement section 112(g) is that the applicability criteria found in its preconstruction review program may differ from those in the section 112(g) rule. However, whether a particular source change qualifies as a modification, construction, or reconstruction for section 112(g) purposes during any transition period will be determined according to the final section 112(g) rule. The EPA would expect Minnesota to be able to issue a preconstruction permit containing a case-by-case determination of MACT where necessary for purposes of section 112(g) even if review under its own preconstruction review program would not be triggered.

8. Title I Modifications

For the reasons set forth in EPA's proposed rulemaking to revise the interim approval criteria of 40 CFR part 70 (59 FR 44572, August 29, 1994), the EPA believes the phrase "modification under any provisions of title I of the Act" in 40 CFR 70.7(e)(2)(i)(A)(5) is best interpreted to mean literally any change at a source that would trigger permitting authority review under regulations approved or promulgated under title I of the Act. This would include State preconstruction review programs approved by EPA as part of the State Implementation Plan under section 110(a)(2)(C) of the Act. The definition of "title I modification" at Minnesota Rules 7007.0100, subpart 26, includes "any change that constitutes a modification under any provision of title I of the act * * " In addition, Commissioner Charles Williams states in a letter dated April 19, 1994, that MPCA does consider "modifications of limits promulgated in the SIP and SIP required permit amendments" to be title I modifications. Therefore, in the September 13, 1994, proposal, EPA states that in light of the clarification in the April 19, 1994, letter, Minnesota's definition would be consistent with any definition of title I modification that EPA may adopt.

EPA received 3 comments on the definition of title I modifications. American Forest and NEDA asserted that neither MPCA nor EPA has the authority to include changes made pursuant to a preconstruction permitting program approved into the SIP as title I modifications. American Forest also asserted that Minnesota has no legal authority to fund its preconstruction permitting program from title V fees. MPCA commented that it does not consider SIP required permit amendments to be title I modifications, as was stated in the April 19, 1994, letter.

Although MPCA's interpretation of title I modification does not conform with EPA's current interpretation, EPA will take no action on Minnesota's program at this time with respect to the definition of title I modification. EPA is not taking action at this time because the definition of title I modification and the criterion for approving part 70 programs with respect to this issue are still being debated. For further explanation, please refer to the TSD or to the Final Interim Approval of the Operating Permit Program for the State of Washington (59 FR 55813).

9. Section 112(l)

In the September 13, 1994 notice, EPA proposed to grant approval under section 112(l)(5) and 40 CFR 63.91 of Minnesota's program for receiving delegation of section 112 standards that are unchanged from the Federal standards as promulgated. In addition, EPA noted that Minnesota intended to accept delegation of section 112 standards through automatic delegation. However, in its comments on the September 13, 1994 notice, MPCA stated that it has not requested delegation to implement section 112 standards, and that it does not intend to request delegation at this time. Therefore, EPA is not approving a mechanism for delegation of section 112 standards at this time. If MPCA does request delegation of section 112 standards in the future, EPA will approve a mechanism for delegation of the 112 standards in a separate rulemaking.

The fact that EPA is not approving a mechanism for delegation of section 112 standards does not affect the approvability of Minnesota's Operating Permits Program. Title V requires a State to be able to incorporate these terms into a permit and to be able to enforce the terms of that permit. Minnesota's program does meet those requirements.

B. Final Action

The EPA is promulgating interim approval of the operating permits program submitted by MPCA on November 15, 1993. The State must make the following changes to receive full approval:

1. Revise Minnesota Rules 7007.0800, subpart 6(B) to require at least semi-annual monitoring reports from any source required to monitor at least every six months, and to require any source required to monitor less frequently than every six months to submit at least an annual monitoring report.

2. Revise Minnesota Rules 7007.1400 to be consistent with the requirements of 40 CFR 70.7(d). Minnesota Rules 7007.1400 provides that the administrative amendment procedure may be used to "clarify a permit term." This ambiguous provision is not consistent with the requirements of 40 CFR 70.7(d) and could be interpreted broadly enough to allow changes to a permit which should be handled through the permit modification procedures.

3. Revise Minnesota Rules 7007.0800, subpart 16, to require that the permit terms included in 40 CFR 70.6(a) that are included in this subpart be expressly stated in part 70 permits. Minnesota Rules 7007.0800, subpart 16, allows permit terms which are required by 40 CFR 70.6(a) to be include in the permit by reference to the State regulation. Failure to have these provisions expressly stated in the permit may create difficulties in enforcing those terms and may make it difficult for citizens to understand what provisions apply to a source.

4. Revise Minnesota Rules 7002 in such a way that the State will collect an amount equivalent to the presumptive minimum, or submit a detailed fee demonstration containing all required elements under 40 CFR 70.9.

5. Revise Minnesota Rules 7007.0750, subpart 2.C, to require the permitting authority to take action on minor permit amendments within 90 days of receipt of a complete application.

This interim approval, which may not be renewed, extends until July 16, 1997. During this interim approval period, the State is protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a Federal operating permits program in the State. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of this interim approval, as does the 3-year time period for processing the initial permit applications.

EPA is granting Source Category-Limited (SCL) interim approval to Minnesota's program. Although the State is required to issue permits within 3 years to all sources subject to the program that obtains interim approval, some sources will not be subject to the requirement to obtain a permit until full approval is granted. Part 70 sources which are not addressed until full approval are also subject to the 3-year time period for processing initial permit applications. The 3-year period for these sources will begin on the date full approval of the State's program is granted. Therefore, initial permitting of all part 70 sources might not be completed until 5 years after interim approval is granted.

If the State fails to submit a complete corrective program for full approval by January 16, 1997, EPA will start an 18-month clock for mandatory sanctions. If the State then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that the State has corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of the State, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determined that the State had come into compliance. In any case, if, six months after application of the first sanction, the State still has not submitted a corrective program that EPA has found complete, a second sanction will be required.

If EPA disapproves the State's complete corrective program, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the State has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator finds a lack of good faith on the part of the State, both sanctions under section 179(b) shall apply after the expiration of the 18-month period until the Administrator determines that the State has come into compliance. In all cases, if, six months after EPA applies the first sanction, the State has not submitted a revised program that EPA has determined corrects the deficiencies, a second sanction is required.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if the State has not timely submitted a complete corrective program or EPA has disapproved its submitted corrective program. Moreover, if EPA has not granted full approval to the State program by the expiration of this interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a Federal permits program for the State upon interim approval expiration.

The EPA is also promulgating approval of Minnesota's preconstruction permitting program found in Minnesota Rules Chapter 7007, under the authority of title V and part 70 solely for the purpose of implementing section 112(g) regulations. The EPA believes this approval is necessary so that Minnesota has a mechanism in place to establish federally enforceable restrictions for section 112(g) purposes during the period between promulgation of the Federal section 112(g) rule and adoption of implementing State regulations. Although section 112(l) generally provides authority for approval of State air programs to implement section 112(g), title V and section 112(g) provide authority for this limited approval because of the direct linkage between the implementation of section 112(g) and title V. The scope of this approval is narrowly limited to section 112(g) and does not confer or imply approval for purposes of any other provision under the Act, for example, section 110. The duration of this approval is limited to 18 months following promulgation by EPA of section 112(g) regulations, to provide Minnesota adequate time for the State to adopt regulations consistent with the Federal requirements.

III. Administrative Requirements

A. Docket

Copies of the State's submittal and other information relied upon for the final interim approval, including 9 public comments received and reviewed by EPA on the proposal, are contained in the docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final interim approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

Dated: June 1, 1995.

Valdas V. Adamkus,

Regional Administrator.

40 CFR part 70 is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Appendix A to part 70 is amended by adding the entry for Minnesota in alphabetical order to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Minnesota

(a) Minnesota Pollution Control Agency; submitted on November 15, 1993; effective July 17, 1995; interim approval expires July 16, 1997.

[FR Doc. 95–14684 Filed 6–15–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 271

[FRL–5222–8]

Oregon; Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: The State of Oregon has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Oregon's application and has made a decision, subject to public review and comment, that Oregon's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Oregon's hazardous waste program revisions. Oregon's application for program revision is available for public review and comment.

DATES: Final authorization for Oregon shall be effective August 15, 1995 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Oregon's program revision application must be received by the close of business July 17, 1995.

ADDRESSES: Copies of Oregon's program revision application are available Monday through Friday, 8 a.m. to 5 p.m., at the following addresses for inspection and copying: Oregon Department of Environmental Quality, Executive Building, 811 SW. Sixth Avenue, Portland, OR 97204; phone: (503) 229–5072; U.S. EPA Region 10, Library, 10th Floor, 1200 Sixth Avenue, Seattle, WA 98101; phone: (206) 553–4763. Written comments should be sent to Michael Le, U.S. EPA, Region 10, 1200 Sixth Avenue, Mail Stop HW–107, Seattle, WA 98101; phone: (206) 553–1099.

FOR FURTHER INFORMATION CONTACT: Michael Le, U.S. EPA, Region 10, 1200 Sixth Avenue, Mail Stop HW–107, Seattle, WA 98101; phone: (206) 553–1099.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under Section 3006(b) of the Resource Conservation and Recovery Act ("RCRA or "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Public Law 98–616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under Section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260–266, 268, 124 and 270.

B. Oregon

Effective on January 31, 1986, Oregon received final authorization for the base program. Today, Oregon is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Oregon's application, and has made an immediate final decision that Oregon's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Oregon. The public may submit written comments on EPA's immediate final decision up until July 17, 1995. Copies of Oregon's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

Approval of Oregon's program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received EPA will publish either (1) A withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

Oregon's revision application includes those RCRA federal provisions promulgated on September 19, 1994 and January 3, 1995. These regulations pertain to Land Disposal Restrictions Phase II—Universal Treatment Standards for Organic Toxicity characteristic Wastes and Newly Listed Wastes. Oregon Environmental Quality Commission incorporated by reference these federal regulations. Accordingly, the State rules (Oregon Administrative Rule, OAR 340–100–002(1)) are equivalent to the federal regulations and became effective in the State of Oregon on May 18, 1995.

This program revision will not authorize the State to operate the RCRA program over any Indian lands; this authority remains with EPA.

C. Decision

I conclude that Oregon's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Oregon is granted final authorization to operate its hazardous waste program as revised.

Oregon now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Oregon also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under Section 3007 of RCRA and to take enforcement actions under Section 3008, 3013 and 7003 of RCRA.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Oregon's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: June 5, 1995.

Chuck Clarke,

Regional Administrator.

[FR Doc. 95–14806 Filed 6–15–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 372

[OPPTS–400086A; FRL–4952–7]

Acetone; Toxic Chemical Release Reporting; Community Right-to-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is granting a petition to delete acetone from the list of toxic chemicals under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA). This deletion is based on a determination that acetone meets the delisting criteria of EPCRA section 313(d)(3). By promulgating this rule, EPA is relieving facilities of their obligation to report releases of acetone that occurred during the 1994 calendar year and releases that will occur in the future. This relief applies only to the reporting requirements under section 313 of EPCRA.

DATES: This rule is effective June 16, 1995.

FOR FURTHER INFORMATION CONTACT: For specific information on this final rule: Maria J. Doa, Petitions Coordinator, Telephone: 202–260–9592. For more information on EPCRA section 313: Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1–800–535–0202, In Virginia and Alaska, 703–412–9877 or Toll free TTD: 1–800–553–7672.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

This final rule is issued under sections 313(d) and (e)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11023. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986 (Pub. L. 99–499).

B. Background

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using listed toxic chemicals to report their environmental releases of such chemicals annually. Beginning with the 1991 reporting year, such facilities must also report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act (42 U.S.C. 13106). When enacted, section 313 established an initial list of toxic chemicals that was comprised of more than 300 chemicals and 20 chemical categories. Section 313(d) authorizes EPA to add or delete chemicals from the list, and sets forth criteria for these actions. Under section 313(e)(1), any person may petition EPA to add chemicals to or delete chemicals from the list. EPA has added chemicals to and deleted chemicals from the original statutory list. EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for petitions. On May 23, 1991 (56 FR 23703), EPA published guidance regarding the recommended content of petitions to delete individual members of section 313 metal compound categories. EPA has also published a statement clarifying its interpretation of the section 313(d)(2) criteria for adding and deleting chemicals from the section 313 toxic chemical list (59 FR 61439, November 30, 1994).

II. Description of Petition and Regulatory History

On September 24, 1991, EPA received a petition from Eastman Chemical Company and Hoechst Celanese to delete acetone from the EPCRA section 313 list of toxic chemicals. The petitioners contend that acetone should be deleted from the EPCRA section 313 list because it does not meet any of the EPCRA section 313(d)(2) criteria and because acetone's low photochemical reactivity does not present substantial concerns for formation of tropospheric ozone or other air pollutants.

On September 30, 1994, following a review which consisted of a toxicity evaluation and an exposure analysis, EPA proposed to grant the petition to delete acetone from the section 313 list by issuing a proposed rule in the **Federal Register** (59 FR 49888). The proposal to grant the petition was based upon EPA's finding that acetone did not meet the listing criteria found in section 313(d)(2) of EPCRA. It was EPA's belief that there was insufficient evidence to demonstrate that acetone causes or can reasonably be anticipated to cause significant adverse human health or environmental effects.

Until this time, acetone has been considered to be a Volatile Organic Compound (VOC). Emissions of VOCs are managed under regulations (40 CFR parts 51 and 52) that implement Title I of the Clean Air Act (CAA), as amended, 42 U.S.C. 7401 *et seq.* EPA's definition of VOCs excludes certain listed chemicals that have been determined to be negligibly photochemically reactive (57 FR 3941, February 3, 1992). Elsewhere in this issue of the **Federal Register**, EPA is finalizing its addition of acetone to the list of compounds excluded from the definition of a VOC based on the determination that acetone has a negligible contribution to tropospheric ozone formation.

III. Final Rule and Rationale for Delisting

A. Comments on the Proposed Deletion of Acetone

The public comment period for the proposed rule closed on November 29, 1994. EPA received 51 comments on the proposed rule to delete acetone. Of these, 29 comments concurred with the proposal, and 22 comments objected to the proposal.

The Chemical Manufacturers Association objected to the statement in the proposed rule that all VOCs "meet the criteria for listing under EPCRA section 313."

In the proposed rule, EPA did not state that all VOCs meet the criteria for listing under EPCRA section 313 solely by virtue of their being so designated. However, EPA reaffirms its position as stated in the proposed rule, that chemicals that clearly fit the definition of VOC under the CAA meet the listing criteria of EPCRA section 313. VOCs contribute to the formation of tropospheric ozone. Ozone can reasonably be anticipated to cause significant adverse effects on human health and the environment, and therefore meets the listing criteria of EPCRA section 313.

Artco Inc. and National Marine Manufacturers Association comment that EPA should further research other chemicals which are not depleting the stratospheric ozone layer and promulgate their removal as well. EPA does not believe that the removal of chemicals from the EPCRA section 313 list is warranted solely on the basis of whether they deplete the stratospheric ozone layer. In making a determination that a chemical should be deleted from the EPCRA section 313 list, EPA examines whether the chemical meets *any* of the criteria set forth in EPCRA section 313(d)(2). A chemical which is shown not to deplete the stratospheric ozone layer could still meet one of the other criteria, and thus, could not be deleted from the list.

Eastman Chemical Co. and Hoechst Celanese stated that the deletion of acetone will "improve EPA's TRI program as well as conserve EPA and industry resources." Further, Outboard Marine Corp., Hoechst Celanese, and the Savannah River Pulp and Paper Corp. stated that the removal of acetone from the list of EPCRA section 313 toxic chemicals will reduce, in part, the administrative burden on facilities.

As described in the economic analysis, EPA agrees that the deletion of acetone will result in a resource savings by EPA and industry. In addition, EPA agrees that, as a result of this action, there will be a decrease in the administrative burden on facilities who have previously been required to report for acetone under EPCRA section 313.

A number of the commenters who supported the deletion stated that acetone is a substitute for more hazardous air pollutants, and that removing acetone from the list will encourage facilities to use acetone rather than these more hazardous chemicals. Specifically, Eastman Chemical Co. and Hoechst Celanese commented that the proposed rule does not address any of the environmental benefits associated with deleting acetone from the section 313 list. These two commenters pointed to the benefits derived from the use of acetone as a substitute for other regulated chemicals.

Although there might be environmental benefits from using acetone rather than some other chemicals, this has no impact on whether acetone meets the listing criteria of EPCRA section 313(d)(2). EPA agrees that, to the extent that the substances being substituted by acetone are more hazardous to human health or the environment than acetone, such substitution would be beneficial.

These two commenters further brought up several technical points, which they felt should have been included in the proposal. Specifically, they believe that a description of drinking water studies which have been conducted with acetone, as well as information on the recently revised oral reference dose (RfD) for acetone, would be a useful addition to the preamble to this final rule. EPA acknowledges that the drinking water studies have been conducted, but does not feel that a description of them is warranted. These studies support the decision to delist acetone. EPA also acknowledges that the RfD has recently been revised. At the time of publication of the proposed rule, the RfD was 0.1 milligram per kilogram per day (mg/kg/day). EPA has revised this RfD to 0.9 mg/kg/day. This higher value reflects a slightly lower toxicity and, as stated above, supports the delisting decision.

A number of the commenters that oppose the delisting stated that there are substantial data to support a concern for health effects from acetone, and that EPA's review of evidence of toxicity for acetone must address the serious concerns raised by the Agency for Toxic Substances and Disease Registry (ATSDR) in its *Draft Toxicological Profile for Acetone*. In addition, as some commenters have pointed out, there are insufficient data to assess the toxicity of acetone.

As reviewed by the ATSDR, there has been considerable research on the health effects of acetone. However, most of this research has involved acute or subchronic exposure to relatively moderate and high levels of acetone. There is a lack of information with which to firmly characterize the critical effects of low-level exposure to acetone. Under EPCRA section 313, a lack of evidence cannot be used as a basis for listing a chemical. The known toxicity levels for acetone fall in the range which can be considered to be moderately low to low, and the decision must be based on the weight-of-the-evidence available.

EPA has reviewed the ATSDR draft profile as well as other relevant materials and has concluded that there is not sufficient evidence of toxicity to retain acetone on the EPCRA section 313 list. According to the ATSDR, based on a lowest observed adverse effect level (LOAEL) of 1,250 parts per million (ppm) for (transient) neurological effects over a 6-week period, intermediate and chronic inhalation Minimal Risk Levels (MRLs) of 13 ppm were calculated. Furthermore, the ATSDR indicates that levels of acetone which are normally found in outdoor air are generally significantly lower than this, at less than 8 parts per billion (ppb), and also generally lower than the air concentrations of acetone inside homes. At this time, there is insufficient evidence regarding chronic or subchronic exposure to such low levels of acetone to warrant listing (Ref. 1).

Several commenters recommended that EPA require industry to fully test acetone for toxicity under the criteria of section 4 of the Toxic Substances Control Act (TSCA), stating that testing should be performed before acetone is removed from the public's right-to-know. Other commenters, noting that EPA is currently negotiating with industrial users of acetone for neurotoxicity testing of the chemical, claimed that the proposal for delisting is ill-timed and inappropriate.

At this time, the Agency has already entered into an Enforceable Consent Agreement with industry, requiring subchronic testing of acetone for neurotoxicity. At concentrations to which workers may be exposed in the workplace, which are much higher than those in outdoor air, central nervous system (CNS) effects such as narcosis, headache, and changes in operant behavior do appear to be relevant concerns indicative of neurotoxicity. However, the criteria for requiring neurotoxicity testing under TSCA section 4 and the criteria for inclusion in section 313 of EPCRA are very different. At this point in time, the weight-of-the-evidence is not sufficient to show that acetone meets the EPCRA section 313(d)(2) criteria for listing. EPA cannot deny a petition under EPCRA section 313 based on the fact that testing is going to be performed to fill data gaps.

A number of commenters stated that EPA should consider the synergistic effects of acetone together with other chemicals and stated that exposure to acetone is well known to increase the toxicity of many other chemicals. Commenters stated that the increased toxicity of other compounds in combination with exposure to acetone, as detailed in the ATSDR draft profile, justifies maintaining the EPCRA section 313 listing of acetone.

The ATSDR draft profile does provide a detailed review of the interaction of acetone and other chemicals. This report indicates that acetone may alter the effect of other chemicals by either increasing, decreasing, having a mixed effect on or having no effect on their toxicity. For example, carbon tetrachloride, halogenated alkanes, ethanol, and some ketones were more toxic when co-administered with acetone. However, acetone had mixed effects on the toxicity of other chemicals (dichlorobenzene, chlorinated alkanes, possibly halogenated alkanes, nitrosoamine, and acetonitrile) either at varying doses or for different toxicity endpoints. Furthermore, acetone had no reported effect on styrene or methyl ethyl ketone, and actually reduced the toxicities of acetaminophen and semicarbazide (Ref. 1).

As with the toxicity of acetone alone, the doses of acetone required for these interactive effects far exceed the concentrations of acetone which are found in outdoor air. For example, the lowest doses for acetone potentiation of toxicity reported by the ATSDR were found with carbon tetrachloride. Liver toxicity of carbon tetrachloride was shown to be potentiated by co-administration of acetone. However, non-effective doses of acetone were as high as 78 milligrams/kilogram (mg/kg) twice a day for 3 days, or 1,000 ppm over 4 hours (Ref. 1).

Again, the weight-of-the-evidence for the synergistic effects of acetone on the toxicity of other chemicals is not sufficient to show that acetone meets the EPCRA section 313(d)(2) criteria for listing.

Several commenters state that EPA has not considered the effects of acetone on susceptible populations such as children, the elderly, or pregnant women, as detailed in the ATSDR draft profile. EPA disagrees. The ATSDR draft profile reported no human data on acetone in "more susceptible populations." Several studies in rats reported possible sex differences in susceptibility. Other factors which may have affected susceptibility in rats were age and pregnancy; however, no doses were reported.

The National Council of the Paper Industry for Air and Stream Improvement Inc. submitted a review on the *Toxicity of Acetone* in support of delisting acetone. This report concludes that acetone does cause CNS depression and irritation of mucous membranes, but that these effects become apparent only at high concentrations (above 500 ppm for irritation and 1,000 ppm for CNS effects).

This review was not as detailed as the ATSDR *Draft Toxicological Profile for Acetone*; however, reports of effective dose levels were similar. This review provides further indication of the relatively high levels of acetone necessary to induce toxicity or enhance the toxicity of other chemicals.

The Chesapeake Bay Foundation commented that acetone is toxic to aquatic life, and that it has a potential to bioaccumulate, and therefore, it should not be removed from the EPCRA section 313 list of toxic chemicals. The commenter cites toxicity values of 10 milligrams/liter (mg/L) to *Daphnia magna*, and a median lethal concentration (LC_{50}) for the clawed toad of 25 mg/L.

The toxicity values quoted by the commenter are within the range which are considered by EPA to be "moderately low." However, the majority of the available aquatic toxicity (LC_{50}) values for acetone are greater than 100 mg/L. In fact, several studies reported LC_{50} values for *Daphnia magna* of greater than 100 mg/L. Taken as a whole, the data indicate that acetone presents a low level of hazard to aquatic organisms. As to the statement that acetone has the potential to bioaccumulate, EPA disagrees. As stated in the proposed rule, acetone is readily biodegradable in aquatic systems. Its octanol/water coefficient (-0.24) indicates a low potential for bioaccumulation, and its high water solubility indicates that acetone is not likely to biomagnify. The commenter did not supply any data which would lead EPA to change this assessment.

The Maine Greens comment that acetone is a known hazardous substance based on flammability, and the State and Territorial Air Pollution Program Administrators/Association of Local Pollution Control Officials comments that acetone should not be removed from the EPCRA section 313 list of toxic chemicals because delisting a flammable solvent will eliminate information needed by emergency response personnel regarding the true hazard presented by a given facility.

While EPA believes that the data collected under EPCRA section 313 may be of use to local response authorities in developing emergency response plans, it is not the primary focus of EPCRA section 313 as it is with EPCRA sections 302–312. Furthermore, flammability is not one of the criteria for listing a substance under EPCRA section 313.

B. Rationale for Delisting and Conclusions

EPA is granting the petition by deleting acetone from the EPCRA section 313 list. EPA believes that acetone does not meet the toxicity criteria of EPCRA section 313(d)(2)(A) because acetone exhibits acute toxicity only at levels that greatly exceed releases and resultant exposures. Specifically, acetone cannot reasonably be anticipated to cause "* * * significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring releases."

EPA believes that acetone does not meet the toxicity criteria of EPCRA section 313(d)(2)(B) because acetone: (1) Cannot reasonably be anticipated to cause cancer or neurotoxicity and has not been shown to be mutagenic, and (2) cannot reasonably be anticipated to cause adverse developmental effects or other chronic effects except at relatively high dose levels.

EPA believes that acetone does not meet the toxicity criteria of EPCRA section 313(d)(2)(C) because acetone causes adverse environmental effects only at relatively high dose levels.

Based upon evaluation of the petition, available toxicity and exposure information, and public comment, EPA reaffirms its determination that acetone meets the EPCRA section 313(d)(3) criteria for deletion. Therefore, EPA is finalizing the deletion of acetone from the list of chemicals subject to reporting under section 313 of EPCRA.

This petition does not request that any action be taken under any statutory provision other than EPCRA section 313, and today's rule should not be inferred as an action under any statutory provision other than EPCRA section 313. Each statute prescribes different standards for adding or deleting chemicals or pollutants from its respective list. Specifically, the deletion of acetone from the EPCRA section 313 list does not alter its regulatory status under other statutory provisions. Today's rule is based solely on the criteria in EPCRA section 313.

IV. Effective Date

This action is effective June 16, 1995. Thus the last year in which facilities had to file a Toxic Release Inventory (TRI) report for acetone was 1994, covering releases and other activities that occurred in 1993.

Section 313(d)(4) provides that "[a]ny revision" to the section 313 list of toxic chemicals shall take effect on a delayed basis. EPA interprets this delayed effective date provision to apply only to actions that add chemicals to the section 313 list. For deletions, EPA may, in its discretion, make such actions immediately effective. An immediate effective date, in these circumstances, is also consistent with 5 U.S.C. section 553(d)(1) because a deletion from the section 313 list relieves a regulatory restriction.

EPA believes that where the Agency has determined, as it has with acetone, that a chemical does not satisfy any of the criteria of section 313(d)(2)(A)–(C), no purpose is served by requiring facilities to collect data or file TRI reports for that chemical, or, therefore, by leaving that chemical on the section 313 list for any additional period of time. This construction of section 313(d)(4) is consistent with previous rules deleting chemicals from the section 313 list. For further discussion of the rationale for immediate effective dates for EPCRA section 313 delistings, see 59 FR 33205 June 28, 1994.

V. Rulemaking Record

The record supporting this rule is contained in the docket number OPPTS–400086A. All documents, including an index of the docket, are available in the TSCA Nonconfidential Information Center (NCIC), also known as the TSCA Public Docket Office, from noon to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA Public Docket Office is located at EPA Headquarters, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

VI. References

(1) USEPA, OPPTS, HERD, HEB. Norris, Deborah O., "Summary of and Response to Health-Related Public Comments on Proposal to Remove Acetone from TRI," dated March 14, 1995.

(2) USEPA, OPPTS, EAB. Cinalli, C., "Exposure Report for Acetone," dated April 13, 1994.

(3) USEPA, OPPTS, EAB. Nold, A. and Cinalli, C., "Addendum to Exposure Report for Acetone," dated June 15, 1994.

VII. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the Order defines a "significant regulatory action" as an action likely to lead to a rule (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

In accord with Executive Order 12866, EPA has prepared an economic analysis of this final rule. This final rule will reduce the number of reports submitted under EPCRA section 313 by 2,500 per year. EPA estimated that this will yield savings of $7 million per year for industry and EPA. Pursuant to the terms of this Executive Order, EPA has determined that this final rule is not significant and therefore not subject to OMB review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980, EPA must conduct a small business analysis to determine whether a substantial number of small entities will be significantly affected. Because this final rule eliminates an existing requirement, it would result in cost savings to facilities, including small entities.

C. Paperwork Reduction Act

This final rule relieves facilities from having to collect information on the use and releases of acetone. Therefore, there were no information collection requirements for OMB to review under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. This rule will reduce reporting burden by approximately 131,000 hours per year."

List of Subjects in 40 CFR Part 372

Environmental protection, Chemicals, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: June 9, 1995.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 372 is amended as follows:

1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11013 and 11028.

§ 372.65 [Amended]

2. Section 372.65(a) and (b) are amended by removing the entire entry for acetone under paragraph (a) and removing the entire CAS No. entry for 67–64–1 under paragraph (b).

[FR Doc. 95–14805 Filed 6–15–95; 8:45 am]
BILLING CODE 6560–50–F

Proposed Rules

Federal Register
Vol. 60, No. 116
Friday, June 16, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 335

[Docket No. 93–026–4]

RIN 0579–AA61

Introduction of Nonindigenous Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; withdrawal.

SUMMARY: We are withdrawing a proposed rule to establish regulations governing the introduction (importation, interstate movement, and release into the environment) of certain nonindigenous organisms. Additionally, we are notifying the public of our intent to publish an advance notice of proposed rulemaking to solicit further public comment regarding what should be proposed in any new proposed rule. We are taking this action after considering the comments on the proposed rule.

DATES: Withdrawal of proposed rule effective June 16, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. Matthew H. Royer, Chief Operations Officer, Biological Assessment and Taxonomic Support, PPQ, APHIS, Suite 4A01, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 734–7654.

SUPPLEMENTARY INFORMATION:

Background

On January 26, 1995, the Animal and Plant Health Inspection Service (APHIS) published a proposed rule in the **Federal Register** (60 FR 5288–5307, Docket No. 93–026–1) to establish regulations governing the introduction (importation, interstate movement, and release into the environment) of certain nonindigenous organisms. In that document, APHIS stated that the proposed rule appeared to be necessary because the plant pest regulations under which the movement of certain nonindigenous organisms are currently regulated do not adequately address the introduction of nonindigenous organisms that may potentially be plant pests. The proposed regulations were intended to provide a means of screening certain nonindigenous organisms prior to their introduction to determine the potential plant pest risk associated with a particular introduction.

We initially solicited comments on the proposed rule for 60 days ending on March 27, 1995. We also hosted three public hearings regarding the proposed rule during that initial comment period, in Kansas City, MO, on March 6, 1995; in Sacramento, CA, on March 7, 1995; and in Washington, DC, on March 10, 1995. We received several requests for an extension of the comment period to allow interested parties additional time to comment on the proposal, as well as a request that we hold a public hearing in Hawaii. In response to those requests, we published a notice in the **Federal Register** on March 21, 1995 (60 FR 14928–14929, Docket No. 93–026–2), that extended the comment period for the proposed rule until May 26, 1995, and announced that a public hearing would be held in Honolulu, HI, on April 6, 1995.

By the close of the extended comment period, we had received a total of 251 comments. The comments were submitted by farmers; weed control committees and districts; university researchers; biological control researchers, producers, distributors, and practitioners; waste treatment and recycling facilities; composters; members of Congress; local, State, and Federal agencies; commercial laboratories; organic farmers and cooperatives; private citizens; a fish hatchery; collections and museums; industry associations; scientific societies; and foreign government agencies.

None of the commenters supported the proposed rule as written. Some commenters requested that the proposed rule be withdrawn and reconsidered, while others recommended that we incorporate changes in any final rule to be published. Many commenters disagreed with the proposed lists of regulated organisms and exempted organisms, or expressed the belief that the proposed rule would impose unnecessary restrictions on the introduction of organisms. Finally, many commenters disagreed with APHIS' analysis of the economic impact of the proposed rule, stating that they believed that the costs of complying with the proposed regulations would be greater than APHIS had anticipated.

After considering all the comments, we have concluded that we should not proceed with a final rule based on the proposal because the revisions that would be necessary to reconcile the proposed regulations with the very diverse views expressed in the comments would be so significant that the final rule would be substantially different from the proposed rule on which the public had the opportunity to comment. Therefore, we are withdrawing the January 26, 1995, proposed rule. We do, however, plan to develop new proposed regulations to address the inadequacies in our current plant pest regulations and to provide a means of screening organisms prior to their introduction to determine the potential plant pest risks associated with such introductions. The concerns and recommendations of all those who commented on the proposed rule that we are withdrawing will be considered during the development of any new proposed regulations. Further, we will publish an advance notice of proposed rulemaking in a future issue of the **Federal Register** to solicit additional input from interested persons and to present opportunities for additional public participation in discussions of the scope, rationale, and basis of any new proposed regulations.

Authority: 7 U.S.C. 150aa–150jj, 151–164a, 167, and 1622(n); 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 9th day of June 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–14815 Filed 6–13–95; 1:45 pm]
BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–19–AD]

Airworthiness Directives; General Dynamics (Convair) Model 240 Series Airplanes, Including Model T–29 (Military) Airplanes; Model 340 and 440 Series Airplanes; and Model C–131 (Military) Airplanes; Including Those Modified for Turbo-Propeller Power

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to various General Dynamics (Convair) airplanes. This proposal would require revising the Airplane Flight Manual to require that the flight crew limit the flap settings during certain icing conditions and air temperatures. This proposal is prompted by reports indicating that incidents involving uncommanded pitch excursions have occurred due to ice contaminated tailplane stall (ICTS) that occurred during or following flight in icing conditions. If flap settings are increased for landing when ICTS is present, elevator control could be affected adversely and the airplane could descend uncontrollably. The actions specified by the proposed AD are intended to ensure that the flight crew is advised of the potential hazard related to increasing the flap settings when ICTS is present, and the procedures necessary to address it.

DATES: Comments must be received by August 14, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–19–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Andrew Gfrerer, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5338; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–19–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–19–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that incidents involving uncommanded pitch excursions have occurred on various turbo-propeller powered airplanes, including General Dynamics (Convair) airplanes. These pitch excursions were caused by ice contaminated tailplane stall (ICTS), which occurred during or following flight in icing conditions. If the flap settings are increased for landing when ICTS is present, elevator control could be affected adversely. This condition, if not corrected, could result in uncontrollable descent of the airplane.

Icing conditions can be encountered during the approach for the landing phase of flight. Further, ice can accumulate on the tailplane before it begins to accumulate on the wings. Since ice may form quickly, in the case of the tailplane, such ice formation could reach hazardous proportions during the approach phase without any prior evidence of its presence in the "clean" (cruise) configuration.

The flight crew can only determine if ice is forming on the airplane by looking out the window at the wings. If the flight crew does not observe any ice on the wings, they could assume that the airplane is free of ice and proceed to select certain flap settings during the approach phase without properly configuring the airplane for icing conditions by turning on the anti-icing system. In addition, the flight crew may increase the flap settings for landing and, consequently, elevator control can be affected adversely.

In response to the reports of uncommanded pitch excursions, the FAA and the National Aeronautics and Space Administration (NASA) sponsored two International Tailplane Icing workshops in November 1991 and April 1993. In addition to representatives from the FAA and NASA, workshop participants included representatives from certain foreign airworthiness authorities, foreign and domestic manufacturers, and industry. As a result of these workshops, emphasis was placed on improving flight crew awareness of ICTS. For the longer term, a review of certain Federal Aviation Regulations (FAR) that pertain to ice protection/detection and tailplane aerodynamic issues also was conducted.

Additionally, the FAA conducted flight tests on various turbo-propeller powered airplanes, including General Dynamics (Convair) Model 5800 series airplanes. (This airplane model is similar to a Model 340 series airplane equipped with turbo-prop engines.) During the certification of Model 5800 series airplanes, the FAA performed a series of flight test maneuvers to determine if the airplane would be susceptible to ICTS. Results of these flight test maneuvers indicate that these airplanes are susceptible to ICTS. Such susceptibility is directly related to the angle-of-attack (AOA) of the tailplane and the sensitivity of the airfoil to degradation by contamination often associated with efficient airfoil design.

The FAA has issued a number of airworthiness directives (AD) to correct the same unsafe condition described previously on various transport category airplane types. Examples of those AD's include the following:

—AD 86–20–02, amendment 39–5429 (51 FR 34452, September 29, 1986), applicable to Aerospatiale Model ATR–42 series airplanes;

—AD 91–16–01, amendment 39–7091 (56 FR 37468, August 7, 1991), applicable to Mitsubishi Heavy Industries (MHI) Model YS–11 and –11A series airplanes; and

—AD 86–06–03 R1, amendment 39–5917 (53 FR 16385, May 9, 1988), applicable to SAAB-Fairchild Model SF–340A series airplanes.

The FAA finds that the FAA-approved Airplane Flight Manual (AFM) for General Dynamics (Convair) Model 240 series airplanes [including Model T–29 (military) airplanes], Model 340 and 440 series airplanes, and Model C–131 (military) airplanes, including those modified for turbo-propeller power, must be revised. This revision must include procedures to ensure that the flight crew does not select a flap setting of more than 30 degrees after icing conditions have been encountered, when icing conditions are anticipated during approach and landing, or when the outside air temperature is +5 degrees Celsius or below and any visible moisture is present. The FAA has determined that such procedures currently are not defined adequately in the AFM for these airplanes.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require revising the Limitations Section of the FAA-approved AFM to limit flap selection during certain icing conditions and air temperatures.

There are approximately 282 Model 240 series airplanes, including Model T–29 (military) airplanes; Model 340 and 440 series airplanes; Model C–131 (military) airplanes, and those models modified for turbo-propeller power; of the affected design in the worldwide fleet. The FAA estimates that 197 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $11,820, or $60 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

General Dynamics (Convair): Docket 95–NM–19–AD.

Applicability: All Model 240 series airplanes, including Model T–29 (military) airplanes; Model 340 and 440 series airplanes; and Model C–131 (military) airplanes; including those models modified for turbo-propeller power (commonly referred to as Model 580, 600, and 640 series airplanes); certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flight crew is advised of the potential hazard associated with increasing the flap settings when ice contaminated tailplane stall (ICTS) is present, and the procedures necessary to address it, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following procedures, which will limit the flap settings during certain icing conditions and air temperatures. This may be accomplished by inserting a copy of this AD in the AFM.

"Flap Limitation in Icing Conditions

Flap selection is limited to a maximum of 30 degrees after icing conditions have been encountered; or when icing conditions are anticipated during approach and landing; or when the outside air temperature is +5 degrees Celsius or below and any visible moisture is present."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 12, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–14766 Filed 6–15–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–50–AD]

Airworthiness Directives; McDonnell Douglas Model DC–10–10 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas DC–10–10 series airplanes. This proposal would require inspections of the wings to detect cracks in the aft spar lower cap, in certain stringer butterfly clips on the bulkheads, and in certain fastener holes; and repair, if necessary. This proposal would also require modification of those areas of the wings, which would terminate the repetitive inspection requirements. This proposal is prompted by reports indicating that, during fatigue testing of the wing structure, cracks developed in the aft spar lower cap, in certain stringer

butterfly clips, and in certain fastener holes due to fatigue-related stress. The actions specified by the proposed AD are intended to prevent such fatigue-related cracking, which could lead to the failure of the aft spar cap and consequently could reduce structural integrity of the wing.

DATES: Comments must be received by August 14, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–50–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, 2855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51, M.C. 2–60. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: John Cecil, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (310) 627–5322; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–50–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–50–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that, during fatigue testing of the wing structure of a McDonnell Douglas Model DC–10–10 series airplane, cracks developed in the aft spar lower cap, in the stringer butterfly clips on the bulkheads at stations X_{ors}=372.000 and X_{ors}=402.000, and in the fastener holes of the access doors of the inboard upper surface. The cause of this cracking has been attributed to fatigue-related stress. The effects of such fatigue-related cracking could lead to the failure of the aft spar cap. This condition, if not detected and corrected in a timely manner, could result in reduced structural integrity of the wing.

The FAA has reviewed and approved McDonnell Douglas DC–10 Service Bulletin 57–36, Revision 7, dated December 11, 1992, which describes procedures for performing repetitive eddy current inspections of the wings to detect cracks in the aft spar lower cap, in the stringer butterfly clips on the bulkheads at stations X_{ors}=372.000 and X_{ors}=402.000, and in the fastener holes of the access doors of the inboard upper surface. This service bulletin also describes procedures for modification of those areas of the wings. For certain airplanes, the modification involves stress coining the fastener holes and replacing existing fasteners with interference-fit fasteners, which will minimize the possibility of crack development. For certain other airplanes, the modification involves adding shear angles to the panel supports of the wing and ring pad stress coining the fastener holes of the access doors of the wing, which will minimize the possibility of cracks developing in the stringer clips and fastener holes of the access doors. Accomplishment of these modifications would eliminate the need for the repetitive inspections.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require repetitive eddy current inspections of the wings to detect cracks in the aft spar lower cap, in the stringer butterfly clips on the bulkheads at stations X_{ors}=372.000 and X_{ors}=402.000, and in the fastener holes of the access doors of the inboard upper surface. The proposed AD would also require modification of those areas of the wings, which would terminate the required repetitive inspections. These inspection and modification actions would be required to be accomplished in accordance with the service bulletin described previously. If any cracks are detected, the repair would be required to be accomplished in accordance with a method approved by the FAA.

The FAA points out that AD 94–23–01, amendment 39–9063 (59 FR 58766, November 15, 1994), currently requires repetitive inspections of the wing rear spar lower cap [reference paragraph (g) of that AD] and installation of crack preventative modifications [reference paragraph (h) of that AD] between Xors 410 and Xors 430. Revision 7 of McDonnell Douglas DC–10 Service Bulletin 57–36, as described above, specifies procedures for accomplishing the identical inspections and modifications referenced in AD 94–23–01, but expands the area to between Xors 409 to Xors 455. In light of this, the FAA has determined that accomplishment of paragraphs (g) and (h) of AD 94–23–02 are considered acceptable for compliance with the applicable inspections and modifications of that area that would be required by this proposed AD. A note to this effect has been included in the text of the proposed AD.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long-standing requirement.

There are approximately 53 Model DC–10–10 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 53 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 262 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $125,609 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $7,490,437, or $141,329 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 95–NM–50–AD.

Applicability: Model DC–10–10 series airplanes, as listed in McDonnell Douglas DC–10 Service Bulletin 57–36, Revision 7, dated December 11, 1992, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

Note 2: Inspections and modifications required by paragraphs (g) and (h) of AD 94–23–01, amendment 39–9063, accomplished prior to the effective date of this amendment in accordance with McDonnell Douglas DC–10 Service Bulletin 57–123, dated June 8, 1993, or McDonnell Douglas DC–10 Service Bulletin 57–36, Revision 6, dated February 25, 1991, are considered acceptable for compliance with the applicable inspections and modifications required by this amendment for the affected structure.

To prevent fatigue-related cracking, which could lead to the failure of the aft spar cap and subsequent reduced structural integrity of the wing, accomplish the following:

(a) Prior to the accumulation of 15,000 total landings or within 2,000 landings after the effective date of this AD, whichever occurs later, perform an eddy current inspection of the wings to detect cracks in the aft spar lower cap, in the stringer butterfly clips on the bulkheads at stations X_{ors}=372.000 and X_{ors}=402.000, and in the fastener holes of the access doors of the inboard upper surface, in accordance with McDonnell Douglas DC–10 Service Bulletin 57–36, Revision 7, dated December 11, 1992.

(1) If no cracks are detected, repeat the inspection thereafter at intervals not to exceed 2,000 landings until the modification required by paragraph (b) of this AD is accomplished.

(2) If any crack is detected, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(b) Prior to the accumulation of 42,000 total landings or within 5 years after the effective date of this AD, whichever occurs later, modify the aft spar lower cap, the stringer butterfly clips on the bulkheads at stations X_{ors}=372.000 and X_{ors}=402.000, and the fastener holes of the access doors of the inboard upper surface of the wings, in accordance with McDonnell Douglas DC–10 Service Bulletin 57–36, Revision 7, dated December 11, 1992. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirement of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 12, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–14768 Filed 6–15–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–209–AD]

Airworthiness Directives; Airbus Model A320–111, –211, and –231 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A320–111, –211, and –231 series airplanes. This proposal would require modification of the aileron support frame of the wings. This proposal is prompted by reports indicating that tensile cracks have been found at a certain mounting hinge of the aileron support frame during full scale fatigue testing of the test article due to fatigue-related stress. The actions specified by the proposed AD are intended to prevent such fatigue-related cracking, which could result in loss of

the aileron control surface and the inability of the pilot to control rolling moments of the airplane.

DATES: Comments must be received by July 28, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–209–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–209–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–209–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A320–111, –211, and –231 series airplanes. The DGAC advises that tensile cracks have been found at the No. 3 mounting hinge of the aileron support frame during full scale fatigue testing of the test article. The cracks in the test article were discovered at 32,338 simulated flight cycles. Investigation revealed that such cracking was caused by fatigue-related stress. Fatigue-related cracking at the mounting hinge of the aileron support frame of the wings, if not detected and corrected in a timely manner, could result in loss of the aileron control surface and the inability of the pilot to control rolling moments of the airplane.

Airbus has issued Service Bulletin A320–57–1002, Revision 1, dated May 12, 1993, which describes procedures for modification of the aileron support frames of the wings. One modification involves replacing the number 1, 2, and 3 aileron support frames on the rear spar of the wing with re-designed aileron support frames. These re-designed support frames have larger diameter lugs with bushings and increased blend radii. Another modification involves re-positioning and installing new electrical cable raceways, and installing new brackets and clamps for the hydraulic lines at the number 2 aileron servo-control. These modifications improve the fatigue life of the aileron support frames. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 93–108–044(B), dated July 7, 1993, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification of the aileron support frames of the wings. The actions would be required to be accomplished in accordance with the service bulletin described previously.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long standing requirement.

The FAA estimates that 5 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 54 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $31,481 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $173,605, or $34,721 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 94–NM–209–AD.

Applicability: Model A320–111, –211, and –231 series airplanes, serial numbers 005 though 043 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue-related cracking at the mounting hinge of the aileron support frames of the wings, which could result in loss of the aileron control surface and the inability of the pilot to control rolling moments of the airplane, accomplish the following:

(a) Prior to the accumulation of 14,000 flight cycles or within 500 flight cycles after the effective date of this AD, whichever occurs later, modify the aileron support frames of the wings, in accordance with Airbus Service Bulletin A320–57–1002, Revision 1, dated May 12, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 12, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–14767 Filed 6–15–95; 8:45 am]

BILLING CODE 4910–13–U

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 17

Reports by Futures Commission Merchants, Members of Contract Markets and Foreign Brokers

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is proposing to amend Rule 17.01 and to modify the Form 102 required to be filed by clearing members, futures commission merchants (FCMs) and foreign brokers. This form identifies persons having financial interest in, or control of, special accounts in futures and options. The proposed amendments clarify the information required on the Form 102 for various kinds of special accounts reported to the Commission. The Commission is also proposing to amend Rule 17.02 concerning the time in which a completed Form 102 must be filed. The proposed rules would require that certain specified identification information be provided on the first day that a special account is reported to the Commission and that a completed Form 102 be filed with the Commission within three business days of that date.

EFFECTIVE DATE: Comments must be received by August 15, 1995.

ADDRESSES: Comments should be sent to the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 and should make reference to "Form 102 changes."

FOR FURTHER INFORMATION CONTACT: Lamont L. Reese, Supervisory Statistician, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, (202) 254–3310.

SUPPLEMENTARY INFORMATION: Part 17 of the Commission's regulations requires that FCMs, clearing members, and foreign brokers ("firms") submit a daily report to the Commission with respect to futures positions in all special accounts on their books.[1] Information required to be provided to the Commission includes quantities of reportable futures positions, exchanges of futures for cash, and delivery notices issued or stopped by each special account.[2] For reporting purposes, futures positions in all accounts controlled by the same person and those in which a person has a 10 percent or more financial interest must be combined and treated as if they are held in a single account. The firm assigns a reporting number to the special account and reports all information to the Commission using this number.[3]

In addition to the reporting number and the position and transaction information mentioned above, the firm must file a CFTC Form 102 showing the information specified under § 17.01 of the regulations for each special

[1] Special account means any commodity futures or option account in which there is a reportable position, 17 CFR 15.00 (1994). Firms report futures information to the Commission and option information to the exchanges.

[2] A reportable position is any open position held or controlled by a trader at the close of business in any one futures contract of a commodity traded on any one contract market that is equal to or in excess of the quantities fixed by the Commission in § 15.03 of the regulations, 17 CFR 15.03 (1994).

[3] The firm's reporting number may be the account number carried on its books. However, as noted above, the number may refer to a collection of accounts that are owned and/or controlled by the same person.

account.[4] This information identifies persons who have a financial interest in or trading control of a special account, informs the Commission of the type of account that is being reported, and gives preliminary information whether positions and transactions are commercial or non-commercial in nature.[5] The form must be filed when the account first becomes reportable and updated when information concerning financial interest in or control of the special account changes.[6] In addition to its use by the Commission, the Form 102 is used by the exchanges to identify accounts reported through their large trader reporting systems for both futures and options.[7]

Effective August 16, 1993, the Commission adopted amendments to part 17 of the regulations which clarified the reporting of futures positions of commodity pools, certain commodity trading advisors and accounts controlled by two or more persons.[8] These amendments primarily addressed the reporting of accounts controlled by independent account controllers for eligible entities, conforming this reporting to the same method used by the Commission to determine compliance with speculative limits.[9] Although certain amendments were made to Rule 17.01, the Commission did not change its Form 102. Rather, Commission staff at that time began a review of the Form 102 in relation to the newly amended Rule 17.01 and to changes in the nature of accounts carried and reported by firms since the last substantive revision of the form by the Commission.[10]

Staff review of this matter concluded that there are generally three types of special accounts reported to the Commission where information requirements differ: House and customer omnibus accounts; accounts controlled by independent account controllers; and accounts generally owned and controlled by the same entity or an employee of the entity. The current Form 102 and Rule 17.01 require the same information for all accounts. Since all of the information is not pertinent for each of the different types of special accounts, the form is subject to varying interpretations and may be confusing for both the persons filing the form and those who receive it.

In view of this, Commission staff interviewed their counterparts at the exchanges in order to develop a new Form 102 which resolves some of the ambiguities in the present form making it more useful to both the exchanges and the Commission. The views of the operations committees of the Futures Industry Association ("FIA") were also sought and are discussed below. Persons on these committees represent the back office staff of clearing members and FCMs generally responsible for completing and filing the Form 102.

The proposed, modified Form 102 is included as an attachment to this notice. The amendments to Rule 17.01 conform the information required in the proposed regulations to that asked on the form.[11] In this respect, the rule amendments will not increase the information currently required under the rule for various types of accounts.

The New Form 102 and Proposed Amendments to Rule 17.01

As noted above, Commission staff have identified three types of special accounts that firms generally report: Omnibus accounts; accounts controlled by an independent account advisor; and accounts owned and controlled by the same entity or employee of the entity.

Item 1 on the proposed Form 102 requires that the firm classify the special account as one of the three types (Sec. 1(a), 1(b) or 1(c)) and give identifying information concerning the person or legal entity holding and/or controlling the account in item 1(d). In addition, if the account is not an omnibus account, the firm must report whether the person or legal entity identified in item 1(d) is a Commodity Trading Advisor ("CTA") or a Securities Investment Advisor ("SIA"). See proposed §§ 17.01(b)(1), (b)(1) (i), (ii), (ii)(A), and (iii)(A).

The reason for identifying SIAs is that many of the participants in stock index futures are SIAs. Exchanges that trade stock index futures have created exclusions from certain of their rules for SIAs. The exchanges therefore believe it is important to identify such persons for enforcement purposes. The Commission also believes this information may be important to determine if investigations or studies should be conducted in cooperation with the Securities and Exchange Commission. Other information required for each type of special account is discussed below.[12]

Omnibus Accounts

For reporting purposes an omnibus account is considered an account carried on the books of an FCM (carrying firm) for and in the name of another FCM, clearing member, or foreign broker (originating firm) where trading in the account may be conducted for two or more persons at the originating firm and the traders are not separately identified to the carrying firm. Since the Commission will contact the originating firm to file the necessary reports required by part 17 of the regulations, the carrying firm need only identify the account as a house or customer omnibus account (question 1(a) on the Form 102) and provide the identifying information specified in item 1(d) of the form. See proposed §§ 17.01(b)(1), and (b)(1)(i).

Accounts Controlled by Independent Account Advisors

In pertinent part, an independent account advisor is a person who specifically is authorized by an FCM or eligible entity, as defined in part 150, to control trading decisions on behalf of, but without the day-to-day direction of, the FCM or eligible entity and over whose trading the FCM or eligible entity maintains only such minimum control as is consistent with its fiduciary responsibilities to supervise diligently the trading done on its behalf.[13] As noted above, the Commission amended Rule 17.00 in 1993 to provide that all accounts controlled by independent account advisors for FCMs and eligible entities would be treated as a single account and reported in the name of the advisor.[14] Changes to the Form 102 specifically provide for this. See proposed §§ 17.01(b)(1) and (b)(1)(iii). Certain additional information must be provided on all accounts included in this type of special account. If the special account is a customer trading program and involves 10 or more separate accounts of other persons, firms need only give the name of the program and identify those accounts held by commodity pools in item 3(a) on the Form 102.[15] Information concerning other controlled accounts is reported in item 3(b). See proposed § 17.01(b)(1)(iii)(B) and (C). On the new form, the account numbers of the controlled accounts must now be reported. This information is helpful to those exchanges using their large trader systems to identify accounts on the daily trade register. Additionally, the information will be useful when Commission or exchange staff contact firms about specific accounts on their books.[16]

The operations committees of the FIA which were interviewed posed a number of questions concerning accounts controlled by independent account advisors. First, those surveyed by the Commission suggested that a distinction be made between managed and guided accounts. The Commission does not agree. In its 1979 Statement of Policy on Aggregation the Commission considered differences between managed and guided account programs.[17] The Commission determined then that there was little difference between managed and guided account programs since such programs are designed and represented to customers to give best results by complete or general participation in the trades generated by the program.

The operations committees also noted that a definition of "program" might be helpful and questioned whether the language in item 3(a) concerning "programs in which 10 or more accounts participate" referred to all accounts parented to an investment advisor and whether this would include investment partnerships. Commission Rule 15.00(f) currently defines a customer trading program for reporting purposes as:

> Any system of trading offered, sponsored, promoted, managed or in any other way supported by, or affiliated with, a futures commission merchant, an introducing broker, a commodity pool operator, or other trader, or any of its officers, partners or employees, and which by agreement, recommendations, advice or otherwise directly or indirectly controls trading done and positions held by any other person.

Generally, this refers to all accounts parented to an investment advisor.

With respect to investment partnerships, if all partners make trading decisions for the partnership and share in ownership rights of the assets of the partnership, then under § 17.00(b)(1)(ii) accounts of the partnership should be reported in the name of the partnership.[18] In this instance, none of the partners are parented to the partnership account for reporting. A second type of partnership involves limited partners. Many commodity pools are organized in this manner. In this case, if the partnership is traded by an independent account advisor for an FCM or eligible entity, the partnership is reported in the name of the independent account advisor.[19] If the partnership trading is conducted by a general partner and there is only one such person, then the partnership is reported in the name of the general partner.[20]

Those who are required to respond on the Form 102 also suggested that consideration be given to include instructions or guidelines in completing the Form 102, especially as it relates to independent account advisors. Generally, reporting issues and questions arise when multiple persons have financial interest or control of an account or control of an account is vested in persons other than those having a financial interest in the account. In such cases it is possible for reporting firms to combine and report positions in more than one manner.[21] The Commission has given guidance in §§ 17.00(b)(1)(i) and (ii) for reporting the more commonly occurring types of such situations. Answers to other problems are generally specific in nature depending on the particular circumstances surrounding each situation. In view of this, the Commission is instructing its staff to coordinate with their counterparts at the exchanges and give answers to reporting questions in writing. These answers, which will be publicly available, will serve as advisories on reporting, providing guidance on reporting issues within the context of those which have already been encountered.

Other Special Accounts

This includes accounts owned and controlled by the same person or entity (or controlled by an officer or employee of the entity) and general partnership or joint accounts. The information that is required for special accounts in this category on the new Form 102 is similar to that requested on the current Form 102. See items 1(d) and 2 on the Form 102 and proposed §§ 17.01(b)(1), 17.01(b)(1)(i), and (ii)(A)–(E). Additional information on the new form includes the names and locations of all persons authorized to trade an account included in the special account. Since this identifies employees or officers of corporations or other entities who conduct the actual trading, the information can be used to ensure that if persons are suspended from trading, they are not violating the suspension by masking their trading in the name of a business. The Commission, however, is limiting the amount of information that must be supplied. Large corporations may use multiple accounts and traders, creating a burden for firms to obtain and report all persons having trading authority for a special account. Moreover, for large corporations this information is not necessary for surveillance purposes. In view of this, the Commission is proposing that the names and locations of account controllers be provided only if there are five or fewer such traders.[22]

During staff interviews, those likely to be responding on the forms presented a number of other suggestions. Chief among these was a concern about the

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[4] 17 CFR 17.01 (1994).

[5] Account types are shown on the CFTC Form 102 as house or customer omnibus, individual, partnership, corporation, etc.

[6] 17 CFR 17.02 (1994).

[7] Part 17 of the regulations requires that firms identify large traders in options on the Form 102 and transmit the form to the appropriate exchange in accordance with their rules. Those exchanges that maintain a futures large trader reporting system also use the CFTC Form 102 for identifying futures large traders.

[8] 58 FR 33327 (June 17, 1993).

[9] Eligible entities are defined in Commission Rule 150.1 as commodity pool operators, operators of a trading vehicle which is excluded or who themselves have qualified for the exclusion from the definition of the term "pool" or "commodity pool operator," respectively, under § 4.5 of this chapter or a commodity trading advisor.

[10] These changes occurred in September of 1982 when the form was revised to include instructions for reporting option large trader information to the exchanges.

[11] On a related issue, the Commission is also proposing to amend Rule 17.01 to require that option and futures accounts be reported using the same designator. This may be any string of alphanumeric characters up to the maximum number permitted. Currently, Rule 17.01 specifies that a designator for a futures account be numeric while that for an option account can be alphanumeric. The restrictions on the use of alphanumeric characters for futures accounts is no longer necessary. Using the same designator for both types of accounts for the same persons will reduce the number of Form 102s that firms must file and that the Commission must process.

[12] Items 6 through 12 on the proposed Form 102 must be provided for all special accounts. This concerns information about the associated person handling the account and the firm filing the report.

[13] The Commission has specified other indices of control to determine if certain accounts should be considered separate from other accounts owned or controlled by an FCM or eligible entity. See, for example the Commission's "Statement of Policy on Aggregation" (44 FR 33839, June 13, 1979) and Rule 150.1 (17 CFR 150.1, 1994).

[14] There is one general exception to this manner of reporting. If an FCM or eligible entity owns an account, the account is reported in the name of the FCM or eligible entity unless otherwise directed by the Commission. Reporting accounts in this manner will alert the Commission when an FCM or eligible entity trades above the speculative limit levels and that further investigation may be necessary.

[15] The Commission amended Rules 17.01 (b)(6) and 18.04(a)(5) in June 1993, to limit the amount of information that is supplied on Forms 102 and 40 concerning controlled accounts. As the Commission then noted, participants in customer trading programs tend to be small traders whose identity for market surveillance purposes is not needed on a routine basis. The Commission reserved the right to obtain this information on call (58 FR 33329 June 17, 1993).

[16] For these same reasons, the Commission is requiring that account numbers be provided in items 2(c) and 4 on the new form.

[17] 44 FR 33842 (June 13, 1979).

[18] On the new Form 102, as proposed, item 1(b) would be checked and the partnership identified in item 1(d). This manner of reporting general partnerships was set forth in the 1993 **Federal Register** Notice (58 FR 33328 June 17, 1993). Generally, this would also apply to joint accounts.

[19] Item 1(c) is checked and information about the advisor is supplied in item 1(d).

[20] Item 1(b) is checked and information about the general partner is supplied in item 1(d).

[21] As noted in the June 17, 1993 **Federal Register**, firms must report in a manner that avoids duplicate reporting of position data so that the data is suitable for regulatory analysis and publication (55 FR 33328).

[22] The remaining information on the proposed Form 102 (items 4–12) is substantively the same information that is asked on the current form and does not need further discussion.

turn around time for the Form 102 and the accuracy of the information that can be supplied in such a short time frame. Currently a Form 102 is due at the same time a special account is reportable for the first time. This is generally the business day following the trade date the account first exceeds reporting levels.[23] Since much of the required information comes from the sales force, delays in obtaining the information are not uncommon. Currently in such instances, Commission staff will accept a filing providing at least the identity and location of the account owner and/or controller within the first 24 hours with a completed Form 102 filed as soon as possible thereafter. This is the least amount of information deemed necessary in order to assign a CFTC trader number to the account. Some exchanges also require that minimal identifying information be provided immediately allowing some longer period for firms to complete and return the Form 102.

In order to obtain more accurate information, the Commission is proposing that Rule 17.02 be amended to require that firms need only supply on an immediate basis the information in items 1(a), 1(b), or 1(c) and the name and location of the trader who will be identified in 1(d).[24] Receipt of a fully completed and accurate Form 102 will be required within 3 business days of the date the special account is first reported.[25]

[23] 17 CFR 17.02 (1994).

[24] Similarly, the Commission is proposing that updates to the Form 102 be filed within three business days of the subject changes. The Commission is also proposing to amend Rule 17.02 to require that hardcopy reports be filed with the Commission by facsimile rather than mail. Currently, all such reports are filed by facsimile. If facsimile reporting represents a problem for some firms, the rule provides that the Commission's designee may specify an alternate means of reporting.

[25] Other suggestions put forth by the FIA and methods suggested by Commission staff for addressing these concerns are as follows:

(1) More space should be provided on the form to alleviate the need for continuation sheets. Since the form will be printed on both sides of a single page, additional space is not available;

(2) Question 5 concerning contract markets used for hedging should contain check boxes with possible choices of specific futures and option markets. Currently, there are over 40 markets which could be considered highly active. It would be difficult and probably of little help to list only a few markets; and

(3) Customers should either complete or sign the form since the filing of a false or fraudulent report may be a basis for administrative action. The Commission currently receives a Form 40 from customers. Generally, a Form 40 requires the reporting of more complete information. However, it is not as timely in its filing as the Form 102. The Commission believes that obtaining information from both sources on the Forms 102 and 40, respectively, is the best method for assuring both timely and complete information necessary for market surveillance.

The Commission requests further comment on the feasibility of these suggestions and alternative methods of addressing these concerns.

[26] Bookkeeping services provide software and/or hardware for firms' operational staff. These services would be responsible for developing software to transmit Form 102 information.

Exchange Initiatives

Staff of the Chicago Mercantile Exchange ("CME") have provided the Commission with proposed record layouts for the electronic transmission of information on the Form 102. CME staff have inquired about the feasibility of firms electronically transmitting Form 102 information to the exchange and the exchange then providing the Commission with the information. The CME indicates that they have had preliminary talks concerning this matter with a number of firms, bookkeeping services,[26] and staff of the Chicago Board of Trade. In the meetings concerns were raised about the Commission's role in this process. Apparently there is concern whether the Commission would be able to receive transmissions in the prescribed format, whether multiple transmissions to the exchanges and the Commission would be necessary and whether the Commission might begin its own development effort. Commission staff are currently reviewing the proposed format and have scheduled further discussions with exchange staff. In the interim, the Commission invites all interested persons to submit comments concerning the CME's suggestion to electronically transmit Form 102 data. The Commission is especially interested in the feasibility of such a proposal, whether and to what extent data required on the new Form 102 is currently in machine readable form, potential costs and benefits to firms if the information is transmitted electronically, and any alternate means through which the firms believe they can reduce the cost of filing Form 102 information.

Other Related Matters

The Regulatory Flexibility Act (RFA)

The RFA requires that agencies consider the impact of substantive rules on small businesses. These amendments affect large traders, FCMs, commodity pools, CTAs and other similar entities such as foreign brokers and foreign traders. The Commission has defined "small entities" in evaluating the impact of its rule in accordance with the RFA, 47 FR 18618–18621 (April 30, 1982).

In that statement, the Commission concluded that large traders and FCMs are not considered to be small entities for purposes of the RFA. In this regard, the proposed amendments to reporting requirements relating to the Form 102 fall mainly upon FCMs. Similarly, foreign brokers and foreign traders report only if carrying or holding reportable positions, i.e., large positions. Thus, pursuant to section 3(a) of the RFA (5 U.S.C. 605(b)), the Chairman, on behalf of the Commission, certifies that these proposed rules would not have a significant economic impact on a substantial number of small entities. The Commission however, invites comments from any firm which believes that these rules would have a significant economic impact upon its operation.

Paperwork Reduction Act ("PRA")

The PRA of 1980, 44 U.S.C. 3501 et. seq., imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission has submitted these rules and their associated information collection requirements to the Office of Management and Budget.

The burden associated with the entire collection, including this rule, is as follows:

Average Burden Hours Per Response—.1587 hour
Number of Respondents—3709
Frequency of Response—Daily

The burden associated with this specific proposed rule, is as follows:

Average Burden Hours Per Response—0.2 hour
Number of Respondents—6,592
Frequency of Response—On occasion

Persons wishing to comment on the information which would be required by this proposed rule should contact Jeff Hill, Office of Management and Budget, Room 3228, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Officer, 2033 K Street NW, Washington, DC 20581, (202) 254–9735.

List of Subjects in

17 CFR Part 17

Brokers, Commodity Futures, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Act and, in particular, sections 4g, 4i, 5 and 8a of the Act, 7 U.S.C. 6g, 6i, 7 and 12a (1989), the Commission proposes to amend Chapter I of title 17 of the Code of Federal Regulations as follows:

PART 17—REPORTS BY FUTURES COMMISSION MERCHANTS, MEMBERS OF CONTRACT MARKETS AND FOREIGN BROKERS

1. The authority citation for part 17 continues to read as follows:

Authority: 7 U.S.C. 6a, 6d, 6f, 6g, 6i, 7 and 12a.

2. Section 17.01 is proposed to be revised as follows:

§ 17.01 Special account designation and identification.

(a) *Designation of special account.* For the purpose of reporting futures information to the Commission and option information to a contract market, each futures commission merchant, clearing member and foreign broker shall assign a unique designator to each special account for futures and options and shall report the account only by such designator. *Provided*, that the designator for options and futures shall not be changed or assigned to another account without prior approval of the Commission.

(b) *Identification of special account.* When a Special Account is reported for the first time, the futures commission merchant, clearing member or foreign broker shall identify the account to the Commission or to the contract market on Form 102 showing the information requested thereon, including:

(1) The designator assigned to the account for reporting purposes and the name, address, business phone and, for individuals, the person's job title and employer for:

(i) The person originating the account, if the special account is a house omnibus or customer omnibus account;

(ii) The person (*i.e.*, individual, corporation, partnership etc.) who owns the special account if such person (or an employee or officer) also controls the trading of the special account. And in addition:

(A) The registration status of the person as a commodity trading advisor or a securities investment advisor;

(B) The legal organization of the person and the person's principal business or occupation;

(C) Account numbers and account names included in the special account, if different than supplied in paragraph (b)(1) of this section;

(D) The name and location of all persons not identified in paragraph (b)(1) of this section having a 10% or more financial interest in the special account, indicating those having discretionary trading over the account; and

(E) For special accounts with five or fewer persons having trading authority, the names and locations of all persons with trading authority that have not been identified in paragraphs (b)(1) or (1)(ii)(D) of this section; or

(iii) The account controller, if trading of the special account is controlled by a person or legal entity who is an independent account controller of the account owners as defined in § 150.1(e). And, in addition:

(A) The registration status of the person as a commodity trading advisor or a securities investment advisor;

(B) For publicly offered managed or guided account programs in which 10 or more accounts participate, the account number and the name of each guided or managed account program and of each pool and the name and address of the commodity pool operator for the pool that participates in the program;

(C) For each controlled account not participating in a program identified above, the account number and the name and address of each person having a 10% or more financial interest in the account. For commodity pools, provide the account number, name of the pool and name and address of the commodity pool operator; and

(D) On call by the Commission or its designee the account numbers and names and locations of each person participating in a program.

(2) For each account not included in the special account that the person identified in paragraph (b)(1) of this section either controls or in which such person has a financial interest of 10% or more, the account number and the name of the account.

(3) For futures or options, commodities in which positions or transactions in the account are associated with a commercial activity of the account owner in a related cash commodity or activity (*i.e.*, those considered as hedging, risk-reducing, or otherwise off-setting with respect to the cash commodity or activity).

(4) The name and business telephone number of the associated person of the futures commission merchant who has solicited and is responsible for the account or, in the case of an introduced account, the name and business telephone number of the introducing broker who introduced the account.

(5) Name and address of the futures commission merchant, clearing member or foreign broker carrying the account, the signature, title and business phone of the authorized representative of the firm filing the report, and the date of signing the Form 102.

(c) *Form 102 update.* If at the time an account is in special account status and a Form 102 filed by a futures commission merchant, clearing member, or foreign broker is then no longer accurate because there has been a change in the information required under paragraphs (b)(1)(B)(iv), (b)(1)(C) and (b)(2) of this section since the previous filing, the futures commission merchant, clearing member, or foreign broker shall file an updated Form 102 with the Commission or the contract market, as appropriate, within three business days after such change occurs.

3. Section 17.02 is proposed to be amended by revising the introductory text and paragraph (b) and by adding a new paragraph (c) as follows:

§ 17.02 Place and time of filing reports.

Unless otherwise instructed by the Commission or its designee, the reports required to be filed by futures commission merchants, clearing members and foreign brokers under §§ 17.00 and 17.01 shall be filed at the nearest appropriate Commission office as specified in paragraphs (a), (b), and (c) of this section, wherein the times stated are eastern times for information concerning markets located in that time zone and central time for information concerning all other markets.

(a) * * *

(b) For data submitted in hardcopy form pursuant to §§ 17.00 (a), or (h) at a Commission office by facsimile or in accordance with instructions by the Commission or its designee not later than 9:00 a.m. on the business day following that to which the information pertains.

(c) For data submitted pursuant to § 17.01 on the Form 102;

(1) The type of special account specified in 1(a), 1(b) or 1(c) and the name and location of the person to be identified in 1(d) on the Form 102 by facsimile or telephone on the same day that the special account in question is first reported to the Commission; and

(2) A completed Form 102 within three business days of the first day that the special account in question is reported to the Commission.

* * * * *

Issued in Washington, DC, this June 12, 1995, by the Commission.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

Note: CFTC Form 102 is being published for informational purposes only and will not be codified in the Code of Federal Regulations.

BILLING CODE 6351-01-P

COMMODITY FUTURES TRADING COMMISSION
Identification of "Special Accounts"

OMB No. 3038-0009

CFTC Form 102 (Revised 4/95)

For Administrative Use Only	
Trader Code:	Firm Code:

NOTICE: Failure to file a report required by the Commodity Exchange Act and the regulations thereunder, or the filing of a false or fraudulent report may be a basis for administrative action under 7 U.S.C. Sec. 9, and may be punishable by fine or imprisonment, or both, under 7 U.S.C. Sec. 13 or 18 U.S.C. Sec. 1001.

INSTRUCTIONS TO FUTURES COMMISSION MERCHANTS, CLEARING MEMBERS, AND FOREIGN BROKERS

Assign a reporting number to each special account when it is reportable for the first time in futures or options. If an account has been assigned a number for reporting in futures (options), use the same number for reporting options (futures). Such reporting number must not be changed or assigned to any other special account without prior approval of the Commodity Futures Trading Commission. For a futures account, transmit the form to the Commission. For an option account, transmit the form to the appropriate contract market in accordance with their instructions.

PLEASE TYPE OR PRINT

1. Check one of (a), (b) or (c) for the special account and give identifying information as directed below:

(a) ☐ House omnibus or ☐ Customer omnibus account of an FCM, clearing member, or foreign broker. Report the information in (d) below for that firm. In addition, complete items 6-12.

(b) ☐ Account(s) owned and controlled by the same person or legal entity, such as a corporation or partnership (or controlled by an employee or officer of the entity). Report the information in (d) below for the person or other legal entity who owns and controls the accounts. In addition, complete items 2 and 4-12.

(c) ☐ Accounts controlled by an advisor or legal entity who is independent of the account owners. Report the information in (d) below for the advisor or legal entity controlling the special account. In addition, complete items 3 through 12.

(d) Name: _____ Reporting Number: _____
If individual, Last, First, Middle Initial

Street: _____ Business Phone: _____

City: _____ State/Country: _____ Zip/Postal Code: _____

If individual, Employer : _____ Job Title: _____

If (b) or (c) is checked, is the above-identified person or legal entity registered as a:

commodity trading advisor ☐ Yes ☐ No

securities investment advisor ☐ Yes ☐ No

If this special account is reported in the name of a business, such as a corporation, give the name of an officer or employee to contact:

Name: _____ Job Title: _____
Last, First, Middle Initial

2. If item 1(b) is checked, complete the following:

(a) Check as many as apply to the legal entity identified in 1(d) above:

☐ Individual ☐ Trust ☐ Partnership ☐ Joint

☐ Sole Proprietorship ☐ Corporation ☐ Other (Specify) _____

(b) Principal Business or Occupation: _____

(Continued on Reverse Side)

(c) Report on an attachment all account numbers and account names included in this special account if different than identified in 1(d) above.

(d) Report all persons or entities not identified in 1(d) above who have a 10% or more financial interest in this special account, including limited partners, indicating with an asterisk those having discretionary trading authority with respect to this account . If none, write "none". Use a continuation sheet, if necessary.

Name: _____
Last, First, Middle Initial

Location: _____
City and State or Country

(e) Report all persons other than those above who control the trading of accounts included in the special account. Use a continuation sheet, if necessary. If there are more than five such persons, show "multiple controllers" in the space below.

Name: _____
Last, First, Middle Initial

Location: _____
City and State or Country

3. Controlled Accounts. If you checked item 1(c), complete (a) and (b) below. Use (a) to report customer trading programs in which ten or more accounts participate. Use (b) to report all other controlled accounts.

(a) Program Name: _____ For each commodity pool participating in the program, provide on an attachment the account number, name of the pool, and name and address of the CPO.

(b) For accounts not in a program, or programs having fewer than ten accounts, provide on an attachment for each account the account number and name and address of persons having a 10% or more financial interest in the account. For commodity pools, provide the account number, name of the pool, and name and address of the CPO.

4. If the person or entity identified in 1(d) has trading authority over, or a 10% or more financial interest in, accounts not included in the special account, complete the information below for each such account. If none, write "none". Use a continuation sheet if necessary. Check "F" for financial interest and "C" for control.

Name: _____ Account Number: _____ ☐ F ☐ C

Name: _____ Account Number: _____ ☐ F ☐ C

5. Are trades and positions in this special account usually associated with commercial activity of the account owner in related cash commodities (i.e., positions considered as hedging in futures or options)? ☐ Yes ☐ No

If "yes," list those specific futures or option markets in which the trader hedges. Use a continuation sheet if necessary.

_____ _____ _____ _____ _____

6. Name, location and business phone number of the account executive handling the account. (If account executive is in a foreign country, list country and city.)

Name: _____ Business Phone: _____
Last, First, Middle Initial

Location: _____
City and State or Country

7. Firm Name and Address:	8. Name (Print):	
	9. Title:	
	10. Business Phone:	11. Date:
	12. Signature:	

[FR Doc. 95–14754 Filed 6–15–95; 8:45 am]
BILLING CODE 6351–01–C

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS–76–92; PS–51–93]

RIN 1545–AR48; RIN 1545–AR93

Recognition of Gain or Loss by Contributing Partner on Distribution of Contributing Partner on Other Property; Hearing Cancellation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to the recognition of gain or loss on certain distributions of contributed property by a partnership. This document also contains proposed regulations relating to the recognition of gain on certain distributions to a contributing partner.

DATES: The public hearing originally scheduled for Monday, June 19, 1995, beginning at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 704(c)(1)(B) of the Internal Revenue Code of 1986, and proposed regulations under section 737. A notice of proposed rulemaking, and public hearing appearing in the **Federal Register** for Monday, January 9, 1995 (60 FR 2352), announced that a public hearing on the proposed regulations would be held on Monday, June 19, 1995, beginning at 10 a.m., in the IRS Auditorium, 7400 Corridor, Internal Ravenue Building, 1111 Constitution Avenue, NW., Washington, DC.

The public hearing scheduled for Monday, June 19, 1995, is cancelled.

Jacquelyn B. Burgess,

Alternate Federal Register Liasion Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 95–14823 Filed 6–15–95; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 4

RIN: 1215–AA98

Service Contract Act; Labor Standards for Federal Service Contracts

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Department of Labor (DOL) is proposing to delete the requirement in § 4.7 of 29 CFR part 4 that any service contract of the Federal Government in an amount less than $2,500 that is subject to the McNamara-O'Hara Service Contract Act of 1965, as amended (SCA), must contain a clause specifying that the contractor or any subcontractor shall pay the minimum wage under the Fair Labor Standards Act (FLSA) to employees engaged in the performance of the contract. This proposed revision is being made to conform the regulations to a new class of Federal government purchases established by the Federal Acquisition Streamlining Act of 1994 (FASA). Requirements otherwise applicable to Federal contracting are eliminated for purchases under $2,500 for the purpose of facilitating the use of government credit cards for the making of low dollar value purchases of supplies and services. The streamlining objectives of the new procurement procedures contemplated by FASA are impeded by contract clause requirements in § 4.7, which were intended for use in contracts awarded traditional procurement procedures.

DATES: Comments are due on or before July 17, 1995.

ADDRESSES: Submit written comments to Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW, Washington, DC 20210. Commenters who wish to receive notification of receipt of comments are requested to include a self-addressed, stamped post card, or to submit them by certified mail, return receipt requested. As a convenience to commenters, comments may be transmitted by facsimile ("FAX") machine to (202) 219–5122 (this is not a toll-free number). If transmitted by facsimile and a hard copy is also submitted by mail, please indicate on the hard copy that it is a duplicate copy of the facsimile transmission.

FOR FURTHER INFORMATION CONTACT: Raymond L. Kamrath, Division of Policy and Analysis, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3506, 200 Constitution Avenue, NW, Washington, DC 20210; telephone (202) 219–8412. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This proposed rule contains no reporting or recordkeeping requirements subject to the Paperwork Reduction Act of 1980 (Pub. L. 96–511). The existing information collection requirements contained in Regulations, 29 CFR part 4 were previously approved by the Office of Management and Budget under OMB control number 1215–0150. The general Fair Labor Standards Act (FLSA) recordkeeping requirements which are restated in Part 4 were approved by the Office of Management and Budget under OMB control number 1215–0017.

II. Background

The Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355, 108 Stat. 3243) was enacted into law on October 13, 1994. Section 4001 of this Act amends the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)) to establish a "simplified acquisition threshold" of $100,000. In addition, § 4301 of FASA amends the Office of Federal Procurement Policy Act to establish a new class of purchases referred to as "micro purchases," and a micro purchase threshold of $2,500. Under this section, among other things, purchases not exceeding $2,500 are not subject to the Small Business Act reservation requirement, Buy American Act, the requirement to secure competitive quotations, and Federal employees making such purchases are not deemed "procurement officials." The new micro purchase authority, based on a recommendation of The National Performance Review (NPR), facilitates the use of credit cards by Federal agencies on small dollar purchases of supplies and services. For such purchases, the credit card procedure becomes both the method of payment and a method of contracting. Because the inclusion of contract clauses in small purchases hinder implementation of the new micro purchase authority, the Office of Federal Procurement Policy in the Office of Management and Budget asked the Department to review the contract clause requirement in § 4.7 of 29 CFR part 4 for service contracts under $2,500.

Section 2(b) of the Service Contract Act of 1995 (SCA) (41 U.S.C. 351(b)(1)) generally obligates all contractors and subcontractors who are awarded contracts principally for the furnishing of services through the use of service employees, regardless of contract amount, to pay not less than the Federal minimum wage under § 6(a)(1) of the Fair Labor Standards Act (FSLA) to the employees engaged in the performance of such contracts. Unlike § 2(a) of the SCA which requires every service contract in excess of $2,500 to include particular stipulations relating to the Act's prevailing wage and fringe benefit provisions and other labor standard protections, § 2(b) does not statutorily require a "clause" to implement the obligation of covered service contractors or subcontractors to pay service employees not less than the minimum wage under § 6(a)(1) of the FLSA. Because the clause mandated by § 2(a) of the SCA for covered contracts in excess of $2,500 advises contractors and subcontractors of the obligation to pay FLSA minimum wages in the absence of prevailing wage attachment for the contract (see paragraph (d)(1) of § 4.6), a counterpart minimum wage clause was considered appropriate for contracts not exceeding $2,500, and the requirement has been a part of the regulations since their inception.

The Department believes that the deletion of the requirement for a minimum wage clause in SCA-covered contracts not exceeding $2,500 will not adversely affect labor standards protections afforded service employees engaged in the performance of such contracts. Although the proposal removes the obligation of contractors and subcontractors to pay not less than minimum wages to their service employees as a condition of contract, the obligation to pay at least the minimum wage to any service employee performing on an SCA-covered contract is specifically contained in § 2(b) of the SCA, and is also set forth in § 6(e)(1) of the FLSA. This statutory obligation is defined further in the existing regulations at § 4.2 of 29 CFR part 4. Accordingly, the proposal is considered necessary and proper to facilitate the streamlining objectives of FASA's § 4301.

Executive Order 12866/§ 202 of the Unfunded Mandates Reform Act of 1995

This proposed rule is not a "significant regulatory action" within the meaning of Executive Order 12866, nor does it require a § 202 statement under the Unfunded Mandates Reform Act of 1995. It will facilitate the handling of Federal agency purchases of $2,500 or less. The proposed change eliminates a contract clause, which impedes the efficiency contemplated by the use of purchase cards on small purchases authorized by the micro-purchase authority under the Federal Acquisition Streamlining Act of 1994. The proposed revision, however, will not eliminate the obligation of contractors and subcontractors to pay employees on such contracts not less than the minimum wage under § 6 of the FLSA.

Because the deletion of the contract clause would not affect contractor's responsibilities, the proposed change is not expected to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. Furthermore, deletion of the clause would facilitate credit card purchases (thereby resulting in savings in paperwork processing) of services—estimated to be about 12 percent of all credit card purchases. Therefore, no regulatory impact analysis has been prepared.

Regulatory Flexibility Analysis

This proposed rule will not have a significant economic impact on a substantial number of small entities. The rule simplifies the handling of small purchases of services and will primarily affect Federal agencies through reductions in burdensome paperwork. While small entities will benefit from less burdensome procurement procedures, the impact is believed to be insignificant because the purchase of services appropriate for credit card use is relatively small, *i.e.*, the bulk of purchases appropriate for credit card use is supplies. Thus, this proposal is not expected to have a "significant economic impact on a substantial number of small entities" within the meaning of the Regulatory Flexibility Act, and the Department has certified to this effect to the Chief Counsel for Advocacy of the Small Business Administration. A regulatory flexibility analysis is not required.

Document Preparation

This document was prepared under the direction and control of Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 4

Administrative practice and procedures, Employee benefit plans, Government contracts, Investigations, Labor, Law enforcement, Minimum wages, Penalties, Recordkeeping requirements, Reporting requirements, Wages.

Signed at Washington, D.C., on this 13th day of June, 1995.

Maria Echaveste,

Administrator, Wage and Hour Division.

For the reasons set forth in the preamble, subtitle A of title 29 is proposed to be amended as follows:

PART 4—LABOR STANDARDS FOR FEDERAL SERVICE CONTRACTS

1. Authority citation for part 4 continues to read as follows:

Authority: 41 U.S.C. 351, *et seq.*, 79 Stat. 1034, as amended in 86 Stat. 789, 90 Stat. 2358; 41 U.S.C. 38 and 39; and 5 U.S.C. 301.

§ 4.7 [Removed and Reserved]

2. In subpart A, § 4.7 is proposed to be removed and reserved.

[FR Doc. 95–14780 Filed 6–15–95; 8:45 am]
BILLING CODE 4510–27–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[OH–235; Amendment Number 70R]

Ohio Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of public comment period.

SUMMARY: OSM is reopening the public comment period for a revised amendment to the Ohio regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977. The amendment was initiated by Ohio and is intended to make the Ohio program as effective as the corresponding Federal regulations

concerning the frequency of inspections at abandoned coal mining operations.

This document sets forth the times and locations that the Ohio program and the proposed amendment to that program will be available for public inspection, the comment period during which interest persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m., E.D.T. on July 3, 1995. If requested, a hearing on the proposed amendment will be held at 1 p.m., E.D.T. on June 26, 1995. Requests to speak at the hearing must be received on or before 4 p.m., E.D.T. on June 23, 1995.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Ms. Beverly C. Brock, Acting Director, Columbus Field Office, at the address listed below.

Copies of the Ohio program, the proposed amendment, and all written comments received in response to this document will be available for public review at the address listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 4480 Refugee Road, Suite 201, Columbus, Ohio 43232, telephone: (614) 866–0578.

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H–3, Columbus, Ohio 43224, telephone: (614) 265–6675.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly C. Brock, Acting Director, Columbus Field Office, (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1983, **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendment

The Ohio Department of Natural Resources, Division of Reclamation (Ohio) submitted proposed Program Amendment Number 70 by letter dated March 28, 1995 (Administrative Record No. OH–2104). In this amendment, Ohio proposed to revise one rule at Ohio Administrative Code (OAC) section 1501:13–14–01 to make the Ohio program as effective as the corresponding Federal regulations concerning the frequency of inspections at abandoned coal mining operations.

OSM announced receipt of PA 70 in the April 11, 1995, **Federal Register** (60 FR 18380), and, in the same document, opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public period closed on May 11, 1995.

On May 11, 1995, OSM notified Ohio of its one comment about PA 70 (Administrative Record No. OH–2128). In response to the OSM comment, Ohio submitted Revised Program Amendment Number 70 (PA 70R) by letter dated May 31, 1995 (Administrative Record No. OH–2127). In PA 70R, Ohio is proposing one further revision to OAC section 1501:13–14–01 paragraph (A)(3)(c)(ii) to cross-reference Ohio's rule on individual civil penalties and Ohio's statute on criminal penalties.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment proposed by Ohio satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time limit indicated under **DATES** or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., E.D.T. on June 23, 1995. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions. The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each public meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 752.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 8, 1995.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 95–14764 Filed 6–15–95; 8:45 am]

BILLING CODE 4310–05–M

Bureau of Land Management

43 CFR Part 3100

[WO–610–4110–02 1A]

RIN 1004–AC26

Promotion of Development, Reduction of Royalty on Heavy Oil

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed rulemaking; notice of reopening of comment period.

SUMMARY: On April 10, 1995, the Bureau of Land Management (BLM) published in the **Federal Register** (60 FR 18081) a notice of proposed rulemaking to amend the regulations related to the waiver, suspension, or reduction of rental, royalty, or minimum royalty on "heavy oil" (crude oil with a gravity of less than 20 degrees). The notice allowed a comment period of 60 days, closing on June 9, 1995.

The Department of Energy (DOE) is currently developing new information on the potential impacts of the proposed rule. DOE is focusing particularly on the effects of raising the qualifying crude oil gravity to more than 20 degrees. In order to allow all interested parties sufficient time to review the new DOE information, BLM is reopening the comment period for an additional 30 days. Information on the DOE findings is available from Dr. John Bebout, at the address shown below under **FOR FURTHER INFORMATION CONTACT.**

DATES: Comments should be submitted by July 17, 1995. Comments received or postmarked after the above date may not be considered in the decisionmaking process on the final rule.

ADDRESSES: Comments should be sent to Director (140), Bureau of Land Management, Room 5555, 1849 C Street, NW., Washington, DC 20240. Comments can also be sent to internet!WO140@attmail.com. Please include "attn: AC26" and your name and return address in your internet message. Comments will be available for public review at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. John W. Bebout, Bureau of Land Management (310), 1849 C Street, NW., Washington, DC 20240. (202) 452–0340.

Micheal A. Ferguson,

Acting Assistant Director, Resource Use and Protection.

[FR Doc. 95–14785 Filed 6–15–95; 8:45 am]

BILLING CODE 4130–84–P

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding for a Petition To List the Swift Fox as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: The Fish and Wildlife Service (Service) announces a 12-month finding for a petition to list the swift fox (*Vulpes velox*) under the Endangered Species Act of 1973, as amended. After review of all available scientific and commercial information, the Service finds that listing this species is warranted but precluded by other higher priority actions to amend the List of Endangered and Threatened Wildlife and Plants.

DATES: The finding announced in this document was made on June 12, 1995.

ADDRESSES: Information, comments, or questions concerning this petition should be submitted to the Field Supervisor, Fish and Wildlife Service, Ecological Services, 420 South Garfield Avenue, Suite 400, Pierre, South Dakota 57501–5408. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Donald R. (Pete) Gober, Field Supervisor, at the above address, telephone (605) 224–8693.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the List of Endangered and Threatened Wildlife and Plants that contains substantial scientific and commercial information, the Fish and Wildlife Service (Service) make a finding within 12 months of the date of the receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals of higher priority. Notice of the finding is to be published promptly in the **Federal Register.** This notice meets that requirement for a 12-month finding made earlier for the petition discussed below. Information contained in this notice is a summary of the information in the 12-month finding, which is the Service's decision

document. Section 4(b)(3)(C) requires that petitions for which the requested action is found to be warranted but precluded should be treated as through resubmitted on the date of such finding, i.e., requiring a subsequent finding to be made within 12 months.

A petition dated February 22, 1992, from Mr. Jon C. Sharps was received by the Service on March 3, 1992. The petition requested the Service to list the swift fox (*Vulpes velox*) as an endangered species in the northern portion of its range, if not the entire range. A 90-day finding was made by the Service that the petition presented substantial information indicating that the requested action may be warranted. The 90-day finding was announced in the **Federal Register** on June 1, 1994 (59 FR 28328).

The Service has reviewed the petition, the literature cited in the petition, other available literature and information, and has consulted with biologists and researchers familiar with the swift fox. On the basis of the best scientific and commercial information available, the Service finds the petition presented information indicating that the listing may be warranted but the immediate listing of the species is precluded by work on other species having higher priority for listing.

The petition and its referenced documentation states that the swift fox once occurred in abundant numbers throughout the species' historical range. The species was known from the Canadian Prairie Provinces south through Montana, eastern Wyoming, and North and south Dakota to the Texas Panhandle. The petitioner asserts that the swift fox has declined and is considered rare in the northern portion of its range. The petitioner indicates that the swift fox is extremely vulnerable to human activities such as trapping, hunting, automobiles, agricultural conversion of habitat, and prey reduction from rodent control programs. The petitioner requests that, at a minimum, the swift fox be listed as an endangered species in Montana, North Dakota, South Dakota, and Nebraska. Justification for such action as cited by the petitioner includes the present status of the species and its habitat in the petitioned area, the strong link to the prairie dog ecosystem, the large distance from the kit (*Vulpes macrotis*)-swift fox zone of intergradation, and the potential for these populations to contain the northern subspecies (*Vulpes velox hebes*).

In 1970, the Service listed the northern swift fox as endangered (35 FR 8485; June 2, 1970). This designation was removed in the United States due to controversy over its taxonomy; however, the designation as endangered in Canada remains (45 FR 49844; July 25, 1980).

In 1970, the Service listed the northern swift fox as endangered (35 FR 8485; June 2, 1970). This designation was removed in the United States due to controversy over its taxonomy; however, the designation as endangered in Canada remains (45 FR 49844; July 25, 1980).

The Service reviewed information regarding the status of the swift fox throughout its range. Historically, the swift fox was considered abundant throughout the Great Plains and the Prairie Provinces of Canada (Hall and Kelson 1959; Egoscue 1979; Zumbaugh and Choates 1985; U.S. Fish and Wildlife Service 1990; FaunaWest 1991). Beginning in the late 1800's to early 1900's, the swift fox declined in numbers, and the northern population disappeared with the southern population decreasing in numbers (Cary 1911; Warren 1942; Egoscue 1979; Bee et al. 1981; FaunaWest 1991).

In the mid-1950's, the swift fox staged a limited comeback in portions of its historical range (Long 1965; Kilgore 1969; McDaniel 1976; Sharps 1977; Hines 1980; FaunaWest 1991). However, this reappearance was limited in nature and, in recent years, many of these populations have again declined. Several factors are provided as reasons for the decline of the species throughout much of its historical range. These factors include (1) loss of nature prairie habitat through conversion for agricultural production and mineral extraction, (2) fragmentation of the remaining habitat, creating a less suitable cropland-grassland habitat mosaic, (3) degradation of habitat due to prairie-dog control activities, (4) predation and interspecific competition, and (5) the species' vulnerability to human activities such as predator control, trapping, shooting, and collisions with automobiles (Hillman and Sharps 1978; Hines 1980; Armbruster 1983; Uresk and Sharps 1986; Jones et al. 1987; Sharps 1989; U.S. Fish and Wildlife Service 1990; FaunaWest 1991; Carbyn et al. 1992).

Currently, swift fox exist in highly disjunct populations in a greatly reduced portion of the species' historical range (Hines 1980; Jones et al. 1987; U.S. Fish and Wildlife Service 1990; FunaWest 1991). Swift fox are believed to be extirpated in North Dakota. Remnant populations remain in Montana and Oklahoma. Small, disjunct populations of unknown status remain in South Dakota, Wyoming, Nebraska, Kansas, Colorado, New Mexico and Texas. There is limited but encouraging evidence that some reoccupation of its former range may be occurring in Montana, Oklahoma, Kansas, Colorado, and Wyoming. New Mexico also appears to contain localized populations distributed throughout reduced portions of the State's historical range. However, there has been no biological or scientific evidence presented to the Service during the extended status review period to confirm the viability or stability of any of these populations. Seventy to 75 percent of remaining swift fox populations are believed to reside on private lands, with the remaining populations on Federal lands belonging to the U.S. forest Service, the National Park Service, the Bureau of Land Management, and the Department of the Army.

Summary of Factors Affecting the Species

The following information is a summary and discussion of the five factors or listing criteria as set forth in section 4(a)(1) of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act and their applicability to the current status of the swift fox.

A. *The Present or threatened destruction, modification, or curtailment of the species' habitat or range.* The swift fox is a prairie-dwelling species that generally requires 518 ha to 1,296 ha (1,280 to 2,300 acres) of short to midgrass prairie habitat with abundant prey to support a pair (Cameron 1984; Jones et al. 1987; Rongstad et al. 1989; Jon Sharps, Wildlife Systems, pers. comm. 1993). Swift fox habitat is comprised of level to gently sloping topography containing an open view of the surrounding landscape (<15 percent slope), abundant prey, and lack of predators and competitors (Cutter 1958a; Hillman and Sharps 1978; Hines 1980; Fitzgerald et al. 1983; Lindberg 1986; U.S. Fish and Wildlife Service 1990; FaunaWest 1991; Carbyn et al. 1992).

Historically, the species was distributed throughout the contiguous short to midgrass prairie habitat from the south-central Prairie Provinces in Canada to the southern portions of the western Great Plains. In recent times, the swift fox has experienced a significant reduction in its historic range due to a combination of human activities. Based on current range-wide swift fox distribution information, the Service estimates that the swift fox is extirpated from 80 percent of its historical range. Within the remaining 20 percent of its historical range, swift fox populations exist in scattered, isolated pockets of remnant short to midgrass prairie habitat. The Service estimates that swift fox may actually occupy only half of the remaining 20 percent of its historical range.

Habitat loss and fragmentation has occurred due to a variety of human activities such a agricultural conversion of the prairie and mineral extraction. Beyond direct agricultural conversion, the remaining short to midgrass prairie ecosystem has been significantly altered due to creation of a grassland-cropland mosaic, with continued reduction of the prairies rodent prey base and modification of the native predator community. Roadways also alter the availability and suitability of habitat, thus fragmenting swift fox habitat and exposing them to traffic, trapping, shooting, predator control, and rodent control.

B. *Overutilization from commercial, recreational, scientific, or educational purposes.* Commercial trapping for other furbearers occurs throughout the range of the swift fox. Often swift fox are harvested incidental to commercial trapping for other furbearers such as coyotes (McDaniel 1976; Sharps 1984; Jones et al. 1987; U.S. fish and wildlife Service 1990). Unlike other furbearers, swift fox pelts are not particularly valuable (Arnold 1925; Jones et al. 1987; FaunaWest 1991). This lack of value and pelt quality has not completely stopped trade in swift fox pelts. Protection is minimal because the swift fox is unwary and naive, making it susceptible to trapping, ragardless of whether it is the targeted species. Legal and/or incidental take of the species is expected to continue.

The swift fox is legally harvested in four States (Colorado, New Mexico, Kansas, and Texas). In Wyoming, it is a protected species by virtue of its nongame status, but it is still legal to buy and sell swift fox pelts. In addition, Wyoming has supplied 25 to 30 swift fox per year to Canada for their recovery program. Harvest data received from the above States is insufficient to assist the Service in the determination of population trends or to determine the actual numbers being legally harvested on an annual basis. The New Mexico data shows a significant (95 percent) decrease in the kit-swift fox harvest in recent years, but its significance relative to swift fox status cannot be determined. The Colorado data shows that harvest of kit/swift fox has decreased from a high of 3,322 animals during the 1981–1982 season to 161 animals (fox) in 1990 and 373 animals in 1991, respectively. Harvest data from Kansas indicates that between 1982 and 1994, 1,220 swift fox were harvested from approximately 23 counties located in the western-most one-fourth of the State. Jones (1987) reports that available harvest data from Texas is limited, but it shows an annual harvest of between 300 and 500 animals.

C. *Disease and predation.* The effects of infectious diseases in swift fox are relatively unknown. However, they are susceptible to most diseases that plague canids (FaunaWest 1991). Studies conducted in California on the kit fox noted canine parvovirus as a major disease (FaunaWest 1991). Since parvovirus is found throughout the U.S. and is fatal to domestic dogs, it is probably also fatal to swift foxes. Other diseases documented in kit foxes include canine hepatitis, tularemia, brucellosis, toxoplasmosis, and coccidiomycosis (FaunaWest 1991). Many of these diseases are known to be widespread and their presence in swift fox populations is highly probable.

Because of major changes to the faunal community of the western Great Plains ecosystem, the swift fox has become extremely vulnerable to predation from coyotes. Historically, the gray wolf (*Canis lupus*) was the dominant canid in the Great Plains hierarchy. The gray wolf was not considered a significant predator on swift fox and, because it targeted large ungulates, it probably provided swift fox with a source of carrion (Moravek 1990; U.S. Fish and Wildlife Service 1990; FaunaWest 1991). The coyote and red fox, while widely distributed in specific habitats, were not generally considered abundant because of the wolf's dominant canid role in the western Great Plains ecosystem (Johnson and Sargeant 1977). Coyotes are now the most abundant and widely distributed canid on the Great Plains (Alan Sargeant, U.S. Fish and Wildlife Service, pers. comm. 1992). Studies have shown that predation by coyotes has a severe impact on the survival of swift fox (Robinson 1961; Reynolds 1986; Rongstad et al. 1989; Sharps 1989; Moravek 1990; U.S. Fish and Wildlife Service 1990; Carbyn et al. 1992). Furthermore, the red fox, which historically existed in isolated pockets on the Great Plains, expanded its distribution westward because of agriculture development (Moravek 1990; A. Sargeant, pers. comm. 1992). Also red foxes undoubtedly compete with swift fox.

D. *Inadequacy of existing regulatory mechanisms.* The swift fox is listed as endangered in Nebraska, threatened in South Dakota, and is protected by regulation in Wyoming. Despite having this protective status, it is still legal to buy and sell swift fox pelts in Wyoming (Bob Oakleaf, Wyoming Game and Fish Department, pers. comm. 1993). The swift fox is listed as a furbearer in seven States (Colorado, Montana, Kansas, Oklahoma, New Mexico, North Dakota, and Texas) and it is legally harvested in Colorado, Kansas, Texas, and New Mexico). In Montana, Oklahoma, and North Dakota, no legal harvest of swift foxes is allowed because of the species' rarity (Arnold Dood, Montana Department of Fish, Wildlife and Parks, pers. comm. 1993; Sonja Jahrsdoerfer, U.S. Fish and Wildlife Service, pers. comm. 1993; Randy Kreil, North Dakota Game and Fish Department, pers. comm. 1993).

Since the swift fox is not federally protected and its pelts are of little economic value, there is little effort by the States to determine the status of the swift fox in their jurisdiction, even though it is harvested legally or incidentally taken. Other than State trapping regulations, there is little regulatory protection afforded the swift fox or its habitat. Efforts by the States to modify techniques to avoid the unintentional trapping of swift fox are minimal.

E. *Other man-made or natural factors affecting the species' continued existence.* The swift fox is inquisitive in nature, thus making it extremely vulnerable to human activities. Swift fox are easily trapped, shot, captured by dogs, or killed along country roadsides (Kilgore 1969; Hillman and Sharps 1978; Hines 1980; Sharps and Whitcher 1983; Uresk and Sharps 1986; U.S. Fish and Wildlife Service 1990; Dr. Clyde Jones, Texas Technology University, pers. comm. 1993). Additionally, swift fox are mistakenly taken for coyotes or by people wishing to remove all canids for fear of livestock predation (Zegers 1976).

Habitat loss and modification, rodent control programs, and other human activities often reduce the prey base, impacting the species' ability to find prey. Historically, the range of the swift fox and prairie dog overlapped extensively (Hall and Kelson 1959; Sharps 1993). Swift fox are extremely vulnerable to prey reduction caused by habitat modification and prairie dog control programs (Hines 1980; Egoscue 1979; Sharps 1984; Sharps 1989; Uresk and Sharps 1986; Moravek 1990). Where the prey base has been reduced, swift fox often seek out carrion along roadsides (Hines 1980). Additionally, predator control in the area is conducted by private individuals who use leg hold traps, snares, and shoot animals (U.S. Fish Wildlife Service 1990; Sharps 1993; FaunaWest 1991).

Finding

Section 4(b)(3)(B)(iii) of the Act states that the Service may make warranted but precluded findings if it can demonstrate that an immediate proposed rule is precluded by other pending proposals and that expeditious progress is being made on other listing actions. Since September 30, 1993, the Service has proposed the listing of 118 species and has finalized the listing for 182 species. The Service believes this demonstrates expeditious progress. Furthermore, on September 21, 1983 (48 FR 43098), the Service published a system for prioritizing species for listing. This system considers 3 factors in assigning species' numerical listing priorities on a scale of 1 to 12. The three factors magnitude of threat, immediacy of threat, and taxonomic distinctiveness.

After reviewing and considering the scientific merits and significance of all comments, recommendations, and study proposals received from State and Federal agencies and from private individuals relative to the Service's 90-day Administrative Finding, the Service has concluded that the magnitude of the threat to the swift fox is moderate throughout its present range. The States of Kansas, Colorado, and Wyoming have presented evidence that swift foxes have reoccupied former prairie habitats and have also moved into agricultural lands. However, scientific evidence also indicates that identifiable threats to the swift fox exist over the entire 10-State range, and the Service has concluded that the immediacy of these threats is "imminent." The Service, in its determination of the current degree of threat to the species, also considered a long-range conservation strategy document drafted by an interagency State team which provides a framework of goals, objectives, and strategies. Implementation of this plan, including the formation of a swift fox working team should help reduce some of these threats to its survival. Having considered this draft conservation strategy document and the significance of the evidence provided by the aforementioned States, the Service believes that the magnitude of threats is "moderate" but the immediacy of these threats remains "imminent." Therefore, a listing priority of 8 is assigned for the species. The Service will reevaluate this warranted but precluded finding 1 year from the date of the finding. If sufficient new data or information becomes available in the future regarding the magnitude of threats, abundance, and health of these swift fox populations, the Service will reassess the status of the species. The warranted but precluded finding elevates the swift fox's candidate species status from category 2 to category 1.

The Service's 12-month finding contains more detailed information regarding the above decisions. A copy may be obtained from the South Dakota Field office (see **ADDRESSES** section).

References Cited

A complete list of references cited in the rule is available upon request from the South Dakota Field office (see **ADDRESSES** section).

Author

The primary author of this document is David A. Allardyce (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*)

Dated: June 12, 1995.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 95–14730 Filed 6–15–95; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 216 and 229

[Docket No. 950605147–5147–01; I.D. 052395C]

RIN 0648–AH33

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Authorization for Commercial Fisheries; Proposed List of Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement the new management regime for the taking of marine mammals incidental to commercial fishing operations established by certain provisions of the Marine Mammal Protection Act of 1972 (MMPA) as added to that Act by certain amendments in 1994. The regulations would implement requirements to authorize vessels engaged in commercial fishing to incidentally, but not intentionally, take species and stocks of marine mammals upon the receipt of specified information and that require commercial fishers to report to NMFS the incidental mortality and injury of marine mammals in the course of commercial fishing and comply with certain other requirements. The intended effect of this rule is to provide for a limited exemption of commercial fisheries from the MMPA's moratorium on the taking of marine mammals incidental to commercial fishing activities. NMFS issues a proposed list of fisheries (LOF), categorized according to frequency of incidental serious injury and mortality of marine mammals. Comments are invited on the proposed rule and the proposed LOF.

DATES: Comments on this proposed rule must be received by July 31, 1995. Comments on the proposed LOF must be received by September 14, 1995.

ADDRESSES: Send comments to Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. A copy of the Environmental Assessment (EA) may be obtained by writing to this address, by telephoning one of the contacts listed below, or by accessing the NMFS "Home Page" on the World Wide Web at http://kingfish.ssp.nmfs.gov:80/home-page.html which will be available by June 19, 1995. Comments regarding the burden-hour estimate or any other aspects of the collection of information requirements contained in this rule should be sent to the above individual and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB); Attention: NOAA Desk Officer, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas Eagle or Robyn Angliss, Office of Protected Resources, 301–713–2322; Douglas Beach, Northeast Region, 508–281–9254; Charles Oravetz, Southeast Region, 813–570–5301; James Lecky, Southwest Region, 310–980–4015; Brent Norberg, Northwest Region, 206–526–6140; Dr. Steve Zimmerman, Alaska Region, 907–586–7235.

SUPPLEMENTARY INFORMATION:

Legislative and Regulatory History

Prior to passage of the 1988 amendments to the MMPA (Public Law 92–522), commercial fishers could receive an exemption from the MMPA's general moratorium on the taking of marine mammals by applying for a general permit and certificates of inclusion. The 1988 amendments to the MMPA (Public Law 100–711), added a section 114 to the MMPA that exempts, on an interim basis, commercial fishers who comply with certain registration

and reporting requirements from the general prohibition on taking marine mammals (Interim Exemption for Commercial Fisheries). The purpose of this exemption was to allow NMFS to collect data to be used in setting up a comprehensive management regime governing fisheries interactions with marine mammals. The 1988 amendments did not allow for the taking of California sea otters or the intentional lethal taking of Steller sea lions, cetaceans, or marine mammals from a population stock designated as depleted.

Section 11 of the MMPA Amendments of 1994 (Public Law 103–278) added a new section 118 to the MMPA establishing a new management regime for the taking of marine mammals incidental to commercial fishing operations. In order to provide time for development and implementation, section 15 of the MMPA Amendments of 1994 amended section 114, the interim exemption, to extend it until September 1, 1995, or until superseded by regulations prescribed under section 118, whichever is earlier.

Since it was first passed in 1972, one of the underlying goals of the MMPA has been that the incidental kill or incidental serious injury of marine mammals permitted in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate (section 101(a)(2) of the MMPA). Section 11 of the 1994 amendments to the MMPA reaffirmed this Zero Mortality Rate Goal (ZMRG)(new section 118(b)(1)) and requires NMFS to begin review of each fishery's progress toward the ZMRG within 3 years of enactment (April 30, 1997), and report the results of this review to Congress within 4 years of enactment (April 30, 1998)(new section 118(b)(3)). The amendments specify that all fisheries must attain this goal within 7 years of enactment (April 30, 2001)(new section 118(b)(2)).

Section 10 of the 1994 Amendments adds a new section 117 to the MMPA that requires NMFS to complete stock assessments for every population or stock of marine mammals that occur in the waters under U.S. jurisdiction and to designate strategic stocks based on the level of human-caused mortality likely to reduce or keep the stock below its optimum sustainable population level. Strategic stocks are also those that are listed as endangered or threatened species under the Endangered Species Act (ESA), depleted under the MMPA, or that are declining and likely to be listed as a threatened species under the ESA. Stock assessments must include an analysis of whether the incidental mortality and serious injury of marine mammals from commercial fishing operations is insignificant and is approaching a zero mortality and serious injury rate (e.g., ZMRG). Draft stock assessment reports (SARs) were published in August, 1994 (59 FR 40527). Final SARs are in preparation.

Section 118 of the MMPA requires NMFS to authorize commercial fishers to incidentally, but not intentionally, take marine mammals during the course of commercial fishing operations upon the receipt of specified information and provided certain conditions are met. The regulations being proposed by this notice would implement section 118.

Section 118(a)(5) of the MMPA prohibits the intentional lethal take of any marine mammal in the course of commercial fishing operations except as provided by section 101(c) which authorizes takings, including intentional lethal takings if imminently necessary in self-defense or to save the life of a person in immediate danger and as long as such taking is reported to NMFS within 48 hours (see 60 FR 6036). The 1994 amendments to the MMPA amended section 101(a)(4) of the MMPA to authorize fishers to deter marine mammals from damaging fishing gear, catch or other private property or from endangering personal safety provided such measures do not result in the serious injury or mortality of a marine mammal. Section 101(a)(4) directs NMFS to develop and publish guidelines for use in safely deterring marine mammals and to prohibit the use of deterrence measures determined to have a significant adverse effect on marine mammals. On May 5, 1995, NMFS published proposed guidelines and prohibited measures (60 FR 22345).

Section 4 of the MMPA Amendments of 1994 amended section 101(a)(5) of the MMPA to authorize NMFS to issue permits for the take of marine mammals listed as a threatened species or endangered species under the ESA incidental to commercial fishing operations.

The 1994 Amendments retained the concept of categorizing commercial fisheries into three groups based on the frequency of incidental mortality and serious injury of marine mammals from section 114—the Interim Exemption for Commercial Fisheries. On September 1, 1994, NMFS published a notice of proposed changes to the LOF (59 FR 45263). As required by section 118, that notice classified commercial fisheries by frequency of incidental serious injury and mortality of marine mammals. This classification differed from the classifications under the Interim Exemption in that non-injurious takes, incidental or intentional, such as harassment, were not included in the revised classification criteria. Only incidental serious injuries and mortalities were considered. Also, since intentional lethal takes are prohibited by section 118(a)(5), those fisheries previously classified based only on intentional takes were proposed for reclassification.

Additional information on the regulatory and legislative history of the MMPA prior to the 1994 Amendments appears in the Environmental Assessment prepared for this rule.

Comments and Responses to the Notice of Proposed Changes to the List of Fisheries

Ten comments were received in response to the September 1, 1994, notice of proposed changes to the LOF (59 FR 45263). Comments and information were received from State agencies, commercial fishing organizations, Indian tribes, conservation groups, and other interested parties. Comments on the proposed reclassification of fisheries, classification criteria, treaty Indian fisheries, and related topics are summarized below along with NMFS' responses. These comments were considered in developing this proposed rule.

Comments on the Proposed Changes to the Criteria

Two commenters agreed with the proposed reclassifications, because of the assumption that the prohibition on intentional serious injuries and mortalities would result in a reduced taking of marine mammals. However, three commenters believed that it was inappropriate to reclassify any fisheries based on this assumption until the prohibition was implemented by regulations. One commenter suggested that any attempt to factor unknown levels of illegal activities when classifying fisheries was inappropriate and would be unfair to law-abiding fishers. On March 3, 1995, the prohibition in section 118(a)(5) on intentionally seriously injuring or killing a marine mammal during commercial fishing operations became effective by regulation (60 FR 6036). Previously, under regulations implementing section 114, lethal deterrence measures could be used to protect fishing gear or catch during commercial fishing operations. NMFS has informed owners of vessels currently registered in a Category I or II fishery (respectively, frequent or

occasional incidental mortality and serious injury of marine mammals) of this prohibition by mail. Furthermore, NMFS conducted a public outreach campaign to inform other affected parties (e.g., vessel owners participating in a Category III fishery (a remote likelihood of incidental mortality and serious injury of marine mammals)) through tradepapers, newsletters, and other media. For these reasons, the proposed classification of fisheries in this proposed rule (see List of Fisheries) is based on the assumption that the prohibition on intentional serious injury and mortality will result in a reduced taking of marine mammals. The proposed LOF is also based on the new proposed definitions of "frequent," "occasional," and "remote" incidental mortality and serious injury of marine mammals (proposed § 229.2).

Comments on the Definition of a Fishery

For purposes of section 114, NMFS defined fisheries by gear type, geographical area, and target species, in accordance with existing state or Federal management designations. However, for some fisheries this information is unavailable or only partially available. In the notice of proposed changes to the LOF, NMFS suggested that fisheries could be partitioned as necessary to reflect concentrations of marine mammals in certain areas within a fishery, or at certain times of the year in order to address management actions on fishery hot spots, or seasons. Gear type (e.g., mesh size) could also be used to help define a fishery to allow flexibility. Three commenters supported these approaches.

The proposed LOF in this notice would define fisheries based on state or Federal management designations where these designations exist and where practicable. When this information was not available, fisheries are defined based on the 1994 LOF. The 1994 LOF based fishery definitions on the location of the fishery, the gear type used, and sometimes the fish species that are targeted by the fishery. A fishery may be proposed to be grouped with other fisheries if the general location and gear type are similar and if the rates of incidental marine mammal mortality and serious injury are known or suspected to be similar. For instance, the U.S. mid-Atlantic coastal gillnet fishery in the 1994 LOF is composed of many small fisheries that target different fish species seasonally but use the same general type of gear, fish in the same general location, and have a marine mammal take that is suspected to be similar. When additional information on either marine mammal incidental mortality and serious injury or on the fishery are available, fisheries in the proposed LOF may be grouped together or split apart in order to better manage the incidental mortality and serious injury of marine mammals in those fisheries.

New fisheries or fisheries that were new to the proposed LOF were defined based on general location, gear type, and, when applicable, target species.

Comments on Take Estimates

The classification criteria developed to implement the Interim Exemption (expiring section 114) were based on an interaction rate of marine mammals with a randomly selected vessel in a fishery during a 20-day period. In the September 1, 1994 notice of proposed changes to the LOF, NMFS solicited comments and/or suggestions on classification criteria based on the relative impact of a fishery on marine mammal stocks (e.g., percentage of a stock's potential biological removal level (PBR)) or other alternative criteria. Four commenters supported classifying fisheries based on the impact of the annual incidental take of marine mammals from a marine mammal stock relative to the stock's PBR. Two of these commenters suggested that a fishery should be considered to have a frequent taking of marine mammals if the incidental take is 30 percent of a stock's PBR per year, instead of 50 percent of a stock's PBR as was suggested in the notice. They believed that this would be a more conservative approach. One of these commenters suggested that a Category III fishery should be considered to have a remote likelihood of taking if the incidental take from a marine mammal stock is less than or equal to 10 percent of a stock's PBR, instead of the one percent of a stock's PBR as was suggested in the notice. Two commenters supported an approach that categorizes fisheries based on either the number of takes per 20 days or impact of an annual take relative to the stock's PBR.

Commercial fisheries were classified in this proposed LOF based on new definitions of "frequent," "occasional", and "remote" incidental mortality and serious injury of marine mammals (proposed § 229.2). These new definitions would take into account the relative impact of incidental serious injury and mortality by commercial fisheries on marine mammal stocks. The development and justification for these proposed new definitions are discussed in the "Comments and Responses to Draft Regulations to Implement Section 118 from Working Sessions and Written Comments" section of this preamble.

Comments on Treaty Indian Fisheries

In the notice of proposed changes to the LOF, NMFS considered whether the Pacific Northwest treaty Indian tribal fisheries should be excluded from the LOF. Seven commenters objected to the omission of Pacific Northwest Indian tribal fisheries from the LOF. Commenters believed that the requirement to register Treaty Indian Fisheries and categorize them in the LOF provided NMFS with a mechanism to evaluate the impact of these fisheries on marine mammals. Some of the commenters believed that while traditional hunting and fishing rights are covered by native treaty agreement, commercial enterprises are not covered and should be regulated under the MMPA. One commenter believed that the exclusion of the Pacific Northwest treaty Indian tribal fisheries from the LOF was appropriate and also objected to the solicitation of public opinion on this topic.

In a September, 1994 letter to the Northwest Indian Fish Commission, NMFS stated that it had reviewed the relationship of Northwest Indian treaties to the MMPA, and did not find clear evidence that Congress intended to abrogate Indian treaty rights with respect to marine mammals. The letter concluded that proposed tribal harvests of seals and sea lions did not violate the MMPA, noting that neither species was subject to the ESA, and that the healthy status of the stocks would not be affected. The letter urged the tribes to continue to consult with NMFS, and to observe adequate conservation measures.

With respect to the LOF and in keeping with its September, 1994 letter, NMFS has determined that Category I and II treaty Indian tribal fisheries are conducted pursuant to the tribes' treaty rights. For the reasons discussed above, NMFS proposes to not require treaty tribes to register, report or comply with take reduction plans under section 118 of the MMPA. In addition, NMFS has removed treaty fisheries from the LOF proposed in this notice.

Comments on Applicability to Zero Mortality Rate Goal

In the **Federal Register** notice of proposed changes to the LOF, NMFS solicited comments on the development of criteria that could be used in the assessment of a fishery's progress in achieving the ZMRG, and whether the criteria used to classify fisheries may be used to make that assessment. In the June 1994 workshop to develop

standards for SARs, workshop participants suggested that a marine mammal stock that experienced a removal level equal to or less than 10 percent of its PBR could be considered to have an insignificant level of incidental mortality and serious injury approaching zero mortality and serious injury rate because the biological impacts would be negligible (see PBR Workshop Report). Several comments were received on the proposed definition set forth in the workshop report. One commenter agreed that a fishery would have achieved the ZMRG if it took 10 percent or less of a stock's PBR. However, three commenters did not agree because for stocks with a large population size, 10 percent removal could still be a very large number of marine mammals. Even if a fishery achieved this 10 percent goal, these commenters believed the fishery should still try to reduce marine mammal bycatch when possible, regardless of whether the reduction would be necessary to mitigate a biological impact on the stock.

NMFS believes that the ZMRG would be met for a marine mammal stock when the incidental mortality and serious injury from commercial fishing operations are at levels significantly below such stock's PBR so that the incidental mortality and serious injury has a negligible effect on the status of the affected stock. In other words, when the total incidental mortality and serious injury from fisheries has no biological impact, the ZMRG will have been met. NMFS believes that fishers should make every reasonable effort to reduce incidental take below this level. Nevertheless, for the purposes of the MMPA, NMFS is proposing to consider a fishery as having achieved the ZMRG if, collectively with other fisheries, it is responsible for the annual removal of 10 percent or less of any marine mammal stock's PBR level (proposed § 229.2).

Comments and Responses to Draft Regulations To Implement Section 118 From Working Sessions and Written Comments

Informal working sessions to discuss the draft proposed regulations to implement section 118 of the MMPA were held in Silver Spring, MD, on November 30, 1994, and Seattle, WA, on December 2, 1994. Attendees at both sessions included Congressional staff (Silver Spring session only), representatives of conservation groups, members of the fishing community, representatives of state governments, a representative of the Alaska subsistence community (Seattle session only) and NMFS staff. Written comments were also received on the draft proposed regulations to implement section 118. Comments on fishery classification criteria, options for classifying fisheries, and related topics are summarized below along with NMFS' responses. These comments were considered in developing this proposed rule.

Comments on Logbook Data

Some commenters believed that logbook data should be used to classify fisheries. Although logbook information is not and probably will not be reliable enough to determine reliable mortality estimates, the information can be used to determine the minimum mortality of marine mammals in a particular fishery. In addition, qualitative information provided in reports by fishers, such as areas of operation, number of fishers, and relative number of incidental takes, is useful in determining which fisheries need more intensive monitoring programs. When no other information is available for a particular fishery, NMFS will continue to use logbook information collected during the Interim Exemption program to supplement information from the monitoring program (e.g., observer program), and to better understand interactions in those commercial fisheries that are not being observed. Under the proposed rule, fishers will no longer be required to submit logbooks; thus, reports of incidental takes made by fishers will be used to classify fisheries when other information is lacking.

Comments on Criteria When Stock Status or Fishery Take Information Are Lacking

Some commenters believed that fishery classification criteria should not be based on annual takes relative to PBR because in the draft SARs many PBRs were zero (no potential removal level estimated) due to a lack of information on the marine mammal stock in question (e.g., stock size) and this would subject certain fisheries to be classified arbitrarily. Some commenters believed that guidelines must be developed to allow categorization of new fisheries, or fisheries about which little is known. Most commenters supported defaulting new fisheries into Category II.

1. In contrast to the number of zero PBRs in the draft SARs, there are relatively few zero PBRs in the final SARs. Furthermore, fisheries that have annual takes of marine mammals from such stocks generally take more than one species of marine mammal; thus, the fishery can be classified based on a stock with a known PBR.

2. New fisheries for which no information is available on its level of interaction with marine mammals, and where the frequency of interaction can not be determined by analogy (e.g., gear used), would be deemed to be a Category II fishery until the next annual LOF is published which may recategorize them based on new information. NMFS believes that this would provide for the necessary safeguards to ensure that potentially high levels of incidental mortality and serious injury of marine mammals in new fisheries is appropriately monitored.

Comments on Options for Fishery Classification Criteria

Under section 118 of the MMPA, commercial fisheries must be classified in one of the following three categories:

Category I: Frequent incidental mortality and serious injury of marine mammals;

Category II: Occasional incidental mortality and serious injury of marine mammals;

Category III: A remote likelihood of or no known incidental mortality or serious injury of marine mammals.

Because the 1994 amendments to the MMPA did not define "frequent", "occasional" or "remote likelihood", definitions for these terms must be developed in order to classify fisheries. Several options for criteria to classify fisheries were considered and discussed during the working sessions, and are summarized below.

Option 1: Status Quo. This option would retain the definitions of "frequent", "occasional", and "remote likelihood" contained in the regulations to implementing section 114 (54 CFR 219.3). Under this option, "frequent" means that it is highly likely that more than one marine mammal will be incidentally taken by a randomly selected vessel in the fishery during a 20-day period. "Occasional" means that there is some likelihood that one marine mammal will be incidentally taken by a randomly selected vessel in the fishery during a 20-day period. "Remote likelihood" means that it is highly unlikely that any marine mammal will be incidentally taken by a randomly selected vessel in the fishery during a 20-day period.

Comments on Option 1. Some commenters stated that the criteria for classifying fisheries under section 118 of the MMPA should be identical to the criteria under section 114. They argued that changing the criteria was not the intent of Congress and might place additional regulatory burden on commercial fishers by increasing the number of fisheries placed in Categories I and II. Furthermore, they were

concerned about what process would be followed for classifying fisheries under a new set of criteria when little or no data exists from which to estimate fishing mortality or PBR. The majority of the commenters however, supported modification of fishery classification criteria to better reflect the effect of commercial fisheries on individual marine mammal stocks. This approach would allow NMFS to place management emphasis on stocks of particular concern. Attendees at the Seattle session constructed a new set of criteria, which is discussed below under Option 2.

Assumptions of Option 1. This approach assumes that NMFS has fairly reliable estimates of rates of serious injuries and mortalities for vessels per 20 days of fishing in each fishery. For fisheries in which NMFS has placed observers, these rates may vary in accuracy, depending on the level of observer coverage applied. For other fisheries, only information submitted in fishers' logbooks are available. Take rates obtained from fishers' logbooks have been found to vary from those reported by observers for the same fishery, with the general tendency to have observed take rates higher than fisher-reported take rates.

Strengths of Option 1. This criteria scheme is useful in identifying fisheries that have relatively high rates of incidental serious injuries and mortalities across a number of marine mammal stocks, regardless of the status of the stocks involved. These fisheries would be classified as Category I or II fisheries.

Weaknesses of Option 1. This approach is problematic in that it does not account for the size of the fishery as a whole (i.e., the number of vessels participating in the fishery), as it relates to impacts on stocks. For instance, two fisheries may have the same serious injury and mortality rate per 20 days of fishing, yet one fishery may have 20 vessels participating and the other may have 3,000 vessels participating. These two fisheries would have significantly different impacts on a particular stock or stocks of marine mammals.

Also, reporting requirements under section 118 require that fishers report only incidents of serious injury and mortality, and not information on fishing effort. This significantly reduces the information available to calculate takes rates per 20 days of fishing. This information would only be accurate for fisheries in which there are observers.

Option 1 could unnecessarily focus management and resources on fisheries (e.g., monitoring programs, take reduction plans, etc.) that do not have a significant impact on marine mammal stocks. It may subject more vessel owners to registration, fees, and observer coverage. Finally, NMFS is concerned that option 1 may be inconsistent with the new section 118 because it does not consider the status of or impact to the marine mammal stocks.

Option 2: Base Criteria on Proportions of the Stock Size and PBR. Under this option, proportions of the best estimated stock size and the PBR for a particular marine mammal stock would be used to classify fisheries in the following manner:

Category I: Annual mortality and serious injury exceeds 0.005 of the best population estimate for cetaceans or 0.01 of the best population estimate for pinnipeds.

Category II: Annual mortality and serious injury is greater than 0.005 of the best population estimate but is greater than 0.01 of the PBR for cetaceans or is less than 0.01 of the best population estimate but greater than 0.1 of the PBR for pinnipeds.

Category III: Annual mortality and serious injury is less than 0.1 of PBR.

Comments on Option 2. There was no support for this option.

Option 3: Proportions of PBR. Under Option 3, a proportion of the PBR for a particular marine mammal would be used to classify fisheries in the following manner:

Category I: Annual mortality and serious injury of a stock in a given fishery is less than or equal to 50 percent of PBR.

Category II: Annual mortality and serious injury is greater than 1 percent and less than 50 percent of PBR.

Category III: Annual mortality and serious injury is less than 1 percent of PBR.

Comments on Option 3. Although there was general support for this type of approach, working session participants were concerned that Option 3 did not account for the collective impacts of all fisheries that interact with a marine mammal stock. Working session attendees also recognized that Option 3 did not account for marine mammal stocks that are subjected to a low level of incidental mortality and injury across a number of fisheries.

Option 4: Proportions of PBR—Two-tiered Approach. This approach is a two-tiered scheme that first addresses the total impacts of all fisheries on each marine mammal stock and then addresses the impacts of individual fisheries on each stock. This approach is based on the annual number of serious injuries and mortalities due to commercial fishing relative to a stock's PBR.

Tier 1: If the annual mortality and serious injury across all fisheries that interact with a stock is less than or equal to 10 percent of the PBR of such a stock, then all fisheries interacting with this stock (and no other stocks that do not fit this criteria) would be placed in Category III. Otherwise, these fisheries are subject to the next tier to determine their classification.

Tier 2—Category I: Annual mortality and serious injury of a stock in a given fishery is greater than some percentage of PBR.

Category II: Annual mortality and serious injury is between some percentage and some percentage of PBR.

Category III: Annual mortality and serious injury is less than or equal to some percentage of PBR.

This approach is modeled after the recommendations from the NMFS PBR Workshop held in June 1994 and the working sessions on the draft proposed regulations. The most critical classification threshold is the one between Category II and Category III fisheries because Category III fisheries only have a "remote likelihood" of incidental serious injury or mortality of a marine mammal and would not be subject to the more stringent requirements of Category I or II fisheries. The PBR Workshop participants agreed that serious injury and mortality incidental to commercial fishing operations would be insignificant to a stock if such removals were only a small portion (i.e., 10 percent of the PBR) of the stock. Using this rationale, all fisheries which impact a stock would be considered in the determination of whether impacts to that stock are significant (Tier 1). If the total removals from a stock across all fisheries were greater than 10 percent of the PBR for that stock, the fishery would then be categorized according to the criteria in Tier 2.

The term "some percentage" under Tier 2 is used, because NMFS considered a number of different percentage options under Option 4 (see EA). The threshold between Category I and II fisheries was set at 50 percent of PBR in this proposed rule. NMFS believes that this is a conservative approach, and in its analysis there were few additional fisheries added to Category I as a result of lowering the dividing line from exceeding PBR to 50 percent of PBR (see EA).

Comments on Option 4. Attendees at the Seattle working session supported the concept of basing fishery classification on takes relative to PBR, and the two-tier system that is presented here as Option 4 resulted from that session. At the Silver Spring working session, there was also some support for this approach, but others believed that the criteria should remain as they were under section 114.

Assumptions of Option 4. This two-tiered approach assumes that NMFS has fairly accurate information on both the abundance of a stock (in order to calculate PBR) and the current level of incidental serious injury and mortality due to commercial fishing per year. For some cases, both the estimated fishing mortality and the PBRs of marine mammal stocks incidentally taken in that fishery are known with some degree of confidence. In these cases, fishing mortalities and serious injuries were calculated using data collected by observers. If observer data were not available, fishers' logbooks were used to estimate removal levels. However, it is assumed that logbooks provide only a minimum indication of total removal levels. In cases where the PBR for a stock is unknown, any known or inferred level of removal from that stock by a fishery usually warranted placement of that fishery in Category II so that better information could be collected.

For some fisheries, NMFS must use its best estimate of fishing mortality and serious injury based on inferences from similar fishing techniques, gear used, target species, seasons and areas fished, and species and distribution of marine mammals in the area. This method of inferring levels of removals was also used under regulations to implement section 114. In most of the Category III fisheries for which NMFS has no updated information to support a change in classification, the Category III designation was maintained.

Strengths of Option 4. This approach categorizes fisheries based on their impacts on stocks, thereby prompting take reduction teams to be formed first for those stocks of greatest concern. Option 4 would alleviate the burden of the management program for those fisheries that do not significantly interact with marine mammal stocks (Category III), because Category III vessel owners would not be required to register, pay fees, or take aboard an observer. Option 4 would focus management resources on those commercial fisheries that have impacts to marine mammals that are more than negligible. Furthermore, this approach would allow for the classification of fisheries that have only rare occurrences of serious injuries and mortalities as Category II, if the stock subject to removal has a very low PBR level and could be greatly impacted by even a low level of taking.

Weaknesses of Option 4. This approach does not specifically address fisheries that have a high frequency of marine mammal serious injuries and mortalities across several stocks. These could be classified as either Category I, II, or III depending on the stocks with which they interact. This may affect the prioritization of take reduction team formation, although, eventually, take reduction teams must be formed for marine mammal stocks that have significant incidental interactions with Category I or II fisheries.

Criteria for Categorizing Fisheries

NMFS believes that the 1994 amendments to the MMPA emphasized management of the interaction between commercial fisheries and marine mammals on a stock-specific basis. For this reason, NMFS proposes to use Option 4 (discussed above) and the proposed definitions of frequent, occasional, and remote (proposed § 229.2) were used to classify commercial fisheries. This requires the previous proposed changes to the LOF to be revised and to be reproposed by this notice.

Zero Mortality Rate Goal

NMFS proposes to consider a fishery as having reached the ZMRG when collectively with other fisheries, it is responsible for the annual removal of (1) 10 percent or less of any marine mammal stock's PBR, or (2) more than 10 percent of any marine mammal stock's PBR, yet the fishery by itself is responsible for the annual removal of one percent or less of that stock's PBR (proposed § 229.2).

It is not possible to determine whether a level of mortality to a declining stock of marine mammals is insignificant simply by applying a mechanistic definition such as the one set forth above. Therefore, fisheries that kill or seriously injure declining, depleted, threatened, or endangered stocks of marine mammals would have to be examined separately to determine whether the incidental take is insignificant.

Another option for defining the ZMRG draws from the 1981 amendments to the MMPA that addressed reducing mortality of small cetaceans in the yellow-fin tuna fishery in the Eastern Tropical Pacific Ocean (ETP). In 1981, Congress expressed it was not its intent to shut down the tuna fishery via the MMPA and that the ZMRG could be achieved in that fishery by requiring the use of the best marine mammal safety techniques and equipment that are economically and technologically practicable (H.R. Rep. 228, 97th Cong., 1st Sess. 13 (Sept. 16, 1981)). If a similar rationale were adopted for other fisheries, the following might be an option for defining the ZMRG: "Zero Mortality Rate Goal means the reduction of the annual number of incidental mortalities and serious injuries in each fishery to insignificant levels approaching a zero mortality and serious injury rate; at a minimum, this requires that the rate of incidental mortality and serious injury is at the lowest level that is technologically and economically practicable."

A problem with such an adopting such an approach when implementing section 118 of the MMPA, however, is that, while Congress adopted a "technologically and economically practicable" approach for the ETP yellowfin tuna fishery in 1981, it effectively abandoned that approach in 1984 when it established an annual statutory quota of 20,500 for that fishery. Congress reduced the quota again in 1992 when through the International Dolphin Conservation Act; there, it added a new section 306 to the MMPA in which the quota was reduced to 1000 for 1992, and 800 from January 1, 1993 to March 1, 1994. It also required that, for each year after 1992, dolphin mortality must decrease by a "statistically significant amount." Under these new requirements, the ETP yellowfin tuna fishery was forced to stop fishing in February of 1994 because it was approaching a take of 114 dolphins, which was statistically significantly less than the 115 it took in 1993. These statutory limits on dolphin mortality clearly indicate that, even for the ETP yellowfin tuna fishery, the 1981 approach using "technologically and economically practicable" methods a questionable method of achieving the ZMRG.

Some commenters proposed a definition where "zero equals zero" and believed that fisheries should be required to reduce their incidental mortality and serious injury of marine mammals to zero. There are two main problems with this approach: (1) It does not consider a "rate" of take as required by the ZMRG, and (2) this option could result in severe curtailment or complete cessation of fishing operations, even for fisheries that had only a remote likelihood of marine mammal incidental take.

In the proposed rule, the definition of ZMRG is proposed to be based on 10 percent of PBR. Comments on the preferred definition and the options presented are specifically encouraged.

Commercial Fishing Authorization

As required by the provisions of section 118(c) of the MMPA, under the proposed rule, in order for persons to lawfully take a marine mammal while engaged in a Category I or II fishery, the owner of a vessel or an authorized representative thereof would have to register with NMFS for and obtain an Authorization Certificate and decal, display the decal on the vessel, possess physical evidence of the authorization on the vessel, and report all incidental mortality and injury of marine mammals to NMFS. Vessels engaged in a Category I or II fishery would be required to carry aboard an observer if requested by NMFS. In the case of a nonvessel fishery, the owner of the fishing gear, or an authorized representative thereof, would have to register with NMFS for and obtain an Authorization Certificate and decal and attach the decal to the Authorization Certificate and the Certificate or a copy thereof would have to be in the possession of the person in charge of the fishing operations.

Owners of vessels engaged only in Category III fisheries would not be required to register with NMFS for or obtain an Authorization Certificate or decal to incidentally take marine mammals as a result of their fishing operations; however, they would be required to report all marine mammals incidentally killed or injured. Owners of vessels in Category I or II fisheries would be required to comply with any general regulations, conditions of Authorization Certificates issued to the vessel owner, and emergency or take reduction plan regulations published under the authority of section 118; owners of vessels in Category III fisheries would be required to comply with emergency or take reduction plan regulations and reporting requirements.

As specified in section 118(c)(2)(B) of the MMPA, the authorization for commercial fisheries applies only to U.S. commercial fishing vessels including licensed commercial passenger fishing vessels (e.g., charter and party boats) or to those foreign vessels with valid fishing permits issued under section 204(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson Act). As specified in section 118(a)(3), authorizations under section 118 are not applicable to vessels fishing in the yellowfin tuna purse seine fishery in the eastern tropical Pacific. Although registration of vessels in Category I and II fisheries under the MMPA is necessary to lawfully incidentally take a marine mammal, not registering under the MMPA would not prevent a fisher from fishing. Fishing is governed by a variety of mechanisms such as Federal or state laws and their respective implementing regulations (including regulations implementing regional fishery management plans).

The authorization for commercial fisheries does not apply to Northwest Treaty Tribal fishers exercising treaty rights.

Section 118 of the MMPA does not include authority to incidentally take southern (California) sea otters (*Enhydra lutris nereis*). This subspecies historically ranged along the west coast of the United States, but currently is found only along the central California coast and San Nicolas Island, CA. Section 118 of the MMPA does not supersede or otherwise affect the provisions of Public Law 99–625, governing the translocation of southern sea otters to San Nicolas Island for research and recovery purposes. Within special zones established for this experimental population, certain restrictions on incidental taking under the MMPA do not apply. (See 50 CFR 17.84(d) for a description of these special zones and activities that can be lawfully conducted within these zones.)

Issuance of Authorization Certificates for Category I and II Fisheries

Registration Process

As required by section 118(c) of the MMPA, under the proposed regulations, a vessel owner (or authorized representative) would have to register to obtain an Authorization Certificate and decal for each vessel that will engage in a Category I or II fishery. The initial registration would cover 1996. After that, registrations to renew certificates would be required each calendar year. Those owners of vessels holding valid Exemption Certificates under section 114 would be deemed to have registered under section 118 through December 31, 1995.

Registration forms, outlining the required information, would be available from NMFS (proposed § 229.4(c)). However, if the granting and administration of authorizations is integrated and coordinated with an existing fishery license, registration, or related program operated by an entity other than NMFS, registrations forms will be available from those program offices. A notice will be published in the **Federal Register** indicating where to register and other means will also be used to notify fishers of the change (e.g., MMPA Bulletin, mailings to previously registered fishers, etc).

One registration per vessel would be required and would cover all Category I and II fisheries in which the vessel participates during the calendar year. The registrant would be requested to send the first page of the registration form to one of the NMFS offices listed in proposed section § 229.4; the second page should be retained by the registrant and would serve as an indication of registration until an Authorization Certificate is issued.

For annual renewals, registration forms, containing the information on file with NMFS, would be sent to existing Authorization Certificate holders prior to the beginning of the year. Vessel owners would be required to make any necessary corrections or updates and sign and return the form to NMFS. A signed registration renewal form would have to be submitted to NMFS prior to any incidental taking of a marine mammal by that vessel owner in a Category I or II fishery.

The term "vessel owners" (proposed § 229.2), in addition to owners of commercial fishing vessels, would be defined to include owners of fixed or other fishing gear that is used in a "nonvessel fishery." A "nonvessel fishery" would mean a commercial fishing operation that uses fixed or other fishing gear without a vessel, such as gear used in set gillnet, trap, beach seine, weir, ranch and pen fisheries. Owners of such gear would be subject to the same requirements and restrictions as owners of fishing vessels or fish processing vessels operating in a commercial fishery.

A registration fee may be required to accompany each registration or request for renewal if NMFS is issuing the Authorization Certificates.

Under the legislation, NMFS is authorized to establish a fee to cover the administrative cost of granting Authorization Certificates and renewals, however, the amount that would be required has not been determined at this time. "Vessel owners" in "nonvessel fisheries" may be required to submit one fee to register all gear owned. The fees collected in connection with the authorization system would be available to NMFS to cover the administrative costs and will be determined annually and published in the LOF.

Issuing Procedures

After submission of a completed registration form and the required fee, an Authorization Certificate and a vessel decal or other physical evidence would be issued to the vessel owner for each vessel intending to engage in a Category I or II fishery. The initial Certificate and decal would be valid for calendar year 1996. After that, Certificate renewals and decals would be issued each year after receipt of an updated registration, required fee, and statement (yes/no) regarding whether any marine mammals were incidentally killed or injured during the previous calendar year covering all registered Category I or II fisheries.

Decals or other physical evidence would be required to be displayed as proof of current registration. In those instances where NMFS is successful in incorporating the registration process with existing licensing systems, fishers will be notified of the accepted "physical evidence" requirements.

A replacement decal would be issued, if requested, to replace a lost or damaged decal. In nonvessel fisheries, the decal would have to be affixed to the Certificate. Annual decals would be issued along with the Certificates in subsequent years.

The Authorization Certificate or a copy thereof would have to be on board the vessel while it is operating in a Category I or II fishery, or, in the case of a nonvessel fishery, a copy of the Certificate would have to be in the possession of the person in charge of the fishing operations. A copy of the Certificate would have to be made available upon request to any state or Federal government official authorized to enforce the provisions of the MMPA or to any designated agent of NMFS.

Suspension or Revocation of Authorization Certificates

Under the proposed regulations, NMFS could suspend or revoke a Certificate or deny a Certificate renewal for any vessel if the Certificate holder (1) fails to report as required under proposed § 229.6, or (2) fails to take aboard an observer in a Category I or II fishery as required under proposed § 229.7, if requested. In addition, NMFS could revoke or suspend a Certificate for any vessel that fails to comply with other terms and conditions of the Authorization Certificate or the regulations governing the incidental taking of marine mammals during commercial operations under this section. NMFS could suspend or revoke a Certificate or could deny a Certificate renewal for any vessel which fails to comply with a take reduction plan or emergency regulations under this section. The suspension, revocation or denial could occur without notice or opportunity for hearing in the case of failure to submit required reports. Other actions would be subject to NOAA's civil procedures contained in subpart D of 15 CFR part 904. Previous failure to comply with the requirements of section 114 of the MMPA would not bar authorization under this section for an owner who complies with the requirements of this section.

Requirements for Category III Fisheries

Under section 118(c) of the MMPA and these proposed regulations, owners of vessels engaged only in Category III fisheries are not required to register with NMFS or to obtain an Authorization Certificate to legally incidentally take marine mammals during commercial fishing operations. However, they would be required to report all incidental mortality and injury and make all reasonable efforts to release animals unharmed. Where necessary to address immediate and adverse impacts to marine mammal stocks, NMFS could place observers aboard Category III vessels if there is reason to believe that such vessels may be causing the incidental mortality and serious injury to such a stock.

Reporting Requirements

As required by section 118(e) of the MMPA and the proposed regulations, vessel owners or operators engaged in Category I, II, or III fisheries would have to report all incidental mortality and injury of marine mammals during the course of commercial fishing operations to NMFS Headquarters or appropriate NMFS Regional Office. NMFS proposes to define an "injury" (proposed § 229.2) as a wound or other physical harm. Any animal that requires assistance to escape from entanglement in fishing gear would also be considered injured and would have to be reported.

Reports would have to be submitted by mail or other means such as FAX within 48 hours after the end of each fishing trip during which the incidental mortality or injury occurred. The "end of a fishing trip" (proposed § 229.2) would mean the time of a vessels' return to port after a fishing trip. NMFS would provide a standard postage-paid form and instructions for recording information for this purpose. If a fisher participates in more than one fishery during a single fishing trip, a separate report would be required to be submitted for each such fishery. Report forms would require information on: The fishery, gear type and fish species involved; the marine mammal species (or description of the animal(s) if species is not known), number, date, and location of marine mammal incidental takes and whether an injury or mortality occurred. Failure to report incidental mortality or injury of marine mammals during the course of commercial fishing operations would result in suspension or revocation of the Authorization Certificate and denial of Authorization Certificate renewal requests until the vessel owner complies with reporting requirements of proposed § 229.6 of this part.

Monitoring Program

As required by section 118(d) of the MMPA, NMFS would establish a program to monitor incidental mortality and serious injury of marine mammals during the course of commercial fishing operations. A "serious injury" (proposed § 229.2) would be defined as any injury of a marine mammal during a commercial fishing operation that will likely result in mortality of that marine mammal. The purposes of the monitoring program as specified in section 118(d)(1) of the MMPA are to: (1) Obtain statistically reliable estimates of incidental mortality and serious injury of marine mammals; (2) determine the reliability of reports of incidental mortality and injury of marine mammals obtained from fishers' reports; and (3) identify changes in fishing methods or technology that may increase or decrease incidental mortality or serious injury of marine mammals. The monitoring program would use information from observer programs, fishers' reports, and marine mammal stranding reports.

Observer Program

Section 118(d)(2) authorizes NMFS to place observers aboard vessels, as necessary, to monitor incidental mortality and serious injury of marine mammals during commercial fishing operations for vessels engaged in Category I or II fisheries. Under the proposed regulations, the owner of a vessel engaged in a Category I or II fishery would be required to take aboard an observer if requested by NMFS or a contractor of NMFS, to do so. The extent of observer coverage would be based on the ability to obtain statistically reliable estimates of incidental mortality and serious injury in each individual fishery and could include up to 100 percent observer coverage of a fishery. The specific design of the observer program, including how long an observer would be placed on a particular vessel, would vary among fisheries.

As required by section 118(d)(4), the highest priority for allocating observers among fisheries would be for those commercial fisheries that have incidental mortality or serious injury of marine mammals from stocks listed as endangered or threatened species under the ESA. To the extent practicable, the next highest priority for allocation would be for those commercial fisheries that have incidental mortality and serious injury of marine mammals from strategic stocks. A "strategic stock" is a

marine mammal stock (1) for which the level of human-caused mortality is greater than the potential biological removal, or (2) which is declining and is likely to be listed under the ESA, or (3) which is listed under the ESA, or (4) which is designated as depleted under the MMPA (proposed § 229.2). The "potential biological removal level" (proposed § 229.2) would mean the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimal sustainable population. To the extent practicable, the third highest priority for allocation would be for commercial fisheries that have incidental mortality or serious injury of marine mammals from stocks for which the level of incidental mortality and serious injury relative to the stock size is uncertain.

As required by section 118(d)(3), when determining the distribution of observers among fisheries and vessels within a fishery, NMFS would be guided by the following standards: (1) The requirement to obtain statistically reliable information; (2) the requirement that the assignment of observers be fair and equitable among fisheries and among vessels within a fishery; (3) the requirement that no individual person or vessel, or group of persons or vessels, be subject to excessive or overly burdensome observer coverage; and (4) to the extent practicable, the need to minimize costs and avoid duplication.

Under section 118(d)(6) of the MMPA, NMFS is not required to place an observer on a Category I or II vessel if (1) statistically reliable information can be obtained from observers on processing vessels to which Category I or II harvesting vessels deliver a catch that has not been taken on board the harvesting vessel, (2) the facilities for housing the observer or for carrying out observer functions are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized, or (3) an observer is not available.

The first exception addresses the situation in which Category I or II vessel catcher/harvester boats do not bring the catch on board, but deliver the fish directly to a floating processor on which an observer is placed. For example, observers on foreign vessels in over-the-side joint ventures may satisfy the observer requirements, and observers would not be needed on the catcher/harvester boats.

With respect to whether a vessel is adequate for taking an observer aboard, NMFS would make the necessary determinations on a case-by-case basis. Examples of situations in which observers would not be required or if a vessel is too small to carry (or house) an observer safely, if an observer would displace a crew member, or if fishing gear or the vessel could not be operated safely because of the presence of an observer.

The exception for unavailability of observers would include situations where NMFS may have inadequate funds to cover a full observer program or may not be able to employ or contract for sufficient qualified personnel to fully staff an observer program. To minimize these situations, NMFS would use observers, to the maximum extent possible, placed under other authorities, such as the Magnuson Act, to collect marine mammal interaction information, in addition to their other duties, to fulfill the observer requirements under the MMPA.

Vessel owners, operators, and crew members would be required to cooperate with observers and to provide information, such as vessel location, needed to meet the observers' responsibilities. If feasible and if required by the observer, marine mammals killed during the fishing operation which are readily accessible to crew members would have to be brought on board the vessel for biological processing and could be retained by NMFS. NMFS recognizes that for many smaller vessels, this will not be feasible and, therefore, would not be required. As authorized by section 118(d)(2), observers could, among other tasks (1) record incidental mortality and serious injury, or bycatch of other nontarget species; (2) record numbers of marine mammals sighted; and (3) perform other scientific investigations, including photographing incidental takes.

Although the primary purpose of the observer program is to collect data on incidental take of marine mammals, observers would not be limited to this activity. Regional fishery management councils, states or other Federal agencies could request NMFS to collect other scientific or biological information needed in their resource conservation and management programs, such as fishery resource and sea bird data. NMFS would require the observer to collect the requested additional information unless NMFS found in writing, and after opportunity for public comment, that the collection of the requested information would interfere with the collection of information related to marine mammals.

Pursuant to section 118(d)(7) of the MMPA, NMFS could place an observer aboard a vessel engaged in a Category III fishery with the consent with the vessel owner or pursuant to section 118(g)(1)(C), if NMFS believed that the incidental mortality or serious injury of marine mammals from such fishery may be contributing to the immediate and significant adverse impact of a species or stock listed under the ESA and has prescribed emergency regulations under proposed § 229.9(a)(3). If an observer was placed on a vessel engaged in a Category III fishery, the vessel owner, operator, and crew members would have to comply with the requirements under § 229.9(e).

NMFS, in coordination with Federal and state scientists and personnel experienced in fishery observer programs, is designing its observer program to obtain statistically reliable information on the species and number of marine mammals incidentally killed or seriously injured in as many Category I and II fisheries as possible. The level of observer coverage and whether an alternative program would be used would be determined for each Category I and II fishery. These determinations would be based on the size and nature of each fishery and on the resources available for these programs. NMFS will try to make the best use of available resources by using existing research programs, programs operated by the states or other authorities, or alternative programs where statistically reliable information can be obtained at lower cost.

Alternative Observer Program

As authorized by section 118(d)(5) of the MMPA, if observers could not be placed on Category I or II vessels at the necessary level, NMFS could establish an alternative observer program to provide statistically reliable information on the species and number of marine mammals incidentally killed or seriously injured in the course of commercial fishing operations. The alternative observer program could include, but would not be limited to, direct observation of fishing activities from vessels, airplanes, or points on shore. Provided sufficient resources were available, an alternative program could also be established in any fishery for which reliable information was not otherwise obtainable.

Stranding Information

The NMFS may use marine mammal stranding data to monitor incidental mortality and serious injury of marine mammals from commercial fishing operations to supplement the information obtained from the observer program and fishers' reports. Intentional Taking of Marine Mammals

Section 118(a)(5) of the MMPA prohibits the intentional lethal take of any marine mammal in the course of commercial fishing operations in Category I, II, or III fisheries except as proved by section 101(c), which authorizes takings, including intentional lethal takings, if imminently necessary in self-defense or to save the life of a person in immediate danger and such taking is reported to NMFS within 48 hours. On February 1, 1995, NMFS published a final rule implementing this section of the MMPA (60 FR 6036). That rule, which became effective on March 3, 1995, requires that a report be made to the appropriate NMFS Regional Office within 48 hours if a marine mammal is killed by a fisher or a member of the general public in self-defense or in order to save the life of another person. If a report is not submitted, the person responsible for the take, whether a fisher or a member of the general public, will be subject to the penalties which have been authorized by the MMPA for illegal takes. This proposed rule incorporates the provisions of that final rule and would supersede it.

When necessary to deter a marine mammal from damaging gear, catch, or private property, or from endangering personal safety, fishers in Category I, II, or III fisheries may do so provided they follow the guidelines for safely deterring marine mammals found at proposed 50 CFR § 216.29(c) and do not use any measures prohibited under proposed 50 CFR 216.29(d). These sections were proposed on May 5, 1995 (60 FR 22345) and are subject to change based on the comments received.

Definitions of Incidental Taking and Incidental Mortality

The proposed definition of incidental, but not intentional, take is the nonintentional or accidental taking of a marine mammal that results from, but is not the purpose of, carrying out an otherwise lawful action. The proposed definition of incidental mortality is the non-intentional or accidental death of a marine mammal that results from, but is not the purpose of, carrying out an otherwise lawful action. The phrase "incidental, but not intentional" is intended to mean accidental taking. The words 'not intentional' should not be read to mean that persons who 'know' that there is some possibility of taking marine mammals incidental to commercial fishing operations or other specified activities are precluded from doing so.

Prohibition on Discarding Fishing Gear

Proposed section 229.3(f) would prohibit the discarding of fishing gear at sea. The ingestion of, or entanglement in, discarded fishing gear by marine mammals often causes them serious injury or mortality. It is not necessary for the conduct of fishing operations to discard fishing gear at sea. Gear can be stowed and safely discarded in port. Accordingly, it is proposed to prohibit the discard of fishing gear at sea, because such discards are not necessary to fishing operations and prohibiting such discards would decrease the number of serious injuries and mortalities to marine mammals caused by fishing operations consistent with the ZMRG.

Publication of List of Fisheries

Section 118(c) of the MMPA requires NMFS to publish a LOF, along with the marine mammals and number of vessels or persons involved in each such fishery, for those fisheries that have:

Category I: A frequent incidental mortality and serious injury of marine mammals;

Category II: An occasional incidental mortality and serious injury of marine mammals; or

Category III: A remote likelihood, or no known incidental mortality or serious injury of marine mammals.

A notice proposing revisions to the last LOF would be published in the **Federal Register** on or about July 1 of each year for the purpose of receiving public comment. A final LOF would be published on or about October 1 of each year which would become effective January 1 of the next calendar year. The proposed and final LOF would be developed according to the definitions for Category I, II, and III fisheries under § 229.2. Each LOF would list the marine mammals that interact with the fisheries, the approximate number of vessels or persons actively involved in each fishery, and would set forth the registration fee. A revised LOF may be published at any time after notice and opportunity for public comment.

Proposed List of Fisheries

The proposed regulations would establish the following fishery classification criteria:

Tier 1: If the annual mortality and serious injury across all fisheries that interact with a stock is less than or equal to 10 percent of the PBR of such a stock, then all fisheries interacting with this stock (and no other stocks that do not fit this criteria) would be placed in Category III. Otherwise, these fisheries are subject to the next tier to determine their classification.

Tier 2—Category I: Annual mortality and serious injury of a stock in a given fishery is greater than or equal to 50 percent of PBR.

Category II: Annual mortality and serious injury is greater than 1 percent and less than 50 percent of PBR.

Category III: Annual mortality and serious injury is less than or equal to 1 percent of PBR.

These criteria and information on commercial fisheries were used to develop the proposed LOF contained in this notice based on the following prioritization scheme:

1. Observer data extrapolated to estimate a total annual kill for that fishery was used where available, after which the proposed classification criteria were applied for Category I, II and III fisheries in order to classify the fisheries. The source of the observer data is provided in the description of how the fishery was classified.

2. Logbook data were used if observer data was unavailable. Only those animals recorded as "injured in gear" and "killed in gear" were included. Those animals harassed, injured, or killed by deterrence were not included in the data used to categorize the fisheries. Logbook data were summarized from the F/PR database. An estimated total annual kill is not calculated; fisheries are categorized based on the reported injuries and mortalities. When logbook data were questionable, the NMFS evaluated the reliability of the data.

3. When neither observer data nor logbook data were available, fisher's reports of marine mammal takes were used to classify the fisheries.

4. Evidence of fishery interactions can sometimes be gleaned by examination of stranded marine mammals. When the cause of death of a particular stranded marine mammal could be attributed to a specific fishery, this information was used to classify some fisheries.

5. If no information was available on which to base the classification of a particular fishery, the fishery was classified based on analogy with other fisheries occurring in similar locations or having similar gear types or methods for which observer or logbook information exists. When classifying fisheries, analogies were not made to fisheries which were classified based on fisher's reports or stranding data.

6. If available information is deemed by NMFS to be highly questionable, the fishery may be categorized based on the best information available, which includes but is not limited to historical patterns of marine mammal takes and expected magnitude of takes resulting from changes in fishery effort.

Justification for Categorization of Commercial Fisheries

The following are justifications for the proposed categorization of commercial fisheries into Category I, II, or III based on the proposed classification scheme. Justifications are presented for only those fisheries proposed to be placed in Category I or II and those fisheries in Category III for which observer, logbook, stranding or other information exist. Unless otherwise specified, fisheries classified into Category I or II have passed the Tier I criteria; thus, most justifications for placing fisheries detail only the information used to classify the fishery under the Tier 2 criteria. Tables 1 and 2 presents the proposed LOF.

Commercial Fisheries in the Pacific Ocean

Category I

California angel shark/halibut and other species large mesh (greater than 3.5 in) set gill net fishery. For the purpose of the 1994 LOF, this fishery was included with the California drift gillnet fishery under the general fishery definition "California set and drift gillnet fisheries that use a stretched mesh size of greater than 3.5 inches". This fishery was renamed in order to remain consistent with the name under which observer data is collected and because the name is more descriptive of the fishery.

This fishery is proposed to be placed in Category I, because observer data averaged across the years 1991 to 1993 indicate that the annual take of the central Californian stock of harbor porpoise (31 animals) is 91 percent of the PBR for this stock (34 animals).

California, Oregon thresher shark/swordfish/blue shark (blue shark in Oregon only) drift gill net fishery. This fishery was included with the California angel shark/halibut set gillnet fishery in the 1994 LOF and was called the "California set and drift gillnet fisheries that use a stretched mesh size of greater than 3.5 inches". This fishery was renamed to be more specific and to include the northward expansion of the fishery into Oregon and a possible future expansion into Washington. Observer data collected in the fishery both in California and in Oregon indicates that the incidental take of marine mammals occurs throughout the fishery. In addition, observer data collected in the late 1980's during an experimental shark fishery in Oregon and Washington using comparable gear also showed incidental takes of marine mammals for the fishery at that time (Stick and Hreha, 1989).

This fishery is proposed to be placed in Category I, because observer data provided by the NMFS Southwest Fisheries Science Center averaged across the years 1991 to 1993 indicate that the annual take of the Pacific sperm whale stock (15 animals) is greater than the PBR for this stock (1 animal).

Category II

Alaska Prince William Sound salmon drift gillnet. Categorization of this fishery is based on observer data. The Prince William Sound drift gillnet (Eshamy, Coghill and Unawik districts) and Copper River and Bering River salmon drift gillnet are combined in this fishery. Because total known harbor porpoise mortality and serious injury levels across all fisheries exceed 10 percent of the stock's PBR, and the known harbor porpoise mortality and serious injury level for this fishery is 20 animals per year (8.1 percent of PBR), this fishery is proposed to be placed in Category II.

Alaska Peninsula/Aleutians salmon drift gillnet fishery. Categorization of this fishery is based on observer data. The South Unimak (including False Pass and Unimak Pass) drift gillnet and the Alaska Peninsula (other than South Unimak) drift gillnet fisheries are combined in this fishery. Although total known Dall's porpoise mortality and serious injury levels across all fisheries do not exceed 10 percent of the stock's PBR with currently available information, low levels of observer coverage across all fisheries have been inadequate to determine mortality and serious injury levels across all fisheries for this stock, and available data suggest that levels of mortality and serious injury may exceed 10 percent of this stock's PBR if observer information were available. This, combined with the fact that known Dall's porpoise mortality and serious injury level of 28/year (1.8 percent of PBR) suggests that this fishery should be placed in Category II.

Southeast Alaska salmon drift gillnet fishery. Categorization of this fishery is based on observer and strandings data. Because total known humpback whale and harbor porpoise mortality and serious injury levels across all fisheries exceed 10 percent of each stock's PBR, and the known harbor porpoise mortality and serious injury level for this fishery is 3 animals per year (1.3 percent of PBR) and humpback mortality and serious injury level for this fishery is 0.13 animals per year (4.6 percent of PBR), this fishery is proposed to be placed in Category II.

Alaska Cook Inlet salmon drift gillnet. Categorization of this fishery is based on logbook data. Although total known marine mammal mortality and serious injury levels across all fisheries do not exceed 10 percent of each stock's PBR with currently available information for those species known to be taken in this fishery, low levels of observer coverage across all fisheries have been inadequate to determine mortality and serious injury levels across all fisheries for these stocks, and available data suggest that levels of mortality and serious injury may exceed 10 percent of each stock's PBR if observer information were available. Similarly, low levels of marine mammals have been documented for this fishery, and available data suggest that levels of marine mammal mortality and serious injury in this fishery are expected to be similar to levels of other drift gillnet fisheries which interact with similar marine mammals species if observer data were available. Therefore, this fishery is proposed to be placed in Category II.

Alaska Yakutat salmon set gillnet fishery. Categorization of this fishery is based on logbook data. Although total known harbor porpoise mortality and serious injury levels across all fisheries do not exceed 10 percent of this stock's PBR with currently available information, low levels of observer coverage across all fisheries have been inadequate to determine mortality and serious injury levels across all fisheries for this stock, and available data suggest that levels of mortality and serious injury may exceed 10 percent of this stock's PBR if observer information were available. This, combined with the fact that known harbor seal mortality and serious injury level of 30/year (1.5 percent of PBR) suggests that this fishery should be placed in Category II.

Alaska Cook Inlet salmon set gillnet. Categorization of this fishery is based on logbook data. Although total known marine mammal mortality and serious injury levels across all fisheries do not exceed 10 percent of each stock's PBR with currently available information for those species known to be taken in this fishery, low levels of observer coverage across all fisheries has not been at a level high enough to accurately determine mortality and serious injury levels across all fisheries for these stocks, and available data suggest that levels of mortality and serious injury may exceed 10 percent of each stock's PBR if observer information were available, especially for harbor porpoise. Similarly, low levels of marine mammals have been documented for this fishery, and available data suggest that levels of marine mammal mortality and serious injury in this fishery would be expected to be similar to levels of other set gillnet fisheries which interact with similar marine mammals species if observer data were available. Therefore, this fishery is proposed to be placed in Category II.

Alaska Kodiak salmon set gillnet. Categorization of this fishery is based on logbook data. Because total known harbor porpoise mortality and serious injury levels across all fisheries exceed 10 percent of this stock's PBR, and the known harbor porpoise mortality and serious injury level for this fishery is 4 animals per year (1.6 percent of PBR), this fishery is proposed to be placed in Category II.

Alaska Peninsula/Aleutians salmon set gillnet (includes Atka and Amlia Islands). Categorization of this fishery is based on logbook data. Although total known marine mammal mortality and serious injury levels across all fisheries do not exceed 10 percent of each stock's PBR with currently available information for those species known to be taken in this fishery, low levels of observer coverage across all fisheries have been inadequate to determine mortality and serious injury levels across all fisheries for these stocks, and available data suggest that levels of mortality and serious injury may exceed 10 percent of each stock's PBR if observer information were available, especially for harbor porpoise. Similarly, though low levels of marine mammal mortalities and serious injuries have been documented for this fishery, available data suggest that levels of mortality and serious injury in this fishery would be expected to be similar to levels of other set gillnet fisheries which interact with similar marine mammals species if observer data were available. Therefore, this fishery is proposed to be placed in Category II.

Alaska Bristol Bay salmon drift gillnet. Categorization of this fishery is based on logbook data. Although total known marine mammal mortality and serious injury levels across all fisheries do not exceed 10 percent of each stock's PBR with currently available information for those species known to be taken in this fishery, low levels of observer coverage across all fisheries have been inadequate to determine mortality and serious injury levels across all fisheries for these stocks, and available data suggest that levels of mortality and serious injury may exceed 10 percent of each stock's PBR if observer information were available, especially for harbor porpoise, harbor seals and Steller sea lions. Similarly, though low levels of marine mammal mortalities and serious injuries have been documented for this fishery, available data suggest that levels of mortality and serious injury in this fishery would be expected to be similar to levels of other set gillnet fisheries which interact with similar marine mammals species if observer data were available. Therefore, this fishery is proposed to be placed in Category II.

Alaska Bristol Bay salmon set gillnet. Categorization of this fishery is based on information from logbooks. This fishery is proposed to be placed in Category II based on an occasional take of marine mammals (0.5 Bristol Bay stock of beluga whales per year). Because the take relative to PBR is 2 percent, which is greater than 1 percent and less than 50 percent, this fishery is proposed to be placed in Category II.

Alaska Metlakatla/Annette Island salmon drift gillnet. This fishery is separated from the Southeast drift gillnet fishery only for purposes of registration. It is a tribal fishery and is thus exempt from the registration fee. For categorization purposes, it is considered the same as the Southeast drift gillnet fishery and is thus proposed to be placed in Category II.

Washington Puget Sound Region salmon drift gillnet fishery (includes inland waters south of U.S.-Canada border and eastward of the Bonilla-Tatoosh line—Treaty Indian fishing is excluded). The name of this fishery has been modified from the name in the 1994 LOF in order to exclude set gillnet gear and commercial steelhead fishing since these fisheries are conducted only by treaty Indian fishers. Also, the name change clarifies that the regulations governing incidental take of marine mammals in fisheries do not apply to tribal members exercising treaty Indian fishing rights.

Categorization of this fishery is based on information from observer programs and logbooks. This fishery experiences an occasional take of marine mammals (50 harbor seals from the Washington inland waters stock were reported in logbooks each year). Because the take relative to PBR is 6 percent, which is greater than 1 percent and less than 50 percent, this fishery is proposed to be placed in Category II. The observer programs conducted in 1993 and 1994 documented a few incidental takes of harbor seals, harbor porpoise and Dall's porpoise; however, the extrapolated estimates of take for the non-Indian fishery are not yet available.

California anchovy, mackerel, tuna purse seine. Categorization of this fishery is based on information from logbooks. This fishery experiences an occasional take of marine mammals (0.33 bottlenose dolphins per year). Because the take relative to PBR is 2 percent, which is greater than 1 percent and less than 50 percent, this fishery is proposed to be placed in Category II.

Alaska Southeast salmon purse seine. This fishery was included under the general title "Alaska salmon/herring beach and purse seine" in the 1994 LOF. Categorization of this fishery is based on Category III reports. Because total known humpback whale mortality and serious injury levels across all fisheries exceed 10 percent of this stock's PBR, and the known humpback whale mortality and serious injury level for this fishery is 0.4 animals per year (14.3 percent of PBR), this fishery is proposed to be placed in Category II.

Alaska Bering Sea and Aleutian Islands groundfish trawl. Categorization of this fishery is based on observer data. Because total known killer whale mortality and serious injury levels across all fisheries exceed 10 percent of this stock's PBR, and the known killer whale mortality and serious injury level for this fishery is 1 animal (0.8 animals) per year (8 percent of PBR), this fishery is proposed to be placed in Category II.

Alaska pair trawl—new fishery. Because this is a new fishery to the region, no information is available to make a determination on expected levels of marine mammal mortalities and serious injuries in this fishery. Analogy cannot be drawn with the Atlantic tuna swordfish pair trawl, as target species and marine mammal species it might interact with are too dissimilar. However, because this is a new fishery for which no information is available, this fishery is proposed to be placed in Category II.

Oregon swordfish/blue shark surface longline fishery—new fishery. Categorization of this fishery is based on analogy with observed pelagic longline fisheries in the Atlantic Ocean. Based on observer data, the Atlantic Ocean pelagic longline fishery for swordfish and tuna have at least an occasional incidental serious injury and mortality of marine mammals. Accordingly, this fishery is proposed to be placed in Category II.

Alaska southern Bering Sea, Aleutian Islands, and Western Gulf of Alaska sablefish longline/set line (federally regulated waters). The name of this fishery has been modified from the 1994 LOF name to specify that this fishery occurs in Federal waters. Categorization of this fishery is based on observer data. Because total known killer whale mortality and serious injury levels across all fisheries exceed 10 percent of this stock's PBR, and the known killer whale mortality and serious injury level for this fishery is 0.25 animals per year (2.5 percent of PBR), this fishery is proposed to remain in Category II.

Category III

Alaska Kuskokwim, Yukon, Norton Sound, Kotzebue salmon set/drift gillnet. The name of this fishery has been changed from the 1994 LOF designation "Alaska Kuskokwim/Yukon/Norton Sound/Kotzebue salmon gillnets" to specify that both set and drift gillnets are used in this fishery. Although this fishery is expected to have occasional interactions with marine mammals, interactions usually result in directed takes for subsistence purposes. Therefore, this fishery is proposed to remain in Category III.

Alaska state waters sablefish longline/set line. This fishery is classified based on logbook data from the Alaska Prince William Sound longline/set line fishery. The fishery description has been expanded from the 1994 LOF to include all sablefish longline/set line fisheries in Alaska state waters. There were no records of incidental takes in logbook reports from this fishery. This fishery is proposed to be reclassified into Category III from Category II based on the prohibition of intentional lethal takes.

Alaska Prince William Sound set gill net. Categorization of this fishery is based on observer data. Because marine mammal mortality and serious injury levels approaching 1 percent of any stocks' PBR are not expected, this fishery is proposed to be reclassified from Category II to Category III.

Washington Willapa Bay salmon drift gillnet. This fishery is classified based on observer data extrapolated to estimate the total annual kill. There were no incidental serious injuries or mortalities in the Willapa Bay fishery in 1991 or 1992; thus, the fishery is proposed to remain in Category III.

Washington Grays Harbor (includes rivers, estuaries, etc.) drift gillnet. This fishery is classified based on observer data extrapolated to estimate the total annual kill. There is a low level of incidental mortality and serious injury of harbor seals in this fishery (under 1 percent of PBR). This fishery is proposed to be placed in Category III.

Washington, Oregon lower Columbia River (includes tributaries) drift gillnet. Categorization of this fishery is based on data from observer programs and current and anticipated future low fishing effort in the winter fishing season. During 3 years of observations in this fishery with observer coverage averaging from 3.0 percent to 9.5 percent each year, all but one of the observed harbor seal mortalities were documented in the winter season. The extrapolated annual mortality of harbor seals in this fishery from 1991 to 1993 was 233 seals in 1991 (all during the winter season), 192 seals in 1992 (180 in the winter season and 12 in the fall), and 11 seals in 1993 (all during the winter season). Although the estimated annual takes of harbor seals in 1991 and 1992 could justify placing this fishery in Category II, reduced fishing seasons in recent years and reduced fishing effort (due to restrictions on the fishery to minimize impacts on ESA listed Snake River chinook salmon) are unlikely to result in the levels of harbor seal mortality observed in 1991 and 1992. The winter season of 1993, when an estimated total of only 11 harbor seals were taken, was restricted due to ESA considerations and resulted in chinook landings of 446 fish in 1993 in contrast with landings of 2,692 fish in 1991 and 1,537 landings in 1992. The winter season was closed in 1994. Therefore, this fishery is proposed to be placed in Category III.

Alaska miscellaneous finfish set gillnet. This fishery description has been changed from the definition "Alaska gillnet (except salmon, herring, and sunken gill nets for groundfish)" used under the 1994 LOF to correlate with the State of Alaska name for this fishery. This fishery is categorized based on logbook data. This fishery is proposed to be moved from Category II to Category III based on an infrequent take of marine mammals (under two unidentified pinnipeds and unidentified species are taken per year).

Alaska salmon purse seine. This fishery used to be called the "Alaska salmon/herring beach and purse seine" fishery and the "Alaska South Unimak (False Pass and Unimak Pass) salmon purse seine" fishery under the 1994 LOF. This proposed fishery description includes all salmon purse seine fisheries in Alaska except for the Alaska Southeast salmon purse seine fishery. Because mortality and serious injuries of marine mammals are not expected for this fishery, it is proposed to be placed in Category III.

California/Oregon/Washington salmon troll. The name of this fishery has been changed from that used in the 1994 LOF, because it is managed as one fishery and the intentional lethal take prohibition will reduce the level of take to very low levels. The previous division of the fishery into the "Washington, Oregon north of 45°46' (Cape Falcon) salmon troll" and the "California, Oregon south of 45°46' (Cape Falcon) salmon troll" was based on differences in intentional lethal take rates between the northern and southern portions of the fishery. In this fishery, lethal deterrence, which is now prohibited, was the predominant source of mortality to marine mammals. As lethal deterrence is illegal and expected to no longer be a source of mortality for marine mammals, it is proposed to reclassify this fishery from Category II to Category III.

Alaska salmon troll. Categorization of this fishery is based on logbook data from 1990. Known Steller sea lion mortalities and serious injuries for this fishery do not exceed 1 percent of the stock's PBR and current information does not indicate that this level is likely to exceed 1 percent. Thus, this fishery is proposed to be placed in Category III.

California herring purse seine. This fishery is categorized based on logbook data. This fishery is proposed to be placed in Category III due to an infrequent take of marine mammals (all marine mammal takes are at a level less than 1 percent of PBR).

California sardine purse seine. This fishery is categorized based on logbook data. This fishery is proposed to be placed in Category III due to an infrequent take of marine mammals (no marine mammal takes have been recorded in logbooks).

California squid purse seine. This fishery is categorized based on logbook data. This fishery is proposed to be placed in Category III due to an infrequent take of marine mammals (California sea lion takes are at a level less than 1 percent of PBR).

Alaska Metlakatla fish trap. No marine mammal mortalities or serious injuries have been recorded for this fishery. Therefore, this fishery is proposed to be placed in Category III.

California squid dip net. This fishery is categorized based on logbook data. This fishery is proposed to be placed in Category III due to an infrequent take of marine mammals (no marine mammal takes have been recorded in logbooks).

Washington, Oregon salmon net pens. This fishery is categorized based on logbook data. This fishery is proposed to be placed in Category III due to an infrequent take of marine mammals (California sea lion takes are at a level less than 1 percent of the PBR).

Oregon salmon ranch. This fishery is categorized based on logbook data. This fishery is proposed to be placed in Category III due to an infrequent take of marine mammals (no marine mammal takes have been recorded in logbooks).

Miscellaneous finfish/groundfish longline/set line. This fishery is renamed from the 1994 LOF designation "Alaska groundfish long line/set line (except sablefish in the Bering Sea-Aleutian Islands/Gulf of Alaska)" to correspond with the fishery name as specified in the State of Alaska records and to include both miscellaneous finfish and groundfish (rockfish). This fishery is classified based on observer data. This fishery is proposed to remain in Category III due to an infrequent take of marine mammals (all incidental takes are at a level less than 1 percent of the PBR).

Hawaii swordfish, tuna, billfish, mahi mahi, wahoo, oceanic sharks longline/set line. Categorization of this fishery is based on observer data. Because there have been no records of incidental serious injury and mortality of marine mammals, this fishery is proposed to remain in Category III.

Alaska Gulf of Alaska groundfish trawl. This fishery is classified based on extrapolations from observer data. This fishery is proposed to remain in Category III due to an infrequent take of marine mammals (all incidental takes are at a level less than 1 percent of the PBR).

Alaska roe herring and food/bait herring gillnet. The name of this fishery has been modified from "Alaska herring gill net" in the 1994 LOF to include two different fisheries on herring. Alaska roe herring and food/bait herring purse seine. This fishery is renamed from the 1994 LOF designation of "Alaska salmon/herring beach or purse seine" to separate out the two target species and gear types.

Alaska roe herring and food/bait herring beach seine. This fishery is renamed from the 1994 LOF designation of "Alaska salmon/herring beach or purse seine" to separate out the two target species and gear types.

Washington, Oregon, California albacore, groundfish, bottom fish, California halibut nonsalmonid troll fisheries. This fishery is renamed from the 1994 LOF designation of "Alaska North Pacific halibut, Alaska bottom fish, Washington, Oregon, California albacore, groundfish, bottom fish, California halibut nonsalmonid troll fisheries" to separate the Alaska fisheries from the fisheries of other states.

Alaska halibut longline/set line (state and Federal waters). This fishery is renamed from the 1994 LOF designation of "Alaska, Washington, Oregon North Pacific halibut longline/set line" to separate the Alaska fisheries from the fisheries of other states. Washington, Oregon North Pacific halibut longline/set line. This fishery is renamed from the 1994 LOF designation of "Alaska, Washington, Oregon North Pacific halibut longline/set line" to separate the Alaska fisheries from the fisheries of other states. Alaska miscellaneous finfish purse seine. This fishery is renamed from the 1994 LOF designation of "Alaska other finfish beach or purse seine" to separate the beach and purse seine fisheries.

Alaska miscellaneous finfish beach seine. This fishery is renamed from the 1994 LOF designation of "Alaska other finfish beach or purse seine" to separate the beach and purse seine fisheries.

Washington, Oregon, California shrimp trawl. This fishery is renamed from the 1994 LOF designation of "Alaska, Washington, Oregon shrimp trawl" to separate the Alaska fisheries from the fisheries of other states.

Alaska shrimp otter trawl and beam trawl (statewide; includes Cook Inlet). This fishery is renamed from the 1994 LOF designation of "Alaska, Washington, Oregon shrimp trawl" to separate the Alaska fisheries from the fisheries of other states.

Alaska miscellaneous finfish otter and beam trawl—new fishery. This is proposed to be a new fishery to the LOF.

Alaska crustacean/octopus/squid pot. This fishery is renamed from the 1994 LOF designation of "Alaska shellfish pot" to more accurately describe this fishery. This fishery includes the crab pot fisheries, the shrimp pot fisheries, and the octopus/squid pot fisheries.

Oregon developmental fishery bottom longline/set line—new fishery. This fishery is classified based on analogy to other bottom longline/setline fisheries such as the Alaska sablefish longline fishery. This fishery is considered separate from the Oregon developmental longline fishery for shark/swordfish, which is classified into Category II based on analogy with surface longline fisheries for similar species in the Atlantic Ocean. Oregon developmental fishery round haul (purse seine and lampara) beach seine and throw net. This fishery is proposed to be classified in Category III based on analogy with similar fisheries in the Pacific Ocean. This fishery may target any or all of the following: Pacific sardine or saury, whitebait, eulachon, night smelt, longfin smelt, surf smelt, sandfish, pomfret, and slender sole.

Oregon developmental fishery trawl—new fishery. This fishery is proposed to be classified in Category III based on analogy with similar fisheries in the Pacific Ocean. This fishery may target any or all of the following: Pacific sardine or saury, whitebait, eulachon, night smelt, longfin smelt, surf smelt, sandfish, pomfret, and slender sole.

Oregon developmental fishery pots, ring nets, and traps—new fishery. This fishery is proposed to be classified in Category III based on analogy with similar fisheries in the Pacific Ocean. This fishery may target any or all of the following: Pacific sardine or saury, whitebait, eulachon, night smelt, longfin smelt, surf smelt, sandfish, pomfret, and slender sole.

Oregon developmental fishery handline and jig—new fishery. This fishery is proposed to be classified in Category III based on analogy with similar fisheries in the Pacific Ocean. This fishery may target any or all of the following: Pacific sardine or saury, whitebait, eulachon, night smelt, longfin smelt, surf smelt, sandfish, pomfret, and slender sole.

Oregon developmental fishery dive, hand, mechanical collection—new fishery. This fishery is proposed to be classified in Category III based on analogy with similar fisheries in the Pacific Ocean. This fishery may target any or all of the following: Pacific sardine or saury, whitebait, eulachon, night smelt, longfin smelt, surf smelt, sandfish, pomfret, and slender sole.

New Pacific Fisheries

The following fisheries are new Pacific fisheries proposed to be placed in Category III, because they are expected to have a remote likelihood of incidental serious injury or mortality of marine mammals:

California bait pen
California finfish and shellfish live trap/hook-and-line
Alaska spawn-on-kelp empoundment
California salmon enhancement rearing pen
Oregon shrimp trawl
Alaska octopus/squid purse seine
Alaska octopus/squid handline
Alaska octopus/squid longline
Alaska octopus/squid other gear

Fisheries Removed From the LOF

The following fisheries have been removed from the proposed LOF:

Northern Washington coastal (area 4 and 4A) salmon set gillnet. This fishery has been removed from the proposed LOF, because it is a fishery conducted by a Northwest Treaty Tribe. The provisions of 50 CFR part 229, including the LOF, do not apply to Northwest treaty Indian tribal members exercising treaty fishing rights.

Washington coastal river set gillnet. This fishery has been removed from the proposed LOF, because it is a fishery conducted by a Northwest Treaty Tribe. The provisions of part 229, including the LOF, do not apply to Northwest treaty Indian tribal members exercising treaty fishing rights.

Washington tribal ranch. This fishery has been removed from the proposed LOF, because it is a fishery conducted by a Northwest Treaty Tribe. The provisions of part 229, including the LOF, do not apply to Northwest treaty Indian tribal members exercising treaty fishing rights.

Washington Puget Sound region and inland waters south of the U.S.-Canada border, including the Strait of Juan de Fuca, Hood Canal and estuaries and lower river areas (subject to tidal action) set and drift gillnet. The name of this fishery has been modified from the name in the 1994 LOF in order to exclude set gillnet gear and commercial steelhead fishing since these fisheries are conducted only by treaty Indian fishers. The provisions of part 229, including the LOF, do not apply to Northwest treaty Indian tribal members exercising treaty fishing rights.

California Klamath River gill net. This fishery is proposed for removal from the LOF, because no commercial fishing has been conducted in recent years.

Washington, Oregon Upper Columbia River Basin (above Bonneville Dam) salmon and other finfish gillnet. This fishery is proposed to be removed from the LOF, because no marine mammals are expected to be encountered.

Other fisheries. There are many fisheries in Category III that were not mentioned above. Because no additional information is available that warrants reclassification for these fisheries, they are proposed to remain in Category III. Commercial Fisheries in the Atlantic Ocean and the Gulf of Mexico

Category I

Atlantic Ocean, Caribbean, Gulf of Mexico swordfish, tuna, shark pair trawl. This fishery was classified based on observer data. This fishery is proposed to be placed in Category I, because the annual estimated take of common dolphins (an average of 1992 and 1993 data was used) is equal to the PBR for this stock (PBR = 33). In addition, the annual estimated take of the offshore stock of bottlenose dolphin (79 animals) is 95 percent of PBR (83).

Atlantic Ocean, Caribbean, Gulf of Mexico swordfish, tuna, shark drift gill net. This fishery was classified based on observer data. This fishery was placed in Category I, because the annual estimated takes of common dolphins (424 animals), pilot whales (61 animals), spotted dolphins (23 animals), right whales (1 animal) and sperm whales (1 animal) exceed the PBRs for these stocks.

New England multispecies sink gill net. This fishery is directed primarily towards species covered by the Multispecies Fishery Management Plan and spiny dogfish. It was classified based on observer data. This fishery is proposed to remain in Category I, because the annual estimated take of harbor porpoise (an average of 1,300 animals for 1992 and 1993; average of 1,875 animals for 1990–93) exceeds the PBR for this stock (403 animals).

Gulf of Maine small pelagics. This fishery has been directed towards small pelagics including mackerel and herring, primarily for bait. Although there has been little or no effort in this fishery in recent years, this fishery is proposed to be retained in Category I, because there is no information currently available to place this fishery in a different category.

Atlantic Ocean, Caribbean, Gulf of Mexico tuna, shark, swordfish longline. This fishery was classified based on observer data. In 1994, this fishery was classified in Category II based on the classification system in section 114. Based on the proposed fishery classification criteria, this fishery is proposed to be placed in Category I, because the annual estimated take of pilot whales (26 animals) is at least 93 percent of the PBR (between 4 and 28 animals), an amount greater than the lower threshold for classification as a Category I fishery, this fishery is proposed to be placed in Category I.

Category II

U.S. Mid-Atlantic coastal gillnet. This fishery was categorized based on stranding information curated by the NMFS Northeast and Southeast Regions. The NMFS Northeast Fisheries Science Center has been focusing observer effort on this fishery from 1993 to the present but has not recorded any interactions. Classification of this fishery is based on the necropsy results of the harbor porpoise stranded in the mid-Atlantic in 1993–94. Of the 68 animals examined, 41 (59 percent) were in good enough condition to be evaluated as to whether or not they had been involved in a human interaction. Twenty-one of the 41 (51 percent) exhibited no signs of human interaction, and 19 (46 percent) were evaluated as having been involved in human interaction, based in each case on the presence of net marks. Therefore, approximately half of the stranded harbor porpoise in that area showed signs of having been involved in human interaction believed to be some kind of net gear. The average annual take of harbor porpoise in this fishery is then calculated at a minimum of ten animals, which is 2.5 percent of PBR. Because the annual take is between 1 percent and 50 percent of the PBR, this fishery is proposed to be placed in Category II.

U.S. South Atlantic shark gillnet fishery. Categorization of this fishery is based on a Category III report from a limited observer program. In 1992, one bottlenose dolphin was captured in this fishery. No takes were observed in 1993. This fishery is proposed to be placed in Category II, because the annual take of the Western North Atlantic coastal bottlenose dolphin averaged over 1992 and 1993 is between 1 percent and 50 percent of the PBR (25 animals).

Atlantic mid-water trawl fishery. This fishery is directed towards species included in the Atlantic Mackerel, Squid and Butterfish Fishery Management Plan and other species. This fishery is proposed to be renamed and would include the 1994 LOF descriptions "Mid-Atlantic squid trawl" and "Mid-Atlantic mackerel trawl". The fishery is renamed, because the gear type and probability for interactions is similar for these mid-water trawl fisheries.

Categorization of this fishery is based on logbook data. Observer data exist for this fishery but are not currently available. In 1994, this fishery was classified in Category III based on the section 114 classification system. Based on the proposed fishery classification criteria, this fishery is proposed to be placed in Category II, because the annual take of pilot whales is between 1 percent and 50 percent of the PBR.

North Carolina roe mullet stop net. Categorization of this fishery is based on stranding information and visual observations. This is a new fishery proposed to be added to the LOF; stop nets for other target species and in other locations are included under Category III. This fishery is proposed to be placed in Category II, because the take of bottlenose dolphins (3 animals per year since 1990) is between 1 percent and 50 percent of the PBR for this stock (25 animals).

North Carolina haul seine fishery—new fishery. This fishery has the potential to take harbor porpoise and U.S. western North Atlantic coastal bottlenose dolphins. Because it is a new fishery to the LOF, and because of the high probability of takes of the above two stocks, this fishery is proposed to be classified in Category II.

Gulf of Maine, U.S. mid-Atlantic menhaden purse seine. This fishery is categorized based on Category III reports. This fishery is proposed to be placed in Category II due to mortality and serious injury of western North Atlantic coastal bottlenose dolphins (1.75 animals per year) that is 6 percent of the PBR for that stock. Because western North Atlantic coastal bottlenose dolphins do not occur in the Gulf of Maine, it may be appropriate to separate this fishery into northern and southern components.

Category III

North Atlantic bottom trawl. This fishery targets species included in, but not limited to, all species described in the Multispecies, Summer Flounder, and Scup and Sea Bass Fishery Management Plans. This fishery is renamed from the 1994 LOF designation "Gulf of Maine, Mid-Atlantic groundfish trawl" to include a specific list of species targeted. This fishery was classified based on observer data.

Six takes of marine mammals incidental to this fishery have been observed from 1989 to 1992. Three of the takes were marine mammals known or suspected to have been dead prior to being caught in the bottom trawl gear. Two takes of striped dolphin were observed in December 1991 along the continental shelf edge off Rhode Island in 50 fathoms of water. Extrapolation of these takes to the entire groundfish bottom trawl fishery generate an estimated mortality level of 45 animals which is 62 percent of this species' PBR. However, several complicating factors exist:

- The observed coverage in the Category III groundfish bottom trawl fishery is small (under 1 percent) and was designed to monitor fishery management related issues. Therefore, the coefficient of variation of the mortality estimate is very high and is derived from nonrandom observer effort.
- The known distribution of the striped dolphin is along the shelf edge from Georges Bank to Cape Hatteras and extends further south.
- Since the species only exists in a small portion of the area fished by North Atlantic Bottom Trawl gear, extrapolation of the observed mortality to the entire fishery produces a substantial overestimate of the total mortality.
- Fishing effort in this fishery will be reduced by 50 percent in 5 years under Amendment nos. 5 and 7 to the Fishery Management Plan for the Northeast Multispecies Fishery, which may be implemented as early as next year, may reduce effort by 80 percent in the first year of implementation.

The mortality estimates derived from two takes of striped dolphin over 4 years of less than 10 percent observer effort are statistically weak and, due to the marginal overlap of the fishery with this species distribution, likely to be an overestimate. The fishery is facing severe cutbacks in effort under ongoing and proposed Magnuson Act actions, further reducing the likelihood of interactions. Therefore, the fishery is proposed to remain in Category III.

U.S. Mid-Atlantic, U.S. South Atlantic, Gulf of Mexico shrimp trawl. Categorization of this fishery is based on observer data. There has been one observed serious injury or mortality in this fishery from 1979 to 1993. Because this is a low level of mortality, this fishery is proposed to be placed in Category III.

Finfish aquaculture. The name of this fishery is proposed to be changed from the 1994 LOF designation "Gulf of Maine Atlantic salmon" to broaden the definition to include other regions and species. Classification of this fishery is based on logbook data and the proposed reclassification due to the prohibition of intentional lethal takes. Incidental takes of harbor seals are less than 1 percent of the PBR. Thus, this fishery is proposed to be placed in Category III.

Shellfish aquaculture. This is a new fishery that is proposed to be added to the LOF. This fishery is classified by analogy to other aquaculture fisheries that have a remote likelihood of serious injury and mortality of marine mammals.

Gulf of Mexico inshore gillnet (black drum, sheepshead). This is a new fishery proposed to be added to the LOF. This fishery is classified by analogy to other inshore gillnet fisheries, specifically the inshore fisheries that occur in the U.S. mid-Atlantic.

U.S. mid-Atlantic hand seine. This is a new fishery proposed to be added to the LOF. This fishery is placed in Category III by analogy with other hand seine fisheries.

Offshore monkfish bottom gillnet. This is a new fishery that is proposed to be added to the LOF. This fishery involves a small number (under 50) of vessels operating along the shelf edge off Rhode Island. Because this fishery uses gear that is set very deep and a remote likelihood of serious injury and mortality of marine mammals is expected, it is proposed to be placed in Category iII.

Georgia, South Carolina, Maryland whelk trawl. This fishery is renamed from the 1994 LOF designation "Georgia, South Carolina whelk trawl" to include the extended range of the fishery.

U.S. mid-Atlantic offshore surfclam and quahog dredge. This fishery is renamed from the 1994 LOF designation "Mid-Atlantic offshore clam" to include the dredge fishery for quahogs.

U.S. mid-Atlantic/Gulf of Mexico oyster. This fishery is renamed from the 1994 LOF designation "Mid-Atlantic oyster" to include the Gulf of Mexico oyster fishery.

U.S. mid-Atlantic mixed species stop/seine/weir (except the North Carolina roe mullet stop net). This fishery includes all fixed or staked net fisheries from Nantucket Sound to the Chesapeake Bay. One bottlenose dolphin was found entangled in a pound net lead during the five years of data collection under the Exemption Program. This occurred in a Chesapeake Bay fishery for which bycatch survey information has been available throughout the 5-year Exemption Program. Bycatch surveys are also carried out in other regions where this gear is used. Therefore, we believe that the remote possibility of marine mammal mortality and serious injury occurring in these fisheries is verifiable, and the fishery remain in Category III.

Gulf of Mexico menhaden purse seine. This fishery is proposed to be defined as separate from the U.S. South Atlantic menhaden purse seine fishery. This fishery is proposed to be placed in Category III based on an expectation of low levels of interaction with marine mammals.

U.S. South Atlantic menhaden purse seine. This fishery is proposed to be defined as separate from the Gulf of Mexico menhaden purse seine fishery. This fishery is proposed to be placed in Category III based on an expectation of low levels of interaction with marine mammals.

Proposed List of Fisheries

The following two tables list the commercial fisheries of the United States in their proposed categories. The estimated number of vessels is expressed in terms of the number of active participants in the fishery, when possible, and as the estimated number of vessels or persons when information on the number of active participants is not available, these values have been updated from the 1994 LOF when possible. The information on which marine mammal species/stocks are involved in interactions with the fishery is based on observer data, logbook data, stranding reports, fisher's reports, and the 1994 LOF. If there is no information indicating which stocks of marine mammals might be involved in fishery interactions, analogy is used to provide a list of stocks with which interactions may occur, if appropriate. An asterisk (*) indicates that the stock is a strategic stock; a plus (+) indicates that the stock is listed as threatened or endangered under the ESA.

Pursuant to section 101(a)(5)(E), NMFS must determine which fisheries have a negligible impact on species or stocks of marine mammals that are listed under the ESA. NMFS is therefore specifically seeking public comments that address those fisheries in the proposed LOF (Tables 1 and 2) that interact with species or stocks of marine mammals listed under the ESA and the information on the magnitude of the

takes of such species or stocks found in the EA that accompanies this proposed rule.

TABLE 1.—PROPOSED LIST OF FISHERIES
[Commercial Fisheries in the Pacific Ocean]

Fishery description	Estimated No. of vessels/persons	Marine mammal species/stocks involved
Category I:		
CA angel shark/halibut and other species large mesh (>3.5in) set gillnet fishery	520	99, 109, 110, 138, 139, 142.
CA/OR/WA thresher shark/swordfish/blue shark (blue shark OR only) drift gillnet fishery	150	2*+, 92*+, 103, 104, 105, 107, 109, 110, 111, 113*, 117*, 142.
Category II:		
AK Prince William Sound salmon drift gillnet	509	1*+, 5, 19.
AK Peninsula/Aleutians salmon drift gillnet fishery	107	3*, 5, 6, 7, 19, 20, 154.
Southeast Alaska salmon drift gillnet fishery	443	2*+, 4, 18, 19, 20.
AK Cook Inlet drift gillnet	554	1*+, 5, 19, 20.
AK Yakutat salmon set gillnet	152	4, 7.
AK Cook Inlet salmon set gillnet	633	1*+, 5, 19, 20.
AK Peninsula/Aleutian Island salmon set gillnet	120	1*+, 19.
AK Kodiak salmon set gillnet	162	5, 19.
AK Bristol Bay drift gillnet	1,741	1*+, 3*, 6, 7, 8, 14, 18, 25.
AK Bristol Bay set gillnet	888	6, 14.
AK Metlakatla/Annette Island salmon drift gillnet	60	4, 19.
WA Puget Sound Region salmon drift gillnet fishery (includes all inland waters south of US-Canada border and eastward of the Bonilla-Tatoosh line—Treaty Indian fishing is excluded).	1,044	2*+, 103, 102, 138, 141.
CA anchovy, mackerel, tuna purse seine	150	107, 138, 139.
AK Southeast salmon purse seine	443	27*+, 19.
AK Bering Sea and Aleutian Islands groundfish trawl	490	1*+, 2*+, 3*, 17, 18, 19, 6, 7, 8, 9, 10, 20, 142, 155.
AK pair trawl	2	5, 6, 18, 20.
AK southern Bering Sea, Aleutian Islands, and Western Gulf of Alaska sablefish longline/set line (federally regulated waters).	226	16, 142.
OR swordfish/blue shark surface longline fishery	30	unknown.
Category III:		
AK Prince William Sound set gillnet	29	1*+, 19.
AK Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet	1,651	7, 12, 13, 14, 19.
AK roe herring and food/bait herring gillnet	162	19, 4, 5, 6.
WA, OR herring, smelt, shad, sturgeon, bottom fish, mullet, perch, rockfish gillnet	913	138, 140, 141.
WA Willapa Bay drift gillnet	82	2*+, 138, 141, 142.
WA Grays Harbor salmon drift gillnet (excluding treaty Tribal fishing)	24	2*+, 138, 141.
WA, OR lower Columbia River (includes tributaries) drift gillnet	40	2*+, 138, 140, 141.
CA set and drift gillnet fisheries that use a stretched mesh size of 3.5 in or less	341	2*+, 25, 99, 100, 103, 109, 110, 138, 139.
AK miscellaneous finfish set gillnet	9	1*+, 2*+, 19, 4, 5, 6.
Hawaii gillnet	115	145*+.
AK salmon purse seine (except Southeast Alaska, which is in Category II)	1,053	1*+, 2*+, 3, 19, 155.
AK salmon beach seine	34	1*+, 2*+, 4, 5, 6, 19.
AK roe herring and food/bait herring purse seine	866	1*+, 2*+, 4, 5, 6, 19.
AK roe herring and food/bait herring beach seine	14	1*+, 2*+, 4, 5, 6, 19.
AK octopus/squid purse seine	3	1*+, 2*+, 4, 5, 6, 19.
CA herring purse seine	100	106, 138, 139.
CA sardine purse seine	120	138.
CA squid purse seine	145	105, 113, 138.
CA squid dip net	115	113, 138.
WA, OR salmon net pens	21	2*+, 138, 140, 141.
OR salmon ranch	1	138, 141.
AK salmon troll	1,450	1*+, 2*+, 3*, 5, 6, 33*+.
CA/OR/WA salmon troll	4,300	2*+, 138, 139, 141.
AK north Pacific halibut, AK bottom fish, WA, OR, CA albacore, groundfish, bottom fish, CA halibut non-salmonid troll fisheries.	1,354	4, 5, 6, 139, 140, 141.
HI trolling, rod and reel	1,795	127, 131, 132.
Guam tuna troll	50	None documented.
Commonwealth of the Northern Mariana Islands tuna troll	50	None documented.
American Samoa tuna troll	<50	None documented.
AK miscellaneous finfish purse seine	6	1*+, 2*+, 4, 5, 6, 19.

TABLE 1.—PROPOSED LIST OF FISHERIES—Continued
[Commercial Fisheries in the Pacific Ocean]

Fishery description	Estimated No. of vessels/persons	Marine mammal species/stocks involved
AK miscellaneous finfish beach seine	4	1*+, 2*+, 4, 5, 6, 19.
WA salmon purse seine	440	103, 140, 141.
WA salmon reef net	53	140, 141.
WA, OR herring, smelt, squid purse seine or lampara	130	138, 140, 141.
WA (all species) beach seine or drag seine	235	None documented.
HI purse seine	18	None documented.
HI opelu/akule net	16	None documented.
HI throw net, cast net	47	None documented.
HI net unclassified	106	None documented.
AK state waters sablefish long line/set line	240	5, 6, 16, 142.
Miscellaneous finfish/groundfish longline/set line	838	5, 6, 142.
HI swordfish, tuna, billfish, mahi mahi, wahoo, oceanic sharks longline/set line	140	127, 131.
WA, OR North Pacific halibut longline/set line	5,364	16, 21*+.
AK halibut longline/set line (state and Federal waters)	213	1*+, 2*+, 5, 6, 26, 27, 142.
WA, OR, CA groundfish, bottomfish longline/set line	367	2*+, 18, 138, 139, 141.
AK octopus/squid longline	1	None documented.
CA shark/bonito longline/set line	10	138.
WA, OR, CA shrimp trawl	300	None documented.
AK shrimp otter trawl and beam trawl (statewide and Cook Inlet)	48	None documented.
AK Gulf of Alaska groundfish trawl	490	1*+, 2*+, 3*, 5, 7, 8, 9, 10, 16, 17, 20, 142.
AK state-managed waters of Cook Inlet, Kachemak Bay, Prince William Sound, Southeast AK groundfish trawl.	8	20.
AK miscellaneous finfish otter or beam trawl	324	None documented.
AK food/bait herring trawl	2	None documented.
WA, OR, CA groundfish trawl	585	1*+, 3*, 18, 103, 138, 139, 141.
AK crustacean pot	1,951	None documented.
AK Bering Sea, Gulf of Alaska finfish pot	226	5, 6, 155.
WA, OR, CA sablefish pot	176	139, 140, 141.
WA, OR, CA crab pot	1,478	25, 28, 139, 140, 141.
WA, OR shrimp pot & trap	254	None documented.
CA lobster, prawn, shrimp, rock crab, fish pot	608	None documented.
OR, CA hagfish pot or trap	25	None documented.
HI lobster trap	15	145*+.
HI crab trap	22	None documented.
HI fish trap	19	None documented.
HI shrimp trap	5	None documented.
AK North Pacific halibut handline and mechanical jig	84	None documented.
AK other finfish handline and mechanical jig	474	None documented.
AK octopus/squid handline	2	None documented.
WA groundfish, bottomfish jig	679	2*+, 138, 140, 141.
HI aku boat, pole and line	54	None documented.
HI inshore handline	650	132.
HI deep sea bottomfish	434	132, 145*+.
HI tuna	144	131, 132, 145*+.
Guam bottomfish	<50	None documented.
Commonwealth of the Northern Mariana Islands bottomfish	<50	None documented.
American Samoa bottomfish	<50	None documented.
WA, OR smelt, herring dip net	119	None documented.
CA swordfish harpoon	228	None documented.
AK Southeast Alaska herring food/bait pound net	7	None documented.
WA herring brush	1	None documented.
WA/OR/CA bait pens	13	25, 141.
Coastwide scallop dredge	106	None documented.
AK abalone	177	None documented.
AK dungeness crab	1	None documented.
AK herring spawn-on-kelp	306	2*+.
AK urchin and other fish/shellfish	127	None documented.
AK clam hand shovel	125	None documented.
AK clam mechanical/hydraulic fishery	3	None documented.
WA herring spawn-on-kelp	4	None documented.
WA/OR sea urchin, other clam, octopus, oyster, sea cucumber, scallop, ghost shrimp hand, dive, or mechanical collection.	637	None documented.
CA abalone	111	None documented.

TABLE 1.—PROPOSED LIST OF FISHERIES—Continued

[Commercial Fisheries in the Pacific Ocean]

Fishery description	Estimated No. of vessels/persons	Marine mammal species/stocks involved
CA sea urchin	583	None documented.
HI squiding, spear	267	None documented.
HI lobster diving	6	None documented.
HI coral diving	2	None documented.
HI handpick	135	None documented.
WA shellfish aquaculture	684	None documented.
WA, CA kelp	4	None documented.
HI fish pond	10	None documented.
AK, WA OR, CA commercial passenger fishing vessel	1,243	4, 5, 6, 138, 139, 140, 141.
AK octopus/squid "other"	19	None documented.
HI "other"	114	None documented.
AK Metlakatla purse seine	3	4, 19.
CA finfish and shellfish live trap/hook-and-line	93	None documented.
CA salmon enhancement rearing pen	>1	None documented.

TABLE 2.—PROPOSED LIST OF FISHERIES

[Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean]

Fishery description	Estimated No. of vessels/persons	Marine mammal species/stocks involved
Category I:		
Atlantic Ocean, Caribbean, Gulf of Mexico swordfish, tuna, shark pair trawl	7	49, 50°, 51°, 54°, 59°.
Atlantic Ocean, Caribbean, Gulf of Mexico swordfish, tuna, shark drift gillnet	75	33°+, 37, 38°, 49, 50°, 51°, 52, 54°, 57, 58, 59°.
New England multispecies sink gillnet	341	32°, 33°+, 36, 50°, 51°, 52, 61, 62.
Gulf of Maine small pelagics surface gillnet	133	33°+, 36, 52, 61°, 62, 63.
Atlantic Ocean, Caribbean, Gulf of Mexico tuna, shark, swordfish longline	830	33°+, 36, 50, 51, 54°.
Category II:		
U.S. mid-Atlantic coastal gillnet fishery	>655	33°+, 36, 60°, 61°.
U.S. South Atlantic shark gillnet fishery	10	60°.
Gulf of Maine, Mid-Atlantic menhaden purse seine	10	36, 60°.
Atlantic mid-water trawl	620	49, 50°, 51°, 52, 54°.
North Carolina haul seine	unknown	60°, 61°.
North Carolina roe mullet stop net	13	60°.
Category III:		
North Atlantic bottom trawl	1,052	50°, 51°, 52, 57, 60°.
Mid-Atlantic, U.S. South Atlantic, Gulf of Mexico shrimp trawl	>18,000	71, 72, 73, 74, 75, 76.
Finfish aquaculture	48	62, 63.
Shellfish aquaculture	unknown	None documented.
Rhode Island, southern Massachusetts (to Monomoy Island), and New York Bight (Raritan and Lower New York Bays) inshore gillnet.	32	33°+, 36, 60°, 61°.
Long Island Sound inshore gillnet	20	33°+, 36, 60°, 61°.
Delaware Bay inshore gillnet	60	33°+, 36, 60°, 61°.
North Carolina inshore gillnet	94	33°+, 36, 60°, 61°.
Gulf of Mexico inshore gillnet (black drum, sheepshead)	unknown	None documented.
Offshore monkfish bottom gillnet	<50	None documented.
Gulf of Maine northern shrimp trawl	320	None documented.
Gulf of Maine mackerel trawl	30	None documented.
Gulf of Maine, Mid-Atlantic sea scallop trawl	215	None documented.
Gulf of Maine, Southern North Atlantic, Gulf of Mexico coastal herring trawl	5	55, 56.
Mid-Atlantic mixed species trawl	>1,000	None documented.
Gulf of Mexico butterfish trawl	2	55, 56.
Georgia, South Carolina, Maryland whelk trawl	25	None documented.
Calico scallops trawl	200	None documented.
Bluefish, croaker, flounder trawl	550	None documented.
Crab trawl	400	None documented.
Gulf of Maine Atlantic herring purse seine	30	61°, 62, 63.
Gulf of Mexico menhaden purse seine	51	73, 74, 75, 76.
U.S. South Atlantic menhaden purse seine	51	60°.
Florida west coast sardine purse seine	16	73.

TABLE 2.—PROPOSED LIST OF FISHERIES—Continued

[Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean]

Fishery description	Estimated No. of vessels/persons	Marine mammal species/stocks involved
U.S. mid-Atlantic hand seine	> 250	None documented.
Gulf of Maine tub trawl groundfish bottom longline/hook-and-line	46	62, 63.
U.S. South Atlantic, Gulf of Mexico snapper-grouper and other reef fish bottom longline/hook-and-line	1,944	None documented.
U.S. South Atlantic, Gulf of Mexico shark bottom longline/hook-and-line	124	None documented.
Gulf of Maine, U.S. mid-Atlantic tuna, shark swordfish hook-and-line/harpoon	26,223	None documented.
U.S. South Atlantic, Gulf of Mexico & U.S. mid-Atlantic pelagic hook-and-line/harpoon	1,446	None documented.
Gulf of Maine, U.S. South Atlantic coastal shad, sturgeon gillnet	1,285	36, 61°.
U.S. South Atlantic, Gulf of Mexico coastal gillnet	4,000	73, 74, 75.
Florida east coast, Gulf of Mexico pelagics king and Spanish mackerel gillnet	271	71, 72, 73, 74, 75.
Florida mullet gillnet	unknown	None documented.
Gulf of Maine, U.S. mid-Atlantic mixed species trap/pot	100	33°+, 36, 61°, 62, 63.
U.S. mid-Atlantic black sea bass trap/pot	30	None documented.
U.S. mid-Atlantic eel trap/pot	>700	None documented.
Gulf of Maine, U.S. mid-Atlantic inshore lobster trap/pot	10,613	32°, 33°+, 36, 52, 62.
Gulf of Maine, U.S. mid-Atlantic offshore lobster trap/pot	2,902	None documented.
Atlantic Ocean, Gulf of Mexico blue crab trap/pot	20,500	73, 74, 75, 153+.
U.S. South Atlantic, Gulf of Mexico, Caribbean spiny lobster trap/pot	736	73, 74, 75, 153+.
Gulf of Maine herring and Atlantic mackerel stop seine/weir	50	32°, 33°+, 36, 61°, 62, 63.
U.S. mid-Atlantic mixed species stop/seine/weir (except the North Carolina roe mullet stop net)	500	None documented.
U.S. mid-Atlantic crab stop seine/weir	2,600	None documented.
Gulf of Maine, U.S. mid-Atlantic sea scallop dredge	233	33°+.
U.S. mid-Atlantic offshore surfclam and quahog dredge	100	None documented.
Gulf of Maine mussel	> 50	None documented.
U.S. mid-Atlantic/Gulf of Mexico oyster	7,000	None documented.
U.S. South Atlantic, Caribbean haul seine	150	None documented.
Caribbean beach seine	15	153+.
Gulf of Maine urchin dive, hand/mechanical collection	> 50	None documented.
Atlantic Ocean, Gulf of Mexico, Caribbean shellfish dive, hand/mechanical collection	20,000	None documented.

SPECIES AND STOCK CODES FOR MARINE MAMMALS OCCURRING IN U.S. WATERS

[Some, but not all stocks listed are taken in the course of commercial fishing operations]

Code	Common name	Stock designation
1	Steller sea lion	Western U.S.°
2	Steller sea lion	Eastern U.S.°
3	Northern fur seal.	North Pacific°
4	Harbor seal	Southeast Alaska.
5	Harbor seal	Gulf of Alaska.
6	Harbor seal	Bering Sea.
7	Spotted seal	Alaska.
8	Bearded seal	Alaska.
9	Ringed seal	Alaska.
10	Ribbon seal	Alaska.
11	Beluga	Beaufort Sea.
12	Beluga	Eastern Chukchi Sea.
13	Beluga	Norton Sound.
14	Beluga	Bristol Bay.
15	Beluga	Cook Inlet.
16	Killer whale	Alaska and Washington Inland Waters—Resident.

SPECIES AND STOCK CODES FOR MARINE MAMMALS OCCURRING IN U.S. WATERS—Continued

[Some, but not all stocks listed are taken in the course of commercial fishing operations]

Code	Common name	Stock designation
17	Killer whale	Alaska and Washington Inland Waters—Transient.
18	Pacific white-sided dolphin.	North Pacific.
19	Harbor porpoise.	Alaska.
20	Dall's porpoise	Alaska.
21	Sperm whale	Alaska°.
22	Baird's beaked whale.	Alaska.
23	Cuvier's beaked whale.	Alaska.
24	Stejnerger's beaked whale.	Alaska.
25	Gray whale	Eastern North Pacific.
26	Humpback whale.	Western North Pacific°.
27	Humpback whale.	Central North Pacific°.
28	Fin whale	N. Pacific°.
28	Minke whale	Alaska.

SPECIES AND STOCK CODES FOR MARINE MAMMALS OCCURRING IN U.S. WATERS—Continued

[Some, but not all stocks listed are taken in the course of commercial fishing operations]

Code	Common name	Stock designation
29	Northern right whale.	North Pacific°.
31	Bowhead whale.	Western Arctic Stock°.
32	North Atlantic right whale.	Western North Atlantic°.
33	Humpback whale.	Western North Atlantic°.
34	Fin whale	Western North Atlantic°.
35	Sei whale	Western North Atlantic°.
36	Minke whale	Canadian east coast.
37	Blue whale	Western North Atlantic°.
38	Sperm whale	Western North Atlantic°.
39	Dwarf sperm whale.	Western North Atlantic°.
40	Pygmy sperm whale.	Western North Atlantic°.
41	Killer whale	Western North Atlantic.
42	Pygmy killer whale.	Northern Gulf of Mexico.

SPECIES AND STOCK CODES FOR MARINE MAMMALS OCCURRING IN U.S. WATERS—Continued

[Some, but not all stocks listed are taken in the course of commercial fishing operations]

Code	Common name	Stock designation
43	Northern bottlenose whale.	Western North Atlantic.
44	Cuvier's beaked whale.	Western North Atlantic*.
45	True's beaked whale.	Western North Atlantic*.
46	Gervais' beaked whale.	Western North Atlantic*.
47	Blainville's beaked whale.	Western North Atlantic*.
48	Sowerby's beaked whale.	Western North Atlantic*.
49	Risso's dolphin	Western North Atlantic.
50	Pilot whale, long-finned.	Western North Atlantic*.
51	Pilot whale, short-finned.	Western North Atlantic*.
52	Atlantic white-sided dolphin.	Western North Atlantic.
53	White-beaked dolphin.	Western North Atlantic.
54	Common dolphin.	Western North Atlantic*.
55	Atlantic spotted dolphin.	Western North Atlantic*.
56	Pantropical spotted dolphin.	Western North Atlantic*.
57	Striped dolphin	Western North Atlantic.
58	Spinner dolphin	Western North Atlantic.
59	Bottlenose dolphin.	Mid-Atlantic offshore*.
60	Bottlenose dolphin.	Western North Atlantic Coastal*.
61	Harbor porpoise.	Gulf of Maine/Bay of Fundy*.
62	Harbor seal	Western North Atlantic.
63	Gray seal	Northwest North Atlantic.
64	Harp seal	Northwestern North Atlantic.
65	Hooded seal northwestern.	North Atlantic.
66	Sperm whale ..	Northern Gulf of Mexico*.
67	Bryde's whale .	Northern Gulf of Mexico.
68	Cuvier's beaked whale.	Northern Gulf of Mexico.
69	Blainville's beaked whale.	Northern Gulf of Mexico.
70	Gervais' beaked whale.	Northern Gulf of Mexico.
71	Bottlenose dolphin.	Gulf of Mexico Outer Continental Shelf.
72	Bottlenose dolphin.	Gulf of Mexico Continental Shelf Edge and Slope.
73	Bottlenose dolphin.	Western Gulf of Mexico Coastal.
74	Bottlenose dolphin.	Northern Gulf of Mexico Coastal.
75	Bottlenose dolphin.	Eastern Gulf of Mexico Coastal.
76	Bottlenose dolphin.	Gulf of Mexico Bay & Sound*.
77	Atlantic spotted dolphin.	Northern Gulf of Mexico.
78	Pantropical spotted dolphin.	Northern Gulf of Mexico.
79	Striped dolphin	Northern Gulf of Mexico.
80	Spinner dolphin	Northern Gulf of Mexico.
81	Rough-toothed dolphin.	Northern Gulf of Mexico.
82	Clymene dolphin.	Northern Gulf of Mexico.
83	Fraser's dolphin.	Northern Gulf of Mexico.
84	Killer whale	Northern Gulf of Mexico.
85	False Killer whale.	Northern Gulf of Mexico.
86	Pygmy killer whale..	Atlantic EEZ.
87	Dwarf sperm whale.	Northern Gulf of Mexico*.
88	Pygmy sperm whale.	Northern Gulf of Mexico*.
89	Melon-headed whale.	Northern Gulf of Mexico.
90	Risso's dolphin	Northern Gulf of Mexico.
91	Pilot whale, short-finned.	Northern Gulf of Mexico*.
92	Sperm whale ..	California to Washington*.
93	Humpback whale.	California/Mexico*.
94	Blue whale	California/Mexico*.
95	Fin whale	California to Washington*.
96	Brydes whale ..	Eastern Tropical Pacific.
97	Sei whale	Eastern North Pacific*.
98	Minke whale ...	California/Oregon/Washington.
99	Harbor porpoise.	Central California*.
100	Harbor porpoise.	Northern California.
101	Harbor porpoise.	Oregon/Washington coast.
102	Harbor porpoise.	Inland Washington.
103	Dall's porpoise	California/Oregon/Washington.
104	Pacific white sided dolphin.	California/Oregon/Washington.
105	Risso's dolphin	California/Oregon/Washington.
106	Bottlenose dolphin.	California coastal.
107	Bottlenose dolphin.	California/Oregon/Washington Offshore.
108	Striped dolphin	California.
109	Common dolphin, short-beaked.	California/Oregon/Washington.
110	Common dolphin, long-beaked.	California.
111	Northern right whale dolphin.	California/Oregon/Washington.
112	Killer whale	California/Oregon/Washington.
113	Pilot whale—short-finned.	California/Oregon/Washington*.
114	Baird's beaked whale.	California to Washington*.
115	Mesoplodont beaked whales.	California to Washington*.
116	Cuvier's beaked whale.	California/Oregon/Washington*.
117	Pygmy sperm whale.	California/Oregon/Washington*.
118	Dwarf sperm whale.	California/Oregon/Washington.
119	Brydes whale ..	Hawaii.
120	Blue whale	Hawaii*.
121	Fin whale	Hawaii*.
122	Pygmy killer whale.	Hawaii.
123	Pilot whale—short-finned.	Hawaii.
124	Risso's dolphin	Hawaii.
125	Killer whale	Hawaii.
126	Melon-headed whale.	Hawaii.
127	False killer whale.	Hawaii.
128	Pantropical spotted dolphin.	Hawaii.
129	Striped dolphin	Hawaii.
130	Spinner dolphin	Hawaii.
131	Rough-Toothed dolphin.	Hawaii.
132	Bottlenose dolphin.	Hawaii.
133	Pygmy sperm whale.	Hawaii.
134	Dwarf sperm whale.	Hawaii.
135	Sperm whale ..	Hawaii*.
136	Cuvier's beaked whale.	Hawaii.
137	Blainville's beaked whale.	Hawaii.
138	California sea lion.	U.S.
139	Harbor seal	California.
140	Harbor seal	Washington Inland waters.
141	Harbor seal	Oregon/Washington coast.
142	Northern elephant seal.	California breeding.
143	Guadalupe fur seal.	Mexico to California*.
144	Northern fur seal.	San Miguel Island.
145	Hawaiian monk seal.	Hawaii*.
146	Beaked whale, all stocks.	Pacific.
147	Harbor seal, all stocks.	Pacific.
148	Beaked whale, all stocks.	Atlantic.
149	Spotted dolphin, all stocks.	Atlantic.
150	Pilot whale, all stocks.	Atlantic.
151	Bottlenose dolphin, all stocks.	Gulf of Mexico.
152	Southern (Calif.) sea otter.	California*.
153	Florida manatee.	Florida*.
154	Walrus	Pacific.
155	Northern (Alaska) sea otter.	Pacific.

Take Reduction Plans

New section 118(f) of the MMPA requires NMFS to develop and implement take reduction plans designed to assist in the recovery or prevent the depletion of each strategic stock that interacts with a Category I or II fishery. NMFS may also develop and implement a take reduction plan for any other marine mammal stock that interacts with a Category I fishery that NMFS determines, after notice and opportunity for public comment, has a high level of mortality and serious injury across a number of such marine mammal stocks. Under these proposed regulations, a Category I fishery would be considered to have a high level of mortality and serious injury across a number of marine mammal stocks, if its annual incidental mortality and serious injury exceeds or equals 50 percent of two or more marine mammal stocks' PBRs.

As required by section 118(f)(2), the immediate goal of a take reduction plan is to reduce, within 6 months of its implementation, the incidental mortality or serious injury of marine mammals from commercial fishing operations to levels less than the PBR established for a stock under the SAR developed pursuant to section 117, and the long-term goal is to reduce, within 5 years of its implementation, the incidental mortality or serious injury of marine mammals from commercial fishing operations to insignificant levels approaching a zero mortality and serious injury rate, taking into account the economics of the fishery, the availability of existing technology, and existing state or regional fishery management plans. Failure of a plan to meet these goals may result in a revision of the plan and implementation of regulations necessary to achieve these goals. Priority for development and implementation of these plans will be accorded to stocks whose level of incidental mortality and serious injury exceeds the PBR, those that have a small population size, and those that are declining rapidly.

Each take reduction plan is required by section 118(f)(4) of the MMPA to include a review of information in the final SAR and any substantial new information. In addition, each plan is required to include recommended regulatory or voluntary measures for the reduction of incidental mortality and serious injury and recommended dates for achieving the specific objectives of the plan. Regulations implementing take reduction plans may: (1) Establish fishery-specific limits on incidental mortality and serious injury of marine mammals in commercial fisheries or restrict commercial fisheries by time or area; (2) require the use of alternative fishing gear or techniques and new technologies, encourage the development of such gear or technology, or convene skipper's panels; and (3) provide for monitoring of the effectiveness of measures taken to reduce the level of incidental mortality and serious injury of marine mammals. Plans would not necessarily include each of these types of measures, rather they would be flexible and designed to address specific problems.

Section 118(f)(6) requires NMFS to establish a take reduction team to develop a draft take reduction plan within 30 days after the publication of a final SAR for a strategic stock. These teams will consist of a balance of representatives of the fishing industry and non-resource user interests. Section 118(f)(6) of the MMPA requires that members represent a diversity of interests including those of Federal agencies, appropriate states and regional fishery management councils, interstate fishery commissions, academic and scientific organizations, environmental groups, all commercial and recreational fisheries groups and gear types which take the species or stock, Alaska Native organizations or Indian tribal organizations, and others as NMFS deems appropriate. By including all interested parties on take reduction teams, a fair and reasonable plan designed to reduce incidental takes of marine mammals during commercial fishing operations should be developed. Take reduction team meetings will be open to the public.

Within 6 months after establishment of the take reduction teams for strategic stocks that interact with Category I or II fisheries and where mortality exceeds PBR, the team must submit a draft take reduction plan for such stock to NMFS. NMFS must take the draft plan into consideration and must publish in the **Federal Register**, for public review and comment, the plan proposed by the team, any changes proposed by NMFS, the rationale for such changes, and proposed regulations to implement such a plan. NMFS must issue a final take reduction plan and implementing regulations within 60 days after the close of the comment period.

Emergency Regulations

New section 118(g) of the MMPA provides NMFS with authority to issue emergency regulations to reduce incidental mortality and serious injury of marine mammals if the incidental mortality and serious injury of marine mammals from commercial fisheries is having, or is likely to have, an immediate and significant adverse impact on a stock or species. Emergency regulations can apply to Category I, II,

or III fisheries. This emergency authority will be used only when no alternative is available to prevent an immediate and significant adverse impact. In the case of a marine mammal population for which a take reduction plan, developed under subpart B, is in effect, section 118(g)(1)(A) requires that the emergency regulations be to reduce incidental mortality and serious injury consistent with the plan, to the maximum extent practicable and that, NMFS, concurrently, approve and implement, on an expedited basis, any amendments to such plan that are recommended by the take reduction team to address such adverse impact.

In the case of a marine mammal population for which a take reduction plan is being prepared, section 118(g)(1)(B) requires NMFS to approve and implement the plan on an expedited basis, which would provide methods to address such adverse impact if still necessary.

In the case of a marine mammal population for which a take reduction plan does not exist, or is not being developed, or in the case of a Category III fishery that NMFS believes may be contributing to such adverse impact, section 118(g)(1)(C) requires NMFS to immediately review the SAR for such population and the classification of such commercial fishery to determine if a take reduction team should be established.

As required by section 118(g)(2) of the MMPA, NMFS must consult with the regional fishery management councils, state fishery agencies, and treaty Indian tribal governments, where appropriate, before taking any emergency action. Emergency actions must, to the maximum extent practicable, avoid interfering with existing regional, state, or tribal fishery management or conservation programs, and must be as brief in duration and nonintrusive as possible. Emergency actions could include, but would not necessarily be limited to: Quotas on the number of marine mammals that may be taken; restrictions on the time, manner and location where the fishery may operate; and prohibitions on the use of fishing techniques or gear which are found to cause excessive marine mammal injuries or mortalities. Emergency regulations would expire at the end of the applicable commercial fishing season or at the end of 180 days, whichever is earlier. However, they could be extended for an additional 90-day period, if needed to address a continuing threat. If NMFS finds that the incidental morality and serious injury is not having an immediate and significant adverse impact over a period of time longer than 1 year, NMFS would develop and implement a take reduction plan under proposed § 229.14 instead of prescribing emergency regulations.

Takes of Listed Marine Mammals

Section 101(a)(5)(E) was added to the MMPA in 1994 to authorize NMFS to issue permits to commercial fishing vessels of the United States allowing for up to 3 years, incidental takes of marine mammals listed as threatened species or endangered species under the ESA. A permit may be issued only if NMFS determines that the total incidental mortality and serious injury from commercial fisheries would have a negligible impact on the species or stock (proposed § 229.2), and that a recovery plan has been, or is in the process of being, developed for that stock under the ESA. Furthermore, any applicable requirements of section 118 (e.g., registration, monitoring, and take reduction plans) must also be met before NMFS could authorize the incidental taking of listed marine mammals by any Category I or II fishery. NMFS will publish a list identifying the Category I, II and III fisheries for which such determinations were made. However, only Category I and II vessels require permits under section 101(a)(5)(E); vessels fishing in either a Category I or II fishery must receive authorizations under both section 118 and section 101(a)(5)(E) in order to legally engage in the incidental taking of listed marine mammals.

Vessels in Category III fisheries that are not required to register under section 118 but which are included in the list published pursuant to section 101(a)(5)(E) will not be subject to the penalties of the MMPA for the incidental taking of marine mammals that are listed as endangered or threatened species under the ESA, as long as the vessel owner or operator of such vessel, in accordance with the requirements of proposed § 229.6, reports any incidental mortality or injury within 48 hours of the end of the fishing trip where the incidental taking occurred.

The MMPA states that after opportunity for public comment, NMFS must determine which fisheries that have interaction with ESA-listed marine mammals have a negligible impact on those stocks. NMFS must then publish a list of those fisheries for which such a determination has been made. Because the proposed LOF (Tables 1 and 2 in this rule) specifies which fisheries have interactions with species or stocks listed under the ESA, and because the associated Environmental Assessment provides the data on which a negligible determination will be made, NMFS is now requesting public comment specifically regarding this issue; such comments will be considered and a final list of those fisheries for which takes have been determined to be negligible will be published in the **Federal Register**.

The section 101(a)(5)(E) authorization in the MMPA to incidentally take marine mammals listed under the ESA will include appropriate terms and conditions made necessary by the associated ESA section 7 consultation. These conditions and restrictions may include actions to reduce the incidental taking or may prohibit any taking of an endangered or threatened species.

NMFS may issue permits under section 101(a)(5)(E) of the MMPA to an identifiable group of vessels, rather than to individuals when possible. Whenever possible, NMFS will issue permits issued under section 101(a)(5)(E) of the MMPA simultaneously with authorizations under section 118 in order not to delay fishing activities. Thus, fishers will not have to apply for a permit under section 101(a)(5)(E). When the level of incidental taking is more than negligible, NMFS may modify, suspend, or revoke such permits. In cases where an individual fisher has a record of excessive incidental takes, NMFS may revoke the permit from that fisher and not from the entire group of vessels in the fishery. For fisheries that have incidental takes of more than one ESA-listed stock, a permit under section 101(a)(5)(E) may be issued to authorize the takes of one stock but not necessarily other stocks.

Penalties

Except as otherwise provided, violations of section 118, the implementing regulations, Authorization Certificates, or permits issued to fishers authorizing the incidental taking of listed marine mammals during commercial fishing operations would subject vessel owners and fishers to the penalties provided in the MMPA and in NOAA regulations governing administrative procedures for the assessment of penalties (15 CFR part 904).

In addition, as noted above, Certificates may be revoked, suspended, or denied for violations of the MMPA, the regulations, take reduction plans, permits issued to fishers to authorize the incidental taking of listed marine mammals during commercial fishing operations, or emergency regulations issued under this part 229. For fishers operating in Category I or II fisheries, failure to report all incidental injuries and mortalities within 48 hours of the end of the fishing trip during which such taking occurred, will result in suspension or revocation of an Authorization Certificate until such requirements have been fulfilled. For fisheries operating in Category III fisheries, failure to report all incidental injuries and mortalities within 48 hours of the end of the fishing trip during which such taking occurred, will subject such persons to the full penalties of the Act.

An owner of a vessel engaged in a Category I or II fishery who fails to obtain from the NMFS an authorization for such vessel under this section, or fails to maintain a current and valid authorization for such vessel will be deemed to have violated this part and will be subject to the penalties of sections 105, 106, and 107 of the MMPA. An owner of a vessel engaged in a Category I or II fishery who fails to ensure that a decal or other physical evidence of such authorization issued by NMFS is displayed on or is in possession of the operator of the vessel, will be deemed to have violated this part and will be subject to a fine of not more than $100 for each offense.

Owners or operators of vessels or nonvessel fisheries that fail to comply with a take reduction plan or implementing regulations issued under subpart C of this part will be subject to the penalties in sections 105 and 107 of the Act, and may be subject to the penalties of section 106 of the Act.

Classification

This action has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities since it would establish a process for issuance of authorizations for the incidental taking of marine mammals while conducting commercial fishing in waters of the U.S. exclusive economic zone. Without these authorizations, the taking of marine mammals would be prohibited and fishers could be subject to fines when takings occur in the course of commercial fishing operations. The payment of a fee set to recover the costs of certificate issuance would be required to obtain an Authorization Certificate. While the amount of such fee has not yet been determined, it would cost no more than approximately $30. Approximately 20,000 fishers are currently required to register under the old interim exemption regime and pay a similar fee. This number is not expected to increase under the new regime.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

This proposed rule contains collection-of-information requirements subject to the provisions of the Paperwork Reduction Act. Although these collections have been approved previously by OMB under OMB control numbers 0648–0224 and 0648–0225, because of new collection requirements for commercial fishing in § 229.6 and slightly modified registration requirements under § 229.4, these collection requirements are being resubmitted to OMB for review and approval.

The average reporting burden for these collections is estimated to be approximately 0.25 hours for each of approximately 13,000 fishers to register each year and 0.17 hours for each report of marine mammal injury or mortality. Because fishers would be required to submit a report for each occurrence of marine mammal injury or mortality, there may be multiple reports required per fisher.

Send comments regarding these burden estimates or any other aspect of these collection of information requirements, including suggestions for reducing the burden, to the Chief, Marine Mammals Division, Office of Protected Resources, and to the Office of Information and Regulatory Affairs, OMB (see **ADDRESSES**).

National Environmental Policy Act

The Assistant Administrator for Fisheries, NOAA (AA) has determined, based upon an EA prepared under the National Environmental Policy Act, that implementation of these regulations would not have a significant impact on the human environment. As a result of this determination, an environmental impact statement is not required. A copy of the EA is available upon request (see **ADDRESSES**).

List of Subjects

50 CFR Part 216

Administrative practice and procedure, Imports, Indians, Marine Mammals, Penalties, Reporting and recordkeeping requirements, Transportation

50 CFR Part 229

Administrative practice and procedure, Confidential business information, Fisheries, Marine mammals, Reporting and recordkeeping requirements.

Dated: June 13, 1995.

Gary Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR parts 216 and 229 are proposed to be amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. Section 216.24 is amended by removing the phrase, under the Note to § 216.24: "for the period from June 17, 1994, through September 1, 1995".

3. Part 229 is revised to read as follows:

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

Subpart A—General Provisions

Sec.

229.1 Purpose and scope.
229.2 Definitions.
229.3 Prohibitions.
229.4 Requirements for Category I and II fisheries.
229.5 Requirements for Category III fisheries.
229.6 Reporting requirements.
229.7 Monitoring of incidental mortalities and serious injuries.
229.8 Publication of list of fisheries.
229.9 Emergency regulations.
229.10 Penalties.
229.11 Confidential fisheries data.
229.12 Consultation with the Secretary of the Interior.

Subpart B—Takes of Endangered and Threatened Marine Mammals

229.20 Issuance of permits.

Subpart C—Take Reduction Plan Regulations and Emergency Regulations [Reserved]

Authority: 16 U.S.C. 1361 et seq., unless otherwise noted.

Subpart A—General Provisions

§ 229.1 Purpose and scope.

(a) The regulations in this part implement sections 101(a)(5)(E) and 118 of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1371(a)(5)(E) and 1387) that provide exceptions from the Act's moratorium on the taking of marine mammals incidental to certain commercial fishing operations.

(b) Section 118 of the Act, rather than sections 103 and 104, governs the incidental taking of marine mammals in the course of commercial fishing operations by persons using vessels of the United States, other than vessels fishing for yellowfin tuna in the eastern tropical Pacific Ocean purse seine fishery, and vessels that have valid fishing permits issued in accordance with section 204(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)).

(c) The regulations of this part also govern the incidental taking by commercial fishers of marine mammals from species or stocks designated under the Act as depleted on the basis of their listing as threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(d) The regulations of this part do not apply to the incidental taking of California sea otters or to Northwest treaty Indian tribal members exercising treaty fishing rights.

(e) Authorizations under subpart A of this part are exemptions only from the taking prohibitions under the Act and not those under the Endangered Species Act of 1973. To be exempt from the taking prohibitions under the Endangered Species Act, specific authorization under subpart B of this part is required.

(f) Authorizations under this part do not apply to the intentional lethal taking of marine mammals in the course of commercial fishing operations.

(g) The purpose of the regulations in this part is to reduce the incidental mortality or serious injury of marine mammals occurring in the course of commercial fishing operations to insignificant levels approaching a zero mortality and serious injury rate by the statutory deadline of April 30, 2001.

§ 229.2 Definitions.

In addition to the definitions contained in the Act and § 216.3 of this chapter, and unless the context otherwise requires, in this part 229:

Act or *MMPA* means the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*).

Authorization Certificate means a document issued by the Assistant Administrator, or designee, under the authority of section 118 of the Act that authorizes the incidental, but not intentional, taking of marine mammals in Category I or II fisheries.

Category I fishery means a commercial fishery determined by the Assistant Administrator to have frequent incidental mortality and serious injury of marine mammals. A commercial fishery that frequently causes mortality or serious injury of marine mammals is one that is by itself responsible for the annual removal of 50 percent or more of any stock's potential biological removal level.

Category II fishery means a commercial fishery determined by the Assistant Administrator to have occasional incidental mortality and serious injury of marine mammals. A commercial fishery that occasionally causes mortality or serious injury of marine mammals is one that, collectively with other fisheries, is responsible for the annual removal of more than 10 percent of any marine mammal stock's potential biological removal level and that is by itself responsible for the annual removal of between 1 and 50 percent, exclusive, of any stock's potential biological removal level. In the absence of information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, the Assistant Administrator will determine whether the taking is "occasional" by analogy or, if an analogy is not possible, the Assistant Administrator may, after public notice and opportunity for public comment regarding a fishery's incidental mortality and serious injury on a stock of marine mammals, place that fishery in Category II. Eligible commercial fisheries not specifically identified in the list of fisheries are deemed to be Category II fisheries until the next annual list of fisheries is published.

Category III fishery means a commercial fishery determined by the Assistant Administrator to have a remote likelihood of, or no known incidental mortality and serious injury of marine mammals. A commercial fishery that has a remote likelihood of causing incidental mortality and serious injury of marine mammals is one that collectively with other fisheries is responsible for the annual removal of:

(1) 10 percent or less of any marine mammal stock's potential biological removal level, or

(2) More than 10 percent of any marine mammal stock's potential biological removal level, yet that fishery by itself is responsible for the annual removal of 1 percent or less of that stock's potential biological removal level. In the absence of information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, the Assistant Administrator will determine whether the taking is "remote" by analogy or, if an analogy is not possible, the Assistant Administrator may, after public notice and opportunity for public comment regarding a fishery's incidental mortality and serious injury on a stock of marine mammals, place that fishery in Category III.

Commercial fishing operation means the catching, taking, or harvesting of fish from the marine environment (or other areas where marine mammals occur) that results in the sale or barter of all or part of the fish harvested. The term includes licensed commercial passenger fishing vessel (as defined in § 216.3 of this chapter) activities and aquaculture activities.

Depleted species means any species or population that has been designated as depleted under the Act and is listed in § 216.15 of this chapter or part 18, subpart E of this title, or any endangered or threatened species of marine mammal.

Fishery has the same meaning it does in section 3 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802).

Fishing trip means any time spent away from port actively engaged in commercial fishing operations. The end of a fishing trip will be the time of a fishing vessel's return to port.

Fishing vessel or *vessel* means any vessel, boat, ship, or other craft that is used for, equipped to be used for, or of a type normally used for, fishing.

Incidental, but not intentional, take means the non-intentional or accidental taking of a marine mammal that results from, but is not the purpose of, carrying out an otherwise lawful action.

Incidental mortality means the non-intentional or accidental death of a marine mammal that results from, but is not the purpose of, carrying out an otherwise lawful action.

Injury means a wound or other physical harm. Signs of injury to a marine mammal include, but are not limited to visible blood flow, loss of or damage to an appendage or jaw, inability to use one or more appendages, asymmetry in the shape of the body or body position, noticeable swelling or hemorrhage, laceration, puncture or rupture of eyeball, listless appearance or inability to defend itself, inability to swim or dive upon release from fishing gear, or signs of equilibrium imbalance. Any animal that ingests fishing gear or requires assistance to escape from entanglement in fishing gear will be considered injured regardless of the absence of any wound or other evidence of an injury.

Interaction means coming in contact with. An interaction may be characterized by a marine mammal entangled, hooked, or otherwise trapped in fishing gear, regardless of whether injury or mortality occur, or situations where marine mammals are preying on catch. Catch means fish or shellfish that has been hooked, entangled, snagged, trapped or otherwise captured by commercial fishing gear.

List of Fisheries means the most recent final list of commercial fisheries published in the **Federal Register** by the Assistant Administrator, categorized according to the likelihood of incidental mortality and serious injury of marine mammals during commercial fishing operations.

Minimum population estimate means an estimate of the number of animals in a stock that:

(1) Is based on the best available scientific information on abundance, incorporating the precision and variability associated with such information; and

(2) Provides reasonable assurance that the stock size is equal to or greater than the estimate.

NMFS means the National Marine Fisheries Service.

Negligible impact has the same meaning as in § 228.3 of this chapter.

Net productivity rate means the annual per capita rate of increase in a stock resulting from additions due to reproduction, less losses due to mortality.

Nonvessel fishery means a commercial fishing operation that uses fixed or other gear without a vessel, such as gear used in set gillnet, trap, beach seine, weir, ranch, and pen fisheries.

Observer means an individual authorized by NMFS, or a designated contractor, to record information on marine mammal interactions, fishing operations, marine mammal life history information, and other scientific data, and collect biological specimens during commercial fishing activities.

Potential biological removal level means the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. The potential biological removal level is the product of the following factors:

(1) The minimum population estimate of the stock;

(2) One-half the maximum theoretical or estimated net productivity rate of the stock at a small population size; and

(3) A recovery factor of between 0.1 and 1.0.

Regional Fishery Management Council means a regional fishery management council established under section 302 of the Magnuson Fishery Conservation and Management Act.

Serious injury means any injury that will likely result in mortality.

Strategic stock means a marine mammal stock:

(1) For which the level of direct human-caused mortality exceeds the potential biological removal level;

(2) Which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act of 1973 within the foreseeable future;

(3) Which is listed as a threatened species or endangered species under the Endangered Species Act of 1973; or

(4) Which is designated as depleted under the Marine Mammal Protection Act of 1972, as amended.

Take Reduction Plan means a plan developed to reduce the incidental mortality and serious injury of marine mammals during commercial fishing operations in accordance with section 118 of the Marine Mammal Protection Act of 1972, as amended.

Take Reduction Team means a team established to review methods of reducing the incidental mortality and serious injury of marine mammals due to commercial fishing operations, in accordance with section 118 of the Marine Mammal Protection Act of 1972, as amended.

Vessel owner or operator means the owner or operator of:

(1) A fishing vessel that engages in a commercial fishing operation; or

(2) Fixed or other commercial fishing gear that is used in a nonvessel fishery.

Vessel of the United States has the same meaning it does in section 3 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802).

Zero mortality rate goal is the reduction of the annual number of incidental mortalities and serious injuries in each fishery to insignificant levels approaching a zero mortality and serious injury rate. A fishery will have reached this goal when it is responsible for, collectively with other fisheries, the annual removal of:

(1) 10 percent or less of any marine mammal stock's potential biological removal level, or

(2) more than 10 percent of any marine mammal stock's potential biological removal level, but that fishery by itself is responsible for the annual removal of 1 percent or less of that stock's potential biological removal level and does not seriously injure or kill species listed as endangered or threatened under the Endangered Species Act or depleted under the MMPA. In addition, those fisheries that kill or seriously injure declining, depleted, threatened, or endangered stocks of marine mammals would have to be examined separately to determine that the incidental take is insignificant.

§ 229.3 Prohibitions.

(a) It is prohibited to take any marine mammal incidental to commercial fishing operations except as otherwise provided in part 216 of this chapter or in this part 229.

(b) It is prohibited to assault, harm, harass (including sexually harass), oppose, impede, intimidate, impair, or in any way influence or interfere with an observer. This prohibition includes, but is not limited to, any action that interferes with an observer's responsibilities, or that creates an intimidating, hostile, or offensive environment.

(c) It is prohibited to provide false information when registering for an Authorization Certificate, applying for renewal of the Authorization Certificate, reporting the taking of any marine mammal, or providing information to any observer.

(d) It is prohibited to tamper with or destroy observer equipment in any way.

(e) It is prohibited to intentionally lethally take any marine mammal in the course of commercial fishing operations unless imminently necessary in self-defense or to save the life of a person in immediate danger, and such taking is reported in accordance with the requirements of § 229.6.

(f) It is prohibited to willfully discard any fishing gear at sea, in whole or in part.

(g) It is prohibited to violate any regulation in this part.

§ 229.4 Requirements for Category I and II fisheries.

(a) *General.* For a vessel owner or crew members to lawfully incidentally take marine mammals in the course of commercial fishing operations in a Category I or II fishery, the owner or authorized representative of a fishing vessel or non vessel fishing gear must annually register for and receive an Authorization Certificate. The granting and administration of authorizations under this part 229 may be integrated and coordinated with existing fishery license, registration, or permit systems and related programs, wherever possible. These programs may include, but are not limited to, state or interjurisdictional fisheries programs. If the administration of authorizations is integrated into an existing program, NMFS will publish a notice in the **Federal Register** of where to register and efforts will be made to contact affected fishers via other appropriate means of notification.

(b) *Required information.* Owners of vessels or, for nonvessel fisheries, gear, must submit the following information when registering for an Authorization Certificate:

(1) Name, address, and phone number of owner;

(2) Name, address, and phone number of operator, if different from owner and if known, unless the name of the operator is not known or has not been established at the time the registration is submitted;

(3) Vessel name, length and home port; U.S. Coast Guard documentation number, or state registration number, state commercial vessel license number, and/or Tribal Permit number (as applicable);

(4) A list of all Category I and II fisheries in which the fisher will actively engage in during the calendar year;

(5) The approximate time, duration, and location of each such fishery operation, and the general type and nature of use of the fishing gear and techniques used; and

(6) A certification, signed and dated by the vessel owner or authorized representative, as follows: "I hereby certify that I am the owner of the vessel, that I have reviewed all information contained on this document, and that it is true and complete to the best of my knowledge."

(c) *Fee.* A check or money order made payable to NMFS in the amount specified in the notice of the final List of Fisheries must accompany each registration submitted to NMFS. The amount of this fee will be based on recovering the administrative costs incurred in granting an authorization. The Assistant Administrator may waive the fee requirement for good cause upon the recommendation of the Regional Director.

(d) *Address.* Unless the granting and administration of authorizations under part 229 is integrated and coordinated with existing fishery licenses, registrations, or related programs pursuant to (a) of this section, requests for registration forms and completed registration forms should be sent to one of the following NMFS Regional Offices:

(1) Alaska Region, NMFS, P.O. Box 21668, 709 West 9th Street, Juneau, AK 99802; telephone: 907–586–7235;

(2) Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070; telephone: 206–526–4353;

(3) Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; telephone: 310–980–4001;

(4) Northeast Region, NMFS, 1 Blackburn Drive, Gloucester, MA 01930; telephone: 508–281–9254; or

(5) Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702; telephone: 813–570–5301.

(e) *Issuance.* After receipt of a completed initial registration form and the required fee, NMFS will issue an Authorization Certificate and annual decal to the vessel owner. The Authorization Certificate will be renewed annually, and an annual decal issued, after receipt of an updated registration form, required fee, and statement (yes/no) regarding whether any marine mammals were incidentally killed or injured during the previous calendar year.

(f) *Authorization Certificate and decal requirements.* (1) The annual decal must be attached to the vessel on the port side of the cabin or, in the absence of a cabin, on the forward port side of the hull, and must be free of obstruction and in good condition. The decal must be attached to the Authorization Certificate for nonvessel fisheries.

(2) The Authorization Certificate, or a copy, must be on board the vessel while it is operating in a Category I or II fishery, or, in the case of nonvessel fisheries, the Authorization Certificate with decal attached, or copy must be in the possession of the person in charge of the fishing operation. The Authorization Certificate, or copy, must be made available upon request to any state or Federal enforcement agent authorized to enforce the Act, any designated agent of NMFS, or any contractor providing observer services to NMFS.

(3) Authorization Certificates and annual decals are not transferable. In the event of the sale or change in ownership of the vessel, the Authorization Certificate is void and the new owner must register for an Authorization Certificate and decal.

(4) An Authorization Certificate holder must notify the issuing office in writing:

(i) If the vessel or nonvessel fishing gear will engage in any Category I or II fishery not listed on the initial registration form at least 30 days prior to engaging in that fishery; and,

(ii) If there are any changes in the mailing address or vessel ownership within 30 days of such change.

(g) *Reporting.* Any Authorization Certificate holders must comply with the reporting requirements specified under § 229.6.

(h) *Disposition of marine mammals.* Any marine mammal incidentally taken must be immediately returned to the sea with a minimum of further injury, unless directed otherwise by NMFS personnel, a designated contractor or an official onboard observer, or by a scientific research permit that is in the possession of the operator.

(i) *Monitoring.* Authorization Certificate holders must comply with the observer or other monitoring requirements specified under § 229.7.

(j) *Deterrence.* When necessary to deter a marine mammal from damaging fishing gear, catch, or other private property, or from endangering personal safety, vessel owners and crew members engaged in a Category I or II fishery must comply with the guidelines for use in safely deterring marine mammals proposed at 60 FR 22345, May 5, 1995, § 216.29(c) of this chapter and are prohibited from using any deterrence measure proposed at FR 22345, May 5, 1995, § 216.29(d) of this chapter.

(k) *Self defense.* When imminently necessary in self-defense or to save the life of a person in immediate danger, a marine mammal may be lethally taken if such taking is reported to NMFS in accordance with the requirements of § 229.6.

(l) *Take reduction plans and emergency regulations.* Authorization Certificate holders must comply with any applicable take reduction plans and emergency regulations.

(m) *Expiration.* Authorization Certificates and annual decals expire at the end of each calendar year.

§ 229.5 Requirements for Category III fisheries.

(a) *General.* Vessel owners and crew members of such vessels engaged only in Category III fisheries may incidentally take marine mammals without registering for or receiving an Authorization Certificate.

(b) *Reporting.* Vessel owners engaged in a Category III fishery must comply with the reporting requirements specified in § 229.6.

(c) *Disposition of marine mammals.* Any marine mammal incidentally taken must be immediately returned to the sea with a minimum of further injury unless directed otherwise by NMFS personnel, a designated contractor, or an official onboard observer, or by a scientific research permit in the possession of the operator.

(d) *Monitoring.* Vessel owners engaged in a Category III fishery must comply with the observer requirements specified under § 229.7(f).

(e) *Deterrence.* When necessary to deter a marine mammal from damaging fishing gear, catch or other private property, or from endangering personal safety, vessel owners engaged in a Category III fishery must comply with the guidelines for use in safely deterring marine mammals proposed at § 216.29(c) of this chapter and are prohibited from using any deterrence measure proposed at § 216.29(d) of this part.

(f) *Self-defense.* When imminently necessary in self-defense or to save the life of a person in immediate danger, a marine mammal may be lethally taken if such taking is reported to NMFS in accordance with the requirements of § 229.6.

(g) *Emergency regulations.* Vessel owners engaged in a Category III fishery must comply with any applicable emergency regulations.

§ 229.6 Reporting requirements.

(a) Vessel owners or operators engaged in any Category I, II, or III fishery must report all incidental mortality and injury of marine mammals in the course of commercial fishing operations to the Assistant Administrator, or appropriate Regional Office, by mail or other means, such as FAX or overnight mail specified by the Assistant Administrator. Reports must be sent within 48 hours after the end of each fishing trip during which the incidental mortality or injury occurred, or, for nonvessel fisheries, within 48 hours of an occurrence of an incidental mortality or serious injury. Reports must be submitted on a standard postage-paid form as provided by the Assistant Administrator. The vessel owner or operator must provide the following information on this form:

(1) The vessel name, and Federal, state, or tribal registration numbers of the registered vessel;

(2) The name and address of the vessel owner or operator;

(3) The name and description of the fishery, including gear type and target species; and

(4) The species and number of each marine mammal incidentally killed or injured, and the date, time, and approximate geographic location of such occurrence. A description of the animal(s) killed or injured must be provided if the species is unknown.

(b) Participants in nonvessel fisheries must include all of the information in paragraphs (a)(1) through (a)(4) of this section with the exception of the vessel name and registration number.

§ 229.7 Monitoring of incidental mortalities and serious injuries.

(a) *Purpose.* The Assistant Administrator will establish a program to monitor incidental mortality and serious injury of marine mammals during the course of commercial fishing operations in order to:

(1) Obtain statistically reliable estimates of incidental mortality and serious injury;

(2) Determine the reliability of reports of incidental mortality and injury under § 229.6; and

(3) Identify changes in fishing methods or technology that may increase or decrease incidental mortality and serious injury.

(b) *Observer program.* Pursuant to paragraph (a) of this section, the Assistant Administrator may place observers aboard Category I and II vessels as necessary. Observers may, among other tasks:

(1) Record incidental mortality and injury, or bycatch of other target species;

(2) Record numbers of marine mammals sighted; and

(3) Perform other scientific investigations, which may include, but are not limited to, sampling and photographing incidental mortalities and serious injuries.

(c) *Observer requirements for Authorization Certificate holders.* (1) If requested by NMFS or a designated contractor providing observer services to NMFS, an Authorization Certificate holder engaged in a Category I or II fishery must take aboard an observer to accompany the vessel on fishing trips.

(2) After being notified by NMFS, or by a designated contractor providing observer services to NMFS, that the vessel is required to carry an observer, the Authorization Certificate holder must comply with the notification by providing information requested within the specified time on scheduled or anticipated fishing trips.

(3) NMFS, or a designated contractor providing observer services to NMFS, may waive the observer requirement based on a finding that the facilities for housing the observer or for carrying out observer functions are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized.

(4) The Authorization Certificate holder and crew must cooperate with the observer in the performance of the observer's duties including:

(i) Providing adequate accommodations;

(ii) Allowing for the embarking and debarking of the observer as specified by NMFS personnel or designated contractors. The operator of a vessel must ensure that transfers of observers at sea are accomplished in a safe manner, via small boat or raft, during daylight hours if feasible as weather and sea conditions allow, and with the agreement of the observer involved;

(iii) Allowing the observer access to all areas of the vessel necessary to conduct observer duties;

(iv) Allowing the observer access to communications equipment and navigation equipment, when available on the vessel, as necessary to perform observer duties;

(v) Providing true vessel locations by latitude and longitude, accurate to the minute, or by loran coordinates, upon request by the observer;

(vi) Sampling marine mammal specimens, upon request by NMFS personnel;

(vii) Sampling, retaining and storing mammal specimens, upon request by NMFS personnel, designated contractors, or the onboard observer if adequate facilities are available and if feasible;

(viii) Notifying the observer in a timely fashion of when all commercial fishing operations are to begin and end;

(ix) Not impairing or in any way interfering with the research or observations being carried out; and

(x) Complying with other guidelines or regulations that NMFS may develop to ensure the effective deployment and use of observers.

(5) Marine mammals incidentally killed during fishing operations that are readily accessible to crew members must be brought aboard the vessel as biological specimens and retained for the purposes of scientific research if feasible and requested by NMFS personnel, designated contractors, or the aboard observer. Marine mammals so collected and retained as biological specimens must, upon request by NMFS personnel, designated contractors, or the aboard observer, be retained in cold storage aboard the vessel, if feasible, until removed at the request of NMFS personnel, designated contractors, or the aboard observer, retrieved by authorized personnel of NMFS, or released by the observer for return to the ocean. Such biological specimens may be transported on board the vessel during the fishing trip and back to port under this authorization.

(6) Any marine mammal incidentally taken may be retained only if authorized by NMFS personnel, designated contractors or an official onboard observer, or by a scientific research permit that is in the possession of the operator.

(d) *Observer requirements for Category III fisheries.* (1) The Assistant Administrator may place observers on Category III vessels if the Assistant Administrator:

(i) Believes that the incidental mortality and serious injury of marine mammals from such fishery may be

contributing to the immediate and significant adverse impact on a species or stock listed as a threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*); and

(ii) Has complied with § 229.9(a)(3)(i) and (ii); or

(iii) Has the consent of the vessel owner.

(2) If an observer is placed on a Category III vessel, the vessel owner must comply with the requirements of § 229.7(c).

(e) *Alternative observer program.* The Assistant Administrator may establish an alternative observer program to provide statistically reliable information on the species and number of marine mammals incidentally taken in the course of commercial fishing operations. The alternative observer program may include direct observation of fishing activities from vessels, airplanes, or points on shore.

§ 229.8 Publication of list of fisheries.

(a) The Assistant Administrator will publish in the **Federal Register** notice of a proposed revised List of Fisheries on or about July 1 of each year for the purpose of receiving public comment. Each year, on or about October 1, the Assistant Administrator will publish a final revised List of Fisheries, which will become effective January 1 of the next calendar year.

(b) The proposed and final revised List of Fisheries will:

(1) Categorize each commercial fishery based on the definitions for Category I, II, and III fisheries set forth in § 229.2; and

(2) List the marine mammals that interact with commercial fishing operations and the estimated number of vessels or persons involved in each commercial fishery.

(c) The Assistant Administrator may publish a revised List of Fisheries at other times, after notice and opportunity for public comment. The revised final List of Fisheries will become effective no sooner than 30 days after publication in the **Federal Register**.

§ 229.9 Emergency regulations.

(a) If the Assistant Administrator finds that the incidental mortality or serious injury of marine mammals from commercial fisheries is having, or is likely to have, an immediate and significant adverse impact on a stock or species, the Assistant Administrator will:

(1) In the case of a stock or species for which a take reduction plan is in effect,

(i) Prescribe emergency regulations that, consistent with such plan to the maximum extent practicable, reduce incidental mortality and serious injury in that fishery; and

(ii) Approve and implement on an expedited basis, any amendments to such plan that are recommended by the Take Reduction Team to address such adverse impact;

(2) In the case of a stock or species for which a take reduction plan is being developed,

(i) Prescribe emergency regulations to reduce such incidental mortality and serious injury in that fishery; and

(ii) Approve and implement, on an expedited basis, such plan, which will provide methods to address such adverse impact if still necessary;

(3) In the case of a stock or species for which a take reduction plan does not exist and is not being developed, or in the case of a Category III fishery that the Assistant Administrator believes may be contributing to such adverse impact,

(i) Prescribe emergency regulations to reduce such incidental mortality and serious injury in that fishery, to the extent necessary to mitigate such adverse impact;

(ii) Immediately review the stock assessment for such stock or species and the classification of such commercial fishery under this section to determine if a take reduction team should be established; and

(iii) Where necessary to address such adverse impact on a species or stock listed as a threatened species or endangered species under the Endangered Species Act (16 U.S.C. 1531 *et seq.*), place observers on vessels in a Category III fishery if the Assistant Administrator has reason to believe such vessels may be causing the incidental mortality and serious injury to marine mammals from such stock.

(b) Prior to taking any action under § 229.9(a)(1) through (3), the Assistant Administrator will consult with the Marine Mammal Commission, all appropriate Regional Fishery Management Councils, state fishery managers, and the appropriate take reduction team, if established.

(c) Any emergency regulations issued under this section:

(1) Will take effect immediately upon publication in the **Federal Register** and will remain in effect for no more than 180 days or until the end of the applicable commercial fishing season, whichever is earlier, except as provided in subsection (d); and

(2) May be terminated by notice in the **Federal Register** at an earlier date if the Assistant Administrator determines that the reasons for the emergency regulations no longer exist.

(d) If the Assistant Administrator finds that incidental mortality and serious injury of marine mammals in a commercial fishery is continuing to have an immediate and significant adverse impact on a stock or species, the Assistant Administrator may extend the emergency regulations for an additional period of not more than 90 days or until reasons for the emergency regulations no longer exist, whichever is earlier.

§ 229.10 Penalties.

(a) Except as provided for in paragraphs (b) and (c) of this section, any person who violates any regulation under this Part shall be subject to all penalties set forth in the Act.

(b) The owner or master of a vessel that fails to comply with a take reduction plan shall be subject to the penalties of sections 105 and 107 of the Act, and may be subject to the penalties of section 106 of the Act.

(c) The owner of a vessel engaged in a Category I or II fishery who fails to ensure that a decal, or other physical evidence of such authorization issued by NMFS, is displayed on, or is in possession of the operator of the vessel shall be subject to a penalty of not more than $100.

(d) Failure to comply with take reduction plans or emergency regulations issued under part 229 may result in suspension or revocation of an Authorization Certificate, and failure to comply with a take reduction plan is also subject to penalties of 105 and 107 of the Act, and may be subject to the penalties of section 106 of the Act.

(e) For fishers operating in Category I or II fisheries, failure to report all incidental injuries and mortalities within 48 hours of the end of each fishing trip, or to comply with requirements to carry an observer, will result in suspension, revocation, or denial of an Authorization Certificate until such requirements have been fulfilled.

(f) For fishers operating in Category III fisheries, failure to report all incidental injuries and mortalities within 48 hours of the end of each fishing trip will subject such persons to the full penalties of the Act.

(g) *Suspension, revocation or denial of Authorization Certificates.* (1) Until the Authorization Certificate holder complies with the regulations under this part, the Assistant Administrator shall suspend or revoke an Authorization Certificate or deny an annual renewal of an Authorization Certificate in accordance with the provisions in 15 CFR part 904 if the Authorization Certificate holder:

(i) Fails to report all incidental mortality and serious injury of marine mammals as required under § 229.6;

(ii) Fails to take aboard an observer, if requested by NMFS or its designated contractors.

(2) The Assistant Administrator may suspend or revoke an Authorization Certificate or deny an annual renewal of an Authorization Certificate in accordance with the provisions in 15 CFR part 904 if the Authorization Certificate holder fails to comply with any applicable take reduction plan, take reduction regulations, or emergency regulations developed under this subpart or subparts B and C of this part or if the Authorization Certificate holder fails to comply with other requirements of these regulations;

(3) A suspended Authorization Certificate may be reinstated at any time at the discretion of the Assistant Administrator provided the Assistant Administrator has determined that the reasons for the suspension no longer apply or corrective actions have been taken.

§ 229.11 Confidential fisheries data.

(a) Proprietary information collected under this part is confidential and includes information, the unauthorized disclosure of which could be prejudicial or harmful, such as information or data that are identifiable with an individual fisher. Proprietary information obtained under part 229 will not be disclosed, in accordance with NOAA Administrative Order 216–100, except:

(1) To Federal employees whose duties require access to such information;

(2) To state employees under an agreement with NMFS that prevents public disclosure of the identity or business of any person;

(3) When required by court order; or

(4) In the case of scientific information involving fisheries, to employees of Regional Fishery Management Councils who are responsible for fishery management plan development and monitoring.

(5) To other individuals or organizations authorized by the Assistant Administrator to analyze this information, so long as the confidentiality of individual fishers is not revealed.

(b) Information will be made available to the public in aggregate, summary, or other such form that does not disclose the identity or business of any person in accordance with NOAA Administrative Order 216–100. Aggregate or summary form means data structured so that the identity of the submitter cannot be determined either from the present release of the data or in combination with other releases.

§ 229.12 Consultation with the Secretary of the Interior.

The Assistant Administrator will consult with the Secretary of the Interior prior to taking actions or making determinations under this part that affect or relate to species or population stocks of marine mammals for which the Secretary of the Interior is responsible under the Act.

Subpart B—Takes of Endangered and Threatened Marine Mammals

§ 229.20 Issuance of Permits.

(a) *Determinations.* During a period of up to 3 consecutive years, NMFS will allow the incidental, but not the intentional, taking by persons using vessels of the United States or foreign vessels which have valid fishing permits issued by the Assistant Administrator in accordance with section 204(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)), while engaging in commercial fishing operations, of marine mammals from a species or stock designated as depleted because of its listing as an endangered species or threatened species under the Endangered Species Act of 1973 if the Assistant Administrator determines that:

(1) The incidental mortality and serious injury from commercial fisheries will have a negligible impact on such species or stock;

(2) A recovery plan has been developed or is being developed for such species or stock pursuant to the Endangered Species Act of 1973; and

(3) Where required under regulations in subpart A of this part:

(i) A monitoring program has been established under § 229.7;

(ii) Vessels engaged in such fisheries are registered in accordance with § 229.4; and

(iii) A take reduction plan has been developed or is being developed for such species or stock in accordance with regulations at subpart C of this part.

(b) *Procedures for making determinations.* In making any of the determinations listed in paragraph (a) of this section, the Assistant Administrator will publish a notice in the **Federal Register** of fisheries having takes of marine mammals listed under the Endangered Species Act, including a summary of available information regarding the fisheries interactions with listed species. Any interested party may, within 45 days of such publication, submit to the Assistant Administrator written data or views with respect to the listed fisheries. As soon as practicable after the end of the 45 days following publication, NMFS will publish in the **Federal Register** a list of the fisheries for which the determinations listed in paragraph (a) of this section have been made. This publication will set forth a summary of the information used to make the determinations.

(c) *Issuance of authorization.* The Assistant Administrator will issue appropriate permits for vessels in fisheries that are required to register under § 229.4 for which determinations under the procedures of paragraph (b) of this section.

(d) *Category III fisheries.* Vessel owners engaged only in Category III fisheries for which determinations are made under the procedures of paragraph (b) of this section will not be subject to the penalties of this Act for the incidental taking of marine mammals to which this subpart applies, as long as the vessel owner or operator of such vessel reports any incidental mortality or injury of such marine mammals in accordance with the requirements of § 229.6.

(e) *Emergency authority.* During the course of the commercial fishing season, if the Assistant Administrator determines that the level of incidental mortality or serious injury from commercial fisheries for which such a determination was made under this section has resulted or is likely to result in an impact that is more than negligible on the endangered or threatened species or stock, the Assistant Administrator will use the emergency authority under § 229.9 to protect such species or stock, and may modify any permit granted under this paragraph as necessary.

(f) *Suspension, revocation, modification and amendment.* The Assistant Administrator may temporarily suspend or revoke a permit granted under this section if the Assistant Administrator determines that the conditions or limitations set forth in such permit are not being complied with. The Assistant Administrator may amend or modify, after notice and opportunity for public comment, the list of fisheries published in accordance with § 229.21(b) whenever the Assistant Administrator determines there has been a significant change in the information or conditions used to determine such a list.

(g) *Southern sea otters.* This subpart does not apply to the taking of Southern (California) sea otters.

Subpart C—Take Reduction Plan Regulations and Emergency Regulations [Reserved]

[FR Doc. 95–14828 Filed 6–15–95; 8:45 am]
BILLING CODE 3510–22–W

50 CFR Part 227

[Docket No. 950427119–5149–03; I.D.060195E]

RIN 0648–AH98

Sea Turtle Conservation: Restrictions Applicable to Shrimp Trawling Activities; Additional Turtle Excluder Device Requirements Within Certain Statistical Zones; Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; notice of hearings.

SUMMARY: NMFS is proposing to impose, for a 30-day period beginning with the reopening of the waters off Texas, additional restrictions on shrimp trawlers fishing in Gulf of Mexico offshore waters out to 10 nautical miles (nm)(18.5 km) from the COLREGS line, along a portion of the Texas coast, between the Texas-Louisiana border and the line along 27° N. lat. This area includes nearshore waters in shrimp fishery statistical Zones 18, 19, and 20 and the westernmost portion of Zone 17 east to Sabine Pass, TX. The restrictions would include prohibitions on the use by shrimp trawlers of soft turtle excluder devices (TEDs), bottom-opening TEDs, flaps completely covering the escape opening of TEDs, and try nets with a headrope length greater than 12 ft (3.6 m) or a footrope length greater than 15 ft (4.5 m), unless the try nets are equipped with approved TEDs other than soft or bottom-opening TEDs. These restrictions would prevent the reoccurrence of high levels of mortality and strandings of threatened and endangered sea turtles documented in Texas after the waters off Texas are reopened to shrimping.

DATES: Comments on this proposed rule must be submitted by July 3, 1995.

The hearings are scheduled as follows:

1. June 19, 1995, at 7 p.m., Galveston, TX
2. June 20, 1995, at 5 p.m., Rockport, TX

ADDRESSES: Comments on this proposed rule and requests for a copy of the environmental assessment (EA) or supplemental Biological Opinion prepared for this proposed rule should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

The hearings will be held at the following locations:

1. Texas-Galveston County Court House, (Jury room, 1st floor), 722 Moody Street, Galveston, TX 77550
2. Texas-Aransas County Court House (Commissioners Courtroom), 301 North Live Oak Street, Rockport, TX 78382.

FOR FURTHER INFORMATION CONTACT: Charles A. Oravetz, 813–570–5312, FAX: 813–570–5300 or Russell J. Bellmer, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempi*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) are listed as endangered. Loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

The incidental take and mortality of sea turtles as a result of shrimp trawling activities have been documented in the Gulf of Mexico and along the Atlantic seaboard. Under the ESA and its implementing regulations, taking sea turtles is prohibited, with exceptions set forth at 50 CFR 227.72. The incidental taking of turtles during shrimp trawling in the Gulf and Atlantic Areas is excepted from the taking prohibition, if the sea turtle conservation measures specified in the sea turtle conservation regulations (50 CFR part 227, subpart D) are employed. The regulations require most shrimp trawlers operating in the Gulf of Mexico and Southeast U.S. Atlantic to have a NMFS-approved TED installed in each net rigged for fishing, year round.

Recent Events

On April 30, 1995 (60 FR 21741, May 3, 1995), the sea turtle conservation measures were revised, for a 30-day period expiring on May 30, 1995, for shrimp trawlers fishing in nearshore waters along two sections of the Texas and Louisiana coast (statistical Zones 18 and 20, and a portion of Zone 17) in order to ensure that ongoing shrimp fishing would not likely jeopardize the continued existence of listed species of sea turtles and that the incidental take level identified in the incidental take statement (ITS) accompanying the Biological Opinion issued November 14, 1994 (BO) on shrimp fishing would not be exceeded, which would require reinitiation of consultation pursuant to 50 CFR 402.16. The revisions were imposed as temporary additional restrictions pursuant to 50 CFR 227.72(e)(6). This provision states that such restrictions may be imposed upon the determination of the Assistant Administrator for Fisheries, NOAA (AA), that continued takings of sea turtles by shrimp fishing are unauthorized, because they would violate the restrictions, terms and conditions of the ITS issued with the BO or would likely jeopardize the continued existence of a listed species. The BO specifically requires that such restrictions be imposed immediately when sea turtle takings, indicated or documented, reach 75 percent of the established incidental take levels. The restrictions imposed were necessitated by the continued high rates of sea turtle strandings occurring along areas of the Texas coast, and were consistent with the BO and the NMFS Shrimp Fishery Emergency Response Plan (ERP).

The BO required the development of a plan to respond to elevated stranding levels. The ERP provides a general statement of policy with respect to NMFS' enforcement practice and use of future rulemaking in response to elevated sea turtle strandings associated with shrimping effort and ensures compliance with sea turtle conservation regulations. The ERP was signed by the AA on March 14, 1995, and was immediately distributed widely among industry and environmental groups. A notice of availability of the ERP was published in the **Federal Register** on April 21, 1995 (60 FR 19885), and comments are being accepted. In addition, NMFS distributes weekly reports of stranding events and notices of enforcement efforts and restrictions being implemented. NMFS is currently in the process of revising the ERP based on comments received.

A complete discussion of sea turtle strandings in Texas was contained in the temporary restrictions published on May 3, 1995 (60 FR 21741), and only a summary of strandings is provided here. For the 3 consecutive weeks from April 9 through April 29, strandings in Zone 18 were 12, 16, 6 turtles per week, respectively. The temporary restrictions went into effect on April 30, and strandings for the 2 consecutive weeks beginning April 30 through May 13 were 8, and 8 turtles per week, respectively. Forty of the 50 total turtles stranded during this 5-week period were Kemp's ridleys. Texas offshore waters

out to 200 nm (370.6 km) were closed to shrimping on May 15, and only 1 turtle stranded in Zone 18 between May 14 and May 20. For the 3 consecutive weeks beginning April 9 and ending April 29, strandings in Zone 20 were 3, 3, and 16 turtles per week, respectively. Seven of the 22 turtles were Kemp's ridleys. The temporary restrictions went into effect on April 30, and only 3 turtles stranded in Zone 20 over the next 3 weeks. These strandings approach or exceed the indicated take levels established for those zones with the exception of Zone 18 following the closure of waters off Texas and Zone 20 following the effective date of the temporary restrictions.

While the ERP's approach is to respond to increases in strandings as they occur, this proposed rule seeks to anticipate and prevent strandings before they occur. Many of the comments that NMFS received on the temporary restrictions published on May 3 concerned the lack of prior notice and opportunity for public comment (see Comments on the Emergency Response Plan and Temporary Restrictions section below). NMFS seeks to address this criticism by providing prior notice and an opportunity for public comment through publishing this proposed rule, which would impose certain restrictions upon the reopening of the waters off Texas. Based on historical data, the thresholds identified in the ERP and ITS likely will be reached and perhaps exceeded shortly after the reopening of the waters off Texas if no additional restrictions are imposed (see Texas Closure section below). NMFS believes that, if the restrictions contained in this proposed rule are not imposed effective upon the reopening of the waters off Texas, the thresholds identified in the ERP will be met or exceeded and restrictions pursuant to 50 CFR 227.72(e)(6) will need to be imposed shortly thereafter, with little or no prior notice or opportunity for prior public comment and little or no delayed effective date. In addition, although this proposed rule is not based on the thresholds identified in the ERP having been reached, it would impose the same restrictions identified in the ERP and promulgated on May 3, and as modified on May 18, 1995 (60 FR 26691). Given the relationship between this rule, the ERP and the temporary restrictions imposed pursuant to 50 CFR 227.72(e)(6), NMFS considered the comments received on the ERP and the temporary restrictions imposed on May 3, 1995 in developing this proposed rule.

The Texas Closure

Every year, offshore waters along Texas boundaries are closed to shrimp fishing out to 200 nm (370.6 km) for approximately 6 to 8 weeks in the late spring and early summer. The Texas closure is coordinated each year by State and Federal fishery managers to allow shrimp to grow to more valuable sizes and increase profits in the fishery. The Texas closure began this year on May 15 and will end no later than July 15. The exact date of the reopening is set by the State of Texas, which monitors shrimp sizes and distributions to determine the optimum time to open the fishery. Over the last 5 years, the waters have always been reopened earlier than July 15.

The reopening of waters off Texas after the closure is usually marked by heavy shrimping activity, with many shrimp vessels from Texas and other states participating. Sea turtle strandings in Texas historically have been low during the closure and have increased dramatically when the waters off Texas were reopened to shrimping. A comparison of strandings during the last 4 weeks of the closure to strandings during the first 4 weeks following the reopening to shrimping, clearly illustrates this trend. For example, in 1990, 6 dead turtles stranded on Texas offshore beaches in the 4 weeks before reopening, while 51 dead turtles stranded in the 4 weeks following reopening. In 1991, the corresponding stranding rates were 4 and 21; in 1992, 3 and 25; in 1993, 4 and 24. In 1994, 9 dead sea turtles stranded in Texas during the 4 weeks prior to reopening, while 99 dead turtles stranded in the 4 weeks following reopening. These data suggest an 8½ fold increase in sea turtle strandings in Texas over the last 5 years following the reopening of the waters off Texas to shrimping.

NMFS and the U.S. Coast Guard maintained high levels of enforcement of TED requirements throughout the waters off Texas prior to the Texas closure. In addition, NMFS gear experts conducted skill-building workshops in Texas during the spring to assist shrimpers regarding the proper use of TEDs. Nonetheless, continued elevated sea turtle strandings occurred in two statistical zones in Texas where shrimp trawl effort was high, and this required NMFS to impose additional restrictions to conserve listed sea turtles in accordance with the ERP. Before the restrictions were implemented, total sea turtle strandings in Texas were occurring at the same rate seen in 1994, which had been determined to likely jeopardize the continued existence of the Kemp's ridley sea turtle. Upon imposing the restrictions, however, strandings were sharply reduced, as previously discussed.

Although NMFS and the U.S. Coast Guard will maintain high enforcement levels when Texas Gulf waters open, NMFS does not believe that this alone will be sufficient to maintain sea turtle mortalities within the incidental take level specified in the ITS accompanying the November 14, 1994, BO. Earlier this season, high enforcement presence alone was not sufficient to prevent the sea turtle mortalities that triggered the promulgation of restrictions in accordance with the ERP. The historical stranding patterns indicate that sea turtle strandings will likely rise very sharply when the waters off Texas reopen. Indicated take levels likely would be reached or exceeded in one or more zones in Texas, requiring NMFS to impose restrictions on an emergency basis, in accordance with the ERP.

Given the likelihood of elevated sea turtle strandings following the reopening of the waters off Texas to shrimping and the need to impose restrictions on the shrimp fishery as an emergency response thereto, NMFS believes that, in compliance with the ESA, it is in the best interests of the shrimp fishery and the conservation of listed sea turtles to impose restrictions on shrimp trawling upon the reopening of the waters off Texas. Shrimp industry representatives have stated that implementing emergency restrictions 2 weeks after the reopening would be disruptive to shrimpers at the height of the shrimp season.

Furthermore, immediate implementation of restrictions might impair their effectiveness because of difficulties in communicating the restrictions to those who must comply and the time necessary to come into compliance. If elevated sea turtle strandings continue, NMFS would have to take more restrictive steps to protect sea turtles. NMFS is, therefore, proposing this temporary rule, to be effective when waters off Texas reopen to shrimping, in order to protect listed sea turtles, reduce sea turtle strandings, reduce the possible need for further restrictive measures, avoid disruption of fishing activities, and give prior notice and an opportunity for prior comment. NMFS is proposing to impose the same restrictions that were in place in waters off Texas before the Texas closure, because many shrimpers are familiar with those restrictions and have already made modifications to their gear to bring that gear into compliance with the restrictions.

Comments on the Emergency Response Plan and Temporary Restrictions

As stated earlier, NMFS made the ERP available to all concerned parties, accepting comments, and is currently in the process of revising the ERP based on those comments. In addition, NMFS considered those comments in developing this proposed rule. One commenter objected to the possible restrictions on soft TEDs and asked that NMFS assess alternatives to flap restrictions. The required use of TEDs in try nets was stated to be acceptable and the commenter stated that many local fishermen already used TEDs in try nets. NMFS has also received proposals from several representatives of the shrimp fishery that set forth alternative restrictions that would limit nearshore fishing pressure and resulting levels of turtle capture, of which one has been submitted as a petition for rulemaking pursuant to section 553(e) of the Administrative Procedure Act (APA), and to which NOAA will respond. In addition, NMFS has received comments supporting the ERP and the imposition of additional restrictions on shrimp fishing.

NMFS received numerous comments on the temporary restrictions published on May 3, 1995 (60 FR 21741). These came primarily by telephone and at a meeting hosted by shrimp industry representatives and attended by NMFS personnel on May 5, 1995, as well as at additional meetings held between NMFS personnel and industry representatives on May 12 and May 19.

Many shrimpers stated that the prohibition on the use of all try nets without TEDs installed was unreasonable, because NMFS had not provided any alternative that would allow them to monitor their catch rates and catch composition, forcing them to fish inefficiently. NMFS subsequently modified the temporary restrictions (60 FR 26691, May 18, 1995) to allow certain small try nets to be used without TEDs installed.

NMFS also received many comments that both the ERP and the temporary requirements were developed and implemented without adequate notice and opportunity to comment, and without adequate time for the shrimpers to come into compliance with the temporary restrictions. In addition, several industry groups have recently filed suit against NMFS alleging failure to comply with sections 553(b) and 553(d) of the APA in promulgating of the ERP and the temporary restriction of May 3. The APA requirement does not apply to interpretative rules, general statements of policy, or rules of agency organization, procedure or practice, and the delayed effective requirement does not apply to interpretative rules and statements of policy. Additionally, the APA provides that an agency may for good cause find that advance notice and opportunity for comment, as well as a delayed effective date, may be impracticable, unnecessary or contrary to the public interest. Nevertheless, NMFS recognizes the concerns of shrimpers that prior notice, opportunity for prior public comment, and delayed effective date should be provided to the greatest extent possible. The purpose of the ERP is to provide notice to the public as to when and what additional restrictions NMFS likely is to impose as strandings of listed sea turtles increased or non-compliance with requirements increased. This proposed rule likewise serves to give the prior public notice an opportunity for prior public comment on restrictions before the thresholds in the ERP are met.

Provisions of the Proposed Rule

This proposed rule would prohibit fishing by shrimp trawlers (as defined in 50 CFR 217.12), starting 12:01 a.m. (local time) on the day of the reopening of the waters off Texas to shrimp fishing and ending 11:59 p.m. (local time) 30 days after the reopening, in offshore waters, seaward to 10 nm (18.5 km) from the COLREGS line, bounded between the line along 27° N. lat. and the line along 93°50.3′ W. long. (the Texas-Louisiana border), unless they are in compliance with the following prohibitions and all other applicable provisions in 50 CFR 227.72(e):

1. The use of soft TEDs described in 50 CFR is prohibited.

2. The use of hard TEDs with bottom escape openings and special hard TEDs with bottom escape openings is prohibited. Approved hard TEDs and special hard TEDs must be configured with the slope of the deflector bars upward from forward to aft and with the escape opening at the top of the trawl.

3. The use of try nets with a headrope length greater than 12 ft (3.6 m) or a footrope length greater than 15 ft (4.6 m) is prohibited unless a NMFS-approved top-opening, hard TED or special hard TED is installed when the try nets are rigged for fishing. Try nets with a headrope length 12 ft (3.6 m) or less and a footrope length 15 ft (4.6 m) or less would be exempt from the TED-use requirement in accordance with paragraph (e)(2)(ii)(B)(*1*).

4. The use of a webbing flap that completely covers the escape opening in the trawl is prohibited. Any webbing that is attached to the trawl, forward of the escape opening, must be cut to a length so that the trailing edge of such webbing does not approach to within 2 inches (5.1 cm) of the posterior edge of the TED grid. The requirements for the size of the escape opening would be unchanged.

The proposed rule would suspend for a 30-day period all provisions in 50 CFR 227.72(e), including, but not limited to 50 CFR 227.72(e)(2)(ii)(B)(*1*) (use of try nets), 50 CFR 227.72(e)(4)(iii) (Soft TEDs), 50 CFR 227.72(e)(4)(i)(F) (Position of escape opening), and 50 CFR 227.72(e)(4)(iv)(C) (Allowable modification to TEDs), that are not consistent with these prohibitions.

This proposed rule would also require owners and operators of shrimp trawlers in the area subject to temporary restrictions to carry a NMFS-approved observer aboard their vessel(s), if directed to do so by the Director, Southeast Region, NMFS, upon written notification sent to either the address specified for the vessel registration or documentation purposes, or otherwise served on the owner or operator of the vessel. Owners and operators and their crew would be required to comply with the terms and conditions specified in such written notification.

These restrictions would allow shrimp trawling to continue in the affected area while providing heightened protection for sea turtles. The use of those TEDs with the greatest potential for turtle capture would be prohibited. Although soft TEDs and bottom-opening TEDs have generally been approved for use, NMFS believes that they may not be as effective at releasing turtles, particularly small juvenile turtles, under some conditions, as top-opening hard TEDs. NMFS researchers have determined through recent in-water testing that small turtles require almost twice as long to escape from a bottom-opening TED than from a top-opening TED (average 125.6 seconds vs. average 68.8 seconds) under ideal conditions. NMFS has previously promulgated regulations to address and discuss other problems with bottom-opening hard TEDs (59 FR 33447, June 29, 1994; 60 FR 15512, March 24, 1995).

Try nets without an approved TED installed would be prohibited except for small try nets. While try nets have been exempted from the requirement to have a TED installed, because they are only intended for use in brief sampling tows not likely to result in turtle mortality, turtles are, however, caught in try nets. Either through repeated captures or long tows, try nets can contribute to the mortality of sea turtles. Takes of sea turtles in try nets, including one mortality, have been documented by NMFS.

Finally, use of full length webbing flaps would be prohibited. While full length flaps have been permitted to help reduce shrimp loss with TEDs, such flaps may hinder turtle release. In a top-opening TED, high pressure is generated above the trawl net, which forces the webbing flap closed, while in a bottom-opening TED the weight of the TED grid can pin the webbing flap shut over the escape opening. Testing has shown that turtles escape more readily from TEDs with shortened flaps than from TEDs with long flaps (55.2 second average escape time vs. 68.8 second average escape time). Additionally, the webbing flap can be sewn shut to disable the TED deliberately. Underwater investigations of the performance of top-opening TEDs with shortened webbing flaps indicated that the shortened webbing flap should not contribute to any shrimp loss. Under this proposed rule, only approved hard TEDs and special hard TEDs with top escape openings and shortened flaps that do not cover the escape opening would be allowed in shrimp trawls in the affected area.

Additional Conservation Measures

The AA may issue a determination that incidental takings of listed species during fishing activities are unauthorized, and, pursuant thereto, may restrict fishing activities in order to conserve threatened and endangered species. The regulatory authority for this is codified at 50 CFR 227.72(e)(6), and guidance in determining unauthorized takings and in setting restrictions is set forth in the ERP. NMFS will continue to monitor sea turtle strandings and will implement the provisions of the ERP as necessary. If offshore sea turtle strandings in any statistical zones in Texas persist at or above 75 percent of the indicated take level for 4 weeks, NMFS will follow the guidance in the ERP to determine whether to limit fishing effort, as required, in the offshore waters of the zones affected by elevated strandings, seaward to 10 nm (18.5 km) from the COLREGS line, for a period of 30 days. Contiguous statistical areas or portions of those areas may be included in the restrictions as necessary. These restrictions may apply to gear types/vessels currently exempted from the TED requirement at 50 CFR 227.72(e)(2)(ii) (A) and/or (B). Area restrictions will be promulgated through emergency rulemaking notices pursuant to the procedures set forth at 50 CFR 227.72(e)(6).

Request for Comments

NMFS will accept written comments (see **ADDRESSES**) on this proposed rule for a 15-day period from date of publication in the **Federal Register**. In addition, NMFS will conduct two public hearings on this action (see **ADDRESSES**).

Classification

This action has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule would not have significant economic impact on a substantial number of small entities, because these restrictions would impose only a minor economic burden on shrimp fishermen. The predominant TED design in use in the affected area is a bottom-opening hard grid TED. Bottom-opening hard grid TEDs can be modified to comply with the requirements of this rule in one to two hours with little, if any, cost. Any webbing flap over the escape opening can be shortened in less than 10 minutes. Trawlers equipped with only soft TEDs would have to move out of the affected area, either offshore or alongshore, or to equip their nets with hard TEDs. Hard grid TEDs are available for as little as $75.00 and take only a few hours to install.

The AA prepared an EA for this proposed rule and copies are available (see **ADDRESSES**).

List of Subjects in 50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: June 13, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 227 is proposed to be amended as follows:

PART 227—THREATENED FISH AND WILDLIFE

1. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. In § 227.72, paragraph (e)(2)(v) is added to read as follows:

§ 227.72 Exceptions to prohibitions.

* * * * *

(e) * * *

(2) * * *

(v) *Gear requirements—Offshore waters along Texas*—(A) *Gear restrictions.* Any shrimp trawler is prohibited from fishing in offshore waters, seaward to 10 nm (18.5 km) from the COLREGS line, bounded between the line along 27° N. lat. and the line along 93°50.3′ W. long. (the Texas-Louisiana border) unless it is in compliance with the prohibitions in paragraphs (e)(2)(v)(A) (*1*) through (*4*) of this section, and all other applicable provisions to § 227.72(e), unless such provisions do not conform to the prohibitions in paragraphs (e)(2)(v)(A) (*1*) through (*4*) of this section. Any provision in this section, including but not limited to, paragraph (e)(2)(ii)(B)(*1*) of this section (use of try nets), paragraph (e)(4)(iii) of this section (Soft TEDs), paragraph (e)(4)(i)(F) of this section (Position of escape opening), and paragraph (e)(4)(iv)(C) of this section (Allowable modification to TEDs), that does not conform to the prohibitions in paragraphs (e)(2)(v)(A) (*1*) through (*4*) of this section is suspended for the duration of this rule.

(*1*) The use of soft TEDs is prohibited.

(*2*) The use of hard TEDs with bottom escape openings and special hard TEDs with bottom escape openings is prohibited. Approved hard TEDs and special hard TEDs must be configured with the slope of the deflector bars upward from forward to aft and with the escape opening at the top of the trawl.

(*3*) The use of try nets with a headrope length greater than 12 ft (3.6 m) or a footrope length greater than 15 ft (4.5 m) is prohibited unless a NMFS-approved top-opening, hard TED or special hard TED is installed when the try nets are rigged for fishing. Try nets with a headrope length 12 ft (3.6 m) or less and a footrope length 15 ft (4.5 m) or less are exempt from the TED-use requirement in accordance with paragraph (e)(2)(ii)(B)(*1*) of this section.

(*4*) The use of a webbing flap that completely covers the escape opening in the trawl is prohibited. Any webbing that is attached to the trawl, forward of the escape opening, must be cut to a length so that the trailing edge of such webbing does not approach to within 2 inches (5.1 cm) of the posterior edge of the TED grid. The requirements for the size of the escape opening set forth in paragraph (e)(4)(i)(G) of this section apply (see Figure 14 to part 227).

(B) *Monitoring.* Shrimp trawlers operating in offshore waters, seaward to 10 nm (18.5 km) from the COLREGS line, bounded between the line along 27° N. lat. and the line along 93°50.3′ W. long. (the Texas-Louisiana border) must carry a NMFS-approved observer aboard such vessel(s) if directed to do so by the Southeast Regional, Director, upon written notification sent to either the address specified for the vessel registration or documentation purposes,

or otherwise served on the owner or operator of the vessel. Owners and operators and their crew must comply with the terms and conditions specified in such written notification. All NMFS-approved observers will report any violations of this section, or other applicable regulations and laws; such information may be used for enforcement purposes.

* * * * *

3. Figure 14 to part 227 is added to read as follows:

BILLING CODE 3510-22-W

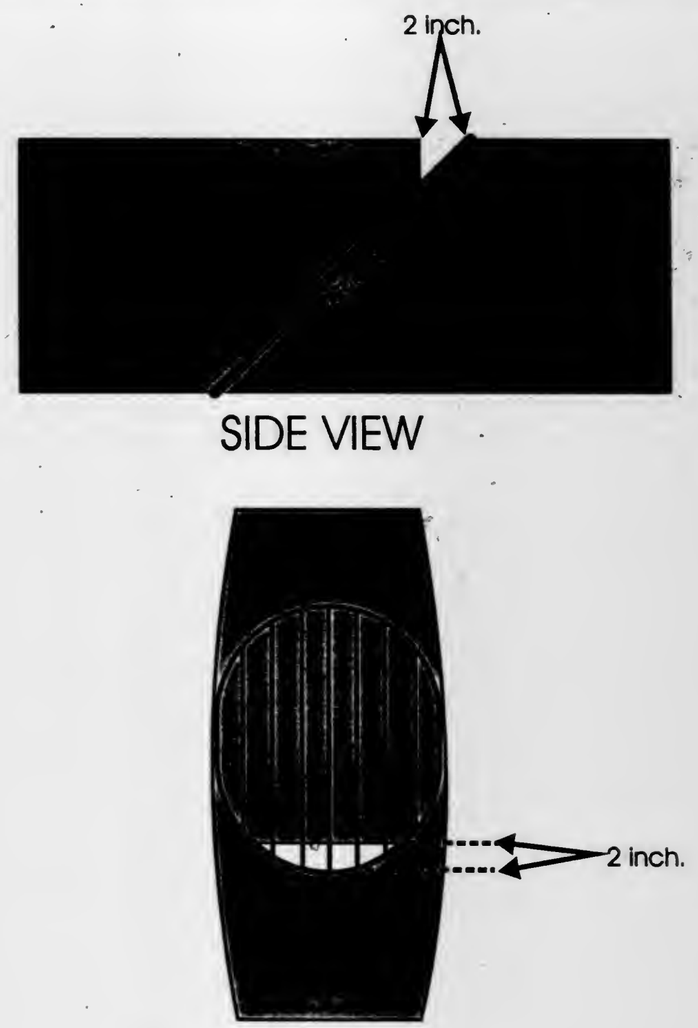


FIGURE 14 to part 227--Shortened Webbing Over the Escape Opening Complying With Requirement at 50 CFR 227.72(e)(2)v)(A)(4)

[FR Doc. 95-14826 Filed 6-13-95; 3:27 pm]
BILLING CODE 3510-22-C

Notices

Federal Register
Vol. 60, No. 116
Friday, June 16, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

June 9, 1995.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information.

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) Who will be required or asked to report; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

- National Resources Conservation Service, Long-term Contracting Conservation Plan of Operations, NRCS–LTP–1, 2, 11, 11A, 11B, 12, 20, 21 and 24, Individuals or households; Farms; 612,000 responses; 106,835 hours, Bobby Rakestraw (202) 720–1866.
- Food and Consumer Service, Recipient Food Stamp Trafficking—Addendum, Individuals or households; 864 responses; 936 hours, Sharron Cristofar (703) 305–2131.

Extension

- Animal and Plant Health Inspection Service, Report of Violations, PPQ Form 518, Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; 400 responses; 68 hours, Linda Mudd (301) 734–8420.
- Animal and Plant Health Inspection Service, Endangered Species Regulations and Forfeiture Procedures, PPQ Forms 368, 621, 623, 625, and 626, Business or other for-profit; 16,115 responses; 3,186 hours, Don Thompson (301) 734–8646.

Donald E. Hulcher,

Deputy Departmental Clearance Officer.

[FR Doc. 95–14751 Filed 6–15–95; 8:45 am]

BILLING CODE 3410–01–M

Forest Service

Klamath Provincial Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Klamath Provincial Advisory Committee will meet on July 20 and July 21, 1995 at the Miner's Inn Convention Center, 122 E. Miner Street in Yreka, California. The meeting will begin at 10:30 a.m. on July 20 and adjourn at 5:00 p.m. The meeting will reconvene at 8:00 a.m. on July 21 and continue until 3:00 p.m. Agenda items to be covered include: (1) Mission and purpose of the Advisory Committee; (2) operating guidelines and ground rules; (3) Klamath PAC issues identification and prioritization; and (4) a public comment period. All PAC meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Jim Anderson, USDA, Klamath National Forest, at 1312 Fairland Road, Yreka, California 96097; telephone 916–842–6131, (FTS) 700–467–1300.

Dated: June 13, 1995.

Robert J. Anderson,

Land Management Planning Staff Officer.

[FR Doc. 95–14867 Filed 6–15–95; 8:45 am]

BILLING CODE 3410–11–M

Rural Utilities Service

Municipal Interest Rates for the Third Quarter of 1995

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of municipal interest rates on advances from insured electric loans for the third quarter of 1995.

SUMMARY: The Rural Utilities Service hereby announces the interest rates for advances on municipal rate loans with interest rate terms beginning during the third calendar quarter of 1995.

DATES: These interest rates are effective for interest rate terms that commence during the period beginning July 1, 1995, and ending September 30, 1995.

FOR FURTHER INFORMATION CONTACT: Sue Arnold, Financial Analyst, U.S. Department of Agriculture, Rural Utilities Service, room 2230-s, 14th Street & Independence Avenue, SW. AgBox 1522, Washington, DC 20250–1500. Telephone: 202–720–0736. FAX: 202–720–4120.

SUPPLEMENTARY INFORMATION: The Rural Utilities Service (RUS) hereby announces the interest rates on advances made during the third calendar quarter of 1995 for municipal rate electric loans. Pursuant to regulations originally published by the Rural Electrification Administration (REA) at 7 CFR 1714.5, the interest rates on advances from municipal rate loans are based on indexes published in the "Bond Buyer" for the four weeks prior to the first Friday of the last month before the beginning of the quarter.

The Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub.L. 103–354, 101 Stat. 3178), signed by President Clinton on October 13, 1994, provides for the establishment of RUS as successor to REA with respect to various programs, including the electric loan program established by the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*). On October 20, 1994, the Secretary of Agriculture issued Secretary's Memorandum 1010–1, establishing RUS and abolishing REA. Therefore, RUS is publishing this notice implementing a rule originally published by REA.

In accordance with 7 CFR 1714.5, the interest rates are established as shown in the following table for all interest rate terms that begin at any time during the third calendar quarter of 1995.

Interest rate term ends in (year)	Interest rate (0.000 percent)
2016 or later	5.750
2015	5.750
2014	5.750
2013	5.750
2012	5.625
2011	5.625
2010	5.500
2009	5.500
2008	5.375
2007	5.375
2006	5.250
2005	5.125
2004	5.000
2003	5.000
2002	4.875
2001	4.750
2000	4.625
1999	4.500
1998	4.500
1997	4.375
1996	4.125

Dated: June 8, 1995.

Wally Beyer,

Administrator, Rural Utilities Service.

[FR Doc. 95–14753 Filed 6–15–95; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 30–95]

Foreign-Trade Zone 2, New Orleans, LA; Proposed Foreign-Trade Subzone Mobil Corporation, (Oil Refinery Complex) New Orleans, Louisiana, Area

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Board of Commissioners of the Port of New Orleans, grantee of FTZ 2, requesting special-purpose subzone status for the oil refinery complex of Mobil Corporation, located in St. Bernard/Jefferson/St. Charles Parishes, Louisiana (New Orleans area). The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on June 8, 1995.

The refinery complex (400 acres) consists of 3 sites in St. Bernard/Jefferson/St. Charles Parishes, Louisiana: *Site 1* (310 acres)—main refinery and petrochemical feedstock complex located on the Mississippi River at 500 West St. Bernard Highway, Chalmette, St. Bernard Parish, some 5 miles east of New Orleans; *Site 2* (200,000 barrel leased capacity)—Amerada Hess Tank Farm, located at 200 Douglass Road, Jefferson Parish, some 10 miles west of the refinery; *Site 3* (236,000 barrel leased capacity)—GATX Tank Farm, located at 1601 River Road, St. Charles Parish, some 20 miles west of the refinery.

The refinery (191,000 barrels per day; 690 employees) is used to produce fuels and petrochemical feedstocks. Fuels produced include gasoline, jet fuel, distillates, residual fuels, and naphthas. Petrochemicals include methane, ethane, propane, benzene, toluene, xylenes, and butane. Refinery by-products include petroleum coke and sulfur. Some 55 percent of the crude oil (90 percent of inputs), and some feedstocks and motor fuel blendstocks are sourced abroad.

Zone procedures would exempt the refinery from Customs duty payments on the foreign products used in its exports. On domestic sales, the company would be able to choose the finished product duty rate (nonprivileged foreign status—NPF) on certain petrochemical feedstocks and refinery by-products (duty-free). The duty on crude oil ranges from 5.25¢ to 10.5¢/barrel. The application indicates that the savings from zone procedures would help improve the refinery's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 15, 1995. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to August 30, 1995).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, Hale Boggs Federal Building, 501 Magazine Street, Room 1043, New Orleans, Louisiana 70130

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: June 8, 1995.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 95–14819 Filed 6–15–95; 8:45 am]

BILLING CODE 3510–DS–P

[Docket A(32b1)–8–95 Docket A(32b1)–9–95]

Requests for Modification of Restrictions

In the matter of: Foreign-Trade Zone 122—Corpus Christi, TX Subzone 122I; CITGO Refining and Chemicals, Inc. (Crude Oil Refinery Complex) and Foreign-Trade Zone 87—Lake Charles, LA, Subzone 87B, CITGO Petroleum Corporation (Crude Oil Refinery Complex)

Requests have been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Corpus Christi Authority, grantee of FTZ 122, and the Lake Charles Harbor & Terminal District, grantee of FTZ 87, pursuant to § 400.32(b)(1) of the Board's regulations, for modification of FTZ Board Order 407 (53 FR 52457, 12/28/88) and Board Order 420 (54 FR 27660, 6/30/89), which authorized subzone status at the crude oil refinery complexes of CITGO Refining and Chemicals, Inc. in Corpus Christi, Texas (Subzone 122I), and CITGO Petroleum Corporation in Lake Charles, Louisiana (Subzone 87B), respectively. The requests were formally filed on June 9, 1995.

The Board Orders in question were issued subject to certain standard restrictions, including one that required the election of privileged foreign status on incoming foreign merchandise. The zone grantees have requested that the latter restriction be modified in each Board Order so that CITGO would have the option available under the FTZ Act to choose non-privileged foreign (NPF) status on foreign refinery inputs used to produce certain petrochemical feedstocks and by-products, including the following: benzene, toluene, xylenes, other aromatic hydrocarbon mixtures, distillates/residual fuel oils, kerosene, naphtha, natural gas, ethane, propane, butane, ethylene, propylene, butylene, butadiene, cumene, petroleum coke, paraffin wax, asphalt, sulfur, and sulfuric acid.

The requests cite the FTZ Board's recent decision in the Amoco, Texas City, Texas case (Board Order 731, 60 FR 13118, 3/10/95), which authorized subzone status with the NPF option noted above. In the Amoco case, the Board concluded that the restriction that precluded this NPF option was not needed under current oil refinery industry circumstances.

Public comment on the proposal is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 17, 1995.

A copy of the application and accompanying exhibits will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: June 12, 1995.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–14820 Filed 6–15–95; 8:45 am]

BILLING CODE 3510–DS–P

Minority Business Development Agency

Business Development Center Applications: Charleston, SC

AGENCY: Minority Business Development Agency.

ACTION: Cancellation.

SUMMARY: The Minority Business Development Agency is cancelling the announcement to solicit competitive applications under its Minority Business Development Center (MBDC) Program to operate the Charleston, South Carolina MBDC. This solicitation was originally published in the **Federal Register**, Wednesday, May 10, 1995, Vol. 60, No. 90, 24838.

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: June 13, 1995.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–14818 Filed 6–15–95; 8:45 am]

BILLING CODE 3510–21–P

National Institute of Standards and Technology

Notice of Prospective Grant of Exclusive Patent License

SUMMARY: This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institute of Standards and Technology ("NIST"), U.S. Department of Commerce, is contemplating the grant of an exclusive license to practice the invention embodied in U.S. Patent Serial Number 08/328,806, titled, "Transparent Carbon Nitride Films, Process For Making Carbon Nitride Films And Compositions Of Matter Comprising Transparent Carbon Nitride Films" to Structured Materials Industries, Inc., having a place of business in Piscataway, New Jersey. The patent rights in this invention have been assigned to the United States of America.

FOR FURTHER INFORMATION CONTACT:

Bruce E. Mattson, National Institute of Standards and Technology, Technology Development and Small Business Program, Building 221, Room B–256, Gaithersburg, MD 20852.

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

The prospective exclusive license may be granted unless, within sixty days form the date of this published Notice, NIST receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

U.S. Patent Serial Number 08/328,806 relates generally to transparent carbon nitride films and more particularly to transparent carbon nitride films for use in optical or solar energy devices. It also relates to processes for making transparent carbon nitride films, and compositions of matter comprising transparent carbon nitride films.

NIST may enter into a Cooperative Research and Development Agreement ("CRADA") to perform further research on the invention for purposes of commercialization. The CRADA may be conducted by NIST without any additional charge to any party that licenses the patent. NIST may grant the licensee an option to negotiate for royalty-free exclusive licenses to any jointly owned inventions which arise from the CRADA as well as an option to negotiate for exclusive royalty-bearing licenses for NIST employee inventions which arise from the CRADA.

The availability of the invention for licensing was published in the **Federal Register**, Vol. 60, No. 55 (March 22, 1995). A copy of the patent application may be obtained from NIST at the foregoing address.

Dated: June 8, 1995.

Samuel Kramer,

Associate Director.

[FR Doc. 95–14776 Filed 6–15–95; 8:45 am]

BILLING CODE 3510–13–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in Sri Lanka

June 12, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: June 15, 1995.

FOR FURTHER INFORMATION CONTACT: Helen L. LeGrande, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased for unused carryforward and special carryforward. The limits for Categories 334/634, 336/636/836 and 342/642/842 are being increased an additional 5 percent for garments made from locally-woven, handloomed fabrics.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 13410, published on March 13, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 12, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 7, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Sri Lanka and exported during the period which began on January 1, 1995 and extends through December 31, 1995.

Effective on June 15, 1995, you are directed to amend the directive dated March 7, 1995 to increase the limits for the following categories, as provided under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
331/631	2,225,054 dozen pairs.
334/634	490,660 dozen.
335/835	228,705 dozen.
336/636/836	377,690 dozen.
340/640	1,059,496 dozen.
341/641	1,749,668 dozen of which not more than 1,113,681 dozen shall be in Category 341 and not more than 1,166,445 dozen shall be in Category 641.
342/642/842	621,312 dozen.
347/348/847	1,153,754 dozen.
351/651	294,170 dozen.
352/652	1,213,799 dozen.
635	293,735 dozen.
840	252,596 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–14779 Filed 6–15–95; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 17, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodity

Cover Assembly, Generator 2805–00–356–1985
NPA: North Bay Rehabilitation Services, Inc., San Rafael, California at its facility in Rohnert Park, California

Services

Grounds Maintenance
Nogales Border Station (West), Nogales, Arizona
NPA: Santa Cruz Training Programs, Inc., Nogales, Arizona
Grounds Maintenance
Department of Veterans Affairs Medical Center, San Francisco, California
NPA: North Bay Rehabilitation Services, Inc., San Rafael, California
Janitorial/Custodial
U.S. Army Reserve Training Center, Buildings 104, 105, 106, 107, 108, 109, 140, 141, 144 and 145, Arlington Heights, Illinois
NPA: Clearbrook Center, Inc., Rolling Meadows, Illinois
Mailing Service
Fleet and Industrial Supply Center, San Diego, California
NPA: Mental Health Systems, Inc., San Diego, California
Switchboard Operation
Department of Veterans Affairs Medical Center, Palo Alto, California
NPA: Project Hired, Inc., Sunnyvale, California.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action does not appear to have a severe economic impact on future contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

Enamel, Lacquer
8010–00–936–8366
8010–00–936–8367
8010–00–936–8369
8010–00–936–8370
8010–00–936–8371

E.R. Alley, Jr.,
Deputy Executive Director.

[FR Doc. 95–14789 Filed 6–15–95; 8:45 am]
BILLING CODE 6820–33–P

COMMODITY FUTURES TRADING COMMISSION

Applications of the New York Cotton Exchange as a Contract Market In Futures and Futures Options on the Emerging Market Debt Index

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures and futures option contracts.

SUMMARY: The Commodity Futures Trading Commission previously published in the **Federal Register** a proposal of the New York Cotton Exchange (NYCE or Exchange) for designation as a contract market in futures and futures options on the emerging market debt index. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that, in this instance, an additional period for public comment is warranted.

DATES: Comments must be received on or before July 17, 1995.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the NYCE emerging market debt index designation applications.

FOR FURTHER INFORMATION CONTACT: Please contact Stephen Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone 202–254–7303.

SUPPLEMENTARY INFORMATION: On October 5, 1995, the Commission published in the **Federal Register** a notice of availability of the NYCE's terms and conditions for the emerging market debt index futures and futures option contracts (59 FR 50730). As noted, the Director of the Division has determined that, for these proposed contracts, an additional comment period is warranted.

Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the NYCE in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the NYCE, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on June 9, 1995.

John Mielke,
Acting Director.

[FR Doc. 95–14755 Filed 6–15–95; 8:45 am]
BILLING CODE 6351–01–P

DEPARTMENT OF EDUCATION

21st Century Community Learning Centers

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards and notice of final priority for fiscal year (FY) 1995—correction.

On June 9, 1995, the Assistant Secretary for Educational Research and Improvement published in the **Federal Register** a notice inviting applications for new awards (60 FR 30756) and a notice of final priority (60 FR 30757) for FY 1995 for the 21st Century Community Learning Centers Program. The purpose of this notice is to amend those notices.

In the notice inviting applications for new awards, add to the eligible applicants section a school or consortia of schools located in areas designated as Urban Enhanced Enterprise Communities.

In the notice of final priority, the priority is amended to include a school or consortia of schools located in areas designated as Urban Enhanced Enterprise Communities. These areas are Boston, Massachusetts; Houston, Texas; Kansas City, Kansas and Kansas City, Missouri; and Oakland, California. These cities were inadvertently omitted from the original notices.

FOR FURTHER INFORMATION CONTACT: Seresa Simpson, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 522, Washington, DC 20208–5524. Telephone (202) 219–1935. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Program Authority: 20 U.S.C. 8241–8246.

Dated: June 9, 1995.

(Catalog of Federal Domestic Assistance Number 84.287, 21st Century Community Learning Centers Program.)

Sharon P. Robinson,
Assistant Secretary for Educational Research and Improvement.

[FR Doc. 95–14761 Filed 6–15–95; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR95–14–000]

Louisiana Resources Pipeline Co., L.P.; Notice of Petition for Rate Approval

June 12, 1995.

Take notice that on June 1, 1995, Louisiana Resources Pipeline Company, L.P. (LRP) filed pursuant to Section 284.123(b)(2) of the Commission's Regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a rate of $0.2756 per MMBtu for Transportation services performed under Section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

LPR states that it is an intrastate pipeline within the meaning of Section 2(16) of the NGPA and it owns and operates an intrastate pipeline system in the State of Louisiana. LPR proposes an effective date of June 1, 1995.

Pursuant to Section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before June 27, 1995. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 95–14742 Filed 6–15–95; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. CP95–543–000]

Northern Natural Gas Co.; Notice of Application for Abandonment

June 12, 1995.

Take notice that on June 5, 1995, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed, in Docket No. CP95–543–000, an application pursuant to Section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations for permission and approval to abandon, as non-jurisdictional facilities, by sale to Highlands Gathering and Processing Company (Highlands), certain compression, pipeline facilities, and delivery points, with appurtenances, located in Crockett, Schleicher, Sutton, and Val Verde Countries, Texas, as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that it has entered into an April 21, 1995, Asset Purchase Agreement with Highlands pursuant to which Highlands will acquire from Northern approximately 128 miles of pipeline with pipe diameters ranging between four to sixteen inches in Crockett, Schleicher, Sutton and Val Verde Counties, Texas, and seven transmission lateral compressor stations located in Crockett, Schleicher, and Sutton Counties, Texas. Additionally, Northern proposes to abandon and convey to Highlands all farm taps, interconnecting points, and delivery points located on the subject facilities. Northern relates that the facilities which it proposes to abandon and convey to Highlands include the following segments: Highlands include the following segments: Hulldale Segment, Hullidale Loop Segment, Hunt-Baggett Segment, and Vinegarone Segment. Northern states that the segment facilities will be conveyed to Highlands for $3.1 million. Northern says that the subject facilities were constructed as gas supply facilities in order for Northern to fulfill its merchant sales obligation but are no longer needed by Northern as its role in the marketplace has changed from a merchant or natural gas to a transporter of natural gas.

Northern notes that Highlands will file a companion filing, a Petition for Declaratory Order, which will seek a determination that the subject facilities of this abandonment application, once conveyed to Highlands, are gathering facilities, not subject to the Commission's jurisdiction pursuant to NGA Section 1(b). The petition was filed June 6, 1995, in docket No. CP95–547–000.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 3, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements to the Commission's Rules and Practice and Procedure (18 CFR 385.214 and 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designed on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matters finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 95–14743 Filed 6–15–95; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. CP95–532–000]

Southern Natural Gas Co.; Notice of Request Under Blanket Authorization

June 12, 1995.

Take notice that on June 1, 1995, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP95–532–000, a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate a new delivery point for service to U.S. Pipe and Foundry Company (U.S. Pipe) under Southern's blanket certificate issued in Docket No. CP82–406–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Southern proposes to construct and operate certain measurement and other appurtenant facilities in order to provide transportation service to U.S. Pipe at a new delivery point for service on Southern's Bessemer Lateral in Jefferson County, Alabama. Southern states that it proposes to locate the delivery point at or near Mile Post 1.558 on Southern's Bessemer Lateral in Jefferson County, Alabama. Specifically, the facilities at the delivery point will consist of a 4-inch orifice meter and a 3-inch rotary meter, tie-in piping, electronic custody transfer equipment (ECT Equipment) and the necessary appurtenant facilities. The estimated cost of the construction of the facilities is approximately $219,000. U.S. Pipe has complied with all the requirements under Section 36 of the General Terms and Conditions of Southern's FERC Gas Tariff for the installation of the direct delivery connection by Southern and will reimburse Southern for the cost of the facilities.

Southern states that it will transport gas on behalf of U.S. Pipe pursuant to its Rate Schedule IT. Southern states

that the installation of the proposed delivery point facilities and the transportation provided thereunder will have no adverse effect on its firm requirements.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity is deemed to be authorized effective on the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–14744 Filed 6–15–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1034–000]

IGI Resources, Inc.; Notice of Filing

June 9, 1995.

Take notice that on May 30, 1995, IGI Resources, Inc., (IGI) tendered for filing and acceptance a supplement to its Application submitted in this proceeding on May 11, 1995.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before June 23, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14793 Filed 6–15–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL95–47–000, et al.]

Megan-Racine Associates, Inc., et al.; Electric Rate and Corporate Regulation Filings

June 9, 1995.

Take notice that the following filings have been made with the Commission:

1. Megan-Racine Associates, Inc.

[Docket Nos. EL95–47–000, EL95–40–000 and QF89–58–001]

On May 23, 1995 Megan-Racine Associates, Inc. (Megan-Racine) filed a request for temporary waiver of the Commission's operating and efficiency standards for the years 1991, 1992, 1993 and 1994.

Megan-Racine's request for waiver was included in its filing of an answer to the April 21, 1995 petition for a declaratory order revoking the qualifying status of a topping-cycle cogeneration facility filed by Niagara Mohawk Power Corporation (Niagara Mohawk) in Docket No. EL95–40–000. The facility, owned by Megan-Racine Associates, Inc. in Canton, New York, was granted certification as a qualifying cogeneration facility in an order dated January 27, 1989. *Megan-Racine Associates, Inc.*, 46 FERC ¶ 62,074 (1989). Niagara Mohawk claimed in its petition that for the years 1991, 1992, 1993, and 1994 the facility did not meet the applicable operating and efficiency standards applicable to natural gas-fired, topping-cycle qualifying cogeneration facilities under section 292.205 of the Commission's regulations. 18 CFR 292.205. Niagara Mohawk asked the Commission to declare that the facility was not a qualifying facility for the years 1991, 1992, 1993, and 1994 and asks the Commission to revoke certification for the years 1991, 1992, 1993 and 1994. In its answer to Niagara Mohawk's petition, Megan-Racine asserts that at all times its facility operated in compliance with the Commission's technical requirements. In the alternative, Megan-Racine asks that the Commission, if it finds that the facility did not operate in compliance with the operating and efficiency standards, grant waiver for the years that non-compliance is found.

Comment date: June 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Torco Energy Marketing, Inc.

[Docket No. ER92–429–005]

Take notice that on May 22, 1995, Torco Energy Marketing, Inc. filed certain information as required by the Commission. Copies of Torco's informational filing are on file with the Commission and are available for public inspection.

3. Cenergy, Inc.

[Docket No. ER94–1402–001]

Take notice that on May 23, 1995, Cenergy, Inc. (Cenergy) filed certain information as required by the Commission. Copies of Cenergy's informational filing are on file with the Commission and are available for public inspection.

4. Mississippi Power Company

[Docket No. ER95–220–000]

Take notice that on May 1, 1995, Mississippi Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: June 23, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. New England Power Company

[Docket No. ER95–761–000]

Take notice that New England Power Company on May 2, 1995, tendered a request for deferral of action in this docket.

Comment date: June 23, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Northern States Power Company (Minnesota)

[Docket No. ER95–867–000]

Take notice that May 25, 1995, Northern States Power Company (Minnesota) (NSP) tendered for filing an amendment to the original Installation and Ownership Agreement filed on April 4, 1995, between NSP and Minnkota Power Cooperative, Inc. (MPC). The agreement allows MPC to double circuit a quarter of a mile of an existing NSP transmission line between NSP's Prairie and Gateway Substations. The amendment provides a complete breakdown of the estimated costs associated with the project.

NSP requests that the Commission accept for filing this amendment effective as of August 1, 1995. NSP requests that the amendment be accepted as a supplement to Rate Schedule No. 284, the rate schedule for previously filed agreements between NSP and MPC.

Comment date: June 23, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Progas Power, Incorporated

[Docket No. ER95–968–000]

Take notice that on June 5, 1995, Progas Power, Incorporated tendered for filing an amendment in the above-referenced docket.

Comment date: June 23, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Arizona Public Service Company

[Docket No. ER95–1132–000]

Take notice that on May 31, 1995, Arizona Public Service Company (APS), tendered for filing Amendments under the following Rate Schedules:

Rate schedule	Customers	Amendments
FPC 68	Electrical District No. 1.	Amendment No. 1.
FERC 126	Electrical District No. 6.	Do.
FERC 128	Electrical District No. 7.	Do.
FERC 140	Electrical District No. 8.	Do.
FERC 141	Aguila Irrigation District.	Do.
FERC 142	McMullen Valley Water Conservation and Drainage District.	Do.
FERC 143	Tonopah Irrigation District.	Do.
FERC 153	Harquahala Valley Power District.	Do.
FERC 155	Buckeye Water Conservation and Drainage District.	Do.
FERC 158	Roosevelt Irrigation District.	Do.
FERC 168	Maricopa County Municipal Water Conservation District No. 1.	Do.

The Amendments provide for the two-year extension of the suspension of a 12-month billing demand ratchet included in the current Wholesale Power Agreements applicable to each of the above listed irrigation resale class customer (Districts). Current rate levels are unaffected and all other rates, terms and conditions for each District are not changed from those currently on file with the Commission.

APS and the above Districts request waiver of the Commission's Notice Requirements in 18 CFR 35.3(a) under § 35.11 to allow the Amendment to become effective June 1, 1995.

A copy of this filing has been served on the Districts and the Arizona Corporation Commission.

Comment date: June 23, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. The Washington Water Power

[Docket No. ER95–1134–000 Company]

Take notice that on May 31, 1995, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.12, an Agreement for the sale of 100 MW of firm energy and 150 MW of winter season peaking capacity and associated energy (fifty percent load factor) to Public Utility District No. 1 of Clark County, Washington (Clark) for an initial period of three years.

Comment date: June 23, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Northeast Utilities Service

[Docket No. ER95–1136–000 Company]

Take notice that on May 31, 1995, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement with Old Dominion Electric Cooperative (ODEC) under the NU System Companies System Power Sales/Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to ODEC.

NUSCO requests that the Service Agreement become effective on July 1, 1995.

Comment date: June 23, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Southwestern Public Service

[Docket No. ER95–1138–000 Company]

Take notice that on May 31, 1995, Southwestern Public Service Company (SPS), tendered for filing pursuant to Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations, comparable "Transmission Tariffs". Pursuant to the terms of the Transmission Tariffs, SPS will offer Network Integration Service, Firm and Non-Firm Point-to-Point Transmission Service, as well as a variety of Ancillary Services.

Comment date: June 23, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. UtiliCorp United Inc.

[Docket No. ES94–13–002]

Take notice that on June 7, 1995, UtiliCorp United Inc. (UtiliCorp) filed an amendment to its application in Docket Nos. ES94–13–000 and ES94–13–001, under § 204 of the Federal Power Act. By letter order dated March 1, 1994, (66 FERC ¶ 62,109), UtiliCorp was authorized to issue corporate guaranties in support of Secured Debentures in an amount of not more than $40 million (Canadian) to be issued by West Kootenay Power, Ltd. (WKP) during 1994 and 1995. UtiliCorp requests that the authorization be amended to authorize UtiliCorp to issue corporate guaranties in support of secured or unsecured debt obligations of WKP during 1995.

Comment date: July 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. IES Utilities Inc.

[Docket No. ES94–20–002]

Take notice that on June 7, 1995, IES Utilities Inc. (IES) filed an amendment to its application in Docket Nos. ES94–20–000 and ES94–20–001, under § 204 of the Federal Power Act. By letter order dated April 11, 1994, (67 FERC ¶ 62,040), IES was authorized to issue, over a two-year period, not more than $250 million of long-term notes or collateral trust bonds including $100 million of collateral trust bonds to be issued to Metropolitan Life Insurance Company (Met Life) or an affiliate of Met Life. The anticipated placement with Met Life or an affiliate of Met Life did not take place. IES requests that the authorization be amended to authorize IES to issue not more than $250 million of long-term notes or collateral trust bonds without specifying any purchaser.

Comment date: July 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. The Washington Water Power Company

[Docket No. ER95–1135–000 Company]

Take notice that on May 31, 1995, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.12, a unit contingent agreement and backup agreement for the sale of 10 MW of firm capacity and associated energy to the Eugene Water and Electric Board, Eugene, Oregon for an initial period of five years.

Comment date: June 23, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR

385.214). All such motions or protests should be filed on or before the Comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–14739 Filed 6–15–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP90–1849–003, et al.]

The Washington Water Power Company, et al.; Natural Gas Certificate Filings

June 8, 1995.

Take notice that the following filings have been made with the Commission:

1. The Washington Water Power Company

[Docket No. CP90–1849–003]

Take notice that on June 2, 1995, The Washington Water Power Company ("Water Power"), East 1411 Mission Avenue, Spokane, Washington 99202, filed an application under Section 7 of the Natural Gas Act for authority to amend its existing certificate to allow for the continuation, for a limited term, the release of a portion of its Jackson Prairie Storage Project deliverability and capacity to Cascade Natural Gas Corporation (Cascade), all as more fully set forth in the application which is on file with the Commission and open to the public inspection.

Water Power states that it is a local distribution company engaged in the business of distributing natural gas within the states of Washington, Oregon, California and Idaho. Water Power explains that is a one-third owner of a natural storage field located in Lewis County, Washington, referred to as the Jackson Prairie Storage Project (Jackson Prairie). Water Power explains that the remaining undivided ownership interests belong to Northwest Pipeline Corporation and Washington Natural Gas Company, with the latter designated as the Project Operator.

Water Power explains that Cascade and Water Power previously entered into an Agreement dated July 23, 1990, entitled "Release of Jackson Prairie Storage Capacity" (Release Agreement). Water Power explains that the Release Agreement calls for the release of 150,000 therms per day of firm deliverability, 55,328 therms per day of "best efforts" deliverability, and 4,800,000 therms of seasonal capacity to Cascade. Water Power states that the Release Agreement provided for an initial term expiring on April 30, 1995.

Water Power proposes to continue the release of Jackson Prairie deliverability and capacity for an additional limited term expiring on April 30, 1998, with pregranted abandonment. Water Power states that the release would be on the same terms and conditions as previously approved by the Commission.

Comment date: June 29, 1995, in accordance with Standard Paragraph F at the end of this notice.

2. Northwest Pipeline Corporation

[Docket No. CP90–2158–002]

Take notice that on June 2, 1995, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed an application in Docket No. CP90–2158–002, pursuant to Sections 7(b) and 7(c) of the Natural Gas Act, for authority to amend existing certificate and abandonment authorizations to permit a three year continuation beyond the originally scheduled April 30, 1995 expiration date, until April 30, 1998, all as more fully described in the application which is on file with the Commission and available for public inspection.

Northwest states that the Commission's November 23, 1990 order authorized Washington Water Power Company (Water Power), pursuant to an agreement dated July 23, 1990 (Release Agreement), to release 480,000 dth of storage capacity, 15,000 Dth per day of firm deliverability and 5,533 Dth per day of best efforts deliverability to Cascade Natural Gas Corporation (Cascade) all attributable to Water Power's ownership share of the Jackson Prairie Storage Project (Jackson Prairie), for a limited term expiring April 30, 1995. Northwest explains that the November 23, 1990 order authorized Northwest to correspondingly reduce its existing Rate Schedule SGS–1 storage service obligations to Water Power and to provide replacement Rate Schedule SGS–1 service to Cascade, both for a limited term expiring April 30, 1995.

Northwest states that by an April 28, 1995 amendment to the Release Agreement, Water Power and Cascade have agreed to extend the release of Jackson Prairie capacity and deliverability for an additional three years. Northwest requests amendments to its existing limited term abandonment and certificate authorizations to reflect continuation of the release-related Rate Schedule SGS–1 service changes until April 30, 1998.

Comment date: June 29, 1995, in accordance with Standard Paragraph F at the end of this notice.

3. Mojave Pipeline Company

[Docket No. CP95–522–000]

Take notice that on May 25, 1995, Mojave Pipeline Company (Mojave), 5001 E. Commercenter Drive, Suite 300, Bakersfield, California 93309, filed in Docket No. CP95–522–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to upgrade an existing delivery point, located in San Bernardino County, California to accommodate increased natural gas deliveries under Mojave's blanket certificate issued in Docket Nos. CP89–001–000 and CP89–002–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Mojave proposes to upgrade its existing Hector Delivery Point in order to deliver up to 280,000 MMBtu of natural gas per day to Southern California Gas Company and other potential customers. Mojave states that it would install an additional 12-inch meter tube, costing approximately $70,000, to provide additional delivery capacity. Mojave asserts that increased gas deliveries through the new facilities would have no impact on its ability to make peak day and annual deliveries. Mojave also states that this application will not have any effect on its pending rate case in Docket No. RP95–175–000.

Comment date: July 24, 1995, in accordance with Standard Paragraph G at the end of this notice.

4. National Fuel Gas Supply Corporation

[Docket No. CP95–533–000]

Take notice that on June 1, 1995, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York 14203, filed a request with the Commission in Docket No. CP95–533–000 pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (NGA) to construct and operate appurtenant facilities at an existing delivery tap authorized in blanket certificate issued in Docket No. CP83–4–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

National proposes to construct and operate appurtenant facilities at an existing delivery tap located in Mercer County, Pennsylvania, The proposed facilities would provide service to an existing firm transportation customer, National Fuel Gas Distribution Corporation (Distribution). National states that the actual construction would consist of replacing an obsolete regulator with a regulator having a higher designed capacity that would improve efficiency, flexibility and reliability. The estimated cost of the upgraded regulator would be $500, which National reports as being less costly than replacing the regulator with the same model.

Comment date: July 24, 1995, in accordance with Standard Paragraph G at the end of this notice.

5. Natural Gas Pipeline Company of America

[Docket No. CP95–534–000]

Take notice that on June 1, 1995, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP95–534–000, an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon, effective December 1, 1995:

(1) A total maximum daily withdrawal quantity (dwq) of 100,573 Mcf of firm storage service authorized in Docket No. CP76–517–000 under Natural's Rate Schedule LS–2 for all four (4) of its remaining Rate Schedule LS–2 customers. Natural further requests authority to terminate and cancel its Rate Schedule LS–2; and

(2) A total maximum dwq of 17,954 Mcf of firm storage service authorized in Docket No. CP78–175–000 under Natural's Rate Schedule LS–3 for all five (5) of its remaining Rate Schedule LS–3 customers. Natural further requests authority to terminate and cancel its Rate Schedule LS–3.

Natural states it currently provides storage services under its Rate Schedules LS–2 and LS–3 up to a total maximum dwq of 100,573 Mcf and 17,954 Mcf, respectively, for the customers listed below:

Name of Rate Schedule LS–2 customer	Maximum DWQ (/Mcf)
Associated Natural Gas Company	600
North Shore Gas Company	30,000
The Peoples Gas Light and Coke Company	68,412
Wisconsin Natural Gas Company	1,561
Total	100,573

Name of Rate Schedule LS–3 customer	Maximum DWQ (/Mcf)
I.E.S. Utilities, Inc.	2,031
Iowa Illinois Gas and Electric Company	14,000
Midwest Gas	580
City of Nebraska City, Nebraska	343
Wisconsin Natural Gas Company	1,000
Total	17,954

Natural states it has provided Rate Schedule LS–2 and LS–3 storage services for the above customers as authorized in Docket Nos. CP76–517–000 and CP78–175–000, respectively. Natural states that its Rate Schedule LS–2 and LS–3 service agreements will expire December 1, 1995. Natural further states that its customers with expiring contracts have an option to remain storage customers on Natural by electing "open access" services under procedures as approved in Docket No. RP95–242–000.

Comment date: June 29, 1995, in accordance with Standard Paragraph F at the end of this notice.

6. Natural Gas Pipeline Company of America

[Docket No. CP95–535–000]

Take notice that on June 1, 1995, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP95–535–000, an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon, effective December 1, 1995: a total maximum daily withdrawal quantity (dwq) of 1,480,800 Mcf of firm storage service authorized in Docket Nos. G–1757, G–6674, G–15328, G–18448, CP60–28, CP61–97, CP62–79, CP62–256, CP64–113, CP65–169, CP66–169, CP68–164, CP69–164, and CP70–119 under Natural's Rate Schedule S–1 for all thirteen (13) of its remaining S–1 customers. Natural further requests authority to terminate and cancel its Rate Schedule S–1.

Natural states it currently provides storage services under its Rate Schedule S–1 up to a total maximum dwq of 1,480,800 Mcf for the customers listed below:

Name of Rate Schedule S–1 customer	Maximum DWQ (/Mcf)
Associated Natural Gas Company	1,838
Illinois Power Company	33,976
Interstate Power Company	9,003
I.E.S. Utilities, Inc.	30,460
Iowa-Illinois Gas and Electric Company	160,081
Midwest Gas	16,421
City of Nebraska City, Nebraska	4,462
Northern Illinois Gas Company	464,768
Northern Indiana Public Service Company	166,238
North Shore Gas Company	53,029
The Peoples Gas Light and Coke Company	527,810
Sullivan, Illinois, City of	1,693
Wisconsin Natural Gas Company	11,021
Total	1,480,800

Natural states that of its thirteen (13) remaining Rate Schedule S–1 customers, all but four (4) of these customer's service agreements have or will expire on or before December 1, 1995. Natural states its Rate Schedule S–1 service agreements with Midwest Gas, City of Nebraska City, Nebraska, Northern Illinois Gas Company, and Northern Indiana Public Service Company expire on April 1, 1996. Natural states that these four service agreements will be automatically converted to replacement "open access" service agreements for their remaining terms. Natural states that customers with expiring contracts have an option to remain storage customers on Natural by electing "open access" service under procedures approved in Docket No. RP95–242–000.

Comment date: June 29, 1995, in accordance with Standard Paragraph F at the end of this notice.

7. Williston Basin Interstate Pipeline Company

[Docket No. CP95–546–000]

Take notice that on June 6, 1995, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed in Docket No. CP95–546–000 an application pursuant to Section 7(b) of the Natural Gas Act, requesting permission and approval to abandon approximately 13.4 miles of transmission pipeline in Sheridan and Johnson Counties, Wyoming, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, Williston Basin states that it proposes to abandon approximately 13.4 miles of the 8-inch Billy Creek-Sheridan transmission line beginning in Johnson County, Wyoming and terminating in Sheridan County, Wyoming. It is averred that the Billy Creek-Sheridan line was installed in 1930 and that severe corrosion and leaks have been found throughout the line. This proposal represents a companion to Williston Basin's request in Docket

No. CP95–233–000, where Williston Basin proposes to replace approximately 13.4 miles of its Billy Creek Sheridan transmission line in Johnson and Sheridan Counties, Wyoming. It is stated that the facilities will be abandoned in place and are located entirely on existing right-of-way.

Comment date: June 29, 1995, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–14740 Filed 6–15–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–547–000, et al.]

Highlands Gathering and Processing Company, et al.; Natural Gas Certificate Filings

June 9, 1995.

Take notice that the following filings have been made with the Commission:

1. Highlands Gathering and Processing Company

[Docket No. CP95–547–000]

Take notice that on June 6, 1995, Highlands Gathering and Processing Company (Highlands), Highland Place I, 8085 S Chester Street, Suite 114, Englewood, Colorado 80112, filed a petition in Docket No. CP95–547–000, requesting that the Commission declare that certain West Texas facilities to be acquired by Highlands from Northern Natural Gas Company (Northern) are gathering facilities within the meaning of Section 1(b) of the Natural Gas Act (NGA) and therefore, exempt from Commission jurisdiction, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Highlands relates that it currently owns and operates extensive facilities for the gathering, treating, and processing of natural gas in the Permian Production Area of West Texas, and that all of its current operations are exempt from Commission jurisdiction pursuant to NGA Section 1(b). Highlands states that it does not perform any jurisdictional transportation services.

It is stated that on April 21, 1995, Highlands, Northern, and Highlands Gas Corp. entered into an Asset Purchase Agreement pursuant to which Highlands will acquire from Northern approximately 127 miles of four inch to sixteen inch pipeline, in addition to seven compression stations, all of which are upstream of Northern's transmission facilities which commence at the El Dorado compressor station. Upon completion of the acquisition of the facilities, Highlands asserts that it will use them in combination with its existing gathering system to gather and process gas and to offer a full range of services on terms dictated by market conditions to producers and gas purchasers.

Highlands notes that Northern has filed in Docket No. CP95–543–000, a companion abandonment application pursuant to Section 7(b) of the NGA, for permission to abandon, by sale to Highlands, the subject facilities, with appurtenances, located in Crockett, Schleicher, Sutton, and Val Verde Counties, Texas.

Highlands states that the facilities consist of three interconnected pipeline segments: the Hunt-Baggett Segment, the Vinegarone Segment and the Hulldale Segment, which intersect at the El Dorado compression station. Highlands says it intends to operate the segments as an integrated single system for the purpose of gathering. Highlands indicates that the seven compressor stations are rated at between 75 and 2313 horsepower with five of them operating at 195 horsepower or less, and that although certain pipeline segments may realize pressures up to 500 psig, most of the facilities are operated at pressures of 300 psig or less.

Highlands submits that the subject facilities described in its petition meet the criteria of "gathering facilities" under Section 1(b) of the NGA as interpreted by the Commission using the "primary function" test, as set forth in *Farmland Industries, Inc.*, 23 FERC ¶ 61,063 (1983). Highlands asserts that the following facilities, described in more detail in the petition, meet the Commission's standards for gathering: the length and diameter of the pipelines; the El Dorado compressor station considered as the central point in the field where the three pipeline segments converge before discharging gas into Northern's transmission system; the pipelines which transport gas from field gathering systems to the transmission facilities of an interstate pipeline company or to a gas processing plant prior to delivery into such transmission facilities; the size and operating pressure of the facilities; and the amount and use of compression capacity.

Comment date: June 30, 1995, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

2. Overthrust Pipeline Company

[Docket No. CP95–545–000]

Take notice that on June 5, 1995, Overthrust Pipeline Company (Overthrust), 79 South State Street, Salt Lake City, Utah 84111 filed in Docket No. CP95–545–000 an application pursuant to Section 7(b) of the Natural Gas Act, as amended, and Sections 157.7 and 157.18 of the Commission's Regulations thereunder for permission and approval to abandon natural gas transportation service for Columbia Gas Transportation Corporation (Columbia) and charge and collect from Columbia a negotiated exit fee all as more fully set forth in the application on file with the Commission and open to public inspection.

Overthrust proposes to abandon the firm transportation service provided for Columbia pursuant to a October 8, 1982 transportation agreement (the Agreement) which provided for Overthrust to transport and deliver, for Columbia's account, up to a maximum of 55,000 Mcf per day purchased by Columbia from Chevron USA, Inc.'s Carter Creek and Whitney Canyon fields located in the Overthrust Producing Area of Uinta County, Wyoming. Overthrust indicates that the transportation service was provided pursuant to Overthrust's Rate Schedule T. Overthrust, noting that the contract will expire on January 1, 2003, explains that Columbia informed Overthrust that it implemented restructured services under the Commission's Order No. 636 effective October 1, 1993, and that, as a result of the restructuring, Columbia no longer requires the transportation service under the agreement.

Overthrust further states that on March 3, 1995, Overthrust and Columbia entered into a Stipulation terminating all contractual obligations established under the Agreement through the payment of a negotiated exit fee by Columbia to Overthrust.

Additionally, Overthrust states that it does not propose to abandon any facilities in conjunction with the instant abandonment authorization request nor will there be any abandonment of facilities as a result of the Commission granting the requested abandonment authorization.

Comment date: June 30, 1995, in accordance with Standard Paragraph F at the end of this notice.

3. Panhandle Eastern Pipe Line Company and Trunkline Gas Company

[Docket No. CP95–542–000]

Take notice that on June 5, 1995, Panhandle Eastern Pipe Line Company (Panhandle) and Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed a joint application with the Commission in Docket No. CP95–542–000 pursuant to Section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon an emergency exchange agreement which was authorized in Docket No. CP76–6,[1] all as more fully set forth in the application which is open to the public inspection.

Panhandle and Trunkline, by mutual agreement, propose to abandon their emergency exchange services provided under Panhandle's and Trunkline's respective FERC Rate Schedules E–11 and E–18. Panhandle and Trunkline state that no facilities would be abandoned in this proposal, rather the interconnection of Panhandle's 4-inch diameter lateral and Trunkline's 26-inch diameter mainline in Vermilion County, Illinois, would remain in place and available for open-access transportation service. In the event that future emergency service should become necessary, Panhandle and Trunkline state that it would be performed under Part 284, subpart I of the Commission's Regulations.

Comment date: June 30, 1995, in accordance with Standard Paragraph F at the end of this notice.

4. K N Interstate Gas Transmission Company

[Docket No. CP95–530–000]

Take notice that on May 31, 1995, K N Interstate Gas Transmission Company (K N Interstate), P.O. Box 281304, Lakewood, Colorado 80228–8304, filed in Docket No. CP95–530–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to install and operate eight new delivery points located on K N Interstate's main transmission system in Adams, Boone, Dawson, Harlan, Howard, Webster and York Counties, Nebraska and Phillips County, Colorado under K N Interstate's blanket certificate issued in Docket No. CP83–140–000, *et al.*, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

K N Interstate states that the proposed delivery points will be added under an existing transportation agreement between K N Interstate and K N Energy, Inc. (K N) and will be used by K N to facilitate the delivery of natural gas to new direct retail customers.

Comment date: July 24, 1995, in accordance with Standard Paragraph G at the end of this notice.

[1] 55 FPC 1041 (1976).

5. Viking Gas Transmission Company

[Docket No. CP95–539–000]

Take notice that on June 2, 1995, Viking Gas Transmission Company (Viking), 1010 Milam Street, P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP95–539–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to establish an additional delivery point for firm gas transportation services to the City of Randall, Minnesota, under Viking's blanket certificate issued in Docket No. CP82–414–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Viking states that the Cambridge delivery point will be located in Morrison County, Minnesota, on Viking's system and that the total quantities to be delivered to Randall will not exceed contract quantities. Viking indicates that its has sufficient capacity in its system to accomplish the delivery of gas to the proposed delivery point without detriment to any of its other customers.

The City of Randall has agreed to reimburse Viking for the costs of the necessary facilities which consist of a two-inch hot tap, measurement, and data acquisition equipment.

Comment date: July 24, 1995, in accordance with Standard Paragraph G at the end of this notice.

6. Mississippi River Transmission Corporation

[Docket No. CP95–548–000]

Take notice that on June 7, 1995, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63214, filed in Docket No. CP95–548–000 a request pursuant to Section 7 of the Natural Gas Act, as amended, and Sections 157.205 and 157.216(b) for authorization to abandon a lateral line, sales tap and related facilities and equipment which have been used to serve Owens-Illinois, pursuant to MRT's blanket authorization issued in Docket No. CP82–489–000, all as more fully described in the request which is on file with the Commission and open for public inspection. MRT also proposes to abandon service to Owens-Illinois.

MRT proposes to abandon approximately 750 feet of Line A–8, pipeline in Madison, Illinois which was used to serve Owens-Illinois. MRT states that Owens-Illinois has not taken any service from MRT since the early

1980s, and it no longer requires service at this location.

MRT proposes to blind off Line A–8 at the tap valve and remove all the above ground facilities. It is further stated that MRT proposes to abandon in place all the underground pipe.

Comment date: July 24, 1995, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretory.

[FR Doc. 95–14741 Filed 6–15–95; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5222–5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 17, 1995.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 0029.06.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: National Pollutant Discharge Elimination System (NPDES) Modification and Variance Requests. (OMB Control No. 2040–0068; EPA ICR No. 0029.06). This is a request for extension of a currently approved information collection.

Abstract: NPDES permittees must notify EPA or the State regulatory agency of events which may render permit conditions or limitations inappropriate. NPDES permits contain limits on the amount of pollutants that facilities may discharge and impose other conditions on dischargers to comply with Clean Water Act requirements. An applicant for a modification or variance must submit information so that the permitting authority can assess whether the facility is eligible for a variance and whether a deviation from Clean Water Act provisions is necessary.

Burden Statement: The public reporting burden for this collection of information is estimated to total 40,122 hours annually for NPDES permittees, or approximately 5 hours per respondent. The total annual burden projected includes 77,398 hours estimated as burden to State governments delegated NPDES regulatory authority. These estimates include the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information.

Respondents: NPDES permittees.

Estimated No. of Respondents: 8,753.

Estimated Total Annual Burden: 117,520 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to the following addresses. Please refer to EPA ICR No. 0029.06 and OMB Control No. 2040–0068 in any correspondence.

Ms. Sandy Farmer, EPA ICR No. 0029.06, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2136), 401 M Street, SW, Washington, DC 20460.

and

Mr. Tim Hunt, OMB Control No. 2040–0068, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW, Washington, DC 20503.

Dated: June 12, 1995.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 95–14800 Filed 6–15–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5222–4]

Subcontractor Access to Confidential Business Information Under the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA has authorized the following subcontractors for access to information that has been, or will be, submitted to EPA under section 114 of the Clean Air Act (CAA) as amended. (1) JACA Corporation, 550 Pinetown Road, Fort Washington, Pennsylvania 19034, under Research Triangle Institute's (RTI) contract number 68D40099; and (2) Mathtech, Incorporated, Suite 111, 202 Carnegie Center, Princeton, New Jersey 08540, under E.H. Pechan and Associates' contract number 68D40107.

Some of the information may be claimed to be confidential business information (CBI) by the submitter.

DATES: Access to confidential data submitted to EPA will occur no sooner than 10 days after issuance of this notice.

FOR FURTHER INFORMATION CONTACT: Doris Maxwell, Document Control Officer, Office of Air Quality Planning and Standards (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541–5312.

SUPPLEMENTARY INFORMATION: The EPA is issuing this notice to inform all submitters of information under section 114 of the CAA that EPA may provide the above mentioned subcontractors access to these materials on a need-to-know basis. These subcontractors will provide technical support to the Office of Air Quality Planning and Standards (OAQPS) in economic impact assessments for Federal air pollution control regulations.

In accordance with 40 CFR 2.301(h), EPA has determined that each subcontractor requires access to CBI, submitted to EPA under sections 112 and 114 of the CAA, in order to perform work satisfactorily under the above noted contracts. The subcontractors' personnel will be given access to information submitted under section 114 of the CAA. Some of the information may be claimed or determined to be CBI. The subcontractors' personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to CBI. All subcontractor access to CAA CBI will take place at the prime contractors' facility. Each subcontractor will have appropriate procedures and facilities in place to safeguard the CAA CBI to which the subcontractor has access.

Clearance for access to CAA CBI is scheduled to expire on September 30, 1998 under contract 68D40099 and on September 30, 1997 under contract 68D40107.

Dated: June 8, 1995.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 95–14802 Filed 6–15–95; 8:45 am]

BILLING CODE 6560–50–P

[OPPTS–140234; FRL–4958–5]

Access to Confidential Business Information by Chemical Abstracts Services, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor Chemical Abstracts Services (CAS), of Columbus, Ohio, for access to information which has been submitted to EPA under sections 5 and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than June 30, 1996.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under contract number 68–W5–0015, contractor CAS of 2540 Olentangy River Road, P. O. Box 3012, Columbus, Ohio, will assist the Office of Pollution Prevention and Toxics (OPPT) in providing technical assistance in developing and operating the TSCA Chemical Substance Inventory. In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–W5–0015, CAS will require access to CBI submitted to EPA under sections 5 and 8 of TSCA to perform successfully the duties specified under the contract. CAS personnel will be given access to information submitted to EPA under sections 5 and 8 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 5 and 8 of TSCA that EPA may provide CAS access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and at CAS's site located at 2540 Olentangy River Road, Columbus, Ohio.

In a previous notice published in the **Federal Register** of September 4, 1990 (55 FR 35955), CAS was authorized for access to CBI submitted to EPA under sections 5 and 8 of TSCA. CAS is currently authorized access to TSCA CBI at its facility under the EPA *TSCA Confidential Business Information Security Manual.* EPA has ensured that the facility is in compliance with the manual. Upon completing review of the CBI materials, CAS will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until June 30, 2000.

CAS personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: June 8, 1995.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 95–14803 Filed 6–15–95; 8:45 am]

BILLING CODE 6560–50–F

[ER–FRL–4724–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 08, 1995 Through May 12, 1995 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 1995 (60 FR 19047).

Draft EISs

ERP No. D–BLM–J65226–WY Rating EC2, Grass Creek Resource Management Plan, Implementation, Big Horn, Washakie, Hot Springs and Park Counties, WY.

SUMMARY: EPA expressed environmental concerns regarding the range of alternatives, cumulative impacts, water quality and ecosystem impacts. EPA requested that additional clarification be provided in the final document on these issues.

ERP No. D–FHW–L40194–WA Rating LO, WA–3/WA–304 Bremerton Ferry Terminal to the vicinity of Gorst Highway Improvement Project, Implementation, Funding, Right-of-Way Grant, NPDES Permit and COE Section 404 Permit, City of Bremerton, Kitsap County, WA.

Summary: EPA used a regional screening process to conduct a limited

review of the draft document. Based upon this limited screen, EPA has not identified any significant issues.

ERP No. D–FRC–L05209–WA Rating LO, Nisqually Hydroelectric Project (FERC. No. 1862) Issuing New License (Relicense), Nisqually River, Pierce, Thurston and Lewis Counties, WA.

Summary: EPA review found no issues of concern that relate to EPA's responsibilities. Therefore EPA had no objection to the action as proposed.

ERP No. D–FTA–C40133–PR Rating EC2, Tren Urbano Transit Project, Improvement, San Juan Metropolitan Area, Funding, NPDES Permit, U.S. Coast Guard Bridge Permit and COE Section 10 and 404 Permits, PR.

Summary: EPA expressed environmental concerns about the proposed project's potential impacts to wetlands, ground water, and historically significant resources. Additionally, EPA requested that further analysis be conducted with regard to air conformity requirements.

ERP No. D–GSA–L40195–WA Rating LO, Pacific Highway Port of Entry (POE) Facility Expansion, Construction of WA–543 in Blaine, near the United States/Canada Border in Blaine, Whatcom County, WA.

Summary: EPA has not identified any significant statutory or jurisdictional issues of concern.

ERP No. D–USA–K11059–CA Rating EC2, Hamilton Army Airfield Disposal and Reuse, Implementation, City of Novato, Marin County, CA.

Summary: EPA expressed environmental concerns that air quality was not adequately considered; that deed restrictions and mitigation measures were not clearly stated; that wetlands and natural resource issues were not explained sufficiently; and that Scenario E (open space) requires further explanation to ensure adequate protection of habitat and specie.

ERP No. DB–COE–E36013–MS Rating EC2, Mississippi River and Tributaries Flood Control Plan, Big Sunflower River Maintenance Project, Yazoo Basin, Sunflower, Washington, Humphreys, Sharkey and Yazoo Counties, MS.

Summary: EPA expressed environmental concerns of potential adverse consequences associated with channelizing over 100 miles of streams in the Big Sunflower watershed. EPA requested additional information before a decision is made on the project's feasibility.

Final EISs

ERP No. F–FHW–C40100–NY I–26 Mohawk River Crossing connecting NYS Thruway Interchange 26, I–890, NYS–5S and NYS–5 Construction, Funding, U.S. Coast Guard Permits and COE Section 404 Permit, Towns of Rotterdam and Glenville, Schenectady County, NY.

Summary: EPA believed that the implementation of the proposed project will not have an adverse effect on the environment; and therefore, does not object to its implementation.

Other

ERP No. LD–AFS–L61200–ID Rating LO, North Fork of the Clearwater River Drainage, Kelly Creek and Cayuse Creek, Wild and Scenic River Study, Suitability or Nonsuitability for Designation or Nondesignation in the National Wild and Scenic River System, Clearwater National Forest, Clearwater and Idaho Counties, ID.

Summary: EPA regional screening process identified no significant statutory or jurisdictional issues of concern, thus EPA had no objection to the action.

Dated: June 13, 1995.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–14821 Filed 6–15–95; 8:45 am]

BILLING CODE 6560–50–U

[ER-FRL–4723–9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 or (202) 260–5075. Weekly receipt of Environmental Impact Statements Filed June 5, 1995 Through June 9, 1995 Pursuant to 40 CFR 1606.9.

EIS No. 950240, Final EIS, HUD, UT, Guadalupe Neighborhood Project, Demolition, Rehabilitation, Construction and Development, Funding, Salt Lake City, Salt Lake City County, UT, Due: July 17, 1995, Contact: Craig A. Hinckley (801) 535–7902.

EIS No. 950241, Draft EIS, AFS, CO, UT, Steamboat Ski Area Expansion, Implementation, Medicine Bow-Routt National Forest, Mt. Weiner, Special-Use-Permit and COE Section 404 Permit, Routt County, CO, Due: July 31, 1995, Contact: Wendy Schmidt (970) 879–1722.

EIS No. 950242, Draft EIS, COE, CA, Port of Long Beach (POLB) Main Channel Deepening and Navigation Improvements, Implementation, Queen's Gate, San Pedro Bay, Los Angeles County, CA, Due: July 31, 1995, Contact: Russell L. Kaiser (213) 894–0247.

EIS No. 950243, Final EIS, FHW, PA, US 219 Transportation Project, Improvement from I–68 to Somerset and US 219 to Meyersdale, Funding, Somerset County, PA, Due: July 17, 1995, Contact: Manual A. Marks (717) 782–3461.

EIS No. 950244, Final EIS, AFS, ID, Salmon Wild and Scenic River Corridor Implementation, Issuance of Special-Use-Permits for three Private Camps, Salmon National Forest, Salmon County, ID, Due: July 24, 1995, Contact: Steve Haydon (208) 865–2383.

EIS No. 950245, Draft EIS, NPS, CA, Cabrillo National Monument, General Management Plan/Development Concept Plans, Implementation, San Diego County, CA, Due: August 18, 1995, Contact: Meredith Kaplan (415) 744–3968.

EIS No. 950246, Final Supplement, COE, KS, Arkansas and Walnut Rivers Flood Control Plan, Updated Information, Implementation, Arkansas City, Cowley County, KS, Due: July 17, 1995, Contact: J. Paul Mace (918) 669–7188.

EIS No. 950247, Draft EIS, FHW, OR, Mount Hood Corridor Study, US 26 Rhododendron to OR–35 Junction, Improvements, Funding, Clackamas County, OR, Due: August 17, 1995, Contact: Jef Kaiser (503) 986–3477.

EIS No. 950248, Draft EIS, AFS, WA, UT, Dixie National Forest Oil and Gas Leasing on Federal Lands and Non-Federal lands, Implementation, Garfield, Kane and Iron Counties, WA and Piute and Wayne Counties, UT, Due: August 29, 1995, Contact: John Shochat (801) 865–3700.

EIS No. 950249, Final EIS, COE, CA, Humboldt Harbor and Bay (Deepening) Channels, Feasibility Study for Navigation Improvements, Humboldt County, CA, Due: July 17, 1995, Contact: Tamara Terry (415) 744–3341.

EIS No. 950250, Final EIS, FHW, PA, I–81 Interchange Project, Construction, Funding and COE Section 404 Permit, Borough of Chambersburg, Franklin County, PA, Due: July 17, 1995, Contact: Manual Marks (717) 782–3461.

EIS No. 950251, Draft Supplement, NPS, AK, Brooks River Area, Katmai National Park and Preserve Development Concept Plan, Updated Information concerning a New Proposal Alternative for Beaver Pond Terrace, Implementation, AK, Due: August 14, 1995, Contact: Clifford Hawkes (303) 969–2262.

EIS No. 950252, Draft Supplement, NAS, Programmatic EIS—Sounding Rocket Program (SRP), Updated Information concerning Programmatic Changes since the 1973 FEIS, Site-Specific to Wallops Flight Facility (WFF), Wallops Island, VA; Poker Flat Research Range (PFRR), Fairbanks, AK and White Sands Missile Range (WSMR), White Sands, NM and on a Global Scale, Due: July 31, 1995, Contact: Kenneth M. Kumor (202) 358–1112.

EIS No. 950253, Draft EIS, NOA, Atlantic Coast Weakfish Fishery, Fishery Management Plan, Implementation, Weakfish Harvest Control in the Atlantic Ocean Exclusive Economic Zone (EEZ), off the New England, Mid-Atlantic and South Atlantic Coast, Due: July 31, 1995, Contact: William Hogarth (301) 713–2339.

EIS No. 950254, Draft EIS, NCP, DC, Washington, D.C. New Sports and Entertainment Arena, Construction and Operation, Modern Multi-Purpose Arena, Eight potential Sites, Washington, D.C., Due: July 31, 1995, Contact: Maurice Foushee (202) 724–0174.

Amended Notices

EIS No. 950195, Draft EIS, AFS, MT, Beaver Woods Vegetation Management Project, Implementation, Bitter National Forest, West Fork Ranger District, Ravalli County, MT, Due: July 18, 1995, Contact: Nora Rasure (406) 821–3269. Published FR—05–19–95 Due Date Correction.

Dated: June 13, 1995.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–14822 Filed 6–15–95; 8:45 am]

BILLING CODE 6560–50–U

[FRL–5222–7]

The Territory of the U.S. Virgin Islands; Adequacy Determination of State Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative determination on application of the territory of the U.S. Virgin Islands for full program adequacy determination, public hearing and public comment period.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA Section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribe Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency has approved and will continue to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that approvals of state programs have an important benefit. Approved State/Tribe permit programs provide for interaction between State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent that the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

The U.S. Virgin Islands applied for a determination of adequacy under section 4005 of RCRA. EPA has reviewed the U.S. Virgin Islands' MSWLF application and certain revisions thereto, and has made a tentative determination that all portions of the U.S. Virgin Islands' MSWLF permit program, including certain regulatory changes, are adequate to assure compliance with the revised Federal Criteria. These changes include a commitment by the Territory that existing solid waste regulations will be amended to conform to part 258 requirements, and that the two existing publicly owned landfills will be operated in accordance with part 258 requirements, pending adoption of the amended regulations. The U.S. Virgin Islands' application for program adequacy determination and its revisions are available for public review and comment.

Although RCRA does not require EPA to hold a hearing on any determination to approve a State/Tribe's MSWLF program, the Region has scheduled two public hearings on this tentative determination. Details appear below in the **DATES** section.

DATES: All comments on the U.S. Virgin Islands' application for a determination of adequacy must be received by the close of business on August 11, 1995. One public hearing will be held on St. Croix on August 1, 1995 and a second hearing will take place on St. Thomas, on August 2, 1995. Both hearings will begin at 6:00 p.m. The U.S. Virgin Islands will participate in the public hearings held by EPA on this subject.

ADDRESSES: Copies of the U.S. Virgin Islands' application for adequacy are available between 8:30 a.m. and 5:00 p.m. at the following three addresses for inspection and copying: U.S. EPA Region II Library, 290 Broadway, 16th Floor, New York, New York, 10007–1866, telephone (212) 637–3185; Department of Planning and Natural Resources, Division of Environmental Protection, Nisky Shopping Center, Suite 231, St. Thomas, Virgin Islands 00802, telephone (809) 774–3320; Department of Planning and Natural Resources, Division of Environmental Protection, Water Gut Homes—1118, Christiansted, St. Croix, Virgin Islands 00820–5065, telephone (809) 773–8565. Written comments should be sent to Carl-Axel P. Soderberg, Director, USEPA-Region II, Caribbean Field Office, Centro Europa Building, 1492 Ponce De Leon Avenue, STOP 22, Santurce, PR 00909. The public hearing on August 1, 1995 will be held at the Department of Planning and Natural Resources, Commissioner's Conference Room, 6003 Anna's Hope, St. Croix, Virgin Islands. The public hearing on August 2, 1995, will be held at the Department of Planning and Natural Resources, CZM Lower Level Conference Room, 8000 Nisky Shopping Center, St. Thomas, Virgin Islands.

FOR FURTHER INFORMATION CONTACT: Stanley Siegel, Chief, Hazardous and Solid Waste Programs Branch, U.S. EPA Region II, 290 Broadway, New York, New York, 10007–1866, telephone (212) 637–4100.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under part 258. Subtitle D also requires in

section 4005 that EPA determine that State municipal solid waste landfill permit programs are adequate to comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA has approved and will continue to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice or prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program. EPA Regions will determine whether a State/Tribe has submitted an "Adequate" program based on the interpretation outlined above. EPA expects States/Tribes to meet all of these requirement for all elements of a MSWLF program before it gives full approval to a MSWLF program.

B. Territory of the U.S. Virgin Islands

On October 6, 1993, the Territory of the U.S. Virgin Islands submitted an application for adequacy determination. Subsequently, the U.S. Virgin Islands made several revised submissions. EPA has reviewed the application and the revised submissions, and has tentatively determined that all portions of the U.S. Virgin Islands' Subtitle D program are adequate to provide compliance with the revised Federal Criteria.

Currently there are two municipal solid waste disposal facilities operating in the U.S. Virgin Islands. One facility is located on St. Thomas and the other on St. Croix. An additional facility, located on St. John, stopped receiving waste between October 9, 1991 and October 9, 1993. The island of St. John is currently serviced by a transfer station from which the waste is transported to the St. Thomas landfill for disposal.

The U.S. Virgin Islands Department of Planning and Natural Resources has responsibility for implementing and enforcing solid waste management regulations, including a permit program, inspection authority and enforcement activities. The solid waste landfills presently located in the Territory are owned by the Government of the U.S. Virgin Islands and operated by the U.S. Virgin Islands Department of Public Works. Although the Territory does not presently have regulations that conform to the Federal solid waste disposal facility criteria, the Departments of Planning and Natural Resources and Public Works have entered into a Memorandum of Agreement dated January 11, 1995 which commits the two agencies to meeting the requirements of 40 CFR part 258 when operating or issuing a permit to a solid waste facility. This Memorandum of Agreement was submitted to the EPA in conjunction with the application for adequacy determination. In addition, the Commissioner of the Department of Planning and Natural Resources submitted a letter to the EPA dated March 22, 1994 in which he committed his agency to adopting amended regulations that incorporate the requirements of 40 CFR part 258 and clear up any existing inconsistencies between 40 CFR part 258 and Title 19 Chapter 56 of the Virgin Islands Code by May 1, 1996. While the Department of Planning and Natural Resources had expected the revised regulations to be enacted by May, 1995, it now expects that the revised regulations will be adopted by May, 1996. The Commissioner's letter also states that no permits will be issued for the establishment of any private solid waste disposal facility until new regulations for solid waste landfill management are approved by the EPA. In addition, the Department has committed to issuing a permit to the Department of Public Works pursuant to the revised regulations once these regulations are adopted. EPA has reviewed these items as well as the other contents of the U.S. Virgin Islands' application and has made a preliminary determination that their provisions are adequate to meet Part 258 criteria.

The EPA will hold two public hearings on its tentative decision. One hearing will be held on August 1, 1995 at the Department of Planning and Natural Resources' Commissioner's Conference Room on St. Croix. An additional hearing will be held on August 2, 1995 at the Department of Planning and Natural Resources' CZM Lower Level Conference Room on St. Thomas. On each of these dates, the hearings will begin at 6:00 p.m. Comments can be submitted orally at the hearings or in writing at the time of the hearings. The public may also submit written comments on EPA's tentative determination to the location indicated in the **ADDRESSES** section of this notice until August 11, 1995. Copies of the U.S. Virgin Islands' application are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

EPA will consider all public comments on its tentative determination received during the public comment period and during each public hearing. Issues raised by those comments may be the basis for a determination of inadequacy for the U.S. Virgin Islands' program. EPA expects to make a final decision on whether or not to approve the U.S. Virgin Islands' program by September 18, 1995 and will give notice of it in the **Federal Register**. The notice will include a summary of the reasons for the final determination and responses to all major comments. Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of Section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR Part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA will be considered to be in compliance with Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this notice from the requirement of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of Section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: May 4, 1995.

Herbert Barrack,

Acting Regional Administrator.

[FR Doc. 95–14825 Filed 6–15–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Clearinghouse Advisory Panel: Renewal of Charter

SUMMARY: The National Clearinghouse on Election Administration announces the renewal of the charter for the Clearinghouse Advisory Panel.

The purpose of the Panel is to provide advice and consultation to the Clearinghouse with respect to its research programs on election administration.

FOR FURTHER INFORMATION CONTACT: Janet McKee, National Clearinghouse on Election Administration, Washington, DC 20463, 202/219–3670.

Dated: June 13, 1995.

Penelope Bonsall,

Director, National Clearinghouse on Election Administration.

[FR Doc. 95–14792 Filed 6–15–95; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

United Community Banks, Inc.; et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 10, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. United Community Banks, Inc., Blairsville, Georgia; to merge with White County Bancshares, Inc., Cleveland, Georgia, and thereby indirectly acquire White County Bank, Cleveland, Georgia.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Neighborhood Bancorp, San Diego, California; to become a bank holding company by acquiring 50.1 percent of the voting shares of Neighborhood Development Bank, National Association (in organization), San Diego, California.

Board of Governors of the Federal Reserve System, June 12, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–14777 Filed 6–15–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a. as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 05–22–95 AND 06–02–95

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Dresser Industries, Inc., Grove, S.p.A., Grove, S.p.A	95–1511	05/22/95
The Seagram Company Ltd. (a Canadian company), Brain Fargo, Interplay Productions, Inc	95–1552	05/22/95
Columbia/HCA Healthcare Corporation, Goodlark Regional Medical Center, Inc., Central Tennessee Hospital Corporation	95–1555	05/22/95
Richard R. Rogers, Nu-Kote Holding, Inc., Nu-Kote Holding, Inc.	95–1585	05/22/95
International Business Machines, General Electric Company, General Electric Capital Computer Leasing Corporation	95–1611	05/22/95
Monsanto Company, L. Peter Frieder, Jr., Optical Diamond Products	95–1614	05/22/95
Adaptec, Inc., Jack A. and Patricia A. Allweiss, Future Domain Corporation	95–1617	05/22/95
E.I. DuPont De Nemours and Company, Enron Corporation, Enron Oil & Gas Company	95–1619	05/22/95
Renfro Corporation, Maurice Bidermann, Great American Knitting Mills, Inc	95–1620	05/22/95
Arjo Wiggins Appleton p.l.c., Stora Kopparbergs Bergslags AB, Stora Papyrus Newton Falls, Inc	95–1621	05/22/95
Air Express International Corporation, Radix Ventures, Inc., Radix Ventures, Inc	95–1623	05/22/95
First Chicago Corporation, Seco Products Corporation, Seco Products Corporation	95–1624	05/22/95
United Mine Workers of America 1974 Pension Trust, AT&T Corp., AT&T Corp	95–1627	05/22/95
M. Francois Pinault, Theodore Ammon, BFP Holdings Corp	95–1628	05/22/95
Adventist Health System Sunbelt Healthcare Corporation, Metroplex Health Care Corporation, Metroplex Health Care Corporation	95–1629	05/22/95

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 05–22–95 AND 06–02–95—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
H.F. Johnson Distributing Trust of Samuel C. Johnson, Whitmire Research Laboratories, Inc. ESOP, Whitmire Research Laboratories, Inc	95–1633	05/22/95
Suiza Foods Corporation, John Labatt Limited, Lehigh Valley Dairies, Inc	95–1634	05/22/95
Illinois Tool Works Inc., Stephen G. Dent, Fibre Glass-Evercoat Company, Inc	95–1635	05/22/95
N.V. Verenigd Bezit VNU, K–III Communications Corporation, Lakewood Publications Inc	95–1639	05/22/95
Benson Eyecare Corporation, Fuji Bank Limited, DBL Management, Inc	95–1640	05/22/95
Applause Enterprises Inc., Dakin, Inc., Dakin, Inc	95–1643	05/22/95
Kenneth R. Thomson, R.L. Polk & Co., R.L. Polk & Co	95–1656	05/22/95
Danaher Corporation, Marc Guindon, Total Containment, Inc	95–1657	05/22/95
Life Re Corporation, Deere & Company, John Deere Life Insurance Company	95–1659	05/22/95
CIS Technologies, Inc., First Financial Management Corporation, Hospital Cost Consultants, Inc	95–1662	05/22/95
The Fuji Bank, Limited, NuVision, Inc., NuVision, Inc	95–1665	05/22/95
MobileMedia Corporation, Dial Page, Inc., Dial Page Southeast, Inc./Radio Call Company of VA, Inc	95–1669	05/22/95
Apollo Investment Fund III, L.P., FFL Partners, Food 4 Less Holdings, Inc	95–1678	05/22/95
Donnkenny, Inc., Beldoch Industries Corporation, Beldoch Industries Corporation	95–1684	05/22/95
Wembley, Ltd. (a British Virgin Island company), Gundle Environmental Systems, Inc., Gundle Environmental Systems, Inc	95–1431	05/23/95
Gundle Environmental Systems, Inc., Wembley, Ltd. (a British Virgin Island company), SLT Environmental, Inc	95–1432	05/23/95
Microsoft Corporation, Wang Laboratories, Inc., Wang Laboratories, Inc	95–1549	05/23/95
Watson Pharmaceuticals, Inc., Circa Pharmaceuticals, Inc., Circa Pharmaceuticals, Inc	95–1599	05/23/95
Douglas & Lomason Company, Bestop, Inc., Bestop, Inc	95–1636	05/23/95
CIGNA Corporation, Tokyo Masuiwaya Co. Ltd., Tokyo Masuiwaya California Corporation	95–1637	05/23/95
Sanifill, Inc., James F. Cozzetto, Metropolitan Disposal and Recycling Corporation	95–1638	05/23/95
General Signal Corporation, Best Power Technology, Incorporated, Best Power Technology, Incorporated	95–1645	05/23/95
AB Volvo, Prevost Car Inc., Prevost Car Inc	95–1646	05/23/95
Tele-Communications, Inc., James C. Calano, CareerTrack, Inc., and assets of DDP Realty Company	95–1672	05/23/95
Quantum Fund N.V., First Reserve Secured Energy Assets Fund, L.P., First Reserve Gas Company	95–1679	05/23/95
Quantum N.V., First Reserve Fund V, Limited Partnership, First Reserve Gas Company	95–1680	05/23/95
Ingersoll-Rand Company, Clark Equipment Company, Clark Equipment Company	95–1388	05/24/95
ARAMARK Corporation, Eugene and Elaine Meader, Meader Distributing Co., Inc	95–1651	05/24/95
Image Industries, Inc., Stowe-Pharr Mills, Inc., Pharr Yarns of Georgia, Inc	95–1658	05/24/95
Protective Life Corporation, State Mutual Life Assurance Company of America, SMA Life Assurance Company	95–1512	05/25/95
AGE Institute, Genesis Health Ventures, Inc., Genesis Assets	95–1632	05/25/95
W. Don Cornwell, Queen City III Limited Partnership, Queen City III Limited Partnership	95–1664	05/25/95
K/B Opportunity Fund II, L.P., American Express Company, Chino Shopping Center Associates Ltd. Partnership Assets	95–1676	05/25/95
Columbia/HCA Healthcare Corporation, LaGrange Memorial Health System, Inc., LaGrange Memorial Hospital	95–1582	05/26/95
Paging Network, Inc., Page American Group, Inc., Page America Communications of California	95–1489	05/30/95
Thyssen Aktiengesellschaft, Figgie International Inc., Safeway Steel Products, Inc	95–1577	05/30/95
Plettac AG (a German company), Figgie International, Inc., Safeway Steel Products, Inc	95–1578	05/30/95
Frontier Corporation, ALC Communications Corporation, ALC Communications Corporation	95–1681	05/30/95
Marvin J. Herb, Arthur J. Canfield, Jr., The Canfield Assets	95–1683	05/30/95
A&D Limited Partnership, Westinghouse Electric Corporation, WCI Communities, Inc	95–1685	05/30/95
Amoco Corporation, Kuwait Petroleum Corporation, Santa Fe Minerals Inc. and SFM Holdings, Inc	95–1687	05/30/95
Quorum Health Group, Inc., The Lutheran Hospital of Indiana, Inc., The Lutheran Hospital of Indiana, Inc	95–1693	05/30/95
Connecticut Health System, Inc., VNA Health Care, Inc., VNA Health Care, Inc	95–1694	05/30/95
R.R. Donnelley & Sons Company, LANSystems, Inc., LANSystems, Inc	95–1695	05/30/95
Kinross Gold Corporation, Peter Kiewit Sons', Inc., Kiewit Rawhide Corp	95–1699	05/30/95
Harvard Industries, Inc., Doehler-Jarvis, Inc., Doehler-Jarvis, Inc	95–1707	05/30/95
Blue Cross and Blue Shield of Missouri, HealthLink, Inc., HealthLink, Inc	95–1708	05/30/95
AT&T Corp., Cellular Communications, Inc., CCI RSA, Inc	95–1710	05/30/95
Tractebel S.A., CRSS Inc., CRSS Inc	95–1712	05/30/95
K/B Opportunity Fund II, L.P., Oak Plaza Partners, L.P., Hak Partners—San Fernando, Ltd	95–1724	05/30/95
Don Tyson, International Multifoods Corporation, JAC Creative Foods, Inc. and Multifoods Seafood, Inc	95–1731	05/30/95
River City Broadcasting, L.P., Kerby E. Confer, Keymarket of New Orleans, Inc	95–1735	05/30/95
Columbia/HCA Healthcare Corporation, Good Samaritan Hospital d/b/a Good Samaritan Corp., Good Samaritan Hospital d/b/a Good Samaritan Corp	95–1563	05/31/95
Welsh, Carson, Anderson & Stowe VI, LP, Liberty Brokerage Investment Corp., MVIS Corporation and Securities Information Corp	95–1421	06/01/95
Atlanta Gas Light Company, Sonat Marketing Company (Joint Venture), Sonat Marketing Company (Joint Venture)	95–1587	06/01/95
Sonat Inc., Sonat Marketing Company (Joint Venture), Sonat Marketing Company (Joint Venture)	95–1589	06/01/95
Imasco Limited (a Canadian company), Stephen B. Ashley, Sibley Mortgage Corporation	95–1594	06/01/95
General Electric Company, Charles Schusterman, Total Compression Incorporated	95–1610	06/01/95
Charterhouse Equity Partners II, L.P., Envirite Corporation, County Environmental Services, Inc. & Envirite Assets	95–1615	06/01/95
BankAmerica Corporation, Limited Liability Company, Limited Liability Company	95–1666	06/01/95
NationsBank Corporation, Limited Liability Company, Limited Liability Company	95–1667	06/01/95
North Shore Regional Health System, Franklin Hospital Medical Center, Franklin Hospital Medical Center	95–1668	06/01/95
BankAmerica Corporation, H&R Block, Inc., MECA Software, Inc	95–1670	06/01/95
NationsBank Corporation, H&R Block, Inc., MECA Software, Inc	95–1671	06/01/95
Wendy's International, Inc., Carolyn Mary Hamra, Executrix of Estate of Gerald Hamra, Wendy's Old Fashioned Hamburgers of Little Rock, Inc	95–1688	06/01/95

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 05–22–95 AND 06–02–95—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Cablevision Systems Corporation, General Electric Company, SportsChannel Associates and Rainbow News 12 Company	95–1709	06/01/95
Jordan Industries, Inc., Albert Schmier, Duro-Med Industries, Inc	95–1718	06/01/95
Aon Corporation, Mark Kottler, Berkely-Arm, Inc	95–1721	06/01/95
Orion Capital Corporation, Sun Alliance Group plc, Wm. H. McGee & Co., Inc	95–1722	06/01/95
Jordan Industries, Inc., Donald Mann, Duro-Med Industries, Inc	95–1728	06/01/95
Robert F.X. Sillerman, Jeffrey E. Trumper, Trumper Communications of North Carolina, L.P	95–1736	06/01/95
Leucadia National Corporation, MK Gold Company, MK Gold Company	95–1745	06/01/95
M. Holder, E.I. du Pont de Nemours and Company, The Conoco Assets	95–1748	06/01/95
Imperial Chemical Industries PLC, The O'Brien Corporation, The O'Brien Corporation	95–1562	06/02/95
John L. Macdonald, Robert S. Zalkowitz, BTL Specialty Resins Corp	95–1581	06/02/95
Koch Industries, Inc., Kerr McGee Corporation, Southwestern Refining Company, Inc	95–1616	06/02/95
Telephone and Data Systems, Inc. Voting Trust, Century Communications Corp., Century Communications Corp	95–1690	06/02/95
General Signal Corporation, Data Switch Corporation, Data Switch Corporation	95–1702	06/02/95
Burlington Northern Inc., Santa Fe Pacific Corporation, Santa Fe Pacific Pipeline Holdings, Inc	95–1730	06/02/95
Wexford Capital Partners II, L.P., San Diego Gas & Electric Company, Wahlco Environmental Systems, Inc	95–1749	06/02/95

FOR FURTHER INFORMATION CONTACT:
Sandra M. Peay or Renee A. Horton, Contract Representatives
Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 95–14721 Filed 6–15–95; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Information Collection Activities Under Office of Management and Budget Review

AGENCY: Office of GSA Acquisition Policy (VP), GSA.

SUMMARY: The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to approve a new information collection entitled "Application To Use Federal Supply Schedules By State, Local and Indian Tribal Governments." The application will be used by states, departments or agencies of a state, and any political subdivision of a state, including a local government, the Commonwealth of Puerto Rico, and the government of an Indian Tribe, to request authorization from GSA to use the Federal supply schedules.

ADDRESSES: Send comments to Ed Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Streets NW., Washington, DC, 20405.

ANNUAL REPORTING BURDEN:
Respondents: 10,000. Annual Responses: 10,000. Average time per response: fifteen minutes. Burden hours: 2,500.

FOR FURTHER INFORMATION CONTACT: Les Davison, (202) 501–4768.

Copy of proposed application may be obtained from the Information Collection Management Branch (CAIR), Room 7102, GSA Building, 18th & F Streets, NW., Washington, DC 20405, or by telephoning (202) 501–2691, or by fax request to (202) 501–2727.

Dated: June 13, 1995.

Kenneth S. Stacey,

Director, Information Management Division.

[FR Doc. 95–14790 Filed 6–15–95; 8:45 am]

BILLING CODE 6820–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement Number 532]

Cooperative Agreements for a National System of Integrated Activities to Prevent HIV Infection and Other Serious Health Problems Among Students, Especially Postsecondary Students

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1995 funds for cooperative agreements to establish a national system of integrated activities for preventing HIV infection and other serious health problems among the nation's students, especially postsecondary students and those in high-risk situations.

Applicants may apply for funding to carry out activities in one or more of the following priority areas:

Priority One—Educate Policy and Decision-Makers

To educate and encourage policy and decision-making members of postsecondary institutions to support programs to prevent HIV infection among students, especially postsecondary students and those in high-risk situations.

Priority Two—Support Institution-Wide Health Promotion Programs

To build the capacity of postsecondary institutions to implement comprehensive integrated strategies designed to prevent HIV infection as part of institution-wide health promotion and disease prevention programs for postsecondary students, especially those in high-risk situations.

Priority Three—Support Preservice Education

To provide technical assistance and training to personnel in postsecondary institutions about the skills that health, education, social service, and other professionals need in order to help young people, including students in grades K–12 and those in high-risk situations, avoid HIV infection and other serious health problems.

The Public Health Service (PHS) is committed to implementing the recommendations outlined in the *External Review of HIV Prevention Strategies,* and the health promotion and disease prevention objectives of *Healthy People 2000,* a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This program announcement is related to the priority areas of HIV

Infection (Objective 18.11, "Provide HIV education for students and staff in at least 90 percent of colleges and universities"), and Educational and Community-Based Programs (Objective 8.4, "Increase to at least 75 percent the proportion of the Nation's elementary and secondary schools that provide planned and sequential kindergarten through 12th grade quality school health education"; Objective 8.5, "Increase to at least 50 percent the proportion of postsecondary institutions with institution-wide health promotion programs for students, faculty, and staff"; and Objective 8.6, "Increase to at least 85 percent the proportion of workplaces with 50 or more employees that offer health promotion activities for their employees, preferably as part of a comprehensive employee health promotion program"). The most recent description of CDC efforts to prevent HIV infection is included in *Public Health Reports*, including CDC efforts to prevent HIV infection among youth. (To order a copy of the *External Review of HIV Prevention Strategies, Healthy People 2000, and Public Health Reports*, see the section on **REFERENCE MATERIALS**).

Authority

This program is authorized under sections 311(c) [42 U.S.C. 243(c)], and 317(k)(2) [42 U.S.C. 247(k)(2)] of the Public Health Service Act, as amended. Regulations are set forth in 42 CFR Part 51b.

Eligible Applicants

Eligible applicants are national education, health, or social service organizations that are private, nonprofit, professional, or voluntary. Eligible applicants must have postsecondary institutions or programs as their major focus; and applicants must have the organizational capacity to help develop an ongoing national system of integrated activities to prevent HIV infection and other serious health problems among students, especially postsecondary students and those in high-risk situations. Eligible applicants must have affiliate offices, organizations, or constituencies in a minimum of 10 States and territories.

Smoke-Free Workplace

PHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Availability of Funds

Approximately $2.5 million is available in FY 1995 to fund approximately 10 awards. It is expected that the average award will be $250,000, ranging from $200,000 to $300,000. It is expected that awards will begin on or about September 25, 1995, and will be made for a 12-month budget period within a project period of up to 5 years. Funding estimates may vary and are subject to change. Continuation awards for new budget periods will be based on satisfactory performance, receipt of an acceptable continuation application, and the availability of funds.

Funds must be used for categorical activities to prevent HIV infection among youth. Activities can also be included that support the integration of HIV activities as part of broader programs to improve the health of youth (e.g., related STD and pregnancy prevention programs; related alcohol and other drug prevention programs; related institution wide health promotion programs for students, faculty, and staff). These funds may not be used to conduct research.

Purpose

The purpose of this program is to support national organizations and other relevant agencies in establishing an ongoing national system of integrated activities to prevent HIV infection and other serious health problems among students, especially postsecondary students and those in high-risk situations.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and CDC will be responsible for the activities listed under B. (CDC Activities).

A. Recipient Activities

1. Collaborate with constituents; other national organizations whose foci are postsecondary institutions; community planning; State and local education and health agencies; and CDC to develop a national system to achieve the purpose of this program announcement.

2. Establish feasible goals and specific, measurable, and realistic objectives.

3. Establish an operational plan that could include, but is not limited to:

(a) Including as a priority within the organization, health promotion and disease prevention programs to reduce HIV risk behaviors of students, especially postsecondary students and those in high-risk situations.

(b) Developing and promoting the implementation of State and local policies designed to reduce the HIV risk behaviors of students, especially postsecondary students and those in high-risk situations.

(c) Developing and promoting the implementation of activities designed to prevent HIV risk behaviors among students, especially postsecondary students and those in high-risk situations.

(d) Educating and encouraging policy and decision-making members of national organizations and their constituents, to support HIV prevention education programs for students, especially postsecondary students and those in high-risk situations.

4. Evaluate the project's effectiveness in achieving goals and objectives.

5. Disseminate programmatic information to CDC and other interested recipients through appropriate methods that include:

(a) Identifying and submitting pertinent programmatic information for incorporation into a computerized database of health information and health promotion resources, such as the Combined Health Information Database (CHID).

(b) Sharing information through electronic bulletin boards, such as the Comprehensive Health Education Network (CHEN).

6. Participate with CDC and other appropriate agencies in planning and convening meetings. The budget request should include the cost of a five-day trip to Atlanta for two individuals to attend a CDC annual conference and a two-day trip to Atlanta for two individuals to attend an additional meeting.

B. CDC Activities

1. Provide and periodically update information related to the purposes or activities of this program announcement.

2. Collaborate with national, State, and local education and health agencies and other relevant organizations in planning and conducting national strategies designed to strengthen programs for preventing HIV infection and other serious health problems among young persons.

3. Provide substantial programmatic consultation and guidance related to program planning, implementation, and evaluation; assessment of program objectives; and dissemination of successful strategies, experiences, and evaluation reports.

4. Plan meetings of national, State, and local education agencies and other appropriate agencies to address issues and program activities related to improving the health of postsecondary students; and strengthening the capacity of education, health, and other relevant agencies to prevent HIV infection and other serious health problems among young persons, especially those in high-risk situations.

5. Assist in the evaluation of program activities.

6. Monitor the recipient's performance of program activities and make recommendations to facilitate future progress.

Review and Evaluation Criteria

Each application will be allocated a total of 100 points, and will be reviewed and evaluated according to the following criteria:

A. *Background/Need* (10 points).

The extent to which the applicant justifies the need for the activities including:

1. Identifying target populations;

2. Identifying the barriers in reaching the target population;

3. Identifying what might move HIV prevention efforts forward within the target population.

B. *Capacity and Impact* (30 points).

The extent to which the applicant demonstrates the capacity and ability to:

1. Develop and conduct the proposed activities;

2. Involve postsecondary institutions or programs;

3. Institutionalize activities that can reduce HIV infection among students, especially postsecondary students and those students who may be in high-risk situations.

C. *Goals and Objectives* (10 points).

1. Goals. The extent to which the applicant has submitted realistic goals for the projected five-year project period.

2. Objectives. The extent to which the applicant has submitted specific, measurable, and feasible objectives for the one-year budget period that directly relate to the applicant's goals.

D. *Operational Plan* (15 points).

1. The extent to which proposed activities:

(a) Involve postsecondary institutions.

(b) Are likely to reduce HIV infection and related health problems among students especially postsecondary students and those in high-risk situations.

(c) Achieve the stated objectives within the first budget period.

2. The extent to which the applicant includes a reasonable timeline for conducting proposed activities.

3. The extent to which the applicant provides a description of the activities anticipated for years 2, 3, 4, and 5 of the project.

E. *Project Management and Staffing* (15 points).

The extent to which the applicant identifies staff and other agencies that have the responsibility and authority to carry out each activity, including:

1. Organizational charts demonstrating that the staff have the authority needed to carry out those responsibilities.

2. Job descriptions and curricula vitae demonstrating that the staff have backgrounds that qualify them to fulfill the proposed responsibilities.

3. Commitment of at least one full-time staff member to provide direction for the proposed activities.

4. Letters from collaborating organizations indicating their intent and capacity to carry out their designated responsibilities.

F. *Sharing Experiences and Resources* (5 points).

The extent to which the applicant indicates how it will share effective materials and activities.

G. *Collaborating* (5 points).

The extent to which the applicant describes how it will collaborate with CDC and with other relevant agencies.

H. *Evaluation* (10 points). The extent to which the applicant:

1. Identifies how it will monitor progress in meeting objectives.

2. Identifies how program effectiveness will be measured and presents a reasonable plan for obtaining data, reporting results, and using the results for programmatic decisions.

I. *Budget and Accompanying Justification* (not scored). The extent to which the applicant provides a detailed and clear budget narrative consistent with the stated objectives and planned activities of the project.

Executive Order 12372 Review

This program is not subject to the Executive Order 12372 review.

Public Health Systems Reporting Requirements

This program is not subject to the Public Health Systems Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.938.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

HIV/AIDS Requirements

Recipients must comply with the document entitled: "Interim Revision of Requirements of the Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control and Prevention Assistance Programs" (June 15, 1992), a copy of which is included in the application kit. The names and affiliations of the review panel members must be listed on the Assurance of Compliance form CDC 0.1113, which is also included in the application kit. In progress reports, the recipient must submit the program review panel's report indicating all materials have been reviewed and approved.

Application Submission and Deadline

The original and two copies of the application Form PHS–5161–1 (OMB Number 0937–0189) must be submitted to Henry S. Cassell, III, Acting Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road NE., Room 300, Atlanta, GA 30305, Attention: Marsha D. Driggans, Mailstop E16, on or before July 24, 1995.

Facsimile copies will not be accepted.

1. *Deadline.* Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial mail carrier or U.S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailing.

2. *Late Applications.* Applications that do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, application package, and business management technical assistance may be obtained from Marsha D. Driggans, Grants Management Specialist, Grants

Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 305, Mailstop E–16, Atlanta, GA 30305, telephone (404) 842–6523, facsimile (404) 842–6513, or via INTERNET: mdd2@opspgo1.em.cdc.gov.

Programmatic technical assistance may be obtained from Elizabeth Majestic, Chief, Special Populations Section, Program Development and Services Branch, Division of Adolescent and School Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop K31, Atlanta, GA 30341–3724, telephone (404) 488–5356.

Please refer to Announcement 532 when requesting information or submitting an application.

Reference Materials

(1) Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0), Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1), and Adolescent Health (Volume 1, Stock No. 052–00301234–1; Volume 2, Stock No. 052–003–01235–9; Volume 3, Stock No. 052–003–01236–7) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

(2) Potential applicants may obtain a copy of the External Review of HIV Prevention Strategies, from the Centers for Disease Control and Prevention (CDC), National Center for Prevention Services, Division of HIV/AIDS Prevention, 1600 Clifton Rd., Mailstop D21, Atlanta, GA 30333, telephone (404) 639–0900.

(3) Potential applicants may obtain a copy of Public Health Reports, Volume 106, Number 6, from the National AIDS Information Clearinghouse, P.O. Box 6003, Rockville, MD 20850, telephone (800) 458–5231.

(4) Potential applicants can obtain additional information about HIV Prevention Community Planning Groups, by contacting Gary West, Division of HIV/AIDS Prevention, National Center for Prevention Services, Centers for Disease Control and Prevention (CDC), 1600 Clifton Rd., Mailstop D21, Atlanta, GA 30333, telephone (404) 639–0900.

(5) Potential applicants may obtain a copy of The Second Annual National School Health Conference Proceedings, from the National Center for Chronic Disease Prevention and Health Promotion, Division of Adolescent and School Health, Centers for Disease Control and Prevention (CDC), 1600 Clifton Rd., Mailstop K31, Atlanta, GA 30333, telephone (404) 488–5324.

Special Guidelines for Technical Assistance Workshop

A one-day technical assistance workshop will be held in Washington, DC, approximately two weeks after the publication date of the Program Announcement in the **Federal Register**. The purpose of this meeting is to help potential applicants to:

1. Understand the scope and intent of Announcement 532; and

2. Understand the Public Health Service grants policies, applications, and review procedures.

Attendance at this workshop is not mandatory. Applicants who are currently funded by CDC may not use project funds to attend this workshop. However, attendees who compete successfully may be reimbursed for their allowable and reasonable expenses through their new award.

Each potential applicant may send no more than two representatives to this meeting. Please provide the names of the persons that are planning to attend this meeting to Elizabeth Majestic, Chief, Special Populations Section, Division of Adolescent and School Health, telephone (404) 488–5356, within 10 working days after the publication date of the program announcement in the **Federal Register**.

Dated: June 12, 1995.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–14773 Filed 6–15–95; 8:45 am]

BILLING CODE 4163–18–P

[Announcement 572]

National Institute for Occupational Safety and Health; Prevention of Stress and Health Consequences of Workplace Downsizing and Reorganization

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1995 funds for a cooperative agreement program to study organizational downsizing/reorganization and propose interventions to reduce the negative health and performance consequences among employees. The research funded by this cooperative agreement will focus on the defense nuclear industry where large-scale downsizing and reorganization are currently occurring, but the research will provide a model for other industries affected by downsizing and reorganization issues.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Occupational Safety and Health and Mental Health and Mental Disorders. (For ordering a copy of Healthy People 2000, see the Section **WHERE TO OBTAIN ADDITIONAL INFORMATION.**)

Authority

This program is authorized under Sections 20 (a) and 22(e)(7) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669(a) and 671(e)(7)).

Smoke-free Workplace

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products, and Public Law 103–227, the Pro- Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care and early childhood development services are provided to children.

Eligible Applicants

Applications may be submitted by public and private, non-profit and for-profit organizations and governments, and their agencies. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, State and local health departments or their bona fide agents, federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations, and small, minority-, and/or women-owned businesses are eligible to apply.

Availability of Funds

Approximately $300,000 is available in FY 1995 to fund at least one award. It is expected that the award will begin on or about September 30, 1995, and will be made for a 12-month budget period within a project period of 3 to 5 years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of this cooperative agreement is to utilize the special resources of the extramural community to conduct a program of applied

research in the prevention of negative health consequences of organizational downsizing/reorganization in selected facilities of the defense nuclear and related industries. The program will consist of applied research to assess the effects of downsizing on employee health and well-being, and on organizational culture/climate. Specifically, this cooperative agreement is intended to result in the development, implementation, and evaluation of practical interventions for preventing the negative health and performance consequences of downsizing. Primary prevention strategies should be emphasized (e.g., recommending "best practices" for downsizing), but secondary prevention strategies, if linked to a primary prevention strategy, can be proposed (e.g., provision of counseling for employees).

At least three key aspects of downsizing/reorganization should be assessed in any research proposal: (1) The purpose of downsizing (proactive vs. reactive); (2) the process of downsizing (targeted vs. across-the-board changes, communication style etc.); and (3) the provision of assistance to employees who lose their jobs (finding new jobs or acquiring new skills), and employees who retain their jobs. Outcome measures can include measures of perceived stress, health consequences to downsizing of those employees who retain their jobs, employee commitment and involvement and organizational culture/climate. The findings should be used to develop preventive interventions; for example, identifying —best practice— for reducing negative health effects of downsizing, or implementing strategies to reduce employee uncertainty and ambiguity during downsizing. Finally, proposals must include an evaluation component which describes the approach and method by which the efficacy of the intervention(s) will be assessed.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and CDC/NIOSH will be responsible for conducting activities under B. (CDC/NIOSH Activities).

A. Recipient Activities

1. Develop and conduct a study of the health and performance consequences of downsizing and/or reorganization.

2. Develop a research protocol that reviews the pertinent downsizing/reorganization and organizational stress/health literatures, and describes the study methodology, data to be collected and the proposed analysis of the data; present the protocol to a panel of peer reviewers and revise the protocol as required for final approval by CDC/NIOSH.

3. Conduct all required medical and laboratory tests on workers participating in the study, collect questionnaire/interview information and identifying data on workers, and analyze data.

4. Prepare a final report summarizing the study methodology, results obtained, conclusions reached and recommendations for preventing the negative health and performance consequences of downsizing and additional research needs.

5. Where appropriate, collaborate with CDC/NIOSH scientists who are working in complementary research areas.

6. Report research results to the scientific community via presentations at professional conferences and articles in peer-reviewed journals.

B. CDC/NIOSH Activities

1. Provide scientific, epidemiologic, engineering, environmental, industrial hygiene, and clinical technical assistance, as needed, for the successful completion of this project.

2. Identify and convene Peer Review Panel to review draft study protocol.

3. Assist in formulating the study design, the analysis of data collected by the recipient, interpretation of the results, and preparation of the written reports.

4. Engage in scientific collaboration in research areas of mutual interest and investigation.

Evaluation Criteria

The application will be reviewed and evaluated according to the following criteria:

1. *Understanding of the Problem (25%)*

Responsiveness to the objective of the cooperative agreement including: (a) applicant's understanding of the research needed to document the health and performance consequences of downsizing and/or reorganization and the objective of the proposed cooperative agreement, and (b) relevance of the proposal to the objective.

2. *Study Design and Project Planning (40%)*

Steps proposed in planning and implementing this project, and the respective responsibilities of the applicant for carrying out those steps, the proposed approach to the study and the draft (or detailed outline) of the study protocol. The applicant's schedule proposed for accomplishing the activities to be carried out in this project and for evaluating the accomplishments.

3. *Program Personnel (25%)*

Qualification and time allocation of the professional staff to be assigned to this project and applicant's ability to provide knowledgeable staff required to perform the applicant's responsibilities in this project, and the approach to be used in carrying out those responsibilities.

4. *Facilities and Resources (10%)*

The adequacy of the applicant's facilities, equipment, and other resources available for performance of this project.

5. *Budget Justification (not scored)*

The budget will be evaluated to the extent that it is reasonable, clearly justified, and consistent with the intended use of funds.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. Indian tribes are strongly encouraged to request tribal government review of the proposed application. A current list of SPOCs is included in the application kit.

If SPOCs or tribal governments have any State process recommendations on applications submitted to CDC, they should send them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Atlanta, GA 30305, no later than 60 days after the application deadline date. The Program Announcement Number and Program Title should be referenced on the document. The granting agency does not guarantee to "accommodate or explain" State or tribal process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.956.

Other Requirements

Paperwork Reduction Act

Projects funded through the cooperative agreement mechanism of this program involving the collection of information from 10 or more individuals will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the DHHS Regulations, 45 CFR part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

In addition to other applicable committees, Indian Health Service (IHS) institutional review committees also must review the project if any component of IHS will be involved or will support the research. If any American Indian community is involved, its tribal government must also approve that portion of the project applicable to it.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (Revised 7/92, OMB Control Number 0937–0189) must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Mailstop E–13, 255 East Paces Ferry Road, NE., Room 300, Atlanta, GA 30305, on or before July 17, 1995.

1. Deadline: Applications will be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date, or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

2. Late Applications: Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and telephone number and will need to refer to Announcement 572. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Oppie Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305, telephone (404) 842–6546.

Programmatic technical assistance may be obtained from Lawrence R. Murphy, Ph.D., Division of Biomedical and Behavioral Science, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), 4676 Columbia Parkway, Cincinnati, OH 45226, telephone (513) 533–8171, Fax (513) 533–8510, Email (Internet): LRM2@NIOBBS1.EM.CDC.GOV.

Please refer to Announcement 572 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction Section through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: June 12, 1995.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–14771 Filed 6–15–95; 8:45 am]

BILLING CODE 4163–19–P

[Announcement 559]

National Institute for Occupational Safety and Health; Chronic Beryllium Disease Among Beryllium-exposed Workers

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1995 funds for a cooperative agreement to develop a model program for the prevention, diagnosis, and treatment of chronic beryllium disease (CBD) among individuals who have been occupationally exposed to beryllium and/or beryllium compounds.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering a copy of Healthy People 2000, see the Section Where to Obtain Additional Information)

Authority

This program is authorized under Sections 20(a) and 22(e)(7) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669(a) and 671(e)(7)).

Smoke-free Workplace

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care and early childhood development services are provided to children.

Eligible Applicants

Applications may be submitted by public and private, non-profit and for-profit organizations and governments, and their agencies. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, State and local health departments or their bona fide agents, federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations, and small, minority-, and/or women-owned businesses are eligible to apply.

Availability of Funds

Approximately $400,000 is available in FY 1995 to fund one award. It is expected that the award will begin on or about September 30, 1995, and will be made for a 12-month budget period within a project period of 3 to 5 years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of this cooperative agreement is to conduct a program of applied research in the prevention of CBD among individuals who have been occupationally exposed to beryllium and/or beryllium compounds. The National Institute of Occupational Safety and Health (NIOSH) has conducted studies of or is aware of a number of such cohorts which are listed in the attached appendix. These cohorts, as well as other beryllium- exposed cohorts not included in this list, may be identified in the research proposal.

Within the past ten years, an *in vitro* test for identifying sensitization to beryllium was developed. Currently, the blood lymphocyte proliferation test (LPT also known as the lymphocyte transformation test or LTT) to beryllium salts is available from a limited number of laboratories in the U.S. The sensitivity, specificity, positive predictive value, and negative predictive value of this test with respect to CBD have been estimated based on its application in a few occupational cohorts. However, these estimates need to be confirmed in other groups of beryllium-exposed workers. Also, it is not known whether interventions (e.g. removal from exposure or early treatment with corticosteroids) impede the progression from sensitization to clinical disease.

Although sensitization can occur after short-term exposure to beryllium, the risk of sensitization appears to increase with more exposure. These findings suggest that both individual susceptibility and exposure conditions are important in the onset of CBD. To improve the prevention of beryllium disease, several research areas need exploration.

These include:

1. The characterization of the natural history of CBD;
2. Identification of specific beryllium compounds associated with CBD; and
3. Evaluation of a possible dose-response relationship between CBD and exposure to beryllium (with beryllium exposures characterized in different manners, e.g., levels, duration, methods of handling, etc.).

In many of the published studies, the small number of sensitized individuals and CBD cases has limited the power to discern process-related risks and temporal patterns. In addition, past studies have suffered from a lack of detailed exposure data. Larger sample sizes and improved exposure data are needed to address these data gaps.

This program will identify applied research needs, formulate a plan to respond to those needs, evaluate the effectiveness of the program interventions, and disseminate research results. Specifically, this cooperative agreement is intended to greatly improve prevention efforts for CBD; including primary and or secondary prevention activities.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and CDC/NIOSH will be responsible for conducting activities under B. (CDC/NIOSH Activities).

A. Recipient Activities

1. Identify research needs relative to the prevention of CBD among people who have been occupationally exposed to beryllium and/or beryllium compounds.

2. Develop a research protocol that reviews the pertinent CBD literature and describes the study methodology, the data to be collected and the proposed analysis of the data. Present the protocol to a panel of peer reviewers and revise the protocol as required for final approval by CDC.

3. Conduct all required medical and laboratory tests on workers participating in the study; collect necessary exposure and identifying data on workers; analyze data.

4. Prepare a final report summarizing the study methodology, results obtained, conclusions reached and recommendations for preventing CBD, and additional research needs.

5. Where appropriate, collaborate with CDC/NIOSH scientists who are working in complementary research areas.

6. Report research results to the scientific community via presentations at professional conferences and articles in peer-reviewed medical journals.

B. CDC/NIOSH Activities

1. Provide scientific, epidemiologic, engineering, environmental, industrial hygiene, and clinical technical assistance.

2. Identify reviews and/or clearances that must be fulfilled by the recipient, and identify and convene Peer Review Panel to review draft study protocol.

3. Assist in formulating the study design, the analysis of the data collected, interpretation of the results, and preparation of the written reports.

4. Engage in scientific collaboration in research areas of mutual interest and investigation.

5. Assist in the reporting of research results to the scientific community via presentations at professional conferences and articles in peer-reviewed medical journals.

Evaluation Criteria

The application will be reviewed and evaluated according to the following criteria:

1. *Understanding of the Problem (25%)*

Responsiveness to the objective of the cooperative agreement including: (a) applicant's understanding of the research needed to prevent CBD and the objective of the proposed cooperative agreement, and (b) relevance of the proposal to the objective.

2. *Study Design and Project Planning (35%)*

Steps proposed in planning and implementing this project, and the respective responsibilities of the applicant for carrying out those steps the proposed approach to the study and the outline of the study protocol. The applicant's schedule proposed for accomplishing the activities to be carried out in this project and for evaluating the accomplishments.

3. *Program Personnel (30%)*

Qualification and time allocation of the professional staff to be assigned to this project and applicant's ability to provide knowledgeable staff required to perform the applicant's responsibilities in this project, and the approach to be used in carrying out those responsibilities.

4. *Facilities and Resources (10%)*

The adequacy of the applicant's facilities, equipment, and other resources available for performance of this project.

5. *Budget Justification (not scored)*

The budget will be evaluated to the extent that it is reasonable, clearly justified, and consistent with the intended use of funds.

Executive Order 12372 Review

Applications are not subject to the review requirements of Executive Order 12372, Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.283.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the DHHS Regulations, 45 CFR part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

In addition to other applicable committees, Indian Health Service (IHS) institutional review committees also must review the project if any component of IHS will be involved or will support the research. If any American Indian community is involved, its tribal government must also approve that portion of the project applicable to it.

Application Submission and Deadline

The original and two copies of the application PHS Form 398 (OMB No. 0925–0001) must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Mailstop E–13, 255 East Paces Ferry Road, NE., Room 300, Atlanta, GA 30305, on or before July 21, 1995.

1. Deadline: Applications will be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date, or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.

2. Late Applications: Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and telephone number and will need to refer to Announcement 559. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Oppie Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305, telephone (404) 842–6546.

Programmatic technical assistance may be obtained from Paul K. Henneberger, Sc.D., Division of Respiratory Disease Studies, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), Mailstop 234, 1095 Willowdale Road, Morgantown, WVA 26505–2845, telephone (304) 285–5756.

Please refer to Announcement 559 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001- 00473–1) referenced in the **INTRODUCTION** through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: June 12, 1995.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health Centers for Disease Control and Prevention (CDC).

Appendix

Beryllium-Exposed Worker Cohorts

Below is a listing of facilities in which workers are or have been known to be exposed to beryllium.

Beryllium Production Facilities

NIOSH conducted a cohort mortality study of employees at the Cabot Berylco plants in Reading and Hazelton, Pennsylvania, and at the Lorain, Perkins, Lucky, St. Clair, and Elmore, Ohio plants of the Brush-Wellman Company (Ward, Am. J. Indust. Med. 1992). These seven plants represent all of the beryllium production plants that have been in operation in the United States. Collectively, the plants cover 57 years of beryllium exposure history, with the oldest facility beginning operations in 1935 and the most recent beginning in 1963. Approximately 9200 workers have been employed at these facilities. The names, location, and years of operation of these plants are listed in Table 1.

Defense Nuclear Facilities

Facilities at which there are or were beryllium operations are listed in Table 2. Of these, the major beryllium operations sites are/were Rocky Flats, Ames, Argonne National Laboratory, Y–12, Lawrence Livermore National Laboratory (LLNL), and Los Alamos National Laboratory (LANL). Because the criteria for designation as a "beryllium worker" have differed within and between facilities, it is difficult to state the size of the worker population at these facilities exposed to beryllium. However, it has been estimated that more than 10,000 persons may have qualified at some time as a beryllium worker at these facilities.

TABLE 1.—BERYLLIUM PRODUCTION PLANTS IN THE UNITED STATES

Company	Plant	Date start production	Date end production
	Lorain, Ohio	1935	1948
	Lucky, Ohio	1950	1958
	Elmore, Ohio	1952	(1)
			(2)
Brush Wellman	Perkins (Cleveland, Ohio)	1937	1963
	St. Clair (Cleveland, Ohio)	1963	1973
Kawecki-Berylco/Cabot	Reading, Pennsylvania	1935	(1)

TABLE 1.—BERYLLIUM PRODUCTION PLANTS IN THE UNITED STATES—Continued

Company	Plant	Date start production	Date end production
Berylco NGK Metals			
	Hazelton, Pennsylvania	1958	1978

[1] Presently.
[2] Operating.

TABLE 2.—DEFENSE NUCLEAR FACILITIES WITH CURRENT AND/OR HISTORICAL BERYLLIUM OPERATIONS

Defense nuclear facility	Location
Y–12 Plant	Oak Ridge, Tennessee.
Oak Ridge National Laboratory (X–10).	Oak Ridge, Tennessee.
Inhalation Toxicology Research Institute.	Albuquerque, New Mexico.
Pantex Plant	Amarillo, Texas.
Mound Laboratory	Miamisburg, Ohio.
Kansas City Plant	Kansas City, Missouri.
Los Alamos National Laboratory.	Los Alamos, New Mexico.
Pinellas Plant	Largo, Florida.
Rocky Flats Plant	Golden, Colorado.
Sandia National Laboratory.	Albuquerque, New Mexico.
Ames Laboratory	Iowa State University, Ames, Iowa.
Argonne National Laboratory.	University of Chicago Metallurgical Laboratory and Idaho National Engineering Laboratory.
Hanford Site (Westinghouse), Pacific Northwest Laboratories.	Richland, Washington.
Lawrence Livermore National Laboratory.	Livermore, California.
Lawrence Berkeley National Laboratory.	Berkeley, California.
Atomic International, Canoga Park.	Santa Susana, California.
Knolls Atomic Power Laboratory.	Schenectady, New York.

[FR Doc. 95–14772 Filed 6–15–95; 8:45 am]

BILLING CODE 4163–19–P

Office of the Secretary

Notice of Three Meetings of the Commission on Research Integrity

Pursuant to P.L. 92–463, notice is hereby given of three public meetings of the Commission on Research Integrity in the Washington/Baltimore Metropolitan Area.

The first meeting will be at the Washington Dulles Airport Marriott Hotel, in Chantilly, VA, on Monday and Tuesday, June 26–27, from 8:30 a.m. until 5 p.m. on day one, and from 9 a.m. until 5 p.m. on day two. The second meeting will be at the Belmont Conference Center in Elkridge, MD, Sunday through Tuesday, July 30 through August 1, from 10 a.m. until 4:30 p.m. on all three days. The third meeting will be at the Washington Dulles Airport Marriott Hotel on Monday and Tuesday, September 18–19, from 8:30 a.m. until 5 p.m. on day one, and from 9 a.m. until 5 p.m. on day two.

The Commission will be working on a report and recommendations to congressional oversight committees and the Secretary of the Department of Health and Human Services on the administration of Section 493 of the Public Health Service Act, as amended by and added to by Section 161 of the NIH Revitalization Act of 1993. Proposed recommendations may address the following topics: A new definition of research misconduct, a model assurance for institutions concerning research integrity, codes of ethics for professional associations, a bill of rights and responsibilities for witnesses (also called "whistleblowers") in alleged cases of research misconduct, and the teaching of research ethics and of the responsible conduct of research.

Interested parties are advised to call the Executive Secretary, Ms. Henrietta Hyatt-Knorr, shortly before each meeting to verify the date, place, and agenda. Persons wishing to make a presentation, either in writing or orally, should contact her in writing at Rockwall II, Suite 700, 5515 Security Lane, Rockville MD 20852, by phone at (301) 443–5300, by fax at (301) 443–5351, or via internet at hhyatt@oasch.ssw.dhhs.gov. Ms. Hyatt-Knorr will furnish the Committee charter, a Committee roster, and/or a meeting agenda upon request. Depending on the number of presentations and other considerations, the Executive Secretary will allocate a reasonable timeframe for each speaker.

Barbara E. Bullman,

Policy Analyst.

[FR Doc. 95–14774 Filed 6–16–95; 8:45 am]

BILLING CODE 4160–17–P

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: July 10, 1995.

Time: 9 a.m.

Place: DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Monica F. Woodfork, Grant Technical Assistant, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–4843.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers 93.126, Small Business Innovation Research; 93.176, ADAMHA Small Instrumentation Program Grants; 93.242, Mental Health Research Grants; 93.281, Mental Research Scientist Development Award and Research Scientist Development Award for Clinicians; 93.282, Mental Health Research Service Awards for Research Training; and 93.921, ADAMHA Science Education Partnership Award)

Dated: June 9, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–14757 Filed 6–15–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Clinical Sciences.
Date: July 10, 1995.
Time: 1:30 p.m.
Place: NIH, Rockledge II, Room 4112, Telephone Conference.
Contact Person: Dr. Gopal Sharma, Scientific Review Administrator, 6701 Rockledge Drive, Room 4112, Bethesda, MD 20892, (301) 435–1783.

Name of SEP: Clinical Sciences.
Date: July 22, 1995.
Time: 1:00 p.m.
Place: NIH, Rockledge II, Room 4218, Telephone Conference.
Contact Person: Dr. Shirley Hilden, Scientific Review Admin., 6701 Rockledge Drive, Room 4218, Bethesda, MD 20892, (301) 435–1197.

Purpose/Agenda: To review Small Business Innovation Research Program grant applications.

Name of SEP: Biological and Physiological Sciences.
Date: June 30, 1995.
Time: 1:00 p.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Abubakar Shaikh, Scientific Review Admin., 6701 Rockledge Drive, Room 6166, Bethesda, MD 20892, (301) 435–1042.

Name of SEP: Multidisciplinary Sciences.
Date: July 5–6, 1995.
Time: 8:00 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Donald Schneider, Scientific Review Admin., 6701 Rockledge Drive, Room 5104, Bethesda, MD 20892, (301) 435–7053.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 9, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–14758 Filed 6–15–95; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health, Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda

To review Small Business Innovation Research Program grant applications.

Name of SEP: Multidisciplinary Sciences.
Date: June 26, 1995.
Time: 8:00 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Houston Baker, Scientific Review Admin., 6701 Rockledge Drive, Room 5208, Bethesda, MD 20892, (301) 435–1175.

Name of SEP: Multidisciplinary Sciences.
Date: July 17–18, 1995.
Time: 8:00 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Houston Baker, Scientific Review Admin., 6701 Rockledge Drive, Room 5208, Bethesda, MD 20892, (301) 435–1175.

Purpose/Agenda

To review individual grant applications.

Name of SEP: Clinical Sciences.
Date: July 3, 1995.
Time: 8:30 a.m.
Place: Mariott Residence Inn, Bethesda, MD.
Contact Person: Dr. Scott Osborne, Scientific Review Administrator, 6701 Rockledge Drive, Room 4114, Bethesda, MD 20892, (301) 435–1782.

Name of SEP: Clinical Sciences.
Date: July 5, 1995.
Time: 8:30 a.m.
Place: Marriott Residence Inn, Bethesda, MD.
Contact Person: Dr. Scott Osborne, Scientific Review Administrator, 6701 Rockledge Drive, Room 4114, Bethesda, MD 20892, (301) 435–1782.

Name of SEP: Clinical Sciences.
Date: July 6, 1995.
Time: 8:30 a.m.
Place: Marriott Residence Inn, Bethesda, MD.
Contact Person: Dr. Scott Osborne, Scientific Review Administrator, 6701 Rockledge Drive, Room 4114, Bethesda, MD 20892, (301) 435–1782.

Name of SEP: Multidisciplinary Sciences.
Date: July 18, 1995.
Time: 1:00 p.m.
Place: NIH, Rockledge II, Room 5112, Telephone Conference.
Contact Person: Dr. Harish Chopra, Scientific Review Administrator, 6701 Rockledge Drive, Room 5112, Bethesda, MD 20892, (301) 425–1169.

Name of SEP: Clinical Sciences.
Date: July 19, 1995.
Time: 2:30 p.m.
Place: NIH, Rockledge II, Room 4106, Telephone Conference.
Contact Person: Dr. Josephine Pelham, Scientific Review Admin., 6701 Rockledge Drive, Room 4106, Bethesda, MD 20892, (301) 435–1786.

Name of SEP: Clinical Sciences.
Date: August 2, 1995.
Time: 8:30 a.m.
Place: Marriott Hotel, Bethesda, MD.
Contact Person: Dr. Harold Davidson, Scientific Review Admin., 6701 Rockledge Drive, Room 4216, Bethesda, MD 20892, (301) 435–1776.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 9, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–14759 Filed 6–14–95; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Agency Forms Undergoing Paperwork Reduction Act Review

Each Friday the Public Health Service (PHS) publishes a list of information collection requests under review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the PHS Reports Clearance Office on (202) 690–7100.

The following requests have been submitted for review since the list was last published on June 9.

1. Weekly and Annual Morbidity and Mortality Reports—0920–0007—Revision, consolidation with 0920–0014, no change in reporting forms or procedures—The timeliness of reporting of nationally notifiable diseases for publication in the MMWR provides information which CDC and State epidemiologists use to detect and more effectively interrupt outbreaks. Also, reporting provides the timely information needed to measure and demonstrate the impact of changed immunization laws or a new therapeutic therapy. The data are widely used by public health professionals concerned with the trends of diseases in the U.S. Respondents: State, Local or Tribal Government. Send comments to James Scanlon, Office of the Assistant Secretary for Health, Room 737–F, Humphrey Building, 200 Independence Ave., S.W., Washington, D.C. 20201.

	No. of respondents	No. of responses/respondents	Avg. burden/response (hr)
Weekly report .	178	52	.45
Annual report ..	57	1	12.32

Estimated total annual burden—4820 hours.

2. Exploratory Study of Reasons Kidney Transplant Waiting List Patients are Unavailable for Organ Offers—New—This is a small-scale study of the extent and causes of patient unavailability for transplant. Information will be collected from transplant center staff, transplant candidates, and transplant recipients on methods used to contact candidates and reasons they are unavailable when an organ offer is made. Respondents: Individuals or households; Business or other for-profit. Send comments to Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, D.C. 20503.

	No. of respondents	No. of responses/respondents	Avg. burden/response (hr)
Survey of transplant	40	1	1.75
Survey of transplant	100	1	.58
Survey of transplant recipients	100	1	.58

Estimated total annual burden—186 hours.

3. Survey of Health Care Providers Participating in Rural Telemedicine Networds—New—This mail survey of all health care providers participating in rural telemedicine projects will provide baseline data on the systems, a minimum data set for future studies, and evaluation methodologies for future evaluations of these systems. Respondents: Business or other for-profit; Not-for-profit institutions; Number of Respondents: 250; Number of Responses per Response: 1; Average Burden per Response: 2.12 hours; Estimated Total Annual Burden: 530 hours. Send comments to Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Written comments and recommendations concerning the proposed information collections should be sent within 30 days of this notice directly to the individual designated.

Dated: June 9, 1995.

James Scanlon,

Director, Data Policy Staff, Office of the Assistant Secretary for Health and PHS Reports Clearance Officer.

[FR Doc. 95–14784 Filed 6–15–95; 8:45 am]

BILLING CODE 4160–01–M

Implementation and Evaluation of U.S. Public Health Service Recommendations for Counseling and Testing of Pregnant Women, Prevention of Perinatal Transmission, and Links to Care of HIV-Infected Women and Children; Public Meeting

The Public Health Service announces the following meeting.

NAME: Implementation and Evaluation of U.S. Public Health Service (PHS) Recommendations for Counseling and Testing of Pregnant Women, Prevention of Perinatal Transmission, and Links to Care of HIV-Infected Women and Children—Public meeting between PHS, outside experts, and other interested parties.

TIME AND DATES: 8:30 a.m.–5 p.m., July 11–12, 1995.

PLACE: Westin Peachtree Plaza Hotel, 210 Peachtree Street, NW, Atlanta, Georgia 30343.

STATUS: The meeting will be open to the public, limited only by space available.

PURPOSE: To obtain individual comments on strategies to implement and evaluate the Centers for Disease Control and Prevention (CDC) guidelines on HIV counseling and testing of pregnant women, to ensure the HIV-infected women and their newborns are entered into a continuum of services, to evaluate these implementation steps, and to consider appropriate surveillance and evaluation mechanisms to monitor the epidemic in women and children.

The structure of the meeting will include workshops for discussion of the scientific and programmatic issues involved in implementation, evaluation, and monitoring of interventions to reduce the risk of perinatal transmission of HIV.

CONTACT PERSON FOR MORE INFORMATION: Connie Granoff, Committee Management Specialist, Division of HIV/AIDS Prevention, National Center for Prevention Services, CDC, 1600 Clifton Road, NE, Mailstop E–40, Atlanta, Georgia 30333, telephone (404) 639–2918.

Dated: June 12, 1995.

Julia M. Fuller,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 95–14770 Filed 6–15–95; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–95–1917; FR–3778–N–41]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: June 16, 1995.

ADDRESSES: For further information, contact David Pollack, Department of Housing and Urban Development, Room 7254, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TDD number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Correction

The 144 Family Housing Facilities which appeared in the April 21, 1995 Notice is located in Adak, Alaska. They were inadvertently published for China Lake, California.

Dated: June 9, 1995.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 95–14566 Filed 6–15–95; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–018–1430–01; NMNM 90102]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, has filed an application to withdraw approximately 770.00 acres of National Forest System lands for the Sipapu Ski Area expansion. This notice closes the lands for up to 2 years from location and entry under the United States mining laws, subject to valid existing rights. The lands will remain open to all other uses which may be made of National Forest System lands.

DATES: Comments and requests for a public meeting should be received on or before September 14, 1995.

ADDRESSES: Comments and meeting requests should be sent to the Albuquerque District Manager, BLM, 435 Montano Road NE., Albuquerque, New Mexico 87107.

FOR FURTHER INFORMATION CONTACT: Hal Knox, BLM Taos Resource Area Office, (505) 758–8851.

SUPPLEMENTARY INFORMATION: On May 19, 1995, the United States Department of Agriculture filed an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws, subject to valid existing rights:

New Mexico Principal Meridian

Carson National Forest

T. 22 N., R. 13 E.,
- Sec. 8, E½SE¼NE¼ and E½NE¼SE¼, unsurveyed and within the Santa Barbara Grant Survey;
- Sec. 9, S½S½N½N½, S½N½, SW¼, and N½SE¼, unsurveyed and within the Santa Barbara Grant Survey;
- Sec. 10, lots 2 and 3, and approximately 23.01 acres in the SW¼NW¼ partly unsurveyed and within the Santa Barbara Grant Survey (excluding SHC Patent No. 883043), and approximately 5.01 acres of the NW¼SE¼ partly unsurveyed and within the Santa Barbara Grant Survey, and SW¼NE¼;
- Sec. 15, SE¼NW¼ and N½SW¼, unsurveyed and within the Santa Barbara Grant Survey;
- Sec. 16, NE¼NW¼ unsurveyed and within the Santa Barbara Grant Survey.

The areas described aggregate approximately 770.00 acres in Taos County.

The purpose of the proposed withdrawal is to protect the area and future investment in the proposed ski area expansion project.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Albuquerque District Manager of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Albuquerque District Manager within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied, canceled, or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are land uses permitted by the Forest Service under existing laws and regulations, including, but not limited to construction and operation of the proposed ski area improvements.

Dated: May 30, 1995.

Michael R. Ford,

District Manager.

[FR Doc. 95–14096 Filed 6–15–95; 8:45 am]

BILLING CODE 4310–FB–P

Fish and Wildlife Service

Notice of Availability of a Draft Recovery Plan for the Lyrate Bladderpod for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the lyrate bladderpod (*Lesquerella lyrata*). This small annual occurs in northwest Alabama with populations known from Colbert, Franklin, and Lawrence Counties. Plants occur in shallow soils adjacent to outcrops supporting cedar glades. Populations occur on private land with plants extending onto county and state-maintained road rights-of-way at several sites. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before August 1, 1995 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Jackson Field Office, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Cary Norquist at the above address (601/965–4900, ext. 28).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The species considered in this draft recovery plan is the lyrate bladderpod (*Lesquerella lyrata*). This annual plant, in the mustard family, occurs near cedar glade areas in Colbert, Franklin, and Lawrence Counties, Alabama. Currently, none of the populations occur on relative pristine cedar glades, as plants are located in gladey pastures, fields, and on roadsides. The lyrate bladderpod was listed as threatened in 1990 due to its limited distribution (only three populations are known) and threats from herbicide usage, road improvement, and increasing development in the area. The lyrate bladderpod is believed to be an early successional species which is eliminated by the shade and competition of invading perennials. Active management will be needed to maintain populations.

The objective of this proposed plan is to delist the lyrate bladderpod. Delisting will be considered when a minimum of 9 demonstrably secure and self-sustaining populations exist. Actions needed to reach this goal include: (1) Protecting, managing, and monitoring populations, (2) surveying for new populations, (3) gathering autecological data, (4) preserving genetic stock, and (5) providing information to the public to assist in the conservation efforts. After consideration of comments received during the review period, it will be submitted for final approval.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 9, 1995.

Robert Bowker,

Field Supervisor.

[FR Doc. 95–14733 Filed 6–15–95; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Sudbury, Assabet and Concord Rivers Wild and Scenic Study, MA; Sudbury, Assabet and Concord Rivers Study Committee; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App. 1 § 10), that there will be a meeting of the Sudbury, Assabet and Concord Rivers Study Committee on Thursday, July 13, 1995.

The Committee was established pursuant to Public law 101–628. The purpose of the Committee is to consult with the Secretary of the Interior and to advise the Secretary in conducting the study of the Sudbury, Assabet and Concord River segments specified in Section 5(a)(110) of the Wild and Scenic Rivers Act. The Committee shall also advise the Secretary concerning management alternatives, should some or all of the river segments studied be found eligible for inclusion in the National Wild and Scenic Rivers System.

The meeting will be held at 7:30 p.m., Thursday, July 13, 1995, at the Upper Level Conference Room, Concord Town Offices, 141 Keyes Rd., Concord, MA. Driving Directions: From Concord town center, take rotary around green. Turn right on to Lowell Rd. after after Colonial Inn. Keyes Rd. is the first left, after supermarket and gas station. Town Offices are on right 100 yds. from intersection; #141 is renovated brick building on right.

The agenda is as follows:

I. Welcome and introductions, approval of minutes from 03/16/95 meeting
II. Brief questions and comments from public
III. Report on Town Meeting Votes—Town Representatives
IV. Next steps: Legislation and Study Report—Cassie
V. Issues of Local Concern
VI. Other Business
Adjournment

Interested persons may make oral/written presentations to the Committee during the business meeting or file written statements. Further information concerning the meeting may be obtained from Cassie Thomas, Planner, National Park Service, 15 State Street, Boston, MA 02109 or call (617) 223–5014.

Chrysandra L. Walter,

Interim Deputy Field Director.

[FR Doc. 95–14728 Filed 6–15–95; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Housing Guaranty Program; Notice of Investment Opportunity

The U.S. Agency for International Development (USAID) has authorized the guaranty of a loan to the Government of Tunisia ("Borrower") as part of USAID's development assistance program. The proceeds of this loan will be used to finance environmental infrastructure and services for the benefit of low-income families in Tunisia. At this time, the Government of Tunisia has authorized USAID to request proposals from eligible lenders for a loan under this program of $17 Million U.S. Dollars (US$17,000,000). The name and address of the Borrower's representative to be contacted by interested U.S. lenders or investment bankers, the amount of the loan and project numbers are indicated below:

Government of Tunisia

Project Nos: (1) 664-HG–004D—(2) 664-HG-V

Amount: US$17,000,000

Housing Guaranty Loan No.:
- 664-HG–009 B01 (tranche A–$2,000,000)
- 664-HG–10 A01 (tranche B–$5,000,000)
- 664-HG–11 B01 (tranche C–$10,000,000)

Attention: Mr. Said MRABAT, Directeur Général des Finances Exterieures, Banque Centrale de Tunisie, Tunis, Tunisia

Telex Nos.: BANCENT 15375, 13311, 13308

Telefax No.: 216–1–340–615 (preferred communication)

Telephone Nos.: 216–1–351–813, 254–000

Interested lenders should contact the Borrower as soon as possible and indicate their interest in providing financing for the Housing Guaranty Program. Interested lenders should submit their bids to the Borrower's representative by *Tuesday, June 27, 1995, 12:00 noon Eastern Daylight Savings Time.* Bids should be open for a period of 48 hours from the bid closing date. Copies of all bids should be simultaneously sent to the following:

Mr. Lane Smith or Ms. Monia Ben Khalifa, Regional Housing and Urban Development Office, USAID/NENA, USAID/Tunisia, c/o American Embassy, Tunis, Tunisia. (Street address: 144, Avenue de la Liberté, Tunis, Tunisia); Telex No.: 14182

USAID TN; Telefax No.: 216–1–783–350 (preferred communication); Telephone No.: 216–1–784–300.

Mr. Charles Billand, Assistant Director, Mr. Peter Pirnie, Financial Advisor. Address: U.S. Agency for International Development, Office of Environment and Urban Programs, G/ENV/UP, Room 409, SA–18, Washington, D.C. 205023–1822. Telex No.: 892703 AID WSA; Telefax No.: 703/875–4384 or 875–4639 (preferred communication); Telephone No.: 703/875–4300 or 875–4510.

For your information the Borrower is currently considering the following terms:

(1) *Amount*: U.S. $17 million.

(2) *Term*: 30 years.

(3) *Grace Period*: Ten years grace on repayment of principal. (During grace period, semi-annual payments of interest only). If *variable* interest rate, repayment of principal to amortize in equal, semi-annual installments over the remaining 20-year life of the loan. If *fixed* interest rate, semi-annual level payments of principal and interest over the remaining 20-year life of the loan.

(4) *Interest Rate*: Alternatives of fixed, variable rates and variable rates with "caps" are requested.

(a) *Fixed Interest Rate*: If rates are to be quoted based on a spread over an index, the lender should use as its index a long bond, specifically the 7⅝% U.S. Treasury Bond due February 15, 2025. Such rate is to be set at the time of acceptance.

(b) *Variable Interest Rate*: To be based on the six-month British Bankers Association LIBOR, preferably with terms relating to Borrower's right to convert to fixed. The rate should be adjusted weekly.

(c) Variable Interest Rate with "Caps": Offers should include a maximum (cap) rate ranging from 10% to 12% per annum, and are to be based on the six month British Bankers Association LIBOR. The rate should be adjusted weekly.

(5) *Prepayment*: (a) Offers should include any options for prepayment and mention prepayment premiums, if any.

(b) Federal statutes governing the activities of USAID require that the proceeds of USAID-guaranteed loans be used to provide affordable shelter and related infrastructure and services to below median-income families. In the extraordinary event that the Borrower materially breaches its obligation to comply with this requirement, USAID reserves the right, among its other rights and remedies, to accelerate the loan.

(6) *Fees*: Offers should specify the placement fees and other expenses, including USAID fees, Paying and Transfer Agent fees, and out of pocket expenses, etc. Lenders are requested to include all legal fees in their placement fee. Such fees and expenses shall be payable at closing from the proceeds of the loan.

(7) *Closing Date*: Not to exceed 60 days from date of selection of lender.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower, and hereafter, subject to certain conditions required of the Borrower by USAID as set forth in agreement between USAID and the Borrower.

The full repayment of the loans will be guaranteed by USAID. The USAID guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive the USAID guaranty are those specified in Section 238(c) of the Act. They are: (a) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for the USAID guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by USAID.

Information as to the eligibility of investors and other aspects of the USAID housing guaranty program can be obtained from: Mr. Michael J. Lippe, Director, Office of Environment and Urban Programs, U.S. Agency for International Development, Room 409, SA–18, Washington, D.C. 20523–1822, Fax Nos: 703/875–4384 or 875–4639, Telephone: 703/875–4300.

Dated June 13, 1995.

Michael G. Kitay,

Assistant General Counsel, Bureau for Global Programs, Field Support and Research, U.S. Agency for International Development.

[FR Doc. 95–14866 Filed 6–15–95; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Divisions; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified herein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decisions, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determination, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modification to General Wage Determinations Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts
- MA950001 (Feb. 10, 1995)
- MA950002 (Feb. 10, 1995)
- MA950003 (Feb. 10, 1995)
- MA950007 (Feb. 10, 1995)
- MA950008 (Feb. 10, 1995)
- MA950009 (Feb. 10, 1995)
- MA950017 (Feb. 10, 1995)
- MA950018 (Feb. 10, 1995)
- MA950019 (Feb. 10, 1995)
- MA950020 (Feb. 10, 1995)
- MA950021 (Feb. 10, 1995)

Vermont
- VT950025 (Feb. 10, 1995)

Volume II

None

Volume III

Florida
- FL950056 (Feb. 10, 1995)

Georgia
- GA950004 (Feb. 10, 1995)
- GA950050 (Feb. 10, 1995)

Volume IV

Indiana
- IN950001 (Feb. 10, 1995)
- IN950002 (Feb. 10, 1995)
- IN950003 (Feb. 10, 1995)
- IN950004 (Feb. 10, 1995)
- IN950005 (Feb. 10, 1995)
- IN950006 (Feb. 10, 1995)
- IN950016 (Feb. 10, 1995)
- IN950018 (Feb. 10, 1995)
- IN950019 (Feb. 10, 1995)

Wisconsin
- WI950017 (Feb. 10, 1995)
- WI950021 (Feb. 10, 1995)

Volume V

Arkansas
- AR950001 (Feb. 10, 1995)

Kansas
- KS950006 (Feb. 10, 1995)
- KS950012 (Feb. 10, 1995)

Iowa
- IA950003 (Feb. 10, 1995)
- IA950005 (Feb. 10, 1995)
- IA950007 (Feb. 10, 1995)
- IA950014 (Feb. 10, 1995)
- IA950019 (Feb. 10, 1995)
- IA950032 (Feb. 10, 1995)
- IA950038 (Feb. 10, 1995)

Oklahoma
- OK950013 (Feb. 10, 1995)
- OK950014 (Feb. 10, 1995)

Volume VI

Arizona
- AZ950001 (Feb. 10, 1995)
- AZ950002 (Feb. 10, 1995)
- AZ950005 (Feb. 10, 1995)
- AZ950007 (Feb. 10, 1995)
- AZ950010 (Feb. 10, 1995)
- AZ950011 (Feb. 10, 1995)
- AZ950012 (Feb. 10, 1995)
- AZ950013 (Feb. 10, 1995)
- AZ950014 (Feb. 10, 1995)
- AZ950015 (Feb. 10, 1995)
- AZ950016 (Feb. 10, 1995)
- AZ950017 (Feb. 10, 1995)

Colorado
- CO950001 (Feb. 10, 1995)
- CO950006 (Feb. 10, 1995)
- CO950008 (Feb. 10, 1995)
- CO950009 (Feb. 10, 1995)
- CO950014 (Feb. 10, 1995)
- CO950020 (Feb. 10, 1995)
- CO950021 (Feb. 10, 1995)
- CO950023 (Feb. 10, 1995)

Oregon
- OR950001 (Feb. 10, 1995)

Washington
- WA950001 (Feb. 10, 1995)
- WA950002 (Feb. 10, 1995)
- WA950003 (Feb. 10, 1995)
- WA950010 (Feb. 10, 1995)
- WA950011 (Feb. 10, 1995)
- WA950013 (Feb. 10, 1995)
- WA950026 (Feb. 10, 1995)

Wyoming
- WY950013 (Feb. 10, 1995)
- WY950023 (Feb. 10, 1995)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which included all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, D.C. this 9th day of June 1995.

Alan L. Moss,

Director, Division of Wage Determination.

[FR Doc. 95–14526 Filed 6–15–95; 8:45 am]

BILLING CODE 4510–27–M

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

June 12, 1995.

The Department of Labor has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act (44 U.S.C. Chapter 35) of 1980, as amended (P.L. 96–511). Copies may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O'Malley ((202) 219–5095). Comments and questions about the ICRs listed below should be directed to Ms. O'Malley, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs,

Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OAW/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 10325, Washington, DC 20503 ((202) 395–7316).

Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

Type of Review: New.
Agency: Bureau of International Labor Affairs.
Title: Senior Technical Assistance Register (STAR).
Frequency: On occasion.
Affected Public: Individuals or households.
Number of Respondents: 1,000.
Estimated Time Per Respondent: 22.5 minutes.
Total Burden Hours: 375.
Description: The Bureau of International Labor Affairs is seeking to develop a new register entitled STAR (Senior Technical Assistance Register) designed to identify specialists in the fields of labor and social affairs who would be able to render voluntary advisory services to developing countries in which the Department is providing development assistance.
Type of Review: Extension.
Agency: Employment and Training Administration.
Title: Weekly Claims and Extended Benefits Data; Weekly Initial and Continued Claims Report.
OMB Number: 1205–0028.
Agency Number: ETA 538 and 539.
Frequency: Weekly.
Affected Public: State, Local or Tribal Government.
Number of Respondents: ETA 538=53, ETA 539=53.
Estimated Time Per Respondent: ETA 538=30 minutes, ETA 539=50 minutes.
Total Burden Hours: 3,675.
Description: The Federal-State Extended Unemployment Compensation Act of 1970 and amendments provide for extended benefits to be paid to claimants exhausting regular benefits in a State if that State has certain levels of insured unemployment as measured a thirteen week moving average of the insured unemployment rate. The ETA 539 report is the vehicle States use to report weekly insured unemployment and other information necessary to calculate the trigger rates. The ETA 538 is used to release an "advance" figure to the economic data.
Type of Review: Extension.
Agency: Employment and Training Administration.
Title: Benefit Rights and Experience.
OMB Number: 1205–0177.
Agency Number: ETA 218.
Frequency: Quarterly.
Affected Public: State, Local or Tribal Government.
Number of Respondents: 53.
Estimated Time Per Respondent: 30 minutes.
Total Burden Hours: 107.
Description: This information collection, authorized under Section 303(a)(6) of the Social Security Act, provides information for solvency studies, in budgeting projections, and for evaluation of adequacy of benefit formulas to analyze effects of proposed changes in State law.

Theresa M. O'Malley,
Acting Departmental Clearance Officer.
[FR Doc. 95–14781 Filed 6–15–95; 8:45 am]
BILLING CODE 4510–30–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Chemical and Transport Systems; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Chemical and Transport System (#1190).
Date and Time: July 5, 1995; 8 a.m. to 5. p.m.
Place: National Science Foundation, 4201 Wilson boulevard, Room 580, Arlington, VA 22230. (703) 306–1370.
Type of Meeting: Closed.
Contact Person: Dr. Maria K. Burka, Program Director, Chemical Reaction Processes, CTS, Room 525, (703) 306–1371.

Purpose of Meeting

To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda

To review and evaluate nominations for the NSF Microwave-Induced Reaction Initiative Panel Proposals as part of the selection process for awards.

Reason for Closing

The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b (c) (4) and (6) of the Government in the Sunshine Act.

Dated: June 8, 1995.

M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 95–14736 Filed 6–15–95; 8:45 am]
BILLING CODE 7555–01–M

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Civil and Mechanical System (#1205).
Date and Time: July 6 and 7, 1995; 8 a.m. to 5 p.m.
Place: Room 530 and 580, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.
Type of Meeting: Closed.
Contact Person: Dr. Oscar W. Dillon, Dr. William A. Spitzig; Program Director(s), Mechanics and Materials Program, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1361.

Purpose of Meeting

To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda

To review and evaluate Unsolicitated proposals as part of the selection process for awards.

Reason for Closing

The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: June 8, 1995.

M. Rebecca Winkler,
Committee Management Officers.
[FR Doc. 95–14737 Filed 6–15–95; 8:45 am]
BILLING CODE 7556–01–M

Special Emphasis Panel in Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Electrical and Communications System (#1196).
Date and Time: July 7, 1995; 8:30 a.m. to 5:00 p.m.
Place: Room 320, NSF, 4201 Wilson Boulevard, Arlington, VA 22230.
Type of Meeting: Closed.

Contact Persons: Dr. Albert Harvey, Acting Program Director, Quantum Electronics, Waves and Beams, Division of Electrical and Communications Systems, NSF, 4201 Wilson Boulevard, Room 675, Arlington, VA 22230 Telephone: (703) 306–1339.

Purpose

To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda

To review and evaluate proposals in the Quantum Electronics, Waves & Beams as part of the selection process for awards.

Reason for Closing:

The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552b(c)(4) and (6) the Government in the Sunshine Act.

Dated: June 8, 1995.

M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 95–14738 Filed 6–15–95; 8:45 am]
BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–499]

Exemption

In the Matter of Houston Lighting & Power Company, City Public Service Board of San Antonio, City of Austin, Texas; (South Texas Project, Unit 2).

I

Houston Lighting & Power Company, (the licensee) is the holder of Facility Operating License No. NPF–80, which authorizes operation of the South Texas Project, Unit 2. The operating license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now and hereafter in effect.

The facility consists of a pressurized water reactor at the licensee's site in Matagorda County, Texas.

II

Section III.D.1.(a) of Appendix J to 10 CFR Part 50 requires the performance of three Type A containment integrated leakage rate tests. (CILRTs), at approximately equal intervals during each 10-year service period. The third test of each set shall be conducted when the plant is shutdown for the 10-year plant inservice inspection.

III

By letter dated March 16, 1995, Houston Lighting & Power requested relief from the requirement to perform a set of three Type A tests at approximately equal intervals during each 10-year service period. The requested exemption would permit an interval extension for the second Type A test of approximately 18 months (from the currently scheduled outage, Fall 1995, until the next planned refueling outage, Spring 1997). This request does not alter the requirement that the third Type A test shall be conducted when the plant is shutdown for the 10-year plant inservice inspection.

The licensee's request cites the special circumstances of 10 CFR 50.12, paragraph (a)(2)(ii), as the basis for the exemption. The underlying purpose of the requirement to perform three Type A CILRTs, at approximately equal intervals during each 10-year service period, is to assure that leakage through the primary reactor containment is detected and does not exceed allowable leakage rate values. The licensee has stated that the existing Type B and C local leak rate test (LLRT) programs are not being modified by this request, and will continue to effectively detect containment leakage caused by the degradation of active containment isolation components as well as containment penetrations. It has been the consistent and uniform experience at South Texas during the two Type A tests conducted in 1988 (the pre-operational Type A test) and 1991 (the first periodic Type A test), that any significant containment leakage paths are detected by the Type B and C testing. The Type A test results have only been confirmatory of the results of the Type B and C test results. Therefore, consistent with 10 CFR 50.12, paragraph (a)(2)(ii), application of the regulation in this particular circumstance is not necessary to achieve the underlying purpose of the rule.

IV

Section III.D.1.(a) of Appendix J to 10 CFR part 50 states that a set of three Type A leakage rate tests shall be performed at approximately equal intervals during each 10-year service period.

The licensee proposes an exemption to this section which would provide an interval extension for the Type A test by approximately 18 months. The Commission has determined that pursuant to 10 CFR 50.12(a)(1) that this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption; namely, that application of the regulation in this particular circumstance is not necessary to achieve the underlying purpose of the rule.

The NRC staff has reviewed the basis and supporting information provided by the licensee in the exemption request. The NRC staff has noted that the licensee has a good record of ensuring a leak-tight containment. Both previous Type A tests were within the acceptance limits, and both passed with significant margin. In addition, at the staff's request, the licensee has verbally committed to perform the general containment inspection specified in Section V.A of appendix J even though this inspection is only required prior to a Type A test.

The NRC staff has also made use of a draft staff report, NUREG–1493, which provides the technical justification for the present Appendix J rulemaking effort which also includes a 10-year test interval for Type A tests. The integrated leakage rate test, or Type A test, measures overall containment leakage. However, operating experience with all types of containments used in this country demonstrates that essentially all containment leakage can be detected by local leakage rate tests (Type B and C). According to results given, in NUREG–1493, out of 180 ILRT reports covering 110 individual reactors and approximately 770 years of operating history, only about 3% of leakage that exceeds current requirements is detectable only by CILRTs, and those few failures were only marginally above prescribed limits. This study agrees well with previous NRC staff studies which show that Type B and C testing can detect a very large percentage of containment leaks. The South Texas Project, Unit 2 experience has also been consistent with this.

The Nuclear management and Resources Council (NUMARC), now the Nuclear Energy Institute (NEI), collected and provided the NRC staff with summaries of data to assist in the Appendix J rulemaking effort. NUMARC collected results of 144 ILRTs from 33 units; 23 ILRTs exceeded $1.0L_a$. Of these, only nine were not due to Type B or C leakage penalties. The NEI data also added another perspective. The NEI data show that in about one-third of the cases exceeding allowable leakage, the as-found leakage was less than $2L_a$; in one case the as-found leakage was less than $3L_a$; one case approached $10L_a$; and

in one case the leakage was found to be approximately 21L_a. For about half of the failed ILRTs the as-found leakage was not quantified. These data show that, for those ILRTs for which the leakage was quantified, the leakage values are small in comparison to the leakage value at which the risk to the public starts to increase over the value of risk corresponding to L_a (approximately 200L_a, as discussed in NUREG–1493).

Based on generic and plant-specific data, the NRC staff finds the basis for the licensee's proposed exemption to allow a one-time exemption to permit a schedular extension of one cycle for the performance of the Appendix J Type A test to be acceptable.

Pursuant to 10 CFR 51.32, the Commission has determined that granting this Exemption will not have a significant impact on the environment (60 FR 28431).

This Exemption is effective upon issuance and shall expire at the completion of the 1997 refueling outage.

Dated at Rockville, Maryland, this 9th day of June 1995.

For the Nuclear Regulatory Commission.

John N. Hannon,

Acting Deputy Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–14791 Filed 6–15–95; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 21128; 812–9486]

SEI Financial Management Corp. and SEI Financial Services Co.; Notice of Application

June 9, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: SEI Financial Management Corporation and SEI Financial Services Company (collectively, "SEI").

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 17(b) of the Act exempting applicants from sections 17(a) of the Act and under section 17(d) of the Act and rule 17d–1 thereunder.

SUMMARY OF APPLICATION: Applicants request an order to permit bank-sponsored collective investment funds to transfer their assets to open-end management investment companies advised by the bank and administered or distributed by SEI.

FILING DATE: The application was filed on February 16, 1995, and was amended on May 10, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 6, 1995 and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certification of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o SEI Financial Services Company, 680 East Swedesford Road, Wayne, Pennsylvania 19087, Attention: Kathryn L. Stanton, Esq.; and Wilmer, Cutler & Pickering, 2445 M Street, N.W., Washington, D.C. 20037, Attention: Jeremy N. Rubenstein.

FOR FURTHER INFORMATION CONTACT: Sarah A. Wagman, Staff Attorney, at (202) 942–0654, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUMMARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. SEI serves as administrator and distributor for a number of registered open-end management investment companies (the "Funds"), including Funds that are advised by banks. SEI requests that the relief sought herein apply to any Fund distributed or administered by SEI and any Fund that may in the future be distributed or administered by SEI or any entity controlling, controlled by, or under common control with SEI.

2. Subject to the supervision of the Funds' respective boards of directors or trustees (the "Board of Directors"), SEI provides or procures administrative and other services necessary for the operation of the Funds and their portfolios. SEI may provide various services to the Funds, although the precise services provided by SEI to a particular Fund will depend on SEI's contract with that Fund. For any Fund relying on the requested order, however, SEI will perform fund accounting services that will include responsibility for maintaining the Fund's general ledger and the preparation of Fund financial statements, determining the net asset value of both the Fund's assets and of the Fund's shares, calculating Fund expenses and controlling Fund disbursements, preparing and filing semi-annual reports on Form N–SAR and notices pursuant to rule 24f–2, coordinating the preparation and filing of the Fund's tax returns, and providing the Fund with individuals reasonably acceptable to the Fund's Board of Directors for nomination, appointment, or election as officers of the Fund.

3. From time to time, certain Funds participate in the conversion of assets from bank-sponsored collective investment funds ("CIFs") into mutual fund shares. As part of the conversion, a Fund typically agrees to accept an in-kind transfer of securities from a CIF with substantially similar investment objectives in exchange for shares with an equal net asset value. Frequently, the bank that sponsors the converting CIF (the "Bank") also serves as the Fund's investment adviser or is affiliated with such adviser. As a result, the Bank may be deemed to control both the CIF and the Fund, and the CIF and the Fund may be affiliated persons of each other under the Act. In addition, some of the assets in the converting CIF may belong to employee retirement plans established for employees of the Bank or other affiliated persons (the "Affiliated Plans"). Such employees and other affiliated persons of the Bank might be considered second-tier affiliates of the Fund.

4. Although the SEC has taken a no-action position with respect to certain CIF conversions, that position is conditioned on affiliated persons, or second-tier affiliates, of the Funds having no beneficial interest in the proposed transactions. Federated Investors (pub. avail. April 21, 1994). A Bank acting as investment adviser to a Fund may be deemed to have a beneficial interest in the proposed transactions because the Bank's Affiliated Plans invest in the converting CIFs. Accordingly, applicants request an exemptive order to permit the Funds to accept in-kind transfers of the assets of the Affiliated Plans (the "Proposed Transfers").

5. Each Fund is or will be registered as an open-end management investment company under the Act. Each Fund's shares are or will be offered and sold pursuant to an effective registration statement under the Securities Act of 1933 (the "Securities Act"). The overall management of each Fund, including the negotiation of investment advisory and other service contracts, rests with the members of the Board of Directors of the Fund, at least 40% of whom are not interested persons (as defined in section 2(a)(19) of the Act) of the Fund.

6. The CIFs are sponsored by Banks as investment vehicles for employee retirement plans. The CIFs are excluded from the definition of investment company under section 3(c)(11) of the Act, which excepts CIFs that consist solely of the assets of employee retirement plans qualified under section 401 of the Internal Revenue Code or similar governmental plans described in section 3(a)(2)(C) of the Securities Act (each, a "Plan"). Some of the assets in the CIFs may belong to Affiliated Plans.

7. In addition to sponsoring a CIF, a Bank or its affiliate also may serve as the Fund's investment adviser, and may receive investment advisory fees from the Fund. Banks frequently determine that Plan holders would be better served if sponsored CIFs were converted into Funds with substantially similar investment objectives so that Plan holders may enjoy the enhanced disclosure and other protections of the Securities Act and the Act. In addition, investment of Plan assets through the Funds allows the sponsors of, and participants in, the Plans to monitor more easily the performance of their investments daily (since information concerning the investment performance of the Funds generally will be available in daily newspapers of general circulation). Finally, by permitting more active marketing of investment services, conversion also may promote sales of Fund shares and thereby allow better diversification and risk spreading among all shareholders.

8. The procedures for transferring CIF assets to a Fund include a number of requirements to protect the interests of Plan holders. First, each Affiliated Plan will have an employee benefit review committee (the "Committee") or equivalent body that serves as a fiduciary for the Plan. In addition to the Bank, each unaffiliated Plan will have an independent or "second" fiduciary, independent of the Bank or its affiliates, that supervises the investment of that Plan's assets. This second fiduciary generally will be the unaffiliated Plan's named fiduciary, trustee, or sponsoring employer and will be subject to fiduciary responsibilities under the Employee Retirement Income Security Act of 1974 ("ERISA"). Under section 404(a) of ERISA, such fiduciaries must ensure that the investment of the Plans' assets is prudent and operates exclusively for the benefit of participating employees of the particular corporation and its subsidiaries and of the participating employees' beneficiaries.

9. Before transferring a CIF's assets to a Fund, a Bank will be required to seek and obtain the approval of the Committee, the Plan's second fiduciary, or both, as the case may be. The Bank will provide the Committee and the second fiduciaries with a current prospectus for the relevant portfolio(s) of the Fund and a written statement given full disclsoure of the fee structure and the terms of the Proposed Transfer. Such disclosure will explain why the Bank believes that the investment of Plan assets in the Fund is appropriate. The disclosure statement also will describe the limitations on the Bank, if any, regarding which Plan assets may be invested in shares of the Fund.

10. On the basis of such information, the Committee, the second fiduciary, or both, as the case may be, will decide whether to authorize the Bank to invest the relevant Plan's assets in the Fund and to receive fees from the Fund (subject to the Bank's agreement to waiver, credit, or rebate relevant fees). A Bank will not collect fees at both the Plan level and the Fund level for managing the same assets. Depending on the Plan, the Bank either will charge a fee only to the Fund or will rebate or credit its management fees at the Plan level.

11. Subject to obtaining the approvals discussed above and the order requested herein, SEI will assist a Bank, in SEI's capacity as administrator, to effect the acquisition of Fund shares by a Plan currently invested in a CIF. On the date of each transfer, the converting CIF will deliver to the corresponding Fund securities equal in value to the interest of each participating Plan, in exchange for Fund shares, using market values as of the time that the Fund calculates its net asset value at the close of business on that day. The Fund shares received by the CIF then will be distributed, *pro rata*, to all Plans who interests were converted as of that date. All securities transferred to a Fund will be securities for which market quotations are readily available, within the meaning of rule 17a–7(a) under the Act, and will be consistent with the investment objectives and fundamental policies of the corresponding Fund.

Applicants' Legal Analysis

1. Section 17(a) of the Act, in relevant part, prohibits an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from selling to or purchasing from such investment company any security or other property. Section 2(a)(3) of the Act, in relevant part, defines an "affiliated person" to include: (a) any person directly or indirectly owning, controlling, or holding with the power to vote, 5% or more of the outstanding voting securities of such other person; (b) any person directly or indirectly controlling, controlled by, or under common control with such other person; and (c) if such other person is an investment company, any investment adviser thereof.

2. Section 17(d) of the Act prohibits any affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from effecting any transaction in which such investment company is a joint, or joint and several, participant with such person in contravention of such rules and regulations as the SEC may prescribe. Rule 17d–1 under the Act provides that no joint transaction covered by the rule may be consummated unless the SEC issues an order upon application. In passing upon such applications, the SEC considers whether participation by a registered investment company is consistent with the provision, policies, and purposes of the Act, and is not on a basis less advantageous than that of other participants.

3. Because a Bank that sponsors a CIF may have legal title to the assets of the CIF and therefore may be viewed as acting as a principal in the Proposed Transfers, and because a CIF and a Fund may be viewed as being under the common control of the Bank within the meaning of section 2(a)(3)(C), the Proposed Transfers may violate section 17(a). For the same reasons, the Proposed Transfers might be deemed to be a joint enterprise or other joint arrangement within the meaning of section 17(d).

4. Section 17(b) of the Act provides that, notwithstanding section 17(a), any person may file an application for an order exempting a proposed transaction from section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and the general policies and purposes of the Act. Under section 6(c) of the Act, the SEC may exempt any person or transaction from any provision of the Act, or any rule thereunder, to the extent that such exemption is necessary or appropriate

in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an order under sections 6(c) and 17(b) exempting them from section 17(a), and pursuant to section 17(d) and rule 17d–1, to permit the Proposed Transfers of CIF assets.

5. Applicants believe that the terms of the Proposed Transfers will be reasonable and fair to all of the Plans and to the shareholders of the Funds, do not involve overreaching on the part of any person, and will be consistent with the provisions, policies, and purposes of the Act. The Proposed Transfers will comply with rule 17a–7 under the Act in most respects, and also will comply with the policy behind the conditions set forth in rule 17a–8. Rule 17a–7 exempts certain purchase and sale transactions otherwise prohibited by section 17(a) if, among other requirements, the transactions are effected at an "independent market price" and the investment company's Board of Directors reviews the transactions for fairness. Rule 17a–8 exempts certain mergers and consolidations from section 17(a) if, among other requirements, the investment company's Board of Directors determines that the transactions are fair.

6. Applicants will comply with rules 17a–7 and a7a–8 to the extent possible, as stated in the conditions to the requested order. The investment objectives and policies of the Funds and CIFs will be substantially similar. Therefore, it will be consistent with the policies of the Funds to acquire securities that the Bank has previously purchased for the CIFs on the basis of substantially similar objectives and policies. Moreover, the Funds will have the opportunity to purchase the portfolio securities of the CIFs at the current market price and with lower transaction costs than would have been possible purchasing such securities in the open market.

Applicants' Conditions

Applicants agree that any order of the SEC granting the requested relief shall be subject to the following conditions:

1. The Proposed Transfers will comply with the terms of rule 17a–7(b) through (f).

2. The Proposed Transfers will not occur unless and until: (a) the Board of Directors of the Fund (including a majority of its disinterested directors) and the Committee or the Plans' second fiduciaries, as the case may be, find that the Proposed Transfers are in the best interests of the Fund and the Plans, respectively; and (b) the Board of Directors of the Fund (including a majority of its disinterested directors) finds that the interests of the existing shareholders of the Fund will not be diluted as a result of the Proposed Transfers. These determinations and the basis upon which they are made will be recorded fully in the records of the Fund and the Plans, respectively.

3. In order to comply with the policies underlying rule 17a–8, any conversion will have to be approved by a Fund's Board of Directors and any unaffiliated Plan's second fiduciaries who would be required to find that the interests of beneficial owners would not be diluted.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–14749 Filed 6–15–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26304]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

June 9, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 3, 1995, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Southern Company, et al. (70–8505)

The Southern Company ("Southern"), 64 Perimeter Center East, Atlanta, Georgia 30346, a registered holding company, and its nonutility subsidiary companies, Southern Electric International, Inc. ("Southern Electric") and Mobile Energy Services Holdings, Inc. ("Mobile Energy"), each of 900 Ashwood Parkway, Suite 500, Atlanta, Georgia 30338 (collectively, "Applicants") have filed a post-effective amendment under sections 6(a), 7, 9(a), 10, 12(b), 12(c) and 12(d) of the Act and rules 43, 45, 46 and 54 thereunder.

By order dated December 13, 1994 (HCAR No. 26185) ("December 1994 Order"), Southern was authorized to organize and acquire all of the common stock of Mobile Energy.[1] The December 1994 Order also authorized Mobile Energy to acquire the energy and recovery complex ("Energy Complex") at Scott Paper Company's ("Scott's) Mobile, Alabama paper and pulp mill.

At the acquisition closing, Mobile Energy purchased the Energy Complex from Scott and assumed Scott's obligations relating to $85 million outstanding principal amount of variable-rate solid waste revenue refunding bonds due 2019 ("Tax-Exempt Bonds") issued by The Industrial Development Board of the City of Mobile, Alabama ("Board"). Southern funded the purchase price in part by making a $190 million interim loan as evidenced by Mobile Energy's promissory note ("Interim Note").

Under the December 1994 Order, Mobile Energy was also authorized to enter into two separate interest rate swap agreements to hedge against adverse interest rate movements pending conversion or reissuance of the Tax-Exempt Bonds on a non-recourse basis [2] and the proposed sale of up to $230 million of senior secured non-recourse notes of Mobile Energy. On December 19, 1994, Mobile Energy entered into two separate interest rate hedging agreements with Barclays Bank PLC.

Applicants now propose to change the ownership structure of the Energy Complex and the financing and credit support proposals described in the December 1994 Order.

[1] On May 17, 1995, Mobile Energy Services Company, Inc. changed its corporate name to Mobile Energy Services Holdings, Inc. Mobile Energy and southern Electric have been added as applicants/declarants under this post-effective amendment.

[2] Under the December 1994 Order, Mobile Energy is authorized to enter into agreements with the Board pursuant to which the Board would issue a new series of fixed-rate Tax-Exempt Bonds, the proceeds of which would be applied to redeem the outstanding Tax-Exempt Bonds.

It is proposed that Mobile Energy and Southern Electric organize a new subsidiary of Mobile Energy to be named Mobile Energy Services Company, L.L.C. ("Project Company") and that Mobile Energy transfer ownership of the Energy Complex and related assets to Project Company. In addition, it is proposed that Project Company assume all liabilities and obligations of Mobile Energy relating to the Energy Complex, including liabilities under the Interim Note and under agreements with the Board, Scott and S.D. Warren Company ("Mill Owners"), and other third parties.

It is also proposed that Mobile Energy declare and pay to Southern a dividend in the form of a 1% membership interest in Project Company, which Southern will contribute to Southern Electric, so that Mobile Energy will hold 99% and Southern Electric will hold 1% of Project Company's membership interests.

Applicants also propose that Project Company issue, and Mobile Energy guaranty, up to $240 million principal amount of first mortgage bonds ("First Mortgage Bonds") plus such additional principal amount of First Mortgage Bonds as may be required to fund (from the net proceeds thereof) the cost, if any, of terminating the outstanding interest rate hedging agreements between Mobile Energy and Barclays Bank PLC. The net proceeds from the sale of the First Mortgage Bonds (after deduction of the underwriting commission), together with other available funds, will be used: (i) to repay the Interim Note ($190 million, exclusive of interest) and return to Southern approximately $4.5 million of paid-in capital; (ii) to pay to Southern electric approximately $10.5 million, representing amounts paid or incurred by Southern Electric as preliminary project development costs and as costs paid or incurred by Southern Electric under the Facility Operations and Maintenance Agreement between Southern Electric and Mobile Energy; (iii) to finance the balance of the costs of certain capital improvements (estimated at approximately $12.7 million) required under the terms of certain project agreements to be made to the Energy Complex; (iv) to pay certain development and start-up costs aggregating approximately $1.3 million; (v) to pay certain financing costs aggregating approximately $2 million; and (vi) to fund the termination payment, if any, under the two interest rate hedging agreements.

Applicants propose that Project Company issue the First Mortgage Bonds in one or more series on or before December 31, 1995. The First Mortgage Bonds will be issued pursuant to any indenture ("Indenture") among Project Company, Mobile Energy, as guarantor, and First Union National Bank of Georgia, as trustee ("Trustee"). The bonds will have final maturities of from 10 to 22 years from financial closing and a weighted average life of from 12 to 15 years; will bear interest at a fixed rate to be determined on or before the date of financial closing that will not exceed the sum of the yield to maturity of an actively traded U.S. Treasury bond with a maturity equal to the weighted average life of the First Mortgage Bonds, plus 3-¾%; and may not provide for optional redemption prior to final maturity. Project Company's obligations under the First Mortgage Bonds will be unconditionally guaranteed by Mobile Energy.

It is stated that the First Mortgage Bonds will be sold to a group of underwriters to be led by Goldman, Sachs & Co. pursuant to an Underwriting Agreement and reoffered by such underwriters in part directly to the public and in part to certain securities dealers. It is anticipated that the First Mortgage Bonds will be rated "investment grade" by one or more of the nationally recognized independent rating agencies.

Applicants alternatively propose that the First Mortgage Bonds may be sold pursuant to a bond purchase agreement to one or more institutional purchasers in an offering that is intended to qualify for an exemption from registration under the Securities Act, or pursuant to an underwriting agreement with one or more underwriters for resale to qualified institutional buyers pursuant to rule 144A of the Securities Act. If the First Mortgage Bonds are not sold in a registered public offering, the terms of the bond purchase or underwriting agreement may include registration rights.

Applicants also propose that Project Company enter into agreements with the Board for the issuance of a new series of Tax-Exempt Bonds, subject to all other terms and conditions set forth in the December 1994 Order.

In addition, it is proposed that Project Company enter into a working capital facility ("Working Capital Facility") with one or more commercial banks or other institutional lenders, pursuant to which Project Company may make borrowings from time to time through 2019 in an aggregate principal amount of up to $15 million at any time outstanding, as such amount may be escalated for inflation.

Borrowings under the Working Capital Facility generally will be used by Project Company to pay for operations and maintenance costs and other routine expenses incurred by Project Company. Each loan under the Working Capital Facility will have a maturity date no later than 90 days after the date of borrowing, and no more than $5 million of such loans may be scheduled to mature during any 30-day period. Under the terms of the Working Capital Facility, Project Company will be required to repay all amounts advanced so that no amounts are outstanding thereunder once during each fiscal year (other than 1995) for a period of at least five consecutive days.

Authorization is requested for either Southern or Project Company to enter into a dedicated revolving credit facility ("Major Maintenance Facility") with one or more commercial banks or other institutional lenders to fund certain major maintenance reserve obligations of Project Company. Borrowings at any one time outstanding under the Major Maintenance Facility will not exceed $13 million.

Southern and Mobile Energy also propose to modify the terms of the Interim Note to be assumed by Project Company, in order to extend its maturity to December 31, 1995, and to provide for the payment of interest from January 1, 1995 to the date of payment at a rate equal to the lesser of (i) Southern's effective cost of borrowing and (ii) the prime commercial lending rate in effect from time to time at a commercial bank designated by Southern, plus 3%.

Under two interest rate hedging agreements executed following the acquisition closing ("Swaps"), Mobile Energy "locked in" base fixed rates with respect to notional amounts of $224 million, effective May 1, 1995, and $85 million, effective July 1, 1995. Since the acquisition closing, comparable base rates have declined markedly, with the result that there would currently be a cost associated with reversing, or terminating, the Swaps. That potential cost, or the cash impact, of reversing the Swaps will be based on the comparable base rates in effect on the dates on which the Swaps are in fact reversed, which will be the same date or dates on which the rates on the First Mortgage Bonds and new series of Tax-Exempt Bonds are fixed.

Based on the notional amounts of the Swaps and other relevant factors, the cash impact of a 100 basis point decline in the applicable base rates would be approximately $25 million. By way of illustration, on June 2, 1995, the comparable base rate for the Swaps was approximately 170 basis points lower than the base rate on December 19, 1994, implying a cost (or cash impact)

of terminating the Swaps of about $45 million. If comparable base rates were to experience a further decline of an additional 200 basis points, the termination payment would be approximately $110 million.

Southern proposes to provide up to $95 million in guaranties on behalf of Mobile Energy and/or Project Company in connection with the sale of the First Mortgage Bonds and other forms of credit support (collectively, "Credit Support"), provided that the amount thereof at any time outstanding, when added to Southern's equity investment in Mobile Energy, shall at no time exceed $135 million.

Credit Support may take a variety of forms, including a parent guaranty of indebtedness to third parties, a capital infusion or similar agreement under which cash calls from Southern may be made for certain defined purposes, or an agreement to indemnify or reimburse commercial banks or other third parties in connection with commercial letters of credit or other forms of commercially available credit enhancement that Mobile Energy or Project Company may require.

Southern proposes to negotiate the terms of Credit Support and any advances related thereto on a case-by-case basis. Subject to the foregoing, Southern proposes that any advance to or on behalf of Mobile Energy or Project Company that is structured as a loan may be unsecured and fully subordinated to the claims of other creditors of Mobile Energy or Project Company, as the case may be, and that it may bear interest at a rate equal to the lesser of (i) Southern's effective cost of borrowing and (ii) the prime commercial lending rate at money center bank designated by Southern, plus 3%. Southern further proposes that, at its option, any loan to Mobile Energy or Project Company may be converted to a capital contribution.

Southern may provide Credit Support in lieu of certain cash funded major maintenance reserves which Project Company is required to establish. Credit Support for this purpose will be funded from borrowings under the Major Maintenance Facility, or by Southern guaranties of borrowings by Project Company under the Major Maintenance Facility. It is proposed that notes issued under the Major Maintenance Facility may have maturities not later than seven years after the date of issuance.

Notes issued under the Working Capital Facility and Major Maintenance Facility may bear interest at a rate or rates based on various interest rate options available to Project Company and Southern, which in no case would be greater than the sum of the reference rate for the interest rate option selected by Project Company or Southern, as the case may be, plus the applicable spread, as follows:

Reference rate	Applicable spread (per-cent)
London Interbank Offered Rate	1½
Adjusted Base Rate	1

The Adjusted Base Rate will equal the greater of (i) the Federal Funds Rate, plus ½%, and (ii) the lender's publicly announced reference rate.

It is stated that Project Company and Southern may be required under the terms of either the Working Capital Facility or the Major Maintenance Facility to pay a commitment fee based on the unutilized portion of any lender's commitment and/or maintain compensating balances. The effective cost of borrowing under either of the foregoing interest rate options would be increased by no more than .625%.

The obligations of Project Company to make payments on the First Mortgage Bonds, the new series of Tax-Exempt Bonds and the Working Capital Facility (collectively, "Senior Secured Debt") will be secured ratably by a lien on and security interest in substantially all of the real and personal property interests of Project Company, subject to the priority of the lien of the Working Capital Provider on earned receivables (i.e., revenues from the sale of electricity, steam and liquor processing services to the Mill Owners) and proceeds from the sale of the Energy Complex fuel inventory. The First Mortgage Bonds and Tax-Exempt Bonds will also be secured by certain reserves required to be maintained under the terms of the First Mortgage Bond and Tax-Exempt Bond indentures and/or by credit Supports. Except for the guaranty provided by Mobile Energy with respect to the First Mortgage Bonds, the obligation of Project Company to make payments on the Senior Secured Debt will be secured solely by the assets of Project Company. Neither Southern nor Southern Electric nor any associate company (other than Project Company and Mobile Energy) will have any obligation with respect to the Senior Secured Debt of Project Company, except as may be expressly provided under the terms of any Credit Support provided by Southern.

Project Company and Mobile Energy propose to make cash distributions consisting, in part, of a return of capital to the extent permitted under Alabama law. Applicants project that cash distributions by Project Company and Mobile Energy will be made in some years in amounts exceeding book earnings.

Central Ohio Coal Company, et al. (70–8611)

Central Ohio Coal Company ("COCCO"), Southern Ohio Coal Company ("SOCCO") and Windsor Coal Company ("WCCO"), each located at 1 Riverside Plaza, Columbus, Ohio 25327 and each a nonutility subsidiary of Ohio Power Company ("Ohio Power"), a public utility subsidiary of American Electric Power Company, Inc., a registered holding company, have filed an application-declaration under sections 6(a), 7, and 12 (c) of the Act and rule 46 thereunder.

COCCO proposes to pay to Ohio Power periodic dividends on common stock and a return of capital in amounts aggregating $19,961,687. To pay these dividends and return of capital, COCCO proposes to amend its Amended Articles of Incorporation to (1) reduce the par value of its authorized common shares to $0.10 per share, (2) change each of its outstanding common shares, par value of $100.00 per share, into a common share, par value $0.10 per share, and (3) reduce the stated capital of its common shares from $6.9 million to $6,900.

SOCCO intends to enter into negotiations for the lease financing of certain existing facilities, namely, a coal preparation plant, intermine coal conveyor and overland coal conveyor (the "SOCCO Plant") with a financial institution (the "Lessor"). SOCCO anticipates that the Lessor will pay SOCCO up to $50 million for the SOCCO Plant. With this amount, and $18 million of internally generated funds which are projected to be available in excess of its needs, SOCCO proposes to pay up to $68 million as one or more dividends on SOCCO's common stock out of its capital surplus.

WCCO also intends to enter into negotiations for the lease financing of certain existing facilities, namely, a coal preparation plant, river loading terminal and overland coal conveyor (the "WCCO Plant") to the Lessor. WCCO anticipates that the Lessor will pay WCCO up to $11 million for the WCCO Plant. With this amount, and internally generated funds projected by WCCO to be available in excess of its own needs, WCCO proposes to pay up to $11,048,356 as a return of capital and as one or more dividends on WCCO's common stock out of its capital surplus.

In conjunction with the payment of these dividends and return of capital, WCCO proposes to reduce the stated capital of outstanding stock.

Specifically, WCCO proposes to amend its Amended Articles of Incorporation to (1) reduce the par value of its authorized common shares from $100 per share to $0.10 per share, (2) change each of its outstanding common shares, par value of $100.00 per share, into a common share, par value $0.10 per share, and (3) reduce the stated capital of its common shares from $406,400 to $406.40.

In accordance with the Commission's order dated December 10, 1982, (HCAR No. 22770), Ohio Power may earn up to a specified rate of return on its capital contributions to COCCO, SOCCO and WCCO. Applicants state that, if the Commission authorizes COCCO, SOCCO and WCCO to pay the requested dividends and, in the case of each of COCCO and WCCO, reduce the par value of its common stock, Ohio Power's total capital investment in COCCO will be reduced by the amount of such payments. This reduction in Ohio Power's capital surplus investment will remove from Ohio Power's cost of coal the return associated with the portion of its capital investment repaid.

Consolidated Natural Gas Company et al. (70–8631)

Consolidated Natural Gas Company ("Consolidated"), CNG Tower, 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222, a registered holding company, and CNG Energy Services Corporation ("CNG Energy"), One Park Ridge Center, P.O. Box 15746, Pittsburgh, Pennsylvania 15244, a nonutility subsidiary of Consolidated, have filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 16 and 45 thereunder. Consolidated and CNG Energy propose to enter into a series of transactions from time to time through December 31, 2020 (except with respect to the guarantee authorization described below, which expires December 31, 1998), that will permit them to participate in the business of buying and selling natural gas and electric power, including in connection with arbitrage transactions, principally in wholesale energy markets.

The applicants propose that CNG Energy raise up to $10,000,000 by selling shares of its common stock, $1,000 par value, to Consolidated, receiving open account advances or long-term loans from Consolidated, or any combination of the foregoing. Open account advances and long-term loans to CNG Energy will have the same effective terms and interest rates as related borrowings of Consolidated. Consolidated proposes to obtain the funds required for these transactions through internal cash generation, issuance of long-term securities, borrowings under credit agreements or other sources subsequently approved by the Commission.

Open account advances from Consolidated to CNG Energy will mature no later than one year from the date of the first advance and bear interest at the same effective rate as Consolidated's weighted average effective rate for commercial paper and/or revolving credit borrowings (or, if no such borrowings are outstanding, at a rate based on the federal funds effective rate of interest). Loans from Consolidated to CNG Energy will be evidenced by long-term, non-negotiable, book-entry notes, will mature over a period of time not in excess of thirty years from issuance and will bear interest at a rate equal to Consolidated's cost of funds for comparable borrowings (or, if Consolidated had no recent comparable borrowings, at a rate tied to the published Salomon Brothers indicative rate for comparable debt issuances).

CNG Energy also proposes to organize a new subsidiary, CNG Energy Arbitrage Corporation ("CNGEA"), which will be incorporated under the laws of the State of Delaware with an authorized equity capitalization of $10,000,000, consisting of 1,000 shares of common stock with a par value of $10,000 per share. CNG Energy proposes to use not more than $10,000,000 of proceeds from its financing transactions with Consolidated to purchase shares of, or make open-account advances or long-term loans to, CNGEA, on the same terms as the related financing from Consolidated. Initially, it is expected that CNGEA will sell, and CNG Energy will acquire, 300 shares of common stock for $3,000,000.

CNGEA will acquire a one-third general partnership interest in Energy Alliance Partnership ("Energy Alliance"), a partnership to be formed under the laws of the State of Delaware. The applicants propose that CNGEA invest not more than $10,000,000 in Energy Alliance, for the acquisition of its general partnership interest and for further equity contributions. The other partners in Energy Alliance will be Noverco Energy Services (U.S.) Inc., a wholly-owned subsidiary of Noverco Inc., a Canadian public-utility holding company whose subsidiaries engage in the gas utility business and related businesses, and H.Q. Energy Services (U.S.) Inc., a wholly-owned indirect subsidiary of Hydro-Quebec, a Canadian electric utility company.

The business of Energy Alliance will be to supply, sell, purchase, market, broker or otherwise trade electricity or fuel, to provide electricity or fuel management services, and to carry on activities, or perform services, related to the foregoing, including in connection with arbitrage transactions. Energy Alliance will initially conduct its activities generally in the wholesale energy markets in the northeastern and middle-Atlantic United States. Energy Alliance intends to use risk-reduction methods, such as market hedging tools, to limit financial risks.

The applicants state that fundamental changes in the energy industry have led to an increasingly integrated and competitive energy market, in which marketers are dealing in interchangeable units of energy rather than sales of natural gas or electricity. Consolidated and CNG Energy seek to enter into the proposed transactions to participate in this market. The applicants believe that these activities are closely related to the core energy business of the Consolidated system.

Energy Alliance may engage in energy transactions with companies in the Consolidated holding company system, including utility companies, on the same market terms that would be available to its nonaffiliate customers. Energy Alliance may also contract with any of its partners, including CNG Energy, or their affiliates for services, at charges that will be made on the basis of salary plus fringe benefits for use of personnel and direct out-of-pocket expenses for other items.

In addition to providing financing to CNGEA indirectly through CNG Energy, Consolidated also proposes to enter into an undertaking agreement under which it will commit to provide up to $3,000,000 to CNGEA, as necessary to permit CNGEA to fulfill its obligations respecting its capital contributions under the Energy Alliance partnership agreement. Consolidated also proposes to guarantee, either directly or through CNGEA, the fuel and power transactions of Energy Alliance. These guarantees would be part of, and subject to the same overall $750,000,000 limitation in, the current authorization of guarantees relating to the obligations of CNG Energy (Holding Co. Act Release No. 25926, November 16, 1993). This guarantee authorization expires December 31, 1998.

The applicants also request that Energy Alliance and each of its affiliates (other than companies in the Consolidated system) be deemed exempt under rule 16 from all obligations imposed by the Holding Company Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–14748 Filed 6–15–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21126; No. 812–9372]

PHL Variable Insurance Company, et al.

June 9, 1995.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: PHL Variable Insurance Company ("PHLV"), PHL Variable Accumulation Account (the "Account"), and Phoenix Equity Planning Corporation ("Phoenix Equity").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) granting exemptions from the provisions of Sections 26(a)(2)(C) and 27(c)(2).

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of a mortality and expense risk charge from the assets of the Account in connection with the offer and sale of certain variable annuity contracts ("Existing Contracts"), and any annuity contracts that are similar in all material respects to the Existing Contracts ("Future Contracts," together with Existing Contracts, the "Contracts"), which may be sold in the future by the Account, or from the assets of any other separate account ("Future Accounts," together with the Account, the "Accounts") established in the future by PHLV in connection with the issuance of Future Contracts.

FILING DATE: The application was filed on December 19, 1994, and amended on May 12, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on July 5, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Phoenix Home Life Mutual Insurance Company, One American Row, Hartford, Connecticut 06115, Attention: Patricia O. McLaughlin, Esq.

FOR FURTHER INFORMATION CONTACT: Kevin M. Kirchoff, Senior Counsel, or Wendy Friedlander, Deputy Chief at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representations

1. PHLV is a corporation organized under the laws of the state of Connecticut. On May 31, 1994, Phoenix Home Life Mutual Insurance Company ("Phoenix Home Life"), a New York domiciled insurer, through its wholly-owned subsidiary, PM Holdings Inc., a Connecticut corporation, acquired all of the issued and outstanding stock of PHLV. PHLV is currently licensed to issue variable annuity contracts in 26 states and the District of Columbia.

2. The Account is a separate investment account established by PHLV for the purpose of investing purchase payments received under the Existing Contracts. The Account is a unit investment trust which has filed a registration statement on Form N–4 under the Securities Act of 1933 to register the Existing Contracts.

3. The Account presently consists of seven subaccounts ("Subaccounts"), each of which currently invests in a corresponding series of The Phoenix Edge Series Fund and which may, in the future, invest in any other registered open-end management investment company funding variable annuity or variable life insurance contracts. Contract owners may allocate accumulation value to any one or more of the Subaccounts or to the general account of PHLV (the "Guaranteed Interest Account"), provided that prescribed minimum purchase payment requirements are met. PHLV may issue Future Contracts through the Account and through Future Accounts.

4. Phoenix Equity, an indirect wholly-owned subsidiary of Phoenix Home Life, is registered as a broker-dealer pursuant to the Securities Exchange Act of 1934 (the "Exchange Act") and is a member of the National Association of Securities Dealers. Phoenix Equity is the principal underwriter for the Existing Contracts. The principal underwriter for Future Contracts may be any broker-dealer registered as a broker-dealer pursuant to the Exchange Act and wholly-owned, directly or indirectly, by Phoenix Home Life.

5. The Phoenix Edge Series Fund is a diversified open-end management investment company which consists of various investment series or portfolios (collectively, "Portfolios") each with different investment objectives and policies. Shares of the Portfolios also are offered to other separate accounts of PHLV, Phoenix Home Life or of other insurance companies offering variable annuity or variable life insurance contracts.

6. The Existing Contracts are flexible premium variable annuity contracts offered for use by retirement plans which qualify for special federal income tax treatment under the Internal Revenue Code or by any other purchasers for whom they may be a suitable investment.

7. The Existing Contracts provide for minimum initial purchase payments and permit additional minimum purchase payments and periodic payments, subject to certain limitations. The Contracts provide for the accumulation of values on a variable basis determined by the investment experience of the Subaccounts to which the Contract owner allocates payments.

8. Prior to the maturity date, amounts held under Contracts may be transferred among the Subaccounts and the Guaranteed Interest Account. PHLV currently makes no charge for transfers among the Subaccounts, but reserves the right to assess a transfer fee, guaranteed never to exceed $10 per transfer, after the first two transfers in each Contract year to offset administrative expenses. Currently, unlimited transfers are permitted, but PHLV reserves the right to limit the number of transfers each Contract year.

9. The Contracts also provide for the payment of a death benefit. If the Contract owner is the Annuitant and dies prior to the Contract's maturity date, and there is no surviving joint owner, a death benefit calculated according to the death benefit formula will be paid to the Contract owner's beneficiary. If the Contract owner is not the Annuitant and dies prior to the maturity date, and there is no surviving joint owner, a death benefit equal to the Contract's cash surrender value (contract value less any applicable sales charge) will be paid to the Contract owner's beneficiary. If the Contract owner and the Annuitant are not the same person and the Annuitant dies prior to the maturity date, the contingent Annuitant becomes the Annuitant. If there is no contingent Annuitant, a death benefit calculated according to the death benefit formula will be paid to the Annuitant's beneficiary.

10. Pursuant to the death benefit formula, if the death occurred prior to the Annuitant's eighty-fifth birthday and during the first seven Contract years, the death benefit payment would be equal to the greater of: (a) The sum of all purchase payments made under the Contract less any prior partial withdrawals; or (b) the Contract value.

11. If the death occurs prior to the Annuitant eighty-fifth birthday and during Contract years 8 through 14 (or during any subsequent seven year period), the death benefit payment would be equal to the greater of: (a) The death benefit that would have been payable at the end of the immediately preceding seven year period, plus any purchase payments made and less any partial withdrawals since such date; or (b) the Contract value. After the Annuitant's eighty-fifth birthday, the death benefit is the Contract value next determined following receipt of a certified copy of the death certificate by PHLV. If the Contract owner and the Annuitant are not the same and the Contract owner dies prior to the maturity date and there is no surviving joint owner, upon receipt of due proof of death PHLV will fully surrender the Contract and pay the cash surrender value (Contract value less any applicable sales charge) to the Contract owner's beneficiary.

12. Various fees and expenses are deducted under the Contracts. Prior to maturity of a Contract, PHLV charges $35 each year for administrative and related expenses ("Contract Fee"). This charge is waived for Contracts with an accumulation value on the last Contract anniversary date of $50,000 or more. PHLV also makes a daily charge to the Subaccounts equal on an annual basis to 0.125% of the current value of the Subaccounts ("Administrative Service Charge"). The Administrative Service Charge is designed to cover actual administrative expenses which exceed the revenue from the Contract Fee.

13. Applicants represent that the Contract Fee and the Administrative Service Charge are guaranteed for the duration of the Contract and will be deducted in reliance upon and in conformity with all of the requirements of Rule 26a–1 under the 1940 Act.

14. PHLV will pay any premium tax due and will then deduct any premium tax from Contract value upon the earlier of partial withdrawal, surrender of the Contract, maturity date or payment of death proceeds.

15. No front-end sales charges are deducted from premium payments under the Contracts. The Contracts assess a contingent deferred sales charge ("CDSC") which may be taken from proceeds of withdrawals from, or complete surrender of, the Contracts if assets are not held under the Contract for a specified period of time. No sales charge is taken after the annuity phase of the Contract has begun. Any sales charge is applied on a first-in, first-out basis. With respect to withdrawals or surrenders during the first year a Contract is in existence, the deduction applies against the total amount withdrawn. After the first year of a Contract, and prior to its maturity date, a withdrawal of up to 10% of the amount held under the Contract as of the previous Contract anniversary may be made each year without imposition of a withdrawal or surrender sales charge, subject to certain restrictions described in the Contract.

16. The deduction for sales charges, expressed as a percentage of the amount redeemed in excess of the 10% allowable amount, is as follows:

Age of deposit in years	CDSC as percentage of amount withdrawn
0	7
1	6
2	5
3	4
4	3
5	2
6	1
7 and over	0

There is no sales charge assessed if the Contract owner or the Annuitant dies before the Contract maturity date. The total deferred sales charges on a Contract will never exceed 9% of the total purchase payments, and the applicable level of sales charge will not be changed with respect to outstanding Contracts. Sales charges imposed in connection with partial surrenders will be deducted from the Subaccounts and the Guaranteed Interest Account on a pro-rata basis.

17. Applicants are relying on Rule 6c–8 under the 1940 Act to deduct the CDSC. PHLV believes that the CDSC will not necessarily be sufficient to pay the cost of distributing the Contracts. If the CDSC is unsufficient to cover such expenses, the deficiency will be met from the general account assets of PHLV, which may include amounts derived from the charge for mortality and expenses risks, discussed below.

18. A daily charge equal to an effective annual rate of 1.25% of the net asset value of the Accounts will be imposed to compensate PHLV for bearing certain mortality and expense risks in connection with the Contracts. Of this amount, 0.85% is allocable to mortality risks and 0.40% is allocable to expense risks. The mortality and expense risk charge is guaranteed never to exceed 1.25%.

19. The mortality risk arises from PHLV's (1) guarantee that it will make annuity payments, in accordance with annuity rate provisions established at the time a Contract is issued for the life of the annuitant or in accordance with the annuity option selected, no matter how long the annuitant or other payee lives and no matter how long all annuitants as a class live, and (2) death benefit guarantees under the Contracts.

20. The expense risk borne by PHLV is the risk that the charges for administrative expenses, which are guaranteed for the life of the Contracts, may be insufficient to cover the actual costs of issuing and administering the Contracts.

21. If the mortality and expense risk charges deducted are insufficient to cover the actual cost of the mortality and expense risk, PHLV will bear the loss. Conversely, if the mortality and expense risk charges deducted prove more than sufficient, the excess will be added to PHLV's surplus and will be used for any lawful purpose, including offsetting the costs of distributing the Contracts.

Applicants' Legal Analysis and Conditions

1. Applicants request an order pursuant to Section 6(c) of the 1940 Act exempting them from Sections 26(a)(2)(C) and 27(c)(2) thereof to the extent necessary to permit the deduction of mortality and expense risk charges from the assets of the Accounts in connection with the issue and sale of the Contracts.

2. Pursuant to Section 6(c) of the 1940 Act the Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the 1940 Act or from any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in pertinent part, prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and are held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative services of a charter normally performed by the bank itself.

4. Applicants submit that their request for exemptive relief for deduction of the mortality and expense risk charge from the assets of the Accounts in connection with the issue and sale of the Contracts would promote competitiveness in the variable annuity contract market by eliminating the need for redundant exemptive applications, thereby reducing Applicants' administrative expenses and maximizing the efficient use of their resources. Applicants further submit that the delay and expense involved in having repeatedly to seek exemptive relief would impair their ability effectively to take advantage of business opportunities as they arise. Further, if Applicants were required repeatedly to seek exemptive relief with respect to the same issues addressed in this application, investors would not receive any benefit or additional protection. Thus, Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the 1940 Act.

5. Applicants represent that the 1.25% mortality and expense risk charge under the Contracts is within the range of industry practice for comparable annuity contracts. This representation is based upon Applicants' analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the manner in which charges are imposed, the existence of charge level or annuity-rate guarantees, and the markets in which the Existing Contracts are offered. Applicants represent that Phoenix Home Life will maintain at the offices of its actuarial department, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

6. Applicants represent that they will, prior to offering Future Contracts, conclude that the mortality and expense risk charges under such contracts (which cannot exceed in amount the mortality and risk charges under the Existing Contracts) will be within the range of industry practice for comparative contracts. PHLV will maintain at the offices of its actuarial department, and make available to the Commission upon request, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of the comparative survey resulting in that conclusion.

7. Applicants acknowledge that, if a profit is realized from the mortality and expense risk charge under the Existing contracts, all or a portion of such profit may be available to pay distribution expenses not reimbursed by the CDSC. PHLV has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Accounts and the owners of Existing Contracts. The basis for that conclusion is set forth in a memorandum which will be maintained by PHLV at the offices of its actuarial department and will be made available to the Commission.

8. Applicants acknowledge that, if a profit is realized from a mortality and expense risk charge under Future Contracts, all or a portion of such profit may be available to pay distribution expenses not reimbursed by a CDSC. Applicants represent that they will, prior to offering Future Contracts, conclude that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Future Accounts and the owners of such Future Contracts. The basis for that conclusion will be set forth in a memorandum which will be maintained by PHLV at the offices of its actuarial department and will be made available to the Commission.

9. Applicants also represent that the Accounts will invest only in underlying funds that have undertaken to have a board of directors, a majority of whom are not interested persons of any such funds within the meaning of Section 2(a)(19) of the 1940 Act, formulate and approve any plan under Rule 12b–1 under the 1940 Act to finance distribution expenses.

Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–14747 Filed 6–15–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–21127; 811–6286]

BITS Trust; Notice of Application

June 9, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: BITS Trust.

RELEVANT 1940 ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

FILING DATE: The application on Form N–8F was filed on May 10, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 3, 1995, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, D.C. 20549. Applicant, 400 South LaSalle Street, Chicago, Illinois 60605.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 942–0564, or C. David Messman, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a registered unit investment trust, filed its notification of registration on Form N–8A on March 8, 1991. Applicant never filed a registration statement under section 8(b) of the 1940 Act or under the Securities Act of 1933.

2. On March 11, 1991, Applicant filed an application under section 6(c) of the 1940 Act for an exemption from various provisions thereof that were necessary in light of its organizational structure. Applicant stated that it intended to organize separate trusts in series form and to register units of each trust series for listing and trading on the Chicago Board Options Exchange, Inc. The stated purpose for this type of investment product was to make available to investors an instrument that closely tracked the underlying component shares of a stock index and traded like a share of common stock. The Standard & Poor's 500 Composite Price Index was to serve as the underlying index for the first trust series. By letter dated November 19, 1991, the SEC granted Applicant's request for withdrawal of the application.

3. Applicant has never issued or sold any securities and has no security holders. Applicant has never engaged, and does not propose to engage, in business activities of any kind.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–14746 Filed 6–15–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35832; File No. SR–CHX–95–13]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to the Technical Correction of its Rule Regarding Letters of Guarantee

June 9, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on May 30, 1995, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, pursuant to Rule 19b–4 of the Act, proposes to amend Rule 9 of Article XI by redesignating one of the two rules that is currently designated as Article XI, Rule 9 as Article XI, Rule 10.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In SR–CHX–95–03, the CHX codified into CHX Article XI, Rule 9 a requirement that non self-clearing brokers procure a letter of guaranty prior to trading.[1] However, the codification inadvertently misnumbered this rule as Article XI, Rule 9.[2] The purpose of the proposed change is to correct this inadvertent error by renumbering the rule requiring non self-clearing brokers to procure a letter of guaranty prior to trading as Rule 10 of Article XI.

The proposed rule change is consistent with Section 6(b)(5) of the Act because it is designed to promote just and equitable principles of trade, to remove impediments, and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition.

[1] Securities Exchange Act Release No. 35550 (Mar. 30, 1995), 60 FR 17376.

[2] A preexisting Article XI, Rule 9 was approved January 27, 1995. *See* Securities Exchange Act Release No. 35287 (Jan. 27, 1995), 60 FR 6743 (approving SR–CHX–94–28).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is concerned solely with the administration of the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule changes if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Chicago Stock Exchange. All submissions should refer to File No. SR–CHX–95–13 and should be submitted by July 7, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–14745 Filed 6–15–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35835; File No. SR–Amex–95–21]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Listing and Trading of Indexed Term Notes.

June 9, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 31, 1995, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to approve for listing and trading under Section 107A of the Amex Company Guide ("Guide"), Indexed Term Notes ("Notes"), the return on which will be based in whole or in part on changes in the value of ten equity securities ("Index"). The text of the proposed rule change is available at the Office of the Secretary, the Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Under Section 107 of the Guide, the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.[1] The Amex now proposes to list for trading, under Section 107A of the Guide, Notes whose value is based in whole or in part on a static index composed of ten actively-traded equity securities. The securities to be included in the Index will be those selected by the issuer of the Notes, Lehman Brothers, Inc. ("Lehman"), on or about July 1, 1995, as their selections of ten securities that they believe will outperform the stock market during the succeeding twelve months.[2] The securities in the Index will be selected by Lehman based on its market research and investment strategy, and will be announced at or as close as possible to the time of the offering of the Notes.

The Notes will be non-convertible debt securities and will conform to the listing guidelines under Section 107A of the Guide.[3] Although the specific maturity date will not be established until immediately prior to the time of the offering, the Notes will provide for maturity within approximately one year from the date of issue. The Notes may provide for periodic payments and/or payments at maturity based in whole or in part on changes in the value of the Index. In addition, the Notes may feature a "cap" on the maximum amount to be paid either periodically or at maturity. The Notes, however, will provide that at maturity, holders will receive not less than 90% of the initial issue price. Consistent with other structured products listed by the Amex, the Amex represents that prior to the commencement of listing and trading of the Notes, the Exchange will distribute a circular to its membership providing guidance with regard to member firm compliance responsibilities, including appropriate suitability criteria and/or guidelines.

Eligibility Standards for Index Components

The Exchange represents that each of the components in the Index will meet the following criteria at the time of the issuance of the Notes: (1) a minimum market capitalization of $75 million, except that one component may have a market capitalization of not less than $50 million; (2) trading volume in each of the six months prior to the offering of the Notes of not less than one million shares, except that one of the component securities may have a trading volume in each of the six months prior to the offering of the Notes of not less than 500,000 shares; (3) at least nine of the component securities will meet the then current criteria for standardized options trading set forth in Exchange Rule 915;[4] and (4) all components of the Index will be listed on the Amex or the New York Stock Exchange, or will be National Market securities traded though Nasdaq.[5]

Index Calculation

The Index will be calculated using an "equal dollar-weighting" methodology designed to ensure that each of the component securities is represented in an approximately equal dollar amount in the Index. To create the Index, a portfolio of equity securities will be established by the issuer representing an investment of $10,000 in each component security (rounded to the nearest whole share). The value of the Index will equal the current market value of the sum of the assigned number of shares of each of the component securities divided by the current Index divisor. The Index divisor will initially be set to provide a benchmark value of 100.00 at the time that the Notes are priced for issuance.

The number of shares of each component stock in the Index will remain fixed except in the event of certain types of corporate actions such as the payment of a dividend (other than an ordinary cash dividend), a stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, or similar event with respect to the component securities. The number of shares of each component security may also be adjusted, if necessary, in the event of a merger, consolidation, dissolution, or liquidation of an issuer or in certain other events such as the distribution of property by an issuer to shareholders, the expropriation or nationalization of a foreign issuer, or the imposition of certain foreign taxes on shareholders of a foreign issuer. Shares of a component security may be replaced (or supplemented) with other securities under certain circumstances, such as the conversion of a component security into another class of security, the termination of a depositary receipt program, or the spin-off of a subsidiary. If the security remains in the Index, the number of shares of that security may be adjusted, to the nearest whole share, to maintain the component's relative weight in the Index at the level immediately prior to the corporate action.[6] In all cases, the divisor will be adjusted, if necessary, to ensure continuity of the value of the Index.

The value of the Index will be calculated continuously by the Amex and disseminated every 15 seconds over the Consolidated Tape Association's Network B.

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5) in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Ampex does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. Sr–Amex–95–21 and should be submitted by July 7, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–14794 Filed 6–15–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35837; File No. SR–NYSE–94–45]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Member Organization Facilitation of a Customer Stock or Program Orders

June 12, 1995.

I. Introduction

On December 6, 1995, the New Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change regarding member organization facilitation of customer stock or program orders.[3] On January 11, 1995, the Exchange submitted Amendment No. 1 to the proposed rule change.[4]

The proposed rule change was published for comment in Securities Exchange Act Release No. 35230 (January 13, 1995), 69 FR 4453 (January 23, 1995). One comment letter was received on the proposal.[5]

II. Description of Proposal

The NYSE proposal consists of an Information Memorandum to advise Exchange members of certain activities that the Exchange will consider inconsistent with just and equitable principles of trade. Specifically, the Memorandum discusses facilitation of customer block orders at the close, trading based upon information of imminent customer transactions, and procedures to review facilitation activities for compliance with Exchange rules and federal securities laws.

First, the Memorandum discusses a member's responsibilities when positioning itself to facilitate a customer transaction to be executed after the close at the closing price.[6] The Memorandum states that a member should not trade for its own account "near the close" if it intends to execute an "at the close" order[7] that reasonably can be expected to affect the closing price of the security. Whether or not the purchase will be deemed near the close will depend upon the degree of risk that reasonably

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[1] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990).

[2] Lehman refers to these ten securities as the "Lehman 10 Uncommon Values in Common Stocks." Lehman has generated similar lists on an annual basis for many years. Telephone conversation between Michael Bickford, Vice President, Capital Markets Group, Amex, and Brad Ritter, Senior Counsel, Office of Market Supervision, Division of Market Regulation, Commission, on June 7, 1995.

[3] Specifically, the Notes must have: (1) a minimum public distribution of one million trading units; (2) a minimum of 400 holders; (3) an aggregate market value of at least $4 million; and (4) a term of at least one year. Additionally, the issuer of the Notes, Lehman, must have assets of at least $100 million, stockholders' equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in two of the three prior fiscal years. As an alternative to these financial criteria, the issuer may have either: (1) assets in excess of $200 million and stockholders' equity in excess of $10 million; or (2) assets in excess of $100 million and stockholders' equity in excess of $20 million.

[4] For these purposes, the Commission notes that in addition to the other requirements in Amex Rule 915, any security issued by a non-U.S. company that is included in the Index must also satisfy the requirements set forth in Amex Rule 915, Commentary .03. A non-U.S. company is defined as any company formed or incorporated outside of the United States.

[5] The Commission notes that all components of the Index will be required to be subject to last sale reporting pursuant to Rule 11Aa3–1 of the Act.

[6] Lehman will not attempt to find a replacement stock or compensate for the extinction of a security due to bankruptcy or a similar event.

[7] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] NYSE Rule 80A defines the term "program trading" as (1) index arbitrage or (2) any trading strategy involving the related purchase or sale of a "basket" or group of 15 or more stocks having a total market value of $1 million or more.

[4] *See* fax from Donald Siemer, NYSE, to Beth Stekler, SEC, dated January 11, 1995 (consisting of a revised Memorandum). The amendment made certain technical corrections to the text of the Memorandum.

[5] *See infra* note 10 and accompanying discussion.

[6] Although the Memorandum uses an example where the member has agreed to sell to a customer at the closing price, and therefore is purchasing stock before and at the close, the principles discussed in the Memorandum would apply equally to the situation where the member agrees to purchase stock from the customer at the closing price and therefore sells the security before and at the close. *See* letter from James Buck, Senior Vice President and Secretary, NYSE, to Brandon Becker, Director, Division of Market Regulation, SEC, dated April 19, 1995 ("NYSE Letter").

[7] An "at the close order" is a market order which is to be executed in its entirety at the closing price on the Exchange. If the order is not executed at the closing price, it is treated as cancelled. *See* NYSE Rule 13.

could be attributed to the position established by the trade versus the reasonably anticipated impact the trade at the close will have on the closing price. Generally, however, trades after 3:40 p.m. will be considered executed "near the close."[8]

Second, the Memorandum states that if a member has knowledge of an imminent block order, the member should not effect any transactions in that stock with the intention of reversing the position subsequently by participating on the contra-side of the block transaction. The Memorandum further provides that a person should not disclose to any other person trading strategies or customers' orders so that the person may take advantage of the information for his or her personal benefit or for the benefit of the member organization.[9]

Finally, the Memorandum reminds members that they are required to establish and maintain procedures reasonably designed to review facilitation activities for compliance with Exchange rules and federal securities laws. It also states that members must ensure that trading strategies engaged in by their proprietary traders to facilitate customers' orders have an economic basis and are not engaged in to mark the close or to mark the value of a position, and that before any at the close customer orders are transmitted to the Floor of the Exchange, members accepting such orders must exercise due diligence to learn the essential facts relative to these orders.

III. Summary of Comments

The Commission received one comment letter on the proposed rule change on behalf of six NYSE-member firms (the "Comment Letter").[10] The issues raised therein and the NYSE response are discussed below.[11]

[8] The Memorandum notes that members will not be precluded from executing customer orders on an agency besis at any time, including at or near the close. The Memorandum, however, cautions that this does not preclude the Exchange from determining that such activity might be a violation of the anti-manipulation provisions of the Act or Exchange rules. *See* 15 U.S.C. 78i(a) and j(b) (1988); NYSE Rule 476.

[9] The Memorandum notes, however, that this would not preclude a member organization from soliciting interest to trade with the contra-side of a block in the normal course of engaging in block facilitation activities.

[10] *See* letter from Roger Blanc, Willkie Farr & Gallagher, dated March 2, 1995 (representing Bear, Stearns & Co. Inc.; CS First Boston Corporation; Goldman, Sachs & Co.; Morgan Stanley & Co. Incorporated; PaineWebber Incorporated; and Saloman Brothers Inc.) ("Comment Letter").

[11] *See* NYSE Letter, *supra* note 6. According to the NYSE, the proposed rule change was reviewed and approved by the Exchange's Upstairs Traders Advisory Committee, Institutional Trading Advisory Committee, Market Performance Committee, and Quality of Markets Committee prior to filing with the Commission.

The Comment Letter noted that, because the rule change would preclude NYSE members from effecting proprietary transactions for the 20 minutes prior to the close, the proposal would result in additional risk for such members when facilitating customer block transactions at the closing price. As a result of this added risk exposure, it was argued that the costs to customers in executing such transactions would increase. In its response, the NYSE recognized that the proposal could produce additional risk for proprietary facilitation, but stated that the transactions after 3:40 p.m. bear *de minimis* risk because they are made in close proximity to a trade at the close that most likely would have a profitable impact on the prior transactions. In addition, the Exchange asserted that the rule change is consistent with the existing prohibitions against frontrunning, and that the 3:40 p.m. cut-off time was included to avoid confusion over what transactions generally would be considered "near the close."

The Comment Letter stated that the proposed rule appears to remove the Exchange's burden of proving manipulative intent on the part of a member that entered an order after 3:40 p.m., without "immunizing" transactions executed before that time. The Comment Letter asserted that because transactions occurring before 3:40 p.m. could still be deemed "near the close," the proposed rule change provides the Exchange with a high degree of prosecutorial discretion, making the proposal inconsistent with Section 6(b) (6) and (7) of the Act.[12] Additionally, the Comment Letter stated that predicating the prohibition against proprietary orders upon whether a member entered a market at the close order that "can reasonably be expected to impact the closing price" would require firms to predict the impact of future trades. The NYSE responded that it believes it is appropriate to use the proposed standard because it provides flexibility for judgmental errors. The NYSE also noted that this is the same standard used in frontrunning cases to assess compliance with just and equitable principles of trade.

Finally, the Comment Letter pointed out that the NYSE has not provided empirical support for restricting proprietary trading near the close. It also asserted that the transactions that would be prohibited represent actual customer demand, as opposed to orders by firms intended to take advantage of customer orders. The Comment Letter suggested that instead of the proposed interpretation, the Exchange should impose a requirement that members make full disclosure to their customers before undertaking transactions of this kind. In response, the Exchange stated that the empirical basis for its belief is demonstrated in patterns of trading that the Exchange has reviewed. The Exchange also asserted that disclosure to customers, even when the proprietary trade has a minimal impact, would be ineffective. According to the NYSE, the transactions in question may be effected due to the probability of immediate profitability, and they would, in any event, be based on an unfair informational advantage over other market participants. In addition, the NYSE asserted that, while the proprietary orders are initiated because of customer interest, those proprietary orders also would not be entered but for the knowledge of customer orders.

IV. Discussion

After careful consideration of the Comment Letter and the NYSE response thereto, the Commission has decided to approve the proposed rule change. For the reasons discussed below, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and; in particular, with the requirements of Sections 6(b) (5), (6), and (7).[13]

The Commission notes that two of the topics discussed in the Memorandum are restatements of current Exchange policy. Specifically, The Memorandum's discussion of trading based upon information of an imminent customer transaction and the requirement that members maintain procedures reasonably designed to review facilitation activities for compliance with Exchange rules and federal securities laws are consistent with Exchange Rule 476 and previous NYSE interpretations issued pursuant to that Rule.[14] The Commission continues to believe that these policies are consistent with the Section 6(b)(5) requirement that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public.

[12] 15 U.S.C. 78f(b) (6) and (7) (1988).

[13] 15 U.S.C. 78f(b) (5), (6), and (7).

[14] *See, e.g.*, NYSE Information Memo Number 89–53 (November 27, 1989).

Similarly, the proposed Memorandum's description of the types of proprietary trading near the close that may, in certain circumstances, constitute a violation of just and equitable principles of trade is reasonably designed to address potential trading abuses that might occur when members are facilitating customer block or program orders. The Commission agrees with the NYSE that the conduct addressed in the Memorandum—trading with knowledge of impending large at the close orders—could prove detrimental to market integrity. The proposed guidelines for such trading near the close are consistent with long standing prohibitions against frontrunning. Moreover, the NYSE restrictions on block facilitation activities near the close are very limited in scope and should provide helpful guidance to members.

For the reasons discussed below, the Commission also believes the Comment Letter's criticisms of the proposal are adequately addressed. First, it is unnecessary for the NYSE to conduct further empirical studies before adopting this proposal. The NYSE represents that it has observed instances of block facilitation trading by its members that results in closing prices that disadvantage customers.[15] In addition, as previously mentioned, the Memorandum is an elaboration of existing prohibitions against frontrunning. Thus, the NYSE is merely providing guidance on the types of conduct that already constitute a violation of just and equitable principles of trade under its rules.

Second, the Commission does not believe that simply requiring disclosure to customers sufficiently will protect customers or preserve market integrity. As the NYSE has indicated, the conduct addressed in this proposal affects not only the facilitation member's customer, but also all other market participants. The NYSE member still would have an informational advantage over the rest of the market even after full disclosure to its customer.

Third, the Comment Letter considers the Memorandum's guidance as a blanket prohibition against certain proprietary trading after 3:40 p.m., the designated cut-off time.[16] The Memorandum, however, only restricts post-3:40 p.m. trading in limited circumstances. The Memorandum states that a member, when positioning itself to facilitate a customer transaction to be made after the close at the closing price, should not trade for its own account "near the close" (after 3:40 p.m.) if it intends to execute an at the close order that reasonably can be expected to impact the closing price of the security. The Memorandum does not prohibit proprietary trading after 3:40 p.m., only a limited type of proprietary trading when in possession of a form of non-public, material market information.

Fourth, the Commission does not agree with the Comment Letter's assertion that the proposed regulation of proprietary trading near the close, defined generally as after 3:40 p.m., provides the Exchange with excessive prosecutorial discretion. The 3:40 p.m. cut-off is intended to provide members with *more* guidance as to prohibited conduct under the NYSE rules. At the same time, the 3:40 p.m. cut-off is not intended to operate as a "safe-harbor." The cut-off guideline provided in the Memorandum does not preclude the Exchange from determining that certain transactions before 3:40 p.m. were executed "near the close." The Commission agrees with the NYSE that the standard for determining which transactions are executed "near the close" must be flexible and take into consideration factors unique to the market for a particular security. The Commission therefore believes the proposed standard for determining when an execution is "near the close" is appropriate and even though it may cover transactions effected before the designated cut-off time.

Fifth, the Comment Letter suggests that the proposed standard would relieve the Exchange from proving manipulative intent for transactions executed after 3:40 p.m. The NYSE, however, seeks to address conduct that could enable block positioners to benefit from an unreasonable informational advantage over other market participants. The Commission believes that it is reasonable for the NYSE to adopt a position to reduce the likelihood of members trading to their own advantage based on customer information. This position still requires proof that the at the close order reasonably could be expected to affect the closing price.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–NYSE–94–45) is approved.

[15] *See* NYSE Letter, *supra* note 6.

[16] *See* Comment Letter; *supra* note 10.

[17] 15 U.S.C. 78s(b)(2) (1988).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–14795 Filed 6–15–95; 8:45 am]

BILLING CODE 8010–01–M

[18] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35836; File No. SR–PSE–95–11]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to the Number of Trading Posts That May Be Included as Part of Each Market Maker's Primary Appointment Zone

June 9, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on April 7, 1995, the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to increase the number of trading posts that may be included as part of each market maker's primary appointment zone.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1) (1988).

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

PSE Rule 6.35 currently requires each options market maker to select and maintain a primary appointment zone consisting of one or two trading posts.[2] Pursuant to Rule 6.35, Commentary .03, at least 75% of the trading activity of each market maker (measured in terms of contract volume per quarter) must be in classes of option contracts to which such market maker's primary appointment zone extends. In addition, under the new short sale rule applicable to stocks traded in the Nasdaq market, the options market maker exemption to that rule is limited to stocks underlying options in which the market maker holds an appointment.[3]

The Exchange proposes to amend Rule 6.35 in two respects: First, the maximum number of trading posts that could be included as part of each primary appointment zone would be increased from two to six. Second, the Options Appointment Committee could allow a market maker to exceed the six trading post maximum if special circumstances were to exist. Under the proposal, the largest number of issues a market maker could have within his or her primary appointment zone, in the absence of special circumstances, would be 108 (or 31% of the issues traded on the Options Floor).

The Exchange believes that the current limit of two trading posts is unduly restrictive and places the PSE's options market makers at a competitive disadvantage in relation to market makers on other options exchanges. The Exchange further believes that its proposal will allow it the flexibility to respond promptly to any need for greater market maker participation that may arise in light of recent and anticipated increases in the number of options classes traded on the floor. The Exchange also believes that its proposal, if approved, would serve to assure adequate market maker coverage of all classes traded on the floor and to enhance the ability of the Exchange to provide deep and liquid markets and to provide for competitive equality among exchanges.

The Exchange believes that its proposal is consistent with Section 6(b) of the Act in general, and Section 6(b)(5) in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

[2] PSE Rule 6.35 requires multiple posts to be contiguous, except under special circumstances.

[3] *See* PSE Rule 4.19(c)(2).

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–PSE–95–11 and should be submitted by [insert date 21 days after the date of this publication].

For the Commission to by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–14796 Filed 6–15–95; 8:45 am]

BILLING CODE 8010–01–M

[4] 17 CFR 200.30–(a)(12) (1994).

SOCIAL SECURITY ADMINISTRATION

Agency Forms Submitted to the Office of Management and Budget for Clearance

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with P.L. 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on June 2, 1995.

(Call Reports Clearance Officer on (410) 965–4142 for copies of package.)

1. Beneficiary Recontact Report—0960–0502. The information on form SSA–1588 is used by the Social Security Administration to recontact mothers, fathers or children in direct payment to determine if they are still entitled. The respondents are beneficiaries who are in the "high risk" area and are, therefore, most prone to overpayments.

Number of Respondents: 241,260.
Frequency of Response: 1.
Average Burden Per Response: 5 minutes.
Estimated Annual Burden: 20,105 hours.

2. Child-Care Dropout Questionnaire—0960–0474. The information on form SSA–4162 is used by the Social Security Administration to determine if an applicant for disability benefits may have certain computation years excluded from the benefit computation. This will result in a higher benefit amount. The respondents are individuals applying for disability benefits.

Number of Respondents: 2,000.
Frequency of Response: 1.
Average Burden Per Response: 5 minutes.
Estimated Annual Burden: 167 hours.

3. Representative Payee Evaluation Report—0960–0069. The information on form SSA–624 is used by the Social Security Administration to accurately account for the use of social security benefits and supplemental security income payments that representative payees receive on behalf of the individual. The affected public is comprised of individuals who were previously sent an SSA–623.

Number of Respondents: 422,533.
Frequency of Response: 1.
Average Burden Per Response: 30 minutes.
Estimated Annual Burden: 211,267 hours.

4. Supplemental Statement Regarding Farming Activities of Person Living Outside the U.S.A.—0960–0103. The information on form SSA–7163A is used by the Social Security Administration to make a determination as to whether foreign work deductions are applicable when an SSA claimant reports work on a farm outside the United States. The respondents are SSA claimants who report work on farms outside of the United States.

Number of Respondents: 1,000.
Frequency of Response: 1.
Average Burden Per Response: 60 minutes.
Estimated Annual Burden: 1,000 hours.

5. Letter to Employer Requesting Information About Wages Earned by Beneficiary—0960–0034. The information on form SSA–L725 is used by the Social Security Administration to establish the exact amount of wages earned by a beneficiary and to determine the amount of benefit payments, if any. The respondents are employers of the beneficiaries.

Number of Respondents: 150,000.
Frequency of Response: 1. .
Average Burden Per Response: 30–50 minutes.
Estimated Annual Burden: 100,000 hours.

6. Request for Address Information from Motor Vehicle Records; Request for Address Information from Employment Commissions—0960–0341. The information on forms SSA–L711 and SSA–L712 is used by the Social Security Administration to determine the current address for missing debtors. The affected public is comprised of State agencies who have entered in agreements with SSA to provide the requested information.

Number of Respondents: 3,200.
Frequency of Response: 1.
Average Burden Per Response: 2 minutes.
Estimated Annual Burden: 106 hours.

7. Payment Cycling Impact Survey—0960–NEW. The information is used by the Social Security Administration to assess whether the issuance of regularly scheduled title II monthly payments significantly increases the workload in the field offices and teleservice centers during the early part of each month. The information is needed to determine whether payment cycling would be an effective tool in managing the title II workload. The respondents are the general public contacting field offices and the teleservice centers.

Number of Respondents: 26,000.
Frequency of Response: 1.
Average Burden Per Response: 5 minutes.
Estimated Annual Burden: 2,167 hours.

8. Social Security Request for Information—0960–0531. The information on form SSA–6231 is used by the Social Security Administration to complete or clarify data previously provided by representative payees on forms SSA–623 or SSA–6230. The respondents will be payees who furnished incomplete or unclear information.

Number of Respondents: 100,000.
Frequency of Response: 1.
Average Burden Per Response: 15 minutes.
Estimated Annual Burden: 25,000 hours.

OMB Desk Officer: Laura Oliven.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: Office of Management and Budget, OIRA, New Executive Office Building, Room 10230, Washington, D.C. 20503.

Dated: June 9, 1995.

Charlotte Whitenight,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 95–14674 Filed 6–15–95; 8:45 am]

BILLING CODE 4190–29–P

[Social Security Ruling SSR 95–2c]

Disability—Authority of Appeals Council to Dismiss a Request for Hearing for a Reason for Which the Administrative Law Judge Could Have Dismissed the Request—Res Judicata

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling 95–2c. This Ruling is based on the decision of the U.S. Court of Appeals for the Sixth Circuit in *Harper* v. *Secretary of Health and Human Services*, which upheld the authority of the Appeals Council to dismiss a request for hearing for a reason the Administrative Law Judge (ALJ) could have dismissed it, even though the ALJ held a hearing and issued a decision on the merits.

This Ruling reconfirms the Appeals Council's authority to dismiss a request for hearing on the basis of administrative *res judicata*.

EFFECTIVE DATE: June 16, 1995.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1711.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552 (a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.406(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of the law or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 422.406(b)(1), and are to be relied upon as precedents in adjudicating other cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance, Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security— Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.005, Special Benefits for Disabled Coal Miners; 96.006, Supplemental Security Income.)

Dated: June 6, 1995.

Shirley S. Chater,

Commissioner of Social Security.

Sections 205(b) and 221(d) of the Social Security Act (42 U.S.C. 405(b) and 421(d)) Disability—Authority of Appeals Council to dismiss a request for hearing for a reason for which the administrative law judge could have dismissed the request—*res judicata*.

20 CFR 404.957(c)(1)

Harper v. *Secretary of Health and Human Services*, 978 F.2d 260 (6th Cir. 1992)

The claimant, who stopped working in January 1981, filed applications for

disability insurance benefits in 1981, 1982, and 1986. The Social Security Administration (SSA) denied all of these applications. In May 1987, she filed a fourth application. SSA denied this application initially and upon reconsideration, and the claimant did not request further administrative review. In June 1988, the claimant filed a fifth application which was denied initially and upon reconsideration. The claimant requested and received a hearing before an Administrative Law Judge (ALJ). The ALJ issued a decision denying her application, finding that she was not disabled through December 31, 1986, the date on which her insured status expired. The claimant filed a request for Appeals Council review. The Appeals Council granted the request, vacated the ALJ's decision, and dismissed the request for hearing on the basis of administrative *res judicata*.

The Appeals Council concluded that under the doctrine of administrative *res judicata*, 20 CFR 404.957(c)(1), the determination denying the claimant's fourth application was dispositive of her subsequent claim.

The claimant then filed a civil action. The district court remanded the case to the Secretary to determine whether the determination on the claimant's fourth application should have been reopened pursuant to 20 CFR 404.988(a). The Appeals Council found no basis for reopening that determination, and again determined that the request for hearing on the fifth application should be dismissed on the basis of *res judicata*. The case was returned to the district court which upheld the action of the Appeals Council. The claimant then appealed to the United States Court of Appeals for the Sixth Circuit. In her appeal, the claimant maintained that the ALJ's decision to hold a hearing and issue a decision on the merits was not subject to review by the Appeals Council. She further argued that even if the ALJ erred in holding the hearing, the Appeals Council could not dismiss the request for hearing on the basis of *res judicata* after the ALJ heard the case on the merits.

The Court of Appeals stated that the ALJ's action in holding a hearing and issuing a decision appeared to be erroneous and that it knew of no reason why it was not within the province of the Appeals Council to correct the error. The court *held* that the Appeals Council has authority to vacate an ALJ's decision and dismiss the request for hearing on *res judicata* grounds even though the ALJ held a hearing and issued a decision on the merits.

Per Curium

This is a social security case in which the appellant filed a series of claims asserting that she had become disabled before her insured status expired. The main question before us is whether, after an administrative law judge has conducted an evidentiary hearing despite the existence of an earlier final decision denying the same claim, the Appeals Council can deny the hearing request retroactively, thereby foreclosing judicial review. The district court answered this question in the affirmative and dismissed the claimant's case. We agree with the district court's decision, and we shall affirm the dismissal.

I

The claimant, Edith Harper, held a job for a ten-year period ending in January of 1981. She has not worked since that time, and her insured status expired on December 31, 1986.

Ms. Harper filed applications for disability insurance benefits on April 7, 1981, February 8, 1982, April 22, 1986, May 19, 1987, and June 23, 1988. The first, third, and fourth applications were denied initially and upon reconsideration. The second was denied initially, and no appeal was taken from its denial. Ms. Harper did not request a hearing before an administrative law judge with respect to any of the first four applications.

After the denial upon reconsideration of her fifth claim, Ms. Harper sought and was granted a hearing before an administrative law judge. The ALJ denied the fifth claim on its merits, finding that Ms. Harper had not been disabled as of the last date on which she was insured. Ms. Harper sought review by the Appeals Council, which granted review in a letter dated March 12, 1990. In the same letter, the council alerted Ms. Harper to the possibility that her claim would be disposed of on administrative *res judicata* grounds.

On May 25, 1990, the Appeals Council vacated the decision of the ALJ and retroactively denied the request pursuant to which the ALJ had conducted the hearing. The council took the position that under the doctrine of administrative *res judicata*, the denial of Ms. Harper's fourth claim was dispositive of any subsequent claim.

Following initiation of the present suit for judicial review, the district court remanded the matter to the Appeals Council for a determination as to whether Ms. Harper's fourth application for benefits should have been reopened under 20 C.F.R. § 404.988(a). The council declined to reopen the fourth claim, finding that Ms. Harper had presented no new evidence as to her condition before December 31, 1986. The council again determined that the fifth claim was barred by the doctrine of *res judicata*. In a well reasoned opinion filed by the district court (Graham, J.) on November 18, 1991, the court then dismissed Ms. Harper's lawsuit. This appeal followed.

The first question we must address is whether the federal courts have jurisdiction. The pertinent statute, 42 U.S.C. § 405(g), provides, in relevant part, as follows:

"Any individual, after any final decision of the Secretary *made after a hearing to which he was a party*, irrespective of the amount in controversy, may obtain a review of such a decision by a civil action commenced within sixty days. * * *" (Emphasis supplied.)

The Appeals Council determined that the final decision of the Secretary was the denial upon reconsideration of the fourth claim in 1987. The final decision of the Secretary thus appears to have been made *before* any evidentiary hearing took place, which would normally preclude judicial review. A refusal to reopen a prior application is not a final decision and may not be reviewed by the courts. *Califano* v. *Sanders*, 430 U.S. 99, 107–09, 97 S.Ct. 980, 51 L.Ed.2d 192 (1977); *Blacha* v. *Secretary of Health and Human Services*, 927 F.2d 228 (6th Cir.1990).

Ms. Harper claimed before the district court, and she claims here, that she was deprived of property without due process of law in violation of her rights under the Fifth Amendment of the United States Constitution. As *Califano* noted, where a constitutional claim is made in conjunction with a social security benefits case, jurisdiction may attach outside the scope of 42 U.S.C. 405(g) and despite the foreclosure, in 42 U.S.C. 405(h), of general federal question jurisdiction over social security appeals. (The latter section provides that "[n]o action against the United States, the Secretary, or any officer or employee thereof shall be brought under section 1331 or 1346 of Title 28 to recover on any claim arising under this subchapter.") The district court thus had jurisdiction to entertain Ms. Harper's constitutional claim, regardless of whether jurisdiction existed under 42 U.S.C. 405(g).

II

Ms. Harper contends, as we have said, that the action of the Appeals Council in vacating the ALJ's decision to grant a hearing on the merits and disposing of the case on *res judicata* grounds constituted a denial of due process. As a preliminary matter we note a potential stumbling block not addressed in the parties' briefs.

Under the language of the Fifth Amendment, due process protections

attach only to "life, liberty, or property." Ms. Harper could not prevail on her constitutional claim, therefore, without showing that she was deprived of "property" without due process of law. The existence of a property interest here is far from self-evident.

"The definition of property since the 1972 [Supreme Court] decision in *Board of Regents* v. *Roth* has centered on the concept of 'entitlement.' The Court will recognize interests in government benefits as constitutional 'property' if the person can be deemed to be 'entitled' to them. Thus, the applicable federal, state or local law which governs the dispensation of the benefit must define the interest in such a way that the individual should continue to receive it under the terms of the law. This concept also seems to include a requirement that the person already has received the benefit or at least had a previously recognized claim of entitlement." 2 Rotunda & Nowak, Treatise on Constitutional Law § 17.5(a) at 628 (1992).

The right to due process applies to the termination of government benefits already being received, *Goldberg* v. *Kelly*, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970), but Ms. Harper has never received disability benefits. Two of our sister courts of appeals have extended *Goldberg* to applicants for government benefits that have not yet been awarded. See *Daniels* v. *Woodbury County, Iowa*, 742 F.2d 1128 (8th Cir.1984) (finding applicants for general assistance on the county level had a right to due process), and *Griffeth* v. *Detrich*, 603 F.2d 118 (9th Cir.1979), *cert. denied sub nom. Peer* v. *Griffeth*, 445 U.S. 970, 100 S.Ct. 1348, 64 L.Ed.2d 247 (1980) (finding applicants for benefits under state general assistance program had a "legitimate expectation of entitlement" because of mandatory language in state statute).

The Supreme Court has recognized a right to due process on the part of parole applicants who can point to a statute saying that prisoners "shall" be released under certain conditions, *Greenholtz* v. *Nebraska Penal Inmates*, 442 U.S. 1, 99 S.Ct. 2100, 60 L.Ed.2d 668 (1979), but the Court has not determined whether applicants for monetary benefits have a similar right. See *Lyng* v. *Payne*, 476 U.S. 926, 942, 106 S.Ct. 2333, 2343, 90 L.Ed.2d 921 (1986) ("We have never held that applicants for benefits, as distinct from those already receiving them, have a legitimate claim of entitlement protected by the Due Process Clause of the Fifth or Fourteenth Amendment"). See also *Peer* v. *Griffeth*, 445 U.S. 970, 100 S.Ct. 1348, 64 L.Ed.2d 247 (1980) (Rehnquist, J., dissenting from denial of certiorari) ("Particularly when the only [California] appellate court to consider the question has concluded that there is no protected property interest under state law, this extension of *Goldberg* v. *Kelly* * * * should receive plenary consideration by this Court"). The Rotunda and Nowak treatise comments that "[a]lthough the Court has not resolved this issue, under the 'entitlement' principle it would appear that a person has no property interest in a benefit unless he has previously been granted it by the government." 2 Rotunda & Nowak, *supra* § 17.5, at 629.

This court was presented with an opportunity to adopt *Griffeth's* "mandatory language" rationale in *Baker* v. *Cincinnati Metropolitan Housing Authority*, 675 F.2d 836 (6th Cir.1982). There the plaintiffs sought changes in procedures followed by a housing authority in determining eligibility for a new Housing and Urban Development program. The district court relied partially on Griffeth in determining that persons who could show they met the criteria for the program were entitled to due process protection. *Baker* v. *Cincinnati Metropolitan Housing Authority*, 490 F.Supp. 520, 532 (S.D. Ohio 1980). We decided on appeal that the procedures satisfied due process, but we did not specifically address the question whether due process was constitutionally required.

In the case at bar we find it unnecessary to decide whether Ms. Harper had a "property" interest of which she could not be deprived without due process. Whether or not there was a property interest, Ms. Harper received all the process that would have been due under any hypothesis.

The regulations promulgated by the Secretary make it clear that an unappealed denial upon reconsideration is a final decision. 20 C.F.R. § 404.921 provides as follows:

"The reconsidered determination is binding unless—

(a) You or any other party to the reconsideration requests a hearing before an administrative law judge within the stated time period and a decision is made;

(b) The expedited appeals process is used; or

(c) The reconsidered determination is revised."

Because the denial of Ms. Harper's fourth claim upon reconsideration was not appealed or revised, and because the denial was not followed by a timely request for a hearing before an ALJ, the denial was a final decision of the Secretary that was, according to the regulation, "binding." The ALJ who heard Ms. Harper's fifth claim was aware of this problem, yet he offered no explanation of his failure to give the reconsidered denial of the fourth claim the binding effect prescribed by the regulation. The ALJ's decision to treat the earlier determination as non-binding appears to have been erroneous, and we know of no reason why it was not within the province of the Appeals Council to correct the error.

In *Mullen* v. *Bowen*, 800 F.2d 535 (6th Cir.1986) (*en banc*), this court noted that the Appeals Council may review *any* determination by an ALJ that it chooses to review, whether or not there has been an application for such review.[1] See *id.* at 545, 554 (Nelson, J., concurring). The Appeals Council is empowered to consider all aspects of a decision, even if the claimant seeks review of a portion only—and the council need not give notice to the claimant of its intent to review the entire decision. *Gronda* v. *Secretary of Health & Human Services*, 856 F.2d 36, 38–39 (6th Cir.1988), cert. denied, 489 U.S. 1052, 109 S.Ct. 1312, 103 L.Ed.2d 581 (1989).[2]

Notwithstanding *Mullen*, Ms. Harper maintains that the ALJ's decision to grant a hearing was not subject to review by the Appeals Council. Even if the grant of a hearing was improvident, she suggests, the council could not set the grant aside and invoke the doctrine of *res judicata* after the ALJ had heard the claim on the merits. In cases that are almost exactly parallel to this one, however, the Courts of Appeals for the Fifth and Seventh Circuits have held that the council can reopen a decision by an ALJ to grant a hearing, and—even if a hearing has actually been held—can dismiss on *res judicata* grounds. *Ellis* v. *Schweiker*, 662 F.2d 419 (5th Cir.1981); *Johnson* v. *Sullivan*, 936 F.2d 974 (7th Cir.1991). See also *Taylor* v. *Heckler*, 765 F.2d 872, 874–77 (9th Cir.1985) (upon second application, ALJ reopened first application and found claimant disabled; Appeals Council vacated ALJ's decision and dismissed on *res judicata* grounds). We agree with these decisions, and we adopt their reasoning.

[1] Since *Mullen* was decided, the Seventh Circuit, sitting *en banc*, has reversed an earlier panel decision and come down on *Mullen's* side. See *Bauzo* v. *Bowen*, 803 F.2d 917, 921 (7th Cir.1986) (*en banc*), overruling *Scott* v. *Heckler*, 768 F.2d 172 (7th Cir.1985). Seven circuits now adhere to *Mullen's* view; only the Third Circuit remains on the other side. See *Mullen*, 800 F.2d at 539 n. 4 (citing cases, including *Powell* v. *Heckler*, 783 F.2d 396 (3rd Cir.1986)).

[2] *Gronda* forecloses any argument that the council should not have been able to bar Ms. Harper's claim on *res judicata* grounds because she had no notice that *res judicata* might be used against her. The point is moot, however, in light of the council's letter of March 12, 1990, warning Ms. Harper of its intention to dismiss her claim on the basis of *res judicata* and inviting her arguments against such action.

Poulin v. *Bowen*, 817 F.2d 865 (D.C. Cir.1987), relied on by Ms. Harper, is not in point. In *Poulin* the ALJ reopened a prior claim and considered it on the merits. The Appeals Council also considered the claim on the merits. The court of appeals simply held that where the Secretary does not rely on the *res judicata* defense in agency proceedings, he cannot raise it initially upon judicial review.

Ms. Harper also contends that one of the forms she received from the agency was misleading about her right to future appeals of the denial of benefits. The brief she filed in this court refers to a letter she addressed to the Appeals Council on this issue, but the letter is not a part of the administrative record. Because the record does not indicate that the issue was raised at the administrative level, we are not in a position to consider the issue. See *Hix* v. *Director, Office of Workers' Comp. Programs*, 824 F.2d 526 (6th Cir.1987).

For the reasons stated, we find no error in the decision of the district court. The order in which that court dismissed Ms. Harper's lawsuit is therefore AFFIRMED.

[FR Doc. 95–14775 Filed 6–15–95; 8:45 am]
BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements filed during the Week Ended June 2, 1995

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 50375.
Date filed: May 30, 1995.
Parties: Members of the International Air Transport Association.
Subject: TC2 Telex Mail Vote 742, Fares Within Africa, r-1—071ww, r-2—079c.
Proposed Effective Date: June 15, 1995.

Docket Number: 50376.
Date filed: May 30, 1995.
Parties: Members of the International Air Transport Association.
Subject: CSC/Reso 064 dated April 25, 1995, Finally Adopted Resolutions—17, 1995 CSC, CSC/Minutes/021 dated April 17, 1995, r-1—003, r-2—600, r-3—600a, r-4—600d, r-5—600e, r-6—606, r-7—607, r-8—660, r-9—662, r-10—666, r-11—670, r-12—671, r-13—683, r-14—685, r-15—686, r-16—1600b, r-17—1600b(II), r-18—1600f, r-19—1600r, r-20—1601, r-21—1605, r-22—1608, r-23—1610, r-24—1640, r-25—1673.
Proposed Effective Date: October 1, 1995.

Paulette V. Twine,
Chief, Documentary Services Division.
[FR Doc. 95–14763 Filed 6–15–95; 8:45 am]
BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended June 2, 1995

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 50377.
Date filed: May 31, 1995.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 28, 1995
Description: Application of Shuttle America Airlines, Inc. pursuant to 49 U.S.C. 41102 and Subpart Q of the Regulations, requests authority to engage in interstate scheduled air transportation of passengers, property, and mail: Between a place in (i) a State, territory, or possession of the United States and a place in the District of Columbia or another State, territory or possession of the United States; (ii) Hawaii and another place in Hawaii through the airspace over a place outside Hawaii; (iii) the District of Columbia and another place in the District of Columbia; and (iv) a territory or possession of the United States and another place in the same territory or possession.

Docket Number: 50379.
Date filed: June 1, 1995.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 29, 1995.
Description: Application of Custom Air Transport, Inc., pursuant to 49 U.S.C. Section 41102, and Subpart Q of the Regulations, requests issuance of a Certificate of Public Convenience and Necessity to provide Scheduled Interstate Air Transportation of property and mail within and between various points in the United States.

Paulette V. Twine,
Chief Documentary Services Division.
[FR Doc. 95–14762 Filed 6–15–95; 8:45 am]
BILLING CODE 4910–62–P

Federal Aviation Administration

Notice of Intent To Rule on Application to Impose and Use the Revenue from a Passenger Facility Charge (PFC) at San Jose International Airport, San Jose, CA.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use revenue from a PFC at San Jose International under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508) and 14 CFR part 158.

DATES: Comments must be received on or before July 17, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Lawndale, CA. 90261 or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA. 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Ralph Tonseth, Director of Aviation, at the following address: City of San Jose, San Jose International Airport, 1661 Airport Boulevard, San Jose, California 95110–1285. Air Carriers and foreign air carriers may submit copies of written comments previously provided to the City of San Jose under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph R. Rodriguez, Supervisor, Planning and Programming Section, Airports District Office, 831 Mitten Road. Room 210, Burlingame, CA. 94010–1303, Telephone: (415) 876–2805. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at San Jose International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus budget Reconciliation Act of 1990 (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On June 5, 1995, the FAA determined that the application to impose and use a PFC submitted by the City of San Jose was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 5, 1995.

The following is a brief overview of the application.

Level of proposed PFC: $3.00.
Proposed charge effective date: September 1, 1995.
Proposed charge expiration date: March 15, 1998.
Total estimated PFC revenue: $9,094,000.00.

Brief description of the proposed projects:

Impose and Use Projects: Project No. 36 Runway 30L Reconstruction (B to C), Project No. 37 runway 30L Reconstruction (C to L), Project No. 38 Reconstruction runway 30L (J to L), Project No. 39 Reconstruction of Taxiways Y and K.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi Commercial Operators (ATCO) filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of San Jose, CA.

Issued in Hawthorne, California, on June 5, 1995.

Herman C. Bliss,
Manager, Airports Division, Western-Pacific Region.
[FR Doc. 95–14787 Filed 6–15–95; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

June 9, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Financial Management Service (FMS)

OMB Number: 1510–0034.
Form Number: POD 315.
Type of Review: Extension.
Title: Depositor's Application to Withdraw Postal Savings.
Description: This form is used as an application for payment by depositor or other legal representatives. This form serves to identify the depositor and insures payment is made to the proper person.
Respondents: Individuals or households.
Estimated Number of Respondents: 1,075.
Estimated Burden Hours Per Response: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 538 hours.
Clearance Officer: Jacqueline R. Perry (301) 344–8577, Financial Management Service, 3361–L 75th Avenue, Landover, MD 20785.
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 95–14008 Filed 6–15–95; 8:45 am]
BILLING CODE 4810–35–M

Public Information Collection Requirements Submitted to OMB for Review

June 9, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0354.
Recordkeeping Requirement ID Number: ATF REC 5170/3.
Type of Review: Extension.
Title: Retail Liquor Dealers Records of Receipts of Alcoholic Beverages and Commercial Invoices.
Description: Audit trail records show amounts purchased and from whom; completes final audit trail established at distilled spirits plant. Protection of the revenue. The collection of information is contained in 27 CFR 194.234.
Respondents: Business or other for-profit, State, Local or Tribal Government.
Estimated Number of Recordkeepers: 455,000.
Estimated Burden Hours Per Recordkeeper: 1 hour.
Frequency of Response: Other.
Estimated Total Recordkeeping Burden: 455,000 hours.
OMB Number: 1512–0384.
Recordkeeping Requirement ID Number: ATF REC 5620/2.
Type of Review: Extension.
Title: Airlines Withdrawing Stock from Customs Custody.
Description: Airlines may withdraw tax-exempt distilled spirits, wine, and beer from Customs custody for foreign flights. Required record shows amount of spirits and wine withdrawn and flight identification; also has Customs certification; enables ATF to verify that tax is not due; allows spirits and wines to be traced and maintains accountability. Protects tax revenues. The collections of information are contained in 27 CFR 252.280 and 252.281.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 25.
Estimated Burden Hours Per Recordkeeper: 100 hours.
Frequency of Response: Other.
Estimated Total Recordkeeping Burden: 2,500 hours.
Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 95–14809 Filed 6–15–95; 8:45 am]
BILLING CODE 4810–31–P

Public Information Collection Requirements Submitted to OMB for Review

June 9, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

SpeciaL Request: On behalf of the Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury is requesting OMB review and approval of the information collection described below by June 30, 1995. This form has been revised to consolidate it with other related ATF information collections. Because of the length of ATF F 7 (5310.12), it cannot be published to allow public review and comment. A copy of ATF F 7 (5310.12) may be obtained by calling or writing to the ATF Clearance Officer listed below. All comments must be received by close of business June 27, 1995.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0042.
Form Number: ATF F 7 (5310.12).
Type of Review: Revision.
Title: Application for License under 18 U.S.C., Chapter 44, Firearms.
Description: This form is used by the public when applying for a Federal firearms license as a dealer, importer, or manufacturer. The information requested on the form establishes eligibility for the license used, The form is also used when a license for activities to deal, manufacture or import, and when responsible persons are added to an existing license.
Respondents: Individuals or households, Business or other for-profit.
Estimated Number of Respondents: 150,000.
Estimated Burden Hours Per Respondent: 1 hour, 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 187,700 hours.
Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 95–14810 Filed 6–15–95; 8:45 am]
BILLING CODE 4810–31–P

Public Information Collection Requirements Submitted to OMB for Review

June 1, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–1134.
Regulation ID Number: IA–141–83 Final (T.D. 8270).
Type of Review: Extension.
Title: Installment Method Reporting by Dealers in Personal Property.
Description: These regulations provide guidance with respect to the manner in which dealers are required to account for installment sales.
Respondents: Business or other for-profit, State, Local or Tribal Government.
Estimated Number of Respondents: 50,000.
Estimated Burden Hours Per Respondent: 10 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 500,000 hours.
OMB Number: 1545–1326.
Form Number: IRS Form 2555–EZ.
Type of Review: Extension.
Title: Foreign Earned Income Exclusion.
Description: This form is used by U.S. citizens and resident aliens who qualify for the foreign earned income exclusion. This information is used by the Service to determine if a taxpayer qualifies for the exclusion. Form 2555–EZ is a less burdensome form that will be used where foreign earned income is $70,000 or less.
Respondents: Individuals or households.
Estimated Number of Respondents/Recordkeepers: 43,478.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—26 min.
Learning about the law or the form—17 min. Preparing the form—42 min. Copying, assembling, and sending the form to the IRS—35 min.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 87,391 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 95–14811 Filed 6–15–95; 8:45 am]
BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

June 6, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–1362.
Form Number: IRS Form 8835.
Type of Review: Revision.
Title: Renewal Electricity Production Credit.
Description: Filers claiming the general business credit for electricity produced from certain renewable resources under code sections 38 and 45 must file Form 8835.
Respondents: Business or other for-profit, Individuals or households
Estimated Number of Respondents/Recordkeepers: 70
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—9 hr., 5 min.
Learning about the law or the form—6 min.
Preparing and sending the form to the IRS—15 min.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 500,000 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 95–14812 Filed 6–15–95; 8:45 am]
BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

June 9, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0823.
Regulation ID Number: FI–221–83 NPRM; FI–100–83 Temporary Regulations.
Type of Review: Extension.
Title: Indian Tribal Governments Treated as States for Certain Purposes.
Description: The regulations provide that if the governing body of a tribe, or its subdivision, is not designated as an Indian tribal government or subdivision thereof for purposes of sections 7701(a)(40) and 7871, it may apply for a ruling from the IRS.
Respondents: State, Local or Tribal Government.
Estimated Number of Respondents: 25.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: Other (Once).
Estimated Total Reporting Burden: 25 hours.
OMB Number: 1545–1138.
Regulation ID Number: INTL–955–86 Final (T.D. 8350).
Type of Review: Extension.
Title: Requirements For Investments to Qualify Under Section 936(d)(4) as Investments in Qualified Caribbean Basin Countries.
Description: The collection of information is required by the Internal Revenue Service to verify that an investment qualifies under Internal Revenue Code (IRC) section 936(d)(4). The recordkeepers will be possession corporations, certain financial institutions located in Puerto Rico, and borrowers of funds covered by this regulation.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 50.
Estimated Burden Hours Per Recordkeeper: 30 hours.
Frequency of Response: Other.
Estimated Total Recordkeeping Burden: 1,500 hours.
OMB Number: 1545–1331.
Regulation ID Number: PS–55–89 Final.
Type of Review: Extension.
Title: General Asset Accounts Under the Accelerated Cost Recovery System.
Description: The regulations describe the time and manner of making the election described in Internal Revenue Code (IRC) Section 168(i)(4). Basic information regarding this election is necessary to monitor compliance with the rules in IRC Section 168.
Respondents: Business or other for-profit, Farms.
Estimated Number of Respondents: 1,000.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 250 hours.
OMB Number: 1545–1338.
Regulation ID Number: PS–103–90 Final.
Type of Review: Extension.
Title: Election Out of Subchapter K for Producers of Natural Gas.
Description: Under section 1.761–2(d)(5)(i), gas producers subject to gas balancing agreements on the regulation's effective date are to file Form 3115 and certain additional information to obtain the Commissioner's consent to a change in method of accounting to either of the two new permissible accounting methods in the regulations.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents: 5,000.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: Other (One-time only).
Estimated Total Reporting Burden: 2,500 hours.
OMB Number: 1545–1416.
Form Number: IRS Form 8847 and Schedule A (Form 8847).
Type of Review: Revision.
Title: Credit for Contributions to Selected Community Development Corporations (8847); and Receipt, Designation and Certification of Qualified Contribution to a Selected Community Development Corporation (CDC) (Schedule A).
Description: Form 8847 is used to claim a credit for contributions to a selected community development corporation (CDC). The CDC issued Schedule A (Form 8847), with Part I completed, to the contributor to verify the contributor, to verify the contribution and to show the amount designated as eligible for the credit. The taxpayer certifies the contribution made in Part II of Schedule A.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents/Recordkeepers: 5,000.
Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 8847	Schedule A (form 8847)
Recordkeeping	5 hr., 16 min	3 hr., 17 min.
Learning about the law or the form	18 min	0 min.
Preparing and sending the form to the IRS	23 min	3 min.

Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 45,600 hours.
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New

Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–14813 Filed 6–15–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

June 9, 1995.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue NW., Washington, DC 20220.

Special Request: In order to conduct the focus group interviews described below in a timely manner, the Department of the Treasury is requesting Office of Management and Budget (OMB) review and approval of this information collection by June 23, 1995. To obtain a copy of this survey, please write to the IRS Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.
Project Number: PC:V 95–010–G.
Type of Review: Revision.
Title: Fairness and Integrity Focus Group Interviews:
Description: The purpose of this study is to obtain more specific information about taxpayers' perceptions of the integrity and fairness of IRS employees, and to assess the relationship of these perceptions to compliance attitudes.
Respondents: Individuals or households, Business or other for-profit.
Estimated Number of Respondents: 25.
Estimated Burden Hours Per Respondent: 3 hours.
Frequency of Response: Other.
Estimated Total Reporting Burden: 888 hours.
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–14814 Filed 6–15–95; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Rehabilitation Research and Development Service Scientific Merit Review Board; Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 (Federal Advisory Committee Act) as amended, by section 5(c) of Public Law 94–409 that a meeting of the Rehabilitation Research and Development Service Scientific Merit Review Board will be held at the Vista International Hotel, 1400 M Street, NW, Washington, DC, on July 11 through July 14, 1995.

The session on July 11, 1995, is scheduled to begin at 6:30 p.m. and end at 9:30 p.m. The sessions on July 12, 13, 14, 1995, are scheduled to begin at 8 a.m. and end at 5 p.m. The purpose of the meeting is to review rehabilitation research and development applications for scientific and technical merit and to make recommendations to the Director, Rehabilitation Research and Development Service, regarding their funding.

The meeting will be open to the public up to the seating capacity of the room for the July 11th session for the discussion of administrative matters, the general status of the program, and the administrative details of the review process. On July 12–14, 1995, the meeting is closed during which the Board will be reviewing research and development applications.

This review involves oral comments, discussion of site visits, staff and consultant critiques of proposed research protocols, and similar analytical documents that necessitate the consideration of the personal qualifications, performance and competence of individual research investigators. Disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. Disclosure would also reveal research proposals and research underway which could lead to the loss of these projects to third parties and thereby frustrate future agency research efforts.

Thus, the closing is in accordance with 5 U.S.C. 552b(c)(6), and (9)(B) and the determination of the Secretary of the Department of Veterans Affairs under Sections 10(d) of Pub. L. 92–463 as amended by Section 5(c) of Pub. L. 94–409.

Due to the limited seating capacity of the room, those who plan to attend the open session should write to Ms. Victoria Mongiardo, Program Analyst, Rehabilitation Research and Development Service, Department of Veterans Affairs, 103 South Gay Street, Baltimore, Maryland 21202. Phone (410–962–2563) at least five days before the meeting.

Dated: June 8, 1995.

By direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 95–14729 Filed 6–15–95; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 116
Friday, June 16, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, June 21, 1995.

PLACE: William McChesney Martin, Jr. Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

Note: Until further notice, open meetings will be held in the *Martin Building*, not the Eccles Building.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Publication of a notice requesting comment on Regulation Z (Truth in Lending) rules for consumer credit advertisements.

Discussion Agenda

2. Publication for comment of proposed amendments to the Board's risk-based capital guidelines to incorporate a measure for market risk in foreign exchange and commodity activities and in the trading of debt and equity instruments.

3. Publication for comment of proposed amendments to Regulation T (Credit by Brokers and Dealers) (proposed earlier for public comment; Docket No. R–0772).

4. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: June 14, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–14880 Filed 6–14–95; 10:35 am]

BILLING CODE 6210–01–P–M

FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:00 a.m., Wednesday, June 21, 1995, following a recess at the conclusion of the open meeting.

PLACES: William McChesney Martin, Jr. Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any times carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 14, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–14881 Filed 6–14–95; 10:36 am]

BILLING CODE 6210–01–P–M

U.S. NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

STATUS: Open.

MEETING: Meeting of the U.S. National Commission on Libraries and Information Science (NCLIS).

DATE AND TIME: July 14, 1995—9:00 a.m.–3:30 p.m.; July 15, 1995—8:30 a.m.–3:00 p.m.

PLACE: July 14, 1995—The Carnegie Library of Pittsburgh; July 15, 1995—Hyatt Regency Pittsburgh.

MATTERS TO BE DISCUSSED:

Chairperson's and Executive Director's reports
Organizational status of NCLIS and other federal agencies
Legislative update
Budgetary status of NCLIS, FY 1995
Status of NCLIS activities, FY 1995
Performance measures and budget request for NCLIS, FY 1997
Presentation on library and community connections in Pittsburgh/Allegheny County
Status report on the information infrastructure
Intellectual property and copyright
Discussion of NCLIS activities addressing information infrastructure, copyright, et al.
Presentation on American Association of Law Libraries

To request further information or to make special arrangements for physically challenged persons, contact Barbara Whiteleather (202–606–9200) no later than one week in advance of the meeting.

Dated: June 12, 1995.

Peter R. Young,

NCLIS Executive Director.

[FR Doc. 95–14906 Filed 6–14–95; 1:11 pm]

BILLING CODE 7527–01–M

UNITED STATES POSTAL SERVICE

Notice of Vote To Close Meeting

At its meeting on June 5, 1995, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for July 10, 1995, in Washington, D.C. The members will consider a modification in the funding of the Integrated Mail Handling System (IMHS).

The meeting is expected to be attended by the following persons: Governors Alvarado, Daniels, del Junco, Dyhrkopp, Fineman, Mackie, Rider, and Winters; Postmaster General Runyon, Deputy Postmaster General Coughlin, Secretary to the Board Harris, and General Counsel Elcano.

The Board determined that pursuant to section 552b(c)(9)(B) of Title 5, United States Code, and section 7.3(i) of Title 39, Code of Federal Regulations, this portion of the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)] because it is likely to disclose information, the premature disclosure of which would significantly frustrate proposed procurement actions.

The Board further determined that the public interest does not require that the Board's discussion of the matter be open to the public.

In accordance with section 552(f)(1) of Title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in her opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(9)(B) of Title 5, United States

Code; and section 7.3(i) of Title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secreatry of the Board, David F. Harris, at (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 95–14944 Filed 6–14–95; 8:45 am]

BILLING CODE 7710–12–M

Corrections

Federal Register

Vol. 60, No. 116

Friday, June 16, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Correction

In notice document 95–13993 appearing on page 30319 in the issue of Thursday, June 8, 1995, the heading should read as set forth above.

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

Correction

In notice document 95–13996 appearing on page 30318 in the issue of Thursday, June 8, 1995, in the first paragraph, in the third line, "Games" should read "Ganes".

BILLING CODE 1505–01–D

federal register

Friday
June 16, 1995

Part II

Department of Agriculture

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority; Proposed Rule

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Proposed rulemaking.

SUMMARY: The Department of Agriculture proposes to revise the delegations of authority from the Secretary and general officers due to a reorganization.

DATES: Written comments must be received by July 17, 1995.

ADDRESSES: Comments may be mailed to Robert L. Siegler, Deputy Assistant General Counsel, Research and Operations Division, Office of the General Counsel, Department of Agriculture, Room 2321–S, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Robert L. Siegler, Deputy Assistant General Counsel, Research and Operations Division, Office of the General Counsel, Department of Agriculture, Room 2321–S, Washington, DC 20250, telephone 202–720–6035.

SUPPLEMENTARY INFORMATION: On October 13, 1994, the President signed the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, Pub. L. No. 103–354. Title II of the Act, the Department of Agriculture Reorganization Act of 1994, permits the Secretary to reorganize the Department of Agriculture. The Act authorized the establishment of subcabinet positions and the restructuring of agencies and offices of the Department of Agriculture. On October 20, 1994, the Secretary signed Secretary's Memorandum No. 1010–1. The following subcabinet positions were established:

(A) *Under Secretary of Agriculture for Farm and Foreign Agricultural Services.* The Under Secretary of Agriculture for Farm and Foreign Agricultural Services supervises all activities of the Consolidated Farm Service Agency including the Federal Crop Insurance Corporation, and the Foreign Agricultural Service, and performs such other functions related to farm and foreign agricultural services as are assigned.

(B) *Under Secretary of Agriculture for Rural Economic and Community Development.* The Under Secretary of Agriculture for Rural Economic and Community Development supervises all activities of the Rural Utilities Service, the Rural Housing and Community Development Service, and the Rural Business and Cooperative Development Service, and performs such other functions related to rural economic and community development as are assigned.

(C) *Under Secretary of Agriculture for Food, Nutrition, and Consumer Services.* The Under Secretary of Agriculture for Food, Nutrition, and Consumer Services supervises all activities of the Food and Consumer Service, coordinates functions related to nutrition policy and education, and performs such other functions related to food, nutrition, and consumer services as are assigned.

(D) *Under Secretary of Agriculture for Natural Resources and Environment.* The Under Secretary of Agriculture for Natural Resources and Environment supervises all activities of the Forest Service and the Natural Resources Conservation Service, coordinates functions related to agricultural environmental quality, and performs such other functions related to natural resources and environment as are assigned.

(E) *Under Secretary of Agriculture for Research, Education, and Economics.* The Under Secretary of Agriculture for Research, Education, and Economics supervises all activities of the Agricultural Research Service, the Cooperative State Research, Education, and Extension Service, the Economic Research Service, and the National Agricultural Statistics Service, and performs such other functions related to research, education, and economics as are assigned.

(F) *Under Secretary of Agriculture for Food Safety.* The position of Under Secretary of Agriculture for Food Safety is established by the Act. The Under Secretary supervises all activities of the Food Safety and Inspection Service, as well as functions under the Egg Products Inspection Act formerly performed by the Agricultural Marketing Service, and the *salmonella enteritidis* reduction program and pathogen reduction activities formerly performed by the Animal and Plant Health Inspection Service, and performs such other functions related to food safety as are assigned.

(G) *Assistant Secretary of Agriculture for Marketing and Regulatory Programs.* The Assistant Secretary of Agriculture for Marketing and Regulatory Programs supervises those activities of the Agricultural Marketing Service and the Animal and Plant Health Inspection Service which do not relate primarily to food safety, as well as all activities of the Grain Inspection, Packers and Stockyards Administration, and performs such other functions related to marketing and regulatory programs as are assigned.

(H) *Assistant Secretary of Agriculture for Congressional Relations.* The Assistant Secretary of Agriculture for Congressional Relations supervises all activities of USDA and its agencies and offices related to relationships with the Congress and with its committees and members, as well as functions related to intergovernmental relations, and performs such other functions as are assigned.

(I) *Assistant Secretary of Agriculture for Administration.* The Assistant Secretary of Agriculture for Administration supervises all activities of the Office of Civil Rights Enforcement, the Office of Information Resources Management, the Office of Operations, and the Office of Personnel, and provides administrative management for the Office of Administrative Law Judges, the Board of Contract Appeals, and the Judicial Officer, and performs such other functions related to administrative management as are assigned.

(J) *Chief Economist.* The Chief Economist supervises all activities of the Office of Risk Assessment and Cost-Benefit Analysis and the World Agricultural Outlook Board, and is assigned responsibility for advising the Secretary with respect to the economic effects of all proposed major programs and activities of USDA and for preparing economic analyses of USDA's principal initiatives.

The following agencies and offices were established within USDA:

(A) *Consolidated Farm Service Agency.* The Consolidated Farm Service Agency is headed by an Administrator who reports to the Under Secretary of Agriculture for Farm and Foreign Agricultural Services. The Agency is assigned responsibility for agricultural price and income support programs, production adjustment programs, and the conservation reserve and agricultural conservation programs formerly performed by the Agricultural Stabilization and Conservation Service, supervision of the Federal Crop Insurance Corporation, farm-related agricultural credit programs formerly performed by the Farmers Home Administration, and such other programs related to farm services as are assigned.

(B) *Rural Utilities Service.* The Rural Utilities Service is headed by an Administrator who reports to the Under Secretary of Agriculture for Rural Economic and Community Development. The Service is assigned responsibility for electric and telephone loan programs formerly performed by the Rural Electrification Administration, water and waste facility loans and grants formerly assigned to the Rural Development Administration, and such other functions related to rural utilities services as are assigned.

(C) *Rural Housing and Community Development Service.* The Rural Housing and Community Development Service is headed by an Administrator who reports to the Under Secretary of Agriculture for Rural Economic and Community Development. The Service is assigned responsibility for housing loan programs formerly performed by the Farmers Home Administration, community facilities loan programs formerly performed by the Rural Development Administration, and such other programs related to rural housing and community development as are assigned.

(D) *Rural Business and Cooperative Development Service.* The Rural Business and Cooperative Development Service is headed by an Administrator who reports to the Under Secretary of Agriculture for Rural Economic and Community Development. The Service is assigned responsibility for business and industry loan programs and assistance programs for cooperatives formerly performed by the Rural Development Administration, and such other functions related to rural business and cooperative development as are assigned.

(E) *Food and Consumer Service.* The Food and Consumer Service is headed by an Administrator who reports to the Under Secretary of Agriculture for Food, Nutrition, and Consumer Services. The Service is assigned responsibility for all food stamp, school lunch, child nutrition, and special feeding programs formerly performed by the Food and Nutrition Service, and for such other functions related to food and consumer services as are assigned.

(F) *Natural Resources Conservation Service.* The Natural Resources Conservation Service is headed by a Chief who reports to the Under Secretary of Agriculture for Natural Resources and Environment. The Service is assigned responsibility for all soil and water conservation programs formerly performed by the Soil Conservation Service, the Wetlands Reserve, Water Bank, Colorado River Basin Salinity Control, and Forestry Incentives programs formerly performed by the Agricultural Stabilization and Conservation Service, the Farms for the Future Act program formerly performed by the Farmers Home Administration, and such other functions related to natural resources conservation as are assigned.

(G) *Cooperative State Research, Education, and Extension Service.* The Cooperative State Research, Education, and Extension Service is established by the Act. It is headed by an Administrator who reports to the Under Secretary of Agriculture for Research, Education, and Economics. The Service is assigned responsibility for all cooperative State and other research programs formerly performed by the Cooperative State Research Service, all cooperative education and extension programs formerly performed by the Extension Service, and such other functions related to cooperative research, education, and extension as are assigned.

(H) *Grain Inspection, Packers and Stockyards Administration.* The Grain Inspection, Packers and Stockyards Administration is headed by an Administrator who reports to the Assistant Secretary of Agriculture for Marketing and Regulatory Programs. The Administration is assigned responsibility for all programs and activities formerly performed by the Federal Grain Inspection Service and by the Packers and Stockyards Administration, and such other functions related to regulatory programs as are assigned.

(I) *National Appeals Division.* The National Appeals Division is headed by a Director who reports to the Secretary. The Division is assigned responsibility for all administrative appeals formerly performed by the National Appeals Division of the Agricultural Stabilization and Conservation Service and by the National Appeals Staff of the Farmers Home Administration, appeals arising from decisions of the Federal Crop Insurance Corporation and the Soil Conservation Service, appeals arising from decisions of the successors to these agencies established by this Memorandum, and such other administrative appeals arising from decisions of agencies and offices of USDA as are assigned.

(J) *Office of Risk Assessment and Cost-Benefit Analysis.* The Office of Risk Assessment and Cost-Benefit Analysis is headed by a Director who reports to the Chief Economist. The Office is assigned responsibility for assessing the risks to human health, human safety, or the environment, and for preparing cost-benefit analyses, with respect to proposed major regulations, and for publishing such assessments and analyses in the **Federal Register**. The Office also has responsibility for such other analytical functions as are assigned.

The following subcabinet positions were abolished:

(A) Under Secretary of Agriculture for International Affairs and Commodity Programs.

(B) Under Secretary of Agriculture for Small Community and Rural Development.

(C) Assistant Secretary of Agriculture for Economics.

(D) Assistant Secretary of Agriculture for Food and Consumer Services.

(E) Assistant Secretary of Agriculture for Marketing and Inspection Services.

(F) Assistant Secretary of Agriculture for Natural Resources and Environment.

(G) Assistant Secretary of Agriculture for Science and Education.

The following agencies and offices within USDA were abolished:

(A) Agricultural Stabilization and Conservation Service.

(B) Farmers Home Administration.

(C) Rural Development Administration.

(D) Rural Electrification Administration.

(E) Food and Nutrition Service.

(F) Soil Conservation Service.

(G) Cooperative State Research Service.

(H) Extension Service.

(I) National Agricultural Library.

(J) Federal Grain Inspection Service.

(K) Packers and Stockyards Administration.

(L) Office of the Consumer Advisor.

In addition, the following agencies are abolished:

(A) Office of International Cooperation and Development.

(B) Office of Energy.

(C) Economic Analysis Staff.

(D) Economics Management Staff.

(E) Agricultural Cooperative Service.

In connection with this reorganization, the Secretary on October 20, 1994, designated a major agency of the Department, in keeping with the reorganization legislation, as the "Consolidated Farm Service Agency." That agency is charged with responsibility for all agricultural price and income support programs, disaster and crop insurance programs, and farm program lending activities. Upon reflection, it is proposed herein that the name be changed to "Farm Service Agency," for purposes of simplicity and in order better to reflect that agency's mission.

Pursuant to Pub. L. 101–576, the Chief Financial Officers Act of 1990 (CFO Act), there is required to be in the Department of Agriculture the position of Chief Financial Officer (CFO). This document makes delegations to the CFO. It also abolishes the Office of Finance and Management. The CFO Act provides that the CFO, in addition to other specified duties, shall oversee all

financial management activities relating to the programs of the Department; develop and maintain an integrated Department accounting and financial management system; direct, manage, and provide policy guidance and oversight of Department financial management personnel, activities, and operations; monitor the financial execution of the budget of the Department in relation to projected and actual expenditures; review the financial management budgets of the component agencies, and provide recommendations to the Office of Budget and Program Analysis; provide advice and make recommendations to the Secretary on financial management and other program matters, including budget levels for financial management budgets; and review, on a biennial basis, the fees, royalties, rents, and other charges imposed by the Department for services and things of value it provides, and make recommendations on revising those charges to reflect costs incurred in providing those services and things of value.

Section 212(c) of the Act provides that the Secretary shall, to the extent practicable give advance public notice of the proposed reorganization of the Department or the delegation of any major functions to any agency or officer. Accordingly, it is proposed to revise 7 CFR Part 2 as set forth below.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Subpart A—General

Sec.
2.1 Establishment of the Department.
2.2 Authority of the Secretary to prescribe regulations.
2.3 Authority of the Secretary to delegate authority.
2.4 General officers.
2.5 Order in which officers of the Department shall act as Secretary.

Subpart B—General Delegations of Authority by the Secretary of Agriculture

2.7 Authority to supervise and direct.
2.8 Delegations of authority to Agency Heads to order that the United States flag be flown at half-staff.
2.9 Additional delegations.
2.10 Limitations.
2.11 New principles and periodic reviews.
2.12 Secretary and general officers not precluded from exercising delegated powers.
2.13 Status of prior delegations.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretaries and Assistant Secretaries

2.15 Deputy Secretary.
2.16 Under Secretary for Farm and Foreign Agricultural Services.
2.17 Under Secretary for Rural Economic and Community Development.
2.18 Under Secretary for Food Safety.
2.19 Under Secretary for Food, Nutrition, and Consumer Services.
2.20 Under Secretary for Natural Resources and Environment.
2.21 Under Secretary for Research, Education, and Economics.
2.22 Assistant Secretary for Marketing and Regulatory Programs.
2.23 Assistant Secretary for Congressional Relations.
2.24 Assistant Secretary for Administration.

Subpart D—Delegations of Authority to Other General Officers and Agency Heads

2.26 Director, Office of the Executive Secretariat.
2.27 Office of Administrative Law Judges.
2.28 Chief Financial Officer.
2.29 Chief Economist.
2.30 Director, Office of Budget and Program Analysis.
2.31 General Counsel.
2.32 Alternative Agricultural Research and Commercialization Board.
2.33 Inspector General.
2.34 Director, National Appeals Division.
2.35 Judicial Officer.
2.36 Director, Office of Communications.

Subpart E—Delegations of Authority by the Deputy Secretary

2.37 Director, Office of Small and Disadvantaged Business Utilization.

Subpart F—Delegations of Authority by the Under Secretary for Farm and Foreign Agricultural Services

2.40 Deputy Under Secretary for Farm and Foreign Agricultural Services.
2.42 Administrator, Farm Service Agency.
2.43 Administrator, Foreign Agricultural Service.

Subpart G—Delegations of Authority by the Under Secretary for Rural Economic and Community Development

2.45 Deputy Under Secretary for Rural Economic and Community Development.
2.47 Administrator, Rural Utilities Service.
2.48 Administrator, Rural Business and Cooperative Development Service.
2.49 Administrator, Rural Housing and Community Development Service.

Subpart H—Delegations of Authority by the Under Secretary for Food Safety

2.51 Deputy Under Secretary for Food Safety.
2.53 Administrator, Food Safety and Inspection Service.

Subpart I—Delegations of Authority by the Under Secretary for Food, Nutrition, and Consumer Services

2.55 Deputy Under Secretary for Food, Nutrition, and Consumer Services.
2.57 Administrator, Food and Consumer Service.

Subpart J—Delegations of Authority by the Under Secretary for Natural Resources and Environment

2.59 Deputy Under Secretaries for Natural Resources and Environment.
2.60 Chief, Forest Service.
2.61 Chief, Natural Resources Conservation Service.

Subpart K—Delegations of Authority by the Under Secretary for Research, Education, and Economics

2.63 Deputy Under Secretary for Research, Education, and Economics.
2.65 Administrator, Agricultural Research Service.
2.66 Administrator, Cooperative State Research, Education, and Extension Service.
2.67 Administrator, Economic Research Service.
2.68 Administrator, National Agricultural Statistics Service.

Subpart L—Delegations of Authority by the Chief Economist

2.70 Deputy Chief Economist.
2.71 Director, Office of Risk Assessment and Cost-Benefit Analysis.
2.72 Chairman, World Agricultural Outlook Board.

Subpart M—Delegations of Authority by the Chief Financial Officer

2.75 Deputy Chief Financial Officer.

Subpart N—Delegations of Authority by the Assistant Secretary for Marketing and Regulatory Programs

2.77 Deputy Assistant Secretary for Marketing and Regulatory Programs.
2.79 Administrator, Agricultural Marketing Service.
2.80 Administrator, Animal and Plant Health Inspection Service.
2.81 Administrator, Grain Inspection, Packers and Stockyards Administration.

Subpart O—Delegations of Authority by the Assistant Secretary for Congressional Relations

2.83 Deputy Assistant Secretary for Congressional Relations.
2.85 Director, Office of Congressional and Intergovernmental Relations.

Subpart P—Delegations of Authority by the Assistant Secretary for Administration

2.87 Deputy Assistant Secretary for Administration.
2.89 Director, Office of Civil Rights Enforcement.
2.90 Director, Office of Information Resources Management.
2.91 Director, Office of Operations.
2.92 Director, Office of Personnel.

Authority: Sec. 212(a), Pub. L. 103–353, 108 Stat. 3210 (7 U.S.C. 6912(a)(1)); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953, 3 CFR, 1949–1953 Comp., p. 1024.

Subpart A—General

§ 2.1 Establishment of the Department.

The Department of Agriculture was created by the Act of May 15, 1862, and by the Act of February 9, 1889, it was made an executive department in the Federal Government under the supervision and control of the Secretary of Agriculture (7 U.S.C. 2201, 2202, 2204).

§ 2.2 Authority of the Secretary to prescribe regulations.

The general authority of the Secretary to prescribe regulations governing the work of the Department is based on 5 U.S.C. 301 which provides that the head of an Executive department may prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use and preservation of its records, papers, and property.

§ 2.3 Authority of the Secretary to delegate authority.

(a) The general authority of the Secretary to make delegations of his authority is based on:

(i) Section 4(a) of Reorganization Plan No. 2 of 1953 which provides that the Secretary of Agriculture may from time to time make such provisions as he shall deem appropriate authorizing the performance by any other officer, or by an agency or employee, of the Department of Agriculture of any function of the Secretary, including any function transferred to the Secretary by the provisions of this reorganization plan;

and

(ii) Section 212(a)(1) of the Department of Agriculture Reorganization Act of 1994, Pub. L. 103–354, 7 U.S.C. 6912(a)(1), which provides that the Secretary may delegate to any agency, office, officer, or employee of the Department the authority to perform any function transferred to the Secretary under section 211(a) or any other function vested in the Secretary as of the date of the enactment of the Act.

§ 2.4 General officers.

The work of the Department is under the supervision and control of the Secretary who is assisted by the following general officers: the Deputy Secretary; the Under Secretary for Farm and Foreign Agricultural Services; the Under Secretary for Rural Economic and Community Development; the Under Secretary for Food Safety; the Under Secretary for Food, Nutrition, and Consumer Services; the Under Secretary for Natural Resources and Environment; the Under Secretary for Research, Education, and Economics; the Assistant Secretary for Marketing and Regulatory Programs; the Assistant Secretary for Congressional Relations; the Assistant Secretary for Administration; the General Counsel; the Inspector General; the Chief Financial Officer; the Judicial Officer; the Director, Office of Budget and Program Analysis; the Chief Economist; the Director, National Appeals Division; the Director of Communications; and the Director, Office of Small and Disadvantaged Business Utilization.

§ 2.5 Order in which officers of the Department shall act as Secretary.

(a) Pursuant to Executive Order 11957, 3 CFR, 1977 Comp., p. 79, in the case of the absence, sickness, resignation, or death of both the Secretary and the Deputy Secretary, the officials designated in paragraphs (a)(1) through (a)(10) shall act as Secretary in the order in which they are listed. Each official shall act only in the absence, sickness, resignation, or death of the immediately preceding official:

(1) The Under Secretary for Farm and Foreign Agricultural Services.

(2) The Under Secretary for Rural Economic and Community Development.

(3) The Under Secretary for Food Safety.

(4) The Under Secretary for Food, Nutrition, and Consumer Services.

(5) The Under Secretary for Natural Resources and Environment.

(6) The Under Secretary for Research, Education, and Economics.

(7) The General Counsel.

(8) The Assistant Secretary for Marketing and Regulatory Programs.

(9) The Assistant Secretary for Administration.

(10) The Assistant Secretary for Congressional Relations.

Subpart B—General Delegations of Authority by the Secretary of Agriculture

§ 2.7 Authority to supervise and direct.

Unless specifically reserved, or otherwise delegated, the delegations of authority to each general officer of the Department and each agency head contained in this part includes the authority to direct and supervise the employees engaged in the conduct of activities under such official's jurisdiction, and the authority to take any action, execute any document, authorize any expenditure, promulgate any rule, regulation, order, or instruction required by or authorized by law and deemed by the general officer or agency head to be necessary and proper to the discharge of his or her responsibilities. This authority will be exercised subject to applicable administrative rules and regulations. Unless otherwise provided, a general officer or agency head may, subject to his or her continuing responsibility for the proper discharge of delegations made to him, in this part, delegate and provide for the redelegation of his or her authority to appropriate officers and employees. Subject to the general supervision of the Secretary, agency heads who are delegated authority from a general officer, in this part or elsewhere, report to and are under the supervision of that general officer.

§ 2.8 Delegations of authority to agency heads to order that the United States flag be flown at half-staff.

Pursuant to section 5 of Presidential Proclamation 3044, 3 CFR, 1954–1958 Comp., p. 4, each general officer and agency head is delegated authority to order that the United States flag shall be flown at half-staff on buildings and grounds under his or her jurisdiction or control. This authority shall be exercised in accordance with directives promulgated by the Director, Office of Operations.

§ 2.9 Additional delegations.

The authority granted to a general officer may be exercised in the discharge of any additional functions which the Secretary may assign.

§ 2.10 Limitations.

The delegations made in this part shall not be construed to confer upon any general officer or agency head the authority of the Secretary to prescribe regulations which by law require approval of the President.

§ 2.11 New principles and periodic reviews.

In the exercise of authority delegated by the Secretary, the application of new principles of major importance or a departure from principles established by the Secretary should be brought to the attention of the Secretary. General officers are responsible for assuring that periodic reviews are conducted of the activities of the agencies assigned to their direction and supervision, as required by 5 U.S.C. 305.

§ 2.12 Secretary and general officers not precluded from exercising delegated powers.

No delegation of authority by the Secretary or a general officer contained in this part shall preclude the Secretary or general officer from exercising any of the authority so delegated.

§ 2.13 Status of prior delegations.

Nothing in this part shall affect the bylaws of the Commodity Credit

Corporation, the Federal Crop Insurance Corporation, or the Rural Telephone Bank. All delegations previously made which are inconsistent with delegations made in this part are superseded; however, any regulation, order, authorization, expenditure, or other instrument, heretofore issued or made pursuant to any delegation of authority shall continue in full force and effect unless and until withdrawn or superseded pursuant to authority granted in this part.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretaries and Assistant Secretaries

§ 2.15 Deputy Secretary.

The following delegation of authority is made by the Secretary of Agriculture to the Deputy Secretary: Perform all of the duties and exercise all of the powers and functions which are now, or which may hereafter be, vested in the Secretary of Agriculture. This delegation is subject to the limitation in § 2.10.

§ 2.16 Under Secretary for Farm and Foreign Agricultural Services.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Under Secretary for Farm and Foreign Agricultural Services:

(1) *Related to consolidated farm service.* (i) Formulate policies and administer programs authorized by the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1282, *et seq.*).

(ii) Formulate policies and administer programs authorized by the Agricultural Act of 1949, as amended (7 U.S.C. 1441, *et seq.*).

(iii) Coordinate and prevent duplication of aerial photographic work of the Department, including:

(A) Clearing photography projects;

(B) Assigning symbols for new aerial photography, maintaining symbol records, and furnishing symbol books;

(C) Recording departmental aerial photography flow and coordinating the issuance of aerial photography status maps of latest coverage;

(D) Promoting interchange of technical information and techniques to develop lower costs and better quality;

(E) Representing the Department on committees, task forces, work groups, and other similar groups concerned with aerial photography acquisition and reproduction, and serving as liaison with other governmental agencies on aerial photography but excluding mapping;

(F) Providing a Chairperson for the Photography Sales Committee of the Department;

(G) Coordinating development, preparation, and issuance of specifications for aerial photography for the Department;

(H) Coordinating and performing procurement, inspection, and application of specifications for USDA aerial photography;

(I) Providing for liaison with EROS Data Center to support USDA programs and research with satellite imagery reproductions; and

(J) Maintaining library and files of USDA aerial film and retrieving and supplying reproductions on request.

(iv) Administer the Agricultural Conservation Program under title X of the Agricultural Act of 1970, as amended (16 U.S.C. 1501, *et seq.*), and under the Soil Conservation and Domestic Allotment Act, as amended (16 U.S.C. 590g, *et seq.*).

(v) Administer the Emergency Conservation Program under the Agricultural Credit Act of 1978, as amended (16 U.S.C. 2201, *et seq.*).

(vi) Conduct fiscal, accounting and claims functions relating to Commodity Credit Corporation (CCC) programs for which the Under Secretary for Farm and Foreign Agricultural Services has been delegated authority under paragraph (a)(3) of this section and, in conjunction with other agencies of the U.S. Government, develop and formulate agreements to reschedule amounts due from foreign countries.

(vii) Conduct assigned activities under the Strategic and Critical Materials Stockpiling Act, as amended (50 U.S.C. 98, *et seq.*).

(viii) Supervise and direct Farm Service Agency State and county offices and delegate functions to be performed by Farm Service Agency State and county committees.

(ix) Administer the dairy indemnity program under the Act of August 13, 1968, as amended (7 U.S.C. 450j, *et seq.*).

(x) Administer procurement, processing, handling, distribution, disposition, transportation, payment, and related services with respect to surplus removal and supply operations which are carried out under section 210 of the Agricultural Act of 1956 (7 U.S.C. 1859), the Act of August 19, 1958, as amended (7 U.S.C. 1431 note), and section 709 of the Food and Agricultural Act of 1965, as amended (7 U.S.C. 1446a–1), except as delegated in paragraph (a)(3) of this section and to the Under Secretary for Food, Nutrition, and Consumer Services in § 2.19, and assist the Under Secretary for Food, Nutrition, and Consumer Services and the Assistant Secretary for Marketing and Regulatory Programs in the procurement, handling, payment, and related services under section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c), the Act of June 28, 1937, as amended (7 U.S.C. 713c), the National School Lunch Act, as amended (42 U.S.C. 1751, *et seq.*), section 8 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1777), section 311 of the Older Americans Act of 1965, as amended (42 U.S.C. 3030a), section 4(a) of the Agriculture and Consumer Protection Act of 1973, as amended (7 U.S.C. 612c note), and section 1114 of the Agriculture and Food Act of 1981 (7 U.S.C. 1431e).

(xi) Administer Wool and Mohair Programs under the National Wool Act of 1954, as amended (7 U.S.C. 1781, *et seq.*), and, in accordance with section 708 of that Act (7 U.S.C. 1787), conduct referenda, withhold funds (for advertising and promotion) from payments made to producers under section 704 of that Act (7 U.S.C. 1783), and transfer such funds to the person or agency designated by the Assistant Secretary for Marketing and Regulatory Programs.

(xii) Administer the Agricultural Foreign Investment Disclosure Act of 1978 (7 U.S.C. 3501, *et seq.*), except those functions delegated in § 2.21(a)(8)(xi).

(xiii) Administer energy management activities as assigned.

(xiv) Conduct producer referenda of commodity promotion programs under the Beef Research and Information Act, as amended (7 U.S.C. 2901, *et seq.*), and the Agricultural Promotion Programs Act of 1990, as amended (7 U.S.C. 6001, *et seq.*).

(xv) Conduct field operations of diversion programs for fresh fruits and vegetables under section 32 of the Act of August 29, 1935.

(xvi) Administer the U.S. Warehouse Act, as amended (7 U.S.C. 241–273), and perform compliance examinations for Farm Service Agency programs.

(xvii) Administer the provisions of the Soil Conservation and Domestic Allotment Act relating to assignment of payments (16 U.S.C. 590h(g)).

(xviii) Formulate and carry out the Conservation Reserve Program under the Food Security Act of 1985, as amended (16 U.S.C. 1231, *et seq.*).

(xix) Carry out functions relating to highly erodible land and wetland conservation under sections 1211–1213 and 1221–1223 of the Food Security Act of 1985, as amended (16 U.S.C. 3811–3813 and 3821–3823).

(xx) Administer the Integrated Farm Management Program under the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 5822).

(xxi) Administer the provisions of section 326 of the Food and Agricultural Act of 1962, as amended (7 U.S.C. 1339c), as they relate to any Farm Service Agency administered program.

(xxii) Conduct an Options Pilot Program pursuant to sections 1151–1156 of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 1421 note).

(xxiii) Formulate and administer regulations regarding program ineligibility resulting from convictions under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance, as required under section 1764 of the Food Security Act of 1985 (21 U.S.C. 881a).

(2) *Related to farm credit.* (i) Administer the Consolidated Farm and Rural Development Act (7 U.S.C. 1921, *et seq.*), except for the authority contained in the following sections:

(A) Section 303(a)(2) and (3) (7 U.S.C. 1923(a)(2) and (3)), relating to real estate loans for recreation and non-farm purposes;

(B) The authority in section 304(b) (7 U.S.C. 1924(b)), relating to small business enterprise loans;

(C) Section 306 (7 U.S.C. 1926), relating to all programs in that section;

(D) Section 306A (7 U.S.C. 1926a) and section 306B (7 U.S.C. 1926b), relating to the emergency community water assistance grant programs;

(E) Section 306C (7 U.S.C. 1926c) to administer the water and waste facility loans and grants to alleviate health risks;

(F) Sections 309 (7 U.S.C. 1929) and 309A (7 U.S.C. 1929a), regarding assets and programs related to rural development;

(G) Section 310A (7 U.S.C. 1931), relating to watershed and resource conservation and development loans;

(H) Section 310B (7 U.S.C. 1932), regarding rural industrialization assistance;

(I) Section 312(b) (7 U.S.C. 1942(b)), relating to small business enterprises;

(J) Section 342 (7 U.S.C. 1013a);

(K) Section 364 (7 U.S.C. 2006f), section 365 (7 U.S.C. 2008), section 366 (7 U.S.C. 2008a), section 367 (7 U.S.C. 2008b), and section 368 (7 U.S.C. 2008c), regarding assets and programs related to rural development; and

(L) Administrative provisions of subtitle D of the Consolidated Farm and Rural Development Act related to Rural Utilities Service, Rural Business and Cooperative Development Service, and Rural Housing and Community Development Service activities.

(ii) Collect, service, and liquidate loans made or insured by the Farm Service Agency, or its predecessor agencies.

(iii) Administer the Rural Rehabilitation Corporation Trust Liquidation Act (40 U.S.C. 440, *et seq.*), and trust, liquidation, and other agreements entered into pursuant thereto.

(iv) Make grants and enter into contracts and other agreements to provide outreach and technical assistance to socially disadvantaged farmers and ranchers under 7 U.S.C. 2279.

(v) Administer Farmers Home Administration or any successor agency assets conveyed in trust under the Participation Sales Act of 1966 (12 U.S.C. 1717).

(vi) Administer the Emergency Loan and Guarantee Programs under sections 232, 234, 237, and 253 of the Disaster Relief Act of 1970 (Pub. L. 91–606), the Disaster Relief Act of 1969 (Pub. L. 91–79), Pub. L. 92–385, approved August 16, 1972, and the Emergency Livestock Credit Act of 1974 (Pub. L. 93–357), as amended.

(vii) Administer loans to homestead or desertland entrymen and purchasers of land in reclamation projects or to an entryman under the desertland law (7 U.S.C. 1006a and 1006b).

(viii) Administer the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711, *et seq.*), and joint regulations issued pursuant thereto by the Attorney General and the Comptroller General (4 CFR chapter II), with respect to claims of the Farm Service Agency.

(ix) Service, collect, settle, and liquidate:

(A) Deferred land purchase obligations of individuals under the Wheeler-Case Act of August 11, 1939, as amended (16 U.S.C. 590y), and under the item, "Water Conservation and Utilization projects" in the Department of the Interior Appropriation Act, 1940 (53 Stat. 719), as amended;

(B) Puerto Rican Hurricane Relief loans under the Act of July 11, 1956 (70 Stat. 525); and

(C) Loans made in conformance with section 4 of the Southeast Hurricane Disaster Relief Act of 1965 (79 Stat. 1301).

(x) Administer loans to Indian tribes and tribal corporations (25 U.S.C. 488–492).

(xi) Administer the State Agricultural Loan Mediation Program under title 5 of the Agricultural Credit Act of 1987 (7 U.S.C. 5101, *et seq.*)

(xii) Administer financial assistance programs relating to Economic Opportunity Loans to Cooperatives under part A of title III and part D of title I and the necessarily related functions in title VI of the Economic Opportunity Act of 1964, as amended (42 U.S.C. 2763–2768, 2841–2855, 2942, 2943(b), 2961), delegated by the Director of the Office of Economic Opportunity to the Secretary of Agriculture by documents dated October 23, 1964 (29 FR 14764), and June 17, 1968 (33 FR 9850), respectively.

(xiii) Exercise all authority and discretion vested in the Secretary by section 331(c) of the Consolidated Farm and Rural Development Act, as amended by section 2 of the Farmers Home Administration Improvement Act of 1994, Pub. L. No. 103–248 (7 U.S.C. 1981(c)), including the following:

(A) Determine, with the concurrence of the General Counsel, which actions are to be referred to the Department of Justice for the conduct of litigation, and refer such actions to the Department of Justice through the General Counsel;

(B) Determine, with the concurrence of the General Counsel, which actions are to be referred to the General Counsel, for the conduct of litigation and refer such actions; and

(C) Enter into contracts with private sector attorneys for the conduct of litigation, with the concurrence of the General Counsel, after determining that the attorneys will provide competent and cost effective representation for the Farm Service Agency.

(3) *Related to foreign agriculture.* (i) Coordinate the carrying out by Department agencies of their functions involving foreign agricultural policies and programs and their operations and activities in foreign areas. Act as liaison on these matters and functions relating to foreign agriculture between the Department of Agriculture and the Department of State, the United States Trade Representative, the Trade Policy Committee, the Agency for International Development, and other departments, agencies, and committees of the U.S. Government, foreign governments, the Organization for Economic Cooperation and Development, the European Union, the Food and Agriculture Organization of the United Nations, the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Organization of American States, and other public and private U.S. and international organizations, and the contracting parties to the General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO).

(ii) Administer Departmental programs concerned with development of foreign markets for agricultural products of the United States except functions relating to export marketing

operations under section 32 of the Act of August 23, 1935, as amended (7 U.S.C. 612c), delegated to the Assistant Secretary for Marketing and Regulatory Programs, and utilization research delegated to the Under Secretary for Research, Education, and Economics.

(iii) Conduct studies of worldwide production, trade, marketing, prices, consumption, and other factors affecting exports and imports of U.S. agricultural commodities; obtain information on methods used by other countries to move farm commodities in world trade on a competitive basis for use in the development of programs of this Department; provide information to domestic producers, the agricultural trade, the public and other interests; and promote normal commercial markets abroad. This delegation excludes basic and long-range analyses of world conditions and developments affecting supply, demand, and trade in farm products and general economic analyses of the international financial and monetary aspects of agricultural affairs as assigned to the Under Secretary for Research, Education, and Economics.

(iv) Conduct functions of the Department relating to GATT, WTO, the Trade Expansion Act of 1962 (19 U.S.C. 1801, *et seq.*), the Trade Act of 1974 (19 U.S.C. 2101, *et seq.*), the Trade Agreements Act of 1979 (19 U.S.C. 2501, *et seq.*), the Omnibus Trade and Competition Act of 1988 (19 U.S.C. 2901, *et seq.*), the provisions of subtitle B of title III of the North American Free Trade Agreement Implementation Act, and other legislation affecting international agricultural trade including the programs designed to reduce foreign tariffs and other trade barriers.

(v) Maintain a worldwide agricultural intelligence and reporting system, including provision for foreign agricultural representation abroad to protect and promote U.S. agricultural interests, and to acquire information on demand, competition, marketing, and distribution of U.S. agricultural commodities abroad pursuant to title VI of the Agricultural Act of 1954, as amended (7 U.S.C. 1761–1768).

(vi) Conduct Department activities to carry out the provisions of the International Coffee Agreement Act of 1968 (19 U.S.C. 1356f).

(vii) Administer functions of the Department relating to import controls, except those functions reserved to the Secretary in paragraph (b) of this section and those relating to section 8e of the Agricultural Act of 1938 (7 U.S.C. 608e-1), as assigned to the Assistant Secretary for Marketing and Regulatory Programs. These include:

(A) Functions under section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624);

(B) General note 15(c) to the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202);

(C) Requests for emergency relief from duty-free imports of perishable products filed with the Department of Agriculture under section 213(f) of the Caribbean Basin Recovery Act of 1983 (19 U.S.C. 2703(f));

(D) Section 404 of the Trade and Tariff Act of 1984 (19 U.S.C. 2112 note);

(E) Section 204(e) of the Andean Trade Preference Act (19 U.S.C. 3203(e));

(F) Functions under sections 309 and 316 of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3358 and 3381);

(G) Section 301(a) of the United States-Canada Free Trade Agreement Implementation Act (19 U.S.C. 2112 note); and

(H) Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

(viii) Represent the Department on the Interdepartmental Committee for Export Control and to conduct departmental activities to carry out the provisions of the Export Administration Act of 1969, as amended (50 U.S.C. App. 2401, *et seq.*), except as reserved to the Secretary under paragraph (b)(2) of this section.

(ix) Exercise the Department's responsibilities in connection with international negotiations of the International Wheat Agreement and in the administration of such Agreement.

(x) Plan and carry out programs and activities under the foreign market promotion authority of the Wheat Research and Promotion Act (7 U.S.C. 1292 note); the Cotton Research and Promotion Act (7 U.S.C. 2101–2118); section 610 of the Agricultural Act of 1970 (7 U.S.C. 2119); the Potato Research and Promotion Act (7 U.S.C. 2611–2627); the Egg Research and Consumer Information Act of 1974 (7 U.S.C. 2701–2718); the National Wool Act of 1954, as amended (7 U.S.C. 1781–1787); the Beef Research and Information Act, as amended (7 U.S.C. 2901–2918); the Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3401–3417); subtitle B of title I of the Dairy and Tobacco Adjustment Act of 1983 (7 U.S.C. 4501–4513); the Pecan Promotion and Research Act of 1990 (7 U.S.C. 6001–6013; the Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6101–6112); the Lime Research, Promotion and Consumer Information Act of 1990 (7 U.S.C. 6201–6212); and the Soybean Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6301–6311). This authority includes determining the programs and activities to be undertaken and assuring that they are coordinated with the overall departmental programs to develop foreign markets for U.S. agricultural products.

(xi) Formulate policies and administer barter programs under which agricultural commodities are exported.

(xii) Perform functions of the Department in connection with the development and implementation of agreements to finance the sale and exportation of agricultural commodities under Public Law 480, 83rd Congress, hereafter referred to as "Public Law 480" (7 U.S.C. 1691, 1701, *et seq.*).

(xiii) Administer commodity procurement and supply, transportation (other than from point of export, except for movement to trust territories or possessions), handling, payment, and related services in connection with programs under titles II and III of Public Law 480 (7 U.S.C. 1691, 1701, *et seq.*), and payment and related services with respect to export programs and barter operations.

(xiv) Coordinate within the Department activities arising under Public Law 480 (except as delegated to the Under Secretary for Research, Education, and Economics in § 2.21(a)(8)), and represent the Department in its relationships in such matters with the Department of State, any interagency committee on Public Law 480, and other departments, agencies and committees of the Government.

(xv) Formulate policies and implement programs to promote the export of dairy products, as authorized under section 153 of the Food Security Act of 1985, as amended (15 U.S.C. 713a–14), and of sunflowerseed oil and cottonseed oil, as authorized under section 301(b)(2)(A) of the Disaster Assistance Act of 1988, as amended (7 U.S.C. 1464 note).

(xvi) Formulate policies and implement a program for the export sales of dairy products, as authorized by section 1163 of the Food Security Act of 1985 (7 U.S.C. 1731 note).

(xvii) Carry out activities relating to the sale, reduction, or cancellation of debt, as authorized by title VI of the Agricultural Trade and Development Act of 1954, as amended (7 U.S.C. 1738, *et seq.*).

(xviii) Carry out debt-for-health-and-protection swaps, as authorized by section 1517 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 1706).

(xix) Determine the agricultural commodities acquired under price support programs which are available for export and allocate such commodities among the various export programs.

(xx) Conduct economic analyses pertaining to the foreign sugar situation.

(xxi) Exercise the Department's functions with respect to the International Sugar Agreement or any such future agreements.

(xxii) Exercise the Department's responsibilities with respect to tariff-rate quotes for dairy products under-chapter 4 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(xxiii) Serve as a focal point for handling quality or weight discrepancy inquiries from foreign buyers of U.S. agricultural commodities to insure that they are investigated and receive a timely response and that reports thereof are made to appropriate parties and government officials in order that corrective action may be taken.

(xxiv) Establish and administer regulations relating to foreign travel by employees of the Department. Regulations will include, but not be limited to, obtaining and controlling passports, obtaining visas, coordinating Department of State medical clearances and imposing requirements for itineraries and contacting the Foreign Agricultural Affairs Officers upon arrival in the Officers' country(ies) of responsibility.

(xxv) Formulate policies and administer programs and activities authorized by the Agricultural Trade Act of 1978, as amended (7 U.S.C. 5601, *et seq.*).

(xxvi) Administer the Foreign Service personnel system for the Department in accordance with 22 U.S.C. 3922, except as otherwise delegated to the Assistant Secretary for Marketing and Regulatory Programs in § 2.22(a)(2)(i), but including authority to approve joint regulations issued by the Department of State and authority to represent the Department of Agriculture in all interagency consultations and negotiations with the other foreign affairs agencies with respect to joint regulations.

(xxvii) Establish and maintain U.S. Agricultural Trade Offices, to develop, maintain and expand international markets for U.S. agricultural commodities in accordance with title IV of Pub. L. 95–501 (7 U.S.C. 1765a–g).

(xxviii) Administer the programs under section 416(b) of the Agricultural Act of 1949, as amended (7 U.S.C. 1431(b)), relating to the foreign donation of CCC stocks of agricultural commodities.

(xxix) Administer section 214 of the Tobacco Adjustment Act of 1983 (7 U.S.C. 509).

(xxx) Administer section 1558 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 958).

(xxxi) Administer programs under the Food for Progress Act of 1985 (7 U.S.C. 1736o).

(xxxii) Serve as Department adviser on policies, organizational arrangements, budgets, and actions to accomplish international scientific and technical cooperation in food and agriculture.

(xxxiii) Administer and direct the Department's programs in international development, technical assistance, and training carried out under the Foreign Assistance Act, as amended, as requested under such act (22 U.S.C. 2151, *et seq.*).

(xxxiv) Administer and coordinate assigned Departmental programs in international research and scientific and technical cooperation with other governmental agencies, land grant universities, international organizations, international agricultural research centers, and other institutions (7 U.S.C. 1624, 3291).

(xxxv) Direct and coordinate the Department's participation in scientific and technical matters and exchange agreements between the United States and other countries.

(xxxvi) Direct and coordinate the Department's work in international organizations and interagency committees concerned with food and agricultural development programs (7 U.S.C. 2201–2202).

(xxxvii) Coordinate policy formulation for USDA international science and technology programs concerning international agricultural research centers, international organizations, and international agricultural research and extension activities (7 U.S.C. 3291).

(xxxviii) Disseminate, upon request, information on subjects connected with agriculture which has been acquired by USDA agencies that may be useful to the U.S. private sector in expanding foreign markets and investment opportunities through the operation of a Department information center, pursuant to 7 U.S.C. 2201.

(xxxix) Enter into contracts, grants, cooperative agreements, and cost reimbursable agreements relating to agricultural research, extension, or teaching activities (7 U.S.C. 3318, 3319a).

(xl) Determine amounts reimbursable for indirect costs under international agricultural programs and agreements (7 U.S.C. 3319).

(xli) Administer the Cochran Fellowship Program (7 U.S.C. 3293).

(xlii) Determine quantity trigger levels and impose additional duties under the special safeguard measures in accordance with U.S. note 2 to subchapter IV of chapter 99 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(4) *Related to federal crop insurance.*

(i) Exercise general supervision of the Federal Crop Insurance Corporation.

(ii) Appoint such officers and employees as may be necessary for the transaction of the business of the Corporation, except, as provided in paragraph (b)(3) of this section.

(5) *Related to committee management.* Establish and reestablish regional, state, and local advisory committees for activities under his or her authority. This authority may not be redelegated.

(6) *Related to defense and emergency preparedness.* Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195, *et seq.*), concerning agricultural production; food processing, storage, and distribution; distribution of farm equipment and fertilizer; rehabilitation and use of food, agricultural and related agribusiness facilities; CCC resources; farm credit and financial assistance; and foreign agricultural intelligence and other foreign agricultural matters.

(7) Related to environmental response. With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("the Act"), as amended:

(i) Sections 104 (a), (b), and (c)(4) of the Act (42 U.S.C. 9604 (a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104 (e)–(h) of the Act (42 U.S.C. 9604 (e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petition for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117 (a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(8) *Related to compliance with environmental laws.* With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901, *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601, *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

(b) The following authorities are reserved to the Secretary of Agriculture:

(1) *Related to farm service.* (i) Appointment of Farm Service Agency State committeemen.

(ii) Final approval of regulations relating to the selection and exercise of the functions of committees promulgated under section 8(b) of the Soil Conservation and Domestic Allotment Act, as amended (16 U.S.C. 590h(b)).

(2) *Related to foreign agriculture.* (i) Approving export controls with respect to any agricultural commodity, including fats and oils or animal hides or skins as provided for in the Export Administration Act of 1969, as amended (50 U.S.C. App. 2401, *et seq.*).

(ii) Advising the President that imports are having the effect on programs or operations of this Department required as a prerequisite for the imposition of import controls under section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624a), recommending that the President cause an investigation to be made by the Tariff Commission of the facts so that a determination can be made whether import restrictions should be imposed under that Act, and determining under section 204(e) of the Andean Trade Preference Act (19 U.S.C. 3203(e)) that there exists a serious injury, or threat thereof and recommending to the President whether or not to take action.

(iii) Determining the agricultural commodities and the quantities thereof available for disposition under Public Law 480 (7 U.S.C. 1731).

(3) *Related to federal crop insurance.* (i) Appointment of the Board of Directors, Federal Crop Insurance Corporation.

(ii) Appointment of the Manager, Federal Crop Insurance Corporation.

§ 2.17 Under Secretary for Rural Economic and Community Development.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Under Secretary for Rural Economic and Community Development:

(1) Provide leadership and coordination within the executive branch of a Nationwide Rural Development Program utilizing the services of executive branch departments and agencies and the agencies, bureaus, offices, and services of the Department of Agriculture in coordination with rural development programs of State and local governments (7 U.S.C. 2204).

(2) Coordinate activities relative to rural development among agencies reporting to the Under Secretary for Rural Economic and Community Development and, through appropriate channels, serve as the coordinating official for other departmental agencies having primary responsibilities for specific titles of the Rural Development Act of 1972, and allied legislation.

(3) Administer a national program of economic, social, and environmental research and analysis, statistical programs, and associated service work related to rural people and the communities in which they live including rural industrialization; rural population and manpower; local government finance; income development strategies; housing; social services and utilization; adjustments to changing economic and technical forces; and other related matters.

(4) Work with Federal agencies in encouraging the creation of rural community development organizations.

(5) Assist other Federal agencies in making rural community development organizations aware of the Federal programs available to them.

(6) Advise rural community development organizations of the availability of Federal assistance programs.

(7) Advise other Federal agencies of the need for particular Federal programs.

(8) Assist rural community development organizations in making contact with Federal agencies whose assistance may be of benefit to them.

(9) Assist other Federal agencies and national organizations in developing means for extending their services effectively to rural areas.

(10) Assist other Federal agencies in designating pilot projects in rural areas.

(11) Conduct studies to determine how programs of the Department can be brought to bear on the economic development problems of the country and assure that local groups are receiving adequate technical assistance from Federal agencies or from local and State governments in formulating development programs and in carrying out planned development activities.

(12) Assist other Federal agencies in formulating manpower development and training policies.

(13) *Related to committee management.* Establish and reestablish regional, state, and local advisory committees for activities under his or her authority. This authority may not be re-delegated.

(14) *Related to defense and emergency preparedness.* Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195, *et seq.*), concerning rural development credit and financial assistance.

(15) *Related to energy.* (i) Provide Department-wide operational support and coordination for loan and grant programs to foster and encourage the production of fuels from agricultural and forestry products or by-products.

(ii) Participate as a Department representative at conferences, meetings and other contacts including liaison with the Department of Energy and other government agencies and departments with respect to implementation of established Department energy policy.

(iii) Serve as Co-Chairperson of the Energy Coordinating Committee of the Department.

(16) Collect, service, and liquidate loans made, insured, or guaranteed by the Rural Utilities Service, the Rural Housing and Community Development Service, the Rural Business and Cooperative Development Service, or their predecessor agencies.

(17) Administer the Federal Claims Collection Act of 1966 (31 U.S.C. 3711, *et seq.*), and joint regulations issued pursuant thereto by the Attorney General and the Comptroller General (4 CFR chapter II), with respect to claims of the Rural Housing and Community Development Service, the Rural Business and Cooperative Development Service and the Rural Utilities Service.

(18) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("the Act"), as amended:

(i) Sections 104 (a), (b), and (c)(4) of the Act (42 U.S.C. 9604 (a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104 (e)–(h) of the Act (42 U.S.C. 9604 (e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(19) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901, *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601, *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

(20) *Related to rural utilities service.* (i) Administer the Rural Electrification Act of 1936, as amended (7 U.S.C. 901, *et seq.*) except for rural economic development loan and grant programs; (7 U.S.C. 940c and 950aa, *et seq.*): Provided, however, that the Under Secretary may utilize consultants and attorneys for the provision of legal services pursuant to 7 U.S.C. 918, with the concurrence of the General Counsel.

(ii) Administer the Rural Electrification Act of 1938 (7 U.S.C. 903 note).

(iii) Designate the chief executive officer of the Rural Telephone Bank.

(iv) Administer the following sections of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921, *et seq.*):

(A) Section 306 (7 U.S.C. 1926), related to water and waste facilities;

(B) Section 306A (7 U.S.C. 1926a);

(C) Section 306B (7 U.S.C. 1926b);

(D) Section 306C (7 U.S.C. 1926c);

(E) Sections 309 (7 U.S.C. 1929) and 309A (7 U.S.C. 1929a), relating to assets and programs related to watershed facilities, resource and conservation facilities, and water and waste facilities;

(F) Section 310A (7 U.S.C. 1931), relating to watershed and resource conservation and development;

(G) Section 310B(b) (7 U.S.C. 1932(b));

(H) Section 310B(i) (7 U.S.C. 1932(i)), relating to loans for business telecommunications partnerships; and

(I) Administrative Provisions of subtitle D of the Consolidated Farm and Rural Development Act relating to rural utility activities.

(v) Administer section 8, and those functions with respect to repayment of obligations under section 4, of the Watershed Protection and Flood Prevention Act (16 U.S.C. 1006a, 1004) and administer the Resource Conservation and Development Program to assist in carrying out resource conservation and development projects in rural areas under section 32(e) of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1011(e)).

(vi) Administer the Water and Waste Loan Program (7 U.S.C. 1926–1).

(vii) Administer the Rural Wastewater Treatment Circuit Rider Program (7 U.S.C. 1926 note).

(viii) Administer the Distance Learning and Medical Link Programs (7 U.S.C. 950aaa, *et seq.*).

(ix) Administer Water and Waste Facility Programs and activities (7 U.S.C. 1926–1).

(21) *Related to rural business and cooperative development.* (i) Administer the Rural Economic Development Loan and Grant Programs under the Rural Electrification Act (7 U.S.C. 940c and 950aa, et *seq.*).

(ii) Administer the following sections of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921, *et seq.*):

(A) Section 306(a)(11)(A) (7 U.S.C. 1926 (a)(11)(A)), relating to grants for business technical assistance and planning;

(B) Section 304(b) (7 U.S.C. 1924(b)), relating to small business enterprises;

(C) Sections 309 (7 U.S.C. 1929) and 309A (7 U.S.C. 1929a), relating to assets and programs related to rural development;

(D) Section 310B (7 U.S.C. 1932), relating to rural industrialization assistance, rural business enterprise grants and rural technology and cooperative development grants;

(E) Section 312(b) (7 U.S.C. 1942(b)), relating to small business enterprises; and

(F) Administrative Provisions of subtitle D of the Consolidated Farm and Rural Development Act relating to rural business and cooperative development activities.

(iii) Administer Alcohol Fuels Credit Guarantee Program Account (Pub. L. 102–341, 106 Stat. 895).

(iv) Administer section 1323 of the Food Security Act of 1985 (7 U.S.C. 1932 note).

(v) Administer loan programs in the Appalachian region under sections 203 and 204 of the Appalachian Regional Development Act of 1965 (40 U.S.C. App. 204).

(vi) Administer section 601 of the Powerplant and Industrial Fuel Use Act of 1978 (Pub. L. 95–620).

(vii) Administer the Drought and Disaster Guaranteed Loan Program under section 331 of the Disaster Assistance Act of 1988 (7 U.S.C. 1929a note).

(viii) Administer the Disaster Assistance for Rural Business Enterprises Guaranteed Loan Program under section 401 of the Disaster Assistance Act of 1989 (7 U.S.C. 1929a note).

(ix) Administer the Rural Economic Development Demonstration Grant Program (7 U.S.C. 2662a).

(x) Administer the Economically Disadvantaged Rural Community Loan Program (7 U.S.C. 6616).

(xi) Administer the Alternative Agricultural Research and Commercialization Act of 1990, (7 U.S.C. 5901, *et seq.*).

(xii) Administer programs authorized by the Cooperative Marketing Act of 1926 (7 U.S.C. 451–457).

(xiii) Carry out the responsibilities of the Secretary of Agriculture relating to the marketing aspects of cooperatives, including economic research and analysis, the application of economic research findings, technical assistance to existing and developing cooperatives, education on cooperatives, and statistical information pertaining to cooperatives as authorized by the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627).

(xiv) Work with institutions and international organizations throughout the world on subjects related to the development and operation of agricultural cooperatives. Such work may be carried out by:

(A) Exchanging materials and results with such institutions or organizations;

(B) Engaging in joint or coordinated activities; or

(C) Stationing representatives at such institutions or organizations in foreign countries (7 U.S.C. 3291).

(xv) Administer in rural areas the process of designation, provision of monitoring and oversight, and provision of technical assistance for Empowerment Zones and Enterprise Communities pursuant to section 13301 of Pub. L. 103–66, Omnibus Budget Reconciliation Act of 1993 (26 U.S.C. 1391, *et seq.*)

(xvi) Work with Federal agencies in encouraging the creation of local rural community development organizations. Within a State, assist other Federal agencies in developing means for extending their services effectively to rural areas and in designating pilot projects in rural areas (7 U.S.C. 2204).

(xvii) Conduct assessments to determine how programs of the Department can be brought to bear on the economic development problems of a State or local area and assure that local groups are receiving adequate and effective technical assistance from Federal agencies or from local and State governments in formulating development programs and in carrying out planned development activities (7 U.S.C. 2204b).

(xviii) Develop a process through which State, sub-state and local rural development needs, goals, objectives, plans, and recommendations can be received and assessed on a continuing basis (7 U.S.C. 2204b).

(xix) Prepare local or area-wide rural development strategies based on the needs, goals, objectives, plans and recommendations of local communities, sub-state areas and States (7 U.S.C. 2204b).

(xx) Develop a system of outreach in the State or local area to promote rural development and provide for the publication and dissemination of information, through multi-media methods, relating to rural development. Advise local rural development organizations of availability of Federal programs and the type of assistance available, and assist in making contact with Federal program (7 U.S.C. 2204; 7 U.S.C. 2204b).

(22) *Related to rural housing and community development.* (i) Administer the following under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921, *et seq.*):

(A) Section 306 (7 U.S.C. 1926), except with respect to financing for water and waste disposal facilities; or loans for rural electrification or telephone systems or facilities other than hydroelectric generating and related distribution systems and supplemental and supporting structures if they are eligible for Rural Utilities Service financing; and financing for grazing facilities and irrigation and drainage facilities; and subsection 306(a)(11);

(B) Section 309A (7 U.S.C. 1929a), regarding assets and programs relating to community facilities; and

(C) Administrative Provisions of subtitle D of the Consolidated Farm and Rural Development Act relating to rural housing and community development activities.

(ii) Administer title V of the Housing Act of 1949 (42 U.S.C. 1471, *et seq.*), except those functions pertaining to research.

(iii) Make grants, administer a grant program, and determine the types of assistance to be provided to aid low-income migrant and seasonal farmworkers (42 U.S.C. 5177a).

(iv) Administer the Rural Housing Disaster Program under sections 232, 234, and 253 of the Disaster Relief Act of 1970 (Pub. L. 91–606).

(v) Exercise all authority and discretion vested in the Secretary by section 510(d) of the Housing Act of 1949, as amended by section 1045 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, Pub. L. 100–628 (42 U.S.C. 1480(d)), including the following:

(A) Determine, with the concurrence of the General Counsel, which actions are to be referred to the Department of Justice for the conduct of litigation, and refer such actions to the Department of Justice through the General Counsel;

(B) Determine, with the concurrence of the General Counsel, which actions are to be referred to the General Counsel for the conduct of litigation and refer such actions; and

(C) Enter into contracts with private sector attorneys for the conduct of litigation, with the concurrence of the General Counsel, after determining that the attorneys will provide competent and cost effective representation for the Rural Housing and Community Development Service and representation by the attorney will either accelerate the process by which a family or person eligible for assistance under section 502 of the Housing Act of 1949 will be able to purchase and occupy the housing involved, or preserve the quality of the housing involved.

(b) The following authority is reserved to the Secretary of Agriculture:

(1) *Related to rural business and cooperative development.* Submission to the Congress of the report required pursuant to section 1469 of Pub. L. 101–624.

§ 2.18 Under Secretary for Food Safety.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Under Secretary for Food Safety:

(1) *Related to food safety and inspection.* (i) Exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), relating to voluntary inspection of poultry and edible products thereof; voluntary inspection and certification of technical animal fat; certified products for dogs, cats, and other carnivora; voluntary inspection of rabbits and edible products thereof; and voluntary inspection and certification of edible meat and other products.

(ii) Exercise the functions of the Secretary of Agriculture contained in the following legislation:

(A) Poultry Products Inspection Act, as amended (21 U.S.C. 451–470);

(B) Federal Meat Inspection Act, as amended, and related legislation, excluding sections 12–14, and also excluding so much of section 18 as pertains to issuance of certificates of condition of live animals intended and offered for export (21 U.S.C. 601–611, 615–624, 641–645, 661, 671–680, 691–692, 694–695);

(C) Egg Products Inspection Act, except for the Shell Egg Surveillance Program, voluntary laboratory analyses of egg products, and the Voluntary Egg Grading Program (21 U.S.C. 1031–1056);

(D) Talmadge-Aiken Act (7 U.S.C. 450) with respect to cooperation with States in administration of the Federal Meat Inspection Act and the Poultry Products Inspection Act;

(E) Humane Slaughter Act (7 U.S.C. 1901–1906);

(F) National Laboratory Accreditation Program (7 U.S.C. 138–138i) with respect to laboratories accredited only for pesticide residue analysis in meat and poultry products; and

(G) Administer and conduct a Food Safety Research Program (7 U.S.C. 427).

(iii) Coordinate with the Assistant Secretary for Marketing and Regulatory Programs the administration of programs relating to human pathogen reduction (such as *salmonella enteritidis*) pursuant to section 2 of the Act of February 2, 1903, as amended (21 U.S.C. 111), and sections 4 and 5 of the Act of May 29, 1884, as amended (21 U.S.C. 120).

(iv) Enter into contracts, grants, or cooperative agreements to further research programs in the agricultural sciences (7 U.S.C. 3318).

(2) *Related to committee management.* Establish and reestablish regional, State, and local advisory committees for activities under his or her authority. This authority may not be redelegated.

(3) *Related to defense and emergency preparedness.* Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195, *et seq.*), concerning the wholesomeness of meat and poultry and products thereof and inspection of eggs and egg products.

(4) *Related to biotechnology.* Coordinate the development and carrying out by Department agencies of all matters and functions pertaining to the Department's regulation of biotechnology as they may affect the safety of meat, poultry or egg products.

(5) *Related to environmental response.* With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("the Act"), as amended:

(i) Sections 104 (a), (b), and (c)(4) of the Act (42 U.S.C. 9604 (a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104 (e)–(h) of the Act (42 U.S.C. 9604 (e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the

acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(6) *Related to compliance with environmental laws.* With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an interagency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901, *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601, *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

§ 2.19 Under Secretary for Food, Nutrition, and Consumer Services.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Under Secretary for Food, Nutrition, and Consumer Services:

(1) *Related to food and nutrition.* (i) Administer the following legislation:

(A) The Food Stamp Act of 1977, as amended (7 U.S.C. 2011–2032);

(B) National School Lunch Act of 1946, as amended (42 U.S.C. 1751–1769h), except procurement of agricultural commodities and other foods under section 6 thereof;

(C) Child Nutrition Act of 1966, as amended (42 U.S.C. 1771–1790);

(D) Sections 933–939 of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (7 U.S.C. 5930 note); and

(E) Section 301 of the Healthy Meals for Healthy Americans Act of 1994 (Pub. L. 103–448).

(ii) Administer those functions relating to the distribution and donation of agricultural commodities and products thereof under the following legislation:

(A) Clause (3) of section 416(a) of the Agricultural Act of 1949, as amended (7 U.S.C. 1431(a)), except the estimate and announcement of the types and varieties of food commodities, and the quantities thereof, to become available for distribution thereunder;

(B) Section 709 of the Food and Agriculture Act of 1965, as amended (7 U.S.C. 1446a–1);

(C) Section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c), as supplemented by the Act of June 28, 1937, as amended (15 U.S.C. 713c), and related legislation;

(D) Section 9 of the Act of September 6, 1958, as amended (7 U.S.C. 1431b);

(E) Section 210 of the Agricultural Act of 1956 (7 U.S.C. 1859), except with respect to donations to Federal penal and correctional institutions;

(F) Section 402 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1922);

(G) Section 311 of the Older Americans Act of 1965, as amended (42 U.S.C. 3030a);

(H) Sections 412 and 413(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5179, 5180(b));

(I) Sections 4 and 5 of the Agriculture and Consumer Protection Act of 1973, as amended (7 U.S.C. 612c note);

(J) Section 1114 of the Agriculture and Food Act of 1981, as amended (7 U.S.C. 1431e);

(K) Section 1336 of the Agriculture and Food Act of 1981 (Pub. L. 97–98);

(L) Emergency Food Assistance Act of 1983 (7 U.S.C. 612c note);

(M) Sections 3 (b)–(i), 3A and 4 of the Commodity Distribution Reform Act and WIC Amendments of 1987 (7 U.S.C. 612c note); and

(N) Section 110 of the Hunger Prevention Act of 1988 (7 U.S.C. 612c note).

(iii) Administer those functions relating to the distribution of food coupons under section 412 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5179).

(iv) In connection with the functions assigned in paragraphs (a)(1) (i), (ii) and (iii) of this section, relating to the distribution and donation of agricultural commodities and products thereof and food coupons to eligible recipients, authority to determine the requirements for such agricultural commodities and products thereof and food coupons to be so distributed.

(v) Receive donation of food commodities under clause (3) of section 416(a) of the Agricultural Act of 1949, as amended, section 709 of the Food and Agriculture Act of 1965, as amended, section 5 of the Agriculture and Consumer Protection Act of 1973, section 1114(a) of the Agriculture and Food Act of 1981, and section 202(a) and 202A of the Emergency Food Assistance Act of 1983.

(2) *Related to consumer advice.* (i) Develop and implement USDA policy and procedural guidelines for carrying out the Department's Consumer Affairs Plan.

(ii) Advise the Secretary and other policy level officials of the Department on consumer affairs policies and programs.

(iii) Coordinate USDA consumer affairs activities and monitor and analyze agency procedures and performance.

(iv) Represent the Department at conferences, meetings and other contacts where consumer affairs issues are discussed, including liaison with the White House and other governmental agencies and departments.

(v) Work with the Office of Budget and Program Analysis and the Office of Communications to ensure coordination of USDA consumer affairs and public participation programs, policies and information, and to prevent duplication of responsibilities.

(vi) Serve as a consumer ombudsman and communication link between consumers and the Department.

(vii) Approve the designation of agency Consumer Affairs Contacts.

(3) *Related to human nutrition information.* (i) Develop techniques and equipment to assist consumers in the home and in institutions in selecting food that supplies a nutritionally adequate diet.

(ii) Develop family food plans at different costs for use as standards by families of different sizes, sex-age composition, and economic levels.

(iii) Develop suitable and safe preparation and management procedures to retain nutritional and eating qualities of food served in homes and institutions.

(iv) Develop materials to aid the public in meeting dietary needs, with emphasis on food selection for good nutrition and appropriate cost, and food preparation to avoid waste, maximize nutrient retention, minimize food safety hazards, and conserve energy.

(v) Develop food plans for use in establishing food stamp benefit levels, and assess the nutritional impact of Federal food programs.

(vi) Coordinate nutrition education promotion and professional education projects within the Department.

(vii) Analyze data from food consumption surveys in coordination with the Under Secretary for Research, Education, and Economics to provide a basis for evaluating dietary adequacy.

(viii) Consult with the Federal and State agencies, the Congress, universities, and other public and private organizations and the general public regarding household food consumption, individual intake, and dietary adequacy, and implications of the survey on public policy regarding food and nutrition policies (7 U.S.C. 3171–3175).

(4) *Related to committee management.* Establish and reestablish regional, State, and local advisory committees for activities under his or her authority. This authority may not be redelegated.

(5) *Related to defense and emergency preparedness.* Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195, *et seq.*), concerning food stamp assistance.

(b) The following authority is reserved to the Secretary of Agriculture:

(1) *Related to food and nutrition.* Authority to appoint the members of the National Advisory Council on Maternal, Infant, and Fetal Nutrition as directed in section 17(k) of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1786(k)).

(2) [Reserved]

§ 2.20 Under Secretary for Natural Resources and Environment.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Under Secretary for Natural Resources and Environment:

(1) *Related to environmental quality.* (i) Administer the implementation of the National Environmental Policy Act for the United States Department of Agriculture (USDA).

(ii) Provide representation for USDA on the National Response Team on hazardous spills pursuant to Pub. L. 92–500 (33 U.S.C. 1151 note), and section 4 of Executive Order 11735, 3 CFR, 1971–1975 Comp., p. 793.

(iii) Represent USDA in contacts with the United States Environmental Protection Agency, the Council on Environmental Quality, and other organizations or agencies on matters related to assigned responsibilities.

(iv) Formulate and promulgate USDA policy relating to environmental activity and natural resources.

(v) Provide staff support for the Secretary in the review of environmental impact statements.

(vi) Provide leadership in USDA for general land use activities including implementation of Executive Order 11988, Flood Plain Management, 3 CFR, 1977 Comp., p. 117, and Executive Order 11990, Protection of Wetlands, 3 CFR, 1977 Comp., p. 121.

(2) *Related to forestry.* (i) Provide national leadership in forestry. (As used here and elsewhere in this section, the term "forestry" encompasses renewable and nonrenewable resources of forests, including lands governed by the Alaska National Interest Lands Conservation Act, forest-related rangeland, grassland, brushland, woodland, and alpine areas including but not limited to recreation, range, timber, minerals, watershed, wildlife and fish; natural scenic, scientific, cultural, and historic values of forests and related lands; and derivative values such as economic strength and social well-being).

(ii) Protect, manage, and administer the national forests, national forest purchase units, national grasslands, and other lands and interests in lands administered by the Forest Service, which collectively are designated as the National Forest System. This delegation covers the acquisition and disposition of lands and interests in lands as may be authorized for the protection, management, and administration of the National Forest System, including the authority to approve acquisition of land under the Weeks Act of March 1, 1911, as amended (16 U.S.C. 521), and special forest receipts acts, as follows: (Pub. L. 337, 74th Cong., 49 Stat. 866, as amended by Pub. L. 310, 78th Cong., 58 Stat. 227; Pub. L. 505, 75th Cong., 52 Stat. 347, as amended by Pub. L. 310, 78th Cong., 58 Stat. 227; Pub. L. 634, 75th Cong., 52 Stat. 699, as amended by Pub. L. 310, 78th Cong., 58 Stat. 227; Pub. L. 748, 75th Cong., 52 Stat. 1205, as amended by Pub. L. 310, 78th Cong., 58 Stat. 227; Pub. L. 427, 76th Cong., 54 Stat. 46; Pub. L. 589, 76th Cong., 54 Stat. 297; Pub. L. 591, 76th Cong., 54 Stat. 299; Pub. L. 637, 76th Cong., 54 Stat. 402; Pub. L. 781, 84th Cong., 70 Stat. 632).

(iii) As necessary for administrative purposes, divide into and designate as national forests any lands of 3,000 acres or more which are acquired under or subject to the Weeks Act of March 1, 1911, as amended, and which are contiguous to existing national forest boundaries established under the authority of the Weeks Act.

(iv) Plan and administer wildlife and fish conservation rehabilitation and habitat management programs on National Forest System lands, pursuant to 16 U.S.C. 670g, 670h, and 670o.

(v) For the purposes of the National Forest System Drug Control Act of 1986 (16 U.S.C. 559b–f), specifically designate certain specially trained officers and employees of the Forest Service, not exceeding 500, to have authority in the performance of their

duties within the boundaries of the National Forest System:

(A) To carry firearms;

(B) To enforce and conduct investigations of violations of section 401 of the Controlled Substance Act (21 U.S.C. 841) and other criminal violations relating to marijuana and other controlled substances that are manufactured, distributed, or dispensed on National Forest System lands;

(C) To make arrests with a warrant or process for misdemeanor violations, or without a warrant for violations of such misdemeanors that any such officer or employee has probable cause to believe are being committed in that employee's presence or view, or for a felony with a warrant or without a warrant if that employee has probable cause to believe that the person being arrested has committed or is committing such a felony;

(D) To serve warrants and other process issued by a court or officer of competent jurisdiction;

(E) To search, with or without a warrant or process, any person, place, or conveyance according to Federal law or rule of law; and

(F) To seize, with or without warrant or process, any evidentiary item according to Federal law or rule of law.

(vi) Authorize the Forest Service to cooperate with the law enforcement officials of any Federal agency, State, or political subdivision, in the investigation of violations of, and enforcement of, section 401 of the Controlled Substances Act (21 U.S.C. 841), other laws and regulations relating to marijuana and other controlled substances, and State drug control laws or ordinances, within the boundaries of the National Forest System.

(vii) Administer programs under section 23 of the Federal Highway Act (23 U.S.C. 101(a), 120(f), 125 (a)–(c), 138, 202 (a)–(b), 203, 204 (a)–(h), 205 (a)–(d), 211, 317, 402(a)).

(viii) Exercise the administrative appeal functions of the Secretary of Agriculture in review of decisions of the Chief of the Forest Service pursuant to 36 CFR parts 215 and 217 and 36 CFR part 251, subpart C.

(ix) Conduct, support, and cooperate in investigations, experiments, tests, and other activities deemed necessary to obtain, analyze, develop, demonstrate, and disseminate scientific information about protecting, managing, and utilizing forest and rangeland renewable resources in rural, suburban, and urban areas in the United States and foreign countries. The activities conducted, supported, or cooperated in shall include, but not be limited to: renewable resource management research, renewable resource environmental research; renewable resource protection research; renewable resource utilization research, and renewable resource assessment research (16 U.S.C. 1641–1647).

(x) Use authorities and means available to disseminate the knowledge and technology developed from forestry research (16 U.S.C. 1645).

(xi) Coordinate activities with other agencies in USDA, other Federal and State agencies, forestry schools, and private entities and individuals (16 U.S.C. 1643).

(xii) Enter into contracts, grants, and cooperative agreements for the support of scientific research in forestry activities (7 U.S.C. 427i(a), 1624; 16 U.S.C. 582a–8, 1643–1645, 1649).

(xiii) Enter into cooperative research and development agreements with industry, universities, and others; institute a cash award program to reward scientific, engineering, and technical personnel; award royalties to inventors; and retain and use royalty income (15 U.S.C. 3710a–3710c).

(xiv) Enter into contracts, grants, or cooperative agreements to further research, extension, or teaching programs in the food and agricultural sciences (7 U.S.C. 3152, 3318).

(xv) Enter into cost-reimbursable agreements relating to agricultural research, extension, or teaching activities (7 U.S.C. 3319a).

(xvi) Administer programs of cooperative forestry assistance in the protection, conservation, and multiple resource management of forests and related resources in both rural and urban areas and forest lands in foreign countries (16 U.S.C. 2101–2114).

(xvii) Provide assistance to States and other units of government in forest resources planning and forestry rural revitalization (7 U.S.C. 6601, 6611–6617; 16 U.S.C. 2107).

(xviii) Conduct a program of technology implementation for State forestry personnel, private forest landowners and managers, vendors, forest operators, public agencies, and individuals (16 U.S.C. 2107).

(xix) Administer Rural Fire Protection and Control Programs (16 U.S.C. 2106).

(xx) Provide technical assistance on forestry technology or the implementation of the Conservation Reserve and Softwood Timber Programs authorized in sections 1231–1244 and 1254 of the Food Security Act of 1985 (16 U.S.C. 3831–3844; 7 U.S.C. 1981 note).

(xxi) Administer forest insect, disease, and other pest management programs (16 U.S.C. 2104).

(xxii) Exercise the custodial functions of the Secretary for lands and interests in lands under lease or contract of sale to States and local agencies pursuant to title III of the Bankhead-Jones Farm Tenant Act and administer reserved and reversionary interests in lands conveyed under that Act (7 U.S.C. 1010–1012).

(xxiii) Under such general program criteria and procedures as may be established by the Natural Resources Conservation Service:

(A) Administer the forestry aspects of the programs listed in paragraphs (a)(2)(xxiii)(A) (*1*), (*2*) and (*3*) of this section on the National Forest System, rangelands with national forest boundaries, adjacent rangelands which are administered under formal agreement, and other forest lands;

(*1*) The cooperative river basin surveys and investigations program (16 U.S.C. 1006);

(*2*) The Eleven Authorized Watershed Improvement Programs and Emergency Flood Prevention Measures Program under the Flood Control Act (33 U.S.C. 701b–1); and

(*3*) The Small Watershed Protection Program under the Pilot Watershed Protection and Watershed Protection and Flood Prevention Acts (7 U.S.C. 701a–h; 16 U.S.C. 1001–1009); and

(B) Exercise responsibility in connection with the forestry aspects of the Resource Conservation and Development Program authorized by title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1011(e)).

(xxiv) Provide assistance to the Farm Service Agency in connection with the Agricultural Conservation Program, the Naval Stores Conservation Program, and the Cropland Conversion Program (16 U.S.C. 590g–q).

(xxv) Provide assistance to the Rural Housing and Community Development Service in connection with grants and loans under authority of section 303 of the Consolidated Farm and Rural Development Act, 7 U.S.C. 1923; and consultation with the Department of Housing and Urban Development under the authority of 40 U.S.C. 461(e).

(xxvi) Coordinate mapping work of USDA including:

(A) Clearing mapping projects to prevent duplication;

(B) Keeping a record of mapping done by USDA agencies;

(C) Preparing and submitting required USDA reports;

(D) Serving as liaison on mapping with the Office of Management and Budget, Department of Interior, and other departments and establishments;

(E) Promoting interchange of technical mapping information, including techniques which may reduce costs or improve quality; and

(F) Maintaining the mapping records formerly maintained by the Office of Operations.

(xxvii) Administer the radio frequency licensing work of USDA, including:

(A) Representing USDA on the Interdepartmental Radio Advisory Committee and its Frequency Assignment Subcommittee of the National Telecommunications and Information Administration, Department of Commerce;

(B) Establishing policies, standards, and procedures for allotting and assigning frequencies within USDA and for obtaining effective utilization of them;

(C) Providing licensing action necessary to assign radio frequencies for use by the agencies of USDA and maintenance of the records necessary in connection therewith;

(D) Providing inspection of USDA's radio operations to ensure compliance with national and international regulations and policies for radio frequency use; and

(E) Representing USDA in all matters relating to responsibilities and authorities under the Federal Water Power Act, as amended (16 U.S.C. 791–823).

(xxviii) [Reserved]

(xxix) Administer the Youth Conservation Corps Act (42 U.S.C. precede 2711 note) for USDA.

(xxx) Establish and operate the Job Corps Civilian Conservation Centers on National Forest System lands as authorized by title I, sections 106 and 107 of the Economic Opportunity Act of 1964 (42 U.S.C. 2716–2717), in accordance with the terms of an agreement dated May 11, 1967, between the Secretary of Agriculture and the Secretary of Labor; and administration of other cooperative manpower training and work experience programs where the Forest Service serves as host or prime sponsor with other Departments of Federal, State, or local governments.

(xxxi) Administer the Volunteers in the National Forests Act of 1972 (16 U.S.C. 558a–558d, 558a note).

(xxxii) Exercise the functions of the Secretary of Agriculture authorized in the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101–3215).

(xxxiii) Exercise the functions of the Secretary as authorized in the Wild and Scenic Rivers Act (16 U.S.C. 1271–1278).

(xxxiv) Jointly administer gypsy moth eradication activities with the Assistant Secretary for Marketing and Regulatory Programs, under the authority of section 102 of the Organic Act of 1944, as amended; and the Act of April 6, 1937, as amended (7 U.S.C. 147a, 148, 148a–148e); and the Talmadge Aiken Act (7 U.S.C. 450), by assuming primary responsibility for treating isolated gypsy moth infestations on Federal lands, and on State and private lands contiguous to infested Federal lands, and any other infestations over 640 acres on State and private lands.

(xxxv) Exercise the functions of the Secretary authorized in the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (30 U.S.C. 226, *et seq.*).

(xxxvi) Administer the Public Lands Corps program (16 U.S.C. 1721, *et seq.*) for USDA consistent with the Department's overall national service program.

(xxxvii) Jointly administer the Forestry Incentives Program with the Natural Resources Conservation Service, in consultation with State Foresters, under section 4 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103).

(xxxviii) Focusing on countries that could have a substantial impact on global warming, provide assistance that promotes sustainable development and global environmental stability; share technical, managerial, extension, and administrative skills; provide education and training opportunities; engage in scientific exchange; and cooperate with domestic and international organizations that further international programs for the management and protection of forests, rangelands, wildlife, fisheries and related natural resources (16 U.S.C. 4501–4505).

(3) *Related to natural resources conservation.* (i) Provide national leadership in the conservation, development and productive use of the Nation's soil, water, and related resources. Such leadership encompasses soil, water, plant, and wildlife conservation; small watershed protection and flood prevention; and resource conservation and development. Integrated in these programs are erosion control, sediment reduction, pollution abatement, land use planning, multiple use, improvement of water quality, and several surveying and monitoring activities related to environmental improvement. All are designed to assure:

(A) Quality in the natural resource base for sustained use;

(B) Quality in the environment to provide attractive, convenient, and satisfying places to live, work, and play; and

(C) Quality in the standard of living based on community improvement and adequate income.

(ii) Provide national leadership in and evaluate and coordinate land use policy, and administer the Farmland Protection Policy Act (7 U.S.C. 4201, *et seq.*), including the Farms for the Future Program authorized by sections 1465–1470 of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 4201 note), except as otherwise delegated to the Under Secretary for Research, Education, and Economics in § 2.21(a)(1)(lxii).

(iii) Administer the basic program of soil and water conservation under Pub. L. No. 46, 74th Congress, as amended, and related laws (16 U.S.C. 590a–f, i–1, q, q–1; 42 U.S.C. 3271–3274; 7 U.S.C. 2201), including:

(A) Technical and financial assistance to land users in carrying out locally adapted soil and water conservation programs primarily through soil and water conservation districts in the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands, and federally recognized Native American tribes, but also to communities, watershed groups, Federal and State agencies, and other cooperators. This authority includes such assistance as:

(*1*) Comprehensive planning assistance in nonmetropolitan districts;

(*2*) Assistance in the field of income-producing recreation on rural non-Federal lands;

(*3*) Forestry assistance, as part of total technical assistance to private land owners and land users when such services are an integral part of land management and such services are not available from a State agency; and forestry services in connection with windbreaks and shelter belts to prevent wind and water erosion of lands;

(*4*) Assistance in developing programs relating to natural beauty; and

(*5*) Assistance to other USDA agencies in connection with the administration of their programs, as follows:

(*i*) To the Farm Service Agency in the development and technical servicing of certain programs, such as the Agricultural Conservation Program and other such similar conservation programs;

(*ii*) To the Rural Housing and Community Development Service in connection with their loan and land disposition programs;

(B) Soil surveys, including:

(*1*) Providing leadership for the Federal part of the National Cooperative

Soil Survey which includes conducting and publishing soil surveys;

(2) Conducting soil surveys for resource planning and development; and

(3) Performing the cartographic services essential to carrying out the functions of the Natural Resources Conservation Service, including furnishing photographs, mosaics, and maps;

(C) Conducting and coordinating snow surveys and making water supply forecasts pursuant to Reorganization Plan No. IV of 1940 (5 U.S.C. App.);

(D) Operating plant materials centers for the assembly and testing of plant species in conservation programs, including the use, administration, and disposition of lands under the administration of the Natural Resources Conservation Service for such purposes under title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010–1011); and

(E) Providing leadership in the inventorying and monitoring of soil, water, land, and related resources of the Nation.

(iv) Administer the Watershed Protection and Flood Prevention Programs, including:

(A) The eleven authorized watershed projects authorized under 33 U.S.C. 702b–1;

(B) The emergency flood control work under 33 U.S.C. 701b–1;

(C) The Cooperative River Basin Surveys and Investigations Programs under 16 U.S.C. 1006;

(D) The pilot watershed projects under 16 U.S.C. 590a–f and 16 U.S.C. 1001–1009;

(E) The Watershed Protection and Flood Prevention Program under 16 U.S.C. 1001–1009, except for responsibilities assigned to the Under Secretary for Rural Economic and Community Development;

(F) The joint investigations and surveys with the Department of the Army under 16 U.S.C. 1009; and

(G) The Emergency Conservation Program under sections 401–405 of the Agricultural Credit Act of 1978 (the Act), 16 U.S.C. 2201, *et seq.*, except for the provisions of sections 401 and 402 of the Act, 16 U.S.C. 2201–2202, as administered by the Under Secretary for Farm and Foreign Agricultural Services.

(v) Administer the Great Plains Conservation Program and the Critical Lands Resources Conservation Program under 16 U.S.C. 590p(b), 590q and 590q–3.

(vi) Administer the Resource Conservation and Development Program under 16 U.S.C. 590a–f; 7 U.S.C. 1010–1011; and 16 U.S.C. 3451–3461, except for responsibilities assigned to the Under Secretary for Rural Economic and Community Development.

(vii) Responsibility for entering into long-term contracts for carrying out conservation and environmental measures in watershed areas.

(viii) Provide national leadership for and administer the Soil and Water Resources Conservation Act of 1977 (16 U.S.C. 2001, *et seq.*).

(ix) Administer the Rural Clean Water Program and other responsibilities assigned under section 35 of the Clean Water Act of 1977 (33 U.S.C. 1251, *et seq.*).

(x) Monitor actions and progress of USDA in complying with Executive Order 11988, Flood Plain Management, 3 CFR, 1977 Comp., p. 117, and Executive Order 11990, Protection of Wetlands, 3 CFR, 1977 Comp., p. 121, regarding management of floodplains and protection of wetlands; monitor USDA efforts on protection of important agricultural, forest and rangelands; and provide staff assistance to the USDA Natural Resources and Environment Committee.

(xi) Administer the search and rescue operations authorized under 7 U.S.C. 2273.

(xii) Administer section 202(c) of the Colorado River Basin Salinity Control Act, 43 U.S.C. 1592(c), including:

(A) Identify salt source areas and determine the salt load resulting from irrigation and watershed management practices;

(B) Conduct salinity control studies of irrigated salt source areas;

(C) Provide technical and financial assistance in the implementation of salinity control projects including the development of salinity control plans, technical services for application, and certification of practice applications;

(D) Develop plans for implementing measures that will reduce the salt load of the Colorado River;

(E) Develop and implement long-term monitoring and evaluation plans to measure and report progress and accomplishments in achieving program objectives; and

(F) Enter into and administer contracts with program participants and waive cost-sharing requirements when such cost-sharing requirements would result in a failure to proceed with needed on-farm measures.

(xiii) Administer natural resources conservation authorities under title XII of the Food Security Act of 1985 (Act), as amended (16 U.S.C. 3801, *et seq.*), including responsibilities for:

(A) the conservation of highly erodible lands and wetlands pursuant to sections 1211–1223 of the Act (16 U.S.C. 3811–3823);

(B) technical assistance related to soil and water conservation technology for the implementation and administration of the Conservation Reserve Program authorized by sections 1231–1244 of the Act, as amended (16 U.S.C. 3831–3844);

(C) the Environmental Easement Program authorized by sections 1239–1239d of the Act (16 U.S.C. 3839–3839d);

(D) the Agricultural Water Quality Improvement Program authorized by sections 1238–1238f of the Act, as amended (16 U.S.C. 3838–3838f); and

(E) the Wetland Reserve Program and the Emergency Wetlands Reserve Program authorized by sections 1237–1237f of the Act, as amended (16 U.S.C. 3837–3837f), and the Emergency Supplemental Appropriations for Relief From the Major, Widespread Flooding in the Midwest Act of 1993, Pub. L. No. 103–75.

(xiv) Approve and transmit to the Congress comprehensive river basin reports.

(xv) Provide representation on the Water Resources Council and river basin commissions created by 42 U.S.C. 1962, and on river basin interagency committees.

(xvi) Jointly administer the Forestry Incentives Program with the Forest Service, in consultation with State Foresters, under section 4 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103).

(xvii) Administer the Water Bank Program under the Water Bank Act (16 U.S.C. 1301, *et seq.*).

(xviii) Administer water quality activities under the Agriculture and Water Policy Coordination Act, subtitle G, title XIV of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 5501–5505).

(xix) Administer the Rural Environmental Conservation Program authorized by sections 1001–1010 of the Agriculture Act of 1970, as amended (16 U.S.C. 1501–1510).

(xx) Coordinate USDA input and assistance to the Department of Commerce and other Federal agencies consistent with section 307 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456), and coordinate USDA review of qualifying state and local government coastal management plans or programs prepared under such Act and submitted to the Secretary of Commerce, consistent with section 306(a) and (c) of such Act (16 U.S.C. 1455 (a) and (c)).

(4) *Related to committee management.* Establish and reestablish regional, state, and local advisory committees for activities under his or her authority. This authority may not be redelegated.

(5) *Related to defense and emergency preparedness.* Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*) and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195, *et seq.*), relating to agricultural land and water, forests and forest products, rural fire defense, and forestry research.

(6) *Related to surface mining control and reclamation.* Administer responsibilities and functions assigned to the Secretary of Agriculture under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201, *et seq.*).

(7) *Related to environmental response.* (i) With respect to land and facilities under his or her authority, to exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, and Executive Order No. 12777, 3 CFR, 1991 Comp., p. 351, to act as Federal trustee for natural resources in accordance with section 107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(f)), section 311(f)(5) of the Federal Water Pollution Control Act (33 U.S.C. 1321(f)(5)), and section 1006(b)(2) of the Oil Pollution Act of 1990 (33 U.S.C. 2706(b)(2)).

(ii) With respect to land and facilities under his or her authority, to exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("the Act"), as amended:

(A) Sections 104(a), (b), and (c)(4) of the Act (42 U.S.C. 9604(a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(B) Sections 104(e)-(h) of the Act (42 U.S.C. 9604(e)-(h)), with respect to information gathering and access requests and orders; compliance orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(C) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(D) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(E) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(F) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) of the Act pertaining to the annual report to Congress;

(G) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(H) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(I) Section 113(g) of the Act (42 U.S.C. 9613(g)), with respect to receiving notification of a natural resource trustee's intent to file suit;

(J) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(K) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(L) Section 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(M) Section 119 of the Act (42 U.S.C. 9619), with respect to indemnifying response action contractors;

(N) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(O) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), relating to mixed funding agreements.

(iii) With respect to land and facilities under his or her authority, to exercise the authority vested in the Secretary of Agriculture to act as the "Federal Land Manager" pursuant to the Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*).

(8) *Related to compliance with environmental laws.* With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate United States District Court with an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901, *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601, *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

(b) The following authorities are reserved to the Secretary of Agriculture:

(1) *Related to natural resource conservation.* Designation of new project areas in which the resource conservation and development program assistance will be provided.

(2) [Reserved]

§ 2.21 Under Secretary for Research, Education, and Economics.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Under Secretary for Research, Education, and Economics.

(1) *Related to science and education.*

(i) Direct, coordinate and provide national leadership and support for research, extension and teaching programs in the food and agricultural sciences to meet major needs and challenges in development of new food and fiber; food and agriculture viability and competitiveness in the global economy; enhancing economic opportunities and quality of life for

rural America; food and agricultural system productivity and development of new crops and new uses; the environment and natural resources; or the promotion of human health and welfare pursuant to the National Agricultural Research, Extension, and Teaching Policy of 1977, as amended (7 U.S.C. 3101, *et seq.*).

(ii) Provide national leadership and support for research, extension, and teaching programs in the food and agricultural sciences to carry out sustainable agriculture research and education; a National Plant Genetic Resources Program; a national agricultural weather information system; research regarding the production, preparation, processing, handling, and storage of agricultural products; a Plant and Animal Pest and Disease Control Program; and any other provisions pursuant to title XVI of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. No. 101–624, 104 Stat. 3703), except the provisions relating to the USDA Graduate School in section 1669 and the provisions relating to alternative agricultural research and commercialization under sections 1657–1664 (7 U.S.C. 5801, *et seq.*).

(iii) Coordinate USDA policy and conduct programs relative to the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*) and coordinate the Department's Integrated Pest Management Programs and the Pesticide Assessment Program (7 U.S.C. 136–136y).

(iv) Carry out research, technology development, technology transfer, and demonstration projects related to the economic feasibility of the manufacture and commercialization of natural rubber from plants containing hydrocarbons (7 U.S.C. 178–178n).

(v) Conduct research on the control of undesirable species of honey bees in cooperation with specific foreign governments (7 U.S.C. 284).

(vi) Administer the appropriation for the endowment and maintenance of colleges for the benefit of agriculture and the mechanical arts (7 U.S.C. 321–326a).

(vii) Administer teaching funds authorized by section 22 of the Bankhead Jones Act, as amended (7 U.S.C. 329).

(viii) Administer a Cooperative Agricultural Extension Program in accordance with the Smith-Lever Act, as amended (7 U.S.C. 341–349).

(ix) Cooperate with the States for the purpose of encouraging and assisting them in carrying out research related to the problems of agriculture in its broadest aspects under the Hatch Act, as amended (7 U.S.C. 361a–361i).

(x) Support agricultural research at eligible institutions in the States through the provision of Federal-grant funds to help finance physical research facilities (7 U.S.C. 390–390k).

(xi) Conduct research concerning domestic animals and poultry, their protection and use, the causes of contagious, infectious, and communicable diseases, and the means for the prevention and cure of the same (7 U.S.C. 391).

(xii) Conduct research related to the dairy industry and to the dissemination of information for the promotion of the dairy industry (7 U.S.C. 402).

(xiii) Conduct research and demonstrations at Mandan, ND, related to dairy livestock breeding, growing, and feeding, and other problems pertaining to the establishment of the dairy and livestock industries (7 U.S.C. 421–422).

(xiv) Conduct research on new uses for cotton and on cotton ginning and processing (7 U.S.C. 423–424).

(xv) Administer and conduct research into the basic problems of agriculture in its broadest aspects, including, but not limited to, production, marketing (other than statistical and economic research but including research related to family use of resources), distribution, processing, and utilization of plant and animal commodities; problems of human nutrition; development of markets for agricultural commodities; discovery, introduction, and breeding of new crops, plants, and animals, both foreign and native; conservation development; and development of efficient use of farm buildings, homes, and farm machinery except as otherwise delegated in § 2.22(a)(1)(ii) and § 2.79(a)(2) (7 U.S.C. 427, 1621–1627, 1629, 2201, and 2204).

(xvi) Conduct research on varietal improvement of wheat and feed grains to enhance their conservation and environmental qualities (7 U.S.C. 428b).

(xvii) Advance the livestock and agricultural interests of the United States, including the breeding of horses suited to the needs of the United States (7 U.S.C. 437).

(xviii) Enter into agreements with and receive funds from any State, other political subdivision, organization, or individual for the purpose of conducting cooperative research projects (7 U.S.C. 450a).

(xix) Carry out a program (IR–4 Program) for the collection of residue and efficacy data in support of minor use pesticide registration or reregistration and to determine tolerances for minor use chemical residues in or on agricultural commodities (7 U.S.C. 450i).

(xx) Administer and direct a program of competitive and special grants to State agricultural experiment stations, colleges and universities, other research institutions and organizations, Federal agencies, private organizations or corporations, and individuals and of facilities grants to State agricultural experiment stations and designated colleges and universities to promote research in food, agriculture and related areas (7 U.S.C. 450i).

(xxi) Provide resource information concerning rural electric and telephone use and rural development efforts (7 U.S.C. 917).

(xxii) Act as a catalyst to provide access to leadership training and services programs encompassing private, public, business, and government entities (7 U.S.C. 950aa–1).

(xxiii) Conduct research related to soil and water conservation, engineering operations, and methods of cultivation to provide for the control and prevention of soil erosion (7 U.S.C. 1010 and 16 U.S.C. 590a).

(xxiv) Maintain four regional research laboratories and conduct research at such laboratories to develop new scientific, chemical, and technical uses and new and extended markets and outlets for farm commodities and products and the byproducts thereof (7 U.S.C. 1292).

(xxv) Conduct a Special Cotton Research Program designed to reduce the cost of producing upland cotton in the United States (7 U.S.C. 1441 note).

(xxvi) Conduct a research and development program to formulate new uses for farm and forest products (7 U.S.C. 1632(b)).

(xxvii) Conduct research to develop and determine methods for the humane slaughter of livestock (7 U.S.C. 1904).

(xxviii) Administer a competitive grant program for non-profit institutions to establish and operate centers for rural technology or cooperative development (7 U.S.C. 1932(f)).

(xxix) Administer a Nutrition Education Program for Food Stamp recipients and for the distribution of commodities on reservations (7 U.S.C. 2020(f)).

(xxx) Conduct education and extension programs and a pilot project related to nutrition education (7 U.S.C. 2027(a) and 5932).

(xxxi) Provide for the dissemination of appropriate rural health and safety information resources possessed by the Rural Information Center, in cooperation with State educational program efforts (7 U.S.C. 2662).

(xxxii) Develop and maintain national and international library and information systems and networks and facilitate cooperation and coordination of the agricultural libraries of colleges, universities, USDA, and their closely allied information gathering and dissemination units in conjunction with private industry and other research libraries (7 U.S.C. 2201, 2204, 3125a, and 3126).

(xxxiii) Accept gifts and order disbursements from the Treasury for carrying out of National Agricultural Library (NAL) functions (7 U.S.C. 2264–2265).

(xxxiv) Propagate bee-breeding stock and release bee germplasm to the public (7 U.S.C. 283).

(xxxv) Administer, in cooperation with the States, a Cooperative Rural Development and Small Farm Research and Extension Program under the Rural Development Act of 1972, as amended (7 U.S.C. 2661–2667).

(xxxvi) Administer a cooperative extension program under the Farmer-to-Consumer Direct Marketing Act of 1976 (7 U.S.C. 3004).

(xxxvii) Coordinate the development and carrying out by Department agencies of all matters and functions pertaining to agricultural research conducted or funded by the Department involving biotechnology, including the development and implementation of guidelines for oversight of research activities, acting as liaison on all matters and functions pertaining to agricultural research in biotechnology between agencies within the Department and between the Department and other governmental, educational, or private organizations and carrying out any other activities authorized by (7 U.S.C. 3121).

(xxxviii) Establish a Joint Council on Food and Agricultural Sciences to bring about more effective research, extension, and teaching in the food and agricultural sciences (7 U.S.C. 3122).

(xxxix) Establish and oversee the National Agricultural Research and Extension Users Advisory Board and the Agricultural Science and Technology Review Board (7 U.S.C. 3123 and 3123A).

(xl) Provide and distribute information and data about Federal, State, local, and other Rural Development Assistance Programs and services available to individuals and organizations. To the extent possible, NAL shall use telecommunications technology to disseminate such information to rural areas (7 U.S.C. 3125b).

(xli) Assemble and collect food and nutrition educational material, including the results of nutrition research, training methods, procedures, and other materials related to the purposes of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended; maintain such information; and provide for the dissemination of such information and materials on a regular basis to State educational agencies and other interested parties (7 U.S.C. 3126).

(xlii) Conduct programs related to composting research and extension (7 U.S.C. 3130).

(xliii) Conduct a program of grants to States to expand, renovate, or improve schools of veterinary medicine (7 U.S.C. 3151).

(xliv) Formulate and administer higher education programs in the food and agricultural sciences and administer grants to colleges and universities (7 U.S.C. 3152).

(xlv) Administer the National Food and Agricultural Sciences Teaching Awards Program for recognition of educators in the food and agricultural sciences (7 U.S.C. 3152).

(xlvi) Administer the National Agricultural Science Award for research or advanced studies in the food and agricultural sciences (7 U.S.C. 3153).

(xlvii) Administer grants to colleges, universities, and Federal laboratories for research on the production and marketing of alcohols and industrial hydrocarbons from agricultural commodities and forest products (7 U.S.C. 3154).

(xlviii) Establish a national food science and research center for the Southeast Region of the United States and administer a National Food and Human Nutrition Research and Extension Program under the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3171–3175).

(xlix) Administer and direct an Animal Health and Disease Research Program under the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3191–3201).

(l) Support continuing agricultural and forestry extension and research, resident instruction, and facilities improvement at 1890 land-grant colleges, including Tuskegee University, and administer a grant program for five National Research and Training Centennial Centers (7 U.S.C. 3221, 3222, and 3222a–3222c).

(li) Support agricultural research at the 1890 land-grant colleges, including Tuskegee University, through Federal-grant funds to help finance physical facilities (7 U.S.C. 3223).

(lii) Make grants, under such terms and conditions as the Under Secretary determines, to eligible institutions for the purpose of assisting such institutions in the purchase of equipment and land, and the planning, construction, alteration, or renovation of buildings, to provide adequate facilities to conduct extension work, and issue rules and regulations as necessary to carry out this authority (7 U.S.C. 3224).

(liii) Provide policy direction and coordinate the Department's work with national and international institutions and other persons throughout the world in the performance of agricultural science, education and development activities (7 U.S.C. 3291).

(liv) Administer grants to States in support of the establishment and operation of International Trade Development Centers (7 U.S.C. 3292).

(lv) Conduct program evaluations to improve the administration and effectiveness of agricultural research, extension, and teaching programs (7 U.S.C. 3317).

(lvi) Enter into contracts, grants, or cooperative agreements to further research, extension, or teaching programs in the food and agriculture sciences (7 U.S.C. 3318).

(lvii) Enter into cost-reimbursable agreements with State cooperative institutions for the acquisition of goods or services in support of research, extension, or teaching activities in the food and agricultural sciences, including the furtherance of library and related information programs (7 U.S.C. 3319a).

(lviii) Conduct research and develop and implement a pilot project program for the development of supplemental and alternative crops (7 U.S.C. 3319d).

(lix) Administer an Aquaculture Assistance Program, involving centers, by making grants to eligible institutions for research and extension to facilitate or expand production and marketing of aquacultural food species and products; making grants to States to formulate aquaculture development plans for the production and marketing of aquacultural species and products; conducting a program of research, extension and demonstration at aquacultural demonstration centers; and making grants to aquaculture research facilities to do research on intensive water recirculating systems (7 U.S.C. 3321–3323).

(lx) Administer a Cooperative Rangeland Research Program (7 U.S.C. 3331–3336).

(lxi) Conduct a program of basic research on cancer in animals and birds (7 U.S.C. 3902).

(lxii) Design and implement educational programs and distribute materials in cooperation with the cooperative extension services of the States emphasizing the importance of productive farmland, and designate a

farmland information center, pursuant to section 1544 of the Farmland Protection Policy Act (7 U.S.C. 4205).

(lxiii) Conduct programs of education, extension, and research related to water quality, agrichemicals and nutrient management (7 U.S.C. 5503–5506).

(lxiv) Administer programs and conduct projects for research, extension, and education on sustainable agriculture (7 U.S.C. 5811–5813).

(lxv) Conduct research and cooperative extension programs to optimize crop and livestock production potential, integrated resource management, and integrated crop management (7 U.S.C. 5821).

(lxvi) Design, implement, and develop handbooks, technical guides, and other educational materials emphasizing sustainable agriculture production systems and practices (7 U.S.C. 5831).

(lxvii) Administer a competitive grant program to organizations to carry out a training program on sustainable agriculture (7 U.S.C. 5832).

(lxviii) Administer a national research program on genetic resources to provide for the collection, preservation, and dissemination of genetic material important to American food and agriculture production (7 U.S.C. 5841–5844).

(lxix) Conduct remote-sensing and other weather-related research (7 U.S.C. 5852).

(lxx) Establish an Agricultural Weather Office and administer a national agricultural weather information system, including a competitive grants program for research in atmospheric sciences and climatology (7 U.S.C. 5852–5853).

(lxxi) Administer a research and extension grant program to States to administer programs for State agricultural weather information systems (7 U.S.C. 5854).

(lxxii) Administer grants and conduct research programs to measure microbiological and chemical agents associated with the production, preparation, processing, handling, and storage of agricultural products (7 U.S.C. 5871–5874).

(lxxiii) Administer and conduct research and extension programs on integrated pest management, including research to benefit floriculture (7 U.S.C. 5881).

(lxxiv) Establish a National Pesticide Resistance Monitoring Program and disseminate information on materials and methods of pest and disease control available to agricultural producers through the pest and disease control database (7 U.S.C. 5882).

(lxxv) Administer and conduct research and grant programs on the control and eradication of exotic pests (7 U.S.C. 5883).

(lxxvi) Conduct research and educational programs to study the biology and behavior of chinch bugs (7 U.S.C. 5884).

(lxxvii) Administer research programs and grants for risk assessment research to address concerns about the environmental effects of biotechnology (7 U.S.C. 5921).

(lxxviii) Administer a special grants program to assist efforts by research institutions to improve the efficiency and efficacy of safety and inspection systems for livestock products (7 U.S.C. 5923).

(lxxix) Establish and coordinate USDA grant programs and conduct basic and applied research and technology development in the areas of plant genome structure and function (7 U.S.C. 5924).

(lxxx) Administer research and extension grants for the development of agricultural production and marketing systems to service niche markets (7 U.S.C. 5925).

(lxxxi) Administer a grants program to States on immunoassay as it is used to detect agricultural pesticide residues on agricultural commodities and to diagnose plant and animal diseases (7 U.S.C. 5925).

(lxxxii) Conduct research programs for the development of technology to determine animal lean content (7 U.S.C. 5925).

(lxxxiii) Conduct and support research programs to determine the presence of aflatoxin in the food and feed chains (7 U.S.C. 5925).

(lxxxiv) Administer grants and conduct research programs to develop production methods and commercial uses for mesquite (7 U.S.C. 5925).

(lxxxv) Administer grants and conduct research programs to investigate enhanced genetic selection and processing techniques of prickly pears (7 U.S.C. 5925).

(lxxxvi) Conduct a research program and administer grants and contracts for research on the disease of scrapie in sheep and goats (7 U.S.C. 5925).

(lxxxvii) Support and conduct basic and applied research in the development of new commercial products from natural plant materials for industrial, medical, and agricultural applications (7 U.S.C. 5925).

(lxxxviii) Establish and administer a program for the development and utilization of an agricultural communications network (7 U.S.C. 5926).

(lxxxix) Establish an Agricultural Research Facilities Planning and Closure Study Commission to review currently operating and planned facilities, and to develop recommendations (7 U.S.C. 5927).

(xc) Administer research programs to establish national centers for agricultural product quality research (7 U.S.C. 5928).

(xci) Administer education programs on Indian reservations and tribal jurisdictions (7 U.S.C. 5930).

(xcii) Administer a special grants program to study constraints on agricultural trade (7 U.S.C. 5931).

(xciii) Administer a demonstration grants program for support of an assistive technology program for farmers with disabilities (7 U.S.C. 5933).

(xciv) Conduct research on diseases affecting honeybees (7 U.S.C. 5934).

(xcv) Control within USDA the acquisition, use, and disposal of material and equipment that may be a source of ionizing radiation hazard.

(xcvi) Conduct programs of research, technology development, and education related to global climate change (7 U.S.C. 6701–6710).

(xcvii) Administer the Small Business Innovation Development Act of 1982 for USDA (15 U.S.C. 638 (e)–(k)).

(xcviii) Coordinate Departmental policies under the Toxic Substance Control Act (15 U.S.C. 2601–2629).

(xcix) Provide educational and technical assistance in implementing and administering the Conservation Reserve Program authorized in sections 1231–1244 of the Food Security Act of 1985 (Pub. L. No. 99–198, 99 Stat. 1509 (16 U.S.C. 3831–3844)).

(c) Enter into cooperative research and development agreements with industry, universities, and others; institute a cash award program to reward scientific, engineering, and technical personnel; award royalties to inventors; and retain and use royalty income (15 U.S.C. 3710a–3710c).

(ci) Coordinate USDA activities delegated under 15 U.S.C. 3710a–3710c.

(cii) Conduct educational and demonstrational work in Cooperative Farm Forestry Programs (16 U.S.C. 568).

(ciii) Cooperate with the States for the purposes of encouraging and assisting them in carrying out programs of forestry, natural resources, and environmental research (16 U.S.C. 582a–8).

(civ) Establish and administer the Forestry Student Grant Program to provide competitive grants to assist the expansion of the professional education of forestry, natural resources, and environmental scientists (16 U.S.C. 1649).

(cv) Provide for an expanded and comprehensive extension program for forest and rangeland renewable resources (16 U.S.C. 1671–1676).

(cvi) Provide technical, financial, and educational assistance to State foresters and State extension directors on rural forestry assistance (16 U.S.C. 2102).

(cvii) Provide educational assistance to State foresters under the Forest Stewardship Program (16 U.S.C. 2103a).

(cviii) Implement and conduct an educational program to assist the development of Urban and Community Forestry Programs (16 U.S.C. 2105).

(cix) Provide staff support to the Secretary of Agriculture in his or her role as permanent Chair for the Joint Subcommittee on Aquaculture established by the National Aquaculture Act of 1980 and coordinate aquacultural activities within the Department (16 U.S.C. 2805).

(cx) Perform research, development, and extension activities in aquaculture (16 U.S.C. 2804 and 2806).

(cxi) Provide educational assistance to farmers regarding the Agricultural Water Quality Protection Program (16 U.S.C. 3838b).

(cxii) Copy and deliver on demand selected articles and other materials from the Department's collections by photographic reproduction or other means within the permissions, constraints, and limitations of sections 106, 107, and 108 of the Copyright Act of October 19, 1976, (17 U.S.C. 106, 107, and 108).

(cxiii) Authorize the use of the 4–H Club name and emblem (18 U.S.C. 707).

(cxiv) Maintain a National Arboretum for the purposes of research and education concerning tree and plant life; accept and administer gifts or devices or real and personal property for the benefit of the National Arboretum; and order disbursements from the Treasury (20 U.S.C. 191–195).

(cxv) Conduct research on foot-and-mouth disease and other animal diseases (21 U.S.C. 113a).

(cxvi) Conduct research on the control and eradication of cattle grubs (screwworms) (21 U.S.C. 114e).

(cxvii) Obtain and furnish Federal excess property to eligible recipients for use in the conduct of research and extension programs (40 U.S.C. 483(d)(2)).

(cxviii) Conduct research demonstration and promotion activities related to farm dwellings and other buildings for the purposes of reducing costs and adapting and developing fixtures and appurtenances for more efficient and economical farm use (42 U.S.C. 1476(b)).

(cxix) Carry out research, demonstration, and educational activities authorized in section 202(c) of the Colorado River Basin Salinity Control Act (43 U.S.C. 1592(c)).

(cxx) Conduct research on losses of livestock in interstate commerce due to injury or disease (45 U.S.C. 71 note).

(cxxi) Administer a Cooperative Agricultural Extension Program related to agriculture, uses of solar energy with respect to agriculture, and home economics in the District of Columbia (D.C. Code 31–1409).

(cxxii) Provide leadership and direct assistance in planning, conducting and evaluating extension programs under a memorandum of agreement with the Bureau of Indian Affairs dated May 1956.

(cxxiii) Exercise the responsibilities of the Secretary under regulations dealing with Equal Employment Opportunity in the Cooperative Extension Service (part 18 of this title).

(cxxiv) Represent the Department on the Federal Interagency Council on Education.

(cxxv) Assure the acquisition, preservation, and accessibility of all information concerning food and agriculture by providing leadership to and coordination of the acquisition programs and related activities of the library and information systems, with the agencies of USDA, other Federal departments and agencies, State agricultural experiment stations, colleges and universities, and other research institutions and organizations.

(cxxvi) Formulate, write, or prescribe bibliographic and technically related standards for the library and information services of USDA.

(cxxvii) Determine by survey or other appropriate means, the information needs of the Department's scientific, professional, technical, and administrative staffs, its constituencies, and the general public in the areas of food, agriculture, the environment, and other related areas.

(cxxviii) Represent the Department on all library and information science matters before Congressional Committees and appropriate commissions, and provide representation to the coordinating committees of the Federal and State governments concerned with library and information science activities.

(cxxix) Represent the Department in international organizational activities and on international technical committees concerned with agricultural science, education, and development activities, including library and information science activities.

(cxxx) Prepare and disseminate computer files, indexes and abstracts, bibliographies, reviews, and other analytical information tools.

(cxxxi) Arrange for the consolidated purchasing and dissemination of printed and automated indexes, abstracts, journals, and other widely used information resources and services.

(cxxxii) Provide assistance and support to professional organizations and others concerned with library and information science matters and issues.

(cxxxiii) Pursuant to the authority delegated by the Administrator of General Services to the Secretary of Agriculture in 34 FR 6406, 36 FR 1293, 36 FR 18440, and 38 FR 23838, appoint uniformed armed guards and special policemen, make all needful rules and regulations, and annex to such rules and regulations such reasonable penalties (not to exceed those prescribed in 40 U.S.C. 318(c), as will ensure their enforcement, for the protection of persons, property, buildings, and grounds of the Arboretum, Washington, DC; the U.S. Meat Animal Research Center, Clay Center, NE; the Agricultural Research Center, Beltsville, MD; and the Animal Disease Center, Plum Island, NY, over which the United States has exclusive or concurrent criminal jurisdiction, in accordance with the limitations and requirements of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471, *et seq.*), the Act of June 1, 1948, as amended (40 U.S.C. 318, *et seq.*), and the policies, procedures, and controls prescribed by the General Services Administration. Any rules or regulations promulgated under this authority shall be approved by the Director, Office of Operations, and the General Counsel prior to issuance.

(cxxxiv) Represent the Department on the Federal Coordinating Council for Science, Engineering, and Technology.

(cxxxv) Administer the Department's Patent Program except as delegated to the General Counsel in § 2.31(e).

(cxxxvi) Review cooperative research and development agreements entered into pursuant to 15 U.S.C. 3710a–3710c, with authority to disapprove or require the modification of any such agreement.

(2) *Related to committee management.* Establish or reestablish regional, state and local advisory committees for the activities authorized. This authority may not be redelegated.

(3) *Related to defense and emergency preparedness.* Administer the responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195, *et seq.*), concerning scientific and educational programs; estimates of supplies of agricultural commodities and evaluation of requirements therefor; coordination

of damage assessment; food and agricultural aspects of economic stabilization, economic research, and agricultural statistics; and the coordination of energy programs.

(4) *Related to rural development activities.* Provide guidance and direction for the accomplishment of activities authorized under the Rural Development Act of 1972, as amended (7 U.S.C. 1921, *et seq.*), for programs under the control of the Under Secretary for Research, Education, and Economics, coordinating the policy aspects thereof with the Under Secretary for Rural Economic and Community Development.

(5) *Related to environmental response.* With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("the Act"), as amended:

(i) Sections 104(a), (b), and (c)(4) of the Act (42 U.S.C. 9604(a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(6) *Related to compliance with environmental laws.* With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901, *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601, *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

(7) *Related to national food and human nutrition research.*

(i) Administer a National Food and Human Nutrition Research Program under the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended. As used herein the term "research" includes:

(A) Research on the nutrient composition of foods and the effects of agricultural practices, handling, food processing, and cooking on the nutrients they contain;

(B) Surveillance of the nutritional benefits provided to participants in the food programs administered by the Department; and

(C) Research on the factors affecting food preference and habits (7 U.S.C. 3171–3175, 3177).

(ii) The authority in paragraph (a)(7)(i) of this section includes the authority to:

(A) Appraise the nutritive content of the U.S. food supply;

(B) Develop and make available data on the nutrient composition of foods needed by Federal, State, and local agencies administering food and nutrition programs, and the general public, to improve the nutritional quality of diets;

(C) Coordinate nutrition education research projects within the Department; and

(D) Maintain data generated on food composition in a National Nutrient Data Bank.

(iii) Conduct, in cooperation with the Department of Health and Human Services, the National Nutrition Monitoring and Related Research Program. Included in this delegation is the authority to:

(A) Design and carry out periodic nationwide food consumption surveys to measure household food consumption;

(B) Design and carry out a continuous, longitudinal individual intake survey of the United States population and special high-risk groups; and

(C) Design and carry out methodological research studies to develop improved procedures for collecting household and individual food intake consumption data;

(iv) Conduct a program of nutrition education research.

(v) Co-chair with the Assistant Secretary for Health, Department of Health and Human Services, the Interagency Board for Nutrition Monitoring and Related Research for the development and coordination of a Ten-Year Comprehensive Plan as required by Pub. L. No. 101–445, 7 U.S.C. 5301, *et seq.*

(8) *Related to economic research and statistical reporting.* (i) Conduct economic research on matters of importance to cooperatives as authorized by the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627).

(ii) Conduct economic and social science research and analyses relating to:

(A) food and agriculture situation and outlook;

(B) the production, marketing, and distribution of food and fiber products (excluding forest and forest products), including studies of the performance of the food and agricultural sector of the economy in meeting needs and wants of consumers;

(C) basic and long-range, worldwide, economic analyses and research on supply, demand, and trade in food and fiber products and the effects on the U.S. food and agriculture system, including general economic analyses of the international financial and monetary aspects of agricultural affairs;

(D) natural resources, including studies of the use and management of land and water resources, the quality of these resources, resource institutions, and watershed and river basin development problems; and

(E) rural people and communities, as authorized by title II of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), and the Act of June 29, 1935, as amended (7 U.S.C. 427).

(iii) Perform economic and other social science research under section 104(b) (1) and (3) of the Agricultural Trade Development and Assistance Act of 1954, as amended, with funds administered by the Foreign Agricultural Service (7 U.S.C. 1704).

(iv) Prepare crop and livestock estimates and administer reporting programs, including estimates of production, supply, price, and other aspects of the U.S. agricultural economy, collection of statistics, conduct of enumerative and objective measurement surveys, construction and maintenance of sampling frames, and related activities. Prepare reports of the Agricultural Statistics Board of the Department of Agriculture covering official state and national estimates (7 U.S.C. 411a, 475, 476, 951, and 2204).

(v) Take such security precautions as are necessary to prevent disclosure of crop or livestock report information prior to the scheduled issuance time approved in advance by the Secretary of Agriculture and take such actions as are necessary to avoid disclosure of confidential data or information supplied by any person, firm, partnership, corporation, or association (18 U.S.C. 1902, 1903, and 2072).

(vi) Improve statistics in the Department; maintain liaison with OMB and other Federal agencies for coordination of statistical methods and techniques.

(vii) Investigate and make findings as to the effect upon the production of food and upon the agricultural economy of any proposed action pending before the Administrator of the Environmental Protection Agency for presentation in the public interest, before said Administrator, other agencies, or before the courts.

(viii) Review economic data and analyses used in speeches by Department personnel and in materials prepared for release through the press, radio, and television.

(ix) Coordinate all economic analysis and review all decisions involving substantial economic policy implications.

(x) Cooperate and work with national and international institutions and other persons throughout the world in the performance of agricultural research and extension activities to promote and support the development of a viable and sustainable global and agricultural system. Such work may be carried out by:

(A) Exchanging research materials and results with the institutions or persons;

(B) Engaging in joint or coordinated research;

(C) Entering into cooperative arrangements with Departments and Ministries of Agriculture in other nations to conduct research, extension; and education activities (limited to arrangements either involving no exchange of funds or involving disbursements by the agency to the institutions of other nations), and then reporting these arrangements to the Secretary of Agriculture;

(D) Stationing representatives at such institutions or organizations in foreign countries; or

(E) Entering into agreements with land-grant colleges and universities, other organizations, institutions, or individuals with comparable goals, and with the concurrence of the Foreign Agricultural Service, USDA, international organizations (limited to agreements either involving no exchange of funds or involving disbursements by the agency to the cooperator), and then reporting these agreement to the Secretary of Agriculture (7 U.S.C. 3291(a)).

(xi) Prepare for transmittal by the Secretary to the President and both Houses of Congress, an analytical report under section 5 of the Agricultural Foreign Investment Disclosure Act of 1978 (7 U.S.C. 3504) concerning the effect on family farms and rural communities of holdings, acquisitions, and transfers of U.S. agricultural land by foreign persons.

(xii) Enter into contracts, grants, or cooperative agreements to further research and statistical reporting programs in the food and agricultural sciences (7 U.S.C. 3318).

(xiii) Enter into cost-reimbursable agreements relating to agricultural research and statistical reporting (7 U.S.C. 3319a).

(9) *Related to energy.* (i) Advise the Secretary and other policy-level officials of the Department on energy policies and programs, including legislative and budget proposals.

(ii) Serve as or designate the Department representative at hearings, conferences, meetings and other contacts with respect to energy and energy-related matters, including liaison with the Department of Energy and other governmental agencies and departments.

(iii) Provide Department leadership in:

(A) Analyzing and evaluating existing and proposed energy policies and strategies, including those regarding the allocation of scarce resources;

(B) Developing energy policies and strategies, including those regarding the allocation of scarce resources;

(C) Reviewing and evaluating Departmental energy and energy-related programs and program progress;

(D) Developing agricultural and rural components of national energy policy plans; and

(E) Preparing reports on energy and energy-related policies and programs required under Acts of Congress and Executive orders, including those involving testimony and reports on legislative proposals.

(iv) Provide Departmental oversight and coordination with respect to resources available for energy and energy-related activities, including funds transferred to USDA from other departments or agencies of the Federal Government pursuant to interagency agreements.

(v) These delegations exclude the energy management actions related to the internal operations of the Department as delegated to the Assistant Secretary for Administration.

(10) *Related to immigration.* Serve as the designee of the Secretary pursuant to section 212(e) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1182(e) and 22 CFR 514.44(c)).

(b) The following authorities are reserved to the Secretary of Agriculture:

(1) *Related to science and education.* (i) Withhold funds from States and sending notification thereof to the President in accordance with sections 5 and 6 of the Smith-Lever Act, as amended (7 U.S.C. 345–346), sections 5 and 7 of the Hatch Act, as amended (7 U.S.C. 361(e) and (g)), and sections 1436, 1444, 1445 and 1468 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3198, 3221, 3222 and 3314).

(ii) Reapportion funds under section 4 and apportion funds under section 5 of the Act of October 10, 1962 (16 U.S.C. 582a–3, 582a–5).

(iii) Appoint an advisory committee under section 6 of the Act of October 10, 1962 (16 U.S.C. 582a–4).

(iv) Final concurrence in Equal Employment Opportunity Programs within the cooperative extension programs submitted under part 18 of this title.

(v) Approve selection of State directors of extension.

(vi) Approve the memoranda of understanding between the land-grant universities and USDA related to cooperative extension programs.

(2) *Related to economic research and statistical reporting.* (i) Final approval and issuance of the monthly crop report (7 U.S.C. 411a).

(ii) Final action on rules and regulations for the Agricultural Statistics Board.

§ 2.22 Assistant Secretary for Marketing and Regulatory Programs.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Assistant Secretary for Marketing and Regulatory Programs:

(1) *Related to agricultural marketing.* (i) Exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), including payments to State Departments of Agriculture in connection with cooperative marketing service projects under section 204(b) (7 U.S.C. 1623(b)), but excepting matters otherwise assigned.

(ii) Conduct marketing efficiency research and development activities directly applicable to the conduct of the Wholesale Market Development Program, specifically:

(A) Studies of facilities and methods used in physical distribution of food and other farm products;

(B) Studies designed to improve handling of all agricultural products as they are moved from farms to consumers; and

(C) application of presently available scientific knowledge to the solution of practical problems encountered in the marketing of agricultural products (7 U.S.C. 1621–1627).

(iii) Exercise the functions of the Secretary of Agriculture relating to the transportation activities contained in section 203(j) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1622(j)) as amended, but excepting matters otherwise assigned.

(iv) Administer transportation activities under section 201 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1291).

(v) Apply results of economic research and operations analysis to evaluate transportation issues and to recommend revisions of current procedures.

(vi) Serve as the focal point for all Department transportation matters including development of policies and strategies.

(vii) Cooperate with other Departmental agencies in the development and recommendation of policies for inland transportation of USDA and CCC-owned commodities in connection with USDA programs.

(viii) Exercise the functions of the Secretary of Agriculture contained in the following legislation:

(A) U.S. Cotton Standards Act (7 U.S.C. 51–65);

(B) Cotton futures provisions of the Internal Revenue Code of 1954 (26 U.S.C. 4854, 4862–4865, 4876, and 7263);

(C) Cotton Statistics and Estimates Act, as amended (7 U.S.C. 471–476), except as otherwise assigned;

(D) Naval Stores Act (7 U.S.C. 91–99);

(E) Tobacco Inspection Act (7 U.S.C. 511–511q);

(F) Wool Standard Act (7 U.S.C. 415b–415d);

(G) Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601, 602, 608a–608e, 610, 612, 614, 624, 671–674);

(H) Cotton Research and Promotion Act (7 U.S.C. 2101–2118) and section 610 of the Agricultural Act of 1970 (7 U.S.C. 2119), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

(I) Export Apple and Pear Act (7 U.S.C. 581–590);

(J) Export Grape and Plum Act (7 U.S.C. 591–599);

(K) Titles I, II, IV, and V of the Federal Seed Act, as amended (7 U.S.C. 1551–1575, 1591–1611);

(L) Perishable Agricultural Commodities Act (7 U.S.C. 499a–499s);

(M) Produce Agency Act (7 U.S.C. 491–497);

(N) Tobacco Seed and Plant Exportation Act (7 U.S.C. 516–517);

(O) Tobacco Statistics Act (7 U.S.C. 501–508);

(P) Section 401(a) of the Organic Act of 1944 (7 U.S.C. 415e);

(Q) Agricultural Fair Practices Act (7 U.S.C. 2301–2306);

(R) Wheat Research and Promotion Act (7 U.S.C. 1292 note), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

(S) Plant Variety Protection Act (7 U.S.C. 2321–2331, 2351–2357, 2371–2372, 2401–2404, 2421–2427, 2441–2443, 2461–2463, 2481–2486, 2501–2504, 2531–2532, 2541–2545, 2561–2569, 2581–2583), except as delegated to the Judicial Officer;

(T) Subtitle B of title I and section 301(4) of the Dairy and Tobacco Adjustment Act of 1983 (7 U.S.C. 4501–4513, 4514(4)), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

(U) Potato Research and Promotion Act (7 U.S.C. 2611–2627), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

(V) Section 708 of the National Wool Act of 1954, as amended (7 U.S.C. 1787), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in §§ 2.16(a)(1)(xi) and (a)(3)(x);

(W) Egg Research and Consumer Information Act (7 U.S.C. 2701–2718), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

(X) Beef Research and Information Act, as amended (7 U.S.C. 2901–2918), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in §§ 2.16(a)(1)(xiv) and (a)(3)(x);

(Y) Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3401–3417), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

(Z) Egg Products Inspection Act relating to the Shell Egg Surveillance Program, voluntary laboratory analyses of egg products, and the Voluntary Egg Grading Program (21 U.S.C. 1031–1056);

(AA) Section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), as supplemented by the Act of June 28, 1937 (15 U.S.C. 713c), and related legislation, except functions which are otherwise assigned relating to the domestic distribution and donation of agricultural commodities and products thereof following the procurement thereof;

(BB) Procurement of agricultural commodities and other foods under section 6 of the National School Lunch Act of 1946, as amended (42 U.S.C. 1755);

(CC) In carrying out the procurement functions in paragraphs (a)(1)(viii)(AA) and (BB) of this section, the Assistant Secretary for Marketing and Regulatory Programs shall, to the extent practicable, use the commodity procurement, handling, payment and related services of the Farm Service Agency;

(DD) Act of May 23, 1980, regarding inspection of dairy products for export (21 U.S.C. 693);

(EE) The Pork Promotion, Research and Consumer Information Act of 1985 (7 U.S.C. 4801–4819);

(FF) The Watermelon Research and Promotion Act (7 U.S.C. 4901–4916);

(GG) The Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4601–4612);

(HH) Subtitles B and C of the Dairy Production Stabilization Act of 1983, as amended (7 U.S.C. 4501–4513, 4531–4538);

(II) The Floral Research and Consumer Information Act (7 U.S.C. 4301–4319);

(JJ) Section 213 of the Tobacco Adjustment Act of 1983, as amended (7 U.S.C. 511r);

(KK) National Laboratory Accreditation Program (7 U.S.C. 138–138i) with respect to laboratories accredited for pesticide residue analysis in fruits and vegetables and other agricultural commodities, except those laboratories analyzing only meat and poultry products;

(LL) Pecan Promotion and Research Act of 1990 (7 U.S.C. 6001–6013), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

(MM) Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6101–6112), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

(NN) Lime Research, Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6201–6212), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

(OO) Soybean Promotion, Research, and Consumer Information Act (7 U.S.C. 6301–6311), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

(PP) Fluid Milk Promotion Act of 1990 (7 U.S.C. 6401–6417);

(QQ) Producer Research and Promotion Board Accountability (104 Stat. 3927);

(RR) Consistency with International Obligations of the United States (7 U.S.C. 2278);

(SS) Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522), provided that the Administrator, Agricultural Marketing Service, will enter into agreements, as necessary, with the Administrator, Food Safety and Inspection Service, to provide inspection services;

(TT) Pesticide Recordkeeping (7 U.S.C. 136i–1) with the provision that the Administrator, Agricultural Marketing Service, will enter into agreements, as necessary, with other Federal agencies;

(UU) The International Carriage of Perishable Foodstuffs Act (7 U.S.C. 4401–4406); and

(VV) The Sheep Promotion, Research, and Information Act (7 U.S.C. 7101–7111).

(ix) Furnish, on request, copies of programs, pamphlets, reports, or other publications for missions or programs as may otherwise be delegated or assigned to the Assistant Secretary for Marketing and Regulatory Programs, and charge user fees therefor, as authorized by section 1121 of the Agriculture and Food Act of 1981, as amended by section 1769 of the Food Security Act of 1985, 7 U.S.C. 2242a.

(x) Collect, summarize, and publish data on the production, distribution, and stocks of sugar.

(2) *Related to animal and plant health inspection.* Exercise the functions of the Secretary of Agriculture under the following authorities:

(i) Administer the Foreign Service personnel system for employees of the Animal and Plant Health Inspection Service in accordance with 22 U.S.C. 3922, except that this delegation does not include the authority to represent the Department of Agriculture in interagency consultations and negotiations with other foreign affairs agencies regarding joint regulations, nor the authority to approve joint regulations issued by the Department of State relating to administration of the Foreign Service;

(ii) Section 102, Organic Act of 1944, as amended, and the Act of April 6, 1937, as amended (7 U.S.C. 147a, 148, 148a–148e), relating to control and eradication of plant pests and diseases, including administering survey and regulatory activities for the Gypsy Moth Program and, with the Chief of the Forest Service, jointly administering gypsy moth eradication activities by assuming primary responsibility for eradication of gypsy moth infestations of 640 acres or less on State and private lands that are not contiguous to infested Federal lands;

(iii) The Mexican Border Act, as amended (7 U.S.C. 149);

(iv) The Golden Nematode Act (7 U.S.C. 150–150g);

(v) The Federal Plant Pest Act, as amended (7 U.S.C. 150aa–150jj);

(vi) The Plant Quarantine Act, as amended (7 U.S.C. 151–164a, 167).

(vii) The Terminal Inspection Act, as amended (7 U.S.C. 166);

(viii) The Honeybee Act, as amended (7 U.S.C. 281–286);

(ix) The Halogeton Glomeratus Control Act (7 U.S.C. 1651–1656);

(x) Tariff Act of June 17, 1930, as amended, sec. 306 (19 U.S.C. 1306);

(xi) Act of August 30, 1890, as amended (21 U.S.C. 102–105);

(xii) Act of May 29, 1884, as amended, Act of February 2, 1903, as amended, and Act of March 3, 1905, as amended, and supplemental legislation (21 U.S.C. 111–114a, 114a–1, 115–130);

(xiii) Act of February 28, 1947, as amended (21 U.S.C. 114b–114c, 114d–1);

(xiv) Act of June 16, 1948 (21 U.S.C. 114e–114f);

(xv) Act of September 6, 1961 (21 U.S.C. 114g–114h);

(xvi) Act of July 2, 1962 (21 U.S.C. 134–134h);

(xvii) Act of May 6, 1970 (21 U.S.C. 135–135b);

(xviii) Sections 12–14 of the Federal Meat Inspection Act, as amended, and so much of section 18 of such Act as pertains to the issuance of certificates of condition of live animals intended and offered for export (21 U.S.C. 612–614, 618);

(xix) Improvement of poultry, poultry products, and hatcheries (7 U.S.C. 429);

(xx) The responsibilities of the United States under the International Plant Protection Convention;

(xxi) (Laboratory) Animal Welfare Act, as amended (7 U.S.C. 2131–2159);

(xxii) Horse Protection Act (15 U.S.C. 1821–1831);

(xxiii) 28 Hour Law, as amended (45 U.S.C. 71–74);

(xxiv) Export Animal Accommodation Act, as amended (46 U.S.C. 3901–3902);

(xxv) Purebred Animal Duty Free Entry Provisions of Tariff Act of June 17, 1930, as amended (19 U.S.C. 1202, part 1, Item 100.01);

(xxvi) Virus-Serum-Toxin Act (21 U.S.C. 151–158);

(xxvii) Conduct diagnostic and related activities necessary to prevent, detect, control or eradicate foot-and-mouth disease and other foreign animal diseases (21 U.S.C. 113a);

(xxviii) The Agricultural Marketing Act of 1946, sections 203, 205, as amended (7 U.S.C. 1622, 1624), with respect to voluntary inspection and certification of animal products; inspection, testing, treatment, and certification of animals; and a program to investigate and develop solutions to the problems resulting from the use of sulfonamides in swine;

(xxix) Talmadge Aiken Act (7 U.S.C. 450) with respect to cooperation with States in control and eradication of plant and animal diseases and pests;

(xxx) The Federal Noxious Weed Act of 1974, as amended (7 U.S.C. 2801–2814);

(xxxi) The Endangered Species Act of 1973 (16 U.S.C. 1531–1544);

(xxxii) Executive Order 11987, 3 CFR, 1977 Comp., p. 116;

(xxxiii) Section 101(d), Organic Act of 1944 (7 U.S.C. 430);

(xxxiv) The Swine Health Protection Act, as amended (7 U.S.C. 3801–3813);

(xxxv) Lacey Act Amendments of 1981, as amended (16 U.S.C. 3371–3378);

(xxxvi) Title III (and title IV to the extent that it relates to activities under title III,) of the Federal Seed Act, as amended (7 U.S.C. 1581–1610);

(xxxvii) Authority to prescribe the amounts of commuted traveltime allowances and the circumstances under which such allowances may be paid to employees covered by the Act of August 28, 1950 (7 U.S.C. 2260);

(xxxviii) The Act of March 2, 1931 (7 U.S.C. 426–426b);

(xxxix) The Act of December 22, 1987 (7 U.S.C. 426c);

(xl) Authority to work with developed and transitional countries on agricultural and related research and extension, with respect to animal and plant health, including providing technical assistance, training, and advice to persons from such countries engaged in such activities and the stationing of scientists of national and international institutions in such countries (7 U.S.C. 3291(a)(3));

(xli) Authority to prescribe and collect fees under the Act of August 31, 1951, as amended (31 U.S.C. 9701), and sections 2508 and 2509 of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136, 136a), as amended;

(xlii) The provisions of 35 U.S.C. 156;

(xliii) Enter into cooperative research and development agreements with industry, universities, and others; institute a cash award program to reward scientific, engineering, and technical personnel; award royalties to inventors; and retain and use royalty income (15 U.S.C. 3710a–3710c); and

(xliv) The Alien Species Prevention and Enforcement Act of 1992 (39 U.S.C. 3015 note).

(3) *Related to grain inspection, packers and stockyards.* (i) Exercise the authority of the Secretary of Agriculture contained in the U.S. Grain Standards Act, as amended (7 U.S.C. 71–87h).

(ii) Exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), relating to inspection and standardization activities relating to grain.

(iii) Administer the Packers and Stockyards Act, as amended and supplemented (7 U.S.C. 181–229).

(iv) Enforce provisions of the Consumer Credit Protection Act (15 U.S.C. 1601–1655, 1681–1681t) with respect to any activities subject to the Packers and Stockyards Act, 1921, as amended and supplemented.

(v) Exercise the functions of the Secretary of Agriculture contained in section 1324 of the Food Security Act of 1985 (7 U.S.C. 1631).

(4) *Related to committee management.* Establish and reestablish regional, State, and local advisory committees for activities under his or her authority. This authority may not be redelegated.

(5) *Related to defense and emergency preparedness.* Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195, *et seq.*), concerning protection of livestock, poultry and crops and products thereof from biological and chemical warfare; and utilization or disposal of livestock and poultry exposed to radiation.

(6) *Related to biotechnology.* Coordinate the development and carrying out by Department agencies of all matters and functions pertaining to the Department's regulation of biotechnology, and act as liaison on all matters and functions pertaining to the regulation of biotechnology between agencies within the Department and between the Department and governmental and private organizations. Provided, that with respect to biotechnology matters affecting egg products, the Assistant Secretary shall consult and coordinate activities of Department agencies with the Under Secretary for Food Safety.

(7) *Related to environmental response.* With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("the Act"), as amended:

(i) Sections 104(a), (b), and (c)(4) of the Act (42 U.S.C. 9604(a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(8) *Related to compliance with environmental laws.* With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901, *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601, *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

(9) *Related to the Capper-Volstead Act.* Serve as a member of the Capper-Volstead Act Committee to identify cases of undue price enhancement by associations of producers and issue complaints requiring such associations to show cause why an order should not be made directing them to cease and desist from monopolization or restraint of trade (7 U.S.C. 292).

(b) The following authorities are reserved to the Secretary of Agriculture:

(1) Relating to agricultural marketing.

(i) Promulgation, with the Secretary of the Treasury of joint regulations under section 402(b) of the Federal Seed Act, as amended (7 U.S.C. 1592(b)).

(ii) Appoint members of the National Dairy Promotion and Research Board established by section 113(b) of the Dairy and Tobacco Adjustment Act of 1983 (7 U.S.C. 4504(b)).

(iii) Appoint members of the National Processor Advertising and Promotion Board established by section 1999H(b)(4) of the Fluid Milk Promotion Act of 1990 (7 U.S.C. 6407(b)).

(2) *Related to animal and plant health inspection.* (i) Determination that an emergency or extraordinary emergency exists because of the outbreak of any dangerous, communicable disease of livestock or poultry anywhere in the United States and that such outbreak threatens the livestock or poultry of the United States (21 U.S.C. 114a, 114c, 134a(b)).

(ii) Determination as to the measure and character of cooperation with Canada, Mexico, Central American countries, Panama, and Columbia related to operations and measures to eradicate, suppress, or control or to prevent or retard any communicable disease of animals, the designation of members of advisory committees, and the appointment of commissioners on any joint commission with these governments set up under such programs (21 U.S.C. 114b).

(iii) Approval of requests for apportionment of reserves for the control of outbreaks of insects, plant diseases, and animal diseases to the extent necessary to meet emergency conditions (31 U.S.C. 665).

(iv) Determination that an extraordinary emergency exists under the criteria in section 105(b)(1) of the Federal Plant Pest Act, as amended, (7 U.S.C. 150dd(b)(1)).

§ 2.23 Assistant Secretary for Congressional Relations.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Assistant Secretary for Congressional Relations:

(1) *Related to congressional affairs.* (i) Exercise responsibility for coordination of all congressional matters in the Department.

(ii) Maintain liaison with the Congress and the White House on legislative Matters of concern to the Department.

(2) *Related to intergovernmental affairs.* (i) Coordinate all programs involving intergovernmental affairs including State and local government relations and liaison with:

(A) National Association of State Departments of Agriculture;

(B) Office of Intergovernmental Relations (Office of Vice President);

(C) Advisory Commission on Intergovernmental Relations;

(D) Council of State Governments;

(E) National Governors Conference;

(F) National Association of Counties;

(G) National League of Cities;

(H) International City Managers Association;

(I) U.S. Conference of Mayors; and

(J) Such other State and Federal agencies, departments and organizations as are necessary in carrying out the responsibilities of this office.

(ii) Maintain oversight of the activities of USDA representatives to the 10 Federal Regional councils.

(iii) Serve as the USDA contact with the Advisory Commission on Intergovernmental Relations for implementation of OMB Circular A–85 to provide advance notification to state and local governments of proposed changes in Department programs that affect such governments.

(iv) Act as the department representative for Federal executive board matters.

(v) Administer the implementation of the National Historic Preservation Act of 1966, 16 U.S.C. 470, *et seq.*, Executive Order 11593, 3 CFR, 1971–1975 Comp., p. 559, and regulations of the Advisory Council on Historic Preservation, 36 CFR part 800, for the Department of Agriculture with authority to name the Secretary's designee to the Advisory Council on Historic Preservation.

(3) *Related to Indian affairs.* Coordinate the Department's programs involving assistance to American Indians except civil rights activities.

§ 2.24 Assistant Secretary for Administration.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Assistant Secretary for Administration:

(1) Related to administrative law judges. (i) Assign, after appropriate consultation with other general officers, to the Office of Administrative Law Judges proceedings not subject to 5 U.S.C. 556 and 557, involving the holdings of hearings and performance of related duties pursuant to the applicable rules of practice, when the Assistant

Secretary for Administration determines that because of the nature of the proceeding it would be desirable for the proceeding to be presided over by an Administrative Law Judge and that such duties and responsibilities would not be inconsistent with those of an Administrative Law Judge.

(ii) Provide administrative supervision of the Office of Administrative Law Judges.

(iii) Maintain overall responsibility and control over the Hearing Clerk's activities which include the custody of and responsibility for the control, maintenance, and servicing of the original and permanent records of all USDA administrative proceedings conducted under the provisions of 5 U.S.C 556 and 557:

(A) Receiving, filing and acknowledging the receipt of complaints, petitions, answers, briefs, arguments, and all other documents that may be submitted to the Secretary or the Department of Agriculture in such proceedings;

(B) Receiving and filing complaints, notices of inquiry, orders to show cause, notices of hearing, designations of Administrative Law Judges or presiding officers, answers, briefs, arguments, orders, and all other documents that may be promulgated or issued by the Secretary or other duly authorized officials of the Department of Agriculture in such proceedings;

(C) Supervising the service upon the parties concerned of any documents that are required to be served, and where required, preserving proof of service;

(D) Keeping a docket record of all such documents and proceedings;

(E) Filing a stenographic record of each administrative hearing;

(F) Preparing for certification and certifying under the Secretary's facsimile signature, material on file in the Hearing Clerk's office;

(G) Performing any other clerical duties with respect to the documents relative to such proceedings as may be required to be performed;

(H) Cooperating with the Office of Operations in the letting of contracts for stenographic and reporting services; and forwarding vouchers to appropriate agencies for payment;

(I) Receiving and compiling data, views or comments filed in response to notices of proposed standards or rules or regulations; and

(J) Performing upon request the following services with respect to any hearings in such proceedings:

(*1*) Arranging for suitable hearing place; and

(*2*) Arranging for stenographic reporting of hearings and handling details in connection therewith.

(2) *Related to management.* (i) Administer a productivity program in accordance with Executive Order 12089, 3 CFR, Comp., p. 246, and other policy and procedural directives and laws to:

(A) Assess and improve productivity of the Department; and

(B) Assist agencies in developing, implementing and maintaining productivity measurement systems.

(ii) Responsible for the Modernization of Administrative Processes project to analyze and make recommendations to the Secretary regarding improved processes with respect to administrative and financial activities of the Department.

(iii) Designate the Department's Chief Management Improvement Officer.

(iv) Improve Departmental management by: Performing management studies and reviews in response to agency requests for assistance; enhancing management decisionmaking by developing and applying analytic techniques to address particular administrative operational and management problems; searching for more economical or effective approaches to the conduct of business; developing and revising systems, processes, work methods and techniques; and undertaking other efforts to improve the management effectiveness and productivity of the Department.

(v) Administer the Department's Management Improvement Program including the provision of assistance to agencies through management studies and planning review; review the management and operating policies and processes; search for more economical approaches to the conduct of business and provide such other assistance as will aid in improving the management effectiveness and operation of the Department's programs.

(vi) Administer the Department's Management Review Program. This authority includes the development and promulgation of departmental directives regulating the management review function.

(vii) Develop, design, install, and revise systems, processes, work methods, and techniques, and undertake other system engineering efforts to improve the management and operational effectiveness of the USDA.

(3) *Related to operations.* (i) Promulgate Departmental policies, standards, techniques, and procedures, and represent the Department, in the following:

(A) Contracting for and the procurement of administrative and operating supplies, services, equipment and construction;

(B) Socioeconomic programs relating to contracting, except matters otherwise assigned;

(C) Selection, standardization, and simplification of program delivery processes utilizing contracts;

(D) Acquisition, leasing, utilization, value analysis, construction, maintenance, and disposition of real and personal property, including control of space assignments;

(E) Acquisition, storage, distribution and disposition of forms, supplies and equipment;

(F) Mail management;

(G) Motor vehicle fleet and other vehicular transportation;

(H) Transportation of things (traffic management);

(I) Prevention, control, and abatement of pollution with respect to Federal facilities and activities under the control of the Department (Executive Order 12088, 3 CFR, 1978 Comp., p. 243);

(J) Implementation of the Uniform Relocation Assistance and Real Property Policies Act of 1970 (42 U.S.C. 4601, *et seq.*) and

(K) Develop and implement energy management actions related to the internal operations of the Department. Maintain liaison with other government agencies in these matters.

(ii) Operate, or provide for the operation of, centralized Departmental services for printing, copy reproduction, offset composition, supply, mail, automated mailing lists, excess property pool, resource recovery, shipping and receiving, forms, labor services, issuance of general employee identification cards, supplemental distribution of Department directives, space allocation and management, and related management support.

(iii) Exercise the following special authorities:

(A) Designate the Department's Debarring Officer to perform the functions of 48 CFR part 9, subparts 9.406 and 9.407;

(B) Conduct liaison with the Office of the Federal Register (1 CFR part 16) including the making of required certifications pursuant to 1 CFR part 18;

(C) Maintain custody and permit appropriate use of the official seal of the Department;

(D) Establish policy for the use of the official flags of the Secretary and the Department;

(E) Coordinate collection of historical material for Presidential Libraries;

(F) Oversee the safeguarding of unclassified materials designated "For Official Use Only;"

(G) Make determinations under 48 CFR 14.406–3(a) through (d), relating to mistakes in bids alleged after opening of bids and before award; and

(H) Make information returns to the Internal Revenue Service as prescribed by 26 U.S.C. 6050M and by 26 CFR 1.6050M–1 and such other Treasury regulations, guidelines or procedures as may be issued by the Internal Revenue Service in accordance with 26 U.S.C. 6050M. This includes executing such verifications or certifications as may be required by 26 CFR 1.6050M–1, and making the election by 26 CFR 1.6050M–1(d)(5)(i).

(iv) Exercise full Departmentwide contracting and procurement authority for automatic data processing and data transmission equipment, software, services, maintenance, and related supplies. This includes the promulgation of Department directives regulating the management or related contracting and procurement functions.

(v) Provide staff assistance for the Secretary, general officers and other Department and agency officials.

(vi) Represent the Department in contacts with the General Services Administration, the Office of Management and Budget, and other organizations or agencies on matters related to assigned responsibilities.

(vii) Serve as the Acquisition Executive in USDA to integrate and unify the management process for the Department's major system acquisitions and to monitor implementation of the policies and practices set forth in OMB Circular A–109, Major Systems Acquisitions. This delegation includes the authority to:

(A) Insure that OMB Circular A–109 is effectively implemented in the Department and that the management objectives of the Circular are realized;

(B) Review the program management of each major system acquisition;

(C) Designate the program manager for each major system acquisition; and

(D) Designate any Departmental acquisition as a major system acquisition under OMB Circular A–109.

(viii) Pursuant to Executive Order 12352, 3 CFR, 1982 Comp., p. 137, and sections 16, 20(b), and 21 of the Office of Federal Procurement Policy Act, as amended, 41 U.S.C. 414, 418(b) and 418, designate a Senior Procurement Executive for the Department and delegate responsibility for the following:

(A) Prescribing and publishing Departmental procurement policies, regulations, and procedures;

(B) Taking any necessary actions consistent with policies, regulations, and procedures with respect to purchases, contracts, leases, and other transactions;

(C) Designating contracting officers;

(D) Establishing clear lines of contracting authority;

(E) Evaluating and monitoring the performance of the Department's procurement system;

(F) Managing and enhancing career development of the procurement work force;

(G) Participating in the development of Government-wide procurement policies, regulations, and standards and determining specific areas where Government-wide performance standards should be established and applied;

(H) Determining areas of Department-unique standards and developing unique Department-wide standards;

(I) Certifying to the Secretary that the procurement system meets approved standards;

(J) Prescribing standards for agency Procurement Executives and designating agency Procurement Executives when these standards are met;

(K) Redelegating, as appropriate, the authority in paragraph (a)(3)(viii)(A) of this section to USDA agency Procurement Executives or other qualified agency officials with no power of further redelegation; and

(L) Redelegating the authorities in paragraphs (a)(3)(viii)(B), (C), (D), (F) and (G) of this section to USDA agency Procurement Executives or other qualified agency officials with the power of further redelegation.

(ix) Promulgate Departmental policies, standards, techniques, and procedures and represent the Department in maintaining the security of physical facilities, self-protection, and warden services.

(x) Review and approve exemptions for Department of Agriculture contracts, subcontracts, grants, subgrants, agreements, subagreements, loans and subloans from the requirements of the Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*), the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, *et seq.*), and Executive Order 11738, 3 CFR, 1971–1975 Comp., p. 799, when he or she determines that the paramount interest of the United States so requires as provided in the above acts and Executive Order and the regulations of the Environmental Protection Act (40 CFR 15.5(c)).

(4) *Related to management services.* (i) Provide management support services for the Secretary of Agriculture and for the general officers of the Department, except the Inspector General. As used herein, such management support services shall include:

(A) Personnel services, as listed in paragraph (a)(5)(x) of this section, and organizational support services, with authority to take actions required by law or regulation to perform such services;

(B) Procurement, property management, space management, communications (telephone), messenger, and related services with authority to take actions required by law or regulation to perform such services; and

(C) Automation, forms management, files management, and directives management with authority to take actions required by law or regulation to perform such services.

(ii) Provide such of the above services listed in paragraph (a)(4)(i) of this section, as may be agreed, for other officers and agencies of the Department.

(5) *Related to personnel.* (i) Formulate and issue Department policy, standards, rules, and regulations relating to personnel.

(ii) Provide personnel management procedural guidance and operational instructions.

(iii) Design and establish personnel data systems.

(iv) Inspect and evaluate personnel management operations and issue instructions or take direct action to insure conformity with appropriate laws, Executive orders, Office of Personnel Management rules and regulations, and other appropriate rules and regulations.

(v) Exercise final authority in all personnel matters, including individual cases, that involve the jurisdiction of more than one General Officer.

(vi) Receive, review, and recommend action on all requests for the Secretary's approval in personnel matters.

(vii) Represent the Department in personnel matters in all contacts outside the Department.

(viii) Exercise specific authorities in the following operational matters:

(A) Authorize cash awards above $2,500;

(B) Waive repayment of training expenses where employee fails to fulfill service agreement;

(C) Establish or change standards and plans for awards to private citizens; and

(D) Execute, change, extend, or renew:

(*1*) Labor-Management Agreements; and

(*2*) Association of Management Officials or Supervisor's Agreements.

(E) Represent any part of the Department in all contacts and proceedings with the National Offices of Labor Organizations;

(F) Change a position (with no material change in duties) from GS to a

pay system other than a wage system, or vice versa;

(G) Grant restoration rights, and release employees with administrative reemployment rights;

(H) Change working hours for groups of 50 or more employees in the Washington, D.C., metropolitan area;

(I) Authorize any mass dismissals of employees in the Washington, D.C., metropolitan area;

(J) Approve "normal line of promotion" cases in the excepted service where not in accordance with time-in-grade criteria;

(K) Make final decisions on adverse action and performance rating appeals in all cases where the Deciding Official:

(*1*) Was involved directly in the adverse action, or performance rating appeal; or

(*2*) Made the informal decision; or

(*3*) Determines that the Examiner's findings or Committee's recommendations are unacceptable.

(L) Make the final decision on all classification appeals from agency appellate decisions;

(M) Authorize all employment actions (except nondisciplinary separations and LWOP) and classification actions for senior level and equivalent positions including Senior Executive Service positions and special authority professional and scientific positions responsible for carrying out research and development functions;

(N) Authorize all employment actions (except LWOP) for the following positions:

(*1*) Schedule C; and

(*2*) Administrative law judge.

(O) Authorize employment actions (accessions or extensions) for the following:

(*1*) Employees whose records are flagged; and

(*2*) Contract services.

(P) Authorize employment actions (accessions or extensions and transfers) for the following:

(*1*) Persons with criminal or immoral records;

(*2*) Persons separated for misconduct, delinquency, or resignation, to avoid such action; and

(*3*) Veterans with dishonorable or other than dishonorable discharge.

(Q) Authorize adverse actions for positions in GS–14–15 and equivalent;

(R) Approve assignments of White House details;

(S) Authorize adverse actions based in whole or in part on an allegation of violation of 5 U.S.C. chapter 73, subchapter III, for employees in the excepted service;

(T) Authorize long-term training in programs which require Department-wide competition;

(U) Issue all Coordinated Federal Wage System (CFWS) Department-wide Wage Schedules, and Lithographic Wage Schedules in the Washington, D.C. metropolitan area; and

(V) Initiate and take adverse action in cases involving a violation of the merit system.

(ix) [Reserved]

(x) As used herein, the term personnel includes:

(A) Position management;

(B) Position classification;

(C) Employment;

(D) Pay administration;

(E) Automation of personnel data and systems design;

(F) Hours of duty;

(G) Performance evaluation and standards;

(H) Promotions;

(I) Employee development;

(J) Incentive Programs;

(K) Leave;

(L) Retirement;

(M) Program evaluation;

(N) Social security;

(O) Life insurance;

(P) Health benefits;

(Q) Unemployment compensation;

(R) Labor management relations;

(S) Intramanagement consultation;

(T) Security;

(U) Discipline; and

(V) Appeals.

(xi) The provisions of paragraphs (a)(5)(x)(N)–(R) of this section shall not apply for positions in, or applicants for positions in, the Office of Inspector General.

(xii) Maintain, review and update departmental delegations of authority.

(xiii) Authorize organizational changes which occur in:

(A) Departmental organizations:

(*1*) Service or office;

(*2*) Division (or comparable component); and

(*3*) Branch (or comparable component in departmental centers, only).

(B) Field organizations:

(*1*) First organizational level; and

(*2*) Next lower organizational level—required only for those types of field installations where the establishment, change in location, or abolition of same, requires approval in accordance with Departmental Regulation 1010–1.

(xiv) Formulate and promulgate departmental organizational objectives and policies.

(xv) Approve coverage of individual law enforcement and firefighter positions under the special retirement provisions of the Civil Service Retirement System and the Federal Employees Retirement System.

(xvi) Establish Departmentwide safety and health policy and provide leadership in the development, coordination, and implementation of related standards, techniques, and procedures, and represent the Department in complying with laws, Executive orders and other policy and procedural issuances related to occupational safety and health within the Department.

(xvii) Represent the Department in all rulemaking, advisory or legislative capacities on any groups, committees, or Governmentwide activities that affect the USDA Occupational Safety and Health Management Program.

(xviii) Determine and/or provide Departmentwide technical services and regional staff support for the Safety and Health Programs.

(xix) Administer the computerized management information systems for the collection, processing and dissemination of data related to the Department's Occupational Safety and Health Programs.

(xx) Administer the administrative appeals process related to the inclusion of positions in the Testing Designated Position listing in the USDA Drug-Free Workplace Program and designate the final appeal officer for that Program.

(xxi) Administer the Department's Occupational Health and Preventive Medical Program, as well as design and operate employee assistance and workers' compensation activities.

(xxii) Provide education and training on a Departmentwide basis for safety and health related issues and develop resource and operational manuals.

(xxiii) Approve hazard pay differentials under the conditions specified in 5 CFR part 550.

(6) *Related to information resources management.* (i) Designated as the senior official to carry out the responsibilities of the Department under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). This designation includes the following responsibilities:

(A) Ensuring that the information policies, principles, standards, guidelines, rules and regulations prescribed by the Office of Management and Budget are appropriately implemented within the Department;

(B) Developing Department information policies and procedures and overseeing, auditing and otherwise periodically reviewing the Department's information resources management activities;

(C) Reviewing proposed Department reporting and recordkeeping requirements including those contained in rules and regulations, to ensure that they impose the minimum burden upon the public and have practical utility for the Department;

(D) Developing and implementing procedures for assessing the burden to the public and costs to the Department of information requirements contained in proposed legislation affecting Department programs;

(E) Conducting and being accountable for acquisitions made by the Department pursuant to authority delegated under section 111 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 759);

(F) Assisting the Office of Management and Budget in the performance of its functions assigned under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), including the review of Department information activities; and

(G) Reviewing, granting, and notifying Congress of waivers to Federal Information Processing Standards pursuant to the authority delegated under section 111(d)(3) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 759(d)(3)).

(ii) Develop and implement an information resources management planning system which will integrate short-term and long-term objectives and coordinate agency and staff office initiatives in support of the objectives.

(iii) Provide Departmentwide guidance and direction in planning, developing, documenting, and managing applications software projects in accordance with Federal and Department information processing standards, procedures, and guidelines.

(iv) Provide Departmentwide guidance and direction in all aspects of the USDA Information Management Program including feasibility studies; economic analyses; systems design; acquisition of equipment, software, services, and timesharing arrangements; systems installation; systems performance and capacity evaluation; and security. Monitor these activities for agencies' major systems development efforts to assure effective and economic use of resources and compatibility among systems of various agencies when required.

(v) Manage the Departmental Computer Centers, including setting of rates to recover the cost of goods and services within approved policy and funding levels.

(vi) Review and evaluate information resource management activities related to delegated functions to assure that they conform to all applicable Federal and Department information resource management policies, plans, standards, procedures, and guidelines.

(vii) Design, develop, implement, and revise systems, processes, work methods, and techniques to improve the management and operational effectiveness of information resources.

(viii) Administer the Departmental records, forms, reports, and Directives Management Programs.

(ix) Manage all aspects of the USDA Telecommunications Program including planning, development, acquisition, and use of equipment and systems for voice and data communications, excluding the actual procurement of data transmission equipment, software, maintenance, and related supplies. Manage Departmental telecommunications contracts. Provide technical advice throughout the Department on telecommunications matters.

(x) Implement a program for applying information resources management technology to improve productivity in the Department.

(xi) Provide leadership to integrate and unify the management process for the Department's major information resource management system acquisitions and to monitor implementation of the policies and practices set forth in applicable OMB Circulars.

(xii) Provide Departmental services related to Departmental administrative regulations, Secretarial issuances, and related management support.

(xiii) Plan, develop, install, and operate computer-based systems for message exchange, scheduling, computer conferencing, and other applications of office automation technology which can be commonly used by multiple Department agencies and offices.

(xiv) Represent the Department in contacts with the General Accounting Office, the General Services Administration, the Office of Management and Budget, the National Bureau of Standards, and other organizations or agencies on matters related to delegated responsibilities.

(xv) Review, clear, and coordinate all statistical forms, survey plans, and reporting and record keeping requirements originating in the Department and requiring approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520).

(7) *Related to committee management.* (i) Serve as the Department's Committee Management Officer and establish and maintain departmentwide policies and procedures for the management of committees. This delegation includes the authority to:

(A) Consult with the Committee Management Secretariat prior to the establishment or reestablishment of advisory committees;

(B) Approve and sign the written certification that creation of the advisory committee is in the public interest and provide for the publication of such certification in the **Federal Register**, along with a description of the nature and purpose of the advisory committee, following the Committee Management Secretariat's approval of the establishment of the committee;

(C) Approve and sign the notice of renewal of advisory committees for publication in the **Federal Register**, following the Committee Management Secretariat's concurrence in the renewal of the committees;

(D) Assign responsibility for preparation of timely notice of meetings for publication in the **Federal Register**; and

(E) Approve charters for national advisory committees when in a format other than a Secretary's Memorandum.

(ii) Establish and reestablish regional, State, and local advisory committees for activities authorized. This authority may not be redelegated.

(8) *Related to equal opportunity.* (i) Provide overall leadership, coordination, and direction for the Department's programs of civil rights, including program delivery compliance and equal employment opportunity, with emphasis on the following:

(A) Actions to enforce title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, prohibiting discrimination in Federally assisted programs;

(B) Actions to enforce title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, prohibiting discrimination in Federal employment;

(C) Actions to enforce title IX of the Education Amendments of 1972, 20 U.S.C. 1681, *et seq.*, prohibiting discrimination on the basis of sex in USDA education programs and activities funded by the Department;

(D) Actions to enforce section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, prohibiting discrimination on the basis of handicap in USDA programs and activities funded by the Department;

(E) Actions to enforce the Age Discrimination Act of 1975, 42 U.S.C. 6102, prohibiting discrimination on the basis of age in USDA programs and activities funded by the Department;

(F) Actions to enforce related Executive orders, Congressional mandates, and other laws, rules, and regulations, as appropriate;

(G) Actions to develop and implement the Department's Federal Women's Program; and

(H) Actions to develop and implement the Department's Hispanic Employment Program.

(ii) Evaluate Departmental agency programs, activities, and impact statements for civil rights concerns.

(iii) Provide leadership and coordinate USDA agency and Department systems for targeting, collecting, analyzing, and evaluating program participation data and equal employment opportunity data.

(iv) Provide leadership and coordinate Departmentwide programs of public notification regarding the availability of USDA programs on a nondiscriminatory basis.

(v) Serve as the focal point through which all contacts with the Department of Justice are made involving matters relating to title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), title IX of the Education Amendments of 1972 (20 U.S.C. 1681, *et seq.*), and section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), except those matters in litigation, including administrative enforcement actions, which shall be coordinated by the Office of the General Counsel.

(vi) Serve as the focal point through which all contacts with the Department of Health and Human Services are made involving matters relating to the Age Discrimination Act of 1975, 42 U.S.C. 6102, except those matters in litigation, including administrative enforcement action, which shall be coordinated by the Office of the General Counsel.

(vii) Order proceedings and hearings in the USDA pursuant to §§ 15.9(e) and 15.86 of this title which concern consolidated or joint hearings within the Department and/or with other Federal departments and agencies.

(viii) Order proceedings and hearings in the USDA pursuant to § 15.8(c) of this title after the program agency has advised the applicant or recipient of his or her failure to comply and has determined that compliance cannot be secured by voluntary means.

(ix) Issue orders to give a notice of hearing or the opportunity to request a hearing pursuant to part 15 of this title; arrange for the designation of an Administrative Law Judge to preside over any such hearing; and determine whether the Administrative Law Judge so designated will make an initial decision or certify the record to the Secretary of Agriculture with his or her recommended findings and proposed action.

(x) Authorize the taking of action pursuant to § 15.8(a) of this title relating to compliance by "other means authorized by law."

(xi) Make determinations required by § 15.8(d) of this title that compliance cannot be secured by voluntary means, and then take action, as appropriate.

(xii) Make determinations that program complaint investigations performed under § 15.6 of this title establish a proper basis for findings of discrimination, and that actions taken to correct such findings are adequate; and perform investigations and make determinations, on both the merits and required corrective action, as to complaints filed under subpart B of part 15 of this title.

(xiii) Conduct investigations and compliance reviews Departmentwide.

(xiv) Develop regulations, plans, and procedures necessary to carry out the Department's civil rights programs, including the development, implementation, and coordination of Action Plans.

(xv) Provide liaison on Equal Employment Opportunity Programs and activities with the Equal Employment Opportunity Commission, the Office of Personnel Management, USDA agencies, Department employees, and applicants for positions within the Department.

(xvi) Monitor, evaluate, and report on agency compliance with established policy and executive orders which further the participation of historically black colleges and universities and with other colleges and universities with substantial minority group enrollment in Departmental programs and activities.

(xvii) Is designated as the Department's Director of Equal Employment Opportunity with authority to perform the functions and responsibilities of that position under 29 CFR part 1613, including the authority to make changes in programs and procedures designed to eliminate discriminatory practices and improve the Department's program for Equal Employment Opportunity, and the authority to make decisions on complaints of discrimination and order such corrective measures as may be considered necessary, including the recommendation for such disciplinary action as is warranted when an employee has been found to have engaged in a discriminatory practice.

(xviii) Administer the Department's Equal Employment Opportunity Program.

(xix) Perform the EEO counseling function for the Department.

(xx) Process formal EEO discrimination complaints, up to the appellate stage, by employees or applicants for employment.

(xxi) Administer the discrimination appeals and complaints program for the Department, including all formal individual or group appeals, where the system provides for an avenue of redress to the Department level, Equal Employment Opportunity Commission, Office of Personnel Management or other outside authority.

(xxii) Provide liaison on EEO matters concerning complaints and appeals with the USDA agencies and Department employees.

(xxiii) Maintain liaison with historically black colleges and universities and with other colleges and universities with substantial minority group enrollment, and assist USDA agencies in strengthening such institutions by facilitating institutional participation in USDA programs and activities and by encouraging minority students to pursue curricula that could lead to careers in the food and agricultural sciences.

(xxiv) Investigate USDA EEO complaints with authority to enter into and administer contracts for such investigations.

(xxv) Make final decisions on complaints and grievance appeals, except in those cases where the Assistant Secretary for Administration has participated, when it is determined that such complaint or grievance appeals are not being decided in a timely manner.

(xxvi) Make final decisions on formal grievance appeals in all cases where the Deciding Official:

(A) Was involved directly in the grievance; or

(B) Made the informal decision; or

(C) Determines that the Examiner's findings or Committee's recommendations is unacceptable.

(xxvii) The provisions of paragraphs (a)(8) (xxv) and (xxvi) of this section shall not apply for positions in, or applicants for positions in, the Office of Inspector General.

(9) *Related to defense.* Provide internal administrative management and support services for the defense program of the Department.

(10) *Related to board of contract appeals.* Provide administrative supervision, and exercise general responsibility for budget and finance aspects of the Board of Contract Appeals. No review by the Assistant Secretary for Administration of the merits of appeals or of decisions of the Board is authorized and the Board shall be the representative of the Secretary in such matters.

(11) *Related to environmental response.* With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("the Act"), as amended:

(i) Sections 104 (a), (b), and (c)(4) of the Act (42 U.S.C. 9604 (a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104 (e)–(h) of the Act (42 U.S.C. 9604 (e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117 (a) and (c) of the Act (42 U.S.C. 9617 (a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(12) *Related to compliance with environmental laws.* With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901, *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601, *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

(13) *Related to emergency programs.* (i) Coordinate the Department's Emergency Preparedness Program and Disaster Emergency Response Program including maintenance of an appropriate system whereby the Department can react immediately when notified of a civil defense or natural disaster emergency.

(ii) Maintain an overview of emergency relocation facilities and assure that resources are in a constant state of readiness.

(iii) Direct the entire defense program of USDA. This delegation includes:

(A) Maintaining liaison with executive departments and the Congress with respect to policy matters;

(B) Supervising and directing USDA regional emergency stalls and USDA State and county emergency boards;

(C) Directing the USDA part of the National Defense Executive Reserve Program;

(D) Providing policy guidance to USDA agencies in carrying out specific defense assignments; and

(E) Representing the Department in matters relating to international defense organizations, such as NATO and its suborganizations.

(iv) Coordinate and facilitate USDA operations of Natural Disaster Programs, including liaison with executive departments and the Congress in disaster matters.

(v) Maintain liaison with:

(A) Federal Preparedness Agency; and

(B) Defense Civil Preparedness Agency.

(b) The following authorities are reserved to the Secretary of Agriculture:

(1) Related to personnel. Make final determinations in the following areas:

(i) Separation of employees for security reasons.

(ii) Restoration to duty of employees following suspension from duty for security reasons.

(iii) Reinstatement or restoration to duty or the employment of any person separated for security reasons.

(iv) Issuance of temporary certificates to occupy sensitive positions.

Subpart D—Delegations of Authority to Other General Officers and Agency Heads

§ 2.26 Director, Office of the Executive Secretariat.

The following delegation of authority is made by the Secretary of Agriculture to the Director, Office of the Executive Secretariat: Responsible for all correspondence control and related records management functions for the Office of the Secretary.

§ 2.27 Office of Administrative Law Judges.

(a) The following designations are made by the Secretary of Agriculture to the Office of Administrative Law Judges.

(1) Administrative law judges (formerly hearing examiners) are designated pursuant to 5 U.S.C. 556(b)(3) to hold hearings and perform

related duties in proceedings subject to 5 U.S.C. 556 and 557, arising under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601, *et seq.*); the Commodity Exchange Act as amended (7 U.S.C. 1, *et seq.*); the Perishable Agricultural Commodities Act, as amended (7 U.S.C. 499a, *et seq.*); the Federal Seed Act, as amended (7 U.S.C. 1551, *et seq.*); the (Laboratory) Animal Welfare Act, as amended (7 U.S.C. 2131, *et seq.*); the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. 181, *et seq.*); the Forest Resources Conservation and Shortage Relief of 1990 (16 U.S.C. 630, *et seq.*); and any other acts providing for hearings to which the provisions of 5 U.S.C. 556 and 557, are applicable. Pursuant to the applicable rules of practice, the administrative law judges shall make initial decisions in adjudication and rate proceedings subject to 5 U.S.C. 556 and 557. Such decisions shall become final without further proceedings unless there is an appeal to the Secretary by a party to the proceeding in accordance with the applicable rules of practice: Provided, however, that no decision shall be final for purposes of judicial review except a final decision of the Secretary upon appeal. As used herein, "Secretary" means the Secretary of Agriculture, the Judicial Officer, or other officer or employee of the Department delegated, pursuant to the Act of April 4, 1940 (7 U.S.C. 450c-450g), and Reorganization Plan No. 2 of 1953 (5 U.S.C. App.), "regulatory functions" as that term is defined in the 1940 Act, in acting as final deciding officer in adjudication and rate proceedings subject to 5 U.S.C. 556 and 557. Administrative Law Judges are delegated authority to hold hearings and perform related duties as provided in the Rules of Practice Governing Cease and Desist Proceedings Under Section 2 of the Capper-Volstead Act, set forth in part 1, subpart I of this title.

(b) The Chief Administrative Law Judge is delegated the following administrative responsibilities subject to the guidance and control of the Assistant Secretary for Administration (See § 2.24(a)):

(1) Exercise general responsibility and authority for all matters related to the administrative activities of the Office of Administrative Law Judges; and

(2) Direct the functions of the Hearing Clerk as set out in § 2.24(a)(1)(iii).

§ 2.28 Chief Financial Officer.

(a) The Chief Financial Officer, under the supervision of the Secretary, is responsible for executing the duties enumerated for agency Chief Financial Officers in the Chief Financial Officers Act of 1990, Public Law No. 101–576, 31 U.S.C. 902, including:

(1) Reporting directly to the Secretary of Agriculture regarding financial management matters and the financial execution of the budget.

(2) Overseeing all financial management activities relating to the programs and operations of the Department and component agencies.

(3) Developing and maintaining an integrated accounting and financial system for the Department and component agencies, including financial reporting and internal controls, which—

(i) Complies with applicable accounting principles, standards, and requirements, and internal control standards;

(ii) Complies with such policies and requirements as may be prescribed by the Director of the Office of Management and Budget;

(iii) Complies with any other requirements applicable to such systems; and

(iv) Provides for complete, reliable, consistent, and timely information which is prepared on a uniform basis and which is responsive to the financial information needs of Department management and for the development and reporting of cost information, the integration of accounting and budgeting information, and the systematic measurement of performance.

(4) Making recommendations to the Secretary regarding the selection of the Deputy Chief Financial Officer of the Department, and selection of principal financial officers of component agencies of the Department.

(5) Directing, managing, and providing policy guidance and oversight of Department financial management personnel, activities, and operations, including:

(i) Preparing and annually revising a Departmental plan to:

(A) Implement the 5-year financial management plan prepared by the Director of the Office of Management and Budget under 31 U.S.C. 3512(a)(3); and

(B) Comply with the requirements established for agency financial statements under 31 U.S.C. 3515 and with the requirements for audits of Department financial statements established in subsections (e) and (f) of section 31 U.S.C. 3521(e) and (f).

(ii) Developing Departmental financial management budgets, including the oversight and recommendation of approval of component agency financial management budgets;

(iii) Recruiting, selecting, and training of personnel to carry out Departmental financial management functions;

(iv) Approving and managing Departmental, and approving component agency, financial management systems design or enhancement projects; and

(v) Implementing and approving Departmental, and approving component agency, asset management systems, including systems for cash management, credit management, debt collection, and property and inventory management and control.

(6) Preparing and transmitting, by not later than 60 days after the submission of the audit report required by 31 U.S.C. 3521(f), an annual report to the Secretary and the Director of the Office of Management and Budget, which shall include:

(i) A description and analysis of the status of financial management of the Department;

(ii) The annual financial statements prepared under 31 U.S.C. 3521;

(iii) The audit report transmitted to the Secretary under 31 U.S.C. 3521;

(iv) A summary of the reports on internal accounting and administrative control systems submitted to the President and the Congress under the amendments made by the Federal Managers' Financial Integrity Act of 1982 (31 U.S.C. 1113, 3512); and

(v) Other information the Secretary considers appropriate to inform fully the President and the Congress concerning the financial management of the Department.

(7) Monitoring the financial execution of the budget of the Department in relation to projected and actual expenditures, and preparing and submitting to the Secretary timely performance reports.

(8) Reviewing, on a biennial basis, the fees, royalties, rent, and other charges imposed by the Department for services and things of value it produces, and making recommendations on revising those charges to reflect costs incurred by the Department in providing those services and things of value.

(9) Accessing all records, reports, audits, reviews, documents, papers, recommendations, or other material that are the property of the Department or that are available to the Department, and that relate to programs and operations with respect to which the Chief Financial Officer has responsibilities, except that this grant allows no access greater than that permitted under any other law to records, reports, audits, reviews, documents, papers, recommendations, or other material of the Office of Inspector General.

(10) Requesting such information or assistance as may be necessary for carrying out the duties and responsibilities granted the Chief Financial Officer by the Chief Financial Officers Act of 1990 (Pub. L. No. 101–576), from any Federal, State, or local governmental entity.

(11) To the extent and in such amounts as may be provided in advance by appropriations acts, entering into contracts and other arrangements with public agencies and with private persons for the preparation of financial statements, studies, analyses, and other services, and making such payments as may be necessary to carry out the duties and prerogatives of the Chief Financial Officer.

(b) In addition to the above responsibilities, the following delegations of authority are made by the Secretary of Agriculture to the Chief Financial Officer:

(1) Designate the Department's Director of Finance and Comptroller of the Department Working Capital Fund.

(2) Establish Departmental policies, standards, techniques, and procedures applicable to all USDA agencies for the following areas:

(i) Development, maintenance, review and approval of all departmental, and review and approval of component agency, internal control, fiscal, financial management and accounting systems including the financial aspects of payroll and property systems;

(ii) Selection, standardization, and simplification of program delivery processes utilizing grants, cooperative agreements and other forms of Federal assistance;

(iii) Review and approval of Federal assistance, internal control, fiscal, accounting and financial management regulations and instructions proposed or issued by USDA agencies for conformity with Departmental requirements; and

(iv) Section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 853a) as it relates to grants, loans, and licenses.

(3) Establish policies related to the Department Working Capital Fund.

(4) Approve regulations, procedures and rates for goods and services financed through the Department Working Capital Fund which will impact the financial administration of the Fund.

(5) Exercise responsibility and authority for operating USDA's Central Accounting System and related administrative systems including:

(i) Management of the National Finance Center (NFC), which includes developing, maintaining, and operating manual and automated administrative and accounting systems for the USDA agencies related to the Central Accounting System, Departmentwide payroll and personnel information, statistics, administrative payments, billings and collections, and related reporting systems that are either requested by the agencies or required by the Department;

(ii) Management of the NFC automated data processing and telecommunications systems and coordination with the Office of Information Resources Management to assure that the hardware and software located at the NFC will be integrated with and compatible with all other systems;

(iii) Develop new or modified accounting systems and documentation supporting the Central Accounting System which includes working with USDA agencies to obtain General Accounting Office approval; and

(iv) Review and approve the issuance of accounting and management instructions related to the operation of the NFC.

(6) Provide management support services for the NFC, and by agreement with agency heads concerned, provide such services for other USDA tenants housed in the same facility. As used herein, such management support services shall include:

(i) Personnel services, as listed in § 2.24(a)(5)(x), and organizational support services, with authority to take actions required by law or regulation to perform such services; and

(ii) Procurement, property management, space management, communications, messenger, paperwork management, and related administrative services, with authority to take actions required by law or regulation to perform such services.

(7) Exercise responsibility and authority for all matters related to the Department's accounting and financial operations including such activities as:

(i) Financial administration, including accounting and related activities;

(ii) Reviewing financial aspects of agency operations and proposals;

(iii) Furnishing consulting services to agencies to assist them in developing and maintaining accounting and financial management systems and internal controls, and for other purposes consistent with delegations in paragraph (b)(2) of this section;

(iv) Reviewing and monitoring agency implementation of Federal assistance policies;

(v) Reviewing and approving agencies' accounting systems documentation including related development plans, activities, and controls;

(vi) Monitoring agencies' progress in developing and revising accounting and financial management systems and internal controls;

(vii) Evaluating agencies' financial systems to determine the effectiveness of procedures employed, compliance with regulations, and the appropriateness of policies and practices;

(viii) Promulgation of Department schedule of fees and charges for reproductions, furnishing of copies and making searches for official records pursuant to the Freedom of Information Act, 5 U.S.C. 552; and

(ix) Monitoring USDA implementation of section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 853a) as it relates to grants, loans, and licenses.

(8) Establish Department and approve component agency programs, policies, standards, systems, techniques and procedures to improve the management and operational efficiency and effectiveness of the USDA including:

(i) Implementation of the policies and procedures set forth in OMB Circulars No. A–76: Performance of Commercial Activities, and No. A–117: Management Improvement and the Use of Evaluation in the Executive Branch;

(ii) Increased use of operations research and management science in the areas of productivity and management; and

(iii) All activities financed through the Department Working Capital Fund.

(9) Designate the Commercial Industrial Officer for USDA.

(10) Develop Departmental policies, standards, techniques, and procedures for the conduct of reviews and analysis of the utilization of the resources of State and local governments, other Federal agencies and of the private sector in domestic program operations.

(11) Represent the Department in contacts with the Office of Management and Budget, General Services Administration, General Accounting Office, Department of the Treasury, Office of Personnel Management, Department of Health and Human Services, Department of Labor, Environmental Protection Agency, Department of Commerce, Congress of the United States, State and local governments, universities, and other public and private sector individuals, organizations or agencies on matters related to assigned responsibilities.

(12) Maintain the Departmental inventory of commercial activities required by OMB Circular No. A–76 and provide Departmentwide technical assistance to accomplish Circular objectives.

(13) Establish policies related to travel by USDA employees.

(14) Exercise responsibility for coordinating and overseeing the implementation of the Government Performance and Results Act of 1993, Pub. L. No. 103–62, at the Department.

(15) Exercise responsibility for design, implementation, and oversight of the Department's project known as Financial Information Systems Vision, and approval of the design and implementation of an integrated financial information and management system for the Department and all component agencies.

§ 2.29 Chief Economist.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Chief Economist:

(1) *Related to economic analysis.*

(i) Coordinate economic analyses of, and review Department decisions involving, policies and programs that have substantial economic implications.

(ii) Review and assess the economic impact of all significant regulations proposed by any agency of the Department.

(iii) Review economic data and analyses used in speeches and Congressional testimony by Department personnel and in materials prepared for release through the press, radio, and television.

(2) *Related to risk assessment.*

(i) Responsible for assessing the risks to human health, human safety, or the environment, and for preparing cost-benefit analyses, with respect to proposed major regulations, and for publishing such assessments and analyses in the Federal Register as required by section 304 of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 2204e).

(ii) Provide direction to Department agencies in the appropriate methods of risk assessment and cost-benefit analyses and coordinate and review all risk assessments and cost-benefit analyses prepared by any agency of the Department.

(3) *Related to food and agriculture outlook and situation.*

(i) Coordinate and review all crop and commodity data used to develop outlook and situation material within the Department.

(ii) Oversee and clear for consistency analytical assumptions and results of all estimates and analyses which significantly relate to international and domestic commodity supply and demand, including such estimates and analyses prepared for public distribution by the Foreign Agricultural Service, the Economic Research Service, or by any other agency or office of the Department.

(4) *Related to weather and climate.*

(i) Advise the Secretary on climate and weather activities, and coordinate the development of policy options on weather and climate.

(ii) Coordinate all weather and climate information and monitoring activities within the Department and provide a focal point in the Department for weather and climate information and impact assessment.

(iii) Arrange for appropriate representation to attend all meetings, hearings, and task forces held outside the Department which require such representation.

(iv) Designate the Executive Secretary of the USDA Weather and Climate Program Coordinating Committee.

(5) *Related to interagency commodity estimates committees.*

(i) Establish Interagency Commodity Estimates Committees for Commodity Credit Corporation price-supported commodities, for major products thereof, and for commodities where a need for such a committee has been identified, in order to bring together estimates and supporting analyses from participating agencies, and to develop official estimates of supply, utilization, and prices for commodities, including the effects of new program proposals on acreage, yield, production, imports, domestic utilization, price, income, support programs, carryover, exports, and availabilities for export.

(ii) Designate the Chairman, who shall also act as Secretary, for all Interagency Commodity Estimates Committees.

(iii) Assure that all committee members have the basic assumptions, background data and other relevant data regarding the overall economy and market prospects for specific commodities.

(iv) Review for consistency of analytical assumptions and results all proposed decisions made by Commodity Estimates Committees prior to any release outside the Department.

(6) *Related to remote sensing.*

(i) Provide technical assistance, coordination, and guidance to Department agencies in planning, developing, and carrying out satellite remote sensing activities to assure full consideration and evaluation of advanced technology.

(ii) Coordinate administrative, management, and budget information relating to the Department's remote sensing activities including:

(A) Inter- and intra-agency meetings, correspondence, and records;

(B) Budget and management tracking systems; and

(C) Inter-agency contacts and technology transfer.

(iii) Designate the Executive Secretary for the Remote Sensing Coordination Committee.

(7) *Related to long-range commodity and agricultural-sector projections.* Establish committees of the agencies of the Department to coordinate the development of a set of analytical assumptions and long-range agricultural-sector projections (2 years and beyond) based on commodity projections consistent with these assumptions and coordinated through the Interagency Commodity Estimates Committees.

(8) *Related to agricultural labor affairs.* Exercise the following functions of the Secretary under the Immigration and Nationality Act (INA), as amended (8 U.S.C. 1101, *et seq.*):

(i) Pursuant to section 214(c) of INA (8 U.S.C. 1184(c)), provide consultation to the Attorney General and the Secretary of Labor concerning the question of the importation of aliens as nonimmigrant temporary agricultural workers, known as "H–2A" workers, under 8 U.S.C. 1101(a)(15)(H)(ii)(a);

(ii) Pursuant to section 218(e) of the INA (8 U.S.C. 1188 note), provide consultation to the Attorney General and the Secretary of Labor concerning all regulations to implement 8 U.S.C. 101(a)(15)(H)(ii)(a) and 1188 providing for the importation of H–2A workers;

(iii) Pursuant to section 210(h) of the INA (8 U.S.C. 1160(h)), promulgate regulations to define "seasonal agricultural services" for purposes of the Special Agricultural Worker (SAW) Program;

(iv) Pursuant to section 210A(a) of the INA (8 U.S.C. 1161(a)), determine jointly with the Secretary of Labor the number (if any) of additional special agricultural workers, known as "replenishment agricultural workers" (RAWs), who should be admitted to the United States or otherwise acquire the status of aliens lawfully admitted for temporary residence during fiscal years 1990 through 1993 to meet a shortage of workers to perform seasonal agricultural services in the United States during each such fiscal year;

(v) Pursuant to section 210A(a)(7) of the INA (8 U.S.C. 1161(a)(7)), determine jointly with the Secretary of Labor emergency requests to increase the shortage number;

(vi) Pursuant to section 210A(a)(8) of the INA (8 U.S.C. 1161(a)(8)), determine jointly with the Secretary of Labor requests to decrease the number of man-days of seasonal agricultural services required of RAWs to avoid deportation and for naturalization under section 210A(d)(5)(A) and (B) of the INA (8 U.S.C. 1161(d)(5)(A) and (B));

(vii) Pursuant to section 210A(b)(1) of the INA (8 U.S.C. 1161(b)(1)), calculate jointly with the Secretary of Labor and annual numerical limitation on the number of RAWs who may be admitted or otherwise acquire the status of aliens lawfully admitted for temporary residence during fiscal years 1990 through 1993 under section 210A(c)(1) of the INA (8 U.S.C. 1161(c)(1)); and

(viii) Pursuant to section 210A(b)(2) of the INA (8 U.S.C. 1161(b)(2)), establish jointly with the Secretary of Labor the information that must be reported by any person or entity who employs SAWs or RAWs in seasonal agricultural services during fiscal years 1989 through 1992, and to designate jointly with the Secretary of Labor the official to whom the person or entity must furnish such certification.

(9) *Related to the Capper-Volstead Act.* Serve as Chairman of the Capper-Volstead Act Committee to identify cases of undue price enhancement by associations of producers and issue complaints requiring such associations to show cause why an order should not be made directing them to cease and desist from monopolization or restraint of trade. The Chairman is authorized to call upon any agency of the Department for support in carrying the functions of the Committee (7 U.S.C. 292).

(10) *Related to committee management.* Establish and reestablish regional, state, and local advisory committees for activities under his or her authority. This authority may not be redelegated.

§ 2.30 Director, Office of Budget and Program Analysis.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Director, Office of Budget and Program Analysis:

(1) Serve as the Department's Budget Officer and exercise general responsibility and authority for all matters related to the Department's budgeting affairs including:

(i) Resource administration, including all phases of the acquisition, and distribution of funds and staff years; and

(ii) Legislative and regulatory reporting and related activities.

(2) Provide staff assistance for the Secretary, general officers, and other Department and agency officials.

(3) Formulate and promulgate Departmental budgetary, legislative and regulatory policies and procedures.

(4) Represent the Department in contacts with the Office of Management and Budget, the General Accounting Office, the Treasury Department, Congressional Committees on Appropriations, and other organizations and agencies on matters related to his or her responsibility.

(5) Coordinate and/or conduct policy and program analyses on agency operations and proposals to assist the Secretary, general officers and other Department and agency officials in formulating and implementing USDA policies and programs.

(6) Review and analyze legislation, regulations, and policy options to determine their impact on USDA programs and policy objectives and on the Department's budget.

(7) Monitor ongoing studies with significant program or policy implications.

(b) The following authority is reserved to the Secretary of Agriculture: Final approval of the Department's program and financial plans.

§ 2.31 General Counsel.

The General Counsel, as the chief law officer of the Department, is legal adviser to the Secretary and other officials of the Department and responsible for providing legal services for all the activities of the Department. The delegations of authority by the Secretary of Agriculture to the General Counsel include the following:

(a) Consider, ascertain, adjust, determine, compromise, and settle claims pursuant to the Federal Tort Claims Act, as amended (28 U.S.C. 2671–2680), and the regulations of the Attorney General contained in 28 CFR part 14.

(b) Certify documents as true copies of those on file in the Department.

(c) Sign releases of claims of the United States against private persons for damage to or destruction of property of the department, except those claims cognizable under the Contract Disputes Act of 1978 (41 U.S.C. 601, *et seq.*).

(d) Responsible for the overall management and operation of the Law Library, furnishing complete legal and legislative library services to the Office of the General Counsel and the Department.

(e) Make determinations as to whether employees of the Department may retain commercial rights in inventions; prepare patent applications and prosecute the same before the Patent Office.

(f) Represent the Department in formal rulemaking and adjudicatory proceedings held in connection with the administration of the Department's activities, and decide whether initial decisions of the administrative law judges shall be appealed by the Department to the Secretary.

(g) Represent the Department in connection with legal issues that arise in its relations with the Congress, the General Accounting Office, or other agencies of the Government.

(h) Represent the Department in proceedings before the Interstate Commerce Commission involving freight rates on farm commodities, and in appeals from decisions of the Commission to the courts.

(i) In civil actions arising out of the activities of the Department, present the Department's case to the Attorney General and U.S. attorneys and, upon request of the Department of Justice, assist in the preparation and trial of such cases and in the briefing and argument of such cases at the appellate level.

(j) Review cases having criminal aspects and refer them to the Department of Justice.

(k) Act as liaison between the Department and the Department of Justice.

(l) Perform the following legal services:

(1) Render legal opinions on questions arising in the conduct of the Department's activities;

(2) Prepare or review regulations;

(3) Draft proposed legislation;

(4) Prepare or review contracts, mortgages, deeds, leases, and other documents; and

(5) Examine titles to land to be acquired or accepted as security for loans.

(m) Perform such other legal services as may be required in the administration of the Department's activities, including the defense program.

(n) Serve as a member of the Capper-Volstead Act Committee to identify cases of undue price enhancement by associations of producers and issue complaints requiring such associations to show cause why an order should not be made directing them to cease and desist from monopolization or restraint of trade (7 U.S.C. 292).

(o) Settle claims for damage to, or loss of, privately owned property pursuant to the provisions of 31 U.S.C. 3723.

§ 2.32 Alternative Agricultural Research and Commercialization Board.

The following delegation of authority is made by the Secretary of Agriculture to the Alternative Agricultural Research and Commercialization Board: Enter into contracts, grants, or cooperative agreements to further research programs in the agricultural sciences (7 U.S.C. 3318).

§ 2.33 Inspector General.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Inspector General:

(1) Advise the Secretary and General officers in the planning, development, and execution of Department policies and programs.

(2) Provide for the personal security of the Secretary and the Deputy Secretary.

(3) Serve as liaison official for the Department for all audits of USDA performed by the General Accounting Office.

(4) In addition to the above delegations of authority, the Inspector General, under the general supervision of the Secretary, has specific duties, responsibilities, and authorities pursuant to the Inspector General Act of 1978, Pub. L. No. 95–452, 5 U.S.C. App.

(b) The following authority is reserved to the Secretary of Agriculture: Approving the implementation in the Office of Inspector General of administrative policies or procedures that contravene standard USDA administrative policies as promulgated by the Assistant Secretary for Administration.

§ 2.34 Director, National Appeals Division.

The Director, National Appeals Division, under the general supervision of the Secretary, has specific duties, responsibilities, and authorities pursuant to subtitle H of the Department of Agriculture Reorganization Act of 1994, Pub. L. No. 103–354, title II (7 U.S.C. 6991, *et seq.*), including:

(a) Deciding appeals from adverse decisions, made by an officer or employee of an agency of the Department designated by the Secretary, that are adverse to participants. The term "agency" shall include the following and any predecessor agency: the Farm Service Agency; the Commodity Credit Corporation (with respect to domestic programs); the Federal Crop Insurance Corporation; the Rural Housing and Community Development Service; the Rural Business and Cooperative Development Service; the Natural Resources Conservation Service; and a State, county, or area committee established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)); and

(b) The authority to appoint such hearing officers and other employees as are necessary for the administration of the activities of the Division.

§ 2.35 Judicial Officer.

The following delegations of authority are made by the Secretary of Agriculture to the Judicial Officer: Pursuant to the provisions of the Act of April 4, 1940 (7 U.S.C. 450c- 450g), and Reorganization Plan No. 2 of 1953 (5 U.S.C. App.), the Judicial Officer is hereby authorized to act as final deciding officer in adjudication proceedings subject to 5 U.S.C. 556 and 557; in other adjudication proceedings which are or may be made subject to the "Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes" set forth in part 1, subpart H of this title; in adjudication proceedings under the "Rules of Practice Governing Cease and Desist Proceedings Under Section 2 of the Capper-Volstead Act" set forth in part 1, subpart I of this title; in rate proceedings under the Packers and Stockyards Act; in adjudication proceedings under the "Procedures Related to Administrative Hearings Under the Program Fraud Civil Remedies Act of 1986" set forth in part 1, subpart L of this title; in adjudication proceedings subject to the "Rules of Practice Governing the Adjudication of Sourcing Area Applications and Formal Review of Sourcing Areas Pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*)" set forth in part 1, subpart M of this title; and in reparation proceedings under statutes administered by the Department. As used herein the term "Judicial Officer" shall mean any person or persons so designated by the Secretary of Agriculture. The provisions of this delegation shall not be construed to limit the authority of the Judicial Officer to perform any functions, in addition to those defined in the said Act of April 4, 1940, which from time to time may be assigned by the Secretary to him or her.

§ 2.36 Director, Office of Communications.

(a) *Delegations.* The following delegations of authority are made by the Secretary of Agriculture to Director, Office of Communications:

(1) *Related to public affairs.*

(i) Advise and counsel general officers on public affairs matters to the Department.

(ii) Organize and direct the activities of a public affairs office to include press relations of the secretary of agriculture and other executive functions and services for general officers of the Department.

(2) *Related to information activities.*

(i) Advise the secretary and general officers in the planning, development, and execution of Department policies and programs.

(ii) Direct and coordinate the overall formulation and development of policies, programs, plans, procedures, standards and organization structures and staffing patterns for the information activities of the Department and its agencies, both in Washington and in the field.

(iii) Exercise final review and approval of all public information material prepared by the Department and its agencies and select the most effective method and audience for distributing this information.

(iv) Serve as the central public information authority in the USDA, with the authority to determine policy for all USDA communication activities and agency information activities in order to provide leadership and centralized operational direction for USDA and agency information activities so that all material shall effectively support USDA policies and programs, including the defense program.

(v) Serve as the central printing authority in the USDA, with authority to represent the USDA with Joint Committee on Printing of the Congress, the Government Printing Office, and other Federal and State agencies on information matters.

(vi) Cooperate with and secure the cooperation of commercial, industrial and other nongovernmental agencies and concerns regarding information work as required in the execution of the Department's programs.

(vii) Plan and direct communication research and training for the Department and its agencies.

(viii) Oversee general officers and agency heads in the development and implementation of information policies issued pursuant to the provisions of the "Freedom of Information Act" (5 U.S.C. 552) and the "Privacy Act" (5 U.S.C. 552a), and provide consultation regarding those policies.

(ix) Supervise and provide leadership and final clearance for the planning, production, and distribution of visual information material for the department and its agencies in Washington, D.C., and the field, and provide such information services as may be deemed necessary.

(x) Maintain overall responsibility and control over the preparation of the "Agricultural Decisions."

(xi) Administer, direct and coordinate publications and user fee authority granted under section 1121 of the Agriculture and Food Act of 1981, as amended by section 1769 of the Food Security Act of 1985, 7 U.S.C. 2242a; and publish any appropriate regulations necessary to the exercise of this authority.

(b) [Reserved]

Subpart E—Delegations of Authority by the Deputy Secretary

§ 2.37 Director, Office of Small and Disadvantaged Business Utilization.

(a) *Delegations.* Pursuant to § 2.15, the following delegations of authority are made by the Deputy Secretary to the Director, Office of Small and Disadvantaged Business Utilization:

(1) The Director, Office of Small and Disadvantaged Business Utilization, under the supervision of the Deputy Secretary, has specific responsibilities under the Small Business Act, 15 U.S.C. 644(k). These duties include being responsible for the following:

(i) Administering the Department's small and disadvantaged business activities related to procurement contracts, minority bank deposits, and grants and loan activities affecting small and minority business, including women-owned business, Labor Surplus Area concerns, and the small business and small minority business subcontracting programs;

(ii) Providing Departmentwide liaison and coordination of activities related to small and disadvantaged business with the Small Business Administration and others in the public and private sector;

(iii) Developing policies and procedures required by the applicable provisions of the Small Business Act, as amended to include the establishment of goals; and

(iv) Implementing and administering programs described under sections 8 and 15 of the Small Business Act, as amended (15 U.S.C. 637 and 644).

(2) In addition to the responsibilities in paragraph (a)(1) of this section, the following delegations of authority are made by the Deputy Secretary of Agriculture to the Director, Office of Small and Disadvantaged Business Utilization:

(i) Pursuant to the Office of Federal Procurement Policy Act (Act), as amended (41 U.S.C. 401, *et seq.*), is designated as the Department's Advocate for Competition with responsibility for sections 20 and 21 of the Act (41 U.S.C. 418 and 418a), including:

(A) Reviewing the procurement activities of the Department;

(B) Developing new initiatives to increase full and open competition;

(C) Developing goals and plans and recommending actions to increase competition;

(D) Challenging conditions unnecessarily restricting competition in the acquisition of supplies and services;

(E) Designating an Advocate for Competition for each procuring activity within the Department; and

(F) Preparing the annual report to the Congress for transmittal by the Secretary on activities of the Advocate for Competition.

(b) [Reserved]

Subpart F—Delegations of Authority by the Under Secretary for Farm and Foreign Agricultural Services

§ 2.40 Deputy Under Secretary for Farm and Foreign Agricultural Services.

Pursuant to § 2.16(a), subject to reservations in § 2.16(b), and subject to policy guidance and direction by the Under Secretary, the following delegation of authority is made to the Deputy Under Secretary for Farm and Foreign Agricultural Services, to be exercised only during the absence or unavailability of the Under Secretary: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Under Secretary for Farm and Foreign Agricultural Services: Provided, that this authority shall be exercised by the respective Deputy Under Secretary in the order in which he or she has taken office as a Deputy Under Secretary.

§ 2.42 Administrator, Farm Service Agency.

(a) *Delegations.* Pursuant to § 2.16(a)(1) through (a)(4) and (a)(6) through (a)(8), subject to the reservations in § 2.16(b)(1), the following delegations of authority are made by the Under Secretary for Farm and Foreign Agricultural Services to the Administrator, Farm Service Agency:

(1) Formulate policies and administer programs authorized by the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1282, *et seq.*).

(2) Formulate policies and administer programs authorized by the Agricultural Act of 1949, as amended (7 U.S.C. 1441, *et seq.*), except the provisions of section 416(a)(1), (a)(2) and (b) of the Agricultural Act of 1949, as amended, unless specifically provided herein.

(3) Coordinate and prevent duplication of aerial photographic work of the Department, including:

(i) Clearing photography projects;

(ii) Assigning symbols for new aerial photography, maintaining symbol records, and furnishing symbol books;

(iii) Recording departmental aerial photography flow and coordinating the issuance of aerial photography status maps of latest coverage;

(iv) Promoting interchange of technical information and techniques to develop lower costs and better quality;

(v) Representing the Department on committees, task forces, work groups, and other similar groups concerned with aerial photography acquisition and reproduction;

(vi) Providing a Chairperson for the Photography Sales Committee of the Department;

(vii) Coordinating development, preparation, and issuance of specifications for aerial photography for the Department;

(viii) Coordinating and performing procurement, inspection, and application of specifications for USDA aerial photography;

(ix) Providing for liaison with EROS Data Center to support USDA programs and research with satellite imagery reproductions; and

(x) Maintaining library and files of USDA aerial film and retrieving and supplying reproductions on request.

(4) Administer the Agricultural Conservation Program under title X of the Agricultural Act of 1970, as amended (16 U.S.C. 1501, *et seq.*), and under the Soil Conservation and Domestic Allotment Act, as amended (16 U.S.C. 590g, *et seq.*).

(5) Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195, *et seq.*), relating to agricultural production; food processing, storage, and distribution of farm equipment and fertilizers, rehabilitation and use of feed, agricultural and related agribusiness facilities; and farm credit and financial assistance.

(6) Administer the Emergency Conservation Program under the Agricultural Credit Act of 1978, as amended (16 U.S.C. 2201, *et seq.*).

(7) Conduct fiscal, accounting and claims functions relating to CCC programs for which the Foreign Agricultural Service has been delegated authority under § 2.43 and, in conjunction with other agencies of the U.S. Government, develop and formulate agreements to reschedule amounts due from foreign countries.

(8) Conduct assigned activities under the Strategic and Critical Materials Stockpiling Act, as amended (50 U.S.C. 98, *et seq.*).

(9) Supervise and direct Farm Service Agency State and county offices and designate functions to be performed by Farm Service Agency State and county committees.

(10) Administer the Dairy Indemnity Program under the Act of August 13, 1968, as amended (7 U.S.C. 450j, *et seq.*).

(11) Administer procurement, processing, handling, distribution,

disposition, transportation, payment, and related services with respect to surplus removal and supply operations which are carried out under section 210 of the Agricultural Act of 1956 (7 U.S.C. 1859), the Act of August 19, 1958, as amended (7 U.S.C. 1431 note), and section 709 of the Food and Agriculture Act of 1965, as amended (7 U.S.C. 1446a–1), except as delegated to the Under Secretary for Food, Nutrition, and Consumer Services in § 2.19 and to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3), and assist the Food and Consumer Service and the Agricultural Marketing Service in the procurement, handling, payment, and related services under section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c), the Act of June 28, 1937, as amended (7 U.S.C. 713c), the National School Lunch Act, as amended (42 U.S.C. 1751, *et seq.*), section 8 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1777), section 311 of the Older Americans Act of 1965, as amended (42 U.S.C. 3030a), and section 4(a) of the Agriculture and Consumer Protection Act of 1973, as amended (7 U.S.C. 612c note), and section 1114 of the Agriculture and Food Act of 1981 (7 U.S.C. 1431e).

(12) Administer commodity procurement and supply, transportation (other than from point of export, except for movement to trust territories or possessions), handling, payment, and related services in connection with programs under titles II and III of Public Law 480 (7 U.S.C. 1691, 1701, et seq.), and payment and related services with respect to export programs and barter operations.

(13) Administer Wool and Mohair Programs under the National Wool Act of 1954, as amended (7 U.S.C. 1781, *et seq.*), and, in accordance with section 708 of that Act (7 U.S.C. 1787), conduct referenda, withhold funds (for advertising and promotion) from payments made to producers under section 704 of that Act (7 U.S.C. 1783), and transfer such funds to the person or agency designated by the Assistant Secretary for Marketing and Regulatory Programs.

(14) Administer the Agricultural Foreign Investment Disclosure Act of 1978 (7 U.S.C. 3501, *et seq.*) except those functions delegated in § 2.21(a)(8)(xi).

(15) Administer energy management activities as assigned.

(16) Conduct producer referenda of commodity promotion programs under the Beef Research and Information Act, as amended (7 U.S.C. 2901, *et seq.*) and the Agricultural Promotion Programs Act of 1990, as amended (7 U.S.C. 6001, *et seq.*).

(17) Conduct field operations of diversion programs for fresh fruits and vegetables under section 32 of the Act of August 29, 1935.

(18) Administer the U. S. Warehouse Act, as amended (7 U.S.C. 241–273), and perform compliance examinations for Farm Service Agency programs.

(19) Administer the provisions of the Soil Conservation and Domestic Allotment Act relating to assignment of payments (16 U.S.C. 590h(g)).

(20) Formulate and carry out the Conservation Reserve Program under the Food Security Act of 1985, as amended (16 U.S.C. 1231, *et seq.*).

(21) Carry out functions relating to highly erodible land and wetland conservation under sections 1211–1213 and 1221–1223 of the Food Security Act of 1985, as amended (16 U.S.C. 3811–3813 and 3821–3823).

(22) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("the Act"), as amended:

(i) Sections 104(a), (b), and (c)(4) of the Act (42 U.S.C. 9604(a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petition for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(23) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901, *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601, *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

(24) Administer the Integrated Farm Management Program under section 1451 of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 5822).

(25) Administer the provisions of section 326 of the Food and Agricultural Act of 1962, as amended (7 U.S.C. 1339c), as they relate to any Farm Service Agency administered program.

(26) Conduct an Options Pilot Program pursuant to sections 1151–1156 of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 1421 note).

(27) Formulate and administer regulations regarding program ineligibility resulting from convictions under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance, as required under section 1764 of the Food Security Act of 1985 (21 U.S.C. 881a).

(28) Administer the Consolidated Farm and Rural Development Act (7 U.S.C. 1921, *et seq.*) except for the authority contained in the following sections:

(i) Section 303(a)(2) and (3) (7 U.S.C. 1923(a)(2) and (3)), relating to real estate loans for recreation and non-farm purposes;

(ii) The authority in section 304(b) (7 U.S.C. 1924(b)), relating to small business enterprise loans;

(iii) Section 306 (7 U.S.C. 1926), relating to all programs in that section;

(iv) Section 306A (7 U.S.C. 1926a) and Section 306B (7 U.S.C. 1926b), relating to the Emergency Community Water Assistance Grant Programs;

(v) Section 306C (7 U.S.C. 1926c) to administer the water and waste facility loans and grants to alleviate health risks;

(vi) Sections 309 (7 U.S.C. 1929) and 309A (7 U.S.C. 1929a), regarding assets and programs related to rural development;

(vii) Section 310A (7 U.S.C. 1931), relating to watershed and resource conservation and development loans;

(viii) Section 310B (7 U.S.C. 1932), regarding rural industrialization assistance;

(ix) Section 312(b) (7 U.S.C. 1942(b)), relating to small business enterprises;

(x) Section 342 (7 U.S.C. 1013a);

(xi) Section 364 (7 U.S.C. 2006f), section 365 (7 U.S.C. 2008), section 366 (7 U.S.C. 2008a), section 367 (7 U.S.C. 2008b), and section 368 (7 U.S.C. 2008c), regarding assets and programs related to rural development; and

(xii) Administrative provisions of subtitle D of the Consolidated Farm and Rural Development Act related to Rural Utilities Service, Rural Business and Cooperative Development Service, and Rural Housing and Community Development Service activities.

(29) Collect, service, and liquidate loans made or insured by the Farm Service Agency, or its predecessor agencies.

(30) Administer the Rural Rehabilitation Corporation Trust Liquidation Act (40 U.S.C. 440, *et seq.*), and trust, liquidation, and other agreements entered into pursuant thereto.

(31) Make grants and enter into contracts and other agreements to provide outreach and technical assistance to socially disadvantaged farmers and ranchers under 7 U.S.C. 2279.

(32) Administer Farmers Home Administration or any successor agency assets conveyed in trust under the Participation Sales Act of 1966 (12 U.S.C. 1717).

(33) Administer the emergency loan and guarantee programs under sections 232, 234, 237, and 253 of the Disaster Relief Act of 1970 (Pub. L. No. 91–606), the Disaster Relief Act of 1969 (Pub. L. No. 91–79), Pub. L. No. 92–385, approved August 16, 1972, and the Emergency Livestock Credit Act of 1974 (Pub. L. No. 93–357), as amended.

(34) Administer loans to homestead or desertland entrymen and purchasers of land in reclamation projects or to an entryman under the desertland law (7 U.S.C. 1006a and 1006b).

(35) Administer the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711, *et seq.*), and joint regulations issued pursuant thereto by the Attorney General and the Comptroller General (4 CFR chapter II), with respect to claims of the Farm Service Agency.

(36) Service, collect, settle, and liquidate:

(i) Deferred land purchase obligations of individuals under the Wheeler-Case Act of August 11, 1939, as amended (16 U.S.C. 590y), and under the item, "Water Conservation and Utilization projects" in the Department of the Interior Appropriation Act, 1940 (53 Stat. 719), as amended;

(ii) Puerto Rican Hurricane Relief loans under the Act of July 11, 1956 (70 Stat. 525); and

(iii) Loans made in conformance with section 4 of the Southeast Hurricane Disaster Relief Act of 1965 (79 Stat. 1301).

(37) Administer loans to Indian tribes and tribal corporations (25 U.S.C. 488–492).

(38) Administer the State Agricultural Loan Mediation Program under title 5 of the Agricultural Credit Act of 1987 (7 U.S.C. 5101, *et seq.*).

(39) Administer financial assistance programs relating to Economic Opportunity Loans to Cooperatives under part A of title III and part D of title I and the necessarily related functions in title VI of the Economic Opportunity Act of 1964, as amended (42 U.S.C. 2763–2768, 2841–2855, 2942, 2943(b), 2961), delegated by the Director of the Office of Economic Opportunity to the Secretary of Agriculture by documents dated October 23, 1964 (29 FR 14764), and June 17, 1968 (33 FR 9850), respectively.

(40) Exercise all authority and discretion vested in the Secretary by section 331(c) of the Consolidated Farm and Rural Development Act, as amended by section 2 of the Farmers Home Administration Improvement Act of 1994, Pub. L. No. 103–248 (7 U.S.C. 1981(c), including the following:

(i) Determine, with the concurrence of the General Counsel, which actions are to be referred to the Department of Justice for the conduct of litigation, and refer such actions to the Department of Justice through the General Counsel;

(ii) Determine, with the concurrence of the General Counsel, which actions are to be referred to the General Counsel, for the conduct of litigation and refer such actions; and

(iii) Enter into contracts with private sector attorneys for the conduct of litigation, with the concurrence of the General Counsel, after determining that the attorneys will provide competent and cost effective representation for the Farm Service Agency.

(41) Provide supervision of the Federal Crop Insurance Corporation.

(42) Administer the provisions concerning the end-use certificate system authorized pursuant to section 301(f) of the North American Free Trade Implementation Act (19 U.S.C. 3391(f)).

(43) Determine the type and quantity of commodities that are available for programming under section 416(b) of the Agricultural Act of 1949 (7 U.S.C. 1431(b)), and the Food for Progress Act

of 1985 (7 U.S.C. 1736o), and charge for the processing, packaging, transportation, handling and delivery to port of such commodities in connection therewith.

(b) *Reservations.* The following authorities are reserved to the Under Secretary for Farm and Foreign Agricultural Services:

(1) Designating counties and areas for emergency programs under Pub. L. No. 85–58, as amended.

(2) Making and issuing notes to the Secretary of the Treasury for the purposes of the Agricultural Credit Insurance Fund as authorized by the Consolidated Farm and Rural Development Act (7 U.S.C. 1929).

§ 2.43 Administrator, Foreign Agricultural Service.

(a) *Delegations.* Pursuant to § 2.16(a)(3) and (a)(6), subject to reservations in § 2.16(b)(2), the following delegations of authority are made by the Under Secretary for Farm and Foreign Agricultural Services to the Administrator, Foreign Agricultural Service:

(1) Coordinate the carrying out by Department agencies of their functions involving foreign agriculture policies and programs and their operations and activities in foreign areas. Act as liaison on these matters and functions relating to foreign agriculture between the Department of Agriculture and the Department of State, the United States Trade Representative, the Trade Policy Committee, the Agency for International Development and other departments, agencies and committees of the U.S. Government, foreign governments, the Organization for Economic Cooperation and Development, the European Union, the Food and Agriculture Organization of the United Nations, the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Organization of American States, and other public and private United States and international organizations, and the contracting parties to the General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO).

(2) Conduct functions of the Department relating to GATT, WTO, the Trade Expansion Act of 1962 (19 U.S.C. 1801, *et seq.*), the Trade Act of 1974 (19 U.S.C. 2101, *et seq.*), the Trade Agreements Act of 1979 (19 U.S.C. 2501, *et seq.*), the Omnibus Trade and Competition Act of 1988 (19 U.S.C. 2901, *et seq.*), the provisions of subtitle B of title III of the North American Free Trade Agreement Implementation Act (except the provisions concerning the end-use certificate system authorized pursuant to section 321(f) of that Act (19 U.S.C. 3391(f)) delegated to the Administrator, Farm Service Agency), and other legislation affecting international agricultural trade including the programs designed to reduce foreign tariffs and other trade barriers.

(3) Conduct studies of worldwide production, trade, marketing, prices, consumption, and other factors affecting exports and imports of U.S. agricultural commodities; obtain information on methods used by other countries to move farm commodities in world trade on a competitive basis for use in the development of programs of this Department; provide information to domestic producers, the agricultural trade, the public and other interests; and promote normal commercial markets abroad. This delegation excludes basic and long-range analyses of world conditions and developments affecting supply, demand, and trade in farm products and general economic analyses of the international financial and monetary aspects of agricultural affairs as assigned to the Under Secretary for Research, Education, and Economics.

(4) Administer Departmental programs concerned with development of foreign markets for agricultural products of the United States except functions relating to export marketing operations under section 32, of the Act of August 23, 1935, as amended (7 U.S.C. 612c), delegated to the Assistant Secretary for Marketing and Regulatory Programs.

(5) Conduct Department activities to carry out the provisions of the International Coffee Agreement Act of 1968 (19 U.S.C. 1356f).

(6) Administer functions of the Department relating to import controls including, among others, functions under section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624), the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), and section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854) but not including those functions reserved to the Secretary under § 2.16(b)(2) and those relating to section 8e of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 608e–1), as assigned to the Assistant Secretary for Marketing and Regulatory Programs.

(7) Represent the Department on the Interdepartmental Committee for Export Control and conduct Departmental activities to carry out the provisions of the Export Administration Act of 1969, as amended (50 U.S.C. App. 2401, *et seq.*), except as reserved to the Secretary under § 2.16(b)(2).

(8) Exercise the Department's responsibilities in connection with international negotiations of the International Wheat Agreement and in the administration of such agreement.

(9) Provide foreign agricultural intelligence and other foreign agricultural services in support of programs administered by the Department under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195, *et seq.*).

(10) Conduct economic analyses pertaining to the foreign sugar situation.

(11) Exercise the Department's functions with respect to the International Sugar Agreement or any such future agreements.

(12) Exercise the Department's responsibilities with respect to tariff-rate quotes for dairy products under chapter 4 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(13) Serve as a focal point for handling quality or weight discrepancy inquiries from foreign buyers of U.S. agricultural commodities to insure that they are investigated and receive a timely response and that reports thereof are made to appropriate parties and government officials in order that corrective action may be taken.

(14) Formulate policies and administer programs and activities authorized by the Agricultural Trade Act of 1978, as amended (7 U.S.C. 5601, *et seq.*).

(15) Formulate policies and administer barter programs under which agricultural commodities are exported.

(16) Perform functions of the Department in connection with the development and implementation of agreements to finance the sale and exportation of agricultural commodities on long-term credit or for foreign currencies under Public Law 480 (7 U.S.C. 1691, 1701, *et seq.*).

(17) Coordinate within the Department activities arising under Public Law 480 (except as delegated to the Under Secretary for Research, Education, and Economics in § 2.21(a)(8), and to represent the Department in its relationships in such matters with the Department of State, any interagency committee on Public Law 480, and other departments, agencies and committees of the Government.

(18) Formulate policies and implement programs to promote the export of dairy products, as authorized under section 153 of the Food Security Act of 1985, as amended (15 U.S.C. 713a–14), and of sunflowerseed oil and cottonseed oil, as authorized under section 301(b)(2)(A) of the Disaster Assistance Act of 1988, as amended (7 U.S.C. 1464 note).

(19) Formulate policies and implement a program for the export sales of dairy products, as authorized by section 1163 of the Food Security Act of 1985 (7 U.S.C. 1731 note).

(20) Carry out activities relating to the sale, reduction, or cancellation of debt, as authorized by title VI of the Agricultural Trade and Development Act of 1954, as amended (7 U.S.C. 1738, *et seq.*).

(21) Carry out debt-for-health-and-protection swaps, as authorized by section 1517 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 1706).

(22) Allocate among the various export programs agricultural commodities determined under § 2.16(a)(3)(xix) to be available for export.

(23) Maintain a worldwide agricultural intelligence and reporting system, including provision for foreign agricultural representation abroad to protect and promote U.S. agricultural interests, and to acquire information on demand, competition, marketing, and distribution of U.S. agricultural commodities abroad pursuant to title VI of the Agricultural Act of 1954, as amended (7 U.S.C. 1761–1768).

(24) Plan and carry out programs and activities under the foreign market promotion authority of the Wheat Research and Promotion Act (7 U.S.C. 1292 note); the Cotton Research and Promotion Act (7 U.S.C. 2102–2118); section 610 of the Agricultural Act of 1970 (7 U.S.C. 2119); the Potato Research and Promotion Act (7 U.S.C. 2611–2627); the Egg Research and Consumer Information Act of 1974 (7 U.S.C. 2701–2718); the National Wool Act of 1954, as amended (7 U.S.C. 1781–1787); the Beef Research and Information Act, as amended (7 U.S.C. 2901–2918); the Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3401–3417); subtitle B of title I of the Dairy and Tobacco Adjustment Act of 1983 (7 U.S.C. 4501–4513); the Pecan Promotion and Research Act of 1990 (7 U.S.C. 6001–6013); the Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6101–6112); the Lime Research, Promotion and Consumer Information Act of 1990 (7 U.S.C. 6201–6212); and the Soybean Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6301–6311). This authority includes determining the programs and activities to be undertaken and assuring that they are coordinated with the overall departmental programs to develop foreign markets for U.S. agricultural products.

(25) Establish and administer regulations relating to foreign travel by employees of the Department. Regulations will include, but not be limited to, obtaining and controlling passports, obtaining visas, coordinating Department of State medical clearances and imposing requirements for itineraries and contacting the Foreign Agricultural Affairs Officers upon arrival in the Officers' country(ies) of responsibility.

(26) Administer the Foreign Service personnel system for the Department in accordance with 22 U.S.C. 3922, except as otherwise delegated in § 2.80(a)(1), but including authority to represent the Department of Agriculture in all interagency consultations and negotiations with the other foreign agencies with respect to joint regulations and authority to approve regulations issued by the Department of State relating to the administration of the Foreign Service.

(27) Establish and maintain U.S. Agricultural Trade Offices to develop, maintain and expand international markets for U.S. agricultural commodities in accordance with title IV of Pub. L. No. 95–501 (7 U.S.C. 1765a–g).

(28) Administer the programs under section 416(b) of the Agricultural Act of 1949, as amended (7 U.S.C. 1431(b)), relating to the foreign donation of CCC stocks of agricultural commodities, except as otherwise delegated in § 2.42(a)(43).

(29) Administer section 214 of the Tobacco Adjustment Act of 1983 (7 U.S.C. 509).

(30) Administer section 1558 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 958).

(31) Administer programs under the Food for Progress Act of 1985 (7 U.S.C. 1736o), except as otherwise delegated in § 2.42(a)(43).

(32) Serve as Department adviser on policies, organizational arrangements, budgets, and actions to accomplish International Scientific and Technical Cooperation in Food and Agriculture.

(33) Administer and direct the Department's programs in international development, technical assistance, and training carried out under the Foreign Assistance Act, as amended, as requested under such act (22 U.S.C. 2151, *et seq.*).

(34) Administer and coordinate assigned Departmental programs in international research and scientific and technical cooperation with other governmental agencies, land grant universities, international organizations, international agricultural research centers, and other institutions (7 U.S.C. 1624, 3291).

(35) Direct and coordinate the Department's participation in scientific and technical matters and exchange agreements between the United States and other countries.

(36) Direct and coordinate the Department's work with international organizations and interagency committees concerned with food and agricultural development programs (7 U.S.C. 2201 and 2202).

(37) Coordinate policy formulation for USDA international science and technology programs concerning international agricultural research centers, international organizations, and international agricultural research and extension activities (7 U.S.C. 3291).

(38) Disseminate, upon request, information on subjects connected with agriculture which has been acquired by USDA agencies that may be useful to the U.S. private sector in expanding foreign markets and investment opportunities through the operation of a Department information center, pursuant to 7 U.S.C. 2201.

(39) Enter into contracts, grants, cooperative agreements, and cost reimbursable agreements relating to agricultural research, extension, or teaching activities (7 U.S.C. 3318, 3319a).

(40) Determine amounts reimbursable for indirect costs under international agricultural programs and agreements (7 U.S.C. 3319).

(41) Administer the Cochran Fellowship Program (7 U.S.C. 3293).

(42) Determine quantity trigger levels and impose additional duties under the special safeguard measures in accordance with U.S. note 2 to subchapter IV of chapter 99 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(b) [Reserved]

Subpart G—Delegations of Authority by the Under Secretary for Rural Economic and Community Development

§ 2.45 Deputy Under Secretary for Rural Economic and Community Development.

Pursuant to § 2.17(a), subject to reservations in § 2.17(b), and subject to policy guidance and direction by the Under Secretary, the following delegation of authority is made to the Deputy Under Secretary for Rural Economic and Community Development, to be exercised only

during the absence or unavailability of the Under Secretary: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Under Secretary for Rural Economic and Community Development.

§ 2.47 Administrator, Rural Utilities Service.

(a) *Delegations.* Pursuant to §§ 2.17 (a)(14) and (a)(16) through (a)(20), and subject to policy guidance and direction by the Under Secretary for Rural Economic and Community Development, the following delegations of authority are made by the Under Secretary for Rural Economic and Community Development to the Administrator, Rural Utilities Service:

(1) Administer the Rural Electrification Act of 1936, as amended (7 U.S.C. 901, *et seq.*) except for rural economic development loan and grant programs; (7 U.S.C. 940c and 950aa, *et seq.*): Provided, however, that the Administrator may utilize consultants and attorneys for the provision of legal services pursuant to 7 U.S.C. 918, with the concurrence of the General Counsel.

(2) Administer the Rural Electrification Act of 1938 (7 U.S.C. 903 note).

(3) The Administrator, Rural Utilities Service is designated to serve as the chief executive officer of the Rural Telephone Bank.

(4) Administer the following sections of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921, *et seq.*):

(i) Section 306 (7 U.S.C. 1926), related to water and waste facilities;

(ii) Section 306A (7 U.S.C. 1926a);

(iii) Section 306B (7 U.S.C. 1926b);

(iv) Section 306C (7 U.S.C. 1926c);

(v) Sections 309 (7 U.S.C. 1929) and 309A (7 U.S.C. 1929a), relating to assets and programs related to watershed facilities, resource and conservation facilities, and water and waste facilities;

(vi) Section 310A (7 U.S.C. 1931), relating to watershed and resource conservation and development;

(vii) Section 310B(b) (7 U.S.C. 1932(b));

(viii) Section 310B(i)), relating to loans for business telecommunications partnerships;

(ix) Section 342 (7 U.S.C. 1013a); and

(x) Administrative Provisions of subtitle D of the Consolidated Farm and Rural Development Act relating to Rural Utilities Service activities;

(5) Administer section 8, and those functions with respect to repayment of obligations under section 4, of the Watershed Protection and Flood Prevention Act (16 U.S.C. 1006a, 1004) and administer the Resource Conservation and Development Program to assist in carrying out resource conservation and development projects in rural areas under section 32(e) of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1011(e)).

(6) Administer the Water and Waste Loan Program (7 U.S.C. 1926–1).

(7) Administer the Rural Wastewater Treatment Circuit Rider Program (7 U.S.C. 1926 note).

(8) Collect, service, and liquidate loans made, insured, or guaranteed by the Rural Utilities Service or its predecessor agencies.

(9) Administer the Federal Claims Collection Act of 1966 (31 U.S.C. 3711, *et seq.*), and joint regulations issued pursuant thereto by the Attorney General and the Comptroller General (4 CFR chapter II), with respect to the claims of the Rural Utilities Service.

(10) Administer responsibilities and function assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*) and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195, *et seq.*), relating to rural development credit and financial assistance.

(11) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("the Act"), as amended:

(i) Sections 104 (a), (b), and (c)(4) of the Act (42 U.S.C. 9604(a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117 (a) and (c) of the Act (42 U.S.C. 9617 (a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(12) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901, *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601, *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

(13) Administer the Distance Learning and Medical Link Programs (7 U.S.C. 950aaa, *et seq.*).

(14) Administer water and waste facility programs and activities (7 U.S.C. 1926–1).

(b) *Reservations.* The following authority is reserved to the Under Secretary for Rural Economic and Community Development:

(1) Making and issuing notes to the Secretary of the Treasury for the purposes of the Rural Development Insurance Fund as authorized by the Consolidated Farm and Rural Development Act (7 U.S.C. 1929a).

(2) Administering loans for rural telephone facilities and service in rural areas as authorized by the Consolidated Farm and Rural Development Act (7 U.S.C. 1921, *et seq.*).

§ 2.48 Administrator, Rural Business and Cooperative Development Service.

(a) *Delegations.* Pursuant to §§ 2.17 (a)(1), (a)(2), (a)(14), (a)(16) through (a)(19) and (a)(21), subject to reservations in § 2.17(b)(1), and subject to policy guidance and direction by the Under Secretary for Rural Economic and Community Development, the following delegations of authority are made by the Under Secretary for Rural Economic and Community Development to the Administrator, Rural Business and Cooperative Development Service:

(1) Administer the rural economic development loan and grant programs under the Rural Electrification Act (7 U.S.C. 940c and 950aa, *et seq.*).

(2) Administer the following sections of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921, *et seq.*):

(i) Section 306(a)(11)(A) (7 U.S.C. 1926(a)(11)(A)), related grants for business technical assistance and planning;

(ii) Section 304(b) (7 U.S.C. 1924(b)), relating to small business enterprises;

(iii) Sections 309 (7 U.S.C. 1929) and 309A (7 U.S.C. 1929a), relating to assets and programs related to rural development;

(iv) Section 310B (7 U.S.C. 1932), relating to rural industrialization assistance, rural business enterprise grants and rural technology and cooperative development grants;

(v) Section 312(b) (7 U.S.C. 1942(b)), relating to small business enterprises; and

(vi) Administrative Provisions of subtitle D of the Consolidated Farm and Rural Development Act relating to Rural Business and Cooperative Development Service activities;

(3) Administer Alcohol Fuels Credit Guarantee Program Account (Pub L. No. 102–341, 106 Stat. 895).

(4) Administer section 1323 of the Food Security Act of 1985 (7 U.S.C. 1932 note).

(5) Administer loan programs in the Appalachian region under sections 203 and 204 of the Appalachian Regional Development Act of 1965 (40 U.S.C. App. 204).

(6) Administer section 601 of the Powerplant and Industrial Fuel Use Act of 1978 (Pub. L. No. 95–620).

(7) Administer the Drought and Disaster Guaranteed Loan program under section 331 of the Disaster Assistance Act of 1988 (7 U.S.C. 1929a note).

(8) Administer the Disaster Assistance for Rural Business Enterprises Guaranteed Loan Program under section 401 of the Disaster Assistance Act of 1989 (7 U.S.C. 1929a note).

(9) Administer the Rural Economic Development Demonstration Grant Program (7 U.S.C. 2662a).

(10) Administer the Economically Disadvantaged Rural Community Loan program (7 U.S.C. 6616).

(11) Administer the Alternative Agricultural Research and Commercialization Act of 1990, (7 U.S.C. 5901, *et seq.*).

(12) Administer programs authorized by the Cooperative Marketing Act of 1926 (7 U.S.C. 451–457).

(13) Carry out the responsibilities of the Secretary of Agriculture relating to the marketing aspects of cooperatives, including economic research and analysis, the application of economic research findings, technical assistance to existing and developing cooperatives, education on cooperatives, and statistical information pertaining to cooperatives as authorized by the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627).

(14) Work with institutions and international organizations throughout the world on subjects related to the development and operation of agricultural cooperatives. Such work may be carried out by:

(i) Exchanging materials and results with such institutions or organizations;

(ii) Engaging in joint or coordinated activities; or

(iii) Stationing representatives at such institutions or organizations in foreign countries (7 U.S.C. 3291).

(15) Collect, service, and liquidate loans made, insured, or guaranteed by the Rural Business and Cooperative Development Service or its predecessor agencies.

(16) Administer the Federal Claims Collection Act of 1966 (31 U.S.C. 3711, *et seq.*), and joint regulations issued pursuant thereto by the Attorney General and the Comptroller General (4 CFR chapter II), with respect to the claims of the Rural Business and Cooperative Development Service.

(17) Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Assistance Act (42 U.S.C. 5195, *et seq.*), relating to rural development credit and financial assistance.

(18) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("the Act"), as amended:

(i) Sections 104(a), (b), and (c)(4) of the Act (42 U.S.C. 9604(a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the

acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(19) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901, *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601, *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

(20) Administer in rural areas the process of designation, provision of monitoring and oversight, and provision of technical assistance for Empowerment Zones and Enterprise Communities pursuant to section 13301 of Pub. L. No. 103–66, Omnibus Budget Reconciliation Act of 1993 (26 U.S.C. 1391, *et seq.*).

(21) Provide leadership and coordination within the executive branch at the state and local level of Federal rural development program utilizing the services of executive branch departments and agencies and the agencies, bureaus, offices, and services of the Department of Agriculture in coordination with rural development programs of State and local governments (7 U.S.C. 2204).

(22) Coordinate, at the state and local level, activities relative to rural development among agencies reporting to the Under Secretary for Rural Economic and Community Development and, through appropriate channels, serve as the coordinating agency for other departmental agencies having primary responsibilities, in coordination with rural development programs of State and local governments (7 U.S.C. 2204).

(23) Work with Federal agencies in encouraging the creation of local rural community development organizations. Within a State, assist other Federal agencies in developing means for extending their services effectively to rural areas and in designating pilot projects in rural areas (7 U.S.C. 2204).

(24) Conduct assessments to determine how programs of the Department can be brought to bear on the economic development problems of a State or local area and assure that local groups are receiving adequate and effective technical assistance from Federal agencies or from local and State governments in formulating development programs and in carrying out planned development activities (7 U.S.C. 2204b).

(25) Develop a process through which State, sub-state and local rural development needs, goals, objectives, plans, and recommendations can be received and assessed on a continuing basis (7 U.S.C. 2204b).

(26) Prepare local or area-wide rural development strategies based on the needs, goals, objectives, plans and recommendations of local communities, sub-state areas and States (7 U.S.C. 2204b).

(27) Develop a system of outreach in the State or local area to promote rural development and provide for the publication and dissemination of information, through multi-media methods, relating to rural development. Advise local rural development organizations of availability of Federal programs and the type of assistance available, and assist in making contact with Federal program contact (7 U.S.C. 2204; 7 U.S.C. 2204b).

(b) *Reservation.* The following authority is reserved to the Under Secretary for Rural Economic and Community Development: Making and issuing notes to the Secretary of the Treasury for the purposes of the Rural Development Insurance Fund as authorized by the Consolidated Farm and Rural Development Act (7 U.S.C. 1929a).

§ 2.49 Administrator, Rural Housing and Community Development Service.

(a) *Delegations.* Pursuant to §§ 2.17(a)(14), (a)(16) through (a)(19) and (a)(22), and subject to policy guidance and directions by the Under Secretary for Rural Economic and Community Development, the following delegations are made by the Under Secretary for Rural Economic and Community Development to the Administrator, Rural Housing and Community Development Service:

(1) Administer the following under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921, *et seq.*):

(i) Section 306 (7 U.S.C. 1926), except with respect to financing for water and waste disposal facilities; or loans for rural electrification or telephone systems or facilities other than hydroelectric generating and related distribution systems and supplemental and supporting structures if they are eligible for Rural Utilities Service financing; and financing for grazing facilities and irrigation and drainage facilities; and subsection 306(a)(11);

(ii) Section 309A (7 U.S.C. 1929a), regarding assets and programs relating to community facilities; and

(iii) Administrative Provisions of subtitle D of the Consolidated Farm and Rural Development Act relating to Rural Housing and Community Development Service activities;

(2) Administer title V of the Housing Act of 1949 (42 U.S.C. 1471, *et seq.*), except those functions pertaining to research.

(3) Make grants, administer a grant program, and determine the types of assistance to be provided to aid low-income migrant and seasonal farmworkers (42 U.S.C. 5177a).

(4) Administer the rural housing disaster program under sections 232, 234, and 253 of the Disaster Relief Act of 1970 (Pub. L. No. 91–606).

(5) Collect, service, and liquidate loans made, insured or guaranteed by the Rural Housing and Community Development Service or its predecessor agencies.

(6) Exercise all authority and discretion vested in the Secretary by section 510(d) of the Housing Act of 1949, as amended by section 1045 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, Pub. L. No. 100–628 (42 U.S.C. 1480(d)), including the following:

(i) Determine, with the concurrence of the General Counsel, which actions are to be referred to the Department of Justice for the conduct of litigation, and refer such actions to the Department of Justice through the General Counsel;

(ii) Determine, with the concurrence of the General Counsel, which actions are to be referred to the General Counsel for the conduct of litigation and refer such actions; and

(iii) Enter into contracts with private sector attorneys for the conduct of litigation, with the concurrence of the General Counsel, after determining that the attorneys will provide competent and cost effective representation for the Rural Housing and Community Development Service and representation by the attorney will either accelerate the process by which a family or person eligible for assistance under section 502 of the Housing Act of 1949 will be able to purchase and occupy the housing involved, or preserve the quality of the housing involved.

(7) Administer the Federal Claims Collection Act of 1966 (31 U.S.C. 3711, *et seq.*), and joint regulations issued pursuant thereto by the Attorney General and the Comptroller General (4 CFR chapter II), with respect to claims of the Rural Housing and Community Development Service.

(8) Administer responsibilities and function assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*) and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195, *et seq.*), relating to rural housing and community development credit and financial assistance.

(9) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("the Act"), as amended:

(i) Sections 104(a), (b), and (c)(4) of the Act (42 U.S.C. 9604(a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(10) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901, *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601, *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

(b) *Reservation.* The following authority is reserved to the Under Secretary for Rural Economic and Community Development: Making and issuing notes to the Secretary of the Treasury for the purposes the Rural Development Insurance Fund as authorized by the Consolidated Farm and Rural Development Act (7 U.S.C. 1929(a)) and the Rural Housing Insurance Fund as authorized by title V of the Housing Act of 1949 (41 U.S.C. 1487).

Subpart H—Delegations of Authority by the Under Secretary for Food Safety

§ 2.51 Deputy Under Secretary for Food Safety.

Pursuant to § 2.18, and subject to policy guidance and direction by the Under Secretary, the following delegation of authority is made by the Under Secretary for Food Safety to the Deputy Under Secretary for Food Safety, to be exercised only during the absence or unavailability of the Under Secretary: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Under Secretary for Farm and Foreign Agricultural Services.

§ 2.53 Administrator, Food Safety and Inspection Service.

(a) *Delegations.* Pursuant to § 2.18, the following delegations of authority are made by the Under Secretary for Food Safety to the Administrator, Food Safety and Inspection Service:

(1) Exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), relating to voluntary inspection of poultry and edible products thereof; voluntary inspection and certification of technical animal fat; certified products for dogs, cats and other carnivora; voluntary inspection of rabbits and edible products thereof; and voluntary inspection and certification of edible meat and other products.

(2) Exercise the functions of the Secretary of Agriculture contained in the following legislation:

(i) Poultry Products Inspection Act, as amended (21 U.S.C. 451–470);

(ii) Federal Meat Inspection Act, as amended, and related legislation, excluding sections 12–14, and also excluding so much of section 18 as pertains to issuance of certificates of condition of live animals intended and offered for export (21 U.S.C. 601–611, 615–624, 641–645, 661, 671–680, 691–692, 694–695);

(iii) Egg Products Inspection Act, except for the shell egg surveillance program, voluntary laboratory analyses of egg products, and the voluntary egg grading program (21 U.S.C. 1031–1056);

(iv) Talmadge-Aiken Act (7 U.S.C. 450) with respect to cooperation with States in administration of the Federal Meat Inspection Act and the Poultry Products Inspection Act;

(v) Humane Slaughter Act (7 U.S.C. 1901–1906); and

(vi) Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195, *et seq.*), relating to wholesomeness of meat and poultry and products thereof and inspection of egg and egg products.

(3) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("the Act"), as amended:

(i) Sections 104(a), (b), and (c)(4) of the Act (42 U.S.C. 9604(a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(4) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901, *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601, *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

(5) Administer the National Laboratory Accreditation Program (7 U.S.C. 138–138i) with respect to laboratories accredited only for pesticide residue analysis in meat and poultry products.

(6) Administer and conduct a food safety research program (7 U.S.C. 427).

(7) Coordinate with the Animal and Plant Health Inspection Service the administration of programs relating to human pathogen reduction (such as *salmonella enteritidis*) pursuant to section 2 of the Act of February 2, 1903, as amended (21 U.S.C. 111), and sections 4 and 5 of the Act of May 29, 1884, as amended (21 U.S.C. 120).

(8) Enter into contracts, grants, or cooperative agreements to further research programs in the agricultural sciences (7 U.S.C. 3318).

(b) [Reserved]

Subpart I—Delegations of Authority by the Under Secretary for Food, Nutrition, and Consumer Services

§ 2.55 Deputy Under Secretary for Food, Nutrition, and Consumer Services.

Pursuant to § 2.19(a), subject to reservations in § 2.19(b), and subject to policy guidance and direction by the Under Secretary, the following delegation of authority is made by the Under Secretary for Food, Nutrition, and Consumer Services to the Deputy Under Secretary for Food, Nutrition and Consumer Services, to be exercised only during the absence or unavailability of the Under Secretary: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Under Secretary for Food, Nutrition, and Consumer Services.

§ 2.57 Administrator, Food and Consumer Service.

(a) *Delegations.* Pursuant to §§ 2.19(a)(1), (a)(2) and (a)(5), subject to reservations in § 2.19(b)(1), the following delegations of authority are made by the Under Secretary for Food, Nutrition, and Consumer Services to the Administrator, Food and Consumer Service:

(1) Administer the following legislation:

(i) The Food Stamp Act of 1977, as amended (7 U.S.C. 2011–2032);

(ii) National School Lunch Act of 1946, as amended (42 U.S.C. 1751–1769h), except procurement of agricultural commodities and other foods under section 6 thereof;

(iii) Child Nutrition Act of 1966, as amended (42 U.S.C. 1771–1790);

(iv) Sections 933–939 of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (7 U.S.C. 5930 note); and

(v) Section 301 of the Healthy Meals for Healthy Americans Act of 1994 (Pub. L. No. 103–448).

(2) Administer those functions relating to the distribution and donation of agricultural commodities and products thereof under the following legislation:

(i) Clause (3) of section 416(a) of the Agricultural Act of 1949, as amended (7 U.S.C. 1431(a)), except the estimate and announcement of the types and varieties of food commodities, and the quantities thereof, to become available for distribution thereunder;

(ii) Section 709 of the Food and Agriculture Act of 1965, as amended (7 U.S.C. 1446a–1);

(iii) Section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c), as supplemented by the Act of June 28, 1937 (15 U.S.C. 713c), and related legislation;

(iv) Section 9 of the Act of September 6, 1958 (7 U.S.C. 1431b);

(v) Section 210 of the Agricultural Act of 1956 (7 U.S.C. 1859), except with respect to donations to Federal penal and correctional institutions;

(vi) Section 402 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1922);

(vii) Section 311 of the Older Americans Act of 1965, as amended (42 U.S.C. 3030a);

(viii) Sections 412 and 413(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5179, 5180(b));

(ix) Sections 4 and 5 of the Agriculture and Consumer Protection Act of 1973, as amended (7 U.S.C. 612c note);

(x) Section 1114 of the Agriculture and Food Act of 1981, as amended (7 U.S.C. 1431e);

(xi) Section 1336 of the Agriculture and Food Act of 1981 (Pub. L. No. 97–98);

(xii) Emergency Food Assistance Act of 1983 (7 U.S.C. 612c note);

(xiii) Sections 3(b)–(i), 3A and 4 of the Commodity Distribution Reform Act and WIC Amendments of 1987 (7 U.S.C. 612c note); and

(xiv) Section 110 of the Hunger Prevention Act of 1988 (7 U.S.C. 612c note).

(3) Administer those functions relating to the distribution of food coupons under section 412 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act 42 U.S.C. 5179).

(4) In connection with the functions assigned in paragraphs (a)(1), (a)(2), and (a)(3) of this section, relating to the distribution and donation of agricultural commodities and products thereof and food coupons to eligible recipients, authority to determine the requirements for such agricultural commodities and products thereof and food coupons to be so distributed.

(5) Receive donation of food commodities under clause (3) of section 416(a) of the Agricultural Act of 1949, as amended, section 709 of the Food and Agriculture Act of 1965, as amended, section 5 of the Agriculture and Consumer Protection Act of 1973, section 1114(a) of the Agriculture and Food Act of 1981, and section 202(a) and 202A of the Emergency Food Assistance Act of 1983.

(6) Authorize defense emergency food stamp assistance.

(7) Develop and implement USDA policy and procedural guidelines for carrying out the Department's Consumer Affairs Plan.

(8) Advise the Secretary and other policy level officials of the Department on consumer affairs policies and programs.

(9) Coordinate USDA consumer affairs activities and monitor and analyze agency procedures and performance.

(10) Represent the Department at conferences, meetings and other contacts where consumer affairs issues are discussed, including liaison with the White House and other governmental agencies and departments.

(11) Work with the Office of Budget and Program Analysis and the Office of Communications to ensure coordination of USDA consumer affairs and public participation programs, policies and information, and to prevent duplication of responsibilities.

(12) Serve as a consumer ombudsman and communication link between consumers and the Department.

(13) Approve the designation of agency Consumer Affairs Contacts.

(b) [Reserved]

Subpart J—Delegations of Authority by the Under Secretary for Natural Resources and Environment

§ 2.59 Deputy Under Secretaries for Natural Resources and Environment.

Pursuant to § 2.20(a), subject to reservations in § 2.20(b), and subject to policy guidance and direction by the Under Secretary, the following delegation of authority is made by the Under Secretary for Natural Resources and Environment to the Deputy Under Secretaries for Natural Resources and Environment, to be exercised only during the absence or unavailability of the Under Secretary: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Under Secretary for Natural Resources and Environment. Provided, that, except in the absence of both the Under Secretary and a Deputy Under Secretary, this authority shall be exercised by the respective Deputy Under Secretary only with respect to the area or responsibility assigned to him or her.

§ 2.60 Chief, Forest Service.

(a) *Delgotions.* Pursuant to §§ 2.20(a)(1), (a)(2), (a)(6), (a)(7)(ii) and (a)(8), the following delegations of authority are made by the Under Secretary for Natural Resources and Environment to the Chief of the Forest Service:

(1) Provide national leadership in forestry. (As used here and elsewhere in this section, the term "forestry" encompasses renewable and nonrenewable resources of forests, including lands governed by the Alaska National Interest Lands Conservation Act, forest-related rangeland, grassland, brushland, woodland, and alpine areas including but not limited to recreation, range, timber, minerals, watershed, wildlife and fish; natural scenic, scientific, cultural, and historic values of forests and related lands; and derivative values such as economic strength and social well being).

(2) Protect, manage, and administer the national forests, national forest purchase units, national grasslands, and other lands and interests in lands administered by the Forest Service, which collectively are designated as the National Forest System. This delegation covers the acquisition and disposition of lands and interest in lands as may be authorized for the protection, management, and administration of the National Forest System, except that the authority to approve acquisition of land under the Weeks Act of March 1, 1911, as amended, and special forest receipts acts (Pub. L. No. 337, 74th Cong., 49 Stat. 866, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 505, 75th Cong., 52 Stat. 347, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 634, 75th Cong., 52 Stat. 699, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 748, 75th Cong., 52 Stat. 1205, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 427, 76th Cong., 54 Stat. 46; Pub. L. No. 589, 76th Cong., 54 Stat. 297; Pub. L. No. 591, 76th Cong., 54 Stat. 299; Pub. L. No. 637, 76th Cong., 54 Stat. 402; Pub. L. No. 781, 84th Cong., 70 Stat. 632) is limited to acquisitions of less than $250,000 in value.

(3) As necessary for administrative purposes, divide into and designate as national forests any lands of 3,000 acres or less which are acquired under or subject to the Weeks Act of March 1, 1911, as amended, and which are contiguous to existing national forest boundaries established under the authority of the Weeks Act.

(4) Plan and administer wildlife and fish conservation rehabilitation and habitat management programs on National Forest System lands, pursuant to 16 U.S.C. 670g, 670h, and 670o.

(5) For the purposes of the National Forests System Drug Control Act of 1986 (16 U.S.C. 559-f), specifically designate certain specially trained officers and employees of the Forest Service, not exceeding 500, to have authority in the performance of their duties within the boundaries of the National Forest System:

(i) To carry firearms;

(ii) To enforce and conduct investigations of violations of section 401 of the Controlled Substance Act (21 U.S.C. 481) and other criminal violations relating to marijuana and other controlled substances that are manufactured, distributed, or dispensed on National Forest System lands;

(iii) To make arrests with a warrant or process for misdemeanor violations, or without a warrant for violations of such misdemeanors that any such officer or employee has probable cause to believe are being committed in that employee's presence or view, or for a felony with a warrant or without a warrant if that employee has probable cause to believe that the person being arrested has committed or is committing such a felony;

(iv) To serve warrants and other process issued by a court or officer of competent jurisdiction;

(v) To search, with or without a warrant or process, any person, place, or conveyance according to Federal law or rule of law; and

(vi) To seize, with or without warrant or process, any evidentiary item according to Federal law or rule of law.

(6) Cooperate with the law enforcement officials of any Federal agency, State, or political subdivision, in the investigation of violations of, and enforcement of, section 401 of the Controlled Substances Act (21 U.S.C. 841), other laws and regulations relating to marijuana and other controlled substances, and State drug control laws or ordinances, within the boundaries of the National Forest System.

(7) Administer programs under section 23 of the Federal Highway Act (23 U.S.C. 101(a), 120(f), 125(a)–(c), 138, 202(a)–(b), 203, 204(a)–(h), 205(a)–(d), 211, 317, 401(a)).

(8) Administer provisions of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1272, 1305) as they relate to management of the National Forest System.

(9) Conduct, support, and cooperate in investigations, experiments, tests, and other activities deemed necessary to obtain, analyze, develop, demonstrate, and disseminate scientific information about protecting, managing, and utilizing forest and rangeland renewable resources in rural, suburban, and urban areas in the United States and foreign countries. The activities conducted, supported, or cooperated in shall include, but not be limited to: renewable resource management research; renewable resource environmental research; renewable resource protection research, renewable resource utilization research, and renewable resource assessment research (16 U.S.C. 1641–1647).

(10) Use authorities and means available to disseminate the knowledge and technology developed from forestry research (16 U.S.C. 1645).

(11) Coordinate activities with other agencies in USDA, other Federal and State agencies, forestry schools, and private entities and individuals (16 U.S.C. 1643).

(12) Enter into contracts, grants, and cooperative agreements for the support of scientific research in forestry activities (7 U.S.C. 427i(a), 1624; 16 U.S.C. 582a–8, 1643–1645, 1649).

(13) Enter into cooperative research and development agreements with industry, universities, and others; institute a cash award program to reward scientific, engineering, and technical personnel; award royalties to inventors; and retain and use royalty income (15 U.S.C. 3710a–3710c).

(14) Enter into contracts, grants, or cooperative agreements to further research, extension, or teaching programs in the food and agricultural sciences (7 U.S.C. 3152, 3318).

(15) Enter into cost-reimbursable agreements relating to agricultural research, extension, or teaching activities (7 U.S.C. 3319a).

(16) Administer programs of cooperative forestry assistance in the protection, conservation, and multiple resource management of forests and related resources in both rural and urban areas and forest lands in foreign countries (16 U.S.C. 2101–2114).

(17) Provide assistance to States and other units of government in forest resources planning and forestry rural revitalization (7 U.S.C. 6601, 6611–6617; 16 U.S.C. 2107).

(18) Conduct a program of technology implementation for State forestry personnel, private forest landowners and managers, vendors, forest operators, public agencies, and individuals (16 U.S.C. 2107).

(19) Administer rural fire protection and control program (16 U.S.C. 2106).

(20) Provide technical assistance on forestry technology or the implementation of the conservation reserve and softwood timber programs authorized in sections 1231–1244 and 1254 of the Food Security Act of 1985 (16 U.S.C. 3831–3844; 7 U.S.C. 1981 note).

(21) Administer forest insect, disease, and other pest management programs (16 U.S.C. 2104).

(22) Exercise the custodial functions of the Secretary for lands and interests in lands under lease or contract of sale to States and local agencies pursuant to title III of the Bankhead-Jones Farm Tenant Act and administer reserved and reversionary interests in lands conveyed under that Act (7 U.S.C. 1010–1012).

(23) Under such general program criteria and procedures as may be established by the Natural Resources Conservation Service:

(i) Administer the forestry aspects of the programs listed in paragraphs (a)(23)(i)(A), (B), and (C) of this section on the National Forest System, rangelands with national forest boundaries, adjacent rangelands which are administered under formal agreement, and other forest lands:

(A) The cooperative river basin surveys and investigations program (16 U.S.C. 1006);

(B) The eleven authorized watershed improvement programs and emergency flood prevention measures program under the Flood Control Act (33 U.S.C. 701b–1);

(C) The small watershed protection program under the Pilot Watershed Protection and Watershed Protection and Flood Prevention Acts (7 U.S.C. 701a–h; 16 U.S.C. 1001–1009).

(ii) Exercise responsibility in connection with the forestry aspects of the resource conservation and development program authorized by title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1011(e)).

(24) Provide assistance to the Farm Service Agency in connection with the agricultural conservation program, the naval stores conservation program, and the cropland conversion program (16 U.S.C. 590g–q).

(25) Provide assistance to the Rural Housing and Community Development Service in connection with grants and loans under authority of section 303 of the Consolidated Farm and Rural Development Act, 7 U.S.C. 1923; and consultation with the Department of Housing and Urban Development under the authority of 40 U.S.C. 461(e).

(26) Coordinate mapping work of USDA including:

(i) Clearing mapping projects to prevent duplication;

(ii) Keeping a record of mapping done by USDA agencies;

(iii) Preparing and submitting required USDA reports;

(iv) Serving as liaison on mapping with the Office of Management and Budget, Department of the Interior, and other departments and establishments;

(v) Promoting interchange of technical mapping information, including techniques which may reduce costs or improve quality; and

(vi) Maintaining the mapping records formerly maintained by the Office of Operations.

(27) Administer the radio frequency licensing work of USDA, including:

(i) Representing USDA on the Interdepartmental Radio Advisory Committee and its Frequency Assignment Subcommittee of the National Telecommunications and Information Administration, Department of Commerce;

(ii) Establishing policies, standards, and procedures for allotting and assigning frequencies within USDA and for obtaining effective utilization of them;

(iii) Providing licensing action necessary to assign radio frequencies for use by the agencies of USDA and maintenance of the records necessary in connection therewith; and

(iv) Providing inspection of USDA's radio operations to ensure compliance with national and international regulations and policies for radio frequency use.

(28) Represent USDA in all matters relating to responsibilities and authorities under the Federal Water Power Act, as amended (16 U.S.C. 791–823).

(29) [Reserved]

(30) Administer the Youth Conservation Corps Act (42 U.S.C. precede 2711 note) for USDA.

(31) Establish and operate the Job Corps Civilian Conservation Centers on National Forest System lands as authorized by title I, sections 106 and 107 of the Economic Opportunity Act of 1964 (42 U.S.C. 2716–2717), in accordance with the terms of an agreement dated May 11, 1967, between the Secretary of Agriculture and the Secretary of Labor; and administration of other cooperative manpower training and work experience programs where the Forest Service serves as host or prime sponsor with other Departments of Federal, State, or local governments.

(32) Administer the Volunteers in the National Forests Act of 1972 (16 U.S.C. 558a–558d, 558a note).

(33) Exercise the functions of the Secretary of Agriculture authorized in the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101–3215).

(34) Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195, *et seq.*), relating to forests and forest products, rural fire defense, and forestry research.

(35) Represent USDA on the National Response Team on hazardous spills pursuant to Pub. L. No. 92–500 (33 U.S.C. 1151 note) and section 4 of Executive Order 11735, 3 CFR, 1971–1975 Comp., p. 793.

(36) Exercise the functions of the Secretary as authorized in the Wild and Scenic Rivers Act (16 U.S.C. 1271–1278), except for making recommendations to the President regarding additions to the National Wild and Scenic Rivers System.

(37) Issue proposed rules relating to the authorities delegated in this section, issue final rules and regulations as provided in 36 CFR 261.70, issue technical amendments and corrections to final rules issued by the Secretary or Under Secretary for Natural Resources and Environment, and issue proposed and final rules necessary and appropriate to carry out title VIII of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101–3215)

with regard to National Forest System Lands.

(38) Jointly administer gypsy moth eradication activities with the Animal and Plant Health Inspection Service, under the authority of section 102 of the Organic Act of 1944, as amended; and the Act of April 6, 1937, as amended (7 U.S.C. 147a, 148, 148a–148e); and the Talmadge Aiken Act (7 U.S.C. 450), by assuming primary responsibility for treating isolated gypsy moth infestations on Federal lands, and on State and private lands contiguous to infested Federal lands, and any other infestations over 640 acres on State and private lands.

(39) With respect to land and facilities under his or her authority, to exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("the Act"), as amended:

(i) Sections 104(a), (b), and (c)(4) of the Act (42 U.S.C. 9604(a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604 (e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) of the Act pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(g) of the Act (42 U.S.C. 9613(g)), with respect to receiving notification of a natural resource trustee's intent to file suit;

(x) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(xi) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xii) Section 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xiii) Section 119 of the Act (42 U.S.C. 9619), with respect to indemnifying response action contractors;

(xiv) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(40) Exercise the functions of the Secretary authorized in the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (30 U.S.C. 226, *et seq.*).

(41) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate United States District Court with an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Hazardous and Solid Waste Amendment, and the Federal Facility Compliance Act (42 U.S.C. 6901, *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(vi) Toxic Substances Control Act, as amended, (15 U.S.C. 2601, *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

(42) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, and Executive Order 12777, 3 CFR, 1991 Comp., p. 351, to act as Federal trustee for natural resources in accordance with section 107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C 9607(f)), section 311(f)(5) of the Federal Water Pollution Control Act (33 U.S.C. 1321(f)(5)), and section 1006(b)(2) of the Oil Pollution Act of 1990 (33 U.S.C. 2706(b)(2)).

(43) With respect to land and facilities under his or her authority, to exercise the authority vested in the Secretary of Agriculture to act as the "Federal Land Manager" pursuant to the Clean Air Act, as amended, 42 U.S.C. 7401, *et seq.*

(44) Administer the Public Lands Corps program (16 U.S.C. 1721, *et seq.*) for USDA consistent with the Department's overall national service program.

(45) Jointly administer the Forestry Incentives Program with the Natural Resources Conservation Service, in consultation with State Foresters, under section 4 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103).

(46) Focusing on countries that could have a substantial impact on global warming, provide assistance that promotes sustainable development and global environmental stability; share technical, managerial, extension, and administrative skills; provide education and training opportunities; engage in scientific exchange; and cooperate with domestic and international organizations that further international programs for the management and protection of forests, rangelands, wildlife, fisheries and related natural resources (16 U.S.C. 4501–4505).

(b) *Reservations.* The following authorities are reserved to the Under Secretary for Natural Resources and Environment:

(1) The authority to issue final rules and regulations relating to the administration of Forest Service programs, except as provided in 36 CFR 261.70 and § 2.60(a)(37).

(2) As deemed necessary for administrative purposes, the authority to divide into and designate as national forests any lands of more than 3,000 acres acquired under or subject to the Weeks Act of March 1, 1911, as amended (16 U.S.C. 521).

(3) The authority to make recommendations to the Administrator of General Services regarding transfer to other Federal, State, or Territorial agencies lands acquired under the Bankhead-Jones Farm Tenant Act, together with recommendations on the conditions of use and administration of such lands, pursuant to the provisions of section 32(c) of title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1011(c), and Executive Order No. 11609, 3 CFR, 1971–1975 Comp., p. 586).

(4) Making recommendations to the President for establishing new units or adding to existing units of the National Wild and Scenic Rivers System (16 U.S.C. 1271–1278); National Scenic Trails System (16 U.S.C. 1241–1249) and the National Wilderness Preservation System (16 U.S.C. 1131–1136).

(5) Signing of declarations of taking and requests for condemnation of property as authorized by law to carry out the mission of the Forest Service (40 U.S.C. 257).

(6) Approval of acquisition of land under the Weeks Act of March 1, 1911, as amended (16 U.S.C. 521), and special forest receipts acts (Pub. L. No. 337, 74th Cong., 49 Stat. 866, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 505, 75th Cong., 52 Stat. 347, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 634, 75th Cong., 52 Stat. 699, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 748, 75th Cong., 52 Stat. 1205, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 427, 76th Cong., 54 Stat. 46; Pub. L. No. 589, 76th Cong., 54 Stat. 297; Pub. L. No. 591, 76th Cong., 54 Stat. 299; Pub. L. No. 637, 76th Cong., 54 Stat. 402; Pub. L. No. 781, 84th Cong., 70 Stat. 632) of $250,000 or more in value for national forest purposes.

§ 2.61 Chief, Natural Resources Conservation Service.

(a) *Delegations.* Pursuant to §§ 2.20(a)(1), (a)(3), (a)(5), (a)(6), (a)(7)(ii) and (a)(8), subject to reservations in § 2.20(b)(1), the following delegations of authority are made by the Under Secretary for Natural Resources and Environment to the Chief of the Natural Resources Conservation Service:

(1) Provide national leadership in the conservation, development and productive use of the Nation's soil, water, and related resources. Such leadership encompasses soil, water, plant, and wildlife conservation; small watershed protection and flood prevention; and resource conservation and development. Integrated in these programs are erosion control, sediment reduction, pollution abatement, land use planning, multiple use, improvement of water quality, and several surveying and monitoring activities related to environmental improvement. All are designed to assure:

(i) Quality in the natural resource base for sustained use;

(ii) Quality in the environment to provide attractive, convenient, and satisfying places to live, work, and play; and

(iii) Quality in the standard of living based on community improvement and adequate income.

(2) Provide national leadership in evaluating and coordinating land use policy, and administer the Farmland Protection Policy Act (7 U.S.C. 4201, *et seq.*), including the Farms for the Future Program authorized by sections 1465–1470 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 4201 note), except as otherwise delegated to the Administrator, Agricultural Research Service in § 2.65(a)(80) and the Administrator, Cooperative State Research, Education, and Extension Service in § 2.66(a)(76).

(3) Administer the basic program of soil and water conservation under Pub. L. No. 46, 74th Congress, as amended, and related laws (16 U.S.C. 590a–f, 1–1, q, q-1; 42 U.S.C. 3271–3274; 7 U.S.C. 2201), including:

(i) Technical and financial assistance to land users in carrying out locally adapted soil and water conservation programs primarily through soil and water conservation districts in the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands, and Federally recognized Native American tribes, but also to communities, watershed groups, Federal and State agencies, and other cooperators. This authority includes such assistance as:

(A) Comprehensive planning assistance in nonmetropolitan districts;

(B) Assistance in the field of income-producing recreation on rural non-Federal lands;

(C) Forestry assistance, as part of total technical assistance to private land owners and land users when such services are an integral part of land management and such services are not available from a State agency; and forestry services in connection with windbreaks and shelter belts to prevent wind and water erosion of lands;

(D) Assistance in developing programs relating to natural beauty; and

(E) Assistance to other USDA agencies in connection with the administration of their programs, as follows:

(*1*) To the Farm Service Agency in the development and technical servicing of certain programs, such as the Agricultural Conservation Program and other such similar conservation programs;

(*2*) To the Rural Housing and Community Development Service in connection with their loan and land disposition programs.

(ii) Soil Surveys, including:

(A) Providing leadership for the Federal part of the National Cooperative Soil Survey which includes conducting and publishing soil surveys;

(B) Conducting soil surveys for resource planning and development; and

(C) Performing the cartographic services essential to carrying out the functions of the Natural Resources Conservation Service, including furnishing photographs, mosaics, and maps.

(iii) Conducting and coordinating snow surveys and making water supply forecasts pursuant to Reorganization Plan No. IV of 1940 (5 U.S.C. App.);

(iv) Operating plant materials centers for the assembly and testing of plant species in conservation programs, including the use, administration, and disposition of lands under the administration of the Natural Resources Conservation Service for such purposes under title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010–1011); and

(v) Providing leadership in the inventorying and monitoring of soil, water, land, and related resources of the Nation.

(4) Administer the Watershed Protection and Flood Prevention Programs, including:

(i) The eleven authorized watershed projects authorized under 33 U.S.C. 702b–1, except for responsibilities assigned to the Forest Service;

(ii) The emergency flood control work under 33 U.S.C. 701b-1, except for

responsibilities assigned to the Forest Service;

(iii) The Cooperative River Basin Surveys and Investigations Programs under 16 U.S.C. 1006, except for responsibilities assigned to the Forest Service;

(iv) The pilot watershed projects under 16 U.S.C. 590a–f, and 16 U.S.C. 1001–1009, except for responsibilities assigned to the Forest Service;

(v) The Watershed Protection and Flood Prevention Program under 16 U.S.C. 1001–1009, except for responsibilities assigned to the Rural Housing and Community Development Service and the Forest Service;

(vi) The joint investigations and surveys with the Department of the Army under 16 U.S.C. 1009; and

(vii) The Emergency Conservation Program under sections 401–405 of the Agricultural Credit Act of 1978 (the Act), 16 U.S.C. 2201, *et seq.*, except for the provisions of sections 401 and 402 of the Act, 16 U.S.C. 2201–2202, as administered by the Farm Service Agency.

(5) Administer the Great Plains Conservation Program and the Critical Lands Resources Conservation Program under 16 U.S.C. 590p(b).

(6) Administer the Resource Conservation and Development Program under 16 U.S.C. 590a–f; 7 U.S.C. 1010–1011; and 16 U.S.C. 3451–3461, except for responsibilities assigned to the Rural Utilities Service.

(7) Responsibility for entering into long-term contracts for carrying out conservation and environmental measures in watershed areas.

(8) Provide national leadership for and administer the Soil and Water Resources Conservation Act of 1977 (16 U.S.C. 2001, *et seq.*), except for responsibilities assigned to other USDA agencies.

(9) Administer Rural Clean Water Program and other responsibilities assigned under section 35 of the Clean Water Act of 1977 (33 U.S.C. 1251, *et seq.*).

(10) Monitor actions and progress of USDA in complying with Executive Order 11988, Flood Plain Management, 3 CFR, 1977 Comp., p. 117, and Executive Order 11990, Protection of Wetlands, 3 CFR, 1977 Comp., p. 121, regarding management of floodplains and protection of wetlands; monitor USDA efforts on protection of important agricultural, forest and rangelands; and provide staff assistance to the USDA Natural Resources and Environment Committee.

(11) Administer the search and rescue operations authorized under 7 U.S.C. 2273.

(12) Administer section 202(c) of the Colorado River Basin Salinity Control Act, 43 U.S.C. 1592(c) including:

(i) Identify salt source areas and determine the salt load resulting from irrigation and watershed management practices;

(ii) Conduct salinity control studies of irrigated salt source areas;

(iii) Provide technical and financial assistance in the implementation of salinity control projects including the development of salinity control plans, technical services for application, and certification of practice applications;

(iv) Develop plans for implementing measures that will reduce the salt load of the Colorado River;

(v) Develop and implement long-term monitoring and evaluation plans to measure and report progress and accomplishments in achieving program objectives; and

(vi) Enter into and administer contracts with program participants and waive cost-sharing requirements when such cost-sharing requirements would result in a failure to proceed with needed on-farm measures.

(13) Administer natural resources conservation authorities under title XII of the Food Security Act of 1985 (Act), as amended (16 U.S.C. 3801, *et seq.*), including responsibilities for:

(i) the conservation of highly erodible lands and wetlands pursuant to sections 1211–1223 of the Act (16 U.S.C. 3811–3823);

(ii) technical assistance related to soil and water conservation technology for the implementation and administration of the Conservation Reserve Program authorized by sections 1231–1244 of the Act, as amended (16 U.S.C. 3831–3844);

(iii) the Environmental Easement Program authorized by sections 1239–1239d of the Act (16 U.S.C. 3839–3839d);

(iv) the Agricultural Water Quality Improvement Program authorized by sections 1238–1238f of the Act, as amended (16 U.S.C. 3838–3838f); and

(v) the Wetland Reserve Program and the Emergency Wetlands Reserve Program authorized by sections 1237–1237f of the Act, as amended (16 U.S.C. 3837–3837f), and the Emergency Supplemental Appropriations for Relief From the Major, Widespread Flooding in the Midwest Act of 1993, Pub. L. No. 103–75.

(14) Approve and transmit to the Congress comprehensive river basin reports.

(15) Provide representation on the Water Resources Council and river basin commissions created by 42 U.S.C. 1962, and on river basin interagency committees.

(16) Jointly administer the Forestry Incentives Program with the Forest Service, in consultation with State Foresters, under section 4 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103).

(17) Administer the Water Bank Program under the Water Bank Act (16 U.S.C. 1301, *et seq.*).

(18) Administer water quality activities under the Agriculture and Water Policy Coordination Act, subtitle G, title XIV of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 5501–5505).

(19) Administer the Rural Environmental Conservation Program authorized by sections 1001–1010 of the Agriculture Act of 1970, as amended (16 U.S.C. 1501–1510).

(20) Coordinate USDA input and assistance to the Department of Commerce and other Federal agencies consistent with section 307 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456), and coordinate USDA review of qualifying state and local government coastal management plans or programs prepared under such Act and submitted to the Secretary of Commerce, consistent with section 306(a) and (c) of such Act (16 U.S.C. 1455(a) and (c)).

(21) Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195, *et seq.*), relating to agricultural lands and water.

(22) Administer the Abandoned Mine Reclamation Program for Rural Lands and other responsibilities assigned under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201, *et seq.*), except for responsibilities assigned to the Forest Service.

(23) With respect to land and facilities under his or her authority, to exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("the Act"), as amended:

(i) Sections 104(a), (b), and (c)(4) of the Act (42 U.S.C. 9604(a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604 (e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and

wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) of the Act pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622) and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Section 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9619), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlement, but excluding section 122(b)(1) of the Act (42 U.S.C. 9633(b)(1)), related to mixed funding agreements.

(24) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate United States District Court with an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901, *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(vi) Toxic Substances Control Act, as amended, (15 U.S.C. 2601, *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

(b) *Reservations.* The following authorities are reserved to the Under Secretary for Natural Resources and Environment:

(1) Executing cooperative agreements and memoranda of understanding for multi-agency cooperation with conservation districts and other districts organized for soil and water conservation within States, territories, possessions, and American Indian Nations.

(2) Approving additions to authorized Resource Conservation and Development Projects that designate new project areas in which resource conservation and development program assistance will be provided, and withdrawing authorization for assistance, pursuant to 16 U.S.C. 590a–f; 7 U.S.C. 1010–1011; 16 U.S.C. 3451–3461.

(3) Giving final approval to and transmitting to the Congress watershed work plans that require congressional approval.

Subpart K—Delegations of Authority by the Under Secretary for Research, Education, and Economics

§ 2.63 Deputy Under Secretary for Research, Education, and Economics.

Pursuant to § 2.21(a), subject to reservations in § 2.21(b), and subject to policy guidance and direction by the Under Secretary, the following delegation of authority is made by the Under Secretary for Research, Education, and Economics, to be exercised only during the absence or unavailability of the Under Secretary: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Under Secretary for Research, Education, and Economics.

§ 2.65 Administrator, Agricultural Research Service.

(a) *Delegations.* Pursuant to §§ 2.21(a)(1), (a)(3) and (a)(5) through (a)(7), subject to reservations in § 2.21(b)(1), the following delegations of authority are made by the Under Secretary for Research, Education, and Economics to the Administrator, Agricultural Research Service:

(1) Coordinate USDA policy relative to the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*) and coordinate the Department's Integrated Pest Management Programs and the Pesticide Assessment Program (7 U.S.C. 136–136y).

(2) Conduct research related to the economic feasibility of the manufacture and commercialization of natural rubber from hydrocarbon-containing plants (7 U.S.C. 178–178n).

(3) Conduct research on the control of undesirable species of honeybees in cooperation with specific foreign governments (7 U.S.C. 284).

(4) Conduct research concerning domestic animals and poultry, their protection and use, the causes of contagious, infectious, and communicable diseases, and the means for the prevention and cure of the same (7 U.S.C. 391).

(5) Conduct research related to the dairy industry and to the dissemination of information for the promotion of the dairy industry (7 U.S.C. 402).

(6) Conduct research and demonstrations at Mandan, ND, related to dairy livestock breeding, growing, and feeding, and other problems pertaining to the establishment of the dairy and livestock industries (7 U.S.C. 421–422).

(7) Conduct research on new uses for cotton and on cotton ginning and processing (7 U.S.C. 423–424).

(8) Conduct research into the basic problems of agriculture in its broadest aspects, including, but not limited to, production, marketing (other than statistical and economic research but including research related to family use of resources), distribution, processing, and utilization of plant and animal commodities; problems of human nutrition; development of markets for agricultural commodities; discovery, introduction, and breeding of new crops, plants, animals, both foreign and native; conservation development; and development of efficient use of farm buildings, homes, and farm machinery except as otherwise delegated in §§ 2.22(a)(1)(ii) and 2.79(a)(2) (7 U.S.C. 427, 1621–1627, 1629, 2201 and 2204).

(9) Conduct research on varietal improvement of wheat and feed grains to enhance their conservation and environmental qualities (7 U.S.C. 428b).

(10) Advance the livestock and agricultural interests of the United States, including the breeding of horses suited to the needs of the United States (7 U.S.C. 437).

(11) Enter into agreements with and receive funds from any State, other political subdivision, organization, or individual for the purpose of conducting cooperative research projects (7 U.S.C. 450a).

(12) Make facilities grants and conduct research under the IR–4 program (7 U.S.C. 450i(d) and (e)).

(13) Conduct research related to soil and water conservation, engineering operations, and methods of cultivation to provide for the control and prevention of soil erosion (7 U.S.C. 1010 and 16 U.S.C. 590a).

(14) Maintain four regional research laboratories and conduct research at such laboratories to develop new scientific, chemical, and technical uses and new and extended markets and outlets for farm commodities and products and the by-products thereof (7 U.S.C. 1292).

(15) Conduct a Special Cotton Research Program designed to reduce the cost of producing upland cotton in the United States (7 U.S.C. 1441 note).

(16) Conduct research to formulate new uses for farm and forest products (7 U.S.C. 1632(b)).

(17) Conduct research to develop and determine methods for the humane slaughter of livestock (7 U.S.C. 1904).

(18) Provide national leadership and support for research programs and other research activities in the food and agricultural sciences to meet major needs and challenges in food and agricultural system productivity; development of new food, fiber, and energy sources; agricultural energy use and production; natural resources; promotion of the health and welfare of people; human nutrition; and international food and agriculture pursuant to the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3101, *et seq.*).

(19) Conduct a program of grants to States to expand, renovate, or improve schools of veterinary medicine (7 U.S.C. 3151).

(20) Administer the National Agricultural Science Award for research or advanced studies in the food and agricultural sciences (7 U.S.C. 3153).

(21) Conduct program evaluations to improve the administration and effectiveness of agricultural research and education programs (7 U.S.C. 3317).

(22) Enter into contracts, grants, or cooperative agreements to further research programs and library and related information programs supporting research, extension, and teaching programs in the food and agricultural sciences (7 U.S.C. 3318).

(23) Enter into cost-reimbursable agreements relating to agricultural research, teaching and to further library and related information programs supporting research, extension and teaching programs in the food and agricultural sciences (7 U.S.C. 3319a).

(24) Conduct research for the development of supplemental and alternative crops (7 U.S.C. 3319d).

(25) Conduct research on potential uses for compost from agricultural wastes, including evaluating the application of compost on soil, plants, and crops (7 U.S.C. 3130).

(26) Reserved.

(27) Cooperate and work with national and international institutions, Departments and Ministries of Agriculture in other nations, land-grant colleges and universities, and other persons throughout the world in the performance of agricultural research activities (7 U.S.C. 3291).

(28) Perform research and development at aquacultural research and development centers (7 U.S.C. 3322).

(29) Conduct a program of basic research on cancer in animals and birds (7 U.S.C. 3902).

(30) Conduct and coordinate Departmental research programs on water quality and nutrient management (7 U.S.C. 5504).

(31) Conduct research to optimize crop and livestock production potential, integrated resource management, and integrated crop management (7 U.S.C. 5821).

(32) Administer a national research program on genetic resources to provide for the collection, preservation, and dissemination of genetic material important to American food and agriculture production (7 U.S.C. 5841).

(33) Conduct remote-sensing and other weather-related research (7 U.S.C. 5852).

(34) Administer grants and conduct research programs to measure microbiological and chemical agents associated with the production, preparation, processing, handling, and storage of agricultural products (7 U.S.C. 5871–5874).

(35) Conduct research on integrated pest management, including research to benefit floriculture (7 U.S.C. 5881).

(36) Conduct research in the control and eradication of exotic pests (7 U.S.C. 5883).

(37) Conduct research to study the biology and behavior of chinch bugs (7 U.S.C. 5884).

(38) Administer a grant program for risk assessment research to address concerns about the environmental effects of biotechnology (7 U.S.C. 5921).

(39) Establish and coordinate USDA programs and conduct basic and applied research and technology development in the areas of plant genome structure and function (7 U.S.C. 5924).

(40) Conduct research for the development of technology to determine animal lean content (7 U.S.C. 5925).

(41) Conduct research to determine the presence of aflatoxin in the food and feed chains (7 U.S.C. 5925).

(42) Conduct research to develop production methods and commercial uses of mesquite (7 U.S.C. 5925).

(43) Conduct research to investigate enhanced genetic selection and processing techniques of prickly pears (7 U.S.C. 5925).

(44) Conduct a research program and administer grants and contracts for research on the disease of scrapie in sheep and goats (7 U.S.C. 5925).

(45) Conduct basic and applied research in the development of new commercial products from natural plant materials (7 U.S.C. 5925).

(46) Conduct research on diseases affecting honeybees (7 U.S.C. 5934).

(47) Coordinate USDA policy and programs relating to global climate change (7 U.S.C. 6701–6703).

(48) Coordinate Departmental policies under the Toxic Substances Control Act (15 U.S.C. 2601–2629).

(49) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901, *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601, *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

(50) Perform research and administer grants for research and development in aquaculture (16 U.S.C. 2804).

(51) Maintain a National Arboretum for the purposes of research and education concerning tree and plant life; accept and administer gifts or devices of real and personal property for the benefit of the National Arboretum; and order disbursements from the Treasury (20 U.S.C. 191–195).

(52) Conduct research on foot-and-mouth disease and other animal diseases (21 U.S.C. 113a).

(53) Conduct research on the control and eradication of cattle grubs (screwworms) (21 U.S.C. 114e).

(54) Conduct research activities related to farm dwellings and other buildings for the purposes of reducing costs and adapting and developing fixtures and appurtenances for more efficient and economical farm use (42 U.S.C. 1476(b)).

(55) Conduct research on losses of livestock in interstate commerce due to injury or disease (45 U.S.C. 71 note).

(56) Control within USDA the acquisition, use, and disposal of material and equipment that may be a source of ionizing radiation hazard.

(57) Pursuant to the authority delegated by the Administrator of General Services to the Secretary of Agriculture in 34 FR 6406, 36 FR 1293, 36 FR 18840, and 38 FR 23838, appoint uniformed armed guards and special policemen, make all needful rules and regulations, and annex to such rules and regulations such reasonable penalties (not to exceed those prescribed in 40 U.S.C. 318(c)), as will insure their enforcement, for the protection of persons, property, buildings, and grounds of the Arboretum, Washington, DC; the U.S. Meat Animal Research Center, Clay Center, NE.; the Agricultural Research Center, Beltsville, MD; and the Animal Disease Center, Plum Island, NY, over which the United States has exclusive or concurrent criminal jurisdiction, in accordance with the limitations and requirements of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471, *et seq.*), the Act of June 1, 1948, as amended (40 U.S.C. 318, *et seq.*), and the policies, procedures, and controls prescribed by the General Services Administration. Any rules or regulations promulgated under this authority shall be approved by the Director, Office of Operations, and the General Counsel prior to issuance.

(58) Administer the Department's Patent Program except as delegated to the General Counsel in § 2.31(e).

(59) Provide management support services for the Economic Research Service, the Cooperative State Research, Education and Extension Service, and the National Agricultural Statistics Service as agreed upon by the agencies with authority to take actions required by law or regulation. As used herein, the term management support services includes budget, finance, personnel, procurement, property management, communications, paperwork management, ADP support, and related administrative services.

(60) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("the Act"), as amended:

(i) Sections 104(a), (b), and (c)(4) of the Act (42 U.S.C. 9604(a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(61) Carry out research activities authorized in section 202(c) of the Colorado River Basin Salinity Control Act (43 U.S.C. 1592(c)).

(62) Perform food and agricultural research in support of functions assigned to the Department under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195, *et seq.*).

(63) Propagate bee-breeding stock and release bee germplasm to the public (7 U.S.C. 283).

(64) Administer a National Food and Human Nutrition Research Program under the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended. As used herein the term "research" includes:

(i) Research on the nutrient composition of foods and the effects of agricultural practices, handling, food processing, and cooking on the nutrients they contain;

(ii) Surveillance of the nutritional benefits provided to participants in the food programs administered by the Department; and

(iii) Research on the factors affecting food preference and habits (7 U.S.C. 3171–3175, 3177).

(65) The authority in paragraph (a)(64) of this section includes the authority to:

(i) Appraise the nutritive content of the U.S. food supply;

(ii) Develop and make available data on the nutrient composition of foods needed by Federal, State, and local agencies administering food and nutrition programs, and the general public, to improve the nutritional quality of diets;

(iii) Coordinate nutrition education research and professional education projects within the Department; and

(iv) Maintain data generated on food composition in a National Nutrient Data Bank.

(66) Conduct, in cooperation with the Department of Health and Human Services, the National Nutrition Monitoring and Related Research Program. Included in this delegation is the authority to:

(i) Design and carry out periodic nationwide food consumption surveys to measure household food consumption;

(ii) Design and carry out a continuous, longitudinal individual intake survey of the United States population and special high-risk groups; and

(iii) Design and carry out methodological research studies to develop improved procedures for collecting household and individual food intake consumption data;

(67) Conduct a program of nutrition education research.

(68) Provide staff support to the Under Secretary for Research, Education, and Economics related to the Ten-Year Comprehensive Plan and the Interagency Board for Nutrition Monitoring and Related Research required by Pub. L. No. 101–445, 7 U.S.C. 5301, *et seq.*

(69) Obtain and furnish excess property to eligible recipients for use in the conduct of research and extension programs.

(70) Provide resource information concerning rural electric and telephone use and rural development efforts (7 U.S.C. 917).

(71) Act as a catalyst to provide access to leadership training and services programs encompassing private, public, business, and government entities in cooperation with the Extension Service (7 U.S.C. 950aa–1).

(72) Develop and maintain library and information systems and networks and facilitate cooperation and coordination of the agricultural libraries of colleges, universities, USDA, and their closely allied information gathering and dissemination units in conjunction with private industry and other research libraries (7 U.S.C. 2201, 2204, 3125a, and 3126).

(73) Accept gifts and order disbursements from the Treasury for the benefit of the National Agricultural Library or for the carrying out of any of its functions (7 U.S.C. 2264–2265).

(74) Provide for the dissemination of appropriate rural health and safety information resources possessed by the National Agricultural Library Rural Information Center, in cooperation with State educational program efforts (7 U.S.C. 2662).

(75) Provide national leadership in the development and maintenance of library and related information systems and other activities to support the research, extension, and teaching programs in the food and agricultural sciences pursuant to the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3101 and 3121).

(76) Administer the programs and services of the National Agricultural Library consistent with its charge to serve as the primary agricultural information resource of the United States and enter into agreements and receive funds from various entities to conduct National Agricultural Library activities (7 U.S.C. 3125a).

(77) Provide and distribute information and data about Federal, State, local, and other rural development assistance programs and services available to individuals and organizations. To the extent possible, the National Agricultural Library shall use telecommunications technology to disseminate such information to rural areas (7 U.S.C. 3125b).

(78) Assemble and collect food and nutrition educational materials, including the results of nutrition research, training methods, procedures, and other materials related to the purposes of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended; maintain such information; and provide for the dissemination of such information and materials on a regular basis to State educational agencies and other interested parties (7 U.S.C. 3126).

(79) Conduct program evaluations to improve the administration and efficacy of the National Agricultural Library and related information systems in the food and agricultural sciences (7 U.S.C. 3317).

(80) Administer the National Agricultural Library, including the farmland information center, pursuant to section 1544(b) of the Farmland Protection Policy Act (7 U.S.C. 4205(b)).

(81) Support Department water programs through participation in State water quality coordination programs and dissemination of agrichemical information (7 U.S.C. 5503–5506).

(82) Provide a repository of agriculture and ground water quality planning information (7 U.S.C. 5505).

(83) Disseminate information on materials and methods of pest and disease control available to agricultural producers through the pest and disease control database (7 U.S.C. 5882).

(84) Represent the Department on all library and information science matters before Congressional Committees and appropriate commissions, and provide representation to the coordinating committees of the Federal and State governments concerned with library and information science activities.

(85) Represent the Department in international organizational activities and on international technical committees concerned with library and information science activities.

(86) Prepare and disseminate computer files, indexes and abstracts, bibliographies, reviews and other analytical information tools.

(87) Arrange for the consolidated purchasing and dissemination of printed and automated indexes, abstracts, journals, and other widely used information resources and services.

(88) Provide assistance and support to professional organizations and others concerned with library and information science matters and issues.

(89) Copy and deliver on demand selected articles and other materials from the National Agricultural Library's collections by photographic reproduction or other means within the permissions, constraints, and limitations of sections 106, 107, and 108 of the Copyright Act of October 19, 1976 (17 U.S.C. 106, 107 and 108).

(90) Formulate, write, or prescribe bibliographic and technically related standards for the library and information systems of USDA.

(91) Assure the acquisition, preservation, and accessibility of all information concerning food and agriculture by providing leadership to and coordination of the acquisition programs and related activities of the library and information systems, with the agencies of USDA, other Federal departments and agencies, State agricultural experiment stations, colleges and universities, and other research institutions and organizations.

(92) Determine by survey or other appropriate means, the information needs of the Department's scientific, professional, technical, and administrative staffs, its constituencies, and the general public in the areas of food, agriculture, the environment, and other related areas.

(b) [Reserved]

§ 2.66 Administrator, Cooperative State Research, Education, and Extension Service.

(a) *Delegations.* Pursuant to §§ 2.21(a)(1) and (a)(3), subject to the reservations in § 2.21(b)(1), the following delegations of authority are made by the Under Secretary for Research, Education, and Extension to the Administrator, Cooperative State Research, Education, and Extension Service.

(1) Administer research and technology development grants related to the economic feasibility of the manufacture and commercialization of natural rubber from hydrocarbon-containing plants (7 U.S.C. 178–178n).

(2) Administer the appropriation for the endowment and maintenance of colleges for the benefit of agriculture and the mechanical arts (7 U.S.C. 321–326a).

(3) Administer teaching funds authorized by section 22 of the Bankhead Jones Act, as amended (7 U.S.C. 329).

(4) Cooperate with the States for the purpose of encouraging and assisting them in carrying out research related to the problems of agriculture in its broadest aspects under the Hatch Act, as amended (7 U.S.C. 361a–361i).

(5) Support agricultural research at eligible institutions in the States through provision of Federal-grant funds to help financial physical research facilities (7 U.S.C. 390–390k).

(6) Carry out a program (IR–4 Program) for the collection of residue and efficacy data in support of minor use pesticide registration or reregistration and to determine tolerances for minor use chemical residues in or on agricultural commodities (7 U.S.C. 450i(e)).

(7) Administer a program of competitive grants to State agricultural experiment stations, colleges and universities, other research institutions and organizations, Federal agencies, private organizations or corporations, and individuals for research to further USDA programs (7 U.S.C. 450i(b)).

(8) Administer a program of special grants to carry out research to facilitate or expand promising breakthroughs in areas of food and agricultural sciences and to facilitate or expand ongoing State-Federal food and agricultural research programs; and administer a program of facilities grants to renovate and refurbish research spaces (7 U.S.C. 450i (c) and (d)).

(9) Conduct a research and development program to formulate new uses for farm and forest products (7 U.S.C. 1632(b)).

(10) Administer, in cooperation with the States, a cooperative rural development and small farm research and extension program under the Rural Development Act of 1972, as amended (7 U.S.C. 2661–2667).

(11) Provide national leadership and support for cooperative research and extension programs and other cooperative activities in the food and agricultural sciences to meet major needs and challenges in food and agricultural system productivity; development of new food, fiber, and energy sources; agricultural energy use and production; natural resources; promotion of the health and welfare of people; human nutrition; and international food and agriculture pursuant to the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3101, *et seq.*).

(12) Conduct a program of grants to States to expand, renovate, or improve schools of veterinary medicine (7 U.S.C. 3151).

(13) Administer higher education programs in the food and agricultural sciences and administer grants to colleges and universities (7 U.S.C. 3152).

(14) Administer the National Food and Agricultural Sciences Teaching Awards program for recognition of educators in the food and agricultural sciences (7 U.S.C. 3152).

(15) Administer grants to colleges, universities, and Federal laboratories for research on the production and marketing of alcohol and industrial hydrocarbons from agricultural commodities and forest products (7 U.S.C. 3154).

(16) Administer a grant, in consultation with the Agricultural Research Service, for the establishment of a food science and nutrition research center for the Southeast Region of the United States (7 U.S.C. 3174).

(17) Conduct a program of grants to States to support continuing animal health and disease research programs under the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3191–3201).

(18) Support continuing agricultural and forestry research and extension, resident instruction, and facilities improvement at 1890 land-grant colleges, including Tuskegee University, and administer a grant program for five National Research and Training Centennial Centers (7 U.S.C. 3221, 3222, and 3222a–3222c).

(19) Administer grants to 1890 land-grant colleges, including Tuskegee University, to help finance and upgrade agricultural and food science facilities which are used for research, extension, and resident instruction (7 U.S.C. 3222(b)–3223).

(20) Cooperate and work with national and international institutions, Departments and Ministries of Agriculture in other nations, land-grant colleges and universities, and other persons throughout the world in the performance of agricultural research and extension activities (7 U.S.C. 3291).

(21) Administer grants to States in support of the establishment and operation of International Trade Development Centers (7 U.S.C. 3292).

(22) Conduct program evaluations to improve the administration and efficacy of the cooperative research grants and extension programs involving State agricultural experiment stations, cooperative extension services, and colleges and universities (7 U.S.C. 3317).

(23) Enter into contracts, grants, or cooperative agreements to further research, extension or teaching activities in the food and agricultural sciences (7 U.S.C. 3318)

(24) Enter into cost-reimbursable agreements relating to agricultural research, extension or teaching activities (7 U.S.C. 3319a).

(25) Provide technical assistance to farm owners and operators, marketing cooperatives, and others in the development and implementation of a

research and pilot project program for the development of supplemental and alternative crops (7 U.S.C. 3319d).

(26) Administer an aquacultural assistance program, involving centers, by making grants to eligible institutions for research and extension to facilitate or expand production and marketing of aquacultural food species and products; conducting a program of extension and demonstration centers; and making grants to States to formulate aquaculture development plans for the production and marketing of aquaculture species and products (7 U.S.C. 3322).

(27) Administer grants to further develop and expand aquaculture research facilities for intensive water recirculating aquaculture systems (7 U.S.C. 3323).

(28) Administer a cooperative rangeland research program (7 U.S.C. 3331–3336).

(29) Administer grants for basic research on cancer in animals and birds (7 U.S.C. 3902).

(30) Administer programs and conduct projects in cooperation with other agencies for research and education on sustainable agriculture (7 U.S.C. 5811–5813).

(31) Administer a cooperative research and extension program to optimize crop and livestock production potential in integrated resource management and integrated crop management systems (7 U.S.C. 5821).

(32) Establish an Agricultural Weather Office and administer a national agricultural weather information system, including competitive grants program for research in atmospheric sciences and climatology (7 U.S.C. 5852–5853).

(33) Administer a cooperative extension program on agricultural weather forecasts and climate information for agricultural producers and administer a grant program to States to administer programs for State agricultural weather information systems (7 U.S.C. 5854).

(34) In cooperation with the Agricultural Research Service, administer competitive research grants regarding the production, preparation, processing, handling, and storage of agriculture products (7 U.S.C. 5871–5874).

(35) Administer a grants and contracts program on integrated pest management including research to benefit floriculture and administer an extension program developed for integrated pest management (7 U.S.C. 5881).

(36) Administer a grants program to States on the control of infestations and eradication of exotic pests (7 U.S.C. 5883).

(37) Administer a grant program for risk assessment research to address concerns about the environmental effects of biotechnology (7 U.S.C. 5921).

(38) Administer a special grants program to assist efforts by research institutions to improve the efficiency and efficacy of safety and inspection systems for livestock products (7 U.S.C. 5923).

(39) Administer a competitive grants program in support of the development of a plant genome mapping program (7 U.S.C. 5924).

(40) Support research related to the development of new commercial products derived from natural plant materials for industrial, medical, and agricultural applications (7 U.S.C. 5925).

(41) Administer a competitive grants program to develop production methods and commercial uses for mesquite (7 U.S.C. 5925).

(42) Administer a competitive grants program to investigate enhanced selection and processing techniques of prickly pears (7 U.S.C. 5925).

(43) Support research to determine the presence of aflatoxin in the food and feed chains (7 U.S.C. 5925).

(44) Administer research and extension grants for the development of agricultural production and marketing systems to service niche markets (7 U.S.C. 5925).

(45) Administer a grants program to States on immunoassay, as it is used to detect agricultural pesticide residues on agricultural commodities and to diagnose plant and animal diseases (7 U.S.C. 5925).

(46) Establish and administer a program for the development and utilization of an agricultural communications network (7 U.S.C. 5926).

(47) Administer a competitive grants program, in consultation with the Agricultural Research Service, to establish national centers for agricultural product quality research (7 U.S.C. 5928).

(48) Administer a special grants program to study constraints on agricultural trade (7 U.S.C. 5931).

(49) Support research on the effects of global climate change in agriculture and forestry, including mitigation of the effects on crops of economic significance, and on the effects of the emissions of certain gases on global climate change (7 U.S.C. 6702).

(50) Administer the Small Business Innovation Development Act of 1982 for USDA (15 U.S.C. 638(e)–(k)).

(51) Administer a competitive forestry, natural resources, and environmental grant program (16 U.S.C. 582a–8).

(52) Establish and administer the Forestry Student Grant Program to provide competitive grants to assist the expansion of the professional education of forestry, natural resources, and environmental scientists (16 U.S.C. 1649).

(53) Provide staff support to the Secretary of Agriculture in his or her role as permanent Chair for the Joint Subcommittee on Aquaculture established by the National Aquaculture Act of 1980 and coordinate aquacultural responsibilities within the Department (16 U.S.C. 2805).

(54) Administer extension education programs in aquaculture and administer grants related to research and development in aquaculture (16 U.S.C. 2806).

(55) Coordinate research by cooperating State research institutions and administer education and information activities assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195, *et seq.*).

(56) Provide management support services to agencies reporting to the Under Secretary for Research, Education, and Economics in the administration of discretionary grants.

(57) Represent the Department on the Federal Interagency Council on Education.

(58) Conduct and coordinate Departmental research programs on water quality and nutrient management (7 U.S.C. 5504).

(59) Establish and administer education programs relating to water quality (7 U.S.C. 5503).

(60) Administer education programs for the users and dealers of agrichemicals (7 U.S.C. 5506).

(61) Administer a cooperative agricultural extension program in accordance with the Smith-Lever Act, as amended (7 U.S.C. 341–349).

(62) Administer a cooperative agricultural extension program related to agriculture, uses of solar energy with respect to agriculture, and home economics in the District of Columbia (D.C. Code 31–1409).

(63) Conduct educational and demonstration work related to the distribution and marketing of a agricultural products under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627).

(64) Administer a competitive grant program for non-profit institutions to establish and operate centers for rural technology or cooperative development (7 U.S.C. 1932(f)).

(65) Administer a nutrition education program for Food Stamp recipients and for the distribution of commodities on reservations (7 U.S.C. 2020(f)).

(66) Administer a grants program for rural health and safety education (7 U.S.C. 2662).

(67) Administer a rural economic and business development program to employ specialists to assist individuals in business activities (7 U.S.C. 2662).

(68) Administer a national program to provide rural citizens with training to increase their leadership abilities (7 U.S.C. 2662).

(69) Administer a competitive grant program for financially stressed farmers, dislocated farmers, and rural families (7 U.S.C. 2662(f)).

(70) Administer a grant program to improve the rural health infrastructure (7 U.S.C. 2662 note).

(71) Administer a competitive grant program to establish demonstration areas for rural economic development (7 U.S.C. 2662a).

(72) Administer a cooperative extension program under the Farmer-to-Consumer Direct Marketing Act of 1976 (7 U.S.C. 3004).

(73) Identify and compile information on methods of composting agricultural wastes and its potential uses and develop educational programs on composting (7 U.S.C. 3130).

(74) Administer a national food and human nutrition extension program under the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3171–3175).

(75) Make grants, under such terms and conditions as the Administrator determines, to eligible institutions for the purpose of assisting such institutions in the purchase of equipment and land, and the planning, construction, alteration, or renovation of buildings, to provide adequate facilities to conduct extension work, and issue rules and regulations as necessary to carry out this authority (7 U.S.C. 3224).

(76) Design educational programs, implement, and distribute materials in cooperation with the cooperative extension services of the States emphasizing the importance of productive farmland pursuant to section 1544(a) of the Farmland Protection Policy Act (7 U.S.C. 4205(a)).

(77) Establish and administer education programs relating to water quality (7 U.S.C. 5503).

(78) Design, implement, and develop handbooks, technical guides, and other educational materials emphasizing sustainable agriculture production systems and practices (7 U.S.C. 5831).

(79) Administer a competitive grant program to organizations to carry out a training program on sustainable agriculture (7 U.S.C. 5832).

(80) Establish a national pesticide resistance monitoring program (7 U.S.C. 5882).

(81) Conduct educational programs on the biology and behavior of chinch bugs (7 U.S.C. 5884).

(82) Administer education programs on Indian reservations and tribal jurisdictions (7 U.S.C. 5930).

(83) Administer competitive grants to States to establish a pilot project to coordinate food and nutrition education programs (7 U.S.C. 2027(a) and 5932).

(84) Administer a demonstration grants program for support of an assistive technology program for farmers with disabilities (7 U.S.C. 5933).

(85) Conduct educational and demonstrational work in cooperative farm forestry programs (16 U.S.C. 568).

(86) Provide for an expanded and comprehensive extension program for forest and rangeland renewable resources (16 U.S.C. 1671–1676).

(87) Conduct forestry and natural resource education programs, including guidelines for technology transfer (16 U.S.C. 1674).

(88) Provide technical, financial, and educational assistance to State foresters and State extension directors on rural forestry assistance (16 U.S.C. 2102).

(89) Provide educational assistance to State foresters under the Forest Stewardship Program (16 U.S.C. 2103a).

(90) Implement and conduct an educational program to assist the development of urban and community forestry programs (16 U.S.C. 2105).

(91) Provide educational assistance to farmers regarding the Agricultural Water Quality Protection Program (16 U.S.C. 3838b).

(92) Authorize the use of the 4–H Club name and emblem (18 U.S.C. 707).

(93) Conduct demonstrational and promotional activities related to farm dwellings and other buildings for the purposes of reducing costs and adapting and developing fixtures and appurtenances for more efficient and economical farm use (42 U.S.C. 1476(b)).

(94) Provide leadership and direct assistance in planning, conducting, and evaluating extension programs under a memorandum of agreement with the Bureau of Indian Affairs dated May 1956.

(95) Exercise the responsibilities of the Secretary under regulations dealing with Equal Employment Opportunity (part 18 of this title).

(96) Carry out demonstration and educational activities authorized in section 202(c) of the Colorado River Basin Salinity Control Act (43 U.S.C. 1592(c)).

(97) Provide educational and technical assistance in implementing and administering the conservation reserve program authorized in sections 1231–1244 of the Food Security Act of 1985 (Pub. L. No. 99–198, 99 Stat. 1509, (16 U.S.C. 3831–3844)).

(b) [Reserved]

§ 2.67 Administrator, Economic Research Service.

(a) *Delegations.* Pursuant to §§ 2.21(a)(3), (a)(8) and (a)(9), subject to reservations in § 2.21(b)(2), the following delegations of authority are made by the Under Secretary for Research, Education, and Economics to the Administrator, Economic Research Service:

(1) Conduct economic research on matters of importance to cooperatives as authorized by the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627).

(2) Conduct economic and social science research and analyses relating to:

(i) food and agriculture situation and outlook;

(ii) the production, marketing, and distribution of food and fiber products (excluding forest and forest products), including studies of the performance of the food and agricultural sector of the economy in meeting needs and wants of consumers;

(iii) basic and long-range, worldwide, economic analyses and research on supply, demand, and trade in food and fiber products and the effects on the U.S. food and agriculture system, including general economic analyses of the international financial and monetary aspects of agricultural affairs;

(iv) natural resources, including studies of the use and management of land and water resources, the quality of these resources, resource institutions, and watershed and river basin development problems; and

(v) rural people and communities, as authorized by title II of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), and the Act of June 29, 1935, as amended (7 U.S.C. 427).

(3) Perform economic and other social science research under section 104(b)(1) and (3) of the Agricultural Trade Development and Assistance Act of 1954, as amended, with funds administered by the Foreign Agricultural Service (7 U.S.C. 1704(b)(1), (3)).

(4) Investigate and make findings as to the effect upon the production of food

and upon the agricultural economy of any proposed action pending before the Administrator of the Environmental Protection Agency for presentation in the public interest, before said Administrator, other agencies, or before the courts.

(5) Review economic data and analyses used in speeches by Department personnel and in materials prepared for release through the press, radio and television.

(6) Cooperate and work with national and international institutions and other persons throughout the world in the performance of agricultural research and extension activities to promote and support the development of a viable and sustainable global agricultural system. Such work may be carried out by:

(i) Exchanging research materials and results with the institutions or persons;

(ii) Engaging in joint or coordinated research;

(iii) Entering into cooperative arrangements with Departments and Ministries of Agriculture in other nations to conduct research, extension; and education activities (limited to arrangements either involving no exchange of funds or involving disbursements by the agency to the institutions of other nations), and then reporting these arrangements to the Under Secretary for Research, Education, and Economics;

(iv) Stationing representatives at such institutions or organizations in foreign countries; or

(v) Entering into agreements with land-grant colleges and universities, other organizations, institutions, or individuals with comparable goals, and with the concurrence of the Office of International Cooperation and Development, USDA, international organizations (limited to agreements either involving no exchange of funds or involving disbursements by the agency to the cooperator), and then reporting these agreements to the Under Secretary for Research, Education, and Economics (7 U.S.C. 3291(a)).

(7) Prepare for transmittal by the Secretary to the President and both Houses of Congress, an analytical report under section 5 of the Agricultural Foreign Investment Disclosure Act of 1978 (7 U.S.C. 3504) concerning the effect of holdings, acquisitions, and transfers of U.S. agricultural land by foreign persons.

(8) Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195, *et seq.*), concerning estimates of supplies of agricultural commodities and evaluation of requirements therefor; food and agricultural aspects of economic stabilization and economic research; and coordination of energy programs.

(9) Enter into contracts, grants, or cooperative agreements to further research programs in the food and agricultural sciences (7 U.S.C. 3318).

(10) Enter into cost-reimbursable agreements relating to agricultural research (7 U.S.C. 3319a).

(11) Provide Department leadership in:

(i) Analyzing and evaluating existing and proposed energy policies and strategies, including those regarding the allocation of scarce resources;

(ii) Developing energy policies and strategies, including those regarding the allocation of scarce resources;

(iii) Reviewing and evaluating Departmental energy and energy-related programs and program progress;

(iv) Developing agricultural and rural components of national energy policy plans; and

(v) Preparing reports on energy and energy-related policies and programs required under Acts of Congress and Executive orders, including those involving testimony and reports on legislative proposals.

(12) Provide Departmental oversight and coordination with respect to resources available for energy and energy-related activities, including funds transferred to USDA from the departments and agencies of the Federal Government pursuant to interagency agreements.

(13) Represent the Under Secretary for Research, Education, and Economics at conferences, meetings, and other contacts where energy matters are discussed, including liaison with the Department of Energy and other governmental departments and agencies.

(14) Provide the Under Secretary for Research, Education, and Economics with such assistance as he may request to perform the duties delegated to him concerning energy.

(b) *Reservation.* The following authority is reserved to the Under Secretary for Research, Education, and Economics: Review all proposed decisions having substantial economic policy implications.

§ 2.68 Administrator, National Agricultural Statistics Service.

(a) *Delegations.* Pursuant to §§ 2.21(a)(3) and (a)(8), subject to reservations in § 2.21(b)(2), the following delegations of authority are made by the Under Secretary for Research, Education, and Economics to the Administrator, National Agricultural Statistics Service:

(1) Prepare crop and livestock estimates and administer reporting programs, including estimates of production, supply, price, and other aspects of the U.S. agricultural economy, collection of statistics, conduct of enumerative and objective measurement surveys, construction and maintenance of sampling frames, and related activities. Prepare reports of the Agricultural Statistics Board of the Department of Agriculture covering official state and national estimates (7 U.S.C. 411a, 475, 951, and 2204).

(2) Take such security precautions as are necessary to prevent disclosure of crop or livestock report information prior to the scheduled issuance time approved in advance by the Secretary of Agriculture and take such actions as are necessary to avoid disclosure of confidential data or information supplied by any person, firm, partnership, corporation, or association (18 U.S.C. 1902, 1905, and 2072).

(3) Improve statistics in the Department; maintain liaison with OMB and other Federal agencies for coordination of statistical methods and techniques.

(4) Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195, *et seq.*), concerning coordination of damage assessment; and food and agricultural aspects of agricultural statistics.

(5) Enter into contracts, grants, or cooperative agreements to further research and statistical reporting programs in the food and agricultural sciences (7 U.S.C. 3318).

(6) Enter cost-reimbursable agreements relating to agricultural research and statistical reporting (7 U.S.C. 3319a).

(7) Cooperate and work with national and international institutions and other persons throughout the world in the performance of agricultural research and extension activities to promote and support the development of a viable and sustainable global agricultural system. Such work may be carried out by:

(i) Exchanging research materials and results with the institutions or persons;

(ii) Engaging in joint or coordinated research;

(iii) Entering into cooperative arrangements with Departments and Ministries of Agriculture in other nations to conduct research, extension, and education activities (limited to arrangements either involving no exchange of funds or involving disbursements by the agency to the institutions of other nations), and then reporting these arrangements to the Under Secretary for Research, Education, and Economics;

(iv) Stationing representatives at such institutions or organizations in foreign countries; or

(v) entering into agreements with land-grant colleges and universities, other organizations, institutions, or individuals with comparable goals, and, with the concurrence of the Foreign Agricultural Service, international organizations (limited to agreements either involving no exchange of funds or involving disbursements by the agency to the cooperator), and then reporting these agreements to the Under Secretary for Research, Education, and Economics (7 U.S.C. 3291(a)).

(b) *Reservation.* The following authority is reserved to the Under Secretary for Research, Education, and Economics: Review all proposed decisions having substantial economic policy implications.

Subpart L—Delegations of Authority by the Chief Economist

§ 2.70 Deputy Chief Economist.

Pursuant to § 2.29, the following delegation of authority is made by the Chief Economist to the Deputy Chief Economist, to be exercised only during the absence or unavailability of the Chief Economist: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Chief Economist.

§ 2.71 Director, Office of Risk Assessment and Cost-Benefit Analysis.

(a) *Delegations.* Pursuant to § 2.29(a)(2), the following delegations of authority are by the Chief Economist to the Director, Office of Risk Assessment and Cost-Benefit Analysis:

(1) Responsible for assessing the risks to human health, human safety, or the environment, and for preparing cost-benefit analyses, with respect to proposed major regulations, and for publishing such assessments and analyses in the **Federal Register** as required by section 304 of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 2204e).

(2) Provide direction to Department agencies in the appropriate methods of risk assessment and cost-benefit analyses and coordinate and review all risk assessments and cost-benefit analyses prepared by any agency of the Department.

(b) *Reservation.* The following authority is reserved to the Chief Economist: Review all proposed decisions having substantial economic policy implications.

§ 2.72 Chairman, World Agricultural Outlook Board.

(a) *Delegations.* Pursuant to §§ 2.29(a)(3) through (a)(7), the following delegations of authority are made by the Chief Economist to the Chairman, World Agricultural Outlook Board:

(1) *Related to food and agriculture outlook and situation.*

(i) Coordinate and review all crop and commodity data used to develop outlook and situation material within the Department.

(ii) Oversee and clear for consistency analytical assumptions and results of all estimates and analyses which significantly relate to international and domestic commodity supply and demand, including such estimates and analyses prepared for public distribution by the Foreign Agricultural Service, the Economic Research Service, or by any other agency or office of the Department.

(2) *Related to weather and climate.*

(i) Advise the Secretary on climate and weather activities, and coordinate the development of policy options on weather and climate.

(ii) Coordinate all weather and climate information and monitoring activities within the Department and provide a focal point in the Department for weather and climate information and impact assessment.

(iii) Arrange for appropriate representation to attend all meetings, hearings, and task forces held outside the Department which require such representation.

(iv) Designate the Executive Secretary of the USDA Weather and Climate Program Coordinating Committee.

(3) *Related to interagency commodity estimates committees.*

(i) Establish Interagency Commodity Estimates Committees for Commodity Credit Corporation price-supported commodities, for major products thereof, and for commodities where a need for such a committee has been identified, in order to bring together estimates and supporting analyses from participating agencies, and to develop official estimates of supply, utilization, and prices for commodities, including the effects of new program proposals on acreage, yield, production, imports, domestic utilization, price, income, support programs, carryover, exports, and availabilities for export.

(ii) Designate the Chairman, who shall also act as Secretary, for all Interagency Commodity Estimates Committees.

(iii) Assure that all committee members have the basic assumptions, background data and other relevant data regarding the overall economy and market prospects for specific commodities.

(iv) Review for consistency of analytical assumptions and results all proposed decisions made by Commodity Estimates Committees prior to any release outside the Department.

(4) *Related to remote sensing.*

(i) Provide technical assistance, coordination, and guidance to Department agencies in planning, developing, and carrying out satellite remote sensing activities to assure full consideration and evaluation of advanced technology.

(ii) Coordinate administrative, management, and budget information relating to the Department's remote sensing activities including:

(A) Inter- and intra-agency meetings, correspondence, and records;

(B) Budget and management tracking systems; and

(C) Inter-agency contacts and technology transfer.

(iii) Designate the Executive Secretary for the Remote Sensing Coordination Committee.

(5) *Related to long-range commodity and agricultural-sector projections.* Establish committees of the agencies of the Department to coordinate the development of a set of analytical assumptions and long-range agricultural-sector projections (2 years and beyond) based on commodity projections consistent with these assumptions and coordinated through the Interagency Commodity Estimates Committees.

(b) *Reservation.* The following authority is reserved to the Chief Economist: Review all proposed decisions having substantial economic policy implications.

Subpart M—Delegations of Authority by the Chief Financial Officer

§ 2.75 Deputy Chief Financial Officer.

Pursuant to § 2.28, the following delegation of authority is made by the Chief Financial Officer to the Deputy Chief Financial Officer, to be exercised only during the absence or unavailability of the Chief Financial Officer: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Chief Financial Officer.

Subpart N—Delegations of Authority by the Assistant Secretary for Marketing and Regulatory Programs

§ 2.77 Deputy Assistant Secretary for Marketing and Regulatory Programs.

Pursuant to § 2.22(a), subject to reservations in § 2.22(b), and subject to policy guidance and direction by the Assistant Secretary, the following delegation of authority is made by the Assistant Secretary for Marketing and Regulatory Programs to the Deputy Assistant Secretary for Marketing and Regulatory Programs, to be exercised only during the absence or unavailability of the Assistant Secretary: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Assistant Secretary for Marketing and Regulatory Programs.

§ 2.79 Administrator, Agricultural Marketing Service.

(a) *Delegations.* Pursuant to §§ 2.22 (a)(1), (a)(5) and (a)(8), subject to reservations in § 2.22(b)(1), the following delegations of authority are made by the Assistant Secretary for Marketing and Regulatory Programs to the Administrator, Agricultural Marketing Service:

(1) Exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), including payments to State departments of agriculture in connection with cooperative marketing service projects under section 204(b) (7 U.S.C. 1623(b)), but excepting matters otherwise assigned.

(2) Conduct marketing efficiency research and development activities directly applicable to the conduct of the Wholesale Market Development Program, specifically:

(i) Studies of facilities and methods used in physical distribution of food and other farm products;

(ii) Studies designed to improve handling of all agricultural products as they are moved from farms to consumers; and

(iii) application of presently available scientific knowledge to the solution of practical problems encountered in the marketing of agricultural products (7 U.S.C. 1621–1627).

(3) Exercise the functions of the Secretary of Agriculture relating to the transportation activities contained in section 203(j) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1622(j)) as amended, but excepting matters otherwise assigned.

(4) Administer transportation activities under section 201 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1291).

(5) Apply results of economic research and operations analysis to evaluate transportation issues and to recommend revisions of current procedures.

(6) Serve as the focal point for all Department transportation matters including development of policies and strategies.

(7) Cooperate with other Departmental agencies in the development and recommendation of policies and programs for inland transportation of USDA and CCC-owned commodities in connection with USDA programs.

(8) Exercise the functions of the Secretary of Agriculture contained in the following legislation:

(i) U.S. Cotton Standards Act (7 U.S.C. 51–65);

(ii) Cotton futures provisions of the Internal Revenue Code of 1954 (26 U.S.C. 4854, 4862–4865, 4876, and 7263);

(iii) Cotton Statistics and Estimates Act, as amended (7 U.S.C. 471–476), except as otherwise assigned;

(iv) [Reserved]

(v) Naval Stores Act (7 U.S.C. 91–99);

(vi) Tobacco Inspection Act (7 U.S.C. 511–511q);

(vii) Wool Standards Act (7 U.S.C. 415–415d);

(viii) Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601, 602, 608a–608e, 610, 612, 614, 624, 671–674);

(ix) Cotton Research and Promotion Act (7 U.S.C. 2101–2118) and section 610 of the Agricultural Act of 1970 (7 U.S.C. 2119), except as specified in § 2.43(a)(24);

(x) Export Apple and Pear Act (7 U.S.C. 581–590);

(xi) Export Grape and Plum Act (7 U.S.C. 591–599);

(xii) Titles I, II, IV, and V of the Federal Seed Act, as amended (7 U.S.C. 1551–1575, 1591–1611);

(xiii) Perishable Agricultural Commodities Act (7 U.S.C. 499a–499s);

(xiv) Produce Agency Act (7 U.S.C. 491–497);

(xv) Tobacco Seed and Plant Exportation Act (7 U.S.C. 516–517);

(xvii) Tobacco Statistics Act (7 U.S.C. 501–508);

(xxii) Section 401(a) of the Organic Act of 1944 (7 U.S.C. 415e);

(xxiii) Agricultural Fair Practices Act (7 U.S.C. 2301–2306);

(xxiv) Wheat Research and Promotion Act (7 U.S.C. 1292 note), except as specified in § 2.43(a)(24);

(xxv) Plant Variety Protection Act (7 U.S.C. 2321–2331, 2351–2357, 2371–2372, 2401–2404, 2421–2427, 2441–2443, 2461–2463, 2481–2486, 2501–2504, 2531–2532, 2541–2545, 2561–2569, 2581–2583), except as delegated to the Judicial Officer;

(xxvi) Subtitle B of title I and section 301(4) of the Dairy and Tobacco Adjustment Act of 1983 (7 U.S.C. 4501–4513, 4514(4)), except as specified in § 2.43(a)(24);

(xxvii) Potato Research and Promotion Act (7 U.S.C. 2611–2627), except as specified in § 2.43(a)(24);

(xxviii) [Reserved]

(xxix) Section 708 of the National Wool Act of 1954, as amended (7 U.S.C. 1787), except as specified in §§ 2.42(a)(25) and 2.43(a)(24);

(xxxi) Egg Research and Consumer Information Act (7 U.S.C. 2701–2718), except as delegated in § 2.43(a)(24);

(xxxii) Beef Research and Information Act, as amended, (7 U.S.C. 2901–2918), except as delegated in §§ 2.42(a)(29) and 2.43(a)(24);

(xxxiii) Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3401–3417), except as delegated in § 2.43(a)(24);

(xxxiv) Egg Products Inspection Act relating to the shell egg surveillance program, voluntary laboratory analyses of egg products, and the voluntary egg grading program (21 U.S.C. 1031–1056);

(xxxv) Section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), as supplemented by the Act of June 28, 1937 (15 U.S.C. 713c), and related legislation, except functions which are otherwise assigned relating to the domestic distribution and donation of agricultural commodities and products thereof following the procurement thereof;

(xxxvi) Procurement of agricultural commodities and other foods under section 6 of the National School Lunch Act of 1946, as amended (42 U.S.C. 1755);

(xxxvii) In carrying out the procurement functions in paragraphs (a)(8) (xxxv) and (xxxvi) of this section, the Administrator, Agricultural Marketing Service shall, to the extent practicable, use the commodity procurement, handling, payment and related services of the Farm Service Agency;

(xxxviii) Act of May 23, 1908, regarding inspection of dairy products for export (21 U.S.C. 693);

(xxxix) The Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819);

(xl) The Watermelon Research and Consumer Information Act (7 U.S.C. 4901–4616);

(xli) The Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4601–4612);

(xlii) Subtitles B and C of the Dairy Production Stabilization Act of 1983, as amended (7 U.S.C. 4501–4513, 4531–4538);

(xliii) The Floral Research and Consumer Information Act (7 U.S.C. 4301–4319);

(xliv) Section 213 of the Tobacco Adjustment Act of 1983, as amended (7 U.S.C. 511r);

(xlv) National Laboratory Accreditation Program (7 U.S.C. 138–138i) with respect to laboratories accredited for pesticide residue analysis in fruits and vegetables and other agricultural commodities, except those laboratories analyzing only meat and poultry products;

(xlvi) Pecan Promotion and Research Act of 1990 (7 U.S.C. 6001–6013), except as specified in § 2.43(a)(24);

(xlvii) Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6101–6112), except as specified in § 2.43(a)(24);

(xlviii) Lime Research, Promotion, and Consumer Information Act of 1990 (7 U.S.C. 6201–6212), except as specified in § 2.43(a)(24);

(xlix) Soybean Promotion, Research, and Consumer Information Act (7 U.S.C. 6301–6311), except as specified in § 2.43(a)(24);

(l) Fluid Milk Promotion Act of 1990 (7 U.S.C. 6401–6417);

(li) Producer Research and Promotion Board Accountability (104 Stat. 3927);

(lii) Consistency with International Obligations of the United States (7 U.S.C. 2278);

(liii) Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) provided that the Administrator, Agricultural Marketing Service, will enter into agreements, as necessary, with the Administrator, Food Safety and Inspection Service, to provide inspection services;

(liv) Pesticide Recordkeeping (7 U.S.C. 136i–l) with the provision that the Administrator, Agricultural Marketing Service, will enter into agreements, as necessary, with other Federal agencies;

(lv) The International Carriage of Perishable Foodstuffs Act (7 U.S.C. 4401–4406); and

(lvi) The Sheep Promotion, Research, and Information Act (7 U.S.C. 7101–7111).

(9) Furnish, on request, copies of programs, pamphlets, reports, or other publications for missions or programs as may otherwise be delegated or assigned to the Administrator, Agricultural Marketing Service and charge user fees therefore, as authorized by section 1121 of the Agriculture and Food Act of 1981, as amended by section 1769 of the Food Security Act of 1985, 7 U.S.C. 2242a.

(10) Collect, summarize, and publish data on the production, distribution, and stocks of sugar.

(11) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("the Act"), as amended:

(i) Sections 104 (a), (b), and (c)(4) of the Act (42 U.S.C. 9604 (a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117 (a) and (c) of the Act (42 U.S.C. 9617 (a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(12) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901, *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601, *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

(b) *Reservations.* The following authorities are reserved to the Assistant

Secretary for Marketing and Regulatory Programs:

(1) Taking final action on regulations under section 8c(15)(A) of the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 608c(15)(A)); section 12(a) of the Cotton Research and Promotion Act (7 U.S.C. 2111(a)); section 311(a) of the Potato Research and Promotion Act (7 U.S.C. 2620(a)); section 118(a) of the Dairy Production Stabilization Act of 1983, as amended, (7 U.S.C. 4509(a)); section 1625(a) of the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4814(a)); section 1650(a) of the Watermelon Research and Promotion Act (7 U.S.C. 4909(a)); section 10(a) of the Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4609(a)); section 14(a) of the Egg Research and Consumer Information Act (7 U.S.C. 2713(a)); section 1714(a) of the Floral Research and Consumer Information Act (7 U.S.C. 4313(a)); section 1710(a) of the Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3409(a)); section 1913(a) of the Pecan Promotion and Research Act of 1990 (7 U.S.C. 6008(a)); section 1927(a) of the Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6106(a)); section 1957(a) of the Lime Research, Promotion, and Consumer Information Act of 1990 (7 U.S.C. 6206(a)); section 1971(a) of the Soybean Promotion, Research, and Consumer Information Act (7 U.S.C. 6306(a)); section 1999K(a) of the Fluid Milk Promotion Act of 1990 (7 U.S.C. 6410(a)); and section 7 of the Sheep Promotion, Research, and Information Act (7 U.S.C. 7106).

(2) Issuing, amending, terminating, or suspending any marketing agreement or order or any provision thereof under the Agricultural Marketing Agreement Act of 1937; the Cotton Research and Promotion Act; the Potato Research and Promotion Act; subtitles B and C of the Dairy Production Stabilization Act of 1983, as amended; the Pork Promotion, Research, and Consumer Information Act of 1985; the Beef Research and Information Act, as amended; the Watermelon Research and Promotion Act; the Honey Research, Promotion, and Consumer Information Act; the Floral Research and Consumer Information Act; the Egg Research and Consumer Information Act; the Wheat and Wheat Foods Research and Nutrition Education Act; the Pecan Promotion and Research Act of 1990; the Mushroom Promotion, Research, and Consumer Information Act of 1990; the Lime Research, Promotion, and Consumer Information Act of 1990; the Soybean Promotion, Research, and Consumer Information Act; the Fluid Milk Promotion Act of 1990; the Organic Foods Production Act of 1990; and the Sheep Promotion, Research, and Information Act (7 U.S.C. 7101–7111).

§ 2.80 Administrator, Animal and Plant Health Inspection Service.

(a) *Delegations.* Pursuant to §§ 2.22(a)(2), (a)(6) through (a)(9), subject to reservations in § 2.22(b)(2), the following delegations of authority are made by the Assistant Secretary for Marketing and Regulatory Programs to the Administrator, Animal and Plant Health Inspection Service: Exercise functions of the Secretary of Agriculture under the following authorities:

(1) Administer the Foreign Service personnel system for employees of the Animal and Plant Health Inspection Service in accordance with 22 U.S.C. 3922, except that this delegation does not include the authority to approve joint regulations issued by the Department of State relating to administration of the Foreign Service, nor an authority to represent the Department of Agriculture in interagency consultations and negotiations with the other foreign affairs agencies with respect to joint regulations.

(2) Section 102, Organic Act of 1944, as amended, and the Act of April 6, 1937, as amended (7 U.S.C. 147a, 148, 148a–148e), relating to control and eradication of plant pests and diseases, including administering survey and regulatory activities for the gypsy moth program and, with the Chief of the Forest Service, jointly administering gypsy moth eradication activities by assuming primary responsibility for eradication of gypsy moth infestations of 640 acres or less on State and private lands that are not contiguous to infested Federal lands.

(3) The Mexican Border Act, as amended (7 U.S.C. 149).

(4) The Golden Nematode Act (7 U.S.C. 150–150g).

(5) The Federal Plant Pest Act, as amended (7 U.S.C. 150aa–150jj).

(6) The Plant Quarantine Act, as amended (7 U.S.C. 151–164a, 167).

(7) The Terminal Inspection Act, as amended (7 U.S.C. 166).

(8) The Honeybee Act, as amended (7 U.S.C. 281–286).

(9) The Halogeton Glomeratus Control Act (7 U.S.C. 1651–1656).

(10) Tariff Act of June 17, 1930, as amended, section 306 (19 U.S.C. 1306).

(11) Act of August 30, 1890, as amended (21 U.S.C. 102–105).

(12) Act of May 29, 1884, as amended, Act of February 2, 1903, as amended, and Act of March 3, 1905, as amended, and supplemental legislation (21 U.S.C. 111–114a, 114a–1, 115–130).

(13) Act of February 28, 1947, as amended (21 U.S.C. 114b–114c, 114d–1).

(14) Act of June 16, 1948 (21 U.S.C. 114e–114f).

(15) Act of September 6, 1961 (21 U.S.C. 114g–114h).

(16) Act of July 2, 1962 (21 U.S.C. 134–134h).

(17) Act of May 6, 1970 (21 U.S.C. 135–135b).

(18) Sections 12–14 of the Federal Meat Inspection Act, as amended, and so much of section 18 of such Act as pertains to the issuance of certificates of condition of live animals intended and offered for export (21 U S.C. 612–614, 618).

(19) Improvement of poultry, poultry products, and hatcheries (7 U.S.C. 429).

(20) The responsibilities of the United States under the International Plant Protection Convention.

(21) (Laboratory) Animal Welfare Act, as amended (7 U.S.C. 2131–2159).

(22) Horse Protection Act (15 U.S.C. 1821–1831).

(23) 28 Hour Law, as amended (45 U.S.C. 71–74).

(24) Export Animal Accommodation Act, as amended (46 U.S.C. 3901–3902).

(25) Purebred animal duty-free-entry provision of Tariff Act of June 17, 1930, as amended (19 U.S.C. 1202, part 1, Item 100.01).

(26) Virus-Serum-Toxin Act (21 U.S.C. 151–158).

(27) Conduct diagnostic and related activities necessary to prevent, detect, control or eradicate foot-and-mouth disease and other foreign animal diseases (21 U.S.C. 113a).

(28) The Agricultural Marketing Act of 1946, section 203, 205, as amended (7 U.S.C. 1622, 1624), with respect to voluntary inspection and certification of animal products; inspection, testing, treatment, and certification of animals; and a program to investigate and develop solutions to the problems resulting from the use of sulfonamides in swine.

(29) Talmadge-Aiken Act (7 U.S.C. 450) with respect to cooperation with States in control and eradication of plant and animal diseases and pests.

(30) Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195, *et seq.*), relating to protection of livestock, poultry and crops and products thereof from biological and chemical warfare; and utilization or disposal of livestock and poultry exposed to radiation.

(31) The Federal Noxious Weed Act of 1974, as amended (7 U.S.C. 2801–2814).

(32) The Endangered Species Act of 1973 (16 U.S.C. 1531–1544).

(33) Executive Order 11987, 3 CFR, 1977 Comp., p. 116.

(34) Section 101(d), Organic Act of 1944 (7 U.S.C. 430).

(35) The Swine Health Protection Act, as amended (7 U.S.C. 3801–3813).

(36) Lacey Act Amendments of 1981, as amended (16 U.S.C. 3371–3378).

(37) Title III (and title IV to the extent that it relates to activities under title III) of the Federal Seed Act, as amended (7 U.S.C. 1581–1610).

(38) Authority to prescribe the amounts of commuted traveltime allowances and the circumstances under which such allowances may be paid to employees covered by the Act of August 28, 1950 (7 U.S.C. 2260).

(39) Provide management support services for the Grain Inspection, Packers and Stockyards Administration, and the Agricultural Marketing Service as agreed upon by the agencies with authority to take actions required by law or regulation. As used herein, the term management support services includes budget, finance, personnel, procurement, property management, communications, paperwork management, and related administrative services.

(40) Coordinate the development and carrying out by Department agencies of all matters and functions pertaining to the Department's regulation of biotechnology, and act as liaison on all matters and functions pertaining to the regulation of biotechnology between agencies within the Department and between the Department and other governmental and private organizations.

(41) The Act of March 2, 1931 (7 U.S.C. 426–426b).

(42) The Act of December 22, 1987 (7 U.S.C. 426c).

(43) Authority to work with developed and transitional countries on agricultural and related research and extension, with respect to animal and plant health, including providing technical assistance, training, and advice to persons from such countries engaged in such activities and the stationing of scientists at national and international institutions in such countries (7 U.S.C. 3291(a)(3)).

(44) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("the Act"), as amended:

(i) Sections 104(a), (b), and (c)(4) of the Act (42 U.S.C. 9604(a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(45) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901, *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601, *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

(46) Authority to prescribe and collect fees under the Act of August 31, 1951, as amended (31 U.S.C. 9701), and sections 2508 and 2509 of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136, 136a), as amended.

(47) The provisions of 35 U.S.C. 156.

(48) Enter into cooperative research and development agreements with industry, universities, and others; institute a cash award program to reward scientific, engineering, and technical personnel; award royalties to inventors; and retain and use royalty income (15 U.S.C. 3710a–3710c).

(49) The Alien Species Prevention and Enforcement Act of 1992 (39 U.S.C. 3015 note).

(b) *Reservation.* The following authority is reserved to the Assistant Secretary for Marketing and Regulatory Programs: The authority to make determinations under 35 U.S.C. 156 as to whether an applicant acted with due diligence.

§ 2.81 Administrator, Grain Inspection, Packers and Stockyards Administration.

(a) *Delegations.* Pursuant to §§ 2.22(a)(3) and (a)(9), the following delegations of authority are made by the Assistant Secretary for Marketing and Regulatory Programs to the Administrator, Grain Inspection Service, Packers and Stockyards Administration:

(1) Administer the United States Grain Standards Act, as amended (7 U.S.C. 71–87h).

(2) Exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), relating to inspection and standardization activities related to grain.

(3) Administer the Packers and Stockyards Act, 1921, as amended and supplemented.

(4) Enforce provisions of the Consumer Credit Protection Act (15 U.S.C. 1601–1665, 1681–1681t), with respect to any activities subject to the Packers and Stockyards Act, 1921, as amended and supplemented.

(5) Exercise the functions of the Secretary of Agriculture contained in section 1324 of the Food Security Act of 1985 (7 U.S.C. 1631).

(6) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("the Act"), as amended:

(i) Sections 104(a), (b), and (c)(4) of the Act (42 U.S.C. 9604(a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)-(h) of the Act (42 U.S.C. 9604(e)-(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(7) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901, *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601, *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

(b) [Reserved]

Subpart O—Delegations of Authority by the Assistant Secretary for Congressional Relations

§ 2.83 Deputy Assistant Secretary for Congressional Relations.

Pursuant to § 2.23, and subject to policy guidance and direction by the Assistant Secretary, the following delegation of authority is made by the Assistant Secretary for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations, to be exercised only during the absence or unavailability of the Assistant Secretary: Perform all duties and exercise all powers which are now or which may hereafter be delegated to the Assistant Secretary for Congressional Relations.

§ 2.85 Director, Office of Congressional and Intergovernmental Relations.

(a) *Delegations.* Pursuant to § 2.23, the following delegations of authority are made by the Assistant Secretary for Congressional Relations to the Director, Office of Congressional and Intergovernmental Relations:

(1) Exercise responsibility for coordination of all congressional matters in the Department.

(2) Maintain liaison with the Congress and the White House on legislative Matters of concern to the Department.

(3) Coordinate all programs involving intergovernmental affairs including State and local government relations and liaison with:

(i) National Association of State Departments of Agriculture;

(ii) Office of Intergovernmental Relations (Office of Vice President);

(iii) Advisory Commission on Intergovernmental Relations;

(iv) Council of State Governments;

(v) National Governors Conference;

(vi) National Association of Counties;

(vii) National League of Cities;

(viii) International City Managers Association;

(ix) U.S. Conference of Mayors; and

(x) Such other State and Federal agencies, departments and organizations as are necessary in carrying out the responsibilities of this office.

(4) Maintain oversight of the activities of USDA representatives to the 10 Federal Regional councils.

(5) Serve as the USDA contact with the Advisory Commission on Intergovernmental Relations for implementation of OMB Circular A–85 to provide advance notification to state and local governments of proposed changes in Department programs that affect such governments.

(6) Act as the department representative for Federal executive board matters.

(7) Administer the implementation of the National Historic Preservation Act of 1966, National Historic Preservation Act of 1966, 16 U.S.C. 470, *et seq.*, Executive Order 11593, 3 CFR, 1971–1975 Comp., p. 559, and regulations of the Advisory Council on Historic Preservation, 36 CFR part 800, for the Department of Agriculture with authority to name the Secretary's designee to the Advisory Council on Historic Preservation.

(8) Coordinate the Department's programs involving assistance to American Indians except civil rights activities.

(b) [Reserved]

Subpart P—Delegations of Authority by the Assistant Secretary for Administration

§ 2.87 Deputy Assistant Secretary for Administration.

Pursuant to § 2.24(a), subject to reservations in § 2.24(b), the following delegation of authority is made by the Assistant Secretary for Administration to the Deputy Assistant Secretary for Administration, to be exercised only during the absence or unavailability of the Assistant Secretary: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Assistant Secretary for Administration.

§ 2.89 Director, Office of Civil Rights Enforcement.

(a) *Delegations.* Pursuant to §§ 2.24(a)(8), the following delegations of authority are made by the Assistant Secretary for Administration to the Director, Office of Civil Rights Enforcement:

(1) Provide overall leadership, coordination, and direction for the Department's programs of civil rights, including program delivery compliance and equal employment opportunity, with emphasis on the following:

(i) Actions to enforce title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, prohibiting discrimination in federally assisted programs;

(ii) Actions to enforce title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, prohibiting discrimination in Federal employment;

(iii) Actions to enforce title IX of the Education Amendments of 1972, 20 U.S.C. 1681, *et seq.*, prohibiting discrimination on the basis of sex in USDA education programs and activities funded by the Department;

(iv) Actions to enforce section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, prohibiting discrimination on the basis of handicap in USDA programs and activities funded by the Department;

(v) Actions to enforce the Age Discrimination Act of 1975, 42 U.S.C. 6102, prohibiting discrimination on the basis of age in USDA programs and activities funded by the Department;

(vi) Actions to enforce related Executive orders, Congressional mandates, and other laws, rules, and regulations, as appropriate;

(vii) Actions to develop and implement the Department's Federal Women's Programs; and

(viii) Actions to develop and implement the Department's Hispanic Employment Program.

(2) Evaluate Departmental agency programs, activities, and impact statements for civil rights concerns.

(3) Provide leadership and coordinate USDA agency and Department systems for targeting, collecting, analyzing, and evaluating program participation data and equal employment opportunity data.

(4) Provide leadership and coordinate Departmentwide programs of public notification regarding the availability of USDA programs on a nondiscriminatory basis.

(5) Serve as the focal point through which all contacts with the Department of Justice are made involving matters relating to title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.), and section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), except those matters in litigation, including administrative enforcement actions, which shall be coordinated by the Office of the General Counsel.

(6) Serve as the focal point through which all contacts with the Department of Health and Human Services are made involving matters relating to the Age Discrimination Act of 1975, 42 U.S.C. 6102, except those matters in litigation, including administrative enforcement action, which shall be coordinated by the Office of the General Counsel.

(7) Order proceedings and hearings in the Department of Agriculture pursuant to §§ 15.9(e) and 15.86 of this title which concern consolidated or joint hearings within the Department and/or with other Federal departments and agencies.

(8) Order proceedings and hearings in the Department of Agriculture pursuant to § 15.8(c) of this title after the program agency has advised the applicant or recipient of his or her failure to comply and has determined that compliance cannot be secured by voluntary means.

(9) Issue orders to give a notice of hearing or the opportunity to request a hearing pursuant to part 15 of this title; arrange for the designation of an Administrative Law Judge to preside over any such hearing; and determine whether the Administrative Law Judge so designated will make an initial decision or certify the record to the Secretary of Agriculture with his or her recommended findings and proposed action.

(10) Authorize the taking of action pursuant to § 15.8(a) of this title relating to compliance by "other means authorized by law."

(11) Make determinations required by § 15.8(d) of this title that compliance cannot be secured by voluntary means, and then take action, as appropriate.

(12) Make determinations that program complaint investigations performed under § 15.6 of this title establish a proper basis for findings of discrimination, and that actions taken to correct such findings are adequate; and perform investigations and make determinations, on both the merits and required corrective action, as to complaints filed under subpart B of part 15 of this title.

(13) Conduct investigations and compliance reviews Departmentwide.

(14) Develop regulations, plans, and procedures necessary to carry out the

Department's civil rights programs, including the development, implementation, and coordination of Action Plans.

(15) Perform staff work for the Director of Equal Employment Opportunity including coordination of the Department's affirmative employment program, special emphasis programs, Federal equal opportunity recruitment program, equal employment opportunity evaluations, and development of policy.

(16) Provide equal employment opportunity services for managers and employees in the Departmental staff offices.

(17) Provide liaison on equal employment opportunity programs and activities with the Equal Employment Opportunity Commission, the Office of Personnel Management, USDA agencies, Department employees, and applicants for positions within the Department.

(18) Monitor, evaluate, and report on agency compliance with established policy and executive orders which further the participation of historically black colleges and universities and with other colleges and universities with substantial monitored group enrollment in Departmental programs and activities.

(19) Perform the EEO counseling function for the Department.

(20) Maintain liaison with historically black colleges and universities and other colleges and universities with substantial minority group enrollment, and assisting USDA agencies in strengthening such institutions by facilitating institutional participation in USDA programs and activities and by encouraging minority students to pursue curricula that could lead to careers in the food and agricultural sciences.

(21) Process formal EEO discrimination complaints, up to the appellate stage, by employees or applicants for employment.

(22) Administer the discrimination appeals and complaints program for the Department, including all formal individual or group appeals, where the system provides for an avenue of redress to the Department level, Equal Employment Opportunity Commission, or other outside authority.

(24) Perform staff work for the Director of Equal Employment Opportunity on the preparation of decisions on complaints of discrimination.

(25) Provide liaison on EEO matters concerning complaints and appeals with USDA agencies and Department employees.

(26) Investigate USDA EEO complaints, with authority to enter into and administer contracts for such investigations.

(27) Make final decisions on complaints and grievance appeals, except in those cases where the Director, Office of Civil Rights Enforcement has participated, when it is determined that such complaint or grievance appeals are not being decided in a timely manner.

(28) Make final decisions on formal grievance appeals in all cases where the Deciding Official:

(i) Was involved directly in the grievance; or

(ii) Made the informal decision; or

(iii) Determines that the Examiner's findings or Committee's recommendations is unacceptable.

(29) The provisions of paragraphs (a)(27) and (a)(28) of this section shall not apply for positions in, or applicants for positions in, the Office of Inspector General.

(b) [Reserved]

§ 2.90 Director, Office of Information Resources Management.

(a) *Delegations.* Pursuant to §§ 2.24(a)(4) and (a)(6), the following delegations of authority are made by the Assistant Secretary for Administration to the Director, Office of Information Resources Management:

(1) Assist the Senior Official designated under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), with the development of Departmental information resource management principles, policies and objectives.

(2) Coordinate with the Senior Official designated under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), the development and promulgation of Departmental information resources management standards, guidelines, rules, and regulations necessary to implement approved principles, policies, and objectives.

(3) Develop and implement an information resources management planning system which will integrate short-term and long-term objectives and coordinate agency and staff office initiatives in support of the objectives.

(4) Provide Departmentwide guidance and direction in planning, developing, documenting, and managing applications software projects in accordance with Federal and Department information processing standards, procedures, and guidelines.

(5) Provide Departmentwide guidance and direction in all aspects of the USDA information management program including feasibility studies; economic analyses; systems design; acquisition of equipment, software, services, and timesharing arrangements; systems installation; systems performance and capacity evaluation; and security. Monitor these activities for agencies' major systems development efforts to assure effective and economic use of resources and compatibility among systems of various agencies when required.

(6) Manage the Departmental Computer Centers, including setting of rates to recover the cost of goods and services within approved policy and funding levels.

(7) Review and evaluate information resource management activities related to delegated functions to assure that they conform to all applicable Federal and Department information resource management policies, plans, standards, procedures, and guidelines.

(8) Design, develop, implement, and revise systems, processes, work methods, and techniques to improve the management and operational effectiveness of information resources.

(9) Administer the Departmental records, forms, reports, and directives management programs, in coordination with the Senior Official designated under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520).

(10) Manage all aspects of the USDA telecommunications program including planning, development, acquisition, and use of equipment and systems for voice and data communications, excluding the actual procurement of data transmission equipment, software, maintenance, and related supplies. Manage Departmental telecommunications contracts. Provide technical advice throughout the Department on telecommunications matters.

(11) Implement a program for applying information resources management technology to improve productivity in the Department.

(12) Provide leadership to integrate and unify the management process for the Department's major information resource management system acquisitions and to monitor implementation of the policies and practices set forth in applicable OMB Circulars.

(13) Provide Departmental services related to Departmental administrative regulations, Secretarial issuances, and related management support.

(14) Plan, develop, install, and operate computer-based systems for message exchange, scheduling, computer conferencing, and other applications of office automation technology which can be commonly

used by multiple Department agencies and offices.

(15) Provide automation, forms management, files management, directives management, and related services, with authority to take any action required by law or regulation to provide such services, for:

(i) The Secretary of Agriculture;

(ii) The general officers of the Department, except the Inspector General;

(iii) The offices and agencies reporting to the Assistant Secretary for Administration; and

(iv) Provide such of the above service for any other officer or agency of the Department as may be agreed.

(16) Represent the Department in contacts with the General Accounting Office, the General Services Administration, the Office of Management and Budget, the National Bureau of Standards, and other organizations or agencies on matters related to delegated responsibilities.

(17) Provide staff assistance as required for the Secretary, general officers, and other Department and agency officials.

(18) Provide related support services needed by the Department to carry out defense responsibilities.

(19) Review, clear, and coordinate all statistical forms, survey plans, and reporting and record keeping requirements originating in the Department and requiring approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520).

(20) Review and make recommendations to the Assistant Secretary for Administration on proposed waivers to Federal Information Processing Standards (FIPS) pursuant to section 111(d)(3) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 759(d)(3)).

(b) [Reserved]

§ 2.91 Delegations to the Director, Office of Operations.

(a) *Delegations.* Pursuant to §§ 2.24(a)(3), (a)(4) and (a)(11), the following delegations of authority are made by the Assistant Secretary for Administration to the Director, Office of Operations:

(1) Promulgate Departmental policies, standards, techniques, and procedures, and represent the Department, in the following:

(i) Contracting for and the procurement of administrative and operating supplies, services, equipment and construction;

(ii) Socioeconomic programs relating to contracting, excepting those matters otherwise vested by statute in the Director of Small and Disadvantaged Business Utilization;

(iii) Selection, standardization, and simplification of program delivery processes utilizing contracts;

(iv) Acquisition, leasing, utilization, value analysis, construction, maintenance, and disposition of real and personal property, including control of space assignments;

(v) Acquisition, storage, distribution and disposition of forms, supplies and equipment;

(vi) Mail management;

(vii) Motor vehicle fleet and other vehicular transportation;

(viii) Transportation of things (traffic management);

(ix) Prevention, control, and abatement of pollution with respect to Federal facilities and activities under the control of the Department (Executive Order 12088, 3 CFR, 1978 Comp., p. 243);

(x) Implementation of the Uniform Relocation Assistance and Real Property Policies Act of 1970 (42 U.S.C. 4601, et seq.); and

(xi) Development and implementation of energy management actions related to the internal operations of the Department. Maintain liaison with other Government agencies in these matters.

(2) Operate, or provide for the operation of, centralized Departmental services to provide printing, copy reproduction, offset composition, supply, mail, automated mailing lists, excess property pool, resource recovery, shipping and receiving, forms, labor services, issuance of general employee identification cards, supplemental distribution of Department directives, space allocation and management, and related management support.

(3) Exercise the following special authorities:

(i) The Director, Office of Operations, is designated as the Department's Debarring Officer, and authorized to perform the functions of 48 CFR part 9, subparts 9.406 and 9.407;

(ii) Conduct liaison with the Office of the **Federal Register** (1 CFR part 16), including the making of required certifications pursuant to 1 CFR part 18;

(iii) Maintain custody and permit appropriate use of the official seal of the Department;

(iv) Establish policy for the use of the official flags of the Secretary and the Department;

(v) Coordinate collection of historical material for Presidential Libraries;

(vi) Oversee the safeguarding of unclassified materials designated "For Official Use Only;"

(vii) Make determinations under 48 CFR 14.406–3(a) through (d), related to mistakes in bids alleged after opening of bids and before award. Except for the authority to permit withdrawal of bids under 48 CFR 14.406–3(c), this authority may not be redelegated; and

(viii) Make information returns to the Internal Revenue Service as prescribed by 26 U.S.C. 6050M and by 26 CFR 1.6050M–1 and such other Treasury regulations, guidelines or procedures as may be issued by the Internal Revenue Service in accordance with 26 U.S.C. 6050M. This includes executing such verifications or certifications as may be required by 26 CFR 1.6050M–1, and making the election allowed by 26 CFR 1.6050M–1(d)(5)(i).

(4) Provide procurement, property management, space management, communications (telephone), messenger, and related services with authority to take actions required by law or regulation to perform such services for:

(i) The Secretary of Agriculture;

(ii) The general officers of the Department, except the Inspector General;

(iii) The offices and agencies reporting to the Assistant Secretary for Administration; and

(iv) Provide such of the above services listed in paragraph (a)(4) of this section for any other officers or agencies of the Department as may be agreed.

(5) Exercise full Departmentwide contracting and procurement authority for automatic data processing and data transmission equipment, software, services, maintenance, and related supplies, subject to the review of the Senior Official designated under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). This authority includes the promulgation of Departmental directives regulating the management of contracting and procurement functions.

(6) Provide related support services needed by the Department to carry out defense responsibilities.

(7) Provide staff assistance for the Secretary, general officers and other Department and agency officials.

(8) Represent the Department in contacts with the General Accounting Office, the General Services Administration, the Office of Management and Budget, and other organizations or agencies on matters related to assigned responsibilities.

(9) Exercise authority under the Department's Acquisition Executive (Assistant Secretary for Administration) to integrate and unify the management process for the Department's major system acquisitions and to monitor implementation of the policies and practices set forth in OMB Circular A–

109, Major Systems Acquisitions. This delegation includes the authority to:

(i) Insure that OMB Circular A–109 is effectively implemented in the Department and that the management objectives of the Circular are realized;

(ii) Review the program management of each major system acquisition;

(iii) Designate the program manager for each major system acquisition; and

(iv) Designate any Departmental acquisition as a major system acquisition under OMB Circular A–109.

(10) Pursuant to Executive Order 12352, 3 CFR, 1982 Comp., p. 137, and sections 16, 20(b), and 21 of the Office of Federal Procurement Policy Act, as amended, 41 U.S.C. 414, 418(b) and 418, the Director, Office of Operations, is designated as the Senior Procurement Executive for the Department with responsibility for the following:

(i) Prescribing and publishing Departmental procurement policies, regulations, and procedures;

(ii) Taking any necessary actions consistent with policies, regulations, and procedures with respect to purchases, contracts, leases, and other transactions;

(iii) Designating contracting officers;

(iv) Establishing clear lines of contracting authority;

(v) Evaluating and monitoring the performance of the Department's procurement system;

(vi) Managing and enhancing career development of the procurement work force;

(vii) Participating in the development of Government-wide procurement policies, regulations, and standards and determining specific areas where Government-wide performance standards should be established and applied;

(viii) Determining areas of Department-unique standards and developing unique Department-wide standards;

(ix) Certifying to the Secretary that the procurement system meets approved standards;

(x) Prescribing standards for agency Procurement Executives and designating agency Procurement Executives when these standards are met;

(xi) Redelegating, as appropriate, the authority in paragraph (a)(10)(i) of this section to USDA agency Procurement Executives or other qualified agency officials with no power of further redelegation; and

(xii) Redelegating the authorities in paragraphs (a)(10) (ii), (iii), (iv), (vi), and (vii) of this section to USDA agency Procurement Executives or other qualified agency officials with the power of further redelegation.

(11) Promulgate Departmental policies, standards, techniques, and procedures and represent the Department in maintaining the security of physical facilities, self-protection, and warden services.

(12) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("the Act"), as amended:

(i) Sections 104(a), (b), and (c)(4) of the Act (42 U.S.C. 9604(a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(13) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901, *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601, *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

(b) [Reserved]

§ 2.92 Director, Office of Personnel.

(a) *Delegations.* Pursuant to §§ 2.24(a)(4), (a)(5) and (a)(7), subject to reservations in § 2.24(b)(1), the following delegations of authority are made by the Assistant Secretary for Administration to the Director of Personnel:

(1) Authority to formulate and issue Department policy, standards, rules and regulations relating to personnel.

(2) Provide personnel management procedural guidance and operational instructions.

(3) Design and establish personnel data systems.

(4) Inspect and evaluate personnel management operations and issue instructions or take direct action to insure conformity with appropriate laws, Executive orders, Office of Personnel Management rules and regulations, and other appropriate rules and regulations.

(5) Exercise final authority in all personnel matters, including individual cases, that involve the jurisdiction of more than one General Officer.

(6) Receive, review, and recommend action on all requests for the Secretary's or Assistant Secretary for Administration's approval in personnel matters.

(7) Make final decisions on adverse actions except in those cases where the Assistant Secretary for Administration has participated, when it is determined that such adverse action is not being decided in a timely manner.

(8) Represent the Department in personnel matters in all contacts outside the Department.

(9) Specific authorities in the following operational matters:

(i) Authorize cash awards above $2,500;

(ii) Waive repayment of training expenses where employee fails to fulfill service agreement;

(iii) Establish or change standards and plans for awards to private citizens;

(iv) Execute, change, extend, or renew:

(A) Labor-Management Agreements; and

(B) Association of Management Officials or Supervisor's Agreements.

(v) Represent any part of the Department in all contacts and proceedings with the National Offices of Labor Organizations;

(vi) Change a position (with no material change in duties) from GS to a pay system other than a wage system, or vice versa;

(vii) Grant restoration rights, and release employees with administrative re-employment rights;

(viii) Change working hours for groups of 50 or more employees in the Washington, D.C. metropolitan area;

(ix) Authorize any mass dismissals of employees in the Washington, D.C. metropolitan area;

(x) Approve "normal line of promotion" cases in the excepted service where not in accordance with time-in grade criteria;

(xi) Make final decisions on adverse action and performance rating appeals in all cases where the Deciding Official:

(A) Was involved directly in the adverse action, or performance rating appeal; or

(B) Made the informal decision; or

(C) Determines that the Examiner's findings or Committee's recommendations is unacceptable.

(xii) Make the final decision on all classification appeals from agency appellate decisions;

(xiii) Authorize all employment actions (except nondisciplinary separations and LWOP) and classification actions for senior level and equivalent positions including Senior Executive Service positions and special authority professional and scientific positions responsible for carrying out research and development functions;

(xiv) Authorize all employment actions (except LWOP) for the following positions:

(A) Schedule C; and

(B) Administrative Law Judge.

(xv) Authorize employment actions (accessions or extensions) for the following:

(A) Employees whose records are flagged; and

(B) Contract services.

(xvi) Authorize employment actions (accessions or extensions and transfers) for the following:

(A) Persons with criminal or immoral records;

(B) Persons separated for misconduct, delinquency, or resignation to avoid such action; and

(C) Veterans with dishonorable or other than dishonorable discharge.

(xvii) Authorize adverse actions for positions in GS–14–15 and equivalent;

(xviii) Approve assignments of White House details;

(xix) Authorize adverse actions based in whole or in part on an allegation of violation of 5 U.S.C. chapter 73, subchapter III, for employees in the excepted service;

(xx) Authorize long-term training in programs which require Department-wide competition;

(xxi) Issue all Coordinated Federal Wage Systems (CFWS) Department-wide Wage Schedules, and Lithographic Wage Schedules in the Washington, D.C. Metropolitan Area; and

(xxii) Initiate and take adverse action in cases involving a violation of the merit system.

(10) As used herein, the term personnel includes:

(i) Position management;

(ii) Position classification;

(iii) Employment;

(iv) Pay administration;

(v) Automation of personnel data and systems design;

(vi) Hours of duty;

(vii) Performance evaluation and standards;

(viii) Promotions;

(ix) Employee development;

(x) Incentive programs;

(xi) Leave;

(xii) Retirement;

(xiii) Program evaluation;

(xiv) Social security;

(xv) Life insurance;

(xvi) Health benefits;

(xvii) Unemployment compensation;

(xviii) Labor management relations;

(xix) Intramanagement consultation;

(xx) Security;

(xxi) Discipline; and

(xxii) Appeals.

(11) Provide personnel services, as listed in paragraph (a)(10) of this section, and organizational support services, with authority to take actions required by law or regulation for:

(i) The Secretary of Agriculture;

(ii) The general officers of the Department, except the Inspector General;

(iii) The offices and agencies reporting to the Assistant Secretary for Administration, except the National Finance Center; and

(iv) Provide such of the above services, for any other officer or agency of the Department as may be agreed.

(12) Provide personnel services relating to defense responsibilities of the Department.

(13) The provisions of paragraphs (a)(9) (xiii) through (xvii) of this section shall not apply to positions in, or applicants for positions in, the Office of Inspector General.

(14) Maintain, review and update departmental delegations of authority.

(15) Authorize organizational changes which occur in:

(i) Departmental organizations:

(A) Service or office;

(B) Division (or comparable component); and

(C) Branch (or comparable component in departmental centers, only).

(ii) Field organizations:

(A) First organizational level; and

(B) Next lower organizational level—required only for those types of field

installations where the establishment, change in location, or abolition of same requires approval in accordance with Departmental Regulation 1010–1, available from the Chief, Information Management Division, Office of Information Resources Management, Room 403–W, Administration Building, U.S. Department of Agriculture, Washington, D.C. 20250.

(16) Formulate and promulgate departmental organizational objectives and policies.

(17) Provide staff assistance and support to the Department's Committee Management Officer.

(18) Formulate policies and procedures on the establishment and management of committees in the Department.

(19) Consult with GSA and Departmental agencies on the establishment and reestablishment of advisory committees.

(20) Establish Departmentwide safety and health policy and provide leadership in the development, coordination, and implementation of related standards, techniques, and procedures, and represent the Department in complying with laws, Executive orders and other policy and procedural issuances related to occupational safety and health within the Department.

(21) Represent the Department in all rulemaking, advisory or legislative capacities on any groups, committees, or Governmentwide activities that affect the USDA Occupational Safety and Health Management Program.

(22) Determine and/or provide Departmentwide technical services and regional staff support for the safety and health programs.

(23) Administer the computerized management information systems for the collection, processing and dissemination of data related to the Department's occupational safety and health programs.

(24) Administer the administrative appeals process related to the inclusion of positions in the Testing Designated Position listing in the USDA Drug-Free Workplace Program and designate the final appeal officer for that Program.

(25) Administer the Department's Occupational Health and Preventive Medical Program, as well as design and operate employee assistance and workers' compensation activities.

(26) Provide education and training on a Departmentwide basis for safety and health related issues and develop resource and operational manuals.

(b) *Reservation.* The following authority is reserved to the Assistant Secretary for Administration: Authorize organizational changes occurring in a Department service or staff office which affect the overall structure of that service or office; i.e., require a change to that service or office's overall organization chart.

For Subparts A, B, C and D:

Dated: May 22, 1995.

Dan Glickman,

Secretary of Agriculture.

For Subpart E:

Dated: May 22, 1995.

Richard E. Rominger,

Deputy Secretary of Agriculture.

For Subpart F:

Dated: May 25, 1995.

Gene Moos,

Under Secretary for Farm and Foreign Agricultural Services.

For Subpart G:

Dated: May 25, 1995.

Michael V. Dunn,

Acting Under Secretary for Rural Economic and Community Development.

For Subpart H:

Dated: June 1, 1995.

Michael Taylor,

Acting Under Secretary for Food Safety.

For Subpart I:

Dated: May 30, 1995.

Ellen Haas,

Under Secretary for Food, Nutrition, and Consumer Services.

For Subpart J:

Dated: May 25, 1995.

James R. Lyons,

Under Secretary for Natural Resources and Environment.

For Subpart K:

Dated: May 30, 1995.

Karl N. Stauber,

Under Secretary for Research, Education and Economics.

For Subpart L:

Dated: May 30, 1995.

Keith Collins,

Chief Economist.

For Subpart M:

Dated: May 31, 1995.

Anthony A. Williams,

Chief Financial Officer.

For Subpart N:

Dated: May 30, 1995.

Patricia Jensen,

Acting Assistant Secretary for Marketing and Regulatory Programs.

For Subpart O:

Dated: May 30, 1995.

P. Scott Shearer,

Acting Assistant Secretary for Congressional Relations.

For Subpart P:

Dated: May 31, 1995.

Warden C. Townsend, Jr.,

Assistant Secretary for Administration.

[FR Doc. 95–14564 Filed 6–15–95; 8:45 am]

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Friday
June 16, 1995

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

Funding Availability for FY 1995; Invitation for Applications: Public Housing Development; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Public and Indian Housing

[Docket No. N–95–3882; FR–3867–N–01]

Notice of Funding Availability for FY 1995; Invitation for Applications: Public Housing Development

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability (NOFA) for Fiscal Year (FY) 1995 for public housing development; invitation for applications.

SUMMARY: This NOFA announces the availability of FY 1995 funding, and invites eligible public housing agencies (PHAs) to submit applications for public housing development. Applications are limited to the following Categories:

(1) Replacements for demolition/disposition subject to section 18 of the United States Housing Act of 1937 (USHA);

(2) Replacements for homeownership transfers under the HOPE I Program, and homeownership sales under section 5(h) of the USHA;

(3) Headquarters Reserve: Unforeseen housing needs resulting from natural and other disasters; housing needs resulting from emergencies, as certified by the Secretary, other than such disasters; housing needs resulting from the settlement of litigation; and housing in support of desegregation efforts; and

(4) "Other" applications.

All successful applicants for categories (3) and (4) above will be required to participate in the Family Self-Sufficiency (FSS) program, unless granted an exception. This NOFA also provides instructions regarding the preparation and processing of applications. The Department is also encouraging applicants to form "partnerships" consisting of cooperative arrangements with community-based entities to provide housing, and is encouraging PHAs to engage in "mixed income" development (wherein public housing units are integrated within market-rate developments). This is being done by providing additional points for such efforts with respect to "other" applications (see sections III.E.5 and IV.E. of this NOFA).

This NOFA is not applicable to the Indian housing program.

DATES: Applications are due at the HUD Field Office on or before 3 p.m., local time, on July 31, 1995. See Section III of this NOFA for further information on application submission. If an application is mailed to the Field Office, the PHA must clearly write "PUBLIC HOUSING DEVELOPMENT APPLICATION" on the outside of the envelope and obtain a return receipt indicating the date and time of delivery. Hand delivered applications shall be date/time stamped and initialed by the employee receiving the application upon delivery.

The application deadline is firm as to date and hour. In the interest of fairness to all applicants, HUD will not consider any application that is received after the deadline. PHAs should take this into account and submit applications as early as possible to avoid risk brought about by unanticipated delays or delivery-related problems. In particular, PHAs intending to mail applications must provide sufficient time to permit delivery on or before the deadline date. Acceptance by a Post Office or private mailer does not constitute delivery. Facsimile (Fax), COD, and postage due applications will not be accepted.

FOR FURTHER INFORMATION CONTACT: Kevin Emanuel Marchman, Deputy Assistant Secretary, Office of Distressed and Troubled Housing Recovery, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4138, Washington, DC 20410. Telephone (202) 401–8812 (Voice) or (202) 708–4594 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been approved by the OMB under the Paperwork Reduction Act of 1980 and have been assigned OMB control numbers 2577–0033 and 3577–0036.

I. Introduction

A. Authority

Sections 5 and 23 of the United States Housing Act of 1937 (USHA) (42 U.S.C. 1437c and 1437u); and sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Public housing development regulations are published at 24 CFR part 941; demolition/disposition regulations are published at 24 CFR part 970; section 5(h) regulations are published at 24 CFR part 906.

The regulations for the public housing FSS program are codified at 24 CFR part 962.

The Notice of Program Guidelines for the HOPE–1 program was published on January 14, 1992 (57 FR 1522) and codified as 24 CFR Subtitle A, Appendix A. The Catalog of Federal Domestic Assistance Program number is 14.850.

B. Fund Availability

The Department of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriation Act of 1995 [(Pub.L. 103–327, approved September 28, 1994) (1995 Appropriations Act)] makes available $598 million of budget authority for Public Housing Development under section 5(a)(2) of the USHA. Some of the appropriated funds for annual contributions are to be derived from the recapture of prior year obligations or funds carried over from last year. Other adjustments within the Annual Contributions Account in 1995, including the addition of carryover funds, abate somewhat the impact of these factors. After these adjustments the amount available is $600,278,866. Of that amount, $74,126,542 already has been obligated to meet litigation needs, including replacement housing related to litigation. The Department expects to reserve or has reserved an approximately additional $145 million to meet litigation needs, including replacement housing related to litigation, or to redress mistakes in prior year awards. This would leave approximately $381 million available for commitments under this NOFA. The Department reserves the right to reserve additional funds prior to awards made under this NOFA for replacement housing proposals which clearly are essential to ending the isolation of large family public housing communities.

The Senate and the House of Representatives have passed legislation which would rescind part or all of the funding made available for public housing development by the 1995 Appropriations Act. The President vetoed this legislation on June 7, 1995. In the event rescissions become law, the Department will publish prompt notice of the impact on this NOFA.

Subject to any changes resulting from enactment of rescission legislation, the Department will make available at least $100 million for "other" applications. Up to .67 percent of the appropriated amount (up to $4,006,600) has been set aside for technical assistance and inspections. The Department expects all of the remaining funds to be needed and used for replacement housing (categories 1 and 2 above). Additional funds may be made available for "other" applications if the Department determines that funds remain after replacement housing and Headquarters Reserve needs are met. For additional details see the next sections below.

C. Fund Assignments

Section 213(d) of the Housing and Community Development Act of 1974 (HCD Act of 1974) requires that funds be allocated on a fair share basis, except for (a) amounts identified as Headquarters Reserve and (b) amounts determined incapable of geographic allocation.

1. Headquarters Reserve

Threshold-approvable applications for housing resulting from unforeseen housing needs resulting from natural and other disasters; housing needs resulting from emergencies, as certified by the Secretary, other than such disasters; housing needs resulting from the settlement of litigation; and housing in support of desegregation efforts shall be assigned Headquarters Reserve funding if available. (Headquarters Reserve amounts are limited in accordance with section 104 of the Department of Housing and Urban Development Reform Act of 1989 (Pub.L. 101–235, approved December 15, 1989), to five percent of the financial assistance that becomes available under the USHA and section 101 of the HUD Act of 1965. Thus, Headquarters Reserve funding decisions will be made by Headquarters and may affect the distribution of grant authority shown above.)

2. Fair Share

Subject to changes which may result from enactment of a rescission law, which could affect the requirement to fair share funds, at least $100 million will be fair shared to approve category 4 ("other") applications. These fair share funds will be distributed to Areas (formerly Regions) on the basis of the following fair share factors, which reflect the most recent decennial census data as to population, poverty, housing overcrowding, housing vacancies, amount of substandard housing, and other measurable conditions. Any unused assignments will be redistributed, proportional to need, among remaining Areas with approvable unfunded "other" applications. The Department may fair share additional funds later in the fiscal year to fund additional approvable "other" applications submitted in response to this NOFA if the Department determines that such funds will not be required for replacement housing and Headquarters Reserve needs.

Fair share and Headquarters Reserve funds are also subject to the requirement of section 213 of the HCD Act of 1974 that not less than 20 percent nor more than 25 percent of the HUD aggregate program funds covered by the statute be allocated for use in nonmetropolitan areas. Therefore, public housing development fund allocations to select "other" applications may be modified before assignment in order to ensure Departmental compliance with this statutory and regulatory requirement (see 24 CFR 791.403(a)).

Area	Fair-share factors (%)
New England	6.5
New York/New Jersey	18.1
Mid-Atlantic	8.8
Southeast	13.8
Midwest	15.7
Southwest	8.3
Great Plains	3.8
Rocky Mountain	2.6
Pacific/Hawaii	18.5
Northwest/Alaska	3.9
Total	100.0

3. Non-Fair Share

The Department expects that there will be a substantial demand during the fiscal year for Category 1, replacements for demolition/disposition subject to section 18 of the USHA, and category 2, replacements for homeownership transfers under the Hope I program and homeownership sales under section 5(h) of the USHA. This is projected to occur based on applications for demolition/disposition and homeownership replacement already received, because the Department and a number of PHAs are placing additional emphasis on the demolition and replacement of obsolete family housing which cannot provide a suitable living environment (e.g., obsolete family highrise developments or partial demolition of excessively dense, large and isolated lowrise developments), and because the future availability of a separate allocation of public housing development funding for replacement housing is uncertain. The Department will make all remaining public housing development funds, after subtracting funding for the Headquarters Reserve, $100 million for "other" applications if these applications are still to be funded (see above) and $4,066,600 for technical assistance, available as needed for categories 1 and 2. Various conditions regarding commitment of funding for replacement housing are listed in Section III of this NOFA below.

4. Remaining Balances

Any residual funds not reserved under categories 1, 2, 3, and 4 as described above will be added to the funds to be fair shared for any priority "other" approvable applications as determined by the Department.

D. Conformity to Regulations and NOFA Requirements

While conformity with 24 CFR part 941 is required, this funding effort is also subject to the additional specific requirements, consistent with the regulations, that are set forth in this NOFA. Applicants also should consult Handbook 7417.1 REV–1, and the FSS regulations codified at 24 CFR part 962. The selection criteria specified in this NOFA may not be added to or modified.

II. Application Process Overview

A. General

All applications shall be submitted to the appropriate Field Office by the application deadline date. The Field Office shall screen each application for completeness and will provide the PHA a 14-day opportunity to furnish missing technical information or exhibits, or to correct technical mistakes. Each application will then be subjected to a "pass/fail" threshold examination. Approvable category 1, 2, and 3 applications will be reported to Headquarters for further action.

Category 4 passing applications will be forwarded for rating to Rating Panel(s). One or more Rating Panels, comprised of HUD Field representatives appointed by Headquarters, shall be convened for the purpose. Category 4 applications will be rated by the Rating Panel(s) based on Field Office analyses. Headquarters will determine the funds required to approve category 1, 2, and 3 applications and select category 4 applications based on Rating Panel ratings and recommendations.

B. Categories of Applications

Each application must be for one of the following categories:

1. Replacement units for demolition/disposition approvals, subject to section 18 of the USHA (Category 1);

2. Replacement units for HOPE I or section 5(h) homeownership transfers or sales (Category 2);

3. Public housing to be funded from Headquarters Reserve (Category 3); or

4. "Other" development applications intended to increase the public housing stock (Category 4). Category 4 applicants are limited to no more than one application per locality, which may cover multiple sites.

C. Application Approval

1. All category 3 approvable applications will be funded, to the extent the required funds do not exceed statutorily set limits.

2. If there are insufficient funds to fund all category 1 and category 2 approvable applications, the

Department shall endeavor to fund category 1 and category 2 applications meeting the following descriptions: replacement related to litigation settlements or court orders, if the necessary funds have not yet been reserved; replacement for emergency demolition/disposition, if any; replacement for demolition/disposition to complete treatment of sites partially funded under the Urban Revitalization Demonstration Program authorized by the HUD Appropriations Acts of 1993, 1994 and 1995 or partially funded for comprehensive modernization or major reconstruction activities; replacement for obsolete family highrises; replacement for essential public housing density reduction at large family lowrises or as part of other efforts to end the isolation of large family public housing communities; prior replacement housing obligations; and category 2 replacement applications for homeownership, particularly where the transfer of property will occur this fiscal year and the units in question have not yet been replaced. Of these categories, replacement related to litigation settlements or court orders will be funded first.

3. Category 4 (other) applications will be funded up to the fair share amounts for each Area.

4. Any funds not required for categories 1, 2, or 3 or initially allocated to categories 4 or technical assistance as outlined above will be utilized for any additional "other" approvable applications as determined by the Department.

D. Disclosure of Information

The Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) prohibits advance disclosure of funding decisions (see 24 CFR part 4); civil penalties related to advance disclosure are set out in 24 CFR part 30. Application approval/non-approval notifications shall not occur until the Congressional notification process is completed.

E. Records Retention

Applications and materials related to applications (e.g., Field Office analyses, application scoring sheets, and notifications of selection/non-selection) will be retained in the appropriate Field Office for five years, and be available for public inspection in accordance with 24 CFR part 12.

III. Application Requirements

A. All Applicants

Each application must specify the housing type (new construction, rehabilitation, or acquisition), development method (conventional, turnkey, or acquisition), and community for which the project is proposed. No more than one housing type, development method, and locality may be proposed for an application. Each such application shall consist of an original and two copies, and must include the following:

1. Cover Letter. The cover letter must identify the category of application (see Section II.B. of this NOFA for a description of the categories; see also subparagraph 6 of Section III.A of this NOFA).

2. Application-Form HUD 52470. The application must be signed by the person authorized and dated and include the information as specified in the form.

3. Evidence of Legal Eligibility. If it has not previously done so, the PHA must document that it is legally organized. A current General Certificate (Form HUD 9009) must be submitted.

4. Cooperation Agreement (Form HUD 52481). The PHA must document that the number of units requested, along with units in management and other units in development, are covered by Cooperation Agreements.

5. PHA Resolution In Support of the Application (Form HUD–52471). Under this resolution, the PHA agrees to comply with all requirements of 24 CFR part 941 (see also paragraph 6 of this Section III.A). By executing the PHA Resolution, the PHA also certifies that it will comply with Title II of the Americans with Disabilities Act (42 U.S.C. 12131) and the implementing regulations at 28 CFR part 35.

6. Front-End Funds. If front-end funds are being requested, the PHA must so state in its cover letter; should the PHA desire the project only if front-end funds can be approved, the PHA must so state. The Form HUD–52471 (PHA Resolution) must refer to the request, and include Form HUD–52472 (Local Governing Body Resolution/Transcript of Proceedings) approving the request.

7. Drug-Free Workplace. The PHA must submit the Certification for a Drug-Free Workplace (Form HUD–50070) in accordance with 24 CFR 24.630.

8. Certification for Contracts, Grants, Loans and Cooperative Agreement (Form HUD–50071). In accordance with section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the implementing regulations at 24 CFR part 87, the PHA must certify that no federally appropriated funds have been paid or will be paid, by or on behalf of the PHA, for influencing or attempting to influence an officer or employee of any agency, or a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant or loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modifications of any Federal contract, grant, loan, or cooperative agreement.

9. Form SF–LLL, Disclosure of Lobbying Activities. Also in accordance with the Byrd Amendment and the regulations at 24 CFR part 87, the PHA must complete and submit Form SF–LLL if funds other than federally appropriated funds have been paid or will be paid by or on behalf of the PHA for influencing or attempting to influence an officer or employee of any agency, or a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant or loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modifications of any Federal contract, grant, loan, or cooperative agreement.

10. Disclosure of Government Assistance and Identity of Interested Parties (Form HUD 2880). The PHA must submit the Applicant/Recipient Disclosure/Update Report (Form HUD–2880) in accordance with the requirements of 24 CFR part 12, subpart C.

11. Family Self-Sufficiency (FSS). Section 23 of the USHA requires PHAs that are awarded new public housing units to implement an FSS program. Applicants for Category 3 (Headquarters Reserve) or Category 4 (Other) funds must certify that they will comply with 24 CFR part 962, which requires successful applicants to initiate or expand an FSS program for the number of families that equals the total number of units they have been awarded (unless otherwise excepted).

B. Applications for New Construction

In accordance with section 6(h) of the USHA, new construction may be engaged in only if the PHA demonstrates to the satisfaction of the Secretary that the cost of new construction in the neighborhood where the PHA determines the housing is needed is less than the cost of acquisition or acquisition and rehabilitation in such neighborhood. Therefore, every application for a new construction project (conventional or turnkey) must be accompanied by either the information described in paragraphs B.1 and B.3 of this section, or, at the applicant's option, the information

described in paragraphs B.2 and B.3 of this section:

1. A PHA comparison of the costs of new construction (in the neighborhood where the PHA proposes to construct the housing) and the costs of acquisition of existing housing or rehabilitation in the same neighborhood (including estimated costs of lead-based paint testing and abatement); or

2. A PHA certification, accompanied by supporting documentation, that there is insufficient existing housing in the neighborhood to develop housing through acquisition of existing housing or rehabilitation; and

3. A statement that:

(a) Although the application is for new construction, the PHA will accept acquisition of existing housing or rehabilitation, if HUD determines the PHA cost comparison or certification of insufficient housing does not support approval of new construction; or

(b) The application is for new construction only. (In any such case, if HUD cannot approve new construction under section 6(h) of the USHA, the application will be rejected.)

C. Replacement Housing Applications

1. Cover Letter. For both category 1 and category 2 applications, the cover letter must state whether the demo/dispo or transfer/sale application (to demolish/dispose of units, or to transfer/sell units) (hereinafter referred to as the "underlying application") has been approved; the date of approval; the project number and the name of the project being replaced; and whether it is being replaced in whole or in part. If the underlying application was not approved at the time the replacement housing application is filed, the cover letter must state the date the underlying application was submitted or the estimated date the underlying application will be submitted for consideration. Category 1 or 2 applications will not be funded unless the underlying application is submitted by the time funding selections are made. The Department may make a funding award if the underlying application has not yet been approved, if all aspects of the underlying application other than compliance with section 412 of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended, are approvable by August 1, 1995.

2. Section 5(j) Certification. The PHA must certify that the units requested are specifically required in FY 1995 either to meet the one-for-one replacement requirement of section 18 of the USHA to replace public housing demolition/disposition; or to meet the requirements of section 304(g) of the USHA to replace existing public housing approved in FY 1995 or earlier for homeownership transfer under HOPE 1, or for sale under section 5(h) of the USHA.

3. Replacement Application Under Section 18. A PHA submitting a replacement housing application under section 18 (category 1) must demonstrate that the replacement units, alone or together with other identified replacement units, will implement the PHA's Replacement Housing Plan submitted and approved or expected to be submitted and approved under 24 CFR 970.11, including requirements that such units:

(a) Are for no fewer units (or portion thereof approved by HUD) than the number of units to be demolished or disposed of; and

(b) Will house at least the same number of individuals and families that could be served by the housing to be demolished or disposed.

4. Replacement Application for Homeownership Transfers or sales. Applicants submitting applications to meet the requirements of section 304(g) of the USHA to replace existing public housing approved in FY 1995 or earlier for homeownership transfer under HOPE 1, or for sale under section 5(h) of the USHA, must provide the following: a schedule, by federal fiscal year, of the number of units previously transferred and/or expected to be transferred consistent with the actual progress achieved under the approved HOPE 1 or Section 5(h) plan; a listing of the number of replacement housing units already received and accounted for under all the allowable replacement housing options as well as the balance of units not yet replaced; and the number of public housing development units and/or Section 8 units now being requested for homeownership replacement. (The Section 8 units will not be awarded under this NOFA.)

5. Statement Regarding Consistency with HUD Priorities. Appropriations for replacement housing are encouraged to include a statement describing consistency of the application with the replacement housing categories described in paragraph II. C. 2. of this NOFA.

6. Impact of Pending Legislation. The Congressionally approved rescission bill includes a proposal to repeal replacement housing requirements for underlying applications approved on or prior to September 30, 1995. In the event this proposal becomes law, the Department will issue notice of any changes required or authorized for replacement housing applications to be submitted in response to this NOFA.

D. Applications for Units to be Funded from Headquarters Reserve

1. Cover Letter. A PHA submitting a category 3 application shall identify the purpose of the application (see Section I.C.1 of this NOFA).

2. Section 5(j) Certification. The PHA may certify that the units requested are required to comply with court orders or directions of the Secretary; or, as appropriate, the section 5(j) certification applicable to category 4 (Other) applications (see Section III.E.2. below). Court orders must be identified.

(**Note:** Category 3 needs typically are not fulfilled through the application process.)

E. "Other" Applications

Applicants are encouraged to review the rating criteria (Section IV.E. of this NOFA) to ensure rating factors have been addressed in the application. "Curable technical deficiencies" (Section IV.B. of this NOFA) relate only to items that would not improve the substantive quality of applications relative to rating factors. A PHA may file only one application per locality under this category.

1. Cover Letter. Applicants for "other" public housing development units (category 4), must state whether they will accept fewer units than applied for. Refusal to accept fewer units may result in an application not being selected if funds are not sufficient for the full number of units.

2. Section 5(j) Certification. The PHA must certify to one of the following, pursuant to section 5(j) of the USHA (select E.2.a or E.2.b.):

(a) The units requested (limited to 100 or fewer) are needed for family housing to satisfy demands not being met by the section 8 existing or voucher rental assistance programs; *or*

(b) 85 percent of the PHA's dwelling units (select (1), (2), or (3)):

(1) Are maintained in substantial compliance with the section 8 housing quality standards (24 CFR 882.109); or

(2) Will be so maintained upon completion of modernization for which funding has been awarded; or

(3) Will be so maintained upon completion of modernization for which applications are pending that have been submitted in good faith under section 14 of the USHA (or a comparable State or local government program), and that there is a reasonable expectation, as determined in writing by HUD, that such application would be approvable; or will be so maintained upon completion of modernization under the Comprehensive Grant program.

3. Funding Preference in Accordance With Section 6(p). Section 6(p) of the USHA requires HUD to provide a

funding preference for applications in areas with an inadequate supply of housing for use by low-income families (i.e., a "tight" housing rental market). The implementation of this preference, shall be in accordance with the process described in Section V.A.2 of this NOFA.

(a) The PHA must furnish data relative to rental vacancy rates in the market area where the project is proposed. This data should include a description of the data sources and methods used to obtain survey information. (It is recommended that PHAs consult with local community development agencies relative to their housing needs before submitting applications under this NOFA, since most of these agencies will have participated in the development of a Comprehensive Housing Affordability Strategy (CHAS) or Consolidatd Plan.)

(b) Factors such as the following will provide evidence of conditions which, when taken together, will demonstrate a pattern of inadequate supply (generally, no one factor, taken alone, is conclusive):

(1) The current rental housing vacancy rate is at a low level (typically six percent or lower) which results in housing not being available for families seeking rental units (unless the housing market area is not growing and, as a result, is experiencing low levels of demand);

(2) The annual production of rental housing units is insufficient to meet the demand arising from the increase in households, or, where there is little or no growth, is insufficient to meet the demand arising from net losses to the available inventory;

(3) The shortage of housing is resulting in rent increases exceeding those increases commensurate with rental housing operating costs; and

(4) A significant number or proportion of section 8 certificate/voucher holders are unable to find adequate housing because of the shortage of rental housing, as evidenced by PHA data showing a lower-than-average percentage of units under lease and a longer-than-average time required to find units (typically, less than 85 percent lease up within 60 days).

4. Documentation to Demonstrate Need. The PHA must submit documentation, such as waiting list description or PHA vacancy rate data, to demonstrate need for the proposed public housing, to assist the HUD Field Office in its determination of need and market in accordance with Section IV.C.8.b of this NOFA.

5. Additional Rating Points. Category 4 (other) applications may obtain additional rating points (see Section IV.E.8 of this NOFA) if the PHA furnishes additional data regarding any of the following:

(a) "Partnerships." PHAs are encouraged to form "partnerships" consisting of cooperative or contractual arrangements with community-based entities for the purpose of developing housing so that the housing fits into the community and is seen as an integral part of it. "Community-based entities" include private non-profit or for-profit entities with experience in the development of low and moderate income housing, or that are skilled in the delivery of services to families who are residents of public housing. "Cooperative or contractual arrangements" include those that will facilitate development (including management of the units) that will enhance the long-term viability of the development; and those arrangements that the PHA has for the delivery of services (such as child care, education, and economic opportunities) made available to residents of public housing. The PHA should indicate who the entity (or entities) are, the qualifications of the entity and its principals, and the role they play or will play in the development, management, or service delivery process which will lead to better acceptance of public housing in the community. Such cooperative arrangements require substantial involvement by the non-PHA partner in at least one of the following areas: design, management, development, site selection, representation to the community, or service delivery. 24 CFR Part 85, regarding procurement, applies to any such cooperative arrangement. With respect to the delivery of services, costs for such services are not eligible to be paid from public housing development funds. The PHA must also certify that its selection of the cooperative entity (or entities) was in compliance with State and local law.

[**Note:** If procurement requirements cannot be complied with before the application deadline date, the PHA may submit a statement with its application describing the anticipated arrangement and certifying that it will undertake such a cooperative relationship and that such a relationship will comply with federal/state and local law.]

(b) Mixed Income Development. In order to encourage the development of public housing in metropolitan areas that will be less identifiable as public housing, PHAs are encouraged to develop units whereby public housing would be mixed with market-rate dwellings so that they are indistinguishable. Specifically, in order to receive the maximum points for this factor, a PHA must propose to develop or acquire units or sites in developments where the non-public housing units require incomes that, on average, are at or above 80 percent of median. A PHA also may receive points for acquisitions of units or sites in developments where the non-public housing units require incomes that, on average, are at or above 50 percent of median.

(c) Past compliance with section 3. The PHA may submit evidence that over the past five years it has met any commitments made under the provisions of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C., 1701u), as amended from time to time, and the implementing regulations for section 3 at 24 CFR part 135. If the PHA does not have development experience, it may instead submit evidence related to such experience with the modernization program.

(d) Proposed compliance with section 3. The PHA may submit its goals for complying with section 3 employment and training with regard to the public housing development application being filed under this NOFA.

(e) Support for local initiatives. If the application proposes a project which, as evidenced by a letter from local officials, actively supports an area of local initiative such as a Community Development Block Grant, urban revitalization, Empowerment Zone/ Enterprise Community, or other similar local activity, or includes a commitment for a donation to the project in the event it is selected for funding, the PHA should describe the activity.

(f) Resident Initiatives. If the PHA is working with residents to establish and/ or foster resident empowerment activities (such as establishing Resident Corporations or Resident Management Corporations), the activities should be described.

(g) Preservation of Low-Income Housing. The PHA should describe any means by which use of public housing development funds will preserve low-income housing resources currently available to the community.

F. Applications Covering State or Locally-Assisted Units

Applications for conversion of State- or locally-assisted units or federally assisted public housing are eligible for assistance under this NOFA.

G. Major Reconstruction of Obsolete Projects (MROP).

The Department will fund no MROP in fiscal 1995, unless the Department determines that such funding is necessary from Headquarters Reserve in relation to litigation settlements, court orders or litigation avoidance.

H. Ineligible Applications

Applications for intermediate care facilities and nursing homes may not be approved under this NOFA.

IV. Field Office Processing of Applications

A. Submission of Applications

The cover letter of all applications must be marked with the date and time of receipt, along with the initials of the Field Office employee accepting the application. Applications received after the date and time specified at the beginning of this NOFA will be returned to the applicant. The PHA should obtain a "Return receipt" or similar evidence of delivery when applications are delivered via other means (U.S. Mail, private mailing firms, etc.).

B. Initial Screening

1. Immediately after the deadline for receipt of applications, the Field Office will screen each application to determine whether all information and exhibits have been submitted.

(a) If any application lacks any technical information or exhibit, or contains a technical mistake, the PHA will be advised in writing and will have 14 calendar days from the date of the issuance of HUD's notification to deliver the missing or corrected information or documentation to the Field Office.

(b) Curable technical deficiencies relate only to items that would not improve the substantive quality of a category 4 application, relative to the ranking factors.

(c) If Form HUD 52470 (Application) is missing, the PHA's application will be considered substantively incomplete, and therefore ineligible for further processing. If other forms are missing, such as Form HUD 50070 (Drug Free Workplace Certification) or if there is a technical mistake, such as no signature, or an unauthorized signatory on a submitted form, the PHA will be given an opportunity to correct the deficiency.

2. An application that does not meet the applicable threshold and NOFA requirements after the 14-day technical deficiency period will be rejected from processing and determined to be unapprovable.

3. Applications proposing housing in areas also served by the Rural Housing and Community Development Service (RHCS) (formerly known as Farmers Home Administration) are subject to coordination with RHCS to assure that assisted housing resources to be provided are not duplicative. The State RHCS office shall be advised that an application for public housing has been received and is being considered for funding, and be provided an opportunity to comment on the application.

4. The responsibility for submitting a complete application rests with the PHA. The failure of the Field Office to identify and provide a notice of deficiency to the PHA shall not relieve the PHA of the consequences of failure to submit a complete application.

C. Application Threshold Approvability.

After initial screening and upon expiration of the deficiency "cure" period, complete applications will be examined for threshold approvability. Applications that fail one or more of the threshold criteria will be rejected from processing and determined to be unapprovable. All applications for public housing development funds must meet the following thresholds to be determined approvable:

1. The PHA may not have any litigation pending which would preclude approval of the application. The PHA must be legally eligible to develop, own, and operate public housing under the USHA and have:

(a) Approved and current PHA organization documents;

(b) Local cooperation agreements to cover units under management, in development, and the units requested (Form HUD 52481), and any other required local authority, or evidence the Department finds sufficient that such cooperation agreements can be obtained in a timely fashion;

(c) A properly executed and complete PHA Resolution (Form HUD 52471), required with respect to all applications and referring to the need for front-end funding, if requested, and a Local Governing Body Resolution (HUD 52472) which approves the request for front-end funds, if front-end funds are requested. (Note: By executing the PHA Resolution, the PHA certifies that it will comply with Title II of the Americans with Disabilities Act (42 U.S.C. 12131) and the implementing regulation at 28 CFR part 35. The PHA Resolution also certifies to the PHA's intent to comply with all requirements of 24 CFR part 941. These requirements include: nondiscrimination under the applicable civil rights laws; the requirements imposed by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601–4655); the accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and HUD's implementing regulations at 24 CFR part 8; and section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u), and HUD's implementing regulations at 24 CFR part 135.

2. The category of application is eligible under this NOFA (see Section II.B of this NOFA).

3. If new construction (conventional or turnkey) has been applied for, the PHA has provided a cost comparison or a certification with documentation (see Section III.B. of this NOFA), and has stated what is to be done with the application if new construction is not approvable.

4. No application shall be determined to be approvable if the PHA has failed to return excess advances received during development or modernization, or amounts determined by HUD to constitute excess financing based on a HUD-approved Actual Development Cost Certificate (ADCC) or Actual Modernization Cost Certificate (AMCC), unless HUD has approved a pay-back plan.

5. There are no environmental factors, such as sewer moratoriums, precluding development in the requested locality.

6. The following certifications are included in the application and have been executed by the appropriate person(s):

(a) Form HUD–50070, Drug-Free Workplace;

(b) Form HUD–50071, Certification for Contracts, Grants, Loans and Cooperative Agreements;

(c) Form SF–LLL, Disclosure of Lobbying Activities, if applicable;

(d) Form HUD–2880, Applicant/ Recipient Disclosure/Update Report;

(e) FSS certification;

(f) Section 5(j) certification appropriate to the category of application;

(g) Certification that the application is consistent with Environmental Justice Executive Order 12898, in that the proposed public housing will be developed only in environmentally sound and desirable locations and will avoid disproportionately high and adverse environmental effects on minority and low-income communities.

7. The PHA must be in compliance with civil rights laws and equal opportunity requirements. A PHA will be considered to be in compliance if:

(a) As a result of formal administrative proceedings, there are no outstanding findings of noncompliance with civil rights laws unless the PHA is operating in compliance with a HUD-approved compliance agreement designed to correct the area(s) of noncompliance;

(b) There is no adjudication of a civil rights violation in a civil action brought against it by a private individual, unless the applicant demonstrates that it is operating in compliance with a court order designed to correct the area(s) of noncompliance;

(c) There is no deferral of Federal funding based upon civil rights violations;

(d) There is no pending civil rights suit brought against the PHA by the Department of Justice; or

(e) There is no unresolved charge of discrimination against the PHA issued by the Secretary under section 810(g) of the Fair Housing Act, as implemented by 24 CFR 103.400.

8. For "other" applications only:

(a) The Field Office must determine that the PHA has or will have the capability to develop and manage the proposed housing. The Field Office shall determine capability based upon the PHA's overall score under the Public Housing Management Assessment Program (PHMAP) (see 24 CFR part 901), the PHA's most recent fiscal audit, and outstanding HUD monitoring findings. A PHA shall not be determined to lack administrative or development capability simply because it has no recent experience in developing or managing public/assisted housing.

(b) The Field Office must determine that there is a need and a market for the proposed household type and bedroom sizes, taking into consideration the documentation submitted by the PHA on housing supply and demonstration of need, any local plans, and other assisted housing (e.g., HUD or RHCS) existing and proposed (including housing funded but not completed).

9. With respect to all applications the Department reserves the right to require the PHA to utilize an alternative administrator to carry out the applicable public housing development program.

D. Threshold Approvable Applications

Applications in categories 1, 2, and 3 will be determined approvable if they successfully pass the threshold review. Threshold-approvable applications in category 4 ("other") will be reviewed and analyzed by the Field Office.

E. "Other" Development Applications

Threshold approvable "Other" applications will have points assigned by a Rating Panel(s) on the basis of Field Office analysis and PHA documentation relating to the following criteria:

Criteria	Points
1. *Relative Need.* The application proposes a development for a locality which has been previously under-funded for the household type (family or elderly) requested, relative to the need for housing for the same household type in the respective metropolitan or non-metropolitan portion of the Field Office's jurisdiction. [Select (a), (b) or (c)]:	
(a) Housing need in the locality specified in the application has been severely under-funded. (A locality with a percentage of need served that is equal to or less than one-half the Field Office percentage will be determined to be severely under-funded.);	20
or	
(b) Housing need in the locality specified in the application has received a proportionate share of funding or has been moderately under-funded. (A locality with a percentage of need served that is equal to or less than the Field Office percentage, but greater than one-half that percentage will be determined to be moderately under-funded.);	10
or	
(c) Housing need in the locality specified in the application has been over-funded. (A locality with a percentage that is greater than the Field Office percentage will be determined to have been over-funded.);	0
2. *Vacancy Rate.* Select (a) or (b):	
(a) The adjusted vacancy rate in public housing developments under management (as such term is defined in the Public Housing Management Assessment Program, 24 CFR 901 *et. seq.*) is not greater than 3 percent, indicating that the PHA will and can fully utilize the units for which it applied;	10
or	
(b) The adjusted vacancy rate in public housing developments under management is greater than 3 percent but less than 6 percent (or two units if that is greater);	5
3. *Large-Family Housing.* The application is for a public housing development comprising 51 percent or more three bedroom or larger units;	15
4. *Relocation.* The proposed public housing development would primarily assist households displaced or to be displaced by Federal action or a natural disaster in a Federally declared disaster area;	15
5. *Low Density Family Housing.* The application proposes scattered site development to expand housing opportunities;	20
6. *PHA Development Experience.* [Select (a), (b), or (c)]	
(a) The PHA scored at least 90 percent ("A") in Indicator 12 (Development) of PHMAP;	15
or	
(b) The PHA's latest PHMAP score for Indicator 12 (Development) is between 80 and 89 percent; or the Field Office has no information on the PHA's previous development experience to rate the PHA under paragraph (a) above; however, the application demonstrates the capability for, and the expectation of, expeditious quality or other development experience, or submitted a development management contract with an experienced development project manager);	10
or	
(c) The PHA's latest PHMAP score for Indicator 12 (Development) is between 60 and 79 percent; or the PHA has no development experience under either paragraph (1) or (2) above, but the PHA has evidenced staff capability and organization that demonstrates the PHA has the capability for, and the expectation of, expeditious quality development or has submitted a proposed development management contract;	5
7. *PHA Management Experience.* [Select (a), (b), or (c)]	
(a) The PHA's latest PHMAP score (excluding development) is 90 percent or better; and there were no Inspector General audit findings during the PHA's last fiscal audit; and there are no outstanding HUD monitoring findings;	20
or	
(b) The PHA's latest PHMAP score (excluding development) is between 80 and 89; and Inspector General audit findings (if any) have been addressed; and outstanding HUD monitoring findings have been resolved;	10
or	
(c) Choose (1) or (2):	
(1) The PHA's latest PHMAP score (excluding development) is between 60 and 79; and Inspector General audit findings (if any) have been addressed; and outstanding HUD monitoring findings have been resolved;	5
or	
(2) The PHA has no public housing in management, but has management experience in the section 8 program and management reviews or Inspector General audit findings (if any) are being addressed satisfactorily;	5

Criteria	Points
8. *Other Criteria.* (Select any that apply)	
(a) The PHA has certified that it will form, or submit evidence that it has formed, a "partnership" (i.e., a cooperative relationship) with an entity that will play a substantial role in development, design, management, or representation to the community and has described the partnership's role; or the PHA has certified that it will form, or submit evidence that it has formed, a "partnership" with an entity that plays a substantial role in the delivery of services and that these services will be available to residents of the project under development, and has described the partnership's role.	15
(b) Choose (1) or (2) if applicable:	
(1) The PHA has certified that it will develop or acquire units or sites in developments where the non-public housing units require incomes that, on average, are at or above 80 percent of median;	15
or	
(2) The PHA has certified that it will develop or acquire units or sites in developments where the non-public housing units require incomes that, on average, are at or above 50 percent of median;	10
(c) The PHA has submitted evidence that over the past five years it has met any commitments made under the provisions of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C., 1701u), as amended from time to time, and the implementing regulations for section 3 at 24 CFR part 135. (If the PHA does not have development experience, it may instead submit evidence related to its experience with the modernization program.);	10
(d) The application proposes a public housing development which, as evidenced by a letter from local officials, actively supports an area of local initiative such as a Community Development Block Grant, urban revitalization, Empowerment Zone/Enterprise Community, or other similar local activity, or includes a commitment for a donation to the project in the event it is selected for funding;	15
(e) The Field Office, based on documentation submitted by the PHA, has determined that the PHA is working with residents to establish and/or foster resident empowerment activities (such as establishing Resident Corporations or Resident Management Corporations);	10
(f) Preservation of low-income housing. The PHA demonstrates that commitment of development funds will preserve low-income housing resources currently available to the community.	20
Total Possible Points	200

F. Field Office Reports

1. Category 1, 2, and 3 Applications. Each Field Office shall forward its lists (by category) of fair-share exempt threshold-approvable applications to Headquarters within two weeks of the deficiency "cure" period. The lists shall include the project number, total number of units and units by bedroom size, structure type(s), cost areas, funding required and the metropolitan/non-metropolitan designations for each application. Category 1 and 2 applications shall also identify the underlying project and its current status (e.g., approved (date), under review in Field Office, etc.).

2. Category 4. All Field Office reports to Rating Panels on threshold-approvable "other" applications shall be submitted within three weeks of the deficiency "cure" period and include the information described in paragraph F.1., above, the analysis of each application, and Field Office recommendations for funding.

V. Rating Panels

A. Rating Panels

1. General. The Rating Panel(s) shall compile data furnished by Field Offices for category 4 (other) applications, and rate each application based on Field Office analyses, comments, and recommendations.

A list of rated applications shall be forwarded to Headquarters, with copies of Field Office reviews and recommendations, and justifications for Rating Panel rankings. Headquarters shall not modify ratings of category 4 ("other") applications unless a gross error has occurred.

Examples of "gross errors" include, but are not limited to, errors in calculating the vacancy rate in the proposed community, or assigning points for development/management experience based on a PHMAP score that was successfully appealed, or simple errors of arithmetic.

Changes in ratings shall be fully documented, and a copy of the memorandum authorizing the change (and the basis thereof) shall be sent to the Rating Panel and to the Field Office for inclusion in the file and be made available for public inspection. Category 4 applications shall be approved within Areas, to the extent fair share funds are assigned, as follows:

2. "Tight Market" Determination. Headquarters will separate applications (category 4) on the basis of "tight rental housing market" and Rating Panel ratings and Headquarters rankings, and approve them (in the following order) to the extent fair share funds are assigned to their respective Area:

(a) Applications within the same Area in tight rental housing markets which receive 100 or more rating points;

(b) All other applications in the same Area, in rank order, depending on "metropolitan" or "non-metropolitan" funding available.

B. Reservation of Funds

Funds will be reserved in an amount equal to the total development cost limit for the number, structure type, and size of units being approved, "trended" to take into consideration the anticipated cost of construction at the time the construction/rehabilitation contract is expected to be executed; acquisition reservations will be trended to take into account anticipated cost variations between fund reservation and Date of Full Availability (DOFA). The trend shall be calculated by multiplying the project total development cost limit by 6 percent (1.06), rounded to the nearest $50. No amendment funds will be available for these projects in the future.

C. Partial Funding

Partial funding of highly ranked "other" applications within an Area may occur (so long as such projects are determined viable and the PHA has indicated willingness to accept fewer units) to facilitate the funding in rank order of additional applications for highly ranked projects. With respect to categories 1, 2 and 3, partial funding may be provided where the Department determines this to be appropriate.

VI. Checklist of Application Submission Requirements

A. Submission Requirements

PHAs may use the following application checklist which enumerates the submission requirements of Section III of this NOFA:

1. Cover letter;
2. Form HUD 52470, Application for Public Housing Development;
3. Evidence of legal eligibility (if not previously evidenced) with a current General Certificate (HUD 9009);
4. Evidence that the number of units in management, in development, and being requested in this application are covered by Cooperation Agreements (HUD 52481) and any other State/local requirements have been met;
5. HUD 52471, PHA Resolution in Support of Public Housing;
6. HUD 52472, Local Governing Body Resolution, if front-end funds are being requested by the PHA. (Note: If front-end funds are requested, the HUD 52471 must be appropriately modified. See Section III.A.6. of this NOFA.);
7. PHA statement identifying its funding preferences for particular sites if an application covering more than one site is being submitted for category 4 (see Section II.B of NOFA). (Note, however, that no more than one application per locality may be filed under category 4.);
8. PHA statement whether it will accept fewer "other" units than applied for (category 4);
9. HUD 50070, PHA Certification for a Drug-Free Workplace;
10. HUD–50071, Certification for Contracts, Grants, Loans and Cooperative Agreements;
11. Form SF–LLL, Byrd Amendment Disclosure and Certification Regarding Lobbying, only if the applicant determines it is applicable;
12. Form HUD 2880, Disclosure of Government Assistance and Identity of Interested Parties;
13. Section 5(j) certification appropriate to the category of application;
14. Certification of consistency with Environmental Justice Executive Order 12898;
15. Evidence of inadequate housing supply (i.e., a "tight" rental housing market), for category 4 ("Other") units;
16. Evidence (such as waiting list information or PHA vacancy rate data) of need and market for the units requested for category 4 applications;
17. Section 6(h) cost comparison justification, if new construction is requested;
18. FSS program certification if for Category 3 (Headquarters Reserve) or Category 4 ("Other") units;
19. Replacement housing exhibits, if applicable (see section III.C);
20. (Optional) For replacement housing applications, documentation how the application addresses HUD priorities (see section II.C.2).
21. (Optional) For "other" applications, documentation to address the rating factors (see section IV.E.).

B. Application Packets

Forms comprising the application package may be obtained from the HUD Field Office.

VIII. Other Matters

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, implementing section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, 451 Seventh Street, S.W., Room 10276, Washington, D.C. 20410.

B. Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA will not have substantial, direct effects on States, on their political subdivisions, or on their relationship with the Federal government, or on the distribution of power and responsibilities between them and other levels of government. The NOFA will provide PHAs with funding for public housing development.

C. Family Impact

The General Counsel, as the Designated Official for Executive Order 12606, the Family, has determined that the provisions of this NOFA do not have the potential for significant impact on family formation, maintenance and general well-being within the meaning of the Order. To the extent that the funding provided through this NOFA results in additional or improved housing, the effects on the family will be beneficial.

D. Prohibition Against Lobbying Activities: The Byrd Amendment

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying.

Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance. As noted earlier a certification is required, at the time the application for funds is made, that Federally appropriated funds are not being or have not been used in violation of section 319 and that *disclosure* will be made of payments for lobbying with other than Federally appropriated funds. Also, again as noted earlier, there is a standard disclosure form, SF–LLL, "Disclosure Form to Report Lobbying," which must be used to disclose lobbying with other than Federally appropriated funds.

E. Prohibition Against Lobbying of HUD Personnel

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department *and* those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

HUD's regulation implementing section 13 is codified at 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule. Appendix A of this rule contains examples of activities covered by this rule.

Any questions concerning the rule should be directed to the Office of Ethics, Room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington DC 20410. Telephone: (202) 708–3815 (voice/TDD). This is not a toll-free number. Forms necessary for compliance with the rule may be obtained from the local HUD office.

F. Section 112 of the HUD Reform Act 1989

A final rule published in the **Federal Register** on September 7, 1993, amended the definition of "person" to exclude from coverage a State or local government, or the officer or employee of a State or local government or housing finance agency thereof who is engaged in the official business of the State or local government.

Any questions concerning the rule should be directed to the Office of Ethics, Room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708–3815 (voice/TDD). This is not a toll-free number. Forms necessary for compliance with the rule may be obtained from the local HUD office.

G. Prohibition Against Advance Information on Funding Decisions

Section 103 of the HUD Reform Act proscribes the communication of certain information by HUD employees to persons not authorized to receive that information during the selection process for the award of assistance. HUD's regulation implementing section 103 is codified at 24 CFR part 4. That regulation applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by 24 CFR part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted by 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (voice/TDD). (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters Counsel for the program to which the question pertains.

H. Accountability in the Provision of HUD Assistance

HUD's regulations at 24 CFR part 12 implement section 102 of the HUD Reform Act. Section 102 contains a number of provisions designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. The following requirements concerning documentation and public access disclosures are applicable to assistance awarded under this NOFA.

1. Documentation and Public Access. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

2. Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period of less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR part 12, subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

Dated: May 30, 1995.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 95–14732 Filed 6–12–95; 3:59 pm]

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Federal Register

Friday
June 16, 1995

Part IV

Federal Election Commission

11 CFR Part 106, et al.
Public Financing of Presidential Primary and General Election Candidates; Final Rule

FEDERAL ELECTION COMMISSION

[Notice 1995–9]

11 CFR Parts 106, 9002, 9003, 9004, 9006, 9007, 9008, 9032, 9033, 9034, 9036, 9037, 9038, and 9039

Public Financing of Presidential Primary and General Election Candidates

AGENCY: Federal Election Commission.

ACTION: Final rule and transmittal of regulations to Congress.

SUMMARY: The Commission has revised its regulations governing public financing of presidential primary and general election candidates. These regulations implement provisions of the Presidential Election Campaign Fund Act ["Fund Act"] and the Presidential Primary Matching Payment Account Act ["Matching Payment Act"]. The revised rules reflect the Commission's experience in administering these programs during the 1992 election cycle, and are intended to anticipate questions that may arise during the 1996 presidential election cycle.

DATES: Further action, including the publication of a document in the **Federal Register** announcing the effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d) and 26 U.S.C. 9009(c) and 9039(c).

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is publishing today the final text of revisions to its regulations at 11 CFR Parts 106, 9002, 9003, 9004, 9006, 9007, 9008, 9032, 9033, 9034, 9036, 9037, 9038 and 9039 governing public financing of presidential campaigns. On October 6, 1994, the Commission issued a Notice of Proposed Rulemaking ["NPRM"] in which it sought comments on proposed revisions to the public financing regulations. 59 FR 51006 (October 6, 1994). Subsequently, the Commission extended the comment period to provide the regulated community with additional time to comment on the proposed rules. 59 FR 64351 (December 14, 1994). The Commission received written comments from Hervey W. Herron, Common Cause, the Center for Responsive Politics, Public Citizen, the White House Counsel's office, the Republican National Committee, Huckaby and Associates, the Democratic National Committee and Lyn Utrecht of Oldaker, Ryan & Leonard in response to the Notice. The Commission held a public hearing on February 15, 1995, at which four witnesses presented testimony on the issues raised in the NPRM.

The Commission also received two Petitions for Rulemaking that addressed related issues. *See* Notice of Availability on Petition for Rulemaking filed by the Center for Responsive Politics ["CRP"], 59 FR 14795 (March 30, 1994); Notice of Availability on Petition for Rulemaking filed by Anthony F. Essaye and William Josephson, 59 FR 63274 (December 8, 1994). In addition to the comments noted above, the Commission received comments from the Internal Revenue Service, Public Citizen, Common Cause and a joint comment from the Republican National Committee and the Democratic National Committee in response to the CRP Rulemaking Petition. The Commission received comments from the Internal Revenue Service and the Republican National Committee in response to the Essaye/Josephson Petition.

The CRP Petition for Rulemaking sought the abolishment of the general election legal and accounting compliance fund ["GELAC"] and is discussed in connection with 11 CFR 9003.3, below. The Essaye/Josephson petition asked the Commission whether expenses incurred in connection with the meeting of the Electoral College are covered by the Fund Act or the Federal Election Campaign Act ["FECA"], 2 U.S.C. 431 *et seq.* This is a complex question that the Commission believes deserves further consideration. Therefore, the issue has been dropped from this rulemaking and will be addressed in a separate rulemaking document.

Sections 9009(c) and 9039(c) of Title 26, United States Code, and 2 U.S.C. 438(d) require that any rules or regulations prescribed by the Commission to carry out the provisions of Title 26 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on June 12, 1995.

Explanation and Justification

The Commission has revised several aspects of its regulations governing publicly-financed presidential primary and general election candidates. A detailed, section by section analysis of these changes appears below. The document then discusses some additional proposals that were considered in the course of this rulemaking that were not ultimately incorporated into the final rules.

Part 106—Allocations of Candidate and Committee Activities

Section 106.2 State Allocation of Expenditures Incurred by Authorized Committees of Presidential Primary Candidates Receiving Matching Funds

The Commission is adding a sentence to paragraph (a)(1) of this section to reflect the new attribution of certain expenditures between the primary and the general election limits. See discussion of 11 CFR 9034.4(e), below. The new sentence states that expenditures required to be allocated to the primary election under these new requirements shall also be allocated to particular states in accordance with 11 CFR 106.2.

Part 9002—Definitions

Section 9002.11 Qualified Campaign Expense

The Commission is adding a conforming amendment to paragraph (c) of this section to reflect the new attribution of certain expenditures between the primary and the general election limits. The amendment notes that certain expenditures formerly covered by this paragraph will now be attributed under these new guidelines. See discussion of 11 CFR 9034.4(e), below.

Part 9003—Eligibility for Payments

Section 9003.1 Candidate and Committee Agreements

The new rules contain a number of changes in section 9003.1. In the interests of clarity, the Commission is adding a comma in the last sentence of paragraph (b)(4), which relates to candidate and committee agreements to furnish certain documentation to the Commission. The rules also slightly reword paragraph (b)(9) to more clearly indicate that candidates must agree to pay any civil penalties arising from violations of the FECA, whether provided for in a conciliation agreement or imposed in a judicial proceeding.

Paragraph (b)(10) has been added to require that, as a precondition of their receiving public funds, presidential candidates agree that they will prepare all of their television commercials with closed captioning or so that they are otherwise capable of being viewed by deaf and hearing impaired individuals. Congress added this requirement to 26 U.S.C. § 9003(e) when it enacted section 354 of the Legislative Branch

Appropriations Act of 1992, Pub. L. No. 102–393, 106 Stat. 1764 (1992).

One commenter requested that committees be allowed to pay the costs of closed captioning with funds from their general election legal and accounting compliance fund. However, the Commission views this not as a compliance cost, but rather as a means for committees to get their message out to those who otherwise would not hear it. Thus it is a qualified campaign expense.

Section 9003.3 Allowable Contributions

On March 1, 1994, the Commission received a Petition for Rulemaking from the Center for Responsive Politics requesting that the Commission repeal its rules providing for the use of privately-financed general election legal and accounting compliance funds in presidential campaigns. Specifically, the petitioner sought repeal of 11 CFR 100.8(b)(15) (last two sentences), 106.2(b)(2)(iii)(last sentence), 9002.11(b)(5), 9003.3(a), and 9035.1(c)(1).

The Commission published a Notice of Availability on March 30, 1994, seeking statements in support of or in opposition to the Petition. 59 FR 14794 (March 30, 1994). The Commission received four comments in response to the Petition. Two comments were supportive, while one opposed the reversal of the Commission's longstanding policies regarding legal and accounting costs. The Commission subsequently incorporated the Petition into this rulemaking, and sought further comment on a number of options. The Commission received seven additional comments on the issues raised in the Petition.

The petitioner argued that the Commission's rules allowing private contributions of up to $1,000 for the GELAC undermine the ability of the public financing laws to achieve the objective of eliminating the corrupting influence of large contributions in presidential elections. The Commission's reasons for establishing the GELAC are explained below and in the 1980 Explanation and Justification, 45 FR 43371 (June 27, 1980). The decision to allow the GELAC to accept contributions up to $1,000 is based on the structure of the FECA. As the Supreme Court recognized in *Buckley* v. *Valeo*, 424 U.S. 1, 58 (1976), Congress created contribution limits to combat the reality or appearance of improper influence. Nevertheless, through the NPRM, the Commission sought evidence either supporting or refuting the petitioner's claim that the privately-funded GELAC undermines the public financing regime by allowing the actuality and the appearance of improper influence in presidential elections. No evidence was presented.

As explained more fully below, the Commission has decided not to eliminate the GELAC. The Commission agrees with the commenters who felt that the separate fund for compliance has worked well since the GELAC rules were promulgated in 1980. To repeal them would force presidential campaigns to devote some of their public funds for compliance expenses, instead of using public monies for campaign expenses. One commenter noted that in the absence of a GELAC, committees would face extraordinary pressure to minimize the amount spent on compliance so as to devote as much money as possible to campaigning. Reducing compliance funds may very well reduce committees' abilities to keep good records, thereby increasing the difficulty and duration of post-election audits. Section 431(9)(B)(vii) of the FECA recognizes an exception for the cost of certain legal and accounting compliance services that is not recognized for other types of costs. The elimination of monetary contributions of $1,000 or less for compliance purposes could force some committees to turn to much larger in-kind donations of legal and accounting services to ensure that their compliance obligations are satisfied. *See* 2. U.S.C. § 431 (8)(B)(ix) and (9)(B)(vii). The GELAC is also used to make repayments, which would still need to be funded from private sources if the campaign had no public funds remaining to pay those amounts.

The Petition for Rulemaking also charged that these regulations permit evasion of the prohibition on accepting contributions to defray qualified campaign expenses established by the Fund Act. 26 U.S.C. § 9003(b). Furthermore, the Petition claims that the Commission's regulations violate the spending limits established by the FECA. 2 U.S.C. § 441a.

The Commission is not persuaded that the creation and operation of the GELAC is beyond its statutory authority or inconsistent with the public funding regime established by the Fund Act and the FECA. The regulations first establishing a separate GELAC were duly promulgated pursuant to 2 U.S.C. § 437d(a)(8) and 26 U.S.C. § 9009(b) for the practical reasons explained above. They were transmitted to Congress on June 13, 1980, together with the Explanation and Justification, for the required legislative review period. They became effective on September 5, 1980, after neither House of Congress disapproved them under 26 U.S.C. § 9009(c)(2). This is, as the Supreme Court has noted, an "indication that Congress does not look unfavorably" upon the Commission's construction of the Act. *FEC* v. *Democratic Senatorial Campaign Committee*, 454 U.S. 27, 34 (1981). *See also, e.g., Sibbach* v. *Wilson*, 312 U.S. 1, 16 (1941) ("That no adverse action was taken by Congress indicates, at least, that no transgression of legislative policy was found"). Subsequently, in legislative recommendations to Congress, the Commission has identified funding for compliance activities as an area Congress may wish to clarify, but Congress has not done so to date.

Consequently, the revised rules follow the previous provisions by retaining sections 100.8(b)(15) (last two sentences), 106.2(b)(2)(iii) (last sentence), 9002.11(b)(5), 9003.3, and 9035.1(c)(1). For the reasons set forth, the Petition for Rulemaking filed by the Center for Responsive Politics is denied.

Comments were also requested on several alternative revisions to the GELAC. For example, the NPRM raised the possibility of limiting the amount raised and spent for compliance to a fixed percentage of the general election spending limit. Although one commenter supported limiting the GELAC to 10% of the general election spending limit, or less, several others believed a limit would be artificial, unworkable and unfair, particularly since several factors make compliance costs unpredictable. Hence, to some extent, these costs cannot be controlled by the committee or known in advance. Other commenters opposed limiting the GELAC because they believed limits would not overcome fundamental defects in the current GELAC rules, and that the rules should be repealed.

The Commission agrees that compliance costs can be unpredictable, and therefore concludes that limiting the amount or percentage of the GELAC is not advisable.

The NPRM also expressed concern that fundraising activities for the GELAC could be used to generate electoral support for the candidate's campaign. Accordingly, the NPRM sought comments on whether to continue to permit the GELAC to pay the entire amount of these costs, or whether a fixed percentage of GELAC fundraising costs should be paid by the general election campaign committee.

In response, the petitioner and two commenters questioned the appropriateness of allowing fundraising costs for the GELAC to be paid for by the GELAC on the grounds these

expenses are campaign expenses that should be paid by the general election campaign and subject to the spending limits. On the other hand, several witnesses and commenters pointed out that effective fundraising necessarily involves setting forth what the candidate stands for. Some felt it is not appropriate to use public funds to raise private contributions that are used solely for legal and accounting compliance purposes.

The Commission has concluded that the rules regarding fundraising for the GELAC should remain largely unchanged. The Commission's audit and enforcement processes provide the appropriate mechanisms for ensuring that GELAC fundraising activities (or any other type of expenses paid from GELAC funds) do not involve campaigning for the candidate's election.

However, changes are being made regarding the information to be disclosed in solicitations to prospective contributors. Former section 9003.3(a)(1)(i)(A) required solicitations to clearly state that the contributions are solicited for the GELAC. The NPRM proposed adding language to let contributors know that their money would be used solely for legal and accounting costs. Those supporting the Petition for Rulemaking did not believe the proposed change would resolve the problems they perceived. Others noted that if the required language is lengthy enough, nobody will read it. Hence, the final rules have been modified to require committees to tell contributors that federal law prohibits the use of private contributions to pay a publicly-funded general election candidate's campaign expenses. This new language more clearly conveys to contributors that their contributions to the GELAC will only be used to ensure compliance with the law. The GELAC solicitation must also indicate how contributors should make out their checks, so as to avoid potential confusion regarding the contributor's intent.

Please note that the provisions regarding redesignations and transfers of primary funds to the GELAC in paragraphs (a)(1)(ii)–(iv) have been reorganized for clarity. In addition, new language has been added to resolve questions regarding depositing designated and undesignated contributions in the GELAC. Paragraph (a)(1)(i)(C) states that contributions must be designated in writing for the GELAC to be deposited directly into the GELAC. All contributions not designated in writing for the GELAC must be deposited initially in a primary election account and reported as such. An explanation of the term "designated in writing" for the GELAC is being added as new paragraph (a)(1)(vi). Please note that 11 CFR 110.1(b)(4) covers designations for a presidential primary election. Contributions made out to the candidate's name or the primary committee, unless properly designated in writing for the compliance fund, cannot be deposited in it, and can be transferred to it only if they are properly redesignated by the contributor for the GELAC. Undesignated contributions cannot be deposited in the GELAC, regardless of when they are made or received, and can be transferred to it only if the committee receives a proper GELAC redesignation from the contributor. An exception to the redesignation requirement exists for leftover primary contributions made during the matching payment period; they may be transferred to the GELAC without securing redesignations if they exceed the amount needed to pay remaining net outstanding campaign obligations for the primary and any repayments. In addition, the revised rules permit contributions made after the date of nomination, but not designated in writing for the GELAC, to be redesignated for the GELAC only if they are not needed to pay remaining net outstanding campaign obligations from the primary campaign. The rules also specify that contributions designated in writing or redesignated for the GELAC cannot be matched.

Current paragraphs (a)(2)(i) (A) through (H) of section 9003.3 set forth the permissible uses of GELAC funds. The Petition for Rulemaking, and several commenters, urged the Commission to delete current paragraph (H) allowing GELAC funds to be used to pay unreimbursed costs of providing transportation for the Secret Service and national security staff. Other commenters and one witness urged the Commission to retain this provision, given the alternative of requiring campaigns to pay these costs from their limited campaign funds, even though transporting Secret Service and National Security staff does little to further the campaign.

This provision has been retained in the final rules because the limits on the amounts that can be reimbursed for transporting the Secret Service and National Security staff may be less than the actual cost to the campaign, and because the campaign must transport security personnel who do not provide a campaign-related benefit. However, GELAC funds may not be used to pay transition costs (costs incurred by the President-elect in preparation for the assumption of his or her official duties which are not provided for under the Presidential Transition Act of 1963) (cf. AO 1980–97); legal defense fund expenses (expenses incurred in a judicial, civil, criminal, administrative, state, federal, or Congressional investigation, inquiry or proceeding not related to the Presidential campaign) (cf. AO 1979–37); or legal expenses not related to ensuring compliance with the FECA and the Fund Act, such as contract litigation.

In addition, the Commission has reduced from 70% to 50% the standard amount that the GELAC may pay for computer-related costs, and the corresponding exclusion from the spending limits. See 11 CFR 9003.3(a)(2)(ii)(A), (b)(6) and (c)(6). Some expressed concern that this allocation demonstrated the impossibility of separating compliance expenses from campaign expenses, thereby necessitating repeal of the GELAC rules. One commenter argued that the allowance should be reduced to 10%. On the other hand, others urged the Commission to increase the allowance to 80% or 90% to more accurately reflect the burden of compliance.

The Commission believes that a reduction from 70% to 50% accurately reflects the increased usage of computers for non-compliance campaign-related activities such as scheduling of campaign-related events, electronic communications, word processing, office automation, maintaining political databases, etc. Moreover, campaign committees must incur computer costs to perform basic accounting purposes irrespective of the need to comply with the campaign financing laws. Please note, however, that committees may still deduct a higher amount if they can show that their computer-related compliance costs are higher.

Section 9003.3(a)(2)(iv) has been modified slightly to clarify that funds remaining in the GELAC may only be used to pay debts remaining from the primary or for other lawful purposes pursuant to 2 U.S.C. § 439a if all GELAC expenses have been paid. Two commenters argued that this allows wealthy donors to evade the primary contribution limits and results in corruption of the public financing system. As explained above, the Commission believes that this provision is in keeping with the purpose and structure of the public funding statutes and notes that Congress did not disapprove of the Commission's regulations on transfers of surplus GELAC funds.

Finally, two citations contained in 11 CFR 9003.3(a)(2)(iii) are being revised. The first sentence of this paragraph referred to paragraphs 9003.3(a)(2)(i) (A) through (E). This is being updated to read, "11 CFR 9003.3(a)(2)(i) (A) through (F) and (H)." Also, the previous citation to paragraph 9003.3(a)(2)(i)(F) in the second sentence has been changed to refer to paragraph 9003.3(a)(2)(i)(G). Portions of paragraphs (b) and (c) of section 9003.3 have been replaced with language indicating that certain provisions in paragraph (a) apply to minor party candidates and situations where major party candidates do not receive full public funding.

Finally, the Commission is deleting the reference to final repayment determinations contained in former paragraph (a)(2)(ii)(B), now paragraph (a)(2)(ii)(G), as that term does not appear in the revised repayment process. *See* discussion of 11 CFR 9007.2, below.

Section 9003.4 Expenses Incurred Prior to the Beginning of the Expenditure Report Period or Prior to Receipt of Federal Funds

Former paragraph (a) of this section stated that certain expenditures for polling could be considered qualified campaign expenses for the general election, regardless of when the results of the polling were received. However, the Commission has now decided that polling expenditures should be attributed to the primary or the general election limits based on when the results are received. See discussion of 11 CFR 9034.4(e)(2), above.

The reference to polling in this paragraph has therefore been deleted. The Commission is adding new language referring readers to the new provisions at 11 CFR 9034.4(e)(2), to better alert them to this change.

Section 9003.5 Documentation of Disbursements

Section 9003.5(b)(1)(i) sets forth the documentation required for disbursements in excess of $200. Under the previous rules, a canceled check, negotiated by the payee, was required in most situations, but not when the committee presented a receipted bill from the payee stating the purpose of the disbursement. The revised rules in this section require committees to provide canceled checks negotiated by the payees for all disbursements over $200. One witness opposed these changes, and urged more flexibility in the requirements for documentation. However, this change will assist the Commission's audit staff in verifying that public funds are spent on qualified campaign expenses. Committees should already have canceled checks in their possession, so production would not be burdensome. New paragraph (b)(1)(iv) indicates that the purpose of the disbursement must be noted on the check if it is not included in the accompanying documentation. Please note that, as in the past, the revised rules require that documentation in addition to the committee's check be provided for disbursements exceeding $200.

Paragraph (b)(3) of this section has also been changed to include individuals who are advanced $1000 or less for travel and subsistence in the definition of payee. The $500 limit in the previous rules was raised to reflect current prices.

Part 9004—Entitlement of Eligible Candidates to Payments; Use of Payments

Section 9004.4 Use of Payments

Winding Down Costs; Gifts and Bonuses

New paragraph (a)(5) of section 9004.4 addresses the use of public funds to pay for gifts and bonuses for campaign staff and consultants. It generally follows new language in section 9034.4, which is discussed below. New language is being added to section 9004.4(a) to allow the GELAC to pay 100% of salary and overhead expenses incurred after the end of the expenditure report period. These expenses are presumed to be solely to ensure compliance with the FECA and the Fund Act.

One commenter questioned why computer expenses were not included in the proposed language when they were included in the corresponding primary regulations. The rules have been revised to recognize that the GELAC may pay 100% of computer expenses incurred after the end of the expenditure report period.

Responsibility for Lost or Damaged Equipment

Accounting procedures employed by the Commission make allowance for reasonable loss and normal damage of equipment leased or purchased by a campaign. However, the Commission has at times encountered incidents involving lost or damaged equipment that do not fall into these categories. The Notice of Proposed Rulemaking therefore sought to clarify how such situations should be handled in the audit process.

The Commission first sought comment on whether, as a precondition for the receipt of public funds, the candidate should agree to meet certain standards in handling public monies as well as in overseeing the use of and accounting for public funds. Such standards would have been specified at 11 CFR 9003.1(b). However, the Commission now believes the question of liability for lost or damaged equipment is best handled by amending 11 CFR 9004.4(b) to clarify that the cost of lost or misplaced items may be considered a nonqualified campaign expense for purposes of these rules.

The Commission recognizes that there are varying degrees of responsibility in this area. The new rules therefore state that certain factors should be considered prior to any determination that a repayment is required. In particular, whether the committee demonstrates that it made careful efforts to safeguard the missing equipment would be of primary importance in this regard. Whether the committee sought or obtained insurance, the type of equipment involved and the number and value of items that were lost will also be among the factors considered in making this determination. However, the Commission has dropped as a stated factor the value of the lost equipment as a percentage of the total value of the equipment leased or owned by the committee, as the loss of even a small percentage of a committee's equipment can involve a sizeable amount of public funding.

One commenter argued that the phrase "used for any purpose other than * * * to defray [ ] qualified campaign expenses" in 26 U.S.C. §§ 9007(b)(4) and 9038(b)(2), stating the reasons for which the Commission can require a repayment, connotes intentional conduct, so the Commission is barred from ever requiring a repayment for lost or misplaced items. While the word "purpose" can connote "intent," the Commission does not believe the two are synonymous in this context.

The Commission routinely determines that funds have been "used for the purpose" of nonqualified campaign expenses, regardless of the specific intent behind particular disbursements. Barring the Commission from inquiring into such situations would run counter to its long-standing practice in this area, and would also be inconsistent with the responsibility to ensure that public funds are properly used.

One commenter proposed a number of safeguards a committee could adopt to help ensure that losses are kept to a minimum. These include (1) maintaining a written inventory of equipment, (2) establishing and disseminating written procedures for handling of equipment by the staff, (3) maintaining and implementing security

procedures that limit access to the premises on which equipment is used and ensuring that equipment cannot be removed from the premises without appropriate written authorizations, (4) limiting use of vehicles to designated individuals, (5) maintaining a check-out system for portable equipment such as cellular telephones, and making individuals personally liable for return of the equipment, (6) obtaining insurance where economically prudent in accordance with the standards of the insurance industry, (7) establishing a procedure for reconciling inventory of equipment, in accordance with recognized accounting standards, when offices are closed, and (8) establishing procedures for handling of funds, including the handling of cash and writing of checks, that generally conform to recognized standards for internal controls established by the American Institute of Certified Public Accountants.

These are sound business practices that, if followed, should greatly reduce the possibility of loss. The Commission plans to recommend in the Financial Control and Compliance Manuals prepared in connection with the 1996 Presidential election that committees implement these or comparable standards.

This commenter further argued that, if a committee could demonstrate "substantial compliance" with these guidelines, the Commission should avoid an "item by item" examination of lost or misplaced items. While committees that follow these standards should have little problem with loss, the fact that they have done so should not preclude the Commission from ever challenging a loss, especially where costly items are involved.

The Notice sought comment on another approach, that of limiting the dollar amount of lost property that could be considered a qualified campaign expense. If a committee lost goods worth more than the specified amount, any amount over that figure would be a nonqualified campaign expense. This would have the advantage of focusing the Commission's resources on only the more serious instances, while recognizing that some loss is inevitable in large, lengthy campaigns.

The Commission believes this approach has merit, but feels it is inappropriate to include an actual dollar figure in the text of the rules. Rather, the Commission may address this matter in the context of the confidential materiality thresholds established in connection with each audit cycle.

Conforming Amendment

The Commission is moving paragraph (c) of 11 CFR 9004.4 to new 11 CFR 9007.2(a)(4). This paragraph, which deals with permissible sources of repayments, is more properly located in the section dealing with repayments.

Section 9004.5 Investment of Public Funds

Section 9004.5 of the existing regulations allows a committee to invest public funds or use them in other ways to generate income, provided that an amount equal to the net income derived from those investments, minus any taxes paid, is paid to the Treasury. Section 9007.2(b)(4) also lists the receipt of any income as a result of investment or other use of payments from the Fund pursuant to 11 CFR 9004.5 as one of the bases for requiring committees to make payments to the Treasury.

The final rules revise section 9004.5 to clarify that the payment requirement applies to any use of public funds that results in income to the committee, regardless of whether the committee engaged in that use with the intention of generating income. The final rules also contain a conforming amendment to the introductory language of section 9007.2(b)(4), clarifying that the receipt of income from any use of payments from the Fund is a basis for requiring payment to the Treasury. The Commission received no comments on these provisions.

These revisions ensure that any income received through the use of pubic funds benefits the pubic financing system. If a committee loses an item that is insured, and the insurance proceeds exceed the cost of replacing the item, such excess will be considered income under sections 9004.5 and 9007.2(b)(4). However, these rules are not meant to require payment of income that qualifies as exempt function income under section 527(c)(3) of the Internal Revenue Code, 26 U.S.C. 527(c)(3), such as receipts from fundraising activities permitted under 11 CFR 9003.3.

Section 9004.6 Expenditures for Transportation Made Available to Media Personnel; Reimbursements

Section 9004.6 of the existing rules has been reorganized for clarification purposes with only minor substantive changes. The revised version operates largely the same as the existing rule. Generally, expenditures for transportation and other services provided to media representatives, Secret Service personnel, and national security staff will be qualified campaign expenses and, with the exception of costs related to Secret Service and national security personnel, will count toward the overall expenditure limits in section 9003.2. However, committees may seek reimbursement for these expenses, and may deduct reimbursements received from media representatives from the amount subject to the spending limit, in accordance with paragraph (c) of the revised rule.

Paragraph (b) limits the amount of reimbursement a committee can seek from a media representative to 110% of that representative's pro rata share of the actual costs of the transportation and services made available. Any reimbursement received in excess of that amount must be returned to the media representative under paragraph (d)(1). Paragraph (b)(2) sets out the formula for determining a media representative's pro rata share of the costs of transportation and services made available.

Paragraph (c) states that the committee may deduct the reimbursements received from media representatives from the amount of expenditures subject to the overall limitation. The rule limits the amount of this deduction to the actual cost of the transportation and services provided to media representatives. However, the rule also allows the committee to deduct an additional amount of the reimbursements received from media representatives, representing the administrative costs of providing these services and seeking reimbursement for them. Generally, this deduction is limited to 3% of the actual cost of the transportation and services provided to the media representatives. However, the committee may deduct an amount in excess of 3% if it can document the total amount of administrative costs actually incurred.

Paragraph (c)(2) clarifies that "administrative costs" includes all costs incurred by the committee in providing these services and seeking reimbursement for them. Thus, any costs that are not part of the actual cost of the transportation and services made available are administrative costs, regardless of whether they are incurred directly by the committee or by an independent contractor hired to make travel arrangements and/or seek reimbursements. If the committee uses a contractor, and the contractor charges the committee a fee for providing these services, the fee charged is part of administrative costs. The contractor's expenses and fees are not part of the actual costs for which the committee may seek reimbursement under paragraph (b)(1). Likewise, if the committee accepts credit card payments

from media representatives, any credit card fee, commission or discount is an administrative cost.

Paragraph (d) requires the committee to return any reimbursement received in excess of 110% of the actual pro rata cost of the transportation and services made available to the media representative providing the reimbursement. In addition, any amount in excess of the amount deductible under paragraph (c) that has not been returned to a media representative must be paid to the Treasury. For example, if a representative's pro rata cost is $1,000, the committee can bill the representative for $1,100. Assuming the committee claims the standard 3% to cover its administrative costs, it can deduct up to $1,030 from the amount of expenditures subject to the limit. Any reimbursement received in excess of $1,100 must be returned to the media representative. Any portion of the remaining amount that exceeds the $1,030 that can be deducted from the spending limit must be paid to the Treasury.

Paragraph (e) requires the committee to report disbursements made in providing these services as expenditures under 11 CFR 104.3(b)(2), and to report any reimbursements received as offsets to operating expenditures under 11 CFR 104.3(a)(3)(ix).

The final rule contains two changes to the existing rule that reflect current practice. Generally, a media representative's pro rata share of the actual cost of transportation and services made available is determined by dividing the total costs of the services provided by the total number of persons to whom the services are made available. However, the new rule contains a special formula for determining the pro rata cost of transportation on a government conveyance to a city not served by regularly scheduled commercial airline service. See 11 CFR 9004.7(b)(5)(i)(C). Committees should not include national security staff in the total number of persons to whom the services were made available when determining pro rata cost in this situation. This formula places incumbent candidates on an equal footing with challengers, who are not required to transport national security personnel. *See* discussion of section 9004.7, below.

The new rule also clarifies that the administrative costs incurred by the committee in providing these services and seeking reimbursement for them must be included in the amount reported as an expenditure under paragraph (e).

Two commenters expressed general support for the Commission's efforts to reorganize this section. However, they also urged the Commission to treat billed out unreimbursed media transportation expenses the same as unreimbursed expenses associated with transporting Secret Service and national security personnel, by excluding these expenses from the spending limit and allowing the use of GELAC funds to reimburse the committee for these expenses.

The Commission has not adopted these recommendations because committees are now better able to recover the full cost of providing these services to media representatives than they were in the past. Committees can require media representatives to provide advance payment through the use of a credit card. If a representative fails to pay, the committee may, if it chooses, deny the representative access to the services being provided.

A review of one 1992 general election committee, and its associated primary committee, clearly demonstrates that this policy does not impose a financial burden. The two committees sought reimbursement from media representatives for a combined total of about $7 million in transportation expenses. Both committees collected more than 99% of the amount they billed. Since the rules allow the committees to bill the representatives for 110% of actual cost, they received about $7.5 million in reimbursements. Each committee received more than 109% of the cost of the services they provided. Thus, notwithstanding the failure of some representatives to provide reimbursement, the committees received payments substantially in excess of the costs they incurred.

In contrast, the amount of reimbursement received from Secret Service and national security personnel is limited by the rules of other federal agencies, not the FEC, and in some cases is not enough to cover the costs of transporting these persons. Allowing committees to use GELAC funds to cover the unreimbursed amounts ensures that transporting these persons does not deplete the public fund.

Consequently, the Commission has decided to continue its current policy of including unreimbursed media transportation expenses in the amount subject to the spending limit. It has also decided not to allow committees to pay these unreimbursed expenses with GELAC funds.

Section 9004.7 Allocation of Travel Expenditures

The NPRM sought comments on modifying 11 CFR 9004.7 to address several issues regarding the cost of campaign-related travel using government airplanes, helicopters and other vehicles. Please note that these rules apply to travel on federal government conveyances, and state or other government conveyances. The rules contemplate that for plane flights between cites served by a regularly scheduled commercial airline service, the campaign must reimburse the appropriate governmental entity for the first class airfare, and that this amount is treated as a qualified campaign expense. New language in section 9004.7(b)(5)(i) specifies that, for travel by airplane, the amount of the lowest unrestricted non-discounted first class commercial airfare available for the time traveled is to be used. Discounted fares that are subject to restrictions on the dates and times of travel, or restrictions on changing flights, are not comparable to the service provided when the campaign uses a government conveyance. Several commenters and witnesses supported this new language.

Under section 9004.7(b)(5)(v), campaign committees are responsible for determining the first class fare at the time of the flight to ensure that the right amount is paid to the appropriate government entity, and to ensure that they maintain documentation supporting these amounts. The lowest unrestricted non-discounted first class airfare is available from several sources including travel agents, and on-line services. Unfortunately, it is not possible to specify a single source for this information.

Questions also arose regarding cities that are served by regular air service, but first class flights are not available. In this case, the revised rules specify that committees should use the lowest unrestricted non-discounted coach fare available for the time traveled. This approach is consistent with the valuation method established by the Select Committee on Ethics of the United States Senate for the use of private aircraft. *See* Interpretive Ruling No. 412, Select Committee on Ethics, United States Senate, 101st Cong., 1st Sess., S. Prt. 101–18 at 251–52 (1989). It is also consistent with the valuation methods used by the House of Representatives' Committee on Standards of Official Conduct with respect to gifts of private transportation not associated with official travel. *See*, Valuation of Gifts of Transportation on Private Aircraft, Committee on

Standards of Official Conduct, Letter dated June 11, 1987. Several witnesses and commenters supported this approach.

For cities not served by regularly scheduled commercial service, the rules continue to specify that the amount to be reimbursed is the charter rate. The NPRM had proposed using the charter rate for a comparable airplane of similar make, model and size. Although that would be consistent with the approaches used by the Congressional Ethics Committees, several commenters and witnesses noted that there are no aircraft comparable to Air Force I and Air Force II, which are specially designed in terms of communications equipment and security. It was also pointed out that the Commission's proposals diverged from the approach taken in AO 1984–48 and the rules in 11 CFR 106.3(e).

It is not feasible to follow precisely the same approach as 11 CFR 106.3(e) because that rule governs non-presidential candidates who are not accompanied by the Secret Service. Accordingly, the final rules have been revised to indicate that the charter rate may be used for an aircraft sufficient in size to accommodate the campaign-related travelers, including the candidate, plus the news media and the Secret Service. Under this approach, campaigns having the use of government aircraft will incur approximately the same cost as campaigns that must charter a plane sufficient to hold campaign staff, media and Secret Service personnel.

The revised regulations address several questions that have arisen regarding the costs of "positioning" flights needed to bring the government aircraft from one stop where it dropped off the candidate and campaign staff to another stop where it will pick them up to continue the trip or return to the point of origin. New language in section 9004.7(b)(5)(ii) incorporates the Commission's previous practice regarding positioning flights. Thus, committees must pay the appropriate government entity for the greater of the amount billed by the government entity or the applicable fare for one passenger. This approach recognizes that positioning flights are campaign-related, and therefore these costs are properly treated as qualified campaign expenses. Several commenters and witnesses argued there should be no charge for positioning flights because commercial airlines do not charge to bring their planes to the city of departure. However, this argument fails to reflect the fact that charter services do build these costs into their price structures. Several commenters also noted that the Commission has not previously required committees to pay the costs of fuel and crew time for positioning flight. The proposed language regarding the payment for fuel and crew costs has been deleted from the final rules because it would be burdensome for committees to absorb these costs.

Paragraph (b)(5)(iii) in section 9004.7 contains provisions regarding travel on federal or state government conveyances other than airplanes. For travel by helicopter or ground conveyance, the commercial rental rate should be paid for a conveyance sufficient in size to hold those traveling on behalf of the campaign, plus media representatives plus Secret Service personnel. This paragraph has been modified from the language previously included in the NPRM because there is no conveyance comparable in terms of security and communications to those used by the President and Vice President. Additional guidance on this area can be found in Advisory Opinion 1992–34. Please note that in the case of a presidential candidate who is also a state official, the equivalent rental conveyance does not need to be able to hold state police or other state security officers.

Section 9004.7(b)(5)(iv) continues to require payment for the use of accommodations paid for by a government entity. Under 11 CFR 100.7(a)(1)(iii)(B), the committee should use the usual and normal charge in the market from which it ordinarily would have purchased the accommodations. The term "accommodations" includes both lodging and meeting rooms.

New paragraph (b)(8) of section 9004.7 explicitly reflects Commission policy that travel on corporate conveyances is governed by 11 CFR 114.9(e). One witness suggested changing section 114.9(e) to include the lowest unrestricted nondiscounted coach fare for travel on corporate aircraft between cities where there is no first class service. Such a change is beyond the scope of this rulemaking.

Finally, new language in paragraph (b)(2) provides additional guidance as to when a stop will be considered campaign-related. It follows the Commission's previous decisions in AOs 1994–15 and 1992–6 that campaign activity includes soliciting, making or accepting contributions, and expressly advocating the nomination, election or defeat of the candidate. *See, e.g.*, AOs 1994–15, 1992–6, and opinions cited therein. In these opinions, the Commission also indicated that the absence of solicitations for contributions or express advocacy regarding candidates will not preclude a determination that an activity is campaign related. Hence, the revised rules include other factors the Commission has considered in determining whether a stop is campaign-related. Please note that this section continues to provide that incidental campaign-related contacts during an otherwise noncampaign-related stop do not cause the stop to be considered campaign-related.

While several witnesses and commenters favored inclusion of express advocacy and contribution solicitations as tests of whether a stop is campaign-related, some felt that the additional factors were subjective, workable, failed to provide sufficient guidance, and exceeded the Commission's authority given the language in *Buckley*, 424 U.S. at 79–80, equating "expenditure" with express advocacy, not mere issue advocacy. Several suggested creating a rebuttable presumption that a stop is not campaign-related in the absence of express advocacy or the solicitation, making or acceptance of contributions. The difficulty with this type of narrow interpretation of *Buckley* is that if a stop is not campaign-related because there is no express advocacy of the candidate's selection or defeat, then the costs of the stop cannot be considered qualified campaign expenses, and cannot be paid for from public funds.

Please note that paragraphs (b)(2) and (b)(3) of this section have been revised to indicate what should be shown on the itinerary, and to indicate what the official manifest created by the government or charter company must be made available for Commission inspection.

Section 9004.9 Net Outstanding Qualified Campaign Expenses

The NPRM sought comments on a proposal to require primary committees to include a categorical breakdown of their estimated winding down costs when submitting a NOCO statement. The Commission proposed this change in order to obtain more useful information about the committee's remaining obligations.

The Commission has decided to require this breakdown, and has incorporated it into paragraph 9034.5(b) of the primary regulations, which are discussed in detail below. In addition, the Commission has decided to require general election candidates to submit this information with the statements of net outstanding qualified campaign expenses ["NOQCE"] they submit after the general election. Under paragraph 9004.9(a) of the final rules, a general election committee must include a breakdown of the estimated winding down costs listed on the NOQCE statement by category and time period. The committee must provide estimates of quarterly or monthly expenses from the date of the NOQCE statement until the expected termination of the committee's political activity. These estimates must be broken down into amounts for office space rental, staff salaries, legal expenses, accounting expenses, office supplies, equipment rental, telephone expenses, postage and other mailing costs, printing, and storage.

Requiring this breakdown will assist the Commission in ensuring that public funds are used only for qualified campaign expenses. It will also ensure that candidates who are eligible for post-election funding receive the amount to which they are entitled.

The Commission is also amending paragraph (d)(1) of this section to provide for a straight 40% depreciation of capital assets that committees include on their post-election statements of net outstanding qualified campaign expenses. Previously, committees could claim a higher depreciation under certain circumstances. This amendment conforms to the Commission's policy of adopting "bright line" rules where feasible throughout the public funding process. The changes to this section generally follow those to 11 CFR 9034.5(c)(1), discussed below.

Part 9006—Reports and Recordkeeping

Section 9006.3 Alphabetized Schedules

The final rules include new section 9006.3, which requires that presidential campaign committee reports containing schedules generated from computerized files list in alphabetical order the sources of the receipts, the payees and creditors. For individuals, including contributors, the list must be in alphabetical order by surname. However, presidential campaign committees are not required to computerize their records if they do not wish to do so. The new provision is intended to remedy situations in which, for example, committees maintain computerized records of contributors in alphabetical order, but file schedules with the order of the names scrambled. That practice makes it very difficult, if not impossible, to locate particular names on the committee's reports if the schedules are voluminous, thereby thwarting the public disclosure purposes of the FECA and making it more difficult to monitor compliance. Alphabetization of lists of contributors is required for contributions to minor and new party candidates. Lists of contributors to the GELAC must also be alphabetized. In the event of a deficiency in the Presidential Election Campaign Fund, where private contributions may be accepted by major party candidates, alphabetical lists of contributors are also required. Unless there is a deficiency in the Fund, major party candidate who accept public funding for the general election may not accept private contributions.

There was no consensus among the witnesses and commenters on this proposal. While some supported it because it furthers full public disclosure, others opposed it on the grounds that it could increase computer costs and increase reliance on computer-driven accounting systems. The Commission notes that committees able to demonstrate such increased computer costs may claim a higher exemption for compliance expenses. One witness stated that accounting software does not currently alphabetize disbursements, debts or obligations, and suggested that committees indicate on their reports whether disbursements are listed by date of invoice, check number or date of payment. However, Commission inquiries indicate that commercial spreadsheet packages sort data in many different ways, including alphabetically. Given that most presidential campaigns use a variation of commercially available software, it should not be difficult for them to use standard database management software to alphabetize the information included on disclosure reports.

Part 9007—Examinations and Audits; Repayments

Section 9007.1 Audits

Further Streamlining the Audit Process

As noted in the NPRM, the Commission took several actions in the 1990–91 review of the public funding rules that have substantially shortened the audit process. These included easing compliance with the state-by-state allocation rules set forth at 11 CFR 106.2, and clarifying the use of subpoenas in presidential audits. *See* 56 FR 35899–900, 35903–04 (July 29, 1991).

The NPRM sought comments on other changes that might further streamline this process. These included publicly releasing the Interim Audit Report ("IAR"), moving up the committee's oral presentation to some earlier point in the process, and compressing or eliminating some stages of the process.

Most of the commenters who addressed this issue opposed further changes to the audit process at this time. They noted that, in part because of changes in the last cycle, the Commission was able to approve all Final Audit Reports for the 1992 presidential elections substantially faster than in earlier cycles. They also noted that issues tend to fall away as the process continues, and argued that the size of the audits and the number of issues involved justify the length of the current process.

Nevertheless, the Commission believes that it is appropriate to further condense the audit process. This will result in more timely audits and a more efficient use of Commission and committee resources.

Accordingly, the Commission is compressing the audit process by eliminating the current IAR. Briefly, the revised process entails an expanded exit conference, including a written Exit Conference Memorandum ("ECM") prepared by Commission staff and presented to the committee at the exit conference; an opportunity for the committee to respond to the ECM; an audit report that contains the Commission's repayment determination; the opportunity for an administrative review of that determination, including the opportunity to request an oral hearing; and a post-review repayment determination and accompanying statement of reasons. These stages are discussed in greater detail below.

Former 11 CFR 9007.1(b)(2)(iii) provided for an exit conference at which Commission staff discussed preliminary findings and recommendations with committee representatives. The revised paragraph states that Commission staff will in addition prepare a written ECM that discusses these findings and recommendations, and provide a copy of the ECM to committee representatives at the exit conference. The listing of potential subjects to be addressed at the exit conference includes those formerly listed with regard to the IAR, but deletes references to Commission findings and enforcement actions, as the Commission will not have made any findings or instituted any enforcement actions at this point of the process.

Revised paragraph (c) gives the candidate and his or her authorized committee 60 calendar days following the exit conference to submit in writing legal and factual materials disputing or commenting on the findings presented in the ECM. The candidate should also provide any additional documentation requested by Commission staff during this period. The language in former 11 CFR 9007.1(c) regarding preparation of an IAR has been deleted, as the IAR is not longer part of the audit process.

Revised paragraph (d) contains many of the procedural provisions formerly found in 11 CFR 9007.1(c), which discussed preparation of the IAR. This paragraph has been renamed "Preparation of audit report," and refers to the report prepared following consideration of written materials submitted in response to the ECM. Revised paragraph (d)(1) notes that this report may address issues other than those discussed at the exit conference. This report also contains the repayment determination made by the Commission pursuant to 11 CFR 9007.2(c)(1).

In addition, former 11 CFR 9007.1(e)(2) has been moved to new paragraph (d)(2). The language has been revised to conform with the Commission's practice of issuing audit reports in their entirety, including all matters noted in the audit process. Former 11 CFR 9007.1(e)(4) has been moved to new paragraph (d)(3), and the language revised to clarify that addenda to the audit report may include additional repayment determination(s).

Revised paragraph (e), which discusses the public release of the audit report, corresponds to former 11 CFR 9007.1(e) (1) and (3), and has been slightly reworded to conform to the new procedures.

Sampling

The Commission is also adding new paragraph (f) to 11 CFR 9007.1 to incorporate sampling and disgorgement procedures that were adopted for use during the 1992 presidential election cycle.

The Commission has a statutory obligation to complete the audits of publicly-funded committees in a thorough and timely manner. In the past, the resources required to conduct reviews of the contributions received by presidential committees contributed to the Commission's difficulty in fulfilling that obligation.

Beginning with the 1992 election cycle, the Commission began to make more extensive use of statistical sampling for audits of contributions received by publicly-financed presidential primary election committees, and to use the sample results to quantify, in whole or in part, the dollar value of any related audit findings. While the Commission continues to conduct a limited non-sample review of contributions received by these committees, most audit testing of contributions and supporting documentation is now done on a sample basis.

The Commission notes that this approach will apply in a general election only to contributions that need to be raised due to a deficiency in the Presidential Election Campaign Fund, to the GELAC, or to contributions raised by new or minor party candidates. See 26 U.S.C. §§ 9003(c)(2), 9006(c); 11 CFR 9003.2 (a)(2) and (b)(2), 9003.3 (b) and (c).

Some commenters argued that the Commission does not have the statutory authority to use statistical sampling in conducting its audits. However, the Commission has been given broad authority to audit publicly-funded presidential and vice presidential campaigns, *see* 26 U.S.C. § 9007(a), which authority includes the right to utilize generally accepted auditing standards in conducting these audits.

The use of statistical sampling is legally acceptable for projecting certain components of a large universe, such as excessive and prohibited contributions. *See, e.g. Chavez County Home Health Service* v. *Sullivan*, 931 F.2d 904 (D.C. Cir. 1991) (sampling audit used to recoup Medicaid overpayments to health care providers); *Michigan Dep't of Education* v. *U.S. Dep't of Education*, 875 F.2d 1196 (6th Cir. 1989) (sampling of 259 out of 66,368 total payment authorizations upheld as proper basis for determining amount of misexpended federal funds in vocational-rehabilitative program); *Georgia* v. *Califano*, 446 F. Supp. 404 (N.D. Ga. 1977) (Medicaid overpayments).

Most of these cases require the agency to demonstrate that it is infeasible to conduct a 100% review. *See, e.g., Chavez*, 931 F.2d at 916. While the Commission was able to conduct a more extensive review in the past, the increasing volume of records to be checked has now made this impossible. An accountant who testified at the Commission's public hearing stated that the Commission had no option but to use sampling, because of the large number of records involved in presidential campaign audits—a recent campaign with which he had been worked had involved over 200,000 contributions and tens of thousands of disbursements. These figures are not unusual in presidential campaign audits.

One commenter argued that these cases, which involve recoupment of government overpaid funds, should not be used to justify the use of sampling to determine excessive and illegal contributions which come from private sources. However, for statistical purposes there is no distinction between these two situations.

Some commenters also questioned the validity of the statistical sampling technique currently employed in this process. However, the fact that the technique may be used in dissimilar programs, or programs seeking other types of information, does not mean that it is not appropriate for use in this context.

There is substantial judicial precedent to the effect that, when considering a challenge to individual accounting rules, the reviewing court must defer to agency expertise. In *A.T.&T. Co.* v. *United States*, 299 U.S. 232 (1936), the Supreme Court stated that before it would overrule an agency's decision to use a certain accounting system, that system "must appear to be so entirely at odds with fundamental principles of correct accounting as to be the expression of whim rather than an exercise of judgment." *Id.* at 236–37. *See also Transcontinental Gas Pipe Line Corp.* v. *Federal Power Commission*, 518 F.2d 459, 465 (D.C. Cir. 1975).

The statistical sampling method used for the Commission's matching fund submission process was designed and recommended by Ernst and Whinney (now Ernst and Young), one of the world's largest accounting firms. The Commission believes that this method works equally well in evaluating excessive and illegal contributions. In addition, in 1979 the Commission's Audit Division wrote to Arthur Andersen & Company, asking whether it would be appropriate to use statistical sampling to determine both matching fund eligibility and nonqualified campaign expenses. They responded that this would be appropriate in both situations. The Commission soon afterwards began to use statistical sampling in making matching fund determinations, but has not yet done so to determine nonqualified campaign expenses. However, if statistical sampling can be used to extrapolate the amount of nonqualified campaign expenses, it would seem equally capable of extrapolating the number of excessive and illegal contributions.

One commenter who supported this approach requested that the Commission advise committees in advance what records will be reviewed on a full 100% basis. The Commission believes it is inappropriate to divulge this kind of information in advance. Also, this can vary from committee to committee.

In its letter endorsing the use of statistical sampling to determine the amount of nonqualified campaign expenses, Arthur Andersen & Company recommended "that the resulting repayment determination [the repayment determination based on the sample] not be deemed as final until the committee being audited has been provided with the opportunity to

furnish additional support that might indicate that a modification of the sample results would be appropriate." The Commission follows this recommendation in projecting excessive and illegal contributions.

The Commission's projection of the total amount of excessive or prohibited contributions based on apparent excessive or prohibited contributions identified in a sample of a committee's contributions is only a preliminary finding. The Commission informs the committee which items served as the basis for the sample projection, and the committee responds to the specific sample items used to make the projection. If the committee shows that any errors found among the sample items were not excessive or prohibited contributions; were timely refunded, reattributed or redesignated; or for some other reason were not errors, a new projection is made, based on the reduced number of errors in the sample. A witness at the Commission's hearing on these rules endorsed the use of sampling in this context in part because of this opportunity to work with Commission auditors and obtain a lower projection if the committee provides additional information to reduce the number of errors found in the sample.

Disgorgement

The Commission is further clarifying at new paragraph 9007.1(f)(3) that the amount of any excessive or prohibited contributions that are not refunded, reattributed or redesignated in a timely manner shall be paid to the United States Treasury. Committees have 30 days from the date of receipt in which to refund prohibited contributions, and 60 days in which to obtain the reattribution, redesignation or refund of excessive contributions. 11 CFR 103.3(b)(1), (2) and (3). A committee's failure to take action on these contributions is a failure to cure contributions that are in violation of the FECA. The same is true of attempts to cure them outside of the specified time periods.

Courts have upheld the use of disgorgement in cases involving securities violations "as a method of forcing a defendant to give up the amount by which he was unjustly enriched." *SEC* v. *Tome*, 833 F.2d 1086, 1096 (2d Cir. 1987), citing *SEC* v. *Commonwealth Chemical Securities, Inc.*, 574 F.2d 90, 102 (2nd Cir. 1978). Requiring repayment to the Treasury for contributions that have been accepted in violation of 2 U.S.C. §§ 441a and 441b is consistent with this reasoning.

Disgorgement eliminates the need for the Commission to monitor a committee's refunds of excessive or prohibited contributions. In addition, it is easier for a committee to make one payment to the Treasury, as opposed to refunding multiple contributions. Finally, although the Commission has used disgorgement in instances where a 100% review is conducted, this is a practical approach in those situations where it is difficult to discern the original contributors, e.g., where a 100% review is not done.

Some commenters questioned the Commission's authority to require repayment to the Treasury because this is not specifically provided for in the public funding Acts. However, the equitable doctrine of disgorgement supports the payment to the Treasury under these circumstances. The purpose of statistical sampling would be defeated if a 100% review of contributions was required to determine which particular contributions must be refunded, reattributed or redesignated. On the other hand, allowing committees to refund only those excessive or illegal contributions uncovered in the sample could result in a committee's retention of substantial funds to which it was not legally entitled.

Disgorgement is also consistent with past Commission practice. *See* Matter Under Review ("MUR") 1704, where, based upon preliminary estimates, Commission directed respondents to pay $350,000 to the United States Treasury for contributions that would have exceeded section 441a limits; Plaintiff's Motion to Effectuate Judgment, *FEC* v. *Populist Party*, No. 92–0674(HHG) (D.D.C. filed May 4, 1993).

Moreover, this proposed payment is analogous to, and consistent with, the requirement at 11 CFR 9038.6 that stale-dated checks (those to creditors or contributors that remain outstanding after the campaign is over) be paid to the Treasury. This issue arose after the 1984 election cycle, and the rule was promulgated as a means to codify the Commission practice of requiring disgorgement, which was implemented during that cycle. *See* 52 FR 20864, 20874 (June 3, 1987).

One commenter argued that the stale-dated check situation should be distinguished from that involving excessive and illegal contributions, because the former involves the return of public funds to the Treasury, while the latter involves private contributions. Once again, however, the same accounting principles apply to both situations.

Section 9007.2 Repayments

Further Streamlining the Audit Process

Section 9007.2 has been revised to reflect amendments made to section 9007.1. Revised paragraph (a)(2) states that the audit report provided to the candidate under 11 CFR 9007.1(d), which contains the Commission's repayment determination, will constitute notification for purposes of the three-year notification requirement of 26 U.S.C. 9007(c). This approach is consistent with two recent decisions by the United States Court of Appeals for the District of Columbia Circuit, *Dukakis* v. *Federal Election Commission*, No. 93–1219 (D.C. Cir. May 5, 1995) and *Simon* v. *Federal Election Commission*, No. 93–1252 (D.C. Cir. May 5, 1995).

Paragraph (a)(2) has also been revised to conform to the statutory requirement that the 26 U.S.C. 9007(c) notification period ends 3 years after the day of the presidential election.

Paragraph (a)(3) has been reworded to state that once the candidate receives notice of the Commission's repayment determination contained in the audit report, the candidate should give preference to the repayment over all other outstanding obligations of the committee, except for any federal taxes owed by the committee.

The Commission is moving former 11 CFR 9004.4(c) to new paragraph (a)(4). This paragraph, which deals with permissible sources of repayments, is more properly located in the section dealing with repayments.

New repayment determination procedures are set forth in revised paragraph (c). Revised paragraph (c)(1) largely follows the former language, but refers to the audit report as the source of the repayment determination. The last sentence of that paragraph has also been revised to clarify that the candidate shall repay to the United States Treasury the amount which the Commission has determined to be repayable, using procedures set forth in 11 CFR 9007.2(d).

Revised paragraph (c)(2) sets forth the procedures necessary for a committee to obtain an administrative review of the repayment determination. Please note that this review is limited to repayment issues. It does not cover other issues, such as disgorgement, that will if necessary be handled through the enforcement process.

Paragraph (c)(2)(i) corresponds to former 11 CFR 9007.2(c)(2) and addresses the submission of written materials as part of this process. Paragraph (c)(2)(ii) corresponds to former 11 CFR 9007.2(c)(3), discussing

the oral hearing. The language in these paragraphs for the most part follows the former rules, with the following additions. The deadline for filing written materials seeking an administrative review of the repayment determination has been lengthened from 30 to 60 days. Also, the candidate's failure to timely raise an issue in the written materials presented pursuant to paragraph (c)(2)(i) will be deemed a waiver of the candidate's right to raise the issue at any future stage of the proceedings. *See Robertson* v. *FEC*, 45 F.3d 486 (D.C. Cir. 1995). Further, under paragraph (c)(2)(ii), a candidate who desires an oral hearing must, at the same time he or she presents written materials pursuant to paragraph (c)(2)(i), request such a hearing in writing, and identify in that request the repayment issues the candidate wishes to address at the oral hearing.

Revised paragraph (c)(3) corresponds to former 11 CFR 9007.2(c)(4), and now deals with repayment determinations made after an administrative review. Please note that the statement regarding the Commission's possible consideration of new or additional information from other sources does not provide a means for the candidate or anyone acting on the candidate's behalf to make untimely submissions. Former 11 CFR 9007.2(c)(4) has been repealed.

Paragraphs (d), (f), (g) and (i) have been revised to conform with the new terminology used elsewhere in this section.

Gains On the Use of Public Funds

As indicated in the discussion of section 9004.5, above, the final rules contain a conforming amendment to the introductory language of section 9007.2(b)(4). This amendment clarifies that receiving income from investment or any other use of payments from the Fund is a basis for requiring payment to the Treasury. The Commission will require the committee to pay any such income received, less taxes paid, to the Treasury. The revisions to sections 9004.5 and 9007.2 ensure that any income received through the use of public funds benefits the public financing system. However, as indicated above, this provision does not apply to income that is exempt function income under 26 U.S.C. § 527(c)(3), such as amounts received from fundraising activities.

Interest

The Commission sought comment in the NPRM on whether interest should be assessed in certain situations. Although some commenters opposed this idea, the Commission believes it is appropriate to assess interest on late repayments, and is therefore amending 11 CFR 9007.2(d) to provide that interest will be assessed on repayments made after the initial 90-day repayment period established at 11 CFR 9007.2(d)(1) or after the 30-day repayment period established at 11 CFR 9007.2(d)(2).

In the absence of interest charges for late repayments, debtors have little or no incentive to make timely repayments. Without this requirement, debtors may be more likely to pay their private sector debts first, as these generally accrue interest, and their government debts last.

While the presidential fund Acts contain no language on interest assessment, federal common law holds that interest may be assessed on debts owed the government, even without a statutory provision granting that power. *Robinson* v. *Watts Detective Agency*, 685 F.2d 729, 741 (1st Cir. 1982), *cert. denied*, 459 U.S. 1204 (1983). In particular, a statute is not necessary to compel payment of interest where equitable principles allow this. *Young* v. *Godbe*, 82 U.S.. 562, 565 (1872).

The Commission has already established the precedent that it may assess interest when a presidential committee seeks a stay of a repayment determination pending appeal. 11 CFR 9007.5(c)(4), 9038.5(c)(4). One reason cited by the Commission for taking this action was to protect the Treasury "by helping to ensure that the repayment challenge is a serious one and not a dilatory tactic." Agenda Document 86–118, Proposed Revision of Title 26 Regulations (Nov. 26, 1986). Another was that, if the candidate is earning interest on the disputed repayment amount, the Treasury and not the candidate should receive the benefit if the Commission's repayment determination is upheld. *Id.* Both reasons are equally applicable in this situation.

By agreeing to certain conditions, including an audit and appropriate repayment, the presidential committees have established a contractual relationship with the Commission under which interest assessment becomes appropriate. *See West Virginia* v. *United States*, 479 U.S. 305, 310 (1987). Also, if a debtor-creditor relationship is established, "interest is allowed as a means of compensating a creditor for loss of use of his money." *United States* v. *United Drill and Tool Corporation*, 183 F.2d 998, 999 (D.C. Cir. 1950). Such a relationship exists in this context in that, prior to the receipt of public funds, the candidate must agree to repay unexpended funds, money determined to be spent in an unqualified manner, and amounts received in excess of entitlement. 11 CFR 9003.1(b)(6), 9033.1(b)(7).

The interest currently assessed under 11 CFR 9007.5(c)(4) and 9038.5(c)(4) is the greater of that calculated using the formula set forth at 28 U.S.C. § 1961 (a) and (b) for computing interest on money judgments in federal civil cases, or the amount actually earned on the funds set aside under those sections. The Commission believes it is appropriate to utilize a similar approach in this situation. The Commission is therefore adding new paragraph 9007.2(d)(3) to provide that a comparable formula shall be used in assessing interest on late repayments under section 9007.2.

Section 9007.3 Extensions of Time

The Commission is amending paragraph (c) to include in that paragraph the policy that, whenever 11 CFR Part 9007 establishes a 60-day response period, the Commission may grant no more than one extension of time, which extension shall not exceed 15 days. The rules formerly provided for a 30 day response period. Materials provided to the committees prior to the audit process explained that extensions of time were limited to a single, 45 day extension. The rules thus continue the former 75-day total response period, and the initial 60-day response period may result in fewer extension of time requests.

Section 9007.5 Petitions for Rehearings; Stays of Repayment Determinations

The Commission is making conforming amendments to paragraphs (a), (b), (c)(1)(ii) and (c)(4), to reflect changes in terminology for the audit and repayment process. *See* discussion of 11 CFR 9007.1 and 9007.2, above.

Section 9007.7 Administrative Record

New section 9007.7 explains which documents constitute the administrative record for purposes of judicial review of final determinations regarding candidate certification and eligibility, and repayment determinations. The NPRM had included a lengthy list of documents that usually form the basis of the administrative record. It also indicated that certain items are not part of the Commission's decisionmaking process, and thus not part of the record on review.

One commenter expressed concern that the Commission was trying to impermissibly restrict documents to be included in the administrative record. The comment noted that judicial review is based on the whole record before the agency. Similarly, another commenter stated that the administrative record should include all materials that form the basis of the Commission's decisions. Two comments suggested including workpapers on which the auditors relied in making their calculations and recommendations. During the course of the audit and repayment processes, it has been the Commission's practice to provide committees with the audit work papers they need to formulate their responses.

The Commission agrees that the administrative record includes all materials it considered in making its decision, and the final rules have been modified to reflect this. Thus, it will generally include all documents circulated to the Commission (including attachments) and materials referenced in those documents. However, documents in the files of individual Commissioners, or documents in FEC employees' files which do not constitute a basis for the Commission's decisions, are not included in the record. The administrative record also does not include transcripts or tapes of Commission discussions of audit or repayment matters. *See, Common Cause* v. *Federal Election Commission*, 676 F. Supp. 286, 289 and n.3 (D.D.C. 1986). Although these materials may sometimes be made available under the Freedom of Information and Government in the Sunshine Acts, they do not provide an adequate explanation of the reasons for the Commission's decisions because they represent pre-decisional discussions. Documents properly subject to privileges such as an attorney-client privilege, or items constituting attorney work product, are also excluded from the administrative record.

The new rules indicate that documents and materials timely submitted by publicly-funded committees for Commission consideration are a part of the administrative record. Materials will also be considered timely submitted if they are received within an extension of time granted by the Commission. It is important that committees avail themselves of the opportunity to submit documents and other materials in a timely fashion, as they will be deemed to have admitted all specific findings and conclusions contained in an audit report or a repayment determination unless they specifically contest those findings and conclusions and provide supporting evidence and legal arguments at the appropriate time. When submitting evidentiary materials, committees should keep in mind that statements of counsel that are not supported by personal knowledge do not constitute evidence. Committees may include in their submissions the audit work papers with which they have been provided. They need not include transcripts or tapes of their oral presentation to the Commission regarding repayment determinations, as those materials are already a part of the record.

Section 9008.12 Repayments

A conforming amendment has been added to paragraph (a)(2), to state that the audit report provided to the convention committee that contains the Commission's repayment determination will constitute notification for purposes of the three-year notification requirement of 26 U.S.C. 9008(h).

The Commission's rules governing public financing of national nominating conventions provide at 11 CFR 9008.11 that audits of convention committees follow the procedures for audits of presidential campaign committees set forth at 11 CFR 9007.1 and 9038.1. The former language contained a reference to the IAR, which is no longer a part of these procedures.

Part 9032—Definitions

Section 9032.9 Qualified Campaign Expenses

The Commission is adding a conforming amendment to paragraph (c) of this section to reflect the new attribution of certain expenditures between the primary and the general election limits. The amendment notes that certain expenditures formerly covered by this paragraph will not be attributed under these new guidelines. See discussion of 11 CFR 9034.4(e), below.

Part 9033—Eligibility for Payments

Section 9033.1 Candidate and Committee Agreements

In the interests of clarity, the Commission is adding a comma in the second sentence of 11 CFR 9033.1(b)(5). Paragraph (b)(5) concerns candidate and committee agreements to furnish certain documentation to the Commission.

A conforming amendment has been added to paragraph 9033.1(b)(7), clarifying that the same candidate and committee responsibilities that attach to an audit and examination made pursuant to 11 CFR part 9038 also attach to part 9039 investigations, under appropriate circumstances. See discussion of part 9039, below.

The final rules slightly reword paragraph (b)(11) of this section to more clearly indicate that candidates must agree to pay any civil penalties arising from violations of the FECA, whether provided for in a conciliation agreement or imposed in a judicial proceeding.

New paragraph 9033.1(b)(12) has been added to require presidential primary candidates to include closed captioning in the preparation of their television commercials, as a precondition of their receiving public funds. This amendment corresponds to new paragraph 9003.1(b)(10), discussed above. The Legislative Branch Appropriations Act of 1992 does not specifically amend 26 U.S.C. § 9033, which sets out the eligibility requirements for presidential primary candidates. However, the Appropriations Act does state that the closed captioning requirement inserted in 26 U.S.C. § 9003(e) applies both to general election candidates and to candidates who are eligible for funding "under chapter 96" of Title 26 of the United States Code, that is, the Matching Payment Act. The Commission is therefore amending 11 CFR 9033.1(b) to reflect this new requirement.

Section 9033.4 Matching Payment Eligibility Threshold Requirements

Former 11 CFR 9033.4(b) stated that, in evaluating a candidate's matching fund submission, the Commission could consider other relevant information in its possession, including but not limited to past actions of the candidate in an earlier campaign. This provision was held to exceed the Commission's statutory authority in *LaRouche v. FEC*, 996 F.2d 1263 (D.C. Cir. 1993), *cert. denied* 114 S. Ct. 550. The Commission is therefore deleting this paragraph from the rule.

Section 9033.11 Documentation of Disbursements

Revised section 9033.11 follows revised section 9003.5.

Part 9034—Entitlements

Section 9034.4 Use of Contributions and Matching Payments

Winding Down Costs

The regulations at 11 CFR 9034.4(a)(3)(i) permit candidates to receive contributions and matching funds, and make disbursements, for the purpose of defraying winding down costs over an extended period after the candidate's date of ineligibility ("DOI"). These amounts are treated as qualified campaign expenses, and can result in additional audit fieldwork and preparation of addenda to audit reports to focus on these receipts and disbursements.

As part of an effort to streamline and shorten the audit process, the

Commission sought comment on ways to reduce the winding down time for campaigns. The NPRM suggested limiting the amount that a candidate may receive for winding down costs to no more than a specified dollar amount, or a fixed percentage of the candidate's total expenditures during the campaign, or a fixed percentage of total matching funds certified for the candidate. The NPRM questioned whether campaigns that receive a pre-established dollar amount, but do not use the entire amount for winding down costs, should be permitted to retain the unspent amount. Alternatively, comments were sought on establishing a cutoff date after which winding down expenses would no longer be considered qualified campaign expenses.

Several commenters and witnesses opposed limiting wind down costs. They felt that basic fairness requires campaigns to have the resources necessary to respond during the audit process and to defend themselves against enforcement proceedings. It was also pointed out that during this period, campaigns need to be able to verify the proper payment of remaining bills, and that it would be a waste of federal funds if they were hampered in identifying incorrect bills.

The Commission agrees that it would be quite difficult to select an amount or time frame sufficient to meet reasonable expenses incurred in winding down the campaign. A limit on the amount of public funds available for winding down would provide the same difficulties as a restriction on the total funds to be used for wind down. Consequently, the final rules contain no new restrictions on the amount spent on winding down or the time taken. Thus, the Commission will continue to review the committee's wind down costs on a case by case basis.

Post-DOI Expenses as Exempt Compliance Expenses

New language in section 9034.4(a) incorporates the current practice of permitting publicly-funded primary committees to treat 100% of salary, overhead and computer expenses incurred after the candidate's DOI as exempt compliance expenses, beginning with the first full reporting period after DOI. *See, Financial Control and Compliance Manual for Presidential Primary Candidates Receiving Public Financing*, p. 25 (January 1992). Two witnesses and one commenter urged adoption of this provision. Please note that this regulation does not apply to expenses incurred during the period between DOI and the date on which a candidate either re-establishes eligibility or ceases to continue to campaign.

Gifts and Bonuses

New language in section 9034.4(a) and section 9004.4(a) permits campaign committees to use federal funds to defray the costs of gifts for committee staff, volunteers and consultants, as long as the gifts do not exceed $150 per individual and as long as all gifts do not exceed $20,000. This approach received a favorable response from one witness and one commenter. It is somewhat similar to a provision included in the public funding rules for convention committees at 11 CFR 9008.7(a)(4)(xii). See 59 FR 33618 (June 29, 1994).

With regard to bonus arrangements provided for in advance in a written contract, the NPRM sought comments on whether the amount of these bonuses should be restricted to a fixed percentage of the compensation paid as provided by the contract, or whether these bonuses should be subject to the overall $20,000 limit. A number of commenters and witnesses opposed these suggestions on the grounds that bonus decisions should remain within the discretion of the committees; primary campaigns may not know at the outset how much will be available for bonuses; and campaigns may choose not to enter into written employment contracts. Some felt these proposals were more feasible for general election committees than for primary campaigns because the party nominees know at the outset what their funding level will be for the general election. It was also suggested that all bonuses be paid within ten days of a committee's date of ineligibility.

The final rules have been revised to require that for general election campaigns, bonus arrangements must be provided for prior to the date of the general election in a written contract, and must be paid during the expenditure report period, which ends thirty days after the general election. Similarly, primary campaigns must make bonus arrangements in advance and must pay bonuses no later than thirty days after the candidate's DOI. These time frames allow ample time for campaigns to make decisions regarding bonuses.

Lost or Damaged Equipment

The Commission is adding new paragraph (b)(8) to section 9034.4 to clarify that the cost of lost or damaged items may be considered a nonqualified expense for purposes of these rules. This change parallels new paragraph 9004.4(b)(8), and is discussed in more detail in connection with section 9004.4, above.

Funding General Election Expenses With Primary Funds

The Presidential Election Campaign Fund Act, the Presidential Primary Matching Payment Account Act, and Commission regulations require that publicly funded presidential candidates use primary election funds only for expenses incurred in connection with primary elections, and that they use general election funds only for general election expenses. 26 U.S.C. 9002(11), 9032(9); 11 CFR 9002.11, 9032.9. These requirements are tied to the overall primary and general election expenditure limits set forth at 2 U.S.C. 441a (b) and (c), and at 26 U.S.C. 9035(a). *See also* 11 CFR 110.8(a), 9035.1(a)(1).

Questions have arisen in recent election cycles as to whether certain expenses charged to primary committees were in fact used to benefit the general election. Once a candidate has secured enough delegates to win the nomination, the focus of the campaign may turn in large part to the general election. However, it can be difficult to distinguish between primary campaign activity, such as that designed to lock up delegates or otherwise related to the outcome of the primary campaign, and convention preparation, from activity that is geared towards winning the general election.

The NPRM sought general suggestions on how best to address this situation. For example, it suggested that certain expenditures within a set time frame before the date of the candidate's nomination might be subject to higher scrutiny. In addition, the Notice contained specific proposals on how to treat capital assets, certain goods and services, and supplies and materials in this context; and sought comments on how other expenditures, such as those for campaign related travel and media expenses, should be attributed.

Most of the commenters who addressed this issue favored a "bright line" cut-off date between primary and general election expenses, which would give committees clear guidance as to which expenses will be attributed to the primary election and which to the general election. Some suggested that this date be set as the candidate's date of ineligibility. Moreover, most comments opposed any guidelines or presumptions that would require a "case-by-case" determination of how certain expenditures should be characterized.

The Commission recognizes that it can be difficult to select a single "bright line" date appropriate for all campaigns under all circumstances. Also, the adoption of "bright line" rules could in certain instances result in the primary committee's subsidizing the general election committee, or vice versa. Nevertheless, the Commission believes this approach is appropriate with regard to certain specific types of expenditures that may benefit both the primary and the general election. These include expenditures for polling; state or national offices; campaign materials; media production costs; campaign communications; and campaign-related travel costs (*see also* 11 CFR 9034.5, depreciation of capital assets, discussed below).

The Commission recognizes that there could be situations in which this approach does not accurately reflect the relative impact of particular expenditures. However, these differences should balance themselves out over the course of a lengthy campaign. In addition, a major factor in the Commission's decision is the desire to complete the audits more quickly and using fewer agency resources. It can be extremely time- and labor-intensive for both the Commission and the committees to examine thousands of individual expenditures, especially where, as here, both the timing and the purpose of each expenditure is at issue. Accordingly, the Commission is adding a new paragraph (e) to this section partially deal with this situation.

The introductory language to this paragraph notes that these rules apply only to campaigns of candidates who receive public funding in both the primary and the general election. Paragraph (e)(1) states the general rule that any expenditure for goods or services that are used exclusively for either the primary or the general election campaign shall be attributed to the limits applicable to that election.

Please note that primary expenditures are also attributable to the state allocation limits set forth in 11 CFR 106.2. Also, any expenditures that are attributed to the general election limits shall be paid for with general election funds.

Paragraph (e)(2) states that polling expenses shall be attributed according to when the results of the poll are received. If the results are received on or before the date of the candidate's nomination, the expenses will be considered primary election expenses. If partial results are received both before and after the date of the candidate's nomination, the costs shall be allocated between the primary and the general election limits based on the percentage of results received during each such period.

A conforming amendment is also being made to 11 CFR 9003.4(a) (see discussion above). That paragraph formerly stated that certain polling expenses could count against the general election limit regardless of when the results of the polling were received.

Paragraph (e)(3) addresses overhead expenditures and payroll costs incurred in connection with state or national campaign offices, and attributes these according to when usage of the office occurs. For usage on or before the date of the candidate's nomination, these expenses are attributed to the primary election, except for periods when the office is used only by persons working exclusively on general election campaign preparations. The definition of "overhead expenditures" set forth in 11 CFR 106.2(b)(2)(iii)(D) is incorporated by reference into this paragraph.

Paragraph (e)(4) addresses campaign materials, including bumper stickers, campaign brochures, buttons, pens and similar items, that are purchased by the primary campaign and later transferred to the general election campaign. Any such materials that are used in the general election shall be attributed to the general election limits. Materials transferred to the general election committee but not used in the general election shall be attributed to the primary election limits.

Paragraph (e)(5) states that 50% of production costs for media communications that are broadcast or published both before and after the date of the candidate's nomination shall be attributed to the primary election limits, and 50% to the general election limits. Please note that distribution costs, including such costs as air time and advertising space in newspapers, must be paid for 100% by the primary or general election campaign depending on when the communication is broadcast or distributed.

The Commission notes that the pre- and post-nomination communications need not be identical for this attribution ratio to apply. Obvious changes include such matters as stating that the communication was "paid for by " the candidate's general rather than primary election campaign committee; and references to the candidate as the party's actual, rather than potential, nominee. However, there are also situations where a communication is substantially unchanged, except for a portion targeted to, for example, specific constituent groups or different parts of the country. The Commission also intends to apply the 50/50 attribution ratio to these communications.

Paragraph (e)(6) addresses campaign communications, including solicitations, that are not used in both the primary and the general election. In the past questions have arisen as to whether a per-DOI communication was intended to influence the general election, or vice versa (e.g., thank you letters for primary contributions sent after the date of the candidate's nomination).

Paragraph (e)(6)(i) states that the costs of a solicitation shall be attributed to the primary election or to the General Election Legal and Accounting Compliance Fund, depending on for which purpose the solicitation is made.

While candidates may not accept private contributions to cover expenses incurred to benefit the general election campaign, they may solicit contributions for the GELAC. The rule states that, if a candidate solicits funds for both the primary election and for the GELAC in a single communication, 50% of the cost of the solicitation shall be attributed to the primary election, and 50% to the GELAC. Consequently, the primary committee must pay 50% of the solicitation costs, and the GELAC must pay 50%.

Occasionally a committee will solicit contributions to retire a primary election debt, and receive more money in response to the solicitation than is needed to pay off the debt. Under 11 CFR 9003.3(a)(1)(iv)(C), the committee may transfer such excess contributions to the GELAC if proper redesignations are obtained. If a committee chooses to seek redesignations, the cost of the solicitation shall be attributed to the primary limits, while any redesignation costs shall be paid by the GELAC.

Paragraph (e)(6)(ii) states that the costs of a communication that does not include a solicitation shall be attributed to the primary or general election limits based on the date on which the communication is broadcast, published or mailed.

Paragraph (e)(7) states that expenditures for campaign-related transportation, food and lodging by any individual, including a candidate, shall be attributed according to when the travel occurs. If the travel occurs on or before the date of the candidate's nomination, the cost is a primary election expense, except that the costs of travel by a person who is working exclusively on general election campaign preparations shall be considered a general election expense even if the travel occurs before the candidate's nomination. Travel both to

and from the convention shall be a primary expense.

Sources of Repayment

The rule set out in current paragraph 9034.4(c) has been moved to new paragraph 9038.2(a)(4). Paragraph 9034.4(c) has been removed and reserved for future use. This change generally follows the conforming amendment discussed in connection with section 9004.4, above.

Section 9034.5 Net Outstanding Campaign Obligations

NOCO Statements

The final rules make a number of changes in the requirements for submission of NOCO statements set out in section 9034.5. Paragraph (b) is amended to require committees submitting NOCO statements to include a breakdown of the estimated winding down costs listed on the statement by category and time period. The committee must provide estimates of quarterly or monthly expenses from the date of the NOCO statement until the expected termination of the committee's political activity. These estimates must be broken down into amounts for office space rental, staff salaries, legal expenses, accounting expenses, office supplies, equipment rental, telephone expenses, postage and other mailing costs, printing, and storage.

One commenter noted that it can be difficult to estimate winding down costs until well into the audit process, because the committee continues to receive bills, and also because it is not clear what issues will arise until the audit is underway.

The Commission recognizes that the winding down figures on a committee's NOCO statements are, by necessity, estimates of anticipated expenses. However the Commission has decided to require a breakdown of these expenses in order to obtain more meaningful information than is obtained under the existing rule. Currently, many NOCO statements list the candidate's estimated necessary winding down costs as a single lump sum. Requiring the breakdown will help the Commission determine whether the candidate is entitled to receive the entire estimated amount.

The final rules also revise the schedule for submission of revised NOCO statements. Under the current rules, candidates are required to submit a revised NOCO statement with each matching payment request submitted after DOI. The proposed rules would have required candidates to submit an additional revised NOCO statement just before the date when matching fund payments will be certified, on a date to be published by the Commission. The additional statement would be used to ensure that the amount of matching funds certified accurately reflects the committee's financial situation at the time of certification. One commenter thought this additional requirement would be burdensome and will not solve the problem identified in the NPRM.

The Commission believes that requiring two revised NOCO statements for each matching payment submission is unnecessary. Consequently, the final rules change the Commission's current policy of requiring candidates to submit a revised NOCO statement at the time of each post-DOI matching payment submission. Instead, the final rules require the candidate to submit a certification that his or her remaining net outstanding campaign obligations equal to or exceed the amount submitted for matching. If the candidate so certifies, the Commission will process the matching payment submission.

The candidate must then submit a revised NOCO statement just before the next regularly scheduled payment date, on a date to be determined and published by the Commission in the **Federal Register**. The statement must reflect the financial status of the campaign as of the close of business three business days before the due date, and must also contain a brief explanation of each change in the committee's assets and obligations from the most recent NOCO statement. This will allow the Commission to adjust the committee's certification to reflect any change in the committee's financial position that occurs after submission of the initial matching payment request. Thus, the amount certified will be closer to the committee's actual entitlement, reducing the need to seek subsequent repayment.

This revised schedule is set out in paragraphs 9034.5(f) (1) and (2) of the final rules. Paragraph 9034.5(f)(2) of the former rules has been renumbered as paragraph (f)(3), without revision.

The Commission notes that, while the additional information required should increase the accuracy of the matching fund certifications, as under the current practice, the Commission will not approve NOCO statements when they are submitted. Thus, although the new rules will often reduce the size of a committee's repayment, the Commission will continue to seek repayment under appropriate circumstances.

Capital Assets

The Commission is amending paragraph (c)(1) of this section to provide for a standard 40% depreciation of capital assets that are received by a primary campaign committee prior to the candidate's DOI and subsequently sold to the general campaign committee or to another entity.

The former rule set forth the 40% depreciation allowance, but allowed a higher depreciation for particular item if the committee demonstrated through documentation that the asset's fair market value was lower. However, there was no corresponding provision for the Commission to document a higher fair market value. The NPRM proposed that the 40% figure be subject to both increase and decrease, under appropriate circumstances. Most of those who commented on this issue opposed this change, which the Commission had proposed to more accurately reflect its experience in dealing with this situation.

Consistent with its approach to other expenditures that can be attributed to both the primary and the general election limits (see discussion of 11 CFR 9034.4(e), above), the Commission is adopting a "bright line" 40% depreciation figure for capital assets that are used in both the primary and the general election campaigns. While the Commission recognizes that there may be instances in which the 40% figure is too low, there are also situations in which that figure may be too high. The Commission believes that in many instances there differences will balance themselves out over the course of a lengthy campaign. Also, given the number of capital assets involved in a typical campaign, it can be time- and labor-intensive for both the Commission and the committee to handle these on a case-by-case basis.

Please note that the term "capital asset" includes components of a system used as a whole and purchased at the same time at a cost exceeding $2000, even if individual system components cost less than $2000.

Section 9034.6 Expenditures for Transportation and Services Made Available to Media Personnel; Reimbursements

Section 9034.6 has been reorganized with minor substantive changes. These revisions are the same as those made to section 9004.6, the parallel provision for general election committees. *See* the discussion of section 9004.6, above.

Section 9034.7 Allocation of Travel Expenditures

The changes in section 9034.7 follow the changes to section 9004.7

Part 9036—Review of Submission and Certification of Payments by Commission

Section 9036.2 Additional Submissions for Matching Fund Payments

Complete Contributor Identification

Treasurers of political committees, including authorized committees of presidential candidates, are required by 2 U.S.C. §§ 432(i) and 434(b) to use their best efforts to obtain, maintain and report the name, address, occupation and employer of all contributors who give over $200 per calendar year. The Commission recently issued revised rules regarding this reporting obligation. *See* 58 FR 57725 (Oct. 27, 1993). During that rulemaking, two commenters suggested revising 11 CFR 9036.2 so that presidential primary candidates would only receive matching funds for contributions exceeding $200 that also contain complete contributor information. While full contributor identifications are required for such contributions in threshold submissions under 11 CFR 9036.1(b), they have not been required under 11 CFR 9036.2(b)(1)(v) for additional submissions for matching funds. Accordingly, the Commission sought comment on whether to delete section 9036.2(b)(1)(v), thereby requiring complete contributor information for all matchable contributions exceeding $200. In the alternative, comments were sought on only matching these contributions if committees can provide evidence demonstrating they made their best efforts to obtain the information.

There was no consensus among the commenters and witnesses who addressed this issue. Some felt that the public has a right to complete disclosure of this information when its money is given to presidential candidates, and that there is no rational basis for the distinction between threshold submissions and subsequent requests for matching funds. They cited figures from the 1992 election cycle to argue that some candidates did not take the disclosure statutes seriously. Others pointed out that the new best efforts rules are intended to resolve this issue, and that it would be onerous for committees to show during the matching submission process that they have satisfied the new best efforts rules. Some felt that contributors should not be forced to forego their privacy rights in order to have their contributions matched. Hence, they argued that vigorous enforcement of the new best efforts rules is the appropriate course of action.

For several reasons, the Commission has decided not to change the current requirements regarding matchability of contributions from individuals. First, the Commission has seen a significant increase in the reporting of occupation and employer since the best efforts regulations were revised. For example, a comparison of authorized committee reports for April–September 1992 with reports for April–September 1994, shows the number of itemizable contributions from individuals which lacked information on the contributor's principal place of business decreased from 17% to 10%. Thus, it is premature to conclude that further measures are needed to enhance disclosure. Secondly, it is not a efficient use of Commission resources to verify this information during the matching fund submission process. Doing so would slow down an already time-constrained process. Moreover, the reasons for requiring occupation and employer in threshold submissions do not apply to additional submissions. Occupation and employer information are necessary for threshold submissions to ensure that candidates have met the eligibility requirements by having received matchable contributions of at least $5000 from contributors in at least 20 states.

Use of Digital Imaging for Matching Fund Submissions

Several questions were also raised regarding the possibility that committees may wish to submit contributions for matching through the use of digital imaging technology such as computer CD ROMs, instead of submitting paper photocopies of checks and deposit slips. One witness urged the Commission to allow committees to have this option. Accordingly, new language has been added to paragraph (a)(1)(vi) of section 9036.2 to let committees provide digital images of contributions, but not to require that they do so. If they choose this option, the Commission may require committees to supply the Commission with the equipment needed to read the digital data at no cost to the Commission. One witness stated that this was a reasonable condition. Given the variety of sources providing this technology, it is not feasible for the Commission to purchase all the equipment that different committees might wish to use. The new language also specifies that the digital information committees provide must include an image of each contribution received and imaged during the period covered by the matching fund submission, not just matchable contributions. As a practical matter, it may be simpler for committees to include all contributions on CD ROMs rather than separating out the nonmatchable ones. This approach will have the additional benefit of enabling the Commission's audit staff to begin examining contributions at an earlier point, which should speed up the audit process. The Commission may seek verification from the committee's bank or from contributors pursuant to 11 CFR 9039 if the Commission is unable to resolve questions regarding the digital images submitted.

While the Commission is approving the submission of contribution information using computerized digital imaging technology, it is not changing the requirements regarding the submission of disbursements documentation. Previously, the Commission has concluded that the retention of microfilm records satisfies the documentation requirements of 2 U.S.C. § 432(c), and that for electronic transfers, committees may keep records in the form of computerized magnetic media. AOs 1994–40 and 1993–4. However, these advisory opinions addressed fairly limited record retention issues, and did not address or resolve issues regarding the use of digital imaging technology to satisfy the requirements of 11 CFR 9003.5 or 9033.11.

Section 9036.5 Determination of Ineligibility Date

A conforming amendment has been added to paragraph 9036.5(a), clarifying that the procedures of section 9036.5 apply to matching fund resubmissions made pursuant to 11 CFR part 9036 and those prompted by an inquiry under 11 CFR part 9039, under appropriate circumstances. See discussion below.

Part 9037—Payments and Reporting

Section 9037.4 Alphabetized Schedules

The final rules include new section 9037.4, which follows new section 9006.3.

Part 9038—Examination and Audits

Section 9038.1 Audit

The amendments to this section follow those made to section 9007.1, above.

Section 9038.2 Repayments

Repayment Ratio

Section 9038.2(b)(2) of the current rules requires candidates to repay amounts received from the matching payment account that are used for non-qualified campaign expenses. The amount of the repayment is determined by multiplying the total amount of non-qualified campaign expenses by the candidate's repayment ratio. The repayment ratio is the ratio of matching funds received by a candidate to the candidate's total deposits. Under the current rules, the repayment ratio is determined as of the candidate's date of ineligibility.

The new rule changes the date for determining a candidate's repayment ratio from the date of ineligibility to 90 days after the date of ineligibility. Under the new rule, the Commission will multiply the amount of non-qualified campaign expenses by the ratio of matching funds to total deposits received as of 90 days after the candidate's date of ineligibility, in order to determine the amount the candidate must repay for using matching funds for non-qualified campaign expenses.

The new rule generates a repayment ratio that more accurately reflects the mix of public funds and private contributions received during the campaign, particularly for a candidate who receives significant amounts of private contributions after his or her date of ineligibility. By taking private contributions received within 90 days of DOI into account when determining a candidate's repayment ratio, the new rule will likely reduce the radio, thereby reducing the amount of the candidate's repayment.

This approach is also more consistent with the statute when applied to a candidate who does not receive matching payments until after his or her date of ineligibility. Section 9038(b)(2) of the Matching Payment Act requires a candidate who uses public funds for non-qualified campaign expenses to repay a portion of the public funds he or she received to the Treasury. However, when section 8038.2(b)(2) of the current regulations is applied to a candidate who does not receive matching payments until after his or her DOI, it arguably generates a repayment ratio of zero. Thus, it does not require the candidate to make a repayment, even if the candidate incurred numerous non-qualified campaign expenses.

The new rule takes these post-DOI matching payments into account, thereby generating a ratio that is greater than zero and more accurately reflects the mix is greater than zero and more accurately reflects the mix of matching payments and private contributions actually received. As a result, publicly-funded candidates that incur non-qualified campaign expenses will be required to make a repayment, even if they do not receive any public funds until after their date of ineligibility.

In approving this approach for the final rules, the Commission rejected an alternative approach set out in the NPRM. The alternative approach would treat all matching funds certified in response to matching payment submissions received before the candidate's DOI as if they were certified before the candidate's DOI. This would result in a repayment ratio of greater than zero that could be used to determine a repayment amount under section 9038(b)(2) of the statute. However, this approach would only address the zero repayment situation outlined above. Since determining the repayment ratio 90 days after DOI addresses both situations, the Commission has incorporated this approach into the final rules.

In an effort to improve clarity, the final rules break the last three sentences of this section into two separate paragraphs. The Commission received no comments on this provision.

Income Derived From the Use of Surplus Public Funds

Paragraph 9038.2(b)(4) has been revised to indicate that the Commission may determine that income resulting from any use of surplus public funds after the candidate's DOI, less taxes, paid, shall be paid to the Treasury. This change parallels the changes made to sections 9004.5 and 9007.2(b)(4), discussed above.

Further Streamlining the Audit Process

The amendments to the audit process contained in this section follow those made to section 9007.2(d), above.

Conforming Amendments

A conforming amendment has been added to paragraph 9038.2(c)(1), to clarify that the repayment procedures followed by the Commission in connection with an 11 CFR part 9038 examination or audit also apply to an 11 CFR part 9039 examination or audit. See discussion of Part 9039, below.

The amendments to paragraph (d) of this section are identical to those made to 11 CFR 9007.2, discussed above.

Section 9038.4 Extensions of Time

The amendment to this section follows that made to section 9007.3, above.

Section 9038.5 Petitions for Rehearing; Stays of Repayment Determinations

The amendments to this section follow those made to section 9007.5, above.

Section 9038.7 Administrative Record

This section generally follows new section 9007.7.

Part 9039—Review and Investigation Authority

Section 9039.3 Examinations and Audits; Investigations

The Commission's review and investigatory authority for administering the matching fund program is set forth at 26 U.S.C. § 9039(b). In carrying out these responsibilities, the Commission must perform a continuing review of candidate and committee reports and submissions, and other relevant information. Regulations implementing these requirements are found at 11 CFR part 9039.

For the most part the Commission's review is routine, carried out in accordance with the eligibility, audit and repayment procedures contained elsewhere in the regulations. Section 9039(b) and its implementing regulations provide authority to conduct audits and investigations in situations other than those addressed by 26 U.S.C. § 9038, 11 CFR part 9038, 2 U.S.C. § 437g and 11 CFR part 111. To date, most of these situations have involved issues relating to a candidate's continuing eligibility or the amount of his or her entitlement during the course of the campaign, although they can also involve a post-election inquiry.

Section 9039.3 of the regulations describes how examinations, audits and investments are conducted in these inquiries. However, the prior section did not address the actions that may be taken at the conclusion of any such action. The Commission is therefore adopting new paragraph 9039.3(b)(4) for that purpose.

This new paragraph states that, if the Commission decides to take no further action in a part 9039 case, the candidates(s) and committee(s) involved will be so notified. If the Commission decides to take further action, such action will follow as closely as possible the procedures already in place for comparable situations. Specifically, if the inquiry results in an adjustments to the amount of certified matching funds, the procedures set forth at 11 CFR 9036.5 shall be followed. If the inquiry coincides with an audit undertaken pursuant to 11 CFR 9038.1, the information obtained in the inquiry will be utilized as part of the repayment determination. If the inquiry results in an initial or additional repayment determination, whether or not this coincides with a Commission audit, the procedures set forth at 11 CFR 9038.2, 9038.4 and 9038.5 shall be followed.

The new rules also include conforming amendments to 11 CFR 9033.1(b)(7), 9036.5(a), and 9038.2(c)(1).

Additional Issues

The Commission considered other proposals in the course of this rulemaking that it did not ultimately incorporate into the final rules. A summary of these proposals follows.

Convention Expenses of Ineligible Candidates

The Commission also sought comments in the NPRM on whether expenses incurred by losing primary election candidates in attending their party's national nominating convention should be considered a qualified campaign expense under 11 CFR 9032.9. Such attendance can provide a defeated candidate the opportunity to continue to fundraise and to maintain contact with his or her pledged convention delegates.

The Commission has decided for several reasons not to take this action. Qualified campaign expenses are defined in the Matching Payment Act at 26 U.S.C. § 9032(9)(A) as those "incurred by a candidate, or by his authorized committee, in connection with his campaign for nomination for election." This definition seemingly does not apply to those no longer seeking the presidential nomination.

Also, the purpose of the 10% rule set forth at 11 CFR 9033.5(b), under which a candidate becomes ineligible for additional funding on the 30th day following the date of the second consecutive primary election in which he or she receives less than 10% of the popular vote, is to discontinue funding of candidates who have not received substantial support following their initial establishment of eligibility. Allowing them to obtain additional funding at a later point in the process would undercut this purpose.

Under 11 CFR 9034.1(b), candidates can already count fundraising expenses incurred following their DOI, including those incurred at a national nominating convention, as qualified campaign expenses as part of their winding down costs. The Commission notes, however, that only those expenses directly related to fundraising qualify as qualified campaign expenses under this section. Creating an additional window of eligibility during the wind down period could substantially lengthen and complicate the audit process.

Treating Matching Payments as an Entitlement

One commenter urged the Commission to treat the matching payment program as more of an entitlement program. This commenter argued that the entitlement of a candidate who remains eligible for matching payments until the nominating convention should not be limited by the candidate's net outstanding campaign obligations. Instead, such a candidate should be entitled to receive matching funds for all matchable contributions received, up to fifty percent of the expenditure limitation. *See* 26 U.S.C. § 9034(b), 11 CFR 9034.1(d). The commenter said that the Commission should match all qualifying contributions submitted by such a candidate for matching, up to fifty percent of the limitation, and then seek a ratio surplus repayment once all campaign obligations have been satisfied.

However, this approach is inconsistent with the Matching Payment Act. Although the Act limits a candidate's overall entitlement to fifty percent of the expenditure limitation, the Act also further limits entitlement for candidates who become ineligible. Ineligible candidates are limited to matching payments for their net outstanding campaign obligations. 26 U.S.C. § 9033(c)(2). *See* 11 CFR 9034.1(b). All candidates for the nomination become ineligible when the party makes its nomination, because they can no longer be "seeking" a nomination that has already been awarded. *See* 26 U.S.C. § 9033(b)(2). Thus, a candidate's post-convention entitlement is limited to his or her NOCO, even if the candidate was eligible at the time the convention began.

If the commenter's suggestion were adopted, a candidate who was still eligible at the time of the convention could submit a large matching payment request after the nomination was awarded and have that request fully matched, even if the campaign had no debts outstanding at the time the funds were certified. The funds received would be treated as surplus funds rather than funds received in excess of entitlement. Thus, the committee would only be required to repay a portion of the funds under the surplus repayment rules. Such a result would frustrate the purposes of the Matching Payment Act, which requires a full repayment of any funds received by a candidate who has no further entitlement on the date of certification. 26 U.S.C. § 9038(b)(1). *See* 11 CFR 9038.2(b)(1).

The Commission also notes that this issue is the subject of ongoing litigation.

Certification of No Effect Pursuant to 5 U.S.C. § 605(b) (Regulatory Flexibility Act)

The attached final rules, if promulgated, will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that few, if any, small entities will be affected by these final rules. Further, any small entities affected are already required to comply with the requirements of the Presidential Election Campaign Fund Act and the Presidential Primary Matching Payment Account Act in these areas.

List of Subjects

11 CFR Part 106

Campaign funds, Political candidate, Political committee and parties, Reporting and recordkeeping requirements.

11 CFR Parts 9002–9004

Campaign funds, Elections, Political candidates.

11 CFR Parts 9006–9007

Administrative practice and procedure, Campaign funds, Elections, Political candidates, Reporting requirements.

11 CFR Part 9008

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Parts 9032–9034

Campaign funds, Elections, Political candidate.

11 CFR Parts 9036–9039

Administrative practice and procedure, Campaign funds, Political candidates.

For the reasons set out in the preamble, subchapters A, E and F of chapter I of title 11 of the Code of Federal Regulations are amended as follows:

PART 106—ALLOCATIONS OF CANDIDATE AND COMMITTEE ACTIVITIES

1. The authority citation for part 106 continues to read as follows:

Authority: 2 U.S.C. 438(a)(8), 441a(b), 441a(g).

2. Section 106.2 is amended by adding a sentence to the end of paragraph (a)(1), to read as follows:

§ 106.2 State allocation of expenditures incurred by authorized committees of presidential primary candidates receiving matching funds.

(a) * * *

(1) * * * Expenditures required to be allocated to the primary election under 11 CFR 9034.4(e) shall also be allocated to particular states in accordance with this section.

* * * * *

PART 9002—DEFINITIONS

3. The authority citation for part 9002 continues to read as follows:

Authority: 26 U.S.C. 9002 and 9009(b).

4. Paragraph (c) of § 9002.11 is amended by revising the first sentence to read as follows:

§ 9002.11 Qualified campaign expense.

* * * * *

(c) Except as provided in 11 CFR 9034.4(e), expenditures incurred either before the beginning of the expenditure report period or after the last day of a candidate's eligibility will be considered qualified campaign expenses if they meet the provisions of 11 CFR 9004.4(a). * * *

PART 9003—ELIGIBILITY FOR PAYMENTS

5. The authority citation for part 9003 continues to read as follows:

Authority: 26 U.S.C. 9003 and 9009(b).

6. In § 9003.1, the introductory text of paragraph (b) is republished, paragraphs (b)(4) and (b)(9) are revised, and new paragraph (b)(10) is added, to read as follows:

§ 9003.1 Candidate and committee agreements.

* * * * *

(b) *Conditions.* The candidates shall:

* * * * *

(4) Agree that they and their authorized committee(s) will keep and furnish to the Commission all documentation relating to receipts and disbursements including any books, records (including bank records for all accounts), all documentation required by this subchapter (including those required to be maintained under 11 CFR 9003.5), and other information that the Commission may request. If the candidate or the candidate's authorized committee maintains or uses computerized information containing any of the categories of data listed in 11 CFR 9003.6(a), the committee will provide computerized magnetic media, such as magnetic tapes or magnetic diskettes, containing the computerized information that meets the requirements of 11 CFR 9003.6(b) at the times specified in 11 CFR 9007.1(b)(1). Upon request, documentation explaining the computer system's software capabilities shall be provided, and such personnel as are necessary to explain the operation of the computer system's software and the computerized information prepared or maintained by the committee shall also be made available.

* * * * *

(9) Agree that they and their authorized committee(s) shall pay any civil penalties included in a conciliation agreement or otherwise imposed under 2 U.S.C. 437g against the candidates, any authorized committees of the candidates or any agent thereof.

(10) Agree that any television commercial prepared or distributed by the candidate or the candidate's authorized committee(s) will be prepared in a manner which ensures that the commercial contains or is accompanied by closed captioning of the oral content of the commercial to be broadcast in line 21 of the vertical blanking interval, or is capable of being viewed by deaf and hearing impaired individuals via any comparable successor technology to line 21 of the vertical blanking interval.

7. Section 9003.3 is revised to read as follows:

§ 9003.3 Allowable contributions.

(a) *Legal and accounting compliance fund—major party candidates.*

(1) *Sources.* (i) A major party candidate may accept contributions to a legal and accounting compliance fund if such contributions are received and disbursed in accordance with this section. A general election legal and accounting compliance fund ("GELAC") may be established by such candidate prior to being nominated or selected as the candidate of a political party for the office of President or Vice President of the United States.

(A) All solicitations for contributions to the GELAC shall clearly state that Federal law prohibits private contributions from being used for the candidate's election and that contributions will be used solely for legal and accounting services to ensure compliance with Federal law, and shall clearly state how contribution checks should be made payable.

(B) Contributions to the GELAC shall be subject to the limitations and prohibitions of 11 CFR parts 110, 114, and 115.

(C) Contributions shall be deposited in the GELAC only if they are designated in writing for the GELAC, or transferred pursuant to paragraph (a)(1)(ii), (iii), (iv) or (v) of this section. Any contribution which otherwise could be matched pursuant to 11 CFR 9034.2 shall not be considered designated in writing for the GELAC unless the contributor specifically redesignates it for the GELAC or unless it is accompanied by a proper designation for the GELAC. Any contribution that is designated in writing or redesignated for the GELAC shall not be matched pursuant to 11 CFR 9034.2.

(ii)(A) Contributions made during the matching payment period that do not exceed the contributor's limit for the primary election may be redesignated for the GELAC and subsequently transferred to the GELAC before the nomination only if—

(*1*) The contributions represent funds in excess of any amount needed to pay remaining primary expenses;

(*2*) The contributions have not been submitted for matching;

(*3*) The redesignations are received within 60 days of the Treasurer's receipt of the contributions; and

(*4*) The requirements of 11 CFR 110.1(b) (5) and (l) regarding redesignation are satisfied.

(B) All contributions redesignated and deposited pursuant to paragraph (a)(1)(ii)(A) of this section shall be subject to the contribution limitations applicable for the general election pursuant to 11 CFR 110.1(b)(2)(i).

(iii) Funds received during the matching payment period that are remaining in a candidate's primary election account after the nomination may be transferred to the GELAC without regard to the contribution limitations of 11 CFR part 110 and used for any purpose permitted under this section, only if the funds are in excess of any amount needed to pay remaining net outstanding campaign obligations under 11 CFR 9034.1(b) and any amount required to be reimbursed to the Presidential Primary Matching Payment Account under 11 CFR 9038.2. The excess funds so transferred may include contributions made before the beginning of the expenditure report period, which contributions do not exceed the contributor's limit for the primary election. Such contributions need not be redesignated by the contributors for the GELAC.

(iv) Contributions that are made after the beginning of the expenditure report period but which are not designated in writing for the GELAC may be redesignated for the GELAC and transferred to the GELAC only if—

(A) The funds are in excess of any amount needed to pay remaining net outstanding campaign obligations under 11 CFR 9034.1(b) and any amount required to be reimbursed to the Presidential Primary Matching Payment Account under 11 CFR 9038.2;

(B) The contributions have not been submitted for matching; and

(C) The candidate obtains the contributor's redesignation in accordance with 11 CFR 110.1.

(v) Contributions made with respect to the primary election that exceed the contributor's limit for the primary election may be redesignated for the GELAC and transferred to the GELAC if the candidate obtains the contributor's redesignation for the GELAC in accordance with 11 CFR 110.1.

(vi) For purposes of this section, a contribution shall be considered to be designated in writing for the GELAC if—

(A) The contribution is made by check, money order, or other negotiable instrument which clearly indicates that it is made with respect to the GELAC; or

(B) The contribution is accompanied by a writing, signed by the contributor, which clearly indicates that it is made with respect to the GELAC.

(2) *Uses.* (i) Contributions to the GELAC shall be used only for the following purposes:

(A) To defray the cost of legal and accounting services provided solely to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.* in accordance with paragraph (a)(2)(ii) of this section;

(B) To defray in accordance with paragraph (a)(2)(ii)(A) of this section, that portion of expenditures for payroll, overhead, and computer services related to ensuring compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.*;

(C) To defray any civil or criminal penalties imposed pursuant to 2 U.S.C. 437g or 26 U.S.C. 9012;

(D) To make repayments under 11 CFR 9007.2;

(E) To defray the cost of soliciting contributions to the GELAC;

(F) To defray the cost of producing, delivering and explaining the computerized information and materials provided pursuant to 11 CFR 9003.6 and explaining the operation of the computer system's software;

(G) To make a loan to an account established pursuant to 11 CFR 9003.4 to defray qualified campaign expenses incurred prior to the expenditure report period or prior to receipt of Federal funds, provided that the amounts so loaned are restored to the GELAC; and

(H) To defray unreimbursed costs incurred in providing transportation and services for the Secret Service and national security staff pursuant to 11 CFR 9004.6.

(ii)(A) Expenditures for payroll (including payroll taxes), overhead and computer services, a portion of which are related to ensuring compliance with Title 2 of the United States Code and Chapter 95 of Title 26 of the United States Code, shall be initially paid from the candidate's Federal fund account under 11 CFR 9005.2 and may be later reimbursed by the compliance fund. For purposes of paragraph (a)(2)(i)(B) of this section, a candidate may use contributions to the GELAC to reimburse his or her Federal fund account an amount equal to 10% of the payroll and overhead expenditures of his or her national campaign headquarters and state offices.

(B) Overhead expenditures include, but are not limited to rent, utilities, office equipment, furniture, supplies and all telephone charges except for telephone charges related to a special use such as voter registration and get out the vote efforts.

(C) If the candidate wishes to claim a larger compliance exemption for payroll or overhead expenditures, the candidate shall establish allocation percentages for each individual who spends all or a portion of his or her time to perform duties which are considered necessary to ensure compliance with title 2 of the United States Code or chapter 95 of title 26 of the United States Code. The candidate shall keep detailed records to support the derivation of each percentage. Such records shall indicate which duties are considered compliance and the percentage of time each person spends on such activity.

(D) In addition, a candidate may use contributions to the GELAC to reimburse his or her Federal fund account an amount equal to 50% of the costs (other than payroll) associated with computer services. Such costs include but are not limited to rental and maintenance of computer equipment, data entry services not performed by committee personnel, and related supplies.

(E) If the candidate wishes to claim a larger compliance exemption for costs associated with computer services, the candidate shall establish allocation percentages for each computer function that is considered necessary, in whole or in part, to ensure compliance with 2 U.S.C. 431 *et seq.*, and 26 U.S.C. 9001 *et seq.* The allocation shall be based on a reasonable estimate of the costs associated with each computer function, such as the costs for data entry services performed by persons other than committee personnel and processing time. The candidate shall keep detailed records to support such calculations. The records shall indicate which computer functions are considered compliance-related and shall reflect which costs are associated with each computer function.

(F) The Commission's Financial Control and Compliance Manual for General Election Candidates Receiving Public Funding contains some accepted alternative allocation methods for determining the amount of salaries and overhead expenditures that may be considered exempt compliance costs.

(G) Reimbursement from the GELAC may be made to the separate account maintained for federal funds under 11 CFR 9005.2 for legal and accounting compliance services disbursements that are initially paid from the separate federal funds account. Such reimbursement must be made prior to any repayment determination by the Commission pursuant to 11 CFR 9007.2. Any amounts so reimbursed to the Federal funds account may not subsequently be transferred back to the GELAC.

(iii) Amounts paid from the GELAC for the purposes permitted by paragraphs (a)(2)(i) (A) through (F) and (H) of this section shall not be subject to the expenditure limits of 2 U.S.C. 441a(b) and 11 CFR 110.8. (See also 11 CFR 100.8(b)(15).) When the proceeds of loans made in accordance with paragraph (a)(2)(i)(G) of this section are expended on qualified campaign expenses, such expenditures shall count against the candidate's expenditure limit.

(iv) Contributions to or funds deposited in the GELAC may not be used to retire debts remaining from the presidential primaries, except that, if after payment of all expenses set out in paragraph (a)(2)(i) of this section, there are excess campaign funds, such funds may be used for any purpose permitted under 2 U.S.C. 439a and 11 CFR part 113, including payment of primary election debts.

(3) *Deposit and disclosure.* (i) Amounts received pursuant to paragraph (a)(1) of this section shall be deposited and maintained in a GELAC account separate from the account described in 11 CFR 9005.2 and shall not be commingled with any money paid to the candidate by the Secretary pursuant to 11 CFR 9005.2.

(ii) The receipts to and disbursements from the GELAC account shall be reported in a separate report in accordance with 11 CFR 9006.1(b)(2). All contributions made to the GELAC account shall be recorded in accordance with 11 CFR 102.9. Disbursements made from the GELAC account shall be documented in the same manner provided in 11 CFR 9003.5.

(b) *Contributions to defray qualified campaign expenses—major party*

candidates. (1) A major party candidate or his or her authorized committee(s) may solicit contributions to defray qualified campaign expenses to the extent necessary to make up any deficiency in payments received from the Fund due to the application of 11 CFR 9005.2(b).

(2) Such contributions may be deposited in a separate account or may be deposited with federal funds received under 11 CFR 9005.2. Disbursements from this account shall be made only to defray qualified campaign expenses and to defray the cost of soliciting contributions to such account. All disbursements from this account shall be documented in accordance with 11 CFR 9003.5 and shall be reported in accordance with 11 CFR 9006.1.

(3) A candidate may make transfers to this account from his or her GELAC, or from the candidate's primary election account in accordance with paragraph (a)(1)(iii) of this section.

(4) The contributions received under this section shall be subject to the limitations and prohibitions of 11 CFR Parts 110, 114 and 115 and shall be aggregated with all contributions made by the same persons to the candidate's GELAC under paragraph (a) of this section for the purposes of such limitations.

(5) Any costs incurred for soliciting contributions to this account shall not be considered expenditures to the extent that the aggregate of such costs does not exceed 20 percent of the expenditure limitation under 11 CFR 9003.2(a)(1). These costs shall, however, be reported as disbursements in accordance with 11 CFR Part 104 and 11 CFR 9006.1. For purposes of this section, a candidate may exclude from the expendute limitation an amount equal to 10% of the payroll (including payroll taxes) and overhead expenditures of his or her national campaign headquarters and state offices as exempt fundraising costs. The candidate may claim a larger fundraising exemption by establishing allocation percentages for employees using the method described in paragraph (a)(2)(ii)(C) of this section.

(6) Any costs incurred for legal and accounting services which are provided solely to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.* shall not count against the candidate's expenditure limitation. A candidate may exclude from the expenditure limitation the amounts described in paragraphs (a)(2)(ii) (A) and (D) of this section for payroll, overhead or computer costs or a larger amount under paragraphs (a)(2)(ii) (C) and (E) of this section.

(7) The Commission's Financial Control and Compliance Manual for General Election Candidates Receiving Public Funding contains some accepted alternative allocation methods for determining the amount of salaries and overhead expenditures that may be considered exempt compliance costs or exempt fundraising costs.

(c) *Contributions to defray qualified campaign expenses—minor and new party candidates.* (1) A minor or new party candidate may solicit contributions to defray qualified campaign expenses which exceed the amount received by such candidate from the Fund, subject to the limits of 11 CFR 9003.2(b).

(2) The contributions received under this section shall be subject to the limitations and prohibitions of 11 CFR parts 110, 114 and 115.

(3) Such contributions may be deposited in a separate account or may be deposited with federal funds received under 11 CFR 9005.2. Disbursements from this account shall be made only for the following purposes:

(i) To defray qualified campaign expenses;

(ii) To make repayments under 11 CFR 9007.2;

(iii) To defray the cost of soliciting contributions to such account;

(iv) To defray the cost of legal and accounting services provided solely to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.*;

(v) To defray the cost of producing, delivering and explaining the computerized information and materials provided pursuant to 11 CFR 9003.6 and explaining the operation of the computer system's software.

(4) All disbursements from this account shall be documented in accordance with 11 CFR 9003.5 and shall be reported in accordance with 11 CFR part 104 and § 9006.1. The candidate shall keep and maintain a separate record of disbursements made to defray exempt legal and accounting costs under paragraphs (c) (6) and (7) of this section and shall report such disbursements in accordance with 11 CFR part 104 and 11 CFR 9006.1.

(5) Any costs incurred for soliciting contributions to this account shall not be considered expenditures to the extent that the aggregate of such costs does not exceed 20 percent of the expenditure limitation under 11 CFR 9003.2(a)(1). These costs shall, however, be reported as disbursements in accordance with 11 CFR Part 104 and 9006.1. For purposes of this section, a candidate may exclude from the expenditure limitation the amount of payroll costs described in paragraph (b)(5) of this section.

(6) Any costs incurred for legal and accounting services which are provided solely to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.* shall not count against the candidate's expenditure limitation. A candidate may exclude from the expenditure limitation the amounts described in paragraphs (a)(2)(ii) (A) and (D) of this section for payroll, overhead or computer costs or a larger amount under paragraphs (a)(2)(ii) (C) and (E) of this section.

(7) The Commission's Financial Control and Compliance Manual for General Election Candidates Receiving Public Funding contains some accepted alternative allocation methods for determining the amount of salaries and overhead expenditures that may be considered exempt compliance costs or exempt fundraising costs.

8. Section 9003.4 is amended by revising the last sentence of paragraph (a), and adding a new sentence to the end of the paragraph (a), to read as follows:

§ 9003.4 Expenses incurred prior to the beginning of the expenditure report period or prior to receipt of Federal funds.

(a) *Permissible expenditures.* (1) * * * Examples of such expenditures include but are not limited to: Expenditures for establishing financial accounting systems and expenditures for organizational planning. Expenditures for polling that are incurred before the start of the expenditure report period are attributed as provided in 11 CFR 9034.4(e)(2).

* * * * *

9. Section 9003.5 is revised to read as follows:

§ 9003.5 Documentation of disbursements.

(a) *Burden of proof.* Each candidate shall have the burden of providing that disbursements made by the candidate or his or her authorized committee(s) or persons authorized to make expenditures on behalf of the candidate or authorized committee(s) are qualified campaign expenses as defined in 11 CFR 9002.11. The candidate and his or her authorized committee(s) shall obtain and furnish to the Commission on request any evidence regarding qualified campaign expenses made by the candidate, his or her authorized committees and agents or persons authorized to make expenditures on behalf of the candidate or committee(s) as provided in paragraph (b) of this section.

(b) *Documentation required.*

(1) For disbursements in excess of $200 to a payee, the candidate shall present a canceled check negotiated by the payee and either:

(i) A receipted bill from the payee that states that purpose of the disbursement; or

(ii) If such a receipt is not available,

(A) One of the following documents generated by the payee: a bill, invoice, or voucher that states the purpose of the disbursement; or

(B) Where the documents specified in paragraph (b)(1)(ii)(A) of this section are not available, a voucher or contemporaneous memorandum from the candidate or the committee that states the purpose of the disbursement; or

(iii) Where the supporting documentation required in paragraphs (b)(1) (i) or (ii) of this section is not available, the candidate or committee may present collateral evidence to document the qualified campaign expense. Such collateral evidence may include, but is not limited to:

(A) Evidence demonstrating that the expenditure is part of an identifiable program or project which is otherwise sufficiently documented such as a disbursement which is one of a number of documented disbursements relating to a campaign mailing or to the operation of a campaign office; or

(B) Evidence that the disbursement is covered by a pre-established written campaign committee policy, such as a dairy travel expense policy.

(iv) If the purpose of the disbursement is not stated in the accompanying documentation, it must be indicated on the canceled check.

(2) For all other disbursements, the candidate shall present:

(i) A record disclosing the full name and mailing address of the payee, the amount, date and purpose of the disbursement, if made from a petty cash fund; or

(ii) A canceled check negotiated by the payee that states the full name and mailing address of the payee, and the amount, date and purpose of the disbursement.

(3) For purposes of this section:

(i) *Payee* means the person who provides the goods or services to the candidate or committee in return for the disbursement; except that an individual will be considered a payee under this section if he or she receives $1000 or less advanced for travel and/or subsistence and if the individual is the recipient of the goods or services purchased.

(ii) *Purpose* means the full name and mailing address of the payee, the date and amount of the disbursement, and a brief description of the goods or services purchased.

(c) *Retention of records.* The candidate shall retain records with respect to each disbursement and receipt, including bank records, vouchers, worksheets, receipts, bills and accounts, journals, ledgers, fundraising solicitation material, accounting systems documentation, and any related materials documenting campaign receipts and disbursements, for a period of three years pursuant to 11 CFR 102.9(c), and shall present these records to the Commission on request.

(d) *List of capital and other assets.* (1) *Capital assets* The candidate or committee shall maintain a list of all capital assets whose purchase price exceeded $2000 when acquired by the campaign. The list shall include a brief description of each capital asset, the purchase price, the date it was acquired, the method of disposition and the amount received in disposition. For purposes of this section, "capital asset" shall be defined in accordance with 11 CFR 9004.9(d)(1).

(2) *Other assets.* The candidate or committee shall maintain a list of other assets acquired for use in fundraising or as collateral for campaign loans, if the aggregate value of such assets exceeds $5000. The list shall include a brief description of each such asset, the fair market value of each asset, the method of disposition and the amount received in disposition. The fair market value of other assets shall be determined in accordance with 11 CFR 9004.9(d)(2).

PART 9004—ENTITLEMENT OF ELIGIBLE CANDIDATES TO PAYMENTS; USE OF PAYMENTS

10. The authority citation for part 9004 continues to read as follows:

Authority: 26 U.S.C. 9004 and 9009(b).

11. Section 9004.4 is amended by revising paragraph (a), by adding new paragraph (b)(8), and by removing paragraph (c), to read as follows:

§ 9004.4 Use of payments.

(a) *Qualified campaign expenses.* An eligible candidate shall use payments received under 11 CFR part 9005 only for the following purposes:

(1) to defray qualified campaign expenses;

(2) To repay loans that meet the requirements of 11 CFR 100.7 (a)(1) or (b)(11) or to otherwise restore funds (other than contributions received pursuant to 11 CFR 9003.3 (b) or (c) and expended to defray qualified campaign expenses) used to defray qualified campaign expenses;

(3) To restore funds expended in accordance with 11 CFR 9003.4 for qualified campaign expenses incurred by the candidate prior to the beginning of the expenditure report period.

(4) *Winding down costs.* The following costs shall be considered qualified campaign expenses:

(i) Costs associated with the termination of the candidate's general election campaign such as complying with the post-election requirements of the Act and other necessary administrative costs associated with winding down the campaign, including office space rental, staff salaries, and office supplies; or

(ii) Costs incurred by the candidate prior to the end of the expenditure report period for which written arrangement or commitment was made on or before the close of the expenditure report period.

(iii) 100% of salary, overhead and computer expenses incurred after the end of the expenditure report period may be paid from a legal and accounting compliance fund established pursuant to 11 CFR 9003.3, and will be presumed to be solely to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.*

(5) *Gifts and monetary bonuses.* Gifts and monetary bonuses shall be considered qualified campaign expenses, provided that:

(i) Gifts for committee employees, consultants and volunteers in recognition for campaign-related activities or services do not exceed $150 total per individual and the total of all gifts does not exceed $20,000; and

(ii) All monetary bonuses for committee employees and consultants in recognition for campaign-related activities or services;

(A) Are provided for pursuant to a written contract made prior to the date of the election; and

(B) Are paid during the expenditure report period.

(b) * * *

(8) *Lost or Misplaced Items.* The cost of lost or misplaced items may be considered a nonqualified campaign expense. Factors considered by the commission in making this determination shall include, but not be limited to, whether the committee demonstrates that it made conscientious efforts to safeguard the missing equipment; whether the committee sought or obtained insurance; the type of equipment involved; and the number and value of items that were lost.

12. Section 9004.5 is revised to read as follows:

§ 9004.5 Investment of public funds; other uses resulting in income.

Investment of public funds or any other use of public funds that results in income is permissible, provided that an amount equal to all net income derived from such a use, less Federal, State and local taxes paid on such income, shall be paid to the Secretary. Any net loss from an investment or other use of public funds will be considered a non-qualified campaign expense and an amount equal to the amount of such loss shall be repaid to the United States Treasury as provided under 11 CFR 9007.2(b)(2)(i).

13. Section 9004.6 is revised to read as follows:

§ 9004.6 Expenditures for transportation and services made available to media personnel; reimbursements.

(a) *General.* (1) Expenditures by an authorized committee for transportation, ground services or facilities (including air travel, ground transportation, housing, meals, telephone service, and typewriters) made available to media personnel, Secret Service personnel or national security staff will be considered qualified campaign expenses, and, except for costs relating to Secret Service personnel or national security staff, will be subject to the overall expenditure limitations of 11 CFR 9003.2 (a)(1) and (b)(1).

(2) Subject to the limitation in paragraphs (b) and (c) of this section, committees may seek reimbursement for these expenses, and may deduct reimbursements received from media representatives from the amount of expenditures subject to the overall expenditure limitations of 11 CFR 9003.2 (a)(1) and (b)(1). Expenses for which the committee receives no reimbursement will be considered qualified campaign expenses, and, with the exception of those expenses relating to Secret Service personnel and national security staff, will be subject to the overall expenditure limitation.

(b) *Reimbursement limits.* (1) The amount of reimbursement sought from a media representative under paragraph (a)(2) of this section shall not exceed 110% of the media representative's pro rata share (or a reasonable estimate of the media representative's pro rata share) of the actual cost of the transportation and services made available. Any reimbursement received in excess of this amount shall be disposed of in accordance with paragraph (d)(1) of this section.

(2) For the purpose of this section, a media representative's pro rata share shall be calculated by dividing the total actual cost of the transportation and services provided by the total number of individuals to whom such transportation and services are made available. For purposes of this calculation, the total number of individuals shall include committee staff, media personnel, Secret Service personnel, national security staff and any other individuals to whom such transportation and services are made available, except that, when seeking reimbursement for transportation costs paid by the committee under 11 CFR 9004.7(b)(5)(i)(C), the total number of individuals shall not include national security staff.

(c) *Deducation of reimbursements from expenditures subject to the overall expenditure limitation.* (1) The committee may deduct from the amount of expenditures subject to the overall expenditure limitation:

(i) The amount of reimbursements received from media representatives in payment for the transportation and services described in paragraph (a) of this section, up to the actual cost of the transportation and services provided to media representatives; and

(ii) An additional amount of the reimbursements received from media representatives, representing the administrative costs incurred by the committee in providing these services to the media representative and seeking reimbursement for them, equal to:

(A) Three percent of the actual cost of transportation and services provided to the media representatives under this section; or

(B) An amount in excess of 3% representing the administrative costs actually incurred by the committee in providing services to the media representatives, provided that the committee is able to document the total amount of administrative costs actually incurred.

(2) For the purpose of this paragraph, "administrative costs" includes all costs incurred by the committee in making travel arrangements and seeking reimbursement, whether these services are performed by committee staff or by independent contractors.

(d) *Disposal of excess reimbursements.* If the committee receives reimbursements in excess of the amount deductible under paragraph (c) of this section, it shall dispose of the excess amount in the following manner:

(1) Any reimbursement received in excess of 110% of the actual pro rata cost of the transportation and services made available to a media representative shall be returned to the media representative.

(2) Any amount in excess of the amount deductible under paragraph (c) of this section that is not required to be returned to the media representative under paragraph (d)(1) of this section shall be paid to the Treasury.

(e) *Reporting.* The total amount paid by an authorized committee for the services and facilities described in paragraph (a)(1) of this section, plus the administrative costs incurred by the committee in providing these services and facilities and seeking reimbursement for them, shall be reported as an expenditure in accordance with 11 CFR 104.3(b)(2)(i). Any reimbursement received by such committee under paragraph (b)(1) of this section shall be reported in accordance with 11 CFR 104.3(a)(3)(ix).

14. Section 9004.7 is revised to read as follows:

§ 9004.7 Allocation of travel expenditures.

(a) Notwithstanding the provisions of 11 CFR 106.3, expenditures for travel relating to a Presidential or Vice Presidential candidate's campaign by any individual, including a candidate, shall, pursuant to the provisions of paragraph (b) of this section, be qualified campaign expenses and be reported by the candidate's authorized committee(s) as expenditures.

(b)(1) For a trip which is entirely campaign-related, the total cost of the trip shall be a qualified campaign expense and a reportable expenditure.

(2) For a trip which includes campaign-related and non-campaign related stops, that portion of the cost of the trip allocable to campaign activity shall be a qualified campaign expense and a reportable expenditure. Such portion shall be determined by calculating what the trip would have cost from the point of origin of the trip to the first campaign-related stop and from the stop through each subsequent campaign-related stop to the point of origin. If any campaign activity, other than incidental contacts, is conducted at a stop, that stop shall be considered campaign-related. Campaign activity includes soliciting, making, or accepting contributions, and expressly advocating the election or defeat of the candidate. Other factors, including the setting, timing and statements or expressions of the purpose of an event, and the substance of the remarks or speech made, will also be considered in determining whether a stop is campaign-related.

(3) For each trip, an itinerary shall be prepared and such itinerary shall be made available by the committee for Commission inspection. The itinerary shall show the time of arrival and departure and the type of events held.

(4) For trips by government conveyance or by charter, a list of all passengers on such trip, along with a designation of which passengers are and which are not campaign-related, shall be made available for Commission inspection. When required to be created, a copy of the government's or charter company's official manifest shall also be maintained and made available by the committee.

(5)(i) If any individual, including a candidate, uses a government airplane for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount equal to:

(A) The lowest unrestricted and non-discounted first class commercial air fare available for the time traveled, in the case of travel to a city served by a regularly scheduled commercial airline service; or

(B) The lowest unrestricted and non-discounted coach commercial air fare available for the time traveled, in the case of travel to a city served by regularly scheduled coach airline service, but not regularly scheduled first class airline service; or

(C) In the case of travel to a city not served by a regularly scheduled commercial airline service, the commercial charter rate for an airplane sufficient in size to accommodate the campaign-related travelers, including the candidate, plus the news media and the Secret Service.

(ii) If a government airplane is flown to a campaign-related stop where it will pick up passengers, or from a campaign-related stop where it left off passengers, the candidate's authorized committee shall pay the appropriate government entity an amount equal to the greater of the amount billed or the amount required under paragraph (b)(5)(i) of this section for one passenger.

(iii) If any individual, including a candidate, uses a government conveyance, other than an airplane, for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount equal to the commercial rental rate for a conveyance sufficient in size to accommodate the campaign-related travelers, including the candidate, plus the news media and the Secret Service.

(iv) If any individual, including a candidate, uses accommodations, including lodging and meeting rooms, during campaign-related travel, and the accommodations are paid for by a government entity, the candidate's authorized committee shall pay the appropriate government entity an amount equal to the usual and normal charge for the accommodations, and shall maintain documentation supporting the amount paid.

(v) For travel by airplane, the committee shall maintain documentation of the lowest unrestricted nondiscounted air fare available for the time traveled, including the airline, flight number and travel service providing that fare or the charter rate, as appropriate. For travel by other conveyances, the committee shall maintain documentation of the commercial rental rate for a conveyance of sufficient size, including the provider of the conveyance and the size, model and make of the conveyance.

(6) Travel expenses of a candidate's spouse and family when accompanying the candidate on campaign-related travel may be treated as qualified campaign expenses and reportable expenditures. If the spouse or family members conduct campaign-related activities, their travel expenses shall be qualified campaign expenses and reportable expenditures.

(7) If any individual, including a candidate, incurs expenses for campaign-related travel, other than by use of government conveyance or accommodations, an amount equal to that portion of the actual cost of the conveyance or accommodations which is allocable to all passengers, including the candidate, who are traveling for campaign purposes shall be a qualified campaign expense and shall be reported by the committee as an expenditure.

(i) If the trip is by charter, the actual cost for each passenger shall be determined by dividing the total operating cost for the charter by the total number of passengers transported. The amount which is a qualified campaign expense and a reportable expenditure shall be calculated in accordance with the formula set forth at 11 CFR 9004.7(b)(2) on the basis of the actual cost per passenger multiplied by the number of passengers traveling for campaign purposes.

(ii) If the trip is by non-charter commercial transportation, the actual cost shall be calculated in accordance with the formula set forth at 11 CFR 9004.7(b)(2) on the basis of the commercial fare. Such actual cost shall be a qualified campaign expense and a reportable expenditure.

(8) Travel on corporate airplanes and other corporate conveyances is governed by 11 CFR 114.9(e).

15. Section 9004.9 is amended by revising paragraph (a)(1)(iii), adding paragraph (a)(4) and revising paragraph (d)(1), to read as follows:

§ 9004.9 Net outstanding qualified campaign expenses.

(a) * * *

(1) * * *

(iii) An estimate of the necessary winding down costs, as defined under 11 CFR 9004.4(a)(4), submitted in the format required by paragraph (a)(4) of this section; less

* * * * * *

(4) The amount submitted as an estimate of necessary winding down costs under paragraph (a)(1)(iii) of this section shall be broken down by expense category and quarterly or monthly time period. This breakdown shall include estimated costs for office space rental, staff salaries, legal expenses, accounting expenses, office supplies, equipment rental, telephone expenses, postage and other mailing costs, printing and storage. The breakdown shall estimate the costs that will be incurred in each category from the time the statement is submitted until the expected termination of the committee's political activity.

* * * * * *

(d)(1) *Capital assets.* For purposes of this section, the term "capital asset" means any property used in the operation of the campaign whose purchase price exceeded $2000 when acquired by the committee. Property that must be valued as capital assets under this section includes, but is not limited to, office equipment, furniture, vehicles and fixtures acquired for use in the operation of the candidate's campaign, but does not include property defined as "other assets" under 11 CFR 9004.9(d)(2). A list of all capital assets shall be maintained by the committee in accordance with 11 CFR 9003.5(d)(1). The fair market value of capital assets may be considered to be the total original cost of such items when acquired less 40%, to account for depreciation, except that items acquired after the date of ineligibility must be valued at their fair market value on the date acquired.

* * * * * *

PART 9006—REPORTS AND RECORDKEEPING

16. The authority citation for part 9006 continues to read as follows:

Authority: 2 U.S.C. 434 and 26 U.S.C. 9006(b).

17. Section 9006.3 is added to read as follows:

§ 9006.3 Alphabetized schedules.

If the authorized committee(s) of a candidate file a schedule of itemized receipts, disbursements, or debts and

obligations pursuant to 11 CFR 104.3 that was generated directly or indirectly from computerized files or records, the schedule shall list in alphabetical order the sources of the receipts, the payees or the creditors, as appropriate. In the case of individuals, such schedule shall list all contributors, payees, and creditors in alphabetical order by surname.

PART 9007—EXAMINATIONS AND AUDITS; REPAYMENTS

18. The authority citation for part 9007 continues to read as follows:

Authority: 26 U.S.C. 9007 and 9009(b).

19. Section 9007.1 is amended by revising paragraphs (b)(2)(iii), (c), (d) and (e) and adding new paragraph (f) to read as follows:

§ 9007.1 Audits.

* * * * *

(b) * * *

(2) * * *

(iii) *Exit conference.* At the conclusion of the fieldwork, Commission staff will hold an exit conference to discuss with committee representatives the staff's preliminary findings and recommendations which the staff anticipates it will present to the Commission for approval. Commission staff will prepare a written Exit Conference Memorandum that discusses these findings and recommendations. A copy of the Exit Conference Memorandum will be given to committee representatives at the exit conference. These preliminary staff findings may include an evaluation of procedures and systems employed by the candidate and committee to comply with applicable provisions of the Federal Election Campaign Act, the Presidential Election Campaign Fund Act and Commission regulations; the accuracy of statements and reports filed with the Commission by the candidate and committee; and preliminary calculations regarding future repayments to the United States Treasury. Commission staff will advise committee representatives at this conference of the committee's opportunity to respond to these proposed findings, the projected timetable regarding the issuance of the audit report and any repayment determination, the committee's opportunity for an administrative review of any repayment determination, and the procedures involved in Commission repayment determinations under 11 CFR 9007.2.

* * * * *

(c) *Committee response to the Exit Conference Memorandum.* The candidate and his or her authorized committee may submit in writing within 60 calendar days after the exit conference, legal and factual materials disputing or commenting on the proposed findings contained in the Exit Conference Memorandum. In addition, the committee shall submit any additional documentation requested by Commission staff. Such materials may be submitted by counsel if the candidate so desires.

(d) *Approval and issuance of the audit report.* (1) Before voting on whether to approve and issue an audit report, the Commission will consider any written legal and factual materials timely submitted by the candidate or his or her authorized committee in accordance with paragraph (c) of this section. The Commission-approved audit report may address issues other than those contained in the Exit Conference Memorandum. In addition, this report will contain a repayment determination made by the Commission pursuant to 11 CFR 9007.2(c)(1).

(2) The audit report may contain issues that warrant referral to the Office of General Counsel for possible enforcement proceedings under 2 U.S.C. 437g and 11 CFR Part 111.

(3) Addenda to the audit report may be approved and issued by the Commission from time to time as circumstances warrant and as additional information becomes available. Such addenda may be based on follow-up fieldwork conducted under paragraph (b)(3) of this section, and/or information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities. The procedures set forth in paragraphs (c) and (d) (1) and (2) of this section will be followed in preparing such addenda. The addenda will be placed on the public record as set forth in paragraph (e) of this section. Such addenda may also include additional repayment determination(s).

(e) *Public release of audit report.* (1) The Commission will consider the audit report in an open session agenda document. The Commission will provide the candidate and the committee with copies of any agenda document to be considered in an open session 24 hours prior to releasing the agenda document to the public.

(2) Following Commission approval of the audit report, the report will be forwarded to the committee and released to the public. The Commission will provide the candidate and committee with copies of the audit report approved by the Commission 24 hours before releasing the report to the public.

(f)(1) *Sampling.* In conducting an audit of contributions pursuant to this section, the Commission may utilize generally accepted statistical sampling techniques to quantify, in whole or in part, the dollar value of related audit findings. A projection of the total amount of violations based on apparent violations identified in such a sample may become the basis, in whole or in part, of any audit finding.

(2) A committee in responding to a sample-based finding shall respond only to the specific sample items used to make the projection. If the committee demonstrates that any apparent errors found among the sample items were not errors, the Commission shall make a new projection based on the reduced number of errors in the sample.

(3) Within 30 days of service of the Final Audit Report, the committee shall submit a check to the United States Treasury for the total amount of any excessive or prohibited contributions not refunded, reattributed or redesignated in a timely manner in accordance with 11 CFR 103.3(b) (1), (2) or (3); or take any other action required by the Commission with respect to sample-based findings.

20. In § 9007.2, paragraphs (a) (2) and (3) are revised, paragraph (a)(4) added, the introductory text of paragraph (b) is republished, paragraph (b)(4) is revised, paragraphs (c) and (d) are revised, and the first two sentences of paragraph (f), the first sentence of paragraph (g), and paragraph (i) are revised to read as follows:

§ 9007.2 Repayments.

(a) * * *

(2) The Commission will notify the candidate of any repayment determinations made under this section as soon as possible, but not later than 3 years after the day of the presidential election. The Commission's issuance of the audit report to the candidate under 11 CFR 9007.1(d) will constitute notification for purposes of this section.

(3) Once the candidate receives notice of the Commission's repayment determination under this section, the candidate should give preference to the repayment over all other outstanding obligations of his or her committee, except for any federal taxes owed by the committee.

(4) Repayments may be made only from the following sources: personal funds of the candidate (without regard to the limitations of 11 CFR 9003.2(c)), contributions and federal funds in the committee's account(s), and any additional funds raised subject to the limitations and prohibitions of the

Federal Election Campaign Act of 1971, as amended.

* * * * *

(b) *Bases for repayment.* The Commission may determine that an eligible candidate of a political party who has received payments from the fund must repay the United States Treasury under any of the circumstances described in paragraphs (b) (1) through (5) of this section.

* * * * *

(4) *Income on investment or other use of payments from the Fund.* If the Commission determines that a candidate received any income as a result of an investment or other use of payments from the fund pursuant to 11 CFR 9004.5, it shall so notify the candidate, and such candidate shall pay to the United States Treasury an amount equal to the amount determined to be income, less any Federal, State or local taxes on such income.

* * * * *

(c) *Repayment determination procedures.* The Commission's repayment determination will be made in accordance with the procedures set forth at paragraphs (c)(1) through (c)(4) of this section.

(1) *Repayment determination.* The Commission will provide the candidate with a written notice of its repayment determination(s). This notice will be included in the Commission's audit report prepared pursuant to 11 CFR 9007.1(d) and will set forth the legal and factual reasons for such determination(s), as well as the evidence upon which any such determination is based. The candidate shall repay to the United States Treasury in accordance with paragraph (d) of this section, the amount which the Commission has determined to be repayable.

(2) *Administrative review of repayment determination.* If a candidate disputes the Commission's repayment determination(s), he or she may request an administrative review of the determination(s) as set forth in paragraph (c)(2)(i) of this section.

(i) *Submission of written materials.* A candidate who disputes the Commission's repayment determination(s) shall submit in writing, within 60 calendar days after service of the Commission's notice, legal and factual materials demonstrating that no repayment, or a lesser repayment, is required. Such materials may be submitted by counsel if the candidate so desires. The candidate's failure to timely raise an issue in written materials presented pursuant to this paragraph will be deemed a waiver of the candidate's right to raise the issue at any future stage of proceedings including any petition for review filed under 26 U.S.C. 9011(a).

(ii) *Oral hearing.* A candidate who submits written materials pursuant to paragraph (c)(2)(i) of this section may at the same time request in writing that the Commission provide such candidate with an opportunity to address the Commission in open session to demonstrate that no repayment, or a lesser repayment, is required. The candidate should identify in this request the repayment issues he or she wants to address at the oral hearing. If the Commission decides by an affirmative vote of four (4) of its members to grant the candidate's request, it will inform the candidate of the date and time set for the oral hearing. At the date and time set by the Commission, the candidate or candidate's designated representative will be allotted an amount of time in which to make an oral presentation to the Commission based upon the legal and factual materials submitted under paragraph (c)(2)(ii) of this section. The candidate or representative will also have the opportunity to answer any questions from individual members of the Commission.

(3) *Repayment determination upon review.* In deciding whether to revise any repayment determination(s) following an administrative review pursuant to paragraph (c)(2) of this section, the Commission will consider any submission made under paragraph (c)(2)(i) of this section and any oral hearing conducted under paragraph (c)(2)(ii) of this section, and may also consider any new or additional information from other sources. A determination following an administrative review that a candidate must repay a certain amount will be accompanied by a written statement of reasons supporting the Commission's determination(s). This statement will explain the legal and factual reasons underlying the Commission's determination(s) and will summarize the results of any investigation(s) upon which the determination(s) are based.

(d) *Repayment period.* (1) Within 90 calendar days of service of the notice of the Commission's repayment determination(s), the candidate shall repay to the United States Treasury the amounts which the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 90 calendar days in which to make repayment.

(2) If the candidate requests an administrative review of the Commission's repayment determination(s) under paragraph (c)(2) of this section, the time for repayment will be suspended until the Commission has concluded its administrative review of the repayment determination(s). Within 30 calendar days after service of the notice of the Commission's post-administrative review repayment determination(s), the candidate shall repay to the United States Treasury the amounts which the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 90 calendar days in which to make repayment.

(3) Interest shall be assessed on all repayments made after the initial 90-day repayment period established at paragraph (d)(1) of this section or the 30-day repayment period established at paragraph (d)(2) of this section. The amount of interest due shall be the greater of:

(i) An amount calculated in accordance with 28 U.S.C. 1961 (a) and (b); or

(ii) The amount actually earned on the funds set aside or to be repaid under this section.

* * * * *

(f) *Additional repayments.* Nothing in this section will prevent the Commission from making additional repayment determinations on one or more of the bases set forth at 11 CFR 9007.1(b) after it has made a repayment determination on any such basis. The Commission may make additional repayment determinations where there exist facts not used as the basis for any previous determination. * * *

(g) *Newly-discovered assets.* If, after any repayment determination made under this section, a candidate or his or her authorized committee(s) receives or becomes aware of assets not previously included in any statement of net outstanding qualified campaign expenses submitted pursuant to 11 CFR 9004.9, the candidate or his or her authorized committee(s) shall promptly notify the Commission of such newly-discovered assets. * * *

* * * * *

(i) *Petitions for rehearing; stays pending appeal.* The candidate may file a petition for rehearing of a repayment determination in accordance with 11 CFR 9007.5(a). The candidate may request a stay of a repayment determination in accordance with 11 CFR 9007.5(c) pending the candidate's appeal of that repayment determination.

21. Section 9007.3 is amended by adding a new sentence to the end of paragraph (c), to read as follows:

§ 9007.3 Extensions of time.

* * * * *

(c) * * * If a candidate seeks an extension of any 60-day response period under 11 CFR Part 9007, the Commission may grant no more than one extension to that candidate, which extension shall not exceed 15 days.

* * * * *

22. Section 9007.5 is amended by revising paragraphs (a), (b), (c)(1)(ii) and the introductory text of paragraph (c)(4) to read as follows:

§ 9007.5 Petitions for rehearing; stays of repayment determinations.

(a) *Petitions for rehearing.* (1) Following the Commission's repayment determination or a final determination that a candidate is not entitled to all or a portion of post-election funding under 11 CFR 9004.9(f), the candidate may file a petition for rehearing setting forth the relief desired and the legal and factual basis in support. To be considered by the Commission, petitions for rehearing must:

(i) Be filed within 20 calendar days following service of the Commission's repayment determination or final determination;

(ii) Raise new questions of law or fact that would materially alter the Commission's repayment determination or final determination; and

(iii) Set forth clear and convincing grounds why such questions were not and could not have been presented during the original determination process.

(2) If a candidate files a timely petition under this section challenging a Commission repayment determination, the time for repayment will be suspended until the Commission serves notice on the candidate of its determination on the petition. The time periods for making repayment under 11 CFR 9007.2(d) shall apply to any amounts determined to be repayable following the Commission's consideration of a petition for rehearing under this section.

(b) *Effect of failure to raise issues.* The candidate's failure to raise an argument in a timely fashion during the original determination process or in a petition for rehearing under this section, as appropriate, shall be deemed a waiver of the candidate's right to present such arguments in any future stage of proceedings including any petition for review filed under 26 U.S.C. 9011(a). An issue is not timely raised in a petition for rehearing if it could have been raised earlier in response to the Commission's original determination.

(c) * * *

(1) * * *

(ii) A request for a stay shall be made in writing and shall be filed within 30 calendar days after service of the Commission's decision on a petition for rehearing under paragraph (a) of this section or, if no petition for rehearing is filed, within 30 calendar days after service of the Commission's repayment determination under 11 CFR 9007.2(c).

* * * * *

(4) All stays shall require the payment of interest on the amount at issue. The amount of interest due shall be calculated from the date 30 days after service of the Commission's repayment determination under 11 CFR 9007.2(c)(4) and shall be the greater of:

* * * * *

23. Section 9007.7 is added to read as follows:

§ 9007.7 Administrative record.

(a) The Commission's administrative record for final determinations under 11 CFR 9004.9 and 9005.1, and for repayment determinations under 11 CFR 9007.2, consists of all documents and materials submitted to the Commission for its consideration in making those determinations. The administrative record will include the certification of the Commission's vote(s), the audit report that is sent to the committee (for repayment determinations), the statement(s) of reasons, and the candidate agreement. The committee may include documents or materials in the administrative record by submitting them within the time periods set forth at 11 CFR 9004.9(f)(2)(ii), 9005.1(b)(2), 9005.1(c)(4), 9007.1(c) and 9007.2(c)(2), as appropriate.

(b) The Commission's administrative record for determinations under 11 CFR 9004.9, 9005.1 and 9007.2 does not include:

(1) Documents and materials in the files of individual Commissioners or employees of the Commission that do not constitute a basis for the Commission's decisions because they were not circulated to the Commission and were not referenced in documents that were circulated to the Commission;

(2) Transcripts or audio tapes of Commission discussions other than transcripts or audio tapes of oral hearings pursuant to 11 CFR 9007.2(c)(2), although such transcripts or tapes may be made available under 11 CFR parts 4 or 5; or

(3) Documents properly subject to privileges such as an attorney-client privilege, or items constituting attorney work product.

(c) The administrative record identified in paragraph (a) of this section is the exclusive record for the Commission's determinations under 11 CFR 9004.9, 9005.1 and 9007.2

PART 9008—FEDERAL FINANCING OF PRESIDENTIAL NOMINATING CONVENTIONS

24. The authority citation for part 9008 continues to read as follows:

Authority: 2 U.S.C. 437, 438(a)(6), 26 U.S.C. 9008, 9009(b).

25. Section 9008.12 is amended by revising the last sentence of paragraph (a)(2) to read as follows:

§ 9008.12 Repayments.

(a) * * *

(2) * * * The Commission's issuance of an audit report to the committee will constitute notification for purposes of the three year period.

* * * * *

PART 9032—DEFINITIONS

26. The authority citation for part 9032 continues to read as follows:

Authority: 26 U.S.C. 9032 and 9039(b).

27. Section 9032.9 is amended by revising the first sentence of paragraph (c) to read as follows:

§ 9032.9 Qualified campaign expense.

* * * * *

(c) Except as provided in 11 CFR 9034.4(e), expenditures incurred either before the beginning of the expenditure report period or after the last day of a candidate's eligibility will be considered qualified campaign expenses if they meet the provisions of 11 CFR 9034.4(a). * * *

* * * * *

PART 9033—ELIGIBILITY FOR PAYMENTS

28. The authority citation for part 9033 is revised to read as follows:

Authority: 26 U.S.C. 9003(e), 9033 and 9039(b).

29. Section 9033.1 is amended by republishing the introductory text of paragraph (b), by revising paragraph (b)(5), by adding a new second sentence to paragraph (b)(7), by revising paragraph (b)(11), and by adding new paragraph (b)(12), to read as follows:

§ 9033.1 Candidate and committee agreements.

* * * * *

(b) *Conditions.* The candidate shall agree that:

* * * * *

(5) The candidate and the candidate's authorized committee(s) will keep and furnish to the Commission all documentation relating to disbursements and receipts including any books, records (including bank records for all accounts), all documentation required by this section (including those required to be maintained under 11 CFR 9033.11), and other information that the Commission may request. If the candidate or the candidate's authorized committee maintains or uses computerized information containing any of the categories of data listed in 11 CFR 9033.12(a), the committee will provide computerized magnetic media, such as magnetic tapes or magnetic diskettes, containing the computerized information at the times specified in 11 CFR 9038.1(b)(1) that meet the requirements of 11 CFR 9033.12(b). Upon request, documentation explaining the computer system's software capabilities shall be provided, and such personnel as are necessary to explain the operation of the computer system's software and the computerized information prepared or maintained by the committee shall be made available.

* * * * *

(7) * * * The candidate and the candidate's authorized committee(s) shall also provide any material required in connection with an audit, investigation, or examination conducted pursuant to 11 CFR part 9039. * * *

* * * * *

(11) The candidate and the candidate's authorized committee(s) will pay an civil penalties included in a conciliation agreement or otherwise imposed under 2 U.S.C. 437g against the candidate, any authorized committees of the candidate or any agent thereof.

(12) Any television commercial prepared or distributed by the candidate or the candidate's authorized committee(s) will be prepared in a manner which ensures that the commercial contains or is accompanied by closed captioning of the oral content of the commercial to be broadcast in line 21 of the vertical blanking interval, or is capable of being viewed by deaf and hearing impaired individuals via any comparable successor technology to line 21 of the vertical blanking interval.

30. Section 9033.4 is amended by removing paragraph (b) and redesignating paragraph (c) as paragraph (b).

31. Section 9033.11 is revised to read as follows:

§ 9033.11 Documentation of disbursements.

(a) *Burden of proof.* Each candidate shall have the burden of proving that disbursements made by the candidate or his or her authorized committee(s) or persons authorized to make expenditures on behalf of the candidate or authorized committee(s) are qualified campaign expenses as defined in 11 CFR 9032.9. The candidate and his or her authorized committee(s) shall obtain and furnish to the Commission on request any evidence regarding qualified campaign expenses made by the candidate, his or her authorized committees and agents or persons authorized to make expenditures on behalf of the candidate or committee(s) as provided in paragraph (b) of this section.

(b) *Documentation required.*

(1) For disbursements in excess of $200 to a payee, the candidate shall present a canceled check negotiated by the payee and either:

(i) A receipted bill from the payee that states the purpose of the disbursement; or

(ii) If such a receipt is not available,

(A) One of the following documents generated by the payee: a bill, invoice, or voucher that states the purpose of the disbursement; or

(B) Where the documents specified in paragraph (b)(1)(ii)(A) of this section are not available, a voucher or contemporaneous memorandum from the candidate or the committee that states the purpose of the disbursement; or

(iii) Where the supporting documentation required in paragraphs (b)(1) (i) or (ii) of this section is not available, the candidate or committee may present collateral evidence to document the qualified campaign expense. Such collateral evidence may include, but is not limited to:

(A) Evidence demonstrating that the expenditure is part of an identifiable program or project which is otherwise sufficiently documented such as a disbursement which is one of a number of documented disbursements relating to a campaign mailing or to the operation of a campaign office; or

(B) Evidence that the disbursement is covered by a pre-established written campaign committee policy, such as a daily travel expense policy.

(iv) If the purpose of the disbursement is not stated in the accompanying documentation, it must be indicated on the canceled check.

(2) For all other disbursements, the candidate shall present:

(i) A record disclosing the full name and mailing address of the payee, the amount, date and purpose of the disbursement, if made from a petty cash fund; or

(ii) A canceled check negotiated by the payee that states the full name and mailing address of the payee, and the amount, date and purpose of the disbursement.

(3) For purposes of this section:

(i) *Payee* means the person who provides the goods or services to the candidate or committee in return for the disbursement; except that an individual will be considered a payee under this section if he or she receives $1000 or less advanced for travel and/or subsistence and if the individual is the recipient of the goods or services purchased.

(ii) *Purpose* means the full name and mailing address of the payee, the date and amount of the disbursement, and a brief description of the goods or services purchased.

(c) *Retention of records.* The candidate shall retain records with respect to each disbursement and receipt, including bank records, vouchers, worksheets, receipts, bills and accounts, journals, ledgers, fundraising solicitation material, accounting systems documentation, and any related materials documenting campaign receipts and disbursements, for a period of three years pursuant to 11 CFR 102.9(c), and shall present these records to the Commission on request.

(d) *List of capital and other assets.*

(1) *Capital assets.* The candidate or committee shall maintain a list of all capital assets whose purchase price exceeded $2000 when acquired by the campaign. The list shall include a brief description of each capital asset, the purchase price, the date it was acquired, the method of disposition and the amount received in disposition. For purposes of this section, "capital asset" shall be defined in accordance with 11 CFR 9034.5(c)(1).

(2) *Other assets.* The candidate or committee shall maintain a list of other assets acquired for use in fundraising or as collateral for campaign loans, if the aggregate value of such assets exceeds $5000. The list shall include a brief description of each such asset, the fair market value of each asset, the method of disposition and the amount received in disposition. The fair market value of other assets shall be determined in accordance with 11 CFR 9034.5(c)(2).

PART 9034—ENTITLEMENTS

32. The authority citation for part 9034 continues to read as follows:

Authority: 26 U.S.C. 9034 and 9039(b).

33. Section 9034.4 is amended by revising paragraphs (a) and (b)(3), by adding new paragraph (b)(8), by removing and reserving paragraph (c), by revising paragraph (d)(2), and by adding new paragraph (e), to read as follows:

§ 9034.4 Use of contributions and matching payments.

(a) *Qualified campaign expenses*—

(1) *General.* Except as provided in paragraph (b)(3) of this section, all contributions received by an individual from the date he or she becomes a candidate and all matching payments received by the candidate shall be used only to defray qualified campaign expenses or to repay loans or otherwise restore funds (other than contributions which were received and expended to defray qualified campaign expenses), which were used to defray qualified campaign expenses.

(2) *Testing the waters.* Even though incurred prior to the date an individual becomes a candidate, payments made in accordance with the 11 CFR 100.8(b)(1) for the purpose of determining whether an individual should become a candidate shall be considered qualified campaign expenses if the individual subsequently becomes a candidate and shall count against that candidate's limits under 2 U.S.C. 441a(b).

(3) *Winding down costs.*

(i) Costs associated with the termination of political activity, such as the costs of complying with the post election requirements of the Act and other necessary administrative costs associated with winding down the campaign, including office space rental, staff salaries, and office supplies shall be considered qualified campaign expenses. A candidate may receive and use matching funds for these purposes either after he or she has notified the Commission in writing of his or her withdrawal from the campaign for nomination or after the date of the party's nominating convention, if he or she has not withdrawn before the convention.

(ii) If the candidate has become ineligible due to the operation of 11 CFR 9033.5(b), he or she may only receive matching funds to defray costs incurred before the candidate's date of ineligibility, for goods and services to be received before the date of ineligibility and for which written arrangement or commitment was made on or before the candidate's date of ineligibility, until the candidate is eligible to receive winding down costs under paragraph (a)(3)(i) of this section.

(iii) For purposes of the expenditure limitations set forth in 11 CFR 9035.1 100% of salary, overhead and computer expenses incurred after a candidate's date of ineligibility may be treated as exempt legal and accounting compliance expenses beginning with the first full reporting period after the candidate's date of ineligibility. For candidates who continue to campaign or re-establish eligibility, this paragraph shall not apply to expenses incurred during the period between the date of ineligibility and the date on which the candidate either re-establishes eligibility or ceases to continue to campaign.

(4) *Taxes.* Federal income taxes paid by the committee on non-exempt function income, such as interest, dividends and sale of property, shall be considered qualified campaign expenses. These expenses shall not, however, count against the state or overall expenditure limits of 11 CFR 9035.1(a).

(5) *Gifts and monetary bonuses.* Gifts and monetary bonuses shall be considered qualified campaign expenses, provided that:

(i) Gifts for committee employees, consultants and volunteers in recognition for campaign-related activities or services do not exceed $150 total per individual and the total of all gifts does not exceed $20,000; and

(ii) All monetary bonuses for committee employees and consultants in recognition for campaign-related activities or services:

(A) Are provided for pursuant to a written contract made prior to the date of ineligibility; and

(B) Are paid no later than thirty days after the date of ineligibility.

(b) * * *

(3) *General election and post-ineligibility expenditures.* Any expenses incurred after a candidate's date of ineligibility, as determined under 11 CFR 9033.5, are not qualified campaign expenses except to the extent permitted under 11 CFR 9034.4(a)(3). In addition, any expenses incurred before the candidate's date of ineligibility for goods and services to be received after the candidate's date of ineligibility, or for property, services, or facilities used to benefit the candidate's general election campaign, are not qualified campaign expenses.

* * * * *

(8) *Lost or misplaced items.* The cost of lost or misplaced items may be considered a nonqualified campaign expense. Factors considered by the Commission in making this determination shall include, but not be limited to, whether the committee demonstrates that it made conscientious efforts to safeguard the missing equipment; whether the committee sought or obtained insurance; the type of equipment involved; and the number and value of items that were lost.

(c) [Reserved]

(d) * * *

(2) *General election.* If a candidate has received matching funds, all transfers from the candidate's primary election account to a legal and accounting compliance fund established for the general election must be made in accordance with 11 CFR 9003.3(a)(1).

(e) *Attribution of expenditures between the primary and the general election limits.* The following rules apply to candidates who receive public funding in both the primary and the general election.

(1) *General rule.* Any expenditure for goods or services that are used exclusively for the primary election campaign shall be attributed to the limits set forth at 11 CFR 9035.1. Any expenditure for goods or services that are used exclusively for the general election campaign shall be attributed to the limits set forth at 11 CFR 110.8(a)(2), as adjusted under 11 CFR 110.9(c).

(2) *Polling expenses.* Polling expenses shall be attributed according to when the results of the poll are received. If the results are received on or before the date of the candidate's nomination, the expenses shall be considered primary election expenses. If results are received from a single poll both before and after the date of the candidate's nomination, the costs shall be allocated between the primary and the general election limits based on the percentage of results received during each period.

(3) *State or national campaign offices.* Overhead expenditures and payroll costs incurred in connection with state or national campaign offices, shall be attributed according to when the usage occurs or the work is performed. For purposes of this section, overhead expenditures shall have the same meaning as set forth in 11 CFR 106.2(b)(2)(iii)(D). Expenses for usage of offices or work performed on or before the date of the candidate's nomination shall be attributed to the primary election, except for periods when the office is used only by persons working exclusively on general election campaign preparations.

(4) *Campaign materials.* Expenditures for campaign materials, including bumper stickers, campaign brochures, buttons, pens and similar items, that are purchased by the primary election campaign committee and later transferred to and used by the general election committee shall be attributed to the general election limits. Materials transferred to but not used by the general election committee shall be attributed to the primary election limits.

(5) *Media production costs.* For media communications that are broadcast or published both before and after the date of the candidate's nomination, 50% of the media production costs shall be attributed to the primary election limits,

and 50% to the general election limits. Distribution costs, including such costs as air time and advertising space in newspapers, shall be paid for 100% by the primary or general election campaign depending on when the communication is broadcast or distributed.

(6) *Campaign Communications.* (i) *Solicitations.* The costs of a solicitation shall be attributed to the primary election or to the GELAC, depending on the purpose of the solicitation. If a candidate solicits funds for both the primary election and for the GELAC in a single communication, 50% of the cost of the solicitation shall be attributed to the primary election, and 50% to the GELAC.

(ii) *Other communications.* Except as provided in paragraph (e)(5) of this section, the costs of a campaign communication that does not include a solicitation shall be attributed to the primary or general election limits based on the date on which the communication is broadcast, published or mailed. The cost of a communication that is broadcast, published or mailed before the date of the candidate's nomination shall be attributed to the primary election limits.

(7) *Travel costs.* Expenditures for campaign-related transportation, food, and lodging by any individual, including a candidate, shall be attributed according to when the travel occurs. If the travel occurs on or before the date of the candidate's nomination, the cost is a primary election expense. Travel to and from the convention shall be attributed to the primary election. Travel by a person who is working exclusively on general election campaign preparations shall be considered a general election expense even if the travel occurs before the candidate's nomination.

34. Section 9034.5 is amended by revising paragraphs (b), (c)(1) and (f) to read as follows:

§ 9034.5 Net outstanding campaign obligations.

* * * * *

(b) *Liabilities.* (1) The amount submitted as the total of outstanding campaign obligations under paragraph (a)(1) of this section shall not include any accounts payable for non-qualified campaign expenses nor any amounts determined or anticipated to be required as repayment under 11 CFR part 9038 or any amounts paid to secure a surety bond under 11 CFR 9038.5.

(2) The amount submitted as estimated necessary winding down costs under paragraph (a)(1) of this section shall be broken down by expense category and quarterly or monthly time period. This breakdown shall include estimated costs for office space rental, staff salaries, legal expenses, accounting expenses, office supplies, equipment rental, telephone expenses, postage and other mailing costs, printing and storage. The breakdown shall estimate the costs that will be incurred in each category from the time the statement is submitted until the expected termination of the committee's political activity.

(c)(1) *Capital assets.* For purposes of this section, the term *capital asset* means any property used in the operation of the campaign whose purchase price exceeded $2000 when received by the committee. Property that must be valued as capital assets under this section includes, but is not limited to, office equipment, furniture, vehicles and fixtures acquired for use in the operation of the candidate's campaign, but does not include property defined as "other assets" under 11 CFR 9034.5(c)(2). A list of all capital assets shall be maintained by the Committee in accordance with 11 CFR 9033.11(d). The fair market value of capital assets shall be considered to be the total original cost of such items when acquired less 40%, to account for depreciation, except that items received after the date of ineligibility must be valued at their fair market value on the date received.

* * * * *

(f)(1) With each submission for matching fund payments filed after the candidate's date of ineligibility, the candidate shall certify that, as of the close of business on the last business day preceding the date of submission for matching funds, his or her remaining net outstanding campaign obligations equal or exceed the amount submitted for matching.

(2) A candidate who makes a submission for matching fund payments after his or her date of ineligibility shall also submit a revised statement of net outstanding campaign obligations. This revised statement shall be due before the next regularly scheduled payment date, on a date to be determined and published by the Commission. This statement shall reflect the financial status of the campaign as of the close of business three business days before the due date of the statement. The revised statement shall also contain a brief explanation of each change in the committee's assets and obligations from the previous statement.

(3) After a candidate's date of ineligibility, if the candidate does not receive the entire amount of matching funds on a regularly scheduled payment date due to a shortfall in the matching payment account, the candidate shall also submit a revised statement of net outstanding campaign obligations. The revised statement shall be filed on a date to be determined and published by the commission, which will be before the next regularly scheduled payment date.

35. Section 9034.6 is revised to read as follows:

§ 9034.6 Expenditures for transportation and services made available to media personnel; reimbursements.

(a) *General.* (1) Expenditures by an authorized committee for transportation, ground services or facilities (including air travel, ground transportation, housing, meals, telephone service, and typewriters) made available to media personnel, Secret Service personnel or national security staff will be considered qualified campaign expenses, and, except for costs relating to Secret Service personnel or national security staff, will be subject to the overall expenditure limitations of 11 CFR 9035.1(a).

(2) Subject to the limitations in paragraphs (b) and (c) of this section, committees may seek reimbursement for these expenses, and may deduct reimbursements received from media representatives from the amount of expenditures subject to the overall expenditure limitation of 11 CFR 9035.1(a). Expenses for which the committee receives no reimbursement will be considered qualified campaign expenses, and, with the exception of those expenses relating to Secret Service personnel and national security staff, will be subject to the overall expenditure limitation.

(b) *Reimbursement limits.* (1) The amount of reimbursement sought from a media representative under paragraph (a)(2) of this section shall not exceed 110% of the media representative's pro rata share (or a reasonable estimate of the media representative's pro rata share) of the actual cost of the transportation and services made available. Any reimbursement received in excess of this amount shall be disposed of in accordance with paragraph (d)(1) of this section.

(2) For the purposes of this section, a media representative's pro rata share shall be calculated by dividing the total actual cost of the transportation and services provided by the total number of individuals to whom such transportation and services are made available. For purposes of this calculation, the total number of individuals shall include committee staff, media personnel, Secret Service

personnel, national security staff and any other individuals to whom such transportation and services are made available, except that, when seeking reimbursement for transportation costs paid by the committee under 11 CFR 9034.7(b)(5)(i)(C), the total number of individuals shall not include national security staff.

(c) *Deduction of reimbursements from expenditures subject to the overall expenditure limitations.*

(1) The Committee may deduct from the amount of expenditures subject to the overall expenditure limitation:

(i) The amount of reimbursements received from media representatives in payment for the transportation and services described in paragraph (a) of this section, up to the actual cost of the transportation and services provided to media representatives; and

(ii) An additional amount of the reimbursements received from media representatives, representing the administrative costs incurred by the committee in providing these services to the media representatives and seeking reimbursement for them, equal to:

(A) Three percent of the actual cost of transportation and services provided to the media representatives under this section; or

(B) An amount in excess of 3% representing the administrative costs actually incurred by the committee in providing services to the media representatives, provided that the committee is able to document the total amount of administrative costs actually incurred.

(2) For the purposes of this paragraph, "administrative costs" includes all costs incurred by the committee in making travel arrangements and seeking reimbursement, whether these services are performed by committee staff or by independent contractors.

(d) *Disposal of excess reimbursements.* If the committee receives reimbursements in excess of the amount deductible under paragraph (c) of this section, it shall dispose of the excess amount in the following manner:

(1) Any reimbursement received in excess of 110% of the actual pro rata cost of the transportation and services made available to a media representative shall be returned to the media representative.

(2) Any amount in excess of the amount deductible under paragraph (c) of this section that is not required to be returned to the media representative under paragraph (d)(1) of this section shall be paid to the Treasury.

(e) *Reporting.* The total amount paid by an authorized committee for the services and facilities described in paragraph (a)(1) of this section, plus the administrative costs incurred by the committee in providing these services and facilities and seeking reimbursement for them, shall be reported as an expenditure in accordance with 11 CFR 104.3(b)(2)(i). Any reimbursement received by such committee under paragraph (b)(1) of this section shall be reported in accordance with 11 CFR 104.3(a)(3)(ix).

36. Section 9034.7 is revised to read as follows:

§ 9034.7 Allocation of travel expenditures.

(a) Notwithstanding the provisions of 11 CFR 106.3, expenditures for travel relating to the campaign of a candidate seeking nomination for election to the office of President by any individual, including a candidate, shall, pursuant to the provisions of paragraph (b) of this section, be qualified campaign expenses and be reported by the candidate's authorized committee(s) as expenditures.

(b)(1) For a trip which is entirely campaign-related, the total cost of the trip shall be a qualified campaign expense and a reportable expenditure.

(2) For a trip which includes campaign-related and non-campaign related stops, that portion of the cost of the trip allocable to campaign activity shall be a qualified campaign expense and a reportable expenditure. Such portion shall be determined by calculating what the trip would have cost from the point of origin of the trip to the first campaign-related stop and from that stop through each subsequent campaign-related stop, back to the point of origin. If any campaign activity, other than incidental contacts, is conducted at a stop, that stop shall be considered campaign-related. Campaign activity includes soliciting, making, or accepting contributions, and expressly advocating the election or defeat of the candidate. Other factors, including the setting, timing and statements or expressions of the purpose of an event and the substance of the remarks or speech made, will also be considered in determining whether a stop is campaign-related.

(3) For each trip, an itinerary shall be prepared and such itinerary shall be made available by the committee for Commission inspection. The itinerary shall show the time of arrival and departure and the type of event held.

(4) For trips by government conveyance or by charter, a list of all passengers on such trip, along with a designation of which passengers are and which are not campaign-related, shall be made available for Commission inspection. When required to be created, a copy of the government's or the charter company's official manifest shall also be maintained and made available by the committee.

(5)(i) If any individual, including a candidate, uses a government airplane for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount equal to:

(A) The lowest unrestricted and non-discounted first class commercial air fare available for the time traveled, in the case of travel to a city served by a regularly scheduled commercial airline service; or

(B) The lowest unrestricted and non-discounted coach commercial air fare available for the time traveled, in the case of travel to a city served by regularly scheduled coach airline service, but not regularly scheduled first class airline service; or

(C) In the case of travel to a city not served by a regularly scheduled commercial airline service, the commercial charter rate for an airplane sufficient in size to accommodate the campaign-related travelers, including the candidate, plus the news media and the Secret Service.

(ii) If a government airplane is flown to a campaign-related stop where it will pick up passengers, or from a campaign-related stop where it left off passengers, the candidate's authorized committee shall pay the appropriate government entity an amount equal to the greater of the amount billed or the amount required under paragraph (b)(5)(i) of this section for one passenger.

(iii) If any individual, including a candidate, uses a government conveyance, other than an airplane, for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount equal to the commercial rental rate for a conveyance sufficient in size to accommodate the campaign-related travelers, including the candidate, plus the news media and the Secret Service.

(iv) If any individual, including a candidate, uses accommodations, including lodging and meeting rooms, during campaign-related travel, and the accommodations are paid for by a government entity, the candidate's authorized committee shall pay the appropriate government entity an amount equal to the usual and normal charge for the accommodations, and shall maintain documentation supporting the amount paid.

(v) For travel by airplane, the committee shall maintain documentation of the lowest unrestricted nondiscounted air fare available for the time traveled, including the airline, the flight number and travel service providing that fare or the charter rate, as appropriate. For travel by other conveyances, the committee shall maintain documentation of the commercial rental rate for a conveyance of sufficient size, including the provider of the conveyance and the size, model and make of the conveyance.

(6) Travel expenses of a candidate's spouse and family when accompanying the candidate on campaign-related travel may be treated as qualified campaign expenses and reportable expenditures. If the spouse or family members conduct campaign-related activities, their travel expenses will be treated as qualified campaign expenses and reportable expenditures.

(7) If any individual, including a candidate, incurs expenses for campaign-related travel, other than by use of government conveyance or accommodations, an amount equal to that portion of the actual cost of the conveyance or accommodations which is allocable to all passengers, including the candidate, who are traveling for campaign purposes will be a qualified campaign expense and shall be reported by the committee as an expenditure.

(i) If the trip is by charter, the actual cost for each passenger shall be determined by dividing the total operating cost for the charter by the total number of passengers transported. The amount which is a qualified campaign expense and a reportable expenditure shall be calculated in accordance with the formula set forth at 11 CFR 9034.7(b)(2) on the basis of the actual cost per passenger multiplied by the number of passengers traveling for campaign purposes.

(ii) If the trips is by non-charter commercial transportation, the actual cost shall be calculated in accordance with the formula set forth at 11 CFR 9034.7(b)(2) on the basis of the commercial fare. Such actual cost shall be a qualified campaign expense and a reportable expenditure.

(8) Travel on corporate airplanes and other corporate conveyances is governed by 11 CFR 114.9(e).

PART 9036—REVIEW OF SUBMISSION AND CERTIFICATION OF PAYMENTS BY COMMISSION

37. The authority citation for part 9036 continues to read as follows:

Authority: 26 U.S.C. 9036 and 9039(b).

38. Section 9036.2 is amended by revising paragraph (b)(1)(ii) and adding a new sentence to the end of paragraph (b)(1)(vi), to read as follows:

§ 9036.2 Additional submissions for matching fund payments.

* * * * *

(b) * * *

(1) * * *

(ii) The candidate is required to submit an alphabetical list of contributors (either solely in magnetic media from or in both printed and magnetic media forms), but not segregated by State as required in the threshold submission;

* * * * *

(vi) * * * In lieu of submitting photocopies, the candidate may submit digital images of checks, written instruments and deposit slips as specified in the Computerized Magnetic Media Requirements. The candidate shall provide the computer equipment and software needed to retrieve and read the digital images, if necessary, at no cost to the Commission, and shall include digital images of every contribution received and imaged on or after the date of the previous matching fund request. Contributions and other documentation not imaged shall be submitted in photocopy form.

* * * * *

39. In section 9036.5, the introductory text of paragraph (a) is revised to read as follows:

§ 9036.5 Resubmissions.

(a) *Alternative resubmission methods.* Upon receipt of the Commission's notice of the results of the submission review pursuant to 11 CFR 9036.4(b), or of an inquiry pursuant to 11 CFR 9039.3 that results in a downward adjustment to the amount of certified matching funds, a candidate may choose to:

* * * * *

PART 9037—PAYMENTS AND REPORTING

40. The authority citation for part 9037 continues to read as follows:

Authority: 26 U.S.C. 9037 and 9039(b).

41. Section 9037.4 is added to read as follows:

§ 9037.4 Alphabetized schedules.

If the authorized committee(s) of a candidate file a schedule of itemized receipts, disbursements, or debts and obligations pursuant to 11 CFR 104.3 that was generated directly or indirectly from computerized files or records, the schedule shall list in alphabetical order the sources of the receipts, the payees or the creditors, as appropriate. In the case of individuals, such schedule shall list all contributors, payees, and creditors in alphabetical order by surname.

PART 9038—EXAMINATIONS AND AUDITS

42. The authority citation for part 9038 continues to read as follows:

Authority: 26 U.S.C. 9038 and 9039(b).

42A. The part heading is revised as set forth above.

43. Section 9038.1 is amended by revising paragraphs (b)(2)(iii), (c), (d) and (e) and adding new paragraph (f) to read as follows:

§ 9038.1 Audit.

* * * * *

(b) * * *

(2) * * *

(iii) *Exit conference.* At the conclusion of the fieldwork, Commission staff will hold an exit conference to discuss with committee representatives the staff's preliminary findings and recommendations which the staff anticipates it will present to the Commission for approval. Commission staff will prepare a written Exit Conference Memorandum that discusses these findings and recommendations. A copy of the Exit Conference Memorandum will be given to committee representatives at the exit conference. These findings may include an evaluation of procedures and systems employed by the candidate and committee to comply with applicable provisions of the Federal Election Campaign Act, the Presidential Matching Payment Account Act and Commission regulations; the accuracy of statements and reports filed with the Commission by the candidate and committee; and preliminary calculations regarding future repayments to the United States Treasury. Commission staff will advise committee representatives at this conference of the committee's opportunity to respond to these proposed findings, the projected timetable regarding the issuance of the audit report and any repayment determination, the committee's opportunity for an administrative review of any repayment determination, and the procedures involved in Commission repayment determinations under 11 CFR 9038.2.

* * * * *

(c) *Committee Response to the Exit Conference Memorandum.* The candidate and his or her authorized committee may submit in writing within 60 calendar days after the exit conference, legal and factual materials disputing or commenting on the proposed findings contained in the Exit Conference Memorandum. In addition, the committee shall submit any additional documentation requested by

Commission staff. Such materials may be submitted by counsel if the candidate so desires.

(d) *Approval and issuance of audit report.* (1) Before voting on whether to issue and approve an audit report, the Commission will consider any written legal and factual materials timely submitted by the candidate or his or her authorized committee in accordance with paragraph (c) of this section. The Commission-approved audit report may address issues other than those contained in the Exit Conference Memorandum. In addition, this report will contain a repayment determination made by the Commission pursuant to 11 CFR 9038.2(c)(1).

(2) The audit report may contain issues that warrant referral to the Office of General Counsel for possible enforcement proceedings under 2 U.S.C. 437g and 11 CFR part 111.

(3) Addenda to the audit report may be approved and issued by the Commission from time to time as circumstances warrant and as additional information becomes available. Such addenda may be based on follow-up fieldwork conducted under paragraph (b)(3) of this section, and/or information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities. The procedures set forth in paragraphs (c) and (d) (1) and (2) of this section will be followed in preparing such addenda. The addenda will be placed on the public record as set forth in paragraph (e) of this section. Such addenda may also include additional repayment determination(s).

(e) *Public release of audit report.* (1) The Commission will consider the audit report in an open session agenda document. The Commission will provide the candidate and the committee with copies of any agenda document to be considered in an open session 24 hours prior to releasing the agenda document to the public.

(2) Following Commission approval of the audit report, the report will be forwarded to the committee and released to the public. The Commission will provide the candidate and committee with copies of the audit report approved by the Commission 24 hours before releasing the report to the public.

(f)(1) *Sampling.* In conducting an audit of contributions pursuant to this section, the Commission may utilize generally accepted statistical sampling techniques to quantify, in whole or in part, the dollar value of related audit findings. A projection of the total amount of violations based on apparent violations identified in such a sample may become the basis, in whole or in part, of any audit finding.

(2) A committee in responding to a sample-based finding concerning excessive or prohibited contributions shall respond only to the specific sample items used to make the projection. If the committee demonstrates that any apparent errors found among the sample items were not errors, the Commission shall make a new projection based on the reduced number of errors in the sample.

(3) Within 30 days of service of the Final Audit Report, the committee shall submit a check to the United States Treasury for the total amount of any excessive or prohibited contributions not refunded, reattributed or redesignated in a timely manner in accordance with 11 CFR 103.3(b) (1), (2) or (3); or take any other action required by the Commission with respect to sample-based findings.

44. Section 9038.2 is amended by revising paragraphs (a) (2) and (3), (b)(2)(iii), (b)(4), (c), (d), (f), and the first sentence of paragraph (g), and by adding paragraphs (a)(4) and (i), to read as follows:

§ 9038.2 Repayments.

(a) * * *

(2) The Commission will notify the candidate of any repayment determinations made under this section as soon as possible, but not later than 3 years after the close of the matching payment period. The Commission's issuance of the audit report to the candidate under 11 CFR 9038.1(d) will constitute notification for purchases of this section.

(3) Once the candidate receives notice of the Commission's repayment determination under this section, the candidate should given preference to the repayment over all other outstanding obligations of his or her committee, except for any federal taxes owned by the committee.

(4) Repayments may be made only from the following sources: personal funds of the candidate (without regard to the limitations of 11 CFR 9035.2), contributions and federal funds in the committee's account(s), and any additional funds raised subject to the limitations and prohibitions of the Federal Election Campaign Act of 1971, as amended.

* * * * *

(b) * * *

(2) * * *

(iii) The amount of any repayment sought under this section shall bear the same ratio to the total amount determined to have been used for non-qualified campaign expenses as the amount of matching funds certified to the candidate bears to the candidate's total deposits, as of 90 days after the candidate's date of ineligibility. For the purposes of this paragraph (b)(2)(iii)—

(A) Total deposits is defined in accordance with 11 CFR 9038.3(c)(2); and

(B) In seeking repayment for non-qualified campaign expenses from committees that have received matching fund payments after the candidate's date of ineligibility, the Commission will review committee expenditures to determine at what point committee accounts no longer contain matching funds. In doing this, the Commission will review committee expenditures from the date of the last matching fund payment to the candidate, using the assumption that the last payment has been expended on a last-in, first-out basis.

* * * * *

(4) *Surplus; income derived from the use of surplus public funds.* The Commission may determine that the candidate's net outstanding campaign obligations, as defined in 11 CFR 9034.5, reflect a surplus. The Commission may determine that the net income derived from an investment or other use of surplus public funds after the candidates's date of ineligibility, less Federal, State and local paid on such income, shall be paid to the Treasury.

(c) *Repayment determination procedures.* The Commission's repayment determination will be made in accordance with the procedures set forth at paragraphs (c)(1) through (c)(4) of this section.

(1) *Repayment determination.* The Commission will provide the candidate with a written notice of its repayment determination(s). This notice will be included in the Commission's audit report prepared pursuant to 11 CFR 9038.1(d), or inquiry report pursuant to 11 CFR 9039.3, and will set forth the legal and factual reasons for such determination(s), as well as the evidence upon which any such determination is based. The candidate shall repay to the United States Treasury in accordance with paragraph (d) of this section, the amount which the Commission has determined to be repayable.

(2) *Administrative review of repayment determination.* If a candidate disputes the Commission's repayment determination(s), he or she may request an administrative review of the determination(s) as set forth in paragraph (c)(2)(i) of this section.

(i) *Submission of written materials.* A candidate who disputes the Commission's repayment determination(s) shall submit in writing; within 60 calendar days after service of the Commission's notice, legal and factual materials demonstrating that no repayment, or a lesser repayment, is required. Such materials may be submitted by counsel if the candidate so desires. The candidate's failure to timely raise an issue in written materials presented pursuant to this paragraph will be deemed a waiver of the candidate's right to raise the issue at any future stage of proceedings including any petition for review filed under 28 U.S.C. 9041(a).

(ii) *Oral hearing.* A candidate who submits written materials pursuant to paragraph (c)(2)(i) of this section may at the same time request in writing that the Commission provide such candidate with an opportunity to address the Commission in open session to demonstrate that no repayment, or a lesser repayment, is required. The candidate should identify in this request the repayment issues he or she wants to address at the oral hearing. If the Commission decides by an affirmative vote of four (4) of its members to grant the candidate's request, it will inform the candidate of the date and time set for the oral hearing. At the date and time set by the Commission, the candidate or candidate's designated representative will be allotted an amount of time in which to make an oral presentation to the Commission based upon the legal and factual materials submitted under paragraph (c)(2)(ii) of this section. The candidate or representative will also have the opportunity to answer any questions from individual members of the Commission.

(3) *Repayment determination upon review.* In deciding whether to revise any repayment determination(s) following an administrative review pursuant to paragraph (c)(2) of this section, the Commission will consider any submission made under paragraph (c)(2)(i) and any oral hearing conducted under paragraph (c)(2)(ii), and may also consider any new or additional information from other sources. A determination following an administrative review that a candidate must repay a certain amount will be accompanied by a written statement of reasons supporting the Commission's determination(s). This statement will explain the legal and factual reasons underlying the Commission's determination(s) and will summarize the results of any investigation(s) upon which the determination(s) are based.

(d) *Repayment period.* (1) Within 90 calendar days of service of the notice of the Commission's repayment determination(s), the candidate shall repay to the United States Treasury the amounts which the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 90 calendar days in which to make repayment.

(2) If the candidate requests an administrative review of the Commission's repayment determination(s) under paragraph (c)(2) of this section, the time for repayment will be suspended until the Commission has concluded its administrative review of the repayment determination(s). Within 30 calendar days after service of the notice of the Commission's post-administrative review repayment determination(s), the candidate shall repay to the United States Treasury the amounts which the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 90 calendar days in which to make repayment.

(3) Interest shall be assessed on all repayments made after the initial 90-day repayment period established at paragraph (d)(1) of this section or the 30-day repayment period established at paragraph (d)(2) of this section. The amount of interest due shall be the greater of:

(i) An amount calculated in accordance with 28 U.S.C. 1961 (a) and (b); or

(ii) The amount actually earned on the funds set aside under this section.

* * * * *

(f) *Additional repayments.* Nothing in this section will prevent the Commission from making additional repayment determinations on one or more of the bases set forth at 11 CFR 9038.2(b) after it has made a repayment determination on any such basis. The Commission may make additional repayment determinations where there exist facts not used as the basis for any previous determination. Any such additional repayment determination will be made in accordance with the provisions of this section.

(g) *Newly-discovered assets.* If, after any repayment determination made under this section, a candidate or his or her authorized committee(s) receives or becomes aware of assets not previously included in any statement of net outstanding campaign obligations submitted pursuant to 11 CFR 9034.5, the candidate or his or her authorized committee(s) shall promptly notify the Commission of such newly-discovered assets. * * *

* * * * *

(i) *Petitions for rehearing; stays pending appeal.* The candidate may file a petition for rehearing of a repayment determination in accordance with 11 CFR 9038.5(a). The candidate may request a stay of a repayment determination in accordance with 11 CFR 9038.5(c) pending the candidate's appeal of that repayment determination.

45. Section 9038.4 is amended by adding a sentence to the end of paragraph (c), to read as follows:

§ 9038.4 Extensions of time.

* * * * *

(c) * * * If a candidate seeks an extension of any 60-day response period under 11 CFR part 9038, the Commission may grant no more than one extension to that candidate, which extension shall not exceed 15 days.

* * * * *

46. Section 9038.5 is amended by revising paragraphs (a), (b), (c)(1)(ii), and the introductory text of (c)(4), to read as follows:

§ 9038.5 Petitions for rehearing; stays of repayment determinations.

(a) *Petitions for rehearing.* (1) Following the Commission's final determination under 11 CFR 9033.10 or 9034.5(g) or the Commission's repayment determination under 11 CFR 9038.2(c), the candidate may file a petition for rehearing setting forth the relief desired and the legal and factual basis in support. To be considered by the Commission, petitions for rehearing must:

(i) Be filed within 20 calendar days after service of the Commission's final determination or repayment determination;

(ii) Raise new questions of law or fact that would materially alter the Commission's final determination or repayment determination; and

(iii) Set forth clear and convincing grounds why such questions were not and could not have been presented during the original determination process.

(2) If a candidate files a timely petition under this section challenging a Commission repayment determination, the time for repayment of the amount at issue will be suspended until the Commission serves notice on the candidate of its determination on the petition. The time periods for making repayment under 11 CFR 9038.2(d) shall apply to any amounts determined to be repayable following the Commission's consideration of a petition for rehearing under this section.

(b) *Effect of failure to raise issues.* The candidate's failure to raise an argument in a timely fashion during the original determination process or in a petition for rehearing under this section, as appropriate, shall be deemed a waiver of the candidate's right to present such arguments in any future stage of proceedings including any petition for review filed under 26 U.S.C. 9041(a). An issue is not timely raised in a petition for rehearing if it could have been raised earlier in response to the Commission's original determination.

(c) *Stay of repayment determination pending appeal.*

(1) * * *

(ii) A request for a stay shall be made in writing and shall be filed within 30 calendar days after service of the Commission's decision on a petition for rehearing under paragraph (a) of this section, or, if no petition for rehearing is filed, within 30 calendar days after service of the Commission's repayment determination under 11 CFR 9038.2(c).

* * * * *

(4) All stays shall require the payment of interest on the amount at issue. The amount of interest due shall be calculated from the date 30 days after service of the Commission's repayment determination under 11 CFR 9038.2(c) and shall be the greater of:

* * * * *

47. Section 9038.7 is added to read as follows:

§ 9038.7 Administrative record.

(a) The Commission's administrative record for final determinations under 11 CFR part 9033, sections 9034.5, 9036.5 and part 9039, and for repayment determinations under 11 CFR 9038.2, consists of all documents or materials submitted to the Commission for its consideration in making those determinations. The administrative record will include the certification of the Commission's vote(s), the audit report that is sent to the committee (for repayment determinations), the statement(s) of reasons, and the candidate agreement. The committee may include documents or materials in the administrative record by submitting them within the time periods set forth at 11 CFR 9033.3(b), 9033.4(a)(2), 9033.6(c), 9033.7(b), 9033.9(b), 9034.5(g)(2), 9036.5(e), 9038.1(c) and 9038.2(c)(2), as appropriate.

(b) The Commission's administrative record for determinations under 11 CFR part 9033, sections 9034.5, 9036.5 and 9038.2 and part 9039 does not include:

(1) Documents and materials in the files of individual Commissioners or employees of the Commission that do not constitute a basis for the Commission's decisions because they were not circulated to the Commission and were not referenced in documents that were circulated to the Commission;

(2) Transcripts or audio tapes of Commission discussions other than transcripts or audio tapes of oral hearings pursuant to 11 CFR 9038.2(c)(2), although such transcripts or tapes may be made available under 11 CFR parts 4 or 5; or

(3) Documents properly subject to privileges such as an attorney-client privilege, or items constituting attorney work product.

(c) The administrative record identified in paragraph (a) of this section is the exclusive record for the Commission's determinations under 11 CFR part 9033, §§ 9034.5, 9036.5 and 9038.2 and part 9039.

PART 9039—REVIEW AND INVESTIGATION AUTHORITY

48. The authority citation for part 9039 continues to read as follows:

Authority: 26 U.S.C. 9039.

49. Section 9039.3 is amended by adding new paragraph (b)(4), to read as follows:

§ 9039.3 Examination and audits; investigations.

* * * * *

(b) * * *

(4) If, at the close of the inquiry, the Commission determines that no action or no further action is warranted, the Commission shall so notify the candidate. If the inquiry results in an adjustment to the amount of certified matching funds, the procedures set forth at 11 CFR 9036.5 or 9038.1 shall be followed, as appropriate. If the inquiry coincides with an audit undertaken pursuant to 11 CFR 9038.1, the information obtained in the inquiry will be utilized in making the repayment determination. If the inquiry results in an initial or additional repayment determination, the procedures set forth at 11 CFR 9038.2, 9038.4, and 9038.5 shall be followed.

Dated: June 12, 1995.

Danny L. McDonald,

Chairman.

[FR Doc. 95–14667 Filed 6–15–95; 8:45 am]

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Federal Register

Friday
June 16, 1995

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting Supplemental Proposals for Migratory Game Bird Hunting Regulations; Meetings; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AC79

Migratory Bird Hunting; Supplemental Proposals for Migratory Game Bird Hunting Regulations; Notice of Meetings.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; supplemental.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter the Service) proposed in an earlier document to establish annual hunting regulations for certain migratory game birds. This supplementary document further describes proposed changes from 19940995 hunting regulations and provides additional information that will facilitate establishment of the 19950996 hunting regulations. This document also announces the meetings of the Service Migratory Bird Regulations Committee.

DATES: The Service Migratory Bird Regulations Committee will meet to consider and develop proposed regulations for early seasons on June 20, 21, and 22, and for late seasons on August 1, 2, and 3. Public hearings on proposed early- and late-season frameworks will be held at 9:00 a.m. on June 22 and August 3, 1995, respectively. The comment period for proposed migratory bird hunting-season frameworks for Alaska, Hawaii, Puerto Rico, the Virgin Islands, and other early seasons will end on July 21, 1995, and for late-season proposals will end on September 4, 1995.

ADDRESSES: Meetings of the Service Migratory Bird Regulations Committee will be held in room 200 of the U.S. Fish and Wildlife Service's Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia. Public hearings will be held in the Auditorium of the Department of the Interior Building, 1849 C Street, NW., Washington, DC. Written comments on the proposals and notice of intention to participate in either hearing should be sent to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240. Comments received will be available for public inspection during normal business hours in room 634, ARLSQ Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358091714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 1995

On March 24, 1995, the Service published in the **Federal Register** (60 FR 15642) a proposal to amend 50 CFR part 20. The proposal dealt with the establishment of seasons, limits, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. This document is the second in a series of proposed, supplemental, and final rules for migratory game bird hunting regulations. Comment periods on this second document are specified above under **DATES.** Early-season frameworks will be proposed in late June and late-season frameworks in early August. Final regulatory frameworks for early seasons are scheduled for publication on or about August 16, 1995, and those for late seasons on or about September 25, 1995.

On June 22, 1995, a public hearing will be held in Washington, DC, to review the status of migratory shore and upland game birds and waterfowl hunted during early seasons and the recommended hunting regulations for these species.

On August 3, 1995, a public hearing will be held in Washington, DC, to review the status of waterfowl and recommended hunting regulations for regular waterfowl seasons, and other species and seasons not previously discussed at the June 22 public hearing.

Announcement of Service Migratory Bird Regulations Committee Meetings

The meeting on June 20 is to review information on the current status of migratory shore and upland game birds and to develop 19950996 migratory game bird regulations recommendations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons. The June 21 meeting is to ensure that the Service's regulations recommendations are developed with the benefit of full consultation on the above issues.

The meeting on August 1 is to review information on the current status of waterfowl and to develop 19950996 migratory game bird regulations recommendations for regular waterfowl seasons and other species and seasons not previously discussed at the early season meetings. The August 2 meeting is to ensure that the Service's regulations recommendations are developed with the benefit of full consultation on the above issues.

In accordance with Departmental policy regarding meetings of the Service Migratory Bird Regulations Committee that are attended by any person outside the Department, these meetings will be open to public observation. Members of the public may submit to the Director written comments on the matters discussed.

Announcement of Flyway Council Meetings

Service representatives will be present at the following meetings of Flyway Councils:

Atlantic Flyway—July 270928, Charleston, West Virginia (Holiday Inn, Charleston House)

Mississippi Flyway—July 290930, Green Bay, Wisconsin (Mid-way Best Western Motel)

Central Flyway—July 270928, Custer, South Dakota (Blue Bell Lodge and Resort - Custer State Park)

Pacific Flyway—July 28, Reno, Nevada (Peppermill Hotel)

Although agendas are not yet available, these meetings usually commence at 8:30 a.m. on the days indicated.

Review of Public Comments

This supplemental rulemaking describes changes which have been recommended based on the preliminary proposals published on March 24, 1995, in the **Federal Register.** Only those recommendations that would require either new proposals or substantial modification of the preliminary proposals to facilitate effective public participation are included herein. Those that support or oppose but do not recommend alternatives to the preliminary proposals are not included, but will be considered later in the regulations-development process. The Service will publish responses to proposals, written comments, and public-hearing testimony when final frameworks are developed.

The Service seeks additional information and comments on the recommendations contained in this supplemental proposed rule. These recommendations and all associated comments will be considered during development of the final frameworks.

New proposals and modifications to previously described proposals are discussed below. Wherever possible, they are discussed under headings corresponding to the numbered items in the March 24, 1995, **Federal Register.**

1. Ducks

The categories used to discuss issues related to duck harvest management are as follows: (A) General Harvest Strategy, (B) Framework Dates, (C) Season Length, (D) Closed Seasons, (E) Bag Limits, (F) Zones and Split Seasons, and (G) Special Seasons/Species Management. Only those categories containing substantial recommendations are included below.

A. General Harvest Strategy

In the March 24, 1995, **Federal Register**, the Service proposed that the choice of regulations frameworks for the 19950996 regular duck season be limited to three sets of frameworks similar to those in effect during the 19790993 hunting seasons. These three framework options were generally described as restrictive, moderate, or liberal. The Service also subsequently proposed in an information package made available on March 24, 1995, specific guidelines for selecting one of these framework packages based on the size of the mallard breeding population and habitat conditions in May 1995. The information package contained specific details of this year's proposed regulatory "packages" for each flyway, guidelines for the use of these regulatory packages, and a general description of the harvest management objective and duck population dynamics that were considered in the process. Based on public comments to date, the Service is continuing to refine the guidelines for the use of these regulatory packages and the specific details of the proposed packages for each flyway in this transition year to the Service's proposed development of a more formal and objective decision-making process.

All four Flyway Councils have endorsed the proposal to limit the choice of 19950996 frameworks to three packages. However, the Pacific, Central, and Mississippi Flyway Councils recommended some modifications to the specific regulatory packages proposed, and these modifications are identified below under "Framework Dates", "Season Length", and "Bag Limits."

The Atlantic Flyway Council endorsed the guidelines proposed for selecting a regulations package in 1995, but commented that the guidelines were based only on mid-continent mallards, which comprise a very small portion of the duck harvest in the Atlantic Flyway. The Lower-Region Regulations Committee of the Mississippi Flyway Council also endorsed the guidelines. The Central Flyway Council and the Upper-Region Regulations Committee of the Mississippi Flyway Council expressed concerns about using the guidelines before the proposed general approach to managing duck harvests has been thoroughly reviewed by all interested parties. These concerns related only to the 19950996 hunting season. The Pacific Flyway Council supported the general format of the guidelines, but expressed reservations about guidelines based upon mid-continent mallards and a harvest strategy that does not permit greater harvest opportunity on lightly-harvested species. Further, the Council urged development of a specific harvest strategy for pintails, the second-most important species in the Pacific Flyway harvest.

B. Framework Dates

In the frameworks packages proposed for 19950996, the Pacific and Central Flyway Councils and the Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the framework opening and closing dates in all 3 packages be the Saturday nearest October 1 and the Sunday nearest January 20. The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that the opening and closing dates be the Saturday nearest October 1 and January 20 in all three packages.

C. Season Length

In the frameworks packages proposed for 19950996, the Pacific Flyway Council recommended that in the "restrictive" package, the season length be 60 days instead of 59 days.

E. Bag Limits

In the frameworks packages proposed for 19950996, the Pacific Flyway Council recommended that mallard daily bag limits be 5 (with 1 hen) instead of 4 (with 1 hen) in the "moderate" package and 6 (with 2 hens) instead of 6 (with 1 hen) in the "liberal" package. The Council also recommended that the pintail daily bag limit in the "liberal" package be 3 birds instead of 2.

The Central Flyway Council recommended reinstating the point-system option for establishing the daily bag limit for ducks in 1995. Further, the Council also would like to work with the Service in another cooperative review of its point-system policy.

F. Zones and Split Seasons

The Central Flyway Council recommended that the Service eliminate its policy that States may not zone and/or use a 3-way split season simultaneously within a special management unit and the remainder of the State when establishing duck hunting zones.

G. Special Seasons/Species Management

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that during the first 9 days of the regular duck season, production States be given the option of 1 additional blue- or green-winged teal in the bag limit during a 3-year experimental period.

i. Canvasback

As part of the general harvest strategy, the Pacific Flyway Council recommended that limits on canvasbacks follow the Service's harvest strategy; however, the Council believes that canvasbacks should be managed by western and eastern populations.

ii. September Teal Seasons

The Central Flyway Council recommended that the September teal season in the Central Flyway be increased from 9 to 16 days.

4. Canada Geese

A. Special Seasons

The Atlantic Flyway Council recommended that Delaware and Rhode Island be permitted to initiate a 3-year experimental resident Canada goose season with framework dates of September 1 to 15.

The Atlantic Flyway Council also recommended that Massachusetts, New Jersey, New York, North Carolina, Pennsylvania, and Virginia be permitted to expand the hunt areas of their experimental goose seasons.

In North Carolina, the Atlantic Flyway Council requested that the framework date for the experimental resident Canada goose season in the Northeast hunt area be September 1 to 20.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended modification of the early Canada goose seasons criteria to allow any State to conduct a non-experimental special season between the dates of September 1 and 15. The Committee recommended that States continue monitoring hunter activity and success until they begin participation in the Harvest Information Program and close areas where evidence from band recoveries or other sources indicated unacceptable (greater than 10 percent) harvest non-target populations of concern. Special seasons occurring after September 15 would be required to meet all existing Service criteria for special resident Canada goose seasons and would not be altered in any way during the 3-year experimental period.

If the above modifications to the special-season criteria are not approved, the Upper-Region Regulations

Committee recommended the following experimental special seasons:

In Indiana, a Statewide season during September 1 to 15.

In Illinois, a season in the nine northeast counties of the State during September 9 to 18.

In Wisconsin, expand the size of the Southeastern Zone for a September 1 to 13 season.

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that the flyway-wide framework for special resident giant Canada goose seasons be September 1 to 15 where areas of concern do not exist.

In Tennessee, the Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that the zone for the special resident Canada goose season in east Tennessee be expanded from 11 to 28 counties, east of and including Anderson, Campbell, Hamilton, Rhea, and Roane Counties. The Committee also recommended that Tennessee be permitted to hold a special September Canada goose season in the Kentucky/Barkley Lakes Zone in west Tennessee.

The Pacific Flyway Council requested modification of the early Canada goose seasons criteria to allow any State to conduct a season between the dates of September 1 and 15 for a 3-year experimental period. The Council recommended that States continue monitoring hunter activity and success until they begin participation in the Harvest Information Program and close areas where evidence from band recoveries or other sources indicated unacceptable (greater than 10 percent) harvest of non-target populations of concern. Special seasons occurring after September 15 would be required to meet all existing Service criteria for special Canada goose seasons and would not be altered in any way during the 3-year experimental period.

The Pacific Flyway Council recommended continuation of the early September Canada goose season in southwestern Wyoming and that an experimental hunt be allowed in Teton County, Wyoming, where it would be by State permit (no more than 40 permits may be issued) with framework dates of September 1 to 15 and a maximum limit of 2 Canada geese permitted per season.

B. Regular Seasons

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended a September 23 framework opening date for regular goose seasons in the Upper Peninsula of Michigan and Statewide in Wisconsin.

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that the Canada goose hunting season in Louisiana be expanded from the Southwest Louisiana Zone to Statewide, using the same guidelines followed during the past 5 years.

The Pacific Flyway Council recommended a daily bag limit of 1 cackling Canada goose in northwestern Oregon and southwestern Washington. The Council recommends allowing one additional cackling Canada goose in the bag if additional Canada goose hunting season closures are required to further protect dusky Canada geese, however, and provided that the 1995 breeding pair index indicates a continued increase in the cackling Canada goose population and the strategy for harvesting not more than 1,500 in northwestern Oregon and 1,000 in southwestern Washington remains unchanged.

7. Snow and Ross's (Light) Geese

The Central Flyway Council recommended that framework dates for hunting light geese in the Central Flyway be extended to March 10.

8. Tundra Swans

The Pacific Flyway Council recommended a 5-year experimental swan season that would allow a restricted take of trumpeter swans in otherwise tundra swan hunting seasons, with the previous tundra swan seasons and areas open to hunting being modified to minimize the take of trumpeter swans. The Council seeks a responsible balance between its efforts to enhance expansion of the Rocky Mountain Population (RMP) of trumpeter swans and accommodate opportunities to hunt tundra swans.

The Pacific Flyway Council recommended changing the closing date for swan hunting seasons from the Sunday closest to January 20 to December 1 for Montana, the Sunday closest to December 15 for Utah, and the Sunday following January 1 for Nevada.

The Pacific Flyway Council also recommended changes to the swan hunt areas in Montana and Utah. In Montana, those portions of Pondera and Teton Counties west of U.S. Highways 2870989 would be deleted from the open area, while Choteau County would be added. Utah would be reduced from the Statewide hunt area that existed prior to 1994 to just the Great Salt Lake Basin, i.e., those portions of Box Elder, Weber, Davis, Salt Lake, and Tooele Counties bounded by Utah State Highway 30, Interstate 80/84, Interstate 15, and Interstate 80.

The Pacific Flyway Council also recommended that the number of swan permits remain unchanged at 500 for Montana and 650 for Nevada but increased from 2,500 to 2,750 for Utah. The Council deemed the increase in Utah permits as appropriate to partially offset anticipated reduction in swan hunting opportunities resulting from the recommended changes.

In addition to the foregoing changes, the Pacific Flyway Council proposed limiting the potential take of trumpeter swans by establishing a quota of 20 trumpeter swans which would be divided between Utah and Nevada prior to the season. A State season would be allowed, within the frameworks, so long as that quota had not been attained; however, the season would be closed through emergency action by the affected State upon attainment of that quota. To measure the take of trumpeters with respect to the quota, the Council recommended hunters in Utah and Nevada be required to participate in a mandatory parts check at designated sites within 72 hours of harvesting any swan. In Montana, where there would be no recommended quota, species composition of the harvest would be determined through the voluntary bill-measurement card program currently operated by the State.

Mr. Laurence N. Gillette, representing The Trumpeter Swan Society (TTSS), submitted an integrated package of recommendations for enhancing efforts to expand both the winter and summer range of RMP of trumpeter swans while allowing continuation of significantly modified tundra swan seasons in Montana, Utah, and Nevada. Dispersal of trumpeter swans from winter concentration areas in less-than-optimum, high-mountain habitats in the Tri-state Area of Montana, Wyoming, and Idaho is deemed of primary importance and, if accomplished, would likely result in trumpeter swans following tundra swan migration corridors through hunt areas in Utah and Nevada enroute to California.

Aside from recommendations regarding management actions directed only at RMP trumpeter swans, TTSS recommended that the Service minimize the mortality of trumpeters during tundra swan seasons by: (1) authorizing seasons only during times of peak tundra swan abundance when the generally later-arriving RMP trumpeter swans are less likely to be present and the ratio of tundra to trumpeters is highest, i.e., Montana and Utah - open early to mid-October and close by December 1, Nevada - open early to mid-October and close by January 1; (2) authorizing tundra swan hunting only in key tundra swan hunting areas, i.e., Montana (Pacific Flyway portion) - Freezeout Lake and currently hunted areas east of U.S. Highway 287 between Augusta and Choteau and east of U.S. Highway 89 between Choteau and the Blackfeet Indian Reservation; Utah - Great Salt Lake Basin, specifically those portions of Box Elder, Weber, Davis, Salt Lake and Tooele Counties that lie south of Utah State Highway 30 and Interstate 84, west of Interstate 15, and north of Interstate 80; Nevada - same as in 1994 because swan hunting is currently restricted to concentration areas in western Nevada; and (3) identifying specific hunt management actions and prohibitions on the Bear River Migratory Bird Refuge in Utah.

Should the above three recommendations regarding tundra swan hunting be fully implemented, TTSS would not object to the Service authorizing an accidental harvest quota of not more than 25 trumpeter swans for the Pacific Flyway States and, thereby, removing liability from tundra swan hunters mistakenly shooting a trumpeter swan. The quota would be subject to the following: (1) the quota would be allocated prior to the season, (2) a State could optionally zone and allocate the quota among zones before the season, but the zone or entire Statewide hunt area will close immediately if the quota is attained, (3) require that swans be tagged immediately and brought in to be checked and measured within 3 days, and (4) each permittee must either check a tagged bird or submit an unused tag at the end of the season, with penalties for noncompliance. Specific efforts to monitor RMP trumpeter swans and to educate hunters were recommended.

Service Response: During 1994, the Service restricted the tundra swan season and hunt areas in Utah and required Montana, Utah, and Nevada to measure the accidental take, if any, of trumpeter swans during the tundra swan seasons. Pending reports on the occurrence and take of trumpeter swans in the hunt areas last year, possible additional changes may be warranted. The Service believes continued tundra swan hunting in these three States is warranted but that seasons may be modified to minimize, but not preclude, the accidental take of trumpeter swans. A general swan season with a limited, biologically acceptable, but very controlled take of trumpeter swans may be a feasible approach to accommodate management objectives for both species. Final decision on such an approach, however, will be deferred until the late-season final frameworks, when all public comment has been considered.

9. Sandhill Cranes

The Central Flyway Council recommended that the Wyoming sandhill crane hunting season be expanded to Park and Bighorn Counties.

The Pacific Flyway Council recommended following the management plan with respect to seasons on the Rocky Mountain Population of greater sandhill cranes. Pending final results of the March 1995 survey which should be available in June 1995, harvest guidelines would allow an open season in the States of Arizona, Colorado, Idaho, Montana, New Mexico, Utah, and Wyoming if the population is above 16,000 cranes; otherwise, there would be no open season. With an open season, there would be no change in frameworks.

14. Woodcock

The Atlantic Flyway Council recommended that woodcock season frameworks remain unchanged in the Eastern Region for 19950996 unless adverse weather substantially depresses the breeding populations as measured by the 1995 Singing Ground Survey. The Council believes that population declines are attributed to habitat loss and degradation rather than due to current harvest levels.

18. Alaska

The Pacific Flyway Council recommended changes in bag and possession limits for ducks in Alaska. Specifically, the Council requested for the framework set and the combined moderate-liberal framework set, respectively, the following bag and possession limits: North Zone 8/24 or 10/30, Gulf Coast Zone 6/18 or 8/24, and Southeast, Pribilof/Aleutian, and Kodiak zones 5/15 or 7/21; pintail limits 2/4; and canvasback limits 2/4. Sea duck limits of 15/30 would be separate, with seasons to remain closed on spectacled and Steller's eiders.

20. Puerto Rico

Puerto Rico recommended that the daily bag limit for ducks be increased from 3 to 4 birds and that the daily bag limit for snipe be increased from 6 to 8 birds.

Public Comment Invited

The Service intends that adopted final rules be as responsive as possible to all concerned interests, and therefore desires to obtain for consideration the comments and suggestions of the public, other concerned governmental agencies, non-governmental organizations, and other private interests on these proposals. Such comments, and any additional information received, may lead to final regulations that differ from these proposals.

Special circumstances are involved in the establishment of these regulations which limit the amount of time that the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) the need to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms; and (2) the unavailability, before mid-June, of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, the Service believes that to allow comment periods past the dates specified is contrary to the public interest.

Comment Procedure

It is the policy of the Department of the Interior, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may participate by submitting written comments to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240. Comments received will be available for public inspection during normal business hours at the Service's office in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia. All relevant comments received during the comment period will be considered. The Service will attempt to acknowledge received comments, but substantive response to individual comments may not be provided.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 880914)," filed with EPA on June 9, 1988. Notice of Availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582). The Service's Record of Decision was published on August 18, 1988 (53 FR 31341). Copies of these documents are available from the Service at the address indicated under the caption **ADDRESSES.**

Endangered Species Act Consideration

As in the past, hunting regulations this year will be designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species. Consultations are presently under way to ensure that actions resulting from these regulatory proposals will not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. It is possible that the findings from the consultations, which will be included in a biological opinion, may cause modification of some regulatory measures proposed in this document. Any modifications will be reflected in the final frameworks. The Service's biological opinions resulting from its consultation under Section 7 are considered public documents and are available for public inspection in the Division of Endangered Species and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

Regulatory Flexibility Act; Executive Order (E.O.) 12866 and the Paperwork Reduction Act

In the **Federal Register** dated March 24, 1995 (60 FR 15642), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing an Analysis of Regulatory Effects and an updated Final Regulatory Impact Analysis (FRIA), and publication of a summary of the latter. Although a FRIA is no longer required, the economic analysis contained in the FRIA was reviewed and the Service determined that it met the requirements of E.O. 12866. However, the Service is currently preparing a Small Entity Flexibility Analysis, under the Regulatory Flexibility Act (5 U.S.C. 601 et seq), to further document the significant beneficial economic effect on a substantial number of small entities. This rule was not subject to review by the Office of Management and Budget (OMB) under E.O. 12866.

These proposed regulations contain no information collections subject to OMB review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). However, the Service does utilize information acquired through other various information collections in the formulation of migratory game bird hunting regulations. These information collection requirements have been approved by OMB and assigned clearance numbers 1018090005, 1018090006, 1018090008, 1018090009, 1018090010, 1018090015, 1018090019, and 1018090023.

Authorship

The primary authors of this proposed rule are Ron W. Kokel and Patricia R. Hairston, Office of Migratory Bird Management.

List of Subjects in 50 CFR part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 19950996 hunting season are authorized under the Migratory Bird Treaty Act (July 3, 1918), as amended, (16 U.S.C. 70309711); the Fish and Wildlife Improvement Act (November 8, 1978), as amended, (16 U.S.C. 712); and the Fish and Wildlife Act of 1956 (August 8, 1956), as amended, (16 U.S.C. 742 a09d and e09j).

Dated: June 5, 1995.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–14756 Filed 6–15–95; 8:45 am]
BILLING CODE 4310–55–F

federal register

Friday
June 16, 1995

Part VI

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

June 1, 1995.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93–344). Section 1014(e) requires a monthly report listing all budget authority for the current fiscal year for which, as of the first day of the month, a special message had been transmitted to Congress.

This report gives the status, as of June 1, 1995, of 28 rescission proposals and seven deferrals contained in five special messages for FY 1995. These messages were transmitted to Congress on October 18, and December 13, 1994; and on February 6, February 22, and May 2, 1995.

Rescissions (Attachments A and C)

As of June 1, 1995, 28 rescission proposals totaling $1,199.8 million had been transmitted to the Congress. Congress approved two of the Administration's rescission proposals in P.L. 104–6. A total of $71.6 million of the rescissions proposed by the President was rescinded by that measure. Attachment C shows the status of the FY 1995 rescission proposals.

Deferrals (Attachments B and D)

As of June 1, 1995, $1,772.9 million in budget authority was being deferred from obligation. Attachment D shows the status of each deferral reported during FY 1995.

Information From Special Messages

The special messages containing information on the rescission proposals and deferrals that are covered by this cumulative report are printed in the **Federal Register** cited below:

59 FR 54066, Thursday, October 27, 1994
59 FR 67108, Wednesday, December 28, 1994
60 FR 8842, Wednesday, February 15, 1995
60 FR 12636, Tuesday, March 7, 1995
60 FR 24692, Tuesday, May 9, 1995

Alice M. Rivlin,
Director.

BILLING CODE 3110–01–M

ATTACHMENT A

STATUS OF FY 1995 RESCISSIONS
(in millions of dollars)

	Budgetary Resources
Rescissions proposed by the President.....	1,199.8
Rejected by the Congress.....	---
Amounts rescinded by P.L. 104-6, the FY 1995 Emergency Supplemental Appropriations Act.....	-71.6
Currently before the Congress.....	1,128.2

ATTACHMENT B

STATUS OF FY 1995 DEFERRALS
(in millions of dollars)

	Budgetary Resources
Deferrals proposed by the President.....	4,699.1
Routine Executive releases through June 1, 1995 (OMB/Agency releases of $2,928.7 million, partially offset by cumulative positive adjustment of $2.5 million).....	-2,926.2
Overturned by the Congress.....	---
Currently before the Congress.....	1,772.9

ATTACHMENT C
Status of FY 1995 Rescission Proposals - As of June 1, 1995
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
DEPARTMENT OF AGRICULTURE								
Foreign Agricultural Service								
Public Law 480 program account	R95-1		43,865	2-6-95	43,865	3-28-95		
Public Law 480 grants, title I (OFD), II, and III			98,635	2-6-95	98,635	3-28-95		
Food and Nutrition Service								
Food stamp program	R95-2		2,900	2-6-95	2,900	3-28-95		
DEPARTMENT OF COMMERCE								
National Telecommunications and Information Administration								
Public broadcasting facilities, planning and construction	R95-3		18,000	2-6-95	18,000	3-31-95		
DEPARTMENT OF EDUCATION								
Office of Elementary and Secondary Education								
School improvement programs	R95-4		138,084	2-6-95	35,000	3-15-95		
	R95-4A		-35,000	2-22-95	103,084	3-30-95	65,000	P.L. 104-6
Office of Vocational and Adult Education								
Vocational and adult education	R95-5		43,888	2-6-95	43,888	3-30-95		
Office of Postsecondary Education								
Higher education	R95-6		26,903	2-6-95	26,903	3-30-95		
College housing and academic facilities program	R95-7		168	2-6-95	168	3-30-95		
Office of Educational Research and Improvement								
Education research, statistics, and improvement	R95-8		750	2-6-95	750	3-30-95		
Libraries	R95-9		12,942	2-6-95	12,942	3-31-95		
DEPARTMENT OF HEALTH AND HUMAN SERVICES								
Health Resources and Services Administration								
Health resources and services	R95-10		29,147	2-6-95	29,147	3-28-95		

ATTACHMENT C
Status of FY 1995 Rescission Proposals - As of June 1, 1995
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
DEPARTMENT OF HEALTH AND HUMAN SERVICES								
Centers for Disease Control and Prevention								
Disease control, research, and training	R95-11		1,300	2-6-95	1,300	3-28-95		
National Institutes of Health								
National Center for Research Resources	R95-12		1,000	2-6-95	1,000	3-28-95		
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Housing Programs								
Annual contributions for assisted housing	R95-13		439,200	2-6-95	439,200	3-28-95		
Congregate services	R95-14		37,000	2-6-95	37,000	3-28-95		
DEPARTMENT OF JUSTICE								
Federal Prison System								
Salaries and expenses	R95-26	28,037		5-2-95				
DEPARTMENT OF LABOR								
Bureau of Labor Statistics								
Salaries and expenses	R95-15		1,100	2-6-95	1,100	3-29-95		
DEPARTMENT OF TRANSPORTATION								
Federal Railroad Administration								
Local rail freight assistance	R95-16		13,216	2-6-95	13,216	3-31-95	6,563	P.L. 104-6
Office of the Secretary								
Payments to air carriers (Airport and airway trust fund)	R95-17		7,680	2-6-95				
Federal Aviation Administration								
Grants-in-aid for airports (Airport and airway trust fund)	R95-27	94,000		5-2-95				

* Funds were never withheld from obligation.

ATTACHMENT C
Status of FY 1995 Rescission Proposals - As of June 1, 1995
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
ENVIRONMENTAL PROTECTION AGENCY								
Abatement, control, and compliance	R95-18		11,642	2-6-95	6,835	2-6-95		
	R95-18A		-6,835	2-6-95	4,807	3-28-95		
Water infrastructure financing	R95-18B		3,200	2-6-95	3,200	3-28-95		
Research and development	R95-18C		3,635	2-6-95	3,635	3-28-95		
	R95-18C-1		Language	2-22-95				
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION								
Mission support	R95-19		1,000	2-6-95	1,000	3-28-95		
Construction of facilities	R95-20		27,000	2-6-95	27,000	3-28-95		
Space flight, control, and data communications	R95-28	10,000		5-2-95				
SMALL BUSINESS ADMINISTRATION								
Salaries and expenses	R95-21		15,000	2-6-95	15,000	4-6-95		
OTHER INDEPENDENT AGENCIES								
Chemical Safety and Hazard Investigation Board Salaries and expenses	R95-22		500	2-6-95	500	3-28-95		
National Science Foundation Academic research infrastructure	R95-23		131,867	2-6-95	131,867	3-27-95		
TOTAL RESCISSIONS		132,037	1,067,767		1,101,942		71,563	

[FR Doc. 95-14760 Filed 6-15-95; 8:45 am]
BILLING CODE 3110-01-C

ATTACHMENT D
Status of FY 1995 Deferrals - As of June 1, 1995
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 6-1-95
FUNDS APPROPRIATED TO THE PRESIDENT.									
International Security Assistance									
Economic support fund	D95-1	53,300		10-18-94					
	D95-1A		1,173,948	12-13-94	891,978			2,525	337,796
Foreign military financing grants	D95-2	3,139,279		10-18-94	1,821,280				1,317,999
Foreign military financing program account	D95-3	47,917		10-18-94	42,774				5,143
Military-to-military contact program	D95-4	2,000		10-18-94					2,000
Agency for International Development									
International disaster assistance, executive	D95-5	169,998		10-18-94	127,830				42,168
SOCIAL SECURITY ADMINISTRATION									
Limitation on administrative expenses	D95-6	7,319		10-18-94					
	D95-6A		2	2-22-95					7,321
DEPARTMENT OF STATE									
Other									
United States emergency refugee and migration assistance fund	D95-7	105,300		10-18-94	44,814				60,486
TOTAL, DEFERRALS		3,525,113	1,173,950		2,928,676			2,525	1,772,912

Federal Register

Friday
June 16, 1995

Part VII

The President

Executive Order 12963—Presidential Advisory Council on HIV/AIDS

Federal Register
Vol. 60, No. 116
Friday, June 16, 1995

Presidential Documents

Title 3—

The President

Executive Order 12963 of June 14, 1995

Presidential Advisory Council on HIV/AIDS

By the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby direct the Secretary of Health and Human Services to exercise her discretion as follows:

Section 1. *Establishment.* (a) The Secretary of Health and Human Services (the "Secretary") shall establish an HIV/AIDS Advisory Council (the "Advisory Council" or the "Council"), to be known as the Presidential Advisory Council on HIV/AIDS. The Advisory Council shall be composed of not more than 30 members to be appointed or designated by the Secretary. The Advisory Council shall comply with the Federal Advisory Committee Act, as amended (5 U.S.C. App.).

(b) The Secretary shall designate a Chairperson from among the members of the Advisory Council.

Sec. 2. *Functions.* The Advisory Council shall provide advice, information, and recommendations to the Secretary regarding programs and policies intended to (a) promote effective prevention of HIV disease, (b) advance research on HIV and AIDS, and (c) promote quality services to persons living with HIV disease and AIDS. The functions of the Advisory Council shall be solely advisory in nature. The Secretary shall provide the President with copies of all written reports provided to the Secretary by the Advisory Council.

Sec. 3. *Administration.* (a) The heads of executive departments and agencies shall, to the extent permitted by law, provide the Advisory Council with such information as it may require for purposes of carrying out its functions.

(b) Any members of the Advisory Council that receive compensation shall be compensated in accordance with Federal law. Committee members may be allowed travel expenses, including per diem in lieu of subsistence, to the extent permitted by law for persons serving intermittently in the Government service (5 U.S.C. section 5701–5707).

(c) To the extent permitted by law, and subject to the availability of appropriations, the Department of Health and Human Services shall provide the Advisory Council with such funds and support as may be necessary for the performance of its functions.

Sec. 4. *General Provisions.* (a) Notwithstanding the provisions of any other Executive order, any functions of the President under the Federal Advisory Committee Act that are applicable to the Advisory Council, except that of reporting annually to the Congress, shall be performed by the Department of Health and Human Services, in accordance with the guidelines and procedures established by the Administrator of General Services.

(b) This order is intended only to improve the internal management of the executive branch, and it is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, it officers, or any person.

William J. Clinton

THE WHITE HOUSE,
June 14, 1995.

[FR Doc. 95–14983
Filed 6–14–95; 4:45 pm]
Billing code 3195–01–P

Reader Aids

Federal Register
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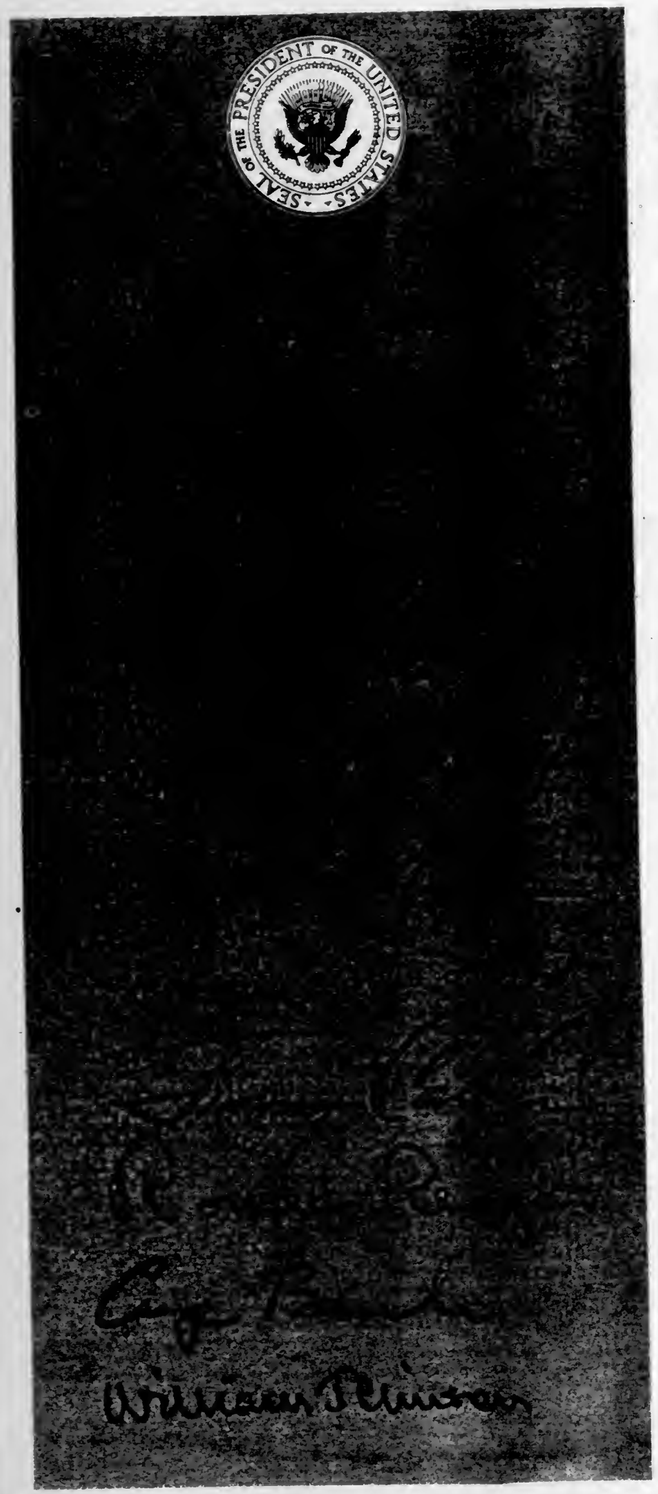
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6–19–95
Vol. 60 No. 117

federal register

Monday
June 19, 1995

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Monday
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federal register

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Electronic Bulletin Board

Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Federal Register
Vol. 60, No. 117
Monday, June 19, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 802

RIN 0580–AA39

Official Performance and Procedural Requirements for Grain Weighing Equipment and Related Grain Handling Systems

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Direct final rule.

SUMMARY: In compliance with the requirements for periodic review of existing regulations, the Federal Grain Inspection Service (FGIS), of the Grain Inspection, Packers and Stockyards Administration is amending the regulations under the United States Grain Standards Act, as amended, entitled Performance and Procedural Requirements for Grain Weighing Equipment and Related Grain Handling Systems. FGIS is incorporating by reference the applicable requirements of the National Institute of Standards and Technology (NIST) Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," 1994 edition (Handbook 44) and continues to adopt all of the requirements of NIST Handbook 105–1, "Specifications and Tolerances for Reference Standard Weights and Measures," 1990 revision (Handbook 105–1). Currently, the 1990 Edition of Handbook 44 and the 1990 edition of Handbook 105–1 are incorporated by reference.

DATES: This rule will be effective on August 18, 1995, unless we receive written adverse comments or written notice of intent to submit adverse comments on or before July 19, 1995. If adverse comments are received, we will publish a document in the **Federal Register.**

ADDRESSES: Please send any adverse comments or notice of intent to submit adverse comments to George Wollam, GIPSA–FGIS, USDA, Room 0623–S, P.O. Box 96454, Washington, DC 20090–6454; FAX (202) 720–4628. All comments received will be made available for public inspection at the above address during business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: George Wollam, address as above, telephone (202) 720–0292.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not-significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by OMB.

Executive Order 12778

This amended rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. The United States Grain Standards Act provides in section 87g that no State or subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this proposed rule will not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflicts with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act Certification

James R. Baker, Administrator, FGIS, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities. Most users of the official inspection and weighing services and those persons that perform those services do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Further, the standards are applied equally to all entities.

Information Collection and Recordkeeping Requirements

In compliance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection and recordkeeping requirements in Part 68 have been approved previously by OMB and assigned OMB No. 0580–0013.

Background

Part 802 of the regulations, Official Performance and Procedural Requirements for Grain Weighing Equipment and Related Grain Handling Systems (7 CFR 802.0–802.1), sets forth certain procedures, specifications, tolerances, and other technical requirements for grain weighing equipment and related grain handling systems used in performing Class X, and Class Y weighing services. This review of the regulations includes a determination of continued need for and consequences of the regulations. An objective of the review is to ensure that the regulations are consistent with FGIS policy and authority and are up-to-date. FGIS has determined that, in general, these regulations are serving their intended purpose, are consistent with FGIS policy and authority, and should remain in effect. FGIS, therefore, will incorporate the 1994 edition of Handbook 44 by reference into Part 802 of the regulations and the 1990 revision of Handbook 105–1 continues to be adopted in order to update the regulations.

Effective December 4, 1991, FGIS incorporated by reference into Part 802 of the regulations most provisions in the National Institute of Standards and Technology (NIST) Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," 1990 edition (Handbook 44), and all provisions in NIST Handbook 105–1, "Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures," 1990 edition (Handbook 105–1) NIST rule (53 FR 37727). Those provisions in Handbook 44 that obviously did not pertain to FGIS services were not incorporated by reference. The provisions that were not incorporated are listed in section 802.0(b) of the regulations.

We are publishing this rule without a prior proposal because we regularly update this portion of the regulations and view this action as noncontroversial and anticipate no adverse public comment. This rule will be effective, as published in this document, 60 days after the date of publication in the

Federal Register unless we receive written adverse comments or written notice of intent to submit adverse comments within 30 days of the date of publication of this rule in the **Federal Register**.

Adverse comments are comments that suggest the rule should not be adopted or suggest the rule should be changed.

If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a document in the **Federal Register** withdrawing this rule before the effective date. We will then publish a proposed rule for public comment. Following the close of that comment period, the comments will be considered, and a final rule addressing the comments will be published.

As discussed above, if we receive no written adverse comments nor written notice of intent to submit adverse comments within 30 days of publication of this direct final rule, this direct final rule will become effective 60 days following its publication. We will publish a document to this effect in the **Federal Register**, before the effective date of this direct final, confirming that it is effective on the date indicated in this document.

Direct Final Action

In 1991 FGIS incorporated by reference the 1990 edition of Handbook 105–1. FGIS will continue to adopt this edition by reference in section 802.0(a) of the regulations.

The 1990 edition of Handbook 44 has been changed annually by NIST as new items are adopted, deleted, or revised by the National Conference on Weights and Measures. Many of these changes were for clarity. Further, most State weights and measures organizations automatically adopt each new edition of Handbook 44 and Handbook 105–1. FGIS will revise section 802.0(a) by incorporating by reference the 1994 edition of Handbook 44 including the following sections:

Section 1.10 General Code
Section 2.20 Scales
Section 2.22 Automatic Bulk Weighing Systems
Section 2.23 Weights

In addition, recent amendments to the U.S. Grain Standards Act (Public Law 103–156) have included the authority to provide for the testing of weighing equipment used for other than weighing grain. FGIS is referring to this type of testing as commercial testing and is including references to commercial services in its regulations.

The following table lists those relevant codes and paragraphs, but not definitions, in which amendments and editorial changes were made in 1991 through 1994 by the 75th, 76th, 77th, and 78th National Conference on Weights and Measures as they appeared in the 1991 through 1994 editions of Handbook 44. The column headed "Action" indicates changes noted as "added", "amended", "deleted", "renumbered", or provides an explanation.

Code	Paragraph	Action
1990 Amendments		
General	G–S.5.3.1 & G–S.5.6	Retroactive.
Scales	S.1.7	Amended.
Scales	S.2.1.5	Added.
Scales	S.6.1., S.6.2.1, S.6.3., S.6.4	Deleted.
Scales	S.6.5., S.6.6., S.6.7., S.6.7.1	Deleted.
Scales	S.6.7.2., S.6.8., S.6.10	Deleted.
Scales	S.6.11	Deleted.
Scales	S.6.1. and S.6.2	Renumbered.
Scales	S.6.3	Added.
Scales	Tables S.6.3.a & b	Added.
Scales	S.6.11	Amended.
Scales	N.3.1	Amended.
Scales	N.3.1.1	Deleted.
Scales	N.3.1.1., N.3.1.2, N.3.1.3	Added.
Scales	N.4.–N.4.3.1.4	Added.
Scales	T.N.3.6.–T.N.3.6.4	Amended.
Scales	T.N.3.7	Renumbered.
Scales	T.N.3.8	Renumbered.
Scales	UR.5	Added.
Scales	Section T.1	Amended.
Scales	Table T.1.1	Added.
Scales	T.N.8.1.3	Amended.
1990 Editorial Changes		
Scales	T.1.1.1	Deleted.
Scales	Table 8	Class III entries restored.
1991 Amendments		
General	G–S.1	Amended.
General	G–UR.2.3	Amended.
General	G–UR.4.1	Amended.
Scales	S.1.11	Amended.
Scales	S.2.4	Amended.
Scales	N.1.3.4	Amended.
Scales	N.4	Footnote Added.
Scales	N.4.3.1.3	Amended.
Automatic Bulk Weighing Systems	UR.4	Amended.

Code	Paragraph	Action
1991 Editorial Changes		
General	G–S.5.2.1	Deleted recorded representation reference.
Scales	S.6.1	Deleted reference to T.1.3.
Scales	Table S.6.3.a	Symbols added.
Scales	Table S.6.3.b	Added Note 17 nonretroactive.
Scales	S.6.4	Added from 1989 Handbook.
Scales	Table T.1.1	Corrected T.N.3.7 to T.N.3.8.
1992 Amendments		
Scales	S.1.1.1	Amended.
Scales	S.1.7	Amended.
Scales	S.1.12	Added.
Scales	S.2.4.1	Added.
Scales	Tables S.6.3.a. and S.6.3.b	Amended.
Scales	N.1.3.7	Added.
Scales	N.1.3.7. to N.1.3.8	Renumbered.
Scales	Table T.1.1	Amended.
Scales	T.N.3.6	Amended.
Scales	T.N.3.6.2	Amended.
Scales	T.N.3.6.4	Amended.
Scales	T.N.3.7	Amended.
Scales	UR.1.4	Added.
Scales	Table 7a	Amended.
Scales	UR.3.3	Added note at end of section.
Scales	UR.3.7	Amended.
Scales	UR.3.9	Added.
Scales	UR.5	Amended.
Automatic Bulk Weighing: Systems	UR.1.1 Table	Deleted.
Automatic Bulk Weighing: Systems	UR.1.1	Amended.
1992 Editorial Changes		
All		Changes made to include SI units.
Scales	Table T.1.1	New headings second line.
Scales	T.3	Deleted T.3.1 in the 1st paragraph.
1993 Amendments		
General	G–S.8	Amended.
Scales	S.1.1	Amended.
Scales	Table S.1.11	Amended.
Scales	S.1.13	Added.
Scales	S.5.4	Added.
Scales	N.4.3.1.1	Amended.
Scales	Renumber N.5 to N.6	Renumbered.
Scales	N.5 (New)	Added.
Scales	UR.2.6.1	Amended.
Automatic Bulk Weighing: Systems	S.3.2	Deleted.
Automatic Bulk Weighing: Systems	S.3.3	Added.
1993 Editorial Changes		
Scales	Table 4	Deleted "recommended".
Scales	Index	Index added for scales code.

Changes in Handbook 44 also necessitate a revision to 802.0(b). Therefore, FGIS revises section 802.0(b) by revising the list of those provisions that do not pertain to FGIS services. These provisions are as follows:

S.1.8. Computing Scales
N.3. Recommended Minimum Test Weights and Test Loads
N.5. Nominal Capacity of Prescription Scales
T.2.3. Prescription Scales
T.2.4. Jewelers' Scales (all sections)
T.2.5. Dairy—Product-Test Scales (all sections)
T.N.3.9. Materials Test on Customer-Operated Bulk-Weighing Systems for Recycled Materials

List of Subjects in 7 CFR Part 802

Administrative practice and procedure, Export, Grain, Incorporation by reference, Reporting and recordkeeping requirements.

For reasons set out in the preamble, 7 CFR Part 802 is amended as follows:

PART 802—OFFICIAL PERFORMANCE AND PROCEDURAL REQUIREMENTS FOR GRAIN WEIGHING EQUIPMENT AND RELATED GRAIN HANDLING SYSTEMS

1. The authority citation for Part 802 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

2. Section 802.0 is revised to read as follows:

§ 802.0 Applicability.

(a) The requirements set forth in this Part 802 describe certain specifications, tolerances, and other technical requirements for grain weighing equipment and related grain handling systems used in performing Class X and Class Y weighing services, official inspection services, and commercial services under the Act. All scales used for official grain weight and inspection certification services provided by FGIS shall meet applicable requirements contained in the FGIS Weighing Handbook, the General Code, the Scales Code, the Automatic Bulk Weighing Systems Code, and the Weights Code of the 1994 edition of National Institute of Standards and Technology (NIST) Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices" (Handbook 44); and NIST HANDBOOK 105–1 (1990 Edition), "Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures" (Handbook 105–1). These requirements are confirmed to be met by having National Type Evaluation Program or Federal Grain Inspection Service type approval. Scales used for commercial purposes will be required to meet only the applicable requirements of the 1994 edition of the NIST Handbook–44. Pursuant to the provisions of 5 U.S.C. 552(a), with the exception of the Handbook 44 requirements listed in paragraph (b) of this section, the materials in Handbooks 44 and 105–1 are incorporated by reference as they exist on the date of approval and a notice of any change in these materials will be published in the **Federal Register**. The NIST Handbooks are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20403. They are also available for inspect at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(b) The following Handbook 44 requirements are not incorporated by reference:

Scales Code (2.20)

S.1.8. Computer Scales
S.1.8.2. Money-Value Computation
S.1.8.3. Customer's Indications
S.1.8.4. Recorded Representations, Point of Sale
S.2.5.2. Jeweler's, Prescription, & Class I & II Scales
S.3.3. Scoop Counterbalance
N.1.3.2 Dairy-Product Test Scales
N.1.5. Discrimination Test (Not adopted for Grain Test Scales only)
N.1.8. Material Tests
N.3.1.2. Interim Approval
N.3.1.3. Enforcement Action for Inaccuracy
N.4. Coupled-In-Motion Railroad Weighing Systems
N.5. Nominal Capacity of Prescription Scales
T.1.2. Postal and Parcel Post Scales
T.2.3. Prescription Scales
T.2.4. Jewelers' Scales (all sections)
T.2.5. Dairy—Product-Test Scales (all sections)
T.N.3.9. Materials Test on Customer-Operated Bulk-Weighing Systems for Recycled Materials
UR.1.4. Grain Test Scales: Value of Scale Divisions
UR.3.1. Recommended Minimum Load
UR.3.1.1. Minimum Load, Grain Dockage
Automatic Bulk Weighing Systems (2.22):
UR.1.1. Selection Requirements for Systems Used to Weight Grain.

Dated: June 6, 1995.

James R. Baker,

Administrator.

[FR Doc. 95–14624 Filed 6–16–95; 8:45 am]

BILLING CODE 3410–EN–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701, 747, 790 and 792

Changes In Citations, Office Descriptions and Information Centers

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: This final rule makes housekeeping changes to NCUA's regulations. Corrections are made to certain citations to the United States Code found in the regulations and descriptions of two NCUA offices are updated to reflect current agency structure.

EFFECTIVE DATE: June 19, 1995.

FOR FURTHER INFORMATION CONTACT: Hattie M. Ulan, Special Counsel to the General Counsel, at 703–544–6540.

SUPPLEMENTARY INFORMATION: Section 701.14 and part 747, subpart J contain incorrect citations to the United States Code. These citations were correct when the regulations were originally drafted, but have changed due to a recodification of the U.S. Code. The corrections are made in this document. Part 790 sets forth descriptions of the various NCUA offices. Two updates need to be made to these descriptions. First, the Office of Chief Economist and Policy Development, described in Section 790.2(b)(14) has been redesignated as the Office of Investment Services. The duties and responsibilities of the Office of Investment Services are somewhat different from the former office. Modifications to both the office name and description are made. Second, the structure of regional office management has recently been modified. Senior regional management formerly consisted of a Regional Director, an Associate Regional Director and a Deputy Regional Director. The titles and duties of these officials are found in Section 790.2(c)(2). Regional management now consists of a Regional Director, an Associate Regional Director for Programs and an Associate Regional Director for Operations Modifications to Section 790.2(c)(2) are made to reflect the current structure and duties.

Part 792 contains, among other things, a description of the NCUA's information centers for purposes of the Freedom of Information Act. The Asset Liquidation Management Center is added to Section 792.2(f) as an agency information center.

Since these changes are housekeeping and do not have any substantive effect on credit unions, the Board finds it unnecessary to either issue a proposed rule or to have a delayed effective date. Therefore these changes are issued in final form and are effective upon publication.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact any regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). The types of changes made by this rule have no economic impact on credit unions. These are merely housekeeping changes. Therefore, the NCUA Board has determined and certifies that, under the authority granted in 5 U.S.C. 605(b), this final rule will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

This final rule does not change any paperwork requirements.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. Since these are housekeeping changes only, there is no effect on state interests.

List of Subjects in 12 CFR Parts 701, 747, 790 and 792

Credit unions.

By the National Credit Union Administration Board on June 12, 1995.

Becky Baker,

Secretary of the Board.

Accordingly, for the reasons set out in the preamble, 12 CFR Ch. VII is amended as set forth below.

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761b, 1766, 1767, 1782, 1784, 1787, 1789, and Public Law 101–73. Section 701.6 is also authorized by 12 U.S.C. 1601 et seq., 42 U.S.C. 1981 and 42 U.S.C. 1601–1610. Section 701.35 is also authorized by 12 U.S.C. 4311–4312.

§ 701.14 [Amended]

1a. In § 701.14, paragraph (a) is amended by removing the citation "12 U.S.C. 1791" and adding in its place "12 U.S.C. 1790a".

PART 747—ADMINISTRATIVE ACTIONS, ADJUCICATIVE HEARINGS, AND RULES OF PRACTICE AND PROCEDURE

2. The authority citation for part 747 continues to read as follows:

Authority: 12 U.S.C. 1766, 12 U.S.C. 1786, 12 U.S.C.1784, 12 U.S.C. 1787.

§§ 747.901, 747.902, 747.904 [Amended]

3. Remove the citation "12 U.S.C. 1791" and add, in its place, "12 U.S.C. 1790a" in the following places:

(a) § 747.901;
(b) § 747.902;
(c) § 747.904(b)(2).

PART 790—DESCRIPTION ON NCUA; REQUESTS FOR AGENCY ACTION

4. The authority citation for part 790 continues to read as follows:

Authority: 12 U.S.C. 1766, 12 U.S.C. 1789, 12 U.S.C. 1795f.

5. Section 790.2(b) is amended by revising paragraph (b)(14) as set forth below; § 790.2(c)(2) is amended by revising the 5th, 6th and 7th sentences as set forth below:

§ 790.2 Central and regional office organization.

* * * * *

(b) Central Office.* * *

(14) Office of Investment Services. The Office of Investment Services is responsible for providing investment expertise and advice to the Board and agency staff. A working relationship is maintained with the financial marketplace to develop resources available to the NCUA and keep abreast of product initiatives. The NCUA Investment Hotline housed in this Office is a toll-free number that is available to examiners, credit unions, and financial product vendors to ask investment related questions. The Hotline provides NCUA an opportunity to be aware of current investment issues as they arise in credit unions and has permitted NCUA to become proactive, rather than reactive, to such issues. In addition, investment officers advise agency management on the purchase of authorized investments for the NCUSIF and the CLF.

* * * * *

(c) Regional Offices. * * *

(2) * * * The Regional Director is aided by an Associate Regional Director for Operations and Associate Regional Director for Programs. Staff working in the Regional Office report to the Associate Regional Director for Operations. Each region is divided into examiner districts, each assigned to a Supervisory Credit Union Examiner; groups of examiners are directed by a Supervisory Credit Union Examiner, each of whom in turn reports directly to the Associate Regional Director for Programs. * * *

PART 792—REQUESTS FOR INFORMATION UNDER THE FREEDOM OF INFORMATION ACT AND PRIVACY ACT, AND BY SUBPOENA; SECURITY PROCEDURES FOR CLASSIFIED INFORMATION

6. The authority citation for part 792 continues to read as follows:

Authority: 12 U.S.C. 1766, 12 U.S.C. 1789, 12 U.S.C. 1795f, 5 U.S.C. 552, 5 U.S.C. 552a, Executive Orders 12600 and 12356.

7. Section 792.2 is amended by revising the first sentence of paragraph (f) as follows:

§ 792.2 Information made available to the public and requests for such information.

* * * * *

(f) Information Centers. The Central Office, Regional Offices and the Asset Management Liquidation Center are designated as Information Centers for the NCUA. * * *

* * * * *

[FR Doc. 95–14872 Filed 6–16–95; 8:45 am]

BILLING CODE 7535–01–U

12 CFR Part 790

Addition of Specific Exemptions Under the Privacy Act

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The NCUA Board has adopted these amendments as proposed. The amendments reflect the addition of the (j)(2) and (k)(2) exemptions of the Privacy Act to the NCUA regulations that describe exempt systems of records, and link the "Office of Inspector General (OIG) Investigative Records—NCUA," system NCUA–20, to these Privacy Act exemptions.

EFFECTIVE DATE: July 19, 1995.

FOR FURTHER INFORMATION CONTACT: Alexandra B. Keith, Counsel to the Inspector General, Office of Inspector General, National Credit Union Administration, 5th floor, 1775 Duke Street, Alexandria, VA, 22314, Telephone: 703–518–6352.

SUPPLEMENTARY INFORMATION: In 1989, in response to the Inspector General Act Amendments, Pub. L. 100–504, the National Credit Union Administration Board established a statutorily designated Inspector General (IG), to whom the functions of the former NCUA Office of Internal Auditor, were transferred. The functions of NCUA's Office of Inspector General (OIG) include: (1) The detection and prevention of waste, fraud, and abuse and (2) the promotion of economy and efficiency in NCUA programs and operations. As one of its principal functions, the OIG performs investigations into alleged violations of criminal law in connection with NCUA's programs and operations, pursuant to the IG Act of 1978, as amended. In conjunction with these functions, OIG reports suspected violations of criminal and civil law to the U.S. Attorney General.

Section (j)(2) of the Privacy Act (Title 5 U.S.C. 552a (j)(2)) permits the head of an agency to promulgate rules to exempt a system of records from certain requirements if the system is maintained by an agency component or sub component whose principal function pertains to the enforcement of criminal laws and if the system of records is compiled for a criminal law enforcement purpose. Accordingly, to

the extent it includes this kind of records, the OIG Investigative Records system of records is exempt from the following sections of 552a of Title 5 U.S.C.: (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g), as well as from the corresponding regulatory subsections.

Section (k)(2) (Title 5 U.S.C. 552a(k)(2)) permits exemption from certain requirements if the system consists of investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2); Provided however, that if any individual is denied any right, privilege, or benefit that he or she would otherwise be entitled to by Federal law, or for which he or she would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to January 1, 1975, under an implied promise that the identity of the source should be held in confidence. Accordingly, to the extent that it includes these kinds of records, this system of records is also exempt under Section (k)(2) from the following sections of Title 5 U.S.C.: (c)(3);(d); (e)(1); (e)(4)(G), (H), and (I); and (f), as well as from the corresponding regulatory subsections. This rule, amending 12 CFR 792.34, makes NCUA's regulations consistent with those of the majority of agencies with statutory IG's.

Summary of Comments and Discussion of Issues

The agency received no comments on its proposed rule.

Overview of Final Rule

The final rule is the same as the proposed rule (See 60 FR 18036, April 10, 1995). Two Privacy Act exemptions, 5 U.S.C. 552 (j)(2) and 5 U.S.C. 552a(k)(2) were proposed as discussed above.

Regulatory Procedures

Regulatory Flexibility Act

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), the NCUA certifies that this rule does not have a significant economic impact on a substantial number of small entities. The amendments to 12 CFR are procedural in nature and will aid an NCUA office to perform its criminal law enforcement function.

Paperwork Reduction Act

These amendments contain no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.)

Executive Order 12612

This amendment to NCUA's systems of record notice does not affect state regulation of credit unions.

List of Subjects in 12 CFR Part 792

Criminal penalties, Freedom of Information, Privacy, Reporting and recordkeeping requirements, Sunshine Act.

By the National Credit Union Administration Board on June 12, 1995.

Becky Baker,

Secretary of the Board.

Accordingly, the proposed rule adding two new Privacy Act exemptions to the Office of Inspector General system of investigative records to 12 CFR part 792, is adopted by the NCUA Board as a final rule as follows:

PART 792—[AMENDED]

Subpart B—The Privacy Act

1. The authority citation for part 792 is revised to read as follows:

Authority: 12 U.S.C. 1766(a) and 1789(a)(7); 5 U.S.C. App. 3. Subpart B is also issued under 5 U.S.C. 552a.

2. In § 792.34, a new paragraph (b)(3) is added to read as follows:

§ 792.34 Exemptions.

* * * * *

(b) * * *

(3) System NCUA–20, entitled, "Office of Inspector General (OIG) Investigative Records," consists of OIG records of closed and pending investigations of individuals alleged to have been involved in criminal violations. The records in this system are exempted pursuant to Sections (k)(2) of the Privacy Act, 5 U.S.C. 552a(k)(2), from sections (c)(3); (d); (e)(1); (e)(4)(G); (e)(4)(H); (e)(4)(I); and (f). The records in this system are also exempted pursuant to Section (j)(2) of the Privacy Act, 5 U.S.C. 552a(j)(2), from sections (c)(3); (c)(4); (d); (e)(1); (e)(2); (e)(3); and (g).

* * * * *

[FR Doc. 95–14873 Filed 6–16–95; 8:45 am]

BILLING CODE 7535–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY–67–1–6130a; FRL–5192–3]

Approval and Promulgation of Implementation Plans; Kentucky: Title V, Section 507, Small Business Stationary Source Technical and Environmental Compliance Assistance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the State Implementation Plan (SIP) submitted by the Commonwealth of Kentucky through the Kentucky Natural Resources and Environmental Protection Cabinet for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM), which was implemented by November 15, 1994. This implementation plan was submitted by the Commonwealth on November 13, 1992, to satisfy the federal mandate to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the Clean Air Act as amended in 1990 (CAA).

DATES: This action will be effective August 18, 1995 unless notice is received July 19, 1995 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: Ms. Kimberly Bingham, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Copies of the material submitted by the Commonwealth of Kentucky may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Environmental Protection Agency, Region IV Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Kentucky Department for Environmental Protection, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Bingham, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. The telephone number is (404)347–3555 extension 4195.

SUPPLEMENTARY INFORMATION:

Implementation of the CAA will require small businesses to comply with specific regulations in order for areas to attain and maintain the national ambient air quality standards (NAAQS) and reduce the emission of air toxics. In anticipation of the impact of these requirements on small businesses, the CAA requires that states adopt a PROGRAM, and submit this PROGRAM as a revision to the federally approved SIP. In addition, the CAA directs the EPA to oversee the small business assistance program and report to Congress on their implementation. The requirements for establishing a PROGRAM are set out in section 507 of title V of the CAA and the EPA guidance document *Guidelines for the Implementation of Section 507 of the 1990 Clean Air Act Amendments.* In order to gain full approval, the state submittal must provide for each of the following PROGRAM elements: (1) the establishment of a Small Business Assistance Program to provide technical and compliance assistance to small businesses; (2) the establishment of a state Small Business Ombudsman to represent the interests of small businesses in the regulatory process; and (3) the creation of a Compliance Advisory Panel (CAP) to determine and report on the overall effectiveness of the SBAP. The plan must also determine the eligibility of small business stationary sources for assistance in the PROGRAM. The plan includes the duties, funding and schedule of implementation for the three PROGRAM components.

Section 507 (a) and (e) of the CAA set forth requirements the State must meet to have an approvable PROGRAM. The Commonwealth of Kentucky has addressed these requirements and established a PROGRAM as described below.

1. Small Business Assistance Program (SBAP)

Kentucky has established a mechanism to implement the following six requirements set forth in section 507 of title V of the CAA:

A. The establishment of adequate mechanisms for developing, collecting and coordinating information concerning compliance methods and technologies for small business stationary sources, and programs to encourage lawful cooperation among such sources and other persons to further comply with the CAA;

B. The establishment of adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution;

C. The development of a compliance and technical assistance program for small business stationary sources which assist small businesses in determining applicable permit requirements under the CAA in a timely and efficient manner;

D. The development of adequate mechanisms to assure that small business stationary sources receive notice of their rights under the CAA in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standards issued under the CAA;

E. The development of adequate mechanisms for informing small business stationary sources of their obligations under the CAA, including mechanisms for referring such sources to qualified auditors, or at the option of the State, for providing audits of the operations of such sources to determine compliance with the CAA; and

F. The development of procedures for consideration of requests from a small business stationary source for modification of (A) any work practice or technological method of compliance, or (B) the schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date, based on the technological and financial capability of any such small business stationary source.

The Commonwealth of Kentucky Natural Resources and Environmental Protection Cabinet has charged the Kentucky Division for Air Quality with the responsibility of implementing the Small Business Assistance Program (SBAP). The division will contract several of the assistance activities with the University of Kentucky. The Division has identified specific employees to serve as contact points between the University, other Division programs, the office of the ombudsman, and the Compliance Advisory Panel. The Division assures that the SBAP will have computerized access to EPA sponsored electronic bulletin boards and hotlines such as EPA's Control Technology Center, Office of Pollution Prevention, and Technology Transfer Network.

The Division will provide information concerning compliance methods and technologies for small business stationary sources to operators and owners of small businesses. This will be accomplished through cooperation and interaction with the Kentucky Economic Development Cabinet, the Chamber of Commerce, various trade associations, and other appropriate groups. An information clearinghouse will be established to provide information concerning pollution prevention and/or accidental release detection and prevention programs which include information regarding alternative technologies, process changes, products, and methods of operation that reduce air pollution. Small businesses will be able to access information regarding their rights under the CAA, permitting procedures, applicable fees, when and where to apply for permits, enforcement processes, etc.

The Division is responsible for maintaining a Toll-Free hotline accessible to small businesses during normal business hours and will develop easily understood brochures describing rights and obligations under the CAA and new regulatory requirements and developments which might affect a small source. In addition, the SBAP will distribute information to small businesses through industry groups, trade associations, local chambers of commerce, and other organizations involved with small businesses. An on-site audit program will be developed in cooperation with the University of Kentucky to be utilized at the request of sources to evaluate work practices, compliance monitoring procedures and record keeping procedures. The Division will also develop procedures for consideration of requests from a source with regards to modification of work practices, compliance methods or implementation schedules.

2. Ombudsman

Section 507(a)(3) of the CAA requires the designation of a state office to serve as the Ombudsman for small business stationary sources. Kentucky has appointed a Small Business Ombudsman and established the Office of the Ombudsman in the Secretary's Office of the Natural Resources and Environmental Protection Cabinet. The Ombudsman will serve as an advocate to represent the interests of small businesses as they come under the regulation of the CAA. The Ombudsman's position was established in the Secretary's office in order to

allow the Ombudsman to have direct access to the Secretary, the Governor's office, and other agencies within state government.

3. Compliance Advisory Panel

Section 507(e) of the CAA requires the state to establish a Compliance Advisory Panel (CAP) that must include two members selected by the Governor who are not owners or representatives of owners of small businesses. Four members will be selected by the state legislature who are owners, or represent owners, of small businesses; the majority and minority leadership in both the house and the senate shall each appoint one member. One member will be selected by the head of the agency in charge of the Air Pollution Permit Program. Kentucky chose to establish a nine member CAP with a membership consistent with the aforementioned CAA requirements with the following modification: the Secretary of the Natural Resources and Environmental Protection Cabinet shall select two members instead of one and the Secretary of the Economic Development Cabinet shall select one panel member to represent that agency. The SBAP will serve as the secretariat to the CAP in the development and dissemination or reports, advisory opinions, and other information.

The duties of the CAP include: providing for ensuring the overall effectiveness of the PROGRAM; rendering advisory opinions regarding the effectiveness of the state PROGRAM, the difficulties encountered, and the degree and severity of enforcement; reviewing information for small business stationary air pollution sources to assure such information is understandable by the layperson; and to make periodic reports to the Administrator of the Environmental Protection Agency in accordance with the requirements of the Paperwork Reduction Act, the Regulatory Flexibility Act, and the Equal Access to Justice Act.

4. Source Eligibility

Kentucky has incorporated section 507(c)(1) and defined a Small Business Stationary Source as a source that:

(1) Is owned or operated by a person who employs 100 or fewer individuals;
(2) is a small business concern as defined in the Small Business Act;
(3) is not a major stationary source as defined in Titles I and III of the CAA;
(4) emits less than 50 tons per year (tpy) of any regulated pollutant; and
(5) emits less than 75 tpy of all regulated pollutants.

Kentucky has established the following mechanisms as required by section 507: (1) A process for ascertaining the eligibility of a source to receive assistance under the PROGRAM, including an evaluation of a source's eligibility using the criteria in section 507(c) (1) of the CAA; (2) A process for public notice and comment on grants of eligibility to sources that do not meet the provisions of sections 507(c)(1)(C), (D), and (E) of the CAA, but do not emit more than 100 tpy of all regulated pollutants; and (3) A process for exclusion from the small business stationary source definition, after consultation with the EPA and the Small Business Administration Administrator and after providing notice and opportunity for public comment, of any category or subcategory of sources that the Department determines to have sufficient technical and financial capabilities to meet the requirements of the CAA.

Final Action

In this action, EPA is approving the PROGRAM SIP revision submitted by the Commonwealth of Kentucky through the Natural Resources and Environmental Protection Cabinet. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective August 18, 1995 unless, within 30 days of its publication, adverse or critical comments are received. If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective August 18, 1995.

Under Section 307(b)(1) of the Act, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 18, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2) of the Act, 42 U.S.C. 7607 (b)(2).)

The OMB has exempted these actions from review under Executive Order 12866.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

By today's action, the U.S. EPA is approving a State program created for the purpose of assisting small business stationary sources in complying with existing statutory and regulatory requirements. The program being approved today does not impose any new regulatory burden on small business stationary sources; it is a program under which small business stationary sources may elect to take advantage of assistance provided by the State. Therefore, because the U.S. EPA's approval of this program does not impose any new regulatory requirements on small businesses, I certify that it does not have a significant economic impact on any small entities affected.

SIP approvals under 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. Environmental Protection Agency*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. Sections 7410(a)(2) and 7410(k).

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Small business stationary source technical and environmental assistance program.

Dated: April 10, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401–7671q.

Subpart S–Kentucky

2. Section 52.920, is amended by adding paragraph (c)(71) to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

(71) The Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet submitted revisions to the Kentucky State Implementation Plan on January 15, 1993 These revisions address the requirements of section 507 of title V of the CAA and establish the Small Business Stationary Source Technical and Environmental Assistance Program (PROGRAM).

(i) Incorporation by reference.

(A) Revision to the Kentucky State Implementation Plan to incorporate document titled "Kentucky Small Business Stationary Source Technical Environmental Assistance Program" which was approved by the Kentucky Natural Resources and Environmental Protection Cabinet effective on July 15, 1993.

(ii) Additional Material. None.

* * * * *

[FR Doc. 95–14446 Filed 6–16–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[TX–37–1–6323a; FRL–5161–9]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Alternative Emission Control Plan For Shell Oil Company, Deer Park, TX

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this action, the EPA is approving the alternative emission reduction (bubble) plan for the Shell Oil Company's Deer Park manufacturing complex as a revision to the Texas State Implementation Plan (SIP). The bubble plan uses the emission reduction credit (ERC) from volatile organic compound (VOC) reductions at an analyzer vent in lieu of controlling VOC emissions from three vacuum vents. The bubble plan was reviewed for consistency with the EPA's Emissions Trading Policy Statement (ETPS) published in the **Federal Register** on December 4, 1986.

DATES: This action will become effective on August 18, 1995 unless adverse or critical comments are received by July 19, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Mr. Guy Donaldson, Acting Chief, Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least twenty-four hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–A), 1445 Ross Avenue, suite 700, Dallas, TX 75202–2733.

U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center, 401 M Street, S.W., Washington, DC 20460.

Texas Natural Resource Conservation Commission, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Ms. Leila Yim Surratt or Mr. Herb Sherrow, Planning Section (6T–AP), Air Programs Branch, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7214.

SUPPLEMENTARY INFORMATION:

I. Background

On July 26, 1993, the Governor of Texas submitted a request to revise the Texas SIP to include an alternative emission reduction plan for the Shell Oil Manufacturing Complex located in Deer Park, Texas.

Due to VOC Reasonably Available Control Technology (RACT) fix-up changes required by the 1990 Clean Air Act (CAA), the Texas Air Control Board (TACB), which is now known as the Texas Natural Resource Conservation Commission, adopted revisions to its Regulation V on May 10, 1991, eliminating the exemption of sources with emissions of less than 100 pounds per day from RACT requirements. As a result of this action, Shell was required to install a 90 percent control technology on three vacuum vents. These vents emit a total of 36 pounds of VOC per year (0.018 tons per year (TPY)). The vast majority of the vent stream emissions are composed of steam and air. Instead of controlling emissions from these three vents, Shell proposed to use an emission reduction from an analyzer vent located at its Alkylation Plant. The analyzer vent reduction is not required by any State or Federal rule, regulation, permit condition, board order, or court order. 1.05 TPY of VOC emission reduction was achieved from the analyzer vent by physically limiting the maximum flow rate through the vent from 4.2 TPY of VOC to 3.15 TPY. The reduced flow was made permanent by replacing the metering valves and adding flow restrictors.

II. Applicable EPA Policies

On December 4, 1986 (51 FR 43814), the EPA issued the final ETPS, containing the criteria by which emissions trades will be evaluated. As indicated in the ETPS, it is the policy of the EPA to encourage emissions trades to achieve more flexible, rapid, and efficient attainment of the National Ambient Air Quality Standards. It describes emissions trading, sets out general principles that the EPA uses to evaluate emissions trades under the CAA, and expands opportunities for States and industry to use these less costly control approaches. A source may secure ERCs by meeting each of the applicable requirements of the final ETPS. Generally, only reductions which are surplus, enforceable, permanent, and quantifiable can qualify as ERCs. In addition, the ETPS lays out more stringent baseline and additional 20 percent emission reduction requirements if the trade occurs in a nonattainment area needing but lacking an approved attainment demonstration.

On April 7, 1994 (59 FR 16710), the EPA issued the final Economic Incentive Program (EIP) rule which sets forth general principles for a broad range of EIPs which States may pursue. Through the EIP rule, the Agency encourages the development of EIPs that will assist States in meeting air quality management goals through flexible approaches which allow for less costly control strategies, and which provide stronger incentives for the development and implementation of innovative emission reduction technology. In the preamble to the EIP rule (59 FR 16690), the EPA addresses the relationship between the EIP and the ETPS. The preamble clarifies that the provisions of the ETPS which apply to trading between existing sources represent one particular model for how States could design an EIP. Therefore, an application for an emissions trade or bubble that meets the requirements of the ETPS,

will be deemed to meet the requirements of the EIP.

Shell Oil Company's Deer Park Manufacturing bubble application was developed to meet the requirements of the ETPS. Therefore, the EPA has evaluated the emissions trade against the ETPS requirements.

III. Analysis

The following items are the basis for approval of the Texas SIP revision. Please refer to the EPA's Technical Support Document and the Texas SIP submittal for more detailed information.

A. Valid Emission Reduction Credits

As required by the ETPS, to be valid for trading purposes, an emission reduction must be surplus, enforceable, permanent, and quantifiable. The EPA believes the emission reduction from the analyzer vent meets these criteria.

First, the emission reduction from the analyzer vent is surplus. The analyzer vent is not subject to any State or Federal regulation. The emissions rate of 4.2 TPY is low enough to be exempt from the State's vent gas rule.

Second, the emission reduction was made enforceable through State Board Order number 93–11 which specifies the terms of the emissions trade.

Third, the emission reduction is permanent since the flow through the analyzer vent was physically reduced by changing the metering valves and adding flow restrictors.

Finally, the emission reduction is quantifiable. The annual emissions for the analyzer vent were from the 1991 Air Emissions Inventory Reportable Quantities based on information from historical flow settings. The annual emissions from the three vacuum vents were based on engineering estimates and measurements.

Because the emission reduction from the analyzer vent is surplus, enforceable, permanent, and quantifiable, the EPA believes that the emission reduction associated with this bubble is valid for use as an ERC.

B. More Stringent Baseline and 20 Percent Reduction Requirements

As discussed above, the ETPS also requires more stringent baselines and an additional 20 percent emission reduction if the trade occurs in a nonattainment area needing but lacking an approved attainment demonstration. This trade occurs in the Houston-Galveston severe ozone nonattainment area, which does not currently have an approved attainment demonstration which is required under section 182(c)(2)(A) of the CAA. This trade complies with the more stringent baseline and the 20 percent additional emission reduction requirements. As described more fully in the Technical Support Document, the 1.05 TPY emission reduction from the analyzer vent more than compensates for the 0.016 TPY emission reduction that was required from the three uncontrolled vacuum vents.

C. Procedural Background

The CAA requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to the EPA. Section 110(a)(2) of the CAA provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[1] Section 110(l) of the CAA similarly provides that each revision to an implementation plan submitted by a State under the CAA must be adopted by such State after reasonable notice and public hearing. Public notice on the proposed Shell bubble was published in the Houston ozone nonattainment area in accordance with the State of Texas' public notice requirements. The State held a public hearing on the proposed regulations on March 9, 1993. The Shell bubble was adopted by the State on June 18, 1993, and was submitted through the Governor to the EPA on July 26, 1993, as a proposed revision to the SIP.

IV. Final Action

In this action, the EPA is approving the alternative emission reduction (bubble) plan for the Shell Oil Company's Deer Park Manufacturing Complex, which was adopted by the TACB on June 18, 1993, in Board Order 93–11, and submitted to the EPA by the Governor of Texas in a letter dated July 26, 1993.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. Thus, this action will be effective August 18, 1995 unless, by July 19, 1995, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective August 18, 1995.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D, of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of State action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2)).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 18, 1995. Filing a petition for reconsideration of this final rule by the Administrator does not affect the finality of this rule for purposes of judicial review; nor does it extend the time within which a petition for judicial review may be filed, or postpone the effectiveness of this action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

[1] Also Section 172(c)(7) of the CAA requires that plan provisions for nonattainment areas meet the applicable provisions of Section 110(a)(2).

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the SIP for the State of Texas was approved by the Director of the Federal Register on July 1, 1982.

Dated: February 9, 1995.

William B. Hathaway,

Acting Regional Administrator.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart SS—Texas

2. Section 52.2270 is amended by adding paragraph (c)(95) to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

(95) Alternative emission reduction (bubble) plan for the Shell Oil Company's Deer Park manufacturing complex submitted to the EPA by the Governor of Texas in a letter dated July 26, 1993.

(i) Incorporation by reference.

(A) TACB Order 93–11, as adopted by the TACB on June 18, 1993.

(B) SIP narrative entitled, "Site-Specific State Implementation Plan," section IV.H.1.b., attachment (4), entitled, "Alternate Emission Reduction ("Bubble") Plan Provisions for Uncontrolled Vacuum-Producing Vents, Shell Oil Company, Deer Park Manufacturing Complex, HG–0659–W," adopted by the TACB on June 18, 1993.

(ii) Additional material.

(A) SIP narrative entitled, "Site-Specific State Implementation Plan," section IV.H.1.b., adopted by the TACB on June 18, 1993.

(B) TACB certification letter dated July 5, 1993, and signed by William R. Campbell, Executive Director, TACB.

[FR Doc. 95–14852 Filed 6–16–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 52 and 81

[OH50–3–7070; FRL–5222–9]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Ohio

AGENCY: United States Environmental Protection Agency.

ACTION: Final rule; withdrawal.

SUMMARY: On May 2, 1995, the United States Environmental Protection Agency (USEPA) published a proposed rule (60 FR 21490) and a direct final rule (60 FR 21456) approving a request by Ohio to redesignate the Toledo ozone nonattainment area to attainment of the National Ambient Air Quality Standard for ozone, and also approving the State's maintenance plan for this area. Because comments adverse to the rulemaking were received, USEPA is withdrawing the direct final rule. In a final rule. USEPA will summarize and respond to the comments received and announce final rulemaking action on the redesignation request and maintenance plan as revisions to Ohio's State Implementation Plan. The approval of the maintenance plan for the Toledo area was also included in the codification in a direct final rule concerning the redesignation and maintenance plan approval for the Dayton area, published on May 5, 1995, (60 FR 22289). That codification of the Toledo maintenance plan approval is also withdrawn.

EFFECTIVE DATE: June 19, 1995.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 5, Regulation Development Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT:

Angela Lee, Regulation Development Section, Air Enforcement Branch (AE–17J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Telephone: (312) 353–5142.

List of Subjects

40 CFR Part 52

Air pollution control, Carbon monoxide, Environmental protection, Hydrocarbons, Nitrogen dioxide, Ozone, Reporting and record keeping requirements, Volatile organic compounds.

40 CFR Part 81

Air pollution control, Environmental protection, National parks, Wilderness areas.

Dated: June 7, 1995.

Valdas V. Adamkus,

Regional Administrator.

Title 40 of the Code of Federal Regulations, Chapter I, Parts 52 and 81, are amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. The amendments to add § 52.1870(c)(105) and § 52.1885(b)(5), published on May 2, 1995, at 60 FR 21463, are withdrawn.

3. The amendment to revise § 52.1885(b)(5) published on May 5, 1995, at 60 FR 22295, is withdrawn.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

4. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

5. The amendment to revise the entry in the ozone table in § 81.336, published on May 2, 1995, at 60 FR 21463, is withdrawn.

[FR Doc. 95–14850 Filed 6–16–95; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Parts 61, 704, 710, 712, 762, 763, 766, 790, 795, 796, 797, 798, and 799]

[OPPTS–00168; FRL–4955–2]

Chemical Substances; Deletion of Certain Chemical Regulations; Technical Amendments to the Code of Federal Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is removing several provisions from the Code of Federal Regulations (CFR) that pertain to the Toxic Substances Control Act. These provisions are being removed from the CFR because they have no current legal effect. The removal of these provisions from the CFR and the technical changes that are being made are necessary to clarify the current status of the provisions for both the regulated

community and the public. EPA is also removing the text of two reporting forms, without making any substantive changes in the reporting requirements.

EFFECTIVE DATE: This final rule takes effect on June 19, 1995.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551, e-mail address: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 4, 1995, the President directed all Federal agencies and departments to conduct a comprehensive review of the regulations they administer and, by June 1, 1995, to identify those rules that are obsolete, not in effect, unduly burdensome, or amenable to streamlining and simplification. The Office of Prevention, Pesticides and Toxic Substances has completed its initial page-by-page review of the CFR provisions within its purview--those issued under the Toxic Substances Control Act (TSCA), the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and certain sections of the Emergency Planning and Community Right-to-Know Act (EPCRA) and the Federal Food, Drug and Cosmetic Act (FFDCA). Based on this initial review, EPA will be amending or eliminating several provisions in the CFR. This notice, which is one of several notices that are being issued at the same time, specifically involves the provisions associated with TSCA. Other notices, appearing elsewhere in this **Federal Register**, involve provisions associated with FFDCA and FIFRA.

The provisions that EPA is eliminating with this notice are not currently in effect because they have (1) expired by their own terms or by the terms of the statute, (2) become obsolete due to subsequent rulemakings, legislation, or policy decisions, or (3) because they have been otherwise identified as being unnecessary. Those provisions that are being amended with this notice reflect minor technical changes that are necessary as a result of the elimination of the provisions, are otherwise nonsubstantive corrections that are necessary, or involve the removal of the text of reporting forms without substantive changes to the reporting requirements.

The removal of these provisions from the CFR is not intended to affect the status of any civil or criminal actions that were initiated prior to June 19, 1995 or which may be initiated in the future to redress violations of the rules that occurred when the rules were still legally in effect.

II. Good Cause Exemption from Rulemaking Procedures

The Administrative Procedure Act (APA) generally requires agencies to provide prior notice and opportunity for public comment before issuing a final rule. 5 U.S.C. 553(b). Similarly, the APA generally requires at least 30 days after publication before a rule can become effective. 5 U.S.C. 553(d). Rules are exempt from this requirement if the issuing agency finds for good cause that notice and comment or delayed effectiveness are unnecessary. 5 U.S.C. 553(b)(3)(B) and (d)(3).

EPA has determined that providing prior notice and opportunity for comment on these changes to the CFR is unnecessary. For the reasons discussed in Units I and III of this preamble, a number of the rules are no longer legally in effect; thus, withdrawing them from the CFR has no legal impact and merely codifies the current legal status of the rules. The associated technical amendments are merely to correct cross-references to the rules that are being removed and related reorganizations resulting from the removal of these regulations. In addition, other technical changes include the removal of the text of reporting forms, without making any substantive changes to the reporting requirements. For the same reasons, EPA believes there is good cause for making these changes to the CFR immediately effective. See 5 U.S.C. 553(d).

III. Regulations Being Eliminated

A. Part 704, Subparts C and D - Reporting and Recordkeeping Requirement; Comprehensive Assessment Information Rule (CAIR)

Part 704 specifies the reporting and recordkeeping procedures under section 8(a) of TSCA for manufacturers, importers, and processors of chemical substances and mixtures that are identified in subpart B or D of part 704. The reporting and recordkeeping provisions in subpart A of part 704apply throughout this part unless revised in any other subpart. Subpart C of part 704 sets out the general reporting provisions for the Comprehensive Assessment Information Rule (CAIR). CAIR was intended to standardize certain section 8(a) rules by: providing a set of uniform questions for EPA and other agencies to use in assembling specific reporting requirements; requiring the submission of information on a standard reporting form; and establishing uniform reporting and recordkeeping provisions that supplement the reporting and recordkeeping provisions in subpart A of part 704. CAIR provisions apply only to those persons who manufacture, import, or process a substance identified in subpart D of part 704 during the time period for which reporting is required. Subpart D of part 704 contains a matrix that identifies the substances for which EPA requires reporting under subpart C, the persons who must report the information to EPA, the information that must be reported, the coverage period (as that term is defined in § 704.203), and the effective date of the final rule.

After the first use of the CAIR in 1989, a lawsuit resulted in a stay of the effectiveness of this regulation until EPA promulgates amendments. Although amendments to this regulation were proposed in 1993, the amendments have not been finalized and EPA does not anticipate taking action for some time as it reassesses its TSCA information needs. Given the current inactive status of this regulation, EPA has decided to remove subparts C and D of part 704 from the CFR. The requirements of subpart C and D are not in effect and their presence in the CFR is confusing to the public and the regulated community. At the time EPA decides to promulgate amendments to CAIR, EPA will repromulgate subparts C and D, as appropriate.

B. Part 710 - Inventory Reporting Regulations; Compilation of the Inventory

This part establishes regulations governing reporting by certain persons who manufacture, import, or process chemical substances subject to TSCA for commercial purposes. Subpart A of this regulation was issued pursuant to TSCA Section 8(b), which requires EPA to compile an inventory of chemical substances manufactured or processed for a commercial purpose. Following an initial reporting period, EPA was required to publish an initial inventory of chemical substances manufactured or imported for commercial purposes, with revised inventories published after supplemental reporting periods.

Subpart A mandated the reporting which was used to create the initial inventory. By the terms of the regulation itself, the initial reporting period closed in 1979, meriting the deletion of subpart A from the CFR. Nevertheless, some provisions of subpart A are referenced in the Inventory Update Rule of subpart B, and are extensively used in other TSCA regulatory contexts. For this reason, only the provisions associated with the initial reporting period in subpart A are being removed. In addition, the headings for both subparts A and B are being removed so that part 710 no longer has any subpart designations. Cooresponding references are also being corrected where necessary.

C. Part 712, Subpart B - Chemical Information Rules; Manufacturers Reporting - Preliminary Assessment Information

This part establishes procedures for chemical manufacturers and processors to report production, use, and exposure-related information on listed chemical substances. Subpart A establishes requirements that apply to all reporting under this part. Subpart B covers manufacturers' and processors' reporting. Section 712.28 requires manufacturers and importers subject to this subpart to submit a single EPA Form No. 7710–35, "Manufacturer's Report-Preliminary Assessment Information," for each plant site manufacturing or importing a chemical substance listed in § 712.30. The instructions and a facsimile of the form appear in § 712.28(d).

EPA is removing the instructions and facsimile of EPA Form No. 7710–35, entitled Manufacturer's Report-Preliminary Assessment Information from § 712.28(d). In addition, EPA is removing § 712.30(d)-(v) and each chemical listed in § 712.30(w) and (x) with a reporting date pre-1990. To accommodate these changes, EPA is also deleting the reference to subpart C which appears in the title for § 712.7; deleting the reference to subpart C in § 712.1(a) and § 712.7; is amending § 712.28(d) to delete and substitute language similar to § 704.216 with new mail code; and is redesignating § 712.30(w) and (x) as paragraphs (d) and (e), respectively.

D. Part 762 - Fully Halogenated Chlorofluoroalkanes

This part prohibits the manufacture, processing, and distribution in commerce of fully halogenated chlorofluoroalkanes for those aerosol propellant uses which are subject to TSCA, requires submission of annual reports, and lists the exemptions to the prohibitions. This prohibition has become obsolete because it has been superseded by a subsequent ban of CFC propellants under the Clean Air Act section 610 and implementing regulations at 40 CFR 82.64(c) and 82.66(d).

E. Part 763, Subpart D - Asbestos; Reporting Commercial and Industrial Uses of Asbestos

This rule required reporting by persons who manufacture, import, or process asbestos. Different reporting requirements were imposed depending on the person's activity. Manufacturers, importers and processors of commercial and industrial asbestos fiber were required to report quantity, use, and exposure information. Importers of mixtures and articles containing asbestos and processors of asbestos mixtures were required to report to EPA in two phases. They initially had to report limited information about processing or importation, and some were required to subsequently report additional information if they were selected as respondents in a sample survey.

This regulation includes a sunset provision at § 763.78, which specifies that all the requirements of this rule terminate 5 years after promulgation. Accordingly, this regulation sunsetted in 1987 and is now obsolete.

F. Part 763, Subpart E - Asbestos; Asbestos-Containing Materials in Schools (AHERA Rule)

At one of the OPPTS "Regulatory Review Stakeholders' Meeting" in April 1995, a commenter indicated that the OPPTS preliminary report missed two sections of the AHERA rule that have been superseded. Specifically, the commenter pointed out that 40 CFR 763.90(i)(4) gives the requirement for completion of a response action by TEM sampling. However, the rule allowed for a gradual phasing in of TEM and a phasing out of PCM in § 763.90(i)(6) and (7). As the commenter correctly noted, § 763.90(i)(6) and (7) have now expired, and are superseded by § 763.90(i)(4).

EPA is therefore removing § 763.90(i)(6) and (7), removing the citations to these sections which appear in § 763.90(i)(3), (4) and (8), and will redesignate § 763.90(i)(8) as § 763.90(i)(6).

G. Part 763, Subpart F - Asbestos; Friable Asbestos-Containing Materials in Schools

This rule requires local education agencies to identify friable asbestos-containing material in public and private schools by visually inspecting school buildings for friable materials, sampling such materials, and having samples analyzed by appropriate techniques referred to in the rule. In addition, the rule requires local education agencies to post a notice of the results of inspections and analyses. The rule requires local education agencies to provide warnings on the health effects of asbestos and instructions on methods to avoid or reduce exposure to school employees of any school with friable asbestos-containing material and to notify parent-teachers associations of the results of inspections. The rule also includes recordkeeping requirements.

This regulation was superseded by the 1987 Asbestos in School Rule at 40 CFR part 763, subpart E, which implemented the Asbestos Hazard Emergency Response Act (AHERA), and is therefore no longer in effect. However, appendix A to subpart F, which provides EPA's regulatory method for analysis of building materials samples for the presence of asbestos, is cited by the AHERA rule as well as the Asbestos National Emission Standards Hazardous Air Pollutants (NESHAP) rule in 40 CFR part 61, subpart M.As such, although the subpart is no longer in effect and may be eliminated, appendix A is still in use and must be retained. To retain appendix A, EPA is moving appendix A of subpart F to subpart E (the AHERA Rule), as a new appendix E. Corresponding changes are also being made for the citations to appendix A in both the AHERA and NESHAP rules.

H. Part 766 - Dibenzo-para-dioxins/ Dibenzofurans

This part identifies requirements for testing under TSCA section 4 to ascertain whether certain specified chemical substances may be contaminated with halogenated dibenzodioxins (HDDs)/dibenzofurans (HDFs) as defined in § 766.3, and requirements for reporting results under TSCA section 8. This regulation is still in effect, and EPA continues to receive a few reports each year. EPA is deleting the Dioxin/Furan Reporting form (EPA 7710–51) from 40 CFR 766.35(d). The form is easily available from EPA.

I. Parts 795 through 798 - TSCA Testing Guidelines

TSCA Section 4(b)(1) specifies that test rules shall include standards for the development of test data. Certain test guidelines, which become test standards when promulgated in individual section 4 test rules, are currently published in parts 795-798 of the CFR. Codification of these test guidelines alone does not impose any regulatory obligation. This final rule deletes from the CFR those test guidelines that are not currently cited as test standards in any test rules.

J. Part 799 - Chemical Specific Test Rules

Part 799 identifies the chemical substances, mixtures, and categories of substances and mixtures for which data are to be developed, specifies the persons required to test, specifies the test substances in each case, prescribes the tests that are to be conducted, including test standards, and provides deadlines for the submission of reports and data to EPA. For several of the substances subject to testing under part 799, EPA has determined that the testing reimbursement period (as defined under 40 CFR 790.3 and 791.3) has terminated (sunset). This final rule removes from the CFR test rules and testing consent order listings under part 799 on substances for which the testing reimbursement periods have sunset.

For a given test rule, the reimbursement period is defined in TSCA section 4 and the associated regulations as the later of (1) the date 5 years after the date the data are submitted in accordance with the rule and (2) the period that begins on the date the data are submitted and equal to the time period that EPA determines was necessary to develop such data. Generally, the reimbursement period is 5 years from the date of submission of the data because EPA has not required any tests that take more than 5 years to develop data from the time data development begins. For all the test rules affected by today's action, EPA has determined that the period required for developing the data is less than or equal to 5 years (by using the dates for submission of data contained in the rules); thus the reimbursement period ends 5 years after submission of the data. For all of the rules being deleted today, over 5 years have passed since the last test data were submitted under that rule.

Section 4 test rules trigger export notification under TSCA section 12(b) (see 40 CFR part 707, subpart D). The period during which the export notification requirements apply for a particular chemical substance or mixture subject to a section 4 test rule ends when the reimbursement period ends. Thus, the obligation to submit section 12(b) export notices for the substances and mixtures subject to the test rules being deleted today has also terminated.

Additionally, this rule adds § 799.18; this new section lists in a table, substances and mixtures that are the subjects of test rules and/or consent orders for which the testing reimbursement period has sunset. "Sunset date," as the term is used in the table at § 799.18, identifies the end of (1) the period during which TSCA section 4 test rule reporting requirements apply under the particular test rule (e.g., submission of exemption requests, notices of intent to conduct testing), and (2) the reimbursement period during which certain persons are subject to an obligation to reimburse test sponsors for their share of the costs (calculated using market share and other bases during the reimbursement period) associated with testing these chemicals (see 40 CFR part 791).

EPA intends to update the table at § 799.18 on a periodic basis.

IV. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPPTS–00168. A public version of the record, without any confidential business information is available in the TSCA Public Docket Office from 12 noon to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located in Rm. NEB–607, 401 M St., SW., Washington, DC.

V. Analyses under E.O. 12866, the Unfunded Mandates Reform Act of 1995, the Regulatory Flexibility Act and the Paperwork Reduction Act

Because the withdrawal of these rules from the CFR merely reflects their current legal status, this action is not a "significant" regulatory action within the meaning of Executive Order 12866 (58 FR 51735, October 4, 1993), and does not impose any Federal mandate on State, local or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reasons, pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), it has been determined that this action would not have a significant economic impact on a substantial number of small entities. In addition, because these rules are not currently in effect or are being eliminated, their deletion from the CFR does not affect requirements under the Paperwork Reduction Act, 44 U.S.C. 3501.

List of Subjects in 40 CFR Parts 61, 704, 710, and 762, 763, 766, 795, 796, 797, 798 and 799

Administrative practice and procedure, Air pollution control, Arsenic, Asbestos, Benzene, Beryllium, Chemicals, Confidential business information, Dibenzo-para-dioxins, Dibenzofurans, Environmental protection, Fully halogenated chlorofluoroalkanes, Hazardous substances, Health, imports, Intergovernmental relations, Labeling, Laboratories, Mercury, Occupational safety and health, Radionuclides, Radon, Reporting and recordkeeping requirements, School, Vinyl chloride.

Dated: June 14, 1995.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, title 40 of the Code of Federal Regulations, chapter I, is amended as follows:

1. In part 61:

PART 61—[AMENDED]

a. The authority citation for part 61 continues to read as follows:

Authority: Secs. 101, 112, 114, 116, 301, Clean Air Act as amended (42 U.S.C. 7401, 7412, 7414, 7416, 7601).

§ 61.141 [Amended]

b. Section 61.141 is amended by replacing "appendix A, subpart F," with "appendix E, subpart E," in each of the following five definitions: "Category I non-friable asbestos- containing material (ACM);" "Category II nonfriable ACM"; "Friable asbestos material"; "Nonfriable asbestos-containing material"; and "Resilient floor covering".

§ 61.146 [Amended]

c. In § 61.146, paragraphs (a) and b are amended by replacing "appendix A, subpart F," with "appendix E, subpart E,".

§ 61.156 [Amended]

d. In § 61.156, Table 1 is amended by replacing in the "CFR citation" column "40 CFR 763, Subpart E, F" with "40 CFR part 763, subpart E".

Appendix A to Subpart M [Amended]

e. In subpart M, appendix A, section I.1.1. is amended by replacing "appendix A, subpart F," with "appendix E, subpart E,".

2. In part 704:

PART 704—[AMENDED]

a. The authority citation for part 704 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

§ 704.1 [Amended]

b. Section 704.1 is amended in paragraph (a), in the first sentence, by removing the words "or D," and by removing paragraphs (c) and (d).

§ 704.104 [Amended]

c. Section 704.104(c)(3) is amended by removing the phrase ", as required by § 712.30(d) of this chapter."

Subparts C and D [Removed]

d. Subparts C and D, consisting of § 704.200 through 704.225 are removed.

3. In part 710:

PART 710—[AMENDED]

a. The authority citation for part 710 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

Subparts A and B Headings [Removed]

b. By removing the subpart A and B headings.

c. In § 710.1, by revising paragraphs (a) and (c) to read as follows:

§ 710.1 Scope and compliance.

(a) This part establishes regulations governing reporting by certain persons who manufacture, import, or process chemical substances for commercial purposes under section 8(a) of the Toxic Substances Control Act (15 U.S.C. 2607(a)). Section 8(a) authorizes the Administrator to require reporting of information necessary for administration of the Act and requires EPA to issue regulations for the purpose of compiling an inventory of chemical substances manufactured or processed for a commercial purpose, as required by section 8(b) of the Act. Following an initial reporting period, EPA published an initial inventory of chemical substances manufactured, processed or imported for commercial purposes. In accordance with section 8(b), EPA periodically amends the inventory to include new chemical substances which are manufactured or imported for a commercial purpose and reported under section 5(a)(1) of the Act. EPA also revises the categories of chemical substances and makes other amendments as appropriate.

* * * * *

(c) Each person who reports under these regulations shall maintain records that document information reported under these regulations and, in accordance with the Act, permit access to, and the copying of, such records by EPA officials.

d. In § 710.2 by revising the introductory text to read as follows:

§ 710.2 Definitions.

In addition to the definitions in § 704.3 of this chapter, the following definitions also apply to this part:

* * * * *

§ 710.3, 710.5, through 710.8 [Removed]

e. By removing § 710.3, and 710.5 through 710.8 .

§ 710.23 [Redesignated and Removed]

f. In § 710.23, by redesignating paragraphs (a), (b), and (c) as § 710.2 (dd), (ee), and (ff), respectively, and by removing the remainder of § 710.23.

§ 710.32 [Amended]

g. In § 710.32 introductory text, change the phrase "this subpart" to read "this part".

§ 710.35 [Amended]

h. In § 710.35 change the phrase "this subpart" to read "this part", each time the phrase appears.

§ 710.37 [Amended]

i. In § 710.37, in the first sentence, change the phrase "this subpart" to read "this part".

§ 710.38 [Amended]

j. In § 710.38 (a), (b), (c)(1)(i), and (d), change the phrase "this subpart" to read "this part", each time the phrase appears.

4. In part 712:

PART 712—[AMENDED]

a. The authority citation for part 712 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

§ 712.1 [Amended]

b. In § 712.1(a) by revising the phrase "Subparts B and C, respectively, cover" to read "Subpart B covers".

§ 712.7 [Amended]

c. In § 712.7, the first sentence, by revising the phrase "Subparts B and C" to read "subpart B".

d. In § 712.28, paragraph (d) is revised to read as follows:

§ 712.28 Form and instructions.

* * * * *

(d) Form 7710–35,Manufacturer's Report--Preliminary Assessment Information or PAIR form and instructions may be obtained by telephoning or writing the Environmental Assistance Division. The telephone number and the address of the Environmental Assistance Division is: Phone Number (202) 554–1404, TDD (202) 554–0551. Address: Environmental Assistance Division (7406), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

e. Section 712.30 is amended in paragraph (c) by changing the parenthetical "(TS-790), Rm. L-100," to read "(7409)", by removing paragraphs (d) through (v), by redesignating paragraphs (w) and (x) as paragraphs (d) and (e) and revising newly designated paragraph (d) to read as follows:

§ 712.30 Chemical lists and reporting periods.

* * * * *

(d) Manufacturers and importers of the substances listed below must submit a Preliminary Assessment Information Manufacturer's Report for each site at which they manufacture or import each substance by the reporting date shown in the table below. The substances are listed in Chemical Abstracts Service Registry Number order. Typically EPA lists the trivial or common name first, then, following the symbol "- -", EPA lists the substance by its TSCA Chemical Substance Inventory name. Whenever EPA lists a single name, the name may be either the TSCA Chemical Substance Inventory name, a trivial name, or a common name. Generally, when a single name is listed, it is the TSCA Chemical Substances Inventory name.

CAS No.	Substance	Effective date	Reporting date
90-30-2	N-Phenyl-1-naphthylamine	9/30/91	11/27/91
100-40-3	4-Vinylcyclohexene	1/11/90	3/12/90
108-95-5	Thiophenol	1/26/94	3/28/94
118-79-6	2,4,6-tribromophenol	1/11/90	3/12/90
143-33-9	Sodium cyanide	10/29/90	12/27/90
632-79-1	Tetrabromophthalic anhydride	1/11/90	3/12/90
637-92-3	Ethyl tert-butyl ether	12/28/94	2/27/95
994-05-8	Tert-amyl methyl ether	12/28/94	2/27/95
1163-19-5	Decabromodiphenyl ether	1/11/90	3/12/90
3194-55-6	Hexabromocyclododecane	1/11/90	3/12/90
3296-90-0	Dibromoneopentyl glycol	1/11/90	3/12/90

CAS No.	Substance	Effective date	Reporting date
12185-10-3	White phosphorus	1/26/94	3/28/94
32534-81-9	Pentabromodiphenyl ether	1/11/90	3/12/90
32536-52-0	Octabromodiphenyl ether	1/11/90	3/12/90
32588-76-4	Ethylene Bis-(tetrabromophthalimide)	1/11/90	3/12/90
37853-59-1	1,2-Bis(tribromophenoxy) ethane	1/11/90	3/12/90
41291-34-3	Ethylene(5,6-dibromonorbornane-2,3-dicarboximide)	1/11/90	3/12/90
52907-07-0	Ethylene bis(5,6-dibromonorbornane-2,3-dicarboximide)	1/26/94	3/28/94
57137-10-7	Tribrominated polystyrene	1/11/90	3/12/90
61262-53-1	Ethylene bis(pentabromophenoxide)	1/11/90	3/12/90

* * * * *

PART 762—[REMOVED]

5. By removing part 762.

6. In part 763:

PART 763—[AMENDED]

a.The authority citation for part 763 is revised to read as follows:

Authority: 15 U.S.C. 2605, 2607(c), 2643, and 2646

Subpart D [Removed and Reserved]

b. By removing and reserving subpart D, consisting of § 763.60 through 763.78.

§ 763.87 [Amended]

c. Section 763.87(b) is amended by changing the phrase "Appendix A to subpart F in 40 CFR Part 763," to read "appendix E to subpart E of this part."

§ 763.90 [Amended]

d. Section 763.90 is amended, in paragraph (i)(3) by changing the phrase "paragraphs (i)(4), (5), (6), or (7) " to read "paragraphs (i)(4), and (i)(5)," in paragraph (i)(4), last sentence, by changing the phrase "paragraph (i)(3), (5), (6), or (7)," to read "paragraph (i)(3) or (i)(5)," by removing paragraphs (i)(6) and (i)(7), by redesignating paragraph (i)(8) as paragraph (i)(6), and by changing the phrase "paragraphs (i)(5), (6), and (7)," to read "paragraph (i)(5)," each time this phrase appears.

Subpart E, Appendix C [Amended]

e. In Subpart E, Appendix C, section I.B.3.(l) "Regulatory review," revise the phrase "the Friable Asbestos in Schools Rule (40 CFR Part 763, Subpart F)" to read "the Asbestos-Containing Materials in Schools Rule (40 CFR Part 763, Subpart E)".

Appendix A to Subpart F [Redesignated]

f. In subpart F, by redesignating "Appendix A to Subpart F" as "Appendix E to Subpart E."

Subpart F [Removed and Reserved]

g. By removing the remainder of subpart F to part 763, consisting of § 763.100 through 763.119 and by reserving the subpart F designation.

7. In part 766:

PART 766—[AMENDED]

a. The authority citation for part 766 continues to read as follows:

Authority: 15 U.S.C. 2603 and 2607.

§ 766.7 [Amended]

b. In § 766.7, by changing "Document Control Office (TS- 790), Office of Prevention, Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460" to read "Document Control Office, (7407), Information Management Division, Office of Polution Prevention and Toxics, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 , ATTN: Dioxin/Furan Report.

§ 766.12 [Amended]

c. In § 766.12, by changing "(TS-799)" to "(7408)", removing "(800–424–9065)" and "OPPTS," by changing "NE-G004" to "NEB-607", and by changing "8 a.m."to "12 noon".

d. In § 766.35, by revising paragraph (c)(1)(i), in paragraph (c)(2), the first sentence, by changing "EPA Form 7910–51 (appearing in § 766.35(d)" to "EPA Form 7710–51", and by removing and reserving paragraph (d), to read as follows

§ 766.35 Reporting requirements.

* * * * *

(c) * * *

(1)

(i) A completed form (EPA 7710-51) for that chemical substance. The form and instructions are available from the Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC, 20460. One form must be submitted for each chemical substance for which a positive test result has been submitted.

* * * * *

§ 766.38 [Amended]

e. In § 766.38(c), by changing "Part II of form EPA 7910-51 (appearing at § 766.35(d)) for each chemical product. A separate form EPA 7910-51 must" to "Part II of EPA Form 7710-51 for each chemical product. A separate EPA Form 7710-51 must", and by removing the parenthetical text at the end of the section.

8. In part 790:

PART 790—[AMENDED]

a. The authority citation for part 790 continues to read as follows:

Authority: 15 U.S.C. 2603.

§ 790.5 [Amended]

b. Section 790.5(a) is amended by removing the phrase "e.g., § 799.4400 1,1,1-Trichloroethane,".

9. In part 795:

PART 795—[AMENDED]

a. The authority citation for part 795 continues to read as follows:

Authority: 15 U.S.C. 2603.

§§ 795.45, 795.54, 795.223, 795.230, 795.235, 795.260, 795.285 [Removed]

b. By removing §§ 795.45, 795.54, 795.223, 795.230, 795.235, 795.260, 795.285.

10. In part 796:

PART 796—[AMENDED]

a. The authority citation for part 796 continues to read as follows:

Authority: 15 U.S.C. 2603.

§§ 796.1220, 796.1370, 796.1520, 796.1550, 796.1570, 796.1720, 796.1840, 796.1860, 796.2700, 796.3140, 796.3180, 796.3200, 796.3220, 796.3240, 796.3260, 796.3300, 796.3340, 796.3360, 796.3400, 796.3480, 796.3700, 796.3780, and 796.3800 [Removed]

b. By removing §§ 796.1220, 796.1370, 796.1520, 796.1550, 796.1570, 796.1720, 796.1840, 796.1860, 796.2700, 796.3140, 796.3180, 796.3200, 796.3220, 796.3240, 796.3260, 796.3300, 796.3340, 796.3360, 796.3400, 796.3480, 796.3700, 796.3780, and 796.3800.

11. In part 797:

PART 797—[AMENDED]

a. The authority citation for part 797 continues to read as follows:

Authority: 15 U.S.C. 2603.

§§ 797.1060, 797.1075, 797.1160, 797.1350, 797.1440, 797.1520, 797.1560, 797.1800, 797.1830, and 797.1970 [Removed]

b. By removing §§ 797.1060, 797.1075, 797.1160, 797.1350, 797.1440, 797.1520, 797.1560, 797.1800, 797.1830, and 797.1970.

Subpart C [Removed]

c. By removing subpart C, consisting of §§ 797.2050, 797.2130, 797.2150, 797.2175, 797.2750, 797.2800, and 797.2850.

12. In part 798:

PART 798—[AMENDED]

a. The authority citation for part 798 continues to read as follows:

Authority: 15 U.S.C. 2603.

Subpart B [Removed and Reserved]

b. By removing subpart B, consisting of §§ 798.1100, 798.1150, and 798.1175 and designating subpart B as reserved.

§§ 798.2675, 798.4420, 798.4470, 798.4500, 798.5100, 798.5140, 798.5250, 798.5550, 798.5575, 798.5900, 798.5915, 798.6450, 798.6540, and 798.6850 [Removed]

c. By removing §§ 798.2675, 798.4420, 798.4470, 798.4500, 798.5100, 798.5140, 798.5250, 798.5550, 798.5575, 798.5900, 798.5915, 798.6450, 798.6540, and 798.6850.

Subpart H [Removed]

d. By removing subpart H, consisting of § 798.7100.

13. In part 799:

PART 799—[AMENDED]

a. The authority citation for part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

b.Section 799.5 is amended by removing the parenthetical text "(e.g. § 799.4400 for 1,1,1-Trichloroethane)".

c. Section 799.18 is added to subpart A to read as follows:

§ 799.18 Chemicals subject of test rules or consent orders for which the testing reimbursement period has passed.

The following table lists substances and mixtures that have been the subjects of section 4 testing actions and for which the testing reimbursement period has terminated (sunset). The **Federal Register** citation in the table is for the final rule/consent order that includes the particular substance for which the sunset date listed in the table below applies. Section 12(b) export notification is no longer required for these substances and mixtures. Substances that are the subjects of two or more section 4 testing actions may have section 4 reimbursement or section 12(b) export notification requirements that have not sunset; see subparts B, C, and D of this part to determine if certain other section 4 testing requirements apply. Additionally, section 12(b) export notification may also be triggered by proposed or final action under TSCA section 5, 6, or 7 (in addition to final actions under section 4); see 40 CFR part 707, subpart D for further information regarding the TSCA section 12(b) export notification requirements.

CAS No.	Chemical Name	FR cite	Sunset dates
	C-9 Aromatic Hydrocarbon Fraction[1]	50 FR 20662, 5/17/85	Aug 13, 1994
62–53–3	Aniline	53 FR 31804, 8/19/88	July 27, 1994
71–55–6	1,1,1-Trichloroethane	49 FR 39810, 10/10/84	June 29, 1992
75–56–9	Propylene oxide	50 FR 48762, 11/27/85	Dec,21, 1992
78–87–5	1,2-Dichloropropane	52 FR 37138, 10/5/87	April 17, 1995
79–94–7	Tetrabromobisphenol-A	52 FR 25219, 7/6/87	Aug 24, 1994
80–05–7	Bisphenol A	51 FR 33047, 9/18/86	April 6, 1993
84–65–1	Anthraquinone	52 FR 21018, 6/4/87	Aug 21,1994
87–61–6	1,2,3-trichlorobenzene	51 FR 11728,4/7/86	Nov 13, 1993
88–74–4	2-nitroaniline	53 FR 31804, 8/19/88	Sept 19, 1994
92–52–4	1,1-Biphenyl	50 FR 37182, 9/12/85	March 15,1994
95–48–7	Ortho-cresols AKA 2-methylphenol	51 FR 15771, 4/28/86	Dec. 6, 1994
95–50–1	1,2-dichlorobenzene	51 FR 24657, 7/8/86	April 27, 1994
95–51–2	2-chloroaniline	53 FR 31804, 8/19/88	Sept 6, 1994
95–76–1	3,4-dichloroaniline	53 FR 31804, 8/19/88	Oct 2, 1994
95–94–3	1,2,4,5-tetrachlorobenzene	51 FR 24657,7/8/86	April 27, 1994
97–02–9	2,4-dinitroaniline	53 FR 31804, 8/19/88	Oct 19, 1993
98–82–8	Cumene	53 FR 28195, 7/27/88	March 11, 1995
99–30–9	2,6-dichloro-4-nitroaniline	53 FR 31804, 8/19/88	Aug 6, 1994
100–01–6	4-nitroaniline	53 FR 31804, 8/19/88	Sept 19, 1994
106–44–5	Para-cresols AKA 4-methylphenol	51 FR 15771, 4/28/86	Dec. 6, 1994
106–46–7	1,4-dichlorobenzene	51 FR 24657, 7/8/86	Jan 22, 1994
106–47–8	4-chloroaniline	53 FR 31804, 8/19/88	Oct 19, 1993
108–39–4	Meta-cresols AKA 3-methylphenol	51 FR 15771, 4/28/86	Dec. 6, 1994
108–90–7	Monochlorobenzene	51 FR 24657, 7/8/86	Nov 13, 1991
112–90–3	Oleylamine	52 FR 31962, 8/24/87	Nov 28, 1994
116–14–3	Tetrafluoroethene	52 FR 21516, 6/8/87	May 19, 1993

CAS No.	Chemical Name	FR cite	Sunset dates
116–15–4	Hexafluoropropene	52 FR 21516, 6/8/87	Jan 22, 1994
123–31–9	Hydroquinone	50 FR 53145, 12/30/85	Dec. 11, 1994
149–57–5	2-Ethylhexanoic Acid	51 FR 40318, 11/6/86	June 19, 1993
328–84–7	3,4-Dichlorobenzotrifluoride	52 FR 23547, 6/23/87	Dec. 5, 1993
25550–98–5	Diisodecyl Phenyl Phosphite	54 FR 8112, 2/24/89	May 21, 1995

[1] Only substances obtained from the reforming of crude petroleum.

§§ 799.500, 799.925, 799.940, 799.1051, 799.1052, 799.1054, 799.1250, 799.1285, 799.1550, 799.1650, 799.2175, 799.2200, 799.3175, 799.3450, 799.4000, 799.4400 [Removed]

d. Sections 799.500, 799.925, 799.940, 799.1051, 799.1052, 799.1054, 799.1250, 799.1285, 799.1550, 799.1650, 799.2175, 799.2200, 799.3175, 799.3450, 799.4000, and 799.4400 are removed.

§ 799.5000 [Amended]

e. Section 799.5000 is amended by removing from the table the complete entries for the following substances and/or mixtures: Aniline, 2-nitroaniline, 2-chloroaniline, 3,4-dichloroaniline, 2,4-dinitroaniline, 2,6-dicloro-4-nitroaniline, 4-nitroaniline, 4-chloroaniline, 3,4-dichlorobenzotrifluoride, and diisodecyl phenyl phosphite.

[FR Doc. 95–14910 Filed 6–16–95; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[CC Docket No. 87–266; FCC 95–203]

Cross-Ownership Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has voted to adopt the tentative conclusion regarding the Commission's legal authority to grant waivers to telephone companies allowing them to provide video programming directly to subscribers in their telephone service areas. For "good cause" the Commission may waive Section 613(b) of the Communications Act, the cable-telco cross-ownership restriction, where a waiver is "justified by the particular circumstances." In response to the decisions of the Fourth and Ninth Circuits which found Section 613(b) unconstitutional on First Amendment grounds, the Commission concluded that under Section 613(b)(4), the waiver provision, it has the legal authority to grant waivers to allow telephone companies to provide video programming in their telephone service areas on video dialtone networks. The Commission further concluded that waiving the restriction in that manner is fully consistent with the language of the statute and Section 613(b)'s underlying policy, and obviates the constitutional infirmities identified by the court of appeals. This order is intended to provide guidance to the public regarding the Commission's legal authority to grant waivers of the cable-telco cross-ownership rule to telephone companies seeking to provide video programming directly to subscribers in their telephone service areas.

EFFECTIVE DATE: June 19, 1995.

FOR FURTHER INFORMATION CONTACT: Aliza Katz, Office of General Counsel, (202) 418–1720.

SUPPLEMENTARY INFORMATION: A summary of the Commission's *Third Report and Order* (TR&O), adopted May 16, 1995 and released May 16, 1995, is set forth below. The full text of this document is available for inspection and copying during normal business hours in the Administrative Law Division, Office of General Counsel (Room 616), 1919 M Street NW., Washington, DC. The full text may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS), 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Third Report and Order

Introduction. In this *Third Report and Order*, we adopt the tentative conclusion set forth in the *Fourth Further Notice of Proposed Rulemaking* ("*Fourth FNPRM*"), 60 FR 8996, February 16, 1995, in the above captioned docket regarding the Commission's legal authority to waive Section 613(b) of the Communications Act, 47 U.S.C. § 533(b). Section 613(b) generally prohibits telephone companies from providing "video programming directly to subscribers in the[ir] telephone service area." However, the statute expressly authorizes us to waive the restriction for "good cause." We conclude that Section 613(b)(4) authorizes us to grant waivers to allow telephone companies to provide video programming directly to subscribers in their telephone service areas under certain conditions. In particular, in response to decisions of the Fourth and Ninth Circuits, we conclude that under Section 613(b)(4) we have the legal authority to grant waivers allowing telephone companies to provide video programming in their telephone service areas on video dialtone networks. We adopt that construction of the waiver provision because it is fully consistent with the language of the statute and Section 613(b)'s underlying policy, and because waiving the restriction in that manner obviates the constitutional infirmities identified by the courts of appeals.

2. *Background and Summary.* Section 613(b), the "cable-telco cross-ownership rule," prohibits a telephone company from operating a cable system where it has a monopoly on local telephone service. Although Section 613(b) does *not* bar a telephone company from acting as a conduit to carry video programming selected and provided by an unaffiliated party, it *does* generally bar a telephone company from selecting (or "exerting editorial control over") and providing the video programming carried over its wires in its local service area. Two counts of appeals, the Fourth and Ninth Circuits, have recently held Section 613(b) unconstitutional because it prohibits telephone companies from choosing the video programming to be provided in their local exchange telephone service areas *altogether*. *See US West, Inc.* v. *United States*, 48 F.3d 1092 (9th Cir. 1995) (US West); *Chesapeake and Potomac Tel. Co.* v. *United States*, 42 F.3d 181 (4th Cir. 1994) (*C&P*). In so holding, both courts referred to the Commission's 1992 recommendation to Congress is our video dialtone docket, a proposal that the Ninth Circuit described in *US West* as a "more speech-friendly plan" than the absolute ban contained in the statute. Under the Commission's legislative recommendations, as described by the Fourth Circuit in *C&P*, "telephone companies' editorial control over video programming (would be limited) to a fixed percentage of the channels available; the telephone companies would be required to lease the balance of the channels on a common carrier basis to various video programmers." In short, the courts of appeals have held that a complete ban on editorial control over video programming in a telephone company's service area "burden[s] substantially more speech than is necessary," especially since there appeared to be an "obvious less-burdensome alternative[]"—allowing the telephone company to provide some video programming in their telephone service areas on a video dialtone system.

3. We now conclude, as we previously proposed in the *Fourth NPRM*, that we have the authority to grant waivers to telephone companies pursuant to Section 613(b)(4) allowing them to provide video programming directly to subscribers in their telephone service areas over video dialtone networks. Section 613(b)(4) provides that upon a showing of "good cause" the Commission may waive the cable-telco cross-ownership restriction where a waiver is "justified by the particular circumstances * * *, taking into account the policy" underlying the cross-ownership restriction.

4. Construing the waiver provision to authorize telephone companies to provide video programming over video dialtone networks avoids the constitutional infirmity identified by the Fourth and Ninth Circuits by making available the "'obvious less-burdensome alternative'" referenced by those courts. Moreover, it is our duty to so construe the statute. The Supreme Court has recently reiterated in *United States* v. *X-Citement Video, Inc.*, 115 S. Ct. 464, 467 (1964), that "a statute is to be construed where fairly possible so as to avoid substantial constitutional questions." [1]

5. In light of the ongoing litigation concerning the constitutionality of Section 613(b), we have decided to adopt the construction of Section 613(b)(4) that we proposed in the *Fourth FNPRM* before answering the other questions presented in this rulemaking.

6. *Discussion.* In the *Fourth FNPRM*, we asked for comment on the terms and conditions under which local telephone companies should be permitted to provide video programming directly to subscribers in their local service areas. For instance, we asked whether we should permit them to do so over video dialtone systems. While we construe Section 613(b)(4), the waiver provision, as authorizing us to permit telephone companies to act as programmers on video dialtone systems pursuant to certain conditions, the remaining issues raised in the *Fourth FNPRM* will be resolved in a further order in this proceeding.

7. Two statutory issues are presented in construing Section 613(b)(4): (1) whether "good cause" exists to waive the statutory restriction to permit a telephone company that wants to provide programming in its service area to do so over a video dialtone system, and (2) whether "the issuance of such waiver is justified by the particular circumstances demonstrated by the petitioner, taking into account the policy of this subsection," when a telephone company requests waiver of Section 613(b) to provide video programming over a video dialtone system.

8. As the D.C. Circuit recognized in its 1990 *NCTA* v. *FCC* decision, "the policy [of Section 613(b)] is to promote competition." When the Commission adopted its cable-telco cross-ownership rules in 1970, it sought to prevent the telephone companies from using their monopoly position to preempt the market for cable service by excluding others from entry. Since 1970, however, the cable industry has grown from a fledgling service to a more mature industry that now serves a majority of households and Congress's interest in ensuring that the cable industry not be extinguished before it is established is no longer relevant. "Good cause" is a phrase that is commonly associated with changed circumstances. The relevant circumstances have changed greatly since the Commission adopted its cross-ownership rules in 1970 and Congress "modeled [Section 613(b)] after the FCC['s] rules" in 1984.

9. We also conclude that significant advances in technology have changed the circumstances relevant to determining whether telephone companies should be permitted to provide video programming directly to subscribers in their service areas. These developments have made it possible for a multitude of programmers to reach end user customers and have mitigated to a fair degree the competitive concerns that led the Commission and Congress to adopt the cross-ownership ban. These technological developments also support the conclusion that "good cause" exists to authorize telephone companies to provide video programming within their service areas where that will promote competition in the multichannel video programming market.

10. We also conclude that the rules we will promulgate in the immediate future to authorize telephone companies to provide video programming in their service areas will constitute "particular circumstances * * *, taking into account the policy" of Section 613(b). While we have not yet adopted definitive rules governing the conditions under which telephone companies may be permitted to act as video programmers over their video dialtone systems, the outline of two of those requirements is clear. First, video dialtone necessarily includes a common carriage element, and we have previously concluded that a telephone company may not allocate all or substantially all of its capacity to a single "anchor programmer." Second, our current video dialtone rules contain provisions intended to ensure that telephone companies providing video programming directly to subscribers do not discriminate in favor of their affiliated programmers and do not subsidize video programming operations with rates collected from their provision of monopoly telephone services. These restrictions are intended to promote the underlying purpose of Section 613(b) by fostering fair competition in the multi-channel video programming market.[2]

11. Construing the waiver provision to authorize telephone companies to provide video programming pursuant to our video dialtone rules obviates the constitutional difficulties associated with Section 613(b). Specifically, the Fourth Circuit and Ninth Circuit have held that the cable-telco cross-ownership restriction "burden[s] substantially more speech than is necessary" to promote the government's interest in promoting a competitive multi-channel video programming market. Waiving Section 613(b), however, constitutes implementation of the "obvious less burdensome alternative" to the ban identified by the

[1] While the courts have identified video dialtone as a possible means by which telephone companies could provide programming in their service areas to remedy the constitutional infirmities of Section 613(b), and while we agree with the suggestion of these courts that waiving Section 613(b) as discussed above will cure these constitutional infirmities, we will address the terms and conditions under which telephone companies should be permitted to provide video programming directly to subscribers in their local service areas in a subsequent order addressing the other issues raised in the *Fourth FNPRM*.

[2] It is possible that we will decide in the ongoing rulemaking proceeding that telephone companies ought to be permitted to provide traditional cable service, rather than participate as programmers on video dialtone systems, under "particular circumstances" that will promote competition in the multichannel video programming market.

Fourth Circuit.[3] Or, to quote the Ninth Circuit, it implements the "more speech-friendly plan that allows telephone companies "to compete in the video programming market" while "requiring that a portion of their transport volume be set aside for sale to unaffiliated third parties on a common carrier basis." As a result of our construction of the waiver provision, telephone companies' free speech interests are not unduly burdened.

12. The fact that waiver of the cable-telco cross-ownership restriction obviates the constitutional difficulties identified by the courts of appeals supports our decision to construe our waiver authority to permit telephone companies to provide video programming over video dialtone systems. As the Supreme Court recently reiterated in *X-Citement Video*, "a statute is to be construed where fairly possible so as to avoid constitutional questions," The Court also articulated this principle in *Jean* v. *Nelson*, 472 U.S. 846 (1985), when it found that "[p]rior to reaching any constitutional questions federal courts must consider nonconstitutional grounds for decision."

13. Several commenters opposed our reading of the wavier provision. Southwestern Bell argued that our proposal constitutes an evisceration of the rule. That is not so. It would eviscerate the statute if we were to waive Section 613(b) to allow telephone companies to provide video programming directly to subscribers in their service areas over video dialtone facilities *and*, as a general matter, to purchase cable systems in their telephone service areas that do not face competition. But we are not authorizing such waivers in this order. Instead, we conclude only that Section 613(b)(4) authorizes us to waive the cable-telco cross-ownership rule to permit a telephone company to provide video programming over video dialtone systems in its telephone service area in competition with existing cable operators, a result that *furthers* the purpose of the rule.[4]

[3] We recognize that the Fourth Circuit reserved judgment on the constitutionality of our recommended model. *C&P*, 42 F.3d at 202 n.34. However, if that recommended approach does not render the statute constitutional then, contrary to the court's holding it is not "'Kobvious less-burdensome alternative,'" because it is no alternative at all. *Id.* at 202.

[4] We do not decide today whether we could grant a waiver authorizing a telephone company to build a traditional cable system in its telephone service area in competition with an existing cable system. Nor do we address the conditions under which a waiver might be warranted to allow a telephone company to purchase an in-region cable system.

14. Both the United States Telephone Association and US West invoke *Secretary of State of Maryland* v. *Munson*, 467 U.S. 947 (1984), to argue that the statute cannot be saved by its waiver provision. But this case is not at all similar to *Munson*. The *Munson* case involved a 25% limitation on the percentage of funds a charitable organization could keep, on the theory that a charity that used less than 75% of the funds that it raised on charitable purposes was engaged in fraud. The Court invalidated the state statute imposing the limitation upon concluding that "[t]he flaw in the statute is not simply that it includes within its sweep some impermissible applications, but that in all its applications it operates on the fundamentally mistaken premise that high solicitation costs are an accurate measure of fraud." Moreover, the Court concluded that the statute stifled speech and discriminated against certain viewpoints, explaining that "the statute will restrict First Amendment activity that results in high costs but is itself a part of the charity's goal or that is simply attributable to the fact that the charity's cause proves to be unpopular." The Court went on to hold that the statute was not saved by a provision allowing for waivers of the limitation. The Court stated that "[b]y placing discretion in the hands of an official to grant or deny a license, such a statute creates a threat of censorship that by its very existence chills free speech." "Particularly where the percentage limitation is so poorly suited to accomplishing the State's goal," the Court added, "and where there are alternative means to serve the same purpose, there is little justification for straining to salvage the statute by invoking the possibility of official dispensation to engage in protected activity." In this case, in contrast, permitting telephone companies to provide video programming over a video dailtone system plainly advances the goal of making programming for a variety of sources available to the public—a goal that furthers rather than hinders First Amendment interests. Unlike *Munson*, speech is not stifled and unpopular viewpoints are not disadvantaged. Moreover, no discretion remotely comparable to that in *Munson* would be lodged in any official to grant or deny particular waivers under our approach. Rather, as part of any decision under 47 U.S.C. § 214 authorizing a telephone company to construct facilities, we will routinely grant a waiver of Section 613(b) where the telephone company agrees to abide by the regulations we will establish governing its provision of video programming. Accordingly, there is no "threat of censorship that by its very existence chills free speech."

15. In light of our duty to interpret Section 613(b) in a fashion that renders the statute constitutional, there is no merit at all to the suggestion by some commenters that the Commission's interpretation of Section 613(b)(4) is barred by res judicata, collateral estoppel, or some unnamed principle that allegedly prevents the Commission from construing a statute that a court has held unconstitutional. In *X-Citement Video*, the Supreme Court read the federal child pornography statute in a manner that the Court acknowledged was not its "most natural grammatical reading" in order to avoid a serious constitutional issue after a court of appeals had held the statute unconstitutional. In particular, the Court held that the statute required the government to prove that the defendant in a child pornography case knew that the material on which the prosecution was based contained child pornography even though the statute did not appear to contain such a scienter requirement. In this case, in contrast, the language of the waiver provision is flexible, speaking of "good cause" and "particular circumstances * * *, taking into account the policy of this subsection." Unlike the Court in *X-Citement Video*, we do not have to strain to construe the waiver provision so that it renders the statute constitutional. Rather, as we have explained, we believe that such an interpretation is fully consistent with both the language of the waiver provision and the policy underlying Section 613(b), and therefore is the best interpretation of Section 613(b)(4). For those reasons, and in light of the fact that such an interpretation also avoids a serious constitutional issue, we now adopt our tentative conclusion that the waiver provision should be interpreted to authorize us to consider and approve requests by telephone companies to provide video programming over video dialtone systems, subject to the rules we have enacted and any further rules we will enact to govern video dialtone systems.

16. Finally, we also conclude that our reading of Section 613(b)(4) is not foreclosed by the D.C. Circuit's 1990 decision in *NCTA* v. *FCC*, 914 F.2d 285 (D.C. Cir. 1990). That case did not involve video dialtone service and presented no constitutional issue. It instead involved a waiver of FCC cross-ownership rules authorizing a cable operator to provide cable service over a telephone companies' wires even though the cable operator was affiliated with the telephone company in violation of the rules by virtue of their joint interest in the contractor that was to build the cable system. The court acknowledged that the project "presents a number of advantages that might justify a good cause waiver." However, it held that the Commission had "failed * * * to explain why any of these advantages require [the contractor's] participation as [the telephone companies'] contractor." In this case, in contrast, in light of the decisions holding Section 613(b) unconstitutional, it is necessary to waive Section 613(b) to allow affiliates of telephone companies to provide video programming in order to render the statute constitutional. The Ninth Circuit recognized that a waiver might be warranted in these circumstances in *GTE California, Inc.* v. *FCC*, 39 F.3d 940 (1994), a case that (unlike *NCTA* v. *FCC*) involved a constitutional challenge to Section 613(b). The Ninth Circuit stated in that case, in response to the argument that Section 613(b) is unconstitutional, that "GTECA did not present the constitutional issue to the Commission at a point in this proceeding where it could have tried to obviate the constitutional question by granting discretionary relief, such as a permanent waiver." As that statement recognizes, a waiver is warranted to implement what the Ninth Circuit in *US West* termed our "more speech-friendly plan" and hence avoid a serious constitutional issue.

17. *Conclusion.* Accordingly, it is ordered that Section 613(b)(4) of the Communications Act is interpreted to authorize waivers permitting telephone companies to provide video programming directly to subscribers in their telephone service area pursuant to the rules we will adopt in this docket or related rulemaking proceedings.

List of Subjects in 47 CFR Part 63

Ownership rules, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–14833 Filed 6–16–95; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 92–196; RM–8041]

Radio Broadcasting Services; Tallassee and Tuskegee, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallots Channel 260A from Tuskegee to Tallassee, Alabama, and modifies the license of WACQ, Incorporated for Station WACQ-FM, as requested, pursuant to the provisions of Section 1.420(i) of the Commission's Rules. The allotment of Channel 260A to Tallassee will provide a first local FM service to the community without depriving Tuskegee of local aural transmission service. *See* 57 FR 44354, September 25, 1992. Coordinates used for Channel 260A at Tallassee, Alabama, are 32–26–30 and 85–47–45. With this action, the proceeding is terminated.

EFFECTIVE DATE: July 28, 1995.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 92–196, adopted June 6, 1995, and released June 13, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by removing Channel 260A at Tuskegee, and by adding Tallassee, Channel 260A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–14835 Filed 6–16–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 91–129; RM–7664]

Radio Broadcasting Services; Lake Havasu City, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 244C2 to Lake Havasu City, Arizona, as that community's fourth local FM service, in response to a petition for rulemaking filed on behalf of Bridge Broadcasting. *See* 56 FR 21465, May 9, 1991. Coordinates used for Channel 244C2 at Lake Havasu City are 34–29–02 and 114–19–18. Lake Havasu City is located within 320 kilometers (199 miles of the United States-Mexico border and therefore, concurrence of the Mexican government to this proposal was obtained. With this action, the proceeding is terminated.

DATES: Effective July 28, 1995. The window period for filing applications on Channel 244C2 at Lake Havasu City, Arizona, will open on July 28, 1995, and close on August 28, 1995.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the window application filing process for Channel 244C2 at Lake Havasu City, Arizona, should be addressed to the Audio Services Division, FM Branch, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 91–129, adopted June 5, 1995, and released June 13, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of the title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding Channel 244C2 at Lake Havasu City.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–14845 Filed 6–16–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–9; RM–8560]

Radio Broadcasting Services; Cambria, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 278A to Cambria, California, as that community's second local FM service, in response to a petition for rule making filed on behalf of James Kampschroer. *See* 60 FR 5158, January 26, 1995. Coordinates used for Channel 278A at Cambria are North Latitude 35–33–54 and West Longitude 121–04–48. With this action, the proceeding is terminated.

DATES: Effective July 28, 1995. The window period for filing applications for Channel 278A at Cambria, California, will open on July 28, 1995, and close on August 28, 1995.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the window application filing process for Channel 278A at Cambria should be addressed to the Audio Services Division, FM Branch, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 95–9, adopted June 7, 1995, and released June 13, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California is amended by adding Channel 278A at Cambria.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–14837 Filed 6–16–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 94–73; RM–8489]

Radio Broadcasting Services; Clarksdale, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Leroy P. Jenkins, Jr., d/b/a Delta Blues Broadcasting, allots Channel 221A to Clarksdale, Mississippi. *See* 59 FR 35292, September 13, 1994. Channel 221A can be allotted to Clarksdale, Mississippi, in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.8 kilometers (3.0 miles) west to avoid a short-spacing conflict with the presently licensed site of Station WUMS(FM), Channel 221A, University, Mississippi. The coordinates for Channel 221A at Clarksdale are 34–11–42 and 90–37–38. With this action, this proceeding is terminated.

DATES: Effective July 28, 1995. The window period for filing applications for Channel 221A at Clarksdale, Mississippi, will open on July 28, 1995, and close on August 28, 1995.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 94–73, adopted June 5, 1995, and released June 13, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by adding Channel 221A at Clarksdale.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–14839 Filed 6–16–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 94–69; RM–8490, RM–8536]

Radio Broadcasting Services; Grenada and Crenshaw, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Delta Radio, Inc. allots Channel 222A to Grenada, Mississippi, as the community's second local FM service. At the request of Robert E. Evans, III, the Commission allots Channel 295A to Crenshaw, Mississippi, as the community's first local aural transmission service. *See* 59 FR 35293, July 11, 1994. Channels 222A and 295A can be allotted to Grenada and Crenshaw, Mississippi, respectively, in compliance with the Commission's minimum distance separation requirements. Channel 222A can be allotted to Grenada with a site restriction of 4.6 kilometers (2.9 miles) north to avoid a short-spacing with the licensed site of Station WQST(FM, Channel 223C, Forest, Mississippi. The coordinates for Channel 222A at Grenada are 33–49–02 and 89–48–00. For Channel 295A at Crenshaw a site restriction of 7.2 kilometers (4.4 miles) southeast is needed to avoid a short-spacing conflict with a construction permit for Station KXFE(FM), Channel 295C3, Dumas, Arkansas. The coordinates for Channel 295A at Crenshaw are 34–28–36 and 90–07–38.

With this action, this proceeding is terminated.

DATES: Effective July 28, 1995. The window period for filing applications will open on July 28, 1995, and close on August 28, 1995.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 94–69, adopted June 5, 1995, and released June 13, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by adding Channel 222A at Grenada, and by adding Crenshaw, Channel 295A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–14838 Filed 6–16–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–27; RM–8582]

Radio Broadcasting Services; Yazoo City, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Mississippi College, substitutes Channel 226A for Channel 229A at Yazoo City, Mississippi. *See* 60 FR 10826, February 28, 1995. Channel 226A can be allotted to Yazoo City, Mississippi, in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.4 kilometers (7.7 miles) east to avoid short-spacing conflicts with the licensed site of Station KQID(FM), Channel 226C, Alexandria, Louisiana, and to a construction permit for Station WDTL(FM), Channel 225C2, Cleveland, Mississippi. The coordinates for Channel 226A at Yazoo City are 32–50–29– and 90–16–28. With this action, this proceeding is terminated.

DATES: Effective July 28, 1995. The window period for filing applications will open on July 28, 1995, and close on August 28, 1995.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 95–27, adopted June 5, 1995, and released June 13, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 229A and adding Channel 226A at Yazoo City.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–14834 Filed 6–16–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 94–151; RM–8555]

Radio Broadcasting Services; Buffalo and Lamar, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 260C3 for Channel 260A at Buffalo, Missouri, modifies the license for Station KBFL(FM) to specify Channel 260C3, substitutes Channel 269A for Channel 260A at Lamar, Missouri, and modifies the license for Station KHST(FM) to specify operation on Channel 269A in response to a petition filed jointly by KBFL Broadcasting Company and KHST Broadcasting Company. *See* 59 FR 66883, December 28, 1994. The coordinates for Channel 260C3 at Buffalo are 37–35–30 and 93–02–30. The coordinates for Channel 269A at Lamar are 37–25–27 and 94–16–12. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 28, 1995.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, MM Docket No. 94–151, adopted June 5, 1995, and released June 13, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 260A and adding Channel 260C3 at Buffalo and by

removing Channel 260A and adding Channel 269A at Lamar.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–14842 Filed 6–16–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 95–10; RM–8572]

Radio Broadcasting Services; Sun Valley, NV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of James D. Sleeman, allots Channel 229A to Sun Valley, NV, as the community's first local FM service. *See* 60 FR 5158, January 26, 1995. Channel 229A can be allotted to Sun Valley in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 39–35–47 North Latitude and 119–46–30 West Longitude. With this action, this proceeding is terminated.

DATES: Effective July 28, 1995. The window period for filing applications will open on July 28, 1995, and close on August 28, 1995.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 95–10, adopted June 2, 1995, and released June 13, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Nevada, is amended by adding Sun Valley, Channel 229A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–14843 Filed 6–16–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 94–84; RM–8478]

Radio Broadcasting Services; Driscoll, Gregory and Robstown, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document denies the petition for rule making filed by Cotton Broadcasting, licensee of Station KMIQ(FM), Channel 286A, Robstown, Texas, requesting the substitution of Channel 283C3 for Channel 286A, the reallotment of Channel 283C3 from Robstown to Driscoll, Texas, and the deletion of vacant Channel 283A at Gregory, Texas. *See* 59 FR 38950, August 1, 1994, and 60 FR 13947, March 15, 1995. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 19, 1995.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 94–84, adopted June 6, 1995, and released June 13, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–14836 Filed 6–16–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 95–4; RM–8501]

Radio Broadcasting Services; Charlotte Amalie, VI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Virgin Islands Public Television System, allots Channel *226A at Charlotte Amalie, Virgin Islands, and reserves it for noncommercial educational use. *See* 60 FR 5157, January 16, 1995. Channel *226A can be allotted to Charlotte Amalie in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction at petitioner's requested site. The coordinates for Channel *226A at Charlotte Amalie are North Latitude 18–21–26 and West Longitude 64–56–50. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

DATES: Effective July 28, 1995. The window period for filing applications for Channel *226A at Charlotte Amalie, Virgin Islands, will open on July 28, 1995, and close on August 28, 1995.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 95–4, adopted June 2, 1995, and released June 13, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Virgin Islands, is amended by adding Channel *226A at Charlotte Amalie for noncommercial educational use.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–14840 Filed 6–16–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 95–2; RM–8502]

Radio Broadcasting Services; Charlotte Amalie, VI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Virgin Islands Youth Development Radio, Inc., allots Channel *275A at Charlotte Amalie, Virgin Islands, and reserves it for noncommercial educational use. *See* 60 FR 3613, January 18, 1995. Channel *275A can be allotted to Charlotte Amalie in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.6 kilometers (6.6 miles) west. The coordinates for Channel *275A at Charlotte Amalie are North Latitude 18–21–20 and West Longitude 65–01–45. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

DATES: Effective July 28, 1995. The window period for filing applications for Channel *275A at Charlotte Amalie, Virgin Islands, will open on July 28, 1995, and close on August 28, 1995.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 95–2, adopted June 2, 1995, and released June 13, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Virgin Islands, is amended by adding Channel *275A at Charlotte Amalie for noncommercial educational use.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–14841 Filed 6–16–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 93–201; RM–8213, RM–8252]

Radio Broadcasting Services; Walla Walla and Waitsburg, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Walla Walla Christian Broadcasters, allots Channel 256A at Walla Walla, Washington, as the community's fifth local commercial FM transmission service (RM–8213). We also, at the request of Brett E. Miller, dismiss the mutually exclusive proposal to allot Channel 270C3 at Waitsburg, Washington, as the community's first local aural transmission service (RM–8252). *See* 58 FR 37696, July 13, 1993. Channel 256A can be allotted to Walla Walla in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 256A at Walla Walla are North Latitude 46–04–12 and West Longitude 118–19–48. With this action, this proceeding is terminated.

DATES: Effective July 28, 1995. The window period for filing applications for Channel 256A at Walla Walla, Washington will open on July 28, 1995, and close on August 28, 1995.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 93–201, adopted June 5, 1995, and released June 13, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Washington, is amended by adding Channel 256A at Walla Walla.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–14844 Filed 6–16–95; 8:45 am]

BILLING CODE 6712–01–F

Proposed Rules

Federal Register
Vol. 60, No. 117
Monday, June 19, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–ANE–09]

Airworthiness Directives; AlliedSignal Inc. TPE331 Series Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain AlliedSignal Inc. TPE331 series turboprop engines. This proposal would establish cyclic retirement lives for certain compressor components. This proposal is prompted by manufacturer's engine testing and analysis that indicate that if these compressor components continue in service without an established retirement life, accumulative cyclic effects may result in a fatigue failure. The actions specified by the proposed AD are intended to prevent fatigue failure of engine compressor components and an inflight engine shutdown.

DATES: Comments must be received by August 18, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–ANE–09, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from AlliedSignal Engines Data Distribution, Dept. 6403/2102–1M, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, FAX (602) 365–2210. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (310) 627–5246; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–ANE–09." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–ANE–09, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

Following an analysis of the AlliedSignal Inc. Model TPE331–14GR and TPE331–14HR turboprop engines tieshaft aft thread form, the Federal Aviation Administration (FAA) has determined that main shouldered shafts (tieshafts) and forward coupling shafts (stub shafts), installed on AlliedSignal Inc. Models TPE331–14A, -14B, -14F, and -15AW turboprop engines, are subject to a fatigue limit. Engine testing and analysis indicate that if these compressor components, which were previously certified as having unlimited service lives, continue in service without established retirement lives, fatigue failure may result. This condition, if not corrected, could result in fatigue failure of engine compressor components and an inflight engine shutdown.

The FAA has reviewed and approved the technical contents of AlliedSignal Inc. Service Bulletins (SB's): No. TPE331–A72–7128, dated June 10, 1994, No. TPE331–A72–7129, dated June 10, 1994, and No. TPE331–A72–7522, dated February 17, 1995, that describe main shouldered shaft (tieshaft) cyclic life limits; and No. TPE331–72–7130, dated June 17, 1994, No. TPE331–72–7131, dated June 17, 1994, and No. TPE331–72–7523, dated February 17, 1995, that describe forward coupling shaft (stub shaft) cyclic life limits.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would establish cyclic retirement lives for main shouldered shafts (tieshafts) and forward coupling shafts (stub shafts). The actions would be required to be accomplished in accordance with the SB's described previously.

There are approximately 200 engines of the affected design in the worldwide fleet. The FAA estimates that 150 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 80 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $22,000 per engine for engines where tieshafts and stub shafts are not serviceable. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $4,020,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

AlliedSignal Inc.: Docket No. 95–ANE–09.

Applicability: AlliedSignal Inc. Models TPE331–14A, –14B, –14F, and –15AW turboprop engines, installed on but not limited to the following aircraft: Piper Model PA–42–1000 and Grumman Model TS–2A (modified in accordance with Supplemental Type Certificate SA4837NM).

Note: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any engine from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue failure of engine compressor components and an inflight engine shutdown, accomplish the following:

(a) For main shouldered shafts (tieshafts), Part Number (P/N) 3105102–1, initiate a life limited part log card and remove from service in accordance with the following schedule and the following AlliedSignal Inc. Alert Service Bulletins (ASB's):

(1) Determine CIS for the main shouldered shafts (tieshafts) as follows:

(i) For main shouldered shafts (tieshafts) installed in TPE331–14A and -14B engines, in accordance with ASB No. TPE331–A72–7128, dated June 10, 1994.

(ii) For main shouldered shafts (tieshafts) installed in TPE331–14F engines, in accordance with ASB No. TPE331–A72–7129, dated June 10, 1994.

(iii) For main shouldered shafts (tieshafts) installed in TPE331–15AW engines, in accordance with ASB No. TPE331- A72–7522, dated February 17, 1995.

(2) For main shouldered shafts (tieshafts) with greater than 5,600 cycles in service (CIS) on the effective date of this airworthiness directive (AD), or if operating hours or cycles are unknown, remove from service within 400 CIS after the effective date of this AD.

(3) For main shouldered shafts (tieshafts) with 5,600 or less CIS on the effective date of this AD, remove from service prior to accumulating 6,000 CIS.

(b) For forward coupling shafts (stub shafts), P/N 3104281–2, initiate a life limited part log card, reidentify the P/N, serialize the forward coupling shaft (stub shaft), at the next major periodic inspection or complete disassembly of the compressor module after the effective date of this AD, whichever occurs first, and remove from service in accordance with the following AlliedSignal Inc. Service Bulletins (SB's):

(1) For forward coupling shafts (stub shafts) installed in TPE331–14A and -14B engines, in accordance with SB No. TPE331–72–7130, dated June 17, 1994.

(2) For forward coupling shafts (stub shafts) installed in TPE331–14F engines, in accordance with SB No. TPE331–72–7131, dated June 17, 1994.

(3) For forward coupling shafts (stub shafts) installed in TPE331–15AW engines, in accordance with SB No. TPE331–72–7523, dated February 17, 1995.

(4) Remove from service forward coupling shafts (stub shafts) prior to accumulating 20,000 CIS.

Note: For guidance on the destruction or marking of parts no longer serviceable for aviation use, see Advisory Circular 21–38, dated July 5, 1994.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on June 12, 1995.

Ronald L. Vavruska,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–14871 Filed 6–16–95; 8:45 am]

BILLING CODE 4910–13–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY–67–1–6130b; FRL–5192–4]

Approval and Promulgation of Implementation Plans; Kentucky: Title V, Section 507, Small Business Stationary Source Technical and Environmental Compliance Assistance Program

AGENCY: Environmental Protection Agency (EPA)

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Kentucky for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM), which will be fully implemented by November 15, 1994. In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct

final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by July 19, 1995.

ADDRESSES: Written comments should be addressed to: Ms. Kimberly Bingham, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Copies of the material submitted by the Commonwealth of Kentucky may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Region IV Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Department for Environmental Protection, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Bingham, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region IV Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta, Georgia 30365. The telephone number is (404) 347–3555 extension 4195.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: April 10, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–14449 Filed 6–16–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[TX–37–1–6323b; FRL–5162–1]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Alternative Emission Control Plan For Shell Oil Company, Deer Park, TX

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA in this action proposes to approve the alternative emission reduction (bubble) plan for the Shell Oil Company's Deer Park manufacturing complex as a revision to the Texas State Implementation Plan (SIP). In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn, and all public comments will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by July 19, 1995.

ADDRESSES: Written comments on this action should be addressed to Mr. Guy Donaldson, Acting Chief, Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least twenty-four hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–A), 1445 Ross Avenue, suite 700, Dallas, Texas 75202.

Texas Natural Resource Conservation Commission, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Ms. Leila Yim Surratt or Mr. Herb Sherrow, Planning Section (6T-AP), Air Programs Branch, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7214.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final action of the same title which is located in the final rules section of this **Federal Register**.

Dated: February 8, 1995.

William B. Hathaway,

Acting Regional Administrator.

[FR Doc. 95–14853 Filed 6–16–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Parts 52 and 81

[OH50–4–7071; FRL–5222–8]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Ohio

AGENCY: United States Environmental Protection Agency.

ACTION: Denial of comment period extension on proposed rule.

SUMMARY: On May 2, 1995, the United States Environmental Protection Agency (USEPA) published a proposed rule (60 FR 21490) and a direct final rule (60 FR 21456) approving a request by Ohio to redesignate the Toledo ozone nonattainment area to attainment of the National Ambient Air Quality Standard for ozone, and also approving the State's maintenance plan for this area. Several commentors provided comments on the proposed approval, and made a general request that the USEPA extend the public comment period on the rulemaking. One commentor requested an extension of the comment period so that concerns about increased vehicle emissions caused by new road contruction projects and a possible increase in highway tolls can be evaluated and addressed. The USEPA is denying the extension requests for the following reasons: Ohio solicited public comments on the issues associated with redesignating the Toledo area in October 1993; the USEPA announced its conclusions regarding the request to the press 6 weeks before publishing the action; justification was not provided that extending the comment period would significantly enhance public input; the USEPA will address the commentors' concerns in a final rule document; and no parties wishing to actually make additional comments were identified. The USEPA notes that a public function for the rulemaking package was held on March 14, 1995, in Toledo, Ohio, and it was shown on television news programs. Based on the factors discussed above, since the public was made aware of this rulemaking action, and because no party has sought to submit comments after the comment period, the USEPA does not believe that an extension of the comment period is warranted. The USEPA is withdrawing the direct final rule mentioned above in a final rule published elsewhere in this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Angela Lee, Regulation Development Section, Air Enforcement Branch (AE–17J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Telephone: (312) 353–5142.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 7, 1995.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 95–14851 Filed 6–16–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3150

[WO–610–4110–02 1A]

RIN 1004–AC25

Onshore Oil and Gas Geophysical Exploration

AGENCY: Bureau of Land Management, Interior.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Bureau of Land Management gives notice of its intention to propose a rule to: Impose a fee to recover costs incurred for processing notices of intent to conduct onshore oil and gas geophysical exploration; and establish guidelines for charging fair market value for the use of Federal lands during onshore oil and gas geophysical exploration operations. The purpose of this notice is to solicit comments to help guide preparation of the proposed rule.

DATES: Comments on the advance notice of proposed rulemaking must be received by August 21, 1995. Comments postmarked after this date may not be considered in the preparation of the proposed rule.

ADDRESSES: Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, 1849 C Street, N.W., Washington, D.C. 20240. Comments can also be sent to WO140@attmail.com. Please include "attn: AC25" and your name and return address in your internet message. Comments will be available for public review at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Erick Kaarlela, Leader, Compliance Team, Bureau of Land Management, (202) 452–0340.

SUPPLEMENTARY INFORMATION: The rule will be proposed based on recommendations by the Office of the Inspector General (OIG) for the Department of the Interior. The OIG recommended that the Bureau of Land Management: (1) impose a $500 fee to recover the costs of processing a notice of intent to conduct oil and gas geophysical exploration operations; and (2) establish and implement procedures for charging operators fair market value for use of Federal lands during onshore oil and gas geophysical exploration and seismic surveys.

Office of Management and Budget Circular No. A–25, as amended and supplemented, requires agencies to establish user charges based on sound management principles and, to the extent feasible, in accordance with commercial practices. The charges need not be limited to the recovery of costs; they may also produce net revenues to the Federal Government. The Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1701 *et seq.*) reaffirmed long-standing Congressional support of fair market value as a basis for fees. Section 102(a) of FLPMA (43 U.S.C. 1701(a)) states that it is the policy of the United States that the United States must receive fair market value for the use of the public lands and their resources unless otherwise provided for by statute. Section 304 of FLPMA (43 U.S.C. 1734) authorizes the Secretary to establish reasonable filing and service fees and reasonable charges.

This advance notice of proposed rulemaking presents only a general description of the actions being considered and includes no regulatory text.

The Bureau of Land Management currently charges no filing fee for notices of intent (NOI) for oil and gas geophysical exploration for lands outside of Alaska. Other Federal agencies, including the Forest Service, the Fish and Wildlife Service, and the Bureau of Indian Affairs, issue permits and charge fees for oil and gas geophysical exploration. Additionally, several State governments charge fees for geophysical exploration. Research has shown that BLM incurs costs per case estimated to range from $450 to $1,500 in processing and monitoring each NOI.

Most agencies base charges for conducting geophysical surveys on line miles of the seismic survey. However, some agencies use the number of shot holes or other criteria to calculate the charge and/or fee. Charges range from nothing up to about $1,000 per line mile, with the average being a few hundred dollars per line mile.

In publishing this advance notice of intent to propose rulemaking, the Bureau of Land Management requests information and public comments on:

a. The effect of charging a $500 fee to recover the cost of processing a notice of intent to conduct onshore oil and gas geophysical exploration operations.

b. The effect of an additional charge for the use of the surface of Federal lands while conducting oil and gas geophysical surveys. (The additional charge would not apply to a Federal lessee conducting such activities on its own leases.)

c. The most appropriate method of determining the additional charge for surface use, including the following possibilities:

1. Whether the surface use charge should be based on a flat rate of $200 per seismic line mile or fraction thereof;

2. Whether the surface use charge should be based on the size of the area affected by the survey, e.g., $800 per section or square mile involved.

3. Whether the surface use charge options in 1. and 2., above, should be higher for those seismic methods involving more extensive surface disturbance.

The public is invited to raise any additional issues of concern related to the proposed processing fee and surface use charges for geophysical exploration operations, including any other factors that should be considered in determining the reasonableness of the proposed fee and charge.

The principal author of this advance notice of proposed rulemaking is Gloria Jean Austin of the of Fluids Group, Compliance Team, assisted by the staff of the Regulatory Management Team, Bureau of Land Management.

Dated: June 13, 1995.

Sylvia V. Baca,

Acting Assistant Secretary of the Interior.

[FR Doc. 95–14933 Filed 6–16–95; 8:45 am]

BILLING CODE 4130–84–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 12, 14, 15, 16, 31, 33, 36, 45, 46, 49, 52, and 53

[FAR Case 94–721]

RIN 9000–AG30

Federal Acquisition Regulation; Truth in Negotiations Act and Related Changes

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Extension of comment period and notice of public meeting.

SUMMARY: This public notice is issued to familiarize the public with the status of the rulemaking effort on FAR Case 94–721, Truth in Negotiations Act and Related Changes (TINA), which implements the Federal Acquisition Streamlining Act of 1994 (FASA), to extend the period for public comment, and to provide notice of a public meeting. The TINA drafting team has made some refinements to the proposed rule that was published in the January 6, 1995, **Federal Register**. The revised coverage has been mailed to the public commenters on FAR Case 94–721 and copies may be obtained by other interested parties.

DATES: *Comment Date:* Comments should be submitted to the FAR Secretariat at the address shown below on or before July 19, 1995.

Meeting Date: The meeting will be held at 2:00 p.m. on July 7, 1995.

ADDRESSES: A copy of the revised coverage may be obtained by calling the FAR Secretariat at 202–501–4755. Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405.

The public meeting will be held at: General Services Administration, National Capital Region Auditorium, 7th & D Streets, SW, Washington, DC 20407. Please cite FAR case 94–721 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Al Winston, Truth in Negotiations Act (TINA) Team Leader, at (703) 602–2119 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GSA Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 94–721.

SUPPLEMENTARY INFORMATION:

A. Background

On January 6, 1995, a proposed rule was published in the **Federal Register** (60 FR 2282). The proposed rule afforded the public a 60 day comment period. During that time, 40 organizations submitted more than 213 comments. A public meeting was also held on this rule on February 13, 1995. Based upon comments received, the TINA drafting team refined the coverage. Accordingly, a copy of revised coverage has been mailed to previous public commenters on FAR Case 94–721. The purpose of this notice is to advise the public generally of the availability of the revised coverage and enable other interested parties to obtain a copy by contacting the FAR Secretariat.

B. Case Summary

FAR case 94–721 implements Sections 1201 through 1210 and Sections 1251 and 1252 of FASA. Highlights include making TINA requirements for civilian agencies substantially the same as those for the Department of Defense (increasing the threshold for submission of "cost or pricing data" to $500,000 and adding penalties for defective pricing). Provisions are also included that increase the threshold for cost or pricing data submission every 5 years beginning October 1, 1995. New exceptions are added to the requirement for the submission of "cost or pricing data" for commercial items; approval levels for waivers are changed, and prohibitions are placed on acquiring "cost or pricing data" when an exception applies. The coverage includes a clear explanation of adequate price competition as required by the Act.

Also, FAR coverage has been included that addresses (1) "information other than cost or pricing data", (2) exemptions based on established catalog or market price, (3) inter-divisional transfers of commercial items at price, and (4) price competition when only one offer has been received.

The FAR language primarily modifies FAR Part 15, together with associated Part 52 clauses and Part 53 forms. However, some coverage addresses contract clauses where threshold changes are made in Part 14 pertaining to sealed bid contracting, and in Part 31 where the cost principle on material costs has been amended to address inter-divisional transfers of commercial items at price. Additional miscellaneous changes in Parts 4, 12, 15, 16, 31, 33, 36, 45, 46, 49, and 53 have also been included.

When a final rule is promulgated, it will also supersede the earlier FAR case 94–720 that was previously published as an interim rule in Federal Acquisition Circular (FAC) 90–22. FAR case 94–720 provided for an immediate increase of the threshold for "cost or pricing data" submission by contractors to civilian agencies to $500,000. FAC 90–22 (FAR case 94–720) also removed the certification requirement of commercial pricing for parts or components for contractors doing business with civilian agencies.

C. Summary of Changes

The following are highlights of changes that have been made to the proposed rule as a result of the written comments received during the comment period and other issues that were raised at the public hearing held on 13 February 1995:

- The coverage has been edited to improve readability.
- The hierarchical policy at FAR 15.802 has been clarified to ensure that it is consistent with TINA and FASA.
- Regulatory guidance implementing the catalog or market price exception to TINA has incorporated more flexible procedures (See FAR 52.215–41).

—The Standard Form (SF) 1412 is eliminated.
—Relational tests have been eliminated.
—Disclosure of lowest prices is no longer mandated.
—TINA-based postaward audit access is no longer required.
—Expanded guidance is provided on what constitutes substantial sales.
—Requirement for offerors to account for "end users" when addressing sales to the general public has been eliminated.
—Reference to GSA certifications for granting a prior exemption under FAR 15.804–1(c)(1)(ii)(B) is removed.

- Flexibility in requesting an exception to TINA is improved via a generic provision at FAR 52.215–41 that provides broad guidelines on the type of data that would be needed to qualify for a TINA exception.
- A "Commercial Item" definition cross-reference is given.
- A definition of "cost realism" has been added.
- Additional data requirements have been removed for qualification under the commercial item exception created by FASA (rebates, credits, warranties, and sales to resellers).
- Expanded guidance is provided on effective dates for certification of cost or pricing data.

E. Presentations at the Public Meeting

To allow the public to present its views on the refinements to this proposed rule, a public meeting will be held at the GSA National Capital Region Auditorium on July 7, 1995. Persons or organizations wishing to make presentations will be allowed 10 minutes to present their views, provided they notify the FAR Secretariat at (202) 501–4745 and provide an advance copy of their remarks not later than July 5, 1995.

Dated: June 13, 1995.

Edward C. Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act.

[FR Doc. 95–14832 Filed 6–16–95; 8:45 am]

BILLING CODE 6820–JC–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 531

[Docket No. 95–45; Notice 1]

Passenger Automobile Average Fuel Economy Standards; Proposed Decision To Grant Exemption

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Proposed decision.

SUMMARY: This proposed decision responds to a petition filed by MedNet Incorporated requesting that it be exempted from the generally applicable average fuel economy standard of 27.5 miles per gallon (mpg) for model years 1996 through 1998, and that lower alternative standards be established. In this document, NHTSA proposes that the requested exemption be granted and that an alternative standard of 17.0 mpg be established for MY 1996, MY 1997, and MY 1998, for MedNet.

DATES: Comments on this proposed decision must be received on or before August 3, 1995.

ADDRESSES: Comments on this proposal must refer to the docket number and notice number in the heading of this notice and be submitted, preferably in ten copies, to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, DC 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Henrietta Spinner, Office of Market Incentives, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Ms. Spinner's telephone number is: (202) 366–4802.

SUPPLEMENTARY INFORMATION:

Statutory Background

Pursuant to 49 U.S.C. section 32902(d), NHTSA may exempt a low volume manufacturer of passenger automobiles from the generally applicable average fuel economy standards if NHTSA concludes that those standards are more stringent than the maximum feasible average fuel economy for that manufacturer and if NHTSA establishes an alternative standard for that manufacturer at its maximum feasible level. Under the statute, a low volume manufacturer is one that manufactured (worldwide) fewer than 10,000 passenger automobiles in the second model year before the model year for which the exemption is sought (the affected model year) and that will manufacture fewer than 10,000 passenger automobiles in the affected model year. In determining the maximum feasible average fuel economy, the agency is required under 49 U.S.C. 32902(f) to consider:

(1) Technological feasibility
(2) Economic practicability
(3) The effect of other Federal motor vehicle standards on fuel economy, and
(4) The need of the Nation to conserve energy.

The statute at 49 U.S.C. 32902(d)(2) permits NHTSA to establish alternative average fuel economy standards applicable to exempted low volume manufacturers in one of three ways: (1) a separate standard for each exempted manufacturer; (2) a separate average fuel economy standard applicable to each class of exempted automobiles (classes would be based on design, size, price, or other factors); or (3) a single standard for all exempted manufacturers.

Background Information on MedNet

MedNet Incorporated (MedNet) is a small company that will produce the Dutcher Paratransit Vehicle (PTV). Dutcher Motors, Inc. (Dutcher), the previous manufacturer of these vehicles, was chartered in 1984 to manufacture a limited quantity of special purpose vehicles—Dutcher PTV. Since its establishment, Dutcher produced only two vehicles. MedNet recently acquired Dutcher's assets. Dutcher's willingness to sell to MedNet was based on its own inability to produce the Dutcher PTV vehicles. MedNet now intends to produce the Dutcher PTV. The Dutcher PTV is a large passenger car intended to be used in providing transportation for mobility-impaired individuals. MedNet intends to begin production of the Dutcher PTV in the summer of 1995 and anticipates manufacturing 100, 250, and 500 vehicles, respectively for MYs 1996, 1997, and 1998.

MedNet's Petition

On June 27, 1994, MedNet petitioned NHTSA for exemption from CAFE standards for model years (MYs) 1996, 1997, and 1998. MedNet's petition was filed less than 24 months prior to the beginning of model year 1996 as required by 49 CFR Part 525.6. The petition can be accepted late if "good cause for late submission is shown" as stated in 49 CFR 525.6. The reason for MedNet's late submission for MY 1996 is its recent acquisition of Dutcher Motors, Inc. (Dutcher) assets. Dutcher's willingness to sell to MedNet was based on its own inability to produce the Dutcher PTV vehicles. Thereafter, MedNet relocated Dutcher's equipment and parts from San Marcos, California to Battle Creek, Michigan. Because of new ownership and lack of knowledge of the required procedures of 49 CFR 525, MedNet believed that it was exempted from the standards based on Dutcher's prior exemption (56 FR 37478). Dutcher has filed several petitions requesting exemptions from the generally applicable CAFE standards for MYs 1986–1988 and MYs 1992–1995. Dutcher's most recent petition was submitted on December 5, 1990, requesting alternative standards for MYs 1992–1995. The agency granted the petition and established an alternate standard of 17.0 miles per gallon (mpg) for MYs 1992–1995.

Under the circumstances outlined above, NHTSA determines good cause is shown by MedNet for the submission of its untimely petition.

Classification of Dutcher PTV as a Passenger Automobile

Due to differences in the definitions used by this agency under the Cost Savings Act for CAFE purposes and the Environmental Protection Agency under the Clean Air Act for emissions control purposes, the Dutcher PTV is classified differently by these two agencies. The Environmental Protection Agency (EPA) classified the predecessor to the Dutcher PTV, the Transitaxi, as a "light duty truck" for emissions compliance due to that model's derivation from existing truck components. (40 CFR 86.02–2). However, NHTSA concluded that the Transitaxi was a "passenger automobile" for fuel economy purposes. Both the Transitaxi and the Dutcher PTV are passenger automobiles under the definition in 49 CFR 523.4 since each transports not more than 10 individuals and does not meet any configurational or usage criteria for light trucks given in 49 CFR 523.5. MedNet plans to produce the Dutcher PTV without substantial change from the design used by Dutcher for the Transitaxi. NHTSA therefore concludes that the Dutcher PTV to be produced in MY's 1996–1998 is a "passenger automobile" for fuel economy purposes.

Methodology Used To Project Maximum Feasible Average Fuel Economy Level for MedNet

Baseline Fuel Economy

To project the level of fuel economy which could be achieved by MedNet in MYs 1996–1998, the agency considered whether there were technical or other improvements that would be feasible for these vehicles, and whether or not the company currently plans to incorporate such improvements in the vehicles. The

agency reviewed the technological feasibility of any changes and their economic practicability.

NHTSA interprets "technological feasibility" as meaning that technology which would be available to MedNet for use on its MY 1996 through 1998 automobiles, and which would improve the fuel economy of those automobiles. The areas examined for technologically feasible improvements were weight reduction, aerodynamic improvements, engine improvements, drive line improvements, and reduced rolling resistance.

The agency interprets "economic practicability" as meaning the financial capability of the manufacturer to improve its average fuel economy by incorporating technologically feasible changes to its MYs 1996 through 1998 automobiles. In assuming that capability, the agency has always considered market demand as an implicit part of the concept of economic practicability.

In accordance with the concerns of economic practicability, NHTSA has considered only those improvements which would be compatible with the basic design concepts of MedNet automobiles. Since NHTSA assumes that MedNet will continue to sell vehicles exclusively designed to be used for transporting the wheelchair bound or other mobility-impaired individuals, design changes that would impair the ability of the vehicle to perform this function were not considered. Such changes to the basic design would be economically impracticable since they might well significantly reduce the demand for these automobiles, thereby reducing sales and causing significant economic injury to the low volume manufacturer.

Technology for Fuel Economy Improvement

Due to MedNet's limited financial resources, small engineering staff, very low production volume, and assemblage of stock components, few opportunities for technological improvement for fuel economy exist. MedNet uses General Motors 3.8 liter electronically fuel injected V–6 engines and four speed automatic transmissions for its MYs 1996–1998 prototypes. Therefore, MedNet depends entirely on the supplier of the engine and drivetrain for technological improvements in fuel efficiency of the engine and drivetrain.

MedNet uses a four-speed automatic transmission with lockup torque converter clutch, one of the more efficient transmission designs. The constant velocity universal joints are a low friction design.

MedNet incorporates in its Dutcher PTV flush windows and door handles, a bottom cover, and a smooth front cowl, all of which reduce drag on the vehicle. MedNet's low dynamometer horsepower setting for certification testing, as shown in the table below, when compared to other small passenger vans and wagons, illustrates that the Dutcher PTV uses good aerodynamic design equivalent to current industry standards.

DYNAMOMETER SETTING COMPARISON

Model	Actual dynamometer horsepower
Dutcher PTV	12.5
Ford Aerostar*	11.2
GM Astro*	17.9
Toyota Previa*	14.0
Chrysler Caravan/Voyager*	11.8
Mercury Villager*	10.1
Chevrolet Caprice Wagon	8.5

*These vehicles are classified by EPA as light trucks.

To achieve maximum weight reduction, the body is made primarily of fiberglass.

MedNet's only significant opportunity for improvement will be the result of any improvements which GM decides for its own purposes to make in the engine and drivetrain it will supply for MedNet. MedNet's role will be limited to attempting to modify the drivetrain to meet emissions requirements.

Model Mix

Since only one vehicle model will be built for MY's 1996–1998, the MedNet corporate average fuel economy is based on the fuel economy of that one model, the Dutcher PTV, and cannot be averaged in with the fuel economy of any other models.

The Effect of Other Vehicle Standards

The new more stringent California emission standards enacted in MY 1995 and the similarly stringent Federal Clean Air Act Amendments will apply in MY 1996. MedNet may achieve lower fuel economy due to compliance with these standards. In addition, a portion of its limited engineering resources will have to be expended to comply with these more stringent emissions standards including, but not limited to, evaporative emission standards.

Federal safety standards also have an adverse effect on fuel economy of Dutcher PTV vehicles. These standards include 49 CFR Part 581 *Energy absorbing bumpers*, Standard No, 214 *Side impact protection*, and Standard No. 208, *Occupant crash protection*. These standards tend to reduce achievable CAFE levels, since they result in increased vehicle weight. As previously noted, MedNet is a small company, and engineering resources are limited. Priority must be given to meeting mandatory standards to remain in the marketplace.

The Need of the Nation to Conserve Energy

The agency recognizes there is a need to conserve energy, to promote energy security, and to improve balance of payments. However, as stated above, NHTSA has tentatively determined that it is not technologically feasible or economically practicable for MedNet to achieve an average fuel economy in MYs 1996 through 1998 above the levels set forth in this proposed decision. Granting an exemption to MedNet and setting an alternative standard at that level would result in only a negligible increase in fuel consumption and would not affect the need of the Nation to conserve energy.

Maximum Feasible Average Fuel Economy for MedNet

The agency has tentatively concluded that it would not be technologically feasible and economically practicable for MedNet to improve the fuel economy of its MY 1996 through 1998 above an average of 17.0 mpg for MY 1996, 17.0 mpg for MY 1997, and 17.0 mpg for MY 1998. Federal automobile standards would not adversely affect achievable fuel economy beyond the amount already factored into MedNet's projections, and the national effort to conserve energy would not be affected by granting the requested exemption and establishing an alternative standard.

Consequently, the agency tentatively concludes that the maximum feasible average fuel economy for MedNet is 17.0 mpg in MY 1996, 17.0 mpg in MY 1997, and 17.0 mpg in MY 1998.

NHTSA tentatively concludes that it would be appropriate to establish a separate standard for MedNet for the following reasons. For MY 1996, the agency has already granted petitions for an alternative standard of 14.6 mpg for Rolls-Royce. The agency has also received a petition from Rolls-Royce for an alternative standard for MY 1997. Therefore, the agency cannot use the second (class standards) or third (single standard for all exempted manufacturers) approaches for MYs 1996 and 1997. In order to avoid undue hardship to MedNet, given its limited ability to improve the fuel economy of its vehicles, the use of a single standard will be allowed by MY 1998 as well.

Regulatory Impact Analyses

NHTSA has analyzed this proposal and determined that neither Executive Order 12866 nor the Department of Transportation's regulatory policies and procedures apply. Under Executive Order 12866, the proposal would not establish a "rule," which is defined in the Executive Order as "an agency statement of general applicability and future effect." The proposed exemption is not generally applicable, since it would apply only to MedNet, Inc., as discussed in this notice. Under DOT regulatory policies and procedures, the proposed exemption would not be a "significant regulation." If the Executive Order and the Departmental policies and procedures were applicable, the agency would have determined that this proposed action is neither major nor significant. The principal impact of this proposal is that the exempted company would not be required to pay civil penalties if its maximum feasible average fuel economy were achieved, and purchasers of those vehicles would not have to bear the burden of those civil penalties in the form of higher prices. Since this proposal sets an alternative standard at the level determined to be MedNet's maximum feasible level for MYs 1996 through 1998, no fuel would be saved by establishing a higher alternative standard. NHTSA finds that because of the minuscule size of the MedNet fleet, that incremental usage of gasoline by MedNet customers would not affect the nation's need to conserve gasoline. There would not be any impacts for the public at large.

The agency has also considered the environmental implications of this proposed exemption in accordance with the National Environmental Policy Act and determined that this proposed exemption if adopted, would not significantly affect the human environment. Regardless of the fuel economy of the exempted vehicles, they must pass the emissions standards which measure the amount of emissions per mile traveled. Thus, the quality of the air is not affected by the proposed exemptions and alternative standards. Further, since the exempted passenger automobiles cannot achieve better fuel economy than is proposed herein, granting these proposed exemptions would not affect the amount of fuel used.

Interested persons are invited to submit comments on the proposed decision. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential business information has been deleted, should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed under the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 531

Energy conservation, Gasoline, Imports, Motor vehicles.

In consideration of the foregoing, 49 CFR part 531 would be amended to read as follows:

PART 531—[AMENDED]

1. The authority citation for part 531 would be revised to read as follows:

Authority: 49 U.S.C. 32902, delegation of authority at 49 CFR 1.50.

2. In § 531.5, the introductory text of paragraph (b) is republished for the convenience of the reader and paragraph (b)(12) would be added to read as follows:

§ 531.5 Fuel economy standards.

* * * * * *

(b) The following manufacturers shall comply with the standards indicated below for the specified model years:

* * * * * *

(12) MedNet, Inc.

Model year	Average fuel economy standard (miles per gallon)
1996	17.0
1997	17.0
1998	17.0

Issued on: June 14, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–14904 Filed 6–16–95; 8:45 am]

BILLING CODE 4910–59–P

49 CFR Parts 564 and 571

[Docket No. 95–47; Notice 1]

RIN 2127–AF65

Replaceable Light Source Information; Federal Motor Vehicle Safety Standards Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Federal motor vehicle safety standard on lighting to allow high intensity discharge (HID) light sources to be used in replaceable bulb headlamp systems, in addition to their presently-allowed use in integral beam headlamp systems. Adoption of this amendment would require corresponding amendments to part 564, the regulation under which Docket No. 93–11 was established as a depository for replaceable light source information. However, if the life of the light source approaches that of the vehicle, as is the case with HIDs, interchangeability will no longer be so important. Therefore, NHTSA proposes adding regulations which would allow a manufacturer to submit fewer items of dimensional information if it can demonstrate that the average rated laboratory life of its light source is not less than 2,000 hours.

DATES: Comments are due on the proposal by August 18, 1995.

FOR FURTHER INFORMATION CONTACT: Kenneth O. Hardie, Office of Rulemaking (202–366–6987).

SUPPLEMENTARY INFORMATION: On April 8, 1994, NHTSA published a notice in

the **Federal Register** calling attention to four new technologies that are being or will be used in signal lamps and headlamps subject to Standard No. 108 (59 FR 16788). These new signal lamp technologies are light-emitting diodes (LEDs), miniature halogen bulbs, long arc discharge bulb systems (e.g., neon and other gas filled tubular lamps), and short arc discharge bulb systems. The notice noted that it is likely that the latter will be used in headlamps, too.

Twenty-five comments were received in response to the notice. Among those who commented were Ford Motor Company, General Motors Corporation (GM), American Automobile Manufacturers Association (AAMA), Koito Manufacturing Co. Ltd., Hewlett-Packard, Hella KG Hueck & Co. (Hella), Volkswagen of America (VWoA), General Electric Company (GE), OSRAM Sylvania, Inc. (OSRAM), Stanley Electric Co. Ltd. (Stanley), and State Farm Insurance.

On the basis of the comments received, NHTSA has decided to initiate rulemaking that would amend Standard No. 108 so as to allow replaceable bulb headlamps to incorporate short arc discharge light sources. It is terminating action on the other lighting technologies for the reasons explained below.

I. Long and Short Arc Discharge Systems

With the thought of developing appropriate amendments to Standard No. 108 to facilitate the introduction of long and short arc discharge technology, NHTSA sought comments on the following:

A. Identification of the performance requirements and/or test procedures specified, or incorporated by reference, in Standard No. 108 that should be modified to accommodate the installation of arc discharge light sources in lamps required by the standard.

B. Specification of the performance requirements and/or test procedures that should be added to Standard No. 108 to accommodate the installation of arc discharge light sources while maintaining the present level of safety achieved by incandescent filament light sources.

C. Identification of any special considerations that should be made to accommodate the concept of a single light source whose light is distributed to the vehicle's lamps by lamp pipes, and an opinion as to whether it is premature to consider regulation of this concept.

D. An opinion of when Standard No. 108 should be amended to accommodate the use of arc light sources in production motor vehicles. These sources are permitted because Standard No. 108 does not specify requirements for signal light sources.

NHTSA received no specific recommendations on how to amend Standard No. 108 to facilitate the use of long arc lighting technology. Some commenters noted that the Society of Automotive Engineers (SAE) is drafting a recommended practice for long arc sources, but estimated that its completion date is well in the future. OSRAM Sylvania commented that it has developed a long arc (neon) Center High Mounted Stop Lamp (CHMSL) that is almost ready for production, and it recommended that NHTSA amend Standard No. 108 to state clearly that long arc sources may be tested *as a system* for compliance with Standard No.108 (which would allow testing with the ballast).

As currently being developed, long arc technology such as neon may be used to provide tail, stop, and turn signal lighting. Long and short arc discharge lamps are similar in some respects. Both require ballasts to transform the 12.8 volt vehicle electrical supply into an output format necessary to operate the discharge tube or bulb. Both operate at voltages substantially higher than the nominal 12.8 volts of a standard automobile battery. The ballast elevates the voltage output of the battery to the level required by the lamp.

NHTSA wishes to assure OSRAM that Standard No. 108 already permits testing of long arc light sources with their ballast. The agency interprets Paragraph S5.1.1.16 as permitting this. This paragraph states:

> S5.1.1.16 A lamp designed to use a type of bulb that has not been assigned a mean spherical candlepower rating by its manufacturer and is not listed in SAE Standard J573d, *Lamp Bulbs and Sealed Units*, December 1968, shall meet the applicable requirements of this standard when used with any bulb of the type specified by the lamp manufacturer, operated at the bulb's design voltage. A lamp that contains a sealed-in bulb shall meet these requirements with the bulb operated at the bulb's design voltage.

While this does not specifically mention long arc light sources with ballasts, the second sentence does address the use of lamps with bulbs that are "sealed-in" and those in which they are not. If a long arc lamp is manufactured with the light source and the ballast as a sealed unit (sealed within the lamp), then it would be tested for compliance by application of the design voltage at the lamp leads.

The first sentence of S5.1.1.16 addresses the situation where the ballast is separate from the lamp (not sealed within it) and externally connected to it. A long arc light source is considered a "bulb" and would be tested at its manufacturer's specified design voltage.

The allowance of long arc technology for signal lamps may raise issues relating to intensity, headlamp/daytime running lamp spacing, and aspect ratio because this technology may result in unique and creative lamp shapes and design variations that influence the efficacy of signal lamps. For example, Standard No. 108 does not specify an aspect ratio for stop lamps. As an example, although a CHMSL must have an effective projected luminous lens area of not less than 4½ square inches, the requirement can be met by both a rectangular lens of 2 inches by 2½ inches and one of 10 inches by .45 inch because Standard No. 108 contains no limitations on signal lamp length or height.

Because the efficacy of long arc technology for signal lamps is still being researched, NHTSA will propose no changes at this time, and will seek further information on the issues of lamp spacing, effective luminous lens area, aspect ratio between lamps, appropriate photometric requirements, and interchangeability. It may also be necessary to obtain information from manufacturers regarding the operating voltage of an arc lamp source as used on a motor vehicle. This would be for the purpose of providing a source voltage equivalent to the design voltage that is required for compliance testing purposes if NHTSA decided to perform testing without the system's original ballast.

Short arc discharge headlamp systems are commonly referred to as "high intensity discharge" (HID) systems. Presently, the only HID application in production for lamps covered by Standard No. 108 is in headlamps, and the only way HID headlamps can be used under the standard is in an "integral beam headlighting system" (Section S7.4). Thus, today, HID headlamps are comprised of a headlamp body (including reflector and lens), a small transparent envelope containing a specific mixture of gases under high pressure (the discharge bulb), and an electronic ballast to convert low voltage direct current to a controlled output high voltage direct or alternating current to drive the discharge bulb.

However, by definition (S4), an integral beam headlamp (including those with HID light sources) is one with an "integral and indivisible optical assembly", and a headlamp that is "not a replaceable bulb headlamp * * *." In the event of damage to one component, such as the lens, the entire unit, ballast and all, must be replaced. The cost to replace an integral beam HID headlamp is going to be substantially higher than the cost of replacing a more conventional headlamp. Ford, Stanley, AAMA, GM, and State Farm suggested that NHTSA could facilitate the introduction and acceptance of HID headlamp technology by redefining them as "replaceable bulb headlamps" so that components could be individually replaced.

NHTSA concurs with these comments. There is no safety reason why HIDs can't be used as replaceable bulb headlamps. Manufacturers chose an integral-type design for the initial HID headlamps as a result of NHTSA-initiated amendments to accommodate them and facilitate their introduction. At that time, around 1992, the most expeditious manner was through the modification of the definition for integral beam headlamps, and the addition of combination headlighting systems. NHTSA did not know how to define HID sources as "replaceable light sources."

GE espoused a contrary position. It finds the relationship between the ballast device for an HID headlamp and the arc source itself to be complex and intricate. As more requirements (e.g., instant start, long life, color control) are placed on the system, the complexity of the ballast, electronics, and light projection system increase by an order of magnitude. Given the present state of arc source technology, GE commented that the industry must further define performance and other enhancements for a "short arc" headlamp and ballast before rulemaking for a non-integral system is initiated. Without a firm industry agreement on basic system requirements, GE concludes that specification of the individual parts and their respective allowable contribution to system requirements is impossible.

However, contrary to GE's argument, Ford presented a regulatory scheme with specific suggested amendments to both Standard No. 108 and the replaceable bulb information regulation, part 564, the effect of which would be to allow use of HIDs as replaceable headlamp light sources in a manner which accommodates GE's concern. NHTSA has reviewed this in great detail, and tentatively concludes that it, for the most part, sets forth a realistic way in which to treat HIDs as replaceable light headlamp light sources. Therefore, the following discussion is based upon Ford's specific suggestions, the European regulatory practice for HID headlamp sight sources, and NHTSA's responses.

Proposed Amendments to Standard No. 108

S4 *Definitions.* A "replaceable light source" is defined as "an assembly consisting of a capsule, base, and terminals that is designed to conform to the requirements of paragraph S7.7" of Standard No. 108. Ford would amend the definition to include the phrase "separable ballast, if required." Because HID headlamps, unlike conventional replaceable bulb units, are operable through ballasts, Ford believes that such an amendment would clearly indicate that HIDs come under the definition of "replaceable light source." However, where the ballast is separable and physically located away from the headlamp housing, it would not be part of an "assembly" of "capsule, base, and terminals," as the term "assembly" is understood. NHTSA has tentatively concluded that there is a better approach, comprised of two parts. The first is to retain the existing definition and propose amendments of paragraph S7.7 pertinent to HID light sources, thus tying it in with the definition of "replaceable light source", as quoted above. The second is to propose an amendment of part 564 which would allow the submittal of ballast information to Docket No. 93–11. Section IX of Part 564 appears an appropriate place for the listing of other dimensions or performance specifications necessary for light sources and ballast interchangeability purposes that are not listed in other places within appendix A. For this reason also, an HID assembly would be a "replaceable light source."

S5.5.8 This paragraph specifies, in part, that in an integral beam headlighting system meeting integral beam headlighting photometrics, the lower beam headlamps shall be wired to remain permanently activated when the upper beam headlamps are activated. Ford would add lower beam headlamps "incorporating non-filament light sources" and meeting replaceable bulb headlighting photometrics.

NHTSA believes that this approach would unnecessarily discriminate between filament and non-filament light sources, and that adopting the definition of "filament" shown below would supersede the need to specify "non-filament light sources". This means that an amendment of S5.5.8 would not be needed as Figure 15 already specifically allows the lower beam headlamps of four-lamp replaceable light source headlamp systems to remain activated when the upper beams are operated. Although Figure 17 is silent on the point, this silence has the effect of not specifying how the lower or upper beam is generated by the headlamp. Thus, the lower beams of two-lamp replaceable light source headlamp systems can remain activated when the upper beams are selected.

The definition that appears appropriate to NHTSA is:

> "*Filament*" means that part of the light source or light emitting element(s), such as a resistive element, the excited portion of a specific mixture of gases under pressure, or any part of other energy conversion sources, that generates radiant energy which can be seen.

S7.5(e)(3)(ii). This relates to headlamp systems comprised of four replaceable bulb headlamps. Ford's recommended revision to this paragraph would limit how replaceable light source headlamps may produce the upper beam, as it would require the HID lower beam to remain on when the upper beam is selected. While this is what proposed changes to European law may require and indeed may be what most manufacturers would choose to do, Standard No. 108 presently permits the lower beam to remain on when the upper beam is used, but does not require it. The reason that a manufacturer might choose to leave the lower beam HID source on is that it is technically complex and expensive to design HIDs that, if extinguished, will quickly re-arc after being extinguished during beam switching. If the HID had difficulty reestablishing an arc after switching from the upper beam, the headlamp would not produce light, a high risk situation, even if possibly a transient one. Given the liabilities inherent in such an instance, NHTSA anticipates that manufacturers will provide systems in which an HID lower beam remains activated during upper beam use.

Because S7.5(e)(3)(ii) allows the manufacturer of a vehicle with replaceable bulb headlamp systems a choice of whether or not to extinguish the lower beam while the upper beam is activated, it provides maximum flexibility for designers of replaceable bulb headlamp systems, whether or not they incorporate lower beam HIDs. NHTSA believes that as long as an HID headlamp complies with applicable photometric requirements, it should be allowed to use present headlamp configurations without restriction.

New paragraph S7.5(e)(3)(iii). Ford would add a new paragraph S7.5(e)(3)(iii) relating to four lamp replaceable bulb headlamp systems to read:

> The upper beam of a headlamp system whose lower beam headlamps are equipped

with non-filament type replaceable light sources shall be produced by all four headlamps, designed to conform to the upper beam requirements of Figure 15A.

This paragraph would limit how HID light source headlamps could be used in a system with non-HID replaceable light source types in the same way as Ford's suggested revisions to S7.5(e)(3)(ii). For this reason, NHTSA disagrees with this suggestion.

In addition, Ford's suggested paragraph would permit the use of a headlamp whose performance is not specified by Standard No. 108. This could occur because Ford would require that the "upper beam" be produced by all four headlamps and that the "beam" (not the headlamp) be designed to conform to the requirements of Figure 15A. Requiring the "beam" from all four headlamps to meet the photometric requirements of Figure 15A is quite different from the current requirement that the upper beam headlamp system independently meet Figure 15A. Because Ford's suggestion does not specify the apportionment of photometry between the headlamps necessary to produce the "beam", it would appear to restrict the replacement market to original equipment manufacturers, as well as potentially allowing replacement headlamps with inadequate illumination or disabling glare. Hence, NHTSA is not proposing Ford's suggested paragraph.

Paragraph S7.7(g). This paragraph requires replaceable light sources to be designed to conform to the information on file in part 564. Ford would modify the phrase "replaceable light source" by adding after it "in conjunction with its ballast, if any is specified in part 564 for its operation." NHTSA does not believe that an amendment is required. The ballast information will be part of the information on file in part 564 and no specific reference to it is needed.

Paragraph S7.7(h). This paragraph requires marking of replaceable light sources in specified ways. Ford would add eight specific requirements for ballast marking: name or logo of the ballast manufacturer, the ballast part number or other unique identifier, the part number or other unique identification of the non-filament type light source for which the ballast is designed, identification of the designated Part 564 discharge sources that the ballast is designed to power, and the rated laboratory life of the ballast/discharge bulb combination for each bulb so identified, shock hazard warning (see discussion below), watts and voltage information, the date of manufacture, and the DOT symbol.

NHTSA agrees with this suggestion, but is proposing a new section S7.7(l) for ballast alone. With one exception, it is consistent with the existing requirement for replaceable light sources. That exception is the identification and documentation of rated laboratory life. With respect to other replaceable light sources, NHTSA has previously decided that requiring this information is an unjustifiable and unnecessary burden. However, the advent of HID technology has caused NHTSA to rethink this issue as it relates to Ford's suggestion for reasons to be explained below in the discussion of proposed amendments to part 564.

Paragraph S7.7(i). This paragraph relates to seasoning of the filament of a replaceable light source before measurement of maximum power and luminous flux. Consistent with its earlier recommendations, Ford would add "filament type" before "replaceable light source." Since the seasoning procedures are different for filament type and arc type light sources, NHTSA agrees that there is a distinction. However, because of the definition of filament that has been proposed, NHTSA is proposing to revise S7.7(i) to apply to the seasoning of "a replaceable light source" rather than to "the filament." This would be followed by two new subparagraphs, S7.7(i)(1), which would apply to light sources with resistive element type filaments, and S7.7(i)(2), which would apply to light sources using excited gas mixtures as filaments. This also accords with recommendations made by Ford. As for seasoning of light sources using "other energy conversion sources", NHTSA solicits comments on what these sources might be and the procedure that would be appropriate for their seasoning. Comments should also address an alternative to S7.7.(i) for "other energy conversion sources" of including seasoning information as an item of information in appendix B.

The reader should note that, under NHTSA's published proposal to transfer HB type light sources to part 564 (60 FR 14247, March 16, 1995), paragraph S7.7(i) would become paragraph S7.7(b), with no substantive change in it. For the same reason, proposed new paragraph S7.7(l) would be adopted as paragraph S7.7(d).

S8 Tests and Procedures for Integral Beam and Replaceable Bulb Headlighting Systems. Ford would add "Ballasts required to operate non-filament type light sources shall be included in the tests specified" in S8. NHTSA concurs but, in its proposal, has substituted "specific gas mixture" for "non-filament type."

Other Issues Associated with Short Arc Discharge Lighting Systems. Two other issues associated with HID headlamp light source use are electrical shock resulting from contact with the high voltages used to energize the light source, and potential health hazards resulting from ultraviolet (UV) radiation.

Severe electrical shock is a potential hazard because of the high voltage generated by the HID system ballast. A voltage that is higher than that which is normally produced by the motor vehicle's standard battery is necessary to operate an HID system. NHTSA believes that manufacturers will design appropriate levels of safety into their HID systems because of competitive market pressures and product liability concerns. For this reason, the only regulatory requirement that NHTSA is proposing that addresses this issue is the marking of the ballast with an appropriate warning.

Because HID light sources produce UV energy, there is the potential for damage to ocular tissues and skin from radiation in the spectral region between 200 and 400 nm. Exposure could arise from a defect in the system or as a result of a crash and damage to it. Exposure could also occur in the course of headlamp repair. At the present time, it appears likely that the plastic lenses on HID headlamps will filter UV energy, that they will be given a protective coating that will minimize UV emission during normal operation, or that UV filters integral to the HID light source envelope will be used. Thus, there appears no need to regulate. However, NHTSA intends to monitor the issue and will propose rulemaking if it appears required for health and safety.

Proposed Amendments to Part 564

General. Ford would replace all references to "filament" with "filament or discharge arc." However, this is unnecessary. If NHTSA adopts the definition of "filament" that has been proposed to be added to Standard No. 108, it will apply to part 564 under § 564.4 which incorporates definitions used in other regulations.

Section IX of appendix A. Ford would add the word "Identification" to the text. NHTSA concurs. If a ballast is required for operation, Section IX would also require a manufacturer to provide a complete listing of the requirements and parameters between the light source and ballast, and ballast and the vehicle.

Proposed appendix B. The purpose of Appendix A of part 564 is to ensure that aftermarket replaceable light sources are interchangeable with their original equipment counterparts so that they

may be easily replaced. But the importance of interchangeability diminishes but is not eliminated if the life of the light source is such that it approaches the life of the lens reflector unit in which it is installed. Manufacturers expect this to be for the life of the vehicle. This is a chief feature of HID light sources. Thus, NHTSA might be wiling to accept rated average laboratory life information demonstrating long life as a tradeoff for detailed interchangeability information such as dimensions relating to the interface of the light source to the ballast.[1]

To explain, barring damage, a lens reflector unit ought to last the life of a motor vehicle because of its certification of conformance to the environmental test requirements set out in Standard No. 108. The task, then, is to design a light source with an equivalent life expectancy. Although industry views 10 years as the average life of a vehicle, it is not uncommon to see in daily service those that are from 10 to 15 years old. NHTSA believes that non-HID light sources used in today's headlamps have a rated average laboratory life of 300 to 500 hours. Thus, one with a minimum rated life of 2,000 hours represents a four-fold to six-fold plus increase in the life of a headlamp light source. Use of such a light source would significantly reduce the need to replace headlamp light sources over the life of a vehicle.

This trade off could be accomplished by adding appendix B to part 564, to serve as a repository for information on long-life light sources. To NHTSA, a long-life light source is one with a rated average laboratory life of not less than 2,000 hours. This figure represents the design target that industry uses today in developing long-life light sources, and has been provided to NHTSA in industry comments on related rulemakings. The manufacturer of such a light source would provide the lesser amount of information that would be required by appendix B, but, at its option, could make its submission under appendix A. The reader is reminded that, in either event, a replaceable light source which is the subject of information submitted to Docket No. 93–11 is required to comply with Standard No. 108.

To conform part 564 to this view, NHTSA would amend § 564.2 *Purpose* to clarify that the existing purpose applies to appendix A, and that a new one would apply to appendix B. Language relating to rated average laboratory life would be added where appropriate to implement the purpose of appendix B.

The reader should note that the proposed conforming amendments to § 564.5 (a) and (c) reflect the agency's recent proposal to amend paragraph S7.7 of Standard No. 108 and § 564.5 (a) and (c) to transfer HB type replaceable light sources to Docket No. 93–11 (60 FR 14247).

II. LEDs and Miniature Halogen Bulbs

The reader is referred to the NPRM for a full discussion of the issues raised by NHTSA. Because the agency has decided to terminate rulemaking on light-emitting diodes (LEDs) and miniature halogen bulbs for the reasons discussed below, it is also deferring any extended published analysis of the comments received on these issues until such time as it may decide to reinitiate rulemaking on this topic.

NHTSA asked for recommendations as to how it might specify a means of determining the number of "equivalent" compartments for lamps equipped with LEDs. AAMA, Ford, and GM thought it premature for the agency to specify unique requirements for lamps equipped with distributive light sources until studies can be completed to assess concerns regarding possible perceptions with respect to brightness. These studies, in AAMA's estimate, would take six months to a year. During that time, its member companies could gather data on intensity, brightness and dimensional features (e.g., aspect ratio) of signal and marking lamps of recent model vehicles. Similar comments came from Ford and GM. Other commenters did not reach a consensus on whether SAE J1889 would be an appropriate specification for LEDs.

Based upon these comments, NHTSA has concluded that there is a great amount of uncertainty within the lighting community about the best method of regulating the photometric requirements of non-traditional light sources for signal and marking lamps. In view of these uncertainties and a lack of consensus among the commenters on methods of equivalent compartmentalization, NHTSA has decided not to pursue further rulemaking at this time. For this reason, it is appropriate also not to pursue the issue of test methods for LEDs and miniature type light sources. However, the docket will remain open to accept comments about these issues, and NHTSA may reinitiate rulemaking at a time when a more definite outcome appears feasible.

Request for Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Effective Date

Since the final rule would not impose any additional burden and is intended to afford an alternative to existing requirements, it is hereby tentatively found that an effective date earlier than 180 days after issuance of the final rule is in the public interest. The final rule

[1] A manufacturer "rates" the design "life" of a light source by "laboratory" tests of a large number of units that are activated under identical and ideal test conditions of temperature, humidity, lack of vibration, etc. When the test sources have been run to burn out, the manufacturer takes the total time data and determines the "average" in hours.

would be effective 30 days after its publication in the **Federal Register**.

Rulemaking Analyses

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking action has not been reviewed under Executive Order 12866. It has been determined that the rulemaking action is not significant under Department of Transportation regulatory policies and procedures. The effect of the rulemaking action would be to allow an alternative headlighting system. It would not impose any additional burden upon any person. A final rule based on such an action would reduce costs both to manufacturers and consumers. Because ballasts would no longer have to be integral with the light source, manufacturers could use a simpler, less expensive connector. Consumers could replace separate elements of an HID-replaceable light source headlamp system as compared with the present regulation which requires replacement of the whole unit. Impacts of the rule are, therefore, so minimal as not to warrant preparation of a full regulatory evaluation.

Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking action in relation to the Regulatory Flexibility Act. I certify that this rulemaking action would not have a significant economic effect upon a substantial number of small entities. Motor vehicle and lighting equipment manufacturers are generally not small businesses within the meaning of the Regulatory Flexibility Act. Further, small organizations and governmental jurisdictions would not be significantly affected as the price of new motor vehicles should not be impacted. Accordingly, no Regulatory Flexibility Analysis has been prepared.

Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 on "Federalism." It has been determined that the rulemaking action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for purposes of the National Environmental Policy Act. The rulemaking action would not have a significant effect upon the environment as it does not affect the present method of manufacturing motor vehicle lighting equipment.

Civil Justice Reform

This rulemaking action would not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Under 49 U.S.C. 30163, a procedure is set forth for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Paperwork Reduction Act

The reporting and recordkeeping requirement associated with part 564 have been approved by the Office and Management and Budget in accordance with 44 U.S.C. chapter 35. The OMB control number is 2127–0563.

List of Subjects in 49 CFR Parts 564 and 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, it is proposed that 49 CFR part 564 be amended as follows:

PART 564—REPLACEABLE LIGHT SOURCE INFORMATION

1. The authority citation for part 564 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166; delegation of authority at 49 CFR 1.50.

2. Part 564 would be amended by revising paragraphs 564.1, 564.2, 564.5(a), (b), (c) and (d)(1), and Section IX of appendix A, and by adding new appendix B, to read as follows:

§ 564.1 Scope.

This part requires the submission of dimensional, electrical specification, and marking/designation information, as specified in Appendix A and Appendix B of this part, for original equipment replaceable light sources used in motor vehicle headlighting systems.

§ 564.2 Purposes.

The purposes of this part are achieved through its Appendices:

(a) The purpose of Appendix A of this part is to ensure the availability to replacement light source manufacturers of the manufacturing specifications of original equipment light sources and thus ensure that replacement light sources are interchangeable with original equipment light sources and provide equivalent performance.

(b) The purpose of Appendix B of this part is to ensure that original equipment light sources are replaceable and that replacement light source equipment provide equivalent performance, and that redesignated or newly developed light sources are designated as distinct and different and noninterchangeable with previously existing light sources.

§ 564.5 Information filing; agency processing of filings.

(a) Each manufacturer of a motor vehicle, original equipment headlamp, or original equipment headlamp replaceable light source, which intends to manufacture a replaceable light source as original equipment or to incorporate a replaceable light source in its headlamps or motor vehicles, shall furnish the information specified in appendix A or appendix B of this part to: Associate Administrator for Safety Performance Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW, Washington, DC 20590. Attn: *Replaceable Light Source Information* Docket No. 93–11 (unless the agency has already filed such information in Docket No. 93–11). If the rated average laboratory life of the light source is not less than 2,000 hours, the manufacturer may furnish the information specified in either Appendix A or Appendix B of this part.

(b) The manufacturer shall submit such information not later than 60 days before it intends to begin the manufacture of the replaceable light source to which the information applies, or to incorporate the light source into a headlamp or motor vehicle of its manufacture. Each submission shall consist of one original set of information and 10 legible reproduced copies, all on 8½ by 11-inch paper.

(c) The Associate Administrator promptly reviews each submission and informs the manufacturer not later than 30 days after its receipt whether the submission has been accepted. Upon acceptance, the Associate Administrator files the information in Docket No. 93–11. The Associate Administrator does not accept any submission that does not contain all the information specified in appendix A or appendix B of this part, or whose accompanying information indicates that any new light source which is the subject of a submission is interchangeable with any replaceable light source for which the agency has previously filed information in Docket No. 93–11.

(d) A manufacturer may request modification of a light source for which information has previously been filed in Docket No. 93–11, and the submission shall be processed in the manner provided by paragraph 564.5(c). A request for modification shall contain the following:

(1) All the information specified in appendix A or appendix B of this part that is relevant to the modification requested, * * *

* * * * *

Appendix A—Information To Be Submitted for Replaceable Light Sources

* * * * *

IX. All other information, dimensions or performance specifications necessary for interchangeability purposes not listed above. If a ballast is required for operation, a complete listing of the requirements and parameters between the light source and ballast, and ballast and the vehicle shall also be provided.

Appendix B—Information To Be Submitted for Long Life Replaceable Light Sources of Limited Definition

I. Bulb Base Interchangeability Dimensions and Tolerance.

A. Angular locations, diameters, key/keyway sizes, and any other interchangeability dimensions for indexing the bulb base in the bulb holder.

B. Diameter, width, depth, and surface finish of seal groove, surface, or other pertinent sealing features.

C. Diameter of the bulb base at the interface of the base and its perpendicular reference surface.

D. Dimensions of features related to retention of the bulb base in the bulb holder such as tabs, keys, keyways, surface, etc.

II. Bulb Holder Interchangeability Dimensions and Tolerances.

A. Mating angular locations, diameters, key/keyway sizes, any other interchangeability dimensions for indexing the bulb base in the bulb holder.

B. Mating diameter, width, depth, and surface, or other pertinent sealing features.

C. Mating diameter of the bulb holder at the interface of the bulb base aperture and its perpendicular reference surface.

D. Mating dimensions of features related to retention of the bulb base in the bulb holder such as tabs, keys, keyways, surface, etc.

III. Electrical Specifications for Each Light Source that Operates with a Ballast and Rated Life of the Light Source/Ballast Combination.

A. Maximum power (in watts).

B. Luminous Flux (in lumens)

C. Rated average laboratory life of the light source/ballast combination (not less than 2,000 hours).

IV. Applicable to light sources that operate with a source voltage other than 12.8 volts direct current, and when a proprietary ballast must be used with the light source.

A. Manufacturer's part number for the ballast.

B. Any other characteristics necessary for system operation.

V. Bulb Markings/Designation—ANSI Number, ECE Identifier, Manufacturer's Part Number, Individual or in Any Combination.

VI. All other identification, dimensions or performance specifications necessary for replaceability or systems operation not listed above.

In consideration of the foregoing, it is proposed that 49 CFR Part 571 be amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.108 would be amended by:

(a) Adding a definition in alphabetical order to section 54 and revising paragraph S7.7(i) to read as set forth below,

(b) Adding new paragraph S7.7(l) to read as set forth below, and

(c) Revising section S8 to read as set forth below:

§ 571.108 Motor Vehicle Safety Standard No. 108 Lamps, Reflective Devices, and Associated Equipment.

* * * * *

Filament means that part of the light source or light emitting element(s), such as a resistive element, the excited portion of a specific mixture of gases under pressure, or any part of other energy conversion sources, that generates radiant energy which can be seen.

* * * * *

S7.7 * * *

* * * * *

(i) A replaceable light source shall be seasoned before measurement of luminous flux as follows:

(1) For a light source with a resistive element type filament, the filament shall be seasoned before measurement of maximum power and luminous flux. Such measurement shall be made with the direct current test voltage regulated within one quarter of one percent. The test voltage shall be design voltage, 12.8v. The measurement of luminous flux shall be in accordance with the Illuminating Engineering Society of North America, LM–45; *IES Approved Method for Electrical and Photometric Measurements of General Service Incandescent Filament Lamps* (April 1980), shall be made with the black cap installed on Type HB1, Type HB2, Type HB4, and Type HB5, and on any other replaceable light source so designed, and shall be made with the electrical conductor and light source base shrouded with an opaque white colored cover, except for the portion normally located within the interior of the lamp housing. The measurement of luminous flux for the Types HB3 and HB4 shall be with the base covered with a white cover shown in Figures 19–I and 20–I. The white covers are used to eliminate the likelihood of incorrect lumen measurement that will occur should the reflectance of the light source base and electrical connector be low.

(2) For a light source using excited gas mixtures as a filament, measurement of maximum power and luminous flux shall be made following seasoning of the light source, including any ballast required for its operation, in accordance with section 4.0 of SAE J2009 FEB93. A test voltage of 12.8 volts DC shall be applied to the ballast input terminals. The measurement of luminous flux shall be in accordance with the Illuminating Engineering Society of North America, LM–45; *IES Approved Method for Electrical and Photometric Measurements of General Service Incandescent Filament Lamps* (April 1980), shall be made with the black cap installed if so designed, and shall be made with any electrical conductors and the light source base shrouded with an opaque white colored cover, except for the portion normally located within the interior of the lamp housing. The measurement of luminous flux for the Types HB3 and HB4 shall be with the base covered with a white cover shown in Figures 19–I and 20–I. The white covers are used to eliminate the likelihood of incorrect lumen measurement that will occur should the reflectance of the light source base and electrical connector be low.

* * * * *

(l) If a ballast is required for operation, each ballast shall bear the following permanent markings:

(1) Name or logo of ballast manufacturer;

(2) Ballast part number or unique identification;

(3) Part number or other unique identification of the light source for which the ballast is designed;

(4) Rated average laboratory life of the light source/ballast combination, if the information for the light source has been filed in appendix B of part 564 of this chapter;

(5) A warning that ballast output voltage presents the potential for severe electrical shock that could lead to permanent injury or death;

(6) Ballast output power in watts and output voltage in rms volts AC or DC;

(7) The date of manufacture; and ,

(8) The symbol 'DOT'."

* * * * *

S8 *Tests and Procedures for Integral Beam and Replaceable Bulb Headlighting Systems.* When tested in accordance with the following procedures, each integral beam headlamp shall meet the requirements

of paragraph S7.4, and each replaceable bulb headlamp shall meet the requirements of paragraph S7.5. Ballasts required to operate specific gas mixture light sources shall be included in the tests specified in paragraphs S8.1 and S8.4 though S8.7.

* * * * *

Issued on: June 13, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–14847 Filed 6–16–95; 8:45 am]

BILLING CODE 4910–59–P

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49 CFR Part 571

[Docket No. 95–42; Notice 1]

RIN 2127–AF67

Federal Motor Vehicle Safety Standards; Seat Belt Assemblies; Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to delete the colorfastness requirements for seat belt assemblies. The purpose of those requirements is to ensure that motorists are not discouraged from using safety belts out of a concern that the belts will transfer their coloring to motorists' clothing. NHTSA tentatively concludes that manufacturer concerns about public acceptance are sufficient by themselves to ensure that manufacturers will make their belts colorfast. Therefore, retention of the requirements is not necessary.

DATES: *Comment Dates:* Comments must be received by August 18, 1995.

Proposed Effective Date: If adopted, the proposed amendments would become effective 30 days following publication of the final rule.

ADDRESSES: Comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket Room hours are 9:30 a.m.–4 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Mr. Clarke B. Harper, Office of Vehicle Safety Standards, NPS–12, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–4916.

SUPPLEMENTARY INFORMATION: Pursuant to the March 4, 1995 directive, "Regulatory Reinvention Initiative," from the President to the heads of departments and agencies, NHTSA has undertaken a review of all its regulations and directives. During the course of this review, the agency identified several requirements and regulations that are potential candidates for rescission, including the colorfastness requirements in Standard No. 209, "Seat Belt Assemblies."

Standard No. 209 includes colorfastness requirements out of concern that occupants would be less likely to wear their seat belt if the webbing stained their clothing. Paragraphs S4.2 (g) and (h) of the Standard require seat belt webbing to resist transferring color to a wet or dry crock cloth and to resist staining (the colorfastness requirements). Test procedures to determine that the colorfastness requirements are met are found in S5.1 (g) and (h) of the Standard.

NHTSA tentatively concludes that market forces would be sufficient, in the absence of the current requirements, to encourage seat belt manufacturers to use webbing that will not stain clothing. The agency is not aware of any basis for believing that rescission of the colorfastness requirements would lessen colorfastness or safety. Therefore, NHTSA is proposing to delete the colorfastness requirements from Standard No. 209. NHTSA is also proposing to delete references to these requirements in Standard No. 213, "Child Restraint Systems."

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." This action has been determined to be not "significant" under the Department of Transportation's regulatory policies and procedures. NHTSA believes that there would be no gain or loss of safety benefits from Standards Nos. 209 and 213 as a result of rescission of the colorfastness requirements. Manufacturers may have a very minor cost savings (approximately $50 per test) as they will no longer have to certify compliance with these requirements.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this notice under the Regulatory Flexibility Act. I hereby certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. As explained above, NHTSA does not anticipate that this proposal will significantly economically impact small manufacturers, or small entities that purchase safety belts or vehicles.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (P.L. 96–511), there are no requirements for information collection associated with this proposed rule.

National Environmental Policy Act

NHTSA has also analyzed this proposed rule under the National Environmental Policy Act and determined that it would not have a significant impact on the human environment.

Executive Order 12612 (Federalism)

NHTSA has analyzed this proposal in accordance with the principles and criteria contained in E.O. 12612, and has determined that this proposed rule would not have significant federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This proposed rule would not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Submission of Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, it is proposed that 49 CFR part 571 be amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

§ 571.209 [Amended]

2. Section 571.209 would be amended by removing S4.2(g), S4.2(h), S5.1(g) and S5.1(h).

3. Section 571.213 would be amended by revising S5.4.1(b) to read as follows:

§ 571.213 Standard No. 213; Child restraint systems.

* * * * *

S5.4.1 * * *

(b) Meet the requirements of S4.2 (e) and (f) of FMVSS No. 209 (§ 571.209); and

* * * * *

Issued on: June 14, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–14901 Filed 6–16–95; 8:45 am]

BILLING CODE 4910–59–P

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49 CFR Part 571

[Docket No. 95–48; Notice 1]

RIN 2127–AF71

Federal Motor Vehicle Safety Standards; Wheel Nuts, Wheel Discs, and Hub Caps

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: NHTSA proposes to rescind Federal Motor Vehicle Safety Standard No. 211, *Wheel Nuts, Wheel Discs, and Hub Caps*. This proposed action is part of NHTSA's efforts to implement the President's Regulatory Reinvention Initiative to remove unnecessary regulations. The agency has tentatively concluded that Standard No. 211 is unnecessarily design-restrictive. Moreover, to the extent that there are safety concerns in this area, the agency believes they are more appropriately addressed by State laws concerning vehicle use than by a Federal motor vehicle safety standard.

DATES: Comments must be received on or before August 3, 1995.

ADDRESSES: Comments must refer to the docket and notice numbers cited at the beginning of this notice and be submitted to: Docket Section, Room 5109, NHTSA, 400 Seventh Street, S.W., Washington, D.C. 20590. It is requested, but not required, that 10 copies of the comments be provided. The Docket Section is open on weekdays from 9:30 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret Gill, Office of Vehicle Safety Standards, Office of Rulemaking, NHTSA, 400 Seventh Street, S.W., Washington, D.C. 20590. Ms. Gill's telephone number is (202) 366–6651. The FAX number is (202) 366–4329.

SUPPLEMENTARY INFORMATION:

President's Regulatory Reinvention Initiative

Pursuant to the March 4, 1995 directive "Regulatory Reinvention Initiative" from the President to the heads of departments and agencies, NHTSA has undertaken a review of its regulations and directives. During the course of this review, NHTSA identified certain regulations that could be rescinded as unnecessary. Among these regulations is Federal Motor Vehicle Safety Standard No. 211, *Wheel Nuts, Wheel Discs, and Hub Caps* (49 CFR 571.211). After a background review, NHTSA explains why it believes Standard No. 211 is unnecessary, and thus proposes to rescind the Standard.

Background

Standard No. 211 was issued in 1967 (32 FR 2408) as one of the initial Federal Motor Vehicle Safety Standards. Since Standard No. 211 applies to motor vehicles and motor vehicle equipment, both vehicle manufacturers and manufacturers of motor vehicle equipment must meet the requirements of Standard No. 211. For many years, Standard No. 211 prohibited all wheel nuts, wheel discs, and hub caps (referred to generically hereafter as "hub caps") that incorporate "winged projections," based on a concern that such projections can pose a hazard to pedestrians and cyclists.

On January 15, 1993, NHTSA published in the **Federal Register** (58 FR 4582) a final rule amending Standard No. 211 to permit "winged projections" on hub caps if, when installed on a wheel rim, the projections do not extend beyond the plane of the wheel rim. NHTSA amended Standard No. 211 after concluding that "winged projections" that do not extend beyond the plane on hub caps do not compromise pedestrian or cyclist safety. Persons who are interested in a more detailed explanation for that conclusion are referred to the January 1993 final rule and the preceding notice of proposed rulemaking (57 FR 24207, June 8, 1992).

The rulemaking which culminated in the January 1993 amendment was initiated in response to a petition submitted by several hub cap manufacturers. After the amendment was published, however, NHTSA received information indicating that the amendment did not provide the regulatory relief that had been requested by the petitioners and anticipated by the agency in issuing the amendment.

John Russell Deane III, an attorney representing the petitioners, wrote to express concern about certain language in the preamble to the January 1993 final rule. NHTSA had stated:

> The agency's intent [in the proposed regulatory text] was to prohibit winged hub caps only if, when the hub cap is installed on any wheel rim/axle combination on which the hub cap fits, the projections extend

beyond the plane described in S4. NHTSA chose the language "physically compatible" instead of "designed to fit" to emphasize that manufacturers must take into consideration not only the specific wheel rim/axle combination(s) on which the hub cap was envisioned or intended to be used, but also any other combinations that the hub cap can fit.

Mr. Deane stated that this preamble language suggests manufacturers may manufacture and distribute hub caps incorporating winged projections only if the manufacturer is sure the product does not fit "any other combinations" which would result in the projections extending beyond the plane of the wheel. He noted, however, that decorative knock-off hub caps have a standardized design which consists of a two-inch long hub adapter to which a cap is installed. This design could be installed on any wheels, both deep wheels, on which the winged projections would not extend beyond the plane of the wheel, and shallower wheels on which the projections would extend beyond such plane. Mr. Deane therefore concluded that complying with the preamble's language would be virtually impossible for nearly all manufacturers of these products, and that the practical effect is to continue to prevent the manufacture and distribution of knock-off hub caps.

Mr. Deane believed that the language of the amendment itself did not create this result and requested a letter of clarification. On review, however, NHTSA concluded that the result at issue is a direct consequence of the regulatory language. That text reads as follows:

Requirements. As installed on *any* physically compatible combination of axle and wheel rim, wheel nuts, wheel discs, and hub caps for use on passenger cars and multipurpose passenger vehicles shall not incorporate winged projections that extend beyond the plane that is tangent to the outboard edge of the wheel rim at all points around its circumference. * * * (Emphasis added.)

The usage of the term "any" is explained in 49 CFR 571.4 as follows:

The word "any," used in connection with a range of values or set of items in the requirements, conditions, and procedures of the standards or regulations in this chapter, means generally the totality of the items or values, any one of which may be selected by the Administration for testing, except where clearly specified otherwise.

Therefore, the regulatory language requires that each hub cap with winged projections, as used in each and every *physically compatible* combination of axle and wheel rim, may not be located such that the winged projections extend beyond the plane of the wheel.

NHTSA's Review of Standard No. 211 and Proposal to Rescind

In reviewing Standard No. 211 under the President's directive, NHTSA was thus faced with a regulation that has the practical effect of preventing the manufacture of all hubcaps with winged projections, notwithstanding the fact that the agency has concluded that such hubcaps only pose a safety concern if the winged projections extend beyond the plane of the wheel. NHTSA strongly believes that its safety standards should not be unnecessarily design-restrictive and therefore considered whether the current standard, or any safety standard, is the best means of addressing the safety concern of winged projections that extend beyond the plane of the wheel.

NHTSA has tentatively concluded that this safety concern primarily relates to how hubcaps with winged projections are used, rather than how they are manufactured, and that the issue is therefore more appropriately addressed by the States than by a Federal motor vehicle safety standard. The agency is therefore proposing to rescind Standard No. 211 for reasons discussed below.

First, NHTSA believes that, because of product liability considerations, it is in the interest of vehicle manufacturers not to place unsafe hubcaps, such as those with winged projections extending beyond the plane of the wheel, on their vehicles. Vehicle manufacturers can ensure that winged hub caps are not used in unsafe hub cap/wheel combinations since they can control which combinations are authorized. The relevant safety concern therefore relates to the availability of such hubcaps in the aftermarket.

As discussed above, the regulatory dilemma facing NHTSA is that hubcaps with winged projections that are safe for one vehicle, since the projections do not extend beyond the plane of the wheel, might be unsafe on other vehicles with more shallow wheels. While the agency recognizes that a total ban on hubcaps with winged projections would ensure safety in this area, it would also unnecessarily restrict vehicle and hubcap design.

The agency believes that the solution to this dilemma is to leave the regulation of hubcaps with winged projections to the States. The relevant safety problem is not how such hubcaps are manufactured but instead how they are used; i.e., whether they are placed on vehicles in such a manner that the winged projections extend beyond the plane of the wheel. While NHTSA does not have the authority to regulate the use of vehicles, the States do. Moreover, all States already regulate the use of vehicles and, to the extent that the States determine that regulations are needed in this area, they can issue ones which are not unnecessarily design-restrictive. They can do this by simply prohibiting the installation of a hub cap with winged projections so that the projections extend beyond the plane of the wheel.

NHTSA believes that rescission of Standard No. 211 would not compromise safety. The potential safety problem addressed by the standard has always been a small one. Moreover, the agency believes that, should there be any significant trend toward vehicle owners installing hubcaps with winged projections in a manner that causes injuries to pedestrians, the States could address that problem through their motor vehicle use regulations.

Proposed Effective Date

Because the proposed rescission of Standard No. 211 would relieve restrictions without compromising safety, the agency tentatively has determined that there is good cause shown that an effective date earlier than 180 days after issuance is in the public interest. Accordingly, the agency proposes that, if adopted, the effective date for the final rule be 30 days after its publication in the **Federal Register**.

Rulemaking Analyses and Notices

1. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule was not reviewed under Executive Order 12866 (Regulatory Planning and Review). NHTSA has analyzed the impact of this rulemaking action and determined that it is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. The proposed rule would not impose any costs or yield any significant savings. It would instead relieve a restriction and thereby provide vehicle and equipment manufacturers with greater flexibility in the design and installation of wheel nuts, wheel discs, and hub caps. Moreover, consumers would likely have a greater choice of hub cap styles. For these reasons, the impacts would be so minimal that they would not warrant preparation of a full regulatory evaluation.

2. Regulatory Flexibility Act

NHTSA has also considered the impacts of this notice under the Regulatory Flexibility Act. I hereby certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. As explained above, the rule would not impose any new requirements but would instead relieve a restriction for hubcaps with winged projections. The proposed rule, if made final, would likely have a small beneficial effect on small manufacturers and dealers of motor vehicle equipment, since they would have greater flexibility in the types of hub caps they may manufacture and sell. Similarly, persons who purchase aftermarket hubcaps would likely have greater choice. For these reasons, small businesses, small organizations and small governmental units which purchase motor vehicles would not be significantly affected by the proposed rule. Accordingly, an initial regulatory flexibility analysis has not been prepared.

3. Executive Order 12612 (Federalism)

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. The agency has determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

4. National Environmental Policy Act

The agency also has analyzed this proposed rule for the purpose of the National Environmental Policy Act, and determined that it would not have any significant impact on the quality of the human environment.

5. Executive Order 12778 (Civil Justice Reform)

The proposed rule would not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Procedures for Filing Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, tires.

In consideration of the following, NHTSA proposes to amend 49 CFR part 571 as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

§ 571.211 [Removed]

2. Section 571.211 would be removed.

Issued on: June 14, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–14902 Filed 6–16–95; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 646 and 659

[I.D. 060695D]

Shrimp and Calico Scallop Fisheries Off the Southern Atlantic States and the Snapper-Grouper Fishery of the South Atlantic; Public Scoping Meetings and Public Hearing

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public scoping meetings and public hearing.

SUMMARY: The South Atlantic Fishery Management Council (Council) is holding public scoping meetings to solicit comments on the following issues: Sale of fish caught under the recreational bag limit (all species); Amendment 2 to the Fishery Management Plan (FMP) for the Shrimp Fishery of the South Atlantic Region (Shrimp FMP) dealing with fishery bycatch issues; the development of an FMP for the calico scallop fishery; and the issue of recreational catch and the commercial bycatch of wreckfish under the FMP for the Snapper-Grouper Fishery of the South Atlantic. The Council is also holding a public hearing to solicit comments on management options for Amendment 1 to the Shrimp FMP that would add rock shrimp to the management unit, prohibit shrimp trawling in certain areas, and establish permitting and reporting requirements for this fishery. See the **SUPPLEMENTARY INFORMATION** section for additional information on the hearing and scoping meetings.

DATES: The public scoping meetings are scheduled to begin at 7 p.m. on Monday, June 19, 1995, at Palm Beach Gardens, FL.

The hearing is scheduled to begin at 1:45 p.m. on Thursday, June 22, 1995, at Palm Beach Gardens, FL.

ADDRESSES: The public scoping meetings and public hearing will be held in conjunction with the South

Atlantic Council public meetings at the Palm Beach Gardens Marriott, 4000 RCA Boulevard, Palm Beach Gardens, FL 33410; telephone: (407) 622–8888.

Requests for copies of the public scoping and hearing documents should be sent to the Council at the following address: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Sharon Coste (Council staff); telephone: 803–571–4366; fax: 803–769–4520.

SUPPLEMENTARY INFORMATION: A public scoping meeting will be held to solicit comments on the sale of fish caught under the recreational bag limit (all species). The Council has considered this issue on numerous occasions over the past several years, and both commercial and recreational fishermen have expressed concerns about this matter. Currently, all of the Council's FMPs allow for the sale of fish taken under a legal bag limit. The issue regarding the sale of fish caught under bag limits involves several considerations including: (1) The definitions of recreational and commercial fishermen; (2) the ethical question of a "recreational" fisherman selling his catch; and (3) the impacts on a commercial quota from selling fish caught under the bag limit. The Council will consider prohibiting the sale of fish by recreational anglers.

The Council will also hold a public scoping meeting to solicit comments on Amendment 2 to the Shrimp FMP to address the issue of finfish bycatch in the shrimp trawl fishery. The Council prepared the Shrimp FMP in 1992 and NMFS approved and implemented it in 1993. At the time the Shrimp FMP was implemented, the Council was concerned about finfish bycatch in the shrimp trawl fishery, and intended to begin developing management measures through an FMP amendment that would reduce bycatch. The Council's goal for bycatch reduction was delayed by the 1990 amendments to the Magnuson Fishery Conservation and Management Act, which mandated a 3-year research program to assess the impacts of shrimp trawl bycatch on fishery resources under management of the Council. The results of this research program have been recently summarized in a NMFS report to Congress titled "A Report to Congress—Cooperative Research Program Addressing Finfish Bycatch in the Gulf of Mexico and South Atlantic Shrimp Fisheries—April 1995."

These research results will be considered by the Council as an important basis for any specific management actions. Recent advances in gear development through cooperative efforts between Federal and state governments and the shrimp industry have produced Bycatch Excluder Devices (BRDs) that successfully exclude juvenile fish from shrimp trawls with a minimum of shrimp loss. At its October 1994 meeting in Wrightsville Beach, NC, the Council recommended that NMFS emphasize the development of efficient and effective BRDs in its bycatch reduction research efforts in the South Atlantic; this would provide the Council and the South Atlantic states with expanded options to reduce finfish bycatch in the shrimp trawl fishery. Both the Council and the South Atlantic states have requested that NMFS proceed as rapidly as possible to obtain the research information needed to identify and assess options for requiring the use of BRDs under the Shrimp FMP and under coastal fishery management plans (CFMPs) developed by the Atlantic States Marine Fisheries Commission (Commission), under provisions of the Atlantic Coastal Fisheries Cooperative Management Act of 1993 (Atlantic Coastal Act).

The Council has asked NMFS to conduct a bycatch characterization of the rock shrimp fishery off Cape Canaveral, FL. Concerns still exist relative to the impacts of shrimp bycatch on the Spanish and king mackerel resources. In addition, under the current Amendment 2 to the CFMP for Weakfish, prepared by the Commission under the Atlantic Coastal Act, all South Atlantic states must implement management measures to reduce the bycatch of weakfish in the shrimp trawl fisheries by 50 percent for the 1996 fishing season. Bycatch reduction plans must be submitted to the Commission's Weakfish Technical Committee by October 1, 1995.

The Council is closely coordinating its efforts with the marine resource agencies of the South Atlantic states and has also initiated action on the shrimp trawl bycatch issue by beginning the scoping process on the development of Amendment 2 to the Shrimp FMP. Among several management alternatives under consideration by the Council are the use of BRDs by season and/or area, as well as areal or seasonal closures.

A public scoping meeting will also be held to solicit comments on the development of an FMP for the calico scallop fishery. The Council may consider the following measures as possible management options for this fishery: (1) No action; (2) prohibit calico scallop trawling (trawling) south of 28°30′ N. lat; (3) prohibit trawling south of 28° N. lat.; (4) allow trawling south of Cape Canaveral only with transponders; (5) prohibit trawling west of Oculina Bank; (6) prohibit trawling in depths of less than 120 ft (36.58 m); (7) allow trawling with transponders only from Duval County through St. Lucie County; (8) limit trawling from Duval County through St. Lucie, County; and (9) prohibit trawling south of Cape Canaveral, FL (i.e., south of 28°35.1′ N. lat.).

A scoping meeting will also be held to solicit comments on wreckfish caught by recreational fishermen and the commercial bycatch of wreckfish outside of the Blake Plateau. Amendments 3 and 4 to the Snapper-Grouper FMP established a management program for wreckfish in the South Atlantic region. A framework measure was also included allowing the Council to set total allowable catch (TAC) each year and at the same time consider other options. Amendment 5 to the Snapper-Grouper FMP established an individual transferable quota (ITQ) system in the wreckfish fishery that only allows ITQ shareholders to land and sell wreckfish, and allows only permitted dealers to handle wreckfish and to buy wreckfish from ITQ shareholders. Recently, there have been reports of wreckfish being caught by recreational fishermen fishing primarily for red grouper off Key West, FL, and commercial fishermen, especially off south Florida, observing occasional wreckfish bycatch. These reports do not indicate frequency or poundage of catches, disposition of catches, nor substantial quantities or targeting of wreckfish. The Council is considering the following management options for regulating this fishery: (1) No action (i.e., do not allow the taking or landing of wreckfish in the South Atlantic region except by ITQ shareholders; (2) set a recreational bag limit of 1 or 2 fish per fisherman per trip; (3) set a recreational bag limit of 1 or 2 fish per boat per day; (4) set a recreational bag limit of 1 or 2 fish per boat per trip; (5) set an undetermined recreational bag limit; (6) set a bag limit of 1 or 2 fish per boat per trip for commercial fishermen in the South Atlantic region who are not wreckfish ITQ shareholders; (7) set a bag limit of 1 or 2 fish per boat per day for commercial fishermen in the South Atlantic region who are not wreckfish ITQ shareholders; (8) set a bag limit of 1 or 2 fish per boat per trip for commercial fishermen in the south Florida area who are not wreckfish ITQ shareholders; (9) set a bag limit of 1 to 2 fish per boat per day for commercial fishermen in the south Florida area who are not wreckfish ITQ shareholders, (10) allow for an undetermined commercial bag limit in the South Atlantic region; and (11) allow for an undetermined commercial bag limit only in the South Florida area.

A final public hearing will be held to solicit comments on management options for Amendment 1 to the Shrimp FMP, which proposes to add rock shrimp to the management unit, prohibit trawling for rock shrimp in designated areas, and implement mandatory permitting and reporting requirements for vessels fishing for, and dealers handling, rock shrimp in the South Atlantic region. In addition, the Council will solicit comments on a mandatory vessel operator license and other management measures to enhance law enforcement that it is considering.

Verbal public comments regarding Shrimp FMP Amendment 1 may be presented at the public hearing and will be considered by the Council prior to taking its intended final action at the June public meeting. Written public comments on the subjects of the scoping meetings, including any Council scoping documents made available to the public, may be submitted to the Council from the time of the scoping meetings until such time as the Council has prepared appropriate and related hearing documents that are available for public comment. For copies of the public scoping and hearing documents, see **ADDRESSES.**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office by June 16, 1995.

For special accommodations regarding the meetings and hearing, contact the Council (see **ADDRESSES**).

Authority: 16 U.S.C. 1801 *et. seq.*

Dated: June 13, 1995.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–14827 Filed 6–13–95; 3:27 pm]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 60, No. 117
Monday, June 19, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Deschutes Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Deschutes PIEC Advisory Committee will meet on July 17 & 18th at the Hood River Inn in Hood River, Oregon. July 17 will be a field trip to selected watersheds on the Mt. Hood National Forest. July 18 will be a regular business meeting. Start times: July 17: 9:30 am; July 18: 8 am. Agenda items include: (1) Watershed restoration projects in the Deschutes Province; (2) Forest health in the Province; (3) A briefing on the Eastside Ecosystem Project; (4) An update on Resource Advisory Committees; and (5) Open public forum. All Deschutes Province Advisory Committee meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Harry Hoogesteger, Province Liaison, USDA, Fort Rock Ranger District, 1230 N.E. 3rd, Bend, Oregon 97701, 503–383–4704.

Dated: June 14, 1995.

Sally Collins,

Deschutes National Forest Supervisor.

[FR Doc. 95–14869 Filed 6–16–95; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801, A–428–801, A–475–801, A–588–804, A–485–801, A–559–801, A–549–801, A–412–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Thailand, and the United Kingdom; Initiation of Antidumping Duty Administrative Reviews and Notice of Request for Revocation of an Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping duty administrative reviews and notice of request for revocation of order.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Romania, Singapore, Thailand, and the United Kingdom. In accordance with the Commerce regulations, we are initiating those administrative reviews. The review period is May 1, 1994, through April 30, 1995. We have also received a request to revoke the order covering ball bearings and parts thereof from Thailand with respect to NMB/Pelmec, the only known producer/exporter of this merchandise from Thailand.

EFFECTIVE DATE: June 19, 1995.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Director, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington D.C. 20230; telephone (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) has received timely requests, in accordance with sections 353.22(a)(1), (2), and (3) of the Department's regulations, for administrative reviews of the antidumping duty orders covering antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Romania, Singapore, Thailand, and the United Kingdom. The orders cover three classes or kinds of merchandise: ball bearings (ball), cylindrical roller bearings (cylindrical), and spherical plain bearings (spherical). Pursuant to section 353.25 of our regulations, NMB/Pelmec has requested revocation of the order covering ball bearings and parts thereof from Thailand. NMB/Pelmec is the only known producer/exporter of this merchandise from Thailand. NMB/Pelmec based its request on its claim that there has been an absence of dumping on sales of the above subject merchandise for a period of three consecutive years.

Initiation of Reviews

In accordance with section 353.22(c) of our regulations, we are initiating administrative reviews of the following antidumping duty orders. We intend to issue the final results of these reviews no later than May 31, 1996.

Proceedings and firms	Class or kind
France A–427–801:	
Franke GmbH	Ball.
Hoesch Rothe-Erde AG	Ball.
Intertechnique	All.
Rollix Defontaine, S.A	Ball.
SKF France (including all relevant affiliates)	All.
SNFA	Ball & Cylindrical.
Societe Nouvelle de Roulements (SNR)	All.
Germany A–428–801:	
FAG Kugelfischer Georg Schaefer AG	All.
Fichtel & Sachs AG	Ball.
Franke GmbH	Ball.
Hoesch Rothe Erde AG	Ball.

Proceedings and firms	Class or kind
INA Walzlager Schaeffler KG	All.
NTN Kugellagerfabrik (Deutschland) GmbH	All.
Rollix & Defontaine, S.A	Ball.
SKF GmbH. (including all relevant affiliates)	All.
Torrington Nadellager (Torrington/Kuensebeck)	Ball & Cylindrical.
Italy A–475–801:	
FAG Italia S.p.A. (including all relevant affiliates)	Ball & Cylindrical.
SKF-Industrie S.p.A	Ball.
Japan A–588–804:	
Asahi Seiko	Ball.
Izumoto Seiko Co., Ltd	All.
Jidosha Buhin Kogyo Co., Ltd	Ball.
Koyo Seiko Company, Ltd	All.
Naiico Spicer Co., Ltd	Ball.
Nippon Pillow Block Sales Company, Ltd	All.
Nippon Seiko K.K. (NSK)	All.
Nissan Trading Co., Ltd	Ball.
NTN Corp	All.
Romania A–485–801:	
Tehnoimportexport, S.A	Ball.
Singapore A–559–801:	
NMB Singapore/Pelmec Ind	Ball.
Thailand A–549–801:	
NMB Thai/Pelmec Thai Ltd	Ball.
United Kingdom A–412–801:	
Barden Corporation	Ball.
NSK Bearings Europe, Ltd./RHP Bearings Ltd	Ball & Cylindrical.
Normalair-Garrett Ltd	Ball & Cylindrical.
Hoffmann U.K	Ball & Cylindrical
Rose Bearing Co., Ltd	Ball & Cylindrical.
Timken Bearing Co	Ball & Cylindrical

Interested parties must submit applications for administrative protective orders in accordance with section 353.34(b) of the Department's regulations.

However, due to the large number of parties to this proceeding, we strongly recommend that parties submit their APO applications as soon as possible, and we will process them on a first-come, first-served basis.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.22(c).

Dated: June 12, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–14935 Filed 6–16–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–357–809]

Notice of Final Determination of Sales at Less than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From Argentina

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 19, 1995.

FOR FURTHER INFORMATION CONTACT: Irene Darzenta or Fabian Rivelis, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–6320 or (202) 482–3853.

Final Determination

The Department of Commerce (the Department) determines that small diameter circular seamless carbon and alloy steel standard, line, and pressure pipe (seamless pipe) from Argentina is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act) (1994). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since our preliminary determination on January 19, 1995 (60 FR 5348, January 27, 1994), the following events have occurred.

In response to a request from respondent Siderca S.A.I.C. (Siderca), we postponed the final determination until June 12, 1995, pursuant to section 735(a)(2)(A) of the Act (60 FR 9012, February 16, 1995).

In our notice of preliminary determination we stated that we would solicit further information on various scope-related issues, including class or kind of merchandise. On February 10, 1995, we issued a questionnaire to interested parties to request further information on whether the scope of the investigation constitutes more than one class or kind of merchandise. Responses to this questionnaire were submitted on March 27, 1995.

On April, 27, 1995, Koppel Steel Corporation, a U.S. producer of subject merchandise which appeared as an interested party from the outset of this investigation, requested co-petitioner status.

On May 5, 1995, respondent submitted its case brief. Petitioner [1] submitted its rebuttal brief on May 15, 1995. In its rebuttal brief, petitioner requested that the Department reject "substantial portions" of Siderca's case brief because it allegedly constituted a "new submission of factual information." Siderca objected to this request on May 19, 1995. Petitioner responded to this letter on May 26, 1995. However, we determined that Siderca's case brief did not contain new factual information. (See Comment 1 in the "Interested Party Comment" section

[1] All references to "petitioner" in this notice include Koppel Steel Corporation.

of this notice.) In addition, on June 1, 1995, the Department returned Siderca's May 19, 1995, letter, as well as petitioner's letter of May 26, 1995, because they constituted unsolicited submissions untimely filed after the briefing period.

Scope of Investigation

The following scope language reflects certain modifications made for purposes of the final determination, where appropriate, as discussed in the "Scope Issues" section below.

The scope of this investigation includes seamless pipes produced to the ASTM A–335, ASTM A–106, ASTM A–53 and API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of this investigation also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters below, regardless of specification.

For purposes of this investigation, seamless pipes are seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3 mm (4.5 inches) in outside diameter, regardless of wall thickness, manufacturing process (hot-finished or cold-drawn), end finish (plain end, bevelled end, upset end, threaded, or threaded and coupled), or surface finish. These pipes are commonly known as standard pipe, line pipe or pressure pipe, depending upon the application. They may also be used in structural applications. Pipes produced in non-standard wall thicknesses are commonly referred to as tubes.

The seamless pipes subject to these investigations are currently classifiable under subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (HTSUS).

The following information further defines the scope of this investigation, which covers pipes meeting the physical parameters described above:

Specifications, Characteristics and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the American Society for Testing and Materials (ASTM) standard A–106 may be used in temperatures of up to 1000 degrees fahrenheit, at various American Society of Mechanical Engineers (ASME) code stress levels. Alloy pipes made to ASTM standard A–335 must be used if temperatures and stress levels exceed those allowed for A–106 and the ASME codes. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53 and API 5L specifications. Such triple certification of pipes is common because all pipes meeting the stringent A–106 specification necessarily meet the API 5L and ASTM A–53 specifications. Pipes meeting the API 5L specification necessarily meet the ASTM A–53 specification. However, pipes meeting the A–53 or API 5L specifications do not necessarily meet the A–106 specification. To avoid maintaining separate production runs and separate inventories, manufacturers triple certify the pipes. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple certified pipes is in pressure piping systems by refineries, petrochemical plants and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, A–106 pipes may be used in some boiler applications.

The scope of this investigation includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, and whether or not also certified to a non-covered specification. Standard, line and pressure applications and the above-listed specifications are defining characteristics of the scope of this investigation. Therefore, seamless pipes meeting the physical description above, but not produced to the A–335, A–106, A–53, or API 5L standards shall be covered if used in a standard, line or pressure application.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in A–106 applications. These specifications generally include A–162, A–192, A–210, A–333, and A–524. When such pipes are used in a standard, line or pressure pipe application, such products are covered by the scope of this investigation.

Specifically excluded from this investigation are boiler tubing and mechanical tubing, if such products are not produced to A–335, A–106, A–53 or API 5L specifications and are not used in standard, line or pressure applications. In addition, finished and unfinished OCTG are excluded from the scope of this investigation, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications. Finally, also excluded from this investigation are redraw hollows for cold-drawing when used in the production of cold-drawn pipe or tube.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Scope Issues

Interested parties in these investigations have raised several issues related to the scope. We considered these issues in our preliminary determination and invited additional comments from the parties. These issues, which are discussed below, are: (A) Whether to continue to include end use as a factor in defining the scope of these investigations; (B) whether the seamless pipe subject to these investigations constitutes more than one class or kind of merchandise; and (C) miscellaneous scope clarification issues and scope exclusion requests.

A. End Use

We stated in our preliminary determination that we agreed with petitioner that pipe products identified as potential substitutes used in the same applications as the four standard, line, and pressure pipe specifications listed in the scope would fall within the class or kind of subject merchandise and, therefore, within the scope of any orders issued in these investigations. However, we acknowledged the difficulties involved with requiring end-use certifications, particularly the burdens placed on the Department, the U.S. Customs Service, and the parties, and stated that we would strive to simplify any procedures in this regard.

For purposes of these final determinations, we have considered carefully additional comments submitted by the parties and have determined that it is appropriate to continue to employ end use to define the scope of these cases with respect to non-listed specifications. We find that the generally accepted definition of standard, line and pressure seamless pipes is based largely on end use, and that end use is implicit in the description of the subject merchandise. Thus, end use must be considered a significant defining characteristic of the subject merchandise. Given our past experience with substitution after the imposition of antidumping orders on steel pipe products,[2] we agree with petitioner that if products produced to a non-listed specification (*e.g.*, seamless pipe produced to A–162, a non-listed specification in the scope) were actually used as standard, line, or pressure pipe, then such product would fall within the same class or kind of merchandise subject to these investigations.

Furthermore, we disagree with respondents' general contention that using end use for the scope of an antidumping case is beyond the purview of the U.S. antidumping law. The Department has interpreted scope language in other cases as including an end-use specification. *See Ipsco Inc.* v. *United States*, 715 F.Supp. 1104 (CIT 1989) (*Ipsco*). In *Ipsco*, the Department had clarified the scope of certain orders, in particular the phrase, "intended for use in drilling for oil and gas," as covering not only API specification OCTG pipe but, "'all other pipe with [certain specified] characteristics used in OCTG applications * * *.'" Ipsco at 1105. In reaching this determination, the Department also provided an additional description of the covered merchandise, and initiated an end-use certification procedure.

Regarding implementation of the end use provision of the scope of these investigations, and any orders which may be issued in these investigations, we are well aware of the difficulty and burden associated with such certifications. Therefore, in order to maintain the effectiveness of any order that may be issued in light of actual substitution in the future (which the end-use criterion is meant to achieve), yet administer certification procedures in the least problematic manner, we have developed an approach which simplifies these procedures to the greatest extent possible.

First, we will not require end-use certification until such time as petitioner or other interested parties provide a reasonable basis to believe or suspect that substitution is occurring.[3] Second, we will require end-use certification only for the product(s) (or specification(s)) for which evidence is provided that substitution is occurring. For example, if, based on evidence provided by petitioner, the Department finds a reasonable basis to believe or suspect that seamless pipe produced to A–162 specification is being used as pressure pipe, we will require end-use certifications for imports of A–162 specification. Third, normally we will require only the importer of record to certify to the end use of the imported merchandise. If it later proves necessary for adequate implementation, we may also require producers who export such products to the United States to provide such certification on invoices accompanying shipments to the United States. For a complete discussion of interested party comments and the Department's analysis on this topic, *see* June 12, 1995, *End Use Decision Memorandum* from Deputy Assistant Secretary Barbara Stafford (DAS) to Assistant Secretary Susan Esserman (AS).

B. Class or Kind

In the course of these investigations, certain respondents have argued that the scope of the investigations should be divided into two classes or kinds. Siderca S.A.I.C., the Argentine respondent, has argued that the scope should be divided according to size: seamless pipe with an outside diameter of 2 inches or less and pipe with an outside diameter of greater than 2 inches constitute two classes or kinds. Mannesmann S.A., the Brazilian respondent, and Mannesmannrohren-Werke, A.G., the German respondent, argued that the scope should be divided based upon material composition: carbon and alloy steel seamless pipe constitute two classes or kinds.

In our preliminary determinations, we found insufficient evidence on the record that the merchandise subject to these investigations constitutes more than one class or kind. We also indicated that there were a number of areas where clarification and additional comment were needed. For purposes of the final determination, we considered a significant amount of additional information submitted by the parties on this issue, as well as information from other sources. This information strongly supports a finding of one class or kind of merchandise. As detailed in the June 12, 1995, *Class or Kind Decision Memorandum* from DAS to AS, we analyzed this issue based on the criteria set forth by the Court of International Trade in *Diversified Products v. United States*, 6 CIT 155, 572 F. Supp. 883 (1983). These criteria are as follows: (1) The general physical characteristics of the merchandise; (2) expectations of the ultimate purchaser; (3) the ultimate use of the merchandise; (4) the channels of trade in which the merchandise moves; and (5) the cost of that merchandise.

In the past, the Department has divided a single class or kind in a petition into multiple classes or kinds where analysis of the *Diversified Products* criteria indicates that the subject merchandise constitutes more than one class or kind. *See, for exomple, Final Determination of Sales at Less than Fair Value; Anti-Friction Bearings (Apart from Tapered Roller Bearings) from Germany*, 54 FR 18992, 18998 (May 3, 1989) ("*AFBs from Germany*"); *Pure and Alloy Magnesium from Conada: Final Affirmative Determination; Rescission of Investigation and Partial Dismissal of Petition*, 57 FR 30939 (July 13, 1992).

1. Physical Characteristics

We find little meaningful difference in physical characteristics between seamless pipe above and below two inches. Both are covered by the same technical specifications, which contains detailed requirements.[4] While we recognize that carbon and alloy pipe do have some important physical

[2] *See Preliminary Affirmative Determination of Scope Inquiry on Antidumping Duty Orders on Certain Welded Non-Alloy Steel Pipes from Brazil, the Republic of Korea, Mexico and Venezuela*, 59 FR 1929, January 13, 1994.

[3] This approach is consistent with petitioner's request.

[4] The relevant ASTM specifications, as well as product definitions from other independent sources (*e.g.*, American Iron and Steel Institute (AISI)), describe the sizes for standard, line, and pressure pipe, as ranging from ½ inch to 60 inches (depending on application). None of these descriptions suggest a break point at two inches.

differences (primarily the enhanced heat and pressure tolerances associated with alloy grade steels), it is difficult to say where carbon steel ends and alloy steel begins. As we have discussed in our *Class or Kind Decision Memorandum* of June 12, 1995, carbon steel products themselves contain alloys, and there is a range of percentages of alloy content present in merchandise made of carbon steel. We find that alloy grade steels, and pipes made therefrom, represent the upper end of a single continuum of steel grades and associated attributes.[5]

In those prior determinations where the Department divided a single class or kind, the Department emphasized that differences in physical characteristics also affected the capabilities of the merchandise (either the mechanical capabilities, as in *AFBs from Germany*, 54 FR at 18999, 19002–03, or the chemical capabilities, as in *Pure and Alloy Magnesium from Canada*, 57 FR at 30939), which in turn established the boundaries of the ultimate use and customer expectations of the products involved.

As the Department said in *AFBs from Germany*,

> [t]he real question is whether the physical differences are so material as to alter the essential nature of the product, and, therefore, rise to the level of class or kind distinctions. We believe that the physical differences between the five classes or kinds of the subject merchandise are fundamental and are more than simply minor variations on a theme.

54 FR at 19002. In the present cases, there is insufficient evidence to conclude that the differences between pipe over 2 inches in outside diameter and 2 inches or less in outside diameter, rise to the level of a class or kind distinction.

Furthermore, with regard to Siderca's allegation that a two-inch breakpoint is widely recognized in the U.S. market for seamless pipe, the Department has found only one technical source of U.S. market data for seamless pipe, the *Preston Pipe Report*. The *Preston Pipe Report*, which routinely collects and publishes U.S. market data for this merchandise, publishes shipment data for the size ranges ½ to 4½ inches: it does not recognize a break point at 2 inches. Accordingly, the Department does not agree with Siderca that "the U.S. market" recognizes 2 inches as a physical boundary line for the subject merchandise.

In these present cases, therefore, the Department finds that there is insufficient evidence that any physical differences between pipe over 2 inches in outside diameter and 2 inches or less in outside diameter, or between carbon and alloy steel, rise to the level of class or kind distinctions.

2. Ultimate Use and Purchaser Expectations

We find no evidence that pipe above and below two inches is used exclusively in any specific applications. Rather, the record indicates that there are overlapping applications. For example, pipe above and below two inches may both be used as line and pressure pipe. The technical definitions for line and pressure pipe provided by ASTM, AISI, and a variety of other sources do not recognize a distinction between pipe over and under two inches.

Likewise, despite the fact that alloy grade steels are associated with enhanced heat and pressure tolerances, there is no evidence that the carbon or alloy content of the subject merchandise can be differentiated in the ultimate use or expectations of the ultimate purchaser of seamless pipe.

3. Channels of Trade

Based on information supplied by the parties, we determine that the vast majority of the subject merchandise is sold through the same channel of distribution in the United States and is triple-stenciled in order to meet the greatest number of applications.

Accordingly, the channels of trade offer no basis for dividing the subject merchandise into multiple classes or kinds based on either the size of the outside diameter or on pipe having a carbon or alloy content.

4. Cost

Based on the evidence on the record, we find that cost differences between the various products do exist. However, the parties varied considerably in the factors which they characterized as most significant in terms of affecting cost. There is no evidence that the size ranges above and below two inches, and the difference between carbon and alloy grade steels, form a break point in cost which would support a finding of separate classes or kinds.

In conclusion, while we recognize that certain differences do exist between the products in the proposed class or kind of merchandise, we find that the similarities significantly outweigh any differences. Therefore, for purposes of the final determination, we will continue to consider the scope as constituting one class or kind of merchandise.

C. Miscellaneous Scope Clarification Issues and Exclusion Requests

The miscellaneous scope issues include: (1) Whether OCTG and unfinished OCTG are excluded from the scope of these investigations; (2) whether pipes produced to non-standard wall thicknesses (commonly referred to as "tubes") are covered by the scope; (3) whether certain merchandise (*e.g.*, boiler tubing, mechanical tubing) produced to a specification listed in the scope but used in an application excluded from the scope is covered by the scope; and (4) whether redraw hollows used for cold drawing are excluded from the scope. For a complete discussion of interested party comments and the Department's analysis on these topics, *see* June 12, 1995, *Additional Scope Clarifications Decision Memorandum* from DAS to AS.

Regarding OCTG, petitioner requested that OCTG and unfinished OCTG be included within the scope of these investigations if used in a standard, line or pressure pipe application. However, OCTG and unfinished OCTG, even when used in a standard, line or pressure pipe application, may come within the scope of certain separate, concurrent investigations. We intend that merchandise from a particular country not be classified simultaneously as subject to both an OCTG order and a seamless pipe order. Thus, to eliminate any confusion, we have revised the scope language above to exclude finished and unfinished OCTG, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in a standard, line or pressure pipe application, and, as with other non-listed specifications, may be subject to end-use certification if there is evidence of substitution.

Regarding pipe produced in non-standard wall thicknesses, we determine that these products are clearly within the parameters of the scope of these investigations. For clarification purposes, we note that the physical parameters of the scope include all seamless carbon and alloy steel pipes, of circular cross-section, not more than 4.5 inches in outside diameter, *regardless of wall thickness*. Therefore, the fact that such products may be referred to as tubes by some parties, and may be multiple-stenciled, does not render them outside the scope.

Regarding pipe produced to a covered specification but used in a non-covered application, we determine that these products are within the scope. We agree with the petitioner that the scope of this investigation includes all merchandise produced to the covered specifications and meeting the physical parameters of the scope, regardless of application. The end-use criteria included in the scope is only applicable to products which can be substituted in the applications to which the covered specifications are put *i.e.* standard, line, and pressure applications.

It is apparent that at least one party in this case interpreted the scope incorrectly. Therefore, we have clarified the scope to make it more explicit that all products made to ASTM A–335, ASTM A–106, ASTM A–53 and API 5L are covered, regardless of end use.

With respect to redraw hollows for cold drawing, the scope language excludes such products specifically when used in the production of cold-drawn pipe or tube. We understand that petitioner included this exclusion language expressly and intentionally to ensure that hollows imported into the United States are sold as intermediate products, not as merchandise to be used in a covered application.

Standing

The Argentine, Brazilian, and German respondents have challenged the standing of Gulf States Tube to file the petition with respect to pipe and tube between 2.0 and 4.5 inches in outside diameter, arguing that Gulf States Tube does not produce these products.

Pursuant to section 732(b)(1) of the Act, an interested party as defined in section 771(9)(C) of the Act has standing to file a petition. (*See also* 19 CFR 353.12(a).) Section 771(9)(C) of the Act defines "interested party," *inter alia*, as a producer of the like product. For the reasons outlined in the "Scope Issues" section above, we have determined that the subject merchandise constitutes a single class or kind of merchandise. The International Trade Commission (ITC) has also preliminarily determined that there is a single like product consisting of circular seamless carbon and alloy steel standard, line, and pressure pipe, and tubes not more than 4.5 inches in outside diameter, and including redraw hollows. (*See* USITC Publication 2734, August 1994 at 18). For purposes of determining standing, the Department has determined to accept the ITC's definition of like product, for the reasons set forth in the ITC's preliminary determination. Because Gulf States is a producer of the like product, it has standing to file a petition with respect to the class or kind of merchandise under investigation. Further, as noted in the "Case History" section of this notice, on April 27, 1995, Koppel, a U.S. producer of the product size range at issue, filed a request for co-petitioner status, which the Department granted. As a producer of the like product, Koppel also has standing.

The Argentine respondent argues that Koppel's request was filed too late to confer legality on the initiation of these proceedings with regard to the products at issue. Gulf States Tube maintains that the Department has discretion to permit the amendment of a petition for purposes of adding co-petitioners who produce the domestic like product, at such time and upon such circumstances as deemed appropriate by the Department.

The Court of International Trade (CIT) has upheld in very broad terms the Department's ability to allow amendments to petitions. For example, in *Citrosuco Paulista, S.A.* v. *United States*, 704 F. Supp. 1075 (Ct. Int'l Trade 1988), the Court sustained the Department's granting of requests for co-petitioner status filed by six domestic producers on five different dates during an investigation. The Court held that the addition of the co-petitioners cured any defect in the petition, and that allowing the petition to be amended was within Commerce's discretion:

> [S]ince Commerce has statutory discretion to allow amendment of a dumping petition *at any time*, and since Commerce may self-initiate a dumping petition, any defect in a petition filed by [a domestic party is] cured when domestic producers of the like product [are] added as co-petitioners and Commerce [is] not required to start a new investigation.

Citrosuco, 704 F. Supp. at 1079 (emphasis added). The Court reasoned that if Commerce were to have dismissed the petition for lack of standing, and to have required the co-petitioners to refile at a later date, it "would have elevated form over substance and fruitlessly delayed the antidumping investigation * * * when Congress clearly intended these cases to proceed expeditiously." *Id.* at 1083–84.

Koppel has been an interested party and a participant in these investigations from the outset. The timing of Koppel's request for co-petitioner status and the fact that it made its request in response to Siderca's challenge to Gulf States's Tube's standing does not render its request invalid. *See Final Affirmative Countervailing Duty Determination; Live Swine and Fresh, Chilled, and Frozen Pork Products from Canada*, 50 FR 25097 (June 17, 1985). The Department has rejected a request to add a co-petitioner based on the untimeliness of the request only where the Department determined that there was not adequate time for opposing parties to submit comments and for the Department to consider the relevant arguments. *See Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Hollow Products from Sweden*, 52 FR 5794, 5795, 5803 (February 26, 1987). In this investigation, the respondents have had an opportunity to comment on Koppel's request for co-petitioner status, and the Argentine respondent has done so in its case brief. Therefore, we have determined that, because respondents would not be prejudiced or unduly burdened, amendment of the petition to add Koppel as co-petitioner is appropriate.

Period of Investigation

The period of investigation (POI) is January 1, through June 30, 1994.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Best Information Available

In accordance with section 776(c) of the Act, we have determined that the use of best information available (BIA) is appropriate for Siderca, the only named respondent in this investigation. As stated in our notice of preliminary determination, on September 12, 1994, Siderca notified the Department that it would not participate in this investigation. Because Siderca refused to answer the Department's questionnaire, we find that it has not cooperated in this investigation.

In determining what rate to use as BIA, the Department follows a two-tiered BIA methodology, whereby the Department may impose the most adverse rate upon those respondents who refuse to cooperate or otherwise significantly impede the proceeding, or assign a lower rate for those respondents who have cooperated in an investigation. The Department's BIA methodology for uncooperative respondents is to assign the higher of the highest margin alleged in the petition or the highest rate calculated for another respondent. The Department's practice for applying BIA to cooperative respondents is to use the higher of the average of the margins alleged in the petition or the calculated

[5] The Department has had numerous cases where steel products including carbon and alloy grades were considered to be within the same class or kind. *See, e.g., Preliminary Determination of Sales at Less than Fair Value: Oil Country Tubular Goods from Austria, et al.*, 60 FR 6512 (February 2, 1995); *Final Determination of Sales at Less than Fair Value: Certain Alloy and Carbon Hot-Rolled Bars, Rods, and Semi-Finished Products of Special Bar Quality Engineered Steel from Brazil*, 58 FR 31496 (June 3, 1993); *Final Determination of Sales at Less than Fair Value: Forged Steel Crankshafts from the United Kingdom*, 60 FR 22045 (May 9, 1995).

margin for another firm for the same class or kind of merchandise from the same country. *See Final Determination of Sales at Less than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany*, 54 FR 18992, 19033 (May 3, 1989). The Department's two-tier methodology for assigning BIA based on the degree of respondents' cooperation has been upheld by the U.S. Court of Appeals for the Federal Circuit. (*See Allied-Signal Aerospace Co.* v. *the United States*, 996 F2d 1185 (Fed Cir. 1993); *see also Krupp Stahl AG. et al* v. *the United States*, 822 F. Supp. 789 (CIT 1993).) Because there are no other respondents in this investigation we are assigning to Siderca, as BIA, the highest margin among the margins alleged in the petition.

Fair Value Comparisons

To determine whether sales of subject merchandise from Germany to the United States were made at less than fair value, we compared United States price (USP) to foreign market value (FMV) as reported in the petition. *See Initiation of Antidumping Duty Investigation of Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Argentina, Brazil, Germany, and Italy* (59 FR 37025, July 20, 1994).

Interested Party Comments

Comment 1

Petitioner contends that Siderca's submissions of factual information made after its September 12, 1994, letter indicating that it would not participate in the investigation, are untimely. As such, they must be stricken from the record and not considered by the Department in its final determination. In addition, petitioner states that none of the factual information upon which Siderca relies in its case brief has been verified by the Department, which is required under the antidumping statute if it is to be utilized by the Department in making a final determination. Also, petitioner states that some of Siderca's later submissions (e.g., submissions on October 12, 1994, and March 27, 1995) related to standing and class or kind issues did not contain certifications of factual information.

DOC Position

We disagree with petitioner. Despite the fact that Siderca chose not to respond to the Department's questionnaire, and thus not to participate in this investigation, the Department cannot preclude it from commenting as an interested party in this investigation. Furthermore, all of the information contained in Siderca's brief was submitted previously on the record, so that its case brief contained no new factual information. In addition, the omission of certification from earlier submissions was a clerical oversight which was cured without prejudicing petitioner.

Comment 2

Siderca maintains that Gulf States is not a producer of standard, line and pressure pipe between 2.0 and 4.5 inches in outer diameter (OD) and, therefore, lacks standing as an "interested party" under section 771(9)(C) of the Act to petition on behalf the U.S. industry which produces this merchandise. Siderca also asserts that the request of Koppel Steel Corporation for co-petitioner status does not remedy Gulf States' lack of standing or cure the petitioner's defects. Consequently, Siderca urges the Department to rescind the initiation of the investigation with respect to seamless pipe in the OD size range between 2.0 and 4.5.

Specifically, respondent states that Gulf States openly admits in the petition that it neither manufactures or sells seamless pipe greater than or equal to 2⅜ inches in OD, and that publicly available evidence shows that Gulf States neither manufactures or sells seamless pipe between 1.9 and 2⅜ inches in OD. Respondent also maintains that Gulf States fails to meet the statutory test for interested party status to file a petition under Section 771(9)(C) of the Act, and has no legally-recognizable stake in the market for pipe greater than 2.0 inches in OD, as provided for in the legislative history of the standing requirement.

Furthermore, Siderca asserts that the ITC's one like product preliminary determination does not change this analysis because the like product determination made by the ITC when it considers the issue of material injury is different from the like product determination made by the Commerce Department when it considers the issue of standing. The Commerce Department is not required to adopt the ITC's like product definition for purposes of determining petitioner's standing. Siderca adds that seamless carbon and alloy pipe is produced in a continuum of sizes at least up to 36 inches in OD; there is no "bright line" at any point on that continuum above 2.0 inches, other than a line that may be drawn where the facilities of producers impose physical limitations. Thus, if the Department concludes that a producer of seamless pipe up to 2.0 inches is an interested party with regard to seamless pipe of greater OD, then there is no more of a justification for a producer such as Gulf States to petition on pipe up to 4.5 inches than there is for it to petition up to 36 inches. Once the Department determines that a petitioner is an interested party for sizes beyond its production capability, there is no reason for drawing the line at 4.5 inches or any other point along the continuum.

With respect to Koppel's request for co-petitioner status, respondent states that this request was filed too late (almost 10 months after the June 23, 1994, filing of the petition) to confer legality on the initiation of this proceeding with regard to seamless pipe between 2.0 and 4.5 inches in OD. According to Siderca, this action is unprecedented, and was precipitated by Gulf States' and Koppel's realization that the petition and Department's subsequent initiation are legally deficient with respect to seamless pipe over 2.0 inches. Siderca also points out that all of the information on which the Department relied in making its initiation determination came from Gulf States, not Koppel. If Koppel is not accepted as co-petitioner, the initiation of these investigations with regard to pipe between 2.0 and 4.5 inches in OD must be rescinded because Gulf States is not an interested party with respect to merchandise of this size range.

Siderca also asserts that if the Department does not reject the petition or rescind the initiation with respect to seamless pipe of this size range, it should determine that there are two classes or kinds of merchandise, *i.e.*, 2.0 inches and below; and between 2.0 and 4.5 inches, because these pipe size ranges differ in terms of physical characteristics, purchaser expectations, end use and cost.

Gulf States contends that Siderca's objection to its standing is without merit because: (1) There is no basis in law or in fact for treating pipe larger than 2.0 inches in OD as a separate class or kind of merchandise; and (2) in any event, Gulf States produces pipe in the categories of merchandise proposed by Siderca. Contrary to respondent's claim, petitioner points out that in its March 27, 1995, submission, it provided extensive factual information concerning the stencilling, sale, distribution, and cost of production for all sizes of subject merchandise produced by Gulf States, including seamless pipe larger than 2.0 inches in OD. Therefore, petitioner asserts that even if pipe over 2.0 inches in OD were to constitute a separate class or kind of merchandise, Gulf States would nonetheless have standing as a petitioner. Additionally, Gulf States maintains that Siderca's claim that Koppel cannot be added as a co-petitioner at the time it made its request on April 27, 1995, is legally incorrect. Citing *Citrosuco Paulista, S.A.* v. *United States* (704 F. Supp. 1075 (CIT 1988)), petitioner asserts that the Department has discretion to permit the amendment of a petition for the purposes of adding co-petitioners who produce the like product, at such time and upon such circumstances as deemed appropriate by the Department.

DOC Position

We agree with petitioner for reasons explained in our section on "Standing" in this notice.

Comment 3

Siderca argues that the Department should reject petitioner's end use language in the scope of this investigation which includes products not subject to this investigation if they are used in standard line pipe applications.

Respondent maintains that such an end use requirement would result in a disparate treatment between imported goods that have crossed the border and domestic goods once they are competing in the U.S. marketplace, which is contrary to Article III of the General Agreement on Tariffs and Trade (GATT).

Respondent also argues that if an end use certification program were implemented, it would be virtually unadministerable because importers and producers normally do not know the end use of their product. Moreover, respondent cites the *Oil Country Tubular Goods from Canada* investigation, in which the Department abandoned its end use program after two years, because the program was cumbersome and difficult to administer.

Petitioner states that end use is an appropriate element of the scope and that the Department has included end use has included end use as an element of scope in other investigations. Furthermore, petitioner maintains that because of overlapping properties, it is possible that pipe made to other specifications than A–53, A–106, A–335, and API–5L may be applied to uses for which those specifications are normally used, creating the likelihood of substitution. Petitioner recognizes that defining scope by end use presents more complications for the enforcement of an order, but, for simplification, has suggested that the Department employ a rebuttable presumption that specification is an indication of use for pipe in non-listed specifications.

Finally, petitioner counters Siderca's assertion that an end use element in the scope is contrary to GATT by stating that the GATT is not violated unless the country imposing the duties has disregarded its obligations under Article VI of the Antidumping Code; and that Siderca does not allege that any provisions of relevant GATT antidumping law would be violated if the Department, following established U.S. practice continues to consider end use as a scope criterion.

DOC Position

We agree with petitioner for the reasons outlined in the "Scope Issues" section of this notice.

Comment 4

Siderca argues that there are two classes or kinds of merchandise: standard line pipe 2.0 inches in outside diameter and below; and between 2.0 and 4.5 inches in outside diameter. Respondent maintains that the criteria articulated in *Diversified Products* support its assertion of two classes of kinds. Specifically, respondent argues that the distinct size differences between steel pipe below 2.0 inches in outside diameter and steel pipe between 2.0 and 4.5 inches are recognized in the industry as differentiating physical characteristics. Respondent maintains that line capacity, operating pressure, temperature, stress level, and structural integrity will determine the size of the pipe, and in turn, will determine the particular application.

With respect to customer expectations, Siderca argues that customers purchase pipe in specific sizes knowing that different sizes have different applications. Respondent states that pipe under 2.0 inches is used almost exclusively as pressure pipe because of the unique characteristics of pipe that size. Moreover, respondent claims that a purchaser will expect pipe above 2.0 inches to be suitable for line pipe applications.

Regarding channels of trade, respondent argues that although pipe below 2.0 inches and pipe between 2.0 and 4.5 inches are sold though distributors, this fact does not make these two groups a single class or kind.

Siderca argues that the ultimate use of the product depends on the size. Respondent states that pipe under 2.0 inches is used almost exclusively as pressure pipe and most pipes between 2.0 and 4.5 inches are sold as line pipe. Furthermore, respondent claims that seamless pipe is almost never used in standard pipe applications.

Respondent contends that the cost of seamless pipe differs significantly depending on size. Respondent states that smaller pipe also costs more to manufacture because it requires more manufacturing time, on a kilogram basis, than larger pipe. Furthermore, respondent maintains that pipe in sizes under 2.0 inches is usually cold-drawn, a more costly process than hot-finishing, which is the most common production process for pipe above 2.0 inches.

Petitioner argues that an analysis of the five factors used in the diversified products analysis supports a single class or kind of merchandise. Regarding the physical characteristics, petitioner argues that seamless standard, line, and pressure pipe each meet the same physical characteristics described in the petition. Petitioner argues that the use of different production facilities to make physically identical merchandise does not constitute a difference in physical characteristics. Petitioner also states the respondent's argument that cold-drawn merchandise (pipe below 2.0 inches) and hot-finished merchandise (pipe above 2.0 inches) indicated two classes or kinds is contrary to the Department's decision not to create separate classes of kinds based on cold-drawn and hot-rolled products in *Stainless Steel Bar from Italy*. Petitioner asserts that respondent's suggestions that end users have different expectations for pipe below 2.0 inches is unfounded. Petitioner contends that the physical characteristics of pipe are set forth in the ASTM and API specifications, which apply to all subject pipe regardless of size. Petitioners contend that the sales subject seamless pipes are made through the same channels of trade. Petitioner maintains that the ultimate end use of the product is largely dictated by the specification to which the pipe is produced. Petitioner argues that since the majority of imported subject pipe is triple certified, the pipe may be put to use in any of the uses that either A–106, A–53, or API 5L may be applied.

Petitioner argues that all subject seamless pipe has sufficiently similar costs to be considered a single class or kind of merchandise. Petitioner contends that since the majority of the subject pipe is triple certified, it has basically identical costs regardless of the customer to whom it is sold and that there are only minimal differences in production costs between pipe over 2.0 inches and pipe under 2.0 inches.

DOC Position

We agree with petitioner for the reasons outlined in the "Scope Issues" section of this notice.

Comment 5

In order to eliminate confusion and uncertainty of the scope, respondent argues that the Department should clarify the language of the scope and explicitly exclude products that are not intended to be part of the investigation. Specifically, respondent argues that the Department exclude unfinished oil country tubular goods and tubing products made in non-pipe sizes. Furthermore, respondent contends that language in the scope concerning "redraw hollows for cold-drawing when used in the production of cold-drawn pipe or tube," is confusing. Respondent suggests the Department revise this language to simply state that the scope excludes hollows for cold-drawing. This would eliminate confusion, while not changing the intended scope of the exclusion.

Petitioner asserts that a modification of the scope to Siderca's requests would be unsupported by substantial evidence on the record. With respect to OCTG, petitioner notes that the scope explicitly excludes OCTG when it is not used or intended for use in one of the listed applications and that no further clarification is necessary. Petitioner states that tubing in "non-pipe" sizes is expressly covered by the scope of the investigation when produced to one of the listed specifications or when used in a listed application. Petitioner maintains that the language in the scope with respect to redraw hollows was included expressly to ensure that hollows are actually cold-drawn and not sold directly as A–106 pipe.

DOC Position

We agree with petitioner for the reasons outlined in the "Scope Issues" section of this notice.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) of the Act 19 USC 1673b(d)(1), we directed the Customs Service to suspend liquidation of all entries of seamless pipe from Argentina, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after January 27, 1995.

Pursuant to the results of this final determination, we will instruct the Customs Service to require a cash deposit or posting of a bond equal to the estimated final dumping margin, as shown below, for entries of seamless pipe from Argentina that are entered, or withdrawn from warehouse, for consumption from the date of publication of this notice in the **Federal Register**. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted average margin percent
Siderca S.A.I.C.	108.13
All Others	108.13

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. The ITC will makes its determination whether these imports materially injure, or threaten injury to, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that material injury or threat of material injury does exist, the Department will issue an antidumping duty order.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) in these investigations of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20(a)(4).

Dated: June 12, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–14936 Filed 6–16–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–351–826]

Notice of Final Determination of Sales at Less Than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 19, 1995.

FOR FURTHER INFORMATION CONTACT: Irene Darzenta or Fabian Rivelis, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–6320 or 482–3853, respectively.

Final Determination

The Department of Commerce (the Department) determines that small diameter circular seamless carbon and alloy steel, standard, line and pressure pipe from Brazil (seamless pipe) is being sold, or is likely to be sold, in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the "Act") (1994). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of preliminary determination on January 27, 1995 (60 FR 5351, January 27, 1995), the following events have occurred.

On February 10, 1995, we issued a supplemental questionnaire to respondent Mannesmann S.A. (MSA) and its affiliated Brazilian and U.S. sales organizations, Mannesmann Comercial S.A. (MCSA) and Mannesmann Pipe & Steel Corporation (MPS), respectively (collectively "Mannesmann"), concerning certain items in its December 9, 1994, response, which we deemed required further clarification and/or information prior to verification. On February 28, and March 9, 1995, Mannesmann submitted its responses to this questionnaire, including revised home market and U.S. sales listings.

In response to respondent's request, we postponed the final determination until June 12, 1995, pursuant to section 735(a)(2)(A) of the Act (60 FR 9012, February 16, 1995).

In our notice of preliminary determination we stated that we would solicit further information on various scope-related issues, including class or kind of merchandise. On February 10, 1995, we issued a questionnaire to interested parties to request further information on whether the scope of the investigation constitutes more than one class or kind of merchandise. Responses to this questionnaire were submitted on March 27, 1995.

In March and April, 1995, we conducted verification of Mannesmann's questionnaire responses. Our verification reports were issued in May, 1995.

On April 27, 1995, Koppel Steel Corporation, a U.S. producer of subject merchandise which appeared as an interested party from the outset of this investigation, requested co-petitioner status, which the Department granted.

Case and rebuttal briefs were submitted on May 19, 1995, and May 25, 1995, respectively. In its rebuttal brief, petitioner maintained that the Department should not consider certain information in respondent's case brief because it allegedly constituted an "untimely submission of factual information." MSA disagreed with petitioner in a letter submitted on June 5, 1995. However, we determined that MSA's case brief did not contain new factual information. On June 6, 1995, the Department returned MSA's June 5, 1995, letter, because it constituted an unsolicited submission untimely filed after the briefing period.

Because no requests were received from interested parties, we did not hold a public hearing in this proceeding.

Scope of Investigation

The following scope language reflects certain modifications made for purposes of the final determination, where appropriate, as discussed in the "Scope Issues" section below.

The scope of this investigation includes seamless pipes produced to the ASTM A–335, ASTM A–106, ASTM A–53 and API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of this investigation also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters below, regardless of specification.

For purposes of this investigation, seamless pipes are seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3 mm (4.5 inches) in outside diameter, regardless of wall thickness, manufacturing process (hot-finished or cold-drawn), end finish (plain end, bevelled end, upset end, threaded, or threaded and coupled), or surface finish. These pipes are commonly known as standard pipe, line pipe or pressure pipe, depending upon the application. They may also be used in structural applications. Pipes produced in non-standard wall thicknesses are commonly referred to as tubes.

The seamless pipes subject to these investigations are currently classifiable under subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (HTSUS).

The following information further defines the scope of this investigation, which covers pipes meeting the physical parameters described above:

Specifications, Characteristics and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the American Society for Testing and Materials (ASTM) standard A–106 may be used in temperatures of up to 1000 degrees fahrenheit, at various American Society of Mechanical Engineers (ASME) code stress levels. Alloy pipes made to ASTM standard A–335 must be used if temperatures and stress levels exceed those allowed for A–106 and the ASME codes. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53 and API 5L specifications. Such triple certification of pipes is common because all pipes meeting the stringent A–106 specification necessarily meet the API 5L and ASTM A–53 specifications. Pipes meeting the API 5L specification necessarily meet the ASTM A–53 specification. However, pipes meeting the A–53 or API 5L specifications do not necessarily meet the A–106 specification. To avoid maintaining separate production runs and separate inventories, manufacturers triple certify the pipes. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple certified pipes is in pressure piping systems by refineries, petrochemical plants and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, A–106 pipes may be used in some boiler applications.

The scope of this investigation includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, and whether or not also certified to a non-covered specification. Standard, line and pressure applications and the above-listed specifications are defining characteristics of the scope of this investigation. Therefore, seamless pipes meeting the physical description above, but not produced to the A–335, A–106, A–53, or API 5L standards shall be covered if used in a standard, line or pressure application.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in A–106 applications. These specifications generally include A–162, A–192, A–210, A–333, and A–524. When such pipes are used in a standard, line or pressure pipe application, such products are covered by the scope of this investigation.

Specifically excluded from this investigation are boiler tubing and mechanical tubing, if such products are not produced to A–335, A–106, A–53 or API 5l specifications and are not used in standard, line or pressure applications. In addition, finished and unfinished OCTG are excluded from the scope of this investigation, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications. Finally, also excluded from this investigation are redraw hollows for cold-drawing when used in the production of cold-drawn pipe or tube.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Scope Issues

Interested parties in these investigations have raised several issues related to the scope. We considered these issues in our preliminary determination and invited additional comments from the parties. These

issues, which are discussed below, are: (A) whether to continue to include end use as a factor in defining the scope of these investigations; (B) whether the seamless pipe subject to these investigations constitutes more than one class or kind of merchandise; and (C) miscellaneous scope clarification issues and scope exclusion requests.

A. End Use

We stated in our preliminary determination that we agreed with petitioner that pipe products identified as potential substitutes used in the same applications as the four standard, line, and pressure pipe specifications listed in the scope would fall within the class or kind of subject merchandise and, therefore, within the scope of any orders issued in these investigations. However, we acknowledged the difficulties involved with requiring end-use certifications, particularly the burdens placed on the Department, the U.S. Customs Service, and the parties, and stated that we would strive to simplify any procedures in this regard.

For purposes of these final determinations, we have considered carefully additional comments submitted by the parties and have determined that it is appropriate to continue to employ end use to define the scope of these cases with respect to non-listed specifications. We find that the generally accepted definition of standard, line and pressure seamless pipes is based largely on end use, and that end use is implicit in the description of the subject merchandise. Thus, end use must be considered a significant defining characteristic of the subject merchandise. Given our past experience with substitution after the imposition of antidumping orders on steel pipe products,[1] we agree with petitioner that if products produced to a non-listed specification (*e.g.*, seamless pipe produced to A–162, a non-listed specification in the scope) were actually used as standard, line, or pressure pipe, then such product would fall within the same class or kind of merchandise subject to these investigations.

Furthermore, we disagree with respondents' general contention that using end use for the scope of an antidumping case is beyond the purview of the U.S. antidumping law. The Department has interpreted scope language in other cases as including an end-use specification. *See Ipsco Inc.* v. *United States*, 715 F.Supp. 1104 (CIT 1989) (*Ipsco*). In *Ipsco*, the Department had clarified the scope of certain orders, in particular the phrase, "intended for use in drilling for oil and gas," as covering not only API specification OCTG pipe but, "'all other pipe with [certain specified] characteristics used in OCTG applications * * *'" Ipsco at 1105. In reaching this determination, the Department also provided an additional description of the covered merchandise, and initiated an end-use certification procedure.

Regarding implementation of the end use provision of the scope of these investigations, and any orders which may be issued in these investigations, we are well aware of the difficulty and burden associated with such certifications. Therefore, in order to maintain the effectiveness of any order that may be issued in light of actual substitution in the future (which the end-use criterion is meant to achieve), yet administer certification procedures in the least problematic manner, we have developed an approach which simplifies these procedures to the greatest extent possible.

First, we will not require end-use certification until such time as petitioner or other interested parties provide a reasonable basis to believe or suspect that substitution is occurring.[2] Second, we will require end-use certification only for the product(s) (or specification(s)) for which evidence is provided that substitution is occurring. For example, if, based on evidence provided by petitioner, the Department finds a reasonable basis to believe or suspect that seamless pipe produced to A–162 specification is being used as pressure pipe, we will require end-use certifications for imports of A–162 specification. Third, normally we will require only the importer of record to certify to the end use of the imported merchandise. If it later proves necessary for adequate implementation, we may also require producers who export such products to the United States to provide such certification on invoices accompanying shipments to the United States. For a complete discussion of interested party comments and the Department's analysis on this topic, see June 12, 1995, *End Use Decision Memorandum* from Deputy Assistant Secretary Barbara Stafford (DAS) to Assistant Secretary Susan Esserman (AS).

B. Class or Kind

In the course of these investigations, certain respondents have argued that the scope of the investigations should be divided into two classes or kinds. Siderca S.A.I.C., the Argentine respondent, has argued that the scope should be divided according to size: seamless pipe with an outside diameter of 2 inches or less and pipe with an outside diameter of greater than 2 inches constitute two classes or kinds. Mannesmann S.A., the Brazilian respondent, and Mannesmannrohren-Werke AG, the German respondent, argued that the scope should be divided based upon material composition: carbon and alloy steel seamless pipe constitute two classes or kinds.

In our preliminary determinations, we found insufficient evidence on the record that the merchandise subject to these investigations constitutes more than one class or kind. We also indicated that there were a number of areas where clarification and additional comment were needed. For purposes of the final determination, we considered a significant amount of additional information submitted by the parties on this issue, as well as information from other sources. This information strongly supports a finding of one class or kind of merchandise. As detailed in the June 12, 1995, *Class or Kind Decision Memorandum* from DAS to AS, we analyzed this issue based on the criteria set forth by the Court of International Trade in *Diversified Products v. United States*, 6 CIT 155, 572 F. Supp. 883 (1983). These criteria are as follows: (1) the general physical characteristics of the merchandise; (2) expectations of the ultimate purchaser; (3) the ultimate use of the merchandise; (4) the channels of trade in which the merchandise moves; and (5) the cost of that merchandise.

In the past, the Department has divided a single class or kind in a petition into multiple classes or kinds where analysis of the *Diversified Products* criteria indicates that the subject merchandise constitutes more than one class or kind. *See, for example, Final Determination of Sales at Less than Fair Value; Anti-Friction Bearings (Apart from Tapered Roller Bearings) from Germany*, 54 Fed. Reg. 18992, 18998 (May 3, 1989) (*"AFBs from Germany"*); *Pure and Alloy Magnesium from Canada: Final Affirmative Determination; Rescission of Investigation and Partial Dismissal of Petition*, 57 Fed. Reg. 30939 (July 13, 1992).

1. Physical Characteristics

We find little meaningful difference in physical characteristics between seamless pipe above and below two inches. Both are covered by the same technical specifications, which contains

[1] *See Preliminary Affirmative Determination of Scope Inquiry on Antidumping Duty Orders on Certain Welded Non-Alloy Steel Pipes from Brazil, the Republic of Korea, Mexico and Venezuela*, 59 FR 1929, January 13, 1994.

[2] This approach is consistent with petitioner's request.

detailed requirements.[3] While we recognize that carbon and alloy pipe do have some important physical differences (primarily the enhanced heat and pressure tolerances associated with alloy grade steels), it is difficult to say where carbon steel ends and alloy steel begins. As we have discussed in our *Class or Kind Decision Memorandum* of June 12, 1995, carbon steel products themselves contain alloys, and there is a range of percentages of alloy content present in merchandise made of carbon steel. We find that alloy grade steels, and pipes made therefrom, represent the upper end of a single continuum of steel grades and associated attributes.[4]

In those prior determinations where the Department divided a single class or kind, the Department emphasized that differences in physical characteristics also affected the capabilities of the merchandise (either the mechanical capabilities, as in AFBs from Germany, 54 Fed. Reg. at 18999, 19002–03, or the chemical capabilities, as in *Pure and Alloy Magnesium from Canada*, 57 Fed. Reg. at 30939), which in turn established the boundaries of the ultimate use and customer expectations of the products involved.

As the Department said in *AFBs from Germany*,

> [t]he real question is whether the physical differences are so material as to alter the essential nature of the product, and, therefore, rise to the level of class or kind distinctions. We believe that the physical differences between the five classes or kinds of the subject merchandise are fundamental and are more than simply minor variations on a theme.

54 Fed. Reg. at 19002. In the present cases, there is insufficient evidence to conclude that the differences between pipe over 2 inches in outside diameter and 2 inches or less in outside diameter, rise to the level of a class or kind distinction.

Furthermore, with regard to Siderca's allegation that a two-inch breakpoint is widely recognized in the U.S. market for seamless pipe, the Department has found only one technical source of U.S. market data for seamless pipe, the *Preston Pipe Report*. The *Preston Pipe Report*, which routinely collects and publishes U.S. market data for this merchandise, publishes shipment data for the size ranges ½ to 4½ inches: it does not recognize a break point at 2 inches. Accordingly, the Department does not agree with Siderca that "the U.S. market" recognizes 2 inches as a physical boundary line for the subject merchandise.

In these present cases, therefore, the Department finds that there is insufficient evidence that any physical differences between pipe over 2 inches in outside diameter and 2 inches or less in outside diameter, or between carbon and alloy steel, rise to the level of class or kind distinctions.

2. Ultimate Use and Purchaser Expectations

We find no evidence that pipe above and below two inches is used exclusively in any specific applications. Rather, the record indicates that there are overlapping applications. For example, pipe above and below two inches may both be used as line and pressure pipe. The technical definitions for line and pressure pipe provided by ASTM, AISI, and a variety of other sources do not recognize a distinction between pipe over and under two inches.

Likewise, despite the fact that alloy grade steels are associated with enhanced heat and pressure tolerances, there is no evidence that the carbon or alloy content of the subject merchandise can be differentiated in the ultimate use or expectations of the ultimate purchaser of seamless pipe.

3. Channels of Trade

Based on information supplied by the parties, we determine that the vast majority of the subject merchandise is sold through the same channel of distribution in the United States and is triple-stenciled in order to meet the greatest number of applications.

Accordingly, the channels of trade offer no basis for dividing the subject merchandise into multiple classes or kinds based on either the size of the outside diameter or on pipe having a carbon or alloy content.

4. Cost

Based on the evidence on the record, we find that cost differences between the various products do exist. However, the parties varied considerably in the factors which they characterized as most significant in terms of affecting cost. There is no evidence that the size ranges above and below two inches, and the difference between carbon and alloy grade steels, form a break point in cost which would support a finding of separate classes or kinds.

In conclusion, while we recognize that certain differences do exist between the products in the proposed class or kind of merchandise, we find that the similarities significantly outweigh any differences. Therefore, for purposes of the final determination, we will continue to consider the scope as constituting one class or kind of merchandise.

C. Miscellaneous Scope Clarification Issues and Exclusion Requests

The miscellaneous scope issues include: (1) Whether OCTG and unfinished OCTG are excluded from the scope of these investigations; (2) whether pipes produced to non-standard wall thicknesses (commonly referred to as "tubes") are covered by the scope; (3) whether certain merchandise (*e.g.*, boiler tubing, mechanical tubing) produced to a specification listed in the scope but used in an application excluded from the scope is covered by the scope; and (4) whether redraw hollows used for cold drawing are excluded from the scope. For a complete discussion of interested party comments and the Department's analysis on these topics, see June 12, 1995, *Additional Scope Clarifications Decision Memorandum* from DAS to AS.

Regarding OCTG, petitioner requested that OCTG and unfinished OCTG be included within the scope of these investigations if used in a standard, line or pressure pipe application. However, OCTG and unfinished OCTG, even when used in a standard, line or pressure pipe application, may come within the scope of certain separate, concurrent investigations. We intend that merchandise from a particular country not be classified simultaneously as subject to both an OCTG order and a seamless pipe order. Thus, to eliminate any confusion, we have revised the scope language above to exclude finished and unfinished OCTG, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in a standard, line or pressure pipe application, and, as with other non-listed specifications, may be subject to end-use certification if there is evidence of substitution.

[3] The relevant ASTM specifications, as well as product definitions from other independent sources (e.g., American Iron and Steel Institute (AISI)), describe the sizes for standard, line, and pressure pipe, as ranging from ½ inch to 60 inches (depending on application). None of these descriptions suggest a break point at two inches.

[4] The Department has had numerous cases where steel products including carbon and alloy grades were considered to be within the same class or kind. *See, e.g., Preliminary Determination of Sales at Less than Fair Value: Oil Country Tubular Goods from Austria, et al.*, 60 Fed. Reg. 6512 (February 2, 1995); *Final Determination of Sales at Less than Fair Value: Certain Alloy and Carbon Hot-Rolled Bars, Rods, and Semi-Finished Products of Special Bar Quality Engineered Steel from Brazil*, 58 Fed. Reg. 31496 (June 3, 1993); *Final Determination of Sales at Less than Fair Value: Forged Steel Crankshafts from the United Kingdom*, 60 Fed. Reg. 22045 (May 9, 1995).

Regarding pipe produced in non-standard wall thicknesses, we determine that these products are clearly within the parameters of the scope of these investigations. For clarification purposes, we note that the physical parameters of the scope include all seamless carbon and alloy steel pipes, of circular cross-section, not more than 4.5 inches in outside diameter, *regardless of wall thickness*. Therefore, the fact that such products may be referred to as tubes by some parties, and may be multiple-stenciled, does not render them outside the scope.

Regarding pipe produced to a covered specification but used in a non-covered application, we determine that these products are within the scope. We agree with the petitioner that the scope of this investigation includes all merchandise produced to the covered specifications and meeting the physical parameters of the scope, regardless of application. The end-use criteria included in the scope is only applicable to products which can be substituted in the applications to which the covered specifications are put *i.e.* standard, line, and pressure applications.

It is apparent that at least one party in this case interpreted the scope incorrectly. Therefore, we have clarified the scope to make it more explicit that all products made to ASTM A–335, ASTM A–106, ASTM A–53 and API 5L are covered, regardless of end use.

With respect to redraw hollows for cold drawing, the scope language excludes such products specifically when used in the production of cold-drawn pipe or tube. We understand that petitioner included this exclusion language expressly and intentionally to ensure that hollows imported into the United States are sold as intermediate products, not as merchandise to be used in a covered application.

Standing

The Argentine, Brazilian, and German respondents have challenged the standing of Gulf States Tube to file the petition with respect to pipe and tube between 2.0 and 4.5 inches in outside diameter, arguing that Gulf States Tube does not produce these products.

Pursuant to section 732(b)(1) of the Act, an interested party as defined in section 771(9)(C) of the Act has standing to file a petition. (*See also* 19 C.F.R. § 353.12(a).) Section 771(9)(C) of the Act defines "interested party," *inter alia*, as a producer of the like product. For the reasons outlined in the "Scope Issues" section above, we have determined that the subject merchandise constitutes a single class or kind of merchandise. The International Trade Commission (ITC) has also preliminarily determined that there is a single like product consisting of circular seamless carbon and alloy steel standard, line, and pressure pipe, and tubes not more than 4.5 inches in outside diameter, and including redraw hollows. (*See* USITC Publication 2734, August 1994 at 18). For purposes of determining standing, the Department has determined to accept the ITC's definition of like product, for the reasons set forth in the ITC's preliminary determination. Because Gulf States is a producer of the like product, it has standing to file a petition with respect to the class or kind of merchandise under investigation. Further, as noted in the "Case History" section of this notice, on April 27, 1995, Koppel, a U.S. producer of the product size range at issue, filed a request for co-petitioner status, which the Department granted. As a producer of the like product, Koppel also has standing.

The Argentine respondent argues that Koppel's request was filed too late to confer legality on the initiation of these proceedings with regard to the products at issue. Gulf States Tube maintains that the Department has discretion to permit the amendment of a petition for purposes of adding co-petitioners who produce the domestic like product, at such time and upon such circumstances as deemed appropriate by the Department.

The Court of International Trade (CIT) has upheld in very broad terms the Department's ability to allow amendments to petitions. For example, in *Citrosuco Paulista, S.A. v. United States*, 704 F. Supp. 1075 (Ct. Int'l Trade 1988), the Court sustained the Department's granting of requests for co-petitioner status filed by six domestic producers on five different dates during an investigation. The Court held that the addition of the co-petitioners cured any defect in the petition, and that allowing the petition to be amended was within Commerce's discretion:

> [S]ince Commerce has statutory discretion to allow amendment of a dumping petition *at any time*, and since Commerce may self-initiate a dumping petition, any defect in a petition filed by [a domestic party is] cured when domestic producers of the like product [are] added as co-petitioners and Commerce [is] not required to start a new investigation.

Citrosuco, 704 F. Supp. at 1079 (emphasis added). The Court reasoned that if Commerce were to have dismissed the petition for lack of standing, and to have required the co-petitioners to refile at a later date, it "would have elevated form over substance and fruitlessly delayed the antidumping investigation * * * when Congress clearly intended these cases to proceed expeditiously." *Id.* at 1083–84.

Koppel has been an interested party and a participant in these investigations from the outset. The timing of Koppel's request for co-petitioner status and the fact that it made its request in response to Siderca's challenge to Gulf States's Tube's standing does not render its request invalid. *See Final Affirmative Countervailing Duty Determination; Live Swine and Fresh, Chilled, and Frozen Pork Products from Canada*, 50 FR 25097 (June 17, 1985). The Department has rejected a request to add a co-petitioner based on the untimeliness of the request only where the Department determined that there was not adequate time for opposing parties to submit comments and for the Department to consider the relevant arguments. *See Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Hollow Products from Sweden*, 52 FR 5794, 5795, 5803 (February 26, 1987). In this investigation, the respondents have had an opportunity to comment on Koppel's request for co-petitioner status, and the Argentine respondent has done so in its case brief. Therefore, we have determined that, because respondents would not be prejudiced or unduly burdened, amendment of the petition to add Koppel as co-petitioner is appropriate.

Period of Investigation

The period of investigation (POI) is January 1, through June 30, 1994.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Such or Similar Comparisons

We have determined that all the products covered by this investigation constitute a single category of such or similar merchandise. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we made similar merchandise comparisons, when verified data permitted, on the basis of the criteria defined in Appendix V to the antidumping questionnaire, on file in Room B–099 of the main building of the Department.

Fair Value Comparisons

To determine whether Mannesmann's sales of seamless pipe from MSA to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

In accordance with past practice and consistent with our decision in the preliminary determination, we considered Brazil's economy to be hyperinflationary during the POI. Pursuant to our methodology concerning such an economy, we made contemporaneous sales comparisons based on the month of the U.S. sale.

In accordance with 19 CFR 353.58, we made comparisons at the same level of trade. For those U.S. sales where there were no comparable sales at the same level of trade in the home market, we used home market sales at a different level of trade as the basis of our less than fair value comparisons. Based on our analysis of Mannesmann's questionnaire response, we have accepted its claim that MSA's sales from its factory to unrelated customers and its sales through its related distributor MCSA represent two distinct levels of trade. However, because we could not determine that the difference in level of trade affects price comparability, we made no adjustment to FMV. *See* Comment 5 of the "Company-specific Issues" sub-section of the "Interested Party Comments" section of this notice.

We also made adjustments for differences-in-merchandise (difmer), where possible, in accordance with 19 CFR 353.57. At verification, we found that respondent's reported variable cost of manufacture data included cost differences not attributable to physical differences in the merchandise. Therefore, we modified the submitted cost data where we had information on the record to eliminate cost differences unrelated to physical differences.

For those products for which difmer cost modification was not possible and those U.S. sales with no comparable home market products and no cost data, we based our analysis, pursuant to section 776(C) of the Act, on the best information available (BIA). As BIA, we used a calculated margin that is sufficiently adverse to fulfill the statutory purpose of the BIA rule. *See* June 12, 1995, *Final Determination Concurrence Memorandum*. *See* also DOC Position to Comment 2 of the "Company-specific Issues" sub-section of the "Interested Party Comments" section of this notice.

United States Price

We calculated USP according to the methodology described in our preliminary determination, with the following exceptions:

1. We corrected certain clerical errors found at verification, including: (a) The reported product codes for four products; (b) the reported sales date and end-finish for one transaction; (c) the level of trade reported for one customer; and (d) the reported U.S. duty charges for certain transactions.
2. We revised the reported ocean freight, U.S. brokerage, and U.S. inland freight amounts for certain transactions to reflect actual expenses.
3. We recalculated credit expenses using respondent's revised U.S. shipment dates submitted in the March 9, 1995, response. These dates reflect the approximate date on which the merchandise left the factory.
4. We made a deduction for foreign inland freight charges that were previously not reported in respondent's sales listing.
5. We made a deduction for bank fees paid by MSA for entering into foreign exchange contracts, which had not been reported in respondent's sales listing. *See* Comment 8 of the "Company-specific Issues" sub-section of the "Interested Party Comments" section of this notice.

Foreign Market Value

As stated in the preliminary determination, we determined that respondent's home market was viable with respect to sales of seamless pipe during the POI to serve as the basis for FMV.

Based on the results of the Department's related party sales test as set forth in Appendix II of the *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 58 FR 37062 (July 9, 1993), we excluded respondent's related party sales from our analysis, and used only those sales made to unrelated parties.

We calculated FMV according to the methodology described in our preliminary determination with the following exceptions:

1. Where we had verified transaction-specific data on the record, we excluded from our analysis those home market sales that were found to have been returned, and incorrectly included in respondent's sales listing.
2. For both MSA's and MCSA's sales, we revised the reported insurance charges, where appropriate, based on the applicable, verified insurance percentage rates prevailing during the POI.
3. We corrected clerical errors made with respect to the reported interest revenue amounts for two transactions.
4. For MSA's sales, we reduced the reported inland freight charges by the amount by which they exceeded the actual amounts charged by MSA's freight supplier.
5. With respect to MCSA's sales, we corrected the surface treatment codes for those products reported incorrectly as corrosion-resistant.
6. We made no adjustment for inflation value in addition to an adjustment for the reported, verified credit expenses which included an inflation factor. *See* Comment 4 in the "Company-specific Issues" sub-section of the "Interested Party Comments" section of this notice.
7. Because the reported U.S. and home market packing expenses did not verify, we used BIA for these expenses. As BIA for home market packing expenses, we used the lowest domestic packing expense noted on the record. As BIA for U.S. packing expenses, we used the highest export packing expense noted on the record. *See* Comment 6 in the "Company-specific Issues" sub-section of the "Interested Party Comments" section of this notice.
8. Where possible, we made difmer adjustments based on the submitted cost data, modified to eliminate cost differences unrelated to physical differences between the merchandise being compared. *See* Comment 2 in the "Company-specific Issues" sub-section of the "Interested Party Comments" section of this notice.

Currency Conversion

No certified rates of exchange, as furnished by the Federal Reserve Bank of New York, were available for the POI. In place of the official certified rates, we used the daily official exchange rates for the Brazilian currency, as well as the UFIR[5] index, published by the Central Bank of Brazil which were provided by respondent in its February 28, 1995, response and verified by the Department.

Verification

As provided in section 776(b) of the Act, we verified information provided by Mannesmann by using standard verification procedures, including the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Interested Party Comments

General Issues

Comment 1

Mannesmann argues that petitioner lacks standing to seek the imposition of antidumping duties on products that it does not produce. According to Mannesmann, petitioner has admitted

[5] The UFIR is an inflationary neutral currency unit.

that it is incapable of manufacturing seamless pipe and tube in dimensions above two inches in outside diameter. Therefore, respondent maintains that petitioner is not an "interested party" with respect to this merchandise. Accordingly, the Department should amend the scope of the investigation to limit it only to those dimensions and pipe types that petitioner has a proven ability to manufacture.

Gulf States Tube contends that the antidumping statute neither requires nor permits the Department to limit the scope of the investigation to products that the petitioner itself produces. Gulf States Tube also maintains that respondent's standing claim is untimely and may not be considered by the Department at this stage of the proceeding. Nevertheless, Gulf States Tube asserts that the issue is rendered moot by the request of Koppel Steel Corporation, a domestic producer of subject merchandise in sizes larger than two inches in outside diameter, for co-petitioner status.

DOC Position

We disagree with respondent for the reasons outlined in the "Standing" section of this notice.

Comment 2

Mannesmann contends that including an end-use certification requirement in the scope would be both illegal and unworkable. Respondent maintains that petitioner is effectively seeking to circumvent the established legal procedure by arguing for an open-ended scope definition that encompasses products that it does not manufacture and that petitioner has conceded are not causing present injury. In addition, respondent states that it is clear that any end-use certification procedure designed to implement such a scope definition is wholly unworkable because of the manner in which the subject products are sold. That is, in almost all cases the importer of record does not know the ultimate use of the pipe products it sells, and in many instances, neither do its customers. According to respondent, as a practical matter, the effect of an end-use certification requirement would be to ask the impossible of importers. Furthermore, respondent states that the anticircumvention procedures of the antidumping law provide ample remedy to petitioner in cases of order circumvention via product substitution. Respondent emphasizes that absent the detailed inquiry required by anti-circumvention legal provisions, the Department cannot include within the scope of this investigation other merchandise simply because such other products might in theory be utilized for the same purposes as pipe meeting the listed specifications. According to respondent, to do otherwise is contrary to the antidumping law and deprives respondents of their right to a full and fair hearing on any circumvention allegations that might be advanced by petitioner at some later date.

Petitioner argues that there is no factual or legal basis for eliminating end use as a defining element of the scope of the investigation. Furthermore, not only is the feasibility of specific enforcement mechanisms irrelevant to the scope determination, but it is also untrue that any end use certification procedure would be unworkable. According to petitioner, there is no evidence on the record of this investigation that an end-use certification program must require the submission of an end-use certificate by the importer at the time of importation. Rather, petitioner proposes a program whereby the end-use certificate travels with the pipe to the ultimate end-user, who may then send it back up the line of distribution. When final duties are assessed, the Department may assume that any pipe for which no certificates can be produced was used in subject applications. Contrary to Mannesmann's arguments, petitioner maintains that the Department and the U.S. Customs Service are perfectly capable of administering an order that includes end use in its scope definition. In the event that products meeting the physical description of subject merchandise, but which are not certified to one or more of the covered specifications, are being substituted into one of the listed applications, the burden would be on the petitioner, other domestic producers or interested parties to notify Customs and the Department with some objective evidence supporting a reasonable belief that substitution is occurring. Accordingly, it is both unnecessary and inappropriate at this point to engage in debate about the feasibility and desirability of specific end-use certification procedures. According to petitioner, the facts and policy considerations relevant to such a debate are not available on this record, and the selection of a specific enforcement mechanism is beyond the Department's responsibilities in this proceeding.

DOC Position

We disagree with respondent's assertion that including end-use in the scope of the investigation would be unlawful. The Department has interpreted scope language in other cases as including an end-use specification. *See Ipsco Inc.* v. *United States*, 715 F. Supp. 1104 (CIT 1989). *See* "Scope Issues" section of this notice for further discussion on end-use.

Comment 3

Mannesmann contends that the carbon and alloy pipe products subject to investigation are distinct classes or kinds of merchandise. Mannesmann asserts that the criteria set out in *Diversified Products* support a division between carbon and alloy products. Specifically, Mannesmann argues that carbon and alloy pipes differ in terms of physical characteristics, uses, customer expectations and cost. With respect to physical characteristics, alloy seamless pipes contain higher grade steel than carbon seamless pipe, and because of their different chemistries, these products have different performance characteristics. With respect to end use which, according to respondent, is inherently tied to physical characteristics, carbon pipe is not as versatile as alloy steel pipe and is not suited for the more sophisticated applications, such as operations in high temperature environments. Respondent asserts that the Department has consistently emphasized the relationship between physical characteristics and end use in past cases (*e.g.*, *Torrington Co.* v. *United States*, 745 F.Supp. 718, 726 (CIT 1990) (*Torrington*)). In addition, respondent states that customer expectations vary depending upon the ability of specific merchandise to perform a given task. With regard to alloy and carbon steel pipe, the ultimate purchaser does not expect these two types of pipe to be interchangeable, and is willing to pay more for alloy steel pipe because it must perform under more adverse conditions than the conditions for which carbon pipe is suited. With respect to cost, respondent states that the cost of alloy pipe is higher than that of carbon pipe because of the more expensive raw materials and production costs incurred in producing alloy pipe. Finally, with respect to channels of trade, respondent states that carbon and alloy pipe move in similar channels, but that this factor is not determinative as to class or kind of merchandise.

Petitioner maintains that the subject merchandise constitutes a single class or kind. With respect to Mannesmann's proposal for a split in class or kind on the basis of material composition, petitioner asserts that the factual evidence does not support such a division. Petitioner states that the application of the criteria employed by the Department in *Diversified Products* compels the conclusion that there is a single class or kind of merchandise. According to petitioner, the physical characteristics of carbon and alloy pipe represent a continuum of products produced with varying chemical compositions to meet a range of heat, pressure and tensile requirements. According to petitioner, there is simply no bright dividing line between the physical characteristics of the products. Petitioner states that the customer's expectations and use of the product are dictated by the engineering specification required by the intended application. Because the majority of all subject seamless pipe is triple-certified, the pipe may be put to any of the uses that apply to each of the individual specifications to which it is certified. Petitioner points out that the vast majority of seamless pipe is sold through the same channel of trade—distributors. Finally, petitioner adds that, because the majority of seamless pipe is triple-certified, it has identical costs regardless of the customer to whom it is sold.

DOC Position

We agree with petitioner that the subject merchandise constitutes a single class or kind for the reasons outlined in the "Scope Issues" section of this notice. Furthermore, respondent's reliance on *Torrington* is misplaced. In *Torrington*, the Court of International Trade found that the Department's division of antifriction bearings into five classes or kinds, based in large part on the physical characteristics of the different types of antifriction bearings, was supported by substantial evidence on the record. In this case, as we stated in our "Scope Issues" section, that there is insufficient evidence to show that the difference between carbon and alloy steel rises to a class or kind distinction. *See* "Scope Issues" section of this notice for further discussion on class or kind.

Company-Specific Issues

Comment 1

Petitioner argues that BIA must be applied to Mannesmann's responses for the following reasons:

(a) the Department was unable to verify the accuracy or completeness of Mannesmann's sales listings;

(b) MSA's difmer data is erratic and contains serious errors; and

(c) the information for various sales charges and adjustments reported by respondent could not be verified.

Petitioner maintains that Mannesmann's home market sales response must be considered unreliable when viewed in the context of the totality of problems identified at verification and the additional opportunities Mannesmann had prior to verification to provide an accurate response.

With respect to reason (a) above, petitioner states that the Department's verification report confirms that Mannesmann omitted certain sales of subject merchandise from its home market sales listing, often characterizing these omissions as insignificant in terms of the percentage they constitute of total reported sales. Petitioner asserts that since only a portion of Mannesmann's total reported sales will be matched to U.S. sales in dumping margin analysis and the Department's standard hyperinflation methodology requires separate FMV calculations for each month, omissions such as those observed by the Department can have a significant impact on the ultimate margin calculation. According to petitioner, the Department must examine each of the errors and omissions noted in the verification report in the context of its potential impact on monthly sales matches.

In addition to these sales omissions, petitioner notes further that certain sales were reported incorrectly because of errors in accounting for merchandise returns and invoice price corrections. Also, the gross prices for numerous transactions and the surface treatment codes for certain products were reported incorrectly.

With respect to reason (b), petitioner maintains that the cost data submitted by respondent remains erratic and unusable even after the Department's request for its revision in a deficiency letter issued subsequent to the preliminary determination. Reason (b) is discussed in detail under Comment 2 below.

With respect to reason (c), petitioner takes issue with verification findings for certain charges and adjustments, *i.e.*, that MSA's home market inland freight and insurance expenses were overstated, that foreign inland freight charges incurred by MSA on U.S. sales were not reported, that home market and U.S. packing costs were not verified, MPS' reporting of estimated movement charges for certain U.S. transactions, and U.S. shipment date.

Respondent argues that the discrepancies noted by the Department in the verification reports either do not have appreciable effects on antidumping analysis or serve to disadvantage respondent. Therefore, its responses should be used in the Department's final analysis. For example, respondent asserts that a portion of the unreported sales would be irrelevant to product comparisons in the Department's analysis because it did not make any sales of those same products in the United States during the POI.

With respect to the transactions which were omitted inadvertently from MCSA's February 28, 1995, sales listing due to programming errors, respondent points out that these sales were originally reported to the Department in the December 9, 1994, sales listing, and considered in the Department's preliminary analysis. Respondent states that these omitted sales fall into two categories: (1) sales of products which were not matched to U.S. products in the preliminary determination and were irrelevant in the margin calculation; and (2) sales of products which were potential matches for products sold to the United States. However, the sales of potentially matchable products were either not made in the same month as the corresponding U.S. products to which they were matched, or the Department has the necessary data from the December 9 response to utilize the sales for matching purposes. With respect to certain sales of cold-drawn pipe which were never reported to the Department, respondent argues that this is an insignificant portion of total reported home market sales, and that examining these sales within the context of the Department's preliminary determination product concordance indicates that none of the unreported sales should be treated as the most similar match to U.S. sales of cold drawn pipe. With respect to another group of products that were not reported to the Department because of a product selection error made during response preparation, respondent argues that these products are irrelevant to product comparisons on the basis of specification.

Furthermore, respondent notes that any other discrepancies found at verification are minor and/or disadvantage respondent. Such discrepancies include: the incorrect reporting of four U.S. product codes for certain transactions; the overstatement of MSA's home market inland freight and insurance charges; MSA's omission of foreign inland freight charges for U.S. sales; and certain estimated U.S. movement charges which were not updated to reflect actual charges incurred.

DOC Position

We disagree with petitioner that Mannesmann's responses cannot be used for the final determination. While we noted several discrepancies at verification, these discrepancies were neither pervasive nor representative of a

pattern of misrepresentation which would merit the rejection of the questionnaire response in total.

It is true that respondent omitted certain home market sales from its February 28, 1995, sales listing for a variety of reasons, ranging from incorrect product code selection to inadvertent programming errors (*see* MSA/MCSA Verification Report at 49–55). However, we were able to verify the nature and magnitude of these errors, and found that they are not significant with respect to either the percentage of total home market sales reported or potential home market matches. In order to arrive at this conclusion, we conducted a comparative analysis between the characteristics (and weighted-average prices) of the omitted home market products originally reported in Mannesmann's December 9, 1994, sales listing, and those of the reported home market products in respondent's February 28, 1995, sales listings. As a result of this exercise, we found that for some of the omitted sales, there did not exist contemporaneous sales of identical products reported in respondent's February 28, 1995, sales listings. We then compared the product characteristics of the omitted sales to those of the U.S. sales, and found that none of the omitted home market sales would be comparable to the U.S. products sold during the POI on the basis of grade. Regarding those sales of another group of products that were not reported to the Department because of a product selection error, we found that, regardless of the month in which they were sold, these products would not be comparable to those sold to the United States on the basis of specification. Finally, we have determined to apply BIA to respondent's U.S. sales of cold-drawn pipe made during the POI for the reasons outlined in Comments 2 and 9 below.

Furthermore, with respect to those home market sales affected by merchandise returns which were verified not to be usable for margin analysis, we found that the home market sales quantity affected was insignificant in terms of total reported home market sales quantity. Because these sales were incorrectly included in respondent's home market sales listing, we excluded them from our analysis where we could clearly identify the affected individual transactions from data contained in verification exhibits.

In addition, regarding the gross prices of those transactions which were found to be overreported, we included these sales in our analysis, but did not make any adjustments to price. Our decision to make no adjustment is based on the fact that the prices at issue represent an overstatement of actual prices charged and any revision of such prices would not only be burdensome given the number of affected transactions, but would also require the revision of other sales-related data (*e.g.*, taxes) which are calculated based upon price and were not examined specifically at verification within the context of overreported gross prices.

As for the other areas stated by petitioner in which discrepancies were found (*e.g.*, difmer, packing, etc.), we made appropriate adjustments in accordance with verification findings based on information on the record, as discussed in the "United States Price," "Foreign Market Value" and "Interested Party Comments" sections of this notice.

Comment 2

Petitioner contends that Mannesmann's difmer cost data remains erratic and unusable for the final determination and, therefore, the Department should apply BIA to calculate the margin for any U.S. sale for which there is no contemporaneous identical match in the home market. According to petitioner, Mannesmann's difmers are deficient because they are not based on replacement costs in the month of shipment; rather Mannesmann's costs have been reported on a historical basis. Petitioner points out that the fact that Mannesmann has recorded its historical costs in UFIRs does not transform them into replacement costs, and that this approach has been rejected in previous cases by the Department (*e.g., Final Determination of Sales at Less Than Fair Value: Silicon Metal from Brazil*, 59 FR 42806, August 19, 1994) (*Silicon Metal from Brazil*). Even though the Department changed its hyperinflationary methodology in 1994 by providing for indexing of costs across different months, petitioner maintains that the costs that are indexed still must be replacement costs during the month of shipment, and must not represent historical costs. Petitioner argues that UFIR indexation is no substitute for the reporting of actual monthly replacement costs.

Petitioner also maintains that the fluctuations in cost are not limited to the materials component of the reported costs; there are also significant variations in the reported labor and variable overhead costs from month to month for the same products, indicating that the data is unreliable. According to petitioner, while the Department verified that the reported cost data was submitted in accordance with the exact methodology used in its normal cost accounting system, the Department did not verify that the system accurately states respondent's costs for purposes of this investigation. Citing *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom* (58 FR 6207, January 27, 1993), petitioner emphasizes that the Department has rejected the use of cost differences unrelated to physical differences for difmer adjustment purposes in past cases.

With respect to petitioner's request for the use of BIA, respondent asserts that petitioner ignores the facts on the record and that the Department was able to trace the reported cost data to source documentation, and tie them to financial statements.

Furthermore, respondent asserts that petitioner's attempt to link the concepts of replacement costs and monetary correction in arguing that MSA's reported costs do not account for changes in replacement costs is confused. According to MSA, a monetary correction is merely an adjustment to financial statements to measure the cost for holding balances in certain accounts during periods of inflation. Such an adjustment has nothing to do with production costs or difmer calculations. Respondent notes that the Department has confirmed this in past cases by treating such monetary corrections as offsets or additions to financing expenses (*e.g., Final Results of Administrative Review: Gray Portland Cement from Mexico*, 58 FR 47253 (1993)).

Respondent asserts that, contrary to petitioner's attempt to confuse the significance of MSA's UFIR-based cost system, this system accounts for the effects of changes in replacement costs. In addition, respondent opposes petitioner's characterization that a UFIR-based system is tantamount to reporting historical costs. According to respondent, the historical method contrasts sharply with the UFIR system, which carries costs forward on a steady currency basis and, in effect, reaches the same result as a replacement cost system. The UFIR-based methodology is applicable for both finished goods and inputs and ensures that MSA's costs reflect market conditions. Because this methodology tracks the inflation rate, material and finished goods are constantly inflated when expressed in Brazilian currency. According to respondent, this result is precisely the intent of the replacement cost accounting system, *i.e.*, to express costs in real terms. Therefore, respondent's UFIR-based system accurately tracks cost on a replacement basis and is not, as petitioner suggests, on a historical cost basis.

DOC Position

We agree in part with both petitioner and respondent. At verification, we noted that respondent's reported UFIR-based material and fabrication costs varied substantially for the same product produced in different months. We were able to establish that this cost variance was due to a combination of factors which are unrelated to physical differences: (1) the nature of MSA's cost accounting system; (2) the process used to produce the input bar consumed in the production of subject merchandise (whether it was produced using ingot or a continuous caster); and (3) whether the material was purchased (imported) or produced in-house by the respondent.

Contrary to petitioner's contention that replacement costs must be used when indexing costs between different months, for difmer purposes, we consider it appropriate to have cost data submitted in UFIR, as maintained by the company in its ordinary course of business. (*See* Department Policy Bulletin No. 94.5 dated March 25, 1994.) The UFIR is not a methodological creation of the respondent; UFIR-denominated costs must be kept in the ordinary course of business for reporting purposes to the "Junta Comercial" (the Brazilian equivalent of the Securities and Exchange Commission). Also, we find that petitioner's cite to *Silicon Metal from Brazil* as case precedence for the Department rejecting submitted UFIR costs is misplaced. In *Silicon Metal from Brazil*, unlike the instant case, there was no UFIR type indexation scheme in effect. Rather, the "monetary correction" methodology (*i.e.*, year-end restatement of assets/liabilities) used by respondent was deemed inappropriate.

Furthermore, we disagree with petitioner's contentions that MSA's submitted variable fabrication costs are unreliable and that the differences in fabrication costs cannot be explained by alleged differences in input steel costs. As stated above, we verified that MSA's submitted cost data was extracted directly from its normal cost accounting system which records the actual costs incurred to manufacture each batch of pipe produced. We thus have no reason to believe that MSA's submitted cost data is unreliable in general. Second, we observed at verification that steel bar produced from ingot versus a continuous caster will affect both material and fabrication costs.

However, notwithstanding the fact that respondent's variable costs were reported in accordance with its normal cost accounting system, we agree with petitioner that we must use variable costs for difmer adjustment purposes which are not distortive in margin analysis. For difmer purposes, it is the Department's practice to consider only those cost differences associated with physical differences in the products under comparison. The flaw we found in MSA's reporting methodology was one of not neutralizing the cost differences resulting from different production processes or supply sources for input bar, which is an inherent result of its normal cost accounting system. Therefore, for purposes of the final determination, we have modified respondent's variable costs of manufacture for those products for which we had information on the record to enable us to compute a difmer adjustment exclusive of the cost differences unrelated to physical differences. For the material costs of these products, we computed a POI weighted-average bar cost for all subject merchandise using the same material grade bar. We then determined the product-specific material costs by multiplying product-specific POI average yield rates by the POI weighted average bar cost. For fabrication costs, we had available a breakout of the quantity of continuous casted versus ingot bar used in production for specific products for each month of the POI. From this data, we identified for similar product matches, which months used comparably sourced bar.

However, for certain products we did not have the information concerning the POI monthly quantity of input bar produced via the continuous-casted versus ingot methods. Additionally, we were unable to determine the percentage of such products produced from imported tube versus MSA-produced tube. We note that the vast majority of the U.S. products that are affected by this lack of information on the record are cold-drawn pipes. *See* Comment 9 below. Therefore, for a small percentage of U.S. sales quantity, we were unable to eliminate the fabrication cost differences resulting from the different production processes and/or sources of input bar. For those sales of U.S. products where we did not have reliable fabrication costs, we used a margin based on BIA. As BIA, we used a calculated margin that is sufficiently adverse to fulfill the statutory purpose of the BIA rule (section 776(c) of the Act) and which is indicative of, and bears a rational relationship to, the respondent's sales. *See National Steel* v. *United States*, 870 F.Supp. 1130 (CIT 1994).

Comment 3

Petitioner argues that MSA and MCSA incorrectly reported invoice date as the date of sale for all home market sales. It maintains that the correct date of sale is Mannesmann's internal order date because it is at this time that final agreement on the essential terms of sale, including price and the manner in which it will be adjusted for inflation, is made. Petitioner asserts that the only changes in the essential terms of sale between Mannesmann's internal order and invoice dates are a currency conversion and an inflation adjustment, both of which are performed automatically by computer without negotiation with the customer; and that this was the only variance between order and invoice date noticed by the Department at verification. According to petitioner, the automatic restatement of the price by computer to account for inflation is not a substantive change in the material terms of sale. Petitioner cites *Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip from France* (52 FR 812, January 9, 1987) (*Brass Sheet and Strip*) to support its position that it is the Department's established practice to use as the date of sale, the date on which basic terms become determinable, without regard to automatic mechanisms that might alter or establish specific terms.

For the final determination, petitioner urges the Department to use the sales listings submitted on December 9, 1994, despite substantial alterations made to them (*i.e.*, in the subsequent sales listings submitted on February 28, 1995). According to petitioner, these listings provide internal order dates and invoice numbers that can easily be matched to the invoice numbers reported in Mannesmann's February 28, 1995, response. For any sales in the February 28, sales listing which cannot be matched to an alleged "proper" date of sale using the December 9, listing, petitioner maintains that the Department should apply partial BIA by using the average time lag between order and invoice date for other sales to place the sale in the appropriate month. This method of partial BIA would entail deflating prices for such months because the prices and adjustments in the February 28, response are stated in cruzeiros valued for months later than the actual date of sale claimed by petitioner, so that they are restated in terms of the value of the cruzeiro during the month of sale. Alternatively, if the currency conversion is too burdensome, the Department should apply, as partial BIA to such sales, either the highest

calculated margin for the company or the highest margin alleged in the petition.

Respondent argues that invoice date is the correct date of sale in accordance with the Department's normal methodology. It is also the date mandated by Brazilian law and accounting practices, which do not recognize a sale until the invoice is generated, and the date consistent with MSA and MCSA's recordkeeping system in the ordinary course of trade. Respondent takes issue with petitioner's assertion that the only subsequent changes in the essential terms of sale between MSA's internal order entry and shipment are a currency conversion and an inflation adjustment. Respondent states that not only did the high rate of inflation during the POI preclude any determination of the essential terms of sale (particularly price) until the time of invoicing, but also that there are significant fluctuations in price and quantity that typically occur between the order date and invoice date which the Department confirmed at verification. Citing the *Preliminary Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit from Thailand* (60 FR 2734, January 11, 1995), respondent asserts that the Department has, under appropriate circumstances in past cases, specifically endorsed invoice date as the date of sale. In addition, respondent states that the purchase order is sometimes not received until after the invoice is generated by MCSA and the order shipped. According to respondent, invoice date is the most consistent and reliable basis for reporting comparable dates of sale in Brazil from both MSA and MCSA.

DOC Position

We agree with respondent and have accepted its reported date of sale. At the verification of both MSA and MCSA, respondent provided source documentation substantiating its reasons for using invoice date as the date of sale. These reasons included not only the effects of inflation between purchase order date and invoice date, but also the fact that Mannesmann's internal order is subject to numerous fluctuations in price and quantity up until the date of invoice. (*See* Verification Report at 11–12 and 47.) Our decision in this instance is consistent with past cases. *See Amended Final Determination of Sales at Less Than Fair Value: Ferrosilicon from Brazil*, 59 FR 8598, February 23, 1994).

We also note that the facts in *Brass Sheet and Strip* are different from those in the instant case. In *Brass Sheet and Strip*, a formal contract between the buyer and seller established a price based upon a publicly quoted metal value source. The parties had agreed upon a time period during which the customer could lock in the publicly quoted rate; no further negotiations were necessary. *In Brass Sheet and Strip*, the price and quantity terms were sufficiently definite and effectively finalized as of the date of the initial contract, and the parties had no further ability to change the price by negotiation. In the instant case, not only are prices subject to fluctuation due to the hyperinflationary adjustment in Brazil, but customers often negotiate a different price or make material changes to quantity between the date of initial order entry and invoice date. While the *Brass Sheet and Strip* case involved long-term, fixed contracts where there was nothing left for the parties to negotiate, the instant case reflects the fact that when a purchase order to schedule production enters into MSA's system, the negotiating continues and a price adjustment often follows at the time of invoicing. With respect to this price adjustment, we could find no evidence in the source documentation examined at verification that, at the time of order, the customer had knowledge of the index (or indices) that would be used by respondent to make the adjustment for inflation, and that the customer therefore knew the exact price to which it had agreed. We also noted evidence of post-order cancellations, indicating that the customer was not bound by the terms set in the order.

We note that our decision in this case to accept the date of invoice as the date of sale is based upon the factual evidence on the record. In general, issues regarding the appropriate date of sale are examined on a case-by-case basis, and our decision in this case should not be interpreted as a general policy preference in future cases.

Comment 4

Consistent with its contention that the appropriate date of sale is the date of respondent's internal order, petitioner maintains that the home market prices and other cruzeiro-denominated data reported by Mannesmann must be restated in terms of the value of the cruzeiro during the month of sale. Similarly, according to petitioner, an inflation factor should not be included in any credit expense adjustment. Petitioner argues that to some extent the inflator in the credit expense adjustment can be expected to offset the inflator in the price. However, since the two inflators are derived differently and serve different purposes, they are seldom, if ever, equal. Whereas the credit expense inflator reflects inflation from the invoice date to the actual date of payment, the price inflator is based on the number of days between the invoice and the expected date of payment. Furthermore, petitioner states that the Department verified that the rates used for the price inflator are not proportional across payment terms. Therefore, while the credit expense inflator should reflect the actual inflation rate, the price inflator may be higher or lower than the true rate depending on the date of actual payment. According to petitioner, the Department can determine the actual gross unit price in terms of cruzeiros during the month of sale by subtracting the reported inflation value from the reported gross unit price (invoice price). In addition, the indexed value of the reported (inflated) gross price should be compared to the price of the internal order, and any excess should be treated as interest revenue attributable to that sale because the price inflator may be higher than the true inflation rate.

Petitioner suggests that the reported inflation value be subtracted from gross price to obtain the price in terms of cruzeiros as valued during the month of shipment, and the resulting values can be converted to cruzeiros as valued on the actual date of sale (*i.e.*, the internal order date) using the exchange rates provided in Mannesmann's response. The indexed value of the reported (inflated) gross price should then be compared to the price of the internal order, and any excess should be treated as interest revenue attributable to that sale.

Respondent maintains that the Department has verified the reported home market credit expenses and the rates for short-term loans available in Brazil during the POI without discrepancy and, therefore, should deduct these credit expenses as reported from FMV. Mannesmann disputes petitioner's allegation that interest revenue affects credit expenses and that, if a customer made a late payment, Mannesmann is not entitled to an adjustment for credit expenses because it would understate home market price. Respondent states that in the few instances when a customer did not pay on the expected date, interest revenue amounts were reported as an upward adjustment to the home market price, as verified by the Department. Also, if a customer did pay late, not only did Mannesmann incur the opportunity cost of not having the customer's money from the invoice date to the expected payment date, but it also suffered a financial loss from delayed payment during the period between the payment date listed on the invoice and the actual payment date. Therefore, according to Mannesmann, denying an adjustment for credit expenses for the time following payment due date and actual payment is totally illogical.

DOC Position

As discussed above in Comment 3, we have determined that invoice date is the appropriate date of sale in this case. Therefore, we consider moot petitioner's arguments with respect to the restatement of home market prices to reflect the value of the cruzeiro on the order date.

In our preliminary determination, we adjusted FMV for inflation occurring between order and invoice date, which factors in expected payment terms, as well as credit expenses, which include an inflation factor based on actual payment terms. Based on verification findings and our acceptance of respondent's date of sales methodology, we have determined that this adjustment was incorrect because it double-counted the value of inflation. Therefore, for purposes of the final determination, we only made an adjustment to FMV for credit expenses as reported and verified.

Comment 5

Mannesmann argues that the Department should compare U.S. sales by MPS with home market sales made by MSA, including sales to its related party MCSA, and that it provided evidence that MSA's sales to MCSA are arm's-length transactions. However, if the Department does not treat MSA's sales to MCSA as arm's-length transactions, the Department should make a level of trade adjustment to reflect the additional selling expenses (*i.e.*, indirect selling expenses and inventory carrying costs) incurred by MCSA.

Mannesmann asserts that 19 CFR 353.58 requires that a level of trade adjustment be made when FMV and U.S. price are not based on sales at the same commercial level of trade. According to respondent, MSA and MCSA operate at different levels of trade in Brazil. MCSA is a distributor that purchases from MSA and sells to customers from inventory, requiring MCSA to incur considerable inventory and selling expenses. In contrast, both MSA in Brazil and MPS in the United States are not made from inventory, but are manufactured to order. To support its argument, respondent cites *Final Determination of Sales at Less Than Fair Value: Stoinless Steel Bar from Spain* (59 FR 66931, December 28, 1994) (*Stainless Steel Bar*) where the Department granted such an adjustment under allegedly similar factual circumstances.

Petitioner contends that Mannesmann did not provide the evidence it purports to have provided substantiating its claim regarding the arm's-length nature of the transactions between MSA and MCSA. At the preliminary determination, the Department determined that sales to MCSA were not made at arm's length, and based FMV on MSA's and MCSA's sales to unrelated customers. According to petitioner, nothing in the verification report obligates the Department to change that finding. Furthermore, petitioner argues that Mannesmann has not proven its entitlement to a level of trade adjustment. Petitioner asserts that it has not been clearly established that two levels of trade exist. In addition, petitioner states that while Mannesmann argues that differences in selling expenses exist due to inventory costs, it has not proven that a correlation exists between both prices and selling expenses at each level of trade.

According to petitioner, absent additional information concerning differences in the customer bases (*e.g.*, relative size and purchasing power of customers), evidence that price differences correlate to level of trade differences, a level of trade adjustment is not appropriate. However, if the Department nonetheless decides to grant respondent the requested adjustment, it should be based on differences in actual expenses incurred on MCSA's sales; *i.e.*, the adjustment should be made on the reported indirect selling expenses only, exclusive of the reported inventory carrying costs. Petitioner also adds that these selling expenses must be offset by the indirect selling expenses incurred by MSA on U.S. sales because the basic purpose of a level of trade adjustment is to account for differences in the level of trade between U.S. and home market sales.

DOC Position

With regard to the arm's-length nature of related party sales, we agree with petitioner. Based on the results of our related party test (as described in the FMV section of this notice), we found that MSA's sales to MCSA are not at arm's length and, thus, we excluded them from our dumping analysis for purposes of the final determination. This result is consistent with that in our preliminary determination, and since that time, respondent has not provided any new evidence to justify a departure from our normal related party test.

With regard to matching by level of trade, we have accepted respondent's level of trade classification because the record indicates that the alleged difference in level of trade involves different selling activities and expenses. However, with regard to the respondent's claim for a level of trade adjustment, we have determined that an adjustment is not warranted because we are uncertain whether the difference in level of trade affects price comparability.

In analyzing the prices at the two levels of trade, we compared average prices, adjusted for all direct selling expenses, by product and month of sale for the POI. The results of this analysis indicate that prices overlap for a significant number of sales. However, because for each month only a small number of prices by product were available and the monthly inflation rate was high, we have concluded that the data does not provide a reliable indication of the pattern of prices at the two levels of trade. Therefore, we do not have a basis to conclude whether there is or is not a pattern of price differences attributable to level of trade. Accordingly, we have not made a level of trade adjustment.

Comment 6

Petitioner maintains that Mannesmann's packing expenses are unverified and may not be relied upon for purposes of the final determination. Petitioner also maintains that these costs appear to have been based solely on labor and materials without any allocation of overhead costs, and MCSA failed to report any repacking costs associated with its sales. Therefore, petitioner advocates using BIA. As BIA, petitioner requests that the Department either not make any upward adjustment to U.S. price for packing or use the lower of the amounts reported in the U.S. sales listing and the lowest export packing amount reported on the chart on page 41 of the Department's May 11, 1995, Verification Report. Additionally, petitioner proposes that the Department should (1) subtract the lowest of the packing amount reported for the home market sales listing and the lowest domestic packing amount from the verification report chart, and (2) add as an offset to FMV the higher of the amount of the highest U.S. packing amount reported in the sales listing and the highest amount of export packing reported on page 41 of the verification report.

Respondent argues that the Department should apply an average per

unit packing cost based on MSA's simulated cost data provided at verification which tied to the cost data provided in Exhibit 18 of the December 9, 1994, response, as this is the most accurate and reliable data on which to calculate MSA's packing costs. MSA provides a monthly average packing cost calculation for each of the four products sold in each market in Exhibit 2 of its May 19, 1995, case brief. Therefore, the Department should match the resulting average monthly packing data to the sales listing based on the month of shipment for home market sales, as all home market shipments occurred between January and June 1994. For U.S. sales, many shipments of which occurred after the POI, respondent proposes using an average POI packing expense (also provided in Exhibit 2). For sales of products which do not match to one of the four product codes, the average packing expense of all four product codes should be applied.

DOC Position

We agree with petitioner that the reported packing expenses were unverified. At verification, respondent explained that MSA's cost accounting system cannot separately identify packing costs incurred for export and domestic sales. Therefore, in order to derive the monthly per unit packing amounts reported in the U.S. and home market sales listings, MSA conducted packing simulation exercises for four products—three hot-finished and one cold-drawn. That is, they estimated the time it took to pack the products based on actual experience and derived the associated materials and labor costs from their accounting records. However, we could not tie the monthly packing costs resulting from this exercise to the reported monthly per unit packing amounts in respondent's home market and U.S. sales listings. Respondent could not explain the reason for the discrepancy. Therefore, we determine that these costs were not verified. Because the reported costs cannot be used for purposes of our analysis, we used BIA. As BIA for these costs, we subtracted from FMV, the lowest domestic packing amount reported on the record, and added to FMV, the highest export packing amount reported on the record.

Comment 7

Respondent maintains that the Department verified that no galvanized, threaded or coupled products were sold to the United States during the POI. Therefore, MCSA's sales of such products will not be matched to U.S. products and are thereby irrelevant in the Department's margin analysis. With respect to the unreported bevelling costs, respondent states that MSA's cost for producing bevelled pipe was used as a surrogate value for MCSA's sales of bevelled product. Mannesmann states that it is logical that its cost of bevelling would be lower than the bevelling costs charged by a third party. The use of the third party bevelling cost would have resulted in higher home market variable costs which, in turn, would have resulted in a lower difmer to be added to FMV. According to Mannesmann, the use of MSA's bevelling costs as a surrogate for third party expenses incurred by MCSA was therefore conservative and reasonable.

Petitioner contends that Mannesmann often reports significantly different costs in the same month for products that are identical except for end finish, and that these variations do not make sense, particularly because the differences between black plain-end pipe and bevelled-end pipe are insignificant especially in terms of material costs. According to petitioner, there is no consistency in the margins by which reported materials costs differ for otherwise identical products with different end finishes. Neither is there any evidence on the record to suggest a reason for attributing such widely varying costs to virtually identical products simply by reason of end finish. Petitioner notes that, in some instances, Mannesmann has reported identical costs for different end finishes. Petitioner maintains that these facts cast doubt on Mannesmann's entire cost accounting system.

In addition, Mannesmann's principal contention concerning MCSA's third party bevelling costs (*i.e.*, that they are higher than MSA's) constitutes non-record information upon which the Secretary may not rely. MCSA's bevelling costs have never been separately reported on the record and, therefore, could not have been verified. Thus, any bevelling cost attributed to products sold by MCSA must be based on BIA.

DOC Position

We agree with petitioner and respondent in part. We verified that while MCSA failed to report third party galvanization, coupling and threading costs for certain products, no such products were sold to the United States during the POI and, therefore, were not used in product comparisons. Thus, the omission of these costs did not affect any difmer adjustments that were made for similar product comparisons. However, even if such products were used in product comparisons, MCSA's omission of these costs for difmer adjustment purposes would have the effect of underestimating home market costs and thereby overstating the upward difmer adjustment made to FMV. Therefore, we did not make any adjustment for the omitted costs at issue.

With respect to bevelling costs, we note that there were U.S. sales of bevelled pipe during the POI. We also note that for MCSA's sales of bevelled products that were used in product comparisons, MSA's costs of bevelling were included in the reported variable costs of manufacture. This is consistent with the verified product coding methodology used by MCSA. That is, for those products that were further processed by third parties prior to sale, MCSA reported only its own internal product code, and for those products that did not undergo further processing, MCSA reported both MSA's product code and its own product code (*see* May 11, 1995, Verification Report at 8). For the transactions consisting of the bevelled products sold by MCSA which were used in product comparisons, respondent reported both product codes, indicating that the bevelling was performed at MSA's mill. However, we modified these costs for difmer adjustment purposes for the reasons stated in DOC Position to Comment 2 above.

Comment 8

Petitioner alleges that a deduction to U.S. price should be made for the "bank fees" incurred by MSA for entering into exchange contracts in order to receive payment from MPS on its shipments to the United States. According to petitioner, such fees are a necessary and direct selling expense relating to U.S. sales. Since similar fees are not incurred for home market sales, the fees must be deducted from USP in order to obtain a proper comparison. Petitioner maintains that Mannesmann's claims that the fees do not affect the U.S. price and that Mannesmann invests a portion of these funds (which respondent has not quantified) is irrelevant to the Department's analysis.

Respondent maintains that this proposal is incorrect for the following reasons: (1) The exchange contract transaction does not impact the U.S. customer, but is solely a mechanism whereby MSA can be paid in local currency for foreign currency sales as required by Brazilian law; and (2) throughout the POI, MSA chose to receive payment in Brazilian currency under the exchange contracts in advance (when the order was booked from the mill), a portion of which it invested and gained returns which exceeded any fees paid to the bank. According to Mannesmann, the Department should treat the exchange contracts as intercompany transfers of funds between MSA and MPS that have no effect on the payment from the U.S. customer. Respondent claims that any bank fees incurred pre-shipment by MSA are administrative fees that have no bearing on U.S. price.

DOC Position

We disagree with respondent that these fees are intracompany transfers. They are fees paid to third parties in the U.S. sales process which we conclude are included in the ultimate price between MPS and the U.S. customer. These types of fees are normally taken into account in the Department's margin analysis. Therefore, we made an adjustment to U.S. price in the amount of the fee reported in the sample exchange contract provided in Exhibit 10 of the December 9, 1994, response.

Comment 9

Petitioner states that respondent included in its sales listing sales of cold-drawn products finished from imported tube hollows. According to petitioner, such products are not subject merchandise produced in Brazil and should not have been included in the sales listing. Petitioner urges that the Department apply BIA to all sales of cold-drawn pipe in the final determination. In addition, petitioner maintains that none of the difmers provided for cold-drawn products can be used because it is not known how many are affected by the inclusion of imported tube hollows. There is no information on the record that would allow the Department to equate the cost of producing cold-drawn pipe with the cost of finishing cold-drawn tube hollows.

Respondent asserts that the cold-drawn products referred to fall within the scope of the investigation. Mannesmann reported as subject merchandise sales of all products within the scope of the investigation, regardless of whether those products were made from ingots or billets, or in the case of the limited amount of cold-drawn products, purchased hollows. Therefore, unless the petitioner contends that pipe manufactured in Brazil from imported hollows are excluded from the scope of the investigation, Mannesmann asserts that it properly reported all shipments of subject merchandise, including small diameter cold-drawn product manufactured from hollows. Moreover, the Department verified the quantity and price of purchased hollow tubes, and traced the reliability of those material costs reported for cold-drawn products.

DOC Position

We agree with petitioner in part. Our verification findings revealed that respondent had properly reported sales of cold-drawn seamless pipe as subject merchandise in its sales listings (but for certain omissions discussed in Comment 1 above). We also found that respondent used imported tubes in the production of cold-drawn pipe during the POI. However, respondent failed to inform the Department that it used any material input other than in-house produced bar for the production of cold-drawn pipe during the POI, despite the Department's questions concerning the materials used in the production of the subject merchandise in its February 10, 1995, supplemental questionnaire. Consequently, we are unable to make a reliable difmer adjustment for U.S. sales of cold-drawn products because the variable costs reported include costs unassociated with physical differences. Therefore, because we cannot use or modify the reported difmer data for these cold-drawn products as we do not have the information on the record to do so, we have used BIA for the affected sales. *See* also DOC Position to Comment 2 above.

Comment 10

Petitioner contends that approximately two-thirds of the exchange rates reported in MCSA's sales listing, which are necessary for the proper calculation of difmers and should reflect the average monthly rate for the month of shipment, are incorrect. Therefore, the Department should cross-check each reported exchange rate against the actual monthly rate, and make appropriate corrections for the final determination.

Respondent maintains that petitioner's contention is incorrect. According to respondent, the rates at issue were adjusted to ensure that they matched the date of shipment from the factory, and this is the reason for the 22 day adjustment reflected in Mannesmann's response. Mannesmann reported all difmer data and the relevant exchange rates based on the month in which the pipe was shipped from MSA's mill. Because MSA does not maintain inventories of finished pipe, the month of shipment from MSA is also the month in which the pipe was produced. Similarly, in the case of U.S. sales, the Department asked MPS to revise its reported shipment date to reflect the date on which the pipe left the mill. Thus, in all cases involving sales by MSA or MPS, the reported date of shipment reflects the month in which pipe was produced and shipped.

For sales by MCSA, pipe produced by MSA and shipped to MCSA is placed in MCSA's inventory from which it is subsequently resold to MCSA's customers. The reported shipment date for MCSA sales, therefore, does not reflect when the pipe was produced and shipped from MSA. In order to ascertain when a given quantity of pipe was produced and shipped from MSA, MCSA's average days in inventory (as reported in Exhibit 24 of the December 9, 1994, response) was subtracted from the reported shipment date. Therefore, all difmer data and exchange rates for MCSA were based on MCSA's date of shipment minus the average number of days in inventory in order to ensure that the difmer data and exchange rate reflected the date on which the merchandise was produced and shipped from the factory.

DOC Position

We consider this issue raised by petitioner to be moot based on our treatment of difmer costs discussed in Comment 2 above. By using revised UFIR costs for difmer adjustment purposes, we no longer need to convert these costs to U.S. dollars using an average exchange rate. However, we note that we verified the daily CR/UFIR and US$/CR exchange rates reported by respondent in Exhibits 4 and 5 of the February 28, 1995, response against source documentation and found that they were based on official government rates. (*See* May 11, 1995, Verification Report at 37.) Therefore, for purposes of converting home market prices, difmer costs and other adjustments to U.S. dollars on the date of the U.S. sale, we intend to use the verified government exchange rates that were verified. This is consistent with past practice. (*See Silicon Metal from Brazil.*)

Comment 11

Petitioner maintains that Mannesmann has improperly submitted untimely new factual information in its case brief, including: (1) an affidavit by an MPS employee which presents evidence of differences between carbon and alloy pipe within the context of the criteria in *Diversified Products* relevant to the issue of whether the subject merchandise should constitute more than one class or kind; (2) portions of the record of proceedings before the International Trade Commission concerning the issue of whether to continue to include end use as a defining characteristic of the scope; and (3) factual information concerning the

manner in which it calculated MCSA's bevelling costs that had not been submitted to the Department previously. According to petitioner, the Department must strike this information from the record and may not consider it in the final determination.

DOC Position

We disagree with petitioner. With respect to the portions of Mannesmann's case brief referred to above concerning class or kind and end use, we note that the information contained therein further corroborates data previously submitted on the record by respondent (*see* Mannesmann's submissions dated October 21, 1994, October 31, 1994, and March 27, 1994). With respect to bevelling costs, we did not rely on the information referred to by petitioner for purposes of the final determination (*see* DOC Position to Comment 7 above).

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) of the Act 19 USC 1673b(d)(1), we directed the Customs Service to suspend liquidation of all entries of seamless pipe from Brazil, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after January 27, 1995.

Pursuant to the results of this final determination, we will instruct the Customs Service to require a cash deposit or posting of a bond equal to the estimated dumping margin, as shown below, for entries of seamless pipe from Brazil that are entered, or withdrawn from warehouse, for consumption from the date of the publication of this notice in the **Federal Register**. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Margin percent
Mannesmann S.A.	125.00
All Others	125.00

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. The ITC will make its determination whether these imports materially injure, or threaten injury to, a U.S. industry, within 45 days of the publication of this notice. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If the ITC determines that material injury or threat of material injury does exist, the Department will issue an antidumping duty order.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) in these investigations of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 USC 1673(d)) and 19 CFR 353.20.

Dated: June 12, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–14937 Filed 6–16–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–428–820]

Notice of Final Determination of Sales at Less Than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe From Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 19, 1995.

FOR FURTHER INFORMATION CONTACT: Irene Darzenta or Fabian Rivelis, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–6320 or (202) 482–3853, respectively.

FINAL DETERMINATION: The Department of Commerce (the Department) determines that small diameter circular seamless carbon and alloy steel, standard, line and pressure pipe (seamless pipe) from Germany is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of the preliminary determination published on January 27, 1995, (60 FR 5355), the following events have occurred.

On February 8, 1995, petitioner alleged that the Department made a ministerial error in its preliminary margin calculations. The Department determined on February 17, 1995, that the allegation raised by petitioners was methodological in nature and improperly raised under Section 751(f) of the Act.

In our notice of preliminary determination we stated that we would solicit further information on various scope-related issues, including class or kind of merchandise.

On February 10, 1995, we issued a questionnaire to interested parties to request further information on whether the scope of the investigation constitutes more than one class or kind of merchandise. Responses to this questionnaire were submitted on March 27, 1995.

On February 10, 1995, we issued a supplemental questionnaire to Mannesmannrohren-Werke AG (MRW). MRW submitted its supplemental responses and revised home market and U.S. sales listings on February 28, 1995, and March 6, 1995, respectively.

Pursuant to requests by petitioner and respondent, on February 16, 1995, a notice was published in the **Federal Register** (60 FR 9012) announcing the postponement of the final determination until June 12, 1995.

In March and April 1995, we conducted verification of MRW's questionnaire responses. Our verification reports were issued in May 1995.

On April 27, 1995, Koppel Steel Corporation, a U.S. producer of subject merchandise which appeared as an interested party from the outset of this investigation, requested co-petitioner status.

Respondent and petitioner submitted case briefs on May 16, 1995, and rebuttal briefs on May 23, 1995. No public hearing was requested. On May 23, 1995, we returned portions of MRW's case brief because we determined that it contained new factual information submitted after the deadline specified in 19 CFR 353.31 (a)(i)) for the submission of factual information. On May 24, 1995, MRW refiled its case brief with the new information deleted.

Scope of Investigation

The following scope language reflects certain modifications made for purposes of the final determination, where appropriate, as discussed in the "Scope Issues" section below.

The scope of this investigation includes seamless pipes produced to the ASTM A–335, ASTM A–106, ASTM A–53 and API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of this investigation also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters below, regardless of specification.

For purposes of this investigation, seamless pipes are seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3 mm (4.5 inches) in outside diameter, regardless of wall thickness, manufacturing process (hot-finished or cold-drawn), end finish (plain end, bevelled end, upset end, threaded, or threaded and coupled), or surface finish. These pipes are commonly known as standard pipe, line pipe or pressure pipe, depending upon the application. They may also be used in structural applications. Pipes produced in non-standard wall thicknesses are commonly referred to as tubes.

The seamless pipes subject to these investigations are currently classifiable under subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (HTSUS).

The following information further defines the scope of this investigation, which covers pipes meeting the physical parameters described above:

Specifications, Characteristics and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the American Society for Testing and Materials (ASTM) standard A–106 may be used in temperatures of up to 1000 degrees fahrenheit, at various American Society of Mechanical Engineers (ASME) code stress levels. Alloy pipes made to ASTM standard A–335 must be used if temperatures and stress levels exceed those allowed for A–106 and the ASME codes. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53 and API 5L specifications. Such triple certification of pipes is common because all pipes meeting the stringent A–106 specification necessarily meet the API 5L and ASTM A–53 specifications. Pipes meeting the API 5L specification necessarily meet the ASTM A–53 specification. However, pipes meeting the A–53 or API 5L specifications do not necessarily meet the A–106 specification. To avoid maintaining separate production runs and separate inventories, manufacturers triple certify the pipes. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple certified pipes is in pressure piping systems by refineries, petrochemical plants and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, A–106 pipes may be used in some boiler applications.

The scope of this investigation includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, and whether or not also certified to a non-covered specification. Standard, line and pressure applications and the above-listed specifications are defining characteristics of the scope of this investigation. Therefore, seamless pipes meeting the physical description above, but not produced to the A–335, A–106, A–53, or API 5L standards shall be covered if used in a standard, line or pressure application.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in A–106 applications. These specifications generally include A–162, A–192, A–210, A–333, and A–524. When such pipes are used in a standard, line or pressure pipe application, such products are covered by the scope of this investigation.

Specifically excluded from this investigation are boiler tubing and mechanical tubing, if such products are not produced to A–335, A–106, A–53 or API 5l specifications and are not used in standard, line or pressure applications. In addition, finished and unfinished OCTG are excluded from the scope of this investigation, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications. Finally, also excluded from this investigation are redraw hollows for cold-drawing when used in the production of cold-drawn pipe or tube.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Scope Issues

Interested parties in these investigations have raised several issues related to the scope. We considered these issues in our preliminary determination and invited additional comments from the parties. These issues, which are discussed below, are: (A) Whether to continue to include end use as a factor in defining the scope of these investigations; (B) whether the seamless pipe subject to these investigations constitutes more than one class or kind of merchandise; and (C) miscellaneous scope clarification issues and scope exclusion requests.

A. End Use

We stated in our preliminary determination that we agreed with petitioner that pipe products identified as potential substitutes used in the same applications as the four standard, line, and pressure pipe specifications listed in the scope would fall within the class or kind of subject merchandise and, therefore, within the scope of any orders issued in these investigations. However, we acknowledged the difficulties involved with requiring end-use certifications, particularly the burdens placed on the Department, the U.S. Customs Service, and the parties, and stated that we would strive to simplify any procedures in this regard.

For purposes of these final determinations, we have considered carefully additional comments submitted by the parties and have determined that it is appropriate to

continue to employ end use to define the scope of these cases with respect to non-listed specifications. We find that the generally accepted definition of standard, line and pressure seamless pipes is based largely on end use, and that end use is implicit in the description of the subject merchandise. Thus, end use must be considered a significant defining characteristic of the subject merchandise. Given our past experience with substitution after the imposition of antidumping orders on steel pipe products [1], we agree with petitioner that if products produced to a non-listed specification (*e.g.*, seamless pipe produced to A–162, a non-listed specification in the scope) were actually used as standard, line, or pressure pipe, then such product would fall within the same class or kind of merchandise subject to these investigations.

Furthermore, we disagree with respondents' general contention that using end use for the scope of an antidumping case is beyond the purview of the U.S. antidumping law. The Department has interpreted scope language in other cases as including an end-use specification. *See Ipsco Inc.* v. *United States*, 715 F.Supp. 1104 (CIT 1989)(*Ipsco*). In *Ipsco*, the Department had clarified the scope of certain orders, in particular the phrase, "intended for use in drilling for oil and gas," as covering not only API specification OCTG pipe but, " 'all other pipe with [certain specified] characteristics used in OCTG applications * * *' " Ipsco at 1105. In reaching this determination, the Department also provided an additional description of the covered merchandise, and initiated an end-use certification procedure.

Regarding implementation of the end use provision of the scope of these investigations, and any orders which may be issued in these investigations, we are well aware of the difficulty and burden associated with such certifications. Therefore, in order to maintain the effectiveness of any order that may be issued in light of actual substitution in the future (which the end-use criterion is meant to achieve), yet administer certification procedures in the least problematic manner, we have developed an approach which simplifies these procedures to the greatest extent possible.

First, we will not require end-use certification until such time as petitioner or other interested parties provide a reasonable basis to believe or suspect that substitution is occurring.[2] Second, we will require end-use certification only for the product(s) (or specification(s)) for which evidence is provided that substitution is occurring. For example, if, based on evidence provided by petitioner, the Department finds a reasonable basis to believe or suspect that seamless pipe produced to A–162 specification is being used as pressure pipe, we will require end- use certifications for imports of A–162 specification. Third, normally we will require only the importer of record to certify to the end use of the imported merchandise. If it later proves necessary for adequate implementation, we may also require producers who export such products to the United States to provide such certification on invoices accompanying shipments to the United States. For a complete discussion of interested party comments and the Department's analysis on this topic, *see* June 12, 1995, *End Use Decision Memorandum* from Deputy Assistant Secretary Barbara Stafford (DAS) to Assistant Secretary Susan Esserman (AS).

B. Class or Kind

In the course of these investigations, certain respondents have argued that the scope of the investigations should be divided into two classes or kinds. Siderca S.A.I.C., the Argentine respondent, has argued that the scope should be divided according to size: seamless pipe with an outside diameter of 2 inches or less and pipe with an outside diameter of greater than 2 inches constitute two classes or kinds. Mannesmann S.A., the Brazilian respondent, and Mannesmannrohren-Werke AG, the German respondent, argued that the scope should be divided based upon material composition: carbon and alloy steel seamless pipe constitute two classes or kinds.

In our preliminary determinations, we found insufficient evidence on the record that the merchandise subject to these investigations constitutes more than one class or kind. We also indicated that there were a number of areas where clarification and additional comment were needed. For purposes of the final determination, we considered a significant amount of additional information submitted by the parties on this issue, as well as information from other sources. This information strongly supports a finding of one class or kind of merchandise. As detailed in the June 12, 1995, *Class or Kind Decision Memorandum* from DAS to AS, we analyzed this issue based on the criteria set forth by the Court of International Trade in *Diversified Products* v. *United States*, 6 CIT 155, 572 F. Supp. 883 (1983). These criteria are as follows: (1) The general physical characteristics of the merchandise; (2) expectations of the ultimate purchaser; (3) the ultimate use of the merchandise; (4) the channels of trade in which the merchandise moves; and (5) the cost of that merchandise.

In the past, the Department has divided a single class or kind in a petition into multiple classes or kinds where analysis of the *Diversified Products* criteria indicates that the subject merchandise constitutes more than one class or kind. *See, for example, Final Determination of Sales at Less than Fair Value; Anti-Friction Bearings (Apart from Tapered Roller Bearings) from Germany*, 54 FR 18992, 18998 (May 3, 1989) ("AFBs from Germany"); *Pure and Alloy Magnesium from Canada: Final Affirmative Determination; Rescission of Investigation and Partial Dismissal of Petition*, 57 FR 30939 (July 13, 1992).

1. Physical Characteristics

We find little meaningful difference in physical characteristics between seamless pipe above and below two inches. Both are covered by the same technical specifications, which contains detailed requirements.[3] While we recognize that carbon and alloy pipe do have some important physical differences (primarily the enhanced heat and pressure tolerances associated with alloy grade steels), it is difficult to say where carbon steel ends and alloy steel begins. As we have discussed in our *Class or Kind Decision Memorandum* of June 12, 1995, carbon steel products themselves contain alloys, and there is a range of percentages of alloy content present in merchandise made of carbon steel. We find that alloy grade steels, and pipes made therefrom, represent the upper end of a single continuum of steel grades and associated attributes.[4]

[1] *See Preliminary Affirmative Determination of Scope Inquiry on Antidumping Duty Orders on Certain Welded Non-Alloy Steel Pipes from Brazil, the Republic of Korea, Mexico and Venezuela*, 59 FR 1929, January 13, 1994.

[2] This approach is consistent with petitioner's request.

[3] The relevant ASTM specifications, as well as product definitions from other independent sources (e.g., American Iron and Steel Institute (AISI)), describe the sizes for standard, line, and pressure pipe, as ranging from 1/2 inch to 60 inches (depending on application). None of these descriptions suggest a break point at two inches.

[4] The Department has had numerous cases where steel products including carbon and alloy grades were considered to be within the same class or kind. *See, e.g., Preliminary Determination of Sales at Less than Fair Value: Oil Country Tubular Goods from Austria, et al.*, 60 FR 6512 (February 2, 1995); *Final Determination of Sales at Less than Fair Value: Certain Alloy and Carbon Hot-Rolled Bars, Rods, and Semi-Finished Products of Special Bar Quality Engineered Steel from Brazil*, 58 FR 31496 (June 3, 1993); *Final Determination of Sales at Less than Fair Value: Forged Steel Crankshafts from the United Kingdom*, 60 FR 22045 (May 9, 1995).

In those prior determinations where the Department divided a single class or kind, the Department emphasized that differences in physical characteristics also affected the capabilities of the merchandise (either the mechanical capabilities, as in *AFBs from Germany*, 54 FR at 18999, 19002–03, or the chemical capabilities, as in *Pure and Alloy Magnesium from Canada*, 57 FR at 30939), which in turn established the boundaries of the ultimate use and customer expectations of the products involved.

As the Department said in AFBs from Germany,

> [t]he real question is whether the physical differences are so material as to alter the essential nature of the product, and, therefore, rise to the level of class or kind distinctions. We believe that the physical differences between the five classes or kinds of the subject merchandise are fundamental and are more than simply minor variations on a theme.

54 Fed. Reg. at 19002. In the present cases, there is insufficient evidence to conclude that the differences between pipe over 2 inches in outside diameter and 2 inches or less in outside diameter, rise to the level of a class or kind distinction.

Furthermore, with regard to Siderca's allegation that a two-inch breakpoint is widely recognized in the U.S. market for seamless pipe, the Department has found only one technical source of U.S. market data for seamless pipe, the *Preston Pipe Report*. The *Preston Pipe Report*, which routinely collects and publishes U.S. market data for this merchandise, publishes shipment data for the size ranges ½ to 4½ inches: It does not recognize a break point at 2 inches. Accordingly, the Department does not agree with Siderca that "the U.S. market" recognizes 2 inches as a physical boundary line for the subject merchandise.

In these present cases, therefore, the Department finds that there is insufficient evidence that any physical differences between pipe over 2 inches in outside diameter and 2 inches or less in outside diameter, or between carbon and alloy steel, rise to the level of class or kind distinctions.

2. Ultimate Use and Purchaser Expectations

We find no evidence that pipe above and below two inches is used exclusively in any specific applications. Rather, the record indicates that there are overlapping applications. For example, pipe above and below two inches may both be used as line and pressure pipe. The technical definitions for line and pressure pipe provided by ASTM, AISI, and a variety of other sources do not recognize a distinction between pipe over and under two inches.

Likewise, despite the fact that alloy grade steels are associated with enhanced heat and pressure tolerances, there is no evidence that the carbon or alloy content of the subject merchandise can be differentiated in the ultimate use or expectations of the ultimate purchaser of seamless pipe.

3. Channels of Trade

Based on information supplied by the parties, we determine that the vast majority of the subject merchandise is sold through the same channel of distribution in the United States and is triple-stenciled in order to meet the greatest number of applications.

Accordingly, the channels of trade offer no basis for dividing the subject merchandise into multiple classes or kinds based on either the size of the outside diameter or on pipe having a carbon or alloy content.

4. Cost

Based on the evidence on the record, we find that cost differences between the various products do exist. However, the parties varied considerably in the factors which they characterized as most significant in terms of affecting cost. There is no evidence that the size ranges above and below two inches, and the difference between carbon and alloy grade steels, form a break point in cost which would support a finding of separate classes or kinds.

In conclusion, while we recognize that certain differences do exist between the products in the proposed class or kind of merchandise, we find that the similarities significantly outweigh any differences. Therefore, for purposes of the final determination, we will continue to consider the scope as constituting one class or kind of merchandise.

C. Miscellaneous Scope Clarification Issues and Exclusion Requests

The miscellaneous scope issues include: (1) Whether OCTG and unfinished OCTG are excluded from the scope of these investigations; (2) whether pipes produced to non-standard wall thicknesses (commonly referred to as "tubes") are covered by the scope; (3) whether certain merchandise (*e.g.*, boiler tubing, mechanical tubing) produced to a specification listed in the scope but used in an application excluded from the scope is covered by the scope; and (4) whether redraw hollows used for cold drawing are excluded from the scope. For a complete discussion of interested party comments and the Department's analysis on these topics, *see* June 12, 1995, *Additional Scope Clarifications Decision Memorandum* from DAS to AS.

Regarding OCTG, petitioner requested that OCTG and unfinished OCTG be included within the scope of these investigations if used in a standard, line or pressure pipe application. However, OCTG and unfinished OCTG, even when used in a standard, line or pressure pipe application, may come within the scope of certain separate, concurrent investigations. We intend that merchandise from a particular country not be classified simultaneously as subject to both an OCTG order and a seamless pipe order. Thus, to eliminate any confusion, we have revised the scope language above to exclude finished and unfinished OCTG, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in a standard, line or pressure pipe application, and, as with other non-listed specifications, may be subject to end-use certification if there is evidence of substitution.

Regarding pipe produced in non-standard wall thicknesses, we determine that these products are clearly within the parameters of the scope of these investigations. For clarification purposes, we note that the physical parameters of the scope include all seamless carbon and alloy steel pipes, of circular cross-section, not more than 4.5 inches in outside diameter, *regardless of wall thickness*. Therefore, the fact that such products may be referred to as tubes by some parties, and may be multiple-stenciled, does not render them outside the scope.

Regarding pipe produced to a covered specification but used in a non-covered application, we determine that these products are within the scope. We agree with the petitioner that the scope of this investigation includes all merchandise produced to the covered specifications and meeting the physical parameters of the scope, regardless of application. The end-use criteria included in the scope is only applicable to products which can be substituted in the applications to which the covered specifications are put *i.e.* standard, line, and pressure applications.

It is apparent that at least one party in this case interpreted the scope incorrectly. Therefore, we have clarified the scope to make it more explicit that all products made to ASTM A–335,

ASTM A–106, ASTM A–53 and API 5L are covered, regardless of end use.

With respect to redraw hollows for cold drawing, the scope language excludes such products specifically when used in the production of cold-drawn pipe or tube. We understand that petitioner included this exclusion language expressly and intentionally to ensure that hollows imported into the United States are sold as intermediate products, not as merchandise to be used in a covered application.

Standing

The Argentine, Brazilian, and German respondents have challenged the standing of Gulf States Tube to file the petition with respect to pipe and tube between 2.0 and 4.5 inches in outside diameter, arguing that Gulf States Tube does not produce these products.

Pursuant to section 732(b)(1) of the Act, an interested party as defined in section 771(9)(C) of the Act has standing to file a petition. (*See also* 19 CFR 353.12(a).) Section 771(9)(C) of the Act defines "interested party," *inter alia*, as a producer of the like product. For the reasons outlined in the "Scope Issues" section above, we have determined that the subject merchandise constitutes a single class or kind of merchandise. The International Trade Commission (ITC) has also preliminarily determined that there is a single like product consisting of circular seamless carbon and alloy steel standard, line, and pressure pipe, and tubes not more than 4.5 inches in outside diameter, and including redraw hollows. (*See* USITC Publication 2734, August 1994 at 18). For purposes of determining standing, the Department has determined to accept the ITC's definition of like product, for the reasons set forth in the ITC's preliminary determination. Because Gulf States is a producer of the like product, it has standing to file a petition with respect to the class or kind of merchandise under investigation. Further, as noted in the "Case History" section of this notice, on April 27, 1995, Koppel, a U.S. producer of the product size range at issue, filed a request for co-petitioner status, which the Department granted. As a producer of the like product, Koppel also has standing.

The Argentine respondent argues that Koppel's request was filed too late to confer legality on the initiation of these proceedings with regard to the products at issue. Gulf States Tube maintains that the Department has discretion to permit the amendment of a petition for purposes of adding co-petitioners who produce the domestic like product, at such time and upon such circumstances as deemed appropriate by the Department.

The Court of International Trade (CIT) has upheld in very broad terms the Department's ability to allow amendments to petitions. For example, in *Citrosuco Paulista, S.A.* v. *United States*, 704 F. Supp. 1075 (Ct. Int'l Trade 1988), the Court sustained the Department's granting of requests for co-petitioner status filed by six domestic producers on five different dates during an investigation. The Court held that the addition of the co-petitioners cured any defect in the petition, and that allowing the petition to be amended was within Commerce's discretion:

> [S]ince Commerce has statutory discretion to allow amendment of a dumping petition *at any time*, and since Commerce may self-initiate a dumping petition, any defect in a petition filed by [a domestic party is] cured when domestic producers of the like product [are] added as co-petitioners and Commerce [is] not required to start a new investigation.

Citrosuco, 704 F. Supp. at 1079 (emphasis added). The Court reasoned that if Commerce were to have dismissed the petition for lack of standing, and to have required the co-petitioners to refile at a later date, it "would have elevated form over substance and fruitlessly delayed the antidumping investigation . . . when Congress clearly intended these cases to proceed expeditiously." *Id.* at 1083–84.

Koppel has been an interested party and a participant in these investigations from the outset. The timing of Koppel's request for co-petitioner status and the fact that it made its request in response to Siderca's challenge to Gulf States's Tube's standing does not render its request invalid. *See Final Affirmative Countervailing Duty Determination; Live Swine and Fresh, Chilled, and Frozen Pork Products from Canada*, 50 FR 25097 (June 17, 1985). The Department has rejected a request to add a co-petitioner based on the untimeliness of the request only where the Department determined that there was not adequate time for opposing parties to submit comments and for the Department to consider the relevant arguments. *See Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Hollow Products from Sweden*, 52 FR 5794, 5795, 5803 (February 26, 1987). In this investigation, the respondents have had an opportunity to comment on Koppel's request for co-petitioner status, and the Argentine respondent has done so in its case brief. Therefore, we have determined that, because respondents would not be prejudiced or unduly burdened, amendment of the petition to add Koppel as co-petitioner is appropriate.

Period of Investigation

The period of investigation (POI) is January 1, through June 30, 1994.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Such or Similar Comparisons

We have determined that all the products covered by this investigation constitute a single category of such or similar merchandise.

Best Information Available (BIA)

We have determined that the questionnaire responses submitted by MRW are unusable because we were unable to verify their accuracy. Most importantly, we found at verification that MRW failed to include the costs incurred by one of its two manufacturing facilities which produced subject merchandise during the POI among the costs reported for differences-in-merchandise (difmer) adjustment purposes, despite the fact that the response had indicated, and MRW claimed up until the final hours of verification, that its reported costs reflected a weighted-average of the two plants. Accurate difmer information is crucial to the Department's analysis in this case because there are very few, if any, comparisons of identical merchandise. In general, seamless pipe in Germany is produced and sold to DIN specifications while seamless pipe exported to the United States is produced to ASTM specifications.

Other significant problems were discovered at verification. Company officials could not explain or provide adequate support documentation to explain numerous discrepancies and omissions. MRW was unable to tie the reported difmer data to its financial statements. MRW also failed to adequately demonstrate that the sales data reported to the Department took into account changes in price, quantity and date of sale. Finally, numerous other errors were found ranging in magnitude from significant discrepancies to minor clerical errors, for the majority of the items we attempted to verify. Collectively, these discrepancies and omissions demonstrate that MRW's questionnaire response is unreliable and unusable for purposes of the final determination.

Section 776(b) of the Act provides that if the Department is unable to verify, within the time specified, the accuracy and completeness of the factual information submitted, it shall use BIA as the basis for its determination. Consequently, we have based this determination on BIA. (*See* decision memorandum from The Team to Barbara R. Stafford dated June 12, 1995, for a detailed discussion of our verification findings and BIA recommendation.)

In determining what rate to use as BIA, the Department follows a two-tiered BIA methodology, whereby the Department may impose the most adverse rate upon those respondents who refuse to cooperate or otherwise significantly impede the proceeding, or assign a lower rate for those respondents who have cooperated in an investigation. When a company is deemed uncooperative, it has been the Department's practice to apply as BIA the higher of the highest margin alleged in the petition or the highest rate calculated for any respondent. The Department's practice for applying BIA to cooperative respondents is to use the higher of the average of the margins alleged in the petition or the highest calculated margin for another firm for the same class or kind of merchandise from the same country. *See Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany*, 54 FR 18992, 19033 (May 3, 1989). The Department's two-tier methodology for assigning BIA based on the degree of respondents' cooperation has been upheld by the U.S. Court of Appeals for the Federal Circuit. (*See Allied-Signal Aerospace Co.* v. *the United States*, 996 F2d 1185 (Fed Cir. 1993); *see also Krupp Stahl AG. et al* v. *the United States*, 822 F. Supp. 789 (CIT 1993).)

We have determined that MRW was uncooperative during this proceeding and have assigned a margin based on uncooperative BIA. Because there are no other respondents in this investigation we are assigning, as BIA, the highest margin among the margins alleged in the petition. MRW significantly impeded our administration of the case by misrepresenting the methodology it used in the response regarding the costs of the unreported plant.

MRW did not alert the Department at any time to any difficulties in providing the information requested in the questionnaire concerning the unreported manufacturing facility, and had indicated that the plant's costs had been included in a weighted-average calculation. In addition, much of the documentation we requested at verification was received late in the verification process, was incomplete, or, in some cases, not received at all. MRW was unable to demonstrate: (1) How many of the figures reported on the sales listing were calculated; (2) how they tied to source documentation; and (3) a tie to financial statements. Therefore, we are assigning MRW the highest margin alleged in the petition as uncooperative BIA.

Fair Value Comparisons

To determine whether sales of subject merchandise from Germany to the United States were made at less than fair value, we compared United States price (USP) to foreign market value (FMV) as reported in the petition. *See Initiation of Antidumping Duty Investigation of Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From Argentina, Brazil, Germany and Italy* (59 FR 37025, July 20, 1994).

Interested Party Comments

General Issues

Comment 1. MRW argues that petitioner lacks standing to seek the imposition of antidumping duties on products that it does not produce. According to MRW, petitioner has admitted that it is incapable of manufacturing seamless pipe and tube in dimensions above two inches in outside diameter. Therefore, respondent maintains that petitioner is not an "interested party" with respect to this merchandise. Accordingly, the Department should amend the scope of the investigation to limit it only to those dimensions and pipe types that petitioner has a proven ability to manufacture.

Gulf States Tube contends that the antidumping statute neither requires nor permits the Department to limit the scope of the investigation to products that the petitioner itself produces. Gulf States Tube also maintains that respondent's standing claim is untimely and may not be considered by the Department at this stage of the proceeding. Nevertheless, Gulf States Tube asserts that the issue is rendered moot by the request of Koppel Steel Corporation, a domestic producer of subject merchandise in sizes larger two inches in outside diameter, for co-petitioner status.

DOC Position. We agree with petitioner for the reasons outlined in the "Standing" section of this notice.

Comment 2. MRW contends that including an end-use certification requirement in the scope would be both illegal and unworkable. Respondent maintains that petitioner is effectively seeking to circumvent the established legal procedure by arguing for an open-ended scope definition that encompasses products that it does not manufacture and that petitioner has conceded are not causing present injury. In addition, respondent states that it is clear that any end-use certification procedure designed to implement such a scope definition is wholly unworkable because of the manner in which the subject products are sold. That is, in almost all cases the importer of record never knows the ultimate use of the pipe products it sells, and in many instances, neither do its customers. According to MRW, as a practical matter, the effect of an end-use certification requirement would be to ask the impossible of importers. Furthermore, respondent states that the anticircumvention procedures of the antidumping law provide ample remedy to petitioner in cases of circumvention via product substitution. MRW emphasizes that absent the detailed inquiry required by anti-circumvention legal provisions, the Department cannot include within the scope of this investigation other merchandise simply because such other products might in theory be utilized for the same purposes as pipe meeting the listed specifications. According to respondent, to do otherwise is contrary to the antidumping law and deprives respondents of their right to a full and fair hearing on any circumvention allegations that might be advanced by petitioner at some later date.

Petitioner argues that there is no factual or legal basis for eliminating end-use as a defining element of the scope of the investigation. Furthermore, not only is the feasibility of specific enforcement mechanisms irrelevant to the scope determination, but it is also untrue that any end-use certification procedure would be unworkable. According to petitioner, there is no evidence on the record of this investigation that an end-use certification program must require the submission of an end-use certificate by the importer at the time of importation. Rather, petitioner envisions a program whereby the end-use certificate travels with the pipe to the ultimate end-user, who may then send it back up the line of distribution. When final duties are assessed, the Department may assume that any pipe for which no certificates can be produced was used in subject applications. Contrary to MRW's arguments, petitioner maintains that the Department and the U.S. Customs Service are perfectly capable of administering an order that includes end use in its scope definition. In the event that products meeting the

physical description of subject merchandise, but which are not certified to one or more of the covered specifications are being substituted into one of the listed applications, the burden would be on the petitioner, other domestic producers or interested parties, to notify Customs and the Department with some objective evidence supporting a reasonable belief that substitution is occurring. However, it is both unnecessary and inappropriate at this point to engage in debate about the feasibility and desirability of specific end-use certification procedures. According to petitioner, the facts and policy considerations relevant to such a debate are not available on this record, and the selection of a specific enforcement mechanism is beyond the Department's responsibilities in this proceeding.

DOC Position. We disagree with respondent's assertion that including end-use in the scope of the investigation would be unlawful. The Department has interpreted scope language in other cases as including an end-use specification. *See Ipsco Inc.* v. *United States*, 715 F. Supp. 1104 (CIT 1989). *See* the "Scope Issues" section of this notice for further discussion on end-use.

Comment 3. MRW contends that the carbon and alloy pipe products subject to investigation are distinct classes or kinds of merchandise. MRW asserts that the criteria set out in *Diversified Products* support a division between carbon and alloy products. Specifically, MRW argues that carbon and alloy pipes differ in terms of physical characteristics, uses, customer expectations and cost. With respect to physical characteristics, alloy seamless pipes contain higher grade steel than carbon seamless pipe, and because of their different chemistries, these products have different performance characteristics. With respect to end use which, according to respondent, is inherently tied to physical characteristics, carbon pipe is not as versatile as alloy steel pipe and is not suited for the more sophisticated applications, such as operations in high temperature environments. Respondent asserts that the Department has consistently emphasized the relationship between physical characteristics and end use in past cases (*e.g., Torrington Co.* v. *United States*, 745 F.Supp. at 726 (CIT 1990)). In addition, respondent states that customer expectations vary depending upon the ability of specific merchandise to perform a given task. With regard to alloy and carbon steel pipe, the ultimate purchaser does not expect these two types of pipe to be interchangeable, and is willing to pay more for alloy steel pipe because it must perform under more adverse conditions than those for which carbon pipe is suited. With respect to cost, respondent states that the cost of alloy pipe is higher than that of carbon pipe because of the more expensive raw materials and production costs incurred in producing alloy pipe. Finally, with respect to channels of trade, respondent states that carbon and alloy pipe move in similar channels; however, this factor is not determinative as to class or kind of merchandise.

Petitioner maintains that the subject merchandise constitutes a single class or kind. With respect to MRW's proposal for a split in class or kind on the basis of material composition, petitioner asserts that the factual evidence does not support such a division. Petitioner's state that the application of the criteria employed by the Department in *Diversified Products* compels the conclusion that there is a single class or kind of merchandise. According to petitioner, the physical characteristics of carbon and alloy pipe represent a single continuum of product produced with varying chemical compositions to meet a range of heat, pressure and tensile requirements. According to petitioner, there is simply no bright dividing line between the physical characteristics of the products. Petitioner states that the customer's expectations and use of the product are dictated by the engineering specification required by the intended application. Because the majority of all subject seamless pipe is triple-certified, the pipe may be put to any of the uses that apply to each of the individual specifications to which it is certified. Petitioner points out that the vast majority of seamless pipe is sold through the same channel of trade—distributors. Finally, petitioner adds that because the majority of seamless pipe is triple-certified, it has identical costs regardless of the customer to whom it is sold.

DOC Position. We agree with petitioner that the subject merchandise constitutes a single class or kind for the reasons outlined in the "Scope Issues" section of this notice.

Company-Specific Issues

For a number of reasons articulated in its briefs, with which we concur, petitioner argues that the final determination should be based on BIA, and that MRW should be found to be uncooperative.

MRW disagrees and argues that the Department's verification report does not offer a balanced assessment of the verification. MRW states that the Department verified the accuracy of its reported sales information and that the discrepancies found at verification were minor. Furthermore, respondent argues that the minor discrepancies detailed in the verification report should be evaluated in the context of the vast majority of data that tied exactly to source documentation. Respondent states that the minor discrepancies found at verification do not affect the Department's ability to perform its antidumping analysis.

Respondent states that the delays in providing information requested by the Department at verification were a result of the manner in which its records are kept in the ordinary course of business. MRW cites to *Nippon Pillow Block Sales Co.* v. *United States*, 820 F. Supp. 1444, 1449 (CIT 1993), and *Fresh Cut Roses from Colombia (Final)* 60 FR 6980, 7009 (February 6, 1995) as examples of Department policy that respondents cannot be penalized because of the way their records are kept.

Regarding its failure to include the costs of one of its plants in its reported difmer costs, MRW states the manner in which it reported difmer costs is reasonable given that this plant is a newly acquired facility located in the former German Democratic Republic, which was a non-market economy until recently. Furthermore, MRW states that it is extraordinarily difficult to calculate actual, verifiable costs for a plant that has operated under a planned economy and that it is appropriate to use the surrogate costs of a plant in the Federal Republic of Germany to perform antidumping calculations.

DOC Position. We agree with petitioner that the magnitude and nature of the problems found at verification require that we base MRW's margin on BIA. (*See Best Information Available (BIA)* section of this notice).

We disagree with respondent's assertion that it is being penalized for the way its records are kept. We must hold all respondents to a basic standard of accuracy and completeness at verification while taking into account the limitations existing with respect to the respondent's sales and cost accounting systems. We require all respondents, regardless of record keeping systems, to prepare for verification in such a manner that the Department's questions can be answered within a specified period of time. To this end, we supply all respondents with an outline which specifies the type of documentation that needs to be available at verification. MRW did not have the necessary documentation readily available, which prevented us from verifying its response. Most

significantly, respondents are expected to be forthcoming in their responses to the Department's requests for information. In this case, respondent failed to report fundamental information—cost data relating to one of its plants producing subject merchandise. In other words, respondent withheld information critical to verification and thus BIA is required.

Other Comments

Petitioner and respondent made additional comments on various charges and adjustments contained in MRW's home market and U.S. sales listings. However, since we are basing our final determination on BIA, we consider these comments to be moot.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, 19 USC 1673b(d)(1), we directed the Customs Service to suspend liquidation of all entries of seamless pipe from Germany, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after January 27, 1995.

Pursuant to the results of this final determination, we will instruct the Customs Service to require a cash deposit or posting of a bond equal to the estimated final dumping margin, as shown below for entries of seamless pipe from Germany that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Margin percent
Mannesmannrohren-Werke AG	58.23
All Others	58.23

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. The ITC will make its determination whether these imports materially injure, or threaten injury to, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or canceled. However, if the ITC determines that material injury or threat of material injury does exist, the Department will issue an antidumping duty order.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) in these investigations of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 USC 1673(d)) and 19 CFR 353.20.

Dated: June 12, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–14938 Filed 6–16–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–475–814]

Notice of Final Determination of Sales at Less Than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 19, 1995.

FOR FURTHER INFORMATION CONTACT: Dolores Peck or James Terpstra, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4929 or 482–3965, respectively.

FINAL DETERMINATION: The Department of Commerce (the Department) determines that small diameter circular seamless carbon and alloy steel, standard, line and pressure pipe (seamless pipe) from Italy is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the "Act") (1994). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since our negative preliminary determination on January 19, 1995 (60 FR 5358, January 27, 1995), the following events have occurred:

On February 1, 1995, we initiated a sales below cost investigation of the respondent, Dalmine, S.p.A. ("Dalmine"). We instructed Dalmine to respond to the complete cost questionnaire which it had previously used to only report constructed value data. Dalmine submitted its response to this questionnaire on March 7. Supplemental cost and sales responses and revisions were submitted in February, March, and April 1995.

On February 8, 1995, we postponed the final determination until not later than June 12, 1995 (60 FR 9012, February 16, 1995).

We conducted verifications of Dalmine's sales and cost questionnaire responses in Italy and the United States in March and April 1995. Verification reports were issued in May 1995.

On April 27, 1995, Koppel Steel Corporation, an interested party to this investigation, requested that it be granted co-petitioner status, which the Department granted.

The petitioner and the respondent submitted case briefs on May 18 and rebuttal briefs on May 24, 1995.

On May 22, and May 30, 1995, respectively, the Department returned the respondent's case and rebuttal briefs and instructed the respondent to refile the briefs redacting new information. The respondent did so on May 25, and June 2, 1995.

Scope of the Investigation

The following scope language reflects certain modifications made for purposes of the final determination, where appropriate, as discussed in the "Scope Issues" section below.

The scope of this investigation includes seamless pipes produced to the ASTM A–335, ASTM A–106, ASTM A–53 and API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of this investigation also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters below, regardless of specification.

For purposes of this investigation, seamless pipes are seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3 mm (4.5 inches) in outside diameter, regardless of wall thickness, manufacturing process (hot-finished or cold-drawn), end finish (plain end, bevelled end, upset end, threaded, or threaded and coupled), or surface finish. These pipes are commonly known as standard pipe, line pipe or pressure pipe, depending upon the application. They may also be used in structural applications. Pipes produced in non-standard wall thicknesses are commonly referred to as tubes.

The seamless pipes subject to these investigations are currently classifiable under subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20,

7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (HTSUS).

The following information further defines the scope of this investigation, which covers pipes meeting the physical parameters described above:

Specifications, Characteristics and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the American Society for Testing and Materials (ASTM) standard A–106 may be used in temperatures of up to 1000 degrees fahrenheit, at various American Society of Mechanical Engineers (ASME) code stress levels. Alloy pipes made to ASTM standard A–335 must be used if temperatures and stress levels exceed those allowed for A–106 and the ASME codes. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53 and API 5L specifications. Such triple certification of pipes is common because all pipes meeting the stringent A–106 specification necessarily meet the API 5L and ASTM A–53 specifications. Pipes meeting the API 5L specification necessarily meet the ASTM A–53 specification. However, pipes meeting the A–53 or API 5L specifications do not necessarily meet the A–106 specification. To avoid maintaining separate production runs and separate inventories, manufacturers triple certify the pipes. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple certified pipes is in pressure piping systems by refineries, petrochemical plants and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, A–106 pipes may be used in some boiler applications.

The scope of this investigation includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, and whether or not also certified to a non-covered specification. Standard, line and pressure applications and the above-listed specifications are defining characteristics of the scope of this investigation. Therefore, seamless pipes meeting the physical description above, but not produced to the A–335, A–106, A–53, or API 5L standards shall be covered if used in a standard, line or pressure application.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in A–106 applications. These specifications generally include A–162, A–192, A–210, A–333, and A–524. When such pipes are used in a standard, line or pressure pipe application, such products are covered by the scope of this investigation.

Specifically excluded from this investigation are boiler tubing and mechanical tubing, if such products are not produced to A–335, A–106, A–53 or API 5l specifications and are not used in standard, line or pressure applications. In addition, finished and unfinished OCTG are excluded from the scope of this investigation, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications. Finally, also excluded from this investigation are redraw hollows for cold-drawing when used in the production of cold-drawn pipe or tube.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Scope Issues

Interested parties in these investigations have raised several issues related to the scope. We considered these issues in our preliminary determination and invited additional comments from the parties. These issues, which are discussed below, are: (A) whether to continue to include end use as a factor in defining the scope of these investigations; (B) whether the seamless pipe subject to these investigations constitutes more than one class or kind of merchandise; and (C) miscellaneous scope clarification issues and scope exclusion requests.

A. End Use

We stated in our preliminary determination that we agreed with petitioner that pipe products identified as potential substitutes used in the same applications as the four standard, line, and pressure pipe specifications listed in the scope would fall within the class or kind of subject merchandise and, therefore, within the scope of any orders issued in these investigations. However, we acknowledged the difficulties involved with requiring end-use certifications, particularly the burdens placed on the Department, the U.S. Customs Service, and the parties, and stated that we would strive to simplify any procedures in this regard.

For purposes of these final determinations, we have considered carefully additional comments submitted by the parties and have determined that it is appropriate to continue to employ end use to define the scope of these cases with respect to non-listed specifications. We find that the generally accepted definition of standard, line and pressure seamless pipes is based largely on end use, and that end use is implicit in the description of the subject merchandise. Thus, end use must be considered a significant defining characteristic of the subject merchandise. Given our past experience with substitution after the imposition of antidumping orders on steel pipe products [1], we agree with petitioner that if products produced to a non-listed specification (*e.g.*, seamless pipe produced to A–162, a non-listed specification in the scope) were actually used as standard, line, or pressure pipe, then such product would fall within the same class or kind of merchandise subject to these investigations.

Furthermore, we disagree with respondents' general contention that using end use for the scope of an antidumping case is beyond the purview of the U.S. antidumping law. The Department has interpreted scope language in other cases as including an end-use specification. *See Ipsco Inc.* v. *United States*, 715 F.Supp. 1104 (CIT 1989) (Ipsco). In Ipsco, the Department had clarified the scope of certain orders, in particular the phrase, "intended for use in drilling for oil and gas," as covering not only API specification OCTG pipe but, "'all other pipe with [certain specified] characteristics used in OCTG applications * * *'" Ipsco at 1105. In reaching this determination, the Department also provided an additional description of the covered merchandise, and initiated an end-use certification procedure.

Regarding implementation of the end use provision of the scope of these investigations, and any orders which may be issued in these investigations, we are well aware of the difficulty and burden associated with such certifications. Therefore, in order to maintain the effectiveness of any order that may be issued in light of actual substitution in the future (which the end-use criterion is meant to achieve), yet administer certification procedures in the least problematic manner, we have developed an approach which simplifies these procedures to the greatest extent possible.

First, we will not require end-use certification until such time as petitioner or other interested parties provide a reasonable basis to believe or suspect that substitution is occurring.[2] Second, we will require end-use certification only for the product(s) (or specification(s)) for which evidence is provided that substitution is occurring. For example, if, based on evidence provided by petitioner, the Department finds a reasonable basis to believe or suspect that seamless pipe produced to A–162 specification is being used as pressure pipe, we will require end-use certifications for imports of A–162 specification. Third, normally we will require only the importer of record to certify to the end use of the imported merchandise. If it later proves necessary for adequate implementation, we may also require producers who export such products to the United States to provide such certification on invoices accompanying shipments to the United States. For a complete discussion of interested party comments and the Department's analysis on this topic, see June 12, 1995, *End Use Decision Memorandum* from Deputy Assistant Secretary Barbara Stafford (DAS) to Assistant Secretary Susan Esserman (AS).

B. Class or Kind

In the course of these investigations, certain respondents have argued that the scope of the investigations should be divided into two classes or kinds. Siderca S.A.I.C., the Argentine respondent, has argued that the scope should be divided according to size: seamless pipe with an outside diameter of 2 inches or less and pipe with an outside diameter of greater than 2 inches constitute two classes or kinds. Mannesmann S.A., the Brazilian respondent, and Mannesmannrohren-Werke AG, the German respondent, argued that the scope should be divided based upon material composition: carbon and alloy steel seamless pipe constitute two classes or kinds.

In our preliminary determinations, we found insufficient evidence on the record that the merchandise subject to these investigations constitutes more than one class or kind. We also indicated that there were a number of areas where clarification and additional comment were needed. For purposes of the final determination, we considered a significant amount of additional information submitted by the parties on this issue, as well as information from other sources. This information strongly supports a finding of one class or kind of merchandise. As detailed in the June 12, 1995, *Class or Kind Decision Memorandum* from DAS to AS, we analyzed this issue based on the criteria set forth by the Court of International Trade in *Diversified Products v. United States*, 6 CIT 155, 572 F. Supp. 883 (1983). These criteria are as follows: (1) the general physical characteristics of the merchandise; (2) expectations of the ultimate purchaser; (3) the ultimate use of the merchandise; (4) the channels of trade in which the merchandise moves; and (5) the cost of that merchandise.

In the past, the Department has divided a single class or kind in a petition into multiple classes or kinds where analysis of the *Diversified Products* criteria indicates that the subject merchandise constitutes more than one class or kind. *See, for example, Final Determination of Sales at Less than Fair Value; Anti-Friction Bearings (Apart from Tapered Roller Bearings) from Germany*, 54 Fed. Reg. 18992, 18998 (May 3, 1989) ("*AFBs from Germany*"); *Pure and Alloy Magnesium from Canada: Final Affirmative Determination; Rescission of Investigation and Partial Dismissal of Petition*, 57 Fed. Reg. 30939 (July 13, 1992).

1. Physical Characteristics

We find little meaningful difference in physical characteristics between seamless pipe above and below two inches. Both are covered by the same technical specifications, which contains detailed requirements.[3] While we recognize that carbon and alloy pipe do have some important physical differences (primarily the enhanced heat and pressure tolerances associated with alloy grade steels), it is difficult to say where carbon steel ends and alloy steel begins. As we have discussed in our *Class or Kind Decision Memorandum* of June 12, 1995, carbon steel products themselves contain alloys, and there is a range of percentages of alloy content present in merchandise made of carbon steel. We find that alloy grade steels, and pipes made therefrom, represent the upper end of a single continuum of steel grades and associated attributes.[4]

In those prior determinations where the Department divided a single class or kind, the Department emphasized that differences in physical characteristics also affected the capabilities of the merchandise (either the mechanical capabilities, as in *AFBs from Germany*, 54 Fed. Reg. at 18999, 19002–03, or the chemical capabilities, as in *Pure and Alloy Magnesium from Canada*, 57 Fed. Reg. at 30939), which in turn established the boundaries of the ultimate use and customer expectations of the products involved.

As the Department said in *AFBs from Germany*,

[t]he real question is whether the physical differences are so material as to alter the essential nature of the product, and, therefore, rise to the level of class or kind distinctions. We believe that the physical differences between the five classes or kinds

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[1] *See Preliminary Affirmative Determination of Scope Inquiry on Antidumping Duty Orders on Certain Welded Non-Alloy Steel Pipes from Brazil, the Republic of Korea, Mexico and Venezuela*, 59 FR 1929, January 13, 1994.

[2] This approach is consistent with petitioner's request.

[3] The relevant ASTM specifications, as well as product definitions from other independent sources (e.g., American Iron and Steel Institute (AISI)), describe the sizes for standard, line, and pressure pipe, as ranging from 1/2 inch to 60 inches (depending on application). None of these descriptions suggest a break point at two inches.

[4] The Department has had numerous cases where steel products including carbon and alloy grades were considered to be within the same class or kind. *See, e.g., Preliminary Determination of Sales at Less than Fair Value: Oil Country Tubular Goods from Austria, et al.*, 60 Fed. Reg. 6512 (February 2, 1995); *Final Determination of Sales at Less than Fair Value: Certain Alloy and Carbon Hot-Rolled Bars, Rods, and Semi-Finished Products of Special Bar Quality Engineered Steel from Brazil*, 58 Fed. Reg. 31496 (June 3, 1993); *Final Determination of Sales at Less than Fair Value: Forged Steel Crankshafts from the United Kingdom*, 60 Fed. Reg. 22045 (May 9, 1995).

of the subject merchandise are fundamental and are more than simply minor variations on a theme.

54 Fed. Reg. at 19002. In the present cases, there is insufficient evidence to conclude that the differences between pipe over 2 inches in outside diameter and 2 inches or less in outside diameter, rise to the level of a class or kind distinction.

Furthermore, with regard to Siderca's allegation that a two-inch breakpoint is widely recognized in the U.S. market for seamless pipe, the Department has found only one technical source of U.S. market data for seamless pipe, the *Preston Pipe Report*. The *Preston Pipe Report*, which routinely collects and publishes U.S. market data for this merchandise, publishes shipment data for the size ranges ½ to 4½ inches: it does not recognize a break point at 2 inches. Accordingly, the Department does not agree with Siderca that "the U.S. market" recognizes 2 inches as a physical boundary line for the subject merchandise.

In these present cases, therefore, the Department finds that there is insufficient evidence that any physical differences between pipe over 2 inches in outside diameter and 2 inches or less in outside diameter, or between carbon and alloy steel, rise to the level of class or kind distinctions.

2. Ultimate Use and Purchaser Expectations

We find no evidence that pipe above and below two inches is used exclusively in any specific applications. Rather, the record indicates that there are overlapping applications. For example, pipe above and below two inches may both be used as line and pressure pipe. The technical definitions for line and pressure pipe provided by ASTM, AISI, and a variety of other sources do not recognize a distinction between pipe over and under two inches.

Likewise, despite the fact that alloy grade steels are associated with enhanced heat and pressure tolerances, there is no evidence that the carbon or alloy content of the subject merchandise can be differentiated in the ultimate use or expectations of the ultimate purchaser of seamless pipe.

3. Channels of Trade

Based on information supplied by the parties, we determine that the vast majority of the subject merchandise is sold through the same channel of distribution in the United States and is triple-stenciled in order to meet the greatest number of applications.

Accordingly, the channels of trade offer no basis for dividing the subject merchandise into multiple classes or kinds based on either the size of the outside diameter or on pipe having a carbon or alloy content.

4. Cost

Based on the evidence on the record, we find that cost differences between the various products do exist. However, the parties varied considerably in the factors which they characterized as most significant in terms of affecting cost. There is no evidence that the size ranges above and below two inches, and the difference between carbon and alloy grade steels, form a break point in cost which would support a finding of separate classes or kinds.

In conclusion, while we recognize that certain differences do exist between the products in the proposed class or kind of merchandise, we find that the similarities significantly outweigh any differences. Therefore, for purposes of the final determination, we will continue to consider the scope as constituting one class or kind of merchandise.

C. Miscellaneous Scope Clarification Issues and Exclusion Requests

The miscellaneous scope issues include: (1) whether OCTG and unfinished OCTG are excluded from the scope of these investigations; (2) whether pipes produced to non-standard wall thicknesses (commonly referred to as "tubes") are covered by the scope; (3) whether certain merchandise (*e.g.*, boiler tubing, mechanical tubing) produced to a specification listed in the scope but used in an application excluded from the scope is covered by the scope; and (4) whether redraw hollows used for cold drawing are excluded from the scope. For a complete discussion of interested party comments and the Department's analysis on these topics, *see* June 12, 1995, *Additional Scope Clarifications Decision Memorandum* from DAS to AS.

Regarding OCTG, petitioner requested that OCTG and unfinished OCTG be included within the scope of these investigations if used in a standard, line or pressure pipe application. However, OCTG and unfinished OCTG, even when used in a standard, line or pressure pipe application, may come within the scope of certain separate, concurrent investigations. We intend that merchandise from a particular country not be classified simultaneously as subject to both an OCTG order and a seamless pipe order. Thus, to eliminate any confusion, we have revised the scope language above to exclude finished and unfinished OCTG, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in a standard, line or pressure pipe application, and, as with other non-listed specifications, may be subject to end-use certification if there is evidence of substitution. Regarding pipe produced in non-standard wall thicknesses, we determine that these products are clearly within the parameters of the scope of these investigations. For clarification purposes, we note that the physical parameters of the scope include all seamless carbon and alloy steel pipes, of circular cross-section, not more than 4.5 inches in outside diameter, *regardless of wall thickness*. Therefore, the fact that such products may be referred to as tubes by some parties, and may be multiple-stenciled, does not render them outside the scope.

Regarding pipe produced to a covered specification but used in a non-covered application, we determine that these products are within the scope. We agree with the petitioner that the scope of this investigation includes all merchandise produced to the covered specifications and meeting the physical parameters of the scope, regardless of application. The end-use criteria included in the scope is only applicable to products which can be substituted in the applications to which the covered specifications are put *i.e.* standard, line, and pressure applications.

It is apparent that at least one party in this case interpreted the scope incorrectly. Therefore, we have clarified the scope to make it more explicit that all products made to ASTM A–335, ASTM A–106, ASTM A–53 and API 5L are covered, regardless of end use.

With respect to redraw hollows for cold drawing, the scope language excludes such products specifically when used in the production of cold-drawn pipe or tube. We understand that petitioner included this exclusion language expressly and intentionally to ensure that hollows imported into the United States are sold as intermediate products, not as merchandise to be used in a covered application.

Standing

The Argentine, Brazilian, and German respondents have challenged the standing of Gulf States Tube to file the petition with respect to pipe and tube between 2.0 and 4.5 inches in outside diameter, arguing that Gulf States Tube does not produce these products.

Pursuant to section 732(b)(1) of the Act, an interested party as defined in section 771(9)(C) of the Act has standing to file a petition. (*See also* 19 C.F.R. § 353.12(a).) Section 771(9)(C) of the Act defines "interested party," *inter alia*, as a producer of the like product. For the reasons outlined in the "Scope Issues" section above, we have determined that the subject merchandise constitutes a single class or kind of merchandise. The International Trade Commission (ITC) has also preliminarily determined that there is a single like product consisting of circular seamless carbon and alloy steel standard, line, and pressure pipe, and tubes not more than 4.5 inches in outside diameter, and including redraw hollows. (*See* USITC Publication 2734, August 1994 at 18.) For purposes of determining standing, the Department has determined to accept the ITC's definition of like product, for the reasons set forth in the ITC's preliminary determination. Because Gulf States is a producer of the like product, it has standing to file a petition with respect to the class or kind of merchandise under investigation. Further, as noted in the "Case History" section of this notice, on April 27, 1995, Koppel, a U.S. producer of the product size range at issue, filed a request for co-petitioner status, which the Department granted. As a producer of the like product, Koppel also has standing.

The Argentine respondent argues that Koppel's request was filed too late to confer legality on the initiation of these proceedings with regard to the products at issue. Gulf States Tube maintains that the Department has discretion to permit the amendment of a petition for purposes of adding co-petitioners who produce the domestic like product, at such time and upon such circumstances as deemed appropriate by the Department.

The Court of International Trade (CIT) has upheld in very broad terms the Department's ability to allow amendments to petitions. For example, in *Citrosuco Paulista, S.A.* v. *United States*, 704 F. Supp. 1075 (Ct. Int'l Trade 1988), the Court sustained the Department's granting of requests for co-petitioner status filed by six domestic producers on five different dates during an investigation. The Court held that the addition of the co-petitioners cured any defect in the petition, and that allowing the petition to be amended was within Commerce's discretion:

> [S]ince Commerce has statutory discretion to allow amendment of a dumping petition *at any time*, and since Commerce may self-initiate a dumping petition, any defect in a petition filed by [a domestic party is] cured when domestic producers of the like product [are] added as co-petitioners and Commerce [is] not required to start a new investigation.

Citrosuco, 704 F. Supp. at 1079 (emphasis added). The Court reasoned that if Commerce were to have dismissed the petition for lack of standing, and to have required the co-petitioners to refile at a later date, it "would have elevated form over substance and fruitlessly delayed the antidumping investigation * * * when Congress clearly intended these cases to proceed expeditiously." *Id.* at 1083–84.

Koppel has been an interested party and a participant in these investigations from the outset. The timing of Koppel's request for co-petitioner status and the fact that it made its request in response to Siderca's challenge to Gulf States Tube's standing does not render its request invalid. *See Final Affirmative Countervailing Duty Determination; Live Swine and Fresh, Chilled, and Frozen Pork Products from Canada*, 50 Fed. Reg. 25097 (June 17, 1985). The Department has rejected a request to add a co-petitioner based on the untimeliness of the request only where the Department determined that there was not adequate time for opposing parties to submit comments and for the Department to consider the relevant arguments. *See Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Hollow Products from Sweden*, 52 Fed. Reg. 5794, 5795, 5803 (February 26, 1987). In this investigation, the respondents have had an opportunity to comment on Koppel's request for co-petitioner status, and the Argentine respondent has done so in its case brief. Therefore, we have determined that, because respondents would not be prejudiced or unduly burdened, amendment of the petition to add Koppel as co-petitioner is appropriate.

Period of Investigation

The period of investigation ("POI") is January 1, 1994, through June 30, 1994.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and the Department's regulations refer to these provisions as they existed on December 31, 1994.

Such or Similar Comparisons

We have determined that all the products covered by this investigation constitute a single category of such or similar merchandise. We made fair value comparisons on this basis. In accordance with the Department's standard methodology, we first compared identical merchandise. Referencing Appendix V of our questionnaire, Dalmine states that the physical characteristics for the majority of the merchandise exported to the United States are identical to the physical characteristics of merchandise sold in the home market. We verified this claim. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we based foreign market value ("FMV") on constructed value ("CV") because the difference in merchandise adjustment ("difmer") for any similar product comparison exceeded 20 percent. See Appendix V to the antidumping questionnaire, on file in Room B–099 of the main building of the Department.

Fair Value Comparisons

To determine whether sales of certain seamless pipe from Italy to the United States were made at less than fair value, we compared the United States price (USP) to the FMV, as specified in the "United States Price" and "Price-to-Price Comparisons" sections of this notice.

United States Price

We calculated USP according to the methodology described in our preliminary determination, with the following exceptions:

We corrected certain clerical errors found at verification, including: (a) the reduction of the marine insurance expense for one sale (see U.S. verification report); b) an increase in the U.S. interest rate used to calculate imputed credit expenses (see U.S. verification report); and c) an increase in the percentage used to calculate an offset for home market commissions (See Comment 5 below). We also limited VAT adjustments to those sales on which VAT was paid on the comparison home market sale.

Cost of Production

Based on the petitioner's allegations, the Department found reasonable grounds to believe or suspect that sales in the home market were made at prices below the cost of producing the merchandise. As a result, the Department initiated an investigation to determine whether Dalmine made home market sales during the POI at prices below their cost of production (COP) within the meaning of section 773(b) of the Act. See memorandum from the Team to Barbara Stafford dated February 1, 1995.

A. Calculation of COP

We calculated the COP based on the sum of the respondent's cost of materials, fabrication, general expenses, and home market packing in accordance

with 19 CFR 353.51(c). We relied on the submitted COP data, except in the following instances where the costs were not appropriately quantified or valued:

1. We recalculated the weighted average costs for two control numbers ("CONNUM"). CONNUM's are used to identify a group of products considered to be identical. See Comment 18 below.

2. We adjusted depreciation expenses to reflect mill- specific costs. See Comment 13 below.

3. We used the revised total indirect costs submitted at verification to recalculate the indirect cost allocation rate.

4. We disallowed the portion of the reported variance which resulted from reversals of prior period accounting entries. See Comment 17 below.

5. We used Instituto per la Ricostruzione Industriale S.p.A.'s ("IRI") consolidated financing costs. IRI is the parent of Dalmine's parent company. See Comment 14 and 15 below.

B. Test of Home Market Sales Prices

After calculating COP, we tested whether, as required by section 773(b) of the Act, the respondent's home market sales of subject merchandise were made at prices below COP, over an extended period of time in substantial quantities, and whether such sales were made at prices which permit recovery of all costs within a reasonable period of time in the normal course of trade. On a product-specific basis, we compared the COP (net of selling expenses) to the reported home market prices, less any applicable movement charges, rebates, and direct and indirect selling expenses. To satisfy the requirement of section 773(b)(1) of the Act that below-cost sales be disregarded only if made in substantial quantities, we applied the following methodology. If over 90 percent of the respondent's sales of a given product were at prices equal to or greater than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." If between ten and 90 percent of the respondent's sales of a given product were at prices equal to or greater than the COP, we discarded only the below-cost sales, provided sales of that product were also found to be made over an extended period of time. Where we found that more than 90 percent of the respondent's sales of a product were at prices below the COP, and the sales were made over an extended period of time, we disregarded all sales of that product, and calculated FMV based on CV, in accordance with section 773(b) of the Act.

In accordance with section 773(b)(1) of the Act, in order to determine whether below-cost sales had been made over an extended period of time, we compared the number of months in which below-cost sales occurred for each product to the number of months in the POI in which that product was sold. If a product was sold in three or more months of the POI, we do not exclude below-cost sales unless there were below-cost sales in at least three months during the POI. When we found that sales of a product only occurred in one or two months, the number of months in which the sales occurred constituted the extended period of time, *i.e.*, where sales of a product were made in only two months, the extended period of time was two months; where sales of a product were made in only one month, the extended period of time was one month. *See Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from the United Kingdom*, 60 FR 10558, 10560 (February 27, 1995).

C. Results of COP Test

We found that for certain products more than 90 percent of the respondent's home market sales were sold at below COP prices over an extended period of time. Because Dalmine provided no indication that the disregarded sales were at prices that would permit recovery of all costs within a reasonable period of time in the normal course of trade, for all U.S. sales left without a match to home market sales as a result of our application of the COP test, we based FMV on CV, in accordance with section 773(b) of the Act.

D. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of the respondent's cost of materials, fabrication, general expenses and U.S. packing costs as reported in the U.S. sales database. In accordance with section 773(e)(1)(B) (i) and (ii) of the Act, we included: (1) for general expenses, the greater of the respondent's reported general expenses, adjusted as detailed in the "Calculation of COP" section above, or the statutory minimum of ten percent of the cost of manufacture; and (2) for profit, the statutory minimum of eight percent of the sum of COM and general expenses because actual profit on home market sales for the respondent was less than eight percent. We recalculated the respondent's CV based on the methodology described in the calculation of COP above.

Price-to-Price Comparisons

We calculated FMV according to the methodology described in our preliminary determination with the following exceptions:

1. We excluded from our analysis reported home market sales that were sold for shipment to third countries. See Comment 5 below.

2. We revised the imputed credit calculation for transactions without reported payment dates, using the earliest verified payment date from the preselected sales in our verification report. *See* Comment 10 below.

3. We limited VAT adjustments to those sales on which VAT was paid.

4. We decreased the interest rate used to calculate imputed credit based on verified data. See home market verification report.

Price-to-CV Comparisons

Where we made CV to purchase price comparisons, we deducted from CV the weighted-average home market direct selling expenses and added the U.S. product-specific direct selling expenses. We adjusted for differences in commissions in accordance with 19 CFR 353.56(a)(2). Because commissions were paid on some, but not all home market sales, we deducted from CV both (1) indirect selling expenses attributable to those sales on which commissions were not paid; and (2) weighted average commissions. The total deduction was capped by the amount of indirect expenses paid on the U.S. sales in accordance with 19 CFR 353.56(b)(1) (1994).

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York, pursuant to 19 CFR 353.60.

Verification

As provided in section 776(b) of the Act, we verified information provided by Dalmine by using standard verification procedures, including the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Interested Party Comments

Sales Issues

Comment 1

The petitioner contends that a margin based on the best information available (BIA) should be assigned to each of the unreported sales of subject merchandise discovered at verification; stating that there is no evidence on the record that Dalmine made a request to have these sales excluded. Additionally, the petitioner asserts that the respondent's unilateral exclusion of certain pipe sales without notice to or permission from the Department was a deliberate and material omission which affected the Department's decision to excuse the respondent from reporting certain categories of sales. Had the Department known about the totality of the exclusion being requested, it would not have excused the respondent from reporting these sales.

The respondent argues that its non-reported sales fall into the category of merchandise produced to a subject specification, but which are used in a non-subject application. Thus, these sales are outside the scope and therefore need not be reported. Since these unreported sales involved non-subject merchandise, no exclusion request was necessary. The respondent contends it only requested exclusions for products produced to subject specifications and used in subject applications, in accordance with the Department's published scope language.

DOC Position

We agree in part with the petitioner. With respect to certain unreported sales of merchandise which was the subject of the respondent's exclusion request, we agree that BIA is appropriate. In the early stages of this investigation, the respondent made several requests to be excused from reporting particular categories of U.S. sales which were clearly covered by the scope of this investigation. The respondent based this exclusion request on the claim that these sales represented a certain percentage of total U.S. sales. Based on this representation, we granted the request but indicated that the claim would be subject to verification. At verification we found additional unreported sales of the same merchandise that was the subject of the respondent's exclusion request. These additional unreported sales constitute a significant additional quantity than was represented in the exclusion request. Accordingly, we have assigned a margin based on BIA to the U.S. sales involved in the exclusion request, as well as the additional unreported sales of the same merchandise.

With regard to the other unreported sales discovered at verification, we agree that the merchandise is within the scope of this investigation. However, we have decided that the use of adverse BIA for these unreported sales is unwarranted. As discussed above (see the Miscellaneous Scope Clarification Issues and Exclusion Requests section of this notice) the scope language, as published in the notice of initiation and the preliminary determination, was unclear as to whether the products in question are subject merchandise. The respondent did not report these sales based on its reading of the scope of the initiation. Since the scope language in the initiation is ambiguous (and hence has been clarified in the final determination), it is not appropriate to penalize the respondent.

Comment 2

The petitioner urges the Department to apply a BIA margin to one unreported U.S. sale of subject merchandise discovered during verification. According to the petitioner, the Department should view Dalmine's failure to report this sale against the background of the respondent's failure to report other sales of subject merchandise, and apply an adverse BIA margin.

The respondent acknowledges that it inadvertently failed to report this sale. According to the respondent, the order for this unreported sale appeared to be filled when it reported its U.S. sales data. However, two months later, the respondent made an additional shipment pursuant to this order, which was mistakenly not loaded with the first two parts of the order. The respondent claims it did not attempt to identify subsequent shipments pursuant to this order, since it considered this order filled at the time it prepared the sales listing. Only in the course of preparing for verification did the additional invoice amount come to the company's attention.

DOC Position

We agree with the petitioner, in part. The respondent made several shipments of subject merchandise pursuant to a customer's order. Each of the shipments were separately invoiced. Two of the invoices were reported in the respondent's sales listing. However, the respondent failed to report one invoice for a small amount of subject merchandise sold pursuant to this order. The facts do not support applying an adverse BIA margin to this sale. Instead, as BIA, we applied the average of all positive margins calculated for the remaining U.S. sales.

Comment 3

The petitioner claims the respondent misreported home market freight charges because it reported a calculated amount based on certain assumptions rather than an actual amount. Therefore, the petitioner urges the Department to use the lowest freight expense in the home market response as the freight expense for all sales for its price to price comparisons. For the Department's price to cost comparisons, the Department should consider the highest freight charge for any home market sale to be the freight charge for all home market sales.

In reply, the respondent argues that it would have been extraordinarily burdensome, if not impossible, to match specific freight invoices to specific shipments because freight invoices are not computerized. At verification, the respondent demonstrated it was impractical to link thousands of freight invoices to the specific shipments to which the invoices related. Therefore, the respondent calculated the reported freight charges from published tariff rates by assuming all shipments were part of a full truck load that was delivered to more than one location. The respondent claims that the Department verified that its freight estimates are reasonable and any differences between estimated amounts and actual freight charges are minor.

DOC Position

We agree with the respondent. At verification, we noted that, while Dalmine maintained computerized databases regarding all sales and cost information, it did not maintain invoice-specific expense data in its computerized sales database. At verification the invoice-specific actual expenses, calculated to check the information in the sales response, had to be calculated manually and there was some difficulty in obtaining source documentation.

At verification, we examined the respondent's methodology for calculating estimated freight expenses. We compared actual freight expenses with the reported estimated freight expenses, and noted only minor discrepancies between these two figures. Therefore, the use of BIA for this adjustment is not warranted.

Comment 4

The petitioner urges the Department to disallow the home market credit expense adjustment in its dumping margin calculation because the respondent overstated substantially credit costs by reporting March 6, 1995, as the payment for all sales unpaid as of November 1994. The petitioner also claims the home market credit expense adjustment should be disallowed because verified credit differed from the actual credit for six of the eight

preselected sales. Further, the petitioner asserts that the respondent failed to take into account certain outstanding short-term loan balances in its calculation of the interest rate used to compute credit costs. Finally, the petitioner cites page 54 of the Department's Italian verification report where it claims the Department notes that the payment dates reported by Dalmine were either incorrect or not available.

The respondent admits that it did not update payment data in its home market sales listing after the submission of December 19, 1994 (which reported all payments as of November 25, 1994). Nevertheless, the respondent acknowledges that, for purposes of calculating imputed credit costs in its March 6, 1995, filing, it assumed incorrectly that all sales unpaid as of November 1994 remained unpaid as of March 6, 1995. As a result, the imputed credit calculation was wrong for sales paid between November 25, 1994, and March 6, 1995. The respondent urges the Department to calculate the imputed credit cost adjustment for all sales for which no home market payment date was reported using November 1, 1994, as the date of payment, since this is a more conservative approach than that employed in the Preliminary Determination.

DOC Position

We disagree with both the petitioner and the respondent. During the Italian verification, we were able to verify the payment dates for preselected and surprise home market sales. The petitioner's reference to page 54 of the Italian sales verification report in support of its statement that payment dates were not available for sales not paid after November 23, 1994, is incorrect. The Italian sales verification report in its entire discussion of payment dates and credit expenses makes no statement regarding the unavailability of payment dates. We used the earliest verified payment date, November 18, 1994, as the payment date in the credit expense calculation for sales without reported payment dates which were shipped before November 18, 1994. We assumed no credit expenses were incurred for sales without reported payment dates which were shipped after November 18, 1994.

Comment 5

The petitioner argues that the respondent incorrectly based its commission offset on U.S. indirect selling expenses taken from Dalmine's U.S. subsidiary's (TAD USA's) 1993 SG&A expenses. The petitioner maintains that the Department must use the verified 1994 SG&A expenses to the extent that it offsets home market commissions.

According to the respondent, it acted reasonably in basing the indirect selling expenses in its questionnaire response on 1993 SG&A expense data, given that 1994 data was unavailable at the time the response was being prepared. The respondent concedes that the 1994 data obtained at verification would be more useful to the Department than the 1993 data.

DOC Position

It is the Department's practice to use the most recent verified data for indirect selling expenses in our margin calculations. Accordingly, we used the verified 1994 SG&A figures in our final determination calculations.

Comment 6

The petitioner claims that Dalmine incorrectly reported average rather than actual foreign inland freight on U.S. sales. The petitioner also claims that the respondent could have reported actual foreign inland freight charges because its records are computerized. Therefore, the petitioner urges the Department to assign the highest foreign inland freight charge observed at verification to all U.S. sales.

In reply, the respondent claims the difference between the highest foreign inland freight charge used in its calculation of average freight and the average foreign inland freight reported for all U.S. sales is immaterial. Moreover, the respondent maintains that its inland and ocean freight documents are not computerized.

DOC Position

We agree with the respondent. There is no evidence that the respondent's automated system allowed it to link individual sales with the freight charges incurred for those sales. At verification, we noted the actual per unit foreign inland freight charges for the U.S. preselected sales did not differ materially from the average charge reported in the sales listing.

Comment 7

In its case brief, the respondent requests that the Department clarify which of its customers are related within the meaning of the U.S. antidumping duty law.

In its rebuttal brief, the petitioner claims that there is no need to make this distinction for the purposes of the final determination. Should the Department address such an issue, the petitioner requests that it do so in a manner consistent with any findings made in the *Antidumping Duty Investigation of Oil Country Tubular Goods from Italy* (A–475–816).

DOC Position

We agree with the petitioner that such a finding is unnecessary. The respondent identified all related parties in its questionnaire response. We verified the accuracy of that response (*see* page 6 of our home market verification report). No further determination is necessary.

Comment 8

The respondent argues that tubes and pipes are distinct products, and urges the Department to clarify that the scope of this proceeding is limited to pipes. In its case brief, the respondent included an affidavit from a steel pipe and tube expert in which the expert explains that hollow steel products known as "pipe" have specific technical and commercial characteristics distinct from those hollow steel products commonly known as "tubes." According to this expert, the pipe producing and consuming industries consider pipe to be a product with any combination of outside diameter ("OD") and wall thickness set forth in the American Society for Testing Materials ("ASTM") standard B36.10. This expert reports that hollow steel products that do not correspond to the OD and wall specifications set forth in this standard are not pipes. The respondent's expert also cites numerous reasons why products produced to non-pipe sizes are normally not used in subject pipe applications. Finally, the respondent notes that according to the American Iron & Steel Institute, tubing, as distinguished from pipe, is normally produced to outside or inside diameter dimensions and to a great variety of diameters and wall thicknesses, and to chemical compositions and mechanical properties not commonly available in pipe. Therefore, the respondent requests that the Department clarify that products produced to non-pipe dimensions are not subject to this investigation.

The petitioner argues that the petition and the published scope expressly state that subject seamless pipe includes all outside diameters not exceeding 4.5 inches regardless of wall thickness. The petitioner contends that the specifications covered by the scope of this investigation allow products to be made to non-standard dimensions and notes that neither the petition, nor the published scope, distinguishes between pipes and tubes. In addition, the petitioner states that the ITC found a single like product containing both pipes and tubes using an analysis similar to that employed by the Department. Finally, the petitioner argues that respondent's own sales invoices and internal records refer to products made to non-standard dimensions as pipes.

DOC Position

We agree with the petitioner. *See* Scope clarification discussion in the body of this notice above.

Comment 9

The petitioner maintains that pipe and tube subject to this investigation constitutes a single class or kind of merchandise. The respondent did not comment on the class or kind issue in its case or rebuttal briefs.

DOC Position

We agree with the petitioner. *See* Class or Kind discussion in the body of this notice above.

Comment 10

The petitioner asserts that the respondent's home market sales data contains a multitude of errors that render it unsuitable for calculating an accurate FMV. Combined with substantial unreported U.S. sales and misreported costs, the petitioner considers it appropriate for the Department to base the final determination on BIA (petitioner cites *Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe from Brazil*, 57 FR 42940 (September 17, 1992)).

The respondent claims that the discrepancies mentioned by the petitioner are immaterial and the use of BIA is unwarranted.

DOC Position

We agree with the respondent that the use of total BIA is unwarranted. Based on the facts on the record, we believe the errors discovered at verification are minor in nature, and resulted from oversight or mathematical rounding. In addition, the lack of clarity in the scope, as published in the notice of initiation and the preliminary determination, may have resulted in respondent misinterpretation. The possibility that some of the unreported sales discovered at verification were not reported because the respondent misinterpreted the scope cannot be overlooked in our decision to accept or reject the home market sales response.

However, we made certain adjustments to the home market sales listing based on our findings at verification. Specifically, we deleted sales of small quantities of subject merchandise which were unlikely to be shipped and sales which the respondent believed would be exported to a country other than the United States. *See* the June 12, 1995 concurrence memorandum to Barbara Stafford from the Team for a complete discussion of this issue.

Cost Issues

Comment 11

The petitioner maintains that Dalmine understated its depreciation expense by excluding improperly the costs associated with 1993 fixed asset write-downs. Such costs, according to the petitioner, should be amortized over a number of years, including the POI. The petitioner argues that the Department should adjust the COP/CV figures by including a portion of the 1993 fixed asset adjustment.

The respondent claims that the 1993 adjustment referred to by the petitioner is not related to fixed assets, but is the adjustment to Dalmine's investment in its subsidiaries. The amount of the adjustment represents the operating losses of those subsidiaries. The respondent argues that, even if the adjustment had involved the company's fixed assets or inventory, it still should not be included in COP/CV as none of the subject merchandise sold during the POI was produced in 1993.

DOC Position

We agree with the respondent. The write-downs referred to by the petitioner are identified in Dalmine's 1993 annual report as write-downs due to the operating results of subsidiaries, associated companies and to an adjustment of the shareholder's equity of two subsidiaries. Accordingly, these write-downs are not related to the respondent's production activities or the subject merchandise and, therefore, we did not adjust the reported COP/CV figures.

Comment 12

The petitioner claims that Dalmine understated its depreciation expense by excluding improperly depreciation of its idle equipment. Although Italian generally accepted accounting principles (GAAP) may permit this practice, the petitioner argues that the Department should not allow the respondent to exclude depreciation of idle assets since this treatment creates distortions. The petitioner further states that the Department's long-standing practice is to include depreciation on idle assets in calculating COP and CV because such assets represent a cost to the company. To support this statement, the petitioner cites *Antifriction Bearings and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand and the United Kingdom*, 58 FR 39729, 37756 (1993) (*Antifriction Bearings*). The petitioner asserts that the Department should write off the remaining book value of the idle assets and allocate the expense to the POI, because the petitioner is unable to determine their remaining useful lives.

The respondent argues that it properly excluded depreciation expense relating to its assets because the facility is permanently closed and such accounting treatment is in accordance with Italian GAAP (*Iron Construction Castings From India*, 51 FR 9486, 1988). If the Department were to impute depreciation expense for the assets in the closed facility, the respondent argues we should allocate the imputed depreciation over 16 years, the average life of the fixed assets, rather than expensing the remaining book value of the idle assets during the POI.

DOC Position

The fixed assets in question relate to one of the respondent's facilities which is no longer in operation. The land and building housing these fixed assets have been sold and the company is currently attempting to sell the equipment. Italian GAAP requires the recognition of a loss on discontinued operations in the income statement, but the appropriate period of recognition is not defined. The respondent, in its normal books and records, has yet to recognize a gain or loss from the remaining assets of the discontinued operation.

The assets in question relate clearly to discontinued operations from a prior period and are no longer productive assets; they are merely awaiting sale. Accordingly, we do not consider the respondent's normal accounting treatment of these assets to be unreasonable. The *Antifriction Bearings* case cited by the petitioner is not controlling because it involved operations which were *temporarily* idle, while Dalmine's facility is *permanently* closed.

Additionally, had we considered the respondent's accounting treatment to be unreasonable and treated the discontinued operations in accordance with U.S. GAAP, we would consider the loss to be related to the year in which the decision was made to discontinue the operations, which was prior to the POI. Upon disposal of these assets, the gain or loss on the sale will be included on the respondent's income statement and we will include the gain or loss in COP/CV, if an order is issued and an administrative review conducted.

Comment 13

The petitioner argues that Dalmine improperly allocated depreciation expense using internal management reports instead of the mill-specific fixed asset ledgers which are kept in the normal course of business. The management reports, according to the petitioner, are used for allocating plant-wide depreciation expense to specific mills, but do not properly take into account the actual plant and equipment used in manufacturing. Instead, the petitioner claims, the submitted allocation method shifted costs from cost centers producing the subject merchandise to cost centers producing non-subject merchandise. The petitioner urges the Department to apply BIA because an analysis they performed suggests that the respondent applied an unusually slow rate of depreciation.

The respondent claims that it did not understate reported depreciation costs, as the verification report suggested, and argues that it may, in fact, have overstated its reported depreciation costs. Dalmine asserts that the internal management reports used to calculate depreciation for the submission segregate separately depreciation by mill and are not used for company-wide allocations. It also maintains that the depreciation expense for equipment used to produce the subject merchandise, as reported in the company's fixed asset ledgers, is substantially less than the depreciation expense which was reported in the submitted COP/CV data.

DOC Position

We agree with the petitioner, in part. The respondent reported its depreciation expense consistent with the way its cost accounting system allocates it to specific mills in the ordinary course of business. However, we believe that the use of its normal cost accounting methodology may not be a reasonable and accurate methodology as it does not properly take into account the actual plant and equipment used in manufacturing the subject merchandise. We consider the mill-specific fixed asset ledgers to be the most accurate basis for allocating depreciation expense to specific products. Therefore, we used the mill-specific depreciation expense.

We note that the petitioner's analysis regarding the unusually slow depreciation rate is flawed because it did not properly consider the cost of some fixed assets, such as land, which are not depreciated, and the cost of other fixed assets, which have long useful lives.

Comment 14

The petitioner argues that the Department should reject Dalmine's reported financing costs because Dalmine failed to disclose the fact that its financial results are consolidated with the financial results of its parent, ILVA S.p.A., in liq. (ILVA). These financial results are, in turn, consolidated with the financial results of ILVA's parent, IRI. The petitioner asserts that the Department calculates interest expense on a consolidated basis, unless the financial structure of the parent and the operating subsidiary are clearly not integrated, or there are no reliable audited consolidated financial statements. According to the petitioner, neither of these exceptions are applicable in this case.

The petitioner also contends that the Department should reject the respondent's argument that Dalmine's 1994 interest costs should be used instead of IRI's 1993 interest costs because the Dalmine-based figures are more closely correlated to the POI. The petitioner argues for the application of BIA in the final determination. However, if the Department determines that total BIA is inappropriate, then the petitioner believes the Department should calculate financing costs using IRI's 1993 audited financial statement information.

The respondent claims that it properly reported interest expense based on the consolidated financing costs incurred at the Dalmine level, rather than at the consolidated IRI level. In support of its claim, the respondent states that IRI does not exercise control over Dalmine's operations or its capital structure. In addition, the respondent maintains that using IRI's consolidated financial expenses would distort Dalmine's true financing costs because IRI's financing costs include expenses for entities which are dissimilar to Dalmine. Additionally, the respondent points out that IRI's 1994 audited consolidated financial statements were not available at verification and only its 1993 audited consolidated financial statements are on the record. However, Dalmine's 1994 audited consolidated financial statements are on the record and, according to the respondent, they are more relevant because they encompass the entire POI. Lastly, the respondent objects to the petitioner's insinuation that it attempted to mislead the Department by failing to disclose that its financial results are consolidated with the financial results of IRI. The respondent asserts that this information was not provided since it was not requested in the Department's questionnaires. When the Department did request IRI's consolidated financial data at verification, the respondent provided this information.

DOC Position

We agree with the petitioner, in part. The Department's long-standing practice is to calculate interest expense for COP/CV purposes from the borrowing costs incurred by the consolidated group. *Silicon Metal From Brazil*, 56 Fed. Reg. at 26,986 (1991). This methodology, which has been upheld by the CIT in *Camargo Correa Metals, S.A. v. U.S.*, Slip Op 93–163 (CIT 1993), is based on the fact that the consolidated group's controlling entity has the power to determine the capital structure of each member of the group. IRI has such power since it owns a substantial majority of Dalmine through ILVA. In addition, although the respondent claims that IRI does not exercise control over Dalmine's operations, it is the Department's position that majority equity ownership is prima facie evidence of corporate control. *See, e.g., Final Determination of Sales at Less Than Fair Value: New Minivans from Japan, (Minivans)* 57 FR 21946 (May 26, 1992) The respondent has not presented sufficient evidence to demonstrate that IRI's consolidated financing expense would distort Dalmine's financing costs. In *Minivans*, we determined that, as a member of a consolidated group of companies, the operations of a financing company remain under the controlling influence of the group. Like other members of the consolidated group, the financing company's capital structure is determined largely within the group. Consequently, its interest income and expenses are as much a part of the group's overall borrowing experience as any other member company.

Lastly, we do not consider it more appropriate to use Dalmine's 1994 consolidated figures over IRI's 1993 consolidated figures simply because Dalmine's audited information more closely relates to the time period of the POI. We have no reason to believe that IRI's 1993 audited financial statement interest expense data is not representative of the POI.

Comment 15

The petitioner believes the Department should not allow the respondent to offset its IRI level financing costs with short-term interest income because the reported interest income included both short and long-term interest income.

The respondent claims that the Department should reduce Dalmine's interest expenses by long and short-term interest income since both long and short-term investments arise from the company's current operations. The respondent argues that it must earn revenue from its current operations in order to make long and short-term investments. Therefore, it is illogical for the Department to only consider short-term interest income to be related to current operations. Additionally, the respondent notes that treating short and long-term interest income differently contradicts the Department's fungibility of money argument. The respondent claims that the Department should recognize the symmetrical nature of interest income and expense and calculate a true net interest cost which would take long-term interest income into account.

DOC Position

We agree with the respondent, in part. It is the Department's practice to allow a respondent to offset financial expenses with interest income earned from the general operations of the company. *See, e.g., Timkin v. United States*, 852 F. Supp. 1040, 1048 (CIT 1994). The Department does not, however, offset interest expense with interest income earned on long-term investments because long-term interest income does not relate to current operations. *See, e.g., Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany: Final Results of Antidumping Duty Administrative Review*, 56 FR 31734 (July 11, 1991). The company did not provide a break-down of short and long-term interest income for IRI. However, we were able to determine the amount of short-term interest income for the consolidated IRI group from verification exhibits and have applied short-term interest income as an offset to Dalmine's financing costs.

Comment 16

The petitioner contends that the Department should not allow the respondent to offset production costs with foreign exchange gains because the gains were not verified by the Department.

The respondent maintains that, contrary to the verification report, it does not associate exchange gains and losses with particular transactions. The respondent states that it classifies exchange gains and losses as part of the company's general expenses and it urges the Department to accept this treatment of these exchange gains and losses. As an alternative to including both foreign exchange gains and losses in its financing cost calculation, the respondent argues that the Department should exclude both gains and losses. The respondent states in its brief that it was not aware of the Department's treatment of exchange gains and losses until it received the verification agenda where the distinction was explicitly noted.

DOC Position

We agree with the petitioner. It is the Department's normal practice to distinguish between exchange gains and loses from sales transactions and exchange gains and losses from purchase transactions. *See, e.g., Final Determination of Sales at Less Than Fair Value; Silicomanganese from Venezuela*, 59 FR 55436 (November 7, 1994) (*Silicomanganese*). Accordingly, the Department does not include exchange gains and losses on accounts receivable because the exchange rate used to convert third-country sales to U.S. dollars is that in effect on the date of the U.S. sale. (See 19 CFR 353.60). The Department includes, however, foreign exchange gains and losses on financial assets and liabilities in its COP and CV, calculation where they are related to the company's production. Financial assets and liabilities are directly related to a company's need to borrow money, and we include the cost of borrowing in our COP and CV calculations. See *Silicomanganese*. The respondent did not provide any substantiation for the exchange gains and losses reflected in either Dalmine's financial statements or IRI's financial statements. However, Dalmine did state at verification that exchange gains are generally from sales transactions and exchange losses are generally from purchase transactions. We therefore adjusted the interest expense rate calculation to include IRI's exchange losses and exclude IRI's exchange gains.

Comment 17

The petitioner argues that the Department should disallow the portion of the LIFO variance adjustment which is comprised of reversals of accruals and other reserves. The petitioner claims that these accruals and reserves were established in prior accounting periods and do not relate to POI production. According to the petitioner, allowing such reversals provides companies that have advance knowledge of a dumping case with a simple means of shifting costs out of the POI.

The respondent contends that it included properly reversals of 1993 accruals and write-downs in its COP/CV costs. Dalmine claims that the Department's general practice is to include accruals which are recognized in the respondent's audited financial statements in the COP/CV calculations. According to the respondent, this treatment necessitates the inclusion of any accrual reversals in COP/CV calculations for the period in which the respondent recognizes the reversal. Otherwise, the respondent claims, the Department would be overstating the company's total costs.

DOC Position

We agree with the petitioner. We do not consider it appropriate to reduce current year production costs by the reversal of prior year operating expense accruals and write-downs of equipment and inventory. The subsequent year's reversal of these estimated costs does not represent revenue or reduced operating costs in the year of reversal. See *Notice of Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From France*, 58 FR 37079 (July 9, 1993). Rather, they represent a correction of an estimate which was made in a prior year. If the Department is able to verify that an operating expense accrual or an equipment or inventory write-down recorded during the POI is subsequently adjusted because the company overestimated the cost, we will use the corrected figure, but only for the same period in which the accrual or write-down occurred. However, absent any verified information supporting the overestimation of cost, we have no choice but to rely on the amounts recorded by the company. The fact that a company is unable to determine that it over accrued certain costs in time for verification does not justify distorting the actual production costs incurred in a subsequent year by reducing subsequent year costs by the overestimated amount. In the present case, since the accruals and write-downs did not occur during 1994, it would be inappropriate to recognize the reversals of such entries in the reported costs.

Comment 18

The petitioner asserts that Dalmine has not reported the COP and CV for all of the subject merchandise sold in the U.S. during the POI. This assertion is based on the fact that Dalmine did not calculate a weighted average cost for CONNUM's 45 and 108, because the company did not produce those products during the POI. The petitioner claims that a significant percentage of U.S. sales during the POI were for control numbers not produced during the POI. The petitioner argues that the

Department should increase the submitted COP and CV for the two products sold in the U.S. during the POI, but produced prior to the POI, because Dalmine was less profitable in 1993.

The respondent maintains that it calculated the average COP and CV for CONNUM's 45 and 108 by using a simple average of the cost of the products that comprise each CONNUM rather than a weighted average with a weighting factor for the cost of products not produced during the POI. Thus, the respondent contends that it properly reported actual contemporaneous cost information.

DOC Position

We agree with the respondent. Dalmine used a simple average of the cost of the products that comprised CONNUM's 45 and 108 and our statement in the verification report that the respondent used a weighting factor for some of the products in its cost calculation for CONNUM's 45 and 108 is inaccurate. We calculated COP/CV by weight averaging the average costs of products classified within those CONNUM's by the production quantities which we obtained at verification.

We disagree with the petitioner's claim that the Department should increase the submitted cost data for the products produced prior to the POI because the company was less profitable in the prior year. The Department tested Dalmine's standard costs as adjusted to actual costs at verification and determined that these costs actually reflect the costs incurred during the POI.

Comment 19

The petitioner contends that Dalmine understated its reported general and administrative (G&A) expenses as it failed to include an allocation of G&A expenses incurred by ILVA and IRI. Because Dalmine failed to disclose that it was consolidated with ILVA and IRI, the petitioner believes that, as BIA, the Department should add the G&A expenses calculated from ILVA's 1992 financial statements and IRI's 1993 financial statements to the amounts reported by Dalmine.

The respondent maintains that the Department verified that an appropriate share of parent company management costs was included in the submitted COP/CV data.

DOC Position

We agree with the respondent. It is the Department's practice to include a portion of the G&A expenses incurred by affiliated companies on the reporting entity's behalf in total G&A expenses for COP/CV purposes. *Final Determination of Sales at Less Than Fair Value: Welded Stainless Steel Pipe from Malaysia*, 59 Fed. Reg. 4023, 4027 (Jan. 28, 1994); *Final Determination of Sales at Less Than Fair Value: Ferrosilicon from Venezuela*, 58 Fed. Reg. 27524 (May 10, 1993); *Final Determination of Sales at Less Than Fair Value: Sweaters from Hong Kong*, 55 Fed. Reg. 30733 (July 27, 1990); *Final Determination of Sales at Less Than Fair Value: Certain Small Business Telephones and Subassemblies Thereof from Korea*, 54 Fed. Reg. 53141 (Dec. 27, 1989). In the present case, the respondent included a portion of Dalmine's G&A expenses and the G&A expenses of its producing subsidiary in the submitted G&A expenses. We identified no parent company costs allocable to Dalmine.

Comment 20

The petitioner questions whether all steel mill variances have been captured because steel bar costs have been reported exclusively on the basis of standard costs. The petitioner claims that price and efficiency variances for the steel mill were excluded from the ratio used to allocate variances to each product.

The respondent claims that the Department verified that the steel mill variance was properly allocated to the subject merchandise.

DOC Position

We agree with the respondent. The steel mill net profit reported on the respondent's management report was zero after all steel mill costs were allocated to producing mills, based on steel usage by the mills. Therefore, all steel mill activity, including variances, was properly allocated to the producing mills.

Suspension of Liquidation

Pursuant to the results of this final determination, we will instruct the Customs Service to require a cash deposit or posting of a bond equal to the estimated final dumping margin, as shown below, for entries of seamless standard, line and pressure pipe from Italy that are entered or withdrawn from warehouse, for consumption from the date of publication of this notice in the **Federal Register**. The suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Producer/manufacturer exporter	Weighted-average margin (percent)
Dalmine	1.84
All Others	1.84

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. The ITC will make its determination whether these imports materially injure or threaten injury to a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or cancelled. However, if the ITC determines that material injury or threat of material injury does exist, the Department will issue an antidumping duty order.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protection order ("APO") in these investigations of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.4(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d))and 19 CFR 353.20.

Dated: June 12, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–14939 Filed 6–16–95; 8:45 am]

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[C–475–815]

Final Affirmative Countervailing Duty Determination: Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe ("Seamless Pipe") From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 19, 1995.

FOR FURTHER INFORMATION CONTACT: Peter Wilkniss, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–0588.

FINAL DETERMINATION: The Department determines that benefits which constitute subsidies within the meaning

of section 701 of the Tariff Act of 1930, as amended ("the Act"), are being provided to manufacturers, producers, or exporters in Italy of seamless pipe. For information on the estimated net subsidies, please see the Suspension of Liquidation section of this notice.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994. References to the *Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments*, 54 FR 23366 (May 31, 1989) (*Proposed Regulations*), which has been withdrawn, are provided solely for further explanation of the Department's CVD practice.

Case History

Since the publication of the preliminary determination in the **Federal Register** (59 FR 60774, November 28, 1994), the following events have occurred.

On December 23, 1994, we aligned the final countervailing duty determination in this investigation with the final determination in the companion antidumping investigation of seamless pipe from Italy (59 FR 66296).

We conducted verification of the responses submitted on behalf of the Government of Italy ("GOI"), and Dalmine S.p.A. ("Dalmine") from January 22 through January 27, 1995.

On April 19, 1995, we postponed the final determination in this case to June 12, 1995 (60 FR 19571).

On May 2, 1995 we received a case brief from respondent. Neither petitioner or respondent requested a hearing in this investigation.

Scope of Investigation

The following scope language reflects certain modifications made for purposes of the final determination, where appropriate, as discussed in the "Scope Issues" section of the final determination in the companion antidumping case of seamless pipe from Italy.

The scope of this investigation includes seamless pipes produced to the ASTM A–335, ASTM A–106, ASTM A–53 and API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of this investigation also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters below, regardless of specification.

For purposes of this investigation, seamless pipes are seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3 mm (4.5 inches) in outside diameter, regardless of wall thickness, manufacturing process (hot-finished or cold-drawn), end finish (plain end, bevelled end, upset end, threaded, or threaded and coupled), or surface finish. These pipes are commonly known as standard pipe, line pipe or pressure pipe, depending upon the application. They may also be used in structural applications. Pipes produced in non-standard wall thicknesses are commonly referred to as tubes.

The seamless pipes subject to these investigations are currently classifiable under subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (HTSUS).

The following information further defines the scope of this investigation, which covers pipes meeting the physical parameters described above:

Specifications, Characteristics and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the American Society for Testing and Materials (ASTM) standard A–106 may be used in temperatures of up to 1000 degrees fahrenheit, at various American Society of Mechanical Engineers (ASME) code stress levels. Alloy pipes made to ASTM standard A–335 must be used if temperatures and stress levels exceed those allowed for A–106 and the ASME codes. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53 and API 5L specifications. Such triple certification of pipes is common because all pipes meeting the stringent A–106 specification necessarily meet the API 5L and ASTM A–53 specifications. Pipes meeting the API 5L specification necessarily meet the ASTM A–53 specification. However, pipes meeting the A–53 or API 5L specifications do not necessarily meet the A–106 specification. To avoid maintaining separate production runs and separate inventories, manufacturers triple certify the pipes. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple certified pipes is in pressure piping systems by refineries, petrochemical plants and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, A–106 pipes may be used in some boiler applications.

The scope of this investigation includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, and whether or not also certified to a non-covered specification. Standard, line and pressure applications and the above listed specifications are defining characteristics of the scope of this investigation. Therefore, seamless pipes meeting the physical description above, but not produced to the A–335, A–106, A–53, or API 5L standards shall be covered if used in a standard, line or pressure application.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in A–106 applications. These specifications generally include A–162, A–192, A–210, A–333, and A–524. When such pipes are used in a standard, line or pressure pipe application, such products are

covered by the scope of this investigation.

Specifically excluded from this investigation are boiler tubing and mechanical tubing, if such products are not produced to A–335, A–106, A–53 or API 5l specifications and are not used in standard, line or pressure applications. In addition, finished and unfinished OCTG are excluded from the scope of this investigation, if covered by the scope of another countervailing duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications. Finally, also excluded from this investigation are redraw hollows for cold-drawing when used in the production of cold-drawn pipe or tube.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Dalmine has raised a scope issue in this investigation. The Department has addressed all scope issues in the final determination of the companion antidumping investigation of seamless pipe from Italy.

Injury Test

Because Italy is a "country under the Agreement" within the meaning of section 701(b) of the Act, the U.S. International Trade Commission ("ITC") is required to determine whether imports of seamless pipe from Italy materially injure, or threaten material injury to, a U.S. industry. On August 3, 1994, the ITC preliminarily determined that there is a reasonable indication that an industry in the United States is being materially injured or threatened with material injury by reason of imports from Italy of the subject merchandise (59 FR 42286, August 17, 1994).

Corporate History of Respondent Dalmine

Prior to its liquidation in 1988, Finsider S.p.A. ("Finsider") was the holding company for all state-owned steel companies in Italy, including Dalmine. Dalmine was an operating company wholly owned by Finsider. After Finsider's liquidation, a new government-owned holding company, ILVA S.p.A. ("ILVA"), was created. ILVA took over the former Finsider companies, among them Dalmine, which became a subsidiary of ILVA in 1989 when Finsider's shareholding in Dalmine was transferred to ILVA.

Between 1990 and 1993, Dalmine itself was radically restructured. Dalmine became a financial holding company, with industrial, trading, and service shareholdings. As part of its restructuring, Dalmine made several asset purchases, sold two of its subsidiaries to private parties, and closed several manufacturing facilities. As of December 31, 1993, the Dalmine Group consisted of a holding company (Dalmine S.p.A.), four wholly-owned, and one majority-owned, manufacturing companies, and a number of sales and service subsidiaries.

During the POI, ILVA was owned by the Istituto per la Ricostruzione Industriale ("IRI"), a holding company which was wholly-owned by the GOI.

Spin-offs

In its questionnaire response, Dalmine reported that between 1990 and 1991, as part of its overall restructuring process, the company twice sold "productive units" to private buyers. According to Dalmine, these sales involved facilities that do not produce the subject merchandise. In the preliminary determination, we determined that the amount of potentially spun-off benefits was insignificant. We did not learn anything at verification that would lead us to reverse this determination. Therefore, we have not reduced the subsidies allocated to sales of the subject merchandise. (See Final Concurrence Memorandum dated June 12, 1995).

Equityworthiness

Petitioner has alleged that Dalmine was unequityworthy in 1989, the year it received an indirect equity infusion from the GOI, through ILVA S.p.A. ("ILVA"), and that the equity infusion was, therefore, inconsistent with commercial considerations.

In accordance with section 355.44(e)(1) of the Proposed Regulations (Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments ("Proposed Regulations"), 54 FR 23366, May 31, 1989)), we preliminarily determined that ILVA's purchase of Dalmine's shares was consistent with commercial considerations because Dalmine provided evidence that private investors, unrelated to Dalmine or the GOI, purchased a significant percentage of the 1989 equity offering, on the same terms as ILVA. We did not learn anything at verification that would lead us to reverse this finding. Therefore, the Department determines that ILVA's purchase of Dalmine's shares was consistent with commercial considerations.

Creditworthiness

Petitioner has alleged that Dalmine was uncreditworthy in every year between 1979 and 1993. In accordance with section 355.44(b)(6)(i) of the Proposed Regulations, we preliminarily determined that Dalmine was creditworthy from 1979 to 1993. In making this determination we examined Dalmine's current, quick, times interest earned, and debt-to-equity ratios, in addition to its profit margin. Specifically, although a number of the financial indicators are weak for certain years, none of the indicators are weak over the medium or long term, and when examined together on a yearly basis, the indicators support the determination that Dalmine was creditworthy in every year examined. (See also Creditworthy Memorandum, November 18, 1994). In addition, Dalmine received long-term, commercial loans from private lenders in several of the years examined.

We did not learn anything new at verification that would lead us to reconsider our preliminary determination. Therefore, we continue to find that Dalmine was creditworthy from 1979 to 1993.

Benchmarks and Discount Rates

Dalmine did not take out any long-term, fixed-rate, lire-denominated loans in any of the years of the government loans under investigation. Therefore, in accordance with section 355.44(b)(4) of the Proposed Regulations, in our preliminary determination we used, as the benchmark interest rate, the Bank of Italy reference rate which was determined in Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Italy ("Certain Steel from Italy"), 58 FR, 37327 (July 9, 1993), to be both the best approximation of the cost of long-term borrowing in Italy and the only long-term fixed interest rate commonly available in Italy. We also used this rate as the discount rate for allocating over time the benefit from non-recurring grants for the same reasons as explained in Final Affirmative Countervailing Duty Determination: Certain Steel Products from Spain, 58 FR 37374, 37376 (July 9, 1993).

At verification, we learned that the Bank of Italy reference rate reflects the cost for Italian banks to borrow long-term funds. Therefore, the reference rate does not incorporate the mark-up a bank would charge a corporate client when making a long-term loan. Long-term corporate interest rate data is not available in Italy. Accordingly, we have adjusted the reference rate used in the preliminary determination upward to reflect the mark-up an Italian bank would charge a corporate customer.

In order to approximate this mark-up, we calculated the difference between the average short-term corporate borrowing rate in Italy and the average interest rate on short-term Italian government debt, for each year in which Dalmine received long-term lire loans or non-recurring grants from the government. We then added this mark-up to the Italian reference rate used in the preliminary determination to approximate an average long-term corporate benchmark interest rate. We also used these rates as the discount rates for allocating over time the benefit from non-recurring grants. *See Certain Steel Products from Spain*, 58 FR at 37376.

For long-term loans denominated in other currencies, we used, as the benchmark interest rate, an average long-term fixed interest rate for loans denominated in the same currency. (See section E—Article 54 Loans below.)

Calculation Methodology

For purposes of this determination, the period for which we are measuring subsidies (the POI) is calendar year 1993. In determining the benefits received under the various programs described below, we used the following calculation methodology. We first calculated the benefit attributable to the POI for each countervailable program, using the methodologies described in each program section below. For each program, we then divided the benefit attributable to Dalmine in the POI by Dalmine's total sales revenue, as none of the programs was limited to either certain subsidiaries or products of Dalmine. Next, we added the benefits for all programs, including the benefits for programs which were not allocated over time, to arrive at Dalmine's total subsidy rate. Because Dalmine is the only respondent company in this investigation, this rate is also the country-wide rate.

Based upon our analysis of the petition, the responses to our questionnaires, verification, and comments by interested parties, we determine the following:

I. Programs Determined To Be Countervailable

A. Benefits Provided Under Law 675/77

Law 675/77 was enacted to bring about restructuring and reconversion in the following industrial sectors: (1) electronic technology; (2) the manufacturing industry; (3) the agro-food industry; (4) the chemical industry; (5) the steel industry; (6) the pulp and paper industry; (7) the fashion sector; and (8) the automobile and aviation sectors. Law 675/77 also sought to promote optimal exploitation of energy resources, and ecological and environmental recovery.

A primary goal of this legislation was to bring all government industrial assistance programs under a single law in order to develop a system to replace indiscriminate and random public intervention by the GOI. Other goals were (1) to reorganize and develop the industrial sector as a whole; (2) to increase employment in the South; and (3) to maintain employment in depressed areas. Among other measures taken, the Interministerial Committee for the Coordination of Industrial Policy ("CIPI") was created as a result of Law 675/77. CIPI approves individual projects in each of the industrial sectors listed above.

Six main programs were provided under Law 675/77: (1) interest contributions on bank loans; (2) mortgage loans provided by the Ministry of Industry at subsidized interest rates; (3) interest contributions on funds raised by bond issues; (4) capital grants for projects in the South; (5) personnel retraining grants; and (6) VAT reductions on purchases of capital goods by companies in the South. Dalmine reported that it received benefits under items (1), (2), and (5) above.

In its response, the GOI asserts that the steel and automobile industries did not receive a "disproportionate" share of benefits associated with interest contributions when the extent of investment in those industries is compared to the extent of investment in other industries. However, in keeping with past practice, we did not consider the level of investment in the individual industries receiving benefits under Law 675/77. Instead, we followed the analysis outlined in *Final Affirmative Countervailing Duty Determination: Grain-Oriented Electrical Steel From Italy (Grain-Oriented Electrical Steel)*, 59 FR 18357 (April 18, 1994), and *Final Affirmative Countervailing Duty Determination: Certain Steel Products From Brazil*, 58 FR 37295, 37295 (July 9, 1993), of comparing the share of benefits received by the steel industry to the collective share of benefits provided to other users of the programs.

According to the information provided by the GOI, of the eight industrial sectors eligible for benefits under Law 675/77, the two dominant users of the interest contribution program were (1) the Italian auto industry which accounted for 34 percent of the benefits, and (2) the Italian steel industry which accounted for 33 percent of the benefits. Likewise, with respect to the mortgage loans, the two dominant users were the auto and steel industries which received 45 percent and 31 percent of the benefits, respectively.

In light of the above evidence, we determine that the steel industry was a dominant user of both the interest contribution and the mortgage loan programs under Law 675/77. (*See* section 355.43(b)(2)(iii) of the *Proposed Regulations*). Therefore, we determine that benefits received by Dalmine under these programs are being provided to a specific enterprise or industry or group of enterprises or industries. On this basis, we find Law 675/77 financing to be countervailable to the extent that it is granted on terms inconsistent with commercial considerations.

Under the interest contribution program, Italian commercial banks provided loans to industries designated under Law 675/77. The interest owed by the recipient companies was partially offset by interest contributions from the GOI. Dalmine received bank loans with interest contributions under Law 675/77 which were outstanding in the POI.

Because the GOI interest contributions were automatically available when the loans were taken out, we consider the contributions to constitute reductions in the interest rates charged, rather than grants (*see Certain Steel From Italy* at 37335).

At verification, we established that Dalmine had repaid each of the loans it received under this program in June 1994. We further found that Dalmine had not yet received a portion of the interest contributions originally owed to it by the GOI under this program, due to delays in GOI approval of several Dalmine internal asset transfers. Finally, we established that Dalmine had paid interest on each of the loans during the loan grace periods, contrary to what Dalmine reported in its questionnaire responses.

Dalmine argues that the GOI terminated the subsidized loan portion of this program in 1982, and that Dalmine repaid each of the loans in June 1994, after the POI, but before the publication of the preliminary determination. Consequently, Dalmine contends, no further benefits can accrue to Dalmine under this program. Therefore, according to Dalmine, the Department should, in accordance with the Department's policy to take program-wide changes into account in setting the duty deposit rate, set Dalmine's deposit rate for this program to zero.

Contrary to Dalmine's assertion, we determine that the termination of the subsidized loan portion of this program

does not constitute a program-wide change as defined in section 355.50(b)(1) of the *Proposed Regulations*. Specifically, although Dalmine has repaid the loans it received under the program, there could be other Italian companies with loans that are still outstanding. Therefore, despite termination of the program in 1982, there may still be residual benefits under the program. Under our program-wide change policy, the change at issue cannot be limited to individual firms. Consequently, we determine that the "termination" of the subsidized loan portion of this program does not constitute a program-wide change. *See Final Affirmative Countervailing Duty Determination and Countervailing Duty Orders; Certain Welded Carbon Steel Pipe and Tube Products From Argentina (Argentine Pipe)*, 53 FR 37619 (September 27, 1988); Section 355.50(b)(1) of the *Proposed Regulations*.

Alternatively, Dalmine claims that the Department should recalculate the benefits under this program to reflect the delayed receipt of GOI interest contributions, as well as Dalmine's payment of grace period interest.

With respect to the grace period, we have adjusted our calculations to reflect that Dalmine paid interest during that time, as established at verification. However, we are treating the interest contributions as countervailable on the date Dalmine made the corresponding interest payments, despite any delay in receipt by Dalmine. This is because Dalmine's entitlement to the interest contributions was automatic when it made the interest payments. Thus, we find, for purposes of benefit calculation, that the interest contributions were received at the time the interest payments were made. *See Steel Wire Nails from New Zealand*, 52 FR 37196 (1987).

Under the mortgage loan program, the GOI provides long-term loans at subsidized interest rates. Dalmine received financing under this program which was outstanding in the POI.

To determine whether these programs conferred a benefit, we compared the effective interest rate paid by Dalmine to the benchmark interest rate, discussed above. Based on this comparison, we determine that the financing provided under these programs is inconsistent with commercial considerations, *i.e.*, on terms more favorable than the benchmark financing.

To calculate the benefit from these programs, we used our standard long-term loan methodology as described in section 355.49(c)(1) of the *Proposed Regulations*. We then divided the benefit allocated to the POI for each program by Dalmine's total sales in 1993. On this basis, we determine the net subsidy from these programs to be 0.46 percent *ad valorem* for all manufacturers, producers, and exporters in Italy of the subject merchandise.

With respect to retraining grants provided to Dalmine under Law 675/77, it is the Department's practice to treat training benefits as recurring grants. (*See Certain Steel General Issues Appendix* at 37226). Since the only grant reported under this program was received by Dalmine in 1986, any benefit to Dalmine as a result of this grant cannot be attributed to the POI. Therefore, we determine that retraining benefits provided under Law 675/77 conferred no benefit to Dalmine during the POI.

B. Grants Under Law 193/84

According to the GOI, Articles 2, 3, and 4 of Law 193/84 provide for subsidies to close steel plants. As stated in Art. 20 of Law N. 46 of 17/2/1982, steel enterprises, including enterprises producing seamless pipes, welded pipes, conduits and welded pipes for water and gas, are the recipients of these subsidies. As benefits under this program are limited to the steel industry, we determine that Law 193/84 is de jure specific and, therefore, countervailable.

At verification, we found that Dalmine received an additional benefit under this program not reported in its questionnaire responses. We have included this additional benefit in our calculation of the benefits received by Dalmine under this program.

To calculate the benefit during the POI, we used our standard grant methodology (*see* section 355.49(b) of the *Proposed Regulations*). We then divided the benefits attributable to Dalmine under Law 193/84 in the POI by Dalmine's total sales. On this basis, we determine the estimated net subsidy to be 0.81 percent *ad volorem* for all manufacturers, producers, and exporters in Italy of the subject merchandise.

C. Exchange Rate Guarantee Program

This program, which was enacted by Law 796/76, provides exchange rate guarantees on foreign currency loans from the European Coal and Steel Community ("ECSC") and *The Council of European Resettlement Fund ("CER")*. Under the program, repayment amounts are calculated by reference to the exchange rate in effect at the time the loan is agreed upon. The program sets a ceiling and a floor on repayment to limit the effect on the borrower of exchange rate changes over time. For example, if the lire depreciates five percent against the DM (the currency in which the loan is taken out), borrowers would normally find that they would have to repay five percent more (in lire terms). However, under the Exchange Rate Guarantee Program, the ceiling would act to limit the increased repayment amount to two percent. There is also a floor in the program which would apply if the lire appreciated against the DM. The floor would limit any windfall to the borrower.

In *Grain-Oriented Electrical Steel*, the Department found this program to be not countervailable because of incomplete information regarding the specificity of the program. The Department stated that, because the determination was reached while lacking certain important information, the finding of non-countervailability would not carry over to future investigations.

In this investigation, information provided by the GOI shows that the steel industry received 25% of the benefits under the program. Furthermore, at verification, we found that in the years Dalmine took out loans on which it received exchange rate guarantees under this program, the steel industry received virtually all the benefits under the program. Based on this information, the Department determines that the steel industry was a dominant user of exchange rate guarantees under Law 796/76 and, thus, that benefits received by Dalmine under this law are being provided to a specific enterprise or industry or group of enterprises or industries. (*See* section 355.43(b)(2)(iii) of the *Proposed Regulations*). Therefore, we determine that the exchange rate guarantees offered under the program are countervailable to the extent they are provided on terms inconsistent with commercial considerations.

Dalmine provided information that it could have purchased an exchange rate guarantee from commercial sources. However, Dalmine's information pertained to 1993, not to the period when the government guarantees were provided. The GOI's response indicates that commercial exchange rate guarantees were not available in 1986, the year in which the loans and the guarantees were received. Therefore, we determine the benefit to be the total amount of payments to Dalmine made during the POI by the GOI. (Because the amount the government will pay in any given year will not be known until that year, benefits can only be calculated on a year-by-year basis.) We divided the GOI's payments in 1993 by Dalmine's 1993 total sales. On this basis, we determine the estimated net subsidy from this program to be 0.20 percent ad valorem for all manufacturers, producers, and exporters in Italy of the subject merchandise.

II. Programs Determined To Be Not Countervailable

A. 1988/89 Equity Infusion

In November 1989, Dalmine completed an equity rights offering which allowed existing shareholders to purchase 7 new shares for every 10 shares they already owned. The new shares were offered at a price of LIT 300 per share. At that time, ILVA owned 81.7 percent of Dalmine's equity, with the remaining 18.3 percent owned by private investors. Pursuant to the rights offering, ILVA subscribed to its full allotment of the new shares issued. The remainder of the new shares were purchased by private shareholders. All shares were purchased at LIT 300 per share.

Petitioner argues that, although Dalmine's shares were nominally publicly traded, the vast majority of Dalmine shares were indirectly owned by the GOI and, therefore, shares were not purchased in adequate volume by private investors to establish a valid benchmark. Specifically, petitioner contends that, in 1991, ILVA owned 99.9 percent of Dalmine and, therefore, Dalmine's shares were in fact not publicly traded. Consequently, because essentially no private purchases were being made, the market price at the time of the equity infusion cannot serve as a valid benchmark. Furthermore, petitioner asserts that it is highly likely that the remaining shares not purchased by ILVA were purchased indirectly by the GOI through other holding companies.

In response to our questionnaire, Dalmine provided a list of all purchasers of shares in the 1989 offering. There was no evidence to indicate that the shares not purchased by ILVA were purchased by other government controlled or owned entities, as petitioner suggests.

Moreover, the extent of ILVA's ownership in 1991 is not relevant to the choice of a benchmark for the equity investment in 1989.

Therefore, in our preliminarily determination, we determined that, because 18.3 percent of the equity infusion was purchased by private shareholders, the sale of these shares provides the market-determined price for Dalmine's equity. Furthermore, in accordance with section 355.44 (e)(1) of the Department's *Proposed Regulations*, we preliminarily determined that the equity infusion is not countervailable because the market-determined price for equity purchased from Dalmine is not less than the price paid by ILVA for the same form of equity. We did not learn anything at verification that would lead us to reconsider our preliminary determination. Therefore, we continue to find that the equity infusion is not countervailable.

B. European Social Fund ("ESF") Grants

The ESF was established by the 1957 European Economic Community Treaty to increase employment and help raise worker living standards.

As described in *Grain-Oriented Electrical Steel*, the ESF receives its funds from the EC's general budget of which the main revenue sources are customs duties, agricultural levies, value-added taxes collected by the member states, and other member state contributions.

The member states are responsible for selecting the projects to be funded by the EC. The EC then disburses the grants to the member states which manage the funds and implement the projects. According to the EC, ESF grants are available to (1) people over 25 who have been unemployed for more than 12 months; (2) people under 25 who have reached the minimum school-leaving age and who are seeking a job; and (3) certain workers in rural areas and regions characterized by industrial decline or lagging development.

The GOI has stated that the ESF grants received by Italy have been used for vocational training. Certain regions in the South are also eligible for private sector re-entry and retraining schemes. Since 1990, the vocational training grants have been available to unemployed youths and long-term unemployed adults all over Italy, according to the GOI. Before 1990, however, the GOI gave preference to certain regions in Italy.

In *Grain-Oriented Electrical Steel*, we determined that this program was not regionally specific and not otherwise limited to a specific enterprise or industry, or group of enterprises or industries. Furthermore, we noted that to the extent there is a regional preference (*i.e.*, southern Italy) in the distribution of ESF benefits, it has not resulted in a countervailable benefit to the production of the subject merchandise, which is produced in northern Italy.

Information provided by the GOI in this investigation is consistent with the information provided in *Grain-Oriented Electrical Steel*. Therefore, we determine that this program is not limited to a specific enterprise or industry, or group of enterprises or industries, and therefore, is not countervailable.

C. ECSC Article 54 Loans

Under Article 54 of the 1951 ECSC Treaty, the European Commission provides loans directly to iron and steel companies for modernization and the purchase of new equipment. The loans finance up to 50 percent of an investment project. The remaining financing needs must be met from other sources. The Article 54 loan program is financed by loans taken by the Commission, which are then re-lent to iron and steel companies in the member states at a slightly higher interest rate than that at which the Commission obtained them.

Consistent with the Department's finding in *Grain-Oriented Electrical Steel*, we determine that this program is limited to the iron and steel industry. As a result, loans under this program are specific.

Of the Article 54 loans Dalmine had outstanding during the POI, some were denominated in U.S. dollars and others were in Dutch guilders ("NLG"). To determine whether the loans were provided on terms inconsistent with commercial considerations, we used the benchmark interest rates for the currencies in which the loans were denominated. That is, for the U.S. dollar loans we used the average interest rate on long-term fixed-rate U.S. dollar loans obtained in the United States, as reported by the Federal Reserve. For the NLG denominated loan, we used the average long-term bond rate for private borrowers in the Netherlands, as reported by the Organization for Economic Cooperation and Development ("OECD").

Because the interest rates paid on Dalmine's Article 54 loans are higher than the benchmark interest rates, the Department determines that loans provided under this program are not inconsistent with commercial considerations and, therefore, not countervailable.

D. 1989 Provisional Payment in Connection With 1989 Equity Infusion

In March 1989, ILVA made a payment to Dalmine in anticipation of purchasing new shares in Dalmine. The payment was provisional in nature because EC authorization of the capital increase was necessary and, if authorization was not granted, the money would have been repaid to ILVA. The capital increase was not finalized until November 1989, due to delays in EC approval. At that time, the payment became equity capital.

Consistent with the Department's position in *Grain-Oriented Electrical Steel*, we determine that the funds provided by ILVA to Dalmine are countervailable.

During the period March-November 1989, Dalmine had use of the money and paid no interest on it. Therefore, we have treated the funds provided by ILVA to Dalmine as an interest-free short-term loan from March 1989 to November 1989.

Because any benefit from this interest-free loan would be allocable entirely to 1989, no benefit is attributable to the POI.

III. Programs Determined To Be Not Used

We established at verification that the following programs were not used during the POI.

1. Preferential IMI Export Financing Under Law 227/77
2. Preferential Insurance Under Law 227/77
3. Retraining Grants under Law 181/89
4. Benefits under ECSC Article 56

Verification

In accordance with section 776(b) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, examination of relevant accounting records and examination of original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

Suspension of Liquidation

In accordance with our affirmative preliminary determination, we instructed the U.S. Customs Service to suspend liquidation of all entries of seamless pipe from Italy, which were entered or withdrawn from warehouse for consumption, on or after November 28, 1994, the date our preliminary determination was published in the **Federal Register**. This final countervailing duty determination was aligned with the final antidumping duty determination of seamless pipe from Italy, pursuant to section 606 of the Trade and Tariff Act of 1984 (section 705(a)(1) of the Act).

Under article 5, paragraph 3 of the GATT subsidies Code, provisional measures cannot be imposed for more than 120 days without a final affirmative determination of subsidization and injury. Therefore, we instructed the U.S. Customs Service to discontinue the suspension of liquidation on the subject merchandise entered on or after March 28, 1995, but to continue the suspension of liquidation of all entries, or withdrawals from warehouse, for consumption of the subject merchandise between November 28, 1994, and March 27, 1995. We will reinstate suspension of liquidation under section 703(d) of the Act, if the ITC issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated below.

Seamless Pipe

Country-Wide *Ad Valorem* Rate 1.47 percent.

ITC Notification

In accordance with section 705(c) of the Act, we have notified the ITC of our determination. The ITC will make its determination whether these imports materially injure, or threaten injury to, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that material injury or threat of material injury does exist, the Department will issue a countervailing duty order.

Return of Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 705(d) of the Act and 19 CFR 355.20(a)(4).

Dated June 12, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–14934 Filed 6–16–95; 8:45 am]

BILLING CODE 3510–DS–P

Export Trade Certificate of Review

ACTION: Correction for Notice of Application.

"In the Notice of Application for a Certificate of Review for United Products of America, Inc., Application No. 95–00004, which was printed in the **Federal Register** on June 7, 1995, page 30064, No. 109, Vol 60, the - Date Deemed Submitted was incorrectly listed as April 30, 1995. In fact, Application No. 95–00004 was deemed submitted on May 30, 1995, not April 30."

Dated: June 30, 1995.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 95–14892 Filed 6–16–95; 8:45 am]

BILLING CODE 3510–25–P

U.S. Automotive Parts Advisory Committee; Closed Meeting

AGENCY: International Trade Administration, Commerce.

ACTION: Closed meeting of U.S. Automotive Parts Advisory Committee.

SUMMARY: The U.S. Automotive Parts Advisory Committee (the "Committee") advises U.S. Government officials on matters relating to the implementation of the Fair Trade in Auto Parts Act of 1988. The Committee: (1) Reports annually to the Secretary of Commerce on barriers to sales of U.S.-made auto parts and accessories in Japanese markets; (2) assists the Secretary in reporting to the Congress on the progress of sales of U.S.-made auto parts in Japanese markets, including the formation of long-term supplier relationships; (3) reviews and considers data collected on sales of U.S.-made auto parts to Japanese markets; (4) advises the Secretary during consultations with the Government of Japan on these issues; and (5) assists in establishing priorities for the Department's initiatives to increase U.S.-made auto parts sales to Japanese markets, and otherwise provide assistance and direction to the Secretary in carrying out these initiatives. At the meeting, committee members will receive briefings on the status of ongoing consultations with the Government of Japan and will discuss specific trade and sales expansion programs related to U.S.-Japan automotive parts policy.

DATE AND LOCATION: The meeting will be held on June 27, 1995 from 10:00 a.m. to 3:00 p.m. at the U.S. Department of Commerce in Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Reck, Office of Automotive Affairs, Trade Development, Room 4036, Washington, D.C. 20230, telephone: (202) 482–1418.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel formally determined on July 5, 1994, pursuant to Section 10(d) of the Federal Advisory Act, as amended, that the series of meetings or portions of meetings of the Committee and of any subcommittee thereof, dealing with privileged or confidential commercial information may be exempt from the provisions of the Act relating to open meeting and public participation therein because these items are concerned with matters that are within the purview of 5 U.S.C. 552b (c)(4) and (9)(B). A copy of the Notice of Determination is available for public inspection and copying in the Department of Commerce Records Inspection Facility, Room 6020, Main Commerce.

Dated: June 13, 1995.

Henry P. Misisco,

Director, Office of Automotive Affairs.

[FR Doc. 95–14893 Filed 6–16–95; 8:45 am]

BILLING CODE 3510–DR–P

National Oceanic and Atmospheric Administration

[I.D. 060895B]

New England Recovery Plan Implementation Team Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public meeting.

SUMMARY: The New England Recovery Plan Implementation Team (Team) for the Northern Right Whale and Humpback Whale Recovery Plans will hold a 1-day public meeting to consider whale recovery plan implementation actions, particularly for the northern right whale.

DATES: The meeting will begin on Thursday, July 13, 1995, at 9:15 a.m.

ADDRESSES: The Team meeting will be held at the Stellwagen Bank National Marine Sanctuary Office, 14 Union Street, Plymouth, MA 02360; telephone (508) 747–1691.

FOR FURTHER INFORMATION CONTACT: Douglas Beach, (508) 281–9254.

SUPPLEMENTARY INFORMATION: The Team is made up primarily of representatives from state and Federal agencies from New England that are identified in each of the recovery plans as having a role in recovery of these two species. The July 13, 1995, Team meeting will focus primarily on the northern right whale and include a discussion on vessel interaction and gear conflicts with whales, whale watching issues and critical habitat locations along the New England coast.

Dated: June 12, 1995.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–14831 Filed 6–16–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 060995A]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit 962 and modification 3 to permit 802.

SUMMARY: Notice is hereby given that NMFS issued Permit 962 to Carlos Diez and Robert van Dam (P509B), and Modification 3 of Permit 802 to Dr. André Landry (P512), to take listed sea turtles for the purpose of scientific research, subject to certain conditions set forth therein.

ADDRESSES: The applications, permits, and related documents are available for review by appointment in the following offices:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Hwy., Room 13307, Silver Spring, MD 20910–3226 (301–713–1401); and

Director, Southeast Region, NMFS, NOAA 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (813–893–3141).

SUPPLEMENTARY INFORMATION: Notice was published on April 14, 1995 (60 FR 19025) that an application had been filed by Carlos Diez of the University of Central Florida and Robert van Dam of Scripps Institute of Oceanography (P509B), to take listed hawksbill sea turtles (*Eretmochelys imbricata*) and listed green sea turtles (*Chelonia mydas*) for habitat and population studies as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–222). The applicants propose to capture by hand 200 listed hawksbill and 20 listed green sea turtles in the waters off of Mona and Monito islands, Puerto Rico (18°05′ N, 67°54′ W), to be examined, photographed, measured, tagged, and released. Some of these turtles may be lavaged, have blood samples taken, or have time depth recorders attached. On May 31, 1995, as authorized by the ESA, NMFS issued Permit 962 for the above research.

On June 9, 1995, NMFS issued Modification 3 to Permit 802 to Dr. André Landry of Texas A&M University (P512) to allow netting of sea turtles in up to 12 ft (3.7 m) of water in the Gulf of Mexico.

Issuance of this permit and modification, as required by the ESA, was based on a finding that such permit and modification: (1) Were applied for in good faith; (2) will not operate to the disadvantage of the listed species which are the subject of this permit and modification; (3) are consistent with the purposes and policies set forth in section 2 of the ESA. This permit and modification were also issued in accordance with and are subject to 50 CFR parts 217–222, NMFS regulations governing listed species permits.

Dated: June 12, 1995.

Russell J. Bellmer,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–14830 Filed 6–16–95; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF EDUCATION

[CFDA No.: 84.316]

Native Hawaiian Higher Education Program

Notice inviting applications for new awards for fiscal year (FY) 1995.

Purpose of Program: To provide direct grants for a program of baccalaureate and postbaccalaureate fellowship assistance to Native Hawaiian students. Program activities may include—(a) full or partial fellowship support for Native Hawaiian students enrolled at two-or four-year degree granting institutions of higher education with awards to be based on academic potential and financial need; and (b) full or partial fellowship support for Native Hawaiian students enrolled at postbaccalaureate degree granting institutions of higher education with priority given to providing fellowship support for professions in which Native Hawaiians are underrepresented and with fellowship awards to be based on academic potential and financial need; (c) counseling and support services for students receiving fellowship assistance under this program; (d) college preparation and guidance counseling at secondary school level for students who may be eligible for fellowship support under this program; (e) appropriate research and evaluation of the activities authorized under this program; and (f) implementation of faculty development programs for the improvement and matriculation of Native Hawaiian students.

This program supports the National Education Goals that every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship; and that the Nation's teaching force will have access to programs for the continued improvement of their professional skills and the opportunity to acquire the knowledge and skills needed to instruct and prepare all American students for the next century.

SUPPLEMENTARY INFORMATION: This program is authorized by section 9206 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by section 101 of the Improving America's Schools Act of 1994, Pub. L. 103–382, enacted October 20, 1994, to be codified at 20 U.S.C. 7906.

Eligible Applicants: Native Hawaiian private nonprofit educational organizations or educational entities with experience in developing or operating Native Hawaiian programs or programs of instruction conducted in the Native Hawaiian language are eligible, as defined in section 9212 of the ESEA.

Deadline for Transmittal of Applications: July 28, 1995.

Deadline for Intergovernmental Review: August 14,1995.

Applications Available: June 19, 1995.

Available Funds: From $1,000,000 to $1,400,000.

Estimated Range of Awards: Up to $1,400,000.

Estimated Average Size of Awards: $467,000.

Estimated Number of Awards: 2–4.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: This program is governed by sections 9206 and 9212 of the ESEA and the Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the selection criteria in EDGAR, 34 CFR 75.210.

These regulations provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition, the Secretary distributes the 15 points as follows:

Plan of Operation (34 CFR 75.210(b)(3)). Ten points are added to this criterion for a possible total of 25 points.

Quality of Key Personnel (34 CFR 75.210(b)(4)). Three points are added to this criterion for a possible total of 10 points.

Adequacy of Resources (34 CFR 75.210(b)(7)). Two points are added to this criterion for a possible total of 5 points.

FOR APPLICATIONS OR INFORMATION CONTACT: Karen W. Johnson, U.S. Department of Education, 600 Independence Avenue, S.W., (Portals, Suite C–80) Washington, D.C. 20202–5329. The Department encourages you to FAX requests for this application to (202) 260–7615. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 7905 SEC. 9206.

Dated: June 5, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–14917 Filed 6–16–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Financial Assistance Award (Grant)

AGENCY: U.S. Department of Energy (DOE).

ACTION: Grant solicitation awards for laser fusion research applications.

SUMMARY: Pursuant to 10 CFR 600.15, the U.S. DOE announces that it plans to conduct a technically competitive solicitation for basic research experiments in high energy density and laser matter interaction studies at the National Laser Users' Facility (NLUF) located at the University of Rochester Laboratory for Laser Energetics (UR/LLE). Grant Solicitation No. DE–PS03–96SF20761. Universities or other higher education institutions, private sector not-for-profit organizations, or other entities are invited to submit grant applications. The total amount of funding expected to be available for the Fiscal Year 1996 (FY96) program cycle is $700,000. Multiple awards are anticipated.

FOR FURTHER INFORMATION CONTACT: James H. Solomon, Contracting Officer, DOE Oakland Operations Office, 1301 Clay Street, Room 700N, Oakland, CA 94612–5208, (510) 637–1865.

SUPPLEMENTARY INFORMATION: Interested parties can obtain a 3½" computer floppy disk of the solicitation document by submitting a written request; specify WordPerfect 5.0 for DOS Microsoft Word 5.0 for Macintosh. The solicitation document contains all the information relative to this action for prospective applicants. The solicitation is targeted for release in June 1995.

The actual work to be accomplished will be determined by the experiments and diagnostic techniques that are selected for award. Proposed experiments and diagnostic techniques will be evaluated through scientific peer review against predetermined, published and available criteria. Final selection will be made by the DOE. It is anticipated that multiple grant will be awarded within available funding. The Unique resources of the NLUF are available to scientists for state-of-the-art experiments primarily in the area of interial confinement fusion (ICF) and related plasma physics. Other areas such as spectroscopy of highly ionized atoms, laboratory astrophysics, fundamental physics, materials science, and biology and chemistry will be considered on a secondary basis.

The LLE was established in 1970 to investigate the interaction of high power lasers with matter. Available at the LLE for NLUF researchers is the upgraded OMEGA LASER, a 30 kJ UV 60 beam laser system (at 0.35 um) suitable for direct-drive ICF implosions, and the Glass Development Laser (GDL), a 1 trillion watt, single beam prototype for the OMEGA (at 0.35um). The systems are suitable for a variety of experiments including laser-plasma interactions and atomic spectroscopy. The NLUF program for FY96 is to concentrate on experiments that can be done with the OMEGA laser at the University of Rochester and development of diagnostic techniques suitable for the OMEGA system. Measurements of the laser coupling, laser-plasma interactions, core temperature, and core density are needed to determine the characteristics of the target implosions. Diagnostic techniques could include either new instrumentation, development of analysis tools, or development of targets that are applicable for 30 kJ implosions.

Additional information about the facilities and potential collaboration at the NLUF can be obtained from: Dr. James Kriauer, Manager, National Laser User's Facility, University of Rochester/LLE, 250 East River Road, Rochester, NY 14623.

Issued in Oakland, CA May 23, 1995.

Joan Macrusky,

Chief, Financial Assistance Branch, Program Acquisition and Assistance Division.

[FR Doc. 95–14914 Filed 6–16–95; 8:45 am]

BILLING CODE 6450–1–M

Federal Energy Regulatory Commission

Cultural Resources Industry Outreach Training Course

June 13, 1995.

The Office of Pipeline Regulation (OPR) staff will convene another session of its cultural resources compliance training course on September 14, 1995. We are holding this course so that additional members of the regulated pipeline industry and interested individuals and organizations can gain an understanding of:

- how the Commission gives the industry and the public an opportunity to assist the Commission in meeting its responsibilities under the National Historic Preservation Act (NHPA) and other historic preservation laws and regulations; and
- what cultural resources information the industry needs to file with the Commission before and after the Commission issues a certificate.

We encourage interested organizations and the public to take advantage of this course.

The course will include the following topics:

- Objectives and requirements of the Commission regarding compliance with § 106 of the NHPA and related historic preservation laws;
- Guidance for reporting on cultural resources investigations;
- Definition of cultural resources terms used by the Commission in the compliance process; and
- Efficient strategies for planning and conducting cultural resources investigations.

The one-day training course will be held at the Embassy Suites Denver Southeast, 7525 East Hampden Avenue, Denver, Colorado 80231. For hotel reservations, call (303) 696–6644 by August 31, 1995 and identify yourself as a cultural resources seminar attendee.

The OPR staff and Foster Wheeler Environmental Corporation, the Commission's environmental support contractor, will conduct the training. There is no fee for the course, but you must pre-register.

Additional outreach training may be offered later this year and in 1996 based on the level of interest. If you would like to attend the September 14, 1995 session, or indicate your preference for other courses and locations, please call the telephone number listed below to obtain a pre-registration form.[1] Because space is limited, please mail or fax the registration form within 15 days of publication of this notice to: Ms. Donna Connor, Foster Wheeler Environmental Corporation, 470 Atlantic Avenue, Boston, MA 02210, Telephone: (617) 542–8805, FAX: (617) 695–1587.

You will receive confirmation of pre-registration and additional information before the Commission's training course.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14860 Filed 6–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG95–56–000, et al.]

North America Energy Services Company, et al. Electric Rate and Corporate Regulation Filings

June 12, 1995.

Take notice that the following filings have been made with the Commission:

1. North American Energy Services

[Docket No. EG95–56–000]

On June 7, 1995, North American Energy Services Company, a Washington corporation ("Applicant"), with its principal executive office at Issaquah, Washington, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations (the "Application").

Applicant has entered into an operation and maintenance subcontract with Cortes Operating Company, S.A. de C.V., a company organized under the laws of Honduras, to operate and maintain an 80-megawatt fuel oil-fired, electric generating plant located near Puerto Cortes, Honduras (the "Project"). Project facilities also include a heavy fuel line, fuel storage tanks and a 138-kV transmission line that is owned by Empresa Nacional De Energia Electrica, a Honduran utility. The Project commenced generating electric power during May 1994.

Comment date: July 3, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Midwest Power Systems Inc.

[Docket No. EL95–51–000]

Take notice that on June 1, 1995, Midwest Power, a division of Midwest Power Systems Inc. (Midwest Power), filed a Petition for Declaratory Order pursuant to Rule 207(a)(2) of the Commission's Rules of Practice and Procedure. Midwest requests the Commission to rule on the constitutionality of Iowa Code §§ 476.41–.45.

Comment date: July 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Texican Energy Ventures, Inc.

[Docket No. ER94–1362–001]

Take notice that on June 1, 1995, Texican Energy Ventures, Inc. (Texican) filed certain information as required by the Commission's July 25, 1994, order in Docket No. ER94–1362–000. Copies of Texican's informational filing are on file with the Commission and are available for public inspection.

4. CLP Hartford Sales, L.L.C

[Docket No. ER95–393–002]

Take notice that on May 24, 1995, CLP Hartford Sales, L.L.C. (CLP Hartford) filed certain information as required by the Commission's February 22, 1995, order in Docket No. ER95–393–002. Copies of CLP Hartford's informational filing are on file with the Commission and are available for public inspection.

5. Potomac Electric Power Company

[Docket No. ER95–543–000]

Take notice that on May 3, 1995, Potomac Electric Power Company submitted a further revised explanation of Pepco's treatment of the cost of emission allowances in its coordination rates in compliance with Order No. 579.

Comment date: June 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Vermont Electric Power Company, Inc.

[Docket No. ER95–741–000]

Take notice that Vermont Electric Power Company, Inc. on June 8, 1995, tendered for filing an amendment in the above-referenced docket.

[1] The registration form referenced in this notice is not being printed in the *Federal Register*. Copies of the form were sent to those receiving this notice in the mail.

Comment date: June 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Boston Edison Company

[Docket Nos. ER95–773–000, ER95–774–000 and ER95–775–000]

Take notice that on June 7, 1995 Boston Edison Company tendered for filing a corrected version of Revised Original Page No. of Schedule II of FERC Electric Tariff, Original Volume No. 6, Power Sales and Exchange Tariff.

Comment date: June 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Northern Indiana Public Service Commpany

[Docket No. ER95–842–000]

Take notice that on May 24, 1995 Northern Indiana Public Service Company (Northern) tendered for filing an Addendum to the Interchange Agreement Between Northern Indiana Public Service Company and Rainbow Energy Marketing Corporation.

The Addendum specifies the treatment of emissions allowance costs included as out-of-pocket costs for sales by Northern.

Copies of this filing have been sent to Rainbow Energy Marketing Corporation and the Indiana Utility Regulatory Commission.

Comment date: June 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. CNB/Olympic Gas Services

[Docket No. ER95–964–000]

Take notice that on June 2, 1995, CNB/Olympic Gas Services tendered for filing additional information to its April 27, 1995 filing in the above-referenced docket.

Comment date: June 23, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Florida Power & Light Company

[Docket No. ER95–1120–000]

Take notice that on May 30, 1995, Florida Power & Light Company (FPL) tendered for filing proposed Service Agreements with the City of St. Cloud for transmission service under FPL's Transmission Tariff Nos. 2 and 3.

FPL requests that the proposed Service Agreements be permitted to become effective on June 1, 1995, or as soon thereafter as practicable.

FPL states that this filing is in accordance with Section 35 of the Commission's regulations.

Comment date: June 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Carolina Power & Light Company

[Docket No. ER95–1139–000]

Take notice that on May 31, 1995, Carolina Power & Light Company, tendered for filing an application for approval of the rate of return on equity to be effective under the Power Coordination Agreement between Carolina Power & Light Company and North Carolina Electric Membership Corporation.

Comment date: June 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Northern Indiana Public Service Company

[Docket No. ER95–1140–000]

Take notice that on May 31, 1995, Northern Indiana Public Service Company, tendered for filing an Interchange Agreement between Northern Indiana Public Service Company and Stand Energy Corporation.

The Interchange Agreement allows for General Purpose transactions and Negotiated Capacity transactions. General Purpose transactions are economy based energy transactions which may be made available from the supplying party's resources from time to time. Negotiated Capacity transactions provide capacity and energy to the buyer, customized to the specific needs at the time of the reservation.

Copies of this filing have been sent to Stand Energy Corporation and to the Indiana Utility Regulatory Commission.

Comment date: June 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Central Power and Light Company

[Docket No. ER95–1141–000]

Take notice that on May 31, 1995, Central Power and Light Company (CPL), submitted for filing an unexecuted Transmission Service Agreement, dated May 31, 1995, between CPL and Rio Grande Electric Cooperative, Inc. (Rio Grande). Under the TSA, CPL will provide wheeling service to Rio Grande which will permit Rio Grande to substitute West Texas Utilities Company as the full-requirements supplier for Rio Grande load currently served by CPL.

CPL requests an effective date of June 1, 1995 and, accordingly, seeks waiver of the Commission's notice requirements. Copies of this filing were served upon Rio Grande and the Public Utility Commission of Texas.

Comment date: June 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. The Washington Water Power Company

[Docket No. ER95–1142–000]

Take notice that on May 31, 1995, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, a Notice of Cancellation concerning Rate Schedule FERC No. 185. Effective July 31, 1995 the capacity and energy sales agreement between WWP and the Public Utility District No. 1 of Pen Oreille County (Pend Oreille) is canceled.

Comment date: June 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Western Resources, Inc.

[Docket No. ER95–1150–000]

Take notice that on June 1, 1995, Western Resources, Inc. (Western Resources), tendered for filing a change in Service Agreement No. 2 under its FERC Electric Tariff, Original Volume No. 1. Western Resources states that the change is to amend Exhibit A to the Transmission Service Agreement between Western Resources and the City of Fredonia, Kansas to reflect increase contract capacity.

Copies of this filing were served upon the City of Fredonia and the Kansas Corporation Commission.

Comment date: June 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Central Illinois Public Service Company

[Docket No. ER95–1151–000]

Take notice that on June 1, 1995, Central Illinois Public Service Company (CIPS), submitted service agreements establishing ten new customers under CIPS' Rate Schedule for Sales of Next Hour Interruptible Energy, Next-Hour Non-Interruptible Energy and Next Hour Firm Wheeling Service (Rate Schedule HSW).

CIPS requests an effective date of May 15, 1995 for the ten service agreements, and, accordingly, seeks waiver of the Commission's notice requirements. Copies of this filing were served upon the ten customers and the Illinois Commerce Commission.

Comment date: June 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Florida Power Corporation

[Docket No. ER95–1152–000]

Take notice that on June 1, 1995, Florida Power Corporation, tendered for filing an amendment to its interchange contract with Alabama Electric Cooperative, Inc., pursuant to which the parties have agreed to the interchange of Backup Interchange Service and Opportunity Sales Interchange Service. Florida Power requests that the amendment become effective on August 1, 1995.

Comment date: June 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. Kentucky Utilities Company

[Docket No. ER95–1153–000]

Take notice that on June 1, 1995, Kentucky Utilities Company filed Letter Agreements providing for power sales between itself and Louis Dreyfus Electric Power Inc. and Electric Clearinghouse, Inc. KU requests waiver and an effective date of June 1, 1995.

Comment date: June 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14858 Filed 6–16–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–502–000, et al.]

Columbia Gas Transmission Corp., et al.; Natural Gas Pipeline Filings; Correction

June 13, 1995.

On June 8, 1995, the above-captioned notice was published in the Federal Register (60 FR 30296). The comment date on the following two items at 60 FR 30298 should have read as follows:

9. Williams Natural Gas Company

Docket No. CP95–525–000.

Comment date: July 17, 1995, in accordance with Standard Paragraph G at the end of this notice.

10. Columbia Gas Transmission Corporation

Docket No. CP95–527–000.

Comment date: June 22, 1995, in accordance with Standard Paragraph F at the end of this notice.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14895 Filed 6–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–182–000]

ANR Pipeline Company; Notice of Technical Conference

June 13, 1995.

In the Commission's order issued on March 31, 1995, in the above-captioned proceeding, the Commission held that the filing raises issues for which a technical conference is to be convened.

The conference to address the issues has been scheduled for Thursday, July 27, 1995, at 10 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14862 Filed 6–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–337–000]

Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

June 13, 1995.

Take notice that on June 8, 1995, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing, to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with a proposed effective date of July 1, 1995, in compliance with Order No. 577–A.

Second Revised Sheet No. 191A
Third Revised Sheet No. 192
Third Revised Sheet No. 194
Second Revised Sheet No. 388
Second Revised Sheet No. 395

In Order No. 577–A, the Commission modified its capacity release regulations to permit shippers to release firm capacity for a period of 31 days or less without having to comply with advance posting and bidding requirements.

Columbia Gulf states that the above-referenced tariff sheets are being filed to revise the capacity release and assignment provisions and forms in its tariff to reflect the change mandated by Order No. 577–A.

Columbia Gulf states that copies of its filing have been mailed to all firm customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 20, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia Gulf's filings are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14863 Filed 6–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–338–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

June 13, 1995.

Take notice that on June 8, 1995, Columbia Gas Transmission Corporation (Columbia) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets in compliance with Order No. 577–A, with a proposed effective date of July 1, 1995.

Second Revised Sheet No. 351
Second Revised Sheet No. 352
Second Revised Sheet No. 353
Second Revised Sheet No. 354
Second Revised Sheet No. 575
Second Revised Sheet No. 585

In Order No. 577–A, the Commission modified its capacity release regulations to permit shippers to release firm capacity for a period of 31 days or less without having to comply with advance posting and bidding requirements.

Columbia states that the above-referenced tariff sheets are being filed to revise the capacity release and assignment provisions and forms in its tariff to reflect the change mandated by Order No. 577–A.

Columbia states that copies of its filing have been mailed to all firm customers and affected state of regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal

Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 20, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filings are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14864 Filed 6–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–52–000]

Granite State Gas Transmission, Inc.; Notice of Site Visit and Technical Conferences

June 13, 1995.

On June 27, 1995, the staff will conduct a second visit to the proposed LNG site in the above docket. Those planning to attend must provide their own transportation.

On June 28, 1995, the staff will conduct two concurrent Technical Conferences in Wells, Maine on the LNG project proposed in the above docket.

The first Technical Conference will be on the Seismic design of the LNG plant and will be held in the Wells Town Hall/Annex at 9 a.m.

The second Technical Conference will be to examine the issues raised by intervenors, protestants, and staff including, but not limited to, the need for the LNG facility, system alternatives, alternative sites, and engineering matters. The second Technical Conference will be held at Wells Town Hall at 9 a.m. An official transcript will be kept.

For both Technical Conferences, the discussion will initially be limited to FERC staff and the members of applicant's staff who have expertise in the given topics. Other attendees will be given the opportunity to ask questions on the above issues after the initial discussion have concluded.

For further information on the site visit or the first Technical Conference call Robert Arvedlund, Chief, Environmental Review and Compliance Branch I, at (202) 208–0091. For further information the second Technical Conference, call Berne Mosley, staff engineer, Special Cases Review Branch, at (202) 208–2256.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14861 Filed 6–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–557–000]

Texas Eastern Transmission Corp., Application

June 13, 1995.

Take notice that on June 12, 1995, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–5310, filed an application in Docket No. CP95–557–000 pursuant to Sections 7(b) and Section 7(c) of the Natural Gas Act requesting permission and approval to abandon, by removal, certain corroded pipeline segments and for a certificate of public convenience and necessity authorizing it to construct, install and operate replacement facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

Texas Eastern requests authorization to replace and operate a total of 1.74 miles of 30-inch pipeline on its Line No. 16 in Refugio and Aransas Counties, Texas. Texas Eastern also requests permission and approval to abandon, by removal, a total of 1.74 miles of existing 30-inch Line No. 16 pipeline. The pipeline will be replaced in three discrete sections: from Milepost (MP) 170.52 to M.P. 171.46, from M.P. 175.03 to M.P. 175.35, and from M.P. 179.34 to 179.82.

Texas Eastern states that a routine in-line tool inspection of Line No. 16 performed in 1994 revealed areas of corrosion in the pipeline, necessitating replacement of the three identified segments. Texas Eastern states that the affected pipeline segments were constructed in 1956 as authorized in Docket No. G–9784 (16 FPC 27). Texas Eastern notes that Line No. 16 is part of one of Texas Eastern's principal transmission lines from its access area to its market areas. It is asserted that if the corroded pipeline were to be taken out of service and not replaced, Texas Eastern would not be able to meet its certified service levels.

Texas Eastern maintains that proposed replacements are required to maintain the integrity, safety, and reliability of its system. It is indicated that the pipeline segments will be replaced with the same 30-inch diameter pipeline as the existing pipeline. Consequently, the project will have no impact on Texas Eastern's design delivery capacity of maximum daily design system capacity. Texas Eastern estimates that the proposed facilities will cost $1,820,000, which will be financed, initially, with corporate funds on hand. Permanent financing will be undertaken at a later date.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 20, 1995, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Eastern to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14859 Filed 6–16–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals Proposed Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy announces the proposed procedures for disbursement of $34,551,984 (plus additional accrued interest) in alleged or adjudicated crude oil overcharges obtained by the DOE from Dorchester Master Limited Partnership (Case No. VEF–0005), Howell Corporation (Case No. VEF–0006), Placid Oil Company (Case No. VEF–0008), Eton Trading Corporation (Case No. VEF–0009) and Rodgers Hydrocarbon Corporation (Case No. VEF–0010). The OHA has determined that the funds obtained from these firms, plus accrued interest, will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 Fed. Reg. 27899 (August 4, 1986).

DATE AND ADDRESS: Comments must be filed in duplicate within 30 days of publication in the **Federal Register**, and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585. All comments should conspicuously display a reference to Case Nos. VEF–0005 *et al.*

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–2860.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR § 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set forth below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute a total of $34,551,984, plus additional accrued interest, remitted to the DOE by Dorchester Master Limited Partnership, Howell Corporation, Placid Oil Company, Eton Trading Corporation and Rodgers Hydrocarbon Corporation. The DOE is currently holding these funds in interest bearing escrow accounts pending distribution.

The OHA proposes to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 Fed. Reg. 27899 (August 4, 1986) (the MSRP). Under the MSRP, crude oil overcharge monies are divided among the federal government, the states, and injured purchasers of refined petroleum products. Refunds to the states will be distributed in proportion to each state's consumption of petroleum products during the price control period. Refunds to eligible purchasers will be based on the volume of petroleum products that they purchased and the extent to which they can demonstrate injury.

The final deadline for the crude oil proceeding is June 30, 1995. As we state in the Proposed Decision, any party who has previously submitted a refund application in the crude oil refund proceeding should not file another Application for Refund. The previously filed crude oil application will be deemed filed in all crude oil proceedings as the proceedings are finalized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received by the OHA will be available for public inspection between the hours of 1 p.m. to 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Dated: June 12, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

June 12, 1995.

Proposed Decision and Order of the Department of Energy; Implementation of Special Refund Procedures

Names of Firms:
Dorchester Master Limited Partnership
Howell Corporation
Placid Oil Company
Eton Trading Corporation
Rodgers Hydrocarbon Corporation

Dates of Filing:
February 27, 1995
February 27, 1995
February 28, 1995
March 8, 1995
March 8, 1995

Case Numbers:
VEF–0005
VEF–0006
VEF–0008
VEF–0009
VEF–0010

In accordance with the procedural regulations of the Department of Energy (DOE), 10 C.F.R. part 205, Subpart V, the Office of General Counsel, Regulatory Litigation ("OGC") (formerly the Economic Regulatory Administration (ERA), Office of Enforcement Litigation), filed five Petitions for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) on February 27, 1995, February 28, 1995, and March 8, 1995. The Petitions request that OHA formulate and implement procedures to distribute funds received by the DOE from Dorchester Master Limited Partnership (DMLP), Howell Corporation (Howell), Placid Oil Company (Placid), Eton Trading Corporation (Eton) and Rodgers Hydrocarbon Corporation, pursuant to DOE enforcement proceedings involving allegations of crude oil pricing and allocation violations by the firms. This Proposed Decision and Order sets forth the OHA's tentative plan to distribute these funds, which are being held in an interest-bearing escrow account maintained at the Department of the Treasury.

I. Background

A. Dorchester Master Limited Partnership

During the period of petroleum price controls, the firms which now comprise DML[1] were engaged in crude oil refining and reselling. The firms were therefore subject to regulations governing the pricing and allocation of crude oil set forth at 10 C.F.R. Parts 211 and 212 of the Mandatory Petroleum Price and Allocation Regulations. In an audit which covered the period from November 1, 1974 through August 1979 the ERA identified instances in which it believed that Dorchester's refinery subsidiary and reseller division engaged in the improper switching of crude oil certifications in violation of 10 C.F.R. §§ 211.67 (the Crude Oil Entitlements Program) and 212.131(b). As a result of the ERA audit, a Proposed Remedial Order (PRO) was issued to Dorchester on March 19, 1982 (Case No. 6A0X00278). The OHA affirmed the findings of the PRO and issued a Remedial Order (RO) to Dorchester on March 11, 1985. *Dorchester Gas Corp.*, 12 DOE ¶ 83,034 (1985), appeal docketed, No. R085–12–000 (FERC April 22, 1985). As a result of another ERA audit, on March 9, 1983, a PRO

[1] DMLP, a limited partnership formed in 1984, is the successor to Dorchester Gas Corporation (Dorchester) and includes Damson Oil Corporation (Damson), the general partner of DMLP, and Doram Energy, Inc. (Doram), a subsidiary of Damson. Therefore, DMLP will be used to refer collectively to Dorchester, Damson, and Doram, and their subsidiaries and affiliates. We will refer to the individual firms in some instances, since the audits originated with those firms during the period of price controls.

was issued to Doram and Damson, the other firms now comprising DMLP, alleging that during the period March 1980 through December 1980, they received illegal revenue by reselling crude oil at prices in excess of those permitted by applicable crude oil reseller price allocation regulations. An RO was issued to those two firms on March 12, 1987. *Doram Energy, Inc.*, 15 DOE ¶ 83,024 (1987), *modified*, 16 DOE ¶ 83,006 (1987), appeal docketed, No. R087–16–000 (FERC April 6, 1987).

On April 4, 1988, a Consent Order was executed between DMLP and the DOE which resolved a number of outstanding issues involving DMLP. Under the terms of the settlement, DMLP would pay the DOE a maximum of $65 million but no less than $11 million, plus installment interest, by July 1, 1997. The Consent Order states that the DOE has made no formal findings of violation by DMLP and that DMLP does not admit it has committed any regulatory violations. As of March 31, 1995, DMLP had paid the DOE the sum of $11,193,730,[2] and it is current in its payments to DOE. Although we anticipate that additional revenues will be collected from DMLP, no good reason exists to forestall implementing procedures for distributing the current balance of the fund, which, with accrued interest, totals $13,165,527.

B. Howell Corporation

During the price control period, Howell was a crude oil producer, refiner, and reseller. Howell was therefore subject to the Federal petroleum price and allocation regulations. In 1981, the ERA audited Howell's compliance with the crude oil Entitlements Program during the period January 1, 1978 through January 27, 1981. As a result of that audit, on June 24, 1988, a PRO was issued to the firm, alleging violations of the crude oil price and allocation regulations.[3] On February 23, 1989, the DOE and Howell executed a Consent Order resolving the issues addressed in the PRO. Pursuant to the Consent Order, Howell agreed to pay the DOE $19,375,000 plus interest, with installment payments over seven years. As of March 31, 1995, Howell had paid the DOE $15,288,098, and it is current in its payments to the DOE. Although we anticipate that additional revenues will be collected from Howell, no good reason exists to forestall implementing procedures for distributing the current balance of the fund, which, with accrued interest, totals $18,527,540.43.

C. Placid Oil Company

Placid was a producer of crude oil during the period of price controls. On March 30, 1981, the ERA issued a PRO in which it alleged that during the period from September 1973 through May 1977, Placid overcharged its customers in sales of crude oil from several properties it operated. In addition, the PRO also alleged that Placid improperly calculated the average daily production for a number of properties and as a result erroneously certified crude oil production from these properties as exempt from price controls pursuant to the stripper well exemption. On February 11, 1985, the OHA issued an RO to Placid, affirming the ERA allegations concerning Placid's overcharges. *Placid Oil Co.*, 12 DOE ¶ 83,030, *modified*, 13 DOE ¶ 83,007 (1985). Placid appealed the RO to the Federal Energy Regulatory Commission (FERC). On February 26, 1987, the FERC reversed and vacated the RO (*Placid Oil Co.*, 38 FERC ¶ 61,199); however, on July 23, 1987, the FERC reversed itself in part, vacating portions of its previous Order (*Placid Oil Co.*, 40 FERC ¶ 61,112). On March 18, 1988, the FERC issued an Order affirming the RO but modifying the violation amount. *Placid Oil Co.*, 42 FERC ¶ 61,326 (1988). Subsequently, in a bankruptcy proceeding involving Placid, the U.S. Bankruptcy Court for the Northern District of Texas approved the DOE's claim of $1,196,728.09 against Placid. Placid has fulfilled its financial obligation to the DOE. As of March 31, 1995, the Placid settlement fund contained $1,691,930, including accrued interest.

D. Eton Trading Corporation

Eton and its affiliate, Eton Enterprises, Inc., were resellers of crude oil during the period June 1980 through December 1980, and were subject to the crude oil reseller regulations set forth at 10 C.F.R. Part 212, Subpart L. As the result of an ERA audit of Eton's operations, on January 14, 1986, the ERA issued a PRO to the firm alleging that it had engaged in layered crude oil transactions in violation of 10 C.F.R. § 212.186. The PRO stated that those layered transactions resulted in overcharges amounting to $9,182,412.70. On March 17, 1986, Eton filed a Notice of Objection with this Office but waived its right to contest the determinations made in the PRO by failing to file a Statement of Objections in a timely manner. Accordingly, on December 5, 1986, the OHA issued the PRO as a final Remedial Order. *Eton Trading Corp.*, 15 DOE ¶ 83,011 (1986). In July 1986, Eton Trading Corporation and Eton Enterprises filed for bankruptcy. The DOE filed identical claims in the bankruptcy proceedings of the two firms. Final distributions have been made in the Eton Trading bankruptcy proceeding, but none has been made in the Eton Enterprise proceeding. As of March 31, 1995, the Eton settlement fund contained $1,106,788, including accrued interest. Although the possibility exists that additional revenues will be distributed to the DOE in the Eton Enterprise bankruptcy proceeding, no reason exists to delay implementing distribution of the current balance of the fund.

E. Rodgers Hydrocarbon Corporation

Rodgers Hydrocarbon Corporation and Ray V. Rodgers, Jr. (referred to collectively as Rodgers), were crude oil resellers during the period of September 1977 through January 1980. On March 29, 1985, the ERA issued a PRO to Rodgers alleging that during that period, Rodgers failed to properly certify crude oil it sold as required by 10 C.F.R. § 212.131(b). In addition, the ERA alleged that Rodgers failed to submit reports and maintain books and records in accordance with 10 C.F.R. § 212.187 (a) and (b).[4] Rodgers filed a Statement of Objections to the PRO on August 26, 1985. After considering Rodgers' objections, certain provisions of the PRO were modified, and the PRO was issued as a final RO on July 20, 1989. *Rodgers Hydrocarbon Corp.*, 19 DOE ¶ 83,004 (1989). On December 4, 1989, Rodgers and the DOE executed a Consent Order resolving the issues addressed by the RO. Pursuant to the Consent Order, Rodgers agreed to pay the DOE $50,000 plus interest, in two equal payments. Rodgers paid to the DOE the sum of $51,190 and has fulfilled its financial obligation to the DOE. As of March 31, 1995, the Rodgers escrow account contained $60,199.

[2] Of that amount $5,198.52 came from Damson pursuant to its own bankruptcy proceeding.

[3] The PRO alleged violations of 10 C.F.R. §§ 211.66(b) and (h), 205.202, and 210.62(c), resulting from significant understatement of receipts of price-controlled crude oil. Specifically, ERA alleged that during the period April 1978 through December 1979, the Joint Venture consisting of Howell and Quintana Refinery Co. failed to correctly report the tier certifications associated with substantial volumes of its crude oil receipts at its Corpus Christi, Texas, refinery; and Howell Hydrocarbons, a Howell subsidiary, engaged in similar conduct during the period April 1978 through November 1980 at its San Antonio, Texas, refinery. In addition, the ERA alleged that during the period April 1978 through December 1979, Howell Industries, another subsidiary, improperly charged prices for crude oil in excess of its actual purchase prices, in violation of 10 C.F.R. §§ 212.186, 210.62(c) and 205.202.

[4] Crude oil resellers were required to file certain information on ERA–69 "Crude Oil Reseller's Self-Reporting Forms."

II. Jurisdiction and Authority

The Subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan of distribution of funds received as a result of an enforcement proceeding. The DOE policy is to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, *see Petroleum Overcharge Distribution and Restitution Act of 1986*, 15 U.S.C. 4501 *et seq.*; see also Office of Enforcement, 9 DOE ¶ 82,508 (1981), and Office of Enforcement, 8 DOE ¶ 82,597 (1981).

We have considered the OGC's petitions that we implement Subpart V proceedings with respect to the DMLP, Howell, Placid, Eton and Rodgers funds and have determined that such proceedings are appropriate. This Proposed Decision and Order sets forth the OHA's tentative plan to distribute these funds. Before taking the actions proposed in this Decision, we intend to publicize our proposal and solicit comments from interested parties. Comments regarding the tentative distribution process set forth in this Proposed Decision and Order should be filed with the OHA within 30 days of its publication in the **Federal Register**.

III. Proposed Refund Procedures

A. Crude Oil Refund Policy

We propose to distribute the monies received from DMLP, Howell, Placid, Eton and Rodgers in accordance with DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases (MSRP), 51 Fed. Reg. 27899 (August 4, 1986), which was issued as a result of the Settlement Agreement approved by the court in The Department of Energy Stripper Well Exemption Litigation, 653 F. Supp. 108 (D. Kan. 1986). Shortly after the issuance of the MSRP, the OHA issued an Order that announced that this policy would be applied in all Subpart V proceedings involving alleged crude oil violations. *See* Order Implementing the MSRP, 51 Fed. Reg. 29689 (August 20, 1986) (the August 1986 Order).

Under the MSRP, 40 percent of crude oil overcharge funds will be disbursed to the federal government, another 40 percent to the states, and up to 20 percent may initially be reserved for the payment of claims to injured parties. The MSRP also specified that any funds remaining after all valid claims by injured purchasers are paid will be disbursed to the federal government and the states in equal amounts.

On April 10, 1987, the OHA issued a Notice analyzing the numerous comments received in response to the August 1986 Order. 52 Fed. Reg. 11737 (April 10, 1987). This Notice provided guidance to claimants that anticipated filing refund applications for crude oil monies under the Subpart V regulations. In general, we stated that all claimants would be required to (1) document their purchase volumes of petroleum products during the August 19, 1973 through January 27, 1981 crude oil price control period, and (2) prove that they were injured by the alleged crude oil overcharges. Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations would be presumed to have been injured by any alleged crude oil overcharges. In order to receive a refund, end-users would not need to submit any further evidence of injury beyond the volume of petroleum products purchased during the period of price controls. *See City of Columbus Georgia*, 16 DOE ¶ 85,550 (1987).

The amount of money subject to this Proposed Decision is $34,551,984, plus additional accrued interest. In accordance with the MSRP, we propose initially to reserve 20 percent of those funds ($6,910,397 plus additional accrued interest) for direct refunds to applicants who claim that they were injured by crude oil overcharges.

We propose to evaluate claims in the DMLP, Howell, Placid, Eton and Rodgers crude oil refund proceedings in exactly the same manner as in other crude oil proceedings. As we stated in the April 10 Notice, claimants will generally be required to document their purchase volumes of petroleum products and prove that they were injured as a result of the alleged violations. We will also presume that the alleged crude oil overcharges were absorbed, rather than passed on, by applicants who were (1) end-users of petroleum products, (2) unrelated to the petroleum industry, and (3) not subject to the regulations promulgated under the Emergency Petroleum Price and Allocation Act of 1973, 15 U.S.C. 751–760. In order to receive a refund, such claimants need not submit any evidence of injury beyond documentation of their purchase volumes.

We propose to base the refunds on a volumetric amount which has been calculated in accordance with the description in the April 10 Notice. That volumetric refund amount is currently $0.0016 per gallon. *See* 57 Fed. Reg. 15562 (March 24, 1995).

Applicants who have executed and submitted a valid waiver pursuant to one of the escrows established by the Stripper Well Settlement Agreement have waived their rights to apply for a crude oil refund under Subpart V and should not file a crude oil refund application. *See Mid-America Dairyman Inc. v. Herrington*, 878 F.2d 1448 (Temp. Emer. Ct. App.); 3 Fed. Energy Guidelines ¶ 26,617 (1989); *In re* Department of Energy Stripper Well Exemption Litigation, 707 F. Supp. 1267 (D. Kan.), 3 Fed. Energy Guidelines ¶ 26,613 (1987). The deadline for filing an Application for Refund is June 30, 1995. A crude oil refund applicant is only required to submit one application for its share of all available crude oil overcharge funds. *See, e.g., Ernest A. Allerkamp*, 17 DOE ¶ 85,079 at 88,176 (1988). Accordingly, any party that has previously submitted a refund Application in the crude oil refund proceeding need not file another Application.

C. Payments to the States and Federal Government

Under the terms of the MSRP, the remaining 80 percent of the alleged crude oil violation amounts subject to this Proposed Decision, or $27,641,587 plus additional accrued interest, should be disbursed in equal shares to the states and federal government, for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Settlement Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Agreement.

It is therefore ordered that: The refund amounts remitted to the Department of Energy by Dorchester Master Limited Partnership, Howell Corporation, Placid Oil Company, Eton Trading Corporation and Rodgers Hydrocarbon Corporation pursuant to their respective Consent Orders or Bankruptcy Court Orders will be distributed in accordance with the foregoing Decision.

[FR Doc. 95–14915 Filed 6–16–95; 8:45 am]

BILLING CODE 6450–01–P

Notice of Implementation of Special Refund Procedures

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures

for the disbursement of $75,638.48, plus accrued interest, in refined petroleum product violation amounts obtained by the DOE pursuant to an April 10, 1985 Modified Remedial Order issued to Mockabee Gas & Fuel Oil Co. (Mockabee), Case No. VEF–0001. The OHA has determined that the funds obtained from Mockabee, plus accrued interest, will be distributed to customers who purchased No. 2 heating oil and kerosene from Mockabee during the period of November 1, 1973 through December 31, 1975.

ADDRESS: Applications must be filed in duplicate, addressed to "Mockabee Gas & Fuel Oil Co. Special Refund Proceeding" and sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

Applications should display a prominent reference to the case number "VEF–0001."

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–2094 (Mann); 586–2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: In accordance with 10 C.F.R. § 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute to eligible claimants $75,638.48, plus accrued interest, obtained by the DOE pursuant to an April 10, 1985 Modified Remedial Order (MRO) issued to Mockabee Gas & Fuel Oil Co. (Mockabee). In the MRO, the DOE found that, during the period from November 1, 1973 through December 31, 1975, Mockabee sold No. 2 heating oil and kerosene in excess of the maximum lawful selling price, in violation of Federal petroleum price regulations.

The OHA has determined to distribute the funds obtained from the firms in two stages. In the first stage, we will accept claims from the identifiable purchasers of No. 2 heating oil and kerosene who may have been injured by the overcharges. The specific requirements which an applicant must meet in order to receive a refund are set out in Section III of the Decision. Claimants who meet these specific requirements will be eligible to receive refunds based on the number of gallons of covered product they purchased from Mockabee.

If any funds remain after valid claims are paid in the first stage, they may be used for indirect restitution in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07.

Applications for Refund must be postmarked by September 29, 1995. Instructions for the completion of refund applications are set forth in the Decision that immediately follows this notice. Applications should be sent to the address listed at the beginning of this notice.

Unless labeled as "confidential," all submissions must be made available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 100 Independence Avenue, SW., Washington, DC 20585.

Date: June 12, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

June 12, 1995.

Decision and Order of the Department of Energy; Implementation of Special Refund Procedures

Name of Firm: Mockabee Gas & Fuel Oil Co.

Date of Filing: October 18, 1994

Case Number: VEF–0001

On October 18, 1994, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) to distribute $75,638.48, plus accrued interest, which Mockabee Gas & Fuel Oil Co. (Mockabee) remitted to the DOE pursuant to a Modified Remedial Order (MRO) issued by the OHA on April 10, 1985. In accordance with the provisions of the procedural regulations found at 10 C.F.R. Part 205, Subpart V (Subpart V), the ERA requests in its Petition that the OHA establish special procedures to make refunds in order to remedy the effects of the regulatory violations set forth in the MRO. This Decision and Order sets forth the OHA's plan to distribute these funds.

I. Background

During the period relevant to this proceeding, Mockabee was a retailer of No. 2 heating oil, kerosene, diesel fuel, and motor gasoline in Upper Marlboro, Maryland. On December 18, 1974, the Federal Energy Administration (FEA) issued a Notice of Probable Violation to Mockabee. On January 28, 1975, the FEA issued a Remedial Order (RO) to Mockabee, finding that Mockabee had overcharged purchasers of No. 2 heating oil and kerosene. A further investigation disclosed additional overcharges other than those cited in the RO, and on December 22, 1976, the FEA rescinded the RO and issued a Revised Remedial Order requiring Mockabee to roll back prices to compensate consumers who were overcharged by Mockabee.

Mockabee failed to comply with the Revised Remedial Order. On April 10, 1985, the ERA [1] issued a Modified Remedial Order which rescinded the price rollbacks it had ordered Mockabee to make. Instead, the MRO required Mockabee to pay to the DOE $29,583.08 in assessed overcharges, and an additional $46,071.46 in interest due. On September 30, 1985, Mockabee appealed the MRO to the OHA, which denied the Appeal on December 19, 1985. *Mockabee Gas & Fuel Oil Co.*, 13 DOE ¶ 83,059 (1985). Mockabee has since remitted $75,638.48 in compliance with the MRO, which is now available for distribution through Subpart V.

II. Jurisdiction and Authority

The Subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan for the distribution of funds received as a result of an enforcement proceeding. The DOE policy is to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, *see* Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501 *et seq.*; *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

We considered ERA's Petition that we implement a Subpart V proceeding with respect to the funds remitted by Mockabee and determined that such a proceeding was appropriate. On January 11, 1995, the OHA issued a Proposed Decision and Order (PD&O) establishing tentative procedures to distribute the money remitted by Mockabee (the Mockabee fund). That PD&O was published in the **Federal Register** and a 30-day period was provided for submission of comments regarding our proposed refund plan. *See* 60 FR 3863 (January 19, 1995). More than 30 days have elapsed, and the OHA has received no comments concerning the proposed refund procedures. Consequently, the procedures will be adopted as proposed.

[1] Under the DOE Organization Act, 42 U.S.C. 7151, *et seq.*, and Executive Order 12009, 42 Fed. Reg. 46367 (September 25, 1977), all functions vested by law in the FEA were transferred to and vested in the DOE. Within the DOE, the ERA was delegated the authority to investigate violations of applicable regulations and to seek compliance of those regulations.

III. Mockabee Refund Procedures

We will implement a two-stage refund procedure for distribution of the Mockabee fund by which purchasers of No. 2 heating oil and kerosene from Mockabee during the period covered by the MRO may submit Applications for Refund in the initial stage. From our experience with Subpart V proceedings, we expect that applicants generally will be limited to ultimate consumers ("end users"). Therefore, we do not anticipate that it will be necessary to employ the injury presumptions that we have used in past proceedings in evaluating applications submitted by refiners, resellers, and retailers.[2]

A. First Stage Refund Procedures

In order to receive a refund, each claimant must submit a schedule of its monthly purchases of No. 2 heating oil or kerosene from Mockabee during the period covered by the MRO—November 1, 1973 through December 31, 1975. Our experience also indicates that the use of certain presumptions permits claimants to participate in the refund process without incurring inordinate expense and ensures that refund claims are evaluated in the most efficient manner possible. *See, e.g., Marathon Petroleum Co.*, 14 DOE ¶ 85,269 (1986) (*Marathon*). Presumptions in refund cases are specifically authorized by the applicable Subpart V regulations at 10 C.F.R. § 205.282(e). Accordingly, we adopt the presumptions set forth below.

1. Calculation of Refunds

First, we adopt a presumption that the overcharges were dispersed equally over all of Mockabee's sales of products covered by the MRO during the period covered by the MRO. *See Permian Corp.*, 23 DOE ¶ 85,034 (1993). In accordance with this presumption, refunds are made on a pro-rata or volumetric basis.[3] In the absence of better information, a volumetric refund is appropriate because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining prices.

Under the volumetric approach, a claimant's "allocable share" of the Mockabee fund is equal to the number of gallons of covered product purchased from Mockabee during the period covered by the MRO times the per gallon refund amount. In the present case, the per gallon refund is $0.0612. We derived this figure by dividing the monies remitted by Mockabee ($75,638.48) by the total volume of covered products sold by Mockabee from November 1, 1973 through December 31, 1975 (1,236,132 gallons). A claimant that establishes its eligibility for a refund will receive all or a portion of its allocable share plus a pro-rata share of accrued interest.[4]

In addition to the volumetric presumption, we also adopt a presumption regarding injury for end-users.

2. End Users

In accordance with prior Subpart V proceedings, we adopt the presumption that an end user or ultimate consumer of covered products purchased from Mockabee whose business is unrelated to the petroleum industry was injured by the overcharges resolved by the MRO. *See, e.g., Texas Oil and Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984). Unlike regulated firms in the petroleum industry, members of this group generally were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of the impact of the overcharges on the final price of goods and services produced by members of this group would go beyond the scope of the refund proceeding. *Id.* Therefore, end-users of covered products purchased from Mockabee need only document their purchase volumes from Mockabee during the period covered by the MRO to make a sufficient showing that they were injured by the overcharges.

B. Refund Application Requirements

To apply for a refund from the Mockabee fund, a claimant should submit an Application for Refund containing all of the following information:

(1) Identifying information including the claimant's name, current business address, business address during the refund period, taxpayer identification number, a statement indicating whether the claimant is an individual, corporation, partnership, sole proprietorship, or other business entity, the name, title, and telephone number of a person to contact for additional information, and the name and address of the person who should receive any refund check.[5] If the applicant operated under more than one name or under a different name during the price control period, the applicant should specify those names;

(2) A monthly purchase schedule covering the Remedial Order period (November 1, 1973 through December 31, 1975). The applicant should specify the source of this gallonage information. In calculating its purchase volumes, an applicant should use actual records from the Remedial Order period, if available. If these records are not available, the applicant may submit estimates of its purchases of covered products, but the estimation method must be reasonable and clearly explained;

(3) A statement whether the applicant or a related firm has filed, or has authorized any individual to file on its behalf, any other application in this refund proceeding. If so, an explanation of the circumstances of the other filing or authorization should be submitted;

(4) If the applicant is or was in any way affiliated with Mockabee, it should explain this affiliation, including the time period during which it was affiliated.[6]

[2] If a refiner, reseller, or retailer should file an application in this refund proceeding, however, we will utilize the standards and appropriate presumptions established in previous proceedings. *See, e.g., Stark's Shell Service*, 23 DOE ¶ 85,017 (1993); *Shell Oil Co.*, 18 DOE ¶ 85,492 (1989).

[3] If an individual claimant believes that it was injured by more than its volumetric share, it may elect to forego this presumption and file a refund application based upon a claim that it suffered a disproportionate share of Mockabee's overcharges. *See, e.g., Mobil Oil Corp./Atchison, Topeka and Santa Fe Railroad Co.*, 20 DOE ¶ 85,788 (1990); *Mobil Oil Corp./Marine Corps Exchange Service*, 17 DOE ¶ 85,714 (1988). Such a claim will be granted if the claimant makes a persuasive showing that it was "overcharged" by a specific amount, and that it absorbed those overcharges. *See Panhandle Eastern Pipeline Co./Western Petroleum Co.*, 19 DOE ¶ 85,705 (1989). To the degree that a claimant makes this showing, it will receive an above-volumetric refund.

[4] As in previous cases, we establish a minimum refund amount of $15. In this proceeding, any potential claimant purchasing less than 245 gallons of covered product from Mockabee would have an allocable share of less than $15. We have found through our experience that the cost of processing claims in which refund amounts of less than $15 are sought outweighs the benefits of restitution in those instances. *See Exxon Corp.*, 17 DOE ¶ 85,590 (1988).

[5] Under the Privacy Act of 1974, the submission of a social security number by an individual applicant is voluntary. An applicant that does not submit a social security number must submit an employer identification number, if one exists. This information will be used in processing refund applications, and is requested pursuant to our authority under the Petroleum Overcharge Distribution and Restitution Act of 1986 and other regulations codified at 10 CFR Part 205, Subpart V. The information may be shared with other federal agencies for statistical, auditing or archival purposes, and with law enforcement agencies when they are investigating a potential violation of civil or criminal law. Unless an applicant claims confidentiality, this information will be available to the public in the Public Reference Room of the Office of Hearings and Appeals.

[6] As in other refund proceedings involving alleged refined products violations, the DOE will presume that affiliates of the Remedial Order firm were not injured by the firm's overcharges. *See, e.g., Marathon Petroleum Co./EMRO Propane Co.*, 15 DOE ¶ 85,288 (1987). This is because the Remedial Order firm presumably would not have sold petroleum products to an affiliate if such a sale would have placed the purchaser at a competitive

Continued

(5) The statement listed below, signed by the individual applicant or a responsible official of the firm filing the refund application:

I swear (or affirm) that the information contained in this application and its attachments is true to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, jail sentence, or both, pursuant to 18 U.S.C. § 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application, which will be placed in the OHA public reference room.

All applications should be either typed or printed clearly and labeled "Mockabee Gas & Fuel Oil Co. (Case No. VEF–0001) Special Refund Proceeding." Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish for that information to be publicly disclosed, it must submit an original application, clearly designated "confidential," containing the confidential information, and two copies of the application with the confidential information deleted. All refund applications should be postmarked on or before September 29, 1995 and sent to: Mockabee Gas & Fuel Oil Co. Special Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., S.W., Washington, DC 20585.

C. Refund Applications Filed by Representatives

We adopt the standard OHA procedures relating to refund applications filed on behalf of applicants by "representatives," including refund filing services, consulting firms, accountants, and attorneys. *See, e.g., Stark's Shell Service*, 23 DOE ¶ 85,017 (1993); *Texaco, Inc.*, 20 DOE ¶ 85,147 (1990); *Shell Oil Co.*, 18 DOE ¶ 85,492 (1989). We will also require strict compliance with the filing requirements as specified in 10 C.F.R. § 205.283, particularly the requirement that applications and the accompanying certification statement be signed by the applicant. The OHA reiterates its policy to closely scrutinize applications filed by filing services. Applications submitted by a filing service should contain all of the information indicated in this Decision.

Finally, the OHA reserves the authority to require additional information before granting any refund in this proceeding. Applications lacking the required information may be dismissed or denied.

D. Distribution of Funds Remaining After First Stage

Any funds that remain after all first stage claims have been decided will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07. The PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. The Secretary has delegated these responsibilities to the OHA, and any monies in the Mockabee fund that the OHA determines will not be needed to effect direct restitution to injured customers will be distributed in accordance with the provisions of the PODRA.

It is therefore ordered that: (1) Applications for Refund from the funds remitted to the Department of Energy by Mockabee Gas & Fuel Oil Co. pursuant to the Modified Remedial Order dated April 10, 1985 may now be filed.

(2) Applications must be postmarked no later than September 29, 1995.

Dated: June 12, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 95–14916 Filed 6–16–95; 8:45 am]

BILLING CODE 6450–01–P

disadvantage. *See Marathon Petroleum Co./Pilot Oil Corp.*, 16 DOE ¶ 85,611 (1987), *amended, claim denied*, 17 DOE ¶ 85,291 (1988), *reconsideration denied*, 20 DOE ¶ 85,236 (1990). Furthermore, if an affiliate of the Remedial Order firm were granted a refund, the Remedial Order firm would be indirectly compensated from a Remedial Order fund remitted to settle its own alleged violations.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5222–6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before July 19, 1995.

FOR FURTHER INFORMATION CONTACT: For further information, or to obtain a copy of the ICR contact Sandy Farmer at EPA, (202) 260–2740, please refer to EPA ICR #1753.01.

SUPPLEMENTARY INFORMATION:

Office of Research and Development

Title: National Survey of Gross Alpha Methodology (EPA ICR No. 1753.01).

Abstract: The purpose of this survey is to assess the origins of statistical variance for gross alpha (radio-analytical) measurements performed on drinking water samples by laboratories as required under Section 1401 of the Safe Drinking Water Act (SDWA). The National Primary Drinking Water Regulations required under Section 1401 of the SDWA, and as described in a recent proposed rulemaking (vol. 56, No. 138 **Federal Register**) for gross alpha contamination, establish Maximum Contaminant Levels (MCLs) for radiological contamination, including gross alpha contamination in drinking water. In support of the SDWA and MCL Goals, a survey is needed to identify the source of inaccuracies in gross alpha data presently collected by USEPA and make appropriate changes to existing methodologies to ensure the accurate measurement and calculation of gross alpha contamination.

EPA will distribute the mail questionnaires and ask laboratories to voluntarily provide information that includes: (1) name, address, location and point of contact information, (2) type of radioanalytical methodology performed by laboratories, (3) quality control information, (4) efficiency curve data, and (5) types of counting instrumentation.

The EPA will collect the questionnaires and enter the information into computerized database for statistical analysis.

Burden Statement: Public reporting burden for this collection of information is estimated to average (1) hour per response including reviewing instructions, searching existing information sources, completing and reviewing the collection of information, and submitting the information to EPA.

Respondents: Federal, State, local, and private radio-analytical laboratories.

Estimated Number of Respondents: 350.

Frequency of Collection: One time.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 350 hours.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, (please refer to EPA ICR #1753.01):

Sandy Farmer, EPA #1753.01, U.S. Environmental Protection Agency, Information Policy Branch (2316), 401 M Street, SW., Washington, DC 20460
and
Timothy Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503

Dated: June 12, 1995.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 95–14801 Filed 6–16–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5223–8]

Meeting of the Small Town Environmental Planning Task Force

On July 10, 11 and 12, 1995, the Small Town Environmental Planning Task Force (STTF) will conduct its fifth meeting. The purpose of the meeting is to review and discuss the reports of the various work groups, prepare draft reports for full committee review and approval, prepare an outline and draft of the STTF's Final Recommendations Report to the Administrator, discuss state/local/federal roles and responsibilities in the current environment, and activities necessary to comply with the provisions of the Small Town Environmental Planning Act (42 U.S.C. 6908).

The Task Force is charged with identifying regulations developed pursuant to Federal environmental laws which pose significant compliance problems for small towns; identifying the means to improve the working relationship between the Environmental Protection Agency and small towns; reviewing proposed regulations for the protection of environmental and public health and suggesting revisions that could improve the ability of small towns to comply with such regulations; and identifying the means to promoting regionalization of environmental treatment systems and infrastructure.

The meeting will be held at the Holiday Inn Hotel and Suites, located at 625 First Street, Alexandria, VA 22314. The meeting will begin at 9 a.m. on July 10th and conclude at 2 p.m. on July 11th.

The Designated Federal Officer (DFO) for this Committee is Christine Zawlocki. She is the point of contact for information concerning any Committee matters and can be reached by calling (202) 260–0244 or by writing to: U.S. EPA, 401 M Street, SW. 1502, Washington, DC 20460

This is an open meeting and all interested persons are invited to attend. Meeting minutes will be available within forty-five days after the meeting and can be obtained by written request from the DFO. Members of the public are requested to call the DFO at the above number if planning to attend so that arrangements can be made to comfortably accommodate attendees as much as possible.

Christine Zawlocki,

Designated Federal Official, Office of Regional Operations and State/Local Relations.

[FR Doc. 95–14907 Filed 6–16–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5224–2]

Lithium of Lubbock Superfund Site: Proposed Settlement

SUMMARY: Under Section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has agreed to settle claims for past response costs at the Lithium of Lubbock Superfund Site in Lubbock, Texas with the following parties:

United States Coast Guard
The Defense Reutilization and Marketing Service
California Institute of Technology
Altus Corporation
West Texas Warehouse
Burlington Northern Railroad

EPA will consider public comments on the proposed settlement for 30 days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Mr. John R. Burleson, Superfund Enforcement Branch (6H–EC), U.S. EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–6728.

Written comments may be submitted to the person above for 30 days from the date of publication.

Dated: June 1, 1995.

Allyn M. Davis,

Acting Regional Administrator, U.S. EPA, Region 6

[FR Doc. 95–14909 Filed 6–16–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

June 12, 1995.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Dorothy Conway, Federal Communications Commission, (202) 418–0217 or via internet at DConway@FCC.GOV. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 10214 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0169.

Title: Sections 43.51 and 43.53 - Reports and Records of Communications Common Carriers and Certain Affiliates.

Form No.: N/A.

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit.

Frequency of Response: On occasion.

Estimated Annual Burden: 374 responses; 16.1 hour burden per response; 6,029 hours total annual burden.

Needs and Uses: Sections 43.51 and 43.53 require reports by which the Commission gathers information concerning carriers which it examines relating to the activities of that carrier which may effect charges and services and rendered.

OMB Number: N/A.

Title: Amendment of Part 65 and 69 of the Commission's Rules to Reform the Interstate Rate of Return Presription and Enforcement Processes.

Form No.: N/A.

Action: New Collection.

Respondents: Business or other for-profit.

Frequency of Response: On occasion.

Estimated Annual Burden: 5 responses; 10,000 hours burden per response; 50,000 hours total annual burden.

Needs and Uses: The Order revises the Part 65 rules governing the procedures and methodologies for prescribing and enforcing the rate of

return for certain LECs. Specifically, the Order replaces the existing rule, which initiates represcription proceedings biennially, with a semiautomatic trigger activated by changes in capital costs; modifies the paper hearing rules set out in Part 65; streamlines the methodolgies used to estimate the cost of capital and removes the automatic refund rule.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–14874 Filed 6–16–95; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review of the information collection system described below.

Type of Review: Extension of the expiration date of a currently approved collection without any change in the substance or method of collection.

Title: Reports on Indebtedness of Executive Officers and Principal Shareholders to Correspondent Banks and to Own Bank.

Form Number: Form FFIEC 004.

OMB Number: 3064–0023.

Expiration Dote of OMB Clearance: September 30, 1995.

Frequency of Response: On occasion.

Respondents: Bank executive officers and principal shareholders from either their own bank or correspondent bank.

Number of Respondents: 28,044.

Annual Hours per Respondent: 2.

Total Annual Hours: 56,088.

OMB Reviewer: Milo Sunderhauf, (202) 395–7316, Office of Management and Budget, Paperwork Reduction Project (3064–0023), Washington, D.C. 20503.

FDIC Contact: Steven F. Hanft, (202) 898–3907, Office of Executive Secretary, Room F–400, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429.

Comments: Comments on this collection of information are welcome and should be submitted before [insert 60 days after date of publication in the **Federal Register**].

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: FDIC Regulation 12 CFR 349 requires annual reports of borrowings by bank executive officers and principal shareholders from either their own bank or from correspondent banks. The information is retained by the banks and made available to the public upon request.

Dated: June 13, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary (Administration).

[FR Doc. 95–14846 Filed 6–16–95; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Robert F. Long; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than July 3, 1995.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Mr. Robert F. Long, Carlisle, Pennsylvania; to acquire an additional 1.24 percent, for a total of 10.57 percent, of the voting shares of United Financial Banking Companies, Inc., Vienna, Virginia, and thereby indirectly acquire The Business Bank, Vienna, Virginia.

Board of Governors of the Federal Reserve System, June 13, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–14889 Filed 6–16–95; 8:45 am]

BILLING CODE 6210–01–F

Marshall & Ilsley Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 3, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Marshall & Ilsley Corporation, Milwaukee, Wisconsin; to acquire through its subsidiary, M&I Data Services, Inc., Milwaukee, Wisconsin, Mutual Services, Inc., Braintree, Massachusetts, and thereby engage in data processing services, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 13, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–14890 Filed 6–16–95; 8:45 am]

BILLING CODE 6210–01–F

Totalbank Corporation of Florida; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than July 13, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Totalbank Corporation of Florida, Miami, Florida; to acquire 100 percent of the voting shares of Florida International Bank, Perrine, Florida.

Board of Governors of the Federal Reserve System, June 13, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–14891 Filed 6–16–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection Under OMB Review

Title: Notice of Proposed Rulemaking (NPRM) for the Developmental Disabilities Program.

OMB No.: N.A.

Description: The Developmental Disabilities Program provides financial assistance through formula & discretionary grant programs to States, non-project organizations & to universities. Information needs are based on statutory requirements & provides compliance progress reporting and financial management of the State plan, Protection & Advocacy System, University Affiliated Programs & Projects of National Significance.

Respondents: State Local or Tribal Government, and Not-for-Profit Institutions.

Annual Number of Respondents: 56 sites.

Number of responses per respondent: 1

Total annual responses: 56 sites

Hours per response: 50

Total Annual Burden Hours: 2,800

Additional Information: Copies of the proposed collection may be obtained from Bob Sargis of the Division of Information Resource Management, ACF, by calling (202) 690–7275.

OMB Comment: Consideration will be given to comments and suggestions received within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street NW., Washington, DC 20503, Attn: Ms. Wendy Taylor.

Dated: June 12, 1995.

Roberta Katson,

Acting Director, Office of Information Resource Management.

[FR Doc. 95–14857 Filed 6–16–95; 8:45 am]

BILLING CODE 4184–01–M

Agency Information Collection Under OMB Review

Title: Low Income Home Energy Assistance Program LIHEAP Leveraging Report.

OMB No.: 0970–0121.

Description: ACF needs this information to carry out statutory requirements for administering the LIHEAP leveraging incentive program—to determine countability and valuation of grantees' leveraged home energy resources, and to determine grantees' shares of leveraging incentive funds.

Respondents: States, Indian tribes, and territories.

Annual Number of Respondents: 70 sites.

Number of responses per respondent: 1.

Total annual responses: 70 sites.

Hours per response: 40.

Total Annual Burden Hours: 2,800.

Additional Information: Copies of the proposed collection may be obtained from Bob Sargis of the Division of Information Resource Management, ACF, by calling (202) 690–7275.

OMB Comment: Consideration will be given to comments and suggestions received within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street NW., Washington, DC 20503, Attn: Ms. Wendy Taylor.

Dated: June 12, 1995.

Roberta Katson,

Acting Director, Office of Information Resource Management.

[FR Doc. 95–14856 Filed 6–16–95; 8:45 am]

BILLING CODE 4184–01–M

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to David Sadowski, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804 (telephone 301/496–7735 ext 288; fax 301/402–0220). A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Dental Implant Modification

Kisielewski, R.W., Hastings, C.K., McCarthy, G.R. (FDA)
Filed 19 Apr 95
Serial No. 08/424,786.

Description of the Invention: Implanted dental prostheses are subjected to large forces acting in different directions within severely-limited space. Screw and/or nut connections, while useful in the construction of these prostheses, are subject to relative rotations which can lead to undesirable loosening of the implant at inopportune times. The present invention greatly inhibits the undesirable loosening of the dental prosthesis by providing for a linear, axial transmission of forces from the prosthesis to a tubular spacer and an implanted base by the retaining nut. This invention has the additional advantage of permitting relatively easy retrofitting of existing dental prostheses which were prone to failure due to loosening when the retaining nut or screw turned under the forces normally found in previously available prostheses.

Potential Areas of Application: Applicable to improvement of dental prostheses used world-wide; design adaptable to other prosthetic securing applications.

Main Advantages of Invention: Inexpensive to apply to existing prostheses; much improved functional design. [portfolio: Dental Technology—Therapeutics, implants]

Drycleaning Secondary Vapor Isolation and Removal System

Earnest, G.S., Froehlich, P.A. (NIOSH)
Filed 27 Oct 94
Serial No. 08/329,920.

Description of the Invention: A system which reduces environmental emissions and operator exposure to solvent vapors associated with dry cleaning machines. Dry cleaning solvents such as perchloroethylene are known to cause liver and kidney damage and to contribute to ozone depletion. Due to the operational nature of dry cleaning machines, which involves continuous loading and unloading, operators are exposed to solvent vapors which are emitted each time the machines are opened. The invention involves a ventilation system which isolates, contains and removes residual solvent vapors before a dry cleaning machine chamber is opened.

Potential Areas of Application: Closed circuit dry cleaning machines; exhausting dry cleaning machines; single and multiple bath processing machines.

Main Advantages of Invention: Reduce worker exposure to hazardous solvent vapors; reduce emission of hazardous vapors into the environment; can be retrofitted onto existing dry cleaning machines.

Stage of Development: Conceptual only. [portfolio: Devices/Instrumentation—Environmental Technology, prevention, apparatus]

An Integrating Sphere Which Delivers a Homogeneous Beam of Laser Light for Use in Photodynamic Therapy

Smith, P.D., Cole, J., Harrington, F., Bernstein, E. (NCRR)
Filed 24 May 94
Serial No. 08/248,918.

Description of the Invention: An irradiation attachment for an optical fiber which provides an output of light that has a highly uniform intensity. Frequently, optical fibers are used in illumination delivery systems. However, in general the output from optical fibers is irregular due to a number of factors which include: imprecise introduction of light into the fiber; imperfect cleaving or polishing of the fiber output face; and distortions introduced by handling the fiber. The inventive device simply attaches to the end of a delivery optical fiber and overcomes the irregularities and produces a uniform level of illumination. The inventive device permits uniform irradiation of irregularly shaped objects.

Potential Areas of Application: Photodynamic therapy; treatment of psoriasis; uniform illumination of flat and raised surfaces.

Main Advantages of Invention: Simple attachment to optical delivery fibers; hand held; uniform illumination of flat and raised surfaces.

Stage of Development: Prototype built and tested on laboratory animals. [portfolio: Devices/Instrumentation—Therapeutics, instruments]

Ventilated Casting Grinding Workstation With Turntable

Gressel, M.G. (CDC)
Filed 20 May 94
Serial No. 08/247,181.

Description of the Invention: A new ventilated workstation which reduces worker exposure to hazardous particulate materials has been invented. In conventional foundry casting operations, castings are cleaned by hand using pneumatic chipping and grinding tools. The grinding and chipping of sand burnt into the castings results in a discharge of respirable silica particles. The workstation of the present invention is equipped with a rotatable workpiece holder which allows all surfaces of the workpiece to be positioned so that particles discharged by grinding or machining are directed toward a ventilation area at which the discharged particles are removed.

Potential Areas of Application: Cleaning foundry castings; machining workpieces.

Main Advantages of Invention: Reduces worker exposure to hazardous particulate materials; easy to retrofit to existing ventilated workstations.

Stage of Development: Prototype built, tested, and evaluated.

Recent Publications: Abstract entitled "An Evaluation of a Local Exhaust Ventilation Control System for Casting Cleaning in a Foundry," May 21–27 meeting of the American Industrial Hygiene Conference and Exhibition (1994); NTIS Technical Report. [portfolio: Devices/Instrumentation—Environmental Technology, equipment and machinery]

Magnetic Resonance Monitor

(Bowman, J.D., Engel, D.P. (NIOSH)
Filed 29 Apr 94
Serial No. 08/235,833.

This invention relates to measurement of static and extremely low frequency magnetic fields. Further, it permits measurement of environmental magnetic fields which are in magnetic resonance with magnetic moments in a biological organism, particularly the human body. This invention overcomes deficiencies in current systems, such as: only measuring oscillating magnetic fields, measuring static and oscillating fields with Hall-effect or flux-gate probes, and measuring static and oscillating fields and all their characteristics without taking into consideration chemical and biological effects. [portfolio: Devices/Instrumentation—Environmental Technology, methods of testing]

Dated: June 8, 1995.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 95–14899 Filed 6–16–95; 8:45 am]

BILLING CODE 4140–01–P

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to John Fahner-Vihtelic, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804 (telephone 301/496–7735 ext 285; fax 301/402–0220). A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Production and Use of Anti-Dorsalizing Morphogenetic Protein

Moos, M., Jr., Krinks, M., Wang, S. (FDA)
Filed 8 Nov 94
Serial No. 08/335,583.

In recent years, a number of members of the TGF–β superfamily have been discovered which serve as growth factors in the development of bone, or participate in a variety of developmental processes. This case discloses a novel member of the TGF–β superfamily, designated Anti-dorsalizing morphogenetic protein-1, or ADMP–1. ADMP–1 is most closely related to human bone morphogenetic protein-3, and counters dorsalizing influences during development. ADMP–1 can be used as a pharmaceutical to treat inappropriate proliferation of neural crest derivative tissues, such as neuroblastomas, as well as a probe for finding and cloning other ADMPs. The case claims isolated ADMP–1, pharmaceutical preparations employing ADMP–1, diagnosis of genetic lesions involving this protein, and methods of treatment of conditions involving inappropriate proliferation of tissues by administering ADMP-l. [*portfolio: Cancer—Research Reagents*]

Improvements in the Ability of Neural Networks, Particularly Dystal, To Distinguish Among Small Differences in Similar Inputs

Alkon, D.L., Vogl, T.P. (NINDS)
Filed 14 Nov 94
Serial No. 08/331,554.

This application describes a powerful associative learning neural network system and improvements designed to enhance decision making. This invention consists of a basic architectural unit of certain inputs and outputs. Interposed between inputs and outputs are "patches" or storage areas of dynamic interaction between conditioned and unconditioned signals. The patches process information to achieve associative learning locally under rules designed for application-related goals of the system. This technology far exceeds the power and utility of previous neural networks with features such as: rapid incremental learning without supervision, self organizing and insensitive to global parameters, and associates extremely noisy and heterogeneous patterns. The utility of this technology has been proven with complex experimental applications. [*portfolio: Devices/Instrumentation—Software, artificial intelligence*]

Fluorescent and NMR Sensitive Intracellular pH Indicators

London, R.E. Levy, L.A., Murphy, E., Gabel, S. (NIEHS)
Filed 11 Oct 94
Serial No. 08/320,986.

This invention discloses compositions and methods useful for measuring pH. Specifically, this invention teaches the measurement of intracellular pH and a new class of fluorescent and fluorinated (NMR sensitive) aromatic compounds. These compounds have excitation wavelengths in the ultraviolet or visible portions of the electromagnetic spectrum. In addition to being useful for pH indicators, fluorine containing analogs of these compounds have shown utility for NMR spectroscopic determinations. The present invention overcomes the disadvantages of pk values that are not matched to the cytosol, leaking, and binding to cellular protein, found in current fluorescent intracellular pH probes. [*portfolio: Internal Medicine—Diagnostics, imaging, agents*]

Method and System for Doppler Ultrasound Measurement of Blood Flow

Adam, D.R., Kempner, K.M., Vivino, M.A., Tucker, E.E., Jones, M. (DCRT)
Filed 24 Sep 94
Serial No. 08/300,718

This invention discloses a system and method for providing Doppler flow velocity data that is corrected for misalignment between the flow direction within a vessel and the beam orientation of the ultrasound probe. A conventional ultrasonic Doppler color mapping system was adapted to include an apparatus to measure and record the free space position and orientation of the ultrasonic probe. A set of 2D image planes, which need not be parallel, is acquired. A structural representation derived from the acquired data is used to determine the flow direction for the imaged vessel. This apparatus and method has advantages over other systems because it offers the ability to measure flow distributions with a hand-manipulated probe. [*portfolio: Devices/Instrumentation—Diagnostics, imaging, ultrasound*]

Method and System for Multidimensional Localization and Rapid Magnetic Resonance Spectroscopic Imaging

Posse, S., Le Bihan, D. (CC)
Filed 15 Aug 94
Serial No. 08/290,348 (CIP of 08/224,942).

A newly developed method and system for multidimensional localization and rapid magnetic resonance spectroscopic imaging allows for quicker, more accurate imaging of metabolites in biologic tissue. Nuclear magnetic resonance (NMR) techniques have long been used to obtain spectroscopic information about substances in order to reveal the substance's chemical composition. More recently, spectroscopic imaging techniques have been developed that combine magnetic resonance imaging (MRI) with NMR spectroscopic techniques, thus providing a spacial image of the chemical composition; however, previously available techniques for making such measurements have been hampered by limitations in prelocalization of samples due to long echo times as well as long data acquisition times. Most of these systems often generate spectral as well as spacial data due to the long echo times, and their localization techniques are not applicable to acquiring multiple-volume data from nuclei that have short T2 relaxation times. This new system circumvents these limitations by applying pulse sequence to a conventional MRI apparatus, which allows the rapid acquisition of data for generating spectroscopic images and greatly shortens the echo time. Spatial prelocalization of a volume of interest is achieved by providing a presuppression sequence before a stimulated echo (STE) sequence and a suppression sequence before the interval of the STE sequence. [portfolio: Devices/Instrumentation—Diagnostics, imaging apparatus, MRI]

Method and System For MRI Detection of Abnormal Blood Flow

Moonen, C.T., Duyn, J., van Gelderen, P. (NCRR)

Filed 5 Aug 94

Serial No. 08/286,783.

The present invention disclosure describes a magnetic resonance imaging system and method for detecting blood flow abnormalities. This is

accomplished by determining the time delay for the arrival of a bolus of MR contrast agent into a localized region of tissue. This arrival is observed in a series of magnetic resonance signals obtained subsequent to the bolus injection. A rapid series of imaging pulse sequences acquires the time development of the signal from the localized regions within the imaged field of view of the body. The arrival time for the bolus into a given localized region is determined from the acquired time data, and the relative arrival time among regions in the imaged field of view indicated whether there is decreased blood flow to certain areas. This method and system has the potential to replace some of the invasive procedures now in use to determine blood flow through certain body tissues. [portfolio: Devices/Instrumentation—Diagnostics, imaging, methods]

DNA Sequence Which Acts as a Chromatin Insulator Element To Protect Expressed Genes From Cis-Acting Regulatory Sequences

Chung, J., Felsenfeld, G. (NIDDK)
Filed 29 Jul 94
Serial No. 08/283,125 (CIP of 08/045,266).

Novel method of insulating functional DNA domains introduced into higher leukaryotic cells from the effects of the cell's cisacting regulatory elements. The invention represents the first pure insulator to be demonstrated to function in human cells. The element promises to be a useful tool in gene therapy, gene transfer techniques, and studies involving gene regulation and other gene expression technologies. [portfolio: Cancer—Therapeutics, gene therapy]

Spectroscopic Imaging Device Employing Quality Spectral Filters

Lewis, E.N., Levin, I.W., Treado, P.J. (NIDDK)
Serial No. 08/236,655
Patent Issued 27 Dec 94
U.S. Patent No. 5,377,003.

This novel imaging device, which integrates both light microscopy and spectroscopy, allows for the cost-effective development of high-resolution spatial, chemical, and spectral images. It provides a rapid means for examining and collecting large format images from vibrational and visible spectra in a three-dimensional sample. It is superior to current equipment because it has no moving parts. This device may be used as a tool for the characterization of polymers and semiconductors and has potential as a diagnostic tool for clinical analysis of histologic materials. [portfolio: Devices/Instrumentation—Diagnostics, imaging, spectroscopy]

Method To Enhance the Sensitivity of MRI for Magnetic Susceptibility Effects

Moonen, C.T. (NCRR)
Filed 13 Aug 93
Serial No. 08/106,372 (CIP of 07/841,994).

A novel fast-imaging method resulting in enhanced sensitivity to T2* changes was developed. This new technique is unlike other methods in that it is based on gradient-recalled echoes of spins whose excitation and echo formation are separated by one or more TR period. It does not require chemical shift refocusing and, thus, results in increased T2* sensitivity. The new method improves the ability of functional MRI based on T2* effects. [portfolio: Devices/Instrumentation—Diagnostics, imaging methods]

Dated: June 8, 1995.

Barbara M. McGarey, J.D.

Deputy Director, Office of Technology Transfer.

[FR Doc. 95–14897 Filed 6–16–95; 8:45 am]

BILLING CODE 4140–01–P

Opportunity for Licensing: Pharmaceutical Preparations Containing Cyclodextrin Derivatives

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH), Department of Health and Human Services, seeks licensee(s) for U.S. Patent 4,727,064, entitled "Pharmaceutical Preparations Containing Cyclodextrin Derivatives," which issued February 23, 1988. This invention describes a method of improvement of pharmaceutical preparations which comprises the addition of crystalline drugs with substantially low solubility to cyclodextrin compounds which are water soluble, have the ability to form inclusion complexes with the drugs in question, and are intrinsically amorphous and substantially decrease the tendency of the drug to crystallize.

This U.S. Patent had been exclusively licensed to Pharmatec Inc. and Cyclex Inc. (see **Federal Register** of September 10, 1987—52 FR 34268) by the National Technical Information Service (NTIS). The period of general exclusivity provided under the NTIS agreements has expired and the patent is now available for licensing. NTIS has transferred custody of this case to NIH and NIH has the right to grant nonexclusive or exclusive licenses to this patent in most fields of use. In particular, NIH can grant an exclusive license for the use of cyclodextrin technology in combination with "drug actives" that are approved for a particular use by the Food and Drug Administration (FDA) if the drug active itself or its FDA-approved use is covered by a U.S. patent.

NIH intends to grant the selected firm(s) royalty-bearing license(s) to practice the inventions embodied in U.S. Patent 4,727,064 in the U.S. for all or some of the available fields of use. The patent rights in these inventions have been assigned to the United States of America.

SUPPLEMENTARY INFORMATION: The NIH seeks licensee(s), who in accordance with requirements and regulations governing the licensing of government-owned inventions (37 CFR Part 404), have the most meritorious plan for the development of the cyclodextrin technology to a marketable status to meet the needs of the public and with the best terms for the NIH. The criteria that NIH will use to evaluate license applications will include, but not be limited to those set forth by 37 CFR 404.7(a)(1)(ii)–(iv).

ADDRESSES: Requests for a copy of the patent, license application form, or other questions and comments concerning the licensing of this technology should be directed to: Carol C. Lavrich, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7735 ext 287; fax: 301/402–0220.

Dated: June 5, 1995.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 95–14898 Filed 6–16–95; 8:45 am]

BILLING CODE 4140–01–P

Office of Inspector General

Program Exclusions: May 1995

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of May 1995, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, Maternal and Child Health Services Block Grant and

Block Grants to States for Social Services programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all other Federal non-procurement programs.

Subject city, state	Effective date
Program-related convictions:	
Boucher, Dana Old Orchard Bch, ME.	06/05/95
BZM Royalty, Inc Bronx, NY.	06/05/95
Corcoran, William Mastic Beach, NY.	06/05/95
Culala, Pascual R Saratoga, CA.	06/01/95
Enriquez, Norma V Vallejo, CA.	06/01/95
Ferrand, Denis Christopher Rockford, MI.	06/04/95
Fomenko, Svetlana Brooklyn, NY.	06/05/95
Galluzzo, Alfred J Janesville, WI.	06/04/95
Gard, Rosie A Edmund, WI.	06/04/95
Lane, Timothy J Jacksonville, FL.	06/05/95
Law, Daniel Greenfield, WI.	06/04/95
Makowski, Dennis Edward Troy, MI.	06/04/95
Sanders, Denise Sickerville, NJ.	06/05/95
Schwartz, Isaac Lawrence, NY.	06/05/95
Super Care Medical Supplies, Broadview, IL	06/04/95
Patient Abuse/Neglect Convictions:	
Altreche, Arturo Brooklyn, NY.	06/05/95
Close, Ann Salem, MA.	06/05/95
Cooper, Mary L Little Rock, AR.	06/01/95
Gadley, Loretta Lackawana, NY.	06/05/95
Jones, Dawn M Troy, AL.	06/05/95
Lancour, Howard M Montpelier, VT.	06/05/95
Sevillano, Marta A Framingham, MA.	06/05/95
Vicko, Peter B Bloomfield Hills, MI.	06/04/95
Williams, Ronald Detroit, MI.	06/04/95
Conviction for health care fraud:	
Garone, Deanna Howard Beach, NY.	06/05/95
Ucer, Erol Grand Blanc, MI.	06/04/95
Controlled substance convictions:	
Arnold, John Jacob Curwensville, PA.	06/05/95
Han, Sum Kyung Pittsburgh, PA.	06/05/95
Haver, Joseph B Punxsutawney, PA.	06/05/95
License revocation/suspension/surrender:	
Black, James Rutherford II Birmingham, AL.	06/05/95
Cohen, Teddy Alan Alexandria, VA	06/05/95
Cordovani, John J Alexandria, VA.	06/05/95
Domino, Constance M Minneapolis, MN.	06/07/95
Ferrari, Francis M Kearny, NJ.	06/05/95
Franklin, Gerald S Amherst, MA.	06/05/95
Hensrud, Mary J Minneapolis, MN.	06/07/95
Irisari, Oscar Solidum Moundsville, WV.	06/05/95
Kabir, David I Alexandria, VA.	06/05/95
Limberopoulos, William M Pelham, NH.	06/05/95
Lyng, Gwendolyn A Winsted, MN.	06/07/95
Marcotuli, Alfonso A New Castle, PA.	06/05/95
Michael, James C Newport, RI.	06/05/95
Mikesell, Stacey L Newton, MA.	06/05/95
Musikant, David S Paoli, PA.	06/05/95
Zajac, William Thompson, CT.	06/05/95
Federal/State exclusion/suspension:	
Arrillaga, Abenamar New York, NY.	06/05/95
Bakhtiar, Farhang Woodbury, NY.	06/05/95
Easycare Home Medical Equipmnt Congers, NY.	06/05/95
Holle, Cheryl L Concordia, KS.	06/01/95
Ram, Moorthy S Wheeling, WV.	06/05/95
Owned/Controlled by Convicted/excluded:	
Eye Physicians & Surgeons Corp S Charleston, WV.	06/05/95
Eye Physicians & Surgeons Corp S Charleston, WV.	06/05/95
Default on heal loan:	
Abbott, Brian L Nyack, NY.	06/05/95
Alexander, Marsha Rio Vista, CA.	06/01/95
Amouhashem, Parvin Alexandria, VA.	06/05/95
Basedow, William K Saint Marys, OH.	06/04/95
Berry, Linda R Johnston, RI.	06/05/95
Bottorff, Douglas J Kansas City, MO.	06/04/95
Boyer, Glenn D Dania, FL.	06/07/95
Burch, Gregory D Riverside, CA.	06/01/95
Byrd, Daryl C New Orleans, LA.	06/01/95
Collins, Henry L Chicago, IL.	05/16/95
Cooley, Stephen L Estes Park, CO.	06/01/95
Coronado, Rudolph K Pembroke, NC.	06/14/95
Desantis, Nicholas G La Mesa, CA.	06/01/95
Downes, John W Kennesaw, GA.	06/14/95
Drier, Yolanda J Ormond Beach, FL.	06/14/95
Ellis, Cynthia E (Harris) Austin, TX.	06/01/95
Gallagher, Tamara G Chino, CA.	06/01/95
Gidowski, Frank W Sun City West, AZ.	06/01/95
Glenn, John Asbury Jr Eastman, GA.	06/14/95
Glum, Gary L Los Angeles, CA.	06/01/95
Goodman, William D Magnolia, AR.	06/01/95
Greene, David Allan Santa Maria, CA.	06/01/95
Greenwald, Lewis A N Miami Beach, FL.	06/07/95
Hahn, Peter S Placentia, CA.	06/01/95
Harcus, James M Chicago, IL.	06/04/95
Harrison, Rodney B Montclair, CA.	06/01/95
Headley, Patricia D Tonkawa, OK.	06/01/95
Herber, Harry A Grover City, CA.	06/01/95
Herbst, Stephen H Winona, MO.	06/04/95
Hubon, Joyce A Lender Anaheim, CA.	06/01/95
Husbands, Michael L Corona, CA.	06/01/95
Jacobson, Robert Queens, NY.	06/05/95
Kelly, Mark S Chino, CA.	06/01/95
Landrum, Keith Hawthorne, CA.	06/01/95
Lillie, Richard W San Dimas, CA.	06/01/95
Lowy-Berry, Christine L Glendora, CA.	06/01/95
Lyons, Glynnis J Tampa, FL.	06/07/95
Mahar, Deborah Zeitsoff Costa Mesa, CA.	06/01/95
Mandracchia, Philip A Palm Beach Gardens, FL.	06/05/95
Martin, Craig S Athens, GA.	06/14/95
McKinney, Laurence T Hilo, HI.	05/12/95
Mendelson, Sol	06/01/95

Subject city, state	Effective date
Alta Loma, CA.	
Michals, Robert H	06/01/95
Aurora, CO.	
Miller, Harry Matthew	06/05/95
Linwood, NJ.	
Moore, Edwin William	06/01/95
Long Beach, CA.	
O'Leary, Molly M	06/04/95
Kansas City, MO.	
Orr, William S	06/01/95
Canon City, CO.	
Perry, Keith O	06/01/95
Los Angeles, CA.	
Rose, Stefan	06/07/95
Miami, FL.	
Shaw, Michael P	06/01/95
Fremont, CA.	
Shelby-Calvin, Rosetta Marie	06/01/95
Little Rock, AR.	
Shin, Hui-Yong	06/01/95
Los Angeles, CA.	
Somlar, Steven C	06/04/95
Chicago, IL.	
Stanton, Lawrence P	06/01/95
Seattle, WA.	
Staples-Horne, Michelle J	06/05/95
Ellenwood, GA.	
Stewart, Mark I	06/05/95
Savannah, GA.	
Teusink, Scott H	06/05/95
Staten Island, NY.	
Thomas, Lindwall A	06/05/95
Silver Spring, MD.	
Volk, Anthony M	06/01/95
Pappillion, NE.	
Wade, Eric V	06/01/95
Tyler, TX.	
West, Marvin L	06/14/95
Montgomery, AL.	
Westing, Denise D	06/01/95
Alameda, CA.	
Wright, Richard O	06/05/95
Virginia Beach, VA.	

Dated: June 7, 1995.

William M. Libercci,

Director, Health Care Administrative Sanctions, Office of Civil Fraud and Administrative Adjudication.

[FR Doc. 95–14912 Filed 6–16–95; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–95–3924]

Notice of Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comments regarding these proposals. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Key F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (7) whether the proposal is new or an extension reinstatement, or revision of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 12, 1995

David S. Christy,

Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Survey of Mortgage Lending Activity.

Office: Housing.

Description of the Need for the Information and its Proposed Use: The surveys will be used to obtain information on the developments in the mortgage market. They will be used to monitor such developments and to provide statistical data to Federal, state, and non-governmental entities.

Form Number: HUD–136.1 through HUD–136.5.

Respondents: State, Local, or Tribal Government, Business or Other For-Profit, and the Federal Government.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Surveys	616		12		1.50		11,832

Total Estimated Burden Hours: 11,832.

Status: Extension with changes.

Contact: John N. Dickie, HUD, (202) 755–7470; Michael C. Wells, HUD, (202) 755–7470; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: June 12, 1995.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Statement of Taxes.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: Form HUD–434 will be used by the Department to record the necessary information pertaining to taxes to enable HUD to establish its tax records and to continue immediate payment of taxes. The form will also verify the taxes paid when the lender's claim is audited for insurance benefits.

Form Number: HUD–434.

Respondents: State, Local or Tribal Government, Businesses or Other For-Profit, and the Federal Government.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Form HUD–434	250		1		.5		125

Total Estimated Burden Hours: 125.

Status: Extension with changes.

Contact: Gary G. Zimmerman, HUD, (202) 401–2168; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated June 12, 1995.

[FR Doc. 95–14930 Filed 6–16–95; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. FR–3655–N–02]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (7) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement, and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 12, 1995.

David S. Cristy,

Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: HUD Condominium "Spot Loan" Checklist and Warranty (FR–3655).

Office: Housing.

Description of the Need for the Information and Its Proposed Use: The Condominium Spot Loan program permits the Department to insure mortgages in viable condominium projects that do not have HUD or VA approval. Lenders will use this form to determine a single unit's eligibility for FHA mortgage insurance.

Form Number: None.

Respondents: Businesses or Other For-Profit.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	2,000		1		.1		200

Total Estimated Burden Hours: 200.

Status: New.

Contact: Susan Hoyer, HUD, (202) 708–2700; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: June 12, 1995.

[FR Doc. 95–14932 Filed 6–16–95; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Administration

[Docket No. FR–3918–N–02]

Privacy Act of 1974; Computer Matching Program

AGENCY: Office of the Assistant Secretary for Administration, (HUD).

ACTION: Notice of a Computer Matching Program between HUD and the Department of Education (ED).

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, as amended, (Pub. L. 100–503), and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (54 FR 25818 (June 19, 1989)), and OMB Bulletin 89–22, "Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public," the Department of Housing and Urban Development (HUD) is issuing a public notice of its intent to conduct a computer matching program with the Department of Education (ED) to utilize a computer information system of HUD, the Credit Alert Interactive Voice Response System (CAIVRS), with ED's debtor files. This match will allow prescreening of applicants for loans or loans guaranteed by the Federal Government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Federal Government for HUD or ED direct or guaranteed loans.

Before granting a loan, the lending agency and/or the authorized lending institution will be able to interrogate the CAIVRS debtor file which contains the Social Security Numbers (SSNs) of HUD's delinquent debtors and defaulters and defaulted debtor records of ED and verify that the loan applicant is not in default or delinquent on direct

or guaranteed loans of participating Federal programs of either agency. Authorized users place a telephone call to the system. The system provides a recorded message followed by a series of instructions, one of which is a requirement for the SSN of the loan applicant. The system then reports audibly whether the SSN is related to delinquent or defaulted Federal obligations for HUD or ED direct or guaranteed loans. As a result of the information produced by this match, the authorized users may not deny, terminate, or make a final decision of any loan assistance to an applicant or take other adverse action against such applicant, until an officer or employee of such agency has independently verified such information.

EFFECTIVE DATE: Computer matching is expected to begin July 19, 1995 and unless comments are received which will result in a contrary determination, will be accomplished 18 months from the beginning date.

FOR PRIVACY ACT INFORMATION CONTACT: Jeanette Smith, Departmental privacy Act Officer, Department of Housing and Urban Development, 451 7th St., SW, room 4178, Washington, DC 20410, telephone number (202) 708–2374. [This is not a toll-free telephone number.]

FOR FURTHER INFORMATION FROM RECIPIENT AGENCY CONTACT: Joseph McCloskey, Director, Control and Analysis Division, Department of Housing and Urban Development, 451 7th Street SW., room 2246, Washington, DC 20410, telephone number (202) 708–2438. [This is not a toll-free number.]

FOR FURTHER INFORMATION FROM SOURCE AGENCY CONTACT: Adara Walton, Branch Chief, Student Receivables Division, Department of Education, Regional Office Building, 7th & D Streets SW, Washington, DC 20202, telephone number (202) 708–4766. [This is not a toll-free number.]

Reporting

In accordance with Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988, as amended, and Office of Management and Budget Bulletin 89–22, "Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public;" copies of this Notice and report, in duplicate, are being provided to the Committee on Governmental Affairs of the United States Senate, the Committee on Government Reform and Oversight of the House of Representatives, and the Office of Management and Budget.

Authority

The matching program may be conducted pursuant to Pub. L. 100–503, "The Computer Matching and Privacy Protection Act of 1988," as amended, and Office of Management and Budget (OMB) Circulars A–129 (Managing Federal Credit Programs) and A–70 (Policies and Guidelines for Federal Credit Programs). One of the purposes of all Executive departments and agencies—including HUD—is to implement efficient management practices for Federal credit programs. OMB Circulars A–129 and A–70 were issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Act of 1950, as amended; the Debt Collection Act of 1982, as amended; and, the Deficit Reduction Act of 1984, as amended.

Objectives To Be Met by the matching program

The matching program will allow ED access to a system which permits prescreening of applicants for loans or loans guaranteed by the Federal Government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Government. In addition, HUD will be provided access to ED debtor data for prescreening purposes.

Records To Be Matched

HUD will utilize its system of records entitled HUD/DEPT–2, *Accounting Records*. The debtor files for HUD programs involved are included in this system of records. HUD's debtor files contain information on borrowers and co-borrowers who are currently in default (at least 90 days delinquent on their loans); or who have any outstanding claims paid during the last three years on Title II insured or guaranteed home mortgage loans; or individuals who have defaulted on Section 312 rehabilitation loans; or individuals who have had a claim paid in the last three years on a Title I loan. For the CAIVRs match, HUD/DEPT–2, System of Records, receives its program inputs from HUD/DEPT–28, Property Improvement and Manufactured (Mobile) Home Loans—Default; HUD/DEPT–32, Delinquent/Default/Assigned Temporary Mortgage Assistance Payments (TMAP) Program; and HUD/CPD–1, Rehabilitation Loans—Delinquent/Default.

ED will provide HUD with debtor files contained in its system of records. HUD is maintaining ED's records only as a ministerial action on behalf of ED, not as a part of HUD's HUD/DEPT–2 system of records. ED's data contain information on individuals who have defaulted on their guaranteed loans. ED will retain ownership and responsibility for their systems of records that they place with HUD. HUD serves only as a record location and routine use recipient for ED's data.

Notice Procedures

HUD and ED will notify individuals at the time of application (ensuring that routine use appears on the application form) for guaranteed or direct loans that their records will be matched to determine whether they are delinquent or in default on a Federal debt. HUD and ED will also publish notices concerning routine use disclosures in the **Federal Register** to inform individuals that a computer match may be performed to determine a loan applicant's credit status with the Federal Government.

Categories of records/individuals involved

The debtor records include these data elements: SSN, claim number, ED Regional Office Code, Collection Agency Code, program code, and indication of indebtedness. Categories of records include: Record of claims and defaults, repayment agreements, credit reports, financial statements, and records of foreclosures. Categories of individuals include: Former mortgagors and purchasers of HUD-owned properties, manufactured (mobile) home and home improvement loan debtors who are delinquent or in default on their loans, and rehabilitation loan debtors who are delinquent or in default on their loans.

Period of the Match

Matching will begin at least 40 days from the date copies of the signed (by both Data Integrity Boards) computer matching agreement are sent to both Houses of Congress or at least 30 days from a date this Notice is published in the **Federal Register**, whichever is later, providing no comments are received which would result in a contrary determination.

Issued at Washington, DC, June 13, 1995.

Marilynn A. Davis,

Assistant Secretary for Administration.

[FR Doc. 95–14929 Filed 6–16–95; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–05–1320–01; WYW136502]

Wyoming; Bridger Coal Co.; Exploration License

June 9, 1995.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Correction—Bridger Coal Co. Exploration License.

SUMMARY: This notice corrects an error in the legal description for a Notice of Invitation for Coal Exploration License WYW136502 previously published in the **Federal Register** June 2, 1995 (60 FR 28792). The legal land description is changed to read T. 20 N., R. 100 W., 6th P.M., Wyoming, instead of T. 40 N., R. 100 W., 6th P.M. The remainder of the Notice of Invitation remains unchanged.

Pamela J. Lewis,

Supervisory Land Law Examiner.

[FR Doc. 95–14641 Filed 6–16–95; 8:45 am]

BILLING CODE 4310–22–P

[WY–920–05–1320–01; WYW136504]

Wyoming Cordero Coal Co.; Exploration License

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of correction—Cordero Coal Co. Exploration License.

SUMMARY: This notice corrects the Notice of Invitation for Coal Exploration License WYW136504 previously published in the **Federal Register** May 24, 1995 (60 FR 27546). That Notice of Invitation stated that a counterpart notice would be published in the News-Record of Gillette, WY, beginning no later than the week of May 22, 1995, and stated that any party electing to participate in the exploration program must send written notice to both the Bureau of Land Management (BLM) and the Cordero Mining Co. no later than thirty days after publication of the Notice of Invitation in the **Federal Register**. The first publication in the News-Record of Gillette did not occur before May 22, 1995, and will not occur until June 9, 1995; therefore, the Notice of Invitation is revised to state that written notice of any party electing to participate in the exploration program must be received by the BLM and Cordero Mining Co. no later than July 10, 1995. The remainder of the Notice of Invitation remains unchanged.

Pamela J. Lewis,

Supervisory Land Law Examiner.

[FR Doc. 95–14642 Filed 6–16–95; 8:45 am]

BILLING CODE 4310–22–P

[WY–920–05–1320–01; WYW136559]

Wyoming; Invitation for Coal Exploration License

June 9, 1995.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of invitation for coal exploration license.

SUMMARY: Pursuant to section 2(b) of the Mineral Leasing Act of February 25, 1920, as amended by section 4 of the Federal Coal Leasing Amendments Act of 1976, 90 Stat. 1083, 30 U.S.C. 201 (b), and to the regulations adopted as Subpart 3410, Title 43, Code of Federal Regulations, all interested parties are hereby invited to participate with Kerr-McGee Coal Corp. on a pro rata cost sharing basis in its program for the exploration of coal deposits owned by the United State of America in the following-described lands in Campbell County, WY:

T. 43 N., R. 70 W., 6th P.M., Wyoming,
Sec. 4: Lots 8, 9, 15–18;
Sec. 5: Lots 5–20;
Sec. 6: Lots 8–23;
Sec. 7: Lots 5–7, N2 of Lot 8, 9–12, N2 and SE of Lot 13, NE of Lot 19;
Sec. 8: Lots 1–16;
Sec. 9: Lots 3–6, 11–14;
T. 43 N., R. 71 W., 6th P.M., Wyoming;
Sec. 1: Lots 5–15, 19, SENE.
Containing approximately 3,395.515 acres.

All of the coal in the above-described land consists of unleased Federal coal within the Powder River Basin Known Recoverable Coal Resource Area. The purpose of the exploration program is to collect baseline data on the quality of the overburden and on the quality and quantity of groundwater.

ADDRESSES: The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. Copies of the exploration plan are available for review during normal business hours in the following offices (serialized under number WYW136559): Bureau of Land Management, Wyoming State Office, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, WY 82003; and, Bureau of Land Management, Casper District Office, 1701 East 'E' Street, Casper, WY 82601.

SUPPLEMENTARY INFORMATION: This notice of invitation will be published in the *The News-Record* of Gillette, WY, once each week for two consecutive weeks beginning the week of June 19, 1995, and in the **Federal Register**. Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management and Kerr-McGee Coal Corp. no later than thirty days after publication of this invitation in the **Federal Register**. The written notice should be sent to the following addresses: Kerr-McGee Coal Corp., Attn: John W. Coleman, MT–2205, 123 Robert S. Kerr Avenue, Oklahoma City, OK 73102, and the Bureau of Land Management, Wyoming State Office, Home Base Chief, Minerals and Lands Authorization Group, P.O. Box 1828, Cheyenne, WY 82003.

The foregoing is published in the **Federal Register** pursuant to 43 CFR 3410.2–1(c)(1).

Pamela J. Lewis,

Supervisory Land Law Examiner.

[FR Doc. 95–14640 Filed 6–16–95; 8:45 am]

BILLING CODE 4310–22–P

[CO–935–1430–01; COC34289]

Realty Action: Section 302 Lease; Classification in Grant County, Colorado

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of realty action.

SUMMARY: In response to a request from the Silver Creek Ski Area, Colorado, the following public lands have been examined and found suitable for leasing under the provisions of Section 302, of the Federal Land Policy and Management Act (FLPMA) of 1976 and 43 CFR 2920. Adjacent lands are currently leased to Silver Creek Ski Area for ski trails and associated facilities.

Affected Public Lands

Sixth Principal Meridian, Colorado

T. 1N., R. 76 W.,
Sec. 17, S½SE¼.
Approximately 3 acres.

FOR FURTHER INFORMATION CONTACT: The environmental assessment and other information concerning this proposed lease is available for review by contacting Madeline Dzielak at the Kremmling Resource Area Office at 1116 Park Avenue, PO Box 68, Kremmling, Colorado 80459, (970) 724–3437.

SUPPLEMENTARY INFORMATION: Publication of this notice in the **Federal Register** segregates the public land from the operation of the public land laws, including the mining laws, except for

conveyance under Section 302 of the Federal Land Policy and Management Act, for a period of two years from the date of publication of this notice. The segrative effect shall terminate upon issuance of a lease, upon rejection of the application, or two years from the date of publication of this notice.

For a period of 45 days from the date of publication of this notice, interested parties may submit comments to the District Manager, Craig District Office, Bureau of Land Management, 455 Emerson Street, Craig, Colorado 81625. Any adverse comments will be evaluated by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Dated: June 7, 1995.

Robert W. Schneider,

Associated District Manager.

[FR Doc. 95–14735 Filed 6–16–95; 8:45 am]

BILLING CODE 4310–JB–M

[CO–010–1430–01; COC57864, COC58080]

Realty Action: Recreation and Public Purposes (R&PP) Act; Classification in Eagle County, Colorado

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of realty action.

SUMMARY: In response to an application from the McCoy Wildcats (a ball team) (C–57864) and the McCoy Community Cemetery Association, (C–58080), McCoy, Colorado, the following public lands have been examined and found suitable for classification for lease and/or conveyance to those entities under the provisions of the Recreation and Public Purposes Act. A portion of the lands are currently occupied by the McCoy Community Cemetery.

Affected Public Lands

Sixth Principal Meridian, Colorado

T. 2 S., R. 83 W.,
Sec. 5, portions of Lots 19 and 20.

The affected public lands (6 acres) would be leased to the McCoy Wildcats for a 20-year period, with the option to renew the lease and the option to patent. Public lands (3.6145 acres) would be patented to the McCoy Community Cemetery Association, upon payment of 50% of the fair market value, as determined by appraisal.

FOR FURTHER INFORMATION CONTACT: The environmental assessment and other information concerning the proposed lease and/or conveyance is available for review by contacting Madeline Dzielak at the Kremmling Resource Area Office at 1116 Park Avenue, P.O. Box 68, Kremmling, Colorado 80459, (970) 724–3437.

SUPPLEMENTARY INFORMATION: Publication of this notice in the **Federal Register** segregates the public land from the operation of the public land laws including the mining laws, except for conveyance under the Recreation and Public Purposes Act under Section 212 of the Federal Land Policy and Management Act, for a period of two years from the date of publication of this notice. The segregative effect shall terminate upon issuance of a lease and/or patent, upon rejection of the application, or two years from the date of publication of this notice.

The following reservations, terms and conditions will be made in a patent issued for the public lands included in the McCoy Community Cemetery:

1. A reservation to the United States of a right-of-way for ditches and canals constructed by the authority of the United States, pursuant to the Act of August 30, 1890 (43 U.S.C. 945).
2. Those rights for powerline purposes as have been granted to Yampa Valley Electric, it successors and assigns, by right-of-way Colorado 53546 under the authority of Title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C.)
3. The provisions of the Recreation and Public Purposes Act amended and to all applicable regulations of the Secretary of the Interior.
4. No portion of the land covered by such patent shall under any circumstances revert to the Untied States.

For a period of 45 days from the date of publication of this notice, interested parties may submit comment to the District Manager, Craig District Office, Bureau of Land Management, 455 Emerson Street, Craig, Colorado 81625. Interested parties should indicated if they are commenting on the patent for the McCoy Community Cemetery or the lease for the McCoy Wildcats. Any adverse comments will be evaluated by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Dated: June 8, 1995.

Robert W. Schneider,

Associated District Manager.

[FR Doc. 95–14734 Filed 6–16–95; 8:45 am]

BILLING CODE 4310–JB–M

[MT–930–1430–01; MTM 83716]

Segregation of Parcel 1 Lands, Crow Boundary Settlement Act of 1994; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This order segregates approximately 2,051 acres of public lands from surface entry and mining to facilitate completion of the requirements of the Crow Boundary Settlement Act of 1994 (25 U.S.C. 1776).

EFFECTIVE DATE: June 19, 1995.

FOR FURTHER INFORMATION CONTACT: John Kwiatkowski, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2914.

The purpose of Crow Boundary Settlement Act of 1994 was to settle the 107th Meridian boundary dispute created by the erroneous survey of the eastern boundary of the Crow Indian Reservation made by the Federal Government.

1. Upon publication of this Notice of Segregation in the **Federal Register**, the following described lands will be segregated from surface entry and mining:

Principal Meridian, Montana

T. 6 S., R. 38 E.,
Sec. 24, lot 4;
Sec. 25, lot 1.
T. 7 S., R. 38 E.,
Sec. 25, lots 1 to 4, inclusive.
T. 9 S., R. 38 E.,
Sec. 13, lot 8;
Sec. 36, lots 1, 4, 5, and 8, SW¼NE¼, and W½SE¼.
T. 10 S., R. 38 E.,
Sec. 1, lot 7.
T. 7 S., R. 39 E.,
Sec. 30, lot 1;
Sec. 31, lots 3 and 4.

2. The following described lands will be segregated from mining:

T. 6 S., R. 38 E.,
Sec. 1, lots 1, 2, and 5, and SE¼SE¼;
Sec. 13, lots 2 and 3, SE¼NE¼ and E½SE¼;
Sec. 25, lots 2, 3, and 4.
T. 7 S., R. 38 E.,
Sec. 1, lots 1, 2, and 3;
Sec. 12, lots 1 to 4, inclusive, and E½E½.
T. 8 S., R. 38 E.,
Sec. 2, lots 1, 2, 6, 7, and 10, SE¼NE¼, and E½SE¼;
Sec. 11, lot 1, NE¼NE¼, and SE¼SE¼;
Sec. 13, E½NW¼;
Sec. 23, lots 4 and 5;
Sec. 25, N½NW¼, S½SW¼, NW¼NE¼, and SW¼SE¼.
T. 10 S., R. 38 E.,
Sec. 1, lot 1 and NW¼NE¼.
T. 6 S., R. 39 E.,
Sec. 6, lots 3 and 2;
Sec. 31, lot 4 and SE¼SW¼.
T. 7 S., R. 39 E.,
Sec. 6, SE¼NW¼ and NW¼SE¼;
Sec. 7, lot 1;
Sec. 18, NE¼NW¼ and NW¼NE¼;
Sec. 30, W½SE¼.

The segregative effect of this notice will terminate upon completion of the requirements of the Act. Notice of completion will be published in the **Federal Register.**

Dated: June 8, 1995.

Thomas P. Lonnie,

Deputy State Director, Division of Resources.

[FR Doc. 95–14913 Filed 6–16–95; 8:45 am]

BILLING CODE 4310–DN–P

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*):

PRT–803589

Applicant: Chicago Zoological Park, Brookfield, Illinois

Collection and retainment of live wood storks, *Mycteria americana*, rescued from abandoned colonies in Everglades National Park, for scientific purposes, educational purposes, and for the purposes of enhancement of propagation and survival of the species.

PRT–803587

Applicant: Burns and McDonnell, Inc., a consulting firm based in Kansas City, Missouri.

Perform population census work on the endangered American burying beetle, *Nicrophorus americanus*, for purposes of enhancement of survival of the species.

Written data or comments on any of these applications should be submitted to: Regional Permit Coordinator, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 210, Atlanta, Georgia 30345. All data and comments must be received within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 210, Atlanta, Georgia 30345 (Attn: Permit Coordinator). Telephone: 404/679–7110; Fax: 404/679–7280.

Dated: June 12, 1995.

Noreen K. Clough,

Regional Director

[FR Doc. 95–14868 Filed 6–16–95; 8:45 am]

BILLING CODE 4310–55–P

Availability of an Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of the availability of an environmental assessment; request for comments.

SUMMARY: The purpose of this Notice is to make available to the public an environmental assessment regarding the release in the United States of three nonindigeneous insects *Galerucella calmariensis*, *Galerucella pusilla*, and Hylobius transversovittatus. The purpose of the release is to reduce and control *Lythrum salicaria* on Service-managed wetlands and to assist the States to reduce and control purple loosestrife on non-Service wetlands. These insects are not native to North America.

The Service proposes to release these three insect species on Service and other lands in the United States so they can contribute to the biological control of purple loosestrife (*Lythrum salicaria*), an introduced weed.

The primary reason for releasing these three insect species as a tool for purple loosestrife control is to lessen the negative environmental impacts caused by purple loosestrife infestations themselves and the methods used currently to control the week plant. The intended result of the proposed action is to cause positive environmental impacts.

DATES: Written comments on the Environmental Assessment should be received on or before July 12, 1995.

ADDRESSES: Comments regarding this Environmental Assessment should be addressed to Robert Schallenberger, Chief, Division of Refuges, U.S. Fish and Wildlife Service, 600 ARLSQ, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sean Furniss, Refuge Program Specialist, or Howard Schlegel, Forester, Division of Refuges, U.S. Fish and Wildlife Service, 600 ARLSQ, 1849 C Street NW., Washington, DC 20240 (703) 358–2043.

SUPPLEMENTARY INFORMATION: An Environmental Assessment (EA) was prepared that addressed three alternative actions for the Service's management of the introduced weed plant purple loosestrife (*Lythrum salicaria*). Purple Loosestrife has impacted North American wetland ecosystems by changing the structure, function, and productivity of the wetlands. The plant forms dense monoculture stands, sometimes thousands of acres in size, that displace native vegetation and threaten the biotic integrity of wetland ecosystems. The loss of plant species richness and diversity has eliminated natural foods and cover essential to many wetland wildlife species. This has altered the wetland habitat necessary to fulfill the purposes for which many wildlife refuges were established.

Conventional control methods are ineffective, costly, and require continuous long term maintenance. The release of the subject biological agents is intended to facilitate use of self-perpetuating biological controls. If the three insects in question become established, they would provide continuous control of the plant without further human actions. This would reduce current dependency on the rather non-effective and costly actions of mechanical methods, fire, water manipulations, and herbicide used to control loosestrife. If not reduced in volume and controlled, the plant will continue to expand and degrade wetlands nationwide by replacing native plant species in already stressed and declining wetland environments.

In addition to the proposed action, the Service also considered the alternative of continuing current management of the plant as well as the alternative of using two previously approved species of beetles for control of the purple loosestrife on Service lands. The selected alternative is the proposed action of releasing the three insects, in addition to the two previously approved species, to develop a continuous biological control of the plant.

Dated: June 14, 1995.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 95–14905 Filed 6–16–95; 8:45 am]

BILLING CODE 4310–55–M

Notice of Availability and Notice of Public Hearing on a Draft Environmental Impact Statement (DEIS)

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior, Fish and Wildlife Service has prepared a draft

environmental impact statement (DEIS) on the Rocky Mountain Arsenal National Wildlife Refuge Comprehensive Management Plan, Adams County, Colorado. The DEIS describes four alternatives for managing the Refuge, and discloses each alternative's environmental effects. A public hearing will be held to receive comments from interested agencies, organizations and individuals on the analysis contained in the DEIS.

DATES: Written comments concerning the analysis will be accepted August 3, 1995 at the address below.

A public meeting will be held on June 27, 1995 at 7 p.m. at the location indicated below.

ADDRESSES: Copies of the DEIS may be reviewed at the following locations:

Rocky Mountain Arsenal National Wildlife Refuge, Building 613, Commerce City, CO 80022–1748
Fish and Wildlife Service Regional Office, 134 Union Blvd, Lakewood, Colorado 80225
Denver Public Library-Central, 1357 Broadway, Denver, Colorado
Denver Public Library-Montbello, 12955 Albrook Drive, Denver, Colorado
Commerce City Public Library, 72nd and Monaco, Commerce City, Colorado
Public Meeting Red Lion Hotel, 3203 Quebec Street, Denver, CO 80207.

FOR FURTHER INFORMATION CONTACT: Dave Shaffer, Planning Coordinator, (303) 289–0232.

SUPPLEMENTARY INFORMATION: The Rocky Mountain Arsenal National Wildlife Refuge Act of 1992 (Public Law 102–402) establishes the Rocky Mountain Arsenal as a National Wildlife Refuge following environmental cleanup, and provided authority for the Fish and Wildlife Service to manage the area as if it were a National Wildlife Refuge during the cleanup process. Pursuant to the Department of Interior's Departmental Manual implementing the National Environmental Policy Act, the Fish and Wildlife Service is preparing a Comprehensive Management Plan for the Refuge and an Environmental Impact Statement on the Plan. The Plan will guide the development of the Rocky Mountain Arsenal National Wildlife Refuge. Ray Rauch, Project Leader, will be the responsible official. The Fish and Wildlife Service believes it is important to give reviewers notice at this early stage of guidance provided by several court rulings related to public participation in the environmental review process. Reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. Judicial review may waive or dismiss objections that could have been raised at the draft environmental impact statement stage, but that were not raised until after completion of the final environmental impact statement.

Terry T. Terrell,

Acting Regional Director, Region 6, Denver, Colorado.

[FR Doc. 95–13624 Filed 6–16–95; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Missouri National Recreational River Advisory Group

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Missouri National Recreational River Advisory Group. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

Meeting Date and Time: Wednesday, July 12, 1995; 2:00 p.m.

ADDRESS: Community Services Center, 605 8th Street, Springfield, South Dakota

Agenda topics include:

1. Discussion of the 39-mile planning team meeting held in Wagner, South Dakota on June 14 and 15, 1995.
2. The opportunity for public comment and proposed agenda, date, and time, of the next Advisory Group meeting.

The meeting is open to the public. Interested persons may make oral/written presentation to the Commission or file written statements. Requests for time for making presentations may be made to the Superintendent prior to the meeting or to the Chair at the beginning of the meeting. In order to accomplish the agenda for the meeting, the Chair may want to limit or schedule public presentations.

The meeting will be recorded for documentation and a summary in the form of minutes will be transcribed for dissemination. Minutes of the meeting will be made available to the public after approval by the Commission members. Copies of the minutes may be requested by contacting the Superintendent. An audio tape of the meeting will be available at the headquarters office of the Niobrara/Missouri National Scenic Riverways in O'Neill, Nebraska.

SUPPLEMENTARY INFORMATION: The Advisory Group was established by the law that established the Missouri National Recreational River, Public Law 102–50. The purpose of the group, according to its charter, is to advise the Secretary of the Interior on matters pertaining to the development of a management plan, and management and operation of the Recreational River. The Missouri National Recreational River is the 39-mile free flowing segment of the Missouri from Fort Randall Dam to the vicinity of Springfield in South Dakota.

FOR FURTHER INFORMATION CONTACT: Warren Hill, Superintendent, Niobrara/Missouri National Scenic Riverways, P.O. Box 591, O'Neill, Nebraska 68763–0591, 402–336–3970.

Dated: June 9, 1995.

William W. Schenk,

Field Director.

[FR Doc. 95–14940 Filed 6–16–95; 8:45 am]

BILLING CODE 4310–70–P

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 523]

Railroad Cost of Capital—1994

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision.

SUMMARY: On June 16, 1995, the Commission served a decision to update its estimate of the railroad industry's cost of capital for 1994. The composite cost of capital rate for 1994 is found to be 12.2%, based on a current cost of debt of 7.9%, a cost of common equity capital of 13.8%, a cost of preferred equity capital of 4.6%, and a 23.9% debt, 74.3% common equity, 1.8% preferred equity capital structure mix. The cost of capital finding made in this proceeding will be used in a variety of Commission proceedings.

EFFECTIVE DATE: This action is effective June 16, 1995.

FOR FURTHER INFORMATION CONTACT: Leonard J. Blistein, (202) 927–6171. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: The cost of capital finding in this decision shall be used to evaluate the adequacy of railroad revenues for 1994 under the standards and procedures promulgated in *Standards for Railroad Revenue Adequacy*, 3 I.C.C.2d 261 (1986). This finding may also be used in other Commission proceedings such as the prescription of maximum reasonable rate levels and proposed abandonments of rail lines. Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, 1201 Constitution Avenue NW., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Environmental and Energy Considerations

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

Pursuant to 5 U.S.C. 605(b), we conclude that our action in this proceeding will not have a significant economic impact on a substantial number of small entities. The purpose and effect of this action are to update the annual railroad industry cost of capital finding by the Commission. No new reporting or other regulatory requirements are imposed, directly or indirectly, on small entities.

Authority: 49 U.S.C. 10704(a).

Decided: June 5, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretory.

[FR Doc. 95–14896 Filed 6–16–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) the agency from number, if any, and the applicable component of the Department sponsoring the collection.

(3) who will be asked or required to respond, as well as a brief abstract;

(4) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) an estimate of the total public burden (in hours) associated with the collection; and

(6) an indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of you intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division Suite 850, WCTR, Washington, DC 20530.

New Collection

(1) COPS Department Initial Report.

(2) COPS 012/01. Office of Community Oriented Policing Services, United States Department of Justice.

(3) Primary: State, Local or Tribal Government. Others: None. The COPS Department Initial Report will collect basic information from all COPS grant recipients concerning characteristics of their sworn workforce and community policing activities at the commencement of the COPS grant period for each recipient. The information collected will be used to establish a baseline for monitoring the progress of each recipient in implementing community policing with COPS funds.

(4) 8,100 annual respondents at 1.00 hours per response.

(5) 12,150.25 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: June 13, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–14883 Filed 6–16–95; 8:45 am]

BILLING CODE 4410–21–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35 and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) the title of the form/collection;

(2) the agency for, number, if any, and the applicable component of the Department sponsoring the collection.

(3) who will be asked or required to respond, as well as a brief abstract;

(4) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) an estimate of the total public burden (in hours) associated with the collection; and

(6) an indication as to whether Section 3504(h) of Pubic Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill, on (202) 395–740 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as son as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

New Collection

(1) COPS Officer Progress Report.

COPS 013/01. Office of Community Oriented Policing Services, United States Department of Justice.

(3) Primary: State, Local or Tribal Government. Other None. The COPS Officer Progress Report will be used to collect information concerning the basic characteristics and processional activities of each officer hired or rehired with COPS funds. COPS grant recipients will submit a COPS Officer Progress Report with COPS funds. COPS grant recipients will submit a COPS Officer Progress Report (for each officer hired or rehired) on a semiannual basis. The

information will be used to monitor the progress of recipients in implementing community policing.

(4) 8,100 annual respondents at 3.00 hours per response.

(5) 24,300 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: June 13, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–14884 Filed 6–16–95; 8:45 am]

BILLING CODE 4410–21–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) the title of the form/collection;

(2) the agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) who will be asked or required to respond, as well as a brief abstract;

(4) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) an estimate of the total public burden (in hours) associated with the collection; and

(6) an indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Application for Stay of Deportation.

(2) Form I–246. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals and households. Other: None. The information collection on this form will be used by the Immigration and Naturalization Service to determine the eligibility of the applicant for a stay of deportation.

(4) 2,500 annual respondents at .5 hours per response.

(5) 1,250 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this items is encouraged.

Dated: June 13, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–14885 filed 6–16–95; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) the title of the form/collection;

(2) the agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) who will be asked or required to respond, as well as a brief abstract;

(4) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) an estimate of the total public burden (in hours) associated with the collection; and

(6) an indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB review and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Baggage and Personal Effects of Detained Aliens.

(2) Form I–43. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals and households. Others: None. This Form is used by the arresting officer to ensure that the alien is afforded a reasonable opportunity to collect his/her property. The Immigration and Naturalization Service also uses this form to protect the government from fraudulent claims.

(4) 600,000 annual respondents at .017 hours per response.

(5) 10,200 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: June 13, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–14886 Filed 6–16–95; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) the title of the form/collection;

(2) the agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) who will be asked or required to respond, as well as a brief abstract;

(4) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) an estimate of the total public burden (in hours) associated with the collection; and

(6) an indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division, Suite 850, WCTR. Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Registration for Classification As Refugee.

(2) Form I–590. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals and households. Others: None. The Form I–590 provides a uniform methods for applicants to apply for refugee status an contains the information needed in order to adjudicate such applications.

(4) 150,000 annual respondents at .583 hours per response.

(5) 87,450 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: June 13, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–14887 Filed 6–16–95; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35 and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

New Collection

(1) COPS Annual Department Report.

(2) COPS 011/01. Office of Community Oriented Policing Services, United States Department of Justice.

(3) Primary: State, Local or Tribal Government. Others: None. The COPS Annual Department Report will be collected annually to monitor the progress of COPS grant recipients in implementing community policing through the use of officers hired or rehired with COPS funds. The information collected will be used to ensure appropriate progress and identify grant recipients in need of additional training and technical assistance in implementing community policing.

(4) 8,100 annual respondents, at 3.00 hours per response.

(5) 24,300 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: June 13, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–14894 Filed 6–16–95; 8:45 am]

BILLING CODE 4410–21–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–31,085]

Blind Design, Inc., San Diego, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 30, 1995 in response to a worker petition which was filed on May 30, 1995 on behalf of workers at Blind Design, Incorporated, San Diego, California.

The petitioning group of workers had filed a petition for a company facility in Tempe, AZ (TA–W–31,084). After a conversation with one of the petitioners it was discovered that this is the only location that they intended to cover with the petition, not the company headquarters or plant in San Diego. Under the law, workers can only file for the location in which they worked. Further discussion with the company's Chief Financial Officer, revealed that the locations in San Diego did not produce the same product as the Tempe, AZ location. Furthermore, there have been no layoffs at either of the San Diego facilities to date. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 6th day of June, 1995.

Victor J. Trunzo,

Program Manager, Policy ond Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–14925 Filed 6–16–95; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (P.L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(a) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment after December 8, 1993 (date of enactment of P.L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of OTAA at the U.S. Department of Labor (DOL) in Washington, D.C., provided such request is filed in writing with the Director of OTAA not later than June 29, 1995.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of OTAA at the address shown below not later than June 29, 1995.

Petitions filed with the Governors are available for inspection at the Office of the Director, OTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C., this 9th day of June, 1995.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/workers/firm)	Location	Date received at governor's office	Petition No.	Articles produced
Boskovich Farms Inc.; Hemet & Perris (HMNAC).	Oxnard, CA	4/10/95	NAFTA–00427	Onion fields.
Stetson Cedar Products (Co.)	Forks, WA	4/10/95	NAFTA–00428	Red cedar shingles.
Black Box Corporation; Manufacturing Div. (Wkrs).	Pittsburg, PA	4/11/95	NAFTA–00429	Cables and switches.
Softhard Systems Inc. (Co.)	Houston, TX	4/13/95	NAFTA–00430	Computer hardware and software.
Superior Propane Inc.; Skelgas A.S. Inc. (Co.).	Oak Brook, IL	4/12/95	NAFTA–00431	Propane.
Names Inc. (Wkrs)	Allentown, PA	4/14/95	NAFTA–00432	Children's clothing.
Anchor Glass Containter (GMPW)	Zion, IL	4/14/95	NAFTA–00433	Glass containers.
Marconi Technologies Inc. (Wkrs)	Lancaster, PA	4/14/95	NAFTA–00434	Cable and wire harness assemblies.
Bowman Lease Service, Inc. (Co.)	Carrizo Springs, TX	4/17/95	NAFTA–00435	Machines.
Louisiana Pacific Corporation; Northern Div. (Co.).	Hayden Lake, ID	4/17/95	NAFTA–00436	Lumber products (i.e., veneer, joist, particle board, dimensional lumber products).
Dia-Netics, Inc.; Mocoil (Co.)	Marionville, MO	4/17/95	NAFTA–00437	Miniature electric coils for relay systems.
Superior Technologies, Inc.; Paris Texas Div. (IBEW).	Paris, TX	4/18/95	NAFTA–00438	Electrical waterbases and enclosures.
Scotty's Fashions; Lewistown Plant (ILGWU)	Lewistown, PA	4/19/95	NAFTA–00439	Ladies' jackets, vests, and slacks.
General Electric Company; Motors and Transformers Div. (IUE).	Fort Wayne, IN	4/18/95	NAFTA–00440	D.C. motors and transformers.
Laidlaw Corporation; Metropolis Plant (Wkrs)	Metropolis, IL	4/17/95	NAFTA–00441	Fly swatters.
Armstrong Pumps Inc. (Wkrs)	N. Tonawanda, NY	4/21/95	NAFTA–00442	Commercial pumps; pressure booster systems and sump and sewage.
Studley Products, Inc. (Co.)	Newark, NJ	4/26/95	NAFTA–00443	Bags (i.e., vacuum, lawn mower, and air pollution bags).
Hagger Clothing Co.; Robstown Mfg. Co. (Co.).	Robstown, TX	4/27/95	NAFTA–00444	Men's pants.
Harvard Industries; Elastic Stop Nut Div. (UAW).	Union, NJ	4/28/95	NAFTA–00445	Aerospace fasteners.
Quebecor Printing, Inc.; Buffalo (Wkrs)	Depew, NY	4/28/95	NAFTA–00446	Printed material.
Debmar Knitwear Ltd. (ILGWU)	Hauppage, NY	4/28/95	NAFTA–00447	Men's and women's sweaters.
American Standard Apparel Corp.; Kan-Trak-Ter Division (Wkrs).	Williamsport, PA	5/01/95	NAFTA–00448	Women's apparel.
Palliser Furniture; Assembly, Upholstery, Sewer (Wkrs).	Fargo, ND	5/01/95	NAFTA–00449	Leather upholstered chairs.

APPENDIX—Continued

Petitioner (Union/workers/firm)	Location	Date received at governor's office	Petition No.	Articles produced
Gist Brocades Food Inc. (Wkrs)	East Brunswick, NJ	5/01/95	NAFTA–00450	Compressed yeast.
FHF Apparel Corp.; of 500 Fashion Group (ACTW).	Miami, FL	5/04/95	NAFTA–00451	Men's suits and sportcoats.
Rogerson Aircraft Corp.; Rogerson Hiller/ Aerocomposites (Wkrs).	Port Angeles, WA	5/04/95	NAFTA–00452	Aerocomposites.
Big Sky Washington (Wkrs)	Tacoma, WA	5/04/95	NAFTA–00453	Sportswear.
Riley Stoker Corp.; Erie Plant (BMU)	Erie, PA	5/04/95	NAFTA–00454	Boilers.
ADA Block Company (Wkrs)	Ada, OK	5/05/95	NAFTA–00455	Blocks.
Noll Printing Inc.; Commercial Sales (GCIU)	Huntington, IN	5/08/95	NAFTA–00456	Commercial printing.
Lockheed; Fort Worth Div. (IAM)	Fort Worth, TX	5/01/95	NAFTA–00457	Wiring harnesses.
The Travelers (Wkrs)	Voorhees, NJ	5/15/95	NAFTA–00458	Medical claims.
Usher Products International, Inc. (Wkrs)	San Antonio, TX	5/15/95	NAFTA–00459	Candy.
Blind Design (Wkrs)	Tempe, AZ	5/15/95	NAFTA–00460	Mini blinds.
King Design Inc.; Production (Wkrs)	Eugene, WA	5/15/95	NAFTA–00461	Commercial interior graphic design products.
Robert Shaw Control Company; Grayson Div. (Co.).	El Paso, TX	5/17/95	NAFTA–00462	Control valve assemblies.
Ohio Edison Co.; W.H. Sammis Plant (UWUA).	Stratton, OH	5/18/95	NAFTA–00463	Electricity.
Penn Ventilator; Keyser Div. (SMWU)	Keyser, WV	5/18/95	NAFTA–00464	ATC, mechanical units, B-units.
Owens-Brockway Glass Container Corp.; Plant #28 (AFGWU).	Pomona, CA	5/18/95	NAFTA–00465	Glass containers.
AMSCO International (Co.)	Erie, PA	5/16/95	NAFTA–00466	Basil washing equipment.
Vernitron; VRN International (Wkrs)	St. Petersburg, FL	5/22/95	NAFTA–00467	Electronic components ie. trimmers.
Bear Cat Logging Inc.; Logging & Trucking (Wkrs).	Klamath Falls, OR	5/19/95	NAFTA–00468	Logs and timber.
Planergy New York Inc. (Wkrs)	East Syracuse, NY	5/23/95	NAFTA–00469	Electricity.
Seagull Energy Corporation; Mid Continent Region (Wkrs).	Amarillo, TX	5/23/95	NAFTA–00470	Oil and gas.
Tippens Apparel Trim, Inc. (Wkrs)	Conley, GA	5/24/95	NAFTA–00471	Apparel belts.
Chevron; West State Inc. (BOILERS)	Portland, OR	5/24/95	NAFTA–00472	Crude oil.
Pacific Lumber & Shipping Co.; (All Divisions) (CARPENTERS).	Seattle, WA	5/24/95	NAFTA–00473	Lumber.
Scout Trucking Company (Co.)	Spring City, PA	5/11/95	NAFTA–00474	Trucking.
Dante Fashions Inc. (ILGWU)	Jeannette, PA	5/24/95	NAFTA–00475	Women's skirts and slacks.
Esselte Pendaflex Corp. (GLIU)	Syracuse, NY	5/25/95	NAFTA–00476	Printed products (i.e., ledger sheets, columnar sheets, and columnar pads).
Crown Pacific L.P.; Colburn Unit (WOODWORK).	Sandpoint, ID	5/25/95	NAFTA–00477	Lumber.
Richs Products; Bakery Division (BC&T)	Dayton, OH	5/30/95	NAFTA–00478	Muffins.

[FR Doc. 95–14923 Filed 6–16–95; 8:45 am]
BILLING CODE 4510–30–M

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of May, 1995.

In order for an affirmative determination to be made and a

certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-30,898; CPC Vending, Inc., Greenville, TX

TA-W-30,955; Trinity Industries, Brownsville, PA

TA-W-30,991; Paragon Trade Brands, Inc., City of Industry (LaPuente), CA

TA-W-30,882; Fisher & Porter Electronics, Vineland, NJ

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA-W-30,936; Continental Airlines, Denver, CO

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-30,975; Holliburton, Midland, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-30,982; Linea Aeropostal Venezolana, Miami, FL

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-30,974; Tidewater Compression Service, Inc., Houston, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-30,951; Interkal, Inc., Kalamazoo, MI

The predominate reason for the layoff of workers at Interkal, Inc., Kalamazoo, MI was a corporate decision to move one of the subject firms product lines (Platform seating) to a new affiliated facility in Greensville, SC.

TA-W-30,978; Scout Trucking Co., Spring City, PA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-30,897; Stewart Warner Instrument Corp., El Paso, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

Affirmative Determinations for Worker Adjustment Assistance

TA-W-30,889; Decorp, Inc., Carrollton, TX

A certification was issued covering all workers separated on or after March 24, 1994.

TA-W-30,921; Forbo Industries, Inc., Hazleton, PA

A certification was issued covering all workers separated on or after April 17, 1994.

TA-W-30,903; Ullenberg Corp., Chattanooga, TN

A certification was issued covering all workers separated on or after March 23, 1994.

TA-W-30,969; Cooper Industries, Inc., Cooper Power Systems Div., Coraopolis, PA

A certification was issued covering all workers separated on or after April 17, 1994.

TA-W-31,028; Zwickel, Inc., (including workers Leased from Out Staff), Philadelphia, PA

A certification was issued covering all workers separated on or after April 24, 1994.

TA-W-31,060; Norcross Footwear, Inc., Nashua, NH

A certification was issued covering all workers separated on or after May 10, 1994.

TA-W-30,947; Brown Shoe Co., Jeff Vander-Lou Plant, St. Louis, MO

A certification was issued covering all workers separated on or after April 11, 1994.

TA-W-30,880; GE Power Systems, Schenectody, NY

A certification was issued covering all workers separated on or after November 19, 1993.

TA-W-30,968; Superior Technology, Inc., Paris, TX

A certification was issued covering all workers separated on or after April 12, 1994.

TA-W-30,869; Ochoco Lumber Co., Prineville, OR

A certification was issued covering all workers separated on or after March 15, 1994.

TA-W-31,013; Marie Coats & Suite, Inc., Clifton, NJ

A certification was issued covering all workers separated on or after December 21, 1993.

TA-W-30,925 & A; Collegeville Engineering, Zionsville, PA and Norristown, PA

A certification was issued covering all workers separated on or after April 3, 1994.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103-182) concerning transitional adjustment assistance hereinafter called (NAFTA-TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA-TAA issued during the months of May, 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA-TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(A) that sales or production, or both, of such firm or subdivision have decreased absolutely,

(B) that imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased.

(C) That the increase in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm of subdivision; or

(2) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA-TAA

NAFTA-TAA-00429; Black Box Corp., Lawrence, PA

The investigation revealed that criteria (3) and (4) were not met. There was no shift in production from Black Box Corp, Lawrence, PA to Mexico or Canada during the period under investigation, nor did the subject firm import from Mexico or Canada any articles that are like or directly competitive with computer supplies.

NAFTA-TAA-00432; Names, Inc., Allentown, PA

The investigation revealed that criteria (3) and (4) were not met. Survey results revealed that customers did not import a significant proportion of children's clothing from Mexico or Canada.

NAFTA-TAA-00438; Superior Technology, Inc., Paris, TX

The investigation revealed that criteria (3) and (4) were not met. The subject firm reduced imports from Canada of articles that are like or directly competitive with electrical meter sockets.

NAFTA-TAA-00329; Swift Adhesives (Reichold Chemical, Inc.) St. Joseph, MO

The investigation revealed that criteria (3) and (4) were not met. The investigation findings showed that customers imports from Canada or Mexico did not have a negative impact on the subject firm during the periods under investigation.

NAFTA-TAA-00431; Skelgas Propane, Inc., Skelgas A.S., Inc, Oak Brook, IL

The investigation revealed that the workers of Skelgas Propane, Inc., Skelgas A.S., Inc., Oak Brook, IL do not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

NAFTA-TAA-00323; LaVelle Powder Co., Inc., Butte, MT

The investigation revealed that the workers of LaVelle Powder Co., Inc., Butte, MT do not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

Affirmative Determinations NAFTA-TAA

NAFTA-TAA-00430; Softhard Systems, Inc., Houston, TX

A certification was issued covering all workers at Softhard Systems, Inc., Houston TX separated on or after April 13, 1994.

NAFTA-TAA-00434; Marconi Technologies, Inc., Lancaster, PA

A certification was issued covering all workers at Marconi Technologies, Inc., Lancaster, PA separated on or after April 14 1994.

NAFTA-TAA-00433 & A; Anchor Glass Contoiner Corp., Gurnee, IL and Huntington Park, CA

A certification was issued covering all workers at Anchor Glass Container Corp., Gurnee, IL and Huntington Park, CA separated on or after March 31, 1994.

NAFTA-TAA-00388; West Pac Cedar Products, Inc., Humptulips, WA

A certification was issued covering all workers at West Pac Cedar Products, Inc., Humptulips, WA separated on or after March 9, 1994.

NAFTA-TAA-00411; Anchor Hocking Packaging Co., Closure Div., Glassboro, NJ

A certification was issued covering all workers at Anchor Hocking Packaging Co., Closure Div., Glassboro, NJ separated on or after March 20, 1994.

NAFTA-TAA-00407; Summit Timber Co., Darrington, WA

A certification was issued covering all workers at Summit Timber Co., Darrington, WA separated on or after March 23, 1994.

NAFTA-TAA-00439 & A; Scotty's Fashions, Lewistown, PA and Kresgeville Manufacturing, Inc., Kresgeville, PA

A certification was issued covering all workers at Scotty's Fashions, Lewistown, PA and Kresgeville Manufacturing, Inc., Kresgeville, PA separated on or after April 19, 1994.

NAFTA-TAA-00437; Dia-Netics, Mocoil Div., Marionville, MO

A certification was issued covering all workers at Dia-Netics, Mocoil Div., Marionville, MO separated on or after April 17, 1994.

NAFTA-TAA-00436; Louisiana Pacific, Northern Div., Hayden Lake, ID & Operating at Following Other Locations: A; Belgrade, MY, B; Chilco, ID, C; Deerlodge, MT, D; Libby, MT, E; Moyie Springs, ID, F; Pilot Rock, OR, G; Priest River, ID, H; Rexburg, ID, I; Saratoga, WY, J; Tacoma, WA, K; Walden, Co, L; Walla Walla, WA.

A certification was issued covering all workers at the above mentioned locations, who became separated on or after April 12, 1994.

I hereby certify that the aforementioned determinations were issued during the month of May, 1995. Copies of these determinations are available for inspection in Room C-4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: May 26, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95-14926 Filed 6-16-95; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-30,889]

Decorp, Inc., A/K/A Kellwood Co., Carrollton, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on May 18, 1995, applicable to all workers of DeCorp, Incorporated, located in Carrollton, Texas. The notice will soon be published in the **Federal Register**.

New information received from the company shows that some of the workers at DeCorp, Incorporated had their unemployment insurance (UI) taxes paid to Kellwood Company.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of DeCorp, Incorporated who were adversely affected by increased imports.

The amended notice applicable to TA-W-30,889 is hereby issued as follows:

"All workers of DeCorp, Incorporated, a/k/a Kellwood Company, Carrollton, Texas who became totally or partially separated from employment on or after March 24, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 1st day of June 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95-14928 Filed 6-16-95; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-31, 045]

Engraph Label Group, Patton Division, Moorestown, NJ; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 22, 1995 in response to a worker petition which was filed on May 22, 1995 on behalf of workers at Engraph Label Group, Patton Division, Moorestown, NJ.

The petitioning group of workers had filed a petition for another facility in Delran, NJ (TA-W-31,044). After a conversation with one of the petitioners it was discovered that the Delran, NJ facility is the only location they intended to cover with the petition, not the company headquarters or plant in Moorestown, NJ. Under the law,

workers can only file a petition for the location in which they worked. Further discussion with James Searcy, the Vice-President of Finance and Administration, revealed that the plant in Moorestown did not produce the same product as the Delran facility, nor had there been any recent layoffs at the Moorestown facilities. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 7th day of June, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–14924 Filed 6–16–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,878]

Russell-Newman, Inc., A/K/A Russell-Newman Manufacturing, Stamford, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on May 4, 1995, applicable to all workers of Russell-Newman, Inc., Stamford, Texas. The notice was published in the **Federal Register** on May 17, 1995 (60 FR 26459).

New information received from the State Agency shows that some of the workers at Russell-Newman, Inc., had their unemployment insurance (UI) taxes paid to Russell-Newman Manufacturing.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Russell-Newman, Inc., who were adversely affected by increased imports.

The amended notice applicable to TA–W–30,878 is hereby issued as follows:

"All workers of Russell-Newman, Inc., a/k/a Russell-Newman Manufacturing, Stamford, Texas who became totally or partially separated from employment on or after March 17, 1994 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 1st day of June 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–14927 Filed 6–16–95; 8:45 am]

BILLING CODE 4510–30–M

Occupational Safety and Health Administration

Connecticut State Standards, Notice of Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State Plan, which has been approved in accordance with Section 18(c) of the Act and 29 CFR part 1902. On November 3, 1978, notice was published in the **Federal Register** (43 FR 51390) of the approval of the Connecticut Public Sector State Plan and the adoption of Subpart E to part 1956 containing the decision.

The Connecticut Public Sector only State Plan provides for the adoption of Federal standards as State standards after:

a. Publishing an intent to amend the State Plan by adopting the standard(s) in the Connecticut Law Journal.

b. Approval by the Commissioner of Labor and the Attorney General of the State of Connecticut.

c. Approval by the Legislative Regulation Review Committee, State of Connecticut.

d. Filing in the Office of the Secretary of State, State of Connecticut.

e. Publishing a notice that the State Plan is amended by adopting the standard(s) in the Connecticut Law Journal.

The Connecticut Public Sector State Plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under Section 6, of the Act.

By letter dated April 28, 1995, from Commissioner John E. Saunders, III, Connecticut Department of Labor, to John T. Phillips, Regional Administrator, and incorporated as part of the plan, the State submitted updated State standards identical to 29 CFR parts 1904, 1910, 1915, 1917, 1918, 1926 and 1928, and subsequent amendments thereto; as described below:

(1) Addition to 29 CFR parts 1910, 1915, 1917, 1918, 1926, and 1928, Retention of DOT Markings, Placards, and Labels; Final Rule (59 FR 36695, dated 7/19/94). This standard became effective on January 19, 1995, pursuant to Section 31–372 of the Connecticut General Statutes.

(2) Addition to 29 CFR part 1904, Reporting of Fatality or Multiple Hospitalization Incidents; Final Rule (59 FR 15594, dated April 1, 1995). This standard became effective on January 19, 1995, pursuant to Section 31–372 of the Connecticut General Statutes.

(3) Addition to 29 CFR parts 1910 and 1926, Safety Standards for Fall Protection in the Construction Industry; Final Rule (59 FR 40730, dated August 9, 1994). This standard became effective on February 23, 1995, pursuant to Section 31–372 of the Connecticut General Statutes.

(4) Addition to 29 CFR parts 1910, 1915, and 1926, Occupational Exposure to Asbestos; Final Rule and Corrections (59 FR 40964, dated 8/10/94, and 60 FR 11194, dated 3/1/95). This standard became effective on February 23, 1995, pursuant to Section 31–372 of the Connecticut General Statutes.

(5) Addition to 29 CFR part 1915, Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment; Final Rule and Corrections (59 FR 37816, dated 7/25/94, and 60 FR 14218, dated 3/16/95). This standard became effective on February 23, 1995, pursuant to Section 31–372 of the Connecticut General Statutes.

(6) Addition to 29 CFR parts 1910 and 1928, Logging Operations; Final Rule (59 FR 51672, dated 10/12/94). This standard became effective on April 19, 1995, pursuant to Section 31–372 of the Connecticut General Statutes.

2. Decision

OSHA has determined that the State's standards for Retention of DOT Markings, Placards, and Labels, Reporting of Fatality or Multiple Hospitalization Incidents, Safety Standards for Fall Protection in the Construction Industry, Occupational Exposure to Asbestos, Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment, and Logging Operations are identical to the comparable Federal standards, and therefore approves these standards.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, 133 Portland Street, Boston, Massachusetts, 02114; Office of the Commissioner, State of Connecticut, Department of Labor, 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109, and the OSHA Office of State Programs, Room N–3476, Third Street and Constitution Avenue, NW., Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Connecticut Public Sector Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason.

1. The standards were adopted in accordance with the procedural requirements of State law which included public comment, and further public participation would be repetitious.

This decision is effective on June 19, 1995.

Authority: Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667).

Signed at Boston, Massachusetts, this 11th day of May 1995.

John T. Phillips,

Regional Administrator.

[FR Doc. 95–14931 Filed 6–16–95; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (95–041)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that Modern Machine and Tool Co., Inc., of Newport News, Virginia, has applied for an exclusive license to practice the invention described and claimed in U.S. Patent No. 08/XXX,XXX, entitled "Six Component Force Balance Calibration System", which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license to Modern Machine and Tool Co., Inc., should be sent to Ms. Kimberly A. Chasteen, Patent Attorney, NASA Langley Research Center.

DATES: Reponses to this Notice must be received by August 18, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly A. Chasteen, NASA Langley Research Center, Mail Code 212, Hampton, Virginia 23681–0001; (804) 864–3227.

Dated: June 12, 1995.

Edward A. Frankle,

General Counsel.

[FR Doc. 95–14865 Filed 8–16–95; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL CAPITAL PLANNING COMMISSION

Intent To Hold Public Meeting

AGENCY: National Capital Planning Commission.

ACTION: Proposed construction and operation of a sports and entertainment arena in Washington, DC.; Notice of public meeting.

SUMMARY: In a Notice dated May 15, 1995 (60 FR 25930), the National Capital Planning Commission stated its intention to prepare an Environmental Impact Statement (EIS) for the proposed construction and operation of a new sports and entertainment arena in Washington, DC, pursuant to Section 106(2)(c) of the National Environmental Policy Act of 1969 (NEPA) as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508) and in accordance with Environmental Policies and Procedures implemented by the Commission. A Draft EIS was published on June 9, 1995.

The Commission has determined that it would be appropriate to hold a public meeting prior to the issuance of a final EIS. The public meeting will be held on Monday, July 17, 1995 at the DC Convention Center, at 900 9th Street NW., Room 10. Adequate signs will be posted to direct meeting participants. Representatives of the National Capital Planning Commission and District of Columbia Government will be available from 5 to 7 p.m. to discuss specific concerns. At 7 p.m. a short formal presentation will precede the public comments. It is important that Federal, regional, and local agencies, and other interested individuals and groups take this opportunity to respond to the concerns set out in the draft EIS. Anyone who wants to speak will be heard and anyone who so desires may sign up in advance by calling (202) 724–0174 or in person at the hearing. Speakers will be heard in the order of signing up. In the interest of time, each speaker will be asked to limit oral comments to five (5) minutes.

As noted in the **Federal Register** of June 16, 1995, copies of the draft EIS are available for inspection at the National Capital Planning Commission at 801 Pennsylvania Avenue NW., Suite 301 and Suite 1130 of One Judiciary Square at 441 4th Street, NW. As also noted, written comments on the Draft EIS must be postmarked by July 31, 1995 and sent to the National Capital Planning Commission.

FOR FURTHER INFORMATION CONTACT: National Capital Planning Commission, 801 Pennsylvania Avenue, NW., Suite 301, Washington, DC 20576. Attention: Ms. Sandra H. Shapiro, General Counsel, Phone: (202) 724–0174.

Sandra H. Shapiro,

General Counsel, National Capital Planning Commission.

[FR Doc. 95–14875 Filed 6–16–95; 8:45 am]

BILLING CODE 7502–02–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: National Endowment for the Humanities, National Foundation on the Art and the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisos of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended,

including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* July 12, 1995.
Time: 8:30 a.m. to 5:30 p.m.
Room 430.
Program: This meeting will review proposals submitted to the May 1, 1995 deadline in the Office of Challenge Grants, for projects beginning after December 1995.

2. *Date:* July 12, 1995.
Time: 8:30 a.m. to 5:30 p.m.
Room 415.
Program: This meeting will review applications submitted to Humanities Projects in Museums and Historical Organizations program, for projects beginning after June 2, 1995.

3. *Date:* July 11, 1995.
Time: 8:30 a.m. to 5:30 p.m.
Room 315.
Program: This meeting will review Fellowships for University Teachers applications in British Literature; Rhetoric; and Composition, submitted to the Division of Research Division, for projects beginning after January 1, 1996.

4. *Date:* July 14, 1995.
Time: 8:30 a.m. to 5:30 p.m.
Room 430.
Program: This meeting will review proposals submitted to the May 1, 1995 deadline in the office of Challenge Grants, for projects beginning after December 1995.

5. *Date:* July 17, 1995.
Time: 8:00 a.m. to 5:30 p.m.
Room 415.
Program: This meeting will review Fellowships for College Teachers applications in European History, submitted to the Division of Research Programs, for projects beginning after January 1, 1996.

6. *Date:* July 18, 1995.
Time: 8:00 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Fellowships for University Teachers applications in Comparative Literature; Germanic, Slavic, and Asian Languages and Literatures; and Linguistics, submitted to the Division of Research Programs, for projects beginning after January 1, 1996.

7. *Date:* July 18, 1995.
Time: 8:00 a.m. to 5:30 p.m.
Room: 415.
Program: This combines Fellowships for University Teachers and Fellowships for College Teachers meeting will review applications in Art History I, submitted to the Division of Research Programs, for projects beginning after January 1, 1996.

8. *Date:* July 18, 1995.
Time: 8:30 a.m. to 5:30 p.m.
Room: 430.
Program: This meeting will review proposals submitted to the May 1, 1995 deadline in the Office of Challenge Grants Programs, for projects beginning after December 1995.

9. *Date:* July 24, 1995.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Fellowships for University Teachers application in American History and Studies I, submitted to the Division of Research Programs, for projects beginning after January 1, 1996.

10. *Date:* July 24–25, 1995.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted to the Humanities Projects in Museums and Historical Organizations programs, submitted to the Division of Public Programs, for projects beginning after January 1, 1996.

11. *Date:* July 25, 1995.
Time: 8:00 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Fellowships for University Teachers application in Music, Dance, Theater & Film History and Criticism, submitted to the Division of Research Programs, for projects beginning after January 1, 1996.

12. *Date:* July 26, 1995.
Time: 8:00 a.m. to 5:30 p.m.
Room: 430.
Program: This meeting will review Fellowships for College Teachers applications in Music, Theater and Film, submitted to the Division of Research Programs, for projects beginning after January 1, 1996.

13. *Date:* July 27–28, 1995.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted to the Humanities Projects in Museums and Historical programs, submitted to the Division of Public Programs, for projects beginning after January 1, 1996.

14. *Date:* July 28, 1995.
Time: 8:00 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review Fellowships for College Teachers applications in American History I, submitted to the Division of Research Programs, for projects beginning after January 1, 1996.

15. *Date:* July 31, 1995.
Time: 8:00 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review Fellowships for College Teachers applications in Sociology, Psychology, and Education, submitted to the Division of Research Programs, for projects beginning after January 1, 1996.

16. *Date:* July 31, 1995.
Time: 8:30 a.m. to 5:30 p.m.
Room: 430.
Program: This meeting will review proposals submitted to the May 1, 1995 deadline in the Office of Challenge Grants Program, for projects beginning after December 1995.

David C. Fisher,
Advisory Committee Management Officer.
[FR Doc. 95–14888 Filed 6–16–95; 8:45 am]
BILLING CODE 7536–01–M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Arts in Education Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Partnership Advisory Panel (Arts in Education Section) to the National Council on the Arts will be held on June 28, 1995 from 10:30 a.m. to 1:30 p.m. This meeting will be held in Room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 10:30 a.m. to 11 a.m. for welcome and introductions and from 1 p.m. to 1:30 p.m. for a policy discussion.

The remaining portion of this meeting from 11 a.m. to 1 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994 this session will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5788.

Dated: June 13, 1995.
Yvonne M. Sabine,
Director, Office of Council and Panel Operations, National Endowment for the Arts.
[FR Doc. 95–19421 Filed 6–16–95; 8:45 am]
BILLING CODE 7537–01–M

Dance Advisory Meeting: Dance Company Grants Sections A&B

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Dance Company Grants Sections A & B) to the National Council on the Arts will be held on July 10–14, 1995. Panel A will meet on July 10–13, from 9:00 a.m. to 8:00 p.m. and Panel B will meet from 9:00 a.m. to 6:00 p.m. on July 14. This meeting will be held in Room M–07, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 9:00 a.m. to 1:00 p.m. July 14 for a policy discussion.

The remaining portions of this meeting from 9:00 a.m. to 8:00 p.m. on July 10–13 and from 2:00 p.m. to 6:00 p.m. on July 14 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994 these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5788.

Dated: June 13, 1995.
Yvonne M. Sabine,
Director, Office of Council and Panel Operations, National Endowment for the Arts.
[FR Doc. 95–14922 Filed 6–16–95; 8:45 am]
BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Investigator Financial Disclosure Policy

AGENCY: National Science Foundation.
ACTION: Delay of effective date.

SUMMARY: The National Science Foundation (NSF) is delaying the effective date of its final Investigator Financial Disclosure Policy (58 FR 33308) from June 28, 1995 to October 1, 1995. This change is necessary to maintain consistency with the Department of Health and Human Services' rule on the subject which will have an effective date of October 1, 1995.

EFFECTIVE DATE: The effective date of the NSF's final Investigator Financial Disclosure Policy is October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Christopher L. Ashley, Assistant General Counsel, National Science Foundation, 4201 Wilson Boulevard, Room 1265, Arlington, VA 22230 (703) 306–1060.

SUPPLEMENTARY INFORMATION: Paperwork Reduction Act Control Number 3145–0149.

On June 28, 1994, NSF published in the Federal Register a final Policy announcing revised award conditions relating to investigator financial disclosure. Those revised conditions require grantee institutions to maintain written and enforced policies on investigator conflict of interest. 59 FR 33308 (June 28, 1994).

NSF has been coordinating its Investigator Financial Disclosure Policy with the Public Health Service and the Office of the Secretary of the Department of Health and Human Services (HHS). At the same time NSF published its final Policy, HHS published a notice of proposed rulemaking also dealing with investigator conflicts. HHS received and reviewed public comments on that proposed rule and has not yet issued its final rule. To maintain consistency with HHS' rule and its anticipated effective date, NSF is now changing the effective date of its Investigator Financial Disclosure Policy to October 1, 1995.

Dated: June 13, 1995.
Lawrence Rudolph,
General Counsel.
[FR Doc. 95–14855 Filed 6–16–95; 8:45 am]
BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).
ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Revision.

2. The title of the information collection: Policy Statement, "Integrated Schedules".

3. The form number if applicable: Not applicable.

4. How often the collection is required: For those licensees who volunteer to participate, a one-time submittal of the integrated schedule program and the integrated schedule, and periodic updates of the integrated schedule.

5. Who will be required or asked to report: Nuclear Power Reactor Licensees.

6. An estimate of the number of responses: 43.

7. An estimate of the total number of hours required annually to complete the requirement or request: 2,400 hours (300 hours per each of eight licensees). In addition, there is a one-time burden of 900 hours (300 hours per each of 3 licensees) for submittal of the initial integrated schedule program.

8. An indication of whether Section 3504(h), P.L. 96–511 applies: Not applicable.

9. Abstract: The policy statement regarding the development of integrated schedules encourages, but does not require, licensees to develop integrated schedules. Those licensees who participate in this voluntary program will develop and submit an integrated schedule program, including prioritization methodology, an

integrated schedule, and periodic schedule updates. NRC uses the reported information to ensure that licensees are establishing realistic and timely implementation schedules.

Copies of the submittals may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC 20555–0001.

Comments and questions should be directed to the OMB Reviewer: Troy Hillier, Office of Information and Regulatory Affairs, (3150–0168), NEOB–10202, Office of Management and Budget, Washington, DC 20503. Comments can also be submitted by telephone at (202) 395–3084. The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 12th day of June 1995.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designoted Senior Official for Information Resources Management.

[FR Doc. 95–14877 Filed 6–16–95; 8:45 am]

BILLING CODE 7590–01–M

Licensing Support System Advisory Review Panel

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meeting.

SUMMARY: The Licensing Support System Advisory Review Panel (LSSARP) will hold its next meeting on July 6–7, 1995, in the Huron Room, Radisson Inn Green Bay, 2040 Airport Drive, Green Bay, Wisconsin. The meeting will be open to the pubic pursuant to the Federal Advisory Committee Act (Pub. L. 94–463. 86 Stat. 770–776).

AGENDA: The meeting will be held from 8:30 a.m. to 5:00 p.m. on Thursday, July 6, and from 9:00 a.m. to Noon, as needed, on Friday, July 7, 1995. The following agenda is planned:

1. LSS Administrator's Activity Report
   a. Status of NRC Senior Management Team's Review of LSS
   b. Update on Pilot Project Topic and Plan
   c. Status of Draft Initial NRC/DOE Memorandum of Understanding
   d. Participant Compliance Guidance
2. DOE Activity Report
   a. Application of Exclusion/Inclusion Criteria and Progress on Loading Existing Documents into Document Management System
   b. Update on DOE Issue Tracking and Decision Document Retrieval
   c. Electronic Capturing vs Scanning
3. Report of Technical Working Group on Review of LSS Level II Functional Requirements
4. Future Meeting Topics and Schedule

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission (NRC) established the LSSARP in 1989 to provide advice and recommendations to the NRC and to the Department of Energy (DOE concerning the design, development and operation of an electronic information management system, known as the Licensing Support System (LSS), which will contain information relevant to the Commission's future licensing proceeding for a geologic repository for the disposal of high-level radioactive waste. Membership on the Panel consists of representatives of the State and Local Governments of Nevada, the National Congress of American Indians, the nuclear industry, DOE, NRC and other agencies of the Federal government which have experience with large electronic information management systems.

FOR FURTHER INFORMATION CONTACT: John C. Hoyle, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555: telephone 301–415–1969.

PUBLIC PARTICIPATION: Interested persons may make oral presentations to the panel or file written statements. Requests for oral presentations should be made to the contact person listed above as far in advance as practicable so that appropriate arrangements can be made.

Dated: June 13, 1995.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 95–14882 Filed 6–16–95; 8:45 am]

BILLING CODE 7590–01–M

NRC/Nuclear Energy Institute Public Workshop on Reactor Pressure Vessel Integrity Issues

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of public meeting.

SUMMARY: The Nuclear Regulatory Commission is holding a public workshop to discuss issues impacting nuclear reactor vessel integrity. The agenda includes three principal subjects: (1) Reactor pressure vessel integrity; (2) pressure vessel annealing to recover toughness lost through neutron radiation; and (3) the operational transient known as pressurized thermal shock. Presentations will be made by representatives of the NRC and the Nuclear Industry. The NRC plans to have copies of the speakers' visual aids available for attendees. The meeting will be open to the public; comments and questions from the audience will be recognized.

DATES: The workshop will be held on July 11 through 13, 1995. Time on 07/11, 8:30 a.m.–5 p.m.; 07/12, 9 a.m.–5 p.m.; and 07/13, 9 a.m.–12:00 a.m.

ADDRESSES: The meeting will be held at NRC Headquarters Auditorium at Two White Flint North, 11545 Rockville Pike, North Bethesda, Maryland 20852.

FOR FURTHER INFORMATION CONTACT:

Dr. Richard E. Johnson, U.S. NRC, Mail Stop: T–10 E 10, Washington, DC 20555, (301–415–6758)

Mr. Kurt Cozens, Nuclear Energy Institute, 1176 Eye Street, NW, Washington, DC 20006–3706, (202–739–8085)

Dated at Rockville, Maryland, this 13th day of June 1995.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–14878 Filed 6–16–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–32827 License No. 13–24866–02 EA 94–240 IA 95–015 IA 95–016]

Midwest Testing, Inc. Indianapolis, Indiana, Mr. William G. Kimbley and Ms. Joan Kimbley; Confirmatory Order

I

Midwest Testing, Inc. (Licensee) is holder of NRC License No. 13–24866–02 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 30. The License authorized the Licensee to possess and use cesium-137 and americium-241 as sealed sources in moisture/density gauges. The License was issued on August 19, 1992, and is being terminated by Amendment No. 1, which is being issued on the date of this Order.

II

On July 27, 1993, a routine inspection of licensed activities was conducted at Midwest Testing, Inc. (Licensee) by NRC Region III. During the inspection the inspector identified that licensee management had allowed workers to operate moisture density gauges without personnel monitoring devices (film badges) and that required leak tests of the gauges had not been performed.

The NRC Office of Investigations (OI) conducted an investigation to determine whether willful violations of NRC requirements had occurred. Based on the NRC inspection and OI investigation, it appears that Mr. William G. Kimbley, owner of Midwest Testing, deliberately violated NRC requirements by:

(1) Allowing operators to use moisture density gauges without personnel monitoring devices between December 24, 1991, and August 25, 1993, in violation of Condition 18.A of License No. 13–24866–01 (expired on March 31, 1992) and Condition 20.A of License No. 13–24866–02 (issued on August 19, 1992);

(2) Not performing leak tests of two moisture density gauges between August 19, 1992, and July 31, 1993, in violation of Condition 13.A of License No. 13–24866–02;

(3) Not requesting a license amendment to name a new Radiation Protection Officer, in violation of Condition 11 of License No. 13–24866–02, when the individual named on the License left Midwest Testing in October 1993;

(4) Storing licensed material at an unauthorized location since March 1994 in violation of Condition 10 of License No. 13–24866–02 and 10 CFR 30.34(c); and

(5) Allowing moisture density gauges to be used between April 1, 1992, and August 19, 1992, with an expired license in violation of 10 CFR 30.3 and 10 CFR 30.36(c)(1) (i) and (iii).

In addition, it appears that Ms. Joan Kimbley, General Manager and Treasurer of Midwest Testing, Inc., deliberately violated Items (1), (2), and (5) above. These actions appear to have been a result of Midwest Testing, Inc. financial constraints, inexperience of the General Manager and, in general, a lack of appreciation on the part of the Owner and the General Manager of the regulatory significance and consequences of the violations.

A Confirmatory Action Letter was issued to the Licensee on March 21, 1994, confirming that the Licensee would secure its moisture density gauges in locked storage until the Licensee: (1) Designated a Radiation Protection Officer, (2) obtained NRC approval via a license amendment for its designated Radiation Protection Officer and its current moisture density gauge storage location, (3) demonstrated that all its moisture density gauges were appropriately tested for leakage, and (4) demonstrated that personnel radiation monitoring devices were provided for those persons designated to use moisture density gauges. The Licensee did not use its moisture density gauges after issuance of the Confirmatory Action Letter.

Subsequently, an Order Suspending License (Effective Immediately) was issued to the Licensee on August 26, 1994, for nonpayment of fees, which required: (1) The Licensee to suspend NRC licensed activities and dispose of its licensed material; and (2) NRC termination of License No. 13–24866–02 following disposal of the licensed material. The Licensee disposed of its licensed material in December 1994. NRC Region III verified that the licensed material was properly transferred to authorized recipients.

III

A transcribed enforcement conference was conducted between the NRC and the Licensee on March 15, 1995, to discuss the apparent violations, their causes and safety significance. Mr. Kimbley stated during the enforcement conference, "And the question about would we ever pursue an NRC license again, the answer to that is no. If there is any way I can give you assurance of that, I'll be glad to do that." Ms. Kimbley stated during the Enforcement Conference, "Like we stated earlier, we don't intend to continue with any licensed material in the future."

Further, in a telephone conversation on May 2, 1995, with Mr. Paul Pelke, NRC Region III, Mr. and Ms. Kimbley agreed to the provisions and to the issuance of this Order to resolve all matters pending between them. Specifically, Mr. Kimbley agreed, for a period of five years from the date he signs this Confirmatory Order, that Mr. Kimbley, Midwest Testing, Inc., or any successor entity wherein Mr. Kimbley is an authorized user, radiation safety officer, owner, an officer, or a controlling stockholder, will not apply to the NRC for a new license, nor shall Mr. Kimbley, Midwest Testing, Inc., or a successor entity, as described above, engage in licensed activities within the jurisdiction of the NRC for that same period of time. Ms. Kimbley agreed, for a period of five years from the date she signs this Confirmatory Order, that Ms. Kimbley, Midwest Testing, Inc., or any successor entity wherein Ms. Kimbley is an authorized user, radiation safety officer, owner, an officer, or a controlling stockholder, will not apply to the NRC for a new license, nor shall Ms. Kimbley, Midwest Testing, Inc., or a successor entity, as described above, engage in licensed activities within the jurisdiction of the NRC for the same period of time.

I find that the Licensee's commitments as stated in the May 2, 1995 conversation with Paul Pelke, NRC Region III, are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that the Licensee's commitments be confirmed by this Order.

IV

Accordingly, pursuant to sections 81, 161b, 161i, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, and 10 CFR part 30, it is hereby ordered that:

1. For a period of five years from the date Mr. William G. Kimbley signs this Confirmatory Order, Mr. Kimbley, Midwest Testing, Inc., or any successor entity wherein Mr. Kimbley is an authorized user, radiation safety officer, owner, an officer, or a controlling stockholder will not apply to the NRC for a new license, nor shall Mr. Kimbley, Midwest Testing, Inc., or a successor entity, as described above, engage in licensed activities within the jurisdiction of the NRC for that same period of time.

2. For a period of five years from the date Ms. Joan Kimbley signs this Confirmatory Order, Ms. Kimbley, Midwest Testing, Inc., or any successor entity wherein Ms. Kimbley is an authorized user, radiation safety officer, owner, an officer, or a controlling stockholder, will not apply to the NRC for a new license, nor shall Ms. Kimbley, Midwest Testing, Inc., or a successor entity, as described above, engage in licensed activities within the jurisdiction of the NRC for that same period of time.

3. Mr. Kimbley, Ms. Kimbley, Midwest Testing, Inc., or any successor entity, as described above, waive the right to contest this Order in any manner, including requesting a hearing on this Order.

The Regional Administrator, NRC Region III, may relax or rescind, in writing, any of the above conditions upon a showing by the Licensee, Mr. William G. Kimbley, or Ms. Joan Kimbley of good cause.

V

Any person adversely affected by this Confirmatory Order, other than the Licensee, Mr. William G. Kimbley, and Ms. Joan Kimbley may request a hearing within 20 days of its issuance. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, D.C. 20555. Copies also shall be sent to the Director, Office of

Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, Illinois 60532, and to the Licensee. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings.

This Order was consented to:
For the Licensee, William G. Kimbley, and Joan Kimbley
By: William G. Kimbley,
Dated: June 2, 1995.
By: Joan Kimbley.
Dated: June 2, 1995.

For the Nuclear Regulatory Commission.
Order Dated: June 12, 1995, Rockville, Maryland.

James Lieberman,
Director, Office of Enforcement.

[FR Doc. 95–14876 Filed 6–16–95; 8:45 am]
BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

National Information Infrastructure; Draft Report on "NII Security: The Federal Role"

AGENCY: Office of Management and Budget.

ACTION: Notice of Availability and Request for Comments.

SUMMARY: The NII Security Issues Forum of the Information Infrastructure Task Force (IITF) has released for public comment a draft report, "NII Security: The Federal Role." Security in the National Information Infrastructure, or NII, consists of the confidentiality, integrity, reliability, and availability of information and communications services. This report is being released in order to develop a consensus of the appropriate Federal role in NII security through a public dialogue. Specifically, this report summarizes the Forum's findings concerning security needs in the NII; presents an analysis of the institutional, legal, and technical issues surrounding security of the NII; and proposes Federal actions to address these issues.

DATES: Comments must be submitted no later than September 18, 1995.

ADDRESSES: Electronic copies of the report may be obtained through the IITF bulletin board at iitf.doc.gov through both the Internet and the World-Wide Web. Dial-up access by modem is also available at 202–482–1920. Modem communications parameters should be set at no parity, 8 data bits, and one stop (N, 8, 1). Hard copies of the report may be obtained by contacting the Information Policy and Technology Branch of the Office of Management and Budget at (202) 395–3785. Comments must be submitted to the Office of Management and Budget, NEOB 10236, Washington, DC 20503, to the attention of Virginia Huth, or to huth_v@a1.eop.gov.

FOR FURTHER INFORMATION CONTACT: Virginia Huth, Office of Management and Budget, (202) 395–3785 or huth_v@a.eop.gov.

SUPPLEMENTARY INFORMATION: To articulate and implement the Administration's vision for the National Information Infrastructure (NII), the Vice President formed the Information Infrastructure Task Force (IITF), chaired by Secretary of Commerce Ron Brown. The NII Security Issues Forum was established within the IITF to address the important cross-cutting issue of security in the NII. In addition to the IITF, the President has established the U.S. Advisory Council on the National Information Infrastructure, which includes representatives from industry, labor, State and local governments, and public interest groups.

Security is critical to the development and operation of a viable National Information Infrastructure. Without the confidence that information will go where and when it is supposed to go, and nowhere else, the NII will not be used to support health, education, commerce, public services, and advanced communications to the fullest extent.

To better understand what will be needed to make the NII adequately secure, the NII Security Issues Forum and members of the U.S. Advisory Council on the NII held seven public meetings with government officials and members of the private and public interest sectors to discuss the security needs of the NII. In order to continue and expand this public dialogue, the draft report, "NII Security: The Federal Role," is being issued for public comment. Although members of the U.S. Advisory Council cosponsored the meetings and numerous representatives from the private sector participated in the meetings, this draft report is solely the product of the NII Security Issues Forum, a Federal government organization.

Sally Katzen,
Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 95–14900 Filed 6–16–95; 8:45 am]
BILLING CODE 3510–60–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–21129; 812–9562]

First Trust Special Situations Trust, Series 69

June 12, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: First Trust Special Situations Trust, Series 69.

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act that would exempt applicant from section 12(d)(3) of the Act.

SUMMARY OF APPLICATION: Applicant requests an order on behalf of itself and certain subsequent series (collectively, the "Series") to permit each Series to invest up to twenty percent of its total assets in securities of issuers that derived more than fifteen percent of their gross revenues in their most recent fiscal year from securities related activities.

FILING DATE: The application was filed on March 31, 1995 and amended on June 8, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 7, 1995 and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549.

Applicant, c/o Nike Securities, L.P., 1001 Warrenville Road, Lisle, Illinois 60532.

FOR FURTHER INFORMATION CONTACT: Sarah A. Buescher, Staff Attorney, at (202) 942–0573, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Nike Securities, L.P. is applicant's depositor (the "Sponsor"). Each Series will invest approximately 20%, but in no event more than 20.5%,[1] of the value of its total assets in each of the five lowest dollar price per share stocks of the ten common stocks in the Dow Jones Industrial Average ("DJIA") having the highest dividend yields no more than two business days prior to the States' initial date of deposit, and hold those stocks for approximately one year.

2. The DJIA comprises 30 common stocks chosen by the editors of The Wall Street Journal. The DJIA is the property of Dow Jones & Company, Inc., which is not affiliated with any Series or the Sponsor and does not participate in any way in the creation of any Series or the selection of its stocks.

3. The securities deposited in each Series will be chosen solely according to the formula described above, and will not necessarily reflect the research opinions or buy or sell recommendations of the Sponsor. The Sponsor is authorized to determine the date of deposit, to purchase securities for deposit in the Series, and to supervise each Series' portfolio. The Sponsor will have no discretion as to which securities are purchased. Securities deposited in a Series may include securities of issuers that derived more than fifteen percent of their gross revenues in their most recent fiscal year from securities related activities.

4. During the 90-day period following the initial date of deposit, the Sponsor may deposit additional securities while maintaining to the extent practicable the original proportionate relationship among the number of shares of each stock in the portfolio. Deposits made after this 90-day period must replicate exactly (subject to certain limited exceptions) the proportionate relationship among the face amounts of the securities comprising the portfolio at the end of the initial 90-day period, whether or not a stock continues to be among the five lowest price per share stocks of the ten highest dividend yielding stocks.

5. The Series' portfolios will not be actively managed. Sales of portfolio securities will be made in connection with redemptions of units issued by a Series and at termination of the Series. The Sponsor has no discretion as to when securities will be sold except that it is authorized to sell securities in extremely limited circumstances, such as a public tender, merger or acquisition affecting the security, a default in the payment of a declared dividend or other outstanding obligation, any action or proceeding restraining the payment of dividends, any legal question or impediment affecting the security, a breach by the issuer of a covenant which would affect the payment of a dividend, circumstances which would impair the investment character of the security, a decrease in the price of the security or other credit factors so that in the opinion of the Sponsor, the retention of the securities would be detrimental to the Series. The adverse financial condition of an issuer will not necessarily require the sale of its securities from a Series' portfolio.

Applicant's Legal Analysis

1. Section 12(d)(3) of the Act, with limited exceptions, prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter, or investment adviser. Rule 12d3–1 under the Act exempts the purchase of securities of an issuer that derived more than fifteen percent of its gross revenues in its most recent fiscal year from securities related activities, provided that, among other things, immediately after such acquisition, the acquiring company has invested not more than five percent of the value of its total assets in securities of the issuer. Notwithstanding the above, rule 12d3–1 prohibits any registered investment company from acquiring any security issued by the company's investment adviser, promoter, or principal underwriter or any affiliated person of such investment adviser, promoter, or principal underwriter that is a securities related business, with certain limited exceptions.

2. Applicant requests an exemption under section 6(c) from section 12(d)(3) to permit a Series to invest up to approximately 20%, but in no event more than 20.5%, of the value of its total assets in securities of an issuer that derives more than fifteen percent of its gross revenues from securities related activities.

3. Section 12(d)(3) was intended to prevent investment companies from exposing their assets to the entrepreneurial risks of securities related businesses, to prevent potential conflicts of interest, and to eliminate certain reciprocal practices between investment companies and securities related businesses. One potential conflict could occur if an investment company purchased securities or other interests in a broker-dealer to reward that broker-dealer for selling fund shares, rather than solely on investment merit. Applicant believes that this concern does not arise in connection with its application because neither applicant nor the Sponsor has discretion in choosing the portfolio securities or amount purchased. The security must first be included in the DJIA, which is unaffiliated with the Sponsor and applicant, and must also qualify as one of the five lowest dollar price per share stocks of the ten highest dividend yielding stocks.

4. Applicant also believes that the effect of a Series' purchase on the stock of parents of broker-dealers would be *de minimis*. Applicant asserts that the common stocks of securities related issuers represented in the DJIA are widely held, have active markets, and that potential purchases by any Series would represent an insignificant amount of the outstanding common stock and the trading volume of any of these issues. Accordingly, applicant believes that it is highly unlikely that purchases of these securities by a Series would have any significant impact on the securities' market value.

5. Another potential conflict of interest could occur if an investment company directed the brokerage to a broker-dealer in which the company has invested to enhance the broker-dealer's profitability or to assist it during financial difficulty, even though that broker-dealer may not offer the best price and execution. To preclude this type of conflict, applicant and each Series agree, as a condition of this application, that no company held in the portfolio of a Series nor any affiliate thereof will act as a broker for any Series in the purchase or sale of any security for its portfolio. In light of the above, applicant believes that its

[1] The Sponsor will attempt to purchase equal values of each of the five common stocks in a Series' portfolio. However, it is more efficient if securities are purchased in 100 share lots and 50 share lots. As a result, applicant may choose to purchase securities of a securities related issuer which represent over 20%, but in no event more than 20.5% percent, of a Series' assets on the initial date of deposit to the extent necessary to enable the Sponsor to meet its purchase requirements and to obtain the best price for the securities.

proposal meets the section 6(c) standards.

Condition

Applicant agrees that the requested exemptive order may be conditioned upon no company held in the Series' portfolio, nor any affiliate thereof, acting as broker for any Series in the purchase or sale of any security for the Series' portfolio.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–14849 Filed 6–16–95; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 95–23; Notice 2]

Decision That Nonconforming 1992 Kenworth T800 Trucks Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1992 Kenworth T800 trucks are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1992 Kenworth T800 trucks not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S.-certified version of the 1992 Kenworth T800), and they are capable of being readily altered to conform to the standards.

DATE: This decision is effective June 19, 1995.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

G&K Automotive Conversion, Inc. of Santa Ana, California (Registered Importer R–90–007) petitioned NHTSA to decide whether 1992 Kenworth T800 trucks are eligible for importation into the United States. NHTSA published notice of the petition on April 7, 1995 (60 FR 17846) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–115 is the vehicle eligibility number assigned to vehicles admissible under this decision.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby decides that a 1992 Kenworth T800 truck not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1992 Kenworth T800 truck originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. 30115, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: June 14, 1995.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–14903 Filed 6–16–95; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Customs Service

Implementation of Automated Export System

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Implementation of Phase I of the Automated Export System (AES).

SUMMARY: This notice announces that beginning on July 3, 1995, the U.S. Customs Service with the assistance of the Bureau of the Census will implement the first phase of AES and also announces to the public where the AES system will be implemented.

BACKGROUND: AES will ultimately provide a single electronic gateway at Customs through which the exporting community can report and receive all information required by U.S. government agencies involved with export administration. AES will create a "one-stop" environment for the trade community to file export information. It will substantially reduce paperwork and eliminate duplicate reporting requirements resulting in decreased respondent burden. AES will facilitate export trade, and improve customer service, trade statistics, and outbound enforcement.

Phase I of AES is for vessel shipments only and only for voluntary participants. Additional implementation phases of AES will be announced in future notices.

Phase I of AES will be implemented in the ports of Baltimore, Maryland; Norfolk, Virginia; Charleston, South Carolina; Houston, Texas (including Galveston and Texas City); and Los Angeles-Long Beach, California.

SECTORS AFFECTED: Parties that may volunteer to participate in Phase I of AES include; exporters, freight forwarders, carriers, customhouse brokers, port authorities, and service bureaus.

RESPONSIBILITIES OF PARTICIPANTS: Exporters, or their agents, will be responsible for providing primary commodity related data, while carriers will be responsible for providing primary transportation related data. These two segments of AES data, commodity and transportation, provide the details needed to complete the export transaction reporting requirements.

During the initial implementation of Phase I of AES, exporters, or their agents, and carriers will be required to continue to report export information under current regulatory requirements using the Shipper's Export Declaration or the Automated Export Reporting Program in addition to reporting export information to AES. This dual reporting period for AES participants is not expected to last past December 31, 1995. The length of the dual reporting period may be adjusted pending the outcome of the evaluation of Phase I of AES. The dual reporting requirement only applies to the export activities of the voluntary participants within the above specified ports. Following this dual reporting period, AES will be extended to other vessel ports to be announced.

DATA CONTROLS: Certain data contained in AES will fall under the purview of the Freedom of Information Act as well as the Privacy Act.

CONTACTS: For information regarding AES, please contact the AES Development Team at (202) 927–0280 or your local Customs Client Representative. To obtain reference or background material, please call the AES MarketFax at (202) 927–3555, extension 100-main menu. To obtain information about AES from a specified port location, please call the following listed phone numbers:

Baltimore	(410) 962–4483
Norfolk	(804) 543–2033
Charleston	(803) 881–4312
Houston (via Galveston Office)	(409) 766–3624
Los Angeles-Long Beach	(310) 514–6015

Dated: June 13, 1995.

Ray Mackin,

Acting Director, AES Development Team.

[FR Doc. 95–14829 Filed 6–16–95; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF VETERANS AFFAIRS

Information Collections Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

The Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted to OMB the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) the title of the information collection, and the Department form number; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Trish Fineran, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–6886.

Comments and recommendations concerning the proposed information collections should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. DO NOT send requests for benefits to this address.

DATES: Comments on the information collections should be directed to the OMB Desk Officer on or before July 19, 1995.

Dated: June 9, 1995.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

Extension of a Currently Approved Collection

1. Federal Fiduciary's Account, VA Form 27–4706b.
2. The form is used by Federal fiduciaries who are required to account to VA for benefits paid to them on behalf of a beneficiary rated incompetent or under legal disability. The accounting information is used by Veterans Benefits Administration to complete account audits.
3. Individuals or households—Business or other for-profit—Not-for-profit institutions—Federal Government—State, Local or Tribal Government.
4. 4,370 hours.
5. 30 minutes.
6. Annually.
7. 8,740 respondents.

Extension of a Currently Approved Collection

1. Fiduciary's Agreement, VA Form 27–4703.
2. The form outlines the responsibilities of the fiduciary with respect to the use of VA funds. When completed by Veterans Benefits Administration and signed by the Federal fiduciary, it constitutes a legally binding contract.
3. Individuals or households—Business or other for-profit—Not-for-profit institutions—Federal Government—State, Local or Tribal Government.
4. 1,390 hours.
5. 5 minutes.
6. One-time.
7. 16,676 respondents.

[FR Doc. 95–14854 Filed 6–16–95; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register

Vol. 60, No. 117

Monday, June 19, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 60 Fed. Reg. 30682 June 9, 1995.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 P.M. (Eastern Time) June 20, 1995.

CHANGE IN THE MEETING:

Closed Session

The closed session of the meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663–4070.

Dated: June 15, 1995.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 95–15026 Filed 6–15–95; 11:33 am]

BILLING CODE 6750–06–M

DEPARTMENT OF JUSTICE
UNITED STATES PAROLE COMMISSION

DATE AND TIME: Tuesday, June 27, 1995, 2:00 p.m.

PLACE: 10220 North Executive Hills Blvd., North Pointe Tower, Suite 700, Kansas City, Missouri 64153.

STATUS: Closed meeting.

MATTERS CONSIDERED:

The following matters will be considered during the closed portion of the Commission's Business Meeting:

(1) Appeals to the Commission involving approximately 19 cases decided by the National Commissioners pursuant to a reference under 28 CFR 2.27. These cases were originally heard by an examiner panel wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

(2) Adoption of the Witness Security Manual.

AGENCY CONTACT: Tom Kowalski, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: June 14, 1995.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 95–15091 Filed 6–15–95; 3:26 pm]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE
UNITED STATES PAROLE COMMISSION

TIME AND DATE: 9 a.m., Wednesday, June 28, 1995.

PLACE: 10220 North Executive Hills Blvd., North Pointe Tower, Suite 700, Kansas City, Missouri 64153.

STATUS: Open.

MATTERS TO BE CONSIDERED:

The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of minutes of previous Commission meeting.
2. Reports from the Chairman, Commissioners, Legal, Chief of Staff, Case Operations, and Administrative Sections.
3. Proposal for Change in Regulation, Chapter Two, Subchapter B, Section 212 Assault.
4. Discussion on the Realignment of states.
5. Discussion on Commissioners Serving as Hearing Examiners.
6. Proposal for Parole Date Advancement for Substance Abuse Program Completion.
7. Proposal for Revising the Fraud Guidelines.
8. Proposal for Revising the Salient Factor Score.

AGENCY CONTACT: Tom Kowalski, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: June 14, 1995.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 95–15090 Filed 6–15–95; 3:26 pm]

BILLING CODE 4410–01–M

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS MEETING NOTICE

TIME AND DATE: The Legal Services Corporation Board of Directors will meet on June 24–25, 1995. The meeting will commence at 1 p.m. on June 24, and at 9 a.m. on June 25.

PLACE: Legal Services Corporation, 750 1st Street, NE., Board Room, 11th Floor, Washington, DC 20002, (202) 336–8800.

STATUS OF MEETING: Open, except that a portion of the meeting may be closed pursuant to a unanimous vote of the Board of Directors to hold an executive session. At the closed session, in accordance with the aforementioned vote, the Board may discuss matters related to internal personnel policies. In addition, the Board may hear and consider the General Counsel's report on litigation in which the Corporation is or may become a party. Finally, the Board may be briefed by the Inspector General on Office of the Inspector General Activities.[1] The closing will be authorized by the relevant sections of the Government in the Sunshine Act (5 U.S.C. Section 552b(c)(2) and (10)), and the corresponding regulation of the Legal Services Corporation (45 C.F.R. Section 1622.5 (a) and (h)). The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street, NE., Washington, DC 20002, in its eleventh floor reception area, and will otherwise be available upon request.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of Agenda.
2. Announcement of Approval, By Notational Vote, of the Management Report Prepared in Response to the Inspector General's Semiannual Report for the Period Ending March 31, 1995.
3. Approval of Minutes of May 12–13, 1995 Meeting.
4. Approval of Minutes of April 28, 1995 Meeting.
5. Approval of Minutes of May 12, 1995 Ad Hoc Structure on Governance Committee Meeting.
6. Approval of Minutes of May 12, 1995 Executive Session.
7. Approval of Minutes of April 28, 1995 Executive Session.
8. Chairman's and Members' Reports.
9. Consider and Act on Proposed Resolution Authorizing the Corporation President to Serve as a Temporary Administrator of the Duke Estate.
10. President's Report on Status of Appropriations and Authorization Proceedings.
11. Report and Discussion of Planning for the Future of Legal Services.
12. Inspector General's Report.
13. Consider and Act on Finance Committee Report.
14. Report on Allocation of 1995 Contingency Funds.
15. Public Comment.
16. Consider and Act on Proposed Resolution Regarding Structure of Legal Services Delivery System.
17. Consider and Act on Proposed Resolution Regarding Competitive Grants Making.
18. Consider and Act on Proposed Resolution Regarding Grantee Timekeeping Requirements.

[1] Briefings do not constitute "meetings" as defined by the Government In the Sunshine Act. Notice of this briefing is being provided solely as a courtesy to the public.

19. Consider and Act on Proposed Resolution Regarding Class Action Litigation.
20. Consider and Act on Proposed Resolution Regarding Cases Involving Drug-Related Evictions.

Closed Session

21. Discussion of Issues Relating to Internal Personnel Policies.
22. Briefing of Board by the Inspector General on Office of the Inspector General Activities.
23. Consider and Act on the General Counsel's Report on Litigation.

Open Session (Resumed)

24. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION: Patricia Batie, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Dated Issued: June 15, 1995.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 95–15080 Filed 6–15–95; 2:31 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS FINANCE COMMITTEE MEETING NOTICE

TIME AND DATE: The Legal Services Corporation Board of Directors Finance Committee (formerly referred to as the "Audit and Appropriations Committee") will meet on June 23, 1995. The meeting will commence at 3:00 p.m.

PLACE: Legal Services Corporation, 750 1st Street, N.E., the Board Room, Washington, D.C. 20002, (202) 336–8800.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of Agenda.
2. Approval of Minutes of May 12, 1995 Meeting.
3. Consideration and Review of Budget and Expenses for the Period Ending May 31, 1995.
4. Consider and Act on Proposed Revisions to the Corporation's Fiscal Year 1995 Consolidated Operating Budget.
5. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION: Patricia Batie, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date issued: June 15, 1995.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 95–15081 Filed 6–15–95; 2:31 pm]

BILLING CODE 7050–01–M

Nuclear Regulatory Commission

DATE: Thursday, June 22, 1995.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Thursday, June 22

9:00 a.m.
Briefing on Results of Senior Management Review of Operating Reactors, Fuel Facilities, and Related Activities (Public Meeting)
(Contact: Victor McCree, 301–415–1711)

10:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
(Please Note: These items will be affirmed immediately following the conclusion of the preceding meeting.)
a. Final Rule on "Clarification of Decommissioning Funding Assurance Requirements" (Tentative)
b. Final Rule Revising 10 CFR Part 110, Import and Export of Radioactive Waste (Tentative)
c. Georgia Power Company's Motion for Order Preserving the Licensing Board's Jurisdiction (Docket Nos. 50–424–OLA–3, 50–425–OLA–3) (Tentative)
d. Final Rulemaking Package for 10 CFR 50.36, "Technical Specifications" (Tentative)
(Contact: Andrew Bates, 301–415–1963)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION Bill Hill, (301) 415–1661.

Dated: June 14, 1995.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 95–15046 Filed 6–15–95; 2:29 pm]

BILLING CODE 7590–01–M

TENNESSEE VALLEY AUTHORITY

(Meeting No. 1477)

TIME AND DATE: 9 a.m. (EDT), June 21, 1995.

PLACE: TVA West Tower Plaza, Conference Room 404, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on May 24, 1995.

Action Items

New Business

C—Energy

C1. Supplements to Watts Bar Nuclear Plant labor and services contracts as follows: Contract No. 91NNP–44970C with Raytheon Constructors, Inc.; Contract No. TV–82466V with Raytheon Engineers and Constructors, Inc., Ebasco Division; Contract Nos. TV–85775V and TV–73035A with Stone & Webster Engineering Corporation; Contract No. TV–85432V with Performance Controls Company; Contract No. TV–86567V with United Energy Services Corporation; Contract No. TV–83455V with General Physics Corporation; Contract No. TV–83216V with BCP Technical Services, Inc., and Contract No. TV–92003V with Cataract Incorporated.

C2. Contract with NPS Energy Services, Inc., for modifications and supplemental maintenance support services for Fossil and Hydro Power, subject to final negotiations and review prior to execution.

C3. Supplement to Contract No. TV–87640V with CDI Corporation to provide temporary professional and technical support services to the Fossil and Hydro Power staff on an as-needed basis.

E—Real Property

E1. Public auction of Bowling Green Steam Plant Railroad right-of-way (Tract Nos. BGST–1, 2KTSP–1C, –1D, –1E, –1F, –1G, –1H, –1I, –1J, and –1K), located in Warren County, Kentucky.

E2. Public auction of Tupelo, Mississippi, Customer Service Center property (Tract Nos. XTPCSC–3 and –4), located in Lee County, Mississippi.

E3. Grant of permanent easement to The McCrory Company, Shiloh Falls Development, for a community golf course development and acquisition of 2.47 acres of land and a conservation easement (Sale Tract No. XPR–445RE; Acquisition Tract No. PR–2354), located on Pickwick Lake, Hardin County, Tennessee.

E4. Sufferance Agreement with Mr. and Mrs. Kenneth Wright affecting 0.007 acre of Boone Lake land in Washington County, Tennessee (Tract No. BR–69F). This agreement would allow a private residence to remain in its present location below the 1390-foot contour so long as it is not enlarged, extended, or otherwise altered.

F—Unclassified

F1. Filing of condemnation cases.

Information Items

1. Modifications to TVA's Transmission Service Guidelines and delegation of authority to make additional modifications to the guidelines.

FOR MORE INFORMATION: Please call TVA Public Relations at (615) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999.

Dated: June 14, 1995.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 95–15025 Filed 6–15–95; 11:32 am]

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Monday
June 19, 1995

Part II

Department of Health and Human Services

Administration for Children and Families

Developmental Disabilities; Availability of Financial Assistance for Projects of National Significance for Fiscal Year 1995; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

(Program Announcement No. 93631–95–02)

Developmental Disabilities: Availability of Financial Assistance for Projects of National Significance for Fiscal Year 1995

AGENCY: Administration on Developmental Disabilities (ADD), Administration for Children and Families (ACF).

ACTION: Announcement of availability of financial assistance for Projects of National Significance for fiscal year 1995.

SUMMARY: The Administration on Developmental Disabilities, Administration for Children and Families, announces that applications are being accepted for funding of Fiscal Year 1995 Projects of National Significance.

This program announcement consists of five parts. Part I, the Introduction, discusses the goals and objectives of ACF and ADD. Part II provides the necessary background information on ADD for applicants. Part III describes the review process. Part IV describes the priorities under which ADD solicits applications for Fiscal Year 1995 funding of projects. Part V describes in detail how to prepare and submit an application. All of the forms and instructions necessary to submit an application are published as part of this announcement following Part V.

No separate application kit is either necessary or available for submitting an application. If you have a copy of this announcement, you have all the information and forms required to submit an application.

Grants will be awarded under this program announcement subject to the availability of funds for support of these activities.

DATES: The closing date for submittal of applications under this announcement is August 3, 1995.

ADDRESSES: Applications should be mailed to: Department of Health and Human Services, ACF/Division of Discretionary Grants, Sixth Floor, 370 L'Enfant Promenade SW, Washington, DC 20447, Attn: 93.631 ADD—Projects of National Significance.

Hand-delivered applications are accepted during the normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at: Administration for Children and Families, Division of Discretionary Grants, 6th Floor OFM/DDG, 901 D Street, SW, Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Adele Gorelick, Program Development Division, Administration on Developmental Disabilities, (202) 690–5982.

SUPPLEMENTARY INFORMATION:

Part I. Introduction

A. Goals of the Administration on Developmental Disabilities

The Administration on Developmental Disabilities (ADD) is located within the Administration for Children and Families (ACF), Department of Health and Human Services (DHHS). Although different from the other ACF program administrations in the specific populations it serves, ADD shares a common set of goals that promote the economic and social well-being of families, children, individuals and communities. Through national leadership, ACF and ADD envision:

- Families and individuals empowered to increase their own economic independence and productivity;
- Strong, healthy, supportive communities having a positive impact on the quality of life and the development of children;
- Partnerships with individuals, front-line service providers, communities, States and Congress that enable solutions which transcend traditional agency boundaries;
- Services planned and integrated to improve client access; and
- A strong commitment to working with Native Americans, persons with developmental disabilities, refugees and migrants to address their needs, strengths and abilities.
- A community-based approach that recognizes and expands on the resources and benefits of diversity.

Emphasis on these goals and progress toward them will help more individuals, including people with developmental disabilities, to live productive and independent lives integrated into their communities. The Projects of National Significance Program is one means through which ADD promotes the achievement of these goals.

B. Purpose of the Administration on Developmental Disabilities

The Administration on Developmental Disabilities (ADD) is the lead agency within ACF and DHHS responsible for planning and administering programs which promote the self-sufficiency and protect the rights of persons with developmental disabilities.

The Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6000, *et seq.*) (the Act) supports and provides assistance to States and public and private nonprofit agencies and organizations to assure that individuals with developmental disabilities and their families participate in the design of and have access to culturally competent services, supports, and other assistance and opportunities that promote independence, productivity and integration and inclusion into the community.

The Act points out that:

- Disability is a natural part of the human experience that does not diminish the right of individuals with developmental disabilities to enjoy the opportunity for independence, productivity and inclusion into the community;
- Individuals whose disabilities occur during their developmental period frequently have severe disabilities that are likely to continue indefinitely;
- Individuals with developmental disabilities often require lifelong specialized services and assistance, provided in a coordinated and culturally competent manner by many agencies, professionals, advocates, community representatives, and others to eliminate barriers and to meet the needs of such individuals and their families; The Act further finds that:
- Individuals with developmental disabilities, including those with the most severe developmental disabilities, are capable of achieving independence, productivity, and integration and inclusion into the community, and often require the provision of services, supports and other assistance to achieve such;
- Individuals with developmental disabilities have competencies, capabilities and personal goals that should be recognized, supported, and encouraged, and any assistance to such individuals should be provided in an individualized manner, consistent with the unique strengths, resources, priorities, concerns, abilities, and capabilities of the individual;
- Individuals with developmental disabilities and their families are the primary decision makers regarding the services and supports such individuals and their families receive; and play decision making roles in policies and programs that affect the lives of such individuals and their families; and
- It is in the nation's interest for people with developmental disabilities to be employed, and to live conventional and independent lives as a part of families and communities.
- Toward these ends, ADD seeks to enhance the capabilities of families in assisting people with developmental disabilities to achieve their maximum potential to support the increasing ability of people with developmental disabilities to exercise greater choice and self-determination; to engage in leadership activities in their communities; as well as to ensure the protection of their legal and human rights.

Programs funded under the Act are:

- Federal assistance to State developmental disabilities councils;
- State system for the protection and advocacy of individual rights;
- Grants to University Affiliated Programs for interdisciplinary training, exemplary services, technical assistance, and information dissemination; and
- Grants for Projects of National Significance.

Part II. Background Information

A. Description of Projects of National Significance

Under Part E of the Act, grants and contracts are awarded for projects of national significance that support the development of national and State policy to enhance the independence, productivity, and integration and inclusion of individuals with developmental disabilities through:

- Data collection and analysis;
- Technical assistance to enhance the quality of State developmental disabilities councils, protection and advocacy systems, and university affiliated programs; and
- Other projects of sufficient size and scope that hold promise to expand or improve opportunities for people with developmental disabilities, including:

—Technical assistance for the development of information and referral systems;
—Educating policy makers;
—Federal interagency initiatives;
—The enhancement of participation of minority and ethnic groups in public and private sector initiatives in developmental disabilities;
—Transition of youth with developmental disabilities from school to adult life; and
—Special pilots and evaluation studies to explore the expansion of programs under part B (State developmental disabilities councils) to individuals with severe disabilities other than developmental disabilities.

B. Comments on FY 1995 Proposed Priority Areas

The notice soliciting comments on the FY 1995 proposed priority areas was published in the **Federal Register** on January 11, 1995 (60 FR 2760). A 60-day period was required to allow the public to comment on the proposed areas. After review and analysis of these comments, ADD is publishing its final priorities in this announcement.

The public comment notice requested specific comments and suggestions on the proposed funding priorities, in addition to recommendations for additional priority areas which would assist in bringing about the increased independence, productivity, and integration into the community of people with developmental disabilities.

ADD received a total of 62 letters and 193 inquiries by the closing date in response to the public comment notice. Commentary was from the following sources:

- Advocacy agencies, which includes national organizations and associations, national advocacy groups and State/local advocacy groups;
- Service organizations, which includes agencies that provide services for individuals with developmental disabilities as well as providing advocacy services on behalf of a particular disability, including developmental disabilities councils;
- Educational systems, which includes schools, colleges, and universities, programs located within a university setting and University Affiliated Programs;
- Private agencies, which includes national, State, and local nonprofit organizations;
- Government agencies, which includes Federal, State, county, and local government agencies;
- Private individuals; and
- Foundations.

The comments ranged from requests for copies of the final application solicitation to general support to substantive, insightful responses for this year's proposed funding priorities and recommendations for other priority areas. The vast majority were supportive of and expanded upon what we proposed in the announcement, in addition to relating specifically to the program goals and priorities of the particular agencies submitting the comments.

The comments received were helpful in highlighting the concerns of the developmental disabilities field and have been used in refining the final priority areas.

Comment: Six letters were submitted to ADD recommending additional funding priorities for FY 1995. Suggestions included projects addressing the need for accessible and inclusive programs within the developmental disabilities network; the needs of aging persons with developmental disabilities and their families, especially those in rural areas; the need for research and training on Abusive Head Trauma, which includes Shaken Baby Syndrome; and transportation needs related to accessing jobs and services. There was a recommendation for priority areas for potential grantees to propose their own issues and for small, grassroots organizations to have the opportunity to develop their own solutions in their local communities.

Response: ADD continues to press for accessible and inclusive programs and project products. Through funding criteria, site visits, and monitoring of reports this principle is conveyed and its implementation evaluated.

ADD has funded projects related to aging in the past and continues to support projects and activities in this area through the University Affiliated Program. We share concerns that were expressed about the aging of individuals with developmental disabilities, which is reflected in our mission to promote the independence, productivity, integration, and inclusion of all people with developmental disabilities in their communities.

ADD will consult with the Administration on Aging and others to identify the need and opportunity for future focused efforts in this area.

We welcome the sharing of information with regard to medical conditions having implications for projects addressing abuse, violence, the need for early assessments and intervention, and family-centered approaches. The specifics regarding Abusive Head Trauma, Shaken Baby Syndrome, and Failure-to-Thrive will be included in appropriate priority areas.

ADD sees the element of transportation as a crucial factor in the success of any program. In stressing outcome-oriented approaches and ongoing mechanisms for evaluation and identification of barriers, ADD will include transportation concerns.

ADD is committed to inclusion and input from advocates and grassroots efforts. It has funded projects to strengthen families through national and grassroots strategies, partnerships in policymaking, and People First self-advocacy. Future priority areas will include opportunities for design options and local community initiatives.

ADD appreciates the suggestions for additional priority areas. With the

proposed fiscal year 1995 priority areas we have developed our most extensive array of project possibilities and will make concentrated efforts to support effective work in these areas. The suggestions have been considered significant and have been incorporated where appropriate.

Comment: ADD received 8 comments on Proposed Priority Area 1, Collaboration Between Youth Service Providers and Disabilities Advocates to Enhance Services to Youth With Developmental Disabilities. There was strong support for collaborative efforts, including memoranda of understanding and fiscal participation, and a recommendation to expand the scope of this priority area. Suggestions included language regarding information sharing and networking efforts that include all stakeholders, the identification of barriers, and the development of materials and strategies and the resources of technology and assistive devices.

One comment urged inclusion of the capability to address and correct the breakdown in the school-to-work transition process and another stressed the importance of completing school as imperative for employment.

A comment from one State was that there was only minuscule risk in that particular State of youth with developmental disabilities running away or becoming involved with delinquent behavior.

Response: ADD is committed to collaborative efforts whenever possible, with or without fiscal participation, and we feel the focus of this priority area is appropriate at this time. It builds on the Family and Youth Services Bureau efforts with respect to at-risk youth and expands to include ADD's concerns. Prevention of and response to these issues will in fact necessitate a holistic approach.

Both agencies regard employment as a major goal, which must be addressed much earlier in the school experience than has been done, as well as attention to the principles of the Americans with Disabilities Act. The comments on project criteria contributed an appreciated refinement of announcement language.

As for the numbers of youth at risk, ADD feels strongly that such youth with developmental disabilities are particularly vulnerable and inadequately served. It is therefore essential that we explore and devise models which hold more promise for these young people.

Comment: ADD received 14 comments on Proposed Priority Area 2, Americans With Developmental Disabilities and the Criminal Justice System. The comments received in this priority area were supportive of what ADD proposed in the published notice. There was strong support for programs to institute ongoing training for law enforcement and court personnel and to address prevention strategies as well. Involving self-advocates was strongly urged as essential, with projects directed by self-advocates and conducted by and through organizations of self-advocates in collaboration with the developmental disabilities network. One comment noted that this area would not impact a large segment of the population of the writer's State.

It was also suggested that there be a component emphasizing the need for mental health services to children in the criminal justice system. Other comments recommended funding for the transition from incarceration to the community, the inclusion of legal and safety concerns during enforcement, training with respect to impaired judgment resulting from fetal alcohol syndrome, and a study of the factors contributing to delinquency.

Response: ADD is committed to supporting leadership and direction by self-advocates, whose experience and perspective will ensure effective projects, a major goal along with ongoing and replicable projects. The specific concerns regarding mental health and transition to the community will clearly be identified in a required analysis of barriers to effective programs and desirable outcomes. ADD hopes to address these components in future PNS projects.

Medical issues should be an element of any proposed project so that justice system personnel are aware of symptoms and of indications of abuse and violence as well as substance abuse. As for the suggested numbers of individuals who may be impacted by the issues of this priority area in a particular State, ADD reiterates its commitment to the vulnerable individuals with developmental disabilities and to the inadequately served among them.

Comment: ADD received 11 comments on Proposed Priority Area 3, First Jobs—Introducing Young Persons With/Without Developmental Disabilities to the World of Work and Community Service. There was strong support for moving from segregated work settings to supported employment programs and a comment urging that individuals with the most severe disabilities who have not benefitted from supported employment not be ignored and remain unserved. There was support for ADD's approach with regard to its Americorps projects, which include individuals with and without disabilities, and for collaboration among nonprofit agencies, Head Start, Vocational Rehabilitation, the Job Training Partnership Act Program (JTPA), and other public resources. Meaningful vocational assessments and a focus on consumer choice and quality of life were stressed, as was the importance of planning and partnerships so that first jobs lead to second jobs and ultimate career paths. One commenter had concerns about the Jobs Opportunities and Basic Skills (JOBS) program and training for JOBS staff unaccustomed to working with individuals with developmental disabilities, about the necessary long-term investment, and about funding for modifications to automated systems.

Comments from individuals involved concerns regarding personal assistance services. There was also a suggestion that this priority area be combined with the priority area for youth at risk for running away who need access to supports and services which lead to independence. Another suggestion was that people with developmental disabilities receive training to be personal assistants.

Response: ADD is in agreement with the movement toward a cultural shift to recognition of abilities and choice and away from control of employment resources by providers of employment and vocational services. We feel the community as a whole benefits from inclusion of individuals with developmental disabilities in the workplace. The benefits of diversity are seen in supported employment, which includes the development of natural supports reflecting participation of all co-workers.

Collaborative linkages are also critical as we strive to expand access to earlier educational/vocational experiences for children and youth with disabilities. Maximum efforts should be made to assure that individuals with the most severe disabilities are afforded these essential opportunities. Consideration of assistive technology, transportation needs, and accommodations for personal assistance services are essential components.

While there is some overlap with the issues addressed in Priority Area 1, ADD intends to fund each of these areas with their particular foci and demonstrate its commitment to contributions to the community that individuals with developmental disabilities make. ADD would consider, however, funding projects which effectively address essential requirements of both areas.

Comment: ADD received 18 comments on Proposed Priority Area 4, Child Care and Early Intervention: Linkages for Successful Inclusion of Young Children With Disabilities. All were supportive and many offered recommendations for project design or additional components. There were suggestions for including effective advocacy strategies and protection of ADA rights, for addressing the needs of children with severe disabilities, for training on the condition of nonorganic failure to thrive as well as the sequelae of Shaken Baby Syndrome and Abusive Head Trauma, for prevention of secondary disabilities, and for broadening the priority to include life-span services and "seamless" interagency collaboration.

There were also recommendations for inclusion of training for staff in after-school programs, assistive technology, and systems conversion. Because of high staff turnover there is a need for ongoing program support, possibly through mentorship, and there is good opportunity for young adults with disabilities to work as educational aides.

There were requests that preference be given to projects addressing the needs of families with low income or living in poverty, migrant families, and homeless families, with a specific suggestion that the Early Prevention, Screening, Diagnosis and Treatment Program be utilized.

There were several comments urging attention to multicultural issues and the need for early intervention with respect to children with developmental disabilities at risk for delinquent behavior. Also suggested was establishment of a national task force to assist states and local communities in implementing policies and services and combining this priority area with Children at Risk: The Impact of Abuse and Violence on Children with Disabilities.

Response: ADD was pleased to see the point made that the experience of inclusion has benefits for children with and without disabilities. The community benefits of diversity are an ongoing focus of ADD. We are also committed to the development of tools and strategies for the implementation of the ADA for all children, with focused attention on those who have been unserved and inadequately served, such as individuals with severe disabilities, families with low income or living in poverty, migrant or homeless families, those living in rural areas, and immigrant and refugee families.

We appreciate the information and suggestions regarding failure to thrive, Shaken Baby Syndrome and Abusive Head Trauma, and prevention concerns, which will be incorporated in appropriate priority areas, as well as attention to after-school personnel and the implementation of assistive technology. We have introduced the collaboration of individuals with and without disabilities in projects with the Family and Youth Services Bureau and our Americorps projects.

ADD will fund separate projects under the youth service providers and disabilities advocates and abuse and violence priority areas. As for a focus on multicultural issues, ADD includes this requirement in the design of all projects and will have a major funding priority area (Priority 5) addressing the development of models for technical assistance.

Comment: ADD received 15 comments on Proposed Priority Area 5. All but one agreed with the need for this proposed priority and many offered recommendations on the design and operation of projects, while others had concerns about sufficient funding and the need for ongoing projects in a multicultural network.

There was agreement that it is time for innovative approaches to identifying areas of need and developing action strategies to meet those needs. Advocacy groups hoped to be included when the various components are collaborating. Nationwide technical assistance within the developmental disabilities network was recommended to implement programs for training service coordinators from culturally diverse backgrounds to guide individuals with developmental disabilities and their families. It was suggested that coalition building and recruitment and retention efforts outside the network depend on the achievement of cultural competence within the network. The dissenting commenter felt that the Commissioner has already begun to build this network and these issues should not be in a separate priority area.

Another commenter felt that if the goal is to provide agency-integrated, comprehensive services to families, the multicultural theme should be a strong, clearly developed part of each project. Another suggestion with regard to this issue proposed a state project targeted for demonstrating model practices for further development of collaboration among the network components.

There was also commentary on including all ages, including young adults, middle aged, and older parents of aging individuals with developmental disabilities in multicultural communities, and on the need for training in self-advocacy and empowerment to address effective actions for overcoming identified barriers.

Response: The issue of building a strong, effective multicultural network within the developmental disabilities system is a major concern of ADD. The Commissioner's Forum as well as the careful consideration of the discussions of the ADD Multicultural Committee and numerous other entities and individuals, including grassroots and larger advocacy groups, are reflections of the high priority of this area of proposed funding.

ADD continues to emphasize cultural competency and recognition of the value of cultural diversity to individuals, families, and the larger community. This will be a required element in the design of projects to be funded. The suggestions for inclusion of all ages will be added to inclusion of unserved and inadequately served individuals. In proposing to fund three State projects, ADD feels that models will be developed for utilizing the resources of appropriate organizations including Historically Black Colleges and Universities and that these intense efforts will provide replicable practices and strategies for focused efforts by others.

Comment: ADD received 12 comments on Priority Area 6, Accessing Telecommunication Services for Persons With Developmental Disabilities. They were supportive and one suggested that a requirement of funding be that grantees establish electronic communication with other recipients. The ideal outcome of projects in this area would be a clearinghouse system that is interactive, assistive, and empowering of individuals seeking services and information including, for example, location of accessible housing, availability of assistive technology, details of Social Security programs, medical developments, and best practices.

Response: ADD agrees that the fast-growing capabilities occurring in cyberspace are going to be factors in communications for previously unserved and inadequately served individuals. Working out how individuals access this technology is the challenge. ADD is funding one Training Initiative Project under its University Affiliated Program which is exploring this issue, and ADD does already link its grantees through teleconferences, Internet, meetings, and forums. We would like to see more consumers, families, and providers accessing and sharing information, calendars,

concerns, and strategies for removal of barriers.

We will consider funding this priority area in future years. All newly funded PNS initiatives are expected to develop the capacity to communicate and disseminate information and technical assistance through e-mail and other effective, affordable, and accessible forms of electronic communication.

Comment: ADD received 12 comments on Priority Area 7, Meeting the Mental Health Needs of Individuals With Developmental Disabilities. ADD received many commendations for including a priority area on the mental health aspects of mental retardation and other developmental disabilities issues. Comments cited lack of training in this area and the critical need for partnerships to stimulate interagency agreements and other needed projects. It was recommended that single points of entry be established and that services follow the individual into the community.

There was a suggestion that ADD consider as a funding requirement a letter of agreement between the State mental health system and the State developmental disabilities system. There were suggestions for projects aimed at improving both the community and social presence and social skills of persons with dual diagnoses and for involvement in arts and leisure programming. Training was urged for all network participants in such issues as inclusion, psychoactive medications, anger management, and legal aspects. There was also strong support for consumer outcome measures to evaluate program impact.

Response: ADD has long felt strongly that the mental health needs of persons with developmental disabilities do not receive adequate attention. ADD was at the forefront of promoting nonaversive approaches and has funded a Project of National Significance to develop training materials for mental health professionals to help bridge the gap between systems. A number of ADD-funded University Affiliated Programs and Developmental Disabilities Councils have projects in their local areas. Community inclusion requires understanding on the part of providers and network participants and individuals and families as well. There is also great need to raise the general standard of practice regarding psychoactive medications.

The next stage of addressing this issue will be broader implementation of strategies and best practices. Effective advocacy through recruitment and training will contribute toward appropriate systems change.

Comment: ADD received 15 comments on Priority Area 8, Children at Risk: The Impact of Abuse and Violence on Children With Disabilities, all of which were supportive of the overall approach. Many commenters noted the great need for this area to be addressed. Some commented that the issue involves both the abuse of children with disabilities and disabilities caused by abuse and neglect of children. Many stated that a comprehensive multi-system, multi-agency approach must be taken to adequately address the significant issue of prevention, intervention, and treatment of abuse and neglect of children with, and at risk of, disabilities. Many commenters noted the need for coordination among a wide variety of State and local agencies in abuse cases. Several recommendations specifically stressed the need for coordinated investigations, including the importance of sharing data among agencies when abuse or neglect of a child is alleged. One commenter reported that Child Advocacy Centers throughout the country are attempting to coordinate all of the investigating entities involved in child abuse cases.

One organization noted that non-organic failure-to-thrive typically results from neglect, abuse, and poor knowledge of care giving. Another commenter recommended the need for training of professionals and research on the incidence and prevalence of Abusive Head Trauma, including Shaken Baby Syndrome (SBS), which was reported as the leading cause of disability among abused children.

One commenter noted that provision of adequate child care can help to reduce the incidence of abuse and neglect and that child care workers are a good source of identifying children at risk of abuse and neglect. Another commenter stated that a "safety net" could be designed to identify and enroll families at risk of abusing their children. Such families would then be provided with education and training designed to increase their parenting skills and reduce the risk of abuse and neglect.

One commenter recommended funding a group of local projects in a given State to bring about a coordinated strategy from the "bottom up" rather than from a Statewide demonstration which then filters change down to the local level. Another organization stressed the need for information, education, and training of a variety of audiences, disciplines, and professions, including children and youth themselves. ADD was also urged to collaborate with appropriate agencies at the Federal level to address the abuse problem.

One commenter reported how well a comprehensive Statewide approach very similar to the one described by ADD in this priority area is working in one State to prevent child abuse of children with disabilities. The strategy being used involves a wide range of agencies including the State Departments of Education, Human Resources, Mental Health and Mental Retardation, as well as the State Developmental Disabilities Planning Council and Protection and Advocacy Agency, Children's Trust Fund, Corporate Foundation for Children, a major university, and several other agencies. Besides including these entities, another organization recommended also involving the State Child Care, Health and Criminal Justice systems as well as Head Start programs.

Response: ADD is pleased to see the very favorable response to this priority area and the comprehensive approach we selected. ADD has worked over the last year, in collaboration with other Federal agencies, to help focus national attention on the problem of abuse of children with disabilities and the fact that abuse often causes disabilities. We believe that a multi-system, multi-agency coordinated approach must be used at the local, State, and national level in order to adequately address this serious problem. In this announcement, ADD will stress the need for coordination and collaboration among all agencies involved in allegations of abuse as well as in prevention activities, including the need to share data among all agencies.

We appreciate the information regarding non-organic failure to thrive and Abusive Head Trauma, including Shaken Baby Syndrome, and will address these in this announcement. ADD agrees that appropriate child care may help reduce abuse and neglect, and we will address the need for inclusive child care in Priority Area 4. Moreover, we hope child care agencies will be involved as relevant agencies in any comprehensive State or local child abuse strategy. Concerning the recommendation that a "safety net" approach be used of enrolling and training parents at risk of abusing their children, ADD agrees that parent skill training can help reduce the risk of abuse and neglect, but we leave the individual elements of any strategy selected to the State or local community involved.

ADD believes that with limited funds it is best to demonstrate the comprehensive, coordinated strategy at a State level first, especially given the flow of Federal funds for the various agencies involved which usually go to the State level first and then to local communities. However, if a State wishes to develop a grant application which is focused on developing a comprehensive multi-system, multi-agency statewide strategy and then proposes to test implementation of the strategy in a number of local communities before implementation statewide, we would be interested in considering funding for this approach. ADD urges any State applying for funds to include all the relevant agencies, systems, disciplines, and other pertinent entities in its proposed strategy and grant application.

In addition to this PNS priority area, ADD will continue its interagency and interdepartmental activities to prevent and reduce the incidence of abuse of children with disabilities and all other children who are abused, many of whom develop disabilities.

Comment: ADD received 9 comments on Proposed Priority Area 9, Technical Assistance Projects. The hope was expressed that ADD could continue to provide the catalyst to generate advocacy and support for individuals to protect their legal and human rights under the ADA, Section 504 of the Rehabilitation Act of 1973 as amended by the Rehabilitation Act amendments of 1992 (Pub.L. 102–569), and the Constitution. Efforts such as the Advocacy Training/Technical Assistance Center were reported to have provided valuable technical assistance to the protection and advocacy systems. One commenter proposed a national technical assistance project independent from the existing Protection and Advocacy System.

There was a recommendation that ADD direct its resources not only to improve each component of the ADD network (Protection and Advocacy Systems, University Affiliated Programs, and Developmental Disabilities Councils) but to realize the impact of cooperative and coordinated activities focused on common goals. Commenters urged ADD to include in any training the application of the 14 principles of quality improvement developed by W. Edwards Deming for private industry, which are seen as applicable to disability issues, as well as the nine principles delineated in Reinventing Government, which reinforce such goals as outcome orientation, responsiveness to consumers, empowerment, and teamwork.

There was encouragement to separate technical assistance from program monitoring and to allow program components to direct the technical assistance provided to them. Exploring different methods of utilizing stipends or vouchers for technical assistance when needed from recognized experts was also suggested. There was also strong support for collaborative network efforts at the Federal level through memoranda of understanding and fiscal participation, which, along with deliverable products, will enable progress to go far beyond communication toward realization of supports and service benefits at the local level.

Response: The thoughtful commentary on this priority area is timely and appreciated. ADD will closely consider the input received and seek out additional consultations with the network and other stakeholders on this issue.

Comment: ADD received 27 general comments on the priority areas. They were vastly supportive of what had been proposed. Several comments were received that commended us for the way in which we approached this year's priorities through considerable consultation, discussion, and reflection and the inclusion of such issues as increasing interagency collaboration and outcome measurement methodology, consumer empowerment, system conversion, strategies for addressing abuse and violence, employment opportunities through community service, unserved and inadequately served individuals, and individuals with developmental disabilities in the criminal justice system.

There was strong support for giving highest priority to the areas of cultural diversity, consumer involvement, and technical assistance and for recognizing that collaboration and cooperation are not outcomes in themselves but means to successful programmatic results. Focusing on deliverable products, such as model memoranda of agreement, training curricula, procedural plans, or memoranda for joint funding, and on outcomes was seen as increasing the replicability of the proposed priorities.

ADD was urged to seek assurance that people with disabilities are included in implementation of funded projects through participation in advisory bodies and quality management and evaluation teams. ADD was also urged to promote culturally appropriate approaches with respect to information dissemination and recruitment of professionals and nonprofessionals.

In addition, there was strong support for ADD's continued funding of national data collection and analysis projects and a recommendation that data should reflect current best thinking of the developmental disabilities network about housing and individual supports, not facilities, and about jobs, not sheltered employment, and that duplication of effort be avoided. One commenter wished to see increased government incentives, such as tax credits, for the promulgation of charitable donations of time, assets such as housing or equipment, and funds to advance the concerns of the Projects of National Significance and other efforts.

Two comments reflected regret over lack of continuation of projects in leadership initiatives and personal assistance services and another would like to have seen more latitude for choice of project design within priority areas. More focus was called for on the Americans with Disabilities Act (ADA) through a dynamic model of empowerment for ADA compliance at the grass roots level utilizing the significant Protection and Advocacy resource.

There were some questions about targeting specific priority areas to address concerns that should already be under development by Councils and about creating or enhancing specialized structures instead of providing appropriate supports from within generic service systems.

Response: The unusual depth and range of commentary on the proposed FY 1995 funding priorities reflects an impressive intensity and commitment. ADD expended considerable energy to develop these initiatives, utilizing the resources of its network and staff, and we have applied the same diligence in consideration of comments, suggestions, and recommendations. We believe the final priority areas reflect the input received from the public comment process and a sensitivity to the concerns expressed in each of the letters received. Clearly, not every issue raised can be addressed and incorporated.

When in the past we proposed only a few priority areas, it was thought by some that the full range of needs was ignored. Proposing several priority areas has been seen by some as attempting too much. The purpose of the ADD Projects of National Significance is to chart courses that others can follow. A component of all Projects of National Significance is the development and implementation of programs and approaches that will be ongoing beyond funding periods. We have been challenged by the call to reinvent government and charged by our constituencies to promote systems change for effective response to identified needs.

ADD hopes that the description of comments received and its responses will be viewed as a forum, for we have seen an unusual range of feedback which tells us and those who read this announcement what the best thinking is

by those who share our interests and concerns. In the course of responding to proposed ADD priority areas, numerous coalitions have been formed and/or strengthened. The 62 comment letters received by the close of the comment period, the 5 letters postmarked after that date, and the 193 telephone inquiries indicate a growing nationwide force. Though we cannot fund every proposal, we will not allow the intense efforts to consult and collaborate to dissipate if a project is not funded. ADD will seek ways to create linkages so that the energy in this repository can become an ever greater resource.

Part III. The Review Process

A. Eligible Applicants

Before applications are reviewed, each will be screened to determine that the applicant is eligible for funding, as specified under the selected priority area. Applications from organizations which do not meet the eligibility requirements for the priority area will not be considered or reviewed in the competition, and the applicant will be so informed.

Only public or non-profit private entities, not individuals, are eligible to apply under any of the priority areas. On all applications developed jointly by more than one agency or organization, the applications must identify only one organization as the lead organization and official applicant. The other participating agencies and organizations can be included as co-participants, subgrantees or subcontractors.

Any nonprofit organization submitting an application must submit proof of its nonprofit status in its application at the time of submission. One means of accomplishing this is by the nonprofit agency providing a copy of the applicant's listing in the Internal Revenue Service's most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate, *or* by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

ADD cannot fund a nonprofit applicant without acceptable proof of its nonprofit status.

B. Review Process and Funding Decisions

Applications from eligible applicants that meet the deadline date requirements under Part V, Section C will be reviewed and scored competitively. Experts in the field, generally persons from outside of the Federal government, will use the appropriate evaluation criteria listed later in this Part to review and score the applications. The results of this review are a primary factor in making funding decisions.

ADD reserves the option of discussing applications with, or referring them to, other Federal or non-Federal funding sources when this is determined to be in the best interest of the Federal government or the applicant. It may also solicit comments from ADD Regional Office staff, other Federal agencies, interested foundations, national organizations, specialists, experts, States and the general public. These comments, along with those of the expert reviewers, will be considered by ADD in making funding decisions.

In making decisions on awards, ADD may give preference to applications which focus on or feature: Culturally diverse minority or ethnic populations; a substantially innovative strategy with the potential to improve theory or practice in the field of human services; a model practice or set of procedures that holds the potential for replication by organizations involved in the administration or delivery of human services; substantial involvement of volunteers; substantial involvement (either financial or programmatic) of the private sector; a favorable balance between Federal and non-Federal funds available for the proposed project; the potential for high benefit for low Federal investment; a programmatic focus on those most in need; and/or substantial involvement in the proposed project by national or community foundations. This year, 5 points will be awarded in scoring for any project that includes partnership and collaboration with the 112 Empowerment Zones/ Enterprise Communities.

To the greatest extent possible, efforts will be made to ensure that funding decisions reflect an equitable distribution of assistance among the States and geographical regions of the country, rural and urban areas, and ethnic populations. In making these decisions, ADD may also take into account the need to avoid unnecessary duplication of effort.

C. Evaluation Criteria

Using the evaluation criteria below, a panel of at least three reviewers (primarily experts from outside the Federal government) will review the applications. Applicants should ensure that they address each minimum requirement in the priority area description under the appropriate section of the Program Narrative Statement.

Reviewers will determine the strengths and weaknesses of each proposal in terms of the evaluation criteria, provide comments, and assign numerical scores. The point value following each criterion heading indicates the maximum numerical weight that each section may be given in the review process.

1. Objectives and Need for Assistance (20 Points)

The extent to which the application pinpoints any relevant physical, economic, social, financial, institutional or other problems requiring a solution; demonstrates the need for the assistance; states the principal and subordinate objectives of the project; provides supporting documentation or other testimonies from concerned interests other than the applicant; and includes and/or footnotes relevant data based on the results of planning studies. The application must identify the precise location of the project and area to be served by the proposed project. Maps and other graphic aids should be attached.

2. Results or Benefits Expected (20 Points)

The extent to which the application identifies the results and benefits to be derived, the extent to which they are consistent with the objectives of the proposal, and the extent to which the application indicates the anticipated contributions to policy, practice, theory and/or research. The extent to which the proposed project costs are reasonable in view of the expected results.

3. Approach (35 Points)

The extent to which the application outlines a sound and workable plan of action pertaining to the scope of the project, and details how the proposed work will be accomplished; cites factors which might accelerate or decelerate the work, giving acceptable reasons for taking this approach as opposed to others; describes and supports any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements; and provides for projections of the accomplishments to be achieved. Activities to be carried out should be listed in chronological order, showing a reasonable schedule of accomplishments and target dates.

The extent to which, when applicable, the application identifies the kinds of data to be collected and maintained, and discusses the criteria to be used to evaluate the results and successes of the project. The extent to which the application describes the evaluation methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. The application also lists each organization, agency, consultant, or other key individuals or groups who will work on the project, along with a description of the activities and nature of their effort or contribution.

4. Staff Background and Organization's Experience (25 Points)

The application identifies the background of the project director/ principal investigator and key project staff (including name, address, training, educational background and other qualifying experience) and the experience of the organization to demonstrate the applicant's ability to effectively and efficiently administer this project. The application describes the relationship between this project and other work planned, anticipated or under way by the applicant which is being supported by Federal assistance.

D. Structure of Priority Area Descriptions

Each priority area description is composed of the following sections:

- *Eligible Applicants:* This section specifies the type of organization which is eligible to apply under the particular priority area.
- *Purpose:* This section presents the basic focus and/or broad goal(s) of the priority area.
- *Background Information:* This section briefly discusses the legislative background as well as the current state-of-the-art and/or current state-of-practice that supports the need for the particular priority area activity. Relevant information on projects previously funded by ACF and/or other State models are noted, where applicable.
- *Minimum Requirements for Project Design:* This section presents the basic set of issues that must be addressed in the application. Typically, they relate to project design, evaluation, and community involvement. This section also asks for specific information on the proposed project. Inclusion and discussion of these items is important since they will be used by the reviewers in evaluating the applications against the evaluation criteria. Project products, continuation of the project effort after the Federal support ceases, and dissemination/utilization activities, if appropriate, are also addressed.
- *Project Duration:* This section specifies the maximum allowable length of time for the project period; it refers to the amount of time for which Federal funding is available.
- *Federal Share of Project Costs:* This section specifies the maximum amount of Federal support for the project.
- *Matching Requirement:* This section specifies the minimum non-Federal contribution, either through cash or in-kind match, that is required to the maximum Federal funds requested for the project.
- *Anticipated Number of Projects To Be Funded:* This section specifies the number of projects that ADD anticipates it will fund in the priority area.
- *CFDA:* This section identifies the Catalog of Federal Domestic Assistance (CFDA) number and title of the program under which applications in this priority area will be funded. This information is needed to complete item 10 on the SF 424.

Please note that applications that do not comply with the specific priority area requirements in the section on "Eligible Applicants" will not be reviewed.

Applicants must clearly identify the specific priority area under which they wish to have their applications considered, and tailor their applications accordingly. In addition, previous experience has shown that an application which is broader and more general in concept than outlined in the priority area description is less likely to score as well as one which is more clearly focused on and directly responsive to the concerns of that specific priority area.

E. Available Funds

ADD intends to award new grants resulting from this announcement during the fourth quarter of fiscal year 1995, subject to the availability of funding. The size of the actual awards will vary. Each priority area description includes information on the maximum Federal share of the project costs and the anticipated number of projects to be funded.

The term "budget period" refers to the interval of time (usually 12 months) into which a multi-year period of assistance (project period) is divided for budgetary and funding purposes. The term "project period" refers to the total time a project is approved for support, including any extensions.

Where appropriate, applicants may propose project periods which are shorter than the maximums specified in the various priority areas. Non-Federal share contributions may exceed the minimums specified in the various priority areas when the applicant is able to do so.

For multi-year projects, continued Federal funding beyond the first budget period, but within the approved project period, is subject to the availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

F. Grantee Share of Project Costs

Grantees must provide at least 25% percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $100,000 in Federal funds (based on an award of $100,000 per budget period) must include a match of at least $33,333 (25% total project cost).

An exception to the grantee cost-sharing requirement relates to applications originating from American Samoa, Guam, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands. Applications from these areas are covered under section 501(d) of Pub. L. 95–134, which requires that the Department waive "any requirement for local matching funds for grants under $200,000."

The applicant contribution must generally be secured from non-Federal sources. Except as provided by Federal statute, a cost-sharing or matching requirement may not be met by costs borne by another Federal grant. However, funds from some Federal programs benefitting Tribes and Native American organizations have been used to provide valid sources of matching funds. If this is the case for a Tribe or Native American organization submitting an application to ADD, that organization should identify the programs which will be providing the funds for the match in its application. If the application successfully competes for PNS grant funds, ADD will determine whether there is statutory authority for this use of the funds. The Administration for Native Americans and the DHHS Office of General Counsel will assist ADD in making this determination.

G. Cooperation in Evaluation Efforts

Grantees funded by ADD may be requested to cooperate in evaluation efforts funded by ADD. The purpose of these evaluation activities is to learn from the combined experience of multiple projects funded under a particular priority area.

H. Closed Captioning for Audiovisual Efforts

Applicants are encouraged to include "closed captioning" in the development of any audiovisual products.

Part IV. Fiscal Year 1995 Priority Areas for Projects of National Significance

The following section presents the final priority areas for Fiscal Year 1995 Projects of National Significance (PNS) and solicits the appropriate applications.

Fiscal Year 1995 Priority Area 1: ADD and ACYF, Family and Youth Services Bureau Collaboration Between Youth Service Providers and Disabilities Advocates to Enhance Services to Youth With Developmental Disabilities

• *Eligible Applicants:* Basic Center Programs for Runaway and Homeless Youth (RHY), Transitional Living Programs for RHY, Drug Abuse and Prevention Programs for RHY, and Youth Gang Drug Prevention Programs currently funded by the Family and Youth Services Bureau and University Affiliated Programs, State Developmental Disabilities Councils, and Protection and Advocacy Programs currently funded by the Administration on Developmental Disabilities.

• *Purpose:* Under this priority area, the Administration on Developmental Disabilities (ADD) and the Family and Youth Services Bureau (FYSB) of the Administration on Children, Youth and Families (ACYF) will jointly award demonstration grant funds to foster collaboration between its grantee programs. The purpose of these grants will be to provide improved access to services and supports for youth with developmental disabilities who are at risk of running away or becoming involved in gang activities or delinquent behavior. Both ADD and FYSB are interested in applications that will support a youth development approach to serving young people. The FYSB encourages local youth service agencies to offer a holistic service approach that acknowledges young people's strengths and contributions while responding to their needs. ADD advocates for services that enable young people with developmental disabilities to live independently through employment. This goal is achieved by drawing on both the support of the community and the youth's own resources. Employment is an important outcome for all youth with developmental disabilities.

These projects, to be conducted jointly by ADD and FYSB funded grantees, would strengthen the ability of at-risk youth with developmental disabilities (12–21 years of age) to achieve their full potential and grow to be successful, independent adults. Specifically, ADD and FYSB are seeking applications that explore methods for assisting their respective grantees to ensure access to appropriate services and supports by youth with developmental disabilities who participate in their programs.

• *Background Information:* Youth with developmental disabilities face enormous odds. Too often, as with all people with developmental disabilities, they lack the basics of American life: A good education, a job, and a real home. Tagged with diagnostic labels and segregated and discriminated against, many lack the information, assistance, and support they need to make informed choices. Their abilities are not recognized; and their differences set them apart, even from family members who love them but cannot afford or manage their special needs. Situations such as these increase the odds that youth with developmental disabilities will join the ranks of other runaway and homeless youth and youth involved in gangs or negative behaviors, thereby increasing their vulnerability.

To address these needs, FYSB and ADD established a three-year Memorandum of Understanding (MOU) to enhance coordination between the two agencies with the goal of increasing access to generic and specialized services for youth with developmental disabilities.

The FYSB administers the Runaway and Homeless Youth Program, the Transitional Living Program for Homeless Youth, the Drug Abuse Prevention Program for Runaway and Homeless Youth, and the Youth Gang Drug Prevention Program. These programs were created in response to widespread concern about the alarming number of runaway and homeless youth and youth at-risk of gang involvement. Today, an estimated 500,000 to 1.5 million youth run away from, or are forced out of their homes, and an estimated 200,000 are homeless. While there are no reliable estimates of youth at-risk of becoming involved or involved in gangs, all States have reported the rise of youth gangs and their illegal activities.

ADD grantees are involved in a variety of State and local efforts which specifically address this population. For example, addressing the transition of youth from school to the workplace is a priority for virtually all State Developmental Disabilities Councils. The Protection and Advocacy agencies advocate for the inclusion of youth with disabilities in regular classrooms and other community activities. In addition, University Affiliated Programs have as one of their mandated activities the provision of training and technical assistance to community agencies serving individuals with developmental disabilities, including youth.

FYSB and ADD are accepting applications developed jointly by at least one ADD and one FYSB funded grantee to demonstrate the need for and effectiveness of collaborations between the FYSB and ADD grantee programs to enable at-risk youth with developmental disabilities to make a successful transition from adolescence to adulthood.

Agencies interested in submitting applications under this priority area should contact FYSB at (202) 205–8060 or ADD at (202) 690–6897 for information regarding their respective programs and existing grantees.

• *Minimum Requirements for Project Design:* These projects must be conducted collaboratively between at least one ADD and one FYSB-funded grantee. Both collaborating agencies must be located in the same or neighboring communities to facilitate collaboration. Collaborations should be functional; letters of agreement are not enough. Each collaborating agency should be actively involved and should provide an essential component of service to the program.

Applications should be culturally sensitive, family based, and community focused. The population to be served by the projects should include both youth who are and who are not at-risk of running away from home or becoming involved in gang activity or delinquent behavior. In addition, both youth who have and who do not have a developmental disability should be included in the target population.

ADD and FYSB are particularly interested in supporting projects which plan to undertake the following activities:

• Improve coordination of services through increased networking and information sharing among Federal, State, and local organizations involved in providing services. These efforts should include all stakeholders, with at-risk youth and their families at the center of the collaborative partnerships.

• Identify existing programs that are providing effective services to at-risk youth with developmental disabilities.

• Enhance service delivery through the identification of the risks, issues, problems and needs of at-risk youth with developmental disabilities.

• Enhance service delivery through the identification of the existing barriers to full collaborative partnerships

designed to advance the independence, individual choice, and empowerment of at-risk youth with disabilities and their families and break the dependence these youth may ultimately have on the service delivery system.

• Improve access to supports and services through the identification and development of collaborative and comprehensive systems of support including training materials and strategies for technical assistance in state-of-the-art services and supports which promote the independence of at-risk youth with disabilities. The activities of these projects may include a technology component for youth for whom assistive devices become the key to independence.

As a general guide, we will expect to fund only those applications for projects that are

• Family focussed.

• Community based.

• Culturally competent.

• In compliance with the Americans with Disabilities Act and section 504 of the Rehabilitation Act of 1973 as amended by the Rehabilitation Act amendments of 1992 (Pub. L. 102–569).

• *Project Duration:* This announcement is soliciting applications for project periods up to three years under this priority area. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for continuation grants funded under this priority area beyond the one-year budget period, but within the three-year project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and determination that continued funding would be in the best interest of the Government.

• *Federal Share of Project Costs:* The maximum Federal share is not to exceed $150,000 for the first 12-month budget period or a maximum of $450,000 for a three-year project period.

• *Matching Requirement:* Grantees must provide at least 25 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $150,000 in Federal funds (based on an award of $150,000 per budget period) must include a match of at least $50,000 (25% total project cost).

• *Anticipated Number of Projects to be Funded:* It is anticipated that up to three (3) projects will be funded.

• *CFDA:* ADD's CFDA (Code of Federal Domestic Assistance) number is 93.631—Developmental Disabilities—Projects of National Significance. FYSB's CFDA numbers are 93.623, Runaway and Homeless Youth Program, 93.550, Transitional Living Program, and 93.660, Youth Gang Drug Prevention Program.

Fiscal Year 1995 Priority Area 2: Americans With Developmental Disabilities and the Criminal Justice System

• *Eligible Applicants:* Self-advocacy groups, independent living centers, private nonprofit organizations, or agencies.

• *Purpose:* Under this priority area, ADD will award demonstration grant funds for projects addressing the consequences of becoming involved in the criminal justice system by individuals with developmental disabilities. The Americans with Disabilities Act requires police to take steps, including training when necessary, to avoid discriminatory treatment on the basis of disability. States and localities require direction and assistance to carry out these provisions.

• *Background Information:* Both as victims and those accused and convicted of committing crimes, individuals with developmental disabilities (especially mental retardation) are becoming increasingly involved in the criminal justice system. Moreover, these individuals often face unequal justice at the hands of police and the courts precisely because the current system is not educated or prepared to respond or adapt to their disabilities and self-advocates have not been considered as essential elements of the educational process.

Advocates, scholars, and others argue that people who have been very carefully taught all their lives to trust and please authority figures sometimes confess to crimes they have not and could not have committed. Police, prosecutors, and the public need to learn about the raw vulnerability of many of these citizens.

Much more focused effort must be placed on identifying and replicating best and promising practices in this area. This is especially true if the critical concept of community policing is going to be applied to individuals with disabilities in a fair and effective manner throughout our Nation.

Greater emphasis, therefore, must be placed on providing current police and new recruits with the training and technical assistance needed to afford people with disabilities who are victims or alleged perpetrators of crime with equal justice under the law.

The input and participation of people with developmental and other disabilities is crucial for familiarizing police and others with the unique range of needs and abilities of such individuals.

Additional training is needed to better prepare individuals with disabilities to avoid conduct that might place them at risk of becoming victims or accused perpetrators of criminal activities and to negotiate in the criminal justice system should they become involved with it. An understanding of Miranda rights and responses is crucial.

ADD is particularly interested in receiving applications from national, State, and local self-advocacy networks, with the capacity to work collaboratively with the developmental disabilities network, service providers, law enforcement officials, criminal justice agencies, the civil rights community, and others, who would be able to spearhead such efforts.

• *Minimum Requirements for Project Design:* ADD is particularly interested in supporting projects which include the following:

• Initiation and coordination by a self-advocacy network working collaboratively with the developmental disabilities network, disability groups, Mentally Retarded Defendants Programs, and those agencies included in the criminal justice system.

• A survey and list of programs, materials, curricula that have been developed and implemented, including relevant legal statutes.

• The implementation of an ongoing procedure for soliciting discussion, exploring experiences and perceptions, and strategizing steps for prevention, for dealing with sexual harassment, and for navigating through legal procedures, which may include focus groups, interviews following incarceration, and video presentations with a view toward receiving input and direction from individuals with developmental disabilities.

• The development of self-produced materials in such media as dramatic presentations, artwork, or music to convey issues regarding prevention of involvement and negotiating involvement with the criminal justice system.

• The development or adaptation of model programs at the local level, including coverage of sexual harassment, for implementation with individuals with developmental

disabilities, family members, service providers, police, court personnel, health and rehabilitation liaison, and others involved with the criminal justice system. Materials should be developed in easy-to-understand language.

- The development of strategies for establishing a pre-trial intervention program providing counseling, education, and family support.

As a general guide, ADD will expect to fund only those applications for projects that incorporate the following elements:

- Consumer/self-advocate orientation and participation.
- Key project personnel with direct life, parental, or familial experience with living with a disability.
- Strong advisory components that consist of 51% individuals with disabilities and a structure where individuals with disabilities make real decisions that determine the outcome of the grant.
- Research reflecting the principles of participatory action.
- Cultural competency.
- A description of how individuals with disabilities and their families will be involved in all aspects of the design, implementation, and evaluation of the project.
- Attention to unserved and inadequately served individuals, having a range of disabilities from mild to severe, from multicultural backgrounds, rural and inner-city areas, and migrant, homeless, and refugee families.
- Compliance with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 as amended by the Rehabilitation Act amendments of 1992 (Pub. L. 102–569).
- Collaboration through partnerships and coalitions.
- Development of the capacity to communicate and disseminate information and technical assistance through e-mail and other effective, affordable, and accessible forms of electronic communication.
- A community-based approach.
- Responsiveness through systems change.
- Identification of barriers and strategies for overcoming barriers.
- Outcome orientation.
- Measurement and ongoing evaluation, including the participation of individuals with disabilities in formulation and implementation.
- Development and establishment of practices and programs beyond project period.
- Dissemination of models, products, best practices, and strategies for distribution between the networks and beyond. A plan describing initial activities is needed between funded projects as well as at the end of the project period. These activities should maintain and share ongoing information, existing resources of consultants/experts, and curriculum/materials with funded projects and within the network.

- *Project Duration*: This announcement is soliciting applications for a three-year project period under this priority area. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for continuation grants funded under this priority area beyond the one-year budget period, but within the three-year project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee, and determination that continued funding would be in the best interest of the Government.
- *Federal Share of Project Costs*: The maximum Federal share is not to exceed $70,000 for the first 12-month budget period or a maximum of $210,000 for a three-year project period.
- *Matching Requirement:* Grantees must provide at least 25 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $70,000 in Federal funds (based on an award of $70,000 per budget period) must include a match of at least $23,333 (25% total project cost).
- *Anticipated Number of Projects to be Funded:* It is anticipated that up to two (2) projects will be funded. Subject to availability of additional resources in FY 1996 and the number of acceptable applications received as a result of this program announcement, the ADD Commissioner may elect to select recipients for the FY 1996 cohort of programs out of the pool of applications submitted for FY 1995 funds.
- *CFDA*: ADD's CFDA (Code of Federal Domestic Assistance) number is 93.631—Developmental Disabilities—Projects of National Significance. This information is needed to complete item 10 on the SF 424.

Fiscal Year 1995 Priority Area 3: First Jobs—Introducing Persons With/Without Developmental Disabilities to the World of Work and Community Service

- *Eligible Applicants*: State agencies, independent living centers, public or private nonprofit organizations, the AmeriCorps program of the Corporation for National and Community Service, institutions or agencies.
- *Purpose*: Under this priority area, ADD will award model research and demonstration funds on introducing young people to the world of work and community service. The initiative intends to target young people with/without developmental disabilities and other significant disabilities from culturally diverse backgrounds to enable them to gain first time job or community service experience that will lead to second jobs and ultimate career paths. We are particularly interested in applications that explore job opportunities for young adults (15–25 years of age).

These projects should encourage the inclusion of matches with individuals with developmental disabilities and those without developmental disabilities in job settings which would lead to a stronger workplace and community for the future.

- *Background Information*: Nationally, the employment outlook for young Americans with developmental disabilities is bleak. Progress is being made supporting people with significant disabilities in real jobs, but the following facts speak for themselves:

1. Only about 10 percent of students with developmental disabilities graduating from school go on to competitive or supported employment.
2. In 1990, only about half of people with developmental disabilities surveyed indicated they had any choice in what job they held.
3. Last, 90 cents of every Federal dollar and 80 cents of every State dollar spent on providing services to people with developmental disabilities during the day is spent on keeping individuals in segregated, non-productive settings.

The cultural change that needs to occur is a redirection of the efforts of service providers and a shifting of focus onto the abilities and skills of individuals with disabilities. First-time job support can result from partnerships with young people without disabilities. This emphasis on inclusion provides mutual benefit as young people in their first community service or employment experiences benefit from the resources of diversity.

- *Minimum Requirements for Project Design:* The projects must address strategies for first jobs that will lead to second jobs and ultimate career paths. Research should include assessments of current practices and of necessary supports, such as transportation, adaptive technology, and personal assistance services.

Collaborative linkages among service/support providers should be explored as well as matches with individuals with developmental disabilities and those without developmental disabilities in job settings. Strategies for success should include and stress consumer choice and empowerment as essential approaches in the development and implementation of projects that will be culturally competent, ongoing, and have measurable outcomes.

The strategy should include the following components:

- The identification of the barriers encountered in putting young people to work and strategies found effective in doing so.
- The development of model memoranda of understanding among schools, businesses, and agencies at the local level as called for in the School-to-Work Opportunities Act of 1994.
- The development of policy recommendations on transitions from school-to-work.
- The development of recommendations on needed technical assistance at local and State levels.
- The development of recommendations on what roles Developmental Disabilities Councils, University Affiliated Programs, and Protection and Advocacy systems can play in increasing school-to-work opportunities.
- The evaluation of whether job sharing among young people with and without disabilities is an effective strategy for increasing the employment opportunities for both groups.

As a general guide, ADD will expect to fund only those applications for projects that incorporate the following elements:

- Consumer/self-advocate orientation and participation.
- Key project personnel with direct life, parental, or familial experience with living with a disability.
- Strong advisory components that consist of 51% individuals with disabilities and a structure where individuals with disabilities make real decisions that determine the outcome of the grant.
- Research reflecting the principles of participatory action.
- Cultural competency.
- A description of how individuals with disabilities and their families will be involved in all aspects of the design, implementation, and evaluation of the project.
- Attention to unserved and inadequately served individuals, having a range of disabilities from mild to severe, from multicultural backgrounds, rural and inner-city areas, and migrant, homeless, and refugee families.
- Compliance with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 as amended by the Rehabilitation Act amendments of 1992 (Pub. L. 102–569).
- Collaboration through partnerships and coalitions.
- Development of the capacity to communicate and disseminate information and technical assistance through e-mail and other effective, affordable, and accessible forms of electronic communication.
- A community-based approach.
- Responsiveness through systems change.
- Identification of barriers and strategies for overcoming barriers.
- Outcome orientation.
- Measurement and ongoing evaluation, including the participation of individuals with disabilities in formulation and implementation.
- Development and establishment of practices and programs beyond project period.
- Dissemination of models, products, best practices, and strategies for distribution between the networks and beyond. A plan describing initial activities is needed between funded projects as well as at the end of the project period. These activities should maintain and share ongoing information, existing resources of consultants/experts, and curriculum/materials with funded projects and within the network.
- *Project Duration*: This announcement is soliciting applications for project periods up to three years under this priority area. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for continuation grants funded under this priority area beyond the one-year budget period, but within the three-year project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and determination that continued funding would be in the best interest of the Government.
- *Federal Share of Project Costs*: The maximum Federal share is not to exceed $100,000 for the first 12-month budget period or a maximum of $300,000 for a three-year project period.
- *Matching Requirement*: Grantees must provide at least 25 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $100,000 in Federal funds (based on an award of $100,000 per budget period) must include a match of at least $33,333 (25% total project cost).
- *Anticipated Number of Projects to be Funded*: It is anticipated that up to two (2) projects will be funded. Subject to availability of additional resources in FY 1996 and the number of acceptable applications received as a result of this program announcement, the ADD Commissioner may elect to select recipients for the FY 1996 cohort of programs out of the pool of applications submitted for FY 1995 funds.
- *CFDA*: ADD's CFDA (Code of Federal Domestic Assistance) number is 93.631—Developmental Disabilities—Projects of National Significance. This information is needed to complete item 10 on the SF 424.

Fiscal Year 1995 Priority Area 4: Child Care and Early Intervention: Linkages for Successful Inclusion of Young Children with Disabilities

- *Eligible Applicants*: State agencies, public and private nonprofit organizations, institutions or agencies.
- *Purpose*: ADD will award demonstration grant funds for projects which will increase the capacity of child care and development programs to meet the needs of young children with disabilities. Child care services need to be included among the essential partner agencies in the provision of early, continuous, intensive, and comprehensive child development and family support services to children with disabilities and their families. The primary goals of projects would be increasing access to quality child care services for children with disabilities birth through age 5 and increasing the delivery of early intervention and related services to children in natural and inclusive environments.
- *Background Information*: Although inclusion of children with disabilities within child care is not a new occurrence, few formal mechanisms support effective coordination between the child care and disability communities. These systems remain separate and apart even as they are called upon to provide services to the same children and families. Families of

young children with disabilities continue to rank child care among the highest of their unmet needs. Furthermore, early findings of the Part H Early Intervention Program for infants and toddlers show no significant number of young children receiving these services within child care or other natural environments outside the home.

Access to quality child care services for children with disabilities was significantly strengthened and is protected by the passage of the Americans with Disabilities Act (ADA) in July 1992. The ADA explicitly prohibits discrimination of children with disabilities in public and private child care settings. The ADA opens many doors and provides the legal protections to assure access to children with disabilities, but this prohibition of discrimination, in and of itself, is limited in its ability to increase the capacity of child care programs to successfully include children with disabilities. Even when providers understand their obligations under the ADA, they continue to need ongoing access to training, technical assistance, mentorship, and consultation to implement meaningful and inclusionary policies and programs.

Furthermore, the linkages between childhood disability and poverty have long gone unnoticed and unaddressed. Nearly 8 percent of children on AFDC have disabilities. Without intervention and support, children in poverty are also at risk for disability. Often overlooked by the child care system are children from homeless shelters. There are indications that many of these children exhibit higher levels of developmental problems. There is also a need for training in the implications of fetal alcohol syndrome, failure to thrive, lead poisoning, abusive head trauma, shaken baby syndrome, pediatric AIDS, and learning delay related to hearing loss from viral infection and congestion.

• *Minimum Requirements for Project Design:* ADD is particularly interested in local and Statewide projects that promote a seamless interagency approach to better serve children with disabilities, especially those children with disabilities who live in poverty. To develop child care services which are responsive to the needs of young children with disabilities and their families, the protections of the ADA must be joined with best practices in the field of early childhood education, early intervention, and family support services.

The following are types of activities projects may wish to engage in:

• Develop and implement a training program to meet the needs of the child care community, providers, and parents of children with disabilities regarding the ADA and its protections and obligations.

• Identify and demonstrate strategies and mechanisms which support and expand training opportunities across systems. Strategies should illustrate how resources and expertise can be shared, as well as establishing opportunities for technical assistance and ongoing mentorship including mentorship by parents of children with disabilities, parents with disabilities, and other individuals with disabilities.

• Develop formal and informal linkages to increase the knowledge, awareness, and access to resources and services among families, child care providers, early childhood educators, disability service providers, and others who work with children with disabilities and their families.

• Identify and document replicable programs and projects which promote supported inclusion, that is, service coordination for individualizing inclusion of children with disabilities into generic child care programs.

• Produce cost effective models to combine sources of funds or other strategies that will facilitate parents accessing child care settings of their choice.

Projects may expand their focus to children older than 5 if the primary focus is on children birth to 5. Projects may address the needs of siblings of children with disabilities as a family support if the primary focus is on children with disabilities from birth to 5.

ADD is interested in funding projects reflecting these values in culturally competent, inclusive, family-centered and measurably outcome-oriented approaches that can establish ongoing relationships.

In addition, ADD is interested in joint efforts of projects such as the Americorps program of the Corporation for National and Community Service and the Job Opportunities Basic Skills (JOBS) program, whereby young people with disabilities may participate in jobs and community service as personal assistants and inclusion aides.

As a general guide, ADD will expect to fund only those applications for projects that incorporate the following elements:

• Consumer/self-advocate orientation and participation.

• Key project personnel with direct life, parental, or familial experience with living with a disability.

• Strong advisory components that consist of 51% individuals with disabilities and a structure where individuals with disabilities make real decisions that determine the outcome of the grant.

• Research reflecting the principles of participatory action.

• Development of the capacity to communicate and disseminate information and technical assistance through e-mail and other effective, affordable, and accessible forms of electronic communication.

• Cultural competency.

• A description of how individuals with disabilities and their families will be involved in all aspects of the design, implementation, and evaluation of the project.

• Attention to unserved and inadequately served individuals, having a range of disabilities from mild to severe, from multicultural backgrounds, rural and inner-city areas, and migrant, homeless, and refugee families.

• Compliance with the Americans with Disabilities Act and section 504 of the Rehabilitation Act of 1973 as amended by the Rehabilitation Act amendments of 1992 (Pub.L. 102–569).

• Collaboration through partnerships and coalitions.

• A community-based approach.

• Responsiveness through systems change.

• Identification of barriers and strategies for overcoming barriers.

• Outcome orientation.

• Measurement and ongoing evaluation, including the participation of individuals with disabilities in formulation and implementation.

• Development and establishment of practices and programs beyond project period.

• Dissemination of models, products, best practices, and strategies for distribution between the networks and beyond. A plan describing initial activities is needed between funded projects as well as at the end of the project period. These activities should maintain and share ongoing information, existing resources of consultants/experts, and curriculum/materials with funded projects and within the network.

• *Project Duration:* This announcement is soliciting applications for project periods up to three years under this priority area. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for continuation grants funded under this priority area beyond the one-year budget period, but within the three-year project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee, and determination that continued funding would be in the best interest of the Government.

• *Federal Share of Project Costs:* The maximum Federal share is not to exceed $100,000 for the first 12-month budget period or a maximum of $300,000 for a three-year project period.

• *Matching Requirement:* Grantees must provide at least 25 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $100,000 in Federal funds (based on an award of $100,000 per budget period) must include a match of at least $33,333 (25% total project cost).

• *Anticipated Number of Projects To Be Funded:* It is anticipated that up to two (2) projects will be funded. Subject to availability of additional resources in FY 1996 and the number of acceptable applications received as a result of this program announcement, the ADD Commissioner may elect to select recipients for the FY 1996 cohort of programs out of the pool of applications submitted for FY 1995 funds.

• *CFDA:* ADD's CFDA (Code of Federal Domestic Assistance) number is 93.631—Developmental Disabilities—Projects of National Significance. This information is needed to complete item 10 on the SF 424.

Fiscal Year 1995 Priority Area 5: Building a Multi-Cultural Network Within the Developmental Disabilities System Which Increases Service Equity, Opportunities, and Inclusion for Individuals From Racial and Ethnic Minority Groups

• *Eligible Applicants:* Consortium of a State Developmental Disabilities Council, University Affiliated Programs, the Protection and Advocacy Program, national developmental disabilities associations, and other multicultural institutions and organizations.

• *Purpose:* ADD is proposing to fund model demonstration projects that will enable State developmental disabilities networks in partnership with advocacy groups and self-advocates to gain and maintain the knowledge, skills, and competencies necessary to serve and empower a culturally diverse constituency. These projects should assist the components of the State developmental disabilities networks (Developmental Disabilities Councils, Protection and Advocacy Agencies, and University Affiliated Programs) in obtaining appropriate tools to identify areas of need and to develop action strategies that will address not only current needs but have as a goal institutionalizing cultural competency in every aspect of these programs. In some instances, assistance in cultural competence should be implemented at the community or policy/advocacy level whereas other programs will need assistance at a more basic internal/programmatic level. At the State level, building linkages or connections among and between the Developmental Disabilities Councils, P&As, and UAPs with cultural/ethnic organizations that are representative of community demographics will be essential as these components of the developmental disabilities network develop and implement action strategies. Within and outside the developmental disabilities system are existing resources, both material and human, that these projects should identify and utilize through a range of individuals having personal and/or professional expertise in this area.

• *Background Information:* The reality of an American society in which racial and ethnic cultural minorities are increasing in numbers and influence is becoming more evident each day. There are an estimated four million American children and adults with developmental disabilities, including a disproportionate number who are members of racial and ethnic minority groups. Many of these individuals and families from culturally diverse backgrounds remain outside of the various disability systems designed for their benefit; they are unable to gain access to the service systems, let alone fully participate in or benefit from them. Successful individuals of color with disabilities are often not encouraged or identified to serve as role models for other individuals having disabilities. In large part, the developmental disabilities network does not reflect this new multicultural reality—not among faculty, planners, staffs, trainees, or advocates.

• *Minimum Requirements for Project Design:* The program components of ADD (UAPs, DD Councils, and P&As) have recognized the need to make their programs culturally competent. Each are making efforts to address this need. If any major, long-term progress is to be made a concerted, comprehensive initiative must occur.

For applications to successfully compete under this priority they must include the following:

• Provide an overview of a range of approaches for assisting the program components and the State developmental disabilities network as a whole to acquire and achieve appropriate knowledge, skills, and competencies for serving a culturally diverse constituency.

• Develop State-level coalitions between Developmental Disabilities Councils, Protection and Advocacy Systems, University Affiliated Programs, and Historically Black Colleges and Universities (HBCUs) and other institutions of higher education with high minority and/or bilingual student enrollment, major civil rights organizations, cultural/ethnic associations, and developmental disability-advocacy organizations.

• Develop an equity service plan to bring the unserved and inadequately served individuals from culturally diverse backgrounds up to greater parity in the distribution of services.

• Develop new ways to gain information from and convey information to members of racial/ethnic/cultural groups.

• Coordinate with national developmental disabilities associations and ethnic and cultural organizations to develop and evaluate a replication package that has as its characteristics that it is user-friendly, relevant to the functions of the program components, and addresses various levels of cultural competency. As part of the evaluation it should be tested in another state.

• Produce a comprehensive dissemination package of best practices, materials, and strategies for distribution between the networks and beyond. A plan for dissemination describing initial activities needs to take place between funded projects as well as at the end of the project period.

• Coordinate with national developmental disabilities associations and ethnic and cultural organizations to maintain and share ongoing information, existing resources of consultants/experts, and curriculum/materials with funded projects and within the network.

• Delineate an outreach plan which has as its focus the sharing of project outcomes and training strategies to the representative associations of the program components, at an ADD national function, to other organizations within the developmental disabilities/advocacy network and the disability field, as well as major civil rights organizations, other minority organizations, and institutions of higher education such as HBCUs with the goal of leading to further collaboration and partnership at the State level in the continued development of cultural competency. Outreach activities can

occur at the national, regional, and/or State level.

• Provide an action plan for the professional recruitment and retention of individuals who are from culturally diverse backgrounds with disabilities into all aspects of the three components of the Developmental Disabilities network, especially in research, training, policy, and administration, and for diverse volunteers to serve as advisors to boards and advocacy organizations.

• Describe measurable outcomes with regard to program components becoming more representative of community demographics in their staff, board members, advisory committees, constituency; or establish memoranda of understanding with the various entities representing racial/ethnic constituencies to implement strategies reflective of the project's outcomes.

• Describe an evaluation component which will measure the project's effectiveness in achieving stated objectives, ensuring that larger numbers of individuals from racial/ethnic/cultural groups are served.

As a general guide, ADD will expect to fund only those applications for projects that incorporate the following elements:

• Consumer/self-advocate orientation and participation.

• Key project personnel with direct life, parental, or familial experience with living with a disability.

• Strong advisory components that consist of 51% individuals with disabilities and a structure where individuals with disabilities make real decisions that determine the outcome of the grant.

• Research reflecting the principles of participatory action.

• Cultural competency.

• A description of how individuals with disabilities and their families will be involved in all aspects of the design, implementation, and evaluation of the project.

• Attention to unserved and inadequately served individuals, having a range of disabilities from mild to severe, from multicultural backgrounds, rural and inner-city areas, and migrant, homeless, and refugee families.

• Compliance with the Americans with Disabilities Act and section 504 of the Rehabilitation Act of 1973 as amended by the Rehabilitation Act amendments of 1992 (Pub. L. 102–569).

• Collaboration through partnerships and coalitions.

• Development of the capacity to communicate and disseminate information and technical assistance through e-mail and other effective, affordable, and accessible forms of electronic communication.

• A community-based approach.

• Responsiveness through systems change.

• Identification of barriers and strategies for overcoming barriers.

• Outcome orientation.

• Measurement and ongoing evaluation, including the participation of individuals with disabilities in formulation and implementation.

• Development and establishment of practices and programs beyond project period.

• Dissemination of models, products, best practices, and strategies for distribution between the networks and beyond. A plan describing initial activities is needed between funded projects as well as at the end of the project period. These activities should maintain and share ongoing information, existing resources of consultants/experts, and curriculum/materials with funded projects and within the network.

• *Project Duration:* This announcement is soliciting applications for project periods up to three years under this priority area. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for continuation grants funded under this priority area beyond the one-year budget period, but within the three-year project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee, and determination that continued funding would be in the best interest of the Government.

• *Federal Share of Project Costs:* The maximum Federal share is not to exceed $100,000 for the first 12-month budget period or a maximum of $300,000 for a three-year project period.

• *Matching Requirement:* Grantees must provide at least 25 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $100,000 in Federal funds (based on an award of $100,000 per budget period) must include a match of at least $33,333 (25% total project cost).

• *Anticipated Number of Projects to be Funded:* It is anticipated that up to three (3) projects will be funded. Subject to availability of additional resources in FY 1996 and the number of acceptable applications received as a result of this program announcement, the ADD Commissioner may elect to select recipients for the FY 1996 cohort of programs out of the pool of applications submitted for FY 1995 funds.

• *CFDA:* ADD's CFDA (Code of Federal Domestic Assistance) number is 93.631—Developmental Disabilities—Projects of National Significance. This information is needed to complete item 10 on the SF 424.

Fiscal Year 1995 Priority Area 6: Meeting the Mental Health Needs of Individuals With Developmental Disabilities

• *Eligible Applicants:* State agencies, public or private nonprofit organizations, institutions or agencies.

• *Purpose:* For this priority area, ADD will award demonstration grant funds on addressing the mental health needs of individuals with developmental disabilities. ADD intends to target individuals, specifically focusing on young adults who are transitioning out of the MR/DD system and into the community with a dual diagnosis of developmental disability and mental illness, and individuals and families of individuals who live in the community and who might be on waiting lists.

• *Background Information:* Meeting the mental health needs of individuals with developmental disabilities is a "quality of life" goal, but often community service personnel have neither the skills nor the desire to effectively treat individuals with developmental disabilities who have mental health needs. In addition, these consumers are often caught between two service delivery systems (mental health and developmental disabilities) where the type and continuity of resources required for effective treatment and improved life quality are inefficient, ineffective, or non-existent. Improving the adequacy and availability of such resources will depend on better training for both specialized and generic service providers.

The challenge of the 1990s is to provide for a coordinated, collaborative human service delivery system that will enable individuals with developmental disabilities to receive services in an expeditious and coordinated manner. The creation of such a system will allow for full community integration and inclusion of individuals who also need mental health services.

• *Minimum Requirements for Project Design:* ADD is interested in projects which demonstrate the potential for creative and humanizing approaches to designing, implementing, and evaluating projects which assist community agencies in coordinating efforts in the mental health and developmental disabilities service systems; educate self-advocates, family members, advocates, individuals with developmental disabilities, and service providers on state-of-the-art practices in the field of mental illness and developmental disabilities; and develop and disseminate methods for working with the mental health and developmental disabilities networks to promote full inclusion and membership in the community.

In order to successfully compete under this priority area, the application must include activities which would:

• Develop a model and train a team consisting of professionals/paraprofessionals, families, advocates, and self-advocates to help bridge the gap between systems.

• Develop and disseminate a handbook of consensus opinion on psychopharmacology. The Handbook will indicate the opinions of a large panel of consumers, scientists, and practitioners regarding what drugs should be used for what conditions, what best practices should be followed, and how consumers can provide effective oversight.

• Develop strategies to disseminate the Handbook to consumers, Protection and Advocacy agencies, oversight committees, and professionals/paraprofessionals.

• Train people who work in Protection and Advocacy in issues related to Mental Retardation/Mental Health.

• Disseminate anger management training that has been developed for people with mental retardation on a broad national level.

• Develop consumer outcome measures to evaluate the impact of programs. These measures should address the following questions: (1) Are hospitalizations reduced? (2) Do coordinated services enable individuals with developmental disabilities to remain in the community? (3) What is the feasibility of replication in other States? (4) What are the barriers in providing coordinated services? and (5) What is the efficacy of a single point of entry?

• Provide evidence of the applicant's ability to establish an advisory committee comprised of individuals with developmental disabilities and families to address what their expectations are from mental health and developmental disabilities services.

• Provide a signed letter of agreement between the State mental health system and the State developmental disabilities system of the selected project.

As a general guide, ADD will expect to fund only those applications for projects that incorporate the following elements:

• Consumer/self-advocate orientation and participation.

• Key project personnel with direct life, parental, or familial experience with living with a disability.

• Strong advisory components that consist of 51% individuals with disabilities and a structure where individuals with disabilities make real decisions that determine the outcome of the grant.

• Research reflecting the principles of participatory action.

• Cultural competency.

• A description of how individuals with disabilities and their families will be involved in all aspects of the design, implementation, and evaluation of the project.

• Attention to unserved and inadequately served individuals, having a range of disabilities from mild to severe, from multicultural backgrounds, rural and inner-city areas, and migrant, homeless, and refugee families.

• Compliance with the Americans with Disabilities Act and section 504 of the Rehabilitation Act of 1973 as amended by the Rehabilitation Act amendments of 1992 (Pub. L. 102–569).

• Collaboration through partnerships and coalitions.

• Development of the capacity to communicate and disseminate information and technical assistance through e-mail and other effective, affordable, and accessible forms of electronic communication.

• A community-based approach.

• Responsiveness through systems change.

• Identification of barriers and strategies for overcoming barriers.

• Outcome orientation.

• Measurement and ongoing evaluation, including the participation of individuals with disabilities in formulation and implementation.

• Development and establishment of practices and programs beyond project period.

• Dissemination of models, products, best practices, and strategies for distribution between the networks and beyond. A plan describing initial activities is needed between funded projects as well as at the end of the project period. These activities should maintain and share ongoing information, existing resources of consultants/experts, and curriculum/materials with funded projects and within the network.

• *Project Duration:* This announcement is soliciting applications for project periods up to three years under this priority area. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for continuation grants funded under this priority area beyond the one-year budget period, but within the three-year project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee, and determination that continued funding would be in the best interest of the Government.

• *Federal Share of Project Costs:* The maximum Federal share is not to exceed $100,000 for the first 12-month budget period or a maximum of $300,000 for a three-year project period.

• *Matching Requirement:* Grantees must provide at least 25 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $100,000 in Federal funds (based on an award of $100,000 per budget period) must include a match of at least $33,333 (25% total project cost).

• *Anticipated Number of Projects to be Funded:* It is anticipated that up to one (1) project will be funded. Subject to availability of additional resources in FY 1996 and the number of acceptable applications received as a result of this program announcement, the ADD Commissioner may elect to select recipients for the FY 1996 cohort of programs out of the pool of applications submitted for FY 1995 funds.

• *CFDA:* ADD's CFDA (Code of Federal Domestic Assistance) number is 93.631—Developmental Disabilities—Projects of National Significance. This information is needed to complete item 10 on the SF 424.

Proposed Fiscal Year 1995 Priority Area 7: Children at Risk: The Impact of Abuse and Violence on Children With Disabilities

• *Eligible Applicants:* A State agency to act as the lead agency in the State for the grant project.

• *Purpose:* ADD is interested in funding one or more State demonstration projects for development and implementation of a Statewide collaboration/coordination strategy to reduce the incidence of abuse and neglect of children with disabilities and reduce the incidence of abuse and neglect of children which causes or

contributes to the development of disabilities.

• *Background Information:* Children with disabilities have been found to be abused at two to ten times the rate of children without disabilities. Most perpetrators of the abuse are well known to the victim. Some of them are service providers, but most are family members. Maltreatment can include physical, sexual, and emotional abuse and physical, educational, and emotional neglect.

In addition, a significant percentage of developmental disabilities are caused by abuse. Victims of child neglect sustain such permanent disabilities as mental retardation and learning and cognitive disabilities. Abusive Head Trauma is a significant cause of disability in abused children and non-organic failure to thrive typically results from abuse or neglect. Over half the fatalities related to child abuse occur from 0 to 1 year and 90 percent of such fatalities occur in children under 5 years of age.

Clearly, there is an epidemic of abuse and neglect of children—3 million reported cases in 1993. Public awareness as well as governmental and professional intervention are urgently needed.

• *Minimum Requirements for the Project Design:* The project should involve developing a comprehensive Statewide strategy with a multi-agency, multi-system approach to address the problem of maltreatment of children with disabilities as well as abuse which leads to disabilities. This coordination and collaboration strategy should involve all pertinent State agencies/programs, including Child Welfare Services, Education, the Developmental Disabilities Protection and Advocacy Agency, Developmental Disabilities Council, Child Care, any State Head Start Coordinator, Health (including mental health and substance abuse, maternal and child health), Human Services/Welfare (AFDC, Medicaid, etc.), Mental Retardation, the criminal justice system, and any other pertinent entities such as a Children's Trust Fund. The project should also involve appropriate State Councils and planning entities including those for Family Preservation and Support, State Interagency Coordinating Council for Part H, IDEA, and other public and private programs/resources including the Developmental Disabilities University Affiliated Program in the State and consumer agencies.

The strategy should include the following components:

• The development of a plan to conduct interdisciplinary training in both the field of child abuse and neglect and the field of disability, simultaneously, which is designed for State and local agency personnel and other providers concerning the risk, investigation, reporting, assessment, intervention, and follow-up of cases of maltreatment involving children with disabilities and those at risk, including training on how to work collaboratively on an ongoing basis to prevent and reduce the incidence of abuse of children with disabilities and the development of disabilities caused by abuse.

• Design for formation of interdisciplinary teams which include disability specialists to assess and treat cases of abuse and neglect involving children with disabilities, including (1) consideration of the nature of the child's disability (e.g., osteogenesis imperfecta, self-injury) and (2) awareness of such disabilities as Abusive Head Trauma, including Shaken Baby Syndrome, and non-organic failure to thrive.

• The development of ongoing interagency agreements to facilitate coordination and collaboration of all relevant agencies/programs concerned with maltreatment cases involving children with disabilities and those children at risk of disability, including emphasizing the importance of sharing data on abuse cases among agencies involved.

• A plan for providing comprehensive community-based services for the treatment of abuse and neglect involving children with disabilities or children at risk of disability due to abuse.

• A design for prevention activities to reduce incidence of maltreatment cases involving children with disabilities or children at risk of disability, including family support programs, child abuse and neglect training for families of children with disabilities, and training for children which includes appropriate training for those with disabilities.

• Mechanisms to promote implementation of this same multi-agency/multi-system approach in local communities in the State. A State may choose to implement its project in several selected communities or try different approaches in different communities, before implementing its strategy Statewide.

Applications for funding for Statewide demonstration projects and models of prevention and intervention should include an inventory of resources and best practices, plans for replication and dissemination, and methods for the evaluation of outcomes. They should reflect cultural competency and an understanding of legal issues as well as the political realities of decentralization of service delivery and empowerment of community-based efforts.

As a general guide, ADD will expect to fund only those proposals for projects that incorporate the following elements:

• Consumer/self-advocate orientation and participation.

• Key project personnel with direct life, parental, or familial experience with living with a disability.

• Strong advisory components that consist of 51% individuals with disabilities and a structure where individuals with disabilities make real decisions that determine the outcome of the grant.

• Research reflecting the principles of participatory action.

• Cultural competency.

• A description of how individuals with disabilities and their families will be involved in all aspects of the design, implementation, and evaluation of the project.

• Attention to unserved and inadequately served individuals, having a range of disabilities from mild to severe, from multicultural backgrounds, rural and inner-city areas, migrant, homeless, and refugee families, with severe disabilities.

• Compliance with the Americans with Disabilities Act and section 504 of the Rehabilitation Act of 1973 as amended by the Rehabilitation Act amendments of 1992 (Pub. L. 102–569).

• Collaboration through partnerships and coalitions.

• Development of the capacity to communicate and disseminate information and technical assistance through e-mail and other effective, affordable, and accessible forms of electronic communication.

• A community-based approach.

• Responsiveness through systems change.

• Identification of barriers and strategies for overcoming barriers.

• Outcome orientation.

• Measurement and ongoing evaluation, including the participation of individuals with disabilities in formulation and implementation.

• Development and establishment of practices and programs beyond project period.

• Dissemination of models, products, best practices, and strategies for distribution between the networks and beyond. A plan describing initial activities is needed between funded projects as well as at the end of the project period. These activities should maintain and share ongoing information, existing resources of consultants/experts, and curriculum/materials with funded projects and within the network.

• *Project Duration:* This announcement is soliciting applications for project periods up to three years under this priority area. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for continuation grants funded under this priority area beyond the one-year budget period, but within the three-year project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee, and determination that continued funding would be in the best interest of the Government.

• *Federal Share of Project Costs:* The maximum Federal share is not to exceed $100,000 for the first 12-month budget period or a maximum of $300,000 for a three-year project period.

• *Matching Requirement:* Grantees must provide at least 25 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $100,000 in Federal funds (based on an award of $100,000 per budget period) must include a match of at least $33,333 (25% total project cost).

• *Anticipated Number of Projects To Be Funded:* It is anticipated that up to one (1) project will be funded. Subject to availability of additional resources in FY 1996 and the number of acceptable applications received as a result of this program announcement, the ADD Commissioner may elect to select recipients for the FY 1996 cohort of programs out of the pool of applications submitted for FY 1995 funds.

• *CFDA:* ADD's CFDA (Code of Federal Domestic Assistance) number is 93.631—Developmental Disabilities—Projects of National Significance. This information is needed to complete item 10 on the SF 424.

Proposed Fiscal Year 1995 Priority Area 8: Technical Assistance Projects

For this priority area, ADD will be awarding funds separately using the procurement process to provide technical assistance to improve the functions of the Developmental Disabilities Planning Councils, Protection and Advocacy Systems, and University Affiliated Programs.

Part V. Instructions for the Development and Submission of Applications

This Part contains information and instructions for submitting applications in response to this announcement. Application forms are provided along with a checklist for assembling an application package. Please copy and use these forms in submitting an application.

Potential applicants should read this section carefully in conjunction with the information contained within the specific priority area under which the application is to be submitted. The priority area descriptions are in Part IV.

A. Required Notification of the State Single Point of Contact

All applications under the ADD priority areas are required to follow the Executive Order (E.O.) 12372 process, "Intergovernmental Review of Federal Programs," and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Program and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and territories, except Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Minnesota, Montana, Nebraska, Oklahoma, Oregon, Pennsylvania, South Dakota, Virginia, Washington, American Samoa and Palau, have elected to participate in the Executive Order process and have established a State Single Point of Contact (SPOC). Applicants from these 19 jurisdictions need take no action regarding E.O. 12372. Applications for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions.

Applicants must submit all required materials to the SPOC as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials and indicate the date of this submittal (or date SPOC was contacted, if no submittal is required) on the SF 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application due date to comment on proposed new or competing continuation awards. However, there is insufficient time to allow for a complete SPOC comment period. Therefore, we have reduced the comment period to 45 days from the closing date for applications. These comments are reviewed as part of the award process. Failure to notify the SPOC can result in delays in awarding grants.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, Sixth Floor, 370 L'Enfant Promenade, SW, Washington, DC 20447, Attn: 93.631 ADD—Projects of National Significance.

Contact information for each State's SPOC is found at the end of this Part.

B. Notification of State Developmental Disabilities Planning Councils

A copy of the application must also be submitted for review and comment to the State Developmental Disabilities Council in each State in which the applicant's project will be conducted. A list of the State Developmental Disabilities Councils is included at the end of this announcement.

C. Deadline for Submittal of Applications

One signed original and two copies of the application must be submitted on or before August 3, 1995 to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW, 6th Floor, Washington, DC 20447, Attn: 93.631 ADD—Projects of National Significance.

Applications may be mailed or hand-delivered. Hand-delivered applications are accepted during the normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday. Applications shall be considered as meeting an announced deadline if received by the deadline date at the ACF Grants Office (Close of Business: 4:30 p.m., local prevailing time).

Late applications: Applications which do not meet the criterion stated above are considered late applications. ACF/ADD shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend the deadline for all applicants due to acts of God, such as floods, hurricanes, or earthquakes; or when there is a widespread disruption of the mails. However, if the granting agency does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

D. Instructions for Preparing the Application and Completing Application Forms

The SF 424, SF 424A, SF 424A, Page 2 and Certifications have been reprinted for your convenience in preparing the application. You should reproduce single-sided copies of these forms from the reprinted forms in the announcement, typing your information onto the copies. Please do not use forms directly from the **Federal Register** announcement, as they are printed on both sides of the page.

Please prepare your application in accordance with the following instructions:

1. SF 424 Page 1, Application Cover Sheet

Please read the following instructions before completing the application cover sheet. An explanation of each item is included. Complete only the items specified.

Top of Page. Enter the single priority area number under which the application is being submitted. An application should be submitted under only one priority area.

Item 1. "Type of Submission"—Preprinted on the form.

Item 2. "Date Submitted" and "Applicant Identifier"—Date application is submitted to ACF and applicant's own internal control number, if applicable.

Item 3. "Date Received By State"—State use only (if applicable).

Item 4. "Date Received by Federal Agency"—Leave blank.

Item 5. "Applicant Information".

"Legal Name"—Enter the legal name of applicant organization. For applications developed jointly, enter the name of the lead organization only. There must be a single applicant for each application.

"Organizational Unit"—Enter the name of the primary unit within the applicant organization which will actually carry out the project activity. Do not use the name of an individual as the applicant. If this is the same as the applicant organization, leave the organizational unit blank.

"Address"—Enter the complete address that the organization actually uses to receive mail, since this is the address to which all correspondence will be sent. Do not include both street address and P.O. box number unless both must be used in mailing.

"Name and telephone number of the person to be contacted on matters involving this application (give area code)"—Enter the full name (including academic degree, if applicable) and telephone number of a person who can respond to questions about the application. This person should be accessible at the address given here and will receive all correspondence regarding the application.

Item 6. "Employer Identification Number (EIN)"—Enter the employer identification number of the applicant organization, as assigned by the Internal Revenue Service, including, if known, the Central Registry System suffix.

Item 7. "Type of Applicant"—Self-explanatory.

Item 8. "Type of Application"—Preprinted on the form.

Item 9. "Name of Federal Agency"—Preprinted on the form.

Item 10. "Catalog of Federal Domestic Assistance Number and Title"—Enter the Catalog of Federal Domestic Assistance (CFDA) number assigned to the program under which assistance is requested and its title. For all of ADD's priority areas, the following should be entered, "93.631—Developmental Disabilities: Projects of National Significance."

Item 11. "Descriptive Title of Applicant's Project"—Enter the project title. The title is generally short and is descriptive of the project, not the priority area title.

Item 12. "Areas Affected by Project"—Enter the governmental unit where significant and meaningful impact could be observed. List only the largest unit or units affected, such as State, county, or city. If an entire unit is affected, list it rather than subunits.

Item 13. "Proposed Project"—Enter the desired start date for the project and projected completion date.

Item 14. "Congressional District of Applicant/Project"—Enter the number of the Congressional district where the applicant's principal office is located and the number of the Congressional district(s) where the project will be located. If Statewide, a multi-State effort, or nationwide, enter "00."

Items 15. Estimated Funding Levels. In completing 15a through 15f, the dollar amounts entered should reflect, for a 17-month or less project period, the total amount requested. If the proposed project period exceeds 17 months, enter only those dollar amounts needed for the first 12 months of the proposed project.

Item 15a. Enter the amount of Federal funds requested in accordance with the preceding paragraph. This amount should be no greater than the maximum amount specified in the priority area description.

Items 15 b–e. Enter the amount(s) of funds from non-Federal sources that will be contributed to the proposed project. Items b–e are considered cost-sharing or "matching funds." The value of third party in-kind contributions should be included on appropriate lines as applicable. For more information regarding funding as well as exceptions to these rules, see Part III, Sections E and F, and the specific priority area description.

Item 15f. Enter the estimated amount of program income, if any, expected to be generated from the proposed project. Do not add or subtract this amount from the total project amount entered under item 15g. Describe the nature, source and anticipated use of this program income in the Project Narrative Statement.

Item 15g. Enter the sum of items 15a–15e.

Item 16a. "Is Application Subject to Review By State Executive Order 12372 Process? Yes."—Enter the date the applicant contacted the SPOC regarding this application. Select the appropriate SPOC from the listing provided at the end of Part IV. The review of the application is at the discretion of the SPOC. The SPOC will verify the date noted on the application.

Item 16b. "Is Application Subject to Review By State Executive Order 12372 Process? No."—Check the appropriate box if the application is not covered by E.O. 12372 or if the program has not been selected by the State for review.

Item 17. "Is the Applicant Delinquent on any Federal Debt?"—Check the appropriate box. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include audit disallowances, loans and taxes.

Item 18. "To the best of my knowledge and belief, all data in this application/preapplication are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded."—To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for signature of this application by this individual as the official representative must be on file in the applicant's office, and may be requested from the applicant.

Item 18 a–c. "Typed Name of Authorized Representative, Title, Telephone Number"—Enter the name, title and telephone number of the authorized representative of the applicant organization.

Item 18d. "Signature of Authorized Representative"—Signature of the authorized representative named in Item 18a. At least one copy of the application must have an original signature. Use colored ink (not black) so that the original signature is easily identified.

Item 18e. "Date Signed"—Enter the date the application was signed by the authorized representative.

2. SF 424A—Budget Information—Non-Construction Programs

This is a form used by many Federal agencies. For this application, Sections A, B, C, E and F are to be completed. Section D does not need to be completed.

Sections A and B should include the Federal as well as the non-Federal funding for the proposed project covering (1) the total project period of 17 months or less or (2) the first year budget period, if the proposed project period exceeds 15 months.

Section A—Budget Summary. This section includes a summary of the budget. On line 5, enter total Federal costs in column (e) and total non-Federal costs, including third party in-kind contributions, but not program income, in column (f). Enter the total of (e) and (f) in column (g).

Section B—Budget Categories. This budget, which includes the Federal as well as non-Federal funding for the proposed project, covers (1) the total project period of 17 months or less or (2) the first-year budget period if the proposed project period exceeds 17 months. It should relate to item 15g, total funding, on the SF 424. Under column (5), enter the total requirements for funds (Federal and non-Federal) by object class category.

A separate budget justification should be included to explain fully and justify major items, as indicated below. The types of information to be included in the justification are indicated under each category. For multiple year projects, it is desirable to provide this information for each year of the project. The budget justification should immediately follow the second page of the SF 424A.

Personnel—Line 6a. Enter the total costs of salaries and wages of applicant/grantee staff. Do not include the costs of consultants, which should be included on line 6h, "Other."

Justification: Identify the principal investigator or project director, if known. Specify by title or name the percentage of time allocated to the project, the individual annual salaries, and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

Fringe Benefits—Line 6b. Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate.

Justification: Provide a break-down of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, etc.

Travel—6c. Enter total costs of out-of-town travel (travel requiring per diem) for staff of the project. Do not enter costs for consultant's travel or local transportation, which should be included on Line 6h, "Other."

Justification: Include the name(s) of traveler(s), total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

Equipment—Line 6d. Enter the total costs of all equipment to be acquired by the project. For State and local governments, including Federally recognized Indian Tribes, "equipment" is tangible, non-expendable personal property having a useful life of more than one year and acquisition cost of $5,000 or more per unit.

Justification: Equipment to be purchased with Federal funds must be justified. The equipment must be required to conduct the project, and the applicant organization or its subgrantees must not have the equipment or a reasonable facsimile available to the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

Supplies—Line 6e. Enter the total costs of all tangible expendable personal property (supplies) other than those included on Line 6d.

Justification: Specify general categories of supplies and their costs.

Contractual—Line 6f. Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and (2) contracts with secondary recipient organizations, including delegate agencies. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line. If the name of the contractor, scope of work, and estimated total costs are not available or have not been negotiated, include on Line 6h, "Other."

Justification: Attach a list of contractors, indicating the names of the organizations, the purposes of the contracts, and the estimated dollar amounts of the awards as part of the budget justification. Whenever the applicant/grantee intends to delegate part or all of the program to another agency, the applicant/grantee must complete this section (Section B, Budget Categories) for each delegate agency by agency title, along with the supporting information. The total cost of all such agencies will be part of the amount shown on Line 6f. Provide backup documentation identifying the name of contractor, purpose of contract, and major cost elements.

Construction—Line 6g. Not applicable. New construction is not allowable.

Other—Line 6h. Enter the total of all other costs. Where applicable, such costs may include, but are not limited to: Insurance; medical and dental costs; noncontractual fees and travel paid directly to individual consultants; local transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use; training costs, including tuition and stipends; training service costs, including wage payments to individuals and supportive service payments; and staff development costs. Note that costs identified as "miscellaneous" and "honoraria" are not allowable.

Justification: Specify the costs included.

Total Direct Charges—Line 6i. Enter the total of Lines 6a through 6h.

Indirect Charges—6j. Enter the total amount of indirect charges (costs). If no indirect costs are requested, enter "none." Generally, this line should be used when the applicant (except local governments) has a current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency.

Local and State governments should enter the amount of indirect costs determined in accordance with HHS requirements. When an indirect cost rate is requested, these costs are included in the indirect cost pool and should not be charged again as direct costs to the grant.

In the case of training grants to other than State or local governments (as defined in title 45, Code of Federal Regulations, part 74), the Federal reimbursement of indirect costs will be limited to the lesser of the negotiated (or actual) indirect cost rate or 8 percent of the amount allowed for direct costs, exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

For training grant applications, the entry under line 6j should be the total indirect costs being charged to the project. The Federal share of indirect costs is calculated as shown above. The applicant's share is calculated as follows:

(a) Calculate total project indirect costs (a*) by applying the applicant's approved indirect cost rate to the total project (Federal and non-Federal) direct costs.

(b) Calculate the Federal share of indirect costs (b*) at 8 percent of the amount allowed for total project (Federal and non-Federal) direct costs exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

(c) Subtract (b*) from (a*). The remainder is what the applicant can claim as part of its matching cost contribution.

Justification: Enclose a copy of the indirect cost rate agreement. Applicants subject to the limitation on the Federal reimbursement of indirect costs for training grants should specify this.

Total—Line 6k. Enter the total amounts of lines 6i and 6j.

Program Income—Line 7. Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount.

Justification: Describe the nature, source, and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources. This section summarizes the amounts of non-Federal resources that will be applied to the grant. Enter this information on line 12 entitled "Totals." In-kind contributions are defined in title 45 of the Code of Federal Regulations, §§ 74.51 and 92.24, as "property or services which benefit a grant-supported project or program and which are contributed by non-Federal third parties without charge to the grantee, the subgrantee, or a cost-type contractor under the grant or subgrant."

Justification: Describe third party in-kind contributions, if included.

Section D—Forecasted Cash Needs. Not applicable.

Section E—Budget Estimate of Federal Funds Needed For Balance of the Project. This section should only be completed if the total project period exceeds 17 months.

Totals—Line 20. For projects that will have more than one budget period, enter the estimated required Federal funds for the second budget period (months 13 through 24) under column "(b) First." If a third budget period will be necessary, enter the Federal funds needed for months 25 through 36 under "(c) Second." Columns (d) and (e) are not applicable in most instances, since ACF funding is almost always limited to a three-year maximum project period. They should remain blank.

Section F—Other Budget Information.

Direct Charges—Line 21. Not applicable.

Indirect Charges—Line 22. Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Remarks—Line 23. If the total project period exceeds 17 months, you must enter your proposed non-Federal share of the project budget for each of the remaining years of the project.

3. Project Summary Description

Clearly mark this separate page with the applicant name as shown in item 5 of the SF 424, the priority area number as shown at the top of the SF 424, and the title of the project as shown in item 11 of the SF 424. The summary description should not exceed 300 words. These 300 words become part of the computer database on each project.

Care should be taken to produce a summary description which accurately and concisely reflects the proposal. It should describe the objectives of the project, the approaches to be used and the outcomes expected. The description should also include a list of major products that will result from the proposed project, such as software packages, materials, management procedures, data collection instruments, training packages, or videos (please note that audiovisuals should be closed captioned). The project summary description, together with the information on the SF 424, will constitute the project "abstract." It is the major source of information about the proposed project and is usually the first part of the application that the reviewers read in evaluating the application.

4. Program Narrative Statement

The Program Narrative Statement is a very important part of an application. It should be clear, concise, and address the specific requirements mentioned under the priority area description in Part IV. The narrative should also provide information concerning how the application meets the evaluation criteria, using the following headings:

(a) Objectives and Need for Assistance;

(b) Results and Benefits Expected;

(c) Approach; and

(d) Staff Background and Organization's Experience.

The specific information to be included under each of these headings is described in Section C of Part III, Evaluation Criteria.

The narrative should be typed double-spaced on a single-side of an 8½"×11" plain white paper, with 1" margins on all sides. All pages of the narrative (including charts, references/footnotes, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with "Objectives and Need for Assistance" as page number one. Applicants should not submit reproductions of larger size paper, reduced to meet the size requirement.

The length of the application, including the application forms and all attachments, should not exceed 60 pages. A page is a single side of an 8½×11" sheet of paper. Applicants are requested not to send pamphlets, brochures or other printed material along with their application as these pose xeroxing difficulties. These materials, if submitted, will not be included in the review process if they exceed the 60-page limit. Each page of the application will be counted to determine the total length.

5. Organizational Capability Statement

The Organizational Capability Statement should consist of a brief (two to three pages) background description of how the applicant organization (or the unit within the organization that will have responsibility for the project) is organized, the types and quantity of services it provides, and/or the research and management capabilities it possesses. This description should cover capabilities not included in the Program Narrative Statement. It may include descriptions of any current or previous relevant experience, or describe the competence of the project team and its demonstrated ability to produce a final product that is readily comprehensible and usable. An organization chart showing the relationship of the project to the current organization should be included.

6. Part V—Assurances/Certifications

Applicants are required to file an SF 424B, Assurances—Non-Construction Programs and the Certification Regarding Lobbying. Both must be signed and returned with the application. Applicants must also provide certifications regarding: (1) Drug-Free Workplace Requirements; and (2) Debarment and Other Responsibilities. These two certifications are self-explanatory.

Copies of these assurances/certifications are reprinted at the end of this announcement and should be reproduced, as necessary. A duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances/certifications. A signature on the SF 424 indicates compliance with the Drug Free Workplace Requirements, and Debarment and Other Responsibilities certifications, and need not be mailed back with the application.

In addition, applicants are required under Section 162(c)(3) of the Act to provide assurances that the human rights of all individuals with developmental disabilities (especially those individuals without familial protection) who will receive services under projects assisted under Part E will be protected consistent with section 110 (relating to the rights of individuals with developmental disabilities). Each application must include a statement providing this assurance.

For research projects in which human subjects may be at risk, a Protection of Human Subjects Assurance may be required. If there is a question regarding the applicability of this assurance, contact the Office for Research Risks of the National Institutes of Health at (301) 496–7041.

E. Checklist for a Complete Application

The checklist below is for your use to ensure that your application package has been properly prepared.

_____One original, signed and dated application, plus two copies. Applications for different priority areas are packaged separately;

_____Application is from an organization which is eligible under the eligibility requirements defined in the priority area description (screening requirement);

_____Application length does not exceed 60 pages, unless otherwise specified in the priority area description.

A complete application consists of the following items in this order:

_____Application for Federal Assistance (SF 424, REV 4–88);

_____A completed SPOC certification with the date of SPOC contact entered in line 16, page 1 of the SF 424 if applicable.

_____Budget Information—Non-Construction Programs (SF 424A, REV 4–88);

_____Budget justification for Section B—Budget Categories;

_____Table of Contents;

_____Letter from the Internal Revenue Service, etc. to prove non-profit status, if necessary;

_____Copy of the applicant's approved indirect cost rate agreement, if appropriate;

_____Project summary description and listing of key words; Program Narrative Statement (See Part III, Section C);

_____Organizational capability statement, including an organization chart;

_____Any appendices/attachments;

_____Assurances—Non-Construction Programs (Standard Form 424B, REV 4–88);

_____Certification Regarding Lobbying;

_____Certification of Protection of Human Subjects, if necessary; and

_____Certification Regarding Environmental Tobacco Smoke

F. The Application Package

Each application package must include an original and two copies of the complete application. Each copy should be stapled securely (front and back if necessary) in the upper left-hand corner. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with page one. In order to facilitate handling, please do not use covers, binders or tabs. Do not include extraneous materials as attachments, such as agency promotion brochures, slides, tapes, film clips, minutes of meetings, survey instruments or articles of incorporation.

(Federal Catalog of Domestic Assistance Number 93.631 Developmental Disabilities—Projects of National Significance)

Dated: June 12, 1995.

Bob Williams,

Commissioner, Administration on Developmental Disabilities.

BILLING CODE 4184–01–P

Attachment A

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction / Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN):	7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision. If Revision, enter appropriate letter(s) in box(es): ☐ ☐ A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other (specify):	A. State H. Independent School Dist. B. County I. State Controlled Institution of Higher Learning C. Municipal J. Private University D. Township K. Indian Tribe E. Interstate L. Individual F. Intermunicipal M. Profit Organization G. Special District N. Other (Specify)
9. NAME OF FEDERAL AGENCY:	
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: TITLE:	11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:
12. AREAS AFFECTED BY PROJECT (Cities, Counties, States, etc.):	

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING: a. Federal	$ .00	16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS? a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____ b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW	
b. Applicant	$ .00		
c. State	$ .00		
d. Local	$ .00		
e. Other	$ .00		
f. Program Income	$ .00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? ☐ Yes If "Yes," attach an explanation. ☐ No	
g. TOTAL	$ .00		

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4184-01-C

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry:

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
—"New" means a new assistance award.
—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184-01-P

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

BILLING CODE 4184-01-C

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years) (b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:

23. Remarks

SF 424A (4-88) Page 2
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Instructions for the SF-424A

General Instructions

This form is designed so that applications can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual of other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title one each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

ASSURANCES—NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (Pub. L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (Pub. L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. 276a to 276a–7), the Copeland Act (40 U.S.C. 276c and 18 U.S.C. 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (Pub. L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (Pub. L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended (Pub. L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with Pub. L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (Pub. L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official

Applicant Organization

Title

Date Submitted

BILLING CODE 4184-01-P

Attachment B

U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

BILLING CODE 4184-01-C

Attachment C—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction," provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Attachment D—Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit standard Form–LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form–LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

_____

Signature

_____

Title

_____

Organization

_____

Date

BILLING CODE 4184–01–P

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter ____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: Congressional District, *if known*:	Congressional District, *if known*:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	9. Award Amount, *if known*: $
10. a. Name and Address of Lobbying Entity (*if individual, last name, first name, MI*):	b. Individuals Performing Services (*including address if different from No. 10a*) (*last name, first name, MI*):
(*attach Continuation Sheet(s) SF-LLL-A, if necessary*)	
11. Amount of Payment (*check all that apply*): $ _____ ☐ actual ☐ planned	13. Type of Payment (*check all that apply*): ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment (*check all that apply*): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:	
(*attach Continuation Sheet(s) SF-LLL-A, if necessary*)	
15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No	
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form - LLL

BILLING CODE 4184–01–C

Attachment E—Certification Regarding Environmental Tobacco Smoke

Public Law 103–227, Part C—Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1,000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act. The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for children's services and that all subgrantees shall certify accordingly.

BILLING CODE 4184–01–P

Attachment F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

PROTECTION OF HUMAN SUBJECTS ASSURANCE/CERTIFICATION/DECLARATION

☐ ORIGINAL ☐ FOLLOWUP ☐ REVISION

☐ GRANT ☐ CONTRACT ☐ FELLOW ☐ OTHER

☐ NEW ☐ RENEWAL ☐ CONTINUATION

APPLICATION IDENTIFICATION NUMBER *(If known)*

STATEMENT OF POLICY: Safeguarding the rights and welfare of subjects at risk in activities supported under grants and contracts from DHHS is primarily the responsibility of the institution which receives or is accountable to DHHS for the funds awarded for the support of the activity. In order to provide for the adequate discharge of this institutional responsibility, it is the policy of DHHS that no activity involving human subjects to be supported by DHHS grants or contracts shall be undertaken unless the Institutional Review Board has reviewed and approved such activity, and the institution has submitted to DHHS a certification of such review and approval, in accordance with the requirements of Public Law 93-348, as implemented by Part 46 of Title 45 of the Code of Federal Regulations, as amended, (45 CFR 46). Administration of the DHHS policy and regulation is the responsibility of the Office for Protection from Research Risks, National Institutes of Health, Bethesda, MD 20205.

1. TITLE OF PROPOSAL OR ACTIVITY

2. PRINCIPAL INVESTIGATOR/ACTIVITY DIRECTOR/FELLOW

3. DECLARATION THAT HUMAN SUBJECTS EITHER WOULD OR WOULD NOT BE INVOLVED

☐ A. NO INDIVIDUALS WHO MIGHT BE CONSIDERED HUMAN SUBJECTS, INCLUDING THOSE FROM WHOM ORGANS, TISSUES, FLUIDS, OR OTHER MATERIALS WOULD BE DERIVED, OR WHO COULD BE IDENTIFIED BY PERSONAL DATA, WOULD BE INVOLVED IN THE PROPOSED ACTIVITY. (IF NO HUMAN SUBJECTS WOULD BE INVOLVED, CHECK THIS BOX AND PROCEED TO ITEM 7. PROPOSALS DETERMINED BY THE AGENCY TO INVOLVE HUMAN SUBJECTS WILL BE RETURNED.)

☐ B. HUMAN SUBJECTS WOULD BE INVOLVED IN THE PROPOSED ACTIVITY AS EITHER: ☐ NONE OF THE FOLLOWING, OR INCLUDING: ☐ MINORS, ☐ FETUSES, ☐ ABORTUSES, ☐ PREGNANT WOMEN, ☐ PRISONERS, ☐ MENTALLY RETARDED, ☐ MENTALLY DISABLED. UNDER SECTION 6. COOPERATING INSTITUTIONS, ON REVERSE OF THIS FORM, GIVE NAME OF INSTITUTION AND NAME AND ADDRESS OF OFFICIAL(S) AUTHORIZING ACCESS TO ANY SUBJECTS IN FACILITIES NOT UNDER DIRECT CONTROL OF THE APPLICANT OR OFFERING INSTITUTION.

4. DECLARATION OF ASSURANCE STATUS/CERTIFICATION OF REVIEW

☐ A. THIS INSTITUTION HAS NOT PREVIOUSLY FILED AN ASSURANCE AND ASSURANCE IMPLEMENTING PROCEDURES FOR THE PROTECTION OF HUMAN SUBJECTS WITH THE DHHS THAT APPLIES TO THIS APPLICATION OR ACTIVITY. ASSURANCE IS HEREBY GIVEN THAT THIS INSTITUTION WILL COMPLY WITH REQUIREMENTS OF *DHHS Regulation 45 CFR 46*, THAT IT HAS ESTABLISHED AN INSTITUTIONAL REVIEW BOARD FOR THE PROTECTION OF HUMAN SUBJECTS AND, WHEN REQUESTED, WILL SUBMIT TO DHHS DOCUMENTATION AND CERTIFICATION OF SUCH REVIEWS AND PROCEDURES AS MAY BE REQUIRED FOR IMPLEMENTATION OF THIS ASSURANCE FOR THE PROPOSED PROJECT OR ACTIVITY.

☐ B. THIS INSTITUTION HAS AN APPROVED GENERAL ASSURANCE (DHHS ASSURANCE NUMBER _____) OR AN ACTIVE SPECIAL ASSURANCE FOR THIS ONGOING ACTIVITY, ON FILE WITH DHHS. THE SIGNER CERTIFIES THAT ALL ACTIVITIES IN THIS APPLICATION PROPOSING TO INVOLVE HUMAN SUBJECTS HAVE BEEN REVIEWED AND APPROVED BY THIS INSTITUTION'S INSTITUTIONAL REVIEW BOARD IN A CONVENED MEETING ON THE DATE OF_____ IN ACCORDANCE WITH THE REQUIREMENTS OF THE *Code of Federal Regulations on Protection of Human Subjects (45 CFR 46)*. THIS CERTIFICATION INCLUDES, WHEN APPLICABLE, REQUIREMENTS FOR CERTIFYING FDA STATUS FOR EACH INVESTIGATIONAL NEW DRUG TO BE USED (SEE REVERSE SIDE OF THIS FORM).

5. THE INSTITUTIONAL REVIEW BOARD HAS DETERMINED, AND THE INSTITUTIONAL OFFICIAL SIGNING BELOW CONCURS THAT:

EITHER ☐ HUMAN SUBJECTS WILL NOT BE AT RISK; OR ☐ HUMAN SUBJECTS WILL BE AT RISK.

5. AND 6. SEE REVERSE SIDE

7. NAME AND ADDRESS OF INSTITUTION

8. TITLE OF INSTITUTIONAL OFFICIAL	TELEPHONE NUMBER
SIGNATURE OF INSTITUTIONAL OFFICIAL	DATE

HHS-596 (Rev. 5-80)

ENCLOSE THIS FORM WITH THE PROPOSAL OR RETURN IT TO REQUESTING AGENCY.

5. INVESTIGATIONAL NEW DRUGS - ADDITIONAL CERTIFICATION REQUIREMENT

SECTION 46.17 OF TITLE 45 OF THE Code of Federal Regulations states, "Where an organization is required to prepare or to submit a certification . . . and the proposal involves an investigational new drug within the meaning of The Food, Drug, and Cosmetic Act, the drug shall be identified in the certification together with a statement that the 30-day delay required by 21 CFR 130.3(e)(2) has elapsed and the Food and Drug Administration has not, prior to expiration of such 30-day interval, requested that the sponsor continue to withhold or to restrict use of the drug in human subjects; or that the Food and Drug Administration has waived the 30-day delay requirement; provided, however, that in those cases in which the 30-day delay interval has neither expired nor been waived, a statement shall be forwarded to DHHS upon such expiration or upon receipt of a waiver. No certification shall be considered acceptable until such statement has been received."

INVESTIGATIONAL NEW DRUG CERTIFICATION

TO CERTIFY COMPLIANCE WITH FDA REQUIREMENTS FOR PROPOSED USE OF INVESTIGATIONAL NEW DRUGS IN ADDITION TO CERTIFICATION OF INSTITUTIONAL REVIEW BOARD APPROVAL, THE FOLLOWING REPORT FORMAT SHOULD BE USED FOR EACH IND: (ATTACH ADDITIONAL IND CERTIFICATIONS AS NECESSARY).

— IND FORMS FILED: ☐ FDA 1571, ☐ FDA 1572, ☐ FDA 1573

— NAME OF IND AND SPONSOR _____

— DATE OF 30-DAY EXPIRATION OR FDA WAIVER
(FUTURE DATE REQUIRES FOLLOWUP REPORT TO AGENCY) _____

— FDA RESTRICTION _____

— SIGNATURE OF INVESTIGATOR _____ DATE _____

6. COOPERATING INSTITUTIONS - ADDITIONAL REPORTING REQUIREMENT

SECTION 46.16 OF TITLE 45 OF THE *Code of Federal Regulations* IMPOSES SPECIAL REQUIREMENTS ON THE CONDUCT OF STUDIES OR ACTIVITIES IN WHICH THE GRANTEE OR PRIME CONTRACTOR OBTAINS ACCESS TO ALL OR SOME OF THE SUBJECTS THROUGH COOPERATING INSTITUTIONS NOT UNDER ITS CONTROL. IN ORDER THAT THE DHHS BE FULLY INFORMED, THE FOLLOWING REPORT IS REQUESTED WHEN APPLICABLE.

USE FOLLOWING REPORT FORMAT FOR EACH INSTITUTION OTHER THAN GRANTEE OR CONTRACTING INSTITUTION WITH RESPONSIBILITY FOR HUMAN SUBJECTS PARTICIPATING IN THIS ACTIVITY: (ATTACH ADDITIONAL REPORT SHEETS AS NECESSARY).

INSTITUTIONAL AUTHORIZATION FOR ACCESS TO SUBJECTS

— SUBJECTS: STATUS (WARDS, RESIDENTS, EMPLOYEES, PATIENTS, ETC.) _____

NUMBER _____ AGE RANGE _____

NAME OF OFFICIAL (PLEASE PRINT) _____

TITLE _____ TELEPHONE _____

NAME AND ADDRESS OF COOPERATING INSTITUTION _____

— OFFICIAL SIGNATURE _____

NOTES: *(e.g., report of modification in proposal as submitted to agency affecting human subjects involvement)*

HHS-596 (Rev. 5-80) (Back)

BILLING CODE 4184-01-C

Attachment G—Executive Order 12372—State Single Points of Contact

Arizona

Mrs. Janice Dunn, Attn: Arizona State Clearinghouse, 1800 N. Central Avenue, 14th Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315

Arkansas

Tracie L. Copeland, Manager, State Clearinghouse, Office of Intergovernment Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 682–1074

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480

Delaware

Ms. Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326

District of Columbia

Rodney T. Hallman, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street, NW., Suite 500, Washington, DC 20005, Telephone (202) 727–6551

Florida

Florida State Clearinghouse, Intergovernmental Affairs Policy Unit, Executive Office of the Govenor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone (904) 488–8441

Georgia

Mr. Charles H. Badger, Administrator, Georgia State Clearinghouse, 254 Washington Street, SW., Atlanta, Georgia 30334, Telephone (404) 656–3855

Illinois

Steve Klokkenga, State Single Point of Contact, Office of the Governor, 107 Stratton Building, Springfield, Illinois 62706, Telephone (217) 782–1671

Indiana

Jean S. Blackwell, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610

Iowa

Mr. Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725

Kentucky

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601, Telephone (502) 564–2382

Maine

Ms. Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261

Maryland

Ms. Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490

Massachusetts

Karen Arone, State Clearinghouse, Executive Office of Communities and Development, 100 Cambridge street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001

Michigan

Richard S. Pastula, Director, Michigan Department of Commerce, Lansing, Michigan 48909, Telephone (517) 373–7356

Mississippi

Ms. Cathy Mallette, Clearinghouse Officer, Office of Federal Grant Management and Reporting, 301 West Pearl Street, Jackson, Mississippi 39203, Telephone (601) 960–2174

Missouri

Ms. Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, PO Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone (702) 687–4065, Attention: Ron Sparks, Clearinghouse Coordinator

New Hampshire

Mr. Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review, Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155

New Jersey

Gregory W. Adkins, Acting Director, Division of Community Resources, N.J. Department of Community Affairs, Trenton, New Jersey 08625–0803, Telephone (609) 292–6613

Please direct correspondence and questions to: Andrew J. Jaskolka, State Review Process, Division of Community Resources, CN 814, Room 609, Trenton, New Jersey 08625–0803, Telephone (609) 292–9025

New Mexico

George Elliott, Deputy Director, State Budget Division, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3640, FAX (505) 827–3006

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605

North Carolina

Mrs. Chrys Baggett, Director, Office of the Secretary of Admin., N.C. State Clearinghouse, 116 W. Jones Street, Raleigh, North Carolina 27603–8003, Telephone (919) 733–7232

North Dakota

N.D. Single Point of Contact, Office of Intergovernmental Assistance, Office of Management and Budget, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone (701) 224–2094

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio, 43266–0411, Telephone (614) 466–0698

Rhode Island

Mr. Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277–2656

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning

South Carolina

Omeagia Burgess, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734–0494

Tennessee

Mr. Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier

Building, Nashville, Tennessee 37219, Telephone (615) 741–1676

Texas

Mr. Thomas Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463–1778

Utah

Utah State Clearinghouse, Office of Planning and Budget, Attn: Carolyn Wright, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538–1535

Vermont

Mr. Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828–3326

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, West Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348–4010

Wisconsin

Mr. William C. Carey, Federal/State Relations, Wisconsin Department of Administration, 101 South Webster Street, P.O. Box 7864, Madison, Wisconsin 53707, Telephone (608) 266–0267

Wyoming

Sheryl Jeffries, State Single Point of Contact, Herschler Building, 4th Floor, East Wing, Cheyenne, Wyoming 82002, Telephone (307) 777–7574

Guam

Mr. Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472–2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

Norma Burgos/Jose H. Caro, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Telephone (809) 727–4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802,

Please direct correspondence to: Linda Clarke, Telephone (809) 774–0750

Attachment H—State Developmental Disabilities Planning Councils

Alabama

Joan B. Hannah, Ed.D., Executive Director, Alabama Developmental Disabilities Planning Council, 200 Interstate Park Dr., P.O. Box 3710, Montgomery, Alabama 36193–5001, (205) 270–4680, 1–800–232–2158, FAX # (205) 240–3195

Alaska

David Maltman, Director, Governor's Council on Disabilities and Special Education, P.O. Box 240249, Anchorage, Alaska 99524–0249, (907) 563–5355, FAX # (907) 563–5357

Arizona

Diane Skay, Director, Governor's Council on Developmental Disabilities, 1717 West Jefferson Street, Site Code 074Z, Phoenix, Arizona 85007, (602) 542–4049, FAX # (602) 542–5339

Arkansas

Orson Berry, Executive Director, Governor's Developmental Disabilities, Planning Council, 4815 West Markham, Slot 12, Little Rock, Arkansas 72205–3867, (501) 661–2589, FAX # (510) 661–2399

California

Roberta A. Marlowe, Ph.D., Executive Director, CA State Council on Developmental Disabilities, 2000 "O" Street, Suite 100, Sacramento, California 95814, (916) 322–8481, FAX # (916) 443–4957

Colorado

Donald St. Louis, Executive Director, Colorado Developmental Disabilities Planning Council, 777 Grant Street, Suite 304, Denver, Colorado 80203, (303) 894–2345, FAX # (303) 894–2880

Connecticut

Edward T. Preneta, Director, CT Council on Developmental Disabilities, 90 Pitkin Street, East Hartford, Connecticut 06108, (203) 725–3829, FAX # (203) 528–3680

Delaware

James F. Linehan, Director, Developmental Disabilities Planning Council, Department of Administrative Services, Box 1401, Townsend Building, Dover, Delaware 19901, (302) 739–3333, FAX # (302) 739–6704

District of Columbia

Carol Boykins, Executive Director, Developmental Disabilities State Planning Council, 801 N. Capitol Street NE., Suite 954, Washington, DC 20002, (202) 279–6085, FAX # 6587

Florida

K. Joseph Krieger, Executive Director, Florida Developmental Disabilities Planning Council, 820 East Park Avenue, Suite I–100, Tallahassee, Florida 32301, (904) 488–4180, FAX # (904) 922–6702

Georgia

Zebe Schmitt, Executive Director, Governor's Council on Developmental Disabilities, 2 Peachtree Street NE., Room 3–210, Atlanta, Georgia 30303, (404) 657–2126, FAX # (404) 657–2132, TDD 657–2133

Hawaii

Diana Tizard, Director, State Planning Council on Developmental Disabilities, Five Waterfront Plaza, 500 Ala Moana Boulevard, Suite 5–200, Honolulu, Hawaii 96813, (808) 586–8100, FAX # (808) 586–8129

Idaho

John D. Watts, Director, Idaho State Council on Developmental Disabilities, 280 North 8th Street, Suite 208, Boise, Idaho 83720, (208) 334–2178, FAX # (208) 334–3417, 800–544–2433 (Idaho only)

Illinois

Rene Christensen-Leininger, Director, Illinois Council on Developmental Disabilities, 830 S. Spring Street, Springfield, IL 62704, (217) 782–9696, FAX # (217) 524–5339

Joan Asturrizaga, Director, Illinois Council on Developmental Disabilities, 100 W. Randolph/10–600, Chicago, Illinois, (312) 814–2080, FAX # (312) 814–7141

Indiana

Ms. Suellen Jackson-Boner, Director, Governor's Planning Council for People with Disabilities, 143 W. Market Street, Harrison Building, Suite 404, Indianapolis, Indiana 46204, (317) 232–7770/3, FAX # (317) 233–3712

Iowa

Mr. Jay Brewer, Executive Director, Governor's Planning Council for Developmental Disabilities, Hoover State Office Building, 1st Floor, Des Moines, Iowa 50319, (515) 281–7632, FAX # (515) 281–4597

Kansas

Ms. Jane Rhys, Executive Director, Kansas Planning Council on Developmental Disabilities, 915 Harrison, Room 141, Topeka, Kansas 66612, (913) 296–2608/9, FAX # (913) 296–1158

Kentucky

Prudence Reilly, Executive Director, Kentucky Developmental Disabilities Planning Council, Department for Mental Health and Mental Retardation Services, 275 East Main Street, Frankfort, Kentucky 40621, (502) 564–7842, FAX # (502) 564–3844

Louisiana

Clarice Eichelberger, Executive Director, Louisiana State Planning Council on Developmental Disabilities, P.O. Box 3455 Ben 14, 1201 Capitol Access, 5th Floor, DOT Edition, East Entrance, Baton Rouge, Louisiana 70821–3455, (504) 342–6804, FAX # (504) 342–4419

Maine

Peter R. Stowell, Executive Director, Maine Developmental Disabilities Council, Nash Building, Station #139, Augusta, Maine 04333–0139, (207) 287–4213, FAX # (207) 287–4268

Maryland

Susanne Elrod, Executive Director, Maryland State Planning Council on Developmental Disabilities, One Market Center, Box 10, 300 West Lexington Street, Baltimore, Maryland 21201–2323, (410) 333–3688, FAX # (401) 333–6674

Massachusetts

Jody Williams, Executive Director, Massachusetts Developmental Disabilities Council, 600 Washington Street, Room 670, Boston, Massachusetts 02111, (617) 727–6374, FAX # (617) 727–1174, TDD (617) 727–1885

Michigan

Ms. Sharon Tipton, Executive Director, Dept. of Mental Health, Michigan DD Council, Lewis Cass Building, 6th Floor, Lansing, Michigan 48913, (517) 334–6123, 7240, FAX # (517) 334–7353

Minnesota

Ms. Colleen Wieck, Ph.D., Executive Director, Governor's Planning Council on Developmental Disabilities, 300 Centennial Office Building, 658 Cedar Street, St. Paul, Minnesota 55155, (612) 296–4018, FAX # (612) 296–3698

Mississippi

Ed C. Bell, Staff Director, Mississippi Developmental Disabilities Planning Council, 1101 Robert E. Lee Building, Jackson, Mississippi 39201, (601) 359–6238, FAX # (601) 359–6295

Missouri

Ms. Kay Conklin, Director, Missouri Planning Council for Developmental Disabilities, P.O. Box 687, 1706 East Elm Street, Jefferson City, Missouri 65102, (314) 751–8611, FAX # (314) 751–9207

Montana

Greg A. Olsen, Executive Director, Developmental Disabilities Planning and Advisory Council, 111 N. Last Chance Gulch, Arcade Bldg., Unit C, Box 526, Helena, Montana 59620, (406) 444–1334, FAX # (406) 444–5999

Nebraska

Ms. Mary Gordon, Director, Dept. of Health/Developmental Disabilities, 301 Centennial Mall South, P.O. Box 95007, Lincoln, Nebraska 68509, (402) 471–2330, FAX # (402) 471–0383

Nevada

Donny Loux, Director, DD Council, Dept. of Rehab., 711 S. Stewart, Carson City, Nevada 89710, (702) 687–4440, FAX # (702) 687–5980

New Hampshire

Thomas Flayton, (Acting) Executive Director, New Hampshire Developmental Disabilities Council, The Concord Center—Room 315, P.O. Box 315, 10 Ferry Street, Concord, New Hampshire 03301–5022, (603) 271–3236, 7, 8, FAX # (603) 225–6766

Pennsylvania

David B. Schwartz, Executive Director, Developmental Disabilities Planning Council, Forum Building, Room 569, Commonwealth Avenue, Harrisburg, Pennsylvania 17120, (717) 787–6057

Rhode Island

Marie V. Citrone, Executive Director, Rhode Island Developmental Disabilities Council, State Executive Department, 600 New London Avenue, Cranston, Rhode Island 02920–3028, (401) 464–3191, FAX # (401) 464–3570

Oklahoma

Ann Trudgeon, Director, Developmental Disabilities Planning Council, Department of Human Services, P.O. Box 25352, Oklahoma City, Oklahoma 73125–0352, (405) 521–4984(5), FAX # (405) 521–6684

Oregon

Charlotte Duncan, Executive Director, Oregon Developmental Disabilities Planning Council, 540 24th Place NE., Salem, Oregon 97301–4517, (503) 373–7555, FAX # (503) 373–7172

North Dakota

Tom Wallner, Director, North Dakota Council on Developmental Disabilities, c/o Department of Human Services, State Capitol, 600 E. Boulevard Avenue, Bismarck, North Dakota 58505–0250, (701) 224–3219, FAX # (701) 224–2359

Ohio

Mr. Ken Campbell, Executive Director, Ohio Developmental Disabilities Planning Council, Department of Mental Retardation/Developmental Disabilities, 8 East Long Street, 6th Floor, Columbus, Ohio 43266–0523, (614) 466–5205, FAX # (614) 466–0298

New York

Isabel T. Mills, Executive Director, New York State Developmental Disabilities Planning Council, 155 Washington Avenue, 2nd Floor, Albany, New York 12210, (518) 432–8233, FAX # 518–432–8238

North Carolina

Holly Riddle, Executive Director, North Carolina Council on Developmental Disabilities, 1508 Western Blvd., Raleigh, North Carolina 27606–1359, (919) 733–6566, FAX # (919) 733–1863

New Jersey

Ethan B. Ellis, Executive Director, NJ Developmental Disabilities Planning Council, 32 W. State Street, CN 700, Trenton, New Jersey 08625–0700, (609) 292–3745, FAX # (609) 292–7114

New Mexico

Chris Isengard, Executive Director, Developmental Disabilities Planning Council, State of New Mexico, 435 St. Michael's Drive, Building D, Santa Fe, New Mexico 87501, (505) 827–7590, FAX # (505) 827–7589

South Carolina

Charles Lang, Interim Executive Director, South Carolina Developmental Disabilities Planning Council, Edgar Brown Building, Room 372, 1205 Pendleton Street, Columbia, South Carolina 29201–3731, (803) 734–0465, FAX # (803) 734–0356

South Dakota

Charles A. Anderson, Director, South Dakota Governor's Planning Council on Developmental Disabilities, Hillsview Plaza, c/o 500 East Capitol, Pierre, South Dakota 57501–5070, (605) 773–6415, FAX # (605) 773–5483

Tennessee

Wanda Willis, Director, Developmental Disabilities Planning Council, Department of Mental Health and Mental Retardation, 706 Church Street, 3rd Floor, Doctor's Building, Nashville, Tennessee 37219–5393, (615) 741–9791, FAX # (615) 741–0770

Texas

Roger A. Webb, Executive Director, Texas Planning Council for Developmental Disabilities, 4900 North Lamar Blvd., Austin, Texas 78751–2399, (512) 483–4080, FAX # (512) 483–4097

Utah

Catherine E. Chambless, Director, Utah Governor's Council for People with Disabilities, P.O. Pox 1958, Salt Lake City, Utah 84110–1958, (801) 533–4128, FAX # (801) 533–5302

Vermont

Thomas A. Pombar, Executive Secretary, Vermont Developmental Disabilities Council, Waterbury Office Complex; 103 South Main Street, Waterbury, Vermont 05671–1534, (802) 241–2612, FAX # 241–2979

West Virginia

Julie Pratt, Director, West Virginia Developmental Disabilities Planning Council, 1601 Kanawha Blvd., West—Suite 200, Charleston, West Virginia 25312–2500, (304) 558–0416 (Voice), (304) 558–2376 (TDD), FAX # (304) 558–0941

Wisconsin

Ms. Jayn Wittenmyer, Executive Director, Council on Developmental Disabilities, State of Wisconsin, 722 Williamson Street, P.O. Box 7851, Madison, Wisconsin 53707–7851, (608) 266–7826, FAX # (608) 267–3906

Virginia

Sandy Reen, Director, Virginia Board for People with Disabilities, Post Office Box 613, Richmond, Virginia 23205–0613, (804) 786–0016, FAX # (804) 786–1118

Washington

Edward M. Holen, Executive Director, Developmental Disabilities Planning Council, Department of Community Development, 906 Columbia Street SW, Post Office Box 48314, Olympia, Washington 98504–8314, (206) 753–3908, 1–800–634–4473, FAX # (206) 586–2424

Wyoming

Sharron C. Kelsey, Executive Director, Governor's Planning Council on Developmental Disabilities, 122 West 25th Street, Herschler Bldg., First Floor East, Cheyenne, Wyoming 82002, (307) 777–7230, 1–800–442–4333 (in-state-only), FAX # (307) 777–5690

National Office

Ms. Susan Ames-Zierman, Executive Director, National Association of Developmental Disabilities Councils (NADDC), 1234 Massachusetts Avenue NE., Suite 103, Washington, DC 20005, (202) 347–1234, FAX # (202) 347–4023

TERRITORIES (DDCs)

American Samoa

Henry Sesepasara, Executive Director, American Samoa Developmental Disabilities Council, P.O. Box 184, Pago Pago, American Samoa 96799, (684) 633–2919, FAX # (684) 633–1139

Commonwealth of the Northern Mariana Islands

Juanita S. Malone, CNMI DD Council, P.O. Box 2565, Saipan, MP 96950, (011) 670–323–3014/16, FAX # (011) 670–322–4168

Government of Federated State of Micronesia

Yosiro Suta, Gov't of Federated States of Micronesia, Dept of Ed., Palikir, Pohnpei, FM 96941, (691) 320–2609, FAX # (691) 320–5500

Guam

Frances Limitiaco Standing Soldier, Executive Director, Guam Developmental Disabilities Council, 122 IT&E Plazza, Rm. 201, Harmon, Guam 96911, (671) 646–9468, 9469, FAX # (671) 649–7672, TDD 671–649–3911

Northern Mariana Islands

Juanita S. Malone, Exeuctive Director, Developmental Disabilities Council, Department of Education, P.O. Box 2565, Saipan, CM 96950, W (670) 322–3014, H (670) 322–1398

Puerto Rico

Maria Luisa Mendia, Executive Director, Puerto Rico Developmental Disabilities State Council, P.O. Box 9543, Santurce, Puerto Rico 00908, (809) 722–0595, FAX # (809) 721–3622

Virgin Islands

Mark Vinzant, Director, VI Developmental Disabilities Council, PO Box 2671 Kings Hill, St. Croix, U.S. Virgin Islands 00850–9999, (809) 772–2133

Western Carolina Islands (Trust Territories of the Pacific)

Minoru Ueki, MD, Trust Territory Health Council, MacDonald Memorial Hospital KOROR, Palau. WCI 96940.

[FR Doc. 95–14817 Filed 6–16–95; 8:45 am]

BILLING CODE 4184–01–P

federal register

Monday
June 19, 1995

Part III

Department of Education

Comprehensive Regional Assistance Centers Program; Notice

DEPARTMENT OF EDUCATION

[CFDA No. 84.283A]

Comprehensive Regional Assistance Centers Program

Notice inviting applications for new awards for fiscal year (FY) 1995.

Purpose of Program: The purpose of this program is to establish a networked system of 15 comprehensive regional assistance centers to provide comprehensive training and technical assistance related to the administration and implementation of programs under the Elementary and Secondary Education Act of 1965 (ESEA), to States, local educational agencies (LEAs), schools, tribes, community-based organizations, and other recipients of funds under the Act.

This new approach will replace the Department's current method of developing technical assistance that involves more than 40 entities providing categorical and often fragmented technical assistance. A new national technical assistance system will aid in: implementing school reform programs in a manner that improves teaching and learning for all students; coordinating reform programs with other Federal, State, and local education plans and activities, so that all students, particularly students at risk of educational failure, are provided opportunities to meet challenging State content standards and challenging State student performance standards; and adopting, adapting, and implementing promising and proven practices for improving teaching and learning.

Eligible Applicants: (1) For regions (I-V, VIII, XI, XII, XIV and XV), public or private nonprofit entities or consortia of these entities are eligible to apply. (2) For regions that serve a significant population of Indian or Alaska Native students (Regions VI, VII, IX, X, and XIII), eligible applicants are consortia of public or private entities that include a tribally controlled community college or other Indian organization.

Deadline for Transmittal of Applications: August 4, 1995.

Deadline for Intergovernmental Review: September 29, 1995.

Applications Available: June 21, 1995.

Available Funds: The amount available for the first year is $55 million. Since amounts for succeeding years depend on appropriations by Congress, budget estimates should assume level funding for 5 years.

Estimated Range of Awards: $2.5 million–$4.5 million per year.

Estimated Average Size of Awards: $3.67 million.

Estimated Number of Awards: 15 Cooperative Agreements (see Definitions section).

Note: The Department is not bound by any estimate in this notice.

Project Period: Up to 60 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85 and 86.

Definitions

(a) "Grant" means an award of financial assistance in the form of money, or property in lieu of money, made by the Federal Government to an eligible recipient. The term includes a cooperative agreement except where otherwise provided by statute or regulation (see § 74.3 or § 80.3 of EDGAR).

(b) "Cooperative agreement" means a type of grant awarded by the Department when it anticipates having substantial involvement with the recipient during the performance of a funded project.

Selection Criteria

The Secretary will use the following criteria to evaluate applications for this competition. The maximum total score is 100. The maximum score for each criterion is indicated in parentheses with the criterion.

1. *Meeting the purposes of the authorizing statute* (30 Points). The Secretary reviews each application to determine how well the project will meet the purposes of Title XIII of the ESEA, including consideration of—

(a) The objectives of the proposed Center;

(b) How the objectives of the proposed Center further the purposes of Title XIII of the ESEA.

Under section 13002 of ESEA, the purpose of Title XIII is to create a national technical assistance and dissemination system to make available to States, local educational agencies, tribes, schools, and other recipients of funds under ESEA technical assistance in—

(1) Administering and implementing programs under the ESEA;

(2) Implementing school reform programs in a manner that improves teaching and learning for all students;

(3) Coordinating reform programs with other Federal, State, and local education plans and activities, so that all students, particularly students at risk of educational failure, are provided opportunities to meet challenging State content standards and challenging State student performance standards; and

(4) Adopting, adapting, and implementing promising and proven practices for improving teaching and learning.

Under section 13101, the specific purpose of Part A—Comprehensive Regional Assistance Centers is to establish a networked system of 15 comprehensive regional assistance centers to provide comprehensive training and technical assistance, related to administration and implementation of programs under ESEA, to States, local educational agencies, schools, tribes, community-based organizations, and other recipients of ESEA funds.

Section 13001 of ESEA further specifies that technical assistance efforts under Title XIII are intended to—

(1) Help schools and school systems focus on improving opportunities for all children to meet challenging State content standards and challenging State student performance standards, as those schools and systems implement programs under ESEA;

(2) Help States, LEAs, tribes, participating colleges and universities, and schools integrate Federal, State, and local education programs in ways that contribute to improving schools and entire school systems; and

(3) Coordinate technical assistance in support of ESEA programs with the Department's regional offices, the regional educational laboratories, the State Literacy Resource Centers, vocational resource centers, and other technical assistance efforts supported by the Department.

2. *Extent of Need for the Center* (20 Points). The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in Title XIII of ESEA, including consideration of—

(a) The needs addressed by the proposed Center;

(b) How the applicant identified those needs;

(c) How those needs will be met by the proposed Center;

(d) The benefits to be gained by meeting those needs.

Section 13001 of ESEA enumerates several needs for technical assistance, including—

(1) The need of States, LEAs, tribes, and schools serving students with special needs, such as students with limited-English proficiency and students with disabilities, for comprehensive technical assistance in order to use funds under ESEA to provide those students with opportunities to learn to challenging State content standards and challenging State student performance standards; and

(2) The need of States, LEAs, schools, and tribes for help in integrating into a coherent strategy for improving teaching and learning the various programs under ESEA with State and local programs and other education reform efforts;

Section 13101 further refers to—

(1) The special needs of students living in urban and rural areas;

(2) The special needs of States and Outlying Areas in geographic isolation; and

(3) The need in regions serving significant populations of Indians or Alaska Natives for assistance in the development and implementation of instructional strategies, methods, and materials that address the specific cultural and other needs of Indian or Alaska Native students.

3. *Plan of Operation* (30 Points). The Secretary reviews each application to determine the quality of the plan of operation for the Center, including—

(a) The quality of the design of the Center;

(b) The extent to which the plan of management is effective and ensures proper and efficient administration of the Center;

(c) How well the objectives of the Center relate to the purposes of Title XIII of ESEA and to the identified needs of the region;

(d) The quality of the applicant plan to use its resources and personnel to achieve each objective; and

(e) How the applicant will ensure that Center participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

Section 13102 specifies that each Center will be required to—

(1) Coordinate services, work cooperatively, and regularly share information with the Regional Educational Laboratories, the Eisenhower Regional Consortia, research and development centers, State literacy centers authorized under the National Literacy Act of 1991, and other entities engaged in research, development, dissemination, and technical assistance activities that are supported by the Department as part of a Federal technical assistance system, to provide a broad range of support services to schools in the region while minimizing the duplication of those services;

(2) Consult with representatives of SEAs, LEAs, and populations served through the ESEA;

(3) Provide services to States, LEAs, tribes, and schools, in coordination with the National Diffusion Network State Facilitators activities under section 13201, in order to provide the support and assistance diffusion agents need to carry out their mission effectively; and

(4) Provide professional development services to SEAs, LEAs, and the National Diffusion Network State Facilitators to increase the capacity of those entities to provide high-quality technical assistance in support of ESEA programs.

Section 13102 of ESEA specifies that each Center must provide support, training, and assistance to SEAs, tribal divisions of education, LEAs, schools, and other ESEA grant recipients, in—

(1) Improving the quality of instruction, curricula, assessments, and other aspects of school reform, supported with funds under Title I of ESEA;

(2) Implementing effective schoolwide programs under Section 1114 of ESEA;

(3) Meeting the needs of children served under ESEA, including children in high-poverty areas, migratory children, immigrant children, children with limited-English proficiency, neglected or delinquent children, homeless children and youth, Indian children, children with disabilities, and, where applicable, Alaska Native children and Native Hawaiian children;

(4) Implementing high-quality professional development activities for teachers, and where appropriate, administrators, pupil services personnel, and other staff;

(5) Improving the quality of bilingual education, including programs that emphasize English and native language proficiency and promote multicultural understanding;

(6) Creating safe and drug-free environments, especially in areas experiencing high levels of drug use and violence in the community and school;

(7) Implementing educational applications of technology;

(8) Coordinating services and programs to meet the needs of students so that students can fully participate in the educational program of the school;

(9) Expanding the involvement and participation of parents in the education of their children;

(10) Reforming schools, school systems, and the governance and management of schools;

(11) Evaluating programs;

(12) Meeting the special needs of students living in urban and rural areas and the special needs of LEAs serving urban and rural areas;

(13) Integrating and coordinating programs under ESEA with each other, as well as with other Federal, State, and local programs and reforms; and

(14) Giving priority to servicing schoolwide programs under section 1114 of IASA and LEAs and Bureau of Indian Affairs-funded schools with the highest percentages or numbers of children in poverty.

4. *Quality of Key Personnel* (7 Points). The Secretary reviews each application to determine the quality of key personnel the applicant plans to use for the proposed Center, including—

(a) The qualifications of the project director (if one is to be used);

(b) The qualifications of each of the other key personnel to be used for the Center;

(c) The time that each person referred to in paragraphs (a) and (b) will commit to the Center; and

(d) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

To determine personnel qualifications under paragraphs (a) and (b) the Secretary considers—

(1) Experience and training in fields related to the objectives of the Center; and

(2) Any other qualifications that pertain to the quality of the Center.

5. *Budget and Cost Effectiveness* (5 Points). The Secretary reviews each applicant to determine the extent to which—

(a) The budget is adequate to support the proposed Center;

(b) Costs are reasonable in relation to the objectives of the proposed Center.

Section 13102 of ESEA specifies that each Center must provide technical assistance using the highest quality and most cost-effective strategies possible.

6. *Evaluation Plan* (5 Points). The Secretary reviews each application to determine the quality of the evaluation plan for the Center, including the extent to which the applicant's methods of evaluation—

(a) Are appropriate to the project; and

(b) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the Grantee.)

7. *Adequacy of Resources* (3 Points). The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the Center, including facilities, equipment, and supplies.

SUPPLEMENTARY INFORMATION: The Centers will assist client organizations in furthering their systemic reform and

school restructuring efforts to improve educational services to students under the ESEA. The client organizations for these centers are: States, local educational agencies, schools, tribes, community-based organizations, and other recipients of funds under the ESEA.

The Department will enter into agreements with the centers for services that provide for cooperative working relationships with each other, with client organizations and with the Department. There will be a transition period of approximately six months in which existing technical assistance centers funded under previous authorities in ESEA will continue to offer services. It is expected that the new centers will be fully operational within six months of the funding date. During this six-month period, existing centers will be available to help the new centers identify needs, incorporate operational plans, and provide other services that will aid the transition for the new centers to offer a full complement of services by March 31, 1996. Activities to foster a smooth transition may include joint meetings, briefings, information sharing, and any other activities that will improve the ability of the newly funded centers to serve the recipients of funds under ESEA.

In accordance with section 13101(a)(2) of the ESEA, the Secretary has established the following regions for the comprehensive centers:

- *Region I*—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont.
- *Region II*—New York.
- *Region III*—Delaware, District of Columbia, Maryland, New Jersey, Ohio and Pennsylvania.
- *Region IV*—Kentucky, North Carolina, South Carolina, Tennessee, Virginia and West Virginia.
- *Region V*—Alabama, Arkansas, Georgia, Louisiana, and Mississippi.
- *Region VI*—Iowa, Michigan, Minnesota, North Dakota, South Dakota and Wisconsin.
- *Region VII*—Illinois, Indiana, Kansas, Missouri, Nebraska and Oklahoma.
- *Region VIII*—Texas.
- *Region IX*—Arizona, Colorado, Nevada, New Mexico and Utah.
- *Region X*—Idaho, Montana, Oregon, Washington and Wyoming.
- *Region XI*—Northern California (all counties not included in Region XII).
- *Region XII*—Southern California (counties: Los Angeles, San Bernadino, Orange, Riverside, San Diego, Imperial, Mono, and Inyo).
- *Region XIII*—Alaska.
- *Region XIV*—Florida, Puerto Rico and Virgin Islands.
- *Region XV*—Hawaii, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

In accordance with section 13101(b)(1), the Secretary ensures that each comprehensive regional assistance center that serves a region with a significant population of Indian or Alaska Native students will be awarded to a consortium that includes a tribally controlled community college or other Indian organization. Regions VI, VII, IX, X and XIII have a significant population of Indian or Alaska Natives.

APPLICATION REQUIREMENTS: Each application must demonstrate the following:

(a) How the proposed Center will provide expertise and services in the areas described in section 13102 of the ESEA.

(b) How the proposed Center will work with the National Diffusion Network to conduct outreach to schoolwide programs under Title I, section 1114 of the ESEA, and LEAs and BIA-funded schools with highest percentages or numbers of children in poverty.

(c) Support from States, LEAs, and tribes in the area to be served.

(d) How the proposed Center will ensure a fair distribution of services to urban and rural areas.

FOR APPLICATIONS PACKAGES OR INFORMATION CONTACT: Arthur Cole, U.S. Department of Education, 600 Independence Avenue SW., Portals Room 4500, Washington, D.C., 20202–6140. Telephone (202) 358–0324. Internet comp—centers@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register.**

Program Authority: 20 U.S.C. 8621–8625.

Dated: May 9, 1995.

Thomas W. Payzant,

Assistant Secretary for Elementary and Secondary Education.

Eugene E. Garcia,

Director, Office of Bilingual Educotion and Minority Languages Affairs.

[FR Doc. 95–14918 Filed 6–16–95; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Monday
June 19, 1995

Part IV

Department of Education

Safe and Drug-Free Schools; Notices

DEPARTMENT OF EDUCATION

RIN 1810-ZA02

Safe and Drug-Free Schools and Communities Programs

AGENCY: Department of Education.

ACTION: Notice of final priority and selection criteria for fiscal year 1995.

SUMMARY: The Secretary establishes a final funding priority and selection criteria under the Safe and Drug-Free Schools and Communities Federal Activities Grants Program for fiscal year (FY) 1995. The priority funds projects that establish, expand, or improve models for alternative education for students expelled from their regular education program.

EFFECTIVE DATE: This priority and selection criteria take effect on July 19, 1995.

FOR FURTHER INFORMATION CONTACT: Albert Macias, U.S. Department of Education, Safe and Drug-Free Schools Programs, 600 Independence Avenue, SW, Portals Room 604, Washington, DC 20202–6123, telephone (202) 260–2823. Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the Safe and Drug-Free Schools and Communities Federal Activities Grants Program is to support activities that promote achieving the seventh National Education Goal, which states that, by the year 2000, all schools in America will be free of drugs and violence and the unauthorized presence of firearms and alcohol, and offer a disciplined environment conducive to learning.

The Secretary will award approximately 10 grants in FY 1995 for a period not to exceed two years to public and private nonprofit organizations, including local educational agencies (LEAs), institutions of higher education (IHEs), and community-based organizations (CBOs) to establish, expand, and improve model alternatives to expulsion programs. These grants must be used to provide educational services to expelled students consistent will all applicable civil rights laws and policies. Contingent upon availability of funds, the Secretary may make additional awards in FY 1996 from the rank order of applicants established from this competition.

Background

Evidence indicates that a small but growing core of the student population finds that bringing a weapon to school is acceptable. A Centers for Disease Control study reports that, in 1990, 1 in 24 students carried a gun to school in the 30 days before the study, and that by 1993 the incidence had risen to 1 in 12 students. Many of these youths will be expelled from the classroom and will have no access to continuing educational services. While expulsion addresses the school's need to provide a safe, secure environment for all its students, it does not address the educational needs of students who are expelled for bringing a gun to school or engaging in other behavior that would lead to expulsion, nor does it address the long-range costs to the community of permitting expelled youths to be unsupervised for prolonged periods of time during the day.

An expelled student tends to exhibit alienation and rebelliousness toward society, a history of referrals for classroom disruption, and a predisposition toward accepting violence as an appropriate response to personal problems. These attitudes and behaviors can lead to more serious involvement with law enforcement unless they are countered by appropriate interventions.

In most circumstances, it is in the best interest of the school and community to provide alternative services, promote high standards of learning, and encourage the involvement of students, parents, and community groups in helping to ensure that the student becomes a responsible, contributing member of society.

Note: This notice of final priority and selection criteria does not solicit applications. A notice inviting applications under this competition is published in a separate notice in this issue of the **Federal Register**.

Priority: Under 34 CFR 75.105(c)(3) and 20 U.S.C. 7131, the Secretary gives absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that address the absolute priority. Applications that fail to address the priority will not be reviewed or funded:

Establish, expand, or improve model projects of alternative education for youth who have been expelled from their regular school program. An applicant must propose a project that addresses both the academic needs of expelled youth and the behaviors that lead to expulsion from the regular school program.

An applicant must provide financial or in-kind contributions (including, where allowable, commitment or other Federal funds to the project), or at least 10 percent of the total cost of the first year of the project. An applicant's contribution to the project in year two must be 15 percent of the total second year project cost. Applicants other than LEAs must include proof of collaboration with an LEA as part of their application for funding.

Applicants must offer proof that they have adopted, or, in the case of a nonprofit agency applicant will adopt, a policy requiring referral to the criminal justice or juvenile delinquency system of any student who brings a firearm to an alternative education program funded by this grant.

Selection Criteria: In evaluating applications for grants under this competition, the Secretary uses the following criteria. Each criterion is assigned a maximum possible score indicated in parentheses. The Secretary awards up to 100 points for all of the criteria.

(1) *Need for the Project* (15 points).

The Secretary determines the extent to which the proposed project addresses a serious community problem illustrated by a large number or percentage of students in the district that have been expelled from their regular educational program. The Secretary considers the extent to which the applicant—

(a) Identifies the specific educational, social, and behavioral needs of expelled students;

(b) Involves students, teachers and counselors, parents, and community leaders in the needs assessment; and

(c) Relates needs of expelled students, including academic, behavioral, and social needs, to the proposed project objectives.

(2) *Approach* (35 points).

The Secretary determines the overall quality and appropriateness of the applicant's plan to provide alternative educational services for youth expelled from school, including the extent to which the proposed project—

(a) Is based on research, including the causes of disruptive and antisocial behavior and educational strategies that take into account of different styles of learning;

(b) Identifies measurable goals and objectives for the project, such as the number of students to be served and the percentage of students who will successfully complete the program either by re-integration or through graduation;

(c) Includes an academic component that emphasizes high educational standards for the expelled students;

(d) Includes educational practices and strategies appropriate for the expelled students and, where appropriate, includes job training and work force readiness;

(e) Describes the educational services and activities to be provided, including the length of time services will be provided for each student and the number of hours per day for which the program will operate, and indicates how these services will meet the educational, behavioral, and social needs of expelled students;

(f) Details a plan for strong collaboration among schools, law enforcement agencies, CBOs, businesses, local service organizations, parent groups, and other agencies, including a description of how they will participate in the program at every stage; and

(g) Proposes a plan for the active recruitment of all expelled students within the project area and describes how the selection of students to be served would be made.

(3) *Staff Background* (20 Points).

The Secretary reviews each application to determine the skills, abilities and educational background of key personnel the applicant plans to use on the project. The Secretary considers—

(a) The extent to which skills, experience and educational background of key staff are relevant to the objectives of the project;

(b) The staff's ability to manage the project effectively, including the ability to provide educational services and coordinate with relevant community agencies;

(c) The appropriateness of the ratio of staff to students proposed for the project; and

(d) The extent to which time commitments are appropriate for the responsibilities each staff member will have.

(4) *Budget* (10 points).

The Secretary reviews each application to determine that the project's costs are reasonable in view of the anticipated results and benefits. The Secretary considers—

(a) The cost of the proposed project in terms of the number of youth to be served by the project, the student-to-staff ratio proposed, and the facilities in which the program will be offered; and

(b) Evidence that the applicant can and intends to generate the local financial and in-kind support, service, and commitments required for this project.

(5) *Evaluation of Project* (20 Points).

The Secretary determines the quality and thoroughness of the applicant's plant to evaluate the project. The Secretary considers—

(a) The extent to which the applicant describes a plan to evaluate the long- and short-term outcomes of the program (such as the percentage of students who are able to re-integrate into the regular school program and remain free of referrals for classroom disruption) and indicates in measurable terms appropriate indicators for assessment of program implementation and impact;

(b) The extent to which the applicant provides an evaluation plan for the project that includes collection of baseline data and identifies and tracks indicators that will show progress in program implementation and attainment of outcomes;

(c) Provides for implementation of the evaluation plan by an independent evaluator; and

(d) The extent to which the applicant develops a plan for long-term tracking of participants.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act (5 U.S.C. 533), it is the practice of the Department of Education to offer interested parties the opportunity to comment on proposed priorities. However, in order to make timely grant awards in FY 1995, the Assistant Secretary, in accordance with section 437(d)(1) of the General Education Provisions Act, has decided to issue this final priority and selection criteria, which will apply only to the FY 1995 grant competition.

Executive Order 12866

This notice of final priority has been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of final priority are those resulting from statutory requirements and those determined by the Secretary as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of final priority, the Secretary has determined that the benefits of the proposed final priority justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local and tribal governments in the exercise of their governmental functions.

Intergovernmental Review: This program is subject to the requirements of Executive Order 12372 and the regulation in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on the processes developed by State and local government for coordination and review of proposed Federal financial assistance.

In accordance with this order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Program Authority: 20 U.S.C. 7131.

(Catalog of Federal Domestic Assistance Program Number 84.184b Safe and Drug-Free Schools and Communities Act Federal Activities Grant Program)

Dated: May 26, 1995.

Thomas W. Payzant,

Assistont Secretary for Elementary and Secondary Education.

[FR Doc. 95–14919 Filed 6–16–95; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No.: 84.184B]

Safe and Drug-Free Schools and Communities Act Federal Activities Grant Program

Notice inviting applications for new awards for fiscal year (FY) 1995.

Purpose of Program: To fund projects that establish, expand, or improve models for alternative education for students expelled from their regular education program.

Eligible Applicants: Public and private nonprofit organizations, including local educational agencies, institutions of higher education, and community based organizations.

Deadline for Transmittal of Applications: July 24, 1995.

Deadline for Intergovernmental Review: September 22, 1995.

Applications Available: June 21, 1995.

Available Funds: $3,500,000.

Estimated Range of Awards: $300,000–$400,000.

Estimated Average Size of Awards: $350,000.

Estimated Number of Awards: 10.

Project Period: Up to 24 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75 (except 75.210), 77, 79, 80, 81, 82, 85 and 86.

Priority: The priority in the notice of final priority for this program, as published elsewhere in this issue of the **Federal Register**, applies to this competition.

Selection Criteria: The selection criteria in the notice of final priority for

this program, as published elsewhere in this issue of the **Federal Register**, applies to this competition.

For Applications or Information Contact: Albert Macias, U.S. Department of Education, Safe and Drug-Free Schools Programs, 600 Independence Avenue, SW, Portals Room 604, Washington, DC 20202–6123. Telephone: (202) 260–2823. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 7131.

Dated: May 26, 1995.

Thomas W. Payzant,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 95–14920 Filed 6–16–95; 8:45 am]

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Federal Register

Monday
June 19, 1995

Part V

Environmental Protection Agency

40 CFR Part 152, et al.

Pesticides; Technical Amendments; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 152, 153, 156, 157, 162, 165, 172, 180, 185, 186

[OPP–00409; FRL–4955–1]

Pesticides; Technical Amendments

AGENCY: Environmental Protection Agency (EPA).
ACTION: Final rule.

SUMMARY: EPA is revising its pesticide regulations by removing obsolete, superseded, expired and otherwise unnecessary sections from various parts of its regulations. These technical amendments will simplify and condense the regulations, and reduce regulatory burdens, without loss of health and environmental protection. EPA is also making associated revisions to cross-references reflecting the deletion of regulations. This final rule is a technical amendment for which notice and comment are unnecessary.
DATES: These amendments are effective August 18, 1995.
FOR FURTHER INFORMATION CONTACT: Jean M. Frane, Policy and Special Projects Staff (7501C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail address: Rm. 1113, CM #2, 1921 Jefferson Davis Highway, Arlington, VA., (703) 305–5944, frane.jean@epamail.epa.gov.

SUPPLEMENTARY INFORMATION

I. Background

On March 16, 1995, President Clinton announced a new initiative under which EPA (and other Agencies) would review all existing regulations. The Regulatory Reinvention initiative is intended to identify opportunities for streamlining, simplifying, reducing reporting and recordkeeping burdens, and promoting partnerships and stakeholder involvement in EPA regulation review.

As a result of the President's Regulatory Reinvention review, EPA has reviewed each of its pesticide regulations and identified provisions that should be removed, revised, or evaluated further for streamlining and simplification. This final rule accomplishes a number of changes, primarily deletions, that do not require notice and comment under the Administrative Procedure Act (APA). This is the first in a series of notices intended to accomplish the goals of the Regulatory Reinvention initiative. Other modifications to regulations will be proposed for notice and comment at a later date. In addition, a number of pesticide regulations are being evaluated further for more significant and far-reaching streamlining opportunities, including evaluating the requirements of the underlying programs themselves as reflected in regulations. Elsewhere in today's **Federal Register**, EPA is issuing additional regulatory revisions under other statutes administered by the Agency.

II. Pesticide Regulations

EPA regulates pesticides under the authority of two statutes, the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), which regulates the sale, distribution and use of pesticides in the United States, and the Federal Food, Drug and Cosmetic Act (FFDCA), which regulates, among other things, pesticide residues in food and feed. Pesticide regulations administered by EPA are located in 40 CFR parts 150–189, and comprise approximately 525 pages in the Code of Federal Regulations.

A. The Federal Insecticide, Fungicide and Rodenticide Act

Because FIFRA is a licensing statute, its regulations are, in significant part, procedural in nature. They describe how pesticide registrants and other persons must interact with EPA to obtain and maintain permission to market and use pesticides without causing unreasonable adverse effects on man or the environment, and the policies that EPA will use in administering these licensing programs. Substantive requirements affecting pesticide sale, distribution or use, for the most part, are not issued in regulatory form, but are incorporated into the registration and other licensing decisions that EPA makes. Because most of its regulations are procedural, EPA believes that few pesticide regulations under FIFRA can be removed or substantially modified without interfering with efficient administration of the programs they describe. Similarly, many of the recordkeeping and reporting burdens associated with these regulations are necessary simply for pesticide producers, registrants and others to deal with EPA in licensing matters.

B. The Federal Food, Drug and Cosmetic Act

By contrast, the FFDCA broadly requires EPA to regulate pesticide residues in food and feed, to ensure that the American public is protected against harmful residues in its food supply. Although some procedural regulations are necessary to administer the program (a petition process, together with an administrative hearing process), the bulk of regulations issued under the FFDCA consist of individual tolerances, exemptions or other clearances of pesticide chemicals in various foods and feeds. Of approximately 250 pages of regulations devoted to the FFDCA in EPA's pesticide regulations, procedural regulations comprise only about 20 percent. In addition, there are a number of finding aids and indexes that catalog and cross-reference these regulations.

III. Technical Changes to Pesticide Regulations

EPA has identified a number of technical amendments that can be made to its pesticide regulations at this time. For the most part, these consist of deletions of superseded or outmoded requirements, deletion of unnecessary material that conveys only guidance or information, but not regulatory requirements, deletion of regulations that are not required by law, or simple formatting changes to consolidate and clarify requirements. These changes are described in this Unit.

A. Part 152 - Pesticide Registration and Classification Procedures

Part 152 contains procedural regulations for registration. EPA is modifying this part as follows:

1. *Reregistration.* Subpart D contains procedural requirements for reregistration of pesticides. Shortly after these regulations were promulgated in 1988, Congress amended FIFRA (the amended law is commonly referred to as "FIFRA–88"), establishing a detailed set of requirements for reregistration. This subpart has therefore been superseded.

2. *Amendment or notification to change active ingredient source.* Section 152.85(c), promulgated in 1984, requires that registrants who wish to change from one registered source of active ingredient to another must submit an application for amended registration. Section 152.46(a)(4), promulgated in 1988, permits such a change by simple notification to the Agency. EPA is clarifying these conflicting sections by deleting the requirement in § 152.85(c) for an amended registration and retaining the notification requirement.

3. *Voluntary cancellation.* Section 6(f) of FIFRA–88 established new procedures for registrants and EPA to effect voluntary cancellations of registration. The current regulation in 40 CFR 152.138 is therefore incomplete and no longer reflects the procedures EPA uses. Rather than continue regulations that are incomplete, EPA is deleting parts of these regulations, and moving still-current material on

supplemental distributor products into § 152.132.

4. *Actions affecting registration.* Subpart H of part 152 describes the various types of actions that are associated with registration, and refers readers to other parts of the regulations for elaboration of those requirements. Since this material is largely informational and guidance, it is not necessary in regulations and is being deleted.

5. *Obsolete restricted use chemicals.* Section 152.175 contains a list of pesticides that have been restricted by regulation. These were promulgated originally between 1978 and 1981 and a number of the chemicals are no longer registered. EPA is deleting obsolete listings for 16 pesticides from § 152.175.

6. *Intrastate pesticide products.* Subpart L describes requirements applicable to the conversion of intrastate pesticide products to Federally-registered products. FIFRA as enacted in 1972 no longer permitted pesticides to be registered solely by States; Federal registration was required.

The process of converting these products began in 1972 and by 1988 was winding down. Subpart L permitted continued sale and distribution of intrastate products until EPA could determine the acceptability of their Federal registration. EPA believes that all intrastate products have been converted or are no longer being marketed. Accordingly, EPA is deleting subpart L.

B. Subpart 153 - Registration Policies and Interpretations

This part contains various non-procedural policies and interpretations that are associated with registration. EPA is modifying this part as follows:

1. *Reporting of adverse effects information.* Subpart D of part 153 (promulgated in 1985) contains a set of regulations implementing FIFRA section 6(a)(2), describing when and how registrants must report adverse effects information to the Agency. Although promulgated in 1985, this subpart has never been made effective, and EPA is currently preparing to promulgate an updated adverse effects reporting rule, which will be clearer, simpler, and contain reduced reporting requirements. Because subpart D is not effective, and in anticipation of a replacement regulation being issued, EPA is deleting subpart D.

2. *Inert ingredients in antimicrobial products.* Section 153.139 contains a list of chemicals that EPA has determined generally to be inert (as opposed to pesticidally active) in antimicrobial products. The listing is still valid, and EPA intends to continue to use it as the basis for inert ingredient determinations, but EPA believes that the list can be more efficiently updated informally by the Agency outside of the regulations. EPA intends to maintain the list within the Agency, and make it available as needed to registrants. Accordingly, EPA is deleting § 153.139.

3. *Coloration of pesticides.* Subpart H addresses the circumstances when pesticide products must be colored or discolored. The individual pesticides listed in this subpart (arsenicals and fluosilicate compounds) are no longer registered and not sold for pesticide use. Accordingly, EPA is deleting four sections in this subpart requiring coloration or discoloration of individual pesticide products. EPA is also revising § 153.140 to delete references to the coloration system. EPA will retain § 153.155 which requires that seed treatment products be colored with an EPA-approved dye to avoid the possibility that treated seeds may be inadvertently used as animal feed.

4. *Devices.* Subpart M contains a listing of FIFRA requirements pertaining to pesticide devices. Although not required to be registered, devices are subject to a variety of requirements, such as labeling, and compliance activities such as recordkeeping and registration of establishments. This section simply refers the reader to those requirements in FIFRA and the regulations that apply to devices. Even though individually these requirements are stated elsewhere, EPA believes that the compilation of requirements in a single location is useful to the regulated industry. EPA is transferring the material, however, into part 152 as subpart Z.

C. Part 157 - Packaging Requirements for Pesticides and Devices

This part, promulgated in 1986, consists solely of requirements for child-resistant packaging at this time. EPA is removing § 157.39, which stated the compliance date for the rule, now past.

D. Part 165 - Regulations for the Acceptance of Certain Pesticides and Recommended Procedures for the Disposal and Storage of Pesticides and Pesticide Containers

This part, promulgated in 1974, addresses two discrete topics. Subpart B contains regulations under which EPA was required to accept for disposal pesticides that were both suspended and canceled. Subsequent to promulgation, FIFRA-88 transferred to pesticide registrants the responsibility for such disposal. EPA has completed the disposal of all pesticides for which it was responsible under these regulations and subpart B is no longer needed. Subparts C and D contain recommended procedures for storage and disposal of pesticides and containers. These subparts were superseded by the passage of the Resource Conservation and Recovery Act in 1976. Moreover, FIFRA section 19 contains new authority for EPA in the area of pesticide storage and disposal, and regulations under current section 19 have been proposed that would replace part 165. Accordingly, EPA is deleting part 165.

E. Part 172 - Experimental Use Permits

This part describes the procedures for applying for and obtaining an experimental use permit under FIFRA section 5. The holder of an experimental use permit is required by § 172.8 to submit quarterly progress reports on his or her experimental work, and a final report. EPA finds that the quarterly progress reports are not needed, and rarely used by the Agency, and is deleting the requirement for such reports contained in § 172.8(b)(1). The final report, however, required by § 172.8(b)(2) is being retained: the information required in the final report is used to evaluate the experimental program and the data generated during the program are used in future determinations on the registrability of the pesticide.

F. Parts 180, 185, and 186 - Pesticide Tolerances

These three parts contain listings of individual tolerances for raw foods, processed foods, and processed animal feeds, respectively. Some of these tolerances are time-limited and have expired. EPA is deleting expired time-limited tolerances from various regulations in these parts.

IV. Effect of Deletion of Regulations

The removal or modification of these regulatory provisions from the Code of Federal Regulations is not intended to affect the status of any civil or criminal actions initiated prior to June 19, 1995, or which may be initiated in the future to redress violations of the rules that occurred when the rules were still legally in effect.

V. Good Cause Exemption From Notice and Comment Rulemaking Procedures

The Administrative Procedure Act generally requires agencies to provide prior notice and opportunity for public comments before issuing a final rule. Rules are exempt from the requirement

if the agency finds for good cause that notice and comment are unnecessary. For the reasons discussed in Unit III of this preamble, EPA has determined that providing prior notice and opportunity for comment on the modification or deletion from the CFR of these rules is unnecessary.

VI. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866, the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a section of the economy, productivity, competition, jobs, the environmental, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Under the terms of this Executive Order, it has been determined that this rule is not "significant" and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)), EPA has determined that this is not a significant regulation. These amendments lessen burdens rather than add burdens; therefore review under the RFA is not required.

C. Paperwork Reduction Act

This rule contains no information collection requirements, and, therefore is not required to be reviewed under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Parts 152, 153, 156, 157, 162, 165, 172, 180, 185, 186

Environmental protection, Administrative practice and procedure, Agricultural commodities, Animal feeds, Food additives, Infants and children, Intergovernmental relations, Labeling, Packaging and containers, Pesticides and pests, Reporting and recordkeeping requirements, Research.

Dated: June 14, 1995.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, under the Administrator's authority, 7 U.S.C. 136 *et seq.* and 21 U.S.C. 346 *et seq.*, title 40, chapter I of the Code of Federal Regulations, is amended as follows:

1. In part 152:

PART 152—[AMENDED]

a. The authority citation continues to read as follows:

Authority: 7 U.S.C. 136–136y; Subpart U is also issued under 31 U.S.C. 9701.

§ 152.1 [Amended]

b. Section 152.1 is amended by removing the last sentence.

§ 152.50 [Amended]

c. In § 152.50, paragraph (f)(3) is amended by removing the last sentence.

Subpart D [Removed and Reserved]

d. Subpart D, consisting of §§ 152.60 through 152.70, is removed and reserved.

§ 152.85 [Amended]

e. In § 152.85, paragraph (c) is amended by removing the second sentence.

§ 152.115 [Amended]

f. In § 152.115(d), the words "and § 152.148" are removed.

§ 152.125 [Amended]

g. In § 152.125, the words "and subpart D of part 153 of this chapter" are removed.

§ 152.132 [Amended]

§ 152.138 [Partially Redesignated and Removed]

h. Section § 152.138 is amended by redesignating paragraph (c) as paragraph (e) of § 152.132, and by removing the remainder of § 152.138.

Subpart H [Removed and Reserved]

i. Subpart H, consisting of §§ 152.140 through 152.159, is removed and reserved.

§ 152.175 [Amended]

j. In the table in § 152.175, the complete entries for acrylonitrile, allyl alcohol, calcium cyanide, chlorfenvinphos, cycloheximide, demeton, dioxathion, endrin, EPN, fensulfothion, fluoracetamide/1081, hydrocyanic acid, mevinphos, monocrotophos, phosacetim and TEPP are removed.

Subpart L [Removed and Reserved]

k. Subpart L, consisting of §§ 152.220 through 152.230, is removed and reserved.

Subpart Z to part 152 [Redesignated From Subpart M to Part 153]

l. Subpart Z entitled Devices, is redesignated from subpart M, part 153. Subpart Z consists of § 152.500 which is redesignated from § 153.240.

2. In part 153:

PART 153—[AMENDED]

a. The authority citation is revised to read as follows:

Authority: 7 U.S.C. 136w.

Subpart D [Removed and Reserved]

b. Subpart D, consisting of §§ 153.61 through 153.78, is removed and reserved.

§ 153.125 [Amended]

c. In § 153.125, by removing the parenthetical text "(including those listed in § 153.139)," from paragraph (b) and by removing paragraph (c) and by redesignating paragraphs (d) and (e) as paragraphs (c) and (d), respectively.

§§ 153.139, 153.142, 153.145, 153.150, and 153.158 [Removed]

d. Sections 153.139, 153.142, 153.145, 153.150, and 153.158 are removed.

e. Section 153.140 is revised to read as follows:

§ 153.140 General.

Section 25(c)(5) of the Act authorizes the Administrator to prescribe regulations requiring coloration or discoloration of any pesticide if the Administrator determines that such requirements are feasible and necessary for the protection of health and the environment. This subpart describes those pesticide products which must be colored or discolored.

Subpart M to part 153 [Redesignated]

f. Subpart M and § 153.240 are redesignated as Subpart Z in part 152 and § 152.500, respectively.

3. In part 156:

PART 156—[AMENDED]

a. The authority citation continues to read as follows:

Authority: 7 U.S.C. 136–136y.

§ 156.10 [Amended]

b. In § 156.10 paragraph (a)(5) introductory text is amended by

changing the reference to "§ 153.240" to read "§ 152.500".

4. In part 157:

PART 157—[AMENDED]

a. The authority citation is revised to read as follows:

Authority: 7 U.S.C. 136w.

§ 157.39 [Removed]

b. Section 157.39 is removed.

5. In part 162:

PART 162—[AMENDED]

a. The authority citation for subpart D is revised to read as follows:

Authority: 7 U.S.C. 136v, 136w.

§ 162.150 [Amended]

b. In § 162.150, paragraph (b) is amended by removing the third sentence.

§ 162.153 [Amended]

c. In § 162.153, paragraph (c)(2), the reference to "subpart A of this part, and of part 163 of this chapter," is revised to read "part 152 of this chapter," and in paragraph (d) the reference to "subpart A and of part 163", is revised to read "part 152 of this chapter".

PART 165—[REMOVED]

6. Part 165 is removed.

7. In part 172:

PART 172—[AMENDED]

a. The authority citation is revised to read as follows:

Authority: 7 U.S.C. 136c, 136w. Section 172.4 is also issued under 31 U.S.C. 9701.

§ 172.8 [Amended]

b. In § 172.8, paragraph (b)(1) is removed and reserved.

c. In § 172.25, by revising paragraphs (g)(1) and (g)(2) to read as follows:

§ 172.25 Administration of State programs.

* * * * *

(g) * * *

(1) Disposed of in accordance with a disposal plan approved as part of the experimental program; or

(2) Returned to the permittee for storage or disposal in accordance with the requirements of RCRA and rules there under; or

* * * * *

8. In part 180:

PART 180—[AMENDED]

a. The authority citation continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. Section 180.115 is revised to read as follows:

§ 180.115 Zineb; tolerances for residues.

Tolerances for residues of the fungicide zineb (zinc ethylene bisdithiocarbamate) in or on raw agricultural commodities are established as follows:

Commodity	Parts Per million	Expiration date
Grapes (wine use only)[1]	7	December 31, 1997

[1] Wine grapes grown for wine vintage years 1992 (Northern Hemisphere), 1993 (Southern Hemisphere), and earlier.

§§ 180.246, 180.285, and 180.1005 [Removed]

c. Sections 180.246, 180.285, and 180.1005 are removed.

§ 180.319 [Amended]

d. In the table in § 180.319, the entire entries for "sodium arsenite" and "zineb (zinc ethylene bisdithiocarbamate)" are removed.

§ 180.320 [Amended]

e. In § 180.320, by removing the designation for paragraph (a) and by removing paragraph (b).

9. In part 185:

PART 185—[AMENDED]

a. The authority citation continues to read as follows:

Authority: 21 U.S.C. 348.

§ 185.2275 [Removed]

b. Section 185.2275 is removed.

§ 185.2700 [Amended]

c. In § 185.2700, by removing the designation for paragraph (a), and by removing paragraphs (b) and (c).

10. In part 186:

PART 186—[AMENDED]

a. The authority citation continues to read as follows:

Authority: 21 U.S.C. 348.

§§ 186.400, 186.750, 186.3415, 186.4725, and 186.5225 [Removed]

b. Sections 186.400, 186.750, 186.3415, 186.4725, and 186.5225 are removed.

§ 186.2275 [Amended]

c. In § 186.2275, by removing the designation for paragraph (a) and by removing paragraph (b).

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3 (1994 Compilation and Parts 100 and 101)	(869–026–00002–6)	40.00	[1] Jan. 1, 1995
4	(869–026–00003–4)	5.50	Jan. 1, 1995
5 Parts:			
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1200–End, 6 (6 Reserved)	(869–026–00006–9)	23.00	Jan. 1, 1995
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27–45	(869–026–00008–5)	14.00	Jan. 1, 1995
46–51	(869–026–00009–3)	21.00	Jan. 1, 1995
52	(869–026–00010–7)	30.00	Jan. 1, 1995
53–209	(869–026–00011–5)	25.00	Jan. 1, 1995
210–299	(869–026–00012–3)	34.00	Jan. 1, 1995
300–399	(869–026–00013–1)	16.00	Jan. 1, 1995
400–699	(869–026–00014–0)	21.00	Jan. 1, 1995
700–899	(869–026–00015–8)	23.00	Jan. 1, 1995
900–999	(869–026–00016–6)	32.00	Jan. 1, 1995
1000–1059	(869–026–00017–4)	23.00	Jan. 1, 1995
1060–1119	(869–026–00018–2)	15.00	Jan. 1, 1995
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1500–1899	(869–026–00021–2)	35.00	Jan. 1, 1995
1900–1939	(869–026–00022–1)	16.00	Jan. 1, 1995
1940–1949	(869–026–00023–9)	30.00	Jan. 1, 1995
1950–1999	(869–026–00024–7)	40.00	Jan. 1, 1995
2000–End	(869–026–00025–5)	14.00	Jan. 1, 1995
8	(869–026–00026–3)	23.00	Jan. 1, 1995
9 Parts:			
1–199	(869–026–00027–1)	30.00	Jan. 1, 1995
200–End	(869–026–00028–0)	23.00	Jan. 1, 1995
10 Parts:			
0–50	(869–026–00029–8)	30.00	Jan. 1, 1995
51–199	(869–026–00030–1)	23.00	Jan. 1, 1995
200–399	(869–026–00031–0)	15.00	[6] Jan. 1, 1993
400–499	(869–026–00032–8)	21.00	Jan. 1, 1995
500–End	(869–026–00033–6)	39.00	Jan. 1, 1995
11	(869–026–00034–4)	14.00	Jan. 1, 1995
12 Parts:			
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200–219	(869–026–00036–1)	16.00	Jan. 1, 1995
220–299	(869–026–00037–9)	28.00	Jan. 1, 1995
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500–599	(869–026–00039–5)	19.00	Jan. 1, 1995
600–End	(869–026–00040–9)	35.00	Jan. 1, 1995
13	(869–026–00041–7)	32.00	Jan. 1, 1995
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1–59	(869–026–00042–5)	33.00	Jan. 1, 1995
60–139	(869–026–00043–3)	27.00	Jan. 1, 1995
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200–1199	(869–026–00045–0)	23.00	Jan. 1, 1995
1200–End	(869–026–00046–8)	16.00	Jan. 1, 1995
15 Parts:			
0–299	(869–026–00047–6)	15.00	Jan. 1, 1995
300–799	(869–026–00048–4)	26.00	Jan. 1, 1995
800–End	(869–026–00049–2)	21.00	Jan. 1, 1995
16 Parts:			
0–149	(869–026–00050–6)	7.00	Jan. 1, 1995
150–999	(869–026–00051–4)	19.00	Jan. 1, 1995
1000–End	(869–026–00052–2)	25.00	Jan. 1, 1995
17 Parts:			
1–199	(869–022–00054–3)	20.00	Apr. 1, 1994
200–239	(869–022–00055–1)	23.00	Apr. 1, 1994
240–End	(869–022–00056–0)	30.00	Apr. 1, 1994
18 Parts:			
1–149	(869–026–00057–3)	16.00	Apr. 1, 1995
150–279	(869–026–00058–1)	13.00	Apr. 1, 1995
*280–399	(869–026–00059–0)	13.00	Apr. 1, 1995
400–End	(869–022–00060–8)	11.00	Apr. 1, 1994
19 Parts:			
1–140	(869–026–00061–1)	25.00	April 1, 1995
*140–199	(869–026–00062–0)	21.00	Apr. 1, 1995
200–End	(869–026–00063–8)	12.00	Apr. 1, 1995
20 Parts:			
1–399	(869–026–00064–6)	20.00	Apr. 1, 1995
400–499	(869–022–00064–1)	34.00	Apr. 1, 1994
500–End	(869–026–00066–2)	34.00	Apr. 1, 1995
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1–99	(869–022–00066–7)	16.00	Apr. 1, 1994
100–169	(869–022–00067–5)	21.00	Apr. 1, 1994
170–199	(869–026–00068–7)	22.00	Apr. 1, 1995
*200–299	(869–026–00070–1)	7.00	Apr. 1, 1995
*300–499	(869–026–00071–9)	39.00	Apr. 1, 1995
500–599	(869–022–00071–3)	16.00	Apr. 1, 1994
600–799	(869–022–00072–1)	8.50	Apr. 1, 1994
800–1299	(869–022–00073–0)	22.00	Apr. 1, 1994
1300–End	(869–026–00075–1)	13.00	Apr. 1, 1995
22 Parts:			
1–299	(869–022–00075–6)	32.00	Apr. 1, 1994
*300–End	(869–026–00077–8)	24.00	Apr. 1, 1995
23	(869–022–00077–2)	21.00	Apr. 1, 1994
24 Parts:			
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1700–End	(869–022–00082–9)	17.00	Apr. 1, 1994
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28 Parts:			
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7–14	(869–022–00190–6)	30.00	Oct. 1, 1994
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49 Parts:			
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100–177	(869–022–00194–9)	30.00	Oct. 1, 1994
178–199	(869–022–00195–7)	21.00	Oct. 1, 1994
200–399	(869–022–00196–5)	30.00	Oct. 1, 1994
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1995. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1994. The CFR volume issued July 1, 1991, should be retained.

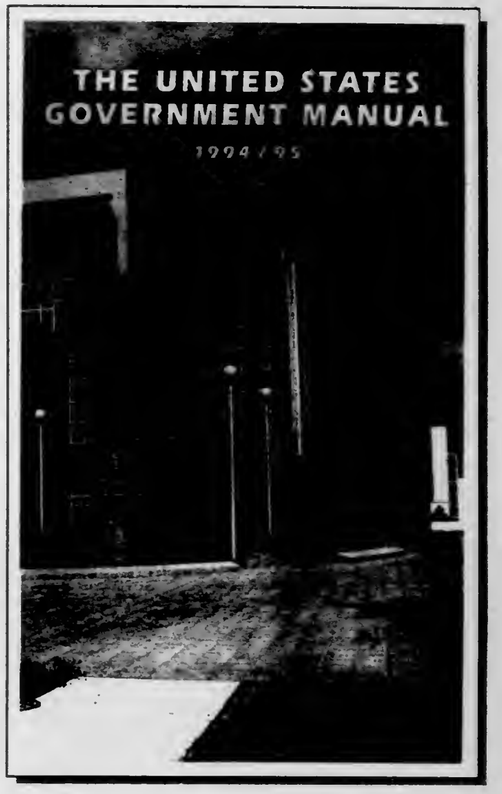
[6] No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1994. The CFR volume issued January 1, 1993, should be retained.

[7] No amendments to this volume were promulgated during the period October 1, 1993, to September 30, 1994. The CFR volume issued October 1, 1993, should be retained.

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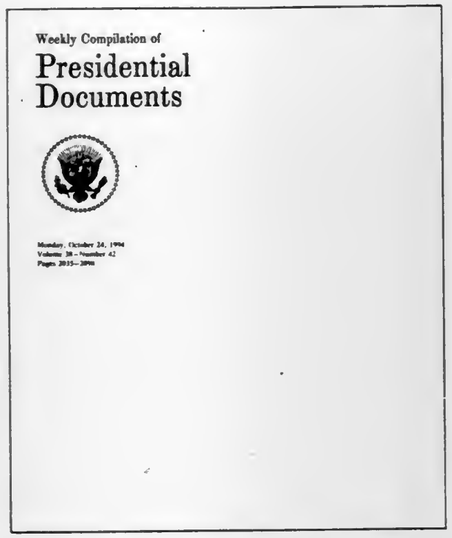
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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1301

[DEA No. 113F]

Registration of Manufacturers and Importers of Controlled Substances

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final rule.

SUMMARY: This final is issued by the Drug Enforcement Administration to eliminate the requirement of an administrative hearing on objections, raised by third-party manufacturers, to the registration of certain bulk manufacturers of controlled substances. This action amends the current regulation and removes the third-party manufacturer hearing provision when requested by another applicant or registrant. Other applicants and registrants may still submit written comments and objections for consideration by DEA and may participate in hearings on bulk manufacturer applications requested by the applicant. This final rule amends the regulation concerning withdrawal of applications to be consistent with this action.

EFFECTIVE DATE: July 20, 1995.

FOR FURTHER INFORMATION CONTACT: Julie C. Gallagher, Associate Chief Counsel, Diversion/Regulatory Section, Office of Chief Counsel, Drug Enforcement Administration, Washington, DC 20537, telephone (202) 307–8010.

SUPPLEMENTARY INFORMATION: On October 7, 1993, DEA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (58 FR 52246) to amend its regulations to eliminate the third-party manufacturer hearing requirement for objections to the registration of certain bulk manufacturers and importers of controlled substances. The DEA proposed to amend two sections of its regulations, specifically 21 CFR 1301.43(a) and 1311.42(a), wherein DEA is required to hold an administrative hearing on an application for registration to manufacture or import a bulk Schedule I or II controlled substance when requested to do so by any current bulk manufacturer of the substance(s) or by any other applicant for a similar registration. The NPRM proposed to modify section 1301.43(a) and provide for a hearing only when DEA "determines that a hearing is necessary to receive factual evidence and/or expert testimony with respect to issues raised by the application or objections thereto."

On June 14, 1994, DEA published a Supplemental Notice of Proposed Rulemaking (SNPRM) in the **Federal Register** (59 FR 3055) proposing to eliminate altogether the third-party manufacturer hearing regulation, section 1301.43(a). DEA would continue to hold hearings when requested by the applicant pursuant to an order to show cause, section 1301.44. DEA would continue to solicit written comments or objections from current registrants and applicants concerning an application for registration. Current registrants and applicants would also be granted an opportunity to participate in any hearings conducted pursuant to section 1301.44.

The SNPRM provided notice that DEA would not change the hearing provision relating to registration of importers, section 1311.42(a), because of the statutory requirements under 21 U.S.C. 958(i). Section 958(i) states that DEA shall provide current bulk manufacturers of controlled substances an opportunity for a hearing prior to issuing an importer registration to another bulk manufacturer. With an existing statute in effect, DEA is not empowered to adopt regulations that contravene the express language of that statute.

Five comments were received in response to the NPRM. Three comments were received concerning the SNPRM, although one commentor had previously commented on the NPRM. To the extent that comments received in response to the NPRM are relevant, they have been considered. Of the seven independent commentors, two supported removing the mandatory third party hearing provision while five commentors opposed the proposed rulemaking.

One commentor that supported the proposed rule provided an example of its own experience as an applicant for a bulk manufacturer registration to demonstrate how "currently registered manufacturers use the regulatory hearing requirement to deter others from applying or to delay entry of their competitors in the marketplace." The five opposing commentors advanced numerous arguments and proposed alternatives to the proposed rule, their primary concerns are summarized below.

Three commentors believed that elimination of the third-party manufacturer hearing regulation would be contrary to Congress' intent that DEA should limit the number of bulk manufacturers in the United States where supply and competition are adequate. One of these commentors noted that the United States had been a party to several international agreements recognizing the need to limit licensing of drug manufacturers. This commentor then argued that the Narcotic Manufacturing Act (NMA) of 1960, which specified limitations on the licensing of bulk manufacturers of controlled substances, provided historical precedent for similar limitations within the Controlled Substances Act (CSA). Similarly, two commentors argued that the proposed rule would run contrary to the intent of Congress to limit the number of bulk manufacturers of controlled substances to the most qualified applicants, and thus, limit the possible diversion of these controlled substances. One commentor interpreted the mandate of "limiting" registration under 21 U.S.C. 823(a) of the CSA as prohibiting DEA from approving additional registrations if there already exists uninterrupted supply and adequate competition.

The final rule is not contrary to either the direct or implied intent of Congress in passing the CSA. The final rule does not alter the DEA's responsibility to apply the factors set forth in 21 U.S.C. 823(a) to applications for bulk manufacturer registrations. While the commentors provide persuasive arguments regarding possible Congressional intent in the enactment of 21 U.S.C. 823(a), such arguments are irrelevant to the issue of whether the

regulations should provide for a third-party manufacturer hearing. The express language of the statute does not provide a hearing right to bulk manufacturer registrants or applicants regarding the registration of a bulk manufacturer, nor can such a right be inferred. *See Comprehensive Drug Abuse Prevention and Control Act of 1970, Committee on Interstate and Foreign Commerce*, H.R. Rep. No. 91–1444 (Part 1), 91st Cong., 2d Sess. (1970) (CSA). Moreover, even assuming that Congress intended to limit the number of bulk manufacturer registrants, the final rule does not purport to increase the number of such registrants. It is also worth noting that the regulations, 21 CFR 1301.43(b), provide that DEA is not required to limit the number of manufacturers even if the current registrants can provide an adequate supply, as long as DEA can maintain effective controls against diversion.

Another commentor suggested that Congress intended that DEA "implement such procedural safeguards when it enacted the CSA." This comment ignores the fact that neither 21 U.S.C. 823(a) nor 21 U.S.C. 824 provides for a third-party manufacturer hearing. Moreover, as one commentor noted, the procedural requirements of the APA are not affected by the removal of the third-party manufacturer hearing provision. Significantly, at the time of promulgation of the CSA, Congress afforded a third-party manufacturer hearing opportunity to current bulk manufacturers on the importer applications of other bulk manufacturers for Schedule I and II controlled substances. *See* 21 U.S.C. 958(i). Thus, a plain reading of the statute demonstrates that Congress did not intend to require a third-party manufacturer hearing for applications to bulk manufacture Schedule I and II controlled substances.

It is also not inconsistent to allow hearings on import registration applications but deny them for bulk manufacturers, as one commentor suggested. First, registrations to import Schedule I and II controlled substances are arguably granted under more limited conditions than manufacturer registrations. *See* 21 U.S.C. 952. Also, it is worth noting that the statute provides for the opportunity for a hearing where a current bulk manufacturer has applied for an importer registration. Thus, it can be inferred that Congress was concerned with the potential impact on domestic competition by existing bulk manufacturers who wanted to import controlled substances as well.

One commentor suggested that more companies will attempt to obtain a DEA registration because they could avoid the scrutiny of other bulk manufacturers and that DEA would have to increase personnel to conduct additional investigations and meet the greater demand for registrations. This commentor argued that it would be highly inadvisable to "ease the entry" of additional bulk manufacturers and promote creation of a class of "opportunistic" bulk manufacturers who would seek to produce products which are temporarily profitable, and felt no obligation to supply for the requirements of the U.S. market. These comments presume that removal of the third-party manufacturer hearing process would "ease the entry" of additional bulk manufacturers or that the applicant would be subject to less "scrutiny." Such is not the case. DEA will continue to apply the same factors required by 21 U.S.C. 823(a) to evaluate applications for registrations of bulk manufacturers. Where DEA discovers information which warrants proceedings to deny a registration, either through its own investigation or as provided through comments of other manufacturers, it will issue an order to show cause seeking to deny the application for registration.

Two commentors found that DEA's conclusion regarding abuse of the regulatory hearing requirement is not supported by the record which reveals that in the last 20 years, DEA has held as few as five evidentiary hearings on importer or bulk manufacturer applications at the request of a current registrant. However, one of these commentors acknowledged that it believed that objections raised in a prior hearing involving one of its subsidiaries "lacked substantive merit." More importantly, one commentor, who supported removing the third-party manufacturer hearing regulation, provided two examples in which it believed other manufacturers had used the hearing process for anti-competitive purposes and to delay entry into the marketplace. Notwithstanding the limited number of evidentiary hearings during the past twenty years, the final rule seeks to discourage potential future abuse of the hearing process.

Four commentors argued that the submission of written comments would be insufficient because either the comment period would be too short or because of the inability to produce witnesses and conduct cross-examination. One of these commentors suggested that this proposal would make it "impossible for any currently registered bulk manufacturer to provide meaningful information to the Administrator" on these applications. Two of these commentors stated that 30 or even 60 days would be insufficient to prepare meaningful comments on an application.

First, regarding all subsequent manufacturer applications, DEA will not consider a comment period less than 60 days. Second, DEA maintains that 60 days is sufficient time for interested parties to submit adequate comments and documentation to notify DEA concerning potential issues that warrant DEA issuing an order to show cause. There is no evidence that DEA would fail to consider such evidence prior to making a final determination. Moreover, these individuals could still participate in any hearing, requested after the issuance of an order to show cause, thereby providing an additional opportunity to present evidence.

DEA does not suggest that written comments are a replacement for direct testimony or cross-examination. However, DEA does argue that applicants should not be subjected to the rigors and delay accompanying an administrative hearing absent some prior good faith belief and evidence that such procedure is warranted. Further, this final rule will foreclose current registrants and applicants from using the third-party manufacturer hearing process as a forum for discovery of non-relevant information from its competitors, such as marketing and pricing data.

Two commentors suggested that DEA consider adopting procedures to prevent abuse of the third-party manufacturer hearing provision such as utilizing motions for summary judgement or requiring written submissions prior to the hearing. The final rule, in effect, resolves both issues because (1) DEA will only issue an order to show cause where it has a good faith basis that the applicant's registration should not be granted and (2) other bulk manufacturers will be required to submit substantive written comments within a reasonable time, after an application has been submitted.

Three commentors stated that the current hearing process enables third-parties to present relevant and useful information to DEA that might not otherwise be available because of limited agency resources or otherwise. DEA acknowledges the critical role that third-parties provide in identifying issues related to the registration of bulk manufacturers. DEA does not intend to discourage such participation. However, the final rule provides DEA with the authority necessary to protect the interests of applicants and current registrants alike.

Finally, four commentors requested a hearing on the issue of the third-party manufacturer hearing provision pursuant to 21 U.S.C. 875. Unlike other rulemaking conducted pursuant to the CSA, the present rulemaking presents no requirement that the rule be made on the record after opportunity for a hearing. For example, 21 U.S.C. 811(a) requires the opportunity for a hearing whenever there is a proposed rescheduling of controlled substances. In addition, 21 U.S.C. 875 identifies general powers available to DEA when exercising its authority under the CSA. Thus, 21 U.S.C. 875 complements existing hearing provisions under the CSA rather than conferring independent hearing authority. In any event, DEA believes that the notice and comment conducted pursuant to this rulemaking enabled interested parties to provide meaningful comment on the final rule.

The final rule removes the mandatory third-party manufacturer hearing requirement while retaining the hearing provision pursuant to an order to show cause. The proposed change as provided herein does not violate statutory intent but instead comports with sound principles of substantive and procedural due process. Eliminating the hearing requirement except when requested by the applicant after issuance of an order to show cause, supports the statutory and regulatory mandate that an applicant for registration as a bulk manufacturer shall have the burden of proof at "any hearing" that the requirements of registration are met. *See* 21 CFR 1301.55. The Administrative Procedures Act (APA) which controls these matters further provides that "[e]xcept as otherwise provided by statute, the proponent of a rule or order has the burden of proof." *See* 5 U.S.C. 556(d).

The final rule eliminates the problem of multiple hearings which not only promotes judicial economy but also avoids the anomalous result of DEA conducting administrative hearings which are not dispositive of the ultimate issue of whether an applicant should be registered. For example, because DEA must issue an order to show cause whenever it takes action to deny an application, 21 U.S.C. 824(c), under the current regulation a second hearing would likely be required when DEA decided to deny an application after a hearing held pursuant to a "third-party" request. Further, this second hearing would involve many of the same issues raised in the prior proceeding. The primary objective of the final rule is to limit abuse of the regulatory hearing process.

For the above-stated reasons and in the absence of express statutory language governing the right to an evidentiary hearing by bulk manufacturers concerning the application for registration of bulk manufacturers of controlled substances, as well as the absence of language in the legislative history of the CSA that would imply Congressional intent in this regard, 21 CFR 1301.43 shall be amended.

The Deputy Assistant Administrator hereby certifies that the final rule will have no significant impact upon those entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The registrants and applicants who use, or are affected by, the hearing covered by these regulations are typically not small entities.

The final rule is not a significant regulatory action pursuant to Executive Order (E.O.) 12866 and therefore, has not been reviewed by the Office of Management and Budget. This action has been analyzed in accordance with the principles and criteria in E.O. 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1301

Administrative practice and procedure, Drug traffic control and security measures.

For the reasons set forth above and pursuant to the authority vested in the Attorney General by 21 U.S.C. 821 and 871(b), as delegated to the Administrator of the Drug Enforcement Administration, and redelegated to the Deputy Assistant Administrator, Office of Diversion Control by 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control hereby amends part 1301 of Title 21, Code of Federal Regulations to read as follows:

PART 1301—[AMENDED]

1. The authority citation for part 1301 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 871(b), 875, 877.

2. Section 1301.37, paragraph (a) is revised to read as follows:

§ 1301.37 Amendments to and withdrawal of applications.

(a) An application may be amended or withdrawn without permission of the Administrator at any time before the date on which the applicant receives an order to show cause pursuant to § 1301.48. An application may be amended or withdrawn with permission of the Administrator at any time where good cause is shown by the applicant or where the amendment or withdrawal is in the public interest.

* * * * *

3. Section 1301.43, paragraph (a) is revised to read as follows:

§ 1301.43 Application for bulk manufacture of Schedule I and II substances.

(a) In the case of an application for registration or reregistration to manufacture in bulk a basic class of controlled substance listed in Schedule I or II, the Administrator shall, upon the filing of such application, publish in the **Federal Register** a notice naming the applicant and stating that such applicant has applied to be registered as a bulk manufacturer of a basic class of narcotic or nonnarcotic controlled substance, which class shall be identified. A copy of said notice shall be mailed simultaneously to each person registered as a bulk manufacturer of that basic class and to any other applicant therefor. Any such person may, within 60 days from the date of publication of the notice in the **Federal Register**, file with the Administrator written comments on or objections to the issuance of the proposed registration.

* * * * *

4. Section 1301.44 is amended by redesignating paragraph (b) as paragraph (c) and adding a new paragraph (b) to read as follows:

§ 1301.44 Certificate of registration; denial of registration.

* * * * *

(b) If a hearing is requested by an applicant for registration or reregistration to manufacture in bulk a basic class of controlled substance listed in Schedule I or II, notice that a hearing has been requested shall be published in the **Federal Register** and shall be mailed simultaneously to the applicant and to all persons to whom notice of the application was mailed. Any person entitled to file comments or objections to the issuance of the proposed registration pursuant to § 1301.43(a) may participate in the hearing by filing a notice of appearance in accordance with § 1301.54. Such persons shall have 30 days to file a notice of appearance after the date of publication of the notice of a request for a hearing in the **Federal Register**.

5. Section 1301.54, paragraph (a), (b), (c) and (d) are revised to read as follows:

§ 1301.54 Request for hearing or appearance; waiver.

(a) Any person entitled to a hearing pursuant to §§ 1301.42, 1301.44, or 1301.45 and desiring a hearing shall, within 30 days after the date of receipt of the order to shown cause, file with the Administrator a written request for a hearing in the form prescribed in § 1316.47 of this chapter.

(b) Any person entitled to participate in a hearing pursuant to § 1301.44(b) and desiring to do so shall, within 30 days of the date of publication of notice of the request for a hearing in the **Federal Register**, file with the Administrator a written notice of intent to participate in such hearing in the form prescribed in § 1316.48 of this chapter. Any person filing a request for a hearing need not also file a notice of appearance.

(c) Any person entitled to a hearing or to participate in a hearing pursuant to §§ 1301.42, 1301.44, or 1301.45 may, within the period permitted for filing a request for a hearing or a notice of appearance, file with the Administrator a waiver of an opportunity for a hearing or to participate in a hearing, together with a written statement regarding such person's position on the matters of fact and law involved in such hearing. Such statement, if admissible, shall be made a part of the record and shall be considered in light of the lack of opportunity for cross-examination in determining the weight to be attached to matters of fact asserted therein.

(d) If any person entitled to a hearing or to participate in a hearing pursuant to §§ 1301.42, 1301.44, or 1301.45 fails to file a request for a hearing or a notice of appearance, or if such person so files and fails to appear at the hearing, such person shall be deemed to have waived the opportunity for a hearing or to participate in the hearing, unless such person shows good cause for such failure.

* * * * *

6. Section 1301.55, paragraph (a) is revised to read as follows:

§ 1301.55 Burden of proof.

(a) At any hearing on an application to manufacture any controlled substance listed in Schedule I or II, the applicant shall have the burden of proving that the requirements for such registration pursuant to section 303(a) of the Act (21 U.S.C. 823(a)) are satisfied. Any other person participating in the hearing pursuant to § 1301.44(b) shall have the burden of proving any propositions of fact or law asserted by such person in the hearing.

* * * * *

Dated: June 14, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–15058 Filed 6–19–95; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 84

[Docket No. R–95–1736; FR–3639–F–02]

RIN 2501–AB97

Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-Profit Organizations—OMB Circular A–110 (Revised)

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: Office of Management and Budget (OMB) Circular A–110 provides standards for obtaining consistency and uniformity among Federal agencies in the administration of grants and agreements with institutions of higher education, hospitals, and other non-profit organizations. On September 13, 1994, the Department published a final rule which adopted the revised circular as it pertains to HUD. However, the September 13, 1994 rule contained, in subpart E, special provisions relating to the use of lump sum grants. Therefore, subpart E was treated as an interim rule, and the public was invited to submit comments on subpart E. This final rule addresses the public comments received on subpart E and makes final the provisions of subpart E.

EFFECTIVE DATE: July 20, 1995.

FOR FURTHER INFORMATION CONTACT: Aliceann B. Muller, Policy and Evaluation Division, Office of Procurement and Contracts, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 5262, Washington, DC 20410. Telephone: (202) 708–0294; TDD: (202) 708–1112. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Office of Management and Budget (OMB) Circular A–110 provides standards for obtaining consistency and uniformity among Federal agencies in the administration of grants and agreements with institutions of higher education, hospitals, and other non-profit organizations.

OMB Circular A–110 was issued under the authority of 31 U.S.C. 503 (the Chief Financial Officers Act), 31 U.S.C. 1111, 41 U.S.C. 405 (the Office of Federal Procurement Policy Act), Reorganization Plan No. 2 of 1970, and E.O. 11541 ("Prescribing the Duties of the Office of Management and Budget and the Domestic Policy Council in the Executive Office of the President").

OMB issued Circular A–110 in 1976 and made a minor revision in February 1987. To update the circular, OMB established an interagency task force to review the circular. The task force solicited suggestions for changes to the circular from university groups, non-profit organizations and other interested parties and compared, for consistency, the provisions of similar provisions applied to State and local governments. On August 27, 1992, OMB published a notice in the **Federal Register**, at 57 FR 39018, requesting comments on proposed revisions to OMB Circular A–110. Interested parties were invited to submit comments. OMB received over 200 comments from Federal agencies, non-profit organizations, professional organizations and others. All comments were considered in developing the final revision. On November 29, 1993, at 58 FR 62992, OMB issued a revised circular which reflects the results of these efforts.

On September 13, 1994, the Department published a final rule which adopted the revised circular as it pertains to HUD. However, the September 13, 1994 rule contained, in subpart E, special provisions relating to the use of lump sum grants. Therefore, subpart E was treated as an interim rule, and the public was invited to submit comments on subpart E. This final rule addresses the public comments received on subpart E and makes final the provisions of subpart E.

Public Comments

The final rule published on September 13, 1994, at 59 FR 47010, invited public comments on Subpart E regarding lump sum grants. One (1) commenter, a national association, responded with a series of technical questions. Below is a listing of the questions presented and the Department's response to each question. The Department's responses set forth additional clarifications needed to aid in the commenter's understanding of the rule. No changes to the rule are necessary, and none are made by this final rule.

Question: Do these lump sum awards go through the same audit process as regular awards?

Response: OMB Circular A–133 "Audits of Institutions of Higher Education and Other Nonprofit Organizations" applies to lump-sum awards. However, in responding to a comment on the proposed A–133 regarding applicability of A–133 to fixed price formula (performance-based) type grants, OMB said "Performance-funded programs are subject to the requirements of OMB Circular A–133. However, the auditor should tailor the auditing procedures to that type of program. For performance-funded programs, the auditor's examination should be directed to such matters as determining beneficiary eligibility, verifying units of service rendered, and controlling program income." Therefore, the Department's view is that the recipient of a lump sum award would be subject to all of the requirements of A–133 except that the lump-sum grant would not be audited for incurred "costs;" the auditor would tailor the review to fit the grant's terms. Internal controls, program compliance, auditing of financial statements, and all other aspects of an audit under A–133 would still apply.

Question: Does HUD anticipate that particular program branches of the agency will avail themselves of these types of awards? If so, which are they?

Response: The Department does not expect an expansion in the use of the lump-sum provisions in the future. Historically, many of HUD's grant programs have been managed on other than a cost-reimbursement basis, so it is not a matter of programs "availing" themselves of this option, but rather of making the Department's rule flexible enough to allow the continuance of historical practice. For example, the Neighborhood Development Demonstration Program (NDDP) uses a matching formula of from one Federal dollar up to six Federal dollars being given for each dollar the grantee raises from within the targeted neighborhood. The ratio of the match is determined by the level of neighborhood distress. The NDDP grantee is paid the match when the local dollar is raised—not when costs are incurred or work is done. The housing counseling grant program works on a unit price basis; the grantee is paid for performing a "counseling unit," which is defined in the grant. In many cases, the funding arrangement is part of the basic program design and the enabling legislation. However, it is highly likely that these programs will change, as HUD is currently undergoing a major reinvention and consolidation of its grant programs. The combined programs or new programs may take any form allowed by the new or revised legislation and by the administrative procedures set forth in 24 CFR part 84 (for non-profits) and part 85 (for state and local governments).

Question: Is the underlying motivation to introduce these lump sum awards cost saving or streamlining of procedures in a larger context of the National Performance Review?

Response: Yes, in a way, but see also the second question above. HUD has been using the lump-sum arrangement for many years and is very aware of its advantages in terms of the streamlining and flexibility it offers, including reduced grantee and Federal burden.

Question: Does a lump sum grant resemble a fixed price contract?

Response: In some cases, yes. In cases where a predetermined payment amount is tied to a predetermined performance milestone, it does resemble a fixed price contract. The housing counseling program discussed above falls in this category. However, not all lump sum grants operate in this manner. Sometimes payment is tied to an external index or to an external event, such as economic distress, or a dollar raised in the NDDP program. See the second question above.

Question: If a lump sum grant is fixed in price and permission is needed for changes as specified in § 84.82(d), will HUD pay increased costs that might be incurred from denial of permission, especially if grant performance were made impossible as a result of such denial?

Response: Under a lump sum award, HUD is not paying for "costs" based on the grantee's actual cost experience in performing the work. Therefore, an increase in the grantee's costs would not in and of itself lead to an increase in the lump sum amount paid by HUD. Rather, the lump sum award represents an agreement between HUD and the grantee that a certain amount will be paid for a certain event, based on a performance milestone, external benchmark, or other pre-defined "event." (See §§ 84.80 and 84.81 for further guidance.) However, awarding a lump sum grant does not necessarily mean that the lump sum could never be increased. The idea is that the Federal contribution be sufficient to achieve the agreed-upon goal and that the grantee neither realize a financial windfall nor find it impossible to perform. In some instances, the HUD contribution might only be a small part of the overall program costs, and HUD's clearly stated intention (set forth in the grant itself and agreed to before award) is to contribute no more than the stated HUD share. For example, a grant might be for acquiring and rehabilitating a home for use by low income persons. During the performance of the work, unknown conditions may come to light at the construction site which cause increased costs. HUD might decline to increase its lump sum amount and insist that the grantee recover these costs from other sources, or it might agree to make an additional contribution. Much of the answer depends on the program design and program rules; some programs have statutory caps on individual award amounts, while others allow for more flexibility. The key factor is that the quid pro quo be clearly set forth in the grant document and agreed to by both parties. In cases where there are statutory caps on grant amounts or other constraints which limit or preclude any adjustments in the amount, these should be made clearly known in advance of the award. For issues which could not be foreseen, and in the absence of a rule limiting the Grant Officer's authority, such matters as adjustments in the lump sum amount would be determined by the Grant Officer.

Also, please note that the conditions for getting approval under § 84.82(d) are extremely limited, consisting only of getting approval for (1) changes in scope or objective, (2) additional Federal funding, and (3) the subcontracting out or transfer of work not previously contemplated. The first of these is necessary to make sure that the grantee is still undertaking activities eligible under the program rule and chargeable to the appropriation, and that the activities are consistent with those for which the grantee was selected (usually competitively). The second is obvious—if the grantee needs additional funding, it cannot continue the grant without it, and the Federal agency must make the funds available or explore other avenues for resolution, BEFORE the grantee has overcommitted funds on the assumption there will be additional Federal dollars. The third is to ensure that the grantee who was evaluated as capable actually accomplishes the work and does not shift performance to some unknown party. These three situations are major and are the only ones for which permission must be sought, compared to the many situations requiring permission under cost-reimbursement grants.

Other Matters

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant

Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, S.W., Washington, D.C. 20410.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. It pertains only to the administration of grants and agreements with institutions of higher education, hospitals, and other nonprofit organizations.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule does not have "federalism implications" because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *the Family*, has determined that this rule does not have potential significant impact on family formation, maintenance, and general well-being. It pertains only to the administration of grants and agreements with institutions of higher education, hospitals, and other nonprofit organizations.

Semi-Annual Agenda of Regulations

This rule was listed as item number 1384 in the Department's Semiannual Agenda of Regulations published on May 8, 1995 (60 FR 23368, 23379) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 84

Accounting, Colleges and universities, Grant programs, Loan programs, Nonprofit organizations, Reporting and recordkeeping requirements.

Accordingly, subpart E of part 84 of title 24 of the Code of Federal Regulations is adopted as final, without change, as it was published on September 13, 1994, at 59 FR 47010.

Dated: June 13, 1995.

Henry G. Cisneros,

Secretary.

[FR Doc. 95–14962 Filed 6–19–95; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

28 CFR Part 93

[OJP No. 1014]

RIN 1121–AA26

Drug Courts

AGENCY: U.S. Department of Justice, Office of Justice Programs.

ACTION: Final rule.

SUMMARY: This notice announces the Final Rule on the Drug Court Program as authorized by Title V of the Violent Crime Control and Law Enforcement Act of 1994. The Rule gives general guidance regarding the Program and specifically delineates the prohibition on participation by violent offenders. Detailed Program Guidelines and application materials for the Fiscal Year 1995 Drug Courts Program were issued by the Drug Courts Program Office on March 23, 1995. The Final Rule does not differ from the Proposed Rule published on January 26, 1995 (60 FR 5152).

DATES: The Final Rule is effective June 20, 1995.

ADDRESSES: All inquiries, correspondence, and requests for information should be addressed to Tim Murray, Acting Director, Drug Courts Program Office, Office of Justice Programs, 633 Indiana Avenue NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: The Department of Justice Response Center at 1–800–421–6770 or (202) 307–1480 or Tim Murray, Acting Director, Drug Courts Program Office, Office of Justice Programs at (202) 616–5001.

SUPPLEMENTARY INFORMATION:

Overview of Title V—Drug Courts

Federal discretionary grants are made available under the Violent Crime Control and Law Enforcement Act of 1994, Title V, Pub. L. 103–322, 108 Stat. 1796 (September 13, 1994), 42 U.S.C. 3796ii–3796ii–8 [hereinafter the "Act"] to States, units of local government, Indian tribal governments, and State and local courts for assistance with Drug Court Programs. The Act gives the Attorney General and through statutory authority contained in the Omnibus Crime Control and Safe Streets Act, 42 U.S.C. 3711 *et seq.*, an authorized designee (in this case the Assistant Attorney General for the Office of Justice Programs), the authority to make grants to the above mentioned entities for Drug Court Programs that involve continuing judicial supervision over non-violent offenders with substance abuse problems and the integrated administration of sanctions and services including: (1) Mandatory periodic testing for the use of controlled substances or other addictive substances during any period of supervised release or probation for each participant; (2) substance abuse treatment for each participant; (3) diversion, probation, or other supervised release involving the possibility of prosecution, confinement, or incarceration based on noncompliance with program requirements or failure to show satisfactory progress; and (4) programmatic, offender management, and aftercare services such as relapse prevention, health care, education, vocational training, job placement, housing placement, and child care or other family support services for each participant requiring such services.

The Fiscal Year 1995 Department of Justice Appropriations Act, Pub. L. 103–317, allocated $29 million for the Drug Court grant programs. Eligibility of applicants to receive grants will be based on requirements of the statute and these regulations, as well as assurances and certifications specified in the detailed program guidelines and application materials published by the Drug Courts Program Office of the Office of Justice Programs on March 23, 1995 and available from that Office.

The Department issued a Proposed Rule on January 26, 1995 (60 FR 5152). The Final Rule being published herein is unchanged from the Proposed Rule and closely mirrors the authorizing statute. Application guidelines addressing the logistics of the Program and its implementation were issued on March 23, 1995. Copies of the Drug Court Program Guidelines are available directly from the DOJ Response Center or the Drug Courts Program Office.

Discussion of Comments

The Office of Justice Programs received sixteen letters commenting on the proposed regulations, primarily from State and local government (including district attorneys and criminal justice planning agencies). Comments are on file in the Drug Courts Program Office and are available for review. All comments were considered by the Drug Courts Program Office in the issuance of its Application Guidelines and in the review of this Final Rule. The Office of Justice Programs thanks all those who commented on this program.

Commentators unanimously voiced their support for the Department's efforts to implement the Program and offered positive suggestions for the essential element of the regulation, the exclusion of violent offenders definition. Commentators also noted concerns in other areas, including the design and type of services provided in programs for Drug Court participants, judicial supervision, participation with local agencies, defendants' rights, and available funding.

The majority of comments focused on the definition of the term "violent offender." While all agreed that such individuals should be excluded and that the definition worked toward achieving that result, some were concerned with its potential breadth. The Department gave much consideration to this particular definitional issue in drafting the Proposed Rule and the subsequent guidelines. Indeed, a careful survey of the comments made in preparation for publication of the Final Rule provided an opportunity for the Department to revisit many of these concerns. Our reexamination, however, suggested that our original approach is appropriate in that it tracks the language of the Act.

We appreciate those comments received regarding program design, treatment availability, and services provided. We emphasized in the preamble of the Proposed Rule, as we do now, that the Department will accept a variety of approaches. Indeed, rather than prescribing one model, the Program Guidelines appropriately encourage flexibility in developing local Drug Court programs. Localities are encouraged to tailor intervention approaches best suited to address local circumstances. Within the boundaries set by the statute, the Department is committed to maintaining flexibility to avoid any restrictions on localities that would tend to limit development to one particular design. The design flexibility provided for local Drug Court programs, similarly, allows grantees to develop an array of services appropriate to the local constituent population served, thereby avoiding the need to specify a list of particular services as a prerequisite for participation.

We received comments concerning the potential impact of Drug Court programming on the rights of individual defendants. Guidelines require participation by the entire criminal justice system including courts, prosecutors and public defenders, to ensure effective programming and that the rights of individual defendants are protected.

The issue of judicial supervision raised by some commentators is a central feature of the program. According to the terms of the statute, judicial supervision must be ongoing. Therefore, it has been retained as a seminal program requirement for all Drug Court programming.

Some commentators focused on the issue of the overall effectiveness of the Program nationally and the role of evaluations in that effort. Assessments and evaluations of Drug Court programs will be carried out by individual grantees in consultation with the National Institute of Justice (NIJ) and other appropriate agencies. It is the Department's intention to review data provided by individual program grantees nationwide to help evaluate the overall effectiveness of the Drug Court Program. NIJ-sponsored impact and process evaluations will focus in more depth on selected Drug Courts funded under this Program.

Administrative Requirements

This regulation has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. This rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and, accordingly, this rule has not been reviewed by the Office of Management and Budget.

The Assistant Attorney General for the Office of Justice Programs, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 93

Grant programs, Judicial administration.

For the reasons set out in the preamble, Title 28, Chapter 1, of the Code of Federal Regulations is amended by adding a new Part 93, consisting of Subpart A as set forth below.

PART 93—PROVISIONS IMPLEMENTING THE VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994

Subpart A—Drug Courts

Sec.

93.1 Purpose
93.2 Statutory Authority
93.3 Definitions
93.4 Grant Authority
93.5 Exclusion of Violent Offenders

Subpart B—[Reserved]

Authority: 42 U.S.C. 3796ii–3796ii–8.

Subpart A—Drug Courts

§ 93.1 Purpose.

This part sets forth requirements and procedures to ensure that grants to States, State courts, local courts, units of local government, and Indian tribal governments, acting directly or through agreements with other public or private entities, exclude violent offenders from participation in programs authorized and funded under this part.

§ 93.2 Statutory authority.

This program is authorized under the Violent Crime Control and Law Enforcement Act of 1994, Title V, Public Law 103–322, 108 Stat. 1796, (September 13, 1994), 42 U.S.C. 3796ii–3796ii–8.

§ 93.3 Definitions.

(a) *State* has the same meaning as set forth in section 901(a)(2) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended.

(b) *Unit of Local Government* has the same meaning as set forth in section 901(a)(3) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended.

(c) *Assistant Attorney General* means the Assistant Attorney General for the Office of Justice Programs.

(d) *Violent offender* means a person who either—

(1) Is currently charged with or convicted of an offense during the course of which:

(i) The person carried, possessed, or used a firearm or other dangerous weapon; or

(ii) There occurred the use of force against the person of another; or

(iii) There occurred the death of, or serious bodily injury to, any person; without regard to whether proof of any of the elements described herein is required to convict; or

(2) Has previously been convicted of a felony crime of violence involving the use or attempted use of force against a person with the intent to cause death or serious bodily harm.

§ 93.4 Grant authority.

(a) The Assistant Attorney General may make grants to States, State courts, local courts, units of local government, and Indian tribal governments, acting directly or through agreements with other public or private entities, for programs that involve:

(1) Continuing judicial supervision over offenders with substance abuse problems who are not violent offenders, and

(2) The integrated administration of other sanctions and services, which shall include—

(i) Mandatory periodic testing for the use of controlled substances or other addictive substances during any period of supervised release or probation for each participant;

(ii) Substance abuse treatment for each participant;

(iii) Diversion, probation, or other supervised release involving the possibility of prosecution, confinement, or incarceration based on noncompliance with program requirements or failure to show satisfactory progress; and

(iv) Programmatic, offender management, and aftercare services such as relapse prevention, health care, education, vocational training, job placement, housing placement, and child care or other family support services for each participant who requires such services.

(b) Applications for grants under this program shall be made at such times and in such form as may be specified in guidelines or notices published by the Assistant Attorney General. Applications will be evaluated according to the statutory requirements of the Act and the programmatic goals specified in the applicable guidelines. Grantees must comply with all statutory and program requirements applicable to grants under this program.

§ 93.5 Exclusion of violent offenders.

(a) The Assistant Attorney General will ensure that grants to States, State courts, local courts, units of local government, and Indian tribal governments, acting directly or through agreements with other public or private entities, exclude violent offenders from programs authorized and funded under this part.

(b) No recipient of a grant made under the authority of this part shall permit a violent offender to participate in any program receiving funding pursuant to this part.

(c) Applicants must certify as part of the application process that violent offenders will not participate in programs authorized and funded under this part. The required certification shall be in such form and contain such assurances as the Assistant Attorney General may require to carry out the requirements of this part.

(d) If the Assistant Attorney General determines that one or more violent offenders are participating in a program receiving funding under this part, such funding shall be promptly suspended, pending the termination of participation by those persons deemed ineligible to participate under the regulations in this part.

(e) The Assistant Attorney General may carry out or make arrangements for evaluations and request information from programs that receive support under this part to ensure that violent offenders are excluded from participating in programs hereunder.

Subpart B—[Reserved]

Laurie Robinson,

Assistant Attorney General, Office of Justice Programs.

[FR Doc. 95–14985 Filed 6–19–95; 8:45 am]

BILLING CODE 4410–18–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–5222–2]

Notice of Administrator's Intent To Permit Filing of Reformulated Gasoline and Anti-Dumping Reports via Electronic Data Interchange (EDI); Deadline for First Quarter Batch Reports

AGENCY: Environmental Protection Agency (EPA).

ACTION: Reporting procedures and extension of reporting deadline.

SUMMARY: The reformulated gasoline (RFG) and anti-dumping regulation requires that specified parties submit compliance reports. These reports are to be submitted via forms and procedures specified by the Administrator. Today, EPA is announcing its intent to permit properly filed electronic reports. EPA is also announcing that it is extending by one month the deadline for the first submission of quarterly batch reporting from May 31, 1995 to June 30, 1995. Thus, first quarter reports for 1995 only must be submitted by midnight June 30, 1995. This extension applies to all parties whether submitting paper forms or submitting electronically.

EFFECTIVE DATE: This action is effective on June 20, 1995.

FOR FURTHER INFORMATION CONTACT: For general questions about RFG reporting, contact Mike Marmen, U.S. Environmental Protection Agency, ATTN: REFGAS, 401 M Street SW. (6406–J), Washington, D.C. 20460, (202) 233–9028. For technical assistance with electronic reports, contact Andy Lowe by calling either (202) 233–9027 or by calling 800–395–6222 and instructing the operator to send a brief text message to PIN 259–0639. For questions regarding the Terms and Conditions Memorandum, contact Anne-Marie Cooney Pastorkovich at (202) 233–9013.

SUPPLEMENTARY INFORMATION: Parties who need assistance may also contact the EPA staff through REFGAS@EPAMAIL.EPA.GOV. A copy of this notice and copies of the "Terms and Conditions" memorandum described below may be obtained from Anne-Marie Cooney Pastorkovich or from Angela Young, (202) 233–9010, or by accessing the bulletin board system described elsewhere in this **SUPPLEMENTARY INFORMATION** section.

A copy of this action is available on the OAQPS Technology Transfer Network Bulletin Board System (TTNBBS). The TTNBBS can be accessed with a dial-in phone line and a high-speed modem (PH# 919–541–5742). The parity of your modem should be set to none, the data bits to 8, and the stop bits to 1. Either a 1200, 2400, 9600 or 14,400 baud modem should be used. When first signing on, the user will be required to answer some basic informational questions for registration purposes. After completing the registration process, proceed through the following series of menus:

(M) OMS
(K) Rulemaking and Reporting
(3) Fuels
(9) Reformulated gasoline

A list of ZIP files will be shown, all of which are related to the reformulated gasoline rulemaking process. Today's action will be in the form of a ZIP file and can be identified by the following titles: EDINOTE.ZIP. To download this file, type the instructions below and transfer according to the appropriate software on your computer:

<D>ownload, <P>rotocol, <E>xamine, <N>ew, <L>ist, or <H>elp Selection or <CR> to exit: D filename.zip

You will be given a list of transfer protocols from which you must choose one that matches with the terminal software on your own computer. The software should then be opened and directed to receive the file using the same protocol. Programs and instructions for de-archiving compressed files can be found via <S>ystems Utilities from the top menu, under <A>rchivers/de-archivers. Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

I. Introduction

RFG and Anti-Dumping Program Reporting Requirements, Generally

The primary purpose of the Federal reformulated gasoline (RFG) and anti-dumping program is to improve air quality in ozone non-attainment areas by reducing motor vehicle emissions of toxic and tropospheric, ozone-forming compounds, as required by § 211(k) of the Clean Air Act ("the Act"). Final regulations for RFG and anti-dumping were signed by the Administrator on December 15, 1993 and were published in the **Federal Register** on February 16, 1994.[1] In order to ensure that the requirements of the RFG and anti-dumping program are complied with (and as a tool for monitoring such compliance), the regulations include, at §§ 80.75 and 80.105, reporting requirements for refiners, importers, and oxygenate blenders. In addition to these parties, independent labs must report the result of analyses of RFG and reformulated gasoline blendstock for downstream oxygen blending (RBOB) to EPA. Interested persons who require further information about the specific reports to be filed should refer to §§ 80.75 and 80.105.

Reporting parties are required, under §§ 80.75 and 80.105, to submit all RFG and anti-dumping compliance reports via forms and procedures specified by the Administrator.[2] EPA has developed and provided scannable paper forms and copies of these forms are available from the person(s) listed in **FOR FURTHER INFORMATION CONTACT**, above.

Purpose of Electronic Filing

EPA desires to decrease, to the extent possible, the amount of paper forms required to be submitted under the RFG and anti-dumping program and to permit the submission of reports electronically. Electronic Data Interchange (EDI), is the transmission, in a standard syntax, of unambiguous information between computers of independent organizations and has been widely used by the private/commercial sector. EPA believes that the electronic transmission and receipt of RFG and anti-dumping compliance reports will simplify the flow of reports from the reporting entity to EPA and will lessen the need for the reporting party and EPA to "re key" data in order to fit the EPA paper form. By eliminating extra steps in the reporting process, reporting via EDI will reduce the chance of human error and will help ensure the accuracy of reports filed with EPA.

How the EDI Reporting Program for RFG and Anti-Dumping Will Work

The Administrator will accept RFG and anti-dumping reports filed via EDI in substitution for paper reports, provided the reporting party signs and abides by the provisions of the "Terms and Conditions Memorandum for Submission of Reformulated Gasoline (RFG) and Anti-Dumping Reports via Electronic Data Interchange (EDI)." (This memorandum, the entire text of which appears in Section III below, explains the responsibilities of the reporting party.) EPA will also provide reporting parties with copies of the technical guidance document titled "Reformulated Gasoline and Anti-Dumping Program Electronic Data Interchange Technical Guideline," which includes detailed information about hardware/software requirements, the required usage of data standards, the value added network (VAN) service EPA will use to receive data, and system description. [Copies of this guidance will be sent to reporting parties and other interested parties and may be obtained from the TTNBBS or by contacting the person(s) listed in **FOR FURTHER INFORMATION CONTACT**.]

EPA, and the reporting party who has signed the Terms and Conditions Memorandum, may electronically transmit to or receive from each other any of the transaction sets for the RFG and Anti-dumping program. EPA will identify in the guidance document, a Value-Added Network (VAN), which provides a mailbox from which EPA may send or receive EDI transmissions. As explained in the Terms and Conditions Memorandum, reporting parties may use, at their own expense, this "EPA VAN" or may select another VAN interconnected with the EPA VAN.

EPA and the reporting party must protect electronic data and Personal Identification Numbers (PINs) from unauthorized access, alteration, loss, destruction and/or disclosure to ensure, at a minimum, the same level of protection required for paper documents. This protection must extend beyond the transactions themselves to any files or data bases that contain information conveyed via EDI.

EPA will use a "dual PIN" system. A responsible corporate officer of the reporting party will identify authorized representatives (i.e., corporate employees who are authorized to submit RFG and anti-dumping reports) and the facilities for which such authorized representatives are authorized to submit reports. A responsible corporate officer (see footnote 3 to the Terms and Conditions Memorandum), is the only person who will be sent a company PIN by EPA. The company PIN will be mailed directly to the responsible corporate officer via U.S. Postal Service by EPA. The individual PIN (i.e. the PIN assigned to each authorized representative) will be mailed directly to such authorized representative(s) via U.S. Postal Service by EPA. Both the individual PIN and the company PIN must appear on all proper EDI submissions. Each PIN will be a four (4) character alpha-numeric code. EPA does not intend to routinely change PINs, but will do so at the written request, on company letterhead, of a responsible corporate officer of the reporting party. The reporting party is responsible for notifying EPA if it has reason to believe the security of any PIN(s) has been compromised and must request a change. The reporting party is also responsible for notifying EPA in writing and on company letterhead of termination of employment of any authorized representative. EPA will cancel such authorized representative's individual PIN within fourteen (14) business days of receiving such notice. The reporting party is responsible for notifying EPA (in writing on company letterhead and signed by a responsible corporate officer) of any new employee(s) who will act as authorized representative(s). EPA will promptly issue such authorized representative(s) individual PIN(s) via U.S. Postal Service. If EPA has reason to believe that PIN security has been compromised, it may initiate PIN changes.

EPA will consider an electronically filed report received when it is accessible to the receiver (i.e. EPA) at its receipt computer. No document shall satisfy any reporting requirement until it is received. Upon receipt of any

[1] EPA published a direct final rulemaking making technical corrections to the February 16 rule in the July 20, 1994 **Federal Register**. A rulemaking related to renewable oxygenates was published in the August 2, 1994 **Federal Register**. Shortly after promulgation of the renewable oxygenates rule, the American Petroleum Institute (API) and National Petroleum Refiners Association (NPRA) brought suit in the United States Court of Appeals seeking review of the Agency's action. On February 16, 1995, oral arguments were held. On April 28, 1995, the Court granted API and NPRA's petition for review and concluded that EPA lacked the authority to promulgate the renewable oxygenate rule. Interested parties may contact the person(s) listed in **FOR FURTHER INFORMATION CONTACT** for information about the status of technical corrections and the renewable oxygenate rule.

[2] On November 4, 1994, authority to require reporting of information and delivery of records required to be maintained under specified sections, including §§ 80.75 and 80.105, was delegated by the Administrator to the Assistant Administrator for Air and Radiation and the Assistant Administrator for Enforcement and Compliance Assurance. On November 28, 1994, certain authorities, including those related to reporting under §§ 80.75 and 80.105, were further delegated by the Assistant Administrator for Air and Radiation to the Director of the Office of Mobile Sources.

On December 2, 1994, authority was further delegated to the Director of the Field Operations and Support Division of the Office of Mobile Sources, which is the office responsible for day-to-day operations of the RFG and Anti-Dumping reporting program.

report, EPA will promptly (i.e. within five [5] business days) and properly submit a functional acknowledgement in return. The functional acknowledgement will constitute conclusive evidence that a report has been properly received by EPA. If a functional acknowledgement is not received in return for a document, then the reporting party initially transmitting the document shall be responsible for re-sending the document.

EPA and the reporting party are responsible for keeping archives of documents sent and received, including a complete record of the data interchanged, representing the messages between the parties and their dates and times (i.e., the data or transaction log). Such data or transaction log shall be maintained for a period of not less than five (5) years. The reporting party agrees to retransmit any document within five (5) days of receiving a re-transmission request by EPA. Likewise, EPA will re-send any transmission originated by EPA at the reporting party's request.

EPA considers that electronic reports which are filed consistent with the procedures outlined in this notice, the Terms and Conditions Memorandum, and the technical guidance document fulfill the requirements of §§ 80.75(n) and 80.105, pertaining to form and signature requirements for reports. Specifically, § 80.75(n)(1), pertaining to RFG reporting, and § 80.105(d)(1), pertaining to anti-dumping reporting, require that reports be submitted on forms and following procedures specified by EPA. Reports must be signed and certified as correct by the owner or a responsible corporate officer of the reporting party. *See* § 80.75(n)(2) [pertaining to RFG reporting] and § 80.105(d)(3) [pertaining to anti-dumping reporting]. EPA will consider a properly filed RFG or anti-dumping report (i.e., a report filed in a manner consistent with the requirement of this notice, the Terms and Conditions Memorandum, and the technical guidance document) to meet the requirements of §§ 80.75(n) and 80.105(d). A report will be considered to be signed and certified as correct by the owner or responsible corporate officer of the reporting party if and only if both the corporate and individual PINs are included in the report itself. Both PINs must be included in each and every report and use of the PINs constitutes certification of correctness within the meaning of §§ 80.75(n)(2) and 80.105(d)(3) for that report. Based on current technology, EPA believes that a dual-PIN certification system is the best available electronic means to meet the reporting requirements of §§ 80.75(n) and (2) and 80.105 (d) (1) and (3). It is the responsibility of the reporting party to institute and maintain security measures to protect PINs from unauthorized use and to notify EPA in the event issuance of a new PIN becomes necessary. As discussed above, EPA may also initiate a change in PINs.

Circumstances, both foreseeable and unforeseeable, may prevent a reporting party from conducting EDI. Nevertheless, no reporting party will be excused from the requirement to file RFG and Anti-Dumping reports with the Agency by the appropriate regulatory deadline. If a party is unable to electronically file a required report by such deadline, it must submit a paper report on forms provided by EPA.

II. Text of Terms and Conditions Memorandum

Terms and Conditions Memorandum for Submission of Reformulated Gasoline (RFG) and Anti-Dumping Reports via Electronic Data Interchonge (EDI)

I. *Introduction*

A. *EDI, Defined*

Electronic Data Interchange (EDI) is the transmission, in a standard syntax, of unambiguous information between computers of independent organizations.

B. *Acceptance of Electronically Submitted Reports in Lieu of Paper Documents, Generally*

Under the reporting provisions for the reformulated gasoline (RFG) and anti-dumping program at 40 CFR 80.75(n) and 80.105(d), reports shall be "submitted on forms and following procedures specified by the Administrator" by a specified date and shall be signed and certified as correct by either the owner or a responsible corporate officer[1] of the reporting entity.

EPA has announced its intent to permit RFG and anti-dumping reporting via EDI (as substitution for paper reports) in the **Federal Register** notice and will accept such electronically filed reports provided the reporting party signs and abides by the provisions of the "Terms and Conditions Memorandum for Submission of Reformulated Gasoline (RFG) and Anti-Dumping Reports via Electronic Data Interchange (EDI)" (hereafter referred to as the "Terms and Conditions Memorandum" or simply as "this memorandum"). The **Federal Register** notice is part and parcel to this Memorandum and is incorporated herein by reference.

The technical requirements are contained in "Reformulated Gasoline and Anti-Dumping Program Electronic Data Interchange Technical Guideline," (hereafter referred to as the "technical guidance document") which is part and parcel to this memorandum and is incorporated herein by reference. (This memorandum, the **Federal Register** notice, and the technical guidance are sometimes collectively referred to as "the agreement.")

From time to time and due to technological change or technical necessity, EPA may update the technical guidance document. EPA will provide reasonable notice of any such changes to the reporting party.

C. *Standards for Documents*

The reporting party who has signed the Terms and Conditions Memorandum may electronically transmit to EPA any of the transaction sets for RFG and the anti-dumping program. These transaction sets are identified in the technical guidance document. The reporting party must use only those transaction sets approved for general use by the American National Standards Institute (ANSI) Accredited Standards Committee (ASC) X.12.

D. *System Requirements*

Reporting parties who wish to submit reports via EDI are responsible for maintaining the equipment, software, services, and testing necessary to effectively and reliably transmit and receive documents. The reporting party may use the EPA VAN or a VAN interconnected with the EPA VAN. The current EPA VAN is identified in the technical guidance.

E. *Security Procedures*

EPA and the reporting party must protect electronic data and Personal Identification Numbers (PINs) from unauthorized access, alteration, loss, destruction and/or disclosure to ensure, at a minimum, the same level of protection required for paper documents. This protection must extend beyond the transactions themselves to any files or data bases that contain information conveyed via EDI.

In order to reasonably protect electronically submitted reports, EPA will maintain security procedures to protect data and messages against the risk of unauthorized access, alteration, loss or destruction. All information claimed by the reporting party as "confidential business information" party will be subject to additional safeguards and procedures consistent with 40 CFR Part 2 and with established Agency procedures for protection of such information. It is the responsibility of a responsible corporate officer of the reporting party to provide, in writing and on company letterhead, a list of those authorized representatives to receive individual PINs and to identify a responsible corporate officer to receive the company PIN. EPA will only issue PINs to the responsible corporate officer and such properly designated authorized representatives. It is the responsibility of a responsible corporate officer of the reporting party to notify EPA in writing and on company letterhead of any changes which necessitate changes, deletions, or issuance of [a] new individual or company PIN(s). The reporting party agrees to use all reasonable efforts to maintain the confidentiality of PINs.

[1] The term "responsible corporate officer" as used here, means an officer of the corporation as defined by the incorporation laws of the state in which the corporation is incorporated or a representative of the corporation who has been delegated the authority in writing to certify RFG and Anti-dumping reports by such a responsible corporate officer.

F. *Failure to Conduct EDI*

Circumstances may arise which render the reporting party unable to submit RFG and anti-dumping reports via EDI. Such circumstances may include, but are not limited to, so-called "acts of God."

Nothing herein is intended to relieve the reporting party of the obligation to file a timely report. If a report cannot be filed in a timely manner via EDI, then the reporting party must submit a paper document as required by 40 CFR 80.75 and 80.105.

II. *Subject*

Responsible corporate officer:

_____

Reporting party:
(Company name as registered with EPA)

_____

EPA RFG Company Registration number:

_____

Corporate Address:
(as registered with EPA)

_____

_____

_____

(List of facilities who will report via EDI to be included in Part V, below.)

III. *Terms and Conditions*

The reporting party who has signed this Terms and Conditions Memorandum to submit reports via EDI, agrees to use only those transaction sets approved for general use by the American National Standards Institute ("ANSI") Accredited Standards Committee ("ASC") X.12 and in accordance with the requirements of the technical guidance and the **Federal Register** notice. The reporting party further agrees:

(a) That both company and individual PINs shall be included on each and every report submitted and that such inclusion of the PINs constitutes the signature and certification that the report is correct within the meaning of 40 CFR 80.75(n)(2) and 80.105(d)(3) for that report and constitutes a "signed document" within the meaning of this Memorandum.

(b) That electronically submitted RFG reports (i.e., RFG reports submitted via EDI) are equivalent to, and in substitution for, paper documents and that any document properly transmitted pursuant to this Memorandum, the technical guidance, and the **Federal Register** notice, shall be considered to be a "writing" or "in writing," and any such document when containing, or to which there is affixed, a signature ("signed documents") shall be deemed for all purposes to have been "signed" and to constitute an "original" when printed from electronic files or records established and maintained in the normal course of business.

(c) Not to contest the validity or enforceability of signed documents under the provisions of any applicable law relating to whether certain agreements are to be in writing or signed by the party to be bound thereby. Signed documents, if introduced into evidence on paper in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of copies of signed documents under either the business records exception to the hearsay rule or the best evidence rule on the basis that the signed documents were not originated or maintained in documentary form.

(d) To provide and maintain the equipment, software, services, and testing necessary to effectively and reliably transmit and receive documents and to accept responsibility for interfacing the EDI application to the EDI system and be responsible for all problems at the application level, including, but not limited to, wrong or missing fields or wrong data in fields.

(e) To safeguard electronic data from tampering and unauthorized disclosure to ensure, at a minimum, the same level of protection required for paper documents.

(f) To safeguard Personal Identification Numbers (PINs) and to notify EPA of any loss of or compromising of a PIN[2] and to treat all individual PINs as non-transferrable. EPA will issue no PINs without the written request of a responsible corporate officer on letterhead, consistent with the requirements of Paragraph V, below.

(g) That no document will be considered to have been received by EPA until it is accessible to EPA at its receipt computer. No document shall be of any legal effect until it is received. Upon receipt of any report, EPA will promptly (i.e., within five [5] business days) and properly submit a functional acknowledgement in return. The functional acknowledgement will constitute conclusive evidence that a report has been properly received by EPA. If a functional acknowledgement is not received in return for a document transmitted to EPA, then the reporting party who transmitted the document shall be responsible for re-sending the document.

(h) To retransmit any document for which a functional acknowledgement was not received. Such re-transmission is to occur within five (5) days of request by EPA.

(i) To maintain records and archives of documents sent and received for not less than five (5) years.[3] Such archives must include a complete record of the data interchanged representing the messages between the parties (i.e., the transaction or data log).

(j) To promptly notify EPA of any inability to properly conduct EDI[4] and to file paper reports on forms provided by EPA or under circumstances where an electronic report cannot be filed by the applicable regulatory deadline.

(k) To notify EPA, in writing, of any information for which the party claims business confidentiality.[5]

[2] EPA will promptly issue within fourteen (14) business days a new PIN upon request of the regulated party.

[3] Examples of documents sent and received include all outgoing transmissions and incoming functional acknowledgements.

[4] Notification does not relieve the party of any reporting requirements under the RFG regulation.

[5] EPA recognizes that information required to be submitted under "Table 2" or "the detail area" of the transaction sets may be claimed as business confidential by the reporting party. For reports due for calendar year 1995, the party may claim confidentiality for the information contained in "Table 2" or "the detail area" by initialing the clause in Section VI. Beginning with the report due May 31, 1996, the party must claim confidentiality with respect to each EDI submission.

IV. *Acceptance and Duration of Agreement*

This Memorandum and the **Federal Register** notice and the technical guidance constitute the complete agreement of the parties relating to the matters specified in this agreement and supersede all prior representations or agreements, whether oral or written, with respect to such matters. No oral modification or waiver of any of the provisions of this agreement shall be binding on either party. As the parties develop additional capabilities respecting EDI, additional addenda may be added to this agreement. Each addendum shall be signed and dated by both the reporting party and EPA. The date of the last signature shall be the effective data, and each addendum shall be appended to this agreement. This agreement is for the benefit of, and shall be binding upon, the reporting party and its respective successors and assigns.

Acceptance by the reporting party of this Terms and Conditions Memorandum is upon return of the original agreement, signed by a responsible corporate officer, to the Director, Field Operations and Support Division (6406J), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

This Terms and Conditions memorandum is effective upon the date indicated in Section VII, below. The agreement shall remain in effect until terminated by either the reporting party or EPA. Termination shall require 30 days written notice, specifying the effective date of the termination. If the reporting party wishes to terminate this agreement, written notice shall be sent to the Director, Field Operations and Support Division, at the above listed address. Such written notice shall be on company letterhead and signed by a responsible corporate officer.

Any termination shall not affect the respective obligations or rights of the parties arising under this Memorandum or the **Federal Register** notice and technical guidance document, which are part and parcel to this Memorandum. Termination of this agreement shall not affect any action required to complete or implement Messages which are sent prior to such termination. Emergency temporary termination of computer connections may be made to protect data from illegal access or other incidental damage.

V. *List of Reporting Facilities and Authorized Representatives to Receive Individual PINs*

The responsible corporate officer agrees to submit in writing, on company letterhead, a list of "Authorized Representatives" to submit reformulated gasoline and anti-dumping reports and the facilities for which these representatives are authorized to reports. Such list shall include appropriate company and facility identification number(s) (issued by EPA), as well as the address, phone number, and title of each

authorized representative. All requests for changes or deletions of company or individual PINs or changes in authorized representatives must be submitted in writing, on company letterhead, and signed by a responsible corporate officer.

VI. *Confidential Business Information*

Some information required to be submitted under "Table 2" or "the detail area" of the transaction sets, as identified in the technical guidance may be claimed as business confidential by the reporting party. The responsible corporate officer representing the reporting party may claim confidentiality as to "Table 2" or "detail area" information for those reports required to be filed for calendar year 1995 by initialing this clause. A reporting party may also notify EPA of a claim of confidentiality in a separate writing addressed to the Director, Field Operations and Support Division, 401 M Street, SW. (6406–J), Washington, DC 20460. Beginning with the report due on May 31, 1996, parties will be able to claim business confidentiality through the electronic reporting format. The reporting party will receive timely notice of such procedures, which will be included in an update to the technical guidance document.

Initials of Responsible Corporate Officer

VII. *Acceptance*

The terms and conditions set forth above are hereby accepted and agreed to by the Reporting Party. Upon receipt of this properly signed Terms and Conditions Memorandum and the list of reporting facilities and authorized representatives, EPA will issue PINs and accept electronic reports from the Reporting Party.

Signature of Responsible Corporate Officer

Printed/Typed Name of Responsible Corporate Officer

Company Name

Date

The statutory authority for today's notice is granted to EPA by §§ 211(c) and (k) and § 301(a) of the Clean Air Act as amended, 42 U.S.C. 7545(c) and (k) and 7601(a).

Dated: June 8, 1995.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 95–14799 Filed 6–19–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 272

[FRL–5188–7]

Hazardous Waste Management Program: Incorporation by Reference of Approved State Hazardous Waste Program for Arkansas

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Under the Resource Conservation and Recovery Act of 1976, as amended (RCRA), the United States Environmental Protection Agency (EPA) may grant Final Authorization to States to operate their hazardous waste management programs in lieu of the Federal program. EPA uses part 272 of Title 40 Code of Federal Regulations (CFR) to provide notice of the authorization status of State programs, and to incorporate by reference those provisions of the State statutes and regulations that EPA will enforce under RCRA Section 3008. Thus, EPA intends to codify the Arkansas authorized State program in 40 CFR Part 272. The purpose of this action is to incorporate by reference EPA's approval of recent revisions to Arkansas' program.

DATES: This document will be effective on August 21, 1995 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on this action must be received by the close of business on July 20, 1995. The incorporation by reference of certain Arkansas statutes and regulations was approved by the Director of the Federal Register as of August 21, 1995 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Written comments should be sent to Alima Patterson, Region 6 AR–NM Authorization Coordinator, Grants and Authorization Section (6H–HS), RCRA Programs Branch, U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202, Phone #: 214–665–8533.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6 AR–NM Authorization Coordinator, Grants and Authorization Section (6H–HS), RCRA Programs Branch, U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202, Phone #: 214–665–8533.

SUPPLEMENTARY INFORMATION:

Background

Section 3006 of the Resource Conservation and Recovery Act of 1976, as amended (RCRA), 42 U.S.C. 6926 *et seq.*, allows the U.S. Environmental Protection Agency (EPA) to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. The purpose of today's **Federal Register** document is to incorporate by reference EPA's approval of recent revisions to Arkansas' program.

Effective December 13, 1993 (see 58 FR 52674), EPA incorporated by reference Arkansas' then authorized hazardous waste program. Effective December 21, 1994 (see 59 FR 51115), EPA granted authorization to Arkansas for additional program revisions. In this document, EPA is incorporating the currently authorized State hazardous waste program in Arkansas.

EPA provides both notice of its approval of State programs in 40 CFR part 272 and incorporates by reference therein the State statutes and regulations that EPA will enforce under section 3008 of RCRA. This effort will provide clearer notice to the public of the scope of the authorized program in Arkansas. Such notice is particularly important in light of the Hazardous and Solid Waste Act Amendments of 1984 (HSWA), Public Law 98–616. Revisions to State hazardous waste programs are necessary when Federal statutory or regulatory authority is modified. Because HSWA extensively amended RCRA, State programs must be modified to reflect those amendments. By incorporating by reference the authorized Arkansas program and by amending the Code of Federal Regulations whenever a new or different set of requirements is authorized in Arkansas, the status of Federally approved requirements of the Arkansas program will be readily discernible.

The Agency will only enforce those provisions of the Arkansas hazardous waste management program for which authorization approval has been granted by EPA. This document incorporates by reference provisions of State hazardous waste statutes and regulations and clarifies which of these provisions are included in the authorized and Federally enforceable program. Concerning HSWA, some State requirements may be similar to HSWA requirements that are in effect under Federal statutory authority in that State. However, a State's HSWA-type requirements are not authorized and will not be codified into the CFR until the Regional Administrator publishes his final decision to authorize the State for specific HSWA requirements. Until such time, EPA will enforce the HSWA requirements and not the State analogues.

Arkansas Authorized Hazardous Waste Program

EPA is incorporating by reference the Arkansas authorized hazardous waste program in subpart E of 40 CFR part 272. The State statutes and regulations are incorporated by reference at § 272.201(b)(1) and the Memorandum of Agreement, the Attorney General's Statement and the Program Description are referenced at § 272.201 (b)(5), (b)(6) and (b)(7), respectively.

The Agency retains the authority under Sections 3007, 3008, 3013 and 7003 of RCRA to undertake enforcement actions in authorized States. With respect to such an enforcement action, the Agency will rely on Federal sanctions, Federal inspection authorities, and the Federal Administrative Procedure Act rather than the authorized State analogues to these requirements. Therefore, the Agency does not intend to incorporate by reference for purposes of enforcement such particular, authorized Arkansas enforcement authorities. Section 272.201(b)(2) of 40 CFR lists those authorized Arkansas authorities that are part of the authorized program but are not incorporated by reference.

The public also needs to be aware that some provisions of the State's hazardous waste management program are not part of the Federally authorized State program. These non-authorized provisions include:

(1) Provisions that are not part of the RCRA Subtitle C program because they are "broader in scope" than RCRA Subtitle C (see 40 CFR 271.1(i)); and

(2) Federal rules for which Arkansas is not authorized, but which have been incorporated into the State regulations because of the way the State adopted Federal regulations by reference.

State provisions which are "broader in scope" than the Federal program are not incorporated by reference for purposes of enforcement in 40 CFR part 272. Section 272.201(b)(3) of 40 CFR lists for reference and clarity the Arkansas statutory and regulatory provisions which are "broader in scope" than the Federal program and which are not, therefore, part of the authorized program being incorporated by reference. "Broader in scope" provisions will not be enforced by EPA; the State, however, will continue to enforce such provisions.

Arkansas has adopted but is not authorized for the September 1, 1988 (53 FR 33938) and the July 1, 1991 (see 56 FR 30200) amendments to Parts 264 and 265 addressing liability requirements. Thus, the portions of the Arkansas Hazardous Waste Management code, chapter 2, sections 3a(5) and 3a(6) incorporating the September 1, 1988 and the July 1, 1991 amendments are not part of the State's authorized program and are not part of the incorporation by reference addressed by today's **Federal Register** document.

Since EPA cannot enforce a State's requirements which have not been reviewed and approved according to the Agency's authorization standards, it is important that EPA clarify any limitations on the scope of a State's approved hazardous waste program. Thus, in those instances where a State's method of adopting Federal law by reference has the effect of including unauthorized requirements, EPA will provide this clarification by: (1) Incorporating by reference the relevant State legal authorities according to the requirements of the Office of Federal Register; and (2) subsequently identifying in 272.201(b)(4) any requirements which while adopted and incorporated by reference, are not authorized by EPA, and therefore are not Federally enforceable. Thus, notwithstanding the language in the Arkansas hazardous waste regulations incorporated by reference at 272.201(b)(1), EPA would only enforce the State provisions that are actually authorized by EPA. With respect to HSWA requirements for which the State has not yet been authorized, EPA will continue to enforce the Federal HSWA standards until the State receives specific HSWA authorization from EPA.

HSWA Provisions

As noted above, the Agency is not amending part 272 to include HSWA requirements and prohibitions that are immediately effective in Arkansas and other States. Section 3006(g) of RCRA provides that any requirement or prohibition of HSWA (including implementing regulations) takes effect in authorized States at the same time that it takes effect in non-authorized States. Thus, EPA has immediate authority to implement a HSWA requirement or prohibition once it is effective. A HSWA requirement or prohibition supercedes any less stringent or inconsistent State provision which may have been previously authorized by EPA (see 50 FR 28702, July 15, 1985).

Because of the vast number of HSWA statutory and regulatory requirements taking effect over the next few years, EPA expects that many previously authorized and incorporated by reference State provisions will be affected. The States are required to revise their programs to adopt the HSWA requirements and prohibitions by the deadlines set forth in 40 CFR 271.21, and then to seek authorization for those revisions pursuant to part 271. EPA expects that the States will be modifying their programs substantially and repeatedly. Instead of amending the part 272 every time a new HSWA provision takes effect under the authority of RCRA 3006(g), EPA will wait until the State receives authorization for its analog to the new HSWA provision before amending the State's part 272 incorporation by reference. In the interim, persons wanting to know whether a HSWA requirement or prohibition is in effect should refer to 40 CFR 271.1(j), as amended, which lists each such provision.

The incorporation by reference of State authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the authorized State program and clarify the extent of Federal enforcement authority. This will be particularly true as more State program revisions to adopt HSWA provisions are authorized.

Certification Under The Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities. It intends to incorporate by reference the decisions already made to authorize Arkansas' program and has no separate effect on handlers of hazardous waste in the State or upon small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 272

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste transportation, Hazardous waste, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties,

Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: March 30, 1995.

Myron O. Knudson,

Acting Regional Administrator.

For the reasons set forth in the preamble, subpart E of 40 CFR part 272 is amended as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

1. The authority citation for part 272 continues to read as follows:

Authority: Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

2. 40 CFR part 272, subpart E is amended by revising § 272.201 to read as follows:

§ 272.201 Arkansas State-Administered Program: Final Authorization.

(a) Pursuant to Section 3006(b) of RCRA, 42 U.S.C. 6926(b), Arkansas has final authorization for the following elements as submitted to EPA in Arkansas' base program application for final authorization which was approved by EPA effective on January 25, 1985. Subsequent program revision applications were approved effective on August 23, 1985, May 29, 1990, November 18, 1991, December 4, 1992 and December 21, 1994.

(b) *State Statutes and Regulations.* (1) The Arkansas statutes and regulations cited in this paragraph are incorporated by reference as part of the hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 et. seq.

(i) EPA Approved Arkansas Statutory Requirements Applicable to the Hazardous Waste Management Program, dated March, 1995.

(ii) EPA Approved Arkansas Regulatory Requirements Applicable to the Hazardous Waste Management Program, dated March, 1995.

(2) The following statutes and regulations concerning State enforcement, although not incorporated by reference, are part of the authorized State program:

(i) Arkansas Hazardous Waste Management Act of 1979, as amended, Arkansas Code of 1987 Annotated (A.C.A.), 1993 Replacement, Sections 8–7–204 (except 8–7–204(e)(3)(B)), 8–7–205 through 8–7–214, 8–7–217, 8–7–218, 8–7–220, 8–7–222, 8–7–224 and 8–7–225(b) through 8–7–225(d).

(ii) Arkansas Resource Reclamation Act of 1979, as amended, Arkansas Code of 1987 Annotated (A.C.A.), 1993 Replacement, Sections 8–7–302(3), 8–7–303, 8–7–308(1), and 8–7–308(4).

(iii) Arkansas Department of Pollution Control and Ecology (ADPC&E) Regulation No. 23, Hazardous Waste Management, as amended August 27, 1993, effective September 21, 1993, chapter two, sections 3a(11), 3b, 3c, 4, 6a, 6d through 6m, 7, 8, 12b(7), 12c (except 12(c)(10) and 12(c)(11)), 12d, 12e, 14a, 17; chapter three, sections 19 and 20; chapter five, section 26.

(iv) Arkansas Department of Pollution Control and Ecology, Regulation No. 7, Civil Penalties, May 25, 1984.

(v) Arkansas Department of Pollution Control and Ecology, Regulation No. 8, Administrative Procedures, July 6, 1984.

(3) The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, and are not incorporated by reference:

(i) Arkansas Hazardous Waste Management Act, as amended, Arkansas Code of 1987 Annotated (A.C.A.), 1993 Replacement, Section 8–7–226.

(ii) Arkansas Department of Pollution Control and Ecology Regulation No. 23, Hazardous Waste Management, as amended as amended August 27, 1993, effective September 21, 1993, chapter two, sections 2a(5) (only the second sentence), 2b(11), 3a(10), 11, 16a, and portions of sections 16c and 16d that refer to PCBs; and chapter four, section 23.

(4) *Unauthorized State Provisions:* Arkansas has adopted but is not authorized for the September 1, 1988 (53 FR 33938) and the July 1, 1991 (56 FR 30200) amendments to Parts 264 and 265 addressing liability requirements. Thus, the portions of the Arkansas Hazardous Waste Management code, chapter 2, sections 3a(5) and 3a(6) adopting the September 1, 1988 and the July 1, 1991 amendments are not part of the State's authorized program and are not Federally enforceable.

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 6 and the State of Arkansas signed by the EPA Regional Administrator on November 3, 1994 is referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(6) *Statement of Legal Authority.* "Attorney General's Statement for Final Authorization", signed by the Attorney General of Arkansas on July 9, 1984 and revisions, supplements and addenda to that Statement dated September 24, 1987, February 24, 1989, December 11, 1990, May 7, 1992, and by the Independent Legal Counsel on May 10, 1994 are referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(7) *Program Description.* The Program Description and any other materials submitted as part of the original application or as supplements thereto are referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

3. Appendix A to part 272, State Requirements, is amended by revising the listing for "Arkansas" to read as follows:

Appendix A to Part 272—State Requirements

* * * * *

Arkansas

The statutory provisions include:

Arkansas Hazardous Waste Management Act, as amended, Arkansas Code of 1987 Annotated (A.C.A.), 1993 Replacement, Sections 8–7–202, 8–7–203, 8–7–215, 8–7–216, 8–7–219, 8–7–221, 8–7–223 and 8–7–225(a), as published by The Michie Company, Law Publishers, 1 Town Hall Square, Charlottesville, Virginia 22906–7587.

The regulatory provisions include:

Arkansas Department of Pollution Control and Ecology Regulation No. 23, Hazardous Waste Management, as amended August 27, 1993, effective September 21, 1993, chapter one; chapter two, sections 2a (except the second sentence of 2a(5)), 2b (except 2b(11)), 2c, 3a (except 3a(10), 3a(11) and 3a(13)), 5, 6 introductory paragraph, 6b, 6c, 9, 10, 12 introductory paragraph, 12a, 12b (except 12b(7) and 12b(8)), 12c(10), 12c(11), 13a introductory paragraph, 13a(1) through 13a(7), 13a(11), 14 introductory paragraph, 14b, 15, 16 introductory paragraph, 16b, 16c introductory paragraph, 16c(1) (except the phrase 'or the letters "PCB" for PCB shipments' in 16c(1)(e)), 16c(2) through 16c(6), 16c(7) (except the second and third sentences), 16c(8) through 16c(12), 16d(1) (except the phrase "(including PCBs and PCB contaminated wastes)" in the first sentence), 16d(1)(a) through 16d(1)(d), 16d(1)(e) (except the phrase 'or "PCBs"' in the first sentence), and 16d(1)(f) through 16e. Copies of the Arkansas regulations can be obtained from the Arkansas Register, Secretary of State, State Capitol Building, Little Rock, Arkansas 72201.

* * * * *

[FR Doc. 95–15016 Filed 6–19–95; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 272

[FRL–5188–8]

Hazardous Waste Management Program: Incorporation by Reference of Approved State Hazardous Waste Program for New Mexico

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Under the Resource Conservation and Recovery Act of 1976, as amended (RCRA), the United States Environmental Protection Agency (EPA) may grant Final Authorization to States to operate their hazardous waste management programs in lieu of the Federal program. EPA uses part 272 of Title 40 Code of Federal Regulations (CFR) to provide notice of the authorization status of State programs, and to incorporate by reference those provisions of the State statutes and regulations that EPA will enforce under RCRA Section 3008. Thus, EPA intends to codify the New Mexico authorized State program in 40 CFR Part 272. The purpose of this action is to incorporate by reference EPA's approval of recent revisions to New Mexico's program.

DATES: This document will be effective on August 21, 1995 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on this action must be received by the close of business on July 20, 1995. The incorporation by reference of certain New Mexico statutes and regulations was approved by the Director of the Federal Register as of August 21, 1995 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Written comments should be sent to Alima Patterson, Region 6 AR–NM Authorization Coordinator, Grants and Authorization Section (6H–HS), RCRA Programs Branch, U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202, Phone #: 214–665–8533.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6 AR–NM Authorization Coordinator, Grants and Authorization Section (6H–HS), RCRA Programs Branch, U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202, Phone #: 214–665–8533.

SUPPLEMENTARY INFORMATION:

Background

Section 3006 of the Resource Conservation and Recovery Act of 1976, as amended (RCRA), 42 U.S.C. 6926 *et seq.*, allows the U.S. Environmental Protection Agency (EPA) to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. The purpose of today's **Federal Register** document is to incorporate by reference EPA's approval of recent revisions to New Mexico's program.

Effective December 13, 1993 (see 58 FR 52677), EPA incorporated by reference New Mexico's then authorized hazardous waste program. Effective December 21, 1994 (see 59 FR 51122), EPA granted authorization to New Mexico for additional program revisions. In this document, EPA is incorporating the currently authorized State hazardous waste program in New Mexico.

EPA provides both notice of its approval of State programs in 40 CFR part 272 and incorporates by reference therein the State statutes and regulations that EPA will enforce under section 3008 of RCRA. This effort will provide clearer notice to the public of the scope of the authorized program in New Mexico. Such notice is particularly important in light of the Hazardous and Solid Waste Act Amendments of 1984 (HSWA), Public Law 98–616. Revisions to State hazardous waste programs are necessary when Federal statutory or regulatory authority is modified. Because HSWA extensively amended RCRA, State programs must be modified to reflect those amendments. By incorporating by reference the authorized New Mexico program and by amending the Code of Federal Regulations whenever a new or different set of requirements is authorized in New Mexico, the status of Federally approved requirements of the New Mexico program will be readily discernible.

The Agency will only enforce those provisions of the New Mexico hazardous waste management program for which authorization approval has been granted by EPA. This document incorporates by reference provisions of State hazardous waste statutes and regulations and clarifies which of these provisions are included in the authorized and Federally enforceable program. Concerning HSWA, some State requirements may be similar to HSWA requirements that are in effect under Federal statutory authority in that State. However, a State's HSWA-type requirements are not authorized and will not be codified into the CFR until the Regional Administrator publishes his final decision to authorize the State for specific HSWA requirements. Until such time, EPA will enforce the HSWA requirements and not the State analogues.

New Mexico Authorized Hazardous Waste Program

EPA is incorporating by reference the New Mexico authorized hazardous waste program in subpart GG of 40 CFR part 272. The State statutes and regulations are incorporated by reference at § 272.1601(b)(1) and the Memorandum of Agreement, the Attorney General's Statement and the Program Description are referenced at § 272.1601(b)(5), (b)(6) and (b)(7), respectively.

The Agency retains the authority under Sections 3007, 3008, 3013 and 7003 of RCRA to undertake enforcement actions in authorized States. With respect to such an enforcement action, the Agency will rely on Federal sanctions, Federal inspection authorities, and the Federal Administrative Procedure Act rather than the authorized State analogues to these requirements. Therefore, the Agency does not intend to incorporate by reference for purposes of enforcement such particular, authorized New Mexico enforcement authorities. Section 272.1601(b)(2) of 40 CFR lists those authorized New Mexico authorities that are part of the authorized program but are not incorporated by reference.

The public also needs to be aware that some provisions of the State's hazardous waste management program are not part of the Federally authorized State program. These non-authorized provisions include:

(1) Provisions that are not part of the RCRA Subtitle C program because they are "broader in scope" than RCRA Subtitle C (see 40 CFR 271.1(i)); and

(2) Federal rules for which New Mexico is not authorized, but which have been incorporated into the State regulations because of the way the State adopted Federal regulations by reference.

State provisions which are "broader in scope" than the Federal program are not incorporated by reference for purposes of enforcement in 40 CFR part 272. Section 272.1601(b)(3) of 40 CFR lists for reference and clarity the New Mexico statutory and regulatory provisions which are "broader in scope" than the Federal program and which are not, therefore, part of the authorized program being incorporated by reference. "Broader in scope" provisions will not be enforced by EPA; the State, however, will continue to enforce such provisions.

New Mexico has adopted but is not authorized for the Federal rules

published in the **Federal Register** from January 28, 1983 through March 20, 1984 (48 FR 3977, 48 FR 39611, 48 FR 52718, 49 FR 5308, and 49 FR 10490); the Federal rules regarding corrective action published on July 15, 1985 (50 FR 28702) and December 1, 1987 (52 FR 45788); the September 1, 1988 (53 FR 33938) and the July 1, 1991 (56 FR 30200) amendments to parts 264 and 265 addressing liability requirements; amendments to the Toxicity Characteristic rule as published on October 5, 1990 (55 FR 40834), February 1, 1991 (56 FR 3978), February 13, 1991 (56 FR 5910) and April 2, 1991 (56 FR 13406); and amendments to the F037 and F038 listings as published on May 13, 1991 (56 FR 21955). Therefore, these Federal amendments included in New Mexico's adoption by reference of Federal code at Parts I, II, III, V, VI, and IX are not Federally enforceable.

Since EPA cannot enforce a State's requirements which have not been reviewed and approved according to the Agency's authorization standards, it is important that EPA clarify any limitations on the scope of a State's approved hazardous waste program. Thus, in those instances where a State's method of adopting Federal law by reference has the effect of including unauthorized requirements, EPA will provide this clarification by: (1) Incorporating by reference the relevant State legal authorities according to the requirements of the Office of Federal Register; and (2) subsequently identifying in 272.1601(b)(4) any requirements which while adopted and incorporated by reference, are not authorized by EPA, and therefore are not Federally enforceable. Thus, notwithstanding the language in the New Mexico hazardous waste regulations incorporated by reference at 272.1601(b)(1), EPA would only enforce the State provisions that are actually authorized by EPA. With respect to HSWA requirements for which the State has not yet been authorized, EPA will continue to enforce the Federal HSWA standards until the State receives specific HSWA authorization from EPA.

HSWA Provisions

As noted above, the Agency is not amending part 272 to include HSWA requirements and prohibitions that are immediately effective in New Mexico and other States. Section 3006(g) of RCRA provides that any requirement or prohibition of HSWA (including implementing regulations) takes effect in authorized States at the same time that it takes effect in non-authorized States. Thus, EPA has immediate authority to implement a HSWA requirement or prohibition once it is effective. A HSWA requirement or prohibition supercedes any less stringent or inconsistent State provision which may have been previously authorized by EPA (see 50 FR 28702, July 15, 1985).

Because of the vast number of HSWA statutory and regulatory requirements taking effect over the next few years, EPA expects that many previously authorized and incorporated by reference State provisions will be affected. The States are required to revise their programs to adopt the HSWA requirements and prohibitions by the deadlines set forth in 40 CFR § 271.21, and then to seek authorization for those revisions pursuant to part 271. EPA expects that the States will be modifying their programs substantially and repeatedly. Instead of amending the part 272 every time a new HSWA provision takes effect under the authority of RCRA 3006(g), EPA will wait until the State receives authorization for its analog to the new HSWA provision before amending the State's part 272 incorporation by reference. In the interim, persons wanting to know whether a HSWA requirement or prohibition is in effect should refer to 40 CFR 271.1(j), as amended, which lists each such provision.

The incorporation by reference of State authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the authorized State program and clarify the extent of Federal enforcement authority. This will be particularly true as more State program revisions to adopt HSWA provisions are authorized.

Certification Under The Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities. It intends to incorporate by reference the decisions already made to authorize New Mexico's program and has no separate effect on handlers of hazardous waste in the State or upon small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 272

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste transportation, Hazardous waste, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: March 30, 1995.

Allyn M. Davis,

Acting Regional Administrator.

For the reasons set forth in the preamble, subpart GG of 40 CFR part 272 is amended as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

1. The authority citation for part 272 continues to read as follows:

Authority: Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

2. 40 CFR part 272, subpart GG is amended by revising § 272.1601 to read as follows:

§ 272.1601 New Mexico State-Administered Program: Final Authorization.

(a) Pursuant to Section 3006(b) of RCRA, 42 U.S.C. 6926(b), New Mexico has final authorization for the following elements as submitted to EPA in New Mexico's base program application for final authorization which was approved by EPA effective on January 25, 1985. Subsequent program revision applications were approved effective on April 10, 1990, July 25, 1990, December 4, 1992, August 23, 1994 and December 21, 1994.

(b) *State Statutes and Regulations.* (1) The New Mexico statutes and regulations cited in this paragraph are incorporated by reference as part of the hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 et. seq.

(i) EPA Approved New Mexico Statutory Requirements Applicable to the Hazardous Waste Management Program, dated March, 1995.

(ii) EPA Approved New Mexico Regulatory Requirements Applicable to the Hazardous Waste Management Program, dated March, 1995.

(2) The following statutes and regulations concerning State enforcement, although not incorporated by reference, are part of the authorized State program:

(i) New Mexico Statutes 1978 Annotated, Inspection of Public Records Act, Chapter 14, Article 2, (1994 Cumulative Supplement), Sections 14–2–1 *et seq.*

(ii) New Mexico Statutes 1978 Annotated, Hazardous Waste Act, Chapter 74, Article 4, (1993 Replacement Pamphlet), Sections 74–4–4 (except 74–4–4C), 74–4–4.1, 74–4–4.2C through 74–4–4.2F, 74–4–4.2G(1), 74–4–4.2H, 74–4–4.2I, 74–4–4.3 (except 74–4–4.3A(2) and 74–4–4.3F), 74–4–4.7B, 74–4–4.7C, 74–4–5, 74–4–7, 74–4–10, 74–4–10.1 (except 74–4–10.1C), 74–4–11 through 74–4–14.

(iii) New Mexico Hazardous Waste Management Regulations, Environmental Improvement Board (EIB), HWMR–7, as amended, October 21, 1992, Part IX, Sections 902 (except 902.B.1 through 902.B.6); and Part X, Sections 1001, 1004 and 1005.

(3)(i) The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, and are not incorporated by reference:

(ii) New Mexico Statutes 1978 Annotated, Hazardous Waste Act, Chapter 74, Article 4, (1993 Replacement Pamphlet), Sections 74–4–3.3 and 74–4–4.2J.

(4) *Unauthorized State Provisions:* The State's adoption of the Federal rules listed below is not approved by EPA and are, therefore, not enforceable:

Federal requirement	Federal Register reference	Publication date
Biennial Report	48 FR 3977	01/28/83
Permit Rules; Settlement Agreement	48 FR 39611	09/01/83
Interim Status Standards; Applicability	48 FR 52718	11/22/83
Chlorinated Aliphatic Hydrocarbon Listing (F024)	49 FR 5308	02/10/84
National Uniform Manifest	49 FR 10490	03/20/84
Liability Requirements	53 FR 33938	09/01/88
Liability Requirements; Technical Amendment	56 FR 30200	07/01/91

Additionally, New Mexico has adopted but is not authorized to implement the HSWA rules that are listed below in lieu of EPA. EPA will continue to enforce the Federal HSWA standards for which New Mexico is not authorized until the State receives specific authorization from EPA.

Federal requirement	Federal Register reference	Publication date
Corrective Action	50 FR 28702: Amendments to 264.90(a), 264.101(a)&(b), 270.60(b)(3) and 270.60(c)(3)(vii).	07/15/85
Permit Application Requirements Regarding Corrective Action	52 FR 45788: Amendments to 270.14(c), 270.14(d), 270.14(d)(1)(i)–(v), 270.14(d)(2) and 270.14(d)(3).	12/01/87
Corrective Action Beyond Facility Boundary	52 FR 45788: Amendments to 264.100(e), 264.100(e)(1), 264.100(e)(2) and 264.101(c).	12/01/87
Corrective Action for Injection Wells	52 FR 45788: Amendments to 265.1(c)(2) and 270.60(b)(3)(i)&(ii).	12/01/87
Toxicity Characteristic; Hydrocarbon Recovery Operations	55 FR 40834	10/05/90
	56 FR 3978	02/01/91
	56 FR 13406	04/02/91
Toxicity Characteristic; Chlorofluorocarbon Refrigerants	56 FR 5910	02/13/91
Revisions to the Petroleum Refining Primary and Secondary Oil/Water/Solids Separation Sludge Listings (F037 and F038).	56 FR 21955	05/13/91

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region VI and the State of New Mexico signed by the EPA Regional Administrator on May 19, 1994, is referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(6) *Statement of Legal Authority.* "Attorney General's Statement for Final Authorization", signed by the Attorney General of New Mexico in January, 1985, and revisions, supplements and addenda to that Statement dated April 13, 1988, September 14, 1988, July 19, 1989, July 23, 1992, February 14, 1994, July 18, 1994, July 20, 1994 and August 11, 1994 are referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(7) *Program Description.* The Program Description and any other materials submitted as part of the original application or as supplements thereto are referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

3. Appendix A to part 272, State Requirements, is amended by revising the listing for "New Mexico" to read as follows:

Appendix A to Part 272—State Requirements

* * * * *

New Mexico

The statutory provisions include:

New Mexico Statutes 1978 Annotated, Hazardous Waste Act, Chapter 74, Article 4, (1993 Replacement Pamphlet), Sections 74–4–2, 74–4–3 (except 74–4–3L, 74–4–3O and 74–4–3R), 74–4–3.1, 74–4–4.2A, 74–4–4.2B, 74–4–4.2G introductory paragraph, 74–4–4.2G(2), 74–4–4.3F, 74–4–4.7 (except 74–4–4.7B and 74–4–4.7C), 74–4–9 and 74–4–10.1C, as published by the Michie Company, Law Publishers, 1 Town Hall Square, Charlottesville, Virginia 22906–7587.

The regulatory provisions include:

New Mexico Hazardous Waste Management Regulations, Environmental

Improvement Board (EIB), HWMR–7, as amended, October 21, 1992, Part I through Part VIII; Part IX, Sections 901, 902.B.1 through 902.B.6; and Part X, Section 1003. Copies of the New Mexico regulations can be obtained from the New Mexico Register, New Mexico Information Systems, P. O. Box 6703, Santa Fe, NM 87502.

* * * * *

[FR Doc. 95–15015 Filed 6–19–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 1

[ET Docket No. 93–266; FCC 95–218]

Pioneer's Preference Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this Third Report and Order, the Commission modifies certain rules regarding its pioneer's preference program. This action is intended to address directives of the General Agreement on Tariffs and Trade (GATT) legislation and make the pioneer's preference rules better comport with the Commission's experience administering them.

EFFECTIVE DATE: August 21, 1995.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, (202) 776–1622.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Report and Order, adopted June 6, 1995, and released June 8, 1995. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's duplication contractor, International Transportation Service, Inc., (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Third Report and Order

1. The Third Report and Order (Third R&O) addresses proposals set forth in the Further Notice of Proposed Rule Making (Further Notice) in this proceeding, 60 FR 13396 (March 13, 1995), and modifies certain rules regarding the Commission's pioneer's preference program pursuant to recent legislation. The pioneer's preference program provides preferential treatment in the Commission's licensing processes for parties that make significant contributions to the development of a new service or to the development of a new technology that substantially enhances an existing service.

2. The Further Notice proposed rules in response to the pioneer's preference directives contained in the legislation implementing domestically the GATT, as well as on the Commission's own motion. The GATT legislation requires parties to whom any licenses are awarded pursuant to the pioneer's preference program in services in which competitive bidding is used to pay 85 percent of the average price paid for comparable licenses. This payment may be made in a lump sum or in installment payments over a period of not more than five years. The GATT legislation, including the payment requirement, applies to any license issued on or after August 1, 1994 pursuant to a pioneer's preference award.

3. The legislation also directs the Commission to prescribe regulations specifying the procedures and criteria to "evaluate applications for preferential treatment in its licensing processes (by precluding the filing of mutually exclusive applications) for persons who make significant contributions to the development of a new service or to the development of new technologies that substantially enhance an existing service." The legislation requires the pioneer's preference regulations to include: (1) Procedures and criteria by which the significance of a pioneering contribution will be determined, after an opportunity for review and verification by experts not employed by the Commission; and (2) such other procedures as may be necessary to prevent unjust enrichment by ensuring that the value of a pioneering contribution justifies any reduction in the amounts paid for comparable licenses. The regulations issued pursuant to this legislation must be prescribed not later than 6 months after enactment of the GATT legislation (i.e., by June 8, 1995), shall apply to pioneer's preference applications accepted for filing after September 1, 1994, and must cease to be effective on September 30, 1998, when the pioneer's preference program sunsets.

4. In the Further Notice, the Commission tentatively concluded that, with the exceptions of the two areas specifically addressed by the GATT legislation, the existing pioneer's preference rules, as modified by the Second Report and Order, 60 FR 13636 (March 14, 1995), comply with the GATT legislation's requirement to specify procedures and criteria by which to evaluate pioneer's preference applications. However, the Commission solicited comment regarding any alternatives to any aspects of these rules that might better achieve the objectives of the GATT legislation.

5. With respect to the two areas specifically set forth in the GATT legislation, the Commission noted that the GATT legislation's directive that the Commission establish a procedure for review and verification by outside experts was contemplated as an optional measure by the current pioneer's preference policies, but that such "peer review" was not mandatory. It therefore proposed to formalize this policy pursuant to the GATT legislation to provide an opportunity for review of potentially pioneering proposals by experts in the radio sciences who are not Commission employees. It sought comment on whether such review by outside experts should be required in all cases or whether pioneer's preference applicants (or other interested parties) should be given only an opportunity for such review, which may be either accepted or declined by the applicants. It tentatively concluded that it would establish a peer review process on a permanent basis. The Commission therefore proposed to delegate to the Chief of the Office of Engineering and Technology ("Chief, OET") the authority to select a panel of experts consisting of persons who are knowledgeable about the specific technology set forth in a pioneer's preference request. In addition, while the Commission sought comment on two possible interpretations of section 309(j)(13(D)(i) of the GATT legislation, which concerns possible conflicts of interest of such experts, it proposed appointing experts who are neither employed by the Commission nor by any applicant seeking a pioneer's preference in the same or similar communications service. Based on its experience with the pioneer's preference program, the Commission tentatively concluded that the outside expertise required to evaluate the claims made in pioneer's preference requests will vary greatly. Accordingly, it proposed that its staff evaluate on a case-by-case basis how much outside assistance is required and that the Chief, OET select experts from all available sources after reviewing the proposed new technology or service.

6. The Commission further proposed that the experts generally be granted a period of up to 180 days to present their findings to the Commission. It sought comment on whether it should generally seek the experts' individual opinions or their consensus (as a Federal Advisory Committee under the Federal Advisory Committee Act). The Commission tentatively concluded that it should not be bound to follow the recommendations of the panel, but that it should evaluate the recommendations in light of all the submissions and comments in the record. However, it solicited comment on whether the views of the panel (especially where consensus is reached) should be entitled to greater, or perhaps controlling, deference. The Commission also sought comment on what restrictions, if any, the panel members should have vis-a-vis contact with the applicants; e.g., whether they should have authority to seek further information pertaining to the preference request or to perform field evaluations. Finally, the Commission sought comment on any additional conflict of interest requirements (e.g., related to financial interests) it should impose upon outside experts.

7. With respect to the second area addressed by the GATT legislation, the Commission stated in the Further Notice that its concerns about unjust enrichment are lessened by the statutorily-mandated payment requirement for prioneer's preference grantees in auctionable services and the formula for calculating per capita bid amounts. Nonetheless, it stated that it remained concerned about the effect of competitive bidding on the pioneer's preference program. It sought comment on a more stringent showing by a preference applicant in a service in which licenses are awarded by competitive bidding. Specifically, the Commission sought comment on whether the applicant should have to demonstrate that our public rulemaking process inhibits it from capturing the economic rewards of its innovation unless it is granted a pioneer's preference license. It also sought comment on whether in its pioneer's preference request each applicant should make a demonstration regarding possible loss of intellectual property protection to ensure that it will retain its eligibility for a preference.

8. With regard to determining which licenses are most reasonably comparable under section 309(j)(13)(B)(i) of the GATT legislation, in the Further Notice the Commission sought comment on any standards for comparing licenses and for excluding anomalous licenses that it might codify into its rules along with the statutory formulas for determining the average per capita bid amount and the payment amount. It also sought comment on the implementation of the installment payment provision in section 309(j)(13)(C). It tentatively concluded that it would not adopt any installment payment scheme that includes royalty payments. The Commission further sought comment on whether eligibility for installment payments should be limited to small businesses or other entities as it has done in its general auction rules. The Commission proposed that, if an entity receiving a pioneer's preference award and license in a particular service would be eligible for installment payments in the auction for that service, that entity would be able to pay for its pioneer's preference license in installments under similar terms and conditions. Finally, the Commission proposed to require a pioneer's preference license that is not eligible for installment payments to pay in one lump sum within a reasonable time (*e.g.*, 30 days) after the auction for comparable licenses has concluded or after the license grant becomes final, whichever is later.

9. In accord with the GATT legislation, the Commission proposed to sunset the pioneer's preference program on September 30, 1998. It requested comment on the utility of the program, particularly in light of its competitive bidding authority. Additionally, it proposed on its own motion to modify the pioneer's preference rules by limiting the award of preferences to services in which a new allocation of spectrum is required.

10. Finally, the Commission proposed to apply the rules adopted in response to the Further Notice to any pioneer's preference requests granted after adoption of those rules, regardless of when the requests were accepted for filing, except in proceedings in which tentative pioneer's preference decisions have been made.

11. Only two parties filed comments on the Further Notice, and no party filed reply comments. Satellite CD Radio, Inc. (CD Radio) states that the Commission should grant pioneer's preferences for regulatory as well as technical innovation, and also grant preferences in services in which no mutually exclusive applications exist. Omnipoint Communications, Inc. (Omnipoint) addresses payment measures for small business pioneers in services in which licenses are awarded by competitive bidding. It argues that the Commission should provide: (1) Payment terms that are more attractive than the terms offered to designated entities or entrepreneur-band applicants, so that small business pioneers have an incentive to take on the risks of innovation; and (2) the use of an installment plan with principal and accrued-interest obligations deferred until the end of a five-year period.

12. With respect to CD Radio's statements regarding regulatory innovation, the Commission finds that its pioneer's preference rules already incorporate non-technical or regulatory aspects. Accordingly, it finds no need to amend its pioneer's preference rules in this regard.

13. With respect to CD Radio's proposals regarding awarding preferences in services where mutually exclusive situations do not exist and where competitive bidding is not authorized, the Commission finds that a preference, beyond a guaranteed license and a 15 percent discount in auctioned services, would be unnecessary and contrary to the stated purpose of the pioneer's preference program. In adopting the pioneer's preference procedures, the Commission sought to foster the development of new services and to improve existing services by reducing the delays and risks for innovators associated with the Commission's licensing processes as they existed at that time. Applicants facing no mutually exclusive applications run no risk of not receiving licenses, assuming they are qualified, so the Commission did not contemplate that any preferences would be needed to serve the public interest purposes of the pioneer's preference program. Accordingly, the Commission rejects CD Radio's proposal to award preferences in services in which mutually exclusive license applications do not exist.

14. With respect to Omnipoint's proposal for lower payments for small business pioneers than designated entities in services in which licenses are awarded by competitive bidding, the Commission noted that the pioneer's preference and designated entity programs are designed to meet different goals. The pioneer's preference program is designed to reward a particular entity for its innovative contributions to a new or existing service, whereas the designated entity program is designed to promote economic opportunity and competition by disseminating licenses among a wide variety of applicants and to increase participation in spectrum-based telecommunications services by entities that lack access to substantial amounts of capital and that face economic disadvantages in obtaining licenses in a competitive bidding environment, such as small businesses. Accordingly, the Commission rejects Omnipoint's proposal to guarantee small business pioneers lower payments than other designated entities.

15. With respect to Omnipoint's proposal for a deferred payment plan for small business pioneers in services in which licenses are awarded by

competitive bidding, consistent with the above discussion, the Commission finds no need to give such pioneers an advantage over similarly situated small businesses. The Commission notes that in the *Further Notice* it proposed that if an entity receiving a pioneer's preference would be eligible for installment payments in the auction for that service, the entity could pay for its pioneer's preference license in installments under comparable terms and conditions to similarly situated licenses over a period not to exceed five years. The Commission finds this proposal adequate to address Omnipoint's concerns and adopts it, while rejecting Omnipoint's deferred payment proposal.

16. No comments were filed with respect to the other proposals in the Further Notice. Because they are in the public interest and promote the goals of the pioneer's preference program and the GATT legislation, the Commission adopts them. Specifically, with respect to peer review, it provides an opportunity for review and verification of pioneer's preference requests by experts who are not Commission employees. It delegates to the Chief, OET the authority to select, in appropriate cases on his/her own initiative or upon request by a preference applicant or other interested person, a panel of experts consisting of persons who are knowledgeable about the specific technology set forth in a pioneer's preference request and who are neither employed by the Commission nor by any applicant seeking a pioneer's preference in the same or similar communications service. It concludes that the best interpretation of Section 309(j)(13)(D)(i)'s conflict-of-interest language provides that there must be an opportunity for review and verification by experts who are neither employees of the Commission nor employees of any applicant seeking a pioneer's preference. These panels will generally be granted a period of up to 90 days, but no more than 180 days, to present their findings to the Commission.

17. With respect to implementing the unjust enrichment provisions in section 309(j)(13)(D)(ii), the Commission is requiring that to qualify for a pioneer's preference in services in which licenses are awarded by competitive bidding, an applicant—in addition to meeting the other pioneer's preference requirements—must demonstrate that the Commission's public rulemaking process inhibits it from capturing the economic rewards of its innovation unless it is granted a pioneer's preference license. The applicant must show that it may lose its intellectual property protection because of the Commission's public process; that the damage to its intellectual property is likely to be more significant than in other contexts, such as the patent process; and that the guarantee of a license is a significant factor in its ability to capture the rewards from its innovation. Such a showing must accompany the pioneer's preference request even if the Commission has not yet determined that the particular service for which a preference is sought will be subject to competitive bidding.

18. As proposed in the Further Notice, pioneer's preference awards will be limited to services that require a spectrum allocation. However, the Commission notes that an entity that develops a new technology that may be used in an existing service may be able to reap significant financial benefits by patenting that technology or by selling equipment that uses that technology.

19. Pursuant to authority in section 4(i), in conjunction with sections 1, 303(r), 307, and 309 of the Communications Act, the Commission finds that it is in the public interest and in furtherance of its pioneer's preference policy in an auction environment to apply the rules adopted herein to pending pioneer's prference proceedings that have not reached the tentative decision stage. Parties with pending pioneer's preference applications on file with the Commission will have 30 days from the effective date of the rules adopted herein to amend their applications to bring them into conformance with these rules and the rules adopted in the Second Report and Order in this proceeding. Failure to timely amend a pending pioneer's preference request will result in the dismissal of the request.

20. In the Second Report and Order, the Commission stated that while the payment mechanism in the GATT legislation does not apply to pioneer's preference requests accepted for filing on or before September 1, 1994, nevertheless—pursuant to section 4(i) and other provisions of the Communications Act—license charges would be imposed on any pioneer's preference license granted in proceedings in which no tentative decision had yet been made, even if the requests in such proceedings were accepted for filing on or before that date. In addition, prior to enactment of the GATT legislation, the Commission amended the rules (also pursuant to Section 4(i)) to impose charges on any pioneer's preference licenses granted as a result of the three pioneer's preference proceedings in which only tentative decisions had been made prior to the initiation of this pioneer's preference review rulemaking.

21. The Commission now concludes, on further analysis, that the payment requirements in subsections 309(j)(13)(B), (C) and (E) of the Communications Act, which were enacted by the GATT legislation, apply to pioneer's preference requests relatless to any licenses issued on or after August 1, 1994, regardless of when the pioneer's preference requests were accepted for filing. The September 1, 1994 date applies only to the regulations required by subsection 309(j)(13)(D). Accordingly, the Commission determines that, while the new regulations prescribed here (regarding criteria, peer review and unjust enrichment), pursuant to subsection 309(j)(13)(D), will not apply in the proceedings in which tentative decisions have been made, the payment provisions of the GATT legislation will apply to any and all licenses ultimately issued in the future resulting from a pioneer's preference, including any license based on a preference granted in CC Docket No. 92–297 (28 GHz Local Multipoint Distribution Service proceeding).

22. Finally, pursuant to the GATT legislation, the Commission will terminate the pioneer's preference program on September 30, 1998.

23. Accordingly, it is ordered that Parts 0 and 1 of the Commission's Rules are amended as specified below, effective 60 days after publication in the **Federal Register**. This action is taken pursuant to Sections 4(i), 7(a), 303(c), 303(f), 303(g), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 157(a), 303(c), 303(f), 303(g), 303(r), and 309(j).

List of Subjects

47 CFR Part 0

Organization and functions (Government agencies).

47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission

William F. Caton,

Acting Secretary.

Amendatory Text

Parts 0 and 1 of chapter I of title 47 of the Code of Federal Regulations are amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

2. Section 0.241 is amended by adding new paragraph (f) to read as follows:

§ 0.241 Authority delegated.

* * * * *

(f) The Chief, Office of Engineering and Technology (OET) is authorized to select, in appropriate cases on his/her own initiative or upon request by a pioneer's preference applicant or other interested person, a panel of experts consisting of persons who are knowledgeable about the specific technology set forth in a pioneer's preference request and who are neither employed by the Commission nor by any applicant seeking a pioneer's preference in the same or similar communications service. In consultation with the General Counsel, the Chief, OET, shall also impose other conflict-of-interest requirements that are necessary in the interest of attaining impartial, expert advice regarding the particular pioneer's preference request or requests.

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552 and 21 U.S.C. 853a, unless otherwise noted.

2. Section 1.402 is amended by revising the first sentence of paragraph (a); removing paragraph (b); redesignating paragraphs (c), (e), (f), and (h) as new paragraphs (b), (d), (e), and (j) respectively; redesignating paragraphs (d) and (g) as new paragraphs (c) and (f), respectively, and revising them; and adding new paragraphs (g), (h), (i), and (k) to read as follows:

§ 1.402 Pioneer's preference.

(a) When filing a petition for rule making pursuant to § 1.401 that seeks an allocation of spectrum for a new service or that, by use of innovative technology in a new spectrum allocation, will substantially enhance an existing service, the petitioner may also submit a separate request that it be awarded a pioneer's preference in the licensing process for the service. * * *

* * * * *

(c) Pioneer's preference requests complying with the requirements and procedures in paragraphs (a) and (b) of this section will be accepted for filing and listed by file number in a notice of proposed rule making addressing the new service or technology proposed in the request, if such a notice of proposed rulemaking is adopted. A final determination on a request for pioneer's preference and its scope will normally be made in a report and order adopting new rules for the service or technology proposed in the request, if such rules are adopted. If awarded, the pioneer's preference will provide that the preference applicant's application for a construction permit or license will not be subject to mutually exclusive applications. If granted, the construction permit or license will be subject to the conditions in paragraphs (e) and (f) of this section.

* * * * *

(f) In services in which licenses are assigned by competitive bidding, any parties receiving pioneer's preferences will be required to pay for their licenses in accord with the payment formula specified in the General Agreement on Tariffs and Trade legislation, Pub. L. 103–465. This formula requires that pioneers pay in a lump sum or in installment payments over a period of not more than five years 85 percent of the average price paid for comparable licenses. Comparable licenses will be determined by the Commission on a case-by-case basis. For licenses issued on or after August 1, 1994, the Commission shall recover for the public a portion of the value of the public spectrum resource made available to a pioneer's preference recipient by requiring such person, as a condition for receipt of the license, to agree to pay a sum determined by—

(1) Identifying the winning bids for the licenses that the Commission determines are most reasonably comparable in terms of bandwidth, scope of service area, usage restrictions, and other technical characteristics to the license awarded to such person, and excluding licenses that the Commission determines are subject to bidding anomalies due to the award of preferential treatment;

(2) Dividing each such winning bid by the population of its service area (hereinafter referred to as the per capita bid amount);

(3) Computing the average of the per capita bid amounts for the licenses identified under paragraph (f)(1) of this section;

(4) Reducing such average amount by 15 percent; and

(5) Multiplying the amount determined under paragraph (f)(4) of this section by the population of the service area of the license obtained by such person.

(g) In services in which licenses are awarded by competitive bidding, a pioneer that qualifies as a designated entity will be eligible for installment payments under the same terms and conditions as other designated entities in that service, except that in all services the pioneer's payments must be completed within a five year period that will begin 30 days after the auction for comparable licenses has concluded or 30 days after the pioneer's license grant becomes final, whichever is later. A pioneer, like other applicants, will be required in its license application to certify and make the requisite demonstration that it is eligible for installments. Pioneers that are not eligible for installment payments must make the 85 percent payment specified in § 1.402(f) within 30 days after the auction for comparable licenses has concluded or within 30 days after the license grant become final, whichever is later.

(h) An opportunity for review and verification of pioneer's preference requests by experts who are not Commission employees will be provided by the Commission. The Chief, Office of Engineering and Technology (OET) may select a panel of experts consisting of persons who are knowledgeable about these specific technology set forth in a pioneer's preference request and who are neither employed by the Commission nor by any applicant seeking a pioneer's preference in the same or similar communications service. The panel of experts will generally be granted a period of up to 90 days, but no more than 180 days, to present their findings to the Commission. The Commission will generally establish, conduct, and seek the consensus of the panel pursuant to the Federal Advisory Committee Act, and will evaluate its recommendations in light of all the submissions and comments in the record. Panelists will have the authority to seek further information pertaining to preference requests and to perform field evaluations, as deemed appropriate by the Chief, OET.

(i) In order to qualify for a pioneer's preference in services in which licenses are awarded by competitive bidding, an applicant must demonstrate that the Commission's public rulemaking process inhibits it from capturing the economic rewards of its innovation unless it is granted a pioneer's preference license. The applicant must

show that it may lose its intellectual property protection because of the Commission's public process; that the damage to its intellectual property is likely to be more significant than in other contexts, such as the patent process; and that the guarantee of a license is a significant factor in its ability to capture the rewards from its innovation. This demonstration will be required even if the Commission has not determined at the time a pioneer's preference request is filed whether assignments in the proposed service will be made by competitive bidding.

* * * * *

(k) This section, along with the other pioneer's preference rules specified in §§ 0.241(f) and 5.207 of this chapter, will cease to be effective on September 30, 1998.

[FR Doc. 95–14945 Filed 6–19–95; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 92–59; RM–7923, RM–8042]

Radio Broadcasting Services; Bradenton and High Point, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: The Commission denies a Petition for Reconsideration filed by ECI License Company, L.P. of the action taken by the Chief, Allocations Branch, in MM Docket No. 92–59 substituting Channel 278C for Channel 278C1 at Bradenton, Florida. *See* 58 FR 21259 (April 20, 1993). Petitioner argues that there is no location within the fully-spaced site zone for Channel 278C that will accommodate a tower sufficiently high to meet the minimum spacing and coverage requirements for a Class C station. The Chief, Policy and Rules Division, Mass Media Bureau, denies the petition based on the fact that ECI raises no new issues or arguments that were not addressed previously in this proceeding.

EFFECTIVE DATE: June 20, 1995.

FOR FURTHER INFORMATION CONTACT: Jane Hinckley Halprin, Mass Media Bureau, (202) 776–1653.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order*, MM Docket No. 92–59, adopted June 7, 1995, and released June 14, 1995. The full text of this decision is available for public inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–15050 Filed 6–19–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 93–136; RM–8161, RM–8309, RM–8310]

Radio Broadcasting Services; Clewiston, Fort Myers Villas, Indiantown, Jupiter, Key Colony Beach, Key Largo, Marathon, and Naples, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: The Commission grants a Petition for Reconsideration filed by Key Chain, Inc. of the action taken by the Acting Chief of the Allocations Branch in MM Docket No. 93–136 denying any reimbursement to Key Chain for reasonable costs incurred in changing channels within its class to accommodate an amendment of the Commission's FM Table of Allotments sought by another party. *See* 59 FR 43064 (August 22, 1994). The Commission hereby allows partial reimbursement to Key Chain. The Commission also denies a Petition for Reconsideration filed by Amaturo Group, Ltd., WUSV, Inc., and Jupiter Broadcasting Corporation, and finds that the particular amendment of the Table of Allotments ordered by the Commission was necessary and warranted by credible evidence.

EFFECTIVE DATE: June 20, 1995.

FOR FURTHER INFORMATION CONTACT: Robert B. Somers, Mass Media Bureau, (202) 776–1653.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order*, MM Docket No. 93–136, adopted June 5, 1995, and released June 14, 1995. The full text of this Commission decision is available for public inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–15048 Filed 6–19–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 90–550; RM–7345]

Radio Broadcasting Services; Lafayette, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: The Commission dismisses a Petition for Reconsideration filed by C.R. Crisler. Crisler sought reconsideration of the action taken by the Chief, Allocations Branch in MM Docket No. 90–550, in which Lafayette FM Joint Venture ("LFMJV"), the permittee of Station KRRQ(FM) in Lafayette, Louisiana, was granted an upgrade of its station from Channel 238A to 238C2. 57 FR 45002 (Sept. 30, 1992). The Commission denied Crisler's petition in that it failed to raise arguments that warranted denying an upgrade of LFMJV's station.

EFFECTIVE DATE: June 20, 1995.

FOR FURTHER INFORMATION CONTACT: Charles W. Logan, Mass Media Bureau, (202) 776–1653.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order*, MM Docket No. 90–550, adopted June 5, 1995, and released June 14, 1995. The full text of this Commission decision is available for public inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–15049 Filed 6–19–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 93–164; RM–8248]

Radio Broadcasting Services; Williamstown, WV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of James Phillips, allots Channel 245A at Williamstown, West Virginia, as its first local aural transmission service. *See* 58 FR 34026, June 23, 1993. Channel 245A can be allotted to Williamstown in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.9 kilometers (4.3 miles) southwest to avoid a short-spacing to Station WRRK(FM), Channel 245A, Braddock, Pennsylvania. The coordinates for Channel 245A at Williamstown are North Latitude 39–22–18 and West Longitude 81–31–04. Since Williamstown is located within 320 kilometers (200 miles) of the U.S.-Canadian border, Canadian concurrence has been obtained. With this action, this proceeding is terminated.

DATES: Effective July 31, 1995. The window period for filing applications for Channel 245A at Williamstown, West Virginia, will open on July 31, 1995, and close on August 31, 1995.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 93–164, adopted June 6, 1995, and released June 14, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under West Virginia, is amended by adding Williamstown, Channel 245A.

Federal Communications Commission.

John A Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–15045 Filed 6–19–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 94–138; RM–8542]

Radio Broadcasting Services; Ketchikan, AK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 260A to Ketchikan, Alaska, as that community's third local FM service, in response to a petition for rule making filed on behalf of TLP Communications, Inc. *See* 59 FR 62390, December 5, 1994. Coordinates used for Channel 260A at Ketchikan are 55–20–30 and 131–38–48. With this action, the proceeding is terminated.

DATES: Effective July 31, 1995. The window period for filing applications on Channel 260A at Ketchikan, Alaska, will open on July 31, 1995, and close on August 31, 1995.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the window application filing process for Channel 260A at Ketchikan, Alaska, should be addressed to the Audio Services Division, FM Branch, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 94–138, adopted June 7, 1995, and released June 14, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alaska, is amended by adding Channel 260A at Ketchikan.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–15051 Filed 6–19–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 217 and 227

[Docket No. 950427119–5152–04; I.D. 061295B]

RIN 0648–AH98

Sea Turtle Conservation: Restrictions Applicable to Shrimp Trawling Activities; Additional Turtle Excluder Device Requirements Within Certain Fishery Statistical Zones

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary additional restrictions on fishing by shrimp trawlers in the nearshore waters off Georgia to protect sea turtles; request for comments.

SUMMARY: NMFS is imposing, for a 30-day period, additional restrictions on shrimp trawlers fishing in the Atlantic Area in offshore waters out to 10 nautical miles (nm)(18.5 km) from the COLREGS line, between 30°45′ N. lat. and 32°03′ N. lat. This area includes nearshore waters in NMFS fishery statistical Zone 31, a small part of the southern portion of statistical Zone 32,

and approximately 18 miles (29.0 km) of the northern portion of statistical Zone 30. The restrictions include prohibitions on the use by shrimp trawlers of: soft turtle excluder devices (TEDs); bottom-opening TEDs; webbing flaps that completely cover the escape opening of TEDs; and try nets with a headrope length greater than 12 ft (3.6 m) and footrope length greater than 15 ft (4.5 m), unless the try nets are equipped with approved TEDs other than soft or bottom-opening TEDs. This action is necessary to prevent the continuation of high levels of mortality and strandings of threatened and endangered sea turtles.

DATES: This action is effective at 12:01 a.m. (local time) June 21, 1995 through 11:59 p.m. (local time) July 20, 1995. Comments on this action must be submitted by July 21, 1995.

ADDRESSES: Comments on this action and requests for a copy of the environmental assessment (EA) or supplemental biological opinion (BO) prepared for this action should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Charles A. Oravetz, 813–570–5312, or Russell Bellmer, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) are listed as endangered. Loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

The incidental take and mortality of sea turtles, as a result of shrimp trawling activities have been documented in the Gulf of Mexico and along the Atlantic Seaboard. Under the ESA and its implementing regulations, taking sea turtles is prohibited, with exceptions set forth at 50 CFR 227.72. The incidental taking of turtles during shrimp trawling in the Gulf and Atlantic Areas (as defined in 50 CFR 217.12) is excepted from the taking prohibition, if the sea turtle conservation measures specified in the sea turtle conservation regulations (50 CFR part 227, subpart D) are employed. The regulations require most shrimp trawlers operating in the Gulf of Mexico and Southeast U.S. Atlantic to have a NMFS-approved TED installed in each net rigged for fishing, year round.

The conservation regulations provide a mechanism to implement further restrictions of fishing activities, if necessary to avoid unauthorized takings of sea turtles that may be likely to jeopardize the continued existence of listed species or that would violate the terms and conditions of an incidental take statement or biological opinion. Upon a determination that incidental takings of sea turtles during fishing activities are not authorized, additional restrictions may be imposed to conserve listed species and will be imposed if necessary to avoid unauthorized takings that may be likely to jeopardize the continued existence of a listed species. Restrictions may be effective for a period of up to 30 days and may be renewed for additional periods of up to 30 days each (50 CFR 227.72(e)(6)).

Biological Opinion

On November 14, 1994, NMFS issued a Biological BO, that concluded that the continued long-term operation of the shrimp fishery in the nearshore waters of the southeastern U.S. was likely to jeopardize the continued existence of the highly endangered Kemp's ridley. In addition, while the long-term operation of the shrimp fishery would not likely jeopardize the continued existence of loggerheads, it could prevent the recovery of this species. This BO resulted from an ESA section 7 consultation that was reinitiated in response to the unprecedented number of dead sea turtles that stranded along the coasts of Texas, Louisiana, Georgia, and Florida in the spring and summer of 1994, coinciding with heavy nearshore shrimp trawling activity. Pursuant to section 7(b)(3) of the ESA, NMFS provided a reasonable and prudent alternative to the existing management measures that would allow the shrimp fishery to continue without jeopardizing the continued existence of the Kemp's ridley sea turtle. In addition, the BO was accompanied by an Incidental Take Statement (ITS), pursuant to section 7(b)(4)(i) of the ESA, that specifies the impact of such incidental taking on the species. The ITS provides two levels to identify the expected incidental take of sea turtles by shrimp fishing. The incidental take levels are based upon either documented takes or indicated takes measured by stranding data. Stranding data are considered an indicator of lethal take in the shrimp fishery during periods in which intensive shrimping effort occurs and there are no significant or intervening natural or human sources of mortality, other than shrimping, conclusively identified as the cause of the strandings.

NMFS has established an indicated take level (ITL) by identifying the weekly average number of sea turtle strandings documented in each NMFS statistical zone for the last 3 years (taking into consideration anomalous years). In Texas and Georgia, where strandings were anomalously high in 1994, the years 1991–93 were used to determine historical levels. The weekly average was computed as a 5-week running average (2 weeks before and after the week in question) to reflect seasonally fluctuating events such as fishery openings and closures and turtle migrations. The ITL for each zone was set at 2 times the weekly 3-year stranding average. For weeks and zones where the historical average was less than one, the ITL was set at two strandings.

As discussed below, consultation was again reinitiated as a result of high levels of strandings in the Gulf this year, and concluded with the issuance of a biological opinion on April 26, 1995. This BO reaffirmed the reasonable and prudent alternative and incidental take statement provided on November 14, 1994.

The Emergency Response Plan

The reasonable and prudent alternative of the November 14, 1994, BO and the accompanying ITS required NMFS to develop and implement an Emergency Response Plan (ERP) to respond to future stranding events and to ensure compliance with sea turtle conservation measures. The Assistant Administrator for Fisheries, NOAA (AA) approved the ERP on March 14, 1995, and published a notice of availability on April 21, 1995 (60 FR 19885). Comments on the ERP are being accepted. The ERP provides for elevated enforcement of TED regulations in two areas in which strandings of Kemp's ridley sea turtles historically have been high. The first, the Atlantic Interim Special Management Area, includes shrimp fishery statistical Zones 30 and 31 (northeast Florida and Georgia). The second, the Northern Gulf Interim Special Management Area, includes statistical Zones 13 through 20 (Louisiana and Texas from the Mississippi River to North Padre Island). The ERP also establishes procedures for notifying NMFS of sea turtle stranding events, and provides guidelines for implementation of temporary restrictions to prevent take levels in the BO from being exceeded.

As described in the ERP, restrictions in addition to those already imposed by 50 CFR 227.72(e) will be placed on shrimping in the Interim Special Management Areas if 75 percent or more of the ITL is reached for 2 consecutive weeks. The restrictions originally identified in the ERP (60 FR 19885, April 21, 1995) and imposed in certain statistical areas in the Gulf of Mexico (60 FR 21741, May 3, 1995) were modified subsequently (60 FR 26691, May 18, 1995). A detailed discussion of those restrictions, the modification, and reasons therefor, is provided in those notices and is not repeated here.

As described in the ERP, when strandings remain elevated for 1 month in zones outside the Interim Special Management Areas, NMFS, upon the determination of the Director, Southeast Region, NMFS (Regional Director), may implement management actions, similar to those specified for the Interim Special Management Areas.

Recent Stranding Events

Sea turtle strandings on offshore beaches in a number of NMFS fishery statistical zones in the southeastern U.S. have exceeded the established ITLs specified in the November 14, 1994, BO, during 1995. Temporary restrictions on shrimp fishing were imposed in some zones of Texas and western Louisiana on April 27, 1995 (60 FR 21741, May 3, 1995), in response to elevated strandings within those zones. Recent strandings in Georgia and South Carolina appear to be closely correlated with the opening of state waters to shrimp fishing, as delineated below.

South Carolina

South Carolina waters, which fall within NMFS statistical Zones 32 and 33, were opened to shrimping on May 16, 1995. Reported strandings on offshore beaches of South Carolina increased beginning on May 17, and exceeded the ITL in Zone 32 by the end of the week of May 28. Strandings again reached the ITL during the week beginning May 28. The ITL was exceeded in Zone 33, beginning May 21, and approached the ITL for the week beginning May 28. Many of the strandings reported in Zone 33 earlier in the spring occurred in North Carolina in the northern portion of the Zone. Four weekly averages (May 7 through June 3) for Zones 32 and 33, have approached 75 percent of, or exceeded, the ITL; however, the strandings have not remained elevated throughout the entire period. Enforcement efforts have been increased in response to strandings, and as described in the ERP, restrictions will be initiated in the waters off South Carolina if stranding levels remain elevated. Shrimping effort was elevated during the week following the May 16 opening of South Carolina waters, with 280 trawlers observed, including 200 in the vicinity of Charleston on May 17, 1995. During an aerial survey conducted on May 23, 1995, 95 vessels were observed. Georgia waters opened to shrimp fishing on June 1, 1995, which may have resulted in reduced effort off South Carolina as vessels moved south. Additionally, tropical storm Allison, which prevented an aerial survey in early June, may also have reduced effort. An aerial survey conducted on June 7, 1995, documented 120 shrimp vessels operating within 1 mile (1.9 km) of the South Carolina offshore beaches.

Georgia

The Georgia coastline encompasses the northern 18 miles (29.0 km) of NMFS shrimp statistical Zone 30, all of Zone 31, and a few miles of the southern portion of Zone 32. Zones 30 and 31 are both within the Atlantic Interim Special Management Area. Georgia waters were opened to shrimping on Thursday, June 1, 1995. During the week beginning May 28, 21 strandings were reported on Georgia offshore beaches, including 1 Kemp's ridley. Fifteen of these strandings, including the ridley, occurred in Zone 31, compared to an ITL of 8. While a number of these turtles stranded before the June 1, 1995, opening, reports of vessels fishing within state waters prior to the opening have been received and are being investigated by enforcement personnel. During an aerial survey conducted over nearshore Georgia waters on June 1, 1995, 351 shrimp vessels were observed. Between June 4 and June 8, 1995, 24 strandings were reported on Georgia offshore beaches, including 6 Kemp's ridleys. The combined ITL for Zones 30 and 31 (which includes a small, northern portion of the Florida coastline) is 16.

Enforcement observations suggest that compliance with the TED requirements of the sea turtle conservation regulations is high in Georgia and South Carolina. Soft TEDs were observed in almost 50 percent of the nets inspected by enforcement agents in Georgia and South Carolina waters this year, and all hard-grid TEDs observed had bottom escape openings. State enforcement personnel and resource managers confirm these observations. As discussed herein, although soft TEDs and bottom-opening hard TEDs have been generally approved for use under the sea turtle conservation regulations, based on the best available information, NMFS concludes that they are not as effective in releasing turtles, under some conditions, as top-opening hard TEDs. Additionally, anecdotal accounts suggest that shrimpers off Georgia are taking high numbers of sea turtles in try nets. Law enforcement personnel stated that a fisherman reported that another individual caught 25 sea turtles in try nets with a headrope length of 20 ft (6.1 m) in 2 days of fishing.

Analysis of Other Factors

NMFS and state personnel have investigated factors other than shrimping that may contribute to sea turtle mortality in Georgia and South Carolina, including other fisheries and environmental factors. Gillnet effort in North Carolina waters is being investigated in association with strandings in North Carolina as well as in northern South Carolina. Shrimp fishermen have suggested that crabbers in Georgia waters may be intentionally killing sea turtles based on their belief that sea turtles cause damage to crab pots. Two loggerheads stranded on Wassaw Island, GA, had apparent gun shot wounds. Georgia law enforcement personnel are investigating these reports but currently have no information identifying participants of any particular fishery in these intentional mortalities.

An algae bloom with red tide organisms has been transported along the Gulf Stream into nearshore North Carolina waters where the coastline projects out near the Gulf Stream. However, there is no information to suggest that red tide or other environmental conditions have contributed to sea turtle strandings in Georgia and South Carolina thus far in 1995. Additionally, accounts of the successful rehabilitation of loggerhead turtles in pools containing red tide organisms suggest that sea turtles are not adversely affected solely by the occurrence of red tide organisms in the environment. Crustaceans, which are the primary forage species of loggerhead and ridley sea turtles in the Atlantic, are not considered bioaccumulators of red tide toxins.

In summary, no new activity or environmental condition has been identified in the nearshore southeast U.S. Atlantic waters to account for high stranding levels except for increased shrimping effort associated with the opening of South Carolina and Georgia waters to shrimping.

Restrictions on Fishing by Shrimp Trawlers

The November 14, 1994, BO provides a reasonable and prudent alternative requiring conservation measures be

implemented as mortality levels approach those established in the ITS to ensure that shrimping is not likely to jeopardize the continued existence of the Kemp's ridley. The BO specifically requires that such measures be implemented immediately when sea turtle takings, indicated or documented, reach 75 percent of the established levels. These measures are intended to allow shrimp fishing to continue, while reducing the likelihood of further sea turtle strandings. The ERP provides further guidance on the nature and geographic scope of such measures. As noted in the foregoing discussion, strandings have reached or exceeded the ITL in Zone 31 for 2 weeks; therefore, conservation measures are being implemented in Zone 31 and adjacent waters along the Georgia coast.

Pursuant to 50 CFR 227.72(e)(6), the exemption for incidental taking of sea turtles in 50 CFR 227.72(e)(1) does not authorize incidental takings during fishing activities if the takings would violate the restrictions, terms or conditions of an incidental take statement or biological opinion, or may be likely to jeopardize the continued existence of a species listed under the ESA. The AA has determined that continued takings of sea turtles by shrimp fishing off Georgia are unauthorized and, therefore takes this action.

The measures that NMFS is implementing include:

1. Prohibition of the use of soft TEDs;
2. Prohibition of the use of bottom-opening TEDs;
3. Prohibition of the use of try nets, with a headrope length greater than 12 ft (3.6 m) or a footrope length greater than 15 ft (4.5 m), unless the try nets are equipped with approved TEDs other than soft or bottom-opening TEDs; and
4. Prohibition of the use of webbing flaps completely covering the escape opening of TEDs, as described in the Requirements section herein.

These restrictions are being applied in Atlantic offshore waters seaward to 10 nm (18.5 km) along the Georgia coast, between 30°45′ N. lat. and 32°03′ N. lat. Under 50 CFR 217.12, offshore is defined as marine and tidal waters seaward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by the NOAA (Coast Charts, 1:80,000 scale) and as described in 33 CFR part 80.

This area includes the nearshore waters in NMFS fishery statistical Zone 31, a small southern, portion of statistical Zone 32, and approximately 18 miles (29.0 km) of the northern portion of Zone 30. As described in the ERP, NMFS may extend conservation measures in any statistical zone to portions of contiguous zones as determined necessary. NMFS has extended these measures to include the entire Georgia coastline due to the familiarity of state boundaries to shrimpers, and state and Federal enforcement personnel, the occurrence of physical landmarks delineating Georgia borders, and the high incidences of strandings along the entire Georgia coastline. These restrictions will allow fishing by shrimp trawlers to continue in these areas despite elevated rates of turtle strandings.

Although soft TEDs and bottom-opening hard TEDs have been generally approved for use under the sea turtle conservation regulations, based on the best available information, NMFS has concluded that they are not as effective, under some conditions, in releasing turtles as top-opening hard TEDs. Therefore, the use of soft TEDs and bottom-opening hard TEDs is temporarily prohibited in the specified areas. NMFS gear specialists conducted evaluations of soft TEDs installed in various trawl designs purchased from a number of suppliers during September, 1994. All the devices met the regulatory requirements for soft TEDs. Trawl evaluations of the TEDs were conducted in the Canaveral ship channel. Seven TED/net configurations were tested. Five turtles were observed upon net retrieval in 21 tows with 1 configuration; 1 turtle was observed in 20 tows with another configuration. Three of the configurations also were evaluated for small turtle exclusion through the release of eight captive-reared loggerhead turtles into the nets. Entanglement in the TED panels occurred in two of the three configurations tested. These tests suggest that proper soft TED installation is critical to turtle release. Additional in-water testing of hard-grid TEDs in May, 1995, indicated that small turtles require almost twice as long to escape from a bottom-opening TED versus a top-opening TED (an average of 125.6 seconds vs. an average of 68.8 seconds) under ideal conditions. NMFS has previously implemented regulations to discuss and address problems with bottom-opening hard TEDs (59 FR 33447, June 29, 1994; 60 FR 15512, March 24, 1995). Notwithstanding the required use of floats, turtles may be more susceptible to capture in bottom-opening TEDs.

Pursuant to 50 CFR 227.72(e)(2)(ii)(B)(*1*), try nets have been exempted from the TED requirements, because they are only intended for use in brief sampling tows not likely to result in turtle mortality. Turtles are, however, caught in try nets, and either through repeated captures or long tows, try nets can contribute to the mortality of sea turtles. Takes of sea turtles in try nets, including one mortality, have been documented by NMFS, and anecdotal accounts suggest multiple sea turtle captures in try nets are occurring in Georgia waters. Twenty-foot try nets are reportedly preferred to smaller try nets by the Atlantic shrimp fleet. During the Canaveral ship channel evaluations, conducted in September 1994 and discussed above, 1 loggerhead was captured in a 13–ft (4.0–m) headrope length try net in 59 tows, while 9 loggerheads were captured in a 20–ft (6.1–m) headrope length try net in 57 tows. Therefore, NMFS has determined that top-opening hard-grid TEDs temporarily should be required in try nets larger than 12–ft (6.1–m) headrope length or a footrope length greater than 15 ft (4.6 m) in the specified areas. Finally, webbing flaps completely covering TED escape openings have been allowed in order to help reduce shrimp loss with TEDs. However, full length flaps may hinder turtle releases. In a top-opening TED, high pressure is generated above the trawl net which forces the webbing flap closed; while in a bottom-opening TED, the weight of the TED grid can pin the webbing flap shut over the escape opening. Additionally, the webbing flap can be sewn shut to disable the TED deliberately. Accordingly, NMFS has determined that use of full length flaps should be temporarily prohibited in the specified areas.

Under these temporary restrictions, only NMFS-approved hard or special hard TEDs with top escape openings may be used in shrimp trawls in the specified areas. Flaps may not completely cover the escape opening. Figure 1 illustrates a top-opening hard TED with a shortened webbing flap meeting the dimension requirements of this emergency action.

Requirements

This action is authorized by 50 CFR 227.72(e)(6). The definitions in 50 CFR 217.12 are applicable to this action, as well as all relevant provisions in 50 CFR parts 217 and 227. For example, § 227.71(b)(3) provides that it is unlawful to fish for or possess fish or wildlife contrary to a restriction specified or issued under § 227.72(e)(3) or (e)(6).

NMFS hereby notifies owners and operators of shrimp trawlers (as defined in 50 CFR 217.12) that for a 30-day period, starting at 12:01 a.m. (local time) June 21, 1995 and ending 11:59 p.m. (local time) July 20, 1995, fishing by shrimp trawlers in offshore waters, seaward to 10 nm (18.5 km) from the COLREGS line, along the Georgia coast, bounded between 30°45′ N. lat. and 32°03′ N. lat., is prohibited unless the shrimp trawler is in compliance with all applicable provisions in 50 CFR 227.72(e) and the following prohibitions:

1. The use of soft TEDs described in CFR 227.72(e)(4)(iii) is prohibited.
2. The use of hard TEDs with bottom escape openings and special hard TEDs with bottom escape openings is prohibited. Approved hard TEDs and special hard TEDs must be configured with the slope of the deflector bars upward from forward to aft and with the escape opening at the top of the trawl.
3. The use of try nets with a headrope length greater than 12 ft (3.6 m) or a footrope length greater than 15 ft (4.6 m) is prohibited unless a NMFS-approved top-opening, hard TED or special hard TED is installed when the try nets are rigged for fishing. Try nets with a headrope length 12 ft (3.6 m) or less and a footrope length 15 ft (4.6 m) or less remain exempt from the requirement to have a TED installed in accordance with 50 CFR 227.72(e)(2)(ii)(B)(*1*).
4. The use of a webbing flap that completely covers the escape opening in the trawl is prohibited. Any webbing that is attached to the trawl, forward of the escape opening, must be cut to a length so that the trailing edge of such webbing does not approach to within 2 inches (5.1 cm) of the posterior edge of the TED grid. The requirements for the size of the escape opening are unchanged.

All provisions in 50 CFR 227.72(e), including, but not limited to 50 CFR 227.72(e)(2)(ii)(B)(*1*) (use of try nets), 50 CFR 227.72(e)(4)(iii) (Soft TEDs), 50 CFR 227.72(e)(4)(i)(F) (Position of escape opening), and 50 CFR 227.72(e)(4)(iv)(C) (Allowable modification to TEDs), that are inconsistent with these prohibitions are hereby suspended for the duration of this action.

NMFS hereby notifies owners and operators of shrimp trawlers in the area subject to restrictions that they are required to carry a NMFS-approved observer aboard such vessel(s) if directed to do so by the Regional Director, upon written notification sent to either the address specified for the vessel registration or documentation purposes, or otherwise served on the owner or operator of the vessel. Owners and operators and their crew must comply with the terms and conditions specified in such written notification.

Additional Conservation Measures

The AA may withdraw or modify a determination concerning unauthorized takings or any restriction on shrimping activities if the AA determines that such action is warranted. Notification of any additional sea turtle conservation measures, including any extension of this 30-day action, will be published in the **Federal Register** pursuant to 50 CFR 227.72(e)(6).

NMFS will continue to monitor sea turtle strandings to gauge the effectiveness of these conservation measures. If, after these restrictions are instituted, strandings in Georgia persist at or above 75 percent of the ITL for 2 weeks, NMFS will follow the guidance in the ERP to determine whether to prohibit fishing by some or all shrimp trawlers, as required, in the offshore waters of all or parts of NMFS statistical Zones 30, 31 and/or 32 seaward to 10 nm (18.5 km) from the COLREGS line, for a period of 30 days. Contiguous statistical zones or portions of those zones may be included in the closure as necessary. Area closures will be implemented through emergency rulemaking notices pursuant to the procedures set forth at 50 CFR 227.72(e)(6).

Classification

This action has been determined to be not significant for purposes of E.O. 12866.

Because neither section 553 of the Administrative Procedure Act (APA), nor any other law requires that general notice of proposed rulemaking be published for this action, under section 603(b) of the Regulatory Flexibility Act, an initial Regulatory Flexibility Analysis is not required.

Pursuant to section 553(b)(B) of the APA, the AA finds there is good cause to waive prior notice and opportunity to comment on this rule. It is impracticable and contrary to the public interest to provide prior notice and opportunity for comment because unusually high levels of turtle strandings have been reported in Georgia and continue to occur as shrimping continues. Any delay in this action will likely result in additional fatal takings of listed sea turtles.

Pursuant to section 553(d) of the APA, the AA finds there is good cause to waive the 30-day delay in effective date. In addition to the immediate need to protect listed sea turtles, these restrictions are expected to impose only a minor burden on shrimp fishermen. The predominant TED designs in use in the affected area are bottom-opening hard grid TEDs and soft TEDs. Bottom-opening hard grid TEDs can be modified to comply with these restrictions in 1 to 2 hours. Any webbing flap over the escape opening can be shortened in less than 10 minutes. Trawlers equipped with soft TEDs may be required to move out of the affected area, or to equip their nets with hard TEDs. Hard grid TEDs are available for $75.00 to $350.00 and take several hours to install. Finally, some fishermen may not elect to equip their larger try nets with hard grid TEDs, and thus, would be unable to monitor their catch rate during long tows. However, these fishermen may elect to monitor their catch rate with smaller try nets not required to have an NMFS-approved top-opening hard TED installed.

The AA prepared an EA for the final rule (57 FR 57348, December 4, 1992) requiring TED use in shrimp trawls and establishing the 30-day notice procedures. An EA has been prepared for this action. Copies of the EA are available (see **ADDRESSES**).

Dated: June 15, 1995.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

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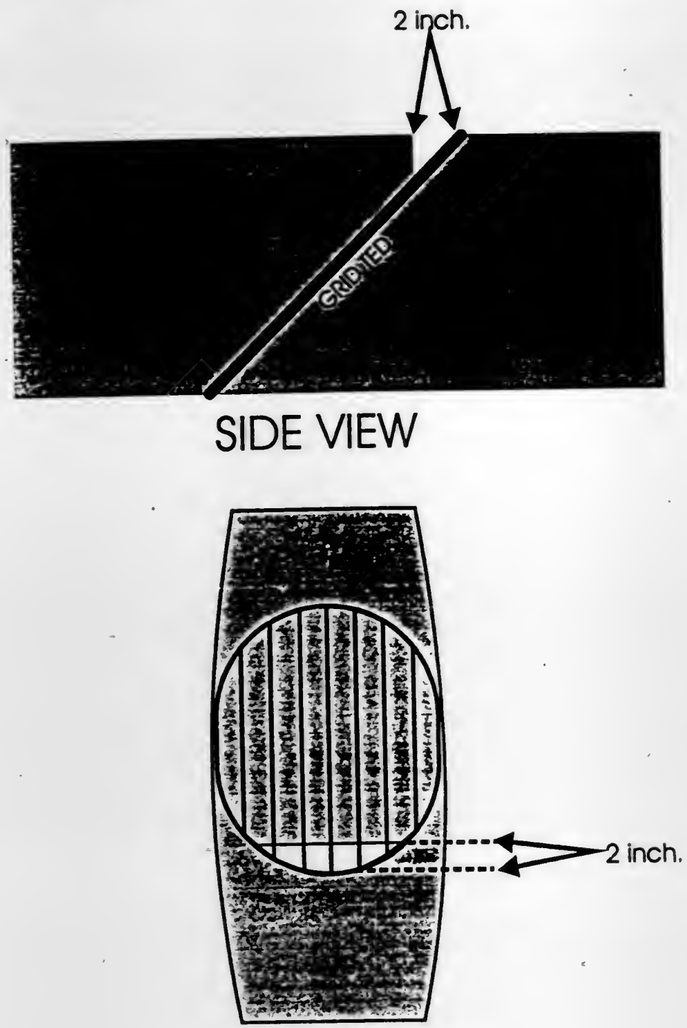


FIGURE 1--SHORTENED WEBBING OVER THE ESCAPE OPENING COMPLYING WITH REQUIREMENT NUMBER 4 OF THIS ACTION.

[FR Doc. 95–15047 Filed 6–15–95; 12:56 pm]
BILLING CODE 3510–22–C

Proposed Rules

Federal Register
Vol. 60, No. 118
Tuesday, June 20, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Chapter III

[Docket No. 95–026N]

Redesigning FSIS for the Future: Roles, Resources, and Structure

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: As part of its overall initiative to improve the safety of meat and poultry products and better protect consumers, the Food Safety and Inspection Service (FSIS) is conducting a "top-to-bottom" review of the Agency's regulatory roles, resource allocation, and organizational structure. The review is intended to ensure that the Agency is making the best possible use of its resources to achieve its food safety and consumer protection goals, consistent with its new food safety strategy and budget realities.

ADDRESSES: For comments, send an original and two copies to the FSIS Docket Clerk, Room 4352, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Comments are welcome on a continuing basis.

FOR FURTHER INFORMATION CONTACT: Jeanne Axtell or John McCutcheon, Top-to-Bottom Review Coordinators, Food Safety and Inspection Service, U.S. Department of Agriculture, Room 350–E, Administration Building, Independence Ave., Washington, DC 20250, (202) 720–3521 or (202) 720–2709, respectively.

SUPPLEMENTARY INFORMATION:

Background

FSIS's Food Safety Strategy

FSIS is pursuing a broad, long term science-based strategy to improve the safety of meat and poultry products and better protect public health. The strategy includes proposed requirements for all federally inspected meat and poultry establishments to reduce pathogenic microorganisms that can cause foodborne illness. The proposal, "Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems" (60 FR 6774–6889, published February 3, 1995), would require implementation of mandatory HACCP programs in meat and poultry establishments, would set interim targets for pathogen reduction in slaughter establishments and require microbial testing to meet those targets, and would require establishments to implement three near-term food safety interventions.

The goal of the proposal is to reduce the risk of foodborne illness associated with meat and poultry products to the maximum extent possible. The industry would be required to adopt procedures that systematically prevent food safety hazards and to meet food safety performance standards. The changes would improve FSIS's capacity to hold industry accountable for following preventive procedures and for meeting appropriate food safety standards.

The FSIS food safety strategy will require change in meat and poultry establishments, but it will also require change within FSIS. The Agency is conducting a total review of its food safety regulations to bring them into accord with the HACCP principles reflected in the regulatory proposal. The goal of this review is to eliminate unnecessary "command and control" regulations that spell out in minute detail how establishments must operate. FSIS believes it is preferable to set performance standards based on current science and, within the context of HACCP and the philosophy of prevention, allow the industry to decide how it can best meet the standards. This shift will encourage industry innovation to improve food safety and eliminate unnecessary requirements and regulations.

The Agency is also reviewing all of its systems for prior approval, such as those for facilities, equipment, and processing changes, to consider eliminating, streamlining or modifying them. This activity is necessary to ensure that legitimate oversight obligations are met without delaying the introduction of beneficial new technologies or requiring unproductive expenditure of efforts by FSIS or the industry.

Top-to-Bottom Review of Roles, Resources, and Structure

To achieve its food safety and consumer protection goals, FSIS must also ensure it is making the best use of its resources to carry out its responsibilities under a HACCP-based strategy that recognizes food safety must be addressed from farm to table. Less emphasis will be placed on the policing of detailed command and control requirements. More emphasis will be placed on verifying that industry has implemented HACCP and is achieving food safety performance standards. In addition, FSIS regulatory roles outside the currently inspected meat and poultry establishments will expand. The fundamental paradigm shift embodied in this food safety strategy, coupled with the reality of very tight government budgets, compels FSIS to critically review and, where necessary, change its regulatory roles, resource allocation, and organizational structure.

The purpose of the top-to-bottom review is to define for the future the Agency's regulatory roles, resource allocation, and organizational structure in a manner consistent with the goals and strategies of the Pathogen Reduction/HACCP regulation.

For the purposes of the review, FSIS will assume no major change in resources and no major changes in the current statutory mandates under which the Agency operates. FSIS recognizes that these variables are always subject to Congressional review and change, but the Agency also recognizes its urgent obligation, within its current resources and statutory structure, to improve food safety. Improving food safety requires a hard look at how FSIS does its job, and it requires answering three broad questions.

—What should be the Agency's regulatory roles and what are the skills needed to carry out these roles?
—How should the Agency's resources be allocated to best meet its food safety objectives and other responsibilities that fall under FSIS's legislative mandate?
—How should the headquarters and field structures be organized, in light of FSIS's new food safety strategy, to carry out the Agency's mission most effectively and efficiently?

To answer these broad questions and make practical recommendations for change, the review has been organized

around three areas—regulatory roles, resource allocation, and organizational structure—and teams have been formed within each area to achieve the following objectives.

Regulatory Roles

The overall objective is to determine the regulatory roles that should be used in a HACCP environment to hold industry accountable for meeting its food safety and other consumer protection responsibilities.

—Determine the best regulatory approaches, tools, and techniques that could be used to ensure food safety in establishments operating HACCP systems.
—Determine the best regulatory approaches, tools, and techniques that could be used to ensure that products are properly labeled, not misbranded, and not economically adulterated both in establishments and between the establishments and the marketplace.
—Determine strategies to ensure that food safety programs are functioning at points in the farm-to-table continuum other than at the in-plant level.
—Determine what knowledge, skills, abilities, and training are necessary to carry out FSIS roles at the different points along the farm-to-table continuum.
—Determine strategies and techniques to better define the distinct roles and responsibilities of FSIS and industry in ensuring food safety.

Resource Allocation

In light of the Agency's goal to reduce foodborne illness, the overall objective is to determine the optimal allocation of Agency resources.

—Determine the optimal allocation of resources between health and safety activities and economic adulteration, labeling, and misbranding activities.
—Determine how to build flexibility into the resource allocation system.
—Determine what support activities are best performed in the field or at headquarters.
—Determine what level of laboratory activities is necessary for regulatory oversight of industry operations and what testing responsibilities should be best undertaken by the industry and by FSIS.

Organizational Structure

The overall objective is to determine the optimal structure needed for headquarters and the field to carry out the goals and strategies of the pathogen reduction/HACCP regulation and to administer the program of the future.

—Examine options for administrative streamlining in line with the goals set by the Administration and the reinvention objectives outlined in the National Performance Review.
—Determine from what location (field, headquarters, or other central location) various FSIS program and administrative support activities are most likely to be effectively and efficiently carried out.
—Determine how policy and regulation development activities can be better managed within the Agency.
—Determine the nature of supervisory and managerial responsibilities and examine better methods for delivering technical information.

The Top-to-Bottom Review Project

The top-to-bottom review project is designed to determine what changes must be completed within 2 to 4 years to implement the proposed regulation for pathogen reduction and HACCP systems.

Communication will be an integral part of the review process. Information will be provided regularly to employees and constituent groups to let them know what activities are ongoing, why these activities are being carried out, how employees and the various groups will be affected, and how they can become involved in the process. The Agency will ensure that the broadest possible input is received from employees and constituent organizations.

A review group composed of several teams has been assigned to each question above. The teams expect to identify the major issues and potential options related to changes in roles, resources, and structure by late summer. At that time, FSIS plans to solicit feedback from its internal and external constituencies on those issues. The Agency will consider these comments as it decides what changes to make to align itself with its public health, food safety, and consumer protection goals. FSIS expects to make decisions on many of these changes by the end of the calendar year, when the Agency expects to finalize the proposed rule "Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems."

FSIS welcomes any comments on the initiatives announced in this notice (See **FOR FURTHER INFORMATION CONTACT**).

Done at Washington, DC on: June 14, 1995.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 95–14984 Filed 6–19–95; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1270

[Docket No. 93N–0453]

Screening and Testing of Donors of Human Tissue Intended for Transplantation; Draft Document; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled "Screening and Testing of Donors of Human Tissue Intended for Transplantation." This draft document is intended to provide additional opportunity for individuals to submit comments on screening and testing of donors of human tissue for transplantation. The availability of the draft document is to coincide with the workshop on Human Tissue for Transplantation and Human Reproductive Tissue: Scientific and Regulatory Issues and Perspectives to be held June 20 and 21, 1995, in Bethesda, MD. The workshop was announced in the **Federal Register** of May 24, 1995.

DATES: Written comments on the draft document should be submitted by July 20, 1995.

ADDRESSES: Single copies of the draft document will be made available to those attending the workshop. Persons not attending the workshop who would like to receive a copy of the draft document should submit a written request for single copies to the Congressional and Consumer Affairs Branch (HFM–12), Food and Drug Administration, 1401 Rockville Pike, suite 200 North, Rockville, MD 20852–1448. Send two self-addressed adhesive labels to assist that office in processing your requests.

Persons with access to the INTERNET may request the draft document be sent by return E-mail by sending a message to "TISSUE1@A1.CBER.FDA.GOV". The draft document may also be obtained through INTERNET via File Transfer Protocol (FTP). Requestors should connect to the Center for Drug Evaluation and Research (CDER) using the FTP. The Center for Biologics Evaluation and Research (CBER) documents are maintained in a subdirectory called CBER on the server, "CDV2.CBER.FDA.GOV". The "READ.ME" file in that subdirectory describes the available documents, which may be available as an ASCII text file (*.TXT), or a WordPerfect 5.1 document (*.w51), or both. A sample dialogue for obtaining the READ.ME file with a test based FTP program would be:

FTP CDV2.CBER.FDA.GOV
LOGIN ANONYMOUS
<ANY PASSWORD>
BINARY
CD CBER
GET READ.ME
EXIT

The draft document may also be obtained by calling the CBER FAX Information System (FAX–ON–DEMAND) at 301–594–1939 from a FAX machine with a touch tone phone attached or built-in.

Submit written comments on the draft document to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Two copies of any comments are to be submitted, except that individuals may submit one copy. Requests and comments should be identified with the docket number found in brackets in the heading of this document. The draft document and received comments are available for public examination in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Martha A. Wells, Center for Biologics Evaluation and Research (HFM–305), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–0967.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 24, 1995 (60 FR 27406), FDA published a notice announcing a public workshop on Human Tissue for Transplantation and Human Reproductive Tissue: Scientific and Regulatory Issues and Perspectives to be held on June 20 and 21, 1995, from 8:30 a.m. to 5:30 p.m., at the National Institutes of Health, Bldg. 45, Natcher Auditorium, 9000 Rockville Pike, Bethesda, MD. The purpose of the workshop is to provide an opportunity for continued discussion of FDA's interim rule on human tissue for transplantation published in the **Federal Register** of December 14, 1993 (58 FR 65514). The workshop will include discussions of other related issues, including possible regulation of reproductive tissue. The notice stated that one of the objectives of the public workshop is to provide an opportunity for discussion of current screening and testing practices for donors of human tissue for transplantation and human reproductive tissue.

The draft document, developed by a task force composed of FDA staff from CBER, is designed to focus discussion towards specific points on testing and screening donors of human tissue intended for transplantation. The document includes the following topics: Required donor testing, donor suitability and screening test performance, plasma dilution, testing algorithm, sources of information for donor screening, behavioral risk information, clinical evidence of human immunodeficiency virus and hepatitis, and suitable autopsy.

Copies of the draft document will be available at the workshop. A copy of the draft document will be placed on file with the Dockets Management Branch (address above) under the docket number found in brackets in the heading of this notice. To accommodate interested persons who do not attend the workshop, as well as those who will be attending the workshop, FDA is making the draft document available for public comment and will consider such comments in any future rulemaking and in the development of regulatory policies. Comments should be submitted to the Dockets Management Branch (address above) by July 20, 1995.

FDA does not intend this draft document to be all-inclusive. This document does not bind FDA and does not create or confer any rights, privileges, or benefits on or for any private person, but is intended merely for discussion.

Dated: June 14, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–15084 Filed 6–15–95; 4:43 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Chapter II

Semiannual Regulatory Agenda; Correction

AGENCY: Minerals Management Service, Interior.

ACTION: Correction to semiannual regulatory agenda.

SUMMARY: The Minerals Management Service's (MMS) semiannual regulatory agenda (also known as Unified Agenda) was published on May 8, 1995 (60 FR 23462). This document corrects some information appearing in the May 8 agenda.

FOR FURTHER INFORMATION CONTACT: Bettine Montgomery, Policy and Management Improvement, at (202) 308–3976, FAX (202) 208–4891.

SUPPLEMENTARY INFORMATION: The corrections to the agenda are as follows:

Proposed Rule Stage

1766. Payor Responsibilities, RIN: 1010–AB45

On page 23462, in the second column, the CFR citation listed for this rule was incorrect. The correct CFR citation is 30 CFR part 211. The information in the timetable section of the agenda for the proposed rule is also incorrect. The correct information is the proposed rule published on June 9, 1995 (60 FR 30492).

Completed/Longterm Actions

1781. Valuation of Oil and Gas From Indian Leases, RIN: 1010–AB57

On page 23466, in the first column, the agenda incorrectly listed this rule as withdrawn. The rule has neither been completed nor withdrawn. The correct information is that an Advance Notice of Proposed Rulemaking was published on August 4, 1994 (59 FR 39712). The comment period closed October 3, 1994. On February 7, 1995, the Secretary of the Interior established an Indian Gas Valuation Negotiated Rulemaking Committee to reach consensus on certain issues. A proposed rule will be drafted based on the agreement reached by the committee. The publication date for the proposed rule is currently undetermined.

1783. Limitations on Credit Adjustment Submitted by Lessees and Other Royalty Payors Under Federal and Indian Mineral Leases, RIN: 1010–AB73

On page 23466, in the second column, the agenda incorrectly listed this rule as withdrawn. This rule has neither been competed nor withdrawn. The rule will be combined with RIN 1010–AB74 and published as one rule under RIN 1010–AB73. The Notice of Proposed Rulemaking was published August 17, 1993 (58 FR 43588). The comment period closed November 1, 1993. The next action will be to publish the final combined rule; this is scheduled to be published in March 1996 or earlier.

1784. Collection of Royalties, Interest, and Other Amounts Due Under Federal and Indian Mineral Leases by Administrative Offset, RIN: 1010–AB74

On page 23466, in the third column, the Agenda incorrectly listed this rule as withdrawn. This rule has neither has been completed nor withdrawn. Instead,

this rule is to be combined with RIN 1010–AB73 into one final rule under RIN 1010–AB73. The Notice of Proposed Rulemaking was published August 17, 1993 (58 FR 43583). The comment period closed November 1, 1993. The next action will be to publish the combined final rule; this is scheduled to be published in March 1996 or earlier.

1787. Training of Lessee and Contractor Employees Engaged in Oil and Gas Sulphur Operations in the Outer Continental Shelf, RIN 1010–AB99

On page 23466, in the third column, the Agenda incorrectly listed this rule as withdrawn. The rule has neither been completed nor withdrawn. An Advance Notice of Proposed Rulemaking was published August 5, 1994 (59 FR 39991). The comment period closed October 19, 1994. The next action will be to publish a proposed rule, and the publication date is undetermined.

Dated: June 14, 1995.

Lucy R. Querques,

Associate Director for Policy and Management Improvement.

[FR Doc. 95–14980 Filed 6–19–95; 8:45 am]

BILLING CODE 4310–MR–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–81, RM–8649]

Radio Broadcasting Services; Temecula, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of BEXT, Inc. requesting the allotment of Channel 277A to Temecula, California, as that community's second local FM service. Coordinates used for Channel 277A at Temecula are 33–29–37 and 117–08–51. Temecula is located within 320 kilometers (199 miles) of the United States-Mexico border, and therefore, the Commission must obtain concurrence of the Mexican government in this proposal.

DATES: Comments must be filed on or before August 7, 1995, and reply comments on or before August 22, 1995.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Bruce A. Eisen, Esq., Kaye, Scholer, Fierman, Hays & Handler, 901 - 15th Street, NW., Suite 1100, Washington, D.C. 20005–2327.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–81, adopted June 5, 1995, and released June 14, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–15052 Filed 6–19–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[Docket No. 950605148–5148–01; I.D. 060195C]

RIN 0648–AH58

Atlantic Coast Weakfish Fishery; Moratorium in Exclusive Economic Zone

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS requests public comment on proposed regulations that would prohibit fishing for and possession of Atlantic coast weakfish (weakfish) in the exclusive economic zone (EEZ) offshore from Maine through Florida. The intent of the proposed regulations is to provide protection to the overfished stock of weakfish, ensure the effectiveness of state regulations, and to aid in the rebuilding of the stock.

DATES: Written comments must be received on or before August 4, 1995.

ADDRESSES: Comments on the proposed rule should be sent to, and copies of supporting documents, including a Draft Environmental Impact Statement (DEIS) and Regulatory Impact Review (RIR), are available from Richard H. Schaefer, Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3282. NMFS will hold public hearings to receive comments from fishery participants and other members of the public regarding these proposed regulations. The dates and locations of public hearings will be announced by notice in the **Federal Register** at least 2 weeks prior to the public hearing dates.

FOR FURTHER INFORMATION CONTACT: William T. Hogarth, 301–713–2339.

SUPPLEMENTARY INFORMATION:

Background

Section 804(b) of the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA), 16 U.S.C 5101 *et seq.*, states that, in the absence of an approved and implemented Fishery Management Plan (FMP) under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson Act), and after consultation with the appropriate Fishery Management Council(s), the Secretary of Commerce (Secretary) may implement regulations to govern fishing in the EEZ, i.e., from 3–200 nautical miles (5.6–370.6 km). These regulations must be (1) necessary to support the effective implementation of an Interstate Fishery Management Plan (ISFMP) developed by the Atlantic States Marine Fisheries Commission (Commission); and (2) consistent with the national standards set forth in section 301 of the Magnuson Act (16 U.S.C. 1851).

The Commission adopted a weakfish ISFMP in 1985, amended the plan in 1994, and is currently developing a new amendment to rebuild declining stocks of weakfish. Federal regulations are needed in the EEZ to support the Commission's effort to protect weakfish.

The Mid-Atlantic Fishery Management Council (MAFMC) is the lead Council for developing weakfish regulations in the EEZ. The MAFMC has listed weakfish as a species in need of management, but has, to date, not developed an FMP for the species. NMFS consulted with the MAFMC to determine if the development of an FMP for weakfish was possible in the immediate future. The MAFMC stated that because of its heavy workload on other species, it would not be possible this year. Therefore, Federal actions authorized by the ACFCMA remain the most effective means to institute management measures in the EEZ that will support the Commission's Plan for weakfish.

Purpose

Weakfish (*Cynoscion regalis*), a member of the family Scianidae, is considered a single stock along the Atlantic coast, ranging from Maine to Florida. The species is most abundant in shallow coastal and estuarine waters from North Carolina to New York. The center of weakfish abundance in the winter ranges from North Carolina southward and in the summer from Delaware northward. Weakfish are taken both in directed fisheries and as a bycatch in other fisheries.

Weakfish populations are overfished and are in a continuing serious decline. Total landings have declined from 35,667 mt (80.0 million lb) in 1980 to 3,628 mt (8.0 million lb) in 1993. The fishing mortality rate (F) for weakfish averaged 1.26 for the period 1991–1993, (i.e., 64 percent of the population was harvested each year), and only 4 percent of the population achieved spawning age. The F of 1.26 is about three times the rate that should be applied to protect and rebuild the stock. Since 1987, F has remained extremely high and has ranged from 1.087 to 1.948.

Concurrent with high fishing mortality, in recent years the weakfish stock has exhibited a reduction in spawning stock biomass, and a severe reduction in older fish (age 4 or older) taken. Ninety-nine percent of the 1993 commercial catch consisted of age 3 or younger fish. Recruitment to the stock has declined by 43 percent since 1990; in 1993 recruitment values are indicative of recruitment failure. Also, studies conducted at different areas along the coast show juvenile recruitment at its lowest levels since these studies were begun.

The proposed rule would prohibit the harvest (catch and retention) of weakfish from the Atlantic coast EEZ. The proposal provides the strongest possible conservation measure, is easy to understand and enforce, and is in the best long-term economic interests of both commercial and recreational fishermen. It eliminates any claim that weakfish were caught in the EEZ, when fishermen might otherwise have caught fish illegally in state waters. Enforcement of the prohibition is straightforward, because possession of weakfish on board a vessel in the EEZ would be a violation of the regulation. The prohibition also includes possession of weakfish taken as incidental catch (bycatch) while fishing for other species, since such bycatch must be released to the water as soon as possible. It allows for the development of a stock rebuilding program and, therefore, resumption of the fishery in the future.

Classification

This proposed rule is published under the authority of the ACFCMA. Paragraphs (A) and (B) of section 804(b)(1) authorizes the Secretary to implement regulations in the EEZ in the absence of a Magnuson Act FMP. Such regulations must be necessary to support a Commission's ISFMP, and consistent with the national standards set forth in section 301 of the Magnuson Act. The Assistant Administrator for Fisheries has preliminarily determined that these actions are consistent with the national standards. The Secretary, before making the final determinations, will take into account the data, views, and comments received during the comment period.

NMFS prepared a DEIS/RIR for this rule, which is available (see **ADDRESSES**). Five different alternatives to regulate the harvest of weakfish in the EEZ were examined. The alternative to prohibit the harvest and possession of weakfish in the EEZ provided the greatest biological gains with only short-term economic loss. This alternative also provided the best approach to reduce law enforcement loopholes. The condition of the stock necessitates that regulations be placed on the weakfish harvest in the EEZ to supplement the states regulations and begin the rebuilding of this overfished stock. Applying state regulations in the EEZ was considered, as well as establishing separate specific regulations for the EEZ, or doing nothing at all.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The closure of the EEZ will have minimal impact on recreational fishing, since recreational catch accounted for only 3 percent of the total catch in the EEZ in 1993. The North Carolina commercial fishery was used to analyze the impact of this proposal on the commercial fishery, since North Carolina accounted for 68 percent of the weakfish caught commercially in the EEZ in 1993. In North Carolina, the fly net trawl fishery, which consists of 11–15 boats, harvests the majority of the fish. This proposed rule will result in these boats either moving shoreward to state waters or directing their fishing effort on other species such as dog fish sharks, flounder, croaker, squid, or striped bass. This switch to fishing in state waters or to targeting other species in the EEZ will mitigate, to a great extent, any economic effects of this rule. Therefore, the proposed rule should not have a significant economic impact on small entities. As a result, a regulatory flexibility analysis was not prepared. Further information is available in the DEIS/RIR (See **ADDRESSES**).

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 697

Fisheries, Fishing.

Dated: June 13, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Chapter VI is proposed to be amended by adding part 697 to read as follows:

PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

Subpart A—Atlantic Coast Weakfish Fishery

Sec.

697.1 Purpose and scope.
697.2 Definitions.
697.3 Prohibitions.
697.4 Relation to the Magnuson Act.
697.5 Civil procedures.
697.6 Specifically authorized activities

Subpart B—[Reserved]

Authority: 16 U.S.C. 5101 *et seq.*, unless otherwise noted.

§ 697.1 Purpose and scope.

The regulations in this part implement section 804(b) of the Atlantic Coastal Fisheries Cooperative

Management Act, 16 U.S.C. 5101 *et seq.*, and govern fishing for and possession of Atlantic Coast weakfish in the EEZ.

§ 697.2 Definitions.

The terms used in this part have the following meanings:

Act means the Atlantic Coastal Fisheries Cooperative Management Act, 16 U.S.C. 5101 *et seq.*

Area of Custody means any vessel, building, vehicle, live car, pound, pier, or dock facility where Atlantic coast weakfish might be found.

Atlantic Coast weakfish means members of stocks or populations of the species *Cynoscion regalis*, found in the waters of the Atlantic Ocean north of Key West, FL.

Authorized officer means:

(1) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(2) Any special agent or enforcement officer of the National Marine Fisheries Service;

(3) Any officer designated by the head of any Federal or state agency that has entered into an agreement with the Secretary to enforce the Act; or

(4) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (1) of this definition.

Catch, take, or harvest means, but is not limited to, any activity that results in killing any fish or bringing any live fish on board a vessel.

EEZ means the Exclusive Economic Zone of the United States, from 3 to 200 nautical miles (5.6-370.6 km) offshore of the United States, beginning at the seaward boundary of the territorial sea of the coastal states.

Fish means finfish (including highly migratory species), mollusks, crustaceans, and all other forms of marine animal and plant life.

Fishing or *to fish* means:

(1) The catching, taking, or harvesting of fish;

(2) The attempted catching, taking, or harvesting of fish; or

(3) Any operation at sea in support of, or in preparation for, any activity described in paragraphs (1) or (2) of this definition.

Land means to begin offloading fish, to offload fish, or to enter port with fish.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

Person means any individual (whether or not a citizen of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any state), and any Federal, state, local, or foreign government or any entity of any such government.

Retain means to fail to return Atlantic Coast weakfish to the sea immediately after the hook has been removed or the fish has otherwise been released from the capture gear.

Secretary means the Secretary of Commerce or a designee.

Vessel means any boat, ship, or other craft that is used for, equipped to be used for, or of a type that is normally used for:

(1) Fishing; or

(2) Aiding and assisting one or more vessels at sea in the performance of any activity related to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

§ 697.3 Prohibitions.

No person shall:

(a) Catch, take, or harvest and retain any Atlantic Coast weakfish within the EEZ;

(b) Fail to return to the water immediately, with the least possible injury, any Atlantic Coast weakfish taken within the EEZ incidental to the commercial or recreational fishing for species of fish other than Atlantic Coast weakfish;

(c) Possess any Atlantic Coast weakfish on board a vessel while such vessel is in the EEZ;

(d) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, land, import or export, or transfer any Atlantic Coast weakfish taken and retained in violation of the Act or the regulations in this part;

(e) Interfere with, obstruct, delay, or prevent by any means a lawful investigation, search or seizure conducted in the process of enforcing the Act;

(f) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, shipping, transporting, selling, offering for sale, purchasing, importing or exporting, or transferring of any Atlantic Coast weakfish;

(g) Refuse to allow an authorized officer to board any vessel or to enter any area of custody for the purpose of conducting any search, inspection, or seizure in connection with the enforcement of the Act or the regulations in this part;

(h) Dispose of any Atlantic Coast weakfish, or parts thereof, or other matter, in any manner, after any communication or signal from an authorized officer, or after the approach by an authorized officer or an enforcement vessel;

(i) Forcibly assault, resist, oppose, impede, intimidate, threaten or interfere with any authorized officer in the conduct of any search, inspection, or seizure in connection with enforcement of the Act or the regulations in this part;

(j) Resist a lawful arrest for any act prohibited by the Act or these regulations; or

(k) Interfere with, delay, or prevent by any means the apprehension of another person, knowing that such person has committed any act prohibited by the Act or the regulations in this part.

§ 697.4 Relation to the Magnuson Act.

The provisions of sections 307 through 311 of the Magnuson Act, as amended, regarding prohibited acts, civil penalties, criminal forfeitures, and enforcement apply with respect to the regulations in this part, as if the regulations in this part were issued under the Magnuson Act.

§ 697.5 Civil procedures.

The civil procedure regulations at 15 CFR part 904 apply to civil penalties, seizures, and forfeitures under the Act and the regulations in this part.

§ 697.6 Specifically authorized activities.

NMFS may authorize for the acquisition of information and data, activities that are otherwise prohibited by these regulations.

Subpart B—[Reserved]

[FR Doc. 95–15023 Filed 6–19–95; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 60, No. 118

Tuesday, June 20, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

National Agricultural Research and Extension Users Advisory Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Public Law 92–463, 86 Stat. 770–776), as amended, the Cooperative State Research, Education and Extension Service announces the following meeting:

Name: National Agricultural Research and Extension Users Advisory Board (hereafter referred to as the UAB).

Date: August 23–25, 1995.

Time: August 23—1:00 p.m.–5:00 p.m.; August 24—8:00 a.m.—5:00 p.m.; August 25—8:00 a.m.—12 noon.

Ploce: Holiday Inn, Ft. Washington, PA, and tours of research facilities at Philadelphia and surrounding areas.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person named below.

Purpose: To review Federal, State, and privately funded agricultural research, education, and extension programs in water quality, sustainable agriculture, animal and plant production, nutrition, food safety, integrated pest management, post-harvest production and non-food uses.

Contact Person for Agendo and More Information: Ms. Marshall Tarkington, Executive Director, Research, Education, and Economics Advisory Committees, Room 316A, Administration Building, U.S. Department of Agriculture, Washington, DC 20250–2255; Telephone (202) 720–3684.

Done in Washington, D.C., this 9th day of June 1995.

William D. Carlson,

Acting Administrator.

[FR Doc. 95–15071 Filed 6–19–95; 8:45 am]

BILLING CODE 3410–22–M

Forest Service

Inland Native Fish Strategy

AGENCY: Notice of public hearings on the Inland Native Fish Strategy environmental assessment.

SUMMARY: In the March 14, 1995, **Federal Register** (Vol. 60, No. 49, pp. 13697–13698), notice was given that the Forest Service, in cooperation with the Bureau of Land Management and U.S. Fish and Wildlife Service, is gathering information in order to prepare an Environmental Assessment (EA) for a proposal to protect habitat and populations of native inland fish.

This EA addresses National Forest System lands on the Bitterroot, Boise, Caribou, Challis, Clearwater, Colville, Deerlodge, Deschutes, Flathead, Fremont, Helena, Humboldt, Idaho Panhandle, Kootenai, Lolo, Malheur, Ochoco, Okanogan, Payette, Sawtooth, Wallowa-Whitman, and Winema National Forests in the Northern, Intermountain, and Pacific Northwest Regions.

The Environmental Assessment has been completed and sent to the public for a 30-day review and comment period. These comments will be considered in reaching a decision.

Public hearings will be conducted to allow the public ample opportunity to comment on the proposal. Hearings are scheduled at the following locations:

June 26, 1995, Bend, Oregon, River House Inn (North/Middle Sister Rooms), 3075 North Highway 97

June 27, 1995, Twin Falls, Idaho, AmeriTel Inn (Blue Lakes Room), 1377 Blue Lakes Blvd. N.

June 28, 1995, Helena, Montana, Park Plaza (Rimini Room), 22 N. Last Chance Gulch

June 29, 1995, Spokane, Washington, Holiday Inn (Hawthorne Room), W. 4212 Sunset Blvd.

Each of the hearings will begin at 4:00 p.m. local time. Speakers are required to sign up, and will be given a maximum of 5 minutes.

FOR FURTHER INFORMATION CONTACT: Questions about the public hearings should be directed to Laird Robinson, Public Affairs Officer for the Inland Native Fish Strategy, USDA Forest Service, P.O. Box 7669, Missoula, Montana, 59807. Phone: (406) 329–3434.

The responsible officials for this Environmental Assessment are the Regional Foresters for the Intermountain, Northern, and Pacific Northwest Regions. They will make a decision regarding this proposal considering the comments and responses, environmental consequences discussed in the Environmental Assessment, and applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Decision Notice. The Decision Notice is expected to be available in late July, 1995.

Dated: June 9, 1995.

David J. Wright,

Inlond Native Fish Team Leader, USDA Forest Service.

[FR Doc. 95–14953 Filed 6–19–95; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–814]

Polyethylene Terephthalate Film, Sheet, and Strip from Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On March 2, 1994, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET film) from Japan. The review covers three manufacturers/exporters of this merchandise to the United States, Toray Industries, Inc. (Toray), Teijin, Ltd. (Teijin), and Diafoil Co. Ltd. (Diafoil), and the period November 30, 1990 through May 31, 1992. Based on our analysis of comments received, we have changed the final results from those presented in our preliminary results of review.

EFFECTIVE DATE: July 20, 1995.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or Thomas F. Futtner,

Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC. 20230, telephone: (202) 482–6312/3814.

SUPPLEMENTARY INFORMATION:

Background

On March 2, 1994, the Department published in the **Federal Register** (59 FR 9960) the preliminary results of its administrative review of the antidumping duty order on PET film (56 FR 25660, June 5, 1991). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act) and 19 CFR 353.22.

One firm, Diafoil, did not respond to the Department's questionnaire. Therefore, we are using best information otherwise available (BIA) for cash deposit and appraisement purposes. As BIA for Diafoil, we determined the dumping margin to be 14.00 percent, the highest margin calculated in any administrative review or the original investigation.

We gave interested parties an opportunity to comment on the preliminary results. We received comments from petitioners, all three respondents and one interested party. All parties participated in the hearing held on April 14, 1994.

Scope of the Review

Imports covered by the review are shipments of all gauges of raw, pretreated, or primed PET film, sheet, and strip, whether extruded or coextruded. The films excluded from the scope of this order are metallized films and other finished films that have had a least one of their surfaces modified by the application of performance-enhancing resin or inorganic layer more than 0.00001 inches (0.254 micrometers) thick. Roller transport cleaning film which has at least one of its surfaces modified by the application of 0.5 micrometers of SBR latex has also been ruled as not within the scope of the order.

PET film from Japan is currently classifiable under Harmonized Tariff Schedule (HTS) item number 3920.62.0000. The HTS item numbers are provided for convenience and for Customs purposes only. The written descriptions remain dispositive.

Analysis of Comments Received

Comment 1: Toray Plastics America (TPA), an interested party, argues that the Department should use BIA for Diafoil, because Diafoil refused to answer the Department's questionnaire. Diafoil responds that it is not uncooperative, only unresponsive. Diafoil objects to TPA's attempt to characterize Diafoil as an "uncooperative party" just because Diafoil declined to respond to the Department's questionnaire. Diafoil argues that, as a small exporter, it did not respond because of the excessive burden and cost involved.

Department's Position: In accordance with section 776(c) of the Tariff Act, the Department uses BIA in cases where a party refuses to respond to the questionnaire, is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes the proceedings. The Department uses a two-tiered approach in its choice of BIA. For uncooperative respondents or respondents who substantially impede the proceedings (first tier), the Department uses the higher of (1) the highest rate for any company from the original investigation or any prior administrative review or (2) the highest rate found in the current review for any company. For respondents which attempt to cooperate (second tier), the Department uses the higher of (1) the highest rate ever applicable to that firm for the subject merchandise or (2) the highest calculated rate in the current review for any firm (*see Antifriction Bearings (Other than Tapered Roller Bearings) and Parts thereof from France, et al.*, 58 FR 39729, July 26, 1993).

Accordingly, whether Diafoil is characterized as uncooperative or unresponsive, in accordance with the current statute, we must apply BIA. In accordance with our two-tier BIA policy, Diafoil's rate will be 14 percent, the highest rate for any company from the original investigation (*see Polyethylene Terephthalate Film, Sheet, and Strip from Japan*, 56 FR 25660, June 5, 1991).

Comment 2: TPA states that since Diafoil refused to answer the Department's questionnaire and in light of the substantial difference between Diafoil's current deposit rate and its new BIA rate, the Department should publish immediately a determination establishing a new BIA deposit rate for future entries of PET film produced or exported by Diafoil.

TPA claims that nothing in the antidumping law, or in the Department's regulations, requires that the Department wait until the conclusion of its review before establishing a new deposit rate for a foreign producer or exporter that has utterly refused to participate in the proceeding.

Department's Position: Deposit rates can only be changed after conducting an administrative review, in accordance with Section 751 of the Tariff Act. Our regulations require that we issue preliminary results of review and allow parties to ask for disclosure of the calculation methodology, submit written argument and rebuttal comments and the opportunity to ask for hearings (19 CFR 353.22 and 353.38).

Comment 3: Toray argues that for these final results the Department should calculate two margins for this review: one for the period preceding issuance of the antidumping duty order (*i.e.*, November 30, 1990, through May 31, 1991) and a second for Toray's sales in the first 12 months following issuance of the order (*i.e.*, June 1, 1991, through May 31, 1992). Toray maintains that the Department should instruct Customs to use the margin from the latter period as the basis for Toray's cash deposits on future entries.

Toray states that because antidumping duties are intended to be remedial, rather than punitive, in nature, they should reflect a respondent's current pricing practices. Accordingly, the Department's final results in this review should demonstrate that Toray has eliminated or substantially reduced its dumping margin in the period following publication of the antidumping duty order. Toray argues that the Department's regulations implicitly require the calculation of a separate, weighted-average margin for a respondent's first full year of sales under an order. If the Department fails to do this, Toray contends, it frustrates the intent of its own regulations by effectively extending the qualifying period for company-specific revocations to four years, thereby making necessary additional administrative reviews that otherwise might have been made unnecessary by respondents' good faith efforts to amend their pricing practices immediately after a less-than-fair-value (LTFV) investigation. Toray further contends that the courts have held that a respondent's weighted-average dumping margin should reflect a respondent's current pricing practices.

The petitioners, E. I. Du Pont de Nemours & Company, Inc., Hoeschst Celanese Corporation, and ICI Americas Inc., argue that the Department's consistent practice during the first administrative review is to use the period between the date provisional measures were first applied and the month before the first anniversary date of the antidumping duty order. This is a reasonable exercise of the Department's administrative discretion in implementing section 751 of the Tariff Act, which does not offer any guidance to the Department regarding the period covered by the first administrative review.

The petitioners note that the Department has consistently utilized this approach in determining the appropriate period for the first administrative review. Furthermore, the Department has consistently calculated assessment and deposit rates based on sales over the entire period. Petitioners further argue that in such situations the courts have consistently supported an agency's implementation of a statute, citing *Timken Co.* v. *United States*, 14 CIT 753 (1990); *Mart Corp.* v. *United States*, 486 U.S. 281 (1988); and *Zenith Radio Corp.* v. *United States*, 437 U.S. 443, 450 (1978). Petitioners observe that none of the cases cited by Toray in its brief relates at all to the Department's first administrative review procedures or in any way attributes any punitive or retaliatory characteristics to them. Further, petitioners note that Toray cites no judicial precedent that supports its position that the Department's current first administrative review period is not "current" or is "unfair."

Therefore, petitioners conclude, the Department has properly-determined that one-year review periods are appropriate only after the first administrative review, which normally covers a period closer to 18 months. By honoring Toray's request, petitioners argue that the Department would in fact be ignoring dumping which occurs earlier in the review period, an action which would be inconsistent with the Tariff Act and would be "punitive" to the domestic industry.

Department's Position: There is no statutory guidance regarding the period to be covered by the first administrative review or the period on which to base cash deposit rates. However, the Department's regulations identify the period to be covered by a first administrative review as "the period from the suspension of liquidation * * * to the end of the month immediately preceding the first anniversary month" (*see* 19 CFR 353.22(b)(2)). As a matter of administrative practice, the Department has consistently calculated assessment and deposit rates based on the entire period of review. To do otherwise would invite manipulation by parties who, depending on their point of view, could argue that one division or another of the POR would be more favorable to their interests. The Department considers the first review period to be "current" even if it exceeds twelve months.

Finally, we are not persuaded by Toray's argument that the Department, by not dividing the first POR into pre- and post-order periods, undermines its own company-specific revocation procedures, which are based on three consecutive years of no dumping. Respondents can begin practicing pricing discipline as soon as the Department initiates an investigation. Certainly at the time of the preliminary determination, when suspension of liquidation occurs, respondents are made aware of the Department's methodology and can begin to change their prices accordingly.

Comment 4: TPA claims that, in accordance with the Department's methodology, recently upheld in *Outokumpu Copper Rolled Products AB* v. *United States*, 829 F.Supp. 1371, 1379–80 (CIT, 1993) (Outokumpu), many of Teijin's U.S. sales should be treated as exporter's sales price (ESP) transactions.

TPA asserts that, in *Outokumpu*, the Court held that the Department could apply a "purchase price" analysis to "closed consignment" sales (where the exporter's U.S. subsidiary held merchandise for "just-in-time" delivery) if, first, the U.S. subsidiary performs strictly ministerial functions, and, second, any warehousing operation undertaken by the U.S. subsidiary reflects the parties' "customary commercial channels." TPA contends that Teijin does not meet either of these criteria. First, according to TPA, Teijin has three separate U.S. companies that account for a significant portion of U.S. sales under review. Further, TPA claims that Teijin's questionnaire response makes clear that the company's U.S. subsidiaries are engaged in a wide range of sales and post-sale activities, including marketing and acting as a selling agent. Similarly, TPA notes that Teijin has reported technical service expenses, as well as indirect expenses, by all three U.S. subsidiaries for the maintenance of sales staff. Finally, TPA claims that Teijin's sales do not follow the "customary commercial channels" utilized by Teijin and its U.S. subsidiaries.

Teijin responds that its U.S. sales are properly analyzed as purchase price transactions and disputes TPA's argument that, based on criteria upheld by *Outokumpu*, Teijin's sales should be treated as ESP sales. First, during the LTFV investigation, the Department verified that the merchandise did not enter the physical inventory of the subsidiary. Second, Teijin's subsidiaries continue to perform only ministerial functions, processing sales-related documentation and serving as a communication link, in connection with U.S. sales of PET film. Finally, Teijin argues that TPA's attempt to portray Teijin's U.S. operations as more substantial or "substantially restructured" are misinformed.

Department's Position: During the LTFV investigation, the Department verified that Teijin's U.S. sales were final before importation and did not enter inventory in the United States. Accordingly, Teijin's sales qualified as purchase price sales. In this review, Teijin again asserts that its U.S. subsidiaries perform only ministerial functions and that its U.S. sales during the POR do not enter inventory in the United States. In this review, TPA offers no specific support for its position except to question certain selling expenses. Further, nothing appears in the record of this review to show that there is anything different from the investigation that would distinguish any of the sales as ESP sales. We disagree with TPA's comment that Teijin's questionnaire response makes it clear that it and its U.S. subsidiaries are engaged in activities that would force the Department to conclude that Teijin's sales should be analyzed as ESP sales. Also, we considered these sales to be in the customary commercial channels in the investigation, and TPA has provided no evidence to the contrary. Finally, in our verification of Teijin's response during the LTFV investigation, we found no additional expenses such as technical services, advertising, or warranties on U.S. sales. Accordingly we have accepted Teijin's claim for purchase price analysis for the final results of administrative review.

Comment 5: TPA argues that the Department should reject Teijin's suggested model match because the methodology is distortive and deficient. TPA argues that the correct methodology is to first match PET film products by their end-use and subsequently by their polymers and gauges because this is the most accurate and administrable model match methodology. TPA maintains that each of PET film's five primary end-use categories requires common physical and performance characteristics that determine the commercial utility and value of the product and that are unique to that class.

Teijin responds that, notwithstanding its strong belief that physical characteristics represent the most appropriate matching methodology, in compliance with the Department's requests, it has provided the Department with alternative product concordances with and without end-use as a matching criteria. Therefore, in spite of Teijin's

position that physical characteristics represent the most appropriate matching methodology, Teijin maintains that the Department has a complete record upon which to base its final results.

Department's Position: In developing product-specific model match methodologies, the statutory preference is for the matching of identical merchandise (see section 771(16)(A) of the Tariff Act). Where this identical matching is not possible, the most similar matches are preferred (see section 771(16)(B)).

During the review, we solicited comments from all parties on matching criteria for comparing similar merchandise in the absence of sales of identical merchandise in the U.S. and home markets. Based on submissions from petitioners and respondents, no single physical characteristic appears to be a defining criterion for all types of PET film.

In the case of PET film, we have determined that it is appropriate to use groups of physical characteristics based on end-use as an organizational tool to establish similar categories of merchandise. This methodology was adopted because of the unique circumstances of this case, such as the complexity of the subject merchandise, the difficulty in determining the most similar models in a consistent manner, and the fact that it is evident that end use plays a role in the determination of the merchandise's physical dimensions.

Therefore, we have matched by physical characteristics within these categories to find matches of the most similar merchandise. We also have determined that it would be inappropriate to match across categories because this could result in more dissimilar matches rather than in comparisons of the most similar merchandise. In these final results we used Teijin's alternative model-matching concordance with broad end-use categories.

Comment 6: The petitioners comment that the Department's preliminary treatment of consumption tax for both Teijin and Toray was not in full conformity with current Department practice. Namely, they argue that, in calculating the consumption tax adjustments, the Department failed to include all of the expenses incurred after the point at which the Japanese government applies the home market consumption tax.

Both Teijin and Toray support the Department's use of a methodology that provides for tax neutrality in the dumping calculation. Toray, however, takes no position with respect to petitioners' claims regarding the imputation of the Japanese consumption tax for the preliminary results.

Department's Position:

We agree with petitioners that the tax adjustment must be made at the same point in the chain of commerce in each market and we have adjusted for taxes in accordance with our practice as outlined in *Silicomanganese from Venezuela, Preliminary Determination of Sales at Less Than Fair Value,* 59 FR 31204, June 17, 1994.

Comment 7: TPA asks the Department to ensure that Teijin has properly reported all U.S. and home market sales, or reject Teijin's questionnaire response in its entirety. In particular, TPA argues that there is no legal basis for Teijin's original request that the Department exclude from its review sales of certain unique grades of PET film, including sandblasted film, embossed film, further-processed film, "experimental" film, film sold on a yen-per-square meter basis, and film sold on a yen-per-piece basis. Similarly, TPA asks the Department to ensure that Teijin has reported all of its provisions of sample merchandise in the United States.

Teijin responds that: (1) It has fully reported all U.S. and home market sales; (2) it has fully reported all grades of PET film, and its questionnaire responses clearly indicate that these sales have been included in its computer files; and (3) its supplemental questionnaire response states explicitly that certain sample sales, which had originally been omitted in error, were included in the computer listing.

Department's Position: We have reviewed Teijin's responses and have determined that they are complete and that all grades of PET film and all sample sales have been reported. Although Teijin originally excluded the types of film noted by TPA, the company included these film types in its supplemental response. Accordingly, we will continue to rely on Teijin's submissions for the final results of administrative review.

Comment 8: TPA argues that Teijin has refused to comply with the Department's questionnaire in numerous critical respects, in addition to the specific issues discussed in other comments:

- Teijin has not provided affiliation and distribution agreements that TPA claims are essential to a proper understanding of its U.S. operations, particularly with respect to Teijin's joint venture with Du Pont;
- Teijin has failed to identify the proper dates of sale;
- Teijin's submissions do not adequately describe the basis for qualification or payment of rebates; and
- Teijin has failed to report, or incorrectly reported, numerous U.S. and home market expenses, such as technical services, warranty claims, advertising, sales promotion, and packing costs.

Accordingly, in the absence of complete and accurate data, TPA maintains that the Department should apply BIA in its final margin calculations.

Teijin responds that it has provided complete and accurate data to the Department.

Department's Position: We have reviewed Teijin's submissions and are satisfied that Teijin's response is complete and responsive to our questionnaire. Specifically:

- Teijin has provided to the Department sufficient information regarding its U.S. affiliations and distribution system for us to determine that Teijin reported its sales to the first unrelated customer.
- Teijin's dates of sale, including such instances as informal orders, blanket purchase agreements, and shipments during ongoing price negotiations, were properly reported. Namely, Teijin reported the date of sale as the date upon which the substantive terms of the contract (especially price and quantity) are set. Consistent with this reporting requirement, the date of sale reported by Teijin in most cases was the purchase order confirmation date. Where this was not the case, Teijin reported the date upon which price and quantity were firmly established as the date of sale. In no case was the reported date of sale later than the date of shipment.
- Teijin's submissions adequately describe the basis for qualification and payment of rebates as related to customer loyalty, purchase volume and market conditions, and identifies each of its home market and U.S. rebates on a customer- and sale-specific basis, precisely the standard articulated by TPA in its brief.
- There is nothing in the record to substantiate TPA's assertions that Teijin's U.S. and home market expenses have been reported incorrectly. Teijin asserts that it incurred no warranty expenses in the United States during the period of review and that it did not incur any technical service, advertising, sales promotion or other expenses directly related to its U.S. sales of PET film.

Therefore, we have relied on Teijin's response for these final results.

Comment 9: TPA argues that the Department cannot rely upon Teijin's questionnaire response without verifying the data. TPA notes that where the Department has "good cause" to verify a respondent's submission, it has a concomitant legal obligation to do so, citing *Smith Corona Corp. v. United States,* 771 F.Supp. 389 (CIT, 1991). TPA notes that it timely requested that the Department verify Teijin's questionnaire response in this review and that the circumstances establish "good cause" for verification.

TPA argues that this review raises significant factors and issues never before considered by the Department: cost data regarding adjustments for differences in merchandise where similar merchandise is used for comparison to U.S. sales; Teijin's radical restructuring of its U.S. operations; Teijin's failure to fully respond and its internally inconsistent responses; and the fact that the Department's prior verification revealed significant unreported expenses and other discrepancies in the data submitted by Teijin.

Teijin responds that the Department correctly declined to verify Teijin's response. Teijin argues that TPA has failed to show that the requisite "good cause" for verification exists in this review. Further, Teijin contends that the Department found that TPA did not demonstrate "good cause" for verification in large measure because the respondent had passed verification in the LTFV investigation and had furnished a "substantial amount of detail and documentation" in the administrative review questionnaire response (*see Small Business Telephone Systems,* 57 FR 8299). Similarly, Teijin argues that the "new" facts cited by TPA in support of the claim for verification are insufficient to establish the necessary good cause. In this regard, Teijin argues, this review is identical to that in *Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France, et al.* (58 FR 28360, June 24, 1992), in which the Department rejected the petitioner's basis for requesting that the Department conduct a more thorough verification of respondents' cost accounting system, on the basis of several factors, including the respondent's past verification history and the Department's evaluation of the credibility of the data submitted.

Department's Position: In accordance with 19 CFR 353.36(a)(1)(b), because we verified Teijin during the LTFV investigation, we were not required to verify in this administrative review unless good cause was shown. We agree with Teijin that no good cause was shown during this review to compel the Department to verify Teijin's response. The decision not to verify fully accords with past Department practice in this regard (*see Certain Small Business Telephone Systems and Subassemblies Thereof from Korea,* 57 FR 8298, March 9, 1992). Further, because we verified the overwhelming amount of the information submitted in the original investigation and because we have determined Teijin's response in this review to be complete and credible, we have also accepted the new cost data as submitted during the review.

Comment 10: The following clerical errors were noted by various parties:

(1) The petitioners comment that the Department's test for use of annual versus monthly weighted-average prices was mathematically incorrect due to misplaced parentheses. Toray comments that the error in the annual average test had no impact on the calculations. Teijin agrees that the Department should correct the clerical error in Teijin's POR-averaging program.

(2) The petitioners comment that the Department failed to convert yen-denominated sales and adjustments into dollar-denominated values in certain of Toray's U.S. sales. Toray agrees with the petitioners that the Department should ensure that all of its conversions of both currencies and units of measure are correct. Further, Toray suggests that the Department should ensure that it properly converts Toray's reported cost of production into dollars and that it properly converts all quantities to kilograms.

(3) The petitioners argue that certain U.S. sales by Toray were incorrectly excluded from the Department's analysis because these sales could not be matched with any such or similar home market sales, and the Department lacked the requisite cost data to construct values for those sales. Petitioners note that the Department is obligated to analyze all U.S. sales unless it can be shown that their inclusion distorts the Department's dumping calculation. Therefore, petitioners maintain that the Department should include these transactions in its analysis of Toray's U.S. sales using the highest margin for any reviewed U.S. sale by Toray as BIA.

Toray agrees with petitioners that the Department should include various U.S. sales that were excluded in the preliminary results as having no foreign market value (FMV), but argues that BIA need not be used because Toray's responses contain the information necessary for the Department to make the appropriate price comparisons.

(4) Teijin notes that the Department inadvertently included home market sales outside the POR in its preliminary margin calculation. Since this is contrary to the Department's stated intention to use only sales made during the POR, Teijin suggests that this clerical error should be corrected for the final results by eliminating the sales prior to November 30, 1990 and after May 31, 1992, from the home market sales database.

(5) TPA argues that Teijin's pre-sale foreign inland freight expense was subtracted twice from FMV. TPA contends that Teijin reported this expense twice, both separately and as part of its overall inland freight expense. TPA notes that the Department is double-counting an expense that should not be deducted at all, citing *Ad Hoc Committee of AZ-NM-TX-FL Producers of Gray Portland Cement v. United States,* 13 F.3d 398, 402 (Fed. Cir. 1994) (*Ad Hoc Committee*).

Teijin states that the Department should continue to deduct Teijin's freight costs from FMV for the final results, but should, however, correct its inadvertent subtraction of the pre-sale inland freight figure in calculating FMV.

(6) TPA argues that if the Department relies on a purchase price analysis for its final results of review, Teijin's U.S. and home market indirect expenses should not be deducted, as they were in the preliminary results of review.

(7) Teijin notes that the Department incorrectly read Teijin's U.S. credit insurance expense field, improperly increasing the U.S. credit expense by 1000 times the actual cost by inadvertently omitting the decimal point.

(8) Teijin argues that in the absence of an identical match in the home market data base, the Department should use the most similar match in calculating FMV, instead of second most similar as was inadvertently done for the preliminary results.

Department's Position: We agree with all eight comments and have recalculated our results accordingly. Specifically:

(1) We corrected the clerical error noted.

(2) We corrected the clerical error noted.

(3) We have included the Toray sales inadvertently omitted from the preliminary results of review. We were able to make appropriate matches and, therefore, did not need to resort to BIA.

(4) All Teijin's sales inadvertently excluded in the preliminary results of review have been included and matched with FMVs for these final results, with the exception of sales outside the POR.

(5) We agree with TPA that Teijin's pre-sale foreign freight was reported separately and also was included in an overall freight total and, therefore, was incorrectly deducted twice. Further, we

agree with TPA that, because this is a purchase price situation and because Teijin has not made an adequate claim for an adjustment under the circumstance-of-sale (COS) provision of 19 CFR 353.56, in accordance with the Federal Circuit's decision in *Ad Hoc Committee*, it is not appropriate to deduct pre-sale inland freight at all and have adjusted our calculations accordingly.

(6) Teijin's U.S. and home market indirect expenses have not been deducted for the final results of review.

(7) We corrected the clerical error noted.

(8) We have used identical or first most similar matching for our final results of review.

Final Results of the Review

As a result of our review, we have determined that the following margins exist for the period November 30, 1990, through May 31, 1992:

Manufacturer/producer/exporter	Margin (percent)
Toray	2.24
Teijin	2.03
Diafoil	14.00

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and FMV may vary from the percentages stated above. Upon completion of the review the Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of these final results of administrative review for all shipments of PET film entered, or withdrawn from warehouse, for consumption on or after that publication date, as provided by section 751(a)(1) of the Tariff Act, and will remain in effect until publication of the final results of the next administrative review: (1) The cash deposit rates for the reviewed companies will be those outlined above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be their previously established company-specific rate; (3) if the exporter is not a firm covered in this review, previous reviews, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be 6.32 percent, which is the all other rate established in the LTFV investigation, in accordance with the Court of International Trade's (CIT's) decisions in *Floral Trade Council* v. *United States*, 822 F. Supp. 766 (CIT 1993), and *Federal Mogul Corporation and the Torrington Company* v. *the United States* 822 F Supp. 782 (CIT 1993).

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: June 14, 1995.

Paul L. Joffe,

Deputy Assistont Secretary for Import Administration.

[FR Doc. 95–15072 Filed 6–19–95; 8:45 am]

BILLING CODE 3510–DS–P

National Institute of Standards and Technology

Announcement of Meeting of National Conference on Weights and Measures

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the 80th Annual Meeting of the National Conference on Weights and Measures will be held July 16 through 20, 1995, at the Holiday Inn By The Bay, Portland, Maine. The meeting is open to the public.

The National Conference on Weights and Measures is an organization of weights and measures enforcement officials of the States, counties, and cities of the United States, and private sector representatives. The interim meeting of the conference, held in January, 1995, as well as the annual meeting, bring together enforcement officials, other government officials, and representatives of business, industry, trade associations, and consumer organizations to discuss subjects that relate to the field of weights and measures technology and administration.

Pursuant to section 2(5) of its Organic Act (15 U.S.C. 272(5)), the National Institute of Standards and Technology acts as a sponsor of the National Conference on Weights and Measures in order to promote uniformity among the States in the complex of laws, regulations, methods, and testing equipment that comprises regulatory control by the States of commercial weighing and measuring.

DATES: The meeting will be held July 16–20, 1995.

LOCATION OF MEETING: Holiday Inn By The Bay, Portland, Maine.

FOR FURTHER INFORMATION CONTACT: Gilbert M. Ugiansky, Acting Executive Secretary, National Conference on Weights and Measures, P.O. Box 4025, Gaithersburg, Maryland 20885. Telephone (301) 975–4005.

Dated: June 12, 1995.

Samuel Kramer,

Associate Director.

[FR Doc. 95–14941 Filed 6–19–95; 8:45 am]

BILLING CODE 3510–13–M

National Fire Codes: Request for Proposals for Revision of Standards

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of request for proposals.

SUMMARY: The National Fire Protection Association (NFPA) proposes to revise some of its fire safety standards and requests proposals from the public to amend existing NFPA fire safety standards. The purpose of this request is to increase public participation in the system used by NFPA to develop standards.

The publication of this notice of request for proposals by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: Interested persons may submit proposals on or before the dates listed with the standards.

ADDRESSES: Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269–9101.

FOR FURTHER INFORMATION CONTACT: Arthur E. Cote, P.E., Secretary, Standards Council, at above address, (617) 770–3000.

SUPPLEMENTARY INFORMATION:

Background

The National Fire Protection Association (NFPA) develops fire safety standards which are known collectively as the National Fire Codes. Federal agencies frequently use these standards as the basis for developing Federal regulations concerning fire safety. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR part 51.

Request for Proposals

Interested persons may submit amendments, supported by written data, views, or arguments to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269–9101. Proposals should be submitted on forms available from the NFPA Standards Administration Office.

Each person must include his or her name and address, identify the document and give reasons for the proposal. Proposals received before or by 5:00 PM local time on the closing date indicated will be acted on by the Committee. The NFPA will consider any proposal that it receives on or before the date listed with the standard.

At a later date, each NFPA Technical Committee will issue a report which will include a copy of written proposals that have been received and an account of their disposition by the NFPA Committee as the Report on Proposals. Each person who has submitted a written proposal will receive a copy of the report.

Authority: 15 U.S.C. 272.

Dated: June 12, 1995.

Samuel Kramer,

Associate Director.

NFPA No.	Title	Proposal closing date
NFPA 36–1993	Solvent Extraction Plants	8/1/95
NFPA 68–1994	Venting of Deflagrations	7/21/95
NFPA 69–1992	Explosion Prevention Systems	7/21/95
NFPA 96–1994	Ventilation Control and Fire Protection of Commercial Cooking Operations	7/21/95
NFPA 221–1994	Fire Walls and Fire Barrier Walls	1/19/96
NFPA 270–P*	Determination of Specific Optical Density of Smoke	1/19/96
NFPA 328–1992	Flammable and Combustible Liquids and Gases in Manholes, Sewers, and Similar Underground Structures	1/15/96
NFPA 329–1992	Underground Releases of Flammable Combustible Liquids	1/15/96
NFPA 471–1992	Responding to Hazardous Materials Incidents	7/21/95
NFPA 472–1992	Professional Competence of Responders to Hazardous Materials Incidents	7/21/95
NFPA 473–1992	EMS Personnel Responding to Hazardous Materials Incidents	7/21/95
NFPA 497A–1992	Classification of Class I Hazardous (Classified) Locations for Electrical Installations in Chemical Process Areas.	1/19/96
NFPA 497B–1991	Classification of Class II Hazardous (Classified) Locations for Electrical Installations in Chemical Process Areas.	1/19/96
NFPA 497M–1991	Classification of Gases, Vapors, and Dusts for Electrical Equipment in Hazardous (Classified) Locations	1/19/96
NFPA 654–1994	Chemical, Dye, Pharmaceutical, and Plastics Industries	7/21/95
NFPA 910–1991	Protection of Libraries and Library Collections	1/19/96
NFPA 1402–1992	Building Fire Service Training Centers	7/21/95
NFPA 1403–1992	Live Fire Training Evolutions in Structures	7/21/95
NFPA 1451–P*	Fire Service Vehicle Risk Management Program	7/21/95
NFPA 1500–1992	Fire Department Occupational Safety and Health program	1/19/96
NFPA 1521–1992	Fire Department Safety Officer	1/19/96
NFPA 1911–1991	Service Tests of Pumps on Fire Department Apparatus	10/1/95
NFPA 1914–1991	Testing Fire Department Aerial Devices	10/1/95
NFPA 1961–1992	Fire Hose	7/21/95
NFPA 1981–1992	Open-Circuit Self-Contained Breathing Apparatus for Fire Fighters	7/31/95
NFPA 1999–1992	Protective Clothing for Emergency Medical Operations	7/31/95
NFPA 8501–1992	Single Burner Boiler Operation	1/17/96
NFPA 8503–1992	Pulverized Fuel Systems	1/17/96
NFPA 8505–1992	Stoker Operation	1/17/96

*Proposed NEW drafts are available from the NFPA Standards Administration Department, 1 Batterymarch Park, Quincy, MA 02269.

[FR Doc. 95–14942 Filed 6–19–95; 8:45 am]

BILLING CODE 3510–13–M

National Fire Codes: Request for Comments on NFPA Technical Committee Reports

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of request for comments.

SUMMARY: The National Fire Protection Association (NFPA) revises existing standards and adopts new standards twice a year. At its Fall Meeting in November or its Annual Meeting in May, the NFPA acts on recommendations made by its technical committees. The purpose of this notice is to request comments on the technical reports which will be presented at NFPA's 1996 Annual Meeting.

The publication of this notice by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: Forty-nine reports are published in the 1996 Annual Meeting Report on Proposals and will be available on August 4, 1995. Comments received on or before October 13, 1995 will be considered by the respective NFPA Committees before final action is taken on the proposals.

ADDRESSES: The 1996 Annual Meeting Report on Proposals is available from NFPA, Publications Department, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269–9101. Comments on the reports should be submitted to Arthur E. Cote, P.E.,

Secretary, Standards Council, NFPA, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269–9101.

FOR FURTHER INFORMATION CONTACT: Arthur E. Cote, P.E., Secretary, Standards Council, at above address, (617) 770–3000.

SUPPLEMENTARY INFORMATION:

Background

Standards developed by the technical committees of the National Fire Protection Association (NFPA) have been used by various Federal Agencies as the basis for Federal regulations concerning fire safety. The NFPA standards are known collectively as the National Fire Codes. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR part 51.

Revisions of existing standards and adoption of new standards are reported by the technical committees at the NFPA's Fall Meeting in November or at the Annual Meeting in May each year. The NFPA invites public comment on its Report on Proposals.

Request for Comments

Interested persons may participate in these revisions by submitting written data, views, or arguments to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269–9101. Commenters may use the forms provided for comments in the Report on Proposals. Each person submitting a comment should include his or her name and address, identify the notice, and give reasons for any recommendations. Comments received on or before October 13, 1995 will be considered by the NFPA before final action is taken on the proposals.

Copies of all written comments received and the disposition of those comments by the NFPA committees will be published as the 1996 Annual Meeting Report on Comments by March 29, 1996, prior to the Annual Meeting.

A copy of the Report on Comments will be sent automatically to each commenter. Action on the reports of the Technical Committees (adoption or rejection) will be taken at the Annual Meeting, May 20–23, 1996 in Boston, Massachusetts, by NFPA members.

Authority: 15 USC 272.

Dated: June 12, 1995.

Samuel Kramer,

Associate Director.

1996 ANNUAL MEETING—REPORT ON PROPOSALS

Doc No.	Title	Action
13	Installation of Sprinkler Systems	P
13D	Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes	P
13R	Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height	P
15	Water Spray Fixed Systems for Fire Protection	C
20	Installation of Centrifugal Fire Pumps	P
30	Flammable and Combustible Liquids Code	P
30A	Automotive and Marine Service Station Code	P
32	Drycleaning Plants	R
45	Fire Protection for Laboratories Using Chemicals	P
54	National Fuel Gas Code	P
72	National Fire Alarm Code	P
73	Residential Electrical Maintenance Code for One- and Two-Family Dwellings	P
80A	Protection of Buildings from Exterior Fire Exposures	P
90A	Air Conditioning and Ventilating Systems	P
90B	Warm Air Heating and Air Conditioning Systems	P
92A	Smoke-Control Systems	P
97	Chimneys, Vents, and Heat-Producing Appliances	P
170	Fire Safety Symbols	P
211	Chimneys, Fireplaces, Vents, and Solid Fuel-Burning Appliances	P
214	Water-Cooling Towers	P
241	Safeguarding Construction, Alteration, and Demolition Operations	P
321	Classification of Flammable and Combustible Liquids	W
395	Flammable and Combustible Liquids at Farms and Isolated Sites	W
402	Aircraft Rescue and Fire Fighting Operations (Formerly NFPA 402M)	P
419	Master Planning Airport Water Supply Sytems for Fire Protection	P
424	Airport/Community Emergency Planning (Formerly NFPA 424M)	P
482	Zirconium	C
495	Explosive Materials Code	P
498	Explosives Motor Vehicle Terminals	C
502	Limited Access Highways, Tunnels, Bridges, Elevated Roadways, and Air Right Structures	C
505	Powered Industrial Trucks Including Type Designations, Areas of Use, Maintenance, and Operation	P
555	Methods for Decreasing the Probability of Flashover	N
704	Identification of the Fire Hazards of Materials	P
750	Water Mist Fire Suppression Systems	N
903	Fire Reporting Property Survey Guide	C
904	Incident Follow-up Report Guide	C
1041	Fire Service Instructor Professional Qualifications	P
1061	Professional Qualifications for Public Safety Telecommunicator	N
1126	Use of Pyrotechnics before a Proximate Audience	C
1141	Fire Protection in Planned Building Groups	C
1901	Automotive Fire Apparatus (Combining and Redesignating NFPA 1901, 1902, 1903, 1904)	C
1971	Protective Clothing for Structural Fire Fighting (Combining and Redesignating NFPA 1971, 1972, 1973, 1974)	C
8504	Atmospheric Fluidized-Bed Boiler Operation	P

(P = Partial revision; W = Withdrawal; R = Reconfirmation; N = New; C = Complete Revision).

[FR Doc. 95–14943 Filed 6–19–95; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[I.D. 061295D]

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings.

DATES: The meetings will be held on July 17–20, 1995.

ADDRESSES: These meetings will be held at the Pier House, One Duval Street, Key West, FL; telephone: (305) 296–4600.

Council address: Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL 33609.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION:

Council

July 19

8:30 a.m.—Convene to receive public testimony.

8:45 a.m. - 12:00 p.m.—Receive final public testimony on Draft Shrimp Amendment 8 and the Regulatory Amendment for Red Grouper Size Limit Changes (NOTE: Testimony cards must be turned in to staff before the start of public testimony).

The Council will hear public testimony and proposes to take final action on Amendment 8 to the Fishery Management Plan for Shrimp in the Gulf of Mexico. The amendment would allow a 2-year increase in the total allowable catch of royal red shrimp by up to 30 percent (up to 509,000 pounds) to provide catch and effort data. The acquisition of better data on how the resource responds to an increase in fishing effort would allow scientists to obtain a better estimate of maximum sustainable yield and thus allow appropriate levels of catch. Copies of the draft amendment are available from the Council office (see **ADDRESSES**).

1:30 p.m. - 5:30 p.m.—Receive reports of the Shrimp Management Committee and Reef Fish Management Committee.

July 20

8:30 a.m. - 9:30 a.m.—Reconvene to continue receipt of the Reef Fish Management Committee report.

9:30 a.m. - 10:00 a.m.—Receive a report of the South Florida Ecosystem Restoration Effort.

10:00 a.m. - 10:15 a.m.—Receive reports of the Personnel Committee.

10:15 a.m. - 10:30 a.m.—Receive report of the Habitat Protection Committee.

10:30 a.m. - 10:45 a.m.—Receive reports of the Data Collection Committee.

10:45 a.m. - 11:00 a.m.—Receive reports of the Administrative Policy Committee.

11:00 a.m. to 12:30 p.m.—Receive Enforcement Reports, the South Atlantic Fishery Management Council Liaison Report, a review of the Shark Operations Team meeting, review Stock Assessment Protocol, a review of the Council Chairmen's meeting, and Director's Reports.

12:30 p.m. - 12:45 p.m.—Other Business during which consideration of a course of action to revise an error in the current rule that precludes shrimp vessels with trawling gear on board from commercially harvesting king mackerel, and a short session will be closed to the public for appointment of members to an advisory panel that will serve as an appeals board under Reef Fish Amendment 8.

Committees

July 17

1:00 p.m.—Convene the Reef Fish Management Committee.

July 18

8:00 a.m. - 5:30 p.m.—Convene the Personnel Committee, Administrative Policy Committee, Data Collection Committee, Shrimp Management Committee and Habitat Protection Committee.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Julie Krebs at the Council (see **ADDRESSES**) by July 10, 1995.

Dated: June 14, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–15024 Filed 6–19–95; 8:45 am]

BILLING CODE 3510–22–F

Monterey Bay National Marine Sanctuary Advisory Council

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Correction; date of open meeting of the Monterey Bay National Marine Sanctuary Advisory Council.

SUMMARY: The original meeting date was Friday, June 23 from 9:00 until 4:30, as listed in 60 FR 27723. The meeting date has now been changed as listed below.

TIME AND PLACE: Friday, June 30, 1995, from 9:00 until 4:30. The meeting will be held at the Crossroads Community Room, Carmel California.

AGENDA: General issues related to the Monterey Bay National Marine Sanctuary are expected to be discussed, including an update from the Sanctuary Manager, reports from the working groups, an update on the Water Quality Protection Program, a status report on the California Mussel Watch Program, and an update on the Vessel Traffic Report.

PUBLIC PARTICIPATION: The meeting will be open to the public. Seats will be available on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Jane Delay at (408) 647–4246 or Elizabeth Moore at (301) 713–3141.

Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program.

Dated: June 15, 1995.

David Evans,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 95–15030 Filed 6–19–95; 8:45 am]

BILLING CODE 3510–08–M

[I.D. 060795B]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of scientific research permit no. 960 (P773#54).

SUMMARY: Notice is hereby given that Dr. Bradford E. Brown, Southeast Fisheries Science Center, NMFS, 75 Virginia Beach Drive, Miami, FL 33149, has been issued a permit to take Atlantic bottlenose dolphins (*Tursiops truncatus*) for the purposes of scientific research.

DATES: Written comments or requests for a public hearing must be received on or before July 20, 1995.

ADDRESSES: The permit is available for review by interested persons in the following offices by appointment:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298, (508/281–9150); and

Director, Southeast Region, NMFS, 9721 Executive Center Drive, North St. Petersburg, FL 33702–2432 (813/893–3141).

FOR FURTHER INFORMATION CONTACT: Kellie Foster (301/713–1401).

SUPPLEMENTARY INFORMATION: On March 16, 1995, notice was published in the **Federal Register** (60 FR 14271) that a permit had been requested by the above-named individual. The requested permit has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the provisions of §§ 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The permit authorized the holder to take by harassment a maximum of 10,000 Atlantic bottlenose dolphins (*Tursiops truncatus*) for the purpose of locating a maximum of 500 dolphins suitable for take by capture for examination, sampling, marking, tagging and release. Project duration is 5 years. The objectives of this study are to develop health assessment indices of dolphin populations and individuals in the southeast, and ultimately to assess the impact of human activities on specific populations.

Dated: June 13, 1995.

Ann D. Terbush,

Chief, Permits & Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–14950 Filed 6–19–95; 8:45 am]

BILLING CODE 3510–22–F

National Telecommunications and Information Administration

[Docket Number 950613151–5151–01]

RIN 0660–XX02

Public Telecommunications Facilities Program (PTFP), National Endowment for Children's Educational Television (NECET), Telecommunications and Information Infrastructure Assistance Program (TIIAP)

AGENCY: National Telecommunications and Information Administration, Department of Commerce.

ACTION: Notice; request for comments.

SUMMARY: The National Telecommunications and Information Administration (NTIA) administers a number of grant programs providing financial assistance to eligible entities. The Public Telecommunications Facilities Program (PTFP) and the Telecommunications and Information Infrastructure Assistance Program (TIIAP) each fund facilities (for public broadcasting and connection to computer networks, respectively), while the National Endowment for Children's Educations Television (NECET) funds the creation of new children's programming. To ensure compliance with the First Amendment, NTIA has had a long-standing policy of not allowing PTFP equipment acquired with grant funds to be used for any purpose the essential thrust of which is sectarian. This policy was also recently adopted for two newer assistance programs, NECET and the TIIAP. NTIA has applied this policy in a "bright-line" fashion: It does not permit a PTFP grantee to broadcast any sectarian program using PTFP-funded equipment, a NECET grantee to include any sectarian material in a children's program funded by NECET, or a TIIAP grantee to transmit any sectarian information by means of facilities funded by TIIAP. NTIA has received a number of inquiries regarding the continued application of its current policy. Accordingly, the purpose of this proceeding is to allow for a full range of public comment on whether NTIA's current policy, as applied to all three grant programs, should be continued or whether alternative approaches are also consistent with the First Amendment and sound public policy. NTIA will consider these comments in determining whether to change its policy, its application procedures, and/or its enforcement of each of the three grant programs prospectively.

DATES: Comments should be submitted on or before August 21, 1995.

ADDRESSES: Persons interested in commenting must send an original plus two copies of any comments to: Department of Commerce, Office of the Chief Counsel, National Telecommunications and Information Administration, 14th and Constitution Avenue, NW., Room 4713, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Jana Gagner, (202) 482–1816.

SUPPLEMENTARY INFORMATION:

Background

On May 29, 1979, the PTFP issued a final rule and policy in a Report and Order on sectarian activities.[1] The Report and Order contains a full discussion of NTIA's rationale for originally establishing its policy and related procedures, including a discussion of applicable Constitutional law. PTFP's regulation regarding sectarian activities, in effect continuously since 1979, provides that: "During the period in which the grantee possesses or uses the Federally funded facilities (whether or not this period extends beyond the Federal interest period), the grantee may not use or allow the use of the Federally funded equipment for purposes the essential thrust of which are sectarian."[2] "Sectarian" has been defined as having "the purpose or function of advancing or propagating a religious belief."[3]

The Report and Order further provided that the rule regarding sectarian activities was not meant to affect "presentation in an educational or cultural context of music or art with a religious theme, nor of programs about religion. * * * [nor] preclude distribution of instructional programming of a secular nature to church-related educational institutions."[4] The Report and Order specifically explained how NTIA would determine the eligibility of applicants with religious affiliations.[5] NTIA made clear its intent not to become a "super-programmer" by inquiring into the content of particular programs on a routine basis.[6]

NTIA's two newer grant programs, the TIIAP and the NECET, currently follow the same policy with regard to Federal support of sectarian activities. The following provision, which references

[1] Public Telecommunications Facilities Program; Report and Order. 44 FR 30,898 (1979) [hereinafter Report and Order].

[2] 15 C.F.R. 2301.22(d) (1995).

[3] 15 C.F.R. 2301.1 (1995).

[4] Report and Order, supra, note 1 at 30,902 ¶ 26.

[5] *Id.* at 30,900–904.

[6] *Id.* at 30,901–902. In fact, NTIA requires PTFP grantees to certify that the grant funds are not being used for sectarian purposes.

the current PTFP rule, was included in the Notice of Availability of Funds for each program:

> The Department of Commerce has a long standing policy of not funding projects for purposes the essential thrust of which is sectarian. Consistent with this policy, TIIAP [and NECET] will not fund projects the essential thrust of which is sectarian. Sectarian organizations, however, are eligible applicants and may request funds for non-sectarian purposes.[7]

NTIA's long-standing regulation in 15 CFR 2301.22(d) was recently challenged for the first time in the case of *Fordham University* v. *Brown*. There a PTFP applicant argued that NTIA's policy on sectarian broadcasting violated its right to free exercise of religion and freedom of speech under the First Amendment of the Constitution. The Fordham court rejected this challenge and held that NTIA's policy was not violative of the First Amendment. In *dicta*, however, the court noted that it was not addressing whether there were alternative interpretations of this regulation which could also be implemented by NTIA consistent with the First Amendment.[8]

Requests for Modification

NTIA has received a number of requests to consider modifying its policy. Various public broadcast stations have indicated concern because they wish to include in their schedules some individual programs that could be considered "sectarian" under PTFP's regulation as currently interpreted and applied. Accordingly, while our current approach has been ruled constitutionally permissible, we seek to determine whether we can and should modify our policy prospectively to permit some limited amount of sectarian programming or information via Federally-funded projects.

In considering whether the essential thrust of a project is sectarian, NTIA is considering whether to look to the overall purpose of the entire project rather than looking to individual components of the project. Under this approach, if the primary purpose of the overall project is non-sectarian, a grant applicant would no longer be considered ineligible, nor would a grant recipient be found to be in violation of the grant conditions, due to use of Federal funds for a project with only a limited amount of sectarian programming or information.

Differences among the programs warrant close examination in adopting a new policy. For example, PTFP grantees, as broadcasters, have editorial control over the content of their transmissions, and NECET grantees control the subject matter of the children's programming that is funded, TIIAP grantees may have no or little control over transmissions sent by others via computer networks.[9] On the other hand, NECET funds specific programs and/or series, and TIIAP may also fund the creation of content for transmission over interactive networks, rather than facilities only, as with PTFP. While the current "bright-line" approach is applied to all three programs alike, we will examine the impact of the programs' differences on proposals to modify our current approach and allow a limited amount of sectarian programming or information.

We also recognize that the proposed modification to our current approach, or any other alternative approach, must pass muster under the First Amendment of the U.S. Constitution.[10] Therefore, NTIA is providing an opportunity for interested parties to comment on the following issues: (1) Whether allowing a limited amount of sectarian programming to be broadcast using PTFP-funded equipment, a limited amount of sectarian material to be included in a children's program produced using NECET funds, or a limited amount of sectarian information to be transmitted electronically over a network using TIIAP-funded facilities would be permissible under the First Amendment, if so whether there are sound policy reasons for such an approach, and what implementation issues are raised; (2) whether any other alternatives to NTIA's current approach have a sound policy basis and could be adopted consistent with the First Amendment and current jurisprudence, including how such a policy could, as practical and constitutional matters, be implemented and enforced; (3) whether the same policy can and should be applied to all three NTIA grant programs, and if the same policy cannot be applied to all three NTIA grant programs, what policy should pertain to each grant program; and (4) whether the current definition of "sectarian" continues to be supportable if NTIA's current policy is modified.

This notice has been determined to be not significant for purposes of Exec. Order No. 12,866.

Larry Irving,

Assistant Secretary for Communications and Information.

[FR Doc. 95–15039 Filed 6–19–95; 8:45 am]

BILLING CODE 3510–60–P

[7] See 60 FR 8,156 (February 10, 1995) and 60 FR 15,636 (March 24, 1995), respectively.

[8] *Fordham University* v. *Brown*, No. 93–2120 at 25 (CCR)(D.D.C. June 29, 1994) (appeal docketed, No. 94–5229, August 22, 1994). PTFP refused a grant to Fordham University's public radio station because it broadcast a Catholic mass every Sunday. In addition, the Supreme Court has before it the case of *Rosenberger* v. *Rector and Visitors of the University of Virginia*, No. 94–329 (oral arg. held Mar. 1, 1995). The *Rosenberger* case raises the constitutionality of a state-supported university's refusal to make a student activities fund grant to a Christian journal. A decision in the *Rosenberger* case is expected by the end of this Supreme Court term.

[9] Because TIIAP funds facilities used for transmission of information via interactive networks, some transmitted information may be under the control of the grantee and some may be under the control of end users.

[10] U.S. Const. amend. I.

DEPARTMENT OF DEFENSE

Department of the Army

Armed Forces Epidemiological Board; Notice of Open Meeting

AGENCY: Armed Forces Epidemiological Board, DOD.

ACTION: Notice of open meeting.

1. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–462), announcement is made of the following committee meeting:

Name of Committee: Armed Forces Epidemiological Board Subcommittee on Injury Prevention Working Group, DOD.

Date of Meeting: 05 July 1995.

Time: 0930–1600.

Place: Great Lakes Naval Training Center, Illinois.

Proposed Agenda: Meeting of the Injury Prevention Working Group of the Armed Forces Epidemiological Board.

2. This meeting will be open to the public but limited by space accommodations. Any interested person may attend, appear before or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, AFEB, Skyline Six, 5109 Leesburg Pike, Room 667, Falls Church, Virginia 22041–3258.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–15097 Filed 6–19–95; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 12 July 1995.

Time of Meeting: 0900–1700.

Place: Pentagon—Washington, DC.

Agenda: The Army Science Board (ASB) C4I Issue Group will commence an Issue Group Study on "A Strategy for Leveraging Commercial Technologies for Future Army Radios." There will be assorted briefings to the Future Army Radio Study Group. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. For further information, please call Michelle Diaz at (703) 695–0781.

Michelle P. Diaz,

Acting Administrative Officer, Army Science Board.

[FR Doc. 95–15054 Filed 6–19–95; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Recognition of Accrediting Agencies, State Agencies for Approval of Public Postsecondary Vocational Education, and State Agencies for Approval of Nurse Education

June 15, 1995.

AGENCY: Department of Education.

ACTION: Request for comments on agencies applying to the Secretary for initial recognition or renewal of recognition.

DATES: Commentors should submit their written comments by August 4, 1995.

FOR FURTHER INFORMATION CONTACT: Karen W. Kershenstein, Director, Accreditation and State Liaison Division, U.S. Department of Education, 600 Independence Avenue, SW., Room 3915 ROB–3, Washington, DC 20202–5244, telephone: (202) 708–7417. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m., Eastern time, Monday through Friday.

SUBMISSION OF THIRD-PARTY COMMENTS: The Secretary of Education recognizes, as reliable authorities as to the quality of education offered by institutions or programs within their scope, accrediting agencies and State approval agencies for public postsecondary vocational education and nurse education that meet certain criteria for recognition. The purpose of this notice is to invite interested third parties to present written comments on the agencies listed in this notice that have applied for initial or continued recognition. All comments received in response to this notice will be reviewed by Department staff as part of its evaluation of the agencies' compliance with the criteria for recognition. In order for Department staff to give full consideration to the comments received, the comments must arrive at the address listed above not later than August 4, 1995. Comments must relate to the Secretary's Criteria for the Recognition of Accrediting Agencies.

The National Advisory Committee on Institutional Quality and Integrity (the "Advisory Committee") advises the Secretary of Education on the recognition of accrediting agencies and State approval agencies. The Advisory Committee is scheduled to meet November 28–30, 1995 in Washington, D.C. All written comments received by the Department in response to this notice will be considered by both the Advisory Committee and the Secretary. A subsequent **Federal Register** notice will announce the meeting and invite individuals and/or groups to submit requests for oral presentation before the Advisory Committee on the agencies being reviewed. That notice, however, does not constitute another call for written comment. This notice is the only call for written comment.

The following agencies will be reviewed during the November 1995 meeting of the Advisory Committee:

Nationally Recognized Accrediting Agencies and Associations

Petition for Initial Recognition

1. National Association of Private, Nontraditional Schools and Colleges, Accrediting Commission for Higher Education (requested scope of recognition: the accreditation and preaccreditation of private, nontraditional colleges and universities)

Petitions for Renewal of Recognition

1. Accrediting Bureau of Health Education Schools (requested scope of recognition: the accreditation of private, postsecondary institutions and programs offering allied health education)
2. Accrediting Commission of Career Schools and Colleges of Technology (requested scope of recognition: the accreditation of private, postsecondary degree and non-degree-granting institutions that are predominantly organized to educate students, for trade, occupational, or technical careers)
3. Accrediting Council for Independent Colleges and Schools (requested scope of recognition: the accreditation of private postsecondary schools, junior colleges, and senior colleges that are predominantly organized to educate students for business careers, including master's degree programs in senior colleges of business)
4. American College of Nurse-Midwives, Division of Accreditation (requested scope of recognition: the accreditation of basic certificate and master's degree nurse-midwifery educational programs)
5. American Council on Pharmaceutical Education (requested scope of recognition: the accreditation of professional degree programs)
6. American Dental Association, Commission on Dental Accreditation (requested scope of recognition: the accreditation of programs leading to the DDS or DMD degree, advanced general dentistry and specialty programs, general practice residency programs, and programs in dental hygiene, dental assisting and dental technology)
7. American Occupational Therapy Association, Inc., Accreditation Council for Occupational Therapy Education (requested scope of recognition: the accreditation of occupational therapist education and occupational therapy assistant education)
8. Joint Review Committee on Education in Radiology Technology (formerly recognized in cooperation with the Committee on Allied Health Education and Accreditation of the American Medical Association but now requesting recognition on its own) (requested scope of recognition: the accreditation of educational programs for the radiographer and the radiation therapist)
9. Joint Review Committee on Educational Programs in Nuclear Medicine Technology (formerly recognized in cooperation with the Committee on Allied Health Education and Accreditation of the American Medical Association but now requesting recognition on its own) (requested scope of recognition: The accreditation of postsecondary educational programs in nuclear medicine technology throughout the Untied States)
10. Middle States Association of Colleges and Schools, Commission on Secondary Schools (requested scope of recognition: the accreditation and preaccreditation of public vocational and technical schools offering non-degree postsecondary education in Delaware, District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, Virgin Islands)
11. National Accrediting Commission of Cosmetology Arts and Sciences (requested scope of recognition: the accreditation of postsecondary schools and departments of cosmetology arts and sciences)
12. National League for Nursing, Inc. (requested scope of recognition: the accreditation of programs in practical nursing and diploma, associate, baccalaureate and higher degree nurse education programs)
13. Southern Association of Colleges and Schools, Commission on Colleges (requested scope of recognition: the accreditation of degree-granting colleges and universities located in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, Virginia)
14. Western Association of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities (requested scope of recognition: The accreditation of senior colleges and universities located in California, Hawaii, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands)

State Agencies Recognized for the Approval of Public Postsecondary Vocational Education

Petition for Renewal of Recognition

1. Minnesota State Board of Technical Colleges

Interim Report (An interim report is a follow-up report on an accrediting agency's compliance with specific criteria for recognition that was requested by the Secretary when the Secretary granted recognition to the agency)—

1. Arkansas State Board of Vocational Education

State Agencies Recognized for the Approval of Nurse Education

Petition for Renewal of Recognition

1. Colorado State Board of Nursing

Public Inspection of Petitions and Third-party Comments

All petitions and interim reports, and those third-party comments received in advance of the meeting, will be available for public inspection at the U.S. Department of Education, ROB–3, Room 3915, 7th and D Streets, SW., Washington, DC 20202–5244, telephone (202) 708–7417 between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–15021 Filed 6–19–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent To Award Cooperative Agreement to Advance Science, Inc. (ASI)

AGENCY: U.S. Department of Energy.

ACTION: Notice of non-competitive financial assistance award.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.15(a)(2), it is making a discretionary financial assistance award based on the application meeting the criteria of 10 CFR 600.7(b)(2)(i)(H) to Advance Science Inc., (ASI) under Grant Number DE-FG01–95EW55088. The proposed grant will provide funding in the estimated amount of $2,999,000 over a two year period, to develop an innovative framework for risk communication and public outreach, risk assessment, and risk management.

ASI's proposed approach is designed to communicate complex environmental information to workers and the general public in an appealing and understandable manner. This project is designed to educate and inform a broad spectrum of people in the United States about specific risks associated with environmental management activities (including technology development, decontamination and decommissioning, waste management, and environmental restoration), by providing technically accurate information in a readily understandable format.

SUPPLEMENTARY INFORMATION: The Department of Energy has determined in accordance with 10 CFR 600.14(d) that the application submitted by the Advance Science, Inc., is meritorious based on the general evaluation of the factors. The basis for the Team's risk assessment approach is the Safety Assessment Comparison (SACO) methodology, a methodology which allows, and in fact requires, the involvement of all interested parties (workers, the public, regulators, and other stakeholders) at all stages in the risk assessment process, from problem definition to evaluation of results.

Environmental issues—particularly those related to the effects of environmental degradation and cleanup on human health—are among the most controversial issues in our society. ASI's approach should allow for an informed national debate about major environmental issues including, for example, contamination and environmental cleanup.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, Attn: Dennis Roth, HR–561.22, 1000 Independence Avenue SW., Washington, D.C. 20585.

The anticipated term of the proposed grant is 24 months from the date of award.

Award is anticipated for July 21, 1995.

John M. Albers,

Contracting Officer, Headquarters Operation Division B, Office of Associate Deputy Assistant, Secretary for Headquarters Procurement Operations.

[FR Doc. 95–15068 Filed 6–19–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Nonproliferation and National Security; Fundamental Review of Classification Policy

AGENCY: Office of Nonproliferation and National Security, Department of Energy.

ACTION: Notice.

SUMMARY: The Department of Energy (DOE) announces its intent to hold public meetings in conjunction with its Fundamental Review of Classification Policy. The review will examine all aspects of the Department of Energy's classification policies in light of the end of the Cold War. An information packet containing a summary of this effort, and a questionnaire soliciting public comment on the review and options regarding future meeting locations is available from the point of contact upon request.

FOR FURTHER INFORMATION CONTACT: W. Gerald Gibson, Director, Technical Guidance Division, USDOE, Office of Declassification (NN–522), 19901 Germantown Road, Germantown, MD 20874, (301) 903–3689.

SUPPLEMENTARY INFORMATION: The end of the Cold War resulted in a unique opportunity for the Department of Energy to re-evaluate the guidance with which it classifies information for the protection of the common defense and security. On March 16, 1995, the Secretary of Energy initiated a year long review of the Department's classification policies. The review is being chaired by Dr. Albert Narath, President of Sandia Corporation. It will examine all areas of classified information falling under the purview of the Department of Energy. Its purpose is to identify which information continues to require protection in support of the common defense and security in light of the end of the Cold War, and which no longer requires such protection. As part of this endeavor the public is requested to submit their written comments on any aspect of the Department's classification policies for consideration by the Fundamental Review panel. Specific comments regarding the Restricted and Formerly Restricted Data system, National Security Information under the purview of the DOE, or the

Unclassified Controlled Nuclear Information program would be most beneficial. Specific proposals for declassification are welcome and will be considered. An information packet containing a synopsis of the Fundamental Review effort, a questionnaire, and a return envelope will be provided upon request. Written public comments need to be received by the information contact no later than July 5, 1995 for adequate consideration by the review panel. A public meeting is being planned for late summer 1995 to update the public on the committee's progress to date and to receive direct verbal comments on the above mentioned issues. This meeting is tentatively planned for late August 1995, location to be determined. Additional public meetings are being considered if a need is demonstrated. The Fundamental Review is scheduled to be completed in March 1996.

Roger K. Heusser,

Deputy Director, Office of Declassification, Office of Security Affairs.

[FR Doc. 95–15069 Filed 6–19–95; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. ER95–808–000, et al.]

Resources West Energy Corporation, et al.; Electric Rate and Corporate Regulation Filings

June 13, 1995.

Take notice that the following filings have been made with the Commission:

1. Resources West Energy Corporation

[Docket No. ER95–808–000]

Take notice that on June 3, 1995, Resources West Energy Corporation (Resources West), tendered for filing two amended transmission tariffs: a network integration service tariff and a point-to-point transmission service tariff, which would supersede and replace the tariffs previously filed in this docket on March 18, 1995. Resources West states that these amended tariffs closely follow the pro forma transmission tariffs appended to the Commission's Notice of Proposed Rulemaking in Docket No. RM95–8–000. Resources West proposes that these two amended tariffs become effective upon the merger of Sierra Pacific Resources (parent company of Sierra Pacific Power Company) and The Washington Water Power Company.

Copies of this filing have been served on the parties of record in Docket No. ER95–808–000.

Comment date: June 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Eastern Edison Company

[Docket No. ER95–1160–000]

Take notice that on June 5, 1995, Eastern Edison Company filed two interconnection agreements between itself and Browning Ferris Gas Services, Inc. to construct Independent Power Production facilities. Browning Ferris and Eastern Edison are each responsible for installing a portion of the facilities. Browning Ferris has agreed to pay Eastern Edison for constructing Eastern Edison's portion of the facilities by making a contribution-in-aid of construction (CIAC) in the form of progress payments and a $10,000 retainer for each interconnection. In order to allow the agreement to become effective promptly as a rate schedule, Eastern Edison requests that this filing be allowed to become effective on June 6, 1995. The Company requests waiver of the notice requirement on the grounds that the filing is for a new service and could not have been made earlier since the agreement has just been executed. In the alternative, the Company requests that the filing be permitted to become effective 60 days from the filing date on August 5, 1995.

Comment date: June 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. PECO Energy Company

[Docket No. ER95–1155–000]

Take notice that on June 2, 1995, PECO Energy Company (PE), tendered for filing a Facilities Agreement among Public Service Electric and Gas Company (PS), Atlantic City Electric Company (AE) and PE which sets forth the terms and conditions under which PS, PE, and AE will make available the Trainer-Mickleton-Deptford 230 Kv line and related facilities for use as an interconnection, and certificates of concurrence by PS and AE.

PE requests an effective date of August 1, 1995.

PE has served copies of the filing on the Pennsylvania Public Utilities Commission. AE has served copies of the filing on the New Jersey Board of Public Utilities.

Comment date: June 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Ohio Edison Company Pennsylvania Power Company

[Docket No. ER95–1156–000]

Take notice that on June 2, 1995, Ohio Edison Company, on behalf of itself and its subsidiary Pennsylvania Power Company, tendered for filing Supplemental No. 2 to FERC Rate Schedule No. 153, the Power Supply Agreement with Potomac Electric Power Company dated March 18, 1987. Supplemental No. 2 specifies a formula for an acid rain adjustment and recovery of costs incurred pursuant to the Acid Deposition Control provisions of the Clean Air Act Amendments of 1990, all as authorized by Subsections 3.24 and Supplemental No. 1 of the Power Supply Agreement.

Comment date: June 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Northeast Utilities Service Company

[Docket No. ER95–1157–000]

Take notice that on June 5, 1995, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement with Baltimore Gas & Electric Company (BG&E) under the NU System Companies System Power Sales/ Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to BG&E.

NUSCO requests that the Service Agreement become effective on July 1, 1995.

Comment date: June 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. The Dayton Power and Light Company

[Docket No. ER95–1158–000]

Take notice that on June 5, 1995, The Dayton Power and Light Company (Dayton), tendered for filing, an executed Interchange Agreement between Dayton and Enron Power Marketing Inc. (Enron).

Pursuant to Rate Schedules A through E attached to the Interchange Agreement, Dayton will provide to Enron a variety of power supply services. Dayton and Enron are currently parties to a Power Sale Agreement dated August 26, 1994 whereby Enron makes electric energy and capacity available for sale to Dayton. Dayton and Enron request an effective date of June 5, 1995.

Comment date: June 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Public Service Company of Colorado

[Docket No. ER95–1159–000]

Take notice that on June 5, 1995, Public Service Company of Colorado, tendered for filing the Contract Among Public Service Company of Colorado, Tri-State Generation & Transmission Association, Inc. and United States Department of Energy Western Area Power Administration Colorado River Storage Project for Interconnection, Entitlements, and Operation and Maintenance of Facilities, dated June 1, 1995 (Contract). Public Service states that the purpose of the Contract is to define or clarify the parties entitlements to certain transmission facilities and to set forth their operations and maintenance responsibilities with respect to those facilities. Public Service requests that the Contract be made effective on June 1, 1995.

Comment date: June 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Niagara Mohawk Power Corporation

[Docket No. ER95–1161–000]

Take notice that on June 6, 1995, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing an agreement between Niagara Mohawk and Utility 2000–Energy Corporation (U2000) dated June 5, 1995 providing for certain transmission services to U2000.

Copies of this filing were served upon U2000 and the New York State Public Service Commission.

Comment date: June 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Power and Light Company

[Docket No. ER95–1162–000]

Take notice that on June 6, 1995, Wisconsin Power and Light Company (WP&L), tendered for filing an Agreement dated May 11, 1995, establishing Howard Energy Company, Inc. as a customer under the terms of WP&L's Transmission Tariff T–2.

WP&L requests an effective date of May 11, 1995 and accordingly seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: June 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Northern States Power Company

[Docket No. ER95–1163–000]

Take notice that on June 6, 1995, Northern States Power Company (Minnesota)(NSP), tendered for filing Supplement No. 3 to the original Interconnection and Interchange Agreement between NSP and the City of New Ulm (New Ulm). This Supplement allows New Ulm to purchase supplemental energy from NSP over the period from July 20, 1995 to April 19, 2000.

NSP requests that the Commission accept for filing this Supplement No. 3 effective as of July 20, 1995, and requests waiver of Commission's notice requirements in order for the Supplement to be accepted for filing on that date. NSP requests that this filing be accepted as a supplement to Rate Schedule No. 398, the rate schedule for previously filed agreements between NSP and New Ulm.

Comment date: June 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14976 Filed 6–19–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket Nos. CP95–289–000 and CP95–292–000]

Southern Natural Gas Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Settlement Facilities Projects and Request for Comments on Environmental Issues

June 14, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impacts of the construction and operation of the facilities proposed in the Settlement Facilities Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether to approve the project.

Summary of the Proposed Project

Southern Natural Gas Company (Southern) wants to construct and/or replace and operate its facilities in Georgia and Alabama. The project description follows below:

Project 1

- Replacement of 6.1 miles of its existing 14-inch-diameter Ocmulgee-Atlanta Loop Line with a 30-inch-diameter pipeline from milepost (MP) 50.5 in Henry County, Georgia to MP 56.6 in Clayton County, Georgia; and
- Replacement of 5.7 miles of its existing 12-inch-diameter Macon Branch Line with a 30-inch-diameter pipeline from MPs 15.7 to 10.0, located in Clayton County, Georgia. Southern also proposes to make the following meter station modifications: (1) Modify miscellaneous piping at the South Atlanta Regulator Station and South Atlanta #1 Meter Station; (2) rebuild the Marietta Meter Station with three 8-inch orifice meter runs; and (3) replace the existing metering facilities at the Dallas #2 Meter Station with a 6-inch turbine meter run and appurtenant facilities.

The Project 1 facilities would provide Atlanta Gas Light Company (AGL) with about 100,000 Mcfd of firm transportation service. Southern indicates that the above-described modifications do not provide additional firm capacity to the meter stations serving the Atlanta area; however they do provide additional peak hour capability and enhanced operational flexibility to better serve AGL in the Atlanta area.

Project 2

- Construction of 7.8 miles of 20-inch-diameter South Main 2nd Loop Line from MP 452.1 in Glascock County, Georgia to MP 459.9 in Jefferson County, Georgia.
- Construction of 3.1 miles of 20-inch-diameter South Main 2nd Loop Line from Mps 417.1 to 420.2 located in Baldwin County, Georgia.

The Project 2 facilities would provide an additional 28,000 Mcfd of service to South Carolina Pipeline Corporation (SCPL).

Project 3

- Construction of 7.1 miles of 30-inch-diameter South Main 3rd Loop Line from MP 265.1 in Macon County, Alabama to MP 272.2 in Lee County, Alabama.

The Project 3 facilities would provide an additional 8,000 Mcfd of service to SCPL's affiliate, SCANA Hydrocarbons Inc.

Southern also proposes to abandon by sale to AGL about 122 miles of its 12-inch-diameter Brunswick Line, including six meter stations and one regulator station, more specifically described below.

• 122 miles of 12-inch-diameter pipeline in Laurens, Wheeler, Jeff Davis, Appling, Wayne and Glynn Counties, Georgia. The Brunswick Line begins at MP 53.8 in Laurens County and extends to MP 175.3 in Glynn County;

• Six meter stations: Eastman, Alamo, Hazelhurst, Baxley, Jesup, and Brunswick, which exist in the counties listed above; and

• The Belle Vista Regulator Station.

Southern also seeks authorization to construct a meter station in order to provide a new delivery point to AGL at the existing Eastman Meter Station site near MP 53.8 in Laurens County, Georgia. All work proposed for the construction of the new meter station would be performed within the existing Eastman Meter Station site.

The general location of the project facilities and specific locations for facilities on new sites are shown in appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would require a total of 50.38 acres of land. Following construction, about 0.71 acre would be maintained as new right-of-way. The remaining 49.67 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed projects under these general headings:

• Geology and soils.

• Water resources, fisheries, and wetlands.

• Vegetation and wildlife.

• Endangered and threatened species.

• Land use.

• Cultural resources.

• Air quality and noise.

• Public safety.

We will also evaluate possible alternatives to the proposed projects or portions of the projects, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Southern. Keep in mind that this is a preliminary list. The list of issues may be added to, subtracted from , or changed based on your comments and our analysis. Issues are:

• 7 residences are within 50 feet of the construction right-of-way;

• 13 federally listed or proposed threatened and endangered species may occur along the proposed project area;

• 24 perennial waterbodies would be crossed by the proposed pipelines; and

• 4.88 acres of wetlands would be affected by the proposed pipelines.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes and locations) and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

• Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., N.E., Washington, D.C. 20426;

• Reference Docket Nos. CP95–289–000 and CP95–292–000;

• Send a *copy* of your letter to: Ms. Kari Schank, EA Project Manager, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Room 7312, Washington, DC 20426; and

• Mail your comments so that they will be received in Washington, DC on or before July 21, 1995.

If you wish to receive a copy of the EA, you should request one from Ms. Schank at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor". Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing of timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by § 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Ms. Kari Schank, EA Project Manager, at (202) 208–0116.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14974 Filed 6–19–95; 8:45 am]

BILLING CODE 6717–01–M

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, Room 3104, 941 North Capitol Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

[Project Nos. 2525–004, 2592–005, 2522–002, 2546–001, 2560–001, 2581–002]

Wisconsin Public Service Corp.; Notice of Intent To Prepare a Multiple-Project Environmental Impact Statement and To Conduct Site Visits and Public Scoping Meetings

June 14, 1995.

The Federal Energy Regulatory Commission (Commission) has received applications for new or subsequent license (relicense) from the Wisconsin Public Service Corporation (WPSC) for the following six existing hydropower projects owned and operated by WPSC on the Peshtigo River in Marinette County, Wisconsin: the Caldron Falls Project, FERC No. 2525; the High Falls Project, FERC No. 2595; the Johnson Falls Project, FERC No. 2522; the Sandstone Rapids Project, FERC No. 2546; the Potato Rapids Project, FERC No. 2560; and the Peshtigo Project, FERC No. 2581.

After reviewing the applications, supplemental filings, and intervenor submittals, the Commission staff has concluded that relicensing these six projects would constitute a major federal action significantly affecting the quality of the human environment. Moreover, given the location and interaction of the six projects, staff will prepare one multiple-project Environmental Impact Statement (EIS) that describes and evaluates the probable impacts of the applicant's proposed and alternative operating procedures, environmental enhancement measures, and additional river access facilities for all six projects.

The staff's EIS will consider both site specific and cumulative environmental impacts of relicensing the six projects and will include economic and financial analyses.

A draft EIS will be issued and circulated for review by all interested parties. All comments filed on the draft EIS will be analyzed by the FERC staff and considered in a final EIS.

One element of the EIS process is scoping and a site visit. These activities are initiated early to:

• Identify reasonable alternative operational procedures and environmental enhancement measures that should be evaluated in the EIS;

• Identify significant environmental issues related to the operation of the existing projects;

• Determine the depth of analysis for issues that will be discussed in the EIS; and

• Identify resource issues that are of lesser importance and, consequently, do not require detailed analysis in the EIS.

Site Visits

A site visit to each of the six projects will be held over a two-day period: Tuesday, July 11, 1995, and Wednesday, July 12, 1995. The purpose of these visits is for interested persons to observe existing area resources and site conditions, learn the locations of proposed new facilities, and discuss project operational procedures with representatives of WPSC and the Commission.

For details concerning the site visits, please contact Greg Egtvedt of WPSC in Greenbay, Wisconsin at (414) 433–5713.

Scoping Meetings

The FERC staff will conduct two scoping meetings: the evening meeting is designed to obtain input from the general public, while the morning meeting will focus on resource agency concerns. All interested individuals, organizations, agencies, and Indian Tribes are invited to attend either or both meetings in order to assist staff in identifying the scope of environmental issues that should be analyzed in the multiple-project EIS.

To help focus discussions, a preliminary EIS scoping document outlining subject areas to be addressed at the meeting will be distributed by mail to persons and entities on the FERC mailing lists for the six Peshtigo River projects. Copies of the preliminary scoping document also will be made available at the scoping meetings.

The evening meeting for the general public will be held from 7:00 P.M. until 10:00 P.M. on Wednesday, July 12, 1995, in the Best Western Riverfront Inn, located at 1821 Riverside Avenue in Marinette, Wisconsin.

The agency meeting will be held at the same location from 9:00 A.M. until 12:00 Noon on Thursday, July 13, 1995.

Scoping Meeting Procedures

Both meetings, which will be recorded by a stenographer, will become part of the formal record of the Commission's proceeding on the Peshtigo River projects. Individuals presenting statements at the meetings will be asked to sign in before the meetings start and identify themselves for the record.

Concerned parties are encouraged to offer us verbal guidance during the public meetings. Speaking time allowed for individuals at the evening public meetings will be determined before that meeting, based on the number of persons wishing to speak and the approximate amount of time available for the session, but all speakers will be provided at least five minutes to present their views.

Scoping Meeting Objectives

At the scoping meetings, the staff will:

• Summarize the environmental issues tentatively identified for analysis in the multiple-project EIS;

• Identify resource issues that are of lesser importance and, therefore, do not require detailed analysis;

• Solicit from the meeting participants all available information, especially quantifiable data, concerning significant local resources; and

• Encourage statement from experts and the public on issues that should be analyzed in the EIS.

Information Requested

Federal and state resource agencies, Indian tribes, local government officials, interested groups, area residents, and concerned individuals are requested to provide any information they believe will assist the Commission staff to evaluate the environmental impacts associated with relicensing the six projects. The types of information sought included the following:

• Data, reports, and resource plans that characterize the physical, biological or social environments in the vicinity of the projects; and

• Information and data that helps staff identify or evaluate significant environmental issues.

Scoping information and associated comments should be submitted to the Commission no later than July 31, 1995. Written comments should be provided at the scoping meetings or mailed to the Commission, as follows: Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, DC 20426.

All filings sent to the Secretary of the Commission should contain an original and 8 copies. Failure to file an original and 8 copies may result in appropriate staff not receiving the benefit of your comments in a timely manner. See 18 CFR 4.34(h).

All correspondence should show the following caption on the first page:

Project No. 2525–004: Caldron Falls Project

Project No. 2595–005: High Falls Project

Project No. 2522–002 Johnson Falls Project

Project No. 2546–001: Sandstone Rapids Project

Project No. 2560–001: Potato Rapids Project

Project No. 2581–002: Peshtigo Project

Intervenors and interceders (as defined in 18 CFR 385.2010) who file documents with the Commission are reminded of the Commission's Rules or Practice and Procedure requiring them to serve a copy of all documents filed with the Commission on each person whose name is listed on the official service list for this proceeding. See 18 CFR 4.34(b)

For further information, please contact Jim Haimes in Washington, DC at (202) 219–2780.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14970 Filed 6–19–95; 8:45 am]

BILLING CODE 6717–01–M

Notice of Application Ready for Environmental Analysis

June 14, 1995.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 2645–029.

c. *Date Filed:* November 9, 1991.

d. *Applicant:* Niagara Mohawk Power Corporation.

e. *Name of Project:* Beaver River Hydro Project.

f. *Location:* On the Beaver River, tributary to the Black River, in Herkimer and Lewis Counties, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Jerry Sabattis, Hydro Licensing Coordinator, Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse, NY 13202, (315) 474–1511.

i. *FERC Contact:* Tom Camp (202) 219–2832.

j. *Deadline Date:* The Director, Office of Hydropower Licensing, waives section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108 (May 20, 1991)), and states that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 30 days from the issuance date of this notice. All reply comments must be filed with the Commission within 45 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) bear in all capital letters the title "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time.

l. *Description of Project:* The existing Beaver River Project consists of the following eight developments on the Beaver River in the towns of Webb, Watson, and Croghan. High Falls is 11 river miles above Beaver River's confluence with the Black River.

High Falls Development

The High Falls Development includes: (1) A 1,233-foot-long concrete gravity dam containing a 470-foot-long non-overflow concrete gravity section and a 650-foot-long concrete ogee spillway; (2) an impoundment which, at the normal maximum surface elevation of 915 feet (USGS), has a surface area of 145 acres, a gross storage capacity of 1,058 ac-ft, and a usable capacity of 923 ac-ft; (3) a 64-foot-wide by 29-foot-high concrete intake structure containing four 12-foot-wide by 20.5-foot-high trashracks and four steel slide gates; (4) a 49-foot-wide log sluice that has been sealed; (5) a 605-foot-long by 12-foot-diameter riveted steel penstock; (6) a 34-foot-wide by 99-foot-long concrete/masonry powerhouse containing three vertical Francis turbines connected to direct-drive synchronous generators, each with a rated capacity of 1,600 kW, a hydraulic capacity of 300 cfs, and a design head of 100 feet; (7) a spare turbine bay for future expansion; (8) a 3.7-mile-long, 23 kV transmission line; and (9) appurtenant equipment.

Belfort Development

The Belfort Development includes: (1) A 206-foot-long by 19-foot-high concrete gravity dam consisting of a 161-foot-long by 17-foot-high concrete ogee spillway equipped with 2-foot-high flashboards; (2) an impoundment which, at the normal maximum surface elevation of 966 feet (USGS), has a surface area of 50 acres, a gross storage capacity of 120 ac-ft, and a usable capacity of 47 ac-ft; (3) a 120-foot-long forebay; (4) a 62-foot-wide concrete intake structure containing one 12-foot-wide by 17-foot-high trashrack, one 12-foot-wide by 23-foot-high trashrack, and two 11-foot by 11-foot timber slide gates; (5) one 52-foot-long by 7-foot-diameter steel penstock and one 52-foot-long by 7.5-foot-diameter steel penstock; (6) a 78-foot-wide by 39-foot-lone concrete masonry powerhouse containing three horizontal Francis turbines connected to direct-drive synchronous generators, with a rated capacity of 400 kW (unit 1), 640 kW (unit 2), and 1,000 kW (unit 3), with hydraulic capacities of 200 cfs (units 1 and 2) and 310 cfs (unit 3), each with a design head of 48 feet; (7) a 400-foot-long tailrace channel; (8) an existing 3,540-foot-long, 23 kV transmission line; and (9) appurtenant equipment.

Taylorville Development

The Taylorville Development includes: (1) A 1,003-foot-long by 23-foot-high concrete gravity dam; (2) an impoundment which, at the normal maximum surface elevation of 1,076.6 feet (USGS), has a surface area of 170 acres, a gross storage capacity of 1,091 ac-ft, and a usable capacity of 685 ac-ft; (3) a 33-foot-wide concrete intake structure containing a 25-foot-wide by 20-foot-high trashrack and three 5.5-foot-wide by 13-foot-high timber slide gates; (4) a 2,725-foot-long by 9.5-foot-diameter steel penstock; (5) an 18-foot-diameter surge tank located about 40 feet upstream of the powerhouse; (6) a 93-foot-wide by 62.5-foot-long concrete/masonry powerhouse containing four horizontal Francis turbines connected to direct-drive synchronous generators, with rated capacities of 1,100 kW (units 1 and 2), 1,372 kW (unit 3), and 1,200 kW (unit 4), each with a hydraulic capacity of 180 cfs, and a design head of 96.6 feet; (7) a 400-foot-long, 23 kV transmission line; and (8) appurtenant equipment.

Elmer Development

The Elmer Development includes: (1) A 238-foot-long by 23-foot-high concrete gravity spillway; (2) a 25-foot-wide sluice gate with needle beams; (3) an impoundment which, at the normal maximum surface elevation of 1,108 feet (USGS), has a surface area of 34 acres, a gross storage capacity of 345 ac-ft, and a usable capacity of 207 ac-ft; (4) a forebay; (5) a 39-foot-wide concrete intake structure containing two 16.5-foot-wide by 21.5-foot-high trashracks and four 6-foot-wide by 11-foot-high timber slide gates; (6) a 78-foot-wide by 34-foot-long concrete/masonry powerhouse containing two vertical Francis turbine connected to direct-drive synchronous generators, each with a rated capacity of 750 kW, a hydraulic capacity of 290 cfs, and a design head of 37 feet; (7) a 2,270-foot-long, 23 kV transmission line; and (8) appurtenant equipment

Effley Developmentt

The Effley Development includes: (1) A 1,647-foot-long by 30-foot-high concrete gravity dam containing a 430-foot-long by 30-foot-high concrete ogee spillway; (2) a gated 29-foot-long log chute; (3) an impoundment which, at the normal maximum surface elevation of 1,163 feet (USGS), has a surface area of 340 acres, a gross storage capacity of 3,140 ac-ft, and a usable capacity of 1,720 ac-ft; (4) a 100-foot-long forebay; (5) a 38.5-foot-wide intake structure containing a 22-foot-wide by 22-foot-high trashrack and three 6-foot-wide by 8-foot-high timber slide gates; (6) a concrete intake structure containing a 20-foot-wide by 27-foot-high trashrack and an 11-foot by 11-foot slide gate; (7) three 87-foot-long by 5-foot-diameter steel penstocks, one 148-foot-long by 8-foot-diameter steel penstock; (8) two concrete/masonry powerhouses, one 58-feet-wide by 53-foot-long containing three horizontal Francis turbines and the other 42.5-feet-wide by 44-feet-long containing a single vertical Francis turbine connected to a direct-drive synchronous generator rated at 1,600 kW, with a hydraulic capacity of 450 cfs and a design head of 52.6 feet; (9) a 2.3-mile-long, 23 kV transmission line; and (10) appurtenant equipment.

Soft Maple Development

The Soft Maple Development includes: (1) Five earth embankment dams; (2) a 910-foot-long by 115-foot-high earth embankment diversion dam; (3) a 720-foot-long by 100-foot-high earth embankment terminal dam; (4) an impoundment which, at the normal maximum surface elevation of 1,289.9 feet (USGS), has a surface area of 400 acres, a gross storage capacity of 2,678 ac-ft, and a usable capacity of 1,528 ac-ft; (5) a 144-foot-long concrete ogee spillway with 1.5-foot-high flashboards; (6) two 10-foot-wide aluminum sluice gates; (7) a 600-foot-long forebay; (8) an 81.5-foot-wide concrete intake structure containing three 26-foot-wide by 33.5-foot-high trashracks; (9) two 530-foot-long by 11.5-foot-diameter steel penstocks; (10) intake facilities for an additional penstock; (11) an 82-foot-wide by 50-foot-long concrete/masonry powerhouse containing two identical vertical Francis turbines connected to direct-drive synchronous generators, each with a rated capacity of 7,500 kW, a hydraulic capacity of 860 cfs, and a design head at 121.5 feet; (12) a 20-foot-long, 115 kV transmission line; and (13) appurtenant equipment.

Eagle Development

The Eagle Development includes: (1) A 365-foot-long by 21-foot-high concrete gravity dam containing a 185-foot-long ogee spillway topped with 1-foot flashboards and an 85-foot-long, non-overflow concrete abutment; (2) an impoundment which, at the normal maximum surface elevation of 1,426.2 feet (USGS), has a surface area of 138 acres, a gross storage capacity of 668 ac-ft, and a usable capacity of 545 ac-ft; (3) a 20-foot-wide gated log sluice; (4) a 50-foot-long headgate with four 9.5-foot-wide stop log slots and four 9.5-foot by 9.5-foot trashracks; (5) an 18-foot-wide by 16-foot-deep by 540-foot-long forebay canal; (6) a concrete intake structure containing three 10-foot-wide by 7-foot-high timber slide gates; (7) a 2,725-foot-long by 9-foot-diameter steel penstock; (8) a 63-foot-wide by 87-foot-long concrete masonry powerhouse containing four horizontal Francis turbines connected to direct-drive synchronous generators, with rated capacities of 1,350 kW (units 1 through 3) and 2,000 kW (unit 4), hydraulic capacities of 150 cfs (units 1 through 3) and 200 cfs (unit 4), and design heads of 135 feet (units 1 through 3) and 125 feet (unit 4); (9) a 5-foot-wide aluminum slide gate that currently supplies minimum flow to the bypass; (10) a 160-foot-long, 115 KV transmission line; and (11) appurtenant equipment.

Moshier Development

The Moshier Development includes: (1) A 920-foot-long by 93-foot-long earth embankment dam consisting of a 200-foot-long concrete spillway topped with 2-foot-high flashboards; (2) an impoundment which, at the normal maximum surface elevation of 1,641 feet (USGS), has a surface area of 340 acres, a gross storage capacity of 7,339 acre-feet (ac-ft), and a usable capacity of 2,876 ac-ft; (3) a 28-foot-wide by 51-foot-high concrete intake structure containing two 11-foot-wide by 51.5-foot-high trashracks and two 10-foot-wide by 12-foot-high steel slids gates; (4) a 3,740-foot-long by 10-foot-diameter steel penstock connected to a 5,620-foot-long by 10-foot-diameter fiberglass reinforced plastic penstock for a total penstock length of 9,360 feet; (5) an excavated tailrace channel; (6) a 30-foot-diameter steel surge tank; (7) a bifurcation downstream of the penstock into two 70-foot-long by 7-foot-diameter steel surge tank; (7) a bifurcation downstream of the penstock into two 70-foot-long by 7-foot-diameter steel penstocks; (8) a 34-foot-wide by 70-foot-long concrete/masonry powerhouse containing two vertical Francis turbines connected to direct-drive synchronous generators, each with a rated capacity of 4,000 kW, a hydraulic capacity of 330 cfs, and a design head of 196 feet; (9) an 11-mile-long, 115 kilovolt (kV) transmission line; and (10) appurtenant equipment.

On May 30, 1995, the applicant filed a settlement offer executed by parties to this proceeding.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraph: A4.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., Room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse, NY 13202 or by calling (315) 474–1511.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with the public notice of the initial development application. In relicensing cases, competing applicaitons shall be filed with the Commission at least 24 months before the expiration of the term of the existing license. No competing applications or notices of intent may be filed in response to this notice.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14969 Filed 6–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–524–000, et al.]

Williams Natural Gas Company, et al.; Natural Gas Certificate Filings

June 13, 1995.

Take notice that the following filings have been made with the Commission:

1. Williams Natural Gas Company

[Docket No. CP95–524–000]

Take notice that on May 25, 1995, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101,

filed in Docket No. CP95–524–000 a request pursuant to §§157.205, 157.208, 157.212, and 157.216, of the Commission's Regulations under the Natural Gas Act for authorization to (1) abandon about 6 miles of the Sweet Springs 3-inch pipeline and to construct about 6 miles of replacement 3-inch pipeline, (2) to relocate 11 domestic customers and the Missouri Gas Energy (MGE) Emma and Sweet Springs town borders to the new 3-inch pipeline and (3) to uprate to mainline pressure the new 3-inch pipeline and an adjacent 2-inch lateral pipeline, located in Lafayette and Saline Counties, Missouri, under WNG's blanket certificate issued in Docket No. CP82–479–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

WNG states that the construction cost is estimated to be $646,290, the reclaim cost $26,000, and the salvage value $4,050.

Comment date: July 28, 1995, in accordance with Standard Paragraph G at the end of this notice.

2. Williston Basin Interstate Pipeline Company

[Docket No. CP95–537–000]

Take notice that on June 1, 1995, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 300, 200 North Third Street, Bismarck, North Dakota 58501, filed in Docket No. CP95–537–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to continue the present operation of a previously installed tap in South Dakota under Williston Basin's blanket certificate issued in Docket No. CP83–1–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Williston Basin's installed tap is located in SW¼ Section 21, Township 2N, Range 8E, Pennington County, South Dakota. Montana-Dakota Utilities Co. (Montana-Dakota), a local distribution company, has requested that it be able to commence transportation deliveries through this tap to J&J Asphalt via transportation deliveries from a third party on Williston Basin's system, making it necessary for Williston Basin to separately state this delivery point on its master delivery point list. This customer and six additional residential type customers are currently purchasing gas from Montana-Dakota via this tap.

The continued operation of this tap, according to Williston Basin, will have no significant effect on its peak day or annual requirements and will not be a detriment or disadvantage to any of its customers. No facilities are to be constructed pursuant to this application.

Comment date: July 28, 1995, in accordance with Standard Paragraph G at the end of this notice.

3. Carnegie Interstate Pipeline Company

[Docket No. CP95–554–000]

Take notice that on June 9, 1995, Carnegie Interstate Pipeline Company (CIPCO), 800 Regis Avenue, Pittsburgh, PA 15236, filed in Docket No. CP95–554–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to add a new delivery point for an interruptible transportation service that CIPCO will provide for The Peoples Natural Gas Company, an end user, under the blanket certificate issued in Docket No. CP88–248–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CIPCO proposes to construct and operate a 3-inch transportation service tap to be attached to its M17 pipeline located in Washington County, Pennsylvania to provide interruptible volumes of gas to Peoples under CIPCO's Rate Schedule ITS. CIPCO indicates that the new facility would permit CIPCO to provide up to a maximum annual delivery of 150,000 Mcf.

CIPCO advises that the total volumes to be delivered to Peoples after the request would not exceed Peoples' certificated entitlements. Also, CIPCO indicates that the proposed activity is not prohibited by its existing tariff and that it has sufficient capacity to accommodate the changes proposed herein without detriment or disadvantage to its other customers.

Comment date: July 28, 1995, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraph

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14963 Filed 6–19–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP92–237–020]

Alabama-Tennessee Natural Gas Company; Notice of Filing of Revised Refund Report

June 14, 1995.

Take notice that on June 2, 1995, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee) filed a revised report of refunds related to excess retainage which it made pursuant to the Settlement in Docket No. RP92–237. The report supersedes the report filed on April 4, 1995, in compliance with ordering paragraph (F) of the Commission's order issued on March 20, 1995.

Alabama-Tennessee's filing includes a letter agreement dated May 12, 1995 between it and the Tennessee Valley Municipal Gas Association which resolves Post–636 retainage refund issues in this case. As a result of that agreement, Alabama-Tennessee issued (1) a credit memo to each current customer on its system to be applied to that customer's April, 1995 invoice or (2) the refund by check for those customers which did not have an April, 1995 invoice. Alabama-Tennessee further states that interest was included through March 31, 1995.

Alabama-Tennessee states that copies of its filing were served upon the Company's jurisdictional customers and interested public bodies as well as all the parties shown on the Commission's official service list established in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before June 21, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14966 Filed 6–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2731 Vermont]

Central Vermont Public Service Corporation; Notice of Intent To File an Application for a New License

June 14, 1995.

Take notice that the Central Vermont Public Service Corporation, the existing licensee for the Weybridge Hydroelectric Project No. 2731, filed a timely notice of intent to file an application for a new license, pursuant to 18 CFR 16.6 of the Commission's Regulations. The original license for Project No. 2731 was issued effective January 1, 1951, and expires May 31, 2000.

The project is located on the Otter Creek in Addison County, Vermont. The principal works of the Weybridge Project include a 30-foot-high concrete gravity dam with the west section having a 150-foot-long spillway as well as a Taintor gate and flashboards and the east section a 110-foot-long spillway; a reservoir with an area of about 60 acres at 174.3 feet m.s.l.; a wasteway and a powerhouse intake structure; a concrete powerhouse containing a 3,000–Kw generator; generator leads, step-up transformer, transmission line and substation; and appurtenant facilities.

Pursuant to 18 CFR 16.7, the licensee is required henceforth to make available certain information to the public. This information is available from the licensee at 77 Grove Street, Ruthland, Vermont 05701.

Pursuant to 18 CFR 16.8, 16.9 and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by May 31, 1998.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14968 Filed 6–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–109–000]

CNG Transmission Corporation; Technical Conference

June 14, 1995.

Take notice that on June 29, 1995, at 10:00 am, the Commission Staff will convene a technical conference in the above captioned docket to discuss *non-environmental* issues raised by the intervenors and protestors and engineering questions raised by the Commission Staff related to the proposal of CNG Transmission Corporation to construct and operate approximately 4.73 miles of pipeline loop known as the TL–470, Ext. 5 Project to be built in the Albany area of Schenectady County, New York.

The conference will be held at the offices of the Federal Energy Regulatory Commission, 810 1st Street NE, Washington, DC 20426. All interested parties are invited to attend. However, attendance at the conference will not confer party status.

For further information, contact George D. Dornbusch (202) 208–0881, Office of Pipeline Regulation, Room 7102C; or Theresa H. Cooney (202) 208–0418, Office of General Counsel, Room 4300, 825 North Capitol Street NE, Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14975 Filed 6–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 420 Alaska]

City of Ketchikan, AK; Notice of Intent To File an Application for a New License

June 14, 1995.

Take notice that the City of Ketchikan, Alaska, dba Ketchikan Public Utilities, the existing licensee for the Ketchikan Lakes Hydroelectric Project No. 420, filed a timely notice of intent to file an application for a new license, pursuant to 18 CFR 16.6 of the Commission's Regulations. The original license for Project No. 420 was issued effective June 1, 1982, and expires June 30, 2000.

The project is located on the Ketchikan Creek within Tongass National Forest on Revillagigedo Island, Alaska. The principal works of the Ketchikan Project include two rock-filled dams, one 1,163 feet long and 30 feet high and the other 385 feet long and 22 feet high, also a concrete diversion dam, 30 feet long and 12 feet high; two 290-acre storage reservoirs; various connecting tunnels, pipelines and penstocks; a powerhouse with an installed generating capacity of 4,200 Kw; generator leads, generator bus, a substation and switchyard; and appurtenant facilities.

Pursuant to 18 CFR 16.7, the licensee is required henceforth to make available certain information to the public. This information is available from the licensee at 2930 Tongass Avenue, Ketchikan, Alaska 99901.

Pursuant to 18 CFR 16.8, 16.9 and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by June 30, 1998.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14971 Filed 6–19–95; 8:45 am]

BILLING CODE 6717–01–M

[RP94–367–000]

National Fuel Gas Supply Corporation; Notice of Informal Settlement Conference

June 14, 1995.

Take notice that an informal settlement conference will be convened in these proceedings on June 22, 1995 at 10:00 a.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the issues in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Marc G. Denkinger (202) 208–2215 or Arnold H. Meltz (202) 208–2161.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14965 Filed 6–19–95; 8:45 am]

BILLING CODE 6717–01–M

[RP95–31–000]

National Fuel Gas Supply Corporation; Notice of Informal Settlement Conference

June 14, 1995.

Take notice that an informal settlement conference will be convened in these proceedings on June 27, 1995 at 10:00 a.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426, for the purpose of exploring the possible

settlement of the issues in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's Regulations (18 CFR 385.214).

For additional information, contact Marc G. Denkinger (202) 208–2215 or Arnold H. Meltz (202) 208–2161.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14964 Filed 6–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 6901–026]

City of New Martinsville, WV; Notice of Extension of Comment Due Date

June 14, 1995.

On May 5, 1995, the Commission issued a Notice of Application for Amendment of License, for the New Cumberland Hydroelectric Project, FERC Project No. 6901–026, on the Ohio River. The notice was published in the Weirton Daily Times and in the Steubenville Herald Star on May 3, 1995, and provided the public with the opportunity to comment on the proposed amendment. The notice required that comments be filed with the Commission no later than June 2, 1995.

On May 23, 1995, Mr. V. James Dunlevy of Pike Island Hydro Associates requested an extension of the comment period. Upon consideration, and extension of time for filing comments is granted from June 2, 1995 to July 10, 1995.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14967 Filed 6–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1124–000]

Pacific Gas & Electric Co.; Filing

June 14, 1995.

Take notice that on May 31, 1995, Pacific Gas and Electric Company (PG&E) tendered for filing the Utility–2000 Energy Corp.—PG&E Power Enabling Agreement between Utility–2000 Energy Corp. (Utility–2000) and PG&E. The Enabling Agreement document terms and conditions for the purchase, sale or exchange economy energy and surplus capacity which the Parties agree to make available to one another at defined control area border interconnection points.

Copies of this filing have been served upon Utility-2000 and the California Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before June 28, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14973 Filed 6–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1145–000]

Portland General Electric Company; Filing

June 12, 1995.

Take notice that on June 1, 1995, Portland General Electric Company (PGE), tendered for filing a Certificate of Concurrence to Puget Power & Light Company's filing under the above-referenced docket number, relating to the 1995-96 Operating Procedures to the Pacific Northwest Coordination Agreement dated September 15, 1964. Copies of this filing have been served upon each party to the Pacific Northwest Coordination Agreement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before June 26, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14972 Filed 6–19–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5223–6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 20, 1995.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260–2740, (please refer to ICR #1367.04).

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Gasoline Volatility Enforcement (EPA ICR #1367.04; OMB #2060–0178). This ICR requests renewal of the existing clearance.

Abstract: The Environmental Protection Agency's gasoline volatility regulations provide for a one pound per square inch allowance above the otherwise applicable standard for ethanol blends. This information collection request seeks approval for the requirement that facilities handling ethanol blends label invoices with the ethanol content; the required label identifies gasoline products that contain ethanol and thereby qualify for the allowance. Changes in the regulations since the previous ICR stated that it was probably overestimating costs. Now that the rule has been in effect for several years, there is only the simple clerical act (generally automatically computer generated) of stating on CBP records that the gasoline contains 10% ethanol. The previous ICR removed over half of the respondents since ethanol is rarely

blended to gasoline at the refinery level except for local use in areas where ethanol blends are common. The labelling requirement now provides purchasers of ethanol blends with the information necessary to manage their own compliance with the volatility regulations and to defend themselves from Agency actions on violations which they did not cause.

Burden Statement: The public reporting burden for this collection of information is estimated to average .3 hours per response, (assuming that half of the respondents will have no burden because of the use of automated equipment), including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and labelling the invoices.

Respondents: Entities that produce or handle ethanol blends.

Estimated Number of Respondents: 8,792

Estimated Total Annual Burden on Respondents: 1,319

Frequency of Collection: No reporting requirement. Inspections as needed.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing burden, to:

Sandy Farmer, ICR Number 1367.04, U.S. Environmental Protection Agency, Regulatory Information Division (2136), 401 M Street SW., Washington, D.C. 20460

and

Chris Wolz, OMB #2060–0178, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, D.C. 20530.

Dated: June 13, 1995.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 95–15014 Filed 6–19–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5224–3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATE: Comments must be submitted on or before July 20, 1995.

FOR FURTHER INFORMATION CONTACT: For further information, or to obtain a copy of the ICR contact Sandy Farmer at EPA, (202) 260–2740, please refer to EPA ICR #1754.01.

SUPPLEMENTARY INFORMATION:

Office of Research and Development

Title: Opinion Survey of New York State Community Leaders and Residents Related to Environmental Quality In and Around Lake Ontario (EPA ICR No. 1754.01).

Abstract: The purpose of this survey to gather opinions from New York residents and leaders to identify motivations, intentions, behaviors, and barriers to stewardship of Lake Ontario. The Federal Water Pollution Control Act of 1972, as amended in 1987, sets forth the Great Lakes Water Quality Agreement, an agreement that requires the development of ecosystem objectives and action plans to improve water quality in the Great Lakes. In 1989, a binational (Canada/US) workgroup was established with the task of developing ecosystem objectives and indicators for Lake Ontario. The workgroup determined that a survey was needed to assess the motivations, behaviors and attitudes of residents along Lake Ontario, in order to develop meaningful plans to achieve the ecosystems objectives set forth by the 1987 Agreement. The survey has already been completed on the Canadian side of the Lake Ontario Basin.

This voluntary survey consists of a mail questionnaire distributed to a random sampling of New York State residents and a selected sample of their leaders along the Lake Ontario Basin. The questionnaire will request respondents to answer questions that assess: (1) Stewardship behavior, (2) motivations with regard to ecosystem protection, (3) commitment to environmentally responsible actions, and (4) barriers to behaviors that are supportive of ecosystem objectives.

The information will be used by government and private sectors to better understand the extent of environmental stewardship in the Great Lakes Basin, and to develop plans and strategies to better accomplish the objectives of environmental stewardship.

Burden Statement: Public reporting burden for this collection of information is estimated to average (0.5) hours per response including reviewing instructions, searching existing information sources, completing and reviewing the collection of information, and submitting the information to EPA.

Respondents: Residents of New York State and New York State leaders living along the shores of Lake Ontario.

Estimated Number of Respondents: 500.

Frequency of Collection: One time.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 250 hours.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, (please refer to EPA ICR #1754.01):

Sandy Farmer, EPA #1754.01, U.S. Environmental Protection Agency, Information Policy Branch (2316), 401 M Street SW., Washington, DC 20460.

and

Timothy Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20503.

Dated: June 13, 1995.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 95–15019 Filed 6–19–95; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review of the information collection system described below.

Type of Review: Extension of the expiration date of a currently approved collection without any change in the substance or method of collection.

Title: Notice of Branch Closure.

Form Number: None.

OMB Number: 3064–0109.

Expiration Date of OMB Clearance: July 31, 1995.

Respondents: Insured state non-member banks.

Frequency of Response: On occasion.

Number of Respondents: 200.
Number of Responses Per Respondent: 1.
Total Annual Responses: 200.
Average Number of Hours Per Response: 3.5.
Total Annual Burden Hours: 700.
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Paperwork Reduction Project 3064–0109, Washington, DC 20503.
FDIC Contact: Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, Room F–400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
Comments: Comments on this collection of information are welcome and should be submitted before August 21, 1995.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: A joint policy statement issued by the Office of the Comptroller of the Currency, the Federal Reserve System, the Office of Thrift Supervision, and the Federal Deposit Insurance Corporation, requires insured depository institutions to adopt policies for closing branches. In addition, institutions must submit notice of proposed closings to their primary Federal regulator. For insured state non-member banks, the primary federal regulator is the FDIC.

Dated: June 15, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 95–15044 Filed 6–19–95; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC of the Federal Maritime Commission, 800 North Capitol Street NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011223–010.
Title: Transpacific Stabilization Agreement.
Parties:
A.P. Moller-Maersk Line
American President Lines
Evergreen Marine Corp. (Taiwan) Ltd.
Hapag-Lloyd Aktiengesellschaft
Hyundai Merchant Marine Co., Ltd.
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha
Orient Overseas Container Line, Inc.
Sea-Land Service, Inc.
Yangming Marine Transport Corp.
Synopsis: The proposed amendment adds Nedlloyd Lijnen B.V. ("Nedlloyd") as a party to the Agreement; however, Nedlloyd's participation in the Capacity Management Program ("Program") under the Agreement will not commence until September 3, 1995, the beginning of the next quarterly accounting period under that Program.

Agreement No.: 203–011503.
Title: Hapag-Lloyd Aktiengesellschaft, Nippon Yusen Kaisha, Neptune Orient Lines, Ltd. and P&O Containers Limited Far East/U.S. Pacific and Atlantic Coasts/North Europe Discussion Agreement.
Parties:
Hapag-Lloyd Aktiengesellschaft
Nippon Yusen Kaisha
Neptune Orient Lines, Ltd.
P&O Containers Limited.
Synopsis: The proposed Agreement authorizes the parties to meet, discuss, exchange information and reach consensus in contemplation of formulating and filing a unified rationalization and sailing arrangement in the trade between ports and points in the Far East, U.S. Pacific (including Alaska) and Atlantic Coasts and North Europe ports and points. Adherence to any agreement reached is voluntary.

Agreement No.: 224–200087–008.
Title: Port of Oakland/Maersk Pacific Ltd. Terminal Agreement.
Parties:
Port of Oakland
Maersk Pacific Ltd. ("Maersk")
Synopsis: The proposed amendment deletes 5,254 square feet of office space previously occupied by the U.S. Customs Service on Maersk's assigned premises and restates the monthly rental taking into account the deletion of said office space.

Agreement No.: 224–200133–003.
Title:
Port Authority of New York & New Jersey/Sea-Land Service, Inc. Terminal Agreement
Parties: Port Authority of New York & New Jersey Sea-Land Service, Inc. ("Sea-Land")
Synopsis: The proposed amendment provides for a 10.6 acre expansion of Sea-Land's Elizabeth, New Jersey Container Terminal.

Dated: June 14, 1995.

By order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–14951 Filed 6–19–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Marine Midland Bank, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 5, 1995.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Marine Midland Bank, Inc., Buffalo, New York; HSBC Holdings BV, Amsterdam, Nethelands, and HSBC Holdings plc, London, United Kingdom; to acquire United Northern Bancorp, Inc., Watertown, New York, and its subsidiary, United Northern Federal Savings Bank (UNFSB), Watertown, New York, pursuant to § 225.25 (b)(9) of the Board's Regulation Y. Upon acquisition UNFSB will be merged into Marine Midland Bank, Buffalo, New York.

Board of Governors of the Federal Reserve System, June 14, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–15001 Filed 6–19–95; 8:45 am]

BILLING CODE 6210–01–F

Patricia B. Morgan, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 5, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Patricia B. Morgan and Bartow Morgan, Jr., Lawrenceville, Georgia, as trustee and advisor, respectively, of a trust to be formed pursuant to the terms of the will of Bartow Morgan, III; to acquire 49.60 percent of the voting shares of Brand Banking Company, Lawrenceville, Georgia.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Grover Lynn Shade & Nelda Sue Shade, Muldoon, Texas; to retain 9.78 percent, and acquire an additional .22 percent, for a total of 10.00 percent, of the voting shares of Lost Pines Bancshares, Inc., Smithville, Texas, and thereby indirectly acquire Lost Pines National Bank, Smithville, Texas.

Board of Governors of the Federal Reserve System, June 14, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–15002 Filed 6–19–95; 8:45 am]

BILLING CODE 6210–01–F

Pointe Financial Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 5, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Pointe Financial Corporation, Boca Raton, Florida; to engage *de novo* through a 50 percent owned subsidiary, Parkside Mortgage Company, Boca Raton, Florida, in mortgage brokerage related activities, pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y. Notificant's interest in Company will be held directly by its wholly-owned subsidiary, Pointe Investments Services, Inc., Boca Raton, Florida. The proposed activity will be conducted throughout the State of Florida.

Board of Governors of the Federal Reserve System, June 14, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–15003 Filed 6–19–95; 8:45 am]

BILLING CODE 6210–01–F

Suburban Bancshares, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than July 14, 1995.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior

Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Suburban Bancshares, Inc., Greenbelt, Maryland; to acquire 24.33 percent of the voting shares of Financial Institutions Holding Corporation, College Park, Maryland, and thereby indirectly acquire The Bank of Bowie, Bowie, Maryland.

Board of Governors of the Federal Reserve System, June 14, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–15004 Filed 6–19–95; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

Public Buildings Service; Phoenix Federal Building—United States Courthouse; Notice of Availability; Final Environmental Impact Statement

Action: Pursuant to the Council on Environmental Quality Regulations (40 Code of Federal Regulations 1500–1508) implementing procedural provisions of the National Environmental Policy Act (NEPA), the U.S. General Services Administration (GSA) hereby gives notice that a Final EIS for the construction of a new FB–CT within the City of Phoenix, Arizona has been prepared and filed with the United States Environmental Protection Agency (EPA). The proposed project would include the construction of a new FB–CT with appropriately 515,010 gross square feet (GSF) of building space and 360 onsite parking spaces. The preferred site encompasses approximately 4.5 acres and is located within the city's redevelopment area known as the Government Mall. The site is bound by Washington Street to the north, 4th Avenue to the east, Jefferson Street to the south and 6th Avenue to the west. Under the Proposed Action, 5th and 6th Avenues would be closed to vehicular traffic.

Alternatives: In addition to the Proposed Action, the DEIS examined three alternatives including: (1) construction of the FB–CT on the same site as the Proposed Action with 6th Avenue remaining open to vehicular traffic; (2) construction of the FB–CT on an alternate site within the DBA; and (3) no action or continued use of the existing FB–CT and lease space.

Public Involvement: The Final EIS, prepared by GSA addressing this action, is on file and may be obtained from: Mr. Alan R. Campbell, U.S. General Services Administration, Portfolio Management Division (9PT), 525 Market Street, San Francisco, CA 94105–2799, Telephone: (415) 744–5252. A limited number of copies of the Final EIS are available to fill single copy requests. Loan copies of the Final EIS are available for review at the city of Phoenix Central Library and at the GSA Field Office, 230 North 1st Avenue, Phoenix, Arizona.

GSA encourages all interested parties to comment on the document. Written comments on the Final EIS can be submitted until July 14, 1995 to the address listed above, sent via facsimile to (415) 744–8117, or mailed electronically to "alan.campbell@gsa.gov" (Internet).

Dated: June 9, 1995.

Aki K. Nakao,

Acting Regional Administrator (9A).

[FR Doc. 95–14955 Filed 6–19–95; 8:45 am]

BILLING CODE 6820–23–M

X.500 Registration of U.S. Government Organizational Units

AGENCY: Electronic Messaging Program Management Office, GSA.

ACTION: Notice.

SUMMARY: The governmentwide Electronic Messaging Program Management Office (E-Mail PMO) has received delegation of naming authority for X.500/Directory entries immediately subordinate to the entry "County=US/Organization=U.S. Government" within the global X.500/Directory hierarchy. This authority was granted by the United States Department of Commerce, National Institute of Standards and Technology effective May 11, 1995.

FOR FURTHER INFORMATION CONTACT:

Jack L. Finley, Program Manager, Electronic Messaging Program Management Office, Registration Services, General Services Administration, Room 1227, 18th and F Streets, NW., Washington, DC 20405, telephone 202–501–1337.

SUPPLEMENTARY INFORMATION: In delegating this authority, NIST confers onto the GSA the authority and responsibility to register, maintain, and publicize X.500/Directory names of organizational or other entries which are immediate subordinates of the entry "Country=US/Organization=U.S. Government" within the global X.500/Directory hierarchy. Furthermore, GSA will insure that each registered X.500/Directory name complies with the Directory Schema Rules and Directory Information Tree (DIT) Structure Rules in force at the time of registration.

Dated: June 6, 1995.

Jack L. Finley,

Program Manager, Electronic Messaging Program Management Office (KB–E), Office of Emerging Technology, General Services Administration.

[FR Doc. 95–14954 Filed 6–19–95; 8:45 am]

BILLING CODE 6820–25–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Institute for Occupational Safety and Health; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following committee meeting.

Name: Board of Scientific Counselors, National Institute for Occupational Safety and Health (BSC, NIOSH).

Times and Dates: 10 a.m.–4 p.m., July 13, 1995; 9 a.m.–12 noon, July 14, 1995.

Place: The Washington Court Hotel, Sagamore Room, 525 New Jersey Avenue, N.W., Washington, D.C. 20001.

Status: Open to the public, limited only by space available.

Purpose: The Board reviews research activities to provide guidance on the quality, timeliness, and efficacy of the Institute's programs.

Matters to be Discussed: The agenda will include a report from the Director of NIOSH, NIOSH's 25th anniversary plans, an ergonomic report, NIOSH training grants, a legislative report, a report on child labor, and future activities of the Board.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Richard A. Lemen, Ph.D., Executive Secretary, BSC, NIOSH, and Deputy Director, NIOSH, CDC, 1600 Clifton Road, N.E., Mailstop D–35, Atlanta, Georgia 30333, telephone 404/639–3773.

Dated: June 13, 1995.

Julia M. Fuller,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–15032 Filed 6–19–95; 8:45 am]

BILLING CODE 4163–19–M

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Innovations in Syphilis Prevention in the United States: Reconsidering the Epidemiology and Involving Communities—Program Announcement 523; Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Disease, Disability, and Injury Prevention and Control SEP: Innovations in Syphilis Prevention in the United States: Reconsidering the Epidemiology and Involving Communities—Program Announcement 523.

Time and Dates: 8:30 a.m.–5:30 p.m., July 27–28, 1995.

Place: Corporate Square, Building 11, Conference Room A, 1413, Corporate Square Boulevard, Atlanta, Georgia 30329.

Status: Closed.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement 523.

The meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Pub. L. 92–463.

Contact Person for More Information: Richard Conlon, Acting Chief, Resource Analysis Office (E07), National Center for Prevention Services, CDC, 11 Corporate Square, Corporate Square Boulevard, Atlanta, Georgia, 30329, Telephone 404/639–8023.

Dated: June 14, 1995.

Julia M. Fuller,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–15031 Filed 6–19–95; 8:45 am]

BILLING CODE 4163–18–M

Food and Drug Administration

[Docket No. 95D–0115]

Compliance Policy Guides Manual; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a new bound edition of the "FDA Compliance Policy Guides" (CPG manual). The CPG manual is intended to provide guidance to FDA district offices by offering a convenient and organized system for statements of FDA compliance policy, including those statements which contain regulatory action guidance information.

ADDRESSES: The CPG manual may be ordered from National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Orders must reference NTIS order number PB95–915499 for each copy of the manual. Payment may be made by check, moneyorder, charge card (American Express, VISA, or Mastercard), or billing arrangements made with NTIS. Charge card orders must include the charge card account number and expiration date. For telephone orders or further information on placing an order, call NTIS at 703–487–4650. The CPG manual is available for public examination in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Barbara A. Rodgers, Office of Regulatory Affairs (HFC–230), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0417.

SUPPLEMENTARY INFORMATION: FDA is issuing the new bound edition of the CPG manual to provide information on FDA compliance policy and internal guidance to FDA district offices in a more organized, convenient, and economical format. With the publication of this bound edition, the CPG manual has been reorganized into a general chapter and five program area chapters. The new CPG manual contains 500 individual guides; 227 of these have been revised and/or updated, and 26 of the guides have been deleted. This new bound edition of CPG's does not contain chapters 55 through 58, which contained memoranda of understanding (MOU's), interagency agreements (IAG's), and mutual recognition agreements (MRA's).

The statements made in the CPG manual are not intended to create or confer any rights, privileges, or benefits on or for any private person, but are intended merely for internal FDA guidance.

Dated: June 13, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–14948 Filed 6–19–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95F–0129]

Shell Chemical Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Shell Chemical Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of poly(oxy-1,2-ethanediyloxycarbonyl-2,6-naphthalenediylcarbonyl) polymer and the copolymer of poly(oxy-1,2-ethanediyloxycarbonyl-2,6-naphthalenediylcarbonyl) with ethylene terephthalate as components of articles intended for food-contact use.

DATES: Written comments on the petitioner's environmental assessment by July 20, 1995.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3086.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 5B4451) has been filed by Shell Chemical Co., 130 Johns Ave., Akron, OH 44305–4097. The petition proposes to amend the food additive regulations in part 177 (21 CFR part 177) to provide for the safe use of poly(oxy-1,2-ethanediyloxycarbonyl-2,6-napthalenediylcarbonyl) polymer and the copolymer poly(oxy-1,2-ethanediyloxycarbonyl-2,6-naphthalenediylcarbonyl) with ethylene terephthalate as components of articles intended for food-contact use.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before July 20, 1995, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments

are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: June 9, 1995.

Alan M. Rulis,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–14946 Filed 6–19–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95D–0114]

Medical Devices; Premarket Notification (510(k)) Procedures/Good Manufacturing Practices; Compliance Program; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of revisions to the standard compliance program for good manufacturing practices (GMP's) (Compliance Program 7382.830). These revisions are intended to refine and refocus FDA's compliance program linking GMP requirements with class I and II premarket notification (510(k)) submissions and other relevant applications. The revisions are being made as part of FDA's reinventing Government initiative and have been incorporated into "Compliance Program 7382.830, Inspection of Medical Device Manufacturers," which supersedes the "Medical Device Reference List" procedures.

ADDRESSES: Submit written requests for single copies of the revisions to the Division of Small Manufacturers Assistance (DSMA) (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–443–6597 or 1–800–638–2041. Requests should be identified with the docket number found in brackets in the heading of this document. Send two self-addressed adhesive labels to assist the office in processing your requests. The revisions are available for public examination in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday. Copies of a facsimile of the revision are available from CDRH Facts on Demand by requesting the following document numbers and their respective parts: 2702 (compliance program), 3702 (attachment A), 4702 (attachment A–1), 5702 (attachment B through F), 6702 (attachment G), (1–800–899–0281). Copies of the revisions may also be obtained from the Electronic Docket administered by DSMA and available to any one with a video terminal or personal computer (1–800–252–1366).

FOR FURTHER INFORMATION CONTACT: Marje A. Hoban, Center for Devices and Radiological Health (HFZ–306), Food and Drug Administration, 2094 Gaither Rd., MD 20850, 301–594–4695.

SUPPLEMENTARY INFORMATION: In a letter dated April 7, 1995, the Director of the Center for Devices and Radiological Health advised registered medical device companies of changes that FDA was making to its compliance program linking class I and II 510(k) submissions with GMP requirements. These procedural changes became effective May 1, 1995, and have been made part of the standard compliance program for GMP's (Compliance Program 7382.830). FDA is now making the revisions available in conjunction with the April 7, 1995, letter. The general framework of the restructured program incudes: (1) Criteria for linking GMP's with marketing clearance for class I or II (510(k)) devices; (2) procedures for notifying firms that clearance of their class I or II (510(k)) submission may be deferred due to serious, related GMP violations; (3) actions FDA will take to reply promptly to a firm's response to an FDA Form 483 and/or GMP Warning Letter; and (4) timeframes for agency action. The changes noted above also apply to PMA supplements that are not subject to the PMA preapproval inspection program, and to export certificates for legally marketed devices.

These changes are being made as part of FDA's reinventing Government initiative. This compliance program supersedes the "Medical Device Reference List" announced in the **Federal Register** of October 26, 1993 (58 FR 57614).

Dated: June 12, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–14947 Filed 6–19–95; 8:45 am]

BILLING CODE 4160–01–F

Public Health Service

Centers for Disease Control and Prevention; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HC (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 60 FR 17792–17795, dated April 7, 1995) is amended to reflect the merger of the Division of Training and Manpower Development and the Division of Standards Development and Technology Transfer, and the establishment of the Education and Information Division, National Institute for Occupational Safety and Health.

Section HC–B, Organization and Functions, is hereby amended as follows:

After the functional statement for the *Health Effects Laboratory Division (HCC3)*, insert the following:

Education and Information Division (HCC4). (1) Develops from existing scientific and technical information documents containing (a) criteria for recommended occupational safety and health standards, and (b) technical and scientific information relevant to a variety of occupational safety and health issues; (2) develops recommended health and safety standards under the Occupational Safety and Health Act of 1970 and the Federal Mine Safety and Health Act of 1977; (3) prepares and coordinates with the Office of the Director comments and testimony on regulations proposed by the Department of Labor and other departments or agencies that pertain to occupational diseases or injuries; (4) assists the Institute Director in establishing and operating a priority system for research, surveillance, document development, and recommended standards; (5) prepares and at least annually revises the legislatively mandated toxic substance list; (6) establishes and maintains a library and a clearinghouse for receiving, storing, retrieving, and disseminating technical information on occupational safety and health; (7) provides risk evaluations for NIOSH policy recommendations; (8) develops and tests occupational safety and health training materials, technologies, strategies, and courses; (9) determines occupational safety and health workforce needs on a nationwide basis and develops strategies to meet those needs; (10) develops methods, through research, to evaluate and monitor the effectiveness of training, including program features, faculty, training methods, and outcome measures; (11) conducts the NIOSH summer intern training program for minority students; (12) serves as the NIOSH printing office; (13) provides graphic design and audio-visual standards and support for the Institute; (14) serves as the NIOSH Docket Office; (15) evaluates in coordination with other divisions the economic and societal burden of occupationally induced diseases and injuries; (16) establishes and maintains the NIOSH archives; and (17) coordinates all relevant Division activities with the Office of the Director.

Information Resources Branch (HCC42). (1) Operates the Institute's libraries for occupational safety and health information for use by occupational safety and health professionals; (2) acquires, disseminates, and coordinates scientific and technical information relating to occupational safety and health in support of Division activities and NIOSH research programs; (3) plans, implements, and coordinates dissemination activities for all NIOSH publications (printed and electronic); (4) verifies printing clearance for NIOSH publications within NIOSH/CDC procedures; (5) develops and manages the NIOSH exhibit program for professional meetings and conferees; (6) develops and maintains electronic data systems for the Institute to assess information; and (7) establishes and maintains the NIOSH archives.

Risk Analysis and Document Development Branch (HCC43). (1) From existing scientific literature develops documents containing (a) criteria for recommended occupational safety and health standards, and (b) technical and scientific information relevant to a variety of occupational safety and health issues for the U.S. Department of Labor and other Federal agencies; (2) coordinates testimony in response to the Department of Labor, Environmental Protection Agency, and other Federal and State agencies' rulemaking; (3) incorporates recommended work practices, engineering controls, and available evidence of technological feasibility into documents and testimony; (4) analyzes the economics of occupational safety and health interventions; (5) maintains the NIOSH Docket Office; (6) coordinates scientific review of NIOSH policy documents and testimony; (7) conducts risk analyses and develops risk profiles; (8) researches and develops new quantitative risk assessment methodologies; (9) assists the Director of NIOSH in establishing a priority system for surveillance, research, document development, recommended standards, and training; (10) identifies information on worker exposures, hazard severity, potential for intervention, and advances in new technology; and (11) coordinates requests for policy and/or scientific review of internationally produced documents.

Training and Educational Systems Branch (HCC44). (1) Develops, through research and evaluation, training resources in industrial hygiene, safety, occupational medicine, nursing, and allied professions; (2) collaborates on cooperative training programs with qualified outside organizations; (3) determines strategies for and advises on occupational safety and health workforce needs on a nationwide basis; (4) defines and evaluates selected workforce certification/accreditation programs; (5) establishes career development guidelines for training of employers and employees in the prevention of injuries and diseases; (6) provides graphic design and audio-visual standards and support for the Institute; (7) consults and advises NIOSH professionals on presentation techniques and selection of media; and (8) consults on workforce development.

Delete in their entirety the titles and functional statements for the *Division of Training and Manpower Development (HCC9)* and the *Division of Standards Development and Technology Transfer (HCCC)*.

Dated: June 9, 1995.

David Satcher,

Director.

[FR Doc. 95–15033 Filed 6–19–95; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Extension of the Public Comment Period—Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit From Aronov Realty and Management Inc., in Baldwin County, AL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of extension of the public comment period.

SUMMARY: The Fish and Wildlife Service (Service) gives notice that the public comment period on the environmental assessment/habitat conservation plan for the Aronov Realty and Management Incorporated (Applicant) application for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act) is being extended. The Applicant has been assigned permit number PRT–802986. The original 30-day comment period was to end on June 30, 1995 (**Federal Register** 60:28428). In the intervening period, the Applicant has proposed certain additional mitigation and minimization measures to fully address the potential impacts to the Bon Secour National Wildlife Refuge and the endangered Alabama Beach mouse (ABM).

DATES: The public comment period for this proposal, which originally closed on June 30, 1995, is now extended until July 14, 1995.

ADDRESSES: Persons wishing to review the application, Environmental Assessment, or Habitat Conservation Plan may obtain a copy *by writing* the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection, by appointment, during normal business hours at the Regional Office, or the field office. Written data or comments concerning the application, Environmental Assessment, or Habitat Conservation Plan should be submitted to the Regional Office. Please reference permit under **PRT–802986** in such comments.

Regional Permit Coordinator (TE), U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 210, Atlanta, Georgia 30345, (telephone 404/679–7110, fax 404/679–7280).

Field Supervisor, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213 (telephone 601/965–4900, fax 601/965–4340).

FOR FURTHER INFORMATION CONTACT: Rick G. Gooch at the Atlanta, Georgia, Regional Office.

SUPPLEMENTARY INFORMATION: The ABM, *Peromyscus polionotus ammobates*, is a subspecies of the common oldfield mouse *Peromyscus polionotus* and is restricted to the dune systems of the Gulf Coast of Alabama. The known current range of ABM extends from Fort Morgan eastward to the western terminus of Alabama Highway 182, including the Perdue Unit on the Bon Secour National Wildlife Refuge (BSNWR). The sand dune systems

inhabited by this species are not uniform; several habitat types are distinguishable. The species inhabits primary dunes, interdune areas, secondary dunes, and scrub dunes. The depth and area of these habitats from the beach inland varies. Population surveys indicate that this subspecies is usually more abundant in primary dunes than in secondary dunes, and usually more abundant in secondary dunes than in scrub dunes. Optimal habitat consists of dune systems with all dune types. Though fewer ABM inhabit scrub dunes, these high dunes can serve as refugia during devastating hurricanes that overwash, flood, and destroy or alter secondary and frontal dunes. ABM surveys on the Applicant's property reveal habitat occupied by ABM. The Applicant's property contains designated critical habitat for the ABM. Construction of the project may result in the death of, or injury to, ABM. Habitat alterations due to house placement and its subsequent use may reduce available habitat for food, shelter, and reproduction. Further, the Applicant's property borders the BSNWR, and is considered Priority I lands for inclusion into the Perdue Unit (of BSNWR).

The Environmental Assessment considers the environmental consequences of several alternatives. One action proposed is the issuance of the incidental take permit. This alternative provides for restrictions that include placing landward of the designated ABM critical habitat, establishment of a walkover structure across that scrub dune, a prohibition against housing or keeping pet cats, ABM competitor control and monitoring measures, scavenger-proof garbage containers, restoration of dune systems impacted by the construction, creation of a mitigation endowment for offsite acquisition of suitable ABM habitat, and the minimization and control of outdoor lighting. The Habitat Conservation Plan provides a funding source for these mitigation measures. Another alternative is Service acquisition of the property for inclusion into the BSNWR. A third alternative is no-action, or deny the request for authorization to incidentally take the ABM.

Dated: June 13, 1995.

Jerome M. Butler,

Acting Regional Director.

[FR Doc. 95–15012 Filed 6–19–95; 8:45 am]

BILLING CODE 4310–55–P

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 10, 1995. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by July 5, 1995.

Carol D. Shull,

Keeper of the Notional Register.

Alabama

Morgan County

New Decatur—Albany Historic District, Roughly, 2d Ave. (100 block NE., 100 block SE. E side, 300 block SE. W side) and parts of Johnson and Moulton Sts., Decatur, 95000810

Florida

Dade County

Barracks and Mess Building—U.S. Coast Guard Air Station at Dinner Key, 2610 Tigertail Ave., Miami, 95000816

Georgia

Bulloch County

Donehoo—Brannen House, 332 Savannah Ave., Statesboro, 95000826

Dodge County

Eastman, William Pitt, House, 407 Eastman Way, Eastman, 95000824

Jackson County

Williamson—Maley—Turner Farm, GA 15 NE of Jefferson, Jefferson vicinity, 95000823

Stephens County

Martin Historic District, Along both sides of GA 17 and the Norfolk Southern RR tracks, Martin, 95000825

Iowa

Johnson County

St. Mary's Rectory, 610 E. Jefferson St., Iowa City, 95000811

Louisiana

Acadia Parish

Lewis & Taylor Lumberyard Office, 403 E. Louisiana Ave., Rayne, 95000812

De Soto Parish

Grand Cane Historic District, U.S. 171, roughly between Burrow and Graham Sts., Grand Cane, 95000815

Ouachita Parish

Filhiol, Roland M., House, 111 Stone Ave., Monroe, 95000813

Minnesota

Dakota County

First Presbyterian Church, 602 Vermillion St., Hastings, 95000822

Hennepin County

Chamber of Commerce, 400–412 S. 4th St., 301 4th Ave. S., Minneapolis, 95000821

Second Church of Christ, Scientist, Administration Building, 1115 Second Ave. S., Minneapolis, 95000820

New York

Warren County

Land Tortoise (radeau) Shipwreck Site, Address Restricted, Lake George vicinity, 95000819

South Dakota

Corson County

Holy Spirit Chapel, SE of SD 65 crossing of Grand R., N of Firesteel, Firesteel vicinity, 95000817

Vermont

Windsor County

Progressive Market, 63 S. Main St., Hartford, 95000814

Virginia

Brunswick County

Rocky Run Methodist Church, VA 616, 1.8 mi. E of jct. with VA 46, Alberta vicinity, 95000828

Hanover County

Laurel Meadow, VA 643 E side, 0.2 mi. S of jct. with VA 627, Mechanicsville vicinity, 95000827

Tazewell County

Old Kentucky Turnpike Historic District, Along Indian Creek Rd., Old Kentucky Tnpk., College Hill Rd. and Cedar Valley Dr., Cedar Bluff, 95000829

Richmond Independent City

Shockoe Hill Cemetery, Jct. of Hospital and 2nd Sts., Richmond (Independent City), 95000818.

In order to assist in the preservation of the following property, the commenting period has been shortened to 5 days:

Arkansas

Pulaski County

Beal—Burrow Dry Goods Building, (Thompson, Charles L., Design Collection TR), 107 E. Markham, Little Rock, 87001546.

[FR Doc. 95–15022 Filed 6–19–95; 8:45 am]

BILLING CODE 4310–70–P

Draft Recommendations Regarding the Disposition of Culturally Unidentifiable Human Remains and Associated Funerary Objects

AGENCY: National Park Service, Interior.

ACTION: Notice and request for comments.

SUMMARY:

The Native American Graves Protection and Repatriation Act (25 U.S.C. 3007(c)(5).) requires the Review Committee to recommend specific actions for developing a process for the disposition of culturally unidentifiable Native American human remains. The seven individuals on the committee have given this matter great thought and have developed the enclosed draft outlining their position and several options. The enclosed draft is intended for wide circulation to elicit comments from Indian tribes, Native Hawaiian organizations, museum, Federal agencies, and national scientific and museum organizations. We are publishing this draft in the *Federal Register* for broad public comment.

EFFECTIVE DATES:

Comments should be received by September 30, 1995 in order for them to receive the committee's full consideration at their next scheduled meeting. For additional information, please contact Dr. C. Timothy McKeown at (202) 343–4101.

Please note that we will not accept any comments in electronic form.

ADDRESS FOR COMMENT:

Anyone interested in commenting on the committee's draft recommendations should send written comments to:

The NAGPRA Review Committee

c/o Archeological Assistance Division

National Park Service

Box 37127, Suite 210

Washington DC, 20013–7127

Dated: June 14, 1995

Veletta Canouts,

Acting, Departmental Consulting Archeologist

Acting Chief, Archeological Assistance Division

Call For Comments

Draft Recommendations By The N.A.G.P.R.A. Review Committee On The Disposition Of Culturally Unidentifiable Native American Remains

Under NAGPRA (25 U.S.C. 3007(c)(5)) the Review Committee is specifically charged with "compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum and recommending specific actions for developing a process for disposition of such remains." What follows below is a draft of recommendations from the Review Committee to the Secretary in compliance with the mandate in NAGPRA. This draft is intended for wide circulation to elicit the comments, suggestions and opinions of members of Indian tribes, Native Hawaiian organizations, scientific organizations, and museums as described under 25 U.S.C. 3007 (e). We wish to emphasize that these recommendations are preliminary and every element is open to change depending on the comments of the public.

In fulfilling their responsibility, the Review Committee makes the following observations and recommendations:

1. Although the disposition of culturally "unidentifiable human remains" is left open in NAGPRA, there is a firmly established principle in the act that assigns responsibility for what happens to human remains and associated funerary objects to lineal descendants and culturally affiliated tribes. This general principle should be followed in determining the disposition of culturally "unidentifiable human remains" that are known to be ancestral Native Americans. It is true that there are remains and associated funerary objects in museums and Federal agencies for which it is not possible to identify specific cultural connections to any particular tribe today. However, such remains and objects, no matter how ancient, are nevertheless Native American, and they should be treated according to the wishes of the Native American community. *Ultimately, decisions about what happens to the remains of Native American individuals from anywhere in the United States and associated funerary objects should rest in the hands of Native Americans.* These decisions can and should be informed by anthropological, archaeological, historical, folkloric, biological, linguistic and spiritual evidence, and nonNative Americans can and should be consulted when appropriate in the decision making process. However, the final decision should be made entirely by Native American people.

2. Although the Act specifically mentions only "unidentifiable human remains", it is consistent with other aspects of the Act to include in this discussion "associated funerary objects" as well. Therefore all recommendations on the disposition of unidentifiable human remains also apply to any funerary objects that are associated with those remains as those terms are defined in the Act. It may be that additional legislation will be required to insure that Native American groups are provided with the opportunity to repatriate associated funerary objects accompanying unidentified remains.

3. The Committee has heard extensive testimony from physical anthropologists and archaeologists as to the broader scientific, medical, and humanistic values that may be gained from analysis of Native American skeletal remains from both the recent and distant path. While the Committee recognizes there may be potential value in such analyses, such values do not provide or confer a right of control over Native American human remains that supersedes the spiritual and cultural concerns of Native American people who clearly have the closest general affiliation to these remains. The issue is not whether there is positive benefit to be gained from analysis of remains, but who has the right and responsibility to make decisions about whether such analysis should take place.

It is the responsibility of archaeologists and physical anthropologists to communicate with Native American tribes and groups to inform them of the potential values of analysis of human remains and associated funerary objects and allow the tribes and groups to use this information as they choose in making their decisions about the treatment and disposition of those remains and objects.

4. The term "unidentifiable human remains" can be applied to three different groups of remains and these should be considered separately. The three categories include: 1. remains for which there is cultural affiliation with Native American groups who are not formally recognized by the BIA; 2. ancient remains for which there is specific information about the original location and circumstances of the burial; and 3. remains which may be Native American but which lack information about their original burial location.

1. Remains for which there is cultural affiliation with Native American groups who are not formally recognized by the BIA

There are remains that can be directly traced by a preponderance of the evidence to tribes, villages, communities of Native Americans which may not be formally recognized by the Bureau of Indian Affairs as "Tribes". In these cases, the remains are only "unidentifiable" because of the wording of the Act. In the Act, the definition of Indian "Tribe" has been interpreted by the Department of the Interior to mean only those groups that have received formal recognition by the BIA as "tribes". There are, however, many groups in the United States that are "eligible for the special programs and services provided by the United States to Indians because of their status as Indians" (25 U.S.C. 3001 (7)), but have not received formal BIA recognition by choice or other circumstances.

In cases where such groups are able to establish cultural affiliation with specific remains it is the unequivocal recommendation of the Review Committee that they should be accorded the same rights and responsibilities given to BIA recognized Tribes for the repatriation of those specific remains. Cultural affiliation in these cases should follow the guidelines of the Act and be determined by a preponderance of the evidence based upon geographical, kinship, biological, archaeological, anthropological, linguistic, folkloric, oral traditional, historical, or other relevant information or expert opinion (25 U.S.C. 3006 a(4)).

The Review Committee Would Appreciate Suggestions on How to Identify and Recognize Those Native American Groups Who Should Be Eligible To Claim Remains For Repatriation But Are Not On The Bureau of Indian Affairs List Of Federally Recognized "Tribes"

2. Ancient remains for which there is specific information about the original location and circumstances of the burial

There is a very large number of remains from across the United States which come from earlier time periods and it is not possible to trace directly ancestry to any known contemporary tribe or group. Remains coming from archaeological excavations at sites that were occupied before the arrival of Europeans will most commonly fall into this category. From available evidence, it is often possible to determine that several groups or tribes may have historical or deeper ancestral ties to the area. In these cases, it may or may not be possible to establish direct links between the ancient remains and any specific contemporary groups or tribes.

In these cases, responsibility for what happens to such remains rests with those tribes and groups who are able to show an affinity both to the territory and to the general time period from which the remains came. Tribes or groups will demonstrate such geographic and temporal affinity through evidence based on biological, archaeological, linguistic, folkloric, oral traditional or other relevant information or expert opinion. Tribes or groups who are able to demonstrate geographical and temporal affinity to ancient remains will decide on what happens to those remains based on consensual agreement. It is the responsibility of the tribes who claim affiliation to come forward and state their claim and present their evidence of affiliation. Based on information in the inventories received from museums and Federal agencies, the Review Committee will take responsibility for notifying all tribes who may be potentially affiliated with particular remains.

The Act anticipates the circumstances of more ancient remains to some extent in 25 U.S.C. 3006 (e), "Competing Claims". This section deals with situations in which there are multiple claims for remains or objects and advises that museums and Federal agencies retain those remains and objects until the "requesting parties agree upon its disposition or the dispute is otherwise resolved pursuant to the provisions of this Act or by a court of competent jurisdiction." Although the case of "unidentified" remains may well not involve a dispute, the same general principles should apply. Specifically, a museum or Federal agency should retain "culturally unidentified" remains and associated funerary objects until such time as all potentially affiliated tribes and groups reach consensual agreement on disposition of the remains and associated objects.

3. Remains which are likely to be Native American but which lack information about their original burial location

There are remains in museums and Federal agencies which are known or appear to be Native American through museum records or simple visual examination but which lack sufficient information to identify more specific cultural or geographical affinities. There are two broad types of remains that may fall in this group. First, there are remains for which there may be some indication that they are culturally affiliated with one federally recognized Tribe or Native Hawaiian group, but there is insufficient independent evidence to confirm the affiliation. It is possible, for example, to have remains in museums which are labeled as belonging to one tribe or group, but with no supporting evidence of any kind to support that identification. In such cases the remains may be affiliated with one or more additional groups of Native Americans or with non-Native Americans. In these cases, however, the museum or Federal Agency should not have to bear the responsibility of determining whether the remains should be returned to a specific group. The Act actually does speak to this situation to some extent in 25 U.S.C. 3006 (a)(4). In this section there are guidelines for when a museum or federal agency is unable to establish cultural affiliation of remains in the inventory process. In these cases, the burden of responsibility goes to the Tribe to "show cultural affiliation by a preponderance of the evidence".

In cases such as this, when the museum or Federal agency is unable to reasonably confirm the cultural affiliation of specific Native American human remains, the inventory of these remains should be provided to the Review Committee, along with a summary made by the museum or Federal agency of whatever limited information is available that might relate to the identity of the individuals involved. The Review Committee then has the opportunity to review available information. The Committee can either decide there is sufficient evidence to reasonably determine cultural affiliation or that the remains should continue to be treated as "unidentifiable."

Another group of remains with limited cultural or geographical information remains are those for which there is no available information about their origins or any possible contemporary descendent Tribes or groups. There are, for example, remains in museums which are simply identified as "Native American" or "Indian", with no information about where they came from. In these cases, there is insufficient evidence to reasonably identify tribal affiliation either culturally, biologically or geographically. Although this is likely to be a relatively small number of individuals, they are no less important than the other remains held by museums and Federal agencies today.

If it has been determined that these remains are Native American, then broad regional associations of Native American tribes and groups may take responsibility for determining the ultimate disposition of such remains. One possibility that has been raised is a series of regional cemeteries or mausoleums can be established on protected lands where these unidentified individuals can be reburied and protected forever. Other alternatives to regional cemeteries for the disposition of unidentifiable Native American remains may also be worked out by the regional associations.

5. Several groups have stepped forward and made explicit claims for all those Native American remains for which there are no identifiable cultural descendants. The sentiment of these groups expressed in this public commentary is that such remains should not be left unattended in museums, but should be returned for reconsecration in the earth. The exact cultural affiliation of these individuals is not as important as the fact that they were removed from their final resting places without consent. There is diverse opinion in the Native American community about the treatment of individuals without cultural affiliation. The conditions outlined above for individuals without specific tribal affiliations should be applied for all so-called "unidentifiable" individuals.

6. The continuance of a Review Committee is integral to the long-term resolution of issues and problems related to the ultimate disposition of culturally unidentified human remains and associated funerary objects.

7. The Review Committee recognizes that many Native American tribes and groups have already developed regional and cultural associations to address the issue of culturally unidentified remains. These existing associations provide good models for repatriating and caring for culturally "unidentified" remains (as defined by the Act) in an expeditious and respectful manner. The guidelines outlined above are explicitly intended to facilitate and encourage the efforts of these existing associations.

8. As a means of stimulating discussion, the Review Committee would like to offer some suggestions about possible alternative procedures for repatriating unidentifiable human remains. These are suggestions only and not intended in any way as proposed regulations. The Committee offers more than one option for resolving several procedural issues and would like to solicit comments about the relative desirability of these or other options.

Draft for Comment Only

Possible procedures for deciding the disposition of unidentified remains
Procedures for identification of potential cloimants

Option 1

(1) NPS compiles map of groups and tribes who may be related to all lands across time in the United States.

(2) NPS sends inventories of unidentifiable remains to groups with historical or cultural ties to the area from which the remains were taken, or where they currently reside if their original location is unknown.

(3) Interested Native American groups determine if there is evidence of a direct biological or cultural affinity between them and the remains.

(4) In the absence of such evidence, groups may use geographical and chronological information to establish an affinity to the remains.

Option 2

(1) NPS prepares abstracts of the complete national inventories and sends copies of these abstracts to every tribe and potentially descendant Native American group in the United States.

(2) Interested Native American groups review information on remains from areas where they maintain cultural and historical affinities.

(3) Interested groups determine if there is evidence of a direct biological or cultural affinity between them and the remains.

(4) In the absence of such evidence, groups may use geographical and chronological information to establish an affinity to the remains.

Procedures for Reviewing Claims

Option 1

(1) Tribe(s) or group(s) make a request for repatriation by providing NPS evidence of their affinity to the remains.

(2) NPS reviews claims for remains and, in consultation with the NAGPRA review committee, makes determinations of cultural affinity.

(3) The museum or requesting group may appeal the NPS decision to the NAGPRA review committee or appropriate courts.

Option 2

(1) Tribe(s) or group(s) requests repatriation by presenting evidence of an affinity with the collection to the museum or Federal agency holding the remains.

(2) Museum or Federal agency reviews request for repatriation and makes determinations of cultural affinity.

(3) If the museum or Federal agency decides an affinity does not exist, the requesting group may appeal the decision to the NAGPRA review committee or appropriate courts.

Procedures for making repatriations to Native American groups without BIA recognition

(1) If it is determined that a Native American group has an affinity with the remains, a notice of intent to repatriate is published in the federal register with an appropriate waiting period to allow other tribes enough time to file additional claims.

(2) If additional claims for specific remains are filed after this publication, the NPS will review the case for each additional request.

(3) If it is determined based on this review that the additional requesting tribe or group does have an affinity with the remains no repatriation will occur until all claimants reach a consensual agreement on the disposition of the remains.

(4) If agreement is reached, the remains will be repatriated to the requesting groups.

(5) If agreement cannot be resolved through consensual agreement, the claimants can ask the NAGPRA review committee to mediate the dispute or appeal to the appropriate courts.

[FR Doc. 95–14999 Filed 6–19–95; 8:45 am]

BILLING CODE 4310–70–F

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32697]

Norfolk Southern Railway Company—Trackage Rights Exemption—CSX Transportation, Inc.

CSX Transportation, Inc. (CSXT) has agreed to grant overhead trackage rights to Norfolk Southern Railway Company (NS) over a total of approximately 1,442 feet of CSXT rail lines located in Chattanooga, TN. The lines involved are described as follows:

(1) A portion of Track No. 161–C beginning at Track Station (T.S.) 1+24 of Track No. 161–C at ownership point between CSXT and NS, 3,536 feet north of milepost J–149, and extending south to the point of switch for Track No. 161–C at T.S. 0+00 of Track No. 161–C, 3,412 feet north of milepost J–149, a distance of 124 feet.

(2) A portion of Track No. 161, known as the River Lead Track, beginning at the point of switch for Track No. 161–C, 3,412 feet north of milepost J–149, and extending south to the point of

switch for Track No. 161–A, 2,315 north of milepost J–149, a distance of 1,097 feet.

(3) A portion of Track No. 161–A beginning at the point of switch for Track No. 161–A at T.S. 0+00 of Track No. 161–A, 2,315 feet north of milepost J–149, and extending south to T.S. 0+97 of Track No. 161–A at the ownership point between CSXT and NS, 2,218 feet north of milepost J–149, a distance of 97 feet.

(4) A portion of Track No. 161–B beginning at the point of switch for Track No. 161–B at T.S. 0+00 of Track No. 161–B, 3,402 feet north of milepost J–149, and extending south to T.S. 1+24 of Track No. 161–B at the ownership point between CSXT and Siskin Steel & Supply Co., Inc., a distance of 124 feet.

The purpose of the transaction is to allow NS to continue serving Siskin Steel after a portion of NS's track is removed to accommodate an expansion of Siskin Steel's facility. The trackage rights were to become effective on or after June 7, 1995.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Greg E. Summy, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

As a condition to use of this exemption, any employees adversely affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: June 12, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–15011 Filed 6–19–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Advisory Council on Violence Against Women

AGENCY: Department of Justice.

ACTION: Notice of establishment of the Advisory Council on Violence Against Women.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, and Executive Order No. 12838, the Attorney General is establishing the Advisory Council on Violence Against Women for the purpose of providing the Attorney General and Secretary of Health and Human Services practical and general policy advice concerning the implementation of the Violence Against Women Act (VAWA). The committee will work to bring national attention to the problem of violence against women and increase public awareness of the need for improved strategies to curb and/or eliminate violence against women. In addition, the committee will provide an organized public forum of discussion of issues relating to violence against women.

Necessity for this Advisory Council arose due to implementation of the VAWA. Through the creation of new federal crimes and enhanced penalties, and the commitment of federal resources, the VAWA seeks to reduce the incidence of violence against women and to improve the response of the criminal justice system and human services providers to such violence.

The Advisory Council shall be composed of 40 members representing law enforcement agencies, the health and mental health profession, victims services and other fields involved in countering violence against women. Criteria to be used in selecting members shall include: (1) A demonstrated background and interest in the issue of violence against women, particularly domestic violence and sexual assault; (2) balance in point of view or professional perspective, and (3) geographical balance.

The Advisory Council on Violence Against Women will function solely as an advisory body in compliance with the provision of the Federal Advisory Committee Act. Its charter will be filed in accordance with the provisions of the Act.

FOR FURTHER INFORMATION CONTACT: Bonnie Campbell, Director of the Office of Violence Against Women, 10th & Pennsylvania Avenue NW., Washington, DC. Room 5302, telephone (202) 616–8894.

Dated: June 13, 1995.

Bonnie Campbell,

Director, Office of Violence Against Women.

[FR Doc. 95–14986 Filed 6–19–95; 8:45 am]

BILLING CODE 4410–01–M

Office of Community Oriented Policing Services, COPS Universal Hiring Program

AGENCY: Office of Community Oriented Policing Services, Department of Justice.

ACTION: Notice of availability.

SUMMARY: The Department of Justice, Office of Community Oriented Policing Services ("COPS") announces the availability of grants to hire and/or rehire additional sworn law enforcement officers to engage in community policing. The COPS Universal Hiring Program permits interested agencies to supplement their current sworn forces or to establish a new law enforcement agency. Eligible applicants include State, local, and Indian law enforcement agencies, as well as jurisdictions seeking to establish a new law enforcement agency and other agencies serving specialized jurisdictions, such as transit, housing, college, school, or natural resources. Agencies that have received funds through COPS AHEAD or COPS FAST need not submit a new application for additional officers under the COPS Universal Hiring Program. The COPS Office will contact those grantees separately to determine their need for additional resources through this program.

DATES: COPS Universal Hiring Program Application Kits will be available on or about June 10, 1995. There will be three application deadlines for the Universal Hiring Program: July 31, 1995, for Round 1; October 15, 1995, for Round 2; and March 15, 1996, for Round 3. Funding for Rounds 2 and 3 is subject to future Congressional appropriations. Applications not funded in Rounds 1 and 2 will be carried over to subsequent rounds.

ADDRESSES: COPS Universal Hiring Program Application Kits will be mailed to all eligible agencies or may be obtained by writing to COPS Universal Hiring Program, 1100 Vermont Avenue NW., Washington, DC 20530, or by calling the Department of Justice Crime Bill Response Center, (202) 307–1480 or 1–800–421–6770. Completed COPS Universal Hiring Program Application Kits should be sent to COPS Universal Hiring Program, COPS Office, 1100 Vermont Avenue NW., Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: The Department of Justice Crime Bill Response Center, (202) 307–1480 or 1–800–421–6770.

SUPPLEMENTARY INFORMATION: The Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103–322) authorizes the Department of Justice to make grants for the hiring or rehiring of law enforcement officers to engage in community policing. The COPS Universal Hiring Program permits interested agencies to supplement their current sworn forces or to establish a new law enforcement agency, through grants for up to three years. All law enforcement agencies, as well as jurisdictions considering establishing new law enforcement agencies, are eligible to apply for this program. In addition, law enforcement agencies serving specialized jurisdictions, such as transit, housing, college, school, natural resources, and others, are eligible to apply for this program.

Agencies which had submitted letters of intent or initial applications under COPS AHEAD or COPS FAST, but were not approved for funding, will need to submit an application under the COPS Universal Hiring Program because the COPS Office has not had an opportunity to review the community policing plans of these agencies. Agencies which have received grants through the COPS AHEAD or COPS FAST program do not need to submit a new application to be eligible for funding through the COPS Universal Hiring Program. These grantees will be contacted separately by the COPS Office to determine their need for additional resources through this program.

There are three application deadlines for this program: July 31, 1995, for Round 1; October 15, 1995, for Round 2; and March 15, 1995, for Round 3. Funding for Rounds 2 and 3 are subject to future Congressional appropriations. Departments may apply before any one of the deadlines and equal consideration will be given to applications in any round. Applications which are not funded in Round 1 or 2 will be carried over to subsequent rounds.

All applicants will be asked to provide basic community policing and planning information for their area of jurisdictions. In addition, new applicants serving jurisdictions of 50,000 and over, as well as all those jurisdictions seeking to establish a department and agencies serving specialized jurisdictions (such as transit, housing, college, school, or natural resources), will be asked to provide additional information relating to the applicant's community policing plan, local community policing initiatives and strategies, local community support for the applicant's community policing plans, and plans for retaining the officers at the end of the grant period. In addition to the requested community policing information, all applicants will be asked to submit a streamlined budget summary containing information relating to planned hiring levels, salary and fringe benefits, and decreasing federal share requirements. The COPS Universal Hiring Program Application offers two alternative budget worksheets which are tailored to the number of officers requested by each applicant; applicants requesting five or fewer officers will complete one budget worksheet for each officer, while applicants requesting more than five officers will complete a single budget worksheet based on the average yearly cost per officer.

Grants will be made for up to 75 percent of the total entry-level salary and benefits of each officer over three years, up to a maximum of $75,000 per officer, with the remainder to be paid by state or local funds. Waivers of the non-federal matching requirement may be requested under this program, but will be granted only upon a showing of extraordinary fiscal hardship. Grant funds may be used only for entry-level salaries and benefits. Funding will begin once the new officers have been hired or on the date of the award, whichever is later, and will be paid over the course of the grant.

In hiring new officers with a COPS Universal Hiring Program grant, grantees must follow standard local recruitment and selection procedures. All personnel hired under this program will be required to be trained in community policing. In addition, all personnel hired under this program must be *in addition to*, and not in lieu of, other hiring plans of the grantees.

An award under the COPS Universal Hiring Program will not affect the eligibility of an agency for a grant under any other COPS program.

Dated: June 8, 1995.

Joseph E. Brann,

Director.

[FR Doc. 95–14988 Filed 6–19–95; 8:45 am]

BILLING CODE 4410–01–M

Advisory Council on Violence Against Women

AGENCY: United States Department of Justice.

ACTION: Notice of meeting.

SUMMARY: The Council on Violence Against Women will meet on July 13, 1995, at the White House Conference Center, 726 Jackson Place. The meeting will start at 10:00 a.m. and end at approximately 4:00 p.m. Agenda items to be covered include: Strategies to improve public awareness of violence against women; new public/private alliances to address the problem, and other topics related to violence against women.

The meeting will be open to the public on a first-come, first-seated basis. Anyone wishing to submit written questions to this session should notify the Designated Federal Employee, prior to the start of the session. The notification may be by mail, telegram, facsimile, or a hand delivered note. It should contain the requestor's name; corporate designation, consumer affiliation, or Government designation; along with a short statement describing the topic to be addressed. Interested persons are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Questions regarding this meeting may be directed to Bonnie Campbell, Director of the Office of Violence Against Women, 10th and Pennsylvania Avenue NW., Room 5302, telephone (202) 616–8894.

Dated: June 14, 1995.

Bonnie Campbell,

Director, Office of Violence Against Women.

[FR Doc. 95–14987 Filed 6–19–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

In accordance with Departmental policy, 28 C.F.R. 50.7 and pursuant to section 122 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9622, notice is hereby given that a proposed Amendment to Consent Decree in *United States* v. *Agrico Chemical Company, et al.*, Civil Action No. 93–23–C, was lodged on May 30, 1995, with the United States District Court for the Northern District of Florida, Pensacola Division. The Amendment to Consent Decree modifies the Consent Decree entered by the Court on May 4, 1994, regarding an action brought under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9606 and 9607, for implementation of Remedial Action and recovery of response costs incurred and to be incurred by the United States at Operable Unit One of the Agrico Chemical Superfund Site in Pensacola, Florida. This amendment requires implementation of Remedial Design and Remedial Action and recovery of response costs incurred and to be incurred by the United States at Operable Unit Two of the Agrico Chemical Superfund Site in Pensacola, Florida.

This case concerns a former fertilizer manufacturing facility at the intersection of Interstate 110 and Fairfield Drive in Pensacola, Florida,

known as the Agrico Chemical Company Superfund Site (the "Site").

Defendants Agrico Chemical Company, a division of Freeport-MacMoRan Resource Partners Limited Partnership, and Conoco, Inc., a wholly owned subsidiary of E.I. DuPont de Nemours and Company, Inc., (collectively, the "Settling Defendants") have agreed in the proposed Amendment to Consent Decree to pay the United States $351,234.45 for past response costs incurred at the Site, as well as all future response costs incurred by the United States in connection with this Site, including costs of overseeing the implementation of the Remedial Design and Remedial Action of Operable Unit Two. The Settling Defendants have also agreed to implement the remedy selected by EPA for the Site. EPA issued the Record of Decision ("ROD") for Operable Unit Two on August 18, 1994. The selected remedy provides for natural attenuation of the groundwater contamination, in conjunction with Operable Unit One (which will prevent further contaminant loading to the groundwater), combined with institutional controls to restrict new wells, comprehensive groundwater monitoring, surface-water monitoring of Bayou Texar, and plugging and abandoning any impacted irrigation wells. The estimated present value of the selected remedy for Operable Unit Two is $1.7 million. The ROD also provides for a contingency remedy. If, in the future, fluoride levels in nearby public water supply wells exceed Florida's secondary drinking water standard of 2 mg/l, EPA will decide whether wellhead treatment or well replacement is needed. The estimated costs of the contingency remedy are $1 million for well replacement and $21 million for wellhead treatment.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Amendment to Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Agrico Chemical Company, et al.*, DOJ Ref. #90–11–2–863.

The proposed Amendment to Consent Decree may be examined at the Office of the United States Attorney, Northern District of Florida, 114 East Gregory Street, Pensacola, Florida; the Office of the United States Environmental Protection Agency, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia; and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Amendment to Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $38.75 (25 cents per page reproduction costs), payable to the Consent Decree Library for a copy of the Amendment to Consent Decree with attachments (ROD and Statement of Work) or a check in the amount of $4.25, for a copy of the proposed Amendment to Consent Decree without those attachments.

Bruce S. Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–14956 Filed 6–19–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree in Action Brought Under the Clean Air Act

In accordance with 28 CFR 50.7, notice is hereby given that on May 2, 1995, a proposed consent decree in *United States* v. *Nu-West Industries, Inc.*, Civil Action No. 95–0205–S–EJL, was lodged with the United States District Court for the District of Idaho.

This action was brought by the United States of America on behalf of the Environmental Protection Agency ("EPA") pursuant to Section 113(b) of the Clean Air Act ("CCA"), 42 U.S.C. 7413(b) for injunctive relief and assessment of civil penalties against Nu-West Industries, Inc. ("Nu-West"). The complaint alleges that Nu-West violated Section 113 of the CAA, 42 U.S.C. 7413, the conditions and limitations of the Idaho State Implementation Plan ("SIP"), 40 CFR 52.670. and the Performance Standards for Sulfuric Acid Plants, 40 CFR Part 60, Subpart H. The alleged violations occurred at Nu-West's phosphate fertilizer facility located in Conda, Idaho.

Pursuant to the proposed consent decree defendant Nu-West will pay to the United States a civil penalty in the amount of $150,000 for historical violations of the SIP, will complete two Supplemental Environmental Projects, which are described fully in the consent decree, and will be subject to stipulated penalties for failure to meet the requirements of the consent decree. The consent decree further requires Nu-West to operate in compliance with the Clean Air Act, the Idaho State Implementation Plan, and the Performance Standards for Sulfuric Acid Plants.

The Department of Justice, for a period of thirty (30) days from the date of this publication, will receive comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resource Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Nu-West Industries, Inc.*, DOJ number 90–5–2–1–1922.

Copies of the proposed consent decree may be examined at the Office of the United States Attorney, 877 W. Main St., Ste. 201, Boise, Idaho; and the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained by mail or in person from the Consent Decree Library. When requesting a copy of the consent decree, please enclose a check in the amount of $3.25 (25 cents per page reproduction costs) payable to the "Consent Decree Library". When requesting a copy please refer to *United States* v. *Nu-West Industries, Inc.*, DOJ number 90–5–2–1–1922.

Bruce Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–14990 Filed 6–19–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a consent decree in *Slagle* v. *United States*, No. 5–90–170 (D. Minn.), was lodged with the United States District Court for the District of Minnesota on May 24, 1995.

The proposed consent decree constitutes a final settlement of all claims against the defendant Slagle pertaining to unpermitted discharge of pollutants into waters of the United States, in connection with defendant's violations of Clean Water Act ("CWA") sections 301 and 404, 33 U.S.C. §§ 1311 and 1344, and pertaining to civil penalties pursuant to CWA section 309, 33 U.S.C. § 1319, for violations by defendant Slagle at a site located adjacent to Inguadona Lake, Cass County, Minnesota ("the Site").

The proposed consent decree permanently enjoins defendant: (i) From taking any action at the Site which results in the discharge of dredged or fill material into the waters of the United States, (ii) to take all necessary actions to complete a program of restoration and conservation in accordance with the activities and schedule set forth in the "Requirements For Wetlands Remedial Plan" attached as Exhibit A to the Consent Decree, and (iii) to take all necessary actions to mitigate the impacts upon wetlands caused by his activities at the Site. The defendant shall also pay a civil penalty of $10,000.

The Department of Justice will accept written comments relating to this proposed consent decree for thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, U.S. Department of Justice, Attention: Robert E. Lefevre, Esquire, P.O. Box 23986, Washington, D.C. 20026–3986, and should refer to *Slagle* v. *United States*, No. 5–90–170 (D. Minn.) DJ Reference No. 90–5–1–5–92.

The proposed consent decree may be examined at the Clerk's Office, United States District Court, 316 North Robert Street, Room 708, St. Paul, Minnesota 55101, or at the office of Assistant United States Attorney Friedrick Siekert, 234 U.S. Courthouse, 110 S. fourth Street, Minneapolis, Minnesota 55401.

Letitia J. Grishaw,

Chief, Environmental Defense Section.

[FR Doc. 95–14989 Filed 6–19–95; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—the ATM Forum

Notice is hereby given that, on May 10, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), The ATM Forum (the "ATM Forum") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new members of ATM Forum are: 3M, Austin, TX; Asahi Chemical Industry, Kawasaki City, Kanagawa 210, JAPAN; Bolt Beranek & Newman, Cambridge, MA; CSIRO Radiophysics, Epping, AUSTRALIA; Deustche Telekom AG, Darmstadt, GERMANY; EMC, Hopkinton, MA; Harris & Jeffries, Inc., Dedham, MA; Hyundai Electronics America, Milpitas, CA; Koninklijke PTT Nederland NV, Den Haag, THE NETHERLANDS; Level One Communications, Sacramento, CA; Matsushita Electric Works, Ltd., Tokyo, JAPAN; Mitsubishi Rayon Co., Ltd., Aichi, JAPAN; NPB Partners, LP, Reston, VA; NTIA/ITS, Bouler, CO; Net2net Corporation, Hudson, MA; Ossippee Networks, Waltham, MA; Rockwell International, Santa Barbara, CA; S–COM AG, Berne, SWITZERLAND; Synbios Logic, Inc., Ft. Collins, CO; TUT Systems, Inc., Santa Clara, CA; Tylink Corporation, Norton, MA; Victor Co. of JAPAN, Ltd., Kanagawa, JAPAN; Westell, Aurora, IL; and Xyplex, Inc., Littleton, MA. Company name changes include: Multimedia Communications to MCC Networks, Inc.; and Hughes LAN Systems to Whittaker Communications. The following companies are no longer members: Bipolar Integrated Technology; and Integrated Device Technology.

No changes have been made in the planned activities of ATM Forum. Membership remains open, and the members intend to file additional written notifications disclosing all changes in membership.

On April 19, 1993, ATM filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 2, 1993 (58 FR 31415).

The last notification was filed with the Department on February 9, 1995. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on April 20, 1995 (60 FR 19779).

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 95–14998 Filed 6–19–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Collaborative Decision Support for Industrial Process Control

Notice is hereby given that, on May 9, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301, *et seq.* ("the Act"), Honeywell, Inc., on behalf of the participants in the Collaborative Decision Support for Industrial Process Control has filed written notifications simultaneously with the Attorney General and with the Federal Trade Commission disclosing (1) the identities of the parties to the Collaborative Decision Support for Industrial Process Control and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties and the general area of planned activity are: Amoco Oil Company, Chicago, IL; Applied Training Resources, Houston, TX; British Petroleum, Cleveland, OH; Chevron Research and Technology, Richmond, CA; Exxon Research and Engineering, Florham Park, NJ; Gensym Corp., Cambridge, MA; Honeywell, Inc., Minneapolis, MN; Mobil Research and Development, Princeton, NJ; Shell Oil Company, Houston, TX; Texaco, Bellaire, TX; SACDA, London Ontario CANADA.

The nature and objective of the collaborative research agreement performed by Honeywell and its team in accordance with a Cooperative Agreement from the Department of Commerce, National Institute of Standards and Technology (NIST) under NIST's Advanced Technology Program (ATP), is to work on the development of technologies for improving the performance and the efficient handling of process upsets of industry operations personnel in the petrochemical industry, thus reducing the impact of these situations by a factor of ten and assuring continued technology leadership for the U.S. in both petrochemical processing and in computerized process control.

Information about participation in the Collaborative Decision Support for Industrial Process Control may be obtained by contacting Wayne E. Prochniak, Honeywell, Inc., Minneapolis, MN.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–14993 Filed 6–19–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1933—Financial Services Technology Consortium Inc.; Check Imaging Project

Notice is hereby given that, on May 2, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Financial Services Technology Consortium, Inc. (the "Consortium") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the Check Imaging Project sponsored by the Consortium and (2) the nature and objectives of the Project. The notifications were filed for

the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties to the Project are: Citibank, N.A., New York, NY; The First National Bank of Boston, Boston, MA; The Chase Manhattan Bank, N.A., Brooklyn, NY; Huntington Bancshares Incorporated, Columbus, OH; and Chemical Bank, New York, NY.

The objectives of the Project is early technology for, and demonstration of the feasibility of, a national check imaging system

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–14994 Filed 6–19–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute; "Gas Pipeline Monitoring for Third-Party Damage"

In notice document 95–10314 appearing on page 20751, in the issue of Thursday, April 27, 1995, in the second column, on line seventeen (17), the word "detected" should read "detection".

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–14995 Filed 6–19–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Gas Utilization Research Forum

Notice is hereby given that, on May 15, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Participants in the Gas Utilization Research Forum ("GURF") Project No. 2, titled "Mid-Range LNG Plant Liquefaction Process Study", has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to GURF Project No. 2, and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Amoco Corporation, Naperville, IL; Chevron Research and Technology Company, Richmond, CA; and Gaz de France, Research Division, Nates Cedex 01 FRANCE. The contemplated liquification process work is to be carried out under contract with the foregoing Participants by M.W. Kellogg Company, Houston, TX. The objective of this Project is to investigate the feasibility with respect to the technical definition and establishment of an LNG facility designed to export approximately sixty (60) million standard cubic feet of liquefied natural gas per day. The general objectives of the Study are to determine the preferred liquefaction process for mid-range LNG capacity plants, and then to develop a preliminary plant description and definition; conceptual design basis for the plant, e.g., capacity, plot plan, feed gas, etc.; and a preliminary capital and preliminary operating cost estimate for the plant.

Participation in this Project will remain open to interested persons and organizations until the Project Completion Date, which is presently anticipated to occur approximately five (5) months after the Project commences. The Participants intend to file additional written notifications disclosing all changes in the membership of the group of Participants involved in this Project.

Information regarding participation in the Project may be obtained from Robert J. Motal, Chevron Research and Technology Company, 100 Chevron Way, P.O. Box 4731, Richmond, CA 94802–0627.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–15000 Filed 6–19–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open Software Foundation, Inc.

Notice is hereby given that, on May 1, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Open Software Foundation, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new, non-voting members of OSF are as follows: Citibank N.A. UK, London, UK; National Institute of Standards & Technology, Gaithersburg, MD; Picture Network International, Arlington, VA; Digital Equipment Corporation Australia, Rhodes, AUSTRALIA; Open System Solutions GMBH, Munchen, GERMANY; Software Associates P/L, N. Sydney, AUSTRALIA; US Army CECOM, Ft. Monmouth, NJ; Digital Equipment Corporation Japan, Tokyo, JAPAN; and North Carolina Office of the State, Raleigh, NC.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OSF intends to file additional written notifications disclosing all changes in membership.

On May 11, 1994, OSF filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 31, 1994 (59 FR 45009).

The last notification was filed with the Department on January 26, 1995. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 27, 1995 (60 FR 20749).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–14996 Filed 6–19–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PDES, Inc.

Notice is hereby given that, on March 27, 1995, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), PDES, Inc. filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes to its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following party has become a member of PDES: Integrated Support Systems, Inc., Clemson, SC. The following parties have withdrawn their membership in PDES: Digital Equipment Corporation; Grumman Corporation; Newport News Shipbuilding & Drydock Company; and Northrop Corporation.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PDES intends to file additional written notifications disclosing all changes in membership.

On September 20, 1988, PDES filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 14, 1988 (53 FR 40282).

The last notification was filed with the Department on October 7, 1994. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on December 1, 1994 (59 FR 61638).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–14997 Filed 6–19–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum

Notice is hereby given that, on March 23, 1995, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Participants in the Petroleum Environmental Research Forum ("PERF") Project No. 94–09 titled "Improvements in Methods for Biological Treatment of Refinery Wastewater and Water Reuse", have filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Amoco Corporation, Naperville, Illinois; Exxon Research and Engineering Company, Florham Park, New Jersey; and Chevron Research and Technology Company, Richmond, California. The general area of planned activity is to exchange research on the general topic of refinery wastewater treatment. Specific topics of interest are biological treatment, with an emphasis on nitrification, and water reuse.

Participation in this venture will remain open to all interested persons and organizations until the Project Completion Date, which is presently anticipated to occur in December, 1996. Also the parties intend to file additional written notifications disclosing all changes in the membership of the group of Participants involved in this project. Information regarding participation in the Project maybe obtained from Dr. Ramachandra Achar, Amoco Research Center, Mail Station H–7, 150 West Warrenville Road, Naperville, IL 60563.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–14991 Filed 6–19–95; 8:45 am]

BILLING CODE 4410–01–M

National Cooperative Research Notification Water Heater Industry Joint Research and Development Consortium; Correction

In the **Federal Register** Notice appearing on page 15789 in the issue of Monday, March 27, 1995, in the second column, in the first paragraph, in the twenty-second (22) and twenty-third (23) lines, the company "GSW Water Heater Company" should read "GSW Water Heating Company".

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–14992 Filed 6–19–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act: Native American Employment and Training Council; Notice of Appointment of Members

SUMMARY: Notice is hereby given that appointments have been made to fill nine (9) vacancies from the eighteen (18) memberships on the Native American Employment and Training Council (NAETC).

The following seven (7) individuals have been reappointed to the Council:

Representing JTPA Section 401 Grantees

Mr. Elkton Richardson, JTPA Director, North Carolina Commission on Indian Affairs, Raleigh, North Carolina

Ms. Karen Kay, Executive Director, Michigan Indian Employment and Training Services, Inc., Holt, Michigan

Mr. Frank Siow, JTPA Director, Pueblo of Laguna, Laguna, New Mexico

Ms. Bernadine Wallace, JTPA Director, Montana United Indian Association, Helena, Montana

Ms. Carol Peloza, JTPA Director, Seattle Indian Center, Inc., Seattle, Washington

Mr. Harold Wauneka, JTPA Director, Navajo Tribe of Indians, Window Rock, Arizona

Representing Other Disciplines

Dr. Scott Butterfield, Principal, Hayesville Elementary School, Salem, Oregon

The following two (2) individuals have been newly appointed to the Council:

Mr. Warren Cook, Executive Director, Mattaponi, Pamunkey, Monacan Consortium, Prince William, Virginia

Mr. Bob Giago, President, United Urban Indian Council, Oklahoma City, Oklahoma

The NAETC was established under Section 401(k)(1) of Title IV of JTPA, as amended, to provide advice with respect to the implementation of JTPA programs for Native American youth and adults.

DATES: These appointments will be effective July 1, 1995, and will expire on June 30, 1997, subject to the rechartering of the NAETC as of July 1, 1995.

FOR ADDITIONAL INFORMATION CONTACT: Thomas W. Dowd, Chief, Division of Indian and Native American Programs, Office of Special Targeted Programs, Employment and Training Administration, Room N–4641, Washington, DC 20210. Telephone: 202–219–8502 (this is not a toll-free number).

Signed at Washington, DC this 15th day of June, 1995.

Timothy M. Barnicle,

Acting Assistant Secretary for Employment and Training Administration.

[FR Doc. 95–15074 Filed 6–19–95; 8:45 am]

BILLING CODE 4510–30–M

Job Training Partnership Act, Title III, Demonstration Program: Specialized/Targeted Dislocated Worker Services Project

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of funds and solicitation for grant application (SGA).

SUMMARY: All information required to submit a proposal is contained in this announcement. The U.S. Department of Labor (DOL), Employment and Training Administration (ETA), announces a demonstration program to provide specialized and/or targeted dislocated worker services to be funded with Secretary's National Reserve funds appropriated through Title III of the Job Training Partnership Act (JTPA). This notice describes the process that eligible entities must use to apply for demonstration funds, the subject area

for which applications will be accepted for funding, how grantees are to be selected, and the responsibilities of grantees. It is anticipated that up to $2 million will be available for funding 8–10 demonstration projects covered by this solicitation with no project being awarded more than $400,000.

DATES: Applications for grant awards will be accepted commencing June 20, 1995. The closing date for receipt of applications will be August 26, 1995, at 2:00 p.m. (Eastern Time) at the address below.

ADDRESSES: Applications shall be mailed to: Division of Acquisition and Assistance, Attention: Mr. Willie E. Harris, Reference: SGA/DAA 95–006, Employment and Training Administration, U.S. Department of Labor, Room S–4203, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: *Mr. Willie E. Harris,* Division of Acquisition and Assistance, Telephone: (202) 219–7300 (this is not a toll-free number).

SUPPLEMENTAL INFORMATION: This announcement consists of five parts. Part I describes the authorities and purpose of the demonstration program and identifies demonstration evaluation and oversight policy. Part II describes the application process and provides detailed guidelines for use in applying for demonstration grants: Part III includes the statement of work for the demonstration projects. Part IV identifies and defines the selection criteria which will be used in reviewing and evaluating applications. Part V describes the reporting requirements.

Part I. Background

A. Authorities

Section 324 of the Job Training Partnership Act authorizes the use of funds reserved under Part B of Title III for demonstration programs of up to three years in length. Under section 324, the Secretary is required to conduct or provide for an evaluation of the success of each demonstration program.

The Department relies on applicants for grants to comply with all Federal and State laws in setting up their programs. For example, we expect that grantees will comply with requirements for licensing and that they would obtain necessary union concurrence when working within a labor agreement.

B. Purpose of the Demonstration

As authorized under Title III of JTPA, the Dislocated Worker Program provides a wide range of employment and training services to eligible dislocated workers to help them find and qualify for new jobs. While the overall population served by the program has received significant assistance, program experience indicates that a need for specialized services exists among those who face particular barriers to employment. Projects funded through this solicitation are to provide reemployment and retraining services—as described in Sections 314(c) and 314(d) of JTPA—to dislocated workers who as members of a specific target population may need and benefit from the receipt of specialized services. Participants must be eligible under Section 301(a) of JTPA and be members of the target population for which the project is designed. For purposes of this demonstration, appropriate target populations include those groups: (1) Who have experienced greater adverse labor market outcomes, and/or (2) who need more or specialized employment and training services, relative to the general dislocated worker population served by JTPA in the local area(s) of proposed demonstration project activity. Possible target populations could include dislocated workers, veterans, handicapped workers, limited-English speaking workers, displaced homemakers, or others with a documented record of labor market outcomes or service needs as noted above.

The purpose of this demonstration is to identify and test the services and service mix necessary to ensure that the following demonstration program goals are met for the target population: (1) At least 70 percent of project participants will find employment within 90 days after leaving the project at an average wage of at least 90 percent of their previous wage (or for those who had no previous wage, an average wage at least equivalent to the poverty level); and (2) at least 70 percent of the project participants will rate the services received as "extremely" or "very valuable."

C. Evaluation

Under a separate announcement, DOL will select and fund separate evaluation contractors to: (1) Provide technical assistance to grantees in establishing appropriate data collection methods and processes; and (2) conduct an independent evaluation of the outcomes, impacts and benefits of the demonstration projects, Grantees will be expected to make available participant records and access to personnel, as specified by the evaluation contractor.

In addition, DOL will establish, for each demonstration project site, and oversight group made up of federal, State and substate staff.

D. Definitions

Unless otherwise indicated in this announcement, definitions of terms used herein shall be those definitions found in the Job Training Partnership Act, as amended, particularly at Section 4 and Section 301.

Part II. Application Process—All Information Required to Submit a Proposal is Contained in This Announcement

A. Eligible Applicants

Eligible applicants for demonstration projects funded under this announcement include States, Title III substate grantees, and other organizations and institutions that can demonstrate the ability to deliver the services proposed and to ensure the integrity of the funds requested.

B. Contents

An original and three (3) copies of the proposal shall be submitted. The proposal shall consist of two (2) separate and distinct parts—Part I, the Financial Proposal, and Part II, the Technical Proposal.

1. *Financial Proposal*—The Financial Proposal, Part I, shall contain the SF–424, "Application for Federal Assistance" (Appendix No. 1), and SF 424–A, "Budget" (Appendix No. 2). The Federal Domestic Assistance Catalog number is 17.246. The budget shall include on separate pages: a cost analysis of the budget, identifying in detail the amount of each budget line item attributable to administrative costs and costs for one or more of the following categories: basic readjustment services [Section 314(c)(1–14, 16–18) of JTPA], supportive services [Section 314(c)(15)], and retraining services [Section 314(d)] requested through this grant [Note: Other Title III cost categories not mentioned are specifically excluded from grant expenditures, e.g. rapid response assistance and needs-related payments]; an identification of the amount of each budget line item which will be covered by other funds (if applicable), and the sources of those funds (including other Title III funds, employer funds, in-kind resources, secured and unsecured loans, grants, and other forms of assistance, public and private); and a justification for the average cost of service per placement. This is to be computed by dividing the number of proposed participants of the target population who will be employed within 90 days after leaving the project into the total funds requested, and is to be compared to existing local dislocated worker program costs.

Grant funds may cover only those costs which are appropriate and reasonable. Federal funds cannot be used to provide training which an employer is in a position to, and would otherwise, provide, nor can they be used to provide salaries for program participants.

Federal funds may not be used for acquisition of production equipment. The only type of equipment that may be acquired with Federal funds is equipment necessary for the operation of the grant. In the instance of a purchase, the cost of the equipment is to be prorated over the projected life of the equipment to determine the cost to the grant. USE OF GRANT FUNDS TO PURCHASE EQUIPMENT WITH A UNIT COST OF $5,000 OR MORE REQUIRES SPECIAL REVIEW AND APPROVAL FROM DOL PRIOR TO PURCHASE.

Applicants may budget limited amounts of grant funds to work with technical expert(s) to provide advice and develop more complete project plans.

2. *Technical Proposal*—The technical proposal shall demonstrate the offeror's capabilities in accordance with the Statement of Work/Project Summary in Part III of this solicitation. NO COST DATA OR REFERENCE TO PRICE SHALL BE INCLUDED IN THE TECHNICAL PROPOSAL.

C. Submission

Grant applications will be evaluated carefully by a panel convened by the Department after closing date of this solicitation. Incomplete or non-responsive proposals may be returned without evaluation. An application will be reviewed based upon the overall responsiveness of the application's content to the submission requirements and to the selection criteria found in Part IV, taking into consideration the extent to which funds are available.

D. Hand-Delivered Proposals

Proposals should be mailed at least five (5) days prior to the closing date for the receipt of applications. However, if proposals are hand-delivered, they shall be received at the designated place by 2 p.m., Eastern Time on the closing date for receipt of applications. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified time and closing date. Telegraphed and/or faxed proposals will not be honored. Failure to adhere to the above instructions will be a basis for a determination of nonresponsiveness.

E. Late Proposals

Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it—

(1) was sent by the U.S. Postal Service registered or certified mail not later than the fifth calendar day before the date specified for receipt of the application (e.g., an offer submitted in response to a solicitation requiring receipt of applications by the 30th of January must have been mailed by the 25th); or

(2) was sent by U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee, not later than 5 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays.

The only acceptable evidence to establish the date of mailing of a late proposal sent either by the U.S. Postal Service registered or certified mail is the U.S. postmark both on the envelope or wrapper and on the original receipt from the U.S. Postal Service. Both postmarks must show a legible date or the proposal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. Postal Service on the date of mailing. Therefore, applicants should request the postal clerk to place a legible hand cancellation "bull's eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late proposal sent by "Express Mail Next Day Service—Post Office to Addressee" is the date entered by the post office receiving clerk on the "Express Mail Next Day Service—Post Office to Addressee" label and the postmark on both the envelope and wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, applicants should request the postal clerk to place a legible hand cancellation "bull's eye" postmark on both the receipt and the envelope or wrapper.

F. Withdrawal of Proposals

Proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before award. Proposals may be withdrawn in person or by an applicant or an authorized representative thereof, if the representative's identify is made known and the representative signs a receipt for the proposal before an award.

G. Period of Performance

Project operators must be prepared to deliver services within 90 days following award. The delivery of services will be a period of 12 months. Grantees will be allowed up to 90 days for final reports and closeout. All projects must be completed not later than 18 months from the date of award.

H. Funding

DOL plans to set aside up to $2 million to be disbursed for 8–10 projects, contingent upon resources being available for this purpose. It is expected that no project will be awarded more than $400,000. No additional funds will be available under this demonstration. The project operator will be expected to seek continued support from funds distributed by formula through the JTPA system.

I. Availability of Funds

The Government's obligation under these grants are contingent upon the availability of appropriated funds from which payment for grant purposes can be made. No legal liability on the part of the Government for any payment may arise until funds are available to the Grant Officer for these grants and until the Grantees receive notice of such availability, to be confirmed in writing by the Grant Officer.

J. Page Count Limit

Applications are to be limited to 30 single-side pages 8.5 in. × 11 in., single-spaced, with a maximum of 15 pages of attachments.

K. Cost Limitations

Demonstration grants are not subject to the cost limitations for formula-funded Title III grants at Section 315 of the JTPA. However, any offeror proposing administrative costs that exceed 15 percent of the budget and/or supportive services that exceed 25 percent of the funds requested in the application shall provide a narrative justification.

Part III. Statement of Work

Each application should follow the format outlined here. For every section, A through G, the application should include: (1) information that responds to the requirements in this part; (2) information that indicates adherence to the provisions described in Parts I and II of this solicitation; and (3) other information the offeror believes will

address the selection criteria identified in Part IV.

A. Target Population

Describe the dislocated worker target population, including the size, location, and the documented needs of this population for specialized services related to the population's labor market outcomes and/or the availability of JTPA services in the local area(s) to be served (as indicated in Part I.B.); the barriers to employment faced by the target population; the number of target population members to be served by specifically identified local area; and the criteria and process for selecting those individuals to be served from among the total number of eligible persons in each area.

B. Components of the Specialized/ Targeted Dislocated Worker Service Demonstration

Describe the major elements of the specialized/targeted dislocated worker services demonstration project, including how the project works in terms of the individual worker getting access to the reemployment and retraining services which the individual needs. Specifically:

- What specialized and other services will be covered by the reemployment and retraining program? Describe mechanisms to ensure appropriate outreach and recruitment? Explain how these services are relevant to the target population to be served? [Note: Such services must be authorized under Sections 314(c) and 314(d) of JTPA and comply with applicable federal regulations at 20 CFR 627 and 631.]
- How will the reemployment and retraining service needs of the individual worker be determined? What will be the sequence of services provided and the criteria/decision points used to determine the appropriateness of specific services for individual participants? [Note: Include in the description of service sequence a flowchart and timelines.]
- How will qualified providers of reemployment and retraining services be determined?
- Will workers be given the choice of optional providers of services? If so, how will these options be developed, and how will the worker be able to access this information?
- How will the amount of funds to be used for an individual's training be determined?
- How will a participant's continuing participation in the program be monitored? At what point(s) will termination occur?
- How will new job openings and opportunities for the project participants be identified and developed including opportunities for jobs in nontraditional occupations?
- What information will be available to the worker to identify and evaluate alternative employment opportunities? How will this information be developed? How will the worker be able to access this information?

C. Administration and Management

Identify the management structure for the project and demonstrate the means to ensure accountability for funds as well as performance.

Provide a description of the process and procedures to be used to obtain feedback from participants and other appropriate parties on the responsiveness and effectiveness of the services provided. The description should include an identification of the types of information to be obtained, the method(s) and frequency of data collection, and how the information will be used in implementing and managing the project. Specific references should be made to collecting information needed to determine: (1) The achievement of project outcomes as indicated in section F (including 90 day follow-ups of participants to determine demonstration program goal achievement) and (2) the reporting of participants, outcomes, and expenditures. It is expected that grantees may employ focus groups and surveys, in addition to other methods, to collect feedback information.

Indicate the applicant's past experience in the management of projects similar to that being proposed, particularly regarding oversight and operating functions including financial management.

D. Use of Existing Services and Resources

A description of the relationship of the proposed project to the ongoing assistance to dislocated workers through the formula-funded JTPA Title III program in the service area and other existing public and private resources. This description must include written comments from the local Title III substate grantee regarding those procedures to be used to ensure non-duplication of services that are available to project participants through the formula-funded Title III program.

E. Coordinated and Linkages

Describe the consultation with relevant parties in developing the project design and the role of these parties in implementing the project. Suggested consultation shall include: State JTPA Dislocated Worker Unit, Substate Title III grantee(s) and administrative entity(ies), and local organizations in the project service area(s) providing education, training and supportive services.

F. Outcomes

Identify project outcomes and the specific measures, and planned achievement levels, that will be used to determine the success of the project.

These outcomes and measures should include, but are not limited to:

- The number of participants to be enrolled in services, those successfully completing services through the project, and those to be placed into new jobs;
- The number of participants not successfully completing their specific service plans, and the reasons for the non-completion;
- Measurable effects of the services provided to project participants as indicated by gains in individuals' skills, competencies, or other outcomes;
- Average wages of participants prior to and at completion of project;
- Customer satisfaction with the project, and at critical points in the service delivery; and
- Other additional measurable, performance-based outcomes that are relevant to the proposed intervention and which may be readily assessed during the period of performance of the project.

Note: An explanation of how such additional measures are relevant to the purpose of the demonstration program shall be included in the application.

The proposal must also describe how outcomes achieved by individuals served by the project are to be related to the demonstration program goals identified in Part I, section B.

G. Replicability

Describe the information to be provided on project activities that will allow other parties to replicate the proposed project.

Part IV. Evaluation Criteria

Prospective offerors are advised that the selection of grantee(s) for award is to be made after careful evaluation of proposals by a panel selected by DOL. Panelists will evaluate the proposals for acceptability based on the various factors enumerated below. The panel results are advisory in nature and not binding on the Grant Officer.

A. Technical Evaluation (80 Points)

Services and Target Group. (35 points) The responsiveness of the services to be provided, including the degree to which the services appear to meet the documented specialized needs of the target population. The demonstrated relationship between the services to be provided and the jobs into which participants are to be placed. The scope of the project in terms of the number of participants to be served. (Relates to information requested in Part III, sections A, B, and F.)

Management Structure. (15 points) The extent to which the management structure ensures accountability for performance, monitors customer satisfaction, and includes procedures for continuous quality improvement. The ability of the management structure to determine the extent to which the planned project outcomes and demonstration program goals have been met by the project. (Relates to information requested in Part III, section C.)

Coordination and Linkages; Utilization of Resources. (10 points) The extent to which the project will be integrated with other existing public and private resources and is supported by appropriate State and local organizations. (Related to information requested in Part III, sections D and E.)

Demonstrated Experience. (10 points) Experience in the oversight and operation of projects requiring management capabilities and experience similar to the proposed project. (Relates to information requested in Part III, section C.)

Replacability. (10 points) The completeness of the information to be provided on project activities that will allow others to replicate the project. The likelihood that the approach may be applicable to a broad range of dislocated worker programs across the country. (Relates to information requested in Part III, section G.)

B. Cost Evaluation (20 Points)

The cost effectiveness of the project as indicated by the relationship of proposed costs to number of participants to be served, the range of services to be provided and the planned outcomes, as compared to other service strategies available for Title III grantees. The extent to which the budget is justified and supports the planned outcomes.

Applicants are advised that discussions may be necessary in order to clarify any inconsistencies in their applications. Applications may be rejected where the information requires is not provided in sufficient detail to permit adequate assessment of the proposal. The final decision on the award will be based on what is most advantageous to the Federal Government as determined by the ETA Grant Officer.

Part V. Reporting Requirements

Applicants selected as grantees will be required to provide the following reports:

A. Dislocated Worker Special Project Reports as required by the grant award documents.

B. Standard Form 269, Financial Status Report Form, on a quarterly basis.

C. Quarterly Progress Reports.

D. Final Project Report including an assessment of project performance.

Signed at Washington, DC, this 15th day of June 1995.

Janice E. Perry,

Grant Officer, Division of Acquisition and Assistance.

Appendices

No. 1—Application for Federal Assistance (Standard Form 424)

No. 2—Budget Form—Non Construction Programs (Standard Form 424–A)

BILLING CODE 4510–30–M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN):	7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐ A. State H. Independent School Dist B. County I. State Controlled Institution of Higher Learning C. Municipal J. Private University D. Township K. Indian Tribe E. Interstate L. Individual F. Intermunicipal M. Profit Organization G. Special District N. Other (Specify) _____
8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision If Revision, enter appropriate letter(s) in box(es): ☐ ☐ A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other (specify): _____	9. NAME OF FEDERAL AGENCY:
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ___ . ___ TITLE:	11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:
12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):	

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. Federal	$ .00	a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____
b. Applicant	$ .00	
c. State	$ .00	b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372
d. Local	$ .00	☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
e. Other	$ .00	
f. Program Income	$ .00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? ☐ Yes If "Yes," attach an explanation ☐ No
g. TOTAL	$ .00	

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: — "New" means a new assistance award. — "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. — "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

SF 424 (REV 4-88) Back

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

(INSTRUCTIONS ON BACK OF FORM)

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. Personnel: Show salaries to be paid for project personnel.
2. Fringe Benefits: Indicate the rate and amount of fringe benefits.
3. Travel: Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.
4. Equipment: Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more.
5. Supplies: Include the cost of consumable supplies and materials to be used during the project period.
6. Contractual: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.
7. Other: Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.
8. Total, Direct Costs: Add lines 1 through 7.
9. Indirect Costs: Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.
10. Training /Stipend Cost: (If allowable)
11. Total Federal funds Requested: Show total of lines 8 through 10.

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE:

PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

[FR Doc. 95-15073 Filed 6-19-95; 8:45 am]
BILLING CODE 4510-30-C

Mine Safety and Health Administration

Summary of Decisions Granting in Whole or in Part Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under section 101(c) of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor may modify the application of a mandatory safety standard to a mine if the Secretary determines either that an alternate method exists at a specific mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard at a specific mine will result in a diminution of safety to the affected miners.

Summaries of petitions received by the Secretary appear periodically in the **Federal Register**. Final decisions on these petitions are based upon the petitioner's statements, comments and information submitted by interested persons, and a field investigation of the conditions at the mine. MSHA has granted or partially granted the requests for modification submitted by the petitioners listed below. In some instances the decisions are conditioned upon compliance with stipulations stated in the decision.

FOR FURTHER INFORMATION: Petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations and Variances, MSHA, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203.

Dated: June 13, 1995.

Richard V. Zeutenhorst,

Associate Director, Office of Standards, Regulations and Variances.

Affirmative Decisions on Petitions for Modification

Docket No.: M–92–166–C
FR Notice: 57 FR 59361
Petitioner: Costain Coal, Inc.
Reg Affected: 30 CFR 75.360
Summary of Findings: Petitioner's proposal to establish a continuous monitoring station to monitor the air passing through the William Station intake air shaft, the 3rd East, the 8th Main North intake and the 9th Main North entries considered acceptable alternative method. Granted with conditions for the 3rd East, 8th Main North, and 8th Main North Parallel intake aircourses.

Docket No.: M–93–108–C
FR Notice: 58 FR 39238
Petitioner: Wenrich Coal Company
Reg Affected: 30 CFR 75.335
Summary of Findings: Petitioner's proposal for construction of seals using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs considered acceptable alternative method. Granted with conditions.

Docket No.: M–93–146–C
FR Notice: 58 FR 39569
Petitioner: RoxCoal, Inc.
Reg Affected: 30 CFR 75.1719–1
Summary of Findings: Petitioner's proposal to ensure that no equipment or pedestrians will travel in front of mobile roof support (MRS) while its being set up; to provide the MRS with reflective tape; and to use continuous mining machines to illuminate the MRS area of travel on the pillar line instead of illuminating the work area considered acceptable alternative method. Granted with conditions for the J. H. Fletcher mobile roof support, Model No. MRS–13 (MRS), used as mobile roof support for second mining.

Docket No.: M–93–149–C
FR Notice: 58 FR 39569
Petitioner: Little Rock Coal Company
Reg Affected: 30 CFR 75.335
Summary of Findings: Petitioner's proposal for construction of seals using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs considered acceptable alternative method. Granted with conditions.

Docket No.: M–93–210–C
FR Notice: 58 FR 44701
Petitioner: Drummond Company, Inc.
Reg Affected: CFR 75.1103–4(a)
Summary of Findings: Petitioner's proposal to install low-level carbon monoxide sensors as an early warning fire detection system in all belt entries in lieu of point-type heat sensors considered acceptable alternate method. Granted with conditions. Petitioner's request for relief to give effect to the modification granted.

Docket No.: M–93–211–C
FR Notice: 58 FR 44701
Petitioner: Drummond Company, Inc.
Reg Affected: 30 CFR 75.350
Summary of Findings: Petitioner's proposal to install a low-level carbon monoxide detection system as an early warning fire detection system in all belt entries used as intake aircourses. Granted for the use of belt air to ventilate active working sections. Petitioner's application for relief to give effect to the March 2, 1995, Proposed Decision and Order GRANTED.

Docket No.: M–93–252–C
FR Notice: 58 FR 50055
Petitioner: The Harriman Coal Corporation
Reg Affected: 30 CFR 77.409(b)
Summary of Findings: Petitioner's proposal to operate its Caterpillar Excavators, Model 245 without handrails on the outside of walkways considered acceptable alternative method. Granted with conditions.

Docket No.: M–93–267–C
FR Notice: 58 FR 57627
Petitioner: AMAX Coal Company
Reg Affected: 30 CFR 77.900
Summary of Findings: Petitioner's proposal to use electronic pump controllers to sense the volume of water coming into the pit pumps and automatically turn the pump on and off electronically considered acceptable alternative method. Granted with conditions for pontoon-mounted de-watering pumps to be operated with undervoltage protection provided by the ground monitor circuit breaker.

Docket No.: M–93–271–C
FR Notice: 58 FR 57627
Petitioner: Peabody Coal Company
Reg Affected: 30 CFR 75.364(b)(1)
Summary of Findings: Petitioner's proposal to establish evaluation points in each of the aircourse entries #1, #2, and #3 at the outby end of the 1st Sub-Main North aircourse near coordinate 1+70 and at the inby end near coordinate 12+70; to test these evaluation points on a weekly basis and record the test results in a designated book; and to travel the "neutral entries" adjacent to the 1st Sub-Main North entries on a weekly basis when monitoring the atmosphere that ventilates the entries considered acceptable alternative method. Granted with conditions for the 1st Sub-main North intake aircourse entries from coordinate 1+70 to 12+70, located between crosscut No. 15 to crosscut No. 84.

Docket No.: M–93–308–C
FR Notice: 58 FR 64972
Petitioner: Consolidation Coal Company
Reg Affected: 30 CFR 75.1002
Summary of Findings: Petitioner's request that paragraph 25 of MSHA's Proposed Decision and Order, docket number M–92–90–C be amended to eliminate conflict between paragraph 25 and MSHA's subsequently issued section 75.342(a)(2) requirements considered acceptable alternative method. Granted with conditions for the high-voltage longwall system at the Robinson Run No. 95 Mine.

Docket No.: M–93–309–C
FR Notice: 58 FR 64972
Petitioner: Tennessee Energy Corporation
Reg Affected: 30 CFR 75.333(g)
Summary of Findings: Petitioner's proposal to designate specific locations strategically positioned and to evaluate the quantity and quality of air entering and leaving the affected area instead of ventilating and evaluating each individual area considered acceptable alternative method. Granted with conditions for the unventilated room necks of the mine's main return aircourse for approximately 1,300 feet.

Docket No.: M–93–311–C
FR Notice: 58 FR 64972
Petitioner: Maple Meadow Mining Company
Reg Affected: 30 CFR 75.364(a)(1)
Summary of Findings: Petitioner's proposal to establish monitoring stations at a point 50 feet outby spad #2076, No. 3 Entry to monitor the quantity and direction of air entering and leaving the affected area due to deteriorating roof conditions considered acceptable alternative method. Granted with conditions for the intake aircourse through 2111 panel.

Docket No.: M–93–313–C
FR Notice: 58 FR 64972
Petitioner: Heatherly Mining, Inc.
Reg Affected: 30 CFR 75.1700
Summary of Findings: Petitioner's proposal to mine through oil and gas well boreholes considered acceptable alternative method. Granted with conditions.

Docket No.: M–93–317–C
FR Notice: 58 FR 68670
Petitioner: Richland Coal Company (now Canfield Energy, Inc.)
Reg Affected: 30 CFR 75.342
Summary of Findings: Petitioner's proposal to monitor continuously with a hand-held methane and oxygen detector instead of using a methane monitoring system on permissible three-wheel tractors with drag bottom buckets considered acceptable alternative method. Granted with conditions for the permissible three-wheel battery-powered tractors used to load coal.

Docket No.: M–93–318–C
FR Notice: 58 FR 68670
Petitioner: Consolidation Coal Company
Reg Affected: 30 CFR 75.343(b)
Summary of Findings: Petitioner's proposal to ventilate the underground shop with intake air that is coursed through the affected air course directly into a return air course and that is not used to ventilate working places; and to establish check points to monitor for methane and the quantity of air in the affected area on a weekly basis due to deteriorating conditions considered acceptable alternative method. Granted with conditions for the underground shop known as the Bowers Air Shaft Motor Barn.

Docket No.: M–93–321–C
FR Notice: 58 FR 68671
Petitioner: Energy West Mining Company (formerly Utah Power and Light Company)
Reg Affected: 30 CFR 75.1101–8
Summary of Findings: Petitioner requests to amend MSHA's Proposed Decision and Order, dated April 29, 1987 granting petition for modification, docket number M–85–49–C. Petitioner's proposal to protect all belt drives in these mines with water sprinkler systems; to use upright type sprinkler heads as an alternative to the previously approved pendant type sprinkler heads; and to include an optional 2-inch outlet at the end of the 2-inch sprinkler pipe to extend the circuit in order to provide optional coverage of remote headrollers at its Deer Creek, Trail Mountain and Cottonwood Mines in Emery County, Utah considered acceptable alternative method. Granted with conditions.

Docket No.: M–93–327–C
FR Notice: 59 FR 1568
Petitioner: McElroy Coal Company
Reg Affected: 30 CFR 75.364(b)(2)
Summary of Findings: Petitioner's proposal to establish evaluation points at specific locations and to have a certified person monitor for methane and the quantity and quality of air at these evaluation points on a weekly basis and record the results in a book kept on the surface due to deteriorating roof conditions in certain areas of the return aircourse considered acceptable alternative method. Granted with conditions for the "East Return" aircourses between Monitoring Station No. 8 (near 2 South sealed area) and Monitoring Station No. 9 (near Big Tribble return air shaft).

Docket No.: M–94–03–C
FR Notice: 59 FR 4114
Petitioner: Peabody Coal Company
Reg Affected: 30 CFR 75.364(b)(4)
Summary of Findings: Petitioner's proposal to have a certified person to monitor on a weekly basis the methane and oxygen concentrations and quantity of air outby the No. 1 Permanent Seal at Station 41+10 in Entry 1 of the 1st Submain North off the 1st Submain East and inby the No. 1 Permanent Seal at Station 40+70 in Entry 1 of the 1st Submain North off the 1st Submain East due to hazardous roof conditions and to record the results in a book kept on the surface available to interested persons considered acceptable alternative method. Granted with conditions for the examination of the No. 1 seal of the 2nd Panel West at the Camp No. 1 Mine.

Docket No.: M–94–30–C
FR Notice: 59 FR 15238
Petitioner: Mon River Mining Corporation
Reg Affected: 30 CFR 75.364(b)(2)
Summary of Findings: Petitioner's proposal to establish evaluation check point No. 3 outby and check point No. 4 inby the crosscut due to deteriorating roof conditions in the right return in the crosscut outby the belt overcast and the adjacent heading at survey Station No. 45; to post danger signs and block off the affected area; to check each side of the crosscut for proper air movement and for methane and oxygen deficiency and record the date, time and initials on date board on each side of the crosscut; to make weekly examinations and record the results in a record book kept on the surface available to interested persons considered acceptable alternative method. Granted with conditions for approximately 50 feet of the return aircourse off the No. 1 and No. 2 Right rooms ventilated worked-out areas at the No. 1 Deep Mine.

Docket No.: M–94–35–C
FR Notice: 59 FR 17793
Petitioner: Mountain Coal Company
Reg Affected: 30 CFR 75.804(a)
Summary of Findings: Petitioner's proposal to use 2/0 and 4/0 Anaconda SHD+GC, and 2/0 and 4/0 Pirelli SHD-Center-GC type flame resistant cables with a flexible No. 16 A.W.G. ground check conductor for the ground check continuity check circuit on high-voltage longwall system(s) considered acceptable alternative

method. Granted with conditions for Mountain Coal Company's West Elk Mine's longwall systems at the West Elk Mine.

Docket No.: M–94–37–C
FR Notice: 59 FR 17793
Petitioner: Golden Oak Mining Company, L.P.
Reg Affected: 30 CFR 75.1710–1
Summary of Findings: Petitioner's proposal to operate its Joy 21 shuttle cars without canopies or cabs and assertion that application of the standard would result in a diminution of safety to the miners considered acceptable. Granted for the two-middle 21SC Joy shuttle cars on the 004–0 MMU section, in mining heights less than 48 inches at the Tango Mine .

Docket No.: M–94–53–C
FR Notice: 59 FR 24729
Petitioner: Kerr-McGee Coal Corporation
Reg Affected: 30 CFR 75.503
Summary of Findings: Petitioner's proposal to use electric motor-driven mine equipment in a longwall recovery room to serve as a power center (transformer) in intake air for furnishing power to roofbolters with a 1200 foot long, Number 2, G–GC, 2KV trail cable that is protected for a short circuit fault with an instantaneous circuit breaker set at not more than 600 amperes at all points of the recovery room considered acceptable alternative method. Granted with conditions for trailing cables supplying the 3 Flether single boom roof bolters, Model No. CDR–13–EC-F, approval No. 2G–2674A–4, Serial Nos. 91086, 91087, and 92048 at the Galatia No. 56–1 Mine.

Docket No.: M–94–58–C
FR Notice: 59 FR 26816
Petitioner: Costain Coal, Inc.
Reg Affected: 30 CFR 75.1002
Summary of Findings: Petitioner's proposal to use high-voltage (2400 volts) operated equipment inby the last open crosscut at the working longwall sections considered acceptable alternative method. Granted with conditions for the permissible high-voltage longwall equipment at the Baker Mine.

Docket No.: M–94–60–C
FR Notice: 59 FR 29304
Petitioner: CONSOL of Kentucky, Inc.
Reg Affected: 30 CFR 75.1101–8
Summary of Findings: Petitioner's proposal to use a single overhead pipe system with ½-inch orifice automatic sprinklers located on 10 foot centers to cover 50 feet of fire-resistant belt or 150 feet of nonfire-resistant belt with actuation temperatures between 200 and 230 degrees fahrenheit with water pressure equal or greater than 10 psi and with sprinklers located 10 feet apart so that the discharge of water will extend over the belt drive, belt take-up, electrical control, and gear reducing unit considered acceptable alternative method. Granted with conditions at the Jones Fork #11bcde-h4 Mine.

Docket No.: M–94–62–C
FR Notice: 59 FR 29305
Petitioner: Air Products and Chemicals, Inc.
Reg Affected: 30 CFR 77.213
Summary of Findings: Petitioner's proposal to have an escapeway not less than 30 inches in diameter from the tunnel within 24 feet of the tail roller at the closed end of the tunnel; to install a cable type heat detection system set at 140 degrees fahrenheit in the enclosed portion of the tunnel; to install heat activated sprinklers in the tunnel; to install a carbon monoxide (CO) monitoring sensor in the tunnel near the tail roller in order to activate a visual alarm in the area of the tail roller and in the main and fuel handling control rooms when a level of 15 ppm is reached; and to install a pull cord throughout the tunnel to stop the belt conveyor considered acceptable alternative method. Granted with conditions for an alternate escapeway from the conveyor tunnel at the Cambria Cogeneration Facility.

Docket No.: M–94–66–C
FR Notice: 59 FR 32465
Petitioner: Blue Arc Coal Corporation, Inc.
Reg Affected: 30 CFR 75.342
Summary of Findings: Petitioner's proposal to monitor continuously with a hand-held methane and oxygen detector instead of using a methane monitoring system on permissible three-wheel tractors with drag bottom buckets considered acceptable alternative method. Granted with conditions for the Mescher permissible three-wheel battery-powered tractors used to load coal at the No. 2 Mine.

Docket No.: M–94–68–C
FR Notice: 59 FR 32465
Petitioner: Island Creek Coal Company
Reg Affected: 30 CFR 75.1100–2(b)
Summary of Findings: Petitioner's proposal to have a fire hose strategically located of sufficient length so that any affected area of the belt would be covered from the most proximate fire hose outlet; to have 700 feet of fire hose instead of the required 500 feet at a location in the immediate area of the longwall belt drive; to have crosscuts leading to the firehose outlets passable from the belt entry by removing a portion of the stoppings at or near the fire hose outlets or by providing stopping doors at or near the fire hose outlets considered acceptable alternative method. Granted with conditions for the retreating longwall sections at the VP–8 Mine.

Docket No.: M–94–82–C
FR Notice: 59 FR 35148
Petitioner: K & S Coal Company
Reg Affected: 30 CFR 75.1100–2(a)(2)
Summary of Findings: Petitioner's proposal to use only portable fire extinguishers to replace existing requirements where rock dust, water, cars, and other water storage are not practical considered acceptable alternative method. Granted with conditions for firefighting equipment in the working sections at the First Chance Slope Mine.

Docket No.: M–94–107–C
FR Notice: 59 FR 40924
Petitioner: Energy West Mining Company
Reg Affected: 30 CFR 75.804(a)
Summary of Findings: Petitioner's proposal to use Cablec Anacondabrand 5KV 3/C Type SHD+GC, Piralli Type SHD-CENTER-GC, or Tiger Brand 5KV Type SHD-CGC, MSHA-approved flame resistant cables with a flexible No. 16 A.W.G. ground check conductor for the ground continuity check circuit, on high-voltage longwall systems considered acceptable alternative method. Granted with conditions for longwall systems at the Deer Creek Mine.

Docket No.: M–94–114–C
FR Notice: 59 FR 40925
Petitioner: Consolidation Coal Company
Reg Affected: 30 CFR 75.503
Summary of Findings: Petitioner's proposal to use 800 feet of trailing cables with three-phase 480 volt to supply power to loading machines, shuttle cars, roofbolters, and section ventilation fans while developing longwall panels considered acceptable alternative method. Granted with conditions for the loading machines, roofbolters, shuttle cars, and section ventilation fans used to develop three-entry longwall panels in the Dilworth Mine.

Docket No.: M–94–115–C
FR Notice: 59 FR 40925
Petitioner: R & S Coal Company
Reg Affected: 30 CFR 75.1400
Summary of Findings: Petitioner's proposal to use the gunboat without safety catches and an increased rope strength safety factor and secondary safety connections which are securely fastened around the gunboat and to the hoisting rope above the main connecting device because of the steep, frequently changing pitch and numerous curves and knuckles in the main haulage slope considered acceptable alternative method. Granted with conditions for the use of the gunboat without safety catches at the Primrose Slope Mine.

Docket No.: M–94–122–C
FR Notice: 59 FR 43869
Petitioner: Freeman United Coal Mining Company
Reg Affected: 30 CFR 75.1002
Summary of Findings: Petitioner's proposal to use high-voltage (2400 volts) cables to power longwall equipment inby the last open crosscut and within 150 feet of pillar workings (gob) areas considered acceptable alternative method. Granted with conditions for the permissible high-voltage longwall equipment at the Orient No. 6 Mine.

Docket No.: M–94–131–C
FR Notice: 59 FR 46269
Petitioner: Monterey Coal Company
Reg Affected: 30 CFR 75.503
Summary of Findings: Petitioner's proposal to use two Fletcher Model CDR–15 slim line roof bolters with No. 2 AWG G-GC portable cables with 1,200 feet of the cable reaching across the face from the power center outby and near the end of the longwall panel in order to provide additional support for the face in preparation for equipment transfer to the next panel considered acceptable alternative method. Granted with conditions at the No. 1 Mine.

Docket No.: M–94–132–C
FR Notice: 59 FR 46269
Petitioner: Consolidation Coal Company
Reg Affected: 30 CFR 75.1002
Summary of Findings: Petitioner's proposal to use high-voltage (4160 volts) cables inby the last open crosscut to supply power to longwall equipment and that application of the standard would result in a diminution of safety to the miners considered acceptable alternative method. Granted with conditions for the hybrid longwall system (combination high-voltage and medium voltage) at the Showmaker Mine.

Docket No.: M–94–164–C
FR Notice: 59 FR 59435
Petitioner: Mallie Coal Company, Inc.
Reg Affected: 30 CFR 75.342
Summary of Findings: Petitioner's proposal to monitor continuously with a hand-held methane and oxygen detector instead of using a methane monitoring system on permissible three-wheel tractors with drag bottom buckets considered acceptable alternative method. Granted with conditions for the Mescher permissible three-wheel battery-powered tractors used to load coal at the No. 4 Mine.

Docket No.: M–94–183–C
FR Notice: 60 FR 3437
Petitioner: Southern Utah Fuel Company
Reg Affected: 30 CFR 75.1002
Summary of Findings: Petitioner's proposal to use high-voltage (2400 volts) cables to power longwall equipment considered acceptable alternative method. Granted with conditions for the permissible high-voltage longwall equipment at the SUFCo Mine. Petitioner's application for relief to give effect to the March 17, 1995, Proposed Decision and Order GRANTED.

Docket No.: M–79–32–M
FR Notice: 45 FR 3678
Petitioner: Kerr-McGee Chemical Corp. (now New Mexico Potash Corporation)
Reg Affected: 30 CFR 57.11050 (previously 30 CFR 57.11–50)
Summary of Findings: Petitioner's granted petition for modification was reviewed and changes were noted which have occurred since petition was granted. Based on this review, MSHA has issued an amended Proposed Decision and Order. Petitioner's proposal to use a rescue changer instead of a second escapeway in certain limited situations considered acceptable alternative method. Granted with conditions.

Docket No.: M–81–01–M
FR Notice: 48 FR 12564
Petitioner: Sunshine Mining Company (now Sunshine Precious Metals, Inc.)
Reg Affected: 30 CFR 57.11059 (previously 57.11–59)
Summary of Findings: Petitioner's granted petition for modification was reviewed and changes were noted which have occurred since petition was granted. Based on this review, MSHA has issued an amended Proposed Decision and Order. Petitioner's proposal to use a one-hour self-contained breathing apparatus for their underground hoist operators considered acceptable alternative method. Granted with conditions.

Docket No.: M–82–03–M
FR Notice: 47 FR 8896
Petitioner: Franklin Limestone Company (now Franklin Industrial Minerals)
Reg Affected: 30 CFR 57.4761 (previously 57.4–61B)
Summary of Findings: Petitioner's granted petition for modification was reviewed and noted that changes were needed to the previous amended Proposed Decision and Order December 14, 1994, to incorporate the changes specified as it pertains to operating an underground shop without fire extinguishers installed. Based on this review, MSHA has issued an amended Proposed Decision and Order to correct the phrase to read ". . . ordered that modification of the application of 30 CFR 57.4761 to the Crab Orchard Mine as it pertains to operating an underground shop without certain ventilation or mechanical fire control devices installed." Granted with conditions.

Docket No.: M–86–20–M
FR Notice: 52 FR 5217
Petitioner: Kennecott Utah Copper
Reg Affected: 30 CFR 56.9300 (previously 56.9022)
Summary of Findings: On December 3, 1986, Petitioner filed a petition seeking a modification of the application of 30 CFR 56.9022 to its Utah Copper Division Concentrator Plants located in Magna, Salt Lake County, Utah. The petitioner alleging that application of the standard would result in a diminution of safety to the miners and that the alternative method outlined in the petition would guarantee no less than the same measure of protection as the mandatory standard. A Proposed Decision and Order (PDO) was issued granting this petition on May 25, 1988. On June 24, 1988, petitioner submitted comments requesting correction to certain sections in the PDO. On July 14, 1988, MSHA issued an amended PDO incorporating the changes requested by petitioner, allowing the operator to use the tailings impoundment roadway without berms or guards conditioned upon petitioner's compliance with specific factors and upon circumstances existing at the mine at the time modification was granted. On October 24, 1988, the mandatory standard was revised and redesignated as 56.9300. On July 26, 1994, petitioner submitted a request for petition to be amended, noting that conditions have changed since previous petition was granted. After review of the entire record, and MSHA's investigative report and recommendations, an amended PDO was issued on March 8, 1995, modifying the granted modification of 30 CFR 56.9022 to Kennecott Utah Copper Concentrator—North. On March 28, 1995, petitioner submitted

comments requesting correction and/or clarification of certain sections in the PDO. This amended PDO incorporates the changes requested by the petitioner. Granted with conditions.

Docket No.: M–94–18–M
FR Notice: 59 FR 15239
Petitioner: Santa Fe Pacific Gold Corp.
Reg Affected: 30 CFR 56.6309
Summary of Findings: Petitioner's proposal to recycle used petroleum-based and lubrication oil from equipment and blend it with fuel oil to create a blasting agent (ANFO) was granted. MSHA Proposed Decision and Order (PDO) issued November 21, 1994, to the Twin Creeks Mine, allowing the operator to use waste oil instead of conventional oil when preparing Ammonium Nitrate Fuel oil blasting agents with specific conditions. On December 8 and 29, 1994, the petitioner submitted a review of the conditions relevant to the PDO. In that review it was noted that conditions No. 2, 6, and 14 were incorrect and needed to be modified. This PDO incorporates those modifications. Granted with conditions.

Docket No.: M–94–38–M
FR Notice: 59 FR 50008
Petitioner: Independent Aggregates
Reg Affected: 30 CFR 56.6306(b)
Summary of Findings: Petitioner's proposal to continue drilling the shop pattern while loading is in progress by completing a drill hole and immediately loading the hole while continuing to drill a new hole considered acceptable alternative method. Granted with conditions.

[FR Doc. 95–15055 Filed 6–19–95; 8:45 am]
BILLING CODE 4510–43–P

NATIONAL INSTITUTE FOR LITERACY

Agency Information Collection Activities Under OMB Review

AGENCY: National Institute for Literacy.
ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before June 26, 1995.

FOR FURTHER INFORMATION CONTACT: Sondra Stein at (202) 632–1508.

SUPPLEMENTARY INFORMATION:

Title

Application for the Adult Learning Content Standards Development awards to public and private not-for-profit organizations operating at a State or national level to participate in a grassroots effort to improve the effectiveness of the system in preparing adults for their roles and responsibilities as parents, citizens, and workers.

Purpose

The purpose of the Adult learning Standards Grant is to launch an ambitious multi-year initiative to promote the improvement of adult learning systems through the development of content standards based on four customer-defined purposes for literacy.

Abstract

The National Literacy Act of 1991 established the National Institute for Literacy and required that the Institute to contribute to the establishment of systems for adult literacy and basic skills.

Burden Statement: The burden for this collection of information is estimated at 4 hours per response. This estimate includes the time needed to review instructions, complete the form, and review the collection of information:

Respondents: 500
Estimated Number of Respondents: 60
Estimated number of Responses Per Respondent: 1
Estimated Total Annual Burden on Respondents: 2400

Frequency of Collection: One time. Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to: Susan Green, National Institute for Literacy, 800 Connecticut Ave., NW., Suite 200 Washington, DC 20006, and Dan Chenok, Office of Management and Budget, office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20503.

Dated: June 13, 1995.

Andrew J. Hartman,
Director, NIFL.

[FR Doc. 95–15113 Filed 6–19–95; 8:45 am]
BILLING CODE 6055–01–M

NATIONAL SCIENCE FOUNDATION

Antarctic Tour Operators Meeting

The National Science Foundation announces the following meeting:

Name: Antarctic Tour Operators Meeting.
Date and Time: July 13, 1995, 9:00 a.m.–4:00 p.m.
Place: National Science Foundation, Room 375, 4201 Wilson Boulevard, Arlington, Virginia 22230.
Type of Meeting: Open.
Contact Person: Nadene G. Kennedy, Polar Coordination Specialist, Office of Polar Programs, National Science Foundation, Arlington, VA 22230, Telephone: 703/306–1031; Fax: 703/306–0139.
Purpose of Meeting: Pursuant to the National Science Foundation's responsibilities under the Antarctic Conservation Act (Pub. L. 95–541) and the Antarctic Treaty, the U.S. Antarctic Program Managers plan to meet with Antarctic Tour Operators to exchange information concerning dates and procedures for visiting U.S. Antarctic stations, review the latest Antarctic Treaty Recommendations concerning the environment and protected sites, and other items designed to protect the Antarctic environment.
Agenda:
- Introduction and Overview
- Review of 1994–95 Visits to McMurdo, Palmer and South Pole Stations
- Tour Operator's Comments on 1994–95 Season Visits
- 1995–96 Visits to McMurdo, Palmer and South Pole Stations
- Information Dissemination
- Report on the 1994–95 Antarctic Site Inventory
- Oil Spill Contingency Plans
- Environmental Impact Assessments
- Report From the International Association of Antarctic Tour Operators (IAATO)
- Report from the 19th Antarctic Treaty Consultative Party Meeting in Seoul, Korea
- Other Items.

Dennis Peacock,
Head, Antarctic Science Section, Office of Polar Programs.

[FR Doc. 95–15070 Filed 6–19–95; 8:45 am]
BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).
ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to the OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision
2. The title of the information collection: 10 CFR Part 21. "Reporting of Defects and Noncompliance"
3. The form number if applicable: Not applicable
4. How often the collection is required: On occasion
5. Who will be required or asked to report: All directors and responsible officers of firms and organizations building, operating, or owning NRC licensed facilities as well as directors and responsible officers of firms and organizations supplying basic components and safety related design, analysis, testing, inspection, and consulting services to NRC licensed facilities or activities
6. An estimate of the number of responses: 350 annually (150 initial notifications, 150 written reports, and 50 interim reports)
7. An estimate of the average burden hours per response: 65 hours
8. An estimate of the total number of hours needed to complete the requirement or request: 22,913 (19,300 reporting hours and 3,613 recordkeeping hours)
9. An indication of whether Section 3504(h). Pub. L. 96–511 applies: Not applicable
10. Abstract: 10 CFR part 21 implements Section 206 of the Energy Reorganization Act of 1974, as amended. It requires directors and responsible officers of firms and organizations building, operating, owning, or supplying basic components to NRC licensed facilities or activities to report defects and noncompliances that could create a substantial safety hazard at NRC licensed facilities or activities. Organizations subject to 10 CFR Part 21 are also required to maintain such records as may be required to assure compliance with this regulation.

The NRC staff reviews 10 CFR Part 21 reports to determine whether the reported defects in basic components and related services and failures to comply at NRC licensed facilities or activities are potentially generic safety problems.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC 20555–0001.

Comments and questions should be directed to the OMB reviewer: Troy Hillier, Office of Information and Regulatory Affairs (3150–0035), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 12th day of June 1995.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,
Designated Senior Official for Information Resources Management.

[FR Doc. 95–15056 Filed 6–19–95; 8:45 am]
BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Claim for Credit for Military Service
(2) *Form(s) submitted:* UI–44
(3) *OMB Number:* 3220–0072
(4) *Expiration date of current OMB clearance:* August 31, 1995
(5) *Type of request:* Extension of a currently approved collection
(6) *Respondents:* Individuals or households
(7) *Estimated annual number of respondents:* 300
(8) *Total annual responses:* 300
(9) *Total annual reporting hours:* 25
(10) *Collection description:* Under Section 2(c) of the Railroad Unemployment Act, military service can be used under certain conditions for entitlement to an extended or accelerated unemployment benefit period. The form will be used to obtain information about the applicant's claimed military service.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,
Clearance Officer.

[FR Doc. 95–14957 Filed 6–19–95; 8:45 am]
BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35839; File No. SR–DTC–95–01]

Self-Regulatory Organizations; the Depository Trust Company; Order Approving a Proposed Rule Change Establishing a Procedure To Buy-In Securities To Eliminate Participants' Short Positions Older Than Ninety Days

June 12, 1995.

On January 13, 1995, the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–DTC–95–01) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on March 17, 1995.[2] The Commission received no comment letters.[3] For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description of the Proposal

DTC currently employs procedures to help eliminate short positions caused by book entry deliveries of callable securities made between the call publication date and the lottery processing date and procedures to help eliminate short positions caused by rejected deposits.[4] Under DTC rules, when DTC participants have short positions in their accounts, DTC debits the participants' accounts by an amount equal to 130% of the market value of the short position as determined by DTC. DTC believes collecting 130% of the value of the short position protects DTC against risk and provides participants with an incentive to cover short positions promptly. The short position is marked to the market daily until the short position is covered or matures.

DTC has established procedures that permit DTC to use the short position

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 35469 (March 10, 1995), 60 FR 14473.

[3] In response to an "Important Notice" to its members requesting comment on the proposed buy-in procedures, DTC received 11 comment letters. In general, DTC's members were opposed to an earlier version of the proposed buy-in procedures which used a tiered approach based on the age of the short position (*i.e.*, offerings starting at 110% after 90 days and extending to 130% after 150 days). DTC believes that this rule change addresses the concerns set forth by the commentors.

[4] For a complete description of DTC's procedures, refer to Securities Exchange Act Release No. 35034 (December 8, 1994), 59 FR 63396 [File Nos. SR–DTC–94–08 and SR–DTC–94–09] (order granting temporary approval of procedures to recall certain deliveries which have created short positions as a result of call lotteries and rejected deposits).

securities to cover short positions which have not been covered by participants within ninety days. Under the buy-in procedures, once a short position has aged beyond ninety calendar days DTC will broadcast to participants that have long positions in the security an Invitation to Cover Short Request ("ICSR") message using the Participant Terminal System ("PTS") operated by DTC.[5] DTC will issue the invitations at premiums above market value on a sliding scale set according to the following table:

SHORT POSITION VALUE

[Market Value]

Minimum	Maximum	Premium Percent	Maximum Possible Premium
$1	$50,000	12	$6,000
50,001	100,000	8	8,000
100,001	300,000	5	15,000
300,001	500,000	3	15,000
500,001	(1)	2	(2)

[1] Up.
[2] Unlimited.

If DTC is unsuccessful in finding a seller through the ICSR function, DTC will contact by telephone participants with long positions in the security. DTC may elect to use the services of a broker to obtain the securities at a price not to exceed the current market value plus the premium based upon the value of the short position.

If DTC is able to buy-in some or all of the securities needed to cover a participant's short position, DTC will: (1) Credit the securities to the participant's account, (2) reduce the short position charge by the amount of the purpose price of the securities together with the expense of the cover transaction including any brokerage fee or other administrative expense, and (3) if the short position has been eliminated entirely, credit the account of the participant with the balance, if any, of the short position charge.

II. Discussion

Section 17A(b)(3)(F)[6] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible. The Commission believes that DTC's rule change meets these requirements because it establishes additional procedures to eliminate aged short positions and therefore helps to protect DTC against risk.

DTC's procedures are modelled on existing DTC procedures used to eliminate short positions of participants whose DTC accounts have been closed.[7] DTC's rule change also is in response to concerns raised by the Federal Reserved Bank of New York urging DTC to take additional steps to eliminate aged short positions. The Federal Reserve Bank of New York has expressed concern about DTC continuing to give long position credits to its participants where such credits are not supported by securities in inventory.

The proposal will permit DTC to take affirmative steps to reduce the outstanding short positions and the risks associated with such short positions. Under DTC's procedures, participants are obligated to cover their short positions immediately. DTC participants are assessed a daily charge of 130% of the market value of the security as an incentive for the participant to cover the short position as soon as possible and as a cushion to protect DTC in the event of a sharp rise in the market price of the security.[8] By assessing a 130% daily charge to short positions in a participant's account, DTC will limit its risk of loss to instances when there is a rise in the market price of the security above 130%. The buy-in procedures will limit further DTC's risk of loss by permitting DTC to use the short position charge to take affirmative action to buy-in securities to cover short positions older than ninety days.

III. Conclusion

The Commission finds that the proposal is consistent with the requirements of the Act, particularly with Section 17A(b)(3)(F) of the Act and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–95–01) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–14977 Filed 6–19–95; 8:45 am]

BILLING CODE 8010–01–M

[5] ICSR is the DTC service that enables DTC participants having short positions to invite DTC participants with long positions in the same or similar securities to tender securities to the participants with the short positions. Under DTC's buy-in procedures, DTC will initiate the ICSR procedures. For further discussion of ICSR, refer to Securities Exchange Act Release Nos. 26896 (June 5, 1989), 54 FR 25185 [File No. SR–DTC–89–07] (order approving rule change establishing ICSR procedures) and 27586 (January 4, 1990), 55 FR 1132 [File No. SR–DTC–89–18] (order approving rule change amending certain ICSR procedures).

[6] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[7] Securities Exchange Act Release No. 33261 (November 30, 1993), 58 FR 64626 [File No. SR–DTC–92–11] (order approving a proposed rule change relating to the elimination of short positions in a retired participant's account).

[8] Securities Exchange Act Release No. 26896 (June 5, 1989), 54 FR 25185 [File No. SR–DTC–89–07] (order approving a proposed rule change concerning invitations to tender to cover short positions).

[9] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35846; File No. SR–MSRB–95–9]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Suitability, Transactions and Discretionary Accounts

June 14, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), and Rule 19b–4 thereunder, notice is hereby given that on June 1, 1995, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change (File No. SR–MSRB–95–9). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing amendments to rule G–19 on suitability of recommendations and transactions and discretionary accounts. In April 1994, the Commission approved an amendment designed to strengthen rule G–19. The proposed rule change makes technical and clarifying changes to rule G–19 concerning discretionary accounts. The Board requests that the Commission set the effective date for 30 days after filing.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On April 7, 1994, the Commission approved an amendment to rule G–19, on suitability, designed to strengthen the rule.[1] As part of that amendment, the language of section (c) regarding suitability of recommendations was amended to ensure that in making a recommendation to customers, dealers must have reasonable grounds, based upon information about the security as well as the customer, for believing that the recommendation is suitable.

Section (d) of rule G–19 requires dealers effecting transactions for discretionary accounts to have prior written authorization and to make a suitability determination regarding the transaction, unless the transaction is specifically directed by the customer. A review of rule G–19 has indicated that a technical amendment to section (d) is necessary to correct a cross reference to the new language of section (c). The proposed rule change also clarifies the language of section (d) to ensure that dealers understand their duty to make a suitability determination before executing a transaction for a discretionary account unless the transaction is specifically directed by the customer without any recommendation having been made.

The Board believes the proposed rule change is consistent with section 15(b)(2)(C) of the Act which provides that the Board's rules:

> Be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, foster cooperation with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The proposed rule clarifies the responsibility of dealers to make suitability determinations before executing transactions for discretionary accounts and therefore the Board believes it will protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Board has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) was provided to the Commission for its review at least five days prior to the filing date; and (4) does not become operative for thirty days from the date of its filing on June 2, 1995, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e)(6) thereunder. In particular, the Commission believes the proposal would qualify as a "non-controversial filing" because it makes technical and clarifying changes to an existing MSRB rule. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–95–9 and should be submitted by July 11, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15040 Filed 6–19–95; 8:45 am]

BILLING CODE 8010–01–M

[1] *See* Securities Exchange Act Release No. 33869 (April 7, 1994) 59 FR 17632.

[Release No. 34–35848; File No. SR–MSRB–95–7]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Fees for Backlog Document Collections of its Official Statement/Advance Refunding Document Subsystem of the Municipal Securities Information Library

June 14, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 24, 1995, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR–MSRB–95–7). The proposed rule change is described in Items, I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing herewith a proposed rule change to establish a price of $7,000 (plus delivery or postage charges) for its 1994 document collection relating to its Official Statement/Advance Refunding Document ("OS/ARD") subsystem of the Municipal Securities Information Library ("MSIL") system (the "1994 backlog fee").[1] The collection consists of imaged documents on magnetic tapes. The proposed 1994 backlog fees are structured to defray the Board's dissemination costs. This fee structure is consistent with the Board's MSIL fee policy, which is that the Board does not expect or intend to make a profit from the MSIL system, and reviews the MSIL

[2] 17 CFR 200.30–3(a)(12).

[1] Municipal Securities Information Library and MSIL are trademarks of the Board. The MSIL system, which was approved in Securities Exchange Act Release No. 29298 (June 13, 1991) 56 FR 28194, is a central facility through which information about municipal securities is collected, stored and disseminated.

system fees annually to ensure that dissemination costs are paid for from user fees.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The OS/ARD subsystem, which was activated on April 20, 1992, is a central electronic facility through which information collected and stored, pursuant to MSRB rule G–36, is made available electronically and in paper form to market participants and information vendors.[2] The annual subscription fee for daily tapes of images of current year documents from the OS/ARD system is $12,000.[3] The fees for backlog document collections are substantially less than fees for an annual subscription because an annual subscription requires the Board to send a computer tape to the subscriber each business day, but a backlog collection requires fewer tapes.[4]

In its prior filings with the Commission, the Board stated that it intends to use its general revenues for collection, indexing and storing the OS/ARD subsystem's documents, and that the costs of producing and disseminating magnetic tapes (and paper copies) would be paid for by user fees.[5] Thus, the Board is establishing fees to defray its cost of disseminating backlog tapes. This is consistent with the Commission's policy that self-regulatory organizations' fees be based on expenses incurred in providing information to the public. The Board believes that employing cost-based prices is in the public interest since it will ensure that a complete collection of vital information will be available, at fair and reasonable prices, for the life of the municipal securities.

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which requires, in pertinent part, that the Board's rules:

> Be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSIL system is designed to increase the integrity and efficiency of the municipal securities market by, among other things, helping to ensure that the price charged for an issue in the secondary market reflects all available official information about that issue. The Board believes that the 1994 backlog fee is fair and reasonable in light of the costs associated with disseminating the information, and that the services provided by the MSIL system are available on reasonable and nondiscriminatory terms to any interested person.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e) thereunder because the proposal is "establishing or changing a due, fee or other charge." At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–95–7 and should be submitted by [insert date 21 days from the date of publication].

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15041 Filed 6–19–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35849; File No. SR–MSRB–95–8]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Delivery of Official Statements to the Board

June 14, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), and Rule 19b–4 thereunder, notice is hereby given that on June 1, 1995, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change (File No. SR–MSRB–95–8). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing a proposed rule change to rule G–36 and Form G–36(OS), relating to delivery of official statements to the Board (hereafter referred to as the "proposed rule change") to correlate references to SEC Rule 15c2–12[1] to the amended sections of the Rule and to add language to Form G–36(OS) to clarify that documents submitted with the Form will be made publicly available. The Board requests that the proposed rule change be effective on the same effective date as that for certain amendments to Rule 15c2–12, set for July 3, 1995, to which the proposed rule change refers.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On November 10, 1994, the Commission approved amendments to its Rule 15c2–12 to enhance disclosure in the secondary market for municipal securities.[2] The amendments revised and reorganized the subparts of the Rule. Part of these amendments will be effective in July 1995, while other parts will go into effect in January 1996.

Board rule G–36 requires that managing underwriters deliver to the Board copies of final official statements for most primary offerings of municipal securities, where an official statement was prepared. Rule G–36 also requires Form G–36(OS) to be sent with the official statement. The Board enters the official statement into the Municipal Securities Information Library ("MSIL") system.[3] Rule G–36 applies to all primary offerings with official statements, with the exception of limited placements which are exempt under SEC Rule 15c2–12.

Rule G–36 and Form G–36(OS) reference, in several places, the definitions once found in SEC Rule 15c2–12(e) and the exemption found in Rule 15c2–12(c). However, since the amendments to Rule 15c2–12 moved the definitions to Rule 15c2–12(f) and the exemption to Rule 15c2–12(d), the proposed rule change to rule G–36 (a)(i), (a)(ii), and (c)(iii) and Form G–36(OS) update the citations to Rule 15c2–12 to correspond to the revised subparts of the amendments. The proposed rule change also makes a conforming change to the Form by adding the word "or" to item 10(c).

The proposed rule change to Form G–36(OS) also makes clear that any documents submitted to the Board with the Form will be public disseminated. The MSIL System has received several disclosure documents relating to primary offerings exempted from Rule 15c2–12 under current section (c)(1) ("limited placements"). Even though such primary offerings are exempt from Rule 15c2–12 and rule G–36, the Board has previously made clear in filings and in *MSRB Reports* that if such documents are voluntarily submitted to the MSIL system by dealers as official statements, they will be accepted and publicly disseminated.[4] A few recently received documents on limited placements contained language stating that they were not to be reproduced or used for any purpose other than in connection with the sale of the securities. Accordingly, the proposed rule change to Form G–36(OS) adds language clarifying that the submitter "acknowledges that the document will be publicly disseminated." This addition will ensure that the submitter has agreed to public dissemination of the submitted document.

The Board believes the purposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which provides that the Board's rules:

> Be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement or Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Board has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) was provided to the Commission for its review at least five days prior to the filing date; and (4) does not become operative for thirty days from the date of its filing on June 2, 1995, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4(e)(6) thereunder. In particular, the Commission believes the proposal would qualify as a "non-controversial filing" because it makes technical and clarifying changes to an existing MSRB rule and form. Accordingly, it neither significantly affects the protection of investors or the public interest and does not impose any significant burden on competition. At any time with sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change it if appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, arguments concerning the foregoing. Persons

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[2] Rule G–36 requires underwriters to provide copies of final official statements and advance refunding documents within certain specified time frames for most new issues issued since January 1, 1990.

[3] This fee was filed with the Commission. *See* Securities Exchange Act Release No. 30306 (Jan. 30, 1992) 57 FR 4657. The Board does not intend at this time to change the OS/ARD annual subscription fee.

[4] Currently, two to three business day's worth of documents are on each tape in an annual collection. The backlog fee plus delivery costs for 1993 is $9,000; 1992 is $7,000; 1991 is $8,000; 1990 is $6,000. These fees were filed with the Commission. *See* Securities Exchange Act Release No. 32482 (June 16, 1993) 58 FR 34115 (1992 and 1990 fees); Securities Exchange Act Release No. 34602 (Aug. 25, 1994) 59 FR 45319 (1993 and 1991 fees). The fees for the backlog collections vary based on the number of documents received and processed in any given year.

[5] *See* Securities Exchange Act Release No. 29298 (June 13, 1991) 56 FR 28194.

[6] 17 CFR 200.30–3(a)(12)

[1] 17 CFR 240.15c2–12.

[2] *See* Securities Exchange Act Release No. 34961 (Nov. 10, 1994) 59 FR 59590.

[3] The Municipal Securities Information Library system and the MSIL system are trademarks of the Board. The MSIL system, which was approved in Securities Exchange Act Release No. 29298 (June 13, 1991) 55 FR 29436, is a central facility through which information about municipal securities is collected, stored, and disseminated.

[4] *See e.g.*, File No. SR–MSRB–90–2 at 16; "Delivery of Official Statements to the Board: Rules G–36 and G–8," *MSRB Reports*, Vol. No. 3 (July 1990).

making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–95–8 and should be submitted by July 11, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15042 Filed 6–19–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35847; File No. SR–NASD–95–20]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Failure to Honor Settlement Agreements Obtained in Connection With an Arbitration or Mediation

June 14, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 9, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the NASD.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[5] 17 CFR 200.30–3(a)(12)

[1] The NASD originally submitted the proposed rule change on May 10, 1995. The NASD subsequently submitted two minor technical amendments, the text of which may be examined in the Commission's Public Reference Room. *See* Letters from Suzanne E. Rothwell, Associate General Counsel, NASD, to Mark P. Barracca, Branch Chief, Division of Market Regulation, SEC (May 16, 1995 and June 9, 1995). This notice reflects those amendments.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend the Resolution of the Board of Governors—Failure to Act Under Provisions of Code of Arbitration Procedure ("Resolution") to make the following acts a violation of Article III, Section 1 of the Rules of Fair Practice: (a) A failure to honor a written and executed settlement agreement obtained in connection with an arbitration conducted under the auspices of a Self-Regulatory Organization ("SRO"); and (b) a failure to honor a written and executed settlement agreement obtained in connection with a mediation conducted under the auspices of the NASD. The instant filing also proposes to amend Article VI, Section 3 of the NASD By-Laws to permit the NASD to suspend or cancel the membership or registration of a member or associated person for failing to honor a written and executed settlement agreement obtained in connection with an arbitration or mediation conducted under the auspices of the NASD.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Enforcing Settlement Agreements

In connection with the administration of its arbitration program the NASD states that many disputes or claims for damages submitted to arbitration before the NASD, or another SRO forum or the American Arbitration Association ("AAA"), are settled prior to a hearing on the merits. In addition, the NASD is currently developing a mediation program, to be administered in connection with the arbitration program, where parties will be participating in a process that the NASD believes will increase the number of claims that are settled prior to a hearing.[2]

The NASD also notes that occasionally members and persons associated with members fail to comply with settlement agreements reached in connection with arbitration proceedings. These settlements may have been reached prior to the hearing on the matter and, as a result, the hearing is canceled only to be rescheduled following a party's failure to honor the settlement. In other cases, matters are settled and claims withdrawn only to be refiled later after a member or associated person fails to honor the agreement.

The NASD is concerned that a failure by a member or associated person to honor a settlement agreement imposes substantial added costs on the prevailing party or parties in the form of delayed recoveries, actions to enforce the agreements and additional fees connected with short-notice cancellation of hearings. The NASD's Arbitration Department also incurs additional costs in rescheduling hearings, and on occasion has had to appoint new arbitrators to hear a matter. In addition, the NASD believes that the credibility of the arbitration process suffers if members and their associated persons are able to delay the resolution of a dispute by failing to honor a settlement agreement.

The Resolution states that "it may be deemed * * * a violation of Article III, Section 1 of the Rules of Fair Practice for a member or person associated with a member to * * * fail to honor an [arbitration] award * * *." The Resolution was adopted in 1973 and has been used to discipline members and associated persons who fail to pay an arbitration award unless they have moved to vacate the award.[3] The Resolution applies to awards rendered in NASD arbitrations, as well as arbitrations sponsored by other SROs and the AAA.

The NASD believes that the failure by a member or associated person to honor a settlement agreement entered into in connection with an arbitration proceeding or a mediation should have the same consequences as the failure to pay an arbitration award. Therefore, the NASD is proposing to amend the Resolution to make the failure by a member or associated person to honor a written and executed settlement agreement actionable as a violation of Article III, Section 1 of the Rules of Fair Practice. The amendment is limited to settlement agreements that have been reduced to writing and have been executed. The amendment, therefore, will not encompass unexecuted settlements.

[2] The NASD has separately submitted a proposed rule change relating to the establishment of a Mediation Program. *See* Securities Exchange Act Release No. 35830 (June 9, 1995).

[3] Under the Federal Arbitration Act and many state statutes such a motion to vacate must be filed within 90 days after the award is rendered.

2. Use of Revocation Procedures

In 1993, the NASD amended Article VI, Section 3 of the By-laws to specify that a membership or registration could be suspended or cancelled on fifteen (15) days notice for failing to honor an arbitration award rendered in an NASD arbitration. The use of such an expedited or "revocation" proceeding was limited to awards in NASD sponsored proceedings because the NASD's oversight of the arbitration process provided greater assurance about the awards that would be enforced in such proceedings.[4]

The NASD believes that the failure by a member or an associated person of a member to honor settlement agreements entered into in connection with an arbitration proceeding or mediation sponsored by the NASD should be subject to the same revocation proceedings as are arbitration awards. Accordingly, the NASD is also proposing to amend Article VI, Section 3 of the By-Laws to specify that membership or registration can be suspended or cancelled on fifteen (15) days notice for failing to honor a settlement agreement obtained in connection with an NASD arbitration or mediation. The action of the NASD under Article VI, Section 3 of the By-Laws with respect to failure to honor settlement agreements will be conducted as a revocation proceeding pursuant to the provisions of Article VI of the Code of Procedure, which provides an opportunity for review of the NASD's action upon written request of the member or associated person.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[5] in that forcing members or associated persons of a member to abide by settlement agreements entered into in compromise of a dispute pending in arbitration or mediation will enhance the effectiveness of arbitration and mediation as alternative dispute resolution forums and eliminate the unfair impact and waste of resources experienced by the public, other litigants and the arbitration/mediation forum that results from the failure to honor a settlement agreement.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–95–20 and should be submitted by July 11, 1995.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–14979 Filed 6–19–95; 8:45 am]

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[4] Revocation proceedings initiated under Article VI, Section 3 of the By-Laws are conducted pursuant to Article VI of the NASD's Code of Procedure. As such they are subject to review by a hearing panel upon request of the member or associated person. The use of Article VI of the Code of Procedure for such proceedings was initiated in connection with the NASD's adoption of an amendment to Article VI, Section 3 of the By-Laws relating to failure to pay arbitration awards. *See*, SR–NASD–91–73, approved by the SEC in Securities Exchange Act Release No. 31763 (January 28, 1993).

[5] 15 U.S.C. 78o–3.

[6] 17 CFR 200.30–3(a)(12).

[Rel. No. IC–21135; 812–9616]

National Equity Trust, et al.; Notice of Application

June 14, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: National Equity Trust and Prudential Securities Incorporated ("Prudential").

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 17(b) of the Act that would exempt applicants from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit a terminating series of a unit investment trust to sell portfolio securities to a new series of the trust.

FILING DATE: The application was filed on May 26, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 10, 1995 and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Prudential Securities Incorporated, Unit Trust Department, One New York Plaza, New York, New York 10292, Attn.: Kenneth Swankie.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Robert A. Robertson,

Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. National Equity Trust, a unit investment trust registered under the Act, consists of several series (each a "Series"). All of the Series currently outstanding are Low 5 Series ("Low 5 Series"). Prudential is the Series' sponsor. Applicants request that the relief sought herein apply to future Series for which Prudential serves as sponsor.

2. The investment objective of each Low 5 Series is total return through investment in certain stocks from among those comprising the entire related index ("Index") (*e.g.*, the Dow Jones Industrial Average). Each Low 5 Series acquires approximately equal values of the five lowest dollar price per share stocks of the ten stocks in the Index having the highest dividend yields as of a specified date ("Select Five") and holds those stocks for approximately one year. Prudential intends that, as each Low 5 Series terminates, a new Series based on the appropriate Index will be offered for the next year.

3. Each Series has or will have a date (a "Rollover Date") on which holders of units in that Series (a "Rollover Series") may at their option redeem their units in the Rollover Series and receive in return units of a subsequent Series of the same type (a "New Series") which is created on or about the Rollover Date, and has a portfolio which contains securities ("Qualified Securities"). Qualified Securities are securities that are (a) actively traded (*i.e.*, have had an average daily trading volume in the preceding six months of at least 500 shares equal in value to at least 25,000 United States dollars) on an exchange (a "Qualified Exchange") which is either (i) a national securities exchange which meets the qualifications of section 6 of the Securities Exchange Act of 1934 or (ii) a foreign securities exchange which meets the qualifications set out in the proposed amendment to rule 12d3–1(d)(6) under the Act as proposed by the SEC and which releases daily closing prices, and (b) included in an Index.

4. There is normally some overlap from one year to the next in the stocks having the highest dividend yields in an Index and, therefore, between the portfolio of a Rollover Series and the New Series. In the case of the Select 5 on January 1, 1994 as compared to the Select 5 on January 1, 1995, two of the five securities were the same. Prudential estimates that the brokerage charge on a purchase or sale transaction averages approximately 5 cents a share. Prudential anticipates that substantial savings of commissions can be realized if a Series can purchase securities directly from a prior Series rather than using the open market as an intermediary between the two Series. Applicants, therefore, request an exemptive order to permit any Rollover Series to sell portfolio securities to a New Series and a New Series to purchase those securities.

5. In order to minimize overreaching, applicants agree that Prudential will certify to the trustee, within five days of each sale from a Rollover Series to a New Series, (a) that the transaction is consistent with the policy of both the Rollover Series and the New Series, as recited in their respective registration statements and reports filed under the Act, (b) the date of such transaction, and (c) the closing sales price on the Qualified Exchange for the sale date of the securities subject to such sale. The trustee will then countersign the certificate, unless, in the unlikely event that the trustee disagrees with the closing sales price listed on the certificate, the trustee immediately informs Prudential orally of any such disagreement and returns the certificate within five days to Prudential with corrections duly noted. Upon Prudential's receipt of a corrected certificate, if Prudential can verify the corrected price by reference to an independently published list of closing prices for the date of the transactions, Prudential will ensure that the price of units of the New Series, and distributions to holders of the Rollover Series with regard to redemption of their units or termination of the Rollover Series, accurately reflect the corrected price. To the extent that Prudential disagrees with the trustee's corrected price, Prudential and the trustee will jointly determine the correct sales price by reference to a mutually agreeable, independently published list of closing sales prices for the date of the transaction.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally makes it unlawful for an affiliated person of a registered investment company to sell securities to or purchase securities from the company. Investment companies under common control may be considered affiliates of one another. The Series may be under common control because they have Prudential as a sponsor.

2. Pursuant to section 17(b), the SEC may exempt a proposed transaction from section 17(a) if evidence establishes that: (a) The terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policy of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the Act. Under section 6(c), the SEC may exempt classes of transactions if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the proposed transactions satisfy the requirements of sections 6(c) and 17(b).

3. Rule 17a–7 under the Act permits registered investment companies that might be deemed affiliates solely by reason of common investment advisers, directors, and/or officers, to purchase securities from or sell securities to one another at an independently determined price, provided certain conditions are met. Paragraph (e) of the rule requires an investment company's board of directors to adopt and monitor procedures for these transactions to assure compliance with the rule. A unit investment trust does not have a board of directors and, therefore, may not rely on the rule. Applicants represent that they will comply with all of the provisions of rule 17a–7, other than paragraph (e).

4. Applicants represent that purchases and sales between Series will be consistent with the policy of the Series, as only securities that would otherwise be bought and sold on the open market pursuant to the policy of each Series will be involved in the proposed transactions. Applicants further believe that the practice of buying and selling on the open market leads to unnecessary brokerage fees on sales of securities and is therefore contrary not only to the policies of the Series but to the general purposes of the Act.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Each sale of Qualified Securities by a Rollover Series to a New Series will be effected at the closing price of the securities sold on a Qualified Exchange on the sale date, without any brokerage charges or other remuneration except customary transfer fees, if any.

2. The nature and conditions of such transactions will be fully disclosed to investors in the appropriate prospectus of each future Rollover Series and New Series.

3. The trustee of each Rollover Series and New Series will (a) review the procedures relating to the sale of securities from a Rollover Series and the purchase of securities for deposit in a New Series and (b) make such changes to the procedures as the trustee deems necessary that are reasonably designed to comply with paragraphs (a) through (d) of rule 17a–7.

4. A written copy of the procedures and a written record of each transaction will be maintained as provided in rule 17a–7(f).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15043 Filed 6–19–95; 8:45 am]

BILLING CODE 8010–01–M

SELECTIVE SERVICE SYSTEM

Form Submitted to the Office of Management and Budget for Clearance

The following form has been submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35):

SSS Form—404

Title: Potential Board Member Information.

Need and or Use: Is used to identify individuals willing to serve as members of local, appeal or review boards in the Selective Service System.

Respondents: Potential board members.

Burden: A burden of 15 minutes or less on the individual respondent.

Copies of the above identified form can be obtained upon written request to the Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, VA 22209–2425.

Written comments and recommendations for the proposed extension of clearance of the form should be sent within 30 days of publication of this notice to the Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, VA 22209–2425.

A copy of the comments should be sent to Office of Information and Regulatory Affairs, Attention: Desk Officer, Selective Service System, Office of Management and Budget, New Executive Office Building, Room 3235, Washington, DC 20503.

Dated: June 12, 1995.

Gil Coronado,

Director.

[FR Doc. 95–14958 Filed 6–19–95; 8:45 am]

BILLING CODE 8015–01–M

SMALL BUSINESS ADMINISTRATION

[Application No. 99000169]

CF Investment Co.; Notice of Filing of an Application for a License to operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) by CF Investment Company, at 102 South Main Street, Greenville, South Carolina 29601 for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended, (15 U.S.C. et seq.), and the Rules and Regulations promulgated thereunder.

CF Investment Company, a South Carolina corporation, is a wholly owned subsidiary of Carolina First Corporation, a bank holding company. The applicant's officers will be William S. Hummers III (President), Catherine W. Batson (Secretary), and Mary M. Gentry (Treasurer). All three of these individuals are officers of Carolina First Corporation and/or Carolina First Bank, and each has extensive experience in banking, finance, and investment analysis.

CF Investment Company will begin operations with committed capital of $2.5 million, with another $1.5 million or more available to the applicant from Carolina First Corporation as investment opportunities arise. CF Investment Company's entire $2.5 million of initial private capital is being contributed by Carolina First Corporation, its sole shareholder, by means of a private placement. Accordingly, the following shareholder will own 10 percent or more of the proposed SBIC:

Name: Carolina First Corporation, 102 South Main Street, Greenville, South Carolina 29601.

Percentage of ownership: 100%.

CF Investment Company is being formed primarily as a vehicle for investment in small enterprises that engaged in businesses that relate to, but do not directly constitute, banking or financial services. The applicant will be a source of debt and equity financing for qualified small business concerns that are based in South Carolina or that serve South Carolina. The applicant does not plan to seek financing from the SBA.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Greenville, South Carolina.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies).

Dated: June 13, 1995.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 95–15010 Filed 6–19–95; 8:45 am]

BILLING CODE 8025–01–M

Javelin Capital Fund, L.P.; Notice of Filing of an Application for a License To Operate as a Small Business Investment Company

[Application No. 99000170]

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to section 107.102 of the Regulation governing small business investment companies (13 CFR 107.102-(1994)) by Javelin Capital Fund, L.P. at 1075 13th Street South, Birmingham, Alabama 35205 for a license to operate as a small business investment company (SBIC under the Small Business Investment Act of 1958, as amended, (15 U.S.C. et. seq.), and the Rules and Regulations promulgated thereunder. Its principal area of operation will generally be in the South and Southeast portion of the United States.

Javelin Capital Fund, L.P., a Delaware limited partnership, will be managed by Tullis-Dickerson & Company, Inc., a Delaware S-Corporation, and JVP, LLC, a Delaware Limited Liability Company and sole general partner of the applicant. The executive officers of Tullis-Dickerson & Company, Inc. and the General Partner will be Lyle A.

Hohnke, Joan P. Neuscheler, James L. L. Tullis, and Thomas P. Dickerson. The applicant's four general partners have 54 years of combined experience in the investment business and 24 years as general partners in established venture capital funds. In addition, the applicant will avail itself of the services of an Advisory Board which will provide advisory services to the General Partner and the Management Company regarding potential investments. The Advisory Board will have between five and seven members, who shall initially be as follows: Henry Wendt, Stephen Wiggins, Lawrence Flinn, Charles A. McCallum, and Peter Farley.

The following limited partners will own 10 percent or more of the proposed SBIC:

Name	Percentage of ownership
University of Alabama at Birmingham, Education Foundation, Medical Towers Bldg., Suite 103A, 1717 11th Avenue South, Birmingham, AL 35205	22
Alabama Power Company, 600 North 18th Street, Birmingham, AL 35291	22
Protective Life Ins. Co., 2801 Highway 280 South, Birmingham, AL 35223	11

The applicant will begin operations with Regulatory Capital of $7 million and will focus its investment portfolio in teh health care industry while providing additional concentrations in the animal health and agricultural research, technology, communications, food, and specialty materials development areas. The applicant will generally make early and seed stage investments to achieve the development and commercialization of technology and innovative business strategies.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW, Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Birmingham, Alabama.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies).

Dated: June 9, 1995.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 95–15009 Filed 6–19–95; 8:45 am]

BILLING CODE 8025–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Defense Policy Advisory Committee for Trade; Meeting

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of closed meeting. The June 28, 1995 meeting of the Defense Policy Advisory Committee for Trade will be closed to the public.

SUMMARY: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to section 2155(f)(2) of title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to any trade agreement, the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States.

DATES: The meeting is scheduled for June 28, 1995, unless otherwise notified.

ADDRESSES: The meeting will be held at the Pentagon, Arlington, Virginia, unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Clayton Parker, Director of Intergovernmental Affairs, Office of the United States Trade Representative, Executive Office of the President (202) 395–6120.

Michael Kantor,

United States Trade Representative.

[FR Doc. 95–15005 Filed 6–19–95; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 USC Chapter 35).

DATES: June 15, 1995.

ADDRESSES: Written comments on the DOT information collection requests should be forwarded, as quickly as possible, to Edward Clarke, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, D.C. 20503. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

FOR FURTHER INFORMATION CONTACT: Copies of the DOT information collection requests submitted to OMB may be obtained from Susan Pickrel or Annette Wilson, Information Management Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366–4735.

SUPPLEMENTARY INFORMATION: Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to OMB for approval or renewal under that Act. OMB reviews and approves agency submissions in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Items Submitted to OMB for Review

The following information collection requests were submitted to OMB on June 15, 1995:

DOT No: 4057
OMB No: 2115–0071
Administration: United States Coast Guard
Title: Official Logbook
Need for Information: Title 46 USC 11301–03, requires commercial shipping companies to maintain an official logbook aboard their vessels
Proposed Use of Information: This information will be used by Coast Guard and various federal maritime casualty investigators of Federal and Civil courts in instances of injury or litigation between a seamen and his shipping company. Coast Guard inspectors use the information to determine compliance with various laws and to examine incidences of shipboard misconduct
Frequency: On occasion
Burden Estimate: 1,750
Respondents: Shipping Companies and U.S. Merchant Marineers
Form(s): CG–706B
Average Burden Hours Per Response: 1 hour

DOT No: 4058
OMB No: 2115–0579
Administration: United States Coast Guard
Title: Application for a permit to transport municipol or commercial waste
Need for Information: As mandated by the Shore Protection Act, the Coast Guard issued interim regulations requiring owners/operators or commercial vessels to apply for a permit to transport municipal or commercial waste on the coastal waters of the U.S.
Proposed Use of Informotion: This information will be used by the Coast Guard to issue permits and identification numbers to owners/operators of commercial vessels that transport municipal or commercial waste
Frequency: Every three years.
Burden Estimate: 366 hours
Respondents: Owners/operators of municipal or commercial vessels transporting waste
Form(s): None
Average Burden Hours Per Response: 50 minutes reporting

DOT No: 4059
OMB No: 2127–0052
Administration: National Highway Traffic Safety Administration
Title: Brake Hose Manufacturing Identification Standard 106
Need for Information: Under the authority of the National Traffic and Motor Vehicle Safety Act of 1966, as amended, Title 15 U.S.C. 1932, Section 103, authorizes the issuances of Federal Motor Vehicle Safety Standards
Proposed Use of Information: The information will be used to ensure traceability of the manufacturer should a noncompliance or safety related defect be discovered
Frequency: On Occasion
Burden Estimate: 30 hours
Respondents: Manufacturers
Form(s): None
Average Burden Hours Per Response: 1.5 hours

DOT No: 4060
OMB No: 2115–0582
Administration: United States Coast Guard
Title: Commercial Fishing Industry Vessel Regulations
Need for Information: The Commercial Fishing Industry Vessels Safety Act of 1988 requires the Coast Guard to prescribe procedures to reduce the high level of fatalities and accidents in the commercial fishing industry. Reporting of casuality information from underwriters of insurance on commercial fishing industry vessels is required at 46 U.S.C. 6104
Proposed Use of Information: The information will be used by the Coast Guard to improve safety in the commercial fishing industry
Frequency: On occasion
Burden Estimate: 91,920 hours
Respondents: Insurers, vessel owners, agents and individuals in charge of commercial fishing vessels
Form(s): None
Average Burden Hours Per Response: 1 hour reporting and 1 hour recordkeeping

DOT No: 4061
OMB No: 2125–0514
Administration: Federal Highway Administration
Title: Develop and Submit Utility Accomodation Policies
Need for Information: In carrying out the requirements of 23 U.S.C. 116 to assure Federal-aid highway projects are being properly maintained and 23 U.S.C. 109 to determine whether any rights-of-way on Federal-aid systems should be used for accomodating utility facilities, the Secretary of Transportation is authorized by 23 U.S.C. 315 to prescribe and promulgate rules and regulations
Proposed Use of Information: The information will be used to review and approve state highway agencies utility accommodation policies.
Frequency: After initial submission, submission on 3 to 5 year cycle as needed
Burden Estimate: 2,800 hours
Respondents: State highway agencies
Form(s): None
Average Burden Hours Per Response: 280 hours

DOT No: 4062
OMB No: 2125–0541
Administration: Federal Highway Administration
Title: Certification of Enforcement of Heavy Vehicle Use Tax
Need for Information: Title 23, U.S.C. 141(d), provides that a States's apportionment of funds under 23 U.S.C. 104(b)(5) shall be reduced in an amount up to 25 percent of the amount to be apportioned during any fiscal year beginning after September 30, 1984, during which vehicles subject to the Federal heavy vehicle use tax are lawfully registered without having presented proof of payment of tax
Proposed Use of Information: The information will be used to certify proof of payment of heavy vehicle use tax and to provide supporting records for each vehicle subject to the tax. The certification procedure is the critical factor in establishing a managable and reasonable procedure for determining State compliance with the Statue 23 U.S.C. 141(d)
Frequency: Annually
Burden Estimate: 612 hours
Respondents: State highway agencies
Form(s): None
Average Burden Hours Per Response: 2 hours processing and 10 hours recordkeeping

DOT No: 4063
OMB No: 2125–0515
Administration: Federal Highway Administration
Title: Eligibility Statement for Utility Adjustments
Need for Information: Under the provisions of 23 U.S.C. 123, Federal-aid highway funds may be used to reimburse State (or local) highway agencies when they have paid for the cost of relocation of utility facilities necessitated by the construction of Federal-aid highway projects
Proposed Use of Information: The information will be used by the Federal Highway Administration to determine whether the State's statutes or ordinances regarding payment for utility relocations are acceptable under 23 U.S.C. 123
Frequency: On occasion
Burden Estimate: 180 hours
Respondents: State highway agencies
Form(s): None
Average Burden Hours Per Response: 36 hours

DOT No: 4064
OMB No: 2125–0542
Administration: National Highway Traffic Safety Administration
Title: Petitions for Exemption from the Vehicle Theft Prevention Standard, 49 CFR part 543
Need for Information: 29 U.S.C. Chapter 331 requires the Secretary of Transportation to promulgate a theft prevetion standard to provide for the identification of certain motor vehicles and their major replacement parts to impede motor vehicle theft

Proposed Use of Information: This information will be used by the National Highway Traffic Safety Administration in exercising its delegated authority to grant exemptions from the vehicle identification requirements of 49 CFR part 541
Frequency: one-time only
Burden Estimate: 96 hours reporting
Respondents: Businesses
Form(s): None
Average Burden Hours Per Response: 8 hours
DOT No: 4065
OMB No: 2120–0101
Administration: Federal Aviation Administration
Title: Physiological Training
Need for Information: The submission of the application is authorized by Sections 302(k), 605,311, and 313(d) of the Federal Aviation Act of 1958 (49 U.S.C. 1343(k), 1346, 1352, 1354(d)
Proposed Use of Information: This information will be used by the Aeromedical Education Division (AAM–400) to determine if the applicant is qualified to receive physiological training
Frequency: On occasion.
Burden Estimate: 458 hours annually
Respondents: Individual air crew members
Form(s): FAA Form 3150–7
Average Burden Hours Per Response: 5 minutes per response
DOT No: 4066
OMB No: 2120–0056
Administration: Federal Aviation Administration
Title: Report of Inspections Required by Airworthiness Directives PAR part 39
Need for Information: FAR 39 authorized principally by 49 U.S.C., Subtitle VII—Aviation Programs, Section 40113(a), Section 44701, and Section 44702
Proposed Use of Information: This information will be used by the Federal Aviation Administration to determine if the corrective action called for in the airworthiness directive has been sufficient to eliminate the unsafe condition, and if not, a new airworthiness directive to correct the unsafe condition will be issued
Frequency: As needed
Burden Estimate: 21,250 hours annually
Respondents: Owners and operators of the affected products
Form(s): None
Average Burden Hours Per Response: 5 minutes per response.

Issued in Washington, D.C. on June 15, 1995.

Paula R. Ewen,

Chief, Information Management Division.

[FR Doc. 95–15063 Filed 6–9–95; 8:45 am]

BILLING CODE 4910–62–P

Aviation Proceedings; Agreements filed During the Week Ended June 9, 1995

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 50388
Date filed: June 8, 1995
Parties: Members of the International Air Transport Association
Subject: COMP Telex—Reso 024f, Local Currency Fare Changes—Hungary
Proposed Effective Date: July 1, 1995

Paulette V. Twine,

Chief Documentary Services Division.

[FR Doc. 95–15061 Filed 6–19–95; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended June 9, 1995.

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 50383
Date filed: June 6, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 5, 1995
Description: Application of American Airlines, Inc., pursuant to 49 USC 41102 and 14 CFR part 377, and Subpart Q of the Regulations applies for renewal of Segment 2 of its certificate of public convenience and necessity for Route 370 (Chicago-Milan/Rome), most recently reissued by Order 93–2–34, February 16, 1993.
Docket Number: 50384
Date filed: June 6, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 5, 1995
Description: Application of Northwest Airlines, Inc., pursuant to 49 U.S.C. Section 41101 of the Act and Subpart Q of the Regulations applies for renewal of its certificate of public convenience and necessity for Route 580, which authorizes Northwest to engage in foreign air transportation of persons, property and mail between the coterminal points of Guam, Saipan, and Northern Mariana Islands, on the one hand, and the terminal point Naha, Japan on the other hand. The authority originally was granted by Order 90–5–21, issued on May 9, 1990 and effective as of June 17, 1990, with a five-year term. The authority is due to expire on June 17, 1995.
Docket Number: 44944
Date filed: June 9, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 7, 1995
Description: Application of Aeronaves Del Peru, pursuant to Section 402 of the Act and Subpart Q of the Regulations, requests renewal of its foreign air carrier permit for an additional indefinite period authorizing it to engage in scheduled foreign air transportation of property and mail twice weekly between Lima, Peru; via the intermediate points Panama City, Panama; Guayaquil, Ecuador (blind sector); Bogota and Cali, Colombia (blind sectors); and the terminal point Miami, Florida.

Paulette V. Twine,

Chief Documentary Services Division

[FR Doc. 95–15062 Filed 6–19–95; 8:45 am]

BILLING CODE 4910–62–P

Bureau of Transportation Statistics

Public Notice; DOT Moves Airline Statistics Office to Bureau of Transportation Statistics

SUMMARY: Effective May 28, 1995, the Office of Airline Statistics (OAS) of the Research and Special Programs Administration (RSPA), U.S. Department of Transportation, was transferred from RSPA to the Bureau of Transportation Statistics (BTS). The office has been renamed the Office of Airline Information (OAI), mail code K–25, and is located in Room 4125 at the Department's headquarters, telephone 202/366–9059. Mr. Timothy E. Carmody from the Office of the Secretary's Office of Aviation Analysis, was named as Acting Director of the new BTS office. The office functions, organizational structure, personnel, and telephone numbers remain the same.

ADDRESSES: The mailing address for airline submissions is Data Administration Division, K–25, Rm 4125, Office of Airline Information, BTS, Department of Transportation, 400 7th Street, SW, Washington, DC 20590–0001 (Telephone 202–366–9059).

Dated: June 14, 1995.

Philip N. Fulton,

Associate Director for Data User Services.

[FR Doc. 95–15008 Filed 6–19–95; 8:45 am]

BILLING CODE 4910–60–P

Coast Guard

[CGD 95–050]

New York Harbor Traffic Management Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: A meeting of the New York Harbor Traffic Management Advisory Committee (NYHTMAC) will be held on July 12, 1995. Topics for this meeting include a report on upcoming marine events, dredging operations in New York Harbor, update on Vessel Traffic Service and Coast Guard regulatory initiatives, environmental monitoring initiatives, committee business, and topics from the floor.

DATES: The meeting will be held at 10 a.m. on July 12, 1995.

ADDRESSES: The meeting will be held in the Conference Room, second floor, U.S. Coast Guard Marine Inspection Office, Battery Park, New York.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander D.S. HILL, USCG, NYHTMAC Executive Secretary, Vessel Traffic Service New York, Building 108, Governors Island, New York, NY 10004–5070; or by calling (212) 668–7429.

SUPPLEMENTARY INFORMATION: Authority for conducting NYHTMAC meetings is granted pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 USC App. I).

The New York Harbor Traffic Management Advisory Committee has been established by Commander, First Coast Guard District to provide information, consultation, and advice with regard to port development, maritime trade, port traffic, and other maritime interests in the harbor. Members of the Committee serve voluntary without compensation from the Federal Government.

Topics for this meeting include a report on upcoming marine events, dredging operations in New York Harbor, update on Vessel Traffic Service and Coast Guard regulatory initiatives, environmental monitoring initiatives, committee business, and topics from the floor.

Attendance is open to the interested public. With advance notice to the Chairperson, members of the public may make oral statements at the meeting. Persons wishing to present oral statements should notify the Executive Director no later than one day before the meeting. Any member of the public may present a written statement to the Committee at any time.

The New York Harbor Traffic Management Advisory Committee continues to seek additional members who represent the many diverse interests in the Port of New York and New Jersey.

Dated: June 6, 1995.

T.H. Gilmour,

Captain, U.S. Coast Guard, Captain of the Port New York, NYHTMAC Executive Director.

[FR Doc. 95–15079 Filed 6–19–95; 8:45 am]

BILLING CODE 4910–14–M

[CGD 95–047]

National Environmental Policy Act: Agency Procedures for Categorical Exclusions

AGENCY: Coast Guard, DOT.

ACTION: Notice of agency policy.

SUMMARY: The Coast Guard is announcing two changes in its policy concerning agency actions that are categorically excluded from additional environmental analysis under the National Environmental Policy Act (NEPA). One change concerns the need for an environmental analysis checklist in the development of drawbridge regulations and procedures. The other change concerns permits for sailing competitions and demonstrations.

FOR FURTHER INFORMATION CONTACT: Mr. David Reese, Environmental Compliance and Restoration Branch, (202) 267–1942.

SUPPLEMENTARY INFORMATION:

Background

Under regulations implementing the National Environmental Policy Act (NEPA) (40 CFR parts 1500 through 1508), each Federal agency is required to adopt procedures to supplement those regulations (40 CFR 1507.3). The Coast Guard's procedures and policies are published as a Commandant instruction entitled "National Environmental Policy Act Implementing Procedures and Policy for Considering Environmental Impacts" (COMDTINST M1675.1B). On July 29, 1994, the Coast Guard published a notice in the **Federal Register** (59 FR 38654) announcing the revision of section 2.B.2 of the instruction. Section 2.B.2 lists the proposed agency actions that are categorically excluded from the requirement that the actions undergo the analysis that accompanies preparation of an Environmental Assessment or Environmental Impact Statement.

Discussion of Changes

(1) The Coast Guard has determined that the requirement under section 2.B.2.e.(32)(e) of COMDTINST M16475.1B (as published in 59 FR 38658; July 29, 1994) to prepare an environmental analysis checklist should not apply to the promulgation of operating regulations or procedures for drawbridges. A checklist is an internal administrative document devised by the Coast Guard to assist in analyzing agency actions that might have a significant effect on the human environment. After numerous cases, the Coast Guard has found that these actions are not likely to have a significant effect on the human environment. Therefore, the Coast Guard is removing the words "(Checklist required)." from section 2.B.2.e.(32)(e). This removal has no affect on the Coast Guard's responsibility to consider the effects of its actions on the human environment.

(2) Section 2.B.2.e.(35)(c) is corrected to refer to sailing competitions or demonstrations involving approximately "100 sailboats or sailboards," not "100 sailboats or sailboats."

For the reasons set out in the preamble, the Coast Guard announces the following amendments to section 2.B.2.e. of COMDTINST M 16475.1B:

2.B.2.e. *Categorical Exclusion List*

(32) * * *

* * * * * *

(e) Promulgation of operating regulations or procedures for drawbridges.

* * * * * *

(35) * * *

* * * * * *

(c) Sailing competitions or demonstrations involving approximately 100 sailboats (up to approximately 26 feet in length) or sailboards and not more than approximately 200 spectator craft.

* * * * * *

Dated: June 13, 1995.

E. J. Barrett,

Rear Admiral, U.S. Coast Guard, Chief, Office of Engineering, Logistics and Development.

[FR Doc. 95–15078 Filed 6–19–95; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

[Change to AC No. 120–42A]

Proposed Appendix 7, Reduction of Operator's Inservice Experience Requirement Prior to the Granting of an ETOPS Operational Approval [Accelerated ETOPS Operational Approval], to Advisory Circular 120–42A, Extended Range Operation with Two-Engine Airplanes (ETOPS)

Correction

In notice document 95–13403 beginning on page 28643 in the issue of Thursday, June 1, 1995, Appendix 7 of Advisory Circular 120–42A was inadvertently not published in the original document. Appendix 7 of Advisory Circular 120–42A reads as follows:

Appendix 7: Reduction of Operator's in Service Experience Requirement Prior to the Granting of ETOPS Operational Approval (Accelerated ETOPS Operational Approval)

1. General

a. Paragraph 9(b) of AC 120–42A states the following:

(1) (In service experience) guidelines may be reduced or increased following review and concurrence on a case-by-case basis by the Director, Flight Standards Service.

(2) Any reduction * * * will be based on evaluation of the operators ability and competence to achieve the necessary reliability for the particular airframe/engine combination in extended range operations.

(3) For example, a reduction in inservice experience may be considered for an operator who can show extensive inservice experience with a related engine on another airplane which has achieved acceptable reliability.

(4) The substitution of in service experience which is equivalent to the actual conduct of 120-minute ETOPS operations will also be established by the Director, Flight Standards Service AFS–1, on a case by case basis.

b. The purpose of this appendix is to establish the factors which the Director, Flight Standards Service may consider in exercising the authority to allow reduction or substitution of operators inservice experience requirement in granting ETOPS Operational Approval.

c. Paragraph 7 of AC 120–42A states that * * * the concepts for evaluating extended range operations with two-engine airplanes * * * ensure that two-engine airplanes are consistent with the level of safety required for current extended range operations with three and four-engine turbine powered airplanes without unnecessarily restricting operation.

d. It is apparent that the excellent propulsion related safety record of two-engine airplanes has not only been maintained, but potentially enhanced, by the process related provisions associated with ETOPS Type Design and Operational Approvals. Further, currently available data shows that these process related benefits are achievable without extensive inservice experience. Therefore, reduction or elimination of inservice experience requirements may be possible when the operator shows to the FAA that adequate and validated ETOPS processes are in place.

e. The Accelerated ETOPS Operations Approval Program with reduced inservice does not imply that any reduction of existing levels of safety should be tolerated but rather acknowledges that an operator may be able to satisfy the objectives of AC 120–42A by a variety of means of demonstrating that operator's capability.

f. This Appendix permits an operator to start ETOPS operations when the operator has demonstrated to the FAA that those processes necessary for successful ETOPS operations are in place and are considered to be reliable. This may be achieved by thorough documentation of processes, demonstration on another airplane/validation (as described in paragraph 7 of this Appendix) or a combination of these.

2. Background

a. When AC 120–42 was first released in 1985 ETOPS was a new concept, requiring extensive inservice verification of capability to assure the concept was a logical approach. At that time, the FAA recognized that reduction in the inservice experience requirements or substitution of inservice experience, on another airplane, would be possible.

b. The ETOPS concept has been successfully applied for close to a decade; ETOPS is now widely employed. The number of ETOPS operators has increased dramatically, and in the North Atlantic U.S. airlines have more twin operations than the number of operations accomplished by three and four engine airplanes. ETOPS is now well established.

c. Under AC 120–42A, an operator was generally required to operate an airframe-engine combination for one (1) year, before being eligible for 120-minute ETOPS; and another one (1) year, at 120-minute ETOPS, before being granted 180-minute ETOPS approval. For example, an operator who currently has 180-minute ETOPS approval on one type of airframe-engine or who is currently operating that route with an older generation three or four engine airplane was required to wait for up to two (2) years for such an approval. Such a requirement could create undue economic burden on operators, while not contributing materially to safety. Data indicates that compliance with processes has resulted in successful ETOPS operation at earlier than the standard time provided for in the advisory circular.

d. ETOPS operational data indicates that twins have maintained a high degree of reliability due to implementation of specific maintenance, engineering and flight operation process related requirements. Compliance with ETOPS processes is crucial in assuring high levels of reliability of twins. Data shows that previous experience on an airframe-engine combination prior to operating ETOPS, does not necessarily make a significant difference in the safety of such operations. Commitment to establishment of reliable ETOPS processes has been found to be a much more significant factor. Such commitment, by operators, to ETOPS processes has, from the outset, resulted in operation of twins at a mature level of reliability.

e. ETOPS experience of the past decade shows that a firm commitment by the operator to establish proven ETOPS processes prior to the start of actual ETOPS operations and to maintain that commitment throughout the life of the program is paramount to ensuring safe and reliable ETOPS operations.

3. Definitions

a. *Process.* A process is a series of steps or activities that are accomplished, in a consistent manner, to assure that a desired result is attained on an ongoing basis. Paragraph 4 documents ETOPS processes that should be in place to ensure a successful Accelerated ETOPS program.

b. *Proven Process.* A process is considered to be proven when the following elements are developed and implemented:

(1) Definition and documentation of process elements.

(2) Definition of process related roles and responsibilities.

(3) Procedure for validation of process of process elements.

(i) Indications of process stability/reliability.

(ii) Parameters to validate process and monitor (measure) success.

(iii) Duration of necessary evaluation to validate process.

(4) Procedure for follow-up inservice monitoring to assure process remains reliable/stable.

Methods of process validation are provided in paragraph 7.

4. ETOPS Processes

a. The two-engine airframe/engine combination for which the operator is seeking Accelerated ETOPS Operational Approval must be ETOPS Type Design approved prior to commencing ETOPS. The operator seeking Accelerated ETOPS Operational Approval must demonstrate to the FAA that it has an ETOPS program in place that addresses the process elements identified in this section.

b. The following are the ETOPS process elements:

(1) Airplane/engine compliance to Type Design Build Standard (CMP).

(2) Compliance with the Maintenance Requirements as defined in paragraph 10 and Appendix 4 of AC 120–42A:

(i) Fully developed Maintenance Program (Appendix 4, paragraph 1(a)(2)) which includes a tracking and control program.

(ii) ETOPS manual (Appendix 4, paragraph 1(a)(3)) in place.

(iii) A proven Oil Consumption Monitoring Program. (Appendix 4, paragraph 1(a)(5)).

(iv) A proven Engine Condition Monitoring and Reporting system. (Appendix 4, paragraph 1(a)(5)).

(v) A proven plan for Resolution of Airplane Discrepancies. (Appendix 4, paragraph 1(a)(6)).

(vi) A proven ETOPS Reliability Program. (Appendix 4, paragraph 1(a)(7)).

(vii) Propulsion system monitoring program (Appendix 4, paragraph 1 (a)(8)) in place. The operator should establish a program that results in a high degree of confidence that the propulsion system reliability appropriate to the ETOPS diversion time would be maintained.

(viii) Training and qualifications program in place for ETOPS maintenance personnel. (Appendix 4, paragraph 1(a)(9)).

(ix) Established ETOPS parts control program (Appendix 4, paragraph 1(a)(10)).

(3) Compliance with the Flight Operations Program as defined in paragraph 10 and Appendix 5 of AC 120–42A:

(i) Proven flight planning and dispatch programs appropriate to ETOPS.

(ii) Availability of meteorological information and MEL appropriate to ETOPS.

(iii) Initial and recurrent training and checking program in place for ETOPS flight operations personnel.

(iv) Flight crew and dispatch personnel familiarity assured with the ETOPS routes to be flown; in particular the requirements for, and selection of, enroute alternates.

(4) Documentation of the following elements:

(i) Technology new to the operator and significant difference in primary and secondary power (engines, electrical, hydraulic and pneumatic) systems between the airplanes currently operated and the two-engine airplane for which the operator is seeking Accelerated ETOPS Operational Approval.

(ii) The plan to train the flight and maintenance personnel to the differences identified in paragraph 1 above.

(iii) The plan to use proven validated Training and Maintenance and Operations Manual procedures relevant to ETOPS for the two-engine airplane for which the operator is seeking Accelerated ETOPS Operational Approval.

(iv) Changes to any previously proven validated Training, Maintenance, or Operations Manual procedures described above. Depending on the nature and extent of any changes, the operator may be required to provide a plan for validating such changes.

(v) The validation plan for any additional operator unique training and procedures relevant to ETOPS.

(vi) Details of any ETOPS program support from the airframe manufacturer, engine manufacturer, other operators or any other outside person.

(vii) The control procedures when maintenance or flight dispatch support is provided by an outside person as described above.

5. Application

a. Paragraph 10(a) of AC 120–42A requires that requests for extended range operations be submitted at least sixty (60) days prior to the start of extended range operations. Normally, the operator should submit an Accelerated ETOPS Operational Approval Plan to the FAA six (6) months before the proposed start of extended range operations. This time will permit the FAA to review the documented plans and assure adequate ETOPS processes are in place. The operators application for Accelerated ETOPS should:

(1) Define proposed routes and the ETOPS diversion time necessary to support these routes.

(2) Define processes and related resources being allocated to initiate and sustain ETOPS operations in a manner that demonstrates commitment by management and all personnel involved in ETOPS maintenance and operational support.

(3) Identify, where required, the plan for establishing compliance with the build standard required for Type Design Approval, e.g., CMP (Configuration, Maintenance and Procedures Document) compliance.

(4) Document plan for compliance with requirements in paragraph 4.

(5) Define Review Gates. A Review Gate is a milestone tracking plan to allow for the orderly tracking and documentation of specific requirements of this Appendix. Each Review Gate should be defined in terms of the tasks to be satisfactorily accomplished in order for it to be successfully passed. Items for which the FAA visibility is required or the FAA approval is sought should be included in the Review Gates. Normally, the Review Gate process will start six (6) months before the proposed start of extended range operations and should continue at least until six (6) months after the start of extended range operations. Assure that the proven processes comply with the provisions of paragraph 3 of this Appendix.

6. Operational Approvals

a. Operational approvals that are granted with reduced inservice experience will be limited to those areas agreed on by the FAA at approval of the Accelerated ETOPS Operational Approval Plan. When an operator wishes to add new areas to the approved list, FAA concurrence is required.

b. Operators will be eligible for ETOPS Operational Approval up to the Type Design Approval limit, provided the operator complies with all the requirements in paragraph 4.

7. Process Validation

a. Paragraph 4 identifies those process elements that need to be proven prior to start of Accelerated ETOPS.

b. For a process to be considered proven, the process must first be defined. Typically this will include a flow chart showing the various elements of the process. Roles and responsibilities of the personnel who will be managing this process should be defined including any training requirement. The operator should

demonstrate that the process is in place and functions as intended. The operator may accomplish this by thorough documentation and analysis, or by demonstrating on an airplane that the process works and consistently provides the intended results. The operator should also show that a feedback loop exists to illustrate need for revision of the process, if required, based on inservice experience.

c. Normally the choice to use, or not use, demonstration on an airplane as a means of validating the process should be left up to the operator. With sufficient preparation and dedication of resources such validation may not be necessary to assure processes should produce acceptable results. However, in any case where the proposed plan to prove the processes is determined by the FAA to be inadequate or the plan does not produce acceptable results, validation of the process in an airplane will be required.

d. If an operator is currently operating ETOPS with a different airframe and/or engine combination it may be able to document that it has proven ETOPS processes in place and only minimal further validation may be necessary. It will, however, be necessary to demonstrate that means are in place to assure equivalent results will occur on the airplane being proposed for Accelerated ETOPS Operational Approval. The following elements which while not required, may be useful or beneficial in justifying a reduction in the validation requirements of ETOPS processes:

(1) Experience with other airframes and/or engines.

(2) Previous ETOPS experience.

(3) Experience with long range, overwater operations with two, three or four engine airplanes.

(4) Experience gained by flight crews, maintenance personnel and flight dispatch personnel while working with other ETOPS approved operators.

e. Process validation may be done in the airframe-engine combination that will be used in Accelerated ETOPS operation or in a different type airplane than that for which approval is being sought, including those with three or four engines.

f. A process may be validated by first demonstrating the process produces acceptable results on a different airplane type or airframe/engine combination. It should then be necessary to demonstrate that means are in place to assure equivalent results should occur on the airplane being proposed for Accelerated ETOPS Operational Approval.

g. Any validation program should address the following:

(1) The operator should show that it has considered the impact of the ETOPS validation program with regard to safety of flight operations. The operator should state in its application any policy guidance to personnel involved in the ETOPS process validation program. Such guidance should clearly state that ETOPS process validation exercises should not be allowed to adversely impact the safety of operations especially during periods of abnormal, emergency, or high cockpit workload operations. It should emphasize that during periods of abnormal or emergency operation or high cockpit workload ETOPS process validation exercises may be terminated.

(2) The validation scenario should be of sufficient frequency and operational exposure to validate maintenance and operational support systems not validated by other means.

(3) A means must be established to monitor and report performance with respect to accomplishment of tasks associated with ETOPS process elements. Any recommended changes to ETOPS maintenance and operational process elements should be defined.

(4) Prior to the start of the process validation program, the following information should be submitted to the FAA:

(i) Validation periods, including start dates and proposed completion dates.

(ii) Definition of airplane to be used in the validation. List should include registration numbers, manufacturer and serial number and model of the airframes and engines.

(iii) Description of the areas of operation (if relevant to validation objectives) proposed for validation and actual extended range operations.

(iv) Definition of designated ETOPS validation routes. The routes should be of duration necessary to ensure process validation occurs.

(5) Process validation reporting—The operator should compile results of ETOPS process validation. The operator should:

(i) Document how each element of the ETOPS process was utilized during the validation.

(ii) Document any shortcomings with the process elements and measures in place to correct such shortcomings.

(iii) Document any changes to ETOPS processes that were required after an inflight shut down (IFSD), unscheduled engine removals, or any other significant operational events.

(iv) Provide periodic Process Validation reports to the FAA. This may be addressed during the Review Gates.

Thomas C. Accardi,

Director, Flight Standards Service.

[FR Doc. 95–15007 Filed 6–19–95; 8:45 am]

BILLING CODE 4910–13–M

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review; Fort Lauderdale-Hollywood International Airport, Fort Lauderdale, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the updated noise exposure maps submitted by the Broward County Aviation Department, Fort Lauderdale, Florida for Fort Lauderdale-Hollywood International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program update that was submitted for Fort Lauderdale-Hollywood International Airport under part 150 in conjunction with the noise exposure maps, and that this program update will be approved or disapproved on or before November 28, 1995.

EFFECTIVE DATE: The effective date of the FAA's determination on the updated noise exposure maps and of the start of its review of the associated noise compatibility program update is June 1, 1995. The public comment period ends July 31, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Tommy J. Pickering, P.E., Federal Aviation Administration, Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827–5397, (407) 648–6583. Comments on the proposed noise compatibility program update should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the updated noise exposure maps submitted for Fort Lauderdale-Hollywood International Airport are in compliance with applicable requirements of part 150, effective June 1, 1995. Further, FAA is reviewing a proposed noise compatibility program update for that airport which will be approved or disapproved on or before November 28, 1995. This notice also announces the availability of this program update for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties to the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The Broward County Aviation Department, Fort Lauderdale, Florida, submitted to the FAA on May 22, 1995, updated noise exposure maps, descriptions and other documentation which were produced during the Fort Lauderdale-Hollywood International Airport FAR Part 150 Program Update conducted between November 25, 1992 and May 18, 1995. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the updated noise exposure maps and related descriptions submitted by the Broward County Aviation Department, Fort Lauderdale, Florida. The specific maps under consideration are "EXISTING CONDITIONS (1992) *NOISE EXPOSURE MAP" and "FUTURE CONDITIONS (1977) *NOISE EXPOSURE MAP" in the submission. The FAA has determined that these maps for Fort Lauderdale-Hollywood International Airport are in compliance with applicable requirements. This determination is effective on June 1, 1995. FAA's determination on an airport operator's noise exposure maps is limited to finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program update for Fort Lauderdale-Hollywood International Airport, also effective on June 1, 1995. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program update. The formal review period, limited by law to maximum of 180 days, will be completed on or before November 28, 1995.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program update with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the updated noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program update are available for examination at the following locations:

Federal Aviation Administration, Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827–5386,

Broward County Aviation Department, Fort Lauderdale-Hollywood International Airport, 1400 Lee Wagener Boulevard, Fort Lauderdale, FL 33315.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT:**

Issued in Orlando, Florida June 1, 1995.

Charles E. Blair,

Manager, Orlando Airports District Office.

[FR Doc. 95–15006 Filed 6–19–95; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Aviation Rulemaking Advisory Committee to discuss air carrier/general aviation maintenance issues.

DATES: The meeting will be held on July 27, 1995, at 8:30 a.m. and should adjourn by 3 p.m. Arrange for oral presentations by July 17, 1995.

ADDRESS: The meeting will be held at the Air Transport Association of America, 1301 Pennsylvania Avenue NW., Suite 1100, Washington, DC, at 8:30 a.m.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Herber, Meeting Coordinator, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–3498; fax number (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee (ARAC) to consider air carrier/general aviation maintenance issues. The

meeting will be held on July 27, 1995, at Air Transport Association of America, 1301 Pennsylvania Avenue NW., Suite 1100, Washington, DC, at 8:30 a.m. The agenda will include:

- Possible consideration of a new task for ARAC concerning revisions to § 121.375 of the Federal Aviation Regulations.
- Dissolution of the Weight and Balance Working Group.
- Discussion of Suspected Unapproved Parts initiatives with senior FAA officials.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements on or before July 17, 1995, to present oral statements at the meeting. The public may present written statements at any time by providing 35 copies to the Assistant Chair or by presenting the copies to him at the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the meeting coordinator listed under the heading **FOR FURTHER INFORMATION CONTACT.** The Assistant Chair may limit the time allowed for oral statements to fit the time available. The Assistant Chair may also allow questions from the public, again subject to time available.

Issued in Washington, DC, on June 14, 1995.

Benjamin J. Burton, Jr.,

Acting Assistant Executive Director for Air Carrier/General Aviation Maintenance Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 95–15065 Filed 6–19–95; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting to solicit information from the aviation maintenance community concerning maintenance, preventive maintenance, rebuilding and alteration, and inspection of certain aircraft. The information is requested to assist the Aviation Rulemaking Advisory Committee (ARAC) in its deliberations.

DATES: The meeting will be held on June 27, 1995, beginning at 1:00 p.m.

ADDRESSES: The meeting will be held at the Machinist's Building, 3830 South Meridian, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Ms. Christine Leonard, Professional Aviation Maintenance Association, 1008 Russell Lane, West Chester, PA 19382; telephone (610) 399–9034.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. II), notice is hereby given of a meeting to solicit information from the aviation maintenance community concerning maintenance, preventive maintenance, rebuilding and alteration, and inspection of certain aircraft. The information is requested to assist the Aviation Rulemaking Advisory Committee in its deliberations with regard to a task assigned to ARAC by the Federal Aviation Administration.

Specifically, the task is as follows:

Review Title 14 Code of Federal Regulations, parts 43 and 91, and supporting policy and guidance material for the purpose of determining the course of action to be taken for rulemaking and/or policy relative to the issue to general aviation aircraft inspection and maintenance, specifically section 91.409, part 43, and Appendices A and D of part 43. In your review, consider any inspection and maintenance initiatives underway throughout the aviation industry affecting general aviation with a maximum certificated takeoff weight of 12,500 pounds or less. Also consider ongoing initiatives in the areas of: maintenance recordkeeping; research and development; the age of the current aircraft fleet; harmonization; the true cost of inspection versus maintenance; and changes in technology.

Attendance is open to the interested public but may be limited to the space available. In addition, sign and oral interpretation can be made available at the meeting, as well as an assisitive listening device, if requested 10 calendar days before the meeting is held. Arrangements may be made by contacting the meeting coordinator listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on June 14, 1995.

Benjamin J. Burton, Jr.,

Acting Assistant Executive Director, Air Carrier/General Aviation Maintenance Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 95–15064 Filed 6–19–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

National High-Speed Ground Transportation (HSGT) Policy Outreach Meeting

AGENCY: Federal Railroad Administration; Department of Transportation.

ACTION: Notice of Public Meeting.

SUMMARY: The Federal Railroad Administration (FRA) will hold a regional public outreach meeting in New Orleans, Louisiana on June 27, 1995, to invite public input for developing the National High Speed Ground Transportation (HSGT) Policy, as mandated by the Intermodal Surface Transportation Efficiency Act. The public is invited to attend and/or submit written comments.

DATES: Due to this additional meeting, FRA has extended the time during which written comments will be accepted through July 1, 1995. Comments should be submitted by mail to the address below and will be accepted in person at the meeting. The New Orleans session will take place as follows:

Date: June 27, 1995.

Place: The Westin Hotel, Ballroom 1, 12th Floor, 100 Rue Iberville, New Orleans, Louisiana 70130, (504) 553–5017.

Time: 4 p.m. to 7:00 p.m.

Local Contact: Carol Cranshaw, Louisiana DOT, (504) 379–1436.

Registration: Attendees are asked to arrive 30 minutes prior to the beginning of the meeting for registration.

Addresses: All written statements should be submitted to: Honorable Jolene M. Molitoris, Administrator, Federal Railroad Administration, Attn: HSGT Policy, 400 Seventh Street, S.W., Room 8206, Washington, D.C. 20590.

BACKGROUND: The FRA recently conducted a series of seven outreach meetings to obtain public input for the development of a National HSGT Policy. On June 15, 1995, the FRA received a request for a regional outreach meeting on the HSGT policy from the Governor of Louisiana on behalf of the Southern states. FRA is co-hosting this meeting in response to that special request.

FOR FURTHER INFORMATION CONTACT: John F. Cikota, (202) 366–9332.

Issued in Washington, DC on June 14, 1995.

Donald M. Itzkoff,

Deputy Administrator Federal Railroad Administration.

[FR Doc. 95–15053 Filed 6–19–95; 8:45 am]

BILLING CODE 4910–06–P

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of 49 CFR Part 236

Pursuant to 49 CFR Part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Block Signal Application (BS–AP)–No. 3357

Applicant: Norfolk Southern Railway Company, Mr. J. W. Smith, Chief Engineer—C&S, Communication and Signal Department, 99 Spring Street SW., Atlanta, Georgia 30303.

The Norfolk Southern Railway Company, Central of Georgia Railway seeks approval of the proposed discontinuance and removal of the automatic block signal system, on the single main track "O" Line and sidings between Fort Benning Junction, Georgia, milepost 4.2 and B.V.& E. Junction, Georgia, milepost 60.0, Georgia Division, Americus District, a distance of approximately 56 miles.

The reason given for the proposed changes is to reduce maintenance costs without affecting the safety of operations, in connection with the pending lease of the "O" Line to the Georgia Southwestern Railroad.

BS–AP–No. 3358

Applicants: Metro North Commuter Railroad Company, Mr. G. F. Walker, Assistant Vice President-Operations, 347 Madison Avenue, New York, New York 10017

Connecticut Department of Transportation, Mr. L. J. Forbes, Rail Administrator, P. O. Box 317546, Newington, Connecticut 06131–7546.

Metro North Commuter Railroad Company and the Connecticut Department of Transportation jointly seek approval of the proposed modifications, near New Haven Interlocking, milepost 72.3, in New Haven, Connecticut, on the New Haven Line; consisting of the reconfiguration of New Haven Interlocking, the installation of CP 271 between milepost 71.16 and milepost 71.46, and installation of a new computer based office control system.

The reason given for the proposed changes is that with the proposed electrification east of New Haven and the number of freight trains and engine changes reduced significantly, the current design of New Haven Interlocking no longer meets the needs of its users. Also, as part of the Northeast Corridor Highspeed Rail Project, New Haven Interlocking must be reconfigured to safely accommodate the proposed mixes of rail traffic and speed.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 within 45 calendar days of the date of issuance of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, D.C. on June 15, 1995.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 95–15066 Filed 6–19–95; 8:45 am]

BILLING CODE 4910–06–P

National Highway Traffic Safety Administration

[Docket No. 95–26; Notice 1]

Uniform Data Collection and Reporting Program

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: This notice invites comments, suggestions and recommendations from individuals and organizations with an interest in data support for highway and traffic safety problem identification and countermeasure activities. In particular, it solicits participation from the traffic safety community regarding a uniform data collection methodology and process pursuant to the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991, which required that the Secretary establish a highway safety program for the collection and reporting of data on traffic related deaths and injuries by the States. Comments should address the specific questions listed in the notice and any relevant data-related concerns applicable to the concept of a national uniform data system or to the ISTEA requirement.

DATES: Comments are due no later than July 20, 1995.

ADDRESSES: Written comments should refer to the docket number of this notice and should be submitted to: Docket Section, NHTSA, Room 5109, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. (Docket hours are 9:30 a.m. to 4:00 p.m.)

FOR FURTHER INFORMATION CONTACT: Janet Johnson, Office of Strategic Planning and Evaluation, NPP–11, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590; telephone 202/366–2571.

SUPPLEMENTARY INFORMATION: When the Highway Safety Act of 1966 was enacted, state central traffic records systems generally contained basic files on crashes, drivers, vehicles and roadways. Highway Safety Program Standard 10, issued by NHTSA in 1967, established a formal traffic records program. It provided: "Each State, in cooperation with its political subdivisions, shall maintain a traffic records system. The Statewide system shall include data for the entire State. Information regarding drivers, vehicles, accidents, and highways shall be compatible for purposes of analysis and correlation."

Since that time, an increasingly comprehensive traffic records program has emerged to meet the need for planning (problem identification), operational management, evaluation of motor vehicle fleet characteristics and state highway safety program activities. States receive funds under the NHTSA/FHWA Section 402 State and Community Highway Safety Grant program. These funds may be used by states to support their traffic records programs. Traffic Records has been identified by NHTSA and FHWA as a priority program under Section 402.

NHTSA's National Center for Statistics and Analysis (NCSA) maintains a number of systems that either collect data or use state-collected data to diagnose problems in motor vehicle safety, analyze potential safety improvements, and evaluate the effects of safety measures that are in place. These data systems include the Fatal Accident Reporting System (FARS), the National Accident Sampling System's Crashworthiness Data System (CDS) and the General Estimates System (GES). NCSA also obtains the crash data files from 17 states for use in its analysis.

While existing data sources meet many of the highway safety community's data needs, it is necessary to periodically examine those needs to see how well they are being satisfied and to identify any new safety areas for which it might become necessary to collect data. Fortunately, the advanced capabilities of computerized data collection, storage and manipulation have made sophisticated information creation and exchange a plausible activity. The availability of uniform or standard data elements enhances the

usefulness of these data for all highway safety related activities, not the least of which is the potential for injury and fatality data to become an increasingly valuable resource for purposes of more pinpointed problem identification.

Uniform Data

NHTSA and FHWA support the ANSI Standard D20.1, Data Element Dictionary for Traffic Record Systems, and ANSI Standard D16.1, Manual on Classification of Motor Vehicle Traffic Accidents. Neither, however, specifies those variables and elements that should be included in a typical motor vehicle crash reporting system or identifies those variables which, if collected and automated, would be appropriate for a full range of problem identification and analytical activities.

NHTSA's most recent activity to focus on standardized data was its development of the CADRE (Critical Automated Data Reporting Elements). CADRE is a set of variables NHTSA believes, if uniformly collected, would improve the usability of state crash data for analytical purposes. CADRE was not intended to serve as a minimal set of elements to cover all aspects of crash data collection. Although the definition of variables to be collected on police crash reports is clearly a state determination, the lack of standardization both of variables across states and of the application of variable definitions within states makes comparison and analysis difficult for all highway safety data users.

Intermodal Surface Transportation Efficiency Act (ISTEA)

On December 18, 1991, the Intermodal Surface Transportation Efficiency Act (ISTEA) (Pub. L. 102–240) was signed into law. Section 2002 (a) of ISTEA was enacted to ensure national uniform data on traffic related deaths and injuries in the U.S. It requires that the following action be taken:

> The Secretary shall establish a highway safety program for the collection and reporting of data on traffic related deaths and injuries by the States. Under such program, the States shall collect and report such data as the Secretary may require. The purposes of the program are to ensure national uniform data on such deaths and injuries and to allow the Secretary to make determinations for use in developing programs to reduce such deaths and injuries and making recommendations to Congress concerning legislation necessary to implement such programs. The program shall include information obtained by the Secretary under section 4007 [1] of the Intermodal Surface Transportation Efficiency Act of 1991 and provide for annual reports to the Secretary on the efforts being made by the States in reducing deaths and injuries occurring at highway construction sites and the effectiveness and results of such efforts. The Secretary shall establish minimum reporting criteria for the program. Such criteria shall include, but not be limited to, criteria on deaths and injuries resulting from police pursuits, school bus accidents, and speeding, on traffic-related deaths and injuries at highway construction sites and on the configuration of commercial motor vehicles involved in motor vehicle accidents.

In 1994, NHTSA began a strategic planning process intended to develop a comprehensive, long-range approach to crash and injury prevention. NHTSA's Strategic Plan was crafted to support the goals of DOT's Strategic Plan and the legislative mandates of the Agency. Eleven strategic goals were developed and derived from the Agency's mission. One of these goals addressed the improvement of data collection and analysis so as to "* * * better identify and understand problems and to support and evaluate programs * * *"

Uniform Data Issues

Section 2002(a) of ISTEA requires the Secretary to "establish a highway safety program for the collection and reporting of data." It further provides that the Secretary "shall establish minimum reporting criteria for the program," and that "the states shall collect and report such data as the Secretary requires." The Agency solicits comments on these requirements, and is particularly interested in answers to the following questions:

1. Commenters should indicate whether they believe there is a need to create a set of uniform definitions for all states to use and should provide a rationale for their position. How would data analysis activities for which commenters have responsibility, use, or benefit from, be specifically affected by having a uniform set of definitions? Is there already an acceptable level of uniformity? If yes, please provide a basis for that determination.

2. If commenters support the development of a uniform set of elements, they should indicate what they believe to be the best way to go about establishing standard or uniform data elements or sets. Who would be best qualified to take on this task? What forum should be used to explore the establishment and adoption of a national uniform data set: a series of public meetings? another **Federal Register** Notice? Other?

3. Commenters should identify financial impacts of establishing a uniform system and assess their capability to meet those funding commitments. What solutions might be proposed to accomplish this? Commenters should describe what they see as DOT's role in establishing and implementing such a system, the state's role, and the role of the highway safety community.

4. Besides the CADRE elements, commenters should indicate what other elements might serve as a core set of elements sufficient to allow for meaningful inter/intrastate comparisons and analyses. Are there any CADRE elements that should be deleted? If so, please include a rationale.

5. If commenters have adopted some or all of the CADRE elements, what adjustments were made to the police accident report (PAR) to accommodate this activity? If commenters have made a decision not to adopt CADRE, what are the impediments to implementation that have been identified? What nationally uniform data elements would the commenter consider adopting?

Minimum Reporting Criteria Issues

Section 2002(a) provides that the Secretary shall establish "minimum reporting criteria" and that the criteria "shall include, but not be limited to, criteria on deaths and injuries resulting from police pursuits, school bus accidents, and speeding, on traffic-related deaths and injuries at highway construction sites and on the configuration of commercial motor vehicles involved in motor vehicle accidents."

Many states currently collect some information about these crash characteristics on their PARs. However, not all states do so, and for those that do, the data definitions and variables collected vary widely. Included below is a brief discussion of issues relating to each of these areas and questions to which NHTSA seeks input from commenters.

Police Pursuits

To determine the nature and extent of the relationship of police pursuit to motor vehicle crashes, DOT believes it may be useful to develop a uniform definition of police pursuit and a data element(s) to properly identify and code whether a police pursuit may have been a contributing factor to a crash. Since the 1994 Fatal Accident Reporting System (FARS) data collection year, police pursuit has been coded as a special circumstance in the Accident Level-Related Factors section and also as a factor in the Driver Level section.

[1] The reference to Section 4007 is incorrect. We believe the intended reference was Section 4003, which added a new section 407 to Part A of title IV of the Surface Transportation Assistance Act of 1982 (49 U.S.C. App. 2301–2305).

FARS is NHTSA's and FHWA's only data system that codes police pursuit related data. Because there is no uniform variable across all states, the NASS General Estimates System (GES), which codes only data collected on PARs cannot collect this information.

During 1994, FARS conducted a special study to determine if police pursuit-related crashes were being reported on state police crash reporting forms. A national news clipping service was engaged to collect news stories where police pursuit was reported in a fatal crash. Preliminary results indicate that for 26 percent of the news clips reviewed, information identifying that a police pursuit was involved was not included on the PAR. Accordingly, we solicit input on the following questions:

6. How does your State currently define a police pursuit? Is information related to police pursuits collected on your PAR? If yes, what is the nature of that information?

7. Is information collected when a police pursuit may have been a contributing factor to the crash or was terminated immediately prior to the crash?

8. What would be an appropriate definition of police pursuit and police pursuit-related crashes? What type of variable would be necessary to capture this information on a PAR?

9. Would information on police pursuit-related crashes be more appropriately collected under a special study? What types of special studies would be most useful? Please be specific.

10. Identify any impediments to obtaining and collecting accurate data on police pursuit-related crashes. How can these impediments be eliminated?

Work Zones

Work zone safety is a national priority for DOT. FHWA has developed a National Work Zone Safety Program and recently held a national conference to discuss this issue. Since 1981, FARS has identified work zone-related crashes in the Accident Level section. In 1995, GES added a similar variable. Both systems distinguish between motorist and nonmotorist fatalities and injuries. However, if information distinguishing highway construction projects from utility company projects or construction workers from nonworkers is needed, both systems can do so only if the information is readily available on the PAR. Recent research on work zone safety has included the testing and recommendation of various types of work zone equipment, barriers, signs, pavement markings, and worker practices. However, more detailed crash statistics are needed to better understand the cause and characteristics of work zone crashes. Preliminary investigations have indicated that work zone crashes may be understated due to the lack of a standard definition and the practice of recording (on PARs) these types of crashes as part of other variables, such as "Road Defects." Consequently, we invite comments on the following issues:

11. How does your state currently define a work zone? Is any information on work zone related crashes collected on any of your state PARs?

12. Does this definition discriminate between highway construction and utility company operations? If so, how is this information used?

13. Does this definition discriminate between construction workers and nonworkers involved in the crash? If so, how is this information used?

14. DOT is considering developing a standard definition for work zone crashes and recommending that states include this as a separate variable on PARs. What would be an appropriate definition of a work zone and a work zone-related crash? What type of variable would be necessary to capture this information on a PAR?

15. Would information on work zone related crashes be more appropriately collected by means of a special study? What types of special studies would be most useful? Please be specific.

School Buses

Currently all states collect data on school bus and school bus related crashes. Consequently, the information can be collected and coded by both FARS and GES. Although there does not appear to be a need to collect any additional data at this time or to propose any changes to the existing national data collection systems, some in the safety community believe these crashes to be underreported.

16. Do commenters believe these crashes are underreported? If so, do you believe changes in collecting school bus data should be made to address this? What specific changes do you recommend?

17. If commenters agree that collection of additional data at this time is not necessary, please state this and include your reasons.

Speeding

Many states currently collect some data on speed, usually as a contributing cause of crashes. One of the difficulties in using current data is that speed can be a contributing factor in a number of ways, e.g., exceeding the posted speed limit or driving too fast for conditions. In addition, the recording of speed as a contributing cause presents some difficulties. Police officers might report speeding as a contributing cause when the crash cause is not clear. On the other hand, a police officer might suspect that speed was a contributing cause but not have enough evidence to issue a citation and consequently, be reluctant to indicate speed as a contributing factor. NHTSA and FHWA also recognize that a research study may be more appropriate to collect the type of information required to fully understand the impacts of speed. We are considering periodic studies of the speed/crash relationship where detailed data would be collected. However, there is still a need for continuous collection of the number and types of speed-related crashes by states and by DOT through its FARS, GES and CDS to provide the problem identification data needed for program development. Therefore, we solicit responses to the following questions:

18. How does your state define a speed-related crash? Do PARs contain a variable to collect this information?

19. What would be an appropriate definition of a speed-related crash? What type of variable would be necessary to capture this information on a PAR?

20. Would information on speed-related crashes be more appropriately collected under a special study? What types of special studies would be most useful? Please be specific.

Commercial Vehicle Related Crashes

Currently DOT, through FHWA's Office of Motor Carriers, collects crash data on commercial vehicles involved in interstate and intrastate commerce (as long as the crash meets the National Governors' Association [NGA] reportable accident criteria). Uniform data elements have been defined and recommended, and all states collect some of the elements. These data elements will be reviewed in 1997, and may be updated to accommodate changes in vehicle and highway travel. With these data and those collected on truck-involved crashes by FARS and GES, NHTSA and FHWA currently plan no major changes in these data collection systems, but solicit comments on this determination and on the following additional issues:

21. Do commenters agree that there is currently no need for any major changes in these data collection systems? If not, please include a rationale.

22. The definition of "longer commercial vehicle" (LCV) is not standard. Should a standard definition be established? If so, by what method?

23. If some double combinations are to be classified as LCV's and others are not to be classified as LCV's, how shall the difference be defined?

Injury Severity Determinations

NHTSA and FHWA are interested in the public's comments and suggestions regarding data collection issues not only on the specific safety areas addressed above, but also relating to the issue of injury severity determinations. There is currently no consistent application of the standard definition of injury severity found in the ANSI D16.1 Manual on Classification of Motor Vehicle Traffic Accidents: fatal, incapacitating, nonincapacitating, possible, no injury. Application of this injury scale depends on evaluation at the crash scene by police officers with little or no medical training. Consequently, people with injuries of different medical severities are often included within the same class because of differing interpretations of how severely a crash victim is injured. Frequently, emergency medical services transport of a victim for treatment is enough to code "incapacitating injury." On the other hand, some injuries are not immediately evident at the scene of the crash, and a victim who is later diagnosed with a serious injury can be initially classified as "not injured." This lack of standard application makes it difficult to determine the extent of the injury problem or to combine data from various jurisdictions. We are soliciting information on the following issues:

24. Is it feasible to standardize or change the application of the injury classification scale in a way that would allow valid judgments by officers on the scene?

25. If so, how should the highway safety community accomplish this?

26. Are there other methods for determining the nature and extent of the injury problem without requiring the collection of these data at the crash site? What are these methods?

27. Is it feasible to collect this information through the linking of EMS and hospital data with PARs?

NHTSA seeks public comment on the issues discussed above. Interested individuals or groups are invited to submit comments on these and any related issues. It is requested, but not required that ten copies of each comment be submitted. Written comments to the docket must be received on or before July 20, 1995. In order to expedite the submission of comments, simultaneous with the issuance of this notice, copies will be mailed to all State Governor's Highway Safety Representatives. Comments should not exceed 15 (fifteen) pages in length. Necessary attachments may be appended to those submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise manner. All comments received before the close of business on the comment closing date listed above will be considered and will be available for examination in the docket room at the above address both before and after that date. To the extent possible, comments filed after the closing date will be considered. The Agency will continue to file relevant information as it becomes available. It is recommended that interested persons continue to examine the docket for new material. Those people desiring to be notified upon receipt of their comments by the docket section should include a self-addressed, stamped postcard in the envelope with their comments. Upon receipt of their comments, the docket supervisor will return the postcard by mail.

Issued on: June 15, 1995.

Donald C. Bischoff,

Associate Administrator for Plans and Policy.

[FR Doc. 95-15067 Filed 6-19-95; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 95-10]

Preemption Determination

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is publishing its response to a written request for the OCC's determination of whether Federal law preempts the application of a Texas regulation that prescribes certain requirements relating to the signs and advertising used to identify branch banking facilities located in Texas. The OCC has determined that Federal law does not preempt the application of this regulation to national banks located in Texas. Section 114 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (the Riegle-Neal Act) requires publication of opinion letters concluding that Federal law preempts certain State statutes and regulations. While publication is not required for opinion letters concluding that Federal law does not preempt the State law, the OCC has decided to publish this letter in order to disseminate broadly its conclusions on preemption issues covered by the Riegle-Neal Act's publication requirements.

FOR FURTHER INFORMATION CONTACT: Sue E. Auerbach, Senior Attorney, Bank Activities and Structure Division, 250 E Street, SW, Eighth Floor, Washington, DC 20219, (202) 874-5300.

SUPPLEMENTARY INFORMATION:

Background

Section 114 of the Riegle-Neal Act, Pub.L. 103-328 (12 U.S.C. 43), generally requires the OCC to publish in the **Federal Register** a descriptive notice of certain requests that the OCC receives for preemption determinations. The OCC must publish this notice before it issues any opinion letter or interpretive rule concluding that Federal law preempts the application to a national bank of any State law regarding community reinvestment, consumer protection, fair lending, or the establishment of intrastate branches (four designated areas). The OCC must give interested persons at least 30 days to submit written comments, and must consider the comments in developing the final opinion letter or interpretive rule.

The OCC must publish in the **Federal Register** any final opinion letter or interpretive rule that concludes that Federal law preempts State law in the four designated areas. It may, at its discretion, publish any final opinion letter or interpretive rule that concludes that State law in these areas is not preempted. The Riegle-Neal Act also provides certain exceptions, not applicable to the present request, to the **Federal Register** publication requirements.

Specific Request for OCC Preemption Determination

On March 10, 1995, the OCC published in the **Federal Register** (60 FR 13205) notice of a request for the OCC's determination of whether Federal law preempts the application of Texas Rule 3.92, 7 Tex. Admin. Code Section 3.92 (Rule), "Naming and Advertising of Branch Facilities," in its entirety, to national banks. The Rule was adopted by the Texas State Finance Commission on August 19, 1994, pursuant to Texas Civil Statutes section 342-917, "Identification of Facilities," which generally provides that a bank may not use any form of advertising that implies or tends to imply that a branch facility is a separate bank.

The Rule, like the statute, prohibits advertising of a branch facility in a manner which implies or fosters the perception that a branch facility is a separate bank. The Rule is more explicit than the statute in identifying prohibited signage and advertising and provides specific guidance in certain situations.

Comments

The comment period closed on April 10, 1995. The OCC received two comments in response to the March 10, 1995, notice. One commenter, a law firm representing certain national banks, believed that Federal law preempted the Rule because the national banking laws provide the OCC with exclusive authority over the corporate affairs of national banks and further because compliance with the Rule would be burdensome. The other commenter, an association of state bank regulatory officials, believed that Federal law did not preempt the Rule because (1) the Rule does not conflict with any provision of Federal law; (2) legislative history of the national banking laws indicates that Congress believed there to be little federal supervisory interest in national bank names; and (3) the Rule is not burdensome.

OCC Determination

The OCC, after carefully considering the comments, believes that Federal law does not preempt the application of the Rule to national banks located in Texas. As discussed in the opinion letter, not only is there no actual conflict between Federal law and the Rule, but certain amendments to the national banking laws provide evidence that Congress intended questions regarding bank names to be settled primarily by reference to State law. In addition, there is no evidence that compliance with the Rule will be burdensome such that it will frustrate the ability of national banks to exercise any of their authorized powers. The Rule therefore is applicable to national banks in Texas.

The Riegle-Neal Act requires publication of opinion letters which conclude that Federal law preempts State statutes or regulations. While the Riegle-Neal Act does not require publication of letters concluding that State law is not preempted, the OCC has decided to publish its letter in order to disseminate broadly its preemption determinations under the Riegle-Neal Act, and in this case also to provide national banks located in Texas with notice and information regarding their obligations under the Rule.

The OCC's letter appears as an appendix to this Notice.

Dated: June 9, 1995.

Eugene A. Ludwig,

Comptroller of the Currency.

Appendix

June 9, 1995

Mr. Everette D. Jobe, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294.

Re: Proposed Branch Advertising and Naming Rule/7 Tex. Admin. Code § 3.92

Dear Mr. Jobe: This is in response to your inquiry, raised in your letters of June 17, 1994, to Randall Ryskamp, and October 24, 1994, to Dean Marriott (respectively, the District Counsel and Deputy Comptroller of the OCC's Southwestern District Office), and subsequently discussed in telephone conversations with OCC legal staff, whether federal law preempts the application to national banks of a state regulation relating to the signs and advertising used to identify branch banking facilities located in Texas. In our opinion, for the reasons discussed below, we believe that the regulation in question is not preempted by federal law and is applicable to national banks.

Background

On August 19, 1994, the Texas State Finance Commission adopted Rule 3.92 ("Rule") entitled "Naming and Advertising of Branch Facilities."[1] The Rule was adopted pursuant to Texas Civil Statutes § 342-917, "Identification of Facilities," which generally provides that a bank may not use any form of advertising that implies or tends to imply that a branch facility is a separate bank.[2] The preamble to the Rule states that the Texas legislature, in regulating identification of branch facilities, had two substantive purposes. One was the possibility that unfair and misleading competition could result if a failed bank is taken over by another institution which continues to represent and advertise the resulting branch as the original failed institution. The second was that depositors could exceed the limits of Federal Deposit Insurance Corporation insurance coverage by unintentionally depositing excess amounts in two branches of the same bank in the mistaken belief that they were two different banks. The Rule, which was published for public comment, states that enforcement authority with respect to national banks is vested in the OCC.

The Rule, like the statute, prohibits advertising of a branch facility in a manner which implies or fosters the perception that a branch facility is a separate bank. However, it is longer and far more explicit than the statute in identifying prohibited signage and advertising and provides specific guidance in certain situations characterized as misleading. While the Rule applies to all state and national banks domiciled in Texas, its provisions and prohibitions would most directly affect those banks that have what might be termed a generic name followed by a geographic modifier (e.g., First National Bank of Dallas, Second State Bank of Austin), rather than what the Rule terms a "unique legal name" such as "Jones National Bank" or "Smith Bank." The principal provisions of the Rule include the following:

1. Upon acquisition of one bank to serve as a branch of another bank, use of the prior name of the extinguished bank to identify the acquired bank facility is prohibited. This prohibition applies to signs, advertising, and bank documents.

2. A sign directing the public to a branch facility must contain either the legal name of the bank or a unique logo, trademark or service mark of the bank. If a separate identifying name is used for the branch facility that either contains the word "bank" or does not contain the word "branch" and further does not identify the facility as a branch, then an additional sign at the branch facility must identify the legal name of the bank and identify the facility as a branch. This additional sign could, for example, consist of lettering on the entrance door or any other lettering visible to the public.

3. The legal name of a bank is the full bank name as reflected in its charter, except that in signs and advertising a bank may omit terms which are either indicators of corporate status (N.A., Inc., Corp., L.B.A.) or geographic modifiers. However, where a bank without a unique legal name proposes to establish a branch facility (other than one within the city of domicile) within the same city as or within a thirty-mile radius of a pre-existing facility of a bank with the same or substantially similar legal name, the bank must either include the geographic modifier on its signs, disclose the city of its domicile on all signs directing the public to the branch, or else put up a separate sign notifying the public that the facility is a branch.

For example, a bank called First National Bank of Austin could put up branches within the city of Austin with signs saying merely "First National Bank." However, if the bank wishes to open a branch in San Antonio, and another bank called First National Bank of San Antonio already exists, then the First National Bank of Austin would be required under the Rule to have signs reading either "First National Bank of Austin" or something like "First National Bank, San Antonio Branch." Alternatively, it could have a sign that said merely "First National Bank" provided that another sign, or lettering on the door, or anywhere visible to the public, clearly identified the facility as a branch or gave the domicile of the bank, or both. In this case, the second sign might say "San Antonio branch" or "a branch of First National Bank of Austin." However, the bank would be in violation of the Rule if it only had signs saying "First National Bank" or "First

[1] Your letter to Mr. Ryskamp referred to the "revised proposed rule" that was then scheduled for publication in the June 28th issue of the *Texas Register*. Since that time, the Rule has been published and adopted by the State Finance Commission. It became effective on September 13, 1994.

[2] Sec. 342-917 provides: A bank may not use a form of advertising, including a sign or printed or broadcast material, that implies or tends to imply that a branch facility is a separately chartered or organized bank. A sign at a branch facility and all official bank documents, including checks, cashier's checks, loan applications, and certificates of deposit, must bear the name of the principal bank and if a separate branch name is used must identify the facility as a branch.

National Bank, San Antonio" because there is no disclosure to the public that the facility is a branch.

4. If a bank without a unique legal name chooses not to place the signs as described in the foregoing paragraph, then the Rule requires that it provide notice to all pre-existing bank facilities of other banks within the same banking market as the proposed branch location that have the same or substantially similar legal name, disregarding geographic modifiers, specifically advising the recipient of the name to be used in connection with the proposed branch facility. Banks so notified then have the opportunity to file a protest regarding the name of the proposed branch.

For example, if a bank called First National Bank of Austin did not wish to put up the requisite signs (as discussed above) for its branch in San Antonio, it would, under the Rule, be required to search the San Antonio banking market and provide notice of its proposed branch to other banks named "First National Bank" or "First National Bank of San Antonio." The banks so notified would then have the opportunity to file a protest with your office (for state banks) or with the OCC (for national banks).

You have indicated your expectation that few banks will choose the notification alternative. It is your view, and in fact the goal of the Rule, that banks in Texas will choose to put up clarifying signs to identify for the public which bank facilities are branches.

5. While banks in Texas are permitted, like other businesses, to operate under an assumed or professional name, they may not use an assumed name to evade the Rule.

The Texas Assumed Business or Professional Name Act, Texas Business and Commerce Code, Chapter 36, permits banks and other businesses to operate under a business or assumed name provided certain documents are filed with appropriate Texas authorities. However, permission to operate under an assumed name would not dispel a bank's obligation under the Rule to identify its branch facilities to the public. Therefore, even if the above-mentioned First National Bank of Austin had properly assumed the name "First National Bank," it would still, with respect to its branches, be required under the Rule to put up the signs discussed in ¶ 3, *supra*, or provide the notification described in ¶ 4, *supra*.

6. The Rule does not prescribe such specifics as number, size, or location of signs, size of lettering, and so on. Further, it does not require that branch names, signs, or advertising be approved by any regulatory authority. You have stated that the goal of the Rule is simply that the public be advised which bank facilities are branches, and that any signs, or combination of signs, reasonably making such identification will be permissible.

Discussion

The question of the extent to which national banks are subject to state laws has existed since the inception of the first National Bank Act in 1863. Under the dual banking system, all banks, including national banks, are subject to the laws of the state in which they are located unless those state laws are preempted by federal law or regulation. The basic premise, expressed numerous times by the United States Supreme Court, is:

> that the national banks organized under the Acts of Congress are subject to state legislation, except where such legislation is in conflict with some Act of Congress, or where it tends to impair or destroy the utility of such banks, as agents or instrumentalities of the United States, or interferes with the purposes of their creation.

Waite v. *Dowley*, 94 U.S. 527, 533 (1877). *See also Davis* v. *Elmira Savings Bank*, 161 U.S. 275 (1896); *Anderson National Bank* v. *Luckett*, 321 U.S. 233, 248 (1944). Banking is the subject of comprehensive regulation at both the federal and state level and the valid exercise of concurrent powers is the general rule unless the state law is preempted. State law applicable to national banks will generally be presumed valid unless it conflicts with federal law, frustrates the purpose for which national banks were created, or impairs their efficiency to discharge the duties imposed upon them by federal law. *National State Bank, Elizabeth, N.J.* v. *Long*, 630 F. 2d 981, 987 (3d Cir. 1980); *see, generally, Michie on Banks and Banking*, Vol. 7 ¶ 5 (1989 Repl.) This principle applies to substantive state regulations as well as state statutes, since it is well established that a rule or regulation of a public administrative body, duly promulgated or adopted in pursuance of properly delegated authority, has the force and effect of law. *See generally*, 73 C.J.S. "Public Administrative Bodies and Procedures," § 97.

In this instance, neither the Texas statute (Art. 342–917) nor the Rule is in conflict with any federal law, since no provision under the national banking laws governs national bank names or requires their approval by a federal authority. On the contrary, while the national banking laws did govern this issue at one time, Congress changed the law in 1982 and left little doubt of its intent that approval of national bank names (except for registered trademarks) not be subject to federal regulation.

Prior to 1982, a national bank was required, pursuant to 12 U.S.C. §§ 22 and 30, to obtain approval from the OCC both for its initial name and for subsequent name changes. However, the Garn-St Germain Depository Institutions Act of 1982 amended Sections 22 and 30 to delete this requirement for OCC approval of bank name or name change. P.L. No. 320, 97th Cong., 2d Sess., § 405, 96 Stat. 1469, 1512 (1982). The Senate Report accompanying this change gave the following explanation:

> Comptroller approval for bank name changes will no longer be required. There exists little supervisory interest in the name of a particular national bank. Federal approval procedures are to be replaced by a simple notice requirement. Any confusion between bank names shall be resolved under other laws, including the federal Lanham Act and state statutory and common law principles of unfair competition. S. Rep. No. 536, 97th Cong., 2d Sess. 28, reprinted in 1982 U.S. Code Cong. & Ad. News 3054, 3082.[3]

OCC regulations were amended accordingly to provide that the OCC would simply receive notice of the initial name and subsequent name changes. 12 CFR 5.42.[4] The only explicit requirement remaining under the national banking laws is that bank names, whether new or revised, include the word "national." 12 U.S.C. §§ 22 and 30(a). Congress has thus made clear its intention that issues related to the names of national banks are subject to state law.

Since these 1982 amendments, the OCC's policy on this matter is that the naming of a national bank, or of a branch office of a national bank, is primarily a business decision of the bank, subject to applicable state law. However, should the OCC determine that a national bank's name or advertising is so misleading or confusing as to constitute an unsafe or unsound practice, it may initiate enforcement action under 12 U.S.C. 1818(b). Further, while there is little supervisory interest in the name of a national bank, the OCC generally does not permit branches of a bank to operate under a different bank name. To do so would not only violate the provisions of 12 U.S.C. 22 and 30, which anticipate that a bank operate under a single title, but could lead customers unwittingly to exceed FDIC insurance limits by depositing excess amounts in two bank branches in the mistaken belief that they were dealing with different banks.

In light of both the federal legislative history on this issue and judicial preemption guidelines, we conclude that the Texas Rule is not preempted with respect to national banks. Not only is there no federal statute dealing with this issue, but there is no indication that the Rule is unduly burdensome to national banks or that it impairs their ability to discharge the duties imposed by federal law. *Long, supra* at 987; *Franklin Notional Bank* v. *New York*, 347 U.S. 373 (1954). The national banking laws do not prevent state measures aimed at preventing misleading advertising, as long as the state regulations do not put national banks at a competitive disadvantage relative to state financial institutions. As stated above, the Rule does not prescribe any particular type of sign or advertising. Its principal requirements are that banks which become branches of another bank as part of an acquisition cease use of the former bank name, and that bank branches identify themselves as branches. Since it is obvious that every bank, bank branch, or other bank facility will have some sort of sign identifying the premises to the public, it is not burdensome to require that the sign not be confusing or misleading. Equally, it is not burdensome to prohibit a bank branch resulting from a corporate acquisition within a reasonable time thereafter to cease using the name of its extinguished corporate predecessor.

Nor does the Rule appear to hamper banks in their operations or efficiency or limit their ability to carry out their functions. The situation here is unlike the situation in *Franklin, supra*, 347 U.S. 373, 377, in which a state law was determined to be preempted because it prohibited national banks from advertising in connection with one of their authorized activities (receiving deposits). Under the Rule, banks are not prohibited from advertising any authorized activity. They are not prevented from using abbreviated "advertising" names, such as "FNB" instead of "First National Bank," although if there should be two different "First National Banks" in one city, the Rule requires the second one establishing a bank facility, which will usually be an out-of-town bank, to identify either its domicile city or its branch status: *e.g.*, "FNB Austin" or "San Antonio Branch." Such requirements do not infringe upon a national bank's ability to establish branches under 12 U.S.C. 36(c) or to carry out any other authorized activity.

Since the Texas Rule and the underlying statute are not in conflict with federal law, do not prevent national banks from carrying out their authorized functions under the national banking laws, and do not unduly burden them in operating, it is my opinion that they are applicable to national banks. The OCC, as the authority responsible for administering and enforcing laws and regulations applicable to national banks, will, as the Rule envisions, determine compliance with the Rule with respect to national banks.

I trust this is responsive to your inquiry.

Sincerely,

/s/

Julie L. Williams,

Chief Counsel.

[FR Doc. 95–15060 Filed 6–19–95; 8:45 am]

BILLING CODE 4810–33–P

[3] The Lanham Act is a common name for the Trademark Act of 1946, 15 U.S.C. § 1051 et seq., which gives federal courts jurisdiction over trademarks and trade names registered with the United States Patent Office. It has no direct relevance to the present discussion.

[4] The regulations prior to the Garn-St Germain amendment provided for OCC approval of national bank names and name changes:

> The [OCC] considers an application for change in corporate title to be primarily a business decision of the applicant. An application will be approved if the proposed new title is sufficiently dissimilar from that of any other existing or proposed unaffiliated bank or depository financial institution so as not to substantially confuse or mislead the public in a relevant market. 12 CFR 5.42(b) (1981).

Customs Service

[T.D. 95–50]

Revocation of Customs Broker Licenses

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Broker License Revocations.

SUMMARY: Notice is hereby given that on March 30, 1995, the Secretary of the Treasury, pursuant to Section 641, Tariff Act of 1930, as amended, (19 U.S.C. 1641), and Part 111.74 of the Customs Regulations, as amended (19 CFR 111.74), ordered the revocation of the following Customs broker licenses due to the failure of the broker to file the status report as required by 19 CFR 111.30(d). These licenses were issued in the Los Angeles District. The list of affected brokers is as follows:

Gilbert E. Amador—03970
Stanley K. Appel—06305
Carol J. Boldt-Miller—06617
Elayne C. Brenner—11744
Marshall R. Brownfield—05207
Yolanda Curry—07856
P.R. Domey—02998
David W. Doran—11777
Ferdinand M. Dreifuss—04236
Herbert S. Fischer—04484
Charlene Marie Fluster—11742
James Thomas Gibbs—12819
Peggy Changsoon Kim—13616
Young Mok Kim—05804
Josefina G. Klink—06673
Suzanne Knight—11170
Regis Francis Kramer—03279
Michael O. Larson—05567
James W. McDonald—04563
Kay J. Meggison—05847
Maria D. Oria—03319
Hal Dennis Pope—10598
Klaus Roessel—04052
David C. Salazar—11457
Morris H. Schneider—03588
Jack Neal Schulman—07871

Dated: June 14, 1995.

Philip Metzger,

Director, Trade Compliance.

[FR Doc. 95–14959 Filed 6–19–95; 8:45 am]

BILLING CODE 4820–02–P

[T.D. 95–49]

Revocation of Customs Broker Licenses

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Broker license revocations.

SUMMARY: Notice is hereby given that on March 30, 1995, the Secretary of the Treasury, pursuant to Section 641, Tariff Act of 1930, as amended, (19 U.S.C. 1641), and Part 111.74 of the Customs Regulations, as amended (19 CFR 111.74), ordered the revocation of the following Customs broker licenses due to the failure of the broker to file the status report as required by 19 CFR 111.30(d). These licenses were issued in the Houston-Galveston District. The list of affected brokers, both individual and corporate, is as follows:

George Anki, Jr.—05896
Lester M. Barnes, Jr.—02448
Dan Beadle—05532
Ann M. Beardsley—07523
Jane Bentley Bowers—05859
Sandra L. Brown—09523
Ernest M. Bruni—07706
Natalie L. Byrd—11151
John Howard Callaway—07262
Rodger A. Chilton—07197
James Costello—06974
David L. Elmers—07263
Arthur Oran Evans, III—05069
Margaret L. Graeff—05480
David W. Gray—05971
Arnold Gene Greathouse—05230
James A. Green, Jr.—03928
Fred M. Hall—05393
Joseph M. Hankins—07648
Gulshan Kale—10188
John William Kenehan—05585
Salvatore Lobello—07784
Jose R. Lopez—06998
Alger L. McDonald—07829
David R. McIntyre—04747
Adolph Kennon Meadows—04109
Jack B. Morgan—04761
William Cary Okerlund—08042
Barbara A. Painter—06507
Joseph B. Peloso—07882
Gregory L. Perun—06119
J.G. Philen, Jr.—07082
J.J. Portier—07280
Rita R. Powell—05758
Jerry E. Rojas—05129
Abelardo A. Salinas—07901
Charles H. Simpson—05276
Robert Wilbur Smith, Jr.—03944
Jose A. Soto, Jr.—07965
Benny Roy Sprayberry—05146
Scott Taylor—07395
Robert J. Villiard—06666
Phillip Andrew Walsh—06126
James A. Webster—05525
Thomas A. Weiderhold—06027
Rebecca O. Young—09577
Joe Zaragoza, Jr.—05738

Corporate

Accelerated Customs Brokers—07504
Alan Customs Service, Inc.—08048
All-Phase Freight, Inc.—07448
Cargo Express, Inc.—11740
Darrell J. Sekin Co., Inc.—05249
Davis Import Consultants—06704
Green, James A., jr. & Co.—04108
HLZ Import Service, Inc.—09765
Jetero Int'l Services, Inc.—07908
L. Braverman & Company—04365
Livingston International Inc.—04725
McLean Cargo Specialist, Inc.—05977
Panalpina Airfreight, Inc.—04616
Salinas Forwarding Co., Inc.—07068
Sauter Corporation—09632
Shipco, Inc.—04861

Dated: June 14, 1995.

Philip Metzger,

Director, Trade Compliance.

[FR Doc. 95–14960 Filed 6–19–95; 8:45 am]

BILLING CODE 4820–02–P

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction act (44 U.S.C. Chapter 35), agencies are required to

submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the Agency has made such a submission. The information collection activity involved with this program is conducted pursuant to the mandate given to the United States Information Agency under the terms and conditions of the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256. USIA is requesting approval for a three-year extension as well as approval for revisions made to the Office of Arts America, Performing Arts Division, United States Information Agency, Application for Panel Rating under OMB control number 3116–0165 which expires August 31, 1995. The proposed revisions are suggested to enhance clarity of required information. Estimated burden hours per response is one (1) hour. Respondents will be required to respond only one time.

DATES: Comments are due on or before July 20, 1995.

COPIES: Copies of the Request for Clearance (OMB 83–1), supporting statement, transmittal letter and other documents submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Jeannette Giovetti, United States Information Agency, M/ADD, 301 Fourth Street, SW., Washington, DC 20547, telephone (202) 619–4408; and OMB review: Mr. Jefferson Hill, Office of Information And Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 1002, NEOB, Washington, DC 20503, telephone (202) 395–3176.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information (Paper Work Reduction Project: OMB No. 3116–0165) is estimated to average one (1) hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the United States Information Agency, M/ADD, 301 Fourth Street, SW., Washington, DC 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10202, NEOB, Washington, DC 20503.

Title: Office of Arts America Performing Arts Division United States Information Agency Application for Panel Rating.

Form Number: IAP–90.

Abstract: The USIA form IAP–90 facilitates submission of tapes and supporting materials to the U.S. Information Agency for artistic panel evaluation of artists being considered for USG financial support as a cultural presentation, and/or inclusion in USIA's quarterly listing of performers touring privately, sent to all American Embassies for possible facilitation assistance.

Proposed Frequency of Responses: No. of Respondents—500, Total Annual Burden—500.

Dated: June 14, 1995.

Rose Royal,

Federal Register Liaison.

[FR Doc. 95–14952 Filed 6–19–95; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974, New Routine Use Statements Amendment of System; Notice

AGENCY: Department of Veterans Affairs.

ACTION: Notice; New routine use statements.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e), notice is hereby given that the Department of Veterans Affairs (VA) is adding two new routine uses to, and is amending other parts of, a system of records.

DATES: Interested persons are invited to submit written comments, suggestions, or objections regarding the new routine uses. All relevant material received before July 20, 1995, will be considered. All written comments received will be available for public inspection in room 315, Information Management Service, 801 I St., NW, Washington, DC, 20001 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except holidays until July 31, 1995. If no public comment is received during the 30 day review period allowed for public comment, or unless otherwise published in the **Federal Register** by VA, the routine uses included herein are effective July 20, 1995. Other changes to the system of records notice contained herein are effective upon publication (June 20, 1995).

ADDRESSES: Written comments concerning the new routine uses may be mailed to the Secretary of Veterans Affairs (045A4), 810 Vermont Avenue, NW., Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: John Muenzen, Information Resources Management Coordination and Field Support Division, Chief, Office of Information Technology (20M52), Veterans Benefits Administration, NW., Washington, DC 20420 (202) 273–6947.

SUPPLEMENTARY INFORMATION: VA has published final rules (59 FR 47082 (9–19–94)) amending its regulations to add sections 38 CFR 14.640 through 14.643 to provide for expanded remote access to computerized claims records by individuals approved by the Department to represent claimants before VA in the preparation, presentation, and prosecution of claims for veterans' benefits.

Those regulations provide that VA will disclose information concerning how these representatives use their access privileges in two circumstances for which routine uses do not currently exist. First, if VA is considering whether to revoke the individual representative's access privileges generally, VA will notify the representative's employer. Second, if the representative is licensed by a governmental entity, such as a state bar association, VA will report the conduct of the representative to that entity after revocation of access privileges if VA concludes that the conduct which was the basis for revocation of access privileges merits reporting.

Consequently, VA is adding the following two new routine uses as part of the implementation of the remote access regulations.

First, if VA is considering whether to deny or suspend or revoke an individual's access privileges generally, VA may then notify the representative's employer or any recognized service organization with which such a representative is affiliated. Second, if the representative is licensed by a governmental entity, such as a state bar association, VA will report the conduct of the representative to that entity after revocation of access privileges if VA concludes that the conduct which was the basis for revocation of access privileges merits reporting.

Both routine sues satisfy the compatibility requirement of subsection (a)(7) of the Privacy Act. VA will gather this information for the purposes of determining whether it should grant, deny, suspend or revoke an individual's remote access privileges to claimants' automated claim records generally, as well as ensuring the individual's continued compliance with the agency's requirements for exercise of the remote access privileges. This information concerns the qualifications and conduct of the individual, that is, the appropriateness of the individual to have remote access privileges to represent beneficiaries and claimants.

State licensing entities, such as bar associations, routinely monitor and enforce the individual member's compliance with the rules of conduct which are intended, at least in part, to protect the public. Additionally, under the rules of these organizations, these persons normally have a responsibility to protect and preserve the confidentiality of information concerning their clients.

VA's proposed routine use authorizing disclosures to state licensing entities would allow VA to provide those state licensing entities with information which is relevant to their enforcement activities concerning compliance with those rules. VA gathered the information, at least in part, to help ensure the confidentiality of the VA's information on people who are, in essence, the clients of the individuals who are licensed by the state governmental entities. The purposes are sufficiently similar that the disclosure satisfies the compatibility requirement of subsection (a)(7) of the Privacy Act.

Veterans service organizations and other entities represent veterans on claims matters. To do so effectively, they must have access to the confidential claims records of those veterans. Part of their acceptance within the community they serve is a confidence on the public's part that they and their accredited representatives and employees will zealously protect the privacy of their clients. If veterans perceive that the confidentiality of their records will not be honored, it will limit the effectiveness of these organizations in representing their clients. Thus, in order to effectively represent veterans, they are concerned about ensuring that individuals whom they use to conduct their representational activities act in a manner consistent with the organization's goal of preserving the confidentiality of their clients' claim records.

As we stated in regard to the routine use authorizing disclosure of records to state licensing entities, VA gathered the information about remote access users, at least in part, to help ensure the confidentiality of the VA's information on it claimants who are, in essence, the clients of the organization which uses the individual representatives and claims agents to prosecute the veterans claims. The purposes are sufficiently similar that the disclosure satisfies the compatibility requirement of subsection (a)(7) of the Privacy Act.

VA has determined that release of information under the circumstances described above is a necessary and proper use of information in this system of records and that the specific routine uses proposed for the transfer of this information is appropriate.

VA is also amending the storage policies and practices for the records in this system of records to reflect the policies and practices applicable to claimants' representatives and attorneys who are granted access to automated claimants' records.

An altered system of records report and a copy of the revised system notice have been sent to the House of Representatives Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) and guidelines issued by OMB (59 FR 37906, 37910–18 (7–25–94)).

The proposed routine uses will be added to the system of records entitled "Veterans and Beneficiaries Identification and Records Location Subsystem—VA" 38VA23) published at 49 FR 38095, August 26, 1975, and amended at 41 FR 11631, March 19, 1976, 43 FR 23798, June 1, 1978, 45 FR 77220, November 21, 1980, 47 FR 367, January 5, 1982, 48 FR 45491, October 5, 1983, 50 FR 13448, April 4, 1985.

Approved: June 5, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

Notice of Amendment to System of Record

In the system of records identified as 38VA23, "Veterans and Beneficiaries Identification and Records Location Subsystem—VA," published at 40 FR 38095, August 26, 1975, and amended at 41 FR 11631, March 19, 1976, 43 FR 23798, June 1, 1978, 45 FR 77220, November 21, 1980, 47 FR 367, January 5, 1982, 48 FR 45491, October 5, 1983, 50 FR 13448, April 4, 1985, is amended by adding the information and revising the entries as shown below:

38VA23

SYSTEM NAME:

Veterans and Beneficiaries Identification and Records Location Subsystems—VA

SYSTEM LOCATION:

Records are maintained at the VA Data Processing Center, 1615 East Woodward Street, Austin, TX, 78722; VA Central Office, 810 Vermont Avenue, NW, Washington, DC 20420; VA Records Processing Center, PO Box 5020, St. Louis, MO 63115 and at Neosho, MO.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

18. The name and address of a prospective, present, or former accredited representative, claims agent or attorney and any information concerning such individual relating to a suspension, revocation, or potential suspension or revocation of that individual's privilege of remote access to Veterans Benefits Administration automated claim records, may be disclosed to any recognized service organization with which the accredited representative is affiliated, and to any entity employing the individual to represent veterans on claims for veterans benefits.

19. The name and address of a former accredited representative, claim agent or attorney, and any information concerning such individual, except a veterans' name and home address, which is relevant to a revocation of remote access privileges to Veterans Benefits Administration automated claim records may be disclosed to an appropriate governmental licensing organization where VA determines that the individual's conduct which resulted in revocation merits reporting.

* * * * *

POLICIES AND PRACTICES FOR STRONG, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The basic file is on automated storage media (e.g., magnetic tapes and disks), with backup copies of the information on magnetic tape. Such information may be accessed through a data telecommunication terminal system designated the Benefits Delivery Network (BDN). BDN terminal locations include VA Central Office, regional offices, VBA Debt Management Center, some VA health care facilities, Department of Defense Finance and Accounting Service Centers and the U.S. Coast Guard Pay and Personnel Center. An adjunct file (at the Records Processing Center in St. Louis, MO) contains microfilm and paper documents of former manual Central Index claims numbers registers, partial

files of pensioners with service prior to 1930, personnel with service between 1940 and 1948 with VA insurance, and partial lists of other Armed Forces personnel indexed by service number. A duplicate of the microfilm is also located at VA Central Office.

Remote on-line access is also made available to authorize representatives of claimants and to attorneys of record for claimants. A VA claimant must execute a prior written consent or a power of attorney authorizing access to his or her claims records before VA will allow the representative or attorney to have access to the claimant's automated claims records. Access by representatives and attorneys of record is to be used solely for the purpose of assisting an individual claimant whose records are accessed in a claim for benefits administered by VA.

RETRIEVABILITY:

Information is retrievable by the use of name only, name and one or more numbers (service, social security, VA claims file and VA insurance file), name and one or more criteria (e.g., dates of birth, death and service), number only, or initials or first five letters of the last name with incorrect file number.

SAFEGUARDS:

Access to the basic file in the Austin DPC (Data Processing Center) is restricted to authorized VA employees and vendors. Accredited service organization representatives, VA-approved claims agents and attorneys acting under a declaration of representation so that these individuals can aid veterans in the preparation, presentation, and prosecution of claims under the laws administered by VA are provided read-only access.

Access to BDN data telecommunications network is by authorization controlled by the site security officer who is responsible for authorizing access to the BDN by a claimant's representative or attorney approved for access in accordance with VA regulations. The site security officer is responsible for ensuring that the hardware, software and security practices of a representative or attorney satisfy VA security requirements before granting access. The security requirements applicable to access to automated claims files by VA employees also apply to access to automated claims files by claimants' representatives or attorneys. The security officer is assigned responsibility for privacy-security measures, especially for review of violation logs, information logs and control of password distribution, including password distribution for claimants' representatives.

Access to the computer room where the basic file is maintained within the DPC is further restricted to authorized VA employees and vendor personnel on a "need to know" basis and is protected from unauthorized access by an alarm system, the Federal Protective Service, and VA security personnel. As to access to Target terminals, see Safeguards, Compensation, Pension, Education, and Rehabilitation Records—58VA21/22. Authorized terminals with access to the VBA Benefits Delivery Network are located only at VA regional officers, VA medical facilities, VA Central Office, VBA Debt Management Center, National Cemetery System facilities, Railroad Retirement Board through the Chicago Regional Office, the National Personnel Records Center, the U.S. Army Reserve Components Personnel and Administration Center at St. Louis, MO, and at remote sites nationwide. The adjunct file is accessible for official use only by personnel assigned to Systems Development Service (20M4), VA Central Office, Washington, DC, and the Administrative Division at VA Records Processing Center, St. Louis, MO.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Director, VBA Systems Development Service (20M4), VA Central Office, 810 Vermont Ave., NW., Washington, DC 20420.

* * * * *

[FR Doc. 95–14982 Filed 6–16–95; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register

Vol. 60, No. 118

Tuesday, June 20, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, July 7, 1995.

PLACE: 2033 K St. N.W., Washington, DC 8th Floor Hearing Room

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–15161 Filed 6–16–95; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, July 14, 1995.

PLACE: 2033 K Street NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–15162 Filed 6–16–95; 11:37 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, July 21, 1995.

PLACE: 2033 K St. NW., Washington, DC., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–15163 Filed 6–16–95; 11:37 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, July 28, 1995.

PLACE: 2033 K St. N.W., Washington, D.C. 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–15164 Filed 6–16–95; 11:37 am]

BILLING CODE 6351–01–M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Friday, June 23, 1995.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

Multiple Tube Mine and Shell Fireworks

The Commission will consider whether to issue a Notice of Proposed Rulemaking (NPR) for multiple tube mine and shell fireworks.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330, East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: June 15, 1995.

Sadye E. Dunn,

Secretary.

[FR Doc. 95–15176 Filed 6–16–95; 1:00 pm]

BILLING CODE 6355–01–M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, June 22, 1995.

LOCATION: Room 420, East West-Towers, 4330 East-West Highway, Bethesda, Maryland.

STATUS: Open to the public.

MATTER TO BE CONSIDERED:

Toy Labeling/Reporting Requirements

The staff will brief the Commission and the Commission will consider three remaining issues from the toy labeling and reporting rules under the Child Safety Protection Act.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East-West Highway, Bethesda, MD 20207, (301) 504–0800.

Dated: June 15, 1995.

Sadye E. Dunn,

Secretary.

[FR Doc. 95–15175 Filed 6–16–95; 1:00 pm]

BILLING CODE 6355–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, June 26, 1995.

PLACE: William McChesney Martin, Jr. Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 16, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–15233 Filed 6–16–95; 2:56 pm]

BILLING CODE 6210–01–P

INTERSTATE COMMERCE COMMISSION

Commission Voting Conference

TIME AND DATE: 10:00 a.m., Tuesday, June 27, 1995.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, NW., Washington, DC 20423.

STATUS: The Commission will meet to discuss among themselves the following agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Finance Docket No. 32467, *National Railroad Passenger Corporation And Consolidated Rail Corporation—Application*

Under Section 402(a) of The Rail Passenger Service Act For An Order Fixing Just Compensation.

Docket No. AB–362 (Sub-No. 2X), *Texas And Oklahoma R.R. Company—Abandonment—Between The Oklahoma-Texas State Line And Orient Junction (Sweetwater), Texas.*[1]

Finance Docket No. 32607, *WFEC Railroad Company—Construction And Operation Exemption—Choctaw And McCurtain Counties, OK.*

Finance Docket No. 32433, *Chicago And North Western Transportation Company—Construction And Operation Exemption—City Of Superior, Douglas County, WI.*

CONTACT PERSONS FOR MORE INFORMATION: Alvin H. Brown or A. Dennis Watson, Office of Congressional and Press Services, Telephone: (202) 927–5350, TDD: (202) 927–5721.

Vernon A. Williams,

Secretary.

[FR Doc. 95–15075 Filed 6–15–95; 2:30 pm]

BILLING CODE 7035–01–P

MARINE MAMMAL COMMISSION

TIME AND DATE: The Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals will meet in executive session on Tuesday, November 14, 1995 from 9:00 a.m. to 9:45 a.m. The public sessions of the Commission and the Committee meeting will be held on Tuesday, November 14, from 10:00 a.m. to 6:00 p.m., on Wednesday, November 15, from 9:00 a.m. to 6:00 p.m., and on Thursday, November 16, from 9:00 a.m. to 1:00 p.m.

PLACE: The Fairbanks Princess Hotel, 4477 Pikes Landing Road, Fairbanks, Alaska, 99709.

STATUS: The executive session will be closed to the public. At it, matters relating to personnel, the internal practices of the Commission, and international negotiations in process will be discussed. All other portions of the meeting will be open to public observation. Public participation will be allowed as time permits and it is determined to be desirable by the Chairman.

MATTERS TO BE CONSIDERED: The Commission and Committee will meet in public session to discuss a broad range of marine mammal matters. While subject to change, among the issues that the Commission plans to consider are: implementation of the 1994 amendments to the Marine Mammal Protection Act; the health and stability of the Bering Sea ecosystem; domestic and international polar bear programs; Glacier Bay National Park vessel entry regulations; bowhead whale research and management issues; the Arctic Environmental Protection Strategy; the Russian Marine Mammal Council; Steller sea lions; harbor seals; North Pacific fur seals; sea otters; and standards and guidelines for the care and maintenance of captive marine mammals.

CONTACT PERSON FOR MORE INFORMATION: John R. Twiss, Jr., Executive Director, Marine Mammal Commission, 1825 Connecticut Avenue, NW., Room 512, Washington, DC 20009, 202/606–5504.

Dated: June 16, 1995.

John R. Twiss, Jr.

Executive Director.

[FR Doc. 95–15148 Filed 6–16–95; 10:52 am]

BILLING CODE 6820–31–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of June 19, 26, July 3, and 10, 1995.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of June 19

Wednesday, June 21

9:00 a.m.
Discussion of Management Issues (Closed—Ex. 2 and 6)

10:30 a.m.
Briefing on Use of Expert Elicitation in HLW Performance Assessments (Public Meeting)
(Contact: Janet Kotra, 301–415–6674)

Thursday, June 22

9:00 a.m.
Briefing on Results of Senior Management Review of Operating Reactors, Fuel Facilities, and Related Activities (Public Meeting)
(Contact: Victor McCree, 301–415–1711)

10:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
(**Please Note:** These items will be affirmed immediately following the conclusion of the preceding meeting.)
a. Final Rule on "Clarification of Decommissioning Funding Assurance Requirements" (Tentative)
b. Final Rule Revising 10 CFR part 110, Import and Export of Radioactive Waste (Tentative)
c. Georgia Power Company's Motion for Order Preserving the Licensing Board's Jurisdiction (Docket Nos. 50–424–OLA–3, 50–425–OLA–3) (Tentative)
d. Final Rulemaking Package for 10 CFR 50.36, "Technical Specifications" (Tentative)
(Contact: Andrew Bates, 301–415–1963)

Week of June 26—Tentative

Thursday, June 29

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of July 3—Tentative

There are no meetings scheduled for the Week of July 3.

Week of July 10—Tentative

Wednesday, July 12

10:00 a.m.
Briefing on Status of Watts Bar and Browns Ferry 3 (Public Meeting)
Contact: Fred Hebdon, 301–415–1485)

Notes: Beginning July 2, 1995, the Commission will be operating under a delegation of authority to Chairman Jackson, because with three vacancies, it will be temporarily without a quorum. As a legal matter, therefore, the Sunshine Act does not apply, but in the interests of openness and public accountability, the Commission will continue to conduct business as though the Sunshine Act were fully applicable.

Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific times are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for commission meetings is subject to change on short notice. To verify the status of meetings call (recording) (301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill, (301) 415–1661.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

Dated: June 16, 1995.

William M. Hill, Jr.

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 95–15218 Filed 6–16–95; 2:55 pm]

BILLING CODE 7590–01–M

UNITED STATES ENRICHMENT CORPORATION BOARD OF DIRECTORS

TIME AND DATE: 10:00 a.m., Monday, June 19, 1995.

PLACE: USEC Corporate Headquarters, 6903 Rockledge Drive, Bethesda, Maryland 20817.

[1] This options paper also embraces *Texas and Oklahoma R.R. Co.—Abandonment Exemption—In Foard and Wilbarger Counties, TX*, Docket No. AB–362 (Sub-No. 3X).

PLACE: USEC Corporate Headquarters, 6903 Rockledge Drive, Bethesda, Maryland 20817.

STATUS: The meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

- Review of commercial and financial issues of the Corporation
- Procedural matters

CONTACT PERSON FOR MORE INFORMATION: Barbara Arnold, 301–564–3354.

Dated: June 15, 1995.

William H. Timbers, Jr.,

President and Chief Executive Officer.

[FR Doc. 95–15125 Filed 6–16–95; 9:12 am]

BILLING CODE 8720–01–M

federal register

Tuesday
June 20, 1995

Part II

Nuclear Regulatory Commission

10 CFR Parts 170 and 171
Revision of Fee Schedules; 100% Fee Recovery, FY 1995; Final Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN 3150–AF07

Revision of Fee Schedules; 100% Fee Recovery, FY 1995

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending the licensing, inspection, and annual fees charged to its applicants and licensees. The amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990, which mandates that the NRC recover approximately 100 percent of its budget authority in Fiscal Year (FY) 1995 less amounts appropriated from the Nuclear Waste Fund (NWF). The amount to be recovered for FY 1995 is approximately $503.6 million.

EFFECTIVE DATE: July 20, 1995.

ADDRESSES: Copies of comments received and the agency workpapers that support these final changes to 10 CFR Parts 170 and 171 may be examined at the NRC Public Document Room at 2120 L Street, NW. (Lower Level), Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: C. James Holloway, Jr., Office of the Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301–415–6213.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Responses to Comments.
III. Final Action.
IV. Section-by-Section Analysis.
V. Environmental Impact: Categorical Exclusion.
VI. Paperwork Reduction Act Statement.
VII. Regulatory Analysis.
VIII. Regulatory Flexibility Analysis.
IX. Backfit Analysis.

I. Background

Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), enacted November 5, 1990, requires that the NRC recover approximately 100 percent of its budget authority, less the amount appropriated from the Department of Energy (DOE) administered NWF, for FYs 1991 through 1995 by assessing fees. OBRA–90 was amended in 1993 to extend the NRC's 100 percent fee recovery requirement through FY 1998.

The NRC assesses two types of fees to recover its budget authority. First, license and inspection fees, established in 10 CFR part 170 under the authority of the Independent Offices Appropriation Act (IQAA), 31 U.S.C. 9701, recover the NRC's costs of providing individually identifiable services to specific applicants and licensees. Examples of the services provided by the NRC for which these fees are assessed are the review of applications for the issuance of new licenses or approvals, and amendments to or renewal of licenses or approvals. Second, annual fees, established in 10 CFR part 171 under the authority of OBRA–90, recover generic and other regulatory costs not recovered through 10 CFR part 170 fees.

On March 20, 1995 (60 FR 14670), the NRC published its proposed rule establishing the licensing, inspection, and annual fees necessary for the NRC to recover approximately 100 percent of its budget authority for FY 1995, less the appropriation received from the Nuclear Waste Fund.

Several changes were proposed by the NRC to the fees to be assessed for FY 1995. These changes were summarized in the proposed rule (60 FR 14671; March 20, 1995) and are as follows:

1. Change the method for allocating the budgeted costs that cause fairness and equity concerns. Approximately $56 million would be allocated to all NRC licensees based on the budgeted dollars for each class of licensees.

2. Eliminate the materials "flat" inspection fees in 10 CFR 170.31 and include the inspection costs with the annual materials fees in 10 CFR 171.16(d). These actions would streamline the license fee process and result in more predictable fees.

3. Change the methodology for calculating the professional hourly rate to better align the budgeted costs with the major classes of licensees. Two professional staff-hour rates were proposed instead of a single rate.

4. Change the methodology for calculating annual fees for power reactors, fuel facilities, and uranium recovery licensees to improve the relationship between annual fees and the cost of providing regulatory services to the classes and subclasses of licensees, and to improve NRC efficiency.

5. Implement the newly promulgated NRC small entity size standards and establish a new lower-tier size standard for annual fee purposes.

The Commission held a public meeting on March 15, 1995, at which the NRC staff briefed the Commission on the proposed changes for FY 1995. A transcript of the Commission meeting is available and has been placed in the Public Document Room.

The American Mining Congress [1] filed a Petition for Rulemaking which requested among other things that (1) annual fees not be assessed for mills in a standby status; and (2) a licensee review board to oversee NRC fees be established. The Commission denied the request on April 28, 1995 (60 FR 20918) noting that (1) the NRC will continue its current practice of providing available backup data to support 10 CFR Part 170 licensing and inspection billings upon request by the applicant or licensee and (2) petitioner's request that the Department of Energy be assessed fees for Uranium Mill Tailings Radiation Control Act (UMTRCA) actions was implemented in the final fee rule for FY 1994.

II. Responses to Comments

The NRC received twenty-two comments on the proposed rule. Although the comment period ended on April 19, 1995, the NRC has reviewed and evaluated all comments received, including those that were late.

Many of the comments were similar in nature. For evaluation purposes, these comments have been grouped, as appropriate, and addressed as single issues in this final rule. The comments are as follows:

A. Comments regarding the major changes proposed in the FY 1995 fee rule.

1. Change the Method for Allocating Those Budgeted Costs (About $56 Million) That Cause Fairness and Equity Concerns

Comment. The commenters agreed that the proposed method for allocating approximately $56 million in budgeted costs for NRC activities which are not directly related to the cost of regulating licensees represented a more equitable method for distributing the costs. Many commenters indicated that, pending legislative relief by Congress to remedy this inequitable situation, they supported the proposal to treat these costs similar to overhead and distribute these costs based on the percentage of the budget directly attributable to a class of licensees. However, the commenters also believed that these costs should not be paid by any licensee and recommended that the NRC should continue to urge Congress to modify OBRA–90 to remove these costs from the fee base. For example, one commenter stated that the proposed 89% allocation of these costs to power reactors results in a charge of $511,000 per operating power reactor. The commenter argued that "power reactor licensees should not have to bear this ever increasing additional fee charge for NRC agency costs that are not related to the regulatory costs of these licensees. Accordingly, these costs should not be included in the user fee base to be recovered from power reactor licensees."

Response. The NRC is adopting in this final rule the allocation method in the proposed rule because it represents an equitable way to allocate the costs and most of the comments supported use of the revised methodology. As noted in the comments, on February 23, 1994, the NRC submitted its report to Congress on fees in compliance with the Energy Policy Act of 1992. This report concluded that modifications to existing statutes governing NRC fees are necessary to alleviate licensees' major concerns about fairness and equity and to reduce the NRC administrative burden resulting from assessing fees. The report recommended enactment of legislation that would reduce the amount to be recovered from fees from 100 percent of the NRC budget to approximately 90 percent, and eliminate the requirement that NRC assess 10 CFR Part 170 fees. Because the requested legislation has not been enacted, the NRC in this final rule will allocate the costs (approximately $56 million) that have raised fairness and equity concerns among the broadest base of NRC licensees. The Commission will continue to discuss and work with the Congress to make fees more fair and equitable.

2. Streamline and Stabilize Fees

Comment. Commenters, for the most part, supported the proposal to stabilize fees by adjusting the annual fees starting in FY 1996 by the percentage change (decrease or increase) in the NRC's total budget. Commenters also supported the NRC's plan to reexamine this approach should there be a substantial change in the total NRC budget or in the magnitude of a specific budget allocation to a specific class of licensees. Commenters also were in agreement that the "flat" materials inspection fees of 10 CFR part 170 should be eliminated and the costs included in the 10 CFR Part 171 annual fees. Most commenters agreed that the proposed changes represent a simplification and streamlining of the fee-setting procedures and are necessary in order to eliminate the large swings in annual fees that have occurred in past years and to allow for greater predictability of fees. Other commenters indicated, however, that they are concerned about the simple annual percentage change adjustment to future annual fees because there has been no resolution of certain long-standing concerns associated with the fairness and equity of NRC fees.

Response. The NRC is adopting in this final rule the proposed methodology to streamline and stabilize fees based on the comments received supporting the methodology. Although not a specific change in this rule, the NRC plans to adjust the annual fees only by the percentage change in NRC's total budget beginning in FY 1996. The NRC believes that this action will help stabilize and improve the predictability of fees. The fees established in this final rule will be used as the base annual fee in subsequent years and the percentage change (plus or minus) in the NRC total budget, adjusted to reflect changes in the total number of licensees paying fees and estimated collections from 10 CFR part 170 licensing and inspection fees, will be used to establish annual fees. However, the NRC will make modifications should there be a substantial change in the NRC budget or in the magnitude of a specific budget allocation to a class of licensees. To streamline fees, the NRC is eliminating the materials "flat" inspection fees in 10 CFR part 170 by including the cost of inspections in certain materials licensees' 10 CFR part 171 annual fees.

3. Change the Methodology for Calculating the Professional Hourly Rate to Better Align the Budgeted Costs With the Major Classes of Licensees

Comment. All commenters responding to this proposed change supported the revised method of calculating hourly rates to separately, and more equitably, allocate the costs associated with the reactor and materials programs. Commenters believe that the new dual rate structure, which establishes different rates for reactor and materials reviews, is inherently fairer and more equitable to licensees. Most commenters were pleased that the rates for both the reactor and materials classes of applicants have been reduced as compared to FY 1994 and indicated that changing the method of calculating hourly rates is a step in the right direction towards providing a more reasonable relationship to the cost of providing regulatory services. Commenters supported the use of the "cost center" concept to identify and allocate the NRC budgeted resources to different types of major programs, namely reactor and material licensees, and indicated that this methodology is more consistent with Congressional intent that the NRC identify and properly assess fees to the entities that utilize NRC resources and regulatory services.

Other commenters, however, indicated that while they appreciate the 13 percent reduction in the professional hourly rate for the materials program (from $133 per hour to $116 per hour), applying such a uniformly high rate for NRC staff cannot be justified. These commenters point out that the $116 hourly rate equals or exceeds the hourly charges of senior consultants, principals, or project managers at major consulting firms and substantially exceeds the generally accepted rate for technical staff performing similar work in private industry. Commenters encouraged the NRC to continue examining its budget structure and cost allocation methods so that the hourly rate can be made consistent with and representative of comparable services performed by private industry. One commenter stated that the NRC has still not adequately explained the derivation of the hourly rate, aside from basing it on a presumed number of chargeable hours per full-time equivalent, or how it relates to the services provided. Another commenter stated that the hourly rates are arbitrary and do not reflect the costs of providing regulatory services to licensees.

Response. In this final rule, the NRC has established two professional hourly rates for FY 1995 which will be used to determine the 10 CFR Part 170 fees. A rate of $123 per hour is established in § 170.20 for the reactor program and a second rate of $116 per hour is established in § 170.20 for the nuclear materials and nuclear waste programs. The two rates are based on the "cost center" concept that is now being used for budgeting purposes.

The NRC professional hourly rates are established to recover approximately 100 percent of the agency's Congressionally-approved budget, less the appropriation from the Nuclear Waste Fund (NWF), as required by OBRA–90. The rates reflect the NRC cost per direct professional hour. This cost includes the salary and benefits for the direct hours, and a prorata share of the salary and benefits for the program and agency overhead and agency general and administrative expenses (e.g., rent, supplies, and information technology). Both the method and budgeted costs used by the NRC in the development of the hourly rates of $123 and $116 are discussed in detail in Part III, Section-by-Section Analysis, relating to § 170.20 of the proposed rule (60 FR 14676; March 20, 1995) and the same section of this final rule. For example, Table III shows the budgeted costs and

[1] The American Mining Congress merged with the National Coal Association on February 13, 1995, and is now the National Mining Association.

the direct FTEs that must be recovered through fees assessed for the hours expended by the direct FTEs. Additional details on the hourly rate are provided in the NRC workpapers located in the Public Document Room.

4. Modify NRC Small Entity and Lower-Tier Size Standards for Annual Fee Purposes

Comment. Two commenters addressed the changes proposed by the NRC for small entity fees. While generally supporting the changes, they believed additional changes should be made. One commenter stated that while he was relieved to see the dramatic reduction in materials annual fees, the company's well logging *department* of only six employees is still unable to qualify as a small entity even under the new standard because the overall gross annual receipts of the consulting company exceed $7 million. The second commenter stated that the proposed rule that would raise the dollar threshold for a medical program from $1 million to $5 million will afford him great relief and ensures that service will continue to be provided to patients. The commenter, however, believes that a more equitable approach would be to base fees on the nuclear medicine activity levels or nuclear medicine billing-receipts levels rather than the total dollar volume of the entire company.

Response. The NRC uses the receipts-based size standards established by the Small Business Administration (SBA) to establish its own small entity size standards. The SBA recently adjusted its receipts-based size standard levels to account for the effects of inflation. The NRC adjusted its receipts-based size standards in turn from $3.5 million to $5 million, to conform to the SBA rule (60 FR 18344; April 11, 1995). The NRC has also eliminated the separate $1 million size standard for private practice physicians and will apply the receipts-based standard of $5 million to this class of licensees. This mirrors the revised SBA standard of $5 million for medical practitioners. The NRC believes that these actions will reduce the impact of annual fees on small businesses.

With respect to basing fees on the gross receipts for a department within a company, or on activity levels or nuclear medicine billing-receipts levels rather than the total dollar volume of the entire entity, the NRC's size standards are based on the SBA guidance which defines annual receipts as those which include "revenues from sales of products or services, interest, rent, fees, commissions and/or whatever sources derived." Moreover, as NRC has stated previously, it is impractical to base fees on the criteria suggested by the commenter. See Regulatory Flexibility Analysis in Appendix A to the final rule published July 10, 1991 (56 FR 31511–31513).

5. Change the Methodology for Calculating Annual Fees for Power Reactors, Fuel Facilities, and Uranium Recovery Licensees

Comment. All the commenters representing the power reactor, fuel facility, and uranium recovery industries supported the simplification of annual fees and are encouraged that the annual fees have been reduced compared to FY 1994 levels. Commenters from the reactor industry favored a uniform fee for each operating power reactor. Commenters from the uranium recovery industry supported attempts to make the annual fees more accurately reflect the cost of providing regulatory services and agreed that the proposed fees are far more reasonable than in past years. However, these commenters believe that NRC needs to address a fundamental industry concern that, as the industry continues to shrink in size thereby decreasing the number of licensees being charged annual fees, the costs associated with regulatory services will continue to increase significantly for each remaining licensee. This trend will force more hardships on an industry that is already severely depressed. Other uranium recovery licensees commented that they are concerned with the NRC's proposed fee calculation matrix, which uses a qualitative estimation ranking of "significant", "some", "minor", or "none" to determine a factor used for establishing the annual fee amount for each license. Commenters suggest a more quantitative approach should be applied, using actual costs and resource time allocations, to determine a more accurate fee assessment schedule.

Response. In this final rule, the NRC has established a single uniform annual fee for each operating power reactor and has refined its method of calculating annual fees for fuel facilities and uranium recovery facilities. The NRC indicated in the final FY 1994 fee rule that given the questions raised at that time by B&W Fuel Company, General Atomics, and other fuel facilities, it would reexamine the fuel facility subclass categorizations, and include any restructuring resulting from this reexamination in the FY 1995 proposed rule for notice and comment (59 FR 36901; July 20, 1994). The NRC's revised methodologies for determining annual fees for fuel facility and uranium recovery licensees, described in the proposed rule, are based on this reexamination. These revised methodologies have been used to determine the final FY 1995 annual fees. The use of the revised methodologies results in an annual fee that more accurately reflects the cost of providing regulatory services to the subclasses of fuel facility and uranium recovery licensees. The revised methodologies are explained in more detail in Section IV—Section-by-Section Analysis of this final rule.

With respect to the suggestion that a more quantitative approach be used to develop the annual fees, the NRC has corroborated the qualitative estimates with resource and time allocation data where such data exist. However, such data in some cases are not available at the level necessary to corroborate the qualitative determinations. The NRC believes that in such cases the approach to be used still results in a more fair and accurate annual fee being charged to fuel facility and uranium recovery licensees.

In response to the comment relative to annual fee increases as a result of the decrease in the number of licenses, the changes in this final rule to stabilize fees should minimize large fee changes as a result of decreases in licenses. See response to Comment A.1.

B. Other Comments

1. Amendments to § 170.11

Comment. One commenter supported the proposal to amend § 170.11 to conform to section 161w. of the Atomic Energy Act which would permit charging 10 CFR Part 170 fees to not only power reactors operated by the Tennessee Valley Authority and other Federal government entities, but also to uranium enrichment facilities operated by the United States Enrichment Corporation (USEC).

Response. The NRC has been assessing the USEC 10 CFR Part 170 fees under the authority provided in 161w. of the Atomic Energy Act of 1954, as amended (AEA). The NRC is amending § 170.11 to conform its regulations to this statutory provision.

2. Low-Level Waste Costs

Comment. One commenter was concerned that the proposed fee schedule does not adequately reflect the long-term regulatory costs which are associated with power reactors. The commenter believed that the NRC's $7 million in annual costs for generic low-level waste work is low in comparison to long-term costs associated with these activities. The commenter indicated that it might be prudent to assume that the long-term costs associated with low-level waste sites will eventually exceed the revenues immediately collected upon disposal.

Response. The amount of $7 million for NRC's low-level waste activities is the amount identified in the FY 1995 budget to be recovered through fees for these activities. If the NRC costs of these activities increase over the long term and are included in the NRC budget, the NRC is required by OBRA–90 to identify and to recover the increased costs from its licensees in the year in which the costs are budgeted. OBRA–90 does not permit the NRC to recover potential future costs that are not included in the current FY 1995 budget.

3. Spent Fuel Storage

Comment. One commenter encouraged the NRC to ensure that any costs associated with spent fuel storage and transportation, particularly the costs associated with the review of the Department of Energy's (DOE) multi-purpose canister program, are kept properly separated from the costs for specific utility licensing actions. Because these activities are funded from different sources, the commenter stated that NRC must ensure that the cost burden for the DOE reviews is not reflected in utility licensing fees. The commenter noted that in the FY 1995 proposed rule there is no explanation for maintaining the fees for general licenses for storage of spent fuel at substantially higher levels than the fee in 1992 ($43,000) or 1993 ($136,000). The commenter questioned whether the fee charged to spent fuel storage licensees includes amounts allocated for other activities.

Response. The costs associated with the review of the DOE's multi-purpose canister program are costs related to the High-Level Waste program which are appropriated from the High Level Waste Fund and separated from specific utility licensing actions. Therefore, in accordance with OBRA–90, the DOE review costs are not included in utility licensing fees, but rather are recovered from the Nuclear Waste Fund. Although the FY 1995 annual fee for spent storage licenses ($279,000) is higher than in FY 1992 ($43,000) or 1993 ($136,000), it is lower than the fee assessed in FY 1994 ($365,170). The reasons for the increases over FY 1992 and FY 1993 were explained in detail in the final FY 1994 rule (59 FR 36902; July 20, 1994). To recap, first, the budgeted amount necessary to regulate spent fuel facilities increased to provide regulatory oversight for the increased number of facilities. Additionally, as the licensing of these facilities was completed, the amount of fees from 10 CFR part 170 necessarily decreased. This resulted in an increased amount that must be recovered from annual fees in 10 CFR part 171.

4. Annual Fees Should Be Prorated When a License is Downgraded

Comment. One commenter proposed that § 171.17(b) be amended to allow proration of annual fees for licenses that are downgraded during the year.

Response. The NRC agrees with the commenter that some provision should be made in the annual fee regulations for those instances where a license is downgraded to a license category with a lower annual fee during the fiscal year. Although the NRC currently has in place a system to track applications for new licenses and terminations which can be readily used for fee purposes, no similar system exists that could easily track upgrades or downgrades of licenses. As a result, § 171.17 is amended to allow for proration of the annual fee for a downgraded license upon request of the licensee. Such a request must be filed with the NRC within 90 days from the effective date of the final rule establishing the annual fees for which a proration is sought. Absent extraordinary circumstances, any request for proration of the annual fee for a downgraded license filed beyond that date will not be considered.

If a timely proration request is filed, annual fees for licenses downgraded after October 1 of a fiscal year will be prorated on the basis of when the applications for downgrade are received by the NRC, provided the licensee permanently ceased the stated activities during the specified period. Annual fees for licenses for which applications to downgrade are filed during the period October 1 through March 31 of the fiscal year will be prorated as follows: (1) Licenses for which applications have been filed to reduce the scope of the license from a higher fee category(ies) to a lower fee category(ies) will be assessed one-half the annual fee for the higher fee category(ies) and one-half the annual fee for the lower fee category(ies), and, if applicable, the full annual fee for fee categories not affected by the downgrade; and (2) licenses with multiple fee categories for which applications have been filed to downgrade by deleting a fee category will be assessed one-half the annual fee for the fee category being deleted and the full annual fee for the remaining categories. Licenses for which applications for downgrade are filed on or after April 1 of the fiscal year are assessed the full fee for that fiscal year.

5. Avoid Billing for Services Rendered One Year Prior to Billing Date

Comment. One commenter proposed that the NRC void any bill for costs of regulatory services that were performed more than one year prior to the invoice date. The commenter stated that this would result in the NRC striving to issue invoices in a timely manner to assure recovery of its budget authority and would not place the licensee in a position of having to pay an unexpected and potentially large invoice.

Response. The NRC has not included this proposal in the final rule. The NRC is required by the Federal Claims Collection Act of 1966 and the Debt Collection Act of 1982 to pursue debts and claims owed to the U.S. government. However, the NRC has made efforts to issue bills in a more timely manner. During the past year, the NRC has implemented procedures to bill for licensing reviews and inspections within 30 days of the close of the billing quarter during which the review or inspection occurred or was completed. Although there have been rare cases where bills were not issued in a timely manner for licensing and inspection activities, the NRC believes that the 30-day billing procedures will help to minimize the number of such occurrences in the future.

6. Reinstate Fee Ceiling for Topical Report Reviews

Comment. One commenter requested that the NRC reinstate a fee ceiling in 10 CFR part 170 for topical report reviews because a fee ceiling would encourage the submittal of topical reports, thus contributing to the advance of the state-of-the-art in the nuclear industry and the resultant improvement in nuclear plant safety. The commenter stated that the current uncapped fee structure encourages prolonged and unreasonably detailed technical reviews by NRC contractors.

Response. The NRC indicated in the FY 1991 final fee rule that it had decided to eliminate the ceiling for topical report reviews based on the 100 percent recovery requirement and Congressional guidance that each licensee or applicant pay the full costs of all identifiable regulatory services received from the NRC. Further, the NRC's costs for topical report reviews vary significantly depending on the particular topical report reviewed. This makes it impractical to establish an equitable fee ceiling or flat fee (56 FR 31478; July 10, 1991). Recently, the Commission revisited this issue as part of its review of fee policy required by EPA–92. The policy of assessing 10 CFR

part 170 fees, without a ceiling, for the review and approval of topical reports was reconfirmed. For these reasons, the NRC is not establishing a fee ceiling for topical reports in this final rule.

7. Comment

Several comments were received from uranium recovery licensees. Commenters suggested (1) a tiered fee system that would result in full fees for operating facilities and reduced fees for facilities in shutdown or standby status; (2) a licensee review board be established to review NRC fees annually; (3) the NRC establish standards for its activities, such as a schedule for response intervals for processing licensing actions; and (4) 10 CFR part 170 bills be itemized to show hours spent, a description of the work performed, the names of individuals who completed the work and the dates the work was performed.

Response. In response to a petition for rulemaking from the American Mining Congress (60 FR 20918), the NRC addressed each of these comments in the **Federal Register** on April 28, 1995. While denying the petition, the NRC noted that it would continue its current practice of providing available backup data to support Part 170 licensing and inspection billings upon request by the licensee or applicant.

8. Establish Reimbursable Agreements With Agreement States and Other Government Agencies

Comment. Several commenters chose to comment on this change, even though the NRC indicated in the proposed rule that the issue of reimbursable agreements falls outside the scope of the proposed rulemaking. The commenters indicated that such action by NRC will affect the levels of fees to be paid by licensees. Those commenting on this change were encouraged by the NRC's initiative in seeking a better way to charge these expenses and supported the NRC's decision to increase the use of reimbursable agreements to eliminate certain costs that do not benefit NRC licensees. Most of the commenters on this issue, however, encouraged the NRC to proceed immediately to negotiate these reimbursable agreements and not wait until FY 1997 because NRC licensees are currently paying for these costs. One commenter suggested that, in the interest of properly and fairly allocating costs, this program be expanded to cover more, if not all, of the costs of the regulatory support to and oversight of Agreement States (about $20 million) rather than limit recovery under reimbursable agreement to costs associated with training, travel and technical support provided to Agreement States.

In addition, several commenters believe that the NRC should assess the Environmental Protection Agency (EPA) for NRC work such as review of regulations promulgated by EPA relating to radionuclide emission standards. One commenter stated that costs to support certain activities related to international treaties may best be covered by the Department of State, the Department of Energy or the Agency for International Development.

On April 5 and 6, 1995, the NRC hosted an Agreement State Managers Workshop in Rockville, Maryland. At that meeting, the Agreement States expressed strong opposition to the reimbursable agreement concept, arguing that such agreements would have a negative impact on their programs. The NRC has also received letters from Agreement States expressing strong disagreement with the reimbursable program.

Response. The NRC indicated in the proposed rule (60 FR 14672; March 20, 1995) that it planned to increase the use of reimbursable agreements with Agreement States and Federal agencies and because this change affected the budget and does not alter fee policies or methods, it falls outside the scope of this rulemaking for FY 1995. It is, however, a subject that has generated strong responses, both positive and negative, on the part of licensees and Agreement States. As indicated previously, this policy does not affect the issuance of this FY 1995 rule and the NRC is proceeding to issue the FY 1995 final rule. The reimbursable agreement issue will be addressed as a separate policy issue in the future.

With respect to the interaction between the NRC and EPA on the promulgation of regulations, the Independent Offices Appropriation Act of 1952, as amended, precludes the NRC from charging fees to Federal agencies for specific services rendered. While the NRC can assess annual fees to Federal agencies holding NRC licenses, the EPA is not considered a licensee of the NRC with respect to regulations promulgated by EPA relating to radionuclide emission standards. Further, NRC interactions with EPA are an integral part of NRC's responsibilities under the Atomic Energy Act. Therefore, NRC must include the costs of this work in its budget and cannot perform such work under reimbursable agreements.

With respect to the NRC's international activities, the NRC budget includes certain international activities that are not directly related to NRC applicants or licensees. These activities are performed because of their benefit to U.S. national interests. The NRC is required to perform some of these activities by the Atomic Energy Act (AEA) and, therefore, must budget for them. Over the past several years, the NRC has considered various means to recover the costs for international activities involving broad U.S. national interests, but has found no viable, fair way to do so. Further, it would not be practical to assess fees to foreign organizations, foreign governments, or to the State Department to whom some of the support is provided. For example, assessment of such fees might create foreign policy tensions that could complicate U.S. goals such as foreign reactor safety and nuclear non-proliferation. Until such time as legislation is enacted allowing the NRC to exclude the cost of international activities from the fee base, the cost of these activities must continue to be recovered from NRC licensees. These costs will be recovered from the broadest base of NRC licensees as described in the response to Comment A.1.

9. Fee Deferral Policy for Standard Plant and Early Site Reviews

Comment. One commenter urged the NRC to reestablish the NRC's previous fee deferral policy for standard plant and early site reviews in order to encourage the development of standardized designs and in light of the NRC decision to issue designs to be certified through rulemaking rather than by granting a license for the certified design.

Response. The Commission decided in its FY 1991 final fee rule that the costs for standardized reactor design reviews, whether for domestic or foreign applicants, should be assessed under 10 CFR part 170 to those filing an application with the NRC for approval or certification of a standardized design (56 FR 31478; July 10, 1991). Recently, the Commission revisited this issue as part of its review of fee policy required by EPA–92 and reconfirmed its FY 1991 decision. The NRC continues to believe that the costs of these reviews should be assessed to advanced reactor applicants. The NRC finds no compelling justification for singling out these types of applications for special treatment and shifting additional costs to operating power reactors or other NRC licensees, and does not believe the points made by the commenter are sufficient to change current policy.

10. Assessing Fees to Design Certification Applicants for Costs Following the Final Design Approval

Comment. Two commenters stated that the Commission should revisit its policy decision to charge fees to design certification applicants following the issuance by the NRC staff of a Final Design Approval (FDA).

Response. The statement of considerations accompanying the proposed rule said that the NRC would charge a vendor 10 CFR Part 170 fees for a design certification to recover all the costs of certification except the costs of any hearing that might be held under 10 CFR 52.51(b) before an Atomic Safety and Licensing Board (60 FR 14673; March 20, 1995). These charges are required by existing rules. The only reason the NRC mentioned these fees in the statement of considerations was to reflect in a widely-read document a policy that NRC had articulated fully only in letters to the vendor applicants in December 1994. The letters were in response to inquiries from three vendors last summer. The vendors, particularly ABB-Combustion Engineering Nuclear Systems (ABB–CE), had argued that all the costs of certification should be recovered through annual fees charged to the NRC's current power reactor licensees. ABB–CE, which received an FDA last year for the System 80+ and has applied for certification of the same design, wrote extensive comments on what NRC said about certification fees in the statement of considerations.[2]

Having considered ABB–CE's arguments, which were largely those ABB–CE had made last summer, the NRC has decided not to change the existing rules and policy on this issue. Although this whole topic is, strictly speaking, not part of this rulemaking, the NRC considers this rulemaking notice to be a useful vehicle for informing a larger public in some detail of ABB–CE's arguments and our responses. NRC's statements here are largely a repetition of arguments NRC made in the letters to the vendors and in a February 24, 1995, letter to the Senate Committee on Appropriations.

Comment. ABB–CE charges that "NRC is proposing to change its fee rules in the middle of the process to the detriment of certification applicants. * * * " (Comments at 10)

Response. Section 170.21 of the Commission's regulations has long explicitly listed standard design "certifications" among the regulatory actions for which "full cost" will be recovered through fees charged to applicants. See 10 CFR 170.21 (1994), Schedule of Facility Fees, heading B, "Standard Reference Design Review". This policy has been the law since Part 52 was first promulgated. (See 54 FR 15372, 15399; April 18, 1989.) Even when, in the past, 10 CFR part 170 called for deferring payment of fees until a utility referenced the certified design, 10 CFR part 170 clearly said that the vendor would have to pay the "full cost of review for a standardized design approval or *certification.*" 10 CFR 170.12(e)(2)(1) (emphasis added).

Comment. ABB–CE's most important argument for changing long-standing policy is that, according to ABB–CE, there is no benefit to ABB–CE in certification, except perhaps an "indirect" benefit of making the certified design attractive to U.S. utilities. (Comments at 4) ABB–CE says, "With the issuance of NRC's FDA in July 1994, * * * System 80+ constitutes a complete and approved standardized design which, without design certification rulemaking, has been accepted for bidding in the global marketplace." (Comments at 2) ABB–CE also argues that the nuclear utilities and their ratepayers and stockholders are the "direct" beneficiaries of certification, because it provides them with greatly reduced licensing risk, and because it contributes to the "continued viability * * * of an important energy option" and to the maintenance of the nuclear servicing-supply sector infrastructure. (Comments at 4)

Response. While the utilities may benefit from certifications, the vendor is more likely to benefit than is any given utility. The NRC knows neither whether, nor how many, applicants for combined construction permits and operating licenses (COLs) will benefit from a given certification. Certainly, not all current power reactor licensees will reference every certified design, and so current licensees will not benefit from every certification. If the design is referenced, the vendor will benefit directly, but most utilities will not. The NRC believes that had ABB–CE not had a reasonable expectation of deriving benefits from the certification, ABB–CE would not have applied for it.

Comment. ABB–CE points out that the vendor applicant does not become a "holder" of the design certification. In fact, a vendor other than the one that applied for certification can, as a matter of law, supply the certified design to a COL applicant. ABB–CE believes that this situation is incompatible with the notion that the original vendor is the primary beneficiary of the certification.

Response. The NRC agrees that the design certification applicant does not become a "holder" of the design certification. However, several things will make it difficult for a vendor other than the certification applicant to supply the design to a utility. First, proprietary information is protected during the certification proceeding (see 10 CFR 52.51(c)). Second, any vendor that supplies a design to an applicant for a COL must be prepared to provide the NRC with a large amount of design information not contained in the rule certifying the design. This information includes the detailed design of site-specific portions of the plant, and "information normally contained in certain procurement specifications and construction and installation specifications" (see 10 CFR 52.63(c)). Third, any vendor supplying a COL applicant a certified design which another vendor brought to certification must pay part of any deferred fees the original vendor owes (see 10 CFR 170.12(e)(2)(i)). Fourth and last, the original vendor's superior knowledge of the design will give that vendor a great advantage over competitors.

Comment. ABB–CE also argues that 10 CFR Part 170 fees should not be charged for a certification rulemaking because such a rulemaking is "generic." ABB–CE points out that the Commission has said that it will not charge 10 CFR part 170 fees for "generic rulemaking and guidance (e.g., 10 CFR part 52 and Regulatory Guides) for standard plants. * * *" (56 FR 31478; July 10, 1991.) "* * * NRC has used the certification," ABB–CE says, "* * * to resolve broadbased policy issues that otherwise would have required independent public rulemaking proceedings." (Comments at 7) ABB–CE goes so far as to say that "nearly all of the procedural and substantive provisions in the proposed rule for System 80+ are similar or identical to those for the ABWR." (Comments at 6)

Response. The proposed rules which would certify the System 80+ and the ABWR are no more generic than licenses certifying the same designs would have been.[3] The resolutions of policy issues in the proposed rules are resolutions specific to those two designs. Moreover, the two proposed rules are quite different. It is important to understand that the few pages of the

[2] Stone & Webster Engineering Corporation submitted brief comments on this issue. Those comments match some of ABB–CE's.

[3] It might have been difficult, if not impossible, for the System 80+ to be certified by license. Section 103d of the Atomic Energy Act says in part, "No license may be issued to an alien or any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government."

proposed rules which appeared in the **Federal Register** are only small parts of the rules. Both will incorporate by reference "Tiers" 1 and 2 of the complete designs. Thus the proposed rules are substantively as different as the designs themselves. Even the portions published in the **Federal Register** have no legal force with respect to other designs.

The NRC did state that 10 CFR part 170 fees would not be charged for "generic rulemakings (e.g., 10 CFR part 52) on standard plants." However, as the parenthetical reference to 10 CFR part 52 shows, the NRC was using the phrase "generic rulemaking" to refer to rulemaking which, like 10 CFR part 52 itself, applies to all, or at least many, designs.

Comment. ABB–CE asserts that the whole of a design certification rulemaking should be regarded as a "contested hearing" and thus have no 10 CFR part 170 fees charged in connection with it. ABB–CE's argument is, first, that under the Administrative Procedure Act (APA), notice and comment rulemaking constitutes a "hearing", and second, that the rulemaking surely will be "contested", because there will, in all likelihood, be filed "material comments reasonably opposing aspects of the proposed rule." (Comments at 9)

Response. It has long been the policy of the NRC not to charge 10 CFR part 170 fees for "contested" hearings, namely those adjudicatory hearings which are not mandated by law. The costs of such hearings are recovered through annual fees imposed under 10 CFR part 171. The NRC agrees that applicants for design certification should not be charged 10 CFR part 170 fees for any hearings held before an Atomic Safety and Licensing Board under 10 CFR 52.51(b), which offers an opportunity for a hearing on a proposed certification.

However, ABB–CE's position that the whole rulemaking is a "contested hearing" is neither required by law nor consistent with the meaning usually attributed to the phrase "contested hearing" in discussions of NRC matters. The phrase refers to those hearings, or parts of hearings, which are held under subpart G or subpart L of 10 CFR part 2, but which would not take place unless some party outside the agency asked for them. The Supreme Court case cited by ABB–CE for the proposition that every rulemaking is a "contested hearing", *US* v. *Florida East Coast Railway*, 410 US 224 (1973), says only that notice and comment rulemaking will, in certain circumstances, satisfy a statute's requirement for a rulemaking hearing. The Court's decision does not say that every rulemaking is a hearing.

Comment. ABB–CE argues that charging vendors for the costs of certification is inconsistent with the NRC's recent decision to recover the costs of confirmatory research "related to the design" from the utilities, under 10 CFR part 171. If NRC recovers those costs from the utilities, then, argues ABB–CE, NRC should recover all the costs of certification from the utilities, because those costs too are "related to the design."

Response. ABB–CE misconstrues the policy. Its aim is to charge vendors applying for FDAs and certifications of standard designs for only the research which is necessary to support the issuance of the FDA or certification. Research initiated to address generic issues, such as human factors or code development, would be charged to the utilities under 10 CFR part 171, even if it had a bearing on the review of a standard design. (See 60 FR 14673; March 20, 1995.) There is in this nothing inconsistent with the existing regulations on certification fees. In both cases, the NRC is charging the vendors for what must be done before issuance of the FDA or certification.

III. Final Action

The NRC is amending its licensing, inspection, and annual fees to recover approximately 100 percent of its FY 1995 budget authority, including the budget authority for its Office of the Inspector General, less the appropriations received from the NWF. For FY 1995, the NRC's budget authority is $525.6 million of which approximately $22.0 million has been appropriated from the NWF. Therefore, OBRA–90 requires that the NRC collect approximately $503.6 million in FY 1995 through 10 CFR part 170 licensing and inspection fees and 10 CFR part 171 annual fees. This amount to be recovered for FY 1995 is about $9.4 million less than the total amount to be recovered for FY 1994 and $15.3 million less when compared to the amount to be recovered for FY 1993. The NRC estimates that approximately $141.1 million will be recovered in FY 1995 from the fees assessed under 10 CFR part 170. The remaining $362.5 million will be recovered through the 10 CFR part 171 annual fees established for FY 1995.

Recognizing that OBRA–90 may have resulted in certain fees that were unfair or inequitable, Congress in Section 2903(c), of the Energy Policy Act of 1992 (EPA–92), directed the NRC to review its annual fee policy, solicit public comment on the need for changes to this policy, and recommend to the Congress any changes to existing law needed to prevent placing unfair burdens on NRC licensees. The NRC reviewed more than 500 public comments submitted in response to the request for comment published in the **Federal Register** on April 19, 1993 (58 FR 21116), and sent its report to Congress on February 23, 1994. A copy of this report has been placed in the Public Document Room. This report concluded that modifications to existing statutes governing NRC fees are necessary to alleviate licensees' major concerns about fairness and equity and to reduce the NRC administrative burden resulting from assessing fees. The report recommended enactment of legislation that would reduce the amount to be recovered from fees from 100 percent of the NRC budget to approximately 90 percent of the budget and eliminate the requirement that NRC assess 10 CFR part 170 fees.

In view of the fact that legislation has not been enacted to address licensees' fairness and equity concerns and the concern about the additional workload generated by 100 percent fee recovery, the Commission has reexamined its existing fee policies to determine whether they can be made more equitable. This reexamination was undertaken with the goal of addressing, within the limitations of the existing laws governing NRC fees, the concerns identified in the report to Congress and improving other features of the NRC fee program. Based on this reexamination, the NRC is amending 10 CFR parts 170 and 171 to partially alleviate the identified concerns and improve the process of collecting NRC fees.

These final changes are summarized as follows and detailed in the following sections.

1. The method for allocating the budgeted costs that cause fairness and equity concerns is changed. Approximately $56 million of NRC costs either do not directly benefit NRC licensees or provide benefits to non-NRC licensees. These costs will be treated similar to overhead and distributed to the broadest base of NRC licensees based on the percent of the budget for each class. As a result, power reactors will pay a greater percentage of these costs.

2. The selected materials inspection fees (i.e., flat fees and others with reasonable averages), hereinafter referred to as "flat" inspection fees in 10 CFR 170.31, are eliminated and the inspection costs are included with the annual materials fees in 10 CFR 171.16(d). These actions will streamline

the license fee process and provide more predictable fees.

3. The methodology for calculating the professional hourly rate is changed to better align the budgeted costs with the major classes of licensees. Two professional staff-hour rates are established instead of a single rate.

4. The methodology for calculating annual fees for power reactors, fuel facilities and uranium recovery licensees is changed to make annual fees more closely reflect the cost of providing regulatory services to the classes and subclasses of licensees and to improve efficiency.

5. NRC small entity and lower-tier size standards are modified for annual fee purposes.

6. The proration provision in 10 CFR 171 has been amended to allow proration of annual fees when materials licenses are downgraded during the year.

As a result of the reduced budget amount to be recovered for FY 1995, increased 10 CFR part 170 fee collections from power reactors, and these final changes, the annual fees for a large majority of the licensees have been reduced. The following provides illustrative examples of the changes in the annual fees.

Class of licensees	Annual fee	
	FY 1994	FY 1995
Power Reactors	$3,078,000	$2,936,000
Nonpower Reactors	62,200	56,500
High Enriched Fuel Facility	3,231,770	2,569,000
Low Enriched Fuel Facility	1,484,770	1,261,000
UF_6 Conversion	1,179,770	639,200
Uranium Mills	74,670	60,900
Typical materials licenses		
Radiographers	19,170	13,900
Well Loggers	12,870	8,100
Gauge Users	2,470	1,700
Broad Scope Medical	32,570	23,200

To help stabilize fees, beginning in FY 1996, the NRC will adjust the annual fees only by the percent change in NRC's total budget. The annual fees in this final FY 1995 rule will be used as a base, and the percentage change (plus or minus) in the NRC total FY 1995 budget will be applied to all annual fees for the next four years (FY 1996–FY 1998 and FY 1999 if OBRA–90 is extended) unless there is a substantial change in the total NRC budget or the magnitude of the budget allocated to a specific class of licensees, in which case the annual fee base would be reestablished. The decision on whether to establish a new baseline will be made each year during budget formulation. For example, if the total NRC budget is reduced by 3 percent and the number of licenses and the amount estimated to be recovered under 10 CFR part 170 remains constant in a given fiscal year, then all annual fees would be reduced by approximately 3 percent.

The NRC contemplates that any fees to be collected as a result of this final rule will be assessed on an expedited basis to ensure collection of the required fees by September 30, 1995, as stipulated in OBRA–90. Therefore, as in FYs 1991–1994 the fees will become effective 30 days after publication of the final rule in the **Federal Register**. The NRC will send a bill for the amount of the annual fee to the licensee or certificate, registration, or approval holder upon publication of the final rule. Payment will be due on the effective date of the FY 1995 rule.

The NRC will continue the proration of annual fees, established in FY 1994, in accordance with the provisions of § 171.17 for new licensees and requests for termination. The annual fees for both reactor and material licensees are prorated based on (1) The date applications are filed during the FY to terminate a license or obtain a possession-only license (POL) and (2) the date new licenses are issued during the FY.

A. Amendments to 10 CFR part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services

Four amendments have been made to part 170. These amendments do not change the underlying basis for the regulation—that fees be assessed to applicants, persons, and licensees for specific identifiable services rendered. The amendments also comply with the guidance in the Conference Committee Report on OBRA–90 that fees assessed under the Independent Offices Appropriation Act (IOAA) recover the full cost to the NRC of identifiable regulatory services each applicant or licensee receives.

First, § 170.11 is amended to conform it to section 161w. of the Atomic Energy Act of 1954, as amended (AEA). That section of the AEA currently allows the Commission to charge part 170 fees to power reactors operated by the Tennessee Valley Authority or other Federal government entities and to uranium enrichment facilities operated by the United States Enrichment Corporation, as these reactors and facilities are licensed or certified by the NRC. In all other cases, the NRC is prevented from charging part 170 fees to Federal agencies for services rendered, due to a prohibition on such charges contained in the Independent Offices Appropriation Act, 31 U.S.C. 9701.

Second, the current method of calculating the 10 CFR part 170 professional hourly rate is revised. Currently, there is one professional hourly rate established in § 170.20, which is used to determine the fees assessed by the NRC. This professional hourly rate was $133 per hour for FY 1994. The NRC has established two professional hourly rates for FY 1995, which will be used to determine the part 170 fees. The NRC has established a rate of $123 per hour ($214,765 per direct FTE) for the reactor program. This rate is applicable to those activities covered by 10 CFR 170.21 of the fee regulations. A second rate of $116 per hour ($203,096 per direct FTE) is established for the nuclear materials and nuclear waste program. This rate is applicable to those activities covered by 10 CFR 170.31 of the fee regulations. These rates are based on the FY 1995 direct FTEs and that portion of the FY 1995 budget that does not constitute direct program support (contractual services costs) and is not recovered through the appropriation from the NWF.

The two rates are based on cost center concepts that are now being used for NRC budgeting purposes. In implementing cost center concepts, all budgeted resources for each cost center are assigned to that center for analysis and license fee purposes to the extent they can be separately distinguished. These costs include all salaries and benefits, contract support, and travel that are required for each cost center activity. Additionally, all resources for the Advisory Committee on Reactor Safeguards (ACRS), the Advisory Committee on Nuclear Waste (ACNW), the Office of Investigation (OI), the Office of Enforcement (OE), and all program direct resources for the Office of the General Counsel (OGC) are assigned to cost centers. The NRC took a first step in this direction in FY 1994 when it directly assigned additional effort to the reactor and materials programs for OI, OE, ACRS and ACNW. Commenters supported this change in FY 1994 indicating that such assignment better defines the beneficiaries of certain regulatory activities and more equitably allocates the fees for services provided (59 FR 36897; July 20, 1994). The cost center concept is discussed more fully in

Section IV—Section-by-Section Analysis.

Third, the current part 170 licensing and inspection fees in §§ 170.21 and 170.31 for applicants and licensees are revised to reflect both the revised hourly rates and the results of the review required by the Chief Financial Officers (CFO) Act. To comply with the requirements of the CFO Act, the NRC has evaluated historical professional staff hours used to process a licensing action (new license, renewal, and amendment) for those materials licensees whose fees are based on the average cost method (flat fees).

Based on evaluation of the historical data related to the average number of professional staff hours needed to complete materials licensing actions, the NRC has increased the fees in some categories and decreased the fees in others to reflect the costs incurred in completing the licensing actions. Thus, the revised average professional staff hours reflect the changes in the NRC licensing review program that have occurred since FY 1993. The revised licensing fees are based on the new average professional staff hours needed to process the licensing actions multiplied by the nuclear materials professional hourly rate for FY 1995 of $116 per hour. The data for the average number of professional staff hours needed to complete licensing actions were last updated in FY 1993 (58 FR 38666; July 20, 1993). For new licenses and amendments, the licensing fees for FY 1995 are reduced in approximately 50 percent of the cases, while the fees for renewals increase in over 70 percent of the cases.

Fourth, the NRC is streamlining the fee program and improving the predictability of fees by eliminating the materials "flat" inspection fees in § 170.31 and including the cost of the inspections in 10 CFR part 171. Eliminating the 10 CFR part 170 materials "flat" fees recognizes that the "regulatory service" to licensees, referred to in OBRA–90, comprises the total regulatory activities that NRC determines are needed to regulate a class of licensees. These regulatory services include not only inspections, but also research, rulemaking, orders, enforcement actions, responses to allegations, incident investigations, and other activities necessary to regulate classes of licensees. This action does not result in any net fee increases for affected licensees and will provide those licensees with greater fee predictability, a frequent request made in licensees' comments on past fee rules. The materials annual fees, which include the cost of inspections, become effective for FY 1995, and those materials licensees who paid a "flat" 10 CFR part 170 fee for inspections conducted in FY 1995 will receive a credit for those payments towards the FY 1995 annual fee assessed under 10 CFR part 171. Because there is no annual fee for licensees operating under reciprocity in non-Agreement States, the reciprocity inspection fee has been combined with the application fee.

In summary, the NRC is (1) establishing two 10 CFR part 170 hourly rates; (2) revising the licensing fees assessed under 10 CFR part 170 in order to comply with the CFO Act's requirement that fees be revised to reflect the cost to the agency of providing the service; and (3) eliminating the materials "flat" inspection fees in § 170.31 and including the costs of inspections with the materials annual fees in § 171.16(d), or with the reciprocity application fee in § 170.31, fee Category 16.

B. Amendments to 10 CFR Part 171: Annual Fees for Reactor Operating Licenses, and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by NRC

Ten amendments have been made to 10 CFR part 171. First, the NRC is modifying its method for recovering certain budgeted costs. The NRC's February 23, 1994, report to Congress in response to EPA–92 identified fairness and equity concerns regarding the fees charged to recover the cost of certain NRC activities. Many licensees believed it was unfair to charge them fees for activities and policies undertaken by the NRC that did not benefit them and were not requested by them. The NRC is modifying its current policies for allocating the budgeted costs for these and other activities that cause fairness and equity concerns, including international activities, the nonprofit educational exemption, the 10 CFR part 170 statutory exemption for Federal agencies, the small entity annual fee reduction resulting from implementing the Regulatory Flexibility Act, certain Site Decommissioning Management Program (SDMP), generic decommissioning and reclamation activities, and regulatory activities that support both NRC and Agreement State licensees. The budgeted costs of approximately $56 million for these activities have been allocated to the broadest base of NRC licensees because the activities are necessary for the NRC to carry out its responsibilities but, in most instances, go beyond the regulation of those licensees or applicants that pay fees. Thus, the NRC is allocating the approximately $56 million in fees for activities that raise fairness and equity concerns to the broadest base of NRC licensees, based on the budgeted dollars for the class of licensees. By allocating the costs in this way, the entire population of NRC licensees pay the costs. The allocation is based on the amount of the budget directly attributable to a class of licensees. This results in operating power reactors paying approximately 89 percent of the costs of the activities in question with other classes of licensees paying their respective share of these costs as follows: 3 percent to fuel facilities, 5 percent to materials licensees, and 1 percent to each of the spent fuel, uranium recovery and transportation classes of licensees.

Second, 10 CFR 171.13 is amended to provide that the NRC will publish the proposed rule in the **Federal Register** as early as is practicable but no later than the third quarter of the fiscal year. Currently, the regulations provide for issuance of the proposed rule during the first quarter of the fiscal year.

Third, §§ 171.15 and 171.16 are amended to revise the annual fees for FY 1995 to recover approximately 100 percent of the FY 1995 budget authority, less fees collected under 10 CFR part 170 and funds appropriated from the NWF.

Fourth, the annual fees for operating power reactors in § 171.15(d) are revised to reflect a single uniform annual fee. The NRC is streamlining the fee program by assessing one uniform annual fee for all operating power reactors.

Fifth, as discussed earlier, the annual fees for materials licenses in § 171.16(d) include the budgeted costs for certain materials inspections which were previously recovered under 10 CFR 170.31.

Sixth, the NRC is refining the method for calculating the annual fees for fuel facilities and uranium recovery facilities. The NRC indicated in its final FY 1994 fee rule that given the questions raised at that time by B&W Fuel Company, General Atomics, and other fuel facilities, it would reexamine the fuel facility subclass categorizations, and include any restructuring resulting from this reexamination in the FY 1995 proposed rule for notice and comment (59 FR 36901; July 20, 1994). The NRC's revised methodologies for determining annual fees for fuel facility and uranium recovery licensees, described in the proposed rule, are based on this reexamination. These revised methodologies have been used to

determine the FY 1995 annual fees for both fuel facility and uranium recovery licensees. The use of the revised methodologies results in an annual fee that more accurately reflects the cost of providing regulatory services to each fuel facility and uranium recovery licensee. The revised methodologies are explained in more detail in Section IV—Section-by-Section Analysis.

Seventh, the NRC is modifying the lower-tier size standard for those licensees that qualify as a small entity under the NRC's size standards. On April 7, 1994 (59 FR 16513), the Small Business Administration (SBA) issued a final rule changing its size standards. The SBA adjusted its receipts-based size standard levels to mitigate the effects of inflation from 1984 to 1994. On April 11, 1995 (60 FR 18344), the NRC published a final rule amending the NRC's size standards. The NRC adjusted its receipts-based size standards from $3.5 million to $5 million to accommodate inflation and to conform to the SBA final rule. The NRC also eliminated the separate $1 million size standard for private practice physicians and applied the receipts-based size standard of $5 million to this class of licensees. This mirrors the revised SBA standard of $5 million for medical practitioners. The NRC also established a size standard of 500 or fewer employees for business concerns that are manufacturing entities. This standard is the most commonly used SBA employee standard and applies to the types of manufacturing industries that hold an NRC license.

The NRC has used the revised standards in the final FY 1995 fee rule. The small entity fee categories in § 171.16(c) of this final fee rule have been modified to reflect the changes in the NRC's size standards. The existing maximum small entity annual fee of $1800 is continued for all small entities except those defined as lower-tier small entities in this rule. The existing lower-tier small entity fee of $400 will be assessed for those manufacturing industries and educational institutions not State or publicly supported with less than 35 employees, small governmental jurisdictions with a population of less than 20,000, and non-manufacturing entities with gross receipts of less than $350,000, a higher threshold than the current lower-tier level of $250,000 in gross receipts.

Eighth, Footnote 1 of 10 CFR 171.16(d) is amended to provide for a waiver of the FY 1995 annual fees for those materials licensees, and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses prior to October 1, 1994, and permanently ceased licensed activities entirely by September 30, 1994. All other licensees and approval holders who held a license or approval on October 1, 1994, are subject to FY 1995 annual fees. This change is in recognition of the fact that since the final FY 1994 rule was published in July 1994, licensees have continued to file requests for termination of their licenses or certificates with the NRC. Other licensees have either called or written to the NRC since the FY 1994 final rule became effective requesting further clarification and information concerning the annual fees assessed. The NRC is responding to these requests as quickly as possible. However, the NRC was unable to respond and take action on all of the requests before the end of the fiscal year on September 30, 1994. Similar situations existed after the FY 1991, FY 1992, and FY 1993 rules were published, and in those cases, NRC provided an exemption from the requirement that the annual fee is waived only when a license is terminated before October 1 of each fiscal year.

Ninth, § 171.17 is amended to add a proration provision for materials licenses that are downgraded during the year to a lower fee category. This provision would permit those materials licensees who filed applications to downgrade their licenses to a lower fee category during the period October 1 through March 31 of a fiscal year to pay reduced annual fees.

Tenth, § 171.19 is amended to credit the quarterly partial annual fee payments and "flat" inspection fee payments for FY 1995 inspections already made by certain licensees in FY 1995 either toward their total annual fee to be assessed or to make refunds, if necessary.

The amounts to be collected through annual fees in the amendments to 10 CFR part 171 are based on the two revised professional hourly rates discussed previously in the summary of the changes to 10 CFR part 170. The amendments to 10 CFR part 171 do not change the underlying basis for 10 CFR part 171; that is, charging a class of licensees for NRC costs attributable to that class of licensees. The changes are consistent with the Congressional guidance in the Conference Committee Report on OBRA–90, which states that the "conferees contemplate that the NRC will continue to allocate generic costs that are attributable to a given class of licensees to such class" and the "conferees intend that the NRC assess the annual charge under the principle that licensees who require the greatest expenditures of the agency's resources should pay the greatest annual fee" (136 Cong. Rec. at H12692–93). For those NRC costs not attributable to a class of licensees, the amendments to 10 CFR part 171 follow the conferees' guidance which states that "the Commission should assess the charges for these costs as broadly as practicable in order to minimize the burden for these costs on any licensee or class of licensees * * *" (136 Cong. Rec. at H12692–3).

C. FY 1995 Budgeted Costs

The FY 1995 budgeted costs, by major activity, that will be recovered through 10 CFR parts 170 and 171 fees are shown in Table I.

TABLE I.—RECOVERY OF NRC'S FY 1995 BUDGET AUTHORITY

[Dollars in millions]

Recovery method	Estimated amount
Nuclear waste fund	$22.0
Part 170 (license and inspection fees)	141.1
Other receipts	.1
Part 171 (annual fees):	
Power Reactors	262.2
Nonpower Reactors	.3
Fuel Facilities	10.1
Spent Fuel Storage	1.6
Uranium Recovery	1.8
Transportation	4.2
Material Users	[1] 24.7
Rare Earth Facilities	.1
Subtotal Part 171	$305.0
Costs remaining to be recovered not identified above	57.4
Total	$525.6

[1] Includes $5.8 million that will not be recovered from small materials licensees because of the reduced small entity fees.

In addition to the $57.4 million remaining to be recovered in Table I, approximately $5.8 million must be collected as a result of continuing the $1,800 maximum fee for small entities and the lower-tier small entity fee of $400 for certain licensees. The composition of the $63.2 million is as follows:

TABLE II.—ACTIVITIES TO BE RECOVERED THROUGH ASSESSMENT OF A SURCHARGE

Activities	Dollars in millions
Federal Agency Exemption	$1.6
Nonprofit Educational Exemption	6.1
International Activities	10.5
Small Entity Subsidy	5.8

TABLE II.—ACTIVITIES TO BE RECOVERED THROUGH ASSESSMENT OF A SURCHARGE—Continued

Activities	Dollars in millions
Agreement State Oversight	6.2
Regulatory Support to Agreement States	14.2
Site Decommissioning Management Plan	6.2
Generic Decommissioning and Reclamation	5.6
Generic Low Level Waste (LLW)	7.0
Total	$63.2

The NRC is continuing the existing policy for recovering the $7 million for generic LLW activities from licensees that generate significant LLW. The revised method of allocation, described in detail in the FY 1993 final rule (58 FR 38669; July 20, 1994) allocates the LLW costs between two groups: large generators (power reactors and large fuel facilities) and small generators (all other LLW-producing licensees). The remaining $56.2 million is distributed to virtually all classes of licensees based on the percentage of the total budget directly allocated to each class. The resulting allocations of the $63.2 million are as follows:

$55.2 million to operating power reactors;
$2.2 million to fuel facilities;
$.6 million to spent fuel storage licensees;
$.6 million to transportation licensees;
$.6 million to uranium recovery facilities; and
$4.0 million to other materials licensees.

IV. Section-by-Section Analysis

The following analysis of those sections that are amended by this final rule provides additional explanatory information. All references are to Title 10, Chapter I, U.S. Code of Federal Regulations.

Part 170

Section 170.11 Exemptions

This section is amended to conform the fee regulations to section 161 w. of the Atomic Energy Act of 1954, as amended (AEA). That section of the AEA currently allows the Commission to charge part 170 fees to power reactors operated by the Tennessee Valley Authority or other Federal government entities and to uranium enrichment facilities operated by the United States Enrichment Corporation (USEC), as these reactors and facilities are licensed or certified by the NRC. The NRC has been assessing the USEC 10 CFR part 170 fees under the authority provided in section 161w. of the AEA. In this final rule, the NRC is now amending § 170.11 to conform its regulations to this statutory provision. In all other cases, the NRC is prevented from charging 10 CFR part 170 fees to Federal agencies for services rendered, due to a prohibition on such charges contained in the Independent Offices Appropriation Act, 31 U.S.C. 9701.

Section 170.20 Average Cost Per Professional Staff Hour

This section is amended to establish two professional staff-hour rates based on FY 1995 budgeted costs—one for the reactor program and one for the nuclear material and nuclear waste program. Accordingly, the NRC reactor professional staff-hour rate for FY 1995 for all activities that are based on full cost under § 170.21 is $123 per hour, or $214,765 per direct FTE. The NRC nuclear material and nuclear waste professional staff-hour rate for all materials activities that are based on full cost under § 170.31 is $116 per hour, or $203,096 per direct FTE. The rates are based on the FY 1995 direct FTEs and NRC budgeted costs that are not recovered through the appropriation from the NWF. The NRC has used cost center concepts in reallocating certain costs to the reactor and materials programs in order to more closely align the budgeted costs with specific classes of licensees. The method used to determine the two professional hourly rates is as follows:

1. The direct program FTE levels are identified for both the reactor program and the nuclear material and waste program.

2. Direct contract support, which is the use of contract or other services in support of the line organization's direct program, is excluded from the calculation of the hourly rate because these support costs are charged directly through the various categories of fees.

3. All other direct program costs (i.e., Salaries and Benefits, Travel) represent "in-house" costs and are to be collected by dividing them uniformly by the total number of direct FTEs for the program. In addition, Salary and Benefits plus contracts for General and Administrative Support are allocated to each program based on that program's salary and benefits. This method results in the following costs, to be included in the hourly rates.

TABLE III.—FY 1995 BUDGET AUTHORITY TO BE INCLUDED IN HOURLY RATES

[Dollars in millions]

Salary and benefits	Reactor program	Materials program
Program	$148.5	$43.5
Allocated Agency Management and Support	39.9	11.7
Subtotal	188.4	55.2
General and Administrative Support (G&A):		
Program Travel and Other Support	13.3	2.7
Allocated Agency Management and Support	73.6	21.6
Subtotal	86.9	24.3
Less offsetting receipts	.1	.....
Total Budget Included in Hourly Rate	275.2	79.5
Program Direct FTEs	1,281.6	391.6
Rate per Direct FTE	214,765	203,096
Professional Hourly Rate	123	116

Dividing the $275.2 million budget for the reactor program by the number of reactor program direct FTEs (1281.6) results in a rate for the reactor program of $214,765 per FTE for FY 1995. Dividing the $79.5 million budget for the nuclear materials and nuclear waste program by the number of program direct FTEs (391.6) results in a rate of $203,096 per FTE for FY 1995. The Direct FTE Hourly Rate for the reactor program is $123 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTEs ($214,765) by the number of productive hours in one year (1744 hours) as indicated in OMB Circular A–76, "Performance of Commercial Activities." The Direct FTE Hourly Rate for the materials program is $116 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTEs ($203,096) by the number of productive hours in one year (1744 hours). The two professional rates of $123 per hour and $116 per hour are lower than the FY 1994 rate of $133 per hour because the budget has been reduced and cost center concepts have been implemented with the effect that more direct FTEs have been charged to the programs.

Section 170.21 Schedule of Fees for Production and Utilization Facilities, Review of Standard Reference Design Approvals, Special Projects, Inspections and Import and Export Licenses

The licensing and inspection fees in this section, which are based on full-cost recovery, are revised to reflect the FY 1995 budgeted costs and to recover costs incurred by the NRC in providing licensing and inspection services to identifiable recipients. The fees assessed for services provided under the schedule are based on the professional hourly rate, as shown in § 170.20, for the reactor program and any direct program support (contractual services) costs expended by the NRC. Any professional hours expended on or after the effective date of this final rule will be assessed at the FY 1995 hourly rate for the reactor program as shown in § 170.20. Although the average amounts of time to review import and export licensing applications have not changed, the fees in § 170.21, facility Category K, have decreased from FY 1994 as a result of the decrease in the hourly rate.

For those applications currently on file and pending completion, footnote 2 of § 170.21 is revised to provide that the professional hours expended up to the effective date of the final rule will be assessed at the professional rates in effect at the time the service was rendered. For topical report applications currently on file which are still pending completion of the review and for which review costs have reached the applicable fee ceiling established by the July 2, 1990 rule, the costs incurred after any applicable ceiling was reached through August 8, 1991, will not be billed to the applicant. Any professional hours expended for the review of topical report applications, amendments, revisions, or supplements to a topical report on or after August 9, 1991, are assessed at the applicable rate established by § 170.20.

Section 170.31 Schedule of Fees for Materials Licenses and Other Regulatory Services, Including Inspections and Import and Export Licenses

The licensing and inspection fees in this section, which are based on full-cost recovery, are modified to recover the FY 1995 costs incurred by the NRC in providing licensing and inspection services to identifiable recipients. The fees assessed for services provided under the schedule will be based on both the professional hourly rate as shown in § 170.20 for the materials program and any direct program support (contractual services) costs expended by the NRC. Those licensing fees, which are based on the average time to review an application ("flat" fees), are adjusted to reflect both the revised average professional staff hours needed to process a licensing action (new license, renewal, and amendment) and the decrease in the professional hourly rate from $133 per hour in FY 1994 to $116 per hour in FY 1995. The "flat" materials inspection fees in § 170.31 are eliminated and combined with the materials annual fees in § 171.16(d). Because there is no annual fee for licensees operating under reciprocity in non-Agreement States, the application fee includes the costs of inspections.

As previously indicated, the CFO Act requires that the NRC conduct a review, on a biennial basis, of fees and other charges imposed by the agency for its services and revise those charges to reflect the costs incurred in providing the services. Consistent with the CFO Act requirement, the NRC has completed its most recent review of license and inspection fees assessed by the agency. The review focused on the flat fees that are charged to nuclear materials users for licensing actions (new licenses, renewals, and amendments). The full cost license and inspection fees (e.g., for fuel facilities) and annual fees were not included in this biennial review because the hourly rate for full cost fees and the annual fees are reviewed and updated annually in order to recover 100 percent of the NRC budget authority.

To determine the licensing flat fees for materials licensees and applicants, the NRC uses historical data to determine the average number of professional hours required to perform a licensing action for each license category. These average hours are multiplied by the revised materials program professional hourly rate of $116 per hour for FY 1995. Because the professional hourly rate is updated annually and the NRC is eliminating materials "flat" inspection fees, the FY 1995 biennial review examined only the average number of hours per licensing action with regard to the 10 CFR Part 170 fees. The review indicated that the NRC needed to modify the average number of hours on which the current licensing flat fees are based in order to recover the cost of providing licensing services. The average number of hours required for licensing actions was last reviewed and modified in 1993 (58 FR 38666; July 20, 1993). Thus the revised hours used to determine the fees for FY 1995 reflect the changes in the licensing program that have occurred since that time. For example, new initiatives underway for certain types of licenses and management guidance that reviewers conduct more detailed reviews of certain renewal applications based on historical enforcement actions in order to insure public health and safety have been incorporated into the revised fees. For new licenses and amendments, the licensing fees for FY 1995 are reduced in approximately 50 percent of the cases, while the fees for renewals have increased in over 70 percent of the cases.

The amounts of the licensing flat fees were rounded by applying standard rules of arithmetic so that the amounts rounded would be de minimis and convenient to the user. Fees that are greater than $1,000 are rounded to the nearest $100. Fees under $1,000 are rounded to the nearest $10.

The licensing flat fees are applicable to fee categories 1.C and 1.D; 2.B and 2.C; 3.A through 3.P; 4.B through 9.D, 10.B, 15A through 15E and 16. Applications filed on or after the effective date of the final rule are subject to the revised fees in this final rule. Although the average amounts of time to review import and export licensing applications have not changed, the fees in Category 15 have decreased from FY 1994 as a result of the decrease in the hourly rate.

For those licensing, inspection, and review fees assessed that are based on full-cost recovery (cost for professional staff hours plus any contractual services), the materials program hourly rate of $116, as shown in § 170.20, applies to those professional staff hours expended on or after the effective date of the final rule.

Part 171

Section 171.13 Notice

The language in this section is revised to reflect more accurately when the NRC expects to publish its annual proposed fee rules. The NRC's experience indicates that the agency has been unable to publish the proposed rule during the first quarter of the fiscal year as indicated in the current FY 1994 rule. Therefore, this section is revised to indicate that the NRC will publish the proposed rule in the **Federal Register** as early as is practicable but no later than the third quarter of the fiscal year.

Section 171.15 Annual Fee: Reactor Operating Licenses

The annual fees in this section are revised to reflect FY 1995 budgeted costs. Paragraphs (a), (b)(3), (c)(1), (c)(2), (d), and (e) are revised to comply with the requirement of OBRA–90 to recover approximately 100 percent of the NRC budget for FY 1995. Table IV shows the

budgeted costs that are allocated directly to operating power reactors as part of the base annual fee. They have been expressed in terms of the NRC's FY 1995 programs and cost centers. The resulting total base annual fee amount for power reactors is shown, as well as the one uniform base annual fee that will be assessed to all operating reactors.

The NRC is streamlining the fee program by assessing one uniform base annual fee for all operating power reactors. During the past four years, the NRC has followed a somewhat lengthy and time consuming process in calculating the amount of the power reactor annual fees. The annual fees were determined in three ways. First, within the operating power reactor class, a distinction was made between the four vendor groups, that is, Babcock & Wilcox, Combustion Engineering, General Electric and Westinghouse. Second, within each vendor group, a distinction was made using the type of containment, for example, General Electric Mark I, II or III. Third, a distinction was made based on the location of the reactor: whether or not it is located east or west of the Rocky Mountains. The NRC indicated in the FY 1991 rule (56 FR 31479; July 10, 1991) and again in its request for public comment on NRC fee policy (58 FR 21119; April 19, 1993) that it would be reexamining this approach with a view toward simplifying the method for determining annual fees and streamlining the fee process without causing an unfair burden. The NRC Office of the Inspector General (OIG), in its report dated October 26, 1993, on license fees, described the fee process as very detailed and labor intensive and stated that substantial effort is expended in attempting to make the process equitable and the costs reasonable. The OIG stated that the determination of the Part 171 fees could be simplified by eliminating and streamlining much of the detailed analyses performed as part of the process. This detailed breakdown of the reactor annual fees was implemented when there were significant differences in the NRC research funding for the various types of reactors. This is no longer the case. For example, in FY 1991, the difference between the highest and lowest power reactor annual fee was $229,000 and in FY 1993 the difference was $96,000. The NRC, for FY 1995, calculated the reactor annual fees using both the current method (different fees for different types of reactors) and the uniform method. The uniform annual fee of $2,936,000 is $23,000 higher than the lowest fee under the current method, which is less than 1 percent of the $2.9 million annual fee for an operating power reactor and $11,000 lower than the highest fee under the current method. Because of this extremely small difference, the NRC is establishing a single uniform annual fee for each operating power reactor. Not only will this not cause an unfair burden, but it will allow the NRC to streamline the fee program and simplify the fee process.

TABLE IV.—ALLOCATION OF NRC FY 1995 BUDGET TO POWER REACTORS' BASE FEES[1]

	Program total		Allocated to power reactors	
	Program support ($,K)	Direct FTE	Program support ($,K)	Direct FTE
Reactor Program				
Cost Center: Reactor Regulation:				
Inspections	$4,350	471.4	$4,350	471.4
Reactor Oversight	11,615	357.0	11,615	357.0
Reactor and Site Licensing	1,660	26.3	1,660	26.3
Reactor Aging and Renewal	19,973	54.7	19,973	54.7
Safety Assessment and Regulatory Development	33,687	69.5	33,687	69.5
Independent Analysis of Operational Experience	7,939	47.0	7,939	47.0
Technical Training and Qualification	4,728	19.0	4,728	19.0
Investigations, Enforcement and Legal Advice	11	59.0	11	59.0
Independent Review	536	42.0	536	42.0
Cost Center Total	.....	.....	$84,499	1,145.9
Cost Center: Standard Reactor Designs:				
Design Certification	$6,873	91.6	$6,873	91.6
Safety Assessment	14,885	19.7	14,885	19.7
Legal Advice	.....	3.0	.....	3.0
Independent Review	86	10.0	86	10.0
Cost Center Total	.....	.....	$21,844	124.3
Nuclear Materials and Nuclear Waste Program				
Cost Center: Fuel Facilities:				
Licensing and Inspection	1,304	28.5	.....	.1
Cost Center: LLW and Decommissioning:				
Licensing and Inspection	50	2.6	.....	.9
Reactor Decommissioning	100	6.7	100	6.7
Radiological Surveys	1,653	.....	331	.....
Cost Center Total	.....	.....	$431	7.6
Management and Support Programs				
Cost Center: Special Technical Programs:				
Educational Grants	$1,050	.....	$1,050	.....
Small Business Innovation Research	1,844	.....	1,844	.....

TABLE IV.—ALLOCATION OF NRC FY 1995 BUDGET TO POWER REACTORS' BASE FEES[1]—Continued

	Program total		Allocated to power reactors	
	Program support ($,K)	Direct FTE	Program support ($,K)	Direct FTE
Nuclear Materials Mgt. and Safeguards System	1,165	1.0	850	.7
Cost Center Total	.....	.....	$3,744	.7
Reactor Program Total	.....	.....	$110,518	1,278.6
Total base fee amount allocated to power reactors	.....	.....	.....	[2]$385.0 million
Less estimated part 170 power reactor fees	.....	.....	.....	$122.9 million
Part 171 amount for operating power reactors	.....	.....	.....	$262.1 million
Part 171 base fee for each operating reactor	.....	.....	.....	$262.1 million
				([3])

[1] Base annual fees include all costs attributable to the operating power reactor class of licensees. The base fees do not include costs allocated to power reactors for policy reasons.
[2] Amount is obtained by multiplying the direct FTE times the rate per FTE ($214,765) and adding the program support funds.
[3] 108 reactors=$2,427,000 per reactor.

Paragraph (b)(3) is revised to establish the base uniform annual fee for each operating power reactor and to change the fiscal year references from FY 1994 to FY 1995.

Paragraphs (c)(1) and (c)(2) are amended to show the amount of the budget allocated for policy reasons (surcharge) to operating reactors for FY 1995. This surcharge is added to the base annual fee for each operating power reactor. The purpose of this surcharge is to recover those NRC budgeted costs that are not directly or solely attributable to operating power reactors but nevertheless must be recovered to comply with the requirements of OBRA–90.

The FY 1995 budgeted costs that are to be recovered in the surcharge from all licensees are as follows:

TABLE V
[In millions of dollars]

Category of costs	FY 1995 budgeted costs ($ in millions)
1. Activities not attributable to an existing NRC licensee or class of licensee:	
a. International cooperative safety program and international safeguards activities	10.5
b. Agreement State oversight	6.2
c. Low-level waste disposal generic activities; and	7.0
d. Site decommissioning management plan activities not recoverable under 10 CFR Part 170	5.6
2. Activities not assessed Part 170 licensing and inspection fees or Part 171 annual fees based on existing law or Commission policy:	
a. Fee Exemption of nonprofit educational institutions;	6.1
b. Licensing and inspection activities associated with other Federal agencies;	1.6
c. Costs not recovered from Part 171 for small entities	5.8
3. Activities supporting NRC operating licensees and Others.	
a. Regulatory support to Agreement States	14.2
b. Decommissioning-Reclamation	6.2
Total budgeted costs	63.2

Excluding low-level waste costs totalling $7 million, the current policy allocates the remaining $56.2 million based on three different methods. First, 100 percent of costs for certain activities (e.g., international activities and the nonprofit educational institution exemption) are allocated to operating power reactors, based on the guidance in the Conference Committee report accompanying OBRA–90 which stated that these types of costs may be recovered from such licensees as the Commission determines can fairly, equitably and practicably contribute to their payment. The second method prorates the costs of some activities (e.g., small entity subsidy and Agreement State oversight) to all licensees under the implicit assumption that no one class of licensees should have to bear the full cost. Under the third method, 100 percent of the costs of some activities (e.g., SDMP and regulatory support to Agreement States) are allocated to the class of licensees to which the activities relate, independent of whether the activities are needed for current licensees/applicants or support non-NRC licensees. In addition to being based on three different principles, the current policy creates significant annual fee problems for classes of licensees with a small or declining number of licensees. For example, as more states become Agreement States, the relatively fixed costs for generic regulatory activities (e.g., rulemaking, research, evaluation of operational data and policy development) that support both NRC and Agreement State licensees will be allocated to a smaller number of

materials licensees, causing the NRC materials licensees' annual fees to increase substantially. For example, if the four States who have expressed interest in becoming Agreement States do so within the next few years, then the remaining NRC materials licensees' annual fees would increase by about 30 percent from current levels.

Therefore, the NRC is changing the current policy for allocating the costs for activities which have raised fairness and equity concerns among many NRC licensees. The changes are based on the premise that these costs should be borne by all NRC licensees, because while the activities are necessary for the NRC to carry out its responsibilities, in most instances, they go beyond the regulation of those licensees or applicants that pay fees. Thus, the NRC has allocated the costs in question to the broadest base of NRC licensees that pay annual fees. The allocation is based on the amount of the budget directly attributable to a class of licensees and results in, for instance, operating power reactors paying 89 percent of the cost of these activities, compared to approximately 50 percent of these costs in the FY 1994 rule.

This change is consistent with the guidance in the Conference Committee Report that accompanied OBRA–90. First, by allocating these costs to the broadest base of NRC licensees, this change is consistent with the Conference Report guidance that: "The Commission should assess the charge for these activities as broadly as practicable in order to minimize the burden for these costs on any licensee or class of licensees so as to establish as fair and equitable a system as is feasible." Second, allocating a higher percentage of these costs to operating power reactors as opposed to other classes of licensees is also consistent with the Conference Report guidance that: "These expenses may be recovered from such licensees as the Commission, in its discretion, determines can fairly, equitable and practicably contribute to their payment." Allocating these costs to the universe of NRC licenses will minimize the impact of the declining numbers of licenses in any specific class, because the costs will be allocated over the maximum number of licensees. It will also put in place both a policy that will help mitigate future fee concerns associated with declining number of licenses, and a single methodology for allocating these types of costs, something that has been requested in comments submitted on previous proposed fee rules.

The annual additional charge for each operating power reactor is determined as follows:

Generic LLW Cost Allocated $= .74 \times \$6,972K = \$5,159K$

Other Activities Allocated $= .89 \times \$56,229K = \$50,044K$

Subtotal Budgeted Costs $55,203K

Less Amount to be Assessed to Small Older Reactors $-206K

Total Budgeted Costs $54,997K

$$\frac{\text{Total budgeted costs allocated}}{\text{Total number of operating reactors}} = \frac{\$54,997K}{108} = \$509,000 \text{ per operating power reactor}$$

With respect to Big Rock Point, a smaller older reactor, the NRC hereby grants a partial exemption from the FY 1995 annual fees similar to FY 1994 based on a request filed with the NRC in accordance with § 171.11. The total amount of $0.2 million to be paid by Big Rock Point has been subtracted from the total amount assessed operating reactors as a surcharge.

Based on the information in Tables IV and V, each operating power reactor, except Big Rock Point, will pay a base annual fee of $2,427,000 and an additional charge of $509,000 for a total FY 1995 annual fee of $2,936,000. The annual fee in this final rule is less than the annual fee shown in the proposed rule because of higher estimated collections anticipated in FY 1995 from 10 CFR Part 170 fees.

Paragraph (d) is revised to show the amount of the total FY 1995 uniform annual fee, including the surcharge, to be assessed to each operating power reactor.

Paragraph (e) is revised to show the amount of the FY 1995 annual fee for nonpower (test and research) reactors. In FY 1995, $339,000 in costs are attributable to those commercial and non-exempt Federal government organizations that are licensed to operate test and research reactors. Applying these costs uniformly to those nonpower reactors subject to fees results in an annual fee of $56,500 per operating license. The Energy Policy Act of 1992 established an exemption for certain Federally-owned research reactors that are used primarily for educational training and academic research purposes, where the design of the reactor satisfies certain technical specifications set forth in the legislation. Consistent with this legislative requirement, the NRC granted an exemption from annual fees for FY 1992 and FY 1993 to the Veterans Administration Medical Center in Omaha, Nebraska, the U.S. Geological Survey for its reactor in Denver, Colorado, and the Armed Forces Radiobiological Institute in Bethesda, Maryland, for its research reactor. This exemption was initially codified in the July 20, 1993 (58 FR 38695) final fee rule at § 171.11(a) and more recently in the March 17, 1994 (59 FR 12543) final rule at § 171.11(a)(2). The NRC amended § 171.11(a)(2) on July 20, 1994 (59 FR 36895) to exempt from annual fees the research reactor owned by the Rhode Island Atomic Energy Commission. The NRC will continue to grant exemptions from the annual fee to those Federally-owned and State owned research and test reactors who meet the exemption criteria specified in § 171.11.

Section 171.16 Annual fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals, and Government Agencies Licensed by the NRC

Section 171.16(c) covers the fees assessed for those licensees that can qualify as small entities under NRC size standards. On April 7, 1994 (59 FR 16513), the Small Business Administration (SBA) issued a final rule changing its size standards. The SBA adjusted its receipts-based size standard levels to mitigate the effects of inflation from 1984 to 1994. On April 11, 1995 (60 FR 18344), the NRC published a final rule amending its size standards. The size standards are as follows:

(a) A small business is a for-profit concern and is a—

(1) Concern that provides a service or a concern not engaged in manufacturing with average gross receipts of $5 million or less over its last three completed fiscal years; or

(2) Manufacturing concern with an average number of 500 or fewer employees based upon employment during each pay period for the preceding 12 calendar months.

(b) A small organization is a not-for-profit organization which is independently owned and operated and has annual gross receipts of $5 million or less.

(c) A small governmental jurisdiction is a government of a city, county, town, township, village, school district, or special district with a population of less than 50,000.

(d) A small educational institution is one that is—

(1) Supported by a qualifying small governmental jurisdiction; or

(2) Not state or publicly supported and has 500 or fewer employees.

(e) For purposes of this section, the NRC shall use the Small Business Administration definition of receipts. (13 CFR 402(b)(2)). A licensee who is a subsidiary of a large entity does not qualify as a small entity for purposes of this section.

Therefore, the small entity categories in § 171.16(c) of this final fee rule have been modified to reflect the changes in the NRC's size standards. Consistent with the establishment of an employee size standard for manufacturers, the NRC is establishing a new maximum small entity fee for manufacturing industries with 35 to 500 employees at $1,800 and a lower-tier small entity fee of $400 is established for those manufacturing industries and educational institutions not State or publicly supported with less than 35 employees. The lower-tier receipts-based threshold of $250,000 is raised to $350,000 to reflect approximately the same percentage adjustment as that made by the SBA when they adjusted the receipts-based standard from $3.5 million to $5 million.

Section 171.16(d) is revised to reflect the FY 1995 budgeted costs for materials licensees, including Government agencies, licensed by the NRC. These fees are necessary to recover the FY 1995 generic and other regulatory costs totalling $42.5 million that apply to fuel facilities, uranium recovery facilities, rare earth facilities, spent fuel facilities, holders of transportation certificates and QA program approvals, and other materials licensees, including holders of sealed source and device registrations.

Tables VI and VII show the NRC programs, cost centers, and resources that are attributable to fuel facilities and materials users, respectively. The costs attributable to the uranium recovery and rare earth classes of licensees are those associated with uranium recovery and rare earth licensing, inspection, and generic activities. For transportation, the costs are those budgeted for transportation licensing, inspection, and generic activities. Similarly, the budgeted costs for spent fuel storage are those for spent fuel storage licensing, inspection and generic activities.

TABLE VI:—ALLOCATION OF NRC FY 1995 BUDGET TO FUEL FACILITY BASE FEES[1]

	Total program element		Allocated to fuel facility	
	Program support $,K	FTE	Program support $,K	FTE
Cost Center: Fuel Facilities:				
Fuel Fabricators Oversight and Inspections	$1,698	59.0	$1,486	56.1
Cost Center: LLW and Decommissioning:				
Decommissioning	4,447	50.0	325	1.7
Cost Center: Other Nuclear Materials and Waste:				
Independent Analysis of Operating Experience	346	8.0	69	1.6
Technical Training and Qualification	692	2.0	138	.4
Adjudicatory Reviews	-	1.0	-	.5
Investigations, Enforcement, Legal Advice	11	39.0	1	1.6
Cost Center: Special Technical Program:				
Nuclear Materials Mgt. and Safeguards System	1,165	1.0	47	-
Total			$2,066	61.9
Total Base Fee Amount Allocated to Fuel Facilities				[2]$14.6 million
Less Part 170 Fuel Facility Fees				4.5 million
Part 171 Base Fees for Fuel Facilities				$10.1 million

[1] Base annual fee includes all costs attributable to the fuel facility class of licensees. The base fee does not include costs allocated to fuel facilities for policy reasons.

[2] Amount is obtained by multiplying the direct FTE times the rate per FTE ($203,096) and adding the program support funds.

TABLE VII.—ALLOCATION OF FY 1995 BUDGET TO MATERIAL USERS' BASE FEES [1]

	Total program element		Allocated to materials users	
	Program support $,K	FTE	Program support $,K	FTE
Nuclear Materials & Nuclear Waste Program				
Cost Center: Materials Users:				
Licensing/Inspection of Materials Users	2,436	113.0	721	82.3
Materials Licensee Performance	700	1.8	189	.5
Materials Regulatory Standards	1,494	12.8	403	3.5
Radiation Protection Health Effects	1,621	5.3	438	1.4
Cost Center Total	.....	.....	1,751	87.7
Cost Center: LLW & Decommissioning:				
Licensing & Inspections	50	2.6	.....	.2
Decommissioning	214	32.8	69	3.5
Radiological Surveys	1,653	.....	372	.....
Cost Center Total	.....	.....	441	3.7
Cost Center: Other Nuclear Materials:				
Analysis of Operational Experience	346	8.0	184	1.7
Technical Training	692	2.0	498	1.4
Adjudicatory Reviews	.....	1.0	.....	.5
Investigations/Enforcement	11	39.0	9	24.4
Event Evaluation	.....	16.0	.....	4.4
Cost Center Total	.....	.....	691	32.4
Total Program	.....	.....	2,883	123.8
Management & Support Program				
Cost Center: Special Technical Programs:				
Nuclear Material Management & Safeguard Systems	1,165	1.0	74	.1
Total All Programs	.....	.....	2,957	123.9
Base Amount Allocated to Materials Users	.....	.....	.....	[2] 28.1 million
Less Part 170 Materials Users Fees	.....	.....	.....	3.4 million
Part 171 Base Fees For Materials Users	.....	.....	.....	24.7 million

[1] Base annual fee includes all costs attributable to the materials class of licensees. The base fee does not include costs allocated to materials licensees for policy reasons.
[2] Amount is obtained by multiplying the direct FTE times the rate per FTE ($203,096) and adding the program support funds.

Major Fuel Facilities

The allocation of the NRC's $10.1 million in budgeted costs to the individual fuel facilities is based on the revised methodologies indicated earlier. The NRC indicated in its final FY 1994 fee rule that given the questions raised at that time by B&W Fuel Company, General Atomics, and other fuel facilities it would reexamine the fuel facility subclass categorizations and that any restructuring resulting from this reexamination would be included in the FY 1995 proposed rule for notice and comment (59 FR 36901; July 20, 1994). The NRC is therefore establishing a revised methodology for determining annual fees for fuel facilities. The revised methodology has been used to determine the FY 1995 annual fees. The objective of revising the methodology is to reflect more precisely agency generic costs attributable to fuel facility licensees. This new methodology results in the creation of five fuel facility license fee categories. Licenses are grouped into these categories according to their license (nuclear material type, enrichment, form, quantity, and use/associated activity) and according to the scope, depth of coverage and rigor of generic regulatory programmatic effort applicable to each category. This methodology can be applied to determine fees for new licenses, current licenses and for licensees in unique license situations. In each case, the existing license was used to determine values for licensed nuclear material and its use without regard for current or planned licensee activities, which are at the discretion of the licensee.

The methodology is amenable to changes in the number of licenses, licensed material/activities, and total programmatic resources to be recovered through annual fees. When a license is modified, given that NRC recovers approximately 100 percent of its generic regulatory program costs through fee recovery, this revised fuel facility fee methodology may result in a change in fee category and may have an effect on the fees assessed to other licensees. For example, if a fuel facility licensee amended its license so as to avoid part 171 fees for fuel facilities, the budget for the safety component would be spread only among those remaining licensees, resulting in a higher annual fee for those licensees.

Therefore, the methodology is applied as follows. First, a fee category is assigned based on certain criteria and the licensed nuclear material and use/associated activity. Although a licensee may choose not to fully utilize a license, the license is still used as the source for determining authorized nuclear material and use/associated activity. Next, the category/license information is used to determine where the license will fit into the matrix. The matrix depicts the categorization of licenses by authorized material and use/activity and the relative programmatic effort associated with each category. The programmatic effort (expressed as a value in the matrix) reflects the safety or safeguards significance associated with the authorized nuclear material and use/activity, and the commensurate generic regulatory program (i.e., scope, depth and rigor). The relative weighted factors per facility for the various subclasses are as follows:

	Number of facilities	Relative weight per facility	
		Safety	Safeguards
High Enriched Fuel	2	1.00	1.00
Low Enriched Fuel	4	.52	.34
Limited Operations Facility	1	.20	.11
UF_6 Conversion	1	.30	.....
Others	3	.12	.09

The above weighted factors for the safety and safeguards portion are applied to the $10.1 million base fee. To this base fee, the LLW and other surcharges are added. The resulting annual fee for each fuel facility, including the additional charge (surcharge) is shown below.

Type of facility	Annual fee
High Enriched Fuel:	
Babcock & Wilcox	$2,569,000
Nuclear Fuel Services	2,569,000
Low Enriched Fuel:	
Combustion Engineering (Hematite)	1,261,000
General Electric	1,261,000
Siemens Nuclear Power	1,261,000
Westinghouse	1,261,000
Limited Operation Facilities:	
B&W Fuel Company	501,700
UF_6 Conversion:	
AlliedSignal Corp	639,200
Other Fuel Facilities:	
Babcock & Wilcox	340,700
General Atomics	340,700
General Electric	340,700

Uranium Recovery

Of the $2.3 million ($1.8 million in base budget plus $0.5 million in surcharge) attributable to the uranium recovery class of licensees, approximately $1.9 million will be assessed to the Department of Energy (DOE) to recover the costs associated with DOE facilities under the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA). In September 1993, DOE became a general licensee of the NRC because post-reclamation closure of the Spook, Wyoming site had been achieved. There are two additional UMTRCA sites now under the general license: Burrell, Pennsylvania and Loman, Idaho.

As indicated earlier, the NRC has refined its methodology for establishing part 171 annual fees for non-DOE uranium recovery licenses. The methodology identifies three categories of licenses: (1) Conventional uranium mills; (2) solution mining uranium mills; and (3) mill tailings disposal facilities, each of which benefits from the generic uranium recovery program. In order to determine the benefits to each uranium recovery category, a matrix was established to relate the category and the level of benefit, by program element and subelement. The two major program elements of the generic uranium recovery program are activities related to facility operations and those related to facility closure. Each of these elements was further divided into three subelements. The three major subelements of generic activities related to uranium facility operations are activities related to: (1) The operation of the mill; (2) the handling and disposal of waste; and (3) prevention of groundwater contamination. The three major subelements of generic activities related to uranium facility closure are activities related to: (1) decommissioning of facilities and cleanup of land; (2) reclamation and closure of the tailings impoundment; and (3) cleanup of contaminated groundwater. Weighted factors were assigned to each program element and subelement.

The two existing categories of mills, those that perform conventional milling and those that perform solution mining and milling, are continued. The existing category for licenses whose purpose is to dispose of Section 11e.(2) byproduct material is also continued. The matrix also contains a category for conventional mills with Possession Only Licenses that are also authorized to dispose of more than 5,000 cubic yards of byproduct material, as defined in section 11e.(2) of the Atomic Energy Act of 1954, as amended, from other facilities. Currently, there are three mills authorized for such waste disposal. The applicability of the generic program in each subelement to each uranium recovery category was qualitatively estimated as either significant, some, minor, or none.

The resulting relative weighted factor per facility for the various subclasses is as follows:

	Number of facilities	Relative weight per facility
Class I facilities	3	1.00
Class II facilities	6	.57
11e.(2) disposal	1	.73
11e.(2) disposal incidental to existing tailings sites	3	.13

Using this refined approach, the remaining $0.4 million not recovered from DOE results in annual fees for each class of licensees as follows:

2.A.(2)—Class I facilities: $60,900
2.A.(2)—Class II facilities: $34,400
2.A.(2)—Other facilities: $22,000
2.A.(3)—11e(2) disposal: $44,700
2.A.(4)—11e(2) disposal incidental to existing tailings site: $7,900

Rare Earth Facilities

Because rare earth facilities are now budgeted for separately, a separate class has been established for these licensees in this final rule. For rare earth facilities, the generic and other regulatory costs of $66,000 have been spread uniformly among licensees who have a specific license for receipt and processing of source material. This results in an annual fee of $22,000 for each facility.

Spent Fuel Storage Facilities

For spent fuel storage licenses, the costs of $2.2 million ($1.6 million in base budget plus $0.6 million in surcharge) have been spread uniformly among those licensees who hold specific or general licenses for receipt and storage of spent fuel at an ISFSI. This results in an annual fee of $279,000 for each facility. This represents a fee decrease compared to FY 1994 because there are now more licensees in this

class. It also represents a fee decrease compared to the proposed rule because of higher estimated collections anticipated in FY 1995 from 10 CFR part 170 fees.

Materials Licenses

To equitably and fairly allocate the $24.7 million directly attributable to the approximately 6,200 diverse material users and registrants plus the materials share ($2.8 million) of the surcharge, the NRC has continued to base the annual fee on the 10 CFR Part 170 application fees and an estimated cost for inspections. Because the application fees and inspection costs are indicative of the complexity of the license, this approach continues to provide a proxy for allocating the generic and other regulatory costs to the diverse categories of licensees based on how much it costs NRC to regulate each category. The fee calculation also continues to consider the inspection frequency, which is indicative of the safety risk and resulting regulatory costs associated with the categories of licensees. In summary, the annual fee for these categories of licenses is developed as follows:

Annual Fee=(Application Fee+Average Inspection Cost/Inspection Priority)×Constant+(Unique Category Costs).

The constant is the multiple necessary to recover $24.7 million and is 1.7 for FY 1995. The unique costs are any special costs that the NRC has budgeted for a specific category of licensees. For FY 1995, unique costs of approximately $1.0 million were identified for the medical improvement program which is attributable to medical licensees.

For the first time, the NRC is combining the "flat" material inspection fees in 10 CFR part 170 with the annual fees in 10 CFR part 171. This is being done to recognize that the "regulatory service" to licensees referred to in OBRA–90, comprises the total regulatory activities that NRC determines are needed to regulate a class of licensees. These regulatory services include not only "flat" fee inspections but also research, rulemaking, orders, enforcement actions, responses to allegations, incident investigations and other activities necessary to regulate classes of licensees. In addition to being consistent with the regulatory service concept in OBRA–90, the NRC believes that materials licensees' "flat" inspection fees can be combined with their annual fees without creating any significant questions of fairness. This is because the concept of the annual fee, including the inspection fee, has, in effect, already been implemented for most materials licensees. First, materials licensees currently pay a "flat fee" per inspection based on the average cost of an inspection for their fee category, and second, the routine inspection frequency is identical for most licensees in the same fee category. Furthermore, past experience suggests that less than 10 percent of the materials inspections for these licensees are nonroutine. Thus, licensees in the same materials license fee category currently pay essentially the same average annual cost for inspections. Therefore, combining inspection and annual fees results in essentially the same average cost per license over time. Additionally, this approach will provide materials licensees with simpler and more predictable NRC fee charges as there will be no additional fees paid for periodic inspections. Because certain materials FY 1995 annual fees include inspection costs, those materials licensees who paid a "flat" 10 CFR part 170 inspection fee for inspections conducted in FY 1995 will receive a credit for those payments towards their FY 1995 annual fee assessed under 10 CFR part 171. Those Agreement state licensees who paid an inspection fee for inspections conducted in FY 1995 will not receive a credit-refund because they pay no annual fee.

Materials annual fees for FY 1995 have decreased compared to the FY 1994 annual fees. There are two basic reasons for this. First, the FY 1995 budgeted amount attributable to materials licensees is about 35 percent lower than the comparable FY 1994 amount, based on the reallocation of certain materials budgeted costs to the broadest base of NRC licensees rather than to materials licensees as discussed earlier. Second, the professional hourly rate for the materials program has decreased from $133 per hour to $116 per hour, due to the use of cost center concepts in allocating NRC budgeted costs. These decreases are partially offset by a decrease in the number of licensees to be assessed annual fees in FY 1995 (from about 6,500 to about 6,200) and the inclusion of the average annual inspection costs with the annual fee. The annual fees for some categories in this final rule have decreased compared to the proposed rule because of higher estimated collections anticipated in FY 1995 from 10 CFR part 170 fees.

A materials licensee may pay a reduced annual fee if the licensee qualifies as a small entity under the NRC's size standards and certifies that it is a small entity using NRC Form 526.

Transportation

To recover the $4.7 million attributable to the transportation class of licensees, $1.2 will be assessed to the Department of Energy (DOE) to cover all of its transportation casks under Category 18. The remaining transportation costs for generic activities ($3.5 million) are allocated to holders of approved QA plans. The annual fee for approved QA plans is $77,800 for users and fabricators and $1,000 for users only.

The amount or range of the FY 1995 annual fees for all materials licensees is summarized as follows:

MATERIALS LICENSES—ANNUAL FEE RANGES

Category of license	Annual fees
Part 70—High enriched fuel.	$2,569,000.
Part 70—Low enriched fuel.	1,261,000.
Part 40—UF_6 conversion.	639,200.
Part 40—Uranium recovery.	22,000 to 60,900.
Part 30—Byproduct Material.	480 to 23,200.[1]
Part 71—Transportation of Radioactive Material.	1,000 to 77,800.
Part 72—Independent Storage of Spent Nuclear Fuel.	279,000.

[1] Excludes the annual fee for a few military "master" materials licenses of broad-scope issued to Government agencies, which is $415,300.

Surcharge

Section 171.16(e) is amended to establish the additional charge which is included in the annual fees shown in § 171.16(d) of this final rule. The Commission is continuing the approach established in FY 1993 to assess the budgeted low-level waste (LLW) costs to two broad categories of licensees (large LLW generators and small LLW generators) based on historical disposal data. This surcharge is included in the annual fees for the applicable categories in § 171.16(d). Although these NRC LLW disposal regulatory activities are not directly attributable to regulation of NRC materials licensees, the costs nevertheless must be recovered in order to comply with the requirements of OBRA–90. For FY 1995, the additional charge recovers approximately 18 percent of the NRC budgeted costs of $7.0 million relating to LLW disposal generic activities from small generators, which are comprised of materials licensees that dispose of LLW. The percentage distribution reflects the deletion of costs for LLW disposed of by Agreement State licensees. Of the $7.0 million in budgeted costs shown above for LLW activities, 82 percent of the amount ($5.7 million) is allocated to the 119 large waste generators (reactors and fuel facilities) included in 10 CFR part 171. This results in an additional charge of $48,000 per facility. Thus, the LLW charge will be $48,000 per HEU, LEU, UF_6 facility, and each of the other three fuel facilities. The remaining $1.3 million is allocated to the materials licensees in categories that generate low-level waste (895 licensees) as follows: $1,400 per materials license except for those in Category 17. Those licensees that generate a significant amount of low-level waste for purposes of the calculation of the $1,400 surcharge are in fee Categories 1.B, 1.D, 2.C, 3.A, 3.B, 3.C, 3.L, 3.M, 3.N, 4.A, 4.B, 4.C, 4.D, 5.B, 6.A, and 7.B. The surcharge for licenses in fee Category 17, which also generate and/or dispose of low-level waste, is $21,000.

Certain costs that caused fairness and equity concerns are allocated to materials licensees based on the percent of the budget that each class comprises. This allocation approach was explained in the previous explanation of changes to § 171.15 of this section.

Footnote 1 of 10 CFR 171.16(d) is amended to provide for a waiver of the annual fees for those materials licensees, and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals, or filed for possession only/storage only licenses before October 1, 1994, and permanently ceased licensed activities entirely by September 30, 1994. All other licensees and approval holders who held a license or approval on October 1, 1994 are subject to the FY 1995 annual fees.

Section 171.17 Proration

10 CFR 171.17 is amended to add a proration provision to allow for proration of the annual fee for a downgraded materials license upon request of the licensee. A proration request must be filed with the NRC within 90 days from the effective date of the final rule establishing the annual fees for which a proration is sought. Absent extraordinary circumstances, any request for proration of the annual fee for a downgraded materials license filed beyond that date will not be considered.

Annual fees for materials licenses downgraded after October 1 of a fiscal year will be prorated on the basis of when the applications for downgrade are received by the NRC, provided the licensee permanently ceased the stated activities during the specified period. Annual fees for materials licenses for which applications to downgrade are filed during the period October 1 through March 31 of the fiscal year will be prorated as follows: (1) Licenses for which applications have been filed to reduce the scope of the license from a higher fee category(ies) to a lower fee category(ies) will be assessed one-half the annual fee for the higher fee category(ies) and one-half the annual fee for the lower fee category(ies), and, if applicable, the full annual fee for fee categories not affected by the downgrade; and (2) licenses with multiple fee categories for which applications have been filed to downgrade by deleting a fee category will be assessed one-half the annual fee for the fee category being deleted and the full annual fee for the remaining categories. Materials licenses for which applications for downgrade are filed on or after April 1 of the FY are assessed the full fee for that fiscal year.

Section 171.19 Payment

This section is revised to give credit for partial payments made by certain licensees in FY 1995 toward their FY 1995 annual fees. The NRC anticipates that the first, second, and third quarterly payments for FY 1995 will have been made by operating power reactor licensees and some materials licensees before the final rule is effective. Therefore, the NRC will credit payments received for those quarterly annual fee assessments toward the total annual fee to be assessed. The NRC will adjust the fourth quarterly bill in order to recover the full amount of the revised annual fee, or to make refunds, as necessary. The NRC also expects that certain materials licensees will have paid inspection fees for inspections that were performed in FY 1995, whereas this final rule includes such costs in the annual fee. The FY 1995 annual fee bills will reflect a credit for these inspection fee payments. As in FY 1994, payment of the annual fee is due on the effective date of the rule and interest accrues from the effective date of the rule. However, interest will be waived if payment is received within 30 days from the effective date of the rule.

During the past four years many licensees have indicated that although they held a valid NRC license authorizing the possession and use of special nuclear, source, or byproduct material, they were in fact either not using the material to conduct operations or had disposed of the material and no longer needed the license. In responding to licensees about this matter, the NRC has stated that annual fees are assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. Whether or not a licensee is actually conducting operations using the material is a matter of licensee discretion. The NRC cannot control whether a licensee elects to possess and use radioactive material once it receives a license from the NRC. Therefore, the NRC reemphasizes that the annual fee will be assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. To remove any uncertainty, the NRC issued minor clarifying amendments to 10 CFR 171.16, footnotes 1 and 7 on July 20, 1993 (58 FR 38700).

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental impact assessment has been prepared for the final regulation.

VI. Paperwork Reduction Act Statement

This final rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

VII. Regulatory Analysis

With respect to 10 CFR part 170, this final rule was developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in its decision of *National Cable Television Association, Inc.* v. *United States*, 415 U.S. 36 (1974) and *Federal Power Commission* v. *New England Power Company*, 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the "value to the recipient" of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia, *National Cable Television Association* v. *Federal Communicotions Commission*, 554 F.2d 1094 (D.C. Cir. 1976); *National Association of Broadcasters* v. *Federal Communications Commission*, 554 F.2d 1118 (D.C. Cir. 1976); *Electronic*

Industries Association v. *Federal Communications Commission*, 554 F.2d 1109 (D.C. Cir. 1976) and *Capital Cities Communication, Inc.* v. *Federal Communications Commission*, 554 F.2d 1135 (D.C. Cir. 1976). These decisions of the Courts enabled the Commission to develop fee guidelines that are still used for cost recovery and fee development purposes.

The Commission's fee guidelines were upheld on August 24, 1979, by the U.S. Court of Appeals for the Fifth Circuit in *Mississippi Power and Light Co.* v. *U.S. Nuclear Regulatory Commission*, 601 F.2d 223 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980). The Court held that—

(1) The NRC had the authority to recover the full cost of providing services to identifiable beneficiaries;

(2) The NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act and with applicable regulations;

(3) The NRC could charge for costs incurred in conducting environmental reviews required by NEPA;

(4) The NRC properly included the costs of uncontested hearings and of administrative and technical support services in the fee schedule;

(5) The NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and

(6) The NRC's fees were not arbitrary or capricious.

With respect to 10 CFR part 171, on November 5, 1990, the Congress passed Pub. L. 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90) which required that for FYs 1991 through 1995, approximately 100 percent of the NRC budget authority be recovered through the assessment of fees. OBRA–90 was amended in 1993 to extend the 100 percent fee recovery requirement for NRC through 1998. To accomplish this statutory requirement, the NRC, in accordance with § 171.13, is publishing the final amount of the FY 1995 annual fees for operating reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed source and devices and QA program approvals, and Government agencies. OBRA–90 and the Conference Committee Report specifically state that—

(1) The annual fees be based on the Commission's FY 1995 budget of $525.6 million less the amounts collected from Part 170 fees and the funds directly appropriated from the NWF to cover the NRC's high level waste program;

(2) The annual fees shall, to the maximum extent practicable, have a reasonable relationship to the cost of regulatory services provided by the Commission; and

(3) The annual fees be assessed to those licensees the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment.

The NRC is establishing a uniform annual fee rather than an annual fee that considers the various vendors, the types of containment, and the location of the operating power reactors. The NRC believes the difference in annual fees of about $20,000 between the highest and lowest annual fee assessed under the current method is small enough relative to the size of the $2.9 million annual fees, to justify moving to a uniform annual fee particularly in light of the administrative savings that will follow. The annual fees for fuel cycle licensees, materials licensees, and holders of certificates, registrations and approvals and for licenses issued to Government agencies take into account the type of facility or approval and the classes of the licensees.

10 CFR Part 171, which established annual fees for operating power reactors effective October 20, 1986 (51 FR 33224; September 18, 1986), was challenged and upheld in its entirety in *Florida Power and Light Company* v. *United States*, 846 F.2d 765 (D.C. Cir. 1988), *cert. denied*, 490 U.S. 1045 (1989).

10 CFR parts 170 and 171, which established fees based on the FY 1989 budget, were also legally challenged. As a result of the Supreme Court decision in *Skinner* v. *Mid-American Pipeline Co.*, 109 S. Ct. 1726 (1989), and the denial of certiorari in *Florida Power and Light*, all of the lawsuits were withdrawn.

The NRC's FY 1991 annual fee rule was largely upheld by the D.C. Circuit Court of Appeals in *Allied Signal* v. *NRC*, 988 F.2d 146 (D.C. Cir. 1993).

VIII. Regulatory Flexibility Analysis

The NRC is required by the Omnibus Budget Reconciliation Act of 1990 to recover approximately 100 percent of its budget authority through the assessment of user fees. OBRA–90 further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

This final rule establishes the schedules of fees that are necessary to implement the Congressional mandate for FY 1995. The final rule results in a decrease in the annual fees charged to most licensees, and holders of certificates, registrations, and approvals, including those licensees who are classified as small entities under the Regulatory Flexibility Act. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this final rule.

IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and that a backfit analysis is not required for this final rule. The backfit analysis is not required because these final amendments do not require the modification of or additions to systems, structures, components, or design of a facility or the design approval or manufacturing license for a facility or the procedures or organization required to design, construct or operate a facility.

List of Subjects

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, registrations, approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source Material, Special Nuclear Material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 170 and 171.

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

1. The authority citation for Part 170 continues to read as follows:

Authority: 31 U.S.C. 9701, 96 Stat. 1051; sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–4381, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205, Pub. L. 101–576, 104 Stat. 2842, (31 U.S.C. 901).

2. In § 170.11, paragraph (a)(5) is revised to read as follows:

§ 170.11 Exemptions.

(a) * * *

(5) A construction permit, license, certificate of compliance, or other approval applied for by, or issued to, a Government agency, except where the Commission is authorized by statute to charge such fees.

* * * * *

3. Section 170.20 is revised to read as follows:

§ 170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, part 55 requalification and replacement examinations and tests, other required reviews, approvals, and inspections under §§ 170.21 and 170.31 that are based upon the full costs for the review or inspection will be calculated using the following applicable professional staff-hour rates:

Reactor Program (§ 170.21 Activities).	$123 per hour.
Nuclear Materials and Nuclear Waste Program (§ 170.31 Activities).	$116 per hour.

4. In § 170.21, the introductory text, Category K, and footnotes 1 and 2 to the table are revised to read as follows:

§ 170.21 Schedule of fees for production and utilization facilities, review of standard referenced design approvals, special projects, inspections and import and export licenses.

Applicants for construction permits, manufacturing licenses, operating licenses, import and export licenses, approvals of facility standard reference designs, requalification and replacement examinations for reactor operators, and special projects and holders of construction permits, licenses, and other approvals shall pay fees for the following categories of services.

SCHEDULE OF FACILITY FEES

[See footnotes at end of table]

Facility categories and type of fees	Fees[1,2]
. . . . .	
K. Import and export licenses:	
Licenses for the import and export only of production and utilization facilities or the import and export only of components for production and utilization facilities issued pursuant to 10 CFR part 110:	
1. Application for import or export of reactors and other facilities and components which must be reviewed by the Commission and the Executive Branch, for example, actions under 10 CFR 110.40(b):	
Application—New license	$7,500
Amendment	$7,500
2. Application for import or export of reactor components and initial exports of other equipment requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(1)–(8):	
Application—New license	$4,600
Amendment	$4,600
3. Application for export of components requiring foreign government assurances only:	
Application—New license	$2,900
Amendment	$2,900
4. Application for export or import of other facility components and equipment not requiring Commission review, Executive Branch review, or foreign government assurances:	
Application—New license	$1,200
Amendment	$1,200
5. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require analysis or review:	
Amendment	$120

[1] Fees will not be charged for orders issued by the Commission pursuant to § 2.202 of this chapter or for amendments resulting specifically from the requirements of these types of Commission orders. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g. §§ 50.12, 73.5) and any other sections now or hereafter in effect regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. Fees for licenses in this schedule that are initially issued for less than full power are based on review through the issuance of a full power license (generally full power is considered 100 percent of the facility's full rated power). Thus, if a licensee received a low power license or a temporary license for less than full power and subsequently receives full power authority (by way of license amendment or otherwise), the total costs for the license will be determined through that period when authority is granted for full power operation. If a situation arises in which the Commission determines that full operating power for a particular facility should be less than 100 percent of full rated power, the total costs for the license will be at that determined lower operating power level and not at the 100 percent capacity.

[2] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect at the time the service was provided. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for any topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20. In no event will the total review costs be less than twice the hourly rate shown in § 170.20.

* * * * *

5. Section 170.31 is revised to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.

Applicants for materials licenses, import and export licenses, and other regulatory services and holders of materials licenses, or import and export licenses shall pay fees for the following categories of services. This schedule includes fees for health and safety and safeguards inspections where applicable.

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2,3]
1. Special nuclear material:	
A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U–235 in unsealed form or 200 grams or more of U–233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only:	
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI):	
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers: [4]	
Application—New license	$530.
Renewal	$720.
Amendment	$290.
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A: [4]	
Application—New license	$580.
Renewal	$650.
Amendment	$280.
E. Licenses for construction and operation of a uranium enrichment facility:	
Application	$125,000.
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
2. Source material:	
A. (1) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, refining uranium mill concentrates to uranium hexafluoride, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode:	
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
(2) Licenses that authorize the receipt, from other persons, of byproduct material as defined in Section 11e(2) of the Atomic Energy Act for possession and disposal except those licenses subject to fees in Category 2.A.(1).	
License, renewal, amendment	Full Cost.
Inspections	Full Cost.
(3) Licenses that authorize the receipt, from other persons, of byproduct material as defined in Section 11e(2) of the Atomic Energy Act for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(1).	
License, renewal, amendment	Full Cost.
Inspections	Full Cost.
B. Licenses which authorize the possession, use and/or installation of source material for shielding:	
Application—New license	$150.
Renewal	$170.
Amendment	$230.
C. All other source material licenses:	
Application—New license	$2,700.
Renewal	$1,500.
Amendment	$400.
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application—New license	$2,900.
Renewal	$1,900.
Amendment	$530.
B. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application—New license	$1,200.
Renewal	$2,400.
Amendment	$560.
C. Licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material:	
Application—New license	$3,900.
Renewal	$3,100.
Amendment	$500.
D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material:	
Application—New license	$1,500.
Renewal	$480.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2,3]
Amendment	$420.
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):	
Application—New license	$1,200.
Renewal	$820.
Amendment	$350.
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes:	
Application—New license	$1,500.
Renewal	$1,100.
Amendment	$360.
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes:	
Application—New license	$5,800.
Renewal	$5,200.
Amendment	$750.
H. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:	
Application—New license	$2,300.
Renewal	$2,700.
Amendment	$990.
I. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:	
Application—New license	$4,300.
Renewal	$2,600.
Amendment	$840.
J. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:	
Application—New license	$1,500.
Renewal	$1,500.
Amendment	$280.
K. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:	
Application—New license	$1,300.
Renewal	$1,300.
Amendment	$300.
L. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution:	
Application—New license	$4,100.
Renewal	$3,300.
Amendment	$640.
M. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for research and development that do not authorize commercial distribution:	
Application—New license	$1,500.
Renewal	$1,700.
Amendment	$590.
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and	
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, 4C, and 4D:	
Application—New license	$1,800.
Renewal	$1,900.
Amendment	$570.
O. Licenses for possession and use of byproduct material issued pursuant to part 34 of this chapter for industrial radiography operations:	
Application—New license	$3,700.
Renewal	$3,000.
Amendment	$700.
P. All other specific byproduct material licenses, except those in Categories 4A through 9D:	
Application—New license	$530.
Renewal	$720.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2,3]
Amendment	$290.
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material:	
License, renewal, amendment	Full Cost.
Inspections	Full Cost.
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application—New license	$3,200.
Renewal	$2,300.
Amendment	$390.
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application—New license	$1,700.
Renewal	$1,200.
Amendment	$280.
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:	
Application—New license	$3,100.
Renewal	$4,000.
Amendment	$610.
B. Licenses for possession and use of byproduct material for field flooding tracer studies:	
License, renewal, amendment	Full Cost.
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material:	
Application—New license	$4,900.
Renewal	$1,900.
Amendment	$770.
7. Human use of byproduct, source, or special nuclear material:	
A. Licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$2,700.
Renewal	$1,400.
Amendment	$450.
B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$2,900.
Renewal	$5,700.
Amendment	$560.
C. Other licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$1,300.
Renewal	$1,400.
Amendment	$430.
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities:	
Application—New license	$730.
Renewal	$630.
Amendment	$340.
9. Device, product, or sealed source safety evaluation:	
A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution:	
Application—each device	$3,200.
Amendment—each device	$1,200.
B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices:	
Application—each device	$1,600.
Amendment—each device	$580.
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution:	
Application—each source	$700.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2,3]
Amendment—each source	$230.
D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel:	
Application—each source	$350.
Amendment—each source	$120.
10. Transportation of radioactive material:	
A. Evaluation of casks, packages, and shipping containers:	
Approval, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
B. Evaluation of 10 CFR part 71 quality assurance programs:	
Application—Approval	$320.
Renewal	$340.
Amendment	$240.
Inspections	Full Cost.
11. Review of standardized spent fuel facilities:	
Approval, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
12. Special projects: [5]	
Approvals and preapplication/licensing activities	Full Cost.
Inspections	Full Cost.
13. A. Spent fuel storage cask Certificate of Compliance:	
Approvals	Full Cost.
Amendments, revisions, and supplements	Full Cost.
Reapproval	Full Cost.
B. Inspections related to spent fuel storage cask:	
Certificate of Compliance	Full Cost.
C. Inspections related to storage of spent fuel under §72.210 of this chapter	Full Cost.
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities pursuant to 10 CFR parts 30, 40, 70, and 72 of this chapter:	
Approval, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
15. Import and Export licenses:	
Licenses issued pursuant to 10 CFR part 110 of this chapter for the import and export only of special nuclear material, source material, byproduct material, heavy water, tritium, or nuclear grade graphite:	
A. Application for import or export of HEU and other materials which must be reviewed by the Commission and the Executive Branch, for example, those actions under 10 CFR 110.40(b):	
Application—new license	$7,500.
Amendment	$7,500.
B. Application for import or export of special nuclear material, heavy water, nuclear grade graphite, tritium, and source material, and initial exports of materials requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(2)–(8):	
Application—new license	$4,600.
Amendment	$4,600.
C. Application for export of routine reloads of LEU reactor fuel and exports of source material requiring foreign government assurances only:	
Application—new license	$2,900.
Amendment	$2,900.
D. Application for export or import of other materials not requiring Commission review, Executive Branch review or foreign government assurances:	
Application—new license	$1,200.
Amendment	$1,200.
E. Minor amendment of any export or import license to extend the expiration date, change domestic information or make other revisions which do not require analysis or review:	
Amendment	$120.
16. Reciprocity:	
Agreement State licensees who conduct activities in a non-Agreement State under the reciprocity provisions of 10 CFR 150.20:	
Application (initial filing of Form 241)	$1,100.
Renewal	N/A.
Revisions	$200.

[1] *Types of fees*—Separate charges, as shown in the schedule, will be assessed for preapplication consultations and reviews and applications for new licenses and approvals, issuance of new licenses and approvals, amendments and renewals to existing licenses and approvals, safety evaluations of sealed sources and devices, and certain inspections. The following guidelines apply to these charges:

(a) *Application fees*—Applications for new materials licenses and approvals; applications to reinstate expired, terminated or inactive licenses and approvals except those subject to fees assessed at full cost; and applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20, must be accompanied by the prescribed application fee for each category, except that:

(1) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category; and

(2) Applications for licenses under Category 1E must be accompanied by an application fee of $125,000.

(b) *License-approval-review fees*—Fees for applications for new licenses and approvals and for preapplication consultations and reviews subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 4D, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(b), (e), and (f).

(c) *Renewal-reapproval fees*—Applications for renewal of licenses and approvals must be accompanied by the prescribed renewal fee for each category, except that fees for applications for renewal of licenses and approvals subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 4D, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(d).

(d) *Amendment-Revision Fees*—

(1) Applications for amendments to licenses and approvals and revisions to reciprocity initial applications, except those subject to fees assessed at full costs, must be accompanied by the prescribed amendment-revision fee for each license-revision affected. An application for an amendment to a license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories in which case the amendment fee for the highest fee category would apply. For those licenses and approvals subject to full costs (fee Categories 1A, 1B, 1E, 2A, 4A, 4D, 5B, 10A, 11, 12, 13A, and 14), amendment fees are due upon notification by the Commission in accordance with § 170.12(c).

(2) An application for amendment to a materials license or approval that would place the license or approval in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for the new category.

(3) An application for amendment to a license or approval that would reduce the scope of a licensee's program to a lower fee category must be accompanied by the prescribed amendment fee for the lower fee category.

(4) Applications to terminate licenses authorizing small materials programs, when no dismantling or decontamination procedure is required, are not subject to fees.

(e) *Inspection fees*—Inspections resulting from investigations conducted by the Office of Investigations and nonroutine inspections that result from third-party allegations are not subject to fees. The fees assessed at full cost will be determined based on the professional staff time required to conduct the inspection multiplied by the rate established under § 170.20 plus any applicable contractual support services costs incurred. Inspection fees are due upon notification by the Commission in accordance with § 170.12(g).

[2] Fees will not be charged for orders issued by the Commission pursuant to 10 CFR 2.202 or for amendments resulting specifically from the requirements of these types of Commission orders. However, fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections now or hereafter in effect) regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

[3] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For those applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect at the time the service was provided. For applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20. The minimum total review cost is twice the hourly rate shown in § 170.20.

[4] Licensees paying fees under Categories 1A, 1B, and 1E are not subject to fees under Categories 1C and 1D for sealed sources authorized in the same license except in those instances in which an application deals only with the sealed sources authorized by the license. Applicants for new licenses or renewal of existing licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application or renewal fee for fee Category 1C only.

[5] Fees will not be assessed for requests-reports submitted to the NRC:

(a) In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter or does not involve an unreviewed safety issue;

(b) In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

(c) As a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts.

PART 171—ANNUAL FEES FOR REACTOR OPERATING LICENSES AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

6. The authority citation for Part 171 continues to read as follows:

Authority: Sec. 7601, Pub. L. 99–272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100–203, 101 Stat. 1330, as amended by Sec. 3201, Pub. L. 101–239, 103 Stat. 2106 as amended by sec. 6101, Pub. L. 101–508, 104 Stat. 1388, (42 U.S.C. 2213); sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201(w)); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 2903, Pub. L. 102–486, 106 Stat. 3125, (42 U.S.C. 2214 note).

7. Section 171.13 is revised to read as follows:

§ 171.13 Notice.

The annual fees applicable to an operating reactor and to a materials licensee, including a Government agency licensed by the NRC, subject to this part and calculated in accordance with §§ 171.15 and 171.16, will be published as a notice in the **Federal Register** as soon as is practicable but no later than the third quarter of FY 1996 through 1998. The annual fees will become due and payable to the NRC in accordance with § 171.19 except as provided in § 171.17. Quarterly payments of the annual fees of $100,000 or more will continue during the fiscal year and be based on the applicable annual fees as shown in §§ 171.15 and 171.16 of the regulations until a notice concerning the revised amount of the fees for the fiscal year is published by Commission.

8. In § 171.15, paragraphs (a), (b)(3), (c)(1), (c)(2), (d), and (e) are revised to read as follows:

§ 171.15 Annual Fees: Reactor operating licenses.

(a) Each person licensed to operate a power, test, or research reactor shall pay the annual fee for each unit for which the person holds an operating license at any time during the Federal FY in which the fee is due, except for those test and research reactors exempted in § 171.11(a)(1) and (a)(2).

(b) * * *

(3) Generic activities required largely for NRC to regulate power reactors, e.g., updating part 50 of this chapter, or operating the Incident Response Center. The base FY 1995 annual fee for each operating power reactor subject to fees under this section and which must be collected before September 30, 1995, is $2,427,000. The total annual fee to be assessed to each operating power reactor which would include the surcharge for each reactor is shown in paragraph (d) of this section.

(c)(1) An additional charge will be established and added to the base annual fee for each operating power reactor to recover the budgeted costs for the following:

(i) Activities not attributable to an existing NRC licensee or classes of licensees; e.g., international cooperative safety program and international safeguards activities; support for the Agreement State program; site decommissioning management plan (SDMP) activities and low-level waste disposal generic activities, and

(ii) Activities not currently assessed under 10 CFR part 170 licensing and inspection fees based on existing law or Commission policy, e.g., reviews and inspections conducted of nonprofit educational institutions and Federal agencies; activities related to decommissioning and reclamation and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act.

(2) The FY 1995 surcharge for each operating power reactor is $509,000. This amount is calculated by dividing the total cost for these activities ($55.0 million) by the number of operating power reactors (108).

* * * * *

(d) The FY 1995 part 171 annual fee for each operating power reactor, which includes the surcharge in paragraph (c)(2) of this section, is $2,936,000. Thereafter, annual fees will be assessed in accordance with § 171.13.

(e) The annual fees for licensees authorized to operate a nonpower (test and research) reactor licensed under part 50 of this chapter, except for those reactors exempted from fees under § 171.11(a), are as follows:

Research reactor	$56,500
Test reactor	$56,500

* * * * *

9. In § 171.16, the introductory text of paragraph (c) and paragraphs (c)(1), (c)(4), (d), and (e) are revised to read as follows:

§ 171.16 Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals and Government agencies licensed by the NRC.

* * * * *

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification, the licensee may pay reduced annual fees for FY 1995 as follows:

	Maximum Annual fee per licensed category
Small businesses not engaged maximum annual fee in manufacturing and small per licensed category not-for-profit organizations (gross annual receipts):	
$350,000 to $5 million	$1,800
Less than $350,000	400
Manufacturing entities that have an average of 500 employees or less:	
35 to 500 employees	1,800
Less than 35 employees	400
Small Governmental Jurisdictions (Including publicly supported educational institutions) (population)	
20,000 to 50,000	1,800
Less than 20,000	400
Educational institutions that are not State or publicly supported, and have 500 employees or less:	
35 to 500 employees	1,800
Less than 35 employees	400

(1) A licensee qualifies as a small entity if it meets the size standards established by the NRC (See 10 CFR 2.810).

* * * * *

(4) For FY 1995, the maximum annual fee (base annual fee plus surcharge) a small entity is required to pay is $1,800 for each category applicable to the license(s).

(d) The FY 1995 annual fees, including the surcharges shown in paragraph (e) of this section, for materials licensees and holders of certificates, registrations or approvals subject to fees under this section are as follows:

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC

[See footnotes at end of table]

Category of materials licenses		Annual fees [1] [2] [3]
1. Special nuclear material:		
A. (1) Licenses for possession and use of U–235 or plutonium for fuel fabrication activities.		
(a) Strategic Special Nuclear Material:		
Babcock & Wilcox	SNM–42	$2,569,000
Nuclear Fuel Services	SNM–124	2,569,000
(b) Low Enriched Uranium in Dispersable Form Used for Fabrication of Power Reactor Fuel:		
Combustion Engineering (Hematite)	SNM–33	1,261,000
General Electric Company	SNM–1097	1,261,000
Siemens Nuclear Power	SNM–1227	1,261,000
Westinghouse Electric Company	SNM–1107	1,261,000
(2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities.		
(a) Facilities with limited operations:		
B&W Fuel Company	SNM–1168	501,700
(b) All Others:		
Babcock & Wilcox	SNM–414	340,700
General Atomics	SNM–696	340,700
General Electric	SNM–960	340,700
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI)		279,000
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers		1,300

D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1.A.(2)	3,000
E. Licenses for the operation of a uranium enrichment facility	[11] N/A
2. Source material:	
A. (1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride	639,200
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.	
Class I facilities [4]	60,900
Class II facilities [4]	34,400
Other facilities [4]	22,000
(3) Licenses that authorize the receipt, from other persons, of byproduct material as defined in Section 11e.(2) of the Atomic Energy Act for possession and disposal, except those licenses subject to the fees in Category 2.A.(2) or Category 2.A.(4)	44,700
(4) Licenses that authorize the receipt, from other persons, of byproduct material as defined in Section 11e(2) of the Atomic Energy Act for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2)	7,900
B. Licenses which authorize only the possession, use and/or installation of source material for shielding	480
C. All other source material licenses	8,600
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	16,400
B. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	5,500
C. Licenses issued pursuant to §§ 32.72, 32.73, and-or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized pursuant to part 40 of this chapter when included on the same license	11,100
D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribu tion or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category also includes the possession and use of source material for shielding authorized pursuant to part 40 of this chapter when included on the same license	4,400
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units)	3,100
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	3,800
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	19,400
H. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter	5,000
I. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter	8,800
J. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter	3,700
K. Licenses issued pursuant to subpart B of part 31 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter	3,200
L. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution	12,100
M. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for research and development that do not authorize commercial distribution	5,400
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and	
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, 4C, and 4D	6,000
O. Licenses for possession and use of byproduct material issued pursuant to part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized pursuant to part 40 of this chapter when authorized on the same license	13,900
P. All other specific byproduct material licenses, except those in Categories 4A through 9D	1,700

4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material	[5] 100,900
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	14,300
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	7,600
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies	8,100
B. Licenses for possession and use of byproduct material for field flooding tracer studies	13,000
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material	14,500
7. Human use of byproduct, source, or special nuclear material.	
A. Licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license	10,200
B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license [9]	23,200
C. Other licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license [9]	4,600
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities	1,800
9. Device, product, or sealed source safety evaluation:	
A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution	7,100
B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices	3,700
C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution	1,500
D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel	770
10. Transportation of radioactive material:	
A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers.	
Spent Fuel, High-Level Waste, and plutonium air packages	[6] N/A
Other Casks	[6] N/A
B. Approvals issued of 10 CFR part 71 quality assurance programs.	
Users and Fabricators	77,800
Users	1,000
11. Standardized spent fuel facilities	[6] N/A
12. Special Projects	[6] N/A
13. A. Spent fuel storage cask Certificate of Compliance	[6] N/A
B. General licenses for storage of spent fuel under 10 CFR 72.210	279,000
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities pursuant to 10 CFR parts 30, 40, 70, and 72	[7] N/A
15. Import and Export licenses	[8] N/A
16. Reciprocity	[8] N/A
17. Master materials licenses of broad scope issued to Government agencies	415,300
18. Department of Energy:	
A. Certificates of Compliance	[10] 1,200,000
B. Uranium Mill Tailing Radiation Control Act (UMTRCA) activities	1,937,000

[1] Annual fees will be assessed based on whether a licensee held, during the fiscal year, a valid license with the NRC authorizing possession and use of radioactive material. However, the annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses prior to October 1, 1994 and permanently ceased licensed activities entirely by September 30, 1994. Annual fees for licensees who filed for termination of a license, downgrade of a license, or for a POL during the fiscal year and for new licenses issued during the fiscal year will be prorated in accordance with the provisions of § 171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1.A.(1). are not subject to the annual fees of Category 1.C and 1.D for sealed sources authorized in the license.

[2] Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of parts 30, 40, 70, 71, or 72 of this chapter.

[3] For FYs 1996 through 1998, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the **Federal Register** for notice and comment.

[4] A Class I license includes mill licenses issued for the extraction of uranium from uranium ore. A Class II license includes solution mining licenses (in-situ and heap leach) issued for the extraction of uranium from uranium ores including research and development licenses. An "other" license includes licenses for extraction of metals, heavy metals, and rare earths.

[5] Two licenses have been issued by NRC for land disposal of special nuclear material. Once NRC issues a LLW disposal license for byproduct and source material, the Commission will consider establishing an annual fee for this type of license.

[6] Standardized spent fuel facilities, part 71 and 72 Certificates of Compliance, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to the users of the designs, certificates, and topical reports.

[7] Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

[8] No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

[9] Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions who also hold nuclear medicine licenses under Categories 7B or 7C.

[10] This includes Certificates of Compliance issued to DOE that are not under the Nuclear Waste Fund.

[11] No annual fee has been established because there are currently no licensees in this particular fee category.

(e) A surcharge is added for each category for which a base annual fee is required. The surcharge consists of the following:

(1) To recover costs relating to LLW disposal generic activities, an additional charge of $48,000 has been added to fee Categories 1.A.(1), 1.A.(2) and 2.A.(1); an additional charge of $1,400 has been added to fee Categories 1.B., 1.D., 2.C., 3.A., 3.B., 3.C., 3.L., 3.M., 3.N., 4.A., 4.B., 4.C., 4.D., 5.B., 6.A., and 7.B.; and an additional charge of $21,000 has been added to fee Category 17.

(2) To recover those budgeted costs that are not directly or solely attributable to materials licensees and holders of certificates, registrations or approvals, a surcharge has been added for the following:

(i) Activities not attributable to an existing NRC licensee or classes of licensees; e.g., international cooperative safety program and international safeguards activities; support for the Agreement State program; site decommissioning management plan (SDMP) activities and

(ii) Activities not currently assessed under 10 CFR Part 170 licensing and inspection fees based on existing law or Commission policy, e.g., reviews and inspections conducted of nonprofit educational institutions and Federal agencies; activities related to decommissioning and reclamation and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act.

* * * * *

10. In § 171.17, paragraph (b) is revised to read as follows:

§ 171.17 Proration.

* * * * *

(b) Materials licenses (including fuel cycle licenses). (1) *New licenses and terminations.* The annual fee for a materials license that is subject to fees under this part and issued on or after October 1 of the FY is prorated on the basis of when the NRC issues the new license. New licenses issued during the period October 1 through March 31 of the FY will be assessed one-half the annual fee for that FY. New licenses issued on or after April 1 of the FY will not be assessed an annual fee for that FY. Thereafter, the full fee is due and payable each subsequent FY. The annual fee will be prorated for licenses for which a termination request or a request for a POL has been received on or after October 1 of a FY on the basis of when the application for termination or POL is received by the NRC provided the licensee permanently ceased licensed activities during the specified period. Licenses for which applications for termination or POL are filed during the period October 1 through March 31 of the FY are assessed one-half the annual fee for the applicable category(ies) for that FY. Licenses for which applications for termination or POL are filed on or after April 1 of the FY are assessed the full annual fee for that FY.

(2) *Downgraded licenses.* (i) The annual fee for a materials license that is subject to fees under this part and downgraded on or after October 1 of a FY is prorated upon request by the licensee on the basis of when the application for downgrade is received by the NRC provided the licensee permanently ceased the stated activities during the specified period. Requests for proration must be filed with the NRC within 90 days from the effective date of the final rule establishing the annual fees for which a proration is sought. Absent extraordinary circumstances, any request for proration of the annual fee for a downgraded license filed beyond that date will not be considered.

(ii) Annual fees for licenses for which applications to downgrade are filed during the period October 1 through March 31 of the FY will be prorated as follows:

(A) Licenses for which applications have been filed to reduce the scope of the license from a higher fee category(ies) to a lower fee category(ies) will be assessed one-half the annual fee for the higher fee category(ies) and one-half the annual fee for the lower fee category(ies), and, if applicable, the full annual fee for fee categories not affected by the downgrade; and

(B) Licenses with multiple fee categories for which applications have been filed to downgrade by deleting a fee category will be assessed one-half the annual fee for the fee category being deleted and the full annual fee for the remaining categories.

(iii) Licenses for which applications for downgrade are filed on or after April 1 of the FY are assessed the full fee for that FY.

11. In § 171.19, paragraphs (b) and (c) are revised to read as follows:

§ 171.19 Payment.

* * * * *

(b) For FY 1995 through FY 1998, the Commission will adjust the fourth quarterly bill for operating power reactors and certain materials licensees to recover the full amount of the revised annual fee. If the amounts collected in the first three quarters exceed the amount of the revised annual fee, the overpayment will be refunded. The NRC will also adjust the FY 1995 annual fee bills to reflect a credit for any payments received for those FY 1995 inspection costs that are included in the FY 1995 annual fee. All other licensees, or holders of a certificate, registration, or approval of a QA program will be sent a bill for the full amount of the annual fee upon publication of the final rule. Payment is due on the effective date of the final rule and interest accrues from the effective date of the final rule. However, interest will be waived if payment is received within 30 days from the effective date of the final rule.

(c) For FYs 1995 through 1998, annual fees in the amount of $100,000 or more and described in the **Federal Register** notice pursuant to § 171.13 must be paid in quarterly installments of 25 percent as billed by the NRC. The quarters begin on October 1, January 1, April 1, and July 1 of each fiscal year. Annual fees of less than $100,000 must be paid once a year as billed by the NRC.

Dated at Rockville, Maryland, this 12th day of June, 1995.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

Appendix A to this Final Rule Regulatory Flexibility Analysis for the Amendments to 10 CFR Part 170 (License Fees) and 10 CFR Part 171 (Annual Fees)

I. Background

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) establishes as a principle of regulatory practice that agencies endeavor to fit regulatory and informational requirements, consistent with applicable statutes, to a scale commensurate with the businesses, organizations, and government jurisdictions to which they apply. To achieve this principle, the Act requires that agencies consider the impact of their actions on small entities. If the agency cannot certify that a rule will not significantly impact a substantial number of small entities, then a regulatory flexibility analysis is required to examine the impacts on small entities and the alternatives to minimize these impacts.

To assist in considering these impacts under the Regulatory Flexibility Act (RFA), first the NRC adopted size standards for determining which NRC licensees qualify as small entities (50 FR 50241; December 9, 1985). These size standards were clarified November 6, 1991 (56 FR 56672). On April 7, 1994 (59 FR 16513), the Small Business Administration (SBA) issued a final rule changing its size standards. The SBA adjusted its receipts-based size standards levels to mitigate the effects of inflation from 1984 to 1994. On November 30, 1994 (59 FR 61293), the NRC published a proposed rule to amend its size standards. The NRC proposed to adjust its receipts-based size standards from $3.5 million to $5 million to accommodate inflation and to conform to the SBA final rule. The NRC also proposed to eliminate the separate $1 million size standard for private practice physicians and to apply a receipts-based size standard of $5 million to this class of licensees. This mirrors the revised SBA standard of $5 million for medical practitioners. The NRC also proposed to establish a size standard of 500 or fewer employees for business concerns that are manufacturing entities. This standard is the most commonly used SBA employee standard and would be the standard applicable to the types of manufacturing industries that hold an NRC license. After evaluating the two comments received, a final rule that would revise the NRC's size standards as proposed was developed and approved by the SBA on March 24, 1995. The NRC published the final rule revising its size standards on April 11, 1995 (60 FR 18344). The revised standards became effective May 11, 1995. The NRC has used the revised standards in the final FY 1995 fee rule. The small entity fee categories in § 171.16(c) of the final rule reflect the changes in the NRC's size standards. A new maximum small entity fee for manufacturing industries with 35 to 500 employees has been established at $1,800 and a lower-tier small entity fee of $400 established for those manufacturing industries with less than 35 employees. The lower-tier receipts-based threshold of $250,000 has been raised to $350,000 to reflect approximately the same percentage adjustment as that made by the SBA when they adjusted the receipts-based standard from $3.5 million to $5 million. The NRC believes that these actions will reduce the impact of annual fees on small businesses. The NRC size standards are codified at 10 CFR 2.810.

Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), requires that the NRC recover approximately 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, for Fiscal Years (FY) 1991 through 1995 by assessing license and annual fees. OBRA–90 was amended in 1993 to extend the 100 percent recovery requirement for NRC through 1998. For FY 1991, the amount for collection was approximately $445.3 million; for FY 1992, approximately $492.5 million; for FY 1993 about $518.9 million; for FY 1994 about $513 million and the amount to be collected in FY 1995 is approximately $503.6 million.

To comply with OBRA–90, the Commission amended its fee regulations in 10 CFR parts 170 and 171 in FY 1991 (56 FR 31472; July 10, 1991) in FY 1992, (57 FR 32691; July 23, 1992) in FY 1993 (58 FR 38666; July 20, 1993) and in FY 1994 (59 FR 36895; July 20, 1994) based on a careful evaluation of over 1,000 comments. These final rules established the methodology used by NRC in identifying and determining the fees assessed and collected in FY 1991, FY 1992, FY 1993 and FY 1994. The NRC has used the same methodology established in the FY 1991, FY 1992, FY 1993, and FY 1994 rulemakings to establish the fees to be assessed for FY 1995 with the following exceptions: (1) The Commission has reinstated the annual fee exemption for nonprofit educational institutions; (2) in the FY 1994 final rule, the NRC directly assigned additional effort to the reactor and materials programs for the Office of Investigations, the Office of Enforcement, the Advisory Committee on Reactor Safeguards, and the Advisory Committee on Nuclear Waste; and (3) for FY 1995, the NRC is using cost center concepts, now being used for budgeting purposes, to develop the fees. The NRC is also (1) changing the method for allocating the budgeted costs (about $56 million) that cause fairness and equity concerns; (2) eliminating the materials "flat" inspection fees in 10 CFR 170.31 and including the inspections with the annual fees in 10 CFR 171.16(d); and (3) establishing two professional hourly rates to better align the budgeted costs with the major classes of licensees. The methodology for assessing low-level waste (LLW) costs was changed in FY 1993 based on the U.S. Court of Appeals decision dated March 16, 1993 (988 F.2d 146 (D.C. Cir. 1993)). The FY 1993 LLW allocation method has been continued in the FY 1995 final rule.

II. Impact on Small Entities.

The comments received on the proposed FY 1991, FY 1992, FY 1993, and FY 1994 fee rule revisions and the small entity certifications received in response to the final FY 1991, FY 1992, FY 1993, and FY 1994 fee rules indicate that NRC licensees qualifying as small entities under the NRC's size standards are primarily those licensed under the NRC's materials program. Therefore, this analysis will focus on the economic impact of the annual fees on materials licensees.

The Commission's fee regulations result in substantial fees being charged to those individuals, organizations, and companies that are licensed under the NRC materials program. Of these materials licensees, about 18 percent (approximately 1,300 licensees) have requested small entity certification in the past. In FY 1993, the NRC conducted a survey of its materials licensees. The results of this survey indicated that about 25 percent of these licensees could qualify as small entities under the current NRC size standards.

The commenters on the FY 1991, FY 1992, FY 1993, and FY 1994 proposed fee rules indicated the following results if the proposed annual fees were not modified:

—Large firms would gain an unfair competitive advantage over small entities. One commenter noted that a small well-logging company (a "Mom and Pop" type of operation) would find it difficult to absorb the annual fee, while a large corporation would find it easier. Another commenter noted that the fee increase could be more easily absorbed by a high-volume nuclear medicine clinic. A gauge licensee noted that, in the very competitive soils testing market, the annual fees would put it at an extreme disadvantage with its much larger competitors because the proposed fees would be the same for a two-person licensee as for a large firm with thousands of employees.

—Some firms would be forced to cancel their licenses. One commenter, with receipts of less than $500,000 per year, stated that the proposed rule would, in effect, force it to relinquish its soil density gauge and license, thereby reducing its ability to do its work effectively. Another commenter noted that the rule would force the company and many other small businesses to get rid of the materials license altogether. Commenters stated that the proposed rule would result in about 10 percent of the well-logging licensees terminating their licenses immediately and approximately 25 percent terminating their licenses before the next annual assessment.

—Some companies would go out of business. One commenter noted that the proposal would put it, and several other small companies, out of business or, at the very least, make it hard to survive.

—Some companies would have budget problems. Many medical licensees commented that, in these times of slashed reimbursements, the proposed increase of the existing fees and the introduction of additional fees would significantly affect their budgets. Another noted that, in view of the cuts by Medicare and other third party carriers, the fees would produce a hardship and some facilities would experience a great deal of difficulty in meeting this additional burden.

Over the past four years, approximately 2,900 license, approval, and registration terminations have been requested. Although

some of these terminations were requested because the license was no longer needed or licenses or registrations could be combined, indications are that other termination requests were due to the economic impact of the fees.

The NRC continues to receive written and oral comments from small materials licensees. These commenters previously indicated that the $3.5 million threshold for small entities was not representative of small businesses with gross receipts in the thousands of dollars. These commenters believe that the $1,800 maximum annual fee represents a relatively high percentage of gross annual receipts for these "Mom and Pop" type businesses. Therefore, even the reduced annual fee could have a significant impact on the ability of these types of businesses to continue to operate.

To alleviate the continuing significant impact of the annual fees on a substantial number of small entities, the NRC considered alternatives, in accordance with the RFA. These alternatives were evaluated in the FY 1991 rule (56 FR 31472; July 10, 1991) in the FY 1992 rule (57 FR 32691; July 23, 1992), in the FY 1993 rule (58 FR 38666; July 20, 1993) and in the FY 1994 rule (59 FR 36895; July 20, 1994). The alternatives considered by the NRC can be summarized as follows:

—Base fees on some measure of the amount of radioactivity possessed by the licensee (e.g., number of sources).
—Base fees on the frequency of use of the licensed radioactive material (e.g., volume of patients).
—Base fees on the NRC size standards for small entities.

The NRC has reexamined the FY 1991, FY 1992, FY 1993, and FY 1994 evaluation of the these alternatives. Based on that reexamination, the NRC continues to believe that establishment of a maximum fee for small entities is the most appropriate option to reduce the impact on small entities.

The NRC established, and is continuing for FY 1995, a maximum annual fee for small entities. The RFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic impact on a small entity. Therefore, the NRC has no benchmark to assist it in determining the amount or the percent of gross receipts that should be charged to a small entity. For FY 1995, the NRC will rely on the analysis previously completed that established a maximum annual fee for a small entity and the amount of cost that must be recovered from other NRC licensees as a result of establishing the maximum annual fees. The NRC continues to believe that license fees, or any adjustments to these fees during the past year, do not have a significant impact on small entities. In issuing this final rule for FY 1995, the NRC concludes that the materials license fees do not have a significant impact on a substantial number of small entities and that the maximum annual small entity fee of $1,800 be continued.

By maintaining the maximum annual fee for small entities at $1,800, the annual fee for many small entities is reduced while at the same time materials licensees, including small entities, pay for most of the FY 1995 costs ($27 million of the total $33 million) attributable to them. The costs not recovered from small entities are allocated to other materials licensees and to operating power reactors. However, the amount that must be recovered from other licensees as a result of maintaining the maximum annual fee is not expected to increase. Therefore, the NRC is continuing, for FY 1995, the maximum annual fee (base annual fee plus surcharge) for certain small entities at $1,800 for each fee category covered by each license issued to a small entity.

While reducing the impact on many small entities, the Commission agrees that the maximum annual fee of $1,800 for small entities, when added to the Part 170 license fees, may continue to have a significant impact on materials licensees with annual gross receipts in the thousands of dollars. Therefore, as in FY 1992, FY 1993, and FY 1994, the NRC is continuing the lower-tier small entity annual fee of $400 for small entities with relatively low gross annual receipts. The lower-tier small entity fee of $400 also applies to manufacturing concerns and educational institutions not State or publicly supported with less than 35 employees. This lower-tier small entity fee was first established in the final rule published in the **Federal Register** on April 17, 1992 (57 FR 13625) and would now include manufacturing companies with a relatively small number of employees.

In establishing the annual fee for lower-tier small entities, the NRC continues to retain a balance between the objectives of the RFA and OBRA–90. This balance can be measured by: (1) The amount of costs attributable to small entities that is transferred to larger entities (the small entity subsidy); (2) the total annual fee small entities pay, relative to this subsidy; and (3) how much the annual fee is for a lower-tier small entity. Based on this final rule, the amount of the FY 1995 small entity subsidy is lower than that for FY 1994. Thus, no change is being made.

III. Summary

The NRC has determined the annual fee significantly impacts a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to collect 100 percent of the NRC budget and the requirement to consider means of reducing the impact of the fee on small entities. On the basis of its regulatory flexibility analyses, the NRC concludes that a maximum annual fee of $1,800 for small entities and a lower-tier small entity annual fee of $400 for small businesses and not-for-profit organizations with gross annual receipts of less than $350,000, small governmental jurisdictions with a population of less than 20,000, small manufacturing entities that have less than 35 employees and educational institutions that are not State or publicly supported and have less than 35 employees reduces the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA–90. Thus, the revised fees for small entities maintain a balance between the objectives of OBRA–90 and the RFA. The NRC has used the methodology and procedures developed for the FY 1991, FY 1992, FY 1993, and FY 1994 fee rules in this final rule except those noted in Section III, in establishing the FY 1995 fees. Therefore, the analysis and conclusions established in the FY 1991, FY 1992, FY 1993, and FY 1994 rules remain valid for this final rule for FY 1995.

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Federal Register

Tuesday
June 20, 1995

Part III

Department of Education

34 CFR Parts 75, 76, and 81
General Education Provisions Act; Equitable Offsets: Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 75, 76, and 81

RIN 1880–AA56

General Education Provisions Act—Enforcement: Equitable Offsets

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend Part 81 of Title 34 of the Code of Federal Regulations, containing regulations regarding enforcement under the General Education Provisions Act (GEPA). The amendment would include regulations clarifying the circumstances under which equitable offset is taken into account in determining harm to an identifiable Federal interest under section 453(a)(1) of the GEPA. The proposed regulations would enhance grantee flexibility and reduce burden by contributing to the early resolution of audit disputes and the avoidance of protracted litigation.

The proposed regulations in this notice do not apply to programs under the Higher Education Act of 1965 or the Impact Aid statutes (Pub. L. 81–874, Pub. L. 81–815, and Title VIII of the Elementary and Secondary Education Act of 1965 (ESEA) as amended by Pub. L. 103–382).

DATES: Comments must be received on or before August 4, 1995.

ADDRESSEES: All comments concerning these proposed regulations should be addressed to Ted Sky, Senior Counsel, U.S. Department of Education, 600 Independence Avenue SW., Washington, DC 20202–2121.

FOR FURTHER INFORMATION CONTACT: Ted Sky. Telephone: (202) 401–6000. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

I. Recognition of Offset Costs

Section 453(a)(1) of the GEPA, 20 U.S.C. 1234b(a)(1), provides that a recipient determined to have made an unallowable expenditure, or to have otherwise failed to discharge its responsibility to account properly for funds, shall be required to return funds in an amount that is proportionate to the extent of the harm its violation caused to an identifiable Federal interest associated with the program under which the recipient received the award.

The proposed regulations (in § 81.32 (c) and (d)) would state the circumstances under which the Secretary or an authorized Department official, in determining the extent of harm to an identifiable Federal interest caused by a violation, may take into account costs that the recipient could have charged to the Federal grant or cooperative agreement in question but in fact did not. These costs are "offset costs." Issues pertaining to those so-called offset costs have arisen in connection with administrative litigation before the Office of Administrative Law Judges (OALJ).

The Secretary believes that regulatory guidance regarding these issues would be helpful to the field, would enhance grantee flexibility, would increase the possibilities for early resolution of disputes, and would reduce the need for protracted litigation arising from expenditure disallowance and other audit claims under Department programs, while maintaining proper accountability. The Secretary solicits additional public comments and suggestions as to how this balance may best be achieved.

Equitable offset is not a new concept initially proposed in these regulations. The concept has evolved over time, through case-by-case adjudication, both in decisions of the Secretary and the courts, arising from disputes under programs administered by the Secretary. The proposed regulations are consistent with this precedent.

If finally adopted, it is anticipated that the provisions of proposed § 81.32 (c) and (d) would apply to existing cases before the OALJ, but without regard to § 81.32(c)(5) (relating to early identification of offset costs).

The proposed regulations are based upon the conclusion that the recognition of offset costs, under appropriate circumstances and subject to appropriate limitations, is consistent with section 453(a)(1) of the GEPA. The proposed regulations would provide for the recognition of offset costs under the following circumstances:

—The offset costs must meet all the requirements of the grant or cooperative agreement, including any applicable recordkeeping requirements;
—The recipient must demonstrate that the offset costs could have been charged to the grant or cooperative agreement during the same Federal fiscal year as the original violation;
—The charging of offset costs to the grant or cooperative agreement must not result in other violations of applicable requirements, such as maintenance of effort, matching or non-supplanting requirements;
—The practices and policies that resulted in the original violation must have been corrected and must not be likely to recur;
—The original violation must not have been intentional or willful.

Under the proposed rule, the Secretary would have the burden of initially establishing a prima facie case that a violation was willful or intentional so as to preclude an offset. It is not anticipated that these cases will be frequent. However, on occasion, circumstances may suggest the existence of this situation. For example, where a recipient continues to incur costs or carry out program activities that the Department has advised the recipient are beyond the purview of the grant, the issue of whether a violation was willful or intentional might be presented.

Federal financial assistance under a program subject to a statutory non-supplanting requirement must supplement and be additional to any State assistance for the project in question. A recipient of assistance under this type of program generally must use all Federal funds awarded for project purposes, irrespective of the use of State or local funds.[1] To permit a recipient to offset disallowed costs under the federally funded project with State or local-funded costs would normally be contrary to the non-supplanting requirement and would result in the diminution of the project to the detriment of the beneficiaries to be served and contrary to the purposes of the program.

In the case of a program with a non-supplanting requirement, therefore, a recipient has a particularly heavy burden in showing that use of State or local funds as offset costs is consistent with the requirement. The Department has identified a limited number of situations in which this burden could be met.

(1) *State administrative expenses.* Where a disallowance involves State administrative expenditures, and the recipient proposes to offset other State administrative expenditures that could have been charged to the grant but were not, the non-supplanting requirement should not present a bar to the offset. Presumably the State administrative expenditures would not have been made in the absence of the program.

[1] One exception to this principle is the non-supplanting requirement in section 614 of the Individuals with Disabilities Education Act which requires a local educational agency to supplement what it has expended on special education in the past. This approach is more similar to a maintenance of effort requirement than it is to the non-supplanting requirements in other statutes. (*See* 34 CFR 300.230.)

(2) *Other cases where the offset expenditures would not have been incurred in the absence of the Federal program.* In exceptional circumstances a recipient may be able to establish that the State or local expenditures sought to be used as an offset would not have been incurred in the absence of the program and thus do not give rise to a question under the non-supplanting requirement. For example, the recipient might be able to show that a particular cost was so related to the Federal grant that it would not have been incurred in the absence of that grant.

(3) *Statutorily excluded funds.* Under the statute governing the program in question, there may be categories of expenditures that may be specifically excluded from the reach of the non-supplanting requirement. For example, under section 1120A(b)(1)(B) of the Title I (ESEA) statute, 20 U.S.C. 6322(b)(1)(B), certain State and local funds may be excluded for purposes of determining compliance with the Title I non-supplanting requirement. These funds would be available for offset purposes, despite the non-supplanting requirement, assuming that other requirements of the proposed rule would be met.

In proposing these rules, the Secretary does not intend to encourage recipients to incur unallowable costs or engage in activities that will give rise to accountability issues. On the contrary, the Secretary believes that the proposed regulations will enable the Department to more readily focus time on those areas where the most serious accountability problems occur.

II. Early Identification of Issue

The proposed regulations provide that, if the recipient is apprised of the violation in a draft audit report or other written communication issued prior to the final audit report, the offset costs must be presented to the auditor within a 60-day period. This provision is designed to ensure that offset claims are raised sufficiently early in the audit process to permit the auditor to verify the claimed offset costs and make recommendations regarding those costs, within the overall context of the auditor's responsibility, prior to the issuance of the final audit report. Even if an oral rather than a written communication regarding the violation is made during the audit process, recipients are encouraged to present offset cost claims to the auditor so that these matters may be taken into account in the audit report in an orderly fashion.

If the recipient is first apprised of the violation in the final audit report, the offset costs must, under the proposed regulations, be presented to the authorized Department official within a 60-day period after the issuance of the final audit report. If the recipient is first apprised of the violation after the issuance of the final audit report, then the 60-day period runs from this first written notice. In either event, offset cost "claims" must be presented in the form of facts verified by an independent auditor.

Early notice of these issues is intended to encourage and contribute to early resolution of disallowance cases (through alternative means of dispute resolution or otherwise) and reduction of litigation expense for recipients as well as for the Department.

The early notice provision in § 81.32(c)(5) is also designed to avoid introduction of offset cost issues late in the audit appeal process. The introduction of offset cost issues at the litigation stage in prior and currently pending cases before the OALJ has caused administrative problems, requiring more audit work long after the original audit is over, thus delaying resolution of these cases. However, as indicated above, these advance notice requirements would not apply to pending cases.

In addition to adding the proposed provisions to 34 CFR Part 81, a cross-reference is proposed to be added to Subpart G of 34 CFR Part 75 and Subpart H of 34 CFR Part 76.

Executive Order 12866

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently as discussed in those sections of the preamble that relate to specific sections of the regulations. Burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. States and State agencies are not considered to be small entities under the Regulatory Flexibility Act. Small local educational agencies could be affected by these regulations. However, these proposed regulations are intended to implement statutory provisions and are designed to provide greater flexibility and reduce litigation in the administration of the programs in question. They should not have a significant economic impact on any small entities affected.

Paperwork Reduction Act of 1980

These proposed regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 5400, 600 Independence Avenue SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of the Executive Order and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

List of Subjects

34 CFR Part 75

Education Department, Grant programs—education, Grant administration, Incorporation by reference.

34 CFR Part 76

Education Department, Grant programs—education, Grant administration, Intergovernmental relations, State-administered programs.

34 CFR Part 81

Enforcement, General Education Provisions Act, Offset costs.

Dated: March 16, 1995.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number does not apply)

The Secretary proposes to amend Parts 75, 76, and 81 of Title 34 of the Code of Federal Regulations as follows:

PART 81—GENERAL EDUCATION PROVISIONS ACT—ENFORCEMENT

1. The authority citation for Part 81 continues to read as follows:

Authority: 20 U.S.C. 1221e–3, 1234–1234i, 3474, unless otherwise noted.

2. Section 81.32 is amended by revising the heading and by adding new paragraphs (c), (d) and (e) to read as follows:

§ 81.32 Proportionality; equitable offset.

* * * * *

(c) In determining the extent to which a violation that is not intentional or willful caused harm to an identifiable Federal interest, the Secretary or an authorized Department official, as appropriate, may take into account costs that could have been charged to the Federal grant or cooperative agreement but in fact were not (offset costs), only if the recipient has demonstrated that—

(1) The offset costs would have met all the requirements of the grant or cooperative agreement, including any applicable recordkeeping requirements;

(2) The offset costs could have been charged to the grant or cooperative agreement during the same Federal fiscal year as the original violation;

(3) The charging of offset costs to the grant or cooperative agreement would not result in other violations of applicable requirements, such as maintenance of effort, matching, or non-supplanting;

(4) The practices and policies that resulted in the original violation have been corrected and are not likely to recur; and

(5) (i) If the recipient was apprised of the violation in a draft audit report or other written communication from the cognizant auditor that was issued prior to the final audit report—

(A) The offset costs were presented to the auditor within 60 days after the issuance of the draft audit report or other written communication; and

(B) The auditor verified that the costs met the conditions in paragraph (c) of this section;

(ii) If the recipient was first apprised in writing of the violation in the final audit report or the costs were timely presented to but not verified by the auditor, the offset costs were presented to the authorized Department official, in the form of facts demonstrating compliance with this paragraph and verified by an independent auditor, within 60 days of the issuance of the final audit report; or

(iii) If the recipient was first apprised of the violation in writing after the issuance of the final audit report, the offset costs were presented to the authorized Department official, in the form of facts demonstrating compliance with this paragraph and verified by an independent auditor, within 60 days of the first written notice of the violation;

(d) In making a verification under paragraph (c)(5) of this section, the independent auditor may be the auditor that initially conducted the audit and may base the verification on the original audit as long as the offset costs were examined as part of that audit and were not disallowed.

(e) For the purposes of § 81.32(c)(1), in the case of a discretionary program under which awards are made by the Secretary, "grant" or "cooperative agreement" means the grant or cooperative agreement awarded to the recipient.

3. Section 81.40 is amended by redesignating paragraphs (d) and (e) as (e) and (f), respectively, and by adding a new paragraph (d) to read as follows:

§ 81.40 Burden of proof.

* * * * *

(d) An offset cost should be taken into account in accordance with § 81.32 (c) and (d), except that the Secretary has the burden of initially establishing a prima facie case that a violation was willful or intentional so as to preclude an offset.

* * * * *

4. The Appendix to Part 81 is amended by adding new Examples 14, 15, 16, 17, and 18 to read as follows:

Appendix to Part 81—Illustrations of Proportionality

* * * * *

Equitable Offset Allowed

(14) Administrative costs of a State educational agency (SEA) are disallowed by the auditor under a program subject to a non-supplanting requirement because the SEA did not maintain adequate time distribution records for employees charged to the grant. The SEA demonstrates that other employees, whose salaries are paid for out of State funds, performed administrative functions allowable under the Federal grant during the relevant fiscal period. Adequate records, including any necessary time distribution records, were maintained for these employees. Charging these costs to the grant would not violate other requirements. The non-supplanting requirement does not bar the offset because it is presumed that the State funds would not have been spent in the absence of the program. The SEA presents a corrective action plan to ensure that future recordkeeping violations will not arise. There is no evidence that the SEA intentionally failed to keep the required records. The Secretary recognizes the offset costs under the principles stated in § 81.32 (c) and (d) and reduces the required recovery by the amount of the offset costs.

Equitable Offset Not Allowed—Violation of Program Requirement

(15) Under the Title I program, a LEA provides remedial reading services to children residing in ineligible attendance areas. The LEA proposes to offset the disallowed costs with funds expended for eligible Title I children under a State compensatory education program similar to Title I but not excluded from the operation of the non-supplanting requirement in Title I under section 1120A(b) of the Title I statute. Even though the costs of the State program would otherwise have been allowable under Title I, an offset is not allowed because the use of the State funds would violate the non-supplanting requirement.

Equitable Offset Not Allowed

(16) Under a Federal vocational education program with a maintenance of effort requirement, the SEA fails to maintain required time distribution records for employees working on more than one progfam. The State proposes to use as offset costs the salaries of other employees, charged to State funds, who worked exclusively on the Federal program. If all those costs are not included as State expenditures, however, the SEA would not have sufficient State expenditures to satisfy the maintenance of effort requirement under the Federal program. An offset is not allowed, because the charging of the offset costs to the Federal grant would have resulted in another violation of an applicable program requirement (maintenance of effort).

Equitable Offset Partially Allowed

(17) In this example the State needs some but not all of its proposed offset costs to satisfy the matching requirement applicable to the program. The State may use the remaining offset costs (i.e., those not needed to meet the matching requirement) to reduce its liability. For example, under a program with a 1:1 matching requirement ($1 of State funds must be spent for every $1 of Federal funds), the State has spent $100,000 of Federal funds and $100,000 of State funds. However, the auditors have determined that $20,000 of the Federal funds were not supported by required time distribution records. The State could not fully extinguish its liability through an offset, because the State would not meet the matching requirement. (If $20,000 of State funds were used as an offset, the State would have left only $80,000 of allowable matching costs which would not support Federal expenditures of $100,000 under the 1:1 match requirement.)

Nevertheless, the State liability could be partially reduced by an offset. The amount of the partial offset is computed by combining the *allowable* Federal and State expenditures ($80,000 Federal plus $100,000 State = $180,000), and computing the allowable Federal expenditure that would be supported by the required State match. The allowable Federal expenditure would be $90,000 ($180,000×50%) which would be supported under the 1:1 match by $90,000 of State expenditures. Rather than repaying the full amount of the Federal disallowance ($20,000), the State would be required to repay $10,000 (the difference between the amount actually charged to the Federal grant ($100,000) and the allowable Federal expenditure considering the allowable State matching costs ($90,000)). The State therefore is credited with a partial offset of $10,000.

Equitable Offset Not Allowed—Intentional or Willful Violation

(18) Under the Title I program, the State seeks written advice from the Secretary regarding the allowability of certain expenditures. The Secretary informs the State that the expenditures are unallowable under the Title I statute. Nevertheless, the State proceeds to spend its Title I funds in this manner. An offset is not allowed, even though other expenditures could have been properly charged to the Title I program, because the Secretary determines that the State's violation is intentional and willful.

PART 75—DIRECT GRANT PROGRAMS

5. The authority citation for Part 75 continues to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474, unless otherwise noted.

6. Part 75 is amended by adding the following cross-reference to the existing cross-reference in Subpart G immediately following the heading:

"See 34 CFR 81.32, Proportionality; equitable offset."

PART 76—STATE-ADMINISTERED PROGRAMS

7. The authority citation for Part 76 continues to read as follows:

Authority: 20 U.S.C. 1221e–3, 3474, and 6511(a), unless otherwise noted.

8. Part 76 is amended by adding the following cross-reference immediately following the heading for Subpart H:

"Cross-Reference. See 34 CFR 81.32, Proportionality; equitable offset."

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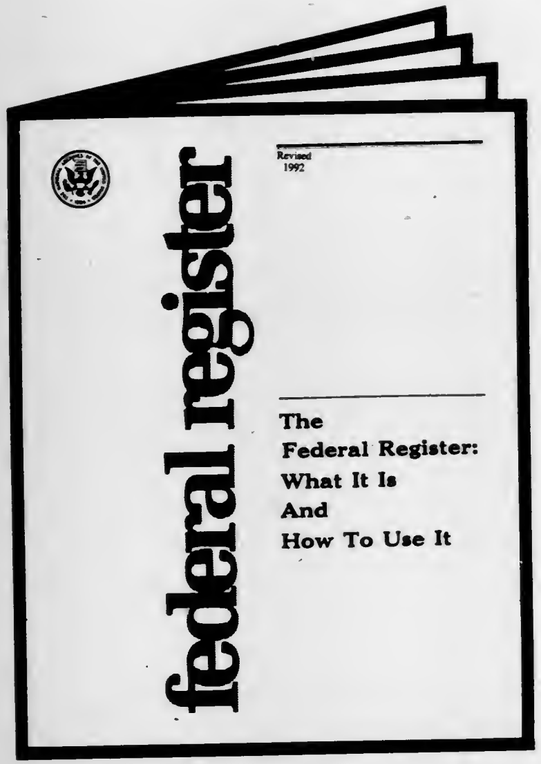
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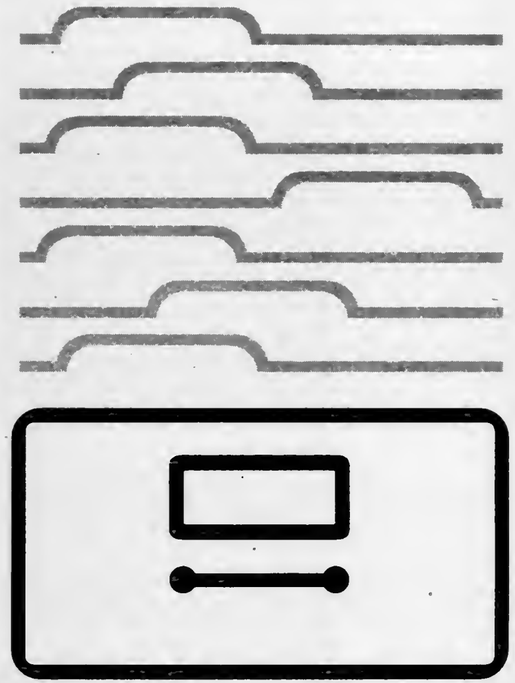
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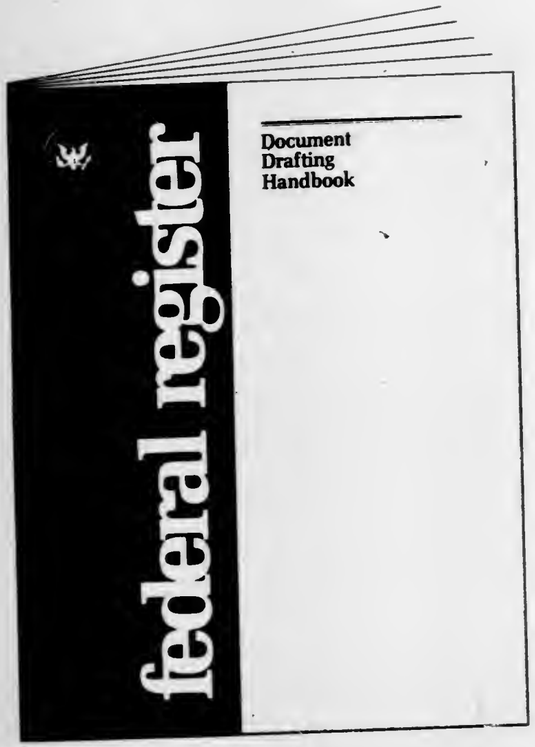
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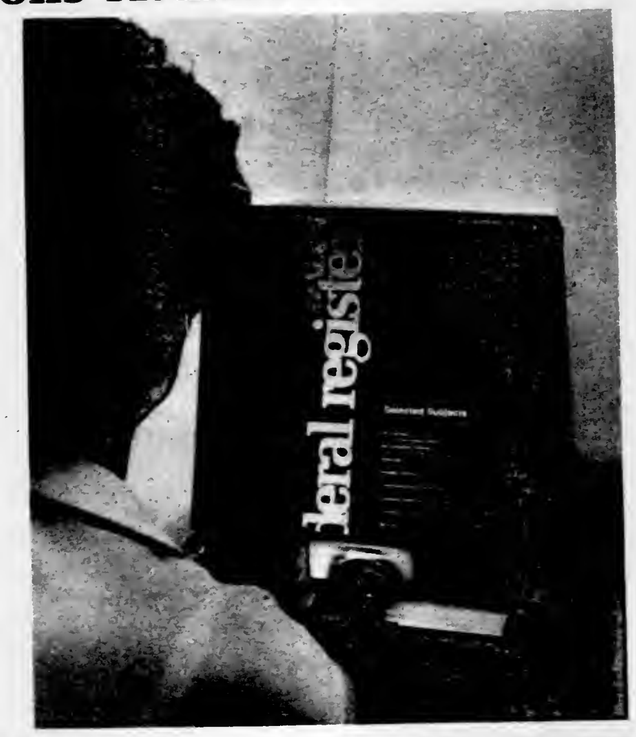
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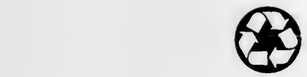
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Rules and Regulations

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Wednesday, June 21, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV95-906-2-IFR]

Expenses and Assessment Rate for the Marketing Order Covering Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate for the Texas Valley Citrus Committee (TVCC) under M.O. No. 906 for the 1995–96 fiscal year. Authorization of this budget enables the TVCC to incur expenses that are reasonable and necessary to administer this program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective beginning August 1, 1995, through July 31, 1996. Comments received by July 21, 1995 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456. Fax # (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Charles L. Rush, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone: (202) 690–3670; or Belinda G. Garza, McAllen, Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, Texas 78501, telephone: (210) 682–2833.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 906 (7 CFR part 906) regulating the handling of oranges and grapefruit grown in the lower Rio Grande Valley in Texas. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, Texas oranges and grapefruit are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable oranges and grapefruit handled during the 1995–96 fiscal year, which begins August 1, 1995, and ends July 31, 1996. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 135 handlers of oranges and grapefruit regulated under the marketing order each season and approximately 2,500 orange and grapefruit producers in Texas. Small agricultural producers have been defined by the Small Business Administration (13 CFR § 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of these handlers and producers may be classified as small entities.

The Texas orange and grapefruit marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable oranges and grapefruit handled from the beginning of such year. Annual budgets of expenses are prepared by the TVCC, the agency responsible for local administration of this marketing order, and submitted to the Department for approval. The members of the TVCC are handlers and producers of Texas oranges and grapefruit. They are familiar with the TVCC's needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The TVCC's budget is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the TVCC is derived by dividing the anticipated expenses by expected shipments of oranges and grapefruit. Because that rate is applied to actual shipments, it must be established at a rate which will provide sufficient

income to pay the TVCC's expected expenses.

The TVCC met on May 16, 1995, and unanimously recommended expenses of $1,035,000 and an assessment rate of $0.10 per 7/10 bushel carton. In comparison, budgeted expenses for the 1994–95 fiscal year were $1,161,244, which is $126,244 more than the $1,035,000 recommended for the 1995–96 fiscal year. The assessment rate of $0.10 is $0.06 less than last season's assessment rate of $0.16.

Major expense categories for the 1995–96 fiscal year include $500,000 for advertising, $180,000 for road guard station operation, and $174,000 for the Mexican Fruit Fly support program.

Assessment income for the 1995–96 fiscal year is estimated at $832,500 based upon anticipated fresh domestic shipments of 8,325,000 cartons of oranges and grapefruit. This, in addition to a withdrawal of $193,500 from the TVCC's reserve fund, and $9,000 estimated interest income should be adequate to cover budgeted expenses. In comparison, the assessment income for the 1994–95 fiscal year was estimated at $960,000 based upon anticipated fresh domestic shipments of 6 million cartons of oranges and grapefruit.

Funds in the reserve at the end of the 1995–96 fiscal year are estimated at $143,890. These reserve funds will be within the maximum permitted by the order of one fiscal year's expenses.

While this action will impose additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the TVCC and other available information, it is hereby found that this rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The TVCC needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1995–96 fiscal year for the TVCC begins August 1, 1995, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable oranges and grapefruit handled during the fiscal year; (3) handlers are aware of this action which is similar to budgets issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements and orders, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 906 is amended as follows:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN THE LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR part 906 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Note: This section will not appear in the annual Code of Federal Regulations.

2. A new § 906.235 is added to read as follows:

§ 906.235 Expenses and assessment rate.

Expenses of $1,035,000 by the Texas Valley Citrus Committee are authorized and an assessment rate of $0.10 per 7/10 bushel carton on assessable oranges and grapefruit is established for the 1995–96 fiscal year ending on July 31, 1996. Unexpended funds may be carried over as a reserve.

Dated: June 15, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–15110 Filed 6–20–95; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 920

[Docket No. FV95–920–1FR]

Kiwifruit Grown in California; Relaxation of Pack Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule relaxes the pack requirements for kiwifruit packed in Size 45 containers under the Federal marketing order (order) for kiwifruit grown in California. This relaxation increases the size variation tolerance for all Size 45 containers of kiwifruit from 5 percent, by count, to 10 percent, by count. This rule reduces grower and handler costs and enables more fruit to be packed and sold. Several editorial changes have been made to clarify the current kiwifruit handling requirements.

EFFECTIVE DATE: August 1, 1995.

FOR FURTHER INFORMATION CONTACT: Rose Aguayo, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone (209) 487–5901; or Charles Rush, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2526–S, Washington, DC 20090–6456, telephone (202) 690–3670.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 920 (7 CFR part 920), as amended, regulating the handling of kiwifruit grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principle place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 65 handlers of California kiwifruit subject to regulation under the order and approximately 600 kiwifruit producers in the production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $5,000,000, and small agricultural producers have been defined as those having annual receipts of less than $500,000. A majority of handlers and producers of California kiwifruit may be classified as small entities.

Section 920.52(a)(3) of the order authorizes regulations to establish the pack of the container or containers which may be used in the packaging or handling of kiwifruit. Under the terms of the marketing order, fresh market shipments of California kiwifruit are required to be inspected and are subject to grade, size, maturity, pack and container requirements. Among the pack requirements, is a size variation tolerance requirement which specifies that not more than 5 percent, by count, of kiwifruit in any container may fail to meet the pack requirements of § 920.302 (a)(4). The size variation tolerance does not apply to other pack requirements such as how the fruit fills the cell compartments, cardboard fillers, or molded trays, or any weight requirements.

The Kiwifruit Administrative Committee (committee), the agency responsible for local administration of the marketing order, met on February 8, 1995, and recommended by unanimous vote to relax the current size variation tolerance from 5 percent to 10 percent for bag, volume fill, bulk, cell compartments, cardboard fillers, or molded tray containers of Size 45 kiwifruit for pack under the Federal marketing order for kiwifruit grown in California.

Section 920.52 of the order authorizes the establishment of pack requirements. Section 920.302(a)(4) of the rules and regulations outlines the pack requirements for fresh shipments of California kiwifruit. Section 920.302(a)(4)(i) outlines pack requirements for proper size, and size variation, and contains a table that provides minimum net weights for count designation of kiwifruit packed in containers with cell compartments, cardboard fillers, or molded trays. Section 920.302(a)(4)(ii) outlines pack requirements for fruit size variation in bags, volume fill and bulk containers and includes a table that specifies numerical size designations that are used to determine kiwifruit sizes. These size designations are defined by numerical counts, which establish the maximum number of fruit per 8-pound sample for each of the established sizes.

Packout by fruit size, of Size 45 containers, increased from 1.80 percent for the 1993–94 season to 14.34 percent for the 1994–95 season. This increase in packout, of Size 45 fruit, is a result of blending Size 49 fruit into Size 45 fruit containers and as a result of weather conditions in the central and southern parts of California which produced a larger percentage of smaller and flatter kiwifruit. Generally Size 45 fruit is a rounder fruit. Blending occurs because adjoining size designations have size tolerances that partially overlap and kiwifruit within either size tolerance may be packed in either size designation. In larger sized fruit, handlers see more of a variety of shapes and pack boxes of round fruit and boxes of flat fruit for each size in order to stay within the size variation requirements. For economic and practical reasons, most handlers pack boxes that include both the round Size 45 fruit, as well as smaller flat fruit.

During the past season, a number of handlers experienced increased difficulty in meeting the size variation tolerance in the Size 45 containers. Currently, a variation of ¼-inch (6.4 mm) difference is allowed between the widest and narrowest pieces of fruit in a Size 45 pack for all containers. There is a tolerance of 5 percent for fruit that exceeds the ¼-inch variation, meaning that up to 5 percent of the fruit in any one container could exceed the ¼-inch variation. As the size of the fruit increases, so does the size of the variation allowed. In the larger fruit sizes, failure to meet the required size variation standards results in packs that are visibly irregular in size. In Size 45, however, when the 5 percent tolerance is exceeded, the variation is difficult to detect visually. During the packing operation, a mechanical sizer routinely sorts the fruit by shape and size. The fruit which is missed by the mechanical sizer must be correctly sorted by the handler. Since it is not economically feasible for each handler to be equipped with a caliper to measure size variation, they rely on their visual judgment. During inspection, calipers are utilized by the inspectors to determine if the size variation is met for Size 45 containers. The 5 percent tolerance requirement is seldom met, but the fruit is found to vary slightly above the allowed tolerance of 5 percent (within 6–8 percent tolerance). Handlers have found that it is cost-prohibitive to slow down their operations in an attempt to stay within the current tolerance levels and to recondition the fruit that fails inspection.

The committee's intention in increasing the size variation tolerance is to set an acceptable size variation tolerance that can be visually discerned while the packing operation is in progress and results in a Size 45 container that is uniform in size.

The industry supports the increase in the size variation tolerance to 10 percent, by count, for the fruit in any Size 45 container. An alternative studied by the committee field staff and considered by the committee was to increase the degree, or size of the variation allowed, from ¼-inch to ⅜-inch. Throughout the season, fruit was measured and sample boxes were made up depicting this increased variation. It was the consensus of the field staff, inspection service and industry handlers that such an increase would allow for the blending up of undersize fruit. The end result would be a box that visibly showed a variation of fruit size, including undersize fruit. This was deemed not acceptable as the industry desires to pack a uniform box of fruit.

Another alternative examined and effectuated by this rule increases the 5 percent size variation tolerance level to 10 percent. Throughout the season, field staff observed and polled handlers and inspectors on problems encountered with Size 45. The overwhelming majority of the cases where Size 45 fruit was rejected for size variation, the tolerance level was in the 6 percent to 8 percent range. It was not possible to distinguish a box at 10 percent variation from one at 5 percent, without the use of a caliper. The general consensus was that once a 10 percent tolerance was exceeded, the variation became more visibly apparent and the handlers would recognize the need for repacking before calling for inspection.

This rule relaxes the tolerance for Size 45 packs by increasing the number of Size 45 kiwifruit allowed in the container that are not within the ¼-inch variance. For example, the pieces of fruit, which vary more than 1/4-inch in a 22-pound volume fill container, could increase from 2 pieces to 5 pieces. This

tolerance increase will not permit blending of additional sizes beyond those currently blended, but will grant more flexibility for varying shapes of the fruit. This relaxation is beneficial to both growers and handlers. The 10 percent size variation tolerance decreases the amount of handler repacking and reduces inspection time and cost, thereby making it more cost effective for handlers. This increase will not result in any visual difference in uniformity.

Section 920.302(a)(4) is amended by revising paragraphs (i) through (iv) and adding new paragraphs (v) and (vi). Included in these changes are editorial changes made for clarity. Diameter variances are specified for kiwifruit packed in cell compartments, cardboard fillers or molded trays. These provisions appear in § 51.2338(d) of the United States Standards for Grades of Kiwifruit (7 CFR 51.2338(d)). Also, these changes delete the phrase: "Provided, That for the season ending July 31, 1995, such containers may also hold 23-pounds net weight of kiwifruit" in § 920.320(a)(4)(iv) (59 FR 53565). This phrase is no longer needed as it applied to the 1994–95 season.

The proposed rule concerning this action was published in the April 24, 1995, **Federal Register** (60 FR 20062). That proposed rule provided a 30-day comment period which ended May 24, 1995. No comments were received.

This final rule impacts all handlers in the same manner. The increased size variation tolerance eases some of the burden associated with packing and sizing kiwifruit and enables handlers to pack and sell more kiwifruit. This change reduces costs for handlers and growers.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this relaxation of pack requirements, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble 7 CFR part 920 is amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 920 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In section 920.302, paragraphs (a)(4) (i) through (iv) are revised and new paragraphs (a)(4) (v) and (vi) are added to read as follows:

§ 920.302 Grade, size, pack, and container regulations.

(a) * * *

(4) * * *

(i) Kiwifruit packed in containers with cell compartments, cardboard fillers, or molded trays shall be of proper size for the cells, fillers, or molds in which they are packed. Such fruit shall be fairly uniform in size.

(ii) Kiwifruit packed in cell compartments, cardboard fillers or molded trays may not vary in diameter more than:

Sizes	Diameter
30 or larger	½-inch (12.7 mm).
31–38	⅜-inch (9.5 mm).
39 or smaller	¼-inch (6.4 mm).

Kiwifruit packed in bags, volume fill or bulk containers, fruit may not vary more than:

Sizes	Diameter
30 or larger	½-inch (12.7 mm).
33, 36, 39, and 42	⅜-inch (9.5 mm).
45 or smaller	¼-inch (6.4 mm).

Not more than 10 percent, by count of the containers in any lot and not more than 5 percent, by count, of kiwifruit in any container, (except that for Size 45 kiwifruit, the tolerance, by count, in any one container, may not be more than 10 percent) may fail to meet the requirements of this paragraph.

(iii) The fruit packed in containers with cell compartments, cardboard fillers, or molded trays shall meet the following minimum weight requirements at the time of initial inspection:

Count designation of fruit	Minimum net weight of fruit (pounds)
34 or larger	7.5
35 to 37	7.25
38 to 40	6.875
41 to 43	6.75
44 and smaller	6.50

The average weight of all sample units in a lot must meet the specified minimum net weight, but no sample unit may be more than 4 ounces less than such weight.

(iv) When kiwifruit is packed in bags, volume fill or bulk containers, the following table specifying the numerical size designation and maximum number of fruit per 8-pound sample is to be used.

Column 1 numerical count size designation	Column 2 maximum number of fruit per 8-pound sample
21	22
25	27
27/28	30
30	32
33	35
36	40
39	45
42	50
45	55

The average weight of all sample units in a lot must weigh at least 8 pounds, but no sample unit may be more than 4 ounces less than 8 pounds.

(v) For shipments in volume fill containers in which the quantity is specified by count, the count must equal three times the size designation in accordance with tolerances specified in the U.S. Standards for Grades of Kiwifruit (7 CFR 51.2328(c)(2)).

(vi) All volume fill containers of kiwifruit designated by weight shall hold 22-pounds (10-kilograms) net weight of kiwifruit unless such containers hold less than 10-pounds or more than 35-pounds net weight of kiwifruit.

Dated: June 15, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–15111 Filed 6–20–95; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 948

[Docket No. FV95–948–2IFR]

Irish Potatoes Grown In Colorado; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 948 for the 1995–96 fiscal period. Authorization of this budget enables the Colorado Potato Administrative Committee, San Luis Valley Office (Area II) (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective September 1, 1995, through August 31, 1996. Comments received by July 21, 1995, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone number 202–720–9918, or Dennis L. West, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, Oregon 97204, telephone number 503–326–2724.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Marketing Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order now in effect, Colorado potatoes are subject to assessments. Funds to administer the Colorado potato marketing order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable potatoes during the 1995–96 fiscal period which begins September 1, 1995, and ends August 31, 1996. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 285 producers of Colorado Area II potatoes under the marketing order and approximately 118 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Colorado Area II potato producers and handlers may be classified as small entities.

The budget of expenses for the 1995–96 fiscal period was prepared by the Colorado Potato Administrative Committee, San Luis Valley Office (Area II), the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of Colorado Area II potatoes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Colorado Area II potatoes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

In Colorado, both a State and a Federal marketing order operate simultaneously. The State order authorizes promotion, including paid advertising, which the Federal order does not. All expenses in this category are financed under the State order. The jointly operated programs consume about equal administrative time and the two orders continue to split administrative costs equally.

The Committee met May 18, 1995, and unanimously recommended a 1995–96 budget of $62,328, which is $3,596 less than the previous year. Budget items for 1995–96 which have increased compared to those budgeted for 1994–95 (in parentheses) are: Audit fee, $975, ($900), other office, $625 ($500), and utilities, $3,000 ($2,000). Items which have decreased compared to those budgeted for 1994–95 (in parentheses) are: Assistant's salary, $8,256 ($10,320), part-time salary, $3,640 ($3,822), major purchase, $2,125 ($2,250), and ($2,425) for property tax, for which no funding was recommended this year.

The Committee also unanimously recommended an assessment rate of $0.0030 per hundredweight, $0.0006 less than last season. This rate, when applied to anticipated potato shipments of 16,500,000 hundredweight, will yield $49,500 in assessment income. This, along with $12,828 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds of $101,064 in the Committee's authorized reserve at the beginning of the 1994–95 fiscal period were within the maximum permitted by the order of two fiscal periods' expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the

information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal period begins on September 1, 1995, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable potatoes handled during the fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other budget actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 948 is amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR part 948 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 948.214 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 948.214 Expenses and assessment rate.

Expenses of $62,328 by the Colorado Potato Administrative Committee, San Luis Valley Office (Area II) are authorized, and an assessment rate of $0.0030 per hundredweight of assessable potatoes is established for the fiscal period ending August 31, 1996. Unexpended funds may be carried over as a reserve.

Dated: June 15, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–15108 Filed 6–20–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 981

[Docket No. FV95–981–1IFR]

Almonds Grown in California; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 981 for the 1995–96 crop year. Authorization of this budget enables the Almond Board of California (Board) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective beginning July 1, 1995, through June 30, 1996. Comments received by July 21, 1995, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, FAX # (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Mary Kate Nelson, Marketing Assistant, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721, telephone (209) 487–5901, or FAX # (209) 487–5906; or Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2522–S, Washington, DC 20090–6456, telephone (202) 720–1509 or FAX # (202) 720–5698.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 981 (7 CFR part 981), both as amended, hereinafter referred to as the "order," regulating the handling of almonds grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, California almonds are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable almonds handled during the 1995–96 crop year, which begins July 1, 1995, and ends June 30, 1996. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A), any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 7,000 producers of California almonds under this marketing order, and approximately 115 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of California almond producers and handlers may be classified as small entities.

The budget of expenses for the 1995–96 crop year was prepared by the Board, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Board are producers and handlers of California almonds. They are familiar with the Board's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected receipts of California almonds. Because that rate will be applied to handlers' actual receipts, a rate must be established that will provide sufficient income to pay the Board's budgeted expenses.

The Board met on May 12, 1995, and unanimously recommended a 1995–96 budget of $4,952,591, as compared to the $5,235,262 ultimately budgeted for the previous year. For the 1994–95 year, the Board initially recommended, and the Department approved, expenditures totalling $9,435,262. Of that total amount, $6.575 million was budgeted for promotional activities and $300,000 was intended to be added to the Board's monetary reserve. The assessment rate for the 1994–95 crop year was initially set at 2.25 cents per kernel pound of almonds. However, because of uncertainty created by legal decisions regarding the Board's former advertising and promotion program, the Board ultimately postponed certain advertising activities and recommended reducing its assessment rate on handlers to .25 cents per pound. As approved by the Department, budgeted expenditures for promotional activities were reduced to $2.675 million and the Board curtailed its plans to add $300,000 to its reserve.

For the 1995–96 year, the Board has budgeted $2.358 million for a line item entitled information and research, with the bulk of these funds targeted for public relations, food service and industrial promotional programs, and research. In addition, the Board has budgeted $150,000 for China and Indonesia Consumer Education, thus maintaining a presence in foreign markets. Unlike the 1994–95 crop year, the Board will not be receiving any funds through the marketing promotion program conducted by the Department's Foreign Agricultural Service for the 1995–96 crop year.

Items which have decreased compared to those budgeted for 1994–95 (in parentheses) are: Salaries, $598,251 ($795,318), employee benefits, $37,391 (50,000), retirement benefits, $44,869 ($64,000), payroll taxes, $45,766 ($55,400), travel, $75,000 ($100,000), meetings, $13,000 ($35,000), office rent, $70,000 ($90,000), storage rent, $4,000 ($5,000), equipment rent, $3,000 ($5,000), security, $1,000 ($2,500), utilities, $12,000 ($13,500), alliances with other organizations to provide information on almonds to consumers, $11,000 ($20,000), econometric model and statistical analysis, $10,000 ($40,000), program accountability analyses to assess the effectiveness of the advertising and market development programs, $100,000 ($150,000), furniture and fixtures, $0 ($10,000), and computers and software, $20,000 ($25,000).

Budget items for 1995–96 which have increased compared to those budgeted for 1994–95 (in parentheses) are: Research conference, $30,000 ($25,000), contract labor and consultants, $55,000 ($30,000), compliance audits and analysis, $95,000 ($75,000), data processing, $10,000 ($6,000), postage and delivery, $40,000 ($32,000), office supplies, $17,500 ($15,000), printing, $17,500 ($12,000), repairs and maintenance, $15,500 ($12,500), publications, $15,500 ($3,500), dues, subscriptions, and registration fees, $12,000 ($7,500), newsletters and releases, $45,000 ($25,000), production research, $512,650 ($489,134), crop estimate, $90,736 ($85,600), acreage survey, $37,429 ($35,310), nutrition and issues research, $175,000 ($50,000), vehicles, $20,000 ($15,000), office equipment, $20,000 ($15,000), and the addition of $25,000 for aflatoxin monitoring.

The Board also unanimously recommended an assessment rate of .75 cents per kernel pound, .50 cents higher than last year. Revenues for the 1995–96 crop year are expected to be $3,096,000 from administrative assessments (based on an estimate of 412.8 million pounds of marketable almonds), $100,000 from interest, and $16,000 from the almond industry conference, for a total of $3,212,000. The Board plans on using money from its reserve to meet the estimated expenses of $4,952,591 for the year. In addition, any unexpended funds from 1995–96 may be carried over to cover expenses during the first four months of the 1996–97 crop year.

This action will impose an obligation on handlers to pay assessments. The assessments are uniform for all handlers. The assessment cost will be offset by the benefits derived by the operation of the marketing order.

Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the crop year begins on July 1, 1995, and the marketing order requires that the rate of assessment for the crop year apply to all assessable California almonds handled during the crop year; (3) handlers are aware of this action which was unanimously recommended by the Board at a public meeting and is similar to other budget actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Note: This section will not appear in the Code of Federal Regulations.

2. A new § 981.342 is added to read as follows:

§ 981.342 Expenses and assessment rate.

Expenses of $4,952,591 by the Almond Board of California are authorized for the crop year ending June 30, 1996. An assessment rate for the crop year payable by each handler in

accordance with § 981.81 is fixed at .75 cents per kernel pound of almonds.

Dated: June 15, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–15107 Filed 6–20–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 93C–0380]

Listing of Color Additives for Coloring Contact Lenses; 1,4-Bis[4-(2-Methacryloxyethyl)Phenylamino] Anthraquinone Copolymers; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of March 30, 1995, of the final rule published in the **Federal Register** of February 27, 1995 (60 FR 10495), that amended the color additive regulations to provide for the safe use of the colored reaction product formed by copolymerizing 1,4-bis[4-(2-methacryloxyethyl)phenylamino] anthraquinone with 3-[tris(trimethylsiloxy)silyl]propyl vinyl carbamate (CAS Reg. No. 134072–99–4) and *N*-vinyl pyrrolidone to form contact lenses.

DATES: Effective date confirmed: March 30, 1995.

FOR FURTHER INFORMATION CONTACT: Helen R. Thorsheim, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3092.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 27, 1995 (60 FR 10495), FDA amended 21 CFR 73.3106 of the color additive regulations to provide for the safe use of 1,4-bis[4-(2-methacryloxyethyl)phenylamino] anthraquinone copolymerized with *N*-vinyl pyrrolidone and 3-[tris(trimethylsiloxy)silyl]propyl vinyl carbamate to form contact lenses.

FDA gave interested persons until March 29, 1995, to file objections or requests for a hearing. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA finds that the final rule published in the **Federal Register** of February 27, 1995, should be confirmed.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 721 (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the February 27, 1995, final rule. Accordingly, the amendments promulgated thereby became effective March 30, 1995.

Dated: June 13, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–15083 Filed 6–20–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–95–032]

Special Local Regulations for Marine Events; Blackbeard Pirate Jamboree; Town Point, Elizabeth River, Norfolk and Portsmouth, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.501.

SUMMARY: This notice implements 33 CFR 100.501 for the Blackbeard Pirate Jamboree to be held on the Elizabeth River at Town Point Park, Norfolk and Portsmouth, Virginia. The regulations in 33 CFR 100.501 are needed to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and the expected congestion at the time of the event. The regulations restrict general navigation in the area for the safety of life and property on the navigable waters during the event.

EFFECTIVE DATES: The regulations in 33 CFR 100.501 are effective from 11 a.m. to 2:30 p.m., July 29, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen L. Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204, or Commander, Coast Guard Group Hampton Roads (804) 483–8567.

Drafting Information

The drafters of this notice are QM2 Gregory C. Garrison, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and LCDR C.A. Abel, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation

Norfolk Festevents, Ltd. submitted an application to hold the Blackbeard Pirate Jamboree on the Elizabeth River at Town Point Park, Norfolk and Portsmouth, Virginia. The event will consist of a parade of sail followed by an orchestrated water drama with cannon fire between two vessels. Since many spectator vessels are expected to be in the area to watch the jamboree, the regulations in 33 CFR 100.501 are being implemented for the safety of life and property. The waterway will not be closed for an extended period, therefore commercial traffic should not be severely disrupted. In addition to regulating the area for the safety of life and property, this notice of implementation also authorizes the Patrol Commander to regulate the operation of the Berkley drawbridge in accordance with 33 CFR 117.1007, and authorizes spectators to anchor in the special anchorage areas described in 33 CFR 110.72aa. 33 CFR 110.72aa establishes the spectator anchorages in 33 CFR 100.501 as special anchorage areas under Inland Navigation Rule 30, 33 U.S.C. 2030(g). 33 CFR 117.1007(b) closes the draw of the Berkley Bridge to vessels during and for one hour before and after the effective period under 33 CFR 100.501, except that the Coast Guard Patrol Commander may order that the draw be opened for commercial vessels.

Dated: June 6, 1995.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 95–15228 Filed 6–20–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 100

[CGD 09–95–012]

RIN 2115–AE46

Special Local Regulation; Thomas Graves Memorial Fireworks Display, Lake Ontario, Port Bay, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: A special local regulation is being adopted for the Thomas Graves Memorial Fireworks Display. This event will be held on Lake Ontario, Port Bay, NY on July 3, 1995, with a rain date of July 8, 1995. This regulation will restrict general navigation on Lake Ontario, Port Bay, NY. Due to the large number of spectator vessels and the falling ash and debris from the fireworks display, this regulation is needed to provide for the safety of life, limb, and property on navigable waters during the event.

EFFECTIVE DATE: This regulation is effective from 9 p.m. through 11 p.m. on July 3, 1995. In case of inclement weather, this regulation will be effective on the rain date of July 8, 1995, at the same times.

FOR FURTHER INFORMATION CONTACT: Marine Science Technician Second Class Jeffrey M. Yunker, Ninth Coast Guard District, Aids to Navigation and Waterways Management Branch, Room 2083, 1240 East Ninth Street, Cleveland, Ohio, 44199–2060, (216) 522–3990.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received by the Commander, Ninth Coast Guard District, until May 10, 1995, and there was not sufficient time remaining to publish a proposed final rule in advance of the event. The Coast Guard has decided to proceed with a temporary rule for this year's event and publish a NPRM, as part of the Great Lakes annual marine events list, prior to next year's event.

Drafting Information

The drafters of this notice are Lieutenant Junior Grade Byron D. Willeford, Project Officer, Ninth Coast Guard District, Aids to Navigation and Waterways Management Branch, and Lieutenant Charles D. Dahill, Project Attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulation

The Thomas Graves Memorial Fireworks Display will be conducted on Lake Ontario, Port Bay, NY on July 3, 1995. This regulation will restrict general navigation on Lake Ontario, Port Bay Harbor, NY in the vicinity of Loon Pt within a 500 foot radius of the fireworks barge. This event will have an unusually large concentration of spectator vessels and falling ash and debris, which could pose hazards to navigation in the area. This regulation is necessary to ensure the protection of life, limb, and property on navigable waters during this event. Any vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (Commanding Officer, U.S. Coast Guard Station Sodus Point, NY).

This regulation is issued pursuant to 33 U.S.C. 1233 as set out in the authority citation for all of part 100.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard is conducting an environmental analysis for this event pursuant to section 2.B.2.c of Coast Guard Commandant Instruction M16475.1B, and the Coast Guard Notice of final agency procedures and policy for categorical exclusions found at (59 FR 38654, July 29, 1994).

Economic Assessment and Certification

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of the DOT is unnecessary.

Collection of Information

This regulation will impose no collection of information requirements under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Temporary Regulation

In consideration of the foregoing, part 100 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35–T09–012 is added to read as follows:

§ 100.35–T09–012 Thomas Graves Memorial Fireworks Display, Lake Ontario, Port Bay, NY.

(a) *Regulated area.* That portion of the Lake Ontario, Port Bay Harbor, NY within a 500 ft radius of the anchored fireworks barge, which will be located northeast of Loon Pt, in approximate position 43°17′46″ N, 076°50′02″ W. Datum: NAD 1983.

(b) *Special local regulation.* This section restricts general navigation in the regulated area for the safety of spectators and participants. Any vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander.

(c) *Patrol Commander.* (1) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander (Officer in Charge, U.S. Coast Guard Station Sodus Point, NY). The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander."

(2) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Any vessel so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(3) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(4) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(5) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life, limb, or property.

(6) All persons in the area shall comply with the orders of the Coast Guard Patrol Commander.

(d) *Effective date:* This section is effective from 9 p.m. through 11 p.m. on July 3, 1995, unless extended or terminated sooner by the Coast Guard Group Commander, Buffalo, NY. In case of inclement weather, this regulation will be effective on the rain date of July 8, 1995, at the same time.

Dated: June 7, 1995.

Rudy K. Peschel,

Rear Admiral, Coast Guard Commander, Ninth Coast Guard District.

[FR Doc. 95–15226 Filed 6–20–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 117

[CGD05–94–116]

RIN 2115–AE47

Drawbridge Operation Regulations; Wicomico River, Salisbury, MD

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations governing the operation of the Main Street and the US 50 drawbridges across the North Prong of the Wicomico River, mile 22.4, in Salisbury, Maryland. This rule will extend the current rush hour restrictions by one hour in the morning and one hour in the afternoon, and require a three hour advance notice for commercial vessels needing a bridge opening during the hours of closure due to emergency situations. The existing 12 noon to 1 p.m. closure period will remain in effect. These changes to the drawbridge regulations are intended to reduce motor vehicle delays and congestion, while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: This rule is effective on July 21, 1995.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (804) 398–6222.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Linda L. Gilliam, Project Manager, Bridge Section, and LCDR Christopher A. Abel, Project Counsel, Fifth Coast Guard District Legal Office.

Regulatory History

On February 10, 1995, the Coast Guard published a notice of proposed rulemaking with request for comments entitled Wicomico River, Salisbury, Maryland, in the **Federal Register** (60 FR 7930). The comment period ended May 11, 1995. The Coast Guard received no comments on the proposed rule. The Commander, Fifth Coast Guard District, also published the proposed rule as a public notice on March 20, 1995, with the comment period ending May 11, 1995, and no comments were received as a result of this notice. A public hearing was not requested and one was not held.

Background and Purpose

The State Highway Administration, Maryland Department of Transportation (MDOT), has requested that openings of the Main Street and US 50 drawbridges across the North Prong of the Wicomico River, mile 22.4, at Salisbury, Maryland, be further restricted during the morning and evening rush hours. This will help to reduce highway traffic congestion problems and relieve public safety and welfare concerns associated with frequent bridge openings caused by commercial boat traffic. Currently, these drawbridges open on signal except from 8 a.m. to 9 a.m., 12 noon to 1 p.m., and 4:30 p.m. to 5:30 p.m., during which time both remain closed to navigation. This rule changes the hours of bridge closures to 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m. The existing 12 noon to 1 p.m. closure will remain the same. This rule also includes the provision that commercial vessels needing passage through the bridge during the hours of restriction will be required to give a three hour advance notice for a bridge opening. This advance notice requirement only applies to tugs and barges unable to reach the bridges except during the hours of closure due to severe inclement weather or other emergency or unforeseen circumstances.

MDOT conducted an analysis of highway traffic and marine traffic data, along with a waterway user and property owner survey that was conducted in 1993. It revealed that the excessive drawbridge openings during the morning and evening hours were caused by commercial vessels from two waterfront companies located upstream of the drawbridges. Based on this information and the allowance of the three hour advance notice provision, the Coast Guard believes these regulations should not unduly restrict commercial vessel passage through the bridge since they can plan their vessel transits around the hours of restriction as well as take advantage of the three hour advance notice for bridge openings during the hours of restriction during inclement weather.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the U.S. Coast Guard must consider whether this final rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism Assessment

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612, and it has been determined that this rule will not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2.e. (32)(e) of Commandant Instruction M16475.1B (as amended, 59 FR 38654, 29 July 1994), this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement and checklist have been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Final Regulations

In consideration of the foregoing, the Coast Guard is amending part 117 of title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); § 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.579 is revised to read as follows:

§ 117.579 Wicomico River (North Prong).

The draws of the Main Street and US 50 bridges, mile 22.4, Salisbury, Maryland shall open on signal, except from 7 a.m. to 9 a.m., from 12 noon to 1 p.m., and from 4 p.m. to 6 p.m., the draw need not be opened for the passage of vessels, except for tugs with tows, if at least three hours of advance notice is given, and the reason for passage through the bridges during a closure period is due to delay caused by inclement weather or other emergency or unforeseen circumstances.

Dated: May 22, 1995.

W.J. Ecker,

Rear Admiral, Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 95–15230 Filed 6–20–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 117

[CGD13–93–031]

RIN 2115–AE47

Drawbridge Operation Regulation; Columbia River, OR and WA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Oregon State Department of Transportation (ODOT), the Coast Guard is amending the regulations governing the operation of the twin Interstate 5 drawbridges across the Columbia River, mile 106.5, between Portland, Oregon, and Vancouver, Washington. This rule extends the length of the morning and afternoon time periods during which the draws need not open for the passage of vessels and provides for reasonably unobstructed passage of commercial vessels during periods of high water. This rule will relieve vehicular traffic congestion caused by bridge openings immediately before and after the existing morning and evening closed periods while continuing to provide for the reasonable needs of navigation.

EFFECTIVE DATE: This rule is effective on July 21, 1995.

ADDRESSES: Unless otherwise noted, documents referred to in this preamble are available for inspection and copying at Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington, Normal office hours are between 7:45 a.m. and 4:15 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Plans and Programs Section, Aids to Navigation and Waterways Management Branch, (Telephone: (206) 220–7272).

SUPPLEMENTARY INFORMATION:

Drafting Information

The principle persons involved in drafting this document are John E. Mikesell, Project Manager, and Lieutenant Commander John C. Odell, Project Counsel.

Regulatory History

On November 26, 1993, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulation; Columbia River, OR and WA, in the **Federal Register** (58 FR 62302). Comments received from affected commercial navigation interests resulted in the proposed rule being redrafted to address their concerns.

On October 4, 1994, the Coast Guard published a supplemental notice of proposed rulemaking entitled Drawbridge Operation Regulation; Columbia River, OR and WA, in the **Federal Register** (59 FR 50531). The Coast Guard received no comments on the supplemental notice of proposed rulemaking. However, subsequent to its publication, the Coast Guard recognized the need for clarification concerning the rule's applicability to commercial and recreational vessels. This resulted in the rule being redrafted to provide necessary clarification.

On March 14, 1995, the Coast Guard published a second supplemental notice of proposed rulemaking entitled Drawbridge Operation Regulation; Columbia River, OR and WA, in the **Federal Register** (60 FR 13653). The Coast Guard received no objections to this second supplemental notice of proposed rulemaking. No public hearing was requested and none was held.

Background and Purpose

This rule amends the drawbridge operation regulations for the twin Interstate 5 drawbridges across the Columbia River, mile 106.5, between Portland, Oregon, and Vancouver, Washington. The rule extends the morning and afternoon time periods during which the draws of bridges need not open for the passage of vessels while deliniating clear exceptions based on river flow conditions and the type of vessel traffic involved.

Under the existing regulations, the twin Interstate 5 vertical lift bridges across the Columbia River between Porland, Oregon and Vancouver, Washington, are currently required to open on signal, except that from 6:30 a.m. to 8 a.m. and from 3 p.m. to 6 p.m., Monday through Friday (except Federal holidays), the draws need not open. These closed periods are necessary to accommodate peak morning and afternoon vehicular commute traffic across the bridges. Both bridges also have alternate mid-level fixed spans which provide greater vertical clearance than do the drawspans in the closed position. The alternate fixed spans are routinely used by tug and barge traffic except at higher water surface elevations. Because the number of vehicles crossing the bridge has increased dramatically, particularly during commute times, any opening in close proximity, before or after, results in unacceptable vehicular traffic delays.

Under the amended regulations, when the river gauge at the bridge indicates 6.0 feet, or more, as determined by the drawtender on duty, the draws need not open for the passage of commercial vessels from 6:30 a.m. to 8 a.m. and from 3:30 p.m. to 6 p.m, Monday through Friday, except Federal holidays, and for all other vessels the draws need not open from 5:30 a.m. to 9 a.m. and from 2:30 p.m. to 6 p.m. Monday through Friday, except Federal holidays. When the river gauge at the bridge indicates 5.9 feet, or less, as determined by the drawtender on duty, the draws need not open for the passage of any vessels from 5:30 a.m. to 9 a.m. and from 2:30 p.m. to 6 p.m. Monday through Friday, except Federal holidays. This change will better accommodate the increased level of vehicular traffic and still provide for the reasonable needs of commercial navigation during periods of high water.

Discussion of Comments and Changes

The Coast Guard received two letters in response to the second supplemental notice of proposed rulemaking published on March 14, 1995 (60 FR 13653). One letter, from a federal resource agency who routinely responds to Coast Guard public notices, offered no comments in objection to the proposal. The other letter, from a regional planning organization, offered comments in support of the proposal.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

Most waterway traffic under the bridge can be accommodated by the alternate fixed span channel. Also, with respect to commercial vessels the rule

would revert to its previous less restrictive form when the vertical clearance under the alternate fixed span is less than 52 feet. For these reasons, the Coast Guard expects the economic impact of this action will be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

The Coast Guard finds that the impact on small entities, if any, is not substantial. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

This rule has been reviewed by the Coast Guard and has been determined to be categorically excluded from further environmental documentation under the authority of 40 CFR 1507.3 and in accordance with paragraph 2.B.2.g.(5) of the NEPA Implementing Procedures, COMDTINST M16475.1B. A copy of the Categorical Exclusion Certification is available for review in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Final Regulations

For the reasons set out in the preamble, the Coast Guard amends part 117 of title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); § 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. In § 117.869, paragraph (a) is revised to read as follows:

§ 117.869 Columbia River.

(a) The draws of the Interstate 5 highway bridge, mile 106.5 between Portland, OR, and Vancouver, WA, shall open on signal, except that:

(1) When the river gauge at the bridge indicates 6.0 feet, or more, as determined by the drawtender on duty, the draws need not open for the passage of commercial vessels from 6:30 a.m. to 8 a.m. and from 3:30 p.m. to 6 p.m. Monday through Friday, except Federal holidays, and for all other vessels the draws need not open from 5:30 a.m. to 9 a.m. and from 2:30 p.m. to 6 p.m. Monday through Friday, except Federal holidays.

(2) When the river gauge at the bridge indicates 5.9 feet, or less, as determined by the drawtender on duty, the draws need not open for the passage of any vessels from 5:30 a.m. to 9 a.m. and from 2:30 p.m. to 6 p.m. Monday through Friday, except Federal holidays.

* * * * *

Dated: June 2, 1995.

John A. Pierson,

Captain, Coast Guard, Commander, 13th Coast Guard District, Acting.

[FR Doc. 95–15229 Filed 6–20–95; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD02–95–014]

RIN 2115–AA97

Safety Zone; Lower Mississippi River, mile 532.0 to mile 529.0

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Lower Mississippi River between mile 532.0 and mile 529.0. The zone is needed to restrict vessel traffic in the regulated areas to provide a safe work area for emergency responders and salvage personnel. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective at 9 a.m. on May 25, 1995 and terminates at 8 p.m. on December 31, 1995.

FOR FURTHER INFORMATION CONTACT:

LT Byron Black, Chief of Port Operations, Captain of the Port Memphis, 200 Jefferson Avenue, Suite 1301, Memphis, TN 38103, Phone: (901) 544–3941.

SUPPLEMENTARY INFORMATION:

Background and Purpose

On May 25, 1995, the Coast Guard was notified of two sunken barges in the vicinity of Lower Mississippi River mile 531.5. After further investigation by Marine Safety Office personnel, it was recommended that a safety zone be issued in order to prevent additional damage that could be caused by a tow striking a submerged barge and to aid in the safe location and salvage of the barges. The barges are believed to be located in the channel and pose a substantial threat to navigation. The safety zone will be limited to Lower Mississippi River mile 532.0 to mile 529.0.

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary. Specifically, emergency response crews and salvage personnel require the area to be secured in order to aid in the location and salvage of the sunken barges. As a result, the Coast Guard deems it to be in the public's best interest to issue a regulation immediately.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water) Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new temporary § 164.T–02–014 is added to read as follows:

§ 165.T–02–014 Safety Zone; Lower Mississippi River.

(a) *Location.* The following area is a Safety Zone: Lower Mississippi River mile 532.0 to mile 529.0.

(b) *Effective dates.* This section becomes effective at 9 a.m. on May 25, 1995 and terminates at 8 p.m. on December 31, 1995.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited except as authorized by the Captain of the Port. The Captain of the Port, Memphis, Tennessee, will notify the maritime community of conditions affecting the area covered by this safety zone by Marine Safety Information Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHZ).

Dated: May 25, 1995.

A.L. Thompson, Jr.,

Commander, USCG, Captain of the Port.

[FR Doc. 95–15224 Filed 6–20–95; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD01–95–063]

RIN 2115–AA97

Safety Zone: Brick Summerfest Fireworks, Metedeconk River, Brick, NJ

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on July 4, 1995, from 8 p.m. until 10 p.m., for the Brick Summerfest fireworks display located in the Metedeconk River, Brick, New Jersey. This safety zone closes all waters of the Metedeconk River within a 300 yard radius from the center of the fireworks platform located on Windward Beach, Brick, New Jersey.

EFFECTIVE DATE: This rule is effective July 4, 1995, from 8 p.m. until 10 p.m., unless extended or terminated soon by the Coast Guard Captain of the Port, New York.

FOR FURTHER INFORMATION CONTACT:

Lieutenant (Junior Grade) K. Messenger, Maritime Planning Staff Chief, Coast Guard Group, New York, (212) 668–7934.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are LTJG K. Messenger, Project Manager, Coast Guard Group New York and LCDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing an NPRM, and for making it effective less than 30 days after **Federal Register** publication. Due to the date this application was received, there was insufficient time to draft and publish a notice of proposed rulemaking that allows for a reasonable comment period prior to the event. The delay encountered if normal rulemaking procedures were followed would effectively cancel this event. Cancellation of this event is contrary to the public interest.

Background and Purpose

The Brick Township Chamber of Commerce submitted an Application for Approval of Marine Event for a fireworks program on Windward Beach in the Metedeconk River. This regulation establishes a temporary safety zone in the waters of the Metedeconk River on July 4, 1995, from 8 p.m. until 10 p.m., unless extended or terminated sooner by the Coast Guard Captain of the Port, New York. This safety zone prevents vessels from transiting a portion of the Metedeconk River within a 300 yard radius of the fireworks platform located on a pier, on Windward Beach, Brick, New Jersey, in the approximate position 40°03'25" N latitude, 074°06'47"W longitude (NAD 1983). It is needed to protect mariners from the hazards associated with fireworks exploding in the area.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This safety zone closes a portion of the Metedeconk River to vessel traffic on July 4, 1995, from 8 p.m. until 10 p.m., unless extended or terminated sooner by the Captain of the Port, New York. Although this regulation prevents traffic from transiting this area, the effect of this regulation will not be significant for several reasons: The limited duration of the event; the late hour of the event; that mariners can transit to the south of this area; and the extensive, advance advisories that will be made. Accordingly, the Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under Section 3 of the Small Business Act (15 U.S.C. 632).

For reasons given in the Regulatory Evaluation, the Coast Guard expects the impact of this regulation to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not raise sufficient

federalism implications to warrant the preparation of a Federalism Agreement.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2.e. of Commandant Instruction M16475.1B, revised 59 FR 38654, July 29, 1994, the promulgation of this regulation is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist are included in the docket. An appropriate environmental analysis of the fireworks under the National Environmental Policy Act will be conducted in conjunction with the marine event permitting process.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Final Regulation

For reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A temporary § 165.T01–063 is added to read as follows:

§ 165.T01–063 Safety Zone; Brick Summerfest Fireworks, Metedeconk River, Brick, New Jersey.

(a) *Location.* All waters of the Metedeconk River within a 300 yard radius of the fireworks platform located on a pier, on Windward Beach, Brick, New Jersey, in the approximate position 40°03′25″N latitude, 074°06′47″W longitude (NAD 1983).

(b) *Effective period.* This section is in effect on July 4, 1995, from 8 p.m. until 10 p.m., unless extended or terminated sooner by the Captain of the Port, New York.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply to this safety zone.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: June 7, 1995.

T.H. Gilmour,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 95–15227 Filed 6–20–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD01–95–025]

RIN 2115–AA97

Safety Zone: Annual "Fireworks on the Navesink" Fireworks Display, Navesink River, Red Bank, NJ

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent safety zone for the annual Independence Day "Fireworks on the Navesink" fireworks display located on the Navesink River, Red Bank, New Jersey. The safety zone is effective annually on the third of July, from 8 p.m. until 11 p.m., with a rain date on the fourth of July, at the same times, unless extended or terminated sooner by the Captain of the Port, New York. The safety zone closes all waters between the north and south shores of the Navesink River, including Red Bank Beach, extending approximately 300 yards east and 300 yards west of the fireworks platform anchored off of Red Bank, New Jersey.

EFFECTIVE DATE: This rule is effective on July 3, 1995.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) K. Messenger, Maritime Planning Staff Chief, Coast Guard Group New York (212) 668–7934.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are LTJG K. Messenger, Project Manager, Coast Guard Group New York and LCDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

Regulatory History

On April 3, 1995, the Coast Guard published a notice of proposed rulemaking (NPRM) in the **Federal Register** (60 FR 16818) concerning this regulatory action. Interested persons were requested to submit comments on or before May 18, 1995. No comments were received. A public hearing was not requested and one was not held. The Coast Guard is promulgating this final rule as proposed.

Due to the NPRM comment period deemed necessary to give adequate public notice, there was insufficient time to publish this final rule 30 days prior to the event. Good cause exists for making this rule effective less than 30 days after publication. Adequate measures are being taken to ensure mariners are made aware of this regulation. This rule will be locally published in the First Coast Guard District's Local Notice to Mariners and announced via Safety Marine Information Broadcasts.

Background and Purpose

For the last several years, the Town of Red Bank, New Jersey, has submitted an Application for Approval of Marine Event for a fireworks program in the waters of the Navesink River. This regulation establishes an annual safety zone in the waters between the north and south shores of the Navesink River, including Red Bank Reach, extending approximately 300 yards east and 300 yards west of the fireworks platform anchored off the Red Bank, New Jersey, at or near 40°21′20″N latitude, 074°04′10″W longitude (NAD 1983). The safety zone is bounded by the following points: 40°21′15″N latitude, 074°03′57″W longitude; to 40°21′43″N latitude, 074°03′57″W longitude; and 40°21′20″N latitude, 074°04′25″W longitude; to 40°21′30″N latitude, 074°04′25″W longitude (NAD 1983). The safety zone is in effect annually on the third of July, from 8 p.m. until 11 p.m., with a rain date on the fourth of July, at the same times, unless extended or terminated sooner by the Captain of the Port, New York. This safety zone prevents vessels from transiting this portion of the Navesink River, from shore to shore, and is needed to protect mariners from the hazardous associated with fireworks exploding in the area.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This safety zone closes a portion of the Navesink River, from shore to shore, to vessel traffic annually on the third of July, from 8 p.m. until 11 p.m., with a rain date on the fourth of July, at the same times, unless extended or terminated sooner by the Captain of the Port, New York. Although this regulation prevents traffic from transiting this area, the effect of this regulation will not be significant for several reasons: the limited duration of the event; the late hour of the event; the amount of traffic in this area is minimal; the event has been held annually for the past several years without incident or complaint; and the extensive, advance advisories that will be made. Accordingly, the Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

For reasons given in the Regulatory Evaluation, the Coast Guard expects the impact of this regulation to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2.e. of Commandant Instruction M16475.1B, revised 59 FR 38654, July 29, 1994, the promulgation of this regulation is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist are included in the docket. An appropriate environmental analysis of the fireworks program under the National Environmental Policy Act will be conducted in conjunction with the marine event permitting process each year.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Final Regulation

For reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Section 165.161, is added to read as follows:

§ 165.161 Safety Zone; Annual "Fireworks on the Navesink" Fireworks Display, Navesink River, Red Bank, New Jersey.

(a) *Location.* All waters between the north and south shores of the Navesink River, including Red Bank Reach, extending approximately 300 yards east and 300 yards east and 300 yards west of the fireworks platform anchored off of Red Bank, New Jersey, at or near 40°21′20″N latitude, 074°04′10″W (NAD 1983). The safety zone is bound by the following points: 40°21′15″N latitude, 074°03′57″W longitude; to 40°21′43″N latitude, 074°03′57″W longitude; and 40°21′20″N latitude, 074°04′25″W longitude; to 40°21′30″N latitude, 074°04′25″W longitude (NAD 1983).

(b) *Effective period.* This section is in effect annually on the third of July, from 8 p.m. until 11 p.m., unless extended or terminated sooner by the Captain of the Port, New York. If the fireworks display is cancelled because of bad weather, this section is in effect on the fourth of July, at the same times, unless extended or terminated sooner by the Captain of the Port, New York. The effective period will be announced annually via Safety Marine Information Broadcasts and locally issued notices.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: June 9, 1995.

T.H. Gilmour,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 95–15225 Filed 6–20–95; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AG63

Dependents and Veterans Education: Mitigating Circumstances and Other Miscellaneous Amendments

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Vocational Rehabilitation and Education regulations to standardize the periods for submission of mitigating circumstances justifying a withdrawal from a course. Failure to submit mitigating circumstances within the prescribed time period could result in the creation of overpayments of educational assistance. This final rule applies to eligible persons receiving Dependents' Educational Assistance and veterans and servicemembers receiving educational assistance under the Post-Vietnam Era Veterans' Educational Assistance Program (VEAP) and the Montgomery GI Bill—Active Duty. This document also amends such regulations to remove attendance recordkeeping requirements for educational institutions that do not have attendance standards.

EFFECTIVE DATE: July 21, 1995.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, (202) 273–7187.

SUPPLEMENTARY INFORMATION: The proposed rule was published in the **Federal Register** of June 24, 1994 (59 FR 32671). Interested persons were given 60 days to submit comments, suggestions or objections.

VA received one letter from a concerned individual. He urged the department to adopt the proposed rule. For the reasons stated in the proposal, VA is adopting the proposed rule as a final rule without any changes.

The Secretary of Veterans Affairs hereby certifies that these revised regulations will not have a significant economic impact on a substantial number of small entities as they are

defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the revised regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Any cost savings for schools which will result from no longer having to maintain attendance records will not have a significant economic impact on such schools. Further, other amendments directly affect only individuals.

These regulations have been reviewed by OMB (the Office of Management and Budget) under provisions of E.O. 12866.

The Catalog of Federal Domestic Assistance numbers for the programs affected by this final rule are 64.117, 64.120 and 64.124.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 29, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 21, subparts D and K are amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart D—Administration of Educational Benefits; 38 U.S.C. Chapters 34, 35, and 36

1. The authority citation for subpart D of part 21 continues to read as follows:

Authority: 38 U.S.C. 501(a).

2. In § 21.4136, paragraph (k)(1)(ii)(C) is revised to read as follows:

§ 21.4136 Rates; educational assistance allowance; 38 U.S.C. Chapter 34.

* * * * *

(k) *Mitigating circumstances.*

(1) * * *

(ii) * * *

(C) The veteran submits evidence supporting the existence of mitigating circumstances within one year of the date that evidence is requested by VA, or at a later date if the veteran is able to show good cause why the one-year time limit should be extended to the date on which he or she submitted the evidence supporting the existence of mitigating circumstances.

* * * * *

3. In § 21.4137, paragraph (h)(1)(ii)(C) is revised to read as follows:

§ 21.4137 Rates; educational assistance allowance—38 U.S.C. Chapter 35.

* * * * *

(h) *Mitigating circumstances.*

(1) * * *

(ii) * * *

(C) The eligible person submits evidence supporting the existence of mitigating circumstances within one year of the date that evidence is requested by VA, or at a later date if the eligible person is able to show good cause why the one-year time limit should be extended to the date on which he or she submitted the evidence supporting the existence of mitigating circumstances.

* * * * *

§ 21.4234 [Amended]

4. In § 21.4234(d)(2)(iii), remove the phrase "§§ 21.4230 and 21.4231", and add, in its place, the phrase "§ 21.4230".

5. In § 21.4253, paragraph (d)(5) is revised and an authority citation is added for paragraph (d) to read as follows:

§ 21.4253 Accredited courses.

* * * * *

(d) *School qualification.* * * *

(5) If the school has a standard of attendance, it maintains records of attendance for veterans and eligible persons enrolled in resident courses which are adequate to show the student meets the school's standard of attendance.

(Authority: 38 U.S.C. 3474, 3675)

* * * * *

§ 21.4262 [Amended]

6. In § 21.4262(c)(10), remove the phrase "as by" and add, in its place, the phrase, "as approved by".

Subpart K—All Volunteer Force Educational Assistance Program (New GI Bill)

7. The authority citation for subpart K of part 21 continues to read as follows:

Authority: 38 U.S.C. chapter 30, Pub. L. 98–525; 38 U.S.C 501(a).

§ 21.7042 [Amended]

8. In § 21.7042(b)(9), remove the phrase "subparagraph (8) of this subparagraph", and add, in its place, the phrase "paragraph (b)(8) of this section".

9. In § 21.7042(d)(2)(i)(A), remove the phrase "paragraph (b)(b)" and add, in its place, the phrase "paragraph (b)".

10. In § 21.7139, paragraphs (b)(2), introductory text, and (b)(2)(ii) are revised and paragraph (b)(2)(iii) is added to read as follows:

§ 21.7139 Conditions which result in reduced rates.

* * * * *

(b) *Withdrawals and nonpunitive grades.* * * *

(2) All of the following exist.

(i) * * *

(ii) The veteran or servicemember submits a description of the mitigating circumstances in writing to VA within one year from the date VA notifies the veteran or servicemember that he or she must submit a description of the mitigating circumstances, or at a later date if the veteran or servicemember is able to show good cause why the one-year time limit should be extended to the date on which he or she submitted the description of the mitigating circumstances; and

(iii) The veteran or servicemember submits evidence supporting the existence of mitigating circumstances within one year of the date that evidence is requested by VA, or at a later date if the veteran or servicemember is able to show good cause why the one-year time limit should be extended to the date on which he or she submitted the evidence supporting the existence of mitigating circumstances.

* * * * *

[FR Doc. 95–15195 Filed 6–20–95; 8:45 am]

BILLING CODE 8320–01–P

POSTAL SERVICE

39 CFR Part 241

Discontinuance of Post Offices

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This amendment reflects the current approval authority for post office discontinuance proposals.

EFFECTIVE DATE: June 21, 1995.

FOR FURTHER INFORMATION CONTACT: Kimberly Matalik, (202) 268–3500.

SUPPLEMENTARY INFORMATION: The Postal Service has recently undertaken further refinements to its management structure. Consistent with earlier, more comprehensive, restructuring efforts, this has resulted in the rearrangement of internal functional responsibilities, but does not involve changes in rules or procedures that would adversely affect a member of the public (see 57 FR 49200, October 30, 1992).

As a result of these changes, the chief marketing officer/senior vice president is responsible for reviewing and approving post office discontinuance proposals.

The Postal Service therefore amends part 241 of title 39 of the CFR to set forth, without substantive amendment, the current approval authority for post office discontinuance proposals.

List of Subjects in 39 CFR Part 241

Organization and functions (Government agencies), Postal Service.

1. The authority citation for part 241 continues to read as follows:

Authority: 39 U.S.C. 401.

PART 241—ESTABLISHMENT, CLASSIFICATION, AND DISCONTINUANCE

2. Section 241.3 is amended by revising paragraphs (d)(4) introductory text only, (e)(2)(ii)(A), (f)(1), (f)(2) introductory text only, (f)(3), (f)(4), (f)(5), (g)(1)(i), (g)(2), (g)(3)(i), and (g)(4)(ii).

§ 241.3 Discontinuance of post offices.

* * * * *

(d) * * *

(4) *Record.* The district manager, Customer Service and Sales, must keep as part of the record for his or her consideration and for review by the chief marketing officer/senior vice president all the documentation gathered about the proposed change.

* * * * *

(e) * * *

(2) * * *

(ii) * * *

(A) Forward the revised proposal and the entire record to the chief marketing officer/senior vice president for final review.

* * * * *

(f) * * *

(1) *In general.* The chief marketing officer/senior vice president or a designee must review the proposal of the district manager, Customer Service and Sales. This review and the decision on the proposal must be based on and supported by the record developed by the district manager, Customer Service and Sales. The chief marketing officer/senior vice president can instruct the district manager to provide more information to supplement the record. Each such instruction and the response must be added to the record. The decision on the proposal of the district manager, which must also be added to the record, may approve or disapprove the proposal, or return it for further action as set forth below.

(2) *Approval.* The chief marketing officer/senior vice president or a designee may approve the proposal of the district manager, Customer Service and Sales, with or without further revisions. If approved, the term "Final Determination" is substituted for "Proposal" in the title. A copy of the Final Determination must be provided to the district manager. The Final Determination constitutes the Postal Service determination for the purposes of 39 U.S.C. 404(b). The Final Determination must include the following notices:

* * * * *

(3) *Disapproval.* The chief marketing officer/senior vice president or a designee may disapprove the proposal of the district manager, Customer Service and Sales, and return it and the record to the manager with written reasons for disapproval. The manager must post a notice in each affected post office that the proposed closing or consolidation has been determined to be unwarranted.

(4) *Return for further action.* The chief marketing officer/senior vice president or a designee may return the proposal of the district manager, Customer Service and Sales, with written instructions to give additional consideration to matters in the record, or to obtain additional information. Such instructions must be placed in the record.

(5) *Public file.* Copies of each Final Determination and each disapproval of a proposal by the chief marketing officer/senior vice president, must be placed on file in the Postal Service Headquarters Library.

(g) * * *

(1) * * *

(i) Provide notice of the Final Determination by posting a copy prominently in the affected post office or offices. The date of posting must be noted on the first page of the posted copy as follows:

"Date of posting:"

The district manager, Customer Service and Sales, must notify the chief marketing officer/senior vice president in writing of the date of posting.

* * * * *

(2) *Implementation of determinations not appealed.* If no appeal is filed pursuant to 39 U.S.C. 404(b)(5), the official closing date of the office must be published in the Postal Bulletin, effective the first Saturday 90 days after the Final Determination was posted. A district manager, Customer Service and Sales, may request a different date for official discontinuance in the Post Office Change Announcement document submitted to the chief marketing officer/senior vice president. However, the post office may not be discontinued sooner than 60 days after the posting of the notice required by § 241.3(g)(1).

(3) * * *

(i) *Implementation of discontinuance.* If an appeal is filed, only the chief marketing officer/senior vice president may direct a discontinuance before disposition of the appeal. However, the post office may not be discontinued sooner than 60 days after the posting of notice required by § 241.3(g)(1).

* * * * *

(4) * * *

(ii) *Determination returned for further consideration.* If the Commission returns the matter for further consideration, the chief marketing officer/senior vice president must direct that either (A) notice be provided under § 241.3(f)(3) that the proposed discontinuance is determined not to be warranted or (B) the matter be returned to an appropriate stage under these regulations for further consideration following such instructions as the chief marketing officer/senior vice president may provide.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–15096 Filed 6–20–95; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. 133; NJ20–1–6709a; FRL–5218–3]

Approval and Promulgation of Implementation Plans; Gasoline Volatility Regulation State of New Jersey

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is today announcing approval of certain revisions to the New Jersey State Implementation Plan (SIP) for ozone. This rule incorporates into the New Jersey SIP revisions to Subchapter 25, "Control and Prohibition of Air Pollution by Vehicular Fuel." These revisions include a modification to the State's volatility standard for vehicular fuels and the addition of a procedure by which persons may apply for an exemption from the Reid Vapor Pressure (RVP) standard that allows the use of gasoline which does not comply with that standard. This action is necessary to keep the State's SIP consistent with changes to its existing regulations.

DATES: This action is effective on August 21, 1995 unless adverse or critical comments are received by July

21, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: All comments should be addressed to: William S. Baker, Chief, Air Programs Branch, Air and Waste Management Division, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278.

Copies of the state submittal are available at the following locations for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 26 Federal Plaza, Room 1034A, New York, New York 10278.

New Jersey Department of Environmental Protection, Bureau of Air Quality Planning, 401 East State Street, CN027, Trenton, New Jersey 08625.

Environmental Protection Agency, Public Information Reference Unit, 401 M Street, S.W., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Michael P. Moltzen, Environmental Engineer, Technical Evaluation Section, Air Programs Branch, Environmental Protection Agency, 26 Federal Plaza, Room 1034A, New York, New York 10278, (212) 264–2517.

SUPPLEMENTARY INFORMATION:

Background

On April 21, 1993, the New Jersey Department of Environmental Protection and Energy (NJDEP) submitted to the EPA revisions to the State's ozone SIP. This notice describes EPA's decision to approve as described below, those revisions to New Jersey's motor vehicle fuels volatility regulation, Subchapter 25 "Control and Prohibition of Air Pollution by Vehicular Fuels," Title 7, Chapter 27 of the New Jersey Administrative Code (NJAC). Notice of Adoption of these revisions appeared in the New Jersey Register on September 3, 1991. Subchapter 25 was first adopted by New Jersey on January 27, 1989 and approved by EPA on June 16, 1989 in 54 FR 25572. Approval of that regulation was based in part on NJDEP's commitment at the time to replace its test methodology to an EPA promulgated method (*see* 54 FR 25581). Today's revision to NJAC 7:27–25.4(d) fulfills that commitment.

This EPA action on New Jersey's SIP revision takes into account the interaction of the New Jersey regulations and the federal reformulated gasoline regulations, promulgated by EPA on February 16, 1994. The New Jersey standard for RVP is a maximum of 9.0 psi, which EPA approved on June 16, 1989. New Jersey also is subject to federal reformulated gasoline requirements, which set an RVP maximum of 8.1 psi for the period May 1 through September 15 for calendar years 1995 through 1997. 40 CFR 80.41, 80.65(a), 80.78(a)(1)(v). Starting in 1998, the reformulated gasoline standard changes from an RVP standard to a VOC performance standard. The then applicable federal standard will be a maximum RVP of 9.0 psi. 40 CFR 80.27(a)(2). Thus, the New Jersey RVP standard is identical to the federal standard starting in 1998, but the reformulated gasoline summertime RVP standard is more stringent for the years 1995–1997.

EPA promulgated the reformulated gasoline rules under the authority of both § 211(k) and § 211(c)(1), thereby triggering application of § 211(c)(4). This provision preempts states from prescribing or attempting to enforce any "control or prohibition of the characteristic or component of a fuel or fuel additive" that is nonidentical to one the Administrator has promulgated under § 211(c)(1). There is an exception for a nonidentical standard contained in a state SIP where the standard is "necessary to achieve" the primary or secondary NAAQS that the SIP implements.

New Jersey's volatility regulations include a nonidentical standard for RVP during the annual periods of the three years that the federal RVP standard for reformulated gasoline will be in effect. During these periods, the federal standard preempts the state standard, and the nonidentical standard cannot be enforced. New Jersey has not changed its RVP standard since EPA last approved the state regulations.

New Jersey's submission consists of various amendments to its previously approved State RVP regulations. It has not resubmitted the unamended portions of those regulations, and EPA takes no action on the unamended State regulations, including the RVP standard. EPA approves the amendments to New Jersey's State volatility regulations for purposes other than enforcement of New Jersey's 9.0 RVP standard for the period May 1 through September 15 for calendar years 1995–1997.

NJDEP's submittal contained the following revisions to Subchapter 25:

The revision to NJAC 7:27–25.4(a)1 extends the period during which refiners, importers, blenders and distributors are required to test and prepare test reports documenting the RVP of gasoline they ship. This period, which was previously designated April 15 through September 1, has been extended fifteen days, making it April 15 through September 15. This revision revises the State's required RVP testing period to encompass both the "high ozone season" (the period from June 1 to September 15) as well as the federally mandated "regulatory control period" (the period from May 1 to September 15) as defined in 40 CFR § 80.27, "Controls and prohibitions on gasoline volatility." EPA approves this revision for calendar year 1998 and later.

Another revision to NJAC 7:27–25.4(a)1. allows persons subject to reporting requirements to substitute other documentation, in place of a test report, that certifies that the gasoline invoiced has a maximum RVP of 9.0 psi and complies with all applicable State and federal regulations. This revision is intended to reduce the paperwork burden on affected parties. EPA approves the reporting revision for calendar year 1998 and later.

The revision to NJAC 7:27–25.4(d) replaces the method previously employed by the State to determine the RVP of gasoline with two EPA-promulgated methods published at 40 CFR part 80, appendix E: Method 1—Dry RVP Measurement Method and Method 2—Herzog Semi-Automatic Method. The previous method, the American Society for Testing and Materials (ASTM) Method D–323, was determined by EPA to understate the true RVP of gasoline when oxygenated additives are present in the fuel.

The new section NJAC 7:27–25.7 establishes procedures whereby a waiver may be obtained to use gasoline which does not conform to the RVP standards for research and development purposes. New section 7:27–25.8 establishes service fees for the application of these waivers and annual compliance fees for operations which obtain these waivers. The RVP standard is in effect during the May 1 through September 15 period. In addition to this new regulation, New Jersey has submitted an inventory estimating the excess emissions of volatile organic substances (VOS) from non-conforming gasoline used for research and development purposes. The requirements in NJAC 7:27–25.7, which must be fulfilled before a party can obtain a waiver are at least as stringent as those contained in 40 CFR 80.27(e) "Testing exemptions." EPA approves the revisions to the test procedure regulations, but not for purposes of enforcing the State RVP requirement during calendar years 1995–1997.

The revision to NJAC 7:27–25.2 adds new definitions for the terms: ASTM, EPA, facility, non-conforming gasoline, product development, research, trial use and volatile organic substances. In addition, five current definitions in NJAC 7:27–25.2 are revised for blender gasoline, person, Reid vapor pressure and standard conditions. In addition a number of minor nonsubstantive definition changes have been incorporated in the State's Response to Comments document included with the SIP submission. These changes and additions are consistent with EPA rules and are, therefore, approvable.

Conclusion

New Jersey's Subchapter 25 was first promulgated to regulate and reduce the volatility of gasoline in order to control the emissions of ozone precursors. Today's action approves revisions to the State's Subchapter 25 as described above. Approval of these revisions brings New Jersey's SIP up to date with its current fuels regulations and incorporates changes necessary for successful implementation of fuel volatility regulations required by EPA.

Nothing in this rule should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. Thus, this direct final action will be effective August 21, 1995 unless, within 30 days of its publication, adverse or critical comments are received.

If the EPA receives such comments, this rule will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this rule should do so at this time. If no adverse comments are received, the public is advised that this rule will be effective August 21, 1995. (See 47 FR 27073 and 59 FR 24059).

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under Section 110 and Subchapter I, Part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moveover, due to the nature of the federal-state relationship under the Clean Air Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *US EPA*, 427 US 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

Under section 307(b)(1) of the Act, petitions for judicial review of this rule must be filed in the United States Court of Appeals for the appropriate circuit within 60 days from date of publication. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This rule may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Ozone, Incorporated by reference, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 2, 1995.

William J. Muszynski,

Deputy Regional Administrator.

Title 40, chapter I, part 52, Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart FF—New Jersey

2. Section 52.1570 is amended by adding new paragraph (c)(52) to read as follows:

§ 52.1570 Identification of plan.

* * * * *

(c) * * *

(52) Amendments submitted on April 21, 1993 by the New Jersey Department of Environmental Protection and Energy to New Jersey Air Code 7:27–25 revising the testing requirements to gasoline providers in New Jersey are subject.

(i) Incorporation by reference:

(A) Amendments to Chapter 27, Title 7 of the New Jersey Administrative Code Subchapter 25, "Control and Prohibition of Air Pollution from Vehicular Fuels," effective September 3, 1991.

3. Section 52.1605 is amended by adding the entry for Subchapter 25 to the table in numerical order as follows:

§ 52.1605 EPA-approved New Jersey State regulations.

State regulation	State effective date	EPA approved date	Comments
Title 7, Chapter 27			
Subchapter 25, "Control and Prohibition of Air Pollution by Vehicular Fuels;".	September 3, 1991	[date and citation of this notice].	Approves 1992 revisions except that (1) for calendar years 1995–1997, test procedure revisions in N.J.A.C. 7:27–25.4 (d) are approved for all uses other than to enforce the 9.0 RVP standard; and (2) testing and reporting period and recordkeeping revisions in N.J.A.C. 7:27–25.4 (a) are approved for calendar year 1998 and later.

[FR Doc. 95–15034 Filed 6–20–95; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90–524; RM–7501, RM–7631]

Radio Broadcasting Services; Miami and Sebring, FL

AGENCY: Federal Communications Commission.
ACTION: Final rule.

SUMMARY: This document substitutes Channel 298C for Channel 298C1 at Miami, Florida, and modifies the license for Station WQBA(FM) to specify operation on Channel 298C, at the request of Spanish Radio Network (RM–7631), and denies the allotment of Channel 298A to Sebring, Florida, as requested by WJCM, Inc., (RM–7501). *See* 55 FR 47343, November 13, 1990. Channel 298C can be allotted to Miami in compliance with the Commission's minimum distance separation requirements, with a site restriction of 5.8 kilometers (3.6 miles) west, in order to avoid a short-spacing to Station WIRK(FM), Channel 300C1, West Palm Beach, Florida. The coordinates for Channel 298C at Miami are North Latitude 25–47–42 and West Longitude 80–14–36. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 21, 1995.
FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 90–524, adopted June 8, 1995, and released June 16, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 298C1 and by adding Channel 298C at Miami.

Federal Communications Commission.
John A. Karousos,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 95–15146 Filed 6–20–95; 8:45 am]
BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–12; RM–8559]

Radio Broadcasting Services; Hudson, TX

AGENCY: Federal Communications Commission.
ACTION: Final rule.

SUMMARY: The Commission, at the request of Phil Parr, allots Channel 242A to Hudson, Texas. *See* 60 FR 05887, January 31, 1995. Channel 242A can be allotted to Hudson, Texas, in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 242A at Hudson are 31–23–50 and 94–46–15. With this action, this proceeding is terminated.

DATES: Effective July 31, 1995. The window period for filing applications will open on July 31, 1995, and close on August 31, 1995.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 95–12, adopted June 7, 1995, and released June 16, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 242A at Hudson.

Federal Communications Commission.
John A. Karousos,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 95–15144 Filed 6–20–95; 8:45 am]
BILLING CODE 6712–01–F

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1105

[Ex Parte No. 511]

Petition for Rulemaking—Protection of Surveying Benchmarks in Railroad Abandonments

AGENCY: Interstate Commerce Commission.
ACTION: Final rule.

SUMMARY: The Commission is modifying the notice requirements for environmental reports submitted in abandonment and abandonment exemption proceedings by adding to the list of individuals or agencies on which the railroad must serve a copy of the environmental report a single designated agent as representative of both the National Geodetic Survey (formerly the Coast and Geodetic Survey) and the U.S. Geological Survey.

EFFECTIVE DATE: This rule is effective July 21, 1995.
FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–7245, or Ronald M. Smullian, (202) 927–5292. (TDD for the hearing impaired: (202) 927–5721).

SUPPLEMENTARY INFORMATION: The American Congress on Surveying and Mapping filed a petition with the Commission requesting the institution of a rulemaking proceeding for the purpose of considering the protection and preservation of surveying monuments and markers exposed to possible destruction when, pursuant to a Commission-authorized abandonment, railroad tracks are dismantled. On October 1, 1993, the Commission issued a notice soliciting public comment and/or specific proposals to assist it in determining whether to institute the requested rulemaking. Comments were received and analyzed. A decision denying the request for rulemaking but modifying the notice requirements of 49 CFR 1105.7(b) is being served concurrently with the publication of this notice. Section 1105.7(b) is modified by adding the National Geodetic Survey (formerly known as the Coast and Geodetic Survey), as designated agent for the National Geodetic Survey and the U.S. Geological Survey, to the list of individuals or agencies on which a copy of the railroad's environmental report submitted in abandonment and abandonment exemption proceedings must be served.

Additional information is contained in the Commission's decision in Ex Parte No. 511. To purchase a copy of this decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Interstate Commerce Commission Building, 1201 Constitution Avenue NW., Room 2229, Washington, D.C. 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services, (202) 927–5721.)

This action simply broadens the notice requirement of 49 CFR 1105.7(b) by adding one new party to the required railroad environmental report service list. Accordingly, the economic impact of this action, if any, will be minimal and is not likely to be felt by a substantial number of small entities. See 5 U.S.C. 605(b).

Environmental Statement

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1105

Environmental impact statements, Reporting and recordkeeping requirements.

Decided: June 2, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners McDonald and Simmons.

Vernon A. Williams,
Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1105 of the Code of Federal Regulations is amended as follows:

PART 1105—PROCEDURES FOR IMPLEMENTATION OF ENVIRONMENTAL LAWS

1. The authority citation for part 1105 continues to read as follows:

Authority: 49 U.S.C. 10321, 10505, 10901, 10903–10906, and 11343; 16 U.S.C. 470f, 1451, and 1531; 42 U.S.C. 4332 and 6362(b); and 5 U.S.C. 553 and 559.

2. Section 1105.7, paragraph (b) is amended as follows:

(a) In paragraph (b)(9) after the semicolon, remove the word "and";

(b) Paragraph (b)(10) is redesignated as paragraph (b)(11); and

(c) A new paragraph (b)(10) is added to read as follows:

§ 1105.7 Environmental reports.

* * * * *

(b) * * *

(10) The National Geodetic Survey (formerly known as the Coast and Geodetic Survey) as designated agent for the National Geodetic Survey and the U.S. Geological Survey; and

* * * * *

[FR Doc. 95–15020 Filed 6–20–95; 8:45 am]
BILLING CODE 7035–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 950426116–5116–01; I.D. 060195D]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California; Inseason Adjustments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.
ACTION: Inseason adjustments.

SUMMARY: NMFS announces that the commercial salmon fishery in the area from Sisters Rocks to House Rock, OR, opened 7 days a week beginning May 18, 1995. This adjustment is intended to provide additional fishing opportunity to commercial fishermen and maximize the harvest of chinook salmon without exceeding the ocean share allocated to the commercial fishery in this area. NMFS also announces that the gear restriction in the recreational fishery between Cape Falcon and Humbug Mountain, OR, is modified to be consistent with state regulations.

DATES: The modification of fishing days per week was effective at 0001 hours local time, May 18, 1995, until July 1, 1995. The modification of the gear restriction is effective on June 16, 1995 until July 1, 1995. Comments will be accepted through July 3, 1995.

ADDRESSES: Comments may be mailed to William Stelle, Jr., Director, Northwest Region, National Marine Fisheries

Service, NOAA, 7600 Sand Point Way NE., BIN C15700–Bldg. 1, Seattle, WA 98115–0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson, 206–526–6140.

SUPPLEMENTARY INFORMATION: In the annual management measures for ocean salmon fisheries (60 FR 21746, May 3, 1995), NMFS announced that the 1995 commercial fishery in the area between Sisters Rocks and House Rock, OR, would open on May 1 and fishing would be allowed on designated days (May 1-2, 5-6, 10-11, 14-15, 18-19, 23-24, 27-28, and 31) or until attainment of the quota. The preseason objective for implementing the open/closure cycle was to dampen catch rates and extend the fishing season for as long as possible.

The best available information on May 16 indicated that commercial catch and effort rates have been low, with catches totaling 155 chinook salmon. The fishery is scheduled to close the earlier of May 31 or attainment of the 1,000–chinook salmon quota. The preseason management measure that opened this fishery for 2-day periods is being rescinded because its use as a catch dampening measure is now considered to be too restrictive. Conversion to a 7-day fishing week would provide additional fishing opportunity to commercial fishermen to increase access to chinook salmon.

In the annual management measures (60 FR 21746, May 3, 1995), NMFS announced a gear restriction in the 1995 recreational fishery in the area between Cape Falcon and Humbug Mountain, OR, that included the provision that all attractors, including divers, are prohibited. The State of Oregon has implemented regulations with a less restrictive provision that allows use of uncolored divers. Therefore, to make Federal regulations consistent with State regulations, in note C.2. of Table 2, on page 21756, the last phrase starting with "all attractors" is amended to read: "all attractors, such as flashers or colored divers, are prohibited; uncolored divers are not considered attractors."

Modifications of fishing seasons and gear restrictions are authorized by regulations at 50 CFR 661.21(b)(1)(i) and (iv), respectively. All other restrictions that apply to these fisheries remain in effect as announced in the annual management measures.

The Director Northwest Region, NMFS, consulted with representatives of the Pacific Fishery Management Council and the Oregon Department of Fish and Wildlife regarding these adjustments affecting the commercial fishery between Sisters Rocks and House Rock and the recreational fishery between Cape Falcon and Humbug Mountain. The State of Oregon will manage the commercial and recreational fisheries in state waters adjacent to these areas of the exclusive economic zone in accordance with this Federal action. In accordance with the inseason notice procedures of 50 CFR 661.23, actual notice to fishermen of the fishing season action was given prior to 0001 hours local time, May 18, 1995, by telephone hotline number (206) 526–6667 or (800) 662–9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz. Because of the need for immediate action in order to take advantage of the opportunity to harvest the quota, and to conform Federal regulations with state regulations, NMFS has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. This notice does not apply to other fisheries that may be operating in other areas.

Classification

This action is authorized by 50 CFR 661.21 and 661.23 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 13, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–14949 Filed 6–16–95; 4:31 pm]

BILLING CODE 3510–22–F

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50 CFR Part 675

[Docket No. 950206040–5040–01; I.D. 051595J]

Groundfish of the Bering Sea and Aleutian Islands Area; Apportionment of Reserve

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Apportionment of reserve.

SUMMARY: NMFS is apportioning reserve to certain target species in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow for ongoing harvest and account for previous harvest of the total allowable catch (TAC).

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), June 20, 1995, until 12 midnight, A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Nick Hindman, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The Director, Alaska Region, NMFS, has determined that the initial TACs specified for the following species need to be supplemented from the nonspecific reserve to continue fishing operations and account for prior harvest: Pollock, Greenland turbot, and Pacific ocean perch (POP) in the Bering Sea subarea (BS); pollock, Greenland turbot, POP, and sharpchin/northern rockfish in the Aleutian Islands subarea (AI); Atka mackerel in the combined Eastern Aleutian District and BS subarea; Atka mackerel in the Central and Western Aleutian Island Districts; and Pacific cod, arrowtooth flounder, and the "other species" category in the BSAI.

Therefore, in accordance with § 675.20(b), NMFS is apportioning to TACs from the reserve for the following species: (1) For the BS - 93,750 metric tons (mt) to pollock, 700 mt to Greenland turbot, and 277 mt to POP; (2) for the AI - 4,245 mt to pollock, 350 mt to Greenland turbot, 1,575 mt to POP, and 765 mt to sharpchin/northern rockfish; (3) for the combined Eastern Aleutian District and BS - 2,025 mt to Atka mackerel; (4) for the Central Aleutian District - 7,500 mt to Atka mackerel; (5) for the Western Aleutian District - 2,475 mt to Atka mackerel; and (6) for the BSAI - 37,500 mt to Pacific cod, 1,534 mt to arrowtooth flounder, and 3,000 mt to the "other species" category.

These apportionments are consistent with § 675.20(a)(2)(i) and do not result in overfishing of a target species or the "other species" category, because the revised TACs are equal to or less than specifications of acceptable biological catch.

Pursuant to § 675.20(a)(3)(i), the apportionments of pollock are allocated between the inshore and offshore components: (1) For the BS - 32,812 mt to vessels catching pollock for processing by the inshore component and 60,938 mt to vessels catching pollock for processing by the offshore component; (2) for the AI - 1,486 mt to vessels catching pollock for processing by the inshore component and 2,759 to vessels catching pollock for processing by the offshore component.

Pursuant to 50 CFR 675.20(a)(3)(iv), the apportionment of the BSAI Pacific cod TAC is allocated 750 mt to vessels using jig gear, 16,500 mt to vessels using hook-and-line or pot gear, and 20,250 mt to vessels using trawl gear.

In accordance with the BSAI final 1995 specifications for groundfish (FR 60 8479, February 14, 1995), the allocation to hook-and-line/pot gear will result in seasonal apportionments as follows: For the period January 1 through April 30 - 80,300 mt, for the period May 1 through August 31 - 20,900 mt, and for the period September 1 through December 31 - 8,800 mt.

This apportionment was proposed in the **Federal Register** (60 FR 27488, May 24, 1995) requesting public comment. The public comment period ended on June 7, 1995, and no comments were received.

Classification

This action is taken under 50 CFR 675.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801, *et seq.*

Dated: June 14, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–15093 Filed 6–20–95; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 119
Wednesday, June 21, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV95–989–3PR]

Change of Desirable Carryout Used In Computing Trade Demand

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would change the desirable carryout levels which are used in computing the yearly trade demand for California raisins. The trade demand is used to help determine the volume regulation percentages for each crop year, if necessary. The desirable carryout would be reduced from the current two and one-half months of shipments to two and one-fourth months of shipments during the 1995–96 crop year and to two months of shipments in subsequent crop years. The Raisin Administrative Committee (Committee), which is responsible for local administration of the Federal marketing order, believes that the current desirable carryout level results in excessive supplies of marketable tonnage early in the crop year. This proposal would contribute to the orderly marketing of California raisins by mitigating the oversupply of raisins early in the crop year, thus stabilizing the market conditions for producers and handlers.

DATES: Comments must be received by July 6, 1995.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456, or faxed to (202) 720–5698. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Mark Hessel, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901, or fax (209) 487–5906; or Valerie L. Emmer, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 205–2829, or fax (202) 720–5698.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement and Order No. 989 (7 CFR Part 989), as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12778, Civil Justice Reform. This proposal would reduce the desirable carryout for the 1995–96 crop year, beginning August 1, 1995, through July 31, 1996, and for subsequent crop years. This proposal will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the marketing order and approximately 4,500 producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts (from all sources) are less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. No more than eight handlers and a majority of producers of California raisins may be classified as small entities. Twelve of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining eight handlers have sales less than $5,000,000, excluding receipts from any other sources.

This proposed rule would change section 989.154 of the administrative rules and regulations of the raisin marketing order. The Committee recommended by a vote of 31 to 15 at its April 28, 1995, meeting, to adjust the desirable carryout level in section 989.154 from the current two and one-half months of shipments to two and one-fourth months of shipments during the 1995–96 crop year and to two months of shipments in subsequent crop years. The crop year includes the 12-month period August 1 through July 31.

The desirable carryout level is the amount of tonnage from the prior crop year needed during the first part of the succeeding crop year to meet market needs, before new crop raisins are harvested and available for market.

Currently, section 989.154 provides that the desirable carryout levels shall be equal to the shipments of free tonnage to all outlets for each varietal type during the months of August, September, and one-half of the total shipments for the month of October of the prior crop year.

The desirable carryout figure is used in marketing policy calculations to determine trade demand. The trade demand is 90 percent of prior year's shipments, adjusted by the carryin and desirable carryout. The trade demand is then used to help determine the volume regulation percentages for each crop year, if necessary.

Beginning in the 1991–92 crop year the desirable carryout was reduced from three months of shipments to two and one-half months of shipments. It was determined that the use of the three month desirable carryout level resulted in excessive supplies of marketable tonnage early in the season.

The Committee has used the two and one-half month desirable carryout figure for four crop years and has determined that the use of this figure also results in an excessive supply of free tonnage at the beginning of the marketing season. A majority of the Committee members believes that this causes unstable market conditions during the early part of the crop year.

To correct the oversupply of marketable raisin tonnage early in the season, the Committee has recommended that the desirable carryout levels be revised from two and one-half months of the prior year's shipments to two and one-fourth months of the prior year's shipments for the 1995–96 crop year and to two months of the prior year's shipments for subsequent crop years.

The change in the desirable carryout levels would reduce the trade demand and the free tonnage percentage, and would make less free tonnage available to handlers for immediate use. However, handlers would still be provided an opportunity to increase their inventories, if necessary, by purchasing raisins from the reserve pool under order-mandated 10 plus 10 offers during November and other releases of reserve pool raisins available under the marketing order. The 10 plus 10 offers are two simultaneous offers of reserve pool raisins which are made available to handlers each season. For each such offer, a quantity of raisins equal to 10 percent of the prior year's shipments is made available for free use. Although this proposed rule would tighten the supply of raisins early in the season, handlers would still have the opportunity to obtain additional supplies to meet market needs, if needed later in the season.

This proposal is intended to stabilize the early season raisin market. Bringing early season supplies in line with market needs is expected to stabilize market prices. This price stabilization should make raisin buyers less likely to postpone their purchases. Thus, decreasing the desirable carryout could strengthen the market and increase shipments, which would benefit raisin producers and handlers.

One alternative that was discussed by the Committee prior to recommending this proposed change was to immediately set the desirable carryout level at two months of the prior year's shipments. It was determined that this was too rapid an adjustment and that first setting the desirable carryout levels at two and one-quarter months for the 1995–96 season and two months in subsequent crop years would be a more prudent approach.

Another alternative considered was setting the desirable carryout at a fixed tonnage. However, this alternative does not allow the desirable carryout to fluctuate with changing market conditions from year to year.

Those voting in opposition to the recommendation to reduce the desirable carryout level believed that the marketing order should not further restrict supplies during the early part of the crop year. However, the following table shows that adequate supplies of Natural (sun-dried) Seedless raisins have been available early in the crop year to meet demand. Natural (sun-dried) Seedless raisins represent about 90 percent of all raisins produced in California. The other two varieties which had reserve pools for the 1994–95 crop year, Zante Currant raisins and Other Seedless raisins, had carryins far exceeding the annual trade demand. "Carryin" is synonymous with the "carryout" of the preceding crop year. All figures are in natural condition tons.

Crop year	Desirable carryin (Aug, Sept and 1/2 Oct shipments) (tons)	Physical carryin (tons)	Aug/Sept shipments (tons)
1994–95	84,671	92,248	64,374
1993–94	81,867	93,752	67,784
1992–93	82,591	115,440	65,495
1991–92	84,541	109,306	65,613

The desirable carryin is set to meet the demand for the early part of the crop year (August and September) before the new crop becomes available. The actual physical carryin has far exceeded the desirable carryin and has resulted in an oversupply of free tonnage during the early part of the crop year. The reduction in desirable carryout would contribute to correcting the problem by adjusting the free tonnage market supply, which would bring it more in line with demand.

The desirable carryout levels that would be established by this proposed rule would apply uniformly to all handlers in the industry, whether small or large, and there would be no known additional costs incurred by small handlers. The stabilizing effects of the revised desirable carryout levels would impact both small and large handlers positively by helping them maintain and expand markets.

In the event that the prior year's shipments are limited because of crop conditions, a proviso in section 989.154 allows the committee to select the total shipments during the months of August, September and one-half of the total shipments for October during one of the three years preceding the prior crop year. Consistent with the need to reduce early season supplies, this proposed rule would make a corresponding revision to this proviso, by changing the total shipments from August, September, and one-half of the total shipments for October to the total shipments from August and September only.

Based on available information, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Interested persons are invited to submit their views and comments on this proposal. A 15-day comment period is considered appropriate because the order requires that the committee meet on or before August 15 to compute and announce the trade demand. As indicated earlier, the desirable carryover is an important factor in that calculation. Thus, a decision on whether to issue the Committee's recommendation must be made prior to that date. A longer comment period would not provide an adequate amount of time to complete this rulemaking by that date. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the, preamble, 7 CFR part 989 is proposed to be amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 989.154 is revised to read as follows:

§ 989.154 Desirable carryout levels.

The desirable carryout levels to be used in computing and announcing a crop year's marketing policy shall be equal to the total shipments of free tonnage of the prior crop year during the months of August and September, for each varietal type, converted to a natural condition basis: *Provided,* That the desirable carryout levels to be used in computing and announcing the 1995–96 crop year's marketing policy shall be equal to the total 1994 shipments of free tonnage for the months of August and September, and one-fourth of the total shipments for the month of October: *Provided further,* That should the prior year's shipments be limited because of crop conditions, the Committee may select the total shipments during the months of August and September during one of the three crop years preceding the prior crop year.

Dated: June 15, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–15106 Filed 6–20–95; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Parts 1124 and 1135

[Docket Nos. AO–368–A25, AO–380–A15; DA–95–01]

Milk in the Pacific Northwest and Southwestern Idaho-Eastern Oregon Marketing Areas; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: The hearing is being held to consider proposals to modify the pooling standards in the Pacific Northwest and Southwestern Idaho-Eastern Oregon Federal milk orders. The hearing will also consider proposals to amend the Pacific Northwest order by expanding the marketing area to include two additional counties, modifying the multiple component pricing plan, providing the market administrator with authority to revise pooling standards and issue a "call" for milk if needed, and modifying the producer-handler definition. The hearing was requested by Darigold Farms, a cooperative association that represents a large portion of the producers on the two orders.

DATES: The hearing will convene at 9 a.m. on July 11, 1995.

ADDRESSES: The hearing will be held at the Red Lion Hotel, Lloyd Center, 1000 N.E. Multnomah, Portland, Oregon 97232 (503) 281–6111.

FOR FURTHER INFORMATION CONTACT: Clifford M. Carman, Order Formulation Branch, USDA/AMS/Dairy Division, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9368.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Notice is hereby given of a public hearing to be held at the Red Lion Hotel, Lloyd Center, 1000 N.E. Multnomah, Portland, Oregon 97232, beginning at 9 a.m., on Tuesday, July 11, 1995, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Pacific Northwest and Southwestern Idaho-Eastern Oregon marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (Pub. L. 96–354). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a "small business" if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

The information collection requirements in the order provisions proposed to be amended in this notice of hearing have been previously approved by the Office of Management and Budget (OMB) under the provisions of Title 44 U.S.C. chapter 35 and have been assigned OMB control number 0581–0032.

The amendments to the rules proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with six copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

List of Subjects in 7 CFR Parts 1124 and 1135

Milk marketing orders.

The authority citation for 7 CFR Parts 1124 and 1135 continue to read as follows:

Authority: 7 U.S.C. 601–674.

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Darigold Farms

Proposal No. 1

1. Amend § 1135.7 by adding a new paragraph (d) to read as follows:

§ 1135.7 Pool plant.

* * * * *

(d) The market administrator may increase or decrease the shipping requirements if the market administrator finds that such revision is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for revision either on the market administrator's own initiative or at the request of interested parties. If the investigation shows that a revision of the shipping requirements might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and invite data, views, and arguments. Any request for revision of shipping percentages shall be filed with the market administrator no later than the 15th day of the month prior to the month for which the requested revision is desired to be effective.

2. Amend § 1135.13 by revising paragraphs (f)(2) and (f)(3), revising the first sentence of paragraph (f)(4), revising the second sentence of paragraph (f)(5) and by adding a new paragraph (f)(7) to read as follows:

§ 1135.13 Producer milk.

* * * * *

(f) * * *

(2) During each of the months of September through November milk of a dairy farmer shall not be eligible for diversion unless during the month one day's production of milk of such dairy farmer is physically received as producer milk at a pool plant.

(3) The total quantity of milk diverted by a cooperative association during any month may not exceed 80 percent during the months of September through April and 90 percent during the months of May through August of the producer milk that the cooperative association causes to be delivered to or diverted from pool plants during the month. * * *

(4) The total quantity of milk diverted during the month by a proprietary bulk tank handler described in § 1135.9(d) may not exceed 80 percent during the months of September through April and 90 percent during the months of May through August of the producer milk that the handler causes to be delivered to or diverted from pool plants during the month;

(5) * * * The total quantity so diverted during any month may not exceed 80 percent during the months of September through April and 90 percent during the months of May through August of the producer milk received at or diverted from such pool plant during the month that is eligible to be diverted by the plant operator; and

(6) * * *

(7) The market administrator may increase or decrease the diversion limitations in paragraphs (f)(3), (f)(4) and (f)(5) of this section if the market administrator finds that such revision is necessary to prevent uneconomic handling or shipments of milk. Before making such a finding the market administrator shall investigate the need for revision either on the market administrator's own initiative or at the request of interested parties. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and invite data, views, and arguments. Any request for revision of diversion limitations shall be filed with the market administrator no later than the 15th day of the month prior to the month for which the requested revision is desired effective.

Proposed by Darigold Farms

Proposal No. 2

1. Amend § 1124.2, Pacific Northwest marketing area, to include the two additional Washington counties of Clallam and Jefferson.

2. Amend § 1124.7 by revising paragraph (c) to read as follows:

§ 1124.7 Pool plant.

* * * * *

(c) The market administrator may increase or decrease the shipping requirements if the market administrator finds that such revision is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding the market administrator shall investigate the need for revision either on the market administrator's own initiative or at the request of interested parties. If the investigation shows that a revision of the shipping requirements might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and invite data, views, and arguments. Any request for revision of shipping percentages shall be filed with the market administrator no later than the 15th day of the month prior to the month for which the requested revision is desired effective.

* * * * *

3. Amend § 1124.13 by revising paragraph (c) and adding a new paragraph (e) to read as follows:

§ 1124.13 Producer milk.

* * * * *

(c) The following conditions shall apply to diverted producer milk:

(1) A cooperative association or its agent may divert for its account the milk of any producer. The total quantity of milk diverted may not exceed 80 percent during the months of September through April and 90 percent during the months of May through August of the total quantity of producer milk which the association or its agent causes to be delivered to pool distributing plants or diverted. The percentage limits on diversions specified in this paragraph shall not apply to a cooperative reserve supply unit defined in § 1124.11;

(2) A handler other than a cooperative association that operates a pool plant may divert milk for its account to other plants or pursuant to § 1124.40(b)(3). The total quantity of milk so diverted may not exceed 80 percent during the months of September through April and 90 percent during the month of May through August of the milk received at such handler's pool plant or diverted by such handler from any producer other than a member of a cooperative association which markets milk under paragraph (c)(1) of this section and for which the operator of such plant is the handler during the month;

* * * * *

(e) The market administrator may increase or decrease the diversion limitations (c)(1) and (c)(2) of this section if the market administrator finds that such revision is necessary to prevent uneconomic handling or shipments of milk. Before making such a finding the market administrator shall investigate the need for revision either on the market administrator's own initiative or at the request of interested parties. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and invite data, views, and arguments. Any request for revision of diversion limitations shall be filed with the market administrator no later than the 15th day of the month prior to the month for which the requested revision is desired effective.

4. Amend § 1124.30 by revising paragraphs (a)(1)(i), (a)(1)(ii) and (c)(1) through (c)(3) as follows:

§ 1124.30 Reports of receipts and utilization.

* * * * *

(a) * * *

(1) * * *

(i) Milk received directly from producers (including such handler's own production) and the pounds of protein and pounds of nonfat milk solids other than protein (other solids) contained therein;

(ii) Milk received from a cooperative association pursuant to § 1124.9(c) and the pounds of protein and of nonfat milk solids other than protein (other solids) contained therein;

* * * * *

(c) * * *

(1) The pounds of skim milk, butterfat, protein, and nonfat milk solids other than protein (other solids) received from producers;

(2) The utilization of skim milk, butterfat, protein, and nonfat milk solids other than protein (other solids) for which it is the handler pursuant to § 1124.9(b); and

(3) The quantities of skim milk, butterfat, protein, and nonfat milk solids other than protein (other solids) delivered to each pool plant pursuant to § 1124.9(c).

* * * * *

5. Amend § 1124.31 by revising paragraphs (a)(1) and (b)(1) to read as follows:

§ 1124.31 Payroll reports.

* * * * *

(a) * * *

(1) The total pounds of milk received from each producer, the pounds of butterfat, the pounds of protein, and nonfat milk solids other than protein (other solids) contained in such milk, and the number of days on which milk was delivered by the producer during the month;

* * * * *

(b) * * *

(1) The total pounds of milk received from each producer and the pounds of butterfat, pounds of protein, and nonfat milk solids other than protein (other solids) contained in such milk;

* * * * *

6. Amend § 1124.50 by revising paragraph (g) and adding a new paragraph (h) to read as follows:

§ 1124. 50 Class and component prices.

* * * * *

(g) Protein price. The protein price per pound, rounded to the nearest one-hundredth cent, shall be 1.32 times the average monthly price per pound for 40-pound block Cheddar cheese on the National Cheese Exchange as reported by the Department.

(h) Other solids price. Other solids are herein defined as nonfat milk solids other than protein. The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the skim milk price times .965, less the average protein test of the basic formula price as reported by the Department for the month times the protein price, and dividing the resulting amount by the market average nonfat milk solids other than protein (other solids) test of producer milk. If the resulting price is less than zero, then the protein price will be reduced so that the other solids price equals zero.

7. Revise § 1124.53 to read as follows:

§ 1124.53 Announcement of class and component prices.

On or before the 5th day of each month, the market administrator shall announce publicly the following prices:

(a) The Class I price for the following month.

(b) The Class II price for the following month.

(c) The Class III price for the preceding month.

(d) The Class III–A price for the preceding month.

(e) The skim milk price for the preceding month.

(f) The butterfat price for the preceding month.

(g) The protein price for the preceding month.

(h) The butterfat differential price for the preceding month.

8. Amend § 1124.60 by revising paragraph (e), renaming paragraphs (f) through (m) as paragraphs (g) through (n), adding a new paragraph (f), changing the reference in the introductory text of paragraph (g) from (f)(6) to (g)(6), revising paragraph (g)(3), renumbering paragraphs (g)(4) through (g)(6) as (g)(5) through (g)(7), adding a new paragraph (g)(4), revising paragraph (h)(3), renumbering paragraphs (h)(4) through (h)(6) as paragraphs (h)(5) through (h)(7), adding a new paragraph (h)(4), and revising paragraph (h)(7), to read as follows:

§ 1124.60 Computation of handler's obligations to pool.

* * * * *

(e) Multiply the protein price for the month by the pounds of protein associated with the pounds of producer skim milk in Class II and Class III during the month. The pounds of protein shall be computed by multiplying the producer skim milk pounds so assigned by the percentage of protein in the handler's receipts of producer skim milk during the month for each report filed separately;

(f) Multiply the other solids price for the month by the pounds of nonfat milk solids other than protein (other solids) associated with the pounds of producer skim milk in Class II and Class III during the month. The pounds of nonfat milk solids other than protein (other solids) shall be computed by multiplying the producer skim milk pounds so assigned by the percentage of nonfat milk solids other than protein (other solids) in the handler's receipts of producer skim milk during the month for each report filed separately;

(g) * * *

(3) Multiply the pounds of protein associated with the skim milk pounds assigned to Class II and III by the protein price;

(4) Multiply the pounds of nonfat milk solids other than protein (other solids) associated with the skim milk pounds assigned to Class II and III by the other solids price;

* * * * *

(h) * * *

(3) Multiply the pounds of protein associated with the skim milk pounds assigned to Class II and III by the protein price;

(4) Multiply the pounds of nonfat milk solids other than protein (other solids) associated with the skim milk pounds assigned to Class II and III by the other solids price;

* * * * *

(7) Subtract the Class III value of the milk at the previous month's protein, other milk solids, and butterfat prices;

* * * * *

9. Revise § 1124.61 to read as follows:

§ 1124.61 Computation of statistical uniform price.

A statistical uniform price for each month shall be computed by the market administrator as follows:

(a) Multiply the butterfat price computed pursuant to § 1124.50(f) times 3.50;

(b) Multiply the protein price computed pursuant to § 1124.50(g) times the market average protein test;

(c) Multiply the producer other solids price computed pursuant to § 1124.62 times the market average other solids test; and

(d) Add paragraphs (a) through (c) of this section. The result shall be the statistical uniform price for milk containing 3.50 percent butterfat and market average protein and other solids.

10. Revise § 1124.62 to read as follows:

§ 1124.62 Computation of producer other solids price.

The producer other solids price shall be computed by the market administrator each month as follows:

(a) Combine into one total the value computed pursuant to § 1124.60 (a) through (c) and (f) through (n) for all handlers who filed the reports prescribed by § 1124.30 for the month and who made the payments pursuant to § 1124.71 for the preceding month;

(b) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(c) Divide the resulting amount by the total pounds of other solids in producer milk; and

(d) Subtract not less than 4 cents per hundredweight nor more than 5 cents per hundredweight of the total pounds of milk used in § 1124.61(c).

11. Revise § 1124.63 to read as follows:

§ 1124.63 Announcement of producer prices.

On or before the 14th day after the end of each month, the market administrator shall announce the following prices and information:

(a) The protein price;

(b) The other solids price;

(c) The producer other solids price;

(d) The butterfat price;

(e) The average protein test and other solids test of producer milk; and

(f) The statistical uniform price for milk containing 3.5 percent butterfat.

12. Amend § 1124.71 by revising paragraph (b)(3) to read as follows:

§ 1124.71 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(3) The value at the statistical uniform price adjusted for the location of the plant(s) at which received (not to be less than zero) with respect to the total hundredweight of skim milk and butterfat in other source milk for which a value was computed or such handler pursuant to § 1124.60(k); and

* * * * *

13. Amend § 1124.73 by revising paragraphs (a)(2)(ii), (a)(2)(iii), (c), (c)(1), and (f)(2)to read as follows:

§ 1124.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) Add the amount that results from multiplying the protein price for the month by the total pounds of protein in the milk received from the producer;

(iii) Add the amount that results from multiplying the producer other solids price for the month by the total pounds of other solids in the milk received from the producer;

* * * * *

(c) Each handler shall pay to each cooperative association which operates a pool plant, or the cooperative's duly authorized agent, for butterfat, protein, and other milk solids received from such plant in the form of fluid milk products as follows:

(1) On or before the second day prior to the date specified in paragraph (a)(1) of this section, for butterfat, protein, and other milk solids received during the first 15 days of the month at not less than the butterfat, protein, and other milk solids prices, respectively for the preceding month; and

* * * * *

(f) * * *

(2) The total pounds of milk delivered by the producer, the pounds of butterfat, protein, and other milk solids contained therein, and, unless previously provided, the pounds of milk in each delivery;

* * * * *

14. Amend § 1124.75 by revising paragraphs (a)(1)(i) to read as follows:

§ 1124.75 Payments by a handler operating partially regulated distributing plant.

* * * * *

(a) * * *

(1)(i) The obligation that would have been computed pursuant to § 1124.60 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II or Class III milk if allocated to such class at the pool plant or other order plant and be valued at the uniform price, estimated uniform price or statistical uniform price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class III price. No obligation shall apply to Class I milk transferred to a pool plant or another order plant if such Class I utilization is assigned to receipts at the partially regulated distributing plant from pool plants and other order plants at which an equivalent amount of milk was classified and priced as Class I milk. There shall be included in the obligation so computed a charge in the amount specified in § 1124.60(k) and a credit in the amount specified in § 1124.71(b)(3) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class III price, unless an obligation with respect to such plant is computed as specified in paragraph (a)(1)(ii) of this section; and

* * * * *

Proposed by Farmers Cooperative Creamery

Proposal No. 3

Amend § 1124.7 by revising paragraph (b)(1) to read as follows:

§ 1124.7 Pool plant.

* * * * *

(b) * * *

(1) With respect to a supply plant operated by a cooperative association, the producer milk of its members which it caused to be delivered directly from their farms to pool distributing plants, for the purpose of this paragraph, may, upon written request to the market administrator prior to the month in which it is effective, have such deliveries considered as a receipt at the cooperative's supply plant and a shipment from the supply plant to pool distributing plants;

Proposed by National All-Jersey Inc.

Proposal No. 4

Modify the multiple component pricing plan in Order 1124 from the current two components (fat and solids-not-fat) to a three component plan (fat, protein, and other solids) as follows:

1. Butterfat. The butterfat price per pound, rounded to the nearest one-hundredth cent, is the Class II price plus an amount computed by multiplying the butterfat differential by 965 and dividing the resulting amount by one hundred.

2. Protein. The protein price per pound, rounded to the nearest one-hundredth cent, is 1.32 times the average monthly price per pound for 40-pound block Cheddar cheese on the National Cheese Exchange as reported by the Department plus 1.95 times the average monthly price per pound for whey powder (West) as reported by Dairy Market News.

3. Other solids price. This is a residual price. The other solids price per pound, rounded to the nearest one-hundredth cent, is computed by subtracting from the basic formula price, 3.5 times the butterfat price per pound and the protein price per pound times the M–W average protein content. The result is divided by Order 124 other solids content.

4. Weighted average differential per hundredweight. The weighted average differential includes each producer's share of the Class I, II, and III–A differentials. Any differences in component levels of milk used in Class I versus Class II and III will be reconciled in the weighted average differential price. The result is that both the handler protein and other solids prices would be identical. There would be no need for a protein or other solids pool.

5. Handler obligations. Handler obligations only change for milk allocated to Class II, III, and III–A. There is no change in a handler's obligation for milk allocated to Class I. Handlers' obligations are as follows:

Class I Handler Obligations

A. Skim milk price per cwt. x total cwt. of skim purchased.

B. Butterfat price per pound x total pounds of butterfat purchased.

C. Class I differential price per cwt. x total cwt of milk purchased.

Class II Handler Obligations

A. Protein price per pound x total pounds of protein purchased.

B. Other solids price per pound x total pounds of other solids purchased.

C. Butterfat price per pound x total pounds of butterfat purchased.

D. Class II differential price per cwt. x total cwt. of milk purchased.

Class III Handler Obligations

A. Protein price per pounds x total pounds of protein purchased.

B. Other solids price per pound x total pounds of other solids purchased.

C. Butterfat price per pound x total pounds of butterfat purchased.

Class III–A Handler Obligations

A. Protein price per pound x total pounds of protein purchased.

B. Other solids price per pound x total pounds of other solids purchased.

C. Butterfat price per pound x total pounds of butterfat purchased.

D. The difference between the Class III price and the Class III–A price x the total cwt. of milk purchased.

6. Producer payments. Producers would be paid for their milk production based on four factors as follows:

A. Protein price per pound x the total pounds of protein production.

B. Other solids price per pound x total pounds of other solids production.

C. Butterfat price per pound x total pounds of butterfat production.

D. Weighted average differential per cwt. (each producer's share of Class I, II, and III–A differentials) x total cwt. of milk production.

7. Change any other order provisions needed to implement this MCP plan.

Proposed by Oregon Washington Dairy Processors Association

Proposal No. 5

1. Amend § 1124.7 by adding a new paragraph (d)(7) to read as follows:

§ 1124.7 Pool plant.

* * * * *

(d) * * *

(7) A government agency plant.

2. Amend § 1124.8 by adding a new paragraph (f) to read as follows:

§ 1124.8 Nonpool plant.

* * * * *

(f) Governmental Agency plant means a plant owned and operated by a government institution from which fluid milk products are distributed as route dispositions to state institutions not for resale. Such plants shall be exempt from all provisions of this part regarding dispositions to state correctional institutions not for resale. All other fluid milk products shall be subject to § 1124.76(b).

3. Amend § 1124.10 by removing the last sentence from the introductory text, revising paragraphs (c)(2) and (c)(2)(i), and deleting paragraph (c)(2)(ii) to read as follows:

§ 1124.10 Producer-handler.

* * * * *

(c) * * *

(2) The producer-handler handles fluid milk products derived from sources other than the milk production and resources specified in paragraph (b) of this section, except as specified below:

(i) A producer-handler may receive fluid milk products from pool plants if such receipts do not exceed a daily average of 100 pounds during the month.

* * * * *

4. Amend § 1124.12 by adding a new paragraph (b)(6) to read as follows:

§ 1124.12 Producer.

* * * * *

(b) * * *

(6) Any government institution which produces milk in conjunction with the operation of a plant exempt from provisions of this part pursuant to § 1124.8(f).

5. A new § 1124.19 is added under the title "Definitions" to read as follows:

§ 1124.19 Call for milk.

Call for milk means the response undertaken by any cooperative association, including one qualified as a cooperative reserve supply unit pursuant to § 1124.11, to supply producer milk to a distribution plant in accordance with a request made by the market administrator. The market administrator may issue a request for specific cooperatives to supply bulk fluid milk to one or more distributing plants whenever he finds that such supplies are needed at such plant(s) to fulfill their needs for milk for Class I purposes:

(a) Before making a finding that additional supplies are needed for Class I purposes the market administrator shall investigate such need in accordance with the procedures set forth in § 1124.11(b)(1).

(b) Any cooperative with an adequate supply of producer milk within 125 miles of distribution plants included in the call may be requested by the market administrator to respond on a timely basis. Producer milk being directed to other plants for manufacturing purposes will be considered to constitute an appropriate alternative supply for Class I use.

(1) Failure of a cooperative reserve supply unit to comply with any announced shipping requirements, including making any significant change in the unit's marketing operation that the market administrator determines has the impact of evading or forcing such an announcement, shall result in immediate loss of cooperative reserve supply unit status until such time as the unit has been a handler pursuant to § 1124.9 (b) and (c) for at least 12 consecutive months.

(2) Failure of other cooperatives to comply with a call for milk will result in a loss of producer milk status for an equivalent volume of milk that is delivered to manufacturing plants during the period when the call is effective.

(3) Cooperatives, other than cooperative reserve supply units, notified of a loss of producer milk status for violation of this provision shall identify those producers and the amount of their milk not eligible for diversion during the call period. Failure of the cooperative to designate such producers and the respective amounts of milk shall result in the forfeiture of producer milk status for all milk diverted to nonpool manufacturing plants during the month.

Proposed by Dairy Division, Agricultural Marketing Service

Proposal No. 6

Make such changes as may be necessary to make the entire marketing agreements and the orders conform with

any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders may be procured from the Market Administrator of the aforesaid marketing areas, or from the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington office) and the Offices of all Market Administrators.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: June 15, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–15105 Filed 6–20–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–ANE–13]

Airworthiness Directives; Royal Inventum Company DR1 and DR6 Series Galley Water Heaters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Royal Inventum Company DR1 and DR6 series galley water heaters. This proposal would require the installation of new pressure relief valves, and 3-phase safety devices on each Royal Inventum Company DR1 and DR6 series galley water heater. This proposal is prompted by a report of a Royal Inventum DR6 water heater explosion in the aircraft galley during an overheat test at a maintenance facility. The actions specified by the proposed AD are intended to prevent explosions of Royal Inventum Company DR1 and DR6 series galley water heaters, which could cause personal injury or galley damage to the aircraft.

DATES: Comments must be received by August 21, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95- ANE–13, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from B/E Aerospace, Inventum Galley Products Division (Royal Inventum Company), P.O. Box 250, 3430 AG Nieuwegin, The Netherlands. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Terry Fahr, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA , 01803–5299; telephone (617) 238–7155, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–ANE–13." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–ANE–13, 12 New England Executive Park, Burlington, MA, 01803–5299.

Discussion

The Director-General of Civil Aviation of the Netherlands, which is the airworthiness authority for the Netherlands, notified the FAA that an unsafe condition may exist on Royal Inventum Company DR1 and DR6 series galley water heaters, and is likely to exist or develop on other water heaters of the same or similar design. A Royal Inventum Company Model DR6 water heater exploded during a simulated overheat test in a maintenance facility. The water heater was of an earlier design, which did not have a pressure relief valve installed, and did not have a 3-phase safety device installed on the water tank, resulting in a thermostat failure which caused an explosion of the aircraft galley water heater.

Inventum Bilthoven-Holland has issued Service Bulletin's (SB's) 25–330, Revision 1, dated July 8, 1976; SB 25–331, Revision 1, dated September 28, 1977; and Inventum Alert Service Bulletin (ASB) DR1/DR6–25–4, Revision A, dated December 6, 1993, that specify the installation of a pressure relief valve; and Inventum Bilthoven-Holland SB's 25–340, dated July 7, 1977; SB 25–344, dated January 18, 1978; SB 25–345, dated February 16, 1978; SB 25–346, dated February 16, 1978; and Inventum ASB DR1/DR6–25–5, Revision A, dated December 6, 1993, that specify the installation of 3-phase safety devices. The Director-General of Civil Aviation of the Netherlands has classified these service bulletins as mandatory and issued Airworthiness Directive BLA 93–168 (AB), dated December 17, 1993, in order to assure the airworthiness of these water heaters.

This water heater is manufactured in the Netherlands. The FAA has examined the findings of the Director-General of Civil Aviation of the Netherlands, reviewed all information, and determined that AD action is necessary for products of this design that are approved for use on aircraft registered in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other water heaters of the same design approved for use on aircraft registered in the United States, the proposed AD would require the installation of a pressure relief valve and two 3-phase safety devices on these water heaters. The actions would be required to be accomplished in accordance with the service bulletin's described previously.

There are approximately 250 water heaters of the affected design that are on aircraft of U.S. registry that would be affected by this proposed AD, and that it would take approximately six and one half work hours per aircraft to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $250 per aircraft. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $94,500.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Royal Inventum Company: Docket No. 95–ANE–13.

Applicability: Royal Inventum Company DR1 and DR6 series galley water heaters, installed on but not limited to Boeing 727 and 737 series, McDonnell Douglas DC–9 series; and Fokker F.28 series (except Mk. 0100) aircraft.

Note: This airworthiness directive (AD) applies to each water heater identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For Royal Inventum water heaters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the Federal Aviation Administration (FAA). This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any Royal Inventum water heater from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously. To prevent possible explosion of water heaters that could cause personal injury and aircraft damage, accomplish the following:

(a) Within 90 days after the effective date of this AD install a pressure relief valve in accordance with Inventum Alert Service Bulletin (ASB) DR1/DR6–25–4, Revision A, dated December 6, 1993, or Inventum Service Bulletin (SB) 25–330, Revision 1, dated July 8, 1976; or SB 25–331, Revision 1, dated September 28, 1977; and two 3-phase safety devices in accordance with Inventum ASB DR1/DR6–25–5, Revision A, dated December 6, 1993, or SB 25–340, dated July 7, 1977; SB 25–344, dated January 18, 1978; or SB 25–345, dated February 16, 1978; or SB 25–346, dated February 16, 1978.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Boston Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Boston Aircraft Certification Office.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on June 11, 1995.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–15150 Filed 6–20–95; 8:45 am]

BILLING CODE 4910–13–U

Coast Guard

33 CFR Part 100

[CGD 09–95–005]

RIN 2115–AE46

Special Local Regulations; Great Lakes Annual Marine Events

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise its list of annual marine events which occur within the Ninth Coast Guard District. Publication of this list will establish permanent special local regulations for marine events within the Ninth Coast Guard District which recur on an annual basis and which have been determined by the District Commander to require the issuance of special local regulations. This action is being taken to ensure the safety of life and property during each event, while avoiding the necessity of publishing a separate temporary regulation each year for each event. The list reflects the approximate dates and locations of each annual marine event.

DATE: Comments must be received on or before August 7, 1995.

ADDRESSES: Comments should be mailed to Commander (oan), Ninth Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199–2060. The comments will be available for inspection and copying at the Aids to Navigation and Waterways Management Branch, Room 2083, 1240 East 9th Street, Cleveland, Ohio. Normal office hours are between 8 a.m. and 4 p.m.

(EDT), Monday through Friday, except holidays. Comments may also be hand delivered to this address. Annual notice of the exact dates and times of the effective period of the regulation with respect to each event, the geographical area, and details concerning the nature of the event and the number of participants and type(s) of vessels involved will also be published in local notices to mariners. To be placed on the mailing list for such notices, write to Commander (oan), Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, Ohio 44199–2060.

FOR FURTHER INFORMATION CONTACT: Marine Science Technician Second Class Jeffrey M. Yunker, Ninth Coast Guard District, Aids to Navigation and Waterways Management Branch, 1240 East Ninth Street, Cleveland, Ohio 44199–2060, (216) 522–3990.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking [CGD09–95–005] and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Project Officer at the address under **ADDRESSES.** If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information

The drafters of this regulation are Lieutenant Junior Grade Byron D. Willeford, Project Officer, Ninth Coast Guard District, Aids to Navigation and Waterways Management Branch, and Lieutenant Karen E. Lloyd, Project Attorney, Ninth Coast Guard District Legal Office.

Discussion of Proposed Regulations

If adopted, this rulemaking will update an existing list of anticipated annual events. Each year various public and private organizations sponsor marine events on the navigable waters of the United States within the Ninth Coast Guard District. These events include slow-moving boat parades, sailboat races, high-speed hydroplane races, fireworks displays, and other water-related events. The listed events are held in approximately the same location during the same general timeframe each year. Exact times and dates will be published in this final rule. This method streamlines the marine event process for those regattas and marine events which have little variation from year to year. Additionally, it significantly reduces the Coast Guard's administrative burden for managing these events, with no reduction in services to the maritime community. The nature of each event is such that special local regulations are deemed necessary to ensure the safety of life, limb, and property on and adjacent to navigable waters during the events. Group Commanders have consulted and will continue to consult with parties potentially affected by any significant changes to the nature, date, time, and location proposed by an event sponsor for each of the events covered in this rule.

Table 1 gives the approximate dates, times, and locations for the annual events listed. Each year, one or more Local Notice to Mariners will be published giving the exact dates, times, and locations for the annual events. It should be noted that Table 1 in the regulation is not a complete list of all marine events that will occur in the Ninth Coast Guard District. It does not include events which do not require special local regulations for the safety of life, limb, and property on or adjacent to navigable waters. It also does not include nonannual events or events which have not been scheduled in time for this publication.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard is simply proposing to revise its list of annual marine events. The listing itself will not affect the environment. Upon receipt of applications, the Coast Guard will conduct appropriate environmental analysis for each event in accordance with section 2.B.2.c of Coast Guard Commandant Instruction M16475.1B, and the Coast Guard Notice of final agency procedures and policy for categorical exclusions found at 59 FR 38654 (July 29, 1994).

Economic Assessment and Certification

These regulations are not a significant regulatory action under section 3(f) of Executive Order 12866 and do not require an assessment of potential costs and benefits under section 6(a)(3) of that order. They have been exempted from review by the Office of Management and Budget under that order. They are not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of these regulations to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of the DOT is unnecessary.

Collection of Information

These regulations will impose no collection information requirements under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.901 is amended by revising Table 1 at the end of the section to read as follows:

§ 100.901 Great Lakes Annual Marine Events.

Table 1

Group Buffalo, NY

Fireworks by Grucci

Sponsor: New York Power Authority.
Date: Last weekend of July.
Location: Lake Ontario, Wright's Landing/Oswego Harbor, NY within an 800 foot radius of the fireworks launching platform located in approximate position 43° 29′ 10″N, 076° 31′ 04″W (NAD 83).

Flagship International Kilo Speed Challenge

Sponsor: Presque Isle Powerboat Racing Association.
Date: 3rd or 4th weekend of June.
Location: That portion of Lake Erie, Presque Isle Bay, south of a line drawn from 42° 08′ 54″N, 080° 05′ 42″W; to 42° 07′N, 080° 21′W (NAD 83) will be a regulated area. That portion of Lake Erie, Presque Isle Bay, north of a line drawn from 42° 08′ 54″N, 080° 05′ 42″W; to 42° 07′N, 080° 21′W (NAD 83)

will be a " caution area". All vessels transiting the caution area will be operated at bare steerageway, keeping the vessel's wake at a minimum, and will exercise a high degree of caution in the area. The bay entrance will not be affected.

Flagship International Offshore Challenge

Sponsor: Presque Isle Powerboat Racing Association.
Date: 3rd or 4th weekend of June.
Location: That portion of Lake Erie, Presque Isle Bay, Entrance Channel, and the enclosed area from Erie Harbor Pier Head Light (LLNR 3430) northeast to 42° 12′ 48″N. 079° 57′ 24″W (NAD 83), thence south to shore just east of Shades Beach.

Friendship Festival Airshow

Sponsor: Friendship Festival.
Date: 4th of July holiday.
Location: That portion of the Niagara River and Buffalo Harbor from:

Latitude	*Longitude*
42° 54.4′N	078° 54.1′W, thence to
42° 54.4′N	078° 54.1′W, thence

along the International Border to:

42° 52.9′N	078° 54.9′W, thence to
42° 52.5′N	078° 54.3′W, thence to
42° 52.7′N	078° 53.9′W, thence to
42° 52.8′N	078° 53.8′W, thence to
42° 53.1′N	078° 53.6′W, thence to
42° 53.2′N	078° 53.6′W, thence to
42° 53.3′N	078° 53.7′W, thence

along the breakwall to

42° 54.4′N	078° 54.1′W.

(NAD 83)

Geneva Offshore Grand Prix

Sponsor: Great Lakes Offshore Powerboat Racing Association.
Date: 3rd or 4th weekend of May.
Location: That portion of Lake Erie from:

Lotitude	*Longitude*
41° 51.5′N	080° 58.2′W, thence to
41° 52.4′N	080° 53.4′W, thence to
41° 53′N	080° 53.4′W, thence to
41° 52.2′N	080° 58.2′W, thence to
41° 51.5′N	080° 58.2′W.

(NAD 83)

Sodus Bay 4th of July Fireworks

Sponsor: Sodus Bay Historical Society.
Date: 4th of July holiday.
Location: Lake Ontario, within a 500 foot radius around a barge anchored in approximate position 43° 15.73′N, 076° 58.23′W (NAD 83), in Sodus Bay.

Tallship Erie

Sponsor: Erie Maritime Programs, Inc.
Date: 1st or 2nd weekend of July.
Location: That portion of Lake Erie, Presque Isle Bay Entrance Channel and Presque Isle Bay from:

Latitude	*Longitude*
42° 10′N	080° 03′W, thence to
42° 08.1′N	080° 07′W, thence to
42° 07.9′N	080° 06.8′W, thence east

along the shoreline and structures to:

42° 09.2′N	080° 02.6′W, thence to
42° 10′N	080° 03′W.

(NAD 83)

Thomas Graves Memorial Fireworks Display

Sponsor: Port Bay Improvement Association.
Date: 1st or 2nd weekend of July.
Location: That portion of Lake Ontario, Port Bay Harbor, NY within a 500 foot radius surrounding a barge anchored in approximate position 47° 17′ 46″N, 076° 50′ 02″W. (NAD 83)

Thunder Island Offshore Challenge

Sponsor: Thunder on the Water Inc.
Date: 3rd or 4th weekend of June.
Location: That portion of Lake Ontario, Oswego Harbor from the West Pier Head Light (LLNR 2080) north to:

Latitude	*Longitude*
43° 29′ 02″N	076° 32′ 04″W, thence to
43° 26′ 18″N	076° 39′ 30″W, thence to
43° 24′ 55″N	076° 37′ 45″W, thence

along the shoreline to the West Pier Head Light (LLNR 2080).

(NAD 83) –

We Love Erie Days Fireworks

Sponsor: We Love Erie Days Festival, Inc.
Date: 3rd weekend of August.
Location: That portion of Lake Erie, Erie Harbor, within a 300 foot radius, surrounding the Erie Sand and Gravel Pier, located in position 42° 08′ 16″N, 080° 05′ 40″W (NAD 83).

Group Detroit, MI

Bay City Fireworks Display

Sponsor: Bay City Fraternal Order of Police, Lodge 103.
Date: 4th of July holiday.
Location: Saginaw River, from the Veterans Memorial Bridge to approximately 1000 yards south of the River Walk Pier, near Bay City, MI.

Detroit APBA Gold Cup Race

Sponsor: Spirit of Detroit Association.
Date: 1st or 2nd weekend of June.
Location: Detroit River, between Belle Isle and the U.S. shoreline, near Detroit, MI. Bound on the west by the Belle Isle Bridge and on the east by a north-south line drawn through the Waterworks Intake Cribe Light (LLNR 1022).

Buick Watersports Weekend

Sponsor: Adore Ltd. and APBA.
Date: 3rd or 4th weekend of July.
Location: That portion of the Saginaw River from the Liberty Bridge on the north to the Veterans Memorial Bridge on the south, near Bay City, MI.

Cleveland Charity Classic

Sponsor: Lake Erie Offshore Racing, Ltd.
Date: 3rd or 4th weekend of July.
Location: That portion of Lake Erie, Cleveland Harbor from the Cleveland Waterworks Intake Crib Light (LLRN 4030) to:

Lotitude	*Longitude*
41° 30.7′N	081° 43.1′W (West) Pierhead Light, LLNR 4160), thence

along the breakwater to,

41° 30.4′N	081° 42.9′W (West Breakthrough Light, LLNR 4175), thence to,
41° 30.2′N	081° 42.8′W (West Pier Light, LLNR 4185), thence

along the shoreline and structure to,

41° 32.5′N	081° 38.3′W (Disposal Light B, LLNR 4045), thence to,
41° 33′N	081° 45′W (Cleveland Waterworks Intake Crib Light LLNR 4030).

(NAD 83)

Cleveland National Air Show

Sponsor: Cleveland National Air Show.
Date: Labor Day Weekend.
Location: That portion of Lake Erie and Cleveland Harbor (near Burke Lakefront Airport) from shore position 41° 31′ 52″N, 081° 39′ 17.5″W, northwest to 41° 32′ 19″N, 081° 39′ 42.3″W, then southwest to the East Pierhead Light (LLNR 4075), thence southeast on a bearing of 145 degrees true to shore (NAD 83).

Cleveland Offshore Grand Prix

Sponsor: Great Lakes Offshore Powerboat Racing Association.
Date: 1st or 2nd weekend of August.
Location: That portion of Lake Erie, Cleveland Harbor from the Cleveland Waterworks Intake Crib Light (LLNR 4030) to:

Latitude	*Longitude*
41° 30.7′N	081° 43.1′W (West) Pierhead Light, LLNR 4160), thence

along the breakwater to,

41° 30.4′N	081° 42.9′W (West Breakthrough Light, LLNR 4175), thence to,
41° 30.2′N	081° 42.8′W (West Pier Light, LLNR 4185), thence

along the shoreline and structures to:

41° 32.5′N	081° 38.3′W (Disposal Light B, LLNR 4045), thence to,
41° 33′N	081° 45′W (Cleveland Waterworks Intake Crib Light LLNR 4030).

(NAD 83)

Flatsfest

Sponsor: Flats Riverfest Corporation.
Date: 3rd or 4th weekend of July.
Location: Cuyahoga River, Conrail Railroad Bridge at Mile 0.8 above the mouth of the river to the Eagle Avenue Bridge, near Cleveland, OH.

International Bay City River Road

Sponsor: Bay City River Roar, Inc.
Date: 3rd or 4th weekend of June.
Location: That portion of the Saginaw River from the Liberty Bridge on the north to the Veterans Memorial Bridge on the south, near Bay City, MI.

International Freedom Festival Fireworks

Sponsor: Detroit Renaissance Foundation.
Date: 3rd or 4th week of June.

Location: The Detroit River between 083° 03′W (Cobo Hall) and 083° 01′ 27″W (NAD 83) (Huron Cement).

International Freedom Festival Tug Across the River

Sponsor: Detroit Renaissance Foundation.
Date: 3rd or 4th week of June.
Location: That portion of the Detroit River bounded on the south by the International Boundary, on the west by 083° 03′W, on the east by 083° 02′W, (NAD 83) and on the north by the U.S. shoreline.

Port Clinton Offshore Grand Prix

Sponsor: Great Lakes Offshore Powerboat Racing Association.
Date: 1st or 2nd weekend of July.
Location: That portion of western Lake Erie:

Latitude	*Longitude*
41° 31.2′N	082° 56.1′W, thence

along the shoreline and structure to

41° 33.3′N	082° 51.3′W, thence to
41° 33.3′N	082° 52.8′W, thence to
41° 31.2′N	082° 56.1W.

(NAD 83)

Port Huron to Mackinac Island Race

Sponsor: Bayview Yacht Club.
Date: 2nd or 3rd weekend of July.
Location: That portion of the Black River, St. Clair River, and Lower Lake Huron from:

Latitude	*Longitude*
42° 58.8′N	082° 26′W, to
42° 58.4′N	082° 24.8′W, theace

northward along the International Boundary to

43° 02.8′N	082° 23.8′W, to
43° 02.8′N	082° 26.8′W, thence

southward along the U.S. shoreline to

42° 58.9′N	082° 26′W, thence to
42° 58.8′N	082° 26′W

(NAD 83)

Thunder on the River Hydroplane Race

Sponsor: Toledo Prop Spinners.
Date: 3rd or 4th weekend of August.
Location: Maumee River, between the Martin Luther King and Anthony Wayne bridges, near Toledo, OH.

Toledo 4th of July Fireworks

Sponsor: City of Toledo.
Date: 4th of July weekend.
Location: Maumee River, between the Martin Luther King and Anthony Wayne bridges, near Toledo, OH.

Toledo Labor Day Fireworks

Sponsor: Reams Broadcasting Corporation.
Date: Labor Day.
Location: Maumee River, between the Martin Luther King and Anthony Wayne bridges, near Toledo, OH.

Group Soult Ste. Marie, MI

Bridgefest Regatta

Sponsor: Bridgefest Committee.
Date: 2nd weekend of June.
Location: Keweenaw Waterway, from the Houghton Hancock Lift Bridge to 1000 yards west of the bridge, near Houghton, MI.

Duluth Fourth Fest Fireworks

Sponsor: Office of the Mayor, Duluth, MN.
Date: 4th of July weekend.
Location: That portion of the Duluth Harbor Basin Northern Section bounded in the south by a line drawn on a bearing of 087° true from the Cargill Pier through Duluth Basin Lighted by Buoy #5 (LLNR 15905) to the opposite shore on the north by the Duluth Aerial Bridge. That portion of Duluth Harbor Basin Northern Section within 600 yards of position 46° 46′ 47″N, 092° 06′ 10″W (NAD 83).

July 4th Fireworks

Sponsor: City of Sault Ste Marie, MI.
Date: 4th of July weekend.
Location: That portion of the St. Marys River, Sault Ste. Marie, MI within a 1000 foot radius of Brady Park, located on the south shore of the river. These waters are enclosed by the Locks to the west and to the east from a line drawn from the pier light of the east center pier to the U.S. Coast Guard Base to the southeast.

National Cherry Festival Blue Angels Air Demonstration

Sponsor: National Cherry Festival Inc.
Date: 1st week of July.
Location: That portion of the Western arm of the Grand Traverse Bay, Traverse City, MI, enclosed by straight lines connecting the following geographic coordinates.

Latitude	*Longitude*
44° 46.8′N	085° 38.3′W, to
44° 46.5′N	085° 35.5′W, to
44° 46′N	085° 35.8′W, to
44° 46.5′N	085° 38.5′W, thence to
44° 46.8′N	085° 38.3′W.

(NAD 83)

Venetian Festival Yacht Parade

Sponsor: Charlevoix Chamber of Commerce.
Date: 3rd or 4th weekend of July.
Location: That portion of the upper and lower section of the Pine River, to include Round Lake, from:

Latitude	*Longitude*
45° 19.3′N	085° 15.9′W, (North Pierhead Light, LLNR 17920) thence to,
45° 18.9′N	085° 14.7′W, (Pine River Light 3, LLNR 17945) thence to,
45° 18.8′N	085° 14.7′W, (Pine River Channel Lighted Buoy 2, LLNR 17950) thence to,
45° 19′N	085° 15.9′W, (South Pierhead Light, LLNR 17925) thence to,
45° 19.3′N	085° 15.9′W.

(NAD 02)

Group Grond Haven, MI

Coast Guard Festival Fireworks

Sponsor: Grand Haven Coast Guard Festival, Inc.
Date: 1st weekend of August.
Location: That portion of the Grand River, Grand Haven, MI, from a north-south line drawn from the North Pierhead Light Number 1 (LLNR 18045) on the north to the South Pierhead Entrance Light (LLNR 18035) on the south, thence down river to the US 31 Bascule Bridge (mile 2.89).

Grand Haven Area Jaycees Annual 4th of July Fireworks Display

Sponsor: Grand Haven Area Jaycees.
Date: 1st week of July.
Location: That portion of the Grand River, Grand Haven, MI from the pier heads (mile 0.0) to the US 31 Bascule Bridge (mile 2.89).

Tulip Time Fireworks and Water Ski Show

Sponsor: Holland Tulip Time Festival Inc.
Date: 1st weekend of May.
Location: That portion of Lake Macatawa, Holland Harbor, east of a north-south line, from shore to shore, at position 086° 08′W. (NAD 83)

Tulip Time Water Ski Show

Sponsor: Holland Tulip Time Festival Inc.
Date: 2nd weekend of May.
Location: That portion of Lake Macatawa, Holland Harbor, east of a north-south line, from shore to shore, at position 086° 08′W. (NAD 83)

Waves of Thunder Offshore Race

Sponsor: Michigan Offshore Powerboat Racing Association.
Date: 3rd weekend of June.
Location: That portion of Lake Michigan, from the South Pierhead Light (LLNR 18520) south along the shoreline to:

Latitude	*Longitude*
42° 19′N	086° 19.3′W, thence to
42° 19.5′N	086° 19.8′W, thence to
42° 23.9′N	086° 18.7′W, thence to
42° 23.9′N	086° 17′W.

(NAD 83)

West Michigan Offshore Powerboat Challenge

Sponsor: Michigan Offshore Powerboat Racing Association.
Date: 1st or 2nd weekend of September.
Location: That portion of Lake Michigan from:

Latitude	*Longitude*
43° 03.4′N	086° 15.3′W (Grand Haven South Pierhead Entrance Light, LLNR 18965), thence

along the breakwater and shoreline to

42° 54.8′N	086° 13′W, thence to
42° 54.8′N	086° 15.7′W, thence to
43° 03.4′N	086° 15.7′W, thence to
43° 03.4′N	086° 15.3′W (Grand Haven) South Pierhead Entrance Light, LLNR 18965).

(NAD 83)

Group Milwaukee, WI

Chicago Air and Water Show

Sponsor: Chicago Park District.
Date: 3rd or 4th weekend of August.
Location: That portion of Lake Michigan from 41° 55′ 54″N at the shoreline, then east to a point at 41° 55′ 54″N, 87° 37′ 12″W, thence southeast to a point at 41° 54′N, 87° 36′W, (NAD 83) then a line drawn southwestward to the northeast corner of the Central District Filtration Plant Breakwall, thence due west to shore.

Festa Italiana

Sponsor: The Italian Community Center.

Date: 3rd weekend of July.
Location: The uncharted lagoon or basin in Milwaukee Harbor north of the mouth of the Milwaukee River and directly adjacent to the Summerfest grounds, enclosed by shore on the west and a "comma" shaped man-made rock wall on the east. The construction of the lagoon is such that a small "basin" has been created with one entrance located at the northwest end, thus, there is no "thru traffic".

Milwaukee Summerfest

Sponsor: Milwaukee World Festival, Inc.
Date: Last week of June through 2nd weekend of July.
Location: The uncharted lagoon or basin in Milkwaukee Harbor north of the mouth of the Milwaukee River and directly adjacent to the Summerfest grounds, enclosed by shore on the west and a "comma" shaped man-made rock wall on the east. The construction of the lagoon is such that a small "basin" has been created with one entrance located at the northwest end, thus, there is no "thru traffic". Four special buoys will be set by the sponsor to delineate the entrance to the lagoon.

Racine on the Lakefront Airshow

Sponsor: Rotary Club of Racine.
Date: 2nd weekend of June.
Location: That portion of Racine Harbor, Lake Michigan bounded by the following corner points:

Southeast Corner—42°41.95'N 87° 45.5'W
Southwest Corner—42°41.95'N 87° 47.2'W
Northwest Corner—42°45.6'N 87° 46.2'W
Northeast Corner—42°45.6'N 87° 45.5'W.
(NAD 83)

Dated: May 17, 1995.

Rudy K. Peschel,

Rear Admiral, Coast Guord, Commander, Ninth Coast Guard District.

[FR Doc. 95–15223 Filed 6–20–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. 133; NJ20–1–6709b; FRL–5218–4]

Approval and Promulgation of Implementation Plans; Gasoline Volatility Regulation State of New Jersey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of New Jersey which incorporates into the New Jersey SIP revisions to Subchapter 25, "Control and Prohibition of Air Pollution by Vehicular Fuel." These revisions include a modification to the State's volatility standard for vehicular fuels and the addition of a procedure by which persons may apply for an exemption from the Reid Vapor Pressure (RVP) standard that allows the use of gasoline which does not comply with that standard. This action is necessary to keep the State's SIP consistent with changes to its existing regulations. In the final rules section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the action is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this proposed rule. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received on or before July 21, 1995.

ADDRESSES: All comments should be addressed to: William S. Baker, Chief, Air Programs Branch, Air and Waste Management Division, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278.

Copies of the State submittal are available at the following locations for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Library, 26 Federal Plaza, room 402, New York, New York 10278.

New Jersey Department of Environmental Protection, Bureau of Air Quality Planning, 401 East State Street, CN027, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Michael P. Moltzen, Environmental Engineer, Technical Evaluation Section, Air Programs Branch, Environmental Protection Agency, 26 Federal Plaza, Room 1034A, New York, New York 10278, (212) 264–2517.

SUPPLEMENTARY INFORMATION:

Background

For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: May 2, 1995.

William J. Muszynski,

Deputy Regional Administrator.

[FR Doc. 95–15035 Filed 6–20–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[FL01; FRL–5225–2]

Clean Air Act Proposed Interim Approval of Operating Permit Program; Florida

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim approval.

SUMMARY: EPA proposes interim approval of the operating permit program submitted by the State of Florida for the purpose of complying with Federal requirements which mandate that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources, and to certain other sources.

DATES: Comments on this proposed action must be received in writing by July 21, 1995.

ADDRESSES: Written comments on this action should be addressed to Carla E. Pierce, Chief, Air Toxics Unit/Title V Program Development Team, Air Programs Branch, at the EPA Region 4 office listed below. Copies of Florida's submittal and other supporting information used in developing the proposed interim approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE, Atlanta, GA 30365.

FOR FURTHER INFORMATION CONTACT: Kim Gates, Title V Program Development Team, Air Programs Branch, Air Pesticides & Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE, Atlanta, GA 30365, (404) 347–3555, Ext. 4146.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under title V of the Clean Air Act ("the Act") as amended by the 1990 Clean Air Act Amendments, EPA promulgated rules on July 21, 1992 (57 FR 32250), that define the minimum elements of an approvable state operating permit program and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of state operating permit programs. These rules

are codified at 40 Code of Federal Regulations (CFR) part 70. Title V and part 70 require that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources.

The Act requires states to develop and submit these programs to EPA by November 15, 1993, and EPA to approve or disapprove each program within one year after receiving the submittal. If the State's submission is materially changed during the one-year review period, 40 CFR 70.4(e)(2) allows EPA to extend the review period for no more than one year following receipt of the additional materials. EPA received Florida's title V operating permit program submittal on November 16, 1993. The State provided EPA with additional materials in supplemental submittals dated July 8, 1994, November 28, 1994, December 21, 1994, December 22, 1994, and January 11, 1995. Because these supplements materially changed the State's title V program submittal, EPA has extended the one-year review period.

EPA reviews state operating permit programs pursuant to section 502 of the Act and 40 CFR part 70, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to two years. If EPA has not fully approved a program by November 15, 1995, or by the end of an interim program, it must establish and implement a Federal operating permit program for that state.

B. Federal Oversight and Sanctions

If EPA grants interim approval to Florida's program, the interim approval would extend for two years following the effective date of final interim approval, and could not be renewed. During the interim approval period, the State of Florida would not be subject to sanctions, and EPA would not be obligated to promulgate, administer, and enforce a Federal operating permit program for the State. Permits issued under a program with interim approval are fully effective with respect to part 70. The 12-month time period for submittal of permit applications by sources subject to part 70 requirements and the three-year time period for processing the initial permit applications begin upon the effective date of final interim approval.

Following the granting of final interim approval, if Florida fails to submit a complete corrective program for full approval by the date six months before expiration of the interim approval, EPA will start an 18-month clock for mandatory sanctions. If Florida then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA is required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that Florida has corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of Florida, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determines that Florida has come into compliance. In any case, if, six months after application of the first sanction, Florida still has not submitted a corrective program that EPA determines to be complete, a second sanction will be required.

If, following final interim approval, EPA disapproves Florida's complete corrective program, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date Florida has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator finds a lack of good faith on the part of Florida, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determines that Florida has come into compliance. In all cases, if six months after EPA applies the first sanction, Florida has not submitted a revised program that EPA determines to have corrected the deficiencies that prompted disapproval, a second sanction will be required.

In addition, discretionary sanctions may be applied where warranted any time after the end of an interim approval period if a state has not timely submitted a complete corrective program or EPA has disapproved a submitted corrective program. Moreover, if EPA has not granted full approval to a state program by the expiration of an interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer, and enforce a Federal operating permit program for that state upon interim approval expiration.

II. Proposed Action and Implications

A. Analysis of State Submission

EPA has concluded that the operating permit program submitted by Florida substantially meets the requirements of title V and part 70, and proposes to grant interim approval to the program. For detailed information on the analysis of the State's submission, please refer to the Technical Support Document (TSD) contained in the docket at the address noted above.

1. Support Materials

Pursuant to section 502(d) of the Act, each state must develop and submit to the Administrator an operating permit program under state or local law or under an interstate compact meeting the requirements of title V of the Act. On November 16, 1993, EPA received the title V operating permit program submitted by the State of Florida. The Florida Department of Environmental Protection (FDEP) requested, under the signature of the Florida Governor's designee, approval of its operating permit program with full authority to administer the program in all areas of the State of Florida, with the exceptions of Indian reservations and tribal lands. The State supplemented the program submittal on July 8, 1994, November 28, 1994, and December 22, 1994.

The Florida submittal addresses, in Section II entitled "Complete Program Description," the requirement of 40 CFR 70.4(b)(1) by describing how the State intends to carry out its responsibilities under the part 70 regulations. EPA has deemed the program description to be sufficient for meeting the requirement of 40 CFR 70.4(b)(1).

Pursuant to 40 CFR 70.4(b)(3), each state is required to submit a legal opinion from the Attorney General (or the attorney for the state air pollution control agency that has independent legal counsel) demonstrating adequate authority to carry out all aspects of the title V operating permit program. The State of Florida submitted a General Counsel Opinion and a Supplementary General Counsel Opinion demonstrating adequate legal authority as required by Federal law and regulation.

Section 70.4(b)(4) requires the submission of relevant permitting program documentation not contained in the regulations, such as permit application forms, permit forms, and relevant guidance to assist in the State's implementation of its permit program. Appendix I of Florida's submittal includes the permit application form, and EPA has determined that the application form meets the requirements of 40 CFR 70.5(c).

2. Regulations and Program Implementation

The State of Florida developed Chapter 62–213 of the Florida Administrative Code (F.A.C.) for the implementation of the substantive requirements of 40 CFR part 70. The State also made changes to Chapters 62–

103 and 62–210, F.A.C. to implement other part 70 requirements. These rules, and several other rules and statutes providing for State permitting and administrative actions, were submitted by Florida with sufficient evidence of procedurally correct adoption as required by 40 CFR 70.4(b)(2).

The Florida program, in Rules 62–213.100 and 62–213.200, F.A.C., substantially meets the requirements of 40 CFR 70.2 and 70.3 with regards to applicability. However, the portion of the State's definition of "major source" in Rule 62–213.200(19)(a), F.A.C., implies that emissions of criteria pollutants from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station will not be aggregated with emissions of criteria pollutants from other similar units. Since the State's definition of "major source" conflicts with the part 70 definition, Florida has initiated rulemaking to clarify that the non-aggregation in the described situations applies only to hazardous air pollutants (HAPs). Finalization of this rulemaking is a condition of full program approval.

Florida's program, in Rules 62–210.900 and 62–213.420, F.A.C., substantially meets the requirements of 40 CFR 70.5 for complete permit application forms. However, the State's program, in Rule 62–4.090, F.A.C., requires renewal applications to be submitted 60 days prior to expiration of existing operating permits. This requirement conflicts with the requirement of 40 CFR 70.5(a)(1)(iii) because the State's timeframe does not ensure that a permit will not expire prior to renewal. Florida has initiated rulemaking to require submittal of renewal applications six months prior to expiration of existing operating permits. Finalization of this rulemaking is a condition of full program approval.

Section 70.4(b)(2) requires states to include in their part 70 programs any criteria used to determine insignificant activities or emission levels for the purposes of determining complete applications. Section 70.5(c) states that an application for a part 70 permit may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate appropriate fee amounts. Section 70.5(c) also states that EPA may approve, as part of a state program, a list of insignificant activities and emissions levels which need not be included in permit applications. Under part 70, a state must request and EPA may approve as part of that state's program any activities or emission levels that the state wishes to consider insignificant. Part 70, however, does not establish emissions thresholds for insignificant activities. EPA has accepted emissions thresholds of five tons per year for criteria pollutants, and the lesser of 1000 pounds per year or section 112(g) de minimis levels for HAPs, as reasonable.

Florida's title V program includes three different approaches to establishing insignificant activities and emissions levels. Rule 62–213.420(3)(c), F.A.C., establishes threshold levels for reporting emissions of pollutants for which no standard applies. Rule 62–210.300(3), F.A.C., provides for the exemption of certain facilities, emissions units, or pollutant-emitting activities from the title V permitting process. Rule 62–4.040(1)(b), F.A.C., allows the State to determine insignificant activities on a case-by-case basis during the permitting process.

The threshold levels in Rule 62–213.420(3)(c), F.A.C., do not exempt any units or activities from permitting requirements or any other requirements, except the reporting of emissions below the thresholds established. Rule 62–213.420(3)(c)2., F.A.C., provides for the reporting of emissions if the title V source emits or has the potential to emit at the following aggregate thresholds: 50 tons/year for carbon monoxide; 500 lbs/year for lead and lead compounds (expressed as lead); and five tons/year for particulates (PM–10), sulfur dioxide, nitrogen oxides, and volatile organic compounds (VOCs). Once these aggregate thresholds have been met, emissions are reported on a per unit basis for units which have a potential to emit at the following thresholds: 10 tons/year for carbon monoxide; 100 lbs/year for lead and lead compounds (expressed as lead); and one ton/year for particulates (PM–10), sulfur dioxide, nitrogen oxides, and VOCs. Fugitive emissions and emissions from units with the potential to emit less than the unit thresholds mentioned above shall be considered as source-wide emissions and shall be reported as source-wide emissions if, in the aggregate, the source-wide emissions equal or exceed the following thresholds: 10 tons/year for carbon monoxide; 100 lbs/year for lead and lead compounds (expressed as lead); and one ton/year of particulates (PM–10), sulfur dioxide, nitrogen oxides, and VOCs.

Rule 62–213.420(3)(c)3.b., F.A.C., provides for the reporting of HAPs when a title V source emits or has the potential to emit eight tons or more per year of any single HAP, or 20 tons or more per year of any combination of HAPs. Once these thresholds have been met, emissions are identified and reported from each emissions unit with the potential to emit one ton per year of any individual HAP. All fugitive emissions not associated with any specific emissions units are also reportable when such emissions exceed one ton per year of any individual HAP.

In the State's Supplement 1 (dated July 8, 1994) to the original title V program submittal, Florida noted that the emissions thresholds in its program were based on the presumption that reporting requirements need to be stringent enough to identify applicable requirements and to suffice for inventorying emissions to evaluate the impact on ambient air concentrations. The aggregate threshold for carbon monoxide of 50 tons/year appears to be inconsistent with this objective. Since the aggregate threshold of 50 tons/year must be met prior to the reporting of carbon monoxide in the application, the potential exists for carbon monoxide to be inappropriately excluded because of miscalculations. EPA proposes that, as a condition of full approval, the State provide EPA with an acceptable justification for establishing an aggregate carbon monoxide emissions threshold of 50 tons/year rather than five tons/year. Otherwise, the State must establish aggregate and individual unit thresholds that trigger the reporting of carbon monoxide emissions consistent with the emissions levels established for particulates (PM–10), sulfur dioxide, nitrogen oxides, and volatile organic compounds.

Moreover, since insignificant emissions levels are reviewed relative to threshold levels for determining major source status, as well as levels at which applicable requirements are triggered, Florida's thresholds for the reporting of HAP emissions must be revised as a condition of full program approval. For other state and local programs, EPA has accepted HAPs emission thresholds of the lesser of 1000 lbs/year or section 112(g) de minimis levels as sufficient for full approval.

Rule 62–210.300(3), F.A.C., exempts specific facilities, emissions units, or pollutant-emitting activities from the title V permitting process. As a condition of full approval, the State must revise Rule 62–210.300(3), F.A.C. to provide that (1) no insignificant activities or emissions units subject to applicable requirements (as defined in Rule 62–213.200(6), F.A.C.) will be exempted from title V permitting requirements; (2) insignificant activities or emissions units exemptions will not be used to lower the potential to emit below major source thresholds; and (3) emissions thresholds for individual activities or units that are exempted will not exceed five tons per year for criteria pollutants, and the lesser of 1000 pounds per year or section 112(g) de minimis levels for HAPs.

In addition, several of the specific exemptions in Rule 62–210.300(3), F.A.C. must either be removed from the rule or revised as a condition of full approval. Specifically, Rule 62–210.300(3)(a), F.A.C. exempts "[s]team and hot water generating units located within a single facility and having a total heat input, individually or collectively, equaling 50 million BTU/hr or less, and fired exclusively by natural gas except for periods of natural gas curtailment during which fuel oil containing no more than one percent sulfur is fired * * *" However, during the periods fuel oil is fired, these sources could potentially emit sulfur dioxide in excess of major source thresholds. Since the potential emissions from these sources would not be "insignificant," this exemption must be removed from Rule 62–210.300(3), F.A.C. as a condition of full approval.

Rule 62–210.300(3)(r), F.A.C. exempts "[p]erchloroethylene dry cleaning facilities with a solvent consumption of less than 1,475 gallons per year." However, at the annual consumption rate of 1,475 gallons of perchloroethylene, these facilities could potentially emit over eight tons per year of perchloroethylene. Since the potential HAPs emissions from these sources is not "insignificant," this exemption must be removed from Rule 62–210.300(3), F.A.C. as a condition of full approval.

Rule 62–210.300(3)(u), F.A.C. exempts "[e]mergency electrical generators, heating units, and general purpose diesel engines operating no more than 400 hours per year * * *" These sources could potentially have emissions in excess of major source thresholds, depending on the fuel used and the unit's size. Since the potential emissions from these sources would not be "insignificant," this exemption must be removed from Rule 62–210.300(3), F.A.C. as a condition of full approval.

Rule 62–210.300(3)(x), F.A.C. exempts "[p]hosphogypsum disposal areas and cooling ponds." This exemption potentially includes phosphogypsum stacks, which emit radon and are subject to the radionuclide National Emissions Standards for Hazardous Air Pollutants (NESHAPS) found in 40 CFR 61, Subpart R. Therefore, as a condition of full approval, this exemption must be revised to exclude phosphogypsum stacks.

Rule 62–4.040(1)(b), F.A.C., allows Florida to determine insignificant activities on a case-by-case basis during the permitting process. As a condition of full approval, the State must revise Rule 62–4.040(1)(b), F.A.C. to provide that (1) no insignificant activities or emissions units subject to applicable requirements (as defined in Rule 62–213.200(6), F.A.C.) will be exempted from title V permitting requirements; (2) no insignificant activities or emissions units will be used to lower the potential to emit below major source thresholds; and (3) emissions thresholds for individual activities or units that are exempted will not exceed five tons per year for criteria pollutants, and the lesser of 1000 pounds per year or section 112(g) de minimis levels for HAPs.

Florida's program, in Rules 62–4.130, 62–4.160, 62–210.700, 62–213.410, and 62–213.440, F.A.C., substantially meets the requirements of 40 CFR 70.4, 70.5, and 70.6 for permit content (including operational flexibility). The State's program does not provide for off-permit changes as described in 40 CFR 70.4(b)(14).

Part 70 requires prompt reporting of deviations from the permit requirements. Section 70.6(a)(3)(iii)(B) requires the permitting authority to define "prompt" in relation to the degree and type of deviation likely to occur and the applicable requirements. Although the permit program regulations should define "prompt" for purposes of administrative efficiency and clarity, an acceptable alternative is to define "prompt" in each individual permit. EPA believes that "prompt" should generally be defined as requiring reporting within two to ten days of the deviation. Two to ten days is sufficient time in most cases to protect public health and safety as well as to provide a forewarning of potential problems. For sources with a low level of excess emissions, a longer time period may be acceptable. However, prompt reporting must be more frequent than the semiannual reporting requirement, given this is a distinct reporting obligation under section 70.6(a)(3)(iii)(A). Where "prompt" is defined in the individual permit but not in the program regulations, EPA may veto permits that do not contain sufficiently prompt reporting of deviations.

Florida has not defined "prompt" in its program with respect to the reporting of deviations. Rule 62–213.440(1)(b)3.b., F.A.C., requires reporting, in accordance with the requirements of Rules 62–210.700(6) and 62–4.130, F.A.C., of deviations from permit requirements. Rule 62–210.700(6), F.A.C., requires notification in accordance with Rule 62–4.130, F.A.C. Rule 62–4.130, F.A.C., requires immediate notification "if the permittee is temporarily unable to comply with any of the conditions of the permit due to breakdown of equipment or destruction by hazard of fire, wind or by other cause." This requirement is reiterated in Rule 62–4.160(8), F.A.C., which is a general condition of each permit that extends the requirement to include immediate reporting if, for any reason, the permittee does not comply with or will be unable to comply with any condition or limitation specified in the permit. Florida has stated that "immediately" is not reasonably interpreted to mean a time beyond the next workday.

Florida has the authority to issue variances from requirements imposed by State law. Rule 62–103.100, F.A.C., allows Florida discretion to grant relief from compliance with State statutes and rules. EPA regards this provision as wholly external to the program submitted for approval under part 70, and consequently proposes to take no action on this provision of State law. EPA has no authority to approve provisions of state law, such as the variance provision referred to, that are inconsistent with title V. EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a Federally enforceable part 70 permit, except where such relief is granted through the procedures allowed by part 70. A part 70 permit may be issued or revised (consistent with part 70 permitting procedures) to incorporate those terms of a variance that are consistent with applicable requirements. A part 70 permit may also incorporate, via part 70 permit issuance or modification procedures, the schedule of compliance set forth in a variance. However, EPA reserves the right to pursue enforcement of applicable requirements notwithstanding the existence of a compliance schedule in a permit to operate. This is consistent with 40 CFR 70.5(c)(8)(iii)(C), which states that a schedule of compliance "shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based."

Florida's program, in Rules 62–210.360, 62–213.400, 62–213.412, 62–213.420, and 62–213.430, F.A.C., substantially meets the permit processing requirements of 40 CFR 70.7 (including minor permit modifications) and 70.8. However, the State's regulations do not provide for permit reopenings for cause consistent with 40 CFR 70.7(f)(1)(i), (iii), and (iv). As a condition of full approval, the State's program must provide the following: (1)

if a permit is reopened and revised because additional applicable requirements become applicable to a major source with a remaining permit term of 3 or more years, such a reopening shall be completed within 18 months after promulgation of the applicable requirement; (2) a permit shall be reopened and revised if EPA or the State determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit; and (3) a permit shall be reopened if EPA or the State determine that the permit must be revised or revoked to assure compliance with the applicable requirements.

The public participation requirements of 40 CFR 70.7(h) were addressed in Rules 62–103.150, 62–210.350, 62–213.430, and 62–213.450, F.A.C. The program also, in Sections 403.131, 403.141, and 403.161 of the Florida Statutes (F.S.), substantially meets the requirements of 40 CFR 70.11 with respect to enforcement authority.

The aforementioned TSD contains the detailed analysis of Florida's program and describes the manner in which the State's program meets all of the operating permit program requirements of 40 CFR part 70.

3. Permit Fee Demonstration

Section 502(b)(3) of the Act requires each permitting authority to collect fees sufficient to cover all reasonable direct and indirect costs necessary for the development and administration of its title V operating permit program. Each title V program submittal must contain either a detailed demonstration of fee adequacy or a demonstration that aggregate fees collected from title V sources meet or exceed $25 per ton of emissions per year (adjusted from 1989 by the Consumer Price Index (CPI)). The $25 per ton is presumed, for program approval, to be sufficient to cover all reasonable program costs and is thus referred to as the "presumptive minimum."

The State of Florida has elected to assess a title V operating permit fee below the Federal presumptive minimum fee amount. The State's program submittal, therefore, included a detailed fee demonstration in accordance with 40 CFR 70.9(b)(5). The fee demonstration showed that the fees collected will adequately cover the anticipated costs of the operating permit program for the years 1995 through 1999.

In Rule 62–213.205, F.A.C., the State established a 1995 license fee for title V sources of $25 per ton of each regulated air pollutant allowed to be emitted annually. Rule 62–213.205(1)(a), F.A.C., provides that the license fee may be increased beyond $25 per ton in years succeeding 1995 if the Secretary of FDEP finds that a shortage of revenue will occur in the absence of a fee adjustment. The State asserts that since one of the program's mandates is that it be self-supporting, it is expected that the Secretary's discretionary power will be exercised as the need arises to adjust the fee accordingly.

The program activities that will constitute the State's title V operating permit program are consistent with the activities described in 40 CFR 70.9(b)(1). Rule 62–213.205(3), F.A.C., provides that an audit of the State's operating permit program will be conducted 2 years after EPA has given full approval of the program or by December 31, 1996, whichever comes later, to ascertain whether the annual fees collected are used solely to support reasonable direct and indirect costs of the title V program. After the first audit, the program will be audited biennially. And though Rule 62–213.205(1)(a), F.A.C., provides that the annual fee may not exceed $35 per ton without legislative approval, Florida has assured EPA that it will seek legislative action to raise the fee amount above the $35 per ton limit if it becomes necessary.

4. Provisions Implementing the Requirements of Other Titles of the Act

a. *Authority for section 112 implementation.* In its program submittal, Florida demonstrates adequate legal authority to implement and enforce all section 112 requirements through the title V permit. This legal authority is contained in the Florida Statutes (i.e., Section 403.0872), and in the Florida Administrative Code in regulatory provisions defining "applicable requirements" and stating that permits must address all applicable requirements. Moreover, Florida has initiated rulemaking to clearly state that each permit shall incorporate all applicable requirements for the title V source. EPA has determined that this legal authority is sufficient to allow the State to issue permits that assure compliance with all section 112 requirements.

EPA is interpreting the above legal authority to mean that Florida is able to carry out all section 112 activities with respect to part 70 and non-part 70 sources. For further rationale on this interpretation, please refer to the TSD.

b. *Implementation of section 112(g) upon program approval.* EPA issued an interpretive notice on February 14, 1995 (60 FR 8333), which outlines EPA's revised interpretation of section 112(g) applicability. The notice postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The notice sets forth in detail the rationale for the revised interpretation.

The section 112(g) interpretative notice explains that EPA is considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule so as to allow states time to adopt rules implementing the Federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), Florida must have a Federally enforceable mechanism for implementing section 112(g) during the period between promulgation of the Federal section 112(g) rule and adoption of implementing State regulations.

EPA is aware that Florida lacks a program designed specifically to implement section 112(g). However, Florida does have a preconstruction review program that can serve as an adequate implementation vehicle during the transition period because it would allow the State to select control measures that would meet the maximum achievable control technology (MACT), as defined in section 112, and incorporate these measures into a Federally enforceable preconstruction permit.

For this reason, EPA proposes to approve the use of Florida's preconstruction review program found in Rule 62–212, F.A.C., under the authority of title V and part 70, solely for the purpose of implementing section 112(g) to the extent necessary during the transition period between section 112(g) promulgation and adoption of a State rule implementing EPA's section 112(g) regulations. Although section 112(l) generally provides authority for approval of state air programs to implement section 112(g), title V and section 112(g) provide for this limited approval because of the direct linkage between the implementation of section 112(g) and title V. The scope of this approval is narrowly limited to section 112(g) and does not confer or imply approval for purpose of any other provision under the Act (e.g., section 110). This approval will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State regulations are adopted. The duration of this approval is limited to 18 months following promulgation by EPA of the section 112(g) rule to provide adequate time for the State to adopt regulations consistent with the Federal requirements.

c. *Program for delegation of section 112 standards as promulgated.* The requirements for part 70 program approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a state program for delegation of section 112 standards promulgated by EPA as they apply to title V sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA also proposes to grant approval, under section 112(l)(5) and 40 CFR 63.91, of Florida's program for receiving delegation of section 112 standards that are unchanged from the Federal standards as promulgated. In addition, EPA proposes delegation of all existing standards and programs under 40 CFR parts 61 and 63 for part 70 sources and non-part 70 sources.[1]

Florida has informed EPA that it intends to accept the delegation of future section 112 standards using the mechanisms of adoption-by-reference and case-by-case delegation. The details of the State's use of these delegation mechanisms are set forth in a letter dated January 11, 1995, submitted by the State as a title V program addendum.

d. *Commitment to implement title IV of the Act.* Florida has committed to take action, following promulgation by EPA of regulations implementing sections 407 and 410 of the Act, or revisions to either part 72 or the regulations implementing sections 407 or 410, to either incorporate the revised provisions by reference or submit, for EPA approval, State regulations implementing these provisions. On January 3, 1995, Florida's acid rain rule for the permitting of Phase II sources became state-effective. On March 10, 1995, the State submitted proposed changes to its acid rain rule to address discrepancies between the State's rule and the Federal requirements in part 72. The State is expediting rule revisions to ensure that an acid rain rule that is acceptable to EPA will be state-effective before November 15, 1995.

[1] The radionuclide National Emission Standards for Hazardous Air Pollutant (NESHAP) is a section 112 regulation and therefore, also an applicable requirement under the State operating permits program for part 70 sources. There is not yet a Federal definition of "major" for radionuclide sources. Therefore, until a major source definition for radionuclide is promulgated, no source would be a major section 112 source solely due to its radionuclide emissions. However, a radionuclide source may, in the interim, be a major source under part 70 for another reason, thus requiring a part 70 permit. EPA will work with the State in the development of its radionuclide program to ensure that permits are issued in a timely manner.

B. Proposed Actions

EPA proposes interim approval of the operating permit program submitted by the State of Florida on November 16, 1993, and as supplemented on July 8, 1994, November 28, 1994, and December 22, 1994. If promulgated, the State must make the changes discussed below to receive full program approval.

1. Definition of "Major Source"

As a condition of full approval, Florida is revising the definition of "major source" in Rule 62–213.200(19)(a), F.A.C. for consistency with the Federal definition. This rulemaking, when state-effective, will clarify that the non-aggregation in the situations described previously in section II.A.2. applies only to HAPs.

2. Timely Application for Permit Renewal

As a condition of full approval, Florida is revising Rule 62–4.090, F.A.C., to require submittal of permit renewal applications six months prior to expiration of existing title V permits. This rulemaking, when state-effective, will address the Federal requirement in 40 CFR 70.5(a)(1)(iii) for timely application for purposes of permit renewal.

3. Insignificant Activities Provisions

As a condition of full program approval, Florida must complete the following:

(a) Provide EPA with an acceptable justification for establishing an aggregate carbon monoxide emissions threshold of 50 tons/year rather than five tons/year. Otherwise, the State must establish aggregate and individual unit thresholds that trigger the reporting of carbon monoxide emissions consistent with the emissions levels established for particulates (PM–10), sulfur dioxide, nitrogen oxides, and volatile organic compounds. The State must also reduce the thresholds for HAP emissions to the lesser of 1000 lbs/year or section 112(g) de minimis levels.

(b) Revise Rule 62–210.300(3), F.A.C. to provide that (1) no insignificant activities or emissions units subject to applicable requirements (as defined in Rule 62–213.200(6)) will be exempted from title V permitting requirements; (2) insignificant activities or emissions units exemptions will not be used to lower the potential to emit below major source thresholds; and (3) emissions thresholds for individual activities or units that are exempted will not exceed five tons per year for criteria pollutants, and the lesser of 1000 pounds per year or section 112(g) de minimis levels for HAPs. In addition, as discussed previously in section II.A.2., several exemptions in Rule 62–210.300(3), F.A.C. must either be removed from the rule or revised.

(c) Revise Rule 62–4.040(1)(b), F.A.C. to provide that (1) no insignificant activities or emissions units subject to applicable requirements (as defined in Rule 62–213.200(6), F.A.C.) will be exempted from title V permitting requirements; (2) no insignificant activities or emissions units exemptions will be used to lower the potential to emit below major source thresholds; and (3) emissions thresholds for individual activities or units that are exempted will not exceed five tons per year for criteria pollutants, and the lesser of 1000 pounds per year or section 112(g) de minimis levels for HAPs.

4. Permit Reopenings Provisions

As a condition of full approval, Florida must provide for permit reopenings for cause consistent with 40 CFR 70.7(f)(1)(i), (iii), and (iv).

This interim approval, which may not be renewed, extends for a period of up to two years. During the interim approval period, Florida is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate a Federal operating permit program in the State. Permits issued under a program with interim approval are fully effective with respect to part 70, and the one-year time period for submittal of permit applications by subject sources begins upon interim approval, as does the three-year time period for processing the initial permit applications.

The scope of Florida's part 70 program that EPA proposes to interimly approve in this notice would apply to all part 70 sources (as defined in the approved program) within the State, except any sources of air pollution over which an Indian Tribe has jurisdiction. *See, e.g.*, 59 FR 55813, 55815–18 (Nov. 9, 1994). The term "Indian Tribe" is defined under the Act as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." *See* section 302(r) of the CAA; *see also* 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

As discussed previously in section II.A.4.b., EPA proposes to approve

Florida's preconstruction review program found in Rule 62–212, F.A.C., under the authority of title V and part 70 solely for the purpose of implementing section 112(g) to the extent necessary during the transition period between 112(g) promulgation and adoption of a State rule implementing EPA's section 112(g) regulations.

In addition, as discussed in section II.A.4.c., EPA proposes to grant approval under section 112(l)(5) and 40 CFR 63.91 to Florida's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. EPA also proposes to delegate existing standards under 40 CFR parts 61 and 63 for both part 70 sources and non-part 70 sources.

III. Administrative Requirements

A. Request for Public Comments

EPA requests comments on all aspects of this proposed interim approval. Copies of the State's submittal and other information relied upon for the proposed interim approval are contained in docket number FL–95–01 maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed interim approval. The principal purposes of the docket are:

(1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process; and

(2) To serve as the record in case of judicial review. EPA will consider any comments received by July 21, 1995.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permit programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act of 1995

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed interim approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 9, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–15174 Filed 6–20–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–125, RM–8534; RM–8575]

Radio Broadcasting Services; Fredericksburg, Helotes, Castroville, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial of.

SUMMARY: The Commission denies the petition filed by October Communications Group, Inc., requesting the reallotment of Channel 266C from Fredericksburg, TX, to either Helotes or Castroville, TX, as their first local aural transmission service, and the modification of Station KONO-FM's license accordingly.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 94–125, adopted June 8, 1995, and released June 16, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Federal Communications Commission.

John A Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–15145 Filed 6–20–95; 8:45 am]

BILLING CODE 6712–01–F

Notices

Federal Register
Vol. 60, No. 119
Wednesday, June 21, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

June 16, 1995.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) Who will be required or asked to report; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, D.C. 20250, (202) 690–2118.

Revision

Animal and Plant Health Inspection Service
7 CFR 330 & 360 & 9 CFR 94.5—Federal Plant Pest and Noxious Weeds Regulations
PPQ 525A, PPQ 526, PPQ 526–1, & PPQ 519
Business or other for-profit; Individuals or households; Federal Government; State, Local or Tribal Government; 45,480 responses; 36,383 hours
Althea Langston, (302) 734–7633

Reinstatement

Federal Crop Insurance Corporation
7 CFR 402, Catastrophic Risk Protection Plan, Crop Insurance
Application And Continuous Contract And Related Requirements FCI–6, FCI–12, FCI–12–A, FCI–19, FCI–19–A(APH), FCI–19–C, FCI–548, and FCI–553
Individuals or households; Farms; 6,360,000 responses; 1,793,750 hours
Jerry Frank, (202) 690–1324.

New Collection

Food and Consumer Service
Evaluation of the Application of Regulation E to Electronic Benefit Transfer (EBT) Systems
Individuals or households; State, Local or Tribal government; 40,009 responses; 2,477 hours
Carol Olander, (703) 305–2133.

Larry K. Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 95–15192 Filed 6–20–95; 8:45 am]

BILLING CODE 3410–01–M

Animal and Plant Health Inspection Service

[Docket No. 95–007–2]

Availability of Determination of Nonregulated Status for Genetically Engineered Corn

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination that Ciba Seeds' corn designated as Event 176 Corn that has been genetically engineered for insect resistance is no longer considered a regulated article under our regulations governing the introduction of certain genetically engineered organisms. Our determination is based on our evaluation of data submitted by Ciba Seeds in its petition for a determination of nonregulated status, an analysis of other scientific data, and our review of comments received from the public in response to a previous notice announcing our receipt of the Ciba Seeds petition. This notice also announces the availability of our written determination document and its associated environmental assessment and finding of no significant impact.

EFFECTIVE DATE: May 17, 1995.

ADDRESSES: The determination, an environmental assessment and finding of no significant impact, the petition, and all written comments received regarding the petition may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are asked to call in advance of visiting at (202) 690–2817.

FOR FURTHER INFORMATION CONTACT: Dr. Ved Malik, Biotechnologist, Biotechnology Permits, BBEP, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1237; (301) 734–7612. To obtain a copy of the determination or the environmental assessment and finding of no significant impact, contact Ms. Kay Peterson at (301) 734–7612.

SUPPLEMENTARY INFORMATION:

Background

On November 15, 1994, the Animal and Plant Health Inspection Service (APHIS) received a petition (APHIS Petition No. 94–319–01p) from Ciba Seeds of Research Triangle Park, NC, seeking a determination that corn designated as Event 176 Corn that has been genetically engineered for insect resistance does not present a plant pest risk and, therefore, is not a regulated article under APHIS' regulations in 7 CFR part 340.

On February 21, 1995, APHIS published a notice in the **Federal Register** (60 FR 9656–9657, Docket No. 95–007–1) announcing receipt of the Ciba Seeds petition and announcing that the petition was available for public review. The notice also discussed the role of APHIS, the Environmental Protection Agency, and the Food and Drug Administration in regulating the subject corn and food products derived from it. In the notice, APHIS solicited written comments from the public as to whether the subject corn posed a plant pest risk. The comments were to have been received by APHIS on or before April 24, 1995.

APHIS received 37 comments on the Ciba Seeds petition. Comments were received from farm-related businesses, universities, national and State associations, farmers cooperatives, farmers, individuals, a cooperative extension research center, and a member of the U.S. House of Representatives. Thirty-five commenters either expressed support for the Event

176 Corn petition for nonregulated status or endorsed the concept of an insect-resistant corn variety without specific reference to the petition. Two of the 37 commenters expressed reservations about a determination in favor of the subject petition based on their concerns about resistance management. APHIS has provided a summary and discussion of the comments in the determination document, which is available upon request from the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Analysis

Ciba Seeds' Event 176 Corn has been genetically engineered to express an insect control protein representing a truncated form of the CryIA(b) protein that occurs naturally in *Bacillus thuringiensis* subsp. *kurstaki* (*Btk*), a common gram-positive soil bacterium. *Btk* proteins are very effective against certain lepidopteran insects, including European corn borer (ECB). Event 176 Corn has been modified to produce the CryIA(b) protein in green tissues and pollen cells. During field tests of Event 176 Corn, ECB infestations were significantly reduced as compared to the nontransgenic control plants.

The subject corn has been considered a regulated article under APHIS' regulations in 7 CFR part 340 because it contains certain gene sequences derived from plant-pathogenic sources. However, evaluation of field data reports from field tests of the subject corn conducted since 1992 indicates that there were no deleterious effects on plants, nontarget organisms, or the environment as a result of the subject corn plants' release into the environment.

Determination

Based on its analysis of the data submitted by Ciba Seeds and a review of other scientific data, comments received from the public, and field tests of the subject corn, APHIS has determined that Event 176 Corn: (1) Exhibits no plant pathogenic properties; (2) is no more likely to become a weed than lepidopteran-insect-resistant corn developed through traditional breeding techniques; (3) is unlikely to increase the weediness potential of any other cultivated plant or native wild species with which it can interbreed; (4) should not cause damage to raw or processed agricultural commodities; (5) is unlikely to harm organisms beneficial to the agricultural ecosystem; and (6) when cultivated, should not reduce the ability to control insects in corn and other crops. APHIS has also concluded that there is a reasonable certainty that new varieties developed from Event 176 Corn will not exhibit new plant pest properties, i.e., properties substantially different from any observed in the field tested Event 176 Corn, or those observed in corn in traditional breeding programs.

The effect of this determination is that insect-resistant corn designated as Event 176 Corn is no longer considered a regulated article under APHIS' regulations in 7 CFR part 340. Therefore, the permit and notification requirements pertaining to regulated articles under those regulations no longer apply to the field testing, importation, or interstate movement of the subject corn or its progeny. However, the importation of the subject corn or seeds capable of propagation is still subject to the restrictions found in APHIS' foreign quarantine notices in 7 CFR part 319.

National Environmental Policy Act

An environmental assessment (EA) has been prepared to examine the potential environmental impacts associated with this determination. The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on that EA, APHIS has reached a finding of no significant impact (FONSI) with regard to its determination that the subject corn and lines developed from it are no longer regulated articles under its regulations in 7 CFR part 340. Copies of the EA and the FONSI are available upon request from the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 13th day of June 1995.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–15112 Filed 6–20–95; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket Nos. 5103–01; 5104–01; 5105–01]

Decision and Order

In the matter of: Waldemar Znamierowski, Krzwinska Str., 16/1, 03–324, Warsaw, Poland; Paul A. Prandecki a/k/a Paul Prand, 3178 El Centro Circle, Las Vegas, Nevada 89121 and Beta Computer Trading Pte. Limited, One Rockor Canal Road, Sim Lin Square #06–67, Singapore 0718; Respondents.

On May 31, 1955, the Administrative Law Judge (ALJ) entered his Recommended Decision and Order in the above-referenced matters. The Recommended Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. After describing the facts of the case and his findings based on those facts, the ALJ found that the Respondents Znamierowski and Prandecki had violated Section 787.2 of the Export Administration Regulations (EAR) by causing, aiding and abetting the export of three U.S.-origin Apollo computer workstations from the United States through Singapore to Poland without obtaining the validated export licenses required by Section 772.1 of the EAR. The ALJ also found that the Respondent Beta Computer Trading PTE, Limited reexported three U.S.-origin Apollo computer workstations from Singapore to Poland without obtaining from the Department of Commerce the reexport authorization required by Section 774.1 of the EAR.

The ALJ found that the appropriate penalty for the violations should be that the Respondents and all successors, assignees, officers, representatives, agents and employees be denied for a period of ten years from this date all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving commodities or technical data exported or to be exported from the United States and subject to the Export Administration Regulations.

Based on my review of the entire record, I affirm the Recommended Decision and Order of the Administrative Law Judge.

This constitutes final agency action in this matter.

Dated: June 13, 1995.

William A. Reinsch,

Under Secretary for Export Administration.

Recommended Decision and Order

On December 9, 1993, the Office of Export Enforcement, Bureau of Export Administration, U.S. Department of Commerce (Department), issued separate charging letters against Paul A. Prandecki, also known as Paul Prand (Prandecki); Beta Computer Trading Pte. Limited (Beta Computer); and Waldemar Znamierowski (Znamierowski) (hereinafter collectively referred to as respondents). None of the respondents answered or otherwise responded to the charging letters.

On April 17, 1995, I issued an Order finding that Znamierowski was in default for failing to file an answer to the charging letter and directing the Department to make the submission required by Section 788.8 of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 768–799 (1995)) (the Regulations), by May 17, 1995. On April 18, 1995, I issued separate Orders against Prandecki and Beta Computer, finding both of them in default for failing to answer the charging letters issued against them and directing the Department to make the submission required by Section 788.8 of the Regulations by May 18, 1995. On April 19, 1995, I issued Corrected Orders in Prandecki and Beta Computer directing the Department to make its submissions by May 19, 1995.

On May 5, 1995, the Department filed a motion to consolidate these matters and requested that it be provided to May 19, 1995 to file a single default submission addressing the allegations against all three respondents in a single pleading. On May 8, 1995, I granted the Department's motion. In accordance with that Order, on May 19, 1995, the Department submitted its Default Submission, together with supporting evidence.

Background

In the December 9, 1993 charging letters, the Department alleged that Prandecki and Znamierowski caused, aided, and abetted the export of three U.S.-origin Apollo computer workstations from the United States through Singapore to Poland without obtaining from the Department the validated export license required by Section 772.1(b) of the Regulations. The Department charged that, by causing, aiding, and abetting the doing of an act prohibited by the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401–2420 (1991, Supp. 1993, and Pub. L. No. 103–277, July 5, 1994)) (the Act),[1] or any regulation, order, or license issued under the Act, Prandecki and Znamierowski each committed one violation of Section 787.2 of the Regulations, involving commodities controlled for reasons of national security under Section 5 of the Act.

In the December 9, 1993 charging letter issued against Beta Computer, the Department alleged that Beta Computer reexported three U.S.-origin Apollo computer workstations from Singapore to Poland without obtaining from the Department the reexport authorization required by Section 774.1 of the Regulations. The Department charged that, by reexporting commodities to any person or destination in violation of or contrary to the terms of the Act, or any regulation, order, or license issued under the Act, Beta Computer committed one violation of Section 787.6 of the Regulations, involving commodities controlled for reasons of national security under Section 5 of the Act.

On the basis of the Department's submission and all of the supporting evidence presented, I have determined that Prandecki, Znamierowski, and Beta Computer committed the violations alleged in the separate charging letters issued against them.

For those violations, the Department urged as a sanction that the export privileges of Prandecki, Znamierowski, and Beta Computer be denied for 10 years. In light of the nature of the violations, I concur in the Department's recommendation.

Accordingly, *it is Therefore Ordered, First*, that all outstanding individual validated licenses in which Waldemar Znamierowski, Krzwinska Str., 16.1, 03–32, Warsaw, Poland; Paul A. Prandecki, a/k/a Paul Prand, 3178 El Centro Circle, Las Vegas, Nevada 89121; and Beta Computer Trading Pte. Limited, One Rockor Canal Road, Sim Lim Square #06–67, Singapore 0718, appear or participate, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Exporter Services for cancellation. Further, all of the privileges of Prandecki, Znamierowski, and Beta Computer to participate, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

Second, that Waldemar Znamierowski, Krzwinska Str., 16/1, 03–32, Warsaw, Poland; Paul A. Prandecki, a/k/a Paul Prand, 3178 El Centro Circle, Las Vegas, Nevada 89121; and Beta Computer Trading Pte. Limited, One Rockor Canal Road, Sim Lim Square #06–67, Singapore 0718 (collectively referred to as respondents), and all of their successors, assigns, officers, representatives, agents, and employees, shall for a period of 10 years from the date of final agency action, be denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, and subject to the Regulations.

A. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) as a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization, or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

B. After notice and opportunity for comment as provided in Section 788.3(c) of the Regulations, any person, firm, corporation, or business organization related to any of the respondents by affiliation, ownership, control, or position of responsibility in the conduct of trade related services may also be subject to the provisions of this Order.

C. As provided by Section 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Exporter Services, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) in any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

[1] The Act expired on August 20, 1994. Executive Order No. 12924 (59 FR 43437, August 23, 2994) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701–1706 (1991)).

Third, that a copy of this Order shall be served on each of the respondents and on the Department.

Fourth, that this Order, as affirmed or modified, shall become effective upon entry of the final action by the Under Secretary for Export Administration, in accordance with the Act (50 U.S.C.A. app. § 2412(c)(1)) and the Regulations (15 CFR 788.23).

Dated: May 31, 1995.

Edward J. Kuhlmann,

Administrative Law Judge.

To be considered in the 30 day statutory review process which is mandated by Section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th & Constitution Ave., N.W., Room 3898B, Washington, D.C., 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 788.23(b), 50 FR 53134 (1985). Pursuant to Section 13(c)(3) of the Act, the order of the final order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

Certificate of Mailing

I certify that I have sent the attached document by first class U.S. mail, postage prepaid, to the following persons:

By Registered Mail to:

R 861 601 782

Waldemar Znamierowski, Krzwinska Str., 16/1, 03–324, Warsaw, Poland

By Registered Mail to:

R 861 601 783

Beta Computer Trading Pte. Limited, One Rockor Canal Road, Sim Lim Square #06–67, Singapore 0718, attn: Kelvin C.S. Teo, Managing Director

By Certified Mail to:

P 067 861 636

Paul A. Prandecki a/k/a Paul Prand, 3178 El Centro Circle, Las Vegas, Nevada 89121

By Certified Mail to:

P 067 861 637

Thomas C. Barbour, Senior Trial Attorney, Office of Chief Counsel for Export Administration, U.S. Department of Commerce, Room H–3839, 14th & Constitution Avenue NW., Washington, D.C. 20230.

Dated: May 31, 1995.

Williemae Waddell,

Support Services Assistant.

[FR Doc. 95–15126 Filed 6–20–95; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

[A–570–835]

Notice of Antidumping Duty Order: Furfuryl Alcohol From the People's Republic of China (PRC)

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: June 21, 1995.

FOR FURTHER INFORMATION CONTACT: John Brinkmann or Donna Berg, Office of Antidumping Duty Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–5288 or (202) 482–0114, respectively.

Scope of Order

The merchandise covered by this order is furfuryl alcohol ($C_4H_3OCH_2OH$). Furfuryl alcohol is a primary alcohol, and is colorless or pale yellow in appearance. It is used in the manufacture of resins and as a wetting agent and solvent for coating resins, nitrocellulose, cellulose acetate, and other soluble dyes.

The product subject to this order is classifiable under subheading 2932.13.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Antidumping Duty Order

On June 14, 1995, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department that imports of furfuryl alcohol from the PRC materially injure a U.S. industry. Therefore, in accordance with section 736 of the Act, the Department will direct United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of furfuryl alcohol from the PRC. These antidumping duties will be assessed on all unliquidated entries of furfuryl alcohol from the PRC entered, or withdrawn from warehouse, for consumption on or after December 16, 1994, the date on which the Department published its preliminary determination notice in the **Federal Register** (59 FR 65009).

On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties, the following cash deposits for the subject merchandise:

Manufacturer/producer/exporter	Weighted-average margin percentage
Qingdao Chemicals & Medicines Import and Export Corporation	50.43
Sinochem Shandong Import and Export Group Corporation	43.54
China-Wide	45.27

This notice constitutes the antidumping duty order with respect to furfuryl alcohol from the PRC, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: June 14, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–15222 Filed 6–20–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–791–802]

Notice of Amended Final Antidumping Duty Determination and Order: Furfuryl Alcohol From South Africa.

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice.

EFFECTIVE DATE: June 21, 1995.

FOR FURTHER INFORMATION CONTACT: John Brinkmann or Donna Berg, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5288 or (202) 482–0114, respectively.

Amended Final Determination

We presented counsel for the respondent, Illovo Sugar Limited, and counsel for the petitioner, QO Chemicals, with the calculations and disclosure materials concerning the final determination on May 4, and 8, 1995, respectively.

The respondent and the petitioner filed timely submissions alleging ministerial errors in the Department of Commerce's (Department) final determination calculations. On May 5, 1995, the respondent alleged that the Department made an inadvertent spreadsheet error which resulted in the revised figures for certain ESP observations being moved to the wrong columns. On May 15, 1995, the petitioner alleged that we departed from our established practice and, for certain U.S. observations, applied a daily exchange rate instead of the quarterly rate to convert South African Rand to U.S. dollars. (For specific details of these allegations and our analysis thereof, *see* Memorandum from Gary Taverman to Barbara R. Stafford dated May 25, 1995).

We have reviewed the respondent's allegation and agree that we erred in moving the revised figures for certain variables to the adjacent spreadsheet columns. In accordance with 19 CFR 353.28, we have corrected the calculations for the final determination.

With respect to the petitioner's allegation, however, we disagree that our reliance on the daily exchange rate constitutes a departure from our established practice. It is the Department's practice to make currency conversions at the Federal Reserve certified quarterly exchange rate except where the daily exchange rate varies by five percent or more from the quarterly rate.

Inasmuch as the variance between the daily and quarterly rates equaled five percent, we followed our established practice and used the daily rate in the final determination. Accordingly, we determined that petitioner's allegation does not constitute a ministerial error.

Pursuant to 19 CFR 353.28, we have corrected the final dumping margins. The final dumping margin for Illovo Sugar Limited and "All Others" has been amended from 15.48 to 11.55 percent.

Scope of Order

The merchandise covered by this order is furfuryl alcohol ($C_4H_3OCH_2OH$). Furfuryl alcohol is a primary alcohol, and is colorless or pale yellow in appearance. It is used in the manufacture of resins and as a wetting agent and solvent for coating resins, nitrocellulose, cellulose acetate, and other soluble dyes.

The product subject to this order is classifiable under subheading 2932.13.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Antidumping Duty Order

On June 14, 1995, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department that imports of furfuryl alcohol from South Africa materially injure a U.S. industry. Therefore, in accordance with section 736 of the Act, the Department will direct United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of furfuryl alcohol from South Africa. These antidumping duties will be assessed on all unliquidated entries of furfuryl alcohol from South Africa entered, or withdrawn from warehouse, for consumption on or after December 16, 1994, the date on which the Department published its preliminary determination notice in the **Federal Register** (59 FR 65012).

On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties, the following cash deposits for the subject merchandise:

Manufacturer/producer/exporter	Weighted-average margin percentage
Illovo Sugar Company	11.55
All others	11.55

This notice constitutes the antidumping duty order with respect to furfuryl alcohol from South Africa, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: June 14, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–15221 Filed 6–20–95; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 061495B]

Endangered and Threatened Wildlife and Plants; Public Hearing

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of additional public hearing.

SUMMARY: On April 18, 1995, NMFS published a notice of availability of a proposed recovery plan for Snake River salmon listed under the Endangered Species Act (ESA). Eleven public hearings were announced in the same notice. An additional public hearing was announced in May to be held in Idaho Falls, ID. NMFS is announcing one additional public hearing.

DATES: The public hearing is scheduled as follows:

June 29, 1995, 6:30 p.m. to 9:30 p.m., Spokane, WA.

ADDRESSES: The hearing will be held at the following location:

Spokane—Spokane Community College Auditorium, 1810 N. Greene Street, Bldg. 6, Spokane, WA 99212.

FOR FURTHER INFORMATION CONTACT: Robert Jones, Recovery Plan Coordinator, NMFS, (503) 230–5400.

Dated: June 15, 1995.

Russell J. Bellmer,

Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–15088 Filed 6–15–95; 4:56 pm]

BILLING CODE 3510–22–F

[I.D. 061395B]

Marine Mammals and Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for a scientific research permit (P368F).

SUMMARY: Notice is hereby given that Dr. James T. Harvey, has applied in due form for a permit to take the marine mammals listed below for the purpose of scientific research.

DATES: Written comments must be received on or before July 21, 1995.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West

Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (310/980–4001);

Written data or views, or requests for a public hearing on this request, should be submitted to the Chief, Permits Division, F/PR1, Office of Protected Resources, Silver Spring, MD 20910, within 30 days of the publication of this notice.

FOR FURTHER INFORMATION CONTACT: Gary Barone, (301/713–2289).

SUPPLEMENTARY INFORMATION: Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The applicant seeks authorization to instrument up to 150 harbor seals (*Phoca vitulina*) with radio tags, heart monitors, and time depth recorders annually. These animals will be subjects in a low frequency sound experiment. The applicant seeks authorization to take by inadvertent harassment up to 810 harbor porpoise annually incidental to the sound experiments and related activities.

The work will be conducted over a 5-year period. During the course of the field work small numbers of other species may be inadvertently harassed by the low frequency sounds. The requested species under NMFS jurisdiction are California sea lions (*Zalophus californianus*), harbor porpoise (*Phocoena phocoena*), and Pacific bottlenose dolphins (*Tursiops truncatus*).

Dated: June 6, 1995.

Ann D. Terbush,

Chief, Permits & Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–15094 Filed 6–20–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 061395A]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for a scientific research permit (P5H) and applications to modify permits (P129J and P281C).

SUMMARY: Notice is hereby given that Dr. Donald B. Siniff, Department of Ecology, Evolution and Behavior, University of Minnesota, 1987 Upper Buford Circle, St. Paul, MN 55108 (P5H), has applied in due form for a permit to take Antarctic pinnipeds for purposes of scientific research.

Dr. Bruce R. Mate, Hatfield Marine Science Center, Oregon State University, Newport, OR 97365–5296 (P129J) has applied for a modification to Permit No. 841 to increase the number of blue whales (*Balaenoptera musculus*) to be tagged over the next 4 years from 50 to 55.

Mr. Jonathan Stern, Marine Mammal Research Program, Texas A&M University, Galveston, TX 77551 (P281C), has applied for a modification to Permit No. 934 to biopsy sample up to 90 killer whales (*Orcinus orca*) in the inland waters of Washington State and to inadvertently harass up to 300.

DATES: Written comments must be received on or before July 21, 1995.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289).

Application P5H. Director, Northeast Region, One Blackburn Drive, Gloucester, MA 01930–2298 (508/281–9250).

Modifications P129J and P281C. Director, Southwest Region, NMFS, 501 West Ocean Blvd., Long Beach, CA 90802–4213 (310/980–4001); and

Director, Northwest Region, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0070 (206/526–6150).

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, NOAA, U.S. Department of Commerce, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of these applications to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit and requests to modify permits are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Dr. Siniff (P5H) requests a permit to: Tag/release annually, up to 900 Weddell seal (*Leptonychotes weddellii*) and take by harassment up to 2000; tag/release up to 20 each of leopard seal (*Hydrurga leptonyx*), crabeater seal (*Lobodon corcinophagus*), Ross seal (*Ommatophoca rossii*), southern elephant seal (*Mirounga leonina*), and Antarctic fur seal (*Arctocephalus gazella*); collect blood samples from up to 100 Weddell seals and collect tissue and tooth samples from seals found dead.

Dr. Bruce R. Mate (P129J) was issued Permit No. 841 on June 4, 1994, to inadvertently harass annually up to 200 blue whales (*Balaenoptera musculus*), 200 fin (*B. physalus*), 200 humpback whales (*Megaptero novaeangliae*), and 200 gray whales (*Eschrichtius robustus*). Up to 50 each of these species may be satellite-tagged, biopsy sampled, photographed, and observed over a 5-year period. Research is authorized to be conducted along the western coast of the United States and in Hawaiian waters.

Mr. S. Jonathan Stern was issued Permit No. 934 on August 3, 1994, to inadvertently harass annually up to 1000 minke whales (*Balaenoptera acutorostrata*), 400 blue whales (*Balaenoptera musculus*), 100 fin (*B. physalus*), 50 sei whales (*B. borealis*), 600 humpback whales (*Megaptera novaeangliae*), and 500 gray whales (*Eschrichtius robustus*), and 300 killer whales (*Orcinus orca*). Up to 150 minke whales and 30 each of the other species are authorized to be photographed and biopsy sampled. Minke whales may be taken from the Gulf of Alaska to the California/Mexican border. All other species are taken only off central California.

Dated: June 13, 1995.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–15095 Filed 6–20–95; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Hong Kong; Correction

June 15, 1995.

On page 17323 of the notice published on April 5, 1995 in the table under the heading "Twelve-month restraint limit," delete the following references to sublevels in Categories 347/348:

"not more than 3,027,891 dozen shall be in Category 347 (other than W); not more than 4,662,390 dozen shall be in Category 348 (other than W)."

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–15127 Filed 6–20–95; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Army

Armed Forces Epidemiological Board; Notice of Partially Closed Meeting

AGENCY: Armed Forces Epidemiological Board, DOD.

ACTION: Notice of partially closed meeting.

1. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–462), announcement is made of the following committee meeting:

Name of Committee: Armed Forces Epidemiological Board, DOD.

Date of Meeting: 06–07 July 1995.

Time: 0800–1630.

Place: Great Lakes Naval Training Center, Illinois.

Proposed Agenda: Service preventive medicine reports, meningococcal, typhoid and varicella vaccine updates, emerging infections, health promotion in the workplace, and report of the Injury Prevention Working Group Subcommittee.

2. A portion of this meeting will be closed to the public for an intelligence briefing in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof and title 5, U.S.C., appendix 1, subsection 10(d). Should additional information be desired, please contact the Executive Secretary, AFEB, Skyline Six, 5109 Leesburg Pike, Room 667, Falls Church, Virginia 22041–3258.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–15098 Filed 6–20–95; 8:45 am]

BILLING CODE 3710–08–M

Military Traffic Management Command Rules and Accessorial Services Governing the Movement of Department of Defense Freight Traffic by Motor or Railroad Carriers

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice of proposed change.

SUMMARY: The Military Traffic Management Command (MTMC), for the Department of Defense, is updating MTMC Freight Traffic Rules Publication (MFTRP) No. 1A for transport of military freight by motor carriers and MFTRP No. 10 for railroads. These changes include the new, standardized American National Standards Institute (ANSI) codes for accessorial and protective security services. When these rules publications are reissued, carriers must file tenders with ANSI codes, which are necessary to support the Department of Defense Electronic Data Interchange capabilities. Carriers will receive, on request, a copy of the initial draft of these revised publications. Suggestions from carriers for needed changes or additions to these publications will be considered, if received at Headquarters, MTMC, by July 27, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Julian Jolkovsky, Headquarters, Military Traffic Management Command, ATTN: MTOP–T–SR, 5611 Columbia Pike, Falls Church, VA 22041–5050; or telephone (703) 681–3440.

SUPPLEMENTARY INFORMATION: Revisions to MFTRP No. 1A and No. 10 will include the current classification of munitions, such as ammunition, explosives, and fireworks formerly designated as Class A, B, or C. MFTRP No. 1A will, for the first time, include rules applying to driveway and towaway service.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–15099 Filed 6–20–95; 8:45 am]

BILLING CODE 3710–08–M

Availability of Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning a Test for Antibodies in Stool Specimens

AGENCY: U.S. Army Medical Research and Materiel Command, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of U.S. Patent Application SN 08/376,977, entitled "Test for Antibodies in Stool Specimens," and filed January 23, 1995, for licensing. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, Fort Detrick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: Mr. John F. Moran, Patent Attorney, 301–619–2065 or telefax 301–619–7714.

SUPPLEMENTARY INFORMATION: This invention provides a method for testing clinical samples suspected of containing systemic or mucosal antibodies to V. cholerae by coupling specific antigen to magnetic beads and exposing said beads to specimens suspected of containing specific antibodies. The method is particularly valuable for detecting mucosal antibodies in stool and can be used for detection of infection, indicating the immune status of individuals, and for epidemiological tracking.

While assays such as ELISA are available for quantitating a systemic immune response, means for evaluating mucosal immune responses are less well developed when though it is believed that the immune response to V. cholerae is predominantly controlled by the mucosal immune system. Because of the rapid nature of the assay and the immediate treatment of the sample with protease inhibitors, problems related to specimen processing are minimized. The method of invention is rapid, inexpensive, can be performed by minimally trained personnel, and provides a means for testing of clinical samples in either a laboratory or field setting.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–15100 Filed 6–20–95; 8:45 am]

BILLING CODE 3710–08–M

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Lake Okeechobee Regulation Schedule Study (LORSS) of the Central and Southern Florida Project for Flood Control and Other Purposes.

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers, intends to prepare a Draft Environmental Impact Statement (DEIS) upon completion of the feasibility study and prior to implementation of an alternative regulation schedule for Lake Okeechobee, Florida.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and draft EIS can be answered by: Mark Ziminske, U.S. Army Engineer District, P.O. Box 4970, Jacksonville, Florida 32232–0019; Telephone 904–232–1786.

SUPPLEMENTARY INFORMATION: Lake Okeechobee is a large, shallow, subtropical lake, of 1,732 km² surface area located in Central-South Florida. Lake Okeechobee's drainage basin covers almost 12,000 km² much of which is agricultural land, dairy and beef cattle to the north, and the 280,000 ha Everglades Agricultural Area (EAA; mostly sugar, rice, and winter vegetable crops) to the south. Major surface water inflows to the lake are from the Kissimmee River, Harney Pond and Indian River basins, Fisheating Creek, and Taylor Creek/Nubbin Slough. Major outflows include evapotransporation, the Caloosahatchee River to the west, the St. Lucie Canal to the east, and several canals draining into the EAA and south to the Water Conservation Areas and ultimately to the Everglades and Florida Bay.

The scope of this study is to consider a range of regulation schedule alternatives for Lake Okeechobee in order to optimize environmental benefits at minimal or no impact to the competing project purposes, primarily flood control and water supply. The alternatives to be considered include: The existing Run 25–3, Run 25–3 with Natural System Model (NSM) demands, Run 22 AZE, Run 22 AZE with NSM demands, and the Lower East Coast Regional Water Supply Plan (LECRWSP) Alternative 1.

The current regulation schedule (Run 25–3) maintains lake surface water elevations ranging from 15.65 feet to 16.75 feet and releases water to the estuaries at relatively high lake stages, in a more graduated fashion. Run 22 AZE is basically Run 25–3 with the addition of a large Zone E, which allows for low level discharges at low stages of 13.75 feet to 15.60 feet. The NSM demands put an additional water supply demand on Lake Okeechobee by establishing targets for delivering water to restore the Everglades to their pre-drainage condition. Runs 25–3 and 22 AZE with NSM demands would tend to lower the water surface in the lake without changing the regulated water levels. The LECRWSP Alternative 1 schedule varies from 14.0 feet to 17.0 feet and differs significantly from the other schedules described above.

The scoping process as outlined by the Council on Environmental Quality will be utilized to involve Federal, State, and local agencies and other interested persons and organizations. A scoping letter will be sent to interested Federal, State, and local agencies requesting their comments and concerns regarding issues they feel should be addressed in the EIS. Interested persons and organizations wishing to participate in the scoping process should contact the Corps of Engineers at the address above. Significant issues anticipated include concern for: water supply, continued flood control, agricultural impacts, protection of the lake's environmental resources and its downstream estuaries, water quality, and fish and wildlife habitat enhancement. Public scoping meetings will be conducted in the future, the exact location, dates, and times will be announced in public notices and local newspapers.

It is estimated that the DEIS will be available to the public in July 1997.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–15104 Filed 6–20–95; 8:45 am]

BILLING CODE 3710–AJ–M

Department of the Army Corps of Engineers

Intent To Prepare a Draft Supplement I to the Final Environmental Impact Statement (FEIS) for the Wilmington Harbor Channel Widening, New Hanover and Brunswick Counties, NC

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: Wilmington Harbor is an approximately 31-mile-long Federal navigation project located along the Cape Fear and Northeast Cape Fear Rivers in southeastern North Carolina. Local interests, represented by the North Carolina State Ports Authority, the North Carolina Division of Water Resources, and the Cape Fear River Pilots Association, have requested that the U.S. Army Corps of Engineers study the following improvements for Wilmington Harbor: (1) construction of a 6.2-mile-long passing lane at a central location between the North Carolina State Port and the mouth of the Cape Fear River; and (2) widening of five turns. This recommended plan may require the blasting of nondredgeable rock. Possible adverse impacts could occur to endangered species, primary nursery areas, and anadromous fish migrations. This Draft Supplement I to the Final Environmental Impact Statement (FEIS) will address the effects of blasting on the estuarine environment and develop a post-blast monitoring plan. Additionally, the U.S. Army Corps of Engineers is looking at alternative disposal areas for dredged material.

FOR FURTHER INFORMATION CONTACT: Questions about the Draft Supplement I to the FEIS can be answered by: Mr. Hugh Heine, Environmental Resources Section, at the U.S. Army Engineer District, Wilmington, Post Office Box 1890, Wilmington, North Carolina 28402–1890; telephone: (910) 251–4070.

SUPPLEMENTARY INFORMATION: This study was conducted under authority of a resolution adopted 8 September 1988 by the Committee on Public Works and Transportation of the United States House of Representatives. The authorizing resolution directs studies of the entire Wilmington Harbor-Northeast Cape Fear River navigation system. A Draft Environmental Impact Statement (DEIS) was filed with the U.S. Environmental Protection Agency (USEPA) on August 13, 1993, and was circulated for a 45-day public review period. Comments received on the DEIS were addressed in the FEIS. The FEIS was filed with USEPA in April 1994. The Record of Decision was signed on August 25, 1994.

1. As indicated in both the DEIS and FEIS, the principal adverse environmental impacts associated with the proposed action stem primarily from the blasting required to remove any nondredegeable rock. Possible adverse impacts could occur to endangered species, primary nursery areas, and anadromous fish migrations. Since the publication of the DEIS and FEIS, it is estimated from core borings, the most recent geophysical surveys, and historical data that the top of rock is below minus (−) 41 feet mean lower low water (mllw) for Turn 1, the 6.2-mile-long passing lane (which includes Turn 5), and Turn 6. However, this same data indicates that the top of rock is located above −41 feet mllw for Turns 2, 3, and 4 (from Keg Island Channel to Lower Brunswick Channel). As a worst case, it is estimated that such nondredgeable rock comprises less than 35,000 cubic yards or about 5 percent of all material to be dredged in Turns 2, 3, and 4. Approximately 122 blasts would be required to remove the nondredgeable rock. This assumes that the maximum number of holes per day would be drilled and then fired together as a unit making up one blast. Additionally, the U.S. Army Corps of Engineers is looking at alternative disposal areas for dredged material originally planned to be placed in disposal island Nos. 4, 11, 12, and 13. The Draft Supplement I to the FEIS will address these environmental issues and develop a post-blast monitoring plan.

2. The project will utilize mechanical dredging with disposal in the USEPA designated Wilmington Ocean Dredged Material Disposal Site (Wilmington ODMDS) and hydraulic pipeline dredge with disposal in existing upland disposal islands.

3. All private interests and Federal, State, and local agencies having an interest in the project are hereby notified of project authorization and are invited to comment at this time. The scoping process will consist of public notification to explain and describe the proposed action, early identification of resources that should be considered during the study, and public review periods. Coordination with the public and with other agencies will be carried out through public announcements, letters, report review periods, telephone conversations, and meetings. A scoping letter requesting input to the study will be sent to all known interested parties in June 1995. As previously stated, the significant issues to be addressed in the Draft Supplement I to the Final EIS are the blasting impacts on endangered species, primary nursery areas, and anadromous fish migrations and the development of a post-blast monitoring plan. Also to be considered will be the effect of alternative disposal areas for the project.

The lead agency for this project is the U.S. Army Engineer District, Wilmington. Cooperating agency status has not been assigned to, nor requested by, any other agency.

The Draft Supplement I to the Final EIS is being prepared in accordance with the requirements of the National Environmental Policy Act of 1969, as amended, and will address the project's relationship to all other applicable Federal and State laws and Executive Orders.

4. No formal scoping meetings are planned at this time but, based on the responses received, scoping meetings may be held with specific agencies or individuals as required.

5. The Draft Supplement I to the Final EIS is currently scheduled for distribution to the public in October 1995 and the Final Supplement I to the Final EIS is scheduled for distribution in December 1996.

Dated: June 9, 1995.

Robert J. Sperberg,

Colonel, U.S. Army, District Engineer.

[FR Doc. 95–15194 Filed 6–20–95; 8:45 am]

BILLING CODE 3710–ON–M

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, June 28, 1995. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 11:30 a.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

An informal conference among the Commissioners and staff will be held at 10 a.m. at the same location and will include discussion of proposed Delaware Estuary toxics management issues, plans for DRBC's 35th anniversary and an opportunity for public dialogue.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact

1. *Homestead Water Utility Co., Inc. D–81–73 CP RENEWAL–2.* An application for the renewal of a ground water withdrawal project to supply up to 12.8 million gallons (mg)/30 days of water to the applicant's distribution system from Well Nos. 1 and 2. Commission approval on September 28, 1988 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 12.8 mg/30 days. The project is located in Mansfield Township, Burlington County, New Jersey.

2. *Delaware County Solid Waste Authority D–89–18 CP (Revised).* An application to revise the applicant's 0.08 million gallons per day (mgd) capacity landfill leachate treatment plant project by relocation of the proposed outfall, with effluent diffuser, to a point in Oley Township, one mile further downstream on the Manatawny Creek than previously considered for a total dissolved solids (TDS) determination in Docket No. D–89–18 CP. A new TDS determination has been requested for the new location. The tertiary treatment system will continue to serve the Colebrookdale Landfill site situated along Schenkel Road in Earl Township, Berks County, Pennsylvania. The Colebrookdale Landfill accepts non-hazardous municipal solid wastes generated in Delaware and Berks Counties, Pennsylvania.

3. *Logan Wells Water Company D–94–38 CP.* An application for approval of a ground water withdrawal project to supply up to 41 mg/30 days of water to the applicant's distribution system from existing Well Nos. 2 and 3 and from new Well Nos. 4 and 5, and to increase the existing withdrawal limit of 35.1 mg/30 days from all wells to 41 mg/30 days. The project is located in Logan Township, Gloucester County, New Jersey.

4. *Logan Township Municipal Utilities Authority D–95–7 CP.* A project to upgrade and expand the applicant's existing 1.0 mgd sewage treatment plant (STP) to 2.0 mgd and provide service for growth in portions of Logan and Woolrich Townships. The project STP is located in the Township of Logan, Gloucester County, New Jersey, approximately 2,000 feet west of High Hill Road and just south of the Pennsylvania-Reading Railroad right-of-way through Maple Swamp. The applicant's discharge will continue to be on the Delaware River in Water Quality Zone 4 via an existing outfall pipe.

5. *Doylestown Township Municipal Authority D–95–9 CP.* An application for approval of a ground water withdrawal project to supply up to 1.2 mg/30 days of water to the applicant's public water distribution system from new Well No. CK–1 (previously owned by Cross Keys Development Corporation); and to increase the existing withdrawal limit of 32.2 mg/30 days from all wells to 45.9 mg/30 days. The project is located in Doylestown Township, Bucks County, in the Southeastern Pennsylvania Ground Water Protected Area.

6. *Trigen-Philadelphia Energy Corporation D–95–10.* A project entailing operation of an existing oil-fired steam turbine formerly owned and operated by PECO Energy at the Schuylkill Generation Station located on Christian Street on the east bank of the Schuylkill River in the City of Philadelphia, Pennsylvania. The applicant will continue to utilize PECO's existing intake and discharge facilities on the Schuylkill River (which

will remain PECO's), sell steam energy to the City of Philadelphia and electrical power to PECO. The power facilities (55 megawatts) utilize approximately 7 mgd of water, withdrawn from the Schuylkill River, of which approximately 1 percent is consumptive.

7. *KidsPeace Corporation, Inc. D–95–14.* A project to expand an existing 0.062 mgd STP to 0.15 mgd to serve the applicant's Orchard Hills Camp in North Whitehall Township, Lehigh County, Pennsylvania. The STP will continue to provide secondary biological treatment with the activated sludge process. After disinfection, the treated effluent will continue to discharge to Jordan Creek, a tributary of the Lehigh River, near the southwest corner of North Whitehall Township.

8. *C & M Developers, Inc. D–95–18 CP.* An application for approval of a ground water withdrawal project to supply up to 4.32 mg/30 days of water to the applicant's distribution system from new Well No. 3, and to increase the existing withdrawal limit from all wells to 6 mg/30 days. The project, which will serve the Cabin Run and proposed Landis Greene Estates residential communities, is located in Plumstead Township, Bucks County, in the Southeastern Pennsylvania Ground Water Protected Area.

9. *Chester Cogeneration Limited Partnership (CCLP) D–95–30.* An application for operation of an existing 66 megawatt cogeneration plant currently owned and operated by Scott Paper Company (Scott) to continue to serve Scott's paper mill operation with both steam and electricity. The applicant, CCLP, will continue to provide Scott's steam and electricity needs, and will provide PECO with electric power not used by Scott. No new withdrawal or discharge is proposed. CCLP will be provided approximately 0.81 mgd of water via Scott's existing intake on the Delaware River. Consumptive use will remain at approximately 0.36 mgd. The project is located in the City of Chester, Delaware County, Pennsylvania.

10. *Grays Ferry Cogeneration Partnership D–95–32.* A proposed cogeneration project to provide 173 megawatts of electric power utilizing a combustion turbine and steam turbine. Steam energy will be supplied to a steam host projected to be Trigen-Philadelphia Energy Corporation, which distributes steam to buildings in the Philadelphia area. Situated on a portion of the Schuylkill Generation Station formerly owned by PECO, the project site is located at 2600 Christian Street just east of the Schuylkill River in the City of Philadelphia, Pennsylvania. Electric power will be purchased by PECO. For once-through cooling, the project will use up to 80 mgd of surface water withdrawn via PECO's existing Schuylkill River intake and approximately 3.8 mgd of water supplied by the City of Philadelphia. Maximum consumptive use is expected to be 0.24 mgd. Wastewaters will be discharged to the Schuylkill River via PECO's existing discharge facilities with no significant change expected in the discharge characteristics.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Dated: June 13, 1995.

Susan M. Weisman,

Secretary.

[FR Doc. 95–15101 Filed 6–20–95; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 11539–000, et al.]

Hydroelectric Applications [Willliams Water Power Company, et al.]; Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. Type of Application: Preliminary Permit.

b. Project No.: 11539–000.

c. Date Filed: May 5, 1995.

d. Applicant: Williams Water Power Company, Inc.

e. Name of Project: Williams Dam Water Power Project.

f. Location: On the East Fork of the White River near the Town of Williams, Lawrence County, Indiana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact: Mr. Thomas J. Reiss, Jr., Williams Water Power Company, Inc., P.O. Box 553, 315 Hart Street, Watertown, WS 53094, 414–261–7975.

i. FERC Contact: Michael Dees, 202–219–2807.

j. Comment Date: August 14, 1995.

k. Description of Project: The proposed project would consist of: (1) an existing dam approximately 525 feet long; (2) an existing 200 acre reservoir with a median water surface elevation of 474.2 feet NGVD; (3) an existing powerhouse, 128 feet long housing hydropower units with a total capacity of 2,700 Kw; (4) a proposed 12.5 Kv transmission line 250 feet long; and (5) appurtenant facilities. The applicant estimates that the annual energy generation would be 12 GWh and that the cost of the studies to be performed under the permit would be $25,000. The energy would be sold to the local electric utility company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

2 a. Type of Application: Preliminary Permit.

b. Project No.: 11540–000.

c. Date Filed: May 12, 1995.

d. Applicant: Joyner Enterprises Corporation.

e. Name of Project: Berry Shoals.

f. Location: On the South Tyger River near Reidville in Spartanburg, South Carolina.

g. Filed Pursuant to: Federal Power Act 17 U.S.C. §§ 791(a)–825(r).

h. Contact Person: V.J. Miller, President, Joyner Enterprises Corporation, Box 13, Powder Horn Mountain, Deep Gap, NC 28618, (704) 265–1228.

i. FERC Contact: Ms. Julie Bernt, (202) 219–2814.

j. Comment Date: August 14, 1995.

k. Description of Project: The proposed project would consist of: (1) An existing 27-foot-high, rock and mortar dam owned by Bluestone Energy Design, Inc.; (2) an impoundment with a surface area of 40 acres at elevation 708.9 m.s.l., with no storage capability; (3) a 3,438-foot-long headrace canal with two headgates at the end of the canal; (4) an intake structure; (5) two 8-foot-diameter, 137-foot-long penstocks; (5) an existing powerhouse containing two generating units with a total capacity of 2000 kW; and, (6) a 200-foot-long tailrace. The applicant estimates the average annual energy production to be 4,200,000 kWh and the cost of the work to be performed under the preliminary permit to be $35,000.

l. Purpose of Project: The power produced would be sold to a local utility company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C and D2.

3 a. Type of Application: Conduit Exemption.

b. Project No.: 10893–002.

c. Date Filed: February 21, 1995, and supplemented on April 27, 1995.

d. Applicant: HY Power Energy Company.

e. Name of Project: Inglis Lock By-pass.

f. Location: On the Inglis Lock By-pass, Withlacoochee River, Levy County, Florida.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact: Mr. Robert Karow, 7008 Southwest 30th Way, Gainesville, FL 32601, (904) 336–4727.

i. FERC Contact: Charles T. Raabe, (202) 219–2811.

j. Comment Date: August 8, 1995.

k. Description of Project: The proposed project would utilize the existing State of Florida's Inglis Lock By-pass Conduit and would consist of: (1) an open intake channel; (2) a reinforced concrete powerhouse with dimensions of 115 feet by 28 feet and containing one 3.0-megawatt (MW) pit turbine and generator unit, rated at a head of 22.5 feet and a hydraulic capacity of 1,667 cubic feet per second; (3) a short tailrace lined with concrete and rip-rap; and (4) appurtenant equipment and facilities. The project would have an estimated annual output of 15.7 Gwh. Power generated would be sold to Florida Power Corporation.

l. With this notice, we are initiating consultation with the *State Historic Preservation Officer (SHPO),* as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

m. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, SHPO, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merits, the resource agency, SHPO, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on the applicant.

4 a. Type of Application: Minor License.

b. Project No.: 11291–000.

c. Dote filed: March 6, 1995.

d. Applicant: Star Mill, Inc.

e. Name of Project: Star Milling and Electric Minor Water Power Project.

f. Location: T38N, R10E, Section 13 (Fawn River, LaGrange County, Indiana—approximately 2 miles north and .5 miles west of unincorporated Howe, Indiana).

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. Applicant Contact: Mr. Richard K. Muntz, 109 South Detroit Street, LaGrange, Indiana 46761, (219) 463–2151.

i. FERC Contact: Mr. Michael Strzelecki, (202) 219–2827.

j. Deadline Date: August 8, 1995.

k. Status of Environmental Analysis: This application is ready for environmental analysis—see attached paragraph D4.

l. Intent to Prepare an Environmental Assessment and Invitation for Written Scoping Comments: The Commission staff intends to prepare an environmental assessment (EA) for the Star Milling and Electric Minor Water Power Project in accordance with the National Environmental Policy Act. The EA will objectively consider both site-specific and cumulative environmental impacts of the project and reasonable alternatives, and will include economic, financial, and engineering analyses.

A draft EA will be issued and circulated to all interested parties for review. All timely filed comments on the draft EA will be analyzed by the staff and considered in the final EA. The staff's conclusions and recommendations will then be considered in reaching the final licensing decision.

Scoping: Interested individuals, organizations, and agencies with environmental expertise are invited to assist the staff in identifying the scope of environmental issues that should be analyzed in the EA by submitting written scoping comments. To help focus these comments, a scoping document outlining subject areas to be addressed in the EA will be mailed to all agencies and interested individuals on the Commission mailing list. Copies of the scoping document may also be requested from the staff.

Persons who have views on the issues or information relevant to the issues may submit written statements for inclusion in the public record. Those written comments should be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, by the deadline date shown in item (j) above. All written correspondence should clearly show the following caption on the first page: Star Milling and Electric Minor Water Power Project, FERC No. 11291–000.

Intervenors are reminded of the Commission's Rules of Practice and Procedure requiring parties filing documents with the Commission to serve a copy of the document on each person whose name appears on the official service list for the project. Further, if a party or intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

m. Description of the Project: The proposed project would consist of: (1) a 250-foot-long, 5.5-foot-high embankment; (2) a 5.5-foot-high, 47-foot-long concrete spillway consisting of seven flashboard-equipped bays (upper dam); (3) a 76-acre-foot impoundment; (4) a 27-foot-long by 22- foot-high brick powerhouse housing two Westinghouse Electric generators and two Type Z Leffel turbines that give the plant an installed capacity of 232 kilowatts (kW); (5) a 65-foot-long embankment abutting the west end of the spillway and the east end of the powerhouse; (6) a 400-foot-long tailrace returning flow to the Fawn River; (7) a 1,000-foot-long bypassed natural river reach; (8) three 6-foot-diameter culverts that channel spillway flow underneath a gravel service road (located about 150 feet downstream of the upper dam); (9) a 30-foot-long by 3.5-foot-high lower dam (its function is unknown); (10) 2.35-kilovolt (kV) transmission lines extending from the powerhouse to a campground (1,320 feet), utility transformers (1,000 feet), project operator home (600 feet), and main house/campground store (400 feet) and (11) appurtenant facilities.

n. This notice contains the standard paragraphs A2, A9, B, D4.

o. Locations of the Application: A copy of the application is available for inspection or reproduction at the Commission's Public Reference and Files Maintenance Branch, 941 North Capitol Street, N.E., Room 3104, Washington, D.C. 20426, or by calling (202) 208–1371.

5 a. Type of Application: Minor License.

b. Project No.: 11547–000.

c. Date Filed: June 5, 1995.

d. Applicant: Summit Hydropower.

e. Name of Project: Hale.

f. Location: On the Quinebaug River in the Town of Putnam, Windham County, Connecticut.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact: Mr. Duncan S. Broatch, 92 Rocky Hill Road, Woodstock, CT 06281, (203) 974–1620.

i. FERC Contact: Charles T. Raabe (dt), (202) 219–2811.

j. Comment Date: August 4, 1995.

k. Description of Project: The proposed project would consist of: (1) the existing dam; (2) a refurbished intake; (3) the forebays; (4) the canal; (5) the penstock; (6) a turbine; (7) a speed increaser; (8) a 440 Kw generator; (9) a powerhouse; (10) a tailrace; (11) a transmission line; and (12) appurtenant facilities.

l. With this notice, we are initiating consultation with the *State Historic Preservation Officer (SHPO)*, as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

m. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, SHPO, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merits, the resource agency, SHPO, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on the applicant.

6 a. Type of Application: New Major License.

b. Project No.: P–2663–004.

c. Date Filed: May 12, 1995.

d. Applicant: Minnesota Power and Light Company.

e. Name of Project: Pillager Hydro Project.

f. Location: On the Crow Wing River in Cass and Morrison Counties, near Pillager, Minnesota.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791 (a)–825(r).

h. Applicant Contact: Mr. Christopher D. Anderson, Minnesota Power and Light Company, 30 West Superior Street, Duluth, MN 55802, (218) 723–3961.

i. FERC Contact: Ed Lee, (202) 219–2809.

j. Comment Date: August 14, 1995.

k. Description of Project: The existing project would consist of: (1) an existing concrete dam and intake structure; (2) an existing 770-acre reservoir; (3) a powerhouse containing two generating units for a total installed capacity of 1,520 Kw; (4) a 200-foot-long 34.5–Kv transmission line; and (5) appurtenant facilities. The applicant estimates that the total average annual generation would be 1,900 Mwh for the project. All lands and project works are owned by the applicant.

l. With this notice, we are initiating consultation with the *Minnesota State Historic Preservation Officer (SHPO)*, as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

m. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's Regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the comment date and serve a copy of the request on the applicant.

7 a. Type of Application: Minor License.

b. Project No.: 11545–000.

c. Date filed: May 26, 1995.

d. Applicant: Allen Ross.

e. Name of Project: Book Mill Hydroelectric Project.

f. Location: on the Sawmill River, in Franklin County, Massachusetts.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. Applicant Contact: Jay Boeri, P.E., RR 1 Box 798, Woodstock, VT 05091, (802) 436–2521.

i. FERC Contact: Mary C. Golato, (202) 219–2804.

j. Comment Date: 60 days from the filing date.

k. Description of Project: The proposed project would consist of the following facilities: (1) an existing dam 108 feet long and 14.2 feet high; (2) an existing reservoir having a surface area of .8 acres, a gross storage capacity of 3.7 acre-feet, and a negligible storage capacity; (3) an existing steel penstock 4.5 feet in diameter and 45 feet long; (4) an existing powerhouse containing two existing turbine-generator units having a total generating capacity of 100 kilowatts; (5) a proposed overhead 4,800-volt transmission line; and (6) appurtenant facilities. The applicant estimates that the total average annual generation would be 375,000 kilowatthours. The owner of the dam is Allen Ross.

l. With this notice, we are initiating consultation with the *Massachusetts State Historic Preservation Officer (SHPO)*, as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

m. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's Regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the comment date and serve a copy of the request on the applicant.

Standard Paragraphs

A2. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D4. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (August 8, 1995 for Project No. 11291–000). All reply comments must be filed with the Commission within 105 days from the date of this notice. (September 22, 1995 for Project No. 11291–000.)

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: June 15, 1995.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15154 Filed 6–20–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. GT95–43–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

June 15, 1995.

Take notice that on June 9, 1995, Columbia Gas Transmission Corporation (Columbia) tendered for filing the following tariff sheets to its FERC Gas Tariff:

Effective November 1, 1993

Original Volume No. 2
Second Revised Sheet No. 681

Effective July 10, 1995

Second Revised Volume No. 1
Seventh Revised Sheet No. 7
Original Volume No. 2
Twentieth Revised Sheet No. 4A

Columbia states that these tariff sheets are being filed to cancel in its entirety Rate Schedule X–70, which embodies a transportation agreement between Columbia and Equitrans, Inc. (Equitrans) as authorized by an individual NGA Section 7(c) certificate issued in Docket No. CP78–41. (3 FERC ¶61,038 1978).

Columbia states further that service under Rate Schedule X–70 was assigned to Equitable Gas Company (Equitable) effective September 1, 1993. Such service to Equitable was then converted to open access firm transportation service under Columbia's Rate Schedule FTS effective November 1, 1993.

Columbia states that a copy of this filing was served upon Equitable and have been mailed to all firm customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 22, 1995.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filings

are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15121 Filed 6–20–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–339–000 and CP95–563–000]

Natural Gas Pipeline Company of America; Notice of Petition for Approval of Settlement

June 15, 1995.

Take notice that on June 9, 1995, Natural Gas Pipeline Company of America (Natural) filed a petition pursuant to Rule 207 of the Commission's Rules of Practice and Procedure for an order approving the Stipulation entered into by Natural and Columbia Gulf Transmission Company (Columbia Gulf) on May 15, 1995.

Natural states that the stipulation terminates Natural's contractual obligations under a transportation and exchange agreement between Natural and Columbia Gulf dated September 30, 1980 (Columbia Gulf's Rate Schedule X–81) and a transportation agreement between Natural and Columbia Gulf dated March 14, 1983 (Columbia's Gulf Rate Schedule X–105) through the payment of a negotiated Exit Fee by Natural to Columbia Gulf (Exit Fee) in consideration for Columbia Gulf's agreement to the termination and abandonment of Columbia Gulf's transportation services performed for Natural under Columbia Gulf's Rate Schedules X–81 and X–105.

Natural notes that the stipulation is contingent upon the Commission's approval, including Commission approval of Natural's full recovery from Natural's customers of the Exit Fee.

Comments on the settlement, as well as motions to intervene or protests should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before June 29, 1995. Reply comments should be filed on or before July 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15122 Filed 6–20–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–49–000]

Paiute Pipeline Company; Notice of Settlement Conference

June 15, 1995.

Pursuant to the Commission order which issued on January 19, 1993, and a notice of extension of time which issued on May 13, 1993, a settlement conference will be held to resolve the issues raised in the above-captioned proceeding.

The conference will be held on Friday, June 23, 1995 at 10 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, N.W., Washington, D.C. 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15123 Filed 6–20–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–340–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

June 15, 1995.

Take notice that on June 13, 1995, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with the proposed effective date of July 8, 1995:

Second Revised Sheet No. 278 ,
Second Revised Sheet No. 282

Panhandle states that this filing is being made to comply with Order No. 577–A, the Commission's Order Granting Rehearing in Docket No. RM95–5–001 issued May 31, 1995.

Panhandle states that the revised tariff sheets reflect the revisions in the term and character of capacity releases that are exempt from advance posting and bidding requirements. Specifically, the tariff sheets clarify that the maximum term of pre-arranged capacity releases, at less than the maximum rate, that are exempt from advance posting and bidding requirements is 31 days.

Panhandle states that copies of this filing have been served on all customers subject to the tariff sheets and applicable state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before June 22, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15124 Filed 6–20–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–564–000]

Texas Eastern Transmission Corporation; Notice of Application

June 15, 1995.

Take notice that on June 13, 1995 Texas Eastern Transmission Corporation (Applicant), 5400 Westheimer Court, Houston, Texas, 77056–5310, filed an application in Docket No. CP95–564–000, under Section 7(c) of the Natural Gas Act and Section 157.7 of the Commission's Regulations for a certificate to replace, operate and maintain 0.12 miles of 30-inch line.

The line to be replaced is part of Applicant's Line No. 16, crossing the Copano Creek in Refugio and Aransas Counties, Texas. The pipeline segment extends from Mile Post 172.40 to Mile Post 172.52 on Line No. 16. The cost of the replacement is $347,000.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 22, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, and if the Commission on its own review of the matter finds that a grant of certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15120 Filed 6–20–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5224–8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces the Office of Management and Budget's (OMB) responses to Agency PRA clearance requests.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer (202) 260–2740, Please refer to the EPA ICR No.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agenda PRA Clearance Requests

OMB Approvals

EPA ICR No. 1749.01; (New assigned ICR No. 1755.01); Solicitation for Proposals for Facility-Based Reinvention Pilot Project (Project XL); was approved 06/07/95; OMB No. 2010–0026; expires 09/30/95.

EPA ICR No. 0226.11; Application for National Pollution Discharge Elimination System (NPDES) Facilities Affected by the Land Disposal Restrictions Phase III Rule; was approved 05/05/95; OMB No. 2040–0086; expires 05/31/98.

EPA ICR No. 1728.02; Municipal Water Pollution Prevention Program Evaluation (Self-Audit; was approved 04/05/95; OMB No. 2040–0181; expires 05/31/98.

EPA ICR No. 1597.02; Hazardous Waste Management Systems Modification of the Hazardous Waste Recycling Regulatory Program, Standards for Universal Waste Management—40 CFR Part 273; was approved 05/05/95; OMB No. 2050–0145; expires 05/31/98.

EPA ICR No. 0596.05; Application and Summary Report for an Emergency Exemption for Pesticides; was approved 05/02/95; OMB No. 2070–0032; expires 05/31/98.

EPA ICR No. 1747.01; Report and Database on Ecosystem Research in the Pacific Northwest; was approved 05/16/95; OMB No. 0280–0052; expires 05/31/98.

EPA ICR No. 0595.09; Facility Ground-Water Monitoring Requirements; was approved 05/05/95; OMB No. 2050–0033; expires 05/31/98.

EPA ICR No. 1639.02; Water Quality Guidance for Great Lakes System; was approved 03/28/95; OMB No. 2040–0180; expires 03/31/98.

EPA ICR No. 0229.10; Discharge Monitoring Report; was approved 05/05/95; OMB No. 2040–0004; expires 05/31/98.

EPA ICR No. 0827.04; Construction Grants Program Information Collection Request; was approved 05/18/95; OMB No. 2040–0027; expires 05/31/98.

EPA ICR No. 1442.08; Land Disposal Restriction Program; was approved 05/05/95; OMB No. 2050–0085; expires 05/31/98.

OMB Disapproval

EPA ICR No. 1730.01; NSPS for Medical Waste Incinerators; was disapproved 04/21/95.

OMB Extensions of Expiration Dates

EPA ICR No. 0143.04; Recordkeeping Requirements for Producers of Pesticides; OMB No. 2070–0028; expiration date was extended to 12/31/95.

EPA Withdrawal

EPA ICR No. 1682.02; California Federal Implementation Plans (FIP's) for Sacramento, Ventura, and South Coast under Clean Air Act Section 110(c); was withdrawn from OMB review by EPA.

Dated: June 15, 1995.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 95–15171 Filed 6–20–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5225–3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 21, 1995.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260–2740, please refer to EPA ICR #1755.02.

SUPPLEMENTARY INFORMATION:

Office of Policy, Planning and Evaluation

Title: Implementation of XL Projects—Regulatory Reinvention Pilot Projects, EPA ICR #1755.02. This ICR requests amendment of a currently approved collection (OMB #2010–0026).

Abstract: This information collection amends the previously approved collection (ICR #1755.01, OMB approval #2010–0026) to extend that proposed Project XL solicitation phase beyond the 9/30/95 approval period. In addition, this information collection covers the burden for implementation of XL projects from the point of project selection onward: development of the Final Project Agreement (FPA), project implementation, and evaluation.

The Project XL Pilot Projects are a set of pilot projects to test performance-based environmental management systems as alternatives to command and control regulatory approaches. The XL Projects are divided into four categories: facility-based projects, industry- or sector-based projects, community-based projects, and government agency-based projects. Under these projects, regulated entities will be given flexibility to depart from existing regulatory requirements in exchange for enforceable commitments to achieve environmental results that, on the

whole, go beyond what would have been achieved through full compliance with those regulations.

The primary users of this information will be EPA and our partners in the state and tribal environmental agencies, as well as facilities, sectors, communities, and government agencies that are project participants. The information will be used to assist in the development of Final Project Agreements that meet the needs of EPA, the states, and the participating entities. The information will also be used to gauge our success at implementing the XL projects, and the success of the projects themselves at demonstrating the usefulness of a performance-based approach. The information will allow EPA to better assure environmental performance and project feasibility, and may provide communities with greater opportunities to participate in environmental protection at the local level.

Burden Statement: Annual public reporting burden for this collection of information is estimated to average 232,000 hours for all respondents, including time for reviewing instructions, searching existing data sources, gathering and maintaining the needed data, and completing and reviewing the collection of information. This burden includes 105,000 hours for the application phase, 38,300 hours for the Final Project Agreements, 160 hours for tracking, and 88,000 hours for determining environmental performance. There is no recordkeeping burden.

Respondents: Any one of the entities regulated by EPA, as organized by individual facility, sector (group of facilities), community (facilities within a defined place and represented with local government), or government agency facilities.

Estimated No. of Respondents: 60.

Estimated Total Annual Burden on Respondents: 232,000 hours.

Frequency of Collection: Varies, one-time Final Project Agreements, quarterly tracking reports, and a verification of final environmental performance.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, (please refer to EPA ICR# 1755.02, and OMB #2010–0026) to:

Sandy Farmer, EPA ICR #1755.02, U.S. Environmental Protection Agency, Regulatory Information Division (Mail Code: 2136), 401 M Street, S.W., Washington, D.C. 20460

and

Timothy Hunt, OMB #2010–0026, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, N.W., Washington, D.C. 20530

Dated: June 15, 1995.

Rick Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 95–15211 Filed 6–20–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5224–6]

California State Nonroad Engine and Equipment Pollution Control Standards; Opportunity for Public Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of an opportunity for public hearing and public comment.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has adopted regulations for exhaust emission standards and test procedures for nonroad recreational vehicles and engines (recreational vehicles) for 1997 and subsequent calendar years. CARB has requested that EPA authorize CARB to enforce these regulations pursuant to section 209(e) of the Clean Air Act (Act), as amended, 42 U.S.C. 7543, and EPA's regulation "Air Pollution Control; Preemption of State Regulation for Nonroad Engine and Vehicle Standards" (section 209(e) Rule) (40 CFR part 85; 59 FR 26969–36983). This notice announces that EPA has tentatively scheduled a public hearing to consider CARB's request and to hear comments from interested parties regarding CARB's request for EPA's authorization and CARB's determination that its regulations, as noted above, comply with the criteria set forth in the 209(e) Rule. In addition, EPA is requesting that interested parties submit written comments. Any party desiring to present oral testimony for the record at the public hearing, instead of, or in addition to, written comments, must notify EPA by July 26, 1995. If no party notifies EPA that it wishes to testify on the recreational vehicles regulations, then no hearing will be held and EPA will consider CARB's authorization request based on written submissions to the record.

DATES: EPA has tentatively scheduled a public hearing for August 8, 1995, beginning at 9:00 a.m., if any party notifies EPA by July 26, 1995, that it wishes to present oral testimony regarding CARB's request. Any party may submit written comments regarding CARB's request by September 11, 1995. After July 26, 1995, any person who plans to attend the hearing may call David Dickinson of EPA's Manufacturers Operations Division at (202)233–9256 to determine if a hearing will be held.

ADDRESSES: If a request is received, EPA will hold the public hearing announced in this notice at the Channel Inn Hotel, 650 Water Street SW., Washington, DC. Parties wishing to present oral testimony at the hearing should notify in writing, and if possible, submit ten (10) copies of the planned testimony to: Charles N. Freed, Director, Manufacturers Operations Division (6405J), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. In addition, any written comments regarding the authorization request, should be sent, in duplicate, to Charles N. Freed at the same address to the attention of Docket A–95–17. Copies of material relevant to the authorization request (Docket A–95–17) will be available for public inspection during normal working hours of 8 a.m. to 4 p.m. Monday through Friday, including all non-government holidays, at the U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center, 401 M Street, S.W., Washington, DC 20460. Telephone: (202)260–7548. FAX Number: (202)260–4000.

FOR MORE INFORMATION CONTACT: David Dickinson, Attorney/Advisor, Manufacturers Operations Division (6405J), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Telephone: (202)233–9256.

SUPPLEMENTARY INFORMATION:

I. Background

Section 209(e)(1) of the Act as amended, 42 U.S.C. 7543(e)(1), provides in part: "No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from either of the following new nonroad engines or nonroad vehicles subject to regulation under this Act—(A) New engines which are used in construction equipment or vehicles or used in farm equipment or vehicles and which are smaller than 175 horsepower. (B) New locomotives or new engines used in locomotives."

For those new pieces of equipment or new vehicles other than those a State is not permanently preempted from regulating under section 209(e)(1), the State of California may regulate such new equipment or new vehicles provided California complies with Section 209(e)(2). Section 209(e)(2) provides in part that the Administrator shall, after notice and opportunity for

public hearing, authorize California to adopt and enforce standards and other requirements relating to the control of emissions from such vehicles or engines "[i]f California determines that California standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. No such authorization shall be granted if the Administrator finds that—(i) the determination of California is arbitrary and capricious, (ii) California does not need such California standards to meet compelling and extraordinary conditions, or (iii) California standards and accompanying enforcement procedures are not consistent with this section."

EPA has issued a final regulation titled "Air Pollution Control; Preemption of State Regulation for Nonroad Engine and Vehicle Standards" (section 209(e) Rule) that sets forth several definitions, as explained below, and the authorization criteria EPA must consider before granting California an authorization to enforce any of its nonroad engine standards.[1] As described in the section 209(e) Rule, in order to be deemed "consistent with this section", California standards and enforcement procedures must be consistent with section 209. In order to be consistent with section 209 California standards and enforcement procedures must reflect the requirements of sections 209(a), 209(e)(1), and 209(b). Section 209(a) prohibits states from adopting or enforcing emission standards for new motor vehicles or new motor vehicle engines.[2] Section 209(e)(1) identifies the categories preempted from state regulation. As stated above, the preempted categories are (a) new engines which are used in construction equipment or vehicles or used in farm equipment or vehicles and which are smaller than 175 horsepower, and (b) new locomotives or new engines used in locomotives. The section 209(e) Rule defines construction equlpment or vehicle to mean "any internal combustion engine-powered machine primarily used in construction and located on commercial construction sites. The section 209(e) Rule defines farm equipment or vehicle to mean "any internal combustion engine-powered machine primarily used in the commercial production and/or commercial harvesting of food, fiber, wood, or commercial organic products or for the processing of such products for further use on the farm. The section 209(e) rule defines "primarily used" to mean "used 51 percent or more."[3] Therefore, California's proposed emission regulations would be considered inconsistent with section 209 if they applied to these permanently preempted categories. Additionally, the section 209(e) Rule requires EPA to review nonroad authorization requests under the same "consistency" criterion that it reviews motor vehicle waiver requests. Under section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if she finds that California standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act. California's nonroad standards are not consistent with section 202(a) if there is inadequate lead time to permit the development of technology necessary to meet those standards, giving appropriate consideration to the cost of compliance within that time frame. Additionally, California's nonroad accompanying enforcement procedures would be inconsistent with section 202(a) if the Federal and California test procedures were inconsistent, that is, manufacturers would be unable to meet both the State and Federal test requirements with one test vehicle or engine.

Once California has been granted an authorization, under section 209(e)(2), for its standards and accompanying enforcement procedures for a category or categories of equipment, it may adopt other conditions precedent to initial retail sale, titling or registration of the subject category or categories of equipment without the necessity of receiving further EPA authorization.

By letter dated March 6, 1995, CARB submitted to EPA a request that EPA authorize California to enforce regulations for standards and test procedures for 1997 and subsequent calendar year recreational vehicles. These regulations, which apply to off-road motorcycles, all-terrain vehicles (ATVs), golf carts, go-karts, and specialty vehicles:

a. Establish an exhaust emission standard for off-road motorcycles and ATV engines produced after December 31, 1996, measured in grams-per-kilometer.

b. Establish a zero-emission requirement for golf carts produced after December 31, 1996.

c. Require that specialty vehicles less than 25 horsepower comply with the exhaust emission standards applicable to utility equipment engines as set forth in Title 13, California Code of Regulation, Section 2403.

d. Establish an exhaust emission standard for specialty vehicles 25 horsepower and greater produced after December 31, 1996 that is equivalent to the 1999 utility exhaust emission standards.

e. Require that no new engines produced for sale to replace pre-controlled off-road motorcycle, ATV, go-kart (25 horsepower and greater), golf cart, and specialty vehicle engines after the implementation of the exhaust emission standards, unless those new replacement engines comply with the applicable exhaust emission standards.

f. Adopt the current federal on-road motorcycle test procedures for off-road motorcycles and ATVs, with an option for ATVs to certify using CARB's utility engine test procedure. For go-karts 25 horsepower and above and specialty vehicles CARB's current utility engine testing procedures will apply. Require certification of engines including compliance and assembly-line quality audit test procedures.

g. Establish a labeling requirement for off-road motorcycles, ATVs, go-karts, and specialty vehicles.

h. Require that CARB's on-road vehicle recall procedures and program apply to off-road motorcycles and ATVs.

i. Establish a requirement that off-road motorcycles and ATVs be encoded with a vehicle identification number in order that such vehicles may be properly registered with California's Department of Motor Vehicles.

j. Require manufactures of specialty vehicles and go-karts 25 horsepower and above to comply with the two year warranty regulations that are part of California's utility engine regulations.

California states in its March 6, 1995 letter that it has determined that its standards for recreational vehicles are, in the aggregate, at least as protective of the public health and welfare as the applicable Federal standards. Further, California states that it needs separate standards to meet compelling and extraordinary conditions. Finally, California states that its standards and test procedures are consistent with section 209 of the Act. California's request will be considered according to the criteria for an authorization request as set forth in the section 209(e)

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[1] *See* 59 FR 36969, July 20, 1994 (to be codified at 40 C.F.R. Part 85, Subpart Q, §§ 85.1601–85.1606). § 85.1604(a) states "California shall request authorization to enforce its adopted standards and other requirements relating to the control of emissions from new nonroad vehicles * * *." As explained in the preamble to the 209(e) rule, California may first adopt a nonroad exhaust emission standard and then seek an authorization from EPA to enforce such standard.

[2] EPA believes CARB's authorization request for recreational vehicles does not raise an issue with regard to whether such vehicles are motor vehicles. EPA anticipates that it will utilize both its definitions of motor vehicles and nonroad engines to resolve this issue.

[3] *See* 40 CFR part 85, subpart Q, § 85.1602.

regulation.[4] Any party wishing to present testimony at the hearing or by written comment should address, as explained in the section 209(e) rule, the following issues:

(1) Whether California's determination that its standards are at least as protective of public health and welfare as applicable Federal standards is arbitrary and capricious;

(2) Whether California needs separate standards to meet compelling and extraordinary conditions; and,

(3) Whether California's standards and accompanying enforcement procedures are consistent with (i) section 209(a), which prohibits states from adopting or enforcing emission standards for new motor vehicles or engines, (ii) section 209(e)(1), which identifies the categories preempted from state regulation, and (iii) section 202(a) of the Act, which requires adequate lead time to permit the development of technology necessary to meet the standards, giving appropriate consideration to the cost of compliance within that time frame, and consistent Federal and California test procedures, that is, manufacturers would be able to meet both the State and federal test requirements with one test vehicle or engine.

II. Public Participation

If the scheduled hearing takes place, it will provide an opportunity for interested parties to state orally their views or arguments or to provide pertinent information regarding the issues as noted above and further explained in the section 209(e) Rule. Any party desiring to make an oral statement on the record should file ten (10) copies of its proposed testimony and other relevant material along with its request for a hearing with the Director of EPA's Manufacturers Operations Division at the Director's address listed above not later than July 26, 1995. In addition, the party should submit 50 copies, if possible, of the proposed statement to the presiding officer at the time of the hearing.

In recognition that a public hearing is designed to give interested parties an opportunity to participate in this proceeding, there are no adverse parties as such. Statements by participants will not be subject to cross-examination by other participants without special approval by the presiding officer. The presiding officer is authorized to strike from the record statements which he deems irrelevant or repetitious and to impose reasonable limits on the duration of the statement of any participant.

If a hearing is held, the Agency will make a verbatim record of the proceedings. Interested parties may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. Regardless of whether a public hearing is held, EPA will keep the record open until September 11, 1995.

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest extent possible and label it as "Confidential Business Information." To ensure that proprietary information is not inadvertently placed in the docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. If a person making comments wants EPA to base its final decision in part on a submission labeled as confidential business information, then a non-confidential version of the document which summarizes the key data or information should be placed in the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it may be made available to the public without further notice to person making comments.

Dated: June 8, 1995.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation

[FR Doc. 95–15165 Filed 6–20–95; 8:45 am]

BILLING CODE 6560–60–P

[4] "Air Pollution Control; Preemption of State Regulation for Nonroad Engine and Vehicle Standards" at 59 FR 36969, July 20, 1994 and 40 CFR Part 85, Subpart Q, §§ 85.1601–85.1606).

[FRL–5221–3]

Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; Public Review of a Notification of Intent To Certify Equipment

AGENCY: Environmental Protection Agency.

ACTION: Notice of agency receipt of a notification of intent to certify equipment and initiation of 45 day public review and comment period.

SUMMARY: The Agency has received a notification of intent to certify urban bus retrofit/rebuild equipment pursuant to 40 CFR Part 85, Subpart O from the Cummins Engine Company, Inc. (Cummins). Pursuant to § 85.1407(a)(7), today's **Federal Register** notice summarizes the notification below, announces that the notification is available for public review and comment, and initiates a 45-day period during which comments can be submitted. The Agency will review this notification of intent to certify, as well as comments received, to determine whether the equipment described in the notification of intent to certify should be certified. If certified, the equipment can be used by urban bus operators to reduce the particulate matter of urban bus engines.

The Cummins notification of intent to certify, as well as other materials specifically relevant to it, is contained in category VIII–A of Public Docket A–93–42, entitled "Certification of Urban Bus Retrofit/Rebuild Equipment." This docket is at the address below.

Today's notice initiates a 45-day period during which the Agency will accept written comments relevant to whether or not the equipment included in this notification of intent to certify should be certified. Comments should be provided in writing to Public Docket A–93–42, Category VIII–A, at the address below. An identical copy should be submitted to Anthony Erb, also at the address below.

DATES: Comments must be submitted on or before August 7, 1995.

ADDRESSES: Submit separate copies of comments to the two following addresses:

1. U.S. Environmental Protection Agency, Public Docket A–93–42 (Category VIII–A), Room M–1500, 401 M Street SW., Washington, D.C. 20460.
2. Anthony Erb, Technical Support Branch, Manufacturers Operations Division (6405J), 401 "M" Street SW., Washington, D.C. 20460.

Docket items may be inspected from 8:00 a.m. until 5:30 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged by the Agency for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Anthony Erb, Manufacturers Operations Division (6405J), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. Telephone: (202) 233–9259.

SUPPLEMENTARY INFORMATION:

I. Background

On April 21, 1993, the Agency published final Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses (58 FR 21359). The retrofit/rebuild program is intended to reduce the ambient levels of particulate matter (PM) in urban areas and is limited to 1993 and earlier model year (MY) urban buses operating in metropolitan areas with 1980 populations of 750,000 or more, whose engines are rebuilt or replaced after January 1, 1995. Operators of the affected buses are required to choose between two compliance programs: Program one sets particulate matter emissions requirements for each urban bus engine in an operator's fleet which is rebuilt or replaced; Program two is a fleet averaging program that establishes specific annual target levels for average PM emissions from urban buses in an operator's fleet.

Certification of retrofit/rebuild equipment is a key element of the retrofit/rebuild. To show compliance under either of the compliance programs, operators of the affected buses must use equipment that has been certified by the Agency. Emissions requirements under either of the two compliance programs depend on the availability of certified retrofit/rebuild equipment for each engine model. To be used for Program one, equipment must be certified as meeting a 0.10 g/bhp-hr PM standard or as achieving a 25 percent reduction in PM. Equipment used for Program two must be certified as providing some level of PM reduction that would in turn be claimed by urban bus operators when calculating their average fleet PM levels attained under the program. For Program one, information on life cycle costs must be submitted in the notification of intent to certify in order for certification of the equipment to initiate (or trigger) program requirements. To trigger program requirements, the certifier must guarantee that the equipment will be available to all affected operators for a life cycle cost of $7,940 or less at the 0.10 g/bhp-hr PM level, or for a life cycle cost of $2,000 or less for the 25 percent or greater reduction in PM. Both of these values are based on 1992 dollars.

II. Notification of Intent To Certify

By a notification of intent to certify signed March 13, 1995, Cummins has applied for certification of equipment applicable to its LTA10–B model engines that were originally manufactured between November 1985 and December 1992. The pending equipment certification is applicable to the following configurations:

Family	Control parts list (CPL)	Manufacture dates [1]	
		Start	End
343B	0780	11/20/85	12/31/87

Family	Control parts list (CPL)	Manufacture dates [1]	
		Start	End
343C	0781	11/20/85	12/31/87
	0774	11/20/85	12/31/89
	0777	11/20/85	12/31/89
	0996	12/04/87	08/19/88
	1226	07/26/88	12/31/90
343F	1226	07/12/90	08/26/92
	1441	12/18/90	12/31/92
	1622	04/24/92	12/31/92
	1624	04/24/92	12/31/92

[1] Equipment certification will be applicable to those engines originally built between the start and end dates for the appropriate configuration.

Two separate horsepower/torque ratings are to apply for each CPL listed, either 240 horsepower and 750 foot-pounds of torque or 270 horsepower and 860 foot-pounds of torque. The notification of intent to certify states that the candidate equipment will reduce PM emissions 25 percent or more, on petroleum-fueled diesel engines that have been rebuilt to Cummins specifications. Pricing information has been submitted with the notification, along with a guarantee that the equipment will be offered to all affected operators for less than the incremental life cycle cost ceiling. Therefore, this equipment may trigger program requirements for the 25% reduction standard. If certified as a trigger of this standard, urban bus operators will be required to use this retrofit/rebuild equipment or other equipment certified to provide a PM reduction as discussed below.

All components of the candidate equipment are contained in combination of two kits. The first kit is common to both horsepower/torque ratings and consists of a camshaft, cam key, cylinder kits, and a fuel plumbing kit. The second kit contains the injectors, cylinder head, turbocharger and fuel pump and is ordered based on the horsepower/torque rating that is wanted. The first kit in combination with one of the second kits is required to rebuild an engine.

Cummins presents exhaust emission data from testing a new engine that was selected directly from the assembly and built to a configuration to which all rebuilt engines that are included under this certification will be made identical. Two tests were conducted, one test was performed on the engine with the 240/750 (horsepower/torque) rating and a second test was conducted on the same engine after retrofit with the components needed to achieve the 270/860 rating. The test data show a PM level of 0.28 g/bhp-hr for the 240/750 rating and a PM level of 0.24 g/bhp-hr for the 270/860 rating with the candidate equipment installed.

Cummins has also provided new engine certification and other emissions data providing the baseline PM level for each engine configuration. The test data show that with candidate equipment installed, PM is reduced between 38% and 61% depending upon the engine and rating being compared. The test data also show that hydrocarbon (HC), carbon monoxide (CO), and oxides of nitrogen (NO_X) are less than applicable standards. Fuel consumption is not affected when the candidate equipment is installed according to Cummins. Cummins presents smoke emission measurements for the engine demonstrating compliance with applicable standards.

Cummins indicates that the candidate equipment will have an incremental fleet purchase price increase over the standard rebuild of $1435.29 due to the increased cost for the components. Cummins states that there will be no incremental installation cost, fuel cost, or maintenance cost compared to the currently available standard rebuild. Therefore, the candidate equipment will be offered to all affected operators for less than a life cycle cost of $2,000 (1992 dollars). This information may trigger the 25 percent reduction standard if the equipment is certified.

If the Agency certifies the candidate Cummins equipment as a trigger of program requirements, operators will be affected as follows. Under Program 1, all rebuilds of applicable engines performed six months following the effective date of certification, must use the Cummins equipment or other equipment certified to provide at least a 25 percent reduction. This requirement would continue for the applicable engines until such time that equipment was certified to trigger the 0.10 g/bhp-hr emission standard for less than a life cycle cost of $7,940 (in 1992 dollars). If the Agency certifies the candidate Cummins equipment as a trigger of program requirements, operators who choose to comply with Program 2 and install this equipment, will use the PM emission level(s) established during the certification review process, in their calculations for target or fleet level as specified in the program regulations.

At a minimum, EPA expects to evaluate this notification of intent to certify, and other materials submitted as applicable, to determine whether there is adequate demonstration of compliance with: (1) the certification requirements of § 85.1406, including whether the testing accurately proves the claimed emission reduction or

emission levels; and, (2) the requirements of § 85.1407 for a notification of intent to certify, including whether the data provided by Cummins complies with the life cycle cost requirements.

The Agency requests that those commenting also consider these regulatory requirements, plus provide comments on any experience or knowledge concerning: (a) problems with installing, maintaining, and/or using the candidate equipment on applicable engines; and, (b) whether the equipment is compatible with affected vehicles.

The date of this notice initiates a 45-day period during which the Agency will accept written comments relevant to whether or not the equipment described in the Cummins notification of intent to certify should be certified pursuant to the urban bus retrofit/rebuild regulations. Interested parties are encouraged to review the notification of intent to certify and provide comment during the 45-day period. Please send separate copies of your comments to each of the above two addresses.

The Agency will review this notification of intent to certify, along with comments received from interested parties, and attempt to resolve or clarify issues as necessary. During the review process, the Agency may add additional documents to the docket as a result of the review process. These documents will also be available for public review and comment within the 45-day period.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 95–15216 Filed 6–20–95; 8:45 am]

BILLING CODE 6560–50–P

[OPPTS–140233; FRL–4953–6]

Access to Confidential Business Information; Advanced Resources Technologies, Inc. and USATREX International

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Advanced Resources Technologies, Inc. (ARTI) of Alexandria, Virginia and ARTI's subcontractor, USATREX, International (USA) of McLean, Virginia for access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than July 6, 1995.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, TSCA Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under contract number 68–W5–0058, contractor ARTI, of 4900 Seminary Road, Suite 1200, Alexandria, VA and subcontractor USA of 7926 Jones Branch Drive, Suite 410, McLean, VA, will assist the Office of Pollution Prevention and Toxics (OPPT) in providing information for EPA's efforts in planning, organizing, and managing a comprehensive physical and information security program (classified and proprietary documents) and in providing information and data for EPA's efforts in developing physical and information security policy for implementation throughout the Agency.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–W5–0058, ARTI and USA will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. ARTI and USA personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide ARTI and USA access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters only.

Clearance for access to TSCA CBI under this contract may continue until January 2, 2000.

ARTI and USA personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: June 13, 1995.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 95–15168 Filed 6–20–95; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5224–7]

Open Meetings on Alternative Approaches To Fund Water and Wastewater Projects on July 19, 1995

The Environmental Protection Agency's Office of Water will hold an open meeting to discuss alternative sources for clean water project funding on July 19, 1995. The meeting will be held at the Airlie Center in Warrenton, Virginia from 8:00 a.m. until 5:00 p.m.

This meeting is being held to allow stakeholders to share their views in support of a Congressional requirement to conduct a study of alternative sources for clean water project funding. Congress provided $250,000 in EPA's FY 1995 Appropriations Bill for this study. The study is being conducted by the Office of Water with assistance from the Environmental Finance Center at Syracuse University.

Participants at the meeting will be encouraged to provide their views on a number of different alternatives for funding clean water projects, including water and wastewater projects. Participants will be asked to examine possible sources of funding, delivery mechanisms for this funding, and eligible categories for funding, along with other related issues.

All interested parties who wish to speak at the meeting should contact Ronda Garlow in the Environmental Finance Center at Syracuse University at (315) 443–5612. Those who wish to speak at the meeting are encouraged to notify Ms. Garlow in advance. Ten minutes will be available for each presentation.

All other inquiries concerning the meeting should be directed to Mr. James Smith at (202) 371–9770.

Dated: June 14, 1995.

Michael B. Cook,

Director, Office of Wastewater Management.

[FR Doc. 95–15172 Filed 6–20–95; 8:45 am]

BILLING CODE 6560–50–M

[OPP–180973; FRL 4957–7]

Propamocarb Hydrochloride; Receipt of Applications for Emergency Exemptions, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received specific exemption requests from state lead agricultural agencies of Delaware, Florida, Georgia, Maine, Maryland, Michigan, Minnesota, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, South Dakota, Virginia, and Wisconsin (hereafter referred to as the "Applicants"), for the use of the pesticide propamocarb hydrochloride (CAS 25606–41–1) to potentially treat the following acreages of potatoes to control immigrant strains of late blight which are resistant to historically used control materials: DE, 5,000; FL, 40,000; GA, 610; ME, 80,000; MD, 3,000; MI, 58,000; MN, 60,000; NJ, 3,400; NY, 30,000; ND, 109,000; OH, 6,000; OR, 50,000; PA, 24,000; SD, 6,000; VA, 7,500; and WI, 30,000 (potential total acreage of 543,110 acres). The Applicants propose the first food use of an active ingredient; therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemptions.

DATES: Comments must be received on or before July 6, 1995.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180973," should be submitted by mail to: Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–180973]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505W), Office of Pesticide Programs, Environmental Profection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Floor 6, Crystal Station I, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8326; e-mail: pemberton.libby@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicants have requested the Administrator to issue specific exemptions for the use of propamocarb hydrochloride on potatoes to control late blight. Information in accordance with 40 CFR part 166 was submitted as part of these requests.

Recent failures to control late blight in potatoes with the registered fungicides, have been caused almost exclusively by immigrant strains of late blight *Phytophthora infestans*, which are resistant to the historically used pesticides. Before the immigrant strains of late blight arrived, all of the strains in the U.S. were previously controlled by treatment with registered materials. The Applicants state that presently, there are no fungicides registered in the U.S. that will provide adequate control of the immigrant strains of late blight. The Applicants state that propamocarb hydrochloride has been shown to be effective against these strains of late blight. This material holds current registrations throughout many European countries for control of this disease. The Applicants state that losses in some states have been greater than $10 million per year for the past 3 years, due to these new strains of late blight, and some growers have completely lost their crops and will go out of business. These costs do not include the increased amount of money spent on fungicides in attempts to control this disease. Under appropriate conditions, it is possible that this disease could develop to epidemic proportions, causing major changes and losses to the U.S. potato industry.

The Applicants have all previously submitted requests for exemptions for two other unregistered materials, dimethomorph and cymoxanil, to address this disease problem. These requests were issued on May 18, 1995. A notice of receipt for these two chemicals was published in the **Federal Register** on May 3, 1995.

The Applicants propose to apply propamocarb hydrochloride at a maximum rate of 0.898 lb. a.i. (2.3 pts. of product) per acre, by ground or air, with a maximum of 5 applications per season, to a maximum of the following acreages of potatoes: DE, 5,000; FL, 40,000; GA, 610; ME, 80,000; MD, 3,000; MI, 58,000; MN, 60,000; NJ, 3,400; NY, 30,000; ND, 109,000; OH, 6,000; OR, 50,000; PA, 24,000; SD, 6,000; VA, 7,500; and WI, 30,000. Therefore, use under this exemption could potentially amount to the following maximum amounts of propamocarb hydrochloride: DE, 22,463 lbs. a.i., 7,188 gal. product; FL, 179,688 lbs. a.i., 57,500 gal. product; GA, 2,741 lbs. a.i., 877 gal. product; ME, 359,375 lbs. a.i., 115,000 product; MD, 13,478 lbs. a.i., 4,313 gal. product; MI, 260,547 lbs. a.i., 83,375 gal. product; MN, 269,531 lbs. a.i., 86,250 gal. product; NJ, 152,734 lbs. a.i., 48,875 gal. product; NY, 134,764 lbs. a.i., 43,125 gal. product; ND, 489,650 lbs. a.i., 156,688 gal. product; OH, 26,953 lbs. a.i., 8,625 gal. product; OR, 224,609 lbs. a.i., 71,875 gal. product; PA, 107,813 lbs. a.i., 34,500 gal. product; SD, 26,953 lbs. a.i., 8,625 gal. product; VA, 33,691 lbs. a.i., 10,781 gal. product; and WI, 134,764 lbs. a.i., 43,125 gal. product.

This notice does not constitute a decision by EPA on the applications. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing the first food use of an active ingredient. Such notice provides for opportunity for public comment on the application. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received

during the comment period in determining whether to issue the emergency exemptions requested by the above-named state lead agricultural agencies.

A record has been established for this notice under docket number "OPP–180973" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: June 2, 1995.

Stephen L. Johnson,

Director, Registration Division Office of Pesticide Programs.

[FR Doc. 95–15166 Filed 6–20–95; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–44618; FRL–4961–3]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on 1,3,5-trimethylbenzene (CAS No. 108–67–8), submitted pursuant to a final test rule under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received.

I. Test Data Submissions

Test data for 1,3,5-trimethylbenzene were submitted by Koch Industries, Inc. pursuant to a test rule at 40 CFR 799.5075. They were received by EPA on May, 11, 1995. The submission includes a final report for a 90-Day Oral Gavage Toxicity Study of 1,3,5-trimethylbenzene in Rats with a Recovery Group. This chemical is used as an intermediate in the production of an antioxidant for plastics.

EPA has initiated its review and evaluation process for this data submission. At this time, the Agency is unable to provide any determination as to the completeness of the submission.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–44618). This record includes copies of all studies reported in this notice. The record is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. B–607 Northeast Mall, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

List of Subjects

Environmental protection, Test data.

Dated: June 8, 1995.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 95–15167 Filed 6–20–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1054–DR]

Missouri; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri, (FEMA–1054–DR), dated June 2, 1995, and related determinations.

EFFECTIVE DATE: June 12, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Missouri dated June 2, 1995, is hereby amended to include Individual Assistance in the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 2, 1995:

The counties of Benton, Boone, Cole, Gasconade, Franklin, Jefferson, Johnson, Miller, St. Charles, St. Clair, Ste. Genevieve, and St. Louis for Individual Assistance. (already designated for Public Assistance.)

The counties of Callaway, Cape Girardeau, Carroll, Clark, Lincoln, Mississippi, Montgomery, Osage, Ray, Scotland, Scott, Vernon, and the City of St. Louis for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Craig Wingo,

Division Director, Infrastructure Support Division Response and Recovery Directorate.

[FR Doc. 95–15183 Filed 6–20–95; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1057–DR]

Tennessee; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Tennessee (FEMA–1057–DR), dated June 14, 1995, and related determinations.

EFFECTIVE DATE: June 14, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 14, 1995, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:.

I have determined that the damage in certain areas of the State of Tennessee, resulting from severe storms and tornadoes on May 14–19, 1995, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Tennessee.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Hazard Mitigation Assistance may be provided at a later date if requested and warranted. Consistent with the requirement that Federal assistance be supplemented, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Glenn Woodard of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Tennessee to have been affected adversely by this declared major disaster:

The counties of Cumberland, Houston and Lawrence for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.512, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 95–15184 Filed 6–20–95; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1056–DR]

Texas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Texas (FEMA–1056–DR), dated June 13, 1995, and related determinations.

EFFECTIVE DATE: June 13, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 13, 1995, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Texas, resulting from severe thunderstorms, flooding, hail and tornadoes on May 28–31, 1995, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Texas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance. Public Assistance and/or Hazard Mitigation Assistance may be provided at a later date if requested and warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153. shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Dell Greer of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following area of the State of Texas to have been affected adversely by this declared major disaster:

The county of Tom Green for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 95–15185 Filed 6–20–95; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL RESERVE SYSTEM

First National of Nebraska, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 5, 1995.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First National of Nebraska, Inc., Omaha, Nebraska; to engage *de novo* through its subsidiary, First Technology Solutions, Inc., Omaha, Nebraska, in providing to others data processing services, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 15, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–15131 Filed 6–20–95; 8:45 am]

BILLING CODE 6210–01–F

KeyCorp, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than July 5, 1995.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. KeyCorp, Cleveland, Ohio; to acquire AutoFinance Group, Inc., Westmont, Illinois, and thereby engage in the business of making, acquiring, and servicing loans made on the security of automobiles, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Associated Banc-Corp, Green Bay, Wisconsin; to acquire Great Northern Mortgage, Rolling Meadows, Illinois, and thereby engage in mortgage banking activities, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 15, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–15132 Filed 6–20–95; 8:45 am]

BILLING CODE 6210–01–F

SouthTrust Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 14, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. SouthTrust Corporation, Birmingham, Alabama, and SouthTrust of Florida, Inc., Jacksonville, Florida; to merge with First Commercial Financial Corporation, Bradenton, Florida, and thereby indirectly acquire First Commercial Bank of Manatee County, Bradenton, Florida.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. KeyCorp, Cincinnati, Ohio; to acquire 100 percent of the voting shares of Key Bank USA, National Association, Cleveland, Ohio, a *de novo* bank.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. BOK Financial Corporation, Tulsa, Oklahoma; to acquire 9.9 percent of the voting shares of Liberty Bancorp, Inc., Oklahoma City, Oklahoma, and thereby indirectly acquire Liberty Bank and Trust Company, Oklahoma City, Oklahoma, and Liberty Bank and Trust Company, Tulsa, Oklahoma.

2. Pony Express Bancorp, Inc., Elwood, Kansas; to acquire at least 100 percent of the voting shares of Farmers State Bank, Lucas, Kansas.

Board of Governors of the Federal Reserve System, June 15, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–15133 Filed 6–20–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[Dkt. C–3265]

Arkla, Inc.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: The order reopens a 1989 consent order that settled allegations that Arkla's acquisition of natural gas pipeline assets from TransArk Transmission Co. could reduce competition in the transportation of natural gas out of the Arkoma basin and the transmission of gas to consumers in the Russellville, Arkansas, area. This order modifies the consent order by deleting the divestiture requirement, because changed market conditions, such as regulatory changes and new entry in the market, make it no longer necessary.

DATES: Consent order issued October 10, 1989. Modifying order issued April 5, 1995.[1]

FOR FURTHER INFORMATION CONTACT: Elizabeth Piotrowski, FTC/S–2115, Washington, DC 20580. (202) 326–2623.

[1] Copies of the Modifying Order are available from the Commission's Public Reference Branch, H–130, 6th Street and Pennsylvania Avenue, N.W., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: In the Matter of Arkla, Inc. The prohibited trade practices and/or corrective actions as set forth at 55 FR 7565, are changed, in part, as indicated in the summary.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.s.C. 45, 18)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 95–15187 Filed 6–20–95; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3573]

Boston Scientific Corporation; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order permits, among other things, Boston Scientific Corporation, a Massachusetts-based manufacturer and marketer of catheters, to proceed with the proposed acquisitions of Cardiovascular Imaging Systems, Inc., and SCIMED Life Systems, Inc., but requires the respondent to grant a nonexclusive license to a specified package of patents and technology related to the manufacture, production and sale of intravascular ultrasound (IVUS) imaging catheters to the Hewlett-Packard Company or another Commission-approved licensee. In addition, the consent order requires the respondent to obtain Commission approval, for ten years, before acquiring an interest greater than one percent in a company engaged in researching, developing or manufacturing IVUS catheters for sale in the United States.

DATES: Complaint and Order issued April 28, 1995.[1]

FOR FURTHER INFORMATION CONTACT: Howard Morse or Robert Tovsky, FTC/S–3627, Washington, D.C. 20580. (202) 326–2949 or 326–2634.

SUPPLEMENTARY INFORMATION: On Thursday, March 9, 1995, there was published in the **Federal Register**, 60 FR 12948, a proposed consent agreement with analysis In the Matter of Boston Scientific Corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 95–15188 Filed 6–20–95; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3576]

Lockheed Corporation, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order allows, among other things, the completion of the merger between Lockheed Corporation and Martin Marietta Corporation, and requires the merged firm to open up the teaming arrangements that each individual firm has with infrared sensor producers in order to restore competition for certain types of military satellites. The consent order also prohibits certain divisions of the merged firm from gaining access through other divisions to competitively sensitive information about competitors' satellite launch vehicles or military aircraft.

DATES: Complaint and Order issued May 9, 1995.[1]

FOR FURTHER INFORMATION CONTACT: Ann Malester or Laura Wilkinson, FTC/S–2224, Washington, D.C. 20580. (202) 326–2682.

SUPPLEMENTARY INFORMATION: On Friday, January 27, 1995, there was published in the **Federal Register**, 60 FR 5408, a proposed consent agreement with analysis In the Matter of Lockheed Corporation, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 95–15189 Filed 6–20–95; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3572]

Sensormatic Electronics Corporation; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, Sensormatic Electronics Corporation, a Florida-based manufacturer of electronic-article surveillance systems from acquiring patents and other exclusive rights for manufacturer installed disposable anti-shoplifting labels from Knogo Corporation, as they pertain to the United States and Canada. Also, the consent order requires Sensormatic, for ten years, to obtain Commission approval before acquiring certain rights in connection with Knogo's SuperStrip, or any significant acquisitions of entities engaged in, or assets used for, the research, development or manufacture of disposable labels, or acquisitions of patents or other intellectual property for such purposes.

DATES: Complaint and Order issued April 18, 1995.[1]

FOR FURTHER INFORMATION CONTACT: Ann Malester or Arthur Strong, FTC/S–2224, Washington, D.C. 20580. (202) 326–2682 or 326–3478.

SUPPLEMENTARY INFORMATION: On Friday, January 27, 1995, there was published in the **Federal Register**, 60 FR 5428, a proposed consent agreement with analysis In the Matter of Sensormatic Electronics Corporation, for the purpose of soliciting public comment. Interested

[1] Copies of the Complaint, the Decision and Order, and Commissioner Azcuenaga's statement are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, D.C. 20580.

[1] Copies of the Compliant and the Decision and Order are available from tha Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580.

[1] Copies of the Complaint, the Decision and Order, and Commissioner Azcuenaga's statement are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580.

parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 95–15190 Filed 6–20–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 942–3263]

WLAR Co., et al.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Falls Church, Virginia weight-loss company from making false or unsubstantiated representations for their weight-loss booklets or other weight-loss products or program, and would require respondent and its owner to disclose in future ads making weight-related claims for these or similar booklets that the products consist solely of booklets or pamphlets.

DATES: Comments must be received on or before August 21, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Richard L. Cleland, FTC/S–4002, Washington, DC 20580. (202) 326–3088.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

In the matter of WLAR Co., a corporation, and Michael K. Craig, individually and as an officer of said corporation. File No. 942 3263.

The Federal Trade Commission, having initiated an investigation of certain acts and practices of WLAR Co., a corporation, and Michael K. Craig, individually and as an officer of said corporation, hereinafter sometimes referred to as proposed respondents, and it now appears that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It Is Hereby agreed by and between WLAR Co., by its authorized officer, and Michael K. Craig, individually and as an officer of said corporation, and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent WLAR Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 5622 Columbia Pike #106, in the City of Falls Church, State of Virginia, 22041.

Proposed respondent Michael K. Craig is or was at relevant times herein the sole owner, officer, and employee of said corporation. Individually or in concert with others, he participated in and/or formulated, directed, and controlled the acts and practices of said corporation and his address is the same as that of said corporation.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered into pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents, addressed to Arnold & Porter, 1200 New Hampshire Avenue, N.W., Washington, D.C. 20036–6885, shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For purposes of this Order:

1. "Clearly and prominently" shall mean as follows:

(a) In a television or videotape advertisement, the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. The audio disclosure shall be delivered in a volume and cadence and for a duration sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it.

(b) In a print advertisement, the disclosure shall be in close proximity to the representation that triggers the disclosure and given in at least twelve (12) point type.

(c) In a radio advertisement, the disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it.

2. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

3. "Weight-loss product" shall mean any product or program designed or used to prevent weight gain or to produce weight loss, reduction or elimination of fat, slimming, or caloric deficit in a user of the product or program.

I

It is ordered that respondents, WLAR Co., a corporation, its successors and assigns, and its officers; and Michael K. Craig, individually and as an officer of WLAR Co.; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of Swedish 19, Swedish System, BM Program, New Shape, Body Maker, or any substantially similar product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

A. Such product is new or is a new weight-loss discovery; or

B. Such product does not require dieting.

II

It is further ordered that respondents, WLAR Co., a corporation, its successors and assigns, and its officers; and Michael K. Craig, individually and as an officer of WLAR Co.; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any weight-loss product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

A. Such product causes fast or easy weight loss;

B. Such product is more effective than other products or programs in controlling appetite or causing weight loss;

C. Purchasers of such products are successful in controlling appetite, losing weight, or reducing body fat;

D. Such product causes users to develop a new set of eating habits, thereby reducing caloric intake and causing significant and long-term or permanent weight loss; or

E. Such product has any effect on users' weight, body size or shape, body measurements, or appetite,

unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

III

It is further ordered that respondents, WLAR Co., a corporation, its successors and assigns, and its officers; and Michael K. Craig, individually and as an officer of WLAR Co.; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any weight-loss product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that such product has been used successfully by any number of persons unless, at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

IV

Nothing in Parts I through III of this Order shall prohibit respondents from making representations which promote the sale of books and other publications, *provided that*, the advertising only purports to express the opinion of the author or to quote the contents of the publication; the advertising discloses the source of the statements quoted or derived from the contents of the publication; and the advertising discloses the author to be the source of the opinions expressed about the publication. This Part shall not apply, however, if the publication or its advertising is used to promote the sale of some other product as part of a commercial scheme.

V

It is further ordered that respondents, WLAR Co., a corporation, its successors and assigns, and its officers; and Michael K. Craig, individually and as an officer of WLAR Co.; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of Swedish 19, Swedish System, BM Program, New Shape, Body Maker, or any substantially similar product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication, that any such product has any effect on weight or body size, unless respondents disclose, clearly and prominently, and in close proximity to such representation, that such product consists solely of a booklet or pamphlet containing information and advice on weight loss.

VI

It is further ordered that respondents, WLAR Co., a corporation, its successors and assigns, and its officers; and Michael K. Craig, individually and as an officer of WLAR Co.; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any weight-loss product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any

representation, in any manner, directly or by implication, that any such weight-loss product has any effect on weight or body size, unless they disclose, clearly and prominently, and in close proximity to such representation, that diet and/or increasing exercise is required to lose weight; *provided however*, that this disclosure shall not be required if respondents possess and rely upon competent and reliable scientific evidence demonstrating that the weight-loss product is effective without either dieting or increasing exercise.

VII

It is further ordered that respondent, WLAR Co., shall:

A. Within thirty (30) days after service of this Order, provide a copy of this Order to each of respondent's current principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this Order; and

B. For a period of five (5) days from the date of issuance of this Order, provide a copy of this Order to each of respondent's future principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this Order who are associated with respondent or any subsidiary, successor, or assign, within three (3) days after the person assumes his or her responsibilities.

VIII

It is further ordered that for five (5) years after the last date of dissemination of any representation covered by this Order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission or its staff for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

IX

It is further ordered that respondent, WLAR Co., shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in its corporate structure, including but not limited to dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, the planned filing of a bankruptcy petition, or any other corporate change that may affect compliance obligations arising out of this Order.

X

It is further ordered that respondent, Michael K. Craig, shall, for a period of three (3) years from the date of issuance of this Order, notify the Commission within thirty (30) days of the discontinuance of his present business or employment and of his affiliation with any new business or employment involving the advertising, offering for sale, sale, or distribution of any weight-loss product. Each notice of affiliation with any new business or employment shall include respondent's new business address and telephone number, current home address, and a statement describing the nature of the business or employment and his duties and responsibilities.

XI

It is further ordered that respondents shall, within sixty (60) days after service of this Order, and at such other times as the Federal Trade Commission may require, file with the Commission's report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from proposed respondents WLAR Co. and Michael K. Craig.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns advertising for five weight-loss products, marketed under the names "Swedish 19," "Body Maker," "BM Program," "New Shape," and "Swedish System" (collectively referred to herein as "the Swedish 19 products"). These products are booklets or pamphlets containing advice on dieting and exercise.

The Commission's Complaint charges that proposed respondents WLAR Co. and Michael K. Craig falsely represented that users of the Swedish 19 products are not required to consciously diet to lose weight and that BM Program, New Shape, and Body Maker are new weight-loss discoveries. The Complaint also alleges that the proposed respondents falsely represented that they possessed a reasonable basis when they made the following claims: (1) the Swedish 19 products cause fast and easy weight loss; (2) the Swedish 19 products are more effective than other products or programs in controlling appetite and causing weight loss; (3) purchasers of the Swedish 19 products are successful in controlling appetite, losing weight, and reducing body fat; (4) Swedish 19, Swedish System, BM Program, and Body Maker cause users to develop a new set of eating habits, thereby reducing caloric intake and causing significant and long-term or permanent weight loss; and (5) thousands of girls have successfully lost weight by using Swedish 19, Swedish System, New Shape, and Body Maker. Finally, the Complaint alleges that respondents' failure to disclose in advertisements that the Swedish 19 products consist only of booklets or pamphlets containing advice concerning techniques for reducing caloric intake and/or exercise, and that reducing caloric intake and/or increasing exercise is required to lose weight was a deceptive practice.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent proposed respondents from engaging in similar acts in the future.

Part I of the proposed order prohibits proposed respondents from representing that the Swedish 19 products, or substantially similar products, are new or are a new weight-loss discovery, or that such products do not require dieting. Part II requires proposed respondents to possess competent and reliable scientific evidence before making representations that any weight-loss product causes fast or easy weight loss; is more effective than other products or programs in controlling appetite or causing weight loss; causes users to develop a new set of eating habits, thereby reducing caloric intake and causing significant and long-term or permanent weight loss; or has any effect on users' weight, body size or shape, body measurements, or appetite; or that purchasers of such products are successful in controlling appetite, losing weight, or reducing body fat. Part III requires proposed respondents to have substantiation for any representation that any weight-loss product has been used successfully by any number of persons.

Part IV of the proposed order provides that nothing in Parts I through III prohibits proposed respondents from making representations which promote the sale of books and other publications, provided that, the advertising only purports to express the opinion of the author or to quote the contents of the publication; the advertising discloses the source of the statements quoted or derived from the contents of the publication; and the advertising discloses the author to be the source of the opinions expressed about the publication. The proposed order further provides that Part IV does not apply to any publication or its advertising that is used to promote the sale of some other product as part of a commercial scheme.

Part V prohibits proposed respondents from representing that the Swedish 19 products, or any substantially similar product, has any effect on weight or body size, unless respondents disclose prominently that the product consists solely of a booklet or pamphlet containing information and advice on weight loss. Part VI requires proposed respondents to disclose that diet or exercise are required to lose weight in connection with any representation about the effect of a weight-loss product on weight or body size, unless they have competent and reliable scientific evidence to the contrary.

Part VII requires WLAR Co. to distribute a copy of the order to certain current and future company personnel. Part VIII requires proposed respondents to maintain, for five (5) years, all materials that support, contradict, qualify, or call into question any representations they make that are covered by the proposed order. Under Part IX of the proposed order, WLAR Co. is required to notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in its corporate structure that may affect compliance with the order's obligations. Part X requires that Michael K. Craig, for a period of three (3) years, notify the Commission of any change in his business or employment or of his affiliation with any new business or employment involving the advertising, offering for sale, sale, or distribution of any weight-loss product. Part XI obligates proposed respondents to file compliance reports with the Commission.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 95–15191 Filed 6–20–95; 8:45 am]

BILLING CODE 6750–01–M

OFFICE OF GOVERNMENT ETHICS

Submission of Updated Model Qualified Trust Documents for OMB Approval Under the Paperwork Reduction Act

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: The Office of Government Ethics has submitted updated qualified trust documents for extension of Office of Management and Budget (OMB) approval under the Paperwork Reduction Act. A model qualified blind trust (for multiple fiduciaries) and two model confidentiality agreements have also been submitted for review and approval for the first time.

DATES: Comments on this proposal should be received by July 21, 1995.

ADDRESSES: Comments should be sent to Joseph F. Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; telephone: 202–395–7316.

FOR FURTHER INFORMATION CONTACT: Judith A. Kim or William E. Gressman, Office of Government Ethics, Suite 500, 1201 New York Avenue NW., Washington, DC 20005–3917; telephone 202–523–5757, FAX 202–523–6325. A copy of OGE's request for extension and approval from OMB, including the certificates and model documents, may be obtained by contacting Ms. Kim or Mr. Gressman.

SUPPLEMENTARY INFORMATION: There are two categories of information collection requirements being submitted, each with its own related reporting certificates or model documents which are subject to review and approval by OMB under the Paperwork Reduction Act (44 U.S.C. chapter 35). The OGE regulatory citations for these two categories, together with identification of the forms used for their implementation, are as follows:

i. Qualified trust administration—5 CFR 2634.401(d)(2), 2634.403(b)(11), 2634.404(c)(11), 2634.406(a)(3) & (b), 2634.408, 2634.409 and appendixes A & B of part 2634 (the two implementing forms, the Certificate of Independence and Certificate of Compliance, are codified respectively in the cited appendixes; see also the Privacy Act and Paperwork Reduction Act notices thereto in appendix C); and

ii. Qualified trust drafting—5 CFR 2634.401(c)(1)(i) & (d)(2), 2634.403(b), 2634.404(c), 2634.408 and 2634.409 (the nine implementing forms are the (A) Model Qualified Blind Trust Provisions, (B) Model Qualified Diversified Trust Provisions, (C) Model Qualified Blind Trust Provisions (For Use in the Case of Multiple Fiduciaries), (D) Model Qualified Blind Trust Provisions (For Use in the Case of an Irrevocable Pre-Existing Trust), (E) Model Qualified Diversified Trust Provisions (Hybrid Version), (F) Model Qualified Diversified Trust Provisions (For Use in the Case of Multiple Fiduciaries), (G) Model Qualified Diversified Trust Provisions (For Use in the Case of an Irrevocable Pre- Existing Trust), (H) Model Confidentiality Agreement Provisions (For Use in the Case of a Privately Owned Business), and (I) Model Confidentiality Agreement Provisions (For Use in the Case of Investment Management Activities).

The Office of Government Ethics is seeking three-year OMB paperwork approval of the Model Qualified Blind Trust Provisions (For Use in the Case of Multiple Fiduciaries) and the two model confidentiality agreements listed in items #'s ii.C., H. & I. above, and a three-year extension of OMB approval on the remaining six model trust drafts, also listed in item # ii, as well as the two certificates listed in item # i. The model confidentiality agreements are used for drafting documents prohibiting communications between the employee/settlor of the qualified trust and other persons not parties to the qualified trust but who are or may be privy to information which indicates the activities occurring in the trust portfolio during the term of the qualified trust. These agreements are publicly available upon request.

The total annual public reporting burden represents the time for trust certificates and model documents processed by OGE. The burden is based on the amount of time imposed on private citizens.

Virtually all filers/document users are private trust administrators and other private representatives helping to set up and maintain the qualified blind and diversified trusts. The detailed paperwork estimates below for the various trust certificates and model documents are based primarily on OGE's experience with administration of the qualified trust program.

i. Trust Certificates:

A. Certificate of Independence: Total filers (executive branch): 10; Private citizen filers (100%): 10; OGE-processed certificates (private citizens): 10; OGE burden hours (20 min./certificate): 3.

B. Certificate of Compliance: Total filers (executive branch): 35; Private citizen filers (100%): 35; OGE-processed certificates (private citizens): 35; OGE burden hours (20 minutes/certificate): 12; and

ii. Model Qualified Trust Drafts:

A. Model Qualified Blind Trust Draft: Total Users (executive branch): 10; Private citizen users (100%): 10; OGE-processed drafts (private citizens): 10; OGE burden hours (100 hours/draft): 1,000.

B. Model Qualified Diversified Trust Draft: Total users (executive branch): 15; Private citizen users (100%): 15; OGE-processed drafts (private citizens): 15; OGE burden hours (100 hours/draft): 1,500.

C.–G. Each of the five remaining model qualified trust modified drafts involves: Total users (executive branch): 2; Private citizen users (100%): 2; OGE-processed drafts (private citizens): 2; OGE burden hours (100 hours/draft): 200, multiplied by 5 (five different drafts): 1,000.

H.–I. Each of the two model confidentiality agreements involves: Total users (executive branch): 2; Private citizens users (100%): 2; OGE-processed agreements (private citizens): 2; OGE burden hours (50 hours/agreement): 100, multiplied by 2 (two different drafts): 200. The total number of forms expected annually is 84, with a cumulative total of 3,715 burden hours.

As required by the Paperwork Reduction Act, the Office of Government Ethics is submitting to OMB a request that it approve, or extend the approval of, these information collection requirements in the forms themselves as well as in the underlying regulatory provisions cited above. Copies of the forms are available upon request from OGE (see the "For Further Information Contact" block above).

Approved: June 14, 1995.

Stephen D. Potts,

Director, Office of Government Ethics.

[FR Doc. 95–15182 Filed 6–20–95; 8:45 am]

BILLING CODE 6345–01–U

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FTR 16]

Federal Travel Regulation; Reimbursement of Higher Actual Subsistence Expenses for Official Travel to Oklahoma City, Oklahoma During Presidentially Declared Emergency

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of bulletin.

SUMMARY: The attached bulletin informs agencies of the establishment of a special actual subsistence expense ceiling for official travel to Oklahoma City (Oklahoma County), Oklahoma. The Department of the Treasury requested establishment of the increased rate to accommodate employees who performed temporary duty in Oklahoma City, Oklahoma, and who experienced a temporary but significant increase in lodging costs during the Presidentially declared emergency following the explosion at the Alfred P. Murrah Federal Building.

EFFECTIVE DATE: This special rate is applicable to claims for reimbursement covering travel to Oklahoma City, Oklahoma during the period April 19 through May 22, 1995.

FOR FURTHER INFORMATION CONTACT: Jane E. Groat, General Services Administration, Transportation Management Division (FBX), Washington, DC 20406, telephone 703–305–5745.

SUPPLEMENTARY INFORMATION: The Administrator of General Services, pursuant to 41 CFR 301–8.3(c) and at the official request of the Department of the Treasury, has increased the maximum daily amount of reimbursement that may be approved for actual and necessary subsistence expenses for official travel to Oklahoma City (Oklahoma County), Oklahoma during the period April 19 through May 22, 1995. The attached GSA Bulletin FTR 16 is issued to inform agencies of the establishment of this special actual subsistence expense ceiling.

Dated: June 15, 1995

Allan W. Beres,

Assistant Commissioner, Office of Transportation and Property Management.

Attachment

ATTACHMENT

[GSA Bulletin FTR 16]

June 15, 1995

To: Heads of Federal agencies

Subject: Reimbursement of higher actual subsistence expenses for official travel to Oklahoma City (Oklahoma County), Oklahoma during Presidentially declared emergency.

1. *Purpose.* This bulletin informs agencies of the establishment of a special actual subsistence expense ceiling for official travel to Oklahoma City (Oklahoma County), Oklahoma, where Federal employees performing temporary duty travel necessarily incurred lodging expenses in excess of the applicable maximum per diem rate following the explosion at the Alfred P. Murrah Federal Building. This special rate applies to claims for reimbursement covering travel during the period April 19, 1995, through May 22, 1995.

2. *Background.* The Federal Travel Regulation (FTR) (41 CFR chapters 301–304) part 301–8 permits the Administrator of General Services to establish a higher maximum daily rate for the reimbursement of actual subsistence expenses of Federal employees on official travel to an area within the continental United States. The head of an agency may request establishment of such a rate when special or unusual circumstances, such as a Presidentially declared emergency, result in an extreme increase in subsistence costs for a temporary period. The Department of the Treasury requested establishment of an increased rate for Oklahoma City to accommodate Federal law enforcement agents who performed temporary duty there and experienced a temporary but significant increase in lodging costs during the Presidentially declared emergency following the explosion at the Alfred P. Murrah Federal Building. These circumstances justify the need for higher subsistence expense reimbursement in Oklahoma City during the designated period.

3. *Maximum rate and effective date.* The Administrator of General Services, pursuant to 41 CFR 301–8.3(c), has increased the maximum daily amount of reimbursement that may be approved for actual and necessary subsistence expenses for official travel to Oklahoma City (Oklahoma County), Oklahoma for travel during the period April 19, 1995, through May 22, 1995. Agencies may approve actual subsistence expense reimbursement not to exceed $145 ($119 maximum for lodging and a $26 allowance for meals and incidental expenses) for official travel to Oklahoma City (Oklahoma County), Oklahoma during this time period.

4. *Expiration date.* This bulletin expires on December 31, 1995.

5. *For further information contact.* Jane E. Groat, General Services Administration, Transportation Management Division (FBX), Washington, DC 20406, telephone 703–305–5745.

[FR Doc. 95–15220 Filed 6–20–95; 8:45 am]

BILLING CODE 6820–24–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95F–0149]

General Electric Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that General Electric Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of phosphorous acid, cyclic butylethyl propanediol, 2,4,6-tri-*tert*-butylphenyl ester as an antioxidant and/or stabilizer in olefin polymers used in articles intended for food-contact applications.

DATES: Written comments on the petitioner's environmental assessment by July 21, 1995.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 5B4463) has been filed by General Electric Co., 501 Avery St., Parkersburg, WV 26102–1868. The petition proposes to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of phosphorous acid, cyclic butylethyl propanediol, 2,4,6-tri-*tert*-butylphenyl ester as an antioxidant and/or stabilizer in olefin polymers used in articles intended for food-contact applications.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before July 21, 1995, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: June 12, 1995.

Alan M. Rulis,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–15085 Filed 6–20–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95G–0102]

Gist-brocades International B.V.; Filing of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Gist-brocades International B.V., has filed a petition (GRASP 5G0413), proposing that lipase enzyme preparation derived from *Rhizopus oryzae* be affirmed as generally recognized as safe (GRAS) as a direct human food ingredient.

DATES: Written comments by September 5, 1995.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vincent E. Zenger, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3090.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (secs. 201(s) and 409(b)(5) (21 U.S.C. 321(s) and 348(b)(5)) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that Gist-brocades International B.V., P.O. Box 241068, Charlotte, NC 28224–1068, has filed a petition (GRASP 5G0413) proposing that a lipase enzyme preparation from *Rhizopus oryzae* be affirmed as GRAS for use in food as a direct human food ingredient.

The petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the requirements outlined in §§ 170.30 (21 CFR 170.30) and 170.35 is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Interested persons may, on or before September 5, 1995, review the petition and file comments with the Dockets Management Branch (address above). Two copies of any comments should be filed and should be identified with the docket number found in brackets in the heading of this document. Comments should include any available information that would be helpful in determining whether the substance is, or is not, GRAS for the proposed use. In addition, consistent with the regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4 (b)), the agency encourages public participation by review of and comment on the environmental assessment submitted with the petition that is the subject of this notice. A copy of the petition (including the environmental assessment) and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 7, 1995.

Alan M. Rulis,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–15082 Filed 6–20–95; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETINGS: The following advisory committee meetings are announced:

Biological Response Modifiers Advisory Committee

Date, time, and place. July 13 and 14, 1995, 8 a.m., Holiday Inn—Bethesda, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Open public hearing, July 13, 1995, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 6 p.m.; open public hearing, 6 p.m. to 6:30 p.m., unless public participation does not last that long; open public hearing, July 14, 1995, 8 a.m. to 8:30 a.m., unless public participation does not last that long; open committee discussion, 8:30 a.m. to 10:10 a.m.; closed committee deliberations, 10:10 a.m. to 10:30 a.m.; open committee discussion, 10:30 a.m. to 4:30 p.m.; William Freas or Pearline Muckelvene, Center for Biologics Evaluation and Research (HFM–21), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Biological Response Modifiers Advisory Committee, code 12388.

General function of the committee. The committee reviews and evaluates data relating to the safety, effectiveness, and appropriate use of biological response modifiers which are intended for use in the prevention and treatment of a broad spectrum of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before July 5, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On July 13, 1995, the committee will discuss public health concerns in xenotransplantation. On the morning of July 14, 1995, the committee will discuss data in support of the safety of a proposed baboon bone marrow transplant in the treatment of advanced human immunodeficiency virus, type 1, (HIV–1) disease, and a discussion of the safety of clinical transplantation of nonhuman primate tissue into human recipients. In the afternoon, the committee will discuss extracorporeal liver assist devices for treatment of liver failure, followed by a discussion of the utility of polymerase chain reaction in the clinical trials of biologic therapies for hepatitis C.

Closed committee deliberations. On July 14, 1995, the committee will discuss trade secret and/or confidential commercial information relevant to pending investigational new drug applications (IND's). This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Endocrinologic and Metabolic Drugs Advisory Committee

Date, time, and place. July 13 and 14, 1995, 8 a.m., Holiday—Inn Silver Spring, Plaza Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Type of meeting and contact person. Open public hearing, July 13, 1995, 8 a.m. to 8:30 a.m., unless public participation does not last that long; open committee discussion, 8:30 a.m. to 5 p.m.; closed presentation of data, July 14, 1995, 8 a.m. to 10 a.m.; open public hearing, 10 a.m. to 10:30 a.m., unless public participation does not last that long; open committee discussion, 10:30 a.m. to 4 p.m.; Kathleen R. Reedy, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, FAX 301–443–0699, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Endocrinologic and Metabolic Drugs Advisory Committee, 12536.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in endocrine and metabolic disorders.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before July 7, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On July 13, 1995, the committee will hear presentations and discuss data submitted regarding the safety and efficacy of alendronate, new drug application (NDA) 20–560 (Fosamax®, Merck), for an osteoporosis indication. On July 14, 1995, the committee will discuss guidance criteria for the development of safe and effective medications for the treatment of obesity.

Closed presentation of data. On July 14, 1995, the committee will hear trade secret and/or confidential commercial information relevant to pending IND's. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Joint Meeting of Nonprescription Drugs Advisory Committee With Gastrointestinal Drugs Advisory Committee and With Arthritis Advisory Committee

Date, time, and place. July 13 and 14, 1995, 8:30 a.m., conference rooms D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, July 13, 1995, 8:30 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 5 p.m.; open committee discussion, July 14, 1995, 8:30 a.m. to 11:30 a.m.; open public hearing, 11:30 a.m. to 12 m., unless public participation does not last that long; closed committee deliberations, 12 m. to 1 p.m.; open committee discussion, 1 p.m. to 4 p.m.; Lee L. Zwanziger or Liz Ortuzar, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Nonprescription Drugs Advisory Committee, code 12541.

General functions of the committees. The Nonprescription Drugs Advisory Committee reviews and evaluates available data concerning the safety and effectiveness of over-the-counter (nonprescription) human drug products for use in the treatment of a broad spectrum of human symptoms and diseases. The Gastrointestinal Drugs Advisory Committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in gastrointestinal diseases. The Arthritis Advisory Committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in arthritic conditions.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before July 7, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On July 13, 1995, the Nonprescription Drugs Advisory Committee and the Gastrointestinal Drugs Advisory Committee will discuss data relevant to NDA 20–520 to switch Zantac® 75 (ranitidine hydrochloride tablets) (Glaxo, Inc.) from prescription to over-the-counter status for the treatment of heartburn. On July 14, 1995, the Nonprescription Drugs Advisory Committee and the Arthritis Advisory Committee will discuss data relevant to NDA 20–499 (Bayer Corp.,) and NDA 20–429 (Whitehall-Robins Healthcare). Both NDA's are to switch ketoprofen (12.5 milligrams tablet/caplet) from prescription to over-the-counter status for the temporary relief of minor aches and pains associated with the common cold, toothache, muscular aches, backache, for the minor pain of arthritis, for the pain of menstrual cramps, and for reduction of fever.

Closed committee deliberations. On July 14, 1995, the committees will discuss trade secret and/or confidential commercial information relevant to pending IND's. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

General Hospital and Personal Use Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. July 17, 1995, 4:30 p.m., and July 18, 1995, 8 a.m., Holiday Inn—Gaithersburg, Ballroom, Two Montgomery Village Ave., Gaithersburg, MD. A limited number of overnight accommodations have been reserved at the hotel. Attendees requiring overnight accommodations may contact the hotel at 301–948–8900 and reference the FDA Panel meeting block. Reservations may be confirmed at the group rate based on availability. Attendees with a disability requiring special accommodations should contact Ed Rugenstein, Sociometrics, Inc., 301–608–2151. The availability of appropriate accommodations cannot be assured unless prior notification is received.

Type of meeting and contact person. Closed committee deliberations, July 17, 1995, 4:30 p.m. to 5:30 p.m.; open public hearing, July 18, 1995, 8 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; Janet L. Scudiero, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1287, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), General Hospital and Personal Use Devices Panel, code 12520.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before July 10, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On July 18, 1995, the committee will discuss the classification of general purpose disinfectants and sterilants, and as time permits, will discuss the classification of Apgar timers, infusion stands, and lice detectors and removers.

Closed committee deliberations. On July 17, 1995, FDA staff will present to the committee trade secret and/or confidential commercial information regarding present and future FDA issues. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. July 19, 1995, 8 a.m., Holiday Inn— Gaithersburg, Whetstone Room, Two Montgomery Village Ave., Gaithersburg, MD. A limited number of overnight accommodations have been reserved at the hotel. Attendees requiring overnight accommodations may contact the hotel at 301–948–8900 and reference the FDA Panel meeting block. Reservations will be confirmed at the group rate based on availability.

Type of meeting and contact person. Open public hearing, 8 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 5 p.m.; Daniel Schultz, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1307, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in Washington, DC area), General and Plastic Surgery Devices Panel, code 12519.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before July 1, 1995, and submit a brief statement of the general

nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss the following issues: (1) Implementation strategy for the draft guidance on medical lasers; and (2) categorization and regulatory considerations for wound dressing devices.

Closed committee deliberations. FDA staff will present to the committee trade secret and/or confidential commercial information regarding issues related to new technologies currently under review. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Anti-Infective Drugs Advisory Committee

Date, time, and place. July 20, 1995, 8 a.m., and July 21, 1995, 8:30 a.m., Holiday Inn—Silver Spring, Plaza Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Type of meeting and contact person. Open committee discussion, July 20, 1995, 8 a.m. to 1 p.m.; open public hearing, 1 p.m. to 2 p.m., unless public participation does not last that long; open committee discussion, 2 p.m. to 5 p.m.; closed committee deliberations, July 21, 1995, 8:30 a.m. to 4:30 p.m.; Ermona B. McGoodwin or Mary Elizabeth Donahue, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Anti-Infective Drugs Advisory Committee, code 12530.

General function of the committee. The committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of infectious diseases and disorders.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before July 13, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. During the morning of July 20, 1995, the committee will discuss treatment goals of the short-term therapy of cystitis, including safety and efficacy data for the fosfomycin tromethamine NDA 50–717, Forest Laboratories, Inc./Zambon Corp. During the afternoon, the committee will revisit the FDA/Infectious Diseases Society of America guidelines for evaluating new treatment regimens for urinary tract infections.

Closed committee deliberations. On July 21, 1995, the committee will discuss trade secret and/or confidential commercial information relevant to pending IND's and NDA's. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Ear, Nose, and Throat Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. July 21, 1995, 8 a.m., Holiday Inn—Gaithersburg, Ballroom, Two Montgomery Village Ave., Gaithersburg, MD. A limited number of overnight accommodations have been reserved at the hotel. Attendees requiring overnight accommodations may contact the hotel at 301–948–8900 and reference the FDA panel meeting block. Reservations will be confirmed at the group rate based on availability. Attendees with a disability requiring special accommodations should contact Ed Rugenstein, Sociometrics, Inc., 301–608–2151. The availability of appropriate accommodations can not be assured unless prior written notification is received.

Type of meeting and contact person. Open public hearing, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 12 m.; closed committee deliberations, 12 m. to 1 p.m.; open committee discussion, 1 p.m. to 6 p.m.; Marilyn N. Flack, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2080, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Ear, Nose, and Throat Devices Panel, code 12522.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before July 10, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a premarket approval application that seeks to substantiate the safety and effectiveness of a cochlear implant device for use in adults with postlinguistically, profound, sensorineural hearing loss, who obtain little benefit from conventional amplification.

Closed committee deliberations. FDA staff will present to the committee trade secret and/or confidential commercial information regarding present and future FDA issues. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, deliberation to formulate advice and recommendations to the agency on matters that do not independently justify closing.This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: June 15, 1995.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 95–15147 Filed 6–20–95; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

Notice of Meeting of the NIH Director's Advisory Panel on Clinical Research

Notice is hereby given that the NIH Director's Advisory Panel on Clinical Research, a group reporting to the Advisory Committee to the Director (ACD), National Institutes of Health (NIH), will meet in public session at the William H. Natcher Building (Building 45) Conference Center, Conference Room E1/E2, National Institutes of Health, Bethesda, Maryland 20892, on July 7, 1995, from 8:30 a.m. until approximately 3:30 p.m.

The goal of the Panel is to review the status of clinical research in the United States and to make recommendations to the ACD about how to ensure its effective continuance. Topics to be considered at this and subsequent meetings will include, but not be limited to, financing of clinical research; roles of the General Clinical Research Centers and the NIH Clinical Center; attracting and training future clinical researchers; conduct of clinical trials; and peer review of clinical research.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other special accommodations, should contact the person named below in advance of the meeting.

Attendance may be limited to seat availability. If you plan to attend the meeting as an observer or if you would like additional information, please contact Mrs. Janet Smith, National Institutes of Health, Building 10, Room 1C–116, 10 Center Drive, MSC 1154, Bethesda, Maryland 20892–1154, telephone (301) 402–3444, fax (301) 402–3443, by June 30, 1995.

Effective Date: June 15, 1995.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 95–15155 Filed 6–20–95; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Heart, Lung, and Blood Special Emphasis Panel (SEP) meetings:

Name of SEP: Gene Nutrient Interaction in the Pathogenesis of Congenital Heart Defects.

Date: July 10–11, 1995.

Time: 7 p.m.

Place: Holiday Inn, Bethesda, Maryland.

Contact Person: Anthony M. Coelho, Jr., M.D., Two Rockledge Building, 6701 Rockledge Drive, Room 7182, Bethesda, Maryland 20892–7924, (301) 435–0277.

Purpose/Agenda: To review and evaluate grant applications.

Name of SEP: SCOR on Ischemic Heart Disease in Blacks.

Date: July 19–20, 1995.

Time: 7 p.m.

Place: Holiday Inn, Chevy Chase, Maryland.

Contact Person: S. Charles Selden, Ph.D., Two Rockledge Building, 6701 Rockledge Drive, Room 7196, Bethesda, Maryland 20892–7924, (301) 435–0288.

Purpose/Agenda: To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in

secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: June 14, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–15159 Filed 6–20–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda

To review individual grant applications.

Name of SEP: Microbiological and Immunological Sciences.
Date: July 7, 1995.
Time: 1 p.m.
Place: NIH, Rockledge II, Room 4194, Telephone Conference.
Contact Person: Dr. Sami Mayyasi, Scientific Review Administrator, 6701 Rockledge Drive, Room 4194, Bethesda, MD 20892, (301) 435–1216.

Name of SEP: Microbiological and Immunological Sciences.
Date: July 7, 1995.
Time: 1 p.m.
Place: NIH, Rockledge II, Room 4204, Telephone Conference.
Contact Person: Dr. Calbert Laing, Scientific Review Admin., 6701 Rockledge Drive, Room 4204, Bethesda, MD 20892, (301) 435–1221.

Name of SEP: Microbiological and Immunological Sciences.
Date: July 10, 1995.
Time: 1 p.m.
Place: NIH, Rockledge II, Room 4204, Telephone Conference.
Contact Person: Dr. Calbert Laing, Scientific Review Admin., 6701 Rockledge Drive, Room 4204, Bethesda, MD 20892, (301) 435–1221.

Name of SEP: Microbiological and Immunological Sciences.
Date: July 10, 1995.
Time: 1 p.m.
Place: NIH, Rockledge II, Room 4208, Telephone Conference.
Contact Person: Dr. Anita Weinblatt, Scientific Review Admin., 6701 Rockledge Drive, Room 4208, Bethesda, MD 20892, (301) 435–1224.

Name of SEP: Microbiological and Immunological Sciences.
Date: July 12, 1995.
Time: 1 p.m.
Place: NIH, Rockledge II, Room 4208, Telephone Conference.
Contact Person: Dr. Anita Weinblatt, Scientific Review Admin., 6701 Rockledge Drive, Room 4208, Bethesda, MD 20892, (301) 435–1224.

Name of SEP: Microbiological and Immunological Sciences.
Date: July 14, 1995.
Time: 1 p.m.
Place: NIH, Rockledge II, Room 4208, Telephone Conference.
Contact Person: Dr. Anita Weinblatt, Scientific Review Admin., 6701 Rockledge Drive, Room 4208, Bethesda, MD 20892, (301) 435–1224.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 14, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–15158 Filed 6–20–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda

To review individual grant applications.

Name of SEP: Clinical Sciences.
Date: July 5, 1995.
Time: 1:00 p.m.
Place: NIH, Rockledge II, Room 4100, Telephone Conference.
Contact Person: Dr. Jeanne Ketley, Scientific Review Admin., 6701 Rockledge Drive, Room 4100, Bethesda, MD 20892, (301) 435–1789.

Name of SEP: Clinical Sciences.
Date: July 10, 1995.
Time: 8:30 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Gopal Sharma, Scientific Review Admin., 6701 Rockledge Drive, Room 4112, Bethesda, MD 20892, (301) 435–1783.

Name of SEP: Clinical Sciences.
Date: July 11, 1995.
Time: 9:30 a.m.
Place: NIH, Rockledge II, Room 4122, Telephone Conference.
Contact Person: Dr. Krish Krishnan, Scientific Review Admin., 6701 Rockledge Drive, Room 4122, Bethesda, MD 20892, (301) 435–1779.

Name of SEP: Multidisciplinary Sciences.
Date: July 12–13, 1995.
Time: 7:30 p.m.
Place: The Colony, New Haven, CT.
Contact Person: Dr. Donald Schneider, Scientific Review Admin., 6701 Rockledge Drive, Room 5104, Bethesda, MD 20892, (301) 435–1165.

Name of SEP: Behavioral and Neurosciences.
Date: July 15, 1995.
Time: 1:00 p.m.
Place: NIH, Rockledge II, Room 5204, Telephone Conference.
Contact Person: Dr. Bob Weller, Scientific Review Administrator, 6701 Rockledge Drive, Room 5204, Bethesda, MD 20892, (301) 435–1261.

Name of SEP: Microbiological and Immunological Sciences.
Date: July 17, 1995.
Time: 11:00 a.m.
Place: NIH, Rockledge II, Room 4194, Telephone Conference.
Contact Person: Dr. Sami Mayyasi, Scientific Review Administrator, 6701 Rockledge Drive, Room 4194, Bethesda, MD 20892, (301) 435–1216.

Name of SEP: Microbiological and Immunological Sciences.
Date: July 18, 1995.
Time: 11:00 a.m.
Place: NIH, Rockledge II, Room 4194, Telephone Conference.
Contact Person: Dr. Sami Mayyasi, Scientific Review Administrator, 6701 Rockledge Drive, Room 4194, Bethesda, MD 20892 (301) 435–1216.

Name of SEP: Microbiological and Immunological Sciences.
Date: July 18, 1995.
Time: 2:00 p.m.
Place: NIH, Rockledge II, Room 4194, Telephone Conference.
Contact Person: Dr. Sami Mayyasi, Scientific Review Administrator, 6701 Rockledge Drive, Room 4194, Bethesda, MD 20892 (301) 435–1216.

Name of SEP: Multidisciplinary Sciences.
Date: July 20, 1995.
Time: 1:00 p.m.
Place: NIH, Rockledge II, Room 5106, Telephone Conference.
Contact Person: Dr. Richard Panniers, Scientific Review Admin., 6701 Rockledge Drive, Room 5106, Bethesda, MD 20892 (301) 435–1166.

Name of SEP: Behavioral and Neurosciences.
Date: July 21, 1995.
Time: 10:00 a.m.
Place: NIH, Rockledge II, Room 5196, Telephone Conference.
Contact Person: Ms. Carol Campbell, Scientific Review Admin., 6701 Rockledge Drive, Room 5196, Bethesda, MD 20892 (301) 435–1257.

Name of SEP: Biological and Physiological Sciences.
Date: July 21, 1995.
Time: 2:00 p.m.
Place: NIH, Rockledge II, Room 6152, Telephone Conference.
Contact Person: Dr. Jerry Roberts, Scientific Review Administrator, 6701 Rockledge Drive, Room 6152, Bethesda, MD 20892 (301) 425–1037.

Name of SEP: Chemistry and Related Sciences.
Date: July 25, 1995.
Time: 2:00 p.m.
Place: NIH, Rockledge II, Room 4148, Telephone Conference.
Contact Person: Dr. Philip Perkins, Scientific Review Admin., 6701 Rockledge Drive, Room 4148, Bethesda, MD 20892 (301) 435–1718.

Name of SEP: Chemistry and Related Sciences.
Date: July 25, 1995.
Time: 2:00 p.m.
Place: NIH, Rockledge II, Room 4172, Telephone Conference.
Contact Person: Dr. John Beisler, Scientific Review Admin., 6701 Rockledge Drive, Room 4172, Bethesda, MD 20892 (301) 435–1727.

Name of SEP: Biological and Physiological Sciences.
Date: July 27–28, 1995.
Time: 8:30 a.m.
Place: Marriott Hotel, Bethesda, MD.
Contact Person: Dr. Robert Su, Scientific Review Administrator, 6701 Rockledge Drive, Room 5144, Bethesda, MD 20892 (301) 435–1025.

Purpose/Agenda

To review Small Business Innovation Research Program grant applications.

Name of SEP: Behavioral and Neurosciences.
Date: July 7, 1995.
Time: 8:30 a.m.
Place: Doubletree Hotel, Rockville, MD.
Contact Person: Dr. Luigi Giacometti, Scientific Review Admin., 6701 Rockledge Drive, Room 5170, Bethesda, MD 20892, (301) 435–1246.

Name of SEP: Behavioral and Neurosciences.
Date: July 13–14, 1995.
Time: 9:00 a.m.
Place: Embassy Suites, Washington, DC.
Contact Person: Dr. Anita Sostek, Scientific Review Admin., 6701 Rockledge Drive, Room 5202, Bethesda, MD 20892, (301) 435–1260.

Name of SEP: Multidisciplinary Sciences.
Date: July 20–21, 1995.
Time: 8:00 a.m.
Place: Hyatt Regency Hotel, Bethesda, MD.
Contact Person: Dr. Donald Schneider, Scientific Review Admin., 6701 Rockledge Drive, Room 5104, Bethesda, MD 20892, (301) 435–1165.

Name of SEP: Multidisciplinary Sciences.
Date: July 24, 1995.
Time: 8:00 a.m.
Place: Embassy Suites Hotel, Washington, DC.
Contact Person: Dr. Eileen Bradley, Scientific Review Admin., 6701 Rockledge Drive, Room 5120, Bethesda, MD 20892, (301) 435–1179.

Name of SEP: Multidisciplinary Sciences.
Date: July 30–August 1, 1995.
Time: 6:00 p.m.
Place: Ritz-Carlton Hotel, Pentagon City, VA.
Contact Person: Dr. Richard Panniers, Scientific Review Admin., 6701 Rockledge Drive, Room 5106, Bethesda, MD 20892, (301) 435–1166.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 14, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–15160 Filed 6–20–95; 8:45 am]

BILLING CODE 4140–01–M

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Meeting.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation will meet on Monday, June 26, 1995. The meeting will be held in the Conference Center, Rooms A&B, at the Denver Public Library, 13th Avenue and Broadway Street, Denver, Colorado, beginning at 8:30 a.m.

The Council was established by the National Historic Preservation Act of 1966 (16 U.S.C. Section 470) to advise the President and the Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Housing and Urban Development, and Transportation; the Administrators of the Environmental Protection Agency and General Services Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; a Native American; and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

I. Chairman's Welcome/Opening
II. Task Force Report on Council's Policy Statement on Affordable Housing and Historic Preservation. Action.
III. Task Force Report on Council's Regulations. Status Report. Discussion and Action.
IV. Legislative Request from Congressional Committee. Discussion and Action.
V. Proposal for Executive Order on Historic Preservation. Discussion
VI. National Park Service Reorganization and Historic Preservation. Report.
VII. Section 106 Cases
VIII. Executive Director's Report
IX. New Business
X. Adjourn

Note: The meetings of the Council are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue NW., Room 809, Washington, D.C., 202–606–8503, at least seven (7) days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue NW., #809, Washington, DC 20004.

Dated: June 15, 1995.

Robert D. Bush,

Executive Director.

[FR Doc. 95–15092 Filed 6–20–95; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–964–1410–00–P]

Alaska; Notice for Publication; F–14880–J; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1614(a), will be issued to Kikiktagruk Inupiak Corporation for approximately 10 acres. The lands involved are in the vicinity of Kotzebue, Alaska, located within Secs. 18, 19 and

30, T. 16N., R. 15 W., Kateel River Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Arctic Sounder. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until July 21, 1995 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Carolyn A. Bailey,

Land Law Examiner, Branch of Northern Adjudication.

[FR Doc. 95–15153 Filed 6–20–95; 8:45 am]

BILLING CODE 4310–JA–M

[WY–030–05–1990–01]

Notice of Availability of Jackpot Mine Project Draft Environmental Impact Statement (DEIS)

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The Bureau of Land Management announces the availability of the Jackpot Mine Project Draft Environmental Impact Statement which analyzes the environmental consequences of an underground uranium mine proposed for the southern side of Green Mountain, 14 miles southeast of Jeffrey City in Fremont County, Wyoming.

DATES: Comments on the DEIS will be accepted for 60 days following the date that the Environmental Protection Agency publishes their Notice of Availability in the **Federal Register**. The EPA notice is expected to be published on June 23, 1995. Public meetings to gather additional comment will be held as follows: July 18, School District 25 Central Administration Building, Riverton, Wyoming; July 19, Fire Hall, Jeffrey City, Wyoming; July 20, BLM District Office, Rawlins, Wyoming; July 24, White Mountain Library, Rock Springs, Wyoming. All of the meetings will begin at 7 p.m. All comments will be recorded.

ADDRESSES: Comments on the DEIS should be sent to the Bureau of Land Management, Rawlins District Office, Attn: Larry Kmoch, P.O. Box 670, Rawlins, WY 82301.

SUPPLEMENTARY INFORMATION: The proposed project is to explore for and develop uranium reserves present in the Battle Springs Formation at depths of approximately 2,500 to 3,500 feet below the surface of Green Mountain. Project-required lands encompass a maximum of 515 acres within portions of Townships 24 through 28 North, Ranges 91 through 93 West. The proposed project entails the construction, operation, and reclamation of an underground uranium mine and associated facilities by the Green Mountain Mining Venture. A transportation corridor connecting the proposed mine with the Sweetwater Uranium Mill, approximately 27 miles to the south, would involve the construction of a new transportation route and/or upgrade of existing roads.

Dated: June 14, 1995.

Alan R. Pierson,

State Director.

[FR Doc. 95–15156 Filed 6–20–95; 8:45 am]

BILLING CODE 4310–22–P

[WY–040–05–1310–01]

Bureau of Land Management

Notice of Availability of Texaco's Stagecoach Draw Unit Final Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of Texaco's Stagecoach Draw Unit Final Environmental Impact Statement.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of Texaco's Stagecoach Draw Unit Final EIS analyzing the environmental consequences of a proposed 72 well natural gas development and production operation in the Stagecoach Draw Unit approximately 7 miles southwest of Farson, Wyoming, Sweetwater County. The project area encompasses 23,575 acres within portions of Townships 22, 23, and 24 north, ranges 107 and 108 North.

DATES: Comments on the FEIS will be accepted for 30 days following the date that the Environmental Protection Agency (EPA) publishes their Notice of Availability in the **Federal Register**. The EPA notice is expected to be published on June 30, 1995.

ADDRESSES: Comments on the FEIS should be sent to Bureau of Land Management, Bill McMahan (Project Coordinator), P.O. Box 1869, Rock Springs, Wyoming 82902–1869.

SUPPLEMENTARY INFORMATION: The Environmental Impact Statement (EIS) assesses the environmental consequences of the Federal approval of the Texaco USA proposal to develop a 23,575 acre natural gas field by drilling 72 wells on an average spacing of 320 acres over the next 6 to 10 years. The FEIS is a supplement to the DEIS, published March 10, 1995, and contains the following material:

- Incorporates by reference most of the material presented in the DEIS and identifies the changes to the DEIS required as a result of additional information.
- Public comment subsequent to publishing of the DEIS.
- The corrections and additions to the DEIS.
- Comments received on the DEIS.
- Responses to the comments.

Thirteen comment letters were received by the BLM on the DEIS. The EPA, based on procedures they use to evaluate the adequacy of the information in an EIS, gave the DEIS a rating of LO–1 (Lack of Objection, Adequate Information). No substantive changes are required to the proposal. The DEIS adequately set forth the environmental impacts of the proposal.

Dated: June 14, 1995.

Alan R. Pierson,

State Director.

[FR Doc. 95–15157 Filed 6–20–95; 8:45 am]

BILLING CODE 4310–22–P

Bureau of Land Management

[CA–064–05–1430–00, CACA 18111]

Realty Action; Classification of Public Lands for Recreation and Public Purposes; San Bernardino Co., CA

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Realty Action; Recreation and Public Purpose Act Classification, San Bernardino County, California.

SUMMARY: The following described land has been examined and found suitable for classification for lease and subsequent conveyance to Kern County under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq).

San Bernardino Meridian

T.11N., R.9W.,

Sec. 34, N1/2N1/2SW1/4NE1/4NW1/4NW1/4, N1/2N1/2SE1/4NW1/4NW1/4NW1/4.

Containing 1.25 acres of public land, more or less.

SUPPLEMENTARY INFORMATION: The County of Kern has applied to expand the area currently leased for the North Edwards Community Park. The land will be leased during the development stage, and subsequently conveyed upon substantial completion of the approved plan of development. The lands are not needed for Federal purposes, and conveyance would be consistent with the 1980 California Desert Conservation Area Plan, as amended. The lease and conveyance of the land would be subject to the following terms and conditions:

1. Provisions of the Recreation and Public Purpose Act and applicable regulations of the Secretary of the Interior.
2. A right of way to the United States for ditches and canals, pursuant to the Act of August 30, 1980 (43 U.S.C. 945).
3. A reservation of all minerals to the United States, and the right to prospect, mine, and remove the minerals.

Publication of this Notice in the **Federal Register** segregates the public lands from all other forms of appropriation under the public land laws and the general mining laws, but not the mineral leasing laws or the Recreation and Public Purpose Act.

Detailed information concerning this action is available for review at the California Desert District, 6221 Box Springs Blvd., Riverside, CA 92507. For a period of 45 days after publication of this notice in the **Federal Register** interested parties may submit comments to the District Manager, California Desert District, in care of the above address. Objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the classification will become effective 60 days after publication of this notice in the **Federal Register**.

Dated: June 5, 1995.

Henri R. Bisson,

District Manager.

[FR Doc. 95–15196 Filed 6–20–95; 8:45 am]

BILLING CODE 4310–40–P

Fish and Wildlife Service

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife, Interior.

ACTION: Notice of availability.

Availability of an Environmental Assessment and Receipt of an Application for a Permit to Allow Incidental Take of 3 Threatened and Endangered Species and 19 Other Species by the City of Poway and its Redevelopment Agency, in San Diego County, California.

SUMMARY: This notice advises the public that the City of Poway and its Redevelopment Agency (applicants) have applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit (PRT–803743) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The application package includes a Habitat Conservation Plan (HCP) and Implementing Agreement(IA). The proposed incidental take would occur as a result of habitat disturbance associated with residential and limited municipal development. The requested permit would authorize incidental take of the threatened coastal California gnatcatcher (*Polioptila californica californica*), endangered least Bell's vireo (*Vireo bellii* pusillus), and endangered southwestern willow flycatcher (*Empidonax traillii extimus*).

The applicants also request coverage of an additional 19 unlisted, sensitive species (11 plant, 8 animal) that occur within the City's jurisdiction. The HCP proposes to conserve all 22 species according to standards required for listed species under the Act, such that, barring unforeseen circumstances, the unlisted species could be amended to the 10(a)(1)(B) permit to authorize incidental take of these species should they be federally listed within the term of the 50-year permit. Concurrent with the proposed issuance of the Federal 10(a)(1)(B) permit, the California Department of Fish and Game proposes to issue a management authorization for the 22 species under section 2081 of the California Endangered Species Act.

Preparation of the HCP is a condition of Service approval of a significant roadway extension project, which will require significant mitigation. Federal approval of the HCP also is required as part of the special 4(d) rule for the California gnatcatcher (58 FR 65088). Incidental take of the gnatcatcher is allowed under section 4(d) of the Act if take results from activities conducted pursuant to the California Natural Community Conservation Planning (NCCP) Act, NCCP Process Guidelines, and NCCP Southern California Coastal Sage Scrub Conservation Guidelines.

In addition to the permit application, the Service also announces the availability of an Environmental Assessment (EA). The EA evaluates the effects on the human environment of the proposed action: issuance of the incidental take permit and approval of the HCP and IA. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the permit application and EA should be received on or before July 21, 1995.

ADDRESSES: Comments regarding the adequacy of the HCP, IA, and EA should be addressed to Mr. Gail Kobetich, Field Supervisor, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, CA 92008; FAX (619) 431–9618. Please refer to permit No. PRT–803743 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Nancy Gilbert, Fish and Wildlife Biologist, at the above address, telephone (619) 431–9440. Individuals wishing copies of the application and EA for review should immediately contact Ms. Gilbert.

SUPPLEMENTARY INFORMATION: The "take" of threatened and endangered species is prohibited under section 9 of the Act and its implementing regulations. Take is defined, in part, as killing, harming, or harassing listed species, including significant habitat modification that results in death of or injury to listed species. Under limited circumstances, the Service may issue permits to take listed species if such taking is incidental to otherwise lawful activities. Regulations governing permits are in 50 CFR 17.22 and 17.32.

The proposed action would allow incidental take of 3 listed animal species and up to 19 other species within the City of Poway. The City has jurisdiction over 24,999 acres, of which approximately 16,678 acres are natural habitats. To minimize and mitigate the impacts of the proposed take, the applicants propose to implement the HCP within an approximate 13,000-acre Resource Conservation Area (RCA). The RCA includes 78 percent of all remaining undeveloped habitat and 85 percent of the California gnatcatcher habitat (coastal sage scrub) under City jurisdiction. Nearly the entire extant gnatcatcher population within the planning area occurs within the RCA. The endangered southwestern willow flycatcher and least Bell's vireo potentially occur within the riparian

habitat of the RCA, proposed for nearly 100 percent conservation.

Residential, limited commercial, and limited public infrastructure development is planned within and beyond the RCA. Some of these projects will result in loss of natural habitats.

An estimated 200 pairs of gnatcatchers occur within the RCA on 6,210 of the remaining 7,300 acres of coastal sage scrub within the planning area. Approximately 90 percent of the coastal sage scrub within the RCA is proposed to be conserved through various measures, resulting in a net loss of approximately 20 pairs.

The applicants propose to mitigate for take of the gnatcatcher by preserving the above mentioned amount of habitat through direct acquisition of habitat and through protective restrictions or easements on lands remaining in private ownership. Acquisition revenues are expected from mitigation fees for development of coastal sage scrub within and beyond the RCA, through a provision of the NCCP process. Mitigation credits also are anticipated to be sold to parties outside of the City of Poway's jurisdiction, as approved by the Service. The level of allowable residential development within the RCA would be determined by existing low-density zoning (various levels) and by the availability of municipal water supply (the lack of which would prevent higher building densities). Currently, the majority of the RCA is not served by municipal water. Existing land-use restrictions would limit the amount of development to 2 acres per parcel. Mitigation areas for these impacts would be preserved in a natural state by resource-management zoning. The balance of mitigation lands remaining in private ownership would be protected by ordinance.

The potential multiple-species preserve system would be built by incremental additions at the parcel level. These additions are proposed to augment and connect an existing system of currently disjunct, publicly owned lands via resource-management zoning. Other elements of the HCP address preserve planning in a regional context: currently, private lands with especially high biological value have been identified for priority acquisition so as to ensure the preservation of unconstrained wildlands and their linkage within and beyond the RCA. Selective siting of development at the parcel level is further proposed to minimize impacts to relatively rare and sensitive biological habitats and features. The achievement of a viable, connected natural preserve system is proposed under the HCP. The HCP includes alternatives ranging from complete preservation of native habitats within the RCA to separate, project-level efforts.

The EA considers the environmental consequences of four alternatives, including the proposed action. Under the no action alternative, the proposed HCP would not be implemented. The applicants would either avoid take of listed species within the planning area, or apply for individual 10(a)(1)(B) permits on a project-by-project basis. Existing land use and environmental regulations would apply to all projects proposed within the planning area. Existing regulatory practices require mitigation for impacts to sensitive species and habitats resulting in lands being set aside for open-space preservation. However, under the no action alternative, greater habitat fragmentation would likely occur because the lands set aside for open-space preservation would not be assembled in a coordinated preserve system. Under a third alternative, the proposed RCA boundary would consist only of lands already preserved in Poway; i.e., cornerstone lands as identified in the HCP, the parcels purchased for mitigation of the Scripps-Poway Parkway Extension project, and slopes over 45 percent within the RCA. No other lands would be included in the RCA or added to the preserve. The fourth alternative would preserve all identified habitat and species within the RCA. Development would be prohibited within the proposed RCA boundary except on already disturbed areas where such development would not impact the viability of the proposed RCA.

(Application for a Permit to Allow Incidental Take of 3 Threatened and Endangered Species and 19 Other Species by the City of Poway and its Redevelopment Agency, in San Diego County, California)

Dated: June 15, 1995.

William F. Shake,

Acting Deputy Regional Director, Region 1, Portland, Oregon.

[FR Doc. 95–15149 Filed 6–20–95; 8:45 am]

BILLING CODE 4310–55–P

Fish and Wildlife Service

North American Wetlands Conservation Council; Meeting Announcement

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: The North American Wetlands Conservation Council (Council) will meet on July 19 to review proposals for funding submitted pursuant to the North American Wetlands Conservation Act. Upon completion of the Council's review, proposals will be submitted to the Migratory Bird Conservation Commission with recommendations for funding. The meeting is open to the public.

DATES: July 19, 1995, 9:00 a.m.

ADDRESSES: The meeting will be held at the Pines Resort Hotel on Shore Road in Digby, Nova Scotia, Canada. The North American Wetlands Conservation Council Coordinator is located at U.S. Fish and Wildlife Service, Arlington Square Building, 4401 N. Fairfax Drive, Suite 110, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Coordinator, North American Wetlands Conservation Council, (703) 358–1784.

SUPPLEMENTARY INFORMATION: In accordance with the North American Wetlands Conservation Act (P.L. 101–233, 103 Stat. 1968, December 13, 1989), the North American Wetlands Conservation Council is a Federal-State-Private body which meets to consider wetland acquisition, restoration, enhancement and management projects for recommendation to and final approval by the Migratory Bird Conservation Commission. Proposals from State and private sponsors require a minimum of 50 percent non-Federal matching funds.

Dated: June 14, 1995.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 95–15152 Filed 6–20–95; 8:45 am]

BILLING CODE 4310–55–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–700 (Final)]

Disposable Lighters From the People's Republic of China

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from the People's Republic of China of disposable pocket lighters, provided for in subheadings 9613.10.00 and 9613.20.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioners Rohr and Newquist dissenting.

Background

The Commission instituted this investigation effective December 13, 1994, following a preliminary determination by the Department of Commerce that imports of disposable pocket lighters from the People's Republic of China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** February 1, 1995 (60 FR 6289). The hearing was held in Washington, DC, on March 21, 1995, and all persons who requested the opportunity were permitted to appear in person or by counsel.

Commission transmitted its determination in this investigation to the Secretary of Commerce on June 12, 1995. The views of the Commission are contained in USITC Publication 2896 (June 1995), entitled "Disposable Lighters from the People's Republic of China: Investigation No. 731–TA–700 (Final)."

Issued: June 13, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–15180 Filed 6–20–95; 8:45 am]

BILLING CODE 7020–02–P

[Investigations Nos. 731–TA–703 and 704 (Final)]

Furfuryl Alcohol From China and South Africa

Determination

On the basis of the record [1] developed in the subject investigations, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from China and South Africa of furfuryl alcohol,[2] that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

Background

The Commission instituted these investigations effective December 16, 1994, following preliminary determinations by the Department of Commerce that imports of furfuryl alcohol from China and South Africa were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 19, 1995 (60 FR 3874). The hearing was held in Washington, DC, on May 3, 1995, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on June 14, 1995. The views of the Commission are contained in USITC Publication 2897 (June 1995), entitled "Furfuryl Alcohol from The People's Republic of China and South Africa: Investigations Nos. 731–TA–703 and 704 (Final)."

Issued: June 15, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–15177 Filed 6–20–95; 8:45 am]

BILLING CODE 7020–02–P

[2] Furfuryl alcohol ($C_4H_3OCH_2OH$), also called furyl carbinol, is a primary alcohol that is colorless or pale yellow in appearance. It is used in the manufacture of resins and as a wetting agent and solvent for coating resins, nitrocellulose, cellulose acetate, and other soluble dyes. It is classifiable under subheading 2932.13.00 of the Harmonized Tariff Schedule of the United States (HTS). The chemical has an assigned Chemical Abstracts Service registry number of CAS 98–00–0.

(Investigation No. 332–360)

International Harmonization of Customs Rules of Origin

AGENCY: United States International Trade Commission.

ACTION: Request for public comment.

EFFECTIVE DATE: June 12, 1995.

FOR FURTHER INFORMATION CONTACT: Eugene A. Rosengarden, Director, Office of Tariff Affairs and Trade Agreements (O/TA&TA) (202–205–2595), or Lawrence A. DiRicco (202–205–2606).

Questions with regard to specific chapters of the Harmonized Tariff Schedule of the United States (HTS) should now be directed to the following coordinators in view of product reassignments:

Chapters 1–24, 41–49—Ronald H. Heller (202–205–2596)
Chapters 25–40—Edward J. Matusik (202–205–3356)
Chapters 50–63—Thomas W. Divers (202–205–2609)
Chapters 64–83, 86–89, 92–97—Lawrence A. DiRicco (202–205–2606)
Chapters 84–85, 90–91, 98–99—Craig M. Houser (202–205–2597)

Parties having an interest in particular products or HTS chapters and desiring to be included on a mailing list to receive available documents pertaining thereto should advise Diane Whitfield by phone (202–205–2610) or by mail at the Commission, 500 E St SW, Room 404, Washington, D.C. 20436. Hearing impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. The media should contact Margaret O'Laughlin, Director, Office of Public Affairs (202–205–1819).

Background

Following receipt of a letter from the United States Trade Representative (USTR) on January 25, 1995, the Commission instituted Investigation No. 332–360, International Harmonization of Customs Rules of Origin, under section 332(g) of the Tariff Act of 1930 (60 FR 19605, April 19, 1995).

The investigation is intended to provide the basis for Commission participation in work pertaining to the Uruguay Round Agreement on Rules of Origin (ARO), under the General Agreement on Tariffs and Trade (GATT) 1994 and adopted along with the Agreement Establishing the World Trade Organization (WTO).

The ARO is designed to harmonize and clarify nonpreferential rules of origin for goods in trade on the basis of the substantial transformation test; achieve discipline in the rules' administration; and provide a framework for notification, review, consultation, and dispute settlement. These harmonized rules are intended to make country-of-origin determinations impartial, predictable, transparent, consistent, and neutral, and to avoid restrictive or distortive effects on international trade. The ARO provides that technical work to those ends will be undertaken by the Customs Cooperation Council (CCC) (now informally known

as the World Customs Organization or WCO), which must report on specified matters relating to such rules for further action by parties to the ARO. Eventually, the WTO Ministerial Conference is to "establish the results of the harmonization work program in an annex as an integral part" of the ARO.

In order to carry out the work, the ARO calls for the establishment of a Committee on Rules of Origin of the WTO and a Technical Committee on Rules of Origin (TCRO) of the CCC. These Committees bear the primary responsibility for developing rules that achieve the objectives of the ARO.

A major component of the work program is the harmonization of origin rules for the purpose of providing more certainty in the conduct of world trade. To this end, the agreement contemplates a 3-year CCC program, to be initiated as soon as possible after the entry into force of the Agreement Establishing the WTO. Under the ARO, the TCRO is to undertake (1) to develop harmonized definitions of goods considered wholly obtained in one country, and of minimal processes or operations deemed not to confer origin, (2) to consider the use of change in Harmonized System classification as a means of reflecting substantial transformation, and (3) for those products or sectors where a change of tariff classification does not allow for the reflection of substantial transformation, to develop supplementary or exclusive origin criteria based on value, manufacturing or processing operations or on other standards.

To assist in the first phase of the Commission's participation in work under the Agreement on Rules of Origin (ARO), the Commission is publishing for public comment the following: (1) A proposed harmonized definition of the expression "goods that are to be considered as being wholly obtained in one country" and (2) a proposal on the definition of the expression "minimal operations or processes that do not by themselves confer origin on a good," the foregoing as set forth in Article 9:2(c)(i) of the ARO.

These proposals, which have been reviewed by interested government agencies, are intended to serve as the basis for the U.S. proposal to the Technical Committee on Rules of Origin (TCRO) of the Customs Cooperation Council (CCC) (now known as the World Customs Organization or WCO).

If eventually adopted by the TCRO for submission to the Committee on Rules of Origin of the World Trade Organization, these definitions would comprise the initial element of the ARO work program to develop harmonized, non-preferential country of origin rules, as discussed in the Commission's earlier notice. Thus, in view of the importance of these definitions, the Commission seeks to ascertain the views of interested parties concerning (1) the extent to which additional categories of goods or processes should be enumerated in, or named goods or processes omitted from, the proposed text set forth above, and (2) the need for other specific changes in or additions to the proposed definitions. Forthcoming Commission notices will advise the public on the progress of the TCRO's work and contain any harmonized definitions or rules that have been provisionally or finally adopted.

Written Submissions

Interested persons are invited to submit written statements concerning this phase of the Commission's investigation. Written statements should be submitted as quickly as possible, and follow-up statements are permitted; but all statements must be received at the Commission by the close of business on July 15, 1995, in order to be considered in the drafting of the final U.S. proposal to the TCRO. Information supplied to the Customs Service in statements filed pursuant to notices of that agency has been given to us and need not be separately provided to the Commission. Again, the Commission notes that it is particularly interested in receiving input from the private sector on the effects of the various proposed rules and definitions on U.S. exports. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be available for inspection by interested persons. All submissions should be addressed to the Office of the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436.

By order of the Commission.

Issued: June 13, 1995.

Donna R. Koehnke,

Secretary.

Annex—Proposed U.S. Note on the Definition of Goods Wholly Obtained in One Country

At its first session, the Technical Committee on Rules of Origin (TCRO) undertook discussions on the definition of goods wholly obtained in one country. This work is part of the first phase of development of worldwide harmonization of non-preferential rules of origin, as envisaged by the World Trade Organization (WTO) in its Agreement on Rules of Origin.

The TCRO invited comments on the draft definition of goods considered to be "wholly obtained in a single country". The United States Administration submits the following comments and proposals.

The approach put forward by the Secretariat in the working document provides a useful basis for considering the definition of goods wholly obtained in one country. However, we are proposing a number of modifications which are intended to:

—provide greater certainty as to the product scope of individual provisions,
—present the rules for goods of similar materials together and to the extent practical in the order in which they occur in the Harmonized System, and
—clarify the presentation of the rules.

Further, we endorse the decision by the TCRO to make use of explanatory notes to provide guidance, but without legal effect, in the interpretation of the rules of origin, thereby enhancing an understanding of the rules.

Accordingly, the United States submits the following proposal:

Goods obtained or produced wholly in a country shall be taken as originating in that country.

The following are to be considered as being wholly obtained in one country:

A. The following goods:

(1) live animals born and raised in that country;

(2) products obtained by hunting, trapping or fishing in that country;

(3) products obtained from live animals in that country;

(4) fish, shellfish and other marine life taken from the sea by vessels of that country;

(5) goods produced on board factory ships of that country from the goods of paragraph (4) of that country;

(6) plant and plant products harvested or gathered in that country;

(7) mineral goods extracted from the territory, soil, subsoil, airspace, territorial waters, sea-bed or beneath the sea-bed of that country,

(8) mineral goods extracted by that country from marine soil or subsoil outside that country's territorial waters, or from outer space, provided that country has rights to recover such goods,

(9) waste and scrap and used goods of any material, collected in that country and fit only for the recovery of raw materials or for disposal.

B. Goods produced in a country from materials of that country referred to in paragraph A, or derived therefrom, which do not contain constituents obtained from any other country and which have not undergone processing in any other country at any stage of production.

Proposed U.S. Note on the Definition of Minimal Processing Operations that do not Confer Origin

At its first meeting, the Technical Committee on Rules of Origin (TCRO) invited comments on the subject of minimal processing operations that are considered not to confer origin. The United States administration accordingly submits the following comments and proposal.

While there are numerous operations that, in specific instances, will not confer origin, there are only a few operations that never or almost never effect a substantial transformation. Consequently, only a limited number of minimal processing operations should be recognized in a general rule as not conferring origin. Although for any specific product certain processes ought not to confer origin, it is the view of the U.S. administration that such situations are best addressed by tariff shift rules that do not recognize particular processes as origin-conferring for a specific product.

The rule should apply to negate only the operation of the tariff shift rules. The rule would operate to preclude conferring origin only when an origin-conferring change in tariff classification is accomplished solely by means of one or more of the listed processing operations. The rule would not operate to preclude conferring origin on goods if the change in tariff classification occurred as a result of other operations, even though one or more of the "minimal processing" operations occurred as well.

The rule should not affect the definition of wholly obtained goods or apply to any supplementary rules, even when those goods undergo such listed operations. The U.S. administration believes the following ought to be included in this enumeration:

Change in tariff classification resulting solely from a change in the use of the article;

Simple packing or packaging for retail sale;

Mere dilution with water or another substance that does not alter the essential character of the good; and

Dismantling or disassembly in order to facilitate transportation.

The U.S. administration wishes to emphasize that the appropriate content of this enumeration depends heavily on the nature and effect of the tariff shift rules yet to be considered. As a result, this issue should be reconsidered after the tariff shift rules have been completed.

[FR Doc. 95–15178 Filed 6–20–95; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–371]

Order No. 39: Order Designating Investigation "More Complicated"

In the Matter of Certain Memory Devices With Increased Capacitance and Products Containing Same.

Rule 210.22(b) of the Commission's final rules published August 30, 1994 (59 FR 39020), permits the administrative law judge to issue sua sponte an order designating an investigation "more complicated" in order to have up to six months of additional time to adjudicate a complainant's request for permanent relief under Section 337 of the Tariff Act.

In a telephone conference attended by counsel for all parties on June 6, 1995, I advised the parties that I would designate this investigation "more complicated" and set the hearing to commence September 18, 1995. The parties agreed to the September 18 hearing date. The reason for the more complicated designation is the unexpected reassignment of the investigation to me on June 2, 1995, and the need to fit it in with my existing docket.

Accordingly, it is hereby ordered that this investigation be designated "more complicated". A revised procedural schedule will be issued separately. The Secretary is requested to publish this order in the **Federal Register**.

Issued: June 9, 1995.

Sidney Harris,

Administrative Law Judge.

[FR Doc. 95–15181 Filed 6–20–95; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

June 15, 1995.

The Department of Labor has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act (44 U.S.C. Chapter 35) of 1980, as amended (P.L. 96–511). Copies may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O'Malley ({202} 219–5095). Comments and questions about the ICRs listed below should be directed to Ms. O'Malley, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OAW/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 10325, Washington, DC 20503 ({202}) 395–7316).

Individuals who use a telecommunications device for the deaf (TTY/TDD) may call {202} 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

Type of Review: Revision
Agency: Bureau of Labor Statistics
Title: National Longitudinal Survey of Youth 79
OMB Number: 1220–0109
Agency number: NORC–4531
Frequency: Biennially
Affected Public: Individuals or households
Number of Respondents: 8,850
Estimated Time per Respondent: 100 minutes
Total Burden Hours: 14,750
Description: The information provided in this survey will be used by the Department of Labor and other government agencies to help understand and explain the employment, unemployment, and related problems faced by young men and women in this age group.

Type of Review: Revision
Agency: Employment Standards Administration
Title: Application for a Farm Labor Contractor Employee Certificate of Registration
OMB Number: 1215–0037
Agency number: WH–512 MIS
Frequency: On occasion
Affected Public: Individuals or households; Business or other for-profit; Farms
Number of Respondents: 2,700
Estimated Time per Respondent: 30 minutes
Total Burden Hours: 1,350
Description: The Migrant Seasonal Agricultural Worker Protection Act provides that no individual may perform farm labor contracting activities without a certificate of registration. Form WH–512 MIS is an application form which provides the Department of Labor with the information necessary to issue a certificate specifying the farm labor contracting activities authorized.

Type of Review: Extension
Agency: Employment Standards Administration
Title: Medical Travel Refund Request
OMB Number: 1215–0054
Agency Number: CM–957
Frequency: On occasion
Affected Public: Individuals or households; Business or other for-profit
Number of Respondents: 12,000
Estimated Time Per Respondent: 10 minutes
Total Burden Hours: 2,000
Description: This form is used by coal miners requesting reimbursement for out-of-pocket expenses incurred when traveling to medical providers for black lung diagnostic testing or treatment of their black lung disease.

Type of Review: Extension
Agency: Employment Standards Administration
Title: Operator Controversion—CM–970; Operator Response—CM–970a
OMB Number: 1215–0058
Agency Number: CM–970; CM–970a
Frequency: On occasion
Affected Public: Business or other for-profit
Number of Respondents: 3,500
Estimated Time Per Respondent: 15 minutes
Total Burden Hours: 1,750
Description: The CM–970 and the CM–970a are used by most coal mine operators to controvert an initial finding or potential liability for payment of black lung benefits under the Act.
Type of Review: Extension
Agency: Employment Standards Administration
Title: Request for State or Federal Workers' Compensation Information
OMB Number: 1215–0060
Agency Number: CM–905
Frequency: On occasion
Affected Public: Federal Government; State, Local or Tribal Government
Number of Respondents: 4,440
Estimated Time Per Respondent: 15 minutes
Total Burden Hours: 1,100
Description: The Federal Mine Safety and Health Act of 1977, as amended, 30 U.S.C. 922 and 20 CFR 725.535 direct that Department of Labor benefit payments to a beneficiary for any month be reduced by any other payments of State of Federal benefits for workers' compensation due to pneumoconiosis. To ensure compliance with this mandate, the Division of Coal Mine Workers Compensation (DCMWC) must collect information regarding the status of any State or Federal workers' compensation claim, including date of payments, weekly or lump sum amounts paid, and other fees or expenses paid out of this award. The information is used by the DCMWC in determining the amounts of black lung benefits paid to beneficiaries.
Type of Review: Extension
Agency: Employment Standards Administration
Title: Survivor's Notification of Beneficiary's Death
OMB Number: 1215–0087
Agency Number: CM–1089
Frequency: On occasion
Affected Public: Individuals or households
Number of Respondents: 2,100
Estimated Time Per Respondent: 8 minutes
Total Burden Hours: 280
Description: The CM–1089 is used to gather information from a beneficiary's survivor to ensure that benefits due on behalf of a deceased miner are accurate for continuation of benefits.
Type of Review: Extension
Agency: Employment Standards Administration
Title: Survivor's Notification of Beneficiary's Death
OMB Number: 1215–0116
Agency Number: CA–721, CA–722
Frequency: On occasion
Affected Public: Individuals or households; Business or other for-profit; State, local or Tribal Government

Form	Respondents	Estimated time per respondent minutes
CA–721	16	60
CA–722	47	90

Total Burden Hours: 87
Description: These forms are used for filing claims for compensation for injury and death to non-Federal law enforcement officers under the provisions of U.S.C. 8191, etc. seq. The forms provide the basic information needed to process the claims made for injury or death.
Type of Review: Extension
Agency: Employment Standards Administration
Title: Waiver of Child Labor Provisions for Agricultural employment of 10 and 11 Year Old Minor in Hand Harvesting of Short Season Crops
OMB Number: 1215–0120
Frequency: On occasion
Affected Public: Individuals or households; Farms
Number of Respondents: 1
Estimated Time Per Respondent: 4 hours
Total Burden Hours: 4
Description: Agricultural employers must supply certain information to the Department of Labor when applying for a waiver of the child labor provisions to employ 10 and 11 year old minors in hand harvesting of short season crops. Employers granted waivers are required to maintain certain records.
Type of Review: Extension
Agency: Employment Standards Administration
Title: Maintenance of Receipt for Benefits Paid by a Coal Mine Operator
OMB Number: 1215–0124
Agency: CM–200
Frequency: Recordkeeping
Affected Public: Business or other for-profit
Number of Respondents: 150
Estimated Time Per Respondent: 1 hour
Total Burden Hours: 150
Description: Insurance carriers and self-insured coal mine operators who make benefit payments to black lung beneficiaries are required to maintain receipts for black lung benefit payments for five years after the date on which the receipt was executive in order to verify payment of black lung benefits.
Type of Review: Revision
Agency: Employment Standards Administration
Title: Labor Standards for Federal Service Contracts
OMB Number: 1215–0150
Frequency: On occasion
Affected Public: Business or other for-profit; Federal Government
Number of Respondents: 55,567

Type	Respondents	Estimated time per respondent
Vacation benefit seniority list.	53,267	1 hour.
Conformance record.	300	30 minutes.
Collective bargaining agreements.	2,000	5 minutes.

Total Burden Hours: 53,584
Description: This information collection is in accordance with the provisions of 29 CFR part 4 for recordkeeping and incidental reporting requirements in Service Contract Act Regulations applicable to employers performing on service contracts with the Federal government.
Type of Review: Extension
Agency: Employment Standards Administration
Title: Rehabilitation Maintenance Certificate
OMB Number: 1215–0161
Agency number: OWCP 17
Frequency: On occasion
Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions
Number of Respondents: 1,300
Estimated Time per Respondent: 10 minutes
Total Burden Hours: 15,600
Description: The Office of Workers Compensation Program (OWCP 17) serves as a bill submitted by the injured worker to OWCP requesting reimbursement of expenses incurred due to participation in an approved rehabilitation effort for the preceding four week period or fraction thereof.

Type of Review: Extension
Agency: Employment Standards Administration
Title: Application for Approval of a Representative's Fee in a Black Lung Proceeding Conducted by the Department of Labor
OMB Number: 12515–0171
Agency number: CM–972
Frequency: On occasion
Affected Public: Business or other for-profit
Number of Respondents: 1,600
Estimated Time per Respondent: 42 minutes
Total Burden Hours: 1,120
Description: Specific requirements are set forth in 20 CFR 725.365 and 725.366 for the items of information that must be included on representative fee applications in order for the representative to be paid. The CM–972 is designed to collect this information.
Type of Review: Reinstatement
Agency: Employment and Training Administration
Title: Internal Fraud Activities
OMB Number: 1215–0187
Agency number: ETA 9000
Frequency: Annual
Affected Public: Federal Government; State, Local or Tribal Government
Number of Respondents: 53
Estimated Time per Respondent: 3 hours
Total Burden Hours: 159
Description: Form ETA 9000 is the State Employment Security Agency's (SESA) Employment and Training Administration's (ETA) sole data collection instrument to identifying continuing activity involving internal fraud and assessing fraud prevention effectiveness. Resulting analysis will be communicated to SESAs to enhance management efforts in controlling false representation and fraud. Negative trends could result in ETA requesting Office of the Inspector General audits.
Type of Review: Revision
Agency: Employment and Training Administration
Title: Attestation by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports
OMB Number: 1205–0309
Agency number: ETA 9033
Frequency: As needed
Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government
Number of Respondents: 500
Estimated Time per Respondent: 4 hours
Total Burden Hours: 2,000
Description: The information provided on this form by employers seeking to use alien crewmembers to perform longshore work at U.S. ports will permit the Department of Labor to meet Federal responsibilities for program administration, management and oversight.
Type of Review: Extension
Agency: Mine Safety Health Administration
Title: Training Plan Regulations (30 CFR 48.3 and 48.23)
OMB Number: 1219–0009
Frequency: On occasion
Affected Public: Business or other for-profit
Number of Respondents: 1,300
Estimated Time per Respondent: 8 hours
Total Burden Hours: 10,400
Description: Requires mine operators to have a Mine Safety and Health Administration approved plan containing programs for training new miners, training newly-employed experienced miners, training miners for new tasks, annual refresher training, and hazard training.
Type of Review: Extension
Agency: Departmental Management, Office of the Solicitor
Title: Equal Access to Justice Act
OMB Number: 1225–0013
Frequency: On occasion
Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government
Number of Respondents: 10
Estimated Time per Respondent: 5 hours
Total Burden Hours: 50
Description: The Equal Access to Justice Act provides for payment of fees and expenses to eligible parties who have prevailed against the Department of Labor in certain administrative proceedings. In order to obtain an aware, the statute and regulations require the filing of an application.

Theresa M. O'Malley,
Acting Departmental Clearance Officer.
[FR Doc. 95–15213 Filed 6–20–95; 8:45 am
BILLING CODE 4510–27–M

Secretary's Task Force on Excellence in State and Local Government Through Labor-Management Cooperation: Meeting

AGENCY: Office of the Secretary, Labor.
ACTION: Notice of public meeting.

SUMMARY: The Secretary's Task Force on Excellence in State and Local Government Through Labor-Management Cooperation was established in accordance with the Federal Advisory Committee Act (FACA) (Pub.L. 82–463)). Pursuant to Section 10(a) of FACA, this is to announce that the Task Force will meet at the time and place shown below.

TIME AND PLACE: The meeting will be held on Monday, July 10, 1995, from approximately 9 a.m. to 4 p.m. and on Tuesday, July 11, 1995, from approximately 9 a.m. to 3 p.m. in Conference Room N–3437 B–D in the Department of Labor, 200 Constitution Avenue NW., Washington, DC.

AGENDA: At this meeting, the Task Force intends to hear testimony on and discuss the following topics, among others: (1) effects of laws and civil service reform on labor-management cooperation, (2) experiences of state or local elected officials in implementing workplace changes through labor-management cooperation, (3) high-performance work environments, and (4) the role of neutral agencies in promoting workplace cooperation.

PUBLIC PARTICIPATION: The meeting will be open to the public Seating will be available on a first-come, first-served basis. Individuals with disabilities wishing to attend should contact the Task Force if special accommodations are necessary. Individuals or organizations wishing to submit written statements should send 20 copies on or before June 30 to Mr. Charles A. Richards, Designated Federal Official, Secretary of Labor's Task Force on Excellence in State and Local Government through Labor-Management Cooperation, U.S. Department of Labor, 200 Constitution Avenue, NW, Room S–2203, Washington, DC 20210. These statements will be thoroughly reviewed and become part of the record.

For the purposes of this meeting, the Task Force is primarily interested in statements that address the topics mentioned above under the heading "Agenda." However, the Task Force continues to welcome submissions that address the questions in the mission statement and the following eight general areas: (1) Finding Models, Ingredients, and Barriers to Service Excellence and Labor-Management Cooperation and, as the following relate to promoting workplace cooperation and excellence; (2) Bargaining and Related Institutions and Practices; (3) Conflict Resolution Skills, Practices, and Institutions; (4) Legal and Regulatory Issues; (5) Effects of Civil Service; (6) Ensuring a High-Performance Work Environment; (7) Political and Electoral Considerations

and Relationships; and (8) Financial Background, Financial Security, and Budget Systems.

FOR FURTHER INFORMATION CONTACT: Mr. Charles A. Richards, Designated Federal Official, Secretary of Labor's Task Force on Excellence in State and Local Government through Labor-Management Cooperation, U.S. Department of Labor, Room S–2203, Washington, DC 20210, (202) 219–6231.

Signed at Washington, DC this 16th day of June 1995.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 95–15214 Filed 6–20–95; 8:45 am]

BILLING CODE 4510–23–M

Employment and Training Administration

[TA–W–31,038]

Baras Jersey, Incorporated, New York, New York; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) as amended by the Omnibus Trade and Competitiveness Act of 1988 (P. L. 100–418), the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. It is determined in this case that all of the requirements have been met.

The investigation was initiated in response to a petition received on April 10, 1995 and filed on behalf of workers at Baras Jersey, Incorporated, New York, New York. The workers manufactured and sold knitted cloth.

The investigation revealed that knitted cloth produced by Baras Jersey, Incorporated, New York, New York is marketed through normal retail channels. Thus, the articles manufactured by the subject firm have been impacted importantly by the high penetration of imports into this market.

U.S. imports of cotton print cloth increased absolutely in 1993, compared to 1992, and increased absolutely in the twelve-month period through June 1994 compared to the same period in 1993. In the twelve-month period ended June 1994, the ratio of imports to domestic production was more than 143%.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with knitted cloth produced at Baras Jersey, Incorporated, New York, New York contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Baras Jersey, Incorporated, New York, New York who became totally or partially separated from employment on or after March 27, 1994 through two years from the date of certification are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 31st day of May, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–15206 Filed 6–20–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,838]

Black Box Corporation of Pennsylvania, Lawrence, PA

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 8, 1995, applicable to all workers at Black Box Corporation of Pennsylvania located in Lawrence, Pennsylvania. The notice was published in the **Federal Register** on May 25, 1995 (60 FR 27793).

The Company requested that the Department review its certification for workers of the subject firm. New information received from the company shows that only the workers involved in the production of active devices, manual switches, and cables were adversely affected by increased imports. Accordingly, the Department is limiting its certification to only those workers at Black Box Corporation of Pennsylvania engaged in employment related to the production of active devices, manual switches, and cables, and revoking the certification for all workers.

The intent of the Department's certification is to include only those workers of Black Box Corporation of Pennsylvania who were adversely affected by imports.

The amended notice applicable to TA–W–30,838 is hereby issued as follows:

All workers of Black Box Corporation of Pennsylvania, Lawrence, Pennsylvania engaged in employment related to the production of active devices, manual switches, and cables who became totally or partially separated from employment on or after March 3, 1994 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 9th day of June 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–15208 Filed 6–20–95; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 3, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 3, 1995.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, DC, this 12th day of June, 1995.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Dante Fashions (ILGWU)	Jeannette, PA	06/12/95	05/22/95	31,117	Women's Pants and Skirts.
Lockhart (Milliken Plant) (Wkrs)	Spartanburg, SC	06/12/95	05/24/95	31,118	Yarn and Fabric.
Wirekraft Industries, Inc. (Co)	Cardington, OH	06/12/95	05/26/95	31,119	Electrical Wiring Harnesses.
Durez Div. Occidental Chemical Corp (Co/Wkr).	North Tonawanda, NY.	06/12/95	05/19/95	31,120	Phenolic Resins & Molding Compounds.
Standard Pennant Co., Inc. (Wkrs)	Big Run, PA	06/12/95	06/02/95	31,121	Chenille Jackets & Clothing Items.
Medalist Apparel, Inc. (Wkrs)	Reading, PA	06/12/95	05/30/95	31,122	Men & Women's Knitted Turtlenecks.
N.B. Co., Inc. (Co)	Russell, KS	06/12/95	05/31/95	31,123	Oil Well Drilling.
Great Bear Industries (Wkrs)	Cross City, FL	06/12/95	06/02/95	31,124	Boy's, Women & Men Slacks.
Market Manufacturing Co., Inc. (Co)	Moxley, GA	06/12/95	05/24/95	31,125	Industrial Work Shirts.
Sikorsky Aircraft (Wkrs)	Stratford, CT	06/12/95	05/10/95	31,126	Flight Mechanics.
Norcross Footwear, Inc. (Co)	Paterson, NJ	06/12/95	06/06/95	31,127	Hipper, Chest Wader, and Boots.

[FR Doc. 95–15198 Filed 6–20–95; 8:45 am]

BILLING CODE 4510–30–M

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of June, 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,907; EVI Highland, Odessa, TX
TA–W–30,908; EVI Highland, Oklahoma City, OK
TA–W–30,877; Bogart Graphics, Erie, PA
TA–W–31,094; Upper Peninsula Power Co., Houghton, MI

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–31,029; OSRAM Sylvania, Inc., Credit Dept., Camillus, NY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,990; Haskon International, Inc., Taunton, MA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,981; Continental Emsco Co., Duratech Div., Garland, TX

Aggregate US imports of oil well and oil field pumps were negligible through April, 1995.

TA–W–31,033; Atlantic Bouquet, Secoucus, NJ

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–31,059; King Design, Inc., Eugene, OR

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,987; Wind "A" Way Concepts, Livingston, TN

The investigation revealed that criterion (2) and (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

Affirmative Determinations for Worker Adjustment Assistance

TA–W–31,016; American Design and Foshions, Inc., Passaic, NJ

A certification was issued covering all workers separated on or after May 2, 1994,

TA–W–31,009; Mel Coat, Weehawken, NJ

A certification was issued covering all workers separated on or after April 26, 1994.

TA–W–30,917; Brunswick Defense, Costa Mesa, CA

A certification was issued covering all workers separated on or after April 2, 1994.

TA–W–30,997; Nobors Drilling USA, Inc., New Braunfels, TX

A certification was issued covering all workers separated on or after April 20, 1994.

TA–W–30,935; Travelers Insurance, Naperville, IL

A certification was issued covering all workers separated on or after April 4, 1994.

TA–W–30,916; Industrial Ceramics, Inc., Derry, PA

A certification was issued covering all workers separated on or after March 27, 1994.

TA–W–30,964; Marconi Technologies, Inc., Lancaster, PA

A certification was issued covering all workers separated on or after April 13, 1994.

TA-W-31,038; Baras Jersey, Inc., New York, NY

A certification was issued covering all workers separated on or after march 27, 1994.

TA-W-31,075; Gentek Building Products, Inc., Woodbridge, NJ

A certification was issued covering all workers separated on or after March 24, 1994.

TA-W-31,014; Sabrina Coat, Paterson, NJ

A certification was issued covering all workers separated on or after February 23, 1995.

TA-W-30,995; Elizabeth Fashion, Inc., Northport, AL

A certification was issued covering all workers separated on or after April 19, 1994.

TA-W-31,034; Briggs & Stratton Corp., Wauwatosa, WI

A certification was issued covering all workers engaged in the production of gasoline engines separated on or after May 5, 1994.

TA-W-31,032; ITT Automotive Body Systems Div., Roscommon, MI

A certification was issued covering all workers separated on or after May 5, 1994.

TA-W-31,010; Gist Brocades Food Ingredients, Inc., East Brunswick, NJ

A certification was issued covering all workers separated on or after May 1, 1994.

TA-W-30,918; Charland Sportswear, Faymore Manufacturing Div., Confluence, PA

TA-W-30,919; Charland Manufacturing Div., Charleroi, PA

A certification was issued covering all workers separated on or after April 17, 1994.

TA-W-30,940 & A; Louisa Manufacturing, Louisa, VA & Roanna Togs, Inc., New York, NY

A certification was issued covering all workers separated on or after April 7, 1994.

TA-W-31,084; Blind Design, Inc., Tempe, AZ

A certification was issued covering all workers separated on or after May 11, 1994.

TA-W-30,948; Briggs & Stratton Corp., Wauwatosa, WI

A certification was issued covering all workers engaged in the production of automotive locks and keys separated on or after April 11, 1994.

TA-W-31,021; Crowntuft, A Division of Kellwood Co., Calhoun, GA

A certification was issued covering all workers separated on or after May 1, 1994.

TA-W-31,022; Gynotech, Middlesex, NJ

A certification was issued covering all workers separated on or after May 4, 1994.

TA-W-31,044; Engraph Label Group, Machine Systems Div., Delran, NJ

A certification was issued covering all workers separated on or after May 4, 1994.

TA-W-31,057; F & M Hat Co., Denver, CO

A certification was issued covering all workers separated on or after May 1, 1994.

TA-W-30,983; Junior Gallery Limited, Clifton, NJ

A certification was issued covering all workers separated on or after April 17, 1994.

TA-W-30,902; Dartmouth Finishing Corp., New Bedford, MA

A certification was issued covering all workers separated on or after March 23, 1994.

TA-W-30,912; Harvard Industries, Elastic Stop Nut Div., Union, NJ

A certification was issued covering all workers separated on or after March 31, 1994.

TA-W-31,011; R & H Well Service, Inc. (including Trey Trucks & Cox Transports), Houston, TX & Operating at the Following Locations: A; Andrews, TX, B; Big Lake, TX, C; Big Spring, TX, D; Crane, TX, E; Eldorado, TX, F; Ft. Stockton, TX, G; Irran, TX, H; McCamey, TX I; Monahans, TX, J; Odessa, TX

A certification was issued covering all workers separated on or after April 10, 1994.

TA-W-30,952; Louisiana Pacific, Northern Div., Hayden Lake, ID & Operating at the Following Locations: A; Belgrade, MT, B; Chilco, ID, C; Deerlodge, MT, D; Libby, MT, E; Moyie Springs, ID, F; Pilot Rock, OR, G; Priest River, ID, H; Rexburg, ID, I; Saratoga, WY, J; Tacoma, WA, K; Walden, CO, L; Walla Walla, WA

A certification was issued covering all workers separated on or after April 10, 1994.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of June, 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(A) that sales or production, or both, of such firm or subdivision have decreased absolutely,

(B) that imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased.

(C) that the increase in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(2) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

NAFTA–TAA–00445; Harvard Industries, Union, NJ

The investigation revealed that criteria (3) and (4) were not met. Major customers of the subject firm were surveyed regarding their purchases of aerospace fasteners. All respondents reported that they did not import the product in question from Mexico or Canada.

NAFTA–TAA–00443; Studley Products, Inc., Newark, NJ

The investigation revealed that criteria (3) and (4) were not met. Major customers of the subject firm were surveyed regarding their purchases of vacuum cleaner, lawn mower, and air pollution bags.

NAFTA–TAA–00453; Organik Technologies, Inc., Big Sky, Washington Div., Tacoma, WA

The investigation revealed that criteria (3) and (4) were not met. The investigation revealed that sales, production and employment of the Big Sky, Washington Div. of Organik Technologies, Inc. have declined and there was no shift in production from Organik to Mexico or Canada during the period under investigation.

NAFTA–TAA–00446; Quebecor Printing Buffalo, Inc., Depew, NY

The investigation revealed that criteria (3) and (4) were not met. Sales and production have not declined at the subject plant and employment declines are related to efforts to align costs. A survey of major customers revealed that customers did not import printed material from Canada or Mexico.

NAFTA–TAA–00442; Armstrong Pumps, Inc., North Tonawanda, NY

The investigation revealed that criteria (3) and (4) were not met. There was no shift in production of packaged systems from the North Tonawanda plant to Canada or Mexico during the period under investigation. A departmental survey revealed that Armstrong's major customers did not import packaged systems from Canada or Mexico.

NAFTA–TAA–00447; Debmar Knitwear, Inc., Hauppauge, NY

The investigation revealed that criteria (3) and (4) were not met. The major customer of the subject firm was surveyed regarding its purchases of sweaters; it reported that it did not import the product in question from Mexico or Canada.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–00435; Bowman Lease Service, Inc., Carrizo Springs, TX

A certification was issued covering all workers at Bowman Lease Service, Inc., Carrizo Springs, TX separated on or after April 12, 1994.

NAFTA–TAA–00440; General Electric Co., Motors and Transformer Divisions, Fort Wayne, IN

A certification was issued covering all workers at General Electric Co., Motors and Transformer Divisions, Fort Wayne, In separated on or after April 12, 1994.

NAFTA–TAA–00441; Laidwaw Corp., Metropolis, IL

A certification was issued covering all workers at Laidlaw Corp., Metropolis, IL separated on or after March 29, 1994.

NAFTA–TAA–00449; Palliser Furniture Corp., Fargo, ND

A certification was issued covering all workers at Palliser Furniture Corp., Fargo, ND separated on or after April 24, 1994.

NAFTA–TAA–00450; Gist-Brocades Food Ingredients, East Burnswick, NJ

A certification was issued covering all workers engaged in the production of yeast at Gist-Brocades Food Ingredients in East Brunswick, NJ separated on or after May 1, 1994.

NAFTA–TAA–00444; Haggar Clothing Co., Robstown Manufacturing Co., Robstown, TX

A certification was issued covering all workers at Robstown Manfacturing plant of the Haggar Clothing Co, Robstown, TX separated on or after April 27, 1994.

NAFTA–TAA–00457; Locheed Fort Worth Co., A Division of Lockheed Corp., Fort Worth, TX

A certification was issued covering all workers engaged in the production of wire harnesses at Lockheed Fort Worth Co., Fort Worth, TX separated on or after May 1, 1994.

NAFTA–TAA–00448 & A; American Standard Apparel Corp., Kan-Trak-Ter Plant, Mifflinburg, PA and Williamsport, PA

A certification was issued covering all workers of American Standard Apparel Corp., Kan Trak-Ter Plant, Mifflinburg, PA and in Williamsport, PA separated on or after April 28, 1994.

NAFTA–TAA–00336; Reiniger Brothers, Inc., Hatboro, PA

A certification was issued covering all workers engaged in the production of cut roses at Reiniger Brothers, Inc., Hatboro, PA separated on or after January 18, 1994.

I hereby certify that the aforementioned determinations were issued during the months of June, 1995. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: June 13, 1995.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–15212 Filed 6–20–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,880]

G.E. Power Systems Including Corporate Research and Development Schenectady, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 18, 1995, applicable to all workers of G.E. Power Systems, Schenectady, New York. The notice will soon be published in the **Federal Register**.

At the request of the State Agency and the one of the petitioners, the Department is amending the certification to include workers in the research and development division of G.E. Power Systems. The investigation findings show that workers of the corporate research and development division of G.E. Power Systems, located in another building in Schenectady, were inadvertently excluded from the certification.

The intent of the Department's certification is to include all workers of G.E. Power Systems adversely affected by imports.

The amended notice applicable to TA–W–30,880 is hereby issued as follows:

All workers of G.E. Power Systems, including Corporate Research and Development, Schenectady, New York who became totally or partially separated from employment on or after November 19, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 9th day of June 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services Office of Trade Adjustment Assistance.

[FR Doc. 95–15209 Filed 6–20–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,822]

Mosbacher Energy Co. A/K/A Mosbacher Management Co., Houston, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on May 3, 1995, applicable to all workers of Mosbacher Energy Company, Houston, Texas. The notice was published in the **Federal Register** on May 17, 1995 (60 FR 26459).

New information received from the State Agency show that some of the workers at Mosbacher Energy had their unemployment insurance (UI) taxes paid to Mosbacher Management Company.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Mosbacher Energy Company who were adversely affected by increased imports.

The amended notice applicable to TA–W–30,822 is hereby issued as follows:

All workers of Mosbacher Energy Company, a/k/a Mosbacher Management Company, Houston, Texas who became totally or partially separated from employment on or after February 28, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 9th day of June 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–15207 Filed 6–20–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,592]

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance; Sante Fe Minerals, Inc. et al.

Santa Fe Minerals, Inc., A/K/A Santa Fe International, A/K/A Santa Fe U.S., Dallas Texas

Santa Fe Minerals, Inc., A/K/A Santa Fe International, A/K/A Santa Fe U.S., Operating in the Gulf of Mexico and at Various Locations in the Following States.

ARKANSAS—TA–W–30,592A
LOUISIANA—TA–W–30,592B
OKLAHOMA—TA–W–30,592C
CALIFORNIA—TA–W–30,592D
TEXAS exc Dallas—TA–W–30,592E

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance applicable to all workers of the subject firm on February 17, 1995. The notice was published in the **Federal Register** on March 10, 1995 (60 FR 13177).

The Certification was subsequently amended on March 27, 1995 and April 27, 1995. These notices were published in the **Federal Register** on April 5, 1995 (60 FR 17372) and May 9, 1995 (60 FR 24656), respectively.

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. New findings show that some of the Santa Fe workers had their unemployment insurance (UI) taxes paid under the name of Santa Fe U.S.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Santa Fe Minerals, Inc. a/k/a Santa Fe International who were adversely affected by increased imports.

The amended notice applicable to TA–W–39,592 is hereby issued as follows:

All workers of Santa Fe Minerals, Inc., also known as Santa Fe International, also known as Santa Fe U.S., Dallas, Texas, and operating in the Gulf of Mexico and at various locations in the States of Arkansas, Louisiana, Oklahoma, California and Texas except Dallas who became totally or partially separated from employment on or after December 13, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 9th day of June 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–15211 Filed 6–20–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,696]

Statler Tissue Company, Augusta, Maine; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 23, 1995, applicable to all workers at Statler Tissue Company located in Augusta, Maine. The notice was published in the Federal Register on April 10, 1995 (60 FR 18146).

At the request of the State Agency, the Department is amending the certification to include leased workers from Olsten Temporary Services, Augusta, Maine engaged in the production of household paper products.

The intent of the Department's certification is to include all workers of Statler Tissue Company adversely affected by imports.

The amended notice applicable to TA–W–30,696 is hereby issued as follows:

All workers of Statler Tissue Company and workers from Olsten Temporary Services who worked at Statler Tissue Company, both located in Augusta, Maine, who became totally or partially separated from employment on or after January 13, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 13th day of June 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–15205 Filed 6–20–95; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 3, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 3, 1995

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 5th day of June, 1995.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Upper Peninsula Power Co. (IBEW)	Houghton, MI	06/05/95	04/14/95	31,094	Electricity.
Titanium Metals Corp. (Wkrs)	Henderson, NV	06/05/95	04/07/95	31,095	Titanium (Sponge & Ingots).
American Lantern (ABGW)	Newport, AR	06/05/95	05/12/95	31,096	Outdoor & Indoor Lighting Fixtures.
Seagull Energy Corp. (Co)	Amarillo, TX	06/05/95	04/04/95	31,097	Natural Gas.
King Finishing Div. of Spartan Mills (Wkrs).	Statesboro, GA	06/05/95	05/15/95	31,098	Dyed, Finished & Printed Cloth.
Traúlsen & Co., Inc. (Wkrs)	College Point, NY	06/05/95	05/17/95	31,099	Commercial Refrigerators.
Louisiana Pacific Co. (Wkrs)	Moyie Springs, ID	06/05/95	05/11/95	31,100	Dimensional Lumber.
Purolator Products NA Inc. (Wkrs)	Dexter, MO	06/05/95	05/24/95	31,101	Automotive Filters.
Rockwell Graphic Systems (USWA)	Reading, PA	06/05/95	05/24/95	31,102	Commercial Printing Presses.
T.T. Fabric Sales, Inc. (Wkrs)	New York, NY	06/05/95	05/22/95	31,103	Fabric for Belts, Vinyls.
Mitchell Energy Corp. (Co)	The Woodlands, TX	06/05/95	05/26/95	31,104	Explore & Produce Oil & Gas.
Liquid Energy Corp. (Co)	Artesia, NM	06/05/95	05/26/95	31,105	Provide Natural Gas Processing.
Liquid Energy Corp. (Co)	Artesia, NM	06/05/95	05/26/95	31,106	Provide Natural Gas Processing.
Mitchell Gas Services, Inc. (Co)	The Woodlands, TX	06/05/95	05/26/95	31,107	Provide Natural Gas Processing.
Southwestern Gas Pipeline, Inc. (Co)	Dallas, TX	06/05/95	05/26/95	31,108	Provide Natural Gas Processing.
Southwestern Gas Pipeline, Inc. (Co)	Lyons, TX	06/05/95	05/26/95	31,109	Provide Natural Gas Processing.
Southwestern Gas Pipeline, Inc. (Co)	Minerals Wells, TX	06/05/95	05/26/95	31,110	Provide Natural Gas Processing.
Southwestern Gas Pipeline, Inc. (Co)	Corpus Christi, TX	06/05/95	05/26/95	31,111	Provide Natural Gas Processing.
Mitchell Energy & Development Corp. (Co).	The Woodlands, TX	06/05/95	05/26/95	31,112	Provide Corporate Support Functions.
Tippens Apparel Trim, Inc. (Co)	Conley, GA	06/05/95	05/22/95	31,113	Belts.
Pennzoil Exploration & Prod. Co. (Wkrs).	Midland, TX	06/05/95	05/17/95	31,114	Oil & Natural Gas.
Louis Dreyfus Natural Gas Corp. (Wkrs).	Oklahoma City, OK	06/05/95	05/18/95	31,115	Crude Oil & Natural Gas.
Kraft General Foods (Co)	Kankakee, IL	06/05/95	05/17/95	31,116	Coupon Redemption.

[FR Doc. 95–15201 Filed 6–20–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,906]

United Engineering Inc., a Subsidiary of Danieli Corporation, Pittsburgh, PA; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on April 10, 1995 in response to a worker petition which was filed on behalf of workers and former workers at United Engineering, Incorporated, a subsidiary of Danieli Corporation, located in Pittsburgh, Pennsylvania (TA–W–30,906).

The Department of Labor has verified that the petition filed on behalf of workers at the above subject firm is not valid. According to Section 221(a) of the Trade Act of 1974, as amended, a petition must be signed by three workers of the subject firm or by their duly authorized representative. This condition has not been met.

Therefore, further investigation in this matter would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C. this 9th day of June 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–15199 Filed 6–20–95; 8:45 am]

BILLING CODE 4510–30–M

TA–W–31,043

Zenith Distributing Corporation of New York Uniondale, NY; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 22, 1995 in response to a worker petition which was filed on May 10, 1995 on behalf of workers at Zenith Distributing Corporation of New York, Uniondale, New York.

The petitioning group of workers is subject to an ongoing investigation for which a determination has not yet been issued (TA–W–30,957). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 9th day of June, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–15200 Filed 6–20–95; 8:45 am]

BILLING CODE 4510–30–M

Job Corps: Final Finding of No Significant Impact (FONSI) for Eight New Job Corps Centers

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Final Finding of No Significant Impact (FONSI) for the New Job Corps Centers in Ft. Devens, Massachussetts; Memphis, Tennessee; Homestead, Florida; Montgomery, Alabama; Long Beach, California; Flint, Michigan; Marsing, Idaho; and Treasure Island, California.

SUMMARY: Pursuant to the Council on Environmental Quality Regulations (CEQ) (40 CFR part 1500–08) implementing procedural provisions of the National Environmental Policy Act (NEPA), the Employment and Training Administration (ETA) of the Department of Labor (DOL) gives final notice of the proposed construction of the above-mentioned eight Job Corps Centers and that this construction will not have a significant adverse impact on the environment. In accordance with 29 CFR 11.11(d)(1) (DOL's NEPA Compliance Procedures) and 40 CFR 1501.4(e)(2) (CEQ Requirement Making FONSIs Available for Public Review), preliminary FONSIs regarding these centers were published in the January 11, 1995, **Federal Register** as follows:

Flint, MI—(60 FR 2785)
Ft. Devens, MA—(60 FR 2786)

Homestead, FL—(60 FR 2788)
Long Beach, CA—(60 FR 2790)
Marsing, ID—(60 FR 2792)
Montgomery, AL—(60 FR 2794)
Memphis, TN—(60 FR 2795)
Treasure Island, CA—(60 FR 2796)

No comments were received regarding the preliminary FONSIs for these eight Job Corps Centers. ETA has reviewed the conclusions of the environmental assessments (EAs). This notice serves as the Final Finding of No. Significant Impact for the new Flint, Michigan; Ft. Devens, Massachussetts; Homestead, Florida; Long Beach, California; Marsing, Idaho; Memphis, Tennessee; Montgomery, Alabama; and Treasure Island, California Job Corps Centers. The preliminary FONSIs and the EAs are adopted in final with no change.

EFFECTIVE DATE: June 21, 1995.

ADDRESSES: Copies of the EAs and additional information regarding the above-mentioned new Job Corps Centers are available to interested parties by writing to the Director, Office of Job Corps, Employment and Training Administration, Department of Labor, 200 Constitution Ave., NW., Room N4510, Washington, DC, 20210.

FOR FURTHER INFORMATION CONTACT: Paul Milam, Department of Labor, Office of Job Corps, 200 Constitution Ave., NW., Washington, DC, (202) 219–5556 (This is not a toll-free call).

Dated at Washington, DC, this 14th day of June, 1995.

Peter E. Rell,

Director of Job Corps.

[FR Doc. 95–15197 Filed 6–20–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00428]

Stetson Cedar Products Forks, Washington; Certification Regarding Eligibility To Apply for NAFTA–Transitional Adjustment Assistance

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2 Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2331), the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for NAFTA–TAA.

In order to make an affirmative determination and issue a certification of eligibility to apply for NAFTA–TAA, the group eligibility requirements in either paragraph (a)(1)(A) or (a)(1)(B) of Section 250 of the Trade Act must be met. It is determined in this case that the requirements of (a)(1)(A) of Section 250 have been met.

The investigation was initiated on April 10, 1995 in response to a petition filed on behalf of workers at Stetson Cedar Products located in Forks, Washington. Workers produced red cedar shingles.

Investigation findings revealed that sales and production declined at Stetson Cedar Products and that significant worker separations have occurred. A survey conducted with Stetson's major customers revealed that the major customers decreased purchases from the subject firm and increased their imports of red cedar shingles from Canada.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with red cedar shingles contributed importantly to the declines in sales or production and to the total or partial separation of workers at Stetson Cedar Products located in Forks, Washington. In accordance with the provisions of the Act, I make the following certification:

All workers of Stetson Cedar Products located in Forks, Washington who became totally or partially separated from employment on or after April 10, 1994 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC, this 9th day of May 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–15202 Filed 6–20–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA—00418]

McCormick Ridge Company Copalis Crossing, Washington; Certification Regarding Eligibility To Apply for NAFTA–Transitional Adjustment Assistance

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2331), the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for NAFTA–TAA.

In order to make an affirmative determination and issue a certification of eligibility to apply for NAFTA–TAA, the group eligibility requirements in either paragraph (a)(1)(A) or (a)(1)(B) of Section 250 of the Trade Act must be met. It is determined in this case that the requirements of (a)(1)(A) of Section 250 have been met.

The investigation was initiated on March 31, 1995 in response to a petition filed by a company official on behalf of the workers at McCormick Ridge Company located in Copalis Crossing, Washington. Workers produced cedar ridge and shakes for roofing.

Investigation findings revealed that sales and production declined at McCormick Ridge Company and that significant workers separations have occurred. A survey conducted with McCormick's major customer revealed that the major customer's decreased purchases from the subject firm and increased their imports of cedar ridge and shakes from Canada.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with cedar ridge and shakes contributed importantly to the declines in sales or production and to the total or partial separation of workers at McCormick Ridge Company located in Copalis Crossing, Washington, In accordance with the provisions of the Act, I make the following certification:

All workers of McCormick Ridge Company located in Copalis Crossing, Washington who became totally or partially separated from employment on or after March 31, 1994 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC, this 4th day of May 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–15203 Filed 6–20–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00439, and NAFTA–00439A]

Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In the matter of: Scotty's Fashions, Lewistown, Pennsylvania and Kresgeville Manufacturing, Inc. (Subsidiary Corporation Owned by Scotty's Fashions) Kresgeville, Pennsylvania.

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2331), the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for NAFTA–TAA.

In order to make an affirmative determination and issue a certification of eligibility to apply for NAFTA–TAA, the group eligibility requirements in either paragraph (a)(1)(A) or (a)(1)(B) of Section 250 of the Trade Act must be met. It is determined in this case that the requirements of (a)(1)(A) of Section 250 have been met.

The investigation was initiated on April 19, 1995 in response to a petition filed on behalf of workers at Scotty's Fashions in Lewistown and Kresgeville, Pennsylvania. Workers are engaged in the production of ladies apparel.

Investigation findings revealed that sales and production declined at the Lewistown and Kresgeville facilities of Scotty's Fashions and that significant worker separations have occurred during Spring of 1995.

A survey conducted with major customers of Scotty's Fashions revealed that respondents decreased purchases from Scotty's Fashions and increased their imports of ladies apparel from Canada and Mexico.

Workers at Scotty's Fashions, located in Lewistown, Pennsylvania and Kresgeville Manufacturing, Inc., located in Kresgeville, Pennsylvania were certified to receive benefits under the Trade Adjustment Assistance program (TA–W–30,832) on May 8, 1995.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with ladies apparel contributed importantly to the declines in sales or production and to the total or partial separation of workers at Scotty's Fashion in Lewistown and Kresgeville, Pennsylvania. In accordance with the provisions of the Act, I make the following certification:

All workers of Scotty's Fashions in Lewistown (NAFTA–00439) and Kresgeville (NAFTA–00439A), Pennsylvania who became totally or partially separated from employment on or after April 19, 1994 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC, this 26th day of May 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–15204 Filed 6–20–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00293–00293C]

Wirekraft Industries, Inc., et al.; Mishawaka, IN; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In the Matter of NAFTA–00293A, Wirekraft Industries, Inc., Burcliff Industries, Marion, Ohio; NAFTA–00293B, Wirekraft Industries, Inc., Burcliff Industries, Lakeville, Indiana; and NAFTA–00293C, Wirekraft Industries, Inc., Burcliff Industries, Cardington, Ohio.

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on December 29, 1994, applicable to all workers at the subject firm. The notice was published in the **Federal Register** on January 20, 1995 (60 FR 4196).

The certification was amended March 17, 1995, and published in the **Federal Register** on March 27, 1995 (60 FR 15793). The certification was subsequently amended May 1, 1995. The notice will soon be published in the **Federal Register.**

New information received from the company show that the Wirekraft workers in Cardington, Ohio also produce wire harnesses.

The intent of the Department's certification is to include all workers who were adversely affected by increased imports.

Accordingly, the Department is amending the certification to include the Wirekraft workers in Cardington, Ohio.

The amended notice applicable to NAFTA–00293 is hereby issued as follows:

All workers of Wirekraft Industries, Inc., Mishawaka, Indiana and Wirekraft Industries' Burcliff Industries, in Marion, Ohio; Lakeville, Indiana; and Cardington, Ohio who became totally or partially separated from employment on or after December 8, 1993 are eligible to apply for NAFTA–TAA Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 9th day of June 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–15210 Filed 6–20–95; 8:45 am]

BILLING CODE 4510–30–M

Occupational Safety and Health Administration

Targeted Training Grants

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of availability of funds and request for grant applications.

SUMMARY: The Occupational Safety and Health Administration (OSHA) has a grant program, Targeted Training, which awards funds to nonprofit organizations to conduct safety and health training and education in the workplace. This notice announces Targeted Training grant availability for training in fall protection in the residential construction industry, assisting small businesses to develop safety and health programs, training hospital and nursing or medical care facility workers in the prevention of injuries, and training small logging employers about the requirements of OSHA's logging standard. This notice describes the scope of the grant program and provides information about how to get detailed grant application instructions. Applications should not be submitted without the applicant first obtaining the detailed grant application instructions mentioned later in the notice.

Authority for this program may be found in section 21(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 670).

DATES: Applications must be received by August 4, 1995.

ADDRESSES: Grant applications must be submitted to the OSHA Office of Training and Education, Division of Training and Educational Programs, 1555 Times Drive, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Ronald Mouw, Chief, Division of Training and Educational Programs, or Helen Beall, Training Specialist, OSHA Office of Training and Education, 1555 Times Drive, Des Plaines, Illinois 60018, telephone (708) 297–4810.

SUPPLEMENTARY INFORMATION:

Background

Section 21(c) of the Occupational Safety and Health Act provides for the education and training of employers and workers in the recognition, avoidance, and prevention of unsafe or unhealthful working conditions. OSHA has used a variety of approaches over the years to fulfill its responsibilities under this section, one of which is the awarding of grants to nonprofit organizations to develop and provide training and education to workers and employers.

The Targeted Training Program is OSHA's current grant program for the training and education of workers and employers. Its goals include educating workers and employers in small businesses (employers with 250 or fewer workers), training in new OSHA standards, and training in areas of special emphasis or recognized high risk activities or tasks. Organizations awarded grants under this program will be expected to develop training and/or educational programs that address a target named by OSHA, reach out to workers and employers for whom the program is appropriate, and provide them with the training and/or educational program. Success is measured by the number of workers or employers reached by the program and their increased ability to recognize and abate hazards or to comply with OSHA standards.

Preference in selection will be given to proposals that will conduct train-the-trainer programs and to proposals submitted by consortiums that include community-based organizations or other organizations that can reach out to workers who are minorities, migrants, limited English-speaking, or have entry level and/or minimum wage jobs. In addition, all grant programs will be encouraged to include managers and/or supervisors and small businesses in their training.

Scope

The purpose of this notice is to announce the availability of funds for grants. Each grant awarded will be designed to develop and provide training and education in one of the following target areas.

1. *Fall protection in the residential construction industry.* Programs that teach workers and employers about the requirements of OSHA's fall protection standard, 29 CFR 1926 Subpart M, and how to apply them in a residential construction setting.

2. *Safety and health programs for small businesses.* Programs that provide orientation to OSHA and its requirements for small businesses and that assist small businesses to establish safety and health programs in accordance with OSHA's safety and health management guidelines published at 54 FR 3904 on January 26, 1989.

3. *Prevention of injuries in hospital and nursing or medical care facilities.* Programs that train workers in the prevention of injuries, especially injuries from lifting.

4. *Logging.* Programs that train small logging employers about the requirements of OSHA's logging standard, 29 CFR 1910.266.

Among the activities which may be supported under these grants are: Conducting training, conducting other educational activities designed to reach and inform workers and employers, and developing educational materials for use in the training and/or educational activities.

Eligible Applicants

Any nonprofit organization that is not an agency of a State or local government is eligible to apply. However, State or local government supported institutions of higher education are eligible to apply in accordance with 29 CFR 97.4(a)(1). Applicants other than State or local government supported institutions of higher education will be required to submit evidence of nonprofit status, preferably from the IRS.

A consortium of two or more eligible applicants is also eligible to apply. Each consortium must have a written agreement that spells out roles and responsibilities for each consortium member and designates one member as the lead agency. The lead agency will receive the grant and be responsible for grant administration.

Nonsupportable Activities

Statutory and regulatory limitations, as well as the objectives of the grant program, prevent reimbursing grantees for certain activities. These limitations include the following.

1. Any activities inconsistent with the goals and objectives of the Occupational Safety and Health Act of 1970.

2. Activities involving workplaces largely precluded from enforcement action under section 4(b)(1) of the Occupational Safety and Health Act.

3. Activities for the benefit of State, county or municipal workers unless those workers are covered by a State Plan funded by OSHA under section 23(g) of the Occupational Safety and Health Act.

4. Production, publication, reproduction or use of training and educational materials, including newsletters and programs of instruction, that have not been reviewed by OSHA for technical accuracy.

5. Training and other educational activities that primarily address issues other than recognition, avoidance, and prevention of unsafe or unhealthful working conditions. Examples include activities concerning workers' compensation, first aid, and publication of materials prejudicial to labor or management.

6. Activities that provide assistance to workers in arbitration cases or other actions against employers, or that provide assistance to employers and/or workers in the prosecution of claims against Federal, State or local governments.

7. Activities that directly duplicate services offered by OSHA, a State under a State Plan, or consultation programs provided by State designated agencies under section 7(c)(1) of the Occupational Safety and Health Act.

8. Activities directly or indirectly intended to generate membership in the grant recipient's organization. This includes activities to acquaint nonmembers with the benefits of membership, inclusion of membership appeals in materials produced with grant funds, and membership drives.

Administrative Requirements

Educational materials will be reviewed by OSHA for technical accuracy during development and before final publication.

Instructional curriculums and purchased training materials will also be reviewed by OSHA for technical accuracy before they are used.

Grant recipients will be expected to share educational materials with others in the industry to which the materials apply. Grant recipients must also provide copies of completed educational materials to OSHA before the end of the grant period. OSHA has a lending program, the Resource Center, that circulates grant-produced audiovisual materials. Grant recipients can expect their materials to be included in OSHA's Resource Center lending program.

Grantees will comply with applicable requirements of the following OMB Circulars.

1. *A–110,* which covers grant requirements for nonprofit organizations, including universities and hospitals. The Department of Labor regulations implementing this circular can be found at 29 CFR part 95.

2. *A–21,* which gives cost principles applicable to educational institutions.

3. *A–122,* which gives cost principles applicable to other nonprofit organizations.

4. *A–133,* which provides audit requirements. The Department of Labor regulations implementing this circular can be found at 29 CFR part 96.

All applicants will be required to certify to a drug-free workplace in accordance with 20 CFR part 98 and to comply with the New Restrictions on Lobbying published at 29 CFR part 93.

The program has matching share requirements. Grant recipients will provide a minimum of 20% of the total grant budget. This match may be in-

kind, rather than a cash contribution. For example, if the Federal share of the grant is $80,000 (80% of the grant), then the matching share will be $20,000 (20% of the grant), for a total grant of $100,000. The matching share may exceed 20%.

Evaluation Process and Criteria

Applications for grants solicited in this notice will be evaluated on a competitive basis by the Assistant Secretary for Occupational Safety and Health with assistance and advice from OSHA staff.

The following factors, which are not ranked in order of importance, will be considered in evaluating grant applications.

1. Program Design

a. The plan to develop and implement a training and education program that addresses one of the following targets.

i. Fall protection in the residential construction industry.

ii. Safety and health programs for small businesses.

iii. Prevention of injuries in hospital and nursing or medical care facilities.

iv. Logging.

b. The number of workers and/or the number of employers to be trained by the program.

c. The number of workers to be trained as trainers of their fellow workers.

d. The appropriateness of the planned activities for the target selected.

e. The plan to recruit trainees for the program.

f. The plan for evaluating the program's effectiveness in achieving its objectives.

g. The feasibility and soundness of the proposed work plan in achieving the program objectives effectively.

2. Program Experience

a. The occupational safety and health experience of the applicant organization.

b. The experience of the applicant organization in developing and conducting training or education programs.

c. The technical and professional expertise of present or proposed project staff in training workers and/or employers and in occupational safety and health.

d. The applicant organization's experience in reaching the target population and conducting occupational safety and health and/or training and educational programs for that population.

3. Administrative Capability

a. The managerial expertise of the applicant as evidenced by the variety and complexity of programs it has administered over the past five years.

b. The experience of the applicant in administering Federal and/or State grants.

c. The completeness of the application, including forms, budget detail, narrative and workplan, and required attachments.

4. Budget

a. The reasonableness of the budget in relation to the proposed program activities.

b. The proposed non-Federal share is at least 20% of the total budget.

c. The compliance of the budget with Federal cost principles contained in applicable OMB Circulars and with OSHA budget requirements contained in the grant application instructions.

Preferential consideration will be given to applications that include one or more of the following elements.

1. Train-the-trainer programs, especially those that train workers to train other workers.

2. Submission by a consortium, particularly one that includes one or more community-based organizations or other organizations that can reach out to workers who are minorities, migrants, limited English-speaking, or have entry level and/or minimum wage jobs.

In addition to the preceding factors, the Assistant Secretary will consider other factors such as the overall geographical distribution and coverage of populations at risk.

Availability of Funds

There is approximately $1,700,000 available for this program, $500,000 each for fall protection, safety and health programs for small businesses, and injury prevention in hospitals and nursing or medical care facilities, and $200,000 for logging. The average Federal award will be $100,000.

Grants will be awarded for a twelve-month period. Grants may be renewed for additional twelve-month periods depending on the availability of funds, the continuing need for the training, and satisfactory performance by the grantee.

Application Procedures

Organizations that meet the eligibility requirements described above and are interested in applying for a grant may request grant application instructions from the OSHA Office of Training and Education, Division of Training and Educational Programs, 1555 Times Drive, Des Plaines, Illinois 60018.

All applications must be received no later than 4:30 p.m. Central Time, August 4, 1995.

Notification of Selection

Following review and evaluation, organizations selected as potential grant recipients will be notified by a representative of the Assistant Secretary. An applicant whose proposal is not selected will be notified in writing to that effect. Notice of selection as a potential grant recipient will not constitute approval of the grant application as submitted. Prior to the actual grant award, representatives of the potential grant recipient and OSHA will enter into negotiations concerning such items as program components, funding levels, and administrative systems. If negotiations do not result in an acceptable submittal, the Assistant Secretary reserves the right to terminate the negotiation and decline to fund the proposal.

Signed at Washington, DC, this 14th day of June 1995.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 95–15128 Filed 6–20–95; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

National Institute of Justice

[OJP (NIJ) No.1053]

RIN 1121–ZA15

National Institute of Justice Solicitation for Research and Evaluation on Violence Against Women

AGENCY: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice.

ACTION: Announcement of the availability of the National Institute of Justice Solicitation for Research and Evaluation on Violence Against Women.

ADDRESS: National Institute of Justice, 633 Indiana Avenue, NW., Washington, D.C. 20531.

DATES: The deadline for receipt of proposals is close of business on August 1, 1995.

FOR FURTHER INFORMATION CONTACT: Bernard Auchter at (202) 307–0499, National Institute of Justice, 633 Indiana Avenue, NW., Washington, DC 20531.

SUPPLEMENTARY INFORMATION: The following supplementary information is provided:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §§ 201–03, as amended, 42 U.S.C. 3721–23 (1988).

Background

The National Institute of Justice is soliciting research and evaluation proposals responsive to the evaluation and research requirements related to the Violence Against Women Act—Title IV of the Violent Crime Control and Law Enforcement Act of 1994. Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of "Solicitation for Research and Evaluation on Violence Against Women" (refer to document No. SL000124). The solicitation is available electronically via the NCJRS Bulletin Board, which can be accessed via Internet. Telnet to ncjrsbbs.aspensys.com, or gopher to ncjrs.aspensys.com 71. Those without Internet access can dial the NCJRS Bulletin Board via modem: dial 301–738–8895. Set modem at 9600 baud, 8–N–1.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 95–15130 Filed 6–20–95; 8:45 am]

BILLING CODE 4410–18–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–320]

Environmental Assessment and Finding of No Significant Impact Regarding the Extension of Possession-only License No. DPR–73; GPU Nuclear Corporation Three Mile Island Nuclear Station, Unit No. 2

The Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Possession-Only License No DPR–73 which allows GPU Nuclear Corporation (the licensee) to possess but not operate the permanently shut down Three Mile Island Nuclear Station, Unit 2 (TMI–2). The amendment would extend the expiration date of the license from November 9, 2009, to April 19, 2014.

Description of the Proposed Action

TMI–2 has been shut down since the March 28, 1979 accident. The facility has been defueled to the extent practicable and has been partially decontaminated. It is now in a safe storage mode called Post-Defueling Monitored Storage (PDMS). The licensee intends to keep TMI–2 in PDMS until the TMI–1 license expires on April 19, 2014, at which time the units would be decommissioned simultaneously.

Environmental Impacts

The staff evaluated the potential environmental and safety consequences of PDMS in Final Supplement 3 to the Programmatic Environmental Impact Statement Related to Decontamination and Disposal of Radioactive Wastes Resulting from the March 28, 1979 Accident at Three Mile Island Nuclear Station, Unit 2 (PEIS Supplement 3 or NUREG–0683 Supplement 3), dated August 1989. The staff evaluated radiological and non-radiological impacts associated with the licensee's proposal and seven staff identified alternatives. The licensee's proposal included storage of TMI–2 until the end of the TMI–1 license in the year 2014. The staff concluded that each of the alternatives (with the exception of the no-action alternative) were within applicable regulatory limits and could each be implemented without significant environmental impact. The potential health impact on both workers and the offsite public from any of the alternatives was very small. The staff concluded that none of the alternatives was obviously superior to the licensee's proposal from the perspective of environmental impacts. Although the quantitative estimates of potential impacts varied among the alternatives, the differences were not judged sufficiently large to allow for identification of an obviously superior alternative. The staff further concluded that the licensee's proposal was environmentally acceptable and would not significantly affect the quality of the human environment. The staff reviewed the conclusions of the 1989 PEIS Supplement 3 and the current TMI–2 conditions now that the facility is in long-term storage. The staff determined that the conclusions reached with respect to environmental impact associated with long-term storage of TMI–2 in the 1989 PEIS Supplement 3 are still valid.

Finding of No Significant Impact

Based on the foregoing environmental assessment, the Commission has concluded that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for this proposed action.

For further details with respect to this action see the licensee's environmental evaluation dated March 11, 1987, the licensee's request for a license amendment dated October 9, 1991, and the staff's PEIS Supplement 3 dated August 1989. These documents are available for inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland, this 15th day of June 1995.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Project Support, Office of Nuclear Reactor Regulation.

[FR Doc. 95–15137 Filed 6–20–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–315]

Indiana Michigan Power Company; Donald C. Cook Nuclear Plant, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from Facility Operating License No. DPR–58, issued to Indiana Michigan Power Company, (the licensee), for operation of the D.C. Cook Nuclear Plant, Unit 1, located in Berrien County, Michigan.

Environmental Assessment

Identification of the Proposed Action

This Environmental Assessment has been prepared to address potential environmental issues related to the licensee's application of March 17, 1995. The proposed action would exempt the licensee from the requirements of 10 CFR part 50, Appendix J, Paragraph III.D.1.(a), to the extent that a one-time interval extension for the Type A test (containment integrated leak rate test) by approximately 18 months from the September 1995 refueling outage to the 1997 refueling outage would be granted.

The Need for the Proposed Action

The proposed action is needed to permit the licensee to defer the Type A test from the September 1995 refueling outage to the 1997 refueling outage, thereby saving the cost of performing the test and eliminating test period from the critical path time of the outage.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed one-time exemption would not increase the probability or consequences of accidents previously analyzed and the proposed one-time exemption would not affect facility radiation levels or facility radiological effluents. The licensee has analyzed the results of previous Type A tests performed at the D.C. Cook Nuclear Plant to show adequate containment performance and will continue to be required to conduct the Type B and C local leak rate tests which historically have been shown to be the principal means of detecting containment leakage paths with the Type A tests confirming the Type B and C test results. It is also noted that the licensee would perform the visual containment inspection although it is only required by Appendix J to be conducted in conjunction with Type A tests. The NRC staff considers that these inspections, though limited in scope, provide an important added level of confidence in the continued integrity of the containment boundary. The change will not increase the probability or consequences of accidents, no changes are being made in the types or amounts of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action involves features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the NRC staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for D.C. Cook, Units 1 and 2, dated August 1973.

Agencies and Persons Consulted

In accordance with its stated policy, on May 31, 1995, the NRC staff consulted with the Michigan State official, Dennis Hahn, of the Michigan Department of Public Health, Nuclear Facilities and Environmental Monitoring, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated March 17, 1995, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Dated at Rockville, Maryland, this 14th day of June.

For the Nuclear Regulatory Commission.

John B. Hickman,

Project Manager, Project Directorate III–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–15142 Filed 6–20–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 40–9022]

SCA Services Inc., Finding of No Significant Impact, and Opportunity for a Hearing

Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission has prepared an Environmental Assessment (EA) related to the issuance of Source Material License No. SUC–1565. On the basis of the EA, the NRC has concluded that this licensing action would not significantly affect the environment and does not warrant the preparation of an environmental impact statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The above document related to this proposed action are available for public inspection and copying at the NRC's Public Document Room, Gelman Building, 2120 L Street NW., Washington, DC 20555.

Opportunity for a Hearing

Any person whose interest may be affected by the issuance of this license may file a request for a hearing. Any request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this **Federal Register** notice; be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852) and on the applicant (SCA Services, Inc., 17250 Newburgh Rd., Livonia, MI 48152) and must comply with the requirements for requesting a hearing set forth in the Commission's regulations, 10 CFR Part 2, Subpart L, "Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings."

These requirements, which the requestor must address in detail, are:

1. The interest of the requester in the proceeding;
2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing;
3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and
4. The circumstances establishing that the request for hearing is timely, that is, filed within 30 days of the date of this notice.

In addressing how the requestor's interest may be affected by the proceeding, the request should describe the nature of the requestor's right under the Atomic Energy Act of 1954, as amended, to be made a party to the proceeding; the nature and extent of the requestor's property, financial, or other (i.e., health, safety, environmental) interest in the proceeding; and the possible effect of any order that may be entered in the proceeding upon the requestor's interest.

Dated at Rockville, Maryland, the 12th day of June 1995.

For the Nuclear Regulatory Commission.

Michael F. Weber,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95–15140 Filed 6–20–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–445]

Texas Utilities Electric Company; Comanche Peak Steam Electric Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations for Facility Operating License No. NPF–87, issued to Texas Utilities Electric Company (TU Electric, the licensee), for the Comanche Peak Steam Electric Station (CPSES), Unit 1, located in Somervell County, Texas.

Environmental Assessment

Identification of Proposed Action

The proposed exemption would extend the first inservice test (IST) program interval for Unit 1 from 120 months to approximately 156 months.

The proposed action is in accordance with the licensee's application for exemption dated March 1, 1994, as supplemented by letter dated August 12, 1994.

The Need for the Proposed Action

The proposed action is to extend the CPSES Unit 1 IST program interval beyond the 120 months specified in 10 CFR 50.55a(f)(4)(ii) which began on the Unit 1 commercial operation date (August 13, 1990) to 120 months from the Unit 2 commercial operation date (August 3, 1993). This extension from 120 months to 156 months for the Unit 1 IST interval is being requested in order to maintain the consistency of the IST program between CPSES Units 1 and 2.

The licensee intends to perform all future IST program updates for both units at 120-month intervals based on the Unit 2 commercial operation date.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that it is advantageous for a facility with two similar units to implement an IST program which is consistent between units by testing each unit to the same Code edition and by scheduling 120-month program updates on each unit to coincide. CPSES Units 1 and 2 are similar units and the licensee has therefore attempted to capture these advantages through the use of one IST program which specifies the same test requirements for both units based on the same ASME Code Edition.

The advantages include a significant reduction in the administrative effort required in preparing periodic program updates, a corresponding reduction in the program review effort by the NRC staff and a reduction in the potential for personnel errors in the performance of testing requirements. Further, a significant unit difference is eliminated by applying the same Code requirements to the testing of both units. In addition, this exemption increases plant safety through simplification and standardization of plant testing procedures, does not present an undue risk to the public health and safety, and is consistent with the common defense and security.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. According, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the CPSES, Units 1 and 2, dated October 1989.

Agencies and Persons Consulted

In accordance with its stated policy, on May 31, 1995, the staff consulted with the Texas State official, Mr. Arthur Tate of the Texas Department of Health, Bureau of Radiation Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's exemption request letter dated March 1, 1994, as supplemented by letter dated August 12, 1994, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, Texas 76019.

Dated at Rockville, Maryland, this 12th day of June 1995.

For the Nuclear Regulatory Commission.

Timothy J. Polich, Project Manager,

Project Directorate IV–1 Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–15141 Filed 6–20–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–280 and 50–281]

Virginia Electric & Power Co.; Surry Power Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–32 and DPR–37, issued to Virginia Electric and Power Company, (the licensee), for operation of the Surry Power Station, Units 1 and 2, located in Surry County, Virginia.

Environmental Assessment

Identification of the Proposed Action

The proposed action would increase the rates core power level at each Surry unit from 2441 Megawatts thermal (MW_t) to 2546 MW_t which is an increase in the rated core power of approximately 4.3 percent.

The proposed action is in accordance with the licensee's application for amendment dated August 30, 1994, as supplemented by letters dated February 6, 1995, February 13, 1995, February 27, 1995, March 23, 1995, March 28, 1995, April 13, 1995 April 20, 1995, April 28, 1995, and May 5, 1995.

The Need for the Proposed Action

The proposed action would increase the electrical output for each unit by 34 Megawatts-electrical (MW_e) and thus provide additional electrical power to the grid which services the commercial and domestic areas in the State of Virginia.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that a slight change in the environmental impact can be expected for the proposed increase in power. The proposed core uprating is projected to increase the rejected heat by 6 percent. However, the Environmental Report and the NRC-approved Final Environmental Impact Statement (FEIS), as amended, have already addressed plant operation up to a stretch core power of 2546 MW_t. Thus, the 6 percent increase in rejected heat has already been evaluated and determined to not significantly impact on the quality of the human environment. Also, the proposed increase in core power involved no significant change in types or significant increase in the amounts of any effluents that may be released offsite which has not already been evaluated and approved in the FEIS, as amended, for a stretch core power level of 2546 MW_t. Similarly, as enveloped by the FEIS, as amended, there would be no significant increase in individual or cumulative occupational radiation exposure. The waste heat will not exceed the 12.0×10^9 BTUs per hour permitted by the Commonwealth of Virginia.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR part 20. Except for heat load, which is bounded by previous analysis, as described above, the amendment does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no significant environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alterntive Use of Resources

The action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Surry Power Station, Units 1 and 2.

Agencies and Persons Consulted

In accordance with its stated policy, on May 16, 1995, the staff consulted with the Virginia State official, L. Foldesi, of the State Health Department, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated August 30, 1994, as supplemented by letters dated February 6, 1995, February 13, 1995, February 27, 1995, March 23, 1995, March 28, 1995, April 13, 1995, April 20, 1995, April 28, 1995, and May 5, 1995, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Dated at Rockville, Maryland, this 14th day of June 1995.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Project Directorate II–I, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–15138 Filed 6–20–95; 8:45 am]

BILLING CODE 7590–1–M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2332b), the Advisory Committee on Reactor Safeguards will hold a meeting on July 13–15, 1995, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Wednesday, December 28, 1994 (59 FR 66977).

Thursday, July 13, 1995

8:30 a.m.—8:45 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting and comment briefly regarding items of current interest. During this session, the Committee will discuss priorities for preparation of ACRS reports.

8:45 a.m.—10:15 a.m.: Revised Health Effects Valuation: Dollars/Person-Rem (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding proposed revisions to NRC health effects valuation.

Representatives of the industry will participate, as appropriate.

10:30 a.m.—12:00 noon: Meeting with the NRC Executive Director for Operations (EDO) and Other Office Directors (Open)—The Committee will meet with the Executive Director for Operations and other NRC program Office Directors to discuss items of mutual interest, including risk/performance-based regulations; PRA policy statement and the use of PRA in the regulatory process; maintaining long-term technical capabilities; and NRC participation in national and international technical exchange meetings.

1:00 p.m.–2:30 p.m.: NRC Technical Training Center (TTC) Curricula (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding TTC curricula, with emphasis in the areas of PRA and digital instrumentation and control systems.

2:45 p.m.–4:15 p.m.: BWR Core Power Stability/ATWS (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and the BWR Owners Group (BWROG) regarding proposed revisions to the emergency procedure guidelines that were developed by the BWROG to cope with an ATWS event compounded by core power instability.

Representatives of other industry groups will participate, as appropriate.

A portion of this session may be closed to discuss General Electric Nuclear Energy proprietary information applicable to this matter.

4:15 p.m.–5:15 p.m.: Proposed Resolution of Generic Safety Issue (GSI) 83, Control Room Habitability (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed resolution of GSI–83.

Representatives of the industry will participate, as appropriate.

5:15 p.m.–6:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting, as well as proposed ACRS reports on fire protection-related issues and prioritization of Generic Safety Issues.

Friday, July 14, 1995

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 a.m.–9:30 a.m.: Engineered Safety Feature (ESF) Bypass Study (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the results of the ESF Bypass performed by the NRC Office for Analysis and Evaluation of Operational Data (AEOD).

Representatives of the industry will participate, as appropriate.

9:30 a.m.–10:45 a.m.: Proposed Resolution of Generic Safety Issue (GSI) 24, Automatic ECCS Switchover to Recirculation (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed resolution of GSI–24.

Representatives of the industry will participate, as appropriate.

11:00 a.m.–11:15 a.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss responses expected from the NRC Executive Director for Operations to ACRS comments and recommendations included in recent ACRS reports.

11:15 a.m.–12:00 noon: Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business and internal organizational and personnel matters relating to the ACRS staff members.

A portion of this session may be closed to discuss matters that relate solely to internal personnel rules and practices of this Advisory Committee, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

1:00 p.m.–3:00 p.m.: Analyses Methodology Required by the Pressurized Thermal Shock (PTS) Rule (Open)—The Committee will hear presentations by and hold discussions with the NRC staff regarding on-going and future work associated with issues that have arisen during implementation of the PTS Rule provisions for operating nuclear power plants, and the lessons learned from the forced shutdown of the Yankee Rowe plant.

Representatives of the industry will participate, as appropriate.

3:15 p.m.–3:45 p.m.: Future ACRS Activities (Open)—The Committee will select topics for consideration during future ACRS meetings.

3:45 p.m.–6:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting, as well as proposed ACRS reports on fire protection-related issues and prioritization of Generic Safety Issues.

Saturday, July 15, 1995

8:30 a.m.–11:30 a.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting, and on other matters noted above.

11:30 a.m.–12:30 p.m.: Strategic Planning (Open)—The Committee will discuss items that are of importance to the NRC which should receive additional emphasis in its future deliberations.

12:30 p.m.–12:45 p.m.: New Research Needs (Open)—The Committee will discuss new research needs, if any, identified during this meeting.

12:45 p.m.–1:00 p.m.: Miscellaneous (Open)—The Committee will discuss miscellaneous matters related to the conduct of Committee activities.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 5, 1994 (59 FR 50780). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during the open portions of the meetings, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director, Dr. John T. Larkins, at least five days before the meeting if possible, so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the ACRS Executive Director prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) Pub. L. 92–463, I have determined that it is necessary to close portions of this meeting noted above to discuss information that involves the internal personnel rules and practices of this Advisory Committee per 5 U.S.C. 552b(c)(2); to discuss information the release of which would constitute a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6); and to discuss General Electric Nuclear Energy proprietary information per 5 U.S.C. 552b(c)(4).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the ACRS Executive Director, Dr. John T. Larkins (telephone 301-415-7361), between 7:30 a.m. and 4:15 p.m. edt.

Dated: June 15, 1995.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 95-15135 Filed 6-20-95; 8:45 am]

BILLING CODE 7590-01-M

Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from May 26, 1995, through June 9, 1995. The last biweekly notice was published on Tuesday, June 6, 1995 (60 FR 29869).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By July 21, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any

limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Commonwealth Edison Company, Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment request: June 8, 1995, supersedes December 16, 1994, request in its entirety, supplemented by letters dated November 30, 1994, April 27, 1995, May 5 and May 11, 1995.

Description of amendment request: The proposed amendment would revise Figure 3.4-4a in the Braidwood Unit 1's technical specifications which provides the nominal pressurizer power operated relief valve set points for the low-temperature overpressure protection system (LTOPS). The proposed revision would extend the applicability of Figure 3.4-4a from 5.37 effective full power years (EFPY) to 16 EFPY (Unit 1). In addition, the proposed amendment removes the 638 psig administrative limit line from the LTOPS curve, because the appropriate instrument uncertainties and discharge piping pressure limits are included in the proposed LTOPS curve. The amendment request also proposes administrative changes to Figure 3.4-4a format and its associated index page.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The new LTOPS curve will not change any postulated accident scenarios. The revised curve was developed using industry standards and regulations which are recognized as being inherently conservative. Appropriate instrument uncertainties and allowances have been included in the development of the LTOPS curves. The PT and LTOPS curves provide RCS pressure limits to protect the Reactor Pressure Vessel (RPV) from brittle fracture by clearly separating the region of normal operations from the region where the RPV is subject to brittle fracture.

Using Regulatory Guide (RG) 1.99, "Radiation Embrittlement of Reactor Vessel Materials," Revision 2, Braidwood Unit 1 Surveillance Capsule U and Capsule X results and the requirements of Appendix G to 10 CFR 50, as modified by the guidance in ASME Code Case N-514, a new LTOPS curve was prepared. This new curve, in conjunction with the PT Limit curves, and the heatup and cooldown ranges provides the required assurance that the RPV is protected from brittle fracture.

No changes to the design of the facility have been made, no new equipment has been installed, and no existing equipment has been removed or modified. This amendment will not change any system operating modes. The revised LTOPS curve provides assurance that the RPV is protected from brittle fracture.

The index page and format changes are purely administrative in nature and are designed to reflect the change in the duration of applicability of Figure 3.4-4a and improve the readability of Figure 3.4-4a. These administrative changes will have no effect on any equipment, system, or operating mode.

Thus, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The use of the new LTOPS curve does not change any postulated accident scenarios. The new LTOPS curve was generated using Braidwood capsule surveillance data and an approved, conservative methodology. No new equipment will be installed, and no existing equipment will be modified. No new system interfaces are created, and no existing system interfaces are modified. The new LTOPS curve provides assurance that the RPV is protected from brittle fracture.

No new accident or malfunction mechanism is introduced by this amendment.

The index page and format changes are purely administrative in nature and are designed to reflect the change in the duration of applicability of Figure 3.4-4a, and improve the readability of Figure 3.4-4a. These administrative changes will have no effect on any equipment, system, or operating mode.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The new LTOPS curve was developed using industry standards and regulations which are recognized as being inherently conservative. Appropriate instrument uncertainties and allowances are included in the development of the new LTOPS curve. This amendment will not change the operational characteristics or design of any equipment or system.

All accident analysis assumptions and conditions will continue to be met. The RPV is adequately protected from non-ductile failure by the revised LTOPS curve.

The index page and format changes are purely administrative in nature and are designed to reflect the change in the duration of applicability of Figure 3.4-4a, and improve the readability of Figure 3.4-4a. These administrative changes will have no effect on any equipment, system, or operating mode.

Thus, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603

NRC Project Director: Robert A. Capra

Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan

Date of amendment request: March 4, 1993, as revised April 14, 1993, as supplemented April 19 and May 31, 1995

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) to conform to the wording of the revised 10 CFR Part 20, "Standards for Protection Against Radiation," and to reflect a separation of chemistry and radiation protection responsibilities. The supplemental submittals provided additional information on the proposed TS change in response to NRC's request for additional information of May 5, 1995. The original submittal was noticed on May 12, 1993 (58 FR 28053), as corrected June 1, 1993 (58 FR 31222).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1.Will the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change does not affect the probability or consequences of an accident. The proposed change is to the ADMINISTRATIVE and RADIOLOGICAL EFFLUENT RELEASES sections of the facility Technical Specifications, and are administrative in nature.

- Change "Chemistry and Radiation Protection Supervisor" to "Radiation Protection Supervisor."

- The change from "mR/h" to "mrem/h" is solely a change in terminology since the revised 10 CFR 20 does not recognize or define the roentgen as a unit of radiation.

- The Liquid Effluents Concentration section and the associated bases have been revised to conform with 10 CFR 50.36(a) [10 CFR 50.36a] with effluent concentrations limited to 10 times the limits of 10 CFR 20.1001 - 20.2402, Appendix B, Table 2, Column 2.

- The actual instantaneous dose rate limits of the Gaseous Effluents Dose Rate section have not changed. However, the bases section has. Under the former 10 CFR 20, these dose rates correspond roughly to maximum permissible concentration and dose(s) received by the maximum exposed member of the public if allowed to continue for an entire year. These limits are used more as instantaneous limits (dose rates above which are not allowed to continue for more than one hour at a time) so as to provide assurance not to exceed 10 CFR 50, Appendix I limits.

2. Will the proposed change(s) create the possibility of a new or different kind of accident from any accident previously evaluated?

This proposed change is required by the implementation of a new 10 CFR Part 20 requirements (except for the title change) and are administrative in nature (sic). Neither the material condition of the facility nor the accident analyses are affected by this proposed change. Therefore, the proposed change does not create the possibility of a different type of accident than previously evaluated.

3. Will the proposed change involve a significant reduction in the margin of safety?

Each limit that was affected increased the margin of safety by making the limit more conservative; or remained the same.

- The change of distance to "30 centimeters" (12 inches) is more conservative, providing a higher degree of protection for occupationally exposed worker.

- The liquid effluent concentration limits remain essentially the same. The bases have changed to [10 CFR 50.36a] reflect 10 times 10 CFR 20.1001 - 20.2402, Appendix B, Table 2, Column 2 limits as controlled by 10 CFR 50.36(a) [10 CFR 50.36a] dose limits.

- Effluent alarm setpoints were reviewed to determine any necessary changes and were found to be set appropriately. No change will be necessary.

- "The instantaneous release rate limits for airborne releases will not be changed because they are imposed on licensees as a control to ensure that the licensees meet Appendix I requirements." Alarm setpoints for these dose rate limits may change slightly due to changes in scientific data and will be reviewed and changed as appropriate prior to implementation.

Therefore, the proposed change does not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201

NRC Project Director: Cynthia A. Carpenter, Acting

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: April 12, 1995

Description of amendment request: The amendments delete Technical Specification 3/4.3.4, "Turbine Overspeed Protection," and its associated Bases. The deletion of TS 3/4.3.4 and its associated Bases provides Duke Power Company the flexibility to implement the manufacturer's recommendations for turbine steam valve surveillance test requirements. These test requirements will be relocated from the TS to the Selected Licensee Commitments (SLC) Manual. The SLC Manual is Chapter 16 of the Updated Final Safety Analysis Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1

The requested amendments will not involve a significant increase in the probability or consequences of an accident previously evaluated. Relocation of the affected TS section to the SLC Manual will have no effect on the probability of any accident occurring. In addition, the consequences of an accident will not be impacted since the above system will continue to be utilized in the same manner as before. No impact on the plant response to accidents will be created.

Criterion 2

The requested amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated. No new accident causal mechanisms will be created as a result of relocating the affected TS requirements to the SLC Manual. Plant operation will not be affected by the proposed amendments and no new failure modes will be created.

Criterion 3

The requested amendments will not involve a significant reduction in a margin of safety. No impact upon any plant safety margins will be created. Relocation of the affected TS requirements to the SLC Manual in consistent with the content of the Westinghouse RSTS (Revised Standard Technical Specifications), as the NRC did not require technical specification controls for the turbine overspeed protection system in the RSTS. The proposed amendments are consistent with the NRC philosophy of encouraging utilities to propose amendments that are consistent with the content of the RSTS.

Based upon the preceding analyses, Duke Power Company concludes that the requested amendments do not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this

review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: Herbert N. Berkow

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: May 18, 1995, as supplemented by letter dated May 31, 1995.

Description of amendment request: The proposed amendment would change Tecnical Specification (TS) 3.6.1.2 to defer the next scheduled containment integrated leak rate test (ILRT) at Catawba, Unit 2, for one outage, from the end-of-cycle (EOC) 7 refueling outage (scheduled for October 1995) to EOC-8 (scheduled for March 1997). Title 10 of the Code of Federal Regulations, Part 50, Appendix J, requires that three ILRTs be performed at approximately equal intervals during each 10-year service period at a nuclear station. "Approximately equal intervals" is defined in Catawba's TS as 40 plus or minus 10 months. The proposed one-time change would allow Catawba to extend that interval to less than or equal to 70 months.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Containment leak rate testing is not an initiator of any accident; the proposed interval extension does not affect reactor operations or accident analysis, and has no perceptible radiological consequences. Therefore, this proposed change will not involve a significant increase in the probability or consequences of any previously[]evaluated accident.

2. The proposed change will not create the possibility of any new accident not previously evaluated.

The proposed change does not affect normal plant operations or configuration, nor does it affect leak rate test methods. The test history at Catawba (no ILRT [intergrated leak rate test] failures) provides continued assurance of the leak tightness of the containment structure.

3. There is no significant reduction in a margin of safety.

It has been documented in draft NUREG-1493 that an increase in the ILRT interval from 1 test every 3 years to 1 test every 10 years would result in an increase in population exposure risk in the vicinity of 5 representative plants from .02% to .14%. The proposed change included herein, an increase from 40 [plus or minus] 10 months to [less than or equal to] 70 months, represents a small fraction of that already very small increase in risk. Therefore, it may be concluded that no significant reduction in a margin of safety will occur.

Based on the above, no significant hazards consideration is created by the proposed change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: Herbert N. Berkow

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: April 12, 1995

Description of amendment request: The amendments delete Technical Specification 3/4.3.4, "Turbine Overspeed Protection," and its associated Bases. The deletion of TS 3/4.3.4 and its associated Bases provides Duke Power Company the flexibility to implement the manufacturer's recommendations for turbine steam valve surveillance test requirements. These test requirements will be relocated from the TS to the Selected Licensee Commitments (SLC) Manual. The SLC Manual is Chapter 16 of the Updated Final Safety Analysis Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1

The requested amendments will not involve a significant increase in the probability or consequences of an accident previously evaluated. Relocation of the affected TS section to the SLC Manual will have no effect on the probability of any accident occurring. In addition, the consequences of an accident will not be impacted since the above system will continue to be utilized in the same manner as before. No impact on the plant response to accidents will be created.

Criterion 2

The requested amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated. No new accident causal mechanisms will be created as a result of relocating the affected TS requirements to the SLC Manual. Plant operation will not be affected by the proposed amendments and no new failure modes will be created.

Criterion 3

The requested amendments will not involve a significant reduction in a margin of safety. No impact upon any plant safety margins will be created. Relocation of the affected TS requirements to the SLC Manual in consistent with the content of the Westinghouse RSTS [Revised Standard Technical Specifications], as the NRC did not require technical specification controls for the turbine overspeed protection system in the RSTS. The proposed amendments are consistent with the NRC philosophy of encouraging utilities to propose amendments that are consistent with the content of the RSTS.

Based upon the preceding analyses, Duke Power Company concludes that the requested amendments do not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: Herbert N. Berkow

Florida Power and Light Company, et al., Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of amendment request: May 17, 1995

Description of amendment request: The amendment will extend the applicability of the current Reactor Coolant System (RCS) Pressure/Temperature Limits and maximum allowed RCS heatup and cooldown rates to 23.6 Effective Full Power Years (EFPY) of operation. In addition, administrative changes are proposed for

TS 3.1.2.1 (Boration Systems Flow Paths-Shutdown) and TS 3.1.2.3 (Charging Pump-Shutdown) to clarify the conditions for which a High Pressure Safety Injection pump may be used.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Pursuant to 10 CFR 50.92, a determination may be made that a proposed license amendment involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. Each standard is discussed as follows:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The pressure-temperature (P/T) limit curves in the Technical Specifications are conservatively generated in accordance with the fracture toughness requirements of 10 CFR 50 Appendix G as supplemented by the ASME Code Section XI, Appendix G recommendations. The RT_{NDT} values are based on Regulatory Guide 1.99, Revision 2, shift prediction and attenuation formula. Analyses of reactor vessel material irradiation surveillance specimens are used to verify the validity of the fluence predictions and the P/T limit curves. Use of these curves in conjunction with the surveillance specimen program ensures that the reactor coolant pressure boundary will behave in a non-brittle manner and that the possibility of rapidly propagating fracture is minimized. Based on the use of plant specific material data, analysis has demonstrated that the current P/T limit curves will remain conservative for up to 23.6 EFPY.

In conjunction with extending the applicability of the existing P/T limit curves, the low temperature overpressure protection (LTOP) analysis for 15 EFPY is also extended. The LTOP analysis confirms that the current setpoints for the power-operated relief valves (PORVs) will provide the appropriate overpressure protection at low Reactor Coolant System (RCS) temperatures. Because the P/T limit curves have not changed, the existing LTOP values have not changed, which include the PORV setpoints, heatup and cooldown rates, and disabling of non-essential components.

The proposed amendment does not change the configuration or operation of the plant, and assurance is provided that reactor vessel integrity will be maintained. Therefore, operation of the facility in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

By applying plant specific data in the determination of critical vessel material limits, the applicability of the existing pressure temperature limits and LTOP requirements can be extended. There is no change in the configuration or operation of the facility as a result of the proposed amendment. The amendment does not involve the addition of new equipment or the modification of existing equipment, nor does it alter the design of St. Lucie plant systems. Therefore, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

Analysis has demonstrated that the fracture toughness requirements of 10 CFR 50 Appendix G are satisfied and that conservative operating restrictions are maintained for the purpose of low temperature overpressure protection. The P/T limit curves will provide assurance that the RCS pressure boundary will behave in a ductile manner and that the probability of a rapidly propagating fracture is minimized. Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

Based on the discussion presented above and on the supporting Evaluation of Proposed TS Changes, FPL has concluded that this proposed license amendment involves no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Attorney for licensee: J. R. Newman, Esquire, Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036

NRC Project Director: David B. Matthews

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: May 17, 1995

Description of amendment request: The proposed amendments will improve consistency between the Technical Specifications and the improved Combustion Engineering Standard Technical Specifications (NUREG-1432, dated September 1992) by incorporating changes in text and resolving other inconsistencies identified by the NRC and plant operations staff.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Pursuant to 10 CFR 50.92, a determination may be made that a proposed license amendment involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. Each standard is discussed as follows:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendments consist of administrative changes to the Technical Specifications (TS) for St. Lucie Units 1 and 2. The amendments will implement changes in text to improve consistency within the TS for each unit, the improved Combustion Engineering Standard Technical Specifications (NUREG-1432, dated September 1992), and the regulations. The proposed amendments do not involve changes to the configuration or method of operation of plant equipment that is used to mitigate the consequences of an accident, nor do the changes otherwise affect the initial conditions or conservatism assumed in any of the plant accident analyses. Therefore, operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed administrative revisions will not change the physical plant or the modes of plant operation defined in the Facility License for each unit. The changes do not involve the addition or modification of equipment nor do they alter the design or operation of plant systems. Therefore, operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendment would not

involve a significant reduction in a margin of safety.

The proposed amendments are administrative in nature and do not change the basis for any technical specification that is related to the establishment of, or the preservation of, a nuclear safety margin. Therefore, operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

Based on the above discussion and the supporting Evaluation of Technical Specification changes, FPL has determined that the proposed license amendment involves no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Attorney for licensee: J.R. Newman, Esquire, Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036

NRC Project Director: David B. Matthews

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendment request: May 23, 1995

Description of amendment request: The licensee proposes to change Turkey Point Units 3 and 4 Technical Specifications (TS) by changing the setpoint presentation format for the Reactor Protection System (RPS) and Engineered Safety Features Actuation System (ESFAS) instrumentation setpoints contained in Technical Specification Tables 2.2-1 and 3.3-3. The approved Westinghouse five-column instrument setpoint methodology currently being used to establishing those setpoints would be retained. The intent of the amendments is to eliminate the need for minor administrative license amendments to these tables that do not impact either the Trip Setpoints or the Safety Analysis Limits.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

No changes to the Reactor Trip System instrumentation setpoints, ESFAS instrumentation setpoints, or the Turkey Point Plant licensing basis (NRC-approved, Westinghouse five-column setpoint methodology, as documented in Westinghouse topical report WCAP-12745P), is being made. The changes proposed reduce the level of detail in the Technical Specifications and place that detailed information in controlled procedures, drawings and the Final Safety Analysis Report. Since the setpoints and methodology remain the same, the changes proposed by this submittal will not increase the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

These proposed changes remove from the Technical Specifications a level of detail which will be maintained in controlled procedures and drawings. The Turkey Point Plant licensing basis (NRC-approved, Westinghouse five column setpoint methodology, as documented in Westinghouse topical report WCAP-12745P), continues to be used to calculate the Reactor Trip System and ESFAS setpoints. No changes to Reactor Trip System or ESFAS instrumentation setpoints are proposed. Since the same methodology will be used to determine the setpoints and no setpoints are changed, the possibility that a new or different kind of accident from any previously evaluated will not be created.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The Turkey Point Plant licensing basis (NRC-approved, Westinghouse five column setpoint methodology, as documented in Westinghouse topical report WCAP-12745P), continues to be used to calculate the Reactor Trip System and ESFAS setpoints. No changes to the Reactor Trip System or ESFAS instrumentation setpoints are proposed. Since the same methodology will be used to determine the setpoints, and no setpoints are changed by this submittal, this change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied.Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199

Attorney for licensee: J.R. Newman, Esquire, Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036

NRC Project Director: David B. Matthews

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: June 6, 1995

Description of amendment request: The proposed change would revise Plant Hatch Units 1 and 2 Technical Specification (TS) Surveillance Requirements (SR) 3.6.4.1.3 and 3.6.4.1.4 for the secondary containment drawdown. The revision would reduce the SR acceptance criteria to greater than or equal to 0.20 inch of vacuum from greater than or equal to 0.25 inch of vacuum. Also, the licensee proposed to change the Bases to reflect the proposed TS revision.

The licensee stated that the secondary containment performs no active function in response to either loss-of-coolant accident or fuel handling accident. However, its leak tightness is required to ensure that the release of radioactive materials from the primary containment is restricted to those leakage paths and associated leakage rates assumed in the accident analysis and that fission products entrapped within the secondary containment structure will be treated by the Unit 1 and Unit 2 standby gas treatment systems prior to discharge to the environment. This change will continue to provide adequate margin for the secondary containment to be sufficiently leak tight such that the conclusions of the accident analysis remain valid.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The secondary containment serves a mitigation function and therefore this change does not increase the probability of an accident previously evaluated. The consequences of the previously evaluated accidents are not affected because at the wind conditions assumed in the accident analysis the building will be at a negative pressure and no exfiltration is postulated. Furthermore, the estimated wind speed at which exfiltration might take place (31 mph) is not a frequent occurrence (wind speeds of greater than 24 mph occur [less than] <0.5% of the time based on Plant Hatch specific meteorological data).

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously analyzed. Revising the surveillance requirement acceptance criteria does not physically modify the plant nor does it modify the operation of any existing equipment.

3. The proposed change does not involve a significant reduction in the margin of safety. The change in vacuum acceptance criteria results in a slightly lower wind speed that may result in exfiltration from the building. However, this wind speed (31 mph) is in the realm of wind speeds which are infrequent at Plant Hatch. Furthermore, there are numerous conservatisms in the existing dose calculations including: neutral to stable meteorological conditions, ground level release until establishment of the required vacuum, accident source terms at event initiation, and no credit for plateout. The secondary containment would be maintained at a slight negative pressure shortly after the Standby Gas Treatment fans are running and the releases would be from the main stack (well before the accident source term would be present in the secondary containment). Some plateout would also occur and this is conservatively ignored. Therefore the margin of safety is not significantly reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Herbert N. Berkow

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: May 17, 1995

Description of amendment request: The proposed license amendment would revise Section 3.2 of the Technical Specifications (TSs) for Three Mile Island Nuclear Station, Unit 1 (TMI-1) to relocate the requirements for volume and boron concentration of the chemical addition system boric acid mix tank and the reclaimed boric acid storage tank from the TMI-1 TSs to the TMI-1 Core Operating Limits Report. The licensee, in its request, stated that the proposed changes are consistent with the intent of NRC Generic Letter 88-16.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated. The proposed amendment relocates chemical addition tank volume and boron concentration parameters from Technical Specifications to the TMI-1 Core Operating Limits Report. The proposed amendment provides continued control of the values of these parameters and assures these values are developed using NRC-approved reload methodologies consistent with all applicable limits of the safety analyses addressed in the TMI-1 [Final Safety Analysis Report] FSAR. The Technical Specifications retain the requirement to maintain the plant within the appropriate bounds of these limits. Therefore, the proposed amendment has no effect on the probability of occurrence or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed amendment relocates chemical addition tank volume and boron concentration parameters to the TMI-1 Core Operating Limits Report. The Technical Specifications retain the requirement to maintain the boric acid mix tank and reclaimed boric acid storage tank volume and boron concentration parameters within the appropriate limits. Therefore, the proposed amendment has no effect on the possibility of creating a new or different kind of accident from any accident previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. The proposed amendment provides continued control of the boric acid mix tank and reclaimed boric acid storage tank volume and boron concentration parameters and assures these values remain consistent with all applicable limits of the safety analyses addressed in the TMI-1 FSAR. Therefore, it is concluded that operation of the facility in accordance with the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Law/Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Phillip F. McKee

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: May 24, 1995

Description of amendment request: The proposed license amendment would revise Table 4.1-1 of the Technical Specifications (TSs) for Three Mile Island Nuclear Station, Unit 1 (TMI-1) to revise the test frequency requirement for the source range nuclear instrumentation from 7 days before reactor startup to 6 months before startup.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed TSCR would not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated.

The proposed revision to the Technical Specifications does not involve any physical changes to the plant, and it does not impact the safety analysis with respect to design basis events and assumptions. The only change proposed is in the "Test" frequency for source-range Nuclear Instrumentation by revision of the appropriate Tech. Spec. tables. The revised testing requirement has no impact upon the probability of occurrence or the consequences of any accident previously evaluated, because no credit is taken in the accident analyses for the source range monitors nor are there any inputs to the Reactor Protection System. Tech. Spec. 3.1.9.2 requires that the control rod withdraw inhibit be operable at all times; however, it is not affected by this change request. Additionally, no nuclear safety equipment or systems interface with source-range nuclear instrumentation, and operator ability to monitor and trend post-accident neutron level is not affected by the proposed change. Therefore, this change request will not increase the probability of occurrence or the consequences of any previously analyzed accidents as described in the Updated [Final Safety Analysis Report] FSAR (UFSAR).

2. Operation of the facility in accordance with the proposed TSCR would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed revision to the TMI-1 Technical Specifications does not involve any physical changes to the plant, and does not impact on the safety analysis with respect to design basis events and assumptions. The only change proposed is in the "Test" frequency for Nuclear Instrumentation by revision of the appropriate Tech. Spec. tables. No nuclear safety equipment or

systems interface with the source-range nuclear instrumentation, and operator ability to monitor and trend post-accident neutron levels is not adversely affected by the proposed change. In addition, the source-range nuclear instrument channels provide indication to the control room, plant computer and one of two channels provides input to Remote Shutdown Panel B.

The 0.5% instrument drift over a six (6) month period will not affect the ability to operate other safety equipment; nor, will it increase the probability of failure of the rod withdrawal inhibit. The inhibit function is triggered by a startup rate, and a 0.5% drift over six (6) months will not affect the instrument's ability to perform the inhibit function. Therefore, this change has no impact upon the possibility of creating a new or different kind of accident from any previously evaluated in the UFSAR.

3. Operation of the facility in accordance with the proposed TSCR would not involve a significant reduction in a margin of safety.

The proposed revision to the TMI-1 Technical Specifications does not involve any physical changes to the plant, and does not impact on the safety analysis with respect to design basis events and assumptions. The only change proposed is in the surveillance frequency for Nuclear Instrumentation by revision of the appropriate Tech. Spec. tables. Startup rate instrumentation is not included in Technical Specifications 2.0, "Safety Limits"; and, hence, all system Limiting Conditions for Operation(s) remain unchanged. Testing of the source-range nuclear instrument channels within six (6) months prior to a reactor startup will not decrease the margin of safety. Hence, the margin of safety for the plant is not diminished by this change request.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Law/Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Phillip F. McKee

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: June 1, 1995

Description of amendment request: The proposed license amendment would revise Section 5.3.1.1 of the Technical Specifications (TSs) for Three Mile Island Nuclear Station, Unit 1 (TMI-1) to allow use of an alternate zirconium-based cladding material manufactured by Babcock & Wilcox Fuel Company to test the properties of the fuel in an operating core. Present TSs require fuel clad material to be either "zircaloy" or "ZIRLO."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated. The test assemblies with the zirconium-based claddings are mechanically and thermal-hydraulically similar to the remainder of the reload batch and the rest of the core, so no failure probability is increased, nor is any operational practice changed which could introduce a new initiator of an accident. The only credible event which could occur as a result of this demonstration is clad failure of the test fuel rods. The number of fuel rods involved is such a small percentage of the core inventory that even a postulated failure of all the demonstration fuel rods from a cause related to the demonstration would not result in dose consequences greater than existing limits. A failure of the fuel rods from a cause not related to the demonstration would not result in consequences greater than those which would have occurred had the assemblies not been demonstrated assemblies. Therefore, this change does not increase the probability of occurrence or the consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. The mechanical and thermal-hydraulic similarity of the test assemblies to the remainder of assemblies in the core precludes the credible possibility of creating any new failure mode or accident sequence. The use of the demonstration assemblies does not involve any alterations to plant equipment or procedures which would introduce any new or unique operational modes or accident precursors.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. The demonstration assemblies meet the same design as the remainder of assemblies in the core. Existing reload design and safety analysis limits are maintained, and the FSAR analyses are bounding. No special setpoints or other safety settings are required as a result of the use of these two (2) test assemblies. The assemblies will be placed in locations which will not experience limiting peak power conditions. Therefore, it is concluded that operation of the facility in accordance with the proposed amendment does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Law/Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Phillip F. McKee

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: April 27, 1995, as supplemented by letters dated May 4, and May 25, 1995.

Description of amendment request: The proposed amendment would change the tables associated with Technical Specification (TS) 3/4.3.3.5, Remote Shutdown System, to eliminate the core exit thermocouples (CETs). The proposed amendment would also change the tables associated with TS 3/4.3.3.6, Accident Monitoring Instrumentation, to require two operable channels of CETs, where each channel would be required to have at least two operable CETs per core quadrant. Each channel would also be required to have at least four operable CETs in at least one quadrant to support the operability of the subcooling margin monitors. In addition, the actions related to TS 3/4.3.3.6 would be changed to require that a report be submitted if one CET channel in a quadrant is inoperable for more than 30 days, and require a plant shutdown if both CET channels in a quadrant are inoperable for more than 7 days.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequence of an accident previously evaluated?

Change to Technical Specification 3.3.3.5:

Deleting the reference to the core exit thermocouples from the Remote Shutdown Technical Specification will not involve a significant increase in the probability of an accident previously evaluated because the core exit thermocouples are not potential accident initiators. The consequences of an accident previously evaluated will not be increased because the core exit thermocouples availability is not reduced, since adequate assurance of their operability is provided in Technical Specification 3.3.3.6, and by the surveillance of other indications that require the availability of the displays that also provide the core exit temperatures at the Auxiliary Shutdown Panel.

Change to Technical Specification 3.3.3.6:

The proposed change reduces the number of core exit thermocouples required per quadrant per channel from at least 4 to at least 2. Thus, the Actions when less than 4 thermocouples per quadrant per train are Operable but more than 6 thermocouples per quadrant are OPERABLE, and less than 6 thermocouples per quadrant are OPERABLE but at least 4 thermocouples per quadrant are OPERABLE and with the number of OPERABLE channels less than 4 thermocouples per quadrant are being deleted. This change does not affect the probability of an accident. The Accident Monitoring Instruments are not initiators of any analyzed events. The consequence of an accident is not affected by this change. The requirement to have two core exit thermocouples OPERABLE per quadrant per channel is adequate because one OPERABLE core exit thermocouple must be located near the center of the core and the other OPERABLE core exit thermocouple must be located near the core perimeter, such that the pair of core exit thermocouples indicate the radial temperature gradient across their core quadrant. The change will not alter assumptions relative to the mitigation of an accident or transient event. Functions supported by the thermocouples will still be adequately supported by the system. The revised specification provides for at least one quadrant per channel to have at least four operable thermocouples to protect the subcooling margin monitor in the event of a single failure. The other indications used to assess core cooling, as described in Chapter 7B of the South Texas Project Updated Final Safety Analysis Report remain unaffected by the proposed change. Therefore, this change will not involve a significant increase in the probability or consequence of an accident previously evaluated.

The proposed change also affects the allowed outage times for the thermocouples. The existing specification allows for 31 days in the case where there are less than four thermocouples per quadrant per train operable, 7 days where there are less than 6 thermocouples per quadrant, and 48 hours where there are less than 4 thermocouples per quadrant. The required action for each of these cases is a plant shutdown. The proposed specification will require a report to the Commission after 30 days in the case where one channel of core exit thermocouples is inoperable, and it will require the plant to go to HOT SHUTDOWN if two channels are inoperable for more than 7 days. A plant shutdown with only one channel inoperable is not warranted based on the fact that the redundant channel remains available to provide the necessary indication and the passive nature of the instrumentation (i.e., no critical automatic action).

As noted above, the core exit thermocouples are not accident initiators; consequently, the change in allowed outage time does not affect the probability of an accident. The consequences of an accident are not significantly increased because the changes to the allowed outage times are not extended to allow operation of the system in such a degraded condition that it will not perform its function. In addition, the other indications used to assess core cooling, as described in Chapter 7B of the South Texas Project Updated Final Safety Analysis Report remain unaffected by the proposed change. As noted above, functionality of the core exit temperature indication is preserved by requiring at least two thermocouples to be operable in separate regions of the core quadrant.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Change to Technical Specification 3.3.3.5:

Deleting the core exit thermocouples from the Remote Shutdown Technical Specification will not create the possibility of a new or different accident because there are no automatic actuations performed by the core exit thermocouples, nor are any different plant configurations or different operational procedures proposed. The existing safety analyses are unchanged and still applicable.

Change to Technical Specification 3.3.3.6:

The proposed change reduces the number of core exit thermocouples required per quadrant per channel from at least 4 to at least 2. Thus, the Actions when less than 4 thermocouples per quadrant per train are Operable but more than 6 thermocouples per quadrant are OPERABLE, and less than 6 thermocouples per quadrant are OPERABLE but at least 4 thermocouples per quadrant are OPERABLE and with the number of OPERABLE channels less than 4 thermocouples per quadrant are being deleted. This change will not physically alter the plant (no new or different type of equipment will be installed). The changes in methods governing normal plant operation are consistent with current safety analysis assumptions. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The change in the allowed outage time does not alter the physical configuration of the plant or how the plant is operated; consequently, this change does not create the possibility of a new or different kind of accident.

3. Does this change involve a significant reduction in a margin of safety?

Change to Technical Specification 3.3.3.5:

Deleting the core exit thermocouples from the Remote Shutdown Technical Specification does not involve a significant reduction in the margin of safety because the core exit thermocouples indications will still be available at the Auxiliary Shutdown Panel. In addition, adequate and appropriate assurance of the operability of the core exit thermocouples is provided in Technical Specification 3.3.3.6 for Accident Monitoring Instrumentation, including the changes proposed in this letter.

Change to Technical Specification 3.3.3.6:

The proposed change reduces the number of core exit thermocouples required per quadrant per channel from at least 4 to at least 2. Thus, the Actions when less than 4 thermocouples per quadrant per train are Operable but more than 6 thermocouples per quadrant are OPERABLE, and less than 6 thermocouples per quadrant are OPERABLE but at least 4 thermocouples per quadrant are OPERABLE and with the number of OPERABLE channels less than 4 thermocouples per quadrant are being deleted. The margin of safety is not affected by this change. The Accident Monitoring Instrumentation provide no automatic actuation functions. Even though the number of core exit thermocouples per quadrant per channel is being reduced, the Bases requirement to have one core exit thermocouple located near the center of the core and one core exit thermocouple located near the core perimeter ensures that the pair of core exit thermocouples indicate the radial temperature gradient across their core quadrant which ensures the required level of information is available. The functions dependent on the core exit thermocouples are still adequately supported by the thermocouples. The revised specification provides for at least one quadrant per channel to have at least four operable thermocouples to protect the subcooling margin monitor in the event of a single failure. In addition, the other indications used to assess core cooling, as described in Chapter 7B of the South Texas Project Updated Final Safety Analysis Report remain unaffected by the proposed change. The safety analysis assumptions will still be maintained, thus, no question of safety exists. Therefore, the change does not involve a significant reduction in a margin of safety.

The proposed changes to the allowed outage times have no significant impact on the margin of safety. A plant shutdown with only one channel inoperable is not warranted based on the fact that the redundant channel remains available to provide the necessary indication and the passive nature of the instrumentation (i.e., no critical automatic action). Based on the small likelihood of an accident occurring concurrent with the station being in an ACTION statement with regard to the thermocouples, and the small chance that the degradation of the system in such a situation would affect its functionality, and the diversity provided by other indications of core cooling, the changes in the allowed outage times are not considered significant.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior

College, J. M. Hodges, Learning Center, 911 Boling Highway, Wharton, Texas 77488

Attorney for licensee: Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, N.W., Washington, D.C. 20036

NRC Project Director: William D. Beckner

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment requests: March 31, 1995

Description of amendment requests: The proposed amendments would modify the technical specifications to eliminate the requirement to test certain safeguards pumps via their recirculation flowpath. The affected pumps are the centrifugal charging pumps, residual heat removal pumps, motor driven auxiliary feedwater pumps, and the turbine driven auxiliary feedwater pumps. The proposed amendments would also eliminate references to specific discharge pressures and flows associated with these pumps and remove footnotes associated with the Unit 2 cycle 9-10 refueling outage which are no longer applicable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Per 10 CFR 50.92, a proposed change does not involve a significant hazards consideration if the change does not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated,
2. create the possibility of a new or different kind of accident from any accident previously evaluated, or
3. involve a significant reduction in a margin of safety.

Criterion 1

The purpose for conducting periodic testing of the pumps identified in this proposed amendment is to detect gross degradation as required by Section XI of the ASME [American Society of Mechanical Engineers] Code. The Cook Nuclear Plant IST [Inservice Testing] program, which encompasses Section XI of the ASME Code, is the basis for the existing as well as the proposed T/Ss. Testing the pumps utilizing a high capacity flowpath instead of a recirculation flow path (where applicable) will have no impact on the ability of the pump to perform its intended function. In fact, it is expected that the high capacity flowpath will provide a more accurate assessment of the pump/systems' conditions and ability to meet their safety function.

The removal of specific test parameters, in favor of referencing the Cook Nuclear Plant IST Program, will not impact the ability of the pumps to perform their safety related function. IST Program parameters ensure that the pumps under test provide the support assumed in the plant's safety analyses.

Therefore, based on these considerations, it is concluded that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2

The proposed change will preclude the need to realign selected pumps to their recirculation flowpaths for testing purposes (where applicable). Eliminating the need for alignment to the recirculation flowpath aids in maximizing the pump's availability to perform its safety function.

As stated previously the removal of the specific test parameters, in favor of referencing the Cook Nuclear Plant IST Program will not impact the ability of the pumps to perform their intended safety function.

Thus, it is concluded that the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3

As stated previously, testing of the selected pumps utilizing a high capacity flowpath will provide greater assurance of pump capability and maximize pump availability. Additionally, removing specific test parameters in favor of referencing the Cook Nuclear Plant IST Program will have no impact on the ability of the pumps to perform their intended safety function. Therefore, we believe that the margin for safety as defined int 10 CFR [Part] 100 has not been reduced. Based on these considerations, it is concluded that the changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Although not specifically addressed in the licensee's analysis, the elimination of specific discharge pressures and flows is encompassed in the elimination of the recirculation testing requirement and presents no additional significant hazards consideration. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: Cynthia A. Carpenter, Acting

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment requests: May 19, 1995

Description of amendment requests: The proposed amendments would modify the Technical Specification action statement associated with the Main Steam Safety Valves (MSSVs). The action statement would reflect different requirements based on operating Mode and the power range neutron flux high setpoint with inoperable MSSVs would be revised in response to an issue raised in Westinghouse Nuclear Safety Advisory Letter 94-001.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Per 10 CFR 50.92, a proposed change does not involve a significant hazards consideration if the change does not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated,
2. create the possibility of a new or different kind of accident from any accident previously evaluated, or
3. involve a significant reduction in a margin of safety.

Criterion 1

Correction of the setpoint methodology does not represent a credible accident initiator. The new methodology reduces the allowable power level setpoints and is conservative compared to the presently evaluated setpoints. The consequences of any previously evaluated accident are not adversely affected by this action because the decrease in the setpoints resulting from the new calculational methodology will ensure that the MSSVs are capable of relieving the pressure at the allowable power levels. Based on these considerations, it is concluded that the changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Correcting the overly restrictive action statements of T/S 3.7.1 does not involve a significant increase in the probability of an accident. The proposed changes modify existing text to more accurately reflect the intention of the restrictions imposed by the action statements. The changes do not create any situation that would initiate a credible accident sequence.

Criterion 2

The change in Table 3.7-1 reduces the allowable power levels that can be achieved in the event that one or more main steam safety valve(s) is inoperable. This change is a result of vendor guidance to correct an error in the existing methodology used to determine the setpoints for the power level. Changing the methodology used to determine the setpoints, and lowering the setpoints themselves, do no create a new condition that could lead to a credible accident. Therefore, it is concluded that the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The action statements remain in effect to perform the intended function of protecting the plant's secondary side when the main steam safety valves are inoperable. They have only been modified to correct the overly restrictive language that specifies when, in each MODE, specific actions must be taken. Therefore, the proposed change does not create a new or different type of accident.

Criterion 3

The margin of safety presently provided is not reduced by the proposed change in the setpoints. The change will correct the limiting power levels that are to be implemented when MSSVs are inoperable. This action does not adversely affect the margin that was previously allocated for the ability of the MSSVs to relieve secondary side pressure. Based on these considerations, it is concluded that the changes do not involve a significant reduction in a margin of safety.

The margin of safety is also not significantly reduced by the proposed change to the action statements of the T/S. The proposed revision clarifies when specific actions are to be taken in response to inoperable main steam safety valves. The changes do not decrease the effectiveness of the actions to be taken; therefore, they do not significantly reduce any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: Cynthia A. Carpenter, Acting

North Atlantic Energy Service Corporation, Docket No. 50-443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: April 16, 1995

Description of amendment request: The proposed amendment would modify certain requirements of the Seabrook Station Technical Specifications relating to containment building penetrations during refueling operations. One change would allow both doors of the containment personnel airlock (PAL) to be open during core alterations or movement of irradiated fuel within containment provided at least one PAL door is capable of being closed and a designated individual is available outside the PAL to close the door. Another change would allow the use of alternate containment building penetration closure methodologies during refueling operations and provide for the manual closure of a penetration provided a designated individual is available at the penetration.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

A. The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)). The changes do not affect the events or conditions which could result in a fuel handling accident and do not affect any equipment or procedures used for fuel handling. The changes would continue to ensure that penetrations which provide direct access of the containment atmosphere to outside containment are capable of restricting a release of radioactive material to the environment. Therefore, the changes do not involve a significant increase in the probability of an accident previously evaluated.

The changes do have the potential for increased dose at the site boundary due to a postulated fuel handling accident. However, the licensee's radiological evaluations show that the resulting offsite and control room doses would be well within the acceptance limits of 10 CFR Part 100 and within the acceptance limits of GDC 19.

The Commission has provided guidance concerning the application of standards in 10 CFR 50.92 by providing certain examples (cf. FEDERAL REGISTER, March 6, 1986 51 FR 7751) of amendments that are considered not likely to involve a significant hazards consideration. These changes are similar to example (vi) in the **Federal Register** notice, in that they result in an increase in the consequences of a previously analyzed accident, but the results of the change are clearly within all acceptance criteria.

B. The changes do not create the possibility of a new or different kindof accident from any accident previously evaluated (10 CFR 50.92(c)(2))because the changes do not affect the events or conditions which could result in a fuel handling accident and do not affect any equipment or procedures used for fuel handling. The changes do not make any modifications to existing plant structures, systems, or components, or otherwise affect the manner by which the facility is operated.

C. The changes do not involve a significant reduction in a margin ofsafety (10 CFR 50.92(c)(3)) because the increase in calculated offsite and control room doses resulting from a postulated fuel handling accident are within the acceptance limits of 10 CFR Part 100 and within the acceptance limits of GDC 19. Additionally, the changes do not otherwise affect the manner by which the facility is operated or involve modifications to equipment or features which affect the operational characteristics of the facility.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Exeter Public Library, Founders Park, Exeter, NH 03833.

Attorney for licensee: Thomas Dignan, Esquire, Ropes & Gray, One International Place, Boston MA 02110-2624.

NRC Project Director: Phillip F. McKee

Northeast Nuclear Energy Company (NNECO), Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of amendment request: May 18, 1995

Description of amendment request: The proposed amendment revises the minimum temperature at which the reactor vessel head bolting studs are allowed to be placed under tension. In addition, the proposed amendment revises the minimum reactor vessel metal temperature during core critical operation, revises the minimum reactor vessel metal temperature for pressure tests, makes editorial changes, and revises the bases for the applicable section.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NNECO has reviewed the proposed changes against the criteria set forth in 10CFR50.92 and has concluded that the changes do not involve a significant hazards consideration (SHC). The bases for this conclusion are that the three criteria of 10CFR50.92(c), discussed separately below, are not compromised. The proposed changes do not involve a SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated:

Revising the boltup temperature of the reactor vessel head, from 86—F to 70—F, does not decrease the margins of safety, as required by 10CFR 50 Appendix G, against non-ductile failure of the reactor vessel. Therefore, the probability of occurrence of an accident previously evaluated in the safety analysis report (i.e., a LOCA)[loss of coolant accident] is not increased since the revised boltup temperature does not increase the probability of failure of the vessel head flange region. The reactor vessel is a passive

component which does not initiate or play a role in any previously evaluated accidents or in mitigating the consequences of any previously evaluated accidents. Therefore, the proposed changes do not involve a significant increase in the probability or the consequences of any accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously evaluated:

Revising the boltup temperature of the reactor vessel head, from 86°F to 70°F, does not decrease the margins of safety, as required by 10CFR 50 Appendix G, against non-ductile failure of the reactor vessel. Therefore, the possibility for a new or different kind of accident than previously evaluated (i.e., a LOCA through the vessel flange) is not created.

3. Involve a significant reduction in a margin of safety.

Using the proposed boltup temperature of 70°F still provides a self-imposed "margin" over the most limiting vessel flange region RT_{NDT} of 22°F (i.e., 70° - 48° = 22°). This is a "margin" over and above the boltup temperature required by Appendix G to the 1992 ASME Section XI Code, since Appendix G would allow a boltup temperature of 48—F.

The above proposed changes to the Limiting Condition for Operation for tensioning the reactor vessel head studs do not alter the configuration, normal operation, design bases, function, mission, or performance of the subject components. Therefore, the proposed changes do not affect the margin of safety inherent in the design, analysis, function, or operation of the reactor vessel head flange region. The proposed changes do not alter the fuel clad barrier, fuel integrity, reactor vessel integrity, reactor coolant system integrity, or the containment boundary integrity; thus the margin of safety related to these barriers remains unchanged.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Ms. L. M. Cuoco, Senior Nuclear Counsel, Northeast Utilities Service Company, Post Office Box 270, Hartford, CT 06141-0270.

NRC Project Director: Phillip F. McKee

Northeast Nuclear Energy Company (NNECO), Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of amendment request: May 24, 1995

Description of amendment request: The proposed amendment would permit an individual who does not have a current senior reactor operator (SRO) license to hold the Operations Manager position. The position will require the individual to have previously held an SRO license at a boiling water reactor (BWR). An individual serving in the capacity of the Assistant Operations Manager will hold a current SRO license for Millstone Unit 1, if the Operations Manager does not. In addition, the proposed amendment would renumber the applicable sections of the related technical specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NNECO has reviewed the proposed change in accordance with 10CFR50.92 and concluded that the change does not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10CFR50.92(c) are not compromised. The proposed change does not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed change affects an administrative control, which was based on the guidance of ANSI N18.1-1971. ANSI N18.1-1971 recommended that the Operations Manager hold an SRO license. The current guidance in Section 4.2.2 of ANSI/ANS 3.1-1987 recommends, as one option, that the Operations Manager have held a license for a similar unit and the Operations Middle Manager hold an SRO license. While the Operations Middle Manager position does not exist at Millstone Unit No. 1, NNECO has created the position of Assistant Operations Manager. The individual in this position would meet the requirements for, and would have responsibilities as recommended in, ANSI/ANS 3.1-1987 for the Operations Middle Manager position.

Therefore, the proposed change requests an exception to ANSI N18.1-1971 to allow use of ANSI/ANS 3.1-1987 in a limited circumstance. Specifically, the proposed revision to Technical Specification 6.3.1 would require the Operations Manager to either hold an SRO license at Millstone Unit No. 1 or have held an SRO at a BWR.

If the Operations Manager does not hold an SRO license at Millstone Unit No. 1, the specification will require the Assistant Operations Manager to hold, and continue to hold, an SRO license. The proposed change includes the requirement to have held a license for a similar unit (a BWR) in accordance with Section 4.2.2 of ANSI/ANS 3.1-1987, if the Operations Manager does not hold an SRO license at Millstone Unit No. 1. For those areas of knowledge that require an SRO license, the Assistant Operations Manager will provide the technical guidance typically provided by the Operations Manager.

The proposed change does not alter the design of any system, structure, or component, nor does it change the way plant systems are operated. It does not reduce the knowledge, qualifications, or skills of licensed operators, and does not affect the way the Operations Department is managed by the Operations Manager. The Operations Manager will continue to maintain the effective performance of his personnel and ensure the plant is operated safely and in accordance with the requirements of the operating license. Additionally, the control room operators will continue to be supervised by the licensed Shift Supervisor.

The proposed change does not detract from the Operations Manager's ability to perform his primary responsibilities. In this case, by having previously held an SRO license, the Operations Manager has achieved the necessary training, skills, and experience to fully understand the operation of plant equipment and the watch requirements for operators. In summary, the proposed change does not affect the ability of the Operations Manager to provide the plant oversight required of that position. Thus, it does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed change to Technical Specification 6.3.1 does not affect the design or function of any plant system, structure, or component, nor does it change the way plant systems are operated. It does not affect the performance of licensed operators. Operation of the plant in conformance with technical specifications and other license requirements will continue to be supervised by personnel who hold an SRO license. The proposed change to Technical Specification 6.3.1 ensures that the Operation Manager will be a knowledgeable and qualified individual by requiring the individual to have held an SRO license at a BWR. Based on the above, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in the margin of safety.

The proposed change involves an administrative control that is not related to the margin of safety. The proposed change does not reduce the level of knowledge or experience required of an individual who fills the Operations Manager position, nor does it affect the conservative manner in which the plant is operated. The Control Room operators will continue to be supervised by personnel who hold an SRO license. Thus, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Ms. L. M. Cuoco, Senior Nuclear Counsel, Northeast Utilities Service Company, Post Office Box 270, Hartford, CT 06141-0270.

NRC Project Director: Phillip F. McKee

Northeast Nuclear Energy Company (NNECO), Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of amendment request: May 26, 1995

Description of amendment request: The proposed amendment will delete the old limiting conditions for operation (LCOs) and surveillance requirements and add new LCOs, surveillance requirements, and bases for the loss of normal power (LNP) instrumentation system.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NNECO has reviewed this proposed change in accordance with 10CFR50.92 and concluded that this change does not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10CFR50.92(c) are not compromised. The proposed change does not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The change does not increase the probability of a loss of off-site power event or the occurrence of any accidents which assume loss of off-site power. This is ensured by the LNP instrumentation system design which uses multiple sensing relays, redundancy, and qualified Class 1E components, as well as conservative operability and surveillance requirements.

Full LNP logic requires two sets of relays to trip in one of two redundant groups. One set monitors bus 14E and the other set monitors bus 14F. Separate sets are provided for loss of voltage and degraded voltage monitoring. This design minimizes the likelihood of an inadvertent full LNP initiation. To maintain redundancy in the instrumentation, two separate groups are provided, each group being powered from an independent DC supply. Partial LNP logic is also provided to detect a loss of voltage on a single emergency bus. Redundancy in the partial LNP logic is achieved by providing an independent logic for each emergency power train.

The proposed technical specification would require that the LNP instrumentation be maintained operable except when the unit is in cold shutdown or refueling conditions. If redundancy in the ability to detect a loss of voltage or degraded voltage and initiate a full LNP is not maintained, reactor operation would be permitted for seven days. In this situation, both full and partial LNP (and both emergency power sources) remain operable. An action statement of seven days, which is the same as the action statement duration for an inoperable EDG [emergency diesel generator], is justified based on continued operability of the other LNP group. Additionally, it allows a reasonable amount of time to perform repairs.

The time delays and voltage setpoints specified in Table 3.2.4 ensure that the emergency power source starting and loading times continue to meet the current technical specification requirements. Also, these time delays are long enough to preclude false trips due to anticipated voltage transients (e.g., during motor starts). The relay calibration surveillance procedure will establish acceptance criteria for each relay to ensure that the total times specified in Table 3.2.4 are not exceeded. The proposed surveillance testing and calibration frequency of every refueling outage is consistent with the requirements in the current technical specification.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

There are no new failure modes associated with this change since the proposed requirements will ensure the LNP instrumentation system is available to perform its safety function. Individual voltage sensing relays, when removed from their cases, would provide the tripped contact configuration. The proposed technical specification would allow relays to be placed in the tripped condition as long as it would not inhibit the LNP function or cause an inadvertent initiation. Additionally, since the design function to ensure that adequate power is available to operate the emergency safeguards equipment has not changed, no new accident or accident of a different kind is created.

3. Involve a significant reduction in the margin of safety.

The protective boundaries are not affected because the consequences of any design basis accident are not changed. Since the protective boundaries are not affected, the safety limits are also unaffected. The proposed change maintains the basis of the technical specifications by ensuring that adequate electrical power is available to operate the emergency safeguards equipment. By maximizing the operability of the LNP instrumentation without requiring high risk testing, the proposed change will improve the margin of safety as related to availability of electric power to safety related loads.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Ms. L. M. Cuoco, Senior Nuclear Counsel, Northeast Utilities Service Company, Post Office Box 270, Hartford, CT 06141-0270.

NRC Project Director: Phillip F. McKee

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: January 13, 1995

Description of amendment request: The proposed amendment would revise the Administrative Controls Section (6.0) of the Technical Specifications (TS) for Hope Creek Generating Station to reflect organizational changes and resultant management title changes. As indicated on the marked-up pages in Attachment 2, PSE&G requests that: 1) Vice President and Chief Nuclear Officer will be replaced with Chief Nuclear Officer and President - Nuclear Business Unit in TS 6.1.2, 6.2.1.c, 6.5.2.4.3.g, 6.5.2.4.4.a, 6.5.2.4.4.b, 6.5.2.6, 6.6.1.b, 6.7.1.a, and 6.7.1.c. 2) Vice President and Chief Nuclear Officer will be replaced with Vice President - Nuclear Operations in TS 6.5.1.8.b, and 6.5.1.9. 3) In addition, General Manager - Quality Assurance and Nuclear Safety will be replaced with Director - Quality Assurance and Nuclear Safety Review in TS 6.5.1.8.b, 6.5.1.9, 6.5.2.2, 6.5.2.4.3.g, 6.7.1.a, 6.7.1.c.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed management title changes from Vice President and Chief Nuclear Officer to Chief Nuclear Officer and President - Nuclear Business Unit or Vice President - Nuclear Operations, and from General Manager - Quality Assurance and Nuclear Safety to Director - Quality Assurance and Nuclear Safety Review are administrative in nature and do not affect assumptions contained in the plant safety analysis, the physical design and/or operation of the plant, nor do they affect Technical Specifications that preserve safety analysis assumptions. Therefore, the proposed changes do not

involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes being proposed are purely administrative and will not lead to material procedure changes or to physical modifications. Therefore, the proposed changes do not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Will not involve a significant reduction in a margin of safety.

The changes being proposed are administrative in nature and do not relate to or modify the safety margins defined in and maintained by the Technical Specifications. The changes discussed herein do not reduce the Technical Specification safety margin since all organizational responsibilities are being adequately implemented, and all personnel in place are properly qualified. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: John F. Stolz

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: May 19, 1995 (TS 95-07)

Description of amendment request: The proposed change would (1) modify Surveillance Requirement (SR) 4.1.1.3 to allow suspension of the end of life (EOL) moderator temperature coefficient (MTC) surveillance measurement provided the benchmark criteria and the Revised Prediction as documented in the Core Operating Limits Report (COLR) are satisfied. The SR would also indicate that the data required for the calculation of the Revised Prediction is provided in the Most Negative Temperature Coefficient Limit Report per Specification 6.9.1.15. In addition, a grammatical error affecting the Unit 1 SR would be corrected; (2) modify Technical Specifications (TS) 6.9.1.14, COLR, by adding to the list of references: WCAP-13749-P-[A], "Safety Evaluation Supporting the Conditional Exemption of the Most Negative EOL Moderator Temperature Coefficient Measurement," May 1993 (Proprietary) (Methodology for Specification 3.1.1.3 - Moderator Temperature Coefficient); (3) add Specification 6.9.1.15, which would require that the Most Negative MTC Report be prepared at least 60 days prior to the date the limit would become effective and be maintained on file. Also, the TS would require that the data required for the determination of the Revised Prediction of the 300 ppm/RTP MTC per WCAP-13749-P-[A] be included in the report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The conditional exemption of the most negative moderator temperature coefficient (MTC) measurement does not change the most negative MTC surveillance requirement (SR) and limiting condition of operation (LCO) limits in the TSs. Since these MTC values are unchanged, and since the basis for the derivation of these values from the safety analysis moderator density coefficient (MDC) is unchanged, the constant MDC assumed for the Updated Final Safety Analysis Report (UFSAR) safety analyses will also remain unchanged. Therefore, no change in the modeling (i.e., probabilities) of the accident analysis conditions or response is necessary in order to implement the change to the conditional exemption methodology. In addition, since the constant MDC assumed in the safety analyses is not changed by the conditional exemption of the most negative MTC SR measurement, the consequences of an accident previously evaluated in the UFSAR are not increased. The dose predictions presented in the UFSAR for a steam generator tube rupture remain valid such that more severe consequences will not occur. Additionally, since mass and energy releases for a loss-of-coolant accident and a steamline break are not increased as a result of the unchanged MDC, the dose predictions for these events presented in the UFSAR also remain bounding.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

Since the end-of-life MTC is not changed by the conditional exemption methodology of WCAP-13749-P, the possibility of an accident, which is different than any already evaluated in the UFSAR, has not been created. No new or different failure modes have been defined for any system or component nor has any new limiting single failure been identified. Conservative assumptions for the MDC have already been modeled in the UFSAR analyses. These assumptions will remain valid since the conditional exemption methodology documented in WCAP-13749-P does not change the safety analysis MDC nor the TS values of the MTC.

3. Involve a significant reduction in a margin of safety.

The conditional exemption methodology is documented in WCAP-13749-P. This WCAP has been evaluated (Reference: SECL 93-117,R1) relative to the design basis, including the TSs, and has been determined to bound the conditions under which the specifications permit operation. The results as presented in the UFSAR remain bounding since the MDC assumed in the safety analyses and the limiting conditions for operation and SR MTCs in the TSs remain unchanged. Therefore, the margin of safety, as defined in the bases to these TSs, is not reduced.

The NRC has reviewed the licensee's analysis and, based on thisreview, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library,1101 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Tennessee Valley Authority, Docket No. 50-328, Sequoyah Nuclear Plant, Unit 2, Hamilton County, Tennessee

Date of amendment request: May 19, 1995 (TS 95-13)

Description of amendment request: The proposed change would revise License Condition 2.C.(17) to extend the required surveillance interval to May 4, 1996, for Surveillance Requirement 4.3.2.1.3. The proposed change would extend the Engineered Safety Features Response Time instrument tests required at 36-month intervals shown in Table 3.3-3 associated with safety injection, feedwater isolation, containment isolation Phase A, auxiliary feedwater pump, essential raw cooling water system, emergency gas treatment system, containment spray, containment isolation Phase B, turbine trip, 6.9-kilovolt shutdown board-degraded voltage or loss of voltage, and automatic switchover to containment sump actuations. The proposed extension will limit the interval past the allowable extension provided by TS 4.0.2 to 4.5 months.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c).

Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change is temporary and allows a one-time extension of Surveillance Requirement 4.3.2.1.3 for Cycle 7 to allow surveillance testing to coincide with the seventh refueling outage. The proposed surveillance interval extension will not cause a significant reduction in system reliability nor affect the ability of the systems to perform their design function. Current monitoring of plant conditions and continuation of the surveillance testing required during normal plant operation will continue to be performed to ensure conformance with TS operability requirements. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

Extending the surveillance interval for the performance of specific testing will not create the possibility of a new or different kind of accidents. No changes are required to any system configurations, plant equipment, or analyses. Therefore, this change will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

Surveillance interval extensions will not impact any plant safety analyses since the assumptions used will remain unchanged. The safety limits assumed in the accident analyses and the design function of the equipment required to mitigate the consequences of any postulated accidents will not be changed since only the surveillance test interval is being extended. Historical performance generally indicates a high degree of reliability, and surveillance testing performed during normal plant operation will continue to be performed to verify proper performance. Therefore, the plant will be maintained within the analyzed limits, and the proposed extension will not significantly reduce the margin of safety.

The NRC has reviewed the licensee's analysis and, based on thisreview, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: May 1, 1995

Brief description of amendments: The proposed amendment would: (1) reduce the minimum fuel oil volume requirement during MODES 5 and 6, for OPERABLE emergency diesel generators (EDG), and (2) allow continued OPERABLE status of diesel generators during all MODES, for 48 hours with greater than 6-day supply of diesel fuel for the associated diesel generator.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

REDUCTION IN MINIMUM DIESEL FUEL STORED VOLUME WHILE SHUTDOWN

The first proposed change reduces the diesel fuel oil inventory required during plant shutdown conditions (MODES 5 and 6). The current fuel oil inventory requirement is the same for plant operation (MODES 1, 2, 3 and 4) and for plant shutdown. This current inventory requirement is based upon the seven days continuous operation of a diesel generator at its rated capacity which encompasses all load demands for the Loss of Coolant Accident concurrent with a Loss of Offsite Power (LOCA/LOOP) scenario. Because of reduced temperature and pressure, LOCA/LOOP is a less significant and probable event in MODES 5 and 6. The bounding scenario is considered to be a Loss of Offsite Power (LOOP) while the plant is shutdown (in MODES 5 and 6). The new diesel fuel oil inventory required during plant shutdown conditions is based on LOOP. Because this change only affects diesel fuel inventory, there is no impact on the probability of an accident. The consequences of LOOP event are unchanged since sufficient fuel remains available to allow the diesel generators to support mitigation of the event. Because seven days of fuel are required, there is no change in the consequences of any event which requires the diesel generators. Therefore, there is no significant increase in the probability or consequences of an accident previously evaluated as a result of this proposed change.

ADDITION OF REMEDIAL ACTION TO RESTORE THE STORED VOLUME OF DIESEL FUEL

The second proposed change applies to all MODES of operation. This change allows the diesel generator to remain OPERABLE if the fuel oil inventory falls below the minimum required in the storage system (i.e., fuel volume for 7-day operation of the diesel generator) but remains above a fuel volume for 6 days operation of the diesel generator. The minimum required fuel oil volume must be restored within 48 hours of falling below the limit. This relaxation by 48 hours allows sufficient time to replenish the required fuel oil volume and complete any required analysis prior to fuel oil addition to the storage tank. Because this change only affects diesel generator fuel inventory, there is no impact on the probability of an accident. Since the fuel oil replenishment can be obtained in less than six days after an event, there is no significant increase in the probability of a loss of all AC power (i.e., Station Blackout). Because the remaining fuel oil volume is larger than 6-day fuel supply and actions are initiated to obtain replenishment within this brief period, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

REDUCTION IN MINIMUM DIESEL FUEL STORED VOLUME WHILE SHUTDOWN

The first proposed change reduces the diesel fuel oil inventory required for plant shutdown conditions. As described above, LOOP is the limiting condition for diesel fuel oil inventory requirements for a plant in the shutdown condition. As the proposed fuel inventory is adequate for a shutdown LOOP and no hardware changes or system operation changes are involved, no new failure modes are introduced and hence, no new or different accidents from any previously evaluated are created.

ADDITION OF REMEDIAL ACTION TO RESTORE THE STORED VOLUME OF DIESEL FUEL

The second proposed change only affects diesel generator fuel inventory as well. There are no hardware changes and no changes in system operations involved; therefore, no new ordifferent accidents from any accident previously evaluated are created.

3. Do the proposed changes involve a significant reduction in a margin of safety?

The intent of the Technical Specification is to conservatively assure sufficient fuel to assure diesel generator operation to support mitigation of postulated events. This intent is accomplished by conservatively assuring a seven day supply of fuel. Seven days fuel supply is considered sufficient to support the initial mitigation activities, identify the need for additional fuel, arrange for delivery, test and then add fuel to the storage tanks, if needed. The current diesel fuel oil inventory for operating conditions (MODES 1, 2, 3 and 4), is sufficient to conservatively support seven days of diesel generator operation for a LOCA with LOOP condition.

REDUCTION IN MINIMUM DIESEL FUEL STORED VOLUME WHILE SHUTDOWN

The proposed diesel fuel oil inventory for shutdown conditions (MODES 5 and 6), is adequate to conservatively support seven days of diesel generator operation for LOOP conditions. The proposed reduction in inventory between operating and shutdown conditions continues to support the different transient conditions which are applicable to the different modes of operation. Even though the minimum storage requirement during shutdown is being reduced, the basis of this specification continues to be conservatively satisfied and therefore this license amendment request does not involve a significant reduction in a margin of safety.

ADDITION OF REMEDIAL ACTION TO RESTORE THE STORED VOLUME OF DIESEL FUEL

The second proposed change which is applicable to all MODES of operation, allows 48 hours to restore diesel generator fuel oil inventory to the seven-day level as long as the inventory does not fall below the six-day level. The probability of a LOOP during this period is low. The 6-day fuel oil supply is calculated with adequate margin similar to the calculation of 7-day fuel oil inventory. In spite of the potential that there may be slightly less fuel available inlenishment within this brief period. Based on this and the low probability of an event during this brief period, it is considered that this change request does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, TX 76019

Attorney for licensee: George L. Edgar, Esq., Newman and Holtzinger, 1615 L Street, N.W., Suite 1000, Washington, D.C. 20036

NRC Project Director: William D. Beckner

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: May 4, 1994

Brief description of amendments: The amendments revise Limiting Condition for Operation (LCO) 3.4.8.3 and Surveillance Requirement 4.4.8.3.1, "Overpressure Protection Systems." Specifically, the LCO and surveillance requirements are revised to clarify that both shutdown cooling system (SCS) suction relief valves shall be OPERABLE and aligned to provide overpressure protection not only during reactor coolant system (RCS) cooldown and heatup evolutions, but also during any steady-state temperature periods in the course of RCS cooldown or heatup evolutions.

Date of issuance: June 2, 1995

Effective date: June 2, 1995

Amendment Nos.: Unit 1 - Amendment No. 93; Unit 2 - Amendment No. 80; Unit 3 - Amendment No. 63

Facility Operating License Nos. NPF-41, NPF-51, and NPF-74: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 17, 1994 (59 FR 42333) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 2, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station,Plymouth County, Massachusetts

Date of application for amendment: November 22, 1994

Brief description of amendment: This amendment revises the suppression chamber water level operating range, increasing it 2 inches, and revises the water level recorder range in response to a commitment from an inspection.

Date of issuance: June 1, 1995

Effective date: June 1, 1995

Amendment No.: 163

Facility Operating License No. DPR-35: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 18, 1995 (60 FR 3672) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 1, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson SteamElectric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: February 24, 1995

Brief description of amendment: The proposed change would remove Section 4.3 from the Technical Specifications (TS) because the primary system testing following opening is already performed in accordance with the American Society of Mechanical Engineers Boiler and Pressure Vessel Code, as implemented in the licensee's inservice inspection program as required by TS 4.0.1.

Date of issuance: May 30, 1995Effective date: May 30, 1995

Amendment No.: 165

Facility Operating License No. DPR-23. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** March 29, 1995 (60 FR 16183) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 30, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550.

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois; Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: October 15, 1992, as supplemented March 9, 1993.

Brief description of amendments: The amendments would modify the existing Dresden and Quad Cities Technical Specifications (TS) to format them in the style of the Boiling Water Reactor 4 (BWR) Standard Technical Specifications (STS). The amendments deal specifically with Section 3/4.4, "Standby Liquid Control System (SLCS)."

Date of issuance: June 8, 1995

Effective date: For Dresden, immediately, to be implemented no later than December 31, 1995; for Quad Cities, immediately, to be implemented no later than June 30, 1996.

Amendment Nos.: 133, 127, 154, and 150

Facility Operating License Nos. DPR-19, DPR-25, DPR-29, and DPR-30. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 7, 1993 (58 FR 36429) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 8, 1995. No significant hazards consideration comments received: No

Local Public Document Room location: for Dresden, Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450; for Quad Cities, Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: April 10, 1995

Brief description of amendments: The amendments would change the Technical Specifications by (1) revising the low pressure value at which the High Pressure Coolant Injection (HPCI) and Reactor Core Isolation Cooling (RCIC) systems can be tested to 150 psig, and (2) testing these systems against a system head corresponding to reactor vessel pressure when steam is supplied to the turbines at 920 psig to 1005 psig for high pressure testing and 150 psig to 325 psig for low pressure testing.

Date of issuance: May 30, 1995

Effective date: Immediately and shall be implemented within 60 days.

Amendment Nos.: 153 and 149

Facility Operating License Nos. DPR-29 and DPR-30: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 28, 1995 (60 FR 21009) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 30, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station Units 1 and 2, Lake County, Illinois

Date of application for amendments: November 21, 1994.

Brief description of amendments: The amendments add footnotes in Limiting Condition for Operation 3.15.2.A of the Technical Specifications (TS) to allow a one-time extension of the allowed outage time (AOT) for an inoperable reserve offsite power source from 72 hours to 14 days. To provide additional assurance that redundant sources of power to the operating unit are operable during the AOT outage, the amendment also adds footnotes in Surveillance Requirement 4.15.2.A of the TS to modify the emergency diesel generator and the normal offsite power source testing requirements.

Date of issuance: May 31, 1995

Effective date: May 31, 1995

Amendment Nos.: 163 and 151

Facility Operating License Nos. DPR-39 and DPR-48: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 4, 1995 (60 FR 500). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 31, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, MichiganDate of application for amendment: October 20, 1992

Brief description of amendment: This amendment revises Technical Specification 5.3.1a to account for changes being made to the Palisades Final Safety Analysis Report (FSAR) Section 4.2 following replacement of the steam generators.

Date of issuance: May 22, 1995

Effective date: May 22, 1995

Amendment No.: 166

Facility Operating License No. DPR-20. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 12, 1995 (60 FR 18624) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 22, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: January 13, 1995, as supplemented April 12 and 27, 1995

Brief description of amendment: This amendment revises the Technical Specifications to allow installed primary and secondary safety valve settings to be within a 3% tolerance of their nominal settings, but would require returning the valve settings to within 1% of the nominal settings if the valves are removed from the piping for maintenance or testing.

Date of issuance: June 8, 1995

Effective date: June 8, 1995

Amendment No.: 167

Facility Operating License No. DPR-20. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 1, 1995 (60 FR 11130) The April 12 and 27, 1995, letters provided clarifying information in response to the staff's request for additional information of April 11, 1995, and a telephone request for information on the Palisades loss of load analysis contained in the January 13, 1995, submittal. This information was within the scope of the original application and did not change the staff's initial no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 8, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan Date of application for amendment: September 13, 1993

Brief description of amendment: The amendment revises Technical Specification (TS) 6.5.2.8 to relocate audit frequencies from the TS to the Quality Assurance Program located in Chapter 17.2 of the Updated Final Safety Analysis Report. A related change to extend the frequency of the use of an independent fire contractor to every third fire protection audit was denied.

Date of issuance: May 23, 1995

Effective date: May 23, 1995, with full implementation within 45 days.

Amendment No.: 104

Facility Operating License No. NPF-43. Amendment revises the Technical Specifications

Date of initial notice in **Federal Register:** April 12, 1995 (60 FR 18625) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 23, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Entergy Operations, Inc., Docket No. 50-382, Waterford Steam ElectricStation, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: September 16, 1993

Brief description of amendment: The amendment revised the Technical Specifications by removing the incore detection system requirements. These requirements are to be relocated in the Updated Final Safety Analysis Report.

Date of issuance: May 30, 1995

Effective date: May 30, 1995, to be implemented within 60 days.

Amendment No.: 107

Facility Operating License No. NPF-38. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 27, 1993 (58 FR 57851) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 30, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application for amendments: January 20, 1995

Brief description of amendments: These amendments will relocate the operability requirements for Incore Detectors in Technical Specification 3/4.3.3.2 to the Updated Final Safety Analysis Report, and revise Linear Heat Rate Surveillance 4.2.1.4, and Special Test Exceptions Surveillances 4.10.2.2, 4.10.4.2 (Unit 2 only), and 4.10.5.2, accordingly.

Date of issuance: June 6, 1995

Effective date: June 6, 1995

Amendment Nos.: 136 and 75

Facility Operating License Nos. DPR-67 and NPF-16: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 1, 1995 (60 FR 11132) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 6, 1995No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: December 29, 1994, as supplemented by letter dated May 2, 1995.

Brief description of amendments: The amendments revise TS 3/4.3, Instrumentation and its associated Bases, and TS 3/4.8, Electrical Power Systems to specify the appropriate actions to take in the event that an automatic load sequencer must be taken out of service or becomes inoperable.

Date of issuance: May 31, 1995

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 86 and 64

Facility Operating License Nos. NPF-68 and NPF-81: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 1, 1995 (60 FR 6301). The May 2, 1995, letter provided minor editorial changes that did not change the scope of the December 29, 1994, application and initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 31, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Gulf States Utilities Company, Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: January 13, 1993, as supplemented by letter dated October 18, 1993

Brief description of amendment: The amendment revised the River Bend Station, Unit 1 operating license to reflect a change in ownership of Gulf States Utilities (GSU). GSU, which owns a 70 percent undivided interest in the River Bend Station, is a wholly-owned subsidiary company of Entergy Corporation. This amendment was originally issued on December 16, 1993, as License Amendment No. 69.

Date of issuance: June 8, 1995.

Effective date: June 8, 1995.

Amendment No.: 78

Facility Operating License No. NPF-47. The amendment revised the operating license.

Date of initial notice in **Federal Register:** July 7, 1993 (58 FR 36436) The October 18, 1993, supplemental letter provided clarifying information and did not change the initial no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 8, 1995.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, LA 70803.

Gulf States Utilities Company, Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: January 13, 1993, as supplemented by letter dated June 29, 1993

Brief description of amendment: The amendment revised the River Bend Station, Unit 1 operating license to include as a licensee, Entergy Operations, Inc. (EOI), and to authorize EOI to use and operate River Bend and to possess and use related licensed nuclear materials. This amendment was originally issued on December 16, 1993 as License Amendment No. 70.

Date of issuance: June 8, 1995

Effective date: June 8, 1995

Amendment No.: 79

Facility Operating License No. NPF-47. The amendment revised the operating license.

Date of initial notice in **Federal Register:** July 7, 1993 (58 FR 36436) The June 29, 1993, supplemental letter provided clarifying information and did not change the initial no significant hazards consideration determination.The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 8, 1995.No significant hazards consideration comments received. Yes. Comments and a request for hearing were received from Cajun Electric Power Cooperative of Baton Rouge, Louisiana.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

IES Utilities Inc., Docket No. 50-331, Duane Arnold Energy, Center, Linn County, Iowa

Date of application for amendment: March 1, 1995

Brief description of amendment: The amendment revised the surveillance criteria for certain pumps and valves in the Low Pressure Coolant Injection (LPCI) subsystem; the Core Spray subsystems; and the Residual Heat Removal (RHR) Service Water, High Pressure Coolant Injection (HPCI), Emergency Service Water (ESW), and River Water Supply systems. The surveillance criteria changed from every three months to the testing frequency specified in the Inservice Testing program.

Date of issuance: May 18, 1995

Effective date: May 18, 1995

Amendment No.: 210

Facility Operating License No. DPR-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 12, 1995 (60 FR 18626) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 18, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S. E., Cedar Rapids, Iowa 52401.

IES Utilities Inc., Docket No. 50-331, Duane Arnold Energy, Center, Linn County, Iowa

Date of application for amendment: March 10, 1995

Brief description of amendment: The amendment deletes Technical Specification Sections 3.7/4.7.H.3 to eliminate redundant Limiting Conditions of Operation and Surveillance Requirements for the containment hydrogen and oxygen analyzers.

Date of issuance: May 31, 1995

Effective date: May 31, 1995

Amendment No.: 211

Facility Operating License No. DPR-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 26, 1995 (60 FR 20518) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 31, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S. E., Cedar Rapids, Iowa 52401.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: September 28, 1990

Brief description of amendment: The amendment revised the Technical Specifications to establish periodic operability testing of the reactor vessel overfill protection system. The changes were requested to satisfy a commitment in the licensee's response to Generic Letter 89-19, "Request for Action Related to Resolution of Unresolved Safety Issue (USI) A-47."

Date of issuance: June 8, 1995

Effective date: June 8, 1995

Amendment No.: 169

Facility Operating License No. DPR-46. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 31, 1990 (55 FR 45885) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 8, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, NE 68305.

Northeast Nuclear Energy Company, Docket No. 50-245, MillstoneNuclear Power Station, Unit 1, New London County, Connecticut

Date of application for amendment: March 31, 1995

Brief description of amendment: The amendment revises the Technical Specifications (TS) to increase the as-found setpoint tolerance of the safety/relief valves (SRVs) from plus or minus 1% to plus or minus 3%. In addition, the amendment (1) allows the as-found condition of one SRV to be inoperable, (2) clarifies the 1325 psig safety limit wording, (3) increases the number of SRVs to be tested during each refueling outage, (4) makes editorial changes to reflect the TS changes, and (5) revises the bases for the applicable sections.

Date of issuance: May 31, 1995

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 82

Facility Operating License No. DPR-21. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 26, 1995 (60 FR 20520) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 31, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, MillstoneNuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: January 23, 1995.

Brief description of amendment: The amendment revises the Technical Specifications to modify the containment spray system by replacing the present sodium hydroxide spray additive with the trisodium phosphate dodecahydrate pH control agent.

Date of issuance: May 26, 1995

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 115

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 1, 1995 (60 FR 11136). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 26, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: September 20, 1994, as supplemented by letter dated April 14, 1995.

Brief description of amendments: The proposed amendments revise surveillance requirements (SRs) as recommended by NRC Generic Letter (GL) 93-05, "Line-Item Technical Specification Improvements to Reduce Surveillance Requirements for Testing During Power Operation" of the combined Technical Specifications (TS) for the Diablo Canyon Nuclear Power Plant Unit Nos. 1 and 2. The specific TS changes are as follows:

(1) TS SR 4.1.3.1.2 is revised to change the frequency for testing the movability of the control rods from at least once per 31 days to at least once per 92 days.

(2) TS 3/4.3.2, Table 4.3-2, "Engineered Safety Features Actuation System Instrumentation Surveillance Requirements," Functional Unit 3.c.4), and TS 3/4.3.3.1, Table 4.3-3, "Radiation Monitoring Instrumentation for Plant Operations SRs," is revised to change the monthly channel functional test to quarterly.

(3) TS 3/4.5.1 is changed as follows: (a) TS SR 4.5.1.1a.1) is revised to more clearly state that the accumulator water volume and pressure must be verified to be within their limits. (b) TS SR 4.5.1.1b. is revised to specify that the boron concentration surveillance is not required to be performed if the accumulator makeup source was the refueling water storage tank (RWST). (c) TS SR 4.5.1.2 is relocated to plant procedures.

(4) TS SR 4.5.2c.2) is revised to clarify that a separate containment entry to verify the absence of loose debris is not required after each containment entry.

(5) TS SR 4.6.2.1d. is revised to change the frequency for a containment spray header flow test from at least once per 5 years to at least once per 10 years.

(6) TS SR 4.6.4.2a. is revised to change the verification of the minimum hydrogen recombiner sheath temperature from at least once per 6 months to at least once each refueling interval.

(7) TS SR 4.7.1.2.1 is revised to change the surveillance frequency for testing each auxiliary feedwater (AFW) pump from at least once per 31 days to at least once per 92 days on a staggered test basis.

(8) TS SR 4.10.1.2 is revised to lengthen the allowed period of time for a rod drop test from 24 hours to 7 days prior to reducing shutdown margin to less than the limits of TS 3.1.1.1.

(9) TS SR 4.11.2.6 is revised to change the surveillance frequency from 24 hours to 7 days when radioactive material is being added to the gas decay tanks and to add a requirement to monitor radioactive material concentrations in the gas decay tanks at least once per 24 hours when system degassing operations are in progress.

Date of issuance: May 26, 1995

Effective date: May 26, 1995, to be implemented within 60 days of issuance.

Amendment Nos.: Unit 1 - Amendment No. 102; Unit 2 Amendment No. 101

Facility Operating License Nos. DPR-80 and DPR-82: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 26, 1994 (59 FR 53843) The April 14, 1995, letter provided clarifying information and did not change the initial no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 26, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: December 30, 1994 (LAR 94-12)

Brief description of amendments: These amendments clarify the technical specifications (TS) issued in license amendments 84/83 associated with the Eagle 21 reactor protection system modification, delete TS references to RM-14A and RM-14B, remove cycle-specific TS requirements, and incorporate editorial corrections.

Date of issuance: June 2, 1995

Effective date: June 2, 1995, to be implemented within 30 days of issuance.

Amendment Nos.: Unit 1 - Amendment No. 103; Unit 2 - Amendment No. 102

Facility Operating License Nos. DPR-80 and DPR-82: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 15, 1995 (60 FR 14026) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 2, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: February 6, 1995, as supplemented by letters dated March 23, 1995, and May 22, 1995.

Brief description of amendments: The amendments would allow the storage of fuel with enrichments up to and including 5.0 weight percent U-235, would clarify that substitution of fuel rods with filler rods is acceptable for fuel designs that have been analyzed with applicable NRC-approved codes and methods, and would allow the use of ZIRLO fuel cladding in the future in addition to Zircaloy-4.

Date of issuance: June 7, 1995

Effective date: June 7, 1995, to be implemented within 30 days of issuance.

Amendment Nos.: Unit 1 - Amendment No. 104; Unit 2 - Amendment No. 103

Facility Operating License Nos. DPR-80 and DPR-82: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 1, 1995 (60 FR 11138) The licensee's supplemental letters provided additional clarifying information. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 7, 1995. No significant hazards consideration comments received: Yes. Comments were submitted by Jill ZamEk on behalf of the San Luis Obispo Mothers for Peace by letter dated March 30, 1995.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Pacific Gas and Electric Company, Docket No. 50-133, Humboldt Bay Power Plant, Unit 3, Humboldt County, California

Date of application for amendment: November 23, 1994, as supplemented April 27, 1995.

Brief description of amendment: This amendment revised the Technical Specifications Section VII.C., Plant Staff, to decrease the minimum staff requirements for the shift operating organization from five to two persons.

Date of issuance: May 31, 1995

Effective date: This license amendment is effective as of the date of its issuance and must be fully implemented no later than 30 days from the date of issuance.

Amendment No.: 28Facility License No. DPR-7: The amendment revised the TS.

Date of initial notice in **Federal Register:** March 1, 1995 (60 FR 11139) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 31, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: Humboldt County Library, 636 F Street, Eureka, California 95501.

PECO Energy Company, Public Service Electric and Gas CompanyDelmarva Power and Light Company, and Atlantic City Electric Company,Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: February 10, 1995

Brief description of amendments: These amendments correct administrative errors in Section 4.11.A of the Technical Specifications (TSs). The errors were made in the TSs by Amendments 9 and 7 dated June 25, 1975.

Date of issuance: May 30, 1995

Effective date: May 30, 1995

Amendments Nos.: 202 and 205

Facility Operating License Nos. DPR-44 and DPR-56: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 26, 1995 (60 FR 20521) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 30, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

PECO Energy Company, Public Service Electric and Gas CompanyDelmarva Power and Light Company, and Atlantic City Electric Company,Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station,Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: September 26, 1994

Brief description of amendments: These amendments extend the surveillance test intervals and allowable out-of service times for the testing and or repair of instrumentation that actuate the Reactor Protection System, Primary Containment Isolation, Core and Containment Cooling systems, Control Rod Blocks, Radiation Monitoring systems and Alternate Rod Insertion/ Recirculation Pump Trip.

Date of issuance: June 6, 1995

Effective date: June 6, 1995

Amendments Nos.: 203 and 206

Facility Operating License Nos. DPR-44 and DPR-56: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 15, 1995 (60 FR 14027) The supplemental letters dated January 5, and March 23, 1995, provided clarifying information and did not change the initial proposed no significant hazards consideration determination.The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 6, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: April 30, 1993

Brief description of amendments: These amendments changed the Technical Specifications by deleting Section 3/4.3.8 of the Turbine Overspeed Protection System.

Date of issuance: June 1, 1995

Effective date: June 1, 1995

Amendment Nos.: 146 and 116

Facility Operating License Nos. NPF-14 and NPF-22. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 9, 1993 (58 FR 32389) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 1, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: August 25, 1993, as supplemented by letters dated June 27, 1994, and May 5, 1995

Brief description of amendments: These amendments modify Technical Specification Surveillance Requirement 4.7.1.3 to require that all spray pond spray network piping above the frost line be drained at an ambient temperature below 40°F, and within 1 hour after being used only when the ambient air temperature is below 40°F.

Date of issuance: June 1, 1995

Effective date: June 1, 1995

Amendment Nos.: 90 and 54

Facility Operating License Nos. NPF-39 and NPF-85. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 29, 1993 (58 FR 50972) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 1, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: August 30, 1994

Brief description of amendment: The changes relocate Technical Specification (TS) 3.3.7.9, Loose Parts Detection System (LPDS), Surveillance Requirement 4.3.7.9, and associated Bases from the TSs to the Updated Final Safety Analysis Report. The TS index is also revised by removing the reference to LPDS.

Date of issuance: May 25, 1995

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 73

Facility Operating License No. NPF-57: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 29, 1995 (60 FR 16197) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 25, 1995. No significant hazards consideration comments received: No

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070.

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: February 9, 1995

Brief description of amendments: The amendments revise the Administrative

Controls section of the Technical Specifications to reflect organizational changes and resultant management title changes.

Date of issuance: June 6, 1995
Effective date: June 6, 1995
Amendment Nos.: 168 and 150
Facility Operating License Nos. DPR-70 and DPR-75. The amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** March 29, 1995 (60 FR 16200) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 6, 1995.No significant hazards consideration comments received: No
Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Southern Nuclear Operating Company, Inc., Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama.

Date of application for amendments: March 6, 1995
Brief description of amendments: The amendments relocate the seismic and meteorological monitoring instrumentation from the Technical Specifications to the Final Safety Analysis Report in accordance with the "Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors," dated July 22, 1993.
Date of issuance: May 22, 1995
Effective date: As of the date of issuance to be implemented within 30 days
Amendment Nos.: 115 and 107
Facility Operating License Nos. NPF-2 and NPF-8: Amendments revise the Technical Specifications.
Date of initial notice in **Federal Register:** April 12, 1995 (60 FR 18628) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 22, 1995.No significant hazards consideration comments received: No
Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302.

Tennessee Valley Authority, Docket No. 50-327, Sequoyah Nuclear Plant, Unit 1, Hamilton County, Tennessee

Date of application for amendment: April 6, 1995 (TS 95-09)
Brief description of amendment: The amendment modifies Operating License Condition 2.C.(25) to provide a limited extension of the ice condenser surveillance test interval on Unit 1 to coincide with the Cycle 7 refueling outage.
Date of issuance: May 30, 1995
Effective date: May 30, 1995
Amendment No.: 200
Facility Operating License Nos. DPR-77: Amendment revises the technical specifications.
Date of initial notice in **Federal Register:** April 26, 1995 (60 FR 20526) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 30, 1995.No significant hazards consideration comments received: None
Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: April 6, 1995
Brief description of amendments: The amendments revise the surveillance requirement for the power range neutron flux channel calibration frequency from monthly to every 31 effective full power days and delays first performance of the surveillance after reaching 15 percent power for 96 hrs.
Date of issuance: May 30, 1995
Effective date: May 30, 1995
Amendment Nos.: 199 and 190
Facility Operating License Nos. DPR-77 and DPR-79: Amendments revise the technical specifications.
Date of initial notice in **Federal Register:** April 26, 1995 (60 FR 20531) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 1, 1995.No significant hazards consideration comments received: None
Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402.

TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: February 14, 1994 (TXX-94046 LAR 94-006)
Brief description of amendments: The proposed changes would revise the Technical Specifications (TSs) for Comanche Peak Steam Electric Station, Units 1 and 2 in the following three areas: 1) a change to the allowable value for the Unit 2 pressurizer pressure-low and Unit 2 overtemperature N-16 (OTN-16) reactor trip setpoints; 2) an administrative change to delete an option which allowed continued operation for a period of time when a reactor trip system (RTS) or engineered safety features actuation system (ESFAS) instrumentation or interlocks trip setpoint is found less conservative than the allowable value; and 3) an administrative change to combine the Unit 1 and Unit 2 line items for RTS or ESFAS trip setpoint and allowable values which are the same.
Date of issuance: May 31, 1995
Effective date: May 31, 1995, to be implemented within 30 days.
Amendment Nos.: Unit 1 - Amendment No. 41; Unit 2 - Amendment No. 27
Facility Operating License Nos. NPF-87 and NPF-89. The amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** June 22, 1994 (59 FR 32238) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 31, 1995.No significant hazards consideration comments received: No.
Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, TX 76019.

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: March 24, 1995
Brief description of amendment: The amendment relaxes the requirement to sample the accumulator after refilling from the RWST.
Date of issuance: May 30, 1995
Effective date: May 30, 1995, to be implemented within 30 days of issuance.
Amendment No.: Amendment No. 87
Facility Operating License No. NPF-42. The amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** April 12, 1995 (60 FR 18632) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 30, 1995.No significant hazards consideration comments received: No. Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621.

Dated at Rockville, Maryland, this 14th day of June, 1995.

For the Nuclear Regulatory Commission
John N. Hannon,
Acting Deputy Director, Division of Reactor Projects - III/IV, Office of Nuclear Reactor Regulation

[Doc. 95–15057 Filed 6–20–95; 8:45]
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[Docket No. 50–255]

Consumers Power Company (Palisades Plant); Exemption

I

Consumers Power Company (CPCo, the licensee) is the holder of Facility Operating License No. DPR–20 which authorizes operation of the Palisades Plant, a pressurized water reactor (PWR) located in Van Buren County, Michigan. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

Pursuant to 10 CFR 50.12(a), the NRC may grant exemptions from the requirements of the regulations (1) which are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) where special circumstances are present.

Section III.D.1.(a) of Appendix J to 10 CFR part 50 requires the performance of three Type A containment integrated leakage rate tests (ILRTs), at approximately equal intervals during each 10-year service period of the primary containment. The third test of each set shall be conducted when the plant is shut down for the 10-year inservice inspection of the primary containment.

III

By letter dated March 17, 1995, as supplemented April 26, 1995, CPCo requested temporary relief from the requirement to perform a set of three Type A tests at approximately equal intervals during each 10-year service period of the primary containment. The requested exemption would permit a one-time interval extension of the third Type A test by approximately 21 months (from the 1995 refueling outage, currently scheduled to begin in May 1995, to the 1997 refueling outage) and would permit the third Type A test of the second 10-year inservice inspection period to not correspond with the end of the current American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code) inservice inspection interval.

The licensee's request cites the special circumstances of 10 CFR 50.12, paragraphs (a)(2) (ii) and (iii), as the basis for the exemption, and states that the exemption would eliminate a cost of $1 million for the Type A test which is not necessary to achieve the underlying purpose of the rule. 10 CFR part 50 Appendix J, states that the purpose of the Type A, B, and C tests is to assure that leakage through the primary containment shall not exceed the allowable leakage rate values as specified in the technical specifications or associated bases. CPCo points out that the existing Type B and C testing programs are not being modified by this request and will continue to effectively detect containment leakage caused by the degradation of active containment isolation components as well as containment penetrations. It has been the experience at the Palisades Plant that, with the exception of the 1978 test results, during the six Type A tests conducted from 1974 to date, any significant containment leakage paths are detected by the Type B and C testing. The Type A test results have only been confirmatory of the results of the Type B and C test results. The testing history, structural capability of the containment, and the risk assessment establish that there is significant assurance that the extended interval between Type A tests will not adversely impact the leak-tight integrity of the containment and that performance of the Type A test is not necessary to meet the underlying purpose of Appendix J. The licensee also references the proposed revision to Appendix J which would reduce the frequency of Type A tests.

IV

Section III.D.1.(a) of Appendix J to 10 CFR part 50 states that a set of three Type A leakage rate tests shall be performed at approximately equal intervals during each 10-year service period.

The licensee proposes an exemption to this section which would provide a one-time interval extension for the Type A test by approximately 21 months. The Commission has determined, for the reasons discussed below, that pursuant to 10 CFR 50.12(a)(1) this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2) (ii) and (iii), are present justifying the exemption; namely, that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule and would impose excessive cost.

The underlying purpose of the requirement to perform Type A containment leak rate tests at intervals during the 10-year service period is to ensure that any potential leakage pathways through the containment boundary are identified within a time span that prevents significant degradation from continuing or becoming unknown. The NRC staff has reviewed the basis and supporting information provided by the licensee in the exemption request. The NRC staff has noted that the licensee has a good record of ensuring a leak-tight containment following the submittal of its Corrective Action Plan on June 30, 1986. The Corrective Action Plan was submitting following three consecutive Type A test failures, of which one was the 1978 test failure. However, the licensee has noted that the containment penetration local leak rate tests (LLRT, Type B and C tests) accounted for the majority of the before maintenance adjustment to the as-found ILRT (Type A) results during the as-found test failures. The penetration associated with the 1978 test failure was significantly modified in the mid-1980's to improve the LLRT test configuration to properly monitor the entire penetration boundary. In addition, the licensee aggressively replaced or repaired the valves and penetrations that accounted for the as-found test failures, with no repeat occurrences.

The NRC staff reviewed the LLRT Corrective Action Plan and granted an

exemption to Appendix J for Palisades on September 17, 1987. The exemption stated that if the conditions of the Plan were met, and the next scheduled Type A test was successfully completed, then normal resumption of the Type A test frequency would be allowed. The two following Type A tests (11/88 and 2/91) passed with significant margin and the licensee has noted that the LLRT Correction Action Plan was successful in eliminating original plant design, maintenance, and testing deficiencies. In addition, the licensee notes that the results of the Type A testing have been confirmatory of the Type B and C tests which will continue to be performed. The licensee has stated that it will perform the general containment inspection although it is required by Appendix J (Section V.A.) to be performed only in conjunction with Type A tests. The NRC staff considers that these inspections, though limited in scope, provide an important added level of confidence in the continued integrity of the containment boundary.

The Palisades containment structure consists of a post-tensioned, reinforced concrete cylinder and dome connected to and supported by a reinforced concrete foundation slab. The containment structure is designed to ensure that leakage will not exceed 0.1% per day by weight at the peak pressure of the design basis accident. A concrete shield building surrounds the containment vessel, providing a shield building annulus between the two structures. Penetrations of the containment vessel for piping, electrical conductors, ducts, and access hatches are provided with double barriers against leakage.

The NRC staff has also made use of the information in a draft staff report, NUREG–1493, "Performance-Based Containment Leak-Test Program," which provides the technical justification for the present Appendix J rulemaking effort which also includes a 10-year test interval for Type A tests. The ILRT, or Type A test, measures overall containment leakage. However, operating experience with all types of containments used in this country demonstrates that essentially all containment leakage can be detected by LLRTs (Type B and C). According to results given in NUREG–1493, out of 180 ILRT reports covering 110 individual reactors and approximately 770 years of operating history, only 5 ILRT failures were found which local leakage rate testing could not detect. This is 3% of all failures. This study agrees well with previous NRC staff studies which show that Type B and C testing can detect a very large percentage of containment leaks. The Palisades Plant experience has also been consistent with these results.

The Nuclear Management and Resources Council (NUMARC), now the Nuclear Energy Institute (NEI), collected and provided the NRC staff with summaries of data to assist in the Appendix J rulemaking effort. NUMARC collected results of 144 ILRTs from 33 units; 23 ILRTs exceeded $1L_a$. Of these, only nine were not Type B or C leakage penalties. The NEI data also added another perspective. The NEI data show that in about one-third of the cases exceeding allowable leakage, the as-found leakage was less than $2L_a$; in one case the leakage was found to be approximately $2L_a$; in one case the as-found leakage was less than $3L_a$; one case approached $10L_a$; and in one case the leakage was found to be approximately $21L_a$. For about half of the failed ILRTs the as-found leakage was not quantified. These data show that, for those ILRTs for which the leakage was quantified, the leakage values are small in comparison to the leakage value at which the risk to the public starts to increase over the value of risk corresponding to L_a (approximately $200L_a$, as discussed in NUREG–1493). Therefore, based on these considerations, it is unlikely that an extension of one cycle for the performance of the Appendix J, Type A test at the Palisades Plant would result in significant degradation of the overall containment integrity. As a result, the application of the regulation in these particular circumstances is not necessary to achieve the underlying purpose of the rule, and compliance would impose excess cost and undue hardship. Therefore, special circumstances exist pursuant to 10 CFR 50.12(a)(2) (ii) and (iii).

Based on the generic and plant-specific data, the NRC staff finds the basis for the licensee's proposed one-time schedular exemption to allow an extension of one cycle for the performance of the Appendix J, Type A test, provided that the general containment inspection is performed, to be acceptable, pursuant to 10 CFR 50.12(a) (1) and (2).

Pursuant to 10 CFR 51.32, the Commission has determined that granting this exemption will not have a significant effect on the quality of the human environment (60 FR 30115).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 14th day of June 1995.

For the Nuclear Regulatory Commission.

John N. Hannon,

Acting Deputy Director, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–15143 Filed 6–20–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–424–OLA–3 50–425–OLA–3; Re: License Amendment (Transfer to Southern Nuclear) ASLBP No. 96–671–01–OLA–3]

Atomic Safety and Licensing Board; Notice (Evidentiary Hearing)

In the matter of Georgia Power Company, *et al.* (Vogtle Electric Generating Plant, Units 1 and 2)

Before Administrative Judges: Peter B. Bloch, Chair; Dr. James H. Carpenter; Thomas D. Murphy.

Pursuant to 10 CFR 2.752, the public evidentiary hearing will continue at 9 am on July 6–8, 1995, at the Hearing Room (T 3 B45), Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

The purpose of the hearing is to receive evidence concerning alleged misrepresentations about diesel generators at the Vogtle Nuclear Power Plant. The hearing is expected to continue at 9 am on July 11–14 and 17–20 at: Savannah Rapids Pavilion, 3300 Evans-to-Locks road, Martinez, Georgia 30907, (706) 868–3349 or 3431.

The Board anticipates the possibility that the July 11–14 hearing days may be rescheduled to be held at the hearing room in Rockville, Maryland.

For the Atomic Safety and Licensing Board.

Peter B. Bloch,

Chair, Rockville, Maryland.

[FR Doc. 95–15134 Filed 6–20–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–443 (License No. NPF–86)]

North Atlantic Energy Service Corp. (Seabrook Station, Unit No. 1); Exemption

I

North Atlantic Energy Service Corporation (North Atlantic or the licensee) is the holder of Facility Operating License No. NPF–86, which authorizes operation of Seabrook Station, Unit No. 1 (the facility or Seabrook), at a steady-state reactor power level not in excess of 3411 megawatts thermal. The facility is a pressurized water reactor located at the licensee's site in Rockingham County, New Hampshire. The license provides among other things, that it is subject to all rules, regulations, and Orders of the U.S. Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect.

II

Part 73 of Title 10 of the *Code of Federal Regulations* prescribes the requirements for the physical protection of plants and materials. Paragraph 10 CFR 73.55(a), *Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage*, states, in part, "The licensee shall establish and maintain an onsite physical protection system and security organization which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health safety."

Paragraph 10 CFR 73.55(d)(1), *Access Requirement*, specifies that "The licensee shall control all points of personnel and vehicle access into a protected area." Paragraph 10 CFR 73.55(d)(5) requires that "A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort." Paragraph 73.55(d)(5) allows an individual not employed by the licensee to be authorized access to protected areas without escort provided, among other requirements, the individual receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area.

North Atlantic plans to implement a biometric access control system which would eliminate the need to issue and retrieve badges at each entrance/exit location and would allow all individuals with unescorted access to retain their badge when leaving the protected area.

An exemption from a requirement of 10 CFR 73.55(d)(5) is required to allow North Atlantic to permit individuals who have unescorted access but who are not employees of North Atlantic to retain their badges instead of returning them when leaving the protected area. By letter dated October 17, 1994, North Atlantic requested an exemption from a requirement of 10 CFR 73.55(d)(5) for this purpose. Supplemental information was submitted by North Atlantic by letters dated February 13, 1995, April 26, 1995, and May 12, 1995.

III

Pursuant to 10 CFR 73.5, *Specific exemptions*, the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions in this part as it determines are (1) authorized by law and will not endanger life or property or the common defense and security, and (2) are otherwise in the public interest.

Pursuant to 10 CFR 73.55, the Commission may authorize a licensee to provide alternative measures for protection against radiological sabotage provided the licensee demonstrates that the alternative measures have the same high assurance objective and that the overall level of protection of system performance provides equivalent protection against radiological sabotage as would otherwise be provided and meets the general performance requirements of the regulation.

Currently, unescorted access into the protected area of Seabrook is controlled through the use of a numbered picture badge and a separate keycard attached to the badge. The security personnel at the entrance to the protected area use the photograph on the badge to confirm visually the identify of the individual requesting access. The individual is then given the badge and keycard to allow access. The badge and keycard are returned for storage when the individual leaves the protected area. The same procedure is used for issuing and retrieving badges and keycards for both North Atlantic employees and individuals who are not North Atlantic employees who have been granted unescorted access. Thus, the requirement of 10 CFR 73.55(d)(5) that individuals not employed by the licensee are not allowed to take badges from the protected area is met in that no individual is allowed to take a badge or keycard from the protected area.

Under the biometric access control system, the physical characteristics of the hand (hand geometry) of each individual who is authorized for unescorted entry into the Seabrook protected area will be registered with the individual's badge number and keycard number in the access control computer. Access is controlled by placing the individual's keycard into the card reader causing the access control computer to retrieve the hand geometry template registered with the keycard. Next, the hand of the individual requesting access is placed on a measuring surface; the computer then compares the measured hand geometry to the hand geometry template registered with the keycard. If the characteristics of the measured hand geometry match the template stored in the computer, access is granted. If the characteristics do not match, access is denied. This provides a nontransferable means of identifying that the individual possessing the keycard is the individual who was granted unescorted access. It also provides a positive means of assuring that a lost or stolen badge and/or keycard could not be used to gain access, thus eliminating the need to issue and retrieve the badges and keycards while maintaining the same high level of assurance that access is granted to only authorized individuals. All other access processes, including search function capability, would remain the same. The system will not be used for persons requiring escorted access. The access process will continue to be under the observation of security personnel located within a hardened cubicle who have final control over the release of the station entrance turnstiles. A numbered picture badge visual identification system will continue to be used for all individuals who are authorized unescorted access to the protected area. Badges will continue to be displayed by all individuals while inside the protected area.

North Atlantic will use hand geometry equipment which will meet the detection probability of 90 percent with a 95 percent confidence level. Testing evaluated by Sandia National Laboratory (Sandia Laboratory report, "A Performance Evaluation of Biometric Identification Devices," SAND91–0276 UC–906 Unlimited Release, Printed June 1991), demonstrated that the proposed hand geometry system is capable of meeting this detection probability and confidence level. Based upon the results reported in the Sandia report and on North Atlantic's experience with the current photo-identification system, North Atlantic asserts that the biometric access control system will increase reliability above that of the current system. North Atlantic will implement a testing program to ensure that the biometric access control system will maintain the expected level of system performance. The Physical Security Plans for the site will be revised to include implementation and testing of the biometric access control system and to allow North Atlantic employees and other individuals authorized unescorted access to retain their badges and keycards when leaving the protected area.

IV

For the foregoing reasons, pursuant to 10 CFR 73.55, the NRC staff has determined that the proposed alternative measures for protection against radiological sabotage have the same high assurance objective and meets the general performance requirements of the regulation and that the overall level of system performance provides protection against radiological

sabotage equivalent to that which would be provided by the regulation.

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, an exemption is authorized by law, will not endanger life or property or common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants North Atlantic Energy Service Corporation an exemption from the requirement of 10 CFR 73.55(d)(5) relating to the returning of picture badges upon exit from the protected area such that individuals who are authorized unescorted access into the protected area but who are not employed by North Atlantic, can take their badges from the protected area.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant adverse environmental impact (60 FR 30118).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 14th day of June 1995.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–15139 Filed 6–20–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 40–0299]

Receipt of Application From Umetco Minerals Corporation To Amend License Condition 59 of Source Material License SUA–648

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of licensee request to amend source material license.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has received, by letter dated April 21, 1995, an application from Umetco Minerals Corporation (Umetco) to amend License Condition (LC) 59 of Source Material License No. SUA–648.

The license amendment application proposes to modify LC 59 to change the completion dates for four site-reclamation milestones. The new dates proposed by Umetco would extend completion of (1) placement of final radon barrier on the A–9 Impoundment by one year, and (2) placement of erosion protection on the Inactive Impoundment, the A–9 Impoundment, and the Heap Leach Impoundment by one year.

FOR FURTHER INFORMATION CONTACT: Mohammad W. Haque, High-Level Waste and Uranium Recovery Projects Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–6640.

SUPPLEMENTARY INFORMATION: The portions of LC 59 with the proposed changes would read as follows:

A. (3) Placement of final radon barrier designed and constructed to limit radon emissions to an average flux of no more than 20 pCi/m²/s above background:

For the A–9 Impoundment—December 31, 1996.

B. (1) Placement of erosion protection as part of reclamation to comply with Criterion 6 of 10 CFR Part 40:

For the Inactive Impoundment—December 31, 1997.

For the A–9 Impoundment—December 31, 1997.

For the Heap Leach Impoundment—December 31, 1997.

Umetco's application to amend LC 59 of Source Material License SUA–648, which describes the proposed changes to the license condition and the reason for the request is being made available for public inspection at the Commission's Public Document Room at 2120 L Street, NW. (Lower Level), Washington, DC 20555. The licensee and any person whose interest may be affected by the issuance of this license amendment may file a request for hearing. A request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this notice in the **Federal Register**; be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852); be served on the licensee (Umetco Minerals Corporation, P.O. Box 1029, Grand Junction, Colorado 81502); and must comply with the requirements set forth in the Commission's regulations, 10 CFR 2.105 and 2.714. The request for hearing must set forth with particularity the interest of the petitioner in the proceedings and how that interest may be affected by the results of the proceedings, including the reasons why the request should be granted, with particular reference to the following factors:

1. The nature of the petitioner's right under the Atomic Energy Act, to be made a party to the proceedings;

2. The nature and extent of the petitioner's property, financial or other interest in the proceedings; and

3. The possible effect on the petitioner's interest, of any order which may be entered in the proceedings.

The request must also set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes a hearing.

Dated at Rockville, Maryland, this 14th day of June 1995.

John O. Thoma,

Acting Chief, High-Level Waste and Uranium Recovery Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95–15136 Filed 6–20–95; 8:45 am]

BILLING CODE 7590–01–M

PHYSICIAN PAYMENT REVIEW COMMISSION

Request for Proposals

AGENCY: Physician Payment Review Commission.

ACTION: Notice.

The Physician Payment Review Commission is soliciting proposals to conduct a telephone interview of Medicare beneficiaries who are either enrolled in or disenrolled from a Medicare managed care plan. The survey's purpose is to gather information about these beneficiaries' experiences with Medicare managed care, particularly on beneficiary access to care. This notice describes the application procedures, general policy considerations, and criteria to be used in reviewing applications for prospective grants and contracts submitted to the Commission.

Background on the Commission

The Physician Payment Review Commission was established in 1986 (P.L. 99–272) to advise the U.S. Congress on physician payment policy under Part B of the Medicare program, and its mandate was later expanded to include consideration of a broader set of interrelated policies affecting the financing, quality, and delivery of health services. The 13-member Commission brings together the perspectives of physicians and other health professionals, consumers and the elderly, purchasers, managed care organizations, and experts in health services and health economics research. The Commission maintains a multidisciplinary staff that conducts and manages all the analytical work that supports its recommendations to the Congress.

The Commission submits an annual report to the Congress on March 31. It also submits a series of reports in May of each year concerning Medicare expenditures and fee updates, access to care, the financial liability of Medicare beneficiaries, and comments on the President's budget. The Commission has published analyses and recommendations relevant to this solicitation on topics such as ensuring access to care for vulnerable populations, approaches to health plan quality assurance, and improving Medicare risk program payment policy.

Description of Proposal Topic

Although beneficiary enrollment currently remains low, managed care is expected to play an increasingly large role in the future of the Medicare program. In response to this expectation, the Commission has begun to develop an approach for evaluating Medicare managed care enrollees' access to care as a component of its ongoing work in monitoring access for beneficiaries generally. Sources of information for use in monitoring Medicare managed care enrollees' access to care are currently limited, however. Encounter data are unavailable, for example. Also, the Medicare Current Beneficiary Survey (MCBS), which provides information about beneficiary experience in obtaining care, is not a useful source of information on beneficiaries enrolled in managed care plans because the number of enrollees in its sample is small and geographically clustered.

Because existing data for monitoring access for this population are insufficient, the Commission seeks to develop, test, and field a questionnaire for use in surveying Medicare beneficiaries who are either enrolled in or disenrolled from Medicare managed care plans. This survey would be used to obtain information about Medicare beneficiaries' experiences with managed care plans, and how those experiences affect their access to care. The managed care experiences of certain vulnerable subgroups of the beneficiary population may be analyzed and compared to those of the general beneficiary population. The survey instrument would use some questions from the MCBS to permit comparisons with beneficiaries in the fee-for-service sector, and would also adapt or develop other questions more appropriate to managed care. The survey results would provide information about beneficiary experience with managed care plans that could potentially be used as a baseline for comparison with the results of future studies. The information is expected to be used by the Commission to help assess the effects of potential health policy initiatives and to formulate policy recommendations. Also, the Commission expects that the survey will yield experience relevant to the design of future Medicare beneficiary surveys for the collection of information specific to Medicare managed care enrollees.

In particular, the Commission seeks to gain insight into Medicare managed care enrollee and disenrollee experiences with or perception of the following:

- access to care, including the timely availability of needed services, experience in obtaining a primary care physician upon enrollment and in cases where a physician leaves the plan, ability to find a physician, waiting times for appointments, travel distance to provider, barriers to care, and adequacy of access to specialists, as well as the perceived impact of supplemental benefits provided by the plan and of case management or disease management programs provided;
- utilization of services, including preventive care, acute care, home health care, rehabilitation care, reasons for and experience with out-of-plan service utilization, and experience in obtaining costly or experimental services in circumstances in which they might be indicated;
- level of satisfaction with various aspects of managed care experiences, including access to care, quality of care, care management or coordination efforts, choice of providers, and financial liability;
- degree of awareness and understanding of managed care plan arrangements, including incentives, service arrangements, restrictions on or consequences of out-of-plan service use, and enrollees' rights and responsibilities;
- aspects of managed care plan enrollment that bear on access to care, such as sources of beneficiary information on enrollment and options, and experience with the enrollment process;
- primary and contributing reasons for continuing enrollment and, where applicable, disenrollment; and
- nature and extent of any problems with discontinuity of care when switching to or from a managed care plan, including experiences with obtaining or retaining supplemental insurance and with changing providers.

As a component of the survey analysis, the Commission seeks to identify characteristics of beneficiaries and of managed care plans that affect beneficiary experience with access to care. To that end, the survey questionnaire should include background questions on relevant characteristics of beneficiaries who have experience in a managed care plan and relevant characteristics of the plans they have enrolled in or disenrolled from.

The sample size will be determined by technical feasibility and resource constraints. Projects should be bid at the sample size that the Offeror believes to be appropriate. For comparability purposes, a budget based on a simple size of 2,000 should be included in the Offeror's business proposal. The Commission is exempt from Office of Management and Budget regulations regarding the clearance of forms and survey instruments.

The contractor will perform the following tasks:

1. Conduct a review of relevant survey or other research findings.
2. Refine survey topics, including suggesting additional survey topics to meet the Commission's needs, develop the survey instrument in consultation with Commission staff, and pilot test the full instrument.
3. Determine the appropriate sampling design and sample size, and select a random sample of Medicare beneficiaries who are either enrolled in or disenrolled from a Medicare managed care plan.
4. Conduct the telephone interviews.
5. Deliver to the Commission a documented, cleaned, computer data file of the responses by July 15, 1996.
6. Deliver a draft report of the methodology and results of the survey to the Commission by August 5, 1996.
7. Deliver to the Commission the final written report of the survey's methodology and results by September 2, 1996.

The Commission plans to award a contract in September 1995.

Formal Proposals

Proposals must conform to the requirements specified in the Commission's formal Request for Proposals, which will be made available to applicants on June 29, 1995. The following provides an outline of what should be contained in the formal proposal:

1. Suggestions for additional topic areas to meet the Commission's needs (described more fully in the Request for Proposals) and examples of questions to address specific topics of interest.
2. Plans for developing and testing the survey instrument, including the use and adaptation of previously validated questions where applicable, and discussion of the types of questions from the MCBS that would be most appropriate and useful in obtaining comparability of relevant survey results.
3. Plans for determining the appropriate sampling design and sample size, and for obtaining a random sample of beneficiaries who are either enrolled or disenrolled from a Medicare managed

care plan. Plans for oversampling certain groups thought to be vulnerable to access problems should be included. The Commission will provide a data set of beneficiaries and relevant characteristics for sample generation.

4. Methods to be used to obtain an adequate response rate.

5. Detailed description of how the interviews will be carried out, including the training of interviewers, and method to achieve reliable results.

6. Analysis plan.

7. Discussion of problems that may be encountered and strategies for resolving them.

8. Work plan including description of tasks, time schedule, level of effort for key individuals, and the number of days devoted to each task.

9. Description of the organizational experience and resources and the qualifications of key project staff, demonstrating their understanding of the Medicare program and managed care, experience with the design and conduct of telephone interview surveys of Medicare beneficiaries or the elderly, and the ability to complete successfully the preceding tasks.

10. Detailed budget providing justifications and explanations for amounts required for each task of the project.

Review of Proposals

Proposals will be reviewed by a panel composed of at least three individuals, at least one of whom will not be affiliated with the Commission. Reviewers will score applications and make recommendations based on the criteria published in the Commission's Request for Proposals, Part IV, Section M, "Technical Evaluation and Criteria for Award."

General Information

Authority

The Commission's authority for making these awards is based on Section 1845(c)(2)(B) of the Social Security Act (42 U.S.C. Section 1359w–1).

Regulations

General policies and procedures that govern the administration of contracts and grants are located in Title 45 of the CFR parts 74 and 92. Applicants are urged to review the requirements contained in those regulations.

Submission Address

Physician Payment Review Commission,2120 L Street NW, Suite 200,Washington, DC 205037.

Submission Deadline

In order to be considered under this Request for Proposals, complete proposals must be received in the Commission's office no later than close of business, Friday, July 28, 1995.

Obligation

Ths solicitation in no way obligates the Commission to fund any applicant.

Date:

June 15, 1995.

Contact:

Elizabeth Docteur, Analyst, Physician Payment Review Commission, 2120 L Street NW., Suite 200, Washington, DC 20037, (202) 653–7220.

Lauren B. LeRoy,

Acting Executive Director.

[FR Doc. 95–15115 Filed 6–20–95; 8:45 am]

BILLING CODE 6820–SE–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 21138; 811–5389]

The American Express Funds; Notice of Application for Deregistration

June 15, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: The American Express Funds.

RELEVANT ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: Application seeks an order declaring it has ceased to be an investment company.

FILING DATES: The application was filed on May 23, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 10, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, American Express Tower, World Financial Center, New York, New York 10285–3400.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Staff Attorney, at (202) 942–0562, or H.R. Hallock, Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a diversified, open-end, registered investment company organized as a Massachusetts's business trust. On November 12, 1987, applicant filed a Notification of Registration on Form N–8A pursuant to section 8(a) of the Act and a registration statement was declared effective on April 7, 1988 and applicant's initial public offering commenced shortly thereafter.

2. Applicant consists of nine separate series: American Express Money Market Fund ("Money Market Fund"); American Express Corporate Bond Fund ("Corporate Bond Fund"); American Express U.S. Government Income Fund ("U.S. Government Income Fund"); American Express Equity Growth Fund ("Equity Growth Fund"); American Express Equity Value Fund ("Equity Value Fund"); American Express Tax-Free Money Market Fund ("Tax-Free Money Market Fund"); American Express Tax-Free Municipal Bond Fund ("Tax-Free Municipal Bond Fund"); American Express Intermediate Term Bond Fund ("Intermediate Term Bond Fund"); and American Express International Equity Fund ("International Equity Fund") (collectively, the "Funds").

3. On November 1, 1991, applicant's Board of Trustees (the "Board") approved a reorganization plan whereby all or substantially all of the assets of each series of applicant would be exchanged for shares of beneficial interest of corresponding series of The Dreyfus/Laurel Funds Trust, The Dreyfus/Laurel Investment Series, and the Dreyfus/Laurel Tax-Free Municipal Funds (collectively, the "Acquiring Funds").

4. Based on a study conducted by the applicant's investment manager, American Express Service Corporation ("American Express"), and American Express Travel Related Services Company, Inc. ("TRS"), the parent of American Express, the Board concluded

that greater operational efficiencies would be achieved upon a reorganization of applicant with other American Express affiliated funds with a greater level of assets. The Board approved the reorganization based on the similarity of investment objectives and shareholder privileges between the Funds and the corresponding series of the Acquiring Funds, the increased investment diversification that would be available to shareholders of a larger group of funds, the shift in focus of applicant's sponsor to unrelated businesses, and the tax-free nature of the reorganization.

5. Because applicant and the Acquiring Funds had investment advisers that may have been deemed to be under "common control" within the meaning of section 2(a)(9), thereby rendering applicant and the Acquiring Funds "affiliated persons" within the meaning of section 2(a)(3)(C), the proposed reorganizations were subject to the prohibition of section 17(a) against affiliated transactions. Consequently, applicant, the Acquiring Funds, and TRS applied for and were granted relief from section 17(a),[1] on the grounds that, among other things, the reorganizations were represented to be consistent with the policies and purposes underlying rule 17a–8 under the Act.

6. Proxy materials previously had been mailed to shareholders on or about December 26, 1990. On February 4, 1992, the Funds' shareholders approved the reorganization. On February 7, 1992, applicant transferred all of the assets and liabilities of the Funds to the individual series of the Acquiring Funds, as follows: (a) Money Market Fund (40,350,320 shares outstanding with an aggregate and per share net asset value of $40,345,504 and $1.00, respectively) to Prime Money Market Fund in exchange for shares of Prime Money Market Fund; (b) Corporate Bond Fund (139,755 shares outstanding with an aggregate and per share net asset value of $1,710,067 and $12.24, respectively) to Managed Income Fund in exchange for shares of Managed Income Fund; (c) U.S. Government Income Fund (160,235 shares outstanding with an aggregate and per share net asset value of $1,917,117 and $11.96, respectively) to Limited Term Government Securities Fund in exchange for shares of Limited Term Government Securities Fund; (d) Equity Growth Fund (256,115 shares outstanding with an aggregate and per share net asset value of $6,033,829 and $23.56, respectively) to Special Growth Fund in exchange for shares of Special Growth Fund; (e) Equity Value Fund (172,484 shares outstanding with an aggregate and per share net asset value of $2,248,418 and $13.04, respectively) to Core Value Fund in exchange for shares of Core Value Fund; (f) Tax-Free Money Market Fund (15,494,982 shares with an aggregate and per share net asset value of $15,496,605 and $1.00, respectively) to Tax-Exempt Money Market Fund in exchange for shares of Tax-Exempt Money Market Fund; (g) Tax-Free Municipal Bond Fund (118,945 shares outstanding with an aggregate and per share net asset value of $1,531,076 and $12.87, respectively) to Limited Term Municipal Bond Fund in exchange for shares of Limited Term Municipal Bond Fund; (h) Intermediate Term Bond Fund (145,310 shares outstanding with an aggregate and per share net asset value of $1,786,922 and $12.30, respectively) to Short-Term Bond Fund in exchange for shares of Short-Term Bond Fund; and (i) International Equity Fund (136,326 shares outstanding with an aggregate and per share net asset value of $1,651,911 and $12.12, respectively) to International Fund in exchange for shares of International Fund.

7. Shares of each series of the Acquiring Funds were immediately distributed to applicant's shareholders. Each shareholder of a Fund received, in exchange for his or her shares in the Fund, shares of the corresponding series of the Acquiring Funds having an aggregate net asset value equal to the net asset value of his or her investment in the Fund.

8. Total expenses of the reorganization were approximately $200,000 and consisted of accounting, printing, administrative and legal fees. Such expenses were borne by American Express, TRS, and The Boston Company Advisors, Inc., applicant's administrator. No portion of such expenses were paid by applicant.

9. As of the date of the application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is neither engaged in nor proposes to engage in any business activities other than those necessary for the winding-up of its affairs.

10. Applicant will terminate its existence as a Massachusetts business trust.

[1] Cash Management Fund, *et al.*, Investment Company Act Release Nos. 18474 (notice) (Jan. 8, 1992) and 18518 (order) (Feb. 4, 1992).

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15119 Filed 6–20–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21137; No. 812–9400]

Western National Life Insurance Company, et al.

June 15, 1995.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order pursuant to the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Western National Life Insurance Company ("Western National"), WNL Separate Account A (the "Separate Account"), and WNL Brokerage Services, Inc. ("WNL").

RELEVANT 1940 ACT SECTIONS: Order requested pursuant to Section 6(c) of the 1940 Act granting exemptions from the provisions of Sections 2(a)(32), 22(c), 26(a)(2)(C), 27(c)(1), 27(c)(2), and 27(d) thereof.

SUMMARY OF APPLICATION: Applicants seek an order granting exemptive relief to the extent necessary to permit the issuance of variable annuity contracts ("Existing Contracts") providing for a recapturable bonus equal to one percent of initial purchase payments, and the deduction of mortality and expense risk and enhanced death benefit charges from the assets of the Separate Account. Exemptive relief also is requested to the extent necessary to permit the provision of the recapturable bonus in connection with, and the deduction of the mortality and expense risk and enhanced death benefit charges from, and other separate account established in the future by Western National, in connection with the issuance and sale of annuity contracts that will be offered on a basis that is substantially similar in all material respects to the Existing Contracts ("Future Contracts," together with Existing Contracts, the "Contracts"), which may be sold in the future by the Separate Account or other separate accounts ("Future Accounts," together with the Separate Account, the "Accounts") established in the future by Western National in connection with the issuance of Contracts.

FILING DATE: The application was filed on December 21, 1994, and amended on June 14, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request

a hearing on the application by writing to the Secretary of the Commission and serving the Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on July 10, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, DC 20549. Applicants, Dwight L. Cramer, Western National Life Insurance Company, 5555 San Felipe, Suite 900, Houston, Texas 77056. Copies to Judith A. Hasenauer, Blazzard, Grodd & Hasenauer, P.C. 943 Post Road East, P.O. Box 5108, Westport, Connecticut 06881.

FOR FURTHER INFORMATION CONTACT: Kevin Kirchoff, Senior Counsel, or Patrice M. Pitts, Special Counsel, at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representations

1. Western National is a stock life insurance company incorporated under the laws of the State of Texas. Western National is licensed to do business in 46 states and the District of Columbia. WNL, an affiliate of Western National, will serve as distributor of the Contracts. WNL is registered as a broker-dealer under the Securities Exchange Act of 1934, and is a member of the National Association of Securities Dealers.

2. The Separate Account was established as a segregated asset account pursuant to a resolution of the Board of Directors of Western National on November 9, 1994, to act as a funding medium for certain annuity contracts. The Separate Account is registered with the Commission pursuant to the 1940 Act as a unit investment trust.

3. The Separate Account presently consists of eight subaccounts, each of which will invest in the shares of one of the portfolios of WNL Series Trust (the "Trust"). Additional subaccounts may be created to invest in any additional portfolios of the Trust which may be added in the future, or in other funding vehicles. The Trust is registered under the 1940 Act as an open-end management investment company.

4. The assets of the Separate Account are the property of Western National. However, the assets of the Separate Account, equal to the reserves and other contract liabilities with respect to the Separate Account, are not chargeable with liabilities arising out of any other business Western National may conduct. Income, gains and losses, whether or not realized, are, in accordance with the Contracts, credited to or charged against the Separate Account without regard to other income gains or losses arising out of any other business Western National may conduct.

5. The Existing Contracts are available for retirement plans which do not qualify for the special federal tax advantages pursuant to the Internal Revenue Code and for retirement plans which do qualify for the federal tax advantages available pursuant to the Internal Revenue Code.

6. The minimum initial purchase payment for non-qualified Existing Contracts is $5,000 and for qualified Existing Contracts is $2,000. The minimum subsequent purchase payment for non-qualified Existing Contracts is $1,000 or, if the automatic premium check option is elected, $50. The minimum subsequent purchase payment for qualified Existing Contracts is $50. The maximum total purchase payments Western National will accept without its prior approval is $500,000 for contract owners up to 75 years in age. The maximum total purchase payments Western National will accept without its prior approval for contract owners age 75 and older is $250,000.

7. Western National will, at the time of the initial purchase payment, add an additional amount, as a bonus ("Bonus"), equal to one percent (1%) of such purchase payment. Western National reserves the right to limit its payment of the Bonus to $5.000. If the contract owner makes a withdrawal prior to the seventh contract anniversary in excess of: (a) up to 10% of the contract value each contract year or (b) the amount permitted under the systematic withdrawal option (up to 10% of the contract value each contract year) an amount equal to the Bonus will be deducted by Western National from the contract value. Western National will not recapture any investment earnings on the Bonus. The owner does not have a vested interest in the principal amount of the Bonus until seven contract years have elapsed from the date of the Bonus payment, and until that time the Bonus belongs to Western National.

8. The Existing Contracts provide for certain guaranteed death benefits during the accumulation period. The standard death benefit provides that for a death occurring prior to the 80th birthday of the contract owner, or the oldest joint owner, the death benefit during the accumulation period will be the greater of: (1) the purchase payments, less any withdrawals including any previously deducted contingent deferred sales charge; or (2) the contract value determined as of the end of the valuation period during which Western National receives at its annuity service office both due proof of death and an election of the payment method; or (3) the highest step-up value prior to the date of death. The step-up value is equal to the contract value on each seventh contract anniversary plus any purchase payments made after such contract anniversary less any withdrawals and contingent deferred sales charge deducted after such contract anniversary. For a death occurring on or after the 80th birthday of the owner, or the oldest joint owner, the death benefit during the accumulation period will be the contract value determined as of the end of the valuation period during which Western National receives at its annuity service office both due proof of death and an election of the payment method.

9. The Contracts also provide for an enhanced death benefit (via an endorsement) if selected by the contract owner ("Enhanced Death Benefit"). If the owner selects the Enhanced Death Benefit, for a death occurring prior to the 75th birthday of the owner, or the oldest joint owner, the death benefit will be the greater of 1, 2 or 3 above (in paragraph 8) or the total amount of purchase payments compounded up to the date of death at 3% interest, minus the total withdrawals and previously deducted contingent deferred sales charges compounded up to the date of death of 3% interest, not to exceed 200% of purchase payments, less withdrawals and previously deducted contingent deferred sales charges. For a death occurring on or after the 75th birthday and before the 80th birthday of the owner, or the oldest joint owner, the death benefit during the accumulation period will be the greater of 1, 2 or 3 (in paragraph 8) above. For death occurring on or after the 80th birthday of the owner, or the oldest joint owner, the death benefit during the accumulation period will be the contract value determined as of the valuation period during which Western National receives at its annuity service office both due proof of death and an election of the payment method.

10. Subject to any limitations imposed by Western National on the number of transfers (currently unlimited), owners may transfer all or part of their interest in a subaccount or during the annuity period from a subaccount to the general account without the imposition of any fee or charge if there have been no more than the number of free transfers permitted. Currently, there are no restrictions on the number of transfers that can be made each contract year. However, if Western National does limit the number of transfers in the future, owners are guaranteed 12 free transfers during the accumulation period and 6 free transfers during the annuity period. Currently, Western National does not impose a transfer fee. Western National has reserved the right to charge a fee for transfers in the future which will not exceed the lesser of $25 or 2% of the amount transferred.

11. Any premium taxes relating to the Existing Contracts may be deducted from the purchase payments or contact value when incurred. Western National currently defers the charge for premium taxes until full withdrawal or annuitization. However, Western National reserves the right to deduct the premium taxes when incurred. Premium taxes generally range from 0% to 4%.

12. The Contracts do not provide for a front-end sales load to be deducted from purchase payments. However, if all or a portion of the Contract value is withdrawn, a contingent deferred sales charge (sales load) ("CDSC") will be calculated at the time of each withdrawal and will be deducted from the contract value. This charge reimburses Western National for expenses incurred in connection with the promotion, sale and distribution of the Contracts. The CDSC is based upon the length of time from when each purchase payment was made as follows:

Length of time from purchase payment (number of years)	Withdrawal charge (percent)
1	5
2	5
3	5
4	4
5	3
6	2
7	1
8 or more	0

After the first contract anniversary, a withdrawal of up to 10% of the contract value, determined as of the immediately preceding contract anniversary, may be withdrawn once each contract year on a non-cumulative basis without the imposition of the CDSC.

13. Applicants acknowledge that the CDSC, if applicable, may be insufficient to cover all costs relating to the distribution of the Contracts, and that if a profit is realized from the Mortality and Expense Risk Charge, all or a portion of such profit may be offset by distribution expenses not reimbursed by the CDSC.

14. On each contract anniversary, Western National will deduct a charge to reimburse it for expenses relating to maintenance of the Contracts ("Contract Maintenance Charge"). The Contract Maintenance Charge is currently $30 each contract year. However, during the accumulation period, if the contract value on the contract anniversary is at least $40,000, then no Contract Maintenance Charge is deducted. If a total withdrawal is made on other than a contract anniversary and the contract value for the valuation period during which the total withdrawal is made is less than $40,000, the full Contract Maintenance Charge will be deducted at the time of the total withdrawal. During the annuity period, the Contract Maintenance Charge will be deducted pro-rata from annuity payments regardless of contract size and will result in a reduction of each annuity payment. The Contract Maintenance Charge will be deducted from the general account and the subaccounts in the Separate Account in the same proportion that the amount of the contract value in the general account and each subaccount bears to the total contract value.

15. Each valuation period Western National will deduct a charge equal on an annual basis to .15% of the average daily net asset value of the Separate Account ("Administrative Charge"). Western National represents that the Administrative Charge will not exceed expenses and will not be increased should it prove to be insufficient. Western National does not intend to profit from the Administrative Charge, which will be reduced to the extent that the amount of the charge is in excess of that necessary to reimburse Western National for its administrative expenses.

16. Western National will assume certain mortality and expense risks under the Contracts. To compensate it for assuming these risks, Western National will deduct each valuation period a charge which is equal, on an annual basis, to 1.25% of the average daily net asset value of the Separate Account ("Mortality and Expense Risk Charge"). Of this amount, approximately .80% is attributable to mortality risks, and approximately .45% is attributable to expense risks. The Mortality and Expense Risk Charge is guaranteed by Western National and cannot be increased. Western National anticipates that it will derive a profit from this charge.

17. The mortality risks assumed by Western National arise from its contractual obligation to make annuity payments after the annuity date (determined in accordance with the annuity option chosen by the owner) regardless of how long all annuitants live. This assures that neither an annuitant's own longevity, nor an improvement in life expectancy greater than that anticipated in the mortality tables, will have any adverse effect on the annuity payments the annuitant will receive under the Contract. Further, Western National bears a mortality risk because it guarantees the annuity purchase rates for the annuity options under the Contracts whether for a fixed annuity or a variable annuity. Also, there is a mortality risk borne by Western National with respect to the standard death benefit and the waiver of the CDSC if purchase payments have been held in the contract less than seven contract years.

18. The expense risk assumed by Western National is that all actual expenses involved in administering the Contracts, including maintenance costs, administrative costs, mailing costs, data processing costs, legal fees, accounting fees, filing fees and the costs of other services may exceed the amount recovered from the Contract Maintenance Charge and the Administrative Charge.

19. If the Owner selects the Enhanced Death Benefit, each valuation period prior to the 75th birthday of the contract owner, or oldest joint owner, Western National will deduct a charge from the Separate Account which is equal, on an annual basis, to .15% of the average daily net asset value of the Separate Account ("Enhanced Death Benefit Charge"). This charge compensates Western National for assuming the mortality risks for the Enhanced Death Benefit. Western National expects to profit from this charge.

Applicants' Legal Analysis and Conditions

1. Pursuant to Section 6(c) of the 1940 Act the Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the 1940 Act or from any rule or regulation thereunder, if and to the extent that such exemption is

necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in pertinent part, prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative services of a character normally performed by the bank itself.

3. Applicants request an order pursuant to Section 6(c) of the 1940 Act exempting them from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of mortality and expense risk and enhanced death benefit charges from the assets of the Separate Account and any Future Accounts in connection with the Existing Contracts and Future Contracts.

4. Applicants assert that the mortality and expense risk charge of 1.25% is reasonable in relation to the risks assumed by Western National under the Existing Contracts and reasonable in amount as determined by industry practice with respect to comparable annuity products. Applicants state that these determinations are based upon an analysis of the mortality risks (taking into consideration such factors as the guaranteed annuity purchase rates), the expense risks (taking into account the existence of charges against the Separate Account assets for other than mortality and expense risks), the estimated costs for certain product features and industry practice with respect to comparable variable annuity products. Western National undertakes to maintain at its principal office a memorandum, available to the Commission, setting forth in detail the products analyzed and the methodology and results of this analysis.

5. Applicants assert that the charge of 0.15% for the Enhanced Death Benefit is reasonable in relation to the risks assumed by Western National under the Existing Contracts for providing the Enhanced Death Benefit. Western National undertakes to maintain at its home office a memorandum, available to the Commission upon request, setting forth in detail the methodology used in determining that the risk charge of 0.15% for the enhanced death benefit is reasonable in relation to the risks assumed by Western National under the Existing Contracts.

6. Applicants represent that, before relying on exemptive relief requested in this application in connection with Future Contracts, Applicants will determine that any enhanced death benefit risk charges under such contracts are reasonable in relation to the related risks assumed by Western National under such Future Contracts. Applicants represent that Western National will maintain and make available to the Commission upon request a memorandum setting forth in detail the methology used in making that determination with respect to Future Accounts.

7. Applicants represent that, before relying on exemptive relief requested in this application in connection with Future Contracts, Applicants will determine that any mortality and expense risk charges under such contracts are reasonable in amount as determined by industry practice with respect to comparable annuity products and/or reasonable in relation to the risks assumed by Western National. Applicants represent that Western National will maintain and make available to the Commission upon request a memorandum setting forth the basis of such conclusion with respect to the Future Accounts.

8. Western National has concluded that there is a reasonable likelihood that the Separate Account's distribution financing arrangement will benefit the Separate Account and its investors. Western National represents that it will maintain and make available to the Commission upon request a memorandum setting forth the basis of such conclusion.

9. Applicants represent that, before relying on exemptive relief requested in this application in connection with Future Contracts or Future Accounts, Applicants will determine that there is a reasonable likelihood that the distribution financing arrangement will benefit the Separate Account and its investors or Future Accounts and their investors. Western National represents that it will maintain and make available to the Commission upon request a memorandum setting forth the basis of such conclusion.

10. Western National represents that the assets of the Separate Account and any Future Accounts will be invested only in underlying mutual funds which undertake, in the event they should adopt a plan for financing distribution expenses pursuant to Rule 12b–1 under the 1940 Act, to have such plan formulated and approved by their board of directors, the majority of whom are not "interested persons" of such funds within the meaning of Section 2(a)(19) of the 1940 Act.

11. Applicants request an order pursuant to Section 6(c) of the 1940 Act exempting them from Sections 2(a)(32), 22(c), 26(a)(2)(C), 27(c)(1), 27(c)(2) and 27(d) of the 1940 Act, and from Rule 22c–1 promulgated thereunder, to the extent necessary to permit Western National to issue Contracts providing for the Bonus and its recapture if the owner makes a withdrawal prior to the seventh contract anniversary in excess of 10% of the contract value each contract year.

12. Applicants represent that contract owners do not have a vested interest in the principal amount of the Bonus until seven contract years have elapsed from the date of payment of the Bonus by Western National and that, until such time, the Bonus is the property of Western National.

13. Applicants represent that it is not administratively feasible for them to track the Bonus amounts in the Separate Account. Accordingly, the Mortality and Expense Risk Charge, the Administrative Charge and, when applicable, the Enhanced Death Benefit Charge (collectively, the "Asset-Based Charges"), will be assessed against the entire value of each Contract holder's account, including the Bonus amount, even during the period when the Owner's interest in the Bonus has not vested (the first seven Contract years). As a result, during the first seven years of each Contract that includes a Bonus, the aggregate Asset-Based Charges assessed will be higher than those that would be charged if the Contract did not include the Bonus.

14. Applicants represent that the Bonus and its recapture will involve none of the abuses to which Sections 2(a)(32), 22(c), 26(a)(2)(C), 27(c)(1), 27(c)(2), and 27(d) of the 1940 Act and Rule 22c–1 thereunder were intended to prevent. Applicants also state that the Bonus will be attractive to and in the interest of investors because it will permit owners to put 101% of their purchase payments to work for them in the selected investment options. Applicants further explain that the earnings attributable to the Bonus always will be retained by the owner, and the principal amount of the Bonus also will be retained if the initial purchase payment is not withdrawn for seven contract years.

15. Applicants submit that their request for exemptive relief would promote competitiveness in the variable annuity contract market by eliminating the need for redundant exemptive applications, thereby reducing Applicants' administrative expenses and maximizing the efficient use of their resources. Applicants further submit that the delay and expense involved in having repeatedly to seek exemptive relief would impair their ability effectively to take advantage of business opportunities as they arise. Further, if Applicants were required repeatedly to seek exemptive relief with respect to the same issues addressed in this application, investors would not receive any benefit or additional protection.

Conclusion

For the reasons summarized above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15118 Filed 6–20–95; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Supplemental Environmental Impact Statement; Wilmington, New Hanover County, North Carolina

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this Notice to advise the public that a second Supplemental Environmental Impact Statement (SEIS) will be prepared for the two western-most sections (just east of 23rd Street to U.S. 117 and 3rd Street east of the Northeast Cape Fear River Bridge) of the proposed highway project (Smith Creek Parkway: State Project No. 8.2250103; T.I.P. No. U–92; Federal Project No. MAM–5851(2)) north of U.S. 17 (Market Street) in Wilmington, North Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. Roy C. Shelton, Operations Engineer, Federal Highway Administration, 310 New Bern Avenue, Suite 410, Raleigh, North Carolina 27601, Telephone (919) 856–4350.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Carolina Department of Transportation (NCDOT), will prepare a second Supplemental Environmental Impact Statement (SEIS) for the assessment of a new alignment for the two western-most sections (approximately 2.2 miles) of Smith Creek Parkway in Wilmington, North Carolina. The original FEIS (FWHA–NC–EIS–77–03–F) was completed September 24, 1980. The SEIS (FHWA–NC–EIS–77–03–FS) was completed July 15, 1991. The eastern-most sections of Smith Creek Parkway, approved under the first SEIS, are currently under construction or will be under construction by September, 1995

The first SEIS previously identified a preferred alternative which would be located south of Smith Creek and would pass through the Burnt Mill Creek Landfill. Due to unknown hazardous material involvement related to construction of the preferred alternative over the Burnt Mill Creek Landfill site and an unresolved noise conflict with the Carolco Film Studios (formerly DEG Film Studios), a series of alternatives north of Smith Creek were additionally evaluated.

The proposed action will evaluate a northern alternative for the western-most sections only. The preferred northern alternative avoids the vicinity of the Burnt Creek Landfill site and surrounds, as well as the Carolco Film Studios, by extending Smith Creek Parkway northwest, crossing Smith Creek near 23rd Street, and crossing back over Smith Creek just southeast of U.S 117 (Castle Hayne Road). Recent study of the area north of Smith Creek indicates this area is a reasonable and feasible alternative route

No formal scoping meeting is planned. A public involvement program has been developed for the project. The draft SEIS will be available for public and agency review and comment prior to the public hearing. To assure the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The Regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: June 13, 1995.

Roy C. Shelton,

Operations Engineer, Raleigh.

[FR Doc. 95–15193 Filed 6–20–95; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

[Docket No. 95–49; Notice 1]

General Motors Corporation; Receipt of Application for Decision of Inconsequential Noncompliance

General Motors Corporation (GM) of Warren, Michigan, has determined that some of its vehicles fail to comply with the requirements of 49 CFR 571.108, Federal Motor Vehicle Safety Standard (FMVSS) No. 108, "Lamps, Reflective Devices, and Associated Equipment," and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." GM has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

In FMVSS No. 108, Table III lists turn signal lamps as required equipment. Society of Automotive Engineers' (SAE) Standard J588, NOV84, incorporated by reference in Table III, provides that the photometric requirements for turn signal lamps may be met at zones or groups of test points, instead of at each individual test point. Within a zone, the lamp is permitted to fail at individual test points as long as the total light intensity of all the test points within the zone is not below the specified level for the zone. SAE J588 specifies four such zones for turn signals.

During the period of September 1990 through 1995, GM manufactured approximately 544,420 Buick Centuries on which the turn signal lamps failed to meet the photometric requirements referenced in Table III of FMVSS No. 108. Of the four zones tested on the turn signal lamps, zones 1, 2, and 4 met the requirements, while zone 3 did not. The required light intensity for zone 3 is 2,375 candela (cd). When tested, 17 of the subject lamps produced, on average, a light intensity of approximately 2,145 cd or 90 percent of the required intensity. The three compliant zones exceed the light intensity requirements by at least 20 percent.

GM supports its application for inconsequential noncompliance with the following:

The difference between the FMVSS 108 requirement for zone 3 and the average performance of the subject lamps is

imperceptible to the human eye. The average performance value for zone 3 for all 17 tested lamps is 10 percent below the 2375 cd federal requirement, and every lamp fell within 20 percent of that requirement (ranging from −1% to −18% of the requirement). As acknowledged in NHTSA's notices granting other similar petitions for determination of inconsequential noncompliance, and as demonstrated in the recent study (DOT HS 808 209, Final Report dated September 1994) sponsored by the agency *Driver Perception of Just Noticeable Difference in Signal Lamp Intensities*, a change in luminous intensity of approximately 25 percent is required before the human eye can detect a difference between the two lamps. (See, e.g., Notice granting petition by Subaru of America (56 Fed. Reg. 59971); and Notice granting petition by Hella, Inc. (55 Fed. Reg. 37602).) Since the average discrepancy for the Buick lamp is only 10% with a maximum measured discrepancy of 18%, the subject lamps do not compromise motor vehicle safety as the noncompliance is not detectable by the human eye.

The subject lamps otherwise meet or exceed all other requirements of FMVSS 108, including the requirement of SAE J588, November 1984, that "the measured values at each test point shall not be less than 60% of the minimum value in Table 3 [Photometric Design Guidelines]."

GM is not aware of any accidents, injuries, owner complaints or field reports related to this condition.

Interested persons are invited to submit written data, views, and arguments on the application of GM described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, D.C. 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: July 21, 1995.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on June 14, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–15087 Filed 6–20–95; 8:45 am]

BILLING CODE 4910–59–M

Research of Special Programs Administration

Grants and Denials of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of grants and denials of applications for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted in January thru May 1995. The modes of transportation involved are identified by a number in a "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
2709–P	DOT–E 2709 ...	Alliant Techsystems, Inc., New Brighton, MN.	49 CFR 173.62, 173.93, 176.76(h), 177.821, 177.834 (l)(1), 177.835(k), 46 CFR Part 146.	To become a party to exemption 2709. (Modes 1, 3)
3126–P	DOT–E 3126 ...	Alliant Techsystems, Inc., New Brighton, MN.	49 CFR 173.62, 177.821, 177.822(b), 177.835(k).	To become a party to exemption 3126. (Mode 1)
3549–P	DOT–E 3549 ...	EG&G Star City, Inc., Miamisburg, OH.	49 CFR 173.65 (a), 173.77.	To become a party to exemption 3549. (Modes 1, 2)
5022–P	DOT–E 5022 ...	Alliant Techsystems, Inc., New Brighton, MN.	49 CFR 174.101(L), 174.104(d), 174.112(a), 174.86, 177.834(l)(1).	To become a party to exemption 5022. (Modes 1, 2)
5022–P	DOT–E 5022 ...	U.S. Department of Energy, Washington, DC.	49 CFR 174.101(L), 174.104(d), 174.112(a), 174.86, 177.834(l)(1).	To become a party to exemption 5022. (Modes 1, 2)
5704–P	DOT–E 5704 ...	Chemical Waste Management, Inc., Oak Brook, IL.	49 CFR 173.62, 173.93(e)	To become a party to exemption 5704. (Modes 1, 2, 3)
5704–P	DOT–E 5704 ...	Alliant Techsystems, Inc., New Brighton, MN.	49 CFR 173.62, 173.93(e)	To become a party to exemption 5004. (Modes 1, 2, 3)
6293–P	DOT–E 6293 ...	Alliant Techsystems, Inc., New Brighton, MN.	49 CFR 173.21(b), 173.248.	To become a party to exemption 6293. (Mode 1)
6614–P	DOT–E 6614 ...	Sierra Chemical Co., Sparks, NV.	49 CFR 173.245, 173.263(a) (28) and 173.277 (a)(6).	To become a party to exemption 6614. (Mode 1)
6691–P	DOT–E 6691 ...	SheSam, Inc. T/A Wilson Supply, Cumberland, MD.	49 CFR 173.34(e) (15)(i), Part 107, Subpart B, Appendix B.	To become a party to exemption 6691. (Modes 1, 2, 3, 4)
6691–P	DOT–E 6691 ...	ILL–MO Products Company/Jacksonville, IL.	49 CFR 173.34(e) (15)(i), Part 107, Subpart B, Appendix B.	To become a party to exemption 6691. (Modes 1, 2, 3, 4)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
6691–P	DOT–E 6691 ...	Raimy Corporation, d/b/a Welders Supply, Erie, PA.	49 CFR 173.34(e) (15)(i), Part 107, Subpart B, Appendix B.	To become a party to exemption 6691. (Modes 1, 2, 3, 4)
6691–P	DOT–E 6691 ...	Ohio Air Products of Canton, Inc., Canton, OH.	49 CFR 173.34(e) (15)(i), Part 107, Subpart B, Appendix B.	To become a party to exemption 6691. (Modes 1, 2, 3, 4)
6691–P	DOT–E 6691 ...	Wolfenden Industries, Inc., Cleveland, OH.	49 CFR 173.34(e) (15)(i), Part 107, Subpart B, Appendix B.	To become a party to exemption 6691. (Modes 1, 2, 3, 4)
6743–P	DOT–E 6743 ...	L.P. Rock Corp., Parsippany, NJ.	49 CFR 173.114 (a)(h)(3), 173.182.	To become a party to exemption 6743. (Mode 1)
7616–P	DOT–E 7616 ...	Wheeling & Lake Erie Railway Company, Brewster, OH.	49 CFR 172.200(a), 172.204(a), 172.204(d), 174.12, 174.24(a), 174.25(b)(2), 174.3.	To become a party to exemption 7616. (Mode 2)
8009–P	DOT–E 8009 ...	Texas Gas Transmission Corporation, Owensboro, KY.	49 CFR 173.301(d) (2), 173.302(a) (3).	To become a party to exemption 8009. (Mode 1)
8230–P	DOT–E 8230 ...	Olin Corporation, Stanford, CT.	49 CFR 173.268(b) (6), 173.269(a) (4).	To become a party to exemption 8230. (Modes 1, 2, 3, 4)
8236–P	DOT–E 8236 ...	Howard Temes Packaging Company, Redford, MI.	49CFR 171.11 (see paragraph 8.d.), 173.153, 173.154, 175.3.	To become a party to exemption 8236. (Modes 1, 2, 3, 4)
8249–X	DOT–E 8249 ...	LPS Industries, Inc., Newark, NJ.	49 CFR 172.203, 172.400, 172.402, 172.504, 173.150, 173.151, 173.152, 173.153, 173.154, 173.201, 173.202, 173.203, 173.211, 173.212, 173.213, 173.25, 175.3.	To modify exemption to provide for zipper reclosable barrier bags as inside container for use in transporting limited quantities of various hazardous materials. (Modes 1, 2, 4, 5)
8264–P	DOT–E 8264 ...	Alliant Techsystems, Inc., New Brighton, MN.	49 CFR 173.93	To become a party to exemption 8264. (Modes 1, 2)
8265–P	DOT–E 8265 ...	Alliant Techsystems, Inc., New Brighton, MN.	49 CFR 173.197a, 173.93, 177.838(g).	To become a party to exemption 8265. (Modes 1, 2)
8273–P	DOT–E 8273 ...	Howard Temes Packaging Company, Redford, MI.	49 CFR 171.11 (see paragraph 8.d.), 173.153, 173.154, 175.3.	To become a party to exemption 8273. (Modes 1, 2, 3, 4)
8273–P	DOT–E 8273 ...	Crysler Corporation, Center Line, MI.	49 CFR 171.11 (see paragraph 8.d.), 173.153, 173.154, 175.3.	To become a party to exemption 8273. (Modes 1, 2, 3, 4)
8451–P	DOT–E 8451 ...	EG&G Star City, Inc., Miamisburg, OH.	49 CFR 173.65, 173.86(e), 175.3.	To become a party to exemption 8451. (Modes 1, 2, 3, 4)
8451–P	DOT–E 8451 ...	Remington Arms Co., Inc., Wilmington, DE.	49 CFR 173.65, 173.86(e), 175.3.	To become a party to exemption 8451. (Modes 1, 2, 3, 4)
8451–P	DOT–E 8451 ...	Owen Oil Tools, Inc., Fort Worth, TX.	49 CFR 173.65, 173.86(e), 175.3.	To become a party to exemption 8451. (Modes 1, 2, 3, 4)
8451–P	DOT–E 8451 ...	Organic Technology, Inc., Fort Worth, TX.	49 CFR 173.65, 173.86(e), 175.3.	To become a party to exemption 8451. (Modes 1, 2, 3, 4)
8453–P	DOT–E 8453 ...	Bishop Brothers Hauling, Inc., Jasper, AL.	49 CFR 173.114a	To become a party to exemption 8453. (Modes 1, 3)
8554–P	DOT–E 8554 ...	L. P. Rock Corp., Parsippany, NJ.	49 CFR 173.114a, 173.154, 173.93.	To become a party to exemption 8554. (Modes 1, 3)
8627–X	DOT–E 8627 ...	Petrolite Corporation, Saint Louis, MO.	49 CFR 173.201, 173.202, 173.203, 178.253.	To modify exemption to provide for a 2″ piping, rearrangement of the "manifold" design to two levels, enlargement of the skid frame to 10″ in height for shipment of various hazardous materials classed as Class 3> (Mode 1)
8815–P	DOT–E 8815 ...	ETI Explosives Technologies International, Inc., Wilmington, DE.	49 CFR 173.62	To authorize party status and modify exemption to provide for additional blasting agents. (Mode 1)
8845–P	DOT–E 8845 ...	Hitwell Surveys, Inc., Forth Worth, TX.	49 CFR 173.110 (c)(1), 173.80(b), 173.80(c).	To become a party to exemption 8845. (Modes 1, 3)
8958–X	DOT–E 8958 ...	Goex, Inc., Moosic, PA	49 CFR 172.101	To modify the exemption to provide for cargo vessel as an additional mode of transportation. (Modes 1, 2, 3)
8967–P	DOT–E 8967 ...	Alliant Techsystems, Inc., New Brighton, MN.	49 CFR 173.93 (a)(11)	To become a party to exemption 8967. (Mode 1)
9275–P	DOT–E 9275 ...	Lerner, Columbus, OH	49 CFR Parts 100–199	To become a party to exemption 9275. (Modes 1, 2, 3, 4, 5)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9275–P	DOT–E 9275	The Limited Stores, Columbus, OH.	49 CFR Parts 100–199	To become a party to exemption 9275. (Modes 1, 2, 3, 4, 5)
9275–P	DOT–E 9275	Ungerer Company, Lincoln Park, NJ.	49 CFR Parts 100–199	To become a party to exemption 9275. (Modes 1, 2, 3, 4, 5)
9275–P	DOT–E 9275	Parlux Fragrances, Inc., Pompano Beach, FL.	49 CFR Parts 100–199	To become a party to exemption 9275. (Modes 1, 2, 3, 4, 5)
9346–P	DOT–E 9346	Stolthaven (Chicago) Inc., Chicago, IL.	49 CFR 174.67(a)(2)	To become a party to exemption 9346. (Mode 2)
9443–P	DOT–E 9443	Alliant Techsystems, Inc., New Brighton, MN.	49 CFR 173.92(b), 175.3	To become a party to exemption 9443. (Modes 1, 3, 4)
9579–P	DOT–E 9579	Intermountain IRECO, Inc., Gillette, WY.	49 CFR 173.154(a) (18)	To become a party to exemption 9579. (Mode 1)
9617–P	DOT–E 9617	Cherokee Products, Inc., Jefferson City, TN.	49 CFR 176.83(a), 177.835(g), 177.848(f), Part 107, Appendix B(1).	To become a party to exemption 9617. (Modes 1, 3)
9696–X	DOT–E 9696	Fluoroware, Inc., Chaska, MN.	49 CFR 173.158, Part 173, Subpart E.	To modify exemption to provide for design changes to non-DOT specification rotationally molded teflon PFA packaging for transporting hazardous materials. (Modes 1, 2)
9723–X	DOT–E 9723	Aqua-Tech, Inc., Port Washington, WI.	49 CFR 177.848(b)	To modify exemption to provide for 6.5 mil liners inside non-DOT specification drums; authorized the use of non-specification 12B fiberboxes and 21C fiber drums and increase the buffer zone to 6 feet. (Modes 1, 2)
9723–P	DOT–E 9723	ADCOM Express, Inc., Tinley Park, IL.	49 CFR 177.848(b)	To become a party to exemption 9723. (Modes 1, 2)
9723–P	DOT–E 9723	RESNA Industries, Inc., Bakersfield, CA.	49 CFR 177.848(b)	To become a party to exemption 9723. (Modes 1, 2)
9723–P	DOT–E 9723	Clean Venture, Inc., Elizabeth, NJ.	49 CFR 177.848(b)	To become a party to exemption 9723. (Modes 1, 2)
10097–P	DOT–E 10097	Alliant Techsystems, Inc., New Brighton, MN.	49 CFR 173.88 (e)(2)(ii), 173.92(a)(1), 173.92(b).	To become a party to exemption 10097. (Mode 1)
10256–X	DOT–E 10256	Q3 Comdyne Cylinders, Inc., West Liberty, OH.	49 CFR 173.302 (a)(1), 173.305 (a) and (d).	To modify exemption to provide for rail as an additional mode of transportation. (Modes 1, 2, 3, 4)
10256–X	DOT–E 10256	Q3 Comdyne Cylinders, Inc., West Liberty, OH.	49 CFR 173.302 (a)(1), 173.305(a) and (d).	To modify exemption to provide for additional cylinders for use in transporting flammable, gas, n.o.s., Division 2.1. (Modes 1, 2, 3, 4)
10256–X	DOT–E 10256	Q3 Comdyne Cylinders, Inc., West Liberty, OH.	49 CFR 173.302(a)(1), 173.305 (a) and (d).	To modify exemption to provide for additional size FRP–1 type, non-DOT specification cylinders for use in transporting Division 2.1 material. (Modes 1, 2, 3, 4)
10307–P	DOT–E 10307	Tosco Refining Company, Concord, CA.	49 CFR 179.200–18, 179.201–1.	To become a party to exemption 10307. (Mode 2)
10441–P	DOT–E 10441	SCW Waste, Inc. South Kearney, NJ.	49 CFR 177.848	To become a party to exemption 10441. (Mode 1)
10441–P	DOT–E 10441	Advanced Environmental Technology Corporation, Flanders, NJ.	49 CFR 177.848	To become a party to exemption 10441. (Mode 1)
10441–P	DOT–E 10441	California Advanced Environmental Technology Corp., Hayward, CA.	49 CFR 177.848	To become a party to exemption 10441. (Mode 1)
10441–P	DOT–E 10441	ETSS of Ohio, Inc., Tipp City, OH.	49 CFR 177.848	To become a party to exemption 10441. (Mode 1)
10623–P	DOT–E 10623	Island Gases Limited, Jupiter, FL.	49 CFR 172.203, 173.318, 173.32, 176.76(h), 178.338.	To become a party to exemption 10623. (Modes 1, 3)
10688–P	DOT–E 10688	Kenai Air Alaska, Inc., Kenai, AK.	49 CFR 175.310(c)	To become a party to exemption 10688. (Mode 4)
10717–P	DOT–E 10717	Procor Limited, East Chicago, IN.	49 CFR 173.31 RETEST TABLE 1, Retest Table 1.	To become a party to exemption 10717. (Mode 2)
10751–P	DOT–E 10751	QEI, Inc., Whitesburg, GA	49 CFR 177.848	To become a party to exemption 10751. (Mode 1)
10751–P	DOT–E 10751	WESCO (Western Explosive Systems Company), Salt Lake City, UT.	49 CFR 177.848	To become a party to exemption 10751. (Mode 1)
10751–P	DOT–E 10751	ETI Explosives Technologies International, Inc., Wilmington, DE.	49 CFR 177.848	To become a party to exemption 10751. (Mode 1)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10791–X	DOT–E 10791	Con-Quest Products, Inc., Elk Grove Village, IL.	49 CFR 173.136 (A)(1)	To modigy exemption to provide for additional design changes to specially design packaging used to transport various classes of hazardous wastes. (Modes 1, 2, 3, 4, 5)
10904–X	DOT–E 10904	InVitro International, Irvine, CA.	49 CFR 173.136 (a)(1), 173.137(a), 173.137(b)", 173.137 (c)(1).	To renew and to authorize a screening test, modify sampling requirements and to remove the current requirements for testing upon determination of non-corrosive. (Mode 1)
10933–P	DOT–E 10933	Ochoa Environmental Services, San Juan, PR.	49 CFR 173.12, 174.81, 176.83 and 177.848.	To become a party to exemption 10933. (Modes 1, 2, 3)
11195–P	DOT–E 11088	Defense Technology Corporation of America, Casper, WY.	49 CFR 172.102	To become a party to exemption 11088. (Modes 1, 3, 4, 5)
11156–X	DOT–E 11156	El Dorado Chemical Company, St. Louis, MO.	49 CFR 173.212(b), 173.62.	To modify exemption to provide for ammonium nitrate, Division 5.1. as an additional class of material. (Mode 1)
11156–P	DOT–E 11156	Maynes Explosives Company, Lee's Summit, MO.	49 CFR 173.212(b), 173.62.	To become a party to exemption 11156. (Mode 1)
11156–P	DOT–E 11156	Dyno New England, Inc., Middlefield, CT.	49 CFR 173.212(b), 173.62.	To become a party to exemption 11156. (Mode 1)
11156–P	DOT–E 11156	Ladshaw Explosives, Inc., New Braunfels, TX.	49 CFR 173.212(b), 173.62.	To become a party to exemption 11156. (Mode 1)
11156–P	DOT–E 11156	Brandywine Explosives & Supply, Inc., Paris, KY.	49 CFR 173.212(b), 173.62.	To become a party to exemption 11156. (Mode 1)
11156–P	DOT–E 11156	Strawn Explosives, Inc., Euless, TX.	49 CFR 173.212(b), 173.62.	To become a party to exemption 11156. (Mode 1)
11156–P	DOT–E 11156	Rock Work, Inc., Blue Bell, PA.	49 CFR 173.212(b), 173.62.	To become a party to exemption 11156. (Mode 1)
11197–P	DOT–E 11197	Nalco Chemical Company, Napervile, IL.	49 CFR 172, 173, Parts 107.	To become a party to exemption 11197. (Mode 1)
11220–P	DOT–E 11220	Ashland Chemical Company, Columbus, OH.	49 CFR 173.28(b) (2)	To become a party to exemption 11220. (Modes 1, 2, 3)
11220–P	DOT–E 11220	Nalco/Exxon Energy Chemicals, L.P., Sugar Land, TX.	49 CFR 173.28(b) (2)	To become a party to exemption 11220. (Modes 1, 2, 3)
11254–P	DOT–E 11254	Western Atlas International Houston, TX.	49 CFR 173.62(c), 49 CFR, Packing Method US006, Paragraph C and F.2.	To become a party to exemption 11254. (Mode 3)
11260–P	DOT–E 11260	Texas Instruments Incorporated Attleboro, MA.	49 CFR 173.306 (a)(1)	To become a party to exemption 11260. (Mode 1)
11267–X	DOT–E 11267	The Univ. of New Mexico, Albuquerque, NM.	49 CFR 173.240, 173.241, 173.242, 173.244.	To modify the exemption to provide for the transportation of a Spece Nuclear Power system (Topaz II), without external insulation to be shipped in a specially designed transport container and provide for a Division 1.D material. (Mode 1)
11335–P	DOT–E 11335	Union Tank Car Company, East Chicago, IN.	49 CFR 172.302(c), 172.203(a) and 173.31(c)(9), Paras 1 & 2 of Appendix b to Subpart B of Part 107.	To become a party to exemption 11335. (Mode 2)
11346–P	DOT–E 11346	Wedge Wireline, Inc., Grand Prairie, TX.	49 CFR 173.61, 173.62(c), 176.166(b), 177.835(g).	To become a party to exemption 11346. (Modes 1, 3)
11346–P	DOT–E 11346	Computalog Wireline Services, Inc., Houston, TX.	49 CFR 173.61, 173.62(c), 176.166(b), 177.835(g).	To become a party to exemption 11346. (Modes 1, 3)
11346–P	DOT–E 11346	Directional Wireline Services, Inc., Lake Charles, LA.	49 CFR 173.61, 173.62(c), 176.166(b), 177.835(g).	To become a party to exemption 11346. (Modes 1, 3)
11346–P	DOT–E 11346	Western Atlas International, Inc., Houston, TX.	49 CFR 173.61, 173.62(c), 176.166(b), 177.835(g).	To become a party to exemption 11346. (Modes 1, 3)
11346–P	DOT–E 11346	Owen Oil Tools, Inc., Fort Worth, TX.	49 CFR 173.61, 173.62(c), 176.166(b), 177.835(g).	To become a party to exemption 11346. (Modes 1, 3)
11346–P	DOT–E 11346	GOEX International, Inc., Forth Worth, TX.	49 CFR 173.61, 173.62(c), 176.166(b), 177.835(g).	To become a party to exemption 11346. (Modes 1, 3)
11346–P	DOT–E 11346	Titan Wireline Services, Inc., Fort Worth, TX.	49 CFR 173.61, 173.62(c), 176.166(b), 177.835(g).	To become a party to exemption 11346. (Modes 1, 3)
11346–P	DOT–E 11346	Magnum Wireline Services, Inc., Giddings, TX.	49 CFR 173.61, 173.62(c), 176.166(b), 177.835(g).	To become a party to exemption 11346. (Modes 1, 3)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11346–P	DOT–E 11346 .	Guiberson Division, Dresser Industries, Inc., Dallas, TX.	49 CFR 173.61, 173.62(c), 176.166(b), 177.835(g).	To become a party to exemption 11346. (Modes 1, 3)
11355–X	DOT–E 11355 .	Button Transportation, Inc., Dixon, CA.	49 CFR 173.315(a), Note 15.	To reissue exemption originally issued on an emergency basis for the transportation of liquefied petroleum gas (LPG), in DOT Specification MC-331 c argo tank motor vehicles manufactured from quenced and tempered steel which are coated on the inside with a cross linked expoxy-phenolic compound. (Mode 1)

NEW EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10850–N	DOT–E 10850 .	Ashland Chemical, Dublin, OH.	49 CFR 173.34(e)	To authorize the transportation of certain cylinders subjected to a complete external visual inspection in lieu of the periodic hydrostatic retest. (Mode 1.)
10880–N	DOT–E 10880 .	IRECO Incorporated, Carthage, MO.	49 CFR 172.101 column (8c), 173.114, 173.35(b).	To authorize the use of reusable, flexible intermediate bulk containers (IBC) type 13H3 or 13H4 conforming to Subpart N and O or Part 178 with replaceable liners having a capacity not over 1000 kg (2206 pounds) and top and bottom outlets, for shipment of ammonium nitrate-fuel oil mixture ANFO. (Mode 1.)
11059–N	DOT–E 11059 .	U.S. Department of the Interior, Amarillo, TX.	49 CFR 173.31(d)	To authorize the U.S. Bureau of Mines to retest Class DOT 107A tank cars used to transport compressed helium, by means of an acoustic emission method. (Mode 2.)
11060–N	DOT–E 11060 .	Hockney Pty. Ltd., New South Wales, Australia.	49 CFR 178.345–2	To authorize the manufacture, marking and sale of cargo tank motor vehicles meeting Specification MC–406, except for the use of aluminum alloys 6005A–T6, 5083 and 6061 as materials of construction, for the transportation of certain Class 3 liquids. (Mode 1.)
11080–N	DOT–E 11080 .	Austin Powder Company, Cleveland, OH.	49 CFR 177.835(g)(i)	To authorize use of modified Canadian Explosive Act Schedule IV Electric Detonator Transportation Compartment as alternative to IME Safety Library Publication Compartment of transport of certain Div. 1.4B electric detonators and non-electric detonating assemblies in the same motor vehicle with any Div. 1.1, 1.2, or 1.3 explosive, Div. 1.4 detonator (Mode 1.)
11086–N	DOT–E 11086 .	Standard Chlorine of Delaware, Inc., Delaware City, DE.	49 CFR 172.35(b), 173.240.	To authorize the use of reusable, collapsible woven polypropylene bulk bags with replaceable liners having a capacity not over 1000 kg (2206 pounds) and top and bottom outlets, for transportation of p-Dichlorobenzene. (Mode 1.)
11171–N	DOT–E 11171 .	Dart Container Corporation, Leola, PA.	49 CFR 173.35(b)	To authorize the reuse of reusable, flexible intermediate bulk container (IBC) type 13H3 or 13H4 conforming to Subpart N and O of Part 178 with replaceable liners having a capacity not over 1000 kg (2206 pounds) and top and bottom outlets, for shipment of polystyrene beads. (Mode 1.)
11180–N	DOT–E 11180 .	Affival, Inc., Niagara Falls, NY.	49 CFR 183/24(c), Part 172, Subparts D, E and F, Part 173, Subparts E and F, Part 178.	To authorize the transportation of metal tubing which contain hazardous materials assigned to Division 4.3, Packing Group III, or Division 6.1, Packing Group III, respectively, and excepts them from the packaging, marking, labeling and placarding requirements of the Hazardous Materials. (Modes 1, 2, and 3.)
10932–N	DOT–E 11197 .	Hach Company, Ames, IA	49 CFR 172, 173, Parts 107.	To authorize the transportation of restricted quantities of hazardous materials that are authorized for exception in column 8A or 49 CFR Table 171.101, excluding Class 1, Class 7 and Division 6.1 and 6.2. Shipments of these materials are exempt from shipping paper and marking requirements when transported in private carriage. (Mode 1.)

NEW EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11203–N	DOT–E 11203 .	McDonnell Douglas Aerospace, Huntington Beach, CA.	49 CFR 173.61, 177.848 .	To authorize the transportation of third stage components of space craft containing one or more hazardous materials in specially designed non-DOT specification containers. (Mode 1.)
11227–N	DOT–E 11227 .	Schlumberger Well Services, Houston, TX.	49 CFR 173.62 Packing Instruction E–114.	To authorize the transportation of certain cartridges, power devices (UN 0276) 1.4C in specially designed vehicles and offshore tool pallets. (Modes 1, 3, and 4.)
11252–N	DOT–E 11252 .	Advanced Monobloc Corporation, Hermitage, PA.	49 CFR 173.306 (a)(3)(v), 178.33.	To authorize the transportation of certain hazardous material, in certain non-DOT specification metal aerosol containers. (Modes 1, 2, 3, 4, and 5.)
11257–N	DOT–E 11257 .	Praxair, Inc., Danbury, CT	49 CFR 173.163, 173.192, 173.201, 173.202, 173.203, 173.226, 173.227, 173.302, 173.304, 173.34.	To authorize the manufacture, marking and sale of non-DOT specification salvage cylinders for overpacking damaged or leaking packages of pressurized and non-pressurized hazardous materials for transportation. (Mode 1.)
11262–N	DOT–E 11262 .	Caire, Inc., New Prague, MN.	49 CFR 173.316 (c)(2), 175.3, 178.57–8(c).	To authorize the manufacture, marking and sale of a non-DOT Specification 4L to be used for the transportation of oxygen, refrigerated liquid, Division 2.2. (Mode 1.)
11264–N	DOT–E 11264 .	David Sarnoff Research Center, Princeton, NJ.	49 CFR 173.416	To authorize the transportation of radioactive material, special form, n.o.s., Cobalt-60, Class 7, Type B, in the form of metal pellets and unsheathed slugs in stainless steel capsule assemblies. (Mode 1.)
11273–N	DOT–E 11273 .	Cherry-Air, Inc., Dallas, TX.	49 CFR 172.101, 172.204 (c)(3), 173.27 (b)(2)(3), 175.30 (a)(1), Part 107, Subpart B, Appendix B with exceptions.	To authorize the transportation of certain Division 1.1, 1.2, 1.3 and 1.4 explosives which are forbidden or exceed quantities authorized for transportation by cargo aircraft only. (Mode 4.)
11294–N	DOT–E 11294 .	Northeast Environmental Services of America, Inc., Canastota, NY.	49 CFR 177.848	To authorize transport of certain lab pack quantities of hazardous materials with other materials in lab packs, with partial relief from certain segregation requirements. (Mode 1.)
11304–N	DOT–E 11304 .	AT&T, Basking Ridge, NJ	49 CFR 172.301, 173.28(b)(2), Part 107, Subpart B, Appendix B.	To authorize the transportation of gasoline in UN standard packagings with a capacity not greater than 5 gallons which have not been leak tested prior to reuse in accordance with 49 CFR 173.28(b)(2). (Mode 1.)
11313–N	DOT–E 11313 .	Columbiana Texas Corp., Gainesville, TX.	49 CFR 173.315(a), 178.245–1(b).	To authorize the manufacture, marking and sale of non-DOT Specification IMO Type portable tanks to be used for the transportation of Division 2.1 and Division 2.2 materials. (Modes 1, 2, and 3.)
11316–N	DOT–E 11316 .	TRW Automotive, Queen Creek, AZ.	49 CFR 173.116(c), (e) and (f), 173.62(c), Part 172, Subparts D and E.	To authorize the transportation of certain cartridges, power device classed as Division 1.4S and airbag inflators or airbag modues classed as Division 4.1 or Class 9 in prescribed packaging. (Mode 1.)
11328–N	DOT–E 11328 .	Dyno Nobel, Inc., Salt Lake City, UT.	49 CFR 176.76(a)(8)	To authorize the transportation of an alternate stacking arrangement for cylindrical shaped bags of Explosive Type E, 1.5D, UN 0332, packed in 5H3 bags. (Mode 3.)
11346–N	DOT–E 11346 .	Halliburton Energy Service, Houston, TX.	49 CFR 173.61, 173.62(c), 176.166(b), 177.835(g).	To authorize the transportation of certain Division 1.1D and 1.4D charged jet perforating guns with Division 1.1B or 1.4B electric detonators affixed. (Modes 1, 3.)
11356–N	DOT–E 11356 .	ACM, Inc., North Chicago, IL.	49 CFR 173.121 (b)(1)(iii)	To authorize the resignment of certain high viscosity flammable liquids for Packing Group II to Packing Group III for packaging with a capacity greater than 30L. (Mode 1.)

NEW EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11366–N	DOT–E 11366 .	Omni Air Express, Tulsa, OK.	49 CFR 171.11, 172.101 Column (9b), 172.204 (c)(3), 173.27 (b)(2), (3), 175.30 (a)(1), 175.320(b), Part 107, Appendix B.	To authorize transportation of certain Division 1.1, 1.2, 1.3 and 1.4 explosives which are forbidden or exceed quantities authorized for transportation by cargo aircraft only. (Mode 4.)
11381–N	DOT–E 11381 .	Nuclear Containers, Inc., Elizabethton, TN.	49 CFR 178.356–2 (a)	To authorize the manufacture, marking and sale of DOT Specification 20PF–1, 20PF–2 and 20PF–3 overpacks manufactured in variance with the specification in 49 CFR 178.356, and for their transport when containing uranium hexafluoride, fissile in Type A cylinders. (Modes 1, 2, 3, and 4.)

EMERGENCY EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 5022–P .	DOT–E 5022 ...	U.S. Department of Energy, Washington, DC.	49 CFR 174.101(L), 174.104(d), 174.112(a), 174.86, 177.834(l)(1).	To become a party to exemption 5022. (Modes 1, 2.)
EE 5403–P .	DOT–E 5403 ...	HydroChem Industrial Services, Inc., Houston, TX.	49 CFR 173.245 (a)(31), 173.248 (a)(6), 173.249 (a)(6), 173.263 (a)(10), 173.264 (a)(14), 173.268 (b)(3), 173.272 (i)(21), 173.289 (a)(4), 178.343–2(b), 178.343–5 (b)(1)(i), 178.343–5 (b)(2)(i).	To become a party to exemption 5403. (Modes 1, 3.)
EE 6691–X .	DOT–E 6691 ...	Mills Welding Supply, Inc., Buffalo, NY.	49 CFR 173.34 (e)(15)(i), Part 107, Subpart B, Appendix B.	Authorizes the use of DOT Specification 3A or 3AA cylinders over 35 years old, which can be retested every 10 years, for transportation of certain flammable and nonflammable gases. (Modes 1, 2, 3, and 4.)
EE 7616–X .	DOT–E 7616 ...	Illinois Central Railroad, Homewood, IL.	49 CFR 172.200(a), 172.204(a), 172.204(d), 174.12, 174.24(a), 174.25(b)(2), 174.3.	Authorizes the carrier to certify the shipping paper on behalf of the shipper when transporting hazardous materials by rail. (Mode 2.)
EE 7774–X .	DOT–E 7774 ...	Computalog Wireline Services, Inc., Fort Worth, TX.	49 CFR 173.246, 175.3 ...	Authorizes the shipment of bromine trifluoride in non-DOT specification cylinders. (Modes 1, 2, 3, and 4.)
EE 8236–P .	DOT–E 8236 ...	Chrysler Corporation, Center Line, MI.	49 CFR 171.11 (see paragraph 8.d.), 173.153, 173.154, 175.3.	To become a party to exemption 8236. (Modes 1, 2, 3, and 4.)
EE 8273–P .	DOT–E 8273 ...	Chrysler Corporation, Center Line, MI.	49 CFR 171.11 (see paragraph 8.d.), 173.153, 173.154, 175.3.	To become a party to exemption 8273. (Modes 1, 2, 3, and 4.)
EE 9568–X .	DOT–E 9568 ...	AZTRON Chemical Services, Inc., South Houston, TX.	49 CFR 173.249	Authorizes use of a DOT Specification MC–306 tank motor vehicle for transportation of sodium hydroxide, liquid. (Mode 1.)
EE 9837–X .	DOT–E 9837 ...	Interstate Industries of N.J., Clark, NJ.	49 CFR 175.3, 178.50–19(a)(2), Part 107, Appendix B(1).	Authorizes manufacture, marking and sale of DOT Specification 4B cylinders using the lot number in lieu of the serial number. (Modes 1, 2, 4, and 5.)
EE 11000–P	DOT–E 11000 .	E. I. DuPont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 173.314 Table	To become a party to exemption 11000. (Mode 2.)
EE 11162–X	DOT–E 11162 .	Gabriel Chemicals, Inc., Houston, TX.	49 CFR 172.102, Special Provision B74 and 173.244(a).	Authorizes the shipment of a Class 8 material meeting the definition of a poison inhalation material, in certain DOT Specification 111A60W7 tank cars. (Mode 2.)
EE 11189–P	DOT–E 11189 .	Chrysler Corporation, Center Line, MI.	49 CFR 172.101, 173.56, 173.116.	To become a party to exemption 11189. (Modes 1, 2, 3, 4, and 5.)
EE 11367–N	DOT–E 11367 .	Miles Incorporated, Pittsburgh, PA.	49 CFR 173.212	To authorize the one-time transportation of a specially designed pressure vessel containing sodium. (Mode 1.)

EMERGENCY EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 11379–N	DOT–E 11379 .	TRW Vehicle Safety Systems, Incorporated, Washington, MI.	49 CFR 173.301(h), 173.302.	To authorize the transportation of no more than 100 non-DOT specification, non-refillable, high pressure cylinders charged with a hydrogen/air mixture, a class 2.1 material, as part of experimental modules used in automobile airbag systems. (Modes 1, 2, 3, and 4.)
EE 11379–X	DOT–E 11379 .	TRW Vehicle Safety Systems, Incorporated, Washington, MI.	49 CFR 173.301(h), 173.302.	To reissue and modify an exemption originally issued on an emergency basis to authorize the shipment of vehicle safety systems (modules) containing of non-DOT specification high pressure cylinder charged with ahydrogne/air mixture, classed as a Division 2.1 material. (Modes 1, 2, 3, and 4.)
EE 11387–N	DOT–E 11387 .	Merichem Co., Houston, TX.	49 CFR 173.29(a), 174.67(k).	To authorize the emergency transportation of a 111A100W1 tank car with defective heater coils. (Mode 2.)
EE 11404–N	DOT–E 11404 .	All Pure Chemical Co., Tracy, CA.	49 CFR 173.31(b) (1) & (3), 179.300–12(b), 179.300–13(a), 179.300–14.	To issue an emergency exemption to authorize the one-time transportation of a DOT Specification 106A500X tank car tank, containing Chlorine, Division 2.3, with a defective unloading valve which is equipped with a emergency "B" Kit to prevent leakage during transportation. (Mode 1.)
EE 11410–N	DOT–E 11410 .	All Pure Chemical Co., Inc., Tracy, CA.	49 CFR 173.300–12(b), 173.31(b)(1), 173.31(b)(3), 179.300–13(a), 179.300–14.	To issue an emergency exemption authorizing a one-time shipment of a DOT–106A500X tank car tank, containing Chlorine, Division 2.3, UN1017, with two defective center unloading valves which have been equipped with an emergency "B" kit hood assembly to prevent leakage during transportation. (Mode 1.)
EE 11412–N	DOT–E 11412 .	Starr Display Fireworks, Inc./Wizard Works Inc., Walcott, ND.	49 CFR 1234	To authorize the emergency transportation of a explosive device classed in Division 1.4G. (Mode 1.)
EE 11418–N	DOT–E 11418 .	Air Products, Allentwon, PA.	49 CFR 1234	To authorize the emergency transportation of rail car with defective liquid line valve. (Mode 2).
EE 11419–N	DOT–E 11419 .	GATX, Chicago, IL	49 CFR 1234	To authorize the emergency transportation of a rail car with defective heater coil. (Mode 2.)
EE 11420–N	DOT–E 11420 .	Jones Chemicals, Inc., LeRoy, NY.	49 CFR 173.24(b)(1), 173.31 (b)(1)(3), 179.300–12(b), 179.300–13(a), 179.300–14.	To authorize the emergency one-time transportation in commerce of a DOT specification MC–331 cargo tank, containing chlorine, Division 2.3, with a leakage gas valve, which has been equipped with an emergency "C" kit. (Mode 1.)
EE 11429–N	DOT–E 11429 .	Olin Chemicals, Stamford, CT.	49 CFR 172.300 (c)(4), 172.407 (d)(2), 172.430(b), 172.430(b), 176.52, Part 107, Subpart B, Appendix B (1).	To authorize on an emergency basis the transportation of toluene diisocyanate, Division 6.1, in UN 1A1 drums on which the hazard labels are not in compliance with the regulations due to the color. (Modes 1, 2, and 3.)
EE 11437–N	DOT–E 11437 .	Standard Chlorine of Delaware.	49 CFR 1, 2, 3	To authorize the one-time shipment of a DOT Specification 111A100W1 tank car, containing a residue of a class 3 material, which does not fully comply with all DOT requirements. (Mode 2.)

WITHDRAWAL EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
4932–P	Personal Security Systems, Throggs Neck, NY.	49 CFR 172.101, 173.385(a), 175.3.	To authorize shipment of tear gas devices in a telescopic type, cylindrical, wound-kraft container fitted with metal ends overpacked in DOT Specification 12B fiberboard box. (Modes 1, 2, and 4.)
6418–X	Great Lakes Chemical Corporation, El Dorado, AR.	49 CFR 173.357(b)	Authorizes the use of DOT Specification MC–303, MC–304, MC–306, MC–307, MC–310, or MC–312 steel cargo tanks for transportation of Class B poisonous liquids. (Mode 1.)
6762–X	Green Mountain Explosives, Inc., Auburn, NH.	49 CFR 173.286(b)(2), 175.3 ..	Authorizes the transport of chemical kits in plastic inside bottles, packed in plastic boxes overpacked in fiberboard boxes. (Modes 1, 2, 3, and 4.)
7060–P	Aviserv, Inc., Columbus, OH ...	49 CFR 175.702(b), 175.75(a)(3)(ii).	To become a party to exemption 7060 (Mode 4.)
7621–X	Great Lakes Chemical Corporation, El Dorado, AR.	49 CFR 173.357, 174.63(b)	Authorizes the use of an ISO portable tank for shipment of methyl bromide and chloropicrin. (Modes 1, 2, and 3.)

WITHDRAWAL EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
7650–X	ICI Americas, Inc., Wilmington, DE.	49 CFR 173.315	To authorize use of non-DOT specification vacuum insulated steel portable tanks, for shipment of certain nonflammable compressed gases. (Modes 1, 3.)
7657–X	Welker Engineering Company, Sugar Land, TX.	49 CFR 173.119, 173.302(a)(1), 173.304(a)(1), 173.304(b)(1), 175.3, 178.42.	To authorize manufacture, marking and sale of non-DOT specification stainless steel cylinders, for transportation of compressed gases. (Modes 1, 2, 3, and 4.)
8362–X	Science Applications International Corporation, San Diego, CA.	49 CFR 172.101, 173.206, 173.247.	Authorizes the shipment of batteries containing lithium metal and thionyl chloride in fiberboard boxes overpacked in wooden boxes. (Modes 1, 2.)
8362–P	Department of the Navy, Silver Spring, MD.	49 CFR 172.101, 173.206, 173.247.	To become a party to exemption 8362 (Modes 1, 2.)
8708–X	Great Lakes Chemical Corporation, El Dorado, AR.	49 CFR 173.357(b)(2)	Authorizes the use of non-DOT specification steel drums (overpacked, palletized and containerized) for shipment of a Class B poison. (Modes 1, 3.)
8944–X	Advanced Silicon Materials, Inc., Moses Lake, WA.	49 CFR 173.302(c)(2), 173.302(c)(3), 173.302(c)(4), 173.34(e) the introductory paragraph, the Table, Part 107, Appendix B.	Authorizes the use of a limited quantity of DOT Specification 3AAX or 3T cylinders that are retested by means other than the hydrostatic retest required in 49 CFR 173.34(e). (Modes 1, 3.)
9355–X	Ultralife Batteries, Inc., Newark, NY.	49 CFR Parts 100–177	Authorizes the transport of a limited number of certain lithium batteries on passenger carrying aircraft. (Modes 1, 2, 3, and 4.)
9445–X	Pacific Construction & Maintenance, Inc., Santa Paula, CA.	49 CFR 173.119(a), 173.119(m), 173.245(a), 173.346(a), 178.340–7, 178.342–5, 178.343–5.	Authorizes the manufacture, marking and sale of non-DOT specification cargo tank designed and constructed in full conformance with DOT Specification MC–307 or MC–312 for shipment of flammable liquid, corrosive material or poison B. (Mode 1.)
9519–X	Transchem I, Inc., Kearny, NJ .	49 CFR 173.119, 173.256, 173.266, 178.19, 178.253, Part 173, Subpart F.	To authorize manufacture, marking and sale of a non-DOT specification rotationally molded, cross-linked polyethylene or linear medium density polyethylene portable tank, enclosed within a protective steel frame for shipment of corrosive liquids, flammable liquids or an oxidizer. (Modes 1, 2.)
9676–X	EM Science, Cincinnati, OH	49 CFR 173.119(b)(4), 173.125, 178.205.	Authorizes the shipment of certain flammable liquids contained in four inside glass bottles or PVC coated glass bottles of one-gallon capacity each, overpacked in a corrugated fiberboard box conforming to DOT Specification 12B65 except for handholes in the same side panels of the box. (Mode 1.)
9723–X	Dahlen Transport, Inc., Newport, MN.	49 CFR 177.848(b)	Authorizes the shipment of "lab-packs" containing cyanides and cyanide mixture with "lab-packs" containing acids and corrosive liquids in the same transport vehicle. (Modes 1, 2.)
9723–X	Advanced Environmental Tech. Corp., Flanders, NJ.	49 CFR 177.848(b)	Authorizes the shipment of "lab-packs" containing cyanides and cyanide mixture with "lab-packs" containing acids and corrosive liquids in the same transport vehicle. (Modes 1, 2.)
9894–X	International Safety Instruments, Inc., Lawrenceville, GA.	49 CFR 173.302(a)(1), 175.3 ..	Authorizes the manufacture, marking, and sale of non-DOT specification cylinders for transport of certain hazardous materials. (Modes 1, 2, 3, 4, and 5.)
10314–N	Rohm and Haas Company, Philadelphia, PA.	49 CFR 172.101, 173.245(a)(33).	To authorize shipment of corrosive liquids, n.o.s. in specification 111A60W7 tank car built to 111A100W6 specification: insulated with a fusion welded stainless steel tank and no bottom outlet. (Mode 2.)
10353–X	Walpole, Inc., Mt. Holly, NJ	49 CFR 173.114	To manufacture, mark and sell a non-DOT specification disposable polyethylene lined woven, polypropylene bulk bags having a capacity not greater than 2200 pounds each with top and bottom outlets, for shipment of ammonium nitrate-fuel oil mixtures. (Mode 1.)
10355–X	Chemtech Industries, Inc., East St. Louis, IL.	49 CFR 173.264	To authorize transport of hydrochloric acid solutions in a DOT Specification 111A100W5 tank car tank equipped with an ethylene chlorotrifluoroethylene lining. (Mode 2.)
10441–P	Clean Harbors Environmental Services, Inc. Quincy, MA.	49 CFR 177.848	To become a party to exemption 10441 (Mode 1.)
10600–N	W.R. Grace & Co, Baltimore, MD.	49 CFR 178.98–7(a), 178.98–7(b).	To authorize the manufacture, marking and sale of 55-gallon 6B480 DOT-specification 16 gauge steel drums equipped with ¾" bung for transportation of metal catalyst, wetted. (Mode 1.)
10619–N	Tri-Gas Inc., Irving, TX	49 CFR 176.76(h), 178.338, 49 CFR 173.318.	To authorize shipment of liquid oxygen, nitrogen or argon, nonflammable gases, in non-DOT specification portable tanks. (Modes 1, 3.)
10640–N	IRECO, Incorporated, Salt Lake City, UT.	49 CFR 173.154	To authorize the bulk transportation of oxidizer, n.o.s. in DOT-Specification 11A60ALW tank cars. (Modes 2, 3.)

WITHDRAWAL EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10719–N	Kin-Tek Laboratories, Inc., Texas City, TX.	49 CFR 173.4, Appendix B, Subpart B, (1) (2).	To authorize shipment of permeation devices containing not over 5 grams of various hazardous materials. (Modes 1, 2, 4, and 5.)
10766–N	Baker Performance Chemicals, Inc., Houston, TX.	49 CFR 173.29(c)(2)	To authorize the transportation of non-DOT specification storage tanks with residual amounts of flammable and corrosive liquids. (Mode 1.)
10806–N	First Brands Corporation, Danbury, CT.	49 CFR 173.306–3(i)	To authorize the transportation of DOT Specification 2Q aerosol tire inflator and sealer containers fitted with a vented dome with a release pressure of 225 psig at 130 degrees. (Mode 1.)
10812–N	Witco Corporation, Marshall, TX.	49 CFR 173.225	To authorize an alternative cargo tank design for shipment of certain organic peroxides classed as flammable liquid. (Mode 1.)
10856–N	Clean Earth Manufacturing, Inc., Birmingham, AL.	49 CFR 171.8(c)	To authorize the manufacture, mark and sell a roll on/roll off type cargo tank that may be loaded while removed from the motor vehicle for transporting various commodities as authorized by CFR in DOT specification 407 and 412 cargo tanks. (Mode 1.)
10859–N	Morton International, Inc., Ogden, UT.	49 CFR 177.848	To authorize the transportation of auto inflator propellants, classed as flammable solid, with relief from the segregation table. (Mode 1.)
10911–X	The Pallet Reefer Company, Houma, LA.	49 CFR 49 CFR 173.24(g)	To manufacture, mark and sell a specially designed refrigeration unit equipped with four DOT specification 3AL1800 cylinders, containing carbon dioxide, refrigerated liquid, division 2.2, which are vented during transportation through a controlled release process for cooling purposes. (Modes 1, 4.)
10932–N	Nalco Chemical Company, Naperville, IL.	49 CFR Part Subparts D and D except 172.312.	To authorize the shipment of small quantities of Packing Group II and III hazardous materials in privately owned automobiles and small trucks to be exempt from shipping papers, marking, labelling and employee training. (Mode 1.)
10935–N	NSI, Norfolk, VA	49 CFR 172.331, 173.154, 173.164, 173.178, 173.182, 173.204, 173.217, 173.234, 173.245(b), 173.366, and 173.367.	To manufacture, mark and sell non-DOT specification flexible nonreusable bulk bags of woven polypropylene fabric for the shipment of certain flammable, corrosive, oxidizer or poison B solids. (Modes 1, 2, and 3.)
11114–N	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.34 (e)(15)(i)(ii)	To authorize retesting of DOT 3A and 3AA specification cylinders on a 15 year cycle in lieu of the required 10 year cycle. (Modes 1, 2, 3, 4, and 5.)
11164–N	Elastochem, Inc., Chardon, OH	49 CFR 173.225	To authorize the shipment of 70 percent organic peroxide, Type F Solid, Division 5.2, as nonregulated based on test criteria, contained in heavy gauge polyethylene bags containing not more than 25 kilos of material and unitized on wooden pallets. (Mode 1.)
11182–N	Safety-Kleen Corp., Elgin, IL ...	49 CFR 173.28 (b)(2)	To exempt reused 1A2 drums, from the leakproofness test requirements, used in transporting cleaning products classed as combustible liquid. (Mode 1.)
11195–N	Defense Technology Corporation of America, Casper, WY.	49 CFR 172.101	To exempt from labelling requirements small packages of various hazardous material (i.e. tear gas type products) now required to bear a poison label. (Mode 1.)
11268–N	Elf Atochem North America, Inc., Philadelphia, PA.	49 CFR 173.225 (d)(2)	To authorize the transportation of solid organic peroxides, Division 5.2 in 4H2 solid plastic boxes equipped with polyethylene film bags. (Modes 1, 2.)

DENIALS

9846–X	Request by Flexcon and Systems, Inc. Lafayette, LA to modify exemption to provide for the manufacture of bulk bags not to exceed 3,000 pounds for use in transporting various classes of hazardous materials denied December 31, 1995.
9920–X	Request by Tri-Wall Corporation Louisville, KY to modify exemption to provide for additional designed non-DOT specification fiberboard bulk construction for use in transporting various hazardous materials classed in Division 4.1, 5.1 and Class 9 denied December 31, 1995.
10764–X	Request by Snyder Industries, Inc. Lincoln, NE to modify exemption to provide for various design changes to a non-DOT specification rotationally molded polyethylene portable tank for use in transporting various hazardous materials denied December 31, 1995.
10942–N	Request by Dowell Schlumberger, Inc. Houston, TX to authorize the shipment of flammable liquid, corrosive n.o.s., Class 3, in DOT specification 57 portable tanks denied December 31, 1995.
11213–N	Request by T.O.T.E. Plastics, Inc. Brampton, Ontario, Canada to authorize the transportation of Division 5.1, 6.1, Class 3 and 8 material in non-DOT specification polyethylene intermediate bulk containers denied December 31, 1995.
11219–N	Request by Galiso, Inc. Montrose, CO to authorize the ultrasonic inspection of 3A and 3AA cylinders for use in transporting various classes of hazardous materials, Class 3, 8, and Division 2.1, 2.2, 2.3 and 6.1 denied December 31, 1995.

DENIALS—Continued

11229–N ...	Request by Airco Gases Murray Hill, NJ to authorize ultrasonic testing of 3A and 3AA cylinders for use in transporting various hazardous materials classed in Division 2.1, 2.2, 2.3, 6.1, and Class 3 and 8 denied December 31, 1995.
11237–N ...	Request by Dapco Industries, Inc. Ridgefield, CT to authorize the ultrasonic testing method of 3A and 3AA cylinders used for transporting various hazardous materials classed as Division 2.1, 2.3, 6.1 and Class 3 and 8 denied December 31, 1995.
11261–N ...	Request by Assmann Corporation of America Garrett, IN to manufacture, mark and sell a 400 gallon rotational molded polyethylene tank of titanium construction equipped with metalframe work for use in transporting various classes of hazardous materials denied December 31, 1995.
11431–N ...	Request by Autoflator AB Vargarda, SW to authorize the emergency transportation of no more than 100 non-DOT specification, non-refillable, high pressure cylinders charged with a hydrogen/air mixture, a Division 2.1 material, as part of experimental modules used in automobile airbag systems denied December 31, 1995.

Issued in Washington, DC, on June 12, 1995.

J. Suzanne Hedgepeth,

Chief, Exemption Programs, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 95–15129 Filed 6–20–95; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation with An International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 19086, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986.)

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an internal boycott (with the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

Bahrain
Iraq
Jordan
Kuwait
Lebanon
Libya
Oman
Qatar
Saudia Arabia
Syria
United Arab Emirates
Yemen, Republic of

Dated: June 14, 1995.

Joseph Guttentag,

International Tax Counsel (Tax Policy).

[FR Doc. 95–15114 Filed 6–20–95; 8:45 am]

BILLING CODE 4810–25–M

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1980, as Amended by Pub. L. 99–591; Information Collection Under Review by the Office of Management and Budget (OMB)

AGENCY: Tennessee Valley Authority.

ACTION: Information Collection Under Review by the Office of Management and Budget (OMB).

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), as amended by Pub. L. 99–591. Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be made within 30 days directly to the Agency Clearance Officer and also to the Desk Officer for the Tennessee Valley Authority, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503; Telephone: (202) 395–3084.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 1101 Market Street (BR 6B), Chattanooga, Tn 37402–2801; (615) 751–2523.

Type of Request: Regular submission.

Title of Information Collection: Customer Survey of Boating Activities on Cherokee and Douglas Lakes.

Type of Affected Public: Individuals or households.

Small Businesses or Organizations Affected: No.

Federal Budget Functional Category Code: 271.

Estimated Number of Annual Responses: 1,000.

Estimated Total Annual Burden Hours: 170.

Estimated Averoge Burden Hours Per Response: .17.

Need For and Use of Information: This survey will collect information from recreational users of Cherokee and Douglas Lakes in Tennessee on their needs and requirements. The information will be used to assess TVA's operations and to identify potential areas of improvement.

Dated: June 13, 1995.

William S. Moore,

Senior Manager, Administrative Services.

[FR Doc. 95–15103 Filed 6–20–95; 8:45 am]

BILLING CODE 8120–08–P

Environmental Impact Statement: Coal Receiving Systems—Kingston Fossil Plant

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Extension of comment period on notice of intent and announcement of public scoping meeting.

SUMMARY: TVA published a Notice of Intent to prepare an Environmental Impact Statement on Alternative Coal Receiving Systems in the **Federal Register** on May 22, 1995. This original notice stated comments would be received on the scope of the EIS on or before June 30, 1995. TVA is today extending that comment period until July 24, 1995, and announcing the location of a public scoping meeting.

DATES: Comments on the scope of the EIS must be received on or before July 24, 1995. A public scoping meeting will be held on Thursday, June 29, 1995, at 7 p.m. (Eastern Daylight Savings Time) at Roane County High School, Cumberland Street, Kingston, Tennessee.

ADDRESSES: Comments should be sent to Dale V. Wilhelm, NEPA Liaison, Tennessee Valley Authority, WT 8C, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

FOR FURTHER INFORMATION CONTACT: David Robinson, Fossil Fuels, Tennessee Valley Authority, 1101 Market Street, LP 5H, Chattanooga, Tennessee 37402, phone (615) 751–2502.

SUPPLEMENTARY INFORMATION: A Notice of Intent (NOI) to prepare an EIS on alternatives for receiving coal at TVA's Kingston, Tennessee, Fossil Plant in East Tennessee was published in the **Federal Register** on May 22, 1995. The NOI stated that comments would be received until June 30, 1995. It was not possible to hold a public meeting on the scope of the EIS during that timeframe, and project schedules allow for a longer public scoping period. Therefore, TVA is extending the EIS scoping period until July 24, 1995, to allow sufficient time to hold the public meeting and allow the interested public to comment on the suggested scope of the EIS alternatives and important issues.

A public meeting will be held on Thursday, June 29, 1995, at 7:00 p.m. Eastern Daylight Savings Time at Roane County High School, Cumberland Street, Kingston, Tennessee. The purpose of this meeting will be to gain information regarding important environmental issues and alternatives to be addressed in the EIS. Written comments on these issues should be mailed to the address noted above. Oral and additional written comments will be received at the public meeting.

Dated: June 12, 1995.

Kathryn J. Jackson,

Senior Vice President, Resource Group, Tennessee Valley Authority.

[FR Doc. 95–15102 Filed 6–20–95; 8:45 am]

BILLING CODE 8120–01–M

UNITED STATES INFORMATION AGENCY

U.S. Advisory Commission on Public Diplomacy Meeting

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: A meeting of the U.S. Advisory Commission on Public Diplomacy will be held on June 21 in Room 600, 301 4th Street, S.W., Washington, D.C. from 9:30 a.m. 12:00 noon.

At 9:30 a.m. the Commission will meet with Mr. Stanley Silverman, Director, Office of the Comptroller; Mr. Edward Platte, Resource Management Committee; Ms. Donna Oglesby, Counselor; USIA, to discuss contingency resource planning for FY 2000. At 11:00 a.m. the Commission will meet with Dr. Joseph Duffy, Director, and Mr. Penn Kemble, Deputy Director, USIA, to discuss contingency planning and issues.

FOR FURTHER INFORMATION: Please call Betty Hayes, (202) 619–4468, if you are interested in attending the meeting. Space is limited and entrance to the building is controlled.

Dated: June 15, 1995.

Rose Royal,

Management Analyst Federal Register Liaison.

[FR Doc. 95–15116 Filed 6–20–95; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 119
Wednesday, June 21, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

ASSASSINATION RECORDS REVIEW BOARD

TIME AND DATE: 10:00 a.m., June 28, 1995.

PLACE: Old U.S. Mint Building, 400 Esplanade Avenue, New Orleans, LA.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

10:00 a.m.: Public Hearing

"Assassination Records in the Greater New Orleans Area"

2:00 p.m.: Board Meeting

Open

1. Discussion of Sunshine Act Regulation
2. Discussion of ROI/PA Regulation
3. Discussion and Decision on Board Procedures
4. General Board Business

Closed

5. Document Review Discussion and Decisions

CONTACT PERSON FOR MORE INFORMATION: Thomas Samoluk, Press and Public Affairs Officer, 600 E Street, NW, Second Floor, Washington, DC 20530. Telephone: (202) 724–0088; Fax: (202) 724–0457.

David G. Marwell,
Executive Director.

[FR Doc. 95–15365 Filed 6–19–95; 3:56 pm]
BILLING CODE 6820–TD–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Notice forwarded to the **Federal Register** on Friday, June 16, 1995.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Monday, June 26, 1995.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting:

Proposed acquisition of automated data processing equipment with the Federal Reserve System.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: June 19, 1995.

Jennifer J. Johnson,
Deputy Secretary of the Board.

[FR Doc. 95–15311 Filed 6–19–95; 1:36 pm]
BILLING CODE 6210–01–P

federal register

Wednesday
June 21, 1995

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 895 and 897
Medical Devices; Performance Standards for Electrode Lead Wires and Banning of Unprotected Electrode Lead Wires; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 895 and 897

[Docket No. 94N-0078]

Medical Devices; Proposed Performance Standards for Electrode Lead Wires and Proposed Banning of Unprotected Electrode Lead Wires

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to establish a performance standard for electrode lead wires. The agency is taking this action because it has determined that a performance standard is needed to prevent hazardous electrical connections between patients and electrical power sources. FDA is also proposing to make unprotected electrode lead wires a banned device upon the effective date of the standard for the device. FDA has determined that unprotected electrode lead wires and patient cables present an unreasonable and substantial risk of illness or injury, and that the risk cannot adequately be corrected or eliminated by labeling or a change in labeling.

DATES: Written comments by September 5, 1995. Written requests for changes in classification of the device before July 21, 1995. FDA is proposing that any final regulation promulgating a performance standard and banning the devices that do not meet the standard be effective 1 or 3 years, depending on the device type, after publication of any final rule based on this proposal.

ADDRESSES: Submit written comments and requests for changes in the classification to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Marquita B. Steadman, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301-594-4765, ext. 145.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 19, 1994 (59 FR 26352), FDA published an advance notice of proposed rulemaking (ANPRM) and announced the need for further FDA action to address this problem. In that ANPRM, FDA described various regulatory actions it had taken since the first reported incidents in 1985 of exposed male connector pins of electrode lead wires being inserted into either alternating current (AC) power cords or a wall outlet, rather than into the patient cable that connects to the monitor. The ANPRM also described actions to various organizations, such as the former Emergency Care Research Institute (ECRI), and outside standard setting bodies have taken to prevent electrode lead wires from being connected to electrical power sources. A summary of these actions is provided later in this section. In the ANPRM, FDA stated that: "despite efforts to eliminate the risk, unprotected electrode lead wires and patient cabling systems are still distributed by some manufacturers as replacements for existing equipment, and may also be interchangeable among various medical devices." (See 59 FR 26532 at 26353.) In the ANPRM, FDA further announced that it, in conjunction with the Health Industry Manufacturers Association and the American Hospital Association (AHA), was sponsoring a public conference entitled "Unprotected Patient Cables and Electrode Lead Wires." The conference was held on July 15, 1994, and provided a forum for device users, manufacturers, and other health professionals to offer and to hear comments for FDA's consideration during the rulemaking process.

The need for FDA action to resolve the potential hazard of unprotected electrode lead wires and patient cables used with medical devices was further emphasized in a letter dated August 2, 1994, to FDA Commissioner David A. Kessler, from the Honorable Ron Wyden, then Chairman, U.S. House of Representatives, Committee on Small Business, Subcommittee on Regulation, Business Opportunities, and Technology (Ref. 1). In that letter, Mr. Wyden stated that "shocks, burns, and electrocutions occur despite warnings issued by the FDA to hospitals, manufacturers, and others." Specifically, Mr. Wyden wrote that:

> Hospitals have been told to purchase and use only protected wires and cables. They have also been told to remove unprotected equipment and to alert staff members to possible hazards to patients.
>
> Manufacturers have been encouraged to modify their designs to prevent lead wires from being inserted into electrical outlets.
>
> Despite warnings and other communications, some manufacturers still distribute to hospitals unprotected lead wires as replacements for deteriorated equipment.
>
> It is clear that regulatory action, as well as additional education and training is needed to stop the slow but steady flow of children (and adults) who are burned or electrocuted.

FDA's records of incidents with unprotected electrode lead wires and patient cables reveal the following: Between 1985 and 1994, 24 infants or children received "macro-shock" (large, externally applied currents) from electrode lead wires or cables, including 5 children who died by electrocution (Ref. 2). The most recent death (1993), which occurred in a hospital, involved a 12-day old infant. The apnea monitor involved in the incident had been sold with safety protected electrode lead wires and patient cable, but an unprotected patient cable from another manufacturer of an ECG monitor and unprotected prewired electrodes from a third manufacturer were being used when the infant was electrocuted.

There are reports of injuries associated with unsafe electrode lead wires and patient cables involving medical devices other than apnea monitors (Ref. 3). In 1986, for example, a death occurred when the ECG lead wires were plugged into an infusion pump power cord in a hospital environment. Similarly, in 1990, a death occurred when a neonatal monitor's electrode lead wires were inserted into a pulse oximeter power cord. FDA has received additional reports of similar events that resulted in electrical shocks, burns, and possible brain damage to patients. In response to the death and electrical burns that occurred in 1985, FDA issued an alert to home-use apnea monitor manufacturers, home user support organizations, and apnea monitor users, announcing, among other things, the agency's intent to embark on a cooperative effort with industry and the medical profession to resolve the problem of potential electrical connection between patients and electrical power sources. FDA also requested each home-use apnea monitor manufacturer to evaluate its device for potential electrode lead wire and patient cable hazards and, when necessary, to consider design changes to preclude insertion of electrode lead wire connectors into AC power cords and outlets. In addition to issuing the alert, the Center for Devices and Radiological Health's July 1985 "Medical Devices Bulletin" was devoted in great part to publicizing the unprotected electrode lead wire hazard.

Since 1985, FDA has not cleared for marketing any home-use apnea monitor that features an unprotected electrode lead wire and patient cable configuration. For all apnea monitors cleared for marketing since 1989, FDA has required a protective electrode lead

wire and cable design, whether or not the device was intended for home use. Despite these efforts, some hospitals continue to use older units, or electrode lead wires and patient cables from other devices, which do not have the protective electrode lead wire and cable design. Even with the new models, as evidenced by the 1993 incident, it may be possible to switch patient cables and/or electrode lead wires, thereby creating a hazard.

On September 3, 1993, FDA issued a safety alert to hospital administrators, risk managers, and pediatric department directors, warning them that the use of unprotected electrode lead wires with an apnea monitor may be dangerous to the patient, and may be in violation of section 518(a) of the act (21 U.S.C. 360h(a)) (Ref. 4). FDA included in the alert a number of recommendations to help prevent these accidents. FDA also sent all apnea monitor manufacturers a notification letter under section 518(a) of the act (Ref. 5).

Section 518(a) of the act authorizes the agency to issue an order to assure that adequate notification is provided in an appropriate form, by the means best suited under the circumstances involved, to all health professionals who prescribe or use a particular device and to any other person who should properly receive such notification, in order to eliminate an unreasonable and substantial harm to the public health when no other practicable means is available under the act to eliminate such risk. FDA stated that, for these devices, notification should include replacement of unprotected electrode lead wires and patient cables, and that a warning label should be permanently affixed to all monitors stating that unprotected electrode lead wires and patient cables should not be used with the device because inappropriate electrical connections may pose an unreasonable risk of adverse health consequences or death. FDA also requested manufacturers of all apnea monitors to cease further distribution of unprotected electrode lead wires and patient cables. On September 20, 1993, FDA issued a similar letter to all known third-party manufacturers of patient cables and electrode lead wires (Ref. 6).

On December 28, 1993, FDA issued a Public Health Advisory to hospital nursing directors, risk managers, and biomedical/clinical engineering departments for distribution to all units in their hospitals and outpatient clinics, as well as to home health care providers and suppliers affiliated with those facilities, advising them of the hazards associated with use of electrode lead wires with unprotected male connector pins (Ref. 7). In the Public Health Advisory, FDA expanded the scope of its September 3, 1993, apnea monitor safety alert to include all devices using patient electrodes. FDA noted that, even though manufacturers have changed the design of their devices to minimize the potential hazard, some facilities are still using older models that make it possible for staff to switch patient cables and/or lead wires, thus creating a hazard. FDA recommended various precautions to prevent the use of unsafe lead wires and patient cables.

Manufacturers of devices other than apnea monitors that utilize patient electrodes, e.g., ECG, have been encouraged by various organizations to modify their electrode lead wires so that they cannot be inserted into AC power cords or outlets. For example, in February 1987 and May 1993, ECRI issued hazard reports concerning electrical shock hazards from unprotected electrode lead wires and patient cables. Further, standards-setting bodies have developed various standards, both in draft and final form, that have the same goal in mind—safety requirements for patient electrode lead wires.

IEC has proposed an amendment to IEC 601-1, the safety standard for electromedical equipment, requiring that electrode lead wires be unable to make contact with hazardous voltages. This amendment was approved and published in March 1995.

The Underwriters Laboratories (UL) adopted IEC 601-1 by issuing its standard 2601-1. It became effective on August 31, 1994. This standard supersedes UL 544 (referenced in the ANPRM). In adopting the IEC standard, UL included a deviation that requires that patient electrodes be designed to avoid connection to electrical power sources. (See UL 2601-1, Medical Electrical Equipment Part 1: General Requirements for Safety.) The UL standard states in the rationale section that "this is a basic safety concern prompted by recent accidents involving patient injury, including infant deaths. Patients were accidently being connected to hazardous circuits while being connected to applied parts of medical equipment, such as an apnea monitor." FDA has been advised that it is possible that UL will modify its requirement to be equivalent to the one included in the proposed amendment to IEC 601-1.

There is also a German DIN standard for touch proof connectors for electromedical applications. This design standard was also referenced in the ANPRM and states that it was developed because of the accidents that occurred with infants in 1985 and 1986.

The National Fire Protection Agency (NFPA) is also proposing a standard for patient electrode lead connectors. FDA has received information that even though it is voluntary, this NFPA standard will be adopted by many States and municipalities as a mandatory standard for health care facilities. Further, this standard is referenced by the Joint Commission on Health Care Organizations.

Finally, the Association for the Advancement of Medical Instrumentation (AAMI) is developing a standard that covers cables and patient lead wires for surface electrocardiographic monitoring in cardiac monitors applications. The draft standard addresses safety and performance of cables and lead wires with the added purpose of encouraging the availability of lead wires that are interchangeable for ECG monitoring applications. The standard defines a safe (no exposed metal pins) common interface at the cable yoke and lead wire connector. The draft standard is currently being balloted by AAMI and undergoing public review for acceptance as an American National Standard.

FDA believes that industry also recognizes the importance of addressing this hazard. In response to FDA's alert letter in June 1985, manufacturers voluntarily began to redesign their electrode lead wires and patient cables for home apnea monitors. And more recently, many firms have taken voluntary action to recall electrode lead wires with unprotected exposed metal pins and/or unprotected patient cables. Apnea monitor firms are replacing their male pin lead wires and associated cables with safety cable systems, usually free of charge, while others are making adapters and warning labels available. Some device manufacturers have ceased supplying unprotected electrode lead wires.

II. Highlights of the Proposal

This rule proposes to establish a performance standard that FDA believes will eliminate the risk of electrode lead wires being inserted or otherwise manipulated so as to make contact with live parts of a power outlet or separable power cord. This standard would apply to all medical devices that use patient-connected electrode lead wires.

FDA is proposing a 1- or 3-year effective date for any final regulation based on this proposed promulgation of a performance standard. Devices that would be subject to the 1-year effective date are those devices that present the

greatest potential risk of harm as demonstrated by use in environments where accidental inappropriate connections could reasonably be anticipated, and by frequent use of the devices and frequent connections of electrode lead wires. Devices subject to the 1-year effective date would also include devices that have been the subject of reported adverse events, and those that can be reasonably anticipated to be the subject of adverse events. Devices that would be subject to the 3-year effective date are those devices that do not satisfy the criteria for the 1-year effective date but also utilize unprotected electrode lead wires. The agency is also proposing to ban devices that do not meet the standard on its effective date.

III. The New Framework

As noted in the ANPRM, FDA recognizes that despite the many efforts described above, the potential risks presented by the continued use of unprotected electrode lead wires and patient cabling systems still exist. In order to eliminate these risks completely, the agency is proposing to establish a performance standard that would apply to all medical devices that use patient-connected electrode lead wires.

In reaching this decision, the agency reviewed several standards that are in various stages of development before deciding to propose to establish its own. FDA decided not to adopt these standards for this proposal because some of them were too restrictive or not restrictive enough for application to all devices. In addition, it would cause unnecessary delay in FDA's handling of this matter to obtain the appropriate clearances for the adoption of an existing standard. FDA believes, however, that devices that meet the IEC, AAMI, and NFPA standards for protected electrode lead wire and cable configurations would also meet FDA's proposed standard.

The agency believes that firms whose devices would be subject to the proposed performance standard will begin adapting existing products to the standard, or modify "new devices" to conform them to the standard, if they have not already done so, before the effective date of the standard. This would be consistent with Congress' admonition that "stockpiling of nonconforming devices is discouraged, since standards will apply to all devices in commercial channels on their effective date." (See H. Rept. 853, 94th Cong., 2d sess. 30; see also 45 FR 7474, February 1, 1980, final standards regulations.)

FDA is publishing a list of devices utilizing patient contacting electrodes that would be subject to the 1- or 3-year phase-in process of the performance standard. FDA reserves the right, upon proper notification to interested parties, to amend this list at any time. FDA believes the proposed effective dates are reasonable and consistent with the congressional intent in enacting section 514 of the act, as well as with comments at the public conference.

To ensure a full adherence to the standard by both new and existing products in commercial distribution and use, the agency is also proposing to ban all devices that do not meet the standard on its effective date.

IV. Performance Standard

The Safe Medical Devices Act of 1990 (the SMDA) (Pub. L. 101–629) prescribes changes to the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321–394), as amended, that improve the regulation of medical devices and strengthen the Medical Device Amendments of 1976 (the 1976 amendments), which established a comprehensive framework for the regulation of medical devices.

The SMDA amended section 513 of the act (21 U.S.C. 360c) to redefine class II as the class of devices that is or will be subject to special controls, and amended section 514 of the act (21 U.S.C. 360d) to simplify the requirements for establishing performance standards. Section 513 of the act states that the "special controls * * * shall include performance standards for a class II device if the Secretary determines that a performance standard is necessary to provide reasonable assurance of the safety and effectiveness of the device." The legislative history of the SMDA states that:

> by simplifying the process for establishing performance standards, and by allowing the Secretary discretion to employ such standards as one of a variety of additional controls to assure the safety and effectiveness of Class II devices, performance standards will become valuable tools to regulate those devices for which they are most needed.

(S. Rept. 513, 101st Cong., 2d sess. 19 (1990).)

Under this proposal, this mandatory standard would apply to all electrode lead wires, and would be phased-in over a period of 3 years. Proposed § 897.12(a) and (b) contain lists of devices that would be subject to the performance standard, with the applicable effective dates of the standard.

A. The Proposed Standard

FDA proposes the following mandatory performance standard for patient-connected electrode lead wires. Any lead wire intended to provide electrical contact between a patient and any medical device shall be protected such that the connector at the lead wire end that is distal to the patient cannot make conductive contact with an AC electrical power source (e.g., wall receptacle, power cord plug).

B. Findings

Unprotected electrode lead wires and patient cabling systems have been associated with burns and electrocutions. The fact that these injuries and deaths occurred in both homes and hospitals emphasizes the need to address this problem on a wider scale. Until all unprotected electrode lead wires and patient cables are out of the user environment, the potential hazard exists. FDA believes that a proactive approach warranted to address this potential hazard adequately.

Despite repeated efforts to eliminate the serious hazard they pose, the production and use of unprotected electrode lead wires continue. Although many firms are taking corrective action, others continue to supply users with unprotected electrode lead wires, and users continue to request and use them. Therefore, to eliminate the serious risks to health presented by these devices, FDA is proposing that all devices featuring patient connected electrode lead wires be redesigned or adapted to prevent the risk by the end of a 3-year period.

C. Opportunity to Request a Change in Classification

In accordance with section 514(b)(1)(B)(iii) of the act and § 860.132, FDA is offering interested persons an opportunity to request a change in the classification of any device that would be subject to the proposed standard, based on new information relevant to its classification. Any proceeding to reclassify a device will be in accordance with section 513(e) of the act.

A request for a change in the classification of a device that uses electrode lead wires is to be in the form of a reclassification petition containing information required by § 860.123 (21 CFR 860.123), including new information relevant to the classification of the device, and shall, under section 514(b)(1)(B) of the act, be submitted before July 21, 1995.

The agency advises that, to ensure timely filing of any such petition, any request should be submitted to the Dockets Management Branch (address above) and not to the address provided in § 860.123(b)(1). If a timely request for a change in the classification is submitted, FDA will, by August 21, 1995, and after consultation with the appropriate FDA advisory committee and by an order published in the **Federal Register**, either deny the request or initiate a change in the classification of the device in accordance with section 513(e) of the act and 21 CFR 860.130.

In accordance with section 515(c)(1)(D) of the act (21 U.S.C. 350e(c)(1)(D)) any class III device for which a PMA is filed would be required to include information showing that the device is in compliance with the standard.

D. The Proposed Effective Date

Section 861.36 (21 CFR 861.36) states that:

> A regulation establishing * * * a performance standard will set forth the date upon which it will take effect. To the extent practical, consistent with the public health and safety, such effective date will be established so as to minimize economic loss to, and disruption or dislocation of, domestic and international trade. (See also section 514(b)(3)(B) of the act.)

FDA has determined that the cost of converting or adapting unsafe electrode lead wire configurations in order to comply with the proposed standard is manageable because the standard will be phased in over a 1- or 3-year period. Furthermore, FDA believes that this cost is justifiable given the severity of the adverse events that have occurred and those that may reasonably be anticipated.

V. Banning Action

The SMDA amended section 516 of the act (21 U.S.C. 360f), which authorizes FDA to ban any device intended for human use if FDA finds, based on all available data and information, that such device presents a "substantial deception" or an "unreasonable and substantial risk of illness or injury" that FDA finds cannot be, or has not been, corrected or eliminated by labeling or a change in labeling.

The Report by the Committee on Interstate and Foreign Commerce on the amendments (House Report) stated that:

> By using the term substantial, the Committee intends that the Secretary make a determination that the deception or risk incurred through the continued marketing of such a device is important, material, or significant. In determining that the device is deceptive, it is not necessary that the Secretary find that there was intent to mislead users of the device. Nor is actual proof of deception of or injury to an individual required.

(H. Rept. 853, 94th Cong., 2d sess. 19 (1976).)

The legislative history of the amendments further stated that:

> A finding that a device presents the requisite degree of deception or risk is made 'on the basis of all available data and information', including information which the Secretary may obtain under other provisions of the proposed legislation, and information which may be supplied by the manufacturer in response to the proceeding relating to the safety, effectiveness, or labeling of the device.

(Id. at 19.)

Under the SMDA, FDA may initiate a proceeding to ban a device, based upon available data and information, without first consulting with a device panel. In addition, the SMDA no longer requires that the agency afford interested persons an opportunity for an informal hearing before proposing a regulation to ban a device. (See Section 18(d) of the SMDA; and also 21 CFR 895.20.) FDA believes, that the conference held on July 15, 1994, was an appropriate forum for interested parties to express their views on the agency's options for a proposed course of action. Further, the ANPRM solicited comments on alternative solutions to the removal of all unprotected electrode lead wires from the market, such as banning them under part 895 (21 CFR part 895). FDA considered the conference transcript, as well as the written comments submitted in response to the ANPRM, before determining that a banning action is warranted. For all these reasons, the agency has decided that an informal hearing is not necessary before proceeding with the proposal. Moreover, this document provides interested persons with an additional opportunity to provide comments on the agency's proposed actions.

FDA is aware that in response to the section 518(a) letters it issued last year, many firms conducted voluntary recalls of unprotected electrode lead wires to correct the labeling on these devices. However, FDA has determined that the continued marketing of unprotected electrode lead wires and patient cables, no matter how they are labeled, presents an unreasonable and substantial risk of illness or injury to individuals, and provides no benefit to the public health that is not provided by protected electrode lead wires and patient cables. Use of unprotected electrode lead wires has resulted in, and can be expected to continue to result in, serious adverse consequences or death because the devices are inherently dangerous when used in a reasonably foreseeable, albeit inappropriate, manner. There are no labeling requirements that can reliably prevent inappropriate connections of unprotected electrode lead wires and, thus, unprotected electrode lead wires cannot be safely marketed for the device's intended purposes. Accordingly, FDA has not proposed a change in device labeling. Indeed, labeling warnings are meaningless when unprotected electrode wires are available to preschool children or individuals with limitations such as vision problems, mental retardation, or other cognitive impairments. Further, labeling is often an inadequate solution in certain hospital settings where health care professionals find themselves in busy, stressful situations in which they may not be provided with, or could inadvertently overlook, instructions.

Therefore, FDA is proposing to ban unprotected electrode lead wires in order to prohibit their further introduction into commerce and to expedite the removal of these devices from commercial distribution and use, thereby preventing any further or unreasonable and substantial risk of illness or injury. Based on the public comments received to date, FDA believes that the proposed 1- or 3-year effective dates would provide a reasonable transition time with minimal economic disruption.

FDA notes that, even though current law requires that hospitals and other users of medical devices report problems such as serious injuries and deaths, that law did not become effective until late 1991. Therefore, there has probably been an underreporting of the deaths and serious injuries attributable to unprotected patient electrode lead wires and cables.

VI. Summary and Analysis of Comments and FDA'S Response

The agency received 19 written comments from manufacturers, distributors, user facilities, trade associations, and a consultant in response to the ANPRM. A summary of the written comments and oral testimony from the conference is provided below:

1. In general, several comments expressed their appreciation to FDA for allowing them to express their views to the agency on this important public health issue. A few comments noted that the July conference was an excellent forum for the exchange of ideas on a subject that is of concern to all manufacturers and users of medical instrumentation. One comment encouraged FDA to increase its use of

forums of this type because they lead to a better understanding of issues that are relevant to industry. A few comments stated that they were in favor of safety systems for all devices that directly connect electrodes to patients. Other comments supported the concept of banning the use and production of unprotected electrode lead wires, provided the ban was implemented over a period of time to allow manufacturers to convert to protected electrode lead or cable sets, and for users to budget for and adapt to the change.

FDA has utilized the information gleaned from the July conference and the written comments submitted in response to the ANPRM in determining the most appropriate regulatory approach to address the risks associated with the continued use of unprotected electrode lead wires and patient cabling systems. The agency is proposing to establish a performance standard for patient-connected electrode lead wires, and also to ban devices that do not meet the standard on its effective date. However, FDA is proposing a phase-in of any final rule based on this proposal for up to a 3-year period, depending on the device type. Based on the public comments received to date, FDA believes that the proposed effective dates provide a reasonable transition period for both new and existing products in commercial distribution and use.

2. Some comments noted that interchangeability with various devices was an attractive feature of unprotected lead sets. Indeed, several comments noted that the straight male (0.80") single pin and corresponding socket are a de facto standard. Several comments noted that this interchangeability feature helps to contain costs. Another comment noted that single lead wire electrodes are lightweight, which makes them good for use on small patients like neonates. Furthermore, because of their light weight, there is an increased probability that the lead will stay on the patient.

Interchangeability of pin-style lead wires was one of the factors leading to FDA's decision to propose this performance standard and ban. FDA believes that protected patient-connected electrode lead wires, if properly designed, can provide the same advantages that have been offered by unprotected electrode lead wires.

3. At the conference it was reported that an advantage to using unprotected electrode lead wires is the ability to clean the contacts of the lead wires, both for the electrical connection because of the oxidation of the connections and also from the standpoint of infection control. Another advantage noted was the ability to disconnect electrode lead wires from one cable and connect them into other cable assemblies while the patient is being transported from unit to unit. Other comments noted that standardized protected electrode lead wire and patient cable interfaces, if properly designed, can provide the same advantages as unprotected electrode lead wires.

FDA agrees that standardized cable and electrode lead wire interfaces, if properly designed, can provide the same advantages as unprotected electrode lead wires.

4. One comment stated that hospitals are being forced to stock many different cables and electrode lead wires to meet the needs of various types of equipment and, as a result, it makes staff training more difficult and creates complex problems when patients move from one area of the hospital to another.

FDA recognizes that in a highly complex setting, such as a hospital, there are numerous questions that arise such as when to change the electrode lead wires, when to change the cables, or when to interchange cables. FDA believes that its proposed standard will eliminate the risk of injury or death when such decisions are made because all electrode lead wires used in the hospital setting, regardless of which device they are being used with, will be protected. FDA encourages design engineers to standardize protected electrode lead wires as much as practicable to permit appropriate interchangeability among device types.

5. One comment noted that many devices (for example, devices that are no longer being manufactured) cannot be modified economically to accept a protected electrode. Another comment stated that at least 20 to 50 percent of all devices in use either cannot be converted or are not worth converting because the manufacturer is out of business or the device is obsolete. This comment states that such devices would need to be discarded and replaced with new equipment.

FDA is not aware of any devices that are no longer being manufactured and are in use today that will be unable to accept protected electrode lead wires with proper design modification. Further, to date, FDA has not been presented with any data showing that firms would be unable to economically redesign their electrode lead wires in accordance with the phase-in approach set forth in this proposal. To the contrary, the evidence in the record demonstrates that a phase-in of up to 3 years would allow sufficient time for such a conversion. For example, at the conference it was reported that clinical engineers from 33 States who responded to an independent survey stated that they could eliminate 90 percent of their nonprotected electrode lead wire and cables in about 2 years. Further, it was reported that studies conducted by AHA and the American Society for Electroneurodiagnostic Technologists (ASET) concluded that it would take a minimum of approximately 2 years to phase-in any conversion for existing electroneurodiagnostic instrumentation and electrode lead wires to a new gender configuration. This 2-year timeframe, according to a representative from ASET, was based on the financial impact that any change would have on the average diagnostic laboratory. This representative further believed that, with an extended compliance date for the diagnostic laboratory setting, the cost would be spread out over a larger fiscal period, making it easier for smaller laboratories to absorb the increased cost of services.

6. At the conference it was suggested that use of adapter blocks would be an inexpensive alternative to address the unprotected electrode lead wire problem. However, this comment noted that adapters are detachable.

FDA recognizes that certain adapters are not failure proof and can be removed, posing the same hazard as an unprotected product. FDA is seeking a permanent solution to the problem. If an adapter is used, it should be designed to prevent removal by the user.

7. One comment noted that the use of unprotected electrode lead wires is preferable to use of an intermediate adapter because adapters introduce a second electrical connection between the device and the electrode, and some devices (for example, electroencephalograms (EEG's)) are very susceptible to noise that may be generated by this additional connection.

FDA acknowledges that, if improperly designed, any extra connection that is made between the electrodes on the patient and the recorder has the potential of causing interference in the recording. However, FDA believes that significant interference could be prevented by proper design of the connector. Further, FDA believes that, in order to comply with the proposed standard, adapters would have to be designed so as to prevent their removal of the adapter by the user.

8. A few comments noted that certain devices, such as transcutaneous electrical nerve stimulators (TENS), Holter, and telemetry, may not permit conversion from unprotected to protected electrode leads unless the device is retrofitted by an adapter and, in some cases, redesigned by the original equipment manufacturer. Several other comments noted that diagnostic instruments cannot accept redesigned electrode connections without modifying the device.

FDA believes that if devices cannot accept safety lead sets currently available, modifications can be made to the design of the lead, and may also be necessary for the device with which the lead is intended to be used. Indeed, one comment noted that modification kits will be available to permit the use of protected electrode lead wires on certain devices that currently cannot accept them.

As noted at the conference, the electrode lead wires for TENS, Holter, and other event monitors may migrate into other clinical areas. Indeed, FDA believes that the same is true for all electrode lead wires, including those intended for diagnostic use. Therefore, FDA is proposing that all unprotected electrode lead wires be redesigned or adapted to prevent the risk to health presented by these devices.

It should be noted that certain battery powered devices (e.g., Holter monitors, TENS, biofeedback devices) are proposed for Phase 1 implementation. If battery powered, these devices do not pose a direct electrical hazard. However, FDA is concerned about their unsupervised use outside a clinical setting, and the potential hazard presented when their pin-style electrode lead wires are connected to a patient instead of to a device. Based on previous adverse experiences with home-use apnea monitors, FDA believes it prudent to require early conversion of these other home-use devices, and is proposing to include them in Phase 1.

9. A trade association stated that it is not aware of any device that inherently cannot accept a redesigned, protected electrode lead. As noted in response to the comment above, FDA believes that if current devices cannot accept safety lead sets currently available, modifications can be made to the design of the lead, and may also be necessary for the device with which the lead is intended to be used. Indeed, one comment noted that modification kits will be available to permit the use of protected electrode lead wires on certain devices that currently cannot accept them.

10. Some hospitals and other providers contended that immediately replacing devices or parts would be too costly and logistically difficult. One comment stated that the cost of converting to protected electrode lead wires and patient cables would increase the costs of medical care. In contrast, one comment stated that the conversion cost to health care providers would not be unreasonably high given the potential loss of life if unprotected electrode lead wires continue to remain available. A few user facilities noted that unprotected electrode lead wires are not only less expensive than protected electrode leads, but they also have several additional advantages for hospitals, i.e., light in weight, and a standard size and shape (allowing the hospital to use the wires for multiple purposes). These facilities believe that the unprotected electrode lead wire problem will resolve itself in time because, as replacements are needed, safer leads will be ordered.

FDA believes that a long-term "natural" phaseout is an unacceptable solution to the problem. Indeed, one manufacturer of electrode lead wires reported that it continues to fill requests for unprotected lead wires, and does not anticipate any decrease in such requests. One comment estimated that 1.5 million unprotected electrode lead wires and patient cables are manufactured and distributed annually in the United States either for new use or as replacement products, and 10 to 40 million unprotected electrode lead wires and patient cables are currently in circulation. Moreover, FDA believes that any "natural" phaseout that might occur, would take much longer than is reasonable and necessary. FDA believes that a proactive approach is necessary to address this potential hazard adequately. Therefore, to eliminate the serious risks to health presented by these devices, FDA is proposing that all devices featuring patient-connected unprotected lead wires be redesigned or adapted in order to eliminate the risk by the end of a 3-year period.

11. A few comments stated that the cost of converting unsafe cables to safe cables is manageable. One comment noted that the manufacturing of electrode lead wires with protected pins, such as pins meeting DIN 42 802, costs only a few cents more than manufacturing lead wires with unprotected pins. In addition, this comment continued, the cost of the jacks that fit into the equipment is also consistent with the costs of the 2-millimeter pin jack. This comment concluded that any additional costs for new equipment are not significant compared to the cost of retrofitting equipment in the field. This comment believed that retrofitting would require significant changes to cases and printed circuit boards, and is not warranted in light of the frequency and nature of the accidents that have occurred.

FDA believes that the cost of converting or adapting unsafe electrode lead wire configurations to safe electrode lead wire configurations meeting its proposed standard is manageable because the agency will be phasing in its standard over a 1- to 3-year period. Furthermore, FDA believes that this cost is justifiable given the nature of the adverse events reported and those that may be reasonably anticipated if these devices were to remain available.

12. Several comments noted that the cost of converting to protected electrode lead wires will be greater for devices that will have to be completely redesigned to accommodate safe connections when electrode lead wires are directly inserted into them.

As noted above, FDA believes that this cost is justifiable and will be manageable given the availability of permanent adapter blocks and the range of time FDA is proposing for adherence to the standard.

13. One comment noted that the likelihood that nonmedical electrode lead wires and patient cables would be substituted for medical uses is virtually nonexistent. Another comment noted that no data are available indicating the extent of such substitution.

FDA has seen no data describing the extent of substitution of nonmedical electrode lead wires and patient cables for protected medical electrode lead wires and patient cables.

14. Some manufacturers claimed that substitution of unprotected electrode lead wires and patient cables can be avoided if the equipment is used properly and adequate warnings and instructions are provided with all devices. On the other hand, some users claimed that the reason why electrode lead wires and patient cables are misused is the poor design of the devices.

Although FDA recognizes that user education and training are essential to the proper use of all devices, including unprotected electrode lead wires, a variety of additional factors are involved when improper electrical connections are made. One of these factors is the cognitive ability of the operator, e.g., sibling, caregiver, or parent, at the time of an incident, and another factor is the environment in which the device is being used. It is worth noting that, in the Chicago hospital incident discussed earlier, the health care professional had 8 years of prior experience. Therefore, FDA believes that the most effective solution to the unprotected electrode lead wire problem is a change in the design of the device.

15. Several comments stated that there is a need for electrical safety education specific to patient cables and electrode lead wires for all personnel who come in contact with them in the patient care setting.

FDA agrees with this comment.

16. Several comments stated that there are certain areas of a hospital that present a higher risk than others for inappropriate electrical connections. These comments mentioned intensive care units (ICU's), cardiac care units (CCU's), and emergency rooms as examples of high risk areas because many times people in those areas are under stress or fatigued, and events are happening extremely quickly. Another comment noted that what was clear regarding reported deaths and macro-shocks from unprotected electrode lead wires was that there were no known reports involving adults. Therefore, this comment continued, the obvious conclusion is that neonatal ICU's, nurseries, and pediatric units where infants are cared for in a hospital should be the first priority in terms of engineering controls and education. The next areas that should be focused on are ICU's, CCU's, and possibly operating rooms. Finally, the comment concluded, areas using diagnostic devices clearly should be addressed last because of the expense of conversion and the unique attributes of that environment, including the fact that operators are trained, there are very few transactions, things are done in a linear fashion, and there is no risk of improper connections by parents, which was the cause of some of the reported incidents. A trade association added that, in any procedure-based area in a hospital, e.g., the catheter lab, the probability of a problem occurring with a single bare-pin lead electrode and a female end of a power cord is diminished.

FDA has considered the environments where these devices are used, the frequency with which they are used and the reported and reasonably anticipated potential adverse events in determining whether specific devices should be subject to either the 1- or the 3-year effective date of the standard.

FDA believes that, even though current law requires that hospitals and other users of medical devices report serious injuries and deaths, there probably has been underreporting of deaths and serious injuries caused by unprotected patient electrode lead wires. FDA believes that most of the deaths, particularly those involving infants, probably have been reported to FDA. However, the agency believes that some injuries, that could be related to these devices, including serious injuries, probably have not been reported.

17. Many comments stated that the risk analysis and the history of incidents involving ECG and apnea monitoring equipment support a need for a performance standard for these devices. One comment at the conference noted that intraoperative EEG monitoring equipment should be included in any FDA regulatory action because the leads used with this equipment are similar to those used with the ECG and apnea monitoring.

FDA believes that all unprotected electrode lead wires present a risk for patients connected to them and, therefore, would be subject to the proposed performance standard and ban.

18. One comment suggested that new devices should be required to have a permanently wired cord. In contrast, another comment noted that hardwiring the modular power cord to the equipment is a poor alternative in light of the costs and logistical feasibility of this action. The modular power cord, this comment continued, is inherently safe and is a standard across the entire industry base. This comment believes that the problem is not the power cords, but rather the lead wires and the lack of training of the individuals using them.

FDA believes that hardwiring the power cord to the monitor is not a solution to the hazard presented by an exposed male pin. FDA's proposed actions, therefore, focus on the unprotected electrode lead wire, where an inappropriate connection can be made.

19. One comment recommended changing the ECG monitoring color codes for lead placement to avoid duplication with those used for the power cord.

FDA believes that a color change is not the most appropriate and direct solution to the problem. As noted above, several factors play a role in an improper connection.

20. During the conference it was stated that the detached power cord was the primary source for all of the incidents involving macro-shocks and deaths associated with unprotected lead wires. Furthermore, it was noted that there have been no accidents in the home, resulting in either injuries or deaths, since 1987. All of the accidents that have occurred since then have occurred in a hospital setting.

As noted in comment 18, FDA believes that the characteristics of the power cord can not eliminate the hazard presented by an exposed male pin. Therefore, FDA's proposed actions focus on the unprotected electrode lead wires. Since 1985, unprotected electrode lead wires have been associated with burns and electrocutions in both homes and hospitals. Therefore, FDA does not believe that the focus of its proposed actions should be limited to a specific environment. FDA has considered the intended environments of use, however, in determining when the proposed requirements would be applicable to a particular device.

21. Several comments objected to the notion that one standard could be appropriate for electrode lead wires and patient cables used in multiple diagnostic procedures because the performance attributes are different.

FDA believes that the proposed standard provides enough flexibility for manufacturers to design safety leads that take into account the type of diagnostic procedure involved, the physical characteristics of each examination and operating room, as well as each physician's or technician's personal preference for use of the diagnostic instrument on the patient. Hence, FDA has determined that one performance standard would be appropriate for all electrode types.

22. Several comments recommended that a risk-based assessment of the unprotected electrode lead problem should be a component of any FDA action. Devices that present the greatest risk should be given the greatest attention.

FDA has determined that all devices that use electrode lead wires should be subject to the proposed performance standard and ban. However, FDA has decided to phase-in its proposed requirements to allow sufficient flexibility for all devices that use unprotected electrode lead wires to be converted. As noted in the response to comment 20, FDA considered risk in determining when the proposed requirements would be applicable to a particular device.

23. One comment stated that lead wire connectors should not have exposed metal that can be connected to a ground or power source, either foreign or domestic.

FDA agrees. Therefore, its proposed standard attempts to achieve this goal.

24. Several comments stated that a performance standard should be focused on line-powered devices and, even more specifically, on apnea monitoring and ECG devices, for which there have been reported adverse incidents. One comment added that other devices should not be required to change to protected electrode lead wires until they are shown to present a risk to patients.

FDA is proposing to apply its standard to all devices featuring

electrode lead wires. As noted earlier, limiting the standard to certain devices would not eliminate the risk of interchanging unprotected electrode lead wires with protected electrode lead wires. Further, FDA considered the reported and reasonably anticipated potential adverse events in determining whether a device should be subject to the 1- or 3-year effective date.

25. One comment noted that FDA should adopt a safety standard such as UL 544 in lieu of a performance or design standard, such as AAMI's. Several other comments asserted that FDA should establish a performance standard. Another comment suggested that, if a general patient safety standard is desired, the language of the UL standard would suffice. This standard, the comment continued, permits the use of unprotected electrode lead wires and cables so long as the overall design of the system prevents exposing the patient to main power. If a performance standard specific to electrode lead wires and cables is desired, then it would be appropriate to establish a standard that requires that all electrical connections that can be manually opened be designed so that insertion into AC power sockets is not possible.

FDA believes that its proposed performance standard sufficiently addresses the hazard to be prevented, while providing design engineers flexibility in determining how to accomplish that goal.

26. Some comments noted that a performance standard across device type is viable assuming that manufacturers are given a reasonable time to convert to this performance standard. One comment argued that existing devices should be permitted to be "grandparented" in.

FDA is requiring that both new and existing devices be subject to the standard. FDA believes that its phase-in approach will provide sufficient time for conversion and is consistent with the statutory requirements with respect to applicability of a performance standard. Therefore, there will be no "grandparenting" of existing equipment.

27. One comment expressed the view that standards committees which are currently in place are best prepared to address the unique requirements of various devices, and that existing standards organizations, such as AAMI, should be encouraged to increase emphasis in this area. Indeed, in the conference it was noted, for example, that the IEC has developed at least four standards for connectors for specific devices.

FDA encourages standards organizations to continue their efforts in this area. However, as stated earlier in this proposal, these are voluntary standards, and the agency has determined that a mandatory standard is necessary to adequately address the risk to health presented by unprotected electrode lead wires. The agency has used these standards in developing its proposed mandatory performance standard. FDA believes that the proposed standard achieves the goal of the existing standards—to eliminate the risk of patient-connected electrode lead wires being inserted or otherwise manipulated so as to make contact with live parts of a power outlet or separable power cord.

28. During the conference a concern was raised that, if FDA were to require a protected environment, equipment currently in place could no longer be used. This comment stated that some equipment lasts more than 10 years. Therefore, it was the comment's recommendation that protected electrode lead wires and cables be required to work with devices in place today.

FDA agrees with this comment. FDA encourages design engineers to consider the "useful life" of the existing devices subject to this proposal when determining how to convert from an unprotected electrode lead wire and patient cable configuration to a protected configuration.

29. Several comments recognized that requiring that only new equipment be changed would not adequately solve the problem.

FDA believes that, until all unprotected electrode lead wires are off the market, the potential hazard still exists. Therefore, to ensure full adherence to the performance standard by all unprotected electrode lead wires currently in commercial distribution or those already sold to the ultimate user, FDA is proposing to ban all devices not meeting the performance standard on its effective date.

30. A couple of comments supported the concept of banning the use and production of unprotected electrode lead wires. These comments recommended that such a ban be implemented over a period of time to allow manufacturers to convert to protected electrode lead or cable sets, and to allow users to budget for and adapt to the change. Comments varied with respect to the timeframe in which they believed the ban should be applied. One comment believed that full conversion should be required after approximately 18 months. Another comment noted that an immediate ban would result in interruption in hospital service and increased costs. Another comment noted that a total phaseout could be accomplished in 2 years.

FDA is proposing to phase-in the ban in the same manner as the performance standard. Thus, the ban would apply on the effective date of the standard.

31. One comment opposed to banning stated that such an action would shut down many areas of a hospital until the equipment could be converted.

As noted earlier, the proposed ban would be phased in over a 1- and 3-year period. This gradual phase-in would allow hospitals to take appropriate measures to convert or adapt existing equipment and thereby minimize, if not eliminate, the potential shortage of certain devices in the hospital.

32. One comment stated that a performance standard would probably not prevent substitution or removal of offending cables and leads that are being used with products that have already been shipped.

FDA believes that its proposed dual regulatory approach of a performance standard and ban for new and existing products would prevent further use of devices already shipped. As stated previously, both the standard and the ban would apply to all devices subject to these actions on the effective date. Any device not in compliance with these requirements would be adulterated in accordance with section 501(e) of the act (21 U.S.C. 351(e)) and/or section 501(g) (21 U.S.C. 351(g)).

33. One comment stated that FDA should identify cable manufacturers not registered with the agency, or who have not filed 510(k)'s and take compliance action against them.

FDA agrees with this comment, and has examined the regulatory status of many cable and lead wire manufacturers and contract manufacturers during the past year. FDA will continue to monitor firms that have not registered and/or listed, or submitted 510(k)'s, with the agency. FDA invites further information regarding any manufacturer believed to be in violation of these requirements.

34. A few comments noted that FDA should require that any device for which a new 510(k) is filed meet safety requirements (UL, IEC, AAMI).

As discussed previously, FDA considered adoption of a voluntary standard e.g., UL, IEC, AAMI, to address the unprotected electrode lead wire hazard, but decided instead to initiate the regulatory process for developing a mandatory performance standard for patient-connected electrode lead wires. If a final rule is promulgated establishing this standard and banning devices that do not meet the standard on its effective date, it will be applicable to

both new devices and existing products in commercial distribution and use.

35. A request was made that FDA control third-party suppliers (manufacturers of cables and lead wires) by requiring 510(k)'s from them.

A third party supplier that manufactures cable and lead wires is subject to the requirements of section 510(k) if that supplier also distributes the cables and lead wires. (See 21 CFR 807.85 for a discussion of exemptions from premarket notification requirements.)

36. Some comments questioned how device modifications from an unprotected electrode lead wire and patient cable configuration to a protected configuration will be handled by the Center for Devices and Radiological Health's Office of Device Evaluation (ODE). These comments noted that, if protected electrode leads were required on equipment, the change would have to be processed through the premarket notification process (510(k) process), which could result in a delay.

In a document entitled "Notification of Implementation of Lead Wires and Patient Cable Changes to Safe Configurations," dated February 15, 1995, ODE stated that, for devices reviewed through the 510(k) process, information regarding device modification to the protected configuration should be submitted as an addendum to the existing premarket notification file. FDA noted that, in the interest of public health, it is not requiring a new 510(k) and/or prior clearance if the only change being made is to a protected configuration. For devices reviewed through the premarket approval process, a modification from an unprotected electrode lead wire and patient cable configuration to a protected configuration may also be implemented without prior clearance by FDA. FDA stated that, for these devices, information regarding device modifications to the protected configuration should be provided in the next annual report to the premarket approval application. In both instances, FDA stated that, within 90 days of the receipt of the information, it will notify parties of any concerns it may have with the proposed safe configuration design. Otherwise, no response will be provided. Please refer to this ODE document, which is available from the Division of Small Manufacturers Assistance (HFZ-220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–443–6597 or 1–800–638–2041, prior to making your submission.

37. A trade association recommended the use of a guidance document in lieu of a new regulation or mandatory standard concerning protected cable and lead sets.

FDA has been recommending, advising, and warning about the hazard presented by unprotected electrode lead wires for 10 years. FDA has decided that firmer regulatory action is warranted.

VII. Enforcement

FDA's statutory authority to issue performance standards is derived from section 514 of the act. Section 701(a) of the act (21 U.S.C. 371(a)) authorizes FDA to promulgate binding regulations for the efficient enforcement of the act. *Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609 (1973); see also *Weinberger* v. *Bentex Pharmaceuticals Inc.*, 412 U.S. 645, 653 (1973); *National Assn. of Pharmaceuticals Manufacturers* v. *FDA*, 637 F.2d 877 (2d Cir. 1981); *National Confectioners Assn.* v. *Califano*, 569 F.2d 690 (D.C. Cir. 1978); *National Nutritional Foods Assn.* v. *Weinberger*, 512 F.2d 688 (2d Cir.), cert. denied, 423 U.S. 827 (1975). Section 519(a) of the act (21 U.S.C. 360i(a)) also authorizes the agency to issue regulations requiring manufacturers of devices to maintain and provide records to ensure that devices are not adulterated, misbranded, unsafe, or ineffective. FDA's performance standards for medical devices are substantive regulations with the force and effect of law. See *United States* v. *Undetermined Quantities of Various Articles of Device * * * Proplast II*, 800 F. Supp. 499, 502 (S.D. Tex. 1992); *United States* v. *789 Cases * * * Latex Surgeons' Gloves*, 799 F. Supp. 1275, 1287 (D.P.R. 1992).

Section 501(e) of the act deems a device to be adulterated, and thus prohibited from commerce, if it is a device subject to a performance standard established under section 514 of the act, unless such device is in all respects in conformity with such standard. Introduction into interstate commerce of a device that fails to comply with the requirements established by section 514 of the act is a prohibited act under section 301(a) of the act (21 U.S.C. 331(a)), and the agency will use its enforcement powers to deter noncompliance. Persons who violate section 301 of the act may be subject to injunction pursuant to section 302(a) of the act (21 U.S.C. 332(a)). In addition, any person responsible for violating section 301 of the act may be subject to civil penalties under section 303(f) of the act (21 U.S.C. 333(f)) and criminal prosecution under section 303(a) of the act.

Section 501(g) of the act deems a device to be adulterated, and thus prohibited from commerce, if it is a banned device. Section 304(a)(2) of the act (21 U.S.C. 334(a)(2)) authorizes seizure of any adulterated device at any time. In any action involving devices, section 709 of the act (21 U.S.C. 379a) establishes a statutory presumption of interstate commerce for any device in commerce. Consequently, once FDA makes a device a banned device, in subsequent regulatory proceedings to remove the device from commerce, the Government need show only that the device has been banned; the Government is not required to cite evidence in court to establish any of the elements usually necessary to prove that the device is adulterated and should be condemned.

VIII. Environmental Impact

The agency has determined under 21 CFR 25.24(e)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IX. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The provisions of the proposed rule, including the establishment of a performance standard and ban of the applicable devices not meeting the standard, are consistent with the industry's response to the hazard presented by medical devices that use unprotected electrode lead wires. Indeed, efforts have already begun to convert to unprotected electrode lead wire and patient cable configurations either by redesigning new equipment or permanently affixing adapters to existing products. The industry has commented that this conversion to protected electrode lead wires and patient cables could occur over a maximum of 2 years. FDA's proposal, if implemented, would be phased in over a 3-year period. This proposed phase-in would further minimize the costs associated with such a conversion. For these reasons, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

X. Request for Comments

Interested persons may, on or before September 21, 1995, submit to the Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

FDA is soliciting comments on all aspects of this proposal, and specifically requests comments on the following issues:

(1) Cost of converting or adapting unsafe electrode lead wire configurations to safe electrode lead wire configurations that meet the proposed requirements in this document. Please provide the source of your estimates.

(2) The list of devices subject to the proposed performance standard and ban, and their respective effective dates for compliance.

(3) The potential for cutaneous electrodes to be interchanged with various medical equipment.

(4) Test methods, if any, that should be included in the proposed mandatory standard.

XI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Letter to FDA Commissioner David A. Kessler from Ron Wyden, then Chairman, U.S. House of Representatives, Committee on Small Business, Subcommittee on Regulation, Business Opportunities, and Technology, dated August 2, 1994.

2. Information from FDA's medical device reporting (MDR) data base, Rockville, MD.

3. Information from FDA's medical device reporting (MDR) data base, Rockville, MD.

4. "FDA Safety Alert: Unsafe Patient Lead Wires and Cables," FDA's September 3, 1993, Safety Alert.

5. Section 518(a) notification letter to apnea monitor manufacturers, September 3, 1993.

6. Section 518(a) notification letter to patient cable and lead wire manufacturers, September 20, 1993.

7. FDA Public Health Advisory: Unsafe Electrode Lead Wires and Patient Cables Used With Medical Devices, December 28, 1993.

List of Subjects

21 CFR Part 895

Administrative practice and procedure, Labeling, Medical devices.

21 CFR Part 897

Administrative practice and procedure, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and the Public Health Service Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Title 21, Chapter I of the Code of Federal Regulations be amended as follows:

PART 895—BANNED DEVICES

1. The authority citation for 21 CFR part 895 continues to read as follows:

Authority: Secs. 502, 516, 518, 519, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352, 360f, 360h, 360i, 371).

2. Section 895.105 is added to subpart B to read as follows:

§ 895.105 Unprotected electrode lead wire.

(a) *Definition.* A lead wire that is intended to provide electrical contact between a patient and any medical device and that has a connector that is not protected at the end distal to the patient, i.e., the connector at the lead wire end that is distal to the patient is capable of making conductive contact with an alternating current electrical power source (e.g., wall receptacle, power cord plug).

(b) *Applicability.* Devices utilizing unprotected patient connected electrode lead wires shall be banned as of the date set forth in paragraph (c) of this section.

(c) *Effective date.* The effective date for the ban of devices utilizing unprotected patient-connected electrode lead wires as defined in paragraph (a) of this section shall be as follows:

(1) For the following devices, the effective date for which compliance is required is (insert date 1 year after date of publication of the final rule):

LISTING OF DEVICES FOR WHICH COMPLIANCE IS REQUIRED EFFECTIVE

[Insert date 1 year after date of publication of the final rule]

Phase	Product code	CFR section	Class	Device name
1	73 BZQ	868.2375	II	Monitor, Breathing Frequency.
1	73 FLS	868.2375	II	Monitor (Apnea Detector), Ventilatory Effort.
1	74 DPS	870.2340	II	Electrocardiograph.
1	74 DRG	870.2910	II	Transmitters and Receivers, Physiological Signal, Radiofrequency.
1	74 DRK	870.5300	III	DC-Defibrillator, High Energy, (Including Paddles).
1	74 DRO	870.5550	III	Pacemaker, Cardiac, External Transcutaneous (Noninvasive).
1	74 DRQ	870.2060	II	Amplifier and Signal Conditioner, Transducer Signal.
1	74 DRR	870.2050	II	Amplifier and Signal Conditioner, Biopotential.
1	74 DRT	870.2300	II	Monitor, Cardiac (Including Cardiotachometer and Rate Alarm).
1	74 DRW	870.2350	II	Adaptor, Lead Switching, Electrocardiograph.
1	74 DRX	870.2360	II	Electrode, Electrocardiograph.
1	74 DSA	870.2900	II	Cable, Transducer and Electrode, Patient, (Including Connector).
1	74 DSB	870.2770	II	Plethysmography, Impedance.
1	74 DSH	870.2800	II	Recorder, Magnetic Tape, Medical.
1	74 DSI	870.1025	III	Detector and Alarm, Arrhythmia.
1	74 DSJ	870.1100	II	Alarm, Blood Pressure.
1	74 DSK	870.1110	II	Computer, Blood Pressure.

LISTING OF DEVICES FOR WHICH COMPLIANCE IS REQUIRED EFFECTIVE—Continued

[Insert date 1 year after date of publication of the final rule]

Phase	Product code	CFR section	Class	Device name
1	74 DSR	870.3850	III	Stimulator, Carotid Sinus Nerve.
1	74 DTE	870.3600	III	Pulse Generator, Pacemaker, External.
1	74 DXG	870.1435	II	Computer, Diagnostic, Preprogrammed, Single-Function.
1	74 DXH	870.2920	II	Transmitters and Receivers, Electrocardiograph, Telephone.
1	74 DXJ	870.2450	II	Display, Cathode-Ray Tube, Medical.
1	74 DXK	870.2330	II	Echocardiograph.
1	74 DXN	870.1130	II	System, Measurement, Blood Pressure, Noninvasive.
1	74 DYC	870.2400	II	Vectorcardiograph.
1	74 JOQ	870.1750	II	Generator, Pulse, Pacemaker, External Programmable.
1	74 KRC	870.2370	II	Tester, Electrode, Surface, Electrocardiographic.
1	74 KRE	870.3640	II	Analyzer, Pacemaker Generator Function, Indirect.
1	74 KRG	870.3700	III	Programmer, Pacemaker.
1	74 LDD	870.5300	II	DC-Defibrillator, Low-Energy, (Including Paddles).
1	74 LDF	870.3680	II/III	Electrode, Pacemaker, Temporary.
1	74 LIW	.....	II	Fibrillator, AC.
1	74 LOR	.....		Resuscitator, Trans-Telephonic.
1	74 LOS	870.2340	II	System, ECG Analysis.
1	74 LPA	.....	III	System, Esophageal Pacing.
1	74 LPD	.....	III	System, Pacing, Antitachycardia.
1	78 LIL	.....		Monitor, Penile Tumescence.
1	78 KPN	876.2040	II	Alarm, Enuresis.
1	78 KPI	876.5320	II	Stimulator, Electrical, Nonimplanted, for Incontinence.
1	84 GWF	882.1870	II	Stimulator, Electrical, Evoked Response.
1	84 GWK	882.1845	II	Conditioner, Signal, Physiological.
1	84 GWL	882.1835	II	Amplifier, Physiological Signal.
1	84 GWN	882.1460	II	Nystagmograph.
1	84 GXY	882.1320	II	Electrode, Cutaneous.
1	84 GXZ	882.1350	II	Electrode, Needle.
1	84 GYE	882.1855	II	System, Telemetry, Physiological Signal.
1	84 GZI	882.5810	II	Stimulator, Neuromuscular, External Functional.
1	84 GZJ	882.5890	II	Stimulator, Nerve, Transcutaneous, for Pain Relief.
1	84 GZO	882.1540	II	Device, Galvanic Skin Response Measurement.
1	84 HCC	882.5050	II	Device, Biofeedback.
1	84 HCJ	882.1560	II	Device, Skin Potential Measurement.
1	84 JXE	882.1550	II	Device, Nerve Conduction Velocity Measurement.
1	84 JXK	882.5800	III	Stimulator, Cranial Electrotherapy for Speech Disorder.
1	84 LIH	.....		Interferential Current Therapy.
1	86 HLZ	886.1220	II	Electrode, Corneal.
1	86 HMC	886.1510	II	Monitor, Eye Movement.
1	86 HLL	886.1510	II	Monitor, Eye Movement.
1	89 IKD	890.1175	I	Cable, Electrode (for Use With Diagnostic Physical Medicine Devices).

(2) For the following devices, the effective date for which compliance is required is (insert date 3 years after date of publication of the final rule):

LISTING OF DEVICES FOR WHICH COMPLIANCE IS REQUIRED EFFECTIVE

[Insert date 3 years after date of publication of the final rule]

Phase	Product code	CFR section	Class	Device name
2	73 KOI	868.2775	II	Stimulator, Nerve, Peripheral, Electrical.
2	74 DQH	870.2310	II	Cardiograph, Apex (Vibrocardiograph).
2	74 DQK	870.1425	II	Computer, Diagnostic, Programmable.
2	74 DQX	870.1330	II	Wire, Guide, Computer.
2	74 DTA	870.3720	II	Tester, Pacemaker Electrode Function.
2	74 DTC	870.3630	II	Analyzer, Pacemaker Generator Function.
2	74 DTD	870.3620	III	Adaptor, Lead, Pacemaker.
2	74 KRI	870.4200	I	Accessory Equipment, Cardiopulmonary Bypass.
2	74 LIX	.....		Aid, Cardiopulmonary Resuscitation.
2	76 LYD	.....	III	Stimulator, Electromagnetic Bone Growth for Dental Use.
2	78 MII	.....		System, Gallbladder Thermal Ablation.
2	78 LNL	.....		Stimulator, Electrical, for Sperm Collection.
2	78 LST	.....		Device, Erectile Dysfunction (only Cavonsometry).
2	78 KDO	876.1500	II	Rongeur, Hot Cystoscopic.
2	78 EXQ	876.1620	II	Cystometer, Electrical Recording.
2	78 FAP	876.1620	II	Cystometric (CO2) on Hydraulic Device.
2	78 FEN	876.1620	II	Device, Hydraulic Cystometric.
2	78 EXS	876.1800	II	Urinometer, Electrical (only with electromyography (EMG) electrodes).

LISTING OF DEVICES FOR WHICH COMPLIANCE IS REQUIRED EFFECTIVE—Continued

[Insert date 3 years after date of publication of the final rule]

Phase	Product code	CFR section	Class	Device name
2	78 EXY	876.1800	II	Uroflowmeter (only with EMG electrodes).
2	78 FHC	876.4300	II	Adaptor to the Cord, for Transurethral Surgical Instrument.
2	78 FGW	876.4300	II	Clamp, Electrical.
2	78 FBJ	876.4300	II	Cord, Electric for Transurethral Surgical Instrument.
2	78 FHZ	876.4300	II	Desiccator, Transurethral.
2	78 FAS	876.4300	II	Electrode, Electrosurgical, Active, Urological.
2	78 FEH	876.4300	II	Electrode, Flexible Suction Coagulator.
2	78 KGE	876.4300	II	Forceps, Biopsy, Electric.
2	78 FDB	876.4300	II	Plate, Patient.
2	78 FDI	876.4300	II	Snare, Flexible.
2	78 FDJ	876.4300	II	Snare, Rigid Self-Opening.
2	78 FFI	876.4300	II	System, Alarm, Electrosurgical.
2	78 FAR	876.4300	II	Unit, Electrosurgical.
2	78 KNS	876.4300	II	Unit, Electrosurgical (and Accessories).
2	78 FDL	876.4300	II	Wristlet, Patient Return.
2	78 EZL	876.5130	II	Catheter, Balloon Retention Type.
2	79 GEI	878.4400	II	Device, Electrosurgical, Cutting and Coagulation and Accessories.
2	79 JOS	878.4400	II	Electrode, Electrosurgical.
2	84 GWQ	882.1400	II	Electroencephalograph.
2	84 GXC	882.5940	III	Device, Electroconvulsive Therapy.
2	84 GXS	882.1610	II	Monitor, Alpha.
2	84 GYC	882.1310	II	Electrode, Cortical.
2	84 GZK	882.1340	II	Electrode, Nasopharyngeal.
2	84 GZL	882.1330	II	Electrode, Depth.
2	84 GZN	882.1825	III	Rheoencephalograph.
2	84 HCB	882.5235	II	Device, Adverse Conditioning.
2	85 HII	884.5940	III	Stimulator, Vaginal, Muscle, Powered, for Therapeutic Use.
2	86 HLT	886.1640	II	Preamplifier, Ophthalmic.
2	86 HQR	886.4100	II	Apparatus, Electrocautery, Radio Frequency.
2	86 HQO	886.4115	II	Unit, Cautery, Thermal.
2	86 HRO	886.4250	II	Unit, Electrolysis, Ophthalmic.
2	86 HQC	886.4670	II	System, Phacofragmentation.
2	86 HQE	886.4150	II	Instrument, Vitreous Aspiration & Cutting.
2	87 KQX	888.1500	I	Goniometer, AC-Powered.
2	87 LBB	888.1240	II	Dynamometer, AC-Powered.
2	87 LOF	.....	III	Stimulator, Bone Growth, Noninvasive.
2	87 LWB	.....	III	Stimulator, Functional Neuromuscular, Scoliosis.
2	89 EGJ	890.5525	III	Device, Iontophoresis, Other Uses.
2	89 KTB	890.5525	II	Device, Iontophoresis, Specific Uses.
2	89 IKN	890.1375	II	Electromyograph, Diagnostic.
2	89 IKP	890.1225	II	Chronaximeter.
2	89 IKT	890.1385	II	Electrode, Needle, Diagnostic Electromyograph.
2	89 IMG	890.5860	II/III	Stimulator, Ultrasound and Muscle, for Use in Applying Therapeutic Deep Heat.
2	89 IPF	890.5850	II	Stimulator, Muscle, Powered.
2	89 ISB	890.1850	II	Stimulator, Muscle, Diagnostic.
2	89 LPQ	890.5860	II/III	Stimulator, Ultrasound and Muscle.
2	89 MBN	.....	III	Stimulator, Muscle, Powered, Invasive.
2	89 MKD	.....	III	Stimulator, Functional Walking Neuromuscular, Noninvasive.
2	90 LNH	892.1000	II	System, Imaging, Nuclear Magnetic Resonance.

3. New part 897 is added to read as follows:

PART 897—PERFORMANCE STANDARD FOR PATIENT-CONNECTED ELECTRODE LEAD WIRES

Sec.

897.10 Applicability.
897.11 Performance standard.
897.12 Effective date.

Authority: Secs. 501, 502, 513, 514, 530–542, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360c, 360d, 360gg–360ss, 371, 374); secs. 351, 361 of the Public Health Service Act (42 U.S.C. 262, 264).

§ 897.10 Applicability.

Devices utilizing electrode lead wires intended to be connected to patients shall be subject to the standard set forth in section 897.11.

§ 897.11 Performance standard.

Any lead wire intended to provide electrical contact between a patient and any medical device shall be protected such that the connector at the lead wire end that is distal to the patient cannot make conductive contact with an alternating current electrical power source (e.g., wall receptacle, power cord plug).

§ 897.12 Effective date.

The effective date for compliance with the standard set forth in 897.11(a) shall be as follows:

(a) For the following devices the effective date for which compliance is required is (insert date 1 year after date of publication of the final rule):

LISTING OF DEVICES FOR WHICH COMPLIANCE IS REQUIRED EFFECTIVE
[Insert date 1 year after date of publication of the final rule]

Phase	Product code	CFR section	Class	Device name
1	73 BZQ	868.2375	II	Monitor, Breathing Frequency.
1	73 FLS	868.2375	II	Monitor (Apnea Detector), Ventilatory Effort.
1	74 DPS	870.2340	II	Electrocardiograph.
1	74 DRG	870.2910	II	Transmitters and Receivers, Physiological Signal, Radiofrequency.
1	74 DRK	870.5300	III	DC-Defibrillator, High Energy (Including Paddles).
1	74 DRO	870.5550	III	Pacemaker, Cardiac, External Transcutaneous (Noninvasive).
1	74 DRQ	870.2060	II	Amplifier and Signal Conditioner, Transducer Signal.
1	74 DRR	870.2050	II	Amplifier and Signal Conditioner, Biopotential.
1	74 DRT	870.2300	II	Monitor, Cardiac (Including Cardiotachometer and Rate Alarm).
1	74 DRW	870.2350	II	Adaptor, Lead Switching, Electrocardiograph.
1	74 DRX	870.2360	II	Electrode, Electrocardiograph.
1	74 DSA	870.2900	II	Cable, Transducer and Electrode, Patient (Including Connector).
1	74 DSB	870.2770	II	Plethysmograph, Impedance.
1	74 DSH	870.2800	II	Recorder, Magnetic Tape, Medical.
1	74 DSI	870.1025	III	Detector and Alarm, Arrhythmia.
1	74 DSJ	870.1100	II	Alarm, Blood Pressure.
1	74 DSK	870.1110	II	Computer, Blood Pressure.
1	74 DSR	870.3850	III	Stimulator, Carotid Sinus Nerve.
1	74 DTE	870.3600	III	Pulse Generator, Pacemaker, External.
1	74 DXG	870.1435	II	Computer, Diagnostic, Preprogrammed, Single-Function.
1	74 DXH	870.2920	II	Transmitters and Receivers, Electrocardiograph, Telephone.
1	74 DXJ	870.2450	II	Display, Cathode-Ray Tube, Medical.
1	74 DXK	870.2330	II	Echocardiograph.
1	74 DXN	870.1130	II	System, Measurement, Blood Pressure, Non-invasive.
1	74 DYC	870.2400	II	Vectorcardiograph.
1	74 JOQ	870.1750	II	Generator, Pulse, Pacemaker, External Programmable.
1	74 KRC	870.2370	II	Tester, Electrode, Surface, Electrocardiographic.
1	74 KRE	870.3640	II	Analyzer, Pacemaker Generator Function, Indirect.
1	74 KRG	870.3700	III	Programmer, Pacemaker.
1	74 LDD	870.5300	II	DC-Defibrillator, Low-Energy (Including Paddles).
1	74 LDF	870.3680	II/III	Electrode, Pacemaker, Temporary.
1	74 LIW	.....	II	Fibrillator, AC.
1	74 LOR	.....		Resuscitator, Trans-Telephonic.
1	74 LOS	870.2340	II	System, ECG Analysis.
1	74 LPA	.....	III	System, Esophageal Pacing.
1	74 LPD	.....	III	System, Pacing, Antitachycardia.
1	78 LIL	.....		Monitor, Penile Tumescence.
1	78 KPN	876.2040	II	Alarm, Enuresis.
1	78 KPI	876.5320	II	Stimulator, Electrical, Nonimplanted, for Incontinence.
1	84 GWF	882.1870	II	Stimulator, Electrical, Evoked Response.
1	84 GWK	882.1845	II	Conditioner, Signal, Physiological.
1	84 GWL	882.1835	II	Amplifier, Physiological Signal.
1	84 GWN	882.1460	II	Nystagmograph.
1	84 GXY	882.1320	II	Electrode, Cutaneous.
1	84 GXZ	882.1350	II	Electrode, Needle.
1	84 GYE	882.1855	II	System, Telemetry, Physiological Signal.
1	84 GZI	882.5810	II	Stimulator, Neuromuscular, External Functional.
1	84 GZJ	882.5890	II	Stimulator, Nerve, Transcutaneous, for Pain Relief.
1	84 GZO	882.1540	II	Device, Galvanic Skin Response Measurement.
1	84 HCC	882.5050	II	Device, Biofeedback.
1	84 HCJ	882.1560	II	Device, Skin Potential Measurement.
1	84 JXE	882.1550	II	Device, Nerve Conduction Velocity Measurement.
1	84 JXK	882.5800	III	Stimulator, Cranial Electrotherapy for Speech Disorder.
1	84 LIH	.....		Interferential Current Therapy.

LISTING OF DEVICES FOR WHICH COMPLIANCE IS REQUIRED EFFECTIVE—Continued
[Insert date 1 year after date of publication of the final rule]

Phase	Product code	CFR section	Class	Device name
1	86 HLZ	886.1220	II	Electrode, Corneal.
1	86 HMC	886.1510	II	Monitor, Eye Movement.
1	86 HLL	886.1510	II	Monitor, Eye Movement.

(b) For the following devices the effective date for which compliance is required is (insert date 3 years after date of publication of the final rule):

LISTING OF DEVICES FOR WHICH COMPLIANCE IS REQUIRED EFFECTIVE
[Insert date 3 years after date of publication of the final rule]

Phase	Product code	CFR section	Class	Device name
2	73 KOI	868.2775	II	Stimulator, Nerve, Peripheral, Electrical.
2	74 DQH	870.2310	II	Cardiograph, Apex (Vibrocardiograph).
2	74 DQK	870.1425	II	Computer, Diagnostic, Programmable.
2	74 DQX	870.1330	II	Wire, Guide, Computer.
2	74 DTA	870.3720	II	Tester, Pacemaker Electrode Function.
2	74 DTC	870.3630	II	Analyzer, Pacemaker Generator Function.
2	74 DTD	870.3620	III	Adaptor, Lead, Pacemaker.
2	74 KRI	870.4200	I	Accessory Equipment, Cardiopulmonary Bypass.
2	74 LIX	.....		Aid, Cardiopulmonary Resuscitation.
2	76 LYD	.....	III	Stimulator, Electromagnetic Bone Growth for Dental Use.
2	78 MII	.....		System, Gallbladder Thermal Ablation.
2	78 LNL	.....		Stimulator, Electrical, for Sperm Collection.
2	78 LST	.....		Device, Erectile Dysfunction (only Cavonsometry).
2	78 KDO	876.1500	II	Rongeur, Hot Cystoscopic.
2	78 EXQ	876.1620	II	Cystometer, Electrical Recording.
2	78 FAP	876.1620	II	Cystometric (CO_2) on Hydraulic Device.
2	78 FEN	876.1620	II	Device, Hydraulic Cystometric.
2	78 EXS	876.1800	II	Urinometer, Electrical (only with EMG electrodes).
2	78 EXY	876.1800	II	Uroflowmeter (only with EMG electrodes).
2	78 FHC	876.4300	II	Adaptor to the Cord, for Transurethral Surgical Instrument.
2	78 FGW	876.4300	II	Clamp, Electrical.
2	78 FBJ	876.4300	II	Cord, Electric for Transurethral Surgical Instrument.
2	78 FHZ	876.4300	II	Desiccator, Transurethral.
2	78 FAS	876.4300	II	Electrode, Electrosurgical, Active, Urological.
2	78 FEH	876.4300	II	Electrode, Flexible Suction Coagulator.
2	78 KGE	876.4300	II	Forceps, Biopsy, Electric.
2	78 FDB	876.4300	II	Plate, Patient.
2	78 FDI	876.4300	II	Snare, Flexible.
2	78 FDJ	876.4300	II	Snare, Rigid Self-Opening.
2	78 FFI	876.4300	II	System, Alarm, Electrosurgical.
2	78 FAR	876.4300	II	Unit, Electrosurgical.
2	78 KNS	876.4300	II	Unit, Electrosurgical (and Accessories).
2	78 FDL	876.4300	II	Wristlet, Patient Return.
2	78 EZL	876.5130	II	Catheter, Balloon Retention Type.
2	79 GEI	878.4400	II	Device, Electrosurgical, Cutting and Coagulation and Accessories.
2	79 JOS	878.4400	II	Electrode, Electrosurgical.
2	84 GWQ	882.1400	II	Electroencephalograph.
2	84 GXC	882.5940	III	Device, Electroconvulsive Therapy.
2	84 GXS	882.1610	II	Monitor, Alpha.
2	84 GYC	882.1310	II	Electrode, Cortical.
2	84 GZK	882.1340	II	Electrode, Nasopharyngeal.
2	84 GZL	882.1330	II	Electrode, Depth.

LISTING OF DEVICES FOR WHICH COMPLIANCE IS REQUIRED EFFECTIVE—Continued

[Insert date 3 years after date of publication of the final rule]

Phase	Product code	CFR section	Class	Device name
2	84 GZN	882.1825	III	Rheoencephalograph.
2	84 HCB	882.5235	II	Device, Adverse Conditioning.
2	85 HII	884.5940	III	Stimulator, Vaginal, Muscle, Powered, for Therapeutic Use.
2	86 HLT	886.1640	II	Preamplifier, Ophthalmic.
2	86 HQR	886.4100	II	Apparatus, Electrocautery, Radio Frequency.
2	86 HQO	886.4115	II	Unit, Cautery, Thermal.
2	86 HRO	886.4250	II	Unit, Electrolysis, Ophthalmic.
2	86 HQC	886.4670	II	System, Phacofragmentation.
2	86 HQE	886.4150	II	Instrument, Vitreous Aspiration & Cutting.
2	87 KQX	888.1500	I	Goniometer, AC-Powered.
2	87 LBB	888.1240	II	Dynamometer, AC-Powered.
2	87 LOF	.....	III	Stimulator, Bone Growth, Noninvasive.
2	87 LWB	.....	III	Stimulator, Functional Neuromuscular, Scoliosis.
2	89 EGJ	890.5525	III	Device, Iontophoresis, Other Uses.
2	89 KTB	890.5525	II	Device, Iontophoresis, Specific Uses.
2	89 IKN	890.1375	II	Electromyograph, Diagnostic.
2	89 IKP	890.1225	II	Chronaximeter.
2	89 IKT	890.1385	II	Electrode, Needle, Diagnostic Electromyograph.
2	89 IMG	890.5860	II/III	Stimulator, Ultrasound and Muscle, for Use in Applying Therapeutic Deep Heat.
2	89 IPF	890.5850	II	Stimulator, Muscle, Powered.
2	89 ISB	890.1850	II	Stimulator, Muscle, Diagnostic.
2	89 LPQ	890.5860	II/III	Stimulator, Ultrasound and Muscle.
2	89 MBN	.....	III	Stimulator, Muscle, Powered, Invasive.
2	89 MKD	.....	III	Stimulator, Functional Walking Neuromuscular, Noninvasive.
2	90 LNH	892.1000	II	System, Imaging, Nuclear Magnetic Resonance.

Dated: June 13, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

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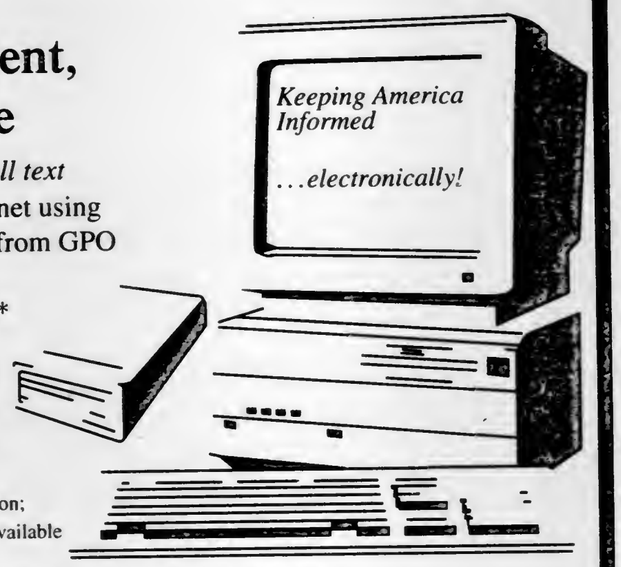
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The President

Presidential Determination No. 95–26 of June 8, 1995

Certification To Permit U.S. Contributions to the International Fund for Ireland for Fiscal Years 1994 and 1995

Memorandum for the Secretary of State

Pursuant to section 5(c) of the Anglo-Irish Agreement Support Act of 1986 (Public Law 99–415), I hereby certify that I am satisfied that: (1) the Board of the International Fund for Ireland as established pursuant to the Anglo-Irish Agreement of November 15, 1985, is, as a whole, broadly representative of the interests of the communities in Ireland and Northern Ireland; and (2) disbursements from the International Fund (a) will be distributed in accordance with the principle of equality of opportunity and nondiscrimination in employment, without regard to religious affiliation, and (b) will address the needs of both communities in Northern Ireland.

You are authorized and directed to transmit this determination and certification to the Congress, together with the Memorandum of Explanation, and to publish it in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, June 8, 1995.

MEMORANDUM OF EXPLANATION FOR CERTIFICATION OF THE FISCAL YEARS 1994 AND 1995 U.S. CONTRIBUTION TO THE INTERNATIONAL FUND FOR IRELAND

I. INTRODUCTION

This memorandum has been prepared to comply with legislative requirements associated with the Anglo-Irish Agreement Support Act of 1986, Public Law 99–415 (the "Act").

Section 5(c) of the Act requires that each fiscal year, prior to contributions to the International Fund for Ireland ("IFI" or the "Fund"), the President certify to the Congress that he is satisfied the following conditions have been met:

A. The Board of the International Fund for Ireland, as a whole, is broadly representative of the interests of the communities of the Republic of Ireland and Northern Ireland; and

B. Disbursements from the IFI:

1. will be distributed in accordance with the principle of equality of opportunity and nondiscrimination in employment, without regard to religious affiliation; and

2. will address the needs of both communities in Northern Ireland.

II. BACKGROUND

A. *Establishment and Operation of the Fund*

The International Fund for Ireland was formally established as an independent entity on December 12, 1986, in keeping with the provisions of the Anglo-Irish Agreement of November 15, 1985. The overall objectives of the Fund are to promote economic and social advancement and to encourage contact, dialogue, and reconciliation between nationalists and unionists throughout Ireland and Northern Ireland. The Anglo-Irish Agreement states that the Fund shall accomplish these objectives by stimulating private investment and encouraging voluntary efforts with special emphasis on projects promoting communal reconciliation. The Agreement also stipulated the establishment of two investment companies under the Fund.

The Fund is an independent entity which is administered by a Board of Directors appointed jointly by the British and Irish governments. The Board is guided by a Joint Advisory Committee consisting of senior civil servants drawn equally from Northern Ireland and the Republic of Ireland. The Advisory Committee's principal role is to advise the Board on the economic and social policies and priorities of the two governments and to maximize the impact of assistance by avoiding duplication of activity. The Board is supported by a Secretariat composed of administrators from the two jurisdictions. The Secretariat is headed by two Joint Directors General, one from each jurisdiction. The Fund's operating expenses are paid by the British and Irish governments.

The Fund's activities are developed primarily through program teams in the following areas: Business Enterprise, Tourism, Urban Development, Agriculture and Rural Development, Science and Technology, the Wider Horizons Program, and the Disadvantaged Areas Initiative. These program teams are composed of an equal number of representatives from Northern Ireland and the Republic of Ireland. The teams are administered by joint chairmen who keep the Board of Directors apprised of their respective program teams' activities.

In an effort to focus on the more disadvantaged areas, the Fund directs 70–80 percent of the resources available in the program sectors to disadvantaged areas in Northern Ireland. The Fund has also created two additional program schemes: Community Economic Regeneration, which focuses on community driven regeneration of economic activity in urban areas; and Community Regeneration and Improvement Special Program (CRISP), which is designated for disadvantaged areas in Northern Ireland and focuses the Fund's resources on smaller towns and villages by linking a series of projects from the various program areas together.

B. *Fund Contributions*

The Fund receives contributions directly from bilateral and multilateral donors. U.S. obligations to date total $209.1 million. Under the appropriate Foreign Operations, Export Financing, and Related Programs Appropriations Acts, Congress appropriated an additional $39.2 million for FY 1994 and FY 1995 funds. Since 1989, the European Community has disbursed 15 million European Currency Units (approximately US$20 million) per year to the Fund, totaling $108 million to date, and will contribute $60 million in FY 1995. New Zealand contributed about $0.6 million in FY 1995 and Canada has provided approximately $7.5 million.

Each donor is entitled to appoint a representative to attend all Board meetings as a non-voting observer. Observers receive all Board papers and provide guidance to the Fund on behalf of their respective donor countries.

C. *Program Implementation*

Since its establishment in 1986, the Fund has approved a total of 3,500 projects and budgeted over $399 million to its various program areas. Some $358 million has been committed to approved projects within the various programs. The Fund has disbursed approximately $279 million to ongoing and completed projects, including $21.7 million to the two investment companies.

Individual project applications continue to represent a majority of the projects for funding. However, the program teams are assisting various communities in identifying and preparing proposals through regular contact and consultation with a number of area Economic Development Consultants. The Consultants serve as a point of contact for local communities, provide technical assistance and advice, and help to speed program implementation.

The Fund has put into place a computerized system of recording key data for the projects. Information, such as employment generation, leveraging, and geographical distribution of funds, is collected and logged into the new system. The information system has assisted the IFI in developing its capacity to analyze and report on the economic and social indicators of the Fund's achievements.

Disbursement procedures have also been established for the U.S. contribution to the Fund. In October 1992, USAID established a Letter of Credit mechanism to meet the legislative requirement to disburse funds at the minimum rate necessary to make timely payments for projects and activities. The Letter of Credit has allowed the U.S. Government to exercise greater control over money distributed to the Fund by transferring resources only when needed, and thereby minimizing interest costs to the U.S. Treasury.

D. *Job Creation and Additional Investment*

Two elements identified as priorities of the U.S. Government in its contribution to the Fund are job creation and the leveraging of additional investment into the economy. Both elements have been adopted by the Fund in the implementation of its program.

The Fund agrees that job creation is an essential factor in determining the allocation of Fund resources and clearly places an emphasis on the job creation potential of each project considered for funding. The Fund estimates that its activities directly resulted in the creation of about 20,500 new jobs and indirectly resulted in the creation of an additional 8,500 jobs. Construction activities have also resulted in 25,500 person-years of temporary employment.

The Fund has also been successful in leveraging new investment. Of the $397 million of Fund resources committed to approved projects, another $353 million and $264 million of private and government resources, respectively, have been invested. Thus every dollar that the Fund has committed has resulted in an additional $1.70 committed from other sources.

III. PRESIDENTIAL CERTIFICATION ELEMENTS

Each fiscal year, prior to the United States making a contribution to the Fund, the President must certify to Congress that he is satisfied that the Fund has complied with the legislative requirements in the Act. This Certification covers both the FY 1994 and FY 1995 contributions to the Fund. The following discusses the required elements.

A. *Board Representation*

The Board of Directors consists of seven members; three nominated by the British government, three nominated by the Irish government, and the Chairman. Board members are approved by both sides through consultations between the two governments. The Board, by design and agreement, is representative of the communities in both Northern Ireland and Ireland. The Board meets once every two months, primarily to review policy and procedural issues and to approve or reject proposals forwarded by the program teams for consideration. In addition, each Board member is responsible for coordinating with specific program teams and is consulted on a regular basis.

The Board members are as follows:

Mr. William T. McCarter (Chairman) is a prominent businessman in the textile industry. He is the Managing Director of Fruit of the Loom, International Ltd. with plants in Northern Ireland and the border County Donegal in the Republic of Ireland. Mr. McCarter was born in Londonderry, graduated

from Trinity College, Dublin and from the Massachusetts Institute of Technology. He now lives in Bucranna, County Donegal.

Mr. John E. Craig, OBE is a retired merchant banker with extensive experience in London. He is Chairman of Powerscreen International a very successful exporting firm based in County Tyrone. Mr. Craig was born in Dublin.

Mr. Paddy Duffy is a prominent lawyer with offices in a number of rural towns in Northern Ireland. He is active in the local credit union movement and Chairman of Dungannon and District Cooperative Society. Mr. Duffy is a former Social Democratic Labor Party councillor and Senator in the Northern Ireland Assembly.

Mr. Pat Kenny is an accountant by profession and a partner in the firm Deloitte, Touche in Dublin.

Ms. Joan McCrum until recently was the Chief Executive of the Housing Rights Association, a voluntary housing advice organization. Ms. McCrum now works for the Simon Community, a voluntary charity body, and acts as an independent consultant.

Ms. Caitriona Murphy is a former senior public official in government service in Dublin and is now a managing director for the Allied Irish Bank in Dublin.

Mr. Brian A. Slowey was, until his recent retirement, a managing director of Guiness Ireland, and the Chairman of Aer Lingus.

As in the past, the present Board is noted for its professionalism and integrity in setting policy and approving projects. The Board has taken an active role in promoting the Fund throughout Northern Ireland and Republic of Ireland as well as internationally.

B. *Disbursements From the International Fund*

The Fund's structure and policy framework ensure that resources are distributed in accordance with the principle of equality of opportunity and nondiscrimination in employment, without regard to religious affiliation, and that these resources address the needs of both communities in Northern Ireland and the six border counties of the Republic of Ireland.

The Board has developed its policies for disbursement of resources taking into account the terms of the Agreement under which it was established, the wishes of the donor countries, and the need to supplement the economic and social policies of the two governments. The Board structure and policy framework is manifested in the internal checks and balances in the Fund's appraisal, approval, and management systems. Also, the wide geographical distribution of approved projects enhances the Fund's efforts to meet the needs of both communities. The Fund's programs have created jobs, leveraged private investments, and fostered reconciliation. In addition, the Fund has made concerted efforts to target the most disadvantaged areas through CRISP and other special programs as well as the through the work of development consultants.

1. *Distribution of disbursements in accordance with the principle of equality of opportunity and nondiscrimination in employment, without regard to religious affiliation.*

a. *Structure of the Fund.* The Republic of Ireland and Northern Ireland are equally represented by members of the Fund's Board of Directors, Advisory Committee, Secretariat, and Program Teams. These individuals are highly respected for their professional competence, integrity, and commitment to the Fund's objectives. The Advisory Committee, as mentioned above, is composed of senior officials of both the British and Irish governments and provides guidance and support for the Board. The Secretariat staff maintains the day-to-day operations of the Fund and has been carefully selected for their administrative skills and judgement. The Program Teams are staffed with technical and administrative professionals who are committed to the Fund's operating principles of non-discrimination. Review of the IFI portfolio of projects and visits to selected sites by Agency for International Development (USAID) personnel have confirmed that the Fund has assembled a competent and professional staff who have cultivated and exercised sound project approval and management procedures.

b. *Policy Framework.* All Fund publications and solicitations for proposals clearly spell out the Fund's commitment to equality of opportunity and nondiscrimination. All successful applicants are required by the Board to agree to the following prior to receiving an award:

> Acceptance of a grant or loan under this scheme will be deemed to signify the applicant's acceptance of the principle of equality of opportunity and non-discrimination in employment, without regard to religious affiliation and that the applicant will be expected to use the money in accordance with this principle.

Letters of offer clearly state that any violation of this agreement will require immediate repayment of resources. To date, the Fund has not had to request repayment.

Equality of opportunity requirements are also enforced in Northern Ireland under the Fair Employment (Northern Ireland) Act of 1989. This act makes employment discrimination on the grounds of religious belief or public opinion illegal. The Act is designed to eradicate job discrimination and ensure the active practice of fair employment opportunity throughout Northern Ireland.

c. *Project Appraisal and Approval.* The Fund has instituted a clear and systematic appraisal and approval system. Each Program Team has signed agreements with the Fund Secretariat that spell out the criteria upon which all applications are made. As mentioned above, the Program Teams consist of officials from various government agencies, both North and South, which, in close cooperation with the Secretariat, help to bring the programs to fruition. The Team members, chosen for their expertise in their particular sector, review each project based on its merit using standard economic and financial analysis tools, as well as criteria relevant to their technical field.

Projects must also be consistent with the economic and social policies and priorities of the British and Irish governments. Each government reserves the right to veto support for activities proposed which violate their stated policies. No resources are to be used, for example, to improve the standing of or to further the goals of any paramilitary organization, either directly or indirectly. The Fund, the British government, and the Irish government are, however, committed to supporting activities which contribute to viable, self-sustaining growth, prosperity, and stability. In addition, it is hoped that the projects will have a positive impact on increasing respect for human rights and fundamental freedoms for citizens of both traditions from Northern Ireland and the Republic.

Thus, within the Fund's policy guidelines and the established criteria for the evaluation and approval process, projects are accepted for funding, rejected, or forwarded to an appropriate government agency for possible support from existing government programs. Applications are processed in a timely and efficient manner, consistent with a proper and prudent review of projects. In addition, of course, a considerable responsibility rests with the individual promoters of projects who must take the lead in completing their share of the financial package and implementing the project to a stage where payment can be made.

Each decision to approve, disapprove, or forward a project to a government agency requires the recommendation of the relevant program team, the endorsement of the two Board members supervising the team, and the approval of the Fund Secretariat. Any projects which are controversial, raise policy issues, or exceed the program team's delegation of authority, are forwarded to the Board for consideration.

Equality of opportunity and nondiscrimination are the guiding principles under which the Fund operates. Projects are reviewed on merit alone, without

regard to political or religious affiliations of the applicants. The cross-community composition of the Fund Board, the Secretariat, and the program teams ensures the realization of these principles.

2. *Addressing the needs of both communities in Northern Ireland.*

In order to comply with British law, the principles under which the Fund was established, and the U.S. Government priorities under which our contributions are made, religious affiliation is not a factor in the approval process. It is generally known, however, which religious majority is predominant within a specific geographical area.

Past program review visits have confirmed that through Fund activities, members of both communities have been able to experience for the first time a working or recreational experience with people of the opposite tradition. Such liaisons have produced cross-community boards of directors (under such organizations as the enterprise centers), cross-community enterprise matchmaking, cross-border joint ventures (such as the Derry-Galway-Boston Trade Fair), and genuine friendships. Other projects, (such as the Shannon-Erne Waterway) have been able to bring people of various communities together to promote their areas and to provide facilities to attract visitors and holiday markets. Because of these improvements, The Waterway Area was awarded a Tourism Award from the British Guild of Travel Writers. The civil servants of both governments in laboring together on the Fund have also developed excellent working, as well as personal, relationships with their counterparts. Such interaction contributes to reconciliation through dialogue and cooperation.

During a program review visit in November of 1994, USAID officials observed that the Fund is highly regarded by moderates from both the Catholic and Protestant communities for the work they have done and the attitudinal changes they have been able to stimulate. The Springboard-training and reconciliation program helps to promote these changes in younger people. This curriculum teaches courses in order to develop vocational training and mixes students from the West Belfast's Catholic and Protestant communities, allowing them to work together. There has been a concerted effort to reach out to those who were skeptical of the Fund activities, specifically in the Protestant communities, and this effort continue.

The Fund has made a concerted effort to direct assistance to the more economically disadvantaged areas. Special programs, such as CRISP, have been developed toward this end. The work of the development consultants is important in assisting the disadvantaged communities to develop ideas and proposals to help themselves through the Fund. The consultants participate in establishing local groups, ensure cross-community participation whenever possible, and assist groups in creating viable projects. In many cases, however, the IFI merely serves as a catalyst for community initiatives that have been developing independently of the Fund. The consultants are also instrumental in contributing to a greater overall understanding and positive perception of the Fund among the people of both communities.

IV. CONCLUSION

A review of Fund activities and a visit to Republic of Ireland and Northern Ireland by a senior USAID officer confirmed that the Board of Directors has maintained policies and procedures designed to ensure that both traditions benefit from Fund activities. The Board's operating principles ensure that project decisions are made on the basis of merit. In addition, it has been concluded that Fund resources are being distributed in a manner consistent with its mandate as stated above. All grantees are made aware of the principles of equality of opportunity and nondiscrimination in employment, stipulated by acceptance of any grant monies.

This report therefore concludes that:

- The Board of Directors of the International Fund for Ireland, as a whole, is broadly representative of the interests of the communities in the Republic of Ireland and Northern Ireland.

- Monies from the Fund are distributed in accordance with the principles of equality of opportunity and nondiscrimination in employment, without regard to religious affiliation, and address the needs of both communities in Northern Ireland.

[FR Doc. 95–15383
Filed 6–19–95; 4:59 pm]
Billing code 4710–10–M

Rules and Regulations

Federal Register
Vol. 60, No. 120
Thursday, June 22, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 922

[FV95–922–1IFR]

Apricots Grown in Designated Counties in Washington; Temporary Suspension of Grade Requirements for Apricots of the Patterson Variety

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule suspends, for the 1995 season only, the minimum grade requirements (Washington No. 1) currently in effect for fresh shipments of the Patterson variety of apricots grown in Washington. The suspension will enable handlers of Patterson variety apricots to ship more fruit to the fresh market, taking into consideration the significant hail damage experienced by this variety during the growing season. This action will improve returns to producers of the Patterson variety of apricots. This rule was recommended by the Washington Apricot Marketing Committee (Committee), the agency responsible for the local administration of the marketing order for Washington apricots.

DATES: Effective: July 1, 1995.

Comments received by July 24, 1995 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, Room 369, Portland, Oregon 97204–2807; telephone: (503) 326–2724 or Britthany Beadle, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–5331.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 922 (7 CFR part 922), regulating the handling of apricots grown in designated counties in Washington, hereinafter referred to as the "order." This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 30 handlers of Washington apricots subject to regulation under the order and approximately 400 producers of Washington apricots in the regulated production area. Small agricultural service firms have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of apricot handlers and producers may be classified as small entities.

Section 922.52 [7 CFR 922.52] authorizes the issuance of regulations for grade, size, quality, maturity, pack, markings, and container for any variety or varieties of apricots grown in any district or districts of the production area. Section 922.53 [7 CFR 922.53] authorizes the modification, suspension, or termination of the regulations issued under section 922.52.

Minimum grade, color, and size requirements for Washington apricots regulated under the order are specified in section 922.321 Apricot Regulation 21 (7 CFR 922.321). Section 922.321 provides that no handler shall handle any container of apricots unless such apricots grade not less than Washington No. 1, except for shipments that are exempt from regulation. In addition, this section provides that, with the exception of exempt shipments, apricots shipped must be reasonably uniform in color, and be at least 1⅝ inches in diameter, except for the Blenheim, Blenril, and Tilton varieties which must be at least 1¼ inches in diameter.

This rule suspends the minimum grade requirements for fresh shipments

of the Patterson variety of apricots for the 1995 season. The grade requirements for the Patterson variety currently specified in section 922.321 will resume April 1, 1996, for the 1996 and future seasons. Color and size requirements for the Patterson variety will remain unchanged.

The Committee met on May 11, 1995, and unanimously recommended the suspension of grade requirements for the Patterson variety. The Committee requested that this suspension be made effective by July 1, 1995, since the harvest of the Patterson variety is expected to begin shortly thereafter.

The Committee meets prior to each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Washington apricots which have been issued on a continuing basis. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews Committee recommendations and information submitted by the Committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

Information available to the Committee indicates that the Patterson variety of apricots experienced severe hail damage this season. The excessive damage was a result of location and stage of fruit development. The Patterson variety is the latest variety of apricots produced within the production area. Earlier varieties of apricots did not experience significant hail damage.

This suspension will enable handlers to ship a larger portion of the Patterson variety to the fresh market this season, than if the minimum grade requirements were not suspended. Without suspension of the grade requirements for the Patterson variety, most of the fruit could not be shipped to fresh markets. Last year, 151 tons of the Patterson variety were shipped into the fresh market. Information available to the Committee indicates that with suspension of the grade requirements for the Patterson variety, approximately 125 tons might be shipped to the fresh market. Since the Patterson variety is the latest variety of apricots shipped within the production area, the suspension of the grade requirements for this variety should not adversely affect the marketing of other varieties.

Suspension of the grade requirements for the Patterson variety is intended to increase fresh shipments to meet consumer needs and improve returns to producers.

Based on the above information, the Administrator of the AMS has determined that this interim final rule will not have a significant impact on a substantial number of small entities and that the action set forth herein will benefit producers and handlers of the Patterson variety of apricots grown in designated counties in Washington.

After consideration of all available information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This action suspends the current grade requirements for the Patterson variety of Washington apricots; (2) the Committee unanimously recommended this rule at a public meeting and all interested persons had an opportunity to provide input; (3) shipment of the Patterson variety of apricots is expected to begin in early July, and this rule should apply to the entire season's shipments; (4) handlers of the Patterson variety of apricots are aware of this rule and they need no additional time to comply with the relaxed requirements; and (5) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 922 is amended as follows:

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

1. The authority citation for 7 CFR part 922 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 922.321, paragraph (a)(1) is revised to read as follows:

§ 922.321 Apricot Regulation 21.

(a) * * *

(1) *Minimum grade and maturity requirements.* Such apricots that grade not less than Washington No. 1 and are at least reasonably uniform in color: *Provided,* That the grade requirement shall not apply to epricots of the Patterson variety handled during the 1995 season through March 31, 1996: *Provided further,* That such apricots of the Moorpark variety in open containers shall be generally well matured; and

* * * * *

Dated: June 15, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–15109 Filed 6–21–95; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AE17

Emergency Planning Licensing Requirements for Independent Spent Fuel Storage Facilities (ISFSI) and Monitored Retrievable Storage Facilities (MRS)

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations, in accordance with the Nuclear Waste Policy Act of 1982, for the emergency planning licensing requirements for Independent Spent Fuel Storage Facilities (ISFSI) and Monitored Retrievable Storage Facilities (MRS). The amendments are necessary to ensure that local authorities will be notified in the event of an accident so that they may take appropriate action. The regulation will provide a level of preparedness at these facilities that is consistent with NRC's defense-in-depth philosophy.

EFFECTIVE DATE: September 20, 1995.

FOR FURTHER INFORMATION CONTACT: Michael T. Jamgochian, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301–415–6534).

SUPPLEMENTARY INFORMATION:

Background

On May 27, 1986 (51 FR 19106), following Commission approval, the proposed revision to 10 CFR part 72 relating to licensing requirements for Independent Spent Fuel Storage Facilities (ISFSI) and Monitored Retrievable Storage Facilities (MRS), including requirements for emergency planning, was published in the **Federal Register** for comment.

On November 30, 1988 (53 FR 31651), the Commission published the final rule outlining the licensing requirements for ISFSI and MRS but reserved the emergency planning licensing requirements for a later date.

On May 24, 1993 (58 FR 29795), the Commission published for public comment the proposed emergency planning licensing requirements for ISFSI and MRS. This final rule codifies the emergency planning licensing requirements.

Discussion

On April 7, 1989 (54 FR 14051), the Commission published in the **Federal Register** the final regulations relating to Emergency Preparedness for Fuel Cycle and Other Radioactive Material Licensees (10 CFR parts 30, 40, and 70).

These regulations require certain NRC fuel cycle and other radioactive materials licensees that engage in activities that may have the potential for a significant accidental release of NRC licensed materials to establish and maintain approved emergency plans for responding to such accidents.

Although applicable to those licensed under different parts of the Commission's regulations, the requirements for emergency plans in parts 30, 40, and 70 contain similar provisions because they are designed to protect the public against similar radiological hazards. The proposed revision of 10 CFR part 72 as published for comment on May 24, 1993 (58 FR 29795), would also require applicants for an ISFSI and MRS license to submit an emergency plan. Although the texts of the Fuel Cycle final emergency planning requirements and the parallel provisions of the proposed Emergency Preparedness licensing requirements for ISFSI and MRS are not identical, these provisions have the same purpose and use the same approach. In both cases, the proposed regulations require onsite emergency planning with provisions for offsite emergency response in terms of coordination and communication with offsite authorities and the public. It is therefore appropriate that in both cases these requirements should be expressed in the same manner.

The Commission has determined that the emergency planning licensing requirements for 10 CFR part 72 licensees should be similar to those requirements already codified in § 70.22 for part 70 licensees. Nonetheless, the Commission wishes to establish unique provisions in the emergency planning requirements for MRS facilities (and certain more complex ISFSIs) versus typical ISFSI facilities. The Commission anticipates a potential need for enhanced emergency planning requirements appropriate to the entire range of operations which may be conducted at an MRS facility (or ISFSI that may be repackaging or handling spent fuel). The Commission acknowledges that, to date, accidents that have been postulated and analyzed for either an ISFSI or MRS would result in similar offsite doses. The analysis of potential onsite and offsite consequences of accidental releases associated with the operation of an ISFSI is contained in NUREG–1140. This evaluation shows that the maximum dose to a member of the public offsite due to an accidental release of radioactive materials would not exceed 1 rem effective dose equivalent, which is within the EPA Protective Action Guides or an intake of 2 milligrams of soluble uranium (due to chemical toxicity).

Thus, the consequences of worst-case accidents involving an ISFSI located on a reactor site would be inconsequential when compared to those involving the reactor itself. Therefore, current reactor emergency plans cover all at- or near-reactor ISFSI's. An ISFSI that is to be licensed for a stand-alone operation will need an emergency plan established in accordance with the requirements in this rulemaking. NUREG–1140 concluded that the postulated worst-case accident involving an ISFSI has insignificant consequences to the public health and safety. Therefore, the final requirements to be imposed on most ISFSI licensees reflect this fact, and do not mandate formal offsite components to their onsite emergency plans.

Similarly, the Commission has conducted an analysis of potential onsite and offsite consequences of accidental release associated with the operation of an MRS. The analysis is contained in NUREG–1092. This evaluation shows that the maximum dose to a member of the public offsite due to an accidental release of radioactive materials would likely not exceed 1 rem effective dose equivalent which is within the EPA Protective Action Guides or an intake of 2 milligrams of soluble uranium (due to chemical toxicity).

In the final NRC Generic Environmental Impact Statement on the handling and storage of light water reactor fuel,[1] it is stated that

* * * To be a potential radiological hazard to the general public, radioactive materials must be released from a facility and dispersed offsite. For this to happen:

- The radioactive material must be in a dispersible form
- There must be a mechanism available for the release of such meterials from the facility, and
- There must be a mechanism available for offsite dispersion of such released material.

Although the inventory of radioactive material contained in 1000 MTHM of aged spent fuel may be on the order of a billion curies or more, very little is available in a dispersible form; there is no mechanism available for the release of radioactive materials in significant quantities from facility; and the only mechanism available for offsite dispersion is atmosphere dispersion * * *.

Furthermore, NRC has conducted Safety Evaluations on many different storage systems. Those studies included evaluations of the effects of corrosion, handling accidents such as cask drops and tipovers, explosions, fires, floods, earthquakes, and severe weather conditions. As documented in each of those Safety Evaluation Reports (SER), NRC was not able to identify any design basis accident that would result in the failure of a confinement boundary. However, to provide a conservative bounding analysis of the threat to the public health and safety, the failure of the confinement barrier was postulated. As discussed in each of the SERs and again in the response to Issue 48 the consequences of this postulated failure do not result in an increased risk to the public health and safety.

In the environmental assessment for 10 CFR Part 72,[2] the accident judged the most severe was the failure of a packaged fuel element. In this analysis, the accident involves the failure of a storage system containing 1.7 MTHM. The postulated individual doses are presented in Table 1.[3]

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[1] NUREG–0575 Vol. 1 sec. 4.2.2 Safety and Accident Considerations.

[2] NUREG–1092 Environmental Assessment for Part 72 "Licensing Requirements for Independent Spent Fuel and High-Level Radioactive Waste."

[3] NUREG–1092 Table 2.2.4–2

TABLE 1.—TOTAL DOSE TO AN INDIVIDUAL AS A RESULT OF A FUEL CANISTER FAILURE ACCIDENT AT A SURFACE STORAGE INSTALLATION (MREM)

Pathway	Skin	Total Body	Thyroid	Lung
Air Submersion	1.0×10^{-1}	1.1×10^{-3}	1.1×10^{-3}	1.1×10^{-3}
Inhalation		1.2×10^{-5}	1.1×10^{-2}	7.3×10^{-5}
Total	1.0×10^{-1}	1.1×10^{-3}	1.2×10^{-2}	1.1×10^{-3}

Note: The maximum individual is defined as a permanent resident at a location 1600 meters southeast of the stack with a time-integrated atmospheric dispersion coefficient (E/Q of 1.5 x 10–4 sec/m³). The accident involves failure of a fuel canister containing approximately 1.7 MTHM.

Since the time these calculations were performed, the storage canisters have increased in capacity, and today the capacity of the largest approved design is approximately 9 MTHM. However, because dose varies directly with inventory, when the totals are increased by a factor of ten, they are still a very small fraction of the 300 mrem/yr [4] an individual receives from natural background radiation, and is below the EPA protective action guides.

Nonetheless, the Commission believes it appropriate to require enhanced offsite emergency planning at an MRS (as well as any ISFSI that conducts similar operations) because of the broader scope of activities which could be performed at such a facility.

In addition to the handling and repackaging for storage of large numbers of individual fuel bundles, which involves the receipt, inspection, and transfer of several thousand transport casks, MRS operations may also encompass the consolidation of the stored fuel into casks for subsequent geological disposal after interim storage. At this time, a final MRS design has not been selected. The MRS may be a large industrial facility equipped to handle the loading, unloading, and decontaminating of a large number of spent fuel shipping containers arriving by both truck and rail. It could also include facilities to disassemble the fuel bundles and consolidate that fuel into special storage/transport containers, and facilities to handle solidified high-level waste. These facilities would require the equipment necessary to process low- and high-level waste that would be associated with the above operations. It is also possible, however, for an MRS facility to serve primarily as a warehouse operation, limited solely to accepting, sorting and later transhipping a large number of multi-purpose canister (MPC) systems of the type being considered by DOE.

The Multi-Purpose-Canister (MPC) being considered by the DOE would be used to store and transport spent fuel. The MPC system provides a sealed canister into which spent fuel would be loaded. After loading, the MPC is evacuated, backfilled with an inert gas, and then permanently sealed. At this point the MPC concept offers several options: the sealed canister could be placed into a storage overpack at the reactor site, or it could be placed in a transportation overpack for movement to an ISFSI or MRS. After arriving at the ISFSI or MRS the MPC would most likely be placed in the storage configuration awaiting transport to the geological repository. When the repository is ready to accept fuel, several options would exist. The canisters could be placed into the transport overpack for movement to the geological repository. Once there, the canister could be transferred directly into the disposal overpack for emplacement into the repository. An option to repackage the spent fuel into disposal canisters allowing the optimum configuration required at the repository remains possible. This could take place at either the repository or MRS. Because the canister may only be opened once during its entire storage life and individual fuel elements only handled under a controlled environment, the MPC concept appears to reduce the overall risk to public health and safety.

Given the uncertainties in the design and operation of an MRS, the Commission believes it prudent to plan and provide for an enhanced level of emergency planning to include some offsite preparedness should operation of a MRS (or any ISFSI conducting similar operations) present accident risks that exceed those analyzed in NUREGs 1140 and 1092. Because the level of risk to the public health and safety from such an MRS (or ISFSI) may exceed that from a typical ISFSI, the relevant emergency planning requirements should be enhanced to include an offsite component. To achieve this goal, the final enhanced emergency plan requirements are modeled after 10 CFR 50.47(d). The intent of 10 CFR 50.47(d) was to mandate a minimum level of offsite response capability during initial reactor licensing and low power operations. This same level of response capability is considered appropriate to MRS (and any comparable ISFSI) operations. Because much of the language needed to achieve this level of offsite protection has already been codified in 10 CFR Part 50, similar language is included within the final emergency planning requirements for an MRS (and ISFSI) (10 CFR 72.32(b)(15)(i-vi)).

The Commission notes that, for both types of facilities, this rulemaking is not required in order to provide adequate safety and may not be justified based solely on a comparison of the anticipated costs of implementing these regulations to the increase in public health and safety. Rather, the Commission believes that it is justified in terms of safety enhancement such as the intangible benefit of being able to assure the public that local authorities will be notified in the event of an accident so that they may take appropriate actions. The NRC feels that such preparedness is prudent and consistent with the NRC's philosophy of defense-in-depth.

Public Comments

The NRC received a total of 25 comment letters. Five were from utilities, two were from organizations representing utilities, eight were from State and/or local emergency management agencies, three were from the Mescalero Indian Tribe, five were from environmental/intervener groups, one was from a private citizen, and one was from the Department of Energy.

One of the letters that opposed the proposed regulation came from a member of the Mescalero Indian Tribe and included the signatures of 40 other tribal members who agreed with opposition to the proposed rule change. Opposition also came from the private citizen, all of the intervener/environmental groups, and a local governmental official.

Letters that were generally in agreement with the proposed rule change were submitted by the Mescalero Tribal MRS Program Manager, the Department of Energy, all of the utilities, all of the State governmental agencies, and from the industry groups (though the industry group letters expressed a preference for deferring the MRS portion of the regulation (10 CFR 72.32(b)) because the industry groups considered it premature).

The comment letters that were received provided many thought-provoking and constructive comments. The Commission's evaluation of and response to these comments is presented in the following section.

Issue 1. The frequency for conducting offsite communication checks (quarterly) and onsite exercises (annually) for MRS should not be more conservative than for ISFSI communications checks (semiannually) and onsite exercises (biennially). The increase in frequency is not justified by experience or analysis.

Response. The Commission agrees that the onsite exercise requirements should be biennial rather than annual. Nonetheless, the quarterly communication checks will remain unchanged due to the obvious importance of reliable communications capabilities.

Issue 2. The proposed rule, 10 CFR 72.32(a)(15) states that the review shall include certain "arrangements" and "other organizations." Those items are not listed as specific elements to be included in the plan. It is inferred that they do not need to be addressed other than in the information regarding offsite interface activities required by paragraphs (a)(7), (a)(8), (a)(9), (a)(10), (a)(12), and (a)(14). As written, the paragraph imposes a review requirement upon the NRC and is merely informational to the applicant.

Response. The Commission agrees and has rewritten §§ 72.32(a)(15) and 72.32(b)(15) in the final regulations.

Issue 3. The discussion section and the proposed rule regarding the frequency of communications checks should be consistent. The discussion section indicates quarterly checks (page 29796, Section xii) and the proposed rule in 10 CFR 72.32(a)(12)(i) indicates semiannual checks. Semiannual checks are appropriate.

Response. The Commission disagrees. The discussion section referred to relates to a Final Rulemaking for Fuel Cycle and Material licensees published on April 7, 1989 (54 FR 14051). The requirement for quarterly communication checks is identical to that requirement for an MRS (and comparable ISFSI). The semiannual communication checks are for a typical, storage only ISFSI. There is no inconsistency.

Issue 4. At a site where the affected ISFSI site could be contiguous to a Part 50 licensed site, the 10 CFR 50.47 emergency plans should apply automatically. This would preclude the unnecessary expenditure of limited utility, State, local and Federal resources; avoid duplication in emergency preparedness; and minimize confusion offsite. In order to limit confusion, change the existing proposed first sentence of 10 CFR 72.32(a) to read: "For an ISFSI that is located on (or immediately adjacent to) the site of a nuclear power reactor * * *".

Response. The Commission agrees and has incorporated this concept into the final regulation by referencing the exclusion area as defined in 10 CFR part 100.

Issue 5. The following areas of the proposed rule introduce inconsistencies that require clarification: Paragraphs (a)(1) through (a)(13) of 10 CFR 72.32 list specific information to be included in the emergency plan. Paragraph (a)(16) also appears to list specific information to be included. However, it is unclear whether paragraphs (a)(14) and (a)(15) are intended to be specific information included in the emergency plan or review and comment requirements related to the submittal of the emergency plan which do not have to be included as specific information in the plan. The discussion contained in the supplementary information section of the **Federal Register** notice implies that these paragraphs are review and comment requirements only. "* * * the proposed requirements to be imposed on ISFSI licensee * * * do not mandate formal offsite components to their onsite emergency plans." (58 FR 29797, May 24, 1993.)

Response. The Commission agrees and has clarified paragraphs (a)(14) and (a)(15).

Issue 6. 10 CFR 72.32(a)(15), Offsite Arrangement: The wording "* * * arrangements to accommodate State local staff at the licensee's near-site emergency facility have been made, * * *," should be deleted from § 72.32(a)(15). The nature of potential emergency events at ISFSIs do not require personnel from State and local governments to respond in a staff capacity, and do not require near-site emergency facilities to be available. The proposed rule already requires that the emergency facilities at the site, and the emergency response staff for the facility, be adequate for emergency planning purposes.

Response. The Commission agrees and has incorporated this comment in the final regulation.

Issue 7. 10 CFR 72.32(b)(14), Offsite Review: The request for the offsite response organization to comment as to whether an offsite component to emergency preparedness at an MRS is reasonable, appropriate, or premature at this time. We believe that it is, in fact, premature at this time. The analyses that have already been done undoubtedly contain a considerable amount of conservatism. It is far easier to add requirements later, should they be found to be recommended, than to remove them when they are confirmed to be excessive later.

Response. See Commission Response to Issue 18.

Issue 8. 10 CFR 72.32(a)(13), Hazardous Chemicals: The certification deals with hazardous materials at the facility. The last phrase of the statement does not clearly convey this message. To clarify, the commenters suggest replacing the phase, "if applicable to the applicant's activities at the proposed place of use of special nuclear material," with "with respect to hazardous materials at the facility."

Response. The Commission agrees and has clarified the final rule accordingly.

Issue 9. 10 CFR 72.32(a)(14), Offsite Review: The proposed rule should only require the 60-day comment period for offsite response organizations prior to the initial plan submittal to the NRC. Subsequent plan changes should not have this 60-day time restriction built into the submittal process unless the plan changes involve offsite response organizations.

Response. The Commission agrees and has changed the final rule accordingly.

Issue 10. 10 CFR 72.32(a)(12)ii, Offsite Participation: "Participation of offsite response organizations in biennial exercises, although recommended, is not required," sends a message to State and local agencies that they may need extensive planning to accommodate the facility. There is nothing unique to a potential release from an ISFSI that is not enveloped by the utility and associated State and local emergency plans to support an operating plant or one with a possession only license. State and local agencies should be provided a copy of the facility's plan and be asked to take part in "table-top" exercises to help them understand their role.

Response. The Commission disagrees, because offsite response organizations should also become familiar with the facility.

Issue 11. 10 CFR 73.32(a)(12)(i), Exercises: The listed drills are capitalized, creating the impression that they are specific types of drills, such as those described in NUREG–0654, for the conduct of similar type drills for

[4] NRCP Report No. 94.

operating power reactors. Furthermore, ISFSIs, in view of the relatively passive nature of the facility and the potential consequence of a release as compared to operating power reactors, do not warrant this frequency. Drills should be held biennially.

Response. See the Commission's Response to Issue 12. Additionally, the frequency of these drills have been changed from semiannual to annual.

Issue 12. It is recommended that the existing wording, "* * * Radiological/ Health Physics, Medical, and Fire Drills should be conducted semiannually * * *," be reworded in a manner similar to 10 CFR 50.47(b)(14) as follows: "Periodic drills shall be conducted to develop and maintain key skills."

Response. The Commission disagrees because it believes that it is beneficial to specify the types of drills necessary.

Issue 13. 10 CFR 72.32(a)(12)(i), Exercises: Semiannual fire drills may not be appropriate for an ISFSI because there are no flammable materials associated with the facility.

Response. The frequency of these drills has been changed and will be required annually.

Issue 14. 10 CFR 72.32(a)(8), Notification and Coordination: The means to promptly notify offsite response organizations should be limited to using commercial telephones. Ring-down systems should not be necessary to meet this requirement.

Response. Ring-down systems are not mentioned in the proposed or final regulations.

Issue 15. 10 CFR 72.32(a)(6), Assessment of Releases: Extensive dose assessment methodology is not necessary to implement the emergency plans.

Response. The proposed rule did not suggest requiring and the final regulation does not require "Extensive" dose assessment.

Issue 16. 10 CFR 72.32(a)(3), Notification and Coordination: The Emergency Response Data System (ERDS) provides for the automated transmission of a limited data set of selected onsite parameters (e.g., system pressure, temperature, radiation monitoring). The activation of the ERDS does not apply to nuclear power facilities that are shut down permanently or indefinitely. The activation of ERDS should not apply to ISFSI incidents even located at operating plant sites.

Response. The proposed rule did not suggest requiring and the final regulation does not require the use of ERDS.

Issue 17. 10 CFR 72.32(a)(3), Classification Requirements: The implementation guidance for the rule should provide for the simplest and easiest understood classification, notification, and reporting system for non-emergency events. NUREG–1140 "A Regulatory Analysis on Emergency Preparedness for Fuel Cycle and Other Radioactive Material Licenses," August 1991 Section 2.27 (Spent Fuel Storage) supports the discussion that EPA's protective action guides would not be exceeded during an accident. Therefore, both classifications for a site and general emergency should not be considered. Redundant classifications, notifications and reports for non-emergency events, such as Notifications of Unusual Events (NOUEs), 1-hour non-emergency event reports, and four-hour non-emergency event reports used for operating reactors, should not apply to ISFSIs and MRSs. These conclusions are based on the magnitude, duration, and energy involved in an incident involving spent fuel storage facilities. These analyses have been docketed as part of submittals to the NRC to license individual ISFSIs. For actual ISFSI and MRS emergencies, the emergency classification, "Alert," should be sufficient. A "NOUE" classification for ISFSI and MRS emergency planning should not be necessary.

Response. The proposed rule did not suggest requiring and the final regulation does not require the use of notification of unusual events "NOUE" or "general" emergency classification.

Issue 18. EEI/WASTE supports adoption of proposed § 72.32(a) that would establish emergency planning requirements for ISFSI. EEI/WASTE recommends that NRC defer proposed § 72.32(b) that would establish emergency planning requirements for MRSs. Because no final design for MRS facilities has been selected, there is no rational basis to determine the level of radiological hazards for which emergency planning requirements are designed. It is therefore premature for the NRC to establish emergency planning requirements for MRS facilities.

Response. The Commission disagrees. The proposed emergency planning licensing requirements for an MRS as published in the **Federal Register** on May 24, 1993 (58 FR 29795), have provided to the public some insight as to what the Commission now feels would be appropriate and reasonable emergency planning licensing requirements for an MRS. One comment stated that, "We have concluded that minimum requirements, such as those currently proposed by the NRC rulemaking process, should serve as guidance for the starting point from which Emergency Planning and Licensing Requirements can be fully developed." Also, the Department of Energy stated that it "* * * intends to work closely with the host community to develop a comprehensive emergency response plan with offsite components that will not only encompass the requirements contained in 10 CFR 72.32(b)(15), but likely will exceed them."

Issue 19. The proposed rule does not require MRS operators to notify local residents of any increased exposure, nor does it require MRS operators to develop a plan for evacuation. This rule is an unfair burden on local emergency responders with little or no training for these type of emergencies. There is specialized training and equipment for radiation accidents and exposure; therefore, the proposed rules should provide for the training and obtaining equipment for the local responders.

Response. The Commission disagrees. The emergency planning regulations specifically require in 10 CFR 72.32(b)(8), "Notification and coordination. A commitment to and a brief description of the means to promptly notify offsite response organizations * * *" In 10 CFR 72.32(b)(9), (10), and (12), the licensee is required to provide:

Information to be communicated: A brief description of the types of information on facility status; radioactive releases; and recommended protective actions, if necessary, to be given to offsite response organizations and to the NRC. "Training. A brief description of the training the licensee will provide workers on how to respond to an emergency and any special instructions and orientation tours the licensee would offer to fire, police, medical and other emergency personnel." * * * The licensee shall invite offsite response organizations to participate in the annual exercises.

Additionally, in 10 CFR 72.32(b)(15) and (b)(16) the licensee is required to identify:

(ii) Provisions that exist for prompt communications among principal response organizations to offsite emergency personnel who would be responding onsite.

(iii) Adequate emergency facilities and equipment to support the emergency response onsite are provided and maintained.

(iv) Adequate methods, systems, and equipment for assessing and monitoring actual or potential consequences of a radiological emergency condition are available.

(v) Arrangements are made for medical services for contaminated and injured onsite individuals.

(vi) Radiological Emergency Response Training has been made available to those off site who may be called to assist in an emergency on site.

(16) Arrangements made for providing information to the public.

Issue 20. Although it is true that emergency plans for ISFSI and MRS need not be equivalent to emergency plans for reactors due to the relatively passive natures of the ISFSI and MRS, offsite emergency planning should not be eliminated for either type of facility. The proposed rule indicates that the maximum offsite dose due to an accidental release of radioactive material from either type of facility would probably not exceed 1 rem. However, 1 rem is within the Environmental Protection Agency (EPA) Protective Action Guides of 1–5 rem whole body, and it is the lower limit of these guides which is to be used as the basis for taking protective actions in emergency response. The commenter would also question whether worst-case scenarios have been considered in the evaluation of potential offsite doses. Worst-case scenarios would include acts of radiological sabotage, such as terrorist attacks employing explosives. Offsite emergency planning is a prudent measure to take against such uncertainties. Offsite plans may not be needed for a 10-mile radius, as is the case for power reactors, but they should not be eliminated for ISFSI and MRS. Reducing the radius of the Emergency Planning Zone (EPZ) (perhaps to 1–5 miles, as appropriate) is the proper response to the reduced hazard posed by the ISFSI and MRS. A reduced zone will provide the basis and flexibility for an enhanced offsite response in those events where this is necessary.

Response. Emergency planning requirements for power reactors, fuel cycle facilities, ISFSIs and MRSs are all based on a spectrum of accidents, including worst-case severe accidents. Emergency planning focuses on the detection of accidents and the mitigation of their consequences. Emergency planning does not focus on the initiating events. Therefore, based on the potential inventory of radioactive material, potential driving forces for distributing that amount of radioactive material, and the probability of the initiation of these events, the Commission concludes that the offsite consequences of potential accidents at an ISFSI or a MRS would not warrant establishing Emergency Planning Zones.

Issue 21. In the interest of protecting public health and safety, appropriate offsite agencies should be notified immediately of any classifiable accident at an ISFSI or MRS. Section 72.32(a)8 should specify that the agency(ies) with responsibility to respond to accidents receive the notifications. In Illinois, IDNS should be notified of all such accidents. Consequently, we request that any licensee submitting a plan for approval under 10 CFR part 72 for an ISFSI or MRS in Illinois specifically provide in its emergency plan for timely notifications to IDNS. The notifications are important to ensure that emergency response actions are not unduly or unnecessarily delayed.

Response. The Commission agrees. This comment focuses on the rationale that was used in proposing the following requirements:

A commitment to, and a brief description of, the means to promptly notify offsite response organizations and request offsite assistance, including medical and "The licensee shall allow the offsite response organizations expected to respond in case of an accident 60 days to comment on the initial submittal of the license's emergency plan before submitting it to NRC." * * * The licensee shall provide any comments received within the 60 days to the NRC with the emergency plan.

Issue 22. The requirements for exercises are appropriate for the facilities involved. We do believe, however, that offsite participation in these exercises should be an integral, not perfunctory, part of the exercise process. Invitations to participate should be both timely and informative, maximizing the opportunity for productive interaction between licensee and offsite personnel. The rule should require that licensees document timely invitations to offsite agencies to participate in annual or biennial exercises, and offsite participation actually resulting from these invitations.

Response. The Commission does not believe that it is necessary for the rule to require licensees to document timely invitations for offsite participation in exercises. NRC expects licensees will do so on their own initiative. Experience has shown that cooperative interactions between licensee and offsite authorities generally are quite productive.

Issue 23. Proposed 10 CFR 72.32(a)(12)(ii) and (b)(12)(ii): Participation of offsite response organizations in exercises should be required.

Response. The Commission believes that this requirement would be unnecessary in that experience shows almost all offsite authorities that are invited to participate in exercises do participate without being required to do so.

Issue 24. Proposed 10 CFR 72.32(a)(12)(i): For the ISFSI, communications checks with offsite response organizations should be conducted quarterly, not semiannually, and onsite exercises conducted annually, not biennially.

Response. The Commission disagrees due to the very low probability of offsite consequences resulting from potential accidents at these facilities in conjunction with the low probability of a significant accident occurring.

Issue 25. Proposed 10 CFR 72.32(a)(3) and (b)(3): These provisions limit the accident classification levels to an alert for the ISFSI and a site area emergency for the MRS. For both facilities, the accident classification system should include the general emergency. This might be necessary in cases of radiological sabotage.

Response. The Commission disagrees. An essential element of a General Emergency is that "A release can be reasonably expected to exceed EPA Protective Action Guidelines exposure levels off site for more than the immediate site area." As previously discussed, NRC studies have concluded that the maximum offsite dose would be less than 1 rem which is within the EPA Protective Action Guides.

Issue 26. Proposed 10 CFR 72.32(a)(8) and (b)(8): Time limits ought to be established for notifying offsite response organizations and the NRC. An appropriate time limit is 15 minutes.

Response. The Commission has established a reasonable time limit for notification which has proven to be adequate in the past. "The licensee shall also commit to notify the NRC operations center immediately after notifications of the appropriate offsite response organizations and not later than one hour after the licensee declares an emergency."

Issue 27. Proposed 10 CFR 72.32(a)(15) and (b)(15)(i): The phrase, "and other organizations capable of augmenting the planned onsite response have been identified" should be modified to include the requirement that arrangements should be made (such as letters of agreement) with any organizations so identified.

Response. The Commission believes that offsite response organizations will respond in the event of an actual emergency in order to protect the health and safety of the public. Therefore, the Commission does not believe that this requirement would be necessary.

Issue 28. On page 29797 of the proposed rule, first column, the statement is made: "As a result of the above evaluation, the Commission is proposing that the emergency planning licensing requirements for part 72 licensees be similar to those requirements already codified in 10 CFR 70.22 for other part 70 licensees." Should this statement also include 10

CFR 70.24 (Criticality Accident requirements)? Because the racking arrangement of spent fuel storage is changing in a manner that places spent fuel assemblies closer than in the past because of storage space needs, criticality accidents possibilities might increase, especially in the dry cell storage.

Response. The Commission disagrees. Criticality is only a concern during a wet loading and unloading evolution. Additionally, such activities would not be expected to occur under a 10 CFR part 72 ISFSI license and, therefore, there is no basis to change 10 CFR part 72 criticality requirements.

Issue 29. Because 10 CFR part 72 contains no language that parallels 10 CFR 50.54(x), we recommend that something similar to it be considered as part of this rulemaking. During the operating life of an Independent Spent Fuel Storage Facility or Monitored Retrievable Storage Facility, it is possible that an unanticipated situation may arise where the most correct action would be one that is not allowed by the license or technical specifications. The writers of 10 CFR part 50 foresaw this eventuality and allowed a licensee to:

> Take reasonable action that departs from license condition or a technical specification in an emergency when this action is immediately needed to protect the public health and safety and no action consistent with license conditions and technical specifications that can provide adequate or equivalent protection is immediately apparent.

Although we never expect to invoke this option, prudence dictates that we should thoughtfully plan and develop procedures that allow for the possibility of low probability events where deviating from a technical specification or any other license condition is the most correct action. Adding this provision to the part 72 rule gives us a legal basis to include it in our procedures. As a licensee under both 10 CFR parts 50 and 72, we feel that similar language has been useful under 10 CFR part 50 for developing procedures, and that it would be equally useful under 10 CFR part 72.

Response. The Commission agrees. The final rule reflects this comment.

Issue 30. In § 72.32(a)(12)(ii), the proposed rule states that the licensee shall critique each exercise using individuals not having direct implementation responsibility for the plan. We disagree with this provision since it excludes our emergency planning (EP) staff from the critique. The individuals who develop the plans are EP experts. These are exactly the individuals that should critique the exercises. As the rule is written, we would have to maintain an EP expert on staff whose only EP job function would be to critique exercises. At all other times, this individual would have to remain at arms-length from the EP program. A better use of resources would be to allow individuals from the EP staff to be a part of the team that critiques exercises.

Response. The Commission agrees and has modified the final regulation to state "the licensee shall critique each exercise using individuals not having direct implementation responsibility for conducting the exercise."

Issue 31. In § 72.32(a)(14), NRC has proposed that an applicant for an ISFSI submit the proposed emergency plan to offsite response organizations (which are expected to respond in case of an onsite accident) 60 days in advance of submittal to NRC. Comments would then be forwarded to the NRC upon submittal of the ISFSI application. This requirement should be deleted as the current licensing process for review and approval of an ISFSI license affords all parties a sufficient amount of time to review and comment on the licensee's entire application to include the emergency plan. Furthermore, licensees have gained sufficient experience from the operating nuclear power plant environment to recognize the benefits of working with the offsite authorities in order to ensure adequacy of an emergency plan and its implementation. A requirement to instruct applications to do as much is unnecessary.

Response. The Commission disagrees. The Commission believes that requiring participation by offsite organizations in the development of the emergency plan significantly helps establish coordination and working relationships between the principals.

Issue 32. In § 72.32(a)(15), NRC proposed to require that the licensee of an ISFSI provide for a "near-site emergency facility" for State and local staff. This requirement should be deleted as it implies that an offsite emergency response facility is needed, when in fact NRC's own studies in NUREG–1140 demonstrate that the consequences of an accident at an ISFSI are insignificant in terms of the public health and safety. Furthermore, NRC has generally affirmed this conclusion through its evaluation of Defueled Emergency Plans for nuclear power plants which are permanently defueled but continue to store spent fuel on site (Possession Only License). The emergency plans for these facilities are appropriately focused on the onsite aspects of emergency response, while maintaining the ability to notify offsite authorities such as the fire, police, and medical personnel who play a role in addressing onsite emergency response. No licensee-provided "near-site" facility is needed for such offsite authorities to implement their onsite emergency planning responsibilities.

Response. The Commission agrees. This change is incorporated in the final regulation.

Issue 33. Mitigation of consequences (§ 72.32(a)(5)): The NRC proposes that the licensee describe those actions which would be taken to mitigate the consequences of each type of accident. This requirement should be revised to require that the licensee describe the response actions for each classification of emergency.

Response. The regulation already requires, "Information to be communicated. A brief description of the types of information on facility status; radioactive releases; and recommended protective actions, if necessary, to be given to offsite response organizations and to the NRC."

Issue 34. Responsibilities (§ 72.32(a)(7)): The term "offsite response organizations" should be revised to "offsite authorities" in recognition of the findings of NUREG–1140, i.e., the consequences of accidental releases associated with the operation of an ISFSI would not exceed the EPA Protective Action Guidelines. The term "offsite response organizations" connotes a need for formal offsite components to the onsite emergency plan and thus, an offsite emergency response plan. This interpretation would be inconsistent with the conclusions of NUREG–1140 which postulated the worst-case accidents involving an ISFSI and found that the consequences were insignificant in terms of public health and safety. To preclude misinterpretation, the term "offsite authorities" should be used.

Response. The Commission disagrees that the term "offsite response organizations" connotes the need for "formal offsite components" to the onsite emergency plan. The term simply refers to those offsite organizations that may be needed to respond to an emergency (medical, fire department, police, etc.)

Issue 35. Information to be communicated (§ 72.32(a)(9)): As concluded by the NRC in NUREG–1140, the consequences of the postulated worst-case accident involving an ISFSI are insignificant in terms of public health and safety. Therefore, because no offsite protective actions are needed, this requirement should be revised to require that the licensee communicate only onsite facility status to offsite authorities.

Response. The Commission disagrees with the suggestion to delete the requirement that licensees notify offsite organizations of recommended protective actions. The Commission acknowledges that the consequences of a postulated worst-case accident involving an ISFSI are insignificant in terms of public health and safety. Nonetheless, the Commission also recognizes the need for offsite organizations to be informed by licensees so that, in the event of an accident, protective actions may or may not need to be taken.

Issue 36. Notification and coordination (§ 72.32(a)(8)): As recommended for § 72.32(a)(7), the term "offsite response organizations" should be revised to "offsite authorities."

Response. See Commission Response to Issue 34.

Issue 37. Types of accident (§ 72.32(a)(2): The NRC has proposed that the licensee identify the "types of accidents" that could occur at an ISFSI installation "for which protective actions may be needed." This requirement should be deleted because the analysis of potential accidents and their consequences, as documented in NUREG–1140, demonstrates that there are no accidents for which protective actions for the public may be needed. Furthermore, even if there were such accidents, the emergency plan is not the appropriate document for a description of the types of accidents that could occur. As is similarly done for operating reactors, any discussion on types of accidents is contained in the ISFSI Safety Analysis Report that supports the license application. Therefore, the licensee should be required only to identify the classification of accidents in 10 CFR 72.32(a)(3) and, in general, response to those classifications, as is similarly required for operating plants.

Response. The Commission agrees to delete the words "* * * for which protective action may be needed." Nonetheless, the Commission believes that licensees should identify the types of accidents in the emergency plan in the same manner as part 30, 40, and 70 licensees have done since 1989.

Issue 38. At a minimum, NRC should revise the term "protective actions" to "protective measures." The term "protective actions," as used by operating reactors, connotes the need for an offsite emergency response plan. In the case of an ISFSI, there is no need for an offsite emergency response plan because the consequences of potential accidents which can occur will not exceed the EPA Protective Action Guidelines. Furthermore, the term "protective measures" is now commonly used by Possession Only License holders to distinguish between onsite and offsite needs. Therefore, to preclude misinterpretation, we recommend that the term "protective measures" be used.

Response. The Commission disagrees. There is nothing in the emergency planning licensing regulations for ISFSI that requires, implies, specifies or connotes the need for a formal offsite emergency response plan.

Issue 39. Changing the proposed 10 CFR part 72 to require local involvement in the creation of the emergency response plan and require funding of local emergency planning and preparedness activities directly attributable to the additional and above ordinary risk of Spent Fuel Storage Facilities and Monitored Retrievable Storage Facilities is appropriate, given the above ordinary risk such facilities present to the local government units in their vicinity.

Response. In view of the requirements in this rule, regarding the potential involvement by local governments, a licensee may have an incentive based on its own self-interest to assist in providing manpower, items of equipment, or other resources that the local governments may need but are themselves unable to provide. The Commission believes that the question of whether the NRC should or could require a licensee to contribute to the expenses incurred by local governments in assisting in emergency planning and preparedness is beyond the scope of the rule.

Issue 40. Provisions should be included in the proposed rule to exempt Independent Spent Fuel Storage Installations (ISFSI) with very limited radionuclide inventories from the emergency planning requirements. This is best accomplished by establishing certain threshold values for the radiological consequences of potential accidents below which exemption can be granted.

Response. The Commission does not agree. An ISFSI is licensed to store specific inventories of radionuclides. The requirements focus on the emergency planning licensing requirements of an ISFSI, not the amount of fuel that may or may not be stored in an individual ISFSI during a specific time period.

Issue 41. 10 CFR 72.32(a)(12)(ii) specifies that the licensee critique each exercise using individuals not having direct responsibility for the plan. This regulation, while well intentioned, is burdensome, costly, and does not allow the personnel with emergency preparedness knowledge to identify and correct potential weaknesses. This statement seems to satisfy the requirements for independent review, not exercise performance (i.e., similar to § 50.54(t)).

Response. See Commission Response to Issue 30.

Issue 42. 10 CFR 72.32(a) does not define the term, "site of a nuclear power reactor." Does the term mean the owner controlled area, the site boundary, or protected area? Based on the definition of the term, the regulations could require some licensees that build ISFSI near their nuclear power plants but not on the site to have two emergency plans established. Consideration should be given to clarifying terms in order to avoid this problem especially since nuclear power plant emergency plans are substantially more extensive than ISFSI emergency plans.

Response. The Commission agrees. The final regulations states "not located within the exclusion areas as defined in 10 CFR Part 100 of a nuclear power reactor."

Issue 43. The 10 CFR Part 70 emergency planning requirements (§ 70.22), which served as the model for the proposed rule, includes a provision for relief based on potential radioactive consequences. It contains the option of demonstrating that the consequences of an accidental release are below certain levels and thereby eliminated the need for emergency preparedness. We recommend that a parallel provision be included in the proposed rule for the ISFSI. This would enable ISFSI with minimal radioactive sources to avoid the substantial costs associated with emergency preparedness which would far outweigh the negligible benefit to the safety of the public.

Response. See Commission Response to Issue 40.

Issue 44. Unfortunately, the public is not very reassured by the idea that the only offsite emergency planning that the discussion on the MRS cites is that the operators of the facility should have current phone numbers of offsite emergency services. Nor is the public very reassured that the NRC asserts that the maximum off-site exposure from an MRS would be 1 rem. If this were true, there is a legitimate concern about being subjected to radiation equivalent to 50 additional chest x-rays—presumably without any notification or disclosure, let alone opportunity to avoid such irradiation. However, it does not seem credible that one could gather together the highest concentration of radioactivity on the planet and assert that there will be virtually no risk of

exposure. This overlooks, at the very least, the potential for malicious attack on the facility from the air, such as the United States has engaged in wiping out "strategic targets" in other countries.

Response. A more accurate characterization of the offsite emergency planning component for an MRS is as follows: "(7) Responsibilities. A brief description of the responsibilities of licensee personnel should an accident occur, including identification of personnel responsible for promptly notifying offsite response organizations and the NRC;" and "(9) Information to be communicated. A brief description of the types of information on facility status; radioactive release; and recommended protective actions, if necessary, to be given to offsite response organizations and to the NRC." and "(10) * * * special instructions and orientation tours the licensee would offer to fire, police, medical and other emergency personnel;" and "(12) * * * The licensee shall invite offsite response organizations to participate in the annual exercises."

Additionally, the offsite emergency planning component for an MRS includes:

(i) Arrangements for requesting and effectively using offsite assistance on site have been made.

(ii) Provisions exist for prompt communications among principal response organizations to offsite emergency personnel who would be responding onsite.

(iv) Adequate methods, systems, and equipment for assessing and monitoring actual potential consequence of a radiological emergency condition are available.

(vi) Radiological Emergency Response Training has been made available to those offsite who may be called to assist in an emergency onsite.

(16) Arrangements made to provide information to the public.

Also, see the Commission's response to Issue 46.

Issue 45. The discussion of MRS emergency planning indicates the dependence upon offsite emergency responders. The fact that individuals would be called upon to respond to radiological crises without any special training, without protective gear and equipment is deeply disturbing to local community officials with whom we have reviewed this proposal. The full liability for dealing with emergency situations should reside with the operators of such a facility and those who are specially trained and understand that they are at risk, and are compensated on that basis. Dependence upon untrained local responders in a true emergency would amount to human sacrifice, and is not acceptable.

Response. The regulations allow for extensive coordination, communication, and training of offsite response organizations. (See Commission Response to Issue 19.)

Issue 46. Although the MRS will represent the largest concentration of irradiated fuel, to date, in one location, the U.S. Nuclear Regulatory Commission has recently proposed a rule that would waive any offsite emergency planning or evacuation, in direct contradiction to the promises of safety to prospective host communities.

Response. In the final NRC Generic Environmental Impact Statement on the handling and storage of light water reactor fuel,[5] it is stated that

* * * To be a potential radiological hazard to the general public, radioactive materials must be released from a facility and dispersed offsite. For this to happen:

• The radioactive material must be in a dispersible form

• There must be a mechanism available for the release of such materials from the facility, and

• There must be a mechanism available for offsite dispersion of such released material.

Although the inventory of radioactive material contained in 1000 MTHM of aged spent fuel may be on the order of a billion curies or more, very little is available in a dispersible form; there is no mechanism available for the release of radioactive materials in significant quantities from facility; and the only mechanism available for offsite dispersion is atmosphere dispersion * * *.

Furthermore, NRC has conducted Safety Evaluations on many different storage systems. Those studies included evaluations of the effects of corrosion, handling accidents such as cask drops and tipovers, explosions, fires, floods, earthquakes, and severe weather conditions. As documented in each of those Safety Evaluation Reports (SER), NRC was not able to identify any design basis accident that would result in the failure of a confinement boundary. However, to provide a conservative bounding analysis of the threat to the public health and safety, the failure of the confinement barrier was postulated. As discussed in each of the SERs and again in the response to Issue 48 the consequences of this postulated failure do not result in an increased risk to the public health and safety.

In the environmental assessment for 10 CFR part 72,[6] the accident judged the most severe was the failure of a packaged fuel element. In this analysis, the accident involves the failure of a storage system containing 1.7 MTHM. The postulated individual doses are presented in Table 1.[7]

TABLE 1.—TOTAL DOSE TO AN INDIVIDUAL AS A RESULT OF A FUEL CANISTER FAILURE ACCIDENT AT A SURFACE STORAGE INSTALLATION (MREM)

Pathway	Skin	Total body	Thyroid	Lung
Air Submersion	1.0×10^{-1}	1.1×10^{-3}	1.1×10^{-3}	1.1×10^{-3}
Inhalation		1.2×10^{-5}	1.1×10^{-2}	7.3×10^{-5}
Total	1.0×10^{-1}	1.1×10^{-3}	1.2×10^{-2}	1.1×10^{-3}

Note: The maximum individual is defined as a permanent resident at a location 1600 meters southeast of the stack with a time-integrated atmospheric dispersion coefficient (E/Q of 1.5×10^{-4} sec/m^3). The accident involves failure of a fuel canister containing approximately 1.7 MTHM.

Since the time these calculations were performed, the storage canisters have increased in capacity, and today the capacity of the largest approved design is approximately 9 MTHM. However, because dose varies directly with inventory, when the totals are increased by a factor of ten, they are still a very small fraction of the 300 mrem/yr[8] an individual receives from natural background radiation, and is below the EPA protective action guides.

Also see the Commission's response to Issues 19 and 48.

Issue 47. It is premature for the Commission to make a rule with regard to emergency planning for an MRS. We also agree with others who point out that the MRS is a significantly different facility than an ISFSI—for two reasons. The first is the difference in the amount of irradiated fuel that would be present at the site: it is four orders of magnitude greater at an MRS than a single reactor site's load. The second is the fact that the MRS, according to the most common model described, would be a repackaging center for the waste. This industrial scale handling of high-level waste and irradiated fuel raises many safety and release concerns.

Response. See the Commission's response to Issues 18 and 48.

Issue 48. The commenter believes that the massive concentration of irradiated fuel at the reactor sites should have been the occasion for revisiting the emergency planning for each nuclear power plant. The irradiated fuel inventory on site far exceeds the amount of radioactive material contained within the reactor core at any one time. The fact that irradiated fuel has been forced to accumulate at reactor sites is no reason to now dismiss that greater radiological hazard that it poses to the populace and the environment. A rulemaking on the ISFSI in our view should include; "at reactor site facilities" and examine the current emergency planning with regard to the potential for much greater releases in the event of sabotage or natural disaster.

Response. For there to be a significant environmental impact resulting from an accident involving the dry storage of spent nuclear fuel, a significant amount of the radioactive material contained within a cask must escape its packaging and enter the biosphere. There are two primary factors that protect the public health and safety from this event. The first is the design requirements for the cask that are imposed by regulation. The regulatory requirements, as codified in the 10 CFR part 72, have sufficient safety margins so that, during normal storage cask handling operations, off-normal events, adverse environmental conditions, and severe natural phenomena, the casks will not release a significant part of its inventory to the biosphere. Furthermore, the cask must be designed to provide confinement safety functions during the unlikely but credible design basis events, as required in § 72.122(b). In addition, § 72.122(h)(i) requires that the fuel clad be protected against degradation that leads to gross rupture, and § 72.122(1) requires that the fuel be retrievable. During the design evaluation process, these provisions received careful consideration. These general design criteria place an upper bound on the energy a cask can absorb before the fuel is damaged. No credible dynamic events have been identified that could impart such significant amounts of energy to a storage cask after that cask is placed at the ISFSI.

Additionally, there is a second factor which does not rely upon the cask itself but considers the age of the spent fuel and the lack of dispersal mechanisms. There exists no significant dispersal mechanism for the radioactive material contained within a storage cask. In the case of an operating nuclear power plant, the dispersal mechanism for radioactive material in the spent fuel is either derived from the heat produced during the fission process or the decay heat which exists in the short period immediately following shutdown. During these times, the potential exists for an accident that could cause the fuel cladding to fail. However, emergency systems exist at every power plant to protect against just such an occurrence. On the other hand, spent fuel stored in an ISFSI is required to be cooled for at least 1 year. Based on the design limitations, the majority of spent fuel is cooled greater than 5 years. At this age, spent fuel has a heat generation rate that is too low to cause significant particulate dispersal in the unlikely event of a cask confinement boundary failure. Therefore, the consequences of worst-case accidents involving an ISFSI located on a reactor site would be significantly less than those accidents involving the reactor. Therefore, current reactor emergency plans adequately provide for the protection of the public from the ISFSI located at or near reactor sites.

Issue 49. An ISFSI not at a reactor warrants site-specific emergency planning that includes evacuation of surrounding population at least as stringent as nuclear reactor licensing. For example, specific provisions should be included requiring: (1) Coordination of the on-site plan with the off-site local and state emergency management agencies; (2) training of the potential off-site responders; and (3) public information/education for local populations.

Response. The Commission does not agree that as a general matter emergency plans for an ISFSI must include evacuation planning. Nonetheless the Commission agrees that the specific provisions mentioned in the comment should be and are specifically included in the proposed and final emergency planning licensing requirements for ISFSI and MRS. See 10 CFR 72.32(a) (10), (12), (14), and (16) and 10 CFR 72.32(b) (10), (12), (14), (15), and (16).

Issue 50. There is no mention of financing the affected jurisdictions to provide the requisite resources to support the planning, operations, response, exercises, recovery and equipment requirements defined as necessary in the plan for off-site agency response.

Response. See the Commission's response to Issue 39.

Issue 51. The NRC should defer as premature the proposed § 72.32(b), which would establish emergency planning requirements for MRS's, until a final MRS design has been selected. Until it is decided whether such facilities would be equivalent, in the Commission's words, to "a large industrial facility" or merely to "a warehouse operation," there is no rational basis to determine the appropriate level of emergency planning requirements.

Response. See Commission Response to Issue 18.

Issue 52. NRC should prepare a full environmental impact statement before issuing any emergency response guidelines. The potential for environmental damage from accidents during the transportation, storage and repackaging of spent fuel rods cannot even be calculated until DOE determines whether to develop a universal cask or a dual purpose cask for transportation/storage/disposal of spent fuel rods. Until this very preliminary decision is made, there is no way of determining what level of activity (or the dangers from that activity) will actually take place at an MRS facility. NRC's response to this uncertainty, "to mandate a minimum level of offsite response capability" does not address potential and very real risks to the public.

Response. The Commission disagrees. The Commission stated the following in the preamble to the proposed rule:

The Commission has determined under the National Environmental Policy Act of 1969, as amended, the Commission's regulations in subpart A of 10 CFR part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment; and therefore, an environmental impact statement is not required. The rule would not affect the probability or the size of accidental radioactive releases. It might in some cases reduce the doses people near the facility site could receive. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. The environmental assessment and finding of no significant impact are contained in Section 4.3 of NUREG–1140, "A Regulatory Analysis on Emergency Preparedness for Fuel Cycle and

[5] NUREG–0575 Vol. 1 sec. 4.2.2 Safety and Accident Considerations.

[6] NUREG–1092 Environmental Assessment for part 72 "Licensing Requirements for Independent Spent Fuel and High-Level Radioactive Waste."

[7] NUREG–1092 Table 2.2.4–2

[8] NRCP Report No. 94.

Other Radioactive Material Licensees."[9] Single copies are available upon written request from NRC Distribution Section, Office of Administration, USNRC, Washington, DC 20555.

Issue 53. An MRS facility poses far greater potential risk to the public than even a nuclear power plant simply by virtue of the quantity of spent fuel rods to be stored. For example, a nuclear power plant stores no more than 1 metric ton of spent fuel while the MRS facility is authorized to store from 10,000 to 15,000 metric tons of spent fuel. Therefore, licensing procedures and requirements for an MRS facility must be more strict than even those required for a nuclear power plant.

Response. See the Commission's Response to Issue 48.

Issue 54. The NRC must require off-site evacuation planning for MRS facilities. NRC estimates that "the maximum dose to a member of the public offsite due to an accidental release of radioactive materials would likely not exceed 1 rem effective dose equivalent" cannot be defended because of the uncertainties. Without an EIS, NRC must at a minimum assume that an MRS facility poses an equal danger to the public as a nuclear reactor does. CCNS therefore recommends that NRC minimally require a 10-mile radius evacuation plan for MRS facilities.

Response. See the Commission's Response to Issue 48.

Issue 55. The NRC's requirement to "notify offsite response organizations and request offsite assistance, including medical assistance for the treatment of contaminated injured onsite workers" is completely unrealistic. The current applicants for MRS facilities are all Indian Nations whose reservations are located in rural areas with no emergency response training, equipment or expertise for handling nuclear emergencies. At a minimum, NRC's proposed rule must require training and equipment for both emergency response personnel as well as hospital facilities.

Response. See the Commission's Response to Issue 19.

Additionally, the Commission received 21 suggested editorial changes to the wording of the proposed regulations. Those changes that improved or clarified the proposed regulations were incorporated into the final regulations. Those suggested changes in wording that departed from the Commission's original intent were not incorporated into the final regulations.

[9] Copies of NUREGs may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Mail Stop SSOP, Washington, DC 20402–9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555–0001.

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, the Commission's regulations in subpart A of 10 CFR part 51, that this rule is not a major Federal action significantly affecting the quality of the human environment and therefore, an environmental impact statement is not required. The rule does not affect the probability or the size of accidental radioactive releases. It might in some cases reduce the doses people near the facility site could receive. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. The environmental assessment and finding of no significant impact are contained in 4.3 of NUREG–1140, "A Regulatory Analysis on Emergency Preparedness for Fuel Cycle and Other Radioactive Material Licensees."

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Action 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget approval number 3150–0132.

Public reporting burden for this collection of information is estimated to average 625 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for further reducing reporting burden to the Information and Records Management Branch, T–6F33, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202 (3150–0132), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this final regulation. The analysis examines the accident scenarios considered by the Commission as well as the costs and benefits of actions considered. The analysis is available by contacting Michael T. Jamgochian, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301–415–6534).

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 6059b), the Commission certifies that this rule does not have a significant economic impact upon a substantial number of small entities.

The final rule requires the development and implementation of emergency plans by licensees who are authorized to possess significant amounts of radioactive material. These companies do not fall within the definition of a small business found in the Small Business Act, 15 U.S.C. 632, or within the small business size standards set forth in 13 CFR part 121. The final rule will affect three (3) licensees. Two licensees hold 10 CFR part 50 licenses and are required to comply with the provisions respecting emergency plans set out in part 50. Thus, the final rule does not impose a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act of 1980.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109 and 10 CFR 72.62, do not apply to this rule change because these amendments do not involve any provisions which would impose backfits as defined in § 50.109(a)(1) or in 10 CFR 72.62. The final rule does not change or impose additional requirements on any ISFSI currently licensed under 10 CFR part 72. For existing ISFSIs at reactor sites, the final rule continues the current option to comply with 10 CFR 50.47. For G.E. Morris, the only ISFSI licensed under 10 CFR part 72 for operation away from a reactor site, the licensee currently is required to have emergency response capabilities that will comply with this rule. Therefore, inasmuch as the rule imposes no requirements on any part 50 facility and imposes no new or different requirements on any part 72 facility after a license has been issued, a backfit analysis is, therefore, not required for this final rule.

List of Subjects in 10 CFR Part 72

Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble, and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C 552, and 553, the NRC is adopting the following amendments to 10 CFR part 72:

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for part 72 is revised to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 295 as amended by Pub. L. 102–486, sec 7902, 106 Stat. 3123 (42 U.S.W. 5851); sec. 102, Pub. L. 91–190, 83 Stat. (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d). Section 72.46 also issued under sec. 189, 68 Stat. 935 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203; 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h). Subparts K and L are also issued under sec. 133, 96 Stat. 2230 (42 U.S.C. 10153) and 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. Section 72.32 is revised to read as follows:

§ 72.32 Emergency Plan.

(a) Each application for an ISFSI that is licensed under this part which is: Not located on the site of a nuclear power reactor, or not located within the exclusion area as defined in 10 CFR part 100 of a nuclear power reactor, or located on the site of a nuclear power reactor which does not have an operating license, or located on the site of a nuclear power reactor that is not authorized to operate must be accompanied by an Emergency Plan that includes the following information:

(1) *Facility description.* A brief description of the licensee's facility and area near the site.

(2) *Types of accidents.* An identification of each type of radioactive materials accident.

(3) *Classification of accidents.* A classification system for classifying accidents as "alerts."

(4) *Detection of accidents.* Identification of the means of detecting an accident condition.

(5) *Mitigation of consequences.* A brief description of the means of mitigating the consequences of each type of accident, including those provided to protect workers onsite, and a description of the program for maintaining the equipment.

(6) *Assessment of releases.* A brief description of the methods and equipment to assess releases of radioactive materials.

(7) *Responsibilities.* A brief description of the responsibilities of licensee personnel should an accident occur, including identification of personnel responsible for promptly notifying offsite response organizations and the NRC; also responsibilities for developing, maintaining, and updating the plan.

(8) *Notification and coordination.* A commitment to and a brief description of the means to promptly notify offsite response organizations and request offsite assistance, including medical assistance for the treatment of contaminated injured onsite workers when appropriate. A control point must be established. The notification and coordination must be planned so that unavailability of some personnel, parts of the facility, and some equipment will not prevent the notification and coordination. The licensee shall also commit to notify the NRC operations center immediately after notifications of the appropriate offsite response organizations and not later than one hour after the licensee declares an emergency.[10]

(9) *Information to be communicated.* A brief description of the types of information on facility status; radioactive releases; and recommended protective actions, if necessary, to be given to offsite response organizations and to the NRC.

(10) *Training.* A brief description of the training the licensee will provide workers on how to respond to an emergency and any special instructions and orientation tours the licensee would offer to fire, police, medical and other emergency personnel.

[10] These reporting requirements do not supersede or release licensees of complying with the requirements under the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Pub. L. 99–499 or other State or Federal reporting requirements.

(11) *Safe condition.* A brief description of the means of restoring the facility to a safe condition after an accident.

(12) *Exercises.* (i) Provisions for conducting semiannual communications checks with offsite response organizations and biennial onsite exercises to test response to simulated emergencies. Radiological/Health Physics, Medical, and Fire drills shall be conducted annually. Semiannual communications checks with offsite response organizations must include the check and update of all necessary telephone numbers. The licensee shall invite offsite response organizations to participate in the biennial exercise.

(ii) Participation of offsite response organizations in biennial exercises, although recommended, is not required. Exercises must use scenarios not known to most exercise participants. The licensee shall critique each exercise using individuals not having direct implementation responsibility for conducting the exercise. Critiques of exercises must evaluate the appropriateness of the plan, emergency procedures, facilities, equipment, training of personnel, and overall effectiveness of the response. Deficiencies found by the critiques must be corrected.

(13) *Hazardous chemicals.* A certification that the applicant has met its responsibilities under the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Pub. L. 99–499, with respect to hazardous materials at the facility.

(14) *Comments on Plan.* The licensee shall allow the offsite response organizations expected to respond in case of an accident 60 days to comment on the initial submittal of the licensee's emergency plan before submitting it to NRC. Subsequent plan changes need not have the offsite comment period unless the plan changes affect the offsite response organizations. The licensee shall provide any comments received within the 60 days to the NRC with the emergency plan.

(15) *Offsite assistance.* The applicant's emergency plans shall include a brief description of the arrangements made for requesting and effectively using offsite assistance on site and provisions that exist for using other organizations capable of augmenting the planned onsite response.

(16) Arrangements made for providing information to the public.

(b) Each application for an MRS that is licensed under this part and each application for an ISFSI that is licensed

under this part and that may process and/or repackage spent fuel, must be accompanied by an Emergency Plan that includes the following information:

(1) *Facility description.* A brief description of the licensee facility and area near the site.

(2) *Types of accidents.* An identification of each type of radioactive materials accident.

(3) *Classification of accidents.* A classification system for classifying accidents as "alerts" or "site area emergencies."

(4) *Detection of accidents.* Identification of the means of detecting an accident condition.

(5) *Mitigation of consequences.* A brief description of the means of mitigating the consequences of each type of accident, including those provided to protect workers on site, and a description of the program for maintaining the equipment.

(6) *Assessment of releases.* A brief description of the methods and equipment to assess releases of radioactive materials.

(7) *Responsibilities.* A brief description of the responsibilities of licensee personnel should an accident occur, including identification of personnel responsible for promptly notifying offsite response organizations and the NRC; also responsibilities for developing, maintaining, and updating the plan.

(8) *Notification and coordination.* A commitment to and a brief description of the means to promptly notify offsite response organizations and request offsite assistance, including medical assistance for the treatment of contaminated injured onsite workers when appropriate. A control point must be established. The notification and coordination must be planned so that unavailability of some personnel, parts of the facility, and some equipment will not prevent the notification and coordination. The licensee shall also commit to notify the NRC operations center immediately after notifications of the appropriate offsite response organizations and not later than one hour after the licensee declares an emergency.[11]

(9) *Information to be communicated.* A brief description of the types of information on facility status; radioactive releases; and recommended protective actions, if necessary, to be given to offsite response organizations and to the NRC.

(10) *Training.* A brief description of the training the licensee will provide workers on how to respond to an emergency and any special instructions and orientation tours the licensee would offer to fire, police, medical and other emergency personnel.

(11) *Safe condition.* A brief description of the means of restoring the facility to a safe condition after an accident.

(12) *Exercises.* (i) Provisions for conducting quarterly communications checks with offsite response organizations and biennial onsite exercises to test response to simulated emergencies. Radiological/Health Physics, Medical, and Fire Drills shall be held semiannually. Quarterly communications checks with offsite response organizations must include the check and update of all necessary telephone numbers. The licensee shall invite offsite response organizations to participate in the biennial exercises.

(ii) Participation of offsite response organizations in the biennial exercises, although recommended, is not required. Exercises must use scenarios not known to most exercise participants. The licensee shall critique each exercise using individuals not having direct implementation responsibility for conducting the exercise. Critiques of exercises must evaluate the appropriateness of the plan, emergency procedures, facilities, equipment, training of personnel, and overall effectiveness of the response. Deficiencies found by the critiques must be corrected.

(13) *Hazardous chemicals.* A certification that the applicant has met its responsibilities under the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Pub. L. 99–499, with respect to hazardous materials at the facility.

(14) *Comments on Plan.* The licensee shall allow the offsite response organizations expected to respond in case of an accident 60 days to comment on the initial submittal of the licensee's emergency plan before submitting it to NRC. Subsequent plan changes need not have the offsite comment period unless the plan changes affect the offsite response organizations. The licensee shall provide any comments received within the 60 days to the NRC with the emergency plan.

(15) *Offsite assistance.* The applicant's emergency plans shall include the following:

(i) A brief description of the arrangements made for requesting and effectively using offsite assistance on site and provisions that exist for using other organizations capable of augmenting the planned onsite response.

(ii) Provisions that exist for prompt communications among principal response organizations to offsite emergency personnel who would be responding onsite.

(iii) Adequate emergency facilities and equipment to support the emergency response onsite are provided and maintained.

(iv) Adequate methods, systems, and equipment for assessing and monitoring actual or potential consequences of a radiological emergency condition are available.

(v) Arrangements are made for medical services for contaminated and injured onsite individuals.

(vi) Radiological Emergency Response Training has been made available to those offsite who may be called to assist in an emergency onsite.

(16) Arrangements made for providing information to the public.

(c) For an ISFSI that is:

(1) located on the site, or

(2) located within the exclusion area as defined in 10 CFR part 100, of a nuclear power reactor licensed for operation by the Commission, the emergency plan required by 10 CFR 50.47 shall be deemed to satisfy the requirements of this section.

(d) A licensee with a license issued under this part may take reasonable action that departs from a license condition or a technical specification (contained in a license issued under this part) in an emergency when this action is immediately needed to protect the public health and safety and no action consistent with license conditions and technical specifications that can provide adequate or equivalent protection is immediately apparent.

Dated at Rockville, MD, this 16th day of June 1995.

For the U.S. Nuclear Regulatory Commission.

Andrew L. Bates,

Acting Secretary of the Commission.

[FR Doc. 95–15285 Filed 6–21–95; 8:45 am]

BILLING CODE 7590–01–P

[11] These reporting requirements do not supersede or release licensees of complying with the requirements under the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Pub. L. 99–499 or other State or Federal reporting requirements.

INTERNATIONAL TRADE COMMISSION

19 CFR Part 210

Filing of Complaints and Supplements to Complaints Alleging Unfair Practices in Import Trade

AGENCY: International Trade Commission.

ACTION: Final rulemaking.

SUMMARY: The Commission hereby revises its final rules for investigations and related proceedings under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). The revised rules require section 337 complainants to file equal numbers of confidential and nonconfidential copies of their complaints and to file them on the same date. The revised rules impose the same requirements for filing supplements to complaints. The revised rules are being adopted in response to concerns expressed by interested members of the public and for the purpose of streamlining the administrative process by improving the speed and efficiency of the Commission's distribution and service of nonconfidential copies of complaints, including supplements thereto.

EFFECTIVE DATE: In accordance with the 30-day advance publication requirement imposed by 5 U.S.C. 553(d), the effective date of these revised rules is July 24, 1995.

FOR FURTHER INFORMATION CONTACT: P.N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3061. Hearing-impaired individuals can obtain information concerning the proposed rulemaking by contacting the Commission's TDD terminal at 202–205–1810.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 1994, the Commission published final rules for 19 CFR part 210.[1] Final rule 210.4(f)(3)(i) imposed a 10-day deadline for section 337 complainants to file nonconfidential copies of their complaints after the confidential version was filed.

On March 29, 1995, the Commission published a notice containing proposed revisions to the part 210 rules which would require section 337 complainants to file equal numbers of confidential and nonconfidential copies of their complaints and to file them on the same date.[2] The Customs and International Trade Bar Association (CITBA) was the only organization that responded to the notice of proposed rulemaking. The CITBA expressed approval of the proposed rules.

Section-by-Section Analysis of the Revised Rules

The commentary that preceded the proposed rules in the notice of proposed rulemaking published on March 29, 1995, constitutes the preamble to the revised rules set forth in the present notice.[3]

Revised rule 210.52(e) is identical to proposed rule 210.52(e). Revised rules 210.4(f)(3), 210.5(a), and 210.8(a) differ slightly from the correspondingly numbered proposed rules. The proposed rules required complainants to file nonconfidential copies of their complaints concurrently with the confidential copies. Upon further reflection, the Commission decided that revised rules 210.4(f)(3), 210.5(a), and 210.8(a) should impose the same requirements for the filing of supplements to section 337 complaints.

Regulatory Analysis

The revised rules adopted in this notice do not meet the criteria enumerated in section 3(f) of Executive Order 12866,[4] and therefore do not constitute a significant regulatory action for purposes of that Executive Order.

In accordance with the Regulatory Flexibility Act,[5] the Commission hereby certifies[6] that the revised rules set forth in this notice are not likely to have a significant economic impact on a substantial number of small business entities. The Commission notes that most section 337 complainants are not small businesses. Moreover, the revised rules merely increase the number of copies that section 337 complainants must file for two categories of submissions: Complaints and supplements to complaints.

In any event, the Regulatory Flexibility Act is inapplicable to this rulemaking, because it is not one for which a notice of proposed rulemaking was required under 5 U.S.C. 553(b) or another statute.[7] Though the Commission chose to publish such a notice on March 29, 1995, the revised rules are "agency rules of procedure or practice" and thus were exempt from the notice requirement imposed by 5 U.S.C. 553(b).

List of Subjects in 19 CFR Part 210

Administrative practice and procedure, Imports, and investigations, Investigations of unfair acts and unfair methods of competition in U.S. import trade.

For the reasons set forth in the preamble, the U.S. International Trade Commission hereby amends part 210 of title 19 of the Code of Federal Regulations as follows:

PART 210—ADJUDICATION AND ENFORCEMENT

1. The authority citation for part 210 continues to read as follows:

Authority: 19 U.S.C. 1333, 1335, and 1337.

2. Paragraph (f)(3) of § 210.4 is revised to read as follows:

§ 210.4 Written submissions; representations; sanctions.

* * * * *

(f) *Specifications; filing of documents.*

* * *

(3)(i) If a complaint, a supplement to a complaint, a motion for temporary relief, or the documentation supporting a motion for temporary relief contains confidential business information as defined in § 201.6(a) of this chapter, the complainant shall file nonconfidential copies of the complaint, the supplement to the complaint, the motion for temporary relief, or the documentation supporting the motion for temporary relief concurrently with the requisite confidential copies, as provided in § 210.8(a) of this part.

(ii) Persons who file the following submissions that contain confidential business information covered by an administrative protective order, or that are the subject of a request for confidential treatment, must file nonconfidential copies and serve them on the other parties to the investigation or related proceeding within 10 calendar days after filing the confidential version with the Commission:

(A) A response to a complaint and all supplements and exhibits thereto;

(B) All submissions relating to a motion to amend the complaint or notice of investigation; and

(C) All submissions addressed to the Commission.

Other sections of this part may require, or the Commission or the administrative law judge may order, the filing and service of nonconfidential copies of other kinds of confidential submissions. If the submitter's ability to prepare a nonconfidential copy is dependent upon receipt of the nonconfidential version of an initial determination, or a Commission order or opinion, or a ruling by the administrative law judge or the Commission as to whether some or all of the information at issue is entitled to confidential treatment, the nonconfidential copies of the submission must be filed within 10 calendar days after service of the Commission or administrative law judge document in question. The time periods

[1] 59 FR 39020, Part II (Aug. 1, 1994), as corrected by 59 FR 64286 (Dec. 14, 1994) and amended by 59 FR 67622 (Dec. 30, 1994).

[2] 60 FR 16087 (Mar. 29, 1995).

[3] See the Section-by-Section analysis of the proposed rules, which appeared in 60 FR at 16087–16088.

[4] 58 FR 51735, Oct. 4, 1993.

[5] 5 U.S.C. 601 note.

[6] Pursuant to 5 U.S.C. 605(b).

[7] See 5 U.S.C. 603(a).

for filing specified in this paragraph apply unless the Commission, the administrative law judge, or another section of this part specifically provides otherwise.

* * * * *

3. Paragraph (a) of § 210.5 is revised to read as follows:

§ 210.5 Confidential business information.

(a) *Definition and submission.* Confidential business information shall be defined and identified in accordance with § 201.6 (a) and (c) of this chapter. Unless the Commission, the administrative law judge, or another section of this part states otherwise, confidential business information shall be submitted in accordance with § 201.6(b) of this chapter. In the case of a complaint, any supplement to the complaint, and a motion for temporary relief filed under this part, the number of nonconfidential copies shall be prescribed by § 210.8(a) of this part.

* * * * *

4. Paragraph (a) of § 210.8 is revised to read as follows:

§ 210.8 Commencement of preinstitution proceedings.

(a) *Upon receipt of complaint.* A preinstitution proceeding is commenced by filing with the Secretary a signed original complaint and the requisite number of true copies. The complainant shall file 14 confidential copies of the complaint, 14 nonconfidential copies, plus one confidential copy and one nonconfidential copy for each person named in the complaint as violating section 337 of the Tariff Act of 1930, and one nonconfidential copy for the government of each foreign country of any person or persons so named. The same requirements apply for the filing of a supplement to the complaint. If the complainant is seeking temporary relief, the complainant must file 14 confidential copies of the motion, 14 nonconfidential copies, plus one additional confidential copy and one additional nonconfidential copy of the motion for such relief for each proposed respondent, and one nonconfidential copy for the government of the foreign country of the proposed respondent. The additional copies of the complaint and motion for temporary relief for each proposed respondent and the appropriate foreign government are to be provided notwithstanding the procedures applicable to a motion for temporary relief, which require service of the complaint and motion for temporary relief by the complainant.

* * * * *

5. Paragraph (e) of § 210.52 is revised to read as follows:

§ 210.52 Motions for temporary relief.

* * * * *

(e) If the complaint, the motion for temporary relief, or the documentation supporting the motion for temporary relief contains confidential business information as defined in § 201.6(a) of this chapter, the complainant must follow the procedure outlined in §§ 210.4(a), 210.5(a), 201.6 (a) and (c), 210.8(a), and 210.55 of this part.

Issued: June 13, 1995.

By Order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–15179 Filed 6–21–95; 8:45 am]

BILLING CODE 7020–02–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 422

RIN 0960–AE18

Evidence Required for Duplicate Social Security Number Card

AGENCY: Social Security Administration (SSA).

ACTION: Interim rule.

SUMMARY: We intend to conduct a pilot project in as many as 100 social security offices throughout the country and in as many as 10 teleservice centers to encourage people who need a duplicate social security number (SSN) card to contact us by phone to request the duplicate card. We are, therefore, providing an exception to our rule in 20 CFR 422.107(c) on the corroborative evidence of identity a person must submit when he or she applies for a duplicate SSN card.

EFFECTIVE DATE: This regulation is effective on June 22, 1995. Since this rule grants a limited exemption from certain requirements for issuing duplicate SSN cards, the 30-day delay in effectuating rules, as provided by 5 U.S.C. 553(d), does not apply. We will consider any comments we receive by August 21, 1995 and will publish a revised final regulation if public comments warrant it.

ADDRESSES: Comments on this rule should be submitted in writing to the Commissioner of Social Security, P.O. Box 1585, Baltimore, MD 21235, sent by telefax to (410) 966–2830, sent by E-mail to "regulations@ssa.gov," or delivered to the Division of Regulations and Rulings, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

Organizations and individuals desiring to submit comments on the information collection requirements under the "Paperwork Reduction Act" should submit them to the Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 3208, Washington, D.C. 20503, Attention: Desk Officer for SSA.

The electronic file of this document is available on the Federal Bulletin Board (FBB) at 9 a.m. on the date of publication in the **Federal Register**. To download the file, modem dial (202) 512–1387. The FBB instructions will explain how to download the file and the fee. This file is in Wordperfect and will remain on the FBB during the comment period.

FOR FURTHER INFORMATION CONTACT: Jack Schanberger, Room 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–8471.

SUPPLEMENTARY INFORMATION: Section 205(c)(2)(B)(ii) of the Act provides that an applicant for an SSN must submit such evidence as may be necessary for the Commissioner of Social Security (the Commissioner) to establish the applicant's age, citizenship or alien status, and true identity. Under this provision, the applicant must also provide evidence that the Commissioner may need to determine which (if any) social security account number has previously been assigned to the applicant. This provision was added to the Act in 1972 (Pub. L. 92–603) to provide instructions for assigning SSNs. In addition, Pub. L. 92–603 amended section 208 of the Act to provide penalties for anyone who knowingly, willfully, and with intent to deceive uses an SSN that was obtained with false information. See S. Rep. No. 92–1230 and H.R. Rep. No. 92–1805, 92d Cong., 2d Sess. (1972).

The amendments were in response to the expanding use of the SSN and a concern about its misuse. To implement the amendments, we increased the security of the procedures we used for assigning an SSN. We also published regulations at 20 CFR 422.107(c) which, among other things, require that each applicant for an original, duplicate, or corrected SSN card must submit documentary evidence of identity. The primary purposes for requiring an applicant for a duplicate SSN card to furnish this evidence are to avoid assigning more than one SSN to a person and to ensure that the card is issued to the correct person.

A recent report by SSA's Inspector General (IG), entitled "SSA Field Office Visitor Workload," indicates that approximately one-third of the many people who visit Social Security offices each day are there to request a new or duplicate social security number card. The IG report suggested that individuals could request duplicate cards by telephone or by mail, thereby significantly reducing the volume of people (approximately 8 million per year) who visit social security offices to apply for original or duplicate SSN cards.

In a continuing attempt to furnish better service to the public, we will conduct a pilot project which will enable certain individuals to apply by phone for a duplicate SSN card without having to complete and sign an application and take or mail their identity documents to a social security office. We plan to conduct the pilot project in as many as 100 social security field offices throughout the country and in as many as 10 teleservice centers.

We are modifying the evidentiary requirements for identity in 20 CFR 422.107(c) for this project. This will enable us to forgo requesting the corroborative documentary evidence of identity for some applicants who request a duplicate SSN card. The pilot project will apply to U.S. citizens born in the U.S. and to U.S. citizens born outside the U.S. who have previously presented to us evidence of U.S. citizenship. The applicant must be the number holder or a parent applying on behalf of his or her minor child number holder.

Because of our enhanced ability to screen by electronic means an applicant requesting a duplicate SSN card, we believe that we may be able to eliminate or at least modify our current requirement that all persons applying for a duplicate SSN card must submit a signed application and corroborative documentary evidence of identity. If we find that this evidence and the signed application are no longer needed in some kinds of cases, we should be able to provide more efficient, more economical, and more convenient service to the public, while at the same time reducing the need for many people to apply in person at social security offices for duplicate SSN cards. We will also be helping businesses with their wage reporting obligations by ensuring that their employees have their correct social security numbers.

With our current electronic systems capability, we believe that under the interim rule we will be able to comply with the evidentiary requirements of the Act. We can compare the information the number holder gives when requesting a duplicate card with the information already available in our electronic records. The true number holder should know the information contained in these electronic records. Therefore, we believe it is reasonable to treat the conforming information provided by the person requesting a duplicate SSN card as acceptable evidence of his or her identity within the meaning of section 205(c)(2)(B)(ii) of the Act. If our records do not confirm the information provided by the applicant, we will require that he or she submit corroborative evidence of identity and a signed application either by mail or in person to an SSA office.

If we decide to discontinue this project concerning duplicate SSN cards, we will rescind this interim rule. If we decide to expand this project, we will publish a notice in the **Federal Register**. If we decide to implement the procedures nationally, a regulation reflecting this decision will be promulgated. However, before deciding to expand the test or implement nationally, we will conduct a study to determine whether the pilot procedures provide sufficient safeguards against fraud.

These special pilot procedures for issuance of duplicate SSN cards will not apply to aliens who request such duplicate cards, because pursuant to 20 CFR 422.107(e), aliens must also furnish proof of alien status as well as identity. Under section 205(c)(2)(B)(i)(I) of the Act, the Commissioner must take affirmative measures to assure that SSNs are assigned to certain aliens. Aliens are assigned SSNs when they are lawfully admitted to the U.S. as permanent residents, when they are admitted to the U.S. for a temporary period of time with authorization to work, or when they receive authorization to work subsequent to entry into the United States. The Immigration and Naturalization Service issues to aliens documentation of their lawful admission and requires that an alien keep that documentation on his or her person at all times. Generally, aliens are required to submit that documentation to us as proof of alien status. Therefore, aliens will need to take their INS documents to SSA to apply for a duplicate SSN card.

These special procedures also do not apply to requests for corrected SSN cards because the corrected information cannot be verified on our records. Additionally, these procedures do not apply to (1) foreign-born U.S. citizens who have not already submitted evidence of citizenship; (2) a person applying on behalf of another if the applicant is not a parent applying on behalf of his or her minor child; and (3) people whose address is an in-care-of address, a post office box, general delivery, or a suite.

Regulatory Procedures

Justification for Interim Rule Without Proposed Rule

We are publishing this amendment to the regulations as an interim rule instead of a proposed rule. The Social Security Administration follows the Administrative Procedure Act (APA) notice of proposed rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds that there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for waiver of notice of proposed rulemaking and public comment procedures in this instance because the use of such procedures to provide a very limited exception to the evidentiary requirements that must be met when a person requests a duplicate SSN card notice is unnecessary. This is a minor rule of limited applicability that should be of little interest to the general public. We do not believe that there is significant public interest in whether persons in areas where this pilot project will be conducted who request duplicate SSN cards must supply signed applications and supportive documentary evidence of their identities when they request duplicate SSN cards.

Executive Order (E.O.) 12866

We have consulted with the Office of Management and Budget (OMB) and determined that this rule does not meet the criteria for a significant regulatory action under E.O. 12866. Thus, it was not subject to OMB review.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only the issuing of duplicate SSN cards to individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

This regulation contains a new reporting burden in section 422.107. As required by section 3507 of the Paperwork Reduction Act of 1980, we

will submit a copy to the Office of Management and Budget for its review.

Public reporting burden for this collection of information is estimated to average 2 minutes per response. This includes the time it will take to read the instructions, gather the necessary facts, and provide the information. If you have any comments or suggestions on this estimate, write to the Social Security Administration, ATTN: Reports Clearance Officer, 1–A–21 Operations Building, Baltimore, MD 21235.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance; 96.006 Supplemental Security Income)

List of Subjects in 20 CFR Part 422

Administrative practice and procedure; Freedom of information; Organization and functions (Government agencies); Social Security.

Dated: June 14, 1995.

Shirley S. Chater,

Commissioner of Social Security.

For the reasons set out in the preamble, Subpart B of Part 422 of 20 CFR Chapter III is amended as follows:

PART 422—ORGANIZATION AND PROCEDURES

1. The authority citation for Subpart B is revised to read as follows:

Authority: Secs. 205, 702, and 1143 of the Social Security Act; 42 U.S.C. 405, 902, and 1320b–13.

2. Section 422.107 is amended by adding language at the end of paragraph (c), to read as follows:

§ 422.107 Evidence requirements.

(c) *Evidence of identity.* * * * An applicant for a duplicate social security number card who is a U.S. citizen and who resides in an area where the Social Security Administration is conducting a pilot project on the issuance of duplicate cards will not be required to submit a signed application or corroborative documentary evidence of identity if the Social Security Administration is able to compare information provided by the applicant with information already in its records and, on the basis of this comparison, decides that corroborative documentary evidence is not needed to establish the applicant's identity. These special procedures do not apply to foreign-born U.S. citizens who have not already submitted evidence of citizenship to us; to a person applying on behalf of another if the applicant is not a parent applying on behalf of his or her minor child; and to people whose address is an in-care-of address, a post office box, general delivery, or a suite.

* * * * *

[FR Doc. 95–15301 Filed 6–21–95; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for 46 new animal drug applications (NADA's) from Sanofi Animal Health, Inc., to Rhone Merieux, Inc.

EFFECTIVE DATE: June 22, 1995.

FOR FURTHER INFORMATION CONTACT: Judith M. O'Haro, Center for Veterinary Medicine (HFV–238), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1737.

SUPPLEMENTARY INFORMATION: Sanofi Animal Health, Inc., 7101 College Blvd., Overland Park, KS 66210, has informed FDA that it has transferred ownership of, and all rights and interests in, the following approved NADA's to Rhone Merieux, Inc., 7101 College Blvd., Overland Park, KS 66210:

NADA number	Drug name
006–623	Caparsolate
008–422	Selcen Suspension
010–092	Gallimycin'-50P Premix
010–346	Combuthal Powder
012–123	Gallimycin-100, Gallimycin LA Injectable, Erythro-200 Injection
033–157	Spectam Scour Halt
035–157	Gallimycin Poultry Formula
035–455	Gallimycin-36/Dry
035–456	Gallimycin 36 Sterile
038–241	Erythro +ZOA+ARS Acid
038–242	Erythro +AMP+ETHO
038–624	Pro-Gallimycin-10
038–661	Spectam Water Soluble Concentrate
040–040	Spectam Injection
041–955	Erythromycin Premix
044–756	Butatron Tablets
045–416	Butatron Injection
048–287	Oxytetracycline-50 Injection
055–002	Chloramphenicol Injection
055–059	Viceton Tablets
065–275	Penicillin VK Filmtab
065–276	Veesyn Granules for Oral Solution
065–383	Procaine G Penicillin Mastitis Tubes
065–384	Procaine G Penicillin Mastitis Tubes
093–483	Spectam Injectable
093–515	Spectam Tablets
095–218	Dexamethasone Tablets
097–397	Syncro-Mate-B
098–379	Cystorelin Injectable
100–128	Medipak Tylan 10
101–690	Erythro-100 Injectable
102–656	Gallimycin Poultry Formula
107–506	Carbam Tablets & Film Coated Tablets
113–510	Equipalazone
118–032	Carbam Palatabs
118–979	Butatron Oral Gel
119–142	Injectable Iron 10%
120–615	Sustain III Calf & Cattle Bolus
123–815	Dexamethasone Sodium Phosphate Injection
124–241	Oxytocin Injection
126–504	Nitrozone Ointment
128–089	Dexamethasone Sterile Solution
134–930	Syncro-Mate-B
200–050	Neomycin 325 Soluble Powder
200–103	Penicillin G Potassium
200–147	Gentamicin Sulfate Injection

Accordingly, FDA is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) to reflect the change of sponsor. The drug labeler code assigned to Sanofi Animal Health, Inc., is being retained as the drug labeler code for Rhone Merieux, Inc.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry for "Sanofi Animal Health, Inc." and by alphabetically adding a new entry for "Rhone Merieux, Inc., 7101 College Blvd., Overland Park, KS 66210.....050604" and in the table in paragraph (c)(2) in the entry for "050604" by removing the sponsor name "Sanofi Animal Health, Inc." and adding in its place "Rhone Merieux, Inc., 7101 College Blvd., Overland Park, KS 66210".

Dated: June 12, 1995.

George A. Mitchell,

Director, Office of Surveillance and Compliance, Center for Veterinary Medicine.

[FR Doc. 95–15241 Filed 6–21–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1307, 1309, 1310, 1313 and 1316

[DEA No. 112F]

RIN 1117–AA23

Implementation of the Domestic Chemical Diversion Control Act of 1993 (PL 103–200)

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final rule.

SUMMARY: This final rule establishes regulations to implement the Domestic Chemical Diversion Control Act of 1993 (DCDCA or Act). These regulations provide additional safeguards to prevent and detect the diversion of listed chemicals by illicit drug manufacturers.

EFFECTIVE DATE: August 21, 1995. Persons seeking registration must apply on or before October 5, 1995 in order to continue their business pending final action by DEA on their application.

FOR FURTHER INFORMATION CONTACT: G. Thomas Gitchel, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION: On October 13, 1994, DEA published a notice of proposed rulemaking (NPRM) entitled Implementation of the Domestic Chemical Diversion Control Act of 1993 (Pub. L. 103–200) in the **Federal Register** (59 FR 51887). The NPRM proposed to amend Title 21, Code of Federal Regulations (21 CFR) by adding a new Part 1309, relating to the registration of List I chemical manufacturers, distributors, retail distributors, importers and exporters; revising Parts 1310 and 1313 to amend the recordkeeping and reporting requirements for domestic as well as import/export activities; adding new procedures with respect to the exemption of regulated chemicals, including chemical mixtures and certain drug products that are marketed under the Food, Drug and Cosmetic Act; adding new procedures regarding "brokers", "traders" and "international transactions"; and revising Part 1316 with respect of DEA's administrative inspection authority.

There are two additional notices that DEA has published in the **Federal Register** that relate to these regulations. On March 24, 1994 an Interim Rule notice entitled Provisional Exemption From Registration for Certain List I Chemical Handlers was published in the **Federal Register** (59 FR 13881). This rule grants a temporary exemption from the registration requirements of the DCDCA. The exemption will remain in effect for any person who files with DEA a properly completed application for registration on or before October 5, 1995, until such a time as DEA takes final action on their application.

DEA published the second notice in the **Federal Register** on December 9, 1994, (59 FR 63738) withdrawing, for further study, Sections 1310.05(d) and 1310.06(h), which relate to manufacturer reports, and Sections 1310.12 and 1310.13, which relate to the exemption of chemical mixtures. The regulations regarding manufacturer reports and the exemption of chemical mixtures will be re-proposed at a later date following additional consultations with the affected chemical industry. Formal comments that were received in response to the NPRM regarding the withdrawn sections will be given consideration in the redrafting of a new proposal for these sections.

Regulatory Flexibility and Small Business Impact

As required under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), DEA addressed in detail regulatory flexibility and small business impact as part of the NPRM. The NPRM discussed the difficulty in determining with certainty how many persons would continue to handle regulated ephedrine drug products, and thus be subject to the regulations. This is due to the rapidly changing market affected by state laws restricting the availability of ephedrine, the availability of alternative products that are not regulated, and the intent of the DCDCA to eliminate sales to clandestine laboratories.

No comments were received on this topic or on DEA's estimate of the number of persons that will seek registration to handle regulated ephedrine drug products. Since publication of the NPRM, the number of states taking restrictive actions has increased. DEA is now aware of twelve states that have enacted laws controlling regulated ephedrine drug products, eleven by making them either prescription only or a controlled substance, and one by setting state licensure and reporting requirements. An additional four states have recently introduced legislation to control the products, three by making them a controlled substance and one by setting age restrictions and requiring reports of all transactions. In addition, DEA has documented that several wholesalers of regulated ephedrine drug products, the primary source of supply for retail distributors, have changed their product line to combination products that are not subject to regulation. Finally, recent reports that the Food and Drug Administration (FDA) is considering moving ephedrine into the prescription drug category may further influence persons handling ephedrine drug products. Under the circumstances, the number of retail distributor applicants under the DCDCA remains uncertain.

In the NPRM, DEA was able to provide relief from the chemical registration requirement for persons handling regulated ephedrine drug products who are already registered with DEA to engage in similar activities with controlled substances. In addition, manufacturers of List I chemicals for internal use, with no subsequent distribution or exportation of the chemical, were also exempted from the registration requirement. Both of these proposals have been retained in the final rule. Consideration was also given to exempting retail distributors from the registration, recordkeeping and reporting requirements. However, such an action would negate the purpose of the DCDCA by leaving a significant portion of the sales of regulated ephedrine drug products unregulated.

Following submission and review of the comments concerning the proposed regulations, two requirements were identified which DEA determined could be removed from the final regulations to reduce the impact of compliance without compromising the control goals of the DCDCA. The proposals were the reporting requirement for sales of 375 dosage units or more of regulated ephedrine drug products (proposed

Section 1310.05(a)(2)) and the restrictions regarding employment of certain persons (proposed Section 1309.72). These proposals have been removed from this final rule.

Further, DEA also determined that the proposed regulations regarding manufacturer reporting (proposed Sections 1310.05(d) and 1310.06(h)) and the exemption of chemical mixtures (proposed Sections 1310.12 and 1310.13) could result in a greater than anticipated burden and, possibly, a duplicative reporting requirement, for the industry. The requirements were withdrawn by notice published in the **Federal Register** on December 9, 1994, (59 FR 63738) for reassessment and redrafting following consultation with the affected industry.

DEA has endeavored, within the requirements and goals of the DCDCA, to limit the impact of these regulations on the affected industry. In some instances, as discussed below in the responses to specific comments (e.g., separate registration for separate locations) the specific language of the DCDCA established the parameters of control. However, in other areas, DEA has been able to take additional steps in these final regulations to lessen the impact of the DCDCA's requirements on the affected industry, while simultaneously carrying out the chemical control mandate of the DCDCA.

Public Comments

A total of 22 comments were submitted regarding the proposed rulemaking. While the general tone of the comments was supportive of efforts to prevent the flow of listed chemicals to clandestine laboratories, the commentors raised a number of concerns regarding certain provisions of the proposed regulation, as follows:

Registration

1. Six comments objected to the requirement in Section 1309.23 that a separate registration be obtained for each location at which List I chemical activities are carried out. The comments suggested that DEA allow companies to obtain a single registration, with attendant fee, for multiple locations or activities.

The law is specific on this point. The DCDCA requires that a separate registration be obtained at each location at which List I chemicals are distributed, imported or exported (21 U.S.C. 822(e) and 958(h)). In accordance with the requirements of the Office of Management and Budget (OMB) Circular A–25, the costs associated with each preregistration investigation must be recovered through the fees.

2. Four comments noted the chemical industry's practice of storing and distributing chemicals from independently operated warehouses. These commentors questioned how the requirement for separate registrations for separate locations would apply to these warehouses.

In reviewing these comments, there appeared to be some confusion regarding whether the commentors were addressing warehouse activities that involved List I chemicals or List II chemicals. In subsequent contacts with commentors for clarification, DEA was able to specifically identify only two comments involving warehouses that handle List I chemicals. DEA wishes to clarify that the registration requirement applies only to the distribution, importation or exportation of List I chemicals. Activities involving List II chemicals are not subject to the registration requirement.

With respect to the use of independently owned warehouses, the Controlled Substances Act (CSA), as amended, exempts warehousemen from the registration requirement (21 U.S.C. 802(39), 822(c)(2), and 957(b)(1)(B)) for activities carried out in the normal course of their business. Instead, the person who distributes List I chemicals from independently owned warehouses must register at each location and ensure that the other chemical control requirements, including security, record keeping, reporting, etc., for their products are met while under the supervision of the non-registered warehouseman.

3. One comment questioned what procedures would apply if more than one chemical company stored and distributed chemicals from a single warehouse, and whether separate registrations, if required, would result in duplicative fees.

Each person who distributes, imports or exports a List I chemical must register with DEA for each separate location at which such activities are carried out. If more than one person independently carries out such activities at the same location, then each person must obtain a registration for their activities at that location. Each application would be subject to a separate pre-registration investigation that would require, among other things, a visit to the applicant's business offices (which in this circumstance would be separate from the warehouse). Therefore, the fees would not be duplicative. The fees for registration are based on the costs associated with the registration, as set forth in the NPRM. DEA's experience in working with the chemical industry indicates this is a rare business practice with respect to List I chemicals.

4. Two comments questioned the impact that registration would have on research and development (R&D) activities that were described by the commentors as involving "very small quantities" of chemicals in mixtures that may be sent to laboratories for physical property or performance testing.

The DCDCA does not require registration for research or development activities, only distributing, importing or exporting. Thus laboratories performing such testing would not be subject to the registration requirement for research and development activities. Further, the products referenced by the commentors are chemical mixtures, therefore, they will be subject to the chemical mixture exemption regulations that are being developed. It is DEA's intent, to the extent possible, that the distribution of such mixtures to laboratories for testing be exempted from the registration requirement.

5. Two comments expressed concern that manufacturers would be forced to suspend their activities due to delays in the approval of their registrations.

Early in the regulatory development process, DEA recognized that the demands of establishing a new registration program would require a transitional procedure that did not disrupt ongoing legitimate business activities. As a consequence, DEA published a notice in the **Federal Register** on March 24, 1994 (59 FR 13881), that provides a temporary exemption from the registration requirement. Any person who submits a proper application for registration on or before October 5, 1995 will remain exempt from the registration requirement until DEA takes final action regarding their application. There is no cause for current legitimate manufacturers to be concerned that they will have to suspend their activities pending issuance of their registrations.

6. Two comments questioned how the registration requirement would apply to manufacturers of non-regulated chemicals that contain List I chemicals as either unintentional by-products or impurities.

This concern has been raised with respect to the application of chemical diversion control requirements on a number of occasions in the past. The manufacture of a List I chemical as an unintentional by-product during the manufacture of another chemical does not require registration, so long as the List I chemical is not distributed or exported. As to the presence of List I chemicals as impurities in non-regulated products, it is DEA's understanding that the impurities are present only in trace amounts. It is not DEA's intent that the distribution of non-regulated chemicals that contain trace amounts of List I chemicals as unintentional by-products of the manufacturing process be subject to the registration requirement.

7. One comment suggested that if the Food and Drug Administration (FDA) removes ephedrine from over-the-counter status, the primary reason for, and economic foundation of, the registration program would be removed through the elimination of the need to register and collect fees from the estimated 10,000 retail distributors that handle ephedrine drug products that are regulated as List I chemicals. The comment urged that if such a circumstance occurs, DEA should withdraw the registration requirement.

The DCDCA requires registration of any person who distributes, imports or exports any List I chemical and was not intended solely to control the distribution of regulated ephedrine drug products. DEA's chemical control program, including registration, applies to all List I chemicals. The potential elimination of the need to register retail distributors of ephedrine drug products would not change the purpose of the program. Secondly, the FDA action is only speculative at this time, and its subsequent impact, if passed, is even more uncertain. However, OMB Circular A–25 requires the review of all fees every two years. Under this review, any major change in the registration population would require reassessment of the fees for other registrants. Any change to the fees would be subject to notice and comment.

8. One comment characterized the registration of sites that manufacture List I chemicals as unnecessary, since it duplicates existing site reporting requirements under other Federal laws. A second comment questioned the need for a pre-registrant investigation and fee for high volume manufacturers.

The DCDCA requires persons who distribute, import or export a List I chemical to obtain a registration and requires that DEA determine if such registration would be in the public interest pursuant to the criteria set forth in Section 823(h) of the Act. The pre-registrant investigation must be conducted to determine whether the criteria regarding the public interest are met. The required fee is assessed to cover the costs of that investigation.

9. One comment requested clarification of the exemption from chemical registration found in Section 1309.25, for companies that are registered with DEA to handle controlled substances.

A controlled substance registrant that distributes, imports or exports a List I chemical, other than a regulated drug product that may be marketed or distributed under the Food, Drug, and Cosmetic Act (FDCA), must obtain a chemical registration for such activities. The exemption in Section 1309.25 applies only to controlled substance registrants who engage in similar activities with a regulated drug product that may be marketed or distributed under the FDCA. The exemption is directed at the approximately 65,000 pharmacies and others who are already registered with DEA under the CSA, so as to avoid a duplicative registration requirement on these registrants. In response to this comment and to help clarify the provisions of the exemption, Section 1309.25 has been amended to specify that the exemption applies only to activities involving drug products that may be marketed or distributed under the Food, Drug and Cosmetic Act, that are regulated as List I chemicals pursuant to Section 1310.01(f)(1)(iv).

10. One comment expressed concerns that the regulations will require persons who handle exempt chemical mixtures containing List I chemicals to register.

The proposed Section 1310.13, which was withdrawn for re-publication at a later date, established that the chemical mixtures exempted by the Administrator would not be subject to the registration, recordkeeping, reporting, and import/export provisions of the Act. It is DEA's intention that the same provision will be included in the new chemical mixture exemption regulations. In the interim, chemical mixtures will be exempt until the exemption regulations are promulgated. However, creation of a chemical mixture for the purpose of evading the requirements of the CSA is a violation of CSA (21 U.S.C. 843(a)(8), subject to a penalty of imprisonment for not more than four years, a fine of $30,000, or both.

Brokers and Traders

11. Three comments found the definition of "broker" and "trader" in Sections 1310.01(k) and 1313.02(m) to be overly broad. Specifically, subparagraph (3) of each section may be read as covering any action, whether deliberate or inadvertent, that results in an international transaction taking place, i.e., a chemical distributor provides a foreign customer with a list of possible sources for a chemical that the distributor does not carry, thus "bringing together a buyer and a seller."

DEA agrees that the definition is not intended to cover such circumstances. DEA has amended the wording of subparagraph (3) of the definition to read "Fulfilling a formal obligation to effect the transaction by bringing together a buyer and seller, a buyer and transporter, or a seller and transporter; or by receiving any form of compensation for so doing."

12. One comment requested clarification of whether import brokers and freight forwarders would be considered brokers or traders.

Brokers and traders are defined as U.S. based persons who assist in arranging international transactions in listed chemicals; the definition does not apply to domestic transactions, including imports into or exports from the United States. Further, brokers and traders, as defined, do not take possession of listed chemicals. Under the circumstances, U.S. based import brokers and freight forwarders would not be considered brokers or traders, as defined, while acting in the normal course of their business. However, it must be understood that imports, exports and distributions of listed chemicals are subject to other provisions of the CDTA and DCDCA and a regulated person is responsible for those transactions.

Security Provisions

13. Two comments questioned the appropriateness of the proposed Section 1309.72, which concerns employment of persons who have been convicted of a felony relating to controlled substances or listed chemicals or have been subject to a denial, suspension or revocation of a DEA registration. One comment raised the issue of whether the requirements violate occupational safety and health, privacy, and non-discrimination laws. The other pointed out that in the absence of the stringent security and storage requirements applied to controlled substances, a far greater number of personnel would have access to List I chemicals, such as ephedrine, thus increasing the burden required to satisfy the requirements of this section.

DEA agrees that the lack of restrictions regarding possession of List I chemicals makes it difficult to employ comprehensive screen practices for all potential employees as proposed in Section 1309.72. However, registrants must employ safeguards to prevent List I chemicals from being diverted from their businesses into the illicit traffic. DEA is, therefore, withdrawing the proposal prohibiting such employment, and in its place establishing that registrants must exercise caution in their employment practices regarding

persons who have been convicted of a felony relating to controlled substances or listed chemicals, or have been subject to denial, suspension or revocation of a DEA registration. The registrant must understand that if an employee diverts a listed chemical, the registrant may be subject to a revocation action. The registrant must assess the risks involved in employing such a person and, in the event of employment, institute procedures to limit the potential for diversion of List I chemicals by such an employee.

14. One comment requested that DEA provide comprehensive guidance regarding assessment of security measures as outlined in Section 1309.71(b).

List I chemical handlers vary greatly in size, type of business and volume handled. Under such circumstances, it would not be desirable to establish specific, inflexible security controls and procedures. The factors outlined in Section 1309.71(b) provide a general framework of elements that allow potential registrants flexibility in assessing the potential threat of diversion and to determine measures necessary to prevent diversion. DEA has made and will continue to make available additional suggestions regarding security in separate publications for the chemical industry. In addition, as set forth in Section 1309.71(c), an applicant or registrant may, following development of a proposed system of controls and procedures, submit materials and plans regarding the system to DEA for assessment.

15. One comment opposed the proposal that retailers stock ephedrine drug products that are regulated as List I chemicals behind a counter on the basis that this requirement creates a third class of drugs (Section 1309.71(a)(2)).

DEA is regulating a List I chemical, not a drug. Section 1309.71(a)(2) provides a basic security measure for a List I chemical that is known to have been diverted from both the retail and wholesale levels for the purposes of manufacturing illicit controlled substances. The section does not prohibit any person from purchasing the product or establish any restrictive requirements, such as sale by prescription only, that must be met by the purchaser. The requirement simply provides an additional means of controlling diversion without restricting public access to the product.

Section 1313.12 Requirement of 486 for Imports

16. One comment questioned the need for advance notice of importation in cases of a return of a previously exported listed chemical and suggested that manufacturers be exempted from this requirement for the return of chemicals which they exported.

DEA previously recognized, under the 1988 Chemical Diversion and Trafficking Act, that exports of listed chemicals might be rejected or otherwise undeliverable, requiring that they be returned to the U.S. exporter. Existing Section 1313.22(e) provides that exports of listed chemicals that are refused, rejected, or otherwise deemed undeliverable may be returned to the U.S. exporter of record without advance notice or a 486 form. That section requires that a written notification be submitted to DEA within a reasonable time following the return.

However, an export that has cleared foreign customs and been accepted by the foreign consignee is not subject to this exception. Any such shipments subsequently returned to the U.S. are imports, subject to all applicable requirements.

17. Two comments questioned the provisions of Section 1313.12(e). One objected that the summary reports of imports required by Section 1313.12(e) are duplicative, since DEA would already have the information available from previously filed 486 forms. The second questioned whether waiver of the advance notice requirement in Section 1313.21(f) would also mean waiver of the quarterly report in Section 1313.21(e), and suggested that DEA publish in Section 1313.21(f) a list of countries with waivers when the final rule is published.

DEA agrees that the wording of this section needed clarification. Section 1313.12(e) proposed minimized reporting procedures for export transactions in circumstances where the Administrator has waived the advance notice requirements as unnecessary for effective chemical diversion control. The comments point out that the proposed section did not specify that a 486 form need not be filed for such transactions. The section has been amended to clarify that a 486 form does not have to be submitted for exports under this section; the regulated person need only file a quarterly summary of such exports. There are presently no waivers established under Section 1313.21(f). This is a new authority granted to the Administrator by the DCDCA. Countries to which this new provision will apply will be determined after implementation of these regulations.

18. One comment raised concerns regarding the need to file an Import 486 form when foreign customers return containers that have not been completely emptied.

DEA has long recognized the standard industry practice to allow a certain level of 'overage' in the amount of chemicals actually shipped in very large tank car/cargo ship type exports due to the difficulty to full recovery and, therefore, that containers that still contain some of the chemicals may be returned. DEA has not required that a 486 form be filed for the return of containers with such "leavings", when the amount of chemical is within normal or standard residue levels.

Exports

19. One comment noted the provisions of the DCDCA allowing the Administrator to withdraw the waiver of the advance notice requirement for all exports of listed chemical to a specified country. The commentor asked if, in the future, existing waivers might be withdrawn. The comment also questioned whether other countries have agreed to comply with the same rules.

The DCDCA allows DEA to require, by regulation, that all exports of a listed chemical to a specified country be subject to the advance notice requirement, regardless of regular customer status, if it is determined that advance notification of export is necessary for compliance with international agreements regarding chemical controls or is necessary to support chemical control programs in other countries. It is possible that the waiver of the advance notice requirement for exports of a listed chemical to a specified country may be withdrawn. However, DEA would be required to publish a notice in the **Federal Register** regarding the withdrawal of the waiver and provide an opportunity for public comment. With respect to the question of compliance with these rules by other countries, all parties to the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotrophic Substances of 1988 are required to be able to provide advance notice of exports of List I chemicals, if requested by the importing country.

20. One comment requested clarification of the term "reasonable cause" as used in Section 1313.21(g) and of the responsibilities of exporters to know the laws of the countries to which chemicals are exported.

The term "reasonable cause" applies to transactions that, due to circumstances such as an unusual method of payment or shipping or quantities inconsistent with stated uses, raise concerns that a customer or a transaction is not what it is represented to be. Exporters should understand the nature of their legitimate transactions and should make informed decisions as to whether the circumstances surrounding a specific transaction give rise to questions regarding the legitimacy of the transaction. As to the laws of other countries, the exporter is expected to make a reasonable effort to determine the validity of a transaction prior to exporting a listed chemical to a country. DEA has published information regarding foreign import restrictions in the **Federal Register.** If further restrictions become known to DEA, they also will be published in the **Federal Register.**

21. One comment objected to the general export reporting requirements as burdensome and unnecessary.

The general export reporting requirements were established by the CDTA in 1988, and have been in continuous use for over five years without presenting any significant obstacles to legitimate chemical exports. As noted in the preamble to the NPRM, the export controls have been successful in significantly reducing the availability of U.S. chemicals to clandestine laboratories in foreign countries.

Definition of Therapeutically Insignificant

22. Two comments argued that the U.S. Food and Drug Administration (FDA) is the appropriate authority for determining whether a product contains therapeutically significant quantities of a medicinal ingredient and that FDA's tentative final monograph for ephedrine combination products should be used as the standard for making such determinations.

At this time, the monograph is a proposed rule. FDA acknowledges that it must publish a final rule in order to actually establish a monograph. When FDA publishes the final monograph, DEA will consider use of the monograph as the determinative standard for therapeutically significant quantities of a medicinal ingredient under the DCDCA. Until such a time, the compendiums set forth in Section 1310.01(f)(1)(iv)(A) provide additional flexibility and will be the primary standard for determining if therapeutically significant quantities of a medicinal ingredient are present in a product.

23. Two comments objected to the provision that a person applying for exemption of a product, the formulation of which is not listed in the compendiums, must submit verification from FDA that the product may be lawfully marketed under the Food, Drug and Cosmetic Act. The commentor noted that FDA does not provide such verifications.

DEA agrees and has removed that language. In its place, the person applying for the exemption must certify to DEA that the product may be lawfully marketed under the Food, Drug and Cosmetic Act.

24. One comment questioned the lack of justification for the choices of compendiums and suggested that the regulation be expanded to include any recognized authority, such as textbooks, treatises, compendia, statements of qualified experts, medical/scientific journals or clinical studies conducted by outside researchers or by a drug company.

The listed compendiums were chosen because they are readily available and are widely recognized as reliable, scientifically accurate and comprehensive listings of products that are commercially available. With respect to the additional sources of information suggested, if a product does not appear in the named compendiums, DEA has provided manufacturers an additional avenue for product exemption. A person requesting a determination from the Administrator that a product does contain therapeutically significant amounts of a certain medicinal ingredient may submit any such information that the person believes supports their request.

25. One comment suggested that wholesalers do not have the expertise to determine whether a drug meets the therapeutically significant standard. Manufacturers should be responsible for making the determination and providing notification to wholesalers that the product meets the requirements.

DEA agrees that manufacturers are responsible for determining whether a product meets the therapeutically significant standard and for notifying their customers of whether the product is, therefore, exempt from List I chemical controls. However, if a distributor has any reason to question a product, then the distributor has an obligation to attempt to determine whether the product meets the standard. If any person, wholesaler or otherwise, is unable to determine from the listed compendiums that a product meets the therapeutically significant criteria, then that person may contact the DEA for assistance in making such a determination.

Contents of Records and Reports

26. One comment acknowledged that most of the information required by the regulations is already maintained in general business records for all transactions. The exception is the registration number of the purchaser. The comment objected that manufacturers should not be required to inquire about the registration number of the customer so long as the legitimacy of the customer is known.

DEA attempted to design the DCDCA recordkeeping requirements to be consistent with existing business records to the extent possible, as recognized by this commentor. One step in establishing the legitimacy of a customer is determining the customer's activity with the regulated chemical and, if that activity requires registration, that the customer is registered to engage in the activity. A record of the customer's registration number confirms that the supplier has taken one of the appropriate steps to determine the legitimacy of the customer and the transaction.

27. One comment noted that the disparity between the requirements for maintenance of records for controlled substances (2 years) and List I chemicals (4 years) would compel the maintenance of separate recordkeeping systems for chemical and pharmaceutical records.

Although both laws are enforced by DEA, the chemical control requirements of the CDTA and DCDCA are entirely separate from the pharmaceutical requirements under the CSA. Each law establishes different recordkeeping standards (21 U.S.C. 827 for controlled substances and 21 U.S.C. 830 for listed chemicals), and with the exception of one List I chemical (regulated ephedrine products) there is little overlap between firms required to keep records under the two laws.

28. One comment objected to the reporting requirement in Section 1310.05(a)(2) as inappropriate. The commentor suggested that establishing a specific level for what constitutes an extraordinary quantity and subjecting a registrant to civil and criminal penalties for failing to file such reports should not be a role for DEA. DEA has not set specific levels for what constitutes extraordinary quantities for controlled substances, and should not do so for OTC drug products. Further, the pharmacist counseling provision would create a third class of drugs and would limit availability of the drugs to the public, since there are many more retailers that sell the regulated

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ephedrine products than there are pharmacies.

This reporting requirement was proposed with the intent of providing a clear standard with respect to reportable transactions involving regulated ephedrine drug products. However, the comments demonstrate that industry would prefer flexibility and discretion based on the circumstances of the transaction rather than a specific standard. Therefore, the proposed section 1310.05(a)(2) and related language in Section 1310.05(b) have been removed.

However, removal of the specific standard for reporting does not relieve regulated persons and registrants of the responsibility to report transactions involving an extraordinary quantity of a listed chemical. Registrants must review transactions involving the sale of regulated ephedrine drug products to individuals for personal use within the context of the established FDA guideline regarding the manner in which the products should be used and the appropriate dosing levels. In this regard, 375 dosage units of regulated ephedrine drug products within a calendar month for individual use provides a valid reference for registrants in determining whether additional efforts should be made to confirm the validity of a transaction.

Miscellaneous

29. Two comments were received questioning the use of the DEA Chemical Code Numbers set forth in Section 1310.02, rather than the familiar Chemical Abstract Services (CAS) or Harmonized Tariff System, (HTS) Numbers.

DEA has reviewed these numbering systems and determined that they were designed for other purposes and that their use could lead to confusion and jeopardize the accuracy of the information reported to DEA. In the HTS numbering system there are multiple chemicals that are assigned the same number and in the CAS numbering system that are chemicals that are assigned multiple codes. DEA has produced and made available a chemical reference guide that provides a cross reference to the CAS and HTS numbers, which will be updated to include the new Chemical Code Numbers.

With respect to the chemical codes, DEA discovered, following publication of the NPRM, that the Chemical Code Numbers assigned to Benzyl Chloride (8568) and Benzyl Cyanide (8570) were incorrect. The correct Chemical Code Number for Benzyl Chloride is 8570 and for Benzly Cyanide is 8735. These corrections have been made in this final order.

30. Three comments were submitted regarding the addition of new chemicals to List I or List II. The first comment questioned the addition of hydrochloric and sulfuric acid to List II without any justification. The second questioned the addition of benzaldehyde and nitroethane without specific justification of the addition or the thresholds. The third recommended that DEA continue to publish the proposed addition of any new chemicals for notice and comment and suggested that DEA hold public hearings on the proposed addition of new chemicals.

With respect to the hydrochloric and sulfuric acid, these chemicals were added to List II by final order published in the **Federal Register** on September 22, 1992 (57 FR 43615). The justification for the action was provided in the **Federal Register** notice regarding the addition of the two chemicals. With respect to nitroethane and benzaldehyde, Section 8 of the DCDCA amended Section 802(34) of the CSA to add the chemicals to List I; there addition to Section 1310.02 is simply a conforming amendment. Regarding the thresholds, benzaldehyde and nitroethane are diverted and used in clandestine laboratories for the illicit manufacture of controlled stimulants in a manner similar to other List I chemicals. These other chemicals, with the exception of ephedrine, have established threshold levels that were based on a review of data regarding the quantities distributed and used licitly, the quantities diverted and used illicitly, and the amount of each chemical necessary to synthesize a certain amount of controlled substance. DEA has reviewed the same type of data for benzaldehyde and nitroethane and found that the data supported the establishment of similar thresholds for the two chemicals. The specific thresholds of 4 kilograms for benzaldehyde and 2.5 kilograms for nitroethane were based on the licit and illicit uses of the two chemicals, and are consistent with the thresholds set for other List I chemicals used in the illicit production of controlled stimulants. Regarding the third comment, Section 1310.02 already clearly establishes that any proposed addition or deletion of chemicals from List I or List II must be published in the **Federal Register** with opportunity for public comment. It has been DEA's experience that the notice and comment procedure provides a satisfactory opportunity for affected persons to provide important information and advice regarding the proposed action. The comment period also satisfies the compelling need for quick response while providing DEA the option to extend the comment period, should the need for additional comment arise.

31. Two comments argued that DEA cannot regulate "herb-containing dietary supplements and herbs containing Ephedra and its alkaloids" on the grounds that the products are dietary or nutritional supplements and not drugs.

The CDTA and DCDCA define and establish controls over List I and List II chemicals. Under these acts, the only exceptions to the application of regulatory controls over products containing listed chemicals are for certain drug products that are lawfully marketed under the Food, Drug and Cosmetic Act (21 U.S.C. 802(39)(A)(iv)) and for chemical mixtures. Within this context, DEA has reviewed the issue of ephedra, e.g., the entire plant or the overground portion the ephedra plant and determined that the unprocessed plant material ephedra and products containing the unprocessed plant material ephedra are not subject to the regulatory provisions of the CDTA and DCDCA. However, preparations of the ephedra plant, such as extracts and concentrates, that contain ephedrine, do fall within the definition of *chemical mixture* (21 C.F.R. 1310.01(g)), thus, they are subject to the regulations as they apply to chemical mixtures. Chemical mixtures are currently exempt from the regulatory provisions of the CDTA and DCDCA, pending promulgation of regulations concerning the exemption of chemical mixtures.

32. One comment requested clarification of what constitutes "unusual or excessive loss or disappearance of a listed chemical."

This term applies to circumstances that appear to be outside the framework of normal business occurrences. Regulated persons and registrants understand the nature of their chemical activities and should be able to make informed decisions as to whether the above term applies to conditions they may encounter and to be able to explain their decision sufficiently to convince a "reasonable person."

33. One comment requested clarification of the term transshipments.

For purposes of DEA's regulations, a transshipment is an exportation of a listed chemical from one foreign country to another foreign country, which exportation transits the jurisdiction of the United States.

34. Two comments questioned the format of paragraphs (f)(1)(iv)(B) and (f)(1)(iv)(C) of Section 1310.01. The first noted that while the present format suggests independent subjects, the use of "and" at the end of (B) implies that (C) is a subpart of (B). A second comment suggested that paragraph (f)(1)(iv)(B) should contain a reference to Section 1310.10, which sets the criteria for removal of the exemption.

DEA agrees. The two paragraphs have been redesignated as paragraphs (f)(1)(iv)(B)(*1*) and (f)(1)(iv)(B)(*2*) of Section 1310.01, and the appropriate citation to Section 1310.10 will be included. Further, in order to keep the language of the section consistent with the language of the DCDCA, the period at the end of Section 1310.01(f)(1)(iv)(A)(*4*) will be deleted and "; or " will be inserted in its place.

35. One comment requested clarification of the term "imminent danger" as used in the revocation provisions as uses in Section 1309.44.

The term "imminent danger", as used in Section 1309.44, refers to actions by a registrant that demonstrate a flagrant indifference to and disregard for the law and the health and safety of the public. There are no specific criteria for determining what constitutes "imminent danger". However, interested persons may wish to review the **Federal Register** for past notices of suspension of controlled substance registrations. In any action under this section related to the activities of a specific registrant, DEA will list the facts that are considered to present an imminent danger.

36. One comment requested clarification of Section 1310.01(f)(1)(ii), with specific emphasis on whether a common or contract carrier would be required to register with DEA for activities involving the delivery of a listed chemical either to or by the carrier.

Section 1310.01(f)(1)(ii) specifically excludes the delivery of a listed chemical by a common or contract carrier for carriage in the lawful and usual course of business from the definition of a regulated transaction. The common or contract carrier is not subject to the registration requirement when transporting chemicals on a registrant's behalf. The registrant remains responsible for the listed chemicals until they are delivered to and accepted by the consignee. In this regard, it is important that a registrant take reasonable measures to insure that any common or contract carrier used to ship listed chemicals to customers will provide adequate security against in-transit losses or thefts.

37. Two comments questioned the provisions in Sections 1310.11(b) and 1310.15(b), which establish recordkeeping and reporting requirements for regulated persons who manufacture exempted drug products, on the grounds that a person who manufactures an exempted drug product is not a regulated person.

The referenced sections as well as Section 1310.13(b), were written with respect to a regulated person who also manufactures an exempted drug product. Upon further consideration, DEA has determined that regulated persons should not be required, solely because of their status as a regulated person, to keep records and make reports of transactions that would otherwise be exempted from those requirements. Sections 1310.11(b), 1310.13(b) and 1310.15(b) have been removed.

38. One comment requested clarification of Section 1309.45 and raised questions regarding procedures to be followed if an application for registration renewal form (DEA Form 510a) is not received in a timely manner.

Section 1309.45 applies only to a registrant who is subject to action by the Administrator to revoke or suspend his or her registration. If the registrant submits a renewal application within the prescribed time period and the Administrator has not issued a final order suspending or revoking the registration, then the registration is deemed to continue in effect until the Administrator issues his final order. As to renewal in circumstances other than those set out in Section 1309.45, Section 1309.32(c) establishes the procedures. DEA will mail out renewal notices to registrants approximately 60 days prior to the date of expiration. If a registrant has not received their renewal notice within 45 days of their expiration date, then a written request for a replacement form must be provided to DEA. A properly completed renewal application and fee must be received by DEA prior to the registrant's expiration date if registration is to be continued without interruption. If a registration is allowed to expire, the registrant is no longer authorized to distribute, import or export a List I chemical. DEA will mail delinquency notices to expired registrants approximately 90 days after the expiration date.

39. One comment questioned the DEA's placing priority on the completion of pre-registration investigations of non-retail firms while DEA's **Federal Register** notice of March 17, 1994 (59 FR 12562, Elimination of Threshold for Ephedrine) focused on the diversion of ephedrine tablets at the retail level. The comment also questioned why DEA has proposed steps to lessen the impact on retail distributors and yet has not specifically proposed steps to lessen the impact on non-retail distributors.

By directing its focus at the non-retail level during the initial registration phase, DEA will identify those firms that have failed to adequately identify their customers or have been shipping to questionable retail firms. With this information, DEA can focus its initial retail investigations on the most likely sources of diversion. With respect to the second question, DEA has taken steps to limit the impact of the chemical controls on all persons. The exemption from the registration requirement in Section 1309.25 applies to any person, either retail or non-retail, registered with DEA to handle controlled substances, who also engages in activities with regulated ephedrine drug products. Further, DEA has attempted to design the chemical control requirements to be consistent with existing business practices, as noted in comment number 26 with respect to the recordkeeping requirements.

40. One comment objected to the exclusion of mail order activities from the definition of retail distribution.

As noted in the supplemental information to the NPRM, retail distributors engage in a limited activity as regulated by the DCDCA. The amounts of product distributed per transaction are generally small and sales are to individuals only. By contrast, it has been DEA's experience that mail order distributors of ephedrine drug products that are regulated deal with both individuals and businesses and the volume of sales and product can be quite large. Additionally, such firms are often less readily able to positively identify their customers. Investigations will be significantly more complex and time consuming for a mail order distributor than for a retail distributor. It is appropriate that mail order activities remain classified as distributors rather than retail distributors.

Protection of Confidential Business Information

41. Four comments expressed concern regarding the safeguarding of confidential business information (CBI) that will be collected by DEA in connection with chemical control activities. Two of the comments suggested that DEA establish specific and strong provisions regarding protection of CBI.

DEA operates national diversion control programs related to controlled substances and listed chemicals. The controlled substance program has been in effect since the early 1970's and the chemical program since the late 1980's.

In each program, DEA collects CBI in the course of investigations and required reporting. With respect to the chemical program, the release of CBI that is protected from disclosure under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4) (FOIA), is governed by Section 830(c) of the CSA (21 U.S.C. 830(c)) and the Department of Justice procedures set forth in 28 CFR 16.7.

Section 830(c) provides that information collected under Section 830 that is protected from disclosure under Exemption 4 may only be released in circumstances related to the enforcement of controlled substance or chemical laws, customs laws, or for compliance with U.S. obligations under treaty or international agreements. The Department of Justice procedures establish that if a FOIA request is received for release of information that is protected under Exemption 4, the submitter of the protected information must be notified of such a request, given an opportunity to object to the disclosure and allowed to provide justification as to why the information should not be disclosed.

In addition to the statutory and regulatory requirements, DEA has established internal guidelines governing the handling of CBI, including provisions that the material be maintained in locked containers, that access to the information be on a need-to-know basis, and that any disclosure under Section 830 be made only pursuant to a non-disclosure agreement by the receiving party.

This regulation has been drafted and reviewed in accordance with Executive Order 12866, Section 1(b), Principals of Regulation. The DEA has determined that this rule is a significant regulatory action under Executive Order 12866, Section 3(f), Regulatory Planning and Review, and accordingly this rule has been reviewed by the Office of Management and Budget.

This action has been analyzed in accordance with the principles and criteria in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

21 CFR Part 1307

Drug traffic control.

21 CFR Part 1309

Administrative practice and procedure, Drug Traffic Control, Security measures, List I and List II chemicals.

21 CFR Part 1310

Drug Traffic Control, Reporting Requirements, List I and List II chemicals.

21 CFR Part 1313

Drug Traffic Control, Imports, Exports, Transshipment and in-transit shipments, List I and List II Chemicals.

21 CFR Part 1316

Administrative practice and procedure, Drug Traffic Control, Research, Seizures and forfeitures.

For the reasons set out above, 21 CFR Parts 1307, 1309, 1310, 1313 and 1316 are amended as follows:

PART 1307—[AMENDED]

1. The authority citation for part 1307 continues to read as follows:

Authority: 21 U.S.C. 821, 822(d), 871(b), unless otherwise noted.

2. Section 1307.03 is revised to read as follows:

§ 1307.03 Exceptions to regulations.

Any person may apply for an exception to the application of any provision of parts 1301–1313, or 1316 of this chapter by filing a written request stating the reasons for such exception. Requests shall be filed with the Administrator, Drug Enforcement Administration, Department of Justice, Washington, D.C. 20537. The Administrator may grant an exception in his discretion, but in no case shall he be required to grant an exception to any person which is not otherwise required by law or the regulations cited in this section.

1. 21 CFR Part 1309 is added to read as follows:

PART 1309—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS, IMPORTERS AND EXPORTERS OF LIST I CHEMICALS

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1309.32 Application forms; contents, signature.
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1309.41 Administrative review generally.
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1309.46 Order to show cause.

Hearings

1309.51 Hearings generally.
1309.52 Purpose of hearing.
1309.53 Waiver or modification of rules.
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1309.56 Time and place of hearing.
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Modification, Transfer and Termination of Registration

1309.61 Modification in registration.
1309.62 Termination of registration.
1309.63 Transfer of registration.

Security Requirements

1309.71 General security requirements.
1309.72 Felony conviction; employer responsibilities.
1309.73 Employee responsibility to report diversion.

Authority: 21 U.S.C. 821, 822, 823, 824, 830, 871(b), 875, 877, 958.

General Information

§ 1309.01 Scope of Part 1309.

Procedures governing the registration of manufacturers, distributors, importers and exporters of List I chemicals pursuant to Sections 102, 302, 303, 1007 and 1008 of the Act (21 U.S.C. 802, 822, 823, 957 and 958) are set forth generally by those sections and specifically by the sections of this part.

§ 1309.02 Definitions.

(a) The term *Act* means the Controlled Substances Act (84 Stat. 1242; 21 U.S.C. 801) and/or the Controlled Substances Import and Export Act (84 Stat. 1285; 21 U.S.C. 951).

(b) The term *hearing* means any hearing held pursuant to the part for the granting, denial, revocation, or suspension of a registration pursuant to sections 303 and 304 of the Act (21 U.S.C. 823–824).

(c) The term *person* includes any individual, corporation, government or governmental subdivision or agency, business trust, partnership, association, or other legal entity.

(d) The term *register* and *registration* refer only to registration required and permitted by sections 302 and 1007 of the Act (21 U.S.C. 822 and 957).

(f) The term *registrant* means any person who is registered pursuant to either section 303 or section 1008 of the Act (21 U.S.C. 823 and 958).

(g) The term *retail distributor* means a distributor whose List I chemical activities are restricted to the sale of drug products that are regulated as List I chemicals pursuant to Section 1310.01(f)(1)(iv), directly to walk-in customers for personal use.

(h) Any term not defined in this section shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) or in Sections 1310.01 and 1313.02 of this chapter.

§ 1309.03 Information; special instructions.

Information regarding procedures under these rules and instructions supplementing these rules will be furnished upon request by writing to the Drug Enforcement Administration, Chemical Operations Section, Office of Diversion Control, Washington, D.C. 20537.

Fees for Registration and Reregistration

§ 1309.11 Fee amounts.

(a) For each initial registration to manufacture for distribution, distribute, import, or export, the applicant shall pay a fee of $595 for a annual registration.

(b) For each reregistration to manufacture for distribution, distribute, import, or export, the registrant shall pay a fee of $477 for an annual registration.

(c) For each initial registration to conduct business as a retail distributor the applicant shall pay an application processing fee of $7 and an investigation fee of $248, for an annual registration.

(d) For each reregistration to conduct business as a retail distributor the registrant shall pay a fee of $116.

§ 1309.12 Time and method of payment; refund.

(a) For each application for registration or reregistration to manufacture for distribution, distribute, import, or export, the applicant shall pay the fee when the application for registration or reregistration is submitted for filing.

(b) For retail the distributor initial applications, the applicant shall pay the application processing fee when the application for registration is submitted for filing. The investigation fee shall be paid within 30 days DEA notifies the applicant that the preregistration investigation has been scheduled.

(c) For retail distributor reregistration applications, the registrant shall pay the fee when the application for reregistration is submitted for filing.

(d) Payments should be made in the form of a personal, certified, or cashier's check or money order made payable to "Drug Enforcement Administration." Payments made in the form of stamps, foreign currency, or third party endorsed checks will not be accepted. These application fees are not refundable.

Requirements for Registration

§ 1309.21 Persons required to register.

(a) Every person who distributes, imports, or exports any List I chemical, other than those List I chemicals contained in a product exempted under § 1310.01(f)(1)(iv), or who proposes to engage in the distribution, importation, or exportation of any List I chemical, shall obtain annually a registration specific to the List I chemicals to be handled, unless exempted by law or pursuant to §§ 1309.24 through 1309.27. Only persons actually engaged in such activities are required to obtain a registration; related or affiliated persons who are not engaged in such activities are not required to be registered. (For example, a stockholder or parent corporation of a corporation distributing List I chemicals is not required to obtain a registration.)

(b) Every person who distributes or exports a List I chemical they have manufactured, other than a List I chemical contained in a product exempted under § 1310.01(f)(1)(iv), or proposes to distribute or export a List I chemical they have manufactured, shall obtain annually a registration specific to the List I chemicals to be handled, unless exempted by law or pursuant to §§ 1309.24 through 1309.27.

§ 1309.22 Separate registration for independent activities.

(a) The following groups of activities are deemed to be independent of each other:

(1) Retail distributing of List I chemicals;

(2) Non-Retail distributing of List I chemicals;

(3) Importing List I chemicals; and

(4) Exporting List I chemicals.

(b) Every person who engages in more than one group of independent activities shall obtain a separate registration for each group of activities, unless otherwise exempted by the Act or §§ 1309.24 through 1309.26, except that a person registered to import any List I chemical shall be authorized to distribute that List I chemical after importation, but no other chemical that the person is not registered to import.

§ 1309.23 Separate registration for separate locations.

(a) A separate registration is required for each principal place of business at one general physical location where List I chemicals are distributed, imported, or exported by a person.

(b) The following locations shall be deemed to be places not subject to the registration requirement:

(1) A warehouse where List I chemicals are stored by or on behalf of a registered person, unless such chemicals are distributed directly from such warehouse to locations other than the registered location from which the chemicals were originally delivered; and

(2) An office used by agents of a registrant where sales of List I chemicals are solicited, made, or supervised but which neither contains such chemicals (other than chemicals for display purposes) nor serves as a distribution point for filling sales orders.

§ 1309.24 Exemption of agents and employees.

The requirement of registration is waived for any agent or employee of a person who is registered to engage in any group of independent activities, if such agent or employee is acting in the usual course of his or her business or employment.

§ 1309.25 Exemption of certain controlled substance registrants.

(a) The requirement of registration is waived for any person who distributes a product containing a List I chemical that is regulated pursuant to § 1310.01(f)(1)(iv), if that person is registered with the Administration to manufacture, distribute or dispense a controlled substance.

(b) The requirement of registration is waived for any person who imports or exports a product containing a List I chemical that is regulated pursuant to § 1310.01(f)(1)(iv), if that person is registered with the Administration to engage in the same activity with a controlled substance.

(c) The Administrator may, upon finding that continuation of the waiver would not be in the public interest, suspend or revoke a person's waiver

pursuant to the procedures set forth in §§ 1309.43 through 1309.46 and 1309.51 through 1309.57. In considering the revocation or suspension of a person's waiver, the Administrator shall also consider whether action to revoke or suspend the person's controlled substance registration pursuant to 21 U.S.C. 824 is warranted.

(d) Any person exempted from the registration requirement under this section shall comply with the security requirements set forth in Sections 1309.71–1309.73 and the recordkeeping and reporting requirements set forth under Parts 1310 and 1313 of this chapter.

§ 1309.26 Exemption of law enforcement officials.

(a) The requirement of registration is waived for the following persons in the circumstances described in this section:

(1) Any officer or employee of the Administration, any officer of the U.S. Customs Service, any officer or employee of the United States Food and Drug Administration, any other Federal officer who is lawfully engaged in the enforcement of any Federal law relating to listed chemicals, controlled substances, drugs or customs, and is duly authorized to possess and distribute List I chemicals in the course of official duties; and

(2) Any officer or employee of any State, or any political subdivision or agency thereof, who is engaged in the enforcement of any State or local law relating to listed chemicals and controlled substances and is duly authorized to possess and distribute List I chemicals in the course of his official duties.

(b) Any official exempted by this section may, when acting in the course of official duties, possess any List I chemical and distribute any such chemical to any other official who is also exempted by this section and acting in the course of official duties.

§ 1309.27 Exemption of certain manufacturers.

The requirement of registration is waived for any manufacturer of a List I chemical, if that chemical is produced solely for internal consumption by the manufacturer and there is no subsequent distribution or exportation of the List I chemical.

Application for Registration

§ 1309.31 Time for application for registration; expiration date.

(a) Any person who is required to be registered and who is not so registered may apply for registration at any time. No person required to be registered shall engage in any activity for which registration is required until the application for registration is approved and a Certificate of Registration is issued by the Administrator to such person.

(b) Any person who is registered may apply to be reregistered not more than 60 days before the expiration date of his registration.

(c) At the time a person is first registered, that person shall be assigned to one of twelve groups, which shall correspond to the months of the year. The expiration date of the registrations of all registrants within any group will be the last day of the month designated for that group. In assigning any of the above persons to a group, the Administration may select a group the expiration date of which is less than one year from the date such business activity was registered. If the person is assigned to a group which has an expiration date less than eleven months from the date of which the person is registered, the registration shall not expire until one year from that expiration date; in all other cases, the registration shall expire on the expiration date following the date on which the person is registered.

§ 1309.32 Application forms; contents; signature.

(a) Any person who is required to be registered pursuant to Section 1309.21 and is not so registered, shall apply on DEA Form 510.

(b) Any person who is registered pursuant to Section 1309.21, shall apply for reregistration on DEA Form 510a.

(c) DEA Form 510 may be obtained at any divisional office of the Administration or by writing to the Registration Unit, Drug Enforcement Administration, Department of Justice, Post Office Box 28083, Central Station, Washington, DC 20005. DEA Form 510a will be mailed to each List I chemical registrant approximately 60 days before the expiration date of his or her registration; if any registered person does not receive such forms within 45 days before the expiration date of the registration, notice must be promptly given of such fact and DEA Form 510a must be requested by writing to the Registration Unit of the Administration at the foregoing address.

(d) Each application for registration shall include the Administration Chemical Code Number, as set forth in Section 1310.02 of this chapter, for each List I chemical to be distributed, imported, or exported.

(e) Registration shall not entitle a person to engage in any activity with any List I chemical not specified in his or her application.

(f) Each application shall include all information called for in the form, unless the item is not applicable, in which case this fact shall be indicated.

(g) Each application, attachment, or other document filed as part of an application, shall be signed by the applicant, if an individual; by a partner of the applicant, if a partnership; or by an officer of the applicant, if a corporation, corporate division, association, trust or other entity. An applicant may authorize one or more individuals, who would not otherwise be authorized to do so, to sign applications for the applicant by filing with the application or other document a power of attorney for each such individual. The power of attorney shall be signed by a person who is authorized to sign applications under this paragraph and shall contain the signature of the individual being authorized to sign the application or other document. The power of attorney shall be valid until revoked by the applicant.

§ 1309.33 Filing of application; joint filings.

(a) All applications for registration shall be submitted for filing to the Registration Unit, Drug Enforcement Administration, Chemical Registration/ODC, Post Office Box 2427, Arlington, Virginia 22202–2427. The appropriate registration fee and any required attachments must accompany the application.

(b) Any person required to obtain more than one registration may submit all applications in one package. Each application must be complete and must not refer to any accompanying application for required information.

§ 1309.34 Acceptance for filing; defective applications.

(a) Applications submitted for filing are dated upon receipt. If found to be complete, the application will be accepted for filing. Applications failing to comply with the requirements of this part will not generally be accepted for filing. In the case of minor defects as to completeness, the Administrator may accept the application for filing with a request to the applicant for additional information. A defective application will be returned to the applicant within 10 days of receipt with a statement of the reason for not accepting the application for filing. A defective application may be corrected and resubmitted for filing at any time.

(b) Accepting an application for filing does not preclude any subsequent request for additional information pursuant to Section 1309.35 and has no bearing on whether the application will be granted.

§ 1309.35 Additional information.

The Administrator may require an applicant to submit such documents or written statements of fact relevant to the application as he deems necessary to determine whether the application should be granted. The failure of the applicant to provide such documents or statements within a reasonable time after being requested to do so shall be deemed to be a waiver by the applicant of an opportunity to present such documents or facts for consideration by the Administrator in granting or denying the application.

§ 1309.36 Amendments to and withdrawals of applications.

(a) An application may be amended or withdrawn without permission of the Administration at any time before the date on which the applicant receives an order to show cause pursuant to § 1309.46. An application may be amended or withdrawn with permission of the Administrator at any time where good cause is shown by the applicant or where the amendment or withdrawal is in the public interest.

(b) After an application has been accepted for filing, the request by the applicant that it be returned or the failure of the applicant to respond to official correspondence regarding the application, including a request that the applicant submit the required fee, when sent by registered or certified mail, return receipt requested, shall be deemed to be a withdrawal of the application.

Action on Applications for Registration: Revocation or Suspension of Registration

§ 1309.41 Administrative review generally.

The Administrator may inspect, or cause to be inspected, the establishment of an applicant or registrant, pursuant to subpart A of Part 1316 of this chapter. The Administrator shall review the application for registration and other information gathered by the Administrator regarding an applicant in order to determine whether the applicable standards of Section 303 of the Act (21 U.S.C. 823) have been met by the applicant.

§ 1309.42 Certificate of registration; denial of registration.

(a) The Administrator shall issue a Certificate of Registration (DEA Form 511) to an applicant if the issuance of registration or reregistration is required under the applicable provisions of section 303 of the Act (21 U.S.C. 823). In the event that the issuance of registration or reregistration is not required, the Administrator shall deny the application. Before denying any application, the Administrator shall issue an order to show cause pursuant to Section 1309.46 and, if requested by the applicant, shall hold a hearing on the application pursuant to § 1309.51.

(b) The Certificate of Registration (DEA Form 511) shall contain the name, address, and registration number of the registrant, the activity authorized by the registration, the amount of fee paid, and the expiration date of the registration. The registrant shall maintain the certificate of registration at the registered location in a readily retrievable manner and shall permit inspection of the certificate by any official, agent or employee of the Administration or of any Federal, State, or local agency engaged in enforcement of laws relating to List I chemicals or controlled substances.

§ 1309.43 Suspension or revocation of registration.

(a) The Administrator may suspend any registration pursuant to section 304(a) of the Act (21 U.S.C. 824(a)) for any period of time he determines.

(b) The Administrator may revoke any registration pursuant to section 304(a) of the Act (21 U.S.C. 824(a)).

(c) Before revoking or suspending any registration, the Administrator shall issue an order to show cause pursuant to Section 1309.46 and, if requested by the registrant, shall hold a hearing pursuant to Section 1309.51. Notwithstanding the requirements of this Section, however, the Administrator may suspend any registration pending a final order pursuant to § 1309.44.

(d) Upon service of the order of the Administrator suspending or revoking registration, the registrant shall immediately deliver his or her Certificate of Registration to the nearest office of the Administration.

§ 1309.44 Suspension of registration pending final order.

(a) The Administrator may suspend any registration simultaneously with or at any time subsequent to the service upon the registrant of an order to show cause why such registration should not be revoked or suspended, in any case where he finds that there is an imminent danger to the public health or safety. If the Administrator so suspends, he shall serve with the order to show cause pursuant to § 1309.46 an order of immediate suspension that shall contain a statement of his findings regarding the danger to public health or safety.

(b) Upon service of the order of immediate suspension, the registrant shall promptly return his Certificate of Registration to the nearest office of the Administration.

(c) Any suspension shall continue in effect until the conclusion of all proceedings upon the revocation or suspension, including any judicial review thereof, unless sooner withdrawn by the Administrator or dissolved by a court of competent jurisdiction. Any registrant whose registration is suspended under this section may request a hearing on the revocation or suspension of his registration at a time earlier than specified in the order to show cause pursuant to Section 1309.46, which request shall be granted by the Administrator, who shall fix a date for such hearing as early as reasonably possible.

§ 1309.45 Extension of registration pending final order.

In the event that an applicant for reregistration (who is doing business under a registration previously granted and not revoked or suspended) has applied for reregistration at least 45 days before the date on which the existing registration is due to expire, and the Administrator has issued no order on the application on the date on which the existing registration is due to expire, the existing registration of the applicant shall automatically be extended and continue in effect until the date on which the Administrator so issues his order. The Administrator may extend any other existing registration under the circumstances contemplated in this section even though the registrant failed to apply for reregistration at least 45 days before expiration of the existing registration, with or without request by the registrant, if the Administrator finds that such extension is not inconsistent with the public health and safety.

§ 1309.46 Order to show cause.

(a) If, upon examination of the application for registration from any applicant and other information gathered by the Administration regarding the applicant, the Administrator is unable to make the determinations required by the applicable provisions of section 303 of the Act (21 U.S.C. 823) to register the applicant, the Administrator shall serve upon the applicant an order to show cause why the application for registration should not be denied.

(b) If, upon information gathered by the Administration regarding any registrant, the Administrator determines that the registration of such registrant is subject to suspension or revocation pursuant to section 304 of the Act (21 U.S.C. 824), the Administrator shall serve upon the registrant an order to show cause why the registration should not be revoked or suspended.

(c) The order to show cause shall call upon the applicant or registrant to appear before the Administrator at a time and place stated in the order, which shall not be less than 30 days after the date of receipt of the order. The order to show cause shall also contain a statement of the legal basis for such hearing and for the denial, revocation, or suspension of registration and a summary of the matters of fact and law asserted.

(d) Upon Receipt of an order to show cause, the applicant or registrant must, if he desires a hearing, file a request for a hearing pursuant to § 1309.54. If a hearing is requested, the Administrator shall hold a hearing at the time and place stated in the order, pursuant to § 1309.51.

(e) When authorized by the Administrator, any agent of the Administration may serve the order to show cause.

Hearings

§ 1309.51 Hearings generally.

(a) in any case where the Administrator shall hold a hearing on any registration or application therefore, the procedures for such hearing shall be governed generally by the adjudication procedures set forth in the Administrative Procedure Act (5 U.S.C. 551–559) and specifically by sections 303 and 304 of the Act (21 U.S.C. 823–824), by §§ 1309.52 through 1309.57, and by the procedures for administrative hearings under the Act set forth in §§ 1316.41 through 1316.67 of this chapter.

(b) Any hearing under this part shall be independent of, and not in lieu of, criminal prosecutions or other proceedings under the Act or any other law of the United States.

§ 1309.52 Purpose of hearing.

If requested by a person entitled to a hearing, the Administrator shall hold a hearing for the purpose of receiving factual evidence regarding the issues involved in the denial, revocation, or suspension of any registration. Extensive argument should not be offered into evidence but rather presented in opening or closing statements of counsel or in memoranda or proposed findings of fact and conclusions of law.

§ 1309.53 Waiver or modification of rules.

The Administrator or the presiding officer (with respect to matters pending before him) may modify or waive any rule in this part by notice in advance of the hearing, if he determines that no party in the hearing will be unduly prejudiced and the ends of justice will thereby be served. Such notice of modification or waiver shall be made a part of the record of the hearing.

§ 1309.54 Request for hearing or appearance; waiver.

(a) Any person entitled to a hearing pursuant to §§ 1309.42 and 1309.43 and desiring a hearing shall, within 30 days after the date of receipt of the order to show cause, file with the Administrator a written request for a hearing in the form prescribed in § 1316.47 of this chapter.

(b) Any person entitled to a hearing pursuant to §§ 1309.42 and 1309.43 may, within the period permitted for filing a request for a hearing, file with the Administrator a waiver of an opportunity for a hearing, together with a written statement regarding his position on the matters of fact and law involved in such hearing. Such statement, if admissible, shall be made a part of the record and shall be considered in light of the lack of opportunity for cross-examination in determining the weight to be attached to matters of fact asserted therein.

(c) If any person entitled to a hearing pursuant to §§ 1309.42 and 1309.43 fails to file a request for a hearing, or if he so files and fails to appear at the hearing, he shall be deemed to have waived his opportunity for the hearing, unless he shows good cause for such failure.

(d) If any person entitled to a hearing waives or is deemed to waive his or her opportunity for the hearing, the Administrator may cancel the hearing, if scheduled, and issue his final order pursuant to § 1309.57 without a hearing.

§ 1309.55 Burden of proof.

(a) At any hearing for the denial of a registration, the Administration shall have the burden of proving that the requirements for such registration pursuant to section 303 of the Act (21 U.S.C. 823) are not satisfied.

(b) At any hearing for the revocation or suspension of a registration, the Administration shall have the burden of proving that the requirements for such revocation or suspension pursuant to section 304(a) of the Act (21 U.S.C. 824(a)) are satisfied.

§ 1309.56 Time and place of hearing.

The hearing will commence at the place and time designated in the order to show cause or notice of hearing published in the **Federal Register** (unless expedited pursuant to Section 1309.44(c)) but thereafter it may be moved to a different place and may be continued from day to day or recessed to a later day without notice other than announcement thereof by the presiding officer at the hearing.

§ 1309.57 Final order.

As soon as practicable after the presiding officer has certified the record to the Administrator, the Administrator shall cause to be published in the **Federal Register** his final order in the proceeding, which shall set forth the final rule and the findings of fact and conclusions of law upon which the rule is based. This order shall specify the date on which it shall take effect, which date shall not be less than 30 days from the date of publication in the **Federal Register** unless the Administrator finds that the public interest in the matter necessitates an earlier effective date, in which case the Administrator shall specify in the order his findings as to the conditions which led him to conclude that an earlier effective date was required.

Modification, Transfer and Termination of Registration

§ 1309.61 Modification in registration.

Any registrant may apply to modify his or her registration to authorize the handling of additional List I chemicals or to change his or her name or address, by submitting a letter of request to the Drug Enforcement Administration, Chemical Registration/ODC, Post Office Box 2427, Arlington, Virginia 22202–2427. The letter shall contain the registrant's name, address, and registration number as printed on the certificate of registration, and the List I chemicals to be added to his registration or the new name or address and shall be signed in accordance with § 1309.32(g). No fee shall be required to be paid for the modification. The request for modification shall be handled in the same manner as an application for registration. If the modification in registration is approved, the Administrator shall issue a new certificate of registration (DEA Form 511) to the registrant, who shall maintain it with the old certificate of registration until expiration.

§ 1309.62 Termination of registration.

The registration of any person shall terminate if and when such person dies, ceases legal existence, or discontinues business or professional practice. Any registrant who ceases legal existence or discontinues business or professional practice shall notify the Administrator promptly of such fact.

§ 1309.63 Transfer of registration.

No registration or any authority conferred thereby shall be assigned or otherwise transferred except upon such conditions as the Administrator may specifically designate and then only pursuant to his written consent.

Security Requirements

§ 1309.71 General security requirements.

(a) All applicants and registrants shall provide effective controls and procedures to guard against theft and diversion of List I chemicals. Specific attention shall be paid to storage of and controlling access to List I chemicals as follows:

(1) Chemicals shall be stored in containers sealed in such a manner as to indicate any attempts at tampering with the container. Where chemicals cannot be stored in sealed containers, access to the chemicals should be controlled through physical means or through human or electronic monitoring.

(2) In retail settings open to the public where drugs containing List I chemicals that are regulated pursuant to § 1310.01(f)(1)(iv) are distributed, such drugs will be stocked behind a counter where only employees have access.

(b) In evaluating the effectiveness of security controls and procedures, the Administrator shall consider the following factors:

(1) The type, form, and quantity of List I chemicals handled;

(2) The location of the premises and the relationship such location bears on the security needs;

(3) The type of building construction comprising the facility and the general characteristics of the building or buildings;

(4) The availability of electronic detection and alarm systems;

(5) the extent of unsupervised public access to the facility;

(6) The adequacy of supervision over employees having access to List I chemicals;

(7) The procedures for handling business guests, visitors, maintenance personnel, and nonemployee service personnel in areas where List I chemicals are processed or stored;

(8) The adequacy of the registrant's or applicant's systems for monitoring the receipt, distribution, and disposition of List I chemicals in its operations.

(c) Any registrant or applicant desiring to determine whether a proposed system of security controls and procedures is adequate may submit materials and plans regarding the proposed security controls and procedures either to the Special Agent in Charge in the region in which the security controls and procedures will be used, or to the Chemical Operations Section Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537.

§ 1309.72 Felony conviction; employer responsibilities.

(a) The registrant shall exercise caution in the consideration of employment of persons who will have access to listed chemicals, who have been convicted of a felony offense relating to controlled substances or listed chemicals, or who have, at any time, had an application for registration with the DEA denied, had a DEA registration revoked, or surrendered a DEA registration for cause. (For purposes of this subsection, the term "for cause" means a surrender in lieu of, or as a consequence of, any Federal or State administrative, civil or criminal action resulting from an investigation of the individual's handling of controlled substances or listed chemicals.) The registrant should be aware of the circumstances regarding the action against the potential employee and the rehabilitative efforts following the action. The registrant shall assess the risks involved in employing such persons, including the potential for action against the registrant pursuant to § 1309.43, If such person is found to have diverted listed chemicals, and, in the event of employment, shall institute procedures to limit the potential for diversion of List I chemicals.

(b) It is the position of DEA that employees who possess, sell, use or divert listed chemicals or controlled substances will subject themselves not only to State or Federal prosecution for any illicit activity, but shall also immediately become the subject of independent action regarding their continued employment. The employer will assess the seriousness of the employee's violation, the position of responsibility held by the employee, past record of employment, etc., in determining whether to suspend, transfer, terminate or take other action against the employee.

§ 1309.73 Employee responsibility to report diversion.

Reports of listed chemical diversion by fellow employees is not only a necessary part of an overall employee security program but also serves the public interest at large. It is, therefore, the position of DEA that an employee who has knowledge of diversion from his employer by a fellow employee has an obligation to report such information to a responsible security official of the employer. The employer shall treat such information as confidential and shall take all reasonable steps to protect the confidentiality of the information and the identity of the employee furnishing information. A failure to report information of chemical diversion will be considered in determining the feasibility of continuing to allow an employee to work in an area with access to chemicals. The employer shall inform all employees concerning this policy.

PART 1310—[AMENDED]

1. The authority citation for part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b).

2. Section 1310.01 is amended by revising paragraphs (b), (c), (d), (e), (f)(1) and (g), redesignating paragraph (k) as paragraph (m) and inserting new paragraphs (k) and (l) as follows:

§ 1310.01 Definitions.

* * * * *

(b) The term *listed chemical* means any List I chemical or List II chemical.

(c) The term *List I chemical* means a chemical specifically designated by the Administrator in § 1310.02(a) that, in addition to legitimate uses, is used in manufacturing a controlled substance in violation of the Act and is important to the manufacture of a controlled substance.

(d) The term *List II chemical* means a chemical, other than a List I chemical, specifically designated by the Administrator in Section 1310.02(b) that, in addition to legitimate uses, is used in manufacturing a controlled substance in violation of the Act.

(e) The term *regulated person* means any individual, corporation, partnership, association, or other legal entity who manufactures, distributes, imports, or exports a listed chemical, a tableting machine, or an encapsulating machine, or who acts as a broker or trader for an international transaction involving a listed chemical, tableting machine, or encapsulating machine.

(f) The term *regulated transaction* means:

(1) A distribution, receipt, sale, importation, or exportation of a listed chemical, or an international transaction involving shipment of a listed chemical, or if the Administrator establishes a threshold amount for a specific listed chemical, a threshold amount as determined by the Administrator, which includes a cumulative threshold amount

for multiple transactions, of a listed chemical, except that such terms does not include:

(i) A domestic lawful distribution in the usual course of business between agents or employees of a single regulated person; in this context, agents or employees means individuals under the direct management and control of the regulated person;

(ii) A delivery of a listed chemical to or by a common or contract carrier for carriage in the lawful and usual course of the business of the common or contract carrier, or to or by a warehouseman for storage in the lawful and usual course of the business of the warehouseman, except that if the carriage or storage is in connection with the distribution, importation, or exportation of a listed chemical to a third person, this paragraph does not relieve a distributor, importer, or exporter from compliance with this part or parts 1309 and 1313 of this chapter;

(iii) Any category of transaction or any category of transaction for a specific listed chemical or chemicals specified by regulation of the Administrator as excluded from this definition as unnecessary for enforcement of the Act;

(iv) Any transaction in a listed chemical that is contained in a drug that may be marketed or distributed lawfully in the United States under the Federal Food, Drug, and Cosmetic Act unless—

(A) The drug contains ephedrine or its salts, optical isomers, or salts of optical isomers as the only active medicinal ingredient or contains ephedrine or its salts, optical isomers or salts of optical isomers and therapeutically insignificant quantities of another active medicinal ingredient. For purposes of this paragraph, the term "therapeutically insignificant quantities" shall apply if the product formulation (i.e., the qualitative and quantitative composition of active ingredients within the product) is not listed in *American Pharmaceutical Association (Apha) Handbook of Nonprescription Drugs; Drug Facts and Comparisons* (published by Wolters Kluwer Company); or *USP DI* (published by authority of the United States Pharmacopeial Convention, Inc.); or the product is not listed in § 1310.15 as an exempt drug product. For drug products having formulations not found in the above compendiums, the Administrator shall determine, pursuant to a written request as specified in § 1310.14, whether the active medicinal ingredients are present in quantities considered therapeutically significant for purposes of this paragraph; or

(B) The Administrator has determined pursuant to the criteria in § 1310.10 that:

(*1*) The drug or group of drugs is being diverted to obtain the listed chemical for use in the illicit production of a controlled substance; and

(*2*) The quantity of ephedrine or other listed chemical contained in the drug included in the transaction or multiple transactions equals or exceeds the threshold established for that chemical by the Administrator;

(v) Any transaction in a chemical mixture listed in § 1310.13.

* * * * *

(g) The term *chemical mixture* means a combination of two or more chemical substances, at least one of which is not a listed chemical, except that such term does not include any combination of a listed chemical with another chemical that is present solely as an impurity or which has been created to evade the requirements of the act.

* * * * *

(k) The terms *broker* and *trader* mean any individual, corporation, corporate division, partnership, association, or other legal entity which assists in arranging an international transaction in a listed chemical by—

(1) negotiating contracts;

(2) serving as an agent or intermediary; or

(3) fulfilling a formal obligation to complete the transaction by bringing together a buyer and seller, a buyer and transporter, or a seller and transporter, or by receiving any form of compensation for so doing.

(l) The term *international transaction* means a transaction involving the shipment of a listed chemical across an international border (other than a United States border) in which a broker or trader located in the United States participates.

* * * * *

3. Section 1310.02 is amended by revising the introductory text and paragraphs (a) and (b) to read as follows:

§ 1310.02 Substances Covered.

The following chemicals have been specifically designated by the Administrator of the Drug Enforcement Administration as the listed chemicals subject to the provisions of this part and parts 1309 and 1313 of this chapter. Each chemical has been assigned the DEA Chemical Code Number set forth opposite it.

(a) List I chemicals

(1) Anthranilic acid, its esters, and its salts 8530
(2) Benzyl cyanide 8735
(3) Ephedrine, its salts, optical isomers, and salts of optical isomers 8113
(4) Ergonovine and its salts 8675
(5) Ergotamine and its salts 8676
(6) N-Acetylanthranilic acid, its esters, and its salts 8522
(7) Norpseudoephedrine, its salts, optical isomers, and salts of optical isomers 8317
(8) Phenylacetic acid, its esters, and its salts 8791
(9) Phenylpropanolamine, its salts, optical isomers, and salts of optical isomers 1225
(10) Piperidine and its salts 2704
(11) Pseudoephedrine, its salts, optical isomers, and salts of optical isomers 8112
(12) 3,4-Methylenedioxyphenyl-2-propanone 8502
(13) Methylamine and its salts 8520
(14) Ethylamine and its salts 8678
(15) Propionic anhydride 8328
(16) Insosafrole (Isosafrole) 8704
(17) Safrole 8323
(18) Piperonal 8750
(19) N-Methylephedrine, its salts, optical isomers, and salts of optical isomers (N-Methylephedrine) 8115
(20) N-Methylpseudoephedrine, its salts, optical isomers, and salts of optical isomers 8119
(21) Hydriotic acid (Hydriodic Acid) 6695
(22) Benzaldehyde 8256
(23) Nitroethane 6724

(b) List II Chemicals:

(1) Acetic anhydride 8519
(2) Acetone 6532
(3) Benzyl chloride 8570
(4) Ethyl ether 6584
(5) Potassium permanganate 6579
(6) 2-Butanone (or Methyl Ethyl Ketone or MEK) 6714
(7) Toluene 6594
(8) Hydrochloric acid 6545
(9) Sulfuric acid 6552
(10) Methyl Isobutyl Ketone (MIBK) 6715

* * * * *

4. Section 1310.04 is amended by revising paragraphs (a), (b), (f)(1) introductory, and (f)(2) introductory text and (iv), by removing paragraphs (f)(1)(xiv), (f)(1)(xx), and (f)(1)(xxii); redesignating paragraphs (f)(1)(xv) through (xix) as (f)(1)(xiv) through (xviii), paragraph (f)(1)(xxi) as (f)(1)(xix) and paragraph (f)(1)(xxiii) as (f)(1)(xx); and adding new paragraphs (f)(1)(xxi) and (xxii) to read as follows:

§ 1310.04 Maintenance of records.

(a) Every record required to be kept subject to Section 1310.03 for a List I chemical, a tableting machine, or an encapsulating machine shall be kept by the regulated person for four years after the date of the transaction.

(b) Every record required to be kept subject to Section 1310.03 for List II chemical shall be kept by the regulated person for two years after the date of the transaction.

* * * * *

(f) * * *

(1) List I Chemicals:

Chemical	Threshold by base weight
(i) * * *	
(xxii) Benzaldehyde	4 Kilograms.
(xxiii) Nitroethane	2.5 Kilograms.

(2) List II chemicals:

(i) * * *

(iv) Exports, transshipments and international transactions to Designated Countries set forth in § 1310.08(b)

* * * * *

5. Section 1310.06 is amended by revising paragraphs (a) introductory text, (a)(1), (c), and (d) to read as follows:

§ 1310.06 Content of records and reports.

(a) Each record required by § 1310.03 shall include the following:

(1) The name, address, and, if required, DEA registration number of each party to the regulated transaction.

* * * * *

(c) Each report required by Section 1310.05(a) shall include the information as specified by Section 1310.06(a) and, where obtainable, the registration number of the other party, if such party is registered. A report submitted pursuant to § 1310.05(a)(1) or (a)(4) must also include a description of the circumstances leading the regulated person to make the report, such as the reason that the method of payment was uncommon or the loss unusual. If the report is for a loss or disappearance under § 1310.05(a)(4), the circumstances of such loss must be provided (in-transit, theft from premises, etc.)

(d) A suggested format for the reports is provided below:

Supplier:
Registration Number _____
Name _____
Business Address _____
City _____
State _____
Zip _____
Business Phone _____

Purchaser:
Registration Number _____
Name _____
Business Address _____
City _____
State _____
Zip _____
Business Phone _____
Identification _____

Shipping Address (if different than purchaser Address):
Street _____
City _____
State _____
Zip _____
Date of Shipment _____
Name of Listed Chemical(s) _____
Quantity and Form of Packaging _____

Description of Machine:
Make _____
Model _____
Serial # _____
Method of Transfer _____

If Loss or Disappearance:
Date of Loss _____
Type of Loss _____
Description of Circumstances _____

Public reporting burden for this collection of information is estimated to average ten minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Drug Enforcement Administration, Records Management Section, Washington, D.C. 20537; and to the Office of Management and Budget, Paperwork Reduction Project No. 1117–0024, Washington, D.C. 20503.

* * * * *

6. Section 1310.07 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1310.07 Proof of identity.

(a) Each regulated person who engages in a regulated transaction must identify the other party to the transaction. For domestic transaction, this shall be accomplished by having the other party present documents which would verify the identity, or registration status if a registrant, of the other party to the regulated person at the time the order is placed. For export transactions, this shall be accomplished by good faith inquiry through reasonably available research documents or publicly available information which would indicate the existence of the foreign customer. No proof of identity is required for foreign suppliers.

(b) The regulated person must verify the existence and apparent validity of a business entity ordering a listed chemical, tableting machine or encapsulating machine. For domestic transactions, this may be accomplished by such methods as checking the telephone directory, the local credit bureau, the local Chamber of Commerce or the local Better Business Bureau, or, if the business entity is a registrant, by verification of the registration. For export transactions, a good faith inquiry to verify the existence and apparent validity of a foreign business entity may be accomplished by such methods as verifying the business telephone listing through international telephone information, the firm's listing in international or foreign national chemical directories or other commerce directories or trade publications, confirmation through foreign subsidiaries of the U.S. regulated person, verification through the country of destination's embassy Commercial Attache, or official documents provided by the purchaser which confirm the existence and apparent validity of the business entity.

* * * * *

7. Section 1310.08 is amended by revising paragraph (b) introductory text to read as follows:

§ 1310.08 Excluded transactions.

* * * * *

(b) Exports, transshipments, and international transactions of hydrochloric and sulfuric acids, except for exports, transshipments and international transactions to the following countries:

* * * * *

8. Sections 1310.10 and 1310.11 are added to read as follows:

§ 1310.10 Removal of the exemption of drugs distributed under the Food, Drug and Cosmetic Act.

(a) The Administrator may remove from exemption under 1310.01(f)(1)(iv) any drug or group of drugs that the Administrator finds is being diverted to obtain a listed chemical for use in the illicit production of a controlled substance. In removing a drug or group of drugs from the exemption the Administrator shall consider:

(1) the scope, duration, and significance of the diversion;

(2) whether the drug or group of drugs is formulated in such a way that it cannot be easily used in the illicit production of a controlled substance; and

(3) whether the listed chemical can be readily recovered from the drug or group of drugs.

(b) Upon determining that a drug or group of drugs should be removed from the exemption under paragraph (a) of this section, the Administrator shall issue and publish in the **Federal Register** his proposal to remove the drug or group of drugs from the exemption, which shall include a reference to the legal authority under which the proposal is based. The Administrator shall permit any interested person to file written comments on or objections to

the proposal. After considering any comments or objections filed, the Administrator shall publish in the **Federal Register** his final order.

(c) The Administrator shall limit the removal of a drug or group of drugs from exemption under paragraph (a) of this section to the most identifiable type of the drug or group of drugs for which evidence of diversion exists unless there is evidence, based on the pattern of diversion and other relevant factors, that the diversion will not be limited to that particular drug or group of drugs.

(d) Any manufacturer seeking reinstatement of a particular drug product that has been removed from an exemption under paragraph (a) of this section, may apply to the Administrator for reinstatement of the exemption for that particular drug product on the grounds that the particular drug product is manufactured and distributed in a manner that prevents diversion. In determining whether the exemption should be reinstated the Administrator shall consider:

(1) the package sizes and manner of packaging of the drug product;

(2) the manner of distribution and advertising of the drug product;

(3) evidence of diversion of the drug product;

(4) any actions taken by the manufacturer to prevent diversion of the drug product; and

(5) such other factors as are relevant to and consistent with the public health and safety, including the factors described in paragraph (a) of this section as applied to the drug product.

(e) Within a reasonable period of time after receipt of the application for reinstatement of the exemption, the Administrator shall notify the applicant of his acceptance or non-acceptance of his application, and if not accepted, the reason therefor. If the application is accepted for filing, the Administrator shall issue and publish in the **Federal Register** his order on the reinstatement of the exemption for the particular drug product, which shall include a reference to the legal authority under which the order is based. This order shall specify the date on which it shall take effect. The Administrator shall permit any interested person to file written comments on or objections to the order. If any such comments raise significant issues regarding any finding of fact or conclusion of law upon which the order is based, the Administrator shall immediately suspend the effectiveness of the order until he may reconsider the application in light of the comments and objections filed. Thereafter, the Administrator shall reinstate, revoke, or amend his original order as he determines appropriate.

(f) Unless the Administrator has evidence that the drug product is being diverted, as determined by applying the factors set forth in paragraph (a) of this section, and the Administrator so notifies the applicant, transactions involving a specific drug product will not be considered regulated transactions during the following periods:

(1) while a bonafide application for reinstatement of exemption under paragraph (d) of this section for the specific drug product is pending resolution, provided that the application for reinstatement is filed not later than 60 days after the publication of the final order removing the exemption; and

(2) for a period of 60 days following the Administrator's denial of an application for reinstatement.

(g) An order published by the Administrator in the **Federal Register**, pursuant to paragraph (e) of this section, to reinstate an exemption may be modified or revoked with respect to a particular drug product upon a finding that:

(1) applying the factors set forth in paragraph (a) of this section to the particular drug product, the drug product is being diverted; or

(2) there is a significant change in the data that led to the issuance of the final rule.

§ 1310.11 Reinstatement of exemption for drug products distributed under the Food, Drug and Cosmetic Act.

(a) The Administrator has reinstated the exemption for the drug products listed in paragraph (e) of this section from application of sections 302, 303, 310, 1007, and 1008 of the Act (21 U.S.C. 822–823, 830, and 957–958), to the extent described in paragraphs (b), (c), and (d) of this section.

(b) No reinstated exemption granted pursuant to 1310.10 affects the criminal liability for illegal possession or distribution of listed chemicals contained in the exempt drug product.

(c) Changes in exempt drug product compositions: Any change in the quantitative or qualitative composition, trade name or other designation of an exempt drug product listed in paragraph (d) requires a new application for reinstatement of the exemption.

(d) The following drug products, in the form and quantity listed in the application submitted (indicated as the "date") are designated as reinstated exempt drug products for the purposes set forth in this section:

EXEMPT DRUG PRODUCTS

Supplier	Product name	Form	Date
[Reserved]	.....	.....	

9. Section 1310.14 and 1310.15. are added to read as follows:

§ 1310.14 Exemption of drug products containing ephedrine and therapeutically significant quantities of another active medicinal ingredient.

(a) Any manufacturer of a drug product containing ephedrine in combination with another active medicinal ingredient, the product formulation of which is not listed in the compendiums set forth in section 1310.01(f)(1)(iv)(A), may request that the Administrator exempt the product as one which contains ephedrine together with a therapeutically significant quantity of another active medicinal ingredient.

(b) An application for an exemption under this section shall contain the following information:

(1) The name and address of the applicant;

(2) The exact trade name of the drug product for which exemption is sought;

(3) The complete quantitative and qualitative composition of the drug product;

(4) A brief statement of the facts which the applicant believes justify the granting of an exemption under this section; and

(5) Certification by the applicant that the product may be lawfully marketed or distributed under the Food, Drug, and Cosmetic Act.

(6) The identification of any information on the application which is considered by the applicant to be a trade secret or confidential and entitled to protection under U.S. laws restricting the public disclosure of such information by government employees.

(c) The Administrator may require the applicant to submit such additional documents or written statements of fact relevant to the application which he deems necessary for determining if the application should be granted.

(d) Within a reasonable period of time after the receipt of a completed application for an exemption under this section, the Administrator shall notify the applicant of acceptance or non-acceptance of the application. If the application is not accepted, an explanation will be provided. The Administrator is not required to accept an application if any of the information required in paragraph (b) of this section or requested pursuant to paragraph (c) of this section is lacking or not readily understood. The applicant may, however, amend the application to meet the requirements of paragraphs (b) and (c) of this section. If the application is accepted for filing, the Administrator shall issue and publish in the **Federal Register** an order on the application, which shall include a reference to the legal authority under which the order is based. This order shall specify the date on which it shall take effect. The Administrator shall permit any interested person to file written comments on or objections to the order. If any comments or objections raise significant issues regarding any findings of fact or law upon which the order is based, the Administrator shall immediately suspend the effectiveness of the order until he may reconsider the application in light of the comments and objections filed. Thereafter, the Administrator shall reinstate, revoke, or amend the original order as deemed appropriate.

§ 1310.15 Exempt drug products containing ephedrine and therapeutically significant quantities of another active medicinal ingredient.

(a) The drug products containing ephedrine and therapeutically significant quantities of another active medicinal ingredient listed in paragraph (e) of this section have been exempted by the Administrator from application of sections 302, 303, 310, 1007, and 1008 of the Act (21 U.S.C. 822–3, 830, and 957–8) to the extent described in paragraphs (b), (c), and (d) of this section.

(b) No exemption granted pursuant to 1310.14 affects the criminal liability for illegal possession or distribution of listed chemicals contained in the exempt drug product.

(c) Changes in drug product compositions: Any change in the quantitative or qualitative composition of an exempt drug product listed in paragraph (d) requires a new application for exemption.

(d) In addition to the drug products listed in the compendium set forth in § 1310.01(f)(1)(iv)(A), the following drug products, in the form and quantity listed in the application submitted (indicated as the "date") are designated as exempt drug products for the purposes set forth in this section:

EXEMPT DRUG PRODUCTS CONTAINING EPHEDRINE AND THERAPEUTICALLY SIGNIFICANT QUANTITIES OF ANOTHER ACTIVE MEDICINAL INGREDIENT

Supplier	Product name	Form	Date
[Reserved]	.....	.....	

PART 1313—[AMENDED]

1. The authority citation for part 1313 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b), 971.

2. Section 1313.02 is amended by revising paragraphs (c), (d) introductory text, (d)(1), (h) and (i); redesignating paragraph (m) as paragraph (o) and adding new paragraphs (m) and (n) to read as follows:

§ 1313.02 Definitions.

* * * * *

(c) The term *regulated person* means any individual, corporation, partnership, association, or other legal entity who manufactures, distributes, imports, or exports a listed chemical, a tableting machine, or an encapsulating machine, or who acts as a broker or trader for an international transaction involving a listed chemical, a tableting machine, or an encapsulating machine.

(d) The term *regulated transaction* means:

(1) A distribution, receipt, sale, importation, exportation, or international transaction of a listed chemical, or if the Administrator establishes a threshold amount for a specific listed chemical, a threshold amount as determined by the Administrator, which includes a cumulative threshold amount for multiple transactions, of a listed chemical, except that such term does not include:

(i) A domestic lawful distribution in the usual course of business between agents or employees of a single regulated person; in this context, agents or employees means individuals under the direct management and control of the regulated person;

(ii) A delivery of a listed chemical to or by a common or contract carrier for carriage in the lawful and usual course of the business of the common or contract carrier, or to or by a warehouseman for storage in the lawful and usual course of the business of the warehouseman, except that if the carriage or storage is in connection with the distribution, importation, or exportation of a listed chemical to a third person, this paragraph does not relieve a distributor, importer, or exporter from compliance with this part or parts 1309 and 1310 of this chapter;

(iii) Any category of transaction or any category of transaction for a specific listed chemical or chemicals specified by regulation of the Administrator as excluded from this definition as unnecessary for enforcement of the Act;

(iv) Any transaction in a listed chemical that is contained in a drug that may be marketed or distributed lawfully in the United States under the Federal Food, Drug, and Cosmetic Act unless)—

(A) The drug contains ephedrine or its salts, optical isomers, or salts of optical isomers as the only active medicinal ingredient or contains ephedrine or its salts, optical isomers or salts of optical isomers and therapeutically insignificant quantities of another active medicinal ingredient (for purposes of this paragraph, the term "therapeutically insignificant quantities" shall apply if the product formulation (i.e., the qualitative and quantitative composition of active ingredients within the product) is not listed in *American Pharmaceutical Association (Apha) Handbook of Nonprescription Drugs*; *Drug Facts and Comparisons* (published by Wolters Kluwer Company); or *USP DI* (published by authority of the United States Pharmacopeial Convention, Inc.); or the product is not listed in Section 1310.15 as an exempt drug product. For drug products having formulations not found in the above compendiums, the Administrator shall determine, pursuant to a written request as specified in Section 1310.14, whether the active medicinal ingredients are present in quantities considered therapeutically significant for purposes of this paragraph; or

(B) The Administrator has determined pursuant to the criteria in Section 1310.10 that:

(*1*) The drug or group of drugs is being diverted to obtain the listed chemical for use in the illicit production of a controlled substance; and

(*2*) The quantity of ephedrine or other listed chemical contained in the drug included in the transaction or multiple transactions equals or exceeds the threshold established for that chemical by the Administrator;

(v) Any transaction in a chemical mixture listed in Section 1310.13.

* * * * *

(h) The term *regular importer* means, with respect to a listed chemical, a person that has an established record as an importer of that listed chemical that is reported to the Administrator.

(i) The term *established record as an importer* means that the regulated

person has imported a listed chemical at least once within the past six months, or twice within the past twelve months from a foreign supplier. The term also means that the regulated person has provided the Administration with the following information in accordance with the waiver of the 15-day advance notice requirements of Section 1313.15:

(1) the name, DEA registration number (where applicable), street address, telephone number, telex number, and, where available, the facsimile number of the regulated person and of each foreign supplier; and

(2) the frequency and number of transactions occurring during the preceding 12-month period.

* * * * *

(m) The terms *broker* and *trader* mean any individual, corporation, corporate division, partnership, association, or other legal entity which assists in arranging an international transaction in a listed chemical by—

(1) negotiating contracts;

(2) serving as an agent or intermediary; or

(3) fulfilling a formal obligation to complete the transaction by bringing together a buyer and seller, a buyer and transporter, or a seller and transporter, or by receiving any form of compensation for so doing.

(n) The term *international transaction* means a transaction involving the shipment of a listed chemical across an international border (other than a United States border) in which a broker or trader located in the United States participates.

* * * * *

3. Section 1313.12 is amended by revising paragraph (c) and adding new paragraphs (d), (e) and (f) to read as follows:

§ 1313.12 Requirement of authorization to import.

* * * * *

(c) The 15-day advance notification requirement for listed chemical imports may be waived for:

(1) Any regulated person who has satisfied the requirements for reporting to the Administration as a regular importer of such listed chemicals; or

(2) A specific listed chemical, as set forth in paragraph (f) of this section, for which the Administrator determines that advance notification is not necessary for effective chemical diversion control.

(d) For imports where advance notification is waived pursuant to paragraph (c)(1) of this section, the DEA Form 486 must be received by the Drug Enforcement Administration, Chemical Operations Section, on or before the date of importation through use of the mailing address listed in § 1313.12(b) or through use of electronic facsimile media.

(e) For importations where advance notification is waived pursuant to paragraph (c)(2) of this section no DEA Form 486 is required, however, the regulated person shall submit quarterly reports to the Drug Enforcement Administration, Chemical Operations Section, P.O. Box 28346, Washington, DC 20038, by no later than the 15th day of the month following the end of each quarter. The report shall contain the following information regarding each individual importation:

(1) The name of the listed chemical;

(2) The quantity and date imported;

(3) The name and full business address of the supplier;

(4) The foreign port of embarkation; and

(5) The port of entry.

(f) The 15 day advance notification requirement set forth in paragraph (a) has been waived for imports of the following listed chemicals:

(1) [Reserved]

4. Section 1313.15 is revised to read as follows:

§ 1313.15 Waiver of 15-day advance notice for regular importers.

(a) Each regulated person seeking designation as a "regular importer" shall provide, by certified mail return receipt requested, to the Administration such information as is required under § 1313.02(i), documenting their status as a regular importer.

(b) Each regulated person making application under paragraph (a) of this section shall be considered a "regular importer" for purposes of waiving the 15-day advance notice, 30 days after receipt of the application by the Administration, as indicated on the return receipt, unless the regulated person is otherwise notified in writing by the Administration.

(c) The Administrator, may, at any time, disqualify a regulated person's status as a regular importer on the grounds that the chemical being imported may be diverted to the clandestine manufacture of a controlled substance.

(d) Unless the Administration notifies the chemical importer to the contrary, the qualification of a regular importer of any one of these three chemicals, acetone, 2-Butanone (MEK), or toluene, qualifies that importer as a regular importer of all three of these chemicals.

(e) All chemical importers shall be required to file a DEA Form 486 as required by Section 1313.12.

5. Section 1313.21 is amended by redesignating paragraph (d) as paragraph (g) by revising paragraph (c) and newly designated paragraph (g) and by adding new paragraphs (d), (e), and (f) to read as follows:

§ 1313.21 Requirement of authorization to export.

* * * * *

(c) The 15-day advance notification requirement for listed chemical exports may be waived for:

(1) any regulated person who has satisfied the requirements of Section 1313.24 for reporting to the Administration an established business relationship with a foreign customer as defined in § 1313.02(j).

(2) A specific listed chemical to a specified country, as set forth in paragraph (f) of this section, for which the Administrator determines that advance notification is not necessary for effective chemical diversion control.

(d) For exports where advance notification is waived pursuant to paragraph (c)(1) of this section, the DEA Form 486 must be received by the Drug Enforcement Administration, Chemical Operations Section, on or before the date of exportation through use of the mailing address listed in Section 1313.12(b) or through use of electronic facsimile media.

(e) For exportations where advance notification is waived pursuant to paragraph (c)(2) of this section, the regulated person shall file quarterly reports to the Drug Enforcement Administration, Chemical Operations Section, P.O. Box 28346, Washington, DC 20038, by no later than the 15th day of the month following the end of each quarter. The report shall contain the following information regarding each individual importation:

(1) The name of the listed chemical;

(2) The quantity and date exported;

(3) The name and full business address of the foreign customer;

(4) The port of embarkation; and

(5) The foreign port of entry.

(f) The 15 day advance notification requirement set forth in paragraph (a) of this section has been waived for exports of the following listed chemicals to the following countries:

Name of Chemical	Country
[Reserved]	

(g) No person shall export or cause to be exported any listed chemical, knowing or having reasonable cause to believe the export is in violation of the laws of the country to which the chemical is exported or the chemical will be used to manufacture a controlled substance in violation of the Act or the laws of the country to which the chemical is exported. The Administration will publish a notice of foreign import restrictions for listed chemicals of which DEA has knowledge as provided in § 1313.25.

6. A new undesignated center heading is added preceding § 1313.31 to read as follows:

Transshipments, In-Transit Shipments and International Transactions Involving Listed Chemicals

7. Sections 1313.32, 1313.33, and 1313,34 are added to read as follows:

1313.32 Requirement of authorization for international transactions.
1313.33 Contents of an international transaction declaration.
1313.34 Distribution of the international transaction declaration.

§ 1312.32 Requirement of authorization for international transactions.

(a) A broker or trader shall notify the Administrator prior to an international transaction involving a listed chemical which meets or exceeds the threshold amount identified in Section 1310.04 of this chapter, in which the broker or trader participates. Notification must be made no later than 15 days before the transaction is to take place. In order to facilitate an international transaction involving listed chemicals and implement the purpose of the Act, regulated persons may wish to provide advance notification to the Administration as far in advance of the 15 days as possible.

(b) (1) A completed DEA Form 486 must be received at the following address not later than 15 days prior to the international transaction:

Drug Enforcement Administration, P.O. Box 28346, Washington, D.C. 20038

(2) A copy of the DEA Form 486 may be transmitted directly to the Drug Enforcement Administration, Chemical Operations Section, through electronic facsimile media not later than 15 days prior to the exportation.

(c) No person shall serve as a broker or trader for an international transaction involving a listed chemical knowing or having reasonable cause to believe that the transaction is in violation of the laws of the country to which the chemical is exported or the chemical will be used to manufacture a controlled substance in violation of the laws of the country to which the chemical is exported. The Administration will publish a notice of foreign import restrictions for listed chemicals of which DEA has knowledge as provided in Section 1313.25.

§ 1313.33 Contents of an international transaction declaration.

(a) An international transaction involving a chemical listed in § 1310.02 of this chapter which meets the threshold criteria established in § 1310.04 of this chapter may be arranged by a broker or trader if the chemical is needed for medical, commercial, scientific, or other legitimate uses.

(b) Any broker or trader who desires to arrange an international transaction involving a listed chemical which meets the criteria set forth in Section 1310.04 shall notify the Administration through the procedures outlined in Section 1313.32(b).

(c) The DEA Form 486 must be executed in triplicate and must include all the following information:

(1) The name, address, telephone number, telex number, and, where available, the facsimile number of the chemical exporter; the name, address, telephone number, telex number, and, where available, the facsimile number of the chemical importer;

(2) The name and description of each listed chemical as it appears on the label or container, the name of each listed chemical as it is designated in Section 1310.02 of this chapter, the size or weight of container, the number of containers, the net weight of each listed chemical given in kilograms or parts thereof, and the gross weight of the shipment given in kilograms or parts thereof;

(3) The proposed export date, the port of exportation, and the port of importation; and

(4) The name, address, telephone, telex, and where available, the facsimile number, of the consignee in the country where the chemical shipment is destined; the name(s) and address(es) of any intermediate consignee(s).

§ 1313.34 Distribution of the international transaction declaration.

The required three copies of the DEA Form 486 will be distributed as follows:

(a) Copies 1 and 3 shall be retained on file by the broker or trader as the official record of the international transaction. Declaration forms involving List I chemicals shall be retained for List II chemicals shall be retained for two years.

(b) Copy 2 is the Drug Enforcement Administration copy used to fulfill the notification requirements of Section 1313.32.

* * * * *

7. In the heading of part 1313, the undesignated center heading preceding section 1313.12, and the undesignated center heading preceding section 1313.21 remove the words "Precursors and Essential Chemicals" and add, in their place, the words "Listed Chemicals";

§ 1313.01 [Amended]

8. In Section 1313.01 remove the words "precursors and essential chemicals" and add, in their place, the words "listed chemicals";

§ 1313.14 [Amended]

9. In Section 1313.14 introductory text, and in Section 1313.23 introductory text, remove the words "precursor and essential chemical" and add, in their place, "listed chemical".

§ 1313.13 [Amended]

10. In Sections 1313.13(a) and 1313.22(a) DEA is removing the words "precursor or essential chemical" and adding, in their place, the words "List I or List II chemical".

§ 1313.14 [Amended]

11. In Sections 1313.14(a) and 1313.23(a) DEA is removing the words "listed precursor chemical" and "listed essential chemical" and adding, in their place, the words "List I chemical" and "List II chemical" respectively.

PART 1316—[AMENDED]

1. The authority citation for part 1316 is amended to read as follows:

Authority: 21 U.S.C. 822(f), 830(a), 871(b), 880, 958(f), 965.

2. Section 1316.02 is amended by revising paragraph (c)(2) to read as follows:

§ 1316.02 Definitions.

* * * * *

(c) * * *

(2) Places, including factors, warehouses, or other establishments and conveyances, where persons registered under the Act or exempted from registration under the Act, or regulated persons may lawfully hold, manufacture, or distribute, dispense, administer, or otherwise dispose of controlled substances or listed chemicals or where records relating to those activities are maintained.

* * * * *

3. Section 1316.03 is amended by revising paragraphs (b), (c), (d) and (e) to read as follows:

§ 1316.03 Authority to make inspections.

* * * * *

(b) Inspecting within reasonable limits and to a reasonable manner all pertinent equipment, finished and unfinished controlled substances, listed chemicals, and other substances or materials, containers, and labeling

found at the controlled premises relating to this Act;

(c) Making a physical inventory of all controlled substances and listed chemicals on-hand at the premises;

(d) Collecting samples of controlled substances or listed chemicals (in the event any samples are collected during an inspection, the inspector shall issue a receipt for such samples on DEA Form 84 to the owner, operator, or agent in charge of the premises);

(e) Checking of records and information on distribution of controlled substances or listed chemicals by the registrant or regulated person (i.e., has the distribution of controlled substances or listed chemicals increased markedly within the past year, and if so why);

* * * * *

4. Section 1316.09 is amended by revising paragraph (a)(3) to read as follows:

§ 1316.09 Application for administrative inspection warrant.

(a) * * *

(3) A statement relating to the nature and extent of the administrative inspection, including, where necessary, a request to seize specified items and/or to collect samples of finished or unfinished controlled substances or listed chemicals;

* * * * *

Dated: May 1, 1995.

Stephen H. Greene,

Deputy Administrator, Drug Enforcement Administration.

[FR Doc. 95–14978 Filed 6–21–95; 8:45 am]

BILLING CODE 4410–09–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–5225–1]

Determination of Attainment of Ozone Standard by Ashland, Kentucky, Northern Kentucky (Cincinnati Area), Charlotte, North Carolina, and Nashville, Tennessee, and Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is determining, through direct final procedure, that the Ashland, Kentucky, Northern Kentucky, Charlotte-Gastonia, North Carolina, and Nashville, Tennessee ozone nonattainment areas have attained the National Ambient Air Quality Standard (NAAQS) for ozone. This determination is based upon three years of complete, quality assured ambient air monitoring data for the years 1992–94 that demonstrate that the ozone NAAQS has been attained in these areas. On the basis of this determination, EPA is also determining that certain reasonable further progress and attainment demonstration requirements, along with certain other related requirements, of Part D of Title 1 of the Clean Air Act are not applicable to the areas for so long as the areas continue to attain the ozone NAAQS. In the proposed rules section of this **Federal Register**, EPA is proposing these determinations and soliciting public comment on them. If adverse comments are received on this direct final rule, EPA will withdraw this final rule and address these comments in a final rule on the related proposed rule which is being published in the proposed rules section of this **Federal Register**.

DATES: This action will be effective August 7, 1995 unless notice is received by July 24, 1995 that any person wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: A copy of the air quality data and EPA's analysis are available for inspection at the following address:

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365

Commonwealth of Kentucky, Division of Air Quality, Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet, 803 Schenkel Lane, Frankfort, Kentucky 40601

State of North Carolina, Air Quality Section, Division of Environmental Management, North Carolina Department of Environment, Health, and Natural Resources, Raleigh, North Carolina 27626

Environmental Management Division, Mecklenburg County Department of Environmental Protection, 700 N. Tryon Street, Charlotte, North Carolina 28202–2236

State of Tennessee, Division of Air Pollution Control, Tennessee Department of Environment and Conservation, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531

Bureau of Environmental Health Services, Metropolitan Health Department, Nashville-Davidson County, 311–23rd Avenue, North, Nashville, Tennessee 37203

Written comments can be mailed to: Kay Prince, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4, Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555 extension 4221.

FOR FURTHER INFORMATION CONTACT: Kay Prince, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4, Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555 extension 4221.

SUPPLEMENTARY INFORMATION:

I. Background

Subpart 2 of Part D of Title I of the Clean Air Act (CAA) contains various air quality planning and state implementation plan (SIP) submission requirements for ozone nonattainment areas. EPA believes it is reasonable to interpret provisions regarding reasonable further progress (RFP) and attainment demonstrations, along with certain other related provisions, so as not to require SIP submissions if an ozone nonattainment area subject to those requirements is monitoring attainment of the ozone standard (i.e., attainment of the NAAQS demonstrated with three consecutive years of complete, quality assured air quality monitoring data). As described below, EPA has previously interpreted the general provisions of subpart 1 of part D of Title I (sections 171 and 172) so as not to require the submission of SIP revisions concerning RFP, attainment demonstrations, or contingency measures. As explained in a memorandum dated May 10, 1995, from John S. Seitz, Director, Office of Air Quality Planning and Standards to the Regional Air Division Directors, entitled Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard, EPA believes it is appropriate to interpret the more specific RFP, attainment demonstration and related provisions of subpart 2 in the same manner.

First, with respect to RFP, section 171(1) states that, for purposes of part D of Title I, RFP "means such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date." Thus, whether dealing with the general RFP requirement of section 172(c)(2), or the more specific RFP requirements of subpart 2 for classified ozone nonattainment areas (such as the 15 percent plan requirement of section 182(b)(1)), the stated purpose of RFP is to ensure attainment by the applicable attainment date.[1] If an area has in fact attained the standard, the stated purpose of the RFP requirement will have already been fulfilled and EPA does not believe that the area need submit revisions providing for the further emission reductions described in the RFP provisions of section 182(b)(1).

EPA notes that it took this view with respect to the general RFP requirement of section 172(c)(2) in the General Preamble for the Interpretation of title I of the Clean Air Act Amendments of 1990 (57 FR 13498 (April 16, 1992)), and it is now extending that interpretation to the specific provisions of subpart 2. In the General Preamble, EPA stated, in the context of a discussion of the requirements applicable to the evaluation of requests to redesignate nonattainment areas to attainment, that the "requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the state will make RFP towards attainment will, therefore, have no meaning at that point." (57 FR at 13564.)[2]

Second, with respect to the attainment demonstration requirements of section 182(b)(1), an analogous rationale leads to the same result. Section 182(b)(1) requires that the plan provide for "such specific annual reductions in emissions * * * as necessary to attain the national primary ambient air quality standard by the attainment date applicable under this Act." As with the RFP requirements, if an area has in fact monitored attainment of the standard, EPA believes there is no need for an area to make a further submission containing additional measures to achieve attainment. This is also consistent with the interpretation of certain section 172(c) requirements provided by EPA in the General Preamble to title I, as EPA stated there that no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since "attainment will have been reached." (57 FR at 13564; *see also* September 1992 Calcagni memorandum at page 6.) Upon attainment of the NAAQS, the focus of state planning efforts shifts to the maintenance of the NAAQS and the development of a maintenance plan under section 175A.

EPA emphasizes that the lack of a requirement to submit the SIP revisions discussed above exists only for as long as an area designated nonattainment continues to attain the standard. If EPA subsequently determines that such an area has violated the NAAQS, the basis for the determination that the area need not make the pertinent SIP revisions would no longer exist. The EPA would notify the State of that determination and would also provide notice to the public in the **Federal Register**. Such a determination would mean that the area would have to address the pertinent SIP requirements within a reasonable amount of time, which EPA would establish taking into account the individual circumstances surrounding the particular SIP submissions at issue. Thus, a determination that an area need not submit one of the SIP submittals amounts to no more than a suspension of the requirement for so long as the area continues to attain the standard.

The states must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR Part 58, to verify the attainment status of the area. The air quality data relied upon to determine that the area is attaining the ozone standard must be consistent with 40 CFR Part 58 requirements and other relevant EPA guidance and recorded in EPA's Aerometric Information Retrieval System (AIRS).

The determinations that are being made with this **Federal Register** notice are not equivalent to the redesignation of the areas to attainment. Attainment of the ozone NAAQS is only one of the criteria set forth in section 107(d)(3)(E) that must be satisfied for an area to be redesignated to attainment. To be redesignated the state must submit and receive full approval of a redesignation request for the area that satisfies all of the criteria of that section, including the requirement of a demonstration that the improvement in the area's air quality is due to permanent and enforceable reductions and the requirements that the area have a fully approved SIP meeting all of the applicable requirements under section 110 and Part D and a fully approved maintenance plan.

Furthermore, the determinations made in this notice do not shield an area from future EPA action to require emissions reductions from sources in the area where there is evidence, such as photochemical grid modeling, showing that emissions from sources in the area contribute significantly to nonattainment in, or interfere with maintenance by, other nonattainment areas. EPA has authority under sections 110(a)(2)(A) and 110(a)(2)(D) to require such emission reductions if necessary and appropriate to deal with transport situations.

II. Analysis of Air Quality Data

The EPA has reviewed the ambient air monitoring data for ozone (consistent with the requirements contained in 40 CFR part 58 and recorded in AIRS) for the Ashland, Northern Kentucky, Charlotte-Gastonia, and Nashville ozone nonattainment areas in the Commonwealth of Kentucky and the States of North Carolina and Tennessee from 1992 through the present time. On the basis of that review EPA has concluded that the areas attained the ozone standard during the 1992–94 period and continue to attain the standard at this time. The monitors in the Northern Kentucky portion of the Cincinnati ozone nonattainment area have not recorded a violation of the ozone standard since 1988 and have recorded only one exceedance (Campbell County monitor) during the 1992–94 period. Additionally, all monitors in the Cincinnati ozone nonattainment area have an expected exceedance rate of less than 1.1 for the 1992–94 period. The Ashland portion of the Ashland-Huntington area has air quality data showing attainment of the standard for the period 1991–94. Both the Boyd County and Greenup County monitors have recorded 2 exceedances in the 1992–94 period. All monitors in the Ashland-Huntington area have an expected exceedance rate for the 1992–94 period of less than 1.1. All monitors in the Charlotte-Gastonia area have an expected exceedance rate of less than 1.1 for the 1992–94 period with no violations recorded at any monitor for the 1990–94 period. Two of the monitors in Mecklenburg County have recorded two exceedances during the 1992–94 period, with no exceedance at

[1] EPA notes that paragraph (1) of subsection 182(b) is entitled "Plan Provisions For Reasonable Further Progress" and that subparagraph (B) of paragraph 182(c)(2) is entitled "Reasonable Further Progress Demonstration," thereby making it clear that both the 15 percent plan requirement of section 182(b)(1) and the 3 percent per year requirement of section 182(c)(2) are specific varieties of RFP requirements.

[2] *See also* "Procedures for Processing Requests to Redesignate Areas to Attainment," from John Calcagni, Director, Air Quality Management Division, to Regional Air Division Directors, September 4, 1992, at page 6 (stating that the "requirements for reasonable further progress * * * will not apply for redesignations because they only have meaning for areas not attaining the standard") (hereinafter referred to as "September 1992 Calcagni memorandum").

any monitor in the area during 1994. All monitors in the Nashville area have less than 1.1 expected exceedance rate. One of the two monitors located in Sumner County recorded 3 exceedances during the 1992–94 period. None of the other monitors in the Nashville ozone nonattainment area have recorded a violation since 1988. Thus, these areas are no longer recording violations of the air quality standard for ozone. A more detailed summary of the ozone monitoring data for the area is provided in the EPA technical support document dated May 19, 1995.

Final Action

EPA determines that the Ashland, Kentucky, Northern Kentucky, Charlotte-Gastonia, North Carolina, and Nashville, Tennessee, ozone nonattainment areas have attained the ozone standard and continue to attain the standard at this time. As a consequence of EPA's determination that the Ashland, Kentucky, Northern Kentucky, Charlotte-Gastonia, North Carolina, and Nashville, Tennessee, areas have attained the ozone standard, the requirements of section 182(b)(1) concerning the submission of the 15 percent plan and ozone attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures are not applicable to the areas so long as the areas do not violate the ozone standard.

The issuance of this determination will have no immediate impact on the way transportation conformity is demonstrated. These areas will continue to demonstrate conformity using the build/no-build test and less-than-1990 test (section 51.436–51.446 of the transportation conformity rule), and the 15 percent SIP if one has been submitted (and attainment/RFP SIP, if one with a budget has been submitted). Since these areas are the subject of conformity determinations pursuant to this action and will not be required to submit RFP or attainment demonstration SIPs, these areas will not generally be in the control strategy period for conformity purposes (i.e., have a control strategy SIP approved and build/no-build test no longer required) for so long as the area does not violate the standard. These areas will not have approved budgets until a maintenance plan is approved as part of the approval of a redesignation request, therefore the build/no-build test and less-than-1990 test, in addition to consistency with any applicable submitted budgets, will be required until maintenance plan approval. (A maintenance plan budget does not apply for conformity purposes until the maintenance plan has been approved, except as provided by section 51.448(i) of the conformity rule (which applies to the Ashland, Kentucky, and Charlotte-Gastonia, North Carolina, areas which were required to submit a 15 percent SIP but submitted a maintenance plan instead).)

The Northern Kentucky area which had previously submitted a 15 percent SIP, and the Nashville, Tennessee, area which had previously submitted 15 percent and attainment SIPs, may choose to withdraw their submitted SIPs through the submission of a letter from the Governors or their designees in order to eliminate the applicability of their motor vehicle emission budgets for conformity purposes. This is because these areas will not be subject to the 15 percent and attainment demonstration requirements of section 182(b)(1) for so long as the area continues to attain the standard. If the respective submitted SIP is not withdrawn, the budget in that submittal will continue to apply for conformity purposes. If the submitted 15 percent or attainment SIP is withdrawn, only the build/no-build and less-than-1990 tests would apply until a maintenance plan is approved.

The Ashland, Kentucky, and Charlotte-Gastonia, North Carolina, areas which are already demonstrating conformity to a submitted maintenance plan pursuant to § 51.448(i) may continue to do so, or may elect to withdraw the applicability of the submitted maintenance plan budget for conformity purposes until the maintenance plan is approved. The applicability may be withdrawn through the submission of a letter from the respective Governor or his or her designee. If the applicability of the submitted maintenance plan budget is withdrawn for conformity purposes, the build/no-build test and less-than-1990 tests will apply until the maintenance plan is approved.

EPA emphasizes that these determinations are contingent upon the continued monitoring and continued attainment and maintenance of the ozone NAAQS in the affected areas. If a violation of the ozone NAAQS is monitored in the Ashland, Kentucky, Northern Kentucky, Charlotte-Gastonia, North Carolina, or Nashville, Tennessee, areas (consistent with the requirements contained in 40 CFR part 58 and recorded in AIRS), EPA will provide notice to the public in the **Federal Register**. Such a violation would mean that the area would thereafter have to address the requirements of section 182(b)(1) and section 172(c)(9) since the basis for the determination that they do not apply would no longer exist.

As a consequence of the determinations that these areas have attained and that the reasonable further progress and attainment demonstration requirements of section 182(b)(1) do not presently apply, the sanctions clocks started by EPA on January 28, 1994, for the Ashland and Charlotte-Gastonia areas for the failure to submit a section 181(b)(1) 15 percent plan and attainment demonstration and on April 1, 1994, for the Nashville area for submittal of an incomplete 15 percent plan are hereby stopped as the deficiency for which the clocks were started no longer exists.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action will become effective on August 7, 1995. However, if the EPA receives adverse comments by July 24, 1995, then the EPA will publish a document that withdraws the action, and will address those comments in the final rule on the requested redesignation and SIP revision which has been proposed for approval in the proposed rules section of this **Federal Register**.

The Office of Management and Budget exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et. seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final ruie on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. This determination does not create any new requirements, but allows suspension of the indicated requirements. Therefore, because the approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected.

Under Sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

EPA's final action does not impose any federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act, upon the State. No additional costs to State, local, or tribal governments, or to the private sector, result from this action, which suspends the indicated requirements. Thus, EPA has determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 21, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Nitrogen oxides, Ozone, Volatile organic compounds, Intergovernmental relations, Reporting and record keeping requirements.

Dated: June 9, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52, chapter 1, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart S—Kentucky

2. Section 52.930 is amended by adding new paragraph (c) to read as follows:

§ 52.930 Control strategy: Ozone.

* * * * *

(c) Determination—EPA is determining that, as of August 7, 1995, the Cincinnati-Hamilton and Huntington-Ashland ozone nonattainment areas have attained the ozone standard and that the reasonable further progress and attainment demonstration requirements of section 182(b)(1) and related requirements of section 172(c)(9) of the Clean Air Act do not apply to the areas for so long as the areas do not monitor any violations of the ozone standard. If a violation of the ozone NAAQS is monitored in the Cincinnati-Hamilton or Huntington-Ashland ozone nonattainment areas, these determinations shall no longer apply.

Subpart II—North Carolina

2. Section 52.1782 is added to read as follows:

§ 52.1782 Control strategy: Ozone.

(a) Determination—EPA is determining that, as of August 7, 1995, the Charlotte-Gastonina ozone nonattainment area has attained the ozone standard and that the reasonable further progress and attainment demonstration requirements of section 182(b)(1) and related requirements of section 172(c)(9) of the Clean Air Act do not apply to the area for so long as the area does not monitor any violations of the ozone standard. If a violation of the ozone NAAQS is monitored in the Charlotte-Gastonia ozone nonattainment area, these determinations shall no longer apply.

(b) [Reserved]

Subpart RR—Tennessee

2. Section 52.2235 is added to read as follows:

§ 52.2235 Control strategy: Ozone.

* * * * *

(a) Determination—EPA is determining that, as of August 7, 1995, the Nashville ozone nonattainment area has attained the ozone standard and that the reasonable further progress and attainment demonstration requirements of section 182(b)(1) and related requirements of section 172(c)(9) of the Clean Air Act do not apply to the area for so long as the area does not monitor any violations of the ozone standard. If a violation of the ozone NAAQS is monitored in the Nashville ozone nonattainment area, these determinations shall no longer apply.

(b) [Reserved]

[FR Doc. 95–15234 Filed 6–21–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 282

[FRL–5205–7]

Underground Storage Tank Program: Approved State Program for North Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The Resource Conservation and Recovery Act of 1976, as amended (RCRA), authorizes the U.S. Environmental Protection Agency (EPA) to grant approval to states to operate their underground storage tank programs in lieu of the federal program. 40 CFR part 282 codifies EPA's decision to approve state programs and incorporates by reference those provisions of state statutes and regulations that will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of RCRA subtitle I and other applicable statutory and regulatory provisions. This rule codifies in part 282 the prior approval of North Dakota's underground storage tank program and incorporates by reference appropriate provisions of state statutes and regulations.

DATES: This regulation is effective on August 21, 1995, unless EPA publishes a prior **Federal Register** document withdrawing this immediate final rule. All comments on the codification of North Dakota's underground storage tank program must be received by the close of business on July 24, 1995. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register**, as of August 21, 1995, in accordance with 5 U.S.C. 552(a).

ADDRESSES: Comments may be mailed to Jo Taylor, 8HWM-WM, Hazardous Waste Management Division, Underground Storage Tank Program, U.S. EPA Region 8, 999 18th Street, Suite 500, Denver, Colorado, 80202–2466. Comments received may be inspected in the U.S. EPA Region 8 Library, Suite 144, at the above address from 12:00 p.m. to 4:00 p.m., Monday through Friday, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Jo Taylor, Underground Storage Tank Program, U.S. EPA Region VIII, 999–18th Street, Suite 500, Denver, CO 80202–2466. Phone: (303) 293–1511.

SUPPLEMENTARY INFORMATION:

Background

Section 9004 of the Resource Conservation and Recovery Act of 1976, as amended, (RCRA), 42 U.S.C. 6991c, allows the U.S. Environmental Protection Agency (EPA) to approve state underground storage tank programs to operate in the state in lieu of the federal underground storage tank program. EPA published a **Federal Register** document announcing its decision to grant approval to North Dakota (56 FR 51333, October 11, 1991). Approval was effective on December 10, 1991.

EPA codifies its approval of State programs in 40 CFR part 282 and incorporates by reference therein the state statutes and regulations that will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions. Today's rulemaking codifies EPA's approval of the North Dakota underground storage tank program. This codification reflects the state program in effect at the time EPA granted North Dakota approval under section 9004(a), 42 U.S.C. 6991c(a) for its underground storage tank program. Notice and opportunity for comment were provided earlier on the Agency's decision to approve the North Dakota program, and EPA is not now reopening that decision nor requesting comment on it.

This effort provides clear notice to the public of the scope of the approved program in each state. By codifying the approved North Dakota program and by amending the Code of Federal Regulations whenever a new or different set of requirements is approved in North Dakota, the status of federally approved requirements of the North Dakota program will be readily discernible. Only those provisions of the North Dakota underground storage tank program for which approval has been granted by EPA will be incorporated by reference for enforcement purposes.

To codify EPA's approval of North Dakota's underground storage tank program, EPA has added section 282.84 to title 40 of the CFR. Section 282.84 incorporates by reference for enforcement purposes the State's statutes and regulations. Section 282.84 also references the Attorney General's Statement, Demonstration of Adequate Enforcement Procedures, the Program Description, and the Memorandum of Agreement, which are approved as part of the underground storage tank program under subtitle I of RCRA.

The Agency retains the authority under sections 9005 and 9006 of subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions in approved states. With respect to such an enforcement action, the Agency will rely on federal sanctions, federal inspection authorities, and federal procedures, rather than the state authorized analogs to these provisions. Therefore, the approved North Dakota enforcement authorities will not be incorporated by reference. Section 282.84 lists those approved North Dakota authorities that would fall into this category.

The public also needs to be aware that some provisions of the State's underground storage tank program are not part of the federally approved state program. These non-approved provisions are not part of the RCRA Subtitle I program because they are "broader in scope" than subtitle I of RCRA. See 40 CFR 281.12(a)(3)(ii). As a result, state provisions which are "broader in scope" than the federal program are not incorporated by reference for purposes of enforcement in part 282. Section 282.84 of codification simply lists for reference and clarity the North Dakota statutory and regulatory provisions which are "broader in scope" than the federal program and which are not, therefore, part of the approved program being codified today. "Broader in scope" provisions cannot be enforced by EPA; the State, however, will continue to enforce such provisions.

Certification Under the Regulatory Flexibility Act

This rule codifies the decision already made (56 FR 51333, October 11, 1991) to approve the North Dakota underground storage tank program and thus has no separate effect. Therefore, this rule does not require a regulatory flexibility analysis. Thus, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, federal agencies must consider the paperwork burden imposed by any information request contained in a proposed or final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 282

Environmental protection, Hazardous substances, Incorporation by reference, Intergovernmental relations, State program approval, Underground storage tanks, Water pollution control.

Dated: May 2, 1995.

Jack McGraw,

Acting Regional Administrator.

For the reasons set forth in the preamble, 40 CFR part 282 is proposed to be amended as follows:

PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS

1. The authority citation for part 282 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

Subpart B—Approved State Programs

2. Subpart B is amended by adding § 282.84 to read as follows:

§ 282.84 North Dakota State-Administered Program.

(a) The State of North Dakota is approved to administer and enforce an underground storage tank program in lieu of the federal program under subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991 *et seq.* The State's program, as administered by the North Dakota Department of Health and Consolidated Laboratories, was approved by EPA pursuant to 42 U.S.C. 6991c and part 281 of this Chapter. EPA approved the North Dakota program on October 11, 1991 and it was effective on December 10, 1991.

(b) North Dakota has primary responsibility for enforcing its underground storage tank program. However, EPA retains the authority to exercise its inspection and enforcement authorities under sections 9005 and 9008 of subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, as well as under other statutory and regulatory provisions.

(c) To retain program approval, North Dakota must revise its approved program to adopt new changes to the federal subtitle I program which make it more stringent, in accordance with section 9004 of RCRA, 42 U.S.C. 6991c, and 40 CFR part 281, subpart E. If North Dakota obtains approval for the revised requirements pursuant to section 9004 of RCRA, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions will be added to this subpart and notice of any change will be published in the **Federal Register.**

(d) North Dakota has final approval for the following elements submitted to EPA in North Dakota's program application for final approval and approved by EPA on October 11, 1991. Copies may be obtained from the Underground Storage Tank Program, North Dakota Department of Health Consolidated Laboratories, 1200 Missouri Avenue, Bismarck, ND 58502–5520.

(1) *State Statutes and Regulations.* (i) The provisions cited in this paragraph are incorporated by reference as part of the underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(A) North Dakota Statutory Requirements Applicable to the Underground Storage Tank Program, 1995.

(B) North Dakota Regulatory Requirements Applicable to the Underground Storage Tank Program, 1995.

(ii) The following statutes and regulations are part of the approved state program, although not incorporated by reference herein for enforcement purposes.

(A) The statutory provisions include: North Dakota Century Code (NDCC), Chapter 23–20.3, Sections 23–20.3–06, 23–20.3–07 and 23–20.3–09.

(B) The regulatory provisions include: North Dakota Administrative Code, Chapter 33–24–08, Sections 33–24–08–56, 33–24–08–57 and 33–24–08–98.

(2) *Statement of Legal Authority.* (i) "Attorney General's Statement for Final Approval", signed by the Attorney General of North Dakota on February 28, 1991, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(ii) Letter from the Attorney General of North Dakota to EPA, February 28, 1991, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of Procedures for Adequate Enforcement.* The "Demonstration of Procedures For Adequate Enforcement" submitted as part of the original application in April 1991, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program Description.* The program description and any other material submitted as part of the original application in April 1991, though not incorporated by reference, are referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region VIII and the North Dakota Department of Health and Consolidated Laboratories, signed by the EPA Regional Administrator on September 10, 1993, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

3. Appendix A to Part 282 is amended by adding in alphabetical order "North Dakota" and its listing.

Appendix A to Part 282—State Requirements Incorporated by Reference in Part 282 of the Code of Federal Regulations

* * * * *

North Dakota

(a) The statutory provisions include: North Dakota Century Code (NDCC), Chapter 23–20.3, Hazardous Waste Management Act:

Section 23–20.3–01 Declaration of Purpose.
Section 23–20.3–02 Definitions.
Section 23–20.3–03 Powers and Duties of the Department.
Section 23–20.3–04 Hazardous Waste Regulations.
Section 23–20.3–04.1 Underground Storage Tank Regulations.
Section 23–20.3–05 Permits.
Section 23–20.3–05.1 Fees—Deposit in Operating Fund.
Section 23–20.3–05.2 Commercial Facility Permits and Ordinances.
Section 23–20.3–08 Imminent Hazard.
Section 23–20.3–10 Applicability.

(b) The regulatory provisions include: North Dakota Administrative Code (NDAC), Chapter 33–24–08, Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks, Amended April 1992:

Section 33–24–08–01 Applicability.
Section 33–24–08–02 Interim Prohibition for Deferred Underground Storage Tank Systems.
Section 33–24–08–03 Definitions (Technical Standards and Corrective Action).
Section 33–24–08–10 Performance Standards for New Underground Storage Tank Systems.
Section 33–24–08–11 Upgrading of Existing Underground Storage Tank Systems.
Section 33–24–08–12 Notification Requirements.
Section 33–24–08–20 Spill and Overfill Control.
Section 33–24–08–21 Operation and Maintenance of Corrosion Protection.
Section 33–24–08–22 Compatibility.
Section 33–24–08–23 Repairs Allowed.
Section 33–24–08–24 Reporting and Recordkeeping.
Section 33–24–08–30 General Release Detection Requirements for All Underground Storage Tank Systems.
Section 33–24–08–31 Release Detection Requirements for Petroleum Underground Storage Tank Systems.
Section 33–24–08–32 Release Detection Requirements for Hazardous Substance Underground Storage Tank Systems.
Section 33–24–08–33 Methods of Release Detection for Tanks.
Section 33–24–08–34 Methods of Release Detection for Piping.
Section 33–24–08–35 Release Detection Recordkeeping.
Section 33–24–08–40 Reporting of Suspected Releases.
Section 33–24–08–41 Investigation Due to Offsite Impacts.
Section 33–24–08–42 Release Investigation and Confirmation Steps.
Section 33–24–08–43 Reporting and Cleanup of Spills and Overfills.
Section 33–24–08–50 General Release Response and Corrective Action for Underground Storage Tank Systems Containing Petroleum or Hazardous Substances.
Section 33–24–08–51 Initial Response.
Section 33–24–08–52 Initial Abatement Measures and Site Check.
Section 33–24–08–53 Initial Site Characterization.
Section 33–24–08–54 Free Product Removal.
Section 33–24–08–55 Investigations for Soil and Ground Water Cleanup.
Section 33–24–08–60 Temporary Closure.
Section 33–24–08–61 Permanent Closure and Changes in Service.
Section 33–24–08–62 Assessing the Site at Closure or Change in Service.
Section 33–24–08–63 Applicability to Previously Closed Underground Storage Tank Systems.
Section 33–24–08–64 Closure Records.
Section 33–24–08–80 Applicability (financial responsibility).
Section 33–24–08–81 Financial Responsibility Compliance Dates.
Section 33–24–08–82 Definitions (financial responsibility).
Section 33–24–08–83 Amount and Scope of Required Financial Responsibility.
Section 33–24–08–84 Allowable Mechanisms and Combinations of Mechanisms.
Section 33–24–08–85 Financial Test of Self-Insurance.
Section 33–24–08–86 Guarantee.
Section 33–24–08–87 Insurance and Risk Retention Group Coverage.
Section 33–24–08–88 Surety Bond.
Section 33–24–08–89 Letter of Credit.
Section 33–24–08–92 Trust Fund.
Section 33–24–08–93 Standby Trust Fund.
Section 33–24–08–94 Substitution of Financial Assurance mechanisms by Owner or Operator.
Section 33–24–08–95 Cancellation or Nonrenewal by Provider of Financial Assurance.
Section 33–24–08–96 Reporting by Owner or Operator.
Section 33–24–08–97 Recordkeeping.
Section 33–24–08–99 Release from Requirements.
Section 33–24–08–100 Bankruptcy or Other Incapacity of Owner or Operator or Provider of Financial Assurance.
Section 33–24–08–101 Replenishment of Guarantees, Letters of Credit, or Surety Bonds.

[FR Doc. 95–15173 Filed 6–21–95; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 60, No. 120
Thursday, June 22, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 210, 245a, 264, and 274a

[INS No. 1399S–94]

RIN 1115–AB73

Control of Employment of Aliens

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Supplement to proposed rule.

SUMMARY: On November 23, 1993, the Immigration and Naturalization Service (the Service) published a proposed rule in the **Federal Register** at 58 FR 61846–61850, which would reduce the number of documents that were acceptable for purposes of completing the Employment Eligibility Verification Form (Form I–9). A number of significant concerns regarding the agency's proposal were raised by the public and this supplement is being issued to address those concerns before proceeding with final rulemaking. This supplement proposes to simplify compliance with the employment eligibility verification requirements by further reducing the number of Service-issued documents that are acceptable for purposes of completing the Form I–9. It also contains other improvements in the system developed by the Service, including introduction of a new, more secure employment authorization document and related regulatory changes. The aim of these changes, along with reduction in the number of acceptable documents, is to produce an employment eligibility verification system that employers can use more easily and effectively. If this is accomplished, the potential for employment discrimination based on misapplication of the employment eligibility verification requirements should also be reduced.

DATES: Written comments must be submitted on or before July 24, 1995.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536, Attn: Public Comment Clerk. To ensure proper handling, please reference INS number 1399S–94 on your correspondence. Comments are available for public inspection at this location by calling (202) 514–3048 to arrange an appointment.

FOR FURTHER INFORMATION CONTACT: Cristina Hamilton (General Counsel), telephone (202) 514–2895; David Yost (Investigations), telephone (202) 514–2998; Jackie Bednarz (Adjudications), telephone (202) 514–5014. The street address is: Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536.

SUPPLEMENTARY INFORMATION: This is a supplement to the proposed rule to reduce the number of Service-issued documents that are acceptable for purposes of completing the Employment Eligibility Verification Form (Form I–9). The proposed rule was published at 58 FR 61846–61850 on November 23, 1993, and provided for a 30-day comment period which expired on December 23, 1993. The rule was proposed to further simplify compliance with the employment eligibility verification requirements and to address the concerns of employers who allege confusion created by the number of acceptable documents on the From I–9.

During the comment period, questions were raised about retaining Federal identification documents in the employment eligibility verification process and also about sharing burdens between employers and employees in re-verifying employment eligibility.

Since the comment period, a Process Action Team (PAT team) containing representatives of various Service components has continued to discuss methods of reducing the number of documents used to verify employment eligibility. One approach that the Service anticipates will be implemented by January 1, 1996, is the introduction of a new, more secure employment authorization document (EAD), the Form I–766, that will replace two other EADs, the Form I–688A and Form I–688B.

In addition, this supplement addresses other employer sanctions-related issues discussed by the PAT team that have been raised by legislation, regulatory changes, or Service interaction with the public. These include the changes in the Higher Education Amendments of 1992 for students enrolled in the Federal Work Study Program, and clarification of the "receipt rule" in 8 CFR 274a.2(b)(1)(vi). Also discussed is the fact that an older Alien Registration Receipt Card (Form I–151) may still be used for employment eligibility verification because of a delayed effective date of the rule terminating its validity.

Besides these matters, the supplement proposes various regulatory changes related to the introduction of the new Form I–766. This will include designation in 8 CFR 264.1 of the I–766 as evidence of alien registration for I–688A holders. Changes are proposed in 8 CFR parts 210 and 245a to accommodate changing document numbers. Other revised language in 8 CFR 274a.12(c) clarifies language in the original proposed rule specifying the regulatory basis for work authorization for legalization applicants. Also proposed is regulatory language lifting a stay on the effective date of 8 CFR 274a.14(c) which terminates the validity of various paper work permits issued by the Service before June 1, 1987.

The thrust of these changes, along with reduction in the number of acceptable documents, is to reduce uncertainty on the part of employers and make the employment eligibility verification system more effective. Another benefit of a more effective system would be to reduce the potential for employment discrimination based upon misunderstandings of the employment eligibility verification requirements.

The following is a discussion of proposed changes to the proposed rule as a result of public comments, recent legislation and regulatory changes. Also discussed are changes recommended by the Process Action Team for reducing the number of documents used to verify employment eligibility and otherwise improving the verification system.

Elimination of Federal Identification Documents

The Service has determined that eliminating Federal identification cards from the category of List B identity documents is consistent with its goal of document reduction and also is consistent with its purpose in the original proposed rule of eliminating military documents. At least one commenter noted that the Service's intentions were unclear with respect to the elimination of military identification documents because, while removing military identification documents, it had retained Federal identification cards. The Service agrees with the commenter that failure to eliminate the Federal identification card creates confusion, as many categories of military cards meet the criteria of Federal identification documents. For that reason, and because it remains the Service's objective to eliminate as many documents as possible, the Service proposes eliminating Federal identification cards.

Modifications to Section 3 of the Form I–9

During the comment period for the proposed rule, at least two commenters, one representing a significant number of employers, expressed the view that employees should be required to complete an attestation in Section 3 of the Form I–9 during the reverification process indicating that the employee is authorized to work in the United States and disclosing any future expiration date of the employee's work authorization. These recommendations are changes which the Service had previously considered and which the Service believes have merit.

At the present time, if an employee's work authorization expires, the employer must reverify that the employee continues to be eligible to work. Reverification may be accomplished either in Section 3 of the original Form I–9 or in Section 3 of a separate Form I–9 attached to the original. For subsequent reverifications, additional Form I–9 are used. The employer satisfies this requirement by reviewing the document presented by the employee and by completing Section 3—"Updating and Reverification"—on the original Form I–9, or by attaching a new Form I–9 to the original and entering the employee's name in Section 1 and completing Section 3 of the new Form I–9. The employee must present a document which shows that he or she is currently eligible to work in the United States.

This supplement to the proposed rule proposes to amend § 274a.2(b)(1)(vii) to create a requirement that the employee sign an attestation in Section 3 of the Form I–9 during the reverification process, indicating that he or she is authorized to work in the United States. In addition, the employee will be required to check the appropriate box indicating that he or she will continue to be authorized to work in the United States indefinitely, or that he or she will be authorized to work in the United States until a certain date. If the employee's work authorization bears a future expiration date, the employee will be required to provide this date. These proposed requirements are intended to alleviate some of the burden placed upon an employer who is presented at the time of reverification with documents purporting to show the employee's new or extended employment authorization when the employer may have a suspicion that the employee is no longer employment eligible. This will make both the employer and the employee responsible for the reverification process.

Because some employees may not be able to complete Section 3 or may need it translated, the Form I–9 will be modified to include an additional Preparer/Translator Certification block for use with Section 3. It is anticipated that the existing Preparer/Translator Certification block will be removed from Section 1. A new Section 4 will be created, and will include two Preparer/Translator Certification blocks—one for use with Section 1 when the Form I–9 is initially completed, and one for use during the reverification process when Section 3 of the Form I–9 is completed.

To more clearly reflect existing law, the Service will further modify the Form I–9 by stating on the form that the recording of the employee's Social Security number in Section 1 is voluntary. It is the Service's opinion that these changes will significantly improve the employment eligibility verification system.

Clarification of the "Receipt Rule"

From inquiries outside the Service, it has become apparent that there is a common misconception among employers that the "receipt rule" contained in 8 CFR 274a.2(b)(1)(vi) permits employers to accept receipts for applications for documents at the time of reverifying employment eligibility as well as at the time of hire. The Service recognizes that an employee may lose an employment authorization document just as easily after his or her employment eligibility has been verified as before. Thus it is logical to apply the "receipt rule" to the reverification process as well. For this reason and because the Service is proposing to require an attestation by the employee at the time of reverification, the Service believes that it is now appropriate to authorize the use of receipts at the time of reverification.

This supplement proposes to provide that if an employee is unable to present a document at the time of reverification, the receipt for an application for a replacement document must be presented not later than the expiration of the original work authorization and the replacement document must be presented not later than 90 days after the expiration of that work authorization. This rule would retain the original language of the section providing that it does not apply to aliens who indicate that they do not have work authorization at the time of hire.

This rule would not apply to aliens who would be presenting a receipt for the application for the renewal of employment authorization. These persons must have an employment authorization document evidencing renewal of their employment authorization or interim employment authorization. If an application for employment authorization has not been adjudicated within 90 days of filing, the applicant is entitled pursuant to 8 CFR 274a.13(d) to an interim employment authorization of no more than 240 days while the application is adjudicated.

The Higher Education Amendments

The Higher Education Amendments of 1992 authorized students in the Federal Work Study Program to present to the employer original or certified copies of the documents collected and maintained by an eligible institution in the admission of the student to the institution in lieu of the documents used to establish both employment eligibility and identity.

To incorporate these changes into the employment eligibility verification system, the Service proposes to amend § 274a.2(b)(1)(v) to include these documents as List A documents. Further, the revised Form I–9 will reflect the new option, and the revised Handbook for Employers (M–274) will explain that the entire admissions package, not just selected portions of the package, must be presented to the employer to satisfy the requirements of section 274A of the Act.

Validity of Form I–151 as List A Document

On September 20, 1993, the Service published a final rule in the **Federal Register** at 58 FR 48775–48780, which terminated the validity of the Alien Registration Receipt Card, Form I–151, effective September 20, 1994. The effective date was delayed until March 20, 1995, by final rule published in the **Federal Register** at 59 FR 47063, and it was further delayed until March 20, 1996, by final rule published on March 17, 1995, at 14353. The delay in the effective dates were needed to minimize

the possibility that lawful permanent residents who apply for a replacement Form I–551, Alien Registration Receipt Card, or for naturalization have their applications adjudicated before expiration of the Form I–151 on March 20, 1996.

The final rule will remove references to the Form I–151 throughout Title 8 of the Code of Federal Regulations, including the reference to the Form I–151 as a List A document in 8 CFR 274a.2(b)(1)(v). Thus the Form I–151 will be removed as a List A document when the final rule becomes effective as anticipated on March 20, 1996.

Elimination of the Form I–688B and Introduction of a More Secure Employment Authorization Document (EAD) (Form I–766)

In another employment-related matter arising since publication of the proposed rule, the Service has determined that utilizing state-of-the-art technology at one or more of its service centers will enable the Service to produce a more secure EAD which will benefit employers, aliens who have been granted employment authorization, and the Service as well. The Service is using this supplement as a vehicle to advise the public of its intention to centralize EAD production.

Currently about one half of all EAD applications are filed and processed at the service centers through Direct Mail, and the Service plans to shift almost all remaining EAD applications to Direct Mail as a new production system becomes available in the service centers. [Direct Mail is a Service program under which the public files certain applications and petitions for benefits under the Immigration and Nationality Act (Act), as amended, at service centers instead of field offices.] This partial centralization has improved inventory control, data integrity, and overall service. It has also made the employment authorization data available for verification purposes sooner than it is from decentralized work stations.

With the introduction of the new EAD, Form I–766, Form I–688B will be eliminated. This is consistent with the overall purpose of this rule and these changes are reflected in the proposed rule. Elimination of the Form I–688A, another current version of the EAD, was previously announced in the proposed rule published at 58 FR 61846 on November 23, 1993.

It is the Service's intention to eliminate both Forms I–688A and I–688B as acceptable evidence of employment authorization as of December 31, 1996. Since all Forms I–688A and most Forms I–688B are issued for a 1-year validity period, this elimination will be accomplished in large measure by the Service's ceasing to issue Forms I–688A and I–688B on or before December 31, 1995, at which time the I–766 will be in production.

The Service will replace any cards with validity dates beyond December 31, 1996, with Forms I–766. While the Service has directed that no Form I–688A (or sticker affixed thereto) be issued or extended to a validity date beyond December 31, 1996, an undetermined number of these documents may have been inadvertently issued or extended beyond that date. Further, the Service estimates on the basis of internal data that as of December 31, 1996, there will be approximately 30,000 Forms I–688B with validity dates beyond that date, due to exceptions to the general practice of issuance in 1-year increments.

The Service has determined that the benefits of a more secure EAD justify a requirement that still-valid Forms I–688A and I–688B alike be replaced with the Form I–766. Further, the fact that the Service's adjudications function no longer receives appropriated funds means that the cost of replacing these cards must come from user fees. In both the Independent Office Appropriation Act, 31 U.S.C. 9701(a), and legislation establishing an "Immigration Examination Fee Account," Section 286(m) of the Act, 8 U.S.C. 1356, Congress has authorized the setting of fees that recover the costs of providing services to aliens. For these reasons, the Service intends to require the standard filing fee for Form I–765 from aliens in these classes applying for replacement EADs.

Holders of Forms I–688A with expiration dates beyond December 31, 1996, will be aliens with pending applications for temporary resident status under sections 210 or 245a of the Act. Current regulations at 8 CFR 103.7(b)(1) do not address the question of fees for renewal of Forms I–688A for these persons, who applied under either section 210 on Form I–700 or under section 245a on Form I–687. However, the Service has administratively exempted this class of aliens from fees for renewal of Forms I-688A since Forms I–687 and I–700 were approved for use. For the reasons discussed above, this practice will cease with introduction of the Form I–766.

Most multiple-year Forms I–688B are issued to dependents of diplomatic, consular and international officials, as well as dependents of certain exchange visitors. Similarly, current regulations at 8 CFR 103.7(b)(1) provide no exemption of the filing fee for the Application for Employment Authorization, Form I–765, for the dependents described above. The Service has, however, administratively exempted this class of aliens from fees since Form I–765 was approved for use. For this class, too, this practice will cease with introduction of Form I–766.

The Service will accept applications to replace with Form I–766 all Forms I–688A and I–688B carrying a validity date beyond December 31, 1996, for a specified period of time. By separate notice, the Service will inform the public of the exact dates of this application period. Further, the Service will take appropriate steps to notify holders of multiple-year Forms I–688B through the Department of State and the United States Information Agency, the government agencies with the closest liaison with the affected communities.

Other regulatory changes are also needed to reflect introduction of Form I–766. In the proposed rule published November 23, 1993, the Service proposed amending 8 CFR parts 210 and 245a to reflect replacement of Form I–688A with I–688B. Since introduction of Form I–766 will make it necessary to further amend those parts, the Service proposes to replace references to specifically numbered forms with a more general reference to "employment authorization document." Current language in those sections providing for employment authorization in 6-month increments will be made consistent with language in the new 8 CFR 274a.12(c) providing for employment authorization in increments not to exceed 1 year.

Further, to clarify the regulatory basis for work authorization in 8 CFR 274a.12 for legalization applicants under sections 210 and 245a of the Act, the Service is proposing to add a paragraph to 8 CFR 274a.12(c) to include this group in that class of aliens who must apply for employment authorization while an application is pending. A similar provision was included in the proposed rule originally published, but the language proposed in this supplement makes it clear that eligibility for employment authorization is during the period in which the legalization application is pending.

Additionally, Form I–688A is designated by existing regulation as evidence of alien registration. The Service proposes to amend 8 CFR part 264 to make Form I–766, which will replace Form I–688A, evidence of alien registration in one instance. It will be such evidence only for persons who have legalization applications under sections 210 and 245a of the Act pending before the Service (including any period of administrative review).

With the introduction of Form I–766, it is appropriate to revisit the final rule published on June 1, 1988, at 53 FR 20086–87, staying and suspending the automatic termination provisions of 8 CFR 274a.14(c). Without the stay, employment authorizations granted by the Service before June 1, 1987, for a period beyond June 1, 1988, were to be automatically terminated by regulation. The stay was imposed "to promote clarity in the issuance of employment authorization documents" while the Service continued to investigate technologies for a secure, standardized employment authorization system.

The Service's view is that the technology behind Form I–766 represents an important step toward such a system. There may still be in circulation an undetermined number of Service-issued paper work permits issued before June 1, 1987, that fall within this regulation. It has remained the Service's intent to automatically invalidate such paper documents under the terms of 8 CFR 274a.14(c), which was stayed and suspended. Consistent with the purpose of this rulemaking, then, the Service proposes to lift the stay on termination of these documents, effective December 31, 1996. Holders of such documents would be required to obtain the new, secure Form I–766.

Overall, this requirement would further reduce the number of EADs with which employers must be familiar in order to comply with Section 274A of the Act. In that regard, it is also consistent with Service plans to terminate Forms I–688A and I–688B as employment authorization documents effective December 31, 1996.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and has been reviewed by the Office of Management and Budget (OMB). As noted in the supplementary section of this rule, this action is intended to streamline and simplify compliance with the employment eligibility verification requirements of the Act.

Executive Order 12612

The regulation proposed herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12606

The Commissioner of the Immigration and Naturalization Service certifies that she has assessed this rule in light of the criteria in Executive Order 12606 and has determined that this regulation will not have an impact on family well-being.

The information collection requirements contained in this rule have been cleared by OMB under the provisions of the Paperwork Reduction Act. The OMB clearance number is 1115–0136.

List of Subjects

8 CFR Part 210

Aliens, Migrant labor, Reporting and recordkeeping requirements.

8 CFR Part 245a

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 264

Administrative practice and procedure, Aliens, Registration.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 210—SPECIAL AGRICULTURAL WORKERS

1. The authority citation for part 210 continues to read as follows:

Authority: 8 U.S.C. 1103, 1160; 8 CFR part 2.

2. In § 210.4 paragraphs (b)(2) and (3) are revised to read as follows:

§ 210.4 Status and benefits.

* * * * *

(b) * * *

(2) *Employment and travel authorization prior to the granting of temporary resident status.* Permission to travel abroad and to accept employment will be granted to the applicant after an interview has been conducted in connection with a nonfrivolous application at a Service office. If an interview appointment cannot be scheduled within 30 days from the date an application is filed at a Service office, authorization to accept employment will be granted, valid until the scheduled appointment date. Employment authorization, both prior and subsequent to an interview, will be restricted to increments not exceeding 1 year, pending final determination on the application for temporary resident status. If a final determination has not been made prior to the expiration date on the employment authorization document, that date may be extended upon return of the employment authorization document by the applicant to the appropriate Service office. Persons submitting applications who currently have work authorization incident to status as defined in § 274a.12(b) of this chapter shall be granted work authorization by the Service effective on the date the alien's prior work authorization expires. Permission to travel abroad shall be granted in accordance with the Service's advance parole provisions contained in § 212.5(e) of this chapter.

(3) *Employment and travel authorization upon grant of temporary resident status.* Upon the granting of an application for adjustment to temporary resident status, the service center will forward a notice of approval to the applicant at his or her last known address and to his or her qualified designated entity or representative. The applicant may appear at any Service office, and upon surrender of the previously issued employment authorization card, will be issued Form I–688, Temporary Resident Card. An alien whose status is adjusted to that of a lawful temporary resident under section 210 of the Act has the right to reside in the United States, to travel abroad (including commuting from a residence abroad), and to accept employment in the United States in the same manner as aliens lawfully admitted to permanent resident.

* * * * *

PART 245a—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR LAWFUL TEMPORARY OR PERMANENT RESIDENT STATUS UNDER SECTION 245A OF THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED BY PUBLIC LAW 99–603, THE IMMIGRATION REFORM AND CONTROL ACT OF 1986, AND PUBLIC LAW 100–204, SECTION 902

3. The authority citation for part 245a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1255a and 1255a note.

4. In § 245a.2 paragraph (n)(2) heading, and paragraphs (n)(2)(ii) and (n)(3) are revised to read as follows:

§ 245a.2 Application for temporary residence.

* * * * *

(n) * * *

(2) *Employment authorization prior to the granting of temporary resident status.*

* * * * *

(ii) If an interview appointment cannot be scheduled within 30 days from the date an application is filed at a Service office, authorization to accept employment will be granted, valid until the scheduled appointment date. Employment authorization, both prior and subsequent to an interview, will be restricted to increments not exceeding 1 year, pending final determination on the application for temporary resident status. If a final determination has not been made prior to the expiration date on the employment authorization document, that date may be extended upon return of the employment authorization document by the applicant to the appropriate Service office.

(3) *Employment and travel authorization upon grant of temporary resident status.* Upon the granting of an application for adjustment to temporary resident status, the service center will forward a notice of approval to the applicant at his or her last known address and to his or her qualified designated entity or representative. The applicant may appear at any Service office, and upon surrender of the previously issued employment authorization card, will be issued Form I–688, Temporary Resident Card, authorizing employment and travel abroad.

* * * * *

PART 264—REGISTRATION AND FINGERPRINTING OF ALIENS IN THE UNITED STATES

5. The authority citation for part 264 continues to read as follows:

Authority: 8 U.S.C. 1103, 1201, 1201a, 1301–1305.

6. In § 264.1 paragraph (b) is amended by revising the entry for "Form I–688A" and by adding the entry for "Form I–766" to the listing of forms, in proper numerical sequence, to read as follows:

§ 264.1 Registration and fingerprinting.

* * * * *

(b) * * *

I–688A, Employment Authorization Card (until December 31, 1996). I–766, Employment Authorization—Applicants under sections 210 and 245a of the Immigration and Nationality Act, as amended, during such time as an application is pending before the Service, (including any period of administrative review).

* * * * *

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

7. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

8. Section 274a.2 is amended by:

a. Revising paragraphs (b)(1)(v)(a) (*6*) and (*7*);

b. Revising paragraph (b)(1)(v)(B)(*1*)(*i*); and by

c. Revising paragraphs (b)(1)(vi) and (vii), to read as follows:

§ 274a.2 Verification of employment eligibility.

* * * * *

(b) * * *

(1) * * *

(v) * * *

(A) * * *

(*6*) An unexpired employment authorization document issued by the Immigration and Naturalization Service which contains a photograph, INS Form I–766, INS Form I–688, INS Form I–688A, (until December 31, 1996), or INS Form I–688B, (until December 31, 1996);

(*7*) For student participants in Federal Work-Study programs, documents collected and maintained by eligible institutions in the admission of those students to the institutions;

* * * * *

(B) * * *

(*1*) * * *

(*i*) A driver's license or identification card issued by a state (as defined in section 101(a)(36) of the Act), or outlying possession (as defined in section 101(a)(29) of the Act) of the United States, provided the document contains a photograph and the following information: name, date of birth, and sex;

* * * * *

(vi) If an individual is unable to provide the required document or documents within the time periods specified in paragraphs (b)(1) (ii) and (iv) of this section, the individual must present a receipt for the application of the replacement document or documents within 3 business days of the hire and present the required document or documents within 90 days of the hire. If an individual is unable to provide the required document or documents within the time period specified in paragraph (b)(1)(vii) of this section, the individual must present a receipt for the application of the replacement document or documents not later than the date work authorization expires and present the required document or documents within 90 days of that expiration date. This section does not apply to an alien who indicates that he or she does not have work authorization at the time of hire. Nor does it apply to an alien who does not have at the time of reverification an employment authorization document evidencing renewal of employment authorization or interim employment authorization pursuant to 8 CFR 274a.13(d).

(vii) If an individual's employment authorization expires, the employer, recruiter or referrer for a fee must reverify on Form I–9 to reflect that the individual is still authorized to work in the United States; otherwise the individual may no longer be employed, recruited, or referred. Reverification on the Form I–9 must occur not later than the date work authorization expires. In order to reverify on the Form I–9, the employee or referred individual must present a document that either shows continuing employment eligibility or is a new grant of work authorization. The employer or recruiter or referrer for a fee must review this document, and if it appears to be genuine and to relate to the individual, reverify by noting the document's identification number and expiration date on the Form I–9. The employee must sign and date the Form I–9 in the appropriate block in section 3, thereby attesting that he or she is authorized to work in the United States. In addition, the employee must mark the appropriate box indicating that he or she is authorized to work in the United States indefinitely, or that he or she is authorized to work in the United States until a certain date. If the employee's work authorization will expire, the employee must provide the expiration date in the appropriate space in section 3 of the Form I–9. If an individual is unable to complete section 3 of the Form I–9 or needs it translated, someone may assist him or her. The preparer or translator must read the Form to the employee, assist him or her in completing section 3—"Updating and Reverification," and have the individual sign or mark the Form in the appropriate place. The preparer or translator must then complete the "Preparer/Translator Certification" portion for section 3 of the Form I–9.

* * * * *

9. In § 274a.12, a new paragraph (c)(20) is added, to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

* * * * *

(c) * * *

(20) Any alien who has filed a completed legalization application pursuant to either section 210 or 245A of the Act (and either 8 CFR parts 210 or 245a). Employment authorization shall be granted in increments not exceeding 1 year during the period the application is pending (including any period when an administrative appeal is pending) and shall expire on a specified date.

* * * * *

10. In § 274a.14 paragraphs (c) (1) and (2) are revised to read as follows:

§ 274a.14 Termination of employment authorization.

* * * * *

(c) *Automatic termination of temporary employment authorization granted prior to June 1, 1987.*—(1) Temporary employment authorization granted prior to June 1, 1987 pursuant to 8 CFR 109.1(b) or its redesignation as § 274a.12(c), shall automatically terminate on the date specified by the Service on the document issued to the alien, or on December 31, 1996, whichever is earlier. Automatic termination of temporary employment authorization does not preclude a subsequent application for temporary employment authorization.

(2) A document issued by the Service prior to June 1, 1987, that authorizes temporary employment authorization for any period beyond December 31, 1996, is null and void pursuant to paragraph (c)(1) of this section, and must be surrendered to the Service on the date that the temporary employment authorization terminates or on December 31, 1996, whichever is earlier. The alien shall be issued a new employment authorization document at the time the document is surrendered to the Service if the alien is eligible for temporary employment authorization pursuant to § 274a.12(c).

* * * * *

Dated: April 25, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–15232 Filed 6–21–95; 8:45 am]

BILLING CODE 4410–10–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–5224–9]

Determination of Attainment of Ozone Standard by Ashland, Kentucky, Northern Kentucky (Cincinnati area), Charlotte, North Carolina, and Nashville, Tennessee, and Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to determine that the Ashland, Kentucky, Northern Kentucky, Charlotte-Gastonia, North Carolina, and Nashville, Tennessee, ozone nonattainment areas have attained the National Ambient Air Quality Standard (NAAQS) for ozone and that certain reasonable further progress and attainment demonstration requirements, along with certain related requirements, of Part D of Title I of the Clean Air Act are not applicable for so long as the areas continue to attain the ozone standard. In the final rules section of this **Federal Register**, EPA is making these determinations without prior proposal. A detailed rationale for the action is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and address the comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this action must be received by July 24, 1995.

ADDRESSES: Written comments should be mailed to: Kay Prince, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365.

A copy of the air quality data and EPA's analysis are available for inspection at the following addresses:

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365

Commonwealth of Kentucky, Division of Air Quality, Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet, 803 Schenkel Lane, Frankfort, Kentucky 40601

State of North Carolina, Air Quality Section, Division of Environmental Management, North Carolina Department of Environment, Health, and Natural Resources, Raleigh, North Carolina 27626

Environmental Management Division, Mecklenburg County Department of Environmental Protection, 700 N. Tryon Street, Charlotte, North Carolina 28202–2236

State of Tennessee, Division of Air Pollution Control, Tennessee Department of Environment and Conservation, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531

Bureau of Environmental Health Services, Metropolitan Health Department, Nashville-Davidson County, 311—23rd Avenue, North, Nashville, Tennessee 37203

FOR FURTHER INFORMATION CONTACT: Kay Prince, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. The telephone number is 404/347–3555 extension 4221.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule published in the Final Rules section of this **Federal Register**.

Dated: June 9, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–15235 Filed 6–21–95; 8:45 am]

BILLING CODE 6560–60–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 30, 31, 70, 71, 90, 91, and 107

[CGD 95–010]

RIN 2115–AF 11

Alternate Compliance via Recognized Classification Society and U.S. Supplement to Rules (CGD 95–010)

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend regulations to provides owners of U.S. tank vessels, passenger vessels, cargo vessels, miscellaneous vessels and mobile offshore drilling units an alternative method to fulfill the requirements for vessel design, inspection and certification. Under this proposal, the Coast Guard would issue a certificate of inspection based upon a recognized classification society's reports that the vessel complies with the International Convention for the Safety of Life at Sea, as amended (SOLAS 74/83), other applicable international conventions, classification society rules, and other specified requirements. This will reduce the burden on vessel owners and operators by eliminating duplicative plan reviews and inspections by the classification society and the Coast Guard.

DATE: Comments must be received on or before September 20, 1995.

ADDRESSES: Comments may be mailed to the Executive Secretary, marine Safety Council (G–LFA/3406) (CGD 95–010), U.S. Coast Guard Headquarters, 2200 Second Street, SW,, Washington, DC 20593–0001, or may be delivered to Room 3406 at the above address between 8 a.m. and 3 p.m. weekdays, except Federal holidays. the telephone number is (202) 267–1477. Comments on collection-of-information requirements must be mailed also to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, D.C. 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at Room 3406, U.S. Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Albert G. Kirchner, Jr., Office of Marine Safety, Security and Environmental Protection (G–MTH–4/13), Room 1304, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, (202) 267–0168.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in the rulemaking by submitting written data, views or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 95–010) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period and may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing the Marine Safety Council at the address under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If the council determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Mr. Albert G. Kirchner, Jr., Project Manager, Office of Marine Safety, Security and Environmental Protection and Commander Thomas R. Cahill, Project Counsel, Office of Chief Counsel.

Background and Purpose

As part of its regulatory reform efforts, the Coast Guard invited the maritime industry to identify unnecessarily burdensome regulations. In response, the U.S. maritime industry submitted many comments noting the continuing pressure on the competitive position of the U.S. oceangoing merchant fleet and commercial shipbuilding industry. Members of the industry called for greater alignment of Coast Guard regulations with international standards to reduce the cost disadvantages incurred by U.S. maritime industry and thereby improve the competitiveness of the U.S. industry. These developments, together with a desire to focus more attention on human element and port state control activities, prompted the Coast Guard to review its approach of ensuring maritime safety through vessel compliance inspections.

This proposal would be responsive to the needs expressed by the U.S. maritime industry to reduce the regulatory burden and alleviate duplication of effort between the Coast Guard and the classification societies. These processes are the culmination of one public meeting and more than 10 follow-on meetings involving all major shipbuilding and maritime operator interests in the nation. As a result of this intensive cooperative effort, the concept of alternative compliance was developed as a means of reducing adverse regulatory effects without jeopardizing safety.

As part of this review, a joint USCG/American Bureau of Shipping (ABS) task force compared the requirements in the Code of Federal Regulations (CFR), ABS Rules, the 1974 Safety of Life at Sea Convention, as amended (SOLAS 74/83), and the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78). The purpose of this comparison was to identify redundancies and determine if other regulations could be used in place of CFR requirements to achieve an equivalent level of safety. Over 370 separate regulatory provisions have been examined to date, and the task force has determined that many of the CFR requirements examined could be satisfied by ABS Rules, SOLAS 74, MARPOL 73/78 or combinations of the three. This led to the development of an ABS U.S. Supplement (USS). The USS addresses those areas where current Coast Guard requirements are not embodied by either ABS Rules or international conventions or, in the case of international conventions, whose interpretations are needed by the U.S. flag administration. The Coast Guard has concluded that the design requirements and survey provisions of ABS class rules, applicable international conventions, and the USS provide a level of maritime safety equivalent to corresponding Federal regulations which govern the same aspects of U.S. vessels.

Under this proposal, owners, operators, shipbuilders, and designers of U.S. flagged tank vessels, passenger vessels, cargo vessels, miscellaneous vessels, and mobile offshore drilling units subject to inspection under Part B of Subtitle II of 46 U.S.C. (sections 3101–4705) would have an alternative to traditional inspection by the Coast Guard. They could use the services of a recognized classification society to perform inspection and plan review functions now performed by the Coast Guard. The cognizant Coast Guard Officer-in-Charge of Marine Inspection may issue a certificate of inspection based upon the classification society's reports that the vessel is classed and complies with applicable requirements. This alternative would free Coast Guard resources and allow the Coast Guard to move from assessing a vessel's equipment and material condition to evaluating more pressing concerns related to the human element. In addition, it would allow the Coast Guard to shift resources from inspection of U.S. vessels to port state enforcement efforts without degrading the safety of U.S vessels. The Coast Guard would maintain oversight of this Alternative Compliance Program (ACP) through random checks of delegated tasks, monitoring of the classification society's quality system via participation in system audits and tracking demonstrated performance in identifying and correcting quality deficiencies.

Under current law, the Coast Guard may, with limited exceptions, only delegate inspection and examination functions to the ABS or similar United States classification society. Separate legislation has been introduced that would allow the Coast Guard to recognize additional classification societies. if the Coast Guard recognizes other classification societies, each classification society's rules would be examined and a separate supplement developed to be incorporated by reference in a future rulemaking.

An ACP pilot program with ABS was announced by the **Federal Register** notice of February 3, 1995 (60 FR 6687). The purpose of the pilot program is to test and evaluate the standards and procedures that have been developed in cooperation with the ABS. The Coast Guard may modify this proposal based upon the experience and findings of the ACP pilot program. In addition, the Coast Guard will use the pilot program to determine the level of resources involved in the alternate compliance process, and may adjust vessel inspection user fees through a separate rulemaking.

Discussion of Proposed Amendments

This proposal would establish alternate compliance procedures for U.S. flagged tank vessels, passenger vessels, cargo vessels, miscellaneous vessels, and mobile offshore drilling units. It would add new incorporation by reference sections in 46 CFR parts 30 (§ 30.01–4), 70 (§ 70.01–10) and 90 (§ 90.01–10). Each of these sections would incorporate, by reference, the ABS Class Rules for Building and Classing Steel Vessels, 1995, and the ABS U.S. Supplement to Class Rules for Building and Classing Steel Vessels, 1995. When developed, the ABS Class Rules for Building and Classing Mobile Offshore Drilling Units would be added to the existing incorporation by reference provisions in 46 CFR 107.115. These documents are available from the American Bureau of Shipping at the address indicated in the applicable section. The Coast Guard has determined that compliance with applicable international requirements, the ABS Class rules, and respective ABS U.S. Supplement would provide a level of safety equivalent to compliance with existing regulations.

The proposal would also add new sections in 46 CFR parts 31 (§ 31.01–3), 71 (§ 71.15–5), 91 (§ 91.15–5), and 107 (§ 107.205). These sections would allow the owner or operator of a vessel subject to Coast Guard inspection for initial issuance or renewal of a certificate of inspection to submit the vessel for inspection by a recognized classification society, such as ABS. The classification society would inspect the vessel to ensure that it complies with applicable international requirements, their Class rules, and its U.S. supplement.

The owner or operator of an eligible vessel who desires to take advantage of these provisions would indicate on the Application for Inspection of U.S. Vessel (CG–3752) that the vessel has been enrolled in an accepted alternate compliance program, naming the classification society, and that the inspection would be conducted by that classification society. The cognizant Coast Guard Officer-in-Charge of Marine Inspection (OCMI) may issue a certificate of inspection (COI) based on reports from a recognized classification society, such as ABS, that the vessel complies with applicable international requirements, the classification society's rules, and its U.S. supplement.

If the OCMI declines to issue a COI even though the recognized classification society's reports indicate the vessel meets the applicable standards, the owner may appeal the OCMI's decision under 46 CFR 1.03–20. If the cognizant OCMI declines to issue a COI based on reports from the classification society that the vessel does not meet applicable standards, the vessel owner could choose to correct the deficiencies and arrange with the classification society for an additional inspection, request that the Coast Guard inspect the vessel under the other provisions of 46 CFR Ch. I, appeal the decision under 46 CFR 1.03–35, or appeal via the recognized classification society to Chief, Merchant Vessel Inspection and Documentation Division, U.S. Coast Guard.

Regulatory Evaluation

The Coast Guard has determined the economic impact of this proposed rule change would be positive and that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This proposal is not significant under Executive Order 12866 and Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11040, February 26, 1979). The purpose of this rulemaking is to provide economic relief to the U.S. maritime industry without jeopardizing safety.

The Coast Guard believes this proposal, if adopted, would provide an economic benefit to the owners and operators of U.S. flagged vessels. Currently, 549 U.S. vessels may be eligible to participate in this proposed alternative compliance program. The Coast Guard estimates that while a vessel owner may have to pay an additional $5 thousand in classification society fees for functions presently performed by the Coast Guard, the savings in design, construction and operating costs will recover this expense many times over during the lifetime of the vessel. Moreover, ships built and maintained to SOLAS 74/83, MARPOL 73/78, recognized classification society rules and accepted U.S. supplement are expected to experience greater competitiveness in the worldwide shipping market.

Additionally, streamlining the certification process will reduce time frames for Coast Guard involvement in the Certificate of Inspection process from an average of over 50 hours to 10 hours or less. Because the vessel is already inspected by the classification society, this program will reduce the duplication, decrease vessel "down time" and permit greater scheduling flexibility. Lower construction and operating costs, grater flexibility for the vessel in the global market and additional availability for vessel hire will offset the costs incurred through the alternative plan review and inspection process utilizing a recognized classification society. The Coast Guard specifically solicits comments on potential costs, savings and benefits.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have significant impact on a substantial number of small entities.

"Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

This rule change provides an alternative to complying with existing regulations. The Coast Guard believes that rulemaking would have a positive economic impact if the owner chooses to participate in the alternate compliance program. This rulemaking would have no impact on vessel owners who do not choose to participate in this program. Therefore, the Coast Guard certifies that under 5 U.S.C. 605(b) this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) reviews each rulemaking which contains a collection of information requirement to determine if the practical value of the information is worth the burden imposed by its collection. Information collection requirements include reporting, recordkeeping, notification and other similar requirements.

Without changing the current Application for Vessel Inspection process, owners and operators would have the opportunity to declare whether the vessel will comply with SOLAS requirements, recognized classification society rules and their U.S. supplement or Coast Guard regulations. Since the application for inspection is already a requirement, this will not impose any additional documentation or paperwork requirements on vessel owners or operators. Under the memorandum of agreement between Coast Guard and ABS, ABS will provide a copy of its reports to the Coast Guard. Future agreements with classification societies wishing to be recognized for this program will contain similar provisions. The Coast Guard expects that the reports compiled by the classification society will be sufficient for Coast Guard review purposes. Although under this proposed rule, the classification society would only provide copies of its report to the Coast Guard with virtually no additional paperwork burden imposed, this is subject to OMB approval under the Paperwork Reduction Act.

This proposal contains collection-of-information requirements in the following sections: § 31.01–3, § 71.15–5, § 91.15–5 and § 107.205.

Dot No: New.

Administration: U.S. Coast Guard.

Title: Alternate Compliance via Recognized Classification Society and U.S. Supplement to Rules.

Need For Information: Vessel inspection reports are needed to document the compliance of a marine vessel with recognized classification society rules, the accepted U.S. supplement to rules, and applicable international maritime safety and marine environmental conventions. Classification societies recognized to participate in this program will submit copies of reports they routinely prepare to the Coast Guard.

Proposed Use of Information: The information will be used by the Coast Guard to determine if the vessel is in compliance with the requirements necessary for issuance of a Certificate of Inspection.

Frequency of Response: Reports are required whenever the recognized classification society inspects a vessel on behalf of the Coast Guard. This is generally for the initial issuance of the Certificate of Inspection (COI) and whenever the COI must be renewed. Renewal periods for vessel Certificates of Inspection are not being changed by this proposal. For tank, cargo, and miscellaneous non-nuclear vessels this period is two years; for passenger vessels over 100 gross tons and miscellaneous nuclear vessels the renewal period is one year; and for mobile offshore drilling units the renewal period is two years. A separate legislative proposal currently exists that would harmonize inspection intervals with international requirements.

Burden Estimate: There is no additional burden created by this rulemaking. The required reported are already being prepared in the course of business between the classification society and the vessel owner or operator.

Respondents: The recognized classification societies.

Forms: None.

Average Burden Hours Per Respondent: No additional burden is created by this rulemaking. The required reported are already being prepared in the course of business between the classification society and the vessel owner or operator.

The Coast Guard has submitted the requirements to OMB for review under section 3504(h) of the Paperwork Reduction Act. Persons submitting comments on the requirements should submit their comments both to OMB and to the Coast Guard where indicated under **ADDRESSES**.

Federalism

The Coast Guard has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined it does not have federalism requirements warranting a Federalism Assessment. the authority to regulate safety requirements of U.S. vessels is committed to the Coast Guard by statute. Furthermore, since these vessels tend to move from port to port in the national market place, these safety requirements need to be national in scope to avoid numerous, unreasonable and burdensome variances. Therefore, this action would preempt State action addressing the same matter.

Environment

Coast Guard Commandant Instruction M16475.1B, Section 2.B.2 categorically excludes inspection and equipment aspects of this rulemaking from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

The Coast Guard also considered the design and construction aspects of this rulemaking for environmental impact, and concluded that preparation of an Environmental Impact Statement is not necessary. Since the combination of classification society rules, applicable international conventions and the U.S. supplement to the rules have been determined to provide a level of safety equivalent to current Coast Guard regulations, the Coast Guard expects that this proposal will have no adverse environmental impact. A draft Environmental Assessment and a draft Finding of No Significant Impact are available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects

46 CFR Part 30

Cargo vessels, Foreign relations, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements, Seamen, Incorporation by reference.

46 CFR Part 31

Cargo vessels, Marine safety, Reporting and recordkeeping requirements, Incorporation by reference.

46 CFR Part 70

Marine safety, Passenger vessels, Reporting and recordkeeping requirements, Incorporation by reference.

46 CFR Part 71

Marine safety, Passenger vessels, Reporting and recordkeeping requirements, Incorporation by reference.

46 CFR Part 90

Cargo vessels, Marine safety, Incorporation by reference.

46 CFR Part 91

Cargo vessels, Marine safety, Reporting and recordkeeping requirements, Incorporation by reference.

46 CFR Part 107

Marine safety, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels, Incorporation by reference.

PART 30—GENERAL PROVISIONS

1. The authority for part 30 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703, 49 U.S.C. App. 1804; 49 CFR 1.45, 1.46; Section 30.01–2 also issued under the authority of 44 U.S.C. 3507.

2. Add new § 30.01–4 to read as follows:

§ 30.01–4 Incorporation by reference.

(a) Certain material is incorporated by reference into this subchapter with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of the change in the **Federal Register** and the material must be available to the public. All material is available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division, 2100 Second St., SW., Washington, DC 20593–0001, and is available from the sources listed in paragraph (b) of this section.

(b) The material incorporated by reference in this subchapter and the sections affected are as follows:

American Bureau of Shipping (ABS)

Two World Trade Center, 106th Floor, New York, NY 10048

Rules for Building and Classing Steel Vessels, 1995: 31.01–3

U.S. Supplement to ABS rules for Steel Vessels for Vessels on International Voyages, 1995: 31.01–3

PART 31—INSPECTION AND CERTIFICATION

3. The authority for part 31 continues to read as follows:

Authority: 33 U.S.C 1321(j); 46 U.S.C. 3306, 3703, 5115, 8105; 49 U.S.C. App. 1984; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR 1971–1975 Comp., p. 793; 49 CFR 1.46.

4. Add new § 31.01–3 to read as follows:

§ 31.01–1 Alternate compliance.

(a) In lieu of compliance with other provisions of this subchapter, the owner or operator of a vessel subject to plan review and inspection under this subchapter for initial issuance or renewal of a Certificate of Inspection (COI) may submit the vessel for classification, plan review and inspection by a recognized classification society to determine compliance with applicable international treaties and agreements, the classification society's rules, and the U.S. supplement prepared by the classification society and accepted by the Coast Guard. Recognized classification societies and accepted rules and supplements are listed in paragraph (e) of this section.

(b) A vessel owner or operator wishing to have a vessel inspected under paragraph (a) of this section shall submit an Application for Inspection of U.S. Vessel (CG–3752) to the cognizant OCMI, and indicate on the form that the inspection will be conducted by a recognized classification society.

(c) Based on reports from a recognized classification society that a vessel complies with paragraph (a) of this section, the cognizant OCMI may issue a certificate of inspection to the vessel. If the OCMI declines to issue a certificate of inspection even though the reports indicate the vessel meets applicable standards, the vessel owner or operator may appeal as provided in subpart 1.03 of this chapter.

(d) If reports from a recognized classification society indicate that a vessel does not comply with paragraph (a) of this section, the cognizant OCMI will not issue a certificate of inspection. The vessel owner or operator may:

(1) Correct the reported deficiencies and arrange with the classification society for an additional inspection;

(2) Request inspection by the Coast Guard under other provisions of this subchapter; or

(3) Appeal via the recognized classification society to Chief, Merchant Vessel Inspection and Documentation Division, Commandant (G–MVI), U.S. Coast Guard, 2100 Second St. SW., Washington, D.C. 20593–0001.

(e) For the purposes of this section, the following classification societies are recognized by the Coast Guard, and their rules and supplements are accepted:

American Bureau of Shipping

Two World Trade Center, 106th Floor, New York, NY 10048

Accepted rules: Rules for Building and Classing Steel Vessels, 1995.

Accepted supplement: U.S. Supplement to ABS Rules for Steel Vessels for Vessels on International Voyages, 1995.

PART 70—GENERAL PROVISIONS

5. The authority for part 70 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804, E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.45, 1.46; Section 70.01–15 also issued under the authority of 44 U.S.C. 3507.

6. Add new § 70.01–10 to read as follows:

§ 70.01–10 Incorporation by reference.

(a) Certain material is incorporated by reference into this subchapter with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of the change in the **Federal Register** and the material must be available to the public. All material is available for inspection at the Office of the Federal Register, 800 North Capitol St., NW., Suite 700, Washington, DC and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division, 2100 Second St., SW., Washington, DC 20593–0001, and is available from the sources listed in paragraph (b) of this section.

(b) The material incorporated by reference in this subchapter and the sections affected are as follows:

American Bureau of Shipping (ABS)

Two World Trade Center, 106th Floor, New York, NY 10048

Rules for Building and Classing Steel Vessels, 1995: 71.15–5

U.S. Supplement to ABS Rules for Steel Vessels for Vessels on International Voyages, 1995: 71.15–5

PART 71—INSPECTION AND CERTIFICATION

8. The authority for part 71 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 CFR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

9. Add new § 71.15–5 to read as follows:

§ 71.15–5 Alternate compliance.

(a) In lieu of compliance with other provisions of this subchapter, the owner or operator of a vessel subject to plan

review and inspection under this subchapter for initial issuance or renewal of a Certificate of Inspection (COI) may submit the vessel for classification, plan review and inspection by a recognized classification society to determine compliance with applicable international treaties and agreements, the classification society's rules, and the U.S. supplement prepared by the classification society and accepted by the Coast Guard. Recognized classification societies and accepted rules and supplements are listed in paragraph (e) of this section.

(b) A vessel owner or operator wishing to have a vessel inspected under paragraph (a) of this section shall submit an Application for Inspection of U.S. Vessel (CG–3752) to the cognizant OCMI, and indicate on the form that the inspection will be conducted by a recognized classification society.

(c) Based on reports from a recognized classification society that a vessel complies with paragraph (a) of this section, the cognizant OCMI may issue a certificate of inspection to the vessel. If the OCMI declines to issue a certificate of inspection even though the reports indicate the vessel meets applicable standards, the vessel owner or operator may appeal as provided in subpart 1.03 of this chapter.

(d) If reports from a recognized classification society indicate that a vessel does not comply with paragraph (a) of this section, the cognizant OCMI will not issue a certificate of inspection. The vessel owner or operator may:

(1) Correct the reported deficiencies and arrange with the classification society for an additional inspection;

(2) Request inspection by the Coast Guard under other provisions of this subchapter; or

(3) Appeal via the recognized classification society to Chief, Merchant Vessel Inspection and Documentation Division, Commandant (G–MVI), U.S. Coast Guard, 2100 Second St. SW., Washington, DC 20593–0001.

(e) For the purposes of this section, the following classification societies are recognized by the Coast Guard, and their rules and supplements are accepted:

American Bureau of Shipping

Two World Trade Center, 106th Floor, New York, NY 10048

Accepted rules: Rules for Building and Classing Steel Vessels, 1995.

Accepted supplement: U.S. Supplement to ABS Rules for Steel Vessels for Vessels on International Voyages, 1995.

PART 90—GENEROUS PROVISIONS

10. The authority for part 90 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. App 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

11. Add new § 90.01–10 to read as follows:

§ 90.01–10 Incorporation by reference.

(a) Certain material is incorporated by reference into this subchapter with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of the change in the **Federal Register** and the material must be available to the public. All material is available for inspection at the Office of the Federal Register, 800 North Capitol St., NW., Suite 700, Washington, DC and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division, 2100 Second St., SW., Washington, DC 20593–0001, and is available from the sources listed in paragraph (b) of this section.

(b) The material incorporated by reference in this subchapter and the sections affected are as follows:

American Bureau of Shipping (ABS)

Two World Trade Center, 106th Floor, New York, NY 10048

Rules for Building and Classing Steel Vessels, 1995: 91.15–5

U.S. Supplement to ABS Rules for Steel Vessels for Vessels on International Voyages, 1995: 91.15–5

PART 91—INSPECTION AND CERTIFICATION

12. The authority for part 91 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

13. Add new § 91.15–5 to read as follows:

§ 91.15–5 Alternate compliance.

(a) In lieu of compliance with other provisions of this subchapter, the owner or operator of a vessel subject to plan review and inspection under this subchapter for initial issuance or renewal of a Certificate of Inspection (COI) may submit the vessel for classification, plan review and inspection by a recognized classification society to determine compliance with applicable international treaties and agreements, the classification society's rules, and the U.S. supplement prepared by the classification society and accepted by the Coast Guard. Recognized classification societies and accepted rules and supplements are listed in paragraph (e) of this section.

(b) A vessel may be inspected under paragraph (a) of this section only if it has not been subject to Coast Guard intervention or enforcement action for violations of this chapter within the thirty-six months preceding the inspection. A vessel owner or operator wishing to have a vessel inspected under paragraph (a) of this section shall submit an Application for Inspection of U.S. Vessel (CG–3752) to the cognizant OCMI, and indicate on the form that the inspection will be conducted by a recognized classification society.

(c) Based on reports from a recognized classification society that a vessel complies with paragraph (a) of this section, the cognizant OCMI may issue a certificate of inspection to the vessel. If the OCMI declines to issue a certificate of inspection even though the reports indicate the vessel meets applicable standards, the vessel owner or operator may appeal as provided in subpart 1.03 of this chapter.

(d) If reports from a recognized classification society indicate that a vessel does not comply with paragraph (a) of this section, the cognizant OCMI will not issue a certificate of inspection. The vessel owner or operator may:

(1) Correct the reported deficiencies and arrange with the classification society for an additional inspection;

(2) Request inspection by the Coast Guard under other provisions of this subchapter;

(3) Appeal via the recognized classification society to Chief, Merchant Vessel Inspection and Documentation Division, Commandant (G–MVI), U.S. Coast Guard, 2100 Second St. SW., Washington, DC 20593–0001.

(e) For the purposes of this section, the following classification societies are recognized by the Coast Guard, and their rules and supplements are accepted:

American Bureau of Shipping

Two World Trade Center, 106th Floor, New York, NY 10048

Accepted rules: Rules for Building and Classing Steel Vessels, 1995.

Accepted supplement: U.S. Supplement to Rules for Steel Vessels for Vessels on International Voyages, 1995

PART 107—INSPECTION AND CERTIFICATION

14. The authority for part 107 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 5115; 49 CFR 1.45, 146; § 107.05 also issued under authority of 44 U.S.C. 3507.

15. Add new § 107.205 to read as follows:

§ 107.205 Alternate compliance.

(a) In lieu of compliance with other provisions of this subchapter, the owner or operator of a vessel subject to plan review and inspection under this subchapter for initial issuance or renewal of a Certificate of Inspection (COI) may submit the vessel for classification, plan review and inspection by a recognized classification society to determine compliance with applicable international treaties and agreements, the classification society's rules, and the U.S. supplement prepared by the classification society and accepted by the Coast Guard. Recognized classification societies and accepted rules and supplements are listed in paragraph (e) of this section.

(b) A vessel owner or operator wishing to have a vessel inspected under paragraph (a) of this section shall submit an Application for Inspection of U.S. Vessel (CG–3752) to the cognizant OCMI, and indicate on the form that the inspection will be conducted by a recognized classification society.

(c) Based on reports from a recognized classification society that a vessel complies with paragraph (a) of this section, the cognizant OCMI may issue a certificate of inspection to the vessel. If the OCMI declines to issue a certificate of inspection even though the reports indicate the vessel meets applicable standards, the vessel owner or operator may appeal as provided in subpart 1.03 of this chapter.

(d) If reports from a recognized classification society indicate that a vessel does not comply with paragraph (a) of this section, the cognizant OCMI will not issue a certificate of inspection. The vessel owner or operator may:

(1) Correct the reported deficiencies and arrange with the classification society for an additional inspection;

(2) Request inspection by the Coast Guard under other provisions of this subchapter; or

(3) Appeal via the recognized classification society to Chief, Merchant Vessel Inspection and Documentation Division, Command (G–MVI), U.S. Coast Guard, 2100 Second St. SW., Washington, DC 20593–0001.

(e) For the purposes of this section, the following classification societies are recognized by the Coast Guard, and their rules and supplements are accepted:

[No classification societies are recognized at this time.]

Dated: June 12, 1995.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–15231 Filed 6–21–95; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD11

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period and Notice of Public Hearing on Proposed Endangered Status for Three Wetland Species in Southern Arizona and Northern Sonora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period and notice of public hearing.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that a public hearing will be held and the comment period reopened on the proposed rule to list two plants, Canelo Hills ladies'-tresses (*Spiranthes delitescens*) and Huachuca water umbel (*Lilaeopsis schaffneriana* spp. *recurva*), and one amphibian, the Sonora tiger salamander (*Ambystoma tigrinum stebbinsi*) as endangered. The hearing and the reopening of the comment period will allow all interested parties to submit oral or written comments on the proposal.

DATES: The public hearing will be held from 7 p.m. to 10 p.m. on July 13, 1995, in Patagonia, Arizona. The comment period for this proposal will be reopened on June 24, 1995 and will close on July 24, 1995. Comments must be received by the closing date. Any comments that are received after the closing date may not be considered in the final decision on the proposal.

ADDRESSES: The public hearing will be held in the Multi-Purpose Room at Patagonia Union High School, on the west-side of State Highway 82 in Patagonia, Arizona. Written comments should be sent to the State Supervisor, U.S. Fish and Wildlife Service, 2321 W. Royal Palm Road, Suite 103, Phoenix, Arizona 85021–4951. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above Service address.

FOR FURTHER INFORMATION CONTACT: Jeffrey A. Humphrey, at the above address, or phone at (602) 640–2720.

SUPPLEMENTARY INFORMATION:

Background

Canelo Hills ladies'-tresses, Huachuca water umbel, and the Sonora tiger salamander occur in a limited number of wetland habitats in southern Arizona and northern Sonora, Mexico. They are threatened by one or more of the following—collecting, disease, predation, competition with nonnative species, catastrophic floods, drought, and degradation and destruction of habitat resulting from livestock overgrazing, water diversions, dredging, and groundwater pumping. All three taxa are also threatened with stochastic extirpations or extinction due to small numbers of populations or individuals. A proposed rule to list these species as endangered was published in the **Federal Register** (60 FR 16836) on April 3, 1995.

Pursuant to 50 CFR 424.16(c)(2), the Service may extend or reopen a comment period upon finding that there is good cause to do so. Full participation of the affected public in the species listing process, allowing the Service to consider the best scientific and commercial data available in making a final determination on the proposed action, is deemed as sufficient cause.

Section 4(b)(5)(E) of the Act, as amended (16 U.S.C. 1531 *et seq.*), requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. In response to two such requests, the Service will hold a public hearing on the date and at the address described above.

Anyone wishing to make an oral statement for the record is encouraged to provide a written copy of their statement and present it to the Service at the start of the hearing. In the event there is a large attendance, the time allotted for oral statements may have to be limited. Oral and written statements receive equal consideration. There are no limits to the length of written comments presented at the hearings or mailed to the Service. Legal notices announcing the dates, times, and locations of the hearings will be published in newspapers concurrently with the **Federal Register** notice.

The comment period on the proposal originally closed on June 2, 1995. In order to accommodate the hearing, the Service reopens the public comment period. Written comments may now be submitted until July 24, 1995, to the Service office in the **ADDRESSES** section.

Author

The primary author of this notice is Jeffrey A. Humphrey (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531–1544).

Notice: Proposed rule for three wetland species in Southern Arizona and Northern Sonora; reopening of comment period and notice of public hearings.

Dated: June 16, 1995.

Nancy M. Kaufman,

Regional Director, Region 2, Fish and Wildlife Service.

[FR Doc. 95–15284 Filed 6–21–95; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061695B]

50 CFR Part 630

Atlantic Swordfish Fisheries; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearings; request for comments.

SUMMARY: NMFS will hold five public hearings to receive comments from fishery participants and other members of the public regarding proposed amendments to regulations governing the Atlantic swordfish fisheries. The proposed rule would change the total allowable catch (TAC) for the Atlantic swordfish fishery in accordance with the framework procedure of the regulations. The rule proposes a reduction of the directed fishery TAC to 1,365 metric tons dressed weight for each of two semiannual periods in 1995.

To accommodate people unable to attend a hearing or wishing to provide additional comments, NMFS also solicits written comments on the proposed rule.

DATES: See **SUPPLEMENTARY INFORMATION** for dates, times, and locations of the public hearings. Written comments on the proposed rule must be received on or before July 17, 1995.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for the public hearing locations. Written comments should be sent to Richard B. Stone, Chief, Highly Migratory Species Management Division, Office of Fisheries Conservation and Management (F/CM), National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Clearly mark the outside of the envelope "Atlantic Swordfish Comments."

FOR FURTHER INFORMATION CONTACT: Ronald Rinaldo at 301–713–2347.

SUPPLEMENTARY INFORMATION: The proposed regulatory amendments that are the subject of the hearings are necessary to improve management and monitoring of the U.S. Atlantic swordfish fisheries and to implement recommendations of the International Commission for the Conservation of Atlantic Tunas.

A complete description of the measures, and the purpose and need for the proposed action, is contained in the proposed rule (60 FR 29543, June 5, 1995) and is not repeated here. Copies of the proposed rule may be obtained by writing (see **ADDRESSES**) or calling one of the contact persons (see **FOR FURTHER INFORMATION CONTACT**).

The public hearing schedule is as follows:

Wednesday, June 28, 1995, Panama City, FL, 6–10 p.m.

Best Western Bayside Inn, 711 W. Beach Drive, Panama City, FL 32401

Thursday, June 29, 1995, Fort Pierce, FL, 6–10 p.m.

Holiday Inn Sunshine Parkway, 7151 Okeechobee Road, Fort Pierce, FL 34945

Thursday, June 29, 1995, Boothville/Venice, LA, 6–10 p.m.

Boothville/Venice Community Center, 112 Gille Lane, Boothville, LA 70038

Friday, June 30, 1995, Manteo, NC, 6–10 p.m.

North Carolina Aquarium, Airport Rd., Manteo, NC 27954

Friday, June 30, 1995, Charleston, SC, 6–10 p.m.

South Carolina Dept. of Natural Resources, 217 Fort Johnson Road, James Island, SC 29422

The purpose of this notice is to alert the interested public of hearings and provide for public participation. In addition to these hearings the staff of NMFS Highly Migratory Species Management Division will consider invitations to provide the same material at hearings in other locations. These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Richard B. Stone by June 26, 1995 (see **ADDRESSES**).

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 971 *et seq.*

Dated: June 16, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–15256 Filed 6–16–95; 4:39pm]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 60, No. 120

Thursday, June 22, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for the Northern Region; Idaho, Montana, North Dakota, and Portions of South Dakota and Eastern Washington

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all Ranger Districts, Forests, and the Regional Office of the Northern Region to publish legal notice of all decisions subject to appeal under 36 CFR parts 215 and 217 and to publish notices for public comment and notice of decision subject to the provisions of 36 CFR part 215. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices for public comment or decisions, thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after June 26, 1995. The list of newspapers will remain in effect until another notice is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Stephen Solem; Regional Appeals Coordinator; Northern Region; P.O. Box 7669; Missoula, Montana 59807. Phone (406) 329–3647.

The newspapers to be used are as follows:

Northern Regional Office

Regional Forester decisions in Montana: The Missoulian, Great Falls Tribune, and The Billings Gazette.

Regional Forester decisions in Northern Idaho and Eastern Washington: The Spokesman Review.

Regional Forester decisions in North Dakota—Bismarck Tribune

Beverhead—Montana Standard

Bitterroot—Ravalli Republic

Clearwater—Lewiston Morning Tribune

Custer—Billings Gazette (Montana); Bismarck Tribune (North Dakota); Rapid City Journal (South Dakota)

Deerlodge—Montana Standard

Flathead—Daily Interlake

Gallatin—Bozeman Chronical

Helena—Independent Record

Idaho—Spokesman Review

Idaho Panhandle—Spokesman Review

Kootenai—Daily Interlake

Lewis & Clark—Great Falls Tribune

Lolo—Missoulian

Nez Perce—Lewiston Morning Tribune.

Supplemental notices may be placed in any newspaper, but time frames/deadlines will be calculated based upon notices in newspapers of record listed above.

Dated: June 15, 1995.

Beryl Johnston,

Acting Deputy Regional Forester.

[FR Doc. 95–15276 Filed 6–21–95; 8:45 am]

BILLING CODE 3410–11–M

Forest Service

California Coast Province Advisory Committee (PAC); Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The California Coast Province Advisory Committee will meet on July 13 and 14, 1995, for a field trip and meeting. The field trip will begin at 9 a.m., July 13, at the Sherwood Valley Rancheria Community Center, 190 Sherwood Hill Drive, Willits, California, and continue until 5:30 p.m. The field trip will visit watershed restoration projects on the Mendocino National Forest and include a presentation on watershed analysis. The meeting on July 14 will begin at 8 a.m. at the Sherwood Valley Rancheria Community Center and continue until 3 p.m. Agenda items to be covered include: (1) Open public forum; (2) PAC committee coordination with the California State Economic Revitalization Team (State CERT); (3) Prioritization of watersheds in the province; (4) Identification and prioritization of issues to be covered by the PAC; and (5) Build agenda for next meeting. All California Coast Province Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Daniel Chisholm, USDA, Forest Supervisor, Mendocino National Forest, 825 N. Humboldt Avenue, Willows, CA 95988, (916) 934–3316 or Phebe Brown, Province Coordinator, USDA, Mendocino National Forest, 825 N. Humboldt Avenue, Willows, California 95988, (916) 934–3316.

Dated: June 16, 1995.

Daniel K. Chisholm,

Forest Supervisor.

[FR Doc. 95–15278 Filed 6–21–95; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–1550–00–7111–24 1A]

National Park Service

Fish and Wildlife Service

Bureau of Indian Affairs

National Biological Service

Federal Wildland Fire Management Policy and Program Review

AGENCIES: Forest Service, Agriculture; Bureau of Land Management, National Park Service, Fish and Wildlife Service, Bureau of Indian Affairs, and National Biological Service, Interior.

ACTION: Notice of draft report; request for comment.

SUMMARY: The interagency Steering Group chartered to review Federal wildfire policy and program management has prepared a draft report suggesting possible changes. Public comment is invited and will be considered by the Steering Group in preparing its final report and recommendations to the Secretaries of Agriculture and the Interior.

DATES: Comments must be submitted in writing by July 24, 1995.

ADDRESSES: Comments should be directed to:
Federal Wildland Fire Policy and Program Review, Department of the Interior, 18th and C Streets NW., Mail Stop 7355, Washington, DC 20240, or sent via FAX to (202) 208–5078.
National Interagency Fire Center, 3833 South Development Avenue, Boise, ID 83705.

See **FOR FURTHER INFORMATION CONTACT:** for telephone requests for additional copies of the draft report.

FOR FURTHER INFORMATION CONTACT: Tim Hartzell, Bureau of Land Management, (202) 208–5472, or Dave Morton, USDA-Forest Service, (208) 387–5633. Additional copies of the draft report may be obtained by calling Pat Moore, BLM's National Office of Fire and Aviation, (208) 387–5150, or Janelle Smith, National Interagency Fire Center, (208) 387–5457.

SUPPLEMENTARY INFORMATION: On December 30, 1994, following one of the worst wildland fire seasons since the early 1900's, the Secretaries of Agriculture and the Interior chartered an interagency Steering Group to conduct a review of Federal wildland fire policy and programs. Composed of representatives of the Forest Service, USDA, and the Bureau of Land Management, National Park Service, U.S. Fish and Wildlife Service, Bureau of Indian Affairs, and National Biological Service, USDI, the Steering Group was directed to assess four specific themes: the role of fire in resource management; use of prescribed fire to reduce unhealthy fuel build up; preparedness and suppression; and the wildland/urban interface. The Steering Group has prepared a draft report addressing these issues as well as interagency coordinated policy and program management. The full text of the draft report is printed at the end of this notice, except for the Glossary (Appendix I) and References (Appendix II). While the draft report reinforces public and firefighter safety as the foundation for wildland fire management, it also breaks with the past on crucial points:

- The draft report would recognize fire's natural role in maintaining healthy ecosystems.
- The draft report would recommend an increased use of fire as one of many resource management tools to reduce fuel build up and to improve forest health.
- Existing plans to use fire for resource benefits stop at abstract administrative borders; the draft report would promote a mosaic of fire regimes along natural ecosystems.
- The draft report would clarify and emphasize the agency administrator's accountability for fire management.
- Current policy encourages interagency cooperation; the draft report would require that suppression, prescribed burning, planning, and research be conducted on an interagency basis across agency jurisdictions.
- Where wildlands and developed communities interface, federal fire protection practices are not consistent. The draft report would clarify federal roles in wildland fire protection as cooperating partners through agreements with responsible tribal, State, or local jurisdictions.

Public comment on the draft report is requested and will be considered by the Steering Group in developing a final report and recommendations for transmittal to and consideration by the two Secretaries.

For the Department for the Department of Agriculture.

Dated: June 13, 1995.

David G. Unger,
Associate Chief.

For the Department of the Interior.

Dated: June 14, 1995.

Sylvia V. Baca,
Acting Assistant Secretary.

Federal Wildland Fire Management Policy and Program Review; Draft Report

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Executive Summary

The Department of the Interior and the Department of Agriculture, together with Tribes, States, and other jurisdictions, are responsible for the suppression and use of wildland fire in the management and protection of natural resources. Although these organizations have traditionally cooperated in carrying out their fire management responsibilities, it is more important than ever, as resources become increasingly scarce, to explore ways in which cooperation can be improved and made more effective. Because fire respects no boundaries, uniform Federal policies and programs must lead to more productive cooperation and efficient operations.

The Federal Wildland Fire Management Policy and Program Review was chartered by the Secretaries of the Interior and Agriculture to examine the need for modification of and addition to Federal fire policy. The review recommends a set of consistent policies for all Federal wildland fire management agencies. The resulting analysis/report is organized around five major fire management program components: (1) Coordinated Policy and Program Management, (2) Role of Fire in Resource Management, (3) Use of Prescribed Fire and Fuels Management, (4) Preparedness and Suppression, and (5) Wildland/Urban Interface Protection.

Two very fundamental principles are recognized as being basic to all other findings and recommendations in this report: (1) Safety is paramount; and (2) wildland fire is a natural occurrence that plays a fundamental role in natural resource management. We must recognize that wildfire has historically been a major force in the evolution of our wildlands, and it must be allowed to continue to play its natural role wherever possible.

The report recommends thirteen new or revised fire management policies consistent across all Federal wildland firefighting agencies. The first policy recommendation says that public and firefighter safety is the first priority. Other policies deal with integrating fire considerations into resource planning, the use of prescribed fire, capability to suppress fires, economic efficiency, protection priority, interagency actions, consistent standards, and the Federal role in the wildland/urban interface.

A set of fire management principles have been identified that address interagency collaboration in the fire management business. We recommend adoption of these principles by the Federal resource agencies. They include guidance on safety, planning, standardization, coordination, use of science, risk management, and economic efficiency.

The report recommends that some very critical processes continue to explore what role States, local governments, and insurance companies should take in addressing the growing fire problems in the wildland/urban interface. We will recommend that the Secretaries require all agencies to develop an implementation plan describing the actions and time frame required to implement the recommendations of this report.

In addition to the specific analysis that was done for this effort, the review team also relied heavily on previous fire management reviews and the work completed by the Interagency Management Review Team that was chartered following the 1994 fatalities on the South Canyon fire.

Many organizations and individuals participated in the development of this report. Special emphasis was given to communication with key national stakeholders, representatives of public and private resource interests, and employees. Public review was facilitated by publishing a scoping notice in the **Federal Register** and analyzing the resulting feedback. It is our hope that the other Federal agencies who have joined us in this review can give their support and concurrence to the final policies that evolve from this and future public involvement.

Introduction

The Federal fire management community has, for many years, been a leader in interagency communication and cooperation to achieve mutual objectives. While many policies and procedures are similar among the agencies, some significant differences may hinder efficient interagency cooperation. Because it is prudent to manage consistently across agency boundaries, uniform cooperative programs are critical to efficient and effective fire management. Policies and programs must incorporate the wisdom and experience of the past, reflect today's values, and be able to adapt to the challenges of the future. They must be based on science and sound ecological and economic principles and, above all, must form the basis for fighting and using fire safely.

While continual improvements are inherent in the fire program, the events of the 1994 wildfire season created a renewed awareness and concern among the Federal land management agencies and our constituents about the impacts of wildfire. As a result of those concerns and in response to specific recommendations in the report of the South Canyon Fire Interagency Management Review Team (IMRT), the Federal Wildland Fire Management Policy and Program Review was chartered to examine the possible need for new Federal fire policy. The review was directed by an interagency Steering Group whose members represented the Departments of Agriculture and the Interior, the U.S. Fire Administration, the National Weather Service, the Federal Emergency Management Agency, and the Environmental Protection Agency (see Appendix III). The Steering Group received staff support from a core team representing the Departments of Agriculture and the Interior.

The five Federal fire/land management agencies referenced throughout this report are the Forest Service (FS) in the Department of Agriculture and the Bureau of Land Management (BLM), National Park Service (NPS), Fish and Wildlife Service (FWS), and Bureau of Indian Affairs (BIA) in the Department of the Interior. The term "Federal wildland" as used in this report recognizes that Indian trust lands are private lands held in trust by the government and that Tribes possess a Nationhood status and retain inherent powers of self-government. Indian trust resource protection will be provided in a knowledgeable, sensitive manner respectful of Tribal sovereignty.

Early in this review process, internal and external ideas were sought and broad program management issues were identified. The review was announced and input was requested in the **Federal Register** on January 3, 1995. At the same time, letters were sent to approximately 300 individuals and organizations across the nation and employee input was sought through internal communications within the Departments of the Interior and Agriculture. Since that time, Steering Group members have met with national stakeholders, the Western Governors' Association, and employees to get additional, more focused input; they have received and incorporated input resulting from the Environmental Regulation and Prescribed Fire conference held in Tampa, Florida, in March 1995; and they have individually continued to network with their constituents. The results of that process are reflected in this draft report.

Throughout the report, the term "fire" refers to wildland fire unless otherwise specified. Other terms that may not be clear to all readers are defined for the purposes of this report in Appendix I.

A number of related reviews and studies form a broad foundation of technical, professional, and scientific assessment upon which the recommended goals, actions, and policies contained in this report are founded, including:

- Final Report on Fire Management Policy—May 1989.
- Rural Fire Protection in America: A Challenge for the Future; National Association of State Foresters—1991.
- Oversight Hearing; Fire Suppression, Fire Prevention, and Forest Health Issues and Programs; Committee on Agriculture and the Committee on Natural Resources, House of Representatives—October 4, 1994.
- National Commission on Wildfire Disasters; Sampson, Chair—1994.
- Western Forest Health Initiative Report, USDA-Forest Service—1994.
- Fire Management Strategic Assessment Report, USDA-Forest Service—1994.
- Report of the Interagency Management Review Team, South Canyon Fire—October 1994.
- Bureau of Land Management Fire and Aviation Programwide Management Review Report—April 1995.

These reviews and studies include extensive input from affected interests, agency employees, and the general public. The recommendations that have resulted from these efforts shall, as part of this review, be implemented if they are consistent with this report and have demonstrated interagency consensus.

Guiding Principles

Guiding principles represent those broad, overarching procedural tenets that apply to all fire management activities. They have their basis in current manuals, handbooks, and written program instruction. The following guiding principles are fundamental to the success of the Federal wildland fire management program and will be inherent in all Federal agency programs:

- *Public and firefighter safety is the first priority in every fire management activity.*
- *The role of fire as an essential ecological process and natural change agent will be incorporated into the planning process.* Fire management activities support the achievement of those plans.
- *Fire management plans, programs, and activities are integral components of land and resource management plans and their implementation.* Federal agency land and resource management plans set the objectives for the use and desired future condition of the various public lands.
- *Sound risk management is a foundation for all fire management activities.* Risks and uncertainties relating to fire management activities must be understood, analyzed, communicated, and managed as they relate to the cost of either doing or not doing the activity. Net gains to the public benefit will be an important component of decisions.
- *Fire management programs and activities are economically viable, based upon values at risk, costs, and land and resource management objectives.* Federal agency administrators are adjusting and reorganizing programs to

reduce costs and increase efficiencies. As part of this process, investments in fire management activities must be evaluated against all agency programs in order to effectively accomplish the overall mission, set short- and long-term priorities, and clarify management accountability.

- *Fire management plans and activities are based upon the best available science.* Knowledge and experience are developed among all wildland fire management agencies. An active fire research program combined with interagency collaboration provides the means to make this available to all fire managers.
- *Federal, State, Tribal, and local interagency coordination and cooperation is essential.* Increasing costs and smaller work forces require that public agencies pool their human resources to successfully deal with the ever-increasing and more complex fire management tasks. Full collaboration among Federal agencies and between the Federal agencies and State, local, and private entities results in a mobile fire management workforce available to the full range of public needs.
- *Standardization of policies and procedures among Federal agencies is an ongoing objective.* Consistency of plans and operations provides the fundamental platform upon which Federal agencies can cooperate and integrate fire activities across agency boundaries and provide leadership for cooperation with State and local fire management organizations.

Current and Proposed Federal Fire Policies

Following the initial comments by employees and the public in January 1995, subject-matter experts from the Federal agencies, State and local governments, and the private sector reviewed the issues that were raised and the policies that relate to those issues. These working groups focused on policies needing change. They are displayed as "current" policies in the following table. The groups then developed proposals for revised or new policies. The results of that effort, refined by the Federal Wildland Fire Management Policy and Program Review Steering Group, are displayed in the table as "proposed" policies.

FEDERAL WILDLAND FIRE POLICIES

	Current Department of the Interior[1]	Current Forest Service[2]	Proposed Federal
Safety	No wildfire situation, with the possible exception of threat to human survival, requires the exposure of firefighters to life-threatening situations.	Conduct fire suppression in a timely, effective, and efficient manner with a high regard for public and firefighter safety. Forest officers responsible for planning and implementing suppression action shall not knowingly or carelessly subordinate human lives to other values.	Public and firefighter safety is the first priority. No resource or property values are worth endangering people. All suppression actions and prescribed fire plans must reflect this commitment.
Planning	Fire will be used to achieve responsible and definable land-use benefits through the integration of fire suppression and prescribed fire as a management tool.	Integrate consideration of fire protection and use into the formulation and evaluation of land and resource management objectives, prescriptions, and practices.	Fire, as a critical natural process, will be integrated into land and resource management plans and activities on a landscape scale, across agency boundaries, and will be based upon best available science.
Prescribed Fire	Prescribed fire may be utilized to accomplish land-use or resource-management objectives only when defined in prescribed fire plans.	Use prescribed fires, from either management ignitions or natural ignitions, in a safe, carefully controlled, cost-effective manner as a means of achieving management objectives defined in Forest Plans. Prepare a burn plan for all prescribed fire projects.	Prescribed fire will be used to protect, maintain, and enhance resources, and prescribed natural fire will be allowed to function, as nearly as possible, in its natural ecological role. All prescribed fire must be consistent with land and resource management plans, public health considerations, and approved prescribed burn plans.
Prescribed Natural Fire.	Prescribed fire, designed to accomplish the management objective of allowing naturally occurring fire to play its role in the ecosystem, will be allowed to burn if provided for in a fire management plan, a valid prescription exists, and the fire is monitored.	Allow lightning-caused fires to play, as nearly as possible, their natural ecological role in Wilderness.	(See above.)
Wildfire	Fires are classified as either wildfire or prescribed fire. All wildfires will be suppressed. Wildfire may not be used to accomplish land-use and resource-management objectives. Only prescribed fire may be used for this purpose.	Wildland fires are defined as either a wildfire or a prescribed fire. Respond to a fire burning on National Forest System land based on whether it is a wildfire or a prescribed fire; implement an appropriate suppression response to a wildfire.	Wildland fire is defined as either a wildfire or a prescribed fire. Management actions taken will be consistent with firefighter and public safety, land-use plan objectives, resource benefits, and values at risk. Wildfire that does not meet land-use plan objectives will be suppressed.

FEDERAL WILDLAND FIRE POLICIES—Continued

	Current Department of the Interior[1]	Current Forest Service[2]	Proposed Federal
Preparedness	Bureaus will maintain an adequate state of preparedness and adequate resources for wildland fire suppression. Preparedness plans will include considerations for cost-effective training and equipping of suppression forces, maintenance of facilities and equipment, positioning of resources, and criteria for analyzing, prioritizing, and responding to various levels of fire situations.	Plan, train, equip, and make available an organization that ensures cost-efficient wildfire protection in support of land and resource management direction as stated in Fire Management Action Plans. Base presuppression planning on the National Fire Management Analysis System.	Agencies will ensure their capability to provide safe, cost-effective fire protection in accordance with land management plans through appropriate planning, staffing, training, and equipment.
Suppression	Wildfire losses will be held to the minimum possible through timely and effective suppression action consistent with values at risk and within the framework of land-use objectives and plans.	Conduct fire suppression in a timely, effective, and efficient manner with a high regard for public and firefighter safety.	Fires are suppressed at minimum costs, considering benefits and values at risk and consistent with resource objectives.
Administrator & Employee Responsibility.	Wildfires are considered emergencies, and their suppression will be given priority over normal Departmental programs.	Every Forest Service employee has the responsibility to support and participate in wildfire suppression activities as the situation demands.	Employees who are trained and certified will participate in the wildland fire program as the situation demands; noncertified employees with operational, administrative, or other skills will support the wildland fire program as needed; and administrators will be responsible, accountable, and make employees available.
Protection Priorities.	The standard criterion to be used in establishing protection priorities is the potential to destroy: (1) Human Life, (2) Property, and (3) Resource Values. (National Interagency Mobilization Guide, March 1995, NFES 2092.).	The standard criterion to be used in establishing protection priorities is the potential to destroy: (1) Human Life, (2) Property, and (3) Resource Values. (National Interagency Mobilization Guide, March 1995, NFES 2092.).	Protection priorities are (1) life and (2) property or natural resources, based on relative values at risk, commensurate with suppression costs.
Interagency Cooperation.	Bureaus will coordinate and cooperate with each other and with other protection agencies for greater efficiency and effectiveness.	Develop and implement mutually beneficial fire management agreements with other Federal agencies and countries. Cooperate, participate, and consult with the States on fire protection for non-Federal wildlands.	Fire planning, prescription, preparedness, suppression, monitoring, and research will be conducted on an interagency basis with the involvement of all partners.
Standardization	The National Wildfire Coordinating Group (NWCG) provides a formalized system to agree upon standards of training, equipment, aircraft, suppression priorities, and other operational areas. (Memorandum of Understanding, NWCG; II, Function and Purpose.).	The National Wildfire Coordinating Group (NWCG) provides a formalized system to agree upon standards of training, equipment, aircraft, suppression priorities, and other operational areas. (Memorandum of Understanding, NWCG; II, Function and Purpose.).	Agencies will use consistent planning processes, funding mechanisms, training and qualification requirements, operational procedures, values-at-risk methodologies, and public education programs for all fire management activities.
Wildland/Urban Interface.	Emergency assistance may be provided to properties in the vicinity of public and Indian lands so long as Departmental lands or the public's interest is not jeopardized. Bureaus will develop and participate in interagency fire prevention cooperatives.	Structural fire suppression, which includes exterior and interior actions on burning structures, is the responsibility of State and local government. Structural fire protection from advancing wildfire within the National Forest protection boundary is the responsibility of State and local fire departments and the Forest Service.	The operational role of Federal agencies, as a partner in the wildland/urban interface, is wildland firefighting, hazard fuels reduction, cooperative prevention and education, and technical assistance. Structural fire protection is the responsibility of State and local governments. Federal agencies may assist with exterior structural suppression activities under formal agreements that state the mutual responsibilities of the partners, including funding. (The National Park Service and Bureau of Indian Affairs have full structural protection authority for their facilities on their land and may also enter into formal agreements to assist State and local governments with full structural protection.)

FEDERAL WILDLAND FIRE POLICIES—Continued

	Current Department of the Interior [1]	Current Forest Service [2]	Proposed Federal
Economic Efficiency.	Bureaus will ensure that all fire management activities are planned and based upon sound considerations, including economic concerns. Bureaus will coordinate and cooperate with each other and with other protection agencies for greater efficiency and effectiveness. Wildfire damage will be held to the minimum possible, giving full consideration to minimizing expenditure of public funds for effective suppression.	Provide a cost-efficient level of wildfire protection on National Forest lands commensurate with the threat to life and property and commensurate with the potential for resource and environmental damage based on hazard, risk values, and management objectives.	Fire management and fire program activities will be based on economic efficiencies developed by using sound economic analysis methodologies that incorporate commodity, non-commodity, and social values.

[1] From current Department of the Interior Manual.
[2] From current USDA-Forest Service Manual.

Coordinated Policy and Program Management

Situation

In analyzing fire policy and programs, several broad components of fire management were identified as needing improvement. These issues are grouped in this section to show the need for consistency across all aspects of fire management. They include accountability, measurement of program efficiency, organization, fire management data, weather support, and legal review and policy analysis of programs, authorities, responsibilities, and liabilities.

The five Federal wildland fire management agencies have worked together for many years to improve many aspects of the fire management program. However, in order to accomplish a more unified approach to fire management, provide the maximum opportunity for reinvention of processes, and improve results, they must take this approach even further.

Program Accountability

Current mechanisms to ensure management accountability in the fire program are ineffective. Policy and guidance are unclear about agency administrators' and fire program managers' responsibilities, and their position descriptions and performance standards are vague in that regard. As a result, there is little incentive for managers to adhere to established policy and direction or to provide oversight to the program. In addition, this lack of performance criteria does not portray expectations to inexperienced administrators or fire program managers.

Most employees and many fire managers don't believe that fire accomplishments or failures, especially in suppression activities, can be measured. There is a widely held view that line officers are not held accountable for failures or rewarded for accomplishments. This aggravates the perception that line officers can give fire activities a low priority without being held responsible for the consequences. Furthermore, there is a perception by employees that only political or public pressure affects the line officer's dealings with fire.

This perception of a lack of accountability is increased by managers not speaking out in support of the fire program, not motivating employees to become certified and be available for fire suppression duties, limiting forces available for regional or national mobilization, or de-emphasizing fire priorities. This perception is also exacerbated by line officers' broad interpretations and varying levels of implementation of policies requiring support of fire suppression activities.

Goal

Achieve an appropriate recognition of fire management program requirements and successfully fulfill managerial and technical responsibilities.

Actions

Federal agencies will:

- Develop and utilize consistent fire management qualification standards and specific selection criteria for fire program managers.
- Establish job performance standards for agency administrators and fire managers that clearly reflect the complexity and scope of the fire management responsibilities.
- Provide consistent and adequate training for agency administrators commensurate with their role and responsibility in fire management.
- Ensure that agency administrators and fire program managers are held accountable for conducting the fire program in accordance with established policies, procedures, standards, and direction.
- Ensure that employees who are trained and certified participate in the wildland fire program as the situation demands; noncertified employees with operational, administrative, or other skills support the wildland fire program as needed; and administrators are responsible, accountable, and make employees available.

Program Efficiency

Services provided by Federal agencies are being critically scrutinized, both internally and externally, to determine the relative priority of every program and its contribution to the agency mission and the public good. As part of that scrutiny, the returns on investments in the fire program must be compared with the returns in other programs. Subsequently, every activity within the fire management program must be analyzed according to its economic efficiency. For example, presuppression activities such as prevention and preparedness must be able to display their contribution to reduced suppression costs, and prescribed fire programs must show a return in improved or restored ecosystems or reduced suppression costs.

Agency managers must be able to analyze program economic efficiency in order to establish the priority and scope of the fire management program. Current information on fire program benefits and costs are neither reliable nor consistent, and present program analysis methodologies are inadequate and inconsistent among Federal agencies. One dilemma is the question of what values should be included in such an analysis of diverse Federal wildlands; however, commodity, non-commodity, and social values all must be considered.

A growing concern shared by Members of Congress, agency administrators, and the public is focused on the cost of fighting large wildfires. Recently, the General Accounting Office has been directed to review 1994 fire suppression expenditures in some agencies.

Some critics believe expenditures are excessive and that the crisis nature of wildfire has led to imprudent use of personnel, equipment, and supplies. Others believe that firefighting practices are not as effective as some natural forces in bringing wildfires under control and that fire suppression efforts should take better advantage of weather, terrain, fuel, and other natural conditions. In the future there is likely to be less tolerance for excessive expenditures on large-fire suppression. This type of fire activity must be analyzed for costs versus benefits. Present analysis methods have not resulted in improved practices or reinforced confidence in current suppression strategies.

Goal

A means is developed with which to demonstrate overall fire management economic efficiency as well as to analyze the relative efficiency of specific activities within the fire management program.

Action

Federal agencies will:

- Jointly develop a standard methodology for measuring and reporting fire management economic efficiency that includes commodity, non-commodity, and social values. This methodology should specifically address, among other considerations, the cost of large-fire suppression.
- Base fire management and fire program activities on economic efficiencies developed by using sound economic analysis methodologies.

Organizational Alternatives

The current focus on reinvention of the Federal government is stimulating new approaches to accomplishing agency missions. As part of this effort, Federal agencies must evaluate their fire management organizations and methods of accomplishing their total fire management program. These analyses must consider the movement to reduce the Federal role in public service, the implications of a continued reduction in work force and skills, and the effectiveness and efficiency of fire management organizations and methods, while at the same time retaining strong principles of public service. Any change in organizations or responsibilities must bring the same or better fire management service to the public and meet the goals and objectives of the agencies' land use plans.

Each Federal agency currently maintains its own separate fire management organization, with qualified employees from other programs available as the fire situation dictates. This is commonly termed the fire militia. Federal agencies and cooperators also share resources nationally, and in some cases local interagency fire organizations exist, contract services are used, or other innovative approaches, such as the National Interagency Fire Center, the National Wildfire Coordinating Group, and the Alaska Fire Service, are being developed or used to accomplish the fire management mission. The Federal fire work force is currently decreasing at an uncomfortable rate, particularly in key specialized skills. An anticipated increase in retirements of fire managers and specialists over the next five years raises a serious question about how agencies will conduct their fire management missions. More aggressive examination and implementation of organizational alternatives are hampered by the inability to measure relative efficiencies among these alternatives as well as by strong traditions that create a resistance to change.

Goal

The most efficient and effective fire management program for Federal resources is developed, using an appropriate analysis procedure.

Actions

Federal agencies will conduct a comprehensive, cooperative analysis of their fire management programs and consider a broad range of alternatives, including non-Federal fire management services provided by Tribes, State or local governments, or private interests. The agencies will focus on developing a consistent analytical approach and evaluate alternatives against well-founded criteria. This analysis will be directed toward achieving the same or improved level of service, and at a minimum each alternative will explore funding mechanisms, specific wildfire suppression activities, and fire management in the wildland/urban interface. Each alternative will include the variables of funding the total program and funding by the benefitting party.

Data Management

Accurate, organized, and accessible information about natural resources and fire activities is the basis for coordinated agency program decisions and is critical to effective and efficient program management.

There is currently no consistency among agencies in compiling, managing, and accessing fire data, which prevents a reliable, holistic view of the Federal fire program. Although some data, such as historical fire patterns, response to past management actions, resource values, prescribed fire statistics, and hazard mapping, have been collected, it is incomplete and is not managed and portrayed consistently. In some cases, e.g., the wildland/urban interface, the need for data is only now being identified.

Goal Federal agencies adhere to sound data management principles and achieve a coordinated Federal fire statistical database.

Actions

Federal agencies will:

- Standardize fire statistics and develop an easily accessible common database.
- Jointly identify, develop, and use tools needed for ecosystem-based fire management programs with mechanisms to integrate fire-related databases with other systems. These tools will include:

—The collection of ecosystem-related data such as disturbance regimes, historical fire patterns, response to management actions, and others.
—Consistent methods to track and access fire information, e.g., fire-use statistics and administrative costs.
—Mechanisms to transfer and exchange information such as fire effects databases (e.g., Fire Effects Information System), expert systems (e.g., Fire Monitoring Navigator), Internet access, National Biological Information Infrastructure, National Wildfire Coordinating Group (NWCG) Publications Management System documents, multimedia training and educational material, and public/private partnership information.

- Direct the collection of a common set of prescribed fire data for use in risk assessment.

Cooperate with the Tribes, States, and local governments to establish a data-collection mechanism, which includes involvement by the insurance industry, National Fire Protection Association, Federal Emergency Management Agency, and other Federal agencies, to better assess the nature and scope of the wildland/urban interface fire problem.

- Play a lead role in the adoption of the National Fire Incident Reporting System standards for all fire agencies that operate in the wildland/urban interface and modify existing fire

reports (Interior's DI–1202 and Forest Service's 5100–29) to reflect wildland/urban interface data.

Weather Support

Fire-weather forecasting is a sophisticated and long-standing tool used by fire managers. As fire behavior prediction techniques have improved and become paramount in fire suppression, weather support has become a critical factor. In addition, longer-term fires are demanding forecasts beyond the six- to ten-day reliable range.

Currently, fire weather services are provided, on request, by the National Weather Service as a special program in that agency; however, demands for weather support have begun to exceed the existing capability. In recent severe fire years, requests for on-the-fire units could not always be filled.

The need for nontraditional weather support is dramatically increasing. Pre-fire-season predictions are being demanded by managers in order to prioritize work loads. Long-range fire severity forecasts are commonly needed for pre-positioning suppression forces, but they are either not available or unreliable. Finally, current and future demands for prescribed-fire weather forecasts, both long-range and on-site, are far exceeding present weather-support capability. To date, evaluation of alternatives for providing weather support to the fire management program have not resulted in substantive change in the methods available to fire managers.

Goal

Appropriate options are implemented for fulfilling fire managers' current and future needs for weather services.

Actions

- The Secretaries of the Interior and Agriculture, together with the Secretary of Commerce, will evaluate alternative methods, including non-Federal sources, to provide weather service to the agencies' fire management programs.
- The Secretaries of the Interior and Agriculture will seek commitment from the Secretary of Commerce to research and develop technology to provide accurate, long-range weather forecasts.

Legal Review and Policy Analysis

New and innovative fire program activities and the increasing interconnection between fire activities and existing environmental, public health, and tort laws require legal review and policy analysis to ensure coordination and compliance. Consequences of prescribed fire activities, where fire is allowed to play a natural role or is introduced into the wildlands, may conflict with some interpretations of existing laws or regulations. Currently, these differences are identified independently by each agency and resolved on a case-by-case basis.

Many of these issues are emerging in the wildland/urban interface zone (see Wildland/Urban Interface Protection section). In order to make the best possible decisions, agencies must have sound, consistent legal interpretation of laws and regulations and/or in-depth systematic analysis of policy. Furthermore, wildland fire management agencies must, early in the process, involve public-health and environmental regulators in developing the most workable application of policies and regulations.

Goal

Agencies have a consistent interpretation of laws and resulting policies to eliminate inconsistencies in agency fire management programs and decisions.

Actions

- Federal agencies will:

—Identify the legal context for reintroducing fire into wildlands and develop options for accomplishment, including modifying regulations to address ecological processes where appropriate, exercising broader interpretations of policy, using the waiver process, or resolving obstacles at regional and local levels.

—Jointly obtain legal interpretation of current policy and law regarding interagency implementation activities related to fire management, including those on non-Federal lands. Based on this interpretation, agencies can develop standardized agreements or new agreements that permit these activities.

—Clarify and differentiate between agency liability and personal liability resulting from prescribed fire, based on legal review and interpretation of tort law.

- The Secretaries of the Interior and Agriculture will direct the Office of the Solicitor and the Office of the General Counsel, in coordination with the Department of Justice, to conduct and publish, by January 1, 1996, a comprehensive legal review on wildland/urban interface fire protection to provide the legal foundation for Federal actions. This review will address:

—Current authority under Federal laws such as the Organic Act, National Forest Management Act, Stafford Act, and the Federal Land Policy and Management Act.

—The subjects of tort liability, budget authorities, cooperative agreements, mitigation activities, and natural resource protection/environmental laws.

Role of Fire in Resource Management

Situation

Long before humans arrived in North America, there was fire. It came with the first lightning strike and will remain forever. Wildfire is inherently neither good nor bad. As an inevitable natural force, it is simply unpredictable and potentially destructive and, along with human activities, has altered ecosystems throughout time.

Early ecologists recognized the presence of disturbance but focused on the principle that the land continued to move toward a stable or equilibrium condition. Through the years, however, scientists have acknowledged that equilibrium conditions are largely the exception and disturbance is generally the rule. Natural forces have affected and defined landscapes throughout time. Inasmuch as humans cannot completely control or eliminate these disturbances, ecosystems will continue to change.

Human activities have also influenced ecosystem change. American Indian Tribes actively used fire in prehistoric and historic times to alter vegetation patterns. In short, people and fire and ecosystems evolved together. This human influence shifted after European settlement in North America, when it was believed that fire, unlike other natural disturbance phenomena, could and should be controlled. For many years fire was aggressively excluded to prevent what was considered the destruction of forests and other vegetation. While the destructive, potentially deadly side of fire was obvious and immediate, changes and risks resulting from these fire exclusion efforts were difficult to recognize and mounted slowly and inconspicuously over many decades.

Recently, however, there has been a growing recognition that past land-use practices such as logging and grazing, combined with the effects of fire exclusion, have resulted in heavy accumulations of dead vegetation, altered fuel arrangement, and changes in vegetative structure and composition. As dead fallen material (including tree boles, tree and shrub branches, leaves, and decaying organic matter) accumulates on the ground, it increases fuel quantity and creates a continuous arrangement of fuel. These conditions allow surface fires to ignite more quickly, burn with greater intensity, and spread more rapidly and extensively than in the past.

The arrangement of live vegetation also affects the way fires burn. For example, an increase in the density of small trees creates a multi-storied forest structure with a continuous vertical fuel arrangement. This arrangement may allow a fire normally restricted to the ground to spread into the trees and become a crown fire. In addition to structural changes, vegetation modification resulting from fire exclusion causes a shift toward species that are not adapted to fire (some of which are not native) and are therefore more susceptible to damage from fire. Fire exclusion also favors non-native species in some fire-dependent areas, while in other areas fires may encourage non-native species. Fires in areas of altered vegetation and fuels affect other important forces within the ecosystem, such as insects and diseases, wildlife populations, hydrologic processes, and nutrient cycling, which influence the long-term sustainability of the land.

Paradoxically, rather than eliminating fire, exclusion efforts have instead dramatically altered fire regimes so that today's fires tend to be larger and more severe. No longer a matter of slow accumulation of fuels, today's conditions confront us with the likelihood of more rapid, extensive ecological changes beyond any we have experienced in the past. To address these changes and the challenge they present, we must first understand and accept the role of fire and adopt land management practices that integrate fire as an essential ecosystem process.

Although ecological knowledge and theories have changed relatively quickly, the scope and process of land management have had difficulty keeping pace. Ecological processes, including fire and other disturbance, and changing landscape conditions are often not integrated into land management planning and decisions. With few exceptions, existing land management planning is confined to individual agency boundaries and single-function goals that are driven by differing agency missions and policies. This type of planning results in an inefficient, fragmented, short-term approach to management that tends to ignore interdisciplinary-based, long-term, broad-scale resource issues that cross agency boundaries. Land management agencies now recognize the need to break down these barriers and seek cooperative, ecologically sound approaches to land management.

The process used in land management planning also hinders the broad-scale approach. One way to break down this barrier is to involve all interests, including the public, scientists, resource specialists, and regulators, throughout the planning process. Another is to establish a clear link for communication and information transfer between scientists and managers. These measures will help to ensure that management needs are met and that current science is used in land management planning at all levels.

Planning must also consider the risks, probabilities, and consequences of various management strategies, e.g., wildfire versus prescribed fire versus fire exclusion. For a responsive planning process, management decisions must be monitored, integrated and supported at each step. And to carry out critical and effective "adaptive management" (a feedback approach to management that uses monitoring results to plan future actions), planners and managers need a nationwide baseline measure of ecological condition and a standardized method of assessing long-term ecological health.

Not only must we understand and accept the need to integrate fire into land management, but this integration must be reconciled with other societal goals (e.g., maintaining species habitat, maximizing commodity production, and protecting air quality, water quality, and human health). Laws and regulations must consistently address long-term ecosystem processes and must guide agencies toward a common goal. Information about the consequences of various management strategies is not currently available to assist in working toward simultaneous goals. Land management and regulatory agencies must interact and collaborate to achieve a balance of ecosystem and other societal goals.

A major obstacle is that many people do not understand the ecological and scientific concepts behind fire. For many, fire remains a fearsome, destructive force that can and should be controlled at all costs. Smokey Bear's simple, time-honored "only you" fire prevention message has been so successful that any complex talk about the healthy, natural role of fire gets lost, ignored or denied by broad internal and external audiences.

The ecological and societal risks of using and excluding fire have not been adequately clarified and quantified to allow open and thorough discussions among managers and the public. Few understand that integrating fire into land management is not a one-time, immediate fix but a continual, long-term process. It is not an end in itself but rather a means to a healthy end. Full agency commitment to internal and external information and education regarding fire and other ecological processes is needed. When agency employees as well as the public misunderstand or remain skeptical about the role of fire, it severely limits adaptive and innovative fire and land management. Conversely, informed constituents and well-educated employees are essential to honestly address the concerns of society.

Several roadblocks keep us from reintroducing fire on an ecologically significant scale. Even now it sometimes takes years to reach agreement about appropriate treatments and to take action. Land managers often feel the need to wait for scientific certainty before acting. This favors the status quo, impedes progress, and deters investigation of new techniques. In many ecosystems, there is little or no information about disturbance regimes, historical fire patterns, inventory data, response to past management actions, and likely future responses. This calls for a consistent, well-planned, and large-scale scientific assessment of current ecosystem conditions and consequences of various management strategies. Also, increasing human settlement near wildlands divides and fragments resource lands, making it difficult to apply new ecosystem-based management strategies. This increases the risk of escaped fires and generates more complaints about smoke and altered scenic values. A further roadblock is the current policy that calls for the suppression of all wildfires. This precludes the use of wildfire as a cost-effective means of accomplishing the objectives contained in agency land-use plans.

Fire is the most powerful natural force that mankind has learned to use. Unlike an earthquake, it can be harnessed; unlike a tornado, it can be channeled; unlike wind, it depends on complex chemical and biological relationships. And, unlike water and ice, fire is not an element; it is an event, a catalyst, and therefore a unique tool that land managers everywhere can use.

But in order to successfully integrate fire into natural resource management, informed managers, partners, and the public must build upon sound scientific principles and social values. Research programs must be developed to create this foundation of sound scientific principles. All parties must work together in the land management planning and implementation process according to agreed-upon goals for

public welfare and the health of the land.

The task before us—reintroducing fire—is both urgent and enormous. We have created conditions on millions of acres of wildlands that increase the probability of large, intense wildfires beyond any scale we have witnessed. These severe fires will in turn increase the risk to humans, to property, and to the land upon which our social and economic well-being is so intimately intertwined.

In the first decade of this century, a new policy was established that systematically excluded the natural flame across the entire nation. In recent years we have begun to understand the full extent of the risks that policy has wrought. Now, in the last decade of this century, it is our responsibility, for the health of the land and for our citizens, to carefully, systematically, and collectively bring fire back to its rightful place.

Goals—Planning

• Ecological processes, including fire, are actively incorporated into land management planning to restore and maintain sustainable ecosystems. Planning is a collaborative effort, with all interested partners working together to develop and implement management objectives that cross jurisdictional boundaries.

• The use of fire to sustain ecosystem health is based on sound scientific principles and is balanced with other societal concerns.

Actions

Federal agencies will:

• Jointly develop consistent, compatible, ecosystem-based interagency land management planning processes that facilitate adaptive management, including effective implementation, continual monitoring, and appropriate feedback to management. This process will:

—Fully integrate ecological concepts that consider the long-term view and cross agency boundaries.

—Involve all internal parties, including managers, scientists, resource specialists, regulators, Tribes, State and local governments, and the public. (The ongoing interagency Columbia River Basin Assessment Project may provide a model.)

—Quickly and effectively incorporate current information, including scientific knowledge, risk assessment, social and economic concerns, and public-health considerations.

—Include multiple scales of planning, assessment, and monitoring to address specific actions such as fire management prescriptions for resource management on a local scale and ecosystem health on a broader scale.

—Set performance requirements and provide rewards for interdisciplinary planning and successful implementation so that team members are responsible for ecosystem health rather than single, specific targets.

—Require consistent and integrated ecosystem monitoring across agency boundaries.

—Include a mechanism to revise existing land management plans to address the above actions.

• Develop research programs that provide a sound scientific basis for the integration of fire as a positive force in resource management.

•Use a consistent fire management planning system that ensures adequate fire suppression capabilities to support fire reintroduction efforts and recognizes fire management (both fire use and fire protection) as an inherent part of natural resource management.

• Create a system for coordination and cooperation among land managers and regulators to allow for the use of fire to achieve goals of ecosystem health while at the same time protecting individual components of the environment and human health and safety. This system will:

—Allow for early collaboration during the process of developing new land management plans.

—Provide a mechanism for achieving balanced goals in existing land management plans.

—Encourage land management agencies to proactively incorporate the intent of environmental laws and regulations into their management practices to achieve a balance among societal goals (e.g., adopt consistent, state-of-the-art smoke management techniques, including smoke modeling).

Goals—Reintroduction of Fire

• Based upon sound scientific information and management objectives, fire is used to restore and maintain healthy ecosystems and to minimize undesirable fire effects, including effects on humans.

• Clearly defined management goals and objectives that include the role of prescribed fire and wildfire are developed. Resulting fire management practices and terminology are consistent for areas with similar management objectives, regardless of jurisdiction.

Actions

Federal agencies will:

• Expedite the decision-making process by developing a uniform set of criteria for evaluating ecosystem condition and prioritizing areas for the reintroduction of fire to meet resource objectives and reduce hazards. This process will identify those ecosystems:

—That will function without fire (fire is not a significant natural component or the fire regime has not been altered).

—Where fire is unlikely to succeed (fire would be adverse, such as areas significantly altered by fuel accumulations and species changes).

—Where treatment is essential or potentially effective (fire is needed to improve resource conditions or reduce risk and hazard).

• Jointly conduct research, expand fire management demonstration areas, and coordinate and implement ecosystem-based fire management programs. These programs will:

—Address today's more fragmented landscapes.

—Address the highest-priority needs in ecosystem assessment, monitoring, and management.

—Use existing tools and develop new ones to assist in understanding and managing for prescribed fires of greater size and intensity consistent with historic fire regimes.

—Determine the appropriate scope of prescribed fire use, including urgency, extent, timing, and risks and consequences.

—Be an integral part of the long-term, comprehensive land management program.

• Revise policy to allow wildfire to be used to accomplish resource or landscape management goals when consistent with land-use plan objectives.

Goal—Education

Clear and consistent information is provided to internal and external audiences about existing conditions, management goals and objectives, the role of fire in achieving these objectives, and alternatives and consequences of various fire management strategies.

Actions

Federal agencies will:

Establish an interdisciplinary team that includes all agencies and regulators to design a consistent fire-role and -use message for decision makers and the public. This message will:

—Describe and clearly explain issues such as ecosystem condition, risks, consequences (including public health impacts), and costs in open dialogue with internal and external constituents through media campaigns, public meetings, employee training, etc.

—Be designed to maximize open communications and reduce polarization among conflicting interests regarding prescribed fire.

Build on existing efforts of the Interior Interagency Wildland Fire Education Initiative to develop and implement a strategic plan that includes education of the general public and agency personnel about the role of fire. As part of this effort, agencies will:

—Develop and transmit a clear message about the role of fire and the consequences of its use and exclusion.

—Integrate this message into existing agency communication systems.

—Tie the role-of-fire message to other agency initiatives such as forest health, ecosystem management, etc.

—Broaden the Initiative to include all interests.

—Incorporate risk assessments into the Initiative.

—Encourage, create, and coordinate partnerships to achieve consistency in messages, build public trust, and obtain public opinion.

—Recognize and use educable moments (where the attention of the public is focused on fire, e.g., fire emergencies and visible prescribed fire operations) to facilitate high-impact information and education.

—Develop mandatory national and regional interagency training programs to instill in all employees an understanding of the role of fire in natural systems.

—Commit funding and support to public information.

Use of Prescribed Fire and Fuels Management

Situation

Since the early 1900's, our national fire policy of aggressively limiting and excluding fire has unwittingly turned many wildlands into altered, high-risk fire zones. As stated in the preceding chapter, this exclusion policy has modified the living landscape, changing plant species composition as well as diversity. In many cases it has transformed a landscape of diffuse, native, fire-adapted plant species into a dense, solid, and often vulnerable fuel load of standing vegetation and ground litter. When lightning inevitably strikes, fires ignite faster, burn hotter, and spread faster and farther. These high-intensity fires are more likely to result in unacceptable environmental conditions such as sterilized or water-repellent soils, accelerated erosion, and displacement of native vegetation by less desirable species.

Recent fire tragedies in the West have helped focus that understanding and, along with it, a consideration of how risk might be mitigated. Some areas will need immediate management intervention to prevent high-intensity fire and to maintain their sustainability as healthy ecosystems.

Prescribed fire or burning is often mentioned by land managers, fire practitioners, and scientists as a potential tool to mitigate fuels and hazards. Prescribed burning is the deliberate application of fire to wildlands to achieve specific resource management objectives. Prescribed fires may be ignited either by resource managers or by natural events such as lightning. They may be used for a number of resource management purposes, from simple fuel reduction to achieving specific responses from fire-dependent species, such as the regeneration of aspen.

When the purpose of a prescribed fire is simply to reduce the amount of fuel, alternative treatments are available. Physical removal or substantial alteration of both dead and living vegetation may be accomplished by mechanical means in areas where heavy equipment can operate. Fuel loads can also be treated by hand but at a relatively high cost. Other land management activities, such as grazing and logging, may also serve to accomplish fuel reduction. But when a land management objective is more complex, the number of acceptable treatment alternatives becomes limited. For instance, there is no alternative to the use of fire as a natural process in Wilderness.

Prescribed burning is a well-established practice utilized by most Federal, Tribal and State land management agencies as well as some private individuals and organizations. In order to use prescribed fire, land managers must prepare burn plans. Each plan specifies desired effects, weather conditions that will result in acceptable fire behavior, and the forces needed to ignite, hold, monitor, and eventually extinguish the fire. In the past, the practice of prescribed burning has been used on a relatively small scale and confined to single land ownerships or jurisdictions. Success has been built around qualified and experienced people, their understanding of vegetative types and terrain conducive to fire, adequate funding, a supportive public, and a willingness on the part of agency administrators to assume a reasonable amount of risk to achieve desired results.

Because of its potential for undesirable results, prescribed fire is one of the highest-risk activities Federal land management agencies engage in. Escaped prescribed fires can result from poorly designed or poorly executed projects, but they can also result from events beyond the control of those conducting the project, such as unpredicted winds or equipment failure. Currently, the stigma associated with an escaped prescribed fire does not distinguish between poor performance and bad luck.

Although prescribed fire is used in many areas of the United States, it is rarely used enough to significantly improve ecosystem health or reduce hazards. One reason for this is lack of commitment to the concept. While land management agencies as a whole generally recognize the role of fire as a natural process, not all individual disciplines and managers fully understand or support this role. Some managers are unwilling to accept the potential negative consequences associated with prescribed fire. Differences of opinion concerning the effect of fire on specific resources, such as cultural values, water quality, air quality, and certain flora and fauna, can also impede the process.

Another shortcoming is lack of access to qualified people. In the current atmosphere of downsizing and reduced budgets, agencies may not be able to maintain sufficient skills to accomplish broad-scale prescribed fire programs. Many of the employees who are most experienced in the application of prescribed fire are the same ones who are responsible for wildfire suppression. This can lead to potential competition for their time during the fire season. Administrative procedures also inhibit temporary hiring of personnel needed to conduct on-the-ground prescribed burning.

The direction in the Interagency Fire Business Management Handbook on hazard-duty pay also tends to limit the number of prescribed fire professionals. This guidance restricts fire-related hazard pay to activity within or adjacent to the perimeter of an uncontrolled wildfire, even though prescribed fire practitioners are exposed to as much risk if not more than firefighters engaged in suppressing wildfire.

Retirement benefits have also been a factor in career choices involving prescribed fire. However, the BLM has now recognized that, based on 5 CFR 831.900 and 842.800, prescribed fire activity qualifies for primary coverage under special firefighter retirement. In some agencies, however, it is still

considered to qualify only for secondary coverage.

To provide optimal biological benefit to forests and rangelands, the timing and intensity of prescribed fire should resemble natural occurrence. Historically, fires were often very large; however, current land-ownership patterns and the process of funding prescribed fire are not conducive to replicating this process. For example, it is difficult to have a landscape-size project without involving lands of another ownership, and there are barriers to spending agency funds on non-agency lands. And the system does not encourage managers to plan large projects with multiple benefits located entirely on agency lands, because participation is generally limited to those program areas that will provide support and funding.

Currently, there is no consistent method to determine the potential for a prescribed fire to escape, nor is there a mechanism to compare the values at risk from an escaped fire versus those at risk by continuing to exclude fire. When a prescribed fire does escape, the only way a private property owner can be compensated more than $2,500 is to pursue a tort claim against the Federal government. To prevail, the damaged party must prove negligence on the part of the agency. This cumbersome process leads to ill will between the managing agency and neighboring landowners and adversely affects cooperation.

Managing for landscape health requires expansion of interagency prescribed fire programs. Agencies must make a commitment with highly qualified people, from leader to practitioner, and provide funding mechanisms to conduct the program. Federal agencies must foster a work force that understands the role of fire and, at the same time, raise the level of public understanding. Public opinion and perception may limit increases in interagency prescribed fire programs. Therefore, continued Federal efforts to work collaboratively with and educate private landowners, interest groups, and the media is paramount. Education efforts should focus on exposing the public to accurate information on the social and economic benefits that result when prescribed fire is used, how natural resources may be maintained, and the risks involved, including those associated with not taking any action. Total implementation may require that the public tolerate some smoke and accept a certain amount of fire in their environment as an investment in the long-term health of the land.

Goal—Implementation

Fire is accepted as a critical process in a fully integrated program to improve forest and rangeland health. Long-term public safety and healthy ecosystems are maintained through the use of fire on all ownerships. Through funding and staffing, agencies support a significant increase in the use of fire as a resource management tool where consistent with integrated land management plans and maintenance of public health.

Actions

Federal agencies will:

• Jointly develop programs to fund and implement an expanded program of prescribed fire in fire-dependent ecosystems.

• Facilitate the planning and implementation of landscape-scale prescribed burns across agency boundaries and seek opportunities to enter into partnerships with Tribal, State and private land managers where appropriate.

• Conduct all prescribed fire projects consistent with land and resource management plans, public health considerations, and approved prescribed burn plans.

• Implement the National Wildfire Coordinating Group (NWCG) interagency prescribed fire qualification and certification system.

• Aggressively pursue the development of employee attitudes that support long-range, multi-resource management viewpoints through the use of training, performance elements, and experience.

• Seek authority to eliminate internal barriers to the transfer and use of funds for prescribed fire on non-Federal lands and among Federal agencies.

• Seek authority or provide administrative direction to eliminate barriers to carrying over from one year to the next all funds designated for prescribed fire.

Goal—Capability

Agencies collectively and cooperatively maintain an organization that can effectively plan and implement prescribed fire to meet resource management objectives.

Actions

Federal agencies will:

• Train and maintain a qualified and adequate work force to implement interagency prescribed fire projects and make them available when needed.

• Jointly develop simple, consistent hiring and contracting procedures for prescribed fire activities.

• Work with the Office of Personnel Management to acquire authority for hazard-differential pay to compensate employees exposed to hazards while engaged in large-scale or complex prescribed fire activities.

• Clarify that prescribed fire positions qualify for primary coverage under special firefighter retirement and issue appropriate guidance to field offices.

• Make optimum use of available skills to ensure adequate focus, oversight, and safety for the prescribed fire program. Methods may include:

—Sharing personnel among agencies.
—Organizationally consolidating key fire skills within and among agencies.
—Minimizing collateral-duty assignments that compromise focus, oversight, and safety in the prescribed fire program.

• Jointly manage prescribed fire and suppression resources to ensure accomplishment of both activities concurrently.

• Explore old and new technologies that may reduce the labor-intensive nature of fire activities.

Goal—Risk Management/Support

Agencies within the Departments of Agriculture and the Interior support employees when properly planned and conducted prescribed fire projects have unfavorable outcomes.

Actions

• Federal agencies will:

—Jointly develop an assessment process that estimates the probability of success and/or failure associated with the use of prescribed fire and evaluates the potential positive and negative consequences. As a part of this process, the effects of not conducting the project will also be evaluated. Research will support this effort.
—Jointly establish partnerships and develop tools to assess, disclose, and mitigate risk from prescribed fires.
—Create an organizational climate that supports employees who implement a properly planned prescribed fire program.
—Relax current cumbersome, nonproductive requirements such as daily written management certification that a prescribed fire is burning within its prescription.

• Secretaries of the Interior and Agriculture will seek legislation allowing rapid reimbursement for non-Federal losses resulting from prescribed fires.

Preparedness and Suppression

Situation

The business of fighting wildfires is costly, time-consuming, and often dangerous to firefighters and the public. Wildfires occur unexpectedly and create an emergency in which firefighters race to minimize harm to valuable resources or property. Firefighters can contain and limit the spread of wildfires only by preparing well ahead of time, thoroughly examining various possibilities of fire numbers and sizes, and developing contingency plans to cope with them. And only by having adequate, thoroughly trained, well-equipped firefighters can fire suppression be carried out safely. For the past ten years, an average of 67,043 fires have started each year on Federally protected wildlands, burning an average of 2,749,029 acres, an area slightly smaller than the State of Connecticut. When an exceptionally severe fire year occurs, the combined fire protection forces of Federal, Tribal, State, and local governments are challenged. In the past ten years, 1988, 1990, and 1994 were considered extreme in the number of acres burned.

In 1994, the Federal agencies with wildfire responsibilities estimate that 95 percent of wildfires were suppressed during initial attack action. Nevertheless, nearly $1 billion was spent on the fires that escaped initial attack, and the nation experienced an enormous loss of natural resources, private property. With the loss of 34 firefighters, it was a tragic year for wildland fire; and even more sobering is that without the commitment to safety demonstrated by firefighting personnel throughout the nation, our losses could have been even greater. Important lessons were learned, including an affirmation that agency personnel at all levels, and not just those directly involved in fire suppression, must be committed to safety.

It is estimated that presently in the 11 western states there are 20 to 30 million acres of Federal lands where conditions are ripe for extremely intense, destructive wildfires. This high risk brings with it the potential for danger to human health and safety and for enormous costs and economic loss as well as severe damage to soils, watersheds, wildlife, and flora. Federal wildland fire protection agencies must continue to provide resources and new technology for early detection and quick suppression of fires. To not do so would be to put significant public and private values, as well as human lives, at unacceptable risk.

The purpose of wildfire suppression is to minimize damage to resources, property, and the environment; to minimize expenditures of public funds for effective suppression, based on values at risk; and to provide for the safety of firefighters and the public.

Following the tragic loss of lives in the past fire season, the USDA-Forest Service and the Bureau of Land Management chartered an Interagency Management Review Team (IMRT) that focused on three key areas:

• Creating a "passion for safety" within all wildland fire suppression organizations that goes beyond traditional implementation.

• Emphasizing the importance of agency administrator duties and responsibilities in the implementation of safe fire management policies, programs, and practices.

• Monitoring performance and accountability of all personnel involved in fire and aviation management activities. This includes ensuring appropriate skills and training are acquired by administrators, program managers and staff, and all firefighting personnel.

The IMRT report includes 35 recommendations for follow-up. Many have been completed; several are more complex and are ongoing. The IMRT will complete its work June 30, 1995, but individual work groups will continue with ongoing projects until they are completed. A significant outcome of this focus on firefighting safety was a joint statement by the Secretaries of Agriculture and the Interior in May of 1995:

We are committed to "Zero Tolerance" of carelessness and unsafe actions. The commitment to and accountability for safety is a joint responsibility of firefighters, managers, and administrators. No resource or property values are worth endangering people. All land management plans and all suppression plans and actions must reflect this commitment. Individuals must be personally committed and responsible for their own performance and accountability.

The task of preparing for and suppressing fires has been accomplished through the excellent cooperation of all fire suppression organizations. With shrinking budgets and work forces and more challenging fire situations, this cooperation and coordination among Federal and non-Federal fire protection organizations becomes even more essential to provide the fire protection capability the public expects.

The Interagency Management Review Team's findings included the following:

The five Federal wildland fire agencies have each adopted separate fire management planning systems. These systems fall into two basic categories: (1) Optimization models (used by FS, BLM, and BIA) and (2) allocation models (used by NPS and FWS). Each approach has strengths and weaknesses. Three major weaknesses shared by both approaches are the focus on single-agency initial attack, the inability to adequately assess the role of non-market or non-commodity values at risk, and the inability to adequately address "non-normal" conditions. Nevertheless, the systems currently provide the principal source of information for budget planning and for organizational configurations in each agency.

The single-agency focus and contrasting approaches of the various systems have precluded effective interagency planning, for both initial- and extended-attack situations and for geographic-area and national-level resources. The lack of capability to address non-market values has hampered the ability of the fire management programs to provide an organization that accounts for all resources and inhibits cross-agency comparisons.

While each agency has been making modifications and improvements to their own systems over the years, discussion has begun within the interagency fire community to commission a new-generation system that can be used by all agencies (including States) and that addresses the full range of fire management planning issues. In November 1993 the National Wildfire Coordinating Group (NWCG) initiated an exploratory study of developing such a system.

A next-generation fire management planning system, usable by all agencies and States, would greatly enhance the ability to analyze the full range of planning issues and provide a more efficient and effective interagency fire protection organization. Fire management planning systems must address the role that fuels management and protection of adjacent lands and structures plan in fire protection planning. Efforts to develop such a system should move forward as a priority effort in the interagency community through the NWCG.

—Taken from the report of the Interagency Management Review Team, October 1994.

This action will facilitate the interchange of forces for suppression and create a totally mobile Federal fire force.

In addition to the need for standardization, there are a number of existing policies and procedures that hinder all agencies' efforts to become more effective in preparedness and suppression. Some of those are operational and some, such as budgeting and personnel practices, are administrative. In some cases, agencies are individually attempting to solve these problems or at least temporarily fix them season to season. However, it is critical that Federal wildland fire management agencies work together to arrive at common solutions.

Some minor differences in budget processes among agencies inhibit full cooperation. Perhaps the most important issue is the separate funding requests for seasonal severity funding, where coordinated planning and

funding for pre-positioning resources on a local basis is a critical part of preparedness. Differences in the use of emergency firefighting appropriations among agencies also inhibit cooperation on prescribed fire actions. In addition, a budget problem common among Federal agencies and a barrier to full effectiveness in fire suppression is that fire organizations are often funded at less than the Most Efficient Level (MEL) for preparedness. This requires shifting funds from emergency suppression to pre-positioning resources. Standardization of budget processes and solution of some of these budget barriers would help to incrementally improve fire suppression.

A few current personnel policies have an adverse effect on Federal employees' pay while on a fire. As a result, employees are not always interested in supporting the fire suppression mission of the agencies. In some geographic areas, primarily California, the annual wage of entry-level Federal firefighters is lower than State and local firefighter salaries. Federal agencies are training firefighters only to lose qualified people to other fire-service agencies. And the Fair Labor Standards Act creates disparity in pay between exempt and nonexempt employees. In addition, the policy for hiring temporary employees is cumbersome and time consuming; these short-term employees have a restricted work year and in many geographic areas are not on the rolls long enough for the agencies to provide necessary training prior to the fire season.

Preparedness planning is critical to ensure that imminent fire situations are recognized, an appropriate level of fire protection is provided in support of land and resource management goals and objectives, and that appropriate priorities are established and actions taken. The absence of carefully developed and specific preparedness plans frequently results in poor decisions that lead to costly operational mistakes or unsafe practices during emergency situations. In contrast, well-prepared fire suppression plans generally result in smaller fires that are less costly to suppress and cause minimal damage to property and natural resources.

Reorganization and downsizing efforts are compelling Federal agencies to look at new ways to accomplish their programs, including firefighting. Retirements and organizational changes have changed the demographics and experience levels within the fire program. In some cases, agency administrators and fire management officers do not have the same level of experience in fire management oversight as did their predecessors. Managers are often not rewarded for success or given incentives to improve. Further, the demands created by more complex natural resource issues and multiple program priorities have diverted administrators' attention away from the fire management program. Lack of oversight and attention to preparedness can result in crisis decision making. When fires become emergencies, public and political pressures may take precedence over suppression plans that are based on values at risk.

Values-at-risk estimates have been commonly used to determine strategies for large-fire suppression. Only losses in values have been considered in these calculations, because in the suppression operations, the objective as predetermined in land use plans is to put the fire out at the least total cost, which is the value of the resources (values at risk) plus suppression costs. While fire benefits have been considered in planning the fire forces for budget allocations, positive benefits of fires have not been factored into the formulation, or choice, of suppression strategies.

Use of values at risk in fire suppression has not been consistent across agencies, and the definition is too narrow without considering fire benefits as well. As mentioned above, in some cases it has been disregarded entirely. These practices contribute, sometimes significantly, to inflated fire suppression costs. The values at risk concept needs to be revised to reflect present recognition of the positive benefits of fire as compatible with agency land use objectives, as well as the need for a broader range of strategic suppression alternatives for large fires to hold costs in check and recognize limits of firefighting resources.

Standard criteria have been established to guide fire suppression priorities. These are based on the potential for the fire to destroy: (1) Human life, (2) property, and (3) resource values. Human life remains the first priority; however, a rigid second priority of property over natural resource values is being questioned by fire managers. It does not allow for flexibility to consider low-value properties relative to higher-valued natural resources. And property protection as a rigid priority is a significant contributor to inflated suppression costs as well as increased size of wildfires when limited suppression resources are concentrated to protect property. More flexibility is needed to assess the relative values between property and natural resources in order to achieve economic efficiency.

The need for better advance preparation and more effective suppression has never been greater. The overall efficiency and effectiveness of the Federal wildland fire protection effort can be improved through consistency and better coordination. Policies and practices that have been tested and found to be inadequate can be improved through some very specific actions.

Goal—Safety

Federal employees are committed to "Zero Tolerance" of carelessness and unsafe actions.

Actions

• Federal agencies will support and enforce direction by the Secretaries of the Interior and Agriculture that:
—Safety comes first on every fire, every time.
—The Ten Standard Fire Orders are firm. We don't break them; we don't bend them.
—All firefighters have the right to a safe assignment.
—Every firefighter, every fireline supervisor, every fire manager, and every agency administrator has the responsibility to ensure compliance with established safe firefighting practices.

• Federal agencies will adopt a policy that is consistent with the Secretaries' direction for fire management safety.

Goal—Values At Risk

Federal agencies maintain preparedness planning and suppression programs that prevent unacceptable loss from fire by implementing consistent strategies based on estimates of suppression costs and damages together with benefits that may result from wildfire.

Actions

Federal agencies will:

• Jointly redefine values at risk and clarify measures of damage and benefits that may result from fire. This will be incorporated into mobilization guides and action plans and inserted into all national training.

• Include risk assessment in preparedness planning, with firefighter safety as a primary component.

• Complete fire preparedness plans utilizing an interagency approach that incorporates values at risk and benefits to resources, consistent with land and resource management plans.

• Consider a full range of suppression strategies that incorporates estimated damage and benefits to resources, consistent with land and resource management plans.

• Document values at risk and benefits to resources in the Escaped Fire Situation Analysis to determine the most appropriate suppression strategy, based on the availability of suppression forces.

• Renegotiate State and local cooperative fire agreements in the wildland/urban interface to clarify protection responsibilities.

• Establish protection priorities that allow an evaluation of relative values at risk for property and natural resources.

Goal—Preparedness

Federal agencies maintain preparedness and suppression programs that ensure appropriate protection from fire. Agencies take special preparedness actions on a case-by-case basis in local geographic areas that have unusually severe fire danger.

Actions

Federal agencies will:

• Emphasize case-by-case special preparedness actions to ensure timely, safe, and cost-effective response to unusually severe fire potential.

• Clearly establish the organization's mission and clarify managerial and employee responsibilities in fire suppression and support activities.

• Pre-position resources on an interagency basis as needed.

• Develop interagency preparedness plans that specifically include:
—Systems for gathering information necessary to make timely fire management decisions, including fuel conditions and weather.
—Analysis and decision-making processes that consider, on an interagency basis, existing and potential fire severity; suppression resource commitment and availability; prescribed fire activity; environmental, social and political concerns; and other pertinent factors.
—Actions to be taken at each level of preparedness.
—Actions to provide increased suppression capability as the fire season develops, including accessing additional resources, pre-positioning resources, and training emergency firefighters.
—A process for delineating actions to be taken when increased suppression capability is not an option.
—A process for identifying the appropriate level of prescribed fire activity, taking into account the potential impact on suppression resources.
—A process for coordinating actions among cooperating agencies and promptly transmitting decisions to all affected parties, including adjacent units and cooperators.
—A process for preparedness reviews and follow-up evaluation of decisions and results.

Goal—Protection Capability

Federal agencies maintain sufficient capability for suppression through interagency staffing and by removing administrative barriers to hiring and retaining qualified personnel.

Actions

• Federal agencies will:
—Examine and ensure, on an interagency basis, employee availability at each organizational level, based on fire qualifications and other skills necessary for incident management.
—Develop and utilize to the maximum extent possible the concept of closest initial attack forces and interagency staffing for fire suppression to optimize the use of the Federal and non-Federal work force.

• Federal agencies will collaborate with the Office of Personnel Management and Congress to effect changes to:
—The Fair Labor Standards Act to remove exempt/nonexempt status of Federal employees during emergency incident management assignments.
—The hiring practices for temporary employees, which currently limit opportunities to hire and retain a highly qualified seasonal work force.

Goal—Standardization

Federal agencies improve upon existing preparedness and suppression programs by further integration of firefighting operations and by standardizing budget planning processes, budget management, and fire training.

Actions

Federal agencies will:

• Develop a standard interagency budget and staffing process which will result in the most economically efficient organization (Most Efficient Level).

• Implement adequate wildland fire suppression qualification standards, criteria, and certification procedures, utilizing the National Wildfire Coordinating Group (NWCG) to facilitate acceptance and adherence to the standards by all incident management personnel in the fire service.

• Staff existing and future fire management vacancies with people who possess the requisite knowledge, skill, ability, and commitment to accomplish the total fire management mission.

• Recognize and reward success in interagency preparedness.

Wildland/Urban Interface Protection

Situation

Each time someone moves a mobile home into the forest or builds a house with a cedar-shingle roof in the foothills, a wildland/urban interface is created and a potentially dangerous situation grows even larger. That seemingly simple interface puts complex demands on Federal fire resources unlike anywhere else on the American landscape.

Wildland/urban interface protection is important to the Federal government because Federally managed lands are often located adjacent to private lands. In these areas, Federal wildland firefighters are often called upon to assist local agencies. In some cases, Federal agencies are the only source of fire protection. If Federal fire resources were unlimited, this would not be a problem. But with limited amounts of money, time, equipment and people, a fire burning in the interface demands that America protect its scattered structures at the huge sacrifice of natural resources elsewhere. Ultimately, the Federal government pays the bills when fire events exceed local capability, either as disaster assistance or relief through the Federal Emergency Management Agency (FEMA). This represents a significant fiscal liability to the Federal treasury and to State and local coffers as well. In addition, Federal response in the interface "spreads Federal firefighters thin" and places them in situations for which they may not be adequately trained or equipped.

Recent fires such as the 1994 Tyee fire in Washington, the 1994 Chicken and Blackwell complexes in Idaho, the southern California fire siege of 1993, and the 1991 Oakland Hills fire are clear examples of the complexity of protecting the wildland/urban interface. Although recent events occurred in the West, nearly every State has experienced wildland/urban interface fire losses.

The interface has become a major fire problem that will escalate as the nation moves into the 21st century. People continue to move from urban areas to rural areas. These new wildland/urban immigrants give little thought to the wildfire hazard and bring with them their expectations for continuation of urban emergency services. The National Fire Protection Association (NFPA) estimates that since 1985 more than

9,000 homes have been destroyed by wildfire and many people have died. In 1994 it is estimated that 30–50% of all Federal wildland fire suppression dollars were spent in protecting the wildland/urban interface.

Reports such as the National Commission on Wildfire Disasters Report (1993) and Fire In Rural America (1992) document the changing demographics from urban areas to rural areas. There is limited data to quantify the extent of the current or projected growth in the wildland/urban interface; however, it is clear from recent episodes that losses will continue to increase in the future.

The fire protection problems in the wildland/urban interface are very complex, and many barriers must be overcome to address them. These barriers include legal mandates, zoning regulations, building codes, basic fire protection infrastructure, insurance/fire protection rating systems, and offset or local mutual-aid agreements. Political, social and psychological factors further complicate the problems. Obviously, there is no one simple solution.

The autonomy of Federal agencies contributes to inconsistent and sometimes conflicting policies and practices. Federal, Tribal, State, and local agencies, as well as the private sector, are all attempting to tackle the wildland/urban interface protection issue. They have created numerous reports, reviews, and mitigation plans. So far these have only revealed how fragmented and sometimes inconsistent the various approaches are, and few have had the corporate and political will to carry out solutions.

The ability of the Federal agencies to provide centralized leadership for solving the interface problem is complicated because responsibilities extend beyond the Departments of the Interior and Agriculture. The Federal Emergency Management Agency (FEMA) and U.S. Fire Administration (USFA) are also directly responsible for post-disaster assistance and training, respectively, and the Environmental Protection Agency (EPA) has regulatory responsibility concerning air quality, smoke management and other environmental issues.

But there is no central coordination, and there is no single policy that clearly defines the Federal land manager's role or requires agencies to take consistent actions in the wildland/urban interface. Only the National Park Service and Bureau of Indian Affairs have specific structure protection responsibility, and only for their facilities on their lands. Current Federal agency mission statements and operational policies vary and generally restrict activity within these areas. As a result, Federal land managers and fire personnel are confused about their role and are inadequately trained and equipped, but in practice they are expected to provide assistance.

Confusion and debate over the role of Federal land management agencies in the wildland/urban interface is a barrier to effective fire protection and hampers solution. This was validated by public comments received during the public scoping process for this policy review and is apparent in current policies of the Federal land management agencies. Agency administrators' views on this issue cover the entire spectrum from "the Federal government has no business in the urban interface" to "Federal involvement is essential in the interface." While the debate is rhetorical, this causes confusion and operational inconsistency both before and during suppression efforts.

The current Federal wildland/urban interface policy is unclear and is limited to providing emergency assistance and cooperating in prevention efforts. But the public, homeowners, and elected officials generally have a broader perception of Federal responsibility and would oppose Federal government withdrawal from the wildland/urban interface.

Federal policy that protection priorities are (1) life, (2) property, and (3) resources limits flexibility in decision making when a wildfire occurs. Federal agencies' capability to address their resource-protection responsibilities outside of the interface is weakened by commitment of firefighting resources before and during wildland/urban interface fires. Firefighter safety is threatened as training and equipment capabilities are exceeded. In addition, after-action reports and post-incident debriefings indicate fire suppression resources assigned to wildland/urban interface fires are often "over-mobilized" and underutilized.

The Federal land management agencies consider themselves to be the premier fire suppression organization in the world (Forest Service Strategic Assessment, 1994). This is demonstrated through development of training material and public fire prevention activities related to the wildland/urban interface and results in delivery of a conflicting message about Federal protection responsibilities as compared with the responsibilities of State and local governments. Federal fire forces in the wildland/urban interface often operate beyond the role of wildfire perimeter control. Also, operations in the wildland/urban interface are not always well organized and safe due to inconsistent qualifications, performance standards, and experience among local, State, and Federal agencies and Tribes.

Concerns over home rule and States' rights dictate that the primary responsibility for wildland/urban interface fire prevention and protection must lie with homeowners and State and local governments. This primary responsibility would be carried out in partnership with the Federal government and private sector. However, there are few State and local incentives to address the mounting risks and increasing hazards in the interface. And providing incentives, such as tax credits for mitigating fire hazards, to those who choose to live in the wildland/urban interface sends a mixed message to the public. This double-edged message is that while we discourage development in the wildland/urban interface we are willing, through mitigation tax credits, to pay homeowners to take care of their problem.

Local incentives to property owners, State and local organizations, and the private sector do appear to be an effective way to reduce the overall exposure of the Federal government in the wildland/urban interface. But the Federal government has few mechanisms to encourage incentives to resolve the problems in these areas. Current Federal grants are effective as far as they go. For example, approximately $10 million is provided annually, primarily through the Forest Service State and Private Forestry Programs to State and local fire organizations to improve basic services, equip engines, and enhance communication systems. However, the amount is too small to address the magnitude of the problem, and Federal funding is not consistently distributed to State and local agencies with operational responsibilities in the wildland/urban interface.

While the Federal agencies have authority to seek reimbursement for fire suppression services in the wildland/urban interface, the probability of successful collection is extremely low because of a myriad of broad tort laws related to responsibility and negligence, existing State fire laws regarding point of fire origin and determination of suppression responsibility, and other legal issues such as what constitutes reasonable action and appropriate hazard mitigation.

In general, the public does not perceive a risk from fire in the wildland/urban interface. Property owners believe that insurance companies or disaster assistance will always be there to cover losses. When people believe the government will protect them from natural hazards, the damage potential of a catastrophic event increases. Fire prevention efforts, official pronouncements, and media depictions of imminent risk have been shown to have little effect on those in danger. The effects of public education efforts have not been significant when compared to the need. Unless a catastrophic event occurs, wildland/urban interface protection issues generate little interest. There is a widespread misconception by elected officials, agency managers, and the public that wildland/urban interface protection is solely a fire-service concern.

Insurance companies may be in a position to provide the largest economic incentive to address issues locally through a change in the existing rating criteria and by supporting prevention or hazard mitigation activities. The follow-up evaluation and report on the 1991 Oakland Hills Fire suggested that a combination of fire protection infrastructure and insurance rating criteria contributed to the disaster.

There is poor communication within and between the insurance industry and fire service organizations. The insurance industry does not fully understand wildland/urban interface problems, and the public and the fire service do not understand the role of the insurance industry in the interface. Insurance Service Offices/Commercial Risk Services (ISO/CRS) rating criteria do not reflect wildland/urban interface hazards or protection needs at specific risk locations. However, there is simply no reason for structural fire departments to change protection standards from small-scale, single-incident fires to large-scale, area-based fires.

The current fire protection infrastructure, such as roads and water-delivery systems, is inadequate to protect property and resources during fast-moving wildfires, but the cost of changing the existing infrastructure would be staggering. State and local fire protection organizations are not adequately funded to provide the level of protection necessary on private lands. Most structure loss occurs in the first few hours of an incident, attributable to a lack of mitigation such as the use of combustible building materials and having trees and grass growing right up to buildings.

Because fire risk constitutes only a portion of the homeowner's insurance cost, premium reductions are not necessarily the answer. Insurance companies can, however, help with education, improvements in building-code rating systems, and revised protection criteria in the wildland/urban interface. Antitrust laws prohibit insurance companies from working together to establish minimum insurance requirements, and in some States, laws such as the Fair Access to Insurance Requirements Plan (FAIR) give homeowners access to insurance coverage generally without regard to the wildland/urban interface.

Current organized data (including hazard mapping) does not reflect wildland/urban interface loss exposure. Without a consistent process that assesses wildland/urban interface hazard and risk, it is difficult to identify appropriate mitigation measures. State and local communities perceive determination of risk as a local issue. Because lost homes/structures are replaced by national insurance companies and Federal Disaster Assistance comes regardless of whether appropriate mitigation measures were taken to offset risk, there is no incentive to improve protection in the wildland/urban interface. What's more, developers, builders, and property owners generally oppose standards because they fear potential building restrictions and higher costs.

Current protection programs and policies do not include all urban and wildland fire protection entities with statutory responsibility, which has led to inefficiencies in training and operations. Wildland suppression resources are often diverted to protect property with less value than adjacent or intermixed natural resources, and the safety of wildland fire personnel is compromised. Performance qualifications in the wildland/urban interface are divided between the structural and wildland certification systems, resulting in inconsistencies.

Partially because of fire prevention campaigns like Smokey Bear, the public generally views all fire as bad. Structural fire prevention activities do not reflect the beneficial role of fire in the ecosystem and send conflicting messages to the public. However, there are excellent examples of successful programs, such as the Sierra Front Cooperative, which demonstrate the value of prevention efforts when combined with property-owner support to mitigate hazards within the wildland/urban interface.

Current Federal wildland/urban interface fire policy does not lay out a clear, consistent, and unified role for the Federal land managing agencies. Consequently, some Federal agencies perceive they bear the heaviest burden in mutual-aid relationships. Some administrators enter into agreements committing Federal firefighters, equipment, and money without understanding the implications of their actions. Still others are confused about the difference between Federal mutual-aid assistance, offset-protection agreements, and Federal Emergency Management Agency (FEMA) financial assistance to States on declared major fire disasters.

The key to solving the total wildland/urban interface problem rests with development of a unified, collaborative partnership among Federal agencies, Tribes, States, local governments, and private industry. This fire protection and prevention issue cannot be solved by any one entity acting independently. This partnership should identify and map hazards and fuels, conduct a national fire insurance feasibility review, and establish mitigation grant mechanisms for local communities. Meanwhile, these long-term issues do not preclude Federal agencies from developing a consistent policy for wildland/urban protection on the lands that they administer.

Goals—Responsibility

- Wildland/urban interface policies are consistent among Federal agencies.
- Federal agencies address wildland/urban interface protection needs occurring on Federal lands through interagency planning and analysis across agency boundaries.
- Uniform Federal wildland/urban interface fire protection policy promotes partnerships with Tribes, State and local agencies, and the private sector.

Actions

Federal agencies will:

- Adopt a policy that establishes the operational role of Federal agencies in the wildland/urban interface.
- Identify and fund fuels management and prescribed fire programs on Federal lands adjacent to wildland/urban interface areas.
- Reassess the proper forum for addressing wildland/urban interface issues upon completion of the Stakeholder Input, Consensus, and Action Process. This may include:

—Expanding representation on the current wildland/urban task group that reports to the National Wildfire Coordinating Group (NWCG).

—Revising membership in NWCG itself to include a representative of entities involved with wildland/urban interface issues (e.g., professional organizations such as the International Association of Fire Chiefs, International Association of

Fire Fighters, International Society of Fire Service Instructors, National Volunteer Fire Council, Insurance Institute for Property Loss Reduction, et al.).

Goal—Preparedness

• Agreements (mutual-aid, reciprocal, offset, etc.) are developed and promoted to provide for pre-fire mitigation activities as well as appropriate suppression operations.

• Structural and wildland fire agency roles in the wildland/urban interface are clarified for both day-to-day mutual aid and large-fire scenarios.

• Federal agencies properly train and equip personnel to ensure firefighter safety during wildland/urban interface operations.

• Cooperative partnerships are established with Tribes and State and local agencies for emergency preparedness and operations in the wildland/urban interface.

Actions

Federal agencies will:

• Inform agency administrators of mutual-aid and FEMA disaster-assistance programs.

• Complete a review of existing protection agreements for wildland/urban interface areas and renegotiate as needed to ensure that Federal responsibility is consistent with policy and that State and local responsibility is apportioned appropriately.

• Acknowledge their role in the wildland/urban interface, consistent with policy, and incorporate the appropriate role into agreements, operating plans, land management plans, and agency fire plans.

• Charge the National Wildfire Coordinating Group with:

—Developing operational curricula, in cooperation with the National Fire Academy, for protection in the wildland/urban interface;

—Identifying specialized skills and training that are needed by both wildland and structural fire agencies;

—Implementing training through interagency systems and joint training activities; and

—Working with the National Fire Academy to augment and enhance fire training not available at the State and local levels.

• Incorporate into the Wildland Fire Qualification System the skills and training requirements necessary to operate safely and efficiently in the wildland/urban interface.

• Increase emphasis on cost-share grant funding through the Forest Service State and Private Cooperative Fire Program and strengthen that program's emphasis on wildland/urban interface issues, including training and equipping of State and local agencies. Assess and revise, as needed, other mechanisms to ensure funding is directed to agencies with wildland/urban interface responsibilities. Emphasize funding and grants to the United States Fire Administration for similar purposes.

• Support research and development activities through the National Fire Protection Association for effective management of the wildland/urban interface.

Goal—Education

Identify and initiate programs to communicate the role of fire in natural systems, with special focus on risk in wildland/urban interface areas.

Actions

Federal agencies will:

• Continue to cooperate with wildland/urban interface property owners through education and awareness messages about the role of fire in natural ecosystems and inherent risks in wildland/urban interface areas.

• Develop programs, curricula, and distribution systems, in cooperation with structural protection agencies, for wildland/urban interface educational material.

• Promote Federally funded education efforts via a consortium of the United States Fire Administration and the insurance industry.

• Work with the United States Fire Administration to update and distribute to the fire service their primer on the insurance industry.

• Involve the Congressional Fire Services Institute in distributing information regarding wildland/urban interface issues and actions.

Goals—Stakeholder Input, Consensus, and Action Process

• Future policy/program requirements for public fire protection within the wildland/urban interface are identified through a partnership among Federal, Tribal, State, local, and private entities.

• Infrastructure protection is based on characteristics of structural and wildland fuels within the wildland setting.

• Responsibility is focused on individual property owners and State and local governments to reduce losses within the wildland urban interface.

Actions

• Federal agencies will:

—Form a partnership with the Western Governors—Association (WGA) to conduct a consensus-building and action process that involves the western governors as a catalyst and other appropriate States, as well as local and private stakeholders, in establishing recommendations and an action plan to achieve a uniform, integrated approach to fire protection in the wildland/urban interface.

—Recharter the current interagency wildland/urban interface project among the Department of the Interior, Department of Agriculture, and U.S. Fire Administration to focus on issues surfaced through this policy review.

—The objective of the partnership with the WGA is to:

—Identify and involve all stakeholders within the wildland/urban interface.

—Define appropriate State and local roles.

—Clarify and synthesize issues; build consensus.

—Develop implementing actions and monitoring processes.

• The issues/areas to be addressed by the WGA include but are not limited to:

—The need for coordinated leadership among Federal, Tribal, State, and local entities concerning the wildland/urban interface.

—Development of a consistent wildland/urban interface hazard and risk assessment model that, as a minimum, includes common terminology, rating criteria, and a classification system.

—Model zoning and building code standards within identified fire hazard areas.

—The need for State, local, insurance-industry, and Federal data to analyze and manage the wildland/urban interface, which includes:

• All fires in the wildland/urban interface.

• The National Fire Incident Reporting System (NFIRS) as an information collection point for fire incidents in the wildland/urban interface.

• Establishment of incentives to individuals and local governments to mitigate hazards.

• Recommendations relating to the role and membership of the National Wildfire Coordinating Group. Consider all entities involved with wildland/urban interface issues, including professional organizations such as the International Association of Fire Chiefs, International Association of Fire Fighters, International Society of Fire Service Instructors, National Volunteer Fire Council, Insurance Institute for Property Loss Reduction, et al.

• Involvement with the insurance industry through the Insurance Institute for Property Loss Reduction (IIPLR) and other insurance trade associations to cooperatively address the wildland/urban interface issue. Attention should be given to:

• Recommendations for including hazards and risks associated with the wildland/urban interface into the fire protection grading system of the Insurance Service Office (ISO).

• Recommendations on a strategy to promote an awareness of wildland/urban interface issues, highlighting insurance industry/policyholder/homeowner success stories.

• Proposals to strengthen Southern Standard Building Code, Uniform Building Code, and National Building Code provisions for structures built in the wildland/urban interface.

—Development of model mutual-aid agreements among Federal fire agencies, the International Association of Fire Chiefs, National Association of State Foresters, and local/regional agencies, addressing local and regional mitigation and suppression requirements in the wildland/urban interface.

—Establishment of a monitoring plan that includes yearly reporting requirements for the Federal agencies and States and establishment of pilot areas as a tool to test and model policy and program changes within the wildland/urban interface.

• The WGA report will independently develop recommendations and an action plan, based on input and consensus, proposing resolution of problems within the wildland/urban interface.

• While the WGA will conduct the assessment in cooperation with the Federal government, WGA will remain an independent contributor to the broader Federal Wildland Fire Policy and Program Review. This will ensure that the various State, local and private interests can fully express their views and not feel compromised through a Federal process.

Appendix III

Federal Wildland Fire Management Policy and Program Review Steering Group

Dr. Charles Philpot, Co-Chair—USDA/U.S. Forest Service
Claudia Schechter, Co-Chair—DOI/Office of the Secretary
Dale Bosworth—USDA/U.S. Forest Service
Dr. Mary Jo Lavin—USDA/U.S. Forest Service
Mike Edrington—USDA/U.S. Forest Service
Dr. Ann Bartuska—USDA/U.S. Forest Service
Les Rosenkrance—DOI/Bureau of Land Management
Rick Gale—DOI/National Park Service
Dr. Robert Streeter—DOI/U.S. Fish & Wildlife Service
Keith Beartusk—DOI/Bureau of Indian Affairs
Stan Coloff—DOI/National Biological Service
Jim Douglas—DOI/Office of the Secretary
Carrye B. Brown—U.S. Fire Administration
James Travers—NOAA/National Weather Service
Richard Krimm—Federal Emergency Management Administration
Sally Shaver—U.S. Environmental Protection Agency

[FR Doc. 95–15304 Filed 6–21–95; 8:45 am]
BILLING CODE 4310–84–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 747]

Grant of Authority for Subzone Status

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order: Chevron U.S.A. Products Company (Oil Refinery) Pascagoula, Mississippi.

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Gulfport/Biloxi Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 92, for authority to establish special-purpose subzone status at the oil refinery complex of Chevron U.S.A. Products Company, in Pascagoula, Mississippi, was filed by the Board on July 21, 1993, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 33–93, 58 FR 41710, 8–5–93); and,

Whereas, the Board has found that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, Therefore, the Board hereby authorizes the establishment of a subzone (Subzone 92D) at the Chevron U.S.A. Products Company refinery complex, in Pascagoula, Mississippi, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery inputs covered under HTSUS Subheadings # 2709.00.1000–# 2710.00.1050 and # 2710.00.2500 which are used in the production of:

—petrochemical feedstocks and refinery by-products (examiners report, Appendix D);

—products for export; and,

—products eligible for entry under HTSUS # 9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 13th day of June 1995.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman Foreign-Trade Zones Board.

ATTEST: John J. Da Ponte, Jr., Executive Secretary.

[FR Doc. 95–15327 Filed 6–21–95; 8:45 am]
BILLING CODE 3510–DS–P

International Trade Administration Initiation of New Shipper Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of new shipper antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) has received a request to conduct a new shipper administrative review of an antidumping duty order with a May anniversary date. In accordance with the Commerce Regulations, we are initiating this administrative review.

EFFECTIVE DATE: June 22, 1995.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received a request, in accordance with 19 CFR 353.22(h) (1995), for a new shipper review of an antidumping duty order with a May anniversary date.

Initiation of Review

In accordance with 19 CFR 353.22(h), we are initiating a new shipper review of the antidumping duty order on ball bearings (other than tapered roller bearings) and parts thereof (ball bearings) from Germany. If this review proceeds normally, we will issue the final results of review not later than March 31, 1996.

Antidumping duty proceeding	Period to be reviewed
GERMANY:	
Ball Bearings A–428–801	
Miniaturkugellager GmbH (MKL)	12/01/94–05/31/95

We will instruct the Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the merchandise in accordance with 19 CFR 353.22(h)(4) (1995).

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b).

This initiation and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 353.22(h).

Dated: June 14, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–15328 Filed 6–21–95; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[Docket No. 950616159–5159–01; I.D. 061695C]

RIN 0648–ZA16

The Fishing Capacity Reduction Demonstration Program (FCRDP); Funding Availability

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of Federal assistance.

SUMMARY: NMFS issues this notice describing the FCRDP and how NMFS will review and select applications for funding. The FCRDP is a $2 million demonstration program to provide grants to the owners of fishing vessels participating in the Northeast multi-species limited access groundfish fishery, who are willing to scrap their vessels and surrender associated Federal fish harvesting permits.

DATES: Applications must be postmarked by September 5, 1995.

ADDRESSES: Applications should be sent to the Northeast Financial Services Branch, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298.

FOR FURTHER INFORMATION CONTACT: Leo Erwin, NMFS at (508) 281–9203.

SUPPLEMENTARY INFORMATION:

I. Background

Under the provisions of Public Law 103–211, the Emergency Supplemental Appropriations Act of 1994, $30 million has been provided to the U.S. Department of Commerce (DOC) for the Northeast Fisheries Assistance Program to address the needs of those directly affected by the decline of traditional fisheries in the Northeast. Of that total amount, $2 million is being made available for the FCRDP to pilot test an approach for permanently reducing the fishing capacity in the Northeast multispecies groundfish fishery. NMFS is conducting the FCRDP under authority contained in 15 U.S.C. 713c–3(d).

The goal of the FCRDP is to demonstrate that a vessel removal program can be successfully designed and implemented and that such a program can be an effective tool in the conservation and management of U.S. fisheries. The FCRDP is a voluntary program which is intended to target full-time groundfish vessels. Consequently, only permit holders of the following types of permits under the Northeast Multispecies Fishery Management Plan are eligible: Multispecies limited access individual days-at-sea (DAS), fleet das or multispecies limited access gillnet vessel (categories I, II, or VI). A successful applicant will have to scrap the offered vessel and surrender all Federal fishing permits associated with that vessel.

II. How to Apply

A. Eligible Applicants

Applications for FCRDP grants can only be made by owners of eligible fishing vessels, in accordance with the procedures set forth in this notice. An owner may be an individual who is a citizen or national of the United States, or a citizen of the Northern Mariana Islands, or a corporation, partnership, association or other entity (non profit or otherwise) if such entity is a citizen within the meaning of section 802 of the Shipping Act, 1916, as amended (46 U.S.C. App. 802). Federal Government agencies or employees, including full-time, part-time, and intermittent personnel (or their spouses or blood relatives who are members of their immediate households), are not eligible to submit an application under this solicitation.

For a vessel to be eligible for FCRDP, it must meet the following conditions:

1. Have a valid Multispecies limited access individual DAS, fleet DAS or limited access gillnet fishing permit. Vessel owners will be required to surrender such permits along with ALL other Federal fishing permits issued to that vessel if awarded a grant under the FCRDP.

2. Be active and functioning at the time the vessel owner submits an application, which means that a vessel must be capable of fishing for groundfish in Federal waters under its own power. Successful applicants will be required to show proof that their vessel made at least 2 fishing trips (of any duration for any species) between March 1, 1995, and May 1, 1995.

3. Have derived 65 percent or more of its gross annual revenues from groundfish regulated under the multi-species plan in 3 of the last 4 years. This means that in 1991, 1992, 1993, and 1994 successful applicants must be able to prove that 65 percent or more of the gross revenues (for the vessel involved) in 3 of those years was from the sale of regulated groundfish. Under the Northeast Multispecies Fishery Management Plan, the regulated groundfish species are: Cod, haddock, pollock, yellowtail flounder, winter flounder, gray sole, American plaice, Windowpane flounder, white hake, and redfish.

B. Submission of Applications

Vessel owners must fill out an FCRDP application form in order to apply. Proof of eligibility need not be submitted with this application. However, applicants preliminarily accepted by NMFS for funding will be expected to provide such documentation upon request. Applicants must submit one signed original and two copies of their completed applications. No facsimile applications will be accepted. Proof of receipt may be obtained by sending an application by certified mail, return receipt requested. The anticipated time required to process applications is 90 days from the closing date of this solicitation.

All Federal NE Multi-species limited access individual DAS, fleet DAS and gillnet vessel fishing permit holders will be mailed a copy of the application form along with a copy of this **Federal Register** notice. Applications will also be made available at the NMFS offices identified below:

Fishing Family Assistance Center, National Marine Fisheries Service, Federal Building, Room 200, 21 Limerock Street, Rockland, ME 04841; Tel: 207–594–2267.

Fishing Family Assistance Center, National Marine Fisheries Service, Marine Trades Center, Suite 311, 2 Portland Fish Pier, Portland, ME 04101; Tel: 207–780–3423.

Fishing Family Assistance Center, National Marine Fisheries Service, Department of Employment and Training, 11–15 Parker Street, Gloucester, MA 01930; Tel: 508–283–2863.

Fishing Family Assistance Center, National Marine Fisheries Service, 15–A Market Place, Chatham, MA 02633; Tel: 508–945–5492.

Fishing Family Assistance Center, National Marine Fisheries Service, Greater New Bedford Reemployment Career Services, 693 Purchase Street, New Bedford, MA 02740; Tel: 508–979–1750.

Fishing Family Assistance Center, National Marine Fisheries Service, 118 Point Judith Road, Narragansett, RI 02882; Tel; 401–782–8640.

III. Application Review and Scoring

All timely submitted and completed applications will be assigned a score calculated by the following method:

STEP A. Identify Bid

The bid is the dollar amount submitted by the applicant in the application.

STEP B. Calculate Vessel Performance

Vessel performance will be determined by averaging the annual gross revenues from the sale of regulated groundfish species for the highest 3 of the last 4 years (1991, 1992, 1993, 1994). Applicants may use annual regulated groundfish revenues from any 3 years between 1991–94.

STEP C. Determine Vessel Score

Vessel scores will be determined using the following formula:

$$\text{Score} = \frac{\square\square\square\square\square \text{ (bid)}}{\text{(average annual revenues from regulated groundfish species of highest 3 of last 4 years)}}$$

Only those years in which an applicant can prove 65 percent or more of a vessel's gross revenue was from the sale of regulated groundfish may be used. Provided below are three examples of how vessels will be scored using the formula described above.

Example 1

The owner of vessel A submits a bid for $200,000. The average annual revenues for the best 3 out of 4 years (1991, 1992, 1993, 1994) were $225,000.

Step A. Bid=$200,000.

Step B. Ave. Rev.=$200,000+$225,000+$250,000+3=$225,000

Step C. Score=$200,000/$225,000=.888

The score for vessel A is .888

Example 2

The owner of vessel B submits the same bid as vessel A ($200,000). However, the average annual revenues for vessel B are $283,333.

Step A. Bid=$200,000

Step B. Ave. Rev.=$200,000+$300,000+$350,000+3=$283,333.

Step C. Score=$200,000/$283,333=.705

The score for vessel B is .705.

Example 3

The owner of vessel C submits a bid in the amount of $350,000. The average annual revenues are $600,000.

Step A. Bid=$350,000

Step B. Ave. Rev.=$500,000+$600,000+$700,000+3=$600,000

Step C. Score=$350,000/$600,000=.583

The score for vessel C is .583.

Even though the bid for vessel C is higher than that of vessels A and B, vessel C scored lower because of its performance. Consequently, vessel C would be selected over vessel A or B and vessel B would be selected before vessel A.

Determining a bid amount is extremely important, since this will be a key factor in the success of an applicant. If the bid is too high in relation to the vessel's groundfish production, the bid may not be competitive. However, an applicant should carefully consider all costs involved with receiving a FCRDP grant. These costs include satisfying vessel liens and vessel scrapping costs. However, Federal assistance funds cannot be used to pay a Federal debt. Applicants may wish to consider selling vessel gear and equipment separately as a way of reducing the amount of a bid because only the vessel hull needs to be scrapped. Vessel owners may retain removable gear and equipment for private disposition. An applicant also needs to consider all tax implications. Applicants are advised to consult with their attorneys and/or accountants.

IV. Ranking and Acceptance of Applications

Applications will be ranked, starting with the lowest score. NMFS will determine which applications will be accepted for further consideration based on the ranking of the applications. NMFS reserves the right to reject any or all applications and may solicit additional applications under a separate **Federal Register** notice if an insufficient number of acceptable applications are submitted that can meet all award requirements described in this notice. If additional applications are solicited, all applications submitted previously and not accepted will be considered rejected.

NMFS will notify accepted applicants in writing and make public the names of accepted applicants and their vessels, not the amount of their bids. However, accepted applicants are not guaranteed funding by simply being accepted. Accepted applicants will be subject to a thorough investigation described in section V. NMFS may initially accept more applications than it can fund. However, NMFS will investigate accepted applications in order of their ranking.

VI. Investigation of Accepted Applications

A representative from the NMFS Financial Services Division will contact accepted applicants with regard to the following:

1. Ensuring that applicants meet all eligibility requirements and can document all claims made in their applications,

2. Determining what debts exist against the vessel offered for scrapping in the application, and

3. Determining how applicants will satisfy all vessel liens before scrapping vessels. Accepted applicants will have to provide written evidence of vessel lienors' willingness to satisfy vessel liens for specific amounts.

Documentation required to support accepted applications includes the following:

1. Federal multi-species limited access individual DAS, fleet DAS or gillnet vessel fishing permit. The applicant may provide a copy of the permit to NMFS, but the actual permit must be surrendered at the time of grant award closing.

2. Proof of Landings. NMFS will require proof that 65 percent or more of a vessel's gross revenues came from the sale of regulated groundfish species in 3 of the last 4 years (1991, 1992, 1993, and 1994). Landing slips or sales tickets may be used to verify claimed revenues.

3. Proof of Gross Revenues for Highest 3 Out of 4 Years. Vessel owners must be able to prove the annual gross revenues from the sale of regulated groundfish species for the highest 3 years used on the application. Documentation to support groundfish income may include, but is not limited to, individual or corporate tax returns, or fish sale receipts accompanied by vessel settlement reports. NMFS may require sworn affadavits from the reporting party regarding the accuracy of the information contained in supporting documentation. Sales of regulated groundfish which can not be substantiated Will Not Be Included in the calculation of gross revenues.

Proprietary information submitted by applicants will only be disclosed to Federal officials who are responsible for the FCRDP or otherwise when required by court order.

VII. Establishment of NMFS Financial Services Division Award Terms

Representatives from the NMFS Financial Services Division will establish the specific terms of each grant award for accepted applications validated during the investigation process. These terms will be binding on the applicants and will control the applicant's post award rights and obligations. Terms of the award will address such matters as how the outstanding liens on the vessels will be satisfied and how the vessel covered in the application will be scrapped. At their own expense, applicants will be required to retain closing attorneys to represent their interests. To the extent necessary, closing attorneys will be required to pay grant funds to vessel lienors in return for lien releases. Should vessel liens exceed the amount of the FCRDP award, attorneys must obtain funds from applicants and exchange them for lien releases.

VIII. Grant Award Closing Procedures

After the Assistant Administrator for Fisheries, NOAA, and the NOAA Grants Management Division have reviewed and approved the terms of accepted and validated applications, then applicants will be notified in writing of the grant award and a closing date will be set. Applicants will be required to have an attorney present at the closing. Seventy-five percent of the grant award will be available at the closing. The remaining 25 percent will be available only when applicants have made arrangements for vessel scrapping and other prescrapping dispositions acceptable to NMFS. If these arrangements have been made by the time of closing, 100 percent of the grant funds may be available at that time. Vessel scrapping must occur promptly.

NMFS reserves the right to terminate grant award negotiations with an applicant, if in the opinion of NMFS there are material adverse changes in an applicant's ability to meet the terms and conditions of a FCRDP grant agreement.

IX. Administrative Requirements

A. Primary Applicant Certification

Applicants whose applications are selected for funding will be required to submit a completed Standard Form 424B, "Assurances—Non-Construction Programs" and Form CD–511, "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

1. *Nonprocurement debarment and suspension.* Prospective participants (as defined at 15 CFR 26.105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

2. *Drug-free workplace.* Grantees (as defined at 15 CFR 26.605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

3. *Anti-lobbying.* Persons (as defined at 15 CFR 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

4. *Anti-lobbying disclosure.* Any applicant who has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, Appendix B.

5. *Lower tier certifications.* Applicants shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to the Department. SF–LLL submitted by any tier recipient or subrecipient should be submitted to the Department in accordance with the instructions contained in the award document.

B. Other Requirements

1. *Federal policies and procedures.* FCRDP grant recipients and subrecipients are subject to all Federal laws and Federal and Department policies, regulations, and procedures applicable to Federal financial assistance awards.

2. *Name check review.* Applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the recipient have been convicted of, or are presently facing, criminal charges such as fraud, theft, perjury, or other matters that significantly reflect on the recipient's management, honesty, or financial integrity. A false statement on the application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment (18 U.S.C. 1001).

3. *Financial management certification/preaward accounting survey.* Applicants at the discretion of the NOAA Grants Officer, may be required to have their financial management systems certified by an independent public accountant as being in compliance with Federal standards specified in the applicable Office of Management and Budget (OMB) Circulars prior to execution of the award. Any first-time applicant for Federal grant funds may be subject to a pre-award accounting survey by the Department prior to execution of the award.

4. *Past performance.* Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

5. *Delinquent Federal debts.* No award of Federal funds shall be made to an applicant or to its subrecipients who have an outstanding delinquent Federal debt or fine until either:

a. The delinquent account is paid in full,

b. A negotiated repayment schedule is established and at least one payment is received, or

c. Other arrangements satisfactory to the Department are made.

6. *Buy American-made equipment or products.* Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding under this program.

7. *Pre-award activities.* If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of the Department to cover pre-award costs.

Classification

This action has been determined to be not significant for purposes of E.O. 12866.

Applications under this program are subject to E.O. 12372, "Intergovernmental Review of Federal Programs."

This notice contains a collection-of-information requirement subject to the Paperwork Reduction Act. The collection of this information has been approved by OMB (OMB control number 0648–0289). Public reporting burden for preparation of the grant application is estimated to be 1 hour per response including the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. An additional 15 hour reporting burden is estimated for those applicants who are accepted by NMFS including time for documenting the income claims on their applications, how outstanding liens on their vessels will be satisfied, and how the vessels will be scrapped.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Richard Roberts, NOAA/IRMS, 6010 Executive Blvd., Rm. 722, WSC–5, Rockville, MD 20852; and to the Office of Information and Regulatory Affairs, OMB, Washington, D.C. 20503, Attention: NOAA Desk Officer.

Authority: 15 U.S.C. 713c–3(d).

Dated: June 16, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 95–15323 Filed 6–21–95; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 061295C]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for a scientific research permit (P771#74).

SUMMARY: Notice is hereby given that Dr. Howard Braham, National Marine Mammal Laboratory, Alaska Fisheries Science Center, 7600 Sand point Way NE., Bldg. 4, BIN C15700, Seattle, WA 98115, has applied in due form for a permit to take California Sea Lions (*Zalophus californianus*), northern fur seals (*Callorhinus ursinus*) and northern elephant seals (*Mirounga angustirostris*) for purposes of scientific research.

DATES: Written comments or requests for a public hearing must be received on or before July 24, 1995..

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (310/980–4001).

Written data or views, or requests for a public hearing on this request, should be submitted to the Chief, Permits Division, F/PR1, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

FOR FURTHER INFORMATION CONTACT: Kellie Foster (301/713–1401).

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the Regulations Governing the Taking, Importing, and Exporting of Endangered Fish and Wildlife (50 CFR part 222), the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*), and the fur seal regulations at 50 CFR part 215.

The applicant proposes to conduct four research projects which will focus on several aspects of California sea lion biology: 1) annual at-sea distribution, foraging behavior, and food habits of adult females, mother-pup activity patterns and weaning behavior. Twenty California sea lion female/pup pairs are proposed to be taken yearly by attachment of instrumentation. Up to 6,000 California sea lions, 350 northern fur seals and 1,650 northern elephant seals are proposed to be taken yearly incidental to activities related to instrumentation and/or scat collection; 2) identification of diseases in the population and the effects of diseases on survival of individuals and weaning parameters of pups. Twenty adult females, four hundred-twenty pups and thirty juvenile california sea lions are proposed to be taken yearly for blood collection, viral and bacterial swabs, measurements and marking by lavage coloring. Ten thousand one hundred California sea lions, three hundred northern fur seals, and one thousand northern elephant seals are proposed to be taken yearly incidental to activities related to the gathering of pups; 3) assessment of vital parameters. Five hundred ninety California sea lion pups are proposed to be taken yearly by hot branding, tagging and measurements. Ninety California sea lion pups are proposed to be taken yearly by measurements and eight thousand eight hundred California sea lions, three hundred northern fur seals and three hundred northern elephant seals are proposed to be harassed yearly incidental to activities related to the gathering of pups for sampling; and 4) assessment of population trends and pup mortality. Twenty-eight thousand California sea lions, one thousand twenty-five northern fur seals and fifteen hundred northern elephant seals are proposed to be harassed yearly incidental to ground surveys to count live and collect and mark dead California sea lion pups. Research will take place on San Miguel Island, the Channel Islands and haul-out sites along the coast of central and northern California. Project duration is 5 years beginning September 1995.

Dated: June 13, 1995.

Ann D. Terbush,

Chief, Permits & Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–15321 Filed 6–21–95; 8:45 am]

BILLING CODE 3510–22–F

[Docket No. 950120020–5160–03; I.D. 040695B]

RIN 0648–AG75

West Coast Salmon Fisheries; Northwest Emergency Assistance Program; Final Amendment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Program for financial assistance; final amendment.

SUMMARY: The Vessel Permit Buyout Program (Buyout Program) established under the Northwest Emergency Assistance Program (NEAP) has been developed in consultation with NMFS by the Washington Department of Fish and Wildlife (WDFW). For purposes of the Buyout Program only, the definitions of "commercial fishery" and "commercial fisheries income" are modified to clarify the exclusion of Puget Sound gill net permit holders from the Buyout Program, and Puget Sound commercial fishing income from the uninsured loss calculations associated with the Buyout Program. Also, a definition of "coastal waters" is provided in order to clarify the sources of commercial fisheries income that can be used to qualify for the Buyout Program. This amendment is intended to limit the Buyout Program to those permit holders most impacted by the ocean chinook and coho salmon disaster declared by the Secretary of Commerce (Secretary) on May 26, 1994.

EFFECTIVE DATE: June 19, 1995.

ADDRESSES: Requests for further information should be sent to Stephen P. Freese, Northwest Emergency Assistance Program, Trade and Industry Services Division, Northwest Regional Office, National Marine Fisheries Service, Bin C15700, 7600 Sand Point Way NE, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Bruce Morehead, (301) 713–2358, or Stephen Freese, (206) 526–6113.

SUPPLEMENTARY INFORMATION:

Background

NEAP was described in the following documents: Revisions to program for financial assistance (60 FR 5908, January 31, 1995); program for financial assistance (59 FR 51419, October 11, 1994); notice of proposed program (59 FR 46224, September 7, 1994); and advance notice of proposed rulemaking (59 FR 28838, June 3, 1994). Background information specific to this notice can be found in the proposed amendment published at (60 FR 25891) on May 15, 1995.

The Buyout Program is intended to compensate commercial fishermen for a percentage of their uninsured, and otherwise uncompensated, lost income suffered as a result of a natural resource disaster and to aid the long-term viability of the fishery resource by reducing fishing effort on the stocks. The program description published in the October 11, 1994, **Federal Register** (59 FR 51419) indicated that the Buyout Program would be applied to the Washington State troll and gillnet fleets and that Washington State may elect to include the charterboat fleets.

In consultation with NMFS, WDFW has designed a Buyout Program consistent with state and Federal management and grant regulations, including a permit offer application that allows assessment of the uninsured, and otherwise uncompensated, loss of the applicant. WDFW, in consultation with NMFS, also has the right to reject any and all bids. The Buyout Program limits eligibility to holders of these Washington State commercial salmon fishery licenses in 1994: Salmon troll/delivery license, Willapa Bay/Columbia River salmon gillnet license, Grays Harbor/Columbia River salmon gillnet license, or salmon charter license. The 1994 license requirement is a prerequisite for the Buyout Program and not part of the definition of loss established in 60 FR 5910 (January 31, 1995). For purposes of determining the uncompensated loss and thus the maximum bid an applicant may make, the Buyout Program allows an applicant to use only income from salmon fisheries in the coastal waters of Washington, Oregon, and California (defined as those waters between the baseline from which the territorial sea of the United States is measured, and the outer boundary of the exclusive economic zone (EEZ), i.e., 200 nautical miles (323 kilometers) seaward of the baseline), and the waters of Grays Harbor, Willapa Bay, and the Columbia River. These definitions focus the Buyout Program principally on those gear groups and fishermen that have been under the most severe restrictions because of the conditions underlying the declaration of the fishery resource disaster.

Comments and Responses

Fifteen sets of comments were received about the definitions published in the proposed amendment (60 FR 25891, May 15, 1995), all of which were supportive of changes and clarifications to the definitions of "coastal fishery" and "commercial fishery income." These comments are grouped into three general comments that address: The new definitions, the implications of any unnecessary delays to the program, and future funding or problems with other facets of the government disaster assistance.

Comment: Many responded that they had understood that Puget Sound gillnetters would be excluded, that the definitions of "commercial fishery" and "commercial fisheries income" will target the coastal and Columbia River salmon fisheries; or that "coastal" referred to ocean and Columbia River fisheries, not all salt water fisheries. Many respondents also stated that coastal and Columbia River salmon fisheries are the fisheries most impacted by the disaster declared by the Secretary on May 26, 1994. In contrast, Puget Sound gillnetters had a season in 1994.

Response: Under NEAP, WDFW was authorized to establish the Buyout Program. WDFW developed a program that limited eligibility to those salmon fishermen most affected by the conditions that led to the Secretary's fishery disaster declaration for ocean chinook and coho salmon and excluded Puget Sound gillnet fishermen as they were minimally affected by the associated fishery restrictions. As the previous **Federal Register** notices did not explicitly limit eligibility, the May 15, 1995, **Federal Register** notice clarifies NEAP's intent with respect to the exclusion of Puget Sound gillnet permit holders from eligibility for buyouts. This notice confirms this intent by modifying the definitions of "commercial fishery" and "commercial fisheries income" and establishing a definition of "coastal waters".

Comment: To involve more groups would dilute the available funds, change the basic intent of the program, defeat the program's goal, stimulate vessels to incur costly startup procedures to re-enter this year's fishery, void the current lists and bids already developed by WDFW, and possibly cause some existing bids to change. Any additional delay would further frustrate fishermen who are already upset with the time taken to implement this program and with the amount of the available funds.

Response: This final notice will allow WDFW to respond quickly to the 510 bidders waiting notification.

Comment: Future funding should also be used to buyout Oregon licensed gillnetters. For coastwide uniformity, the Oregon proposals for the Data jobs program should be expanded into Washington State. The Small Business Administration (SBA) should be more helpful, especially in providing loans to install freezer equipment for use in alternative fisheries such as albacore tuna.

Response: Should future funds be available and a buyback program supported by the State of Oregon, participation of the Oregon gillnetters will be encouraged but will also depend on the State of Oregon providing the necessary assurances that any Oregon permit reduction will be permanent. In the final selection of Data Jobs proposals, many of the Oregon projects were expanded into Washington so that uniformity could be achieved. Comments concerning loans have been sent to the SBA.

Final Amendments

For the reasons stated above, the amendments proposed in the May 15, 1995, **Federal Register** notice are adopted as final. The following definitions and modifications are incorporated into the NEAP:

Coastal waters means those waters between the baseline from which the territorial sea of the United States is measured, and the outer boundary of the EEZ (i.e., 200 nautical miles (323 kilometers) seaward of the baseline).

Commercial fishery, for purposes of the Habitat and Data Collection Jobs Programs, is defined as the salmon fishery off the coasts and in the State waters of Washington, Oregon, and California for purposes of either selling the salmon harvested or providing a vessel for hire that carries recreational fishermen to engage in fishing for a fee (e.g., charterboats and headboats). Subsistence fisheries do not fall under this definition. For purposes of the Vessel Permit Buyout Program, commercial fishery is defined as a fishery conducted under a 1994 Washington State troll, salmon delivery, Willapa Bay/Columbia River salmon gillnet, Grays Harbor/Columbia River salmon gill net, or salmon charter license. (Note that a salmon delivery license is only for fishing in the Federal exclusive economic zone and landing the fish in Washington State. Salmon troll licenses are only for fishing within 3 miles (4.8 kilometers) off the coast.)

Commercial fishery income, for purposes of the Habitat and Data Collection Jobs Programs, is income derived from participation in the commercial fishery. For purposes of the Vessel Permit Buyout Program, commercial fishery income is income derived from participation in a commercial salmon fishery in the coastal waters of Washington, Oregon, and California, and the waters of Grays Harbor, Willapa Bay, and the Columbia River.

Classification

This action has been determined to be not significant for the purposes of E.O. 12866.

The application mentioned in this notice is subject to the Paperwork Reduction Act. It has been approved by the Office of Management and Budget under control number 0648–0288.

Authority: 16 U.S.C. 4107(d).

Dated: June 16, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 95–15322 Filed 6–19–95; 2:07 pm]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

June 16, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: June 20, 1995.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 338/339 is being increased by special shift, reducing the limit for Categories 638/639.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 5371, published on January 27, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 16, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 24, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on June 20, 1995, you are directed to amend the January 24, 1995 directive to adjust the limits for the following categories, as provided under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
338/339	1,000,199 dozen.
◆ 638/639	1,129,030 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–15337 Filed 6–21–95; 8:45 am]

BILLING CODE 3510–DR–F

Request for Public Comments on Bilateral Textile Consultations With Guatemala on Certain Cotton and Man-Made Fiber Textile Products

June 16, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on categories for which consultations have been requested, call (202) 482–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On May 31, 1995, under the terms of Section 204 of the Agricultural Act of 1956, as amended, the Government of the United States requested consultations with the Government of Guatemala with respect to cotton and man-made fiber skirts in Categories 342/642, produced or manufactured in Guatemala.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of Guatemala, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of textile products in Categories 342/642, produced or manufactured in Guatemala and exported during the twelve-month period which began on May 31, 1995 and extends through May 30, 1996, at a level of not less than 319,417 dozen.

A statement of serious damage concerning Categories 342/642 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 342/642, or to comment on domestic production or availability of products included in Categories 342/642, is invited to submit 10 copies of such comments or information to Rita D. Hayes, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of Guatemala.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Categories 342/642. Should such a solution be reached in consultations with the Government of Guatemala, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Statement of Serious Damage—Guatemala
Cotton and Manmade Fiber Skirts
Category 342/642
May 1995

Import Situation and Conclusion

U.S. imports of cotton and manmade fiber skirts, Category 342/642, from Guatemala reached 319,417 dozen in the year ending February 1995, 22 percent above the 262,414 dozen imported in same period a year earlier. Imports from Guatemala were 4.0 percent of total U.S. imports of Category 342/642 in the year ending February 1995, and were equivalent to 4.8 percent of U.S. production of Category 342/642 in calendar year 1994.

U.S. imports of cotton and manmade fiber skirts from Guatemala in Category 342/642 during 1994 entered the U.S. at an average landed duty-paid value of $71.16 per dozen, 53 percent below U.S. producers' average price for cotton and manmade fiber skirts.

The sharp and substantial increase of low valued Category 342/642 imports from Guatemala is causing serious damage to the U.S. domestic industry producing cotton and manmade fiber skirts.

U.S. Production, Import Penetration, and Market Share

U.S. production of cotton and manmade fiber skirts, Category 342/642, declined from 8,117,000 dozen in 1992 to 6,606,000 dozen in 1994, a decline of 19 percent. In contrast imports of Category 342/642 surged from 6,884,000 dozen in 1992 to 7,661,000 dozen in 1994, an 11 percent increase. Category 342/642 imports continue to increase, reaching 7,908,000 dozen in the year ending February 1995.

The ratio of imports to domestic production increased from 85 percent in 1992 to 116 percent in 1994. The share of this market held by domestic manufacturers fell from 54 percent in 1992 to 46 percent in 1994, a decline of eight percentage points.

[FR Doc. 95–15338 Filed 6–21–95; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and Applicable Form: Chemical Weapons Exposure; DD Form 2733.

Type of Request: Expedited Processing—Approval date requested: 30 days following publication in the **Federal Register**.

Number of Respondents: 300.

Responses per Respondent: 1.

Annual Responses: 300.

Average Burden per Response: 45 minutes.

Annual Burden Hours: 225.

Needs and Uses: This information collection provides data needed to identify records which may support veterans' claims of participation in chemical weapons tests or exposure prior to 1968.

Respondents are veterans, families of veterans, and former civilian employees of the U.S. Government who allege involvement in testing or exposure. The data will be used to obtain information for possible submission to the Department of Veterans Affairs to substantiate compensation claims, and to provide treatment; to locate individuals eligible for receipt of DoD commendation; and in some cases to locate names of additional individuals for possible compensation, commendation, and treatment.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 5, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–15242 Filed 6–21–95; 8:45 am]

BILLING CODE 5000–04–M

Department of the Navy

Notice of Postponement: Naval Reserve Center, Coconut Grove, Miami, FL

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: This Notice provides for the indefinite postponement of the submittal of expressions of interest and outreach efforts for the Naval Reserve Center, Coconut Grove, Miami, FL.

FOR FURTHER INFORMATION CONTACT: John J. Kane, Director, Real Estate Operations Division, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300, telephone (703) 325–0474; or E. R. Nelson, Real Estate Division, Southern Division, Naval Facilities Engineering Command, 2155 Eagle Drive, North Charleston, SC 29419–9010, telephone (803) 743–0494.

NOTICE OF POSTPONEMENT: In 1988, the Naval Reserve Center, Coconut Grove, Miami, FL, was designated for closure pursuant to the Defense Authorization Amendments and Base Closure and Realignment Act, Public Law 100–526, as amended. On or about May 1, 1995, the City of Miami issued a public notice stating, in part, that interested parties should submit Notices of Interest concerning the surplus property at the Naval Reserve Center before June 12, 1995.

Pursuant to Section 2905(b)(7)(N) of Public Law 101–510, as amended by Public Law 103–421, the Secretary, in consultation with the City of Miami, has determined that it would be in the interest of communities affected by the closure of the Naval Reserve Center, Coconut Grove, Miami, FL, to postpone indefinitely the deadlines, such as the submittal of Notices of Interest and outreach efforts. The Department of the Navy will publish a subsequent Notice in the **Federal Register** when the Secretary determines that the process should be resumed.

Dated: June 9, 1995.

M.D. Schetzsle,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 95–15273 Filed 6–21–95; 8:45 am]

BILLING CODE 3810–FF–P

Department of the Air Force

Notice of Availability for Environmental Assessment and Finding of No Significant Impact for the Disposal and Reuse of Newark AFB, OH

The United States Air Force is issuing this notice to advise the public that the Air Force has prepared an environmental assessment (EA) to assess the potential environmental consequences of the disposal and reuse of Newark AFB identified for closure under the Base Closure and Realignment Act of 1990 as amended. As a result of the analysis of impacts in the EA, it was concluded that the proposed disposal and reuse of Newark AFB would not have a significant effect on human health or the natural environment and, therefore, an environmental impact statement will not be prepared. Based on the analysis in the EA, a Finding of No Significant Impact (FONSI) has been issued. Please direct requests for further information concerning the Newark AFB disposal and reuse EA and FONSI to: Col. Thomas Gross, USAF, AFCEE/EC, 8106 Chennault Road, Brooks AFB TX 78235–5318, (201) 536–3907.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–15283 Filed 6–21–95; 8:45 am]

BILLING CODE 3910–01–P

Office of the Secretary

Privacy Act of 1974; Notice to Amend a Record System.

AGENCY: Office of the Secretary, DOD.

ACTION: Notice to amend a record system.

SUMMARY: The Office of the Secretary of Defense proposes to amend a system of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendment will be effective on July 24, 1995, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Chief, Records Management and Privacy Act Branch, Washington Headquarter Services, Correspondence and Directives, Directives and Records Division, 1155 Defense Pentagon, Washington, DC 20301091155.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cragg at (703) 695090970 or DSN 225090970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record systems being amended are set forth below followed by the notice, as amended, published in its entirety.

Dated: June 12, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DWHS P28

SYSTEM NAME:

OSD Clearance File *(February 22, 1993, 58 FR 10274).*

CHANGES:

SYSTEM NAME:

Delete entry and replace with 'Personnel Security Operations File'.

SYSTEM LOCATION:

Delete entry and replace with 'Directorate for Personnel and Security, Washington Headquarters Services, Department of Defense, Personnel Security Operations Division, 1155 Defense Pentagon, Room 3B347, Washington, DC 20301091155.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete and replace entry with, 'Civilian employees of, and military members assigned to, the Office of the Secretary of Defense, its components and supported organizations including the United States Court of Appeals for the Armed Forces, the Advanced Research Projects Agency, the Ballistic Missile Defense Organization, the American Forces Information Service, the Defense Legal Services Agency, the Defense Security Assistance Agency, the Defense Technology Security Administration, the Defense Medical Program Activity, the Defense POW/MIA Office, and certain personnel selected for assignment to the United States Mission to NATO.

Experts and consultants serving with or without compensation.

Certain employees of the Congressional Budget Office and the U.S. Capitol Police.

Staff of Congressional committees and personnel office staff who require access to classified DoD information or material.

Employees of other agencies detailed to the Office of the Secretary of Defense.

Members and staff of DoD commissions and certain Presidential commissions.

Very important people selected to attend orientation conferences.

Defense contractors requiring access to special programs.

Unsalaried students working as interns in supported organizations.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'National Agency Checks conducted by the Directorate for Personnel and Security, Washington Headquarters Services; the Individual's Certificate of Security Clearance; security briefing and debriefing statements; security violations and other files pertinent to the security clearance or access status of an individual'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301 and Executive Order 12356, Executive Order 10450, Executive Order 9397.'

PURPOSE(S):

Delete entry and replace with 'To be used by officials of the Personnel Security Operations Division, Directorate for Personnel and Security, Washington Headquarters Services, to maintain security clearance and authorized access information.'

* * * * *

RETRIEVABILITY:

Delete entry and replace with 'Active personnel security files maintained alphabetically by last name of subject, or by Social Security Number. Inactive personnel security files serially numbered and indexed alphabetically'

SAFEGUARDS:

Delete entry and replace with 'Files are maintained under the direct control of office personnel during duty hours. Office is locked and alarmed during non-duty hours. Computer media is stored in controlled areas. Computer terminal access is controlled by user passwords that are periodically changed.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Personnel security clearance files are maintained until notification of death, separation, or transfer of the individual, placed in inactive status, and destroyed after 3 years.'

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Applications and related forms from the individual; background investigations and summaries of information from background investigations; employment suitability related information; and forms and correspondence relating to the security clearance and access of the individual.'

* * * * *

DWHS P28

SYSTEM NAME:

Personnel Security Operations File.

SYSTEM LOCATION:

Directorate for Personnel and Security, Washington Headquarters Services, Department of Defense, Personnel Security Operations Division, 1155 Defense Pentagon, Room 3B347, Washington, DC 20301091155

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian employees of, and military members assigned to, the Office of the Secretary of Defense, its components and supported organizations including the United States Court of Appeals for the Armed Forces, the Advanced Research Projects Agency, the Ballistic Missile Defense Organization, the American Forces Information Service, the Defense Legal Services Agency, the Defense Security Assistance Agency, the Defense Technology Security Administration, the Defense Medical Program Activity, the Defense POW/MIA Office, and certain personnel selected for assignment to the United States Mission to NATO.

Experts and consultants serving with or without compensation.

Certain employees of the Congressional Budget Office and the U.S. Capitol Police.

Staff of Congressional committees and personnel office staff who require access to classified DoD information or material.

Employees of other agencies detailed to the Office of the Secretary of Defense.

Members and staff of DoD commissions and certain Presidential commissions.

Very important people selected to attend orientation conferences.

Defense contractors requiring access to special programs.

Unsalaried students working as interns in supported organizations.

CATEGORIES OF RECORDS IN THE SYSTEM:

National Agency Checks conducted by the Directorate for Personnel and Security, Washington Headquarters Services; the Individual's Certificate of Security Clearance; security briefing and debriefing statements; security violations and other files pertinent to the security clearance or access status of an individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and Executive Order 12356, Executive Order 10450, Executive Order 9397.

PURPOSE(S):

To be used by officials of the Personnel Security Operations Division, Directorate for Personnel and Security, Washington Headquarters Services, to maintain security clearance and authorized access information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy files are maintained in a secured area, and computer files are stored on magnetic tape and disk.

RETRIEVABILITY:

Active personnel security files maintained alphabetically by last name of subject, or by Social Security Number. Inactive personnel security files serially numbered and indexed alphabetically.

SAFEGUARDS:

Files are maintained under the direct control of office personnel during duty hours. Office is locked and alarmed during non-duty hours. Computer media is stored in controlled areas. Computer terminal access is controlled by user passwords that are periodically changed.

RETENTION AND DISPOSAL:

Personnel security clearance files are maintained until notification of death, separation, or transfer of the individual, placed in inactive status, and destroyed after 3 years.

SYSTEM MANAGER(S) AND ADDRESS:

Director for Personnel and Security, Washington Headquarters Services, Department of Defense, Room 3B347, 1155 Defense Pentagon, Washington, DC 20301091155.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director for Personnel and Security, Washington Headquarters Services, Department of Defense, Room 3B347, 1155 Defense Pentagon, Washington, DC 20301091155

RECORD ACCESS PROCEDURES:

Individuals seeking to access information about themselves contained in this system should address written inquiries to the Director for Personnel and Security, Washington Headquarters Services, Department of Defense, Room 3B347, 1155 Defense Pentagon, Washington, DC 20301091155

CONTESTING RECORD PROCEDURES:

The OSD's rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Applications and related forms from the individual; background investigations and summaries of information from background investigations; employment suitability related information; and forms and correspondence relating to the security clearance and access of the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt from certain provisions of 5 U.S.C. 552a(k)(5), as applicable.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b) (1), (2), and (3), (c) and (e) and published in 32 CFR part 311. For additional information contact the system manager.

[FR Doc. 95–15243 Filed 6–21–95; 8:45 am]

BILLING CODE 5000–04–F

Performance Review Board Membership

AGENCY: Defense Finance and Accounting Service.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of the Performance Review Board for the Defense Finance and Accounting Service.

EFFECTIVE DATE: July 15, 1995.

FOR FURTHER INFORMATION CONTACT: Beverley McDaris, Defense Finance and Accounting Service, DFAS–HQ/H, 1931 Jefferson Davis Highway, Arlington, VA 22240–5291.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

Gary Amlin, Principal Deputy Director, Defense Finance and Accounting Service—Headquarters.

John Barber, Director, External Affairs and Management Support, Defense Finance and Accounting Service—Headquarters.

Gregory Bitz, Director—Indianapolis Center, Defense Finance and Accounting Service.

Robert Burke, Deputy Director for Information Management, Defense Finance and Accounting Service.

Bruce Carnes, Deputy Director for Resource Management, Defense Finance and Accounting Service—Headquarters.

Charles Coffee, Director—Columbus Center, Defense Finance and Accounting Service.

Jerome Coleman, Principal Deputy Director—Denver Center, Defense Finance and Accounting Service.

Michael Dugan, Assistant Deputy Director for Resource Management, Defense Finance and Accounting Service—Headquarters.

Robert Goetz, Principal Deputy Director—Indianapolis Center, Defense Finance and Accounting Service.

Ida Faye Groves, Principal Deputy Director—Columbus Center, Defense Finance and Accounting Service.

Edward Harris, Deputy Director for Business Funds, Defense Finance and Accounting Service—Headquarters.

Phyllis Hudson, Director—Cleveland Center, Defense Finance and Accounting Service.

Leon Krushinski, Principal Deputy Director—Cleveland Center, Defense Finance and Accounting Service.

Thomas McCarty, Deputy Director for General Accounting, Defense Finance and Accounting Service—Headquarters.

Robert McNamara, Assistant Deputy Director for Plans and Management, Defense Finance and Accounting Service—Headquarters.

John Mester, General Counsel, Defense Finance and Accounting Service—Headquarters.

John Nabil, Director—Denver Center, Defense Finance and Accounting Service.

Steve Turner, Director—Kansas City Center, Defense Finance and Accounting Service.

Teresa Walker, Deputy Director for Plans and Management, Defense Finance and Accounting Service—Headquarters.

Michael Wilson, Deputy Director for Customer Service and Performance Assessment, Defense Finance and Accounting Service—Headquarters.

Dated: June 15, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–15244 Filed 6–21–95; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

Office of Educational Research and Improvement (OERI)—Regional Educational Laboratory Program; Availability of Request

AGENCY: Department of Education.

ACTION: Notice of availability of request for proposals.

On May 18, 1995, the Secretary published a notice in the Commerce Business Daily (page 2) announcing intent to issue a request for proposals (RFP) for the Regional Educational Laboratory Program. The Department of Education proposes to operate ten Regional Educational Laboratories to serve ten geographic regions. The closing date for responding to the RFP is August 8, 1995.

The purpose of this notice is to inform interested parties that copies of the RFP may be obtained—

- By telephone at (202) 708–6498;
- By mail or telegram to Department of Education, 7th and D Streets, S.W., Room 3633, ROB 3, Washington, D.C. 20202–4725; or
- In person at the mail address.

FOR FURTHER INFORMATION CONTACT: LaVerne Reddick (202) 708–8222 or Latonya Simpson (202) 708–6498.

Dated: June 16, 1995.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 95–15257 Filed 6–21–95; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No: 84.272]

National Early Intervention Scholarship and Partnership (NEISP) Program; Notice Inviting Applications for New Awards for Fiscal Year 1995

Purpose of Program: Under the NEISP Program, the Secretary provides grants to States to—

(a) Encourage the States to provide or maintain a guaranteed amount of financial assistance necessary to permit eligible low-income students who obtain high school diplomas or the equivalent to attend an institution of higher education; and

(b) Provide financial incentives to enable States, in cooperation with local educational agencies, institutions of higher education, community organizations, and businesses, to provide—

(1) Additional counseling, mentoring, academic support, outreach, and supportive services to preschool, elementary school, middle school, and secondary school students who are at risk of dropping out of school; and

(2) Information to students and their parents about the advantages of obtaining a postsecondary education and their college financing options.

Eligible Applicants: The Secretary is authorized to accept applications from the 50 States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands.

Deadline for Transmittal of Applications: July 24, 1995.

Deadline for Intergovernmental Review: September 22, 1995.

Available Funds: The Administration's budget request for fiscal year 1995 did not include funds for this program. However, the Congress has appropriated $3,108,000 in fiscal year 1995 for the early intervention and postsecondary educational scholarship components of the NEISP Program. Please note that for fiscal year 1995 only approximately $1,000,000 in Federal funds are available to fund new State applicants to be allocated to States on a competitive basis. This is due to the grant continuation requirements for 1994–95 NEISP Program grantees.

Estimated Range of Awards: $150,000 to $375,000.

Estimated Average Size of Awards: $275,000.

Estimated Number of Awards: 3–5.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Budget Period: 12 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 76, 77 79, 80, 82, 85 and 86; (b) the regulations in 34 CFR part 600; (c) the regulations in 34 CFR part 668; and (d) the regulations for this program in 34 CFR part 693.

Supplementary Information: The Secretary strongly requests the applicant to limit the application narrative to no more than 50 double-spaced, typed pages (on one side only) although the Secretary will consider applications of greater length. The Department anticipates that successful applications under this program generally will meet this page limit.

Priority: None.

Selection Criteria: In evaluating applications for grants under this program competition, the Secretary uses the selection criteria in 34 CFR 693.22 of the program regulations.

For Further Information Contact: Daniel Sullivan, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3045, ROB–3, Washington, D.C. 20202–5447. Telephone: (202) 708–4607. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 1070e–21 to 1070a–27.

Dated: June 16, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–15258 Filed 6–21–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Notice of Intent to Prepare an Environmental Impact Statement and Notice of Floodplain and Wetlands Involvement for the Wildlife Mitigation Program

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of Intent to Prepare an Environmental Impact Statement (EIS) and Notice of Floodplain and Wetlands Involvement.

SUMMARY: Today's notice announces BPA's intention to prepare an EIS on proposed establishment of principles for implementing a program to mitigate the loss of wildlife habitat caused by the development and operation of Columbia River Basin (Basin) hydroelectric projects (as allocated to the purpose of power production). This action involves land resources planning probably affecting many floodplains and wetlands throughout the Basin. In accordance with the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act, 16 U.S.C. 839), specific wildlife mitigation activities that BPA would implement under the program are developed through Pacific Northwest Power Planning Council (Council) procedures and proposed in the Council's Fish and Wildlife Program. Although BPA decisions on these specific actions are independent of one another, preparation of this EIS recognizes their similarity of impacts, methods of implementation, and subject matter. We stress that the EIS will focus on wildlife mitigation, *not* on anadromous or resident fish mitigation. In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR part 1022), the EIS will integrate a floodplain and wetlands assessment.

BPA invites public comment on the range of actions, alternatives, and impacts to address in the Wildlife Mitigation Program EIS.

DATES: A public scoping meeting is schedule for July 14, 1995, 2 p.m. to 4 p.m., at the Forum Building, room 190, 525 NE Oregon Street, Portland, Oregon. BPA is willing to hold additional scoping meetings depending on public interest and will contact Tribes, agencies, and groups known to be interested in the wildlife program. Written comments are due to the address below no later than July 28, 1995.

ADDRESSES: Please send written comments and requests to be placed on the project mailing list to the Public Involvement and Information Manager, Bonneville Power Administration—CKP, PO Box 12999, Portland, Oregon 97212. The phone number of the Public Involvement and Information Office is 503–230–3478 in Portland; toll-free 1–800–622–4519 outside of Portland.

FOR FURTHER INFORMATION, CONTACT: Thomas C. McKinney, Bonneville Power Administration, PO Box 3621(ECN), Portland, Oregon 97208–3621, phone number 503–230–4749, fax number 503–230–5699.

SUPPLEMENTARY INFORMATION:

Development and operation of the hydropower system in the Columbia River Basin has had far-reaching effects on many species of wildlife. Some floodplain and riparian habitats important to wildlife were inundated when reservoirs filled. BPA needs mitigation for the loss of wildlife habitat caused by the federal portion of this development. Specific mitigation actions that BPA may support to satisfy this need are initially developed in a public process managed by the Northwest Power Planning Council. Future mitigation actions with potential environmental effects are expected to include fee-title land acquisition and management, property lease and management, conservation easement acquisition and management, water rights acquisition and management, habitat restorations and enhancements, installation of watering devices, riparian fencing, and similar wildlife conservation actions. Potential project implementors and managers include Indian Tribes, states, private conservation groups, and other federal agencies. The area of potential impact is most of the Columbia River Basin, including land in Idaho, Montana, Nevada, Oregon, and Washington.

Proposed Action

The proposed action to be considered in this BPA Wildlife Mitigation Program EIS is the establishment of principles to guide program implementation. A primary purpose of these program implementation principles will be cost-effective achievement of wildlife mitigation goals. General issues the EIS may address include wildlife management, vegetation management, water management, ecosystem management, fire management, multiple use and public access management, cultural resource management, Indian treaty rights, and local economic effects. Identification of additional issues may result from the public scoping process, and scoping may also eliminate some issues from in-depth analysis. The proposed program principles may establish criteria for implementing specific mitigation actions without further review, or with limited site-specific analysis tiered to the Program EIS. Undertaking preparation of the EIS necessarily assumes future BPA funding of wildlife mitigation, but is not a commitment to program funding. If funds are available, the EIS will help to achieve maximum benefits for wildlife.

Process to Date

BPA began mitigating for wildlife losses under the Northwest Power Act following issuance of the Council's initial Fish and Wildlife Program in 1982. To date, BPA has performed environmental review of requests for wildlife mitigation funding concurrent with site-specific proposals for action. Issues common to many of these site-specific reviews have helped to tentatively define the scope of the Wildlife Mitigation Program EIS. To the extent practical, the Council and BPA intend to integrate the Wildlife Mitigation Program EIS process with this year's process to amend the wildlife section of the Council's Fish and Wildlife Program.

Information developed from other environmental reviews in the Pacific Northwest, particularly the System Operation Review EIS jointly undertaken by BPA, the U.S. Army Corps of Engineers, and the U.S. Bureau of Reclamation, may be included in the Wildlife Mitigation Program EIS as appropriate.

Possible Alternatives

Alternatives to be considered in the BPA Wildlife Mitigation Program EIS would include alternative implementation principles for each management issue addressed. The EIS will also consider a No Action alternative, *i.e.*, program implementation without defined program-wide implementation principles.

Identification of Environmental Issues

The environmental issues associated with wildlife mitigation activities include changes in land use, vegetation patterns, wildlife populations, recreational opportunities, and water use and quality. Additional environmental issues concern protection of historic and cultural resources, introduction of herbicides into the environment, and smoke from vegetation burning.

Issued in Portland, Oregon, on June 12, 1995.

Randall W. Hardy,

Administrator.

[FR Doc. 95–15324 Filed 6–21–95; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

Central Vermont Public Service Corporation; Notice of Intent To File an Application for a New License

[Project No. 2737 Vermont]

June 16, 1995.

Take notice that the Central Vermont Public Service Corporation, the existing licensee for the Lower Middlebury Hydroelectric Project No. 2737, filed a timely notice of intent to file an application for a new license, pursuant to 18 CFR 16.6 of the Commission's Regulations. The original license for Project No. 2737 was issued effective April 1, 1962, and expires July 1, 2000.

The project is located on the Otter Creek in Addison County, Vermont. The principal works of the Lower Middlebury Project include an 80-foot-long, 15-foot-high concrete gravity West Dam with two stop log sections, and a 270-foot-long, 10-foot-high buttressed concrete gravity East Dam with a headrace structure and eight sliding gates; a reservoir with an area of about 16 acres at 314.48 feet U.S.G.S.; a power intake canal about 400 feet long and 40 feet wide; a concrete and brick powerhouse containing three 750-Kw generators; transformers and transmission line; and appurtenant facilities.

Pursuant to 18 CFR 16.7, the licensee is required henceforth to make available certain information to the public. This information is available from the licensee at 77 Grove Street, Rutland, Vermont 05701.

Pursuant to 18 CFR 16.8, 16.9 and 16.10, each application for a new license and any competing license application must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by July 1, 1998.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–15266 Filed 6–21–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–341–000]

Colorado Interstate Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

June 16, 1995.

Take notice that on June 13, 1995, Colorado Interstate Gas Company (CIG), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 271 to be effective August 1, 1995.

CIG states the purpose of this filing is to:

(1) reduce to one day from the current ten days the period during which CIG must notify an existing Shipper of any offers deemed superior to existing Shipper's offered terms of extension of capacity covered by an expiring contract; and

(2) reduce to one day from the current ten days the period during which an existing off-system Shipper can decide whether to exercise the right-of-first-refusal to match the highest bid.

CIG states that copies of this filing were served upon all CIG jurisdictional transportation customers and State Commissions where CIG provides transportation service.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such petitions or protests should be filed on or before June 23, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–15271 Filed 6–21–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–553–000]

Florida Gas Transmission Company; Notice of Request Under Blanket Authorization

June 16, 1995.

Take notice that on June 9, 1995, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP95–553–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a new delivery point in Dade County, Florida under FGT's blanket certificate issued in Docket No. CP82–553–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

FGT proposes that the new delivery point will be constructed near mile post 10.0 on its existing 4-inch Homestead Lateral (Township 56 South, Range 39 east, Section 23) and will include a new 2-inch tap, pressure regulation, a rotary meter, approximately 50 feet of 2-inch line, and related appurtenant facilities. FGT states that the City Gas Company of Florida (CGC), a Division of NUI Corporation, requested this delivery point. FGT proposes to make gas deliveries to CGC of approximately 75 MMBtu per day and 27,375 MMBtu annually on an interruptible basis. Construction will be on the property site of CGC's new customer. FGT will be reimbursed by CGC for the estimated cost of $83,000, inclusive of tax gross-up. The end use is industrial. FGT states it has sufficient capacity to continue all services without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–15263 Filed 6–21–95; 8:45 am]

BILLING CODE 6717–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–160]

Georgia Institute of Technology, (Georgia Tech Research Reactor); Order Modifying Facility Operating License No. R–97

I

The Georgia Institute of Technology (Georgia Tech or the licensee) is the holder of Facility Operating License No. R–97 (the license) issued on December 29, 1964, by the U.S. Atomic Energy Commission. The license, as amended on June 6, 1974 (Amendment No. 1) and by subsequent amendments, authorizes operation of the Georgia Tech Research Reactor (GTRR or the facility) at steady-state power levels up to 5 megawatts thermal (MWt). The research reactor is located in the Neely Nuclear Research Center, in the north central portion of the Georgia Tech campus in Atlanta, Georgia.

II

On February 25, 1986, the U.S. Nuclear Regulatory Commission (NRC or the Commission) promulgated a final rule in § 50.64 of Title 10 of the Code of Federal Regulations (10 CFR 50.64) limiting the use of high-enriched uranium (HEU) fuel in domestic research and test reactors (non-power reactors) (see 51 FR 6514). The rule, which became effective on March 27, 1986, requires that each licensee of a non-power reactor (NPR) replace its HEU fuel with low-enriched uranium (LEU) fuel acceptable to the Commission. This replacement is contingent upon Federal Government funding for conversion-related costs, and is required unless the Commission has determined that the reactor has a unique purpose as defined in 10 CFR 50.2. The rule is intended to promote the common defense and security by reducing the risk of theft or diversion of HEU fuel used in non-power reactors and the consequences to public health, safety and the environment from such potential theft or diversion.

Sections 50.64(b)(2)(i) and (ii) require that a licensee of an NPR (1) not initiate acquisition of additional HEU fuel, if LEU fuel that is acceptable to the Commission for that reactor is available when the licensee proposes that acquisition, and (2) replace all HEU fuel in its possession with available LEU fuel acceptable to the Commission for that reactor in accordance with a schedule determined pursuant to 10 CFR 50.64(c)(2).

Section 50.64(c)(2)(i) requires, among other things, that each licensee of an NPR authorized to possess and to use HEU fuel, develop and submit to the Director of the Office of Nuclear Reactor Regulation (Director, NRR) by March 27, 1987, and at 12-month intervals thereafter, a written proposal for conforming to the requirements of the rule.

Section 50.64(c)(2)(i) also requires the licensee to have the following in its proposal: (1) A certification that Federal Government funding for conversion is available through the U.S. Department of Energy (DOE) or another appropriate Federal agency and (2) a schedule for conversion, based upon the availability of replacement fuel acceptable to the Commission for that reactor, and upon consideration of other factors such as

the availability of shipping casks, implementation of arrangements for available financial support, and reactor usage.

Section 50.64(c)(2)(iii) requires the licensee to include in its proposal, to the extent required to effect conversion, all necessary changes to the license, facility, or procedures. This paragraph also requires the licensee to submit supporting safety analyses so as to comply with the schedule established for conversion.

Section 50.64(c)(2)(iii) also requires the Director, NRR, to review the licensee proposal, to confirm the status of Federal Government funding for conversion, and to determine a final schedule if the licensee has submitted a schedule for conversion.

Section 50.64(c)(3) requires the Director, NRR, to review the supporting safety analyses and to issue an appropriate Enforcement Order directing both the conversion and, to the extent consistent with protection of the public health and safety, any necessary changes to the license, facility, or procedures. In the **Federal Register** notice of the final rule, the Commission indicated that in most cases, if not all, an Enforcement Order would be issued to modify the license.

Section 2.202, the current authority for issuing Orders of all types, including Orders to modify licenses, provides, among other things, that the Commission may modify a license by serving an Order on the licensee. The licensee or other person adversely affected by the Order may demand a hearing with respect to any part or all of the Order within 20 days from the date of the notice or such other period as the notice may provide.

III

On January 21, 1993, as supplemented on March 2, March 21, and July 15, 1994, the licensee submitted a proposal to convert from the use of HEU to the use of LEU. This proposal contained descriptions of the modifications, supporting safety analyses, and plans for conversion. The conversion consists of replacing HEU with LEU fuel elements. The LEU fuel elements contain material test reactor (MTR)-type fuel plates, with the fuel consisting of uranium silicide dispersed in an aluminum matrix and completely clad in aluminum alloy. These plates contain an enrichment of less than 20 percent uranium–235.

The NRC staff has reviewed the licensee's proposal for conversion to LEU fuel and the requirements of 10 CFR 50.64 and has determined that the public health and safety and the common defense and security support a conversion of the facility from the use of HEU to LEU fuel in accordance with the attachment to this Order and the schedule requirements that follow. The attachment to this Order specifies the changes to the license and Technical Specifications that are needed to implement the requirements of this Order.

IV

Accordingly, pursuant to Sections 51, 53, 57, 101, 104, 161b, 161i, and 161o of the Atomic Energy Act of 1954, as amended, and Commission regulations in 10 CFR 2.202 and 10 CFR 50.64, it is hereby ordered that:

Facility Operating License No. R–97 be modified as stated in the "ATTACHMENT TO ORDER MODIFYING FACILITY OPERATING LICENSE NO. R–97" by adding License Conditions 2.B(4) and 2.C(4) on the thirtieth day after the date of publication of this Order in the **Federal Register** and by revising the License Conditions 2.B(2) and 2.C(2) and Technical Specifications on the day the licensee receives an adequate number and type of LEU fuel elements that are necessary to operate the facility as specified in the licensee's proposal as supplemented.

V

In accordance with 10 CFR 2.202, the licensee or any other person adversely affected by this Order may submit an answer to this Order, and may request a hearing on this Order within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, set forth the matters of fact and law on which the licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, to the Assistant General Counsel for Hearings and Enforcement at the same address, and to the licensee if the hearing request is by a person other than the licensee. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which the person's interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the licensee or by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at that hearing is whether this Order should be sustained.

In the absence of any request for a hearing, the provisions specified in this Order shall be effective and final 20 days from the date of this Order without further order or proceedings.

For the Nuclear Regulatory Commission.

Dated at Rockville, Md., this 16th day of June 1995.

Frank J. Miraglia,

Acting Director, Office of Nuclear Reactor Regulation.

Attachment To Order—Modifying Facility Operating License No. R–97

A. *License Conditions Revised and Added by This Order*

2.B(2) Pursuant to the Act and 10 CFR Part 70, "Domestic Licensing of Special Nuclear Material," to possess, but not use, up to 4.9 kilograms of contained uranium-235 at enrichments greater than 20 percent in the form of MTR-type reactor fuel until the existing inventory of this fuel is removed from the facility.

2.B(4) Pursuant to the Act and 10 CFR Part 70, "Domestic Licensing of Special Nuclear Material," to receive, possess, and use at any one time in connection with the operation of the reactor up to 8.85 kilograms of contained uranium-235 at enrichments less than 20 percent in the form of MTR-type reactor fuel.

2.C(2) *Technical Specifications*

The Technical Specifications contained in Appendix A, as revised through the Order Modifying Facility Operating License No. R–97, dated June 16, 1995, and Amendment No. 10 are hereby incorporated in the license. The licensee shall operate the facility in accordance with the Technical Specifications.

2.C(4) *Startup Test Report*

The licensee shall submit a startup test report within six months after achieving initial criticality with low-enriched uranium reactor fuel in accordance with the Order Modifying Facility Operating License No. R–97, dated June 16, 1995. This report shall be sent as specified in 10 CFR 50.4, "Written Communications."

B. The Technical Specifications will be revised by this Order in accordance with the Enclosure to the Order Modifying Facility Operating License No. R–97, dated June 16, 1995, Docket

No. 50–160, and as discussed in the safety evaluation for this Order.

[FR Doc. 95–15293 Filed 6–21–95; 8:45 am]
BILLING CODE 7590–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–173–003]

Koch Gateway Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

June 16, 1995.

Take notice that on June 12, 1995, Koch Gateway Pipeline Company (Koch Gateway) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets effective April 1, 1995:

Third Revised Sheet No. 1

Koch Gateway states that the above referenced tariff sheet reflects Koch Gateway's compliance with the May 31, 1995, Office of the Pipeline Regulation (OPR) Order in this proceeding. Koch Gateway states that the tariff sheet has been filed to make a pagination change. Additionally, pursuant to the OPR order, Koch Gateway submits an explanation for the tariff language contained in Tariff Sheet No. 403 and 502 of its tariff.

Koch Gateway also states that the tariff sheet is being mailed to all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before June 23, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–15269 Filed 6–21–95; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. GT95–10–002]

Texas Eastern Transmission Corporation; Notice of Compliance Filing

June 16, 1995.

Take notice that on June 1, 1995, pursuant to Section 154.62 of the Commission's Regulations and in compliance with the Commission's March 17, 1995 order in Docket No. GT95–10–000, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing executed Section 7(c) service contract between Texas Eastern, as Pipeline, and Public Service Electric and Gas Company under its firm Rate Schedule FTS–7, Contract Number 331007. Texas Eastern states that on April 13, 1995, it submitted several executed Section 7(c) service contracts to the Commission in Docket No. GT95–10–001, but inadvertently omitted this contract.

Texas Eastern requests that the Commission waive all necessary rules and regulations to permit the contract to become effective on the first day of the primary terms as stated in the contract.

Texas Eastern states that a copy of the letter of transmittal and its attached contract is being sent to Public Service Electric and Gas Company.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before June 23, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–15264 Filed 6–21–95; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. RP93–106–010]

Texas Gas Transmission Corporation; Notice of Filing of Refund Report

June 16, 1995.

Take notice that on June 12, 1995, Texas Gas Transmission Corporation (Texas Gas) tendered for filing a refund report detailing a May 31, 1995, Transportation Cost Adjustment (TCA) Tracker refund of $13,252,957.15.

Texas Gas states that the refund reflects the net credit balances in its TCA deferral accounts at March 31, 1995 when its TCA tracker was terminated.

Texas Gas states that copies of the filing have been served upon Texas Gas's customers receiving refunds and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before June 23, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–15268 Filed 6–21–95; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. RP95–342–000]

Viking Gas Transmission Co.; Notice of Filing

June 16, 1995.

Take notice that on June 14, 1995, Viking Gas Transmission Company (Viking), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet, proposed to be effective July 1, 1995:

Third Revised Sheet No. 72

Viking states that the purpose of the filing is to conform its tariff to the requirements of Order No. 577–A. In particular, Viking proposes to modify the capacity release provisions of its tariff by changing from one calendar month to 31 days the period during which capacity can be released at less than the maximum rate without prior posting or bidding.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 23, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–15272 Filed 6–21–95; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. RP95–244–001]

Williams Natural Gas Co., Notice of Proposed Changes in FERC Gas Tariff

June 16, 1995.

Take notice that on June 14, 1995, Williams Natural Gas Company (WNG) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, Substitute Second Revised Sheet No. 240. The proposed effective date of this tariff sheet is May 4, 1995.

WNG states that the purpose for the instant filing is to comply with the Commission's Order No. 577–A issued May 31, 1995. Substitute Second Revised Sheet No. 240 includes a revision to Article 11 of WNG's FERC Gas Tariff to provide that releases for a period of 31 days or less will be considered short term releases, and releases for more than 31 days are long term releases.

WNG states that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in the dockets referenced above and on all of WNG's jurisdictional customers and interested state commissions.

Any persons desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before June 23, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–15270 Filed 6–21–95; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. EG95–55–000, et al.]

ABB Barranquilla Inc., et al.; Electric Rate and Corporate Regulation Filings

June 15, 1995.

Take notice that the following filings have been made with the Commission:

1. ABB Barranquilla Inc.

[Docket No. EG95–55–000]

On June 2, 1995, ABB Barranquilla Inc. ("ABB BAQ") filed with the Federal Energy Regulatory Commission ("Commission") an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations. ABB BAQ states that its sole business purpose is to acquire and own a 25.74 percent interest in Termobarranquilla S.A., Empresa de Servicios Publicos ("TEBSA"), which will own and operate the Termobarranquilla generating facility ("Facility") near Barranquilla, Colombia.

The Commission has previously determined that TEBSA is an exempt wholesale generator ("EWG") and, therefore, that the Facility is an "eligible facility" under PUHCA. Termobarranquilla S.A., Empresa de Servicios Publicos, 69 FERC ¶ 61,295 (1994). ABB BAQ states that ABB BAQ's acquisition of an ownership interest in TEBSA will not affect that determination. ABB BAQ further states that ABB BAQ will be engaged indirectly (through TEBSA) and exclusively in the business of owning and operating an eligible facility and selling electric energy at wholesale. ABB BAQ concludes therefore that ABB BAQ qualifies as an EWG.

Comment date: July 5, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Connecticut Light and Power Company

[Docket No. ER95–514–000]

Take notice that Northeast Utilities Service Company (NUSCO), on May 30, 1995, tendered an amendment for filing to the Fourth Amendment to Capacity, Transmission and Energy Service Agreement between Connecticut Light and Power Company (CL&P) and Green Mountain Power Corporation (GMP) (CL&P Rate Schedule No. 519).

NUSCO states that a copy of this filing has been mailed to GMP.

NUSCO requests that the Service Agreement become effective on January 31, 1995.

Comment date: June 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. PacifiCorp

[Docket No. ER95–727–000]

Take notice that on June 2, 1995, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, an amended filing in the above Docket.

Copies of this filing were supplied to AES Power Inc., Engelhard Power Marketing, Inc., InterCoast Energy Marketing Company, Gulfstream Energy, LLC, National Electric Associates (L.P.), Power Exchange Corporation, Coastal Electric Services Company, Colorado Springs Utilities, Energy Resource Marketing, Lincoln Electric System, Nebraska Public Power District, Grant County PUD No. 2, Texas-New Mexico Power Company, the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: June 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Maine Public Service Company

[Docket No. ER95–954–000]

Take notice that on June 5, 1995, Central Maine Power Company tendered for filing a Certificate of Concurrence in the above-referenced docket.

Comment date: June 28, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Montaup Electric Company

[Docket No. ER95–1165–000]

Take notice that on June 6, 1995, Montaup Electric Company (Montaup), filed executed service agreements for the sale of system capacity and associated energy to the following companies (Buyers):

1. Maine Public Service Company (MPS);
2. Enron Power Marketing, Inc. (ENRON);
3. InterCoast Power Marketing Company (IPMC);
4. Taunton Municipal Lighting Plant (TMLP);
5. Long Island Lighting Company (LILCO);
6. Connecticut Municipal Electric Energy Cooperative (CMEEC);
7. Citizens Lehman Power (Citizens);
8. Burlington Electric Department (BED);
9. Rainbow Energy Marketing Corporation (REMCO);
10. Louis Dreyfus Electric Power, Inc. (LDEP);
11. Niagara Mohawk Power Corporation (NMO);

12. Catex Vitol Electric L.L.C. (Catex);
13. Vermont Marble Power Division of Omya, Inc. (VMPE); and
14. Commonwealth Electric Company (CE)

The sales provide Buyers with needed capacity and associated energy. Montaup may sell system capacity and associated energy pursuant to the terms and conditions of FERC Electric Tariff, Original Volume No. IV (the Tariff). They also allow Buyers except LILCO and BED, through a certificate of concurrence, to provide capacity from one of Buyers units (Exchange Unit), which enables Montaup to make a system sale while maintaining its minimum monthly system capability required under the present NEPOOL Agreement. Montaup requests waiver of the sixty-day notice requirement so that the service agreements may become effective as of each respective service agreement date.

Comment date: June 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Montaup Electric Company

[Docket No. ER95–1166–000]

Take notice that on June 6, 1995, Montaup Electric Company, filed a Notice of Cancellation of a system-exchange agreement between Montaup and Taunton Municipal Lighting Plant, Montaup Rate Schedule No. 101, Supplement No. 1.

Comment date: June 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Montaup Electric Company

[Docket No. ER95–1167–000]

Take notice that on June 6, 1995, Montaup Electric Company filed a Notice of Cancellation for a system-exchange agreement between Montaup and Connecticut Municipal Electric Energy Cooperative, Montaup Rate Schedule No. 102, Supplement No. 1.

Comment date: June 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Montaup Electric Company

[Docket No. ER95–1168–000]

Take notice that on June 6, 1995, Montaup Electric Company (Montaup), filed executed service agreements to furnish and the following companies (Buyers) to purchase capacity and energy pursuant to the terms and conditions of FERC Electric Tariff, Original Volume No. III (the Tariff) to the following companies:

1. Maine Public Service Company (MPS);
2. Enron Power Marketing, Inc. (ENRON);
3. InterCoast Power Marketing Company (IPMC);
4. Taunton Municipal Lighting Plant (TMLP);
5. Long Island Lighting Company (LILCO);
6. Connecticut Municipal Electric Energy Cooperative (CMEEC);
7. Citizens Lehman Power (Citizens);
8. Rainbow Energy Marketing Corporation (REMCO);
9. Louis Dreyfus Electric Power, Inc. (LDEP);
10. Niagara Mohawk Power Corporation (NIMO);
11. Catex Vitol Electric L.L.C. (Catex);
12. Vermont Marble Power Division of Omya, Inc. (VMPD); and
13. Commonwealth Electric Company (CE).

Montaup and Buyers understand that transactions under the service agreements are purely voluntary and will be entered into only if mutually beneficial and agreeable. Montaup requests a waiver of the sixty-day notice requirements so that the service agreements may become effective as of each respective service agreement date.

Comment date: June 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Boston Edison Company

[Docket No. ER95–1169–000]

Take notice that on June 2, 1995, Boston Edison Company (Edison), tendered for filing a Service Agreement and Appendix A under Original Volume No. 6, Power Sales and Exchange Tariff (Tariff) for Catex Vitol Electric L.L.C. (Catex). Boston Edison requests that the Service Agreement become effective as of May 1, 1995.

Edison states that it has served a copy of this filing on Catex and the Massachusetts Department of Public Utilities.

Comment date: June 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Tampa Electric Company

[Docket No. ER95–1170–000]

Take notice that on June 7, 1995, Tampa Electric Company (Tampa Electric), tendered for filing a Purchase Contract between Tampa Electric and the Tennessee Valley Authority (TVA). Tampa Electric also tendered for filing, as supplements to the Purchase Contract, Purchase Schedule C, providing for Economy Energy Service and Purchase Schedule J, providing for Negotiated Capacity and/or Energy Service.

Tampa Electric proposes an effective date of June 8, 1995, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on TVA and the Florida Public Service Commission.

Comment date: June 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Midwest Power Systems Inc.

[Docket No. ER95–1171–000]

Take notice that on June 7, 1995, Midwest Power Systems Inc. (Midwest), tendered for filing an annual rate revision of the Transmission Service Fee and Amendment No. 2 to Transmission Service and Facilities Agreement (Agreement). On October 23, 1992, FERC accepted for filing and designated Rate Schedule FERC No. 38 for the Agreement between Midwest and Cedar Falls Utilities (CFU). This Agreement provides transmission service to CFU for its share of power and energy from the Council Bluffs Energy Center Unit No. 3 to CFU's system. Exhibit B of the Agreement provides that the transmission service fee shall be reviewed and adjusted annually, if necessary. The purpose of Amendment No. 2 is to specify January 1 as the effective date of annual rate adjustment.

Pursuant to the provisions of § 35.11 of the Commission's Regulations, Midwest respectfully requests a waiver of Commission's Regulations and notice requirements to allow Amendment No. 2 to be effective on January 1, 1995.

MPSI states that copies of this filing were served on Cedar Falls Utilities and the Iowa Utilities Board.

Comment date: June 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Midwest Power Systems Inc.

[Docket No. ER95–1172–000]

Take notice that on June 7, 1995, Midwest Power Systems Inc. (Midwest), tendered for filing an annual rate revision of the Transmission Service Fee and Amendment No. 1 to Transmission Service Agreement. On October 23, 1992, FERC accepted for filing and designated Rate Schedule FERC No. 65 for the Transmission Service Agreement (Agreement) between Midwest and Cedar Falls Utilities (CFU). This Agreement provides transmission service to CFU for its share of power and energy from the George Neal Generating Station Unit No. 4 to CFU's system. Section 2 of the Agreement provides that the transmission service fee shall be reviewed and adjusted annually, if necessary. The purpose of Amendment No. 1 is to specify January 1 as the effective date of annual rate adjustment.

Pursuant to the provisions of § 35.11 of the Commission's Regulations, Midwest respectfully requests a waiver of Commission's Regulations and notice requirements to allow Amendment No. 1 to be effective on January 1, 1995.

Midwest states that copies of this filing were served on Cedar Falls Utilities and the Iowa Utilities Board.

Comment date: June 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 95–15260 Filed 6–21–95; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 5728–014 New Hampshire]

Sandy Hollow Power Company, Inc.; Notice of Availability of Environmental Assessment

June 16, 1995.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's Regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) reviewed the application for amendment for the Sandy Hollow Hydroelectric Project. The application proposes to install a 160 kilowatt turbine with a siphon-fed penstock on the Indian River, in Jefferson County, near the Village of Philadelphia, New York. The staff prepared an Environmental Assessment (EA) for the action. In the EA, staff concludes that approval of the licensee's amendment application would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, Room 3308, of the Commission's offices at 941 North Capitol Street, N.E., Washington, D.C. 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–15267 Filed 6–21–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–109–000]

CNG Transmission Corporation; Notice of Availability of the Environmental Assessment for the Proposed TL–470 Extension 5 Project

June 16, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by CNG Transmission Corporation (CNG) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of about 4.73 miles of 30-inch-diameter natural gas pipeline loop in Rooterdam Township, Schenectady County, New York.

The proposed loop would be constructed parallel and adjacent to CNG's existing facilities and would begin at a new gate station on CNG's system near Gregg Road and end at a new gate station near Burdeck Street.

The purpose of the proposed facilities would be to maintain pressure requirements to meet CNG's delivery obligations to Niagara Mohawk Power Corporation's distribution system which serves the Albany, New York area.

The EA has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 941 North Capitol Street, N.E., Room 3104, Washington, D.C. 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

A limited number of copies of the EA are available from: Mr. Howard Wheeler, Environmental Project Manager, Environmental Review and Compliance Branch II, Office of Pipeline Regulation, Room 7312, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 208–2299.

Any person wishing to comment on the EA may do so. Written comments must reference Docket No. CP95–109–000, and be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Comments should be filed as soon as possible, but must be received no later than July 17, 1995, to ensure consideration prior to a Commission decision on this proposal. A copy of any comments should also be sent to Mr. Howard Wheeler, Environmental Project Manager, Room 7312, at the above address.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by Section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your comments considered.

Additional information about this project is available from Mr. Howard Wheeler, Environmental Project Manager.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–15262 Filed 6–21–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–544–000, et al.]

Natural Gas Pipeline Co. of America, et al.; Natural Gas Certificate Filings

June 14, 1995.

Take notice that the following filings have been made with the Commission:

1. Natural Gas Pipeline Company of America

[Docket No. CP95–544–000]

Take notice that on June 5, 1995, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP95–544–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to

abandon a natural gas receipt point located in Cass County, Texas, all as more fully set forth in the application on file with the Commission and open to public inspection.

Natural proposes to remove a 4-inch meter and a 4-inch tap that were originally constructed in April, 1984, to receive and transport approximately 8 MMCF of gas per day for Dow Pipeline Company (Dow) pursuant to Section 311(a)(1) of the NGPA. Natural states that its gas exchange agreement with Dow terminated on March 10, 1986. Natural asserts that it subsequently certificated the subject facilities in 1988, under its blanket certificate issued in Docket No. CP82–402–000, in order to provide interruptible transportation service for Cabot Energy Marketing Corporation pursuant to Subpart G of Part 284 of the Commission's Regulations. Natural mentions that the subject facilities were last used in September, 1988, and will not be used in the future.

Comment date: July 5, 1995, in accordance with Standard Paragraph F at the end of this notice.

2. Williams Natural Gas Company

[Docket No. CP95–551–000]

Take notice that on June 8, 1995, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP95–551–000 a request pursuant to Sections 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act for authorization to abandon certain facilities under its blanket certificate issued in Docket No. CP82–479–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG proposes to abandon by reclaim 235 feet of 10-inch pipeline and to abandon in place 625 feet of 10-inch pipeline located in Douglas County, Kansas. WNG explains that a new section of 16-inch pipeline would be constructed under its blanket certificate authority issued in Docket No. CP82–479–000. WNG further explains that the reclaim cost is estimated to be $500 with a salvage value of $289.

WNG states that this change is not prohibited by an existing tariff and it has sufficient capacity to accomplish the deliveries specified without detriment or disadvantage to its other customers.

Comment date: July 31, 1995, in accordance with Standard Paragraph G at the end of this notice.

3. Columbia Gas Transmission

[Docket No. CP95–556–000]

Take notice that on June 9, 1995, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed in Docket No. CP95–556–000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to establish a new point of delivery for firm transportation service and abandon an existing point of delivery and reassign 5,000 dth/day in Maximum Daily Delivery Obligations between points of delivery to Columbia Gas of Ohio, Inc. (COH), in Franklin County, Ohio, under Columbia's blanket certificate issued in Docket No. CP83–76–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia states that it would construct and operate a new point of delivery for firm transportation service and would provide the service pursuant to Columbia's Blanket Certificate issued in Docket No. CP86–240–000 under existing authorized rate schedules and within certificated entitlements.

Columbia states further that the new point of delivery has been requested by COH for firm transportation service for residential and commercial use. The estimated cost, it is said, would be approximately $36,200 and would be reimbursed by COH.

Comment date: July 31, 1995, in accordance with Standard Paragraph G at the end of this notice.

4. Pacific Gas Transmission Company

[Docket No. CP95–560–000]

Take notice that on June 12, 1995, Pacific Gas Transmission Company (PGT), 160 Spear Street, San Francisco, California 94105–1570, filed in Docket No. CP95–560–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to install a new tap and meter station under PGT's blanket certificate issued in Docket No. CP82–530–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

PGT proposes to install a new tap and meter station near Hermiston, Oregon for delivery of gas to Cascade Natural Gas Corporation.

Comment date: July 31, 1995, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15261 Filed 6–21–95; 8:45 am]

BILLING CODE 6717–01–P

City of Watertown; Notice of Availability of Final Environmental Assessment

[Project 2442–001 New York]

June 16, 1995.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) Regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major new license for the proposed Watertown Project, located in Jefferson County and has prepared a Final Environmental Assessment (EA) for the project.

On April 10, 1995, staff issued and distributed to all parties a draft EA and requested that all comments on the draft EA be filed within 30 days. All comments that were timely filed have been considered in this final EA.

In the final EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the project, with appropriate mitigation or enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street, N.E., Washington, D.C. 20426.

For further information, please contact Peter Leitzke, Environmental Coordinator, at (202) 219–2803.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–15265 Filed 6–21–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–552–000, et al.]

Seagull Natural Gas Company, et al.; Natural Gas Certificate Filings

June 15, 1995.

Take notice that the following filings have been made with the Commission:

1. Seagull Natural Gas Company

[Docket No. CP95–552–000]

Take notice that on June 8, 1995, Seagull Natural Gas Company (Seagull), 1700 First City Tower, 1001 Fannan Street, Houston, Texas 77002, filed a petition in Docket No. CP95–552–000, requesting that the Commission declare that its facilities extending from an offshore platform located in Brazos Area, Block 366, Offshore Texas to an onshore separation and dehydration facility located in Brazoria County, Texas are gathering facilities exempt from Commission jurisdiction pursuant to Section 1(b) of the Natural Gas Act, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Seagull states that it owns and operates a pipeline facility in offshore Texas waters known as the Brazos 366 Line, which consists of a 12.86 mile, 8-inch line and a 0.13 mile, 4-inch line. It is indicated that the facility extends from a platform owned by Rutherford Oil and Gas Company in Brazos Area Block 366 to a separation and dehydration facility owned by Dow Hydrocarbons and Resources, Inc. (Dow) located approximately one mile onshore in Brazoria County, Texas. It is stated that the only pipeline connected to the tailgate of the Dow plant is an 8-inch line owned by Dow.

Seagull states that it uses the facility to gather gas production for others and to deliver those volumes to the Dow plant for separation and dehydration. It is also stated that, in addition to the gas produced from the Rutherford 366 Platform, the facility also transports gas produced from production platforms in Brazos Blocks 340, 375, and 376 and gathered to the Rutherford 366 Platform through lines owned either by Seagull or producers. It is also stated that volumes produced from Brazos Block 444 are delivered to the facility at its approximate mid-point through producer-owned facilities. It is also stated that most of the gas moved through the facility is destined for Texas intrastate markets or interstate markets on behalf of two shippers pursuant to Section 311(a)(2) of the Natural Gas Policy Act of 1978. Seagull has stated that recently it has reevaluated the nature of the facility and the service it provides and concluded that the facility and the services it provides through that facility are gathering.

In support of its claim that the primary function of the pipeline is gathering, Seagull indicates that the facility meets the gathering criteria set forth in Farmland Industries, Inc., 23 FERC ¶ 61.063 (1983), as modified by later Commission orders, indicating the following:

Length and Diameter of the Line

Seagull states that offshore lines of comparable and greater length and diameter, including a 45 to 60 mile, 14-inch diameter pipeline (see 69 FERC ¶ 61,272 (1994)), have been characterized as gathering. It is also indicated that the location of the Seagull facility is solely a function of the location of the production in the Brazos area in relation to the Dow plant.

Location of Compressor and Processing Plants

Seagull also states that it neither owns nor operates any compressors along the facility, and that the facility relies on wellhead pressure and any pressure generated from producer-owned compression located on the various platforms directly or indirectly connected to the facility. It is also indicated that the only plant near the facility is the Dow separation/dehydration facility located at the terminus of the facility.

Extension of the Facility Beyond the Central Point in the Field

Seagull states that, because the facility is configured solely to deliver gas to the Dow plant from various producing platforms in the offshore Brazos area, there is no true central point in the field. Seagull concludes that the application of this factor in determining whether the facility is a gathering facility is inappropriate.

Location of Wells

Seagull states that the facility is located in a prolific producing area and is designed to gather gas from various production platforms for delivery to a separation and dehydration facility. Seagull states that, although this criterion requires that wells be located along all or part of onshore facilities, the Commission has found that offshore facilities do not need to meet this requirement for the Commission to find that such facilities provide a gathering function. It is also noted that there is a field connection approximately at the facility's mid-point.

Geographic Configuration of the Facility

Seagull states that the facility is a straight line gathering platform from various platforms for delivery to an onshore separation plant, a configuration similar to numerous other offshore systems previously determined to be gathering.

Operating Pressure

Seagull states that the maximum operating pressure of the facility is 800 psig, and that the Commission has determined that other offshore facilities with much higher pressures are gathering facilities.

Primary Function

Seagull indicates that the primary business purpose of owning and operating the facility is to gather gas that is owned by non-affiliated third-party producers in the offshore Brazos area for delivery to the Dow plant. It is also indicated that neither Seagull or any of its affiliates owns or purchases any of the gas gathered by the facility, and that neither Seagull or any of its affiliates owns or operates any facilities subject to the Commission's Natural Gas Act jurisdiction.

Comment date: July 6, 1995, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

2. Natural Gas Pipeline Company of America

[Docket No. CP95–555–000]

Take notice that on June 9, 1995, Natural Gas Pipeline Company of America (Natural) 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP95–555–000 an application pursuant to Section 7(b) of the Natural Gas Act, as amended, and Sections 157.7 and 157.18 of the Commission's Regulations thereunder for permission and approval to abandon a natural gas exchange service with Columbia Gulf Transmission Company (Columbia Gulf) all as more fully set forth in the application on file with the Commission and open to public inspection.

Natural proposes to abandon the exchange service between Natural and Columbia Gulf provided under Natural's Rate Schedule X–125. Natural states that pursuant to a gas transportation and exchange agreement (Agreement) between Natural and Columbia Gulf dated September 30, 1980, Natural made available for exchange up to 10,000 Mcf of natural gas per day to Columbia Gulf at Columbia Gulf's Pecan Island Plant located in Vermilion Parish, Louisiana. Natural explains that from Pecan Island, Columbia Gulf transported Natural's gas to Columbia Gulf's Rayne Compressor Station located in Acadia Parish, Louisiana at which point it became Columbia Gulf's by exchange. Natural further explains that Columbia Gulf then redelivered to Natural equivalent volumes of natural gas available to Columbia Gas Transmission Corporation at the outlet of Texaco Inc.'s Henry Plant located in Vermilion Parish, Louisiana.

Natural states that by settlement agreement between Natural and Columbia Gulf dated May 15, 1995, Natural and Columbia Gulf agreed to terminate the Agreement (and Natural's Rate Schedule X–125 exchange service) through the payment of a negotiated exit fee by Natural to Columbia Gulf in consideration for Columbia Gulf's early termination and abandonment of, among other things, the transportation and exchange service performed under the exchange agreement.

Comment date: July 6, 1995, in accordance with Standard Paragraph F at the end of this notice.

3. CNG Transmission Corporation

[Docket No. CP95–562–000]

Take notice that on June 12, 1995, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP95–562–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon by removal a 1.2 mile segment of 6-inch diameter pipeline located in Tyler County, West Virginia, all as more fully set forth in the application on file with the Commission and open to public inspection.

CNG states that the pipeline was installed by CNG's predecessor, Hope Natural Gas Company (Hope) in 1925 and authorized by the Commission under Hope's grandfather certificate in 1942 in Docket No. G–290. It is stated that the line was installed to provide service to a customer of Hope Gas, Inc. It is further stated that the pipeline segment had deteriorated and had to be closed off in May 1984, with the customer relocated to receive service from another line in the vicinity. It is asserted that the proposed abandonment would have no impact on service to any customer since the single customer being served has been relocated.

Comment date: July 6, 1995, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–15259 Filed 6–21–95; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Pub. L. 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended

American Classic Voyages Company, Two North Riverside Plaza, Suite 600, Chicago, Illinois 60606
Vessel: AMERICAN QUEEN
Dated: June 16, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95–15313 Filed 6–21–95; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License Number: 3764
Name: Inteks Trans-International, Inc.
Address: 22431 South Vermont Ave., Torrance, CA 90502
Date Revoked: May 5, 1955
Reason: Surrendered license voluntarily.

License Number: 2206
Name: Sea Cargo International, Inc.
Address: 5467 Northwest 72nd Ave., Miami, Fl 33166
Date Revoked: May 31, 1995
Reason: Failed to furnish a valid surety bond.

License Number: 3733
Name: Complete Cargo Systems, Inc.
Address: 2600 N.W. 79th Ave., Miami, Fl 33122
Date Revoked: June 1, 1995
Reason: Failed to furnish a valid surety bond.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 95–15288 Filed 6–21–95; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Logistics International, Inc., 10159 11th Street, Suite 310, Tulsa, OK 74128, Officers: Mitchell L. Bray, President; Maria U. Canteras, Secretary
Caribbean Cold Storage, Inc., 136 N. Myrtle Ave., Suite 201, Jacksonville, FL 32204, Officers: Julie Robbins, President; Paul V. Robbins, Vice President
William J. Siemens, III, 7027 Llama Street, La Costa, CA 92009, Sole Proprietor.
Dated: June 16, 1995.
By the Federal Maritime Commission.

[FR Doc. 95–15287 Filed 6–21–95; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Sahara Motors Incorporated, 6734 Doolittle #M, Riverside, CA 92503, Officer: Abdallah Elaref Bezan, President
Caribbean Cold Storage, Inc., 136 N. Myrtle Ave., Suite 201, Jacksonville, FL 32204, Officers: Julie Robbins, President, Paul V. Robbins, Vice President
Aquaocean Transport, Inc., d/b/a/ ATI R.G.R. Shipping & Forwarding B.V., P.O. Box 9199, 3007 AD Rotterdam, The Netherlands, Officers: R.W. van Tuyll, President; Bob Peska, Vice President
Intermar International Inc., 9300 N.W. 58th Street, Miami, FL 33178, Officer: Angelo Carresquillo, President
Tampa Bay Ocean Services, Inc., 6001 Jet Port Industrial Blvd., Tampa, FL 33614, Officers: Ana I, Penichet, President; Magda Maranzana, Vice President.
Dated: June 16, 1995.
By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–15286 Filed 6–21–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Caisse Nationale de Credit Agricole; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 6, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Caisse Nationale de Credit Agricole*, Paris, France; to engage *de novo* through its subsidiary, Credit Agricole Futures, Inc., Chicago, Illinois, in becoming both a member firm and a clearing member of the Coffee, Sugar and Cocoa Exchange, Inc., New York, New York, pursuant to § 225.25(b)(18) of the Board's Regulation Y and Supervision and Regulation Letter 93-27.

Board of Governors of the Federal Reserve System, June 16, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–15294 Filed 6–21–95; 8:45 am]

BILLING CODE 6210–01–F

First Savings Financial Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the

application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 17, 1995.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. First Savings Financial Corp., Reidsville, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of First Savings Bank of Rockingham County, S.S.B. Reidsville, North Carolina.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. C. B. Bank Shares, Inc., Russiaville, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Central Bank, Russiaville, Indiana.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Watford City Bancshares, Inc., Watford City, North Dakota; to acquire 100 percent of the voting shares of First International Bank & Trust, Scottsdale, Arizona, a *de novo* bank.

Board of Governors of the Federal Reserve System, June 16, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–15295 Filed 6–21–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95F–0122]

Hempel Coatings (USA), Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Hempel Coatings (USA), Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of meta-xylylenediamine and 3-diethylaminopropylamine as components of articles intended for food-contact use.

DATES: Written comments on the petitioner's environmental assessment by July 24, 1995.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9500.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 5B4457) has been filed by Hempel Coatings (USA), Inc., 6901 Cavalcade St., Houston, TX 77028. The petition proposes to amend the food additive regulations in § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300) to provide for the safe use of meta-xylylenediamine and 3-diethylaminopropylamine as components of articles intended for food-contact use.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before July 24, 1995, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: June 13, 1995.

Alan M. Rulis,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–15348 Filed 6–21–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95F–0130]

Shell Chemical Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Shell Chemical Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of polyethylene terephthalate polymers in which the finished polymer contains less than 50 weight percent of ethylene-2,6-naphthalate as components of articles intended for food-contact use.

DATES: Written comments on the petitioner's environmental assessment by July 24, 1995.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3086.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 5B4450) has been filed by Shell Chemical Co., 130 Johns Ave., Akron, OH 44305–4097. The petition proposes to amend the food additive regulations in § 177.1630 *Polyethylene phthalate polymers* (21 CFR 177.1630) to provide for the safe use of polyethylene terephthalate polymers in which the finished polymer contains less than 50 weight percent of ethylene-2,6-naphthalate as components of articles intended for food-contact use.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before July 24, 1995, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: June 13, 1995.

Alan M. Rulis,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–15346 Filed 6–21–95; 8:45 am]

BILLING CODE 4160–01–F

Clinical Studies of Safety and Effectiveness of Orphan Products; Availability of Grants; Request for Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing changes to its Orphan Products Development (OPD) grant program for fiscal year (FY) 1996. Previously, the $200,000 grant for phase 2 or 3 trials could only be awarded for a maximum of 2 years. Now all grants, including the $200,000 grant, may be awarded for a maximum of 3 years. This document is intended to inform eligible applicants of the application receipt dates, the estimated amount of funds available, the estimated number of awards to be made in FY 1996, and any changes in programmatic requirements, as well as to inform eligible applicants of the new extended length for all grants.

DATES: Application receipt dates are October 1, 1995, and January 15, 1996. If the receipt date falls on a weekend, it will be extended to Monday; if the date falls on a holiday, it will be extended to the following work day.

ADDRESSES: Application forms are available from, and completed applications should be submitted to: Robert L. Robins, Grants Management Officer, Grants and Agreements Management Branch (HFA–520), Food and Drug Administration, Park Bldg., rm. 3–40, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6170.

Note: Applications hand-carried or commercially delivered should be addressed to the Park Bldg., rm. 3–40, 12420 Parklawn Dr., Rockville, MD 20857. Do not send applications to the Division of Research Grants, National Institutes of Health (NIH).

FOR FURTHER INFORMATION CONTACT:

Regarding the administrative and financial management aspects of this notice: Robert L. Robins (address above).

Regarding the programmatic aspects of this notice: Patricia R. Robuck, Office of Orphan Products Development (HF–35), Food and Drug Administration, 5600 Fishers Lane, rm. 8–73, Rockville, MD 20857, 301–443–4903.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 15, 1994 (59 FR 41769), FDA announced that the agency would publish a notice annually in the **Federal Register** that references the August 15, 1994, standing announcement and reminds eligible applicants of: The receipt dates, the estimated amount of funds available, the estimated number of awards to be made during the fiscal year, and any changes in programmatic requirements or criteria. All provisions of the August 1994 standing announcement are applicable to the FY 1996 OPD grant program, except for the changes described below, and applicants should refer to the standing announcement for additional information. The OPD grant program standing announcement changes for FY 1996 are set forth below.

FDA is announcing the anticipated availability of funds for FY 1996 for awarding grants to support clinical trials on safety and effectiveness of products for rare diseases and conditions (i.e., those affecting fewer than 200,000 people in the United States). Contingent on availability of FY 1996 funds, it is anticipated that $12 million will be available for these grants, of which $6.2 million will be for noncompeting continuation awards. This will leave $5.8 million for funding the following: Approximately $2.9 million for 20 grants (phase 1, 2, or 3 trials) up to $100,000 each in direct costs per annum plus applicable indirect costs for up to 3 years, and approximately $2.9 million for 10 grants (phase 2 and 3 trials only) up to $200,000 each in direct costs per annum plus applicable indirect costs for up to 3 years. Applications exceeding this direct cost limit will be considered nonresponsive and will be returned to the applicant. The current, active investigational new drug (IND) or investigational device exemption (IDE) number for the proposed study must appear on the face page of the application with the title of the project.

In the **Federal Register** of August 15, 1994, under "II. Human Subject Protection and Informed Consent," in section B. Informed Consent, the agency stated that consent and/or assent forms, and any additional information to be given to a subject should accompany the grant application. Under current procedures, consent and/or assent forms, and any additional information to be given to a subject, must be included in the grant application.

In addition, in the **Federal Register** of August 15, 1994, under "V. Review Procedure and Criteria," in section B. Program Review Criteria, paragraph 3, the agency stated that if the sponsor of the IND/IDE is other than the principal investigator listed on the application, a letter from the sponsor verifying access to the IND/IDE is required. Under current procedures, if the sponsor of the IND/IDE is other than the principal investigator listed on the application, documentation must be provided in the grant application verifying that the grant applicant and the proposed protocol are included in the IND/IDE. Applications that do not have an active IND or IDE for the proposed study *at the time of application* will be considered nonresponsive.

In the same section, paragraph 4, the agency stated that the requested budget must be within the limits (either $100,000 in direct costs for up to 3 years or $200,000 in direct costs for up to 2 years) as stated in the request for applications. Under current procedures, the requested budget must be within the limits (either $100,000 in direct costs for any phase study or up to $200,000 in direct costs for studies in phase 2 or 3) as stated in the request for applications. The maximum study period will be 3 years.

The outside of the mailing package and item 2 of the application face page

should be labeled: "Response to RFA–FDA–OP–96–1."

The grants are funded under the legislative authority of section 301 of the Public Health Service Act (PHS act)(42 U.S.C. 241). All awards will be subject to all policies and requirements that govern the research grant programs of PHS, including the provisions of 42 CFR part 52 and 45 CFR parts 74 and 92. All funded studies are subject to the requirements of the Federal Food, Drug, and Cosmetic Act (the act) and regulations promulgated thereunder. The regulations promulgated under Executive Order 12372 do not apply to this program.

All grant awards are subject to applicable requirements for clinical investigations imposed by sections 505, 507, 512, 515, and 520 of the act (21 U.S.C. 355, 357, 360b, 360e, and 360j), section 351 of the PHS act (42 U.S.C. 262), and regulations promulgated under any of these sections.

Dated: June 19, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–15350 Filed 6–21–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94D–0397]

Powered Wheelchair Labeling; Letter; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a letter concerning the labeling of powered wheelchairs. This letter, which was sent to all powered wheelchair, scooter, and accessory and component manufacturers, describes the agency's increasing concern about electromagnetic interference (EMI) with powered wheelchairs and motorized scooters (hereinafter collectively called powered wheelchairs). FDA believes that electromagnetic (EM) energy is causing these devices to move unintentionally. This letter is intended to establish certain necessary steps that powered wheelchair manufacturers should follow in order to help minimize the risks associated with the unintended movement of powered wheelchairs caused by EMI. FDA is publishing this notice because it believes that the letter may not have reached all interested persons.

DATES: Written comments may be submitted at any time.

ADDRESSES: Submit written requests for single copies of the letter to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6597 or 1–800–638–2041. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the letter to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. The letter and received comments are available for public examination in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Marie A. Schroeder, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1296.

SUPPLEMENTARY INFORMATION: On May 26, 1994, FDA issued a letter to all powered wheelchair, scooter, accessory, and component manufacturers explaining FDA's increasing concern about the effects of EMI on the safe use of powered wheelchairs. FDA has received many reports of erratic and unintentional powered wheelchair movement. The agency believes that EM energy is causing these devices to move unintentionally. As a result of these concerns, FDA established the following steps in order to provide information to protect powered wheelchair users from the potential hazards of EMI.

I. Minimum Recommended Immunity Level

FDA recommends that all marketed powered wheelchairs have a minimum immunity level of 20 volts per meter (V/m). This immunity level was proposed by wheelchair manufacturers at the American National Standards Institute/Association for the Advancement of Rehabilitation Technology meeting in June 1993, and it reflects the present technological capability that can be immediately implemented.

II. Product Labeling

The labeling described in FDA's letter is intended to inform powered wheelchair users about the risks from EMI associated with the use of powered wheelchairs and how to avoid these risks. This labeling should be on or attached to the powered wheelchair and provide the following information:

1. An explanation of what EMI is, what causes EMI, and the risks associated with EMI;

2. An explanation of how the user can avoid risks associated with EMI, including warnings to use caution around sources of EMI;

3. A Warning that the addition of accessories or components, or modifications to a powered wheelchair may make it more susceptible to EMI, and that there is no easy way to evaluate their effect on the overall immunity of the powered wheelchair;

4. A statement that, as of May 1994, 20 V/m is a generally achievable and useful immunity level; and

5. A statement of the EMI immunity level of the powered wheelchair, or a statement that the EMI immunity level is not known.

FDA believes that this information will help minimize the risks associated with unintended movement of powered wheelchairs caused by EMI. Omission of the labeling information requested above will result in a failure of the powered wheelchair labeling to include facts relevant to the powered wheelchair's use and in a failure to provide adequate warnings, as required by section 502 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352). Accordingly, products shipped without the required labeling may be considered misbranded under section 502 of the act.

III. Recommended Educational Program

FDA recommends that manufacturers implement an educational program to warn users of the potential hazards of EMI and to provide information about the risks and how to avoid them.

Additionally, FDA will continue to solicit reports of EMI problems and to monitor the problems in order to evaluate the full scope of the problem.

Interested persons may, at any time, submit to the Docket Management Branch (address above) written comments on the powered wheelchair labeling letter. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The letter and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Received comments will be considered in determining whether future action should be taken to address concerns about the effects of EMI on powered wheelchairs.

Dated: June 12, 1995.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 95–15347 Filed 6–21–95; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETINGS: The following advisory committee meetings are announced:

Gastrointestinal Drugs Advisory Committee

Date, time, and place. July 12, 1995, 9 a.m., Holiday Inn—Bethesda, Versailles Ballroom, 8120 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; Joan C. Standaert, Center for Drug Evaluation and Research (HFD–180), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 419–259–6211, or Valerie M. Mealy, Advisors and Consultants Staff (HFD–9), 301–443–4695, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Gastrointestinal Drugs Advisory Committee, code 12538.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in gastrointestinal diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 30, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss new drug application (NDA) 20–436, Lemmon Co., zinc acetate to be indicated for use in Wilson's disease. The advisory committee will also consider draft "Points to Consider" from the Division of Anti-Infective Drug Products on *Helicobacter pylori* studies to prevent peptic ulcer recurrence.

National Mammography Quality Assurance Advisory Committee

Date, time, and place. July 18 and 19, 1995, 9 a.m., Hyatt Regency—Bethesda, Cabinet-Judiciary Suite, One Bethesda Metro Center, Bethesda, MD. A limited number of overnight accommodations have been reserved at the hotel. Attendees requiring overnight accommodations may contact the hotel at 301–657–1234 and reference the FDA Committee meeting block. Reservations will be confirmed at the group rate based on availability.

Type of meeting and contact person. Open public hearing, July 18, 1995, 9 a.m. to 10 a.m., unless public participation does not last that long; open subcommittee discussions, 10 a.m. to 5 p.m.; open subcommittee discussions, July 19, 1995, 9 a.m. to 2 p.m.; open committee discussion, 2 p.m. to 5 p.m.; Charles K. Showalter, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3332, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), National Mammography Quality Assurance Advisory Committee, code 12397.

General function of the committee. The committee advises on developing appropriate quality standards and regulations for the use of mammography facilities.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before July 11, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On July 19, 1995, the committee will discuss the ongoing work of the three subcommittees: Access to Mammography Services, Physicists Availability, and Cost Benefit of Compliance.

Open subcommittee discussions. On July 18 and 19, 1995, the three subcommittees will meet concurrently. The subcommittees will discuss the ongoing work which is necessary to make the determinations and subsequently prepare the reports as mandated in the Mammography Quality Standards Act. Upon completion, the subcommittee reports will be reviewed by the committee prior to submission to the Secretary of Health and Human Services and Congress.

Ophthalmic Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. July 20 and 21, 1995, 8:30 a.m., Bethesda Pooks Hill Marriott, Congressional Ballroom, 5151 Pooks Hill Rd., Bethesda, MD. A limited number of overnight accommodations have been reserved at the hotel. Attendees requiring overnight accommodations may contact the hotel at 301–897–9400 and reference the FDA Panel meeting block. Reservations will be confirmed at the group rate based on availability. Attendees with a disability requiring special accommodations should contact Ed Rugenstein, Sociometrics, Inc., 301–608–2151. The availability of appropriate accommodations cannot be assured unless prior written notification is received.

Type of meeting and contact person. Open public hearing, July 20, 1995, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; open public hearing, July 21, 1995, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 12 m.; Sara M. Thornton, Center for Devices and Radiological Health

(CDRH) (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2053, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Ophthalmic Devices Panel, code 12396.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before July 7, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On July 20, 1995, the Division of Ophthalmic Devices will propose a redraft of the myopia refractive laser guidance document and request discussion and comments from the public and the panel and panel recommendations on designated sections. Single copies of the proposed redraft are available from Sara M. Thornton (address above). On July 21, 1995, the Contact Lens Branches will present an overview of the draft premarket notification (510(k)) guidance document for lens care products to be used as a special control for reclassification of contact lens care products. The committee will discuss and recommend the classification status for vision trainers. There will also be general updates from the Contact Lens Branches, Intraocular Implants Branch, and Diagnostic and Surgical Devices Branch within CDRH.

Oncologic Drugs Advisory Committee

Date, time, and place. July 24 and 25, 1995, 8 a.m., Parklawn Bldg., conference rooms D and E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, July 24, 1995, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 5 p.m.; open committee discussion, July 25, 1995, 8 a.m. to 11:30 a.m.; Adele S. Seifried, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Oncologic Drugs Advisory Committee, code 12542.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in treatment of cancer.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before July 19, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On July 24, 1995, the committee will discuss: (1) NDA 20–036, Aredia® (pamidronate disodium for injection, Ciba Pharmaceuticals Division, Ciba-Geigy Corp.), "for the treatment of bone metastases associated with multiple myeloma," and (2) NDA 20–509, Gemzar® (gemcitabine hydrochloride, Eli Lilly), "as first line treatment for patients with advanced (nonresectable Stage II or Stage III) or metastatic (Stage IV) adenocarcinoma of the pancreas," and "for patients with 5-FU-refractory pancreatic cancer." On July 25, 1995, the committee will discuss product license application PLA 94–0799 Intron®A, (interferon alpha 2b, recombinant, Schering, Inc.), for "post-operative adjuvant therapy in malignant melanoma."

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: June 13, 1995.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 95–15240 Filed 6–21–95; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

RIN 0905–ZA90

Program Announcement and Proposed Project Requirements, Review Criteria, and Funding Preference for Cooperative Agreement for a Model Hispanic Health Careers Opportunity Program for Fiscal Year 1995

The Health Resources and Services Administration (HRSA) announces that applications will be accepted for a fiscal year (FY) 1995 Cooperative Agreement for a Model Hispanic Health Careers Opportunity Program (HCOP) under the authority of section 740, title VII of the Public Health Service Act, as amended by the Health Professions Education Extension Amendments of 1992, Pub. L. 102–408, dated October 13, 1992. Comments are invited on the proposed project requirements, review criteria and funding preference.

Approximately $300,000 will be available in FY 1995 for this program. It is anticipated that one competing award will be made at a level of $300,000 per year over a three year period.

Purpose and Eligibility

Section 740 authorizes the Secretary to make grants to and enter into contracts with schools of allopathic medicine, osteopathic medicine, public health, dentistry, veterinary medicine, optometry, pharmacy, allied health, chiropractic and podiatric medicine and public and nonprofit private schools which offer graduate programs in clinical psychology and other public or private nonprofit health or educational entities to carry out programs which assist individuals from disadvantaged backgrounds to enter and graduate from such schools. Assistance may be used for the following five legislative purposes:

1. Recruitment—activities designed to identify, recruit and select individuals from disadvantaged backgrounds for education in the health or allied health professions, e.g., motivational activities, distribution of information, exposure to role models, and counseling.

2. Preliminary Education—education designed to expand the academic ability and otherwise prepare student participants from disadvantaged backgrounds during their preprofessional training that they may subsequently complete the regular course of education in a health professions school or school of allied health. This education must be offered prior to entry in a health professions or allied health professions school and may not include courses already taught as part of the regular course of education leading to a degree.

3. Facilitating Entry—activities designed to enhance the competitiveness of student participants from disadvantaged backgrounds for admission to health professions schools or schools of allied health, such as improving performance on admissions tests, counseling concerning the application process, and assisting admissions committees in the evaluation of disadvantaged applicants.

4. Retention—activities designed to help student participants from disadvantaged backgrounds, who have been accepted to or are enrolled in health professions schools or schools of allied health, to complete their education. These activities may include tutorial assistance, counseling, and assistance in adjusting to the environment of the school. Activities may not include courses already taught as part of the school's curriculum.

5. Financial Aid Information Dissemination—the distribution of information to student participants from disadvantaged backgrounds about financial aid available in health professions schools, schools of allied health or schools and entities which provide training necessary to qualify for enrollment in health professions schools or schools of allied health.

Applicants may request support for up to three years.

The Model Hispanic HCOP cooperative agreement is being proposed in an effort to achieve the following goals: (1) To establish and test a comprehensive Model Hispanic HCOP (addressing all of the HCOP purposes) in a metropolitan area with a high concentration of Hispanic citizens. No such model currently exists. In addition to the formulation of academic-community educational partnerships, this model provides for community infrastructure building. The proposed model encompasses strong linkages throughout the community involving community organizations, official agencies, educational institutions at all levels and health professionals throughout the community, and (2) To increase the number of Hispanic participants in HCOP programs.

This cooperative agreement also addresses section 740(c) of the HCOP legislation which requires "the Secretary to ensure that services and activities under HCOP awards are equitably allocated among the various racial and ethnic populations."

Proposed Project Requirements

I. The Model Hispanic HCOP will establish an educational continuum from high school graduation through graduation from a health or allied health professions school through development and implementation of activities related to all five of the legislative purposes.

II. A plan for selecting students including criteria for selection must be developed and implemented.

III. Activities related to all of the five legislative purposes undertaken must be evaluated. Modifications must be made in activities based on evaluation.

IV. Activities and experiences related to the establishment of the Model Hispanic HCOP must be documented in a format that would allow for future replication by HCOP applicants.

Substantial Federal Programmatic Involvement

It is anticipated that the federal government will have substantial programmatic involvement with the planning, development and administration of the Model Hispanic HCOP and its outputs by:

1. Providing technical assistance and reviewing changes needed in the approved application.

2. Reviewing and advising regarding training content and methodologies.

3. Participating in the review and advising regarding formal linkage arrangements which have been established for the purpose of conducting the Model Hispanic HCOP.

4. Reviewing the validity of and assisting in the modification of student participant selection criteria and processes.

5. Providing information relative to proven evaluation methods, including data collection methods, data analysis techniques and participant tracking systems.

6. Reviewing and advising regarding program evaluation methods, including data collection activities, data analysis techniques and participant tracking systems.

7. Reviewing and advising regarding the documentation of the activities and experiences related to establishment of the Model Hispanic HCOP.

8. Providing data and information about federal programs that may impact the Model Hispanic HCOP.

9. Participating in the review of sub-contracts awarded under the Cooperative Agreement.

National Health Objectives for the Year 2000

The Public Health Service urges applicants to submit work plans that address specific objectives of Healthy People 2000. Potential applicants may obtain a copy of *Healthy People 2000* (Full Report; Stock No. 017–001–00474–0) or *Healthy People 2000* (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service education programs and programs which provide comprehensive primary care services to the underserved.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products, and Pub. L. 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Proposed Review Criteria

The following criteria are proposed for review of applications for this program:

1. Compliance with the Standard Application Instructions for Form 6025–1, and the Supplement to Instructions for Form 6025–1.
2. The relationship of the proposed project to the purposes stated in the legislative authorization, the stated problem, the particular needs to be addressed, and the relevance of proposed objectives to the identified needs.
3. The extent and outcomes of past efforts and activities of the institution in conduct of disadvantaged student programs particularly for Hispanics and enrollment data on the target population (current and past three years) and the extent to which these data indicate trends.
4. The relevance of objectives to the stated problem and need, and to Model Hispanic HCOP purposes; their measurability and attainability within a specific time frame; and the extent to which they represent outcome measures.
5. The number of Hispanic individuals who can be expected to benefit from the project, types of participants by gender, metropolitan area, and educational level; the appropriateness of the proposed participant eligibility requirements and student selection criteria and process.
6. The specific activities and their scope and relevance to the stated objectives and project outcomes, and the appropriateness of these activities for Model Hispanic HCOP support along with the extent and nature of the academic content and non-academic services and their suitability to the needs of the target group.
7. The logic and sequencing of the planned approaches, soundness for delivery of academic content and non-academic services and appropriateness of scheduling and time allocation.
8. The administrative and managerial capability of the applicant to carry out the project in a cost effective manner considering the extent of past efforts and institutional commitment to disadvantaged students.
9. The adequacy of the staff and faculty to carry out the program; the academic and experiential background, and time commitment of key staff and faculty, the nature and level of their involvement, and their experience in working with the proposed target group.
10. The soundness of the budget for assuring effective utilization of cooperative agreement funds and the cost effectiveness of the proposed project; the compatibility of budget requests with program objectives and activities, the adequacy of the line item justifications, and the extent of the applicant's in-kind contributions.
11. Institutional or organizational plan for phasing-in income from other sources; developing self-sufficiency funding initiatives and strategies (after the end of the current federally funded project period); and achieving self-sufficiency based on a timetable and the level of financial support needed.
12. Extent to which project plans are transferable to other institutions.

Other Considerations

In addition, the following funding factor will be applied in determining funding of approved applications.

A funding preference is defined as the funding of a specific category or group of approved applications ahead of other categories or groups of approved applications.

It is not required that applicants request consideration for a funding factor. Applications which do not request consideration for funding factors will be reviewed and given full consideration for funding.

Proposed Funding Preference

A funding preference will be given to a nonprofit, accredited four-year undergraduate college or university:

1. Where Hispanic students constitute a minimum of 25 percent of the total enrollment at either the graduate or undergraduate level;
2. Which is located in a geographic area with a high concentration of Hispanic residents (approximately 20 percent of the area's total population) such as the following: Anaheim, Los Angeles, Riverside, San Diego and San Jose, California; Miami, Florida; Chicago, Illinois; Northern New Jersey; Long Island and New York City, New York; El Paso, Dallas, Fort Worth, Galveston, Houston, and San Antonio, Texas; and
3. Which is able to establish and document formal linkage arrangements with local community colleges, community health organizations and health professions and/or allied health professions schools.

"Hispanic" means a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish origin. The 25 percent minimum enrollment has been established through public notice and comment in the Centers of Excellence Program, authorized under section 739 of the PHS Act as representing a significant number of minority students.

Additional Information

Interested persons are invited to comment on the proposed project requirements, review criteria, and funding preference. The comment period is 30 days. All comments received on or before July 24, 1995, will be considered before the final project requirements, review criteria, and funding preference are established. Written comments should be addressed to: Mr. William J. Holland, Acting Director, Division of Disadvantaged Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8A–09, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Disadvantaged Assistance, Bureau of Health Professions, at the above address, weekdays (federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

Application Requests

Requests for application materials and questions regarding grants policy and business management issues should be directed to: Ms. Diane Murray, Grants Management Specialist, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C–26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6857 FAX: (301) 443–6343.

Completed applications should be returned to the Grants Management Branch at the above address.

If additional programmatic information is needed, please contact: Mr. Darl Stephens, Chief, Program Development Branch, Division of Disadvantaged Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8A–09, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone : (301) 443–3843 FAX: (301) 443–5242.

Paperwork Reduction Act

The standard application form PHS 6025–1, HRSA Competing Training Grant Application and General Instructions have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB Clearance Number is 0915–0060.

The deadline date for receipt of applications is August 7, 1995. Applications will be considered to be "on time" if they are either:

(1) *Received on or before* the established deadline date, or

(2) *Sent on or before* the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications not accepted for processing will be returned to the applicant.

This program, Model Hispanic HCOP, is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). This program is not subject to the Public Health System Reporting Requirements.

Dated: May 23, 1995.

Ciro V. Sumaya,

Administrator.

[FR Doc. 95–15279 Filed 6–21–95; 8:45 am]

BILLING CODE 4160–15–P

National Vaccine Injury Compensation Program: Revised Amount of the Average Cost of a Health Insurance Policy

The Health Resources and Services Administration is publishing an updated monetary amount of the average cost of a health insurance policy as it relates to the National Vaccine Injury Compensation Program (VICP).

Subtitle 2 of Title XXI of the Public Health Service Act, as enacted by the National Childhood Vaccine Injury Act of 1986 and as amended, governs the VICP. The VICP, administered by the Secretary of Health and Human Services (the Secretary), provides that a proceeding for compensation for a vaccine-related injury or death shall be initiated by service upon the Secretary and the filing of a petition with the United States Court of Federal Claims. In some cases, the injured individual may receive compensation for future lost earnings, less appropriate taxes and the "average cost of a health insurance policy, as determined by the Secretary."

Section 100.2 of the VICP's implementing regulations (42 CFR part 100) provides that revised amounts of an average cost of a health insurance policy, as determined by the Secretary, are to be published from time to time in a notice in the **Federal Register**. The previously published amount of an average cost of a health insurance policy was $183.86 per month (58 FR 52782, October 12, 1993); this amount was based on data from a survey by the Health Insurance Association of America, updated by a formula using changes in the medical care component of the Consumer Price Index (CPI) (All Urban Consumers, U.S. City average) for the period October 1, 1991, through June 30, 1993.

The Secretary announces that for the 12-month period, July 1, 1993, through June 30, 1994, the medical care component of the CPI increased 4.6 percent. According to the regulatory formula (§ 100.2), 2 percent is added to the actual CPI change for each year. Therefore, the adjusted CPI change results in an increase of 6.6 percent for this 12-month period. Applied to the baseline amount of $183.86, this results in the amount of $195.99.

The medical care component of the CPI change for the 6-month period, July 1, 1994, through December 31, 1994, was 2.3 percent. According to the regulatory formula, one-half of the annual adjustment, or 1.00 percent, is added to the actual CPI change for this 6-month period. Therefore, according to the current regulatory formula, the adjusted CPI change results in an increase of 3.3 percent for this 6-month period. Applied to the $195.99 amount, this results in a new amount of $202.46.

Therefore, the Secretary announces that the revised average cost of a health insurance policy under the VICP is $202.46 per month. In accordance with § 100.2, the revised amount was effective upon its delivery by the Secretary to the United States Court of Federal Claims (formerly known as the United States Claims Court). Such notice was delivered to the Court on May 19, 1995.

Dated: June 19, 1995.

Ciro V. Sumaya,

Administrator.

[FR Doc. 95–15345 Filed 6–21–95; 8:45 am]

BILLING CODE 4160–15–P

Office of Community Services

[Program Announcement No. OCS 95–09]

Request for Applications Under the Office of Community Services' Fiscal Year 1995 Training, Technical Assistance, and Capacity-Building Program

AGENCY: Office of Community Services, ACF, DHHS.

ACTION: Request for Applications Under the Office of Community Services' Training, Technical Assistance and Capacity-Building Program.

SUMMARY: The Office of Community Services (OCS) announces that competing applications will be accepted for new grants pursuant to the Secretary's authority under Section 674(a) of the Community Services Block Grant Act of 1981, as amended, the Human Services Amendments of 1994, (Pub. L. 103–252). This Program Announcement consists of seven parts. Part A covers information on the legislative authority and defines terms used in the Program Announcement. Part B describes the purposes and Priority Areas that will be considered for funding, and describes which organizations are eligible to apply in each Priority Area. Part C provides details on application prerequisites, amounts of funds available in each Priority Area, tentative numbers of grants to be awarded, etc. Part D provides information on application procedures including the availability of forms, where to submit an application, criteria for initial screening of applications, and project evaluation criteria. Part E provides guidance on the content of an application package and the application itself. Part F provides instructions for completing an

application. Part G details post-award requirements.

CLOSING DATES: The closing time and date of receipt of applications is 6:30 p.m. EDST on August 21, 1995. Applications received after 6:30 p.m. will be classified as late.

FOR FURTHER INFORMATION CONTACT: Mae Brooks, Office of Community Services, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447. You may also call (202) 401–9343. This Program Announcement is accessible on the OCS Electronic Bulletin Board for downloading through a computer modem by calling 1–800–627–8886. For assistance in accessing the Bulletin Board, A Guide to Accessing and Downloading is available from Ms. Minnie Landry at (202) 401–5309.

PART A—Preamble

1. Legislative Authority

Under Section 674(a) (1) and (2) of the Community Services Block Grant (CSBG) Act of 1981, as amended by the Human Services Amendments of 1994, Public Law 103–252, the Secretary of Health and Human Services is authorized to utilize a percentage of appropriated funds for training, technical assistance, planning, evaluation, and data collection activities related to programs or projects carried out under this subtitle. To carry out the above activities, the Secretary is authorized to make grants, or enter into contracts or cooperative agreements with eligible entities or with organizations or associations whose membership is composed of CSBG-eligible entities or agencies that administer programs for CSBG-eligible entities.

The process for determining the technical assistance, training and capacity-building activities to be carried out under this referenced section shall (a) ensure that the needs of community action agencies and programs relating to improving program quality, including financial management practices, are addressed to the maximum extent feasible; and (b) incorporate mechanisms to ensure responsiveness to local needs, including an ongoing procedure for obtaining input from the community action, State and national networks. Additionally, the OCS has established the CSBG Task Force on Monitoring and Assessment which has taken a comprehensive approach to monitoring which includes establishing national goals and outcome measures, reviewing data needs relevant to these outcome measures, and assessing technical assistance and training provided toward capacity building with the community action network, including community action agencies and related State and national associations.

2. Definitions of Terms

For purposes of this Program Announcement the following definitions apply:

Eligible entity means any organization which was officially designated as a community action agency (CAA) or a community action program under Section 673(1) of the Community Services Block Grant Act (CSBG), and meets all the requirements under Section 675(c)(3) of the CSBG Act. All eligible entities are current recipients of Community Services Block Grant funds, including Migrant and Seasonal Farmworker programs which received CSBG funding in the previous fiscal year (FY 1994). In cases where eligible entity status is unclear, final determination will be made by OCS/ACF.

Performance Measure is a tool used to objectively assess how a program is accomplishing its mission through the delivery of products, services, and activities.

Outcome Measures are indicators which focus on the impacts/improvements one wants to have on its customers; they must be primary and in compliance with Federal requirements.

Results-Oriented Management is an approach to monitoring and assessment that identifies measures of program success that are targeted to outcome measures.

Training is an educational activity or event which is designed to impart knowledge, understanding, or increase the development of skills. Such training activities may be in the form of assembled events such as workshops, seminars, conferences or programs of self-instructional activities.

Technical assistance is an activity, generally utilizing the services of an expert, aimed at enhancing capacity, improving programs and systems, or solving specific problems. Such services may be provided proactively to improve systems or as an intervention to solve specific problems. Services may be provided on-site, by telephone, or other communications systems.

State means all of the States and the District of Columbia. Except where specifically noted, for purposes of this Program Announcement, it also means Territory.

Territory refers to the Commonwealth of Puerto Rico, the American Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau.

Local service providers are the approximately 1,000 local public or private non-profit agencies that receive Community Services Block Grant funds from States to provide services to, or undertake activities on behalf of, low-income people.

Nationwide refers to the scope of the technical assistance, training, data collection, or other capacity-building projects to be undertaken with grant funds. Nationwide projects must provide for the implementation of technical assistance, training or data collection for all or a significant number of States, and the local service providers who administer CSBG funds.

Statewide refers to training, technical assistance and other capacity-building activities undertaken with grant funds and available to one or more community action agencies in a State, as needed and appropriate.

Community Services Network refers to the various organizations involved in planning and implementing programs funded through the Community Services Block Grant or providing training, technical assistance or support to them. The network includes local community action agencies, other eligible entities, State CSBG offices and their national association, CAA State, regional and national associations, and related organizations which collaborate and participate with community action agencies and other eligible entities in their efforts on behalf of low-income people.

Program technology exchange refers to the process of sharing expert technical and programmatic information, models, strategies and approaches among the various partners in the Community Services Network. This may be done through written case studies, guides, seminars, technical assistance, and other mechanisms.

Capacity-building refers to activities that assist community action agencies and programs to improve or enhance their overall or specific capability to plan, deliver, manage and evaluate programs efficiently and effectively to produce results. This may include upgrading internal financial management or computer systems, establishing new external linkages with other organizations, improving board functioning, adding or refining a program component or replicating techniques or programs piloted in another local community, or other cost effective improvements.

Part B—Purposes/Program Priority Areas

Section 674(a) (1) and (2) of the CSBG Act authorizes the Secretary of the Department of Health and Human Services to make grants, or to enter into contracts or cooperative arrangements with eligible entities or with organizations or associations whose membership is composed of eligible entities or agencies that administer programs for eligible entities for purposes of providing training, technical assistance, planning, evaluation, and data collection activities related to programs or projects carried out under the CSBG Act. Therefore, the principal purpose of this announcement is to stimulate and support the activities of planning training, technical assistance and data collection which strengthen the Community Services Network to affect results for low-income people. New and revised techniques and tools are needed to fundamentally change the way the network does business on a daily basis.

In addition to the changes in the 1994 CSBG Reauthorization Act, two other concepts which frame the technical assistance and training activities in this program announcement have converged to assist the Community Services Network in making this change: a) the Government Performance and Results Act of 1993 (Pub. L. 103–62), which requires Federal programs to determine and describe expected program outcomes; and b) the Community Services Block Grant Task Force on Monitoring and Assessment established by the Director of the OCS to develop a process to encourage the Community Services Network to manage for results. Thus, the importance of strong technical assistance, training, planning and data collection is essential to ensure a results-oriented strategy for the management and delivery of service to low-income people.

OCS is soliciting applications which implement these legislative mandates in a systematic manner on a nationwide or statewide basis, as appropriate to the Priority Area. OCS believes that identifying training and technical assistance needs requires substantial involvement of eligible entities at local, State and National levels. OCS also anticipates that the recipients of awards under this Program Announcement can be expected to implement the approved project(s) without substantial federal agency involvement and direction. Therefore, funds will be provided in the form of grants. The major Priority Areas of the Office of Community Services' Fiscal Year 1995 Training, Technical Assistance, and Capacity-Building Program are as follows:

Priority Area 1.0: Training and Technical Assistance for the Community Services Network

Sub-Priority Areas:

1.1 Training and Technical Assistance to Enhance Community Action Agencies' (CAAs') and Other Local Service Providers' Capacity;
1.2 T&TA to CAA State and Regional Associations;
1.3 Replication of Pilot Training and/or Service Delivery Projects;
1.4 Provision of Coordinated Peer-to-Peer TA Strategies for CAAs Experiencing Programmatic, Administrative and/or Fiscal Problems;
1.5 TA to Develop Collaborative Projects between CAAs and Other Organizations Serving Low-Income Veterans and Their Communities; and
1.6 TA to Develop Special Initiatives Between CAAs and Organizations Addressing Urban Problems.

Priority Area 2.0: Data Collection, Analysis, Dissemination, and Utilization

Sub-Priority Areas:

2.1 Collection, Analysis, and Dissemination of Information on CSBG Activities Nationwide;
2.2 CAAs and Technology and;
2.3 Community Action Network Program Technology Exchange.

Priority Area 1.0: Training and Technical Assistance for the Community Services Network

This Priority Area addresses the development and implementation of coordinated, comprehensive nationwide or, where appropriate, statewide training and/or technical assistance programs to assist State CSBG staff, staff of state and regional organizations representing eligible entities, and staff of local service providers which receive funding under the CSBG Act, to acquire the skills and knowledge needed to plan, administer, implement, monitor, and evaluate programs designed to ameliorate the causes of poverty in local communities. Programs should include the provision of training and/or technical assistance to State staff, CAA associations, and/or staff of local service providers statewide or nationwide and a description of collaboration with State CSBG staff and local service providers.

Sub-Priority Area 1.1: Training and Technical Assistance to Enhance Community Action Agencies' (CAAs) and Other Local Service Providers' Capacity

While all organizations within the Community Services Network need to be strengthened to perform their respective functions efficiently and effectively, local service providers' performance is the ultimate measure of the effectiveness of CSBG funds. The purpose of this Sub-Priority Area is to provide funding for the development and implementation of a comprehensive nationwide training and/or technical assistance program to assist staff and boards of local service providers which receive funding under CSBG to acquire the skills and knowledge needed to administer and implement effective anti-poverty programs in their communities. This may include workshops, seminars and conferences, development and dissemination of newsletters and educational materials, individual or group technical assistance, and other proposed activities determined to be consistent with the purposes stated above. This program should be planned and conducted in cooperation with State CSBG Directors and local service providers.

Sub-Priority Area 1.2: Training and Technical Assistance to CAA State and Regional Associations

State and regional non-profit membership organizations whose memberships are comprised of eligible entities are an important technical resource and coordination vehicle for local community action agencies and other eligible entities. However, according to local and state surveys, these organizations need to be strengthened as does their capacity to effectively and efficiently facilitate the exchange of critical information among eligible entities within and among States and regions. Under this Sub-Priority Area, funds will be provided to a national, private, non-profit organization whose membership is composed of community action agencies and other eligible entities and which has the experience and expertise to develop and implement a systematic program of technical assistance on a nationwide basis. It is suggested that this technical assistance be designed to build the capacities of State and regional CAA associations so that they can provide timely, effective, state-of-the-art technical assistance to local eligible entities. Funds might also be used to assist select State and regional CAA associations to identify case studies of exemplary programs, strategies, and initiatives that effectively address issues of poverty in their States. This information could be disseminated either statewide or nationwide so the Community Services Network may learn from effective approaches and strategies utilized in other States. Facilitation of

such information exchange will help eligible entities to keep up, avoid duplication of effort, (i.e., reinventing the wheel) or advance the knowledge base by making this available so that the CAA network can learn about and adopt effective approaches to service delivery and results-oriented management.

Sub-Priority Area 1.3: Replication of Pilot Training and/or Service Delivery Projects

The purpose of this Sub-Priority Area is to further the capacity of eligible entities to deliver and manage services to low-income people. This purpose is in keeping with the guideline approach recommended by the CSBG Task Force on Monitoring and Assessment that Agencies Increase Their Capacity To Achieve Results. Many organizations in the Community Action network have initiated projects based on new and creative concepts related to training and or social services delivery which require additional resources for further development in order to be replicable on a nationwide basis by other organizations in the network. In order to hasten the utilization of these innovative training and service projects, OCS is proposing to fund a number of applications which address innovations in the areas of: capacity building; services integration; team building; family development; and self-sufficiency/family functioning projects which include scales or ladder development.

Sub-Priority Area 1.4: Provision of Coordinated Peer-to-Peer TA for CAAs Experiencing Programmatic, Administrative and/or Fiscal Problems

The purpose of this Sub-Priority Area is to fund an organization to develop and implement strategies to provide coordinated, timely peer-to-peer technical assistance and crisis aversion intervention strategies for CAAs which have identified themselves as experiencing programmatic, administrative and/or fiscal problems. Such technical assistance should be designed to prevent problems from deteriorating into crisis situations that would threaten the capacity of CAAs to provide quality services to their communities. In agreement with the chosen CAAs, this grantee will coordinate and deploy the technical assistance resources of experienced individuals within the Community Services Network and other resource experts as may be necessary to assist in the identification and resolution of problems, through necessary actions, including training, to ensure that relevant and timely assistance is provided. Such technical assistance may be requested to assist the agency in resolving adverse program monitoring or audit findings, improving or upgrading financial management systems to prevent losses of funds, averting serious deterioration of the boards of directors, or other immediate assistance to CAAs as requested. To the extent feasible, the grantee may be expected to develop an expert technical assistance resourec bank of experienced individuals from the Community Action Network who may be deployed to provide peer technical assistance.

Sub-Priority Area 1.5: Technical Assistance to Develop Collaborative Projects Between CAAs and Other Organizations Serving Low-Income Veterans and Their Communities

With the downsizing of the U.S. military, thousands of low-income veterans are returning to civilian life ill-prepared to compete in an increasingly complex, technological economy. Many of these veterans are returning to low-income communities facing industry layoffs and struggling with high poverty rates, homelessness, drugs, and violence. To address this situation, CAAs can assist low-income veterans to attain empowering roles by providing technical assistance to low-income veterans to enable them to learn new skills and to draw from their military experiences to help local communities address issues of violence and poverty. This special initiative will facilitate the transfer of knowledge and collaboration between CAAs and other organizations to improve services to low-income veterans and their communities. This priority area is particularly geared to providing technical assistance to organizations which serve low-income veterans on a nationwide basis. Applicants are encouraged to develop applications in collaboration with at least one other national private, non-profit organization which has a substantial track record in formulating strategies to improve conditions in low-income communities.

Sub-Priority Area 1.6: Technical Assistance to Develop Special Initiatives Between CAAs and Organizations Addressing Urban Problems

Issues of crime, violence, drug abuse, unemployment, poverty, family breakdown, and inadequate education and training of many young people to attain productive employment in an increasingly technological labor market, threaten the safety and viability of many urban communities. These multi-faceted problems cannot be solved by CAAs alone. This project will provide technical assistance to assist CAAs in developing and implementing collaborative community-wide strategies, effective organizational working relationships, and special initiatives among CAAs and other organization(s) focusing on issues of crime, violence, family breakdowns, drug abuse and poverty. Emphasis will be on assisting CAAs to bring together the various community, business, labor, voluntary, educational, civil rights, and governmental sectors required to develop model local strategies to improve conditions in low-income, urban communities. Applicants are encouraged to develop applications in collaboration with at least one other national private, non-profit organization which has a substantial track record in formulating strategies to improve conditions in low-income urban communities.

Priority Area 2.0: Data Collection, Analysis, Dissemination and Utilization

The purpose of this Priority Area is to fund a project to improve the collection, analysis, dissemination and utilization of data and information on CSBG activities and effective approaches to ameliorating poverty. This includes the development of a CSBG data collection instrument and collection, analysis and dissemination of information on FY 1994 CSBG Programs on a nationwide basis through a process that relies on voluntary State cooperation. The information should be comprehensive enough and disseminated in such formats as to enable State and local service providers to improve their planning, management and delivery of services and to assure that the general public has a clear understanding of those programs and their outcomes. This Priority Area also includes an assessment of the current status of the data and computer system technology of community action agencies and other partners in the Community Services Network for two specific objectives: (1) Their ability to participate in the information highway, and (2) their ability to use and disseminate data, research, and information regarding poverty issues, particularly activities and outcomes of the Community Services Network.

Sub-Priority Area 2.1: Collection, Analysis and Dissemination of Information on the CSBG Activities Nationwide

The purposes of this Sub-Priority Area are two-fold: (1) To provide accurate, reliable and comparable data from the Community Services Network nationwide; and (2) to ensure that applicable research data regarding the conditions of poverty necessary for framing program design and organizational management are available to the Community Services Network. The first purpose will be assisted by the development or continuous improvement of a process for data collection, analysis, training, monitoring, reporting and dissemination of CSBG and CAA best practices and programs information. Coordination and collaboration of all Federal, State and local level partners within the Community Services Network are critical to the implementation of this Priority Area. The second purpose relates to the collection and dissemination of evaluation or research data. Valuable research on poverty issues provides information on the context of the conditions in which low-income people live. The CSBG Task Force on Monitoring and Assessment, in response to the CSBG legislative authority, has established a results-oriented goal to improve the conditions in which low income people live. Several performance measures have been set forth which assess incremental change in these conditions. Dissemination of research data which provides the framework for program planning and organizational improvements is critical to effective service provision. Also, some consistent track record in the collection, analysis and dissemination of CSBG and other poverty-related data is important to the effectiveness of this priority

Priority Area 2.2: CAAs' and Technology

To promote management efficiency and program productivity, it is essential that local CAAs and other partners in the Community Services Network participate in new and appropriate information systems technologies. The purpose of this Sub-Priority Area is to fund a comprehensive assessment of the computer technology capability of state CSBG offices and eligible entities to participate in the Information Super Highway. This assessment is needed to determine future hardware, software, training and development needs of the Community Services Network. This project also will entail funding for the development of a training and technical assistance capacity to enable the Community Services Network to replicate currently piloted computer-based, multi-media, community workstation projects and to build an in-house capacity to provide technical assistance and training to additional CAAs to participate in integrated service delivery networks. Collaboration on the national level is an essential ingredient to the objective of this priority.

Sub-Priority Area 2.3: Community Services Network Program Technology Exchange

Many CAAs and other eligible entities have developed effective model programs or techniques which address various aspects of poverty. These models/techniques need to be shared more broadly within the Community Services Network and with other sectors of the community so other organizations may learn from and adapt these successful program models. This project will provide funds to State CSBG offices, CAA State or regional associations, or CAAs or other eligible entities for projects which would transfer program technology in specific areas of expertise to other organizations. These areas may include economic development, community development, youth violence prevention and conflict resolution, partnerships for resources, education and training, technical advances, and other areas. Activities to exchange information and program technology may include development and dissemination of case studies or best practices, how-to guides and other publications, workshops and seminars, training and technical assistance, etc. Eligible applicants are eligible entities, organizations or associations whose membership is composed of eligible entities or agencies that administer programs for eligible entities. See Part F, Section 4, for special instructions on developing a work program. Applicants must be able to demonstrate that the projects and program models they wish to share are effective and produce results.

Part C—Application Prerequisites

1. Eligible Applicants

In general, eligible applicants under the various Priority Areas in this Program Announcement are restricted to "eligible entities" as defined in Section A or organizations or associations whose membership is composed of eligible entities or agencies that administer programs for eligible entities or with organizations or associations whose membership is composed of eligible entities or agencies that administer programs for eligible entities for purposes of providing training, technical assistance, planning, evaluation, and data collection activities related to programs or projects carried out under the CSBG Act.

2. Availability of Funds

The total amount of funds available for grant awards under this Program Announcement in FY 95 is $3,675,000; amounts available and numbers of grants under each Sub-Priority Area stated in Part B are as follows:

Sub-Priority Area	Grant amounts	Estimated No. of grants
1.1 T&TA to Enhance CAAs' and Other Service Providers' Capacity	300,000	1
1.2 T&TA to CAA State and Regional Associations	1,000,000	1
1.3 Replication of Pilot Training and/or Service Delivery Projects	1,000,000	1–4
1.4 Provision of Coordinated Peer-to-Peer TA Strategies for CAAs Experiencing Programmatic, Administrative and/or Fiscal Problems.	75,000	1
1.5 TA to Develop Collaborative Projects between CAAs and Other Organizations Serving Low-Income Veterans and Their Communities.	100,000	1
1.6 TA to Develop Special Initiatives Between CAAs and Organizations Addressing Urban Problems	100,000	1
2.1 Collection, Analysis, and Dissemination of Information on the CSBG Activities Nationwide	250,000	1
2.2 CAAs and Technology	550,000	1
2.3 Community Action Network Program Technology Exchange	300,000	Up to 12.
TOTAL	$3,675,000	Up to 23.

Grant amounts under priority 1.3 will be up to $300,000; Grant amounts under priority 2.3 will not exceed $25,000.

3. Project and Budget Periods

For most projects, the Office of Community Services (OCS) will grant funds for 12-months project. However, in rare instances, depending on the characteristics of any individual project and on the justification presented by the applicant in its application, a grant may be made for a period of up to 17 months. The application must clearly demonstrate that the project work plan will achieve measurable results and can be successfully completed within the stated project period.

4. Project Beneficiaries

The overall intended beneficiaries of the projects to be funded under this Program Announcement are the various "partners" in the Community Services Network. Specific beneficiaries are indicated under each Sub-Priority Area in Part B. It is the intent of OCS, through funding provided under this Program Announcement, to significantly strengthen the capacity of State and regional CAA associations to provide technical assistance and support to local service providers; to strengthen the capacity of State CSBG offices to collect and disseminate accurate and reliable data and to provide support for local service providers; and to enhance the capacities of local service providers themselves. The ultimate beneficiaries of improved program management, data and information collection and dissemination, and service quality of local service providers are low-income individuals, families, and communities.

5. Sub-Contracting or Delegating Projects

OCS will not fund any project where the role of the applicant is primarily to serve as a conduit for funds to organizations other than the applicant. This prohibition does not bar the making of subgrants or subcontracting for specific services or activities needed to conduct the project. However, the applicant must have a substantive role in the implementation of the project for which funding is requested.

6. Number of Projects in Application

Separate applications must be made for each Sub-Priority Area. The Sub-Priority Area must be clearly identified by title and number.

7. Project Evaluations

Each application must include an assessment/self evaluation to determine the degree to which the goals and objectives of the project are met.

Part D—Application Procedures

1. Availability of Forms

Attachments A, B and C contain all of the standard forms necessary for the application for awards under these OCS programs. These forms may be photocopied for use in developing the application.

Copies of the **Federal Register** containing this announcement are available at most local libraries and Congressional District Offices for reproduction. If copies are not available at these sources, they may be obtained by writing or telephoning the office listed under the section entitled **FOR FURTHER INFORMATION** at the beginning of this announcement. A copy is also available on the OCS Electronic Bulletin Board. (See **FOR FURTHER INFORMATION** section.) For purposes of this announcement, all applicants will use SF–424, SF–424A, and SF–424B, Attachments A, B. and C. Instructions for completing the SF–424, SF–424A, and SF–424B are found in Part F of this announcement.

Part F also contains instructions for the project narrative. The project narrative will be submitted on plain bond paper along with the SF–424 and related forms.

Attachment I provides a checklist to aid applicants in preparing a complete application package for OCS.

2. Application Submission

Refer to the section entitled Closing Date at the beginning of this Program Announcement for the last day on which applications should be submitted. To be considered as meeting the deadline, applications must be received before 6:30 p.m. EDST on the deadline date at the ACF Office of Financial Management, Division of Discretionary Grants, 6th Floor OFM/DDG, 370 L'Enfant Promenade, S.W., Washington, D.C. 20047. Applications may be mailed to: Administration for Children and Families, Division of Discretionary Grants, 6th Floor OFM/DDG, OCS–95–09, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447

Hand-delivered applications are accepted during normal working hours of 8:00 a.m. to 6:30 p.m., Monday through Friday, except legal holidays, on or prior to the established closing date at: Administration for Children and Families, Division of Discretionary Grants, OCS–95–09, Sixth Floor, ACF Guard Station, 901 D street, S.W., Washington, D.C. 20447

Applications which are not physically received on or before the closing date are considered late applications. The ACF Division of Discretionary Grants will notify each late applicant that its application will not be considered in this competition.

The ACF may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc. or when there is a disruption of the mails. However, if the ACF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

Applications, once submitted, are considered final and no additional materials will be accepted.

One signed original application and one copy should be submitted.

3. Intergovernmental Review

This program is covered under Executive Order 12372, Intergovernmental Review of Federal Programs and 45 CFR part 100, Intergovernmental Review of Department of Health and Human Services Programs and Activities. Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Minnesota, Montana, Nebraska, Oklahoma, Oregon, Pennsylvania, South Dakota, Virginia, Washington, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these nineteen jurisdictions need take no action regarding E.O. 12372.

Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions, so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424A, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline date to comment on proposed new awards. These comments are reviewed as a part of the award process. Failure to notify the SPOC can result in a delay in grant award.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the accommodate or explain rule under 45 CFR 100.10.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, OCS–95–09, 6th Floor, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447.

A list of the Single Points of Contact for each State and Territory is included as Attachment G to this announcement.

4. Application Consideration

Applications which meet the screening requirements in Sections 5a and 5b below will be reviewed competitively. Such applications will be referred to reviewers for a numerical score and explanatory comments based solely on responsiveness to program guidelines and evaluation criteria published in this announcement.

Applications will be reviewed by persons outside of the OCS unit which would be directly responsible for programmatic management of the grant. The results of these reviews will assist OCS in considering competing applications. Reviewers' scores will weigh heavily in funding decisions but will not be the only factors considered. Applications will be ranked and generally considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding since other factors deemed relevant may be considered including, but not limited to, the timely and proper completion of projects funded with OCS funds granted in the past 5 years; comments of reviewers and government officials; staff evaluation and input; geographic distribution; previous program performance of applicants; compliance with grant terms under previous DHHS grants; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowances on OCS or other Federal agency grants.

OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to ascertain the applicant's performance record.

5. Criteria for Screening Applications

a. Initial Screening

All applicants will receive an acknowledgement with an assigned identification number. This number, along with any other identifying codes, must be referenced in all subsequent communications concerning the application. If an acknowledgement is not received within two weeks after the deadline date, please notify ACF by telephone at (202) 401–9365. All applications that meet the published deadline for submission will be screened to determine completeness and conformity to the requirements of this announcement. Only those applications meeting the following requirements will be reviewed and evaluated competitively. Others will be returned to the applicants with a notation that they were unacceptable.

(1) The application must contain a Standard Form 424 Application for Federal Assistance (SF–424), a budget (SF–424A), and signed Assurances (SF–424B) completed according to instructions published in Part F and Attachments A, B, and C of this program announcement.

(2) A project narrative must also accompany the standard forms.

(3) The SF–424 and the SF–424B must be signed by an official of the organization applying for the grant who has authority to obligate the organization legally.

b. Pre-rating Review

Applications which pass the initial screening will be forwarded to reviewers and/or OCS staff to verify, prior to the programmatic review, that the applications comply with this Program Announcement in the following areas:

(1) *Eligibility:* Applicant meets the eligibility requirements found in Part B. Applicant also must be aware that the applicant's legal name as required on the SF 424 (Item 5) *must match* that listed as corresponding to the Employer Identification Number (Item 6).

(2) *Duration of Project:* The application contains a project that can be successfully implemented in the project period.

(3) *Target Populations:* The application clearly targets the specific outcomes and benefits of the project to State staff administering CSBG funds, CAA state or regional associations, and/or local providers of CSBG-funded services and activities. Benefits to low-income consumers of CSBG services also must be identified.

(4) *Program Focus:* The application must address development and implementation of nationwide or statewide comprehensive activities as described in Part B of this document for each Priority Area. While some technical assistance activities will focus on individual eligible entities, the applicant must be able to develop a system to offer such services on a nationwide or statewide basis to many eligible entities.

An application may be disqualified from the competition and returned to the applicant if it does not conform to one or more of the above requirements.

c. Evaluation Criteria

Applications which pass the pre-rating review will be assessed and scored by reviewers. Each reviewer will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and major weaknesses under each applicable criterion published in this announcement.

The in-depth evaluation and review process will use the following criteria coupled with the specific requirements contained in Part B.

Criteria for Review and Evaluation of Applications Submitted Under This Program Announcement

(1) Criterion I: Need for Assistance (Maximum: 20 points)

(a) The application documents that the project addresses vital needs related to the purposes stated under Sub-Priority Areas discussed in this Program Announcement (Part B) and provides statistics and other data and information in support of its contention. (0–10 points).

(b) The application provides current supporting documentation or other testimonies regarding needs from *State* CSBG Directors, local service providers and/or State and Regional organizations of local service providers. (0–10 points)

(2) Criterion II: Work Program (Maximum: 30 points)

(a) Goals are appropriately related to needs and are specific and measurable. (0–10 points)

(b) Activities are comprehensive and statewide or nationwide in scope depending on Sub-Priority Area, and adequately described and appropriately related to goals. (0–10 points)

(c) Time frames and chronology of key activities are realistic. (0–2 points)

(d) The plan for conducting an assessment/self evaluation that will determine the degree to which the stated goals and objectives of the project are achieved is adequate and workable and/or the plan for disseminating the information resulting from the project to CSBG grantees, local service providers, and other interested parties is workable and assures that all relevant parties are included in the dissemination. (0–8 points)

(3) Criterion III: Significant and Beneficial Impact (Maximum 15 points)

Applicant adequately describes how the project will assure long-term program and management improvements for State CSBG offices, CAA state associations, and/or local providers of CSBG services and activities.

(4) Criterion IV: Evidence of Significant Collaborations (Maximum 10 Points)

A new performance-based paradigm is replacing a compliance-based approach to managing CSBG programs. Under this new approach, development and strengthening of collaborative working relationships among all eligible entities in the Community Services Network and with other related organizations is emphasized. OCS does not believe that the Priority Areas in this Program Announcement can be effectively carried out without collaboration and cooperation. Thus, cooperation and collaboration within the Community Services Network and with other organizations relevant to the Priority Area must be documented in the application.

(5) Criterion V: Ability of Applicant to Perform (Maximum: 20 points)

(a) The application demonstrates that the applicant has experience and a successful track record relevant to the activities that it proposes to undertake. (0–10 points)

(b) The applicant's proposed project director and primary staff are well qualified and their professional experiences are relevant to the successful implementation of the proposed project. (0–10 points)

(6) Criterion VI: Adequacy of Budget (Maximum: 5 points)

(a) The resources requested are reasonable and adequate to accomplish the project. (0–3 points)

(b) Total costs are reasonable and consistent with anticipated results. (0–2 points)

Part E—Contents of Application and Receipt Process

1. Contents of Application

Each application should include one original and one additional copy of the following:

a. A completed Standard Form 424 which has been signed by an official of the organization applying for the grant who has authority to obligate the organization legally. The applicant must be aware that, in signing and submitting the application for this award, it is certifying that it will comply with the Federal requirements concerning the drug-free workplace and debarment regulations set forth in Attachments D and E.

b. Budget Information—Non-Construction Programs (SF–424A).

c. A filled out, signed and dated Assurances—Non-Construction Programs (SF–424B), Attachment C.

d. Restrictions on Lobbying—Certification for Contracts, Grants, Loans, and Cooperative Agreements: fill out, sign and data form found at Attachment F.

e. Certification Regarding Environmental Tobacco Smoke found at Attachment—sets forth the Federal certification requirement. The applicant is certifying that it will comply by signing and submitting the SF–424.

f. Disclosure of Lobbying Activities, SF–LLL: fill out, sign and date form found at Attachment F, as appropriate.

g. A Project Abstract describing the proposal in 200 characters or less.

h. A Project Narrative consisting of the following elements preceded by a consecutively numbered Table of Contents that will describe the project in the following order:

(i) Need for Assistance
(ii) Work Program
(iii) Significant and Beneficial Impact
(iv) Evidence of Significant Collaborations
(v) Ability of Applicant to Perform
(vi) Appendices including proof of non-profit status, such as IRS determination of non-profit status, where applicable; relevant sections of By-Laws, Articles of Incorporation, and/or statement from appropriate State CSBG office which confirms eligibility; Certification Regarding Anti-Lobbying Activities; resumes; Single Point of Contact Comments, where applicable; and any partnership/collaboration agreements etc.

The original must bear the signature of the authorizing official representing the applicant organization. The total number of pages for the entire application package should not exceed 30 pages, including appendices. Pages should be numbered sequentially throughout. If appendices include photocopied materials, they must be legible. Applications should be two-hole punched at the top center and fastened separately with a compressor slide paper fastener or a binder clip. The submission of bound applications or applications enclosed in a binder is specifically discouraged.

Applications must be uniform in composition since OCS may find it necessary to duplicate them for review purposes. Therefore, applications must be submitted on white 8½ x 11 inch paper only. They must not include colored, oversized or folded materials. Do not include organizational brochures or other promotional materials, slides, films, clips, etc. in the proposal. They will be discarded if included.

Part F—Instructions for Completing Application Package

(Approved by the OMB under Control Number 0970–0062) The standard forms attached to this Announcement shall be used when submitting applications for all funds under this Announcement.

It is recommended that the applicant reproduce the SF–424 (Attachment A), SF–424A (Attachment B), SF–424B (Attachment C) and that the application be typed on the copies. If an item on the SF–424 cannot be answered or does not appear to be related or relevant to the assistance requested, the applicant should write NA for Not Applicable.

The application should be prepared in accordance with the standard instructions in Attachments A and B corresponding to the forms, as well as the specific instructions set forth below:

1. SF–424 Application for Federal Assistance Item

1. For the purposes of this Program Announcement, all projects are considered Applications; there are no Pre-Applications.

5 and 6. The legal name of the applicant must match that listed as corresponding to the Employer Identification Number. Where the applicant is a previous Department of Health and Human Services grantee, enter the Central Registry System Employee Identification Number (CRS/EIN) and the Payment Identifying Number, if one has been assigned, in the Block entitled Federal Identifier located at the top right hand corner of the form.

7. If the applicant is a non-profit corporation, enter N in the box and specify non-profit corporation in the space marked Other. Proof of non-profit status such as IRS determination, Articles of Incorporation, or by-laws, must be included as an appendix to the project narrative.

8. For the purposes of this announcement, all applications are New.

9. Enter DHHS—ACF/OCS.

10. The Catalog of Federal Domestic Assistance number for the OCS program covered under this announcement is 93.032.

11. In addition to a brief descriptive title of the project, the following Priority Area designations must be used to indicate the Priority and Sub-Priority Areas for which funds are being requested:

CB—Sub-Priority 1.1—T&TA to Enhance CAA and Other Local Service Providers' Capacity;

CR—Sub-Priority 1.2—T&TA to CAA State and Regional Associations;

PT—Sub-Priority 1.3—Replication of Pilot Training and/or Service Delivery Projects;

PP—Sub-Priority 1.4—Provision of Coordinated Peer-to-Peer TA for CAAs Experiencing Programmatic, Administrative and/or Fiscal Problems;

VT—Sub-Priority 1.5—TA to Develop Collaborative Projects between CAAs and Other Organizations Serving Low-Income Veterans and their Communities; and

UI—Sub-Priority 1.6—TA to Develop Special Initiatives Between CAAs and Organization Addressing Urban Problems;

IS—Sub-Priority 2.1—Collection, Analysis, and Dissemination of Information on CSBG Activities Nationwide;

CT—Sub-Priority 2.2—CAAs' Computer Technology; and

NT—Sub-Priority 2.3—Community Action Network Program Technology Exchange.

The title is Office of Community Services' Discretionary CSBG Awards—Fiscal Year 1995 Training, Technical Assistance, and Capacity-Building Program.

15a. For purposes of this announcement, this amount should reflect the amount requested for the entire project period.

15b–e. These items should reflect both cash and third party in-kind contributions for the total project period.

2. SF–424A—Budget Information-Non-Construction Programs

See instructions accompanying this page as well as the instructions set forth below:

In completing these sections, the Federal Funds budget entries will relate to the requested OCS Training and Technical Assistance Program funds only, and Non-Federal will include mobilized funds from all other sources—applicants, State, and other. Federal funds, other than those requested from the Training and Technical Assistance Program, should be included in Non-Federal entries.

Sections A and D of SF–424A must contain entries for both Federal (OCS) and non-Federal (mobilized funds).

Section A—Budget Summary

Line 1–4
Col. (a):

Line 1 Enter OCS Training and Technical Assistance Program;
Col. (b):
Line 1 Enter 93.032.
Col. (c) and (d): Not Applicable
Col. (e)–(g):

For each line 1–4, enter in columns (e), (f) and (g) the appropriate amounts needed to support the project for the entire project period.

Line 5 Enter the figures from Line 1 for all columns completed, (e), (f), and (g).

Section B—Budget Categories

This section should contain entries for OCS funds only. For all projects, the first budget period of 12 months will be entered in Column #1. Allowability of costs is governed by applicable cost principles set forth in 45 CFR Parts 74 and 92.

A separate itemized budget justification should be included to explain fully and justify major items, as indicated below. The budget justification should immediately follow the Table of Contents.

Column 5: Enter total requirements for Federal funds by the Object Class Categories of this section.

Line 6a–Personnel: Enter the total costs of salaries and wages.

Justification

Identify the project director. Specify by title or name the percentage of time allocated to the project, the individual annual salaries and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

Line 6b—Fringe Benefits: Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate which is entered on line 6j.

Justification

Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate.

Line 6c—Travel: Enter total cost of all travel by employees of the project. Do not enter costs for consultant's travel.

Justification

Include the name(s) of traveler(s), total number of trips, destinations, length of stay, mileage rate, transportation costs and subsistence allowances.

Line 6d—Equipment: Enter the total costs of all non-expendable personal property to be acquired by the project. Equipment means tangible non-expendable personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit.

Justification

Equipment to be purchased with Federal funds must be required to conduct the project, and the applicant organization or its subgrantees must not already have the equipment or a reasonable facsimile available to the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

Line 6e—Supplies: Enter the total costs of all tangible personal property (surplus) other than that included on line 6d.

Line 6h—Other: Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to, insurance, food, medical and dental costs (noncontractual), fees and travel paid directly to individual consultants, local transportation (all travel which does not require per diem is considered local travel), space and equipment rentals, printing and publication, computer use training costs including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Line 6j—Indirect Charges: Enter the total amount of indirect costs. This line should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services or other Federal agencies. With the exception of States and local governments, applicants should enclose a copy of the current approved rate agreement if it was negotiated with a Federal agency other than the Department of Health and Human Services. For an educational institution the indirect costs on training grants will be allowed at the lesser of the institution's actual indirect costs or 8 percent of the total direct costs.

If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the pertinent *DHHS Guide for Establishing Indirect Cost Rates*, and submit it to the appropriate DHHS Regional Office.

It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool cannot be also budgeted or charged as direct costs to the grant.

The total amount shown in Section B, Column (5), Line 6k, should be the same as the amount shown in Section A, Line 5, Column (e).

Line 7—Program Income: Enter the estimated amount of income, if any,

expected to be generated from this project. Separately show expected program income generated from OCS support and income generated from other mobilized funds. Do not add or subtract this amount from the budget total. Show the nature and source of income in the program narrative statement.

Column 5: Carry totals from Column 1 to Column 5 for all line items.

Justification

Describe the nature, source and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources

This section is to record the amounts of Non-Federal resources that will be used to support the project. Non-Federal resources mean other than OCS funds for which the applicant has received a commitment. Provide a brief explanation, on a separate sheet, showing the type of contribution, broken out by Object Class Category (See Section B.6), and whether it is cash or third-party in-kind. The firm commitment of these required funds must be documented and submitted with the application.

Except in unusual situations, this documentation must be in the form of letters of commitment or letters of intent from the organization(s)/individuals from which funds will be received.

Line 8—

Col. (a): Enter the project title.

Col. (b): Enter the amount of cash or donations to be made by the applicant.

Col. (c): Enter the State contribution.

Col. (d): Enter the amount of cash and third party in-kind contributions to be made from all other sources.

Col. (e): Enter the total of columns (b), (c), and (d). Lines 9, 10, and 11 should be left blank.

Line 12—Carry the total of each column of Line 8, (b) through (e).

The amount in Column (e) should be equal to the amount on Section A, Line 5, Column (f).

Justification

Describe third party in-kind contributions, if included.

Section D—Forecasted Cash Needs

Line 13—Enter the amount of Federal (OCS) cash needed for this grant, by quarter, during the first 12 month budget period.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the total of Lines 13 and 14.

Section F—Other Budget Information

Line 21—Include narrative justification required under Section B for each object class category for the total project period.

Line 22—Enter the type of HHS or other Federal agency approved indirect cost rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied and the total indirect expense. Also, enter the date the rate was approved, where applicable. Attach a copy of the approved rate agreement if it was negotiated with a Federal agency other than the Department of Health and Human Services.

Line 23—Provide any other explanations and continuation sheets required or deemed necessary to justify or explain the budget information.

3. SF–424B Assurances Non-Construction

All applicants must sign and return the Assurances found at Attachment C with their application.

4. Project Narrative

Each narrative section of the application must address one or more of the focus areas described in Part B and follow the format outlined below.

a. Need for Assistance
b. Work Program
c. Significant and Beneficial Impact
d. Evidence of Significant Collaborations
e. Ability of the Applicant to Perform

a. *Need for Assistance.* The application should identify the problem area(s) in which State organizations receiving CSBG funds and/or local service providers which receive CSBG funds as subgrantees from States are seeking assistance and how those needs were identified. Applicants also should provide current supporting-documentation or other testimonies from *State* CSBG Directors and *local* service providers or State and Regional organizations of local service providers, as appropriate, regarding need for the proposed project.

b. *Work Program.* The application must contain a detailed and specific work program that is both sound and feasible. Applicants must address how the proposed project will carry out the legislative mandate and the program activities found in Part B. This section of the narrative must include the goals of the project related to the needs, the activities that they propose to carry out to address those goals, the methods by which they will carry out those activities, and the plan for disseminating products resulting from the project, where appropriate. Project activities must be described in a quantitative manner, e.g. number of training days, number of workshops, number of persons to be trained, number of local services providers to be impacted, materials to be developed, etc. The applicant must define the comprehensive nature of the proposed project and the methods which will be used to ensure that it is a nationwide project.

For data collection projects, applicants should, at a minimum, describe the methodology to be used to identify the kind of data to be collected, how the data will be collected, how the applicant will assure that the appropriate data will be collected, a plan for data analysis, the methods by which the data will be disseminated and the audiences, and a plan for conducting an assessment of the usefulness of data collected.

The application must (1) Set forth realistic quarterly time targets by which the various work tasks will be completed; (2) include a plan for conducting an assessment of its activities as they relate to the goals and objectives; and (3) include a description of how the applicant will involve other appropriate organizations in the planning or implementation of the project in order to avoid duplication of effort and to leverage additional resources.

c. *Significant and Beneficial Impact.* Each applicant must indicate how the project will have a significant and beneficial impact. At a minimum the applicant must provide (1) A description of how the project will result in long-term improvements for the State organization receiving CSBG funds and/or local providers who receive CSBG as subgrantees of the State and (2) the types and amounts of public and/or private resources it will mobilize and how those resources will directly benefit the project, and (3) how the project will ultimately benefit low-income individuals and families. An applicant proposing a project with a training and technical assistance focus also must indicate the number of organizations and/or staff it will impact. An applicant proposing a project with a data collection focus also must provide a description of the mechanism the applicant will use to collect data, how it can assure collections from a significant number of states, and how many states will be willing to submit data to the applicant. An applicant proposing to develop the symposium series or other policy-related projects must identify the number and types of beneficiaries. Methods of securing participant feedback and evaluations of activities must be described for all Priority Areas.

d. *Evidence of Significant Collaboration(s).* Applicants must describe how they will involve the partners in the Community Services Network in their activities. Where appropriate, applicants also must describe how they will interface with other related organizations. If subcontracts are proposed, documentation of the willingness and capacity of the subcontracting organization(s) to participate must be described.

e. *Ability of Applicant to Perform.* Organizations must detail their competence in the specific program area. Documentation must be provided which addresses (1) accomplishments relevant to the proposed project, and (2) experience relevant to the CSBG program.

Organizations which propose providing training and technical assistance must detail their competence in the specific program Priority Area and as a deliverer with expertise in the fields of training and technical assistance on a nationwide basis. If applicable, information provided by these applicants must also address related achievements and competence of each cooperating or sponsoring organization.

f. *Staffing and Resources.* The application must fully describe (e.g. a resume) the experience and skills of the proposed project director and primary staff showing that the individuals are not only well-qualified but that their professional capabilities are relevant to the successful implementation of the proposed project.

Part G—Post Award Information and Reporting Requirements

Following approval of the applications selected for funding, notice of project approval and authority to draw down project funds will be made in writing. The official award document is the Financial Assistance Award which provides the amount of Federal funds approved for use in the project, the project and budget periods for which support is provided, the terms and conditions of the award, and the total project period for which support is contemplated.

In addition to the standard terms and conditions which will be applicable to grants, grantee will be subject to the provisions of 45 CFR parts 74 (non-governmental) and 92 (governmental) and OMB Circulars A–122 and A–87.

Grantees will be required to submit quarterly progress and financial reports (SF–269) as well as a final progress and financial report.

Grantees are subject to the audit requirements in 45 CFR parts 74 (non-governmental) and 92 (governmental) and OMB Circulars A–128 and A–133.

Section 319 of Public Law 101–121, signed into law on October 23, 1989, imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. It provides exemptions for Indian tribes and tribal organizations. Current and prospective recipients (and their subtier contractors and/or grantees) are prohibited from using Federal funds, other than profits from a Federal contract, for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement, or loan. In addition, for each award action in excess of $100,000 (or $150,000 for loans) the law requires recipients and their subtier contractors and/or subgrantees (1) to certify that they have neither used nor will use any appropriated funds for payment to lobbyists, (2) to disclose the name, address, payment details, and purpose of any agreements with lobbyists whom recipients or their subtier contractors or subgrantee will pay with profits or *nonappropriated* funds on or after December 22, 1989, and (3) to file quarterly up-dates about the use of lobbyists if material changes occur in their use. The law establishes civil penalties for noncompliance. See Attachment F for certification and disclosure forms to be submitted with the applications for this program.

Public Law 103–227, Part C. Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through States or local governmental by Federal grant, contract, loan or loan guarantee. The law does not apply to children's services, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for in-patient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1,000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application the applicant/grantee certifies that it will comply with the requirement of the Act. The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for children's services and that all subgrantees shall certify accordingly.

Attachment H indicates the regulations which apply to all applicants/grantees under this program.

Dated: June 16, 1995.

Donald Sykes,

Director, Office of Community Services.

BILLING CODE 4184–01–P

Attachment A

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN):	7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐ A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify)
8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision; If Revision, enter appropriate letter(s) in box(es): ☐ ☐ A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other (specify):	9. NAME OF FEDERAL AGENCY:
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: TITLE:	11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:
12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):	

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. Federal	$ .00	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____
b. Applicant	$ .00	b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
c. State	$ .00	
d. Local	$ .00	
e. Other	$ .00	
f. Program Income	$ .00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? ☐ Yes If "Yes," attach an explanation. ☐ No
g. TOTAL	$ .00	

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4184-01-C

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry:

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—"New" means a new assistance award.

—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities)

13. Self-explanatory.

14. List the applicant's Congressional District and and District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, encloce the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184-01-P

Attachment B

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years) (b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION
(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
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INSTRUCTIONS FOR THE SF–424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B,C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed of the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i—Show the totals of Lines 6a to 6h in each column.

Line 6j—show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated for this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and sources of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency . Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to the made from the other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funds periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall total on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 —Provide any other explanations or comments deemed necessary.

Attachment C—Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to, and the right to examine, all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Health Act (5 U.S.C. 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. 276a to 276a–7), the Copeland Act (40 U.S.C. 276c and 18 U.S.C. 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et seq.*); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. 7401 *et seq.*); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic River Act of 1968 (16 U.S.C. 1271 *et seq.*) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 *et seq.*).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 *et seq.*) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 *et seq.*) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of authorized certifying official

Applicant organization

Title

Date submitted

BILLING CODE 4184–01–P

Attachment D

U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

BILLING CODE 4184-01-C

Attachment E—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction," provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Attachment F—Certification Regarding Anti-Lobbying Provisions

Certification for Contracts, Grants Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form—LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Date

BILLING CODE 4184–01–P

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known:* Congressional District, *if known:*	Congressional District, *if known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:* _____
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI):*
(attach Continuation Sheet(s) SF-LLL-A, if necessary)	
11. Amount of Payment *(check all that apply):* $ _____ ☐ actual ☐ planned	13. Type of Payment *(check all that apply):* ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply):* ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11: *(attach Continuation Sheet(s) SF-LLL-A, if necessary)*	
15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No	
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form - LLL

BILLING CODE 4184–01–C

Certification Regarding Environmental Tobacco Smoke

Public Law 103–227, Part C—Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act. The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

Attachment G—Executive Order 12372—State Single Points of Contact

Arizona

Mrs. Janice Dunn, ATTN: Arizona State Clearinghouse, 3800 N. Central Avenue, 14th Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315

Arkansas

Tracie L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 682–1074

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480

Delaware

Ms. Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326

District of Columbia

Rodney T. Hallman, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street, N.W., Suite 500, Washington, DC 20005, Telephone (202) 727–6551

Florida

Florida State Clearinghouse, Intergovernmental Affairs Policy Unit, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone (904) 488–8441

Georgia

Mr. Charles H. Badger, Administrator, Georgia State Clearinghouse, 254 Washington Street, S.W., Atlanta, Georgia 30334, Telephone (404) 656–3855

Illinois

Steve Klokkenga, State Single Point of Contact, Office of the Governor, 107 Stratton Building, Springfield, Illinois 62706, Telephone (217) 782–1671

Indiana

Jean S. Blackwell, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610

Iowa

Mr. Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725

Kentucky

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601, Telephone (502) 564–2382

Maine

Ms. Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261

Maryland

Ms. Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490

Massachusetts

Karen Arone, State Clearinghouse, Executive Office of Communities and Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001

Michigan

Richard S. Pastula, Director, Michigan Department of Commerce, Lansing, Michigan 48909, Telephone (517) 373–7356

Mississippi

Ms. Cathy Mallette, Clearinghouse Officer, Office of Federal Grant Management and Reporting, 301 West Pearl Street, Jackson, Mississippi 39203, Telephone (601) 960–2174

Missouri

Ms. Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834

Nevada

Department of Adminsitration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone (702) 687–4065, Attention: Ron Sparks, Clearinghouse Coordinator

New Hampshire

Mr. Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review, Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155

New Jersey

Gregory W. Adkins, Acting Director, Division of Community Resources, N.J. Department of Community Affairs, Trenton, New Jersey 08625–0803, Telephone (609) 292–6613

Please direct correspondence and questions to: Andrew J. Jaskolka, State Review Process, Division of Community Resources, CN 814, Room 609, Trenton, New Jersey 08625–0803, Telephone (609) 292–9025.

New Mexico

George Elliott, Deputy Director, State Budget Division, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3640, FAX (505) 827–3006

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605

North Carolina

Mrs. Chrys Baggett, Director, Office of the Secretary of Admin., N.C. State Clearinghouse, 116 W. Jones Street, Raleigh, North Carolina 27603–8003, Telephone (919) 733–7232

North Dakota

N.D. Single Point of Contact, Office of Intergovernmental Assistance, Office of Management and Budget, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone (701) 224–2094

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411, Telephone (614) 466–0698

Rhode Island

Mr. Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277–2656

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning

South Carolina

Omeagia Burgess, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734–0494

Tennessee

Mr. Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741–1676

Texas

Mr. Thomas Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463–1778

Utah

Utah State Clearinghouse, Office of Planning and Budget, ATTN: Carolyn Wright, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538–1535

Vermont

Mr. Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828–3326

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, West Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348–4010

Wisconsin

Mr. William C. Carey, Federal/State Relations, Wisconsin Department of Administration, 101 South Webster Street, P.O. Box 7864, Madison, Wisconsin 53707, Telephone (608) 266–0267

Wyoming

Sheryl Jeffries, State Single Point of Contact, Herschler Building, 4th Floor, East Wing, Cheyenne, Wyoming 82002, Telephone (307) 777–7574

Guam

Mr. Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472–2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

Norma Burgos/Jose H. Caro, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Telephone (809) 727–4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802

Please direct correspondence to: Linda Clarke, Telephone (809) 774–0750.

Attachment H, DHHS Regulations Applicable to Grants

The following DHHS regulations apply to all applicants/grantees under the Training and Technical Assistance Program

Title 45 of the Code of Federal Regulations:

Part 16—Procedures of the Departmental Grant Appeals Board

Part 74—Administration of Grants (non-governmental)

Part 74—Administration of Grants (state and local governments and Indian Tribal affiliates):

Sections 74.62(a) Non-Federal Audits
74.173 Hospitals
74.174(b) Other Non-profit Organizations
74.304 Final Decisions in Disputes
74.710 Real Property, Equipment and Supplies
74.715 General Program Income

Part 75—Informal Grant Appeal Procedures

Part 76—Debarment and Suspension form Eligibility for Financial Assistance

Subpart—Drug Free Workplace Requirements

Part 80—Non-discrimination Under Programs Receiving Federal Assistance through the Department of Health and Human Services

Effectuation of Title VI of the Civil Rights Act of 1964

Part 81—Practice and Procedures for Hearings Under Part 80 of this Title

Part 84—Non-discrimination on the Basis of Handicap in Programs

Part 86—Nondiscrimination on the basis of sex in the admission of individuals to training programs

Part 91—Non-discrimination on the Basis of Age in Health and Human Services Programs or Activities Receiving Federal Financial Assistance

Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (*Federal Register*, March 11, 1988)

Part 93—New Restrictions on Lobbying

Part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities

Attachment I, Checklist for Use in Submitting OCS Grant Applications (Optical)

The application should contain:

1. A completed, *signed* SF–424, "Application for Federal Assistance". The letter and number code for the Sub-Priority Areas, located in Part B of this Program Announcement should be in the lower right-hand corner of the page;
2. A completed "Budget Information-Non-Construction" Form (SF–424A);
3. A *signed* "Assurances-Non-Construction" Form (SF–424A);
4. A Project Abstract describing the proposal in 200 words or less;
5. A Project Narrative beginning with a Table of Contents that describes the project in the following order:
   (a) Need for Assistance
   (b) Work Program
   (c) Significant and Beneficial Impact
   (e) Evidence of Significant Collaboration
   (f) Ability of Applicant to Perform
6. Appendices including proof of non-profit status, Single Points of Contact comments (where applicable), resumes;
7. A *signed* copy of "Certification Regarding Anti-Lobbying Activities;
8. A completed "Disclosures of Lobbying Activities", if appropriate; and
9. A self-addressed mailing label which can be affixed to a postcard to acknowledge receipt of application.

The applicant should not exceed a total of 30 pages. It should include one original and four identical copies, printed on white 8½ by 11 inch paper, two hole punched at the top center and fastened separately with a compressor slide paper fastener or a binder clip.

The applicant must be aware that in signing and submitting the application for this award, it is certifying that it will comply with the Federal requirements concerning the drug-free workplace and debarment regulations set forth in Attachments D and E.

[FR Doc. 95–15325 Filed 6–21–95; 8:45 am]
BILLING CODE 4184–01–P

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made final findings of scientific misconduct in the following case:

Gloria Clayton, R.N., Ed.D., Medical College of Georgia: The Division of Research Investigations (DRI) of the Office of Research Integrity (ORI) reviewed an investigation report, forwarded by the Medical College of Georgia, into possible scientific misconduct on the part of Gloria Clayton, R.N., Ed.D., Professor of Adult Nursing at the Medical College of Georgia. ORI found that Dr. Clayton fabricated the existence of subjects and associated data under a subcontract with the Gerontology Center at the University of Georgia for research entitled "Adaptation and Mental Health of the Oldest Old," supported by the National Institute of Mental Health. Dr. Clayton, who has admitted this fabrication, has accepted the ORI findings and agreed to a Voluntary Exclusion Agreement. Under the Agreement, Dr. Clayton is not eligible to apply for or receive any Federal grant or contract funds or to serve on any Public Health Service Advisory Committee, Board or peer review committee for a three-year period beginning May 25, 1995. In addition, Dr. Clayton has agreed to cooperate with the University of Georgia and the Medical College of Georgia in the submission of letters of correction to appropriate journals for publications shown to contain the fabricated data.

FOR FURTHER INFORMATION, CONTACT: Director, Division of Research

Investigations, Office of Research Integrity, 301–443–5330.

Lyle W. Bivens, Director,

Office of Research Integrity.

[FR Doc. 95–15238 Filed 6–21–95; 8:45 am]

BILLING CODE 4160–17–P

Public Health Service

Centers for Disease Control and Prevention Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HC (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 59 FR 62406–62407, dated December 5, 1994) is amended to reflect the transfer of quarantine activities within the Centers for Disease Control and Prevention (CDC) from the National Center for Prevention Services (NCPS) to the National Center for Infectious Diseases (NCID).

Revise the functional statement for the National Center for Prevention Services (HCM) as follows:

Delete item (8) in its entirety and renumber the remaining items accordingly.

Following the functional statement for the Division of STD/HIV Prevention (HCM4), delete in its entirety the title and functional statement for the Division of Quarantine (HCM5).

Following the functional statement for the Office of Program Resources (HCR14), National Center for Infectious Diseases (HCR), insert the following:

Division of Quarantine (HCR2). (1) Administers a national quarantine program to protect the United States against the introduction of diseases from foreign countries; (2) administers an overseas program for the medical examination of immigrants and others with excludable health conditions that would impose an economic burden on public health and hospital facilities; (3) maintains liaison with and provides information on quarantine matters to other Federal agencies, State, and local health departments, and interested industries; (4) provides liaison with international health organizations, such as the Pan American Health Organization and the World Health Organization, and participates in the development of international agreements affecting quarantine; (5) conducts studies to provide new information about health hazards abroad, measures for their prevention, and the potential threat of disease introduction into the United States; and (6) provides logistic support to other programs of the Centers for Disease Control and Prevention in the distribution of requested biologicals.

Office of the Director (HCR21). (1) Manages, directs, and coordinates the activities of the Division; (2) provides leadership in development of Division policy, program planning, implementation, and evaluation; (3) identifies needs and resources for new initiatives and assigns responsibilities for their development; (4) coordinates liaison with other Federal agencies, State, and local health departments, and interested industries; (5) coordinates liaison with international health organizations; (6) provides administrative, fiscal management, information, and computer support and data management services to the Division.

Program Operations Branch (HCR22). (1) Develops, reviews, and evaluates operations in the United States and abroad involving inspection of persons, conveyances, airports, seaports, and importations; (2) conducts a continuing review of operations to assure the most effective application of epidemiologic data on quarantinable and specified other disease prevalences; (3) reviews and evaluates field inspectional operations, plans and develops staffing studies and procedures, and launches new programs and refocuses activities as necessary; (4) provides training and general supervision of field staff in the technical, management, and administrative facets of quarantine operations; (5) works cooperatively and in concert with other Federal agencies at home and abroad in connection with improving and implementing new inspectional activities at ports of entry; (6) provides coordination and liaison with State and local health departments in all activities affecting the possible transmission and spread of quarantinable diseases; (7) coordinates and provides immunization data and advice on health precautions for international travel, and develops and issues vaccination documents and validation stamps in accordance with the International Health Regulations.

Travelers' Health Section (HCR222). (1) Directs and coordinates the collection, analysis, and dissemination of data on worldwide quarantinable and other communicable diseases; (2) develops, implements, and maintains systems to provide immunization data and advice on health precautions for international travel; (3) develops and issues vaccination documents and validation stamps in accordance with the International Health Regulations; (4) notifies the World Health Organization of the incidence of quarantinable diseases in the United States as required by the International Health Regulations; (5) maintains liaison with State and local health authorities, the travel industry, the World Health Organization, and other interested organizations.

Quarantine Section (HCR223). (1) Performs quarantine inspections and medical inspections of aliens through staff at quarantine stations located at major ports of entry; (2) provides logistic support to other programs of the Centers for Disease Control and Prevention in the distribution of requested biologicals; (3) initiates surveillance and other health control measures at sea, air, and land ports of entry to the United States and its possessions.

Medical Screening and Health Assessment Branch (HCR23). (1) Develops, reviews, and evaluates operations in the United States and abroad involving the administration of alien medical examination activities; (2) conducts a continuing review of medical screening procedures to assure the most effective application of current medical practices; (3) plans and develops staffing studies and procedures, and launches new programs and refocuses activities as necessary; (4) provides training to field staff and general supervision of field staff assigned to the Branch in the technical, managerial, and administrative facets of alien medical examination operations; (5) works cooperatively and in concert with other Federal and international agencies, voluntary agencies, and foreign governments, both in the United States and abroad, in efficiently administering the alien medical screening program; (6) provides coordination and liaison with State and local health departments on the followup of aliens with serious disease and mental problems; (7) administers a grant program to assist States in carrying out health assessments of refugees.

Medical Screening Section (HCR232). (1) Administers and monitors activities related to the overseas and domestic medical examinations of aliens, including preparation, publication, and distribution of manuals for examining physicians; (2) establishes and maintains procedures to process requests for waivers of excludable medical conditions; (3) establishes, maintains, and evaluates alien medical inspection and notification procedures at ports-of-entry; (4) provides training and general supervision of field staff assigned to the Section; (5) convenes boards of medical officers to reexamine aliens, when necessary.

Health Assessment Section (HCR233). (1) Administers a grant program for the health assessment of refugees, including the development, publication, and distribution of manuals for examining physicians, public health personnel, and others involved in refugee resettlement; (2) reviews and evaluates the efficiency and effectiveness of domestic followup of notifiable diseases and conditions for aliens with tuberculosis or Hansen's disease, and aliens requiring evaluation for mental conditions; (3) provides training and general supervision of field staff assigned to the Section; (4) coordinates activities related to followup with State and local health departments.

Effective Date: June 7, 1995.

Donna E. Shalala,

Secretary.

[FR Doc. 95–15245 Filed 6–21–95; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–95–3855; FR–3843–N–02]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (7) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 13, 1995.

David S. Cristy,

Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Community Development Work Study Program (FR–3843)

Office: Policy Development and Research

Description of the Need for the Information and its Proposed Use: The data is essential to help assure that the grantee institutions monitor and guide funded students and their work placement agencies. The information will be used to make sure that students progress academically and develop their professional career potential in community development or a related field.

Form Number: None.

Respondents: Not-For-Profit Institutions and State, and Local, or Tribal Government.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Application	75		1		20		1,500
Quarterly/Semester	30		1		6		180
Final Report	30		1		8		240
Recordkeeping	30		1		5		150

Total Estimated Burden Hours: 2,070.

Status: New.

Contact: John J. Hartung, HUD, (202) 708–1537; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: June 13, 1995.

[FR Doc. 95–15248 Filed 6–21–95; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. FR–3917–N–03]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (7) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 13, 1995.

David S. Cristy,

Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Personal Financial and Credit Statement.

Office: Housing

Description of the Need for the Information and its Proposed Use: The information is submitted with the initial application for mortgage insurance of a project. The form is used by HUD to determine whether the sponsor will be able to develop a successful project and have the resources to complete the project.

Form Number: HUD–92417.

Respondents: Individuals or Households and the Federal Government.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–92417	8,000		1		8		64,000

Total Estimated Burden Hours: 64,000.

Status: Extension, no changes.

Contact: Wendy Carter, HUD, (202) 708–0283, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: June 13, 1995.

[FR Doc. 95–15249 Filed 6–21–95; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. FR–3917–N–02]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (7) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 13, 1995.

David S. Cristy,

Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: PHA-Owned or Leased Projects; Maintenance and Operation; Tenant Allowances for Utilities.

Office: Public and Indian Housing.

Description of the Need for the Information and its Proposed Use: Housing Authorities (HAs) are required to maintain records on criteria and procedures used in establishing tenant allowances for utilities. HUD requires HAs to maintain records to document how allowances were determined to reflect reasonable utilities amounts for tenants.

Form Number: None.

Respondents: State, Local or Tribal Government and Not-For-Profit Institutions.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Recordkeeping	3,400		1		4		13,600

Status: Extension with changes.

Contact: William C. Thorson, HUD, (202) 708–4703; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: June 13, 1995.

[FR Doc. 95–15250 Filed 6–21–95; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU–69635]

Notice of Coal Lease Offering by Sealed Bid

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Competitive Coal Lease Sale.

SUMMARY: Notice is hereby given that certain coal resources in lands hereinafter described in Carbon County, Utah, will be offered by competitive lease by sealed bid of $100.00 per acre or more to the qualified bidder submitting the highest bonus bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (41 Stat. 437). *However, no bid will be accepted for less than fair market value as determined by the authorized officer.* A company or individual is limited to *one sealed bid.* If a company or individual submits two or more sealed bids for this tract, all of the company's or individual's bids will be rejected.

DATES: The lease sale will be held in the State of Utah, Division of Community and Economic Development Conference Room, 324 South State Street, Suite 501, Salt Lake City, Utah, at 1:00 p.m. on Wednesday, July 19, 1995. At that time, the sealed bids will be opened and read. No bids received after *10:00 a.m., Wednesday, July 19, 1995,* will be considered.

COAL OFFERED: The coal resources to be offered consist of all recoverable reserves available in the following described lands located in Carbon County, Utah, approximately 9 miles northeast of Wellington, Utah:

T. 13 S., R. 11.E., SLM, Utah
Sec. 1, lots 1–7, lot 8 (for all coal except the Rock Canyon Bed)
Sec. 10, E2E2;
Sec. 11, all;
Sec. 12, W2W2;
Sec. 13, W2NW, SENW, SW;
Sec. 14, N2, N2S2, SESE;
Sec. 15, NENE;
Sec. 23, N2NENE;
Sec. 24, N2N2NW.
Containing 2,177.32 acres

Two economically recoverable coal beds, the Gilson Seam and the Rock Canyon Seam, are found in this tract. The seams average between 6.8 to 7.8 feet in thickness. The tract contains an estimated 12,700,000 tons of recoverable high volatile C bituminous coal. The estimated coal quality using weighted average of samples on an as-received basis is:

12,333 to 12,434	BTU/lb.;
3.4 to 4.1	Percent moisture;
0.6	Percent sulphur;
10.0 to 10.7	Percent ash;
48.6 to 49.4	Percent fixed carbon;
36.8 to 37.4	Percent volatile matter.

RENTAL AND ROYALTY: A lease issued as a result of this offering will provide for payment of an annual rate of $3.00 per acre and a royalty payable to the United States of 12.5 percent of the value of coal mined by surface methods, and 8 percent of the value of coal mined by underground methods. The value of coal shall be determined in accordance with BLM Manual 3070.

NOTICE OF AVAILABILITY: Bidding instructions are included in the Detailed Statement of Lease Sale. A copy of the detailed statement and the proposed coal lease available by mail at the Bureau of Land Management, Utah State Office, 324 South State Street, Suite 301, Salt Lake City, Utah 84111–2303 or in the Public Room (Room 400). All case file documents and written comments submitted by the public on Fair Market Value or royalty rates, except those portions identified as proprietary by the commentator and meeting exemptions stated in the Freedom of Information Act, are available for public inspection in the Public Room (Room 400) of the Bureau of Land Management.

SUPPLEMENTARY INFORMATION: The unleased coal in this tract is included in Proposed Legislation cited as the "Utah Public Lands Management Act of 1995" concerning the Designation of BLM Wilderness Land in Utah. Provisions of the Proposed Act call for the exchange of State and Federal Lands. The State of Utah has designated the unleased coal tract (Alkali Creek) for acquisition by the State. Consummation of the exchange under the Proposed Act may, in the future, allow for the State of Utah to succeed to some or all of the United States interest in this tract.

Douglas M. Koza,

Acting State Director.

[FR Doc. 95–15274 Filed 6–21–95; 8:45 am]

BILLING CODE 4310–DQ–M

[CA–940–5700–00; CACA 35718]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 1,236.31 acres of National Forest System land in Mariposa County to protect the Jordan Creek Bower Cave Special Interest Area. This notice closes the land for up to 2 years from mining. The land will remain open to mineral leasing and the Materials Act of 1947.

DATES: Comments and requests for a public meeting must be received by September 20, 1995.

ADDRESSES: State Director, BLM (CA–931), Federal Building, Room E–2845, 2800 Cottage Way, Sacramento, California 95825–1889.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office, 916–979–2858, or Bill Ferrell, Stanislaus National Forest, Forest Service, 209–532–3671, extension 320.

SUPPLEMENTARY INFORMATION: On April 10, 1995, the Stanislaus National Forest, Forest Service, filed an application to withdraw the following described National Forest System land from location and entry under the United States mining laws (30 U.S.C. Ch. 2), subject to valid existing rights:

Mount Diablo Meridian

T. 2 S., R. 17 E.,
Sec. 13, SW¼, S½SE¼SW¼, E½SE¼, S½NE¼, SE¼SE¼NW¼;
Sec. 14, NW¼SW¼, NE¼SW¼SW¼, N½SE¼SW¼, SE¼SE¼SW¼, S½SE¼;
Sec. 15, SE¼NE¼, SW¼NE¼NE¼, SE¼NW¼NE¼, E½SW¼NE¼, NE¼NE¼SE¼;
Sec. 23, lots 1 and 5, and a portion of MC 2108;
Sec. 24, N½ of lot 1, N½NE¼, NE¼NW¼, E½SW¼SW¼, SE¼SE¼, E½NE¼SE¼, E½SE¼NE¼, NW¼SE¼NE¼;
T. 2 S., R. 18 E.,
Sec. 18, lot 3;
Sec. 19, lots 1–4 inclusive, S½NE¼SW¼, N½SW¼SE¼, S½NW¼SE¼, SE¼SE¼;
Sec. 20, S½SW¼SW¼; and
Sec. 29, N½NW¼, NW¼NE¼, N½SE¼NW¼.

The area described contains approximately 1,236.31 acres in Mariposa County.

The purpose of the proposed withdrawal is to protect the Jordan Creek Bower Cave Special Interest Area, which is located approximately nine miles northeast of Coulterville, California.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the California State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the California State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are those which are compatible with the use of the land by Forest Service.

Dated: June 15, 1995.

John D. Beck,

Acting Chief, Branch of Lands.

[FR Doc. 95–15296 Filed 6–21–95; 8:45 am]

BILLING CODE 4310–40–P

[CO–934–05–4110–03; COC49194]

Colorado; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease COC49194, Rio Blanco County, Colorado, was timely filed and was accompanied by all required rentals and royalties accruing from February 1, 1995, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee for the lease and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice.

Having met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Leasing Act of 1920, as amended, (30 U.S.C. 188 (d) and (e)), the Bureau of Land Management is proposing to reinstate the lease effective February 1, 1995, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Milada Krasilinec of the Colorado State Office (303) 239–3767.

Dated: June 13, 1995.

Milada Krasilinec,

Land Law Examiner, Oil and Gas Lease Management Team.

[FR Doc. 95–15281 Filed 6–21–95; 8:45 am]

BILLING CODE 4310–JB–M

[CA–067–7123–00]

Proposed Update of Off-Road Vehicle Designation of Routes of Travel on Public Land in Eastern San Diego and Imperial Counties, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Designation of Open, Closed and Limited Routes of Travel.

SUMMARY: Notice is hereby given that the Route of Travel Designations on Public Land in Eastern San Diego and Imperial Counties are being updated in accordance with title 43 Code of Federal Regulations, section 8342.2. These designations are being updated as part of the California Desert Conservation Area Plan and the Eastern San Diego Management Framework Plan. The update will include routes missed on previous designations and redesignation of some existing routes. The environmental assessment, Maps and Proposed Vehicle Route Designation Records for each route may be reviewed Monday through Friday at the following locations beginning June 26, 1995 through September 8, 1995: El Centro Resource Area Office, 1661 South 4th Street, El Centro, CA., 7:45 am–4:30 pm; California Desert District Office, 6221 Box Springs Blvd., Riverside, CA, 7:45 am–4:30 pm; Jay's Maintenance Service, 3550 Foothill Blvd., La Cresenta, CA., 9 am–6 pm; and Fibertech Manufacturing, 10809 Prospect Ave., Santee, CA., 9 am–6 pm (9 am–4 pm Saturdays).

DATES: For Public Meetings and Comments: A 60-day public review period has been established for review of the proposed route designations. Written comments must be filed no later than September 8, 1995. For those who still have questions after reviewing the Environmental Assessment and appropriate maps and Designation Records, four public meetings will be held to answer specific questions. Each meeting is scheduled 7 to 10 pm. On August 28, 1995 at the El Cajon Community Center 195 E. Douglas Ave., El Cajon, CA, on August 29, 1995 at Jay's Maintenance Service, 3550 Foothill Blvd., La Cresenta, CA., on August 30, 1995 at the California Desert District Office, 6221 Box Springs Blvd., Riverside, CA, and on August 31, 1995 at the El Centro Resource Area Office, 1661 South 4th St., El Centro, CA.

ADDRESSES: Written comments must be filed no later than September 8, 1995, and should be addressed to: Bureau of Land Management, 1661 South 4th Street, El Centro, CA 92243.

FOR ADDITIONAL INFORMATION CONTACT: Robert Bower, Outdoor Recreation Planner, Bureau of Land Management, El Centro Resource Area, 1661 South 4th Street, El Centro, California, 92243.

SUPPLEMENTARY INFORMATION: Since most desert visitors use motorized vehicles to engage in desert activites, a suitable vehicle transportation network is crucial to their needs. Access for desert use and enjoyment needs to be provided while at the same time natural resources are protected. Access outside of motorized vehicle "open" areas is managed through the Vehicle Route Designation Process. This was initiated on adoption of the California Desert Conservation Area Plan and is described in the Motorized Vehicle Access Element. The El Centro Resource Area is updating its vehicle designations for Public Lands in Eastern San Diego County and in Imperial County those Public Lands west of a line along the Chocolate Mountains Aerial Gunnery Range and the east side of the Imperial Sand Dunes.

Dated: June 15, 1995.

G. Ben Koski,

Area Manager.

[FR Doc. 95–15275 Filed 6–21–95; 8:45 am]

BILLING CODE 4310–40–P

Fish and Wildlife Service

Endangered and Threatened Species Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; Endangered and Threatened Species Permits.

SUMMARY: The Southeastern Regional Office of the Fish and Wildlife Service (Service) is providing notice of issued permits which incidentally take threatened and endangered species pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act) (16 U.S.C. 1531–1536) and the Service's implementing regulations governing listed fish, wildlife, and plant permits (50 CFR Parts 13 and 17).

Issuance of these permits, as required by the Act, was based on findings that such permits: (1) were applied for in good faith; (2) will not operate to the disadvantage of the listed species which are the subject of the permit, and; (3) are consistent with the purposes and policies set forth in Section 2 of the Act. Each permit issued was also found in compliance with and are subject to Parts 13 and 17 of Title 50 CFR, the Service's regulations governing listed species permits.

ADDRESSES: Specific applications of incidental taking, the mandatory Habitat Conservation Plan (HCP), the authorizing permit, and supporting documentation are available for review by interested persons (by appointment during regular business hours) at the Service's Southeast Regional Office, Atlanta, Georgia: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 210, Atlanta, Georgia 30345.

FOR FURTHER INFORMATION CONTACT: Mr. Rick G. Gooch at the address noted above, telephone: 404/679–7110.

SUPPLEMENTARY INFORMATION: The following is a listing of issued permits. Each entry identifies permit number, the Applicant's name, the species for which incidental taking was sought, the location of the activity, and the date the permit was issued.

Permit Number: PRT–790906.
Applicant: Mr. Welton Tapper.
Species: Florida scrub jay.
Project Location: Brevard County, Florida.
Date Issued: July 19, 1994.

Permit Number: PRT–792144.
Applicant: O.C. Mendes (Balmoral).
Species: Florida scrub jay.
Project Location: Brevard County, Florida.
Date Issued: August 10, 1994.

Permit Number: PRT–794539.
Applicant: Gen Real Estate and Management.
Species: Florida scrub jay.
Project Location: Brevard County, Florida.
Date Issued: October 27, 1994.

Permit Number: PRT–795455.
Applicant: Ms. Sarah Bradley.
Species: Red Hills salamander.
Project Location: Monroe County, Alabama.
Date Issued: December 2, 1994.

Permit Number: PRT–796769.
Applicant: Stallworth Preserve.
Species: Choctawhatchee beach mouse.
Project Location: Walton County, Florida.
Date Issued: December 21, 1994.

Permit Number: PRT–795856.
Applicant: The Cavalear Companies (Cloisters).
Species: Florida scrub jay.
Project Location: Brevard County, Florida.
Date Issued: March 28, 1995.

Permit Number: PRT–798839.
Applicant: Fish and Wildlife Service's Red-cockaded Woodpecker Coordinator, (Safe Harbor HCP).
Species: Red-cockaded woodpecker.
Project Location: Sandhills Region, North Carolina.
Date Issued: April 17, 1995.

Permit Number: PRT–797979.
Applicant: Mr. D. Gregory Luce.
Species: Alabama beach mouse.
Project Location: Baldwin County, Alabama.
Date Issued: April 25, 1995.

Permit Number: PRT–798698.
Applicant: RNR Properties, Ltd.
Species: Florida scrub jay.
Project Location: Brevard County, Florida.
Date Issued: May 3, 1995.

Permit Number: PRT–799977.
Applicant: Forte Macaulay Development Company.
Species: Florida scrub jay.
Project Location: Brevard County, Florida.
Date Issued: May 16, 1995.

Permit Number: PRT–798697.
Applicant: Mr. Robert Farr.
Species: Alabama beach mouse.
Project Location: Baldwin County, Alabama.
Date Issued: May 24, 1995.

Dated: June 15, 1995.

Jerome M. Butler,

Acting Regional Director.

[FR Doc. 95–15277 Filed 6–21–95; 8:45 am]

BILLING CODE 4310–55–P

Finding of No Significant Impact for an Incidental Take Permit for the Incidental Take of the Golden-cheeked Warbler During Construction of Treetops Residential Development in Travis County, Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has prepared an Environmental Assessment/Habitat Conservation Plan for the issuance of a Section 10(a)(1)(B) permit for the incidental take of the Federally endangered golden-cheeked warbler (*Dendroica chrysoparia*) during the construction and operation of the Treetops residential development in Travis County, Texas.

Proposed Action

The proposed action is the issuance of a permit under Section 10(a)(1)(B) of the Endangered Species Act to authorize the incidental take of the golden-cheeked warbler during construction of the multi-family housing development.

The Applicant (J.P.I. Texas Development, Inc.) plans to construct a multi-family housing development southwest of the Intersection of Capital of Texas Highway (SH360) and Spicewood Springs Road, 7.5 miles N/NE of Austin, Travis County, Texas.

The proposed development will comply with all local, State, and Federal environmental regulations addressing environmental impacts associated with this type of development. A conservation plan has been developed as mitigation for the incidental take of golden-cheeked warblers and its habitat. This plan includes the following features: clearing and construction activities will be conducted outside of the warbler's breeding season; purchasing and dedication (to a conservation entity approved by the U.S. Fish and Wildlife Service) of 71 acres of occupied warbler habitat will be accomplished prior to initiation of development activity; planned undeveloped areas of the property will be maintain in their natural conditions; minimization or avoidance of clearing within the canyon habitats on the development sites, particularly the canyon habitat along Bull Creek that warblers are likely to utilize; force mains will be used to enable the proposed development to place all wastewater lines within road rights-of-way, thereby eliminating the need for gravity-fed mains which would necessitate the disturbance of warbler habitat in adjacent drainages; and follow-up monitoring of golden-cheeked warbler territories onsite will be conducted for one or more seasons as needed, following completion of the project to determine the affects of the development. Results will be reported to the U.S. Fish and Wildlife Service.

Details of the mitigation are provided in the Treetops Environmental Assessment/Habitat Conservation Plan. These conservation plan actions ensure that the criteria established for issuance of an incidental take permits will be fully satisfied.

Alternatives Considered

1. No action,
2. Proposed action,

3. Alternative project designs,
4. Alternate location, and
5. Wait for issuance of a regional Section 10(a)(1)(B) permit.

Determination

Based upon information contained in the Environmental Assessment/Habitat Conservation Plans, the Service has determined that this action is not a major Federal action which would significantly affect the quality of the human environment with the meaning of Section 102(2)(c) of the National Environmental Policy Act of 1969. Accordingly, the preparation of Environmental Impact Statements on the proposed action is not warranted.

It is my decision to issue the Section 10(a)(1)(B) permit for the construction of multi-family housing in Travis County, Texas.

Nancy M. Kaufman,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 95–15297 Filed 6–21–85; 8:45 am]

BILLING CODE 4310–55–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32715]

Cen-Tex Rail Link, Ltd.[1]—Trackage Rights Exemption—Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company[2]

Burlington Northern Railroad Company (BN) and The Atchison, Topeka and Santa Fe Railway Company (ATSF) have agreed to grant non-exclusive overhead trackage rights to Cen-Tex Rail Link, Ltd. (Cen-Tex), as follows: (1) over BN's line of railroad from milepost 0.0 on BN's Wichita Falls Subdivision near Tower 55 in Fort Worth, TX to milepost 5.1 on BN's Wichita Falls Subdivision near Tower 60 in Fort Worth, a distance of approximately 5.1 miles (including BN's Race Track from milepost 2.2 on the preceding segment to the end of track at the connection point with the Missouri Pacific Railroad Company, a further distance of approximately 0.2 miles); and (2) over ATSF's line of railroad from approximately milepost 1.29 on ATSF's Dublin Subdivision near Belt Junction in Fort Worth, to approximately milepost 349.97 on ATSF's Fort Worth Subdivision near Tower 60 in Fort Worth, a distance of approximately 9.0 miles. The total distance of the trackage involved is approximately 14.3 miles. The proposed transaction will allow Cen-Tex to reach and directly interchange traffic with other railroads in the Fort Worth area (including Dallas Area Rapid Transit, Fort Worth & Western Railroad Company, The Kansas City Southern Railway Company, Southern Pacific Transportation Company/St. Louis Southwestern Railway Company, and Missouri Pacific Railroad Company). The trackage rights were scheduled to become effective on or after June 9, 1995.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Thomas W. Rissman, 6 West Hubbard St., Suite 500, Chicago, IL 60610.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: June 16, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–15310 Filed 6–21–95; 8:45 am]

BILLING CODE 7035–01–P

[1] Cen-Tex is under common control and management with South Orient Railroad Company, Ltd. (SORC). A continuance in control transaction was exempted by the Commission in *Joel T. Williams, III, Roy C. Coffee, Jr., Rafael Fernandez-MacGregor, and Bristol Investment Co., Inc.—Continuance in Control Exemption—Cen-Tex Rail Link, Ltd. and South Orient Railroad Company, Ltd*, Finance Docket No. 32478 (ICC served Aug. 16, 1994).

[2] Cen-Tex was a previous participant in a pending proceeding in *Burlington Northern Inc. and Burlington Northern Railroad Company—Control and Merger—Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company*, Finance Docket No. 32549. On April 10, 1995, Cen-Tex and SORC filed a petition pursuant to 49 CFR 1180.4(f), seeking a waiver or clarification of certain railroad consolidation procedures to facilitate the preparation of a responsive application that Cen-Tex and SORC intended to file. The petition was granted by decision served April 18, 1995, but Cen-Tex and SORC did not file a responsive application. In its notice of exemption, Cen-Tex states that, by not filing any responsive application, the class exemption procedure at 49 CFR 1180.2(d)(7) is available for the proposed trackage rights. Cen-Tex also states that copies of the trackage rights agreements in this proceeding will be submitted to the Commission in the above pending proceeding.

[Ex Parte No. 55 (Sub-No. 92)]

Compliance Procedures

AGENCY: Interstate Commerce Commission.

ACTION: Notice.

SUMMARY: The Commission is implementing, with modification, its previously-announced compliance policy (57 FR 58824, December 11, 1992) regarding any application for new motor, water, broker, and freight forwarder operating authority that was granted prior to December 10, 1992, and that is still pending because applicant has not yet complied with applicable insurance or surety bond, tariff, and process agent requirements. With respect to those still-pending applications, applicants must satisfy compliance requirements currently in effect within 60 days of the effective date of this notice or the application will be dismissed for want of prosecution. Implementation of the Commission's compliance policy through this Notice and Notice in the *Interstate Commerce Commission Register* is necessitated because of the large number of still-pending applications (approximately 15,000) that accumulated during the years when Commission policy did not require compliance within a specified period. This action is intended to alleviate the burden on Commission resources associated with maintaining these still-pending application files.

EFFECTIVE DATE: This Notice is effective July 22, 1995.

FOR FURTHER INFORMATION CONTACT: The Office of Public Assistance, 202–927–7597. [TDD for the hearing impaired: 202–927–5721.]

SUPPLEMENTARY INFORMATION: In *Compliance Procedures*, 9 I.C.C. 2d 207 (1992), served December 10, 1992, the Commission reinstated its policy of imposing a compliance deadline on applicants seeking new operating authority. As a result of that policy statement, applicants were required to file with the Commission applicable insurance or surety bond, tariff, and process agent documents within 180 days of a grant of authority, or the application would be dismissed.

That policy statement also established procedures for disposing of the thousands of applications that were granted but still pending on December 10, 1992, due to non-compliance. As to those applicants that were granted authority but that did not effect compliance within 180 days of their grant of authority, the Commission would issue a decision effective in 60 days tentatively dismissing the application for want of prosecution. The application would not be dismissed if the applicant achieved compliance within 60 days. We will modify our procedures and not issue individual decisions because the Commission does not have the staff to process such a large number of decisions and, because of the age of some of the applications, the service list addresses may no longer be accurate.

Accordingly, all applicants for new motor, water, broker, and freight forwarder operating authority granted before December 10, 1992, that are still not in compliance will have 60 days from the effective date of this Notice to achieve compliance. If they do not achieve compliance within 60 days, their applications will be dismissed for want of prosecution.

This Notice will be published in the **Federal Register** and the *Interstate Commerce Commission Register* to afford the broadest notice feasible. The Notice in the *Interstate Commerce Commission Register* will list all applications affected by this Notice. In light of the volume and age of the still-pending applications, the Commission will not issue an individual decision as to each application affected by this Notice. Rather, if a carrier-applicant identified in the Notice published in the *Interstate Commerce Commission Register* does not timely achieve compliance, its application will stand dismissed for want of prosecution.

To purchase a copy of the full *Interstate Commerce Commission Register Notice*, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Washington, DC 20423. Telephone: 202–289–4357/4359. [Assistance for the hearing impaired is available through TDD services 202–927–5721.]

Authority: 5 U.S.C. 551(a), 553 and 559; 16 U.S.C. 1456; and 49 U.S.C. 10101, 10305, 10321, 10921, 10922, 10923, 10924, 10928, and 11102.

Decided: June 8, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–15326 Filed 6–21–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1726–95]

Notice of Intent To Prepare a Draft Environmental Impact Statement (DEIS) and Scoping Meeting

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY:

Proposed Action

The United States Department of Justice, Immigration and Naturalization Service (INS) has determined that a Federal Detention Center (FDC) is needed in its system.

The Notice of Intent is required to prepare a Draft Environmental Impact Statement (DEIS) for the construction of a combined INS and U.S. Marshalls Service (USMS) FDC near Batavia, Genesee County, New York or Albion, Orleans County, New York.

The INS has preliminarily evaluated several sites in both Genesee and Orleans Counties, and they will be the focus of the DEIS.

The INS proposes to build and operate a FDC in conjunction with the USMS. The FDC will house individuals within the jurisdiction of the INS and/or USMS while awaiting trial, facing deportation proceedings, awaiting sentencing or having similar business before the courts. The total population of the facility will be 250; 150 beds allocated for USMS and 10 beds for INS.

The Process

In the process of evaluating the site, several aspects will receive detailed examination including: utilities, traffic patterns, noise levels, visual intrusion, threatened and endangered species, cultural resources and socio-economic impacts.

Alternatives

In developing the DEIS, the options of "no action" and "alternatives sites" for the proposed facility will be fully and thoroughly examined.

Scoping Process

During the preparation of the DEIS, there will be opportunities for public involvement in order to determine the issues to be examined. Scoping meetings will be held in two locations. One meeting will be in Batavia, Genesee County, New York and the other will be in Albion, Orelans County, New York. The specific time and place will be announced at a later time. Consult with the local newspapers respectively or with the Point of Contact. The meeting will be publicized and will be held at a time which will make it possible for the public and interested agencies or organizations to attend. In addition, public information meetings will be held by representatives of the INS with interested citizens, officials and community leaders.

DEIS Preparation

Public notice will be given in the Federal Register concerning the availability of the DEIS for public review and comment.

Address

Questions concerning the proposed action and the DEIS may be directed to the Point of Contact:

John W. Clarke, Director—Facilities and Space Management, U.S. Immigration and Naturalization Service, Administrative Center Burlington; 70 Kimball Avenue, South Burlington, Vermont 05403–6813, Telephone: (802) 660–1154

or

Victoria L. Kingslien—Chief, Planning Branch, U.S. Immigration and Naturalization Service, Headquarters Facilities Division, 425 I Street, N.W., Washington, D.C. 20536, Telephone: (202) 616–7575.

Dated: June 15, 1995.

Doris Meissner,

Commissioner, Immigration and Noturalization Service.

[FR Doc. 95–15302 Filed 6–21–95; 8:45 am]

BILLING CODE 4410–10–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Special Emphasis Panel in Civil & Mechanical Systems (#1205).

Date and Time: June 13 & 14, 1995, 8 a.m. to 5 p.m.

Place: NSF, Rm. 365, 4201 Wilson Blvd., Arlington, VA 22230.

Contact: Dr. Clifford Astill, Program Director, Siting and Geotechnical Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Room 545. Telephone: 703–306–1361.

Type of Meeting: Closed.

Purpose of Meeting: To provide advice and recommendations concerning the Siting and Geotechnical Systems program proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Division of Civil and Mechanical systems as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: June 19, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–15314 Filed 6–21–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Civil and Mechanical Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Civil and Mechanical Systems (#1205).

Date and Time: July 12 & 13, 1995, 8:30 a.m. to 5 p.m.

Place: Room 530, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Ken P. Chong, Program Director Structural Systems and Construction Processes, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1361.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Unsolicited proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: June 19, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–15316 Filed 6–21–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Civil and Mechanical Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Civil and Mechanical Systems (#1205).

Date and Time: July 12 & 13, 1995, 8:30 a.m. to 5 p.m.

Place: 5th Floor Conference Rooms, Holiday Inn, 480 King Street, Alexandria, VA 22314.

Type of Meeting: Closed.

Contact Person: Priscilla P. Nelson, Program Director Geomechanical, Geotechnical and Geo-environmental, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone (703) 306–1361.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Unsolicited proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: June 19, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–15317 Filed 6–21–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture and Industrial Innovation; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name and Committee Code: Special Emphasis Panel in Design, Manufacture and Industrial Innovation (#1194).

Date and Time: July 13, 1995, 8:30 am to 5 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Room 565.

Type of Meeting: Closed.

Contact Person: Mr. Charles R. Hauer, Program Manager, Small Business Innovation Research, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1391.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Small Business Innovation Research (SBIR) proposals as part of the selection for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552(c) (4) and (6) of the Government in the Sunshine Act.

Dated: June 19, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–15315 Filed 6–21–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Elementary, Secondary and Informed Education; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name of Committee: Special Emphasis Panel in Elementary, Secondary and Informal Education (#59)

Date and Time: Monday, July 10, 1995; 8:30 a.m. to 5 p.m., Wednesday, July 12, 1995; 8:30 a.m. to 5 p.m.

Place: Arlington Renaissance Hotel, North Stafford Street, Arlington, VA 22203.

Type of Meeting: Closed.

Contact Person: Dr. Julia V. Clark, Program Director, Division of Elementary, Secondary and Informal Education, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1616.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in Sunshine Act.

Dated: June 19, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–15320 Filed 6–21–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Engineering Education and Centers; Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel Engineering Education and Centers. (#173).

Date/time: July 10–11, 1995, 8 a.m.–5:30 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Room 375.

Type of Meeting: Closed.

Contact Person: Mary Poats, Program Manager, Engineering Education and Centers Division, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Room 585.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Combined Research-Curriculum Development Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b. (c) (4) and (6) of the Government in the Sunshine Act.

Dated: June 19, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–15319 Filed 6–21–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Materials Research (DMR).

Dates, and Times: July 12, 1995, 12 p.m.–8 p.m., July 13, 1995, 8 a.m.–12 p.m.

Place: Room 204, Kent State University Student Center, Kent, OH.

Type of Meeting: Closed.

Contact Person: Dr. David L. Nelson, Program Director, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Blvd., Arlington, VA, 22230. Telephone (703) 306–1838.

Purpose of Meeting: To provide advice and recommendations concerning support for the Center for Advanced Liquid Crystal Optical Materials (ALCOM), Science and Technology Center, Kent State University.

Agenda: Presentation and evaluation of progress.

Reason for Closing: The proposal being reviewed may include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposal. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: June 19, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–15318 Filed 6–21–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information and collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

1. Type of submission: Revision.

2. The title of the information collection: NRC Form 4, "Cumulative Occupational Exposure History" NRC Form 5, "Occupational Exposure Record for a Monitoring Period."

3. The form number, if applicable: NRC Forms 4 and 5.

4. How often the collection is required: NRC Form 4 is generated for each individual who may enter the licensee's restricted or controlled area and who is likely to receive, in one year, an occupational dose requiring monitoring as described § 20.1502. It is maintained by the licensee until the Commission terminates the license. It is not submitted to the NRC. NRC Form 5 is prepared by the licensee and transmitted to the NRC annually.

5. Who will be required to report: NRC licensees.

6. An estimate of the number of responses per licensee: NRC Form 4—6/year. NRC Form 5—60/year.

7. An estimate of the total number of hours needed annually to complete the requirement or request: NRC Form 4—8,052 or an average of 1.2 hours per licensee. NRC Form 5—132,858 or an average of 19 hours per licensee for recordkeeping requirements; 6,710 or an average of 1 hour per licensee for reporting requirements; 139,568 total hours annually.

8. An indication of whether Section 3504(h), Pub. L. 96–511 applies: Not applicable.

9. Abstract: NRC Form 4 is used to record the mandatory summary of the previous occupational radiation dose to individuals to ensure that dose does not exceed regulatory limits. NRC Form 5 is used to record and report the mandatory results of individual monitoring for occupational dose from radiation during a one-year period to ensure regulatory compliance with annual dose limits.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC 20037.

Comments and questions should be directed to the OMB reviewer: Troy Hillier, Office of Information and Regulatory Affairs, (3150–0005 and 3150–0006), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone (202) 395–3084.

The NRC Clearance Officer is Brenda Jo Shelton, (301) 415–7233.

Dated at Rockville, MD, this 16th day of June, 1995.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 95–15290 Filed 6–21–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–498 and 499]

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, (South Texas Project, Units 1 and 2); Exemption

I

Houston Lighting & Power Company, (the licensee) is the holder of Facility Operating License Nos. NPF–76 and NPF–80, which authorizes operation of the South Texas Project, Units 1 and 2 (STP). The operating license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now and hereafter in effect.

The facilities consists of two pressurized water reactors at the licensee's site in Matagorda County, Texas.

II

Title 10 CFR 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," paragraph (a), in part, states that "The licensee shall establish and maintain an onsite physical protection system and security organization which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety."

10 CFR 73.55(d), "Access Requirements," paragraph (1), specifies that "The licensee shall control all points of personnel and vehicle access into a protected area." 10 CFR

73.55(d)(5) requires that "A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort." 10 CFR 73.55(d)(5) also states that an individual not employed by the licensee (i.e., contractors) may be authorized access to protected areas without escort provided the individual "receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area * * *"

The licensee proposed to implement an alternative unescorted access control system which would eliminate the need to issue and retrieve badges at each entrance/exit location and would allow all individuals with unescorted access to keep their badge with them when departing the site.

An exemption from 10 CFR 73.55(d)(5) is required to allow contractors who have unescorted access to take their badges offsite instead of returning them when exiting the site. By letter dated March 27, 1995, the licensee requested an exemption from certain requirements of 10 CFR 73.55(d)(5) for this purpose.

III

Pursuant to 10 CFR 73.5, "Specific exemptions," the Commission may, upon application of any interested person on upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

Pursuant to 10 CFR 73.55, the Commission may authorize a licensee to provide alternative measures for protection against radiological sabotage provided the licensee demonstrates that the alternative measures have "the same high assurance objective" and meet "the general performance requirements" of the regulation, and "the overall level of system performance provides protection against radiological sabotage equivalent" to that which would be provided by the regulation.

At STP, unescorted access into protected areas is controlled through the use of a photograph on a combination badge and keycard (hereafter referred to as a badge). The security officers at each entrance station use the photograph on the badge to visually identify the individual requesting access. The badges for both licensee employees and contractor personnel, who have been granted unescorted access, are issued upon entrance at each entrance/exit location and are returned upon exit. The badges are stored and are retrievable at each entrance/exit location. In accordance with 10 CFR 73.55(d)(5), contractor individuals are not allowed to take badges offsite. In accordance with the plants' physical security plans, neither licensee employees nor contractors are allowed to take badges offsite.

Under the proposed system, each individual who is authorized for unescorted entry into protected areas would have the physical characteristics of their hand (hand geometry) registered with their badge number in the access control system. When an individual enters the badge into the card reader and places the hand on the measuring surface, the system would record the individual's hand image. The unique characteristics of the extracted hand image would be compared with the previously stored template in the access control system to verify authorization for entry. Individuals, including licensee employees and contractors, would be allowed to keep their badge with them when they depart the site and thus eliminate the process to issue, retrieve and store badges at the entrance stations to the plant. Badges do not carry any encoded information other than a unique identification number.

All other access processes, including search function capability, would remain the same. This system would not be used for persons requiring escorted access, i.e., visitors.

Based on a Sandia report entitled, "A Performance Evaluation of Biometric Identification Devices" (SAND91—0276 UC—906 Unlimited Release, Printed June 1991), and on its experience with the current photo-identification system, the licensee concludes that the biometric access control system will provide the same high assurance objective regarding onsite physical protection that is achieved by the current system. The biometric system is now in use at other NRC-licensed nuclear generating facilities. The licensee will implement a process for testing the proposed system to ensure a continued overall level of performance equivalent to that specified in the regulation. The Physical Security Plans for STP will be revised to include implementation and testing of the hand geometry access control system and to allow licensee employees and contractors to take their badges offsite.

The licensee will control all points of personnel access into a protected area under the observation of security personnel through the use of a badge and verification of hand geometry. A numbered picture badge identification system will continue to be used, once inside the protected area, for all individuals who are authorized unescorted access to protected areas. Badges will continue to be displayed by all individuals while inside the protected area.

IV

Since both the badge and hand geometry would be necessary for access into the protected area, the proposed system would provide for a positive verification process. In addition, potential loss of a badge by an individual, as a result of taking the badge offsite, would not enable an unauthorized entry into protected areas.

For the foregoing reasons, pursuant to 10 CFR 73.55, the NRC staff has determined that the proposed alternative measures for protection against radiological sabotage meet "the same high assurance objective," and "the general performance requirements" of the regulation and that "the overall level of system performance provides protection against radiological sabotage equivalent" to that which would be provided by the regulation.

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, an exemption is authorized by law, will not endanger life or property or common defense and security, and is otherwise in the public interest. Therefore, as long as the licensee uses the hand geometry access control system, the Commission hereby grants Houston Lighting and Power Company an exemption from these requirements of 10 CFR 73.55(d)(5) relating to the returning of picture badges upon exit from the protected area such that individuals not employed by the licensee, i.e., contractors, who are authorized unescorted access into the protected area, can take their badges offsite.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (60 FR 30117). This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 14th day of June 1995.

For the Nuclear Regulatory Commission.

John N. Hannon,

Acting Deputy Director, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–15292 Filed 6–21–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–414]

Duke Power Co., et al; Catawba Nuclear Station, Unit No. 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of 10 CFR part 50, appendix J, Paragraph III.D.1.(a), Type A Tests, to Duke Power Company, et al. (the licensee), for operation of the Catawba Nuclear Station, Unit No. 2, located in York County, South Carolina, in accordance with Facility Operating License No. NFP–35.

Environmental Assessment

Identification of the Proposed Action

This Environmental Assessment has been prepared to address potential environmental issues related to the licensee's application dated May 18, 1995, as supplemented by letter dated May 31, 1995. The proposed action would exempt the licensee from the requirements of 10 CFR part 50, appendix J, Paragraph III.D.1.(a), to the extent that a one-time schedular extension would permit rescheduling the third containment integrated leak rate test (ILRT) in the first 10-year service period from the end-of-cycle 7 outage until the end-of-cycle 8 outage. The requested exemption would also allow the decoupling of this third test from the endpoint of the first 10-year inservice inspection.

The Need for the Proposed Action

The current containment integrated leakage rate requirement for Catawba, Unit 2, pursuant to Appendix J, is that, after the preoperational leak rate preoperational leak rate test, a set of three Type A tests must be performed at approximately equal intervals during each 10-year period. Also, the third test of each set must be conducted when the plant is shut down for the 10-year plant inservice inspection. This is reflected in the Catawba Technical Specifications (TS) as a testing interval of once each 40 months plus or minus 10 months, for a frequency of three time in a 120-month period. To date, for Catawba Unit 2, the preoperational and the first two periodic ILRTs have been conducted. The most recent ILRT was conducted in February 1993, approximately 28 months ago. Thus, in accordance with appendix J and the current TS, an ILRT would have to be conducted during the refueling outage beginning in October 1995 (the end-of-cycle (EOC) 7 outage).

The licensee has requested an exemption from Appendix J and a corresponding change to the TS that would allow a one-time change to the interval for the Unit 2 ILRT from 40 plus or minus 10 months to less than or equal to 70 months. This would allow the EOC–7 ILRT to be rescheduled for EOC–8. Therefore, the need for the licensee's proposed action is to allow a longer interval between the Catawba Unit 2 second and third periodic Type A ILRTs, which will result in a cost savings to the licensee.

Environmental Impacts of the Proposed Action

The proposed one-time exemption would not increase the probability or consequences of accidents previously analyzed and the proposed one-time exemption would not affect facility radiation levels or facility radiological effluents. The licensee has analyzed the results of previous Type A tests performed at the Catawba Nuclear Station, Unit No. 2. The licensee has provided an acceptable basis for concluding that the proposed one-time extension of the Type A test interval would maintain the containment leakage rates within acceptable limits. Accordingly, the Commission has concluded that the one-time extension does not result in a significant increase in the amounts of any effluents that may be released nor does it result in a significant increase in individual or cumulative occupational radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption only involves Type A testing on the containment. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to this action would be to deny the request for exemption. Such action would not reduce the environmental impacts of plant operations.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the "Final Environmental Statement Related to the Operation of Catawba Nuclear Station Units 1 and 2," dated January 1983.

Agencies and Persons Consulted

In accordance with its stated policy, on June 6, 1995, the NRC staff consulted with the South Carolina State official, Mr. M.K. Batavia, PE, Chief of the Bureau of Radiological Health, Department of Health and Environmental controls, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the licensee's letter dated May 18, 1995, as supplemented by letter dated May 31, 1995, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the York County Library, 138 East Black Street, Rock Hill, South Carolina.

Dated at Rockville, MD this 15th day of June 1995.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II–2, Division of Reactor Projects–I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–15289 Filed 6–21–95; 8:45 am]

BILLING CODE 7590–01–M

Availability of Draft Application Format and Content Guidance and Review Plan and Acceptance Criteria for Non-Power Reactors

The U.S. Nuclear Regulatory Commission (NRC) is in the process of developing for Non-Power Reactors (NPRs) a "Format and Content for Applications for the Licensing of Non-Power Reactors" (F&C) and a "Standard Review Plan and Acceptance Criteria for Applications for the Licensing of Non-Power Reactors" (SRP). The NRC has made available a draft of Chapter 15, "Financial Qualifications," of the F&C and SRP documents for comment. Other

draft chapters will be made available for comment as they are completed.

Copies of these chapters have been placed in the NRC Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC 20555. Single copies of these documents may be requested in writing from Alexander Adams, Jr., Senior Project Manager, U.S. Nuclear Regulatory Commission, MS: 0–11–B–20, Washington, DC 20555. Comments on this chapter should be sent by Sept. 15, 1995, to the Director, Non-Power Reactors and Decommissioning Project Directorate at the above address.

Dated at Rockville, MD, this 15th day of June 1995.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Project Support, Office of Nuclear Reactor Regulation.

[FR Doc. 95–15291 Filed 6–21–95; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Patricia Paige, (202) 606–0830.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on May 30, 1995 (60 FR 28183). Individual authorities established or revoked under Schedules A and B and established under Schedule C between May 1, 1995 and May 31, 1995, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 will also be published.

Schedule A

No Schedule A authorities were established or revoked in May 1995.

Schedule B

No Schedule B authorities were established or revoked in May 1995.

Schedule C

The following Schedule C positions were approved in May 1995.

Department of Agriculture

Special Assistant to the Secretary of Agriculture. Effective May 16, 1995.

Confidential Assistant to the Secretary of Agriculture. Effective May 16, 1995.

Confidential Assistant to the Assistant Secretary for Congressional Relations. Effective May 17, 1995.

Confidential Assistant to the Executive Assistant to the Secretary. Effective May 19, 1995.

Special Assistant to the Secretary of Agriculture. Effective May 26, 1995.

Confidential Assistant to the Administrator, Rural Electrification Administration. Effective May 26, 1995.

Department of Commerce

Director of Legislative, Intergovernmental and Public Affairs to the Under Secretary, Bureau of Export Administration. Effective May 1, 1995.

Confidential Assistant to the Director, Office of Business Liaison. Effective May 10, 1995.

Department of Defense

Special Assistant for Policy Planning and Analysis to the Head, Plans and Policy Group. Effective May 19, 1995.

Department of Education

Special Assistant to the Assistant Secretary, Office of Elementary and Secondary Education. Effective May 25, 1995.

Department of Housing and Urban Development

Deputy Assistant Secretary for Policy Development to the Assistant Secretary for Policy Development and Research. Effective May 9, 1995.

Special Assistant to the Assistant Secretary for Public Affairs. Effective May 16, 1995.

Special Assistant/Director of Scheduling to the Secretary. Effective May 25, 1995.

Department of the Interior

Special Assistant to the Deputy Assistant Secretary, Indian Affairs. Effective May 17, 1995.

Department of Justice

Director, Special Projects to the Director, Office of Public Affairs. Effective May 19, 1995.

Department of Labor

Director of Scheduling and Advance to the Chief of Staff. Effective May 8, 1995.

Staff Assistant to the Chief of Staff. Effective May 8, 1995.

Staff Assistant to the Deputy Under Secretary for International Labor Affairs. Effective May 8, 1995.

Special Assistant to the Counselor to the Secretary. Effective May 19, 1995.

Secretary's Representative to the Associate Director, Office of Intergovernmental Affairs. Effective May 19, 1995.

Special Assistant to the Administrator, Wage and Hour Division. Effective May 26, 1995.

Special Assistant to the Assistant Secretary for Public Affairs. Effective May 30, 1995.

Department of Transportation

Special Assistant to the Director, Bureau of Transportation Statistics. Effective May 1, 1995.

Department of the Treasury

Staff Assistant to the Assistant Secretary (Economic Policy). Effective May 1, 1995.

Senior Advisor to the Under Secretary, International Affairs. Effective May 18, 1995.

Environmental Protection Agency

Confidential Assistant to the Chief of Staff. Effective May 16, 1995.

Federal Trade Commission

Director of Public Affairs (Supervisory Public Affairs Specialist) to the Chairman. Effective May 8, 1995.

Secretary (Office Automation) to the Director, Bureau of Competition. Effective May 12, 1995.

General Services Administration

Deputy Associate Administrator for Congressional and Intergovernmental Affairs to the Associate Administrator for Congressional and Intergovernmental Affairs. Effective May 10, 1995.

Interstate Commerce Commission

Congressional Affairs Assistant to the Congressional Affairs Advisor. May 26, 1995.

Occupational Safety and Health Review Commission

Special Assistant to the Chairman of the Occupational Safety and Health Review Commission. Effective May 17, 1995.

Office of Management and Budget

Confidential Assistant to the Associate Director, Health Personnel. Effective May 16, 1995.

Office of National Drug Control Policy

Director, Public Affairs to the Director, Public and Legislative Affairs. Effective May 16, 1995.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954—1958 Comp., P.218.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 95–15246 Filed 6–21–95; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Morgan, Cass, Schuyler, and McDonough Counties, Illinois

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a project in Morgan, Cass, Schuyler, and McDonough Counties, Illinois. The proposed project will extend from the northwestern terminus of the proposed Jacksonville Bypass, in Morgan County to US Route 136, in McDonough County. The proposed project will be designated Federal Air Primary Route 310 (FAP Route 310).

FOR FURTHER INFORMATION CONTACT:

Mr. Walter C. Waidelich, Jr., Design Operations Engineer, Federal Highway Administration, Illinois Division, 3520 Executive Park Drive, Springfield, Illinois 62703, Telephone: (217) 492–4622.

Mr. James L. Easterly, district Engineer, Illinois Department of Transportation (IDOT), 126 East Ash Street, Springfield, Illinois 62704, Telephone: (217) 782–7301.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Illinois Department of Transportation, will prepare an Environmental Impact Statement on a proposal to improve US Route 67 with Morgan, Cass, Schuyler, and McDonough Counties. The proposed action involves upgrading approximately 88.5 km (55 miles) of US Route 67 to a four lane, partial access-controlled facility, utilizing both the existing alignment and new alignment, depending on the determination of the best combination to meet project goals. The proposed project will extend from the proposed Jacksonville Bypass in Morgan County on the south to US Route 136 near Macomb in McDonough County on the north.

The need of improving US Route 67 is based on improving access to existing/potential development in the region, transportation demands, safety considerations, and system continuity for the route. Future economic development in the area is tied to improving transportation networks to major urban areas. Upgrading US Route 67 from Jacksonville to Macomb would provide the opportunity for growth. The proposed action would not only connect major urban areas of St. Louis and the Quad Cities, but would also tie together the population centers within the immediate project area.

Alternatives under consideration include no action and a new four lane, partial access-controlled expressway facility. Several alignment alternatives will be evaluated for the proposed project, including bypasses of Beardstown, Rushville, and Industry. Additionally, studies will evaluate the use of the existing US Route 67 alignment south of Beardstown versus alternative alignments in that area. The proposed expressway would be grade separated at all active railroad tracks and interchanges would be constructed at most marked routes along the way. A new Illinois River crossing would also be required in the Beardstown vicinity.

The scoping process for this project will include meetings, review sessions as appropriate, and coordination with appropriate Federal, State, and local agencies. An initial scoping meeting to discuss the project's impacts and determine the extent of additional agency involvement will be held on June 22, 1995 beginning at 1 p.m. at the Elks Club in Beardstown (205 East 2nd Street). Initial areas of environmental concern identified as being potentially impacted by project alternatives include conversion of agricultural land, cultural resources, wetlands, threatened and endangered species (Federal and State), floodplains, and water quality. Further details and a scoping information packet may be obtained from one of the contact persons listed above.

To ensure that the full range of issues related to the proposed project are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or suggestions concerning this proposed action and the EIS should be directed to the FHWA or IDOT contact persons at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: June 12, 1995.

Walter C. Waidelich, Jr.,

Design Operations Engineer, Federal Highway Administration, Illinois Division, Springfield, Illinois.

[FR Doc. 95–15280 Filed 6–21–95; 8:45 am]

BILLING CODE 4910–22–M

UNITED STATES INFORMATION AGENCY

International Educational and Cultural Activities Discretionary Grant Program

SUMMARY: The Office of Citizen Exchanges (E/P) of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award program. Public or private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c)(3)–1 may apply to develop projects that link their international exchange interests with counterpart institutions/groups in ways supportive of the aims of the Bureau of Education and Cultural Affairs.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87–256, also known as the Fulbright Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries . . .; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations . . . and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." Programs and projects must conform with Agency requirements and guidelines outlined in the Application Package. USIA projects and programs are subject to the availability of funds.

Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the Office of Citizen Exchanges or submitting their proposals. Once the RFP deadline has passed, the Office of Citizen Exchanges may not discuss this competition in any way with applicants until after the Bureau program and project review process has been completed.

ANNOUNCEMENT NAME AND NUMBER: All communications concerning this announcement should refer to the Annual Discretionary Grant Program. The announcement number is E/P–96–

1. Please refer to title and number in all correspondence or telephone calls of USIA.

DATES: Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Friday, October 6, 1995. Faxed documents will not be accepted, nor will documents postmarked on October 6, 1995, but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. This action is effective from the publication date of this notice through October 6, 1995, for projects where activities will begin between January 1, 1996 and December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions must contact the Office of Citizens Exchanges, E/PL, Room 216, United States Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, (202) 619–5326, to request detailed application packets which include award criteria; all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please direct inquiries and correspondence to USIA Program Officer Laverne Johnson, E-Mail (LJohnson@USIA.GOV)

ADDRESSES: Applicants must follow all instructions given in the Application Package and send only complete applications to: U.S. Information Agency, REF: E/P–96–1 Annual Discretionary Grant Competition, Grants Management Division (E/XE), 301–4th Street SW., Room 336, Washington, D.C. 20547.

Applicants must also submit to E/XE the "Executive Summary," "Proposal Narrative," and "Budget" sections of each proposal on a 3.5" diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including but not limited to race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle.

Overview

The office of Citizens Exchanges works with U.S. private sector, non-profit organizations on cooperative international group projects that introduce American and foreign participants to each others' social, economic, and political structures, and international interests. The Office supports international projects in the United States or overseas involving leaders or potential leaders in the following fields and professions: urban planners, jurists, specialized journalists (specialists in economics, business, political analysis, international affairs), business professionals, NGO leaders, environmental specialists, parliamentarians, educators, economists, and other government officials.

Guidelines

Applicants should carefully note the following restrictions/recommendations for proposals in specific geographical areas:

The Newly Independent States: USIA and other agencies of the U.S. government have numerous programs in the countries of the NIS (Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan). As such, proposals involving this region will not be accepted under this competition.

Western Europe and Canada (WEU): Priority themes and target countries/regions follow:—Immigration and Multiculturalism: Italy, France, Germany.—Conflict Resolution: Greece/Turkey/Cyprus; Northern Ireland.—Environmental Cooperation and Sustainable Development: Nordic/Baltic region; Western Canada;—School-to-work Transition/Vocational Education: Germany, Scandinavia, Spain.

East Asia and the Pacific (EA): Priority consideration will be given to the following:

(1) Asean and Other Southeast Asian Countries: Proposals for a journalism project focusing on investigative reporting, media ethics and the relationship between the media, government and the people. Proposals should be designed for junior to mid-level working journalists, in the print or electronic media, in ASEAN member countries and/or other Southeast Asian countries. Proposals that include two-way exchanges are preferred. It is projected that this subregional project will be conducted in English and participants must be fluent in English. As the overseas portion of the exchange, a seminar/workshop on the methods and ethics of investigative reporting is suggested. Potential site would be Thailand.

(2) China: Rule of law. An exchange of young Chinese legal professionals including practicing lawyers, academics and government officials on issues in civil law focusing on how the rights of ordinary citizens in such fields as consumer protection, environmental protection, and intellectual property rights are protected by a strong legal code which permits civil suits against violators by private individuals or by individuals acting in a private capacity. Participants should observe how the threat of liability suits in the U.S. eases the burden on the state for the enforcement of public policy and provides a check on abuses of the rights of individuals.

(3) China: Role of individuals in environmental protection. Exchanges that provide Chinese mid-level central governments and municipal and provincial officials with responsibility for environmental protection, as well as academics and staff in non-governmental environmental organizations, an opportunity to observe how citizens' action groups in the U.S. represent public interest in environmental issues, affect legislation and influence public policy. Participants should observe how citizen organizations in the U.S. can affect the outcome of specific local projects with the potential for environmental degradation. Proposals should reflect previous experience in working with Chinese organizations in the environmental field.

(4) Korea: Korean Local Autonomy Project. Proposals to conduct a project for Korean provincial and municipal administrators to observe how U.S. state and local governments function and how the federal, state and local governments interact. Participants should be elected provincial and municipal government officials or high-level appointees to provincial and municipal government positions or a combination of the two. The program should emphasize the degree of autonomy enjoyed by state and local governments within the U.S. federal system.

American Republics (AR): Priority will be given to projects involving Haiti (focusing on democracy building or adult/community-based education), Brazil (focusing on ethics in government or cultural diversity), and the Andean region (focusing on judicial reform). Proposals for projects in the Andean region should include activities in at least two Andean countries, one of which must be Colombia or Bolivia. (The Andean Region consists of the following countries: Bolivia, Chile, Colombia, Ecuador, Peru, and Venezuela.)

Africa (AF): Preference will be accorded to proposals which include three or four countries in one subregion of Africa (West, East, or Southern Africa), and priority will be given to projects addressing rule of law, print or electronic media development, and conflict resolution. Other themes may be proposed, but the three listed above will receive preference.

North Africa, Near East and South Asia (NEA): Priority will be given to projects involving Pakistan/India (focusing on conflict resolution and economic reform) and the Middle East Peace Process States (focusing on public administration and natural resource management). The Office of Citizen Exchanges strongly encourages the coordination of activities with respected universities, professional associations, and major cultural institutions in the U.S. and abroad, but particularly in the U.S. Projects should be intellectual and cultural, not technical. Vocational training (an occupation other than one requiring a baccalaureate or higher academic degree; i.e., clerical work, auto maintenance, etc., and other occupations requiring less than two years of higher education) and technical training (special and practical knowledge of a mechanical or a scientific subject which enhances mechanical, narrowly scientific, or semi-skilled capabilities) are ineligible for support. In addition, scholarship programs are ineligible for support.

The Office does not support proposals limited to conferences or seminars (i.e., one- to fourteen-day programs with plenary sessions, main speakers, panels, and a passive audience). It will support conferences only insofar as they are part of a larger project in duration and scope which is receiving USIA funding from this competition. USIA-supported projects may include internships; study tours; short-term, non-technical training; and extended, intensive workshops taking place in the United States or overseas. The themes addressed in exchange programs must be of long-term importance rather than focused exclusively on current events or short-term issues. In every case, a substantial rationale must be presented as part of the proposal, one that clearly indicates the distinctive and important contribution of the overall project, including, where applicable, the expected yield of any associated conference. No funding is available exclusively to send U.S. citizens to conferences or conference-type seminars oversees; nor is funding available for bringing foreign nationals to conferences or to routine professional association meetings in the United States. Projects that duplicate what is routinely carried out by private sector and/or public sector operations will not be considered. The Office of Citizen Exchanges strongly recommends that applicants consult with host country USIS posts *prior* to submitting proposals.

Selection of Participants:

All grant proposals should clearly describe the type of persons who will participate in the program as well as the process by which participants will be selected. It is recommended that programs in support of U.S. internships include letters tentatively committing host institutions to support the internships. In the selection of foreign participants, USIA and USIS posts abroad retain the right to nominate all participants and to accept or deny participants recommended by grantee institutions. However, grantee institutions are often asked by USIA to suggest names of potential participants. The grantee institution will also provide the names of American participants and brief (two pages) biographical data on each American participant to the Office of Citizen Exchanges for information purposes. Priority will be given to foreign participants who have not previously traveled to the United States.

Additional Guidance:

The Office of Citizen Exchanges offers the following additional guidance to prospective applicants:

1. The Office of Citizen Exchanges encourages project proposals involving more than one country. Pertinent rationale which links countries in multi-country projects should be included in the submission. Single-country projects that are clearly defined and possess the potential for creating and strengthening continuing linkages between foreign and U.S. institutions are also welcome.

2. Proposals for bilateral programs are subject to review and comment by the USIS post in the relevent country, and pre-selected participants will also be subject to USIS post review.

3. Bilateral programs should clearly identify the counterpart organization and provide evidence of the organization's participation.

4. The office of Citizen Exchanges will consider proposals for activities which take place exclusively in other countries when USIS posts are consulted in the design of the proposed program and in the choice of the most suitable venues for such programs.

5. Office of Citizen Exchanges grants are not given to support projects whose focus is limited to technical or vocational subjects, or for research projects, for publications funding, for student and/or teacher/faculty exchanges, for sports and/or sports related programs. Nor does this office provide scholarships or support for long-term (a semester or more) academic studies. Competitions sponsored by other Bureau offices are also announced in the **Federal Register**.

For projects that would begin after December 31, 1996, competition details will be announced in the **Federal Register** on or about June 1, 1996. Inquiries concerning technical requirements are welcome prior to submission of applications.

Funding

Although no set funding limit exists, proposals for less than $135,000 will receive preference. Organizations with less than four years of successful experience in managing international exchange programs are limited to $60,000. Applicants are invited to provide both an all-inclusive budget as well as separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding. While an all-inclusive budget must be provided with each proposal, separate component budgets are optional. Competition for USIA funding support is keen.

The selection of grantee institutions will depend on program substance, cross-cultural sensitivity, and ability to carry out the program successfully. Since USIA grant assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other anticipated sources of financial and in-kind support. Proposals with substantial private sector support from foundations, corporations, other institutions, *et al.* will be deemed highly competitive. The Recipient must provide a minimum of 33 percent cost sharing of the total project cost.

Cost Sharing

The Bureau of Educational and Cultural Affairs encourages cost-sharing, which may be in the form of allowable direct or indirect costs. The recipient of an assistance award must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as costs to be paid by the Federal Government. Such records are subject to audit.

The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, Subpart C(23) "Cost-sharing or Matching," and should be described in the proposal. Cost sharing may be in the form of allowable direct or indirect costs. The Recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as costs to be paid by the Federal Government. Such records are subject to audit. In the event the Recipient does not provide a minimum of 33 percent cost sharing, the Agency's contribution will be reduced in proportion to the Recipient's contribution. The Recipient's proposal shall include the cost of an audit that: (1) Complies with the requirements of OMB Circular No. A–133, Audits of Institutions of Higher Education and Other Nonprofit Institutions; (2) complies with the requirements of American Institute of Certified Public Accountants (AICPA) Statement of Position (SOP) No. 92–9; and (3) complies with AICPA Codification of Statements on Auditing Standards AU Section 551, "Reporting on Information Accompanying the Basic Financial Statements in Auditor-Submitted Documents," where applicable. When USIA is the largest direct source of Federal financial assistance—i.e. the cognizant Federal Agency—and indirect costs are charged to Federal grants, a supplemental schedule of indirect cost computation is required.

The audit costs shall be identified separately for: (1) Audit of the basic financial statements, and (2) supplemental reports and schedules required by A–133.

USIA's Office of Inspector General has provided supplemental guidance for conducting A–133 audits and recovery of related audit costs in a separate "Dear Colleague" letter dated January 24, 1995.

The following project costs are eligible for consideration for funding:

1. International and domestic air fares; visas; transit costs; ground transportation costs.

2. Per Diem. For the U.S. program, organizations have the option of using a flat $140/day for program participants or the published U.S. Federal per diem rates for individual American cities. For activities outside the U.S., the published Federal per diem rates must be used.

Note: U.S. escorting staff must use the published Federal per diem rates, not the flat rate.

3. Interpreters: If needed, interpreters for the U.S. program are provided by the U.S. State Department Language Services Division. Typically, a pair of simultaneous interpreters is provided for every four visitors who need interpretation. USIA grants do not pay for foreign interpreters to accompany delegations from their home country. Grant proposal budgets should contain a flat $140/day per diem for each Department of State interpreter, as well as home-program-home air transportation of $400 per interpreter plus any U.S. travel expenses during the program. Salary expenses are covered centrally and should not be part of an applicant's proposed budget.

4. Book and cultural allowance: Participants are entitled to and escorts are reimbursed a one-time cultural allowance of $150 per person, plus a participant book allowance of $50. U.S. staff do not get these benefits.

5. Consultants. May be used to provide specialized expertise or to make presentations. Daily honoraria generally do not exceed $250 per day. Subcontracting organizations may also be used, in which case the written agreement between the prospective grantee and subcontractor should be included in the proposal.

6. Room rental, which generally should not exceed $250 per day.

7. Materials development. Proposals may contain costs to purchase, develop, and translate materials for participants.

8. One working meal per project. Per capita costs may not exceed $5–8 for a lunch and $14–20 for a dinner, excluding room rental. The number of invited guests may not exceed participants by more than a factor of two-to-one.

9. A return travel allowance of $70 for each participant which is to be used for incidental expenditures incurred during international travel.

10. All USIA-funded delegates will be covered under the terms of a USIA-sponsored health insurance policy. The premium is paid by USIA directly to the insurance company.

11. Other costs necessary for the effective administration of the program, including salaries for grant organization employees, benefits, and other direct and indirect costs per detailed instructions in the application package.

Note: The 20 percent limitation of "administrative costs" included in previous announcements does not apply to this RFP.

Please refer to the Application Package for complete budget guidelines.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the Application Packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the budget and contract offices, as well the USIA geographic regional office and the USIS post overseas, where appropriate. Proposals may also be reviewed by the USIA's Office of General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for grant award resides with USIA's contracting officer.

Review Criteria

USIA will consider proposals based on their conformance with the objectives and considerations already stated in this RFP, as well as the following criteria:

1. *Quality of Program Idea:* Proposals should exhibit originality, substance, precision, and relevance to the Agency mission.

2. *Program Planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. *Ability to Achieve Program Objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program objectives and plan.

4. *Multiplier Effect:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Value of U.S.-Partner Country Relations:* Proposed projects should receive positive assessments by USIA's geographic area desk and overseas officers of program need, potential impact, and significance in the partner country(ies).

6. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program's or project's goal.

7. *Institution Reputation/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without USIA support) which ensures that USIA-supported programs are not isolated events.

9. *Evaluation Plan:* Proposals should provide a plan for a thorough and objective evaluation of the program/project by the grantee institution.

10. *Cost-Effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. *Cost-Sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

12. *Support of Diversity:* Proposals should demonstrate the recipients' commitment to promoting the awareness and understanding of diversity throughout the program. This can be accomplished through documentation (such as a written statement or account) summarizing past and/or on-going activities and efforts that further the principle of diversity within both their organization and their activities.

Notice

The need of the program may require the award to be reduced, revised, or increased. The terms and conditions published in the RFP are binding and may not be modified by any USIA representative. Explanatory information provided by USIA that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final awards cannot be made until funds have been fully appropriated by the Congress, allocated, and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about December 8, 1995. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: June 14, 1995.

Dell Pendergrast,

Deputy Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 95–15117 Filed 6–21–95; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 120
Thursday, June 22, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:03 p.m. on Monday, June 19, 1995, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate, supervisory, and resolution activities.

In calling the meeting, the Board determined, on motion of Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), seconded by Vice Chairman Andrew C. Hove, Jr., concurred in by Mr. Stephen R. Steinbrink, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency) and Chairman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii), of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: June 20, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary

[FR Doc. 95–15497 Filed 6–20–95; 3:41 pm]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, June 27, 1995 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Wednesday, June 28, 1995 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor)

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Regulations:

MCFL Rulemaking: Explanation and Justification for Express Advocacy Definition and Qualified Nonprofit Corporation Regulations. (Continued from meeting of June 15, 1995)

DATE AND TIME: Thursday, June 29, 1995 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor)

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Advisory Opinions:

AOR 1995–12
Independent Bankers Association of America by its president, Richard L. Mount.

AOR 1995–15
Beth Taylor (AllisonPAC) Allison Engine Company (continued from meeting of June 15, 1995).

AOR 1995–18
Honorable James A. Leach, Chairman, Committee on Banking and Financial Services, U.S. House of Representatives.

AOR 1995–20
Honorable Tim Roemer, on behalf of Hoosiers for Tim Roemer Committee.

Regulations:

MCFL Rulemaking: Explanation and Justification for Express Advocacy Definition and Qualified Nonprofit Corporation Regulations. (continued from meeting of June 28, 1995).

Administrative Matters:

Status Update on Computer Development Projects (continued from meeting of June 15, 1995).

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 95–15499 Filed 6–20–95; 3:49 pm]

BILLING CODE 6715–01–M

FEDERAL HOUSING FINANCE BOARD

TIME AND DATE: 9:00 a.m., Thursday, June 29, 1995.

PLACE: Board Room Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, DC 20006.

STATUS: The entire meeting on Thursday, June 29, 1995 will be open to the public.

MATTERS TO BE CONSIDERED:

a. FHLBank of Topeka Proposal to Certify Nebraska Investment Finance Authority as a Nonmember Mortgagee
B. FHLBank Dividend Recommendation for the Second Quarter, 1995
C. Appointment to the Office of Finance Board of Directors
D. Approval of AHP Applications—First Round, 1995
E. Notional Vote Procedures

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Executive Secretary to the Board, (202) 408–2837.

Rita I. Fair,

Managing Director.

[FR Doc. 95–15396 Filed 6–20–95; 10:29 am]

BILLING CODE 6725–01–M

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [60 FR 31186, June 13, 1995]

STATUS: Closed meeting.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: June 13, 1995.

CHANGE IN THE MEETING: Additional Item.

The following item was considered at a closed meeting held on Wednesday, June 14, 1995, following the open meeting:

Litigation matter.

Commissioner Wallman, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the

scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: June 19, 1995.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–15424 Filed 6–20–12:31 pm]

BILLING CODE 8010–01–M

UNITED STATES ENRICHMENT CORPORATION BOARD OF DIRECTORS

TIME AND DATE: 8:30 a.m., Tuesday, June 27, 1995.

PLACE: USEC Corporate Headquarters, 6903 Rockledge Drive, Bethesda, Maryland 20817.

STATUS: The meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

- Review of commercial and financial issues of the Corporation
- Procedural matters

CONTACT PERSON FOR MORE INFORMATION: Barbara Arnold, 301–564–3354.

Dated: June 19, 1995.

William H. Timbers, Jr.,

President and Chief Executive Officer.

[FR Doc. 95–15408 Filed 6–20–95; 11:12 am]

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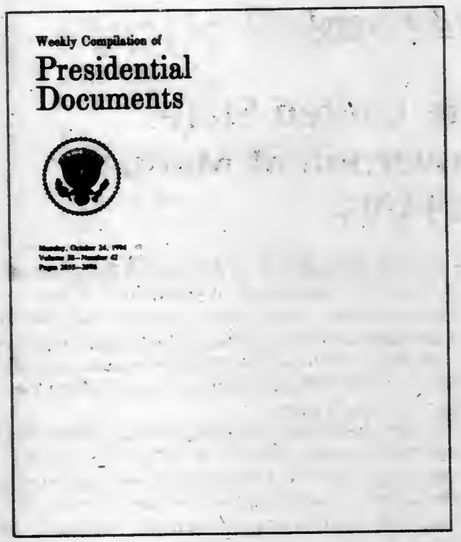
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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–148–AD; Amendment 39–9281; AD 95–13–01]

Airworthiness Directives; Air Bus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.
ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A320 series airplanes, that requires inspections to determine the gap of the seat track joints at frame 64, and correction of discrepancies. This amendment also requires eventual modification of the seat tracks on all affected airplanes, which terminates the requirement of repetitively removing or repositioning the seats. This amendment is prompted by in-service inspection reports, which have revealed that a gap between the forward and aft seat track at frame 64 could exceed the tolerance limit due to a method used on the assembly line to control the position of the seat track. The actions specified by this AD are intended to ensure that the gap of the seat track joints do not exceed the tolerance limit and subsequently lead to separation of the passenger seats from the seat track under emergency landing conditions.

DATES: Effective July 24, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 24, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2776; fax (206) 277–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A320 series airplanes was published in the **Federal Register** on November 2, 1994 (59 FR 54849). That action proposed to require a one-time visual inspection to determine if a seat fitting having an x-plunger behind a z-stud is installed at the seat track joint at frame 64, and correction of discrepancies. That action also proposed to require modification of the seat tracks, which would terminate the requirement of repetitively removing or respositioning the seats whenever the cabin configuration is changed.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

One commenter requests that the terminating modification be optional rather than required, since there is no increase in safety by requiring the terminating modification. The commenter states that the only benefit of requiring the terminating modification is that operators do not have to repetitively remove or reposition the seat when the internal configuration of the airplane is changed. The FAA does not concur. The FAA has determined that long term continued operational safety will be better assured by design change to remove the source of the problem, rather than by repetitively removing or repositioning the seats and other equipment when the interior configuration of the airplane is changed. Repetitive removal/repositioning of the seats over the longer term may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual actions, has led the FAA to consider placing less emphasis on repetitively removing or repositioning the seats and more emphasis on design improvements. The modification requirement of this AD is in consonance with these considerations.

The same commenter requests that the compliance time for accomplishment of the modification be extended from the proposed 30 months to 48 months. This commenter states that such an extension will allow the modification to be accomplished during a regularly scheduled "D" check. This commenter states that it would have to special schedule its fleet of airplanes in order to accomplish the proposed modification within the proposed compliance time; this would entail considerable additional expenses and schedule disruptions. The FAA does not concur with the commenter's request to extend the compliance time. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the availability of required parts and the practical aspect of installing the required modification during affected operators' scheduled maintenance holds. The manufacturer has advised that an ample number of required parts will be available for modification of the U.S. fleet within the proposed compliance period. However, under the provisions of paragraph (d) of the final rule, the FAA may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

The same commenter also requests clarification regarding the structural modification procedures described in Airbus Service Bulletin A320–53–1088, which is referenced in the proposal as the appropriate source of service information. The FAA concurs that clarification is necessary and provides the following specific information: That service bulletin describes two procedures (Solution 1 and Solution 2) for accomplishing the subject modification, depending on the

magnitude of the gap. For a gap that is greater than 2.8 mm but less than 3.8 mm, Solution 1 involves removing the seat track couplings, adjusting the gap, and installing new couplings. For a gap that exceeds 3.8 mm, Solution 2 involves removing the couplings, seatrail beams, and cross beams; adjusting the gap; installing new couplings and a seatrail beam; and reinstalling the crossbeams. For further clarification purpose, the FAA has determined that, when referring to the subject modification, the phrase "modification of the seat tracks" is clearer than the phrase "repositioning or replacing the seat tracks." Therefore, the text of the final rule has been revised accordingly throughout.

Additionally, this commenter requests that the FAA revise paragraph (b)(2) of the proposal to require marking the discrepant seat track junctions so that they can be identified visually. This commenter states that marking the discrepant junctions would be a secondary method to ensure that the aft attach point of an installed article is not installed at frame 64 after accomplishing the one-time inspection. This commenter notes that it has painted discrepant junctions with red paint. The FAA does not concur totally. Neither the referenced All Operators Telex 53–01 nor Airbus Service Bulletin A320–53–1088 contain any specific procedures for marking discrepant seat track junctions. However, operators are always permitted to perform actions beyond those strictly required by an AD. Therefore, if an operator elects to mark the discrepant junctions, in addition to removing/repositioning the seat or modifying the seat tracks, it is that operator's prerogative to do so. The FAA finds it appropriate not to revise the final rule, but to leave it to the individual operators' discretion whether or not to mark the discrepant junctions.

Further, this commenter requests that the FAA ensure that the proposed rule does not reference Airbus Service Bulletin A32–53–1088 as the appropriate source of service information for removing or repositioning the seat, if the seat track junction exceeds the given valve. The commenter states that Airbus All Operators Telex 53–01 is the appropriate source of service information for these procedures. The FAA points out that the relevant paragraph (b)(2)(i)(A) of the final does not mention Service Bulletin A32–53–1088, and it does reference All Operators Telex 53–01.

Since issuance of the NPRM, Airbus has issued Revision 3 of Service Bulletin A320–53–1088, dated March 27, 1994. This service bulletin is essentially identical to the original issue, but contains certain editorial changes. The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in France. The FAA has revised the final rule to reference this revision of the service bulletin as the appropriate source of service information. (Required actions that were previously performed in accordance with earlier revisions of this same service bulletin will be considered to be in compliance with this AD.)

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been added to this final rule to clarify this long-standing requirement.

Additionally, the FAA has recently reviewed the figures it has used over the past several years in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $55 per work hour to $60 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 85 airplanes of U.S. registry will be affected by this AD.

It will take approximately 7 work hours per airplane to accomplish the required inspection at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of the inspection required by this AD on U.S. operators is estimated to be $35,700, or $420 per airplane.

It will take approximately 54 work hours per airplane to accomplish the required modification at an average labor rate of $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the total impact of the modification required by this AD on U.S. operators is estimated to be $275,400, or $3,240.

Based on above figures, the total cost impact of the required inspection and modification on U.S. operators is estimated to be $311,100, or $3,660 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–13–01 Airbus Industrie: Amendment 39–9281. Docket 94–NM–148–AD.

Applicability: Model A320 series airplanes; manufacturer's serial numbers 002 through 008 inclusive, 010 through 014 inclusive, 016 through 078 inclusive, 088 through 122 inclusive, 124 through 179 inclusive, 183 through 194 inclusive, 196 through 228 inclusive, 230 through 251 inclusive, and 253 through 255 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of the passenger seats from the seat track during an emergency landing, accomplish the following:

(a) Within 450 flight cycles after the effective date of this AD, perform a visual inspection to determine if a seat fitting having an x-plunger behind a z-stud is installed at the seat track joint at frame 64, in accordance with Airbus All Operator Telex (AOT) 53–01, dated August 27, 1992.

(b) If such a seat fitting is installed, prior to further flight, measure the gap between the forward and aft seat tracks at frame 64, in accordance with the Airbus AOT 53–01, dated August 27, 1992.

(1) If the gap is less than or equal to 2.8 mm, prior to further flight, apply sealing material at the seat tracks, in accordance with the AOT.

(2) If the gap is greater than 2.8 mm, prior to further flight, accomplish the requirements of either paragraph (b)(2)(i) or (b)(2)(ii) of this AD, as applicable.

(i) For airplanes equipped with passenger seats at frame 64: Accomplish either paragraph (b)(2)(i)(A) or (b)(2)(i)(B) of this AD:

(A) Remove or reposition the seat in accordance with Airbus AOT 53–01, dated August 27, 1992. Thereafter, repeat the removal or repositioning whenever the cabin configuration is changed until the accomplishment of paragraph (c) of this AD. Or

(B) Modify the seat tracks in accordance with Airbus Service Bulletin A320–53–1088, Revision 3, dated March 27, 1994. Such modification constitutes terminating action for the requirements of this AD.

Note 2: Modification of the seat tracks prior to the effective date of this amendment in accordance with Airbus Service Bulletin A320–53–1088, original issue through Revision 2, is considered acceptable for compliance with the applicable actions specified in this paragraph.

(ii) For airplanes equipped with equipment other than passenger seats at frame 64: Prior to further flight, correct the discrepancy in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(c) Within 30 months after the effective date of this AD, modify the seat tracks, in accordance with Airbus Service Bulletin A320–53–1088, Revision 3, dated March 27, 1994. Accomplishment of this modification constitutes terminating action for the requirements of this AD.

Note 3: Modification of the seat tracks prior to the effective date of this amendment in accordance with Airbus Service Bulletin A320–53–1088, original issue through Revision 2, is considered acceptable for compliance with the applicable actions specified in this paragraph.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The actions shall be done in accordance with All Operators Telex 53–01, dated August 27, 1992, or Airbus Service Bulletin A320–53–1088, Revision 3, dated March 27, 1994; as applicable. Revision 3 of Airbus Service Bulletin A320–53–1088 contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 4–6, 12, 13, 17, 29, 30, 45, 46, 53, 61, 62, 77, 78, 86, 93, 94, 102, 109, 110, 118, 125, 132, 139, 149, 153, 164.	3	March 27, 1994.
2, 13A, 13B, 14, 17A, 17B, 18.	2	November 22, 1993.
3, 8, 11, 15, 16, 19, 20, 21–28, 31–44, 47–52, 54–60, 63–76, 79–85, 87–92, 95–101, 103–108, 111–117, 119–124, 126–131, 133–138, 140–148, 150–152, 154–163.	Original	May 10, 1993.
7, 9, 10, 19A, 20A. .	1	August 16, 1993.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on July 24, 1995.

Issued in Renton, Washington, on June 12, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–14769 Filed 6–22–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 94–NM–181–AD; Amendment 39–9278; AD 95–12–25]

Airworthiness Directives; McDonnell Douglas Model DC–9, DC–9–80, and C–9 (Military) Series Airplanes, and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9, DC–9–80, and C–9 (military) series airplanes, and Model MD–88 airplanes. This amendment requires an inspection to detect chafing

on the FIREX pipe assembly of the number one engine; and either repair of chafed pipe assemblies or replacement of the chafed pipe assemblies with new pipe assemblies; and modification of the FIREX and the pneumatic sense pipe assembly clamp marriage. This amendment is prompted by reports of incidents in which the pneumatic sense pipe chafed against the FIREX supply pipe of the number one engine. The actions specified by this AD are intended to prevent the chafing of the FIREX supply pipe, which could result in a hole in the pipe and subsequently prevent the proper distribution of the fire extinguishing agent within the nacelle in the event of a fire.

DATES: Effective July 24, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 24, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (310) 627–5245; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9, DC–9–80, and C–9 (military) series airplanes, and Model MD–88 airplanes was published in the **Federal Register** on December 8, 1994 (59 FR 63275). That action proposed to require inspection to detect chafing on the FIREX pipe assembly of the number one engine; and either replacement of the chafed pipe assemblies with new pipe assemblies and modification of the FIREX and the pneumatic sense pipe assembly clamp marriage, or repair of the chafed pipe assemblies.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

Two commenters request that the compliance time for accomplishment of the inspection be extended from the proposed 8 months to 12 months. This will allow the inspection to be accomplished during the time of a regularly scheduled "C" check. One commenter considers that adoption of the proposed compliance time of 8 months would result in an additional expense to operators to schedule special times for the accomplishment of this inspection. The FAA does not concur with the commenters' request to extend the compliance time for the inspection requirements. In developing an appropriate compliance time for this action, the FAA considered the safety implications, parts availability, and normal maintenance schedules for timely accomplishment of the inspection. In consideration of these items, as well as the several reports of chafing of the FIREX supply pipe assembly found on in-service airplanes, the FAA has determined that 8 months represents the maximum interval of time allowable wherein the inspection can reasonably be accomplished and an acceptable level of safety can be maintained. However, paragraph (b) of the final rule does provide affected operators the opportunity to apply for an adjustment of the compliance time if data are presented to justify such an adjustment.

One commenter states that paragraph (a)(1) of the proposed rule seems to offer an option of not modifying the clamping configuration if repair is needed. The commenter requests that paragraph (a)(1) be changed to read, "* * * either replace the chafed pipe assemblies with new pipe assemblies or repair chafed pipe assemblies; and modify the FIREX * * *" for clarification purposes. The FAA concurs. Further review of McDonnell Douglas Service Bulletin 26–25, which is referenced in the final rule as the appropriate source of service information, indicates that the repair procedures [described in paragraph 2.C.(2) of the service bulletin] include modification of the clamping configuration. Therefore, the modification is part of the repair, and is not optional. The FAA has revised paragraph (a)(1) of the final rule to clarify this modification requirement accordingly. Since this revision just clarifies a requirement of the rule, the FAA finds that it does not pose an increased burden on any operator.

One commenter requests that Model DC–9 series airplanes that are not equipped with a ventral stair be excluded from the applicability of the proposed rule. The commenter states that these airplanes do not have a pipe assembly having part number P/N 7914299–521 or 7914299–524; these pipe assemblies are referenced in Revision 1 of the service bulletin that is cited in the proposal as the appropriate source of service information. The FAA concurs. Since issuance of the proposal, the FAA has reviewed and approved Revision 2 of McDonnell Douglas DC–9 Service Bulletin 26–25, dated April 18, 1995. The procedures described in Revision 2 are identical to those described in Revision 1 , but include minor editorial changes. However, Revision 2 revises the effectivity listing of the service bulletin by removing 544 non-ventral stair Model DC–9 series airplanes. Accordingly, the applicability of the final rule has been revised to include only those airplanes listed in Revision 2 of the service bulletin. Additionally, the economic impact information, below, has been revised to reduce the total cost impact by the amount of costs applicable to the 544 airplanes that have been deleted from the applicability of the final rule. Further, the final rule has been revised to reference Revision 2 of the service bulletin as an additional source of service information.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 1,410 Model DC–9, DC–9–80, and C–9 (military) series airplanes, and Model MD–88 airplanes of the affected design in the worldwide fleet. The FAA estimates that 553 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. The cost of required parts will be nominal. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $33,180, or $60 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–12–25 McDonnell Douglas: Amendment 39–9278. Docket 94–NM–181–AD.

Applicability: Model DC–9–10, –20, –30, –40, and –50 series airplanes; Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) series airplanes; Model MD–88 airplanes; and Model C–9 (Military) series airplanes; as listed in McDonnell Douglas DC–9 Service Bulletin 26–25, Revision 2, dated April 18, 1995; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent the chafing of a hole in the FIREX supply pipe of the number one engine, which could prevent the proper distribution of the fire extinguishing agent within the nacelle in the event of a fire, accomplish the following:

(a) Within 8 months after the effective date of this AD, perform an inspection to detect chafing of the FIREX pipe assembly of the number one engine, in accordance with McDonnell Douglas DC–9 Service Bulletin 26–25, Revision 1, dated September 30, 1994, or Revision 2, dated April 18, 1995.

(1) If any chafing is detected, prior to further flight, accomplish paragraph (a)(1) and (a)(2) of this AD in accordance with the service bulletin. Where there are differences between the requirements of this AD and the procedures specified in the service bulletin, the AD prevails.

(i) Either repair chafed pipe assemblies or replace the chafed pipe assemblies with new or serviceable pipe assemblies. And

(ii) Modify the FIREX and the pneumatic sense pipe assembly clamp marriage.

(2) If no chafing is detected, prior to further flight, modify the FIREX and the pneumatic sense pipe assembly clamp marriage in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspection, replacement, modification, and repair shall be done in accordance with McDonnell Douglas DC–9 Service Bulletin 26–25, Revision 1, dated September 30, 1994, or McDonnell Douglas DC–9 Service Bulletin 26–25, Revision 2, dated April 18, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, M.C. 2–98. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on July 24, 1995.

Issued in Renton, Washington, on June 9, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–14630 Filed 6–22–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–ANE–18; Amendment 39–9282; AD 95–08–10]

Airworthiness Directives; Teledyne Continental Motors (TCM) Model TSIO–360 and LTSIO–360 Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, request for comments.

SUMMARY: This document publishes in the **Federal Register** Airworthiness Directive (AD) 95–08–10 that was sent previously to all known U.S. owners and operators of Teledyne Continental Motors (TCM) Model TSIO–360 E, EB, F, FB, G, GB, KB, LB, MB, and Model LTSIO–360 E, EB, and KB reciprocating engines by individual letters. This AD requires replacement of the suspect turbocharger check valves prior to further flight, and prohibits special flight permits. This amendment is prompted by three reported engine failures caused by incorrectly assembled turbocharger oil outlet check valves, resulting in an improperly expanded rivet that held the check valve flapper assembly together as one unit. The actions specified by this AD are intended to prevent complete engine failure due to an incorrectly assembled turbocharger oil outlet check valve.

DATES: Effective July 10, 1995, to all persons except those persons to whom it was made immediately effective by

priority letter AD 95–08–10, issued on April 6, 1995, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 10, 1995.

Comments for inclusion in the Rules Docket must be received on or before August 22, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–ANE–18, 12 New England Executive Park, Burlington, MA 01803–5299.

The applicable service information may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, Alabama, 36601, telephone (334) 438–3411, fax (334) 432–2922. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jerry Robinette, Aerospace Engineer, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, GA, 30337–2748; telephone (404) 305–7371, fax (404) 305–7348.

SUPPLEMENTARY INFORMATION: On April 6, 1995, the Federal Aviation Administration (FAA) issued priority letter airworthiness directive (AD) 95–08–10, applicable to Teledyne Continental Motors (TCM) Model TSIO–360 E, EB, F, FB, G, GB, KB, LB, MB, and Model LTSIO–360 E, EB, and KB reciprocating engines, which requires removal of suspect turbocharger oil outlet check valves. That action was prompted by three reported cases of check valve failures, two of which resulted in complete loss of engine power. The three reported failures were caused by incorrectly assembled turbocharger oil outlet check valves, resulting in an improperly expanded rivet which held the check valve flapper assembly together as one unit. The improperly expanded rivet allowed the rivet, washer, retainer, and seal components to separate and shift within the check valve unit.

One reported case showed that a part of the flapper assembly blocked the oil flow to the scavenge pump, and resulted in engine failure. Another reported case showed that the scavenge pump was disabled when one part of the flapper assembly shifted through the unit, again resulting in engine failure. These failures occurred early in the life of the check valve, ranging from one hour to 40 hours total time since new.

The incorrectly assembled check valves were manufactured between August 1, 1994, through March 20, 1995. Accordingly, all have date code ink stamps of either A3Q94, A4Q94, or A1Q95, indicating they were manufactured either during the third quarter of 1994, the fourth quarter of 1994, or the first quarter of 1995. Since an incorrectly assembled check valve can not be visually identified by other than by this date code, this AD must consider all check valves with these date codes as suspect, and require their removal prior to further flight. This condition, if not corrected, could result in damage to the oil scavenge pump, internal engine damage and subsequent loss of complete engine power.

The FAA has reviewed and approved the technical contents of Teledyne Continental Motors (TCM) Critical Service Bulletin (CSB) 95–1A, Revision A, dated April 5, 1995, that describes inspection and replacement of suspect oil outlet check valves.

Since the unsafe condition described is likely to exist or develop on other engines of the same type design, the FAA issued priority letter AD 95–08–10 to prevent damage to the oil scavenge pump, internal engine damage and subsequent loss of complete engine power. The AD requires removal prior to further flight, of suspect turbocharger oil outlet check valves. The actions are required to be accomplished in accordance with the service bulletin described previously.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on April 6, 1995, to all known U.S. owners and operators of Teledyne Continental Motors (TCM) Model TSIO–360 E, EB, F, FB, G, GB, KB, LB, MB, and Model LTSIO–360 E, EB, and KB reciprocating engines. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of part 39 of the Federal Aviation Regulations (14 CFR part 39) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–ANE–18." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–08–10 Teledyne Continental Motors: Amendment 39–9282. Docket 95–ANE–18.

Applicability: Teledyne Continental Motors (TCM) engine Model TSIO–360 E, EB, F, FB, G, GB, KB, LB, MB, and Model LTSIO–360 E, EB, and KB reciprocating engines with turbocharger oil outlet check valve, TCM part number (P/N) 641068, shipped directly or indirectly from the manufacturer on or after August 1, 1994. These check valves are installed on but not limited to the following serial numbered engines:

New engine model TSIO–360–FB, serial number (S/N) 318019; new engine model TSIO–360–KB, S/N 320223, 320229, 320233, through 320235, 320239, 320242 through 320250, 320254 through 320259, 320261, 320262, 320264, 320266, 320292, 320293; new engine model LTSIO–360–KB, S/N 319226, 319232, 319235 through 319237, 319241, 319244 through 319246, 319248 through 319253, 319257, 319258, 319260 through 319268, 319270, 319271, 319273, 319297, 319322; rebuilt engine model TSIO–360–E, S/N 225140–R; rebuilt engine model TSIO–360–EB, S/N 265937–R, 265938–R, 265942–R through 265944–R, 265946–R through 265968–R, 265970–R through 265973–R, 265975–R, 265977–R through 265982–R; rebuilt engine model LTSIO–360–E, S/N 225648–R; rebuilt engine model LTSIO–360–EB, S/N 266471–R, 266480–R, 266482–R 266486–R, 266487–R, 266489–R through 266495–R, 266497–R through 266499–R, 807251–R through 807254–R, 807256–R through 807259–R, 807261–R through 807265–R, 807267–R, 807268–R, 807271–R through 807275–R, 807276–R; rebuilt engine model TSIO–360–F, S/N 232814–R through 232817–R; rebuilt engine model TSIO–360–FB, S/N 281183–R, 281187–R, 281189–R, 281190–R, 281193–R through 281197–R, 281199–R, 299501–R through 299523–R, 299525–R through 299528–R, 299532–R; rebuilt engine model TSIO–360–KB, S/N 268192–R, 268195–R through 268201–R, 268205–R through 268207–R; rebuilt engine model LTSIO–360–KB, S/N 268428–R, 268430–R, 268431–R, 268433–R, 268434–R, 268436–R, 268437–R, 268440–R through 268445–R; rebuilt engine model TSIO–360–LB, S/N 247257–R, 247259–R, 247260–R, 247262–R, 247267–R through 247271–R, 247273–R through 247275–R; and rebuilt engine model TSIO–360–MB, S/N 279245–R through 279247–R, 279249–R, 279250–R.

These engines are installed on but not limited to: Mooney Model M20K, Piper Models PA28–201T, PA28R–201T, PA28RT–201T, PA34–200T and PA34–220T aircraft.

Note: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any engine from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent engine failure due to incorrectly assembled turbocharger oil outlet check valve, which could result in complete engine failure, accomplish the following:

(a) Prior to further flight, determine if the turbocharger oil outlet check valve has been installed or repaired on or after August 1, 1994. This AD is not applicable to engines that did not have the turbocharger oil outlet check valve installed or repaired on or after August 1, 1994.

(b) Prior to further flight, inspect the turbocharger oil outlet check valve, TCM P/N 641068, in accordance with section B of Teledyne Continental Motors (TCM) Critical Service Bulletin (CSB) 95–1A, Revision A, dated April 5, 1995, and replace any check valve with an ink stamped date code of A3Q94, A4Q94 or A1Q95, or with no readable date code, with a serviceable check valve as defined in paragraph (c) of this AD.

(c) For the purpose of this AD, serviceable turbocharger oil outlet check valve is defined as one with a date stamp code indicating that it was manufactured before July 1, 1994, i.e., A2Q94, or earlier, or that it was manufactured after March 31, 1995, i.e., A2Q95, or later.

(d) Install replacement valve in the turbocharger oil outlet line with the flow arrow on the valve body pointing in the direction of oil flow toward the scavenge pump in accordance with section B of TCM CSB95–1A, Revision A, dated April 5, 1995.

(e) An alternative method of compliance that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Atlanta Aircraft Certification Office.

(f) Special flight permits may not be issued.

(g) Copies of the applicable service information may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, Alabama, 36601, telephone (334) 438–3411, fax (334) 432–2922.

(h) The turbocharger oil outlet check valve inspections shall be done in accordance with the following service bulletin:

Document No.	Pages	Revision	Date
TCM CSB95–1A.	1, 2	A	April 5, 1995.

Total pages: 2.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, Alabama, 36601, telephone (334)438–3411, fax (334) 432–2922. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective July 10, 1995, to all persons except those persons to whom it was made immediately effective by priority letter AD 95–08–10, issued April 6, 1995, which contained the requirements of this amendment.

Issued in Burlington, Massachusetts, on June 12, 1995.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–15151 Filed 6–22–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–CE–27–AD; Amendment 39–9283; AD 95–13–02]

Airworthiness Directives; Twin Commander Aircraft Corporation 685, 690, and 695 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that

applies to certain Twin Commander Aircraft Corporation (Twin Commander) 685, 690, and 695 series airplanes. This action requires initially inspecting the vertical stabilizer for cracks, modifying any cracked vertical stabilizer, and, if not cracked, either repetitively inspecting or modifying the vertical stabilizer. Several reports of the vertical stabilizer cracking in different areas prompted this action. The actions specified by this AD are intended to prevent failure of the vertical stabilizer as a result of cracking, which, if not detected and corrected, could result in loss of control of the airplane.

DATES: Effective July 22, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 22, 1995.

ADDRESSES: Service information that applies to this AD may be obtained from the Twin Commander Aircraft Corporation, 19010 59th Drive, N.E., Arlington, Washington 98223. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. David D. Swartz, Aerospace Engineer, FAA, Northwest Mountain Region, 1601 Lind Avenue S.W., Renton, Washington 98055–4056; telephone (206) 227–2624; facsimile (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Twin Commander Models 685, 690, 690A, 690B, 690C, 690D, 695, and 695A airplanes was published in the **Federal Register** on February 1, 1995 (60 FR 6045). The action proposed to require initially inspecting the vertical stabilizer for cracks, modifying any cracked vertical stabilizer, and, if not cracked, either repetitively inspecting or modifying the vertical stabilizer. Accomplishment of the proposed actions would be in accordance with Twin Commander Service Bulletin No. 218, dated May 19, 1994, including Revision Notices 1 and 2, dated July 11, 1994, and September 23, 1994, respectively.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

The FAA estimates that 469 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 10 workhours per airplane to accomplish the required inspection, and that the average labor rate is approximately $60 an hour. Parts to accomplish the required inspection cost approximately $200 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $375,200. This figure does not take into account the cost of repetitive inspections or the cost of any modifications that may be needed based on the inspection results. The FAA has no way of determining how many vertical stabilizers may be cracked and need modification, or how many repetitive inspections each owner/operator may incur.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new AD to read as follows:

95–13–02 Twin Commander Aircraft Corporation: Amendment 39–9283; Docket No. 94–CE–27–AD.

Applicability: The following airplane models and serial numbers, certificated in any category, that do not have the vertical stabilizer modified in accordance with the ACCOMPLISHMENT INSTRUCTIONS: PART II—MODIFICATION section of Twin Commander Service Bulletin (SB) No. 218, dated May 19, 1994, including Revision Notices 1 and 2, dated July 11, 1994, and September 23, 1994, respectively:

Model	Serial numbers
685	12000 through 12066.
690	11000 through 11079.
690A	11100 through 11344.
690B	11350 through 11566.
690C	11600 through 11735.
690D	15001 through 15042.
695	95000 through 95084.
695A	96001 through 96100.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (f) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required upon the accumulation of 2,000 hours time-in-service (TIS) on a vertical stabilizer or within the next 50 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished, and thereafter as indicated in the body of this AD.

To prevent failure of the vertical stabilizer as a result of cracks, which, if not detected and corrected, could result in loss of control of the airplane, accomplish the following:

(a) Inspect the vertical stabilizer for cracks in accordance with the ACCOMPLISHMENT INSTRUCTIONS: PART I—INSPECTION section of Twin Commander SB No. 218, dated May 19, 1994, including Revision Notices 1 and 2, dated July 11, 1994, and September 23, 1994, respectively.

(b) If damage or cracks are found within the limits of Figures 1 and 2 of the service information referenced above, prior to further flight, modify the vertical stabilizer in accordance with the ACCOMPLISHMENT INSTRUCTIONS: PART II—MODIFICATION section of Twin Commander SB No. 218, dated May 19, 1994, including Revision Notices 1 and 2, dated July 11, 1994, and September 23, 1994, respectively.

(c) If damage or cracks are found outside the limits referenced in Figures 1 and 2 of the service information referenced above or if cracks intersect, prior to further flight, replace the damaged parts with new parts in accordance with the applicable maintenance manual instructions. The requirements of this AD still apply when the damaged parts are replaced, unless the stabilizer is modified as specified in paragraph (b) of this AD.

(d) If no cracks are found, accomplish one of the following:

(1) Reinspect at intervals not to exceed 500 hours TIS, and modify any damaged or cracked vertical stabilizer as specified in paragraphs (b) and (c) of this AD; or

(2) Prior to further flight, modify the vertical stabilizer in accordance with the ACCOMPLISHMENT INSTRUCTIONS: PART II—MODIFICATION section of Twin Commander SB No. 218, dated May 19, 1994, including Revision Notices 1 and 2, dated July 11, 1994, and September 23, 1994, respectively.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Northwest Mountain Region, 1601 Lind Avenue S.W., Renton, Washington 98055–4056. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(g) The inspections and modification required by this AD shall be done in accordance with Twin Commander Service Bulletin 218, dated May 19, 1994, including Revision Notices 1 and 2, dated July 11, 1994, and September 23, 1994, respectively. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Twin Commander Aircraft Corporation, 19003 59th Drive, NE., Arlington, Washington 98223. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment (39–9283) becomes effective on July 22, 1995.

Issued in Kansas City, Missouri, on June 13, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–15013 Filed 6–22–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–CE–24–AD; Amendment 39–9284; AD 95–13–03]

Airworthiness Directives; Beech Aircraft Corporation Model F90, and 99, 100, and 200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Beech Aircraft Corporation (Beech) Model F90, and 99, 100, and 200 series airplanes. This action requires installing a circuit breaker that will open before the landing gear power system motor is damaged to the point of restricting operation of the manual landing gear extension system. An incident where excessive current flow caused the electrical landing gear motor and wiring to catch fire on a Beech Model 200 airplane prompted this action. The actions specified by this AD are intended to prevent excessive current flow through the electrical landing gear motor, which could cause an airplane fire.

DATES: Effective July 28, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 28, 1995.

ADDRESSES: Service information that applies to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Dale A. Vassalli, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone (316) 946–4132; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Beech Model F90, and 99, 100, and 200 series airplanes was published in the **Federal Register** on December 30, 1994 (59 FR 67656). The action proposed to require installing a circuit breaker that will open before the landing gear power system motor is damaged to the point of restricting operation of the manual landing gear extension system. Accomplishment of the proposed action would be in accordance with Beech Service Bulletin (SB) No. 2035, Issued: February 1985; Revised August 1990; and the instructions to the following Landing Gear Motor Circuit Breaker Installation Kits (as applicable): 101–3069–1 S, 101–3069–3 S, 101–3069–5 S, and 101–3133–1 S.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

Since issuance of the proposal, Beech has revised SB No. 2035 to the Revision III level (Issued: February 1985; Revised: April 1995). This revision adds reference to Kit No. 101–3069–7 S for the Model A200C airplanes, serial numbers BJ–1 through BJ–66, and incorporates minor editorial corrections. The FAA has determined that Beech Kit No. 101–3069–7 S should be added to the final rule AD, as well as reference to Beech SB 2035, Revision III, Issued: February 1985; Revised: April 1995.

After careful review of all available information, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the addition of the installation kit described above, reference to the revised service bulletin, and minor editorial corrections. The FAA has determined that the additions and minor editorial corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

The FAA estimates that 2,297 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 6 workhours (varies between 2 to 6 workhours depending on the airplane model) per airplane to accomplish the required action, and that

the average labor rate is approximately $60 an hour. The cost for parts varies by airplane model; however, for the purposes of this AD, $1,000 is utilized. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,123,920. This figure is based on the assumption that no U.S. operator of the affected airplanes has accomplished the proposed installation.

Beech has informed the FAA that approximately 2,100 installation kits have been sold. Assuming that each of these kits is installed on one of the affected airplanes, the cost impact of this action on U.S. operators is reduced by $2,856,000 from $3,123,920 to $267,920.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new AD to read as follows:

95-13-03 Beech Aircraft Corporation: Amendment 39-9284; Docket No. 94-CE-24-AD.

Applicability: The following airplane models and serial numbers, certificated in any category:

Models	Serial numbers
F90	LA-2 through LA-225 equipped with mechanical landing gear.
99, 99A, A99A, and B99.	U-1 through U-49 equipped with mechanical landing gear and U-51 through U-164 equipped with mechanical landing gear.
100 and A100	B-1 through B-94 and B-100 through B-247.
B100	BE-2 through BE-137.
200 and B200	BB-2, BB-6 through BB-1157, BB-1159 through BB-1166, and BB-1168 through BB-1192.
200C and B200C	BL-1 through BL-72.
200T and B200T	BT-1 through BT-30.
200CT and B200CT.	BN-1 through BN-4.
A100 (U-12F)	B-95 through B-99.
A100-1 (U-21J)	BB-3, BB-4, and BB-5.
A200 (C-12A/C)	BC-1 through BC-75 and BD-1 through BD-30.
A200C (UC-12B)	BJ-1 through BJ-66.
A200CT (C-12D)	BP-1, BP-22, and BP-24 through BP-45.
A200CT (FWC-12D).	BP-7 through BP-11.
A200CT (RC-12D).	GR-1 through GR-13.
A200CT (RC-12G).	FC-1, FC-2, and FC-3.
A200CT (RC-12H).	GR-14 through GR-19.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent excessive current flow through the electrical landing gear motor, which could result in an airplane fire, accomplish the following:

(a) Install a circuit breaker that will open before the landing gear power system motor is damaged to the point of restricting operation of the manual landing gear extension system by accomplishing the following:

(1) Prepare the airplane by completing the ACCOMPLISHMENT INSTRUCTIONS section of Beech Service Bulletin No. 2035, Revision III: Issued: February 1985; Revised: April 1995.

(2) Incorporate one of the following Landing Gear Motor Circuit Breaker Installation Kits, as applicable, in accordance with the instructions provided with the kits:

(i) 101-3069-1 S for Models 200, B200, 200C, B200C, 200T, B200T, 200CT, B200CT, A200 (C-12A/C), and A200C (UC-12B);

(ii) 101-3069-3 S for Models 100, A100, B100, and A100-1 (U-21J);

(iii) 101-3069-5 S for Models F90, 99, 99A, A99A, and B99;

(iv) 101-3069-7 S for Model A200C (UC-12B); and

(v) 101-3133-1 S for Models A200 (C-12A/C), A200CT (C-12D), A200CT (FWC-12D), A200CT (RC-12D), A200CT (RC-12G), and A200CT (RC-12H).

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(d) The installation required by this AD shall be done in accordance with the instructions to Landing Gear Motor Circuit Breaker Installation Kits 101-3069-1 S, 101-3069-3 S, 101-3069-5 S, 101-3069-7 S, or 101-3133-1 S, as referenced in Beech Service Bulletin No. 2035, Revision III: Issued: February 1985; Revised: April 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment (39-9284) becomes effective on July 28, 1995. Issued in Kansas City, Missouri, on June 13, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95-14870 Filed 6-22-95; 8:45 am]

BILLING CODE 4910-13-U

NATIONAL LABOR RELATIONS BOARD

29 CFR Parts 100 and 102

Miscellaneous Amendments

AGENCY: National Labor Relations Board (NLRB).

ACTION: Miscellaneous amendment rule.

SUMMARY: The National Labor Relations Board is issuing a miscellaneous amendments rule to its administrative regulations to update cross-references and to change the NLRB's headquarters address.

EFFECTIVE DATE: The miscellaneous amendments are effective June 23, 1995.

FOR FURTHER INFORMATION CONTACT: Gloria Joseph, Director of Administration, National Labor Relations Board, Room 7108, 1099 14th Street NW, Washington, DC 20570-0001. (202-273-3890).

SUPPLEMENTARY INFORMATION: On July 21, 1994, the National Labor Relations Board amended its administrative regulations (59 FR 37157) governing the standards of conduct and financial disclosure requirements of its employees of the Agency. Most of those regulations had been superseded by the Standards of Ethical Conduct for Employees of the Executive Branch issued by the Office of Government (OGE). The NLRB published the rule to repeal those portions of the provisions that were superseded by the executive branch-wide standards and to update cross-references in the current regulations that continued to be applicable. Again, on May 5, 1995, the NLRB published a rule to correct amendatory instructions 4, and 5, and amendatory instruction 10. (59 FR 37158) of the July 21, 1994 amending rule (60 FR 22269). This miscellaneous amendments rule is being published to update cross-references, and change the NLRB's headquarters address in some sections from its former address of 1717 Pennsylvania Avenue NW to its current address of 1099 14th Street NW.

List of Subjects in 29 CFR Parts 100 and 102

Administrative practice and procedure; Civil rights; Claims; Equal employment opportunity; Individuals with disabilities.

Parts 100 and 102 of Title 29 CFR are amended as follows:

PART 100—ADMINISTRATIVE REGULATIONS

1. The authority citation for part 100 is revised to read as follows:

Authority: Sec. 6, National Labor Relations Act, as amended (29 U.S.C. 141, 146).

Subpart A is also issued under 5 U.S.C. 7301; 5 U.S.C. app. (Ethics in Government Act of 1978); E.O. 12674, 3 CFR 1989 Comp., 215, as modified by E.O. 12731, 3 CFR 1990 Comp., p. 306; 5 CFR 2635.105, 2635.403, 2635.802(a), 2635.803; 18 U.S.C. 201 et seq.; 18 U.S.C. 208; 57 FR 56433 (codified at 5 CFR 735).

Subpart B is also issued under the Inspector General Act of 1978, as amended by the Inspector General Act Amendment of 1988, 5 U.S.C. app. 3; 18 U.S.C. 201 *et seq.*; 5 CFR 735; 42 U.S.C. 2000e-16(a); 29 CFR 1613.2049a) and 29 CFR 1613.216.

Subpart D is also issued under 28 U.S.C. 2672; 28 CFR part 14.

Subpart E is also issued under 29 U.S.C. 794.

§ 100.502 [Amended]

2. In § 100.502, reference "(§§ 100.601-100.670)" is revised to read "(§§ 100.501-100.570)".

§ 100.503 [Amended]

3. In § 100.503, in the definition of "qualified individual with handicaps", in paragraph (4), the reference "§ 100.640" is revised to read "§ 100.540".

§ 100.549 [Amended]

4. In § 100.549, reference "§ 100.150" is revised to read "§ 100.550".

§ 100.550 [Amended]

5. In § 100.550(a)(3) and (b)(2), reference "§ 100.650(a)" is revised to read "§ 100.550(a)".

§ 100.560 [Amended]

6. In § 100.560(d) reference "§ 100.160" is revised to read "§ 100.560".

PART 102—RULES AND REGULATIONS, SERIES 8

1. The authority citation for Part 102 continues to read as follows:

Authority: Sec. 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156). Section 102.117 also issued under sec. 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)), and section 552a(j) and (k) of the Privacy Act (5 U.S.C. 552a(j) and (k)). Sections 102.143 through 102.155 also issued under sec. 504(c)(1) of the Equal Access to Justice Act as amended (5 U.S.C. 504(c)(1)).

§ 102.117 [Amended]

2. In § 102.117(f), (g), and (i) the address "1717 Pennsylvania Avenue NW., Washington, DC 20570" is revised to read "1099 14th Street NW., Washington, DC 20570".

3. In § 102.117, paragraph (c)(2)(iii)(*a*), (*b*), and (*c*) is renumbered as paragraph (c)(2)(iii)(A), (B), and (C).

By direction of the Board.

National Labor Relations Board.

John J. Toner,

Acting Executive Secretary.

[FR Doc. 95-15352 Filed 6-22-95; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 63

[AD-FRL-5217-2]

RIN 2060-AE04

National Emission Standards for Hazardous Air Pollutants From Secondary Lead Smelting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for new and existing secondary lead smelters pursuant to section 112 of the Clean Air Act (the Act) as amended in 1990. Secondary lead smelters have been identified by the EPA as significant emitters of several chemicals identified in the Act as hazardous air pollutants (HAP's) including but not limited to lead compounds, arsenic compounds, and 1,3-butadiene. Chronic exposure to arsenic and 1,3-butadiene is associated with skin, bladder, liver and lung cancer and other developmental and reproductive effects. Exposure to lead compounds results in adverse effects on the blood, central nervous system and kidneys. Children are particularly sensitive and exposure to lead compounds can also result in reduced cognitive development and reduced growth. This rulemaking will affect secondary lead smelters that use blast, reverberatory, rotary, or electric smelting furnaces to recover lead metal from scrap lead, primarily from used lead-acid automotive-type batteries. The purpose of the final rule is to reduce HAP emissions from secondary lead smelting. This rule is estimated to reduce emissions, including metal HAP's and organic HAP's, by about 1,300 megagrams (1,400 tons) per year.

The NESHAP provides protection to the public by requiring all secondary lead smelters to meet emission standards reflecting the application of the maximum achievable control technology (MACT). The NESHAP regulates emissions of lead compounds and total hydrocarbons (THC's) as surrogates for metal HAP's and organic HAP's, respectively. The EPA is also adding secondary lead smelters that are area sources to the list of source categories that are subject to MACT standards.

EFFECTIVE DATE: June 23, 1995.

ADDRESSES: *Docket.* Docket No. A–92–43, containing information considered by the EPA in development of the promulgated standards, is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday except for Federal holidays, at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (MC–6102), 401 M Street, SW, Washington, DC 20460; telephone (202) 260–7548. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying.

Background Information Document. A background information document (BID) for the promulgated standards may be obtained from the docket; the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone (919) 541–2777; or from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, telephone (703) 487–4650. Please refer to "Secondary Lead Smelting—Background Information for Promulgated Standards," (EPA–453/R–95–008b).

The BID contains a summary of all the public comments made on the proposed standards and the EPA's response to the comments. It also contains a summary of the changes made to the standards since proposal.

FOR FURTHER INFORMATION CONTACT: Mr. Phil Mulrine, Metals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone (919) 541–5289.

SUPPLEMENTARY INFORMATION:

Judicial Review. Under section 307(b)(1) of the Act, judicial review of a NESHAP is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this final rule. Under section 307(b)(2) of the Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

The information presented in this preamble is organized as follows:

I. Background
II. Summary
  A. Summary of Promulgated Standards
  B. Summary of Major Changes Since Proposal
  C. Summary of Environmental, Energy, Cost, and Economic Impacts
III. Public Participation
IV. Significant Public Comments and Responses
  A. Adverse Health Effects Finding for Area Sources
  B. Hydrogen Chloride/Chlorine Emission Standards
  C. Metal Hazardous Air Pollutant Monitoring Requirements
  D. Exemption from Resource Conservation and Recovery Act Boiler and Industrial Furnace Emission Standards
V. Administrative Requirements
  A. Docket
  B. Executive Order 12866
  C. Unfunded Mandates Act
  D. Paperwork Reduction Act
  E. Regulatory Flexibility Act

I. Background

On July 16, 1992 (57 FR 31576), the EPA published a list of major and area sources for which NESHAP are to be promulgated. On December 3, 1993 (58 FR 63941), the EPA published a schedule for promulgation of those standards. The secondary lead smelting source category is included on the list of major sources and the EPA is required to establish national emission standards by May 31, 1995 according to this schedule. Major sources are those sources emitting 10 or more tons per year of any one HAP or 25 or more tons per year of a combination of HAP's.

This NESHAP was proposed in the **Federal Register** on June 9, 1994 (59 FR 29750). The same notice also announced that the EPA was proposing to add secondary lead smelters that are area sources to the list of source categories that will be subject to national emission standards. Area sources are those smelters emitting less than 10 tons per year of any single HAP and less than 25 tons per year of a combination of HAP's. The EPA received 31 letters commenting on the proposed rule and proposed area source listing. The EPA received no requests for a public hearing. The EPA published a supplemental notice announcing the availability of new data regarding the proposed standards for hydrogen chloride/chlorine (HCl/Cl_2) emissions on April 19, 1995 (60 FR 19556). The EPA received eight comment letters in response to the supplemental notice.

II. Summary

A. Summary of Promulgated Standards

The promulgated rule establishes standards to limit HAP emissions from smelting furnaces, refining kettles, agglomerating furnaces, dryers, and fugitive dust sources at both major source and area source secondary lead smelters. The promulgated rule does not apply to primary lead smelters, lead refiners, or lead remelters.

Emission standards promulgated under section 112 are to be technology-based and are to reflect the maximum degree of reduction of HAP emissions achievable taking into consideration the cost of achieving the emission reduction, any nonair quality health and environmental impacts and energy requirements. These standards are termed MACT standards. Emission reduction may be accomplished through application of a variety of measures, methods, or techniques. Emission standards, however, can be no less stringent than a minimum baseline or "floor" for standards set out in the statute.

For new sources, the standards for a source category or subcategory cannot be less stringent than the emission control that is achieved in practice by the best controlled similar source. The standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources (excluding certain sources described in section 112(d)(3) of the Act) for categories and subcategories with 30 or more sources, or the best-performing 5 sources for categories and subcategories with fewer than 30 sources. There are fewer than 30 secondary lead smelters, so the standards for existing sources are based on the best-performing 5 sources.

Floor levels of control were determined for each of the affected source types under consideration for regulation. Source types are process sources, process fugitive sources, and fugitive dust sources. For process fugitive sources and fugitive dust sources, which are similar in character and emissions potential across all secondary lead smelters, the entire population of secondary lead smelters are considered in determining MACT floor levels of control. For process sources, specifically smelting furnaces, smelters are differentiated and divided into configurations based on the smelting furnace types used at individual smelters. In all but one case, floors for existing source MACT and new source MACT are identified. In the one case where existing source MACT is less stringent than new source MACT, the determination was made that the establishment of standards beyond the existing source floor was unreasonable. A complete discussion of the selection of the MACT and basis of standards for each source type is presented in the preamble to the proposed rule (59 FR 29760; June 9, 1994).

1. Process Emission Sources

Owners and operators of all smelting furnace types must limit lead compound emissions, which is a surrogate for all metal HAP's, to no more than 2.0 milligrams per dry standard cubic meter (mg/dscm; 0.00087 grains per dry standard cubic foot (gr/dscf)). Owners and operators must limit THC emissions, which is a surrogate for all organic HAP's, to varying levels depending on the smelting furnace type. No THC limits apply to reverberatory, rotary, and electric furnaces not collocated with blast furnaces.

Owners and operators of collocated reverberatory and blast furnaces must comply with a THC limit of 20 parts per million by volume (ppmv) as propane at 4 percent carbon dioxide (CO_2) when both furnaces are operating. Less stringent limits apply when the reverberatory furnace is not operating. When the reverberatory furnace is not operating, new blast furnaces collocated with reverberatory furnaces must comply with a THC limit of 70 ppmv, and existing blast furnaces must comply with a THC limit of 360 ppmv.

Owners and operators of new blast furnaces located at blast-furnace-only smelters must comply with a THC limit of 70 ppmv. Existing blast furnaces located at blast-furnace-only smelters must comply with a THC limit of 360 ppmv. The THC emissions from each blast furnace charging chute at all smelters with blast furnaces shall not exceed 0.20 kilograms per hour (kg/hr; 0.44 pounds per hour (lb/hr)).

Table 2 in the attached regulatory text summarizes the emission limits for smelting furnace process sources.

2. Process Fugitive Emission Sources

Owners and operators must comply with either of two process fugitive emission control options. Each process fugitive emission source must be controlled either by an enclosure-type hood that is ventilated to a control device or must be fully enclosed within a containment building (within the meaning of 40 CFR part 265, subpart DD) that is ventilated to a control device. Lead compound emissions, as a surrogate for all metal HAP's, from each hood or building control device are limited to 2.0 mg/dscm (0.00087 gr/dscf).

Refining kettle enclosure hoods must have a minimum air velocity into all hood openings (i.e., face velocity) of 75 meters per minute (m/min; 250 feet per minute (fpm)), and the enclosure hoods over drying kiln transition pieces must have a minimum face velocity of 110 m/min (350 fpm). All other process fugitive emission sources (charging points, lead and slag taps, and agglomerating furnaces) with an enclosure hood must have a minimum face velocity of 90 m/min (300 fpm). If a ventilated building is used to control process fugitive sources, then it must have a minimum air velocity into the building through all openings of 75 m/min (250 fpm).

Table 3 in the attached regulatory text summarizes the requirements for process fugitive emission sources.

3. Fugitive Dust Sources

Fugitive dust emissions must be controlled by the measures specified in a standard operating procedures (SOP) manual. The SOP must be developed by the owner or operator of each smelter and submitted to the Administrator for approval. The SOP must describe the measures that will be used to control fugitive dust emissions from plant roadways; the battery breaking area; the furnace, refining, and casting areas; and the materials storage and handling areas. Acceptable control measures include either a total enclosure of the fugitive dust source and ventilation of the enclosure to a control device, or a combination of partial enclosures, wet suppression, and pavement cleaning. Lead compound emissions, as a surrogate for all metal HAP's, from enclosure control devices must be limited to 2.0 mg/dscm (0.00087 gr/dscf).

4. Compliance Dates

Compliance for existing sources must be achieved no later than June 23, 1997, or upon startup for new or reconstructed sources.

5. Compliance Test Methods

Compliance with the emission limits for lead compounds shall be determined according to EPA Reference Method 12 (40 CFR part 60, appendix A). Compliance with the THC emission limits shall be determined according to EPA Reference Method 25A (40 CFR part 60, appendix A). Concentrations of THC shall be reported in ppmv, as propane, corrected to 4 percent CO_2 to correct for dilution. Sampling point locations shall be determined according to EPA Reference Method 1, and stack gas conditions shall be determined, as appropriate, according to EPA Reference Methods 2, 3, 3B, and 4 (40 CFR part 60, appendix A).

6. Monitoring Requirements

The rule requires an initial lead compound emission test to demonstrate compliance with the lead compound emission standards. All owners and operators must also prepare SOP manuals for the systematic inspection and maintenance of all baghouses. Each manual shall also include provisions for the diagnosis of problems and a corrective action plan. In addition, all baghouses are required to have bag leak detection systems with alarms to indicate bag leaks or other causes of increased emissions. Plans for corrective action must prescribe procedures to be followed whenever an alarm is triggered.

Compliance with the THC emission standards (except that for blast furnace charging) will require monitoring either afterburner or incinerator temperature or THC concentration. Only an initial compliance test is required for blast furnace charging.

7. Notification Requirements

The owner or operator will be required to comply with the notification requirements in the General Provisions to part 63 (40 CFR part 60, subpart A). In addition, owners and operators will be required to submit the fugitive dust control SOP and the baghouse SOP to the Administrator for review and approval.

8. Recordkeeping and Reporting Requirements

Owners and operators will be required to comply with the recordkeeping and reporting requirements in the General Provisions to part 63 (40 CFR part 63, subpart A). In addition, the owners and operators will be required to maintain records demonstrating that they have implemented the requirements of the fugitive dust control SOP and the baghouse SOP, including records of all bag leak detection system alarms and corrective actions.

B. Summary of Major Changes Made Since Proposal

Based on public comments received in response to both the initial notice of proposal and the supplemental notice, and other data received since proposal, the EPA has made several changes to the

proposed rule. The BID referred to in the **ADDRESSES** section of this preamble contains a complete explanation of the EPA's reasons for making each of these changes. A summary of the major changes is presented below.

1. Applicability

The applicability of the rule was clarified by adding a statement that the rule does not apply to primary lead smelters, lead refiners, and lead remelters.

2. Standards for Process Sources

The THC emission limits for blast furnaces collocated with reverberatory furnaces were revised to account for periods when the reverberatory furnace is not operating.

When the reverberatory furnace is not operating, these blast furnaces will be allowed to meet the same THC limits as new and existing blast furnaces located at blast-furnace-only smelters (70 ppmv and 360 ppmv, respectively). The proposed standards required that reverberatory/blast furnace facilities meet a THC emission limit of 20 ppmv at all times. The proposed HCl/Cl_2 emission standards (and associated testing and monitoring requirements) are not being promulgated.

3. Standards for Process Fugitive Sources

The ventilation requirements for hoods have been modified; the volumetric flow rate requirement for refining kettle hoods has been withdrawn and the face velocity requirements for furnace charging and tapping have been lowered from 110 m/min (350 fpm) to 90 m/min (300 fpm). A provision has been added that will allow owners and operators to control process fugitive emission sources by enclosing them in a building that is ventilated to a control device, rather than having to comply with the enclosure hood and face velocity requirements at each emission source.

4. Test Methods and Schedule

The annual lead test has been withdrawn for all sources; only an initial lead test is now required. Velometers (anemometers) have been added as an alternate method for determining face velocities for process fugitive hoods and building doorways.

5. Monitoring Requirements

The proposed rule would have required a continuous opacity monitor (COM) and a site-specific opacity limit for monitoring lead compound emissions from process sources. These requirements have been withdrawn. Rather than install and operate a COM, each owner or operator must now prepare a baghouse SOP manual that includes an inspection and maintenance procedure and a corrective action plan for all process, process fugitive, and fugitive dust baghouses. Each baghouse must also be fitted with a bag leak detection system with an alarm to monitor baghouse performance. An alarm signal by itself is not considered to be a violation of the lead compound emission limit. To maintain compliance, the owner or operator must follow the inspection and maintenance procedure and comply with the requirements of the corrective action plan whenever an alarm is activated.

There has been no change to the organic HAP monitoring requirements. The proposed HCl/Cl_2 monitoring requirements have been withdrawn.

6. Recordkeeping and Reporting Requirements

The recordkeeping and reporting requirements have been revised so they are consistent with the baghouse SOP manual in the revised monitoring requirements. Owners and operators also will be required to record the date and time of all bag leak detection system alarm signals, their cause, the corrective action taken, and the timing for such action.

The requirements for THC recordkeeping and reporting have been clarified so that only the 3-hour averages that are not in compliance with the allowable afterburner or incinerator temperature, or THC concentration must be reported, rather than all 3-hour averages for the entire reporting period. The recordkeeping and reporting requirements associated with the HCl/Cl_2 emission standards have been withdrawn. Finally, the reporting frequency has been changed to be consistent with the requirements under § 63.10 of the General Provisions.

C. Summary of Environmental, Health, Cost, and Economic Impacts

The final standards will reduce total nationwide emissions of both metal HAP's and organic HAP's from secondary lead smelters by 1,283 megagrams per year (Mg/yr) (1,411 tons/yr). These reductions include 53 Mg/yr (58 tons/yr) of metal HAP's and 1,230 Mg/yr (1,353 tons/yr) of organic HAP's. No reductions in HCl/Cl_2 emissions are expected as a direct consequence of the final rule because of the deletion of HCl/Cl_2 emission standards since proposal. However, emissions of HCl/Cl_2 are expected to be essentially eliminated in any case because of the elimination of polyvinyl chloride (PVC) plastic as a separator material in batteries. The rationale for not promulgating HCl/Cl_2 emission standards is explained in section IV(B) of this preamble.

These emission reductions will have a positive effect on public health. Metal HAP emissions from secondary lead smelting include lead compounds and arsenic compounds, among others. Populations around secondary lead smelters can be exposed to metal HAP's through inhalation or through ingestion of metal HAP's that have settled on the soil in the vicinity of the smelter. Exposure to lead compounds occurs through inhalation or ingestion, but the effects are the same regardless of the route of exposure. Chronic exposure to lead compounds results in adverse effects on the blood, central nervous system, blood pressure, kidneys, and vitamin D metabolism. Children are particularly sensitive and exposure can also result in reduced cognitive development and reduced growth. Adverse effects on human reproduction have also been reported. Lead compounds can be persistent in the environment and have the potential to accumulate in food chains.

Chronic inhalation exposure to arsenic compounds is strongly associated with lung cancer and is associated with irritation of the skin and mucous membranes (dermatitis, conjunctivitis, pharyngitis, and rhinitis). Chronic oral exposure has resulted in gastrointestinal effects, anemia, peripheral nerve damage, skin lesions, and liver or kidney damage and is linked to skin, bladder, liver, and lung cancer.

Organic HAP emissions from secondary lead smelting include 1,3-butadiene, among other organic compounds. The effects of chronic exposure to 1,3-butadiene include increased cardiovascular disease. Animal studies of chronic exposure to 1,3-butadiene indicate effects on respiratory and cardiovascular systems and the liver, as well as developmental and reproductive effects. Animal studies have also reported tumors from inhalation exposure to 1,3-butadiene and the EPA has classified 1,3-butadiene as a probable human carcinogen.

In addition to the reductions in HAP air emissions achieved, the final standards will also achieve reductions in nationwide emissions of two criteria pollutants, carbon monoxide and particulate matter. Compliance with the final standards will reduce emissions of particulate matter by 135 Mg/yr (149 tons/yr) and those of carbon monoxide by 80,000 Mg/yr (88,000 tons/yr).

No significant adverse secondary air, water, or solid waste impacts are anticipated from these standards. The national annual energy usage due to the installation of the required control devices is expected to be 5.0 million cubic meters per year (180 million cubic feet per-year) of natural gas to operate afterburners on blast furnaces and reverberatory/blast furnace smelters. The natural gas consumption estimated at proposal was 3.7 million cubic meters (130 million cubic feet per year). The increase since proposal is due to a revised analysis of the control equipment and amount of natural gas needed to perform gas stream blending to control organic HAP emissions from reverberatory/blast furnace smelters. No other notable energy impacts are expected.

The implementation of this regulation is expected to result in a national annual cost of $2.8 million. This includes an annualized cost from installation of control devices of $1.86 million and total monitoring, reporting, and recordkeeping costs of $0.93 million. At proposal, the estimated national costs were $2.6 million per year. The annualized control costs were estimated to be $890,000 and the annual costs for monitoring, recordkeeping, and reporting were $1.7 million. The annualized control costs have increased since proposal because the cost estimate to control organic HAP emissions from reverberatory/blast furnace smelters was revised in response to public comments. The annual monitoring, recordkeeping, and reporting costs have decreased since proposal because the HCl/Cl_2 monitoring requirements have been withdrawn and the final metal HAP monitoring requirements involve fewer emission tests and less expensive monitoring devices than at proposal.

The economic impact analysis done at proposal showed that the economic impacts from the proposed standard would be insignificant. The economic impact analysis was not revised for promulgation because the relatively small increase in costs is not expected to have any effect on the conclusions of the economic impact analysis.

III. Public Participation

On November 17, 1992, the EPA presented the National Air Pollution Control Techniques Advisory Committee with an overview of the EPA's decision to regulate surrogates in place of regulating individual metal HAP's and organic HAP's.

Prior to proposal of the standards, owners and operators of secondary lead smelters were invited by the EPA to participate in a meeting to discuss the results of the EPA's secondary lead smelter testing program as well as the standards being evaluated for proposal. This meeting was held on October 5, 1993. The comments submitted following this meeting were incorporated into the proposed rule.

The standards were proposed and published in the **Federal Register** on June 9, 1994 (59 FR 29750). The preamble to the proposed standards discussed the availability of the BID, which described the technical basis and the impacts of the proposed standards. Public comments were solicited at the time of proposal.

To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed standards, the opportunity for a public hearing was offered at proposal; however, no requests for a hearing were received. The public comment period was from June 9, 1994 to August 8, 1994. Thirty-one comment letters were received. A supplemental notice was published on April 19, 1995 (60 FR 19556) and eight comment letters were received. The comments were carefully considered by the Administrator in formulating the final rule.

IV. Significant Comments and Responses

The EPA received comment letters on the proposed standards from owners and operators of secondary lead smelters and industry trade associations, States, equipment vendors, and environmental groups. A detailed discussion of all the comments and the EPA's responses can be found in the promulgation BID, which is referenced in the **ADDRESSES** section of this preamble. The summary of comments and responses in the BID serves as the basis for the revisions that have been made to the standards between proposal and promulgation. Most of the comment letters contained multiple comments.

Significant comments and new information were received on four topics since proposal: the area source finding, the standards for process sources (especially those proposed for HCl/Cl_2 emissions), the monitoring requirements for metal HAP's, and the exemption from the Resource Conservation and Recovery Act (RCRA) boiler and industrial furnace (BIF) emission standards. These comments and the EPA's responses are summarized in this preamble.

A. Adverse Health Effects Finding for Area Sources

Six commenters agreed with the EPA's finding that smelters that are area sources (i.e., those with emissions of less than 10 tons per year of any one HAP or 25 tons per year of a combination of HAP's) should be listed as sources subject to section 112 standards and should be subject to the same regulations as smelters that are major sources. Seven commenters disagreed with the EPA's decision to regulate area sources; three of the seven argued that the risks are insufficient to warrant regulation under MACT standards. After considering all comments on the subject, the EPA continues to believe that area sources should be regulated under MACT standards and is, therefore, maintaining its decision to regulate secondary lead smelters that are area sources under this final action.

The decision to list area source smelters to regulate them under the same standards as major source smelters is based on the cancer risks from secondary lead smelter emissions and noncancer health risks posed by lead compound emissions. The estimated annual cancer incidence is 0.1 cases for all seven smelters predicted to be area sources. This cancer incidence is due primarily to exposure to 1,3-butadiene and arsenic. The maximum exposed individual has a cancer risk of 1 in 1,000 and 560,000 individuals are estimated to be exposed to a risk greater than 1 in 1 million.

Section 112(c)(3) of the Act does not offer a "bright line" test for the EPA to use in making an area source finding. Instead, the EPA believes that it has discretion to consider a range of health effects endpoints and exposure criteria in making the requisite finding of a threat of adverse effects to health or the environment. In making area source listing determinations, the EPA strives to provide maximum feasible protection against risks to health from HAP's by: (1) Protecting the greatest number of persons possible to an individual lifetime cancer risk level of no higher than approximately 1 in 1 million and (2) limiting to no more than 1 in 10,000 the estimated cancer risk to the hypothetical maximum exposed individual. The estimated cancer risks presented by area source smelters are consistent with those supporting similar EPA decisions to regulate other categories of area sources and with the EPA's strategy to implement section 112 (57 FR 31576, July 16, 1992).

Exposure to lead compounds is also a concern. It is estimated that 250 individuals in the vicinity of area source smelters are exposed to ambient lead levels above the national ambient air quality standard (NAAQS) for lead of 1.5 micrograms per cubic meter ($\mu g/m^3$).

Emissions that result in ambient lead concentrations below the NAAQS are also troubling. Ambient lead levels, particularly in urban areas, may already represent a substantial portion of the lead NAAQS (56 FR 7167, February 21, 1991; 52 FR 16994, May 6, 1987) (existing substantial ambient concentrations of lead justify lowering permissible air emissions for lead from boilers and industrial furnaces burning hazardous waste). Estimates indicate that 300 individuals may be exposed to ambient lead levels above 1.0 $\mu g/m^3$ (two-thirds the current NAAQS) and 1500 individuals may be exposed to levels above 0.5 $\mu g/m^3$ (one-third the current NAAQS) due to the area source smelters. Finally, recent scientific information suggests that lead blood levels in children lower than previously thought may cause adverse health effects (56 FR 7167, February 21, 1991; 56 FR 26469, June 7, 1991) (establishing standards for lead in drinking water).

Lead is also persistent in the environment and individuals, particularly children, can be exposed through pathways other than inhalation. The sites of two former smelters have required Federal cleanup action under the Comprehensive Environmental Response, Compensation, and Liability Act, also known as "Superfund." Both sites were contaminated by lead deposition onto surrounding soil. Deposition at these sites was caused by the same types of air emission sources that will be regulated by this rule.

In short, the EPA finds that secondary lead smelter area sources pose potential adverse human health and environmental threats that justify listing under section 112(c)(3). The Agency further finds that MACT standards are the most appropriate for these sources.

The EPA considers the cost impacts of the final rule, including the regulation of area source smelters by MACT standards, to be reasonable. The pollutants being regulated are especially toxic, warranting heightened control. (cf. S. Rept. 228, 101st Cong., 1st sess., 173.) The overall cost-effectiveness of the rule will be about $1,400 per Mg ($1,300 per ton) of HAP reduced. The EPA's decision to regulate both major and area sources by the same standards also eliminates the potential for adverse effects on competition within the industry.

Finally, the EPA believes that regulating all smelters under the same regulations is consistent with the Agency's responsibilities for achieving environmental justice under Executive Order (E.O.) No. 12898. Historically, some secondary lead smelters have had adverse impacts on communities that are disproportionately represented by minority and lower income populations. Some area source smelters are currently located in communities that are disproportionately represented by minority and lower income populations. Therefore, the EPA believes that regulating all smelters under MACT standards addresses the objectives of E.O. 12898.

B. Hydrogen Chloride/Chlorine Emission Standards

The proposed rule contained emission standards and monitoring requirements to control HCl and Cl_2 emissions from all furnace types. Hydrogen chloride and Cl_2 are formed from the combustion of PVC plastic separators that are found in some used lead-acid batteries. The only significant source of HCl/Cl_2 emissions is from feedstock materials containing PVC. At proposal, the EPA believed that many used lead-acid batteries contained PVC separators. Based on the results of tests at several smelters, the EPA predicted at proposal that the addition of soda ash or limestone fluxing agents to the feed material could achieve the same level of HCl/Cl_2 control as an acid gas scrubber, but at a much lower cost. The proposed emission standards and monitoring requirements and the estimated cost impacts were based on the use of fluxing agents.

Several comments were received stating that the feasibility of fluxing as a control may be overstated and scrubbers may be necessary in many cases. Several commenters also asserted that the proposed HCl/Cl_2 emission standards are not needed because PVC is no longer used as a separator material. Information obtained by the EPA since proposal confirms that PVC is no longer used as a separator material and the proportion of spent batteries with PVC is expected to decline as these batteries are removed from service and recycled (Docket Item IV-D–34). In 1990, about 1 percent of scrap batteries processed at lead smelters contained PVC separators. In 1994, less than 0.1 percent of scrap batteries contain PVC. The EPA predicts that by the time existing smelters must demonstrate compliance with these standards in 1997, batteries containing PVC will only be present in the scrap battery inventory in trace amounts, resulting, at most, in only trivial amounts of HCl or Cl_2 air emissions.

Data provided to the EPA since proposal also indicates that the EPA may have overstated the feasibility of fluxing as a control option. At the blast furnace tested by the EPA, powdered fluxing agents were mixed with flue dust in a briquetting machine and the briquettes were then charged to the furnace. This smelter is the only facility handling flux and flue dust in this manner. After proposal, the operators of a blast-furnace-only smelter that recycled agglomerated flue dust sponsored an HCl testing program in which additional flux was added to the furnace separately in the form of crushed limestone. The test results obtained show that additional fluxing in this manner achieved no incremental reduction in HCl emissions. A reevaluation of the fluxing issue suggests that flux material must be mixed with the flue dust, for example through briquetting, to achieve effective HCl/Cl_2 control. Mixing powdered flux and the flue dust is necessary to achieve a close physical association to promote the chemical reactions that prevent HCl and Cl_2 emissions.

If HCl/Cl_2 control were still required by the rule, those smelters that do not currently operate a scrubber or combine flue dust with flux before charging them to the furnace would need to install and operate a scrubber or reconfigure the flue dust handling and flux delivery system. The cost impacts of the proposed HCl/Cl_2 emission standards, therefore, would be substantially greater than those estimated at proposal. However, as noted above, the EPA predicts that secondary lead smelters will no longer be sources of HCl or Cl_2 emissions when the rule takes effect. For that reason, the EPA is withdrawing the proposed HCl/Cl_2 emission standards and associated monitoring requirements.

Six commenters agreed with the EPA's decision to withdraw the HCl/Cl_2 emission standards and associated monitoring requirements for this rule. Two commenters disagreed with EPA's decision to withdraw the HCl/Cl_2 emission standards. One argued that lead-contaminated personal protective equipment (PPE) that is disposed of in the smelting furnaces could be a source of PVC in addition to battery separators. The other commenter argued for temporary HCl/Cl_2 emission standards for a minimum of 3 to 5 years to confirm that HCl/Cl_2 emissions have been reduced.

Data provided by a smelter operator indicate that less than one ton per year of lead-contaminated PPE is disposed of in the smelting furnace of a large smelter. Only a fraction of PPE is PVC and only a fraction of PVC is chlorine (Docket Item IV–D–47). Therefore, the potential HCl/Cl_2 emissions attributed to PPE disposal is minimal. A worse case estimate of HCl/Cl_2 emissions due to PPE disposal indicates maximum emissions on the order of a few hundred pounds per year.

In regard to the issuance of temporary standards, pending confirmation that HCl/Cl_2 emissions have been reduced, the EPA acknowledges that such an action would be prudent if the predicted decline in PVC was uncertain. However, the EPA is reasonably confident that the predicted decline in PVC separators in secondary lead smelter feedstock will continue and PVC will be present in only trace quantities by the 1997 effective date of this rule. Therefore, it is EPA's judgement that a temporary HCl/Cl_2 emission standard is unnecessary.

After considering all comments, the EPA believes the HCl/Cl_2 emission standards and associated monitoring requirements should be deleted from the rule.

C. Metal Hazardous Air Pollutant Monitoring Requirements

The proposed rule would have required each smelter to install and operate a COM and establish a site-specific opacity limit during the initial lead compound compliance test for process sources. Exceeding this opacity limit would have constituted a violation of the lead compound emission standard. For process fugitive and fugitive dust sources, the proposed rule required an annual lead test and a baghouse inspection and maintenance plan.

The EPA received many comments that presented technical arguments against the proposed metal HAP monitoring requirements. Several commenters argued that there is a poor correlation among lead, particulate matter, and opacity at low grain loadings. Therefore, the argument goes, opacity cannot be used as a reliable surrogate to indicate compliance with a numerical lead emission limit. Other commenters recommended that other technologies are more reliable, accurate, and cost effective than COM's for detecting broken bags in baghouses, particularly bag leak detection systems using triboelectric or light scattering effects.

Based on these comments and additional information collected from monitoring equipment vendors since proposal, the EPA has revised the metal HAP monitoring requirements. The final monitoring provisions require an SOP for baghouse inspection and maintenance that includes a bag leak detection system with an alarm and a corrective action plan for responding to alarms. The same monitoring requirements will apply to all metal HAP emission sources that are controlled by baghouses (i.e., process, process fugitive, and fugitive dust sources).

The bag leak detection system must be fully operational prior to the initial lead compliance test. However, the detection system will not be used to monitor compliance with the numerical lead emission limit; it will be used to monitor baghouse performance and operating conditions to indicate baghouse failures.

The EPA agrees that COM's cannot be used to monitor compliance with a numerical lead compound emission limit applicable to secondary lead smelting. Instead, the EPA has determined that compliance can be demonstrated and ensured through well-specified operation and maintenance procedures as delineated in this final rule.

D. Exemption From Resource Conservation and Recovery Act Boiler and Industrial Furnace Emission Standards

The EPA proposed to continue the exemption (40 CFR 266.100(c)) for RCRA regulation of air emissions from secondary lead smelters burning hazardous wastes solely for metal recovery. All commenters agreed that this is an appropriate approach. As the EPA stated at proposal, this exemption is temporary and permanent resolution can be made at the time of the section 112(f) residual risk determination.

V. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docket system is intended to allow members of the public and affected industries to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the BID's and preambles to the proposed and promulgated standards, the contents of the docket will serve as the official record in case of judicial review (section 307(d)(7)(A) of the Act).

B. Executive Order 12866

The Agency must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the E.O. 12866, (58 FR 51735, October 4, 1993). The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations have been documented in Docket A–92–43 (see the **ADDRESSES** section of this preamble).

C. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this final rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of significantly less than $100 million in any 1 year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not

required to develop a plan with regard to small governments.

D. Paperwork Reduction Act

Information collection requirements associated with this regulation (those included in 40 CFR part 63, subpart A and subpart X) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and have been assigned OMB control number 2060–0296. An Information Collection Request (ICR) document has been prepared by the EPA (ICR No. 1686.02) to reflect the revised information requirements of the final rule and has been submitted to OMB for review. A copy may be obtained from Sandy Farmer, Information Policy Branch, 401 M Street, SW. (2136), Washington, DC 20460, or by calling (202) 260–2740.

The annual industry recordkeeping and reporting burden and costs averaged over the first 3 years for secondary lead smelters are 11,300 hours and $452,000 per year. This collection of information is estimated to have an annual government recordkeeping and reporting burden averaging 1,600 hours over the first 3 years. These burden estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspects of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch (EPA 2136); U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for the EPA."

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (or RFA, Public Law 96–354, September 19, 1980) requires Federal agencies to give special consideration to the impact of regulation on small businesses. The RFA specifies that a regulatory flexibility analysis must be prepared if a screening analysis indicates a regulation will have a significant economic impact on a substantial number of small entities. For this industry, a small entity is defined as one with 500 or fewer employees. A "substantial number" of small entities is generally considered to be more than 20 percent of the small entities in the affected industry.

Regulatory impacts are considered significant if:

(1) Annual compliance costs increase total costs of production by more than 5 percent;

(2) Annual compliance costs as a percent of sales are at least 20 percent higher for small entities;

(3) Capital cost of compliance represents a significant portion of capital available to small entities; or

(4) The requirements of the regulation are likely to result in closures of small entities.

The results of the economic assessment performed at proposal served as the regulatory flexibility analysis and indicated that the rule will have an economic impact on small business entities. The assessment has not been updated because the impacts on the small entities have not increased since proposal. However, adverse economic impacts have been minimized to the greatest extent possible in this rulemaking, and those that remain are unavoidable. All of the small entities that are currently operating and that are impacted are major sources of HAP's for which the EPA is required to adopt MACT standards. Consequently, the economic impacts cannot be minimized by promulgating less stringent standards based on generally achievable control technology (GACT). The final standards are based on MACT floor controls, and in no instance did the EPA establish standards based on controls more stringent than the floor. The EPA was also able to identify alternatives to add-on controls (e.g., work practice controls) in the MACT floors that offered equivalent levels of control. The EPA has minimized the impacts associated with monitoring by adopting a surrogate pollutant approach and by allowing for alternative monitoring strategies when available. The impacts on all entities have been reduced since proposal by withdrawing the HCl/Cl_2 emission standards and by revising the metal HAP monitoring requirements. Finally, the EPA has minimized the impacts associated with recordkeeping and reporting by promulgating only the minimum requirements needed to document continuous compliance with the emission limits.

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 63

Air pollution control, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements, Secondary lead smelters.

Dated: May 31, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 et seq., 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 et seq., 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 et seq., 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by adding a new entry to the table under the indicated heading to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
. . . . .	
National Emission Standards for Hazardous Air Pollutants for Source Categories [3]	
. . . . .	
63.548–63.550	2060–0296
. . . . .	

[3] The ICRs referenced in this section of the Table encompass the applicable general provisions contained in 40 CFR part 63, subpart A, which are not independent information collection requirements.

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Part 63 is amended by adding subpart X to read as follows:

Subpart X—National Emission Standards for Hazardous Air Pollutants From Secondary Lead Smelting

Sec.

63.541 Applicability.
63.542 Definitions.
63.543 Standards for process sources.
63.544 Standards for process fugitive sources.
63.545 Standards for fugitive dust sources.
63.546 Compliance dates.
63.547 Test methods.
63.548 Monitoring requirements.
63.549 Notification requirements.
63.550 Recordkeeping and reporting requirements.

SUBPART X—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FROM SECONDARY LEAD SMELTING

§ 63.541 Applicability.

(a) The provisions of this subpart apply to the following affected sources at all secondary lead smelters: blast, reverberatory, rotary, and electric smelting furnaces; refining kettles; agglomerating furnaces; dryers; process fugitive sources; and fugitive dust sources. The provisions of this subpart do not apply to primary lead smelters, lead refiners, or lead remelters.

(b) Table 1 of this subpart specifies the provisions of subpart A that apply and those that do not apply to owners and operators of secondary lead smelters subject to this subpart.

TABLE 1.—GENERAL PROVISIONS APPLICABILITY TO SUBPART X

Reference	Applies to subpart X	Comment
63.1	Yes.	
63.2	Yes.	
63.3	Yes.	
63.4	Yes.	
63.5	Yes.	
63.6 (a), (b), (c), (e), (f), (g), (i) and (j).	Yes.	
63.6 (d) and (h)	No.	No opacity limits in rule.
63.7	Yes.	
63.8	Yes.	
63.9 (a), (b), (c), (d), (e), (g), (h)(1–3), (h)(5–6), and (j).	Yes.	
63.9 (f) and (h)(4).	No.	No opacity or visible emission limits in subpart X.
63.10	Yes.	
63.11	No.	Flares will not be used to comply with the emission limits.
63.12 to 63.15	Yes.	

§ 63.542 Definitions.

Terms used in this subpart are defined in the Act, in subpart A of this part, or in this section as follows:

Agglomerating furnace means a furnace used to melt into a solid mass flue dust that is collected from a baghouse.

Bag leak detection system means systems that include, but are not limited to, devices using triboelectric, light scattering, and other effects to monitor relative or absolute particulate matter emissions.

Battery breaking area means the plant location at which lead-acid batteries are broken, crushed, or disassembled and separated into components.

Blast furnace means a smelting furnace consisting of a vertical cylinder atop a crucible, into which lead-bearing charge materials are introduced at the top of the furnace and combustion air is introduced through tuyeres at the bottom of the cylinder, and that uses coke as a fuel source and that is operated at such a temperature in the combustion zone (greater than 980 °C) that lead compounds are chemically reduced to elemental lead metal.

Blast furnace charging location means the physical opening through which raw materials are introduced into a blast furnace.

Dryer means a chamber that is heated and that is used to remove moisture from lead-bearing materials before they are charged to a smelting furnace.

Dryer transition piece means the junction between a dryer and the charge hopper or conveyor, or the junction between the dryer and the smelting furnace feed chute or hopper located at the ends of the dryer.

Electric furnace means a smelting furnace consisting of a vessel into which reverberatory furnace slag is introduced and that uses electrical energy to heat the reverberatory furnace slag to such a temperature (greater than 980 °C) that lead compounds are reduced to elemental lead metal.

Enclosure hood means a hood that covers a process fugitive emission source on the top and on all sides, with openings only for access to introduce or remove materials to or from the source and through which an induced flow of air is ventilated.

Fugitive dust source means a stationary source of hazardous air pollutant emissions at a secondary lead smelter that is not associated with a specific process or process fugitive vent or stack. Fugitive dust sources include, but are not limited to, roadways, storage piles, materials handling transfer points, materials transport areas, storage areas, process areas, and buildings.

Furnace and refining/casting area means any area of a secondary lead smelter in which:

(1) Smelting furnaces are located; or

(2) Refining operations occur; or

(3) Casting operations occur.

Materials storage and handling area means any area of a secondary lead smelter in which lead-bearing materials (including, but not limited to, broken battery components, slag, flue dust, and dross) are stored or handled between process steps including, but not limited to, areas in which materials are stored in piles, bins, or tubs, and areas in which material is prepared for charging to a smelting furnace.

Partial enclosure means a structure that incorporates walls or partitions on at least three sides or three-quarters of the circumference of an area to screen the material or process equipment located therein to prevent the entrainment of particulate matter into the air.

Pavement cleaning means the use of vacuum equipment, water sprays, or a combination thereof to remove dust or other accumulated material from the paved areas of a secondary lead smelter.

Plant roadway means any area of a secondary lead smelter that is subject to vehicle traffic, including traffic by fork lifts, front-end loaders, or vehicles carrying whole batteries or cast lead ingots. Excluded from this definition are employee and visitor parking areas, provided they are not subject to traffic by vehicles carrying lead-bearing materials.

Process fugitive emission source means a source of hazardous air pollutant emissions at a secondary lead smelter that is associated with lead smelting or refining but is not the primary exhaust stream from a smelting furnace and is not a fugitive dust source. Process fugitive sources include, but are not limited to, smelting furnace charging points, smelting furnace lead and slag taps, refining kettles, agglomerating furnaces, and drying kiln transition pieces.

Refining kettle means an open-top vessel that is constructed of cast iron or steel and is indirectly heated from below and contains molten lead for the purpose of refining and alloying the lead. Included are pot furnaces, receiving kettles, and holding kettles.

Reverberatory furnace means a refractory-lined furnace that uses one or more flames to heat the walls and roof of the furnace and lead-bearing scrap to such a temperature (greater than 980 oC) that lead compounds are chemically reduced to elemental lead metal.

Rotary furnace (also known as a rotary reverberatory furnace) means a furnace consisting of a refractory-lined chamber that rotates about a horizontal axis and that uses one or more flames to heat the walls of the furnace and lead-bearing scrap to such a temperature (greater than 980 oC) that lead compounds are chemically reduced to elemental lead metal.

Secondary lead smelter means any facility at which lead-bearing scrap material, primarily but not limited to lead-acid batteries, is recycled into elemental lead by smelting.

Smelting means the chemical reduction of lead compounds to lead metal in high-temperature furnaces including, but not limited to, blast furnaces, reverberatory furnaces, rotary furnaces, and electric furnaces.

Total enclosure means a building with a roof and walls or partitions on all sides or the entire circumference to shelter the materials and/or process equipment located therein to prevent the entrainment of particulate matter into the air and with openings only to allow access and egress for people and vehicles.

Vehicle wash means a device for removing dust and other accumulated material from the wheels, body, and underside of a vehicle to prevent the inadvertent transfer of lead-contaminated material to another area of a secondary lead smelter or to public roadways.

Wet suppression means the use of water, water combined with a chemical surfactant, or a chemical binding agent to prevent the entrainment of dust into the air from fugitive dust sources.

§ 63.543 Standards for process sources.

(a) No owner or operator of a secondary lead smelter shall discharge or cause to be discharged into the atmosphere from any existing, new, or reconstructed blast, reverberatory, rotary, or electric smelting furnace any gases that contain lead compounds in excess of 2.0 milligrams of lead per dry standard cubic meter (0.00087 grains of lead per dry standard cubic foot).

(b) [Reserved]

(c) No owner or operator of a secondary lead smelter with a collocated blast furnace and reverberatory furnace shall discharge or cause to be discharged into the atmosphere from any existing, new, or reconstructed blast furnace or reverberatory furnace any gases that contain total hydrocarbons in excess of 20 parts per million by volume, expressed as propane corrected to 4 percent carbon dioxide, except as allowed under paragraphs (c)(1) and (c)(2) of this section.

(1) No owner or operator of a secondary lead smelter with a collocated blast furnace and reverberatory furnace shall discharge or cause to be discharged into the atmosphere from any existing blast furnace any gases that contain total hydrocarbons in excess of 360 parts per million by volume, expressed as propane corrected to 4 percent carbon dioxide, during periods when the reverberatory furnace is not operating.

(2) No owner or operator of a secondary lead smelter with a collocated blast furnace and reverberatory furnace shall discharge or cause to be discharged into the atmosphere from any blast furnace that commences construction or reconstruction after June 9, 1994, any gases that contain total hydrocarbons in excess of 70 parts per million by volume, expressed as propane corrected to 4 percent carbon dioxide, during periods when the reverberatory furnace is not operating.

(d) No owner or operator of a secondary lead smelter with only blast furnaces shall discharge or cause to be discharged into the atmosphere from any existing blast furnace any gases that contain total hydrocarbons in excess of 360 parts per million by volume, expressed as propane corrected to 4 percent carbon dioxide.

(e) No owner or operator of a secondary lead smelter with only blast furnaces shall discharge or cause to be discharged into the atmosphere from any blast furnace that commences construction or reconstruction after June 9, 1994, any gases that contain total hydrocarbons in excess of 70 parts per million by volume, expressed as propane corrected to 4 percent carbon dioxide.

(f) If the owner or operator of a blast furnace or collocated blast and reverberatory furnace combines the blast furnace charging process fugitive emissions with the blast furnace process emissions and discharges them to the atmosphere through a common emission point, then compliance with the applicable total hydrocarbon concentration limit under paragraph (c) of this section shall be determined downstream from the point at which the two emission streams are combined.

(g) If the owner or operator of a blast furnace or a collocated blast and reverberatory furnace does not combine the blast furnace charging process fugitive emissions with the blast furnace process emissions and discharges such emissions to the atmosphere through separate emission points, then the total hydrocarbon emission rate for the blast furnace process fugitive emissions shall not be greater than 0.20 kilograms per hour (0.44 pounds per hour).

(h) The standards for process sources are summarized in table 2.

TABLE 2.—SUMMARY OF STANDARDS FOR PROCESS SOURCES

Furnace configuration	Lead compounds (milligrams per dry standard cubic meter)	Total hydrocarbons	Citation
Collocated reverberatory/blast (when both furnaces operating).	2.0	20 parts per million by volume [1]	§ 63.543 (a), (c).
(when reverberatory furnace not operating)	2.0	360 parts per million by volume [1] (existing)	§ 63.543 (a), (c)(1).
		70 parts per million by volume [1] (new) [2]	§ 63.543 (a), (c)(2).
Blast	2.0	360 parts per million by volume [1] (existing)	§ 63.543 (a), (d).
		70 parts per million by volume [1] (new) [2]	§ 63.543(e).
		0.20 kilograms per hour [3]	§ 63.543(g).
Reverberatory, rotary, and electric	2.0	None	§ 63.543(a).

[1] Total hydrocarbons emission limits are as propane at 4 percent carbon dioxide to correct for dilution, based on a 3-hour average.
[2] New sources include those furnaces that commence construction or reconstruction after June 9, 1994.
[3] Applicable to blast furnace charging process fugitive emissions that are not combined with the blast furnace process emissions prior to the point at which compliance with the total hydrocarbons concentration standard is determined.

§ 63.544 Standards for process fugitive sources.

(a) Each owner or operator of a secondary lead smelter shall control the process fugitive emission sources listed in paragraphs (a)(1) through (a)(6) of this section by complying with either paragraph (b) or (c) of this section.

(1) Smelting furnace and dryer charging hoppers, chutes, and skip hoists;

(2) Smelting furnace lead taps and molds;

(3) Smelting furnace slag taps and molds;

(4) Refining kettles;

(5) Dryer transition pieces; and

(6) Agglomerating furnace product taps.

(b) All process fugitive emission sources listed in paragraphs (a)(1) through (a)(6) of this section shall be controlled by an enclosure hood meeting the requirements of paragraphs (b)(1), (b)(2), or (b)(3) of this section except those meeting the requirements of paragraph (c) of this section. All enclosure hoods shall be ventilated to a control device that shall not discharge to the atmosphere any gases that contain lead compounds in excess of 2.0 milligrams of lead per dry standard cubic meter (0.00087 grains of lead per dry standard cubic foot).

(1) All process fugitive enclosure hoods except those specified for refining kettles and dryer transition pieces shall be ventilated to maintain a face velocity of at least 90 meters per minute (300 feet per minute) at all hood openings.

(2) Process fugitive enclosure hoods required for refining kettles in paragraph (a) of this section shall be ventilated to maintain a face velocity of at least 75 meters per minute (250 feet per minute).

(3) Process fugitive enclosure hoods required over dryer transition pieces in paragraph (a) of this section shall be ventilated to maintain a face velocity of at least 110 meters per minute (350 feet per minute).

(c) All process fugitive emission sources listed in paragraphs (a)(1) through (a)(6) of this section except those controlled by hoods meeting the requirements of paragraphs (b)(1) through (b)(3) of this section shall be located in a total enclosure that is ventilated to achieve an air velocity into the enclosure at all doorway openings of not less than 75 meters per minute (250 feet per minute). This enclosure shall be ventilated to a control device that shall not discharge to the atmosphere any gases that contain lead compounds in excess of 2.0 milligrams of lead per dry standard cubic meter (0.00087 grains per dry standard cubic foot).

(d) All dryer emission vents and agglomerating furnace emission vents shall be ventilated to a control device that shall not discharge to the atmosphere any gases that contain lead compounds in excess of 2.0 milligrams of lead per dry standard cubic meter (0.00087 grains per dry standard cubic foot).

(e) The standards for process fugitive sources are summarized in table 3.

TABLE 3.—SUMMARY OF STANDARDS FOR PROCESS FUGITIVE SOURCES

Fugitive emission source	Control device lead compound emission limit (milligrams per dry standard cubic meter)	Enclosed hood or doorway face velocity (meters/minute)	Citation
Control Option I:			
Smelting furnace and dryer charging hoppers, chutes, and skip hoists	2.0	[1] 90	§ 63.544(b)
Smelting furnace lead taps and molds	2.0	[1] 90	§ 63.544(b)
Smelting furnace slag taps and molds	2.0	[1] 90	§ 63.544(b)
Refining kettles	2.0	[1] 75	§ 63.544(b)
Dryer transition pieces	2.0	[1] 110	§ 63.544(b)
Agglomerating furnace process vents and product taps	2.0	[1] 90	§ 63.544(b)
Control Option II:			
Enclosed building ventilated to a control device	2.0	[2] 75	§ 63.544(c)
Applicable to Both Control Options:			
Dryer and agglomerating furnace emission vents	2.0	.....	§ 63.544(d)

[1] Enclosure hood face velocity applicable to those process fugitive sources not located in an enclosed building ventilated to a control device.
[2] Building doorway air velocity measured at all doorways that are normally open during operations.

§ 63.545 Standards for fugitive dust sources.

(a) Each owner or operator of a secondary lead smelter shall prepare and at all times operate according to a standard operating procedures manual that describes in detail the measures that will be put in place to control fugitive dust emission sources within the areas of the secondary lead smelter listed in paragraphs (a)(1) through (a)(5) of this section.

(1) Plant roadways;

(2) Battery breaking area;

(3) Furnace area;

(4) Refining and casting area; and

(5) Materials storage and handling area.

(b) The standard operating procedures manual shall be submitted to the Administrator or delegated authority for review and approval.

(c) The controls specified in the standard operating procedures manual shall at a minimum include the requirements of paragraphs (c)(1) through (c)(5) of this section.

(1) Plant roadways—paving of all areas subject to vehicle traffic and pavement cleaning twice per day of those areas, except on days when natural precipitation makes cleaning unnecessary or when sand or a similar material has been spread on plant roadways to provide traction on ice or snow.

(2) Battery breaking area—partial enclosure of storage piles, wet suppression applied to storage piles with sufficient frequency and quantity to prevent the formation of dust, and pavement cleaning twice per day; or total enclosure of the battery breaking area in a structure meeting the requirements of 40 CFR 265.1101(a) and (c) and ventilation of the enclosure to a control device.

(3) Furnace area—partial enclosure and pavement cleaning twice per day; or total enclosure in a structure meeting the requirements of 40 CFR 265.1101(a) and (c) and ventilation of the enclosure to a control device.

(4) Refining and casting area—partial enclosure and pavement cleaning twice per day; or total enclosure in a structure meeting the requirements of 40 CFR 265.1101(a) and (c) and ventilation of the enclosure to a control device.

(5) Materials storage and handling area—partial enclosure of storage piles, wet suppression applied to storage piles with sufficient frequency and quantity to prevent the formation of dust, vehicle wash at each exit from the area, and paving of the area; or total enclosure of the area in a structure meeting the requirements of 40 CFR 265.1101(a) and (c) and ventilation of the enclosure to a control device and a vehicle wash at each exit.

(d) The standard operating procedures manual shall require that daily records be maintained of all wet suppression, pavement cleaning, and vehicle washing activities performed to control fugitive dust emissions.

(e) No owner or operator of a secondary lead smelter shall discharge or cause to be discharged into the atmosphere from any building or enclosure ventilation system any gases that contain lead compounds in excess of 2.0 milligrams of lead per dry standard cubic meter (0.00087 grains of lead per dry standard cubic foot).

§ 63.546 Compliance dates.

(a) Each owner or operator of an existing secondary lead smelter shall achieve compliance with the requirements of this subpart no later than June 23, 1997.

(b) Each owner or operator of a secondary lead smelter that commences construction or reconstruction after June 9, 1994, shall achieve compliance with the requirements of this subpart by June 23, 1995 or upon startup of operations, whichever is later.

§ 63.547 Test methods.

(a) The following test methods in appendix A of part 60 of this chapter in paragraphs (a)(1) through (a)(5) of this section shall be used to determine compliance with the emission standards for lead compounds under §§ 63.543(a), 63.544(b), (c), and (d), and 63.545(e):

(1) Method 1 shall be used to select the sampling port location and the number of traverse points.

(2) Method 2 shall be used to measure volumetric flow rate.

(3) Method 3 shall be used for gas analysis to determine the dry molecular weight of the stack gas.

(4) Method 4 shall be used to determine moisture content of the stack gas.

(5) Method 12 shall be used to determine compliance with the lead compound emission standards. The minimum sample volume shall be 0.85 dry standard cubic meters (30 dry standard cubic feet) and the minimum sampling time shall be 60 minutes for each run. Three runs shall be performed and the average of the three runs shall be used to determine compliance.

(b) The following test methods in appendix A of part 60 listed in paragraphs (b)(1) through (b)(5) of this section shall be used, as specified, to determine compliance with the emission standards for total hydrocarbons under § 63.543(c), (d), (e), and (g):

(1) Method 1 shall be used to select the sampling port location to determine compliance under § 63.543(c), (d), (e), and (g).

(2) Method 2 shall be used to measure volumetric flow rate to determine compliance under § 63.543(g).

(3) The Single Point Integrated Sampling and Analytical Procedure of Method 3B shall be used to measure the carbon dioxide content of the stack gases to determine compliance under § 63.543(c), (d), and (e).

(4) Method 4 shall be used to measure moisture content of the stack gases to determine compliance under § 63.543(c), (d), (e), and (g).

(5) Method 25A shall be used to measure total hydrocarbon emissions to determine compliance under § 63.543(c), (d), (e), and (g). The minimum sampling time shall be 1 hour for each run. A minimum of three runs shall be performed. A 1-hour average total hydrocarbon concentration shall be determined for each run and the average of the three 1-hour averages shall be used to determine compliance. The total hydrocarbon emissions concentrations for determining compliance under § 63.543(c), (d), and (e) shall be expressed as propane and shall be corrected to 4 percent carbon dioxide, as described in paragraph (c) of this section.

(c) For the purposes of determining compliance with the emission limits under § 63.543(c), (d), and (e), the measured total hydrocarbon concentrations shall be corrected to 4 percent carbon dioxide as listed in paragraphs (c)(1) through (c)(2) of this section in the following manner:

(1) If the measured percent carbon dioxide is greater than 0.4 percent in each compliance test, the correction factor shall be determined by using the following equation:

$$F = \frac{4.0}{CO_2}$$

where:

F=correction factor (no units)

CO_2=percent carbon dioxide measured using Method 3B, where the measured carbon dioxide is greater than 0.4 percent.

(2) If the measured percent carbon dioxide is equal to or less than 0.4 percent, then a correction factor (F) of 10 shall be used.

(3) The corrected total hydrocarbon concentration shall be determined by multiplying the measured total hydrocarbon concentration by the correction factor (F) determined for each compliance test.

(d) Compliance with the face velocity requirements under § 63.544(b) and (c) for process fugitive enclosure hoods shall be determined by the following test methods in paragraph (d)(1) or (d)(2) of this section.

(1) Owners and operators shall calculate face velocity using the procedures in paragraphs (d)(1)(i) through (d)(1)(iv) of this section.

(i) Method 1 shall be used to select the sampling port location in the duct leading from the process fugitive enclosure hood to the control device.

(ii) Method 2 shall be used to measure the volumetric flow rate in the duct from the process fugitive enclosure hood to the control device.

(iii) The face area of the hood shall be determined from measurement of the hood. If the hood has access doors, then face area shall be determined with the access doors in the fully open position.

(iv) Face velocity shall be determined by dividing the volumetric flow rate determined in paragraph (d)(1)(ii) of this section by the total face area for the hood determined in paragraph (d)(1)(iii) of this section.

(2) The face velocity shall be measured directly using the procedures in paragraphs (d)(2)(i) through (d)(2)(vi) of this section.

(i) A propeller anemometer or equivalent device shall be used to measure hood face velocity.

(ii) The propeller of the anemometer shall be made of a material of uniform density and shall be properly balanced to optimize performance.

(iii) When the anemometer is mounted with the propeller shaft in a horizontal position, the threshold velocity of the anemometer shall not exceed 15 meters per minute (50 feet per minute) as determined by a procedure equivalent to that in Method 14 of appendix A of part 60.

(iv) The measurement range of the anemometer shall extend to at least 300 meters per minute (1,000 feet per minute).

(v) A known relationship shall exist between the anemometer signal output and air velocity, and the anemometer must be equipped with a suitable readout system.

(vi) Hood face velocity shall be determined for each hood during normal operation with all access doors in the open position and by placing the anemometer in the plane of the hood opening.

(e) Owners and operators shall measure doorway air velocity to determine compliance with the doorway velocity requirement for enclosed buildings in § 63.544(c) using the procedures in paragraphs (e)(1) and (e)(2) of this section.

(1) Owners and operators shall use a propeller anemometer or equivalent device meeting the requirements of paragraphs (d)(2)(ii) through (d)(2)(v) of this section.

(2) Doorway air velocity into the building shall be determined for each doorway in the open position during normal operation by placing the anemometer in the plane of the doorway opening.

§ 63.548 Monitoring requirements.

(a) Owners and operators of secondary lead smelters shall prepare, and at all times operate according to, a standard operating procedures manual that describes in detail procedures for inspection, maintenance, and bag leak detection and corrective action plans for all baghouses (fabric filters) that are used to control process, process fugitive, or fugitive dust emissions from any source subject to the lead emission standards in §§ 63.543, 63.544, and 63.545, including those used to control emissions from building ventilation. This provision shall not apply to process fugitive sources that are controlled by wet scrubbers.

(b) The standard operating procedures manual for baghouses required by paragraph (a) of this section shall be submitted to the Administrator or delegated authority for review and approval.

(c) The procedures specified in the standard operating procedures manual for inspections and routine maintenance shall, at a minimum, include the requirements of paragraphs (c)(1) through (c)(12) of this section.

(1) Daily monitoring of pressure drop across each baghouse cell.

(2) Daily visual observation of baghouse discharge or stack.

(3) Daily visual inspection to ensure that dust is being removed from hoppers.

(4) Daily check of compressed air supply for pulse-jet baghouses.

(5) Daily visual inspection of isolation dampers for proper operation.

(6) Daily monitoring of cleaning cycle by observing meters or control panel instrumentation.

(7) Weekly visual inspection of bag cleaning mechanisms for proper functioning.

(8) Weekly check of bag tension on reverse air and shaker type baghouses.

(9) Monthly visual inspection of baghouse interior for air leaks.

(10) Monthly inspection of bags and bag connections.

(11) Monthly inspection of fans for wear, material buildup, and corrosion.

(12) Continuous operation of a bag leak detection system.

(d) The procedures specified in the standard operating procedures manual for maintenance shall, at a minimum, include a preventative maintenance schedule that is consistent with the baghouse manufacturer's instructions for routine and long-term maintenance.

(e) The bag leak detection system required by paragraph (c)(12) of this section, shall meet the specifications and requirements of paragraphs (e)(1) through (e)(5) of this section.

(1) The bag leak detection system must be capable of detecting particulate matter emissions at concentrations of 1.0 milligram per actual cubic meter (0.00044 grains per actual cubic foot) or less.

(2) The bag leak detection system sensor must provide output of relative or absolute particulate matter emissions.

(3) The bag leak detection system must be equipped with an alarm system that will alarm when an increase in particulate emissions is detected.

(4) For negative pressure or induced air baghouses, the bag leak detector must be installed downstream of the baghouse and upstream of any wet acid gas scrubber. For positive pressure baghouses, a bag leak detector must be installed in each baghouse compartment or cell. Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(5) The bag leak detection system shall be installed and operated in a manner consistent with available guidance from the U.S. Environmental Protection Agency or, in the absence of such guidance, the manufacturer's written specifications and recommendations for installation, operation, and calibration of the system. The calibration of the system shall, at a minimum, consist of establishing the relative baseline output level by adjusting the sensitivity and the averaging period of the device, and establishing the alarm set points and the alarm delay time. The system must be fully operational at the time of the initial lead compliance test required to demonstrate compliance with the applicable lead emission standard under §§ 63.543, 63.544, or 63.545. The owner or operator shall not adjust the sensitivity, averaging period, alarm set points, or alarm delay time after the initial lead compliance test unless a test is performed to demonstrate compliance with the applicable lead emission standard after the adjustments are made.

(f) The standard operating procedures manual required by paragraph (a) of this section shall include a corrective action plan that specifies the procedures to be followed in the case of a bag leak detection system alarm. The corrective action plan shall include, at a minimum, the procedures used to determine and record the time and cause of the alarm as well as the corrective actions taken to correct the control device malfunction or minimize emissions as specified in paragraphs (f)(1) and (f)(2) of this section.

(1) The procedures used to determine the cause of the alarm must be initiated within 30 minutes of the alarm.

(2) The cause of the alarm must be alleviated by taking the necessary corrective action(s) which may include, but not be limited to, paragraphs (f)(1)(i) through (f)(2)(vi) of this section.

(i) Inspecting the baghouse for air leaks, torn or broken filter elements, or any other malfunction that may cause an increase in emissions.

(ii) Sealing off defective bags or filter media.

(iii) Replacing defective bags or filter media, or otherwise repairing the control device.

(iv) Sealing off a defective baghouse compartment.

(v) Cleaning the bag leak detection system probe, or otherwise repairing the bag leak detection system.

(vi) Shutting down the process producing the particulate emissions.

(g) The owner or operator of a secondary lead smelter that uses a wet scrubber to control particulate matter and metal hazardous air pollutant emissions from a process fugitive source shall monitor and record the pressure drop and water flow rate of the wet scrubber during the initial test to demonstrate compliance with the lead emission limit under § 63.544(d). Thereafter, the owner or operator shall monitor and record the pressure drop and water flow rate at least once every hour and shall maintain the pressure drop and water flow rate no lower than 30 percent below the pressure drop and water flow rate measured during the initial compliance test.

(h) The owner or operator of a blast furnace or collocated reverberatory and blast furnace subject to the total hydrocarbon standards in § 63.543(c), (d), or (e), must comply with the requirements of either paragraph (h)(1) or (h)(2) of this section, to demonstrate

continuous compliance with the total hydrocarbon emission standards.

(1) *Continuous Temperature Monitoring*—(i) The owner or operator of a blast furnace or a collocated reverberatory furnace and blast furnace subject to the total hydrocarbon emission standards in § 63.543(c), (d), or (e) shall install, calibrate, maintain, and continuously operate a device to monitor and record the temperature of the afterburner or the combined blast furnace and reverberatory furnace exhaust streams consistent with the requirements for continuous monitoring systems in subpart A, General Provisions.

(ii) The owner or operator of a blast furnace or a collocated reverberatory furnace and blast furnace subject to the total hydrocarbon emission standards shall monitor and record the temperature of the afterburner or the combined blast furnace and reverberatory furnace exhaust streams every 15 minutes during the total hydrocarbon compliance test and determine an arithmetic average for the recorded temperature measurements.

(iii) To remain in compliance with the standards for total hydrocarbons, the owner or operator must maintain an afterburner or combined exhaust temperature such that the average temperature in any 3-hour period does not fall more than 28 °C (50 °F) below the average established in paragraph (h)(1)(ii) of this section. An average temperature in any 3-hour period that falls more than 28 °C (50 °F) below the average established in paragraph (h)(1)(ii) of this section, shall constitute a violation of the applicable emission standard for total hydrocarbons under § 63.543(c), (d), or (e).

(2) *Continuous Monitoring of Total Hydrocarbon Emissions*—

(i) The owner or operator of a secondary lead smelter shall install, operate, and maintain a total hydrocarbon continuous monitoring system and comply with all of the requirements for continuous monitoring systems found in subpart A, General Provisions.

(ii) Allowing the 3-hour average total hydrocarbon concentration to exceed the applicable total hydrocarbon emission limit under § 63.543 shall constitute a violation of the applicable emission standard for total hydrocarbons under § 63.543(c), (d), or (e).

§ 63.549 Notification requirements.

(a) The owner or operator of a secondary lead smelter shall comply with all of the notification requirements of § 63.9 of subpart A, General Provisions.

(b) The owner or operator of a secondary lead smelter shall submit the fugitive dust control standard operating procedures manual required under § 63.545(a) and the standard operating procedures manual for baghouses required under § 63.548(a) to the Administrator or delegated authority along with a notification that the smelter is seeking review and approval of the these plans and procedures. Owners or operators of existing secondary lead smelters shall submit this notification no later than December 23, 1996. The owner or operator of a secondary lead smelter that commences construction or reconstruction after June 9, 1994, shall submit this notification no later than 180 days before startup of the constructed or reconstructed secondary lead smelter, but no sooner than June 23, 1995.

§ 63.550 Recordkeeping and reporting requirements.

(a) Each owner or operator of a secondary lead smelter shall maintain for a period of 5 years, records of the information listed in paragraphs (a)(1) through (a)(8) of this section.

(1) The results of initial and subsequent compliance tests for lead compounds and total hydrocarbons.

(2) An identification of the date and time of all bag leak detection system alarms, their cause, and an explanation of the corrective actions taken.

(3) If an owner or operator chooses to demonstrate continuous compliance with the total hydrocarbon emission standards under § 63.543(c), (d), or (e) by employing the method allowed in § 63.548(h)(1), the records shall include the output from the continuous temperature monitor, an identification of periods when the 3-hour average temperature fell below the minimum established under § 63.548(h)(1), and an explanation of the corrective actions taken.

(4) If an owner or operator chooses to demonstrate continuous compliance with the total hydrocarbon emission standard under § 63.543(c), (d), or (e) by employing the method allowed in § 63.548(h)(2), the records shall include the output from the total hydrocarbon continuous monitoring system, an identification of the periods when the 3-hour average total hydrocarbon concentration exceeded the applicable standard and an explanation of the corrective actions taken.

(5) Records of maintenance, calibration, or other procedures required by this rule for any monitoring system used to demonstrate compliance with an applicable requirement.

(6) Any recordkeeping required as part of the practices described in the standard operating procedures manual required under § 63.545(a) for the control of fugitive dust emissions.

(7) Any recordkeeping required as part of the practices described in the standard operating procedures manual for baghouses required under § 63.548(a).

(8) Records of the pressure drop and water flow rate for wet scrubbers used to control metal hazardous air pollutant emissions from process fugitive sources.

(b) The owner or operator of a secondary lead smelter shall comply with all of the reporting requirements under § 63.10 of the General Provisions. The submittal of reports shall be no less frequent than specified under § 63.10(e)(3) of the General Provisions. Once a source reports a violation of the standard or excess emissions, the source shall follow the reporting format required under § 63.10(e)(3) until a request to reduce reporting frequency is approved.

(c) The reports required under paragraph (b) of this section shall include the information specified in paragraphs (c)(1) through (c)(6) of this section.

(1) The report shall include records of all alarms from the bag leak detection system specified in § 63.548(e).

(2) The report shall include a description of the procedures taken following each bag leak detection system alarm pursuant to § 63.548(f)(1) and (2).

(3) The report shall include the information specified in either paragraph (c)(3)(i) or (c)(3)(ii) of this section, consistent with the monitoring option selected under § 63.548(h).

(i) A record of the temperature monitor output, in 3-hour block averages, for those periods when the temperature monitored pursuant to § 63.548(h)(1) fell below the level established in § 63.548(h)(1).

(ii) A record of the total hydrocarbon concentration, in 3-hour block averages, for those periods when the total hydrocarbon concentration being monitored pursuant to § 63.548(h)(2) exceeds the relevant limits established in § 63.543(c), (d), and (e).

(4) The reports required under paragraph (b) of this section shall contain a summary of the records maintained as part of the practices described in the standard operating procedures manual for baghouses required under § 63.548(a) including an explanation of the periods when the procedures were not followed and the corrective actions taken.

(5) The reports required under paragraph (b) of this section shall contain an identification of the periods when the pressure drop and water flow rate of wet scrubbers used to control process fugitive sources dropped below the levels established in § 63.548(g) and an explanation of the corrective actions taken.

(6) The reports required under paragraph (b) of this section shall contain a summary of the fugitive dust control measures performed during the required reporting period, including an explanation of the periods when the procedures outlined in the standard operating procedures manual pursuant to § 63.545(a) were not followed and the corrective actions taken. The reports shall not contain copies of the daily records required to demonstrate compliance with the requirements of the standard operating procedures manuals required under §§ 63.545(a) and 63.548(a).

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40 CFR Part 52

[IA–15–1–6829a; FRL–5210–5]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This final action approves the State Implementation Plan (SIP) revision submitted by the state of Iowa. The revision includes special requirements for nonattainment areas, compliance and enforcement information, and adoption of EPA definitions. These revisions strengthen the SIP with respect to attainment and maintenance of established air quality standards.

DATES: This action will be effective August 22, 1995 unless by July 24, 1995 adverse or critical comments are received.

ADDRESSES: Comments may be mailed to Christopher D. Hess, Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101. Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and EPA Air & Radiation Docket and Information Center, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Christopher D. Hess at (913) 551–7213.

SUPPLEMENTARY INFORMATION: The state of Iowa operates a Federally approved SIP that implements various requirements of the Clean Air Act (Act) and the Code of Federal Regulations (CFR). Since the initial approval of its SIP in 1972, numerous revisions and updates have been made in response to Federal requirements.

In accordance with 40 CFR 51.103, the state of Iowa has requested approval of two SIP revisions under the authority and signature of the Governor's designee, Larry J. Wilson, Director, Iowa Department of Natural Resources (IDNR). Requests were received by the EPA on October 18, 1994, and January 26, 1995. Both of these submittals were deemed complete in accordance with the criteria specified in 40 CFR part 51, appendix V. The state has provided evidence of the lawful adoption of regulations, public notice, and public hearing requirements for each submittal.

Rule Revisions

A. Special Requirements for Nonattainment Areas

The state of Iowa currently has one nonattainment area, in Muscatine for SO_2. In response to the requirements of the Act, as amended in 1990, the state has adopted the following rules.

1. In IAC 567–22.5 (1), the state amends its definition of "major stationary source" to conform to the requirements of Part D of the Act. The Act provides, in general, that a source which emits, or has the potential to emit, 100 tons per year or more of a regulated pollutant is a major source. Part D provides lower cutoff levels for some nonattainment areas, depending on the classification of the area.

Specifically in response to the following cited sections of the Act, the state has added the major source emissions thresholds for the following pollutants: Ozone precursors (section 182), ozone precursors in ozone transport regions (section 184), carbon monoxide (section 186), and PM_{10} (section 188).

2. In subrule 22.5(1)"f"(2), the state also amends the definition of "net emissions increase" as it relates to major sources for nonattainment areas. Previously, a net emissions increase was considered contemporaneous with the particular change if it occurred between January 1, 1978, and the date that the increase from the particular change occurred. The state now uses a date five years before construction of the particular change rather than the fixed date of January 1, 1978.

This revision, although not required as a result of the 1990 Amendments to the Act, is consistent with the EPA's requirements at 40 CFR 51.165(a)(1)(vi) relating to calculation of net emissions increases for permitting applicability purposes.

3. In subrule 22.5(1)"m," the state has expanded its definition of "enforceable permit condition" to include requirements of Title V operating permits. This recognizes that limitations in those operating permits will qualify as federally enforceable restrictions which can be utilized in determining source applicability in the state's permitting programs.

4. In subrule 22.5(2), the state updates its emission offset applicability provisions to conform with the requirements of the 1990 Amendments. In particular:

a. The reference to 40 CFR 81.316 is updated to include amendments through March 10, 1994, pertaining to particulate matter nonattainment areas.

b. In this same subrule, the state deletes the provision that previously allowed the director to relieve an applicant from the obligation of continuing to implement offset requirements of a nonattainment construction permit if an area is subsequently redesignated attainment or unclassified. This measure is necessary to help ensure maintenance of the air quality standards after an area is redesignated to attainment.

c. The state deletes the reference to secondary standard particulate matter nonattainment areas. This reflects the fact that the current particulate matter standards are the same for the primary and secondary standards.

d. The state adds a requirement for offsets in sulfur dioxide (SO_2) nonattainment areas in subrule 22.5(2)b. As discussed in more detail below, EPA has determined that this addition strengthens the SIP and is therefore approvable.

e. The state also deletes subrule 22.5(2)c which previously provided a "loophole" for sources in secondary particulate matter nonattainment areas to claim that offsets were not reasonably available. This action strengthens the SIP by requiring sources to achieve offsets that conform with the Act.

f. Due to the new 22.5(2)b and deletion of 22.5(2)c, the former 22.5(2) d, e, and f become 22.5(2) c, d, and e.

5. Rule 22.5(3) previously allowed a source in a secondary particulate matter nonattainment area to submit proposals for emission offsets or a demonstration that offsets were not reasonably

available with a permit application. In conjunction with the deletion of 22.5(2)c, the state now deletes the ability to submit a demonstration that offsets are not reasonably available. This strengthens the SIP by requiring, without exception, offsets in nonattainment areas. It also reflects the state's other revisions eliminating the distinction between primary and secondary particulate nonattainment areas.

6. Subrule 22.5(4)"b" previously required an offset ratio of at least 1.25:1 for particulate emissions. The revision requires a ratio of greater than 1:1 for all nonattainment areas. Although the reduced ratio would represent a relaxation of the offset requirements for particulate matter nonattainment areas, there are currently no such areas in Iowa. In any newly designated PM_{10} nonattainment areas, the revised ratio would be consistent with the requirements of the Act.

7. In accordance with section 173 of the Act, the state adds a new rule that requires new or modified major sources to comply with the lowest achievable emission rate in nonattainment areas.

8. In 22.5(7), the state updates its rule to reflect appropriate revisions. With respect to compliance of existing sources, this subrule referenced a rescinded subrule. By inserting the reference "rule 22.5," the state now clearly identifies that a new major source or major modification subject to the emission offset subrule shall be in compliance with applicable emission standards or an approved compliance schedule.

B. Compliance and Enforcement Information

In 58 FR 54677, dated October 22, 1993, the EPA announced that SIP calls pursuant to section 110(k)(5) of the Act would be issued in order to implement the monitoring requirements of section 114(a)(3) including the periodic monitoring requirements for operating permits pursuant to sections 502(b)(2) and 504. This SIP call is required, because existing SIPs are inadequate in that they may be interpreted to limit the types of testing or monitoring data that may be used for determining compliance and establishing violations.

On May 11, 1994, the EPA notified the Governor of Iowa that an SIP revision is necessary to meet the aforementioned requirements of the Act. In IAC 567–21.5, the state has added rules that fulfill this requirement.

1. In IAC 567–21.5, a new rule has been added providing that any credible evidence may be used for the purpose of establishing whether a violation has occurred at the source.

2. Subrule 21.5(1) specifies that information from the use of monitoring methods approved in the source's Title V operating permit, compliance test methods specified in IAC 567–25, and testing or monitoring methods approved in the source's construction permit is presumptively credible evidence of whether a violation has occurred at a source.

3. Subrule 21.5(2) identifies presumptively credible monitoring or testing methods.

4. The state also amends subrule 22.105(2)"i" by adding a new subparagraph, (5). For purposes of submitting compliance certifications, this subrule specifies that an owner or operator is not prohibited from using monitoring as required by any specified compliance methods or as required by subrules 22.108(3)–(5) and incorporated into a Title V operating permit. The practical effect of this addition is that the SIP is now strengthened by providing for more extensive means of determining compliance and gathering enforcement information.

C. Miscellaneous Revisions

1. In IAC 567–20.2 the state adds the definition of "volatile organic compound" as found in 40 CFR 51.100(s) as amended through November 30, 1993.

2. With respect to emissions testing, the state adds two approved EPA definitions: "EPA conditional method" and "EPA reference method." A conditional method describes any method of sampling that has been validated by the Administrator, but has not yet been published as a reference method. A reference method, in contrast, describes any method of sampling or analyzing published in the CFR. EPA Action:

EPA is taking final action to approve revisions submitted on October 18, 1994, and January 26, 1995, for the state of Iowa.

Insofar as the state's request involves new source review (NSR) in nonattainment areas, EPA is approving the revision because its overall effect is to strengthen the SIP. EPA recognizes that this revision does not address all of the requirements for NSR under the 1990 Amendments to the Act. As an example, the revision does not include a requirement, as a precondition to permit issuance, an analysis of alternatives to construction of a proposed source or modification which shows that the benefits of construction outweigh the environmental and social costs (section 173(a)(5)).

The state is required to submit a revision by October 10, 1995, for the SO_2 nonattainment area in Muscatine, Iowa. In addition to other requirements of Part D of the Act, the revision must meet all the requirements of section 173 relating to NSR. EPA anticipates that Iowa will submit a revision by the statutory deadline addressing the other NSR requirements. Because the Part D revision for Muscatine is not yet due, and Iowa currently has no additional nonattainment areas, EPA is approving the rule which the state submitted. However, if the state does not submit a complete and timely SIP, including a Part D NSR rule, or if EPA determines that Iowa's submission is not approvable, EPA will take appropriate action (either finding a failure to submit an SIP or disapproving the SIP).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and Subpart 1, Part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds (*Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

The Office of Management and Budget has exempted these actions from review under Executive Order 12866.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 22, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in the **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 2, 1995.

Dennis Grams,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401—7671q.

Subpart Q—Iowa

2. Section 52.820 is amended by adding paragraph (c)(61) to read as follows:

§ 52.820 Identification of plan.

* * * * *

(c) * * *

(61) On October 18, 1994, and January 26, 1995, the Director of the Iowa Department of Natural Resources submitted revisions to the State Implementation Plan (SIP) to include special requirements for nonattainment areas, provisions for use of compliance and enforcement information, and adoption of EPA definitions. These revisions fulfill Federal regulations which strengthen maintenance of established air quality standards.

(i) Incorporation by reference.

(A) Revised rules "Iowa Administrative Code," effective November 16, 1994. This revision approves revised rules 567–20.2, 567–22.5(1)a, 567–22.5(1)f(2), 567–22.5(1)m, 567–22.5(2), 567–22.5(3), 567–22.5(4)b, 567–22.5(6), 567–22.5(7), 567–22.105(2), and new rule 567–21.5. These rules provide for enhanced monitoring, special requirements for nonattainment areas, and adopts EPA's definition of volatile organic compound.

(B) Revised rules, "Iowa Administrative Code," effective February 22, 1995. This revision approves new definitions to rule 567–20.2. This revision adopts EPA's definitions of "EPA conditional method" and "EPA reference method."

(ii) Additional material.

(A) None.

[FR Doc. 95–15236 Filed 6–22–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 52 and 70

[CA 147–1–6995–a; FRL–5216–3]

Clean Air Act Final Approval of Title V Operating Permits Program Revisions; Final Approval of Amended Synthetic Minor Operating Permit Program as a State Implementation Plan Revision; Bay Area Air Quality Management District, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is promulgating direct final approval of the title V operating permit program revisions adopted by the Bay Area Air Quality Management District (Bay Area, BAAQMD, or District) on February 1, 1995 and submitted to EPA on March 23, 1995. These revisions modify Bay Area's title V program as proposed for interim approval on November 29, 1994 by providing for optional permit shield provisions, clarifying permit application requirements, and making other minor program changes in response to local concerns. In this direct final action, EPA is also promulgating approval of revisions that Bay Area made to its synthetic minor operating permit program. The synthetic minor program allows for the issuance of federally enforceable state operating permits (FESOP) and was also proposed for approval on November 29, 1994. The synthetic minor amendments being approved in this notice clarify the District's permit modification procedures for synthetic minors. Upon approval, the amended synthetic minor regulations will be incorporated into Bay Area's portion of the State Implementation Plan (SIP). In order to extend the federal enforceability of synthetic minor operating permit conditions to hazardous air pollutants (HAP), EPA is also approving Bay Area's amended synthetic minor regulations pursuant to section 112(l) of the Clean Air Act (Act or CAA).

EFFECTIVE DATE: This action is effective on August 22, 1995 unless adverse or critical comments are received by July 24, 1995. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the rules and EPA's Technical Support Document for the amended title V and synthetic minor programs are available for public inspection at the following location: Operating Permits Section (A–5–2), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the regulations being incorporated by reference in today's rule are available for inspection at the following location: Air Docket (6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Celia Bloomfield (telephone 415/744–1249), Operating Permits Section (A–5–2), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION:

I. Background

On November 29, 1994, EPA proposed in the **Federal Register** to grant Bay Area's title V operating permits program interim approval (59 FR 60939) in accordance with title V of the Act (as amended in 1990) and 40 CFR part 70 (the title V implementing regulations). In the same notice, EPA proposed approval of Bay Area's synthetic minor program based on the June 28, 1989 (54 FR 27274) approval criteria for federally enforceable state operating permit programs. On February 1, 1995, Bay Area adopted revisions to Regulation 2, Rule 6 (Regulation 2–6) and the

District's Manual of Procedures, Volume II, Part 3 (MOP), which implement the District's title V and synthetic minor programs. These revisions were not made in response to the title V program deficiencies identified by EPA in the proposed rulemaking, but rather to address local issues and concerns. EPA is promulgating a direct final approval of the amendments to coordinate the effective date of the title V and FESOP programs (which are being promulgated in today's Final Rules Section) with the effective date of the revisions.

II. EPA Evaluation and Action

On March 23, 1995, the California Air Resources Board (CARB) submitted to EPA, on behalf of the Bay Area, revisions to the District's title V operating permits program. The revisions, adopted February 1, 1995 by the Bay Area, address local issues and concerns and were not adopted in response to EPA's November 29, 1994 proposed interim approval notice (59 FR 60939). The District's synthetic minor program revisions, also adopted on February 1, 1995, were submitted to EPA by CARB, on behalf of the Bay Area, on March 31, 1995. The synthetic minor revisions clarify the District's processing of synthetic minor permit modifications.

The EPA has evaluated the submitted rules and has determined that they are substantially consistent with 40 CFR part 70 and fully consistent with the June 28, 1989 approval criteria (54 FR 27274) for SIP-approved state operating permit programs. The following is a brief analysis of the key regulatory revisions being acted on in today's notice. (Please refer to the Technical Support Document for a complete analysis of the submission.)

A. Analysis of Submission

1. Title V Operating Permit Program

a. Federal Enforceability—Title V permits in the Bay Area will contain District, State, and federal requirements. Bay Area's regulation, prior to the February 1, 1995 revisions, interchanged the terms "applicable requirement" and "federally enforceable requirement," causing District and State-only requirements to become federally enforceable. (See 59 FR 60942.) On February 1, 1995, Bay Area revised its regulations to ensure that District and State-only requirements would not automatically become federally enforceable. (See 2–6–305, 2–6–307, 2–6–311.)

b. Duty to Apply—EPA proposed source category-limited interim approval of Bay Area's title V program on November 29, 1994 because the program allows certain sources to remain out of the program for two years by deferring the duty to apply for a title V permit. On February 1, 1995, Bay Area revised the duty to apply section of its regulation to clarify eligibility and timing issues associated with this deferral of applications. The changes ensure that only smaller sources of emissions will receive the deferral (2–6–403.1). These changes are consistent with the source category-limited interim approval proposed in the November 29, 1994 **Federal Register** notice. The revisions further specify which sources are required to submit applications within three months from the effective date of Bay Area's title V program so that the District can meet federal requirements for initial permit issuance (2–6–404.7 and section 70.4(b)(11)).

c. Permit Applications—Bay Area made several revisions to its permit application requirements. The primary substantive revision relieves sources of the requirement to calculate and summarize emissions from units that emit quantities below given thresholds (2 tons per year of a regulated air pollutant and 1000 pounds per year of a hazardous air pollutant) (2–6–405.6). EPA stated in its proposed notice that it would accept emissions cut-offs of 2 tons per year for criteria pollutants and the lesser of 1000 pounds per year or the section 112(g) de minimis levels for hazardous air pollutants (HAP) as criteria used to establish insignificant activities. According to section 70.5(c), once an activity qualifies as insignificant under these cut-offs, a source need only list it on the permit application. Bay Area's approach is substantially consistent with EPA's interpretation of insignificant activities. (For further analysis, please refer to the Technical Support Document located in the docket and Bay Area's final title V interim approval notice published in today's Final Rules Section of the **Federal Register**.)

d. Insignificant Activities—As noted above, section 70.5(c) in part 70 defines insignificant activities as "activities and emissions levels which need not be included in permit applications." Bay Area indicated in the program description for its initial title V submittal that sources listed as exempt or excluded from permitting in Regulation 2, Rule 1, section 113.3 and sections 114–128 constitute the District's list of insignificant activities ("November 1993 List"). (See November 16, 1993 submittal: Program Description, p.II–3; rule 2–6–405.4, adopted November 3, 1993; and Appendix B, Part III.) The threshold on the November 1993 List is 150 pounds per day, which exceeds the level that EPA has allowed to be insignificant; therefore, EPA noted this provision as an interim approval issue. (See 59 FR 60939, November 29, 1994.) In the February 1, 1995 revisions, rule 2–6–405.6 is unclear as to whether Bay Area intended to require the activities on the November 1993 List to be quantified on the permit application. For an interim period, EPA will allow Bay Area not to require quantification of emissions from units on the November 1993 List, unless the emissions are necessary for determining the applicability of requirements or establishing permit terms and conditions that assure compliance with the applicable requirements. (See MOP, section 2.1.2, subsection d (p.3–8), adopted February 1, 1995.) At the end of the two-year interim approval period, Bay Area must demonstrate that each of the activities on the November 1993 List meet EPA's criteria for insignificant activities in section 70.5(c) and revise the list to exclude activities and emissions that do not qualify as insignificant to ensure that such activities and emissions will be quantified on the permit application. EPA also recommends that the District clarify that any "exemption" or "exclusion" provided by Regulation 2, Rule 1 as referred to in rule 2–6–405.4.2 (February 1, 1995 version of Regulation 2–6) does not exempt sources from title V permitting requirements.

In addition, the February 1, 1995 version of Regulation 2–6 relieves sources emitting less than 2 tons per year of a regulated air pollutant or 1000 pounds per year of a hazardous air pollutant from having to quantify emissions. While the emissions cut-off approach is acceptable for defining insignificant activities, Bay Area must add a provision to Regulation 2–6 stating that information from insignificant activities may not be omitted from the permit application if it is necessary to determine the applicability of a requirement, to impose any applicable requirement, or to assess fees (section 70.5(c)). This addition will ensure that Bay Area's insignificant activities provisions will not interfere with determining whether and how a CAA requirement applies at a source.

e. Fees—Section 3 of the revised MOP specifies fees associated with permit shields, acid rain facility monitors, public notice, etc. These fees are in addition to those that EPA found adequate for full approval in its November 29, 1994 proposal. Part 70 gives the District discretion to establish fees as long as all direct and indirect costs of the program are covered (section 70.9(b)).

2. Synthetic Minor Operating Permit Program

Bay Area added a definition for "synthetic minor operating permit modification" to section 232 of Regulation 2–6 and procedural requirements for such modifications in sections 421, 422, and 423. The definition and procedural requirements provide additional assurance that revisions made to federally enforceable permit conditions contained in a synthetic minor permit will be revised in accordance with the procedures established for initial issuance of the synthetic minor permit. These revisions are fully approvable since they are consistent with the five approval criteria for FESOP programs set out in the June 28, 1989 **Federal Register** notice. (See 59 FR 60939).

B. Final Action and Implications

The EPA is publishing this notice without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing approval of Bay Area's title V and synthetic minor program revisions should adverse or critical comments be filed. This action will be effective August 22, 1995, unless, within 30 days of its publication, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective August 22, 1995.

1. Title V Operating Permits Program

EPA is promulgating approval of the title V operating permit program revisions submitted to EPA by CARB on March 23, 1995. These revisions do not correct the deficiencies identified in the November 29, 1994 proposed interim approval, and hence, do not impact Bay Area's interim approval status. In order for the February 1, 1995 revisions to be fully approvable with respect to insignificant activities, Bay Area must revise Regulation 2–6 to: (1) State that the permit application may not omit any information necessary to determine the applicability of, or to impose, any applicable requirement, or to assess fees; and (2) clarify that the November 1993 List no longer defines insignificant activities, or correct the deficiencies associated with the November 1993 List (59 FR 60939).

2. Synthetic Minor Operating Permit Program

EPA is promulgating approval of the synthetic minor operating permit program revisions submitted to EPA by CARB on March 31, 1995. Bay Area has already begun to issue permits containing voluntarily accepted limits pursuant to the District's synthetic minor regulations as adopted on February 1, 1995 (synthetic minor provisions are contained within Regulation 2, Rule 6). If the District followed its own procedures, each of those permits was subject to public notice and prior EPA review. Therefore, EPA will consider all voluntarily accepted limits in any District permit issued pursuant to the February 1, 1995 version of Bay Area's synthetic minor program which is being proposed for direct final approval in today's **Federal Register**, to be federally enforceable upon promulgation of this rule provided that any such permit is submitted to EPA and accompanied by documentation that the approved procedures were followed. The EPA will expeditiously review individual permits to ensure their conformity to the program requirements.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

III. Administrative Requirements

A. Docket

Copies of Bay Area's submittal and other information relied upon for the direct final actions are contained in docket number CA–BA–95–1–OPS maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this direct final rulemaking. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. §§ 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over population of less than 50,000.

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address revisions to Bay Area's existing operating permits program that was submitted to satisfy the requirements of 40 CFR part 70. Application for limits under Bay Area's synthetic minor provisions is voluntary and therefore does not create any new requirements. Because these approval actions do not impose any new requirements, I certify that they do not have a significant impact on any small entities affected.

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated today does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state or local law, and imposes no new federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

D. Executive Order 12866

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

List of Subjects

40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

40 CFR Part 70

Administrative practice and procedure, Air pollution control, Environmental protection, Hazardous substances, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: May 25, 1995.

David P. Howekamp,

Acting Regional Administrator.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(216)(i)(B) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(216) * * *

(i) * * *

(B) Bay Area Air Quality Management District.

(*1*) Amended Regulation 2, Rule 1, Section 129 adopted on February 1, 1995; Amended Regulation 2, Rule 6, Sections 232, 234, 310, 311, 403, 404, 420, 421, 422, 423 adopted on February 1, 1995.

* * * * *

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Appendix A to part 70 is amended by revising paragraph (b) to the entry for California to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

(b) Bay Area Air Quality Management District: submitted on November 16, 1993, amended on October 27, 1994, and effective as an interim program on July 24, 1995. Revisions to interim program submitted on March 23, 1995 and effective on August 22, 1995 unless adverse or critical comments are received by July 24, 1995. Approval of interim program, including March 23, 1995 revisions, expires July 23, 1997.

* * * * *

[FR Doc. 95–15037 Filed 6–22–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Parts 52 and 70

[CA 77–1–6996; AD–FRL–5216–5]

Clean Air Act Final Interim Approval of the Operating Permits Program; Final Approval of State Implementation Plan Revision for the Issuance of Federally Enforceable State Operating Permits; Bay Area Air Quality Management District, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is promulgating interim approval of the title V operating permits program submitted by the Bay Area Air Quality Management District (Bay Area, BAAQMD, or District) for the purpose of complying with federal requirements that mandate that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources. In addition, EPA is promulgating final approval of a revision to Bay Area's portion of the California State Implementation Plan (SIP) regarding synthetic minor regulations for the issuance of federally enforceable state operating permits (FESOP). In order to extend the federal enforceability of state operating permits to hazardous air pollutants (HAP), EPA is also finalizing approval of Bay Area's synthetic minor regulations pursuant to section 112(l) of the Clean Air Act (CAA or Act). Finally, today's action grants final approval to Bay Area's mechanism for receiving delegation of section 112 standards as promulgated.

EFFECTIVE DATE: July 24, 1995.

ADDRESSES: Copies of Bay Area's submittals and other supporting information used in developing the final approvals are available for inspection (docket number CA-BA–94–1–OPS) during normal business hours at the following location: U.S. Environmental Protection Agency, Region IX, Air & Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105. Copies of the regulations being incorporated by reference in today's rule are also available for inspection at the following location: Air Docket (6102), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Celia Bloomfield (telephone 415/744–1249), Mail Code A–5–2, U.S. Environmental Protection Agency, Region IX, Air & Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (Act)), and implementing regulations at 40 Code of Federal Regulations (CFR) part 70, require that states develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a federal program.

On November 29, 1994, EPA proposed interim approval of the operating permits program for Bay Area, California. See 59 FR 60939. The November 29, 1994 **Federal Register** document also proposed approval of Bay Area's interim mechanism for implementing section 112(g) and program for delegation of section 112 standards as promulgated. Public comment was solicited on these proposed actions. EPA received public comment on the proposal and is responding to those comments in this document and in a separate "Response to Comments" document that is available in the docket at the Regional office. In this notice, EPA is promulgating interim approval of Bay Area's operating permits program and approving the section 112(g) and section 112(l) mechanisms noted above.

On June 28, 1989 (54 FR 27274), EPA published criteria for approving and incorporating into the SIP regulatory programs for the issuance of federally enforceable state operating permits. Permits issued pursuant to a program meeting the June 28, 1989 criteria and approved into the SIP are considered

federally enforceable for criteria pollutants. The synthetic minor mechanism may also be used to create federally enforceable limits for emissions of hazardous air pollutants (HAP) if it is approved pursuant to section 112(l) of the Act.

In the November 29, 1994 **Federal Register** document, EPA also proposed approval of Bay Area's synthetic minor program for creating federally enforceable limits in District operating permits. In this notice, EPA is promulgating approval of the synthetic minor program for the Bay Area as a revision to Bay Area's SIP and pursuant to section 112(l) of the Act.

II. Final Action and Implications

A. Analysis of State Submission and Response to Public Comments

On November 29, 1994, EPA proposed interim approval of Bay Area's title V operating permits program as it was submitted on November 16, 1993 and amended on October 27, 1994. Since the time that EPA proposed interim approval, Bay Area adopted regulations to implement title IV of the Act. On September 21, 1994, Bay Area incorporated part 72 by reference into District Regulation 2, Rule 7. Regulation 2, Rule 7 was submitted to EPA on December 29, 1994, and it corrects the first program deficiency (i.e., acid rain definitions) identified in the proposed interim approval notice by incorporating the federal acid rain definitions by reference and by stating that "if the provisions or requirements of 40 CFR Part 72 are determined to conflict with Regulation 2, Rule 6, the provisions and requirements of Part 72 shall apply and take precedence."

EPA recently became aware that the November 29, 1994 proposal incorrectly identified District Regulation 1, sections 431–433. Those regulations are SIP-approved District breakdown provisions (September 2, 1981, 46 FR 43968) and are recognized by EPA.

EPA received comments on the proposed interim approval of the Bay Area program from three public commenters: New United Motor Manufacturing Inc. (NUMMI), BAAQMD, and the National Stone Association (NSA). Several interim approval issues set forth in the November 29, 1994 proposal were modified as a result of public comment. These changes are discussed below along with other issues raised during the public comment period. EPA's final action, as set forth in section II.B. below, is being revised from the proposed notice in response to public comment. EPA received no adverse public comment on the proposed approval of Bay Area's synthetic minor program or program for receiving section 112(l) standards as promulgated.

1. Section 112(g) Implementation

One commenter stated that in the absence of a final section 112(g) regulation, Bay Area should be allowed to use its existing air toxics program and de minimis levels to determine case-by-case Maximum Achievable Control Technology (MACT) for new, reconstructed, and modified sources. The commenter further stated that the broad statutory requirements of section 112(g) should not supersede Bay Area's existing toxics program.

EPA has received many comments on various state part 70 programs concerning this issue and agrees that it is not reasonable to expect the states and districts to implement section 112(g) before a rule is issued. EPA has therefore published an interpretive notice in the **Federal Register** regarding section 112(g) of the Act: 60 FR 8333 (February 14, 1995). This notice outlines EPA's revised interpretation of section 112(g) applicability prior to EPA's issuing the final section 112(g) rule. The notice states that major source modifications, constructions, and reconstructions will not be subject to section 112(g) requirements until the final rule is promulgated. EPA expects to issue the final section 112(g) rule in September 1995.

The interpretative notice further explains that EPA is considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the federal rule so as to allow states time to adopt rules implementing the federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), Bay Area must be able to implement section 112(g) during the period between promulgation of the federal section 112(g) rule and adoption of implementing District regulations.

In the November 29, 1994 **Federal Register** notice proposing interim approval for the Bay Area's title V program, EPA also proposed to approve the use of Bay Area's preconstruction review program as a mechanism to implement section 112(g) during the transition period between promulgation of the section 112(g) rule and adoption by the Bay Area of rules specifically designed to implement section 112(g). Since approval is intended solely to confirm that the District has a mechanism to implement section 112(g) during the transition period, the approval itself will be without effect if EPA decides in the final section 112(g) rule that there will be no transition period.

Bay Area commented that EPA should allow California districts 18 months, rather than 12 months, to develop section 112(g) regulations following EPA's promulgation of the federal section 112(g) rule. Bay Area stated that 12 months is not sufficient time to both undergo the regulatory development process and prepare a section 112(l) equivalency package for approval of the District's regulation to be used in lieu of the federal section 112(g) rule.

EPA has approved an 18-month transition period in other states and does not see a unique reason to limit the Bay Area to 12 months. Therefore, EPA will allow Bay Area 18 months from the date of EPA's final section 112(g) rule to develop and submit district regulations for the implementation of section 112(g). If the final section 112(g) rule, however, eliminates the transition period, Bay Area must follow the implementation time lines set out in that rulemaking.

2. Certification by a Responsible Official

One commenter objected to EPA's statement, under program deficiencies, that any document submitted in conjunction with a title V permit must be certified by a responsible official. The commenter stated that part 70 specifies which documents must be certified and that requiring "any document" to be certified represents an overly strict interpretation of section 70.6(c)(1).

EPA disagrees that the requirement to certify "any document" required by the permit is either redundant or unwarranted. The use of the term "any document" is necessary to ensure that all documents required to be certified under part 70 will be certified. Including the language in section 70.6(c)(1) should not create any additional burden than if the documents were all specifically listed. As the Bay Area's program is currently written, only semiannual reports and annual compliance certifications need to be certified by a responsible official. The Bay Area's program fails to specify certification of other required documents such as progress reports associated with a compliance schedule (section 70.6(c)(4)) or prompt reports of permit deviations (section 70.6(a)(3)(iii)(B)). Adding a requirement consistent with section 70.6(c)(1) would correct such omissions.

On a related note, EPA believes that, in one respect, the language suggested

in the November 29, 1994 **Federal Register** proposal may have been an overly inclusive interpretation of section 70.6(c)(1). Section 70.6(c)(1) reads, "Any document (including reports) required by a part 70 permit shall contain a certification by a responsible official * * *" While the commenter focused on the words "any document," EPA believes that the overly inclusive language in the proposed interim approval is the reference to any document submitted "in conjunction with" a permit. Therefore, Bay Area may substitute the phrase "required by," rather than "in conjunction with," when correcting the above deficiency.

3. Insignificant Activities

Two commenters responded to EPA's identification of deficiencies regarding Bay Area's insignificant activities list and significance thresholds. The commenters raised several points, the first being that EPA's recommended insignificance levels would impose unnecessary administrative burdens.

EPA does not agree that the cut-off levels proposed in the November 29, 1994 notice of 2 tons per year (tpy) for criteria pollutants and the lesser of 1000 pounds per year or the section 112(g) de minimis levels for hazardous air pollutants (HAP) would create an unreasonable administrative burden. Insignificant activities are relevant only during the initial application phase when the source has to determine what information must be included in its permit application. Regardless of the list of insignificant activities or the cut-off emissions levels, the source may not omit from its application any information that is necessary to determine applicability, impose an applicable requirement, or assess fees (section 70.5(c)).

EPA also disagrees that the requirement to describe emissions from activities not qualifying as insignificant is overly burdensome. First, sources can use reliable emissions factors rather than extensive testing and monitoring. Second, the source descriptions required by section 70.5(c)(3)(ii) need only include sufficient detail to determine fees and the applicability of requirements of the Act. Finally, in many cases, smaller units can be aggregated and described in general terms if such an approach would not interfere with determining whether and how an applicable requirement applies at a source.

A second point raised in comment was that the redesignation of Bay Area to attainment status for ozone justifies a higher insignificance threshold for criteria pollutants. EPA agrees that emissions cut-offs for insignificant activities should be based on area-specific circumstances and analysis. The proposed notice recommended a 2 tpy cut-off for criteria pollutants for the Bay Area because of the large number of sources and emissions in the District, the high population density, and the distinct relationship between regulatory compliance and air quality improvement in the Bay Area. While EPA is open to evaluating alternative emissions cut-offs, such a proposal must clearly demonstrate that the higher level of emissions are insignificant for the Bay Area.

An industry commenter also requested that EPA accept Bay Area's categorical permit exemption list as its list of insignificant activities. While part 70 allows state and local agencies to submit a list of insignificant activities and emissions levels for approval, this list must be accompanied by selection criteria that will assure insignificance with respect to federal applicable requirements (sections 70.4(b)(2) and 70.5(c)). The fact that the District has a preexisting exemption list does not constitute sufficient justification of insignificance. Because Bay Area has not provided EPA with justification for each categorical exemption, EPA does not have adequate information on which to evaluate the activities.

A fourth point raised in response to EPA's recommended insignificance thresholds was the suggestion that a single emissions cut-off be used to define insignificant activities for HAP-emitting sources. The commenter suggested that a single threshold would be more appropriate than the section 112(g) de minimis values since the Act uses a broad 10 tpy applicability threshold.

EPA recommended using the proposed section 112(g) de minimis levels because they define what EPA, through research and science, has determined to be significant enough to warrant review by the public and EPA on a facility-wide basis. EPA believes that the section 112(g) de minimis levels would more easily allow the permitting authority to verify independently the applicability of requirements and should serve as an upper bound on which activities may be excluded from permit applications. The same result may be achieved, however, with a single cut-off of 1000 pounds per year if the threshold is accompanied by a caveat that activities and emissions necessary for determining the applicability of, or imposing an applicable requirement on, the source may not be omitted from the permit application.

A fifth comment regarding insignificant activities was Bay Area's objection to adding an "applicable requirement gatekeeper" that excludes activities subject to an applicable requirement from classification as insignificant. Bay Area asserted that the applicable requirement gatekeeper for insignificant activities is too stringent since some state implementation plans (SIPs) contain requirements such as opacity limits that would generally apply to all activities at the facility regardless of size.

EPA understands Bay Area's concerns and believes that the applicable requirement gatekeeper can be added to Bay Area's program without nullifying the usefulness of insignificant activities. EPA recognizes that certain requirements approved into the SIP, such as opacity standards, are applicable not to specific emissions units, but instead to the facility as a whole. Therefore, the presence of an applicable opacity limit does not mean that every emissions unit at the facility must be described in the application since the applicability of the requirement is clear.

4. Notice to the Public and Affected States

Bay Area disagreed with the public and affected state notice deficiencies identified by EPA in the proposed interim approval notice. First, Bay Area objected to revising its program to include affected state notice provisions for Native American tribes since there is not currently a potentially affected tribe that is eligible for treatment as a state.

EPA is concerned about Bay Area's proposal to delay adoption of affected state notice provisions until tribes apply for state status. Although the federal rule that will enable tribes to apply for treatment as states has not yet been finalized, and there are no tribes currently eligible for treatment as a state under the Act, EPA believes that the likelihood of Native American tribes qualifying as affected states under part 70 is great and that Bay Area will ultimately need to revise its rule to address this outcome. Nonetheless, as an alternative to up-front adoption of affected state notice provisions, EPA will accept a commitment from Bay Area to: (1) initiate rule revisions upon notification from EPA that an affected tribe has applied for state status, and (2) provide affected state notice to tribes upon their filing for state status, that is, prior to the District's adoption of affected state notice rules. Second, Bay Area also objected to adding the phrase "by other means if necessary to assure adequate notice to the affected public" to the District's public notice procedures. Bay Area claimed that its existing public notice procedures already assure adequate notice to the affected public.

EPA acknowledges that the Bay Area has an extensive public notice process and that it is adequate in most circumstances. However, EPA also realizes that the United States, in general, and the Bay Area, in particular, consist of diverse communities with varying ties to the publications used for public notification. EPA proposed adding the phrase "by other means if necessary to assure adequate notice to the affected public * * *" to Bay Area's public notice provisions to give Bay Area the legal authority to expand its notification procedures if notice under existing procedures is ever inadequate. The additional language is not intended to require the Bay Area to expand its routine notification procedures, but rather to allow the District to take extra steps when circumstances dictate.

5. Alternative Emission Limits

Bay Area believes that EPA's concerns regarding alternative emission limits can be handled on a permit-by-permit basis rather than by revising the District's Manual of Procedures (MOP). Bay Area's MOP states that alternative emission control plans issued pursuant to District Regulation 8 may be incorporated into title V permits. In the proposed interim approval notice, EPA stated that the permit may contain an alternative emission limit only if it has been approved into Bay Area's SIP. The MOP provides no assurance that an alternative emission control plan in District Regulation 8 is SIP-approved before it is incorporated into a title V permit. In response, Bay Area commented that if the alternative emission control plan in District Regulation 8 has been approved into the SIP, it will become part of the federally enforceable portion of the permit; if it has not been approved into the SIP, it will become part of the state-only portion of the permit.

EPA finds this permit-by-permit approach acceptable. However, the current language in the MOP does not distinguish between alternative emission control plans in District Regulation 8 that have been approved into the SIP and alternative emission control plans in Regulation 8 that have not been approved into the SIP. Therefore, in order to correct this deficiency, the District must add a provision to the MOP (section 4.1) stating that only alternative emission control plans that have been approved into the SIP may be incorporated into the federally enforceable portion of the permit.

6. Emissions Trading

Bay Area commented that the emissions trading provisions of section 70.6(a)(10) should not be required for the Bay Area since the District's new source review program prohibits emissions increases at a facility without a case-by-case approval. EPA does not support Bay Area's position on this matter. Bay Area must include a provision consistent with section 70.6(a)(10) to ensure that the District can implement mandatory trading opportunities that may arise in specific federal requirements.

7. Particulate Matter (PM) Issues

The National Stone Association raised several issues regarding PM that were not relevant to EPA's proposed interim approval of Bay Area's operating permits program. Therefore, EPA is addressing these comments in the Response to Comments Document (located in the docket at the Regional Office) and not in this final interim approval notice.

B. Final Action

1. Title V Operating Permits Program

The EPA is promulgating interim approval of Bay Area's title V operating permits program as submitted on November 16, 1993 and amended on October 27, 1994. Bay Area must make the following changes to receive full approval:

(1) Provide a demonstration that each activity on Bay Area's insignificant activities list (See p. II–3 of program description, 2–6–405.4, and list in Appendix B.) is truly insignificant and is not likely to be subject to an applicable requirement. Alternatively, the District may establish emissions level cut-offs, in which activities emitting below the cut-offs would qualify as insignificant. In the latter case, the District must demonstrate that the cut-off emissions levels are insignificant compared to the level of emissions from and type of units that are required to be permitted or subject to applicable requirements. In addition, Bay Area must revise Regulation 2, Rule 6 to state that activities needed to determine the applicability of, or impose applicable requirements on, the facility may not qualify as insignificant activities. (§§ 70.5(c) and 70.4(b)(2))

(2) Include a term consistent with the part 70 definition of "applicable requirement," and use that term consistently in rules 2–6–409.1, 2–6–409.2 and throughout the regulation. As currently written, Bay Area's regulation requires that "all federal * * * air quality requirements" be incorporated into permits (2–6–409.1); yet, the term is never defined. Bay Area's program does define "applicable requirement" (2–6–202), but the definition deviates from the part 70 definition and includes non-federally enforceable District and State requirements. Bay Area's definition of "federally enforceable" (2–6–207) appears to address the federal definition of "applicable requirement"; however, it does not include the entire list of applicable requirements, and it is not clearly used in the permit content section of Regulation 2–6.

(3) Rule 2–6–409 must be revised to require that permit terms and conditions *assure compliance with all applicable requirements* (§ 70.7(a)(1)(iv)) and that permits contain emission limitations and standards (§ 70.6(a)(1)) and compliance certification requirements (§ 70.6(c)(1)) that assure compliance with all applicable requirements. As Regulation 2–6 is currently written, the District's title V permits only have to include requirements for testing, monitoring, reporting, and recordkeeping sufficient to assure compliance with the terms and conditions of the permit and the applicable requirements themselves. (2–6–409.1 and 2–6–409.2)

(4) Require that certifications by the responsible official affirmatively state that they are based on truth, accuracy, and completeness and that they are based on information and belief formed after reasonable inquiry. Bay Area must revise 2–6–405.9, 2–6–502, MOP (4.5 and 4.7), and any other certification provisions to ensure that both elements are explicitly required. (§ 70.5(d))

(5) Revise Regulation 2–6 to define and require notice to, affected states. Alternatively, Bay Area may make a commitment to: (1) Initiate rule revisions upon being notified by EPA of an application by an affected tribe for state status, and (2) provide affected state notice to tribes upon their filing for state status (i.e., prior to Bay Area's adopting affected state notice rules).

(6) Eliminate the phrase "but not limited to" from the definition of "administrative permit amendment" (2–6–201). Only changes identified in the rule and approved as part of Bay Area's program may be processed as administrative amendments. (§ 70.7(d)(1)(vi))

(7) Revise 2–6–404.3 to limit the universe of significant permit modification applications due 12 months after commencing operations to only those applications for revisions pursuant to section 112(g) and title I,

parts C and D of the Act that are not prohibited by an existing part 70 permit. Except in the above circumstances, a source is not allowed to operate the proposed change until the permitting authority has revised the source's part 70 permit. (§ 70.5(a)(1)(ii))

(8) In minor permit modification procedures, eliminate the extended review period (2–6–414.2) that is inconsistent with 2–6–410.2 and § 70.7(e)(2)(iv). This extension inappropriately lengthens the time that the source can operate under new conditions without a formal permit revision.

(9) Revise 2–6–412.1 to include notice "by other means if necessary to assure adequate notice to the affected public." (§ 70.7(h)(1))

(10) Add a provision to the Manual of Procedures (section 4.1) stating that only alternative emission control plans that have been approved into the SIP may be incorporated into the federally enforceable portion of the permit. (§ 70.6(a)(1)(iii))

(11) Add emissions trading provisions consistent with § 70.6(a)(10), which requires that trading must be allowed where an applicable requirement provides for trading increases and decreases without a case-by-case approval.

(12) Add a requirement to Regulation 2–6 that any document required by a part 70 permit must be certified by a responsible official. (§ 70.6(c)(1))

(13) Revise 2–6–224 and 2–6–409.10 to specify that all progress reports must include: (1) Dates when activities, milestones, or compliance required in the schedule of compliance were achieved; and (2) an explanation of why any dates in the schedule of compliance were not or will not be met and any preventive or corrective measures adopted. (§ 70.6(c)(4) (i) and (ii))

(14) Revise section 4.5 of the MOP and add a provision to 2–6–409 to require that compliance certifications be submitted more frequently than annually if specified in an underlying applicable requirement. (§ 70.6(c)(4))

(15) Bay Area has indicated in its program description that it intends to process new units that do not affect any federally enforceable permit condition "off-permit" (Section II, p. 21 and Staff Report, pp. 3–4). However, Regulation 2–6 does not include any of the off-permit provisions required by §§ 70.4(b)(14) and (15). The part 70 off-permit provisions provide several safeguards such as notice to EPA and recordkeeping requirements that must be incorporated into Bay Area's program. In order to receive full approval in this regard, Bay Area may submit a letter revising its program description to indicate that it will not process new units "off-permit" or it may revise its rule to include the part 70 off-permit provisions.

(16) Revise 2–6–222 defining "regulated air pollutant" to be consistent with the federal definition (§ 70.2) and include pollutants subject to *any requirement* established under section 112 of the Act, including sections 112 (g), (j), and (r).

(17) In addition to the District-specific issues arising from Bay Area's program submittal and locally adopted regulations, California state law currently exempts agricultural production sources from permit requirements. In order for this program to receive full approval (and avoid a disapproval upon the expiration of this interim approval), the California Legislature must revise the Health and Safety Code to eliminate the exemption of agricultural production sources from the requirement to obtain a permit.

The scope of the Bay Area's part 70 program approved in this notice applies to all part 70 sources (as defined in the approved program) within the Bay Area, California, except any sources of air pollution over which an Indian tribe has jurisdiction. *See, e.g.*, 59 FR 55813, 55815–18 (Nov. 9, 1994). The term "Indian tribe" is defined under the Act as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." *See* section 302(r) of the Act; *see also* 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

This interim approval, which may not be renewed, extends until July 23, 1997. During this interim approval period, the Bay Area is protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a federal operating permits program in the Bay Area. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of this interim approval, as does the 3-year time period for processing the initial permit applications.

If the Bay Area fails to submit a complete corrective program for full approval by January 23, 1997, EPA will start an 18-month clock for mandatory sanctions. If the Bay Area then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that the Bay Area has corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of the Bay Area, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determines that the Bay Area has come into compliance. In any case, if, six months after application of the first sanction, the Bay Area still has not submitted a corrective program that EPA has found complete, a second sanction will be required.

If EPA disapproves the Bay Area's complete corrective program, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the Bay Area has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator finds a lack of good faith on the part of the Bay Area, both sanctions under section 179(b) shall apply after the expiration of the 18-month period until the Administrator determines that the Bay Area has come into compliance. In all cases, if, six months after EPA applies the first sanction, the Bay Area has not submitted a revised program that EPA has determined corrects the deficiencies, a second sanction is required.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if the Bay Area has not submitted a timely and complete corrective program or EPA has disapproved its submitted corrective program. Moreover, if EPA has not granted full approval to the Bay Area program by the expiration of this interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a federal permits program for the Bay Area upon interim approval expiration.

2. District Preconstruction Permit Program Implementing Section 112(g)

EPA is approving the use of Bay Area's preconstruction review program found in Regulation 2, Rule 2 as a mechanism to implement section 112(g) during the transition period between promulgation of EPA's section 112(g) rule and adoption by the Bay Area of rules specifically designed to implement section 112(g). EPA is limiting the duration of this approval to 18 months following promulgation by EPA of the section 112(g) rule.

3. Program for Delegation of Section 112 Standards as Promulgated

Requirements for part 70 program approval, specified in 40 CFR section 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the District's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is also promulgating approval under section 112(l)(5) and 40 CFR section 63.91 of Bay Area's program for receiving delegation of section 112 standards that are unchanged from the federal standards as promulgated. This program for delegations applies to both existing and future standards but is limited to sources covered by the part 70 program.

4. State Operating Permit Program for Synthetic Minors

EPA is promulgating full approval of Bay Area's synthetic minor operating permit program submitted to EPA by the California Air Resources Board, on behalf of the Bay Area, on February 28, 1994 (supplemented April 29, 1994). The synthetic minor operating permit program is being approved into Bay Area's SIP pursuant to part 52 and the five approval criteria set out in the June 28, 1989 **Federal Register** document (54 FR 27282). EPA is also promulgating full approval pursuant to section 112(l)(5) of the Act so that HAP emission limits in synthetic minor operating permits may be deemed federally enforceable.

Bay Area has already begun to issue permits containing voluntarily accepted limits pursuant to the District's synthetic minor regulations. If the District followed its own procedures, each of those permits was subject to public notice and prior EPA review. Therefore, EPA will consider all operating permits issued pursuant to Bay Area's synthetic minor regulations being approved in today's notice to be federally enforceable with the promulgation of this approval provided that Bay Area submit any permits that it wishes to make federally enforceable to EPA, accompanied by documentation that the procedures approved today have been followed. EPA will expeditiously review any individual permits so submitted to ensure their conformity to the program requirements. (See 57 FR 59931.)

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

III. Administrative Requirements

A. Docket

Copies of Bay Area's submittal and other information relied upon for the final interim approval, including the three public comment letters received and reviewed by EPA on the proposal, are contained in docket number CA–BA–94–1–OPS maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final interim approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from review under Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under sections 502, 110, and 112 of the Act do not create any new requirements, but simply address operating permit programs submitted to satisfy the requirements of 40 CFR part 70. Because these actions do not impose any new requirements, they do not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated today does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state or local law, and imposes no new federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

List of Subjects

40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

40 CFR Part 70

Administrative practice and procedure, Air pollution control, Environmental protection, Hazardous substances, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: May 25, 1995.

David P. Howekamp,

Acting Regional Administrotor.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c) (217) and (218) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(217) New and amended regulations for the following APCDs were submitted on February 28, 1994, by the Governor's designee.

(i) Incorporation by reference.

(A) Bay Area Air Quality Management District.

(*1*) Amended Regulation 2, Rule 1, Sections 102, 129, 204, 213, 214, 215, 216, 217, 218, 219, 302, 408, 411 adopted November 3, 1993; and New Regulation 2, Rule 6, Sections 206, 207, 210, 212, 213, 214, 218, 222, 230, 231.

301, 311, 401, 402, 403, 404, 420, 421, 422, 602 adopted November 3, 1993.

(218) New and amended regulations for the Bay Area Air Quality Management District were submitted on April 29, 1994 by the Governor's designee.

(i) Incorporation by reference.

(A) New Regulation 2, Rule 6, Sections 310 and 423 adopted November 3, 1993.

* * * * *

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Appendix A to part 70 is amended by adding paragraph (b) to the entry for California to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

(b) *Bay Area Air Quality Management District:* submitted on November 16, 1993 and amended on October 27, 1994; interim approval effective on July 24, 1995, interim approval expires July 23, 1997.

* * * * *

[FR Doc. 95–15038 Filed 6–22–95; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

Evaporative Emission Enclosure Calibrations

CFR Correction

In title 40 of the Code of Federal Regulations, parts 86 to 99, revised as of July 1, 1994, in § 86.1217–90 the first paragraph (c) and the second paragraph (b) appearing on pages 909 and 910 should be removed.

BILLING CODE 1505–01–D

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7619]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATE: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date
NEW ELIGIBLES—Emergency Program			
Illinois: Mansfield, village of, Piatt County	170549	May 11, 1995	June 9, 1978.
Michigan: Leoni, township of, Jackson County	260930	.....do	
South Dakota: Beadle County, unincorporated areas	460251	.....do	Jan. 10, 1978.
Michigan: Zeeland, charter township, of, Ottawa County.	260932	May 12, 1995	
Colorado: Fraser, town of, Grand County	080073	.....do	Mar. 26, 1976.
Michigan: Swan Creek, township of, Saginaw County	260888	.....do	
Oklahoma: Jackson County, unincorporated areas	400480	May 31, 1995	
NEW ELIGIBLES—Regular Program			
Alabama: Roanoke, city of, Randolph County	010348	May 3, 1995	July 5, 1982.
California: [1] Windsor, town of, Sonoma County	060761	May 11, 1995	
Illinois: Hainesville, village of, Lake County	171005	.....do	Feb. 1, 1984.
Indiana: Spiceland, town of, Henry County	180494	.....do	Sept. 4, 1987.
Ohio: Laura, village of, Miami County	390835	.....do	Mar. 15, 1995.
Illinois: Douglas County, unincorporated areas	170194	May 17, 1995	Mar. 4, 1985.
California: [2] Truckee, town of, Nevada County	060762	.....do	
Georgia: Buford, city of, Gwinnett and Hall Counties	130323	May 22, 1995	June 15, 1981.
Kentucky: Meade County, unincorporated areas	210169	May 31, 1995	Feb. 6, 1991.
REINSTATEMENTS			
Wisconsin: Oneida County, unincorporated areas	550579	June 10, 1975, Emerg.; Aug. 5, 1991, Reg.; Aug. 19, 1991, Susp.; May 22, 1995, Rein.	Aug. 5, 1991.
Ohio: Chilo, village of Clermont County	390067	Jan. 20, 1975, Emerg.; Jan. 16, 1981, Reg.; Mar. 15, 1993, Susp.; March 15, 1993, Susp.; May 25, 1995, Rein.	Aug. 15, 1989.
REGULAR PROGRAM CONVERSIONS			
Region I			
New Hampshire: Raymond, town of, Rockingham County.	330140	May 2, 1995, suspension withdrawn	May 2, 1995.
Region III			
Pennsylvania:			
Juniata, township of, Huntingdon County	421692	.....do	Do.
Upper Chichester, township of, Delaware County	420439	.....do	Do.
West Virginia: Mercer County, unincorporated areas	540124	.....do	Do.
Region VI			
Louisiana: Farmerville, town of, Union Parish	220325	.....do	Do.
Oklahoma:			
Bethany, city of, Oklahoma County	400254	.....do	Do.
Purcell, city of, McClain County	400104	.....do	Do.
Region I			
Connecticut: Prospect, town of, New Haven County	090151	May 16, 1995 suspension withdrawn	May 16, 1995.
Region II			
New York: Hammondsport, village of, Steuben County.	360775	.....do	Do.
Region III			
Pennsylvania: Huntingdon, borough of, Huntingdon County.	420486	.....do	Do.
Region V			
Indiana: Shoals, town of, Martin County	180166	.....do	Do.
Ohio:			
Gilboa, village of, Putnam County	390469	.....do	Do.
Metamora, village of, Fulton County	390840	.....do	Do.

[1] The Town of Windsor has adopted Sonoma County's (CID #060375) Flood Insurance Study and Flood Insurance Rate Map (FIRM) for flood insurance and floodplain management purposes. (Sonoma County's map date is 4–2–91, panels #530, 535, 540 and 545).

[2] The Town of Truckee has adopted Nevada County's Flood Insurance Study and Flood Insurance Rate Map (FIRM) dated July 19, 1982, Revised July 2, 1987 for flood insurance and floodplain management purposes (Panels No. 0508B and 0509B; County's CID No. 060210).

Code for reading third column: Emerg.—Emergency: Reg.—Regular; Susp.—Suspension, Rein.—Reinstatement.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: June 15, 1995.

Frank H. Thomas,

Deputy Associate Director, Mitigation Directorate.

[FR Doc. 95–15453 Filed 6–22–95; 8:45 am]

BILLING CODE 6718–21–P

Proposed Rules

Federal Register

Vol. 60, No. 121

Friday, June 23, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Parts 273 and 275

[Amdt. No. 366]

RIN 0584–AB75

Food Stamp Program: Quality Control Provisions of the Mickey Leland Childhood Hunger Relief Act

AGENCY: Food and Consumer Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action proposes changes to Food Stamp Program regulations based on section 13951 of the Mickey Leland Childhood Hunger Relief Act. This action proposes to modify the quality control system of the Food Stamp Program in the following areas: timeframes for completion of all review activity, exclusion of variances resulting from the application of new regulations, the tolerance level for excessive error rates, the calculation of liability amounts, interest charges on liability amounts, good cause relief from liabilities, and the authority of the Administrative Law Judges to determine good cause. This action proposes to incorporate these legislative provisions into the Food Stamp Program regulations.

DATES: Comments must be received by August 22, 1995 to be assured of consideration.

ADDRESSES: Send comments to Quality Control Policy Section, Quality Control Branch, Food Stamp Program, Food and Consumer Service, USDA, 3101 Park Center Drive, Room 904, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: John H. Knaus, Chief, Quality Control Branch, Program Accountability Division, Food and Consumer Service, USDA, 3101 Park Center Drive, Room 904, Alexandria, Virginia 22302, (703) 305–2472.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule at 7 CFR 3015, Subpart V and related Notice (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12778

This action has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any state or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Implementation" section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: (1) For program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(10) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-QC liabilities) or Part 283 (for rules related to QC liabilities); (3) for program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 through 612). William E. Ludwig, Administrator of the Food and Consumer Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities. The requirements will affect State and local agencies that administer the Food Stamp Program.

Paperwork Reduction Act

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting and recordkeeping burdens. The estimate covers the time that a State agency will need to complete and transmit a checklist with each request for arbitration. As FCS will provide the content of the checklist to the State agency it is believed that any time spent on the design of the checklist will be minimal. The increase in burden hours reflects current requirements for the arbitration process which were not previously submitted for approval.

Title: Arbitration Checklist.

Description: Final regulations published January 21, 1988 (53 FR 1603) required State agencies to provide full documentation of the case and the policy(s) in question when requesting arbitration. The burden on the States for providing the documentation necessary for arbitration under the requirements of that final rule were not submitted for approval and inclusion under OMB No. 0584–0303 which covers existing reporting and recordkeeping requirements of 7 CFR part 275. The existing requirements in OMB No. 0584–0303 have been approved for use through July 31, 1994. Thus, the following does not represent a change in actual burden, but rather it reflects a redefinition of what is to be included as burden under 7 CFR part 275.

Description of Respondents: State agencies.

Estimated Annual Reporting and Recordkeeping Burden:

Section	Annual number of respondents	Annual frequency	Average burden per response hours	Annual burden hours
7 CFR 275:				
Existing	53	1	5.0236	266
Proposed	53	10	10.4	5512
Total Existing Burden Hours: 266				
Total Proposed Burden Hours: 5512				
Total Difference: 5246.				

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB # 0584–A679), Washington, DC 20503, ATTN: Wendy Taylor.

Background

Section 13951 of the Mickey Leland Childhood Hunger Relief Act, (the "Leland Act"), Chapter 3, Title XIII of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66), revises sections 13(a)(1), 14(a), and 16(c) of the Food Stamp Act of 1977, as amended, (the "Act").

Section 13 of the Food Stamp Act is entitled "Collection and Disposition of Claims". Subsection (a)(1) of this section concerns the settlement and adjustment of claims, including the waiver, for good cause, of all or a portion of a quality control (QC) liability claim established against a State agency. This subsection also addresses the collection of interest on such liability claims. The Leland Act has amended the Food Stamp Act to remove the authority of the Secretary of Agriculture's designee, the Food and Consumer Service ("FCS"), to render good cause determinations. In addition, the timeframes for charging interest on any unpaid portion of a liability claim has been changed from two years to one year after the date that a bill for collection of a liability claim has been received by a State agency.

Section 14 of the Act is entitled "Administrative and Judicial Review". Subsection (a) of this section concerns the authority of Department of Agriculture Administrative Law Judges (ALJs) to review liability claims. The Leland Act has amended the Act to grant the ALJs the authority to determine, upon the request of a State agency, whether or not good cause exists to waive all or a portion of a liability claim.

Section 16 of the Food Stamp Act is entitled "Administrative Cost-Sharing and Quality Control". Subsection (c) of this section concerns payment accuracy and provides for liabilities against State agencies with payment error rates that exceed established tolerance levels, and provides for enhanced funding for State agencies with the lowest error rates. The Leland Act includes a number of provisions which replace key features of the existing liability/incentive system. The Leland Act establishes the national average error rate (also referred to as the national performance measure) for a given fiscal year as the tolerance level for individual State agency error rates for that year. Previously, the tolerance level was equivalent to the lowest national average error rate ever achieved, plus one percentage point. The Leland Act also modifies the calculation of sanction amounts. Prior to the Leland Act, a State agency with an individual error rate which exceeded the tolerance level had a liability equivalent to the difference between the State agency's error rate and the tolerance level, times the total value of food stamp issuance by the State agency for that fiscal year. The Leland Act modifies this calculation by the addition of another factor, the percentage by which a State agency's error rate exceeds the tolerance level or 1 (one), whichever is smaller. In addition, the Leland Act has modified the variance exclusion period for implementation of new regulations from 60/90 days to 120 days. The Leland Act has also changed the timeframes for the determination of final State agency error rates; the national average payment error rate, and the amounts of liability claims against State agencies. The Leland Act provides that these figures must be determined, and State agencies notified, no later than 30 days after the completion of the case review and arbitration process. The case review and arbitration process itself will now be required to be completed no later than 180 days after the end of the fiscal year. Finally, the Leland Act adds specific criteria into the language of section 16(c) of the Food Stamp Act for what will be considered "good cause" for the waiver of liability claims.

As part of the implementation of the new payment accuracy system, this proposed rule addresses amendments made by section 13951 of the Leland Act. Other provisions of section 13951 concerned with the timeframes involved in the administrative law judge appeal process have been published in a separate rulemaking.

Time Limits

Section 13951 of the Leland Act amends the Act by specifying that "not later than 180 days after the end of the fiscal year, the case review and all arbitrations of State-Federal difference cases shall be completed". This means that by March 29th (March 28th in leap years) each year, all State agency QC reviews must be disposed of and transmitted into the Integrated Quality Control System, all Federally subsampled QC reviews must be selected and completed by FCS, and any disparity between the State agency and Federal review findings must be resolved. It should be recognized that these activities can, and do, take place concurrently over the course of the annual review period, but that they cannot be completed simultaneously. The final Federal subsample cannot be selected until all State agency reviews have been disposed of, and final arbitration requests and determinations cannot be made until all Federal reviews have been completed, and the findings transmitted to the State agencies. Current regulations at 7 CFR 275.21 provide State agencies with a deadline of January 5th to dispose of all QC reviews, and regulations at 7 CFR 275.23(e)(8) specify that FCS must determine final payment error rates, and notify State agencies of these error rates by June 30th. Current regulations do not specify any deadline for the completion of the arbitration process. The Department has determined that the deadlines mandated by section 13951 of the Leland Act cannot be met without changes in the timeframes for the completion of QC reviews, and changes in the arbitration system. The specific Departmental proposals for meeting the deadlines mandated by the Leland Act are contained in paragraphs entitled *Validation of State Agency Error Rates—§ 275.3(c), Arbitration—§ 275.3(c)(4),* and *Quality control review reports—§ 275.21.*

Validation of State Agency Error Rates—§ 275.3(c)

Current regulations at 7 CFR 275.3(c)(1)(iii), published February 17, 1984 (49 FR 6292), specify that FCS Regional Offices shall assist State agencies in completing case reviews that State agencies were unable to complete due to refusal on the part of a household to cooperate with the State agency QC reviewer. It was determined that FCS Regional Offices should assist State agencies in completing these difficult cases because of the importance that accepted statistical practices place on completion of the maximum possible percentage of sampled cases. Regulations require a State agency to complete 100 per cent of the cases sampled for QC review. Failure to complete 100 per cent of the sampled cases results in FCS adjusting a State agency's regressed error rate (see regulations at 7 CFR 275.23(e)(7)(iii)). Actual experience since the implementation of these regulations has shown that FCS Regional Offices are rarely able to gain the cooperation of a household which has refused to cooperate with the State agency, so that the results of this effort fail to justify the staff time and resources dedicated to it. These efforts have also had a negative impact on the efficiency of the State agency review process in some instances. Occasionally a household will misinform the FCS Regional Office that it is willing to cooperate with a State agency QC reviewer. When the State agency reviewer attempts to contact the household and complete the review the household again refuses to cooperate. The case must remain incomplete, and additional State agency staff time and resources have been expended in the process.

Section 13951 of the Leland Act amends the Food Stamp Act by specifying that "not later than 180 days after the end of the fiscal year, the case review and all arbitrations of State-Federal difference cases shall be completed." The Department has concluded that this mandated deadline cannot be achieved without maximizing the efficiency of the QC process at both the State agency and Federal review levels. Because efforts on the part of FCS Regional Offices to assist State agencies in completing refusal-to-cooperate cases have proven to be ineffective the Department is proposing to amend regulations so that an FCS Regional Office will only assist a State agency in attempting to complete refusal-to-cooperate cases at the specific request of the State agency. This will allow the State agency, which is in the best position to evaluate the probability of success, to determine whether or not additional efforts should be made to complete reviews in which the household has refused to cooperate.

Arbitration—§ 275.3(c)(4)

Current regulations at 7 CFR 275.3(c)(4), published January 21, 1988 (53 FR 1603), and June 5, 1989 (54 FR 23950) contain the QC procedures for arbitrating differences in review findings between State agencies and FCS. Under current procedures a State agency which disagrees with the FCS review findings for an individual case has a maximum of 28 calendar days after receipt of the Federal findings to request reevaluation of the Federal findings by a Regional arbitrator. The Regional arbitrator has 30 days from the date of such a request to determine the correctness of the Federal findings or to notify the State agency of the status of the arbitration case. A State agency which disagrees with a Regional arbitrator's review findings for an individual case has a maximum of 28 calendar days after receipt of the Regional arbitrator's decision to request a reevaluation of the Regional arbitrator's decision by a National arbitrator. The National arbitrator has no established time limit for rendering decisions on the correctness of the Regional arbitrator's findings. As these timeframes would indicate, arbitration is a process which can routinely take as many as 86 days to reach the level of national arbitration. This estimate does not include possible delays when a Regional arbitrator requests additional information from a State agency. Nor does this figure contain any time estimate for the completion of the National arbitrator's evaluation, which can vary greatly depending on priorities, the workload of the National arbitrator, and the complexity of the case under review. Section 13951 of the Leland Act amends the Food Stamp Act by specifying that "not later than 180 days after the end of the fiscal year [March 29th, or March 28th in leap years], the case review and all arbitrations of State-Federal difference cases shall be completed." Granting that the current arbitration process (not including the National arbitrator's evaluation) can routinely take 86 calendar days, it would be necessary for the arbitration process to begin earlier than January 2nd following the end of the fiscal year in order to insure meeting the March 29th deadline. Current regulations at 7 CFR 275.21(b)(2) provide State agencies with 95 days from the end of a sample month to complete all case reviews. This means that for the last sample month of the review period (September) the State agencies final deadline for disposing of all cases for the fiscal year is January 5th. The Department has concluded that the deadlines mandated by the Leland Act for the completion of arbitration for a fiscal year cannot be achieved without a restructuring of the current arbitration system.

The Department proposes to replace the current two-tier arbitration process with a one-tier arbitration system. State agencies would submit requests for arbitration to their appropriate FCS Regional offices within 10 days of receipt of the Federal QC findings for a case. The Department considers 10 days to be sufficient for a State agency to submit requests for arbitration because the State agency has already completed its review of households' circumstances before the Federal review was conducted. In preparing its cases for arbitration the State agency is simply identifying the specific case issue(s) in dispute between the State agency and FCS, and then ensuring that all verification, documentation, or other material supporting its findings are included in its submittal(s). The FCS Regional office QC staff may also submit to the arbitrator(s) a response to the State agency's request either agreeing with the State agency or explaining why the State agency's position is incorrect. The arbitrator(s) would be allowed a maximum of 35 calendar days from the date a request is received to render a decision regarding the accuracy of the Federal QC findings and disposition in a case. Prudence dictates that with the modification of the arbitration system to a single level of review, the reviewing official should be allowed the longest possible timeframe to render decisions.

The Department is proposing a number of other changes to the arbitration process to maximize the efficiency and accuracy of the system. The proposed regulations would limit requests for arbitration to those cases where the State agency's findings or disposition, as transmitted to the National Computer Center's (NCC) Integrated Quality Control System (IQCS), differ from the Federal findings or disposition transmitted to NCC. These cases are commonly referred to as "disagree cases". Under the proposed system State agencies will not be permitted to arbitrate cases where the

State agency's and Federal findings or disposition are the same. The purpose of the arbitration system is solely to resolve disagreements between the State agency's and Federal findings or disposition. State agencies have sometimes used the arbitration process as a way of registering disagreement with FCS policy on an issue. In these cases, the State agency agrees that the findings were correct, but it does not approve of the current Federal policy. The Department maintains that it is important to dedicate the limited resources and staff to those cases where there is a difference between the State agency's and FCS regional office's findings or disposition of an individual case, rather than those cases where all parties agree.

As a further expedient to maximizing the efficiency of the arbitration system, the Department is proposing that State agencies be required to submit specific documents and to ensure that their arbitration requests are complete, legible, and understandable. Over the past several fiscal years, requests for arbitration have frequently failed to provide arbitrators with the information needed to render decisions efficiently and accurately without time consuming requests for additional information or clarification. Common problems have included: illegible documents, blank photocopied pages, income calculations that cannot be duplicated, missing information regarding waivers in effect at the time of the review, and lack of documentation regarding the reporting and budgeting systems applicable to the case. When arbitrators confront these problems, they often must recontact State agencies and Regional offices for clarification. This process has become both time-consuming and confusing. As a solution to this problem, the Department proposes to require a standardized set of documents to accompany each State agency request. The Department proposes that the following items be required: (1) The request for arbitration and basic case information, which would include State, sample month and year, review number, review date, reporting and budgeting procedure, food stamp procedures for budgeting grants from the Aid to Families with Dependent Children Program, certification period, and calendar or fiscal month system; (2) Information about the certification action under dispute, which would include initial certification or recertification, legible certification work papers, legible State agency quality control work papers, and legible regional office quality control work papers; and (3) Information about the State agency's specific issues, which would include the element under dispute, regulatory citations, handbook citations, policy memoranda, legislative implementation dates, applicable waivers, and verification of facts. Each arbitration request would also include a checklist identifying the required items and indicating whether they were included with the request. The Department is particularly interested in soliciting comments about the need for such a checklist, the items that should appear on the checklist, and any alternatives that might be suggested to enhance the efficiency of arbitration.

If a State agency submitted an incomplete request for arbitration the arbitrator would render a decision based strictly on the merits of the available information. This does not mean that in instances where the State agency submits an incomplete request, and the FCS Regional office submits a response, the arbitrator(s) would automatically decide in favor of the Federal position because of the incomplete State agency request. Nor would this apply in the reverse situation. If a State agency's request for arbitration is complete but the FCS Regional office does not submit a response, the arbitrator(s) would not automatically decide in favor of the State agency's position because the Regional office had not submitted a response. The arbitrator(s) would make an independent judgement of the request, based upon whatever information the State agency and Regional office had provided. The proposed procedure would not permit a State agency to submit a partial request for arbitration and then supply supporting documentation over a ten day period.

In order to ensure that the QC process meets the legislated timeframes the Department is proposing that arbitration be limited to those cases where the State agency's findings and disposition were transmitted to the National Computer Center's (NCC) Integrated Quality Control System (IQCS) in a timely manner. The timeframes for the transmission of case findings to NCC is discussed in the paragraph entitled "*Quality control review reports—§ 275.21*". The Department maintains that State agency reviews which are not completed and transmitted into the IQCS in a timely manner delay the selection and completion of FCS's Federal QC subsample reviews, and jeopardize the system's ability to meet the deadlines mandated by the Leland Act for the completion of all case review and arbitration activity. The Department proposes to restrict arbitration to those case reviews which have met the timeframes for transmittal to NCC to ensure that the QC process is completed in time to meet the mandated deadline of 180 calendar days after the end of the fiscal year. This restriction would not apply to one exceptional class of case reviews transmitted into the IQCS in an untimely manner. This class would be cases originally disposed of (in a timely manner) as incomplete due to refusal to cooperate on the part of the food stamp household. If the household later agrees to cooperate with QC and the review is completed and retransmitted to IQCS on a date after the original deadline for completing the case, but prior to the final deadline for disposing of all cases for the review period (December 29th under these proposed rules) the State agency would retain the right to request arbitration of the review findings of the completed case (assuming that the completed case is selected for FCS review, and the Federal review findings/disposition disagree with the State agency's findings/disposition). The Department is soliciting comments on additional categories of case reviews which should be excluded from the timeframe restrictions for arbitration.

Quality Control Review Reports—§ 275.21

Current regulations at 7 CFR 275.21(b), published February 17, 1984 (49 FR 6292), specify the timeframes for State agencies to dispose of and report the findings of cases selected for QC review. Under current procedures a State agency has 75 calendar days from the end of a sample month to dispose of 90 percent of the cases selected for review in that month; 100 percent of the cases must be disposed of within 95 days of the end of the sample month. As discussed in the section dealing with the arbitration process, this means that for the last sample month of the review period (September) the State agencies final deadline for disposing of all cases for the fiscal year is currently January 5th. The Department is proposing an arbitration system which will provide State agencies the opportunity to submit a request for arbitration of a case, to be received by the appropriate FCS regional office within 10 days from the date of receipt of the Federal findings, and 35 days for the arbitrator(s) to render a decision on a case. Thus, arbitration will be a process which could routinely take up to 45 days to complete. This is the minimum timeframe which the Department has deemed necessary to ensure an arbitration process which will render accurate determinations. Section 13951 of the Leland Act amends the Food Stamp Act of 1977 by specifying that "not later than 180 days after the end of the fiscal year [March 29th, or March 28th in leap years], the case review and all arbitrations of State-Federal difference cases shall be completed." Since the Department has concluded that the arbitration process requires a minimum of 45 calendar days to ensure accurate decisions being rendered, it would be necessary for the arbitration process to begin no later than February 12th following the end of the fiscal year in order to insure meeting the March 29th deadline. With the current State agency deadline for final case disposition of January 5th, this would leave FCS a total of 38 days to select the final Federal subsample of cases (approximately 1,580 cases, based on one month, or one twelfth, of the Fiscal Year 1991 Federal sample size of 18,982), accumulate the State agency and local office records necessary for the completion of the Federal reviews, complete the Federal review, and transmit the Federal review findings to the appropriate State agencies. The Department concludes that the deadlines mandated by the Leland Act for case completion (both State agency and Federal reviews) and arbitration cannot be achieved without restructuring the current timeframes for case completion.

The Department proposes to modify the deadline for State agencies to dispose of QC cases and transmit review findings to NCC's IQCS, by requiring that 100 percent of the cases selected for review be disposed of within 90 calendar days of the end of the sample month for which the cases were selected for review. State agencies would continue to be required to dispose of 90 percent of selected cases within 75 calendar days of the end of the sample month for which the cases were selected for review, as provided for in current regulations at 7 CFR 275.21(b)(2). Such a timeframe will result in a final annual deadline for the completion of State agency reviews of December 29th. This will provide FCS with approximately 45 days to complete the Federal case review process and transmit final Federal review findings to the State agencies. While the Department recognizes that the proposed timeframes for case completion may require dedication of additional resources by both State agencies and FCS, only a modification of the case completion timeframes and adherence to them, in conjunction with the redesign of the arbitration process, will allow sufficient time to meet the mandated deadlines contained in the Leland Act. Because of the importance which accepted statistical practices places on the completion of the maximum possible number of cases sampled for QC review, the Department is proposing to restate, in this section of the regulations, instructions currently contained in 7 CFR 275.12(g),

Disposition of Case Reviews

These instructions specify that without FCS approval a State agency shall not dispose of a case as not completed based solely on the fact that the State agency was unable to complete the case in time to meet the timeframes for the disposal of case reviews.

The Department is also proposing a conforming change to regulations at 7 CFR 273.2(d)(2), *Cooperation with QC Reviewer*. This section of the regulations, published February 17, 1984 (49 FR 6292), currently specifies that food stamp households which refuse to cooperate with a quality control reviewer shall be determined ineligible to participate in the Food Stamp Program until 95 days after the end of the annual QC review period, or until the household cooperates with the QC reviewer (whichever is earlier). This 95 day timeframe was established to correspond to the 95 day timeframe which the State agency has to dispose of QC reviews. Just as QC has a final deadline for the disposal of all reviews for an annual review period of 95 days after the end of the review period, a household which refuses to cooperate with QC is determined ineligible to participate in the Program until 95 days after the end of the annual review period. The Department is proposing to change the period of household ineligibility from 95 to 90 days after the end of the annual review period, in order to correspond to the proposed change to the State agencies timeframes for the disposition of QC reviews. The Department is proposing an additional conforming change to regulations at 7 CFR 273.2(f)(1)(ix). This section of the regulations, published February 4, 1987 (52 FR 3402), deals with the requirement that State agencies verify all factors of eligibility for households which have been terminated for refusal to cooperate with quality control. A reference is made in this section to the period of ineligibility lasting until the 95 day after the end of the annual review period. The Department is proposing to change the reference from 95 to 90 days after the end of the annual review period, in order to correspond to the proposed change to the State agencies timeframes for the disposition of QC reviews.

Variances Excluded From Error Analysis—§ 275.12(d)(2)

Prior to the Leland Act, section 16(c)(3) of the Food Stamp Act specified that any errors resulting from the application of new regulations promulgated under the Act during the first 60 days (or 90 days at the discretion of the Secretary) from the required implementation date of such regulations shall be excluded from the payment error rate. Section 13951 of the Leland Act amends the Act by changing the timeframe for excluding these errors from 60 (or 90) days, to 120 days. In response to this change the Department is proposing a regulatory change at 7 CFR 275.12(d)(2)(vii) to reflect the new timeframe for excluding variances resulting from the promulgation of new regulations.

State Agencies' Liabilities for Payment Error—Fiscal Year 1986 and Beyond—§ 275.23(e)(4)

Current regulations at 7 CFR 275.23(e)(4), published November 27, 1991 (56 FR 60045), specify a payment error rate tolerance level for any fiscal year to be one percentage point added to the lowest national performance measure announced up to and including that fiscal year. A State agency which exceeds this tolerance level is subject to a liability claim equivalent to the difference between the State agency's payment error rate and the tolerance level, multiplied by the total value of the allotments issued in the fiscal year by the State agency. Section 13951 of the Leland Act establishes a new system of payment error rate goals and consequences. The payment error rate tolerance level, beginning in Fiscal Year 1992 and applying to Fiscal Year 1992 and all subsequent fiscal years, is the national performance measure for the fiscal year. The national performance measure continues to be defined as the sum of the products of each State agency's payment error rate times that State agency's proportion of the total value of national allotments issued for the fiscal year using the most recent issuance data available at the time the State agency is notified of its payment error rate. A State agency which exceeds this tolerance level is now subject to a liability claim equivalent to the total value of the allotments issued in the fiscal year by the State agency, multiplied by a factor which is the lesser of (1) the ratio of the amount by which the payment error rate of the State agency for the fiscal year exceeds the national performance measure for the fiscal year, to the national performance measure for the fiscal year,

or (2) one. This figure is then multiplied by the amount by which the payment error rate of the State agency for the fiscal year exceeds the national performance measure for the fiscal year.

The Department is proposing changes to regulations at 7 CFR 275.23(e) to revise current subparagraph (4) to reflect the fact that the sanction system mandated by the Hunger Prevention Act of 1988 (Pub. L. 100–435, enacted September 19, 1988) (the "Hunger Prevention Act") now applies only to Fiscal Years 1986 through 1991. A new paragraph will be added to reflect the sanction system mandated by the Leland Act for Fiscal Year 1992, and all subsequent fiscal years. In addition, the Department proposes to continue the current policy under which, once announced, the national performance measure for a fiscal year will not be subject to change. The Leland Act mandates that within 30 days of the completion of the case review and arbitration process for a fiscal year (which itself must be completed within 180 days of the end of the fiscal year) the Department shall determine *final* error rates, the national performance measure, and the amounts of liability claims against State agencies (emphasis added). The Department concludes that the intent of the Leland Act is that once individual State agency error rates, and the national performance measure are announced, they are final, and that adjustments to these figures cannot be considered.

Good Cause—§ 275.23(e)(6)

The Food Stamp Act of 1977, as amended by the Hunger Prevention Act, allows relief from all or a part of a Quality Control liability as established under § 275.23(e)(4) when a State agency can demonstrate that a part or all of an excessive error rate was due to an unusual event which had an uncontrollable impact on the State agency's payment error rate. The legislative history for current regulations governing good cause provides that "The purpose of good cause under the new system is to allow the Secretary the discretion to provide relief when a State with otherwise effective administration has faced an unusual event with a large uncontrollable impact on errors." (House Report 100–828, part 1, page 34).

Although the Leland Act transfers the authority to grant good cause relief from the Secretary of Agriculture to the Department's Administrative Law Judges (ALJs), the intent as to what constitutes good cause has not changed. Congress' intent was made clear in the legislative history accompanying the Leland Act which states, "It is the Committee's intent that the new national performance measure will provide relief for those factors that are not unique to any one state agency, such as the effects of recession or program changes. However, the Committee recognizes that there will be unusual events with an uncontrollable impact on errors which affect *state agencies with otherwise effective program administration* (emphasis added). The Committee expects that these *individual state situations* (emphasis added) will be addressed through the good cause waiver procedures. The Committee also expects that the Secretary's determination on states' good cause waiver requests will be based on good cause criteria, and not on such factors as budget considerations." (House Report 103–111, pg.12). Other than the provision that the determination to waive all or part of a Quality Control liability will be made by an ALJ, this intent was adopted by the Conference Substitute. (Statement of Managers). The language of these reports reaffirms Departmental policy as established under the provisions of the Hunger Prevention Act.

The Department concludes, therefore, that good cause relief is intended to ensure that a State agency which otherwise effectively administers the Food Stamp Program is not held liable for that portion of an excessive error rate caused by an unusual event which has an uncontrollable impact on a State agency's payment error rate.

The Leland Act provides good cause consideration for the following unusual events: (A) a natural disaster or civil disorder that adversely affects Food Stamp Program operations; (B) a strike by employees of a State agency who are necessary for the determination of eligibility and processing of case changes under the Food Stamp Program; (C) a significant growth in food stamp caseload in a State prior to or during a fiscal year, such as a 15 percent growth in caseload; (D) a change in the Food Stamp Program or other Federal or State program that has a substantial adverse impact on the management of the Food Stamp Program of a State; and (E) a significant circumstance beyond the control of the State agency.

This proposed rulemaking adopts the unusual events which qualify for consideration under good cause relief. As noted above, the legislative history makes clear that good cause relief based on the impact of unusual events is limited to *individual state situations*, and that allowances for those situations that are not unique to any one state are made via the national performance measure.

The effects of recession and program changes are specifically identified in the legislative history as factors that are not considered unique to any one state. Program changes have therefore been designated both as an unusual situation for which good cause relief will be considered and as a condition that is not unique to one state. From this report language, the Department concludes Congress' intent was that the five situations are considered "unusual events", appropriate for good cause relief, only if they exceed a national norm.

The preamble to current regulations published September 28, 1992, (57 FR 44482) discusses further those situations that will not be considered for good cause relief.

Current regulations at § 275.23(e)(6)(i) describe the criteria and methodology under which FCS will grant good cause waivers. While the Secretary or the Secretary's designee will no longer be making the final determination in good cause appeals, FCS retains the authority to establish criteria under which good cause is evaluated. The Department wishes to make it clear that current criteria and methodology, with modifications, will serve as guidelines for both FCS and the ALJ to assess, evaluate and respond to claims by the State agency for a good cause waiver of liability in conjunction with the appeals process. As under current regulations, an alternate methodology will continue to be used for certain events when a State agency provides insufficient information to demonstrate using factual analysis that the unusual event had an uncontrollable impact on the error rate. However, the Department is proposing modifications to these alternate methodologies. While current procedures take into account the duration of an unusual event, they do not measure the degree of impact that the unusual event has on Program operations. As a result, a Federally-declared disaster, for example, is treated the same regardless of size of the counties affected or amount of issuances for those counties. The Department is proposing an alternate methodology that will take into account both the duration of the unusual event and the magnitude or intensity of the unusual event. The alternate methodologies have also been modified to include specific procedures for calculating waiver amounts to ensure equity and consistency in these determinations. The following is a summary of the modifications to the alternate methodologies:

Disasters/Civil Disorders and Strikes

Duration will be measured by the number of months the event had an adverse impact on program operations. Intensity of these unusual events will be a proportional measurement of the issuances for the counties affected to the State's total issuance. The amount of the waiver of liability will be determined using the following linear equation: Ia/Ib × [M/12 or Mp/18] × L where; Ia is the issuance for the first full month immediately preceding the unusual event for the county affected; Ib is the State's total issuance for the first full month immediately preceding the unusual event; M/12 is number of months in the subject fiscal year that the unusual event had an adverse impact on program operations; Mp/18 is the number of months in the last half (April through September) of the prior fiscal year that the unusual event had an adverse impact on program operations; L is the total amount of the liability for the fiscal year.

For example, a tornado hits County A on 5/15, and the County is declared a Federal disaster area. Program operations in this county were adversely impacted for 3 months. In addition, a significant number of program staff from County B were diverted for 1 month to handle the crises in County A. Issuance figures for the month of April were: 2,000,000 (A); 1,900,000 (B); 38,500,000 (Statewide). The liability for the fiscal yr. was $3,300,000. The above formula is applied as follows: County A—[2,000,000/38,500,000] × 3/12 × 3,300,000 OR; .05195 × .25 × 3,300,000 = $42,858 credit to the liability. County B—[1,900,000/38,500,000] × 1/12 × 3,300,000 OR; .04935 × .08333 × 3,300,000 = $13,571 credit to the liability. Total credit to the liability is $56,429 ($42,858 + $13,571). This results in a revised liability for the State agency of $3,243,571 ($3,300,000—$56,429).

Significant Growth in Food Stamp Caseload

Duration and intensity will be measured by the degree to which caseload growth, statewide, exceeds 15 percent during the 12 month period from April of the prior fiscal year through March of the subject fiscal year, and by the degree to which a State's error rate exceeds the national performance measure. The amount of waiver of liability will be determined using a ratio of the percentage of caseload increase from a 12 month base period to the percentage the State's error rate exceeds the national performance measure.

This proportional measurement is based on procedures similar to the "sliding scale" used for the determination of liability amounts, and incorporates a floating national average which accounts for those factors that are common to all States. Using the error rate in this calculation allows greater consideration for a State agency that effectively manages caseload growth. As a result, a State agency with an error rate barely exceeding the national performance measure and an 18 percent increase in caseload growth will receive a proportionally larger waiver amount than a State agency with the same percentage of caseload growth but with an error rate greatly exceeding the national performance measure.

Under this alternate methodology, requisite caseload growth will be determined statewide rather than by individual counties. The Department recognizes that an individual county, because of its size, may drive the error rate for the State as a whole. The State agency may still use the impact of caseload growth in individual counties on the State's error rate to pursue good cause relief under the primary criterion. With the improvements in automated systems for data analysis, State agencies should have little difficulty in demonstrating the impact on the error rate when the impact is significant. The Department has designed the alternate methodology for use when the impact of an unusual event on the error rate is more difficult to isolate and distinguish.

Caseload growth occurring in the last half of the subject fiscal year will not be considered under the alternate methodology. The Department believes caseload growth occurring in the six month period prior to the subject fiscal year and in the beginning of the subject fiscal year will have a greater potential for disrupting Program operations as more months will be affected than will caseload growth occurring at the end of the fiscal year. For example, an increase in caseload growth prior to the subject fiscal year will have an impact on the error rate for the entire 12 months while caseload growth in the last month of the fiscal year will have an impact for only 1 month. If the State agency can demonstrate the effects of caseload growth in the last half of the subject fiscal year, it may do so under primary criterion.

The Department is proposing to modify the alternate methodology by using an average of 12 months as the base period from which caseload growth is measured rather than the 1 month base period that is currently used. An average of 12 months takes into account normal fluctuations in growth occurring over a period of time, and provides a more accurate indication of actual growth than does 1 month.

These methodologies are described in full in the regulatory section of this proposed rule.

In the application of the criteria and methodology, the mere existence of an unusual event specified under good cause relief is not, by itself, sufficient to establish a determination of good cause. Congressional intent is explicit in stating that a determination of good cause is contingent upon the following 3 conditions:

(1) An unusual event must occur. As previously stated, good cause relief is only appropriate for events affecting individual State agencies and exceeding a national norm. The national performance measure which floats from year to year provides relief for those factors that are common to all States. Certain events may be common to all States but have a significantly different impact on State agencies for a variety of reasons. For example, while all State agencies are required to implement new regulations, an individual State agency may be disproportionately affected by the program change due to the State's caseload demographics. New regulations affecting Native American households on reservations, for instance, would have an extensive impact on State agencies with a large population of such food stamp households. In these situations, the State agency needs to demonstrate the disproportionate effect caused by the unusual event. Good cause relief will be considered to the extent the unusual event has an uncontrollable impact on a State's error rate beyond the relief that is already provided through the national performance measure.

(2) The event must have an uncontrollable impact on errors. For example, during the middle of a review period, several counties within a state are declared Federal disaster areas due to massive flooding. This disaster occurs shortly after the expiration of the variance exclusion period for a new regulation which the State agency implemented timely but incorrectly. Subsequent to the disaster, there is a significant increase in the error rate. Data analysis show that the increase in the error rate was attributable to the State's incorrect implementation of the regulation. Even though there was a Federally declared disaster, a good cause determination is not appropriate, in this example, because the increase in the error rate resulted from a factor that was not associated with the unusual event. Good cause relief will be considered only for that portion of the

error rate/liability attributal to the unusual event.

(3) The event must affect a State agency with otherwise effective Program administration. Under current regulations, otherwise effective administration is measured and evaluated by the State's error rate together with any other available error rate data immediately before and after the unusual event, and by determining the impact of the unusual event on the error rate. With this proposed rulemaking, the Department is modifying this measurement to take into consideration the degree to which the error rate exceeds the national performance measure.

FCS Timeframes—§ 275.23(e)(8)

Prior to the Leland Act, section 16(c)(5) of the Food Stamp Act specified that the Secretary must make the determinations regarding any possible incentive payments or claims, and notify the State agencies of these determinations, within nine months following the end of each fiscal year. Section 16(c)(6) specified that at the same time that the State agencies are informed of their error rates and possible incentive payments or claims, that the Secretary shall announce the national performance measure (the sum of the products of each State agency's error rate times that State agency's proportion of the total value of national allotments issued for a fiscal year).

Section 13951 of the Leland Act amends the Food Stamp Act by specifying that: "not later than 180 days after the end of the fiscal year, the case review and all arbitrations of State-Federal difference cases shall be completed. Not later than 30 days thereafter, the Secretary shall determine final error rates, the national average payment error rate, and the amounts of payment claimed against State agencies; and notify State agencies of the payment claims." In response to this change the Department is proposing a regulatory change at 7 CFR 275.23(e)(8) to reflect the new timeframes for the completion of the QC review process for a fiscal year.

Interest Charges—§ 275.23(e)(9)

Prior to the Leland Act, section 13(a)(1) of the Food Stamp Act specified that interest charges on any unpaid portion of a liability claim would accrue from the date of the decision on an administrative appeal of the claim, or from the day two years after the date the bill for the claim was received by the State agency, whichever was earlier. Section 13951 of the Leland Act amends the Food Stamp Act by changing the timeframe for the accruing of interest charges from two years to one year. The Food Stamp Act now specifies that interest on any unpaid portion of the claim shall accrue from the date of the decision on the administrative appeal, or from the day that is one year after the date the bill is received, whichever is earlier, until the date the unpaid portion of the payment is received. In response to this change the Department is proposing a regulatory change at 7 CFR 275.23(e)(9) to reflect the new timeframe of one year.

In addition, the Department is taking the opportunity to make a technical correction to the language in this paragraph of the regulations. The current regulations specify that interest will accrue from the date that a State agency receives the bill for the liability claim unless the State agency appeals the claim "under § 276.7 of the regulations". Since regulations at 7 CFR 275.23(e)(9) regarding interest charges were published (November 27, 1991) (56 FR 60045) the administrative appeals process for liability claims has been modified to provide for appeal to a Departmental Administrative Law Judge. The procedures for appeal of claims to a Departmental Administrative Law Judge are contained in 7 CFR Part 283 of the regulations. The Department proposes to change the reference to the appeal process contained in 7 CFR 275.23(e)(9) from "under § 276.7 of the regulations" to "under Part 283 of the regulations".

Miscellaneous Technical Corrections

The Department is proposing to take advantage of the opportunity presented with the publication of this rule to effect technical corrections to regulatory references appearing in Part 275 of the regulations. In a number of paragraphs in Part 275 other paragraphs or sections of the regulations are cited as a reference for the reader. Over the years many of these references have become inaccurate due to revisions and renumbering of various sections of the regulations. The Department is taking this opportunity to correct references appearing in the following paragraphs: 275.3(c), 275.11(g), 275.23(d)(1)(iii), 275.23(e)(1), 275.23(e)(7)(i)(D), 275.23(e)(7)(ii), 275.23(e)(7)(iii)(A), 275.23(e)(7)(iii)(B), and 275.23(e)(10)(iii).

Dates

Section 13971 of the Leland Act sets implementation dates for the various provisions of the law addressed in this proposed rule. The provisions of section 13951 that amended sections 13(a)(1), 14(a), and 16(c) of the Act are effective on October 1, 1991, with the exception of the provision regarding exclusion of variances resulting from the application of new regulations. The provision regarding the exclusion of variances resulting from the application of new regulations is effective on October 1, 1992.

List of Subjects

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Records, Reporting, and recordkeeping requirements, Social Security, Students.

7 CFR Part 275

Administrative practice and procedure, Food stamps, Reporting, and recordkeeping requirements.

For the reasons set out in the preamble, Parts 273 and 275 of Chapter II of Title 7 *Code of Federal Regulations* are proposed to be amended as follows:

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

1. The authority citation for Part 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

§ 273.2 [Amended]

2. In § 273.2:

a. the third sentence of paragraph (d)(2) is amended by removing the words "after 95 days" and adding the words "after 90 days" in their place;

b. the first sentence of paragraph (f)(1)(ix) is amended by removing the words "after 95 days" and adding the words "after 90 days" in their place.

PART 275—PERFORMANCE REPORTING SYSTEM

3. The authority citation for Part 275 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

4. In § 275.3:

a. the last sentence of the introductory text of paragraph (c) is amended by removing the reference to "275.23(e)(6)" and adding in its place a reference to "275.23(e)(8)";

b. paragraph (c)(1)(iii) is revised;

c. paragraph (c)(4) is revised.

The revisions read as follows:

§ 275.3 Federal monitoring.

* * * * *

(c) *Validation of State Agency Error Rates.* * * *

(1) *Payment error rate.* * * *

(iii) Upon the request of a State agency, the appropriate FCS Regional Office will assist the State agency in completing active cases reported as not completed due to household refusal to cooperate.

* * * * *

(4) *Arbitration.* (i) Whenever the State agency disagrees with the FCS regional office concerning individual QC case findings and the appropriateness of actions taken to dispose of an individual case, the State agency may request that the dispute be arbitrated on a case-by-case basis by an FCS Arbitrator, subject to the following limitations.

(A) The State agency may only request arbitration when the State agency's and FCS regional office's findings or disposition of an individual QC case disagree.

(B) The arbitration review shall be limited to the point(s) within the Federal findings or disposition that the State agency disputes. However, if the arbitrator in the course of the review discovers a mathematical error in the computational sheet, the arbitration shall correct the error while calculating the allotment.

(C) The State agency shall only be eligible to request arbitration of the Federal findings or disposition of an individual case if that case was disposed of and the findings reported in accordance with the timeframes specified in § 275.21(b)(2). An exception shall be made for cases which fail to meet the timeframes specified in § 275.21(b)(2) if the cases were originally disposed of by the State agency, in a timely manner, as incomplete due to refusal-to-cooperate on the part of the household. If the household later agrees to cooperate with the Quality Control reviewer, and the case is retransmitted into IQCS as completed, then the secondary disposition/findings shall not be subject to the timeliness of disposition restriction.

(ii) The FCS Arbitrator(s) shall be an individual or individuals who are not directly involved in the validation effort.

(iii) The State agency shall submit a request for arbitration, to be received by the appropriate FCS regional office within 10 calendar days of the date of receipt by the State agency of the regional office case findings. In the event the last day of this time period falls on a Saturday, Sunday, or Federal or State holiday, the period shall run to the end of the next work day.

(iv) When the State agency requests arbitration, it shall submit all required documentation to the appropriate FCS regional office addressed to the attention of the FCS Arbitrator. The FCS regional office QC staff may submit a response to the State agency's request to the FCS Arbitrator.

(A) A complete request is one that contains all of the information that FCS requires. The following items shall be required:

(*1*) The request for arbitration and basic case information, which would include State, sample month and year, review number, review date, reporting and budgeting procedure, food stamp procedures for budgeting grants from the Aid to Families with Dependent Children Program, certification period, and calendar or fiscal month system.

(*2*) Information about the certification action under dispute, which would include initial certification or recertification, legible certification work papers, legible State agency quality control work papers, and legible regional office quality control work papers.

(*3*) Information about the State agency's specific issues, which would include the element under dispute, regulatory citations, handbook citations, policy memoranda, legislative implementation dates, applicable waivers, and verification of facts.

(B) If the State agency's request is not complete the arbitrator shall make a decision based solely on the available documents.

(v) The FCS Arbitrator shall have 35 calendar days from the date of receipt of a State agency's request for arbitration to review the case and make a decision.

* * * * *

§ 275.11 [Amended]

5. In § 275.11:

a. the third sentence of paragraph (g) is amended by removing the reference to "275.25(e)(6)" and adding in its place a reference to "275.23(e)(8)";

b. the fourth sentence of paragraph (g) is amended by removing the reference to "275.25(c)" and adding in its place a reference to "275.23(c)".

6. In § 275.12:

a. the introductory text of paragraph (d)(2)(vii) is revised;

b. paragraph (d)(2)(vii)(A) is revised;

c. paragraph (d)(2)(vii)(D) is revised.

The revisions read as follows:

§ 275.12 Review of active cases.

* * * * *

(d) *Variance identification.* * * *

(2) *Variances excluded from error analysis.* * * *

(vii) Subject to the limitations provided in paragraphs (d)(2)(vii)(A) through (d)(2)(vii)(F) of this section any variance resulting from application of a new Program regulation or implementing memorandum (if one is sent to advise State agencies of a change in Federal law, in lieu of regulations) during the first 120 days from the required implementation date.

(A) When a regulation allows a State agency an option to implement prior to the required implementation date, the date on which the State agency chooses to implement may, at the option of the State, be considered to be the required implementation date for purposes of this provision. The exclusion period would be adjusted to begin with this date and end on the 120th day that follows. States choosing to implement prior to the required implementation date must notify the appropriate FCS Regional Office, in writing, prior to implementation that they wish the 120 day variance exclusion to commence with actual implementation. Absent such notification, the exclusionary period will commence with the required implementation date.

* * * * *

(D) Regardless of when the State agency actually implemented the regulation, the variance exclusion period shall end on the 120th day following the required implementation date, including the required implementation date defined in paragraph (d)(2)(vii)(A) of this section.

* * * * *

7. In § 275.21:

a. paragraph (b)(2) is revised;

b. the first sentence of paragraph (b)(4) is amended by removing the words "pending 95 days" and adding the words "pending 90 days" in their place.

The revision reads as follows:

§ 275.21 Quality control review reports.

* * * * *

(b) *Individual cases.* * * *

(2) The State agency shall dispose of and report the findings of 90 percent of all cases selected in a given sample month so that they are received by FCS within 75 days of the end of the sample month. All cases selected in a sample month shall be disposed of and the findings reported so that they are received by FCS within 90 days of the end of the sample month. Without FCS approval, no active case shall be reported as not completed solely because the State agency was unable to process the case review in time for it to be reported in accordance with these timeframes.

* * * * *

8. In § 275.23:

a. the last sentence of paragraph (d)(1)(iii) is amended by removing the reference to "(e)(6)(iii)" and adding in its place a reference to "(e)(8)(iii)";

b. paragraph (e)(1) is amended by removing the reference to "paragraph

(e)(6)" and adding in its place a reference to "paragraph (e)(8)";

c. the heading of paragraph (e)(4) is amended by removing the words "*Fiscal Year 1986 and Beyond*" and adding the words "*Fiscal Years 1986 through Fiscal Year 1991*" in their place;

d. the first sentence of paragraph (e)(4)(i) is amended by removing the words "For Fiscal Year 1986 and subsequent years" and adding the words "For Fiscal Year 1986 through Fiscal Year 1991" in their place;

e. paragraphs (e)(5), (e)(6), (e)(7), (e)(8), (e)(9), and (e)(10) are redesignated as paragraphs (e)(6), (e)(7), (e)(8), (e)(9), (e)(10), and (e)(11), respectively, and a new paragraph (e)(5) is added;

f. the newly redesignated paragraph (e)(7) is revised;

g. the first sentence of newly redesignated paragraph (e)(8)(i)(D) is amended by removing the reference to "paragraph (e)(7)(iii)" and adding in its place a reference to "paragraph (e)(8)(iii)";

h. the last sentence of newly redesignated paragraph (e)(8)(ii) is amended by removing the words "procedure of § 276.7" and adding the words "procedures of Part 283" in their place;

i. the first sentence of newly redesignated paragraph (e)(8)(iii)(A) is amended by removing the reference to "paragraph (e)(7)(i)(C)" and adding in its place a reference to "paragraph (e)(8)(i)(C)";

j. the first sentence of newly redesignated paragraph (e)(8)(iii)(B) is amended by removing the reference to "paragraph (e)(7)(i)(C)" and adding in its place a reference to "paragraph (e)(8)(i)(C)";

k. the first three sentences in newly redesignated paragraph (e)(9) are revised;

l. in newly redesignated paragraph (e)(10)(i) the first sentence is amended by removing the reference to "275.23(e)(4)" and adding in its place a reference to "275.23(e)(5)". The second sentence is amended by removing the reference to "276.7" and adding in its place a reference to "Part 283". The fourth sentence is amended by removing the words "2 years" and adding the words "one year" in their place.

m. the last sentence of newly redesignated paragraph (e)(11)(iii) is amended by removing the reference to "(e)(10)(vi)" and adding in its place a reference to "(e)(11)(vi)".

The revisions and additions read as follows:

§ 275.23 Determination of State agency program performance.

* * * * *

(e) *State agencies' liabilities for payment error rates.* * * *

(5) *State agencies' liabilities for payment error—Fiscal Year 1992 and beyond.* Each State agency that fails to achieve its payment error rate goal during a fiscal year shall be liable as specified in the following paragraphs.

(i) For Fiscal Year 1992 and subsequent years, FCS shall announce a national performance measure within 30 days following the completion of the case review and the arbitration processes for the fiscal year. The national performance measure is the sum of the products of each State agency's payment error rates times that State agency's proportion of the total value of national allotments issued for the fiscal year using the most recent issuance data available at the time the State agency is notified of its payment error rate. Once announced, the national performance measure for a given fiscal year will not be subject to change.

(ii) For any fiscal year in which a State agency's payment error rate exceeds the national performance measure for the fiscal year, the State agency shall pay or have its share of administrative funding reduced by an amount equal to the product of:

(A) the value of all allotments issued by the State agency in the fiscal year; multiplied by

(B) the lesser of—

(*1*) the ratio of the amount by which the payment error rate of the State agency for the fiscal year exceeds the national performance measure for the fiscal year, to the national performance measure for the fiscal year, or

(*2*) one; multiplied by

(C) the amount by which the payment error rate of the State agency for the fiscal year exceeds the national performance measure for the fiscal year.

* * * * *

(7) *Good cause—(i) Events.* When a State agency with otherwise effective administration exceeds the tolerance level for payment errors as described in this section, the State agency may seek relief from liability claims that would otherwise be levied under this section on the basis that the State agency had good cause for not achieving the payment error rate tolerance. State agencies desiring such relief must file an appeal with the Department's Administrative Law Judge (ALJ) in accordance with the procedures established under Part 283 of this chapter. The 5 unusual events described below are considered to have a potential for disrupting program operations and increasing error rates to an extent that relief from a resulting liability or increased liability is appropriate. The occurrence of an event(s) does not automatically result in a determination of good cause for an error rate in excess of the national performance measure. The State agency must demonstrate that the event had an adverse and uncontrollable impact on program operations during the relevant period, and the event caused an uncontrollable increase in the error rate. Good cause relief will only be considered for that portion of the error rate/liability attributal to the unusual event. The following are unusual events which State agencies may use as a basis for requesting good cause relief and specific information that must be submitted to justify such requests for relief:

(A) Natural disasters such as those under the authority of the Stafford Act of 1988 (Pub. L. 100–707), which amended the Disaster Relief Act of 1974 (Pub. L. 93–288) or civil disorders that adversely affect program operations.

(*1*) When submitting a request for good cause relief based on this example, the State agency shall provide the following information:

(*i*) The nature of the disaster(s) (e.g. a tornado, hurricane, earthquake, flood, etc.) or civil disorder(s)) and evidence that the President has declared a disaster;

(*ii*) The date(s) of the occurrence;

(*iii*) The date(s) after the occurrence when program operations were affected;

(*iv*) The geographic extent of the occurrence (i.e. the county or counties where the disaster occurred);

(*v*) The proportion of the food stamp caseload whose management was affected;

(*vi*) The reason(s) why the State agency was unable to control the effects of the disaster on program administration and errors;

(*vii*) The Identification and explanation of the uncontrollable nature of errors caused by the event (types of errors, geographic location of the errors, time period during which the errors occurred, etc.).

(*viii*) The percentage of the payment error rate that resulted from the occurrence and how this figure was derived; and

(*ix*) The degree to which the payment error rate exceeded the national performance measure in the subject fiscal year.

(*2*) The following criteria and methodology will be used to assess, evaluate and respond to claims by the State agency for a good cause waiver of liability in conjunction with the appeals process, and to determine that portion of the error rate/liability attributable to the uncontrollable effects of a disaster or civil disorder: Geographical impact of the disaster; State efforts to control impact on program operations; the proportion of food stamp caseload affected; and/or the duration of the disaster and its impact on program operations. Adjustments for these factors may result in a waiver of all, part, or none of the error rate liabilities for the applicable period. As appropriate, the waiver amount will be adjusted to reflect States' otherwise effective administration of the program based upon the degree to which the error rate exceeds the national performance measure. For example, a reduction in the amount may be made when a State agency's recent error rate history indicates that even absent the events described, the State agency would have exceeded the national performance measure in the review period. If a State agency has provided insufficient information to determine a waiver amount for the uncontrollable effects of a natural disaster or civil disorder using factual analysis, the waiver amount shall be evaluated using the following formula and methodology which measures both the duration and intensity of the event: Duration will be measured by the number of months the event had an adverse impact on program operations. Intensity will be a proportional measurement of the issuances for the counties affected to the State's total issuance. This ratio will be determined using issuance figures for the first full month immediately preceding the disaster. This figure will not include issuances made to households participating under disaster certification authorized by FCS for a natural disaster and already excluded from the error rate calculations under § 275.12(g)(2)(vi). "Counties affected" will include counties where the disaster/civil disorder occurred, and any other county that the State agency can demonstrate had program operations adversely impacted due to the event (such as a county that diverted significant numbers of food stamp certification or administrative staff). The amount of the waiver of liability will be determined using the following linear equation: Ia/Ib × [M/12 or Mp/18] × L where: Ia is the issuance for the first full month immediately preceding the unusual event for the county affected; Ib is the State's total issuance for the first full month immediately preceding the unusual event; M/12 is number of months in the subject fiscal year that the unusual event had an adverse impact on program operations; Mp/18 is the number of months in the last half (April through September) of the prior fiscal year that the unusual event had an adverse impact on program operations; L is the total amount of the liability for the fiscal year. Mathematically this formula could result in a waiver of more than 100% of the liability, however, no more than 100% of a State's liability will be waived for any one fiscal year. Under this approach, unless the State agency can demonstrate a direct uncontrollable impact on the error rate, the effects of disasters or civil disorders that ended prior to the second half of the prior fiscal year will not be considered.

(B) Strikes by state agency staff necessary to determine Food Stamp Program eligibility and process case changes.

(*1*) When submitting a request for good cause relief based on this example, the State agency shall provide the following information:

(*i*) Which workers (i.e. eligibility workers, clerks, data input staff, etc.) and how many (number and percentage of total staff) were on strike or refused to cross picket lines;

(*ii*) The date(s) and nature of the strike (i.e. the issues surrounding the strike);

(*iii*) The date(s) after the occurrence when program operations were affected;

(*iv*) The geographic extent of the strike (i.e. the county or counties where the strike occurred);

(*v*) The proportion of the food stamp caseload whose management was affected;

(*vi*) The reason(s) why the State agency was unable to control the effects of the strike on program administration and errors;

(*vii*) Identification and explanation of the uncontrollable nature of errors caused by the event (types of errors, geographic location of the errors, time period during which the errors occurred, etc.);

(*viii*) The percentage of the payment error rate that resulted from the strike and how this figure was derived; and

(*ix*) The degree to which the payment error rate exceeded the national performance measure in the subject fiscal year.

(*2*) The following criteria shall be used to assess, evaluate and respond to claims by the State agency for a good cause waiver of liability in conjunction with the appeals process, and to determine that portion of the error rate/liability attributable to the uncontrollable effects of the strike: Geographical impact of the strike; State efforts to control impact on program operations; the proportion of food stamp caseload affected; and/or the duration of the strike and its impact on program operations. Adjustments for these factors may result in a waiver of all, part, or none of the error rate liabilities for the applicable period. For example, the amount of the waiver might be reduced for a strike that was limited to a small area of the State. As appropriate, the waiver amount will be adjusted to reflect States' otherwise effective administration of the program based upon the degree to which the error rate exceeded the national performance measure. If a State agency has provided insufficient information to determine a waiver amount for the uncontrollable effects of a strike using factual analysis, a waiver amount shall be evaluated by using the formula described in paragraph (e)(7)(i)(A) of this section. Under this approach, unless the State agency can demonstrate a direct uncontrollable impact on the error rate, the effects of strikes that ended prior to the second half of the prior fiscal year will not be considered.

(C) A significant growth in food stamp caseload in a State prior to or during a fiscal year, such as a 15 percent growth in caseload. Caseload growth which historically increases during certain periods of the year will not be considered unusual or beyond the State agency's control.

(*1*) When submitting a request for good cause relief based on this example, the State agency shall provide the following information:

(*i*) The amount of growth (both actual and percentage);

(*ii*) The time the growth occurred (what month(s)/year);

(*iii*) The date(s) after the occurrence when program operations were affected;

(*iv*) The geographic extent of the caseload growth (i.e. Statewide or in which particular counties);

(*v*) The impact of caseload growth;

(*vi*) The reason(s) why the State agency was unable to control the effects of caseload growth on program administration and errors;

(*vii*) The percentage of the payment error rate that resulted from the caseload growth and how this figure was derived; and

(*viii*) The degree to which the error rate exceeded the national performance measure in the subject fiscal year.

(*2*) The following criteria and methodology shall be used to assess, evaluate and respond to claims by the State agency for a good cause waiver of liability in conjunction with the appeals process, and to determine that portion of the error rate/liability attributable to the uncontrollable effects of unusual caseload growth: Geographical impact of the caseload growth; State efforts to control impact on program operations; the proportion of food stamp caseload

affected; and/or the duration of the caseload growth and its impact on program operations. Adjustments for these factors may result in a waiver of all, part, or none of the error rate liabilities for the applicable period. As appropriate, the waiver amount will be adjusted to reflect States' otherwise effective administration of the program based upon the degree to which the error rate exceeded the national performance measure. For example, a reduction in the amount may be made when a state agency's recent error rate history indicates that even absent the events described, the State agency would have exceeded the national performance measure in the review period. Under this approach, unless the State agency can demonstrate a direct uncontrollable impact on the error rate, the effects of caseload growth that ended prior to the second half of the prior fiscal year will not be considered. If the State agency has provided insufficient information to determine a waiver amount for the uncontrollable effects of caseload growth using factual analysis, the waiver amount shall be evaluated using the following five step calculation: first, determine the average number of households certified to participate statewide in the Food Stamp Program for the base period consisting of the twelve consecutive months ending with March of the prior fiscal year; second, determine the percentage of increase in caseload growth from the base period (step 1) using the average number of households certified to participate statewide in the Food Stamp Program for the twelve month period beginning with April of the prior fiscal year and ending with March of the current fiscal year; third, determine the percentage the error rate for the subject fiscal year as calculated under paragraph (e)(5)(i) of this section exceeds the national performance measure determined in accordance with paragraph (e)(5)(i) of this section; fourth, divide the percentage of caseload growth increase arrived at in step 2 by the percentage the error rate for the subject fiscal year exceeds the national performance measure as determined in step 3; and finally, multiply the quotient arrived at in step 4 by the liability amount for the current fiscal year to determine the amount of waiver of liability. Under this methodology, caseload growth of less than 15% and/or occurring in the last half of the subject fiscal year will not be considered. Mathematically this formula could result in a waiver of more than 100% of the liability, however, no more than 100% of a State's liability will be waived for any one fiscal year.

(D) A change in the food stamp program or other Federal or State program that has a substantial adverse impact on the management of the food stamp program of a State. Requests for relief from errors caused by the uncontrollable effects of unusual program changes other than those variances already excluded by § 275.12(d)(2)(vii) will be considered to the extent the program change is not common to all States.

(*1*) When submitting a request for good cause relief based on unusual changes in the Food Stamp or other Federal or State programs, the State agency shall provide the following information:

(*i*) The type of change(s) that occurred;

(*ii*) When the change(s) occurred;

(*iii*) The nature of the adverse effect of the changes on program operations and the State agency's efforts to mitigate these effects;

(*iv*) Reason(s) the State agency was unable to adequately handle the change(s);

(*v*) Identification and explanation of the uncontrollable errors caused by the changes (types of errors, geographic location of the errors, time period during which the errors occurred; etc.);

(*vi*) The percentage of the payment error rate that resulted from the adverse impact of the change(s) and how this figure was derived; and

(*vii*) The degree to which the payment error rate exceeded the national performance measure in the subject fiscal year.

(*2*) The following criteria will be used to assess, evaluate and respond to claims by the State agency for a good cause waiver of liability in conjunction with the appeals process, and to determine that portion of the error rate/liability attributable to the uncontrollable effects of unusual changes in the Food Stamp Program or other Federal and State programs: Geographical impact of the unusual changes in the Food Stamp Program or other Federal and State programs; State efforts to control impact on program operations; the proportion of food stamp caseload affected; and/or the duration of the unusual changes in the Food Stamp Program or other Federal and State programs and the impact on program operations. Adjustments for these factors may result in a waiver of all, part, or none of the error rate liabilities for the applicable period. As appropriate, the waiver amount will be adjusted to reflect States' otherwise effective administration of the program based upon the degree to which the error rate exceeded the national performance measure.

(E) A significant circumstance beyond the control of the State agency. Requests for relief from errors caused by the uncontrollable effect of the significant circumstance other than those specifically set forth in this paragraph will be considered to the extent that the circumstance is not common to all States, such as a fire in a certification office.

(*1*) When submitting a request for good cause relief based on significant circumstances, the State agency shall provide the following information:

(*i*) The significant circumstances that the State agency believes uncontrollably and adversely affected the payment error rate for the fiscal year in question;

(*ii*) Why the State agency had no control over the significant circumstances;

(*iii*) How the significant circumstances had an uncontrollable and adverse impact on the State agency's error rate;

(*iv*) Where the significant circumstances existed (i.e. Statewide or in particular counties);

(*v*) When the significant circumstances existed (provide specific dates whenever possible);

(*vi*) The proportion of the food stamp caseload whose management was affected;

(*vii*) Identification and explanation of the uncontrollable errors caused by the event (types of errors, geographic location of the errors, time period during which the errors occurred, etc.);

(*viii*) The percentage of the payment error rate that was caused by the significant circumstances and how this figure was derived; and

(*ix*) The degree to which the payment error rate exceeded the national performance measure in the subject fiscal year.

(*2*) The following criteria shall be used to assess, evaluate and respond to claims by the State agency for a good cause waiver of liability in conjunction with the appeals process, and to determine that portion of the error rate/liability attributable to the uncontrollable effects of a significant circumstance beyond the control of the State agency, other than those set forth in paragraph (e)(7)(i)(E) of this section: Geographical impact of the significant circumstances; State efforts to control impact on program operations; the proportion of food stamp caseload affected; and/or the duration of the significant circumstances and the impact on program operations. Adjustments for these factors may result in a waiver of all, part, or none of the error rate liabilities for the applicable period. As appropriate, the waiver amount will be adjusted to reflect States' otherwise effective administration of the program based upon the degree to which the error rate exceeded the national performance measure.

(ii) *Adjustments.* When good cause is found under the criteria in paragraphs (e)(7)(i)(A) through (e)(7)(i)(E) of this section, the waiver amount may be adjusted to reflect States' otherwise effective administration of the program based upon the degree to which the error rate exceeds the national performance measure.

(iii) *Evidence.* When submitting a request to the ALJ for good cause relief, the State agency shall include such data and documentation as is necessary to support and verify the information submitted in accordance with the requirements of paragraph (e)(7) of this section so as to fully explain how a particular significant circumstance(s) uncontrollably affected its payment error rate.

(iv) *Finality.* The initial decision of the ALJ concerning good cause shall constitute the final determination for purposes of judicial review without further proceedings as established under the provisions of § 283.17 and § 283.20 of this chapter.

* * * * *

(9) *FCS Timeframes.* FCS shall determine, and announce the national average payment error rate for a fiscal year within 30 days following the completion of the case review process and all arbitrations of State agency-FCS difference cases for that fiscal year, and at the same time FCS shall notify all State agencies of their individual payment error rates and payment error rate liabilities, if any. The case review process and the arbitration of all difference cases shall be completed not later than 180 days after the end of fiscal year. FCS shall initiate collection action on each claim for such liabilities before the end of the fiscal year following the end of the fiscal year reporting period in which the claim arose unless an administrative appeal relating to the claim is pending. * * *

* * * * *

Dated: June 16, 1995.

Ellen Haas,

Under Secretary, Food, Nutrition, and Consumer Services.

[FR Doc. 95–15460 Filed 6–22–95; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products; Energy Efficiency Standards for Television Sets

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Department of Energy (Department) today withdraws a proposed rule to establish energy efficiency standards for television sets. Promulgation of such a rule is discretionary under the terms of the authorizing legislation for the program. This action is based on: a decision to focus the Department's limited resources on standards-related rulemakings that are mandatory under the authorizing legislation; and acceptance of arguments reflected in the comments that the uncertainty created by the rulemaking and any resulting standards could adversely affect the development of innovative television technologies critical to the Nation's future economy and international competitive position.

FOR FURTHER INFORMATION CONTACT:

Ingrid Watson, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–431, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8119

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507

SUPPLEMENTARY INFORMATION:

1. Authority

Part B of Title III of the Energy Policy and Conservation Act (EPCA), Pub. L. 94–163, created the Energy Conservation Program for Consumer Products other than automobiles. In 1978, the National Energy Conservation Policy Act (NECPA), Pub. L. 95–619, amended EPCA and required DOE to establish mandatory energy efficiency standards for each of the 13 listed "covered products," including television sets. In 1987, the National Appliance Energy Conservation Act (NAECA), Pub. L. 100–12, amended EPCA, by refining the list of appliances defined as "covered products" and establishing federal energy conservation standards for 11 of the 12 "covered products" on the revised list. Television sets have a unique status under EPCA—televisions are listed as "covered products," but are the only covered product for which the statute does not require a standard. Moreover, televisions have a unique status under EPCA with regard to rulemakings. EPCA requires the Department to undertake rulemakings with regard to the other covered products according to a prescribed schedule. By contrast, with regard to televisions, EPCA provides the Secretary with discretion to establish an energy conservation standard for television sets by rule, but does not require such a rulemaking. 42 U.S.C. 6295(l)(3).

2. Background

On March 4, 1994, the Department published a notice of proposed rulemaking regarding energy conservation standards for eight products. (59 FR 10464.) The rulemaking is mandatory for seven of these products. The eighth product was television sets. The Department invited interested members of the public to submit written comments and to participate at a public hearing. The public comment period closed on July 18, 1994. During the comment period, over 35 comments were received on the proposed rule regarding energy conservation standards on television sets from manufacturers, consumers, members of Congress, retailers, national energy advocates and environmental groups. The Department has reviewed and evaluated the comments. On January 31, 1995, the Department published a **Federal Register** notice describing the Department's plans for pursuing these rulemakings. (60 FR 5880.) That notice acknowledged the need for further data collection prior to deciding how to proceed with the proposed standards for televisions. Such data collection would involve original development of test data that is otherwise unavailable.

Since the January notice, there have been a variety of developments. First, the appropriations requested for this program and preliminary Congressional actions on this request suggest that resources to carry out this program are likely to be limited and are unlikely to be sufficient to support all of the possible analyses related to TVs and other products covered by the authorizing legislation. Second, the Department has been urged to give priority to rulemakings affecting other products by manufacturers of those

other products and other interested persons. Some of these rulemakings may result in very large additional energy savings and economic benefits.

Third, Department officials met with representatives of the Electronics Industry Association (EIA) to discuss options for the proposed standards on televisions. EIA reiterated comments made in its written submissions, and urged DOE to terminate the rulemaking with regard to televisions. EIA's arguments stressed that: the energy usage of an individual television is relatively small; standards could adversely affect the utility of the product; the large number of options make it difficult to design an efficiency standard; the proposed standard might have anti-competitive effects; and standards could interfere with the development of the information superhighway.

Fourth, DOE officials met with a representative of the American Council for an Energy Efficient Economy (ACEEE) concerning the proposed television standards. ACEEE acknowledged that further data collection may be needed before pursuing the rulemaking, but advised DOE to continue with efforts to collect the necessary information. ACEEE also indicated that televisions need not be a top priority of the appliance program. However, they urged DOE to hold the rulemaking in abeyance pending collection of further data rather than affirmatively terminating the rulemaking.

3. Discussion

DOE acknowledges that, as some of the comments argued, its engineering analysis in support of the proposed television standards did not consider the energy use of the large number of special features now available on many televisions. Remedying that defect would require DOE to engage in expensive and time consuming testing of television sets, and it is impossible to know whether the results of such testing would support the establishment of Federal energy efficiency standards. Additionally some of those special features would require modifications to the DOE test procedure in order to adequately measure the impact of the features on energy consumption. If DOE were to undertake such testing and possible test procedure modifications, it would expend limited resources on a project with less potential benefits than currently mandated EPCA rulemakings. Moreover, devotion of additional resources to setting television standards would make it very difficult to respond to the requests of companies in other industries that are subject to mandatory standards and that are pressing the Department to assign higher priority to completion of updated test procedure and standards rulemakings that they view as beneficial. In view of the limited funds likely to be available for implementing this program, the Department has decided that priority must be assigned to completion of mandatory rulemakings and not to this discretionary rulemaking.

Several comments claim that there is a significant risk that the prospect of standards could adversely affect ongoing fundamental changes in television technology and markets. These technology changes could have significant implications for the energy use of televisions, as well as for the range of communication, data processing, and other services provided by the televisions of the future and their associated electronic equipment. Some of the possible developments in television technology that could significantly affect their energy use include: high definition television, emergency broadcast features, virtual reality entertainment, built-in video cassette recorders, on screen program guides, and interactive information and communication features necessary for access to the National Information Infrastructure (the so-called "information superhighway"). These changes in technology distinguish televisions from other covered products that, for the most part, are based on well-established, relatively stable technologies. The Department recognizes that technology and product developments continuing throughout the 1990's and into the next decade will be critical to the future success of the U.S. television industry. The Department further also recognizes that the development of Federal energy efficiency standards for televisions could adversely affect the willingness of private industry to invest in new technologies or products that might otherwise produce substantial economic benefits. The Department believes this risk, although not precisely quantifiable, could be significant.

Accordingly, in order to focus its resources on mandatory rulemakings and to avoid the risk of undue interference in the development of new technology and products critical to the Nation's future economic health and international competitive position, the Department today gives notice of the withdrawal of its proposed energy efficiency standards for televisions.

Issued in Washington, DC, June 20, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 95–15474 Filed 6–22–95; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–CE–21–AD]

Airworthiness Directives; Fairchild Aircraft SA226 and SA227 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise AD 94–07–10, which currently requires the following on Fairchild Aircraft SA226 and SA227 series airplanes: repetitively inspecting (visually) the wing skin for cracks; dye penetrant inspecting the spar straps if the wing skin is found cracked; and, if any crack is found in the spar straps, repairing the spar straps and modifying the wing skin. That AD references an incorrect dye penetrant inspection when the wing skin is found cracked. This action would maintain the requirements of AD 94–07–10, but would incorporate the correct dye penetrant inspection for when the wing skin is found cracked. The actions specified by the proposed AD are intended to prevent failure of the wing skin at the top aft outboard corner of the battery box, which could result in structural damage to the wing.

DATES: Comments must be received on or before August 25, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–21–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490; telephone (512) 824–9421. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Hung Viet Nguyen, Aerospace Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76137–0150; telephone (817) 222–5155; facsimile (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA- public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 93–CE–21–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–21–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 94–07–10, Amendment 39–8868 (59 FR 15329; April 1, 1994), currently requires the following on certain Fairchild Aircraft SA226 and SA227 series airplanes: repetitively inspecting (visually) the wing skin for cracks; dye penetrant inspecting the spar straps if the wing skin is found cracked; and, if any crack is found in the spar straps, repairing the spar straps and modifying the wing skin. That AD also provides the option of modifying the wing skin as terminating action for the repetitive inspections. Accomplishment of the required actions would be in accordance with the following service bulletins (SB), as applicable:

- Fairchild Service Bulletin (SB) 226–57–018, Issued: January 28, 1993, Revised: June 3, 1993 (pages 4 through 11 and 13 through 15), Revised: July 1, 1993 (page 12) and Revised: October 25, 1993 (pages 1 through 3);
- Fairchild SB 227–57–005, Issued: December 21, 1992, Revised: June 3, 1993 (pages 2 through 11 and 13 through 15), and Revised: July 1, 1993 (pages 1 and 12); or
- Fairchild Aircraft SB CC7–57–002, Issued: January 28, 1993, Revised: June 3, 1993 (pages 2 through 11 and 13 through 15), and Revised: July 1, 1993 (pages 1 and 12).

Since issuing that AD, the FAA has received reports that AD 94–07–10 references an incorrect dye penetrant inspection in the applicable service information. The FAA has determined that reference to this dye penetrant inspection should be corrected and incorporated into the AD.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent failure of the wing skin at the top aft outboard corner of the battery box, which could result in structural damage to the wing.

Since an unsafe condition has been identified that is likely to exist or develop in other Fairchild Aircraft SA226 and SA227 series airplanes of the same type design, the proposed AD would revise AD 94–07–10 to require the same repetitive visual inspections, but require the dye penetrant inspection in accordance with the correct portion of the ACCOMPLISHMENT INSTRUCTIONS section of the above-referenced service bulletins, as applicable.

The FAA estimates that 776 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to accomplish the proposed visual inspection of the upper wing skin on both wings, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $46,560. This figure does not include the cost of any dye penetrant inspections of the spar strap that would be required if the wing skin is found cracked, nor does it include the cost of the wing skin modification or the repetitive inspections. The optional modification would terminate the need for the repetitive inspection requirement. The figure above is based upon the assumption that no affected airplane owner/operator has accomplished this inspection-terminating modification.

In addition, the proposed actions impose the same cost impact upon U.S. operators as is already required by AD 94–07–10.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13, is amended by removing AD 94–07–10, Amendment 39–8868 (59 FR 15329; April 1, 1994), and adding a new AD to read as follows:

Fairchild Aircraft: Docket No. 93–CE–21–AD; Revises AD 94–07–10, Amendment 39–8868.

Applicability: The following model and serial number airplanes, certificated in any category:

Model	Serial Nos.
SA226–T	T201 through T275, and T277 through T291.
SA226–T(B) ..	T(B)276, and T(B)292 through T(B)417.
SA226–AT	AT001 through AT074.
SA226–TC	TC201 through TC419.
SA227–TT	TT421 through TT541.
SA227–AT	AT423 through AT631, and AT695.
SA227–AC	AC406, AC415, AC416, and AC420 through AC789.
SA227–BC	BC420 through BC789.
SA227–CC ...	CC784, and CC790 through CC822.
SA227–DC ...	DC784, and DC790 through DC822.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required initially upon the accumulation of 2,500 hours time-in-service (TIS) or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished (compliance with AD 94–07–10), and thereafter as indicated in the body of the AD.

To prevent failure of the wing skin at the top aft outboard corner of the battery box, which could result in structural damage to the wing, accomplish the following:

Note 2: The paragraph structure of this AD is as follows:
Level 1: (a), (b), (c), etc.
Level 2: (1), (2), (3), etc.
Level 3: (i), (ii), (iii), etc.

Level 2 and Level 3 structures are designations of the Level 1 paragraph they immediately follow.

(a) Visually inspect the right and left upper wing skin by the top aft outboard corner of the battery box for cracks in accordance with Figure 1 and the ACCOMPLISHMENT INSTRUCTIONS, A. Inspection, section of whichever of the following is applicable:

(1) Fairchild Service Bulletin (SB) 226–57–018, Issued: January 28, 1993, Revised: June 3, 1993 (pages 4 through 11 and 13 through 15), Revised: July 1, 1993 (page 12) and Revised: October 25, 1993 (pages 1 through 3);

(2) Fairchild SB 227–57–005, Issued: December 21, 1992, Revised: June 3, 1993 (pages 2 through 11 and 13 through 15), and Revised: July 1, 1993 (pages 1 and 12); or

(3) Fairchild Aircraft SB CC7–57–002, Issued: January 28, 1993, Revised: June 3, 1993 (pages 2 through 11 and 13 through 15), and Revised: July 1, 1993 (pages 1 and 12).

(b) If cracks are not found during the visual inspection required by paragraph (a) of this AD, within 500 hours TIS after this initial visual inspection, accomplish one of the following:

(1) Reinspect the right and left upper wing skin by the top aft outboard corner of the battery box for cracks in accordance with Figure 1 and the ACCOMPLISHMENT INSTRUCTIONS, A. Inspection, section of the applicable service information presented in paragraphs (a)(1), (a)(2), and (a)(3) of this AD, and reinspect thereafter at intervals not to exceed 500 hours TIS; or

(2) Modify the upper wing skin in accordance with the ACCOMPLISHMENT INSTRUCTIONS, B. Removal and C. Installation, section of the service information referenced in paragraphs (a)(1), (a)(2), or (a)(3) of this AD, as applicable. Accomplishing this modification terminates the repetitive visual inspections that are specified in paragraph (b)(1) of this AD, and the modification may be accomplished at any time to eliminate this repetitive inspection requirement.

(c) If cracks are found during the inspection required by paragraph (a) of this AD, prior to further flight, dye penetrant inspect the 27–31130 straps in the wheel wells as specified in the ACCOMPLISHMENT INSTRUCTIONS, A. Inspection section, paragraph (1)(b), of the service information referenced in paragraphs (a)(1), (a)(2), or (a)(3) of this AD, as applicable.

(1) If cracks are found in either of the 27–31130 straps during the inspection required by paragraph (c) of this AD, prior to further flight, accomplish the following:

(i) Repair the 27–31130 strap in accordance with a scheme obtained from the manufacturer through the Fort Worth Airplane Certification Office (ACO) at the address specified in paragraph (e) of this AD; and

(ii) Modify the upper wing skin in accordance with the ACCOMPLISHMENT INSTRUCTIONS, B. Removal and C. Installation, section of the service information referenced in paragraphs (a)(1), (a)(2), or (a)(3) of this AD, as applicable.

(2) If no cracks are found in either of the 27–31130 straps, within 150 hours TIS after the initial dye penetrant inspection required by paragraph (c) of this AD, accomplish one of the following:

(i) Reinspect (dye penetrant) the 27–31130 straps in the wheel well for cracks as specified in the ACCOMPLISHMENT INSTRUCTIONS, A. Inspection section, paragraph (1)(b), of the service information referenced in paragraphs (a)(1), (a)(2), or (a)(3) of this AD, as applicable, and if no cracks are found, continue to reinspect at intervals not to exceed 150 hours TIS; or

(ii) Modify the upper wing skin in accordance with the ACCOMPLISHMENT INSTRUCTIONS, B. Removal and C. Installation, section of the service information referenced in paragraphs (a)(1), (a)(2), or (a)(3) of this AD, as applicable. Accomplishing this modification terminates the repetitive dye penetrant inspections that are specified in paragraph (c)(2)(i) of this AD, and the modification may be accomplished at any time to eliminate this repetitive inspection requirement.

Note 3: Certain Limited Approved Repair (LAR) and Approved Repair Procedure (ARP) documents issued by Fairchild Aircraft specify procedures for accomplishing the same modification referenced in paragraphs (b)(2), (c)(1)(ii), and (c)(2)(ii). Check with the Fort Worth ACO at the address presented in paragraph (e) of this AD to find out which LAR's and ARP's are considered "unless already accomplished" as they relate to this AD.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Fort Worth ACO, FAA, 2601 Meacham Boulevard, Fort Worth, Texas 76137–0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth ACO.

(f) All persons affected by this directive may obtain copies of the documents referred to herein upon request to Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(g) This amendment revises AD 94–07–10, Amendment 39–8868.

Issued in Kansas City, Missouri, on June 19, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–15462 Filed 6–22–95; 8:45 am]
BILLING CODE 4910–13–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 206 and 234

[Docket No. FR–3855–P–01]

RIN 2502–AG23

Mortgage Insurance on Condominium Units in Non-FHA Approved Projects

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner (HUD).

ACTION: Proposed rule.

SUMMARY: This rule would add provisions to the regulations governing Federal Housing Administration (FHA) mortgage insurance on condominium units to permit insurance of mortgages on individual units in condominium projects that have not received FHA approval in advance under existing regulatory requirements. These "spot loans" would be approved under less stringent requirements than the existing requirements for mortgage insurance for condominiums, but the revised rule would require satisfaction of standards that would assure FHA adequate protection of the reduced risk involved of mortgage insurance on only a few loans in any particular project.

DATES: Comments due date: August 22, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. Faxed comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Richard Manuel, Acting Director, Single Family Development Division, Office of Insured Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. He may be reached at (202) 708–2700 (voice) or (202) 708–4594 (TDD). These telephone numbers are not toll-free.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in § 234.26(i) of this proposed rule have been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1980 (42 U.S.C. 3501–3520). The estimated public reporting burden is not expected to increase significantly over the burden previously estimated, since the Department does not expect more than 2,000 loans to be insured under this new provision.

The estimated public reporting burden of these collections is stated under the Preamble heading Findings and Certifications. Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing the burden, to the Department of Housing and Urban Development, Rules Docket Clerk at the above address; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for HUD, Washington, DC 20503.

I. Background

The impetus for this proposed rule came from forums conducted by the FHA Commissioner in the Northwest/Alaska region. Individuals have been unable to obtain FHA mortgage insurance because condominium units that were being purchased were not in projects that had received approval under existing requirements. Existing regulations and handbook provisions contain requirements that serve as obstacles to obtaining mortgage insurance for units in condominium projects that have not been approved during or after development.

For example, in order to conform with the policies expressed by FHA in Handbook 4265.1, Appendix 24, a high percentage of the unit owners must vote to approve certain changes in the common area, such as converting any part of it to units, or selling or mortgaging any part of the common areas. Such changes, while not a frequent occurrence—because they affect the common area that is an undivided part of each property—obviously impact on the interest of lenders and mortgage insurers who look to the property as security for the mortgage. When FHA's involvement in a project is sizeable, any such change to the common area must be supported by a substantial part of the membership.

For an existing project that has not been approved during development, it is often not possible to obtain the requisite majority to approve the change and amend the documents accordingly just for the benefit of a single association member wishing to apply for Section 234 mortgage insurance. FHA has determined that approval of a unit on a spot loan basis would represent a reasonable underwriting risk even where such document changes have not been made, provided that its involvement is limited.

II. Action

The Department has determined that it is possible to insure a few condominium units in a project that has not received project approval by reducing the paperwork involved in obtaining approval. To assure that this new provision would not be used as a way to avoid the greater protections afforded the Department under the existing provisions for project approval, it would be limited to approvals of no more than 10 percent of the units in a condominium project.

The intent of this proposed rule, therefore, is to facilitate sales of units in well-managed condominium projects that are in good condition. To accomplish this end, this proposed rule would add a new paragraph to the section describing eligibility of condominium projects for mortgage insurance (§ 234.26) to deal with these unit-by-unit ("spot loan") approvals for mortgage insurance. It also would add, in the section dealing with reverse equity mortgages (§ 206.51), a cross-reference to the new provision authorizing spot loan approvals. To make clear that the requirements for assumability, such as no right of first refusal given in any governing document, would still apply, the condominium mortgage insurance provision would include a cross-reference to that section (§ 234.66).

Findings and Certifications

Impact on the Environment

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m.) in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this proposed rule do not have significant impact on States or their political subdivisions since the provisions of the proposed rule affect private purchasers and sellers of condominium units.

Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this proposed rule does not have potential for significant impact on family formation, maintenance, and general well-being. Therefore, the proposed rule is not subject to review under the Order. The proposed rule merely broadens the coverage of condominium units for which mortgage insurance can be obtained.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule before publication and by approving it certifies that this proposed rule will not have a significant impact on a substantial number of small entities, because it makes available additional financing options for purchasers and sellers of condominium units.

Regulatory Agenda

This proposed rule was listed as item number 1417 under the Office of Housing in the Department's Semiannual Agenda of Regulations published on May 8, 1995 (60 FR 23368, 23384) under Executive Order 12866 and the Regulatory Flexibility Act.

Public Reporting Burden

The Department has estimated the public reporting burden involved in the information collections contained in the proposed rule as shown below. The public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

TABULATION OF ANNUAL REPORTING BURDEN

Description of information collection	Number of respondents	Responses per respondents	Total annual responses	Hours per response	Total annual burden hours
HUD/FHA ..... Condominium "Spot Loan" Checklist & Warranty.	2,000	1	2,000	.1	200

Catalog

The Catalog of Federal Domestic Assistance number for the program affected by this proposed rule is 14.133.

List of Subjects

24 CFR Part 206

Aged, Condominiums, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 234

Condominiums, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, parts 206 and 234 of title 24 of the Code of Federal Regulations would be amended as follows:

PART 206—HOME EQUITY CONVERSION MORTGAGE INSURANCE

1. The authority citation would continue to read as follows:

Authority: 12 U.S.C. 1715b, 1715z–20; 42 U.S.C. 3535(d).

2. Section 206.51 would be revised to read as follows:

§ 206.51 Eligibility of mortgages involving a dwelling unit in a condominium.

If the mortgage involves a dwelling unit in a condominium, the project in which the unit is located shall have been committed to a plan of condominium ownership by deed, or other recorded instrument, that is acceptable to the Secretary, except as provided in § 234.26(i) of this chapter.

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

3. The authority citation for part 234 would continue to read as follows:

Authority: 12 U.S.C. 1715b and 1715y; 42 U.S.C. 3535(d). Section 234.520(a)(2)(ii) is also issued under 12 U.S.C. 1701(a).

4. In § 234.26, a new paragraph (i) would be added, to read as follows:

§ 234.26 Project requirements.

* * * * *

(i) Notwithstanding the requirements of paragraphs (a) through (h) of this section, a loan on a single unit in an unapproved condominium project ("spot loan") may qualify for mortgage insurance under this part.

(1) The project must meet the following criteria:

(i) All units, common elements, and facilities—including those that are part of any master association—must have been completed, and the project cannot be subject to additional phasing or annexation. The project must provide for undivided ownership of common areas by unit owners;

(ii) Control of the owners' association must have been turned over to the unit purchasers, and the unit purchasers must have been in control for at least one year;

(iii) At least 90% of the total units in the project must have been conveyed to the unit purchasers, and at least 51% of the total units in the project must have been conveyed to purchasers who are occupying the units as their principal residences or second homes. No single entity (the same individual, investor group, partnership, or corporation) may own more than 10% of the total units in the project;

(iv) The units in the project must be owned in fee simple or be an eligible leasehold interest, as described in § 234.65, and the unit owners must have sole ownership interest in, and right to the use of, the project's facilities, common elements, and limited common elements including parking, recreational facilities, etc.;

(v) The project must be covered by hazard, flood, and liability insurance acceptable to the Commissioner;

(vi) No more than 10% of the total units in the project may be encumbered by FHA-insured mortgages. (If more than 10% of the units in the project are encumbered by FHA-insured mortgages, the condominium project must be approved under paragraphs (a) through (h) of this section); and

(vii) The assumability provisions of § 234.66 must be satisfied.

(2) Lenders must perform an underwriting analysis and certify that a project satisfies the eligibility criteria for a "spot loan" on a condominium project that has not been approved by FHA. Lenders may use information from the appraiser, the owners' association, the management company, the real estate broker, and the project developer, but the lender must ensure the accuracy of the information obtained from these sources.

Dated: May 22, 1995.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 95–15356 Filed 6–22–95; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 292

National Recreation Areas; Smith River National Recreational Area

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: This notice of proposed rulemaking sets forth the procedures by which the Forest Service proposes to regulate mineral operations on National Forest System lands within the Smith River National Recreation Area. Required by statute, this proposed rule would supplement existing Forest Service mineral regulations. The intended effect is to allow for mineral operations in a manner consistent with the purposes for which Congress established the Smith River National Recreation Area.

DATES: Comments must be received in writing by August 22, 1995.

ADDRESSES: Send written comments to Director, Minerals and Geology Management Staff (2800—AUD Bldg, 4 CEN), Forest Service, USDA, PO Box 96090, Washington, DC 20090–6090.

The public may inspect comments received on this proposed rule in the office of the Director, Fourth floor, Central Wing, Auditors Building, 201 Fourteenth Street SW., Washington, DC, between the hours of 8:30 am and 4:30 pm. Those wishing to inspect comments are encouraged to call (202) 205–1535 ahead of time to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Sam Hotchkiss, Minerals and Geology Management Staff, (202) 205–1535.

SUPPLEMENTARY INFORMATION: The Smith River National Recreation Area (SRNRA) was established by the Smith River National Recreation Area Act of 1990 (the Act) (16 U.S.C. 460bbb *et seq.*). The purposes of the Act are to ensure, "* * * the preservation, protection, enhancement, and interpretation for present and future generations of the Smith River Watershed's outstanding wild and scenic rivers, ecological diversity, and recreation opportunities while providing for the wise use and sustained productivity of its natural * * *" In order to meet the purposes of the Act, Congress directed the Forest Service to administer the SRNRA to, among other things, provide for a broad range of recreation uses and improve fishery and water quality. Congress prohibited mining subject to valid existing rights and limited extraction of common variety mineral materials within the SRNRA to situations where the material extracted is used for construction and maintenance of roads and other facilities within the SRNRA and the excluded areas.

The SRNRA consists of approximately 300,000 acres of National Forest System lands in the Six Rivers National Forest in northern California. The Act divided the SRNRA into eight distinct management areas and specified a management emphasis for each management area. One of these eight areas is the Congressionally designated Siskiyou Wilderness which the Act specifies is to be administered pursuant to the provisions of the Wilderness Act.

The Act also designated the following rivers or river segments as components of the National Wild and Scenic Rivers System: (1) The Smith River; (2) the Middle Fork of the Smith River; (3) the North Fork of the Smith River; (4) the Siskiyou Fork of the Smith River; and (5) the South Fork of the Smith River. For these wild and scenic rivers, Congress directed that they be administered in accordance with the Act and the Wild and Scenic Rivers Act. In the event of a conflict between the provisions of these two statutes, Congress specified that provisions of the more restrictive statute apply. Finally, there are four areas that lie within the boundary of the SRNRA expressly excluded from the SRNRA.

Prospecting for minerals and mining has been an important part of the history of the Smith River area since the 1850's. Mining operations within the Smith River area have historically been small-scale placer gold exploration and recovery operations within the bed and banks of the Smith River and its main tributaries. Panning, sluicing, and dredging operations occur predominantly during the summer months. In recent years, large, low-grade nickel-cobalt resources in the uplands of the Smith River watershed have attracted attention. Currently, there are approximately 5,000 mining claims covering about 30,000 acres of National Forest System lands within the SRNRA. In addition, there are outstanding mineral rights within the SRNRA. However, as of early June 1995, there are no operators conducting operations.

In section 8 of the Act, Congress addressed to what extent mineral operations would be authorized within the SRNRA. Section 8(a) of the Act withdrew all federal lands in the SRNRA from the operation of the mining, mineral leasing, and geothermal leasing laws subject to valid existing rights. Section 8(b) of the Act precluded the issuance of patents for locations and claims made prior to the establishment of the SRNRA. Section 8(c) of the Act prohibited all mineral operations within the SRNRA except where valid existing rights are established. Section 8(c) also prohibited the extraction of common variety minerals such as stone, sand, and gravel except if it is used in the construction and maintenance of roads and other facilities within the SRNRA and the excluded areas. Finally, section 8(d) directed the Secretary to promulgate supplementary mineral regulations to promote and protect the purposes for which the SRNRA was designated.

Provisions of the Proposed Rule

This proposed rule has been prepared pursuant to section 8(d) of the Act and would supplement existing Forest Service regulations pertaining to locatable mineral operations in the SRNRA and provide new regulations pertaining to outstanding mineral rights on National Forest System lands in the SRNRA. Accordingly, mineral operations in the SRNRA would not only be subject to the provisions of this rule but also to the applicable provisions of 36 CFR parts 228, 251, and 261, among others. The proposed rule clearly states that if there is a conflict or inconsistency with provision of other applicable regulations, the provisions of this rule would take precedence to the extent permitted by law.

The proposed rule divides mineral operations in the SRNRA into three categories—operations under the General Mining Laws, operations pursuant to outstanding mineral rights, and extraction of common variety mineral materials. There are no reserved mineral rights in the SRNRA, consequently, there is no need to address this category of mineral ownership in the proposed rule. In the event of a land acquisition that results in reserved mineral rights in the SRNRA, the current regulations at 36 CFR 251.15 provide sufficient direction to govern this activity and to protect the values for which the SRNRA was established.

The proposed rule is specifically designed to supplement existing locatable mineral regulations at 36 CFR part 228, subpart A, and thus to provide a greater degree of protection for the natural resources in the SRNRA than would be provided under 36 CFR part 228, subpart A, alone. This additional protection would be accomplished in several ways: (1) By the expansion of the types of mineral operations subject to the requirement for a plan of operations; (2) by setting additional reclamation standards; and (3)

providing expedited suspension procedures where harm or damage to resources or to people is imminent or is occurring. These and the other provisions of the proposed rule would enable the Forest Service to administer mineral operations in the SRNRA consistent with the purposes for which the area was established.

Section-by-Section Explanation of the Proposed Rule

This proposed rule would establish a new subpart G, Smith River National Recreation Area, in part 292 of Title 36 of the Code of Federal Regulations. A section-by-section explanation of the proposed rule follows.

Section 292.60, Purpose and scope. Paragraph (a) of the proposed § 292.60 explains that the purpose of this rule is to establish the rules and procedures for regulating mineral operations on National Forest System lands in the SRNRA so that they are in conformance with the Act. Paragraph (b) explains that rules and procedures in this rule apply only to National Forest System lands in the SRNRA. Paragraph (c) notes that this rule supplements existing Forest Service mineral regulations and that mineral operations on National Forest System lands in the SRNRA will continue to be subject to other applicable regulations governing these activities, particularly parts 228, 251, and 261 of this chapter. Paragraph (d) provides that, to the extent provided by law, the provisions of this rule shall take precedence over the provisions of other applicable regulations if there is a conflict or inconsistency between them. Finally, the last paragraph states that mineral operations approved or determined to be acceptable before the effective date of this proposed rule would continue to operate under the conditions of approval or acceptability including the specified period of operations. While there are no known operations at the time of publication of this proposed rule, that could change by the time of adoption of a final rule; thus, a transitional provision is needed.

Section 292.61, Definitions. This section defines special terms used in the proposed rule, some of which have been previously established or used in other rules or directives. However, the definitions included in the proposed § 292.61 define the terms as they are used in the proposed rule.

Section 292.62, Plan of operations requirements. Proposed § 292.62(a) would reduce the amount of discretion that the authorized officer currently has under 36 CFR 228.4(a) in determining whether a plan of operations or a notice of intent is required for a proposed mineral operation. In addition to the requirements of 36 CFR 228.4 for submitting a plan of operations or a notice of intent, this proposed rule would require a plan of operations for some mineral operations that in other locations have been routinely conducted under a notice of intent. For example, to operate mechanical or mechanized equipment such as a suction dredge and sluice under the proposed rule would require a plan of operations. Given the special status of the SRNRA and the special statutory management direction for the area set by Congress, further regulation of these kinds of operations is necessary in order to maintain the resource values which prompted its designation.

The information requirements specified in proposed § 292.62(b) are the same information that has been routinely gathered by the Forest Service from Bureau of Land Management records, county records, and the operator when a plan of operations is submitted for an area withdrawn from disposition under the General Mining Laws. The burden of gathering this information is now being shifted from the Forest Service to the operator since this information should be readily available to the operator if it does exist. The requirement to have the operator submit this information as part of the plan of operations should decrease the cost and the amount of time it takes for the Forest Service to collect the information, and, thereby, to make a valid existing rights determination.

Proposed § 292.62(c) outlines the minimum operating elements that must be included in a plan of operations in the SRNRA. The information requirements found at 36 CFR 228.4(c) and 228.8 that are generally applicable for a plan of operations on National Forest System lands are also applicable to a plan of operations proposed within the SRNRA. In addition to these specific information requirements, this proposed rule for the SRNRA would require an operator, who is not the claim owner, to submit a copy of the authorization granting the operator permission to conduct operations on a mining claim owned by another party. The existing regulations at 36 CFR 228.8(g) allow the authorized officer several options as to when reclamation activities can occur. These activities can take place upon depletion of the mineral deposit or sometime during the operation when it is practicable or within 1 year after the operations have concluded, unless the authorized officer allows for a longer time. In contrast, reclamation activities for mineral operations under the proposed rule would occur concurrently with the mineral operations whenever practicable. A requirement for concurrent reclamation would restore the land to another useful productivity in the shortest possible time. This requirement is essential to meet the statutory requirements to protect and preserve the values of the SRNRA.

Section 292.63, Plan of operations. Proposed § 292.63 establishes the procedures by which a plan of operation for mineral operations on mining claims in the SRNRA would be processed.

Proposed § 292.63(a) explains that the first item considered by the authorized officer is whether the operator has furnished the information required by § 292.62(b) to help substantiate valid existing rights. For reasons of efficiency, it is logical for the authorized officer to first determine whether the operator has discovered a valuable ore deposit before undertaking a review of that part of the plan of operations which describes in detail how the deposit is to be developed. Following the initial review, the authorized officer must notify the operator in writing whether the information required in § 292.62(b) has been provided or whether additional information still needs to be provided. Once the information required by § 292.62(b) has been provided, the authorized officer notifies the operator when the valid existing rights determination is expected to be completed.

Proposed § 292.63(b) explains that if the determination finds valid existing rights have not been established, the authorized officer must notify the operator of the determination, the reasons for such a determination, and that the development activities as contemplated in the plan of operations cannot be conducted.

Proposed § 292.63(c) explains that if the determination finds valid existing rights have been established, the authorized officer notifies the operator that this determination has been made and that the Forest Service is beginning a review of the proposed plan of operations and specifies the date when the Forest Service expects to complete the review.

Proposed § 292.63(d) directs that upon completion of the review of that part of the plan of operations that contains the operational and reclamation elements specified in proposed § 292.62(c), the authorized officer must notify the operator in writing the results of the review as specified in § 228.5(a).

Proposed § 292.63(e) would limit the maximum period for which a plan of operations is approved to five years; for operations beyond 5 years, the operator would have to submit a new plan in accordance with the specifications of § 292.62 of this proposed rule. The 5-year limit was chosen with large projects in mind. It would provide the authorized officer a more frequent and consistent approach to reviewing and updating operating conditions and ensuring the approved plan of operations remains consistent with the purposes for which the SRNRA was established. The 5-year limit will have little to no effect on the typical small-scale operation which last only one or two years from start to finish.

Proposed § 292.63(f) explains that substantive changes to an approved plan of operations must be reviewed and approved by the authorized officer. Under this paragraph, the operator has the option to submit a modification of an approved plan of operations, as provided for in 36 CFR 228.4(e), which clearly identifies the elements that are different from the previously approved plan of operations, or to submit a supplemental plan of operations pursuant to 36 CFR 228.4(d).

Section 292.64, Plan of operations suspension. Proposed § 292.64 authorizes the suspension of mineral operations under an approved plan of operations by the Forest Service authorized officer, if the operator is not in compliance with applicable law, regulations, or the terms and conditions of the approved plan. If an operator is found to be in noncompliance, the authorized officer must provide the operator with the reasons why the plan of operations is not in compliance with the laws, regulations, or the approved plan of operations and a reasonable time to abate the noncompliance. Generally, the operator will have at least 30 days after the notice of noncompliance is issued to correct the noncompliance before a suspension becomes effective. However, for those instances that present an imminent threat of harm to public health, safety, or the environment or where such harm is already occurring, the authorized officer can take immediate action to alleviate the threat or damage. This immediate suspension authority would allow the authorized officer to take steps to avoid or minimize the risk of harm to persons and the environment. Only after the harm or risk of harm has been abated would the authorized officer be required to notify the operator of the suspension and provide him or her with an opportunity to respond.

Section 292.65, Operating plan requirements. Proposed § 292.65 establishes that operating plans are required for mineral operations involving outstanding mineral rights; that is, mineral rights owned by a party other than the surface owner at the time the surface estate was conveyed to the Federal government.

Proposed § 292.65(a) specifies that all individuals who want to exercise outstanding mineral rights in the SRNRA must submit an operating plan to the authorized officer at least 60 days in advance of surface occupancy.

Proposed § 292.65(b) specifies the information that an operator must provide in order to conduct mineral operations involving outstanding mineral rights where the surface estate is within the SRNRA. The operating plan must include information such as: (1) Evidence of ownership of the outstanding mineral rights, (2) the name of a designated field representative, (3) a map showing the location and dimension of all improvements, (4) a plan of operations including a schedule for construction and drilling, and (5) a soil erosion and sedimentation control plan.

Section 292.66, Operating plan acceptance. Proposed § 292.66 establishes the procedures by which operating plans in the SRNRA would be processed.

Proposed § 292.66(a) requires the authorized officer to review that portion of the operating plan related to substantiating outstanding mineral rights and notify the operator whether the information required to substantiate ownership of outstanding mineral rights has been provided to the Forest Service. If more information must be provided by the operator, the Forest Service would specify what is needed. If no more information is necessary for the Forest Service to complete its review, the authorized officer would indicate when the review is expected to be completed.

Proposed § 292.66(b) would specify that if outstanding mineral rights have not been verified, the authorized officer would notify the operator of the finding, the reasons for such a finding, and that the proposed operation cannot be conducted.

Proposed § 292.66(c) would specify that if outstanding mineral rights have been verified, the authorized officer would notify the operator that outstanding mineral rights have been verified, that the Forest Service would begin a review of the proposed operating plan, and the date when the Forest Service would expect to complete the review.

Proposed § 292.66(d) explains that the authorized officer will focus the review of the operating plan on whether the development activities proposed are consistent with the rights granted by the deed, consistent with the SRNRA Management Plan, and whether the development activities will utilize the least amount of surface lands necessary for the operation.

Proposed § 292.66(e) would specify that upon completion of the review of the operating plan, the authorized officer would notify the operator of the findings. If the findings indicate that the proposed operating plan is consistent with the rights granted by the deed of conveyance, consistent with the SRNRA Management Plan, and uses only that portion of the surface as is absolutely necessary, the operating plan would be determined to be acceptable to the Forest Service. If the findings indicate that the proposed operating plan does not meet all three criteria listed at § 292.66 (d)(1) through (d)(3), the authorized officer must specify the reasons why the proposed operating plan does not meet the three listed criteria, propose changes to the operating plan to make it consistent with the three criteria, and attempt to negotiate the proposed changes with the operator.

Proposed § 292.66(f) would require that another operating plan be submitted if additional operations not included in an acceptable operating plan are proposed and that the process as outlined in § 292.66 would be followed. This provision is similar to that in § 228.5(c) and § 292.63(f) of the proposed rule.

By requiring parallel information and review of operations under outstanding mineral rights, the Forest Service can ensure that the values for which the SRNRA was established are protected, and operators can be assured that requirements for negotiating modifications to an operating plan are consistent with those required of other mineral programs.

Section 292.67, Mineral material operations. Proposed § 292.67 states that the disposal of common variety mineral materials would be governed by the existing mineral material regulations set forth at 36 CFR part 228, subpart C, and would require that proposals for the extraction and removal of common variety mineral materials within the SRNRA would be approved only if the material is used within the SRNRA or in one of the four excluded areas identified by the Act.

Section 292.68, Indemnification. This section would provide a means of protecting the United States Government from liability as a result of claims, demands, losses, or judgments caused by an operator's use or occupancy. In addition, the operator would be required to pay the costs

incurred by the Forest Service or other agencies resulting from noncompliance with an approved plan of operations or an agreed to operating plan.

Operators have not had to bear any of the costs incurred by the Forest Service to administer mineral projects on National Forest System lands even if operations were not being conducted under the conditions approved or agreed upon. Proposed § 292.68(c) would require those operators who do not abide by the conditions of an approved plan of operations or agreed upon operating plan to pay the costs incurred by the Forest Service resulting from noncompliance. It is believed that if an operator was required to reimburse the Forest Service for the costs incurred by the Forest Service resulting from noncompliance, there would be less noncompliance.

Regulatory Impact

This proposed rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this regulation is not a significant rule. This rule will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this proposed rule is not subject to OMB review under Executive Order 12866.

Moreover, this proposed rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and it has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined by that Act because of its limited scope and application. Also, this proposed rule does not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States based enterprises to compete in local or foreign markets.

Environmental Impact

Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions." The agency's preliminary assessment is that this rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement. A final determination will be made simultaneously with adoption of the final rule.

Controlling Paperwork Burdens on the Public

Section 292.62(b) of this proposed rule specifies that in addition to the requirements of § 228.4, an operator must provide information to support valid existing rights as part of a plan of operations. Also, proposed § 292.65(b) requires those who wish to exercise outstanding mineral rights to submit an operating plan. The provisions of the proposed rule applicable to locatable minerals are supplementary to the existing information required by 36 CFR 228.4 which still apply for plans of operations. The provisions of the proposed rule applicable to outstanding mineral rights represent new information requirements as defined in 5 CFR part 1320, Controlling Paperwork Burdens on the Public. Although the proposed rule requires the operator to submit more information with a plan of operations than applies under part 228, subpart A, the information is readily available to the operator and does not require additional effort or information that the operator does not already have to acquire to conduct operations.

In accordance with the rules of 5 CFR part 1320 and the Paperwork Reduction Act of 1980 as amended (44 U.S.C. 3507), the Forest Service is requesting Office of Management and Budget review and approval of the information required to be addressed in a plan of operations or an operating plan. The agency estimates that an operator preparing a plan of operations will spend an average of 2 hours gathering and submitting the information related to valid existing rights and another 2 hours preparing and submitting the minimal information on the proposed operation for Forest Service review and approval. The agency also estimates that an operator preparing an operating plan will spend an average of 2 hours gathering and submitting the information related to outstanding mineral rights and the operation itself for acceptability. Reviewers who wish to comment on these information requirements should submit their views to the Chief of the Forest Service at the address listed earlier in this document as well as to the: Forest Service Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

No Takings Implications

In compliance with Executive Order 12630 and the Attorney General's Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings, the takings implication of this proposed rule have been reviewed and considered. It has been determined that there is no risk of a taking.

Civil Justice Reform Act

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule were adopted, (1) all State and local laws and regulations that are in conflict with this proposed rule or which would impede its full implementation would be preempted; (2) no retroactive effect would be given to this proposed rule; (3) it would not require administrative proceedings before parties could file suit in court challenging its provisions.

List of Subjects in Part 292

Administrative practice and procedure, Environmental protection, Mineral resources, National forests, National recreation areas, and Surety bonds.

Therefore, for the reasons set forth in the preamble, it is proposed to amend part 292 of chapter II of title 36 of the Code of Federal Regulations by adding a new subpart G to read as follows:

PART 292—NATIONAL RECREATION AREAS

Subpart G—Smith River National Recreation Area

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Subpart G—Smith River National Recreation Area

Authority: 16 U.S.C. 460bbb *et seq.*

§ 292.60 Purpose and scope.

(a) *Purpose.* The regulations of this subpart set forth the rules and procedures by which the Forest Service regulates mineral operations on National Forest System lands within the Smith River National Recreation Area as established by Congress in the Smith River National Recreation Area Act of 1990 (16 U.S.C. 460bbb *et seq.*).

(b) *Scope.* The rules of this subpart apply only to mineral operations on National Forest System lands within the Smith River National Recreation Area.

(c) *Applicability of other rules.* The rules of this subpart supplement existing forest Service regulations concerning the review, approval, and administration of mineral operations on National Forest System lands including, but not limited to, those set forth at parts 228, 251, and 261 of this chapter.

(d) *Conflicts.* In the event of conflict or inconsistency between the rules of this subpart and other parts of this chapter, the rules of this subpart take precedence, to the extent allowable by law.

(e) *Applicability to ongoing operations.* Operations under an acceptable operating plan or an approved plan of operations in effect prior to the effective date of these regulations shall be for a limited time not to exceed 5 years. If operations have a shorter specified operating time, the shorter operating time shall remain in effect.

§ 292.61 Definitions.

The special terms used in this subpart have the following meaning:

Act means the Smith River National Recreation Area Act of 1990 (16 U.S.C. 460bbb *et seq.*).

Authorized officer means the Forest Service officer to whom authority has been delegated to take actions pursuant to the provisions of this subpart.

Hazardous substance means any substance so classified under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9601).

Operating plan means the document submitted in writing by the owner or lessee, or a representative acting on behalf of an owner or lessee, to exercise outstanding mineral rights for minerals underlying National Forest System lands.

Outstanding mineral rights means the rights owned by a party other than the surface owner at the time the surface was conveyed to the United States.

SRNRA is the abbreviation for the Smith River National Recreation Area, located within the Six Rivers National Forest, California.

Valid existing rights for the purposes of this subpart means all mining claims on National Forest system lands in the SRNRA which: (1) Were properly located prior to November 16, 1990, for a mineral that was locatable at that time; (2) were properly maintained thereafter under the applicable law; (3) were supported by a discovery of a valuable mineral deposit within the meaning of the general mining law prior to November 16, 1990, which discovery has been continuously maintained since that date; and (4) continue to be valid.

Valid Existing Rights

§ 292.62 Plan of operations supplementary requirements.

(a) *Applicability.* In addition to the activities for which a plan of operations is required under § 228.4 of this part, a plan of operations is required when a proposed operation within the SRNRA involves mechanical or mechanized equipment, including a suction dredge and sluice.

(b) *Information to support valid existing rights.* A plan of operations within the SRNRA must include at least the following information relevant to the existence of valid existing rights for the period from November 16, 1990, to the present except as otherwise specified:

(1) The mining claim recordation serial number assigned by the Bureau of Land Management;

(2) A copy of the original location notice and conveyance deeds, if ownership has changed since the date of location;

(3) A copy of the affidavit of assessment work or notice of intention to hold the mining claim since the date of recordation with the Bureau of Land Management;

(4) Verification by the Bureau of Land Management that the holding fees have been paid or have been exempted;

(5) Sketches or maps showing the location of past and present mineral workings on the claims and information sufficient to locate and define the mining claim corners and boundaries on the ground;

(6) For lode and placer mining claims—

(i) An identification of the valuable mineral that has been discovered;

(ii) An identification of the site within the claims where the deposit has been discovered and exposed;

(iii) Information on the quantity and quality of the deposit including copies of assays or test reports, the width, locations of veins, the size and extent of any deposit; and

(iv) Evidence of past and present sales of the valuable mineral; and

(7) For millsite claims, information proving that the millsite is associated with a valid mining claim and that the millsite is used or occupied for mining or milling purposes.

(c) *Minimum information on proposed operations.* A plan of operations must include the information required at 36 CFR 228.4 (c)(1) through (c)(3) which includes information about the proponent and a detailed description of the proposed operation. In addition, if the operator and claim owner are different, the operator must submit a copy of the authorization or agreement under which the proposed operations are to be conducted. A plan of operations must also address the environmental protection requirements of 36 CFR 228.8 which includes reclamation. In addition, when practicable, reclamation will proceed concurrently with the mineral operation.

§ 292.63 Plan of operations approval.

(a) Upon receipt of a plan of operations, the authorized officer shall review the information related to valid existing rights and notify the operator in writing that one of the following circumstances apply:

(1) That sufficient information on valid existing rights has been provided and the date by which the forest Service expects to complete the valid existing rights determination; or

(2) That sufficient information on valid existing rights has not been provided and the specific information that still needs to be provided.

(b) If upon receipt, review, and verification of all requested information, the authorized officer finds that there is not sufficient evidence of valid existing rights, the authorized officer shall so notify the operator in writing, providing the reasons for the determination, and advise that the proposed mineral operation cannot be conducted.

(c) If upon receipt, review, and verification of all requested information, the authorized officer finds that there is sufficient evidence of valid existing rights, the authorized officer shall so notify the operator in writing, that a review of the proposed plan of operations is underway, and the date by which the review is expected to be completed. A prior determination that there is sufficient evidence of valid existing rights shall not bar the authorized officer from requesting the Department of the Interior to file a mineral contest against a mining claim if the authorized officer has a reasonable basis to question that determination.

(d) Upon completion of the review of the plan of operations, the authorized officer shall ensure that the minimum information required by § 292.62(c) has

been addressed and, pursuant to § 228.5(b) of this chapter, notify the operator in writing whether or not the plan of operations is approved.

(e) The period for which a plan of operations is approved may not exceed five years and must be explicitly identified by the authorized officer in giving notice of approval of a plan of operations.

(f) If an operator desires to make substantive changes in the type, scope, or duration of mineral operations from those described in an approved plan of operations and those changes will result in resource impacts not anticipated when the original plan was approved, the operator must submit a supplemental plan or a modification for review and approval of the authorized officer pursuant to § 292.62 of this proposed rule.

§ 292.64 Plan of operations suspension.

The authorized officer may suspend mineral operations due to an operator's noncompliance with applicable statutes, regulations, or terms and conditions of the approved plan of operations. Except as otherwise provided in this paragraph, prior to suspending operations, the authorized officer must first notify the operator in writing of the basis for the suspension and provide the operator with a reasonably sufficient time to respond to the notice of the authorized officer or to bring the mineral operations into conformance with applicable laws, regulations, or the terms and conditions of the approved plan of operations. Generally, the authorized officer shall notify the operator not less than thirty days prior to the date of the proposed suspension; however, in those cases that present a threat of imminent harm to public health, safety, or the environment, or where such harm is already occurring, the authorized officer may take immediate action to stop the threat or damage without prior notice. In such case, written notice and explanation of the action taken, shall be given the operator as soon as reasonably practicable following the suspension.

Outstanding Mineral Rights

§ 292.65 Operating plan requirements.

(a) Proposals for mineral operations involving outstanding mineral rights within the SRNRA must be documented in an operating plan and submitted in writing to the authorized officer for review at least 60 days in advance of surface occupancy.

(b) An operating plan for operations involving outstanding mineral rights within the SRNRA must include the following:

(1) The name and legal mailing address of the operator, owner, and any lessees, assigns, and designees;

(2) A copy of the deed or other legal instrument that conveyed the outstanding mineral rights;

(3) Sketches or maps showing the location of the outstanding mineral rights, the proposed area of operations, including but not limited to, existing and/or proposed roads or access routes identified for use, any new proposed road construction, and the approximate location and size of the areas to be disturbed, including existing or proposed structures, facilities, and other improvements to be used;

(4) A description of the type of operations which includes, at a minimum, a list of the type, size, location, and number of structures, facilities, and other improvements to be used;

(5) An identification of the hazardous substances and any other toxic materials, petroleum products, insecticides, pesticides, and herbicides that will be used during the mineral operation, and the means for disposing of such substances;

(6) An identification of the character and composition of the mineral wastes that will be used or generated and a method or strategy for their placement, control, isolation, or removal; and

(7) A reclamation plan to reduce or control on-site and off-site damage to natural resources resulting from mineral operations.

(i) The plan should provide, to the extent practicable, that reclamation proceed concurrently with the mineral operations and must show how public health and safety are maintained.

(ii) Reclamation measures to be identified and described in the plan include, but are not limited to, the following:

(A) Reduction and/or control of erosion, landslides, and water runoff;

(B) Rehabilitation of wildlife and fisheries habitat to be disturbed by the proposed mineral operation; and

(C) Protection of water quality.

(iii) The area of surface disturbance must be reclaimed to a condition or use that is consistent with the SRNRA Management Plan.

§ 292.66 Operating plan acceptance.

(a) Upon receipt of an operating plan, the authorized officer must review the information related to the ownership of the outstanding mineral rights and notify the operator in writing that one of the following circumstances apply:

(1) That sufficient information on ownership of the outstanding mineral rights has been provided and the date by which the review is expected to be completed; or

(2) That sufficient information on ownership of outstanding minerals rights has not been provided and the specific information that still needs to be provided.

(b) If the review shows outstanding mineral rights have not been verified, the authorized officer must notify the operator in writing that outstanding mineral rights have not been verified, the reasons for such a finding, and that the proposed mineral operation cannot be conducted.

(c) If the review shows outstanding mineral rights have been verified, the authorized officer must notify the operator in writing that outstanding mineral rights have been verified, that review of the proposed operating plan is underway, and the date by which the review is expected to be completed.

(d) The authorized officer shall focus review of the operating plan to determine if all of the following criteria are met:

(1) The operating plan is consistent with the rights granted by the deed;

(2) The operating plan is consistent with the SRNRA Management Plan; and

(3) The operating plan uses only so much of the surface as is necessary for the proposed mineral operations.

(e) Upon completion of the review of the operating plan, the authorized officer shall notify the operator in writing that one of the following two circumstances apply.

(1) The operating plan meets the criteria of paragraphs (d)(1) through (d)(3) of this section, and, therefore, the Forest Service has no objections to commencement of operations and that the Forest Service intends to monitor operations to ensure that operations conform to the operating plan; or

(2) The operating plan does not meet all of the criteria in paragraphs (d)(1) through (d)(3) of this section and the reasons why the operating plan does not meet the criteria. In this event, the authorized officer shall propose changes to the operating plan and attempt to negotiate modifications that will enable the operating plan to meet the criteria in paragraphs (d)(1) through (d)(3) of this section.

(f) To conduct mineral operations beyond those described in an acceptable operating plan, the owner or lessee must submit in writing an amended operating plan to the authorized officer at the earliest practicable date. The authorized officer shall have at least 60 days in which to review and respond to a proposed amendment before the new operations begin. The review will be conducted in accordance with paragraphs (d)(1) through (d)(3) of this section.

Mineral Materials

§ 292.67 Mineral material operations.

Subject to the provisions of part 228, subpart C and part 293 of this chapter, the authorized officer may approve contracts and permits for the sale or other disposal of mineral materials, including but not limited to, common varieties of gravel, sand, or stone. However, such contracts and permits may be approved only if the material is not within a designated wilderness area and is to be used for the construction and maintenance of roads and other facilities within the SRNRA and the four areas identified by the Act that are within the exterior boundaries of the SRNRA but are not classified as part of the SRNRA.

Indemnification

§ 292.68 Indemnification.

The owner and/or operator of mining claims and the owner and/or lessee of outstanding mineral rights are jointly and severally liable in accordance with Federal and State laws for indemnifying the United States for:

(a) Injury, loss, or damage, including fire suppression costs, which the United States incurs as a result of the mineral operations;

(b) Payments made by the United States in satisfaction of claims, demands or judgments for an injury, loss, or damage, including fire suppression costs, which result from the mineral operations; and

(c) Cost incurred by the Untied States for any action resulting from noncompliance with an approved plan of operations or activities outside a mutually agreed to operating plan.

Dated: June 9, 1995.

David G. Unger,

Associate Chief.

[FR Doc. 95–15360 Filed 6–22–95; 8:45 am]

BILLING CODE 3410–11–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[FRL–5226–9]

Notice of Open Meeting of the Negotiated Rulemaking Advisory Committee for Small Nonroad Engine Regulations

AGENCY: Environmental Protection Agency.

ACTION: Change in dates of FACA Committee Meeting—Negotiated Rulemaking on Small Nonroad Engine Regulations.

SUMMARY: On June 9, 1995, (60 FR 30506) EPA announced the next meeting of the Advisory Committee to negotiate the Phase II rule to reduce air emissions from small nonroad engines. The meeting was originally scheduled to start on June 27, 1995 at 10:00 am. The meeting will now start the next day, on June 28, 1995. The meeting will still end at 4:00 pm on June 27, 1995.

DATES: The committee will now meet on June 28, 1995 from 10:00 a.m. to 5:00 p.m. and on June 29, 1995 from 8:00 a.m. to 4:00 p.m.

ADDRESSES: The location of the meeting will still be the Courtyard by Marriott, 3205 Broadwalk, Ann Arbor, MI 48108; phone: (313) 995–5900.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on the substantive matters of the rule should contact Lisa Snapp, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Rd., Ann Arbor, MI 48108; (313) 668–4200. Persons needing further information on committee procedural matters should call Deborah Dalton, Consensus and Dispute Resolution Program, Environmental Protection Agency, 401 M Street, S.W. Washington, DC 20460, (202) 260 260–5495, or the Committee's facilitators, Lucy Moore or John Folk-Williams, Western Network, 616 Don Gaspar, Santa Fe, New Mexico, 87501 (505) 982–9805.

Dated: June 20, 1995.

Deborah Dalton,

Designated Federal Official.

[FR Doc. 95–15551 Filed 6–22–95; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[IA–15–1–6829b; FRL–5210–6]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the state of Iowa. The state's request for a revision to the SIP includes provisions for enhanced monitoring, special requirements for nonattainment areas, and adoption of EPA definitions. These revisions fulfill Federal regulations which strengthen maintenance of established air quality standards.

In the final rules section of the **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal, because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments must be received on or before July 24, 1995.

ADDRESSES: Comments may be mailed to Christopher D. Hess, Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Christopher D. Hess at (913) 551–7213.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: May 2, 1995.

Dennis Grams,

Regional Administrator.

[FR Doc. 95–15237 Filed 6–22–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 52 and 70

[CA 147–1–6995–b; FRL–5216–4]

Clean Air Act Proposed Approval of Title V Operating Permits Program Revisions; Proposed Approval of Amended Synthetic Minor Operating Permit Program as a State Implementation Plan Revision; Bay Area Air Quality Management District, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On November 29, 1994, EPA proposed to grant interim approval to the title V operating permits program and full approval to the synthetic minor operating permit program submitted by the Bay Area Air Quality Management District (Bay Area, BAAQMD, or District) for the purpose of complying with title V of the Clean Air Act (Act) in the case of the former, and for creating federally enforceable limits on potential to emit in the case of the latter. Bay Area has since revised the two

programs, and this document addresses those revisions. In this document, EPA is proposing approval of Bay Area's title V operating permits program revisions which add optional permit shield provisions, clarify permit application requirements, and make other minor program changes in response to local concerns. EPA is also proposing to approve revisions to Bay Area's synthetic minor regulations which clarify permit modification requirements under the federally enforceable state operating permit program (FESOP). EPA is proposing approval of the revised synthetic minor regulations as a revision to Bay Area's portion of the California State Implementation Plan (SIP) and pursuant to section 112(l) of the Act.

In the Final Rules Section of this **Federal Register**, EPA is promulgating direct final approval of Bay Area's title V and FESOP revisions without prior proposal because EPA views these changes as noncontroversial amendments and anticipates no adverse comments. A detailed rationale for these approvals is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rulemaking. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by July 24, 1995.

ADDRESSES: Written comments on this action should be addressed to: Celia Bloomfield, Operating Permits Section (A–5–2), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the District's submittal, EPA's Technical Support Document, and other supporting information used in developing the proposed approvals are available for public inspection at EPA's Region IX office during normal business hours.

FOR FURTHER INFORMATION CONTACT: Celia Bloomfield (telephone 415/744–1249), Operating Permits Section (A–5–2), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION: On November 29, 1994, EPA proposed in the **Federal Register** to grant interim approval to Bay Area's title V operating permits program (59 FR 60939) in accordance with title V of the Act (as amended in 1990) and 40 CFR part 70 (the title V implementing regulations). In the same notice, EPA proposed approval of Bay Area's synthetic minor program based on the June 28, 1989 (54 FR 27274) approval criteria for federally enforceable state operating permit programs. On February 1, 1995, Bay Area adopted revisions to Regulation 2, Rule 6 (Regulation 2–6) and the District's Manual of Procedures, Volume II, Part 3 (MOP) that implement the District's title V and synthetic minor programs. These revisions were not made in response to the deficiencies identified in the proposed rulemaking, but rather to address local issues and concerns. EPA is proposing direct final approval of the amendments to coordinate the effective date of the title V and FESOP programs with the effective date of the revisions.

Amendments to Bay Area's title V program were submitted to EPA by the California Air Resources Board (CARB) on March 23, 1995. The regulations covered by this direct final approval include: Regulation 2, Rule 6, Sections 232, 233, 234, 305, 307, 311, 403.1, 403.1.1, 403.1.2, 403.1.3, 404.6, 404.7, 405.2, 405.4.1, 405.4.2, 405.6, 405.6.1, 405.6.2, 409.12, 410.6, 411, 418.3, 420, 421.3, 421.4, 422, 422.3, 422.4, 422.6, 423, 423.2.1, 423.5; and the Manual of Procedures, Volume II, Part 3. Bay Area's synthetic minor program amendments were submitted to EPA by CARB on March 31, 1995. The regulations covered by this direct final SIP and section 112(l) approval include: Regulation 2, Rule 1, Section 129; and Regulation 2, Rule 6, Sections 232, 234, 310, 311, 403, 404, 420, 421, 422, and 423. For further information, please see the direct final action which is located in the Final Rules Section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 25, 1995.

David P. Howekamp,

Acting Regional Administrator.

[FR Doc. 95–15036 Filed 6–22–95; 8:45 am]

BILLING CODE 6560–50–W

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40 CFR Part 180

[OPP–300390; FRL–4962–6]

RIN 2070–AC18

Dimethoate; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish an import tolerance for total residues of the insecticide dimethoate including its oxygen analog in or on the raw agricultural commodity blueberries. EPA is issuing this proposal on its own initiative pursuant to a project to harmonize certain tolerances with those established by the Canadian government.

DATES: Comments, identified by the document control number [OPP-300390], must be received on or before July 24, 1995.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP-300390]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Forrest, Product Manager (PM) 14, Registration Division (7505C), Office of Pesticide Programs,

Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Rm. 219, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6600; e-mail: forrest.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Own its own initiative and pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), EPA is proposing to amend 40 CFR 180.204 by establishing an import tolerance for total residues of the insecticide dimethoate including its oxygen analog in or on the raw agricultural commodity blueberries at 1. part per million (ppm). As part of the Canada-U.S. Trade Agreement (CUSTA), and through the Pesticides Technical Working Group's Maximum Residue Limit (MRL) Harmonization Pilot Project, the Canadian government has requested that the U.S. establish a tolerance of 1 ppm for residues of dimethoate in or on blueberries. This insecticide is registered for use on blueberries in Canada, but not in the U.S. The Canadian tolerance is 1 ppm. The Agency has reviewed Canadian crop field trial residue data and determined that they are adequate to support an import tolerance. All relevant materials have been evaluated. The toxicological data considered in support of the proposed tolerance include:

1. A 3-month feeding study in rats fed diets containing 0, 2, 8, 32, 50, and 400 ppm with a no-observed-effect level (NOEL) for plasma, red blood cell and brain cholinesterase inhibition of 32 ppm (equivalent to 1.6 milligrams (mg)/kilogram (kg)/day) and a systemic NOEL of 50 ppm (equivalent to 2.5 mg/kg/day) based on depressed growth and food consumption, and increased kidney and liver weights ratios at the 400-ppm dose level.

2. A 3-month feeding study in dogs fed diets containing 0, 2, 10, 50, 1,500, and 3,000 ppm with a NOEL for red blood cell cholinesterase inhibition of 2 ppm (equipvalent to 0.05 mg/kg/day) and a NOEL for systemic effects of 50 ppm (equivalent to 1.25 mg/kg/day) based on tremors and decreased food consumption in females at the 1,500-ppm dose level.

3. A 1-year feeding study in dogs fed diets containing 0, 5, 20, or 125 ppm with a NOEL of less than 5 ppm (equivalent to less than 0.18 mg/kg/day) based on decreased brain and red blood cell cholinesterase in males and decreased liver weight in females at the 5-ppm dose level.

4. A two-generation reproduction study in rats fed diets containing 0, 1, 15, or 65 ppm (equivalent to 0/0, 0.8/0.9, 1.2/1.3, or 5.46/6.04 mg/kg/day for males/females) with a tentative reproductive NOEL of 15 ppm based on decreased fertility in the F1b and F2a, and F2b matings; decreased pup weight during the lactation period for both sexes and generations; and decreased live births in the F2b litters.

5. A developmental toxicity study in rats given gavage doses of 0, 3, 6, or 18 mg/kg/day with no developmental toxicity observed under the conditions of the study. The NOEL for maternal toxcity was established at 6 mg/kg/day; rats fed 18 mg/kg/day (lowest-effect level) displayed hpersensitivity, tremors, and unsteady gait.

6. A developmental toxicity study in rabbits given gavage doses of 1, 10, 20, or 40 mg/kg/day from day 7 to day 19 of gestation with a developmental NOEL of 20 mg/kg/day based on significant reduction in fetal weight at the 40 mg/kg/day dose level. The maternal NOEL/LEL were 10/20 mg/kg/day based on body weight decrement at 20 mg/kg/day.

7. A 2-year chronic feeding/carcinogenicity study in rats fed diets containing 0, 5, 25, or 100 ppm (equivalent to 0, 0.25, 1.25, or 5.0 mg/kg/day) with a systemic NOEL of 25 ppm based on increased female mortality, decreased male body weight gain, anemia in males, and increased leukocytes in male and female rats at the 100-ppm dose level. The NOEL for cholinesterase inhibition was established at 5 ppm based on cholinesterase inhibition at the 25-ppm dose level. In male rats, there were dose-related trends for (1) spleen hemangiosarcomas (malignant tumors associated with connective tissue and blood and lymph vessels); (2) combined spleen hemangioma (benign tumors) and hemangiosarcoma; and (3) combined spleen hemangioma and hemangiosarcoma, and skin hemangiosarcoma. Furthermore, there were significant pair-wise comparisons between control and the high-dose (100 ppm) for spleen (hemangioma/hemangiosarcoma) and in the combined tumors of spleen and skin hemangioma/hemangiosarcoma and lymph angioma/angiosarcoma (benign and malignant tumors made up of lymph vessels). There was also a significant difference by pair-wise comparison between the control and low dose (5 ppm) for (1) lymph angiosarcoma, (2) combined lymph angioma and angiosarcoma, and (3) combined spleen and skin hemangioma/hemangiosarcoma and lymph angioma/angiosarcoma. There were no significant tumor increases in female rats.

8. A 78-week carcinogenicity study in B6C3F1 mice fed diets containing 0, 25, 100, or 200 ppm (equivalent to 0, 3.75, 15, or 30 mg/kg/day). In male mice there were significant dose-related incrased trends for (1) combined lung adenoma and/or adenocarcinoma, (2) for lymphoma, and (3) for the combined group of lymphoma, reticularsarcoma, and leukemia. In female mice there were significant dose-related trends for (1) liver carcinoma and for (2) combined liver adenoma and/or carcinoma.

9. Dimethoate is regarded as a mutagenic compound based on the results of studies designed to determine gene mutation and structural chromosome aberrations. Dimethoate is a bacterial mutagen and shows equivocal results for gene mutations in mammalian cells. It produces clastogenic effects in several studies *in vitro* and *in vivo*, and there are suggestive results for dominant-lethal effects. The National Toxicology Program has concluded that dimethoate is a mutagenic compound based on its testing for gene mutation and chromosomal aberrations. A third category of studies to determine other genotoxic effects is a data gap for dimethoate.

Dimethoate has been classified as a possible human carcinogen (category C) by the Office of Pesticide Programs' Health Effects Division's Peer Review Committee. The Peer Review Committee supports this classification based on the appearance of equivocal hemolymphoreticular tumors in male mice, the compound-related (no dose response) weak effect of combined spleen (hemangioma and hemangiosarcoma), skin (hemangiosarcoma), and lymph (angioma and angiosarcoma) tumors in male rats, and positive mutagenic activity associated with dimethoate.

The Peer Review Committee concluded that the lung tumors seen in male mice were not biologically significant tumors related to compound administration since there were no statistically significant differences based on pair-wise comparisons with controls and each dose level. The incidence of lung tumors in the control groups was variable, and there was a high background level of these tumors. The increase in lymphoma observed in male mice in the high-dose group was of borderline statistical significance by pair-wise comparison with controls. The incidence of lymphoma in mice is also common and variable. The Committee agreed that the increased incidence for the combined hemolymphoreticular tumors in male mice is compound related, but could only classify this

incidence as equivocal. The incidence of hemolymphoporeticular tumors in male mice was relatively low and consistent with historical control, only occurred in one sex (males), and was evident only in the highdose group.

The Committee concluded that in female mice there were no significant pair-wise comparisons, there was only the trend with combined tumors, and the combined incidence was similar to historical controls. In addition, there also was no evidence of precursor lesions to carcinogenicity. Regarding the carcinogenicity study in rats, the Committee concluded that although there were significant pair-wise comparisons at the low and high doses for all tumors combined, these tumors did not indicate much more than a weak effect.

EPA has concluded that dimethoate poses no greater than a negligible cancer risk to humans; therefore, the Agency has chosen to use reference dose calculations to estimate dietary risk from dimethoate residues. The dietary risk exposure analysis used a Reference Dose (RfD) for dimethoate of 0.0005 mg/kg/body weight/day, based on a NOEL of 0.05 mg/kg/bwt/day for brain cholinesterase inhibition from a 2-year feeding study in rats, and an uncertainty factor of 100. The anticipated residue contribution (ARC) for the general population from published uses and the proposed use on blueberries utilizes 22 percent of the RfD. The ARC for the most highly exposed subgroup, nonnursing infants, from published uses and the proposed use on blueberries, utilizes 57% of the RfD.

The nature of the residue in plants is adequately understood and an adequate analytical method, gas-liquid chromatography with a thermionic detector, is available for enforcement purposes. An analytical method for enforcing this tolerance has been published in the Pesticide Analytical Manual (PAM), Vol. II. No secondary residues in meat, milk, poultry, or eggs are expected since blueberries are not considered a livestock feed commodity.

The pesticide is considered useful for the purpose for which the tolerance is sought. There are presently no actions pending against the continued registration of this chemical.

Based on the information and data considered, the Agency has determined that the tolerance established by amending 40 CFR 180.204 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP–300390]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

A record has been established for this rulemaking under docket number [OPP-300390] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 15, 1995.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.204, by amending paragraph (a) by amending the table therein to add and alphabetically insert the following commodity, to read as follows:

§ 180.204 Dimethoate including its oxygen analog; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Blueberries[1]	1
* * * * *	

[1]There are no U.S. registrations as of (date of publication of final rule) for dimethoate on blueberries.

* * * * *

[FR Doc. 95–15427 Filed 6–20–95; 1:50 pm]

BILLING CODE 6560–50–F

40 CFR Parts 180 and 185

[OPP–300391; FRL–4962–7]

RIN 2070–AC18

Clethodim; Pesticide Tolerance and Food Additive Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish an import tolerance and a food additive regulation, respectively, for residues of the herbicide clethodim ((E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety in or on the raw agricultural commodity potatoes and the food additive commodities potato flakes and granules. EPA is issuing this proposal on its own initiative pursuant to a project to harmonize certain tolerances and food additive regulations with those established by the Canadian government.

DATES: Comments, identified by the document control number [OPP-300391], must be received on or before July 24, 1995.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP-300391]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne Miller, Product Manager (PM) 23, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-6224; e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: On its own initiative and pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act by (FFDCA), 21 U.S.C. 346a(e), EPA is proposing to amend 40 CFR 180.458 by establishing an import tolerance for residues of the herbicide clethodim and its metabolites containing the 2-cyclohexen-1-one moiety in or on the raw agricultural commodity potatoes at 0.5 part per million (ppm); and to add new § 185.1075 (40 CFR 185.1075) by establishing a food additive regulation for residues of the herbicide clethodim and its metabolites containing the 2-cyclohexen-1-one moiety in or on the food additive commodity potato granules and potato flakes at 1 part per million (ppm). Clethodim residues on potatoes grown in Canada and imported into the United States have been identified as a Canada-United States Trade Agreement (CUSTA) irritant. The Agency has reviewed Canadian crop field trial residue data and determined that they are adequate to support an import tolerance. All relevant materials have been evaluated. The toxicological data considered in support of the proposed tolerances and food additive regulation include:

1. Several acute toxicology studies placing the technical-grade herbicide in Toxicity Category II for primary dermal irritation, Toxicity Category III for oral and inhalation toxicity and primary eye irritation, and Toxicity Category IV for dermal toxicity.

2. A 2-year rat chronic toxicity/carcinogenicity study found the compound to be noncarcinogenic to rats under the conditions of the study. The systemic no-observed-effect level (NOEL) was 500 ppm (approximately 19 mg/kg/day), and the systemic lowest-observed-effect level (LOEL) was 2,500 ppm (approximately 100 mg/kg/day) based on the observed body weight gain, the increases in liver weights, and the presence of centrilobular hepatic hypertrophy.

3. An 18-month mouse carcinogencity study which showed the compound to be noncarcinogenic to mice under the conditions of the study. The systemic NOEL was 200 ppm (approximately 30 mg/kg/day), and the systemic LOEL was 1,000 ppm (approximately 150 mg/kg/day) based on treatment-related effects on survival, red cell mass, absolute and relative liver weights, and microscopic findings in liver and lung.

4. A 1-year feeding study in dogs with a systemic NOEL of 1 mg/kg/day in both sexes and a LOEL of 75 mg/kg/day based on increased absolute and relative liver weights, and alterations in hematology and clinical chemistry.

5. A developmental toxicity study in rats with a developmental and maternal NOEL and LOEL of 100 and 350 mg/kg/day, respectively. The LOEL for developmental toxicity was based on reductions in fetal body weight and increases in skeletal anomalies.

6. A developmental toxicity study in rabbits with a maternal toxicity NOEL and LOEL of 25 and 100 mg/kg/day, respectively. Maternal toxicity was manifested as clinical signs of toxicity and reduced weight gain and food consumption during treatment. Developmental toxicity was not observed, and therefore the developmental toxicity NOEL was 300 mg/kg/day (HDT).

7. A two-generation reproduction study in the rat with a parental toxicity NOEL and LOEL of 500 and 2,500 ppm (51 and 263 mg/kg/day), respectively, based on reductions in body weight in males, and decreased food consumption in both generations. The NOEL for

reproductive toxicity was 2,500 ppm (263 mg/kg/day, HDT).

8. A mutagenicity test with Salmonella Ames assay showed nonmutagenicity in three strains. Clethodim imine sulfone was negative for reverse gene mutation in *Salmonella* and *E. coli* exposed up to 10,000 ug/plate with or without activation. Clethodim was negative for chromosomal damage in bone marrow cells of rats treated orally up to toxic doses (1,500 mg/kg).

The dietary risk exposure analysis used a RfD of 0.01 mg/kg/body weight(bw)/day based on a NOEL of 1.0 mg/kg/bw/day and a safety factor of 100. The proposed use on potatoes for the U.S. population results in an Anticipated Residue Contribution (ARC) of 0.000571 mg/kg/bw/day, which represents 6% of the RfD. For nonnursing infants less than one year old, the ARC for the use on potatoes is 0.000860 mg/kg/bw/day, or 9% of the RfD.

The nature of the residue is adequately understood. A common moiety analytical method (gas chromatograph with a flame photometric detector in the sulfur mode) and a compound-specific confirmatory method are available for enforcement purposes. Prior to publication in the Pesticide Analytical Manual, Vol. II, both methods are available in the interim to anyone interested in pesticide enforcement. They can be requested from: Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M. St. SW., Washington, DC 20460. Office location and telephone number: Crystal Mall #2, Rm. 1132, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5232.

Any secondary residues occurring in milk, eggs, or meat of livestock and poultry will be covered by the established tolerances for these commodities.The pesticide is considered useful for the purpose for which the tolerance is sought. There are currently no actions pending against the continued registration of this chemical.

Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR parts 180 and 185 would protect the public health. Therefore, it is proposed that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300391]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

A record has been established for this rulemaking under docket number [OPP-300391] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 180 and 185

Environmental protection, Administrative practice and procedure, Agricultural commodities, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 15, 1995.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR parts 180 and 185 be amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. By amending § 180.458 in the table therein by adding and alphabetically inserting the commodity potatoes, to read as follows:

§ 180.458 Clethodim ((E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one); tolerances for residues.

. . . . . .

Commodity	Parts per million
. . . . .	
Potatoes	0.5
. . . . .	

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

b. By adding new § 185.1075, to read as follows:

§ 185.1075 Clethodim ((E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one).

Food additive tolerances are established for the combined residues of the herbicide clethodim ((E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety in or on the following processed foods:

Food	Parts per million
Potato flakes[1]	1.0
Potato granules[1]	1.0

[1]There are no U.S. registrations as of (date of publication of final rule) for clethodim on potatoes.

[FR Doc. 95–15428 Filed 6–20–95; 1:50 pm]

BILLING CODE 6560–60–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket Nos. 91–221 and 87–8; DA 95–1355]

Broadcast Services; TV Ownership

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Commission granted an additional eleven-day extension of time to file reply comments in this proceeding in response to a request filed by The Black Citizens for a Fair Media, Center for Media Education, Chinese for Affirmative Action, Communications Task Force, Hispanic Bar Association, League of United Latin American Citizens, National Conference of Puerto Rican Women, Office of Communications of the United Church of Christ, Philadelphia Lesbian and Gay Task Force, Telecommunications Research Action Center, Wider Opportunities for Women, and the Women's Institute for Freedom of the Press (Petitioners). The Commission had already granted an extension of the original deadline for filing comments in this proceeding (April 17, 1995) to May 17, 1995, and had extended the original deadline for filing reply comments (May 17, 1995) to June 19, 1995. Petitioners requested an additional 60-day extension of time to file reply comments. The Commission determined that a brief extension was warranted to facilitate the development of a full and complete record, but declined to grant the full 60-day extension requested by Petitioners.

DATES: Reply comments are now due on June 30, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kim Matthews (202) 739–0774 or Robert Kieschnick (202) 739–0764, Mass Media Bureau.

SUPPLEMENTARY INFORMATION:

In the matter of Review of the Commission's Regulations Governing Television Broadcasting, MM Docket No. 91–221; Television Satellite Stations Review of Policies and Rules, MM Docket No. 87–8.

Order Granting Extension of Time for Filing Reply Comments

Adopted: June 15, 1995.
Released: June 15, 1995.

By the Chief, Mass Media Bureau:

1. On December 15, 1994, the Commission adopted a *Further Notice of Proposed Rule Making* regarding ownership of television stations. *Further Notice of Proposed Rule Making* in MM Docket Nos. 91–221 and 87–8, FCC 94–322 (Jan. 17, 1995) (*Notice*) 60 FR 6490, February 2, 1995. Comments on the *Notice* were initially due on April 17, 1995, and reply comments were initially due on May 17, 1995. By *Order* released April 7, 1995 60 FR 19566, April 19, 1995, the time for filing comments in this proceeding was extended to May 17, 1995, and the time for filing reply comments was extended to June 19, 1995.

2. On June 12, 1995, The Black Citizens for a Fair Media, Center for Media Education, Chinese for Affirmative Action, Communications Task Force, Hispanic Bar Association, League of United Latin American Citizens, National Conference of Puerto Rican Women, Office of Communications of the United Church of Christ, Philadelphia Lesbian and Gay Task Force, Telecommunications Research Action Center, Wider Opportunities for Women, and the Women's Institute for Freedom of the Press (Petitioners), filed a joint request for an additional 60-day extension of time to file reply comments in this proceeding. Petitioners argue primarily that additional time is needed to review and prepare a reply to comments filed in response to the Commission's *Notice*. Petitioners also argue that Congress is presently considering legislation that would "effectively moot" this proceeding and therefore obviate the need to prepare and file reply comments.

3. As set forth in Section 1.46 of the Commission's Rules, 47 C.F.R. § 1.46, it is our policy that extensions of time for filing comments in rulemaking proceedings shall not be routinely granted. Moreover, the initial comment period in this proceeding was longer than usual, and one 30-day extension of time has already been granted. However, in view of the circumstances outlined by Petitioners, we believe an additional 11-day extension of the reply comment deadline is warranted in order to facilitate the development of a full and complete record. We decline to grant a longer extension at this point in time based on speculation as to events that may or may not affect this proceeding.

4. Accordingly, It is Ordered that the Request for Extension of Time filed in MM Docket Nos. 91–221 and 87–8 by The Black Citizens for a Fair Media, Center for Media Education, Chinese for Affirmative Action, Communications Task Force, Hispanic Bar Association, League of United Latin American Citizens, National Conference of Puerto Rican women, Office of Communications of the United Church of Christ, Philadelphia Lesbian and Gay Task Force, Telecommunications Research Action Center, Wider Opportunities for Women, and the Women's Institute for Freedom of the Press is Granted to the extent detailed above and is otherwise Denied.

5. It is Further Ordered that the time for filing reply comments in the above-captioned proceeding is Extended to June 30, 1995.

6. This action is taken pursuant to authority found in Sections 4(i) and 303(r) of the communications Act of 1934, as amended, 47 U.S.C. 154(i) and

303(r), and Sections 0.204(b), 0.283, and 1.45 of the Commission's Rules, 47 CFR 0.204(b), 0.283, and 1.45.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 95–15394 Filed 6–22–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

48 CFR Parts 45 and 52

Federal Acquisition Regulation; Government Property

AGENCY: Department of Defense.

ACTION: Notice of public meeting.

SUMMARY: The next public meetings of the Government Property Rewrite Team are scheduled for July 12, 1995, and July 13, 1995. Discussion will focus on a draft revised Government Property (Fixed-Price Contracts) clause.

DATES: *Public Meetings:* The public meetings will be conducted at the address shown below from 9:30 a.m. to 5:00 p.m., local time, on July 12, 1995, and July 13, 1995.

Draft Materials: Drafts of the materials to be discussed at the public meetings will be available no earlier than July 7, 1995, and may be obtained from Ms. Angelena Moy, (PDUSD (A&T) DP/MPI) at Room C–103, 1211 S. Fern St., Arlington, VA 22202–2808

ADDRESSES: *Public Meetings:* The public meetings will be held in Room 104, VSE Corporation, 2550 Huntington Ave., Alexandra, VA 22303.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena Moy, by telephone at (703) 604–5875, or by FAX at (703) 604–6709.

SUPPLEMENTARY INFORMATION: On September 16, 1994, (59 FR 47583) the Director of Defense Procurement, Department of Defense, announced an initiative to rewrite the Federal Acquisition Regulation (FAR) Part 45, Government Property, to make it easier to understand and to minimize the burdens imposed on contractors and contracting officers. The Director of Defense Procurement is providing a forum for an exchange of ideas and information with government and industry personnel by holding public meetings, soliciting public comments, and publishing notices of the public meetings in the **Federal Register.**

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 95–15255 Filed 6–22–95; 8:45 am]

BILLING CODE 5000–04–M

48 CFR Parts 209 and 252

[DFARS Case 92–D344]

Defense Federal Acquisition Regulation Supplement; Organizational Conflict of Interest

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule; withdrawal.

SUMMARY: The proposed rule published November 1, 1993, at 58 FR 58316, is hereby withdrawn. The rule proposed revisions to the Defense Federal Acquisition Regulation Supplement (DFARS) to add an organizational conflict of interest solicitation provision and contract clause for use in acquisitions for development, production, or testing of a defense acquisition program. These DFARS revisions have been determined to be unnecessary at this time.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0131.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 95–15254 Filed 6–22–95; 8:45 am]

BILLING CODE 5000–04–M

48 CFR Part 215

Defense Federal Acquisition Regulation Supplement; Field Pricing Reports

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comment.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to increase the threshold for requesting a field pricing report for cost-type proposals from offerors without significant estimating system deficiencies.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before August 22, 1995, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 95–D010 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule implements a recommendation of the Department of Defense Procurement Process Reform Process Action Team. The rule amends DFARS Subpart 15.8 by increasing, from $1,000,000 to $10,000,000, the threshold for requesting a field pricing report for cost-type proposals from offerors without significant estimating system deficiencies.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule primarily relates to application of Government resources for field pricing reviews. An Initial Regulatory Flexibility Analysis has, therefore; not been performed. Comments from small entities concerning the affected DFARS subpart will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 95–D010 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this proposed rule does not impose any new information collection requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 215

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR part 215 is proposed to be amended as follows:

1. The authority citation for 48 CFR part 215 is revised to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 215—CONTRACTING BY NEGOTIATION

2. Section 215.805–5(a)(1)(A)(*3*) is amended by revising "$1 million" to read "$10 million."

[FR Doc. 95–15253 Filed 6–22–95; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 567

[Docket No. 94–74; Notice 2]

RIN 2127–AE71

Certification

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Termination of rulemaking proceeding.

SUMMARY: This notice terminates rulemaking to amend NHTSA's certification regulation to require the standardized display of a permanent metal vehicle manufacturer's label for all motor vehicles weighing more than 4,536 kg (10,000 lb).

FOR FURTHER INFORMATION CONTACT: Dr. Leon DeLarm, Chief, Pedestrian, Heavy Truck and Child Crash Protection Division, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590, (202) 366–4920.

SUPPLEMENTARY INFORMATION:

I. The Petition

On August 17, 1992, Michael Robinson, Director of the Michigan Department of State Police, petitioned NHTSA to amend the agency's certification regulations at 49 CFR 567.4 to require that manufacturers' labels on vehicles weighing more than 4,536 kg (10,000 lb) be made of a heavy gauge metal of a specified thickness with raised or recessed letters and numbers, and be riveted to the vehicle. Mr. Robinson also recommended specific locations for the placement of these labels, depending on the type of vehicle involved. Mr. Robinson stated that his petition was prompted by difficulties that the Motor Carrier Division of his Department had encountered in locating information identifying the gross vehicle weight rating (GVWR) and vehicle identification number (VIN) of commercial vehicles. Information identifying a commercial vehicle's GVWR is necessary, Mr. Robinson asserted, for the proper enforcement of the Commercial Driver License (CDL) requirements of the Federal Highway Administration's (FHWA's) Motor Carrier Safety Assistance Program. Under the CDL program, drivers are only licensed to operate vehicles within GVWR ranges for which they are qualified. Mr. Robinson contended that law enforcement officers often have difficulty determining the GVWRs of commercial vehicles since the labels on those vehicles are often damaged, painted over, or missing because they were not designed or constructed to withstand the rigors of commercial vehicle operation.

II. The NPRM

On September 26, 1994, NHTSA published a notice in the **Federal Register** (at 59 FR 49038) announcing that it had granted Mr. Robinson's petition, in part, and was proposing to amend the agency's certification regulations at 49 CFR 567.4 to require that the manufacturer's certification label on vehicles with a GVWR over 4,536 kg (10,000 lb) be made of metal, have raised or recessed letters and numbers, and be riveted or otherwise permanently affixed to the vehicle in locations specified in the petition. In granting the petition, the agency noted that not only would the use of permanent metal labels help to ensure that commercial vehicles are being driven by duly qualified and licensed operators, but it would also improve the accuracy of commercial vehicle GVWR information submitted to the FHWA's SAFETYNET system, which is shared with state personnel who monitor commercial motor carrier operations.

In the notice of proposed rulemaking (NPRM), NHTSA solicited comments on seventeen issues that the agency identified as being raised by the petition. These included questions on:

(1) whether there was a problem with labels on commercial vehicles becoming obliterated, painted over, or otherwise rendered illegible during the service life of he vehicle;

(2) the costs currently incurred by manufacturers in the purchase, printing, and application of labels;

(3) the types of material currently used for the labels on vehicles with a GVWR over 4,536 kg (10,000 lb);

(4) the sizes of the labels currently affixed to those vehicles;

(5) the incremental costs that vehicle manufacturers would incur to purchase, emboss, and affix permanent metal labels with raised or recessed letters and numbers;

(6) the incremental costs, if any, that label manufacturers would incur in producing metal labels with raised or recessed letters and numbers;

(7) the quantities in which vehicle manufacturers currently order labels;

(8) the time that is currently required for vehicle manufacturers to prepare and affix labels;

(9) the time that would be required for vehicle manufacturers to rivet or otherwise permanently affix metal labels;

(10) the special problems, if any, that vehicle manufacturers would have in affixing permanent metal labels;

(11) whether a particular metal, such as aluminum, stainless steel, etc. should be specified for the labels;

(12) whether a minimum thickness should be prescribed for the labels;

(13) whether a minimum size should be specified for the labels;

(14) whether a minimum height or depth should be specified for the letters and numbers embossed on the labels;

(15) whether any information should be added to or deleted from that currently required to appear on the label;

(16) whether trailers with a GVWR of 4,536 kg (10,000 lb) or less should also meet the requirements proposed for trailers above that weight;

(17) whether NHTSA should require some approach different from the proposed metal label requirement for preserving VIN labels.

III. Comments

NHTSA received 142 comments in response to the NPRM. Only five of these supported the proposal. Two of the supporting comments were from law enforcement entities. Lt. Bruce Bugg of the Georgia Public Service Commission stated that from his own experience in enforcing the CDL requirements, and from discussions with other law enforcement officers, he has come to believe that missing and obliterated certification labels are a common problem that could be partially alleviated through the use of more durable, embossed metal plates. The California Highway Patrol (CHP) also supported the metal label requirement because existing non-metallic labels are being removed with increasing frequency in an apparent attempt to circumvent the CDL requirements. Supporting comments were also received from the Wisconsin Department of Transportation and Advocates for Highway and Auto Safety, which expressed agreement with a need for metal certification labels. Additionally, the National Automobile Dealers Association (NADA) expressed support for an improved certification labelling scheme and agreed with the proposal to impose requirements that will assist with theft enforcement and with the administration of motor carrier regulations.

The remaining 137 comments were opposed to the proposal, either in whole or in part. Of these, 117 were essentially identical letters submitted primarily by multi-stage truck manufacturers. Those

comments expressed opposition to the proposal that only metal be used for certification labels, based on the contention that other materials are available that are cheaper, easier to imprint and install, and able to withstand the rigors of commercial use. These comments noted that the adhesive-backed plastic labels with clear protective outer coatings that are in current use cost only about fifty cents apiece, and can be prepared on a typewriter and affixed to the vehicle in a matter of minutes. In contrast, these comments noted that metal labels would be more costly, would require the use of an expensive embossing machine, and would require considerably more time to be riveted onto the vehicle.

In its comment opposing the proposal, Mack Trucks, Inc. noted that unlike the polyester film labels that it currently uses, which cannot be removed from a vehicle without being destroyed, a riveted metal label could be easily removed and transferred to another vehicle. General Motors Corporation (GMC) and Ford Motor Company made similar remarks, and noted that the adoption of a metal label requirement could increase the risk of vehicle theft, since such labels could be used to retag stolen vehicles.

Mack further questioned whether there is really a problem with the existing labels, in view of the fact that 49 CFR 565.4(b) requires a vehicle's "GVWR class" to be encoded into its vehicle identification number (VIN), which is stamped into the vehicle's frame rail and included in a number of other readily visible plates and labels affixed to the vehicle. The American Automobile Manufacturers Association (AAMA) also noted that a vehicle's GVWR can be obtained by decoding its VIN, and that the VIN is found not only on the vehicle's certification label, but also on a separate metal VIN plate that all of its members install. GMC expressed the opinion that requiring the VIN to be not only included in the certification label, but also stamped or engraved on a separate metal plate, would address the problems raised in the petition.

Ford noted that it improved the identification of its medium and heavy duty trucks approximately seven years ago by riveting a metal plate to the left door post of these vehicles on which the VIN was imprinted with embossed letters and numbers. Additionally, Ford prints the VIN and GVWR on a non-metallic self-adhesive label with a protective plastic covering that is affixed to the left door post. This label also includes a bar-coded VIN that a law enforcement officer can scan and download into a computer to minimize transcription errors.

Ford also noted that a long-term solution to the concerns raised in the petition would be realized if the ADVANTAGE I–75 Program and Heavy Vehicle Electronic License Plate (HELP) Program are successfully implemented. The goals of these programs are to reduce congestion, increase efficiency, and enhance the safety of users of major highway corridors through the application of a network of advanced highway, vehicle, and communication technologies. An automatic vehicle identification (AVI) transponder located in the commercial vehicle will transmit an electronic signal that, when decoded, will provide information such as the identity of the motor carrier, the gross weight of the vehicle, and the status of its registration and fuel tax payments.

The Recreational Vehicle Industry Association (RVIA) recommended that recreational vehicles (RVs) be exempted from the proposed metal certification label requirements, on the theory that the operators of RVs are not subject to the CDL requirements, precluding the need for enforcement officers to ascertain the GVWR of those vehicles. In separate comments, RV manufacturers such as Fleetwood and Winnebago took similar positions in opposing the proposed metal label requirements.

Thomas Built Buses expressed the opinion that no benefit would be served by returning to metal certification labels on buses, and that such a step would negate the progress it has made in using non-removable, non-reusable, tamper resistant, adhesive-backed, metallized labels. The AM General Corporation also faulted the proposal in that it would restrict the use of more conventional, and potentially technically superior, methods of vehicle identification. HYDRA-TECH noted that in its experience, plastic adhesive labels with clear protective coatings do not deteriorate and are easier to read than metal tags after several years of service.

The Flxible Corporation stated that it chose an adhesive backed aluminum foil label instead of a riveted rigid metal plate for its VIN tag because the aluminum foil cannot be removed without being completely destroyed. In contrast, Flxible noted that a metal plate may be left undamaged after its rivets are drilled out.

The National Truck Equipment Association (NTEA) noted that the nonmetallic labels in current use offer greater flexibility than metal labels for placement in highly visible locations. The NTEA also noted that non-metallic labels are more resistant to tampering or fraud than metal labels because they are produced with a self-voiding feature. The NTEA further stated that existing certification labels are sometimes intentionally or inadvertently removed by certain manufacturers and end-users, posing an enforcement problem that will not be resolved by requiring a metal label that is both expensive and difficult to mount.

Navistar International Transportation Corporation stated that the root cause of the problems cited in the petition is the fact that many final stage manufacturers do not install a certification label, even though they are instructed to do so in the documents they are furnished by the incomplete vehicle manufacturer. Navistar believes that this is a problem that merits NHTSA's attention.

The Freightliner Corporation recommended that NHTSA consider establishing a performance standard for adhesion and/or abrasion to ensure legibility and permanent integrity of labels without specifying a material or mounting method.

In response to the specific questions raised in the NPRM, most commenters stated that they are unaware of any problem with existing certification labels becoming obliterated, painted over, or otherwise rendered illegible during the service life of the vehicle. The comments further indicated that the materials most commonly used for certification labels are adhesive-backed plastic sheeting with a clear plastic overlay to preserve the information the labels contain. Some commenters stated that they use heavy aluminum foil with an adhesive backing. Most commenters stated that the certification labels they apply measure 2½ by 5 inches.

Most commenters also stated that they spend between eleven and seventy-five cents apiece for the certification labels that they presently use, and an additional dollar or two for imprinting the required information on the label and installing it on the vehicle. All commenters who addressed the cost issue stated that the costs of preparing and installing an embossed metal certification label would be significantly greater. Cost estimates for this increase ranged from four to fifteen times the amount that manufacturers are currently spending to prepare and apply certification labels. One factor contributing to these greater costs is the expensive embossing equipment that most manufacturers stated they would have to procure. The cost estimates for this equipment ranged from $5,000 to $14,000 per machine, with some manufacturers noting that they would have to obtain a separate machine for each of their production facilities. Additional costs were predicted for retooling door frames and door jambs to provide a flat surface necessary for the secure attachment of metal certification labels. Commenters reported that it currently takes on the average of five to ten minutes to imprint a nonmetallic certification label and install it on a vehicle. The time expenditure predicted for the installation of metal labels was substantially the same, although one commenter noted that additional time would be required to drill the four holes necessary to rivet the label to the vehicle. Based on a total annual production of more than 250,000 vehicles with a GVWR over 10,000 lbs., the NTEA estimated additional material and labor costs approaching twelve million dollars if metal certification labels were required.

Most comments stated that it would be design restrictive to specify the material composition, size, and thickness of certification labels, as well as the height or depth of the characters on those labels, and that these matters should be left up to the vehicle manufacturer, who should have freedom to adapt the labelling requirements to individual circumstances. Most comments further stated that there is no need to specify information other than what is currently required on certification labels. Most comments also recognized that there is a greater need for preserving a vehicle's VIN than the other information found on its certification label.

IV. Agency Decision

After reviewing these comments, NHTSA has decided to terminate rulemaking to require the standardized display of a permanent metal certification label for all motor vehicles weighing more than 4,536 kg (10,000 lb). In light of the comments, it is not clear that a significant problem exists with respect to the preservation of GVWR and VIN information on commercial vehicles. Even if such a problem did exist, the comments reveal that it may be attributed to the deliberate removal of certification labels by unscrupulous operators, or the inadvertent failure to install labels by final stage manufacturers, circumstances that would not be addressed by the proposed rule. Moreover, the comments reveal that it would be more costly for manufacturers to prepare and install metal certification labels in place of the labels in current use, and that metal labels may be more easily removable, potentially exacerbating the problems faced by law enforcement officers in attempting to ascertain a commercial vehicle's GVWR and VIN.

Issued on: June 19, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–15392 Filed 6–22–95; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 649, 650, and 651

[I.D. 061495A]

New England Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 2-day public meeting to consider actions affecting New England fisheries in the exclusive economic zone.

DATES: The meeting will begin on Wednesday, June 28, 1995, at 10 a.m. and on Thursday, June 29, 1995, at 8:30 a.m.

ADDRESSES: The meeting will be held at the King's Grant Inn, Route 128 and Trask Lane, Danvers, MA 01923; telephone: (508) 774–6800. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01096–1097; telephone: (617) 231–0422.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, (617) 231–0422.

SUPPLEMENTARY INFORMATION: The June 28, 1995, session will begin with a Groundfish Committee report on the development of management alternatives for inclusion in Amendment 7 to the Fishery Management Plan for the Northeast Multispecies Fishery (FMP). At this meeting, the Council will finalize proposals to address severely overfished groundfish stocks in the Northeast for public hearing purposes. The Council has identified this agenda item as the priority for this meeting. All other subjects will be addressed only after groundfish discussions are concluded.

If time allows, the following will be discussed at this meeting: Progress on the development of an FMP amendment to allow consolidation of fishing days now allocated to individual vessels in the Atlantic sea scallop fleet; approval of an American lobster stock rebuilding/effort reduction program for review at public hearings; details associated with the draft FMP for Monkfish, such as limited entry criteria, the basis for limited access fishery quotas and trip limits to control bycatch; work to date on an industry proposal to conduct a demonstration project involving sea scallop research, enhancement and aquaculture; and the current structure and role of the Council's advisory committees.

The Council also may hear reports from the Chairman, Council Executive Director, NMFS Regional Director, Northeast Fisheries Science Center liaison, Mid-Atlantic Fishery Management Council liaison, and representatives from the U.S. Coast Guard and the Atlantic States Marine Fisheries Commission.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Douglas G. Marshall (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: June 19, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–15459 Filed 6–22–95; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 60, No. 121
Friday, June 23, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 95–016–2]

Availability of Determination of Nonregulated Status for Genetically Engineered Tomato Lines

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination that tomato lines developed by Zeneca Plant Science and Petoseed Company, Inc., designated as B, Da, and F that have been genetically engineered for suppressed polygalacturonase enzyme activity are no longer considered regulated articles under our regulations governing the introduction of certain genetically engineered organisms. Our determination is based on our evaluation of data submitted by Zeneca Plant Science and Petoseed Company, Inc., in their petition for a determination of nonregulated status, an analysis of other scientific data, and our review of comments received from the public in response to a previous notice announcing our receipt of the Zeneca Plant Science and Petoseed, Inc., petition. This notice also announces the availability of our written determination document and its associated environmental assessment and finding of no significant impact.

EFFECTIVE DATE: June 6, 1995.

ADDRESSES: The determination, an environmental assessment and finding of no significant impact, the petition, and all written comments received regarding the petition may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are asked to call in advance of visiting at (202) 690–2817.

FOR FURTHER INFORMATION CONTACT: Dr. Subhash Gupta, Biotechnologist, Biotechnology Permits, BBEP, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1237; (301) 734–7612. To obtain a copy of the determination or the environmental assessment and finding of no significant impact, contact Ms. Kay Peterson at (301) 734–7612.

SUPPLEMENTARY INFORMATION:

Background

On February 7, 1995, the Animal and Plant Health Inspection Service (APHIS) received a petition (APHIS Petition No. 94–290–01p) from Zeneca Plant Science of Wilmington, DE, and Petoseed Company, Inc., of Woodland, CA, (Zeneca/Petoseed) seeking a determination that tomato lines designated as B, Da, and F that have been genetically engineered for suppressed polygalacturonase (PG) enzyme activity do not present a plant pest risk and, therefore, are not regulated articles under APHIS' regulations in 7 CFR part 340.

On March 17, 1995, APHIS published a notice in the **Federal Register** (60 FR 14413–14414, Docket No. 95–016–1) announcing receipt of the Zeneca/Petoseed petition and announcing that the petition was available for public review. The notice also discussed the role of APHIS and the Food and Drug Administration in regulating the subject tomato lines and food products derived from them. In the notice, APHIS solicited written comments from the public as to whether the subject tomato lines posed a plant pest risk. The comments were to have been received by APHIS on or before May 16, 1995.

APHIS received five comments on the Zeneca/Petoseed petition, from a food company, a seed company, and State departments of agriculture. All the commenters supported the Zeneca/Petoseed petition for nonregulated status for the subject tomato lines.

Analysis

Zeneca/Petoseed's tomato lines B, Da, and F have been developed from an unmodified proprietary inbred tomato line coded as T7, that has been genetically engineered to contain a fragment of the tomato PG gene in the sense or antisense orientation. Inhibition of the PG enzyme resulting from the transcription of the PG gene fragment results in an increased thickness of the tomato, which is a desired characteristic in processing tomatoes. The subject tomato lines also contain the bacterial neomycin phosphotransferase (*nptII*) gene that is used as a selectable marker. Tomato lines B, Da, and F were transformed through the use of disarmed vectors from a common soil-borne bacterium, the plant pathogen *Agrobacterium tumafaciens*. The subject tomato lines have been considered regulated articles under APHIS' regulations in 7 CFR part 340 because they contain certain gene sequences derived from plant-pathogenic sources. However, evaluation of field data reports from field tests of the subject tomato lines conducted under APHIS permits or notifications since 1991 indicate that there were no deleterious effects on plants, nontarget organisms, or the environment as a result of the subject tomato plants' release into the environment.

Determination

Based on its analysis of the data submitted by Zeneca/Petoseed and a review of other scientific data, comments received from the public, and field tests of the subject tomato lines, APHIS has determined that tomato lines B, Da, and F: (1) Exhibit no plant pathogenic properties; (2) are no more likely to become a weed than tomatoes with suppressed PG activity developed by traditional breeding techniques; (3) are unlikely to increase the weediness potential of any other cultivated plant or wild species with which they can interbreed; (4) are unlikely to harm other organisms, such as bees, which are beneficial to agriculture; and (5) should not cause damage to processed agricultural commodities.

The effect of this determination is that tomato lines designated as B, Da, and F are no longer considered regulated articles under APHIS' regulations in 7 CFR part 340. Therefore, the permit and notification requirements pertaining to regulated articles under those regulations no longer apply to the field testing, importation, or interstate movement of the subject tomato lines or their progeny. However, the importation of the subject tomato lines or seeds capable of propagation is still subject to the restrictions found in APHIS' foreign quarantine notices in 7 CFR part 319.

National Environmental Policy Act

An environmental assessment (EA) has been prepared to examine the potential environmental impacts associated with this determination. The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on that EA, APHIS has reached a finding of no significant impact (FONSI) with regard to its determination that the subject tomato lines and lines developed from them are no longer regulated articles under its regulations in 7 CFR part 340. Copies of the EA and the FONSI are available upon request from the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 15th day of June 1995.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–15379 Filed 6–22–95; 8:45 am]

BILLING CODE 3410–34–P

Forest Service

Rabbit and Sisters Timber Sales, Colville National Forest, Ferry County, Washington

AGENCY: Forest Service, USDA.

ACTION: Cancellation notice.

SUMMARY: The Forest Service, USDA, is no longer involved in the preparation of an environmental impact statement for the Rabbit and Sisters Timber Sales on the Kettle Falls Ranger District of the Colville National Forest. The Notice of Intent, published in the **Federal Register** on November 4, 1991 is hereby rescinded (56 FR 56356).

FOR FURTHER INFORMATION CONTACT: Ralph Egan, Planning Forester, 225 W. 11th Street, Kettle Falls, Washington 99141, or phone 509–738–6111.

Dated: June 9, 1995.

Tim Town,

Acting Forest Supervisor.

[FR Doc. 95–15389 Filed 6–22–95; 8:45 am]

BILLING CODE 3410–11–M

Eagle Rock and Granite Timber Sales, Colville National Forest, Ferry County, Washington

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: On November 6, 1990, the Forest Service, USDA, published a Notice of Intent (NOI) in the **Federal Register** (55 FR 46693). The notice stated that the proposed action was to harvest 5.0 million board feet (MMBF) of timber and construct 6.0 miles of roads in the Eagle Rock timber sale, and to harvest 5.0 MMBF of timber and construct 7.0 miles of road in the Granite timber sale. Both timber sales were within portions of the South Fork O'Brien Creek, Rabbit Creek, and South Fork Rabbit Creek drainages on the Republic Ranger District and were to be sold in Fiscal Year 1993.

This revised NOI changes the name of this project to "Eagle Rock Ecosystem Restoration" with the Proposed Action changed to timber harvesting and prescribed burning, in which we propose to restore portions of the area to a sustainable forest condition. Road construction and reconstruction is still included in the Proposed Action.

The location of the revised project is now within Thirteenmile Creek, Ninemile Creek (formerly called Rabbit Creek), McMann Creek, Camel Creek, and other unnamed smaller drainages flowing westerly into the Sanpoil River between the Colville Indian Reservation and the town of Republic, Washington. The South Fork O'Brien Creek drainage is no longer included.

The revised Proposed Action includes timber harvest and subsequent prescribed burning or thinning on approximately 2,520 acres, prescribed burning without timber harvest on approximately 3,360 acres, and approximately 7 miles of road construction and reconstruction. The timber harvest portion of the project, called Eagle Rock timber sale, is now proposed to sell in Fiscal Year 1996. Burning treatments are proposed to occur over a five year period beginning in 1996.

The draft environmental impact statement (EIS) will be tiered to the Forest Land and Resource Management Plan as amended by Regional Forester's Forest Plan Amendments for Eastside Forests, May 24, 1994 and June 12, 1995. The revised date of filing the draft EIS is October 1995 and the final EIS in February 1996.

DATES: Comments concerning the scope of the revised analysis should be received in writing by July 24, 1995.

ADDRESSES: Send written comments and suggestions concerning the proposed project to Patricia Egan, District Ranger, P.O. Box 468, Republic, Washington, 99166.

FOR FURTHER INFORMATION CONTACT: Questions should be directed to Pat Egan, Kristie Miller, or Jim Parker, Republic Ranger District, Colville National Forest; at P.O. Box 468, Republic, Washington, 99166 or telephone 509–775–3305.

Dated: June 9, 1995.

Tim Town,

Acting Forest Supervisor.

[FR Doc. 95–15388 Filed 6–22–95; 8:45 am]

BILLING CODE 3410–11–M

Grain Inspection, Packers and Stockyards Administration

Amendment to Certification of Central Filing System—Oklahoma

The Statewide central filing system of Oklahoma has been previously certified, pursuant to section 1324 of the Food Security Act of 1985, on the basis of information submitted by the Oklahoma Secretary of State, for farm products produced in that State (52 FR 49056, December 29, 1987).

The certification is hereby amended on the basis of information submitted by Tom Cole, Secretary of State, for an additional farm product produced in that State as follows:

sesame

This is issued pursuant to authority delegated by the Secretary of Agriculture.

Authority: Sec. 1324(c)(2), Pub. L. 99–198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 CFR 2.18(e)(3), 2.56(a)(3), 55 FR 22795.

Dated: June 19, 1995.

Calvin W. Watkins,

Deputy Administrator, Packers and Stockyards Programs.

[FR Doc. 95–15366 Filed 6–22–95; 8:45 am]

BILLING CODE 3410–KD–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Dakota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the South Dakota Advisory Committee to the Commission will convene on Friday,

July 14, 1995, from 1 p.m. to 4 p.m., at the Rapid City Hilton Inn, Alex Johnson Hotel, Rapid City, South Dakota 57701. The purpose of the meeting is: (1) To provide orientation to new members; (2) to brief committee members on Commission activities; and (3) to plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Jonathan Van Patten, 605–677–5361, or Ki-Taek Chun, Acting Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 16, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–15363 Filed 6–22–95; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

[Docket Number: 950124024–5157–02]

RIN 0660–AA04

National Telecommunications and Information Administration Telecommunications and Information Infrastructure Assistance Program (TIIAP)

AGENCY: National Telecommunications and Information Administration, Department of Commerce.

ACTION: Notice of partial rescission of funds for fiscal year 1995.

SUMMARY: The National Telecommunications and Information Administration (NTIA) previously announced the availability of $64 million in funds for the Telecommunications and Information Infrastructure Assistance Program (TIIAP) to promote the widespread use of advanced telecommunications and information technologies in the public and non-profit sectors.[1] By providing targeted, matching demonstration and planning grants, TIIAP will help to develop a nationwide, interactive, multimedia information infrastructure that is accessible to citizens in rural as well as urban areas. A partial rescission of $15 million of the TIIAP funds, however, was recently enacted by Congress.

SUPPLEMENTAL INFORMATION: By **Federal Register** notice dated February 10, 1995, the NTIA, within the Department of Commerce, announced that Congress had appropriated $64 million for the TIIAP for FY 1995.[2] The grant funds "may be used for the planning and construction of telecommunications networks for the provision of educational, cultural, health care, public information, public safety, or other social services."[3]

Out of the $64 million originally appropriated for the TIIAP, $15 million was rescinded.[4] This partial rescission reduces the TIIAP budget to $49 million for FY 1995. Accordingly, the Notice of Availability is hereby modified to reflect this change.

Except for the partial rescission reducing the TIIAP funds to $49 million, the Program Categories, Evaluation Criteria, Selection Process, as well as all other information announced in the Notice of Availability remain in effect.

Larry Irving,

Assistant Secretary for Communications and Information.

[FR Doc. 95–15464 Filed 6–22–95; 8:45 am]

BILLING CODE 3510–60–P

[1] TIIAP; Notice of Availability of Funds, 60 Fed. Reg. 8156 (Feb. 10, 1995) [hereinafter Notice of Availability]

[2] *Id.* at 8160.

[3] Departments of Commerce, Justice, and the Judiciary, and Related Agencies Appropriations Act, 1995, Pub. L. No. 103–317, 108 Stat. 1724, 1747 (1994).

[4] Emergency Supplemental Appropriations and Rescissions for the Department of Defense to Preserve and Enhance the Military Readiness Act of 1995; Mexican Debt Disclosure Act of 1995, Pub. L. No. 104–6, 109 Stat. 73, 84 (1995).

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Colombia

June 16, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: June 27, 1995.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A notice published in the **Federal Register** on April 21, 1995 (60 FR 19890) announces that, under Section 204 of the Agricultural Act of 1956, as amended, the Government of the United States requested consultations with the Government of Colombia with respect to cotton and man-made fiber underwear in Categories 352/652. The notice further states that if no solution is agreed upon in consultations between the two governments, the Committee for the Implementation of Textile Agreements may establish a limit at a level of not less than 1,509,880 dozen for the twelve-month period beginning on March 29, 1995 and extending through March 28, 1996.

Inasmuch as no agreement was reached during the consultation period on a mutually satisfactory solution, the United States Government has decided to control imports in Categories 352/652 for the period beginning on March 29, 1995 and extending through March 28, 1996 at a level of 1,509,880 dozen.

This action is taken in accordance with the Uruguay Round Agreement on Textiles and Clothing and the Uruguay Round Agreements Act now that Colombia is a member of the World Trade Organization.

The United States remains committed to finding a solution concerning Categories 352/652. Should such a solution be reached in consultations with the Government of Colombia, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 16, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 23, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the Categories 352/652, produced or manufactured in Colombia and exported during the period beginning on March 29, 1995 and extending through March 28, 1996, in excess of 1,509,880 dozen [1].

Textile products in Categories 352/652, which have been exported to the United States prior to March 29, 1995 shall not be subject to this directive.

Textile products in Categories 352/652 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

Import charges will be provided at a later date.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–15332 Filed 6–22–95; 8:45 am]

BILLING CODE 3510–DR–F

[1] The limit has not been adjusted to account for any imports exported after March 28, 1995.

Establishment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Costa Rica

June 16, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: June 23, 1995.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A notice published in the **Federal Register** on April 21, 1995 (60 FR 19891) announces that if no solution is agreed upon in consultations between the Governments of the United States and Costa Rica on Categories 352/652, the Committee for the Implementation of Textile Agreements may establish a limit at a level of not less than 14,423,178 dozen for the twelve-month period beginning on March 27, 1995 and extending through March 26, 1996.

Inasmuch as no agreement was reached during the consultation period on a mutually satisfactory solution, the United States Government has decided to control imports in Categories 352/652 for the period beginning on March 27, 1995 and extending through March 26, 1996 at a level of 14,423,178 dozen.

This action is taken in accordance with the Uruguay Round Agreement on Textiles and Clothing and the Uruguay Round Agreements Act.

The United States remains committed to finding a solution concerning Categories 352/652. Should such a solution be reached in consultations with the Government of Costa Rica, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 16, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 23, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the Categories 352/652, produced or manufactured in Costa Rica and exported during the period beginning on March 27, 1995 and extending through March 26, 1996, in excess of 14,423,178 dozen [1].

Textile products in Categories 352/652, which have been exported to the United States prior to March 27, 1995 shall not be subject to this directive.

Textile products in Categories 352/652 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

Import charges will be provided at a later date.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–15333 Filed 6–22–95; 8:45 am]

BILLING CODE 3510–DR–F

Establishment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

June 16, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

[1] The limit has not been adjusted to account for any imports exported after March 26, 1995.

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: June 23, 1995.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A notice published in the **Federal Register** on April 21, 1995 (60 FR 19891) announces that if no solution is agreed upon in consultations between the Governments of the United States and the Dominican Republic on Categories 352/652, the Committee for the Implementation of Textile Agreements may establish a limit at a level of not less than 16,442,148 dozen for the twelve-month period beginning on March 27, 1995 and extending through March 26, 1996.

Inasmuch as no agreement was reached during the consultation period on a mutually satisfactory solution, the United States Government has decided to control imports in Categories 352/652 for the period beginning on March 27, 1995 and extending through March 26, 1996 at a level of 16,442,148 dozen.

This action is taken in accordance with the Uruguay Round Agreement on Textiles and Clothing and the Uruguay Round Agreements Act.

The United States remains committed to finding a solution concerning Categories 352/652. Should such a solution be reached in consultations with the Government of the Dominican Republic, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

Rita D. Hayes,

Choirman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 16, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 23, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the Categories 352/652, produced or manufactured in the Dominican Republic and exported during the period beginning on March 27, 1995 and extending through March 26, 1996, in excess of 16,442,148 dozen [1].

Textile products in Categories 352/652 which have been exported to the United States prior to March 27, 1995 shall not be subject to this directive.

Textile products in Categories 352/652 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

Import charges will be provided at a later date.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–15335 Filed 6–22–95; 8:45 am]

BILLING CODE 3510–DR–F

Establishment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in El Salvador

June 16, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: June 23, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A notice published in the **Federal Register** on April 21, 1995 (60 FR 19892) announces that if no solution is agreed upon in consultations between the Governments of the United States and El Salvador on Categories 351/651 and 352/652, the Committee for the Implementation of Textile Agreements may establish a limit at levels of not less than 259,914 dozen (Categories 351/651) and 3,687,034 dozen (Categories 352/652) for the period beginning on March 27, 1995 and extending through March 26, 1996.

Inasmuch as no agreement was reached during the consultation period on a mutually satisfactory solution on Categories 351/651 and 352/652, the United States Government has decided to control imports in these categories for the period beginning on March 27, 1995 and extending through March 26, 1996, at levels of 259,914 dozen (Categories 351/651) and 3,687,034 dozen (Categories 352/652).

This action is taken in accordance with the Uruguay Round Agreement on Textiles and Clothing and the Uruguay Round Agreements Act.

The United States remains committed to finding a solution concerning Categories 351/651 and 352/652. Should such a solution be reached in consultations with the Government of El Salvador, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 16, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 23, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in El Salvador and exported during the period beginning on March 27, 1995 and extending through March 26, 1996, in excess of the following levels of restraint:

Category	New limit [1]
351/651	259,914 dozen.
352/652	3,687,034 dozen.

[1] The limits have not been adjusted to account for any imports exported after March 26, 1995.

Textile products in Categories 351/651 and 352/652 which have been exported to the United States prior to March 27, 1995 shall not be subject to the limits established in this directive.

Textile products in Categories 351/651 and 352/652 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

Import charges will be provided at a later date.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–15336 Filed 6–22–95; 8:45 am]

BILLING CODE 3510–DR–F

Establishment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Honduras

June 16, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: June 23, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A notice published in the **Federal Register** on April 21, 1995 (60 FR 19893) announces that if no solution is agreed upon in consultations between the Governments of the United States and Honduras on Categories 351/651 and 352/652, the Committee for the Implementation of Textile Agreements may establish a limit at levels of not less than 157,990 dozen (Categories 351/651) and 6,550,810 (Categories 352/652) for the twelve-month period beginning on March 27, 1995 and extending through March 26, 1996.

Inasmuch as no agreement was reached during the consultation period on a mutually satisfactory solution, the United States Government has decided to control imports in Categories 351/651 and 352/652 for the period beginning on March 27, 1995 and extending through March 26, 1996 at levels of 157,990 dozen (Categories 351/651) and 6,550,810 dozen (Categories 352/652).

This action is taken in accordance with the Uruguay Round Agreement on Textiles and Clothing and the Uruguay Round Agreements Act.

The United States remains committed to finding a solution concerning Categories 351/651 and 352/652. Should such a solution be reached in consultations with the Government of Honduras, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 16, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 23, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Honduras and exported during the period beginning on March 27, 1995 and extending through March 26, 1996, in excess of the following limits:

Category	New limit [1]
351/651	157,990 dozen.
352/652	6,550,810 dozen.

[1] The limits have not been adjusted to account for any imports exported after March 26, 1995.

Textile products in Categories 351/651 and 352/652 which have been exported to the United States prior to March 27, 1995 shall not be subject to this directive.

Textile products in Categories 351/651 and 352/652 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

Import charges will be provided at a later date.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–15330 Filed 6–22–95; 8:45 am]

BILLING CODE 3510–DR–F

Establishment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Thailand

June 16, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: June 26, 1995.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A notice published in the **Federal Register** on April 21, 1995 (60 FR 19891) announces that if no solution is agreed upon in consultations between the Governments of the United States and Thailand on Categories 352/652, the Committee for the Implementation of Textile Agreements may establish a limit at a level of not less than 1,586,005 dozen for the twelve-month period beginning on March 29, 1995 and extending through March 28, 1996.

Inasmuch as no agreement was reached during the consultation period on a mutually satisfactory solution, the United States Government has decided to control imports in Categories 352/652 for the prorated period beginning on March 29, 1995 and extending through December 31, 1995 at a level of 1,207,971 dozen. Categories 352/652 shall remain subject to the Group II limit and shall be charged at a rate of 9.4 square meters equivalent per dozen.

This action is taken in accordance with the Uruguay Round Agreement on Textiles and Clothing and the Uruguay Round Agreements Act.

The United States remains committed to finding a solution concerning Categories 352/652. Should such a solution be reached in consultations with the Government of Thailand, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

Edwin Maddrey III,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 16, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on June 26, 1995, you are directed, pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, to establish a limit at 1,207,971 dozen [1] for textile products in Categories 352/652, produced or manufactured in Thailand and exported during the period beginning on March 29, 1995 and extending through December 31, 1995.

Textile products in Categories 352/652 shall remain subject to the Group II limit established in the directive dated March 30, 1995 for the period January 1, 1995 through December 31, 1995. The conversion factor for converting merged Categories 352/652 to square meters equivalent is 9.4.

Textile products in Categories 352 and 652 which have been exported to the United States prior to March 29, 1995 shall not be subject to the limit established in this directive..

Import charges will be provided at a later date.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Edwin Maddrey III,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–15329 Filed 6–22–95; 8:45 am]

BILLING CODE 3510–DR–F

[1] The limit has not been adjusted to account for any imports exported after March 28, 1995.

Establishment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Turkey

June 16, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: June 23, 1995.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A notice published in the **Federal Register** on April 21, 1995 (60 FR 19891) announces that if no solution is agreed upon in consultations between the Governments of the United States and Turkey on Categories 352/652, the Committee for the Implementation of Textile Agreements may establish a limit at a level of not less than 1,291,118 dozen for the twelve-month period beginning on March 28, 1995 and extending through March 27, 1996.

Inasmuch as no agreement was reached during the consultation period on a mutually satisfactory solution, the United States Government has decided to control imports in Categories 352/652 for the period beginning on March 28, 1995 and extending through March 27, 1996 at a level of 1,291,118 dozen.

This action is taken in accordance with the Uruguay Round Agreement on Textiles and Clothing and the Uruguay Round Agreements Act.

The United States remains committed to finding a solution concerning Categories 352/652. Should such a solution be reached in consultations with the Government of Turkey, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 16, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 23, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the Categories 352/652, produced or manufactured in Turkey and exported during the period beginning on March 28, 1995 and extending through March 27, 1996, in excess of 1,291,118 dozen [1].

Textile products in Categories 352/652, which have been exported to the United States prior to March 28, 1995 shall not be subject to this directive.

Textile products in Categories 352/652 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

Import charges will be provided at a later date.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–15331 Filed 6–22–95; 8:45 am]

BILLING CODE 3510–DR–F

[1] The limit has not been adjusted to account for any imports exported after March 27, 1995.

Request for Public Comments on Bilateral Textile Consultations on Women's and Girls' Wool Suits

June 19, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Anne Novak (Colombia) and Janet Heinzen (the Philippines), International Trade Specialists, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on categories for which consultations have been requested, call (202) 482–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Under the terms of Article 6 of the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Round Agreements Act, the Government of the United States requested consultations with the Governments of Colombia and the Philippines with respect to women's and girls' wool suits in Category 444.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Governments of Colombia and the Philippines, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of wool textile products in Category 444, produced or manufactured in Colombia and the Philippines and exported during the twelve-month period beginning on May 31, 1995 and extending through May 30, 1996, at levels of not less than 132,420 numbers (Colombia) and 74,874 numbers (the Philippines).

A statement of serious damage concerning Category 444 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 444, or to comment on domestic production or availability of products included in Category 444, is invited to submit 10 copies of such comments or information to Rita D. Hayes, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Governments of Colombia and the Philippines.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Category 444. Should such a solution be reached in consultations with the Governments of Colombia and the Philippines further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Statement of Serious Damage

Women's and Girls' Wool Suits—Category 444

May 1995

The sharp and substantial increase in imports of women's and girls' wool suits, Category 444, is causing serious damage to the U.S. industry producing women's and girls' wool suits.

Category 444 imports increased to 1,125,392 units in the year ending February 1995, 7 percent above the year ending February 1994 level, and 19 percent above the level imported in calendar year 1992.

Serious damage to the domestic industry resulting from the sharp and substantial increase in imports of women's and girls' wool suits is attributed to Colombia and Philippines. The combination of high import levels, surging imports, and low priced goods from these countries have resulted in loss of domestic output, market share, employment, man-hours worked, and total annual wages.

Total imports from these two countries increased from 186,271 units in the year ending February 1994 to 207,294 units in the twelve months ending in February 1995, a sharp and substantial increase of 11 percent. Together their year ending February 1995 imports were 18.5 percent of total Category 444 imports into the U.S during the year ending February 1995,

and were 3.6 percent of total U.S. production of women's and girls' wool suits in 1994.

[FR Doc.95–15386 Filed 6–22–95; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled

ACTION: Additions to the procurement list.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: July 24, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On October 14, 1994, February 10, April 28, and May 5, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (59 F.R. 52145, 60 F.R. 7944, 20971, 22372) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Administrative Services, Department of Veterans Affairs Medical Center, 1500 East Woodrow Wilson Drive, Jackson, Mississippi

Commissary Shelf Stocking, Custodial and Warehousing, Naval Station Everett, Smoky Point Commissary, Marysville, Washington

Dispatcher, Department of Veterans Affairs Medical Center, 7305 N. Military Trail, West Palm Beach, Florida

Facilities Services Support, Missoula Fire Technology Center, (excluding International Fire Sciences Laboratory), Highway 10, Missoula, Montana

Grounds Maintenance, Department of the Army, Television and Audio Support Activities, Mather Air Force Base, California

Janitorial/Custodial, Eisenhower Hall, Fort Leavenworth, Kansas

Janitorial/Custodial, Department of Veterans Affairs Medical Center, Omaha, Nebraska

Operation of Postal Service Center, Department of the Air Force, Hurlburt Field, Florida

Recycling Service, Department of Veterans Affairs Medical Center, 1500 East Woodrow Wilson Drive, Jackson, Mississippi

Scrap Breakdown, Defense Reutilization and Marketing Office, Kelly Air Force Base, Texas.

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–15449 Filed 6–22–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 24, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information. The following commodities and service have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Dog Repellent
6840–01–000–9316
NPA: Lighthouse for the Blind, St. Louis, Missouri at its facility in Berkeley, Missouri

Cleaning Compound, Aircraft Surface
6850–00–005–5305
NPA: Lighthouse for the Blind, St. Louis, Missouri at its facility in Berkeley, Missouri

Organizer, Day Planner, Travel Size
7530–00–D16–0057 (Burgundy)
(Requirements for the Defense Supply Service, Washington, DC)

NPA: Easter Seal Society of Western Pennsylvania, Pittsburgh, Pennsylvania

Service

Grounds Maintenance
Presidio of San Francisco Commissary
San Francisco, California
NPA: Rubicon Programs, Inc.
Richmond, California

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–15450 Filed 6–22–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 24, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Undershirt, Man's, Brown
8420–01–112–1476
8420–01–112–1477
NPA: Mississippi Industries for the Blind, Jackson, Mississippi
BESB Industries,
West Hartford, Connecticut

Services

Food Service Attendant
Naval Air Station
Cecil Field, Florida,
NPA: Goodwill Industries of Central Florida, Orlando, Florida

Janitorial/Grounds Maintenance
Bureau of Engraving and Printing
Fort Worth, Texas
NPA: Development Resources, Inc., San Antonio, Texas

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–15451 Filed 6–22–95; 8:45 am]

BILLING CODE 6820–33–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Availability of Educational Awards to Governor-sponsored National and Community Service Programs

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of educational awards.

SUMMARY: The Corporation for National Service (the Corporation) announces the availability of up to 1,500 educational awards from the National Service Trust, for national and community service programs sponsored by Governors. The Corporation will only provide these educational awards to programs that can support participant and programs costs through sources other than the Corporation; that meet AmeriCorps program requirements; and that are judged to be high quality according to Corporation criteria, as set forth in the application materials. Educational awards-only programs will not count against a State's maximum number of allowable competitive programs.

DATES: Applications may be obtained on or after July 7, 1995. Applications will be evaluated, and decisions made, on a rolling basis in the order in which they are received. The number of applications approved is subject to the availability of funds.

ADDRESSES: Applications may be obtained from and must be submitted to the Corporation at the following address: Corporation for National Service, 1201 New York Avenue NW., Washington, D.C. 20525. This notice may be requested in an alternative format for the visually impaired.

FOR FURTHER INFORMATION CONTACT: For further information and to obtain applications, contact the Corporation for National Service at (202) 606–5000, ext. 474.

SUPPLEMENTARY INFORMATION:

Background

The Corporation is a federal government corporation that engages Americans of all ages and backgrounds in community-based service. This service addresses the nation's educational, public safety, human, and environmental needs to achieve direct and demonstrable results. In doing so, the Corporation fosters civic responsibility, strengthens the ties that bind us together as a people, and provides educational opportunity for those who make a substantial commitment to service.

Pursuant to the National and Community Service Act of 1990, as amended, 42 U.S.C. 12501, et seq. (the Act), the Corporation may "support innovative and model programs, including * * * programs sponsored by governors." 42 U.S.C. 12653(b)(5). In addition, an individual can receive an educational award from the National Service Trust if, among other things, the individual "successfully completes the required term of service * * * in an approved national service position." 42 U.S.C. 12602. The Act defines an approved national service position to include six specific service positions and "such other national service positions as the Corporation considers to be appropriate." 42 U.S.C. 12573.

Because the Corporation's statutory authority for sponsoring these "innovative and model" programs is found in Subtitle H of the Act, rather than Subtitle C, some of the AmeriCorps program requirements found in Subtitle C may not necessarily apply to these programs. However, the Corporation has determined that to maintain the

integrity of the AmeriCorps national service network, these Governor-sponsored programs should in fact be as similar as possible to traditional AmeriCorps programs. Accordingly, the following AmeriCorps program requirements (which are discussed in greater detail in the application) will apply to these programs. Other program, grant, and administrative requirements will be set forth in the application materials.

Program Eligibility and Design

The Corporation will accept applications from a state Governor proposing to sponsor a national service program in his or her state that addresses the unmet education, public safety, human, or environmental needs in the community served, and provides a direct and demonstrable benefit that is valued by the community. The Corporation is looking for high-quality programs that (1) are "getting things done" in communities, (2) strengthen communities, and (3) develop participants. For this educational awards-only initiative, the Corporation seeks to support programs that are innovative and that can support all program and participant costs (other than educational awards) through sources other than the Corporation.

By "getting things done", programs will help their communities meet education, public safety, human or environmental needs through direct and demonstrable service. Programs must be large enough to achieve a demonstrable impact on the community served. Accordingly, the Corporation encourages programs to enroll at least 20 full-time participants, regardless of whether they are placed individually or in teams.

To strengthen communities, programs should engage a full range of local partners to build a self-sustaining commitment to service. To this end, service projects should be designed, implemented, and evaluated with extensive and broad-based local input, such as consultation with representatives of the community served; appropriate community-based agencies; foundations; businesses; local labor organizations representing employees of service sponsors; and local government.

To develop participants, programs should provide appropriate training, education, supervision, and support, and emphasize the ethic and skills needed for productive, active citizenship.

To help promote a national identity for all AmeriCorps programs and Members, programs must agree to identify the program and its Members as part of the Corporation's larger national effort and to participate in activities designed to promote national identity.

The Corporation intends to monitor programs supported through this program to the same extent that it oversees its other programs. Programs will be required to cooperate with the Corporation and its evaluators in all its monitoring and evaluation efforts.

Participant Recruitment, Development and Benefits

Programs must select their participants in a non-partisan, non-political, and non-discriminatory manner. Programs are encouraged to recruit participants who possess leadership potential and a commitment to the goals of national service, regardless of the participant's educational level, work experience, or economic background. In recruiting and placing their participants, programs must not displace any employee or position, or otherwise violate the nondisplacement provisions of the Corporation's regulations, which are published at 45 CFR 2540.100(f). In addition, programs should strive to build strong communities by engaging diverse participants and staff in service activities and encouraging mutual understanding and cooperation. Programs must actively seek to include participants and staff from the communities in which projects are conducted, as well as individuals of different races and ethnicities, education levels, socioeconomic backgrounds, both men and women, and individuals with physical and cognitive disabilities.

Programs must provide participants with the training, skills, and knowledge necessary to perform the tasks required in their respective projects. In addition, programs must provide support services that help participants: (1) who are completing a term of service to make the transition to other educational and career opportunities; and (2) who have not completed their secondary education to earn the equivalent of a high school diploma.

Programs must provide full-time participants with a living allowance of between $7,945 and $15,890 per year. Programs are not required to provide a living allowance to part-time participants, but if they choose to do so, then the living allowance should be prorated according to the number of hours of service per year. Programs that were in existence prior to the signing into law of the National and Community Service Trust Act of 1993 (September 21, 1993) are not required to provide a living allowance to their participants. Such programs that choose to offer a living allowance, however, are exempt from the minimum requirement but not from the maximum requirement (for example, they may offer a living allowance of between $0 and $15,890).

Programs must provide each full-time participant with basic health care coverage if he or she is not otherwise covered by a health care policy that provides certain minimum benefits at the time he or she is accepted into the program. Finally, programs must provide reasonable accommodation, including auxiliary aids and services based on the individualized need of a participant who is a qualified individual with a disability.

Eligibility for the Educational Award

Participants who successfully complete full-time or part-time terms of service are eligible for educational awards for each of up to two terms of service. Full-time participants must serve at least 1700 hours during a period of not less than 9 months and not more than a year. Part-time participants must serve at least 900 hours during a period of not more than two years, except if the part-time participant is enrolled in an institution of higher education while performing some or all of the service, then the individual must perform at least 900 hours of service during a period of not more than three years. Full-time educational awards are $4725 and part-time educational awards are $2362.50.

Prohibited Service

Prohibited activities may not be performed by participants in the course of their duties, at the request of program staff, or in a manner that would associate the activities with the national service program or the Corporation. These activities include:

(1) any effort to influence legislation, as prohibited under section 501(c) of the Internal Revenue Code of 1986 (26 U.S.C. 501);

(2) organizing protests, petitions, boycotts, or strikes;

(3) assisting, promoting, or deterring union organizing;

(4) impairing existing contracts for services or collective bargaining agreements;

(5) engaging in partisan political activities, or other activities designed to influence the outcome of an election to any public office;

(6) engaging in religious instruction, conducting worship services, providing instruction as part of a program that includes mandatory religious educational or worship, constructing or operating facilities primarily or inherently devoted to religious instruction or worship, or engaging in any form of religious proselytization; and

(7) providing a direct benefit to (a) a business organized for profit, (b) a labor union, (c) a partisan political organization, (d) a nonprofit organization that fails to comply with the restrictions contained in section 501(c) of the Internal Revenue Code of 1986, or (e) an organization engaged in the religious activities described in paragraph (6) above, unless Corporation assistance is not used to support those religious activities.

Eligible Applicants

Governors may apply on behalf of the following eligible entities: non-profit organizations, states, subdivisions of states, institutions of higher education. Governors are strongly encouraged to consult with and utilize the assistance of their State Commissions (or Alternative Administrative Entities.)

Extent and Duration of Program Is Subject to the Availability of Funds

The number of educational awards provided to approved programs and the duration of the Governor-sponsored national service programs are subject to the availability of appropriated funds.

Dated: June 20, 1995.

Terry Russell,

General Counsel, Corporation for National Service.

[FR Doc. 95–15461 Filed 6–22–95; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Joint Technology Issues

ACTION: Change in date of advisory committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Joint Technology Issues scheduled for May 30 and June 29, 1995, as published in the **Federal Register** (Vol. 60, No. 96, Page 26722, Thursday, May 18, 1995, FR Doc. 95–12243) will be held on June 26 and July 14, 1995. In all other respects the original notice remains unchanged.

Dated: June 19, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–15353 Filed 6–22–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board 1995 Summer Study Task Force on Technology Investments for 21st Century Military Superiority, Industrial Base Team

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board 1995 Summer Study Task Force on Technology Investments for 21st Century Military Superiority, Industrial Base Team will meet in closed session on July 20–21, 1995 at Science Applications International Corporation, McLean, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense (Acquisition and Technology) on research, scientific, technical, and manufacturing matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will focus on those R&D investments that must be made now so as to assure a technology base in the year 2000 capable of providing U.S. military superiority in the 21st century.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(4) (1988), and that accordingly this meeting will be closed to the public.

Dated: June 19, 1995.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–15354 Filed 6–22–95; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF ENERGY

Extension of the Public Comment Period for the Draft Environmental Impact Statement on a Proposed Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel

AGENCY: Department of Energy.

ACTION: Extension of the public comment period.

SUMMARY: The Department of Energy is extending the public comment period through July 20, 1995, for the draft Environmental Impact Statement (EIS) on a Proposed Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel. All comments received by that date will be considered by the Department in the preparation of the final EIS. Comments received after the close of the comment period will be considered to the extent practicable. The Department had earlier announced (60 FR 19899, April 21, 1995) that the comment period would end on June 20, 1995. Comments can be mailed to Mr. Charles Head, Office of Spent Fuel Management, EM–37, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, D.C. 20585–0001. For more information on the draft EIS please call 1–800–736–3282.

Issued in Washington, D.C. on June 20, 1995.

Mark W. Frei,

Acting Special Associate Deputy Assistant Secretary for Waste Management, Environmental Management.

[FR Doc. 95–15540 Filed 6–22–95; 8:45 am]

BILLING CODE 6450–01–P

Amended Notice of Intent to Prepare an Environmental Impact Statement for the Continued Operation of the Pantex Plant and Associated Storage of Nuclear Weapon Components

AGENCY: Department of Energy.

ACTION: Amended Notice of Intent.

SUMMARY: The Department of Energy (DOE) issued a Notice of Intent for the preparation of a site-wide Environmental Impact Statement (EIS) for the Continued Operation of the Pantex Plant and Associated Storage of Nuclear Weapon Components (59 FR 26635, May 23, 1994). In that notice, alternatives involving the potential relocation of selected Pantex Plant operations to other sites were not fully defined. DOE published an EIS Implementation Plan (DOE/EIS–0225–IP, December 1994) which defined the proposed scope of the EIS and the process of identifying potential alternate sites. DOE has now identified the potential reasonable alternate sites for relocation of selected Pantex Plant operations which will be analyzed in the EIS, and is issuing this amended Notice of Intent to announce these modifications to the scope of the EIS and to solicit public comments regarding these changes.

DATES: DOE invites the general public, other government agencies, and all other interested parties to comment on the amended scope and content of this EIS. DOE is soliciting additional oral and written comments, suggestions, requests for information, and requests for public meetings no later than July 24, 1995. These comments will receive equal consideration to comments presented during the June 1994 scoping period.

Oral Comments

All interested parties are invited to record their comments, suggestions, and requests concerning this EIS by calling the Pantex Plant EIS Hotline at 1–800–788–0306. The Hotline will give instructions on how to record your comments.

Written Comments

Written comments to assist DOE in identifying significant environmental issues and the appropriate scope of this EIS, questions concerning the Pantex Plant or the other sites involved, requests to be placed on the Pantex Plant EIS mailing list, requests for copies of the Implementation Plan, requests to be placed on the EIS distribution list, and requests for public meetings should be directed to: Ms. Nanette Founds, U.S. Department of Energy, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, New Mexico 87185–5400.

Written comments, suggestions, and requests can be submitted using the Pantex Plant EIS Faxline at 1–800–822–5499. Facsimiles should be marked: Pantex Plant EIS.

FOR FURTHER INFORMATION CONTACT: For information on DOE's NEPA process, please contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, 202–586–4600 or 1–800–472–2756.

ADDRESSES: In addition to those locations listed in the original Notice of Intent, copies of all written comments, transcripts of all oral comments, and copies of the Implementation Plan will be prepared and retained by DOE for inspection by the public at the following additional locations:

Pantex SWEIS Public Information Center, c/o Tetra Tech, Inc., 6900 I–40 West, Suite 260, Amarillo, Texas 79106, 806–355–9480

U.S. Department of Energy, Public Reading Room, Washington State University, 100 Sprout Road, Richland, WA 99352, 509–376–8583

SUPPLEMENTARY INFORMATION:

Program Changes

The Implementation Plan (Plan) summarized the comments received during scoping in June 1994, described the scope of the EIS, the alternatives that were planned to be evaluated, and the methodology for preparing the EIS. After publication of the Plan in December 1994, the proposed action and alternatives for relocating some of the Pantex Plant operations were modified. These modifications are described below:

Relocating Pantex Plant Weapons Operations: In the Plan, DOE proposed to analyze the impacts of relocating some or all of the Pantex Plant operations to one or more sites. The Nevada Test Site was identified as the only alternate site for relocation of Pantex operations involving disassembly, modification, maintenance, or quality assurance of nuclear weapons components. Since the publication of the Plan, DOE has begun planning a

Stockpile Stewardship and Management Programmatic EIS (60 FR 31291, June 14, 1995) that will address the nuclear weapons complex requirements in the year 2005 and beyond. One of the anticipated alternatives of this Programmatic EIS is the possible relocation of the Pantex nuclear weapons operations to another site. Any decision on relocation of Pantex nuclear weapons operations will be made in the Record of Decision for the

Stockpile Stewardship and Management Programmatic EIS and not the Pantex site-wide EIS. Therefore, the Pantex site-wide EIS will not examine the impacts at any other site of relocating the Pantex nuclear weapons operations to that site. However, for completeness of analysis, the Pantex site-wide EIS will evaluate the impacts *at Pantex* of relocating these operations to another site. (See Implementation Plan, Section 3.2.3, Option A.)

Relocating Plutonium Pits Interim Storage Operations: The Pantex site-wide EIS will analyze alternatives to the interim storage of plutonium pits from disassembled weapons at Pantex pending decisions on their disposition. Initially, DOE identified four DOE sites as potential alternate pit storage locations pending future site identification activities. These were: The Nevada Test Site; The Savannah River Site in South Carolina; the Oak Ridge Reservation in Tennessee; and the Los Alamos National Laboratory in New Mexico. Based on further examination of more than 70 DOE and Department of Defense (DOD) sites, DOE has modified the list of alternative sites for relocating interim storage of plutonium pits. The Pantex site-wide EIS will now analyze relocating interim pit storage from Pantex to each of the following candidate sites: the Nevada Test Site; the Hanford Reservation, the Savannah River Site, and DOD's Manzano Facility at Kirtland Air Force Base in New Mexico. The Oak Ridge Reservation and the Los Alamos National Laboratory have been eliminated as reasonable interim pit storage sites due to inadequate storage space.

Analysis of Storage of Depleted Uranium: DOE currently ships depleted uranium components from disassembled weapons to the Oak Ridge Reservation for routine processing and storage. The Plan identified four alternate sites for interim storage of depleted uranium components (See Implementation Plan, Section 3.2.3., Option B–3). However, DOE has determined that there are currently no reasonable alternative sites for the receipt of depleted uranium from disassembled weapons in the 5 to 10 year period covered by the Pantex Site-Wide EIS because of the lack of facilities to perform the routine processing (demilitarization or recycling) of this material at any site other than the Oak Ridge Reservation. Therefore, the processing and storage of depleted uranium will not be addressed in the Pantex site-wide EIS.

Potential New Missions: Pantex has been identified as a reasonable alternative location for actions being analyzed in other DOE EISs. Pantex is one of the reasonable alternatives for the proposed new tritium facility in the *Tritium Supply and Recycling Programmatic EIS* (60 FR 14433, March 17, 1995). Pantex is also under consideration for long-term plutonium component storage in the *Long-Term Storage and Disposition of Weapons-Usable Fissile Materials Programmatic EIS* (59 FR 31985, June 21, 1994). In addition, Pantex may be identified as an alternative for other defense missions during preparation of the *Stockpile Stewardship and Management Programmatic EIS.* The Pantex site-wide EIS will consider the potential receipt of such new activities in its cumulative impact analysis; however, decisions on where to locate these new missions will be made on the basis of the programmatic EISs, and not on the basis of the Pantex site-wide EIS.

Subsequent Document Preparation

After the completion of this additional public scoping process, DOE will prepare an addendum to the Implementation Plan and make it available in the public reading rooms. The addendum will record the results of the additional comment period. DOE intends to complete the draft EIS in December 1995 and will announce its availability in the **Federal Register.** DOE will solicit comments from the public, organizations, and other agencies on the draft EIS, and will consider all comments in its preparation of the final EIS.

Issued in Washington, DC, on June 19, 1995.

Tara O'Toole,

Assistant Secretary Environment, Safety and Health.

[FR Doc. 95–15469 Filed 6–22–95; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site Specific Advisory Board, Nevada Test Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Fernald.

DATES: Saturday, July 8, 1995: 8:30 p.m.—12:30 p.m. (public comment session, 11:45 a.m.—12:00 p.m.)

ADDRESSES: The Joint Information Center, 6025 Dixie Highway, Route 4 Fairfield, Ohio.

FOR FURTHER INFORMATION CONTACT: John S. Applegate, Chair of the Fernald Citizens Task Force, P.O. Box 544, Ross, Ohio 45061, or call the Fernald Citizens Task Force message line (513) 648–6478.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities at the Fernald site.

Tentative Agenda

Saturday, July 8, 1995

Final Report Approval

8:30 p.m. Task Force Administration, (Call to order, Approval of Minutes, Chair's Remarks)
8:50 a.m. Identification of Key Comments and Issues, Walk-through Final Report
10:00 a.m. Break
10:15 a.m. Resolution of Key Comments and Issues
11:45 a.m. Opportunity for Public Input
12:00 p.m. Approval of Draft Final Report
12:15 p.m. Wrap Up
12:30 p.m. Adjourn

A final agenda will be available at the meeting, Saturday, July 8, 1995.

Public Participation

The meeting is open to the public. Written statements may be filed with the Task Force chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Task Force chair at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official, Kenneth Morgan, Public Affairs Officer, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to John S. Applegate, Chair, the Fernald Citizens Task Force, P.O. Box 544, Ross, Ohio 45061 or by calling the Task Force message line at (513) 648–6478.

Issued at Washington, DC on June 20, 1995.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–15467 Filed 6–22–95; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site Specific Advisory Board, Nevada Test Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Nevada Test Site.

DATES: Wednesday, July 5, 1995: 5:30 p.m.–9:30 p.m.

ADDRESSES: Community College of Southern Nevada, Cheyenne Campus, Highdesert Conference and Training Center, Room 1422, Las Vegas, NV.

FOR FURTHER INFORMATION CONTACT: Kevin Rohrer, U.S. DOE, Nevada Operations Office, AMEM, P.O. Box 98518, Las Vegas, NV 89193–8518, ph. 702–295–0197 fax 702–295–1810.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The EM SSAB provides input and recommendations to the Department of Energy on Environmental Management Strategic decisions that impact future use, risk management, economic development, and budget prioritization activities.

Tentative Agenda:

Wednesday, July 5, 1995

5:30 p.m.
Call to Order
Review Agenda
Minutes Acceptance
Financial Report
Correspondence
Reports from Committees, Delegates and Representatives
Unfinished Business
New Business
Evaluation of Board and Environmental Restoration and Waste Management Programs
Announcements

9:30 p.m.
Adjournment

If needed, time will be allotted after public comments for old business, new business, items added to the agenda, and administrative details.

A final agenda will be available at the meeting, Saturday, July 8, 1995.

Public Participation: The meeting is open to the public. Written statements may be filed with the Task Force chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Task Force chair at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official, Kenneth Morgan, Public Affairs Officer, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday-Friday, except Federal holidays.

Issued at Washington, DC on June 20, 1995.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–15466 Filed 6–22–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. CP95–563–000]

Florida Gas Transmission Company; Request Under Blanket Authorization

June 19, 1995.

Take notice that on June 15, 1995, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed a prior notice request with the Commission in Docket No. CP95–563–000 pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a new delivery point and realign natural gas volumes at another delivery point under FGT's blanket certificate issued in Docket No. CP82–553–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

FGT proposes to construct and operate a delivery point and meter station on its existing West Leg pipeline in Pasco County, Florida, to serve Peoples Gas System, Inc. (Peoples) with firm and interruptible transportation service pursuant to FGT's FERC Rate Schedules FTS–1 and PTS–1, respectively. FGT also proposes to realign Maximum Daily Transportation Quantities (under Rate Schedule FTS–1) of 2,897 MMBtu to the proposed delivery point from FGT's Eustis Division for the months of October to April, and 370 MMBtu from May to September. FGT states that Peoples would reimburse FGT for the $151,000 estimated construction cost of the new delivery point.

FGT states that its tariff allows additional delivery points and realignment of natural gas volumes. FGT also states that its gas deliveries to Peoples would remain within the currently certificated limits and have no disadvantageous impact on FGT's other existing customers.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15371 Filed 6–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1049–000]

Gateway Energy, Inc.; Notice of Filing

June 19, 1995.

Take notice that on June 12, 1995, Gateway Energy, Inc. tendered for filing an amendment to its May 15, 1995, filing in the above-referenced docket.

Any person desiring to be heard or to protects said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rule 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before June 30, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15374 Filed 6–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ID–2907–000]

General H. Norman Schwarzkopf; Notice of Filing

June 19, 1995

Take notice that on May 25, 1995, General H. Norman Schwarzkopf (Applicant) tendered for filing an application under Section 305(b) of the Federal Power Act to hold the following positions:

Director
The Washington Water Power Company
Director
Kuhlman Corporation

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before June 30, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15377 Filed 6–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–559–000]

Northern Natural Gas Company; Application to Abandon Service

June 19, 1995.

Take notice that on June 14, 1995, Northern Natural Gas Company (Applicant), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP95–559–000 under Section 7(b) of the Natural Gas Act and Section 9 of the Alaska Natural Gas Transportation Act, for authority to abandon service to Pan-Alberta (U.S.) Inc., under an individually certificated exchange agreement. The parties mutually agree to the termination of an exchange agreement for up to 75,000 Mcf/d.

Any person desiring to be heard or make any protest with reference to said application should on or before July 10, 1995, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is

filed within the time required, or if the Commission on its own review of the matter finds that permission and approval of the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advise, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15373 Filed 6–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1146–000]

PacifiCorp; Notice of Filing

June 19, 1995.

Take notice that on June 1, 1995, Portland General Electric Company (PGE) tendered for filing a Certificate of Concurrence to PacifiCorp's filing relating to Amendatory Agreement No. 4 executed by the parties as of May 5, 1995, to the Pacific Northwest Coordination Agreement dated September 15, 1964. Copies of this filing have been served upon each party to the Pacific Northwest Coordination Agreement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before June 28, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15375 Filed 6–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–558–000]

Pan-Alberta Gas (U.S.) Inc.; Application to Abandon

June 19, 1995.

Take notice that on June 14, 1995, Pan-Alberta Gas (U.S.) Inc. (Applicant), 500, 707 Eighth Avenue, S.W., Calgary, Alberta Canada, T2P 3V3, filed pursuant to Section 7(b) of the Natural Gas Act, and Section 9 of the Alaska Natural Gas Transportation Act, for authority to abandon, effective upon the termination of the underlying contract, its firm exchange of up to 75,000 Mcf/d with Northern Natural Gas Company (Northern). The exchange was certificated by the Commission as part of the Alaskan Natural Gas Transportation System prebuild project on December 21, 1989, in Docket No. CP79–396–007. Applicant is submitting this application in conjunction with a related filing by Northern.

Any person desiring to be heard or to protest with reference to said application should on or before July 10, 1995, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required, or if the Commission on its own review of the matter finds that permission and approval of the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15372 Filed 6–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1148–000]

PSI Energy, Inc.; Notice of Filing

June 19, 1995.

Take notice that on May 31, 1995, PSI Energy, Inc. tendered for filing its informational filing for calendar year 1994, pursuant to the orders issued in Docket Nos. EC93–6–000, EC93–6–001 and ER94–1015–000 on August 16, 1993 and October 3, 1994.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before June 30, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15376 Filed 6–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–423–000]

Texas Gas Transmission Corp.; Notice of Informal Settlement Conference

June 19, 1995.

Take notice that informal settlement conferences will be convened in the above-captioned proceeding commencing at 1:00 pm on Wednesday, July 5, 1995, through Thursday, July 6, 1995, and reconvening at 10:00 am Wednesday, July 12, 1995, through Thursday, July 13, 1995, at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE, Washington, D.C., for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to

attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's Regulations (18 CFR 385.214).

For additional information please contact Michael D. Cotleur, (202) 208–1076, or Russell B. Mamone (202) 208–0744.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15378 Filed 6–22–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $10,700,000, plus accrued interest, in alleged crude oil overcharges obtained by the DOE pursuant to a Settlement Agreement entered into by the DOE and Murphy Oil Corp., Murphy Oil USA, Inc. and Murphy Exploration & Production Co., Case No. VEF–0003 (Murphy). The DOE has determined that the funds obtained from Murphy will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986).

DATES AND ADDRESSES: Applications for Refund from the crude oil funds should be clearly labeled "Application for Crude Oil Refunds" and should be mailed to Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., S.W., Washington, DC 20585. Applications for Refund must be filed in duplicate no later than June 30, 1995. Any party who has previously filed an Application for Refund should not file another for the present crude oil funds. The previously filed crude oil application will be deemed filed in all crude oil proceedings as the proceedings are finalized.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Ave., S.W., Washington, DC 20585, (202) 586–2094 (Mann); 586–2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: In accordance with 10 C.F.R. 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures the DOE has formulated to distribute a total of $10,700,000, plus accrued interest, obtained from Murphy pursuant to the Settlement Agreement entered into by Murphy and the DOE. The DOE is currently holding these funds in an interest bearing account, pending distribution.

The OHA will distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986) (the MSRP). Under the MSRP, crude oil overcharge monies are divided among the federal government, the states, and injured purchasers of refined petroleum products. Refunds to the states will be distributed in proportion to each state's consumption of petroleum products during the price control period. Refunds to eligible purchasers will be based on the volume of petroleum products that they purchased and the extent to which they can demonstrate injury.

Applications for Refund must be postmarked no later than June 30, 1995. As we state in the Decision, any party who has previously filed a refund application in the crude oil proceedings should not file another application for refund. The previously filed crude oil application will be deemed filed in all crude oil proceedings as the proceedings are finalized.

Dated: June 15, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

Implementation of Special Refund Procedures

Name of Firm: Murphy Oil Corp./ Murphy Oil USA, Inc.
Date of Filing: October 25, 1994
Case Number: VEF–0003

On October 25, 1994, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA), to distribute $10,700,000 remitted by Murphy Oil Corp., Murphy Oil USA, Inc., and Murphy Exploration & Production Co. (collectively referred to as "Murphy"), pursuant to a Consent Order entered into between Murphy and the DOE on July 15, 1994. In accordance with the procedural regulations codified at 10 C.F.R. Part 205, Subpart V (Subpart V), the ERA requests in its Petition that the OHA establish special procedures to make refunds in order to remedy the effects of alleged regulatory violations which were resolved by the present Consent Order. This Decision and Order sets forth the OHA's plan to distribute these funds.

I. Background

Murphy is a major integrated refiner which produced and sold crude oil and a full range of refined petroleum products during the period of federal price controls. As such, it was subject to the federal petroleum price and allocation regulations. During that time, the ERA conducted an extensive audit of Murphy and issued an Issue Letter to Murphy on September 29, 1976. ERA issued a Notice of Probable Violation to Murphy on January 28, 1981. ERA issued a Proposed Remedial Order (PRO) to Murphy on December 15, 1986, which Murphy contested before the OHA.

On February 9, 1987, Murphy and the DOE entered into a Consent Order which resolved disputes regarding Murphy's refined petroleum product operations during the period the petroleum price and allocation regulations were in effect. See *Murphy Oil Corp.*, 17 DOE ¶ 85,782 (1987) (the first Consent Order). The first Consent Order left the issue of Murphy's alleged violations as a producer of crude oil unresolved. Those issues were decided by the OHA on June 17, 1992 when the OHA issued a modified version of the PRO as a Remedial Order (RO). See *Murphy Oil Corp.*, 22 DOE ¶ 83,005 (1992). Murphy subsequently appealed the OHA's determination to the Federal Energy Regulatory Commission (FERC). On January 24, 1994, a FERC Administrative Law Judge (ALJ) issued a Decision and Proposed Order (D&PO) which modified the RO. See *Ocean Drilling & Exploration Co., et al.*, 66 FERC ¶ 63,002 (1994).

On July 15, 1994, Murphy and the DOE entered into the present Consent Order. This second Consent Order, which does not modify or affect the terms of the first Consent Order, resolves all existing or potential civil and administrative claims against Murphy for alleged violations of the federal petroleum price and allocation regulations left unresolved by the first Consent Order. Under the terms of this second Consent Order, Murphy has remitted $10,700,000 to the DOE, and all outstanding or potential crude oil overcharge claims by the DOE against Murphy have been settled. These funds are being held in an interest-bearing escrow account maintained at the Department of the Treasury pending a determination regarding their proper distribution.

II. Jurisdiction and Authority

The Subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. The DOE policy is to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, *see* The Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07; *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

III. The Proposed Decision and Order

We considered the ERA's Petition that we implement a Subpart V proceeding with respect to the Murphy funds and, on December 12, 1994, we issued a Proposed Decision and Order (PDO) setting forth the tentative plan to distribute these funds. *See* 59 FR 65332 (December 19, 1994). In the PDO, we proposed to distribute the Murphy funds in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 Fed. Reg. 27899 (August 4, 1986) (the MSRP). The MSRP was issued as a result of the Stripper Well Settlement Agreement. *In re: The Department of Energy Stripper Well Exemption Litigation*, 653 F. Supp. 108 (D. Kan.), 6 Fed. Energy Guidelines ¶ 90,509 (1986). Under the MSRP, 40 percent of the crude oil overcharge funds will be remitted to the federal government and 40 percent to the states for indirect restitution, and up to 20 percent may be initially reserved for direct restitution to injured parties. Any money remaining after all valid claims by injured parties are paid will be disbursed to the federal government and the states in equal amounts.

We received two comments on the PDO. The first comment was submitted by the Controller of the State of California (Controller). The second comment was submitted by Utilities, Transporters and Manufacturers (UTM), a consortium of six utilities, fourteen transporting companies, and five manufacturers. Both address the issue of royalties paid by Murphy to the federal government under its lease agreements to produce crude oil from federal lands.[1]

A. The Royalty Issue

As part of its operations, Murphy leased land from the United States and paid royalties to the United States Geological Survey of the Department of the Interior (USGS) on all crude oil produced from federal lease areas. During the Murphy enforcement proceedings, Murphy claimed that the United States had benefited from the overcharges through increased royalty payments (since royalty payments are based on the sale price of crude produced from leased federal land). Accordingly, Murphy argued, the amount of any overcharges assessed against Murphy should be reduced by the amount of royalties paid to prevent the United States from enjoying a double recovery. *Murphy Oil Corp.*, 22 DOE ¶ 83,005 at 86,097. While the OHA rejected this argument, the FERC ALJ found that the argument had merit. The ALJ ordered the OHA to reconsider the issue on remand and determine to what extent the United States benefited from the overcharges through increased royalty payments, and to reduce Murphy's overcharges accordingly. *Ocean Drilling & Exploration Co., et al.*, 66 FERC ¶ 63,002 at 65,027–29.

The second Murphy Consent Order eliminated the need to make any such determination, since it settled all claims by the DOE against Murphy in exchange for one lump sum payment. In its announcement of the Proposed Consent Order, the ERA listed the royalty issue as one of the matters addressed and settled by the agreement between Murphy and the DOE. Announcement of Proposed Consent Order with Murphy Oil Corporation, Murphy Oil USA, Inc., and Murphy Exploration & Production Co., 59 FR 38169, at 38170 (July 27, 1994).

In response to the Proposed Consent Order, the Controller and UTM submitted comments asking that, if the ERA accepted an offset from the alleged overcharges based on FERC's determination on the royalty issue, the ERA identify the amount of money in the settlement set aside as royalty payments. UTM and the Controller further stated that this amount should not be subject to the usual division of funds between the federal government, the states, and individual claimants, as set forth in the MSRP. Instead, they argued that the amount attributable to the royalty issue should be divided exclusively between the states and individual claimants to prevent any sort of "double recovery" by the federal government. For a more detailed discussion of their comments, see Announcement of Final Consent Order with Murphy Oil Corporation, Murphy Oil USA, Inc. and Murphy Exploration & Production Company, 59 Fed. Reg. 47315 (September 15, 1994) (Final Consent Order Notice). In considering these comments, the ERA stated that it would be difficult to set a dollar value on the amount attributable to the royalty issue.[2] The ERA also stated that consideration of any comments regarding the division of funds should wait until the implementation of the Subpart V process. Accordingly, the Controller and UTM have filed comments with us after the publication of the PDO in the **Federal Register.**

B. Comments of the Controller and UTM

Both the Controller and UTM argue that none of the Murphy Consent Order fund attributable to the royalty issue should be disbursed to the federal government for indirect restitution under the MSRP. In addition, since the ERA did not set a value on the royalty issue in the Final Consent Order Notice, UTM proposes its own formula for determining the percentage of the Murphy funds attributable to the royalty issue.

C. Analysis of Comments

As explained below, we find no merit in the Controller's and UTM's arguments that we should alter the normal formula set forth in the MSRP for the disbursement of funds in this proceeding.

The Controller asserts that, by compromising with Murphy on the royalty issue in the final Consent Order, the ERA reduced the amount of the settlement. The Controller argues that, in so doing, ERA had, in effect, acted to reduce the potential amount of restitutionary funds available to the states and individual claimants. Controller Comments at 1. The Controller maintains that this is inequitable in light of the determination of the FERC ALJ that the federal government may have benefited from the overcharges through the royalties. The Controller therefore asks us to deny the federal government the right to receive any money attributable to the royalty issue, so that the states and individual claimants "are not required to bear this burden out of their share of the refund." *Id.* at 2.

UTM's position is also based on the issue raised by the FERC ALJ that the federal government, through the royalty payments made to the USGS, may have benefited from the overcharges. UTM

[1] UTM also commented, without elaboration, upon the Subpart V proceedings as a whole. We have previously considered these comments at length and rejected them. We therefore do not discuss them again here. See *Permion Corp.*, 23 DOE ¶ 85,034 (1993); *Seneca Oil Co.*, 21 DOE ¶ 85,327 (1991).

[2] However, in two footnotes, the ERA indicated that the value could be $341,798, or 3.2% of the total. Final Consent Order Notice at 47316 n.3, 47317 n.5.

Comments at 3. According to UTM's theory, we should regard the royalty payments as "an advance payment of restitution to the U.S. Treasury." *Id.* Therefore, UTM argues, the federal government should receive none of the money attributable to the royalty issue, in order to preserve the 40:40:20 ratio set forth in the Stripper Well Settlement Agreement and the MSRP.[3]

We reject these arguments to change the disbursement of the Murphy Consent Order funds from the formula set forth in the Stripper Well Settlement Agreement. Under the statute and regulations governing the litigation between Murphy and the DOE, the final Consent Order is a final Order of the DOE which is not subject to administrative appeal. See Department of Energy Organization Act, section 503, 42 U.S.C. 7193; 10 C.F.R. 205.199B. It therefore supersedes the determination of the FERC ALJ and forecloses further inquiry into the issue of whether, and to what extent, the federal government may have benefited from the alleged Murphy overcharges through the royalties paid to USGS. We instead rely on the ERA's statement that "it is neither practical nor appropriate to quantify the portion of the $10.7 million proposed settlement sum that exceeds the $5.2 million in restitution under the D&PO that can be ascribed to the royalty payment issue." Final Consent Order Notice, 59 FR 47315, 47316. As the Court of Appeals recently noted in *Mullins* v. *DOE*, No. 93–1424 (Fed. Cir. March 25, 1995), *petition for rehearing en banc denied* (June 8, 1995), the OHA may rely on ERA's statements about overcharges compromised in settlements when implementing Subpart V refund procedures.

Furthermore, contrary to the Controller's assertion, the ERA did not disturb the "inviolate" allocation of the crude oil restitutionary funds by agreeing to settle the Murphy crude oil overcharge litigation. The disbursement of crude oil overcharge funds is based on the total amount of funds collected by the DOE in its enforcement proceedings and then turned over to the OHA for distribution through Subpart V proceedings. It is not based on the potential amount of funds that the DOE could have obtained if it successfully litigated every claim to finality. The ERA correctly noted that the royalty issue was one of the litigation risks which could justifiably be compromised in settlement. See Final Consent Order Notice at 47315, 47317. As courts have noted in the past, Consent Orders result from a process in which each party "gives up something it might have won in litigation." *Consumer Energy Council* v. *Duncan*, No. CA 80–2570 (D.D.C. April 1, 1981), 3 Fed. Energy Guidelines ¶ 26,314 (1981) (*CEC*). Consent Order negotiations, therefore, fall entirely within ERA's prosecutorial discretion. *Id.* See also *Payne 22, Inc.*, 762 F.2d 91 (1985) (Court review of DOE Consent Orders would result "in chaos"). If we followed the Controller's logic to its natural conclusion, the OHA could never rely on an ERA Consent Order. Instead, the OHA would need to determine what ERA could conceivably have won in completely successful litigation and deduct the amount of any compromise from the federal share of any crude oil refund disbursement under the MSRP. This notion is patently absurd. It would run counter to the considerations of administrative efficiency underlying ERA's settlement authority, and impose an impossible burden on DOE's limited resources. *CEC*, 3 Fed. Energy Guideline at 28,417.

We do not, however, rely solely on these considerations in rejecting the Controller's and UTM's comments on the proper disbursement of funds. We reject the suggested disbursement changes because they stem from a misunderstanding of the federal government's role in the disbursement of funds for indirect restitution. Our recent holding in *Defense Logistics Agency*, 24 DOE ¶ 85,134 (1995) (*DLA*) is relevant here. As we stated in *DLA*, the federal government is not seen as a monolithic entity for the purposes of refund proceedings. Its role in the division of funds is entirely separate from the role of individual agencies as consumers of petroleum products or, in the case of USGS, as a collector of royalties for crude oil produced on federal land. "[T]he division of monies between the federal government and the states pursuant to the terms of the Settlement Agreement arose as a function of their role as *parens patriae*, as stand-ins for their citizens who, though unidentified, were nonetheless injured by the crude oil overcharges." *Id.* at 88,415. In other words, the federal government's 40 percent share of crude oil monies for indirect restitution under the MSRP is not paid to compensate the federal government for any injuries from petroleum overcharges. It is paid to the federal government so that the federal government can compensate the mass of unidentified citizens who all suffered to some degree from the overcharges.

The federal government and the states also have other, different roles in the process. For example, we have held that state and federal agencies may receive refunds as end-users in refund proceedings because their role as purchasers and consumers is entirely separate from their role in providing indirect restitution to their citizens. *Id.*; *City of Burbank*, 19 DOE ¶ 85,169 (1989) (No double recovery "is presented by a state serving as a conduit for indirect restitution on behalf of its citizens, while at the same time receiving direct restitution in its own right for petroleum product purchases."); *Metropolitan Atlanta Rapid Transit Authority*, 17 DOE ¶ 85,243 (1988); *Chicago Transit Authority*, 17 DOE ¶ 85,223 (1988). Pursuant to this reasoning, we have granted direct refunds to a number of states based on their purchases of petroleum products. *See, e.g., The Commonwealth of Massachusetts*, 22 DOE ¶ 85,002 (1992); *State of Minnesota*, 21 DOE ¶ 85,342 (1991); *State of Tennessee*, 21 DOE ¶ 85,334 (1991); *State of New Hampshire*, 21 DOE ¶ 85,234 (1991); *State of Arkansas*, 20 DOE ¶ 85,741 (1990). Similarly, any benefit USGS received from the alleged overcharges through the royalties has no effect upon the disbursement of the Murphy funds to the federal government for indirect restitution.

In addition, if we accepted UTM's argument that we consider royalty payments to the USGS as an advance payment of restitution, we would need to apply the same principle to the states. Several states have leasing provisions for state-owned land which require payments of royalties on mineral rights. To apply this principle consistently, we would be forced to revisit each crude oil overcharge proceeding in which we have disbursed money to the states, determine if the funds came from a firm which paid royalty payments to any state, and retroactively deduct that amount from our disbursement to the states in question. Such a scheme would be hopelessly complex, particularly at this late date, and we would refuse to adopt UTM's arguments for this reason alone.

In conclusion, we reject UTM's argument that we depart from the disbursement of funds set out in the MSRP and the Stripper Well Agreement. Whether one agency of the federal government arguably received some benefit from the alleged overcharges is immaterial to the right of all United States citizens to receive indirect restitution through the 40 percent share of the Murphy Consent Order fund deposited in the United States Treasury under the MSRP. In addition, principles of administrative efficiency would provide ample reason not to deviate from our established policy and begin a lengthy examination into the question of which states received royalty payments from crude oil producers, how much the states may have benefited from these royalties, and whether to rescind refunds already made to them. Accordingly, we have decided that we will not alter the formula.

[3] In view of our determination not to alter the distribution of funds from the formula in the MSRP, there is no need to discuss UTM's suggested method of estimating the percentage of the Murphy funds attributable to the royalty issue.

IV. The Refund Procedures

A. Crude Oil Refund Policy

As explained above, we will distribute the Murphy funds in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986) (the MSRP). As noted above, the MSRP establishes that 40 percent of the crude oil overcharge funds will be remitted to the federal government, another 40 percent to the states, and up to 20 percent may initially be reserved for the payment of claims by injured parties. The MSRP also specifies that any monies remaining after all valid claims by injured purchasers are paid be disbursed to the federal government and the states in equal amounts. The OHA has utilized the MSRP in all Subpart V proceedings involving alleged crude oil violations. See Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). This Order provided a period of 30 days for the filing of comments or objections to our proposed use of the MSRP as the groundwork for evaluating claims in crude oil refund proceedings. Following this period, the OHA issued a Notice evaluating the numerous comments which it received pursuant to the Order Implementing the MSRP. This Notice was published at 52 FR 11737 (April 10, 1987) (the April 10 Notice).

The April 10 Notice contained guidance to assist potential claimants wishing to file refund applications for crude oil monies under the Subpart V regulations. Generally, all claimants would be required to (1) document their purchase volumes of petroleum products during the August 19, 1973 through January 27, 1981 crude oil price control period, and (2) prove that they were injured by the alleged crude oil overcharges. We also specified that end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to have been injured by the alleged crude oil overcharges and need not submit any additional proof of injury beyond documentation of their purchase volumes. See *City of Columbus, Georgia*, 16 DOE ¶ 85,550 (1987). Additionally, we stated that crude oil refunds would be calculated on the basis of a per gallon (or "volumetric") refund amount, which is obtained by dividing the crude oil refund pool by the total consumption of petroleum products in the United Sates during the crude oil price control period. The OHA has adopted the refund procedures outlined in the April 10 Notice in numerous cases. See, *e.g., Texaco, Inc*, 19 DOE ¶ 85,200 (1989); *Shell Oil Co.*, 17 DOE ¶ 85,204 (1988) (*Shell*); *Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986) (*Mountain Fuel*).

B. Refund Claims

We adopt the DOE's standard crude oil refund procedures to distribute the monies remitted by Murphy. We have chosen initially to reserve 20 percent of the fund, plus accrued interest, for direct refunds to claimants in order to ensure that sufficient funds will be available for injured parties. This reserve figure may later be reduced if circumstances warrant.

The OHA will evaluate crude oil refund claims in a manner similar to that used in Subpart V proceedings to evaluate claims based on alleged refined product overcharges. See *Mountain Fuel*, 14 DOE at 88,869. Under these procedures, claimants will be required to document their purchase volumes of petroleum products and prove they were injured as a result of the alleged violations.

We adopt a presumption that the alleged crude oil overcharges were absorbed, rather than passed on, by applicants which were (1) end-users of petroleum products, (2) unrelated to the petroleum industry, and (3) not subject to the regulations promulgated under the Emergency Petroleum Allocation Act of 1973 (EPAA), 15 U.S.C. 751–760h. In order to receive a refund, end-user claimants need not submit any evidence of injury beyond documentation of their purchase volumes. See *Shell*, 17 DOE at 88,406.

Petroleum retailer, reseller, and refiner applicants must submit detailed evidence of injury, and they may not rely upon the injury presumptions utilized in refined product cases. *Id.* These applicants, however, may use econometric evidence of the type found in the *OHA Report on Stripper Well Overcharges*, 6 Fed. Energy Guidelines ¶ 90,507 (1985). See also PODRA section 3003(b)(2), 15 U.S.C. § 4502(b)(2). If a claimant has executed and submitted a valid waiver pursuant to one of the escrows established by the Stripper Well Settlement Agreement, it has waived its rights to file an application for Subpart V crude oil refund monies. See *Mid-America Dairymen* v. *Herrington*, 878 F.2d 1448 (Temp. Emer. Ct. App.), 3 Fed. Energy Guidelines ¶ 26,617 (1989); *In re: Department of Energy Stripper Well Exemption Litigation*, 707 F. Supp. 1267 (D. Kan.), 3 Fed Energy Guidelines ¶ 26,613 (1987).

As has been stated in prior Decisions, a crude oil refund applicant will only be required to submit one application for its share of all available crude oil overcharge funds. See, *e.g., A. Tarricone, Inc.*, 15 DOE ¶ 85,495 (1987). A party that has already submitted a claim to any other crude oil refund proceeding implemented by the DOE need not file another claim. The prior application will be deemed to be filed in all crude oil refund proceedings finalized to date. The final deadline for the crude oil refund proceeding is June 30, 1995. It is the policy of the DOE to pay eligible crude oil refund claimants at the rate of $0.0016 per gallon. We will decide after the resolution of a few outstanding enforcement proceedings whether sufficient funds are available for additional refunds.

To apply for a refund, a claimant should submit an Application for Refund containing the information specified by the OHA in past Decisions. See, *e.g., Permian Corp.*, 23 DOE ¶ 85,034 (1993); *Hood Goldsberry*, 18 DOE ¶ 85,902 (1989). All applications must be postmarked no later than June 30, 1995 and sent to: Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585

Although an applicant is not required to use any specific form for its crude oil refund application, a suggested form has been prepared by the OHA and may be obtained by sending a written request to the address listed above.

C. Payments to the Federal Government and the States

Under the terms of the MSRP, we have determined that the remaining 80 percent of the Murphy funds, plus accrued interest, should be disbursed in equal shares to the states and the federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Settlement Agreement, 6 Fed. Energy Guidelines ¶ 90,509 at 90,687. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Settlement Agreement.

It Is Therefore Ordered That:

(1) Applications for Refund from the crude oil overcharge funds remitted by Murphy Oil Corp./Murphy Oil USA, Inc., may now be filed.

(2) All Applications submitted pursuant to paragraph (1) must be filed in duplicate and postmarked no later than June 30, 1995.

(3) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller of the Department of Energy shall take all steps necessary to transfer $10,700,000, plus all accrued interest, from the Murphy subaccount (Account No. RMUC01994W) pursuant to Paragraphs (4), (5), and (6) of this Decision.

(4) The Director of Special Accounts and Payroll shall transfer $4,280,000 (plus interest) of the funds obtained pursuant to Paragraph (3) above into the subaccount denominated "Crude Tracking-States," Number 999DOE003W.

(5) The Director of Special Accounts and Payroll shall transfer $4,280,000 (plus interest) of the funds obtained pursuant to Paragraph (3) above into the subaccount denominated "Crude Tracking-Federal," Number 999DOE002W.

(6) The Director of Special Accounts and Payroll shall transfer $2,140,000 (plus interest) of the funds obtained pursuant to Paragraph (3) above into the subaccount denominated "Crude Tracking-Claimants 4," Number 999DOE010Z.

Date: June 15, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 95–15465 Filed 6–22–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5226–2]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before July 24, 1995.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, please refer to EPA ICR # 0143.05.

SUPPLEMENTARY INFORMATION:

Office of Prevention, Pesticides and Toxic Substances

Title: Recordkeeping Requirements for Producers of Pesticides (EPA ICR No.: 0143.05; OMB No.: 2070–0028). This is a request for an extension of the expiration date of a currently approved collection.

Abstract: This collection requires producers of pesticides to maintain records related to production and other operations. EPA may inspect these records to determine compliance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Producers themselves may use the records to fulfill various FIFRA-mandated reporting requirements.

Burden Statement: The estimated annual recordkeeping burden for this collection of information is an average of 2 hours per pesticide producer. This estimate includes the time needed to review instructions, plan activities, gather information, process and review for accuracy, and store and maintain the information.

Respondents: Pesticide producers.

Estimated No. of Respondents: 12,700.

Estimated No. of Responses per Respondent: 0 (Recordkeeping only).

Estimated Total Annual Burden on Respondents: 25,400 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, (please refer to EPA ICR # 0143.05 and OMB # 2070–0028) to:

Sandy Farmer, EPA ICR # 0143.05, U.S. Environmental Protection Agency, Regulatory Information Division—2136, 401 M Street, S.W., Washington, D.C. 20460.

and

Tim Hunt, OMB # 2070–0028, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, N.W., Washington, D.C. 20503.

Dated: June 19, 1995.

Richard Westlund,

Acting Director for Regulatory Information Division.

[FR Doc. 95–15432 Filed 6–22–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5226–5]

Proposed Stipulation of Settlement; NO_X Waivers for Clean Air Act Conformity Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed stipulation; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act (Act), notice is hereby given of a proposed stipulation of partial settlement in litigation instituted against the Environmental Protection Agency (EPA) challenging EPA's rules on determining conformity of federal actions to State Implementation Plans (SIPs). The Environmental Defense Fund (EDF) and several other environmental groups challenged numerous aspects of EPA's transportation and general conformity rules issued under section 176(c) of the Act (58 FR 62,188 (Nov. 24, 1993); 58 FR 63,214 (Nov. 30, 1993)). *EDF et al. v. EPA, et al.*, D.C. Cir. No. 94–1044 and consolidated cases.

EPA is currently reconsidering various provisions of these regulations, including some of those under challenge by EDF. The parties to the litigation agree that judicial consideration of the issues under reconsideration by EPA should be stayed pending EPA action with respect to any changes to those provisions.

One of the provisions under reconsideration by EPA is EPA's authority to issue exemptions from interim conformity requirements for NO_X emissions under the authority of section 182(f) of the Act. EPA proposes to enter into a stipulation with EDF in which EPA will commit not to use the authority of the conformity regulations to sign any conformity waivers under section 182(f) of the Act for areas subject to section 182(b)(1) of the Act from April 20, 1995 until EPA takes final action completing the reconsideration of the conformity regulations with respect to this issue. In addition, if EPA grants any conformity waivers during the period described above as to areas not subject to 182(b)(1) and the regulatory provisions relied upon in issuing such waivers are reversed by the court, EPA agrees to reconsider any such waivers within six months following such court determination.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed modification of the stipulation of settlement. EPA or the Department of Justice may withhold or withdraw

consent to the proposed modification if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

Copies of the proposed stipulation are available from Sara Schneeberg, Air and Radiation Division (2344R), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (703) 235–5332. Written comments should be sent to Sara Schneeberg at the above address and must be submitted on or before July 24, 1995.

Dated: June 14, 1995.

Jean C. Nelson,

General Counsel.

[FR Doc. 95–15437 Filed 6–22–95; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–4724–2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075.

Weekly receipt of Environmental Impact Statements Filed June 12, 1995 Through June 16, 1995 Pursuant to 40 CFR 1506.9.

EIS No. 950255, FINAL EIS, GSA, AZ, Phoenix Federal Building—United States Courthouse, Site Selection and Construction within a portion of the Central Business District, City of Phoenix, AZ, Due: July 24, 1995, Contact: Alan R. Campbell (415) 744–5252.

EIS No. 950256, FINAL EIS, GSA, WA, Seattle Federal Courthouse Building (Project # ZWA 81061), Implementation, Site Selection, Construction and Operation, King County, WA, Due: July 24, 1995, Contact: Donna M. Meyer (206) 931–7675.

EIS No. 950257, DRAFT EIS, FHW, NY, I–287 Cross Westchester Expressway (CWE) Transportation Improvements, New York State Thruway Route-303 to Route-120, Funding, Right-of-Way Acquisition, COE Section 10 and 404 Permits, Rockland and Westchester Counties, NY, Due: August 07, 1995, Contact: Vin Tabor (518) 431–4126.

EIS No. 950258, FINAL EIS, AFS, CO, Loveland Ski Area Master Development Plan, Implementation, Arapaho National Forest, Clear Creek Ranger District, Clear Creek County, CO, Due: July 24, 1995, Contact: Sue Greenley (303) 567–2901.

EIS No. 950259, FINAL EIS, DOE, WA, ID, NV, MT, UT, OR, CA, AZ, WY, NM, Business Plan to Operate Electric Utility Market, Transmission Services and Fish and Wildlife Activities, Funding and Implementation, WA, OR, ID, CA, NV, AZ, MT, WY, UT, NM and British Columbia, Due: July 24, 1995, Contact: Carol M. Borgstrom (800) 472–2756.

EIS No. 950260, FINAL EIS, AFS, VT, Mad River Water Withdrawal and Sugarbush South Snowmaking and Trail Improvement Project, Approval, Special-Use and COE Section 404 Permits Issuance, Green Mountain National Forest, Washington County, VT, Due: July 24, 1995, Contact: Sam Emmons (802) 747–6757.

EIS No. 950261, DRAFT EIS, BLM, WY, Jackpot Underground Uranium Mine Project, Construction and Operation, Plan of Operation Approval, NPDES Permit and COE Section 404 Permit, Fremont and Sweetwater Counties, WY, Due: August 22, 1995, Contact: Larry Kmoch (307) 324–7171.

EIS No. 950262, FINAL EIS, AFS, ID, Grays Ranger Timber Sales, Implementation, Caribou National Forest, Soda Springs Ranger District, Caribou County, ID, Due: July 24, 1995, Contact: Anthony A. Varibre (208) 547–4356.

EIS No. 950263, FINAL EIS, AFS, Red-Cockaded Woodpecker (RCW) (Picoides borealis) Repopulation and Habitat Areas Management Implementation, National Forests in the Southern Region, Due: July 24, 1995, Contact: Dennis L. Krusac (404) 347–4338.

EIS No. 950264, FINAL EIS, USN, SC, Charleston Naval Base Disposal and Reuse, Implementation, Charleston and Dorchester Counties, SC, Due: July 24, 1995, Contact: William Sloger (803) 743–0797.

Amended Notices

EIS No. 950082, DRAFT EIS, AFS, PR, Caribbean National Forest Land and Resource Management Plan, Implementation, PR, Due: July 17, 1995, Contact: Pablo Cruz (809) 766–5335. Published FR 03–17–95—Review period extended.

EIS No. 950170, DRAFT EIS, FHW, WI, US 12 Highway Improvement, Sauk City to Middleton, Funding and COE Section 404 Permits Issuance, Sauk and Dane Counties, WI, Due: July 17, 1995, Contact: Richard Madrzak (608) 264–5968. Published FR—05–05–95 Review period extended.

EIS No. 950177, DRAFT SUPPLEMENT, COE, TX, OK, Red River Chloride Control Project, Construction and Operation Methods, Updated and Additional Information, several counties TX and OK, Due: July 05, 1995, Contact: David L. Combs (918) 669–7188. Published FR 03–17–95—Review period extended.

EIS No. 950238, FINAL EIS, SFW, NV, Desert Tortoises (Gopherus Agassizii) Habitat, Issuance of Permit to Allow Incidental Take, Federal Land and Non-Federal Land, Clark County, NV, Due: July 10, 1995, Contact: Al Pfister (503) 231–6241. Published 6–09–95—Telephone Number Correction.

Dated: June 20, 1995.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–15472 Filed 6–22–95; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–4724–3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 15, 1995 Through May 19, 1995 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 1995 (60 FR 19047).

Draft EISs

ERP No. D–AFS–K65240–CA Rating EC2, Barkley Fire Salvage Sale, Implementation, Lower Deer Creek Management Area, Lassen National Forest, Almanor Ranger District, Tehama County, CA.

Summary: EPA expressed environmental concerns because the draft EIS does not sufficiently describe impacts to water quality, air quality and biodiversity—including plant species and wildlife.

ERP No. D–AFS–L60101–ID Rating EC2, Secesh River Subdivision Access Roads, Implementation, Special-Use-Permit, Idaho County, ID.

Summary: EPA expressed environmental concerns based on potential water quality impacts, specifically potential affects on Snake River chinook salmon, and no cumulative effects issues in the South Fork Salmon River Special Management Area.

ERP No. D–AFS–L65241–ID Rating EC2, Fish Bate Timber Sale, Implementation, North Fork Clearwater River, Clearwater National Forest, North

Fork Ranger District, Clearwater County, ID.

Summary: EPA expressed environmental concerns and is particularly concerned with the effects of timber harvest on fisheries in Sheep Creek, Sneak Creek and Bates Creek.

ERP No. D–COE–K36111–CA Rating EC2, Santa Paula Creek Flood Control Project, Improvements, Right-of-Way Grant, Ventura County, CA.

Summary: EPA expressed environmental concerns that the proposed action could further diminish the aquatic and streamside habitat by eliminating a reach of natural streambed. EPA recommended that the final EIS examine alternative designs which incorporate natural stream processes and promote habitat restoration, and reevaluate mitigation measures to ensure that impacts to wildlife and aquatic resources are fully offset.

ERP No. D–FHW–K40210–AZ Rating EC2, Pima Freeway—Loop 101, Construction, I–17 and Scottsdale Road, Funding, NPDES and COE Section 404 Permits, Maricopa County, AZ.

Summary: EPA expressed environmental concerns regarding air quality impacts, Environmental Justice, and floodplain management. EPA asked FHWA to provide more information in the Final EIS regarding CO microscale analysis, cumulative impacts, and also neighborhood demographics.

ERP No. D–IBR–A39137–00 Rating EO2, Acreage Limitation and Water Conservation Rules and Regulations, Revised and/or New Rules for Replacement and Expansion of Existing Rules pertaining to the Administration of the Reclamation Reform Act of 1982, Implementation in Seventeen Western States.

Summary: EPA expressed environmental objections over the limited analysis of alternatives that could promote a more environmentally protective allocation of water, and requested that the final EIS more fully explore opportunties for using conserved water for insteam purposes.

ERP No. D–USN–K11050–HI Rating EC2, Bellows Air Force Station Land Use and Development Plan, Implementation, Waimanalo, HI.

Summary: EPA requested additional data on wetlands and biological resources, identification of mitigation measures; and further discussion of cumulative impacts.

ERP No. DS–COE–K36009–CA Rating EO2, Napa River Flood Control Project, Updated Information, Flood Improvement, City of Napa, Napa County, CA.

Summary: EPA expressed environmental objections due to the potential for significant degradation of valuable riparian habitat. EPA requested that the final document provide greater detail on potential water quality impacts, impacts from upland sediment disposal, hazardous waste management, cumulative impacts and mitigation for impacts to wetland areas. EPA also requested that the final document include a discussion of non-structural alternatives.

FINAL EISs

ERP No. F–AFS–K65156–CA Shasta-Trinity National Forests Land and Resource Management Plan, Implementation, Humboldt, Modoc, Shasta, Siskiyou, Tehama and Trinity Counties, CA.

Summary: EPA expressed continuing concern with the adequacy of the opportunity for the public to thoroughly review the final LRMP/FEIS and the lack of detailed analysis of environmental consequences. Of specific concern is the minimal discussion of air quality, biodiversity, cumulative impacts, and mitigation measures.

ERP No. F–AFS–K65166–CA Cottonwood Fire Restoration Project, Implementation, Tahoe National Forest, Sierraville Ranger District, Sierra County, CA.

Summary: EPA expressed environmental objections with the projected adverse impact to water quality, particularly in watersheds with very high Threshold of Concern (TOC) levels and/or significant increments in erosion due to the project. The Record of Decision should commit to monitoring and mitigation necessary to demonstrate that Water Quality Standards and beneficial uses will be fully protected in all watersheds, consistent with the Clean Water Act.

ERP No. F–AFS–L65236–OR Santiam Pass Forest Health Project, Implementation, Willamette National Forest, McKenzie Ranger District, Linn County, OR.

Summary: Review of the final EIS has been completed and the project found to be environmentally satisfactory. No formal comment letter was sent to the preparing Agency.

ERP No. F–BLM–K67027–AZ Cypus Tohono Open Pit Mine Expansion Project, Plan of Operation Approval and Drilling Permit, Implementation, Tohono O'odham Nation, Papago Indian Reservation, Pinal County, AZ.

Summary: EPA expressed environmental concerns about the need for additional information regarding acid drainage potential, a discussion of the impacts and necessary measures to mitigate impacts to waters of the U.S. pursuant to Clean Water Act Section 404, and project monitoring. EPA recommended that these issues be resolved before BLM signs a Record of Decision.

ERP No. F–COE–C30009–NJ Atlantic Coast of New Jersey, Beach Erosion Control Project, Implementation, Sandy Hook to Barnegat Inlet within the Borough of Asbury Park to Manasquan, Monmouth County, NJ.

Summary: EPA commented that the final EIS adequately addressed EPA's concerns, and it does not object to implementation of the project.

ERP No. F–FHW–G40133–OK OK–99/OK–3E/US 377 North of Ada Transportation Corridor Reconstruction, Funding, COE Section 404 and NPDES Permits, Pontotoc and Seminole Counties, OK.

Summary: Review of the final EIS has been completed and the project found to be environmentally satisfactory. No formal comment letter was sent to the preparing Agency.

ERP No. F–FHW–J40126–MT US 2 Reconstruction, Columbia Heights to Hungry Horse, Funding, Land Transfer and COE Section 404 Permit, Flathead County, MT.

Summary: EPA expressed environmental concerns regarding the potential for the preferred alternative to hasten or induce changes in the pattern of land use, population density or growth rate in the Canyon area which may result in adverse effects to water, wetlands, wildlife habitat, and other natural and environmentally sensitve areas in undeveloped areas east of Columbia Heights. EPA also, identified inconsistences in the wetland impact evaluation.

ERP No. F–FRC–K02023–00 Tuscarora Natural Gas Pipeline Project, Construction and Operation, Right-of-Way Grant, Special-Use-Permit, NPDES Permit and COE Section 404 Permit, Lassen County, CA; Washoe and Storey Counties, NV and Klamath County, OR.

Summary: EPA continues to have environmental concerns regarding cultural resource mitigation and requested that appropriate mitigation be included in the Record of Decision.

ERP No. F–FRC–L02022–AK Yukon Pacific Liquefied Natural Gas (LNG) Liquefaction Plant Construction and Operation, Approval, Anderson Bay, Port Valdez, AK.

Summary: EPA expressed environmental concerns that the final EIS did not contain a detailed Prevention of Significant Deterioration (PSD) permit analysis or detailed information on wetland impacts and mitigation.

Other

ERP No. LD–AFS–L61202–ID Rating LO, White Sand Creek and a Two-Mile Segment of the Upper Lochsa River Wild and Scenic River Suitability Study for Designation or Nondesignation in the Wild and Scenic Rivers System, Clearwater National Forest, Idaho County, ID.

Summary: EPA expressed lack of environmental objections. No formal comment letter was sent to the preparing Agency.

ERP No. LD–AFS–L61203–ID Rating LO, Upper Selway River Tributaries, Wild and Scenic River Study, for Fifteen Rivers, Suitability and Unsuitability, National Wild and Scenic Rivers Systems, Nez Perce National Forest, Idaho County, ID.

Summary: EPA expressed lack of environmental objections. No formal comment letter was sent to the preparing Agency.

Dated: June 20, 1995.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–15473 Filed 6–22–95; 8:45 am]

BILLING CODE 6560–50–U

[FRL–5225–4]

Underground Injection Control Program; Hazardous Waste Disposal Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection; Sterling Chemicals

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Decision on Exemption Reissuance.

SUMMARY: Notice is hereby given that a Petition for reissuance of an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to Sterling Chemicals, for the Class I injection wells located at Texas City, Texas. As required by 40 CFR Part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by Sterling Chemicals of the specific restricted hazardous waste identified in the petition for reissuance, into the Class I hazardous waste injection wells at the Texas City, Texas facility specifically identified in the petition for as long as the basis for granting an approval of this petition remains valid, under provisions of 40 CFR 148.24. As required by 40 CFR 124.10, a public notice was issued April 24, 1995. The public comment period ended on June 8, 1995. EPA received no comments. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of June 15, 1995.

ADDRESSES: Copies of the petition for reissuance and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Management Division, Water Supply Branch (6W–SU), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Phil Dellinger, Unit Leader, UIC State Programs/Land Ban, EPA—Region 6, telephone (214) 665–7142.

Robert Hannesschlager,

Acting Director, Water Monagement Division (6W).

[FR Doc. 95–15434 Filed 6–22–95; 8:45 am]

BILLING CODE 6565–50–P

[OPP–00411; FRL–4962–2]

FIFRA Scientific Advisory Panel; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: There will be a 1-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP), in conjunction with members of the Science Advisory Board, to review a set of scientific issues being considered by the Agency in connection with a report prepared by the Aquatic Dialogue Group for the Society of Environmental Toxicology and Chemistry (SETAC) titled: *Aquatic Risk Assessment and Mitigation (November 1994).* The report presents the Aquatic Dialogue Group's deliberations concerning aquatic risk assessment procedures, when aquatic mitigation would be necessary for agricultural use of pesticides, followed by mitigation methods that are currently available. Methods for assessing the efficacy of mitigation actions to reduce or eliminate exposure and/or effects to aquatic resources are also presented in this report. This report is the result of open scientific discussions between EPA, the Agricultural Chemical Protection Association, agrichemical companies, academia, and environmental and agricultural interest groups.

DATES: The meeting will be held on Monday, July 17, 1995, from 8:30 a.m. to 4:30 p.m. Written comments should be submitted by June 30, 1995.

ADDRESSES: The meeting will be held at: Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, in the 11th Floor Conference Room ("Fishbowl", Rm. 1123).

Submit written comments (1 original and 20 copies) to: By mail: Public Response and Program Resources Branch, Field Operations Division (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number "OPP–00411." No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this document may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under SUPPLEMENTARY INFORMATION.

FOR FURTHER INFORMATION CONTACT: By mail: Robert B. Jaeger, Designated Federal Official, FIFRA Scientific Advisory Panel (7509C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 815B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5369/7351, e-mail: jaeger.bruce@epamail.epagov. Copies of the SETAC Report may be obtained by contacting: By mail: Rodney Parrish, Executive Director, SETAC//SETAC Foundation for Environmental Education, 1010 North 12th Avenue, Pensacola, Florida 32501. By telephone: (904) 469–1500/9777.

Copies of EPA documents may be obtained by contacting: By mail: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs,

Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1132 Bay, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5805.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will follow the general outline of the report. Any member of the public wishing to submit written comments should contact Robert B. Jaeger at the address or the phone number given above to be sure that the meeting is still scheduled and to confirm the Panel's agenda. Interested persons are permitted to file written statements before the meeting. To the extent that time permits and upon advanced written request to the Designated Federal Official, interested persons may be permitted by the chairman of the Scientific Advisory Panel to present oral statements at the meeting. There is no limit on written comments for consideration by the Panel, but oral statements before the Panel are limited to approximately 5 minutes. Since oral statements will be permitted only as time permits, the Agency urges the public to submit written comments in lieu of oral presentations. Persons wishing to make oral and/or written statements should notify the Designated Federal Official and submit 20 copies of a summary no later than June 30, 1995, in order to ensure appropriate consideration by the Panel.

Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. All statements will be made part of the record and will be taken into consideration by the Panel.

A public record has been established for this notice under docket number "OPP–00411" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "**ADDRESSES**" at the beginning of this document.

Copies of the Panel's report of their recommendations will be available 10 to 15 working days after the meeting and may be obtained by contacting the Public Response and Program Resources Branch, at the address or telephone number given above.

Dated: June 16, 1995.

Penelope A. Fenner-Crisp,

Acting Director, Office of Pesticide Programs.

[FR Doc. 95–15442 Filed 6–22–95; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5225–8]

Common Sense Initiative Council (CSIC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of Public Advisory CSIC Metal Finishing Sector Subcommittee Meeting; Open Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Metal Finishing Sector Subcommittee of the Common Sense Initiative Council (CSIC) will meet on the date and times described below. All times noted are Central Time. The meeting is open to the public. Seating at meeting will be on a first-come basis.

Metal Finishing Sector Subcommittee—July 11–12, 1995

The Common Sense Initiative Council, Metal Finishing Sector Subcommittee (CSIC–MFS) is convening an open meeting on July 11 and 12, 1995. The meeting on July 11, 1995 is scheduled from approximately 9:30 a.m. until about 4:00 p.m., and from 8:30 until 4:00 p.m. on July 12, 1995. The meetings will be held at the Holiday Inn Crown Plaza, 610 Hilton Boulevard, Ann Arbor, MI 48108. The phone number of the hotel is (313) 761–7800.

The purpose of the Subcommittee meeting is to continue the development of project proposals and workplans for individual projects.

Projects are being developed in each of the five current workgroups of the Metal Finishing sector: (1) key regulatory and reporting issues for this industry; (2) targeted research and technology diffusion programs; (3) promoting improved performance by mid-level and upper tier firms, (4) environmentally responsible transition of old, outdated facilities; and (5) compliance assistance and enforcement programs that create a more level "playing field" in the industry.

Limited time will be provided for members of the public wishing to make an oral presentation or comments at the beginning of the Subcommittee meeting on July 12, 1995.

For further information on the Metal Finishing Sector Subcommittee meeting, contact Bob Benson of EPA's Office of Policy, Planning and Evaluation at (202) 260–8668.

FURTHER INFORMATION AND INSPECTION OF CSIC DOCUMENTS: Documents relating to the above Sector Subcommittee announcement will be publicly available at the meeting. Thereafter, these documents, together with official minutes for the meeting, will be available for public inspection in room 2417 Mall of EPA Headquarters, Common Sense Initiative Program Staff, 401 M Street, S.W., Washington, D.C. 20460, phone (202) 260–7417. CSIC information can be accessed electronically through contacting Katherine Brown at: brown.katherine@epamail.epa.gov.

Dated: June 15, 1995.

Bob Benson,

Designated Federal Officer.

[FR Doc. 95–15429 Filed 6–22–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5225–6]

Science Advisory Board; Radiation Advisory Committee (RAC) Meeting; Notification of Public Advisory Committee Meeting; Open Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Radiation Advisory Committee (RAC) of the Science Advisory Board (SAB) will conduct an advisory review of the Agency's Environmental Radiation Ambient Monitoring System (ERAMS) in a public meeting on Thursday, July 13 and Friday, July 14, 1995. The review will take place at the Agency's National Air and Radiation Environmental Laboratory (NAREL), 540 South Morris Avenue, Montgomery, Alabama 36115–2601 [Tel. No. (334) 270–3400]. The meeting will begin at 9:00 a.m. on Thursday, July 13 and end no later than 3:00 p.m. Friday, July 14, 1995. The RAC was introduced to the topic of this review at its public meeting of May 25, 1995 in which a preliminary discussion occurred on the upcoming advisory review of the Environmental Radiation Ambient Monitoring System (ERAMS) [See **Federal Register** Vol. 60, No. 80, Wednesday, April 26, 1995, pages 20491–20492]. This meeting is open to the public, but seating is limited and available on a first come basis. Documents that are the subject of SAB reviews are normally available from the originating EPA office and are *not* available from the SAB Office. Public drafts of SAB reports are available to the Agency and the public from the SAB office. Additional instructions about how to participate in the meeting can be obtained by calling Ms. Diana L. Pozun at (202) 260–6552 or FAX (202) 260–7118 no later than 12 noon eastern time on July 10, 1995.

The ERAMS is a continuous monitoring network operating throughout the U.S. and its territories. The basic goals of the network are to provide a means of estimating the ambient levels of radioactive pollutants in the environment, following trends in environmental radioactivity levels, and assessing the impact of fallout and other intrusions of radioactive materials. Currently, the ERAMS network is used to collect air, pasteurized milk, precipitation, surface water, and drinking water. Several thousand samples per year are collected. There are approximately 300 sampling stations across the U.S. and its territories operated on a voluntary basis primarily by state and local health agencies. The stations are distributed so as to cover each geographic region, most individual states, and major population centers.

The tentative charge to the SAB's RAC regarding the ERAMS protocol involves the following:

(1) Are the proposed objectives adequate for the refinements and redirection of ERAMS, given the priorities that emerged from the various efforts to evaluate the program and user needs?

(2) With specific emphasis on ambient monitoring, site-specific monitoring, and data dissemination, are the general approaches outlined in the Agency's submittal to the proposed objectives appropriate?

The draft documents that are the subject of this review are available from the originating EPA office (see below) and are *not* available from the SAB Office. At this time the only draft document that has been provided to the SAB's RAC at this time is background information on the ERAMS program (i.e., the ERAMS Manual, EPA 520/5–84–007, –008, –009). It is expected that additional information specifically relevant to the review will be provided to the Committee soon. To discuss technical aspects of the ERAMS program, or to obtain review and background information provided to the SAB's RAC, please contact Dr. Mary Clark, Technical Advisor, Office of Radiation and Indoor Air (ORIA), U.S. Environmental Protection Agency (6601J), 401 M Street, SW., Washington, D.C. 20460 (Tel. 202–233–9348; FAX 202–233–9651).

To simply obtain copies of the draft documents, please contact Ms. Virginia Stradford, Secretary, at (202) 233–9350, FAX (202) 233–9650. The background documents that support this review, as well as the draft documents listed above are available in the Agency's Air and Radiation Docket. Please address written inquiries as follows: USEPA, Attn: Air and Radiation Docket, Mail Stop 6102, Air, Room M1500, First Floor, Waterside Mall, 401 M Street, SW, Washington, DC 20460. The docket may be inspected from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays, in Room M1500. A reasonable fee may be charged for copies of docket materials. Inquiries regarding access to the public information docket should be directed to Ms. Lynn Johnson, ORIA Staff at (202) 233–9383.

Members of the public who wish to make a brief oral presentation at this meeting must contact Mrs. Diana L. Pozun, Staff Secretary, RAC, (tel. 202–260–6552; FAX 202–260–7118) no later than Monday, July 10, 1995, in order to have time reserved on the agenda. For a copy of the proposed agenda, please contact Ms. Pozun at the numbers given above or via the INTERNET: POZUN.DIANA@EPAMAIL.EPA.GOV. For questions regarding technical issues to be discussed, please contact Dr. K. Jack Kooyoomjian, Designated Federal Official, Science Advisory Board (1400F), US EPA, 401 M Street, SW, Washington DC 20460, tel. (202) 260–2560, FAX (202) 260–7118, or via the INTERNET: KOOYOOMJI-AN.JACK@EPAMAIL.EPA.GOV. At this meeting, possible future review topics may be discussed as time permits.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, opportunities for oral comment will be limited to no more than five minutes per speaker and no more than thirty minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to the meeting date (usually one week prior to the meeting), may be mailed to the committee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the committee up until the time of the meeting.

Dated: June 13, 1995.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 95–15433 Filed 6–22–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5225–5]

Interim Policy on Compliance Incentives for Small Businesses

AGENCY: Office of Enforcement and Compliance Assurance, EPA.

ACTION: Notice.

SUMMARY: The Office of Enforcement and Compliance Assurance (EPA) is issuing this *Interim Policy on Compliance Incentives for Small Businesses.* This interim Policy is intended to promote environmental compliance among small businesses by providing incentives for participation in compliance assistance programs, and encouraging the prompt correction of violations. The Policy accomplishes this in two ways: by setting forth guidelines for the Agency to reduce or waive penalties for small businesses that make good faith efforts to correct violations, and by providing guidance for States and local governments to offer these incentives.

DATES: Comments must be received on or before July 31, 1995.

ADDRESSES: Comments may be mailed to: Small Business Policy, Mail Code 2224–A, United States Environmental Protection Agency, 401 M Street, S.W., Washington D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Elliott Gilberg, 202–564–2310, Office of Compliance, Mail Code 2224–A, or

David A. Hindin, 202–564–2230, Office of Regulatory Enforcement, Mail Code 2248–A, United States Environmental Protection Agency, 401 M Street, S.W., Washington D.C. 20460.

SUPPLEMENTARY INFORMATION: Pursuant to this Interim Policy, EPA will exercise its discretion, under applicable media-specific policies, to refrain from initiating an enforcement action seeking civil penalties, or to mitigate civil penalties, whenever a small business makes a good faith effort to comply with environmental requirements and where there is no criminal behavior and no significant health, safety or environmental threat. In addition, EPA is creating special incentives for small businesses who take the initiative to identify and correct environmental violations by requesting compliance assistance from the government. In such circumstances, and provided the small business meets certain criteria set forth in the Policy, EPA will exercise its discretion to waive the entire penalty for environmental violations. Moreover, EPA will defer to state actions that are consistent with this Policy.

Dated: June 13, 1995.

Steven A. Herman,

Assistant Administrator, Office of Enforcement and Compliance Assurance, United States Environmental Protection Agency.

A. Introduction

This document sets forth the Environmental Protection Agency's Interim Policy on compliance incentives for small businesses. This Policy is one of the 25 regulatory reform initiatives announced by President Clinton on March 16, 1995, and implements, in part, the Executive Memorandum on Regulatory Reform, 60 FR 20621 (April 26, 1995).

The Executive Memorandum provides in pertinent part:

> To the extent permitted by law, each agency shall use its discretion to modify the penalties for small businesses in the following situations. Agencies shall exercise their enforcement discretion to waive the imposition of all or a portion of a penalty when the violation is corrected within a time period appropriate to the violation in question. For those violations that may take longer to correct than the period set by the agency, the agency shall use its enforcement discretion to waive up to 100 percent of the financial penalties if the amounts waived are used to bring the entity into compliance. The provisions [of this paragraph] shall apply only where there has been a good faith effort to comply with applicable regulations and the violation does not involve criminal wrongdoing or significant threat to health, safety, or the environment.

Pursuant to this Interim Policy, EPA will exercise its discretion, under applicable media-specific policies, to refrain from initiating an enforcement action seeking civil penalties, or to mitigate civil penalties, whenever a small business makes a good faith effort to comply with environmental requirements and where there is no criminal behavior and no significant health, safety or environmental threat. In addition, as announced in the package of regulatory reform initiatives, EPA is creating special incentives for small businesses who take the initiative to identify and correct environmental violations by requesting compliance assistance from the government. In such circumstances, and provided the small business meets certain other criteria set forth below, EPA will exercise its discretion to waive the entire penalty. Moreover, EPA will defer to state actions that are consistent with this Policy.

B. Background

The Clean Air Act (CAA) Amendments of 1990 require that states establish Small Business Assistance Programs (SBAPs) to provide technical and environmental compliance assistance to stationary sources. On August 12, 1994, EPA issued an enforcement response policy which provided that an authorized or delegated state program may, consistent with federal requirements, either:

(1) assess no penalties against small businesses that voluntarily seek compliance assistance and correct violations revealed as a result of compliance assistance within a limited period of time; or

(2) keep confidential information that identifies the names and locations of specific small businesses with violations revealed through compliance assistance, where the SBAP is independent of the state enforcement program.

In a further effort to assist small businesses to comply with environmental regulations, and to achieve health, safety, and environmental benefits, the Agency is adopting a similar policy for water, toxics, hazardous waste, and other media programs. This interim Policy sets forth the Agency's implementation of the Executive Memorandum.

C. Purpose

This interim Policy is intended to promote environmental compliance among small businesses by providing incentives for participation in compliance assistance programs, and encouraging the prompt correction of violations. The Policy accomplishes this in two ways: by setting forth a settlement penalty Policy that rewards such behavior, and by providing guidance for States and local governments to offer these incentives.

EPA is committed to a strong enforcement and compliance assurance program as a means to protect human health and the environment. We expect this Policy to encourage greater participation in compliance assistance programs that offer services to small businesses (referred to generically as SBAPs in this Policy). The Policy will allow greater openness among SBAPs and specific facilities, the small business community in general, and other federal and state officials. It will promote the sharing of information on pollution prevention measures, cost effective means of compliance and other valuable compliance-related activities with and among the regulated community. Application of the policy to all media programs should encourage small businesses to look for "whole facility" approaches to environmental compliance. Ultimately, by bringing many small businesses into compliance, this Policy will enhance the quality of our air, water, and land.

Measuring the success of compliance assistance programs is a critical component of EPA's ability to assess the results of compliance and enforcement activities. EPA will work with States to evaluate the effectiveness of this Policy and, in 1997, EPA will consider whether this Policy should be continued, modified or discontinued.

D. Applicability

This Policy applies to facilities owned by small businesses as defined here. A small business is a person, corporation, partnership, or other entity who employs 100 or fewer individuals (on a companywide basis). This definition is a simplified version of the CAA § 507 definition of small business. On balance, EPA determined that a single definition would make implementation of this Policy simple and would allow for consistent application of the Policy in a multimedia context.

This interim policy is effective immediately. This Policy applies to all civil judicial and administrative enforcement actions taken under the authority of the environmental statutes and regulations that EPA administers, except for corrective action programs and the Public Water System Supervision Program under the Safe Drinking Water Act.[1] This Policy

[1] This Policy does not apply to corrective action programs (such as CERCLA, RCRA § 7003, and SDWA § 1431) because these programs are primarily remedial in nature and generally do not seek penalties. This Policy does not apply to the Public Water System Supervision Program because EPA is developing another policy which addresses compliance by small communities.

applies to all such actions filed after the effective date of this Policy, and to all pending cases in which the government has not reached agreement in principle with the alleged violator on the amount of the civil penalty.

This Policy sets forth how the Agency expects to exercise its enforcement discretion in deciding on an appropriate enforcement response and determining an appropriate civil settlement penalty for violations by small businesses. This Policy is to be used for settlement purposes and is not intended for use in pleading, or at hearing or trial. To the extent that this Policy may differ from the terms of applicable enforcement response policies under media-specific programs, this document supersedes those policies. This Policy supplements, but does not supplant the August 12, 1994 *Enforcement Response Policy for Treatment of Information Obtained Through Clean Air Act Section 507 Small Business Assistance Progroms.*

E. Criteria for Civil Penalty Mitigation

EPA will eliminate or mitigate its settlement penalty demands against small businesses based on the following criteria:

(1) For purposes of sections F(1) and F(2), *the small business has made a good faith effort to comply with applicable environmental requirements as demonstrated by receiving compliance assistance* from a non-confidential government or government supported program that offers services to small businesses (such as a SBAP or state university), and the violations are detected during the compliance assistance.[2]

Good faith does not exist if an agency specifically offered a compliance assistance program concerning the relevant regulated activities to the business and it failed to participate in such program.

(2) *This is the small business's first violation of this requirement.* This Policy applies to businesses that have not previously been subject to a warning letter, notice of violation, field citation, or other enforcement action by a government agency for a violation of that requirement within the past five years. If a business has been subject to multiple enforcement actions for violations of environmental requirements in the past five years, this Policy does not apply even if this is the first violation of this particular requirement.

(3) The policy does not apply if:

(a) The violation has caused actual serious harm to public health, safety, or the environment; or

(b) The violation may present an imminent and substantial endangerment to public health or the environment; or

(c) The violation presents a significant health, safety or environmental threat (e.g., violations involving hazardous or toxic substances may present such threats).

(4) *The violation does not involve criminal conduct.*

(5) *The business corrects the violation within the corrections period set forth below.*

Small businesses are expected to remedy the violations within the shortest practicable period of time. Small businesses may take up to 90 days following detection of the violation to correct the violation, or to take substantial steps to correct the violations (e.g., apply for necessary permits, secure financing, order equipment). For violations that cannot be corrected within 90 days, the correction period may be extended for an additional period not to exceed 90 days, so long as the business enters into a written agreement that sets forth the additional correction period and any additional steps to be undertaken by the business to achieve compliance. The schedule may extend for an additional period of 180 days, *i.e.*, up to a period of one year from the date the violation is detected, only if necessary where the small business corrects the violation by implementing pollution prevention measures. Correcting the violation includes remediating any environmental harm associated with the violation.[3] Any corrections period longer than 180 days should be incorporated into an enforceable order. The requirements of the correction period should be made clear to the small business prior to offering compliance assistance.

F. Penalty Mitigation Guidelines

EPA will exercise its enforcement discretion to eliminate or mitigate civil settlement penalties as follows.

1. EPA will eliminate the civil settlement penalty in any enforcement action if a small business satisfies all of the criteria in section E.

2. If the small business meets all of the criteria, except it needs a longer corrections period than provided by criterion 5 (i.e., more than 180 days for non-pollution prevention remedies, or 360 days for pollution prevention remedies), EPA will waive up to 100% of the gravity component of the penalty, but may seek the full amount of any economic benefit associated with the violations.[4]

3. If a small business has not met all the criteria above, but has otherwise made a good faith effort to comply, EPA has discretion, pursuant to its applicable policies, to refrain from filing an enforcement action seeking civil penalties or to mitigate its demand for penalties to the maximum extent appropriate. These policies generally recognize good faith efforts to comply and allow for mitigation of the penalty where there is a documented inability to pay all or a portion of the penalty, thereby placing emphasis on enabling the small business to finance compliance.

G. Other Factors

To ensure that this Policy enhances and does not compromise public health and the environment, the following conditions apply:

1. Violations detected through federal, state, or local enforcement inspections or reported to an agency as required by applicable regulations or permits remain fully enforceable.

2. A business is subject to all applicable enforcement response policies (which may include discretion whether or not to take formal enforcement action) for all violations that had been detected through compliance assistance and were not remedied within the corrections period. The penalty in such action may include the time period before and during the correction period.

3. A business's good faith efforts to correct violations detected during compliance assistance should be considered as a mitigating factor in determining an appropriate enforcement response or penalty in a subsequent enforcement action. However, a State's or EPA's actions in providing

[2] If the compliance or technical assistance program keeps the information obtained confidential (i.e., does not share or disclose facility specific information on compliance status with a regulatory agency), this Policy does not apply. However, if a small business wishes to obtain a corrections period after receiving compliance assistance from a confidential program, the business need only disclose the violations to the appropriate regulatory agency pursuant to criterion 1 and comply with the other provisions of this Policy.

[3] If significant efforts will be required to remediate the harm, criterion 3 is likely not to have been satisfied.

[4] In determining how much of the gravity component of the penalty is appropriate, EPA should consider the nature of the violations, the duration of the violations, the environmental or public health impacts of the violations, good faith efforts by the small business to promptly remedy the violation, and the facility's overall record of compliance with environmental requirements.

compliance assistance is not a legal defense in any enforcement action. This Policy does not limit EPA or a state's discretion to use information on violations revealed through compliance assistance as evidence in subsequent enforcement actions.

H. Applicability To States

EPA recognizes that states are partners in enforcement and compliance assurance. Therefore, EPA will defer to state actions in delegated or approved programs that are generally consistent with the guidelines set forth in this Policy.

This Policy does not require SBAPs to provide to EPA information that identifies the names or locations of specific businesses that are found to be in violation through compliance assistance. EPA recommends, however, that whenever an agency provides a correction period to a small business, the agency notify the appropriate EPA Region or state of its action, to assure that federal and state enforcement responses to the identified violations are consistent. A state program that offers confidentiality may not also offer a corrections period for the same violations (see footnote 2).[5]

In developing this Policy, EPA balanced three primary considerations. First, the Agency is seeking to provide States with ample opportunity to adopt innovative approaches to environmental compliance. Thus, the Policy provides the parameters within which States have flexibility to tailor SBAPs to their needs.

Second, EPA recognizes that participation in SBAPs by individual businesses is typically voluntary. Assistance is provided generally upon request. Thus, the Agency is seeking to assure states of the ability to provide incentives that will encourage many small businesses to participate in SBAPs.

Third, the environmental statutes covered by this Policy generally require, as a condition of delegation or authorization, that programs be consistent with Federal requirements and that states have the authority to take appropriate enforcement action with respect to violations.[6] Thus, EPA has an obligation to ensure that state SBAPs are structured so as to maintain an appropriate level of enforcement authority within delegated or authorized state programs. The Agency believes this Policy will allow states sufficient latitude to use an appropriate combination of delegated state enforcement authority and compliance assistance activity to improve compliance in the small business community.

[FR Doc. 95–15435 Filed 6–22–95; 8:45 am]

BILLING CODE 6560–50–P

[5] The CAA § 507 policy establishes criteria for EPA approval of SBAPs in State Implementation Plans to satisfy the mandate in the CAA, and addresses confidential assistance in that context.

[6] For example, the Resource Conservation and Recovery Act provides that the Administrator may authorize any State to administer and enforce the Act unless he finds, among other things, that "such program does not provide adequate enforcement of compliance with the requirements of" the Act. 42 U.S.C. 6926(b).

[FRL–5226–6]

Proposed Settlement Agreement, Clean Air Act; Petition for Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("Act"), notice is hereby given of a proposed settlement agreement in the following cases: *American Petroleum Institute* v. *U.S. Environmental Protection Agency*, No. 94–1138 (D.C. Cir.); *Texaco, Inc. and Star Enterprises* v. *U.S. Environmental Protection Agency*, No. 94–1143 (D.C. Cir.) (consolidated cases). These petitions for review were filed under § 307(b) of the Act, 42 U.S.C. 7607(b), contesting various aspects of the regulations issued by EPA on December 15, 1993 for reformulated and conventional gasoline.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement agreement from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withhold or withdraw consent to the proposed agreement if the comments disclose facts or circumstances that indicate that such agreement is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

A copy of the proposed settlement agreement is available from Phyllis J. Cochran, Air and Radiation Division (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 260–7606. Written comments should be sent to John T. Hannon, Esq. at the above address and must be submitted on or before July 24, 1995.

Dated: June 14, 1995.

Jean C. Nelson,

General Counsel.

[FR Doc. 95–15436 Filed 6–22–95; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[ET Docket No. 94–32; DA 95–1365]

In-Flight Phone Corp.; Allocation of Spectrum Below 5 GHz Transferred From Government Use

AGENCY: Federal Communications Commission.

ACTION: Public notice.

SUMMARY: This Public Notice solicits comment on a pioneer's preference request filed by In-Flight Phone Corp. (In-Flight). The action is taken in response to a filing by In-Flight.

DATES: Comments are due July 3, 1995; reply comments are due July 13, 1995.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, (202) 776–1622.

SUPPLEMENTARY INFORMATION: This is the text of the Commission's Public Notice in GEN Docket No. 94–32, released June 16, 1995. The pioneer's preference request filed by In-Flight is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, D.C., and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington D.C. 20037.

Comment Sought on In-Flight Phone Corp. Pioneer's Preference Request

On March 16, 1995, In-Flight Corp. (In-Flight) filed a Petition for Declaratory Ruling (Petition) asking that its pioneer's preference (PP) Request filed in the Narrowband Personal Communications Services proceeding, ET Docket No. 92–100, now be considered in ET Docket No. 94–32, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use. The Petition was placed on Public Notice on April 28, 1994; see DA 95–967. No comments were filed on this Public Notice. On June 8, 1995, in response to the Commission's Third Report and Order in the pioneer's preference review proceeding (see ET Docket No. 93–266, FCC 95–218, released June 8, 1995), In-Flight filed a Supplement to its PP Request. In the Supplement, In-Flight asks that the Commission issue a public notice soliciting comment on the PP Request.

In-Flight filed its PP Request in ET Docket No. 92–100 on October 30, 1992, seeking a preference in the 901–902 MHz and 940–941 MHz bands for a live ground-to-air audio news, information, and entertainment service for airline passengers. However, because the rules adopted in ET Docket No. 92–100 were not related to In-Flight's proposal, its PP Request was not acted upon by the Commission.

In May 1994, the Commission released a Notice of Inquiry (NOI) in ET Docket No. 94–32, seeking information on potential applications of 50 megahertz of transferred Federal Government spectrum; see 9 FCC Rcd 2175 and 59 FR 25589, May 17, 1994. In November 1994, a Notice of Proposed Rulemaking was released proposing the allocation of the spectrum; see 9 9 FCC Rcd 6779 and 59 FR 59393, November 17, 1994. A First Report and Order and Second Notice of Proposed Rulemaking (Second NPRM) was released in February 1995; see 10 FCC Rcd 4769 and 60 FR 13102, March 10, 1995. The Second NPRM proposes that the 4660–4685 MHz band be allocated for a General Wireless Communications Service (GWCS).

In its Petition, In-Flight argued that its PP Request should be considered in ET Docket No. 94–32 because the proposed service rules would allow it to apply for a license to provide its service in the 4660–4685 MHz band. In-Flight claimed that the service for which the preference is sought is identical in all relevant respects to the service it would provide as a GWCS licensee. In-Flight also requested that the Commission issue the recommended ruling well in advance of the August 10, 1995 statutory deadline for issuing final rules in ET Docket No. 94–32, so that the Commission would have sufficient time to decide whether to award a pioneer's preference to In-Flight.

In its Supplement, In-Flight notes that the Commission recently decided in ET Docket No. 93–266 that public notices would no longer be issued inviting comment on pioneer's preference requests—rather, such comment would be solicited in the notices of proposed rule making that propose to establish rules governing the services for which the preferences are sought; see Second Report and Order and Further Notice of Proposed Rule Making, 10 FCC Rcd 4523 (1995) and 60 FR 13396, March 13, 1995. However, In-Flight states that because an NPRM has already been issued in Docket No. 94–32, the only way the Commission can give parties an opportunity to comment on its PP Request is to issue a public notice.

We concur with In-Flight that due to the special circumstances surrounding its PP Request, issuance of a public notice is appropriate in this case. Accordingly, we are assigning file number PP–88 to the Request and invite comment on it and the Supplement. Comments must reference both PP–88 and ET Docket No. 94–32 on the cover page. Comments are due July 3, 1995, and reply comments are due July 13, 1995. We note that In-Flight's PP Request has been formally opposed. Accordingly, the PP Request constitutes a restricted Commission proceeding in which *ex parte* presentations are prohibited; see 47 CFR 1.1208(c).

In-Flight's PP Request, including the Supplement, is available for inspection in the FCC Reference Center, Room 239, 1919 M Street N.W., Washington, DC during regular business hours. This material may also be purchased from the Commission's duplication contractor, International Transcription Service, Inc., 2100 M Street, NW, Suite 140, Washington, DC 20036, (202) 857–3800. For further information, contact Thomas Derenge or Rodney Small in the Office of Engineering and Technology, (202) 739–0703 or (202) 776–1622, respectively.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–15395 Filed 6–22–95; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1053–DR]

Illinois; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Illinois (FEMA–1053–DR), dated May 30, 1995, and related determinations.

EFFECTIVE DATE: June 15, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective June 15, 1995.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 95–15455 Filed 6–22–95; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1053–DR]

Illinois; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Illinois, (FEMA–1053–DR), dated May 30, 1995, and related determinations.

EFFECTIVE DATE: June 16, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Illinois dated May 30, 1995, is hereby amended to include Individual Assistance and Public Assistance in the following areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 30, 1995:

Madison and St. Clair for Public Assistance (already designated for Individual Assistance).

Alexander, Brown, Calhoun, Cass, Greene, Jackson, Jersey, Mason, Monroe, Morgan, Pike, Pulaski, Randolph, Schuyler, Scott, and Union for Public Assistance and Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

G. Clay Hollister,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 95–15456 Filed 6–22–95; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1055–DR]

Kentucky; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Kentucky (FEMA–1055–DR), dated June 13, 1995, and related determinations.

EFFECTIVE DATE: June 13, 1995.

FOR FURTHER INFORMATION CONTACT:
Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a latter dated June 13, 1995, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the Commonwealth of Kentucky, resulting from tornadoes, severe wind and hail storms, torrential rain and flooding on May 13–19, 1995, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the Commonwealth of Kentucky.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Jose Bravo of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Kentucky to have been affected adversely by this declared major disaster:

Mercer County for Individual Assistance and Hazard Mitigation.
Bath, Clark, Hardin, Jessamine, Meade, Montgomery, and Rowan Counties for Individual Assistance. Public Assistance and Hazard Mitigation.
Adair, Boyd, Breathitt, Breckinridge, Carter, Casey, Elliot, Floyd, Green, Johnson, Lawrence, Magoffin, Owsley, Pulaski, Russell, and Taylor Counties for Public Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,
Director.

[FR Doc. 95–15454 Filed 6–22–95; 8:45 am]
BILLING CODE 6718–02–M

FEDERAL RESERVE SYSTEM

Guaranty Bancshares, Inc.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 95–14498) published on page 31310 of the issue for Wednesday, June 14, 1995.

Under the Federal Reserve Bank of Kansas City heading, the entry for Guaranty Bancshares, Inc., is revised to read as follows:

1. Guaranty Bancshares, Inc., Oklahoma City, Oklahoma; to engage *de novo* through its subsidiary, First Oklahoma Finance Company, Inc., Bethany, Oklahoma, in additional activities of consumer finance pursuant to § 225.25(b)(1)(i) and credit-related insurance, pursuant to § 225.25(b)(8)(i)(A) and (B) of the Board's Regulation Y.

Comments on this application must be received by June 28, 1995.

Board of Governors of the Federal Reserve System, June 19, 1995.

Jennifer J. Johnson,
Deputy Secretary of the Board.

[FR Doc. 95–15411 Filed 6–22–95; 8:45 am]
BILLING CODE 6210–01–F

Fredric R. LeVarge; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than July 7, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Fredric R. LeVarge, Tampa, Florida; to acquire an additional 10.2 percent, for a total of 19.5 percent of the voting shares of City Financial Corporation of Tampa, Tampa, Florida, and thereby indirectly acquire City First Bank, Tampa, Florida.

Board of Governors of the Federal Reserve System, June 19, 1995.

Jennifer J. Johnson,
Deputy Secretary of the Board.

[FR Doc. 95–15412 Filed 6–22–95; 8:45 am]
BILLING CODE 6210–01–F

Regions Financial Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than July 7, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Regions Financial Corporation, Birmingham, Alabama; to acquire Interstate Billing Service, Inc., Decatur, Alabama, and thereby engage in the business of purchasing accounts receivable at a discount from automobile dealerships and trucking/freight companies, pursuant to § 225.25(b)(1)(v) of the Board's Regulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. National Commerce Bancorporation, Memphis, Tennessee; to acquire Transplatinum Service Corp., Nashville, Tennessee, and thereby engage in providing data processing and data transmission services (including data processing and transmission hardware, software, documentation and operating personnel) and data bases, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire through its subsidiary, Norwest Investment Services, Inc., Minneapolis, Minnesota, the brokerage business of Valley-Hi National Bank, San Antonio, Texas. The geographic scope for these activities is Texas.

D. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. First Hawaiian, Inc., Honolulu, Hawaii; to expand the geographic scot of its subsidiary, First Hawaiian Leasing, Inc., Honolulu, Hawaii, which engages in leasing personal and real property, pursuant to § 225.25(b)(5) of the Board's Regulation Y. The geographic scope for this activity is expanded and will be conducted on a world-wide basis.

Board of Governors of the Federal Reserve System, June 19, 1995.

Jennifer J. Johnson,
Deputy Secretary of the Board.

[FR Doc. 95–15413 Filed 6–22–95; 8:45 am]
BILLING CODE 6210–01–F

SunTrust Banks, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 17, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. SunTrust Banks, Inc., Atlanta, Georgia, and Sun Banks, Inc., Orlando, Florida; to acquire 100 percent of the voting shares of Key Biscayne Bankcorp, Inc., Key Biscayne, Florida, and thereby indirectly acquire Key Biscayne Bank & Trust Company, Key Biscayne, Florida.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. DCNB Holding Company, Clear Lake, South Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of Deuel County National Bank, Clear Lake, South Dakota.

Board of Governors of the Federal Reserve System, June 19, 1995.

Jennifer J. Johnson,
Deputy Secretary of the Board.

[FR Doc. 95–15414 Filed 6–22–95; 8:45 am]
BILLING CODE 6210–01–F

Canadian Imperial Bank of Commerce, Toronto, Ontario, Canada; Notice to Engage in Nonbanking Activities

Canadian Imperial Bank of Commerce, Toronto, Ontario, Canada (Notificant), has given notice pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) (BHC Act) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), to acquire, indirectly through its subsidiary Wood Gundy Corporation, New York, New York (Company), certain assets and assume certain liabilities of The Argosy Securities Group, L.P. and The Argosy Group, L.P., both of New York, New York. Following the proposed acquisition, Notificant will continue to engage in various securities and securities-related activities described below on a nationwide basis. Notificant previously received Board approval to engage in the proposed activities through Company. *See Canadian Imperial Bank of Commerce*, 74 Federal Reserve Bulletin 571 (1988); 76 Federal Reserve Bulletin 158 (1990); and 76 Federal Reserve Bulletin 548 (1990).

Notificant proposes to continue to engage in the following activities previously authorized by the Board:

(1) Providing investment advisory services pursuant to § 225.25(b)(4) of Regulation Y (12 CFR 225.25(b)(4));

(2) providing advice on swaps and related contracts pursuant to § 225.25(b)(4)(vi)(A)(2) of Regulation Y (12 CFR 225.25(b)(4)(vi)(A)(2));

(3) providing financial advice, for example advice on mergers, divestitures, recapitalizations and loan syndications, pursuant to § 225.25(b)(4)(vi)(A)(1) of Regulation Y (12 CFR 225.25(b)(4)(vi)(A)(1)).

Notificant also proposes to continue to engage in the following activities which previously have been determined by the Board by Order to be closely related to banking.

(1) Underwriting and dealing in municipal revenue bonds, residential mortgage-related securities, consumer-receivable securities, and commercial paper.

(2) underwriting and dealing in debt securities and equity securities of all types;

(3) acting as agent, in the private placement of all types of securities; and

(4) acting as a riskless principal in the purchase and sale of all types of securities on the order of investors.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board, after due notice and opportunity for hearing, has

determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be proper incident thereto." This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, "closely related to banking." Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may be reasonably be expected to produce public benefits that outweigh possible adverse effects.

Notificant maintains that the Board previously has determined that the proposed activities are "so closely related to banking or managing or controlling banks as to be proper incident thereto." The Board previously has approved, by order, the proposed private placement and riskless principal activities, and Notificant has stated that it will continue to conduct the proposed activities using the same methods and subject to the prudential limitations established by the Board in its previous orders. *See J.P. Morgan & Co. Incorporated*, 76 Federal Reserve Bulletin 26 (1990); *Bankers Trust New York Corporation*, 75 Federal Reserve Bulletin 829 (1989).

The Board also has previously approved, by order, underwriting and dealing in, to a limited extent, all types of debt and equity securities. *See Canadian Imperial Bank of Commerce*, 76 Federal Reserve Bulletin 158 (1990); *J.P. Morgan & Co. Incorporated, et al.*, 73 Federal Reserve Bulletin 192 (1989) (1989 Section 20 Order), *aff'd sub nom. Securities Industry Association v. Board of Governors of the Federal Reserve System*, 900 F.2d 360 (D.C. Cir. 1990). Notificant has stated that it will continue to conduct the proposed underwriting and dealing activities using the same methods and procedures, and subject to the same prudential limitations established by the Board in the 1989 Section 20 Order, as modified by the *Order Approving Modifications to Section 20 Orders*, 75 Federal Reserve Bulletin 751 (1989), the *Order Approving Modifications to the Section 20 Orders*, 79 Federal Reserve Bulletin 226 (1993), and the *Supplement to Order Approving Modifications to Section 20 Orders*, 79 Federal Reserve Bulletin 360 (1993), including the Board's 10 percent revenue limitation on such activities.

Notificant also takes the position that the proposed acquisition will benefit the public. Notificant states that the expected benefits to the public include increased competition, expanded products and services, and gains in efficiency. The proposed acquisition also would allow Notificant to offer customers expanded services at competitive costs. Notificant also maintains that the proposed activities would not result in any adverse effects.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the notice, and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than July 7, 1995. Any request for hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This notice may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, June 19, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-15410 Filed 6-22-95; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Telemarketing Sales Rule; Information Collection Under OMB Review

AGENCY: Federal Trade Commission ("FTC").

ACTION: Notice of amended application to the Office of Management and Budget ("OMB") under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) for clearance of information collection requirements contained in a revised proposed trade regulation rule pursuant to the Telemarketing and Consumer Fraud and Abuse Prevention Act.

SUMMARY: The FTC is seeking OMB clearance for information collection requirements contained in revised proposed regulations implementing the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101–6108 ("Telemarketing Act" or "the Act").

The Telemarketing Act requires the Commission to issue a rule prohibiting deceptive and abusive telemarketing acts and practices. In accordance with the statutory directive, the Commission issued a Notice of Proposed Rulemaking on February 14, 1995 (60 FR 8313). Since that time, the Commission has made revisions to the recordkeeping and disclosure requirements contained in the initially proposed rule.

Specifically, the Commission has reviewed the public comments and has incorporated many of the suggestions received from industry on how to minimize the recordkeeping burden. The revised proposed rule requires the following records to be kept for a twenty-four month period: advertising and promotional materials, and telemarketing scripts; information regarding prize recipients and prize distribution; sales information; and information regarding employees directly involved in telephone sales. The recordkeeping provisions will be helpful in preserving evidence of compliance with the rule.

Absent the recordkeeping requirements, Commission staff believes that this is the type of information that would be retained by these entities in any event during the normal course of business because this information would be useful in resolving private, non-governmental inquiries and disputes. The definition of "burden" for OMB purposes excludes any effort that would be expended regardless of a regulatory requirement. 5 C.F.R. § 1320.7(b)(1). Further, the revised proposed rule clarifies that records kept in the ordinary course of business need not be duplicated or separately maintained. Thus, the only burden would be for retaining the records for an additional period of time.

Nonetheless, the Commission is increasing the estimate of burden hours imposed by the recordkeeping requirements to take into account any time necessary to develop, modify, construct, or assemble any materials or equipment. Staff estimates that approximately 40,000 industry members could be affected by these recordkeeping requirements. Staff further estimates that no more than 100 companies would find it necessary to develop, modify, construct, or assemble materials or equipment in order to comply with the proposed rule. Staff further estimates that it would take these 100 entities approximately 100 hours each during the first year of compliance to assemble the necessary equipment, for a total of 10,000 burden hours. Staff also estimates that the companies that already have recordkeeping systems would require only one hour to comply with the proposed recordkeeping requirements, for a total burden estimate of 49,900 hours. The Commission is requesting that this figure be rounded up to 50,000 hours. A burden estimate of 50,000 hours, which is a yearly estimate, would allow approximately 100 new companies to enter the industry during each succeeding year without requiring the Commission to modify the burden estimate.

The Commission's February 14, 1995 Application to OMB did not request clearance for the various disclosure requirements contained in the proposed Telemarketing Rule. The Commission is now submitting these disclosure requirements to OMB for clearance. The primary purpose of the rule's disclosure requirements is to assist in preventing deceptive and abusive telemarketing acts or practices by ensuring that customers are informed of the purpose of the call and the terms and conditions of the potential sale.

Specifically, the revised proposed rule requires sellers or telemarketers to disclose the identity of the seller; the purpose of the call; the nature of goods or services; and that no purchase is necessary to win if a prize promotion is offered in conjunction with a sales offer of goods or services. If requested, the telemarketer must also disclose the no-purchase entry method of the prize promotion.

Staff estimates that 40,000 industry members make approximately 9 billion calls per year, or 225,000 calls per year per company. However, sections 310.6(d) and (e) provide that if an industry member chooses to solicit consumers by using advertising media other than direct mail or by using direct mail solicitations that make certain required disclosures, they are exempted from complying with other disclosures required by the rule. Because the burden of complying with written disclosures is much lower than the burden of complying with all the rule's provisions, staff estimates that at least 9,000 firms will choose to adopt marketing methods that exempt them from oral disclosure requirements. Staff estimates that it will take 7 seconds for callers to disclose the required information. Staff also estimates that at least 60% result in "hang-ups" before the seller or telemarketer can make all the required oral disclosures. Staff estimates that hang-up calls last for only 2 seconds. Accordingly, staff estimates that the total disclosure burden of these requirements is approximately 250 hours per firm or 7.75 million hours.

The revised proposed rule also requires additional disclosures before the customer pays for goods or services. Specifically, the sellers or telemarketers must disclose the total costs to purchase, receive, or use the offered goods or services; all material restrictions; all material terms and conditions of the seller's refund, cancellation, exchange, or repurchase policies if a representation about the policy is part of the sales offer; and that no purchase is necessary to win if a prize promotion is offered in conjunction with a sales offer of goods or services. The telemarketer must disclose the non-purchase entry method for the prize promotion. Staff estimates that approximately 10 seconds is necessary to make these required disclosures. However, these disclosures need only be made where a call results in an actual sale. Staff estimates that sales occur in approximately 6 percent of telemarketing calls. Accordingly, the estimated burden for the disclosures is 37.5 hours per firm or 1.163 million hours.

Alternately, the disclosures required before the customer pays for goods or services may be *in writing*. As discussed above, staff estimates that approximately 9,000 firms will choose to comply with this optional written disclosure requirement. Although this burden estimate is difficult to quantify, mailing campaigns appear to be much less burdensome for firms than are individual oral disclosures. Staff also finds that these disclosure requirements are closely consistent with the ordinary business practices of most members of the industry. Nonetheless, staff has no reliable data from which to conclude that there is *no* separately identifiable burden associated with this provision. Therefore, staff estimates that a typical firm will spend approximately 10 hours per year engaged in activities ensuring compliance with this provision of the rule, for an estimated burden estimate of 90,000 hours.

Total Yearly Burden

Based on these figures, staff estimates the total yearly burden of the proposed rule to be 9,053,000 hours (50,000 recordkeeping hours + 9,003,000 disclosure hours). The basis for this estimate is described in more detail in the Supporting Statement submitted with the Amended Request for OMB Review.

DATES: Comments on this application must be submitted on or before June 30, 1995.

ADDRESSES: Send comments both to Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, ATTN: Desk Officer for the Federal Trade Commission, and to the Office of the Secretary, Room 159, Federal Trade Commission, Washington, DC 20580. Copies of the submission to OMB may be obtained from the Public Reference Section, Room 130, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: David M. Torok, Attorney, Bureau of Consumer Protection, Division of Marketing Practices, Federal Trade Commission, Washington, DC 20580, (202) 326–3140.

Donald S. Clark,

Secretary.

[FR Doc. 95–15186 Filed 6–21–95; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection Under OMB Review

Title: Monthly "FLASH" Report of Selected AFDC Program Data.

OMB No.: 0970–0071.

Description: The information collected by use of this form is used to monitor program trends and serves as advanced indicators of program activity and costs. The affected public is comprised of State and local agencies administering AFDC programs. The forms are completed by State agencies administering AFDC programs.

Respondents: State and Local governments.

Title	Number of respondents	Number of responses per respondent	Average burden per response	Burden
Flash report	54	12	2.5	1,620

Estimated Total Annual Burden: 1,620.

Additional Information

Copies of the proposed collection may be obtained from Bob Sargis of the Division of Information Resource Management, ACF, by calling (202) 690–7275.

OMB Comment

Consideration will be given to comments and suggestions received within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street NW., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: June 20, 1995.

Roberta Katson,

Acting Director, Office of Information Resource Management.

[FR Doc. 95–15470 Filed 6–22–95; 8:45 am]

BILLING CODE 4184–01–M

Agency Information Collection Under OMB Review

Title: Job Opportunity and Basic Skills (JOBS) Participation Rate Quarterly Report.

OMB No.: 0970–0098.

Description: The ACF is required to collect monthly information on a quarterly basis to determine the Federal Financial Participation (FFP) matching rate that states are entitled to receive. Authorization for this request is granted in the Family Support Act of 1988.

Respondents: State, Local, or Tribal Govt.

Title	Number of respondents	Number of responses per respondent	Average burden per response	Burden
ACF–103	51	4	12	2448

Estimated Total Annual Burden: 2448.

Additional Information

Copies of the proposed collection may be obtained from Bob Sargis of the Division of Information Resource Management, ACF, by calling (202) 690–7275.

OMB Comment

Consideration will be given to comments and suggestions received within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street NW., Washington, DC 20503, Attn: Ms. Wendy Taylor.

Dated: June 19, 1995.

Roberta Katson,

Acting Director, Office of Information Resource Management.

[FR Doc. 95–15471 Filed 6–22–95; 8:45 am]

BILLING CODE 4184–01–M

Office of the Secretary

Completion of Investigation

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has completed an investigation and does not find scientific misconduct in the following case:

David Plotkin, M.D., Memorial Cancer Research Foundation of Southern California: The Division of Research Investigations (DRI), Office of Research Integrity (ORI), investigated allegations that clinical trial data forms submitted from the Memorial Cancer Research Foundation of Southern California (MCRF), Los Angeles, California, contained falsified and fabricated information. The data forms were submitted to the Statistical Office of the National Surgical Adjuvant Breast and Bowel Project (NSABP) located at the University of Pittsburgh. The NSABP project at MCRF received funding from the National Cancer Institute (NCI), with Dr. David Plotkin as Principal Investigator.

In mid-April 1994, the Chicago Tribune obtained a copy of an April 1990 NSABP Audit Report that indicated there was a "serious problem * * * with respect to the accuracy of the data reported to the NSABP" from the MCRF. A Chicago Tribune reporter reviewed records on some subjects entered on NSABP trials at MCRF and found apparent discrepancies between reported data and medical records. Much of the questioned data was related to the B–06 clinical trial which compared lumpectomy (with or without radiation therapy) to total mastectomy for the treatment of breast cancer.

ORI reviewed records and data on 59 patients reported to NSABP between 1973 and 1994 and did not find falsification, fabrication, or deliberate misrepresentation on the part of Dr. Plotkin or his staff. ORI found that many of the discrepancies originally identified by the NSABP and the Chicago Tribune were the result of a review of incomplete records, honest error on the part of one or more of the participating parties, or differences in interpretations or judgments of the facts.

FOR FURTHER INFORMATION, CONTACT: Director, Division of Research Investigations, Office of Research Integrity, 301–443–5330.

Lyle W. Bivens,

Director, Office of Research Integrity.

[FR Doc. 95–15397 Filed 6–22–95; 8:45 am]

BILLING CODE 4160–17–P

Public Health Service

Food and Drug Administration; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, and 56 FR 29484, June 27, 1991, as amended most recently in pertinent part at 59 FR 17106, April 11, 1994, is amended to reflect the following reorganization in the Food and Drug Administration (FDA).

The Office of Management in the Office of Management and Systems is being reorganized to reduce the number of components reporting to the Associate Commissioner for Management from eight to four. The position of Deputy Associate Commissioner for Management is being abolished and additional reductions in subordinate substructures are expected to further reduce the number of supervisory positions to meet Agency streamlining goals. A new Office of Facilities, Acquisitions, and Central Services and an Office of Human Resources and Management Services, and an Executive Management Staff are being established. The current Office of Facilities and Administrative Management, and the Office of Contracts and Grants Management will be abolished and their divisions will report directly to the two new offices. The structure of the Office of Financial Management will not change.

Under section HF–B, Organization:

1. Delete subparagraphs Office of Human Resources Management (HFA77), Office of Contracts and Grants Management (HFA78), and Office of Facilities and Administrative Management (HFA75) under paragraph Office of Management (HFA7), in their entirety.

2. Insert the following new subparagraphs under paragraph Office of Management (HFA7).

Office of Facilities, Acquisitions, and Central Services (HFA73). Provides leadership and direction regarding all aspects of facilities management nationwide.

Provides leadership and direction regarding all administrative management support services including personal property management and accountability, graphic arts, and files and records.

Manages and coordinates all aspects of the Agency's long range facilities planning.

Serves as the Agency focal point for developing, coordinating, and implementing FDA policies and procedures pertaining to acquisitions, interagency agreements, technology transfer and grants management; coordinates all administrative matters related to acquisitions, grants, cooperative agreements, interagency agreements, memoranda of understanding and technology transfer.

Office of Human Resources and Management Services (HFA79). Provides leadership and direction regarding all aspects of Agency human resources management including employment, recruitment, compensation and benefits, classification, employee relations, training, career development, and executive services.

Provides leadership and direction regarding all aspects of the Agency's management, organizational and delegational studies, processes, and policies.

Provides leadership and direction regarding all conflicts of interest and employee associations with regulated industries, reviews financial interests including outside activities of FDA employees, decides conflict of interest issues, and counsels and trains employees on the avoidance of conflicts of interests.

Executive Management Staff (HFA7A). Advises the Commissioner, Deputy Commissioners, and other senior managers in regard to administrative management matters for their components.

Provides a focal point for administrative activities for the Office of the Commissioner, the offices of the Deputy Commissioners, and the Office of Management.

Develops, coordinates, and facilitates various administrative processes such as personnel, procurement, training, travel, and other pertinent areas as necessary.

Establishes and maintains liaison with administrative officers throughout the serviced components to keep abreast with current issues.

3. Prior Delegations of Authority. Pending further delegations, directives, or orders by the Commissioner of Food and Drugs, all delegations of authority to positions of the affected organizations in effect prior to this date shall continue in effect in them or their successors.

Dated: June 9, 1995.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 95–15358 Filed 6–22–95; 8:45 am]

BILLING CODE 4160–01–M

Food and Drug Administration; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3865, February 25, 1970, and 56 FR 29484, June 27, 1991, as amended most recently in pertinent part at 58 FR 45111, August 26, 1993) is amended to reflect the establishment of the Office of Science, in the Office of Operations, Food and Drug Administration (FDA). FDA believes that the establishment of an Office of Science in the Office of Operations will provide the necessary coordination of the integration of the Agency's scientific and operational functions.

Under section HF–B Organization:

Under the Office of Operations (HFA9), insert a new paragraph reading as follows:

Office of Science (HFA91). Advises and assists the Deputy Commissioner for Operations, the Commissioner, and other key officials on scientific issues which have an impact on policy, direction, and long-range goals.

Coordinates and provides guidance on special and overall science policy in program areas which cross major agency component lines and scientific aspects which are critical or controversial, including the agency risk assessment policy.

Represents the agency with other government agencies, state and local governments, industry, academia, consumer organizations, Congress, and national and international organizations, and the scientific community on science policy.

Serves as the focal point for overall management of scientific agency research, training, contracts, and fellowship activities.

Provides leadership and direction on scientific technological achievement in FDA.

Evaluates the adequacy of scientific resources available to the agency and initiates action as appropriate to enhance the scientific posture.

Advises the Deputy Commissioner for Operations, and Commissioner, and the Office of Management and Systems on scientific facilities and participates with

other agency components in planning such facilities.

Provides leadership to agency components in the identification, recruitment, and retention of top level scientists to fill vacancies for key positions.

Assist in overseeing quality assurance of FDA-operated laboratories.

Under Section HF–D, Delegation of Authority. Pending further delegations, directives, or orders by the Commissioner of Food and Drugs, all delegations of authority to officers or employees of the affected components in effect prior to this date shall continue in effect in them in their successors.

Dated: June 9, 1995

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 95–15357 Filed 6–22–95; 8:45 am]

BILLING CODE 4160–01–M

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of July 1995:

Name: Advisory Committee on Infant Mortality.

Date and time: July 20–21, 1995, 9:00 a.m.

Place: Hyatt Regency Bethesda Hotel, 1 Bethesda Metro, Bethesda, MD.

The meeting is open to the public.

Purpose: The Committee provides advice and recommendations to the Secretary on the following: Department programs which are directed at reducing infant mortality and improving the health status of pregnant women and infants; how best to coordinate the variety of Federal, State, local and private programs and efforts that are designed to deal with the health and social problems impacting on infant mortality; and the implementation of the Healthy Start initiative and infant mortality objectives from *Healthy People: 2000: Notional Health Promotion and Disease Prevention Objectives.*

Agenda: Topics that will be discussed include: Updates on the Healthy Start Program; Prenatal Care Issues; Early Postpartum Discharge; Unintended Pregnancy, Newborn Screening; and swearing in of new Committee members.

Anyone requiring information regarding the Committee should contact Dr. Peter van Dyck, Executive Secretary, Advisory Committee on Infant Mortality, Health Resources and Services Administration, Room 18–20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–2204.

Persons interested in attending any portion of the meeting or having questions regarding the meeting should contact Ms. Kerry P. Nesseler, Maternal and Child Health Bureau, Health Resources and Services Administration, Telephone (301) 443–2204.

Agenda Items are subject to change as priorities dictate.

Dated: June 20, 1995.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 95–15476 Filed 6–22–95; 8:45 am]

BILLING CODE 4160–15–P

Office of Refugee Resettlement

Availability of Discretionary Grants to Promote Community Development in Sites With Significant Refugee Populations in Order to Increase Economic Independence Among Refugees and Their Families

AGENCY: Office of Refugee Resettlement (ORR), HHS.

SUMMARY: This program announcement governs the availability of funds and award procedures for approximately $1,000,000 in FY 1995 discretionary grants for technical assistance and operating costs to promote community development in sites with significant refugee [1] populations in order to increase economic independence among refugees and their families. This announcement is soliciting applications for cooperative agreement project periods up to three years. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for continuation grants funded under these awards beyond the one-year budget period, but within the three-year project period will be entertained in subsequent years on a noncompetitive basis, subject to availability of funds, satisfactory progress by the grantee, and a determination that continued funding would be in the best interest of the Government.

[1] In addition to persons who meet all requirements of 45 CFR, 400.43, eligibility for refugee social services also includes: (1) Cuban and Haitian entrants, under section 501 of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422); (2) certain Amerasians from Vietnam who are admitted to the U.S. as immigrants under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub. L. 100–202); and (3) certain Amerasians from Vietnam, including U.S. citizens, under title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Pub. L. 100–461), 1990 (Pub. L. 101–167), and 1991 (Pub. L. 101–513). For convenience, the term "refugee" is used in this notice to encompass all such eligible persons unless the specific context indicates otherwise.

Available Funds

In FY 1995, ORR expects to make available approximately $1,000,000 for one award in this program area. The amount in subsequent years will depend upon the availability of funding, need, and the best interests of the Government.

The Director reserves the right to award more or less than the funds described above depending upon the quality of the applications or such other circumstances as may be deemed to be in the best interest of the Government.

Authorization

Authority for this activity is contained in Section 412(c)(1)(A) of the Immigration and Nationality Act, which authorizes the Director "to make grants to, and enter into contracts with, public or private nonprofit agencies for projects specifically designed— * * * (iii) to provide where specific needs have been shown and recognized by the Director, health (including mental health) services, social services, educational, and other services."

Application Submission

Forms and instructions for submitting an application are included with this announcement which may be reproduced. Additional copies also may be obtained by contacting the Office of Refugee Resettlement at the address below. An original and two copies of all applications should be submitted to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade SW, Sixth Floor, Washington, DC 20447 Or hand delivered to: Division of Discretionary Grants, 901 D St. SW, 6th Fl. ACF Guard Station, Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Ms. Anna Mary Portz, Office of Refugee Resettlement, 370 L'Enfant Promenade SW., Washington, D.C. 20447, Telephone (202) 401–1196, email: aportz@acf.dhhs.gov.

Purpose and Scope

The Refugee Act of 1980 mandates two broad goals: (1) To assist refugees in achieving self-sufficiency as early as possible after arrival, and (2) to provide long-term effective resettlement. Since 1975, almost two million refugees have been resettled in communities throughout the United States. While many refugees have achieved economic and social self-sufficiency, some continue to face poverty, joblessness, under-employment and lack of access to opportunities. ORR recognizes that in order for refugees to be effectively resettled, refugees need to have continuing access to mainstream services and resources beyond ORR funds; and refugee communities must be strengthened so that they can provide their own members with a long-term economic and social safety net.

The purpose of this announcement is to solicit applications for a project to strengthen refugee community-based organizations (CBOs) which are already engaged in community development in sites where significant refugee populations currently reside. A strong CBO is able to tap into a community's desire for self-help, improve services, nurture leaders, raise money from a variety of sources within and outside the community, expand housing and economic opportunities and, at the same time, remain accountable to the community. Most importantly, these organizations give refugees a sense of hope about their community's future.

Strong refugee CBOs are critical building blocks for effective resettlement. Such organizations can foster long-term community development—the process by which refugee communities identify their own needs and wants, mobilize resources, and develop and carry out their own strategies—in order to improve their own communities.

The successful applicant to this notice will be expected to do three things:

(1) Design and implement a comprehensive strategy which will increase the organizational capacity of a certain number of refugee CBOs so that these organizations can promote effective, long-term development of their communities

(2) Provide limited core funding to this group of CBOs so that they can devote specific staff resources to a sustained implementation of their respective organizational and community development plans; and,

(3) Conduct a select number of activities, such as workshops or peer-to-peer assistance, for the purpose of providing broad technical assistance in community and organizational development to additional refugee CBOs which are not selected for participation in items 1 and 2 described above.

ORR will enter into a cooperative agreement with the successful applicant(s) in order to jointly develop the technical assistance procedures and project schedules. ORR will also provide guidance on selection of participating refugee CBOs and service and monitoring protocols.

Eligible Applicants

Eligible applicants are public or private nonprofit organizations. If an applicant represents a consortium (that is, the applicant includes other types of agencies among its membership), the single organization identified to be the grant recipient with primary administrative and fiscal responsibilities must be a nonprofit organization.

Application Content

All applications must be submitted on Standard Form (SF) 424 Parts I through III. A narrative project description constitutes Part IV and must not exceed 30 pages (typewritten, double spaced on standard, letter-size paper) plus a maximum of 20 pages of appended material. In the event that the project description and/or supplementary material exceed the page limitations, only the first 30 pages of the project description (if single-spaced, only the first 15 pages), and the first 20 pages of the supplementary material, will be considered in the review process. The limitation should be considered as a maximum, and not necessarily a goal to be achieved.

Part IV should contain the following sections:

A. A discussion of the specific criteria to be used in participant selection, and the community development needs to be addressed by this project. ORR recognizes that concentrated planning has to occur at all stages in the design and implementation of such a project. Part of this planning should involve detailed consideration of the priority criteria for determination of which ethnic CBOs will be invited to participate with the applicant technical assistance provider in proposed activities 1 and 2 referenced in the section titled Purpose and Scope.

ORR suggests the following criteria for refugee ethnic CBO participants to be served by the grantee. Agencies served should be viable nonprofit organizations with IRS 501(c)(3) status. Organizational missions should provide a commitment to community accountability and grassroots democracy.

These CBOs should have staff and an actively involved broad-based board. Such organizations should reflect the community-responsiveness, decision-making, and oversight role of the Board.

Applicants should discuss how they would identify organizations with these respective characteristics, and suggest other criteria they consider appropriate to qualify for receipt of services funded under this grant. Applications should include examples of appropriate CBOs for participation. (Final selection of participating CBOs will require ORR concurrence under the terms of the Cooperative Agreement.)

B. A description of the applicant's approach to community development and how the applicant determines the type of technical assistance that is required. A discussion of the perceived strengths and obstacles in promoting effective refugee community development and how the applicant can incorporate the strengths in its approach. An analysis of how the strategies proposed would enhance community development for refugees, indicating specifically how these services can be applied and how the refugee communities selected can develop constituency support. If the proposal was developed by a consortium or other combination of entities, the role of each must be detailed.

C. A description of the anticipated one-, two-, and three-year outcomes. ORR expects at a minimum that during the project period a certain number of refugee community-based organizations will exhibit (1) significant progress toward a stabilized, multiple-source income base appropriately related to the economic forces in the local community; (2) outreach and accountability to multiple strata of the local refugee community demonstrated inter alia by constituency-contributed financial support; (3) a track record of advocacy activities and relevant organizational collaboration; and if appropriate, (4) a demonstrated resettlement-related service provision or refugee representation capacity.

D. A description of the applicant's qualifications to carry out the proposed activities, particularly descriptions of relevant previous experience emphasizing experience with differing cultural groups. Applications should include names and addresses of at least three organizations for whom the applicant has previously provided similar services, as well as a brief outline of the measurable outcomes achieved for each. The applicant should also include resumes of key staff proposed to work for the applicant in the implementation of this grant, if awarded. (Applicants which cannot document experience in technical assistance similar to that required herein will not be considered.)

E. A description of the proposed activities based on an analysis of refugee ethnic community-based organizational needs and available resources, as necessary to address the development of the refugee community. Applicants should provide a detailed workplan of

the steps and activities proposed to carry out the objectives of the project, if funded, including a timetable for implementation. ORR anticipates that such activities may include, but are not limited to:

- Intensive, individually tailored technical assistance to a certain number of refugee ethnic community-based organizations in a limited number of sites;
- General community development assistance (i.e. grassroots democracy and organizing, leadership training, coalition building, resource development) for a broad audience of refugee community-based organizations;
- Facilitation of peer to peer consultation among community-based organizations; and
- Development and applied testing of a refugee appropriate model design or curricula for these activities.

F. A line-item budget with narrative justification for each line which correlates with and/or refers to the workplan.

Application Review Criteria

Applications will be reviewed, scored, and ranked in accordance with the following criteria:

1. Understanding of community development demonstrated by the quality of the discussion of the criteria that would be used and how they would be applied in selecting implementation sites and participating refugee CBOs, including appropriate examples of each. (10 Points)

2. Adequacy of the applicant's community development strategy, including leveraging of other resources and recruiting mainstream service providers, and the appropriateness of this approach for refugee community organizations. (25 Points)

3. Appropriateness of the anticipated outcomes. (15 Points)

4. Qualifications of the applicant agency, including the staffing plan and qualifications of key personnel to carry out the proposed activities. (25 Points)

5. Adequacy and reasonableness of implementation plan. (15 points)

6. Appropriateness, cost-effectiveness, and reasonableness of the budget. (10 Points)

Administrative Requirement

A. Availability of Application Forms

All forms necessary for submission of an application, as described herein are attached to this announcement and may be reproduced.

B. Assurances and Procedures

Applicants requesting financial assistance for a non-construction project must file the Standard Form 424B, "Assurances: Non-Construction Programs." Applicants must sign and return the Standard Form 424B with their applications.

The following certifications are attached: Drug-Free Workplace, Debarment, Environmental Tobacco Smoke, and Anti-Lobbying. In signing and submitting an application, the applicant should be aware that it is certifying that it will comply with the Federal requirement concerning the above-cited certifications for a drug-free workplace, debarment, and environmental tobacco smoke. By signing and submitting the applications, applicants are providing these certifications and need not mail back the certification with the applications. However, the applicant must submit a signed certification regarding Lobbying with the application.

Copies of the certifications and assurance are located at the end of this announcement.

Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate, and by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

C. Closing Date

1. Applications will be considered to have met the announced deadline if they are received at the address specified in this announcement by 6:30 p.m. on July 24, 1995. Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline date. (Applicants are cautioned that postmarks will not be considered as a methodology for meeting the deadline.)

2. Applications which do not meet the criteria in paragraph 1 of this section are considered late applications. The ACF shall notify each late applicant that its application will not be considered in the current competition.

3. The ACF may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if the ACF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

4. Once an application has been submitted, it is considered as final and no additional materials will be accepted by ORR. An application with an original signature and two copies is required. Applications, if mailed, should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade SW., Washington, DC 20447.

No application will be accepted by telefax. Hand delivered applications are accepted during the normal working hours of 8 a.m. to 6:30 p.m. (Eastern Daylight Time), Monday through Friday, on or prior to the established closing date at: Administration for Children and Families, Division of Discretionary Grants, 6th Floor, ACF Guard Station, 901 D Street, SW., Washington, DC 20447.

The application should reference this program announcement.

Intergovernmental Review

This program is covered by Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Virginia, Washington, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these nineteen jurisdictions need take no action regarding Executive Order 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline date to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 6th Floor, OFM/DDG, 370 L'Enfant Promenade SW., Washington, DC 20447.

A list of Single Points of Contact for each State and Territory is included as *Appendix A* of this announcement.

Applicable Regulations

Applicable HHS regulations will be provided to grantees upon award.

Post-Award Requirements—Records and Reports

Grantees are required to file Financial Status (SF–269) on a semi-annual basis and Program Progress Reports on a quarterly basis. Funds shall be accounted for and reported upon separately from all other grant activities. Successful applicants will be given specific instructions by ACF, following the award of the grant, for reporting grant performance.

The official recipient point for all reports and business management correspondence is the Division of Discretionary Grants. The original and two copies of each report and business management correspondence shall be submitted to the Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade SW., Washington, DC 20447.

The final Financial and Program Progress Reports shall be due 90 days after the project expiration date or termination of grant support.

ORR expects grantees to maintain adequate records to track and report on project outcomes and expenditures by budget line item.

The Catalog of Federal Domestic Assistance (CFDA) number assigned to this announcement is 93.576.

Dated: June 19, 1995.

Regina Lee,

Deputy Director, Office of Refugee Resettlement.

Appendix A—Executive Order 12372—State Single Points of Contact

ARIZONA
Mrs. Janice Dunn, Attn: Arizona State Clearinghouse, 3800 N. Central Avenue, 14th Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315

ARKANSAS
Tracie L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, PO Box 3278, Little Rock, Arkansas 72203, Telephone (501) 682–1074

CALIFORNIA
Glen Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480

DELAWARE
Ms. Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326

DISTRICT OF COLUMBIA
Rodney T. Hallman, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street, NW, Suite 500, Washington, DC 20005, Telephone (202) 727–6551

FLORIDA
Florida State Clearinghouse, Intergovernmental Affairs Policy Unit, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone (904) 488–8441

GEORGIA
Mr. Charles H. Badger, Administrator, Georgia State Clearinghouse, 254 Washington Street, SW, Atlanta, Georgia 30334, Telephone (404) 656–3855

ILLINOIS
Steve Klokkenga, State Single Point of Contact, Office of the Governor, 107 Stratton Building, Springfield, Illinois 62706, Telephone (217) 782–1671

INDIANA
Jean S. Blackwell, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610

IOWA
Mr. Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725

KENTUCKY
Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601, Telephone (502) 564–2382

MAINE
Ms. Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261

MARYLAND
Ms. Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490

MASSACHUSETTS
Karen Arone, State Clearinghouse, Executive Office of Communities and Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001

MICHIGAN
Richard S. Pastula, Director, Michigan Department of Commerce, Lansing, Michigan 48909, Telephone (517) 373–7356

MISSISSIPPI
Ms. Cathy Mallette, Clearinghouse Officer, Office of Federal Grant Management and Reporting, 301 West Pearl Street, Jackson, Mississippi 39203, Telephone (601) 960–2174

MISSOURI
Ms. Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834

NEVADA
Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone (702) 687–4065, Attention: Ron Sparks, Clearinghouse Coordinator

NEW HAMPSHIRE
Mr. Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review, Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155

NEW JERSEY
Gregory W. Adkins, Acting Director, Division of Community Resources, N.J. Department of Community Affairs, Trenton, New Jersey 08625–0803, Telephone (609) 292–6613
Please direct correspondence and questions to: Andrew J. Jaskolka, State Review Process, Division of Community Resources, CN 814, Room 609, Trenton, New Jersey 08625–0803, Telephone (609) 292–9025

NEW MEXICO
George Elliott, Deputy Director, State Budget Division, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3640, FAX (505) 827–3006

NEW YORK
New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605

NORTH CAROLINA
Mrs. Chrys Baggett, Director, Office of the Secretary of Admin., N.C. State Clearinghouse, 116 W. Jones Street, Raleigh, North Carolina 27603–8003, Telepone (919) 733–7232

NORTH DAKOTA
N.D. Single Point of Contact, Office of Intergovernmental Assistance, Office of Management and Budget, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone (701) 224–2094

OHIO
Larry Weaver, State Single Point of Contact, State/Federal Funds

Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411, Telephone (614) 466–0698

RHODE ISLAND
Mr. Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277–2656
Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning

SOUTH CAROLINA
Omeagie Burgess, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734–0494

TENNESSEE
Mr. Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotta Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741–1676

TEXAS
Mr. Thomas Adams, Governor's Office of Budget and Planning, PO Box 12428, Austin, Texas 78711, Telephone (512) 463–1778

UTAH
Utah State Clearinghouse, Office of Planning and Budget, Attn: Carolyn Wright, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538–1535

VERMONT
Mr. Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828–3326

WEST VIRGINIA
Mr. Fred Cutlip, Director, Community Development Division, West Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348–4010

WISCONSIN
Mr. William C. Carey, Federal/State Relations, Wisconsin Department of Administration, 101 South Webster Street, PO Box 7864, Madison, Wisconsin 53707, Telephone (608) 266–0267

WYOMING
Sheryl Jeffries, State Single Point of Contact, Herschler Building, 4th Floor, East Wing, Cheyenne, Wyoming 82002, Telephone (307) 777–7574

GUAM
Mr. Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, PO Box 2950, Agana, Guam 96910, Telephone (671) 472–2285

NORTHERN MARIANA ISLANDS
State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

PUERTO RICO
Norma Burgos/Jose H. Caro, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, PO Box 41119, San Juan, Puerto Rico 00940–9985, Telephone (809) 727–4444

VIRGIN ISLANDS
Jose L. George, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802
Please direct correspondence to: Linda Clarke, Telephone (809) 774–0750

BILLING CODE 4184–01–P

Appendix B

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:
Application: ☐ Construction ☐ Non-Construction
Preapplication: ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address (give city, county, state, and zip code):

Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:
TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT.

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____
b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number

d. Signature of Authorized Representative	e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4184–01–C

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Ester the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   —"New" means a new assistance award.
   —"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   —"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184–01–P

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		Total (g)
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Nonfederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years) (b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION
(Attach additional Sheets if Necessary)

21. Direct Charges: 22. Indirect Charges:

23. Remarks

SF 424A (4-88) Page 2
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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b).

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in Columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

ASSURANCES—NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will

establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681–1583, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (Pub. L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (Pub. L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to the confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. 276a to 276a–7), the Copeland Act (40 U.S.C. 276c and 18 U.S.C. 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) Institution of environmental quality control measures under the National Environmental Policy Act of 1969 (Pub. L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (Pub. L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (Pub. L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with Pub. L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (Pub. L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL _____

TITLE _____

APPLICANT ORGANIZATION _____

DATE SUBMITTED _____

BILLING CODE 4184–01–P

Appendix C

U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

Check __ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

BILLING CODE 4184-01-C

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction," provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Appendix E

Certification Regarding Environmental Tobacco Smoke

Public Law 103-227, Part C—Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly, or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act. The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for children's services and that all subgrantees shall certify accordingly.

Appendix F—Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature _____

Title _____

Organization _____

Date _____

BILLING CODE 4184-01-P

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. **Type of Federal Action:** ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. **Status of Federal Action:** ☐ a. bid/offer/application b. initial award c. post-award	3. **Report Type:** ☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____
4. **Name and Address of Reporting Entity:** ☐ Prime ☐ Subawardee Tier _____, *if known:* **Congressional District,** *if known:*	5. **If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:** **Congressional District,** *if known:*	
6. **Federal Department/Agency:**	7. **Federal Program Name/Description:** CFDA Number, *if applicable:* _____	
8. **Federal Action Number,** *if known:*	9. **Award Amount,** *if known:* $	
10. a. **Name and Address of Lobbying Entity** *(if individual, last name, first name, MI):*	b. **Individuals Performing Services** *(including address if different from No. 10a)* *(last name, first name, MI):*	
(attach Continuation Sheet(s) SF-LLL-A, if necessary)		
11. **Amount of Payment** *(check all that apply):* $ _____ ☐ actual ☐ planned	13. **Type of Payment** *(check all that apply):* ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____	
12. **Form of Payment** *(check all that apply):* ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____		
14. **Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:** *(attach Continuation Sheet(s) SF-LLL-A, if necessary)*		
15. **Continuation Sheet(s) SF-LLL-A attached:** ☐ Yes ☐ No		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	**Signature:** _____ **Print Name:** _____ **Title:** _____ **Telephone No.:** _____ **Date:** _____	
Federal Use Only:		**Authorized for Local Reproduction** **Standard Form - LLL**

[FR Doc. 95–15468 Filed 6–22–95; 8:45am]

BILLING CODE 4184–01–C

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.
Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: June 28, 1995.
Time: 1 p.m.
Place: Parklawn Building, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.
Contact Person: Shirley H. Maltz, Grant Technical Assistant, Parklawn Building, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, telephone: 301, 443–3857.
Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: July 24, 1995.
Time: 8:30 a.m.
Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Shirley H. Maltz, Grant Technical Assistant, Parklawn Building, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, telephone: 301, 443–3857.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552bZ(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the first meeting due to the urgent need to meet timing limitations imposed by the review cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.126, Small Business Innovation Research; 93.176, ADAMHA Small Instrumentation program Grants; 93.242, Mental Health Research Grants; 93.281, Mental Research Scientist Development Award and Research Scientist Development Award for Clinicians; 93.282, Mental Health Research Service Awards for Research Training; and 93.921, ADAMHA Science Education partnership Award.)

Dated: June 19, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–15384 Filed 6–22–95; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Agency Forms Undergoing Paperwork Reduction Act Review

Each Friday the Public Health Service (PHS) publishes a list of information collection requests under review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the PHS Reports Clearance Office on (202) 690–7100.

The following requests have been submitted for review since the list was last published on June 16.

1. HRSA Competing Training Grant Application, Supplements and Related Regulations—0915–0060—Extension, no change—The Health Resources and Services Administration uses this information to determine the eligibility of applicants for awards, to calculate the amount of each award, and to judge the relative merit of application. This is a short-term extension while the Bureau of Health Professions re-evaluates its approach to the application process. Send comments to James Scanlon, Office of the Assistant Secretary for Health, Room 737–F, Humphrey Building, 200 Independence Ave., SW., Washington, DC 20201.

	No. of respondents	No. of responses/respondent	Average burden/response
Application—reporting	2,347	1	61.25 hrs.
Statutory provisions	1,364	1	105 hrs.
Reporting in regulations	28	1.4	1 hr.
Disclosure in regulations	148	1.4	3.3 hrs.
Recordkeeping	17	1	10 hrs.

Estimated Total Annual Burden—287,852 hours.

Community Prevention Coalitions Demonstration Program Survey and Adult Community Survey—New—The purpose of the data collection is to determine how, and to what extent, Community Prevention Coalitions Demonstration grant projects, supported by the Center for Substance Abuse Prevention, are effective in reducing the incidence and prevalence of alcohol, tobacco, and other drug abuse problems. Two surveys, of 10th graders and adults, will be used. Respondents: Individuals or households. Send comments to Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503.

	No. of respondents	No. of responses/respondent	Average burden/response
Student survey	7,200	1	0.7 hour
Adult community survey	7,200	1	0.7 hour

Estimated Total Annual Burden—10,080 hours.

3. World Health Organization Cross-National Study of Behavior Among Youth: US Component (WHO Survey)—New—SAMHSA is the sponsor of the third cycle of the WHO Survey, U.S. Component. Youth in 6th, 8th, and 10th grades will be asked about health behaviors, attitudes and mental health, and injuries. The survey will identify the differences between youth from the U.S. and other participating nations on key indicators. The survey results will be used for policy and program development and information campaigns. Respondents: Individuals or households; Number of Respondents: 21,000; Number of Responses per Respondent: 1; Average Burden per Response: 0.75 hours; Estimated Total Annual Burden: 15,750 hours. Send comments to Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503.

4. Use of Auditory Canal Thermometers in Pediatric and Family Practice Offices—New—This is a mailed survey of a sample of pediatricians and family practitioners in clinical practice to determine experience with auditory canal thermometers including device performance problems, in support of the Center for Devices regulation and monitoring of this device. Respondents: Business or other for-profit; Number of Respondents: 740; Number of Responses per Respondent: 1; Average Burden per Response: .167 hour; Estimated Total Annual Burden: 123 hours. Send comments to Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503.

5. 1994 Access to Care Survey—0920–0346—Reinstatement, no change—The 1994 Access to Care Survey is a follow-up study of a sample of persons identified in the 1993 National Health Interview Survey. The objectives of the survey are to characterize experience of the general American population in obtaining medical care and provide detailed information on the nature of access problems. Respondents: Individuals or households: Number of Respondents: 8400; Number of Responses per Respondent: 1; Average Burden per Response: .43 hour; Estimated Total Annual Burden: 3600 hours. Send comments to Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503.

6. A Prospective Study of Diet and Cancer in Members of the American Association of Retired Persons—New—This study will collect primary data by mail from the male and female AARP members aged 50–69 years. The study is uniquely and explicitly designed to overcome the problems of dietary homogeneity and dietary measurement error. The information is expected to elucidate the relation between diet and several major cancers. Respondents: Individuals or households; Business or other for-profit; Number of Respondents: 291,900; Number of Responses per Respondent: 1.3; Average Burden per Response: .0.4734 hour; Estimated Total Annual Burden: 179,636 hours. Send comments to Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503.

Written comments and recommendations concerning the proposed information collections should be sent within 30 days of this notice directly to the individual designated.

Dated: June 20, 1995.

James Scanlon,

Director, Data Policy Staff, Office of the Assistant Secretary for Health and PHS, Reports Clearance Officer.

[FR Doc. 95–15416 Filed 6–22–95; 8:45 am]

BILLING CODE 4160–01–M

Substance Abuse and Mental Health Services Administration

Suspension of a Laboratory Which No Longer Meets Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, PHS, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services routinely publishes a list of laboratories in the **Federal Register** that are currently certified to meet standards of Subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29925) dated June 9, 1994. This notice informs the public that effective June 14, 1995 the following laboratory's certification is suspended: ACCU–LAB, Inc., 405 Alderson Street, Schofield, WI 54476, 800–627–8200 (formerly: Alpha Medical Laboratory, Inc., Employee Health Assurance Group, ExpressLab, Inc.)

FOR FURTHER INFORMATION CONTACT: Division of Workplace Programs, Substance Abuse and Mental Health Services Administration, Room 13A–54, Telephone: 301–443–6014, 5600 Fishers Lane, Rockville, Maryland 20857.

Michele W. Applegate,

Administrator, Substance Abuse and Mental Health Services Administration.

[FR Doc. 95–15510 Filed 6–22–95; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–95–1917; FR–3778–N–42]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact David Pollack, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to David Pollack at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: General Services Administration: Norman C. Miller, Acting Assistant Commissioner, General Services Administration, Federal Property Resources Services, 18th and F Streets, NW, Washington, DC 20405; U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; (These are not toll-free numbers).

Dated: June 15, 1995.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 06/23/95

Suitable/Available Properties

Buildings (by State)

Knoxville Job Corps Center
621 Dale Avenue
Knoxville 37921–
Landholding Agency: GSA
Property Number: 549520005
Status: Excess
Comment: 23,445 sq. ft.; 4 stories, concrete, brick, masonry, steel structure; incs. 115,000 sq. ft. parking lot; most recent use—student housing and Job Corps Center.
GSA Number: 4–L–TN–641

North Carolina

Portion VA Reservation
Nurses Quarters
Oteen Co: Buncombe NC
Landholding Agency: GSA
Property Number: 549320006
Status: Excess
Comment: 8,752 sq. ft., 3-story stucco bldg., presence of asbestos, most recent use—educational facility.
GSA Number: 4–GR–NC–481B

Tennessee

Federal Building-Post Office
Liberty and Main Streets
Jacksboro Co: Campbell TN 37757–
Landholding Agency: GSA
Property Number: 549520006
Status: Excess
Comment: 3,967 sq. ft., 2 story, brick, steel frame; presence of asbestos; most recent use—office space/storage.
GSA Number: 4–G–TN–639

Federal Bldg.—Post Office
Main Street and Maiden Lane
Wartburg TN 37887–
Landholding Agency: GSA
Property Number: 549520008
Status: Excess
Comment: 7,603 sq. ft., 1 story, brick structure; most recent use—post office and office space for federal tenants.
GSA Number: 4–G–TN–640

Texas

USDA Subtropical Agricultural
Reserch Center
509 West 4th Street
Weslaco Co: Hidalgo TX 78557–
Landholding Agency: GSA
Property Number: 549520007
Status: Excess
Comment: 8,000 sq. ft., 1 story; most recent use—office/lab; potential utilities; needs rehab.
GSA Number: 7–A–TX–1039

Land (by State)

Florida

Jacksonville Com. Annex
U.S. Highway 17
Orange Park Co: Clay FL 32073–
Landholding Agency: GSA
Property Number: 549520013
Status: Excess
Comment: 5.35 fee acres, bldgs. gutted, road easement.
GSA Number: 4–D–FL–780

Georgia

Naval Submarines Base
Kings Bay Co: Camden GA
Landholding Agency: GSA
Property Number: 549520012
Status: Excess
Comment: 20+ acres, elementary school on site/not owned by Fed. Govt. leased to Camden County.
GSA Number: 4–N–GA–606B

Texas

Tracts 909, 954, 958, 967, 970, 971
Whitney Lake Project
Kopprell Co: Bosque TX 76652–
Landholding Agency: GSA
Property Number: 549520009
Status: Excess
Comment: 1.106 acres, maintenance of lake property.
GSA Number: 7–D–TX–0505N

Unsuitable Properties

Buildings (by State)

California

Bldg. 481
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520018
Status: Unutilized
Reason: Secured Area.

Bldg. 482
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520019
Status: Excess
Reason: Secured Area.

Bldg. 356
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520020
Status: Excess
Reason: Secured Area.

Bldg. 361
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520021
Status: Excess
Reason: Secured Area.

Bldg. 364
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520022
Status: Excess
Reason: Secured Area.

Bldg. 373
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520023
Status: Excess
Reason: Secured Area.

Bldg. 407
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520024
Status: Excess
Reason: Secured Area.

Bldg. 413
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy

Property Number: 779520025
Status: Excess
Reason: Secured Area.

Bldg. 366
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520026
Status: Unutilized
Reason: Secured Area.

Bldg. 432
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520027
Status: Excess
Reason: Secured Area.

Bldg. 372
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520028
Status: Excess
Reason: Secured Area.

Bldg. 417
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520029
Status: Excess
Reason: Secured Area.

Bldg. 422
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520030
Status: Excess
Reason: Secured Area.

Bldg. 424
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520031
Status: Excess
Reason: Secured Area.

North Carolina

Structure RR–85
Camp Lejeune, Base Rifle Range
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779520016
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Structure SRR–86
Camp Lejeune, Base Rifle Range
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779520017
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

[FR Doc. 95–15089 Filed 6–22–95; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–1220–00; Closure Notice No. NV–030–95–04]

Temporary Closure of Certain Public Lands in the Carson City District for Management of the 1995 Running of the V.O.R.R.A. "Fallon 250" Off-Highway Vehicle (OHV) Race

AGENCY: Bureau of Land Management, Nevada.

ACTION: Temporary closure of certain public lands in Churchill County, Nevada, on and adjacent to the 1995 "Fallon 250" race course on July 29, 1995. Access will be limited to race officials, entrants, law enforcement and emergency personal, BLM personnel monitoring the event, licensed permittee(s) and right-of-way grantees.

SUMMARY: The Carson City District Manager announces the temporary closure of selected public lands under his administration. This action is being taken to provide for public safety during the official running of the 1995 "Fallon 250" OHV Race.

EFFECTIVE DATE: July 29, 1995.

FOR FURTHER INFORMATION CONTACT: Terry Knight, Outdoor Recreation Planner, Carson City District Office, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89706–0638. Telephone (702) 885–6100.

SUPPLEMENTARY INFORMATION: Certain public lands in the Carson City District, Churchill County, Nevada, will be temporarily closed to public access on July 29, 1995, to protect persons, property, and public land resources on and adjacent to the 1995 "Fallon 250" OHV race, permit number NV–03–4–010. Specific restrictions and closure information are as follows:

1. The public lands to be closed or restricted are those lands adjacent to and including roads, trails and washes identified as the 1995 "Fallon 250" OHV race course. These lands are within T.17N., R.30E.; T.17N., R.31E.; T.16N., R.30E.; T.16N., R.31E.; T.16N., R.32E.; T.15N., R.31½E.; T.15N., R.32E.; and T.15N., R.33E, M.D.M. A map of the race course may be obtained from Terry Knight at the contact address. The event permittee is required to mark and monitor the race course during this closure period.

2. From 12 p.m., Saturday, July 29, 1995, to 3 a.m., Sunday, July 30, 1995, the race course and those public lands 300 feet to either side of the course are closed to the public, except for designated check points and spectator areas.

3. Areas from which spectators may view the event are confined to the start/finish area in NE¼SE¼ Section 9 and NW¼SW¼ Section 10, T.16N., R.32E., M.D.M., and check points 1, 2, 3 and 4, identified on the map of the race course. All public spectator vehicles operating within these designated areas shall maintain maximum speed of 10 MPH. Spectators shall remain in safe locations as directed by event officials or BLM personnel.

The above restrictions do not apply to race officials, law enforcement and emergency personnel, or BLM personnel monitoring the event.

Authority for closure of public lands is found in 43 CFR 8341, 43 CFR 8364 and 43 CFR 8372. Any person who fails to comply with this closure order may be subject to the penalties provided in 43 CFR 8360.7.

Dated: June 15, 1995.

James M. Phillips,

Area Manager, Lahontan Resource Area.

[FR Doc. 95–15407 Filed 6–22–95; 8:45 am]

BILLING CODE 4310–HC–M

[CO–920–95–1320–01; COC 58219]

Colorado; Notice of Invitation for Coal Exploration License Application, Mountain Coal Company

Pursuant to the Mineral Leasing Act of February 25, 1920, as amended, and to Title 43, Code of Federal Regulations, Subpart 3410, members of the public are hereby invited to participate with Mountain Coal Company in a program for the exploration of unleased coal deposits owned by the United States of America in the following described lands located in Gunnison County, Colorado:

T. 13 S., R. 89 W., 6th P.M.
Sec. 16, SW¼;
Sec. 17, all;
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 20, all;
Sec. 21, W½;
Sec. 28, W½;
Sec. 29, all;
Sec. 30, lots 1 to 4, E½, E½W½;
Sec. 31, lots 3 to 6, E½, E½W½;
Sec. 32, all;
Sec. 33, W½.

T. 13 S., R. 90 W., 6th P.M.
Sec. 12, lots 6 to 10, inclusive, NW¼SW¼;
Sec. 13, lots 1 to 16, inclusive;
Sec. 24, lots 1 to 16, inclusive;
Sec. 25, all;
Sec. 35, lots 1 to 16, inclusive;
Sec. 36, all.

T. 14 S., R. 89 W., 6th P.M.
Sec. 4, lots 7, 8, S½NW¼, and SW¼;
Sec. 5, lots 3 to 6, inclusive, S½N½, and S½;
Sec. 6, lots 4 to 10, inclusive, S½NE¼, SE¼NW¼, W½SW¼, and SE¼.

T. 14 S., R. 90 W., 6th P.M.
Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 11, N½N½;
Sec. 12, N½N½.

The area described contains approximately 12,592.58 acres.

The application for coal exploration license is available for public inspection during normal business hours under serial number COC 58219 at the Bureau of Land Management (BLM), Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, and at the Montrose District Office, 2465 South Townsend Avenue, Montrose, Colorado 81401.

Written Notice of Intent to Participate should be addressed to the attention of the following persons and must be received by them within 30 days after publication of the Notice of Invitation in the **Federal Register**:

Karen Purvis, Solid Minerals Team, Resource Services, Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215,
and
Mark W. Scanlon, Sr. Geologist, Mountain Coal Company, P.O. Box 591, Somerset, Colorado 81434.

Any party electing to participate in this program must share all costs on a pro rata basis with the applicant and with any other party or parties who elect to participate.

Dated: June 15, 1995.

Karen Purvis,

Solid Minerals Team Resource Services.

[FR Doc. 95–15364 Filed 6–22–95; 8:45 am]

BILLING CODE 4310–JB–M

[NV–930–05–1430–01; N58350]

Realty Action, Lease and Sale of Public Lands for Recreation and Public Purpose, Humboldt Co., Nevada

ACTION: Notice of Realty Action, lease and sale of public lands for Recreation and Public Purpose (R&PP) Act Application N–58350, Humboldt County, Nevada.

SUMMARY: In response to an application from the Humboldt County Board of Commissioners for a regional recreation complex, the following described land has been identified as suitable for lease and sale and will be classified for lease and sale under the R&PP Act of June 14, 1926, as amended (43 U.S.C. 869, *et seq.*):

Mount Diablo Meridian, Nevada

T. 35 N., R. 38 E., Sec. 6, Lots 1, 11, 12, 13, E½W½SW¼NW¼NE¼, E½SW¼NW¼NE¼, SE¼NW¼NE¼, E½W½W½SW¼NE¼, E½W½SW¼NE¼, E½SW¼NE¼, SE¼NE¼, S½N½N½NE¼SW¼, S½N½NE¼SW¼, S½NE¼SW¼, S½N½N½NE¼NW¼SW¼, S½N½NE¼NW¼SW¼, S½NE¼NW¼SW¼, SE¼SW¼, SE¼.

Totalling approximately 431.19 acres.

The lands are not required for Federal purposes. Disposal is consistent with the Bureau's land use plan for the area and would be in the public's interest.

FOR FURTHER INFORMATION CONTACT: Ken Detweiler, Realty Specialist, 705 East 4th Street, Winnemucca, NV 89445, telephone (702) 623–1500.

SUPPLEMENTARY INFORMATION: The public lands are being offered to the Humboldt County Board of Commissioners for a regional recreation complex. The complex would include an eighteen hole championship golf course, equestrian center, park, little league/softball fields, multi-purpose field, and associated maintenance facilities.

The lease and/or patent, when issued will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

2. All mineral deposits in the lands so patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

And will be subject to:

1. Those rights for transmission line purposes granted to Sierra Pacific Power Company by Rights-of-way NEV–042767, NEV–057840, N–46291, N–52751, and N–59698.

2. Those rights for road purposes granted to Humboldt County under Right-of-way N–37919.

3. Those rights for a bicycle path granted to Humboldt County under Right-of-way N–41637.

4. Those rights for electric substation purposes granted to Sierra Pacific Power Company under Right-of-way N–46290.

5. Those rights granted to the Nevada Department of Transportation for Grass Valley Road under Highway Easement Deed N–58306.

6. An easement 30 feet in width along the north and east boundaries of Lot 1, the east boundary of the SE¼NE¼ and the SE¼, and the south boundary of the SE¼ and the SE¼SW¼ and Lot 11, for road and public utilities purposes to ensure continued ingress and egress to adjacent lands.

Upon publication of this notice in the **Federal Register**, the lands, except Lot 13, will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the R&PP Act and leasing under the mineral leasing laws. Lot 13 will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the R&PP Act and sale under the Federal Land Policy and Management Act and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register** (August 7, 1995), interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the District Manager, Winnemucca District Office, 705 East 4th Street, Winnemucca, Nevada 89445.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for a Regional Recreation Complex. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a regional recreation complex.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register** (August 22, 1995).

Dated: June 16, 1995.

Ron Wenker,

District Manager, Winnemucca.

[FR Doc. 95–15361 Filed 6–22–95; 8:45 am]

BILLING CODE 4310–HC–P

[NM017–1430–01; NMNM 87007]

Realty Action—Recreation and Public Purpose (R&PP) Act Classification; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice is to advise that the following public lands in Sandoval County, New Mexico, have been examined and found suitable for classification for conveyance to the Torreon Navajo Mission/Dunkard Brethern Church under the provisions of the R&PP Act, as amended (43 U.S.C. 869 *et seq.*) at not less than the appraised fair market value (FMV) of $2,000. The Torreon Navajo Mission/Dunkard Brethern Church proposes to use the land for cemetery purposes.

New Mexico Principal Meridian

T. 18 N., R. 3 W., sec. 8,
N½SW¼SE¼SW¼,
W½SW¼SW¼SE¼SW¼ and
E½SE¼SW¼SE¼SW¼.

The area described contains 7.500 acres.

The lands would not be leased prior to being patented to the Torreon Navajo Mission/Dunkard Brethern Church. A patent under the Recreation and Public Purpose Act is consistent with current BLM land use planning and would be in the public interest. The lands are not needed for Federal purposes.

The patent, when issued, will be subject to the following terms, conditions and reservations.

1. Provisions of the R&PP Act and to all applicable Regulations of the Secretary of the Interior.

2. A right-of-way for ditches or canals constructed by the authority of the United States pursuant to the Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and such deposits from the same under applicable law and such, regulations as the Secretary of the Interior may prescribe.

4. Those rights for a pipeline granted to Cortez Company Inc. by Right-of-Way NMNM 29081.

5. Any other reservation that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interest therein.

Detailed information concerning this action is available for review at the Office of the Bureau of Land Management, Rio Puerco Resource Area, 435 Montano NE, Albuquerque, New Mexico.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public laws, including the general mining laws, except for conveyance under the R&PP Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, (August 7, 1995), interested persons may submit comments regarding the proposed conveyance or classification of lands to the District Manager, Bureau of Land Management, 435 Montano NE, Albuquerque, New Mexico 87107.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for a cemetery. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for cemetery.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register** (August 22, 1995).

Michael R. Ford,

District Manager.

[FR Doc. 95–15362 Filed 6–22–95; 8:45 am]

BILLING CODE 4310–FB–M

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for a Permit to Allow Incidental Take of the Threatened Northern Spotted Owl and Threatened Marbled Murrelet by the Oregon Department of Forestry on the Elliott State Forest, Coos and Douglas Counties, Oregon

AGENCY: Fish and Wildlife, Interior.

ACTION: Notice of document availability; request for comments.

SUMMARY: This notice advises the public that the Oregon Department of Forestry (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The application has been assigned permit number PRT–803344. The requested permit would authorize incidental take of the threatened northern spotted owl *(Strix occidentalis caurina)* (owl) and threatened marbled murrelet *(Brachyramphus marmoratus)* (murrelet) on the Elliott State Forest (Forest) in Coos and Douglas Counties, Oregon. The proposed incidental take would occur as a result of timber harvest activities in owl and murrelet habitat.

The Service also announces the availability of an Environmental Assessment (EA) for the proposed issuance of the incidental take permit. All comments received will become part of the public record and may be released. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the permit application and EA should be received on or before July 24, 1995.

ADDRESSES: Comments regarding the application or EA should be addressed to Curt Smitch, Assistant Regional Director-North Pacific Coast Ecoregion, U.S. Fish and Wildlife Service, Pacific Northwest Habitat Conservation Plan Program, 3773 Martin Way East, Building C—Suite 101, Olympia, Washington 98506 (360–534–9330). Please refer to permit number PRT–803344 when submitting comments. Individuals wishing copies of the documents for review should immediately contact the office listed above.

FOR FURTHER INFORMATION CONTACT: Brian Bogaczyk, at the office listed above.

SUPPLEMENTARY INFORMATION:

Background

Under section 9 of the Act and its implementing regulations, "taking" of owls and murrelets, both threatened species, is prohibited. However, the Service, under limited circumstances, may issue permits to authorize take of threatened wildlife species if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened species are in 50 CFR 17.32.

The Applicant proposes to implement a Habitat Conservation Plan (HCP) for owls and murrelets that will allow timber harvest on portions of the approximately 93,000 acre Forest in Coos and Douglas Counties, Oregon. The Applicant's proposed timber harvest may result in the take, as defined in the Act and its implementing regulations, of owls and murrelets in the harvest area. The permit authorizing incidental take would be in effect for 60 years for owls, and 6 years for murrelets. The HCP includes mitigation that would be in effect for 60 years, and would benefit both owls and murrelets. The application includes an HCP and Implementation Agreement.

The Applicant proposes to mitigate the incidental take by: (1) Setting aside approximately 19 percent of the Forest in late successional reserves located along riparian areas, in important owl, murrelet, and other wildlife habitat, and other areas of high ecological or scenic value; (2) managing the remaining Forest acreage in longer (80–240-year) timber rotations; (3) reducing habitat fragmentation and edge; (4) maintaining a forest landscape conducive to dispersal by owls; (5) dedication of research funds for 5 years to investigate murrelet and owl habitat relationships; and (6) habitat enhancement at the stand level. The Applicant will minimize take through: (1) Implementing a decision hierarchy procedure designed to ensure timber harvest only occurs in the poorest quality potential murrelet habitat; (2) protect and buffer currently known murrelet-occupied sites; (3) for the first 5 years of HCP implementation, protect a 70-acre core area around currently known owl activity centers, and restrict timber harvest and road construction activities within 0.25 miles of currently known owl nest sites during the breeding season; and (4) prohibit timber harvest and road construction within 0.25 miles of known occupied murrelet stands during the breeding season.

The EA considers the environmental consequences of 5 alternatives, including the Proposed Action and No Action alternatives. The Proposed Action is the issuance of a permit under section 10(a) of the Act that would authorize incidental take of owls for 60 years and murrelets for 6 years on the Forest, in accordance with the HCP. The Conservation Biology alternative would set aside 81 percent of the Forest in reserves, and would have the lowest level of take, other than the No Action alternative: The Intermediate Rotation alternative would set aside 13 percent of the Forest, would not include many of the mitigation and minimization measures inherent in the proposed action, and would produce the highest level of take. The Modified Interim Plan alternative would set aside 67 percent of the Forest, and would produce an intermediate level of take. Under the No Action alternative, the Applicant would avoid incidental take of owls and murrelets and the permit would not be issued.

Dated: June 19, 1995.

John H. Doebel,

Deputy Regional Director, Region 1, Portland, Oregon.

(**Notice:** Availability of an Environmental Assessment and Receipt of an Application for a Permit Under Section 10(a)(1)(B) of the Endangered Species Act.)

[FR Doc. 95–15409 Filed 6–22–95; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Reclamation

Interim Concessions Management Policy Statement and Corresponding Concessions Management Guidelines

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation is extending the comment period published in 60 FR 21827, May 3, 1995, for the interim concessions management policy statement and corresponding concessions management guidelines. The extension will allow the public more time to prepare comments concerning the policy and guidelines.

DATES: Comments on the policy and guidelines must be postmarked no later than September 5, 1995.

FOR FURTHER INFORMATION CONTACT: To request a copy of the policy and guidelines contact Bruce Glenn, Bureau of Reclamation, P.O. Box 25007, Denver, Colorado, 80225, Telephone: 303–236–3289, extension 314. Submit written comments to Mr. Glenn at the above address.

Dated: June 16, 1995.

Wayne Deason,

Assistant Director, Program Analysis Office.

[FR Doc. 95–15387 Filed 6–22–95; 8:45 am]

BILLING CODE 4310–94–P

National Biological Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information reproduced below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest for the reasons given below. Approval has been requested by July 1, 1995. Comments and suggestions on the proposal should be made directly to the bureau clearance officer listed below and the Office of Management and Budget, Paperwork Reduction Project (1089–NB52), Washington, DC 20503; telephone 202–395–7340.

Title: Request for Economic Valuation of Riverine Resources.

OMB approval number: 1089–NB52.

Abstract: This study focuses on entire river basin and ecosystem valuation methodology development. The overall goal is development of transferable models and methods for assessing the value of habitats, using the Tallaposa River in Alabama and Georgia as a study site. Methods to collect and analyze this data is needed to be able to predict the probable social and economic consequences of riverine and ecosystem management actions.

Results can assist decision-makers in effectively managing a river system's multiple uses. Telephone, mail and on-site interviews with Tallapoosa River users and non-users from a 20 county area will be the focus audience of this research.

Reason for expedited review: To allow timely continuation of project activities and to reduce difficulty in responding to question on use of the riverine resource during primary season use. Approval by expedited date would allow surveying to begin during or shortly after peak summer season.

Frequency: Once.

Description of respondents: Users and non-users of the Tallapossa River system.

Estimated completion time: 14.25 minutes per survey (weighted average of telephone and mail/on-site survey instruments).

Annual responses: 4,350.

Annual burden hours: 1,509.

Bureau clearance officer: Don Minnich 202–482–4838, MS 3070 MIB, 1849 C Street NW., Washington, DC 20240.

Dated: June 16, 1995.

H. Ronald Pulliam,

Director, National Biological Service.

[FR Doc. 95–15282 Filed 6–22–95; 8:45 am]

BILLING CODE 4310–DP–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–374]

Notice

In the Matter of certain electrical connectors and products containing same.

Notice is hereby given that the prehearing conference in this matter will commence at 9:00 a.m. on June 27, 1995, in Courtroom C (Room 217), U.S. International Trade Commission Building, 500 E St. SW., Washington, DC, and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register.**

Issued: June 20, 1995.

Paul J. Luckern,

Administrative Law Judge.

[FR Doc. 95–15426 Filed 6–22–95; 8:45 am]

BILLING CODE 7020–02–P

[Investigations Nos. 731–TA–711 and 716–717 (Final)]

OCTG From Argentina, Mexico, and Spain

AGENCY: International Trade Commission.

ACTION: Institution and scheduling of final antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of antidumping investigations Nos. 731–TA–711 and 716–717 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Argentina, Mexico, and Spain of oil country tubular goods (OCTG),[1] provided for in subheadings 7304.20, 7305.20, and 7306.20 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: June 20, 1995.

FOR FURTHER INFORMATION CONTACT: Douglas Corkran (202–205–3177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background.—The subject investigations are being instituted as a result of affirmative final determinations by the Department of Commerce that imports of OCTG from Argentina, Mexico, and Spain are being sold in the United States at less than fair value (LTFV) within the meaning of section 733 of the Act (19 U.S.C. § 1673b). Commerce's preliminary determinations of sales at LTFV were negative (60 F.R. 6503, February 2, 1995, and 60 F.R. 13119, March 10, 1995). These investigations were requested in petitions filed on June 30, 1994, by Bellville Tube Corp. (Bellville, TX); IPSCO Steel, Inc. (Camanche, IA); Koppel Steel Corp. (Beaver Falls, PA); Maverick Tube Corp. (Chesterfield, MO); North Star Steel Ohio (Youngstown, OH); U.S. Steel Group (Pittsburgh, PA); and USS/Kobe Steel Co. (Lorain, OH). The schedule for the subject investigations will be identical to that of the Commission's ongoing countervailing and antidumping duty investigations of the subject product (60 F.R. 10107, February 23, 1995).

Participation in the investigations and public service list.—Any person having already filed an entry of appearance in the ongoing countervailing and antidumping duty investigations on OCTG is considered a party in the subject antidumping investigations. Any other persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission not later than two (2) days after publication of this notice in the **Federal Register.** The time limits established in section 201.11(b) of the Commission's rules are hereby waived.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—The Secretary will make BPI gathered in these final investigations available to additional authorized applicants under the APO issued in the investigations, provided that the application is made not later than two (2) days after the publication of this notice in the **Federal Register.** The time limits established in section 207.7(a) of the Commission's rules are hereby waived. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in these investigations was placed in the nonpublic record on June 14, 1995, and a public version was issued on June 16, 1995, pursuant to section 207.21 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on June 27, 1995, at the U.S. International Trade Commission Building. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on June 22, 1995, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules.

Requests for a separate hearing in these investigations for the limited purpose of supplementing the June 27, 1995, hearing record with testimony and evidence solely related to these antidumping duty investigations should be filed in writing with the Commission not later than June 30, 1995. If such a hearing is requested, parties will be contacted regarding the dates for the hearing and for the filing of briefs.

Written submissions.—Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.22 of the Commission's rules; the deadline for filing is June 21, 1995. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.24 of the Commission's rules. The deadline for filing posthearing briefs is July 6, 1995; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before July 6, 1995. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections § 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections § 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

By order of the Commission.

Issued: June 20, 1995

Donna R. Koehnke,

Secretary.

[FR Doc. 95–15547 Filed 6–22–95; 8:45 am]

BILLING CODE 7020–02–P

[1] For the purposes of these investigations, OCTG are hollow steel products of circular cross-section. These products include oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether or not conforming to American Petroleum Institute ("API") or non-API specifications, whether finished or unfinished (including green tubes). These investigations do not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium.

[Investigation No. 731–TA–710 (Final)]

Certain Seamless Carbon and Alloy Standard, Line, and Pressure Steel Pipe From Italy

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–710 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of certain seamless carbon and alloy standard, line, and pressure steel pipe [1] from Italy. Such imports are provided for in subheadings 7304.10.10, 7304.10.50, 7304.31.60, 7304.39.00, 7304.51.50, 7304.59.60, and 7304.59.80 of the Harmonized Tariff Schedule of the United States. The Commission will make its final injury determination within 75 days after receipt of Commerce's notification of its final determination (19 U.S.C. 1673d(b)).

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's rules of practice and procedure, part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: June 14, 1995.

FOR FURTHER INFORMATION CONTACT: Diane J. Mazur (202–205–3184), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background

The subject antidumping investigation is being instituted as a result of the affirmative final determination by the Department of Commerce (60 FR 31981, June 19, 1995) that imports of certain seamless carbon and alloy standard, line, and pressure steel pipe from Italy are being sold in the United States at less than fair value (LTFV) within the meaning of section 733 of the Act (19 U.S.C. 1673b). Commerce's preliminary determination of sales at LTFV was negative (60 FR 5358, January 27, 1995). This investigation was requested in a petition filed on June 23, 1994, on behalf of the Gulf States Tube Division of Quanex Corp., Rosenberg, TX. The schedule for the subject investigation will be identical to that of the Commission's ongoing countervailing and antidumping duty investigations of the subject product (60 FR 11110, March 1, 1995).

Participation in the Investigation and Public Service List

Any person having already filed an entry of appearance in the related countervailing duty investigation is considered a party in this antidumping investigation. Any other persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register.** The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List.

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register.** A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report.

A prehearing staff report applicable to this investigation was placed in the nonpublic record on June 7, 1995, and a public version was issued on June 8, 1995, pursuant to § 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the ongoing countervailing and antidumping duty investigations (Invs. Nos. 701–TA–362 and 731–TA–707–709 (Final)) of the subject product, beginning at 9:30 a.m. on June 20, 1995, at the U.S. International Trade Commission Building. At that hearing, the Commission will hear testimony and receive evidence regarding the antidumping investigation instituted herein. Oral testimony and written materials to be submitted at the public hearing are governed by § 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules.

Requests for a separate hearing in this investigation for the limited purpose of supplementing the June 20, 1995, hearing record with testimony and evidence solely related to the antidumping duty investigation, should be filed in writing with the Commission not later than June 27, 1995. If such a hearing is requested, parties will be contacted regarding dates for the hearing and for the filing of briefs.

Written Submissions

Parties may file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is June 28, 1995; witness testimony must be filed

[1] The imports subject to investigation are seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3mm (4.5 inches) in outside diameter, regardless of wall thickness, manufacturing process (hot-finished or cold-drawn), end finish (plain end, bevelled end, upset end, threaded, or threaded and coupled), or surface finish. The subject imports are further defined in the U.S. Department of Commerce's notice of final determination of sales at less than fair value (60 FR 31981, June 19, 1995).

no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before June 28, 1995. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3 and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: June 19, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–15425 Filed 6–22–95; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–33 (Sub-No. 89X)]

Union Pacific Railroad Company—Abandonment Exemption—In McPherson County, KS (McPherson Branch)

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 12.6-mile line of railroad between milepost 518.0 near McPherson and milepost 530.6 near Lindsborg, in McPherson County, KS.

UP has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) the line is not used to move overhead traffic; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (service of environmental report on agencies), 49 CFR 1105.8 (service of historic report on State Historic Preservation Officer), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (service of verified notice on governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on July 23, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by July 3, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 13, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Joseph D. Anthofer, 1416 Dodge St., Room 830, Omaha, NE 68179.

If the notice of exemption contains false or misleading information, the exemption is void ab initio.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by June 28, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 14, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–15452 Filed 6–22–95; 8:45 am]

BILLING CODE 7035–01–P

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated March 13, 1995, and published in the **Federal Register** on March 17, 1995, (60 FR 14449), North Pacific Trading Company, 1505 SE Gideon Street, Portland, Oregon 97202, made application to the Drug Enforcement Administration to be registered as an importer of Marihuana (7360), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: June 15, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–15385 Filed 6–22–95; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Registration

By Notice dated April 7, 1995, and published in the **Federal Register** on April 20, 1995, (60 FR 19779), Stepan Company, Natural Products Department, 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cocaine (9041)	II
Benzoylecgonine (9180)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: June 15, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–15351 Filed 6–22–95; 8:45 am]

BILLING CODE 4410–09–M

Federal Bureau of Prisons

Intent to Prepare a Draft Environmental Impact Statement (DEIS) for the Construction of a Detention Center in Oahu Island, Hawaii

AGENCY: Federal Bureau of Prisons, Justice.

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS).

SUMMARY

Proposed Action

The United States Department of Justice, Federal Bureau of Prisons has determined that a Detention Center is needed to provide Federal detention capacity in Oahu Island, Hawaii.

The four sites under consideration include the following:

Site A—An approximately four (4) acre tract located along Lagoon Drive and in close proximity to the Honolulu International Airport. The land is state controlled and is separated from Site B by Iolana Place. The land is currently being used as an airport employee parking lot.

Site B—An Approximately five (5) acre tract along Lagoon Drive and in close proximity to the Honolulu International Airport. The land is state controlled, and is separated from Site A by Iolana Place. The land is currently being used as an airport employee parking lot.

Site C—An approximately three (3) acre tract on the Makai side of Ualena Street, and bounded by Lagoon Drive and Ohohia Street (closer to Ohohia). The land is state controlled, and is also near the Honolulu International Airport. The land is vacant and currently being used for the temporary storage of new automobiles.

Site D—An approximately four (4) acre tract at Fort Armstrong behind the INS Building on Ala Moana. The land is state (2½ acres) and Federally (1½ acres) controlled, and is currently being used for government employee parking.

The Federal Bureau of Prisons proposes to construct a 500 bed detention facility for individuals who are awaiting trial, sentencing, or having other business before the United States District Court. As such, the facility is considered an extension of the Federal judiciary and law enforcement activity.

The sites under consideration are of sufficient size to provide space for detainee housing, programs, services and support areas, as well as administration, staff training and parking.

The Process

In the process of evaluating the four sites, several aspects will receive detailed examination including: utilities, traffic patterns, noise levels, visual intrusion, threatened and endangered species, cultural resources and socio-economic impacts.

Alternatives

In developing the DEIS, the options of no action and alternative sites for the proposed facility will be fully and thoroughly examined.

Scoping Process

During the preparation of the DEIS, there will be numerous opportunities for public involvement. A public Scoping Meeting will be held at a time and location convenient to the citizens of Oahu. The meeting will be well-publicized and will be held at a time which will make it possible for the public and interested agencies or organizations to attend. In addition, a number of informal meetings will be conducted by representatives of the Bureau of Prisons with interested citizens, officials and community leaders.

DEIS Preparation

Public notice will be given concerning the availability of the DEIS for public review and comment.

Address

Questions concerning the proposed action and the DEIS can be answered by: David J. Dorworth, Acting Chief, Site Selection and Environmental Review Branch, Federal Bureau of Prisons, 320 First Street, NW., Washington, DC 20534, (202) 514–8697.

Dated: June 2, 1995.

David J. Dorworth,

Acting Chief, Site Selection and Environmental Review.

[FR Doc. 95–14935 Filed 6–22–95; 8:45 am]

BILLING CODE 4410–05–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

June 20, 1995.

The Department of Labor has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act (44 U.S.C. Chapter 35) of 1980, as amended (Pub. L. 96–511). Copies may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O'Malley ([202] 219–5095). Comments and questions about the ICRs listed below should be directed to Ms. O'Malley, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OAW/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 10325, Washington, DC 20503 ([202] 395–7316).

Individuals who use a telecommunications device for the deaf (TTY/TDD) may call [202] 219–4720 between 1 p.m. and 4 p.m. Eastern time, Monday through Friday.

Type of Review: Revision.

Agency: Employment and Training Administration.

Title: Adjudication Determinations Activity Report.

OMB Number: 1205–0150.

Agency Number: ETA 207.

Frequency: Quarterly.

Affected Public: State, Local or Tribal Government.

Type of reporting	Respondents	Estimated time per respondent minutes
Regular Reports	53	244
Extended Benefits	3	240

Total Burden Hours: 910.
Description: The data collected on the Employment and Training (ETA) 207 are used to monitor the impact of the disqualification provisions, to measure workload, and to appraise adequacy and effectiveness of State and Federal nonmonetary determination procedures.
Type of Review: Extension.
Agency: Employment and Training Administration.
Title: Attestation by Facilities Temporarily Employing Nonimmigrant Aliens as Registered Nurses.
OMB Number: 1205–0305.
Agency Number: ETA 9029.
Frequency: On occasion.
Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.
Number of Respondents: 1,403.
Estimated Time Per Respondent: 3 hours 19 minutes.
Total Burden Hours: 13,343.
Description: The information provided on this form by health care facilities will permit the Department of Labor to meet Federal responsibilities for program administration, management, and oversight.
Type of Review: New
Agency: Employment and Training Administration.
Title: Unemployment Insurance Survival Rate Analysis and Benefit Models.
OMB Number: 1205–0new.
Frequency: One-time.
Affected Public: Federal Government; State, Local or Tribal Government.
Number of Respondents: 15
Estimated Time Per Respondent: 40 hours.
Total Burden Hours: 600.
Description: This project is designed to conduct a comprehensive analysis of the nature of the Unemployment Insurance benefit payment process and to use those findings in developing an integrated benefit payment and workload projection model.
Type of Review: New.
Agency: Employment and Training Administration.
Title: Unemployment Insurance Performance Measurement Review System (PMR).
OMB Number: 1205–0new.
Frequency: Monthly; Quarterly.
Affected Public: State, Local or Tribal Government.

Type of reporting	Respondents	Average time per respondent hours
Monthly Universe	53	8
Quarterly Universe	53	1.5
SESA Workload for Sample Measures	53	4.5

Total Burden Hours: 38,486.
Description: The Unemployment Insurance Service and State Employment Security Agencies (SESAs) will utilize the UI PMRS to assess quality and timeliness of UI benefit operations. The results will help to determine operating areas that need corrective action plans to meet achievement standards in States' Annual Program and Budget Plan (PBP).
Type of Review: New.
Agency: Occupational Safety and Health Administration.
Title: Hazardous Waste Operations and Emergency Response (29 CFR 1910.120).
OMB Number: 1218–0new.
Frequency: One-time.
Affected Public: Business or other for-profit; Federal Government; State, Local or Tribal Government.
Number of Respondents: 650 clean-up site respondents, 3,940 disposal site respondents, 30,528 emergency response respondents, 35,118 total respondents.
Estimated Time Per Respondent: 1,545.49 for clean-up sites, 48.00 for disposal sites, 499.33 for emergency responders.
Total Burden Hours: 18,289,070.
Description: 29 CFR 1910.120 regulates the safety and health of employees engaged in hazardous waste site operations and emergency response to the release of hazardous substances from their containers. It was mandated by Congress under section 126 of the Superfund Amendments and Reauthorization Act of 1986. Worker populations covered by the rule include workers at Superfund clean-sites and similar operations, workers at the Environmental Protection Agency permitted disposal sites, and emergency response workers at those sites, fire fighters, emergency medical service personnel, policy, and others involved in hazardous substance emergency response.
Type of Review: New.
Agency: Occupational Safety and Health Administration.
Title: Personal Protective Equipment; Hazard Assessment Certification and Training Certification.
OMB Number: 1218–0new.
Frequency: One-time.
Affected Public: Business or other for-profit; Federal Government.
Number of Respondents: 103,000.
Estimated Time Per Respondent: 10 minutes.
Total Burden Hours: 17,510.
Description: Section 1910.132(d) requires employers to perform a hazard assessment of the workplace to determine if personal protective equipment (PPE) is necessary. Section 1910.132(f) requires employers to train employees in the use of PPE. Each employer will have to document that a hazard assessment and training has been performed.
Type of Review: New.
Agency: Occupational Safety and Health Administration.
Title: Welding, Cutting and Brazing.
OMB Number: 1218–0new.
Frequency: One-time.
Affected Public: Business or other for-profit; Federal Government.
Number of Respondents: 189,113.
Estimated Time Per Respondent: 2 hours.
Total Burden Hours: 378,226.
Description: Section 1910.252(a)(2)(xiii)(C) requires employers to develop and implement training for new welders, cutters and brazers in the safe use of welding, cutting and brazing equipment. There is no documentation requirement.
Type of Review: New.
Agency: Occupational Safety and Health Administration.
Title: Grain Handling Facilities.
OMB Number: 1218–0new.
Frequency: On occasion.
Affected Public: Business or other for-profit.
Number of Respondents: 810.
Estimated Time Per Respondent: 2 hours.
Total Burden Hours: 1,620.
Description: These recordkeeping requirements are directed toward assuring the safety of employees in grain handling through the development of a housekeeping plan which addresses the planned actions an employer expects to take relative to the control of combustible dust, and an emergency action plan which covers the designated actions

employers and employees must take during an emergency.
Type of Review: New.
Agency: Occupational Safety and Health Administration.
Title: Storage and Handling of Anhydrous Ammonia (29 CFR 1910.111).
OMB Number: 1218–0new.
Frequency: On occasion.
Affected Public: Business or other for-profit; Farms; State, Local or Tribal Government.
Number of Respondents: 5,000.
Estimated Time Per Respondent: 5 minutes.
Total Burden Hours: 2,500.
Description: The collection of information is necessary for the safe handling and storage of anhydrous ammonia, a substance which is extremely dangerous to humans (toxic and corrosive). This standard requires the marking and physical specifications of anhydrous ammonia containers.
Type of Review: Extension.
Agency: Occupational Safety and Health Administration.
Title: Occupational Exposure to 4,4'Methylenedianline (MDA) for the General Industry.
OMB Number: 1218–0184.
Frequency: On occasion.
Affected Public: Business or other for-profit.
Number of Respondents: 18.

Category	Average time per response
Emergency plan	0
Exposure monitoring	0
1. Initial	0
2. Periodic/additional	144
Employee notification:	
1. Initial	0
2. Periodic	72
3. Visual	2
Compliance program:	
1. Annual review and update	27
Respiratory program	0
Fit testing	189
Notify the laundry	0
Signs and labels	0
Information and training	18
Medical surveillance:	
1. Initial exams	0
2. Periodic exams	378
3. Additional exams	4
4. Multiple physician review	4
5. Information provided physician	20
6. Physicians' written opinion	20
7. Medical removal decision	0
Recordkeeping:	
1. Objective data for exempted	0
2. Exposure measurement	5
3. Federal records access	1
4. Federal records transfer	1

Total burden hours: 885.
Description: The MDA Standard for General Industry and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to MDA. The Standard requires that employers must establish and maintain training, compliance, exposure monitoring and medical surveillance programs and records, and provide information to employees and others on these records. The records are used by employees, physicians, employers and the Occupational Safety and Health Administration (OSHA) to determine the effectiveness of the employers' compliance efforts. Also, the standard requires that OSHA have access to various records to ensure that employers are complying with the provisions of the MDA General Industry Standard.
Type of Review: EXTENSION.
Agency: Occupational Safety and Health Administration.
Title: Occupational Exposure to 4,4'Methylenedianline (MDA) for Construction.
OMB Number: 1218–0183.
Frequency: On occasion.
Affected Public: Business or other for-profit.
Number of Respondents: 66.

Category	Average time per response
Emergency plan	0
Exposure monitoring	0
1. Periodic/additional	528
Employee notification:	
1. Periodic	66
3. Visual	2
Compliance program:	
1. Annual review and update	99
Respiratory program	0
Fit testing	500
Notify the laundry	0
Signs and labels	0
Information and training	66
Medical surveillance:	
1. Initial exams	0
2. Periodic exams	800
3. Additional exams	8
Multiple surveillance exams:	
1. Multiple physician review	8
2. Information provided physician	41
3. Physicians' written opinion	41
4. Medical removal decision	0
Recordkeeping:	
1. Objective data for exempted	0
2. Exposure measurement	17
3. Federal records access	1
4. Federal records transfer	1

Total Burden Hours: 2,178.
Description: The MDA Standard for Construction and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to MDA. The Standard requires that employers must establish and maintain training, compliance, exposure monitoring and medical surveillance programs and records, and provide information to employees and others on these records. The records are used by employees, physicians, employers and the Occupational Safety and Health Administration (OSHA) to determine the effectiveness of the employers' compliance efforts. Also, the standard requires that OSHA have access to various records to ensure that employers are complying with the provisions of the MDA Construction Standard.

Theresa M. O'Malley,
Acting Departmental Clearance Officer.

[FR Doc. 95–15457 Filed 6–22–95; 8:45 am]
BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

DEPARTMENT OF EDUCATION

The Advisory Council for School-to-Work Opportunities; Notice of Establishment

In accordance with the Federal Advisory Committee Act, the Secretaries of Labor and Education have established The Advisory Council for School-to-Work Opportunities.

The Advisory Council for School-to-Work Opportunities shall provide advice to the Departments of Labor and Education on a number of matters pertaining to implementation of the School-to-Work Opportunities Act of 1994. The Council shall be responsible for: assessing the progress of School-to-Work Opportunities systems development and program implementation toward achieving the goals of the School-to-Work Opportunities Initiative; providing feedback and making recommendations to the Governing Board regarding the progress and direction of implementation of the School-to-Work Opportunities initiative; reporting periodically to the Governing Board on emerging issues, actions, and findings; and providing input into policy issues, as requested.

The Council will meet two times a year. It will be comprised of approximately 40 members, with the following representation: educators (seven), employers (six), labor (six), community groups (five), the general public (four), students (two, one secondary and one post-secondary), parents (two), State officials (four, e.g., current Governors, State legislators,

State STWO officials), and local officials (four, e.g., mayors, county administrators, local STWO officials). None of these members shall be deemed to be employees of the United States.

The Council will report to the Departments of Education and Labor through the School-to-Work Opportunities Governing Board, comprised of senior executive Federal officials from the Departments of Labor and Education. It will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under the Act fifteen(15) days from the date of this publication.

Interested persons are invited to submit comments regarding the establishment of The Advisory Council for School-to-Work Opportunities. Such comments should be addressed to: J. D. Hoye, School-to-Work Office, 400 Virginia Ave., SW, Room 210, Washington, DC 20024.

Signed at Washington, DC this 15th day of June 1995.

Robert B. Reich,

Secretary of Labor.

Richard W. Riley,

Secretary of Education.

[FR Doc. 95–15458 Filed 6–22–95; 8:45 am]

BILLING CODE 4510–23–M

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 34, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S–3014, Washington, DC. 20210.

Notification to General Wage Determinations Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts
MA950007 (FEB. 10, 1995)
Maine
ME950031 (FEB. 10, 1995)
ME950032 (FEB. 10, 1995)
ME950034 (FEB. 10, 1995)
ME950035 (FEB. 10, 1995)
ME950036 (FEB. 10, 1995)
ME950037 (FEB. 10, 1995)
ME950038 (FEB. 10, 1995)
New York
NY950014 (FEB. 10, 1995)

Volume II:

Pennsylvania
PA950005 (FEB. 10, 1995)
PA950006 (FEB. 10, 1995)
PA950025 (FEB. 10, 1995)
PA950026 (FEB. 10, 1995)
PA950030 (FEB. 10, 1995)
PA950031 (FEB. 10, 1995)

Volume III:

Georgia
GA950050 (FEB. 10, 1995)

Volume IV:

Michigan
MI950001 (FEB. 10, 1995)
MI950002 (FEB. 10, 1995)
MI950003 (FEB. 10, 1995)
MI950004 (FEB. 10, 1995)
MI950005 (FEB. 10, 1995)
MI950007 (FEB. 10, 1995)
MI950012 (FEB. 10, 1995)
MI950017 (FEB. 10, 1995)
MI950034 (FEB. 10, 1995)
Wisconsin
WI950001 (FEB. 10, 1995)
WI950003 (FEB. 10, 1995)
WI950005 (FEB. 10, 1995)
WI950014 (FEB. 10, 1995)
WI950020 (FEB. 10, 1995)
WI950021 (FEB. 10, 1995)
WI950022 (FEB. 10, 1995)
WI950024 (FEB. 10, 1995)

Volume V:

Kansas
KS950009 (FEB. 10, 1995)
KS950013 (FEB. 10, 1995)
KS950015 (FEB. 10, 1995)

Volume VI:

Colorado
CO950005 (FEB. 10, 1995)
Idaho
ID950001 (FEB. 10, 1995)
Neveda
NV950001 (FEB. 10, 1995)
Oregon
OR950001 (FEB. 10, 1995)
OR950004 (FEB. 10, 1995)
Washington
WA950001 (FEB. 10, 1995)
WA950002 (FEB. 10, 1995)
WA950003 (FEB. 10, 1995)
WA950005 (FEB. 10, 1995)
WA950006 (FEB. 10, 1995)
WA950007 (FEB. 10, 1995)
WA950008 (FEB. 10, 1995)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which included all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 16th day of June 1995.

Alan L. Moss,

Director, Division of Wage Determination.

[FR Doc. 95–15170 Filed 6–22–95; 8:45 am]

BILLING CODE 4510–27–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Technical Training Programs; Notice of Meeting

The ACRS Subcommittee on Technical Training Programs will hold a meeting on July 12, 1995, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: Wednesday, July 12, 1995—8:30 a.m. until the conclusion of Business.

The Subcommittee will continue its review of NRC Technical Training Center curricula, with emphasis in the areas of probabilistic risk assessment and digital instrumentation and control systems. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff.

Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the scheduling of sessions which are open to the public, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Douglas Coe (telephone 301/415–6885) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes in the proposed agenda, etc., that may have occurred.

Dated: June 16, 1995.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 95–15400 Filed 6–22–95; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Thermal Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal Hydraulic Phenomena will hold a meeting on July 11, 1995, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance with the exception of a portion that may be closed to discuss General Electric Nuclear Energy (GENE) proprietary information pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows: Tuesday, July 11, 1995—8:30 a.m. until the conclusion of business.

The Subcommittee will continue its review of the emergency procedure guidelines to cope with anticipated transients without scram (ATWS) compounded by BWR core power instabilities, and the associated NRC staff safety evaluation report (SER). A copy of the SER is available for inspection in the NRC Public Document Room, 2120 L Street, NW., Washington, DC. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, the BWR Owners Group, GENE, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the scheduling of sessions which are open

to the public, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301/415–8065) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes in the proposed agenda, etc., that may have occurred.

Dated: June 19, 1995.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 95–15398 Filed 6–22–95; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on July 12, 1995, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows: Wednesday, July 12, 1995—2:30 p.m. until the conclusion of business.

The Subcommittee will discuss proposed ACRS activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (edt). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: June 16, 1995.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 95–15399 Filed 6–22–95; 8:45 am]

BILLING CODE 7590–01–M

Final NUREG: Issuance, Availability

The Nuclear Regulatory Commission (NRC) has issued NUREG/CR–6112, "Impact of Reduced Dose Limits on NRC Licensed Activities—Major Issues in the Implementation of ICRP/NCRP Dose Limit Recommendations," as a final report. On May 21, 1991, the Nuclear Regulatory Commission (NRC) published a revision to 10 CFR Part 20, "Standards for Protection Against Radiation." The rule became effective in June, 1991, and licensees were required to implement the regulations on or before January 1, 1994.

The revised 10 CFR Part 20 is based upon the recommendations of the International Commission on Radiological Protection (ICRP) in Publication 26 (ICRP 1977). In 1991, the ICRP published revised recommendations in Publication 60. These recommendations were based upon revised dosimetry and epidemiology, including the information presented in reports such as the 1988 United Nations Scientific Committee on the Effects of Atomic Radiation (UNSCEAR). The new recommendations include a revised occupational dose limitation approach of 100 mSv (10 rem) in 5 years, with the additional limitation that no more than 50 mSv (5 rem) be received in any one year.

In 1991, the National Council on Radiation Protection and Measurements (NCRP) recommended a lifetime limit of 10 mSv (1 rem) times age in years (NCRP Report 91). This recommendation was continued in recommendations published in 1993 (NCRP Report 116).

In anticipation of these recommendations, and as a result of the epidemiological and dosimetric information available in the last 5 years, the NRC staff initiated a study by Brookhaven National Laboratory (BNL) to analyze the potential impacts of reduced dose limits on its licensees. The results of this study are contained in this NUREG/CR. During the study period, a relatively small number of licensees responded to questionnaires and surveys, thereby limiting the extent to which the survey results can be assumed to be an accurate representation of the potential impacts of changed dose limits.

The NRC staff published these results in draft form in January 1994 to solicit further comments from interested parties regarding the impacts of the different possible dose limits discussed in the draft NUREG/CR.

NUREG/CR–6112 is not a substitute for NRC regulations, and compliance is not required. The approaches and/or methods described in this NUREG/CR are provided for information only. Publication of the report does not necessarily constitute NRC approval or agreement with the information cited therein.

Copies of NUREG/CR–6112 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

For further information contact George E. Powers, Radiation Protection and Health Effects Branch, Mail Stop NL/S–139, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 415–6212.

Dated at Rockville, Maryland, this 5th day of May 1995.

For the Nuclear Regulatory Commission.

Bill M. Morris,

Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 95–15403 Filed 6–22–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–01888 License No. 20–06900–01 EA 95–038]

In the Matter of: Elias Charles Dow, M.D. Boston, Massachusetts; Order Imposing a Civil Monetary Penalty

I

Elias Charles Dow, M.D. (Licensee) is the holder of Byproduct Materials License No. 20–06900–01 (License) issued by the Atomic Energy Commission on November 7, 1960. The License was most recently renewed by the Nuclear Regulatory Commission (NRC or Commission) on April 24, 1990, and is currently under timely renewal. The License authorizes the Licensee to possess and use certain byproduct materials in accordance with the conditions specified therein at the Licensee's facility in Brookline, Massachusetts.

II

An inspection of the Licensee's activities was conducted on February 8, and March 1, 1995, at the Licensee's facility located in Brookline, Massachusetts. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated April 20, 1995. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for one of the violations.

The Licensee responded to the Notice in two letters, both dated April 28, 1995. In its responses, the Licensee denies the violation assessed a civil penalty (Violation I), and requests that the penalty be withdrawn.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, the Violation I occurred as stated in the Notice. The staff also has determined that an adequate basis was not provided for mitigation of the penalty and that a penalty of $750 should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, It is Hereby Ordered That:

The Licensee pay a civil penalty in the amount of $750 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738.

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, with a copy to the Commission's Document Control Desk, Washington, D.C. 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, PA 19406.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in Section I of the Notice referenced in Section II above, and

(b) Whether on the basis of such violation, this Order should be sustained.

Dated at Rockville, Maryland this 16th day of June 1995.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

Appendix

Evaluations and Conclusion

On April 20, 1995, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during a NRC inspection conducted at the Licensee's facility located in Brookline, Massachusetts. The penalty was issued for one violation. The Licensee responded to the Notice in two letters, both dated April 28, 1995. In its responses, the Licensee denies the violation assessed a penalty (Violation I), and requests that the civil penalty be withdrawn. The NRC's evaluation and conclusion regarding the Licensee's requests are as follows:

Restatement of Violation I

10 CFR 20.1801 requires that the licensee secure from unauthorized removal or access licensed materials that are stored in controlled or unrestricted areas. 10 CFR 20.1802 requires that the licensee control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage. As defined in 10 CFR 20.1003, unrestricted area means an area, access to which is neither limited nor controlled by the licensee.

Contrary to the above, as of February 8, 1995, the licensee did not secure from unauthorized removal or limit access to licensed materials stored in an unrestricted area. Specifically, on numerous occasions, the licensee did not secure diagnostic capsules (each containing between 14 and 129 microcuries of iodine–131(I–131)) located in patients' homes, an unrestricted area, nor did the licensee control and maintain constant surveillance of this licensed material.

Summary of Licensee's Response to Violation I

In its responses, the Licensee denies the violation and requests that the civil penalty be withdrawn.

The Licensee states that the NMSS Licensee Newsletter 95–1 issued in March/April 1995, and the **Federal Register** dated January 25, 1995, both state that the medical administration of any radiation or radioactive material to any individual, including an individual who is not supposed to receive a medical administration, is regulated by the Commission's provisions governing the medical use of byproduct material (10 CFR Part 35) rather than the dose limits in NRC's regulation concerning standards for protection against radiation (10 CFR Part 20). The Licensee states that Part 35 takes precedence over Part 20 because the Licensee's use of I–131 in this instance is a medical use. The Licensee states that the regulation for unrestricted areas does not apply, and asserts that this is stated in 10 CFR 20.1002. The Licensee states that it appears that there should not have been a citation, since the I–131 was used for medical use.

The Licensee also states that the dispensing of I–131 capsules for diagnostic use has never resulted in any harm, and there is no way that capsules containing between 14 and 129 microcuries could have caused unnecessary exposure to members of the public anymore than if the patient had ingested the same capsule prior to leaving the premises. The Licensee further states that there have never been any reports in medical literature of instances of I–131 causing any harm to anyone at this dosage. The Licensee states that it is purely speculative and misleading to state that this could cause any unnecessary exposure to members of the public.

The Licensee further states that a patient who ingests 25 millicuries of I–131 for therapeutic purposes is permitted to go home, be with family, and mingle with the public without restriction. In addition, the licensee states that it seems paradoxical and illogical that the possession of a 100 microcurie capsule, either in the patient's possession or ingested internally, would constitute any public health hazard.

NRC Evaluation of Licensee's Response to Violation I

Notwithstanding the Licensee's contention, the NRC maintains that a violation of 10 CFR Part 20 occurred, and that 10 CFR 20.1801 and 20.1802 required that the I–131 be

secured or controlled until such time as it was administered to a patient. By giving the I–131 capsules to patients to take to their residence for self administration at a later time, the Licensee failed to secure or control the licensed material as required.

With respect to the Licensee's comment regarding the NMSS Licensee Newsletter 95–1 issued March/April 1995, and the Federal Register notice on January 25, 1995 (60 FR 4872), these documents describe a proposed NRC rulemaking concerning errors in administering radiation or radioactive materials for medical purposes. That rulemaking, if adopted in final form, would clarify that the dose limits for individual members of the public in 10 CFR 20.1301 do not apply to the exposure that the individual receives from such an error.[1] There is nothing in the proposed rulemaking that would exempt the medical use of licensed material from 10 CFR 20.1801 and 20.1802, which are the requirements that are cited in the violation. 10 CFR Part 35 does not take precedence over 10 CFR Part 20. 10 CFR 20.1002, "Scope", specifically states that the regulations in 10 CFR Part 20 apply to persons licensed pursuant to 10 CFR Parts 30 through 36, which includes 10 CFR Part 35, "Medical Use of Byproduct Material." Similarly, 10 CFR.35.1, "Purpose and scope", states that the requirements and provisions of 10 CFR Part 20 apply to licensees subject to 10 CFR Part 35, unless specifically exempted.

Therefore, the NRC maintains that the violation occurred as stated in the Notice.

With respect to the Licensee's statement that dispensing of capsules containing between 14 and 129 microcuries of I–131 could not have caused any unnecessary exposure to members of the public anymore than if the patient had ingested the same capsule prior to leaving the premises, the NRC disagrees. Because of the Licensee's lack of security or control over the capsule (i.e., after the capsule had been given to the patient to take to the patient's home), the capsule could have been ingested inadvertently by someone other than the patient. Such an event would result in an unnecessary radiation exposure to an unintended person far in excess of the regulatory limits for radiation exposure to members of the public. Therefore, the violation was properly categorized at Severity Level III in accordance with the Enforcement Policy because of the potential safety hazard.

NRC Conclusion

The NRC has concluded that the violation assessed a penalty occurred as stated in the Notice. In addition, the NRC has concluded that the Licensee did not provide an adequate basis for withdrawal of the civil penalty. Accordingly, the proposed civil penalty in the amount of $750 should be imposed.

[FR Doc. 95–15402 Filed 6–22–95; 8:45 am]

BILLING CODE 7590–01–M

[1] Currently, 10 CFR 20.1002 provides that the limits of that Part do not apply to doses due to exposure of patients to radiation for the purpose of medical diagnosis or therapy.

[Docket No. 72–1]

General Electric Company; Notice of Issuance of Amendment to Materials License SNM–2500

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 9 to Materials License No. SNM–2500 held by the General Electric Company for the receipt and storage of spent fuel at the Morris Operation, located at 7555 East Collins Road, Morris, Illinois. The amendment is effective as of the date of issuance.

The amendment revises the General Electric Physical Security Plan making administrative changes which do not affect fuel receipt, handling, and storage safety.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of the amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that, pursuant to 10 CFR 51.22(c)(12), an environmental assessment need not be prepared in connection with issuance of the amendment.

For further details with respect to this action, see (1) the application for amendment dated December 28, 1994, as supplemented by letter dated March 10, 1995, and (2) Amendment No. 9 to Materials License No. SNM–2500 with the Commission's letter to the licensee. All of these items are available for public inspection at the Commission's Public Document Room, The Gelman Building, Lower Level, 2120 L Street, NW., Washington, DC., and the Local Public Document Room at the Morris Area Public Library District, 604 Liberty Street, Morris, Illinois, 60450.

Dated at Rockville, Maryland, this 16 day of June 1995.

For the Nuclear Regulatory Commission.

William D. Travers,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95–15401 Filed 6–22–95; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Federal Salary Council; Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the forty-fifth meeting of the Federal Salary Council will be held at the time and place shown below. At the meeting the Council will continue discussing issues relating to locality based comparability payments authorized by the Federal Employees Pay Comparability Act of 1990 (FEPCA). The meeting is open to the public.

DATE: July 31, 1995, at 9 a.m.

ADDRESS: Office of Personnel Management, 1900 E Street NW., Room 7B09, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth O'Donnell, Chief, Salary Systems Division, Office of Personnel Management, 1900 E Street NW., Room 6H31, Washington, DC 20415–0001. Telephone number: (202) 606–2838.

For the President's Pay Agent.

Lorraine A. Green,

Deputy Director.

[FR Doc. 95–15247 Filed 6–22–95; 8:45 am]

BILLING CODE 6325–01–M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Meeting of the President's Committee of Advisors on Science and Technology

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for a meeting of the President's Committee of Advisors on Science and Technology (PCAST), and describes the functions of the Committee. Notice of this meeting is required under the Federal Advisory Committee Act.

DATES AND PLACE: July 11 and 12, 1995. The White House Conference Center, Truman Room, Third Floor, 726 Jackson Place NW., Washington, DC 20500.

TYPE OF MEETING: Open.

PROPOSED SCHEDULE AND AGENDA: The President's Committee of Advisors on Science and Technology (PCAST) will meet in open session on Tuesday, July 11, 1995, at approximately 9 a.m. to be briefed on the findings and recommendations of the PCAST Review of the Department of Energy Magnetic Fusion Energy Program. The Committee will also discuss various aspects of Federal science and technology policies. This session will end at approximately 12 Noon. The Committee will reconvene in open session at approximately 1:30 p.m., to discuss issues related to the health of the Unites States research university system. This session will end at approximately 4 p.m. Either of the morning or afternoon sessions may be interrupted for the PCAST to gather at the White House to be introduced to the President of the United States.

The Committee will meet again in open session on Wednesday, July 12, at approximately 9 a.m. to discuss various components of the Committee's work plan. However, this session may be delayed until approximately 10:15 a.m. for the PCAST to gather at the White House to be introduced to the President of the United States.

FOR FURTHER INFORMATION: For information regarding time, place, and agenda please call Laurel Kayse or Mike Kowalok, (202) 456–6100, prior to 3 p.m. on Friday, July 7, 1995. Other questions may be directed to Angela Phillips Diaz, Executive Secretary of PCAST, or Mike Kowalok, (202) 456–6100. Please note that public seating for this meeting is limited, and is available on a first-come, first-served basis.

SUPPLEMENTARY INFORMATION: The President's Committee of Advisors on Science and Technology was established by Executive Order 12882, as amended, on November 23, 1993. The purpose of PCAST is to advise the President on matters of national importance that have significant science and technology content, and to assist the President's National Science and Technology Council in securing private sector participation in its activities. The Committee members are distinguished individuals appointed by the President from non-Federal sectors. The PCAST is co-chaired by John H. Gibbons, Assistant to the President for Science and Technology, and by John Young, former President and CEO of the Hewlett-Packard Company.

Dated: June 19, 1995.

Barbara Ann Ferguson,

Administrative Officer, Office of Science and Technology Policy.

[FR Doc. 95–15382 Filed 6–22–95; 8:45 am]

BILLING CODE 3170–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35863; File No. SR–Amex–95–23]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange, Inc., Relating to the Discontinuation of the Emerging Company Marketplace

June 19, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 9, 1995, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to discontinue the listing of new companies on the Emerging Company Marketplace ("ECM").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has determined to discontinue the listing of new companies on the ECM and is proposing to eliminate the ECM guidelines that allow for such listings. Companies that are presently listed on the ECM may continue listed there and will be subject to all the rules applicable to ECM issues, including the continued listing guidelines. Quotes and trades in such securities will continue to be reported to vendors with the ".EC" designator.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such

filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–95–23 and should be submitted by July 14, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15421 Filed 6–22–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35855; File No. SR–CBOE–95–30]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Membership Fees

June 16, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s (b)(1), notice is hereby given that on June 6, 1995, the Chicago Board Options Exchange, Incorporated ("CBOE" or Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE hereby gives notice that it is proposing to amend the Exchange Regulatory Circular which sets forth the membership fees imposed by the Exchange ("Membership Fee Circular").

The text of the Membership Fee Circular as proposed to be amended is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below," of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, Proposed Rule Change

The purpose of this proposed rule change is to amend the Membership Fee Circular in five respects.[1]

First, the Membership Fee Circular is proposed to be amended to reflect a new $500 fee to be paid to the Exchange by every Exchange member who makes application to the Exchange to transfer his or her membership into trust pursuant to recently adopted CBOE Rule 3.25 ("Transfer of Individual Membership in Trust"). The Exchange is establishing this fee pursuant to CBOE Rule 2.22 ("Other Fees or Charges") in order to cover the administrative costs associated with processing applications under CBOE Rule 3.25. This fee will go into effect on June 1, 1995.

Second, the Membership Fee Circular is proposed to be amended to add to the Circular an existing Exchange fee which is payable quarterly by Exchange member firms for each inactive nominee status that such firms wish to maintain. This inactive nominee status maintenance fee is provided for by CBOE Rule 3.8 ("Nominees"), section (b)(1), and the amount of the fee is equal to the amount of the Exchange's quarterly membership dues. In addition, the Membership Fee Circular will reflect the policy of the Exchange that this fee is payable regardless of any waiver of membership dues which might be applicable.[2] This fee was originally filed with the Commission in 1990[3] but is not currently included in the Membership Fee Circular.

Third, the Membership Fee Circular is proposed to be amended to explicitly reflect the membership fees that are applicable to limited liability companies ("LLCs"). CBOE Rule 3.3 ("Qualifications of Member Organizations"), Interpretation and Policy .01 provides that for the purposes of eligibility for Exchange membership an entity organized as an LLC shall be deemed a corporation. Pursuant to this rule, LLCs that are applicants for Exchange membership are charged the same fee that is charged to corporations that are applicants for Exchange membership (*i.e.*, $250). Similarly, LLC managers and members are charged the same fee that is charged to executive officers and principal shareholders of corporations (*i.e.*, $250).

Fourth, the Membership Fee Circular is proposed to be amended to delete the reference to "Stock Execution Business" contained therein and to replace it with a reference to "Order Service Firm." At the time that the Membership Fee Circular was last amended in 1992, CBOE Rule 6.77 ("Stock Execution Services") provided that stock services could register with the Exchange for the purpose of providing market-makers on the Exchange's trading floor with order handling services related to stock transactions. In 1994, CBOE Rule 6.77 was amended to replace the term "stock service" with the term "order service firm" and to expand the scope of activities that can be engaged in by such firms on the Exchange's trading floor to include order handling services related to commodity transactions. Accordingly, the reference in the Membership Fee Circular to the membership fee that is applicable to such firms is amended to reflect this change in terminology.

Fifth, the Membership Fee Circular is proposed to be amended to provide that the $250 fee payable by persons who are shareholders or limited partners of firms applying to be members or who become shareholders or limited partners of member firms is payable by such persons whose ownership percentage of the organization is 5% or more. Similarly, the proposed rule change makes express that a similar fee requirement applies to members of an LLC whose ownership percentage is 5% or more. This is consistent with the Exchange's membership application materials which request information concerning shareholders, limited partners, and LLC members that have an ownership percentage that is 5% or greater and with Schedule A of SEC Form BD[4] which does the same with respect to broker-dealer applicants.

Finally, the proposed rule change makes certain editorial changes to clarify the Membership Fee Circular without affecting its substance.

The CBOE represents that the proposed rule change is consistent with Section 6 of the Act, in general, and furthers the objectives of Section 6(b)(4) of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other changes among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the File No. SR–CBOE–95–30 and should be submitted by July 13, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15312 Filed 6–21–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35852; File No. SR–CHX–95–06]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change To Add Interpretation and Policies .01, .02, and .03 Under Rule 3 of Article V of the Exchange's Rules and To Add a New Clerk's Fee

June 16, 1995.

On March 1, 1995 the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to add interpretation and policies .01, .02 and .03 under Rule 3 of Article V of the Exchange's Rules and to add a new clerk's fee.

The proposed rule change was published for comment in Securities Exchange Act Release No. 35667 (May 3, 1995), 60 FR 24947 (May 10, 1995). No comments were received on the proposal.

First, the proposed rule change adopts interpretations under which *all* Floor employees will be required to submit a Uniform Application for Securities Industry Registration or Transfer ("Form U–4") in order to become registered.[3] The Form U–4 requires detailed disclosure of background information, including information regarding employment and disciplinary history, and is the standard industry form submitted to Self Regulatory Organizations ("SROs") for individuals required to be registered (including securities salespersons and traders). The Form U–4 also requires this information to be updated whenever the information submitted becomes inaccurate or incomplete.

Second, the Exchange also is imposing a requirement that a member (or member organization) promptly give written notice of termination of a Floor employee to the Exchange on the Uniform Termination Notice for Securities Industry Registration (Form U–5)[4] and concurrently provide a copy of such notice to the person who has been terminated.

Third, the proposal will require all Floor employees of members and member organizations and all Exchange members to be fingerprinted and to submit such fingerprints to the Exchange for identification, background checking, and appropriate processing.[5]

Finally, the proposal will impose an initial registration fee on clerks of $50.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6(b).[6] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public. Further, the Commission believes that the proposal is consistent with Section 6(c)(2) of the Act[7] in that it should assist the Exchange in fulfilling its regulatory responsibilities regarding the granting of membership by identifying those individuals who are subject to a statutory disqualification under Section 3(a)(39) of the Act.[8] In

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[1] The Membership Fee Circular was first filed with the Commission in 1990. *See* Securities Exchange Act Release No. 27898 (April 12, 1990), 55 FR 14887 (April 19, 1990) (notice of filing and immediate effectiveness of File No. SR–CBOE–90–05). All of the fees initially contained in the Membership Fee Circular had been previously filed with the Commission, and the purpose of the Membership Fee Circular was to enumerate these fees in a single document which could be distributed to the Exchange's membership. The Membership Fee Circular has been amended twice since 1990. *See* Securities Exchange Act Release No. 29747 (September 27, 1991), 56 FR 50600 (October 7, 1991) (notice of filing and immediate effectiveness of File No. SR–CBOE–91–31) and Securities Exchange Act Release No. 30901 (July 8, 1992), 57 FR 31548 (July 16, 1992) (notice of filing and immediate effectiveness of File No. SR–CBOE–92–12).

[2] According to the Exchange, this policy has been in effect since the fee was first filed with the Commission in 1990. The Exchange believes that because the fee is a separate, independent fee, authorized by Rule 3.8(b)(1), the waiver of membership dues would have no bearing on the fee. Telephone conversation between Michael L. Meyer, Attorney, Schiff Hardin & Waite, and James T. McHale, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, on June 15, 1995.

[3] *See* Securities Exchange Act Release No. 28092 (June 4, 1990), 55 FR 23621 (June 11, 1990) (order approving File No. SR–CBOE–90–09).

[4] 17 CFR 249.501 (1992).

[5] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] Currently, only Floor employees that accept orders from the public and applicants for membership are required to submit a Form U–4 to the Exchange.

[4] Form U–5 contains information relating to the circumstances surrounding the termination of an applicant's prior employment, and must be completed and submitted to the NASD, and other SROs requiring such a submission under their respective rules, whenever a registered employee is terminated.

[5] Fingerprinting currently is required for each partner, director, officer or employee of broker-dealers pursuant to Rule 17f–2 under the Act, with certain exceptions. Floor clerks are not required by Rule 17f–2 to submit fingerprints because they do not physically handle monies or securities. *See* 17 CFR 240.17f–2 (1994).

[6] 15 U.S.C. 78f(b) (1988).

[7] *See* 15 U.S.C. 78f(c) (1988).

[8] The Exchange is required to make a determination in each case where an individual who is subject to a statutory disqualification (e.g., is suspended or barred by an SRO, or has been

Continued

addition, it should assist the Exchange in providing detailed information to the Commission under certain circumstances as required in Rule 19h–1.[9] Moreover, the Commission believes that the additional fingerprinting requirements being imposed by the Exchange will further enhance security measures implemented by the CHX and is consistent with Section 17(f)(2) of the Act.[10] Finally, the Commission finds that the clerk's fee is consistent with Section 6(b)(4) of the Act, which requires exchange rules to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.[11]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–CHX–95–06) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15369 Filed 6–22–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35853; File No. SR–NSCC–95–05]

Self-Regulatory Organizations; National Securities Clearance Corporation; Order Granting Accelerated Approval of a Proposed Rule Change Modifying Procedures Relating to the Trade Comparison Service for Debt Securities

June 16, 1995.

On April 19, 1995, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–NSCC–95–05) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] On April 27, 1995, NSCC filed an amendment to the proposed rule change requesting the Commission to consider the rule filing pursuant to Section 19(b)(2)[2] of the Act rather than under Section 19(b)(3)(A)[3] of the Act as originally filed.[4] Notice of the proposal was published in the **Federal Register** on May 25, 1995.[5] No comment letters were received. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Description of the Proposal

NSCC is modifying its procedures relating to the trade comparison service for debt securities. Specifically, NSCC is expanding the parameters for trade input and trade comparison for transactions in debt securities. The rule change will expand the comparison parameters for debt securities from $.05 per $1,000 of contract amount to a net $10 difference per trade for trades of $100,000 or less and to $.10 per $1,000 of contract amount for trades greater than $100,000. NSCC will continue to advise participants of money differences for fixed income transactions on the morning of T+1 when contract prices are reported to transaction parties.

NSCC expects to implement the proposed rule change during the late part of the second quarter of 1995. Participants will be notified of the exact date of this change by an NSCC Important Notice.

II. Discussion

Section 17A(b)(3)(F)[6] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that NSCC's proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) because expanding the comparison parameters for trades in debt securities should increase the initial trade date comparison rate for such transactions. Although NSCC has established comprehensive and effective procedures for the resolution of uncompared trades,[7] expanding the comparison parameters to increase the initial trade date comparison rate should result in a greater number of trades in debt securities being reported as compared earlier in the settlement cycle. Earlier comparison should provide greater certainty that those trades will settle on settlement date. Consequently, NSCC members should have to spend less time and resources on the supplemental activity required to resolve uncompared trades. Accordingly, the Commission believes that the proposed rule change should facilitate a faster and more effective comparison process and thereby should enhance the prompt and accurate clearance and settlement of securities transactions.

NSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving the proposed rule because it will permit NSCC to notify its members and to begin use of the proposed rule change within NSCC's implementation schedule. In addition, as of the end of the period for public comment, the Commission had not received any comment letters on NSCC's proposal.

III. Conclusion

For the reasons stated above, the Commission finds that the proposal is consistent with the requirements of Section 17A of the Act[8] and the rules and regulations thereunder.

It is Therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (File No. SR–NSCC–95–05) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15370 Filed 6–22–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35862; File No. SR–NASD–95–18]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Corporate Financing Underwriting Terms and Arrangements

June 19, 1995.

On May 3, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder.[2] The proposed rule change amends the NASD's Rules of Fair Practice, Article III, Subsection 44(c)(6)(B)(xi) of the Corporate Financing Rule to raise the permissible level of non-cash incentives to $100 per person per issuer annually.

Notice of the proposed rule change, together with the substance of the proposal, was issued by Commission release (Securities Exchange Act Release No. 35712, May 12, 1995) and by publication in the **Federal Register** (60 FR 26753, May 18, 1995). No comment letters were received. The Commission is approving the proposed rule change.

convicted of any felony or certain enumerated misdemeanors) seeks admission to or continuance in membership, participation in, or association with a member or member organization. *See* 15 U.S.C. 78c(a)(39) (1988).

[9] Specifically, the Rule requires SROs to notify the Commission whenever it determines to admit or continue in membership or participation or association with a member or member organization, any person who is subject to a statutory disqualification. *See* 17 CFR 240.19h–1 (1994).

[10] *See* supra note 5.

[11] 15 U.S.C. 78f(b)(4) (1988).

[12] 15 U.S.C. 78s(b)(2) (1988).

[13] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 15 U.S.C. 78s(b)(2) (1988).

[3] 15 U.S.C. 78s(b)(3)(A) (1988).

[4] Letter from John P. Barry, Associate Counsel, NSCC, to Peter Geraghty, Senior Counsel, Division of Market Regulations, Commission (April 24, 1995).

[5] Securities Exchange Act Release No. 35733 (May 18, 1995), 60 FR 27800.

[6] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[7] NSCC, Rules and Procedures, Procedure II.D.2. (June 7, 1995).

[8] 15 U.S.C. § 78q–1 (1988).

[9] 15 U.S.C. § 78s(b)(2) (1988).

[10] 17 CFR 200.30–3(a)(12) (1994).

I. The Terms of Substance of the Proposed Rule Change

Subsection 44(c)(6)(B)(xi) of the Corporate Financing Rule (the "Rule") currently prohibits NASD members from receiving non-cash sales incentives from an issuer or its affiliates valued in excess of $50 per person per issuer annually. Such non-cash sales incentives are typically de minimis in nature, such as small souvenir or gift items, provided by issuers to a member or associated persons of a member. The sole purpose of this rule is to raise the permissible level of non-cash sales incentives to $100 per person, annually.

II. Commission Findings

The Commission believes that a dollar amount of $100 is still relatively low and will neither compromise the intent, nor reduce the ability, of the rule to prevent fraudulent acts and practices that might arise in connection with the giving of gifts or payments by issuers and their affiliates as non-cash compensation to members or persons associated with members.

Additionally, the amendment will make the value-limitation provisions of the Rule consistent with similar provisions in Article III, Sections 10 and 34 of the Rules of Fair Practice, with proposed amendments to Sections 26 and 29 now pending SEC approval, and with Rule 350(a) of the New York Stock Exchange ("NYSE"). The amendment to the Rule would provide regulatory consistency and simplify compliance for member firms that are also members of the NYSE.

The Commission believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[3] which require that the rules of the association be designed to prevent fraudulent and manipulative acts and promote just and equitable principles of trade in that the proposed rule change allows for an increase in the dollar limit to a level that is still reasonably de minimis and provides for regulatory consistency with other rules of the NASD and the NYSE.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR–NASD–95–18 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15420 Filed 6–22–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35854; File No. SR–NYSE–95–09]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1 to Proposed Rule Change Relating to Entry of Limit-at-the-Close Orders

June 16, 1995.

I. Introduction

On March 3, 1995, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities and Exchange Commission of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to replace its current pilot[3] for the entry of limit-at-the-close ("LOC")[4] orders to offset a published market-at-the-close ("MOC")[5] order imbalance of 50,000 shares or more in stocks selected from expiration day[6] pilot stocks with a pilot including all stocks for which MOC order imbalances are published. On April 18, 1995, the NYSE submitted Amendment No. 1 to the proposed rule change.[7]

The proposed rule change, including Amendment No. 1, was published for comment in Securities Exchange Act Release No. 35653 (April 27, 1995), 60 FR 21839. No comments were received on the proposal.

II. Description of the Proposal

The proposed rule change proposes to expand the universe of stocks in which LOC orders may be entered to all stocks for which MOC imbalances are published pursuant to such procedures regarding time of order entry and order cancellation as the Exchange may establish from time to time.

Currently, the NYSE allows entry of LOC orders to offset published imbalances of MOC orders of 50,000 shares or more in five of the so-called "pilot stocks."[8] The Commission approved the current LOC order entry procedures on a 15-month pilot basis through July 15, 1995.[9] Thus far, LOC orders been entered rarely. Members cite the limited number of stocks for which LOC orders may be entered as a primary reason for not committing resources to effect system program changes necessary to support the pilot program.

The Exchange believes that by expanding the universe of eligible LOC stocks, it will make it more feasible for member firms to effect the systems changes required to use LOC orders.[10] The Exchange is therefore proposing to replace the current pilot to permit the entry of LOC orders to offset a MOC order imbalance of 50,000 shares or more in all stocks for which MOC order imbalances are published.[11] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 33706 (March3, 1994), 59 FR 11093.

[4] A LOC order is a limited price order entered for execution at the closing price if the closing price is within the limit specified. *See* NYSE Rule 13.

[5] A MOC order is a market order to be executed in its entirety at the closing price on the Exchange. *Id.*

[6] *See infra* note 11.

[7] *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Glen Barrentine, Team Leader, SEC dated April 17, 1995.

[8] For purposes of LOC order entry, the term "pilot stocks" refers to the Expiration Friday pilot stocks plus any additional QIX Expiration Day pilot stocks. Specifically, the Expiration Friday pilot stocks consist of the 50 most highly capitalized Standard & Poors ("S&P") 500 stocks and any component stocks of the Major Market Index ("MMI") not included therein. The QIX Expiration Day pilot stocks consist of the 50 most highly capitalized S&P 500 stocks, any component stocks of the MMI not included therein and the 10 highest weighted S&P Midcap 400 stocks.

[9] *See* Release No. 33706, *supra*, note 3.

[10] The NYSE has represented that, before initiating the expanded pilot program, it will submit to the Commission a letter (1) stating that the NYSE is operationally ready to accept LOC orders and (2) informing the Commission of the start-up date for this pilot. Telephone conversation between Donald Siemer, Director of Market Surveillance, NYSE, to Elisa Metzger, Senior Counsel, SEC, on June 7, 1995.

[11] Currently, MOC imbalances are published for pilot stocks on expiration days and non-expiration days. The term "expiration days" refers to both (1) the trading day, usually the third Friday of the month, when some stock index options, stock index futures and options on stock index futures expire or settle concurrently ("Expiration Fridays") and (2) the trading day on which end of calendar quarter index options expire ("QIX Expiration Days").

In addition, on non-expiration days, MOC imbalances are published for stocks that are being added to or dropped from an index and, upon the request of a specialist, any other stock with the

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Exchange intends to keep the 3:55 p.m. cutoff time for the entry of LOC orders, except to correct a bonafide error. On expiration days, LOC orders will continue to be irrevocable after 3:40 p.m., except to correct a bonafide error. For non-expiration days, cancellation of LOC orders would be prohibited after 3:55 p.m., except to correct errors.[12]

The Exchange believes that LOC orders may be a useful means to help address the prospect of excess market volatility that may be associated with an imbalance of MOC orders at the close. Therefore, the Exchange believes it is appropriate to replace the current pilot for LOC orders to a pilot including all stocks for which MOC imbalances are published that will last for one year from the date of approval of this proposed rule change.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6(b).[13] The Commission believes the proposal is consistent with the Section 6(b))5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public.

As noted in approving the current pilot, the self-regulatory organizations have instituted certain safeguards to minimize excess market volatility that may arise from the liquidation of stock positions related to trading strategies involving index derivative products. For instance, since 1986, the NYSE has utilized auxiliary closing procedures on expiration days. These procedures allow NYSE specialists to obtain an indication of the buying and selling interest in MOC orders at expiration and, if there is a substantial imbalance on one side of the market, to provide the investing public with timely and reliable notice thereof and with an opportunity to make appropriate investment decisions in response.

The NYSE auxiliary closing procedures have worked relatively well and may have resulted in more orderly markets on expiration days. Nevertheless, both the Commission and the NYSE remain concerned about the potential for excess market volatility, particularly at the close on expiration days. Although, to date, the NYSE has been able to attract sufficient contra-side interest to effectuate an orderly closing, adverse market conditions could converge on an expiration day to create a market dislocation which could make member firms and their customers unwilling to acquire significant positions.

The NYSE recently adopted auxiliary closing procedures for MOC orders on non-expiration days that are substantially similar to those in place for expiration days.[14] This allows members and member organizations to follow comparable procedures at the close on all trading days. Although there is less likelihood of an influx of MOC orders at the close on non-expiration days, certain trading and asset allocation strategies use NYSE closing prices and, accordingly, could employ MOC orders. In the event of unusual market conditions, the Commission believes that the MOC procedures for non-expiration days offer benefits in terms of assessing volatility at the close of trading in the same manner as the NYSE's procedures for expiration days.

The Commission continues to believe preliminarily that LOC orders should provided the NYSE with an additional means of attracting contra-side interest to help alleviate MOC order imbalances both on expiration and non-expiration days. As a practical matter, the Commission believes that LOC orders will appeal to certain market participants who other wise might be reluctant to commit capital at the close. Specifically, unlike a MOC order, which results in significant exposure to adverse price movements, a LOC order will allow each investor to determine the maximum/minimum price at which he or she is willing to buy/sell. To the extent that such risk management benefits encourage NYSE member firms and their customers to enter orders to offset MOC order imbalances of 50,000 shares or more, thereby adding liquidity to the market, the Commission agrees with the NYSE that LOC orders could become a useful investment vehicle for curbing excess price volatility at the close.[15]

The Commission also finds that the NYSE has established appropriate procedures for the handling of LOC orders and that the NYSE's existing surveillance should be adequate to monitor compliance with those procedures. Because LOC orders will be required to yield priority to conventional limit orders at the same price, the Commission is satisfied that public customer orders on the specialist's book will not be disadvantaged by this proposal. In addition, the Commission believes that the proposed 3:55 p.m. deadline for LOC order entry strikes a reasonable balance between the need to effectuate an orderly closing and the need to avoid unduly infringing upon legitimate trading strategies. Similarly, in the Commission's opinion, the prohibition on cancelling LOC orders is consistent with the Exchange's auxiliary closing procedures and, like those procedures, should allow specialists to make a timely and reliable assessment of order flow and its potential impact on the closing price.

The Commission is approving LOC order entry for all stocks for which MOC order imbalances are published on a pilot basis contingent on the extension or permanent approval of the MOC procedures.[16] During the pilot program, the Commission expects the NYSE to monitor the effectiveness of its LOC order procedures.

The Commission therefore requests that the NYSE submit a report to the Commission, by May 31, 1996, describing its experience with the expanded pilot program. At a minimum, this report should contain the following data for each expiration day during the 10-month period after the start-up date for LOC order entry for all stocks: (1) For all stocks which had a MOC order imbalance of 50,000 shares or more at 3:40 p.m., the names of those stocks and the size of the imbalance; (2) for each stock listed in (1) above, the size of the MOC order imbalance at 4:00 p.m. and an appropriate measure of the size of conventional limit order and LOC order interest, on the opposite side of the market from the imbalance, at 4:00 p.m.; (3) for each stock listed in (1) above, (i) the price of the transaction effected closest in time to 3:40 p.m., the price of the last regular way trade and the closing price, (ii) the change in price of the closing transaction, measured as a percentage, from the last regular way trade and from the transaction effected closest in time to 3:40 p.m., (iii) historical data analyzing price volatility for the same stock on expiration days prior to the implementation of this pilot program; and (4) the average price volatility for all stocks listed in (1) above. The NYSE report also should contain, for one week per calendar quarter (including at least one week with no expiration days) the data described herein, as modified to reflect the MOC procedures for non-expiration days. Any requests to modify this pilot program, to extend its effectiveness or to seek permanent approval for the pilot procedures also should be submitted to the Commission, by May 31, 1996, as a proposed rule change pursuant to Section 19(b) of the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–NYSE–95–09) is approved on a pilot basis to expire on July 31, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18].

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15422 Filed 6–22–95; 8:45 am]

BILLING CODE 8010–01–M

approval of a Floor Official. *See* Securities Exchange Act Release No. 35589 (April 10, 1995), 60 FR 19313.

[12] The NYSE modified its electronic display book, such that LOC orders are prioritized relative to other LOC orders by time of entry, but are required to yield priority to all conventional limit orders on the specialist's book at the same price. Telephone conversation between Donald Siemer, Director of Market Surveillance, NYSE, to Elisa Metzger, Senior Counsel, SEC, on June 16, 1995.

[13] 15 U.S.C. 78f(b).

[14] *See supra* note 11.

[15] Furthermore, the Commission notes that LOC orders could allow the NYSE to accomplish this goal without diminishing any benefit to investors from trading strategies that rely on MOC orders fo guarantee a fill at the closing price.

[16] The pilot program for MOC procedures expires on October 31, 1995. *See* Securities Exchange Act Release No. 34916 (October 31, 1994), 59 FR 55507.

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Elan International Finance, Ltd., Liquid Yield Option Notes Dues 2012) File No. 1–11378

June 19, 1995.

Elan International Finance, Ltd. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, it has listed the Security with the New York Stock Exchange, Inc. ("NYSE"). In making the decision to withdraw the LYONS from listing on the Amex, the Company considered the direct and indirect costs and expenses in connection with maintaining the dual listing of the Security on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of the Security and believes that dual listing would fragment the market for its LYONS. The Amex has informed the Company that it has no objections to the withdrawal of the Security from listing on the Amex.

Any interested person may, on or before July 11, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–15417 Filed 6–22–95; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Elan Corporation plc, American Depositary Shares Evidenced by American Depositary Receipts, Representing Ordinary Shares, Par Value 4 Irish Pence; Warrants To Purchase Ordinary Shares, par Value 4 Irish Pence, Represented by American Depositary Shares, Evidenced by American Depositary Receipts of Elan Corporation, plc) File No. 1–10416

June 19, 1995.

Elan Corporation, plc ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities ("Securities") from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing the Securities from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, the Securities are listed on the New York Stock Exchange, Inc. ("NYSE"). In making the decision to withdraw the Securities from listing on the Amex, the Company considered the direct and indirect costs and expenses in connection with maintaining the dual listing of the Securities on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of the Securities and believes that dual listing would fragment the market for the Securities.

Any interested person may, on or before July 11, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–15418 Filed 6–22–95; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Great Pines Water Company, Inc., Common Stock, $0.01 Par Value) File No. 1–12130

June 19, 1995.

Great Pines Water Company, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the Boston Stock Exchange, Inc. ("BSE").

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, the expense associated with the BSE listing can not be justified. The Security is currently a Nasdaq Stock Market SmallCap security.

Any interested person may, on or before July 11, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application

has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–15419 Filed 6–22–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26310]

Filings Under the Public Utility Holding Company Act of 1935, as amended ("Act")

June 16, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 10, 1995, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Maine Yankee Atomic Power Company (No. 70–7627)

Maine Yankee Atomic Power Company ("Maine Yankee"), 329 Bath Road, Brunswick, Maine 04011, an indirect subsidiary of Northeast Utilities and New England Electric System, both registered holding companies, has filed a post-effective amendment to its declaration under Sections 6(a) and 7 of the Act and Rule 54 thereunder.

By order dated July 18, 1989 (HCAR No. 24925), Maine Yankee was authorized to enter into a Secured Credit Agreement ("Agreement") with a syndicate of commercial banks and to issue promissory notes ("Notes") under the Agreement, through August 31, 1992, from time-to-time in an outstanding aggregate principal amount of up to $50 million. The Notes could have maturities of from one day to ten years from the date of issuance. By subsequent order dated August 20, 1992 (HCAR No. 25608), Maine Yankee was authorized to amend the Agreement ("Amended Agreement") in several respects, including the interest rate options, and to extend the time in which it could issue Notes in the same outstanding aggregate principal amount, through August 31, 1995.

Maine Yankee now proposes to extend the time in which it may issue Notes under the Amended Agreement in the same outstanding aggregate principal amount and under the same terms and conditions, through August 31, 1998.

Consolidated Natural Gas Company, et al. (70–8619)

Consolidated Natural Gas Company ("CNG"), a registered holding company, CNG Tower, 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222–3199, and its wholly owned nonutility subsidiary companies, CNG Research Company and Consolidated Natural Gas Service Company, Inc., both located at CNG Tower, 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222–3199; CNG Coal Company; CNG Producing Company ("Producing") and its subsidiary company, CNG Pipeline Company, all located at CNG Tower, 1450 Poydras Street, New Orleans, Louisiana 70112–6000; CNG Transmission Corporation and CNG Storage Service Company, both located at 445 West Main Street, Clarksburg, West Virginia 26301; CNG Energy Services Corporation ("Energy Services"), One Park Ridge Center, P.O. Box 15746, Pittsburgh, Pennsylvania 15244–0746; and CNG's public-utility subsidiary companies, The Peoples Natural Gas Company, CNG Tower, 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222–3199; The East Ohio Gas Company, located at 1717 East Ninth Street, Cleveland, Ohio 44114–0759; Virginia Natural Gas, Inc., 5100 East Virginia Beach Boulevard, Norfolk, Virginia 23502–3488; Hope Gas, Inc., P.O. Box 2868, Clarksburg, West Virginia 26301–2868; and West Ohio Gas Company ("West Ohio"), P.O. Box 1217, Lima, Ohio 45802–1217 (Collectively, "Subsidiaries"), have filed an application-declaration under sections 6(a), 6(a)(2), 7, 9(a), 10, 12(b) and 12(c) of the Act and rules 43 and 45. A notice was issued by the Commission with respect to this application-declaration on June 2, 1995 (HCAR No. 26300) ("Notice").

As set forth in the notice and, more completely, in the application-declaration, CNG has proposed to issue and sell commercial paper and/or short term notes from time to time through June 30, 1996 in amounts not to exceed $1.25 billion and to finance the Subsidiaries with up to $1.225 billion through June 30, 1996. Additionally, CNG Producing proposes through June 30, 1996 to purchase up to 10,000 shares of its common stock from CNG. Also, CNG Energy Services proposes to issue and sell shares of its common stock to CNG at amounts greater than par up to a maximum of $10,000 per share.

Consolidated Natural Gas Company, et al. (70–8621)

Consolidated Natural Gas Company ("Consolidated"), CNG Tower, Pittsburgh, Pennsylvania 15222–3199, a registered holding company, and its wholly owned nonutility subsidiary company, CNG Energy Service Corporation ("Energy Services"), One Park Ridge Center, Pittsburgh, Pennsylvania 15244–0746, have filed an application-declaration under sections 9(a), 10 and 12(b) of the Act and rule 45 thereunder.

By order dated February 27, 1987 (HCAR No. 24329) ("Order"), the Commission authorized Energy Services, among other things, to be the gas marketing subsidiary company for the Consolidated System. Specifically, the Order authorizes Energy Services, as a gas marketer, to purchase, pool, transport, exchange, store and sell gas supplies from competitively priced sources, including the spot markets, independent producers and brokers, and the Consolidated System producing affiliate, CNG Producing Company ("Gas Related Activities").

Energy Services is financed by Consolidated pursuant to the authorizations granted in annual Consolidated intra-system financing proceedings. Energy Services is currently authorized, for the period July 1, 1994 through June 30, 1995, to receive up to $100 million from Consolidated under the system financing order dated June 27, 1994 (HCAR No. 26072) ("Financing Authority"). A request to increase the amount of such Financing Authority to $300 million for the fiscal period July 1, 1995 through June 30, 1996 is currently under review by the Commission.

Energy Services now proposes, without further Commission approval, to invest an aggregate amount not to exceed the lesser of $150 million or its unused Financing Authority to acquire: (1) an ownership interest, which may be up to 50% of the voting or nonvoting stock, in one or more corporations established for the sole purpose of engaging in Gas Related Activities; (2) either into its own name or through a wholly owned special purpose subsidiary company, up to 50% of the general partnership interests in one or more partnerships, or up to 50% voting equity interest in one or more other joint business entities such as joint ventures or limited liability companies, which are established for the sole purpose of engaging in Gas Related Activities; and/or (3) up to 100% of the limited partnership interests in one or more partnerships established for the sole purpose of engaging in Gas Related Activities. None of the projects in which Energy Services would seek to invest will be a utility company.

Energy Services is currently reviewing a number of possible investments in projects with nonaffiliates which would enhance its ability to obtain supplies of natural gas for its customers. None of the projects currently under study would by itself require equity investment by Energy Services or its subsidiary company in excess of $25 million, with most of the opportunities being in the $3 to $5 million investment range. The amount that could be invested by Energy Services in joint entities would be included in the Financing Authority available to Energy Services from Consolidated. However, the amount invested (including capitalized development expenses) by Energy Services in such joint entities will in no event exceed the lesser of $150 million or the unused amount authorized for Consolidated financing of Energy Services during the authorization period ending December 31, 1997.

Consolidated and Energy Services propose to guarantee their obligations incurred as a result of equity investments made in the joint entities up to an aggregate amount not to exceed the lesser of $150 million or its unused Financing Authority. Such guarantees, if made by Consolidated, would be calculated as part of the maximum $750 million authority to guarantee obligations of Energy Services granted in Commission order dated November 16, 1993 (HCAR No. 25926).

Atlantic Energy, Inc. (70–8647)

Atlantic Energy, Inc. ("Atlantic"), 6801 Black Horse Pike, Pleasantville, New Jersey 08232, an exempt public utility holding company, has filed an application under Sections 9(a)(2) and 10 of the Act.

By order dated October 15, 1987 (HCAR. 24475) ("Order"), Atlantic, a New Jersey corporation, became a public utility holding company exempt from all provisions of the Act except section 9(a)(2) pursuant to section 3(a)(1). Atlantic's principal electric utility subsidiary company, Atlantic City Electric Company ("ACE"), provides electric service in southern New Jersey. The Order authorized Atlantic to acquire the common stock of ACE and those of ACE's electric utility subsidiary company, Deepwater Operating Company, pursuant to Sections 9(a)(2) and 10 of the Act.

The Order was issued subject to the condition that neither Atlantic nor any non-utility subsidiary of Atlantic would, without prior authorization of the Commission, acquire from any person other than a subsidiary company or an affiliate of the acquiring company, or an affiliate of any associate company, any securities, utility assets or interests in other business other than:

1. Such securities, utility assets, or interest in any business, as could property be acquired under the Act were the acquiring company a registered holding company or an associate for a registered holding company, without further authorization, permission, or approval by the Commission;

2. Securities, or assets, or an interest in a business, representing (a) an investment in qualifying cogeneration facilities, as defined, pursuant to PURPA in any geographic area or (b) an investment in a small power production project located in the service territory of Atlantic Electric or any other member of the Pennsylvania-New Jersey Maryland Interconnection or within other areas hereafter allowed by law or applicable regulation;

3. Securities, or assets, or an interest in any business, representing an investment in a business which is, or upon completion of the construction thereof will be, functionally related to Atlantic Electric's utility business;

4. Securities, or assets, or an interest in any business representing a passive investment in property acquired on terms substantially equivalent to those authorized by the Commission in *Central and South West Corp.*, HCAR No. 23578, 32 SEC Docket 412 (January 22, 1985);

5. The purchase by an investment subsidiary of Atlantic Energy of accounts receivable of associate companies in Atlantic Energy's system and others on terms substantially equivalent to those authorized by the Commission in *Central and South West Corp.*, HCAR No. 23767, 33 SEC Docket 971 (July 19, 1985) and HCAR No. 24157, 36 SEC Docket 245 (July 31, 1986); or

6. Securities, or assets, or any interest in any business (a) which is substantially equivalent to any type of investment of any registered holding company or any exempt holding company, or any subsidiary company of any such company, that shall have been authorized, permitted, or approved by order of the Commission issued subsequent to January 1, 1987, or by any rule or regulation of the Commission, or (b) which conforms to any guidelines or restrictions of a general or generic nature applicable to registered holding companies or exempt holding companies or subsidiaries thereof, that have been adopted or approved by order of the Commission issued subsequent to January 1, 1987, or by any rule or regulation of the Commission.

Atlantic requests that the condition be removed from the Order because the circumstances which gave rise to the inclusion of the condition in the Order no longer exist and such removal would not be detrimental to the public interest. Atlantic notes that ACE's rates and certain other matters are subject to regulation by the New Jersey Board of Public Utilities ("BPU") and Atlantic believes that the regulatory structure in existence in New Jersey is sufficient to protect ratepayers' interests.

In addition, the New Jersey Division of the Ratepayer Advocate, which is the successor to Rate Counsel, has indicated that it does not object to the removal of the condition, subject to Atlantic agreeing to remain in compliance, unless the Ratepayer Advocate shall agree to any deviation, with the following limitation on non-utility investments:

So long as Atlantic Energy shall be an exempt holding company under the 1935 Act, except as may otherwise be authorized, permitted or approved by order of the Commission, or of any successor commission, under the 1935 Act, neither Atlantic Energy nor Atlantic City Electric shall make any investment, including loans, in any non-utility subsidiary, affiliate or associate company that would cause the total investment by Atlantic Energy and Atlantic City Electric in all such non-utility subsidiaries, affiliates and associate companies to exceed, at the time any such investment is made, 10% of Atlantic Energy's consolidated assets. For purposes of the foregoing, a company primarily engaged in the business of investing in and/or the ownership or operation of, qualifying facilities, as defined by, PURPA [the Public Utility Regulatory Policies Act of 1978], shall be deemed not to be a "non-utility" subsidiary, affiliate or associate company.

This limitation is contained in an agreement between Atlantic and Rate Counsel established at the time of the formation of Atlantic as a holding company.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15368 Filed 6–22–95; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Westbridge Capital Corp., Common Stock, $0.10 Par Value) File No. 1–8538

June 19, 1995.

Westbridge Capital Corp. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, the Security is listed on the New York Stock Exchange, Inc. ("NYSE"). The Security commenced trading on the NYSE at the opening of business on April 12, 1995 and concurrently therewith the Security was suspended from trading on the Amex.

In making the decision to withdraw the Security from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant with maintaining the dual listing of the security on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of the Security and believes that dual listing would fragment the market for the Security.

Any interested person may, on or before July 11, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–15423 Filed 6–22–95; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 2223]

Collection of Fee for Processing Garnishment of Department of State Employees for Payment of Debt

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State is giving notice that, as authorized by title 5 United States Code, section 5520a(j)(2), it will collect and use a fee for processing of garnishments against Department of State employees to satisfy debts other than for alimony or child support. The fee is $30, and it will be collected from the employee at the time the garnishment is first instituted. It will be added to the amount garnished as a charge against salary.

EFFECTIVE DATE: Pay period beginning July 2, 1995.

ADDRESSES: Comments regarding this notice should be sent to the Assistant Legal Adviser for Legislation and General Management (L/LM), Office of the Legal Adviser, Department of State, room 5425, 22nd and C Streets NW., Washington, D.C. 20520.

FOR FURTHER INFORMATION CONTACT: Ms. Sheila McCoy phone number (202) 647–7359.

SUPPLEMENTARY INFORMATION: The law permitting garnishment to satisfy debts also authorizes government agencies to collect a fee for such garnishments. Based upon a cost study, the Department of State has decided to impose a fee of $30.00 for receipt and processing of each garnishment. As required by the law, this fee will be charged to the employee whose salary is being garnished.

The fee will be charged for each garnishment order served and processed. Thus, each time a court or other institution orders the Department to garnish an employee's salary, the Department will deduct the $30.00 fee. Although administrative costs are incurred for each pay period for which a garnishment is in effect, no additional fee will be charged to cover those costs.

The fee will deducted at the time the garnishment is first instituted. It will be added to the garnishment amount, except that, in cases where the garnishment amount plus the fee would exceed the statutory garnishment limit, the garnishment amount will be reduced to keep the total within that limit.

The fee does not apply to garnishments for child support or alimony under title 42 of the United States Code, sections 659, 661, and 662.

Mary Beth West,

Assistant Legal Adviser for Legislation and General Management.

[FR Doc. 95–15380 Filed 6–22–95; 8:45 am]

BILLING CODE 4710–08–M

[Public Notice 2226]

Advisory Committee on Historical Diplomatic Documentation; Meeting

The Advisory Committee on Historical Diplomatic Documentation will meet July 6 and 7, 1995, in the Department of State, in Conference Room 1107.

The Committee will meet in open session from 9:00 a.m. on the morning of Thursday, July 6, 1995, until 12 noon. The remainder of the Committee's sessions, 1 p.m. on Thursday, July 6 until 1 p.m. Friday, July 7, will be closed in accordance with section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463). It has been determined that discussions during these portions of the meeting will involve consideration of matters not subject to public disclosure under 5 U.S.C. 552b(c)(1), and that the public interest requires that such activities will be withheld from disclosure.

Questions concerning the meeting should be directed to William Z. Slany, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC, 20520, telephone (202) 663–1123.

Dated: June 19, 1995.

William Z. Slany,

Executive Secretary.

[FR Doc. 95–15381 Filed 6–22–95; 8:45 am]

BILLING CODE 4710–11–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 USC Chapter 35).

DATES: June 16, 1994.

ADDRESSES: Written comments on the DOT information collection requests should be forwarded, as quickly as possible, to Edward Clarke, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, DC 20503. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

FOR FURTHER INFORMATION CONTACT: Copies of the DOT information collection requests submitted to OMB may be obtained from Susan Pickrel or Annette Wilson, Information Resource Management (IRM) Strategies Division, M–32, Office of the Secretary of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366–4735.

SUPPLEMENTARY INFORMATION: Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to OMB for approval or renewal under that Act. OMB reviews and approves agency submissions in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Items Submitted to OMB for Review

The following information collection requests were submitted to OMB on June 16, 1995:

DOT No: 4067
OMB No: 2127—New
Administration: National Highway Traffic Safety Administration (NHTSA)
Title: NHTSA Customer Satisfaction Surveys
Need for Information: Executive Order No. 12862 requires agencies to set customer service standards.
Proposed Use of Information: This information will be used by NHTSA to: (1) Identify their customers, and (2) Survey their customers on services and results desired and on satisfaction with existing services
Frequency: Varies with each survey
Burden Estimate: Varies with each survey
Respondents: Varies with each survey
Form(s): None
Average Burden Hours Per Response: Varies with each survey.

Issued in Washington, DC, on June 16, 1995.

Paula R. Ewen,

Chief, Information Resource Management (IRM), Strategies Division.

[FR Doc. 95–15359 Filed 6–22–95; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended June 16, 1995.

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 50393
Date filed : June 12, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 10, 1995
Description: Application of Air Alliance, Inc., pursuant to 49 U.S.C. Section 41304 of the Act, and Subpart Q of the Regulations, applies for amendment if its Foreign Air Carrier Permit to authorize it to provide scheduled and charter foreign air transportation of persons, property, and mail from any point or points in Canada to any point or points in the United States.

Docket Number: 50394
Date filed: June 12, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 10, 1995
Description: Application of Air Ontario, Inc., pursuant to 49 U.S.C. Section 41304 of the Act and Subpart Q of the Regulations, applies for amendment of its Foreign Air Carrier Permit to authorize it to provide scheduled and charter foreign air transportation of persons, property, and mail from any point or points in Canada to any point or points in the United States.

Docket Number: 50397
Date filed: June 13, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 28, 1995
Description: Application of Loken Aviation, Inc., requests the Department to reissue its certificate of public convenience and necessity in the name of Lynden Air Cargo, Inc., and accept the fitness data included in Appendix A in support of its existing operation. In addition, applicant requests that it be found fit to operate large aircraft in all-cargo service as outlined in Appendix C. Under its code sharing agreement with Zantop, applicant has no operational control or financial responsibility for the operation of large aircraft service, and there has been no significant change in its operations as a result.

Docket Number: 50399
Date filed: June 16, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 14, 1995
Description: Application of Malev Hungarian Airlines, pursuant to Section 402(c) of the Act and Subpart Q of the Regulations, requests renewal of its Foreign Air Carrier Permit for:

(a) Authority to engage in foreign air transportation of persons, property and mail between Budapest and the co-terminal points New York, Chicago and Los Angeles (code-sharing only) via intermediate points in Europe and Canada.

(i) MALEV proposes to continue to serve New York (John F. Kennedy International Airport).

(ii) The current service involved herein will continue to be scheduled service involving persons, property and mail, utilizing Hungarian registered Boeing 767–200 aircraft. The continuing frequency of service will be daily scheduled round-trip flights between Budapest and New York.

(iii) At a later date Malev may also serve the co-terminal points Chicago and/or Los Angeles, whether through joint commercial use (blocked space) or code sharing agreements, with one or more carriers or, eventually through direct operation of owned or leased aircraft.

(b) In addition to the scheduled services proposed to continue to be operated under the authorizations sought herein, Malev also requests continuing authority to engage in charter services:

(i) With respect to passenger and/or cargo flights between any point or

points in Hungary and any point or points in Hungary and any point or points in the United States; and

(ii) With respect to passenger flights: between any point or points in the United States, and any point or points in any third country or countries provided that such traffic is carried via a point or points in Hungary and makes a stopover in Hungary for at least two consecutive nights.

Docket Number: 50405
Date filed: June 16, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 14, 1995
Description: Application of Continental Airlines, Inc., pursuant to 49 U.S.C. 41108, and Subpart Q of the Act, applies for a certificate of public convenience and necessity authorizing it to provide scheduled foreign air transportation of persons, property and mail between Houston, Texas and Newark, New Jersey, on the one hand, and Lima, Peru, on the other hand, nonstop or via Bogota, Colombia. Continental also requests the right to combine service at the points on this route with service at other points Continental is authorized to serve by certificates or exemptions, consistent with applicable international agreements.

Paulette V. Twine, Chief,
Documentary Services Division.
[FR Doc. 95–15463 Filed 6–22–95; 8:45 am]
BILLING CODE 4910–62–P

National Highway Traffic Safety Administration

Research and Development Programs Meeting Agenda

AGENCY: National Highway Traffic Safety Administration, DOT.
ACTION: Notice.

SUMMARY: This notice provides the agenda for a public meeting at which NHTSA will describe and discuss specific research and development projects.

DATES AND TIMES: As previously announced, the National Highway Traffic Safety Administration will hold a public meeting devoted primarily to presentations of specific research and development projects on June 27, 1995, beginning at 1:30 p.m. and ending at approximately 5:00 p.m.

ADDRESSES: The meeting will be held at the Ramada Inn, near Detroit Metro, 8270 Wickham Rd., Romulus, MI 48174.

SUPPLEMENTARY INFORMATION: This notice provides the agenda for the tenth of a series of quarterly public meetings to provide detailed information about its research and development programs. This meeting will be held on June 27, 1995. The meeting was announced on May 25, 1995 (60 FR 27808). For additional information about the meeting consult that announcement.

Starting at 1:30 p.m. and concluding by 5:00 p.m., NHTSA's Office of Research and Development will discuss the following topics:

* Upgrade side impact protection,
* Vehicle aggressivity and fleet compatibility,
* Crash test dummy component development,
* Upgrade seat and occupant restraint systems,
* Thorax injury research program,
* Performance guidelines for ITS systems,
* Crash causal analysis.

NHTSA has based its decisions about the agenda, in part, on the suggestions it received by June 8, 1995, in response to the announcement published on May 25, 1995.

As announced on May 25, 1995, in the time remaining at the conclusion of the presentations, NHTSA will provide answers to questions on its research and development programs, where those questions have been submitted in writing by June 19, 1995, to the Associate Administrator for Research and Development, NRD–01, National Highway Traffic Safety Administration, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Rita I. Gibbons, Administrative Staff Assistant, Office of Research and Development, 400 Seventh Street, SW, Washington, DC 20590. Telephone: 202–366–4862. Fax number: 202–366–5930.

Issued: June 19, 1995.

William A. Boehly,
Associate Administrator for Research and Development.
[FR Doc. 95–15391 Filed 6–22–95; 8:45 am]
BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

June 13, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Financial Management Service (FMS)

OMB Number: 1510–0030
Form Number: POD 1690
Type of Review: Extension
Title: Certification of Bill From Undertaker
Description: This form is used when application is made by the funeral home for the funeral expenses of a deceased postal depositor. This form is completed by a relative of the deceased depositor certifying that the bill submitted by the funeral home is correct. Entitlement to the funds are based on this data to insure proper payment.
Respondents: Individuals or households
Estimated Number of Respondents: 10
Estimated Burden Hours Per Response: 15 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 3 hours
Clearance Officer: Jacqueline R. Perry, (301) 344–8577, Financial Management Service, 3361–L 75th Avenue, Landover, MD 20785
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland
Departmental Reports Management Officer.
[FR Doc. 95–15444 Filed 6–22–95; 8:45 am]
BILLING CODE 4810–35–P

Public Information Collection Requirements Submitted to OMB for Review

June 16, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0046
Form and Recordkeeping Numbers: ATF F 27–G and ATF REC 5520/2
Type of Review: Extension
Title: Applications—Volatile Fruit-Flavor Concentrate Plants
Description: Persons who wish to establish premises to manufacture volatile fruit-flavor concentrates are required to file an application so requesting. ATF uses the application information to identify persons responsible for such manufacture, since these products contain ethyl alcohol and have potential for use as alcoholic beverages with consequent loss of revenue. The application constitutes registry of a still, a statutory requirement
Respondents: Business or other for-profit
Estimated Number of Respondents/Recordkeepers: 10
Estimated Burden Hours Per Respondent/Recordkeeper: 3 hours
Frequency of Response: On occasion
Estimated Total Reporting/Recordkeeping Burden: 30 hours
OMB Number: 1512–0098
Form and Recordkeeping Numbers: ATF F 5520.2 and ATF REC 5520/1
Type of Review: Extension
Title: Annual Report of Concentrate Manufacturers, and Usual and Customary Business Records-Volatile Fruit Flavor Concentrate (VFFC) Plants
Description: VFFC manufacturers are regulated because the products they produce contain ethyl alcohol which can be diverted to untaxpaid beverage use. Records required are usual and customary business records of receipt and transfer. The required annual report provides a basis for statistics concerning this industry. Records and the report are audited to protect the revenue
Respondents: Business or other for-profit
Estimated Number of Respondents/Recordkeepers: 87
Estimated Burden Hours Per Respondent/Recordkeeper: 20 minutes
Frequency of Response: Annually
Estimated Total Reporting/Recordkeeping Burden: 29 hours
OMB Number: 1512–0515
Form Number: ATF F 5000.28T
Type of Review: Extension
Title: 1993 Cigarette Floor Stocks Tax Return, Recordkeeping and Reporting Requirements
Description: The Omnibus Budget Reconciliation Act of 1990 raised the excise tax of tobacco products effective 1/1/93. The Act also imposes a floor stocks tax affecting wholesale and retail dealers in cigarettes as well as producing/warehouse facilities. ATF F 5000.28T and the regulations (already published) implement the law and are necessary to protect the revenue
Respondents: Business or other for-profit
Estimated Number of Respondents: 60,000
Estimated Burden Hours Per Respondent: 12 hours, 30 minutes
Frequency of Response: Other (One time only, January 1993)
Estimated Total Reporting Burden: 750,000 hours
Clearance Officer: Robert N. Hogarth, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 95–15445 Filed 6–22–95; 8:45 am]
BILLING CODE 4810–31–P

Public Information Collection Requirements Submitted to OMB for Review

June 16, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

U.S. Customs Service (CUS)

OMB Number: 1515–0001.
Form Number: CF 7509.
Type of Review: Extension.
Title: Air Cargo Manifest.
Description: Customs Form 7509 is the source of information that provides for the accountability, integrity, and security of goods in air commerce that are imported into the United States.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 150.
Estimated Burden Hours Per Respondent: 40 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 116,586 hours.
OMB Number: 1515–0077.
Form Number: CF 7514.
Type of Review: Extension.
Title: Drawback Notice (Lading/Foreign Trade Zone Transfer).
Description: Customs Form 7514 is used by drawback liquidators to determine that a drawback claimant has received supplies (normally oil) for use in operating the vessels or aircraft and is, therefore, entitled to drawback of these supplies or that articles were properly transferred to a foreign trade zone rather than being exported.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents: 100.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 833 hours.
Clearance Officer: Norman Waits, (202) 927–1551, U.S. Customs Service, Printing and Records Management Branch, Room 6426, 1301 Constitution Avenue NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 95–15446 Filed 6–22–95; 8:45 am]
BILLING CODE 4820–02–P

Public Information Collection Requirements Submitted to OMB for Review

June 12, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–1262.
Form Number: IRS Form 8038–Q.
Type of Review: Reinstatement.

Title: Issuer's Information Return for Qualified Mortgage Bonds (QMBs).

Description: Form 8038–Q is used by issuers of qualified mortgage bonds to report information to the Internal Revenue Service applicable to each federally-subsidized mortgage loan financed through the issuance of a bond and to furnish certain required information to the mortgagors (borrowers). These issuers include state and local governments.

Respondents: State, Local or Tribal Government.

Estimated Number of Respondents/ Recordkeepers: 74,500.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—5 hr., 30 min.

Learning about the law or the form—2 hr., 23 min.

Preparing, Copying, assembling, and sending the form to the IRS and to the borrower or holder—2 hr., 35 min.

Frequency of Response: Other (a filing for each federally-subsidized mortgage granted).

Estimated Total Reporting/ Recordkeeping Burden: 1,673,600 hours.

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–15447 Filed 6–22–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

June 16, 1995.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–1059.

Form Number: IRS Forms 7018 and 7018–A.

Type of Review: Revision.

Title: Employer's Order Blank for Forms.

Description: Forms 7018 and 7018–A allow taxpayers who must file information returns a systematic way to order information tax forms materials.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 1,668,000.

Estimated Burden Hours Per Respondent: 3 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 83,400 hours.

OMB Number: 1545–1083.

Regulation ID Number: INTL–0961–86 Temporary Regulations (T.D. 8261); INTL–0399–88 Final Regulations (T.D. 8434).

Type of Review: Extension.

Title: Treatment of Dual Consolidated Losses.

Description: Section 1503(d) denies use of the losses of one domestic corporation by another affiliated domestic corporation where the loss corporation is also subject to the income tax of another country. The regulation allows an affiliate to make use of the loss if the loss has not been used in the foreign country and if an agreement is attached to the income tax return of the dual resident corporation or group, to take the loss into income upon future use of the loss in the foreign country. The regulation also requires separate accounting for a dual consolidated loss where the dual resident corporation files a consolidated return.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 400.

Estimated Burden Hours Per Respondent: 45 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 328 hours.

OMB Number: 1545–1336.

Form Number: IRS Forms 9455 and 9456.

Type of Review: Extension.

Title: IRS Taxpayer Education Programs Annual Survey.

Description: The data collected will be used to estimate the number of individuals who teach IRS' Educational Programs, and the number of students who are exposed to the Understanding Taxes (UT) High School, UT–8th Grade, UT-Post Secondary, and the Small Business Tax Education Programs during the course of a year. It will also be used to justify the continued use of these programs. This effort is in line with IRS initiatives on reducing taxpayer burden and Compliance 2000 initiatives to encourage voluntary compliance with the tax laws.

Respondents: State, Local or Tribal Government.

Estimated Number of Respondents: 120,800.

Estimated Burden Hours Per Respondent: 10 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 20,137 hours.

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–15448 Filed 6–22–95; 8:45 am]

BILLING CODE 4830–01–P

Study of the United States Financial Services System

AGENCY: Department of the Treasury.

ACTION: Request for comments.

SUMMARY: The Secretary of the Treasury (Secretary) is conducting a study of the strengths and weaknesses of the United States financial services system in meeting the needs of the system's users. We encourage all interested parties to submit written comments on the topics set forth below.

DATES: Comments must be received by August 22, 1995.

ADDRESSES: Interested parties are requested to submit *written* data, views, or arguments. A public file containing all the public comments will be maintained at the Department of the Treasury.

Comments should be sent via mail or facsimile to:

Study of the United States Financial Services System, Department of the Treasury, Room 3025, 1500 Pennsylvania Avenue, NW, Washington, DC 20220. Fax number 202/622–0256.

FOR FURTHER INFORMATION CONTACT: For further information contact Joan Affleck-Smith, Director, Office of Financial Institutions Policy, 202/622–2740.

SUPPLEMENTARY INFORMATION: On September 29, 1994, the President signed into law the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994. Section 210 of the Act requires the Secretary to conduct a study that assesses the strengths and weaknesses of the United States financial services system in meeting the needs of its users, including the needs of: (1) Individual consumers and households; (2) communities; (3) agriculture; (4) small-, medium-, and large-sized businesses; (5) governmental and non-profit entities; and (6) exporters and other users of international financial services. The Act requires the Secretary to report to Congress by December 29, 1995, on the results of the study, including any recommendations.

The Act also requires the Secretary, in conducting the study, to consult with an Advisory Commission on Financial Services, to be appointed by the Secretary, and with the following governmental agencies: The Board of Governors of the Federal Reserve System; the Commodity Futures Trading Commission; the Office of the Comptroller of the Currency; the Office of Thrift Supervision; the Federal Deposit Insurance Corporation; the Department of Housing and Urban Development; the Securities and Exchange Commission; the Congressional Budget Office; and the General Accounting Office.

The Act requires the Secretary to consider:

- The effects that changes in the national economy, international economy, and the financial services industry will have on the ability of the financial services system to meet the needs of the national economy and the system's users; and
- The adequacy of the existing legal and regulatory framework of the financial services system to meet the needs of the system's users.

Based on the results of the study, the Secretary may make recommendations, as appropriate, for changes in statutes, regulations, and policies to improve the operation of the financial services system, including changes to better: (1) Meet the needs of, and assure access to the system for, current and potential users; (2) promote economic growth; (3) protect consumers; (4) promote competition and efficiency; (5) avoid risk to the taxpayers; (6) control systemic risk; and (7) eliminate discrimination.

Background

The United States financial services system has changed rapidly and significantly in recent years. The more important changes have included:

(1) The growing importance of non-traditional, unregulated financial intermediaries in providing a broad array of lending, saving, payment, and investment services in competition with traditional, regulated depository institutions;

(2) The globalization of financial markets as financial services providers compete in the U.S. and abroad to meet the needs of their internationally engaged customers; and

(3) Innovations in information and telecommunications technologies that permit creation of new financial products and new ways to package and distribute existing products.

Because of these changes, it is appropriate that consideration be given to the needs of users of financial services as the financial services industry evolves.

Questions for Respondents

Respondents (both users and providers of financial services) should build their responses around the two core questions posed in the legislation requiring this study. These questions are:

1. What effect will changes in the national and international economies have on the ability of the U.S. financial services system to meet your needs as a user of financial services?

2. Is the existing legal and regulatory framework of the U.S. financial services system adequate to meet your needs as a user of financial services? What changes in that framework would better enable providers of financial services to meet your needs?

Respondents should assess the strengths and weaknesses of the U.S. financial services system as completely as possible from their perspective as users or providers. These responses will help identify specific user needs (for example, access by small businesses to credit and capital) and the changes appropriate to help meet those needs.

Dated: June 12, 1995.

Richard S. Carnell,

Assistant Secretary (Financial Institutions), Department of the Treasury.

[FR Doc. 95–15343 Filed 6–22–95; 8:45 am]

BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 121
Friday, June 23, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. § 552b), notice is hereby given of the Defense Nuclear Facilities Safety Board's (Board) second meeting in a series, described below, regarding DOE's standards-based safety management program.

TIME AND DATE: 9:00 a.m., July 18, 1995.

PLACE: The Defense Nuclear Facilities Safety Board, public Hearing Room, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Board will reconvene and continue the open meeting conducted on May 31, 1995, regarding DOE's standards-based safety management program. 42 U.S.C. § 2286b requires that the Board review and evaluate the content and implementation of standards relating to the design, construction, operation, and decommissioning of defense nuclear facilities of the Department of Energy. Those standards include rules, DOE safety Orders, and other requirements. The Board, acting pursuant to its enabling statute, has issued a series of Recommendations (most notably 90–2 and 94–5) designed to foster the development of an effective standards-based nuclear safety program within DOE. The Secretary of Energy has accepted each of these Recommendations. In the meantime, DOE is engaged in a number of initiatives designed to simplify existing safety Orders and the promulgation of new rules. The Secretary of Energy's commitment to implementing Board recommendations calling for an effective standards-based safety program will require careful integration with these recent DOE initiatives. The Board will hold a public meeting to consider the essential elements of a safety management program that is standards-based and to review DOE's progress in developing such a program.

CONTACT PERSON FOR MORE INFORMATION: Kenneth M. Pusateri, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004, (800) 788–4016. This is a toll free number.

SUPPLEMENTAL INFORMATION: The Board has a responsibility for oversight of DOE's development of nuclear health and safety requirements as the transition is being made from the use of safety Orders to rules. The Board understands the reasons for development and promulgation of nuclear safety requirements through rulemaking and is concerned that the conversion process not compromise the requirements-based safety program now embodied in the DOE's safety Orders. The Board's most recent effort to ensure that the "good engineering practices" codified in DOE's safety Orders are maintained was expressed in its Recommendation 94–5, dated December 29, 1994. In that Recommendation, the Board noted the results of its review of selected DOE contracts and DOE advisories and stated, among other things, that:

> The provisions [of these DOE contracts and advisories by DOE management] indicate that the integrated use of nuclear safety-related Rules, Orders, standards and guides in defining and executing DOE's safety management program may not be sufficiently well understood by either the M&O contractors or DOE managers. This issue was raised in the Board's letter of May 6, 1994 to the Department of Energy.
>
> Given the situation as described above, the Board believes that further DOE actions are needed to ensure there is no relaxation of commitments made to achieve compliance with requirements in Orders while proposed rules are undergoing the development process. These actions should also provide for smooth transition of Orders to rules once promulgated.

Recommendation 94–5, in its entirety, is on file in DOE's Public Reading Rooms, at the Defense Nuclear Facilities Safety Board's Washington office, and on the Internet through access to the Board's electronic bulletin board at the following address: gopher://gopher.dnfsb.gov:7070. It is also set forth in the **Federal Register** at 60 FR 2089.

In accord with the statute establishing the Board, a public meeting will be conducted to lay the groundwork for a full assessment of how Standards/Requirements Identification Documents (S/RIDs), rules, Orders, and other safety requirements are integrated into an overall safety management program for defense nuclear facilities. To assist the Board and inform the public, individual Board members will present their views, and the Board's staff will brief the Board on related topics, including, but not limited to the following:

1. Status of staff reviews of DOE revisions to safety Orders and rules.
2. Approaches to development and implementation of standards-based safety programs for DOE nuclear weapons research and development activities.

A transcript of this proceeding will be made available by the Board for inspection by the public at the Defense Nuclear Facilities Safety Board's Washington office.

The Board also intends to notice and further conduct public hearings pursuant to 42 U.S.C. § 2286b, at a later date, to assess the Department of Energy's (DOE) progress in implementing an effective standards-based safety program of DOE's defense nuclear facilities and to assure that DOE's activities in streamlining DOE's nuclear safety order system and converting to a regulatory program do not eliminate the engineering practices now codified in DOE's safety Orders that are necessary to adequately protect public health and safety.

The Board reserve its right to further schedule and otherwise regulate the course of these meetings and hearings, to recess, reconvene, postpone or adjourn the meeting, and otherwise exercise its power under the Atomic Energy Act of 1954, as amended.

Dated: June 21, 1995.

John T. Conway,
Chairman.

[FR Doc. 95–15615 Filed 6–21–95; 3:53 pm]
BILLING CODE 3670–01–M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of June 26, 1995.

An open meeting will be held on Tuesday, June 27, 1995, at 10:00 a.m. A closed meeting will be held on Tuesday, June 27, 1995, following the 10:00 a.m. open meeting.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Tuesday, June 27, 1995, at 10:00 a.m., will be:

1. Consideration of a release expressing the views of the Commission concerning problematic practices under Regulation S of the Securities Act of 1933. In connection with these practices, consideration of proposals (a) designed to streamline requirements with respect to financial statements of significant acquisitions by eliminating certain impediments to registered offerings of securities under the Securities Act of 1933 and by providing an automatic 75-day waiver for reports under the Securities Exchange Act of 1934 for certain unavailable acquiree financial statements and (b) requiring registrants to report on a quarterly basis recent sales of equity securities that have not been registered under the Securities Act of 1933. For further information, contact: Paul Dudek or Annemarie Tierney, Office of International Corporate Finance, Division of Corporation Finance, at (202) 942–2990, or Douglas Tanner, Office of Chief Accountant, Division of Corporation Finance, at (202) 942–2960.

2. Consideration of a recommendation to propose revisions to rules under the Securities Exchange Act of 1934 to double the total assets threshold for Section 12(g) registration from $5 million to $10 million. For further information, contact: Richard K. Wulff, Office of Small Business Policy, Division of Corporation Finance, at (202) 942–2950.

3. Consideration of a recommendation to propose regulations that would implement a system whereby registrants could choose to include abbreviated financial statements in annual reports and other disclosure documents that are delivered to investors. For further information, contact: Elizabeth M. Murphy or William B. Haseltine, Office of Disclosure Policy, Division of Corporation Finance, at (202) 942–2910.

4. Consideration of a recommendation to propose streamlining the proxy statement by permitting certain executive compensation information to be provided in the annual report on Form 10–K; consideration of a recommendation to improve the presentation of director compensation disclosure. For further information, contact: Elizabeth M. Murphy or William B. Haseltine, Office of Disclosure Policy, Division of Corporation Finance, at (202) 942–2910.

5. Consideration of a recommendation to propose a new Section 3(b) exemption from the registration requirements of the Securities Act of 1933 for issues of up to $5 million where the securities are offered and sold in reliance on a recently adopted California qualification exemption, and to solicit comment on whether the prohibition against general solicitation in certain Regulation D offerings should be reconsidered in light of the new California exemption's approach to this issue. For further information, contact: Richard K. Wulff, Office of Small Business Policy, Division of Corporation Finance, at (202) 942–2950, or James R. Budge, Office of Disclosure Policy, Division of Corporation Finance, at (202) 942–2910.

6. Consideration of whether to propose amendments to the Securities Act rules that would allow issuers to solicit interest in their companies prior to the filing of a Securities Act registration statement for an initial public offering. For further information, contact: Richard K. Wulff, Office of Small Business Policy, Division of Corporation Finance, at (202) 942–2950, or James R. Budge, Office of Disclosure Policy, Division of Corporation Finance, at (202) 942–2910.

7. Consideration of a recommendation to propose amendments to the holding period requirements contained in Rule 144(d) and (k) under the Securities Act of 1933 to permit limited resales of "restricted" securities after a one-year, rather than a two-year holding period, and free resales by non-affiliated shareholders after a two-year, rather then a three-year holding period. Further, comment would be requested on whether Rule 144 should be revised to address new trading strategies, such as equity swaps, and a reminder would be issued to persons subject to the reporting requirements of Section 16 under the Securities Exchange Act of 1934 that these transactions are required to be reported. For further information, contact: Richard K. Wulff, Office of Small Business Policy, Division of Corporation Finance, at (202) 942–2950.

The subject matter of the closed meeting scheduled for Tuesday, June 27, 1995, following the 10:00 open meeting, will be:

Institution of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Settlement of injunctive actions.
Settlement of administrative proceedings of an enforcement nature.
Formal orders of investigation.
Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: June 21, 1995.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 95–15613 Filed 6–21–95; 3:54 pm]
BILLING CODE 8010–01–M

federal register

Friday
June 23, 1995

Part II

Securities and Exchange Commission

17 CFR Part 200, et al.
Rules of Practice; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 201, 202, 203, 209, 228, 229, 230, 232, 240, 250, 260, 270 and 275

[Release No. 34–35833; File No. S7–40–92]

RIN 3235–AF91

Rules of Practice

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Securities and Exchange Commission today announces the adoption of comprehensive revisions to its Rules of Practice ("Rules"), the procedural rules that govern Commission administrative proceedings. Enforcement proceedings initiated by the Commission and review of disciplinary proceedings brought by self-regulatory organizations are among the most frequently occurring and significant proceedings governed by the Rules. Adoption of the Rules and the other actions taken today implement recommendations made by the Commission's Task Force on Administrative Proceedings in its final Report, entitled *Fair and Efficient Administrative Proceedings.*

The Rules contain procedures implementing authority granted to the Commission by the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 to issue administrative temporary cease-and-desist and disgorgement orders. The Rules also implement revised procedures for the conduct of hearings, including simplified service of orders instituting proceeding, expanded use of prehearing conferences, codification of policies on the availability of certain investigation files to respondents in enforcement and disciplinary proceedings, issuance of subpoenas returnable prior to hearing and the consideration by administrative law judges of dispositive motions prior to hearing. In addition, the Rules contain revised procedures governing appeals to the Commission including various procedural requirements governing Commission review of self-regulatory determinations that were previously contained in part in Rules 19d–2 and 19d–3 under the Securities Exchange Act of 1934.

The revised Rules better facilitate full, fair and efficient proceedings by setting forth applicable procedural requirements more completely and in an easier to use format; by streamlining procedures that had become burdened with archaic requirements; and by the addition of provisions that address changes in statutory requirements, judicial and administrative case law developments, Commission policies, and litigation practices since the Rules were last revised.

The Commission also announces the issuance of a statement of Informal Procedures and Supplementary Information Concerning Adjudicatory Proceedings. This statement establishes guidelines for the completion of key phases of contested adjudications; requires periodic case status reports that will formally apprise the Commission if an adjudicatory matter is pending for longer than specified periods of time, so that the Commission can determine whether additional steps are necessary to reach a fair and timely resolution of the matter; and provides for increased and more timely disclosure concerning the Commission's adjudicatory docket through the periodic publication in the *SEC Docket* of summary statistical information concerning changes in the Commission's case load.

EFFECTIVE DATE: These rules are effective July 24, 1995.

TRANSITION PROVISION: Any administrative proceeding that has been docketed by the Commission—*i.e.*, in which an administrative proceedings file number has been assigned by the Secretary—prior to the date of this **Federal Register** publication, June 23, 1995, shall be completed pursuant to the former Rules of Practice. Any proceeding docketed by the Commission after the date of this **Federal Register** publication but prior to the effective date shall be conducted under the former Rules of Practice unless, within 30 days of the effective date, each respondent in the proceeding submits a request in writing to the Secretary that the proceedings be conducted under the Rules of Practice adopted today.

ADDRESSES: Printed copies of the revised Rules of Practice including the comments will be available from the Commission's Publications Branch, U.S. Securities and Exchange Commission, 450 Fifth Street, NW.; Stop C–11; Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Andrew Z. Glickman or Daniel O. Hirsch, Office of the General Counsel at (202) 942–0870; U.S. Securities and Exchange Commission; 450 Fifth Street, N.W.; Stop 6–6; Washington, D.C. 20549.

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TEXT OF ADOPTED RULES

I. Background

Today's adoption of comprehensive revisions to the Rules of Practice ("Rules") of the Securities and Exchange Commission ("Commission") and issuance of a statement of informal procedures with respect to Commission adjudications culminate an extensive review of the Commission's adjudication procedures and process. In July 1990, then-Commissioner Mary L. Schapiro was appointed chairman of the Task Force on Administrative Proceedings ("Task Force" or "Schapiro Task Force"). The mission of the Task Force was to review the rules and procedures relating to Commission administrative proceedings, to identify sources of delay in those proceedings and to recommend steps to make the adjudicatory process more efficient and effective.[1] Following passage of the Securities Enforcement Remedies and Penny Stock Reform Act ("Remedies Act"),[2] the Task Force greatly expanded its work to include preparing procedures to implement the authority granted to the Commission by the Remedies Act. The Task Force ultimately determined that it would be necessary and appropriate to revise completely the entire Rules of Practice.

[1] SEC Creates Task Force on Administrative Proceedings, News Release 90–39 (July 19, 1990).

[2] Pub. L. 101–429, 104 Stat. 931 (1990).

In January 1991 and December 1991, the Schapiro Task Force presented to the Chairman interim findings and recommendations concerning the need to reduce the pending case backlog. Implementation of these recommendations included, among other things, a reorganization of the Adjudications Group within the Office of the General Counsel, significant increases in staff resources assigned to adjudicatory proceedings, and more frequent Commission meetings to consider proposed adjudicatory opinions.

In August 1992, the Secretary published approximately 400 orders issued by the Commission and administrative law judges between 1964 and 1992.[3] The previously unpublished orders, which were assembled and organized by the Task Force, concerned interpretations of the Rules of Practice or other procedural issues. The orders provide litigants with additional information about applicable procedure and thereby reduce the likelihood that previously decided issues will need to be relitigated. Also, as recommended by the Task Force, the Commission began regular publication in the *SEC Docket* of initial decisions of the administrative law judges as well as significant procedural orders.

In March 1993, the Schapiro Task Force issued its final report, *Fair and Efficient Administrative Proceedings* ("the Task Force Report").[4] The Task Force concluded that the fundamental structure of the Commission's administrative process is sound. The Task Force found, however, that there was unnecessary delay in deciding litigated adjudicatory proceedings.[5] The Task Force recommended a comprehensive revision of the Rules of Practice and included proposed new Rules in its Report. In addition, the Task Force made various other recommendations designed to improve the efficiency and fairness of the Commission's administrative proceedings.[6] These included steps that were intended to make structural changes that would reduce the likelihood of a recurrence of the conditions that led to unnecessary delay and a backlog of pending cases.

In November 1993, the Commission published in the **Federal Register** a release proposing to adopt the Task Force's proposals pertaining to the Rules and asking interested persons for comment.[7]

[3] 52 SEC Docket 3, 3–792 (Aug. 18, 1992).

[4] Task Force on Administrative Proceedings, Securities and Exchange Commission, *Fair and Efficient Administrative Proceedings: Report of the Task Force* (Feb. 1993) [hereinafter *Task Force Report*).

[5] *Id.* at 13. *See also id.* at 19–22 (summary of statistical data concerning proceedings adjudicated from 1982 through 1992).

[6] *Id.* 12–19.

II. Discussion of the Revised Rules

The Commission received seven comment letters from various interested persons.[8] Although not numerous, the comment letters as a group contained very extensive commentary on the proposed Rules. Commenters generally greeted the Commission's proposals favorably. All commenters praised the Commission's initiating a review of its Rules with the goal of further promoting fair and efficient administrative proceedings. All commenters submitted proposals to make various modifications to the Rules including many suggestions in response to the specific requests for comment contained in the proposing release. A number of comments also addressed matters not directly within the scope of the Rules. These included internal Commission management issues, such as the organizational structure of the Commission's divisions and offices, or enforcement policy issues, such as the frequency with which the Commission will initiate administrative proceedings. Significant changes to the Rules are discussed below.

A. New Organizational Structure of the Rules

The former Rules, which had not been comprehensively revised since 1960, contained requirements which were out-of-date or inconsistent with current practices and, in a few cases, inconsistent with other rules. In revising the Rules, emphasis was placed on maintaining consistency with applicable statutory language while improving intelligibility, ensuring that the Rules accurately reflected current Commission practice, and providing internal consistency in the use of terms between individual rules.

The Commission has adopted a new organizational structure and numbering system for the Rules of Practice based on model administrative rules prepared by the Administrative Conference of the United States ("ACUS"). As originally proposed, the Commission's Rules had been arranged in roughly the order in which an administrative proceeding progresses and numbered consecutively. The new format groups rules together in six broad categories based on which phase or type of proceeding they govern. The first four groups—general rules; institution of proceedings and prehearing rules; hearing rules; and rules regarding appeals to the Commission and Commission review—are predicated upon the four classifications suggested by ACUS. The two additional groups are related to specific Commission proceedings and administrative remedies and sanctions—rules regarding temporary orders, suspension of a registration and summary suspensions of trading; and rules governing disgorgement and penalty payments.

Within each group, related rules are placed together. Rules which, as proposed, covered multiple topics have been divided into shorter rules each limited to fewer topics. The new structure increases the use of rule headings and subheadings to guide a user to the appropriate rule. To the extent possible, related provisions cross-reference each other. Each of the six major groups of rules is numbered in a separate series, from 100 through 600. In addition to improving the ease of use of the rules, the new numbering system will provide the Commission with greater flexibility when future amendments and additions to the Rules occur.

B. Comments Accompanying the Rules

The Commission has prepared explanatory comments for the Rules of Practice; these comments appear with the Rules in this "Supplementary Information" section. The complete text of the Rules without comments appears below in Section VII. Each explanatory remark is identified as either a "comment" or a "revision comment." "Comments" are statements explaining the basis for a rule, describing the rule's rationale, referencing related rules, or providing information concerning pertinent Commission practice. Comments are not a part of the rules, and are not included in the Code of Federal Regulations. The Commission believes, however, that information in the comment section will assist persons consulting the Rules in a more thorough understanding of the Rules. Printed copies of the revised Rules of Practice including the comments will be

[7] Proposed Rules of Practice, Exchange Act Release No. 33163, 58 FR 61732 (Nov. 22, 1993). Most of the rules in the Rules of Practice deal with agency procedure and practice and are exempt from the Administrative Procedure Act's notice and comment requirement for rulemaking, 5 U.S.C. 553(b)(3). Consistent with the recommendation of the Task Force, though, all the Rules were published for comment. *See Task Force Report, supra* note 4, at 12.

[8] The comment letters may be inspected and copied at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549, File No. S7–40–92.

available from the Commission's Publications Branch, U.S. Securities and Exchange Commission; 450 Fifth Street, N.W.; Stop C–11; Washington, D.C. 20549. A copy of this publication will be provided to each respondent by the Secretary at the commencement of proceedings.

"Revision comments" are statements explaining changes from the proposed Rules to the adopted Rules. In addition, revision comments include, where appropriate, a brief discussion of responses to the requests for comment in the proposing release.

C. Summary of Major Changes to the Rules From the Former Rules

This section contains a capsule summary of major changes from the former Rules.

1. *Temporary cease-and-desist orders.* The Rules include procedures for the issuance of a temporary cease-and-desist order ("TCDO").[9–10] Rules 510, 511 and 512 contain the application procedures, notice requirements, hearing procedures and issuance requirements for TCDO's. Rule 513 contains additional requirements for *ex parte* issuance of a TCDO. Rule 514 sets forth the availability of judicial review and the duration of a TCDO. Rule 530 governs special procedures relating to issuance of an initial decision whether to enter a permanent order if a temporary order is pending. Rules 531 and 540 govern Commission review of that initial decision, and duration of the temporary order pending that review.

The Division of Enforcement may file an application for a TCDO simultaneously with or after the commencement of proceedings seeking a permanent cease-and-desist order with respect to a registered entity or associated person.[11] The application must be accompanied by a declaration of facts signed by a person with knowledge of the facts contained therein; a memorandum of points and authorities; a proposed order imposing the temporary relief sought; and, unless relief is sought *ex parte*, a proposed notice of hearing and order to show cause whether the temporary relief should be imposed. If a proceeding for a permanent cease-and-desist order has not already been commenced, the Division must also file a proposed order instituting proceedings to determine whether a permanent cease-and-desist order should be imposed.

Unless the conditions warranting issuance of an *ex parte* order are met, a respondent shall be served with the application and additional papers and a hearing on the application shall be scheduled.

If a respondent has been served with a temporary cease-and-desist order entered without a prior Commission hearing, the respondent may apply to the Commission to have the order set aside, limited, or suspended, and if the application is made within 10 days after the date on which the order was served, may request a hearing on such application. The Commission shall hold a hearing and render a decision on such an application at the earliest possible time. The hearing shall begin within two days of the filing of the application unless the applicant consents to a longer period or the Commission, by order, for good cause shown, sets a later date. If the Commission does not render its decision within 10 days of the application or such longer time as consented to by the applicant, the temporary order shall be suspended until a decision is rendered.

A temporary cease-and-desist order may be appealed to a federal district court within 10 days of service of an order entered with prior notice, or within 10 days after the Commission's issuance of its decision upon a respondent's application to set aside, limit or suspend an *ex parte* order.

After issuance of a temporary cease-and-desist order, the proceeding to determine whether to enter a permanent order shall go forward with a hearing before a hearing officer and the issuance of an initial decision. The Rules establish procedures with respect to expedited consideration of any appeal of the initial decision. The Rules also set forth limitations on the duration and scope of the temporary cease-and-desist order pending issuance of the Commission's opinion on review of the initial decision.

2. *Suspension of Registered Entity.* Rules 520, 521, 522 and 524 include extensive revisions to the provisions of former Rule 19 relating to the suspension of a registered broker or dealer pending a final determination whether the registration shall be revoked. Consistent with amendments to the Securities Exchange Act, the new rules apply to a municipal securities dealer, government securities broker, government securities dealer, or transfer agent as well as a broker or dealer. Where possible, the new procedures for suspensions pending a final determination whether to revoke a registration parallel the procedures relating to temporary cease-and-desist orders.

3. *Disgorgement.* The 600 series of the revised Rules contains new provisions governing payment of disgorgement, interest and penalties. Rule 600 requires prejudgment interest to be assessed on any sum required to be paid pursuant to an order of disgorgement. The rate of interest is set at the IRS underpayment rate and compounded quarterly unless the Commission specifies a lower rate with respect to funds placed in an approved escrow. Under Rule 601 unless otherwise provided, funds due pursuant to an order by the Commission requiring the payment of disgorgement, interest or penalties must be paid no later than 21 days after service of the order. After disgorgement has been paid, a proposed plan of disgorgement will be submitted pursuant to Rule 610.

Rule 611 lists the required elements of such disgorgement plan. A plan may provide for distribution of funds to investors or to a court registry or court-appointed receiver for injured investors. Where return of disgorged funds to investors is not justified, funds may be paid to the U.S. Treasury. Rule 612 requires that notice of a proposed plan be published in the *SEC News Digest* and the *SEC Docket* and other publications as required. A plan may be approved, approved with modifications, republished for additional comments or disapproved pursuant to Rule 613. Rule 614 contains provisions governing the administration of an approved plan.

Rule 620 addresses conditions under which a non-party will be granted leave to intervene or to participate in a proceeding for the purpose of challenging a disgorgement order or plan of disgorgement. The Rule provides that no person shall be granted leave to intervene or to participate for such a purpose based solely upon that person's eligibility or potential eligibility to participate in a disgorgement fund or based upon any private right of action such person may have against any person who is also a respondent in an enforcement proceeding.

Persons claiming an inability to pay disgorgement, interest or a penalty must do so in accordance with Rule 630. A respondent who asserts inability to pay may be required to file a sworn financial statement and to keep the statement current. Failure to file a required statement may be deemed a waiver of the claim of inability to pay.

4. *Expanded Role for Prehearing Conferences.* The Rules significantly expand the role of prehearing conferences and encourage more active prehearing case management by administrative law judges. Under the proposed rule, no initial prehearing conference was required. In accordance with suggestions by commenters, revised Rule 221 requires that except where the emergency nature of a proceeding would make a prehearing conference clearly inappropriate, both an initial and a final prehearing conference shall be held. The initial conference is to be held within 14 days of service of an answer, or if no answer is required, within 14 days of the issuance of an order instituting proceedings. The final conference is to be held as close to the beginning of the hearing as is reasonable.

The Rules make an initial prehearing conference mandatory in most cases because such a conference can eliminate unnecessary delay and improve the quality of adjudicative decisionmaking by sharpening the preparation of cases and presentation of issues. The increased role for prehearing conferences will facilitate the new procedures that provide for access to certain categories of investigation file documents in enforcement and disciplinary proceedings and for the prehearing production of documents pursuant to subpoena.

5. *Prehearing Access to Certain Investigative Documents.* Pursuant to new Rule 230, in an enforcement or disciplinary proceeding, the Division of Enforcement will provide any party with an opportunity for inspection and copying of certain categories of documents obtained by the Division in connection with the investigation leading to the Division's recommendation to institute proceedings. The rule codifies the prevailing practice of the Division of Enforcement staff in the Headquarters Office and various regional offices. A respondent's right to inspect and copy documents under this Rule is automatic; the respondent does not need to make a formal request for access through the hearing officer.

Documents to which access must be provided include: (1) Each subpoena issued; (2) every other written request to persons not employed by the Commission to provide documents or to be interviewed; (3) the documents turned over in response to any such subpoenas or other written requests; (4) all transcripts and transcript exhibits; (5) any other documents obtained from persons not employed by the Commission; and (6) any final examination or inspection reports prepared by the Division of Market Regulation or the Division of Investment Management. The Division of Enforcement's obligation under this rule relates only to documents obtained by the Division of Enforcement. Documents located only in the files of other divisions or offices are beyond the scope of the rule.

The Division of Enforcement may withhold a document if: (1) The document is privileged; (2) the document is an internal memorandum, note or writing prepared by a Commission employee, other than certain examination or inspection reports prepared by the Divisions of Market Regulation or Investment Management, or is otherwise attorney work-product and will not be offered in evidence; (3) the document would disclose the identity of a confidential source; or (4) the hearing officer grants leave to withhold a document or category of documents as not relevant to the subject matter of the proceeding or otherwise, for good cause shown.

Rule 230 is not the exclusive means by which a respondent may obtain access to documents. Production of documents prepared by the staff may be required under the doctrine of *Brady* v. *Maryland*, 373 U.S. 83 (1963), or pursuant to Jencks Act requirements made applicable to the Commission pursuant to rule, or may be sought by subpoena or through other procedures. *See, e.g.*, the Freedom of Information Act, 5 U.S.C. 552.

The document access policy in Rule 230 has been revised significantly from the proposed rule. Under the proposed rule, the staff was required to make a relevancy determination before a document would be produced. The Commission decided to change this rule, based in part upon comments received that contended that a relevancy determination by the staff was problematic.[12]

6. *Prehearing Document Production Pursuant to Subpoena.* Rule 232(a) allows for production of documents pursuant to subpoena prior to the start of a hearing. The Rule states that a party may request "subpoenas requiring the production of documentary or other tangible evidence returnable at any designated time or place." Under former Rule 14(b)(1), such documents were only to be turned over at the hearing. As adopted, the rule will reduce delay and eliminate the need for postponements by allowing for documents to be reviewed and copied, and for proposed exhibits to be selected, all prior to a final prehearing conference.

7. *Summary Disposition.* Under former Rule 11(e), a motion that would dispose of a proceeding in whole or in part could not be made, or considered by a hearing officer, prior to the completion of the interested division's case or the conclusion of the hearing. *See* 17 CFR 201.11(e) (1994). Rule 250 makes substantial changes to these procedures. The Rule provides for a motion for summary disposition by any party after each party required to file an answer has done so and, in an enforcement or disciplinary proceeding, after documents have been made available to the respondent for inspection and copying. If the interested division has not completed presentation of its case in chief at the hearing, a summary decision motion may be made only with leave of the hearing officer. The facts of the pleadings of the party against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by that party, by uncontested affidavits, or by facts officially noted. In accordance with suggestions of a commenter, the Rule now provides that if a party cannot, for good cause, present facts essential to justify opposition to the motion by affidavit prior to hearing, the hearing officer shall deny the motion.

A motion for summary disposition is subject to a 35-page limit.

8. *Protective Orders.* The revised Rules contain provisions allowing certain persons involved in an evidentiary hearing to obtain a protective order for confidential information. Documents and testimony introduced in a public hearing are presumed to be public. Rule 322 allows any party intending to introduce material as evidence during a hearing, any person who is the subject or creator of such material, or any witness who testifies at a hearing to file a motion requesting a protective order for such material or testimony. A protective order shall be granted only upon a finding that the harm resulting from disclosure would outweigh the benefits of disclosure.

The former Rules of Practice contained a confidential treatment provision that related solely to applications for materials filed in connection with registration statements and other statutorily required filings; it required that confidential treatment be sought at the time of filing. *See* 17 CFR 201.25 (1994). Proposed Rule 33 would have responded to this situation by

[9–10] Rules S10–S14, S30, S31 and S40.

[11] Prior to filing an application for temporary relief, the staff would, in all cases, have to obtain authority to seek a temporary order from the Commission. As with any other decision to initiate enforcement action prior to the institution of proceedings, Commission deliberations and discussions with the staff concerning the decision whether to authorize an application for temporary relief would be nonpublic, privileged, and not ordinarily reviewable by a court.

[12] Specifically, it was suggested that the proposed standard might deny respondents access to documents that "while possibly not directly relevant to any of the Commission's allegations, may bear directly on the lines of defense the respondent is developing." ABA comment letter dated Feb. 28, 1994, at 59. It was also suggested that asking the staff to make such a determination was inappropriate because of the staff's "outlook and allegiance." *Id.*

allowing a party to seek confidential treatment under any "applicable statute or rule," without limiting the scope of materials sought to be protected or the timing of the application.

The Commission has decided that a separate rule for protective orders would be more efficient and easier for adjudicatory litigants to use than a rule that encompassed not only protective orders, but also requests for confidential treatment under the federal securities laws [13] or the Freedom of Information Act.[14]

9. *Service.* The rule for service of orders by the Commission, Rule 141, and the rule for service of papers by parties, Rule 150, contain a number of revisions. Rule 141 contains new provisions specifically addressing service upon persons in a foreign country and upon persons currently registered with the Commission. Rule 141 also contains a new provision allowing a waiver of formal service to permit a party to accept service by facsimile transmission. For parties wishing to use facsimile transmission to serve one another, Rule 150 allows delivery of papers by fax when two conditions are met: (i) there must be a written agreement between the persons intending to serve each other by fax specifying such terms as they deem necessary with respect to telephone numbers, hours of facsimile operation, provision of paper original or other matters; and (ii) receipt of each document served by fax must be confirmed by a manually signed receipt delivered by fax or other means agreed to by the parties. These conditions are intended to ensure that service by fax will be both an efficient and an effective means of service.

D. Technical Changes and Appendices

A number of technical changes have been made and appendices created in order to implement the Rules. First, former Rule 24 concerning incorporation by reference, which related to the making of disclosure or regulatory filings has been moved from the Rules of Practice to Regulation S–K section 10, paragraph (d) (17 CFR 229.10(d); a comparable provision has been added to Regulation S–B section 10, paragraph (f) (17 CFR 228.10(f)). Second, Commission procedures for summary suspensions pursuant to Section 12(k) of the Exchange Act, 15 U.S.C. 78*l*(k), have been moved from Part 202 of 17 CFR into new Rule 550. Third, new cross-reference tables showing the location of the former rules in the revised rules and vice versa have been included in an appendix to appear in the Code of Federal Regulations. Finally, all references to the Rules of Practice in the Commission's other rules and forms have been updated.

III. Discussion of the Statement of Informal Procedures and Supplemental Information Concerning Adjudicatory Proceedings

In 1990, at the time the Schapiro Task Force was created, there was significant delay in the disposition of administrative proceedings. For example, in fiscal years 1991 and 1992, the Commission issued a total of 10 opinions in Commission-initiated administrative proceedings. These 10 cases took an average of four years from institution of proceedings to conclusion.[15]

Interim recommendations made by the Task Force to eliminate unnecessary delay and reduce the backlog were implemented in 1991 and 1992. The Commission reorganized the Adjudications Group within the Office of the General Counsel and appointed new senior staff to supervise the adjudicatory work assigned to the Office of the General Counsel. On a Commission-wide basis, the total number of staff assigned to adjudicatory matters was increased over three fold. For approximately one year attorneys throughout the General Counsel's Office assisted the Adjudications Group in preparing opinions for the Commission. Further, the Commission gave greater priority to adjudicatory matters, held oral arguments on a more timely basis, and met to consider proposed opinions more frequently.[16]

In fiscal year 1994, the number of new appeals to the Commission declined and the number of cases resolved increased compared with the prior year. As a result, in fiscal year 1994 the pending appellate caseload declined for the first time in over a decade. In addition, the number of cases pending on appeal for more than one year has declined significantly from the level of four years ago.

Despite these strides, the Commission's past experience strongly suggests that additional steps should be taken, especially given the increase in proceedings assigned to the administrative law judges [17] and the likelihood that the number and complexity of new appeals may increase again in coming years. Backlogs in the Commission's disposition of adjudicatory proceedings have recurred periodically over at least the past 30 years.[18] The Task Force examined prior efforts to address delay in the administrative proceedings process, and considered why earlier "solutions" gave way to new backlogs.

The Task Force considered various alternatives aimed at eliminating systemic causes of the recurring backlog problems. In its Report, the Task Force recommended: (1) That the Commission establish guidelines for the timely completion of adjudicatory proceedings; (2) that the Commission be specifically apprised of matters not completed within designated periods, so that the Commission has a specific opportunity to determine what, if any, steps to take to advance the fair and timely resolution of those particular matters; and (3) that the Commission make increased public disclosure of the status of the pending case docket and changes in its case load.

The Statement of Informal Procedures and Supplementary Information Concerning Adjudicatory Proceedings ("Statement of Informal Procedures") adopts, with modifications, these three recommendations. Implementation of these recommendations will increase accountability for the timely and efficient completion of adjudicatory proceedings and consolidate on a more permanent basis the improvements in the adjudications process made since the creation of the Task Force.

A. Guidelines for the Timely Completion of Proceedings

The Guidelines For the Timely Completion of Proceedings provide that an administrative law judge's initial decision should be filed within 10 months of issuance of the order for proceedings and that a decision by the Commission on appeal of an initial decision, review of a self-regulatory organization determination or remand of a prior decision by a court of appeals should be issued within 11 months of the filing of a petition for review or application for review or the issuance of a mandate of the court.[19]

The primary purposes of the guidelines are to provide a basis to gauge the Commission's and administrative law judges' productivity in issuing opinions, and to permit the allocation of appropriate Commission, management and staff resources for the timely completion of proceedings. Establishment of guidelines by the Commission indicates the priority of adjudicatory matters for the Commission, as well as for persons delegated authority or assigned responsibility for adjudicatory matters. Among other benefits, the guidelines can lend important authority to the deadlines set by the administrative law judges for hearing dates and pre- and post-hearing submissions, and by the General Counsel and the Secretary for oral argument dates and the filing of briefs.

The Schapiro Task Force had recommended that "normative guidelines" for the completion of adjudicatory proceedings be included in the Rules of Practice themselves. The existing Rules of Practice use this approach in some instances,[20] and other federal agencies and departments also have used similar approaches.[21] The Commission believes, however, that since the guidelines are not themselves rules, it is preferable to publish them in a supplemental statement, and thereby eliminate a potential source of confusion or collateral litigation concerning their status as non-binding criteria for monitoring the age of pending cases rather than a legal standard. This approach is consistent with the publication in the Code of Federal Regulation of other non-binding, informal procedures.[22]

The guidelines do not create a requirement that each portion of a proceeding or the entire proceeding be completed within the periods described. Proceedings at either the hearing stage or on review by the Commission may require additional time because they are unusually complex or because the record is exceptionally long or for other reasons. In addition, fairness to all parties requires that the Commission's deliberative process not be constrained by an inflexible schedule. In some proceedings, deliberation may be delayed by the need to consider more urgent matters, to permit the preparation of dissenting opinions or for other good cause. The guidelines will be used by the Commission as one of several criteria in monitoring and evaluating its adjudicatory program.

As noted in the supplemental statement, the guidelines adopted today will need to be examined periodically and may need to be readjusted in light of changes in the Commission's case load and the availability of Commission resources.

One alternative approach, considered by the Task Force, was to set fixed deadlines for the issuance of initial decisions and Commission opinions, and to provide for a remedy, such as dismissal, if cases were not completed within the deadline. Applying this approach to adjudicatory proceedings, including enforcement actions and review of self-regulatory organization determinations, places too great a premium on the benefits of achieving resolution of a proceeding, without due consideration to the resolution reached. In light of its broad responsibilities, the Commission should retain the flexibility to delay the resolution of proceedings in order to address higher priority matters, without abandoning the opportunity to adjudicate issues properly before it, particularly those relating to whether the protection of the public or investors requires that a securities law violator be subject to remedial sanctions.

B. Reports to the Commission on Pending Cases

Prior reviews of the administrative process concluded that delegation of certain functions to the staff is desirable, as it frees the Commission from having to deal with routine matters and can expedite Commission action.[23] Unmonitored delegation, however, can also create a source of delay. The Schapiro Task Force observed that, once a case is assigned to an administrative law judge or to the staff, "there is no procedure to return cases to the Commission for a status conference if significant milestones are not reached or no opinion is prepared within specified periods."[24] The Task Force recommended that if a case does not proceed through each major phase on a timely basis, it should automatically be returned to the Commission to determine whether any additional steps should be taken to advance the resolution of the case. The Task Force stated that "[b]y establishing this procedure, the Commission will require the staff to identify non-routine matters, shortages in staff or other impediments that are preventing the timely completion of delegated decisionmaking."[25]

In response to this recommendation, one commenter advocated that the Commission should "encourage more ALJ autonomy and thereby avoid SEC involvement between the times when cases are authorized and appealed."[26] Accordingly, this commenter suggested, unless absolutely necessary, interim Commission review of cases assigned to an administrative law judge should not occur, even on a case management basis such as for status conferences. The commenter suggested, as an alternative to status conferences, that the administrative law judges have a periodic requirement to report any case backlog to the Commission and the public. The Commission has modified the recommendation of the Schapiro Task Force to address the concerns raised by this commenter.

Under the informal procedures adopted today, a requirement formally to apprise the Commission of proceedings beyond a specified age is being integrated into a case status reporting system overseen by the Secretary. Use of written status reports as a tool to improve docket control is a widely accepted practice. For example, federal court judges are required to report periodically to the Office of United States Courts on the status of certain matters pending beyond specified periods. Face-to-face status conferences between the Commission and an administrative law judge, or discussion of the merits of a proceeding, will not be a part of the more formal case status reporting system.

Periodically, confidential status reports with respect to all filed

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[13] *See* Clause 30 of Schedule A of the Securities Act of 1933, 15 U.S.C. 77aa(30), and Rule 406 thereunder, 17 CFR 230.406; Section 24(b)(2) of the Securities Exchange Act of 1934, 15 U.S.C. 78x(b)(2), and Rule 24b–2 thereunder, 17 CFR 240.24b–2; Section 22(b) of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79v(b), and Rule 104 thereunder, 17 CFR 250.104; Section 45(a) of the Investment Company Act of 1940, 15 U.S.C. 80a–44(a), and Rule 45a–1 thereunder, 17 CFR 270.45a–1; and Section 210(a) of the Investment Advisers Act of 1940, 15 U.S.C. 80b–10(a). *See* also Rule of Practice 190, 17 CFR 201.190 (specifying procedures by which registrants may request confidential treatment of certain information contained in regulatory filings).

[14] *See* 17 CFR 200.83 (providing for procedures by which persons submitting information to the Commission can request that the information not be disclosed pursuant to a request under the Freedom of Information Act, 5 U.S.C. § 552).

[15] *See* Task Force Report, *supra* note 4, at 20–22.

[16] Also pursuant to a recommendation of the Task Force, the Office of the General Counsel organized a conference with self-regulatory organizations, held in June 1994, to address problems of mutual concern. Changes in adjudicatory procedures or practices by the self-regulatory organizations resulting from the conference may eliminate or simplify certain issues that would otherwise be appealed to the Commission.

[17] There were 56 cases pending before the administrative law judges as of October 1, 1994, up from 32 cases on October 1, 1993 and 25 cases on October 1, 1992.

[18] *See* Task Force Report, *supra* note 4, at 33 n.46.

[19] The guidelines also set 45 days for a Commission decision on interlocutory matters, and up to 45 days to decide a motion for stay, depending upon whether the action to be stayed has already taken effect.

[20] *See, e.g.*, former Rule 16(e), 17 CFR 201.16(e) (1994) (period prescribed for filing of proposed findings and conclusions "normally should be no more than 30 days after the close of the hearing, and if the hearing officer directs that the first filing be made at a date later than 30 days after the close of the hearing, the reasons for so doing shall be stated in his order").

[21] *See, e.g.*, 37 CFR 10.139(c) (ALJ in Patent and Trademark Office, Dept. of Commerce, shall normally issue initial decisions in disciplinary cases within six months of the date a complaint is filed).

[22] *See, e.g.*, 17 CFR 202.

[23] *Task Force Report, supra* note , at 32–33.

[24] *Id.* at 33.

[25] *Id.* at 42.

[26] ABA comment letter to Commissioner Mary Schapiro on the Report of the Task Force on Administrative Proceedings dated Nov. 10, 1993, at 8.

adjudicatory proceedings shall be made to the Commission. The Chief Administrative Law Judge shall report on proceedings assigned to an administrative law judge. The General Counsel shall report on proceedings assigned to the Office of the General Counsel, as well as any other pending proceedings. These status reports shall be made through the Secretary, with a minimum frequency established by the Commission. In connection with these reports, the Chief Administrative Law Judge and the General Counsel shall specifically apprise the Commission of any proceeding that exceeds the guidelines established for the timely completion of proceedings by more than 30 days. The report shall describe the procedural posture of any such proceeding, estimate a date for conclusion of the proceeding, and provide such other information as is necessary to enable the Commission to determine whether additional steps are necessary to reach a fair and timely resolution of the matter.

In some cases, additional resources may be necessary to free an administrative law judge or staff to address a matter of unusually large size or exceptional complexity.[27] In some instances, consultation with the Commission by the General Counsel may speed the completion of a particular case. In others, the length of the hearing, the number or respondents, the complexity of a case or the urgency of other matters may justify delay in reaching a decision at a delegated level, in which case no action in response to the status report would be needed. Coupled with the guidelines for the timely completion of proceedings, however, the use of a comprehensive and formalized case status reporting system will provide greater assurance that the resolution of a proceeding that has been delayed will be treated as a priority matter.

As noted by the Schapiro Task Force, an increasing number of status reports concerning cases that are not completed within the guidelines may provide an "early warning signal" that additional resources are necessary. Had a more detailed and more formal case status reporting requirement been in effect in the mid-1980's, the Commission might have been in a better position to address the developing case backlog before it gained the magnitude it had reached by 1990 when the Task Force was created.

The Commission believes that the case status reporting requirements announced today will fulfill the purpose of the Schapiro Task Force recommendation discussed above by establishing a mechanism that will automatically address cases that are not timely resolved and by increasing accountability by and to the Commission for management of the docket.

The Task Force recommended that the requirement to formally apprise the Commission if a proceeding is not completed within specified periods should be implemented through changes in the Commission's formal delegations to the administrative law judges, the Secretary, and the General Counsel. See 17 CFR 200.30–1 *et. seq.* The Commission believes that publication of these case status reporting procedures in the Statement of Informal Procedures will be equally effective in implementing this recommendation.

C. Increased Public Disclosure Concerning the Pending Case Docket

The Task Force recommended publishing more information concerning the status of the Commission's adjudicatory docket.[28] Ongoing disclosure of information about the adjudication program caseload increases awareness of the importance of the program, facilitates oversight of the program, and promotes public confidence in the efficiency and fairness of the program. Under the procedures adopted today, the Secretary will publish each October and April in the *SEC Docket* summary statistical information about the status of the pending adjudicatory docket and changes in the Commission's caseload over the prior six months.[29]

The Commission will also continue to follow the Task Force recommendation that it adopt the practice of several federal courts of appeals by publishing with each opinion the date the appeal or review was commenced and the date of oral argument, if any.

The Task Force suggested publication of information about the Commission's caseload in the Annual Report. Although a useful adjunct to publication in the *SEC Docket*, publication in the Annual Report alone is not sufficient. The *Docket* is more widely available (both on commercial database services and in other places such as libraries) than the Annual Report. In addition, publication in the *Docket* allows more frequent and more timely disclosure.

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[27] For example, additional administrative law judges might be necessary on a temporary basis, *see, e.g.*, 5 U.S.C. 3344, to allow the judge assigned responsibility for a proceeding to complete that proceeding without the burden of new cases, or additional law clerks, paralegals or other staff might be needed on temporary assignment.

[28] *See* Recommendation 4, *Task Force Report, supra* note , at 43–44.

[29] The report shall include the number of cases pending before the administrative law judges and the Commission at the beginning and end of the six-month period. The report shall also show increases in the caseload arising from new cases being instituted, appealed or remanded to the Commission, and decreases in the caseload arising from the disposition of proceedings by issuance of initial decisions, issuance of final decisions issued on appeal of initial decisions, other dispositions of appeals of initial decisions, final decisions on review of self-regulatory organization determinations, other dispositions on review of self-regulatory organization determinations, and decisions with respect to stays or interlocutory motions. For each category of decision, the report shall also show the median age of the cases at the time of the decision and the number of cases decided within the guidelines for the timely completion of adjudicatory proceedings.

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General Rules

Rule 100. Scope of the Rules of Practice

(a)Unless provided otherwise, these Rules of Practice govern proceedings before the Commission under the statutes that it administers.

(b) These rules do not apply to:

(1) investigations, except where made specifically applicable by the Rules Relating to Investigations, part 203 of this chapter; or

(2) actions taken by the duty officer pursuant to delegated authority under 17 CFR 200.43.

Comment: The Rules of Practice govern a wide range of Commission processes, including Commission-initiated enforcement and disciplinary proceedings, proceedings to review disciplinary actions initiated by self-regulatory organizations and certain other self-regulatory decisions, proceedings to review Commission staff decisions made pursuant to delegated authority, and proceedings in which an exemptive application is contested and a hearing ordered. Certain agency processes are specifically excluded from the scope of the Rules. First, Commission investigations are not governed by the Rules unless a rule explicitly provides otherwise. *See, e.g.*, Rule 240 (concerning offers of settlement); *see also* 17 CFR 203.8 (service of subpoenas in formal investigations is governed by Rule 232). Second, these Rules do not cover an appeal from a decision of the duty officer. Rules governing appeals of such decisions are contained in 17 CFR 200.43(c).

Each rule indicates whether that rule applies generally to all proceedings, or only to a particular category of proceedings, such as ones in which an order instituting proceedings has been entered. A majority of the Rules address procedures in those matters where the Commission has ordered an evidentiary hearing pursuant to an order instituting proceedings. When an order instituting proceedings has been entered, it may specify particular procedures to be used in the proceeding to which it applies.

The Administrative Procedure Act ("APA"), 5 U.S.C. 551 *et seq.*, is the source of various provisions of the Rules. In addition, in any particular proceeding the APA may govern the Rules or the specific procedures that the Commission is required to employ. Which requirements of the Administrative Procedure Act are applicable to a particular Commission proceeding depends on the language of the statute authorizing the proceeding. An adjudication is subject to the requirements of 5 U.S.C. 554, 556 and 557 if the Commission is authorized by statute to make its determination "on the record, after notice and opportunity for an agency hearing." Such adjudications are often referred to as "on the record" or formal adjudications. Other adjudications, including those where the Commission is authorized by statute to make its determination "after opportunity for hearing," are often referred to as informal adjudications. *See* Rules 191 and 326 and associated comments.

Rule 101. Definitions

(a) For purposes of these Rules of Practice, unless explicitly stated to the contrary:

(1) *Commission* means the United States Securities and Exchange Commission, or a panel of Commissioners constituting a quorum of the Commission, or a single Commissioner acting as duty officer pursuant to 17 CFR 200.43;

(2) *counsel* means any attorney representing a party or any other person representing a party pursuant to Rule 102(b);

(3) *disciplinary proceeding* means an action pursuant to Rule 102(e);

(4) *enforcement proceeding* means an action, initiated by an order instituting proceedings, held for the purpose of determining whether or not a person is about to violate, has violated, has caused a violation of, or has aided or abetted a violation of any statute or rule administered by the Commission, or whether to impose a sanction as defined in section 551(10) of the Administrative Procedure Act, 5 U.S.C. 551(10);

(5) *hearing officer* means an administrative law judge, a panel of Commissioners constituting less than a quorum of the Commission, an individual Commissioner, or any other person duly authorized to preside at a hearing;

(6) *interested division* means a division or an office assigned primary responsibility by the Commission to participate in a particular proceeding;

(7) *order instituting proceedings* means an order issued by the Commission commencing a proceeding or an order issued by the Commission to hold a hearing;

(8) *party* means the interested division, any person named as a respondent in an order instituting proceedings, any applicant named in the caption of any order, persons entitled to notice in a stop order proceeding as set forth in Rule 200(a)(2) or any person seeking Commission review of a decision;

(9) *proceeding* means any agency process initiated by an order instituting proceedings; or by the filing, pursuant to Rule 410, of a petition for review of an initial decision by a hearing officer; or by the filing, pursuant to Rule 420, of an application for review of a self-regulatory organization determination; or by the filing, pursuant to Rule 430, of a notice of intention to file a petition for review of a determination made pursuant to delegated authority;

(10) *Secretary* means the Secretary of the Commission; and

(11) *temporary sanction* means a temporary cease-and-desist order or a temporary suspension of the registration of a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, or transfer agent pending final determination whether the registration shall be revoked.

(b) [Reserved]

Rule 102. Appearance and Practice Before the Commission

A person shall not be represented before the Commission or a hearing officer except as stated in paragraphs (a) and (b) of this rule or as otherwise permitted by the Commission or a hearing officer.

(a) *Representing Oneself.* In any proceeding, an individual may appear on his or her own behalf.

(b) *Representing Others.* In any proceeding, a person may be represented by an attorney at law admitted to practice before the Supreme Court of the United States or the highest court of any State (as defined in Section 3(a)(16) of the Exchange Act, 15 U.S.C. 78c(a)(16)); a member of a partnership may represent the partnership; a bona fide officer of a corporation, trust or association may represent the corporation, trust or association; and an officer or employee of a state commission or of a department or political subdivision of a state may represent the state commission or the department or political subdivision of the state.

(c) *Former Commission Employees.* Former employees of the Commission must comply with the restrictions on practice contained in the Commission's Conduct Regulation, Subpart M, 17 CFR 200.735.

(d) *Designation of Address for Service; Notice of Appearance; Power of Attorney; Withdrawal.*

(1) *Representing Oneself.* When an individual first makes any filing or otherwise appears on his or her own behalf before the Commission or a hearing officer in a proceeding as defined in Rule 101(a), he or she shall file with the Commission, or otherwise state on the record, and keep current, an address at which any notice or other written communication required to be served upon him or her or furnished to him or her may be sent and a telephone number where he or she may be reached during business hours.

(2) *Representing Others.* When a person first makes any filing or otherwise appears in a representative capacity before the Commission or a hearing officer in a proceeding as defined in Rule 101(a), that person shall file with the Commission, and keep current, a written notice stating the name of the proceeding; the representative's name, business address and telephone number; and the name and address of the person or persons represented.

(3) *Power of Attorney.* Any individual appearing or practicing before the Commission in a representative capacity may be required to file a power of attorney with the Commission showing his or her authority to act in such capacity.

(4) *Withdrawal.* Withdrawal by any individual appearing in a representative capacity shall be permitted only by order of the Commission or the hearing officer. A motion seeking leave to withdraw shall state with specificity the reasons for such withdrawal.

(e) *Suspension and Disbarment.*

(1) *Generally.* The Commission may censure a person or deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found by the Commission after notice and opportunity for hearing in the matter:

(i) not to possess the requisite qualifications to represent others; or

(ii) to be lacking in character or integrity or to have engaged in unethical or improper professional conduct; or

(iii) to have willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws or the rules and regulations thereunder.

(2) *Certain Professionals and Convicted Persons.* Any attorney who has been suspended or disbarred by a court of the United States or of any State; or any person whose license to practice as an accountant, engineer, or other professional or expert has been revoked or suspended in any State; or any person who has been convicted of a felony or a misdemeanor involving moral turpitude shall be forthwith suspended from appearing or practicing before the Commission. A disbarment, suspension, revocation or conviction within the meaning of this rule shall be deemed to have occurred when the disbarring, suspending, revoking or convicting agency or tribunal enters its judgment or order, including a judgment or order on a plea of nolo contendere, regardless of whether an appeal of such judgment or order is pending or could be taken.

(3) *Temporary Suspensions.* An order of temporary suspension shall become effective upon service on the respondent. No order of temporary suspension shall be entered by the Commission pursuant to paragraph (e)(3)(i) of this rule more than 90 days after the date on which the final judgment or order entered in a judicial or administrative proceeding described in paragraph (e)(3)(i)(A) or (e)(3)(i)(B) has become effective, whether upon completion of review or appeal procedures or because further review or appeal procedures are no longer available.

(i) The Commission, with due regard to the public interest and without preliminary hearing, may, by order, temporarily suspend from appearing or practicing before it any attorney, accountant, engineer, or other professional or expert who has been by name:

(A) permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder; or

(B) found by any court of competent jurisdiction in an action brought by the Commission to which he or she is a party or found by the Commission in any administrative proceeding to which he or she is a party to have violated (unless the violation was found not to have been willful) or aided and abetted the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

(ii) Any person temporarily suspended from appearing and practicing before the Commission in accordance with paragraph (e)(3)(i) of this rule may, within 30 days after service upon him or her of the order of temporary suspension, petition the Commission to lift the temporary suspension. If no petition has been received by the Commission within 30 days after service of the order, the suspension shall become permanent.

(iii) Within 30 days after the filing of a petition in accordance with paragraph (e)(3)(ii) of this rule, the Commission shall either lift the temporary suspension, or set the matter down for hearing at a time and place designated by the Commission, or both, and, after opportunity for hearing, may censure the petitioner or disqualify the petitioner from appearing or practicing before the Commission for a period of time or permanently. In every case in which the temporary suspension has not been lifted, every hearing held and other action taken pursuant to this paragraph (e)(3) shall be expedited in accordance with Rule 500. If the hearing is held before a hearing officer, the time limits set forth in Rule 531 will govern review of the hearing officer's initial decision.

(iv) In any hearing held on a petition filed in accordance with paragraph (e)(3)(ii) of this rule, the staff of the Commission shall show either that the petitioner has been enjoined as described in paragraph (e)(3)(i)(A) of this rule or that the petitioner has been found to have committed or aided and abetted violations as described in paragraph (e)(3)(i)(B) of this rule and that showing, without more, may be the basis for censure or disqualification. Once that showing has been made, the burden shall be upon the petitioner to show cause why he or she should not be censured or temporarily or permanently disqualified from appearing and practicing before the Commission. In any such hearing, the petitioner may not contest any finding made against him or her or fact admitted by him or her in the judicial or administrative proceeding upon which the proceeding under this paragraph (e)(3) is predicated. A person who has consented to the entry of a permanent injunction as described in paragraph (e)(3)(i)(A) of this rule without admitting the facts set forth in the complaint shall be presumed for all purposes under this paragraph (e)(3) to have been enjoined by reason of the misconduct alleged in the complaint.

(4) *Filing of Prior Orders.* Any person appearing or practicing before the Commission who has been the subject of an order, judgment, decree, or finding as set forth in paragraph (e)(3) of this rule shall promptly file with the Secretary a copy thereof (together with any related opinion or statement of the agency or tribunal involved). Failure to file any such paper, order, judgment, decree or finding shall not impair the operation of any other provision of this rule.

(5) *Reinstatement.* (i) An application for reinstatement of a person permanently suspended or disqualified under paragraph (e)(1) or (e)(3) of this rule may be made at any time, and the applicant may, in the Commission's discretion, be afforded a hearing; however, the suspension or disqualification shall continue unless and until the applicant has been reinstated by the Commission for good cause shown.

(ii) Any person suspended under paragraph (e)(2) of this rule shall be reinstated by the Commission, upon appropriate application, if all the grounds for application of the provisions of that paragraph are subsequently removed by a reversal of the conviction or termination of the suspension, disbarment, or revocation. An application for reinstatement on any other grounds by any person suspended under paragraph (e)(2) of this rule may be filed at any time and the applicant shall be accorded an opportunity for a hearing in the matter; however, such suspension shall continue unless and until the applicant has been reinstated by order of the Commission for good cause shown.

(6) *Other Proceedings Not Precluded.* A proceeding brought under paragraph (e)(1), (e)(2) or (e)(3) of this rule shall not preclude another proceeding brought under these same paragraphs.

(7) *Public Hearings.* All hearings held under this paragraph (e) shall be public unless otherwise ordered by the Commission on its own motion or after considering the motion of a party.

(f) *Practice Defined.* For the purposes of these Rules of Practice, practicing before the Commission shall include, but shall not be limited to:

(1) transacting any business with the Commission; and

(2) the preparation of any statement, opinion or other paper by any attorney, accountant, engineer or other professional or expert, filed with the Commission in any registration statement, notification, application, report or other document with the consent of such attorney, accountant, engineer or other professional or expert.

Revision Comment: Rule 102, which governs appearance and practice before the Commission, contains two changes from former Rule 2. First, as suggested by one commenter, the rule now explicitly requires that individuals and other persons filing a notice of appearance keep the information contained in the notice, such as address and telephone number, up-to-date. Current information is necessary to permit the expeditious service of orders as well as other efforts to contact a party.

The same commenter suggested that the Commission consider adopting a provision that would require an attorney to file a written notice of withdrawal when the attorney seeks to withdraw from a matter before the Commission. New paragraph (d)(4) accomplishes this by requiring that, a person appearing in a representative capacity who wishes to withdraw from a proceeding, must file a motion seeking leave to withdraw and obtain such leave from the Commission or the hearing officer.

In addition, language has been added to paragraph (d) (1) and (2) to clarify the longstanding policy of the Commission that a person who makes a filing with the Commission thereby makes an appearance before the Commission.

Rule 103. Construction of Rules

(a) The Rules of Practice shall be construed and administered to secure the just, speedy, and inexpensive determination of every proceeding.

(b) In any particular proceeding, to the extent that there is a conflict between these rules and a procedural requirement contained in any statute, or any rule or form adopted thereunder, the latter shall control.

(c) For purposes of these rules:

(1) any term in the singular includes the plural, and any term in the plural includes the singular, if such use would be appropriate;

(2) any use of a masculine, feminine, or neuter gender encompasses such other genders as would be appropriate; and

(3) unless the context requires otherwise, counsel for a party may take any action required or permitted to be taken by such party.

Comment (a): Paragraph (a) is based on Rule 1 of the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 1.

Rule 104. Business Hours

The Headquarters office of the Commission, at 450 Fifth Street, NW., Washington, DC 20549, is open each day, except Saturdays, Sundays, and Federal legal holidays, from 9 a.m. to 5:30 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect in Washington, DC Federal legal holidays consist of New Year's Day; Birthday of Martin Luther King, Jr.; Presidents Day; Memorial Day; Independence Day; Labor Day; Columbus Day; Veterans Day; Thanksgiving Day; Christmas Day; and any other day appointed as a holiday in Washington, D.C. by the President or the Congress of the United States.

Rule 110. Presiding Officer

All proceedings shall be presided over by the Commission or, if the Commission so orders, by a hearing officer. When the Commission designates that the hearing officer shall be an administrative law judge, the Chief Administrative Law Judge shall select, pursuant to 17 CFR 200.30–10, the administrative law judge to preside.

Comment: Ordinarily the assignment to a hearing officer is part of the order instituting proceedings. The Rules use the term "hearing officer," defined in Rule 101(a), to refer to a person who presides at a hearing. While an administrative law judge presides at most hearings at which the Commission itself does not preside, other persons may preside. *See* Securities Exchange Act § 4A, 15 U.S.C. 78d–1; Administrative Procedure Act § 556(b), 5 U.S.C. 556(b).

Revision Comment: Rule 110 has been revised to specify the process by which administrative law judges are assigned by referencing the authority the Commission has previously delegated to the Chief Administrative Law Judge to assign matters to any of the administrative law judges.

Rule 111. Hearing Officer: Authority

The hearing officer shall have the authority to do all things necessary and appropriate to discharge his or her duties. No provision of these Rules of Practice shall be construed to limit the powers of the hearing officer provided by the Administrative Procedure Act, 5 U.S.C. 556, 557. The powers of the hearing officer include, but are not limited to, the following:

(a) administering oaths and affirmations;

(b) issuing subpoenas authorized by law and revoking, quashing, or modifying any such subpoena;

(c) receiving relevant evidence and ruling upon the admission of evidence and offers of proof;

(d) regulating the course of a proceeding and the conduct of the parties and their counsel;

(e) holding prehearing and other conferences as set forth in Rule 221 and requiring the attendance at any such conference of at least one representative of each party who has authority to negotiate concerning the resolution of issues in controversy;

(f) recusing himself or herself upon motion made by a party or upon his or her own motion;

(g) ordering, in his or her discretion, in a proceeding involving more than one respondent, that the interested division indicate, on the record, at least one day prior to the presentation of any evidence, each respondent against whom that evidence will be offered;

(h) subject to any limitations set forth elsewhere in these rules, considering and ruling upon all procedural and other motions;

(i) preparing an initial decision as provided in Rule 360;

(j) upon notice to all parties, reopening any hearing prior to the filing of an initial decision therein, or, if no initial decision is to be filed, prior to the time fixed for the filing of final briefs with the Commission; and

(k) informing the parties as to the availability of one or more alternative means of dispute resolution, and encouraging the use of such methods.

Comment: This rule is based upon Section 556(c) of the Administrative Procedure Act, 5 U.S.C. 556(c). By its terms, the list of powers is illustrative, not exhaustive. The hearing officer is permitted to take any action necessary and appropriate to discharge his or her duties.

Revision Comment: One commenter suggested that the Commission include in Rule 111 two powers recently added to Section 556(c) of the Administrative Procedure Act by the Administrative Dispute Resolution Act: the power to require attendance at a prehearing conference by a representative of each party who has the authority to negotiate concerning the resolution of issues in controversy and the power to inform parties as to the availability of alternate means of dispute resolution (ADR) and to encourage the use of such methods.

The Commission has decided to modify this rule to address these concerns.

Rule 112. Hearing Officer: Disqualification and Withdrawal

(a) *Notice of Disqualification.* At any time a hearing officer believes himself or herself to be disqualified from considering a matter, the hearing officer shall issue a notice stating that he or she is withdrawing from the matter and setting forth the reasons therefor.

(b) *Motion for Withdrawal.* Any party who has a reasonable, good faith basis to believe that a hearing officer has a personal bias, or is otherwise disqualified from hearing a case, may make a motion to the hearing officer that the hearing officer withdraw. The motion shall be accompanied by an affidavit setting forth in detail the facts alleged to constitute grounds for disqualification. If the hearing officer finds himself or herself not disqualified, he or she shall so rule and shall continue to preside over the proceeding.

Comment: Section 556(b) of the Administrative Procedure Act, 5 U.S.C. 556(b), provides that a hearing officer may disqualify himself or herself at any time. The standard for making a motion to disqualify requires that the movant have a reasonable good-faith basis. This standard is intended to emphasize that there must be objective reasons to seek a disqualification, not just a subjective, though sincerely held, belief. A party seeking disqualification must do so promptly upon learning of the relevant information. A party may not await the outcome of the hearing officer's decision to determine if the alleged grounds for disqualification affected the decision.

Rule 120. Ex Parte Communications

(a) Except to the extent required for the disposition of *ex parte* matters as authorized by law, the person presiding over an evidentiary hearing may not:

(1) consult a person or party on a fact in issue, unless on notice and opportunity for all parties to participate; or

(2) be responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative or prosecuting functions for the Commission.

(b) The Commission's code of behavior regarding *ex parte* communications between persons outside the Commission and decisional employees, 17 CFR 200.110–200.114, governs other prohibited communications during a proceeding conducted under the Rules of Practice.

Comment: Paragraph (a) is based on Section 554(d)(1) of the Administrative Procedure Act (APA), 5 U.S.C. 554(d)(1). Paragraph (b) references the Commission's rules applying to communications between Commission members or decisional employees and persons outside the agency, which incorporate the requirements of Section 557(d)(1) of the APA, 5 U.S.C. 557(d)(1). *See also* 17 CFR 200.62 (ethical canon for Commission members regarding *ex parte* communications); Securities Act Release No. 5815 (Mar. 10, 1977), 11 SEC Docket 1933 (Mar. 22, 1977) (amending Commission's code of behavior governing *ex parte* communications between persons outside the Commission and decisional employees to conform to requirements of Section 4 of the Government in the Sunshine Act, 5 U.S.C. § 552b).

Revision Comment: Although the Commission's administrative proceedings were previously subject to the requirements of the Administrative Procedure Act governing *ex parte* communications, 5 U.S.C. 554(d)(1) and 557(d)(1), the prior rules did not mention them. Rule 120 makes no substantive changes to these requirements—it simply restates the APA's directive with regard to *ex parte* contacts. The Rule was added so that these requirements were more readily available to persons subject to proceedings under the Rules of Practice. *See*, Model Adjudication Rule 120(A), Administrative Conference of the United States (Dec. 1993).

Rule 121. Separation of Functions

Any Commission officer, employee or agent engaged in the performance of investigative or prosecutorial functions for the Commission in a proceeding as defined in Rule 101(a) may not, in that proceeding or one that is factually related, participate or advise in the decision, or in Commission review of the decision pursuant to Section 557 of the Administrative Procedure Act, 5 U.S.C. 557, except as a witness or counsel in the proceeding.

Comment: Rule 121 is based on Section 554(d) of the Administrative Procedure Act (APA), 5 U.S.C. 554(d), which governs the separation of personnel involved in prosecutorial and investigative functions in certain cases from decisionmaking in those cases.

Revision Comment: Although the Commission's administrative proceedings were previously subject to the requirements of Section 554(d) of the APA governing separation of functions, 5 U.S.C. 554(d), the prior rules did not mention them. Rule 121 makes no substantive changes to these requirements—it simply restates the APA's position on separation of functions. The Rule was added so that these requirements were more readily available to persons subject to proceedings under the Rules of Practice. *See* Model Adjudication Rule 121, Administrative Conference of the United States (Dec. 1993).

Rule 140. Commission Orders and Decisions: Signature and Availability

(a) *Signature Required.* All orders and decisions of the Commission shall be signed by the Secretary or any other person duly authorized by the Commission.

(b) *Availability for Inspection.* Each order and decision shall be available for inspection by the public from the date of entry, unless the order or decision is nonpublic. A nonpublic order or decision shall be available for inspection by any person entitled to inspect it from the date of entry.

(c) *Date of Entry of Orders.* The date of entry of a Commission order shall be the date the order is signed. Such date shall be reflected in the caption of the order, or if there is no caption, in the order itself.

Revision Comment (b): Changes to the text of the Commission's rule regarding availability of orders are technical. The Office of the Secretary has for many years maintained a practice of holding Commission orders for five days before release to the public. Under Rule 140(b), unless an order or decision is nonpublic, it will be available to the public from the date of entry.

Revision comment (c): This paragraph has been simplified. No substantive change is intended.

Rule 141. Orders and Decisions: Service of Orders Instituting Proceeding and Other Orders and Decisions

(a) *Service of an Order Instituting Proceedings.*

(1) *By Whom Made.* The Secretary, or another duly authorized officer of the Commission, shall serve a copy of an order instituting proceedings on each person named in the order as a party. The Secretary may direct an interested division to assist in making service.

(2) *How made.*

(i) *To Individuals.* Notice of a proceeding shall be made to an individual by delivering a copy of the order instituting proceedings to the individual or to an agent authorized by appointment or by law to receive such notice. *Delivery* means—handing a copy of the order to the individual; or leaving a copy at the individual's office with a clerk or other person in charge thereof; or leaving a copy at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein; or sending a copy of the order addressed to the individual by U.S. Postal Service certified, registered or Express Mail and obtaining a confirmation of receipt; or giving confirmed telegraphic notice.

(ii) *To Corporations or Entities.* Notice of a proceeding shall be made to a person other than a natural person by delivering a copy of the order instituting proceedings to an officer, managing or general agent, or any other agent authorized by appointment or by law to receive such notice, by any method specified in paragraph (a)(2)(i) of this rule.

(iii) *Upon Persons Registered with the Commission.* In addition to any other method of service specified in paragraph (a)(2) of this rule, notice may be made to a person currently registered with the Commission as a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, investment adviser, investment company or transfer agent by sending a copy of the order addressed to the most recent business address shown on the person's registration form by U.S. Postal Service certified, registered or Express Mail and obtaining a confirmation of attempted delivery.

(iv) *Upon Persons in a Foreign Country.* Notice of a proceeding to a person in a foreign country may be made by any method specified in paragraph (a)(2) of this rule, or by any other method reasonably calculated to give notice, provided that the method of service used is not prohibited by the law of the foreign country.

(v) *In Stop Order Proceedings.* Notwithstanding any other provision of paragraph (a)(2) of this rule, in proceedings pursuant to Sections 8 or 10 of the Securities Act of 1933, 15 U.S.C. 77h or 77j, or Sections 305 or 307 of the Trust Indenture Act of 1939, 15 U.S.C. 77eee or 77ggg, notice of the institution of proceedings shall be made by personal service or confirmed

telegraphic notice, or a waiver obtain pursuant to paragraph (a)(4) of this rule.

(3) *Certificate of Service.* The Secretary shall place in the record of the proceeding a certificate of service identifying the party given notice, the method of service, the date of service, the address to which service was made and the person who made service. If service is made in person, the certificate shall state, if available, the name of the individual to whom the order was given. If service is made by U.S. Postal Service certified, registered or Express Mail, the certificate shall be accompanied by a confirmation of receipt or of attempted delivery, as required. If service is made to an agent authorized by appointment to receive service, the certificate shall be accompanied by evidence of the appointment.

(4) *Waiver of Service.* In lieu of service as set forth in paragraph (a)(2) of this rule, the party may be provided a copy of the order instituting proceedings by first-class mail or other reliable means if a waiver of service is obtained from the party and placed in the record.

(b) *Service of Orders or Decisions Other Than an Order Instituting Proceedings.* Written orders or decisions issued by the Commission or by a hearing officer shall be served promptly on each party pursuant to any method of service authorized under paragraph (a) of this rule or Rule 150(c). Service of orders or decisions by the Commission, including those entered pursuant to delegated authority, shall be made by the Secretary or, as authorized by the Secretary, by a member of an interested division. Service of orders or decisions issued by a hearing officer shall be made by the Secretary or the hearing officer.

Comment (a): The Rule is derived, in part, from Rules 4 and 5(b) of the Federal Rules of Civil Procedure. The Rule is also based, in part, on Section 40(a) of the Investment Company Act, 15 U.S.C. 80a–39(a), and Section 211(c) of the Investment Advisers Act, 15 U.S.C. 80b–11(c), which set forth acceptable methods for service of orders instituting proceedings under those Acts, and on Sections 8 and 10 of the Securities Act of 1933, 15 U.S.C. 77h and 77j, and Sections 305 and 307 of the Trust Indenture Act of 1939, 15 U.S.C. 77eee and 77ggg, which set forth acceptable methods of service for orders instituting stop order proceedings pursuant to those statutory sections.

The Commission commences proceedings to enforce the Federal securities laws by issuing an "order instituting proceedings." The Commission is required to give each party appropriate notice of an order instituting proceedings. *See* Rule 200 (setting forth requirements in connection with the issuance of such orders). While service of the order instituting proceedings satisfies notice requirements, it is not the exclusive means of providing notice sufficient to meet the requirements of due process. In some circumstances—for example, where emergency or expedited relief is sought—actual notice of the institution of a proceeding may be made by telephone. *See, e.g.,* Rule 511. Although formal service of the order is still required in such circumstances, action on an application for emergency or expedited relief may precede service of the order.

Rule 141(a)(2) allows service by those means specifically mentioned by statute. Rule 141 also allows service to be made by U.S. Postal Service Express Mail which, like certified or registered mail, both traditionally relied upon under the former rule, is a U.S. Post Office service that provides each letter a unique identification number, is traceable, and allows for a receipt upon delivery. Under Rule 141, alternative methods of service to persons located in the United States, such as service by publication, are not permitted. A party may, however, waive service and receive notice by accepting a copy of an order instituting proceedings by facsimile transmission, U.S. Mail, private overnight courier, or other means. Whatever method of service is used, Rule 141 requires a certificate of service establishing how notice was given, or a written waiver of service.

The Rule establishes specific criteria for service of orders upon persons registered with the Commission and upon persons in a foreign country. A person who is currently registered with the Commission to engage in the securities business with the public may reasonably be expected to receive mail sent to the address shown on their registration form or to make appropriate arrangements for such mail to be forwarded or delivered. Rule 141 provides that a person currently registered with the Commission as a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, investment adviser, investment company or transfer agent may be served by sending a copy of the order to the last business address shown on their registration form by U.S. Postal Service certified, registered or Express Mail and that confirmation of attempted delivery to that address is sufficient for valid service if no confirmation of receipt can be obtained.

A person in a foreign country may be served by any method of service, reasonably calculated to give notice, that is not prohibited by the law of the foreign country.

Comment (b): Service of an order instituting proceedings places a party on notice that there will be subsequent filings or other papers. Unless a party defaults, a party's response to receipt of an order instituting proceedings must include the filing of a notice of appearance. *Cf.* Rule 155 (governing defaults). The notice will provide an address of record where the party can be served with subsequent orders. Therefore, a return receipt or other confirmation of delivery is not required for subsequent orders.

Subject to statutory limitations governing particular types of orders, orders other than an order instituting proceedings may be served pursuant to any method provided for in Rule 141(a) or in Rule 150(c), which governs service of papers filed by parties. The Commission may serve an order on a party, as well as on the party's counsel. It is the Commission's practice to send orders instituting proceedings and final orders to each party in addition to serving counsel, if any. *Cf.* Rule 150(b) (if a party is represented by counsel, counsel shall be served with papers filed by other parties with the Commission).

Revision Comment (a): The Rule has been revised to permit a waiver of formal service and thereby allow the use of methods of service, such as private courier service or facsimile transmission, in circumstances where such methods might otherwise be inconsistent with statutory requirements.

The Rule has been revised to include a provision specifically addressing service by the Commission on a person in a foreign country. The Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents does not apply to the service of Commission orders.

The rule has also been revised to include a specific provision for service on persons registered with the Commission as a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, investment adviser, investment company or transfer agent.

Rule 150. Service of Papers by Parties

(a) *When Required.* In every proceeding as defined in Rule 101(a), each paper, including each notice of appearance, written motion, brief, or other written communication, shall be served upon each party in the proceeding in accordance with the provisions of this rule; provided, however, that absent an order to the contrary, no service shall be required for motions which may be heard *ex parte.*

(b) *Upon a Person Represented by Counsel.* Whenever service is required to be made upon a person represented by counsel who has filed a notice of appearance pursuant to Rule 102, service shall be made pursuant to paragraph (c) of this rule upon counsel, unless service upon the person represented is ordered by the Commission or the hearing officer.

(c) *How Made.* Service shall be made by delivering a copy of the filing. *Delivery* means:

(1) personal service—handing a copy to the person required to be served; or leaving a copy at the person's office with a clerk or other person in charge thereof; or leaving a copy at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein;

(2) mailing the papers through the U.S. Postal Service by first class, certified, registered, or Express Mail delivery addressed to the person;

(3) sending the papers through a commercial courier service or express delivery service addressed to the person; or

(4) transmitting the papers by facsimile machine where the following conditions are met:

(i) the persons serving each other by facsimile transmission have agreed to do so in a writing, signed by each party, which specifies such terms as they deem necessary with respect to facsimile machine telephone numbers to be used, hours of facsimile machine operation, the provision of non-facsimile original or copy, and any other such matters; and

(ii) receipt of each document served by facsimile is confirmed by a manually signed receipt delivered by facsimile machine or other means agreed to by the parties.

(d) *When Service Is Complete.* Personal service, service by U.S. Postal Service Express Mail or service by a commercial courier or express delivery service is complete upon delivery. Service by mail is complete upon mailing. Service by facsimile is complete upon confirmation of transmission by delivery of a manually signed receipt.

Comment (a): Each document a party files in connection with a proceeding, as defined in Rule 101(a), must be served on all other parties admitted to the proceeding. In general, the party serving a paper should use the same method of service on all other parties and for filing with the Commission. Where a party uses different methods of service, the reason for doing so must be stated. Where a party is represented by counsel who has filed a notice of appearance, service ordinarily shall be made on counsel.

Revision Comment: The rule now contains a provision, paragraph (c)(4), allowing the use of facsimile transmission ("fax") for the delivery of papers. The Commission received a large number of comments on this subject. Commenters had a number of suggestions for how to implement service by fax, including: that service should not be deemed complete unless a manually signed receipt acknowledges that the transmission was readable and was received in full within the time permitted for filing; that the hearing officer be given discretion to determine whether, and under what circumstances, fax service should be allowed; that an initial agreement to allow service by fax should include an undertaking to serve documents leaving sufficient time before the filing deadline and to notify the sender promptly of any fax transmission errors; that simultaneous service of an original copy should also be made through other means; and that a written agreement of terms should be required when the parties agree to the use of fax service. Commenters disagreed whether the Commission should limit the use of facsimile transmission to cases in which all parties agree on the terms for service.

In federal court, filing by fax is permitted where authorized by local rule subject to standards approved by the Judicial Conference. *See* Fed. R. Civ. P. 5(e); Fed. R. App. P. 25(a). The Commission has decided to allow service by facsimile transmission where two conditions have been met. First, persons serving each other by fax must agree to do so in writing. The written agreement shall contain such terms as are necessary with respect to telephone numbers, hours of operation, and provision of paper original and any other matters. Second, receipt of a document served by fax must be confirmed by a manually signed receipt. These conditions are intended to ensure that service by fax will be both an efficient and an effective means of service.

One commenter objected to the provision in the proposed rule that would have allowed service directly upon a party where the party was represented by counsel. In response, Rule 150(b) has been amended to clarify that service upon counsel by another party is required unless service upon the person represented is specifically ordered by the Commission or the hearing officer.

Rule 151. Filing of Papers With the Commission: Procedure

(a) *When to File.* All papers required to be served by a party upon any person shall be filed with the Commission at the time of service or promptly thereafter. Papers required to be filed with the Commission must be received within the time limit, if any, for such filing.

(b) *Where to File.* Filing of papers with the Commission shall be made by filing them with the Secretary. When a proceeding is assigned to a hearing officer, a person making a filing with the Secretary shall promptly provide to the hearing officer a copy of any such filing; provided, however, that the hearing officer may direct or permit filings to be made with him or her, in which event the hearing officer shall note thereon the filing date and promptly provide the Secretary with either the original or a copy of any such filings.

(c) *To Whom to Direct the Filing.* Unless otherwise provided, where the Commission has assigned a case to a hearing officer, all motions, objections, applications or other filings made during a proceeding prior to the filing of an initial decision therein, or, if no initial decision is to be filed, prior to the time fixed for the filing of briefs with the Commission, shall be directed to and decided by the hearing officer.

(d) *Certificate of Service.* Papers filed with the Commission or a hearing officer shall be accompanied by a certificate stating the name of the person or persons served, the date of service, the method of service and the mailing address or facsimile telephone number to which service was made, if not made in person. If the method of service to any party is different from the method of service to any other party or the method for filing with the Commission, the certificate shall state why a different means of service was used.

Comment: Since hearing officers frequently preside at locations away from the Commission's Headquarters in Washington, D.C., persons are permitted to make filings with the hearing officer, who then can forward the filings to the Secretary. Rule 351 contains additional procedures for the transmittal of the record of a proceeding before a hearing officer (and the index of the record) from the hearing officer to the Secretary.

Rule 151 requires that where the Commission has assigned a hearing officer to preside at a proceeding, the person making a motion direct his or her requests and arguments to the hearing officer, not the Commission. If

a motion is directed to the Commission in a case in which a hearing officer is assigned, the Secretary must refer the motion to the hearing officer unless a motion directly to the Commission is authorized. In those unusual circumstances where a motion is properly directed to the Commission, the proceeding before the hearing officer should continue, unless otherwise ordered.

Revision Comment (d): The requirements for the certificate of service have been modified to require that the certificate list the name of the person served and the method of service used if other than personal service is made. Additionally, if the method of service to any party is different from the method of service to any other party or the method for filing with the Commission, the certificate must state why a different method was used.

Rule 152. Filing of Papers: Form

(a) *Specifications.* Papers filed in connection with any proceeding as defined in Rule 101(a) shall:

(1) be on one grade of unglazed white paper measuring 8½ x 11 inches, except that, to the extent that the reduction of larger documents would render them illegible, such documents may be filed on larger paper;

(2) be typewritten or printed in either 10- or 12-point typeface or otherwise reproduced by a process that produces permanent and plainly legible copies;

(3) include at the head of the paper, or on a title page, the name of the Commission, the title of the proceeding, the names of the parties, the subject of the particular paper or pleading, and the file number assigned to the proceeding;

(4) be paginated with left hand margins at least 1 inch wide, and other margins of at least 1 inch;

(5) be double-spaced, with single-spaced footnotes and single-spaced indented quotations; and

(6) be stapled, clipped or otherwise fastened in the upper left corner.

(b) *Signature Required.* All papers must be dated and signed as provided in Rule 153.

(c) *Suitability for Recordkeeping.* Documents which, in the opinion of the Commission, are not suitable for computer scanning or microfilming may be rejected.

(d) *Number of Copies.* An original and three copies of all papers shall be filed.

(e) *Form of Briefs.* All briefs containing more than 10 pages shall include a table of contents, an alphabetized table of cases, a table of statutes, and a table of other authorities cited, with references to the pages of the brief wherein they are cited.

(f) *Scandalous or Impertinent Matter.* Any scandalous or impertinent matter contained in any brief or pleading or in connection with any oral presentation in a proceeding may be stricken on order of the Commission or the hearing officer.

Rule 153. Filing of Papers: Signature Requirement and Effect

(a) *General Requirements.* Following the issuance of an order instituting proceedings, every filing of a party represented by counsel shall be signed by at least one counsel of record in his or her name and shall state that counsel's business address and telephone number. A party who acts as his or her own counsel shall sign his or her individual name and state his or her address and telephone number on every filing.

(b) *Effect of Signature.*

(1) The signature of a counsel or party shall constitute a certification that:

(i) the person signing the filing has read the filing;

(ii) to the best of his or her knowledge, information, and belief, formed after reasonable inquiry, the filing is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and

(iii) the filing is not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of adjudication.

(2) If a filing is not signed, the hearing officer or the Commission shall strike the filing, unless it is signed promptly after the omission is called to the attention of the person making the filing.

Comment: Rule 153(b) is based upon Rule 11 of the Federal Rules of Civil Procedure. Persons signing a filing bear personal responsibility for the contents of the filing. If a filing is contrary to the provisions of this rule, the person or persons signing the filing may be subject to sanctions under Rule 180.

Rule 154. Motions

(a) *Generally.* Unless made during a hearing or conference, a motion shall be in writing, shall state with particularity the grounds therefor, shall set forth the relief or order sought, and shall be accompanied by a written brief of the points and authorities relied upon. All written motions shall be served in accordance with Rule 150, be filed in accordance with Rule 151, meet the requirements of Rule 152, and be signed in accordance with Rule 153. The Commission or the hearing officer may order that an oral motion be submitted in writing. Unless otherwise ordered by the Commission or the hearing officer, if a motion is properly made to the Commission concerning a proceeding to which a hearing officer is assigned, the proceeding before the hearing officer shall continue pending the determination of the motion by the Commission. No oral argument shall be heard on any motion unless the Commission or the hearing officer otherwise directs.

(b) *Opposing and Reply Briefs.* Except as provided in Rule 401, briefs in opposition to a motion shall be filed within five days after service of the motion. Reply briefs shall be filed within three days after service of the opposition.

(c) *Length Limitation.* A brief in support of or opposition to a motion shall not exceed 10 pages, exclusive of pages containing any table of contents, table of authorities, and/or addendum. Requests for leave to file briefs in excess of 10 pages are disfavored.

Rule 155. Default; Motion to Set Aside Default

(a) A party to a proceeding may be deemed to be in default and the Commission or the hearing officer may determine the proceeding against that party upon consideration of the record, including the order instituting proceedings, the allegations of which may be deemed to be true, if that party fails:

(1) to appear, in person or through a representative, at a hearing or conference of which that party has been notified;

(2) to answer, to respond to a dispositive motion within the time provided, or otherwise to defend the proceeding; or

(3) to cure a deficient filing within the time specified by the Commission or the hearing officer pursuant to Rule 180(b).

(b) A motion to set aside a default shall be made within a reasonable time, state the reasons for the failure to appear or defend, and specify the nature of the proposed defense in the proceeding. In order to prevent injustice and on such conditions as may be appropriate, the hearing officer, at any time prior to the filing of the initial decision, or the Commission, at any time, may for good cause shown set aside a default.

Comment: Pursuant to Rule 155 the Commission or the hearing officer may enter a default against any party who fails to appear in person or, if appropriate, through a representative, at a hearing or conference of which the party has notice. Thus, for example, failure to appear at a prehearing conference may be a grounds for default.

In addition, for example, this rule permits the entry of default against any party who fails to answer, to respond to a dispositive motion, or otherwise to defend the proceeding, or to file a required brief either before the hearing officer or on appeal before the Commission. This provision retains the existing standards for setting aside a default contained in former Rule of Practice 12(d), 17 CFR 201.12(d) (1994).

Revision Comment: Failure to file a notice of appearance has been eliminated as a basis for a default. Failure to file a notice of appearance, like the failure to make any other required filing, is subject to sanctions under Rule 180(c).

Rule 160. Time Computation

(a) *Computation.* In computing any period of time prescribed in or allowed by these Rules of Practice or by order of the Commission, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or Federal legal holiday (as defined in Rule 104), in which event the period runs until the end of the next day that is not a Saturday, Sunday, or Federal legal holiday. Intermediate Saturdays, Sundays, and Federal legal holidays shall be excluded from the computation when the period of time prescribed or allowed is seven days or less, not including any additional time allowed for service by mail in paragraph (b) of this rule. If on the day a filing is to be made, weather or other conditions have caused the Secretary's office or other designated filing location to close, the filing deadline shall be extended to the end of the next day that is neither a Saturday, a Sunday, nor a Federal legal holiday.

(b) *Additional Time For Service by Mail.* If service is made by mail, three days shall be added to the prescribed period for response.

Revision Comment (b): This paragraph has been simplified. No substantive change is intended. One commenter requested that the amount of time for service by mail be increased. Rule 6(e) of the Federal Rules of Civil Procedure, which allows only three days to be added to a prescribed period when service is by mail, establishes a widely used and familiar standard for the computation of additional time when service is by mail. No change in the additional time period for service by mail was deemed warranted.

Rule 161. Extensions of Time, Postponements and Adjournments

(a) *Availability.* Except as otherwise provided by law, the Commission, at any time, or the hearing officer, at any time prior to the filing of his or her initial decision or, if no initial decision is to be filed, at any time prior to the closing of the record, may, for good cause shown, extend or shorten any time limits prescribed by these Rules of Practice for the filing of any papers and may, consistent with paragraph (b) of this rule, postpone or adjourn any hearing.

(b) *Limitations on Postponements, Adjournments and Extensions.* A hearing shall begin at the time and place ordered, provided that, within the limits provided by statute, the Commission or the hearing officer may for good cause shown postpone the commencement of the hearing or adjourn a convened hearing for a reasonable period of time or change the place of hearing.

(1) *Additional Considerations.* In considering a motion for postponement of the start of a hearing, adjournment once a hearing has begun, or extensions of time for filing papers, the hearing officer or the Commission shall consider, in addition to any other factors:

(i) the length of the proceeding to date;

(ii) the number of postponements, adjournments or extensions already granted;

(iii) the stage of the proceedings at the time of the request; and

(iv) any other such matters as justice may require.

(2) *Time Limit.* Postponements, adjournments or extensions of time for filing papers shall not exceed 21 days unless the Commission or the hearing officer states on the record or sets forth in a written order the reasons why a longer period of time is necessary.

Comment: The rule requires the hearing officer to consider explicitly the efficient and timely administration of justice when determining whether to grant a postponement, adjournment or extension of time for filing of papers. The need for delay must be balanced against the need to bring each case to a timely conclusion, consistent with the public interest. The factors listed in the rule build on existing standards applied by the administrative law judges.

Rule 180. Sanctions

(a) *Contemptuous Conduct.*

(1) *Subject to Exclusion or Suspension.* Contemptuous conduct by any person before the Commission or a hearing officer during any proceeding, including any conference, shall be grounds for the Commission or the hearing officer to:

(i) exclude that person from such hearing or conference, or any portion thereof; and/or

(ii) summarily suspend that person from representing others in the proceeding in which such conduct occurred for the duration, or any portion, of the proceeding.

(2) *Review Procedure.* A person excluded from a hearing or conference, or a counsel summarily suspended from practice for the duration or any portion of a proceeding, may seek review of the exclusion or suspension by filing with the Commission, within three days of the exclusion or suspension order, a motion to vacate the order. The Commission shall consider such motion on an expedited basis as provided in Rule 500.

(3) *Adjournment.* Upon motion by a party represented by counsel subject to an order of exclusion or suspension, an adjournment shall be granted to allow the retention of new counsel. In determining the length of an adjournment, the Commission or hearing officer shall consider, in addition to the factors set forth in Rule 161, the availability of co-counsel for the party or of other members of a suspended counsel's firm.

(b) *Deficient Filings; Leave to Cure Deficiencies.* The Commission or the hearing officer may reject, in whole or in part, any filing that fails to comply with any requirements of these Rules of Practice or of any order issued in the proceeding in which the filing was made. Any such filings shall not be part of the record. The Commission or the hearing officer may direct a party to cure any deficiencies and to resubmit the filing within a fixed time period.

(c) *Failure to Make Required Filing or to Cure Deficient Filing.* The Commission or the hearing officer may enter a default pursuant to Rule 155, dismiss the case, decide the particular matter at issue against that person, or prohibit the introduction of evidence or exclude testimony concerning that matter if a person fails:

(1) to make a filing required under these Rules of Practice; or

(2) to cure a deficient filing within the time specified by the Commission or the hearing officer pursuant to paragraph (b) of this rule.

Comment (a): Paragraph (a) is based on former Rule 2(f), which provided that contemptuous conduct was grounds for exclusion and summary suspension for the duration of a hearing. Contemptuous conduct during the course of a proceeding that would warrant

sanctions has been rare. Under Rule 180(a), any person found to have engaged in contemptuous conduct can be excluded from all or a portion of a particular hearing or conference.

In the event that a hearing officer or the Commission excludes or suspends a party's counsel, the party may make a motion for an adjournment to obtain new counsel. *See* 5 U.S.C. 555(b) (right in administrative proceedings to be accompanied by retained counsel); *cf. Feeney* v. *SEC*, 564 F.2d 260, 262 (8th Cir. 1977), *cert. denied*, 435 U.S. 969 (1978) (no right to appointed counsel in administrative proceedings where respondent assumed to be indigent (citing *Boruski* v. *SEC*, 340 F.2d 991, 992 (2d Cir.), *cert. denied*, 381 U.S. 943 (1965)). Whether or not an exclusion or summary suspension order is issued, conduct during a hearing may be the basis for further disciplinary action, *e.g.*, pursuant to Rule 102(e), or, as to a staff member, under the Commission's personnel regulations.

Comment (b): A filing may be rejected if it fails to meet the requirements of any rule or order. *See In the Matter of Fischbach*, Admin. Proc. File No. 3–7384 (June 18, 1991). For example, filings that are not served as required by Rule 150, that fail to cite to the record as required by Rule 450, that are longer than permitted by Rule 450, or that fail to comply with a prehearing order pursuant to Rule 221, could be found to be deficient.

The rule permits the hearing officer or the Commission to fix a period of time during which a deficiency must be cured and a new filing made. The authority to reject a filing or to permit an opportunity to cure a deficiency is discretionary. Whether a particular filing should be rejected or whether leave to cure a deficient filing should be granted requires a case-by-case determination. Parties, including those appearing *pro se*, are obligated to familiarize themselves with the Rules of Practice. The fact that a person may represent himself or herself or be represented by counsel who has not previously practiced before the Commission may be a factor in considering how to address a deficient filing, but should not, standing alone, be determinative. Deficiencies that are technical, *de minimis*, or non-prejudicial, however, may not warrant any action pursuant to this rule.

Comment (c): This provision permits the entry of sanctions for the failure to file a document required under the Commission's Rules of Practice or for failure to cure a deficient filing within the time ordered. In response to such failures, the Commission or the hearing officer may determine the particular matter at issue against the person who has failed to perform or may preclude that person from introducing evidence or testimony on that matter. It is intended that the provision will be invoked for failures that do not warrant the entry of a default under Rule 155.

Revision Comment (b): The rule now states explicitly that a rejected filing is not part of the record. If a filing is rejected, the entry of that filing on the docket may be stricken.

Revision Comment (c): The revised rule allows for a sanction less severe than a default for a deficient filing.

Rule 190. Confidential Treatment of Information in Certain Filings

(a) *Application.* An application for confidential treatment pursuant to the provisions of Clause 30 of Schedule A of the Securities Act of 1933, 15 U.S.C. 77aa(30), and Rule 406 thereunder, 17 CFR 230.406; Section 24(b)(2) of the Securities Exchange Act of 1934, 15 U.S.C. 78x(b)(2), and Rule 24b–2 thereunder, 17 CFR 240.24b–2; Section 22(b) of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79v(b), and Rule 104 thereunder, 17 CFR 250.104; Section 45(a) of the Investment Company Act of 1940, 15 U.S.C. 80a–44(a), and Rule 45a–1 thereunder, 17 CFR 270.45a–1; or Section 210(a) of the Investment Advisers Act of 1940, 15 U.S.C. 80b–10(a), shall be filed with the Secretary. The application shall be accompanied by a sealed copy of the materials as to which confidential treatment is sought.

(b) *Procedure For Supplying Additional Information.* The applicant may be required to furnish in writing additional information with respect to the grounds for objection to public disclosure. Failure to supply the information so requested within 14 days from the date of receipt by the applicant of a notice of the information required shall be deemed a waiver of the objection to public disclosure of that portion of the information to which the additional information relates, unless the Commission or the hearing officer shall otherwise order for good cause shown at or before the expiration of such 14-day period.

(c) *Confidentiality of Materials Pending Final Decision.* Pending the determination of the application for confidential treatment, transcripts, non-final orders including an initial decision, if any, and other materials in connection with the application shall be placed under seal; shall be for the confidential use only of the hearing officer, the Commission, the applicant, and any other parties and counsel; and shall be made available to the public only in accordance with orders of the Commission.

(d) *Public Availability of Orders.* Any final order of the Commission denying or sustaining an application for confidential treatment shall be made public. Any prior findings or opinions relating to an application for confidential treatment under this rule shall be made public at such time as the material as to which confidentiality was requested is made public.

Comment: Pursuant to the statutory provisions and rules set forth in paragraph (a), persons who file a registration statement, report, application or other such materials may file an application for confidential treatment of required information included in such filings. Securities Act Rule 406, 17 CFR 230.406, Exchange Act Rule 24b-2, 17 CFR 240.24b-2, and Pubic Utility Holding Company Act Rule 104, 15 CFR 250.104, set forth certain procedures governing application for confidential treatment for materials filed under the Securities Act, Exchange Act and Public Utility Holding Company Act respectively. There are no corresponding rules governing applications for confidential treatment under the Investment Company Act or Investment Advisers Act, although Investment Company Act Rule 45a-1, 17 CFR 270.45a-1, sets forth certain procedures governing applications for confidential treatment of the names and addresses of dealers of registered investment companies.

Rule 190 is based in part on former Rule 25. The Rule governs applications for confidential treatment with respect to information required to be filed with the Commission in connection with a registration statement, report, application or other such materials. Rule 322 applies to requests for a protective order for materials introduced at hearings conducted pursuant to these Rules of Practice. Thus, both rules address material that would ordinarily be placed in a public file but is treated as confidential pending the determination of the request for confidentiality. The Commission's Freedom of Information Act regulations, 17 CFR 200.83, apply to requests for confidential treatment of information, such as testimony in an enforcement investigation, that is not ordinarily placed in a public file at the time received by the Commission but which may be made public pursuant to a request under the Freedom of Information Act ("FOIA"). Requests to keep materials confidential under FOIA are not evaluated until the Commission receives a request for access to the information.

An application for confidential treatment may be heard by the Commission or referred to a hearing officer. Authority to act on applications for confidential treatment has been delegated to the staff, *see, e.g.*, Delegation to the Director of the Division of Corporation Finance, 17 CFR 200.30–1(a)(3). In practice, applications are determined by delegated authority. Review of delegated decisionmaking may be sought pursuant to Rule 430.

Rule 191. Adjudications Not Required To Be Determined on the Record After Notice and Opportunity for Hearing

(a) *Scope of the Rule.* This rule applies to every case of adjudication, as defined in 5 U.S.C. 551, pursuant to any statute which the Commission administers, where adjudication is not required to be determined on the record after notice and opportunity for hearing and which the Commission has not chosen to determine on the record after notice and opportunity for hearing.

(b) *Procedure.* In every case of adjudication under paragraph (a) of this rule, the Commission shall (1) give prompt notice of any adverse action or final disposition to any person who has requested the Commission to make (or not to make) any such adjudication, and (2) furnish to any such person a written statement of reasons therefor. Additional procedures may be specified in rules relating to specific types of such adjudications. Where any such rule provides for the publication of a Commission order, notice of the action or disposition shall be deemed to be given by such publication.

(c) *Contents of the Record.* If the Commission provides notice and opportunity for the submission of written comments by parties to the adjudication or, as the case may be, by other interested persons, written comments received on or before the closing date for comments, unless accorded confidential treatment pursuant to statute or rule of the Commission, become a part of the record of the adjudication. The Commission, in its discretion, may accept and include in the record written comments filed with the Commission after the closing date.

Comment: Section 23(c) of the Exchange Act, 15 U.S.C. 78w(c) requires the Commission to prescribe the procedures applicable to Exchange Act adjudications "not required to be determined on the record after notice and opportunity for hearing." Rule 191 contains these required procedures and also applies them to adjudications arising under all statutes administered by the Commission.

The Administrative Procedure Act recognizes a distinction between an "adjudication required by statute to be determined on the record after opportunity for an agency hearing," *See* 5 U.S.C. 554(a), and other types of adjudications. The former are often referred to as "formal" or "on the record" adjudications. The latter, such as proceedings in which a hearing is required to be conducted after "notice and opportunity for hearing," but not specifically "on the record," are often referred to as "informal" adjudications. Various Administrative Procedure Act requirements, particularly with respect to hearing procedures, apply only to an "adjudication required by statute to be determined on the record after opportunity for an agency hearing * * *" *See, e.g.*, 5 U.S.C. 556(a), 557(a) (requirements of those sections apply only to an adjudication "on the record" as set forth in Section 554(a)); *cf.* 5 U.S.C. 555 (requirements not limited to proceedings "on the record" as set forth in Section 554(a)).

Where an "on the record" hearing is not mandated by statute, this rule establishes certain basic requirements for the proceedings. The Commission, as a matter of discretion, can order a "formal" hearing or provide other alternative procedures in addition to the minimum requirements of Rule 191.

Rule 192. Rulemaking: Issuance, Amendment and Repeal of Rules of General Application

(a) *By Petition.* Any person desiring the issuance, amendment or repeal of a rule of general application may file a petition therefor with the Secretary. Such petition shall include a statement setting forth the text or the substance of any proposed rule or amendment desired or specifying the rule the repeal of which is desired, and stating the nature of his or her interest and his or her reasons for seeking the issuance, amendment or repeal of the rule. The Secretary shall acknowledge, in writing, receipt of the petition and refer it to the appropriate division or office for consideration and recommendation. Such recommendations shall be transmitted with the petition to the Commission for such action as the Commission deems appropriate. The Secretary shall notify the petitioner of the action taken by the Commission.

(b) *Notice of Proposed Issuance, Amendment or Repeal of Rules.* Except where the Commission finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, whenever the Commission proposes to issue, amend, or repeal any rule or regulation of general application other than an interpretive rule; general statement of policy; or rule of agency organization, procedure, or practice; or any matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts, there shall first be published in the **Federal Register** a notice of the proposed action. Such notice shall include:

(1) a statement of the time, place, and nature of the rulemaking proceeding, with particular reference to the manner in which interested persons shall be afforded the opportunity to participate in such proceeding;

(2) reference to the authority under which the rule is proposed; and

(3) the terms or substance of the proposed rule or a description of the subjects and issues involved.

Rule 193. Applications by Barred Individuals for Consent to Associate

Preliminary Note

This rule governs applications to the Commission by certain persons, barred by Commission order from association with brokers, dealers, municipal securities dealers, government securities brokers, government securities dealers, investment advisers, investment companies or transfer agents, for consent to become so associated. Applications made pursuant to this rule must show that the proposed association would be consistent with the public interest. In addition to the information specifically required by the rule, applications should be supplemented, where appropriate, by written statements of individuals (other than the applicant) who are competent to attest to the applicant's character, employment performance, and other relevant information. Intentional misstatements or omissions of fact may constitute criminal violations of 18 U.S.C. 1001 *et seq.* and other provisions of law.

The nature of the supervision that an applicant will receive or exercise as an associated person with a registered entity is an important matter bearing upon the public interest. In meeting the burden of showing that the proposed association is consistent with the public interest, the application and supporting documentation must demonstrate that the proposed supervision, procedures, or terms and conditions of employment are reasonably designed to prevent a recurrence of the conduct that led to imposition of the bar. As an associated person, the applicant will be limited to association in a specified capacity with

a particular registered entity and may also be subject to specific terms and conditions.

Normally, the applicant's burden of demonstrating that the proposed association is consistent with the public interest will be difficult to meet where the applicant is to be supervised by, or is to supervise, another barred individual. In addition, where an applicant wishes to become the sole proprietor of a registered entity and thus is seeking Commission consent notwithstanding an absence of supervision, the applicant's burden will be difficult to meet.

In addition to the factors set forth in paragraph (d) of this rule, the Commission will consider the nature of the findings that resulted in the bar when making its determination as to whether the proposed association is consistent with the public interest. In this regard, attention is directed to Rule 5(e) of the Commission's Rules on Informal and Other Procedures, 17 CFR 202.5(e). Among other things, Rule 5(e) sets forth the Commission's policy "not to permit a * * * respondent [in an administrative proceeding] to consent to * * * [an] order that imposes a sanction while denying the allegations in the * * * order for proceedings." Consistent with the rationale underlying that policy, and in order to avoid the appearance that an application made pursuant to this rule was granted on the basis of such denial, the Commission will not consider any application that attempts to reargue or collaterally attack the findings that resulted in the Commission's bar order.

(a) *Scope of Rule.* Applications for Commission consent to associate, or to change the terms and conditions of association, with a registered broker, dealer, municipal securities dealer, government securities broker, government securities dealer, investment adviser, investment company or transfer agent may be made pursuant to this rule where a Commission order bars the individual from association with a registered entity and:

(1) such barred individual seeks to become associated with an entity that is not a member of a self-regulatory organization; or

(2) the order contains a proviso that application may be made to the Commission after a specified period of time.

(b) *Form of Application.* Each application shall be supported by an affidavit, manually signed by the applicant, that addresses the factors set forth in paragraph (d) of this rule. One original and three copies of the application shall be filed pursuant to Rules 151, 152 and 153. Each application shall include as exhibits:

(1) a copy of the Commission order imposing the bar;

(2) an undertaking by the applicant to notify immediately the Commission in writing if any information submitted in support of the application becomes materially false or misleading while the application is pending;

(3) the following forms, as appropriate:

(i) a copy of a completed Form U–4, where the applicant's proposed association is with a broker-dealer or municipal securities dealer;

(ii) a copy of a completed Form MSD–4, where the applicant's proposed association is with a bank municipal securities dealer;

(iii) the information required by Form ADV, 17 CFR 279.1, with respect to the applicant, where the applicant's proposed association is with an investment adviser;

(iv) the information required by Form TA–1, 17 CFR 249b.100, with respect to the applicant, where the applicant's proposed association is with a transfer agent; and

(4) a written statement by the proposed employer that describes:

(i) the terms and conditions of employment and supervision to be exercised over such applicant and, where applicable, by such applicant;

(ii) the qualifications, experience, and disciplinary records of the proposed supervisor(s) of the applicant;

(iii) the compliance and disciplinary history, during the two years preceding the filing of the application, of the office in which the applicant will be employed; and

(iv) the names of any other associated persons in the same office who have previously been barred by the Commission, and whether they are to be supervised by the applicant.

(c) *Required Showing.* The applicant shall make a showing satisfactory to the Commission that the proposed association would be consistent with the public interest.

(d) *Factors to be Addressed.* The affidavit required by paragraph (b) of this rule shall address each of the following:

(1) the time period since the imposition of the bar;

(2) any restitution or similar action taken by the applicant to recompense any person injured by the misconduct that resulted in the bar;

(3) the applicant's compliance with the order imposing the bar;

(4) the applicant's employment during the period subsequent to imposition of the bar;

(5) the capacity or position in which the applicant proposes to be associated;

(6) the manner and extent of supervision to be exercised over such applicant and, where applicable, by such applicant;

(7) any relevant courses, seminars, examinations or other actions completed by the applicant subsequent to imposition of the bar to prepare for his or her return to the securities business; and

(8) any other information material to the application.

(e) *Notification to Applicant and Written Statement.* In the event an adverse recommendation is proposed by the staff with respect to an application made pursuant to this rule, the applicant shall be so advised and provided with a written statement of the reasons for such recommendation. The applicant shall then have 30 days to submit a written statement in response.

(f) *Concurrent Applications.* The Commission will not consider any application submitted pursuant to this rule if any other application for consent to associate concerning the same applicant is pending before any self-regulatory organization.

Initiation of Proceedings and Prehearing Rules

Rule 200. Initiation of Proceedings.

(a) *Order Instituting Proceedings: Notice and Opportunity For Hearing.*

(1) *Generally.* Whenever an order instituting proceedings is issued by the Commission, appropriate notice thereof shall be given to each party to the proceeding by the Secretary or another duly designated officer of the Commission. Each party shall be given notice of any hearing within a time reasonable in light of the circumstances, in advance of the hearing; provided, however, no prior notice need be given to a respondent if the Commission has authorized the Division of Enforcement to seek a temporary sanction *ex parte.*

(2) *Stop Order Proceedings: Additional Persons Entitled to Notice.* Any notice of a proceeding relating to the issuance of a stop order suspending the effectiveness of a registration statement pursuant to Section 8(d) of the Securities Act of 1933, 15 U.S.C. 77h(d), shall be sent to or served on the issuer; or, in the case of a foreign government or political subdivision thereof, sent to or served on the underwriter; or, in the case of a foreign or territorial person, sent to or served on its duly authorized representative in the United States named in the registration statement, properly directed in the case of telegraphic notice to the address

given in such statement. In addition, if such proceeding is commenced within 90 days after the registration statement has become effective, notice of the proceeding shall be given to the agent for service named on the facing sheet of the registration statement and to each other person designated on the facing sheet of the registration statement as a person to whom copies of communications to such agent are to be sent.

(b) *Content of Order.* The order instituting proceedings shall:

(1) state the nature of any hearing;

(2) state the legal authority and jurisdiction under which the hearing is to be held;

(3) contain a short and plain statement of the matters of fact and law to be considered and determined, unless the order directs an answer pursuant to Rule 220 in which case the order shall set forth the factual and legal basis alleged therefor in such detail as will permit a specific response thereto; and

(4) state the nature of any relief or action sought or taken.

(c) *Time and Place of Hearing.* The time and place for any hearing shall be fixed with due regard for the public interest and the convenience and necessity of the parties, other participants, or their representatives.

(d) *Amendment to Order Instituting Proceedings.*

(1) *By the Commission.* Upon motion by a party, the Commission may, at any time, amend an order instituting proceedings to include new matters of fact or law.

(2) *By the Hearing Officer.* Upon motion by a party, the hearing officer may, at any time prior to the filing of an initial decision or, if no initial decision is to be filed, prior to the time fixed for the filing of final briefs with the Commission, amend an order instituting proceedings to include new matters of fact or law that are within the scope of the original order instituting proceedings.

(e) *Publication of Notice of Public Hearings.* Unless otherwise ordered by the Commission, notice of any public hearing shall be given general circulation by release to the public, by publication in the *SEC News Digest* and, where directed, by publication in the **Federal Register.**

Comment (a): Paragraph (a) requires that appropriate notice of an order instituting proceedings be given. Ordinarily, notice is accomplished through service of the order pursuant to the procedures set forth in Rule 141. Where emergency or expedited action is sought, however, notice of a hearing may be given prior to formal service of the order instituting proceedings. *See* Rules 511(a) and 521(a). Notice may be delayed if the Commission determines to hear a matter *ex parte. See* Rule 513.

Comment (c): The provisions of this paragraph are based on Section 554(b) of the Administrative Procedure Act, 5 U.S.C. § 554(b). It is the policy of the Commission that in a proceeding under the Public Utility Holding Company Act, the Investment Company Act (except Section 9(b)), Section 206A of the Investment Advisers Act, Section 8 of the Securities Act, or Sections 305 and 307 of the Trust Indenture Act or any proceeding in which a temporary sanction is sought, the hearing should normally be held at the Commission's Headquarters.

Comment (d): The Commission has stated that amendment of orders instituting proceeding should be freely granted, subject only to the consideration that other parties should not be surprised, nor their rights prejudiced. *Carl L. Shipley,* 45 S.E.C. 589, 595 (1974). Where amendments to an order instituting proceedings are intended to correct an error, to conform the order to the evidence or to take into account subsequent developments which should be considered in disposing of the proceeding, and the amendments are within the scope of the original order, either a hearing officer or the Commission has authority to amend the order. *See, e.g., Don A. Long,* Admin. Proc. Rulings Release No. 233 (Mar. 31, 1980), 52 SEC Docket 497 (Aug. 18, 1992) (hearing officer's grant of motion to conform pleading to evidence adduced at hearing). Since, however, the Commission has not delegated its authority to authorize orders instituting proceedings, hearing officers do not have authority to initiate new charges or to expand the scope of matters set down for hearing beyond the framework of the original order instituting proceedings. *See* Securities Act Release No. 5309 (Sept. 27, 1972).

Revision Comment (c): Comment was requested as to the Commission's practice with respect to holding hearings in multiple cities, in locations outside Washington, or in locations other than those where the Commission maintains Regional Offices. Commenters supported the current practice. The Commission has determined not to change the substance of the rule. The statement of policy in former Rule 6(b) that certain specified hearings would normally be held in Washington, D.C. has been moved into a comment to Rule 200. The policy statement contained in the comment has been modified to reflect that the hearing location should normally be at the Commission's Headquarters, and that hearings as to whether a temporary sanction will be imposed are covered by the policy.

Rule 201. Consolidation of Proceedings

By order of the Commission or a hearing officer, proceedings involving a common question of law or fact may be consolidated for hearing of any or all the matters at issue in such proceedings. The Commission or the hearing officer may make such orders concerning the conduct of such proceedings as it deems appropriate to avoid unnecessary cost or delay. Consolidation shall not prejudice any rights under these Rules of Practice and shall not affect the right of any party to raise issues that could have been raised if consolidation had not occurred. For purposes of this rule, no distinction is made between joinder and consolidation of proceedings.

Comment: Rule 201 is modeled after Model Adjudication Rule 201, Administrative Conference of the United States (Dec. 1993).

Revision Comment: Former Rule 10 provided that proceedings could be "joined" and "consolidated." Rule 201 does not draw a distinction between joinder and consolidation.

One commenter suggested that the Commission should refrain from making decisions on whether to consolidate proceedings in order to avoid the appearance that in deciding the consolidation issue the Commission had reached an opinion as to the merits of a case. Just as judges make preliminary decisions regarding joinder, consolidation, evidentiary motions and other matters without losing either their objectivity or the appearance of objectivity, so the Commission or a hearing officer must decide matters preliminary to a final decision. There is neither a loss of objectivity nor an appearance of less objectivity from doing so. Although the Commission does not agree with the rationale provided by the commenter, the rule as adopted permits the decision on consolidation to be made by a hearing officer because it may be more efficient to have a hearing officer issue a decision on consolidation.

The commenter also suggested that consolidation should be permitted only if consolidation tends to avoid unnecessary cost or delay as under former Rule 10. Rule 201 as revised includes a standard substantially similar to that of former Rule 10.

Rule 202. Specification of Procedures by Parties in Certain Proceedings

(a) *Motion to Specify Procedures.* In any proceeding other than an enforcement or disciplinary proceeding

or a proceeding to review a determination by a self-regulatory organization pursuant to Rules 420 and 421, a party may, at any time up to 20 days prior to the start of a hearing, make a motion to specify the procedures necessary or appropriate for the proceeding, with particular reference to:

(1) whether there should be an initial decision by a hearing officer;

(2) whether any interested division of the Commission may assist in the preparation of the Commission's decision; and

(3) whether there should be a 30-day waiting period between the issuance of the Commission's order and the date it is to become effective.

(b) *Objections; Effect of Failure to Object.* Any other party may object to the procedures so specified, and such party may specify such additional procedures as it considers necessary or appropriate. In the absence of such objection or such specification of additional procedures, such other party may be deemed to have waived objection to the specified procedures.

(c) *Approval Required.* Any proposal pursuant to paragraph (a) of this rule, even if not objected to by any party, shall be subject to the written approval of the hearing officer.

(d) *Procedure Upon Agreement to Waive an Initial Decision.* If an initial decision is waived pursuant to paragraph (a) of this rule, the hearing officer shall notify the Secretary and, unless the Commission directs otherwise within 14 days, no initial decision shall be issued.

Comment: Allowing for the specification of procedures by the parties under the supervision of a hearing officer has been effective in promoting efficiency in certain proceedings involving regulatory matters. By contrast, in an enforcement or disciplinary proceeding in which the government is seeking to impose sanctions on particular persons, or on review of a determination by a self-regulatory organization, it is not in the public interest to subject basic procedures to negotiation by the parties. Accordingly, Rule 202 excludes enforcement, disciplinary, and self-regulatory organization review proceedings from its scope.

Consistent with the operation of Rule 221, the Rule requires motions to specify procedures to be made at least 20 days prior to a hearing. As a result, any such motions may be timely answered and resolved prior to the final prehearing conference.

Rule 210. Parties, Limited Participants and Amici Curiae

(a) *Parties in an Enforcement or Disciplinary Proceeding or a Proceeding to Review a Self-Regulatory Organization Determination.*

(1) *Generally.* No person shall be granted leave to become a party or a non-party participant on a limited basis in an enforcement or disciplinary proceeding or a proceeding to review a determination by a self-regulatory organization pursuant to Rules 420 and 421.

(2) *Disgorgement Proceedings.* In an enforcement proceeding, a person may state his or her views with respect to a proposed plan of disgorgement or file a proof of claim pursuant to Rule 612.

(b) *Intervention as a Party.*

(1) *Generally.* In any proceeding, other than an enforcement proceeding, a disciplinary proceeding or a proceeding to review a self-regulatory organization determination, any person may seek leave to intervene as a party by filing a motion setting forth the person's interest in the proceeding. No person, however, shall be admitted as a party to a proceeding by intervention unless it is determined that leave to participate pursuant to paragraph (c) of this rule would be inadequate for the protection of his or her interests.

(i) In a proceeding under the Public Utility Holding Company Act of 1935, any representative of interested consumers or security holders, or any other person whose participation in the proceeding may be in the public interest or for the protection of investors or consumers, may be admitted as a party upon the filing of a written motion setting forth the person's interest in the proceeding.

(ii) In a proceeding under the Investment Company Act of 1940, any representative of interested security holders, or any other person whose participation in the proceeding may be in the public interest or for the protection of investors, may be admitted as a party upon the filing of a written motion setting forth the person's interest in the proceeding.

(2) *Intervention as of Right.*

(i) In proceedings under the Public Utility Holding Company Act of 1935, any interested representative, agency, authority or instrumentality of the United States or any interested State, State commission, municipality or other political subdivision of a state shall be admitted as a party to any proceeding upon the filing of a written motion requesting leave to be admitted.

(ii) In proceedings under the Investment Company Act of 1940, any interested State or State agency shall be admitted as a party to any proceeding upon the filing of a written motion requesting leave to be admitted.

(c) *Leave to Participate On a Limited Basis.* In any proceeding, other than an enforcement proceeding, a disciplinary proceeding or a proceeding to review a self-regulatory organization determination, any person may seek leave to participate on a limited basis as a non-party participant as to any matter affecting the person's interests.

(1) *Procedure.* Motions for leave to participate shall be in writing, shall set forth the nature and extent of the movant's interest in the proceeding, and, except where good cause for late filing is shown, shall be filed not later than 20 days prior to the date fixed for the commencement of the hearing. Leave to participate pursuant to this paragraph (c) may include such rights of a party as the hearing officer may deem appropriate. Persons granted leave to participate shall be served in accordance with Rule 150; provided, however, that a party to the proceeding may move that the extent of notice of filings or other papers to be provided to persons granted leave to participate be limited, or may move that the persons granted leave to participate bear the cost of being provided copies of any or all filings or other papers. Persons granted leave to participate shall be bound, except as may be otherwise determined by the hearing officer, by any stipulation between the parties to the proceeding with respect to procedure, including submission of evidence, substitution of exhibits, corrections of the record, the time within which briefs or exceptions may be filed or proposed findings and conclusions may be submitted, the filing of initial decisions, the procedure to be followed in the preparation of decisions and the effective date of the Commission's order in the case. Where the filing of briefs or exceptions or the submission of proposed findings and conclusions are waived by the parties to the proceedings, a person granted leave to participate pursuant to this paragraph (c) shall not be permitted to file a brief or exceptions or submit proposed findings and conclusions except by leave of the Commission or of the hearing officer.

(2) *Certain Persons Entitled to Leave to Participate.* The hearing officer is directed to grant leave to participate under this paragraph (c) to any person to whom it is proposed to issue any security in exchange for one or more bona fide outstanding securities, claims or property interests, or partly in such exchange and partly for cash, where the Commission is authorized to approve

the terms and conditions of such issuance and exchange after a hearing upon the fairness of such terms and conditions.

(d) *Amicus Participation.*

(1) *Availability.* An amicus brief may be filed only if:

(i) a motion for leave to file the brief has been granted;

(ii) the brief is accompanied by written consent of all parties;

(iii) the brief is filed at the request of the Commission or the hearing officer; or

(iv) the brief is presented by the United States or an officer or agency thereof, or by a State, Territory or Commonwealth.

(2) *Procedure.* An amicus brief may be filed conditionally with the motion for leave. The motion for leave shall identify the interest of the movant and shall state the reasons why a brief of an amicus curiae is desirable. Except as all parties otherwise consent, any amicus curiae shall file its brief within the time allowed the party whose position the amicus will support, unless the Commission or hearing officer, for cause shown, grants leave for a later filing. In the event that a later filing is allowed, the order granting leave to file shall specify when an opposing party may reply to the brief. A motion of an amicus curiae to participate in oral argument will be granted only for extraordinary reasons.

(e) *Permission to State Views.* Any person may make a motion seeking leave to file a memorandum or make an oral statement of his or her views. Any such communication may be included in the record; provided, however, that unless offered and admitted as evidence of the truth of the statements therein made, any assertions of fact submitted pursuant to the provisions of this paragraph (e) will be considered only to the extent that the statements therein made are otherwise supported by the record.

(f) *Modification of Participation Provisions.* The Commission or the hearing officer may, by order, modify the provisions of this rule which would otherwise be applicable, and may impose such terms and conditions on the participation of any person in any proceeding as it may deem necessary or appropriate in the public interest.

Comment (b): Paragraph (b) reflects requirements of Section 19 of the Public Utility Holding Company Act of 1935, 15 U.S.C. § 79s, and Section 40(c) of the Investment Company Act of 1940, 15 U.S.C. § 80a–39(c).

Comment (c): Through leave to participate on a limited basis, this rule provides an interested person the opportunity to express concerns relating to any matter affecting the person's interests. Unlike the consent to submission by an amicus, written consent of all parties is not sufficient to obtain status as a limited participant. Approval from the hearing officer is required.

By their terms, certain rules within the Rules of Practice apply to the rights and responsibilities of "parties." When non-party participants are admitted, the order granting leave to participate may specify the extent to which they are to have the obligations or rights of a party under the Rules. Depending on the extent of the participant's interest and the facts of each case, the degree of participation will vary. *See, e.g., In the Matter of College Retirement Equities Fund,* Admin. Proc. Rulings Release No. 288 (Feb. 11, 1988), 52 SEC Docket 448 (Aug. 18, 1992) (order scheduling prehearing conference to discuss inter alia procedures to limit duplicative cross-examination of witnesses without diminishing the opportunity for full cross-examination by participants).

In an enforcement or disciplinary proceeding, or a proceeding to review a self-regulatory organization determination, the only persons who may be parties are those specified by the Commission in the order instituting proceedings. Status as a limited, non-party participant pursuant to paragraph (c) is not allowed. A person may seek to participate in such proceedings as an amicus, pursuant to paragraph (d), or, if that person has knowledge of specific facts relevant to the proceeding, as a witness. In addition, pursuant to Rule 612, persons desiring to comment on a proposed plan of disgorgement will have an opportunity to submit their written views to the Commission and, as appropriate under the plan, to file a claim against the disgorgement pool.

Paragraph (c)(2) reflects the requirements of Section 3(a)(10) of the Securities Act of 1933, 15 U.S.C. § 77c(a)(10).

Comment (d): The provisions for amicus participation are based on Rule 29 of the Federal Rules of Appellate Procedure. Amicus participation contemplates the limited action of filing a brief setting forth the filer's views on particular legal or policy issues in the proceeding.

Comment (e): This paragraph allows for the submission of a statement of views with less formality than that required for an amicus brief or for participation on an ongoing basis as a non-party. From time to time persons, particularly individual security holders or members of the public, who do not otherwise wish to participate in a proceeding on any extended basis will seek to make written statements of their views in a letter or by appearing at a hearing. The factual assertions in such letters or statements will be considered only to the extent that the statements therein made are otherwise supported by the record.

Revision Comment (d): One commenter suggested that the consent of the Division of Enforcement should not be required for the filing of an amicus brief on behalf of a respondent in an enforcement proceeding. The Commission or a hearing officer can more fairly and more adequately assess the benefits of a proposed amicus filing if the Division of Enforcement or any other party with views on the proposal may set forth its objections on the record. Accordingly, the Commission decided not to make the suggested rule change.

Rule 220. Answer to Allegations

(a) *When Required.* In its order instituting proceedings, the Commission may require any party to file an answer to each of the allegations contained therein. Even if not so ordered, any party in any proceeding may elect to file an answer. Any other person granted leave by the Commission or the hearing officer to participate on a limited basis in such proceedings pursuant to Rule 210(c) may be required to file an answer.

(b) *When to File.* Except where a different period is provided by rule or by order, a party required to file an answer as provided in paragraph (a) of this rule shall do so within 20 days after service upon the party of the order instituting proceedings. Persons granted leave to participate on a limited basis in the proceeding pursuant to Rule 210(c) may file an answer within a reasonable time, as determined by the Commission or the hearing officer. If the order instituting proceedings is amended, the Commission or the hearing officer may require that an amended answer be filed and, if such an answer is required, shall specify a date for the filing thereof.

(c) *Contents; Effect of Failure to Deny.* Unless otherwise directed by the hearing officer or the Commission, an answer shall specifically admit, deny, or state that the party does not have, and is unable to obtain, sufficient information to admit or deny each allegation in the order instituting proceedings. When a party intends in good faith to deny only a part of an allegation, the party shall specify so much of it as is true and shall deny only the remainder. A statement of a lack of information shall have the effect of a denial. A defense of res judicata, statute

of limitations or any other matter constituting an affirmative defense shall be asserted in the answer. Any allegation not denied shall be deemed admitted.

(d) *Motion for More Definite Statement.* A party may file with an answer a motion for a more definite statement of specified matters of fact or law to be considered or determined. Such motion shall state the respects in which, and the reasons why, each such matter of fact or law should be required to be made more definite. If the motion is granted, the order granting such motion shall set the periods for filing such a statement and any answer thereto.

(e) *Amendments.* A party may amend its answer at any time by written consent of each adverse party or with leave of the Commission or the hearing officer. Leave shall be freely granted when justice so requires.

(f) *Failure to File Answer: Default.* If a party respondent fails to file an answer required by this rule within the time provided, such person may be deemed in default pursuant to Rule 155(a). A party may make a motion to set aside a default pursuant to Rule 155(b).

Comment (b): The time allowed to file an answer, 20 days, conforms to the time for answers under Rule 12 of the Federal Rules of Civil Procedure.

Revision Comment (c): The provision relating to the filing of affirmative defenses is based on Rule 8(c) of the Federal Rules of Civil Procedure. The change is intended to improve efficiency and fairness by clarifying issues at an early stage of the proceeding that may affect the timing, duration or necessity for a hearing.

Revision Comment (e): Proposed Rule 9(b) provided for amendment of an answer only when ordered by the Commission or a hearing officer. As adopted, Rule 220(e) allows amendment of an answer by consent of all parties or by leave of the Commission or hearing officer. Amendment of an answer may increase efficiency and fairness by sharpening the issues in dispute. Moreover, the provisions for a summary disposition prior to hearing pursuant to Rule 250 increase the importance of the answer. The modification to the rule is in accordance with Rule 15 of the Federal Rules of Civil Procedure. No provision is made, however, for allowing a period for an amendment as of right, because a meaningful period for exercise of such a right, such as the 20-day period provided under the Federal Rules of Civil Procedure, is inconsistent with the prompt start of the hearing. *See, e.g.*, Exchange Act § 21C(b), 15 U.S.C. 78u–3(b) (cease-and-desist proceedings to begin no later than 60 days after institution, other than with consent of respondent).

Rule 221. Prehearing Conferences

(a) *Purposes of Conferences.* The purposes of prehearing conferences include, but are not limited to:

(1) expediting the disposition of the proceeding;

(2) establishing early and continuing control of the proceeding by the hearing officer; and

(3) improving the quality of the hearing through more thorough preparation.

(b) *Procedure.* On his or her own motion or at the request of a party, the hearing officer may, in his or her discretion, direct counsel or any party to meet for an initial, final or other prehearing conference. Such conferences may be held with or without the hearing officer present as the hearing officer deems appropriate. Where such a conference is held outside the presence of the hearing officer, the hearing officer shall be advised promptly by the parties of any agreements reached. Such conferences also may be held with one or more persons participating by telephone or other remote means.

(c) *Subjects to be Discussed.* At a prehearing conference consideration may be given and action taken with respect to any and all of the following:

(1) simplification and clarification of the issues;

(2) exchange of witness and exhibit lists and copies of exhibits;

(3) stipulations, admissions of fact, and stipulations concerning the contents, authenticity, or admissibility into evidence of documents;

(4) matters of which official notice may be taken;

(5) the schedule for exchanging prehearing motions or briefs, if any;

(6) the method of service for papers other than Commission orders;

(7) summary disposition of any or all issues;

(8) settlement of any or all issues;

(9) determination of hearing dates;

(10) amendments to the order instituting proceedings or answers thereto;

(11) production of documents as set forth in Rule 230, and prehearing production of documents in response to subpoenas duces tecum as set forth in Rule 232;

(12) specification of procedures as set forth in Rule 202; and

(13) such other matters as may aid in the orderly and expeditious disposition of the proceeding.

(d) *Required Prehearing Conferences.* Except where the emergency nature of a proceeding would make a prehearing conference clearly inappropriate, both an initial and a final prehearing conference should be held. Unless ordered otherwise, an initial prehearing conference shall be held within 14 days of the service of an answer, or if no answer is required, within 14 days of service of the order instituting proceedings. A final conference shall be held as close to the start of the hearing as reasonable under the circumstances.

(e) *Prehearing Orders.* At or following the conclusion of any conference held pursuant to this rule, the hearing officer shall enter a ruling or order which recites the agreements reached and any procedural determinations made by the hearing officer.

(f) *Failure to Appear: Default.* Any person who is named in an order instituting proceedings as a person against whom findings may be made or sanctions imposed and who fails to appear, in person or through a representative, at a prehearing conference of which he or she has been duly notified may be deemed in default pursuant to Rule 155(a). A party may make a motion to set aside a default pursuant to Rule 155(b).

Comment (a): Rule 221 is modeled on Rule 16 of the Federal Rules of Civil Procedure. When properly managed, prehearing conferences can eliminate unnecessary delay and improve the quality of justice by sharpening the preparation of cases, facilitating the prehearing exchange of documents, and promoting settlements in appropriate cases.

Comment (d): Unless ordered otherwise, the initial prehearing conference will be held within 14 days after a respondent files an answer. Pursuant to Rule 230(d), the Division of Enforcement is required to commence making documents available to a respondent for inspection and copying in an enforcement or disciplinary proceeding no later than 14 days after the respondent files an answer. Consequently, the initial prehearing conference can be used to address any pending issues related to the availability of documents for inspection and copying, and thereafter the respondent should ordinarily have access to such documents.

Revision Comment (c): Paragraph (c)(6) was added to bring to the attention of the participants that they may agree among themselves to procedures for the service of papers by facsimile. *See* Rule 150(c)(4).

Revision Comment (d): Under the proposed rule, no initial prehearing conference was required. In accordance with comments received, the revised rule requires both an initial and a final prehearing conference, except where the emergency nature of a proceeding would make a prehearing conference clearly inappropriate.

Rule 222. Prehearing Submissions

(a) *Submissions Generally.* The hearing officer, on his or her own motion, or at the request of a party or other participant, may order any party, including the interested division, to furnish such information as deemed appropriate, including any or all of the following:

(1) an outline or narrative summary of its case or defense;

(2) the legal theories upon which it will rely;

(3) copies and a list of documents that it intends to introduce at the hearing; and

(4) a list of witnesses who will testify on its behalf, including the witnesses' names, occupations, addresses and a brief summary of their expected testimony.

(b) *Expert Witnesses.* Each party who intends to call an expert witness shall submit, in addition to the information required by paragraph (a)(4) of this rule, a statement of the expert's qualifications, a listing of other proceedings in which the expert has given expert testimony, and a list of publications authored or co-authored by the expert.

Rule 230. Enforcement and Disciplinary Proceedings: Availability of Documents for Inspection and Copying

For purposes of this rule, the term *documents* shall include writings, drawings, graphs, charts, photographs, recordings and other data compilations, including data stored by computer, from which information can be obtained.

(a) *Documents to be Available for Inspection and Copying.*

(1) Unless otherwise provided by this rule, or by order of the Commission or the hearing officer, the Division of Enforcement shall make available for inspection and copying by any party documents obtained by the Division prior to the institution of proceedings, in connection with the investigation leading to the Division's recommendation to institute proceedings. Such documents shall include:

(i) each subpoena issued;

(ii) every other written request to persons not employed by the Commission to provide documents or to be interviewed;

(iii) the documents turned over in response to any such subpoenas or other written requests;

(iv) all transcripts and transcript exhibits;

(v) any other documents obtained from persons not employed by the Commission; and

(vi) any final examination or inspection reports prepared by the Division of Market Regulation or the Division of Investment Management.

(2) Nothing in this paragraph (a) shall limit the right of the Division to make available any other document, or shall limit the right of a respondent to seek access to or production pursuant to subpoena of any other document, or shall limit the authority of the hearing officer to order the production of any document pursuant to subpoena.

(b) *Documents That May Be Withheld.*

(1) The Division of Enforcement may withhold a document if:

(i) the document is privileged;

(ii) the document is an internal memorandum, note or writing prepared by a Commission employee, other than an examination or inspection report as specified in paragraph (a)(1)(vi) of this rule, or is otherwise attorney work product and will not be offered in evidence;

(iii) the document would disclose the identity of a confidential source; or

(iv) the hearing officer grants leave to withhold a document or category of documents as not relevant to the subject matter of the proceeding or otherwise, for good cause shown.

(2) Nothing in this paragraph (b) authorizes the Division of Enforcement in connection with an enforcement or disciplinary proceeding to withhold, contrary to the doctrine of *Brady v. Maryland*, 373 U.S. 83, 87 (1963), documents that contain material exculpatory evidence.

(c) *Withheld Document List.* The hearing officer may require the Division of Enforcement to submit for review a list of documents withheld pursuant to paragraphs (b)(1)–(b)(4) of this rule or to submit any document withheld, and may determine whether any such document should be made available for inspection and copying.

(d) *Timing of Inspection and Copying.* Unless otherwise ordered by the Commission or the hearing officer, the Division of Enforcement shall commence making documents available to a respondent for inspection and copying pursuant to this rule no later than 14 days after the respondent files an answer. In a proceeding in which a temporary cease-and-desist order is sought pursuant to Rule 510 or a temporary suspension of registration is sought pursuant to Rule 520, documents shall be made available no later than the day after service of the decision as to whether to issue a temporary cease-and-desist order or temporary suspension order.

(e) *Place of Inspection and Copying.* Documents subject to inspection and copying pursuant to this rule shall be made available to the respondent for inspection and copying at the Commission office where they are ordinarily maintained, or at such other place as the parties, in writing, may agree. A respondent shall not be given custody of the documents or leave to remove the documents from the Commission's offices pursuant to the requirements of this rule other than by written agreement of the Division of Enforcement. Such agreement shall specify the documents subject to the agreement, the date they shall be returned and such other terms or conditions as are appropriate to provide for the safekeeping of the documents.

(f) *Copying Costs and Procedures.* The respondent may obtain a photocopy of any documents made available for inspection. The respondent shall be responsible for the cost of photocopying. Unless otherwise ordered, charges for copies made by the Division of Enforcement at the request of the respondent will be at the rate charged pursuant to the fee schedule at 17 CFR 200.80e for copies. The respondent shall be given access to the documents at the Commission's offices or such other place as the parties may agree during normal business hours for copying of documents at the respondent's expense.

(g) *Issuance of Investigatory Subpoenas After Institution of Proceedings.* The Division of Enforcement shall promptly inform the hearing officer and each party if investigatory subpoenas are issued under the same investigation file number or pursuant to the same order directing private investigation ("formal order") under which the investigation leading to the institution of proceedings was conducted. The hearing officer shall order such steps as necessary and appropriate to assure that the issuance of investigatory subpoenas after the institution of proceedings is not for the purpose of obtaining evidence relevant to the proceedings and that any relevant documents that may be obtained through the use of investigatory subpoenas in a continuing investigation are made available to each respondent for inspection and copying on a timely basis.

(h) *Failure to Make Documents Available—Harmless Error.* In the event

that a document required to be made available to a respondent pursuant to this rule is not made available by the Division of Enforcement, no rehearing or redecision of a proceeding already heard or decided shall be required, unless the respondent shall establish that the failure to make the document available was not a harmless error.

Comment (a): A respondent's right to inspect and copy documents under this rule is automatic; the respondent does not need to make a formal request for access through the hearing officer. Generally, the rule requires that the Division of Enforcement make available for inspection and copying documents obtained by the Division from persons not employed by the Commission during the course of its investigation prior to the institution of proceedings. Except for final inspection or examination reports prepared by the Division of Market Regulation or the Division of Investment Management, documents prepared by Commission staff are treated as attorney work product, and do not have to be made available pursuant to this rule.

Rule 230 is not the exclusive means by which a respondent may obtain access to or production of documents. Production of documents prepared by the staff may be required under the doctrine of *Brady* v. *Maryland*, 373 U.S. 83 (1963), or pursuant to Jencks Act requirements made applicable to the Commission pursuant to Rule 231, or may be sought by subpoena pursuant to Rule 232 or through other procedures. *See, e.g.*, Freedom of Information Act, 5 U.S.C. 552.

The Rule states that the Division of Enforcement shall (1) make available for inspection and copying (2) documents (3) obtained by the Division (4) in connection with the investigation leading to the institution of proceedings.

(1) The Division of Enforcement is required to make documents available for inspection and copying. It is not required to produce a copy of the documents to each respondent. The definition of documents is based in part on Federal Rule of Civil Procedure 34.

(2) The definition of the term "documents" in paragraph (a) is modeled on the definition of documents in Rule 34 of the Federal Rules of Civil Procedure.

(3) The Division of Enforcement's obligation under this rule relates to documents obtained by the Division of Enforcement. Documents located only in the files of other divisions or offices are beyond the scope of the rule.

(4) The "investigation leading to the Division's recommendation to institute proceedings" ordinarily is delineated by the investigation number or numbers under which requests for documents, testimony or other information were made. When an investigation is initiated by the Division of Enforcement it is assigned a number, often referred to as the "case" or "investigation" number. Each request for documents, testimony or other information from persons not employed by the Commission specifies the investigation or preliminary investigation number to which it relates. In turn, each written recommendation by the Division of Enforcement to institute proceedings identifies on its cover page, by investigation number, the source investigation or investigations to which it relates. Accordingly, the identity and content of the appropriate investigation file or files from which documents must be made available can be based on objective criteria.

Comment (b): Under paragraph (b), the Division can withhold documents under four exceptions. Exception (1) shields information subject to a claim of privilege. Exception (2) protects as attorney work product internal documents prepared by Commission employees, which will not be offered in evidence. Work product includes any notes, working papers, memoranda or other similar materials, prepared by an attorney in anticipation of litigation. *See Hickman v. Taylor*, 329 U.S. 495 (1947); *see also* Fed. R. Civ. P. 26(b)(3) and (b)(5). Accountants, paralegals and investigators who work on an investigation do so at the direction of the director, an associate director, an associate regional administrator or another supervisory attorney, and their work product is therefore shielded by the rule. An examination or inspection report prepared by the Division of Market Regulation or the Division of Investment Management is not prepared in anticipation of litigation, and is therefore explicitly excluded from the materials that may be withheld. A respondent's claim that work product should be turned over will necessarily be evaluated on a case-by-case basis.

Exception (3) protects the identity of a confidential source. *See* 5 U.S.C. 552(b)(7)(C) and (D). Exception (4) protects any other document or category of documents that the hearing officer determines may be withheld as not relevant to the subject matter of the proceeding, or otherwise for good cause shown. This exception provides a mechanism to address a situation where a single investigation involves a discrete segment or segments that are related only indirectly, or not at all, to the recommendations ultimately made to the Commission with respect to the particular respondents in a specific proceeding. To require that documents not relevant to the subject matter of the proceeding be made available, simply because they were obtained as part of a broad investigation, burdens the respondent as well as the Division of Enforcement with unnecessary costs and delay.

For example, a single investigation may encompass inquiry into an issuer's allegedly false accounting disclosure and an unrelated manipulation of the issuer's securities by a third party. If the recommendation to the Commission and resulting administrative proceeding involve only the accounting disclosures, the Division could seek leave to withhold trading records, transcripts and other documents related to the manipulation investigation.

Comment (c): The hearing officer may, in his or her discretion, override any exception claimed by the Division and order the Division to produce withheld items.

Comment (g): In some circumstances, for example, where a temporary cease-and-desist order is sought, or where a single formal order is being used to investigate several distinct areas of potential violations, proceedings may be instituted prior to the end of all investigative activities. To allow the hearing officer to take appropriate steps to assure that investigative subpoenas are not used for the purpose of gathering information for use in the proceeding, paragraph (g) requires the Division of Enforcement to notify the hearing officer and each party if the Division is continuing to issue investigative subpoenas under the same investigation file number or order directing private investigation ("formal order") used in the investigation leading to the institution of proceedings.

Revision Comment: As stated in the proposing release, the intent of the Rule is to codify existing staff practice with respect to voluntarily making available documents for inspection or copying. *See* Comments to proposed Rules 20 and 21, 58 FR 61750–51 (Nov. 22, 1993). The staff practice reflected an informal policy of the Division of Enforcement staff in the Headquarters Office and certain Regional Offices to make available to respondents major portions of the Division's investigation file. The policy evolved over many years and was implemented differently by different offices. Rule 230 seeks to respond to the criticism of commenters without establishing document production requirements, suggested by several commenters, that are not a part of existing practice.

Proposed Rule 20 would have required the production of "all documents, including transcripts of testimony, relevant to any allegation in the order instituting proceedings" and excepted from production various documents including those "obtained during the course of a pending nonpublic investigation, unless the documents will be relied upon by the interested division during the course of the hearing." One commenter suggested that the scope of required production was too narrow and ill defined, thereby providing too much discretion to the Division of Enforcement staff to determine whether a document was relevant. For example, it was suggested that a respondent should be entitled to information relevant to the scope of requested relief as well as allegations of liability. Moreover, the commenter explained, the exception for documents from pending investigations could negate the requirement to produce if the investigation that led to an enforcement proceeding is still continuing with respect to other persons or activities.

With exceptions for documents that are privileged, work product, or would reveal a confidential source, the revised rule requires that documents obtained from persons outside the Commission as part of the investigation leading to institution of proceedings be made available for inspection and copying. In addition, the Division of Enforcement may seek leave of the hearing officer to withhold other documents. The rule no longer calls upon the Division of Enforcement staff to make relevancy determinations.

As proposed, Rule 20 would have allowed the Division to withhold documents "obtained during the course of a pending nonpublic investigation," unless the documents will be relied upon by the interested division during the course of the hearing." This provision was intended to address the possibility, particularly where a temporary cease-and-desist order was sought, that the investigation that led to proceedings was continuing as to other persons or events after the institution of proceedings. As revised, Rule 230 provides that the Division of Enforcement shall promptly inform the hearing officer and each party if investigatory subpoenas are issued under the same investigation file number or pursuant to the same formal order under which the investigation leading to the recommendation to institute proceedings was conducted. The hearing officer will then order such steps as are necessary and appropriate with regard to documents obtained in the ongoing investigation.

In order to provide for the safekeeping of documents subject to inspection, and to control costs associated with implementation of the rule, the revised rule provides that documents shall be made available for inspection and copying at the Commission office where they are ordinarily maintained, or at such other place as the parties may agree. The Commission considered alternatives raised by commenters. None appear more likely to result in prompt access to documents obtained by the Division of Enforcement that are the basis of the Division's allegations.

Rule 231. Enforcement and Disciplinary Proceedings: Production of Witness Statements

(a) *Availability.* Any respondent in an enforcement or disciplinary proceeding may move that the Division of Enforcement produce for inspection and copying any statement of any person called or to be called as a witness by the division that pertains, or is expected to pertain, to his or her direct testimony and that would be required to be produced pursuant to the Jencks Act, 18 U.S.C. 3500. Such production shall be made at a time and place fixed by the hearing officer and shall be made available to any party, provided, however, that the production shall be made under conditions intended to preserve the items to be inspected or copied.

(b) *Failure to Produce—Harmless Error.* In the event that a statement required to be made available for inspection and copying by a respondent is not turned over by the Division of Enforcement, no rehearing or redecision of a proceeding already heard or decided shall be required unless the respondent establishes that the failure to turn over the statement was not harmless error.

Comment: Prior statements by witnesses memorialized in transcripts during the investigation that led to a proceeding fall within the scope of Rule 230 as well as Rule 231. Where the staff believes a witness statement falls outside the purview of the rule, the hearing officer may require that the documents in question be turned over for *in camera* inspection. *See, e.g., In the Matter of Thomas J. Fittin, Jr.*, Exchange Act Release No. 29173, 48 SEC Docket 1474, 1483 (May 21, 1991); *In the Matter of Robert E. Iles, Sr.*, Admin. Proc. Rulings Release No. 367 (Apr. 19, 1990), 52 SEC Docket 750 (Aug. 18, 1992) (order relating to *Brady* v. *Maryland* and Jencks Act issues).

The Jencks Act does not require production of a witness's prior statement until the witness takes the stand. In Commission proceedings administrative law judges often required production prior to the start of the hearing, and the Division of Enforcement now provides such prehearing production voluntarily in most circumstances. Submission of a witness's prior statement, however, may provide a motive for intimidation of that witness or improper contact by a respondent with the witness. The rule provides, therefore, that the time for delivery of witness statements is to be determined by the hearing officer, so that a case-specific determination of such risks can be made if necessary. Upon a showing that there is substantial risk of improper use of a witness's prior statement, the hearing officer may take appropriate steps, for example, delaying production of a prior statement, or prohibiting parties from communicating with particular witnesses.

Rule 232. Subpoenas

(a) *Availability; Procedure.* In connection with any hearing ordered by the Commission, a party may request the issuance of subpoenas requiring the attendance and testimony of witnesses at the designated time and place of hearing, and subpoenas requiring the production of documentary or other tangible evidence returnable at any designated time or place. Unless made on the record at a hearing, requests for issuance of a subpoena shall be made in writing and served on each party pursuant to Rule 150. A person whose request for a subpoena has been denied or modified may not request that any other person issue the subpoena.

(1) *Unavailability of Hearing Officer.* In the event that the hearing officer assigned to a proceeding is unavailable, the party seeking issuance of the subpoena may seek its issuance from the first available of the following persons: the Chief Administrative Law Judge, the law judge most senior in service as a law judge, the duty officer, any other member of the Commission, or any other person designated by the Commission to issue subpoenas. Requests for issuance of a subpoena made to the Commission, or any member thereof, must be submitted to the Secretary, not to an individual Commissioner.

(2) *Signing May be Delegated.* A hearing officer may authorize issuance of a subpoena, and may delegate the manual signing of the subpoena to any other person authorized to issue subpoenas.

(b) *Standards for Issuance.* Where it appears to the person asked to issue the subpoena that the subpoena sought may be unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may, in his or her discretion, as a

condition precedent to the issuance of the subpoena, require the person seeking the subpoena to show the general relevance and reasonable scope of the testimony or other evidence sought. If after consideration of all the circumstances, the person requested to issue the subpoena determines that the subpoena or any of its terms is unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may refuse to issue the subpoena, or issue it only upon such conditions as fairness requires. In making the foregoing determination, the person issuing the subpoena may inquire of the other participants whether they will stipulate to the facts sought to be proved.

(c) *Service.* Service shall be made pursuant to the provisions of Rule 150(b)–(d). The provisions of this paragraph (c) shall apply to the issuance of subpoenas for purposes of investigations, as required by 17 CFR 203.8, as well as hearings.

(d) *Tender of fees required.* When a subpoena compelling the attendance of a person at a hearing or deposition is issued at the instance of anyone other than an officer or agency of the United States, service is valid only if the subpoena is accompanied by a tender to the subpoenaed person of the fees for one day's attendance and mileage specified by paragraph (f) of this rule.

(e) *Application to Quash or Modify.*

(1) Procedure. Any person to whom a subpoena is directed or who is an owner, creator or the subject of the documents that are to be produced pursuant to a subpoena may, prior to the time specified therein for compliance, but in no event more than 15 days after the date of service of such subpoena, request that the subpoena be quashed or modified. Such request shall be made by application filed with the Secretary and served on all parties pursuant to Rule 150. The party on whose behalf the subpoena was issued may, within five days of service of the application, file an opposition to the application. If a hearing officer has been assigned to the proceeding, the application to quash shall be directed to that hearing officer for consideration, even if the subpoena was issued by another person.

(2) *Standards Governing Application to Quash or Modify.* If compliance with the subpoena would be unreasonable, oppressive or unduly burdensome, the hearing officer or the Commission shall quash or modify the subpoena, or may order return of the subpoena only upon specified conditions. These conditions may include but are not limited to a requirement that the party on whose behalf the subpoena was issued shall make reasonable compensation to the person to whom the subpoena was addressed for the cost of copying or transporting evidence to the place for return of the subpoena.

(f) *Witness Fees and Mileage.* Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear.

Comment (a): Rule 232 requires that, unless made on the record at a hearing, subpoena requests must be in writing. *Ex parte,* oral communication with the hearing officer concerning the need for issuance of a subpoena creates the opportunity for unintended and potentially improper discussion of the merits of a case.

Comment (b): Rule 232(b) is based upon Section 555(d) of the Administrative Procedure Act, 5 U.S.C. 555(d).

Revision Comment: Under the former Rule 14 of the Rules of Practice and the proposed rules, neither the fact that a subpoena was sought nor the identity of the person subpoenaed was disclosed. Comment was requested as to whether the identity of the persons subpoenaed should be disclosed to other parties, and if so, when such disclosure should take place. One commenter suggested that the identity of persons subpoenaed should be disclosed to all other parties and an application to quash should be served on all parties. The Commission believes that these suggestions are consistent with other changes made to increase the prehearing exchange of information. Accordingly, Rule 232 has been revised to incorporate these suggestions.

Commenters also suggested that respondents be allowed to issue subpoenas for the purpose of compelling prehearing discovery depositions as is allowed in actions under the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 30(a)(1). Discovery under the Federal Rules of Civil Procedure, including deposition practice, is often a source of delay, extensive collateral disputes and high litigation costs. *See Fair and Efficient Administrative Proceedings: Report of the Task Force on Administrative Proceedings* (1993) at 47–48. One commenter suggested that the disadvantages of oral deposition practice under the Federal Rules of Civil Procedure could be avoided by permitting depositions only by order of the hearing officer; by limiting each respondent to five depositions, unless additional depositions were approved by the hearing officer; and by requiring all depositions to be completed within 90 days of the close of document discovery.

The Commission has weighed the arguments advanced in favor of expanding the scope of prehearing discovery to permit oral depositions as suggested and has concluded that a rule authorizing discovery depositions is not warranted.

First, the Commission's experience in federal court litigation strongly suggests that notwithstanding the proposed restriction for the use of discovery depositions, there remains a significant potential for extensive collateral litigation over their use. Under the commenter's proposal, for example, each respondent could seek leave to take more than five depositions, and might contest, through motions for interlocutory review and arguments on appeal, any denial of additional depositions by the hearing officer.

Second, the suggestion to limit depositions to the 90-day period after the close of "document discovery" conflicts with the statutory timetable for cease-and-desist proceedings, the fastest growing category of enforcement proceedings. When a cease-and-desist order is sought, the Commission is required to set a hearing date not earlier than 30 days nor later than 60 days after service of the order instituting proceedings, unless an earlier or a later date is set by the Commission with the consent of a respondent. *See, e.g.,* Exchange Act 21C(b), 15 U.S.C. § 78u–3(b). In a proceeding with multiple respondents, one respondent's decision not to consent to a later hearing date, or to consent to an extension less than that sought by other respondents, would give rise to difficult and time-consuming collateral issues over scheduling, and could necessitate multiple hearings. Even without such complications, a 90-day period for depositions, in addition to a period for inspection and copying of documents, would represent a significant departure from the statute.

Third, the rationale for permitting oral depositions in litigation under the Federal Rules of Civil Procedure does not apply equally to a Commission administrative proceeding. In the typical civil action, where neither party can compel testimony prior to the filing of the complaint, oral depositions play a critical role in permitting evidence to be gathered prior to trial. Also, a plaintiff in the typical civil action is not required before filing to vet a proposed lawsuit either with the defendant or anyone else. In this context, discovery, including depositions, is a crucial adjunct to motions to dismiss, summary judgment, and other procedural mechanisms designed to allow an assessment by the judge whether the allegations of the complaint are sufficient to warrant trial.

By contrast, in administrative proceedings brought by the Commission, there is ordinarily a detailed pre-institution fact finding investigation and a rigorous pre-institution review process. At the close of the investigation, a respondent is usually told the general conclusions reached by the Division of Enforcement and is afforded an opportunity to submit a written "Wells" statement presenting arguments against commencement of an action. *See* Commission's decisions on advisory committee recommendations regarding commencement of enforcement proceedings and termination of staff investigations, Securities Act Release No. 5310, 38 FR 5457 (Mar. 1, 1973). No proceedings are instituted unless a majority of the Commission votes to authorize proceedings after reviewing both a report on the investigation's findings from the Division of Enforcement and any Wells statement that is submitted. If proceedings are authorized, the documents and transcripts obtained from persons not employed by the Commission in the investigation are shared with the respondent. The benefits from and need for oral depositions are therefore different and less important in the context of Commission administrative proceedings than they may be in litigation between private parties under the Federal Rules of Civil Procedure.

Finally, the revised Rules of Practice include two new provisions that address in significant part a respondent's interest in obtaining discovery prior to the start of the hearing. Rule 232 authorizes the issuance of subpoenas *duces tecum* for the production of documents returnable at any designated time or place. Rule 230 mandates that the Division of Enforcement generally make available documents and transcripts of testimony obtained from persons other than employees of the Commission in the investigation leading to the proceeding.

One commenter suggested that the opportunity to review transcripts of investigative depositions was not sufficient. The commenter noted that knowledge gained during an investigation is cumulative. Division of Enforcement staff are unable to question each witness as thoroughly during the course of an investigation, particularly in the early stages, as can be done in a post-investigation deposition. Further, an investigator on the Division of Enforcement staff will not necessarily ask the same questions as would a respondent. Moreover, even where investigative testimony is complete, the transcript provided to respondents is not a full substitute for the opportunity during live testimony to observe a witness's demeanor as well as to hear the content of a witness's answers.

These reasons establish support for an opportunity after the investigation for both the respondent and the Division of Enforcement to subpoena witnesses and question them under oath—an opportunity available at the hearing. They do not establish the need for prehearing depositions as well. Permitting post-investigation, prehearing depositions would afford a respondent information that may be useful in advance of hearing. However, given the newly established right to subpoena documents prior to hearing, the marginal benefits of prehearing depositions are not justified by their likely cost in time, expense, collateral disputes and scheduling complexities.

Rule 233. Depositions Upon Oral Examination

(a) *Procedure.* Any party desiring to take the testimony of a witness by deposition shall make a written motion setting forth the reasons why such deposition should be taken including the specific reasons why the party believes the witness will be unable to attend or testify at the hearing; the name and address of the prospective witness; the matters concerning which the prospective witness is expected to be questioned; and the proposed time and place for the taking of the deposition.

(b) *Required Finding When Ordering a Deposition.* In the discretion of the Commission or the hearing officer, an order for deposition may be issued upon a finding that the prospective witness will likely give testimony material to the proceeding, that it is likely the prospective witness will be unable to attend or testify at the hearing because of age, sickness, infirmity, imprisonment or other disability, and that the taking of a deposition will serve the interests of justice.

(c) *Contents of Order.* An order for deposition shall designate by name a deposition officer. The designated officer may be the hearing officer or any other person authorized to administer oaths by the laws of the United States or of the place where the deposition is to be held. An order for deposition also shall state:

(1) the name of the witness whose deposition is to be taken;

(2) the scope of the testimony to be taken;

(3) the time and place of the deposition;

(4) the manner of recording, preserving and filing the deposition; and

(5) the number of copies, if any, of the deposition and exhibits to be filed upon completion of the deposition.

(d) *Procedure at Depositions.* A witness whose testimony is taken by deposition shall be sworn or shall affirm before any questions are put to him or her. Examination and cross-examination of deponents may proceed as permitted at a hearing. The witness being deposed may have counsel present during the deposition.

(e) *Objections to Questions or Evidence.* Objections to questions or evidence shall be in short form, stating the grounds of objection relied upon. Objections to questions or evidence shall be noted by the deposition officer upon the deposition, but a deposition officer other than the hearing officer shall not have the power to decide on the competency, materiality or relevance of evidence. Failure to object to questions or evidence before the deposition officer shall not be deemed a waiver unless the ground of the objection is one that might have been obviated or removed if presented at that time.

(f) *Filing of Depositions.* The questions propounded and all answers or objections shall be recorded or transcribed verbatim, and a transcript prepared by the deposition officer, or under his or her direction. The transcript shall be subscribed by the witness and certified by the deposition officer. The original deposition and exhibits shall be filed with the Secretary. A copy of the deposition shall be available to the deponent and each party for purchase at prescribed rates.

(g) *Payment.* The cost of the transcript shall be paid by the party requesting the deposition.

Comment: Depositions under the Rules of Practice are used only to preserve testimony of a witness who would be unlikely to be able to attend the hearing. They are not allowed for purposes of discovery. *See In the Matter of Central and South West Corp.,* Admin. Proc. Rulings Release No. 184 (July 14, 1976), 52 SEC Docket 375 (Aug. 18, 1992) (citing *L.M. Rosenthal & Co., Inc.,* Admin. Proc. File No. 3–4330 (Jan. 30, 1974)); *see also In the Matter of Gail G. Griseuk,* Admin. Proc. Rulings Release 440 (Aug. 31, 1994), 57 SEC Docket 1488 (Sept. 27, 1994) (formal

discovery procedures are not available in Commission administrative proceedings).

Comment (c): The criteria for serving as a deposition officer are based on the criteria in Rule 28 of the Federal Rules of Civil Procedure.

Revision Comment (b): Under Proposed Rule 22, the criteria for whether to allow a deposition to be taken were not consistent with the criteria for allowing the deposition to be introduced. As revised, the criteria for permitting a deposition are consistent with the criteria of Rule 235 for introducing a prior sworn statement of a witness.

Depositions are no longer required to be filed under seal, although a confidentiality order may be sought. *See* Rule 322.

Rule 234. Depositions Upon Written Questions

(a) *Availability.* Depositions may be taken and submitted on written questions upon motion of any party. The motion shall include the information specified in Rule 233(a). A decision on the motion shall be governed by the provisions of Rule 233(b).

(b) *Procedure.* Written questions shall be filed with the motion. Within 10 days after service of the motion and written questions, any party may file objections to such written questions and any party may file cross-questions. When a deposition is taken pursuant to this rule no persons other than the witness, counsel to the witness, the deposition officer, and, if the deposition officer does not act as reporter, a reporter, shall be present at the examination of the witness. No party shall be present or represented unless otherwise permitted by order. The deposition officer shall propound the questions and cross-questions to the witness in the order submitted.

(c) *Additional Requirements.* The order for deposition, filing of the deposition, form of the deposition and use of the deposition in the record shall be governed by paragraphs (c) through (g) of Rule 233, except that no cross-examination shall be made.

Comment: The procedures for depositions upon written questions are based in part on Rule 31 of the Federal Rules of Civil Procedure.

Rule 235. Introducing Prior Sworn Statements of Witnesses into the Record

(a) At a hearing, any person wishing to introduce a prior, sworn statement of a witness, not a party, otherwise admissible in the proceeding, may make a motion setting forth the reasons therefor. If only part of a statement is offered in evidence, the hearing officer may require that all relevant portions of the statement be introduced. If all of a statement is offered in evidence, the hearing officer may require that portions not relevant to the proceeding be excluded. A motion to introduce a prior sworn statement may be granted if:

(1) the witness is dead;

(2) the witness is out of the United States, unless it appears that the absence of the witness was procured by the party offering the prior sworn statement;

(3) the witness is unable to attend or testify because of age, sickness, infirmity, imprisonment or other disability;

(4) the party offering the prior sworn statement has been unable to procure the attendance of the witness by subpoena; or,

(5) in the discretion of the Commission or the hearing officer, it would be desirable, in the interests of justice, to allow the prior sworn statement to be used. In making this determination, due regard shall be given to the presumption that witnesses will testify orally in an open hearing. If the parties have stipulated to accept a prior sworn statement in lieu of live testimony, consideration shall also be given to the convenience of the parties in avoiding unnecessary expense.

Revision Comment: Proposed Rule 22, which addressed the introduction of a deposition as part of the record, did not state whether it applied to any deposition, or only a deposition taken pursuant to the Rules of Practice. Rule 235 specifies the circumstances under which prior sworn statements by a witness are admissible. One commenter suggested making the stipulation of the parties to accept a deposition in lieu of live testimony a factor in determining whether a deposition already taken should be admitted in evidence. The rule was revised accordingly.

Rule 240. Settlement

(a) *Availability.* Any person who is notified that a proceeding may or will be instituted against him or her, or any party to a proceeding already instituted, may, at any time, propose in writing an offer of settlement.

(b) *Procedure.* An offer of settlement shall state that it is made pursuant to this rule; shall recite or incorporate as a part of the offer the provisions of paragraphs (c)(4) and (5) of this rule; shall be signed by the person making the offer, not by counsel; and shall be submitted to the interested division.

(c) *Consideration of Offers of Settlement.* (1) Offers of settlement shall be considered by the interested division when time, the nature of the proceedings, and the public interest permit.

(2) Where a hearing officer is assigned to a proceeding, the interested division and the party submitting the offer may request that the hearing officer express his or her views regarding the appropriateness of the offer of settlement. A request for the hearing officer to express his or her views on an offer of settlement or otherwise to participate in a settlement conference constitutes a waiver by the persons making the request of any right to claim bias or prejudgment by the hearing officer based on the views expressed.

(3) The interested division shall present the offer of settlement to the Commission with its recommendation, except that, if the division's recommendation is unfavorable, the offer shall not be presented to the Commission unless the person making the offer so requests.

(4) By submitting an offer of settlement, the person making the offer waives, subject to acceptance of the offer:

(i) all hearings pursuant to the statutory provisions under which the proceeding is to be or has been instituted;

(ii) the filing of proposed findings of fact and conclusions of law;

(iii) proceedings before, and an initial decision by, a hearing officer;

(iv) all post-hearing procedures; and

(v) judicial review by any court.

(5) By submitting an offer of settlement the person further waives:

(i) such provisions of the Rules of Practice or other requirements of law as may be construed to prevent any member of the Commission's staff from participating in the preparation of, or advising the Commission as to, any order, opinion, finding of fact, or conclusion of law to be entered pursuant to the offer; and

(ii) any right to claim bias or prejudgment by the Commission based on the consideration of or discussions concerning settlement of all or any part of the proceeding.

(6) If the Commission rejects the offer of settlement, the person making the offer shall be notified of the Commission's action and the offer of settlement shall be deemed withdrawn. The rejected offer shall not constitute a part of the record in any proceeding against the person making the offer, provided, however, that rejection of an offer of settlement does not affect the continued validity of waivers pursuant to paragraph (c)(5) of this rule with respect to any discussions concerning the rejected offer of settlement.

(7) Final acceptance of any offer of settlement will occur only upon the issuance of findings and an order by the Commission.

Comment: In proceedings required to be conducted "on the record," Section 554(c) of the Administrative Procedure Act, 5 U.S.C. § 554(c), requires that administrative agencies give interested parties the opportunity for the submission and consideration of offers of settlement "when time, the nature of the proceeding, and the public interest permit." *Cf.* Table I, Subpart D, 17 CFR 201 (listing Commission proceedings required to be conducted "on the record"). It is the Commission's practice to provide such an opportunity in all proceedings, whether or not the proceeding is required to be conducted "on the record."

Although the staff is authorized to participate in settlement negotiations under various circumstances, the Commission must approve every settlement.

Rule 240 addresses offers of settlement made both prior to and after the institution of proceedings. The Rule requires each offer of settlement to recite or incorporate as part of the offer the provisions of paragraphs (c)(4) and (5). Certain facts necessary for the Commission to make a reasoned judgment as to whether settlement offer is in the public interest are often available only to the staff that negotiated the proposed settlement. Paragraph (c)(5)(i) requires waiver of any provisions that may be construed to prohibit *ex parte* communications regarding the settlement offer between the Commission and staff involved in litigating the proceeding. Paragraph (c)(5)(ii) requires waiver of any right to claim bias or prejudgment by the Commission arising from the Commission's consideration or discussion concerning settlement of all or any part of the proceeding.

Revision Comment: The Commission considered but declined to accept one commenter's suggestion that the rule regarding settlements should retain a provision of former Rule 8(a)(3) that, where the Commission deemed it appropriate, the Commission also may give the party making an offer an opportunity to make an oral presentation. The Commission considers hundreds of settlement offers each year. Given the volume of settlements, it would require significant resources to rule on oral presentation requests, to address collateral disputes if a request was denied, and to hear presentations if requests were granted. While the Commission has authority to permit oral presentations at any time, *see* Rule 451, based on its experience, the Commission does not believe that oral presentations by a respondent in support of a written offer of settlement would aid the Commission's decisional process.

Rule 250. Motion for Summary Disposition

(a) After a respondent's answer has been filed and, in an enforcement or a disciplinary proceeding, documents have been made available to that respondent for inspection and copying pursuant to Rule 230, the respondent, or the interested division may make a motion for summary disposition of any or all allegations of the order instituting proceedings with respect to that respondent. If the interested division has not completed presentation of its case in chief, a motion for summary disposition shall be made only with leave of the hearing officer. The facts of the pleadings of the party against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by that party, by uncontested affidavits, or by facts officially noted pursuant to Rule 323.

(b) The hearing officer shall promptly grant or deny the motion for summary disposition or shall defer decision on the motion. The hearing officer may grant the motion for summary disposition if there is no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition as a matter of law. If it appears that a party, for good cause shown, cannot present by affidavit prior to hearing facts essential to justify opposition to the motion, the hearing officer shall deny or defer the motion. A hearing officer's decision to deny leave to file a motion for summary disposition is not subject to interlocutory appeal.

(c) The motion for summary disposition, supporting memorandum of points and authorities, and any declarations, affidavits or attachments shall not exceed 35 pages in length.

Comment: The rule applies to enforcement proceedings and disciplinary proceedings as well as any other proceeding in which a hearing is scheduled. Motions for disposition prior to hearing may provide particular benefits in regulatory proceedings. Enforcement or disciplinary proceedings in which a motion for disposition prior to hearing would be appropriate are likely to be less common. Typically, enforcement and disciplinary proceedings that reach litigation involve genuine disagreement between the parties as to material facts. Where a genuine issue as to material facts clearly exists as to an issue, it would be inappropriate for a party to seek leave to file a motion for summary disposition or for a hearing officer to grant the motion. While partial disposition may be appropriate in some cases, a hearing will still often be necessary in order to determine a respondent's state of mind and the need for remedial sanctions if liability is found.

Summary disposition is a procedure that can resolve issues prior to hearing, thereby reducing the costs of hearing and expediting resolution of the proceeding. The possibility that such motions may simplify the proceeding should not be allowed to delay the planned start of the hearing, however. The hearing officer is authorized to set schedules for the submission of summary disposition motions in order to prevent the use of such motions as a tactic for delay or as a means for needlessly increasing the costs of prehearing preparation. The hearing officer may deny or defer a ruling on such a motion if it is not filed timely in light of the prehearing schedule. Nothing in Rule 250 should be construed to create a right to prehearing depositions or other discovery not otherwise provided for by these rules in order to support or oppose such a motion.

Revision Comment: Most major agencies in the federal system have made available some form of summary disposition procedure. *See Puerto Rico Aqueduct & Sewer Authority* v. *EPA*, 35 F.3d 600, 606 (1st Cir. 1994), *cert. denied*, 115 S. Ct. 1096 (1995) (listing agencies that provide for summary disposition). Rule 250 expressly permits a dispositive motion prior to hearing to be made to and decided by the hearing officer, a reversal of practice under former Rule 11(e) which required such decisions to be made by the Commission.

One commenter recommended that the proposed rule allowing for dispositive motions be modified to permit a procedure similar or identical to a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure. That commenter also recommended that a summary judgment remedy be available to respondents only, unless a staff motion for summary judgment triggered a respondent's right to take discovery depositions to secure evidence necessary to show the existence of a genuine factual dispute.

The Commission gave detailed consideration to both proposals. Rule 250 balances the potential efficiency gained by allowing the hearing officer to eliminate unnecessary hearings in some

cases against the costs of allowing additional motions, prehearing procedures and the attendant delay in cases where a hearing in which all evidence can be presented and witness demeanor can be observed is warranted.

As noted in the Revision Comment to Rule 232, pretrial procedures developed under the Federal Rules of Civil Procedure, including summary judgment under Rule 56, must be viewed in context. The Federal Rules of Civil Procedure govern a judicial system that deals most frequently with disputes between private parties. Unlike in Commission proceedings, in the typical private party civil action there is no opportunity to conduct a pre-filing investigation with the use of subpoenas; no formal opportunity such as a Wells submission, *see* 17 CFR 202.5(c), for the opposing party to present reasons against the initiation of an action; and no panel of public officials, such as the Commission, that must authorize the filing of a complaint. In addition, because of the priority of criminal caseloads, there is a high premium on providing trial dates for civil matters. Thus, the rationales that justify prehearing summary disposition procedures under the Federal Rules of Civil Procedure do not apply equally to Commission administrative proceedings.

Also as noted in the Revision Comment to Rule 232, the statutory schedule for cease-and-desist proceedings provides no realistic opportunity for summary judgment procedures comparable to those allowed under the Federal Rules of Civil Procedure. It is the Commission's view, therefore, that procedures to allow for the disposition of a case prior to hearing have a potentially useful role in the administrative process, but one that is more limited than summary judgment under the Federal Rules of Civil Procedure.

It was also suggested that the Commission should permit the use of affidavits in support of a motion for summary disposition. The text of the proposed rule did not set forth any limitation on the filing of affidavits in connection with a dispositive motion. The comment to the proposed rule, however, stated that affidavits were not contemplated. After further consideration, the Commission has decided that affidavits or declarations should be allowed, subject to limitations on their length.

Typically, Commission proceedings that reach litigation involve basic disagreement as to material facts. Based on past experience, the circumstances when summary disposition prior to hearing could be appropriately sought or granted will be comparatively rare. Consistent with the goal of various other rules to facilitate the hearing officer's control over the prehearing scheduling, the revised rule requires leave of the hearing officer prior to filing a motion for summary disposition at any time prior to completion of the interested division's case in chief. *See* Rules 221 and 222. Such leave shall be granted only for good cause shown, and if consideration of the motion will not delay the scheduled start of the hearing.

The Commission will monitor closely the use of the procedures for disposition prior to hearing to determine whether they operate as intended to create more streamlined proceedings and an elimination of needless hearings, or whether the availability of such procedures operates as a source of delay, expense or harassment.

Rules Regarding Hearings

Rule 300. Hearings

Hearings for the purpose of taking evidence shall be held only upon order of the Commission. All hearings shall be conducted in a fair, impartial, expeditious and orderly manner.

Rule 301. Hearings to Be Public

All hearings, except hearings on applications for confidential treatment filed pursuant to Rule 190, hearings held to consider a motion for a protective order pursuant to Rule 322, and hearings on *ex parte* application for a temporary cease-and-desist order, shall be public unless otherwise ordered by the Commission on its own motion or the motion of a party. No hearing shall be nonpublic where all respondents request that the hearing be made public.

Rule 302. Record of Hearings

(a) *Recordation.* Unless ordered otherwise by the hearing officer or the Commission, all hearings shall be recorded and a written transcript thereof shall be prepared.

(b) *Availability of a Transcript.* Transcripts of public hearings shall be available for purchase at prescribed rates. Transcripts of nonpublic proceedings, and transcripts subject to a protective order pursuant to Rule 322, shall be available for purchase only by parties, provided, however, that any person compelled to submit data or evidence in a hearing may purchase a copy of his or her own testimony.

(c) *Transcript Correction.* Prior to the filing of post-hearing briefs or proposed findings and conclusions, or within such earlier time as directed by the Commission or the hearing officer, a party or witness may make a motion to correct the transcript. Proposed corrections of the transcript may be submitted to the hearing officer by stipulation pursuant to Rule 324, or by motion. Upon notice to all parties to the proceeding, the hearing officer may, by order, specify corrections to the transcript.

Comment (b): The Administrative Procedure Act (APA) provides that any person compelled to submit data or evidence in a non-investigatory proceeding may purchase a copy of his or her own testimony. *See* 5 U.S.C. 555(c). In addition, Section 11 of the Federal Advisory Committee Act (FACA) requires that an agency make available copies of transcripts of agency proceedings as defined in Section 551(12) of the APA, 5 U.S.C. § 555(c). *See* FACA, 5 U.S.C. App. (1988), 86 Stat. 770.

Rule 310. Failure to Appear at Hearings: Default

Any person named in an order instituting proceedings as a person against whom findings may be made or sanctions imposed who fails to appear at a hearing of which he or she has been duly notified may be deemed to be in default pursuant to Rule 155(a). A party may make a motion to set aside a default pursuant to Rule 155(b).

Rule 320. Evidence: Admissibility

The Commission or the hearing officer may receive relevant evidence and shall exclude all evidence that is irrelevant, immaterial or unduly repetitious.

Comment: Rule 320 restates the Administrative Procedure Act (APA) standard for the reception of evidence. 5 U.S.C. 556(c)(3) and (d). While Section 556 of the APA applies only to proceedings which are "on the record" pursuant to 5 U.S.C. 554(a), Rule 320 applies to all proceedings, as defined in Rule 101(a), before the Commission or a hearing officer.

Rule 321. Evidence: Objections and Offers of Proof

(a) *Objections.* Objections to the admission or exclusion of evidence must be made on the record and shall be in short form, stating the grounds relied upon. Exceptions to any ruling thereon by the hearing officer need not be noted at the time of the ruling. Such exceptions will be deemed waived on appeal to the Commission, however, unless raised:

(1) pursuant to interlocutory review in accordance with Rule 400;

(2) in a proposed finding or conclusion filed pursuant to Rule 340; or

(3) in a petition for Commission review of an initial decision filed in accordance with Rule 410.

(b) *Offers of Proof.* Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the record. Excluded material shall be retained pursuant to Rule 350(b).

Rule 322. Evidence: Confidential Information, Protective Orders

(a) *Procedure.* In any proceeding as defined in Rule 101(a), a party; any person who is the owner, subject or creator of a document subject to subpoena or which may be introduced as evidence; or any witness who testifies at a hearing may file a motion requesting a protective order to limit from disclosure to other parties or to the public documents or testimony that contain confidential information. The motion should include a general summary or extract of the documents without revealing confidential details. If the movant seeks a protective order against disclosure to other parties as well as the public, copies of the documents shall not be served on other parties. Unless the documents are unavailable, the movant shall file for *in camera* inspection a sealed copy of the documents as to which the order is sought.

(b) *Basis for Issuance.* Documents and testimony introduced in a public hearing are presumed to be public. A motion for a protective order shall be granted only upon a finding that the harm resulting from disclosure would outweigh the benefits of disclosure.

(c) *Requests for Additional Information Supporting Confidentiality.* A movant under paragraph (a) of this rule may be required to furnish in writing additional information with respect to the grounds for confidentiality. Failure to supply the information so requested within five days from the date of receipt by the movant of a notice of the information required shall be deemed a waiver of the objection to public disclosure of that portion of the documents to which the additional information relates, unless the Commission or the hearing officer shall otherwise order for good cause shown at or before the expiration of such five-day period.

(d) *Confidentiality of Documents Pending Decision.* Pending a determination of a motion under this rule, the documents as to which confidential treatment is sought and any other documents that would reveal the confidential information in those documents shall be maintained under seal and shall be disclosed only in accordance with orders of the Commission or the hearing officer. Any order issued in connection with a motion under this rule shall be public unless the order would disclose information as to which a protective order has been granted, in which case that portion of the order that would reveal the protected information shall be nonpublic.

Comment: A protective order under Rule 322 is available only in proceedings as defined in Rule 101(a). Rule 322 is distinct from other Commission rules relating to the treatment of requests for preserving the confidentiality of information. *See* 17 CFR 200.83 (providing for procedures by which persons submitting information generally to the Commission can request that the information not be disclosed pursuant to a request under the Freedom of Information Act, 5 U.S.C. § 552). *See also* Rule 190 (specifying procedures by which registrants may request confidential treatment of certain information contained in regulatory filings).

Revision Comment: The former Rules of Practice did not have a provision that specifically allowed the entry of protective orders for documents submitted as evidence in connection with a hearing. Former Rule 25 related solely to applications for confidential treatment of materials filed in connection with registration statements and other such filings and required that confidential treatment be sought at the time of filing. Proposed Rule 33 allowed a party to seek confidential treatment under any "applicable statute or rule," without limiting the scope of materials sought to be protected or the timing of the application. The proposed rule was intended to allow for issuance of a protective order in connection with a hearing. Rule 322 has been added to clarify the availability of protective orders for documents filed or testimony given in an adjudicative proceeding.

Comment was requested as to whether the filing of an application for confidential treatment of evidentiary information should be permitted *ex parte*. The Commission has decided that allowing such filings will not be necessary because Rule 322 allows a party to file a motion containing a general summary or extract of the materials without revealing confidential details.

Rule 323. Evidence: Official Notice

Official notice may be taken of any material fact which might be judicially noticed by a district court of the United States, any matter in the public official records of the Commission, or any matter which is peculiarly within the knowledge of the Commission as an expert body. If official notice is requested or taken of a material fact not appearing in the evidence in the record, the parties, upon timely request, shall be afforded an opportunity to establish the contrary.

Comment: This provision is based on Section 556(e) of the Administrative Procedure Act, 5 U.S.C. § 556(e).

Rule 324. Evidence: Stipulations

The parties may, by stipulation, at any stage of the proceeding agree upon any pertinent facts in the proceeding. A stipulation may be received in evidence and, when received, shall be binding on the parties to the stipulation.

Revision Comment: Stipulation as to facts not in dispute can aid in the efficient conduct of a hearing and reduce costs for all parties. Rule 324 has been added to clarify that stipulations may be entered into at any stage of the proceeding, including prior to the start of the hearing. Rule 324 is based, in part, on Rule 324 of the Model Adjudication Rules, Administrative Conference of the United States (Dec. 1993).

Rule 325. Evidence: Presentation Under Oath or Affirmation

A witness at a hearing for the purpose of taking evidence shall testify under oath or affirmation.

Rule 326. Evidence: Presentation, Rebuttal and Cross-examination

In any proceeding in which a hearing is required to be conducted on the record after opportunity for hearing in accord with 5 U.S.C. 556(a), a party is entitled to present its case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as, in the discretion of the Commission or the hearing officer, may be required for a full and true disclosure of the facts. The scope and form of evidence, rebuttal evidence, if any, and cross-examination, if any, in any other proceeding shall be determined by the Commission or the hearing officer in each proceeding.

Comment: The requirements of Section 556 of the Administrative Procedure Act, including those regarding the right to present evidence, submit rebuttal evidence and conduct cross-examination, apply only to "formal" adjudications: those hearings

required by statute to be conducted "on the record" after opportunity for hearing. *See* 5 U.S.C. §§ 554(a), 556(a). In contrast, "informal" adjudications are proceedings where the statutory requirement for an "opportunity for hearing" does not specifically require the hearing to be held "on the record." The Commission may, but is not required to, follow procedures mandated for "formal" adjudications under Section 556 in "informal" adjudications. Thus, in cases of "informal" adjudication, such as a proceeding as to whether a temporary cease-and-desist order should be entered, the respondent's opportunity to put on live witnesses at the hearing may be limited. *See also* Rule 191 (regarding adjudications not required to be determined on the record after notice and opportunity for hearing); Rules 510–513 (regarding temporary cease-and-desist orders).

Rule 340. Proposed Findings, Conclusions and Supporting Briefs

(a) *Opportunity to File.* Before an initial decision is issued, each party shall have an opportunity, reasonable in light of all the circumstances, to file in writing proposed findings and conclusions together with, or as a part of, its brief.

(b) *Procedure.* Proposed findings of fact must be supported by citations to specific portions of the record. If successive filings are directed, the proposed findings and conclusions of the party assigned to file first shall be set forth in serially numbered paragraphs, and any counter statement of proposed findings and conclusions must, in addition to any other matter, indicate those paragraphs of the proposals already filed as to which there is no dispute. A reply brief may be filed by the party assigned to file first, or, where simultaneous filings are directed, reply briefs may be filed by each party, within the period prescribed therefor by the hearing officer. No further briefs may be filed except with leave of the hearing officer.

(c) *Time for Filing.* In any proceeding in which an initial decision is to be issued:

(1) At the end of each hearing, the hearing officer shall, by order, after consultation with the parties, prescribe the period within which proposed findings and conclusions and supporting briefs are to be filed. The party or parties directed to file first shall make its or their initial filing within 30 days of the end of the hearing unless the hearing officer, for good cause shown, permits a different period and sets forth in the order the reasons why the different period is necessary.

(2) The total period within which all such proposed findings and conclusions and supporting briefs and any counter statements of proposed findings and conclusions and reply briefs are to be filed shall be no longer than 90 days after the close of the hearing unless the hearing officer, for good cause shown, permits a different period and sets forth in an order the reasons why the different period is necessary.

Comment (a): Rule 340 is based on Section 557(c) of the Administrative Procedure Act, 5 U.S.C. § 557(c). By its terms, Section 557(c) applies only to proceedings "on the record" after opportunity to be heard. *See* Comment to Rule 326. Consistent with longstanding Commission practice, however, Rule 340 mandates an opportunity for submission of findings and conclusions in any case in which an initial decision is to be prepared, whether or not the proceeding is "on the record." The limitation in Rule 340 that the opportunity to submit proposed findings and conclusions be "reasonable in light of all the circumstances" grants the hearing officer or the Commission discretion to restrict the time allowed for filing findings and conclusions. For example, in emergency proceedings, an abbreviated period might be appropriate. Rule 340 does not apply to proceedings in which the Commission itself presides at the taking of evidence since no initial decision is issued in such circumstances. In such a case—for example, where a temporary cease-and-desist order is sought—the Commission has complete discretion whether to allow for post-hearing submissions.

The rule requires that each proposed finding must be supported by appropriate citations to the record. Filings that fail to meet this requirement may be subject to sanctions pursuant to Rule 180.

Rule 350. Record in Proceedings Before Hearing Officer; Retention of Documents; Copies

(a) *Contents of the Record.* The record shall consist of:

(1) the order instituting proceedings, each notice of hearing and any amendments;

(2) each application, motion, submission or other paper, and any amendments, motions, objections, and exceptions to or regarding them;

(3) each stipulation, transcript of testimony and document or other item admitted into evidence;

(4) each written communication accepted by the hearing officer pursuant to Rule 210;

(5) with respect to a request to disqualify a hearing officer or to allow the hearing officer's withdrawal under Rule 112, each affidavit or transcript of testimony taken and the decision made in connection with the request;

(6) all motions, briefs and other papers filed on interlocutory appeal;

(7) all proposed findings and conclusions;

(8) each written order issued by the hearing officer or Commission; and

(9) any other document or item accepted into the record by the hearing officer.

(b) *Retention of Documents Not Admitted.* Any document offered in evidence but excluded, and any document marked for identification but not offered as an exhibit, shall not be considered a part of the record. The Secretary shall retain any such documents until the later of the date upon which a Commission order ending the proceeding becomes final, or the conclusion of any judicial review of the Commission's order.

(c) *Substitution of Copies.* A true copy of a document may be substituted for any document in the record or any document retained pursuant to paragraph (b) of this rule.

Rule 351. Transmittal of Documents to Secretary; Record Index; Certification

(a) *Transmittal From Hearing Officer to Secretary of Partial Record Index.* The hearing officer may, at any time, transmit to the Secretary motions, exhibits or any other original documents filed with or accepted into evidence by the hearing officer, together with an index of such documents. The hearing officer, may, by order, require the interested division or other persons to assist in promptly transporting such documents from the hearing location to the Office of the Secretary.

(b) *Preparation, Certification of Record Index.* Promptly after the close of the hearing, the hearing officer shall transmit to the Secretary an index of the originals of any motions, exhibits or any other documents filed with or accepted into evidence by the hearing officer that have not been previously transmitted to the Secretary, and the Secretary shall prepare a record index. Prior to issuance of an initial decision, or if no initial decision is to be prepared, within 30 days of the close of the hearing, the Secretary shall transmit the record index to the hearing officer and serve a copy of the record index on each party. Any person may file proposed corrections to the record index with the hearing officer within 15 days of service of the record index. The hearing officer shall, by order, direct whether any corrections to the record index shall be made. The Secretary shall make such corrections, if any, and issue a revised record index. If an initial decision is to be issued, the initial decision shall include a certification that the record consists of the items set forth in the record index or revised record index issued by the Secretary.

(c) *Final Transmittal of Record Items to the Secretary.* After the close of the hearing, the hearing officer shall transmit to the Secretary originals of any motions, exhibits or any other documents filed with, or accepted into evidence by, the hearing officer, or any other portions of the record that have not already been transmitted to the Secretary. Prior to service of the initial decision by the Secretary, or if no initial decision is to be issued, within 60 days of the close of the hearing, the Secretary shall inform the hearing officer if any portions of the record are not in the Secretary's custody.

Comment: The Office of the Secretary is responsible for custody and safekeeping of administrative proceedings records. Hearings, however, are often held away from the Commission's Headquarters in Washington. Exhibits introduced at such hearings or filings made directly with the hearing officer (*see* Rule 151) may be voluminous. Rule 350 establishes procedures to facilitate and safeguard the transfer to the Secretary of motions, exhibits or other record items filed with the hearing officer. Parties and other persons are afforded a specific opportunity to object if they believe that the certified record is incomplete.

Rule 360. Initial Decision of Hearing Officer

(a) *When Required.* Unless the Commission directs otherwise, the hearing officer shall prepare an initial decision in any proceeding in which the Commission directs a hearing officer to preside at a hearing, provided, however, that an initial decision may be waived by the parties with the consent of the hearing officer pursuant to Rule 202.

(b) *Content.* An initial decision shall include: findings and conclusions, and the reasons or basis therefor, as to all the material issues of fact, law or discretion presented on the record and the appropriate order, sanction, relief, or denial thereof. The initial decision shall also state the time period, not to exceed 21 days after service of the decision, except for good cause shown, within which a petition for review of the initial decision may be filed. The reasons for any extension of time shall be stated in the initial decision. The initial decision shall also include a statement that, as provided in paragraph (d) of this rule:

(1) the initial decision shall become the final decision of the Commission as to each party unless a party files a petition for review of the initial decision or the Commission determines on its own initiative to review the initial decision as to a party; and

(2) if a party timely files a petition for review or the Commission takes action to review as to a party, the initial decision shall not become final with respect to that party.

(c) *Filing, Service and Publication.* The hearing officer shall file the initial decision with the Secretary. The Secretary shall promptly serve the initial decision upon the parties and shall promptly publish notice of the filing thereof in the *SEC News Digest.* Thereafter, the Secretary shall publish the initial decision in the *SEC Docket*; provided, however, that in nonpublic proceedings no notice shall be published unless the Commission otherwise directs.

(d) *When Final.* (1) Unless a party or an aggrieved person entitled to review files a petition for review in accordance with the time limit specified in the initial decision, or unless the Commission on its own initiative orders review pursuant to Rule 411, an initial decision shall become the final decision of the Commission.

(2) If a petition for review is timely filed by a party or an aggrieved person entitled to review, or if the Commission upon its own initiative has ordered review of a decision with respect to a party or a person aggrieved who would be entitled to review, the initial decision shall not become final as to that party or person.

(e) *Order of Finality.* In the event that the initial decision becomes the final decision of the Commission with respect to a party, the Commission shall issue an order that the decision has become final as to that party. The order of finality shall state the date on which sanctions, if any, take effect. Notice of the order shall be published in the *SEC News Digest* and the *SEC Docket.*

Comment (a): Paragraph (a) is based on Section 557(b) of the Administrative Procedure Act (APA), 5 U.S.C. § 557(b).

Comment (b): The first sentence of paragraph (b), is based on Section 557(c)(3) of the APA, 5 U.S.C. § 557(c)(3).

Comment (d): Paragraph (d) is based on Sections 557(b) and 704 of the APA, 5 U.S.C. §§ 557(b) and 704. In certain limited circumstances, a non-party may be aggrieved by a decision and entitled to seek review. *See, e.g.*, Exchange Act § 25(a)(1), 15 U.S.C. § 78y(a)(1).

Comment (e): The order of finality provides formal notice that the initial decision will not be reviewed. An initial decision automatically becomes final, however, with the passage of time even if the order of finality is not issued. Formal notice to a respondent that an initial decision has become final is not required for the decision to take effect. A respondent is able to ascertain when the period for filing a petition for review pursuant to Rule 410, or for initiation of review on the Commission's initiative pursuant to Rule 411, has expired. When an initial decision becomes final, any collateral consequences from entry of a final order take effect immediately. Sanctions pursuant to the decision may not be immediately effective, however. Rule 601 specifies when amounts owing pursuant to a disgorgement or penalty order become due. In addition, some period of time may be necessary or appropriate after an initial decision becomes final before sanctions should take effect, for example, to allow a respondent to provide for an orderly termination of a business upon effectiveness of a suspension or bar. Ordinarily, the initial decision will specify when sanctions will take effect if the initial decision becomes final. If the initial decision or applicable rule does not specify when sanctions are to become final, the Commission will enter an appropriate order. The Secretary has delegated authority to fix the date when sanctions become effective. *See* 17 CFR 200.30–7.

Appeal to the Commission and Commission Review

Rule 400. Interlocutory Review

(a) *Availability.* The Commission will not review a hearing officer's ruling prior to its consideration of the entire proceeding in the absence of extraordinary circumstances. The Commission may decline to consider a ruling certified by a hearing officer pursuant to paragraph (c) of this rule if it determines that interlocutory review is not warranted or appropriate under the circumstances. The Commission may, at any time, on its own motion, direct that any matter be submitted to it for review.

(b) *Expedited Consideration.* Interlocutory review of a hearing officer's ruling shall be expedited in every way, consistent with the Commission's other responsibilities.

(c) *Certification Process.* A ruling submitted to the Commission for interlocutory review must be certified in writing by the hearing officer and shall specify the material relevant to the

ruling involved. The hearing officer shall not certify a ruling unless:

(1) his or her ruling would compel testimony of Commission members, officers or employees or the production of documentary evidence in their custody; or

(2) upon application by a party, within five days of the hearing officer's ruling, the hearing officer is of the opinion that:

(i) the ruling involves a controlling question of law as to which there is substantial ground for difference of opinion; and

(ii) an immediate review of the order may materially advance the completion of the proceeding.

(d) *Proceedings Not Stayed.* The filing of an application for review or the grant of review shall not stay proceedings before the hearing officer unless he or she, or the Commission, shall so order. The Commission will not consider the motion for a stay unless the motion shall have first been made to the hearing officer.

Comment: Rule 400 is based in part on rules governing interlocutory review of the decisions of a United States district court by a court of appeals. *See* 28 U.S.C. § 1292(b). In contrast to the practice in the federal judicial system, however, the Commission may take up a matter on its own motion at any time, even if a hearing officer does not certify it for interlocutory review.

The requirement in paragraph (b) that interlocutory review be "expedited in every way, consistent with the Commission's other responsibilities," conforms to the standard for review in Rules 102(e)(3) and 500. Interlocutory matters should be promptly resolved in order to allow for the timely completion of the entire proceeding.

Revision Comment: The structure of this rule has been significantly modified to break out each of the rule's substantive provisions and thereby improve its readability. Other changes in the rule are technical and are intended only to clarify its operation.

One commenter recommended that a hearing officer's decision with respect to a motion that he or she be disqualified be subject to interlocutory review and that the rule contain an express provision making immediately appealable any decision not to quash a subpoena as requested by a third-party recipient. The Commission has decided not to incorporate these recommendations. Either is subject to interlocutory review if the hearing officer determines that the decision meets the standards of paragraph (c). Moreover, the decision whether to subpoena a witness is best made by the hearing officer who is most familiar with the details of the proceeding.

Rule 401. Issuance of Stays

(a) *Procedure.* A request for a stay shall be made by written motion, filed pursuant to Rule 154, and served on all parties pursuant to Rule 150. The motion shall state the reasons for the relief requested and the facts relied upon, and, if the facts are subject to dispute, the motion shall be supported by affidavits or other sworn statements or copies thereof. Portions of the record relevant to the relief sought, if available to the movant, shall be filed with the motion. The Commission may issue a stay based on such motion or on its own motion.

(b) *Scope of Relief.* The Commission may grant a stay in whole or in part, and may condition relief under this rule upon such terms, or upon the implementation of such procedures, as it deems appropriate.

(c) *Stay of a Commission Order.* A motion for a stay of a Commission order may be made by any person aggrieved thereby who would be entitled to review in a federal court of appeals. A motion seeking to stay the effectiveness of a Commission order pending judicial review may be made to the Commission at any time during which the Commission retains jurisdiction over the proceeding.

(d) *Stay of an Action by a Self-Regulatory Organization.*

(1) *Availability.* A motion for a stay of an action by a self-regulatory organization for which the Commission is the appropriate regulatory agency, for which action review may be sought pursuant to Rule 420, may be made by any person aggrieved thereby.

(2) *Summary Entry.* A stay may be entered summarily, without notice and opportunity for hearing.

(3) *Expedited Consideration.* Where the action complained of has already taken effect and the motion for stay is filed within 10 days of the effectiveness of the action, or where the action complained of, will, by its terms, take effect within five days of the filing of the motion for stay, the consideration of and decision on the motion for a stay shall be expedited in every way, consistent with the Commission's other responsibilities. Where consideration will be expedited, persons opposing the motion for a stay may file a statement in opposition within two days of service of the motion unless the Commission, by written order, shall specify a different period.

Comment: The Commission has stated that it "generally considers four factors" when evaluating the appropriateness of a stay of its own orders:

(1) whether there is a strong likelihood that a party will succeed on the merits in a proceeding challenging the particular Commission action (or, if the other factors strongly favor a stay, that there is a substantial case on the merits); (2) whether, without a stay, a party will suffer irreparable injury; (3) whether there will be substantial harm to any person if the stay were granted; and (4) whether the issuance of a stay would likely serve the public interest.

Order Preliminarily Considering Whether to Issue Stay Sua Sponte and Establishing Guidelines for Seeking Stay Applications, Exchange Act Release No. 33870 (Apr. 7, 1994), 56 SEC Docket 1189, 1190–91 (Apr. 26, 1994). The evaluation of the factors enumerated by the Commission, according to the release, will vary with the "equities and circumstances" of the case before the Commission. *Id. See also In re Hibbard, Brown & Co. et al.*, Admin. Proc. File No. 3–8418, SEC Press Release No. 94–72 (Aug. 2, 1994) at 4.

The General Counsel has been delegated the authority to decide whether a stay should be granted. 17 CFR 200.30–14(g)(5), (6). Such decisions by the General Counsel are subject to review pursuant to Rule 430.

The Commission may condition the grant of a stay on such terms or upon the implementation of such procedures as it deems appropriate. For example, where a respondent seeks a stay of a disgorgement order, the Commission may require safeguards, such as establishment of an escrow, that would assure that funds will be available for payment at a later date if the disgorgement order is upheld.

Comment (c): Rule 401(c) requires that a motion for a stay of a Commission order pending review by a court be made to the Commission while the Commission retains jurisdiction over the proceeding. Other than a temporary cease-and-desist order, which is subject to judicial review in the first instance in a United States District Court, Commission orders are reviewable by a court of appeals. *See, e.g.*, Exchange Act § 25, 15 U.S.C. 78y (governing judicial review of final orders of the Commission generally), Exchange Act § 21C(d)(2), 15 U.S.C. § 78u–3(d)(2) (governing judicial review of temporary cease-and-desist orders). The Commission loses jurisdiction to grant a stay of an order subject to review in a court of appeals only after the record is filed in a court of appeals. *See, e.g.*, Exchange Act §§ 25(a)(3), (c)(2), 15 U.S.C. 78y(a)(3), (c)(2), and Fed. R. App. P. 18.

Comment (d): This paragraph is based on Section 19(d) of the Exchange Act, 15 U.S.C. § 78s(d), and former Exchange Act Rule 19d–2, 17 CFR 240.19d–2 (1994).

The provision for expedited consideration in paragraph (d)(3) is based on the requirement of Section 19(d)(2) that the Commission establish an expedited procedure for consideration and determination of the question of a stay for "appropriate cases." The Commission has established a guideline for the timely determination of such requests. *See* 17 CFR 201.900 (Informal Procedures and Supplementary Information Concerning Adjudicatory Proceedings). A self-regulatory organization controls the effective date of the sanctions it imposes. If it desires additional time to address the issue of whether a stay should issue, it may consider delaying the effective date of its order. If the determination complained of has not taken effect, the time limits for the filing of opposing and reply briefs would be those set forth in Rule 154.

Revision Comment: A commenter suggested that the Commission amend the rule to include substantive standards under which a stay shall be granted or to identify the criteria the Commission applies in considering a request for a stay. As noted in the comment to Rule 401, earlier this year the Commission reiterated in a release the factors generally considered when evaluating the appropriateness of a stay under Section 25(c)(2) of the Exchange Act. Order Preliminarily Considering Whether to Issue Stay Sua Sponte and Establishing Guidelines for Seeking Stay Applications, Exchange Act Release No. 33870 (Apr. 7, 1994). The Commission believes that the long-standing enunciation of its policy with respect to such stays provides sufficient guidance.

A commenter suggested that the Commission reconsider its rule allowing motions for stays of a self-regulatory organization (SRO) determination, including a final SRO disciplinary action, to be made "at any time." The commenter proposed that a person seek a stay within 10 days of the filing of an SRO disciplinary decision pursuant to Section 19(d)(1) of the Exchange Act, 15 U.S.C. 78s(d)(1). The Commission does not agree that respondents should be required to request a stay within such a limited period. Requiring a stay to be sought within a fixed time would place respondents who may have no reason to seek a stay immediately at a disadvantage, as they may be entitled to a stay or other relief as the result of changed circumstances at a later time. *Cf.* Rule 512(e).

Exchange Act Section 19(d)(2) requires that in "appropriate cases" the Commission establish an expedited procedure for consideration and determination of the question of a stay. Expedited consideration is appropriate when a sanction or other action complained of has already taken effect or will take effect prior to the time a decision could be made without expedited consideration.

Rule 410. Appeal of Initial Decisions by Hearing Officers

(a) *Petition for Review; When Available.* In any proceeding in which an initial decision is made by a hearing officer, any party, and any other person who would have been entitled to judicial review of the decision entered therein if the Commission itself had made the decision, may file a petition for review of the decision with the Commission.

(b) *Procedure.* The petition for review of an initial decision shall be filed with the Commission within such time after service of the initial decision as prescribed by the hearing officer pursuant to Rule 360(b). The petition shall set forth the specific findings and conclusions of the initial decision as to which exception is taken, together with supporting reasons for each exception. Supporting reasons may be stated in summary form. Any exception to an initial decision not stated in the petition for review, or in a previously filed proposed finding made pursuant to Rule 340, may, at the discretion of the Commission, be deemed to have been waived by the petitioner.

(c) *Financial Disclosure Statement Requirement.* Any person who files a petition for review of an initial decision that asserts that person's inability to pay either disgorgement, interest or a penalty shall file with the opening brief a sworn financial disclosure statement containing the information specified in Rule 630(b).

(d) *Opposition to Review.* A party may seek leave to file a brief in opposition to a petition for review within five days of the filing of the petition. The Commission will grant leave, or order the filing of an opposition on its own motion, only if it determines that briefing will significantly aid the decisional process. A brief in opposition shall identify those issues which do not warrant consideration by the Commission and shall state succinctly the reasons therefore.

(e) *Prerequisite to Judicial Review.* Pursuant to Section 704 of the Administrative Procedure Act, 5 U.S.C. 704, a petition to the Commission for review of an initial decision is a prerequisite to the seeking of judicial review of a final order entered pursuant to such decision.

Comment (a)–(b): Pursuant to Section 557(c) of the Administrative Procedure Act, 5 U.S.C § 557(c), in adjudications required to be conducted "on the record after opportunity for agency hearing," a party is entitled to a reasonable opportunity to file exceptions to the initial decision and supporting reasons for the exceptions or proposed findings or conclusions. The Commission's practice, reflected in paragraph (a), is to provide an opportunity to file exceptions in all proceedings where an initial decision is to be made, not only those in "on-the-record" or "formal" adjudication. *See* Comments to Rules 100 and 191.

Except in limited cases as specified in Rule 411(b)(1) when the right of appeal is mandatory, the Commission, after considering a petition for review, may determine not to hear an appeal or to limit the issues on appeal. Administrative Procedure Act § 557(b), 5 U.S.C § 557(b) ("[o]n appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule"). *Cf.* Section 4A(b) of the Exchange Act, 15 U.S.C. § 78d–1(b) (providing a right to appeal certain decisions to the Commission).

The standards for granting a petition for review are set forth in Rule 411. Under these standards, the Commission grants a petition for review in virtually all cases. The product of a consensus over many years, this result represents a Commission determination that there is a benefit to joint deliberation by the Commission when exception is taken to an initial decision.

Comment (c): In order to make a determination with respect to whether disgorgement, interest or a penalty is appropriate for a respondent who raises inability to pay as an issue, the Commission must have access to complete and current financial information. Although financial disclosure may have occurred during the course of a hearing, by the time an initial decision and petition for review are filed that information is not likely to be current. Accordingly, a current financial disclosure statement is required if a petition for review raises exceptions concerning inability to pay.

Comment (d): The Commission has rarely found grounds for denial of a petition for review under its long-standing standards for determining whether to grant review, now set forth in Rule 411(b). Therefore, routine opposition to a petition for review

serves little purpose. Accordingly, leave from the Commission must be sought prior to filing an opposition to a petition for review. Where the Commission believes briefing would significantly assist its decisional process, it may grant leave to file an opposition or order such a filing. The Commission has delegated authority to the General Counsel to determine whether to grant requests for leave to file an opposition. *See* 17 CFR 200.30–14.

Revision Comments: Comment was requested as to (1) whether, notwithstanding the potential benefits of preparing a petition for review, the requirement for a petition should be eliminated where an appeal is provided as of right by Section 4A(b) of the Exchange Act; and (2) whether, in light of the Commission's longstanding practice of granting virtually all petitions for review, the requirement of filing a petition for review should be eliminated.

One commenter supported retaining the petition for review and suggested that the petition for review is a more appropriate mechanism for noticing an appeal because it helps clarify issues and provides more information than the notice of appeal used under the Federal Rules of Appellate Procedure.

The Commission grants virtually all petitions for review. Although Commission review in a particular case can be time consuming, it establishes authoritative precedent applicable to other cases and promotes accountability for, and confidence in, the Commission's adjudicatory process. Commission review of those cases in which review is sought has tended to encourage acceptance of hearing officers' decisions and to promote the settlement of cases even prior to hearing in similar cases, thereby reducing the overall adjudicatory workload.

The Commission has decided to retain the petition for review process for all cases including those where a right to appeal is statutorily required. The petition for review is a summary document and requires limited resources to prepare. Requiring the petition, however, enhances the efficiency of the appeals process for both the Commission and parties by focusing attention from an early point on those issues considered most significant by the petitioner. Thus, the petition for review offers substantial benefits both to the Commission and to petitioners.

As proposed, the rule would have allowed the filing of an opposition to review by any person opposing review. As noted by one commenter, given the Commission's practices with respect to the grant of petitions for review, an opposition to review serves little benefit to either the Commission or the parties, except in those rare cases where there is a genuine issue as to the necessity or appropriateness of review. As revised, the rule allows a party to seek leave to file a brief in opposition to a petition for review. The Commission believes this mechanism will limit the unnecessary expenditure of time or resources in routine oppositions to petitions for review while allowing, in appropriate cases, for other parties to be heard in opposition. The Commission retains discretion to direct the filing of an opposition on its motion in any case.

Comment was requested as to whether, after the filing of a petition for review, a 10- or 15-day period would be more realistic for filing a brief in opposition to a petition for review or a petition for summary affirmance. As revised, the Rule provides a 10-day period for a person to seek leave to file an opposition. If leave is granted, the Commission will specify the time allowed for filing a brief. Provisions related specifically to the filing of a motion for summary affirmance have been deleted.

Rule 411. Commission Consideration of Initial Decisions by Hearing Officers

(a) *Scope of Review.* The Commission may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, an initial decision by a hearing officer and may make any findings or conclusions that in its judgment are proper and on the basis of the record.

(b) *Standards for Granting Review Pursuant to a Petition for Review.*

(1) *Mandatory Review.* After a petition for review has been filed, the Commission shall review any initial decision that:

(i) denies any request for action pursuant to Section 8(a) or Section 8(c) of the Securities Act of 1933, 15 U.S.C. 77h (a), (c), or the first sentence of Section 12(d) of the Exchange Act, 15 U.S.C. 78*l*(d);

(ii) suspends trading in a security pursuant to Section 12(k) of the Exchange Act, 15 U.S.C. 78*l*(k); or

(iii) is in a case of adjudication (as defined in 5 U.S.C. 551) not required to be determined on the record after notice and opportunity for hearing (except to the extent there is involved a matter described in 5 U.S.C. 554(a) (1) through (6)).

(2) *Discretionary Review.* The Commission may decline to review any other decision. In determining whether to grant review, the Commission shall consider whether the petition for review makes a reasonable showing that:

(i) a prejudicial error was committed in the conduct of the proceeding; or

(ii) the decision embodies:

(A) a finding or conclusion of material fact that is clearly erroneous; or

(B) a conclusion of law that is erroneous; or

(C) an exercise of discretion or decision of law or policy that is important and that the Commission should review.

(c) *Commission Review Other Than Pursuant to a Petition for Review.* The Commission may, on its own initiative, order review of any initial decision, or a portion of any initial decision, within 21 days after the end of the period established for filing a petition for review pursuant to Rule 410(b) or any brief in opposition to a petition for review permitted pursuant to Rule 410(d). A party who does not intend to file a petition for review, and who desires the Commission's determination whether to order review on its own initiative to be made in a shorter time, may make a motion for an expedited decision, accompanied by a written statement that the party waives its right to file a petition for review. The vote of one member of the Commission, conveyed to the Secretary, shall be sufficient to bring a matter before the Commission for review.

(d) *Limitations on Matters Reviewed.* Review by the Commission of an initial decision shall be limited to the issues specified in the petition for review or the issues, if any, specified in the briefing schedule order issued pursuant to Rule 450(a). On notice to all parties, however, the Commission may, at any time prior to issuance of its decision, raise and determine any other matters that it deems material, with opportunity for oral or written argument thereon by the parties.

(e) *Summary Affirmance.* The Commission may summarily affirm an initial decision based upon the petition for review and any response thereto, without further briefing, if it finds that no issue raised in the petition for review warrants further consideration by the Commission.

(f) *Failure to Obtain a Majority.* In the event a majority of participating Commissioners do not agree to a disposition on the merits, the initial decision shall be of no effect, and an order will be issued in accordance with this result.

Comment (a): Section 557(b) of the Administrative Procedure Act, 5 U.S.C § 557(b), provides that "[o]n appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."

Comment (b): Paragraph (b) is based, in part, on the requirements of Exchange Act Section 4A, 15 U.S.C. § 78d-1.

Comment (c): Paragraph (c) is based, in part, on the requirements of Exchange Act Section 4A.

Before the Commission determines whether to order review of an issue on its own motion, petitions for review and cross-petitions, if any, should be filed in accordance with Rule 410(b) and opposition briefs, if any, should be filed in accordance with Rule 410(d). Under Rule 411(c), there is a 21-day period after the end of the period for the filing of a petition for review during which the Commission may determine whether to grant review. If time is allowed for filing an opposition, there would be a corresponding increase in the time allowed for the Commission to order review on its own motion.

Comment (e): A provision for summary affirmance was added to the Rules of Practice in 1964 based upon Recommendation Number 9 of the Administrative Conference of the United States (ACUS). *See* also ACUS Recommendation No. 68–6 (suggesting that an agency may accord administrative finality to an initial decision by summarily affirming the initial decision or denying a petition for review). Summary affirmance may be appropriate when exception is taken to conclusions of law, but there is no genuine dispute as to any material facts, or when the Commission believes that deliberation by the Commission would not be useful or appropriate. Summary affirmance has very rarely been granted. *But see In the Matter of Joseph A. Lugo,* Exchange Act Release No. 25982 (Aug. 8, 1988), 41 SEC Docket 946 (Aug 23, 1988) (petitioners failed to file required briefs).

Revision Comment (c): The period during which the Commission can determine whether to grant review on its own initiative has been extended from 15 days to 21 days to conform to the 21-day period allowed in Rule 450(a)(2) for the issuance of a briefing schedule order.

Revision Comment (e): Comment was requested as to whether, in light of the Commission's summarily affirming an initial decision only rarely, the possibility of a summary affirmance should be eliminated. One commenter objected to summary affirmance based solely upon the petition for review and suggested that to the extent that review of an initial decision can be denied at the Commission's discretion, summary affirmance is unnecessary and counteracts the benefits of joint deliberation. The commenter suggested that if summary affirmance is retained it should be considered only after briefs have been filed, and should not be available at all where the Commission has granted review based upon a reasonable showing of error.

While summary affirmance has rarely been used in the past, the Commission's adjudication workload changes over time. Summary affirmance provides a potentially useful mechanism to resolve quickly certain cases. The Commission has decided to retain summary affirmance as a mechanism for disposition of appropriate cases. *See In the Matter of Joseph Lugo,* Admin. Proc. File No. 3–6740 (Aug. 8, 1988), Exchange Act Release No. 25982, 41 SEC Docket 946 (1988) (petitioners failed to file required briefs).

Rule 420. Appeal of Determinations by Self-Regulatory Organizations

(a) *Application for Review; When Available.* An application for review by the Commission may be filed by any person who is aggrieved by a determination of a self-regulatory organization with respect to any

(i) final disciplinary sanction;

(ii) denial or conditioning of membership or participation;

(iii) prohibition or limitation in respect to access to services offered by that self-regulatory organization or a member thereof; or

(iv) bar from association as to which a notice is required to be filed with the Commission pursuant to Section 19(d)(1) of the Exchange Act, 15 U.S.C. 78s(d)(1).

(b) *Procedure.* An application for review may be filed with the Commission pursuant to Rule 151 within 30 days after notice of the determination was filed with the Commission pursuant to Section 19(d)(1) of the Exchange Act, 15 U.S.C. 78s(d)(1), and received by the aggrieved person applying for review. The application shall be served by the applicant on the self-regulatory organization. The application shall identify the determination complained of, set forth in summary form a brief statement of alleged errors in the determination and supporting reasons therefor and state an address where the applicant can be served with the record index. The application shall be accompanied by the notice of appearance required by Rule 102(d).

(c) *Determination Not Stayed.* Filing an application for review with the Commission pursuant to paragraph (b) of this rule shall not operate as a stay of the complained of determination made by the self-regulatory organization unless the Commission otherwise orders either pursuant to a motion filed in accordance with Rule 401 or on its own motion.

(d) *Certification of the Record; Service of the Index.* Fourteen days after receipt of an application for review or a Commission order for review, the self-regulatory organization shall certify and file with the Commission one copy of the record upon which the action complained of was taken, and shall file with the Commission three copies of an index to such record, and shall serve upon each party one copy of the index.

Comment: Rule 420 (a) and (b) are based in part on Exchange Act Section 19(d)(2), 15 U.S.C § 78s(d)(2).

Comment (b): It is the responsibility of the person seeking review to assure that the application for review is actually received by the Commission within the time limit provided. *See* Rule 151. While a method of service that provides proof of delivery is not mandatory, in the event there is a question as to whether an application was timely filed, it is the applicant's burden to establish when the filing was made.

Commission review of self-regulatory organization determinations for which an application may be filed pursuant to paragraph (a) is required by statute. The purpose of the statement of alleged errors and supporting reasons is to provide general notice of the basis for the application, not to justify the need for review. Citations to the record are not required because at the time the application is filed the record index has not been served on the applicant.

Revision Comment (a)–(d): Rules 420 and 421 are the only rules within the Rules of Practice limited expressly to self-regulatory organization (SRO) determinations. The substantive provisions of former Exchange Act Rules 19d–2 (concerning applications for stays of SRO determinations) and 19d–3 (concerning applications for review of SRO determinations generally) have been incorporated into Rules 420, 421 and other rules in the Rules of Practice. Rules 19d–2 and 19d–3 have been revised to cross-reference the Rules of Practice. Their substantive provisions have been deleted. These two rules were not deleted entirely at this time in order to provide a transition period for the updating of reference works, materials published by SROs and other guides relied upon by associated persons of SROs or others who seek information about the Commission's review of SRO determinations.

Comment was requested whether, in light of the potential benefits of a

summary statement of the contested issues early in the review process, respondents appealing the determination of an SRO should be required to file a petition for review that includes a statement of the issues on review and the alleged errors by the SRO. The National Association of Securities Dealers (NASD) suggested that the application for review process should require parallel levels of specificity with the petition for review process governing appeals from an initial decision of a hearing officer. The NASD commented that it believes that the Commission's obligation to conduct a *de novo* review of an SRO disciplinary proceeding requires that the Commission apply a non-deferential standard of review, but does not mandate that the Commission raise issues that the party seeking review overlooked.

The NASD suggested, therefore, that the Rules should provide that issues not raised by the party seeking review are deemed waived. The NASD asserted that briefs filed by the NASD with the Commission typically address not only those issues raised by the parties seeking review, but all issues that the NASD believes that the Commission may wish to address. The NASD stated that in its view, "[i]t is not uncommon for briefs to devote more discussion to issues that are not in dispute than those that have been raised by the parties." Letter from T. Grant Callery, V.P. and General Counsel, NASD, to Jonathan G. Katz, Secretary, SEC 25 n.63 (Jan. 31, 1994).

The Commission believes that the *de novo* standard requires consideration of the entire record of a proceeding including material issues on that record, even if the parties have themselves failed to raise those issues. Over the 10-year period from 1983 through 1992, review of NASD disciplinary sanctions has been sought in less than five percent of all cases. Commission opinions on review play a critical role in setting standards for the securities industry. While it is not inconsistent with a *de novo* standard for the Commission to expect the parties to raise material issues and to bring forward relevant portions of the record, the Commission should not, as a matter of policy, ignore material issues or allow errors unaddressed by the parties to stand. Moreover, since the person seeking review would not have a record index at the time an application for review is filed, failure to note an exception at this preliminary stage would not constitute a waiver of any matters.

In response to the suggestions of the NASD, Rule 420 requires the person seeking review to make a summary statement of alleged errors in the determination complained of, so as to give the Commission and other parties notice of issues on review. This procedure allows the Commission to make a more informed briefing schedule order, pursuant to Rule 450, and to provide earlier opportunities for all parties to consider the content of their briefs.

The NASD also suggested that the Rules of Practice should provide that the Commission give parties notice and an opportunity to address any additional issues that the Commission raises in an administrative appeal. The NASD urged that adoption of a policy advising litigants when the Commission is raising an issue sua sponte could make SRO briefs "more focused, more succinct, and presumably more helpful."

Revised Rule 421(b) states that the Commission will provide an opportunity for supplemental briefing with respect to issues not raised by the parties when the Commission believes such briefing would significantly aid the decisional process. Supplemental briefing is not appropriate, however, in each case where the parties overlook an issue deemed material by the Commission. For example, where the law on an issue overlooked by the parties is clear, requiring briefs can inject unnecessary delay and expense with no corresponding benefit to the Commission or the parties.

Comment was also requested whether the requirement to include a financial disclosure statement if a respondent makes a claim of inability to pay should be extended to SRO proceedings. One commentator agreed that the requirement should be added, for purposes of consistency, to the rules governing appeals from SRO decisions. The Commission has decided not to add a financial disclosure requirement for appeals of SRO sanctions. The Commission, however, may require additional evidence as to a respondent's claim of inability to pay, including submission of a financial disclosure form, in particular cases. See Rule 452 (regarding additional evidence). A self-regulatory organization may choose to impose a financial disclosure requirement when a person intends to argue an inability to pay on appeal to the self-regulatory organization. Such a financial statement would provide a standardized baseline for consideration of claims of inability to pay.

Rule 421. Commission Consideration of Determinations by Self-Regulatory Organizations

(a) *Commission Review Other than Pursuant to a Petition for Review.* The Commission may, on its own initiative, order review of any determination by a self-regulatory organization that could be subject to an application for review, pursuant to Rule 420(a) within 40 days after notice thereof was filed with the Commission pursuant to Section 19(d)(1) of the Exchange Act, 15 U.S.C. 78s(d)(1).

(b) *Supplemental Briefing.* The Commission may at any time prior to issuance of its decision raise or consider any matter that it deems material, whether or not raised by the parties. Notice to the parties and an opportunity for supplemental briefing with respect to issues not briefed by the parties shall be given where the Commission believes that such briefing would significantly aid the decisional process.

Comment: Exchange Act Section 19(e) sets forth standards regarding the scope of the Commission's review of a self-regulatory organizations' imposition of a final disciplinary sanction. Exchange Act Section 19(f) sets forth standards with respect to the Commission's review of a self-regulatory organization's denial of membership or participation to an applicant, the barring of a person from becoming associated with a member of a self-regulatory organization, and a self-regulatory organization's prohibition or limitation of a person with respect to access to services offered by the self-regulatory organization or any member thereof. Among the many opinions in which the Commission and the courts of appeal have explained the scope of the Commission's review under Sections 19(e) and 19(f) are the following: *Schellenbach* v. *SEC*, 989 F.2d 907, 909 (7th Cir. 1993) (in considering an appeal under Section 19(e), Commission undertakes an independent review of facts and law); *Todd & Co.* v. *SEC*, 557 F.2d 1008, 1013 (7th Cir. 1977) (self-regulatory organization rules and actions are subject to full review by Commission, which must base its decision on its own findings); *R.H. Johnson & Co.* v. *SEC*, 198 F.2d 690, 695 (2d Cir.), *cert. denied*, 344 U.S. 855 (1952) (noting that provisions of former 15 U.S.C. § 78o–3 called for *de novo* findings by Commission); *Paul Edward Van Dusen*, 47 S.E.C. 668, 690 (1981) (on appeal taken under Section 19(f), in order to sustain self-regulatory organization's action, Commission must find that grounds on which self-regulatory organization based that action exist, that action was in accordance with organization's rules, and that those rules are, and were applied in a manner, consistent with purposes of Exchange Act); *Sumner B. Cotzin*, 45 S.E.C. 575, 580 (1974) ("[W]e must make our own findings as to the conduct of applicants seeking review of [self-regulatory organization disciplinary action], determine whether such conduct violated the organization's rules, and, if so, determine whether the sanctions imposed are excessive or oppressive having due regard to the public interest.").

Comment (a): Rule 421(a) allows the Commission 40 days to determine whether to order review on its own initiative. The time limit for Commission review is tied to the Commission's receipt of the notice required by Exchange Act Section 19(d)(1), not receipt of the notice by the respondent, since the Commission would have no practical way of knowing when such receipt occurred.

Rule 430. Appeal of Actions Made Pursuant to Delegated Authority

(a) *Scope of Rule.* Any person aggrieved by an action made by authority delegated in §§ 200.30–1 through 200.30–17 of this chapter may seek review of the action pursuant to paragraph (b) of this rule.

(b) *Procedure.* (1) *Notice of Intention to Petition for Review.* A party or any person aggrieved by an action made pursuant to delegated authority may seek Commission review of the action by filing a written notice of intention to petition for review within five days after actual notice to the party of the action or service of notice of the action pursuant to Rule 141(b), whichever is earlier. The notice shall identify the petitioner and the action complained of, and shall be accompanied by a notice of appearance pursuant to Rule 102(d).

(2) *Petition for Review.* Within five days after the filing of a notice of intention to petition for review pursuant to paragraph (b)(1) of this rule, the person seeking review shall file a petition for review containing a clear and concise statement of the issues to be reviewed and the reasons why review is appropriate. The petition shall include exceptions to any findings of fact or conclusions of law made, together with supporting reasons for such exceptions based on appropriate citations to such record as may exist. These reasons may be stated in summary form.

(c) *Prerequisite to Judicial Review.* Pursuant to Section 704 of the Administrative Procedure Act, 5 U.S.C. 704, a petition to the Commission for review of an action made by authority delegated in §§ 200.30–1 through 200.30–17 of this chapter is a prerequisite to the seeking of judicial review of a final order entered pursuant to such an action.

Comment (a): Congress granted the Commission explicit authority to delegate certain functions to an individual commissioner, division directors and others in 1962. Pub. L. No. 87–592, 76 Stat. 394. This authority appears in Sections 4A and 4B of the Exchange Act, 15 U.S.C. 78d–1 and 78d–2, and was amended most recently in 1987. *See* Pub. L. No. 100–181, Title III, § 308(a), 101 Stat. 1254. The predecessor rule to Rules 430 and 431, former Rule 26, was adopted in 1963. *See* Securities Act Release No. 4588 (Mar. 8, 1963) (adopting release).

Due to the different nature of matters delegated to hearing officers, senior staff or the duty officer, the Commission's rules provide different mechanisms for review of such actions. *See* Rules 410 and 411 (procedures relating to initial decisions by a hearing officer); 17 CFR 200.43 (procedures relating to duty officer). Rule 430 relates to certain delegations made to staff. It applies only to review of actions taken pursuant to authority delegated in 17 CFR 200.30–1 through 200.30–17. Authority delegated by other provisions—for example, the delegation of authority to issue subpoenas pursuant to a private order directing investigation ("formal order")—is not subject to the Rule.

Comment (b): Decisions made by division directors or other senior staff pursuant to delegated authority often relate to registration statements, proxy statements, applications, periodic filings or other matters which are highly time sensitive. Generally, the record in actions made pursuant to delegated authority is not extensive. The rule therefore requires a prompt decision by a party as to whether review will be sought. Under Rule 430, a party or other aggrieved person must file a notice of intent to petition for review within five days after actual notice of the decision, or within five days after service of a written decision pursuant to Rule 141(b), whichever is earlier. Actual notice of a decision pursuant to delegated authority may be conveyed by any means, including a telephone call. The required information in a petition for review is essentially the same as that required for a petition for review of a hearing officer's initial decision. *See* Rule 410(b).

Rule 431. Commission Consideration of Actions Made Pursuant to Delegated Authority

(a) *Scope of Review.* The Commission may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, any action made pursuant to authority delegated in §§ 200.30–1 through 200.30–17 of this chapter.

(b) *Standards for Granting Review Pursuant to a Petition for Review.*

(1) *Mandatory Review.* After a petition for review has been filed, the Commission shall review any action that it would be required to review pursuant to Rule 411(b)(1) if the action was made as the initial decision of a hearing officer.

(2) *Discretionary Review.* The Commission may decline to review any other action. In determining whether to grant review, the Commission shall consider the factors set forth in Rule 411(b)(2).

(c) *Commission Review Other Than Pursuant to a Petition for Review.* The Commission may, on its own initiative, order review of any action made pursuant to delegated authority at any time, provided, however, that where there are one or more parties to the matter, such review shall not be ordered more than ten days after the action. The vote of one member of the Commission, conveyed to the Secretary, shall be sufficient to bring a matter before the Commission for review.

(d) *Required Items in an Order for Review.* In an order granting a petition for review or directing review on the Commission's own initiative, the Commission shall set forth the time within which any party or other person may file a statement in support of or in opposition to the action made by delegated authority and shall state whether a stay shall be granted, if none is in effect, or shall be continued, if in effect pursuant to paragraph (e) of this rule.

(e) *Automatic Stay of Delegated Action.* An action made pursuant to delegated authority shall have immediate effect and be deemed the action of the Commission. Upon filing with the Commission of a notice of intention to petition for review, or upon notice to the Secretary of the vote of a Commissioner that a matter be reviewed, an action made pursuant to delegated authority shall be stayed until the Commission orders otherwise, provided, however, there shall be no automatic stay of an action:

(1) to grant a stay of action by the Commission or a self-regulatory organization as authorized by 17 CFR 200.30–14(g)(5)–(6); or

(2) to commence a subpoena enforcement proceeding as authorized by 17 CFR 200.30–4(a)(10).

(f) *Effectiveness of Stay or of Commission Decision to Modify or*

Reverse a Delegated Action. As against any person who shall have acted in reliance upon any action at a delegated level, any stay or any modification or reversal by the Commission of such action shall be effective only from the time such person receives actual notice of such stay, modification or reversal.

Comment: See Comment (a) to Rule 430.

Comment (b): Paragraph (b) is based, in part, on requirements of Exchange Act Section 4A, 15 U.S.C. § 78d-1.

Comment (c): Paragraph (c) is based, in part, on requirements of Exchange Act Section 4A, 15 U.S.C. § 78d-1. In practice, the authority to review decisions on the Commission's own initiative is used very rarely.

Revision Comment (c): Comment was requested as to whether the period in which the Commission could order review on its own initiative should be retained at five days or extended to 15 days. One commenter supported the extension of the period to 10 days. The Commission has adopted a 10-day standard.

Revision Comment (e): After publication of the proposed rules, the delegation to the Director of the Division of Enforcement was amended to permit the Director to authorize a subpoena enforcement proceeding in Federal Court. *See* 17 CFR 200.30–4(a)(10). Under Rule 431, the Director's decision to commence a proceeding is not automatically stayed when notice of intention to file a petition for review is given since a stay would unnecessarily disrupt judicial proceedings commenced on the basis of the Director's decision. The presence of a Federal judge overseeing the subpoena enforcement proceeding makes an automatic stay unnecessary for the limited period before the Commission reviews the Director's decision.

Rule 450. Briefs Filed with the Commission

(a) *Briefing Schedule Order.* Other than review ordered pursuant to Rule 431, if review of a determination is mandated by statute, rule, or judicial order or the Commission determines to grant review as a matter of discretion, the Commission shall issue a briefing schedule order directing the party or parties to file opening briefs and specifying particular issues, if any, as to which briefing should be limited or directed. Unless otherwise provided, opening briefs shall be filed within 40 days of the date of the briefing schedule order. Opposition briefs shall be filed within 30 days after the date opening briefs are due. Reply briefs shall be filed within 14 days after the date opposition briefs are due. No briefs in addition to those specified in the briefing schedule order may be filed except with leave of the Commission. The briefing schedule order shall be issued:

(1) at the time the Commission orders review on its own initiative pursuant to Rules 411 or 421, or orders interlocutory review on its own motion pursuant to Rule 400(a); or

(2) within 21 days, or such longer time as provided by the Commission, after:

(i) the last day permitted for filing a petition for review pursuant to Rule 410(b) or a brief in opposition to a petition for review pursuant to Rule 410(d);

(ii) receipt by the Commission of an index to the record of a determination of a self-regulatory organization filed pursuant to Rule 420(d);

(iii) receipt by the Commission of the mandate of a court of appeals with respect to a judicial remand; or

(iv) certification of a ruling for interlocutory review pursuant to Rule 400(c).

(b) *Contents of Briefs.* Briefs shall be confined to the particular matters at issue, Each exception to the findings or conclusions being reviewed shall be stated succinctly. Exceptions shall be supported by citation to the relevant portions of the record, including references to the specific pages relied upon, and by concise argument including citation of such statutes, decisions and other authorities as may be relevant. If the exception relates to the admission or exclusion of evidence, the substance of the evidence admitted or excluded shall be set forth in the brief, in an appendix thereto, or by citation to the record. Reply briefs shall be confined to matters in opposition briefs of other parties.

(c) *Length Limitation.* Opening and opposition briefs shall not exceed 50 pages and reply briefs shall not exceed 25 pages, exclusive of pages containing the table of contents, table of authorities, and any addendum, except with leave of the Commission.

Comment (a): When the Commission reviews an action made by delegated authority pursuant to Rules 430 and 431, briefs are generally not submitted and no briefing schedule order is required.

Under Rule 450, the first brief on the merits would usually be due 40 days from the date of the scheduling order. The rules allot substantial time prior to issuance of the scheduling order for filing of a petition for review or, in the case of an appeal from a self-regulatory organization decision, for filing of a notice pursuant to Exchange Act Rule 19d-1, 17 CFR 240.19d-1, an application for review and the record index. *See* Rule 360 (21-day maximum for filing petition for review of initial decision); Rule 420(b) (30 days for filing application for review of determination by self-regulatory organization); Rule 420(d) (14 days to file record index). The time taken by the Commission to issue the briefing schedule order—up to 21 days in the ordinary case—affords additional time for parties to review the record and begin preparation of a merits brief. Accordingly, requests for extensions of time to file briefs will be disfavored. Failure to file a required brief may be grounds for dismissal. *See* Rule 180(c).

Comment (b): Failure to cite to the record in briefs can result in unnecessary delay, particularly where the record is long. Under Rule 450, the obligation to support claims made in a brief lies with the person submitting the brief. Briefs that fail to include appropriate citations to the record, or to conform to other requirements of the Rules of Practice relating to the form and content of briefs, may be rejected or subject to other sanction. *See* Rule 180(b).

Revision Comment (a): Paragraph (a) requires that if review is granted or ordered, the Commission shall issue a briefing schedule order in all cases except pursuant to Rule 431 for review of an action made pursuant to certain delegated authority. Prior to the submission of merits briefs the Commission will make a formal determination whether to grant petitions for review where review is not mandatory, and in any case may choose to specify particular issues as to which briefing should be limited or directed. Also, where there are cross-petitions for review, there may be particular reasons to designate the side that will file opening briefs. In proceedings arising on review of self-regulatory organization proceedings a scheduling order is useful in assuring that the respondent is on notice of applicable filing deadlines. The briefing schedule order therefore provides an efficient, uniform mechanism for the Commission to address issues raised by a petition for review, to order review on its own initiative if it chooses to do so, and to establish a schedule for the filing of briefs.

As revised, Rule 450 includes a requirement for issuance of a briefing schedule order when the Commission is ordered to conduct further proceedings on remand from a court.

Comment was requested as to whether the time ordinarily allowed for filing of briefs under Rule 450 should be increased to 45 days for the opening brief, 35 days for a brief in opposition and 21 days for a reply brief. One commenter supported such an increase. The Commission has decided, however, that the presumptive filing deadlines set forth in paragraph (a), which are identical to those under the Federal Rules of Appellate Procedure, are reasonable and do not need to be extended in the typical appeal. *See* Fed. R. App. P. 31.

Unless the Commission provides for a longer time, the Commission will have 21 days to issue the briefing schedule order after the filing of the last petition for review or other filing that triggers the issuance of a briefing schedule order. In the revised rule, this period was increased from 15 days to correspond to the 21-day period allowed the Commission pursuant to Rule 411 to decide whether to order review of an initial decision on its own initiative if no petition for review is received.

Ordinarily, issuance of a briefing schedule order will be a ministerial act, undertaken by staff in the Office of the General Counsel, pursuant to delegated authority. *See* 17 CFR 200.30–14. Timely issuance of the briefing schedule order is a crucial step in assuring that matters on appeal to the Commission are completed promptly. Consistent with the recommendation of the Task Force on Administrative Proceedings that the Commission itself be involved in resolving problems if proceedings are delayed, the delegation to issue a briefing schedule order is limited. *See, Fair and Efficient Administrative Proceedings: Report of the Task Force on Administrative Proceedings* (1993) at 45. If an order is not issued within the 21-day time-frame established by Rule 450, the Secretary shall submit a proposed order for consideration by the Commission.

Rule 451. Oral Argument Before the Commission

(a) *Availability.* The Commission, on its own motion or the motion of a party or any other aggrieved person entitled to Commission review, may order oral argument with respect to any matter. Motions for oral argument with respect to whether to affirm all or part of an initial decision by a hearing officer shall be granted unless exceptional circumstances make oral argument impractical or inadvisable. The Commission will consider appeals, motions and other matters properly before it on the basis of the papers filed by the parties without oral argument unless the Commission determines that the presentation of facts and legal arguments in the briefs and record and the decisional process would be significantly aided by oral argument.

(b) *Procedure.* Requests for oral argument shall be made by separate motion accompanying the initial brief on the merits. The Commission shall issue an order as to whether oral argument is to be heard, and if so, the time and place therefor. The grant or denial of a motion for oral argument shall be made promptly after the filing of the last brief called for by the briefing schedule. If oral argument is granted, the time fixed for oral argument shall be changed only by written order of the Commission, for good cause shown. The order shall state at whose request the change is made and the reasons for any such change.

(c) *Time Allowed.* Unless the Commission orders otherwise, not more than one half-hour per side will be allowed for oral argument. The Commission may, in its discretion, determine that several persons have a common interest, and that the interests represented will be considered a single side for purposes of allotting time for oral argument. Time will be divided equally among persons on a single side, provided, however, that by mutual agreement they may reallocate their time among themselves. A request for additional time must be made by motion filed reasonably in advance of the date fixed for argument.

(d) *Participation of Commissioners.* A member of the Commission who was not present at the oral argument may participate in the decision of the proceeding, provided that the member has reviewed the transcript of such argument prior to such participation. The decision shall state whether the required review was made.

Comment: Rule 451 is based on former Rule of Practice 21(a) and former Exchange Act Rule 19d-3(f).

Comment (c): The term "side" is used in this rule to indicate that the time allowed is afforded to opposing interests rather than to individual parties. *See* Fed. R. App. P. 34(b). If multiple appellants or appellees have a common interest, they may constitute only a single side.

Revision Comment (a): Comment was requested as to (1) whether the Commission's practice with respect to granting requests for oral argument should be changed to limit the opportunity for oral argument on appeals from decisions of administrative law judges to the most significant cases; and (2) whether the Commission should change its standards for granting oral argument in self-regulatory organization appeals to allow argument only in the most significant cases—such as cases in which fines exceed certain dollar limits, in which a member or associated person with no prior disciplinary record is permanently barred from membership, or in which the decisional process as to an important matter of law would be significantly aided by oral argument.

The Commission received a number of comments on the proposed changes to its oral argument rule. The commenters were divided as to whether the Commission should change its standards for granting oral argument in self-regulatory organization appeals. Some commenters objected to the Commission's current practice of denying oral argument in such proceedings. The comments were also divided as to whether to support the proposed criteria for identifying self-regulatory organization cases that warrant oral argument. One commenter recommended that the Commission provide for oral argument in cases where self-regulatory organization sanctions (either by fine or permanent membership bar) are significant, or where an important issue of law is in question. Another suggested that certain of the proposed criteria (specifically a large fine or bar against a person without a disciplinary record) would not assist the Commission in identifying those self-regulatory organization cases that warrant oral argument. According to this commenter, the total circumstances of the case should be considered. One commenter suggested that as an alternative to increasing oral argument in self-regulatory organization cases, the Commission consider adopting a policy of requesting additional briefing on issues that are of particular interest and not raised by the parties in their briefs. In response to this comment, the Commission has adopted Rule 421(b) relating to supplemental briefing on review of self-regulatory organization determinations.

One commenter supported the proposal to require that requests for oral argument be set forth in a separate motion accompanying the initial brief on the merits. The Commission believes that this requirement will make oral argument requests more readily identifiable than at present.

Where the Commission itself has instituted proceedings, a respondent has a substantial claim for the opportunity to argue directly to the Commission. In the context of issues presented in appeals from self-regulatory organizations, the Commission has determined that, in general, its decisionmaking process would not be significantly aided by oral argument. Accordingly, after careful consideration of the other comments and given the

Commission's decision to adopt Rule 421(b) on supplemental briefing, the Commission has decided to modify its oral argument rule. The Rule continues the Commission policy of ordinarily granting requests for oral arguments on appeals from an initial decision of an administrative law judge, but not holding oral argument on review of a determination by a self-regulatory organization. The Rule makes clear, however, that oral argument will be allowed where the Commission believes the presentation of facts and legal arguments in the briefs and record and the decisional process would be significantly aided by oral argument.

Rule 452. Additional Evidence

Upon its own motion or the motion of a party, the Commission may allow the submission of additional evidence. A party may file a motion for leave to adduce additional evidence at any time prior to issuance of a decision by the Commission. Such motion shall show with particularity that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence previously. The Commission may accept or hear additional evidence, may remand the proceeding to a self-regulatory organization, or may remand or refer the proceeding to a hearing officer for the taking of additional evidence, as appropriate.

Comment: Rule 452 is based on former Rule 21(d) and former Exchange Act Rule 19d-3(e). *See In the Matter of Jonathan Scott Saluk*, Exchange Act Release No. 35371 (Feb. 14, 1995), 58 SEC Docket 2273 (Mar. 14, 1995) (Order Remanding Proceedings) (remand to a self-regulatory organization to consider new evidence not available when decision was reached); *In the Matter of Klaus Langheinrich*, Exchange Act Release No. 32603 (July 8, 1993), 54 SEC Docket 1376 (July 27, 1993) (Order Remanding Proceedings) (remand on motion of Commission to a self-regulatory organization to supplement record with additional evidence).

Rule 460. Record Before the Commission

The Commission shall determine each matter on the basis of the record.

(a) *Contents of the Record.*

(1) In proceedings for final decision before the Commission other than those reviewing a determination by a self-regulatory organization, the record shall consist of:

(i) all items part of the record below in accordance with Rule 350;

(ii) any petitions for review, cross-petitions or oppositions; and

(iii) all briefs, motions, submissions and other papers filed on appeal or review.

(2) In a proceeding for final decision before the Commission reviewing a determination by a self-regulatory organization, the record shall consist of:

(i) the record certified pursuant to Rule 420(d) by the self-regulatory organization;

(ii) any application for review; and

(iii) any submissions, moving papers, and briefs filed on appeal or review.

(b) *Transmittal of Record to Commission.* Within 14 days after the last date set for filing briefs or such later date as the Commission directs, the Secretary shall transmit the record to the Commission.

(c) *Review of Documents Not Admitted.* Any document offered in evidence but excluded by the hearing officer or the Commission and any document marked for identification but not offered as an exhibit shall not be considered a part of the record before the Commission on appeal but shall be transmitted to the Commission by the Secretary if so requested by the Commission. In the event that the Commission does not request the document, the Secretary shall retain the document not admitted into the record until the later of

(1) the date upon which the Commission's order becomes final, or

(2) the conclusion of any judicial review of that order.

Rule 470. Reconsideration

(a) *Scope of Rule.* A party or any person aggrieved by a determination in a proceeding may file a motion for reconsideration of a final order issued by the Commission.

(b) *Procedure.* A motion for reconsideration shall be filed within 10 days after service of the order complained of on each party, or within such time as the Commission may prescribe upon motion of the person seeking reconsideration, if made within the foregoing 10-day period. The motion for reconsideration shall briefly and specifically state the matters of record alleged to have been erroneously decided, the grounds relied upon, and the relief sought. Except with permission of the Commission, a motion for reconsideration shall not exceed 15 pages. No responses to a motion for reconsideration shall be filed unless requested by the Commission.

Comment: This rule is based in part on former Rules of Practice 21(e), Rules 35 and 40 of the Federal Rules of Appellate Procedure with respect to petitions for rehearing, and Rule 450 of the Model Adjudication Rules, Administrative Conference of the United States (Dec. 1993). The page limit for motions for reconsideration is based on the page limit for petitions for reconsideration before federal courts of appeals. A motion for reconsideration is intended to be an exceptional remedy. As a result, Rule 470 provides that no responses to motions for reconsideration shall be filed unless requested by the Commission.

Rule 490. Receipt of Petitions for Judicial Review Pursuant to 28 U.S.C. 2112(a)(1)

The Commission officer and office designated pursuant to 28 U.S.C. 2112(a)(1) to receive copies of petitions for review of Commission orders from the persons instituting review in a court of appeals, are the Secretary and the Office of the Secretary at the Commission's Headquarters. Ten copies of each petition shall be submitted. Each copy shall state on its face that it is being submitted to the Commission pursuant to 28 U.S.C. 2112 by the person or persons who filed the petition in the court of appeals.

Comment: Unless directed otherwise by statute, appeals of Commission orders and decisions to a court of appeals are instituted by the filing of a petition for review in accordance with the Federal Rules of Appellate Procedure. *See* Fed. R. App. P. 15(a). Section 2112(a)(2) of Title 28 of the U.S. Code requires the Commission to designate the officer and office who must receive copies of any petitions for review of Commission orders filed in the federal courts of appeals.

Persons seeking judicial review of Commission orders should be aware that if the Commission receives, within ten days after approval of its order, petitions for judicial review properly filed in more than one court of appeals, the Judicial Panel on Multidistrict Litigation will randomly select one of those courts to have jurisdiction over all cases challenging the order. *See* 28 U.S.C. 2112(a). If no petition for review is received during the 10-day period and petitions are subsequently filed in two or more courts of appeals, the appeal will be heard in the court of appeals where the first petition for review was filed. *Id.*

Rules Relating to Temporary Orders and Suspensions

Rule 500. Expedited Consideration of Proceedings

Consistent with the Commission's or the hearing officer's other responsibilities, every hearing shall be held and every decision shall be

rendered at the earliest possible time in connection with:

(a) an application for a temporary sanction, as defined in Rule 101(a), or a proceeding to determine whether a temporary sanction should be made permanent;

(b) a motion or application to review an order suspending temporarily the effectiveness of an exemption from registration pursuant to Regulations A, B, E or F under the Securities Act, §§ 230.258, 230.336, 230.610 or 230.656 of this chapter; or,

(c) a motion to or petition to review an order suspending temporarily the privilege of appearing before the Commission under Rule 102(e)(3), or a sanction under Rule 180(a)(1).

Comment: Rule 500's requirement that "Consistent with the Commission's or the hearing officer's other responsibilities, every hearing shall be held and every decision shall be rendered at the earliest possible time" is derived from two sources. First, when a temporary cease-and-desist order is entered *ex parte* and the respondent timely seeks Commission review of the decision, the Commission is required by statute to hold a hearing and render its decision "at the earliest possible time." *See, e.g.*, Exchange Act § 21C(d)(1), 15 U.S.C. § 78u–3(d)(1). Second, former Rule 2(e)(3)(iii) contained the requirement that proceedings in connection with Commission review of temporary suspensions of persons appearing or practicing before the Commission "be expedited in every way consistent with the Commission's other responsibilities."

The rule requires expedited consideration when temporary sanctions are sought or ordered against a respondent. Temporary sanction orders generally arise from exigent circumstances. Expedited consideration of the decision whether to enter or continue such an order is necessary both to protect the public from harm, by promptly restraining improper ongoing or threatened activities, and to protect the rights of respondents, who may be adversely affected by an application for a temporary sanction even if the sanction is ultimately denied. After a temporary sanction is entered, fairness to the public—especially persons harmed by violative conduct—and to the respondent further dictates expediting proceedings to determine whether a permanent sanction or other appropriate relief is warranted.

The rule also requires expedited consideration of a motion, application or petition to review a temporary suspension of an exemption from registration, a temporary suspension from practice before the Commission pursuant to Rule 102(e)(3), or a sanction for misconduct during the course of the hearing pursuant to Rule 180(a)(1).

Rule 510. Temporary Cease-and-Desist Orders: Application Process

(a) *Procedure.* A request for entry of a temporary cease-and-desist order shall be made by application filed by the Division of Enforcement. The application shall set forth the statutory provision or rule that each respondent is alleged to have violated; the temporary relief sought against each respondent, including whether the respondent would be required to take action to prevent the dissipation or conversion of assets; and whether the relief is sought *ex parte*.

(b) *Accompanying Documents.* The application shall be accompanied by a declaration of facts signed by a person with knowledge of the facts contained therein, a memorandum of points and authorities, a proposed order imposing the temporary relief sought, and, unless relief is sought *ex parte*, a proposed notice of hearing and order to show cause whether the temporary relief should be imposed. If a proceeding for a permanent cease-and-desist order has not already been commenced, a proposed order instituting proceedings to determine whether a permanent cease-and-desist order should be imposed shall also be filed with the application.

(c) *With Whom Filed.* The application shall be filed with the Secretary or, if the Secretary is unavailable, with the duty officer. In no event shall an application be filed with an administrative law judge.

(d) *Record of Proceedings.* Hearings, including *ex parte* presentations made by the Division of Enforcement pursuant to Rule 513, shall be recorded or transcribed pursuant to Rule 302.

Comment (a)–(c): Rule 510 requires requests for a temporary cease-and-desist order be made by application, not motion, to make clear that the time limitations governing the filing of an opposition to a motion do not apply. The information required in the application and accompanying documents is similar to the type of information required in a request for a temporary restraining order under Rule 65(b) of the Federal Rules of Civil Procedure.

The rule requires the Division of Enforcement to file a declaration of facts and a memorandum of points and authorities in order to provide the Commission with a clearly articulated record on which to base the temporary cease-and-desist order. A declaration may be made by a staff member or any other person.

If notice of the application is to be given to the respondent, the rule requires the Division to file a proposed notice of hearing and order to show cause why a temporary cease-and-desist order should not be issued. A proposed temporary order is also required. If warranted, and with such modifications as may be appropriate, these orders can be entered by the Commission without the delay otherwise required while an order is drafted and then submitted to the Commission.

A temporary cease-and-desist order may only be issued pending a proceeding to determine whether to issue a permanent cease-and-desist order. *See, e.g.*, Exchange Act § 21C(c)(1), 15 U.S.C. § 78u–3(c)(1). If an order instituting proceedings has not already been issued, a proposed order is required so that proceedings can be instituted before action is taken on the application for a temporary cease-and-desist order.

The rule also specifies that the application and accompanying documents are to be filed with the Secretary. The Secretary will promptly forward such documents to each Commissioner. If the Secretary is unavailable, the application may be filed with the duty officer. Rule 151(b), which provides generally that a hearing officer may allow filings to be made with the hearing officer, does not authorize the filing of an application for a temporary cease-and-desist order with an administrative law judge, even if the request for a temporary order arises from an ongoing proceeding where an administrative law judge has been assigned.

Comment (d): Rule 302 requires that except as otherwise ordered, all hearings are to be recorded or transcribed. Paragraph (d) clarifies that the appearance of the Division of Enforcement, *ex parte*, to seek entry of a temporary cease-and-desist order after institution of proceedings constitutes a hearing subject to Rule 302. A Commission meeting prior to the institution of proceedings at which the Commission considers a recommendation by the Division of Enforcement that the Commission authorize the filing of an application for a temporary cease-and-desist order is not a hearing, however, and a transcript of the meeting would not be a part of the record or otherwise available to a respondent.

Revision Comment: As proposed, Rule 510 included a provision allowing the Commission to waive the filing of any or all of the supporting documents that

would ordinarily accompany the application for a temporary cease-and-desist order. The proposed rule also provided that proceedings should be recorded or transcribed "or otherwise memorialized to the extent that circumstances permit." As the comments to the proposed rules stated, the possible waiver of requirements with respect to accompanying documents or the creation of a transcript was included in the proposed rule to address limited circumstances such as the need to hold a hearing in emergency circumstances at night, over a weekend, or when no Commissioners were present in Washington, and certain hearing formalities could not be observed. However, as noted by one commenter, the proposed rule was subject to interpretations which could have allowed the use of waivers more frequently than intended. In addition, consideration of a request for a waiver could raise collateral issues that would delay prompt, effective remedial action.

The Commission has authority under these rules, *see, e.g.,* Rule 161 (extension of time to file documents) and Rule 302 (hearings to be recorded and transcribed except as otherwise ordered), and in its inherent powers as an adjudicative body to respond to truly exigent or emergency conditions. The Commission concluded that the extraordinary circumstances justifying the proposed waivers have been so rare that having separate provisions to account for them is unnecessary at this time.

Rule 511. Temporary Cease-and-Desist Orders: Notice; Procedures for Hearing

(a) *Notice: How Given.* Notice of an application for a temporary cease-and-desist order shall be made by serving a notice of hearing and order to show cause pursuant to Rule 141(b) or, where timely service of a notice of hearing pursuant to Rule 141(b) is not practicable, by any other means reasonably calculated to give actual notice that a hearing will be held, including telephonic notification of the general subject matter, time, and place of the hearing. If an application is made *ex parte*, pursuant to Rule 513, no notice to a respondent need be given prior to the Commission's consideration of the application.

(b) *Hearing Before the Commission.* Except as provided in paragraph (d) of this rule, hearings on an application for a temporary cease-and-desist order shall be held before the Commission.

(c) *Presiding Officer: Designation.* The Chairman shall preside or designate a Commissioner to preside at the hearing. If the Chairman is absent or unavailable at the time of hearing and no other Commissioner has been designated to preside, the duty officer on the day the hearing begins shall preside or designate another Commissioner to preside.

(d) *Procedure at Hearing.*

(1) The presiding officer shall have all those powers of a hearing officer set forth in Rule 111 and shall rule on the admissibility of evidence and other procedural matters, including, but not limited to: whether oral testimony will be heard; the time allowed each party for the submission of evidence or argument; and whether post-hearing submission of briefs, proposed findings of fact and conclusions of law will be permitted and if so, the procedures for submission; provided, however, that the person presiding may consult with other Commissioners participating in the hearing on these or any other question of procedure.

(2) Each Commissioner present at the hearing shall be afforded a reasonable opportunity to ask questions of witnesses, if any, or of counsel.

(3) A party or witness may participate by telephone. Alternative means of remote access, including a video link, shall be permitted in the Commission's discretion. Factors the Commission may consider in determining whether to permit alternative means of remote access include, but are not limited to, whether allowing an alternative means of access will delay the hearing, whether the alternative means is reliable, and whether the party proposing its use has made arrangements to pay for its cost.

(4) After a hearing has begun, the Commission may, on its own motion, or the motion of a party, assign a hearing officer to preside at the taking of oral testimony or other evidence and to certify the record of such testimony or other evidence to the Commission within a fixed period of time. No recommended or initial decision shall be made by such a hearing officer.

Comment (a): If an order instituting proceedings has not been issued prior to the filing of an application for a temporary cease-and-desist order, an order instituting proceedings must be entered in conjunction with entry of a notice of hearing and order to show cause. *See, e.g.,* Exchange Act § 21C(c)(1), 15 U.S.C. § 78u–3(c)(1). Provided that the respondent receives actual notice of the hearing, which may be made by telephone, formal service of the order instituting proceedings pursuant to Rule 141 is not required prior to the commencement of the hearing. Absent a waiver, as provided for in Rule 141(a)(4), furnishing a copy of the order by facsimile transmission would not meet the service requirements of Rule 141. At or promptly after the hearing, however, the Secretary must serve a copy of the order instituting proceedings and the notice of hearing in accord with Rule 141 and the Division of Enforcement must serve its application and accompanying documents pursuant to Rule 150.

Comment (b): Rule 101(a) defines the term "Commission" to include the duty officer as provided for by 17 CFR 200.43. Pursuant to that section, the duty officer may preside at the taking of evidence.

Comment (d): Hearings held pursuant to the Commission's authority to impose a temporary cease-and-desist order are not required to be formal, "on the record" adjudications within the meaning of Sections 554, 556–557 of the Administrative Procedure Act, 5 U.S.C. §§ 554, 556–57. *See Chemical Waste Management, Inc. v. EPA*, 873 F.2d 1477, 1481–82 (D.C. Cir. 1989) (no presumption that a statutory "hearing" requirement compels the agency to undertake a formal "hearing on the record"). A full, trial-type evidentiary hearing will not ordinarily be held because of the exigent nature of the proceedings, the temporary nature of any sanction, and the opportunity for immediate post-sanction review by a federal district court. *See Boddie v. Connecticut*, 401 U.S. 371, 378 (1971) ("The formality and procedural requisites for the hearing can vary, depending upon the importance of the interests involved and the nature of the subsequent proceedings.").

Rule 511(d) incorporates the statutory provision that the hearing does not have to be a formal, trial-type proceeding. The amount of process due will vary based on the facts and circumstances of each case. *See Boddie*, 401 U.S. at 378. The Commission may determine the form of evidence (for example, whether live or by affidavit), the duration of the hearing (for example, by restricting the time for argument) or the extent of post-hearing procedures (for example, whether to allow submissions of post-hearing briefs). Relevant factors in making these determinations may include, among others, the risk of harm to investors or the public, the nature of the alleged or threatened violations, the nature of the proposed sanction, the potential effect of a sanction on the respondent, and the likely duration of the sanction before opportunity for further hearings.

Ordinarily, the Commission expects that the hearing on an application for a temporary cease-and-desist order will proceed on the basis of affidavits and oral argument in similar fashion to a

hearing on a Commission request under Rule 65 of the Federal Rules of Civil Procedure for a temporary restraining order in federal court.

Due to the exigent circumstances in cases in which a temporary cease-and-desist order would be sought, respondents, their counsel and the participating Commission staff may not be able to be present in Washington, D.C., where the Commission ordinarily meets. The rule provides that parties and witnesses may participate by telephone. Alternative technologies that would allow remote access to the hearing may be used in the Commission's discretion.

Revision Comment (b): The comment to proposed Rule 41 noted the recommendation of the Task Force on Administrative Proceedings that applications for temporary cease-and-desist orders be heard by the Commission. The proposed rules provided, in addition, that a hearing could be held before a hearing officer, which was defined as an administrative law judge or duty officer. While the comment noted that "the Commission could make such an assignment when an application for a temporary sanction has arisen during the course of a proceeding already assigned to a hearing officer," the proposed rule did not, by its terms, limit the proceedings that would be assigned to a hearing officer to such rare circumstances.

Referral of a temporary cease-and-desist order application to a hearing officer for hearing and preparation of an initial decision would likely require approximately three days at a minimum, and up to a week or more, depending upon the time allowed for submission of proposed findings of fact and conclusions of law and for the preparation of the initial decision. It would be inconsistent for the Commission to authorize a proceeding in which the Division of Enforcement alleged that there were exigent circumstances warranting a temporary order and to then assign the matter to a hearing officer for preparation of a non-binding initial decision, which would be subject to briefing and argument to the Commission before a binding order could be entered.

After careful consideration, the Commission has decided to require that hearings on an application for a temporary cease-and-desist order be held before the Commission, not a hearing officer. In judicial proceedings on an application for a temporary restraining order, evidence is often submitted solely by affidavit. Proceedings for a temporary cease-and-desist order also may not involve live testimony. The Rules recognize, however, that testimony may be offered and allowed. *See* Rule 510. Due to considerations of efficiency, expertise and the demands of other Commission business, the Commission itself does not ordinarily preside at the taking of testimony in an enforcement or disciplinary proceeding. In recognition of this fact, the rule permits the Commission to assign a hearing officer to preside solely at the taking of testimony and to certify the resulting record to the Commission, without a recommended or initial decision. There would be no argument, briefing or submissions to the hearing officer.

Rule 512. Temporary Cease-and-Desist Orders: Issuance After Notice and Opportunity for Hearing

(a) *Basis for Issuance.* A temporary cease-and-desist order shall be issued only if the Commission determines that the alleged violation or threatened violation specified in an order instituting proceedings whether to enter a permanent cease-and-desist order pursuant to Securities Act Section 8A(a), 15 U.S.C. 77h–1(a), Exchange Act Section 21C(a), 15 U.S.C. 78u–3(a), Investment Company Act Section 9(f)(1), 15 U.S.C. 80a–9(f)(1), or Investment Advisers Act Section 203(k)(1), 15 U.S.C. 80b–3(k)(1), or the continuation thereof, is likely to result in significant dissipation or conversion of assets, significant harm to investors, or substantial harm to the public interest, including, but not limited to, losses to the Securities Investor Protection Corporation, prior to the completion of proceedings on the permanent cease-and-desist order.

(b) *Content, Scope and Form of Order.* Every temporary cease-and-desist order granted shall:

(1) describe the basis for its issuance, including the alleged or threatened violations and the harm that is likely to result without the issuance of an order;

(2) describe in reasonable detail, and not by reference to the order instituting proceedings or any other document, the act or acts the respondent is to take or refrain from taking; and

(3) be indorsed with the date and hour of issuance.

(c) *Effective Upon Service.* A temporary cease-and-desist order is effective upon service upon the respondent.

(d) *Service: How Made.* Service of a temporary cease-and-desist order shall be made pursuant to Rule 141(a). The person who serves the order shall promptly file a declaration of service identifying the person served, the method of service, the date of service, the address to which service was made and the person who made service; provided, however, failure to file such a declaration shall have no effect on the validity of the service.

(e) *Commission Review.* At any time after the respondent has been served with a temporary cease-and-desist order, the respondent may apply to the Commission to have the order set aside, limited or suspended. The application shall set forth with specificity the facts that support the request.

Comment (a): Rule 512(a) sets forth the statutory criteria for issuance of a temporary cease-and-desist order when the order is preceded by notice and an opportunity to be heard. *See, e.g.,* Exchange Act § 21C(c), 15 U.S.C. § 78u-3(c).

Comment (b): Rule 512(b) requires that a temporary cease-and-desist order describe the basis for the order and the acts that the respondent is to take or refrain from taking to comply with the order. These requirements, which are modeled on Rule 65(d) of the Federal Rules of Civil Procedure, are meant to ensure that a respondent will have adequate notice of the constraints placed upon him or her by the order and to provide the predicate notice for enforcement of the order if the respondent fails to comply with it.

Rule 512(b) also requires that a temporary cease-and-desist order be indorsed with the date and hour of issuance. Although a temporary cease-and-desist order is not effective until served, requiring this indorsement minimizes the potential for disputes over when an order was entered. A similar provision is included in Rule 65(b) of the Federal Rules of Civil Procedure.

Comment (c): A temporary cease-and-desist order becomes effective upon service upon the respondent. *See, e.g.,* Exchange Act § 21C(c)(1), 15 U.S.C. § 78u–3(c)(1).

Comment (e): Paragraph (e) is based on statutory provisions permitting respondents to seek to set aside, limit or suspend a temporary order at any time. *See, e.g.,* Exchange Act § 21C(d)(1), 15 U.S.C. § 78u-3(d)(1).

RuIe 513. Temporary Cease-and-Desist Orders: Issuance Without Prior Notice and Opportunity For Hearing

In addition to the requirements for issuance of a temporary cease-and-desist order set forth in Rule 512, the following requirements shall apply if a temporary cease-and-desist order is to be entered without prior notice and opportunity for hearing:

(a) *Basis for Issuance Without Prior Notice and Opportunity for Hearing.* A

temporary cease-and-desist order may be issued without notice and opportunity for hearing only if the Commission determines, from specific facts in the record of the proceeding, that notice and hearing prior to entry of an order would be impracticable or contrary to the public interest.

(b) *Content of the Order.* An *ex parte* temporary cease-and-desist order shall state specifically why notice and hearing would have been impracticable or contrary to the public interest.

(c) *Hearing Before the Commission.* If a respondent has been served with a temporary cease-and-desist order entered without a prior Commission hearing, the respondent may apply to the Commission to have the order set aside, limited, or suspended, and if the application is made within 10 days after the date on which the order was served, may request a hearing on such application. The Commission shall hold a hearing and render a decision on such an application at the earliest possible time. The hearing shall begin within two days of the filing of the application unless the applicant consents to a longer period or the Commission, by order, for good cause shown, sets a later date. The Commission shall render a decision on the application within five calendar days of its filing, provided, however, that the Commission, by order, for good cause shown, may extend the time within which a decision may be rendered for a single period of five calendar days, or such longer time as consented to by the applicant. If the Commission does not render its decision within 10 days of the respondent's application or such longer time as consented to by the applicant, the temporary order shall be suspended until a decision is rendered.

(d) *Presiding Officer, Procedure at Hearing.* Procedures with respect to the selection of a presiding officer and the conduct of the hearing shall be in accordance with Rule 511.

Comment (a): The rule sets forth the statutory requirement for entry of a temporary cease-and-desist order without prior notice. *See, e.g.*, Exchange Act § 21C(c)(1), 15 U.S.C. § 78u-3(c)(1). The requirement that the Commission's determination be based on "specific facts" is modeled on Rule 65(b) of the Federal Rules of Civil Procedure.

Comment (b): The requirement that an *ex parte* order state why it was issued without notice and hearing is modeled on Rule 65(b) of the Federal Rules of Civil Procedure which requires a similar statement of reasons if a temporary restraining order is issued without notice. A statement of the reasons why an order was entered *ex parte* aids the Commission's decisional process by ensuring that the statutory criteria for *ex parte* action have been met and facilitates review of the order. *See* Rule 514 (*ex parte* order must be appealed to the Commission before seeking judicial review).

Comment (c): Rule 513(c) restates the statutory standards with respect to opportunity for a hearing after service of a temporary cease-and-desist order entered *ex parte*. *See, e.g.*, Exchange Act § 21C(d)(1), 15 U.S.C. § 78u–3(d)(1). The requirement that a hearing be held and a decision rendered "at the earliest possible time" is not elaborated upon in the legislative history.

The Due Process Clause of the Fifth Amendment requires that if a person is subject to an *ex parte* deprivation of property, he or she shall be provided a "prompt" opportunity for hearing thereafter. *FDIC* v. *Mallen*, 486 U.S. 230, 241–42 (1988); *Barry* v. *Barchi*, 443 U.S. 55, 65–66 (1979) (hearing must be provided "at a meaningful time") (citation omitted). While the hearing must be held and a decision rendered promptly, judicial decisions should be made in a "considered and deliberate manner," and without excessive or undue haste. *Mallen*, 486 U.S. at 244. The Commission must allow an appropriate amount of time for each party to prepare its case prior to hearing and must allow time for each Commissioner to review all evidence or other submissions and, as necessary, to engage in joint deliberation. *See id.* at 243–244. What would be "possible" in terms of the earliest time for hearing or resolution of a case would depend, therefore, on the specific facts of each case and the Commission's other responsibilities.

When a temporary cease-and-desist order is entered *ex parte*, the respondent must, as a prerequisite to judicial review of the order, first apply to the Commission to have the order set aside, limited or suspended, and the Commission must then hold a hearing, if requested, and render a decision on the application. *See, e.g.*, Exchange Act § 21C(d)(2), 15 U.S.C. § 78u-3(d)(2). While recognizing that some cases may demand more time than others, Rule 513(c) establishes a maximum time limit on the continuing effectiveness of an *ex parte* order pending its review by the Commission.

Under the rule, a hearing on the application to set aside a temporary cease-and-desist order will begin within two days of the filing of the application, unless the respondent requests a longer period or the Commission determines, by order, for good cause shown, that a longer time is necessary. A temporary cease-and-desist order entered *ex parte* will be suspended, however, if the Commission does not hold the hearing and render a decision on an application to set aside, limit or suspend the order within 10 calendar days of the date of application, or such longer time as consented to by the respondent. While the Commission may take as long as needed to decide the application, after the 10-day period or such longer time as consented to by the respondent, the respondent does not remain bound by the temporary order pending the Commission's decision. If the Commission then upholds the temporary cease-and-desist order, the order will once again become binding and the respondent can seek judicial review.

The time limits set forth in Rule 513 are consistent with the statutory time limits established with respect to orders entered after notice and hearing. If an order is entered after notice and hearing, the respondent is allowed to seek judicial review within 10 days of service of the order. Under Rule 513, a respondent will not be subject to an *ex parte* order for any longer than 10 days prior to having the opportunity to seek judicial review.

The provisions of Rule 513(c) are similar to the provisions of Rule 65(b) of the Federal Rules of Civil Procedure, that a party subject to a temporary restraining order obtained without notice may, on two days notice to the adverse party, or such shorter time as permitted by the court, appear and move for dissolution of the temporary restraining order. Rule 65(b) does not require that a hearing be held or a decision on the motion be issued within the two-day period allowed for the making of a motion to dissolve the temporary restraining order. Rather, the rule requires the court to hear and determine the motion "as expeditiously as the ends of justice require." Such motions are ordinarily resolved within the initial 10-day duration of a temporary restraining order. Extension of an *ex parte* temporary restraining order for an additional ten days, though permitted by rule, is uncommon.

Revision Comment (c): By statute, a respondent given notice and opportunity to be heard prior to entry of a temporary cease-and-desist order may seek judicial review of the order within 10 days of service of the order. In contrast, under the proposed rules a respondent could be subject to a temporary order entered *ex parte* for an indefinite period of time without access to judicial review. Judicial review of an *ex parte* order is unavailable until the Commission acts on the respondent's application to set aside, limit or suspend the order. The proposed rules established no time limit for the Commission to act or, in the alternative, for the effectiveness of the order. As adopted, the rule includes standards for the start of the hearing on a respondent's application for review of an *ex parte* order and limits the effectiveness of an *ex parte* order to 10 days after the respondent files an application for review of the order.

Rule 514. Temporary Cease-and-Desist Orders: Judicial Review; Duration

(a) *Availability of Judicial Review.* Judicial review of a temporary cease-and-desist order shall be available as provided in Section 8A(d)(2) of the Securities Act, 15 U.S.C. 77h–1(d)(2), Section 21C(d)(2) of the Exchange Act, 15 U.S.C. 78u–3(d)(2), Section 9(f)(4)(B) of the Investment Company Act, 15 U.S.C. 80a–9(f)(4)(B), or Section 203(k)(4)(B) of the Investment Advisers Act, 15 U.S.C. 80b–3(k)(4)(B).

(b) *Duration.* Unless set aside, limited, or suspended, either by order of the Commission, a court of competent jurisdiction, or a hearing officer acting pursuant to Rule 531, or by operation of Rule 513, a temporary cease-and-desist order shall remain effective and enforceable until the earlier of:

(1) the completion of proceedings to determine whether a permanent order shall be entered; or

(2) 180 days, or such longer time as consented to by the respondent, after issuance of a briefing schedule order pursuant to Rule 540(b), if an initial decision whether a permanent order should be entered is appealed.

Comment: Rule 514(b) sets forth provisions governing the duration of a temporary cease-and-desist order. After entry of a temporary cease-and-desist order, proceedings to determine whether a permanent order is warranted will be assigned to an administrative law judge. The case will follow the same procedural steps as any other proceeding assigned to an administrative law judge for hearing. Depending upon the pace of judicial review of the temporary order, the filing of the respondent's answer, prehearing preparation or the hearing on issuance of the permanent order may take place prior to the completion of judicial review of the temporary order.

Unless set aside, limited, or suspended, either by order of the Commission, a court of competent jurisdiction, or a hearing officer acting pursuant to Rule 531, or pursuant to the operation of Rule 513(c), a temporary cease-and-desist order remains effective and enforceable pending issuance of the administrative law judge's initial decision as to whether a permanent order will be issued. *See, e.g.*, Exchange Act § 21C(c)(1), 15 U.S.C. § 78u–3(c)(1).

Rule 500 requires that during the pendency of the temporary order every hearing be held and every decision be rendered at the earliest possible time, consistent with the Commission's or the hearing officer's other responsibilities. The number of respondents, the complexity of the allegations, the number and location of witnesses and other such factors, however, will affect, to a substantial degree, the length of the hearing before the administrative law judge. Rule 530 provides for expedited preparation of an initial decision once the hearing is concluded. When the initial decision is issued, Rule 531 requires that if the original terms of a temporary order are not to be made permanent, the administrative law judge shall set aside, limit or suspend the terms of the order in accordance with their initial decision. *See* 17 CFR 200.30–9 (authority delegated to the administrative law judges to set aside, limit or suspend temporary orders in accord with an initial decision). Hence, if the initial decision denies a permanent cease-and-desist order, the temporary order may be suspended pending any appeal of the initial decision.

If an initial decision would make a pending temporary order permanent the temporary order will not be suspended. If the initial decision is appealed, the Commission may take as long as needed to reach a decision on the need for a permanent order. Rule 514(b) provides, however, that the temporary order shall be suspended after 180 days from issuance of the briefing schedule order pursuant to Rule 540 in connection with the appeal, or such longer time as consented to by the respondent, if the Commission has not issued its decision by that time.

Rule 520. Suspension of Registration of Brokers, Dealers, or other Exchange Act-Registered Entities: Application

(a) *Procedure.* A request for suspension of a registered broker, dealer, municipal securities dealer, government securities broker, government securities dealer, or transfer agent pending a final determination whether the registration shall be revoked shall be made by application filed by the Division of Enforcement. The application shall set forth the statutory provision or rule that each respondent is alleged to have violated and the temporary suspension sought as to each respondent.

(b) *Accompanying Documents.* The application shall be accompanied by a declaration of facts signed by a person with knowledge of the facts contained therein, a memorandum of points and authorities, a proposed order imposing the temporary suspension of registration sought, and a proposed notice of hearing and order to show cause whether the temporary suspension of registration should be imposed. If a proceeding to determine whether to revoke the registration permanently has not already been commenced, a proposed order instituting proceedings to determine whether a permanent sanction should be imposed shall also be filed with the application.

(c) *With Whom Filed.* The application shall be filed with the Secretary or, if the Secretary is unavailable, with the duty officer. In no event shall an application be filed with an administrative law judge.

(d) *Record of Hearings.* All hearings shall be recorded or transcribed pursuant to Rule 302.

Comment: The Exchange Act provides for the Commission's authority to suspend certain entities registered under the Act. *See* Exchange Act §§ 15(b)(5), 15B(c)(3), 15C(c)(1)(B), 17A(c)(4)(A), 15 U.S.C. §§ 78*o*(b)(5), 78*o*–4(c)(3), 78*o*–5(c)(1)(B), 78q–1(c)(4)(A). The procedures for the suspension of Exchange Act-registered entities are based upon the applicable statutory standards and modeled upon provisions applicable to temporary cease-and-desist order proceedings. From 1936 through 1981, the Commission brought over 30 proceedings to suspend temporarily the registration of a broker or dealer pending final determination whether the registration would be permanently revoked. In contrast to practice before 1981, the Rules provide that the Commission, without prior assignment to a hearing officer for initial decision, will decide applications to suspend a registration pending final determination whether the registration should be permanently revoked.

Rule 521. Suspension of Registration of Brokers, Dealers, or Other Exchange Act-Registered Entities: Notice and Opportunity for Hearing on Application

(a) *How Given.* Notice of an application to suspend a registration pursuant to Rule 520 shall be made by serving a notice of hearing and order to show cause pursuant to Rule 141(b) or, where timely service of a notice of hearing pursuant to Rule 141(b) is not practicable, by any other means reasonably calculated to give actual notice that a hearing will be held,

including telephonic notification of the general subject matter, time, and place of the hearing.

(b) *Hearing: Before Whom Held.* Except as provided in paragraph (d) of this rule, hearings on an application to suspend a registration pursuant to Rule 520 shall be held before the Commission.

(c) *Presiding Officer: Designation.* The Chairman shall preside or designate a Commissioner to preside at the hearing. If the Chairman is absent or unavailable at the time of hearing and no other Commissioner has been designated to preside, the duty officer on the day the hearing begins shall preside or designate another Commissioner to preside.

(d) *Procedure at Hearing.* (1) The presiding officer shall have all those powers of a hearing officer set forth in Rule 111 and shall rule on the admissibility of evidence and other procedural matters, including, but not limited to: whether oral testimony will be heard; the time allowed each party for the submission of evidence or argument; and whether post-hearing submission of briefs, proposed findings of fact and conclusions of law will be permitted and if so, the procedures for submission; provided, however, that the person presiding may consult with other Commissioners participating in the hearing on these or any other question of procedure.

(2) Each Commissioner present at the hearing shall be afforded a reasonable opportunity to ask questions of witnesses, if any, or counsel.

(3) A party or witness may participate by telephone. Alternative means of remote access, including a video link, shall be permitted in the Commission's discretion. Factors the Commission may consider in determining whether to permit alternative means of remote access include, but are not limited to, whether allowing an alternative means of access will delay the hearing, whether the alternative means is reliable, and whether the party proposing its use has made arrangements to pay for its cost.

(4) After a hearing has begun, the Commission may, on its own motion or the motion of a party, assign a hearing officer to preside at the taking of oral testimony or other evidence and to certify the record of such testimony or other evidence to the Commission within a fixed period of time. No recommended or initial decision shall be made.

Rule 522. Suspension of Registration of Brokers, Dealers, or other Exchange Act-Registered Entities: Issuance and Review of Order

(a) *Basis for Issuance.* An order suspending a registration, pending final determination as to whether the registration shall be revoked shall be issued only if the Commission finds that the suspension is necessary or appropriate in the public interest or for the protection of investors.

(b) *Content, Scope and Form of Order.* Each order suspending a registration shall:

(1) describe the basis for its issuance, including the alleged or threatened violations and the harm that is likely to result without the issuance of an order;

(2) describe in reasonable detail, and not by reference to the order instituting proceedings or any other document, the act or acts the respondent is to take or refrain from taking; and

(3) be indorsed with the date and hour of issuance.

(c) *Effective Upon Service.* An order suspending a registration is effective upon service upon the respondent.

(d) *Service: How Made.* Service of an order suspending a registration shall be made pursuant to Rule 141(a). The person who serves the order shall promptly file a declaration of service identifying the person served, the method of service, the date of service, the address to which service was made and the person who made service; provided, however, failure to file such a declaration shall have no effect on the validity of the service.

(e) *Commission Review.* At any time after the respondent has been served with an order suspending a registration, the respondent may apply to the Commission or the hearing officer to have the order set aside, limited, or suspended. The application shall set forth with specificity the facts that support the request.

Comment (b): When an order suspending a registration is issued, there may be trades in process or other commitments which the respondent is obligated to meet as well as other ongoing activities which would have to be addressed to permit an orderly cessation of business. The Rule, therefore, requires a description, in reasonable detail of the act or acts the respondent is to take or refrain from taking. To protect investors or the public, the order may provide that a suspension will be effective in stages, or only after a period of time.

Rule 523. [Reserved]

Rule 524. Suspension of Registrations: Duration

Unless set aside, limited or suspended by order of the Commission, a court of competent jurisdiction, or a hearing officer acting pursuant to Rule 531, an order suspending a registration shall remain effective and enforceable until the earlier of:

(a) the completion of proceedings to determine whether the registration shall be permanently revoked; or

(b) 180 days, or such longer time as consented to by the respondent, after issuance of a briefing schedule order pursuant to Rule 540(b), if an initial decision whether the registration shall be permanently revoked is appealed.

Rule 530. Initial Decision on Permanent Order: Timing for Submitting Proposed Findings and Preparation of Decision

Unless otherwise ordered by the Commission or hearing officer, if a temporary cease-and-desist order or suspension of registration order is in effect, the following time limits shall apply to preparation of an initial decision as to whether such order should be made permanent:

(a) proposed findings and conclusions and briefs in support thereof shall be filed 30 days after the close of the hearing;

(b) the record in the proceedings shall be served by the Secretary upon the hearing officer three days after the date for the filing of the last brief called for by the hearing officer; and

(c) the initial decision shall be filed with the Secretary at the earliest possible time, but in no event more than 30 days after service of the record, unless the hearing officer, by order, shall extend the time for good cause shown for a period not to exceed 30 days.

Rule 531. Initial Decision on Permanent Order: Effect on Temporary Order

(a) *Specification of Permanent Sanction.* If, at the time an initial decision is issued, a temporary sanction is in effect as to any respondent, the initial decision shall specify:

(1) which terms or conditions of a temporary cease-and-desist order, if any, shall become permanent; and

(2) whether a temporary suspension of a respondent's registration, if any, shall be made a permanent revocation of registration.

(b) *Modification of Temporary Order.* If any temporary sanction shall not become permanent under the terms of the initial decision, the hearing officer shall issue a separate order setting aside, limiting or suspending the temporary sanction then in effect in accordance with the terms of the initial decision. The hearing officer shall decline to suspend a term or condition of a temporary cease-and-desist order if it is found that the continued effectiveness of such term or condition is necessary to effectuate any term of the relief ordered in the initial decision, including the payment of disgorgement, interest or penalties. An order modifying temporary sanctions shall be effective 14 days after service. Within one week of service of the order modifying temporary sanctions any party may seek a stay or modification of the order from the Commission pursuant to Rule 401.

Comment: If, after hearing all the evidence as to whether a permanent cease-and-desist order or permanent suspension of registration should be issued, a hearing officer issues an initial decision denying a permanent order, consideration must be given to the necessity for continuation of the temporary order.

Rule 531 requires that the hearing officer modify the temporary sanction order in accordance with the initial decision. *See* 17 CFR 200.30–9 (authority delegated to the administrative law judges to set aside, limit or suspend temporary orders in accord with an initial decision). In order to allow time for each party to seek Commission review of any modification to the temporary sanction, the hearing officer's order will not become effective for 14 days.

The initial decision of the hearing officer to deny a permanent order in whole or in part is reached after all evidence has been heard and briefs have been submitted. By contrast, the decision to enter a temporary sanction, and in the case of a temporary cease-and-desist order, any judicial review, is more limited in scope. Nonetheless, the hearing officer's judgment that continuation of a temporary order is not necessary must be balanced against the fact that the initial decision may be reversed. The Commission's decision whether to stay or modify the hearing officer's order is an interim procedural ruling that is not be subject to judicial review.

Rule 540. Appeal and Commission Review of Initial Decision Making a Temporary Order Permanent

(a) *Petition for Review.* Any person who seeks Commission review of an initial decision as to whether a temporary sanction shall be made permanent shall file a petition for review pursuant to Rule 410, provided, however, that the petition must be filed within 10 days after service of the initial decision.

(b) *Review Procedure.* If the Commission determines to grant or order review, it shall issue a briefing schedule order pursuant to Rule 450. Unless otherwise ordered by the Commission, opening briefs shall be filed within 21 days of the order granting or ordering review, and opposition briefs shall be filed within 14 days after opening briefs are filed. Reply briefs shall be filed within seven days after opposition briefs are filed. Oral argument, if granted by the Commission, shall be held within 90 days of the issuance of the briefing schedule order.

Rule 550. Summary Suspensions Pursuant to Exchange Act Section 12(k)(1)(A)

(a) *Petition for Termination of Suspension.* Any person adversely affected by a suspension pursuant to Section 12(k)(1)(A) of the Exchange Act, 15 U.S.C. 78l(k)(1)(A), who desires to show that such suspension is not necessary in the public interest or for the protection of investors may file a sworn petition with the Secretary, requesting that the suspension be terminated. The petition shall set forth the reasons why the petitioner believes that the suspension of trading should not continue and state with particularity the facts upon which the petitioner relies.

(b) *Commission Consideration of a Petition.* The Commission, in its discretion, may schedule a hearing on the matter, request additional written submissions, or decide the matter on the facts presented in the petition and any other relevant facts known to the Commission. If the petitioner fails to cooperate with, obstructs, or refuses to permit the making of an examination by the Commission, such conduct shall be grounds to deny the petition.

Comment: Exchange Act Section 12(k) authorizes the Commission summarily to suspend trading in securities for 10-day periods, if in its opinion the public interest or the protection of investors so requires. *See* 15 U.S.C. 78*l*(k). Orders suspending trading in particular securities pursuant to Section 12(k)(1)(A) are directed towards a security; they do not name a person or entity as a respondent. Accordingly, Rule 550 establishes a special mechanism to allow persons adversely affected by a suspension to petition for relief.

The usual purpose of a suspension is to alert the investing public that there is insufficient public information about the issuer upon which an informed investment judgment can be made or that the market for the securities may be reacting to manipulative forces or deceptive practices. Consequently, the primary issues normally to be considered by the Commission in determining whether or not a 10-day suspension should be instituted are whether or not there is sufficient public information upon which to base an informed investment decision or whether the market for the security appears to reflect manipulative or deceptive activities.

Rules Regarding Disgorgement and Penalty Payments

Rule 600. Interest on Sums Disgorged

(a) *Interest Required.* Prejudgment interest shall be due on any sum required to be paid pursuant to an order of disgorgement. The disgorgement order shall specify each violation that forms the basis for the disgorgement ordered; the date which, for purposes of calculating disgorgement, each such violation was deemed to have occurred; the amount to be disgorged for each such violation; and the total sum to be disgorged. Prejudgment interest shall be due from the first day of the month following each such violation through the last day of the month preceding the month in which payment of disgorgement is made. The order shall state the amount of prejudgment interest owed as of the date of the disgorgement order and that interest shall continue to accrue on all funds owed until they are paid.

(b) *Rate of Interest.* Interest on the sum to be disgorged shall be computed at the underpayment rate of interest established under Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2), and shall be compounded quarterly. The Commission or the hearing officer may, by order, specify a lower rate of prejudgment interest as to any funds which the respondent has placed in an escrow or otherwise guaranteed for payment of disgorgement upon a final determination of the respondent's liability. Escrow and other guarantee arrangements must be approved by the Commission or the hearing officer prior to entry of the disgorgement order.

Comment: The Commission is authorized to order disgorgement, "including reasonable interest," in any administrative proceeding in which a cease-and-desist order is sought or a civil monetary penalty could be imposed. *See, e.g.*, Exchange Act § 21B(e), 15 U.S.C. 78u–2(e) (monetary penalty proceedings); Exchange Act

§ 21C(e), 15 U.S.C. 78u–3(e) (cease-and-desist proceedings). The purpose of disgorgement in Commission administrative proceedings is to deny a wrongdoer his ill-gotten gains. *See* The Securities Law Enforcement Remedies and Penny Stock Reform Act of 1990, S. Rep. No. 337, 101st Cong., 2d Sess. 16 (1990) ("[D]isgorgement forces a defendant to give up the amount by which he was unjustly enriched."). Unless prejudgment interest is assessed on funds to be disgorged, the wrongdoer benefits unjustly by having had the equivalent of an interest free loan from the victims of his wrongdoing. In order to effectuate fully the remedial purposes of disgorgement, Rule 600 therefore requires that prejudgment interest be assessed on all funds to be disgorged.

Rule 600 prescribes the payment of prejudgment interest at the underpayment rate of interest established under Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2). The Commission or hearing officer, by order, may specify a lower rate of prejudgment interest, however, as to funds which the respondent, with the approval of the Commission or hearing officer, and prior to entry of the disgorgement order, placed in an approved escrow or otherwise guaranteed for payment of disgorgement upon a finding of liability. In calculating the rate of prejudgment interest as to such funds, the Commission or hearing officer may take into account the actual interest obtained on the funds while in escrow, with appropriate adjustments for expenses of the escrow or guarantee.

An adjustment to the rate of prejudgment interest may be appropriate if a respondent makes arrangements to escrow or guarantee payment of disputed funds prior to a formal adjudication of liability because the respondent's continuing benefit from those funds is significantly limited. Providing such an adjustment to the prejudgment interest facilitates the prompt and cost-efficient return of investor funds upon a finding of liability, and permits a respondent to limit its liability for prejudgment interest pending resolution of a proceeding. A person who concludes prior to the institution of proceedings that he or she may be liable for disgorgement claims may, in anticipation of proceedings, seek to limit potential prejudgment interest by establishing an escrow or equivalent arrangement on terms in accord with this rule. Such terms would include approval of the escrow by the Commission or by the staff, pursuant to delegated authority.

Revision Comment: A number of comments addressed criteria for whether prejudgment interest should be assessed and what an appropriate rate of prejudgment interest would be. A respondent who wrongfully takes for his own use monies that belong to investors or other persons has received the equivalent of an interest free loan from the victims of his wrongdoing. The proper measurement of the benefit of this loan to the respondent is the cost the respondent would otherwise have paid for a comparable, unsecured loan. The actual use to which the respondent put the funds, or the rate of return the respondent earned is irrelevant. Similarly, it is irrelevant to the calculation of the respondent's economic benefit whether he obtained use of the funds by fraud or negligence. In order to fulfill the remedial purposes of disgorgement, a respondent should never be allowed free use of funds wrongfully obtained from others. Therefore, the Commission concluded that prejudgment interest should be assessed on all funds to be disgorged.

Seeking to determine the specific interest rate for borrowed funds a particular respondent might have obtained in an arms length transaction would involve an inquiry into a wide variety of factors, including unique characteristics of the respondent's credit history and general economic conditions at the time of the violation. Typically, however, the interest rate charged to small entities or individuals for unsecured credit by a lender with no prior relationship to the borrower will be at the prime rate plus two to five points. The Internal Revenue Code underpayment rate of interest established under Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2), a widely published, floating rate based on a fixed margin above the rate for treasury bills, is a reasonable proxy for an unsecured loan rate. Accordingly, Rule 600 prescribes the payment of prejudgment interest at the Internal Revenue Code underpayment rate.

Commenters suggested that a lower rate, such as the treasury bill rate, was a more appropriate measure of prejudgment interest. The treasury bill rate, which reflects the rate paid by the U.S. Government to borrow money, is lower than the cost of funds rate that ordinarily could be obtained by an unsecured, private borrower. That rate, or any other below-market rate for the cost of funds is therefore not an appropriate measure of prejudgment interest to charge in remedial proceedings, where the purpose of the prejudgment interest is to deny a wrongdoer any economic benefit from his violations. One commenter advocated that in assessing prejudgment interest the Commission should be guided by factors which a court would consider in awarding prejudgment interest in a dispute between private parties. The criteria courts use in seeking to balance competing private economic interests, particularly in commercial settings voluntarily entered into by the parties, should not govern assessment of prejudgment interest authorized by statute in a remedial law enforcement action.

The Commission considered whether any other prejudgment interest rate, or a case by case determination of a rate, would be more appropriate than the Internal Revenue Code underpayment rate. No other widely published, floating rate appears to offer a proxy for borrowing costs which would better approximate a typical respondent's cost of funds. A case-by-case approach to assessing prejudgment interest would be unduly complicated, particularly in light of the speculative nature of a post-hoc determination of the costs a particular respondent would have been able to obtain in connection with activities that violated the federal securities laws. Finally, restitution payments or other factors that might be appropriately considered to have diminished the duration of a respondent's use of ill-gotten gains would affect the calculation of disgorgement principal owed at various times, and thereby reduce prejudgment interest by a corresponding amount, but should not alter the rate of interest. Based on all these considerations, the Commission concluded that ordinarily, the IRS underpayment rate is a reasonable and appropriate rate to use in assessing prejudgment interest on disgorgement ordered as the result of remedial administrative proceedings.

If, however, a respondent, with the approval of the Commission or the hearing officer, sets aside allegedly ill-gotten gains in an escrow, or makes other approved arrangements guaranteeing payment upon a finding of liability, the rationale for assessing prejudgment interest at a cost of funds rate is less compelling. Since the rate of return a respondent can earn by placing potential disgorgement funds in a conservative, risk-free investment will ordinarily be less than the rate established under 26 U.S.C. § 6621(a)(2), an adjustment to the rate of prejudgment interest may be appropriate when an approved escrow is established. Cases in which respondents have sought to return or escrow funds prior to a finding of liability have been rare. Rule 600 has been revised, however, to adopt Commission practice which permits an adjustment to the prejudgment interest rate when an approved escrow or equivalent arrangement is established prior to a finding of liability.

Rule 601. Prompt Payment of Disgorgement, Interest and Penalties

(a) *Timing of Payments.* Unless otherwise provided, funds due pursuant to an order by the Commission requiring the payment of disgorgement, interest or penalties shall be paid no later than 21 days after service of the order, and funds due pursuant to an order by a hearing officer shall be paid on the first day after the order becomes final pursuant to Rule 360.

(b) *Stays.* A stay of any order requiring the payment of disgorgement, interest or penalties may be sought at any time pursuant to Rule 401.

Comment (a): Prompt collection of disgorgement, interest and penalties is essential to prevent a dissipation of assets that would thwart the disgorgement order. Since collection of disgorgement, interest and penalties becomes increasingly more difficult the longer it is delayed, timely determination of whether a respondent will pay disgorgement, interest and penalties as ordered is necessary so that appropriate collection efforts can be initiated. Procedures for execution of a money judgment are not available in an administrative proceeding. If a respondent does not pay disgorgement, interest and penalties as ordered, the Commission must determine whether to seek enforcement of its order by bringing a judicial action or by referring the matter to the Department of Justice for collection. Both processes often require significant periods of time.

Rule 601 provides, therefore, that funds due pursuant to an order by a hearing officer are to be paid on the first day after the order becomes final. Since Rule 360 provides at least a 21-day period before a hearing officer's order becomes final, even if no review of the order is sought, a respondent will have at least 22 days notice before payment is due. If a respondent seeks review of the hearing officer's order, the Commission, by order, must deny the petition for review or affirm the initial decision before payment would be required. Rule 601 provides that disgorgement, interest and penalties owed pursuant to an order by the Commission are to be paid no later than 21 days after service of the order. The one-day and 21-day time periods specified in Rule 601(a) may be modified by order in a particular case.

Rule 610. Submission of Proposed Plan of Disgorgement

The Commission or the hearing officer may, at any time, order any party to submit a plan for the administration and distribution of disgorgement funds. Unless ordered otherwise, the Division of Enforcement shall submit a proposed plan no later than 60 days after funds or other assets have been turned over by the respondent pursuant to a Commission disgorgement order and any appeals of the disgorgement order have been waived or completed, or appeal is no longer available.

Comment: The rules relating to disgorgement are based on the Commission's experience in judicial actions involving disgorgement. In most civil actions the court orders the Commission to submit a proposed plan for administration and distribution of disgorgement funds which, after notice and a hearing, the court later approves, modifies or disapproves. At the hearing, parties and other persons may present their objections to the court. Ordinarily, the Division of Enforcement seeks to avoid disputes over the plan and attempts, when preparing the plan, to consult with other parties and any other persons who have notified the staff or the court of an interest in the disposition of disgorgement funds. Since the development of a disgorgement plan may be a significant undertaking, it is not required in most proceedings until the funds to be disgorged have been transferred from the control of the respondent and, if the disgorgement order is subject to appeal, until after the appeal is decided.

Similar procedures are established under Rules 610 through 614. Rule 610 requires that unless ordered otherwise, the Division of Enforcement shall submit a plan of disgorgement no later than 60 days after funds are turned over by the respondent pursuant to a disgorgement order and appeals of the order, if any, are concluded. In some cases a respondent may be in a better position than the Division of Enforcement to propose a disgorgement plan. Any party, therefore, may be required to submit a plan of disgorgement in addition to or in lieu of the plan of the Division of Enforcement. Also, the presumptive 60-day period set forth in the Rule may be modified by order. For example, in a case with multiple respondents, where some respondents settle and others choose to litigate, it may be appropriate to await the resolution of the case against all respondents before making a determination as to the disposition of disgorgement funds received from those who settled.

Rule 611. Contents of Plan of Disgorgement; Provisions for Payment

(a) *Required Plan Elements.* Unless otherwise ordered, a plan for the administration of a disgorgement fund shall include the following elements:

(1) procedures for the receipt of additional funds, including the specification of an account where funds will be held and the instruments in which the funds may be invested;

(2) specification of categories of persons potentially eligible to receive proceeds from the fund;

(3) procedures for providing notice to such persons of the existence of the fund and their potential eligibility to receive proceeds of the fund;

(4) procedures for making and approving claims, procedures for handling disputed claims and a cut-off date for the making of claims;

(5) a proposed date for the termination of the fund, including provision for the disposition of any funds not otherwise distributed;

(6) procedures for the administration of the fund, including selection, compensation and, as necessary, indemnification of a fund administrator to oversee the fund, process claims, prepare accountings, file tax returns and, subject to the approval of the Commission, make distributions from the fund to investors; and

(7) such other provisions as the Commission or the hearing officer may require.

(b) *Payment to Registry of the Court or Court-Appointed Receiver.* Subject to such conditions as the Commission or the hearing officer shall deem appropriate, a plan of disgorgement may provide for payment of disgorgement funds into a court registry or to a court-appointed receiver in any case pending in federal or state court against a respondent or any other person based upon a complaint alleging violations arising from the same or substantially similar facts as those alleged in the Commission's order instituting proceedings.

(c) *Payment to the United States Treasury Under Certain Circumstances.* When, in the opinion of the Commission or the hearing officer, the cost of administering a plan of disgorgement relative to the value of the available disgorgement funds and the number of potential claimants would not justify distribution of the disgorgement funds to injured investors, the plan may provide that the funds shall be paid directly to the general fund of the United States Treasury.

Comment (b): To minimize the costs of administering a plan of disgorgement, the Commission has in certain civil injunctive proceedings consented to the payment of disgorgement funds obtained as the result of a Commission initiated proceeding into a fund established for the benefit of persons in a related private civil action. *See, e.g., SEC v. Levin*, No. 3–92CV–399D (N.D. Tex. Mar. 2, 1992) (settlement directed payment into court registry); *SEC v. Boesky*, No. 86–CIV–2299, slip op. (S.D.N.Y. Nov. 14, 1986) (settlement directed payment to escrow agent). Rule 611 provides for a similar disposition of disgorgement funds obtained in an administrative proceeding. Transfer of disgorgement funds into a fund established in a judicial proceeding may be subject to conditions on the use of the funds. For example, the Commission has routinely prohibited the use of any funds obtained in a Commission initiated action to pay attorneys' fees in a private lawsuit.

Comment (c): The Commission has the authority to provide for the return of ill-gotten gains to investors, but there is no requirement that it do so. *See, e.g.,* Exchange Act §§ 21B(e) and 21C(e), 15 U.S.C. §§ 78u-2(e) and 78u-3(e) ("[t]he Commission is authorized to adopt rules, regulations, and orders * * * concerning payments to investors"). Returning funds to the United States Treasury when the expense of locating or making distributions to injured investors is prohibitive is consistent with treatment by the courts in similar situations. *SEC v. Marcus Schloss & Co.*, 714 F. Supp. 100 (S.D.N.Y. 1989); *SEC* v. *Courtois*, [1984–85 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 92,000 (S.D.N.Y. 1985); *SEC v. Lund*, 570 F. Supp. 1397, 1404–1405 (C.D. Cal. 1983).

Revision Comment (b): The respondent named in a Commission action may have settled a related civil action brought by private parties or may not have been named in a related private party litigation. The rule has been revised to permit the payment of disgorged funds to a fund established in connection with a judicial proceeding against the respondent or against any other person based upon a complaint alleging violations arising from the same or substantially similar facts as those alleged in the Commission's order instituting proceedings.

Rule 612. Notice of Proposed Plan of Disgorgement and Opportunity for Comment by Non-Parties

Notice of a proposed plan of disgorgement shall be published in the *SEC News Digest*, in the *SEC Docket*, and in such other publications as the Commission or the hearing officer may require. The notice shall specify how copies of the proposed plan may be obtained and shall state that persons desiring to comment on the proposed plan may submit their views, in writing, to the Commission.

Comment: Publication of notice that a proposed plan has been submitted is required in order to provide potential claimants or other persons with an opportunity to make known their views prior to adoption of the plan.

Rule 613. Order Approving, Modifying or Disapproving Proposed Plan of Disgorgement

At any time more than 30 days after publication of notice of a proposed plan of disgorgement, the hearing officer or the Commission shall, by order, approve, approve with modifications, or disapprove the proposed plan. In the discretion of the Commission or the hearing officer, a proposed plan of disgorgement that is substantially modified prior to adoption may be republished for an additional comment period pursuant to Rule 612. The order approving or disapproving the plan should be entered within 30 days after the end of the final period allowed for comments on the proposed plan unless the Commission or the hearing officer, by written order, allows a longer period for good cause shown.

Comment: After submission of comments, if any, the plan should be promptly approved, approved as modified or disapproved. The Commission or the hearing officer may hold a hearing on the proposed plan or may rule on the plan based only on written submissions, if any.

Rule 614. Administration of Plan of Disgorgement

(a) *Appointment and Removal of Administrator.* The Commission or the hearing officer shall have discretion to appoint any person, including a Commission employee, as administrator of a plan of disgorgement and to delegate to that person responsibility for administering the plan. A respondent may be required or permitted to administer or assist in administering a plan of disgorgement, subject to such terms and conditions as the Commission or the hearing officer deem appropriate to ensure the proper distribution of funds. An administrator may be removed at any time by order of the Commission or hearing officer.

(b) *Administrator to Post Bond.* If the administrator is not a Commission employee, the administrator shall be required to obtain a bond in the manner prescribed by 11 U.S.C. 322, in an amount to be approved by the Commission. The cost of the bond may be paid for as a cost of administration. The Commission may waive posting of a bond for good cause shown.

(c) *Administrator's Fees.* If the administrator is a Commission employee, no fee shall be paid to the administrator for his or her services. If the administrator is not a Commission employee, he or she may file an application for fees for completed services, and upon approval by the Commission or a hearing officer, may be paid a reasonable fee for those services. Any objections thereto shall be filed within 21 days of service of the application on the parties.

(d) *Source of Funds.* Unless otherwise ordered, fees and other expenses of administering the plan of disgorgement shall be paid first from the interest earned on disgorged funds, and if the interest is not sufficient, then from the corpus.

(e) *Accountings.* During the first 10 days of each calendar quarter, or as otherwise directed by the Commission or the hearing officer, the administrator shall file an accounting of all monies earned or received and all monies spent in connection with the administration of the plan of disgorgement. A final accounting shall be submitted for approval of the Commission or hearing officer prior to discharge of the administrator and cancellation of the administrator's bond, if any.

(f) *Amendment.* A plan may be amended upon motion by any party or the plan administrator or upon the Commission's or hearing officer's own motion.

Comment (a): In some circumstances, for example, where the number of potential claimants to a fund is small and the identity of the claimants is known in advance, the plan of disgorgement may be relatively uncomplicated and may not require extensive resources to administer. In such a case, an administrative law judge or a staff member may administer the plan of disgorgement most effectively.

As in court actions, however, if the amount of disgorgement is large or there are many potential claimants, administration of a disgorgement plan may involve extensive time and resources and may be accomplished most effectively by selecting an administrator with expertise in handling disgorgement-type proceedings. Such a person would, as necessary, be able to retain an accounting firm, a law firm, or any other entity necessary to assist in the administration of the disgorgement plan.

Rule 614 does not specify a method for selecting an administrator. In court proceedings, the Commission may have an advisory role in recommending individuals to the court as possible administrators, but the court itself must select and appoint the administrator. In administrative proceedings, however, the Commission itself is responsible for appointing the administrator. Selection of an administrator by the Commission may be subject to various statutory provisions or regulations regarding personnel matters, procurement and contract requirements, or other matters. In addition, the selection process should promote public confidence that the selection was made on an impartial basis.

In some proceedings, particularly those in which a settlement has been reached, the respondent may be required or allowed to assist in administering a disgorgement plan. *See, e.g., In the Matter of Donaldson, Lufkin & Jenrette Sec. Corp.*, Exchange Act Release No. 27889 (Apr. 11, 1990), 45 SEC Docket 1826, 1834 (Apr. 24, 1990). Especially in such self-administered disgorgement plans, the Commission may require affidavits, an accountant's certification, or other safeguards to assure that funds have been distributed only in accordance with the plan.

Comment (b): Funds or other assets paid as disgorgement will be placed into an escrow, custodial or similar account established by the Commission or with the Commission's approval for the purpose of holding such funds or assets until they are disbursed. No funds will be transferred to the Commission itself. *See* 31 U.S.C. § 3302(b) (requiring agencies receiving funds for the government to deposit the money into the Treasury without deduction for any charge or claim).

Funds paid pursuant to a disgorgement order do not become the property of the Commission and internal control and audit procedures mandated by statute for the Commission's own funds are not applicable to disgorgement funds. Rule 614(b) requires, therefore, that if the administrator is not a Commission employee, the administrator must obtain a surety bond comparable to that when a trustee is appointed in a SIPC liquidation or bankruptcy proceeding. *See* 15 U.S.C. § 78eee(b)(3); 11 U.S.C. § 322. See also Rule 614(e) (quarterly accountings required).

Comment (c): If the administrator is not a Commission employee, reasonable fees may be paid to the administrator. Payment of the administrator's fees may be made only upon a public application filed by the administrator and subject to the approval of the Commission or a hearing officer. Filings by the administrator, including fee applications, should conform to the filing requirements of Rule 151 and be served on all parties pursuant to Rule 150.

Comment (d): The Commission has broad authority to adopt rules, regulations and orders it deems appropriate to implement its authority to order disgorgement. *See, e.g.,* Exchange Act § 21B(e), 15 U.S.C. § 78u–2(e). Paragraph (d) provides that fees and expenses be paid first out of interest earned on disgorged funds, and if the interest is insufficient, then out of the corpus of the funds. Subject to any applicable requirements established by Congress with respect to the use of appropriated funds, and except to the extent a Commission employee is appointed administrator, or an administrative law judge administers a disgorgement fund without the assistance of an administrator, appropriated funds ordinarily will not be used to defray the direct costs of administering a disgorgement plan. Where the value of the available disgorgement funds relative to the expense of administrating a plan of disgorgement from the corpus or the interest earned would not justify distribution of funds, the disgorged funds may be turned over to the general fund of the United States Treasury. *See* Rule 611(c).

Comment (f): After a plan is approved, changed circumstances may require amendment of the plan. A plan may be amended upon motion by any party or the plan administrator or upon the Commission's or hearing officer's own motion. Procedures for publication of notice or hearing on the motion will be subject to case by case determination.

Rule 620. Right to Challenge Order of Disgorgement

Other than in connection with the opportunity to submit comments as provided in Rule 612, no person shall be granted leave to intervene or to participate in a proceeding or otherwise to appear to challenge an order of disgorgement; or an order approving, approving with modifications, or disapproving a plan of disgorgement; or any determination relating to a plan of disgorgement based solely upon that person's eligibility or potential eligibility to participate in a disgorgement fund or based upon any private right of action such person may have against any person who is also a respondent in an enforcement proceeding.

Comment: The opportunity to submit comments on a plan of disgorgement does not give a person any right to become a party to or intervene in an enforcement proceeding. *See* Rule 210 (no one may become a party or receive leave to intervene in an enforcement proceeding).

Although return of ill-gotten gains to injured investors is often an appropriate disposition of disgorged funds, the purpose of the Commission's administrative disgorgement remedy is to deprive violators of ill-gotten gains and thus serve as a deterrent to violations, rather than to compensate injured investors. *See* The Securities Law Enforcement Remedies and Penny Stock Reform Act of 1990, S. Rep. No. 337, 101st Cong., 2d Sess. 16 (1990) ("In contrast to an award of damages in a private action, which is designed to compensate an injured plaintiff, disgorgement forces a defendant to give up the amount by which he was unjustly enriched."). The statutory remedy is consistent in this regard with the equitable remedy available in civil injunctive actions brought by the Commission. *See, e.g., SEC v. First City Financial Corp.*, 890 F.2d 1215, 1230, 1232 n.24 (D.C. Cir. 1989) (the primary purpose of disgorgement is not to compensate investors); *SEC v. Tome*, 833 F.2d 1086, 1096 (2d Cir. 1987), *cert.* denied, 486 U.S. 1014 (1988); *SEC v. Texas Gulf Sulphur Co.*, 446 F.2d 1301, 1307 (2d Cir.), *cert. denied*, 404 U.S. 1005 (1971); Securities Law Enforcement Remedies and Penny Stock Reform Act of 1990, H.R. Rep. No. 616, 101st Cong., 2d Sess. at 22 (1990).

Where it is not practical to locate persons who have been harmed, disgorgement in injunctive actions has been ordered paid into the general fund of the U.S. Treasury. *See SEC* v. *Marcus Schloss & Co.*, 714 F. Supp. 100, 103 (S.D.N.Y. 1989); *SEC v. Courtois*, [1984–85 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 92,000, at 90,959 (S.D.N.Y. 1985); *SEC v. Lund*, 570 F. Supp. 1397, 1404–1405 (C.D. Cal. 1983). In insider trading cases, courts have required that disgorgement be made available to persons other than investors. *See SEC v. Materia*, [1983–84 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 99,583, at 97,284–85 (S.D.N.Y. 1983), *aff'd on other grounds*, 745 F.2d 197 (2d Cir. 1984), *cert. denied*, 471 U.S. 1053 (1985). *See generally* Louis Loss, *Fundamentals of Securities Regulation* 1007 (2d ed. 1988) (discussing discretion exercised by courts in designating recipients of disgorged funds).

Since there is not a requirement that funds obtained in an administrative enforcement proceeding be paid to

investors, persons who may have a private right of action in federal court against a respondent do not thereby have standing in the Commission's enforcement proceeding against that respondent to challenge a plan of disgorgement solely because of dissatisfaction with their potential eligibility to receive funds from the Commission's disgorgement pool. *See Marino v. Ortiz*, 484 U.S. 301, 304 (1988) (per curiam) (explicitly disapproving of the suggestion in *SEC v. Certain Unknown Purchasers*, 817 F.2d 1018, 1021 & n.1 (2d Cir. 1987), *cert. denied*, 484 U.S. 1060 (1988), that a person has standing to appeal whenever he "has an interest that is affected by the trial court's judgment.").

The limitations in Rule 620 on participation in the proceedings before a hearing by a person with potential claims against the disgorgement pool does not preclude a person who is aggrieved by a decision concerning the disposition of disgorgement assets and entitled to review of the decision from petition the Commission for such review. A person aggrieved by a final decision of the Commission who is entitled to review may also seek a stay of the Commission order or judicial review of the order. *See* Rules 360, 401 and 410; Section 702 of the Administrative Procedure Act, 5 U.S.C. § 702. *See also SEC v. Wozniak*, 33 F.3d 13 (7th Cir. 1994) (persons not parties to the litigation who objected to a disgorgement plan could have sought a stay of district court's judgment and distribution of the plan in order to have standing to appeal).

Rule 630. Inability to Pay Disgorgement, Interest or Penalties

(a) *Generally.* In any proceeding in which an order requiring payment of disgorgement, interest or penalties may be entered, a respondent may present evidence of an inability to pay disgorgement, interest or a penalty. The Commission may, in its discretion, or the hearing officer may, in his or her discretion, consider evidence concerning ability to pay in determining whether disgorgement, interest or a penalty is in the public interest.

(b) *Financial Disclosure Statement.* Any respondent who asserts an inability to pay disgorgement, interest or penalties may be required to file a sworn financial disclosure statement and to keep the statement current. The financial statement shall show the respondent's assets, liabilities, income or other funds received and expenses or other payments, from the date of the first violation alleged against that respondent in the order instituting proceedings, or such later date as specified by the Commission or a hearing officer, to the date of the order requiring the disclosure statement to be filed. By order, the Commission or the hearing officer may prescribe the use of the Disclosure of Assets and Financial Information Form (*see* Form D–A at § 209.1 of this chapter) or any other form, may specify other time periods for which disclosure is required, and may require such other information as deemed necessary to evaluate a claim of inability to pay.

(c) *Confidentiality.* Any respondent submitting financial information pursuant to this rule or Rule 410(c) may make a motion, pursuant to Rule 322, for the issuance of a protective order against disclosure of the information submitted to the public or to any parties other than the Division of Enforcement. Prior to a ruling on the motion, no party receiving information as to which a motion for a protective order has been made may transfer or convey the information to any other person without the prior permission of the Commission or the hearing officer.

(d) *Service Required.* Notwithstanding any provision of Rule 322, a copy of the financial disclosure statement shall be served on the Division of Enforcement.

(e) *Failure to File Required Financial Information: Sanction.* Any respondent who, after making a claim of inability to pay either disgorgement, interest or a penalty, fails to file a financial disclosure statement when such a filing has been ordered or is required by rule may, in the discretion of the Commission or the hearing officer, be deemed to have waived the claim of inability to pay. No sanction pursuant to Rules 155 or 180 shall be imposed for a failure to file such a statement.

Comment (a): A respondent may present evidence of ability to pay a penalty, and the Commission may, in its discretion, consider such evidence. *See, e.g.*, Exchange Act § 21B(d), 15 U.S.C. § 78u–2(d). A respondent's ability to pay becomes a significant issue not only in proceedings in which a penalty is ordered, but also when disgorgement and interest is ordered. Although no statutory requirement addresses inability to pay disgorgement or interest, the Commission considers evidence of ability to pay as a factor in determining whether a respondent should be required to pay disgorgement and interest as well as penalties. Rule 630 codifies this practice.

Comment (b): A respondent may not be entirely candid about his or her financial position when asserting an inability to pay disgorgement, interest or penalties. The Commission or a hearing officer may require persons who assert an inability to pay disgorgement, interest or penalties to file sworn, verifiable financial disclosure statements before consideration of inability to pay as a basis for waiving disgorgement, interest or penalties.

Rule 630 provides that the Commission or the hearing officer may require "such other information as deemed necessary to evaluate a claim of inability to pay." Accordingly, the Division of Enforcement may seek an order to question the respondent under oath or may seek the issuance of subpoenas to obtain documents or testimony concerning an asserted inability to pay. In addition, the rule provides that, by order, the Commission or the hearing officer may prescribe a particular financial disclosure form to be used and may specify time periods for which disclosure is required. Form D–A, the Disclosure of Assets and Financial Information Form, includes a waiver by the respondent that authorizes "The Securities and Exchange Commission and any of its staff * * * to obtain any such information from credit bureaus, financial institutions or any other source as may be needed to verify the statements made on this form." If such a waiver is obtained, the Division of Enforcement may rely on it as a basis to seek confirmation of information in the financial disclosure form without further approval from the hearing officer or Commission.

Comment (c): The public's right to review financial disclosure statements submitted in connection with a respondent's claim of inability to pay should be balanced against the respondent's legitimate interest in protecting confidential or personal information from premature or unnecessary disclosure. Each request for confidentiality must be decided based on the procedural status of the case, the extent to which financial information has already been disclosed, and the individual facts and circumstances underlying the request.

While financial circumstances may change during the course of a proceeding, a respondent who intends to assert a claim of inability to pay may be required by the hearing officer to specify in connection with prehearing submissions or conferences whether the issue will be raised. Early submission of a financial disclosure form to support a planned claim of inability to pay will allow the hearing officer and parties to better prepare for hearing and to assess the time needed for the hearing. Part I of Form D–A requires only summary information as to which confidentiality interests are limited. Part II requires detailed back-up information that is more likely to call for personal, confidential data, such as bank account numbers and information about regular medical payments. The earlier in a proceeding the respondent is required to submit financial information, however, the more compelling the case for the confidentiality of personal financial information such as that called for in Part II of Form D–A. Providing for confidential treatment of personal financial information at the early stages of a proceeding or prior to the respondent's own introduction of evidence of inability to pay protects a respondent's privacy interests to the maximum extent in the event that the Division fails in its case in chief or that the case settles prior to completion of the hearing.

Comment (d): A copy of the financial disclosure statement must be served on the Division of Enforcement notwithstanding any motion for a protective order. The Division of Enforcement must have the respondent's financial information in order to determine whether to challenge a claim of inability to pay. Notice that a disclosure statement has been filed must also be provided to other respondents, who may seek all or part of the information submitted unless a protective order has been sought or granted pursuant to Rule 322.

Form

209.1. Form D–A: Disclosure of Assets and Financial Information

(a) Rules 410 and 630 of the Rules of Practice (17 CFR 201.410 and 630 of this chapter) provide that under certain circumstances a respondent who asserts or intends to assert an inability to pay disgorgement, interest or penalties may be required to disclose certain financial information. Unless otherwise ordered, this form may be used by individuals required to supply such information.

(b) The respondent filing Form D–A is required promptly to notify the Commission of any material change in the answer to any question on this form.

(c) Form D–A may not be withheld from the Division of Enforcement. A respondent making financial information disclosures on this form after the institution of proceedings may make a motion, pursuant to Rule 322 of the Commission's Rules of Practice (17 CFR 201.322 of this chapter), for the issuance of a protective order to limit disclosure of the information submitted on Form D–A to the public or parties other than the Division of Enforcement. A request for a protective order allows the requester an opportunity to justify the need for confidentiality. The making of a motion for a protective order does not, however, guarantee that disclosure will be limited.

(d) No party receiving information for which a motion for a protective order has been made may transfer or convey the information to any other person prior to a ruling on the motion without the prior permission of the Commission or a hearing officer.

(e) A person making financial information disclosures on Form D–A prior to the institution of proceedings, in connection with an offer of settlement or otherwise, may request confidential treatment of the information pursuant to the Freedom of Information Act. *See* the Commission's Freedom of Information Act ("FOIA") regulations, 17 CFR 200.83. A request for confidential treatment allows the requester an opportunity to substantiate the need for confidentiality. No determination as to the validity of any request for confidential treatment will be made until a request for disclosure of the information under FOIA is received.

Note: Form D–A appears in the appendix to this document.

V. Regulatory Flexibility Analysis

The initial Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 603 and published in the Proposing Release. No comments were received on this analysis. The Commission has prepared a Final Regulatory Flexibility Analysis, a copy of which may be obtained by writing to Andrew Glickman, Esq., Office of the General Counsel, Mail Stop 6–6, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549.

VI. Statutory Basis For Rules

These amendments to the Rules of Practice and related rules are being adopted pursuant to: 15 U.S.C. 77f, 77g, 77h, 77h–1, 77j, 77s, 77u, 78c(b), 78d–1, 78d–2, 78*l*, 78m, 78n, 78*o*(d), 78*o*–3, 78s, 78u–2, 78u–3, 78v, 78w, 79c, 79s, 79t, 79z–5a, 77sss, 77ttt, 80a–8, 80a–9, 80a–37, 80a–38, 80a–39, 80a–40, 80a–41, 80a–44, 80b–3, 80b–9, 80b–11, and 80b–12.

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies), Securities.

17 CFR Part 201

Accountants, Administrative practice and procedure, Brokers, Claims, Confidential business information, Equal access to justice, Fraud, Lawyers, Penalties, Securities.

17 CFR Part 202

Administrative practice and procedure.

17 CFR Part 203

Administrative practice and procedure, Reporting and recordkeeping requirements, Securities.

17 CFR Part 209

Administrative practice and procedure—financial disclosure form.

17 CFR Part 228

Reporting and recordkeeping requirements, Securities.

17 CFR Part 229

Reporting and recordkeeping requirements, Securities.

17 CFR Part 230

Reporting and recordkeeping requirements, Securities.

17 CFR Part 232

Reporting and recordkeeping requirements, Securities.

17 CFR Part 240

Accountants, Administrative practice and procedure, Brokers, Lawyers, Penalties, Reporting and recordkeeping requirements, Securities.

17 CFR Part 250

Reporting and recordkeeping requirements, Securities.

17 CFR Part 260

Reporting and recordkeeping requirements, Securities.

17 CFR Part 270

Reporting and recordkeeping requirements, Securities.

17 CFR Part 275

Reporting and recordkeeping requirements, Securities.

Text of Adopted Rules

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart A—Organization and Program Management

1. The authority citation for part 200, subpart A, continues to read in part as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 78*ll*(d), 79t, 79sss, 80a–37, 80b–11, unless otherwise noted.

* * * * *

2. Section 200.1(j) is revised to read as follows:

§ 200.1 General statement and statutory authority.

* * * * *

(j) Administrative sanctions, injunctive remedies, civil money penalties and criminal prosecution. There are also private rights of action for investors injured by violations of the Acts.

§ 200.16 [Amended]

3. In § 200.16, remove the words "Rule 2(e) of the Commission's Rules of Practice (§ 201.2(e) of this chapter)", and, in their place, add the words "Rule 102(e) of the Commission's Rules of Practice (§ 201.102(e) of this chapter)".

§ 200.30–4 [Amended]

4. In § 200.30–4(a)(5), remove the words "Rule 29 of the Commission's Rules of Practice (17 CFR 201.1–201.29)", and, in their place, add the words "Rule 193 of the Commission's Rules of Practice, § 201.193 of this chapter".

§ 200.30–7 [Amended]

5. In § 200.30–7(a)(1), remove the words "Rule 21(a) of the Commission's rules of practice, § 201.21(a)", and, in their place, add the words "Rule 451 of the Commission's Rules of Practice, § 201.451".

6. In § 200.30–7(a)(2), remove the words "Rule 21(b) of the Commission's rules of practice, § 201.21(b)", and, in their place, add the words "Rule 451(c) of the Commissions Rules of Practice, § 201.451(c)".

7. In § 200.30–7 (a)(3) and (a)(4), remove the words "Rule 13 of the Commission's rules of practice, § 201.13", and, in their place, add the words "Rule 161 of the Commission's Rules of Practice, § 201.161".

8. In § 200.30–7(a)(5), remove the words "Rule 22(d) of the Commission's rules of practice, § 201.22(d)", and, in their place, add the words "Rule 450(c) of the Commission's Rules of Practice, § 201.450(c)".

9. In § 200.30–7(a)(9), remove the words "rules 6 and 23 of the Commission's rules of practice", and, in their place, add the words "Rules 141 and 150 of the Commission's Rules of Practice, §§ 201.141 and 201.150 of this chapter".

10. In § 200.30–7 paragraph (a)(10) is added to read as follows: § 200.30–7 Delegation of Authority to Secretary of the Commission.

(a) * * *

(10) To set the date for sanctions to take effect if an initial decision is not appealed and becomes final pursuant to Rule 360(d) or if an initial decision is affirmed pursuant to Rule 411.

* * * * *

11. Section 200.30–9 is revised to read as follows:

§ 200.30–9 Delegation of authority to hearing officers.

Pursuant to the provisions of Section 4A of the Securities Exchange Act of 1934 (15 U.S.C. 78d-1), the Securities and Exchange Commission hereby delegates, until the Commission orders otherwise, to each Administrative Law Judge ("Judge") the authority:

(a) To make an initial decision in any proceeding at which the Judge presides in which a hearing is required to be conducted in conformity with the Administrative Procedure Act (5 U.S.C. 557) unless such initial decision is waived by all parties who appear at the hearing and the Commission does not subsequently order that an initial decision nevertheless be made by the Judge, and in any other proceeding in which the Commission directs the Judge to make such a decision; and

(b) To issue, upon entry pursuant to Rule 531 of the Commission's Rules of Practice, § 201.531 of this chapter, of an initial decision on a permanent order, a separate order setting aside, limiting or suspending any temporary sanction, as that term is defined in Rule 101(a)(11) of the Commission's Rules of Practice, § 201.101(a) of this chapter, then in effect in accordance with the terms of the initial decision.

§ 200.30–10 [Amended]

12. In § 200.30–10(a)(1), remove the words "Rule 6(b) of the Commission's rules of practice, § 201.6(b) of this chapter, and Rule 11(a) of the Commission's rules of practice (§ 201.11(a) of this chapter)", and, in their place, add the words "Rule 200 of the Commission's Rules of Practice, § 201.200 of this chapter".

13. In § 200.30–10(a)(2), remove the words "Rule 11(b) of the Commission's rules of practice (§ 201.11(b) of this chapter)", and, in their place, add the words "Rule 110 of the Commission's Rules of Practice, § 201.110 of this chapter".

14. In § 200.30–10(a)(3), remove the words "Rule 13 of the Commission's rules of practice, § 201.13", and, in their place, add the words "Rule 161 of the Commission's Rules of Practice, § 201.161".

15. In § 200.30–10(a)(4), remove the words "Rule 13 of the Commission's rules of practice (§ 201.13 of this chapter)", and, in their place, add the words "Rule 161 of the Commission's Rules of Practice, § 201.161 of this chapter".

16. In § 200.30–10(a)(5), remove the words "Rule 22(d) of the Commission's rules of practice (§ 201.22(d) of this chapter)", and, in their place, add the words "Rule 450(c) of the Commission's Rules of Practice, § 201.450(c) of this chapter".

17. In § 200.30–10 paragraph (a)(6) is removed and paragraphs (a)(7) and (a)(8) are redesignated as paragraphs (a)(6) and (a)(7).

18. In newly redesignated § 200.30–10(a)(6), remove the words "Rule 14(b) of the Commission's rules of practice (201.14(b) of this chapter)", and, in their place, add the words "Rule 232 of the Commission's Rules of Practice, § 201.232 of this chapter".

19. Section 200.30–14 is amended by revising the introductory text of paragraph (g)(1), adding paragraphs (g)(1)(x) through (g)(1)(xiv), and revising paragraphs (g)(2), and (g)(4) through (g)(7) to read as follows:

§ 200.30–14 Delegation of authority to the General Counsel.

* * * * *

(g)(1) With respect to proceedings conducted pursuant to the Securities Act of 1933 (15 U.S.C. 77a, *et seq.*), the Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*), the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a, *et seq.*), the Trust Indenture Act of 1939 (15 U.S.C. 77aaa, *et seq.*), the Investment Company Act of 1940 (15 U.S.C. 80a–1, *et seq.*), the Investment Advisers Act of 1940 (15 U.S.C. 80b–1, *et seq.*),the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa, *et seq.*) and the provisions of Rule 102(e) of the Commission's Rules of Practice (§ 201.102(e) of this chapter);

* * * * *

(x) To determine motions to consolidate proceedings pending before the Commission.

(xi) To determine whether to permit or require that a record of proceedings be supplemented with additional evidence.

(xii) To determine requests for leave to file an opposition to a petition for review filed pursuant to the provisions of Rule 411 of the Commission's Rules of Practice, § 201.411 of this chapter.

(xiii) To issue a briefing schedule order pursuant to Rule 450 of the Commission's Rules of Practice, § 201.450 of this chapter.

(xiv) To determine motions for expedited briefing schedules.

(2) With respect to proceedings conducted pursuant to the Securities Act of 1933 (15 U.S.C. 77a, *et seq.*), the Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*), the Investment Company Act of 1940 (15 U.S.C. 80a–1, *et seq.*), the Investment Advisers Act of 1940 (15 U.S.C. 80b–1, *et seq.*), the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa, *et seq.*) and the provisions of Rule 102(e) of the Commission's Rules of Practice (§ 201.102(e) of this chapter), to issue findings and orders taking the remedial action described in the order for proceedings where the respondents expressly consent to such action, fail to appear or default in the filing of answers required to be filed; or to grant a request, based upon a showing of good cause, to vacate an order of default, so as to permit presentation of a defense.

* * * * *

(4) With respect to proceedings under Sections 19 (d), (e) and (f) of the Securities Exchange Act of 1934 (15 U.S.C. 78s (d), (e) and (f)), to determine that an application for review under those sections has been abandoned, under the provisions of Rule 420, § 201.420 of this chapter, or otherwise, and to issue an order dismissing the application in such event.

(5) With respect to proceedings conducted or reviewed pursuant to the Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*), the Investment Company Act of 1940 (15 U.S.C. 80a–1, *et seq.*), the Investment Advisers Act of 1940 (15 U.S.C. 80b–1, *et seq.*) and the provisions of Rule 102(e) of the Commission's Rules of Practice, § 201.102(e) of this chapter, to determine applications to stay Commission orders pending appeal of those orders to the federal courts and to determine applications to vacate such stays.

(6) With respect to review proceedings pursuant to Sections 19 (d), (e), and (f) of the Securities Exchange Act of 1934 (15 U.S.C. 78s (d), (e), and (f)), to determine applications for a stay of action taken by a self-regulatory organization pending Commission review of that action and to determine applications to vacate such stays.

(7) In connection with Commission review of actions taken by self-regulatory organizations, pursuant to Sections 19 (d), (e) and (f) of the Securities Exchange Act of 1934 (15 U.S.C. 78s (d), (e) and (f)), to grant or deny requests for oral argument in accordance with the provisions of Rule 451, § 201.451 of this chapter.

* * * * *

Subpart B—Disposition of Commission Business

20. The authority citation for part 200, subpart B continues to read as follows:

Authority: 5 U.S.C. 522b.

21. Section 200.43 is amended by adding ", except that the duty officer may preside at the taking of evidence with respect to the issuance of a temporary cease-and-desist order as provided by Rule 511(c) of the Commission's Rules of Practice, § 201.511(c) of this chapter." before the period.

Subpart F—Code of Behavior Governing Ex Parte Communications Between Persons Outside the Commission and Decisional Employees

22. The authority citation for part 200, subpart F is revised to read as follows:

Authority: 15 U.S.C. 77s, 78w, 79t, 77sss, 80a–37, 80b–11; 5 U.S.C. 557.

§ 200.111 [Amended]

23. In § 200.111(d)(1)(i), remove the words "Rule 23 of the Commission's Rules of Practice, § 201.23", and, in their place, add the words "Rule 150 of the Commission's Rules of Practice, § 201.150".

24. In § 200.111(d)(2), remove the words "Rule 9(c) of the Commission's Rules of Practice, § 201.9(c)", and, in their place, add the words " Rule 210(c) of the Commission's Rules of Practice, § 201.210(c)".

Subpart H—Regulations Pertaining to the Privacy of Individuals and Systems of Records Maintained by the Commission

25. The general authority citation for part 200, subpart H is revised to read as follows:

Authority: 5 U.S.C. 552a(f), unless otherwise noted.

* * * * *

§ 200.312 [Amended]

26. In § 200.312(a)(8), remove the words "Rule 2(e)", and, in their place, add the words "Rule 102(e)".

Subpart K—Regulations Pertaining to the Protection of the Environment

27. The authority citation for part 200, subpart K is revised to read as follows:

Authority: 15 U.S.C. 78w(a)(2).

§ 200.554 [Amended]

28. In § 200.554(a), remove the words "§ 201.20", and, in their place, add the words "Rule 460 of the Commission's Rules of Practice, § 201.460".

Subpart M—Regulation Concerning Conduct of Members and Employees and Former Members and Employees of the Commission

29. The authority citation for part 200, subpart M continues to read as follows:

Authority: 15 U.S.C. 77s, 78w, 79t, 77sss, 80a–37, 80b–11; E. O. 11222; 3 CFR, 1964–1965 Comp.; 5 CFR 735.104 unless otherwise noted.

§ 200.735–13 [Amended]

30. In § 200.735–13(c), remove the words "Rule 2(e) of the Commission's Rules of Practice, 17 CFR 201.2(e)", and "17 CFR 201.1" and, in their place, add the words "Rule 102(e) of the Commission's Rules of Practice, § 201.102(e) of this chapter" and "17 CFR 201.100".

PART 201—RULES OF PRACTICE

31. The authority citation for Part 201 is removed.

Subpart A—[Removed and Reserved]

32. Subpart A is removed and reserved.

Subpart B—Regulations Pertaining to the Equal Access to Justice Act

33. The authority citation for Subpart B of Part 201 is revised to read as follows:

Authority: 15 U.S.C. 77s, 78w, 78x, 79t, 77sss, 80a–37 and 80b–11; 5 U.S.C. 504(c)(1).

34. In § 201.42: the reference to "201.25" in paragraph (b) is corrected to read "201.190".

35. In § 201.54: the reference to "201.8" is corrected to read "201.240".

36. In § 201.57: the reference to "201.17" is corrected to read "201.410 and 201.411".

37. Section 201.60 is removed and reserved.

Subpart C—Procedures Pertaining to the Payment of Bounties Pursuant to Subsection 21A(e) of the Securities Exchange Act of 1934

38. The authority citation for Subpart C of Part 201 is revised to read as follows:

Authority: 15 U.S.C. 78u–1 and 78w.

39. Subpart D is added to read as follows:

Subpart D—Rules of Practice

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201.900 Informal Procedures and Supplementary Information Concerning Adjudicatory Proceedings.
Table I to Subpart D—Adversary Adjudications Conducted by the Commission under 5 U.S.C. 554
Table II to Subpart D—Cross-reference table showing location of Rules of Practice adopted in 1995 with former Rules of Practice, related rules and statutory provisions.
Table III to Subpart D—Cross-reference table showing location of former Rules of Practice and related rules with Rules of Practice adopted in 1995

Subpart D—Rules of Practice

Authority: 15 U.S.C. 77f, 77g, 77h, 77h-1, 77j, 77s, 77u, 78c(b), 78d-1, 78d-2, 78*l*, 78m, 78n, 78*o*(d), 78*o*-3, 78s, 78u-2, 78u-3, 78v, 78w, 79c, 79s, 79t, 79z-5a, 77sss, 77ttt, 80a-8, 80a-9, 80a-37, 80a-38, 80a-39, 80a-40, 80a-41, 80a-44, 80b-3, 80b-9, 80b-11, and 80b-12 unless otherwise noted.

General Rules

§ 201.100 Scope of the rules of practice.

(a) Unless provided otherwise, these Rules of Practice govern proceedings before the Commission under the statutes that it administers.

(b) These rules do not apply to:

(1) Investigations, except where made specifically applicable by the Rules Relating to Investigations, part 203 of this chapter; or

(2) Actions taken by the duty officer pursuant to delegated authority under 17 CFR 200.42.

§ 201.101 Definitions.

(a) For purposes of these Rules of Practice, unless explicitly stated to the contrary:

(1) *Commission* means the United States Securities and Exchange Commission, or a panel of Commissioners constituting a quorum of the Commission, or a single Commissioner acting as duty officer pursuant to 17 CFR 200.43;

(2) *Counsel* means any attorney representing a party or any other person representing a party pursuant to § 201.102(b);

(3) *Disciplinary proceeding* means an action pursuant to § 201.102(e);

(4) *Enforcement proceeding* means an action, initiated by an order instituting proceedings, held for the purpose of determining whether or not a person is about to violate, has violated, has caused a violation of, or has aided or abetted a violation of any statute or rule administered by the Commission, or whether to impose a sanction as defined in Section 551(10) of the Administrative Procedure Act, 5 U.S.C. 551(10);

(5) *Hearing officer* means an administrative law judge, a panel of Commissioners constituting less than a quorum of the Commission, an individual Commissioner, or any other person duly authorized to preside at a hearing;

(6) *Interested division* means a division or an office assigned primary responsibility by the Commission to participate in a particular proceeding;

(7) *Order instituting proceedings* means an order issued by the Commission commencing a proceeding or an order issued by the Commission to hold a hearing;

(8) *Party* means the interested division, any person named as a respondent in an order instituting proceedings, any applicant named in the caption of any order, persons entitled to notice in a stop order proceeding as set forth in § 201.200(a)(2) or any person seeking Commission review of a decision;

(9) *Proceeding* means any agency process initiated by an order instituting proceedings; or by the filing, pursuant to § 201.410, of a petition for review of an initial decision by a hearing officer; or by the filing, pursuant to § 201.420, of an application for review of a self-regulatory organization determination; or by the filing, pursuant to § 201.430, of a notice of intention to file a petition for review of a determination made pursuant to delegated authority;

(10) *Secretary* means the Secretary of the Commission; and

(11) *Temporary sanction* means a temporary cease-and-desist order or a temporary suspension of the registration of a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, or transfer agent pending final determination whether the registration shall be revoked.

(b) [Reserved]

§ 201.102 Appearance and practice before the Commission.

A person shall not be represented before the Commission or a hearing officer except as stated in paragraphs (a) and (b) of this section or as otherwise permitted by the Commission or a hearing officer.

(a) *Representing oneself.* In any proceeding, an individual may appear on his or her own behalf.

(b) *Representing others.* In any proceeding, a person may be represented by an attorney at law admitted to practice before the Supreme Court of the United States or the highest court of any State (as defined in Section 3(a)(16) of the Exchange Act, 15 U.S.C. 78c(a)(16)); a member of a partnership may represent the partnership; a bona fide officer of a corporation, trust or association may represent the corporation, trust or association; and an officer or employee of a state commission or of a department or political subdivision of a state may represent the state commission or the department or political subdivision of the state.

(c) *Former Commission employees.* Former employees of the Commission must comply with the restrictions on practice contained in the Commission's Conduct Regulation, Subpart M, 17 CFR 200.735.

(d) *Designation of address for service; notice of appearance; power of attorney; withdrawal.* (1) *Representing oneself.* When an individual first makes any filing or otherwise appears on his or her own behalf before the Commission or a hearing officer in a proceeding as defined in § 201.101(a), he or she shall file with the Commission, or otherwise state on the record, and keep current, an address at which any notice or other written communication required to be served upon him or her or furnished to him or her may be sent and a telephone number where he or she may be reached during business hours.

(2) *Representing others.* When a person first makes any filing or otherwise appears in a representative capacity before the Commission or a hearing officer in a proceeding as defined in § 201.101(a), that person shall file with the Commission, and keep current, a written notice stating the name of the proceeding; the representative's name, business address and telephone number; and the name and address of the person or persons represented.

(3) *Power of attorney.* Any individual appearing or practicing before the Commission in a representative capacity may be required to file a power of attorney with the Commission showing his or her authority to act in such capacity.

(4) *Withdrawal.* Withdrawal by any individual appearing in a representative capacity shall be permitted only by order of the Commission or the hearing officer. A motion seeking leave to withdraw shall state with specificity the reasons for such withdrawal.

(e) *Suspension and disbarment.* (1) *Generally.* The Commission may censure a person or deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found by the Commission after notice and opportunity for hearing in the matter:

(i) Not to possess the requisite qualifications to represent others; or

(ii) To be lacking in character or integrity or to have engaged in unethical or improper professional conduct; or

(iii) To have willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws or the rules and regulations thereunder.

(2) *Certain professionals and convicted persons.* Any attorney who has been suspended or disbarred by a court of the United States or of any State; or any person whose license to practice as an accountant, engineer, or other professional or expert has been revoked or suspended in any State; or any person who has been convicted of a felony or a misdemeanor involving moral turpitude shall be forthwith suspended from appearing or practicing before the Commission. A disbarment, suspension, revocation or conviction within the meaning of this section shall be deemed to have occurred when the disbarring, suspending, revoking or convicting agency or tribunal enters its judgment or order, including a judgment or order on a plea of nolo contendere, regardless of whether an appeal of such judgment or order is pending or could be taken.

(3) *Temporary suspensions.* An order of temporary suspension shall become effective upon service on the respondent. No order of temporary suspension shall be entered by the Commission pursuant to paragraph (e)(3)(i) of this section more than 90 days after the date on which the final judgment or order entered in a judicial or administrative proceeding described in paragraph (e)(3)(i)(A) or (e)(3)(i)(B) of this section has become effective, whether upon completion of review or appeal procedures or because further review or appeal procedures are no longer available.

(i) The Commission, with due regard to the public interest and without preliminary hearing, may, by order, temporarily suspend from appearing or practicing before it any attorney, accountant, engineer, or other professional or expert who has been by name:

(A) Permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder; or

(B) Found by any court of competent jurisdiction in an action brought by the Commission to which he or she is a party or found by the Commission in any administrative proceeding to which he or she is a party to have violated (unless the violation was found not to have been willful) or aided and abetted the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

(ii) Any person temporarily suspended from appearing and practicing before the Commission in accordance with paragraph (e)(3)(i) of this section may, within 30 days after service upon him or her of the order of temporary suspension, petition the Commission to lift the temporary suspension. If no petition has been received by the Commission within 30 days after service of the order, the suspension shall become permanent.

(iii) Within 30 days after the filing of a petition in accordance with paragraph (e)(3)(ii) of this section, the Commission shall either lift the temporary suspension, or set the matter down for hearing at a time and place designated by the Commission, or both, and, after opportunity for hearing, may censure the petitioner or disqualify the petitioner from appearing or practicing before the Commission for a period of time or permanently. In every case in which the temporary suspension has not been lifted, every hearing held and other action taken pursuant to this paragraph (e)(3) shall be expedited in accordance with § 201.500. If the hearing is held before a hearing officer, the time limits set forth in § 201.531 will govern review of the hearing officer's initial decision.

(iv) In any hearing held on a petition filed in accordance with paragraph (e)(3)(ii) of this section, the staff of the Commission shall show either that the petitioner has been enjoined as described in paragraph (e)(3)(i)(A) of this section or that the petitioner has been found to have committed or aided and abetted violations as described in paragraph (e)(3)(i)(B) of this section and that showing, without more, may be the basis for censure or disqualification. Once that showing has been made, the burden shall be upon the petitioner to show cause why he or she should not be censured or temporarily or permanently disqualified from appearing and practicing before the Commission. In any such hearing, the petitioner may not contest any finding made against him or her or fact admitted by him or her in the judicial or administrative proceeding upon which the proceeding under this paragraph (e)(3) is predicated. A person who has consented to the entry of a permanent injunction as described in paragraph (e)(3)(i)(A) of this section without admitting the facts set forth in the complaint shall be presumed for all purposes under this paragraph (e)(3) to have been enjoined by reason of the misconduct alleged in the complaint.

(4) *Filing of prior orders.* Any person appearing or practicing before the Commission who has been the subject of an order, judgment, decree, or finding as set forth in paragraph (e)(3) of this section shall promptly file with the Secretary a copy thereof (together with any related opinion or statement of the agency or tribunal involved). Failure to file any such paper, order, judgment, decree or finding shall not impair the operation of any other provision of this section.

(5) *Reinstatement.* (i) An application for reinstatement of a person permanently suspended or disqualified under paragraph (e)(1) or (e)(3) of this section may be made at any time, and the applicant may, in the Commission's discretion, be afforded a hearing; however, the suspension or disqualification shall continue unless and until the applicant has been reinstated by the Commission for good cause shown.

(ii) Any person suspended under paragraph (e)(2) of this section shall be reinstated by the Commission, upon appropriate application, if all the grounds for application of the provisions of that paragraph are subsequently removed by a reversal of the conviction or termination of the suspension, disbarment, or revocation. An application for reinstatement on any other grounds by any person suspended under paragraph (e)(2) of this section may be filed at any time and the applicant shall be accorded an opportunity for a hearing in the matter; however, such suspension shall continue unless and until the applicant has been reinstated by order of the Commission for good cause shown.

(6) *Other proceedings not precluded.* A proceeding brought under paragraph (e)(1), (e)(2) or (e)(3) of this section shall not preclude another proceeding brought under these same paragraphs.

(7) *Public hearings.* All hearings held under this paragraph (e) shall be public unless otherwise ordered by the Commission on its own motion or after considering the motion of a party.

(f) *Practice defined.* For the purposes of these Rules of Practice, practicing before the Commission shall include, but shall not be limited to:

(1) Transacting any business with the Commission; and

(2) The preparation of any statement, opinion or other paper by any attorney, accountant, engineer or other professional or expert, filed with the Commission in any registration statement, notification, application, report or other document with the consent of such attorney, accountant, engineer or other professional or expert.

§ 201.103 Construction of rules.

(a) The Rules of Practice shall be construed and administered to secure the just, speedy, and inexpensive determination of every proceeding.

(b) In any particular proceeding, to the extent that there is a conflict between these rules and a procedural requirement contained in any statute, or any rule or form adopted thereunder, the latter shall control.

(c) For purposes of these rules:

(1) Any term in the singular includes the plural, and any term in the plural includes the singular, if such use would be appropriate;

(2) Any use of a masculine, feminine, or neuter gender encompasses such other genders as would be appropriate; and

(3) Unless the context requires otherwise, counsel for a party may take any action required or permitted to be taken by such party.

§ 201.104 Business hours.

The Headquarters office of the Commission, at 450 Fifth Street, N.W., Washington, D.C. 20549, is open each day, except Saturdays, Sundays, and Federal legal holidays, from 9 a.m. to 5:30 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect in Washington, D.C. Federal legal holidays consist of New Year's Day; Birthday of Martin Luther King, Jr.; Presidents Day; Memorial Day; Independence Day; Labor Day; Columbus Day; Veterans Day; Thanksgiving Day; Christmas Day; and any other day appointed as a holiday in Washington, D.C. by the President or the Congress of the United States.

§ 201.110 Presiding officer.

All proceedings shall be presided over by the Commission or, if the Commission so orders, by a hearing officer. When the Commission designates that the hearing officer shall be an administrative law judge, the Chief Administrative Law Judge shall select, pursuant to 17 CFR 200.30–10, the administrative law judge to preside.

§ 201.111 Hearing officer: authority.

The hearing officer shall have the authority to do all things necessary and appropriate to discharge his or her duties. No provision of these Rules of Practice shall be construed to limit the powers of the hearing officer provided by the Administrative Procedure Act, 5 U.S.C. 556, 557. The powers of the hearing officer include, but are not limited to, the following:

(a) Administering oaths and affirmations;

(b) Issuing subpoenas authorized by law and revoking, quashing, or modifying any such subpoena;

(c) Receiving relevant evidence and ruling upon the admission of evidence and offers of proof;

(d) Regulating the course of a proceeding and the conduct of the parties and their counsel;

(e) Holding prehearing and other conferences as set forth in § 201.221 and requiring the attendance at any such conference of at least one representative of each party who has authority to negotiate concerning the resolution of issues in controversy;

(f) Recusing himself or herself upon motion made by a party or upon his or her own motion;

(g) Ordering, in his or her discretion, in a proceeding involving more than one respondent, that the interested division indicate, on the record, at least one day prior to the presentation of any evidence, each respondent against whom that evidence will be offered;

(h) Subject to any limitations set forth elsewhere in these rules, considering and ruling upon all procedural and other motions;

(i) Preparing an initial decision as provided in § 201.360;

(j) Upon notice to all parties, reopening any hearing prior to the filing of an initial decision therein, or, if no initial decision is to be filed, prior to the time fixed for the filing of final briefs with the Commission; and

(k) Informing the parties as to the availability of one or more alternative means of dispute resolution, and encouraging the use of such methods.

§ 201.112 Hearing officer: disqualification and withdrawal.

(a) *Notice of disqualification.* At any time a hearing officer believes himself or herself to be disqualified from considering a matter, the hearing officer shall issue a notice stating that he or she is withdrawing from the matter and setting forth the reasons therefor.

(b) *Motion for withdrawal.* Any party who has a reasonable, good faith basis to believe that a hearing officer has a personal bias, or is otherwise disqualified from hearing a case, may make a motion to the hearing officer that the hearing officer withdraw. The motion shall be accompanied by an affidavit setting forth in detail the facts alleged to constitute grounds for disqualification. If the hearing officer finds himself or herself not disqualified, he or she shall so rule and shall continue to preside over the proceeding.

§ 201.120 Ex parte communications.

(a) Except to the extent required for the disposition of *ex parte* matters as authorized by law, the person presiding over an evidentiary hearing may not:

(1) Consult a person or party on a fact in issue, unless on notice and opportunity for all parties to participate; or

(2) Be responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative or prosecuting functions for the Commission.

(b) The Commission's code of behavior regarding *ex parte* communications between persons outside the Commission and decisional employees, 17 CFR 200.110 through 200.114, governs other prohibited communications during a proceeding conducted under the Rules of Practice.

§ 201.121 Separation of functions.

Any Commission officer, employee or agent engaged in the performance of investigative or prosecutorial functions for the Commission in a proceeding as defined in § 201.101(a) may not, in that proceeding or one that is factually related, participate or advise in the decision, or in Commission review of the decision pursuant to Section 557 of the Administrative Procedure Act, 5 U.S.C. 557, except as a witness or counsel in the proceeding.

§ 201.140 Commission orders and decisions: signature and availability.

(a) *Signature required.* All orders and decisions of the Commission shall be signed by the Secretary or any other person duly authorized by the Commission.

(b) *Availability for inspection.* Each order and decision shall be available for inspection by the public from the date of entry, unless the order or decision is nonpublic. A nonpublic order or decision shall be available for inspection by any person entitled to inspect it from the date of entry.

(c) *Date of entry of orders.* The date of entry of a Commission order shall be the date the order is signed. Such date shall be reflected in the caption of the order, or if there is no caption, in the order itself.

§ 201.141 Orders and decisions: service of orders instituting proceeding and other orders and decisions.

(a) *Service of an order instituting proceedings.* (1) *By whom made.* The Secretary, or another duly authorized officer of the Commission, shall serve a copy of an order instituting proceedings on each person named in the order as a party. The Secretary may direct an interested division to assist in making service.

(2) *How made.* (i) *To individuals.* Notice of a proceeding shall be made to an individual by delivering a copy of the order instituting proceedings to the individual or to an agent authorized by appointment or by law to receive such notice. *Delivery* means—handing a copy of the order to the individual; or leaving a copy at the individual's office with a clerk or other person in charge thereof; or leaving a copy at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein; or sending a copy of the order addressed to the individual by U.S. Postal Service certified, registered or Express Mail and obtaining a confirmation of receipt; or giving confirmed telegraphic notice.

(ii) *To corporations or entities.* Notice of a proceeding shall be made to a person other than a natural person by delivering a copy of the order instituting proceedings to an officer, managing or general agent, or any other agent authorized by appointment or by law to receive such notice, by any method specified in paragraph (a)(2)(i) of this section.

(iii) *Upon persons registered with the Commission.* In addition to any other method of service specified in paragraph (a)(2) of this section, notice may be made to a person currently registered with the Commission as a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, investment adviser, investment company or transfer agent by sending a copy of the order addressed to the most recent business address shown on the person's registration form by U.S. Postal Service certified, registered or Express Mail and obtaining a confirmation of attempted delivery.

(iv) *Upon persons in a foreign country.* Notice of a proceeding to a person in a foreign country may be made by any method specified in paragraph (a)(2) of this section, or by any other method reasonably calculated to give notice, provided that the method of service used is not prohibited by the law of the foreign country.

(v) *In stop order proceedings.* Notwithstanding any other provision of paragraph (a)(2) of this section, in proceedings pursuant to Sections 8 or 10 of the Securities Act of 1933, 15 U.S.C. 77h or 77j, or Sections 305 or 307 of the Trust Indenture Act of 1939, 15 U.S.C. 77eee or 77ggg, notice of the institution of proceedings shall be made by personal service or confirmed telegraphic notice, or a waiver obtain pursuant to paragraph (a)(4) of this section.

(3) *Certificate of service.* The Secretary shall place in the record of the proceeding a certificate of service identifying the party given notice, the method of service, the date of service, the address to which service was made and the person who made service. If service is made in person, the certificate shall state, if available, the name of the individual to whom the order was given. If service is made by U.S. Postal Service certified, registered or Express Mail, the certificate shall be accompanied by a confirmation of receipt or of attempted delivery, as required. If service is made to an agent authorized by appointment to receive service, the certificate shall be accompanied by evidence of the appointment.

(4) *Waiver of service.* In lieu of service as set forth in paragraph (a)(2) of this section, the party may be provided a copy of the order instituting proceedings by first class mail or other reliable means if a waiver of service is obtained from the party and placed in the record.

(b) *Service of orders or decisions other than an order instituting proceedings.* Written orders or decisions issued by the Commission or by a hearing officer shall be served promptly on each party pursuant to any method of service authorized under paragraph (a) of this section or § 201.150(c). Service of orders or decisions by the Commission, including those entered pursuant to delegated authority, shall be made by the Secretary or, as authorized by the Secretary, by a member of an interested division. Service of orders or decisions issued by a hearing officer shall be made by the Secretary or the hearing officer.

§ 201.150 Service of papers by parties.

(a) *When required.* In every proceeding as defined in § 201.101(a), each paper, including each notice of appearance, written motion, brief, or other written communication, shall be served upon each party in the proceeding in accordance with the provisions of this section; provided, however, that absent an order to the contrary, no service shall be required for motions which may be heard *ex parte.*

(b) *Upon a person represented by counsel.* Whenever service is required to be made upon a person represented by counsel who has filed a notice of appearance pursuant to § 201.102, service shall be made pursuant to paragraph (c) of this section upon counsel, unless service upon the person represented is ordered by the Commission or the hearing officer.

(c) *How made.* Service shall be made by delivering a copy of the filing. *Delivery* means:

(1) Personal service—handing a copy to the person required to be served; or leaving a copy at the person's office with a clerk or other person in charge thereof, or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein;

(2) Mailing the papers through the U.S. Postal Service by first class, registered, or certified mail or Express Mail delivery addressed to the person;

(3) Sending the papers through a commercial courier service or express delivery service; or

(4) Transmitting the papers by facsimile machine where the following conditions are met:

(i) The persons serving each other by facsimile transmission have agreed to do so in a writing, signed by each party, which specifies such terms as they deem necessary with respect to facsimile machine telephone numbers to be used, hours of facsimile machine operation, the provision of non-facsimile original or copy, and any other such matters; and

(ii) Receipt of each document served by facsimile is confirmed by a manually signed receipt delivered by facsimile machine or other means agreed to by the parties.

(d) *When service is complete.* Personal service, service by U.S. Postal Service Express Mail or service by a commercial courier or express delivery service is complete upon delivery. Service by mail is complete upon mailing. Service by facsimile is complete upon confirmation of transmission by delivery of a manually signed receipt.

§ 201.151 Filing of papers with the Commission: procedure.

(a) *When to file.* All papers required to be served by a party upon any person shall be filed with the Commission at the time of service or promptly thereafter. Papers required to be filed with the Commission must be received within the time limit, if any, for such filing.

(b) *Where to file.* Filing of papers with the Commission shall be made by filing them with the Secretary. When a proceeding is assigned to a hearing officer, a person making a filing with the Secretary shall promptly provide to the hearing officer a copy of any such filing, provided, however, that the hearing officer may direct or permit filings to be made with him or her, in which event the hearing officer shall note thereon the filing date and promptly provide the Secretary with either the original or a copy of any such filings.

(c) *To whom to direct the filing.* Unless otherwise provided, where the Commission has assigned a case to a hearing officer, all motions, objections, applications or other filings made during a proceeding prior to the filing of an initial decision therein, or, if no initial decision is to be filed, prior to the time fixed for the filing of briefs with the Commission, shall be directed to and decided by the hearing officer.

(d) *Certificate of service.* Papers filed with the Commission or a hearing officer shall be accompanied by a certificate stating the name of the person or persons served, the date of service, the method of service and the mailing address or facsimile telephone number to which service was made, if not made in person. If the method of service to any party is different from the method of service to any other party or the method for filing with the Commission, the certificate shall state why a different means of service was used.

§ 201.152 Filing of papers: form.

(a) *Specifications.* Papers filed in connection with any proceeding as defined in § 201.101(a) shall:

(1) Be on one grade of unglazed white paper measuring 8½ x 11 inches, except that, to the extent that the reduction of larger documents would render them illegible, such documents may be filed on larger paper;

(2) Be typewritten or printed in either 10- or 12-point typeface or otherwise reproduced by a process that produces permanent and plainly legible copies;

(3) Include at the head of the paper, or on a title page, the name of the Commission, the title of the proceeding, the names of the parties, the subject of the particular paper or pleading, and the file number assigned to the proceeding;

(4) Be paginated with left hand margins at least 1 inch wide, and other margins of at least 1 inch;

(5) Be double-spaced, with single-spaced footnotes and single-spaced indented quotations; and

(6) Be stapled, clipped or otherwise fastened in the upper left corner.

(b) *Signature required.* All papers must be dated and signed as provided in § 201.153.

(c) *Suitability for recordkeeping.* Documents which, in the opinion of the Commission, are not suitable for computer scanning or microfilming may be rejected.

(d) *Number of copies.* An original and three copies of all papers shall be filed.

(e) *Form of briefs.* All briefs containing more than 10 pages shall include a table of contents, an alphabetized table of cases, a table of statutes, and a table of other authorities cited, with references to the pages of the brief wherein they are cited.

(f) *Scandalous or impertinent matter.* Any scandalous or impertinent matter contained in any brief or pleading or in connection with any oral presentation in a proceeding may be stricken on order of the Commission or the hearing officer.

§ 201.153 Filing of papers: signature requirement and effect.

(a) *General requirements.* Following the issuance of an order instituting proceedings, every filing of a party represented by counsel shall be signed by at least one counsel of record in his or her name and shall state that counsel's business address and telephone number. A party who acts as his or her own counsel shall sign his or her individual name and state his or her address and telephone number on every filing.

(b) *Effect of signature.* (1) The signature of a counsel or party shall constitute a certification that:

(i) the person signing the filing has read the filing;

(ii) to the best of his or her knowledge, information, and belief, formed after reasonable inquiry, the filing is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and

(iii) the filing is not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of adjudication.

(2) If a filing is not signed, the hearing officer or the Commission shall strike the filing, unless it is signed promptly after the omission is called to the attention of the person making the filing.

§ 201.154 Motions.

(a) *Generally.* Unless made during a hearing or conference, a motion shall be in writing, shall state with particularity the grounds therefor, shall set forth the relief or order sought, and shall be accompanied by a written brief of the points and authorities relied upon. All written motions shall be served in accordance with § 201.150, be filed in accordance with § 201.151, meet the requirements of § 201.152, and be signed in accordance with § 201.153. The Commission or the hearing officer may order that an oral motion be submitted in writing. Unless otherwise ordered by the Commission or the hearing officer, if a motion is properly made to the Commission concerning a proceeding to which a hearing officer is assigned, the proceeding before the hearing officer shall continue pending the determination of the motion by the Commission. No oral argument shall be heard on any motion unless the Commission or the hearing officer otherwise directs.

(b) *Opposing and reply briefs.* Except as provided in § 201.401, briefs in opposition to a motion shall be filed within five days after service of the motion. Reply briefs shall be filed within three days after service of the opposition.

(c) *Length limitation.* A brief in support of or opposition to a motion shall not exceed 10 pages, exclusive of pages containing any table of contents, table of authorities, and/or addendum. Requests for leave to file briefs in excess of 10 pages are disfavored.

§ 201.155 Default; motion to set aside default.

(a) A party to a proceeding may be deemed to be in default and the Commission or the hearing officer may determine the proceeding against that party upon consideration of the record, including the order instituting proceedings, the allegations of which may be deemed to be true, if that party fails:

(1) To appear, in person or through a representative, at a hearing or conference of which that party has been notified;

(2) To answer, to respond to a dispositive motion within the time provided, or otherwise to defend the proceeding; or

(3) To cure a deficient filing within the time specified by the commission or the hearing officer pursuant to § 201.180(b).

(b) A motion to set aside a default shall be made within a reasonable time, state the reasons for the failure to appear or defend, and specify the nature of the proposed defense in the proceeding. In order to prevent injustice and on such conditions as may be appropriate, the hearing officer, at any time prior to the filing of the initial decision, or the Commission, at any time, may for good cause shown set aside a default.

§ 201.160 - Time computation.

(a) *Computation.* In computing any period of time prescribed in or allowed by these Rules of Practice or by order of the Commission, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or Federal legal holiday (as defined in § 201.104), in which event the period runs until the end of the next day that is not a Saturday, Sunday, or Federal legal holiday. Intermediate Saturdays, Sundays, and Federal legal holidays shall be excluded from the computation when the period of time prescribed or allowed is seven days or less, not including any additional time allowed for service by mail in paragraph (b) of this section. If on the day a filing is to be made, weather or other conditions have caused the Secretary's office or other designated filing location to close, the filing deadline shall be extended to the end of the next day that is neither a Saturday, a Sunday, nor a Federal legal holiday.

(b) *Additional time for service by mail.* If service is made by mail, three days shall be added to the prescribed period for response.

§ 201.161 Extensions of time, postponements and adjournments.

(a) *Availability.* Except as otherwise provided by law, the Commission, at any time, or the hearing officer, at any time prior to the filing of his or her

initial decision or, if no initial decision is to be filed, at any time prior to the closing of the record, may, for good cause shown, extend or shorten any time limits prescribed by these Rules of Practice for the filing of any papers and may, consistent with paragraph (b) of this section, postpone or adjourn any hearing.

(b) *Limitations on postponements, adjournments and extensions.* A hearing shall begin at the time and place ordered, provided that, within the limits provided by statute, the Commission or the hearing officer may for good cause shown postpone the commencement of the hearing or adjourn a convened hearing for a reasonable period of time or change the place of hearing.

(1) *Additional considerations.* In considering a motion for postponement of the start of a hearing, adjournment once a hearing has begun, or extensions of time for filing papers, the hearing officer or the Commission shall consider, in addition to any other factors:

(i) The length of the proceeding to date;

(ii) The number of postponements, adjournments or extensions already granted;

(iii) The stage of the proceedings at the time of the request; and

(iv) Any other such matters as justice may require.

(2) *Time limit.* Postponements, adjournments or extensions of time for filing papers shall not exceed 21 days unless the Commission or the hearing officer states on the record or sets forth in a written order the reasons why a longer period of time is necessary.

§ 201.180 Sanctions.

(a) *Contemptuous conduct.*

(1) *Subject to exclusion or suspension.* Contemptuous conduct by any person before the Commission or a hearing officer during any proceeding, including any conference, shall be grounds for the Commission or the hearing officer to:

(i) Exclude that person from such hearing or conference, or any portion thereof; and/or

(ii) Summarily suspend that person from representing others in the proceeding in which such conduct occurred for the duration, or any portion, of the proceeding.

(2) *Review procedure.* A person excluded from a hearing or conference, or a counsel summarily suspended from practice for the duration or any portion of a proceeding, may seek review of the exclusion or suspension by filing with the Commission, within three days of the exclusion or suspension order, a motion to vacate the order. The Commission shall consider such motion on an expedited basis as provided in § 201.500.

(3) *Adjournment.* Upon motion by a party represented by counsel subject to an order of exclusion or suspension, an adjournment shall be granted to allow the retention of new counsel. In determining the length of an adjournment, the Commission or hearing officer shall consider, in addition to the factors set forth in § 201.161, the availability of co-counsel for the party or of other members of a suspended counsel's firm.

(b) *Deficient filings; leave to cure deficiencies.* The Commission or the hearing officer may reject, in whole or in part, any filing that fails to comply with any requirements of these Rules of Practice or of any order issued in the proceeding in which the filing was made. Any such filings shall not be part of the record. The Commission or the hearing officer may direct a party to cure any deficiencies and to resubmit the filing within a fixed time period.

(c) *Failure to make required filing or to cure deficient filing.* The Commission or the hearing officer may enter a default pursuant to § 201.155, dismiss the case, decide the particular matter at issue against that person, or prohibit the introduction of evidence or exclude testimony concerning that matter if a person fails:

(1) To make a filing required under these Rules of Practice; or

(2) To cure a deficient filing within the time specified by the Commission or the hearing officer pursuant to paragraph (b) of this section.

§ 201.190 Confidential treatment of information in certain filings.

(a) *Application.* An application for confidential treatment pursuant to the provisions of Clause 30 of Schedule A of the Securities Act of 1933, 15 U.S.C. 77aa(30), and Rule 406 thereunder, 17 CFR 230.406; Section 24(b)(2) of the Securities Exchange Act of 1934, 15 U.S.C. 78x(b)(2), and Rule 24b–2 thereunder, 17 CFR 240.24b–2; Section 22(b) of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79v(b), and Rule 104 thereunder, 17 CFR 250.104; Section 45(a) of the Investment Company Act of 1940, 15 U.S.C. 80a–44(a), and Rule 45a–1 thereunder, 17 CFR 270.45a–1; or Section 210(a) of the Investment Advisers Act of 1940, 15 U.S.C. 80b–10(a), shall be filed with the Secretary. The application shall be accompanied by a sealed copy of the materials as to which confidential treatment is sought.

(b) *Procedure for supplying additional information.* The applicant may be required to furnish in writing additional information with respect to the grounds for objection to public disclosure. Failure to supply the information so requested within 14 days from the date of receipt by the applicant of a notice of the information required shall be deemed a waiver of the objection to public disclosure of that portion of the information to which the additional information relates, unless the Commission or the hearing officer shall otherwise order for good cause shown at or before the expiration of such 14-day period.

(c) *Confidentiality of materials pending final decision.* Pending the determination of the application for confidential treatment, transcripts, non-final orders including an initial decision, if any, and other materials in connection with the application shall be placed under seal; shall be for the confidential use only of the hearing officer, the Commission, the applicant, and any other parties and counsel; and shall be made available to the public only in accordance with orders of the Commission.

(d) *Public availability of orders.* Any final order of the Commission denying or sustaining an application for confidential treatment shall be made public. Any prior findings or opinions relating to an application for confidential treatment under this section shall be made public at such time as the material as to which confidentiality was requested is made public.

§ 201.191 Adjudications not required to be determined on the record after notice and opportunity for hearing.

(a) *Scope of the rule.* This rule applies to every case of adjudication, as defined in 5 U.S.C. 551, pursuant to any statute which the Commission administers, where adjudication is not required to be determined on the record after notice and opportunity for hearing and which the Commission has not chosen to determine on the record after notice and opportunity for hearing.

(b) *Procedure.* In every case of adjudication under paragraph (a) of this section, the Commission shall give prompt notice of any adverse action or final disposition to any person who has requested the Commission to make (or not to make) any such adjudication, and furnish to any such person a written statement of reasons therefor. Additional procedures may be specified in rules relating to specific types of such adjudications. Where any such rule provides for the publication of a Commission order, notice of the action

or disposition shall be deemed to be given by such publication.

(c) *Contents of the record.* If the Commission provides notice and opportunity for the submission of written comments by parties to the adjudication or, as the case may be, by other interested persons, written comments received on or before the closing date for comments, unless accorded confidential treatment pursuant to statute or rule of the Commission, become a part of the record of the adjudication. The Commission, in its discretion, may accept and include in the record written comments filed with the Commission after the closing date.

§ 201.192 Rulemaking: issuance, amendment and repeal of rules of general application.

(a) *By petition.* Any person desiring the issuance, amendment or repeal of a rule of general application may file a petition therefor with the Secretary. Such petition shall include a statement setting forth the text or the substance of any proposed rule or amendment desired or specifying the rule the repeal of which is desired, and stating the nature of his or her interest and his or her reasons for seeking the issuance, amendment or repeal of the rule. The Secretary shall acknowledge, in writing, receipt of the petition and refer it to the appropriate division or office for consideration and recommendation. Such recommendations shall be transmitted with the petition to the Commission for such action as the Commission deems appropriate. The Secretary shall notify the petitioner of the action taken by the Commission.

(b) *Notice of proposed issuance, amendment or repeal of rules.* Except where the Commission finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, whenever the Commission proposes to issue, amend, or repeal any rule or regulation of general application other than an interpretive rule; general statement of policy; or rule of agency organization, procedure, or practice; or any matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts, there shall first be published in the **Federal Register** a notice of the proposed action. Such notice shall include:

(1) A statement of the time, place, and nature of the rulemaking proceeding, with particular reference to the manner in which interested persons shall be afforded the opportunity to participate in such proceeding;

(2) Reference to the authority under which the rule is proposed; and

(3) The terms or substance of the proposed rule or a description of the subjects and issues involved.

§ 201.193 Applications by barred individuals for consent to associate.

Preliminary note

This rule governs applications to the Commission by certain persons, barred by Commission order from association with brokers, dealers, municipal securities dealers, government securities brokers, government securities dealers, investment advisers, investment companies or transfer agents, for consent to become so associated. Applications made pursuant to this section must show that the proposed association would be consistent with the public interest. In addition to the information specifically required by the rule, applications should be supplemented, where appropriate, by written statements of individuals (other than the applicant) who are competent to attest to the applicant's character, employment performance, and other relevant information. Intentional misstatements or omissions of fact may constitute criminal violations of 18 U.S.C. 1001 *et seq.* and other provisions of law.

The nature of the supervision that an applicant will receive or exercise as an associated person with a registered entity is an important matter bearing upon the public interest. In meeting the burden of showing that the proposed association is consistent with the public interest, the application and supporting documentation must demonstrate that the proposed supervision, procedures, or terms and conditions of employment are reasonably designed to prevent a recurrence of the conduct that led to imposition of the bar. As an associated person, the applicant will be limited to association in a specified capacity with a particular registered entity and may also be subject to specific terms and conditions.

Normally, the applicant's burden of demonstrating that the proposed association is consistent with the public interest will be difficult to meet where the applicant is to be supervised by, or is to supervise, another barred individual. In addition, where an applicant wishes to become the sole proprietor of a registered entity and thus is seeking Commission consent notwithstanding an absence of supervision, the applicant's burden will be difficult to meet.

In addition to the factors set forth in paragraph (d) of this section, the Commission will consider the nature of the findings that resulted in the bar when making its determination as to whether the proposed association is consistent with the public interest. In this regard, attention is directed to Rule 5(e) of the Commission's Rules on Informal and Other Procedures, 17 CFR 202.5(e). Among other things, Rule 5(e) sets forth the Commission's policy "not to permit a * * * respondent [in an administrative proceeding] to consent to * * * [an] order that imposes a sanction while denying the allegations in the * * * order for proceedings." Consistent with the rationale underlying that policy, and in order to avoid the appearance that an application made pursuant to this section was granted on the basis of such denial, the Commission will not consider any application that attempts to reargue or collaterally attack the findings that resulted in the Commission's bar order.

(a) *Scope of rule.* Applications for Commission consent to associate, or to change the terms and conditions of association, with a registered broker, dealer, municipal securities dealer, government securities broker, government securities dealer, investment adviser, investment company or transfer agent may be made pursuant to this section where a Commission order bars the individual from association with a registered entity and:

(1) Such barred individual seeks to become associated with an entity that is not a member of a self-regulatory organization; or

(2) The order contains a proviso that application may be made to the Commission after a specified period of time.

(b) *Form of application.* Each application shall be supported by an affidavit, manually signed by the applicant, that addresses the factors set forth in paragraph (d) of this section. One original and three copies of the application shall be filed pursuant to §§ 201.151, 201.152 and 201.153. Each application shall include as exhibits:

(1) A copy of the Commission order imposing the bar;

(2) An undertaking by the applicant to notify immediately the Commission in writing if any information submitted in support of the application becomes materially false or misleading while the application is pending;

(3) The following forms, as appropriate:

(i) A copy of a completed Form U–4, where the applicant's proposed association is with a broker-dealer or municipal securities dealer;

(ii) A copy of a completed Form MSD–4, where the applicant's proposed association is with a bank municipal securities dealer;

(iii) The information required by Form ADV, 17 CFR 279.1, with respect to the applicant, where the applicant's proposed association is with an investment adviser;

(iv) The information required by Form TA–1, 17 CFR 249b.100, with respect to the applicant, where the applicant's proposed association is with a transfer agent; and

(4) A written statement by the proposed employer that describes:

(i) The terms and conditions of employment and supervision to be

exercised over such applicant and, where applicable, by such applicant;

(ii) The qualifications, experience, and disciplinary records of the proposed supervisor(s) of the applicant;

(iii) The compliance and disciplinary history, during the two years preceding the filing of the application, of the office in which the applicant will be employed; and

(iv) The names of any other associated persons in the same office who have previously been barred by the Commission, and whether they are to be supervised by the applicant.

(c) *Required showing.* The applicant shall make a showing satisfactory to the Commission that the proposed association would be consistent with the public interest.

(d) *Factors to be addressed.* The affidavit required by paragraph (b) of this section shall address each of the following:

(1) The time period since the imposition of the bar;

(2) Any restitution or similar action taken by the applicant to recompense any person injured by the misconduct that resulted in the bar;

(3) The applicant's compliance with the order imposing the bar;

(4) The applicant's employment during the period subsequent to imposition of the bar;

(5) The capacity or position in which the applicant proposes to be associated;

(6) The manner and extent of supervision to be exercised over such applicant and, where applicable, by such applicant;

(7) Any relevant courses, seminars, examinations or other actions completed by the applicant subsequent to imposition of the bar to prepare for his or her return to the securities business; and

(8) Any other information material to the application.

(e) *Notification to applicant and written statement.* In the event an adverse recommendation is proposed by the staff with respect to an application made pursuant to this section, the applicant shall be so advised and provided with a written statement of the reasons for such recommendation. The applicant shall then have 30 days to submit a written statement in response.

(f) *Concurrent applications.* The Commission will not consider any application submitted pursuant to this section if any other application for consent to associate concerning the same applicant is pending before any self-regulatory organization.

Initiation of Proceedings and Prehearing Rules

§ 201.200 Initiation of proceedings.

(a) *Order instituting proceedings: notice and opportunity for hearing.*(1) *Generally.* Whenever an order instituting proceedings is issued by the Commission, appropriate notice thereof shall be given to each party to the proceeding by the Secretary or another duly designated officer of the Commission. Each party shall be given notice of any hearing within a time reasonable in light of the circumstances, in advance of the hearing; provided, however, no prior notice need be given to a respondent if the Commission has authorized the Division of Enforcement to seek a temporary sanction *ex parte.*

(2) *Stop order proceedings: additional persons entitled to notice.* Any notice of a proceeding relating to the issuance of a stop order suspending the effectiveness of a registration statement pursuant to Section 8(d) of the Securities Act of 1933, 15 U.S.C. 77h(d), shall be sent to or served on the issuer; or, in the case of a foreign government or political subdivision thereof, sent to or served on the underwriter; or, in the case of a foreign or territorial person, sent to or served on its duly authorized representative in the United States named in the registration statement, properly directed in the case of telegraphic notice to the address given in such statement. In addition, if such proceeding is commenced within 90 days after the registration statement has become effective, notice of the proceeding shall be given to the agent for service named on the facing sheet of the registration statement and to each other person designated on the facing sheet of the registration statement as a person to whom copies of communications to such agent are to be sent.

(b) *Content of order.* The order instituting proceedings shall:

(1) State the nature of any hearing;

(2) State the legal authority and jurisdiction under which the hearing is to be held;

(3) Contain a short and plain statement of the matters of fact and law to be considered and determined, unless the order directs an answer pursuant to § 201.220 in which case the order shall set forth the factual and legal basis alleged therefor in such detail as will permit a specific response thereto; and

(4) State the nature of any relief or action sought or taken.

(c) *Time and place of hearing.* The time and place for any hearing shall be fixed with due regard for the public interest and the convenience and necessity of the parties, other participants, or their representatives.

(d) *Amendment to order instituting proceedings.*(1) *By the Commission.* Upon motion by a party, the Commission may, at any time, amend an order instituting proceedings to include new matters of fact or law.

(2) *By the hearing officer.* Upon motion by a party, the hearing officer may, at any time prior to the filing of an initial decision or, if no initial decision is to be filed, prior to the time fixed for the filing of final briefs with the Commission, amend an order instituting proceedings to include new matters of fact or law that are within the scope of the original order instituting proceedings.

(e) *Publication of notice of public hearings.* Unless otherwise ordered by the Commission, notice of any public hearing shall be given general circulation by release to the public, by publication in the *SEC News Digest* and, where directed, by publication in the **Federal Register.**

§ 201.201 Consolidation of proceedings.

By order of the Commission or a hearing officer, proceedings involving a common question of law or fact may be consolidated for hearing of any or all the matters at issue in such proceedings. The Commission or the hearing officer may make such orders concerning the conduct of such proceedings as it deems appropriate to avoid unnecessary cost or delay. Consolidation shall not prejudice any rights under these Rules of Practice and shall not affect the right of any party to raise issues that could have been raised if consolidation had not occurred. For purposes of this section, no distinction is made between joinder and consolidation of proceedings.

§ 201.202 Specification of procedures by parties in certain proceedings.

(a) *Motion to specify procedures.* In any proceeding other than an enforcement or disciplinary proceeding or a proceeding to review a determination by a self-regulatory organization pursuant to §§ 201.420 and 201.421, a party may, at any time up to 20 days prior to the start of a hearing, make a motion to specify the procedures necessary or appropriate for the proceeding, with particular reference to:

(1) Whether there should be an initial decision by a hearing officer;

(2) Whether any interested division of the Commission may assist in the preparation of the Commission's decision; and

(3) Whether there should be a 30-day waiting period between the issuance of the Commission's order and the date it is to become effective.

(b) *Objections; effect of failure to object.* Any other party may object to the procedures so specified, and such party may specify such additional procedures as it considers necessary or appropriate. In the absence of such objection or such specification of additional procedures, such other party may be deemed to have waived objection to the specified procedures.

(c) *Approval required.* Any proposal pursuant to paragraph (a) of this section, even if not objected to by any party, shall be subject to the written approval of the hearing officer.

(d) *Procedure upon agreement to waive an initial decision.* If an initial decision is waived pursuant to paragraph (a) of this section, the hearing officer shall notify the Secretary and, unless the Commission directs otherwise within 14 days, no initial decision shall be issued.

§ 201.210 Parties, limited participants and amici curiae.

(a) *Parties in an enforcement or disciplinary proceeding or a proceeding to review a self-regulatory organization determination.* (1) *Generally.* No person shall be granted leave to become a party or a non-party participant on a limited basis in an enforcement or disciplinary proceeding or a proceeding to review a determination by a self-regulatory organization pursuant to §§ 201.420 and 201.421.

(2) *Disgorgement proceedings.* In an enforcement proceeding, a person may state his or her views with respect to a proposed plan of disgorgement or file a proof of claim pursuant to § 201.612.

(b) *Intervention as a party.* (1) *Generally.* In any proceeding, other than an enforcement proceeding, a disciplinary proceeding or a proceeding to review a self-regulatory organization determination, any person may seek leave to intervene as a party by filing a motion setting forth the person's interest in the proceeding. No person, however, shall be admitted as a party to a proceeding by intervention unless it is determined that leave to participate pursuant to paragraph (c) of this section would be inadequate for the protection of his or her interests.

(i) In a proceeding under the Public Utility Holding Company Act of 1935, any representative of interested consumers or security holders, or any other person whose participation in the proceeding may be in the public interest or for the protection of investors or consumers, may be admitted as a party upon the filing of a written motion setting forth the person's interest in the proceeding.

(ii) In a proceeding under the Investment Company Act of 1940, any representative of interested security holders, or any other person whose participation in the proceeding may be in the public interest or for the protection of investors, may be admitted as a party upon the filing of a written motion setting forth the person's interest in the proceeding.

(2) *Intervention as of right.* (i) In proceedings under the Public Utility Holding Company Act of 1935, any interested representative, agency, authority or instrumentality of the United States or any interested State, State commission, municipality or other political subdivision of a state shall be admitted as a party to any proceeding upon the filing of a written motion requesting leave to be admitted.

(ii) In proceedings under the Investment Company Act of 1940, any interested State or State agency shall be admitted as a party to any proceeding upon the filing of a written motion requesting leave to be admitted.

(c) *Leave to participate on a limited basis.* In any proceeding, other than an enforcement proceeding, a disciplinary proceeding or a proceeding to review a self-regulatory organization determination, any person may seek leave to participate on a limited basis as a non-party participant as to any matter affecting the person's interests.

(1) *Procedure.* Motions for leave to participate shall be in writing, shall set forth the nature and extent of the movant's interest in the proceeding, and, except where good cause for late filing is shown, shall be filed not later than 20 days prior to the date fixed for the commencement of the hearing. Leave to participate pursuant to this paragraph (c) may include such rights of a party as the hearing officer may deem appropriate. Persons granted leave to participate shall be served in accordance with § 201.150; provided, however, that a party to the proceeding may move that the extent of notice of filings or other papers to be provided to persons granted leave to participate be limited, or may move that the persons granted leave to participate bear the cost of being provided copies of any or all filings or other papers. Persons granted leave to participate shall be bound, except as may be otherwise determined by the hearing officer, by any stipulation between the parties to the proceeding with respect to procedure, including submission of evidence, substitution of exhibits, corrections of the record, the time within which briefs or exceptions may be filed or proposed findings and conclusions may be submitted, the filing of initial decisions, the procedure to be followed in the preparation of decisions and the effective date of the Commission's order in the case. Where the filing of briefs or exceptions or the submission of proposed findings and conclusions are waived by the parties to the proceedings, a person granted leave to participate pursuant to this paragraph (c) shall not be permitted to file a brief or exceptions or submit proposed findings and conclusions except by leave of the Commission or of the hearing officer.

(2) *Certain persons entitled to leave to participate.* The hearing officer is directed to grant leave to participate under this paragraph (c) to any person to whom it is proposed to issue any security in exchange for one or more bona fide outstanding securities, claims or property interests, or partly in such exchange and partly for cash, where the Commission is authorized to approve the terms and conditions of such issuance and exchange after a hearing upon the fairness of such terms and conditions.

(d) *Amicus participation.*

(1) *Availability.* An amicus brief may be filed only if:

(i) A motion for leave to file the brief has been granted;

(ii) The brief is accompanied by written consent of all parties;

(iii) The brief is filed at the request of the Commission or the hearing officer; or

(iv) The brief is presented by the United States or an officer or agency thereof, or by a State, Territory or Commonwealth.

(2) *Procedure.* An amicus brief may be filed conditionally with the motion for leave. The motion for leave shall identify the interest of the movant and shall state the reasons why a brief of an amicus curiae is desirable. Except as all parties otherwise consent, any amicus curiae shall file its brief within the time allowed the party whose position the amicus will support, unless the Commission or hearing officer, for cause shown, grants leave for a later filing. In the event that a later filing is allowed, the order granting leave to file shall specify when an opposing party may reply to the brief. A motion of an amicus curiae to participate in oral argument will be granted only for extraordinary reasons.

(e) *Permission to state views.* Any person may make a motion seeking leave to file a memorandum or make an oral statement of his or her views. Any such communication may be included in the record; provided, however, that unless offered and admitted as evidence

of the truth of the statements therein made, any assertions of fact submitted pursuant to the provisions of this paragraph (e) will be considered only to the extent that the statements therein made are otherwise supported by the record.

(f) *Modification of participation provisions.* The Commission or the hearing officer may, by order, modify the provisions of this section which would otherwise be applicable, and may impose such terms and conditions on the participation of any person in any proceeding as it may deem necessary or appropriate in the public interest.

201.220 Answer to allegations.

(a) *When required.* In its order instituting proceedings, the Commission may require any party to file an answer to each of the allegations contained therein. Even if not so ordered, any party in any proceeding may elect to file an answer. Any other person granted leave by the Commission or the hearing officer to participate on a limited basis in such proceedings pursuant to § 201.210(c) may be required to file an answer.

(b) *When to file.* Except where a different period is provided by rule or by order, a party required to file an answer as provided in paragraph (a) of this section shall do so within 20 days after service upon the party of the order instituting proceedings. Persons granted leave to participate on a limited basis in the proceeding pursuant to § 201.210(c) may file an answer within a reasonable time, as determined by the Commission or the hearing officer. If the order instituting proceedings is amended, the Commission or the hearing officer may require that an amended answer be filed and, if such an answer is required, shall specify a date for the filing thereof.

(c) *Contents; effect of failure to deny.* Unless otherwise directed by the hearing officer or the Commission, an answer shall specifically admit, deny, or state that the party does not have, and is unable to obtain, sufficient information to admit or deny each allegation in the order instituting proceedings. When a party intends in good faith to deny only a part of an allegation, the party shall specify so much of it as is true and shall deny only the remainder. A statement of a lack of information shall have the effect of a denial. A defense of res judicata, statute of limitations or any other matter constituting an affirmative defense shall be asserted in the answer. Any allegation not denied shall be deemed admitted.

(d) *Motion for more definite statement.* A party may file with an answer a motion for a more definite statement of specified matters of fact or law to be considered or determined. Such motion shall state the respects in which, and the reasons why, each such matter of fact or law should be required to be made more definite. If the motion is granted, the order granting such motion shall set the periods for filing such a statement and any answer thereto.

(e) *Amendments.* A party may amend its answer at any time by written consent of each adverse party or with leave of the Commission or the hearing officer. Leave shall be freely granted when justice so requires.

(f) *Failure to file answer: default.* If a party respondent fails to file an answer required by this section within the time provided, such person may be deemed in default pursuant to § 201.155(a). A party may make a motion to set aside a default pursuant to § 201.155(b).

201.221 Prehearing conferences.

(a) *Purposes of conferences.* The purposes of prehearing conferences include, but are not limited to:

(1) Expediting the disposition of the proceeding;

(2) Establishing early and continuing control of the proceeding by the hearing officer; and

(3) Improving the quality of the hearing through more thorough preparation.

(b) *Procedure.* On his or her own motion or at the request of a party, the hearing officer may, in his or her discretion, direct counsel or any party to meet for an initial, final or other prehearing conference. Such conferences may be held with or without the hearing officer present as the hearing officer deems appropriate. Where such a conference is held outside the presence of the hearing officer, the hearing officer shall be advised promptly by the parties of any agreements reached. Such conferences also may be held with one or more persons participating by telephone or other remote means.

(c) *Subjects to be discussed.* At a prehearing conference consideration may be given and action taken with respect to any and all of the following:

(1) Simplification and clarification of the issues;

(2) Exchange of witness and exhibit lists and copies of exhibits;

(3) Stipulations, admissions of fact, and stipulations concerning the contents, authenticity, or admissibility into evidence of documents;

(4) Matters of which official notice may be taken;

(5) The schedule for exchanging prehearing motions or briefs, if any;

(6) The method of service for papers other than Commission orders;

(7) Summary disposition of any or all issues;

(8) Settlement of any or all issues;

(9) Determination of hearing dates;

(10) Amendments to the order instituting proceedings or answers thereto;

(11) Production of documents as set forth in § 201.230, and prehearing production of documents in response to subpoenas duces tecum as set forth in § 201.232;

(12) Specification of procedures as set forth in § 201.202; and

(13) Such other matters as may aid in the orderly and expeditious disposition of the proceeding.

(d) *Required prehearing conferences.* Except where the emergency nature of a proceeding would make a prehearing conference clearly inappropriate, both an initial and a final prehearing conference should be held. Unless ordered otherwise, an initial prehearing conference shall be held within 14 days of the service of an answer, or if no answer is required, within 14 days of service of the order instituting proceedings. A final conference shall be held as close to the start of the hearing as reasonable under the circumstances.

(e) *Prehearing orders.* At or following the conclusion of any conference held pursuant to this section, the hearing officer shall enter a ruling or order which recites the agreements reached. and any procedural determinations made by the hearing officer.

(f) *Failure to appear: default.* Any person who is named in an order instituting proceedings as a person against whom findings may be made or sanctions imposed and who fails to appear, in person or through a representative, at a prehearing conference of which he or she has been duly notified may be deemed in default pursuant to § 201.155(a). A party may make a motion to set aside a default pursuant to § 201.155(b).

§ 201.222 Prehearing submissions.

(a) *Submissions generally.* The hearing officer, on his or her own motion, or at the request of a party or other participant, may order any party, including the interested division, to furnish such information as deemed appropriate, including any or all of the following:

(1) An outline or narrative summary of its case or defense;

(2) The legal theories upon which it will rely;

(3) Copies and a list of documents that it intends to introduce at the hearing; and

(4) A list of witnesses who will testify on its behalf, including the witnesses' names, occupations, addresses and a brief summary of their expected testimony.

(b) *Expert witnesses.* Each party who intends to call an expert witness shall submit, in addition to the information required by paragraph (a)(4) of this section, a statement of the expert's qualifications, a listing of other proceedings in which the expert has given expert testimony, and a list of publications authored or co-authored by the expert.

§ 201.230 Enforcement and disciplinary proceedings: availability of documents for inspection and copying.

For purposes of this section, the term *documents* shall include writings, drawings, graphs, charts, photographs, recordings and other data compilations, including data stored by computer, from which information can be obtained.

(a) *Documents to be available for inspection and copying.* (1) Unless otherwise provided by this section, or by order of the Commission or the hearing officer, the Division of Enforcement shall make available for inspection and copying by any party documents obtained by the Division prior to the institution of proceedings, in connection with the investigation leading to the Division's recommendation to institute proceedings. Such documents shall include:

(i) Each subpoena issued;

(ii) Every other written request to persons not employed by the Commission to provide documents or to be interviewed;

(iii) The documents turned over in response to any such subpoenas or other written requests;

(iv) All transcripts and transcript exhibits;

(v) Any other documents obtained from persons not employed by the Commission; and

(vi) Any final examination or inspection reports prepared by the Division of Market Regulation or the Division of Investment Management.

(2) Nothing in this paragraph (a) shall limit the right of the Division to make available any other document, or shall limit the right of a respondent to seek access to or production pursuant to subpoena of any other document, or shall limit the authority of the hearing officer to order the production of any document pursuant to subpoena.

(b) *Documents that may be withheld.* (1) The Division of Enforcement may withhold a document if:

(i) The document is privileged;

(ii) The document is an internal memorandum, note or writing prepared by a Commission employee, other than an examination or inspection report as specified in paragraph (a)(1)(vi) of this section, or is otherwise attorney work product and will not be offered in evidence;

(iii) The document would disclose the identity of a confidential source; or

(iv) The hearing officer grants leave to withhold a document or category of documents as not relevant to the subject matter of the proceeding or otherwise, for good cause shown.

(2) Nothing in this paragraph (b) authorizes the Division of Enforcement in connection with an enforcement or disciplinary proceeding to withhold, contrary to the doctrine of *Brady v. Maryland*, 373 U.S. 83, 87 (1963), documents that contain material exculpatory evidence.

(c) *Withheld document list.* The hearing officer may require the Division of Enforcement to submit for review a list of documents withheld pursuant to paragraphs (b)(1) through (b)(4) of this section or to submit any document withheld, and may determine whether any such document should be made available for inspection and copying.

(d) *Timing of inspection and copying.* Unless otherwise ordered by the Commission or the hearing officer, the Division of Enforcement shall commence making documents available to a respondent for inspection and copying pursuant to this section no later than 14 days after the respondent files an answer. In a proceeding in which a temporary cease-and-desist order is sought pursuant to § 201.510 or a temporary suspension of registration is sought pursuant to § 201.520, documents shall be made available no later than the day after service of the decision as to whether to issue a temporary cease-and-desist order or temporary suspension order.

(e) *Place of inspection and copying.* Documents subject to inspection and copying pursuant to this section shall be made available to the respondent for inspection and copying at the Commission office where they are ordinarily maintained, or at such other place as the parties, in writing, may agree. A respondent shall not be given custody of the documents or leave to remove the documents from the Commission's offices pursuant to the requirements of this section other than by written agreement of the Division of Enforcement. Such agreement shall specify the documents subject to the agreement, the date they shall be returned and such other terms or conditions as are appropriate to provide for the safekeeping of the documents.

(f) *Copying costs and procedures.* The respondent may obtain a photocopy of any documents made available for inspection. The respondent shall be responsible for the cost of photocopying. Unless otherwise ordered, charges for copies made by the Division of Enforcement at the request of the respondent will be at the rate charged pursuant to the fee schedule at 17 CFR 200.80e for copies. The respondent shall be given access to the documents at the Commission's offices or such other place as the parties may agree during normal business hours for copying of documents at the respondent's expense.

(g) *Issuance of investigatory subpoenas after institution of proceedings.* The Division of Enforcement shall promptly inform the hearing officer and each party if investigatory subpoenas are issued under the same investigation file number or pursuant to the same order directing private investigation ("formal order") under which the investigation leading to the institution of proceedings was conducted. The hearing officer shall order such steps as necessary and appropriate to assure that the issuance of investigatory subpoenas after the institution of proceedings is not for the purpose of obtaining evidence relevant to the proceedings and that any relevant documents that may be obtained through the use of investigatory subpoenas in a continuing investigation are made available to each respondent for inspection and copying on a timely basis.

(h) *Failure to make documents available—harmless error.* In the event that a document required to be made available to a respondent pursuant to this section is not made available by the Division of Enforcement, no rehearing or redecision of a proceeding already heard or decided shall be required, unless the respondent shall establish that the failure to make the document available was not harmless error.

§ 201.231 Enforcement and disciplinary proceedings: production of witness statements.

(a) *Availability.* Any respondent in an enforcement or disciplinary proceeding may move that the Division of Enforcement produce for inspection and copying any statement of any person called or to be called as a witness by the division that pertains, or is expected to pertain, to his or her direct testimony and that would be required to be produced pursuant to the Jencks Act, 18 U.S.C. 3500. Such production shall be

made at a time and place fixed by the hearing officer and shall be made available to any party, provided, however, that the production shall be made under conditions intended to preserve the items to be inspected or copied.

(b) *Failure to produce—harmless error.* In the event that a statement required to be made available for inspection and copying by a respondent is not turned over by the Division of Enforcement, no rehearing or redecision of a proceeding already heard or decided shall be required unless the respondent establishes that the failure to turn over the statement was not harmless error.

§ 201.232 Subpoenas.

(a) *Availability; procedure.* In connection with any hearing ordered by the Commission, a party may request the issuance of subpoenas requiring the attendance and testimony of witnesses at the designated time and place of hearing, and subpoenas requiring the production of documentary or other tangible evidence returnable at any designated time or place. Unless made on the record at a hearing, requests for issuance of a subpoena shall be made in writing and served on each party pursuant to § 201.150. A person whose request for a subpoena has been denied or modified may not request that any other person issue the subpoena.

(1) *Unavailability of hearing officer.* In the event that the hearing officer assigned to a proceeding is unavailable, the party seeking issuance of the subpoena may seek its issuance from the first available of the following persons: the Chief Administrative Law Judge, the law judge most senior in service as a law judge, the duty officer, any other member of the Commission, or any other person designated by the Commission to issue subpoenas. Requests for issuance of a subpoena made to the Commission, or any member thereof, must be submitted to the Secretary, not to an individual Commissioner:

(2) *Signing may be delegated.* A hearing officer may authorize issuance of a subpoena, and may delegate the manual signing of the subpoena to any other person authorized to issue subpoenas.

(b) *Standards for issuance.* Where it appears to the person asked to issue the subpoena that the subpoena sought may be unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may, in his or her discretion, as a condition precedent to the issuance of the subpoena, require the person seeking the subpoena to show the general relevance and reasonable scope of the testimony or other evidence sought. If after consideration of all the circumstances, the person requested to issue the subpoena determines that the subpoena or any of its terms is unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may refuse to issue the subpoena, or issue it only upon such conditions as fairness requires. In making the foregoing determination, the person issuing the subpoena may inquire of the other participants whether they will stipulate to the facts sought to be proved.

(c) *Service.* Service shall be made pursuant to the provisions of § 201.150 (b) through (d). The provisions of this paragraph (c) shall apply to the issuance of subpoenas for purposes of investigations, as required by 17 CFR 203.8, as well as hearings.

(d) *Tender of fees required.* When a subpoena compelling the attendance of a person at a hearing or deposition is issued at the instance of anyone other than an officer or agency of the United States, service is valid only if the subpoena is accompanied by a tender to the subpoenaed person of the fees for one day's attendance and mileage specified by paragraph (f) of this section.

(e) *Application to quash or modify.* (1) *Procedure.* Any person to whom a subpoena is directed or who is an owner, creator or the subject of the documents that are to be produced pursuant to a subpoena may, prior to the time specified therein for compliance, but in no event more than 15 days after the date of service of such subpoena, request that the subpoena be quashed or modified. Such request shall be made by application filed with the Secretary and served on all parties pursuant to § 201.150. The party on whose behalf the subpoena was issued may, within five days of service of the application, file an opposition to the application. If a hearing officer has been assigned to the proceeding, the application to quash shall be directed to that hearing officer for consideration, even if the subpoena was issued by another person.

(2) *Standards governing application to quash or modify.* If compliance with the subpoena would be unreasonable, oppressive or unduly burdensome, the hearing officer or the Commission shall quash or modify the subpoena, or may order return of the subpoena only upon specified conditions. These conditions may include but are not limited to a requirement that the party on whose behalf the subpoena was issued shall make reasonable compensation to the person to whom the subpoena was addressed for the cost of copying or transporting evidence to the place for return of the subpoena.

(f) *Witness fees and mileage.* Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear.

§ 201.233 Depositions upon oral examination.

(a) *Procedure.* Any party desiring to take the testimony of a witness by deposition shall make a written motion setting forth the reasons why such deposition should be taken including the specific reasons why the party believes the witness will be unable to attend or testify at the hearing; the name and address of the prospective witness; the matters concerning which the prospective witness is expected to be questioned; and the proposed time and place for the taking of the deposition.

(b) *Required finding when ordering a deposition.* In the discretion of the Commission or the hearing officer, an order for deposition may be issued upon a finding that the prospective witness will likely give testimony material to the proceeding, that it is likely the prospective witness will be unable to attend or testify at the hearing because of age, sickness, infirmity, imprisonment or other disability, and that the taking of a deposition will serve the interests of justice.

(c) *Contents of order.* An order for deposition shall designate by name a deposition officer. The designated officer may be the hearing officer or any other person authorized to administer oaths by the laws of the United States or of the place where the deposition is to be held. An order for deposition also shall state:

(1) The name of the witness whose deposition is to be taken;

(2) The scope of the testimony to be taken;

(3) The time and place of the deposition;

(4) The manner of recording, preserving and filing the deposition; and

(5) The number of copies, if any, of the deposition and exhibits to be filed upon completion of the deposition.

(d) *Procedure at depositions.* A witness whose testimony is taken by deposition shall be sworn or shall affirm before any questions are put to him or her. Examination and cross-examination of deponents may proceed as permitted at a hearing. The witness being deposed may have counsel present during the deposition.

(e) *Objections to questions or evidence.* Objections to questions or evidence shall be in short form, stating the grounds of objection relied upon. Objections to questions or evidence shall be noted by the deposition officer upon the deposition, but a deposition officer other than the hearing officer shall not have the power to decide on the competency, materiality or relevance of evidence. Failure to object to questions or evidence before the deposition officer shall not be deemed a waiver unless the ground of the objection is one that might have been obviated or removed if presented at that time.

(f) *Filing of depositions.* The questions propounded and all answers or objections shall be recorded or transcribed verbatim, and a transcript prepared by the deposition officer, or under his or her direction. The transcript shall be subscribed by the witness and certified by the deposition officer. The original deposition and exhibits shall be filed with the Secretary. A copy of the deposition shall be available to the deponent and each party for purchase at prescribed rates.

(g) *Payment.* The cost of the transcript shall be paid by the party requesting the deposition.

§ 201.234 Depositions upon written questions.

(a) *Availability.* Depositions may be taken and submitted on written questions upon motion of any party. The motion shall include the information specified in § 201.233(a). A decision on the motion shall be governed by the provisions of § 201.233(b).

(b) *Procedure.* Written questions shall be filed with the motion. Within 10 days after service of the motion and written questions, any party may file objections to such written questions and any party may file cross-questions. When a deposition is taken pursuant to this section no persons other than the witness, counsel to the witness, the deposition officer, and, if the deposition officer does not act as reporter, a reporter, shall be present at the examination of the witness. No party shall be present or represented unless otherwise permitted by order. The deposition officer shall propound the questions and cross-questions to the witness in the order submitted.

(c) *Additional requirements.* The order for deposition, filing of the deposition, form of the deposition and use of the deposition in the record shall be governed by paragraphs (c) through (g) of § 201.233, except that no cross-examination shall be made.

§ 201.235 Introducing prior sworn statements of witnesses into the record.

(a) At a hearing, any person wishing to introduce a prior, sworn statement of a witness, not a party, otherwise admissible in the proceeding, may make a motion setting forth the reasons therefor. If only part of a statement is offered in evidence, the hearing officer may require that all relevant portions of the statement be introduced. If all of a statement is offered in evidence, the hearing officer may require that portions not relevant to the proceeding be excluded. A motion to introduce a prior sworn statement may be granted if:

(1) The witness is dead;

(2) The witness is out of the United States, unless it appears that the absence of the witness was procured by the party offering the prior sworn statement;

(3) The witness is unable to attend or testify because of age, sickness, infirmity, imprisonment or other disability;

(4) The party offering the prior sworn statement has been unable to procure the attendance of the witness by subpoena; or,

(5) In the discretion of the Commission or the hearing officer, it would be desirable, in the interests of justice, to allow the prior sworn statement to be used. In making this determination, due regard shall be given to the presumption that witnesses will testify orally in an open hearing. If the parties have stipulated to accept a prior sworn statement in lieu of live testimony, consideration shall also be given to the convenience of the parties in avoiding unnecessary expense.

§ 201.240 Settlement.

(a) *Availability.* Any person who is notified that a proceeding may or will be instituted against him or her, or any party to a proceeding already instituted, may, at any time, propose in writing an offer of settlement.

(b) *Procedure.* An offer of settlement shall state that it is made pursuant to this section; shall recite or incorporate as a part of the offer the provisions of paragraphs (c) (4) and (5) of this section; shall be signed by the person making the offer, not by counsel; and shall be submitted to the interested division.

(c) *Consideration of offers of settlement.* (1) Offers of settlement shall be considered by the interested division when time, the nature of the proceedings, and the public interest permit.

(2) Where a hearing officer is assigned to a proceeding, the interested division and the party submitting the offer may request that the hearing officer express his or her views regarding the appropriateness of the offer of settlement. A request for the hearing officer to express his or her views on an offer of settlement or otherwise to participate in a settlement conference constitutes a waiver by the persons making the request of any right to claim bias or prejudgment by the hearing officer based on the views expressed.

(3) The interested division shall present the offer of settlement to the Commission with its recommendation, except that, if the division's recommendation is unfavorable, the offer shall not be presented to the Commission unless the person making the offer so requests.

(4) By submitting an offer of settlement, the person making the offer waives, subject to acceptance of the offer:

(i) All hearings pursuant to the statutory provisions under which the proceeding is to be or has been instituted;

(ii) The filing of proposed findings of fact and conclusions of law;

(iii) Proceedings before, and an initial decision by, a hearing officer;

(iv) All post-hearing procedures; and

(v) Judicial review by any court.

(5) By submitting an offer of settlement the person further waives:

(i) Such provisions of the Rules of Practice or other requirements of law as may be construed to prevent any member of the Commission's staff from participating in the preparation of, or advising the Commission as to, any order, opinion, finding of fact, or conclusion of law to be entered pursuant to the offer; and

(ii) Any right to claim bias or prejudgment by the Commission based on the consideration of or discussions concerning settlement of all or any part of the proceeding.

(6) If the Commission rejects the offer of settlement, the person making the offer shall be notified of the Commission's action and the offer of settlement shall be deemed withdrawn. The rejected offer shall not constitute a part of the record in any proceeding against the person making the offer, provided, however, that rejection of an offer of settlement does not affect the continued validity of waivers pursuant to paragraph (c)(5) of this section with respect to any discussions concerning the rejected offer of settlement.

(7) Final acceptance of any offer of settlement will occur only upon the

issuance of findings and an order by the Commission.

§ 201.250 Motion for summary disposition.

(a) After a respondent's answer has been filed and, in an enforcement or a disciplinary proceeding, documents have been made available to that respondent for inspection and copying pursuant to § 201.230, the respondent, or the interested division may make a motion for summary disposition of any or all allegations of the order instituting proceedings with respect to that respondent. If the interested division has not completed presentation of its case in chief, a motion for summary disposition shall be made only with leave of the hearing officer. The facts of the pleadings of the party against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by that party, by uncontested affidavits, or by facts officially noted pursuant to § 201.323.

(b) The hearing officer shall promptly grant or deny the motion for summary disposition or shall defer decision on the motion. The hearing officer may grant the motion for summary disposition if there is no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition as a matter of law. If it appears that a party, for good cause shown, cannot present by affidavit prior to hearing facts essential to justify opposition to the motion, the hearing officer shall deny or defer the motion. A hearing officer's decision to deny leave to file a motion for summary disposition is not subject to interlocutory appeal.

(c) The motion for summary disposition, supporting memorandum of points and authorities, and any declarations, affidavits or attachments shall not exceed 35 pages in length.

Rules Regarding Hearings

§ 201.300 Hearings.

Hearings for the purpose of taking evidence shall be held only upon order of the Commission. All hearings shall be conducted in a fair, impartial, expeditious and orderly manner.

§ 201.301 Hearings to be public.

All hearings, except hearings on applications for confidential treatment filed pursuant to § 201.190, hearings held to consider a motion for a protective order pursuant to § 201.322, and hearings on *ex parte* application for a temporary cease-and-desist order, shall be public unless otherwise ordered by the Commission on its own motion or the motion of a party. No hearing shall be nonpublic where all respondents request that the hearing be made public.

§ 201.302 Record of hearings.

(a) *Recordation.* Unless ordered otherwise by the hearing officer or the Commission, all hearings shall be recorded and a written transcript thereof shall be prepared.

(b) *Availability of a transcript.* Transcripts of public hearings shall be available for purchase at prescribed rates. Transcripts of nonpublic proceedings, and transcripts subject to a protective order pursuant to § 201.322, shall be available for purchase only by parties; provided, however, that any person compelled to submit data or evidence in a hearing may purchase a copy of his or her own testimony.

(c) *Transcript correction.* Prior to the filing of post-hearing briefs or proposed findings and conclusions, or within such earlier time as directed by the Commission or the hearing officer, a party or witness may make a motion to correct the transcript. Proposed corrections of the transcript may be submitted to the hearing officer by stipulation pursuant to § 201.324, or by motion. Upon notice to all parties to the proceeding, the hearing officer may, by order, specify corrections to the transcript.

§ 201.310 Failure to appear at hearings: default.

Any person named in an order instituting proceedings as a person against whom findings may be made or sanctions imposed who fails to appear at a hearing of which he or she has been duly notified may be deemed to be in default pursuant to § 201.155(a). A party may make a motion to set aside a default pursuant to § 201.155(b).

§ 201.320 Evidence: admissibility.

The Commission or the hearing officer may receive relevant evidence and shall exclude all evidence that is irrelevant, immaterial or unduly repetitious.

§ 201.321 Evidence: objections and offers of proof.

(a) *Objections.* Objections to the admission or exclusion of evidence must be made on the record and shall be in short form, stating the grounds relied upon. Exceptions to any ruling thereon by the hearing officer need not be noted at the time of the ruling. Such exceptions will be deemed waived on appeal to the Commission, however, unless raised:

(1) Pursuant to interlocutory review in accordance with § 201.400;

(2) In a proposed finding or conclusion filed pursuant to § 201.340; or

(3) In a petition for Commission review of an initial decision filed in accordance with § 201.410.

(b) *Offers of proof.* Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the record. Excluded material shall be retained pursuant to § 201.350(b).

§ 201.322 Evidence: confidential information, protective orders.

(a) *Procedure.* In any proceeding as defined in § 201.101(a), a party, any person who is the owner, subject or creator of a document subject to subpoena or which may be introduced as evidence, or any witness who testifies at a hearing may file a motion requesting a protective order to limit from disclosure to other parties or to the public documents or testimony that contain confidential information. The motion should include a general summary or extract of the documents without revealing confidential details. If the movant seeks a protective order against disclosure to other parties as well as the public, copies of the documents shall not be served on other parties. Unless the documents are unavailable, the movant shall file for *in camera* inspection a sealed copy of the documents as to which the order is sought.

(b) *Basis for issuance.* Documents and testimony introduced in a public hearing are presumed to be public. A motion for a protective order shall be granted only upon a finding that the harm resulting from disclosure would outweigh the benefits of disclosure.

(c) *Requests for additional information supporting confidentiality.* A movant under paragraph (a) of this section may be required to furnish in writing additional information with respect to the grounds for confidentiality. Failure to supply the information so requested within five days from the date of receipt by the movant of a notice of the information required shall be deemed a waiver of the objection to public disclosure of that portion of the documents to which the additional information relates, unless the Commission or the hearing officer shall otherwise order for good cause shown at or before the expiration of such five-day period.

(d) *Confidentiality of documents pending decision.* Pending a determination of a motion under this section, the documents as to which confidential treatment is sought and any other documents that would reveal the confidential information in those documents shall be maintained under seal and shall be disclosed only in accordance with orders of the Commission or the hearing officer. Any order issued in connection with a motion under this section shall be public unless the order would disclose information as to which a protective order has been granted, in which case that portion of the order that would reveal the protected information shall be nonpublic.

§ 201.323 Evidence: official notice.

Official notice may be taken of any material fact which might be judicially noticed by a district court of the United States, any matter in the public official records of the Commission, or any matter which is peculiarly within the knowledge of the Commission as an expert body. If official notice is requested or taken of a material fact not appearing in the evidence in the record, the parties, upon timely request, shall be afforded an opportunity to establish the contrary.

§ 201.324 Evidence: stipulations.

The parties may, by stipulation, at any stage of the proceeding agree upon any pertinent facts in the proceeding. A stipulation may be received in evidence and, when received, shall be binding on the parties to the stipulation.

§ 201.325 Evidence: presentation under oath or affirmation.

A witness at a hearing for the purpose of taking evidence shall testify under oath or affirmation.

§ 201.326 Evidence: presentation, rebuttal and cross-examination.

In any proceeding in which a hearing is required to be conducted on the record after opportunity for hearing in accord with 5 U.S.C. 556(a), a party is entitled to present its case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as, in the discretion of the Commission or the hearing officer, may be required for a full and true disclosure of the facts. The scope and form of evidence, rebuttal evidence, if any, and cross-examination, if any, in any other proceeding shall be determined by the Commission or the hearing officer in each proceeding.

§ 201.340 Proposed findings, conclusions and supporting briefs.

(a) *Opportunity to file.* Before an initial decision is issued, each party shall have an opportunity, reasonable in light of all the circumstances, to file in writing proposed findings and conclusions together with, or as a part of, its brief.

(b) *Procedure.* Proposed findings of fact must be supported by citations to specific portions of the record. If successive filings are directed, the proposed findings and conclusions of the party assigned to file first shall be set forth in serially numbered paragraphs, and any counter statement of proposed findings and conclusions must, in addition to any other matter, indicate those paragraphs of the proposals already filed as to which there is no dispute. A reply brief may be filed by the party assigned to file first, or, where simultaneous filings are directed, reply briefs may be filed by each party, within the period prescribed therefor by the hearing officer. No further briefs may be filed except with leave of the hearing officer.

(c) *Time for filing.* In any proceeding in which an initial decision is to be issued:

(1) At the end of each hearing, the hearing officer shall, by order, after consultation with the parties, prescribe the period within which proposed findings and conclusions and supporting briefs are to be filed. The party or parties directed to file first shall make its or their initial filing within 30 days of the end of the hearing unless the hearing officer, for good cause shown, permits a different period and sets forth in the order the reasons why the different period is necessary.

(2) The total period within which all such proposed findings and conclusions and supporting briefs and any counter statements of proposed findings and conclusions and reply briefs are to be filed shall be no longer than 90 days after the close of the hearing unless the hearing officer, for good cause shown, permits a different period and sets forth in an order the reasons why the different period is necessary.

§ 201.350 Record in proceedings before hearing officer; retention of documents; copies.

(a) *Contents of the record.* The record shall consist of:

(1) The order instituting proceedings, each notice of hearing and any amendments;

(2) Each application, motion, submission or other paper, and any amendments, motions, objections, and exceptions to or regarding them;

(3) Each stipulation, transcript of testimony and document or other item admitted into evidence;

(4) Each written communication accepted by the hearing officer pursuant to § 201.210;

(5) With respect to a request to disqualify a hearing officer or to allow the hearing officer's withdrawal under § 201.112, each affidavit or transcript of testimony taken and the decision made in connection with the request;

(6) All motions, briefs and other papers filed on interlocutory appeal;

(7) All proposed findings and conclusions;

(8) Each written order issued by the hearing officer or Commission; and

(9) Any other document or item accepted into the record by the hearing officer.

(b) *Retention of documents not admitted.* Any document offered in evidence but excluded, and any document marked for identification but not offered as an exhibit, shall not be considered a part of the record. The Secretary shall retain any such documents until the later of the date upon which a Commission order ending the proceeding becomes final, or the conclusion of any judicial review of the Commission's order.

(c) *Substitution of copies.* A true copy of a document may be substituted for any document in the record or any document retained pursuant to paragraph (b) of this section.

§ 201.351 Transmittal of documents to Secretary; record index; certification.

(a) *Transmittal from hearing officer to Secretary of partial record index.* The hearing officer may, at any time, transmit to the Secretary motions, exhibits or any other original documents filed with or accepted into evidence by the hearing officer, together with an index of such documents. The hearing officer, may, by order, require the interested division or other persons to assist in promptly transporting such documents from the hearing location to the Office of the Secretary.

(b) *Preparation, certification of record index.* Promptly after the close of the hearing, the hearing officer shall transmit to the Secretary an index of the originals of any motions, exhibits or any other documents filed with or accepted into evidence by the hearing officer that have not been previously transmitted to the Secretary, and the Secretary shall prepare a record index. Prior to issuance of an initial decision, or if no initial decision is to be prepared, within 30 days of the close of the hearing, the Secretary shall transmit the record index to the hearing officer and serve a copy of the record index on each party. Any person may file proposed corrections to the record index with the hearing officer within 15 days of service of the record index. The hearing officer shall, by order, direct whether any corrections to the record index shall be made. The Secretary shall make such corrections, if any, and issue a revised

record index. If an initial decision is to be issued, the initial decision shall include a certification that the record consists of the items set forth in the record index or revised record index issued by the Secretary.

(c) *Final transmittal of record items to the Secretary.* After the close of the hearing, the hearing officer shall transmit to the Secretary originals of any motions, exhibits or any other documents filed with, or accepted into evidence by, the hearing officer, or any other portions of the record that have not already been transmitted to the Secretary. Prior to service of the initial decision by the Secretary, or if no initial decision is to be issued, within 60 days of the close of the hearing, the Secretary shall inform the hearing officer if any portions of the record are not in the Secretary's custody.

§ 201.360 Initial decision of hearing officer.

(a) *When required.* Unless the Commission directs otherwise, the hearing officer shall prepare an initial decision in any proceeding in which the Commission directs a hearing officer to preside at a hearing, provided, however, that an initial decision may be waived by the parties with the consent of the hearing officer pursuant to § 201.202.

(b) *Content.* An initial decision shall include: findings and conclusions, and the reasons or basis therefor, as to all the material issues of fact, law or discretion presented on the record and the appropriate order, sanction, relief, or denial thereof. The initial decision shall also state the time period, not to exceed 21 days after service of the decision, except for good cause shown, within which a petition for review of the initial decision may be filed. The reasons for any extension of time shall be stated in the initial decision. The initial decision shall also include a statement that, as provided in paragraph (d) of this section:

(1) The initial decision shall become the final decision of the Commission as to each party unless a party files a petition for review of the initial decision or the Commission determines on its own initiative to review the initial decision as to a party; and

(2) If a party timely files a petition for review or the Commission takes action to review as to a party, the initial decision shall not become final with respect to that party.

(c) *Filing, service and publication.* The hearing officer shall file the initial decision with the Secretary. The Secretary shall promptly serve the initial decision upon the parties and shall promptly publish notice of the filing thereof in the *SEC News Digest.* Thereafter, the Secretary shall publish the initial decision in the *SEC Docket*; provided, however, that in nonpublic proceedings no notice shall be published unless the Commission otherwise directs.

(d) *When final.*

(1) Unless a party or an aggrieved person entitled to review files a petition for review in accordance with the time limit specified in the initial decision, or unless the Commission on its own initiative orders review pursuant to § 201.411, an initial decision shall become the final decision of the Commission.

(2) If a petition for review is timely filed by a party or an aggrieved person entitled to review, or if the Commission upon its own initiative has ordered review of a decision with respect to a party or a person aggrieved who would be entitled to review, the initial decision shall not become final as to that party or person.

(e) *Order of finality.* In the event that the initial decision becomes the final decision of the Commission with respect to a party, the Commission shall issue an order that the decision has become final as to that party. The order of finality shall state the date on which sanctions, if any, take effect. Notice of the order shall be published in the *SEC News Digest* and the *SEC Docket.*

Appeal to the Commission and Commission Review

§ 201.400 Interlocutory review.

(a) *Availability.* The Commission will not review a hearing officer's ruling prior to its consideration of the entire proceeding in the absence of extraordinary circumstances. The Commission may decline to consider a ruling certified by a hearing officer pursuant to paragraph (c) of this section if it determines that interlocutory review is not warranted or appropriate under the circumstances. The Commission may, at any time, on its own motion, direct that any matter be submitted to it for review.

(b) *Expedited consideration.* Interlocutory review of a hearing officer's ruling shall be expedited in every way, consistent with the Commission's other responsibilities.

(c) *Certification process.* A ruling submitted to the Commission for interlocutory review must be certified in writing by the hearing officer and shall specify the material relevant to the ruling involved. The hearing officer shall not certify a ruling unless:

(1) His or her ruling would compel testimony of Commission members, officers or employees or the production of documentary evidence in their custody; or

(2) Upon application by a party, within five days of the hearing officer's ruling, the hearing officer is of the opinion that:

(i) The ruling involves a controlling question of law as to which there is substantial ground for difference of opinion; and

(ii) An immediate review of the order may materially advance the completion of the proceeding.

(d) *Proceedings not stayed.* The filing of an application for review or the grant of review shall not stay proceedings before the hearing officer unless he or she, or the Commission, shall so order. The Commission will not consider the motion for a stay unless the motion shall have first been made to the hearing officer.

§ 201.401 Issuance of stays.

(a) *Procedure.* A request for a stay shall be made by written motion, filed pursuant to § 201.154, and served on all parties pursuant to § 201.150. The motion shall state the reasons for the relief requested and the facts relied upon, and, if the facts are subject to dispute, the motion shall be supported by affidavits or other sworn statements or copies thereof. Portions of the record relevant to the relief sought, if available to the movant, shall be filed with the motion. The Commission may issue a stay based on such motion or on its own motion.

(b) *Scope of relief.* The Commission may grant a stay in whole or in part, and may condition relief under this section upon such terms, or upon the implementation of such procedures, as it deems appropriate.

(c) *Stay of a Commission order.* A motion for a stay of a Commission order may be made by any person aggrieved thereby who would be entitled to review in a federal court of appeals. A motion seeking to stay the effectiveness of a Commission order pending judicial review may be made to the Commission at any time during which the Commission retains jurisdiction over the proceeding.

(d) *Stay of an action by a self-regulatory organization.*

(1) *Availability.* A motion for a stay of an action by a self-regulatory organization for which the Commission is the appropriate regulatory agency, for which action review may be sought pursuant to § 201.420, may be made by any person aggrieved thereby.

(2) *Summary entry.* A stay may be entered summarily, without notice and opportunity for hearing.

(3) *Expedited consideration.* Where the action complained of has already taken effect and the motion for stay is filed within 10 days of the effectiveness of the action, or where the action complained of, will, by its terms, take effect within five days of the filing of the motion for stay, the consideration of and decision on the motion for a stay shall be expedited in every way, consistent with the Commission's other responsibilities. Where consideration will be expedited, persons opposing the motion for a stay may file a statement in opposition within two days of service of the motion unless the Commission, by written order, shall specify a different period.

§ 201.410 Appeal of initial decisions by hearing officers.

(a) *Petition for review; when available.* In any proceeding in which an initial decision is made by a hearing officer, any party, and any other person who would have been entitled to judicial review of the decision entered therein if the Commission itself had made the decision, may file a petition for review of the decision with the Commission.

(b) *Procedure.* The petition for review of an initial decision shall be filed with the Commission within such time after service of the initial decision as prescribed by the hearing officer pursuant to § 201.360(b). The petition shall set forth the specific findings and conclusions of the initial decision as to which exception is taken, together with supporting reasons for each exception. Supporting reasons may be stated in summary form. Any exception to an initial decision not stated in the petition for review, or in a previously filed proposed finding made pursuant to § 201.340, may, at the discretion of the Commission, be deemed to have been waived by the petitioner.

(c) *Financial disclosure statement requirement.* Any person who files a petition for review of an initial decision that asserts that person's inability to pay either disgorgement, interest or a penalty shall file with the opening brief a sworn financial disclosure statement containing the information specified in § 201.630(b).

(d) *Opposition to review.* A party may seek leave to file a brief in opposition to a petition for review within five days of the filing of the petition. The Commission will grant leave, or order the filing of an opposition on its own motion, only if it determines that briefing will significantly aid the decisional process. A brief in opposition shall identify those issues which do not warrant consideration by the Commission and shall state succinctly the reasons therefore.

(e) *Prerequisite to judicial review.* Pursuant to Section 704 of the Administrative Procedure Act, 5 U.S.C. 704, a petition to the Commission for review of an initial decision is a prerequisite to the seeking of judicial review of a final order entered pursuant to such decision.

§ 201.411 Commission consideration of initial decisions by hearing officers.

(a) *Scope of review.* The Commission may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, an initial decision by a hearing officer and may make any findings or conclusions that in its judgment are proper and on the basis of the record.

(b) *Standards for granting review pursuant to a petition for review.*

(1) *Mandatory review.* After a petition for review has been filed, the Commission shall review any initial decision that:

(i) Denies any request for action pursuant to Section 8(a) or Section 8(c) of the Securities Act of 1933, 15 U.S.C. 77h(a), (c), or the first sentence of Section 12(d) of the Exchange Act, 15 U.S.C. 78*l*(d);

(ii) Suspends trading in a security pursuant to Section 12(k) of the Exchange Act, 15 U.S.C. 78l(k); or

(iii) Is in a case of adjudication (as defined in 5 U.S.C. 551) not required to be determined on the record after notice and opportunity for hearing (except to the extent there is involved a matter described in 5 U.S.C. 554(a) (1) through (6)).

(2) *Discretionary review.* The Commission may decline to review any other decision. In determining whether to grant review, the Commission shall consider whether the petition for review makes a reasonable showing that:

(i) A prejudicial error was committed in the conduct of the proceeding; or

(ii) The decision embodies:

(A) A finding or conclusion of material fact that is clearly erroneous; or

(B) A conclusion of law that is erroneous; or

(C) An exercise of discretion or decision of law or policy that is important and that the Commission should review.

(c) *Commission review other than pursuant to a petition for review.* The Commission may, on its own initiative, order review of any initial decision, or a portion of any initial decision, within 21 days after the end of the period established for filing a petition for review pursuant to § 201.410(b) or any brief in opposition to a petition for review permitted pursuant to § 201.410(d). A party who does not intend to file a petition for review, and who desires the Commission's determination whether to order review on its own initiative to be made in a shorter time, may make a motion for an expedited decision, accompanied by a written statement that the party waives its right to file a petition for review. The vote of one member of the Commission, conveyed to the Secretary, shall be sufficient to bring a matter before the Commission for review.

(d) *Limitations on matters reviewed.* Review by the Commission of an initial decision shall be limited to the issues specified in the petition for review or the issues, if any, specified in the briefing schedule order issued pursuant to § 201.450(a). On notice to all parties, however, the Commission may, at any time prior to issuance of its decision, raise and determine any other matters that it deems material, with opportunity for oral or written argument thereon by the parties.

(e) *Summary affirmance.* The Commission may summarily affirm an initial decision based upon the petition for review and any response thereto, without further briefing, if it finds that no issue raised in the petition for review warrants further consideration by the Commission.

(f) *Failure to obtain a majority.* In the event a majority of participating Commissioners do not agree to a disposition on the merits, the initial decision shall be of no effect, and an order will be issued in accordance with this result.

§ 201.420 Appeal of determinations by self-regulatory organizations.

(a) *Application for review; when available.* An application for review by the Commission may be filed by any person who is aggrieved by a self-regulatory organization determination as to which a notice is required to be filed with the Commission pursuant to Section 19(d)(1) of the Exchange Act, 15 U.S.C. 78s(d)(1). Such determinations include any:

(1) Final disciplinary sanction;

(2) Denial or conditioning of membership or participation;

(3) Prohibition or limitation in respect to access to services offered by that self-regulatory organization or a member thereof; or

(4) Bar from association.

(b) *Procedure.* An application for review may be filed with the Commission pursuant to § 201.151 within 30 days after notice of the determination was filed with the Commission pursuant to Section

19(d)(1) of the Exchange Act, 15 U.S.C. 78s(d)(1), and received by the aggrieved person applying for review. The application shall be served by the applicant on the self-regulatory organization. The application shall identify the determination complained of, set forth in summary form a brief statement of alleged errors in the determination and supporting reasons therefor and state an address where the applicant can be served with the record index. The application shall be accompanied by the notice of appearance required by § 201.102(d).

(c) *Determination not stayed.* Filing an application for review with the Commission pursuant to paragraph (b) of this section shall not operate as a stay of the complained of determination made by the self-regulatory organization unless the Commission otherwise orders either pursuant to a motion filed in accordance with § 201.401 or on its own motion.

(d) *Certification of the record; service of the index.* Fourteen days after receipt of an application for review or a Commission order for review, the self-regulatory organization shall certify and file with the Commission one copy of the record upon which the action complained of was taken, and shall file with the Commission three copies of an index to such record, and shall serve upon each party one copy of the index.

§ 201.421 Commission consideration of determinations by self-regulatory organizations.

(a) *Commission review other than pursuant to a petition for review.* The Commission may, on its own initiative, order review of any determination by a self-regulatory organization that could be subject to an application for review pursuant to § 201.420(a) within 40 days after notice thereof was filed with the Commission pursuant to Section 19(d)(1) of the Exchange Act, 15 U.S.C. 78s(d)(1).

(b) *Supplemental briefing.* The Commission may at any time prior to issuance of its decision raise or consider any matter that it deems material, whether or not raised by the parties. Notice to the parties and an opportunity for supplemental briefing with respect to issues not briefed by the parties shall be given where the Commission believes that such briefing would significantly aid the decisional process.

§ 201.430 Appeal of actions made pursuant to delegated authority.

(a) *Scope of rule.* Any person aggrieved by an action made by authority delegated in §§ 200.30–1 through 200.30–17 of this chapter may seek review of the action pursuant to paragraph (b) of this section.

(b) *Procedure.*

(1) *Notice of intention to petition for review.* A party or any person aggrieved by an action made pursuant to delegated authority may seek Commission review of the action by filing a written notice of intention to petition for review within five days after actual notice to the party of the action or service of notice of the action pursuant to § 201.141(b), whichever is earlier. The notice shall identify the petitioner and the action complained of, and shall be accompanied by a notice of appearance pursuant to § 201.102(d).

(2) *Petition for review.* Within five days after the filing of a notice of intention to petition for review pursuant to paragraph (b)(1) of this section, the person seeking review shall file a petition for review containing a clear and concise statement of the issues to be reviewed and the reasons why review is appropriate. The petition shall include exceptions to any findings of fact or conclusions of law made, together with supporting reasons for such exceptions based on appropriate citations to such record as may exist. These reasons may be stated in summary form.

(c) *Prerequisite to judicial review.* Pursuant to Section 704 of the Administrative Procedure Act, 5 U.S.C. 704, a petition to the Commission for review of an action made by authority delegated in §§ 200.30–1 through 200.30–17 of this chapter is a prerequisite to the seeking of judicial review of a final order entered pursuant to such an action.

§ 201.431 Commission consideration of actions made pursuant to delegated authority.

(a) *Scope of review.* The Commission may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, any action made pursuant to authority delegated in §§ 200.30–1 through 200.30–17 of this chapter.

(b) *Standards for granting review pursuant to a petition for review.*

(1) *Mandatory review.* After a petition for review has been filed, the Commission shall review any action that it would be required to review pursuant to § 201.411(b)(1) if the action was made as the initial decision of a hearing officer.

(2) *Discretionary review.* The Commission may decline to review any other action. In determining whether to grant review, the Commission shall consider the factors set forth in § 201.411(b)(2).

(c) *Commission review other than pursuant to a petition for review.* The Commission may, on its own initiative, order review of any action made pursuant to delegated authority at any time, provided, however, that where there are one or more parties to the matter, such review shall not be ordered more than ten days after the action. The vote of one member of the Commission, conveyed to the Secretary, shall be sufficient to bring a matter before the Commission for review.

(d) *Required items in an order for review.* In an order granting a petition for review or directing review on the Commission's own initiative, the Commission shall set forth the time within which any party or other person may file a statement in support of or in opposition to the action made by delegated authority and shall state whether a stay shall be granted, if none is in effect, or shall be continued, if in effect pursuant to paragraph (e) of this section.

(e) *Automatic stay of delegated action.* An action made pursuant to delegated authority shall have immediate effect and be deemed the action of the Commission. Upon filing with the Commission of a notice of intention to petition for review, or upon notice to the Secretary of the vote of a Commissioner that a matter be reviewed, an action made pursuant to delegated authority shall be stayed until the Commission orders otherwise, provided, however, there shall be no automatic stay of an action:

(1) To grant a stay of action by the Commission or a self-regulatory organization as authorized by 17 CFR 200.30–14(g) (5)–(6); or

(2) To commence a subpoena enforcement proceeding as authorized by 17 CFR 200.30–4(a)(10).

(f) *Effectiveness of stay or of Commission decision to modify or reverse a delegated action.* As against any person who shall have acted in reliance upon any action at a delegated level, any stay or any modification or reversal by the Commission of such action shall be effective only from the time such person receives actual notice of such stay, modification or reversal.

§ 201.450 Briefs filed with the Commission.

(a) *Briefing schedule order.* Other than review ordered pursuant to § 201.431, if review of a determination is mandated by statute, rule, or judicial order or the Commission determines to grant review as a matter of discretion, the Commission shall issue a briefing schedule order directing the party or parties to file opening briefs and specifying particular issues, if any, as to which briefing should be limited or directed. Unless otherwise provided, opening briefs shall be filed within 40 days of the date of the briefing schedule order. Opposition briefs shall be filed within 30 days after the date opening briefs are due. Reply briefs shall be filed within 14 days after the date opposition briefs are due. No briefs in addition to those specified in the briefing schedule order may be filed except with leave of the Commission. The briefing schedule order shall be issued:

(1) At the time the Commission orders review on its own initiative pursuant to §§ 201.411 or 201.421, or orders interlocutory review on its own motion pursuant to § 201.400(a); or

(2) Within 21 days, or such longer time as provided by the Commission, after:

(i) The last day permitted for filing a petition for review pursuant to § 201.410(b) or a brief in opposition to a petition for review pursuant to § 201.410(d);

(ii) Receipt by the Commission of an index to the record of a determination of a self-regulatory organization filed pursuant to § 201.420(d);

(iii) Receipt by the Commission of the mandate of a court of appeals with respect to a judicial remand; or

(iv) Certification of a ruling for interlocutory review pursuant to § 201.400(c).

(b) *Contents of briefs.* Briefs shall be confined to the particular matters at issue. Each exception to the findings or conclusions being reviewed shall be stated succinctly. Exceptions shall be supported by citation to the relevant portions of the record, including references to the specific pages relied upon, and by concise argument including citation of such statutes, decisions and other authorities as may be relevant. If the exception relates to the admission or exclusion of evidence, the substance of the evidence admitted or excluded shall be set forth in the brief, in an appendix thereto, or by citation to the record. Reply briefs shall be confined to matters in opposition briefs of other parties.

(c) *Length limitation.* Opening and opposition briefs shall not exceed 50 pages and reply briefs shall not exceed 25 pages, exclusive of pages containing the table of contents, table of authorities, and any addendum, except with leave of the Commission.

§ 201.451 Oral argument before the Commission.

(a) *Availability.* The Commission, on its own motion or the motion of a party or any other aggrieved person entitled to Commission review, may order oral argument with respect to any matter. Motions for oral argument with respect to whether to affirm all or part of an initial decision by a hearing officer shall be granted unless exceptional circumstances make oral argument impractical or inadvisable. The Commission will consider appeals, motions and other matters properly before it on the basis of the papers filed by the parties without oral argument unless the Commission determines that the presentation of facts and legal arguments in the briefs and record and the decisional process would be significantly aided by oral argument.

(b) *Procedure.* Requests for oral argument shall be made by separate motion accompanying the initial brief on the merits. The Commission shall issue an order as to whether oral argument is to be heard, and if so, the time and place therefor. The grant or denial of a motion for oral argument shall be made promptly after the filing of the last brief called for by the briefing schedule. If oral argument is granted, the time fixed for oral argument shall be changed only by written order of the Commission, for good cause shown. The order shall state at whose request the change is made and the reasons for any such change.

(c) *Time allowed.* Unless the Commission orders otherwise, not more than one half-hour per side will be allowed for oral argument. The Commission may, in its discretion, determine that several persons have a common interest, and that the interests represented will be considered a single side for purposes of allotting time for oral argument. Time will be divided equally among persons on a single side, provided, however, that by mutual agreement they may reallocate their time among themselves. A request for additional time must be made by motion filed reasonably in advance of the date fixed for argument.

(d) *Participotion of Commissioners.* A member of the Commission who was not present at the oral argument may participate in the decision of the proceeding, provided that the member has reviewed the transcript of such argument prior to such participation. The decision shall state whether the required review was made.

§ 201.452 Additional evidence.

Upon its own motion or the motion of a party, the Commission may allow the submission of additional evidence. A party may file a motion for leave to adduce additional evidence at any time prior to issuance of a decision by the Commission. Such motion shall show with particularity that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence previously. The Commission may accept or hear additional evidence, may remand the proceeding to a self-regulatory organization, or may remand or refer the proceeding to a hearing officer for the taking of additional evidence, as appropriate.

§ 201.460 Record before the Commission.

The Commission shall determine each matter on the basis of the record.

(a) *Contents of the record.*

(1) In proceedings for final decision before the Commission other than those reviewing a determination by a self-regulatory organization, the record shall consist of:

(i) All items part of the record below in accordance with § 201.350;

(ii) Any petitions for review, cross-petitions or oppositions; and

(iii) All briefs, motions, submissions and other papers filed on appeal or review.

(2) In a proceeding for final decision before the Commission reviewing a determination by a self-regulatory organization, the record shall consist of:

(i) The record certified pursuant to § 201.420(d) by the self-regulatory organization;

(ii) Any application for review; and

(iii) Any submissions, moving papers, and briefs filed on appeal or review.

(b) *Transmittal of record to Commission.* Within 14 days after the last date set for filing briefs or such later date as the Commission directs, the Secretary shall transmit the record to the Commission.

(c) *Review of documents not admitted.* Any document offered in evidence but excluded by the hearing officer or the Commission and any document marked for identification but not offered as an exhibit shall not be considered a part of the record before the Commission on appeal but shall be transmitted to the Commission by the Secretary if so requested by the Commission. In the event that the Commission does not request the document, the Secretary shall retain the document not admitted into the record until the later of:

(1) The date upon which the Commission's order becomes final, or

(2) The conclusion of any judicial review of that order.

§ 201.470 Reconsideration.

(a) *Scope of rule.* A party or any person aggrieved by a determination in a proceeding may file a motion for reconsideration of a final order issued by the Commission.

(b) *Procedure.* A motion for reconsideration shall be filed within 10 days after service of the order complained of on each party, or within such time as the Commission may prescribe upon motion of the person seeking reconsideration, if made within the foregoing 10-day period. The motion for reconsideration shall briefly and specifically state the matters of record alleged to have been erroneously decided, the grounds relied upon, and the relief sought. Except with permission of the Commission, a motion for reconsideration shall not exceed 15 pages. No responses to a motion for reconsideration shall be filed unless requested by the Commission.

§ 201.490 Receipt of petitions for judicial review pursuant to 28 U.S.C. 2112(a)(1).

The Commission officer and office designated pursuant to 28 U.S.C. 2112(a)(1) to receive copies of petitions for review of Commission orders from the persons instituting review in a court of appeals, are the Secretary and the Office of the Secretary at the Commission's Headquarters. Ten copies of each petition shall be submitted. Each copy shall state on its face that it is being submitted to the Commission pursuant to 28 U.S.C. 2112 by the person or persons who filed the petition in the court of appeals.

Rules Relating to Temporary Orders and Suspensions

§ 201.500 Expedited consideration of proceedings.

Consistent with the Commission's or the hearing officer's other responsibilities, every hearing shall be held and every decision shall be rendered at the earliest possible time in connection with:

(a) An application for a temporary sanction, as defined in § 201.101(a), or a proceeding to determine whether a temporary sanction should be made permanent;

(b) A motion or application to review an order suspending temporarily the effectiveness of an exemption from registration pursuant to Regulations A, B, E or F under the Securities Act, §§ 230.258, 230.336, 230.610 or 230.656 of this chapter; or,

(c) A motion to or petition to review an order suspending temporarily the privilege of appearing before the Commission under § 201.102(e)(3), or a sanction under § 201.180(a)(1).

§ 201.510 Temporary cease-and-desist orders: application process.

(a) *Procedure.* A request for entry of a temporary cease-and-desist order shall be made by application filed by the Division of Enforcement. The application shall set forth the statutory provision or rule that each respondent is alleged to have violated; the temporary relief sought against each respondent, including whether the respondent would be required to take action to prevent the dissipation or conversion of assets; and whether the relief is sought *ex parte.*

(b) *Accompanying documents.* The application shall be accompanied by a declaration of facts signed by a person with knowledge of the facts contained therein, a memorandum of points and authorities, a proposed order imposing the temporary relief sought, and, unless relief is sought *ex parte,* a proposed notice of hearing and order to show cause whether the temporary relief should be imposed. If a proceeding for a permanent cease-and-desist order has not already been commenced, a proposed order instituting proceedings to determine whether a permanent cease-and-desist order should be imposed shall also be filed with the application.

(c) *With whom filed.* The application shall be filed with the Secretary or, if the Secretary is unavailable, with the duty officer. In no event shall an application be filed with an administrative law judge.

(d) *Record of proceedings.* Hearings, including *ex parte* presentations made by the Division of Enforcement pursuant to § 201.513, shall be recorded or transcribed pursuant to § 201.302.

§ 201.511 Temporary cease-and-desist orders: notice; procedures for hearing.

(a) *Notice: how given.* Notice of an application for a temporary cease-and-desist order shall be made by serving a notice of hearing and order to show cause pursuant to § 201.141(b) or, where timely service of a notice of hearing pursuant to § 201.141(b) is not practicable, by any other means reasonably calculated to give actual notice that a hearing will be held, including telephonic notification of the general subject matter, time, and place of the hearing. If an application is made *ex parte,* pursuant to § 201.513, no notice to a respondent need be given prior to the Commission's consideration of the application.

(b) *Hearing before the Commission.* Except as provided in paragraph (d) of this section, hearings on an application for a temporary cease-and-desist order shall be held before the Commission.

(c) *Presiding officer: designation.* The Chairman shall preside or designate a Commissioner to preside at the hearing. If the Chairman is absent or unavailable at the time of hearing and no other Commissioner has been designated to preside, the duty officer on the day the hearing begins shall preside or designate another Commissioner to preside.

(d) *Procedure at hearing.* (1) The presiding officer shall have all those powers of a hearing officer set forth in § 201.111 and shall rule on the admissibility of evidence and other procedural matters, including, but not limited to whether oral testimony will be heard; the time allowed each party for the submission of evidence or argument; and whether post-hearing submission of briefs, proposed findings of fact and conclusions of law will be permitted and if so, the procedures for submission; provided, however, that the person presiding may consult with other Commissioners participating in the hearing on these or any other question of procedure.

(2) Each Commissioner present at the hearing shall be afforded a reasonable opportunity to ask questions of witnesses, if any, or of counsel.

(3) A party or witness may participate by telephone. Alternative means of remote access, including a video link, shall be permitted in the Commission's discretion. Factors the Commission may consider in determining whether to permit alternative means of remote access include, but are not limited to, whether allowing an alternative means of access will delay the hearing, whether the alternative means is reliable, and whether the party proposing its use has made arrangements to pay for its cost.

(4) After a hearing has begun, the Commission may, on its own motion, or the motion of a party, assign a hearing officer to preside at the taking of oral testimony or other evidence and to certify the record of such testimony or other evidence to the Commission within a fixed period of time. No recommended or initial decision shall be made by such a hearing officer.

§ 201.512 Temporary cease-and-desist orders: issuance after notice and opportunity for hearing.

(a) *Basis for issuance.* A temporary cease-and-desist order shall be issued only if the Commission determines that the alleged violation or threatened violation specified in an order instituting proceedings whether to enter a permanent cease-and-desist order pursuant to Securities Act Section 8A(a), 15 U.S.C. 77h–1(a), Exchange Act Section 21C(a), 15 U.S.C. 78u–3(a), Investment Company Act Section 9(f)(1), 15 U.S.C. 80a–9(f)(1), or Investment Advisers Act Section 203(k)(1), 15 U.S.C. 80b–3(k)(1), or the continuation thereof, is likely to result in significant dissipation or conversion of assets, significant harm to investors, or substantial harm to the public interest, including, but not limited to, losses to the Securities Investor Protection Corporation, prior to the completion of proceedings on the permanent cease-and-desist order.

(b) *Content, scope and form of order.* Every temporary cease-and-desist order granted shall:

(1) Describe the basis for its issuance, including the alleged or threatened violations and the harm that is likely to result without the issuance of an order;

(2) Describe in reasonable detail, and not by reference to the order instituting proceedings or any other document, the act or acts the respondent is to take or refrain from taking; and

(3) Be indorsed with the date and hour of issuance.

(c) *Effective upon service.* A temporary cease-and-desist order is effective upon service upon the respondent.

(d) *Service: how made.* Service of a temporary cease-and-desist order shall be made pursuant to § 201.141(a). The person who serves the order shall promptly file a declaration of service identifying the person served, the method of service, the date of service, the address to which service was made and the person who made service; provided, however, failure to file such a declaration shall have no effect on the validity of the service.

(e) *Commission review.* At any time after the respondent has been served with a temporary cease-and-desist order, the respondent may apply to the Commission to have the order set aside, limited or suspended. The application shall set forth with specificity the facts that support the request.

§ 201.513 Temporary cease-and-desist orders: issuance without prior notice and opportunity for hearing.

In addition to the requirements for issuance of a temporary cease-and-desist order set forth in § 201.512, the following requirements shall apply if a temporary cease-and-desist order is to be entered without prior notice and opportunity for hearing:

(a) *Basis for issuance without prior notice and opportunity for hearing.* A temporary cease-and-desist order may be issued without notice and opportunity for hearing only if the Commission determines, from specific facts in the record of the proceeding, that notice and hearing prior to entry of an order would be impracticable or contrary to the public interest.

(b) *Content of the order.* An *ex parte* temporary cease-and-desist order shall state specifically why notice and hearing would have been impracticable or contrary to the public interest.

(c) *Hearing before the Commission.* If a respondent has been served with a temporary cease-and-desist order entered without a prior Commission hearing, the respondent may apply to the Commission to have the order set aside, limited, or suspended, and if the application is made within 10 days after the date on which the order was served, may request a hearing on such application. The Commission shall hold a hearing and render a decision on the respondent's application at the earliest possible time. The hearing shall begin within two days of the filing of the application unless the applicant consents to a longer period or the Commission, by order, for good cause shown, sets a later date. The Commission shall render a decision on the application within five calendar days of its filing, provided, however, that the Commission, by order, for good cause shown, may extend the time within which a decision may be rendered for a single period of five calendar days, or such longer time as consented to by the applicant. If the Commission does not render its decision within 10 days of the respondent's application or such longer time as consented to by the applicant, the temporary order shall be suspended until a decision is rendered.

(d) *Presiding officer, procedure at hearing.* Procedures with respect to the selection of a presiding officer and the conduct of the hearing shall be in accordance with § 201.511.

§ 201.514 Temporary cease-and-desist orders: judicial review; duration.

(a) *Availability of judicial review.* Judicial review of a temporary cease-and-desist order shall be available as provided in Section 8A(d)(2) of the Securities Act, 15 U.S.C. 77h–1(d)(2), Section 21C(d)(2) of the Exchange Act, 15 U.S.C. 78u–3(d)(2), Section 9(f)(4)(B) of the Investment Company Act, 15 U.S.C. 80a–9(f)(4)(B), or Section 203(k)(4)(B) of the Investment Advisers Act, 15 U.S.C. 80b–3(k)(4)(B).

(b) *Duration.* Unless set aside, limited, or suspended, either by order of the Commission, a court of competent jurisdiction, or a hearing officer acting pursuant to § 201.531, or by operation of § 201.513, a temporary cease-and-desist order shall remain effective and enforceable until the earlier of:

(1) The completion of the proceedings whether a permanent order shall be entered; or

(2) 180 days, or such longer time as consented to by the respondent, after issuance of a briefing schedule order pursuant to § 201.540(b), if an initial decision whether a permanent order should be entered is appealed.

§ 201.520 Suspension of registration of brokers, dealers, or other Exchange Act-registered entities: application.

(a) *Procedure.* A request for suspension of a registered broker, dealer, municipal securities dealer, government securities broker, government securities dealer, or transfer agent pending a final determination whether the registration shall be revoked shall be made by application filed by the Division of Enforcement. The application shall set forth the statutory provision or rule that each respondent is alleged to have violated and the temporary suspension sought as to each respondent.

(b) *Accompanying documents.* The application shall be accompanied by a declaration of facts signed by a person with knowledge of the facts contained therein, a memorandum of points and authorities, a proposed order imposing the temporary suspension of registration sought, and a proposed notice of hearing and order to show cause whether the temporary suspension of registration should be imposed. If a proceeding to determine whether to revoke the registration permanently has not already been commenced, a proposed order instituting proceedings to determine whether a permanent sanction should be imposed shall also be filed with the application.

(c) *With whom filed.* The application shall be filed with the Secretary or, if the Secretary is unavailable, with the duty officer. In no event shall an application be filed with an administrative law judge.

(d) *Record of hearings.* All hearings shall be recorded or transcribed pursuant to § 201.302.

§ 201.521 Suspension of registration of brokers, dealers, or other Exchange Act-registered entities: notice and opportunity for hearing on application.

(a) *How given.* Notice of an application to suspend a registration pursuant to § 201.520 shall be made by serving a notice of hearing and order to show cause pursuant to § 201.141(b) or, where timely service of a notice of hearing pursuant to § 201.141(b) is not practicable, by any other means reasonably calculated to give actual notice that a hearing will be held, including telephonic notification of the general subject matter, time, and place of the hearing.

(b) *Hearing: before whom held.* Except as provided in paragraph (d) of this section, hearings on an application to

suspend a registration pursuant to § 201.520 shall be held before the Commission.

(c) *Presiding officer: designation.* The Chairman shall preside or designate a Commissioner to preside at the hearing. If the Chairman is absent or unavailable at the time of hearing and no other Commissioner has been designated to preside, the duty officer on the day the hearing begins shall preside or designate another Commissioner to preside.

(d) *Procedure at hearing.* (1) The presiding officer shall have all those powers of a hearing officer set forth in § 201.111 and shall rule on the admissibility of evidence and other procedural matters, including, but not limited to whether oral testimony will be heard; the time allowed each party for the submission of evidence or argument; and whether post-hearing submission of briefs, proposed findings of fact and conclusions of law will be permitted and if so, the procedures for submission; provided, however, that the person presiding may consult with other Commissioners participating in the hearing on these or any other question of procedure.

(2) Each Commissioner present at the hearing shall be afforded a reasonable opportunity to ask questions of witnesses, if any, or counsel.

(3) A party or witness may participate by telephone. Alternative means of remote access, including a video link, shall be permitted in the Commission's discretion. Factors the Commission may consider in determining whether to permit alternative means of remote access include, but are not limited to, whether allowing an alternative means of access will delay the hearing, whether the alternative means is reliable, and whether the party proposing its use has made arrangements to pay for its cost.

(4) After a hearing has begun, the Commission may, on its own motion or the motion of a party, assign a hearing officer to preside at the taking of oral testimony or other evidence and to certify the record of such testimony or other evidence to the Commission within a fixed period of time. No recommended or initial decision shall be made.

§ 201.522 Suspension of registration of brokers, dealers, or other Exchange Act-registered entities: issuance and review of order.

(a) *Basis for issuance.* An order suspending a registration, pending final determination as to whether the registration shall be revoked shall be issued only if the Commission finds that the suspension is necessary or appropriate in the public interest or for the protection of investors.

(b) *Content, scope and form of order.* Each order suspending a registration shall:

(1) Describe the basis for its issuance, including the alleged or threatened violations and the harm that is likely to result without the issuance of an order;

(2) Describe in reasonable detail, and not by reference to the order instituting proceedings or any other document, the act or acts the respondent is to take or refrain from taking; and

(3) Be indorsed with the date and hour of issuance.

(c) *Effective upon service.* An order suspending a registration is effective upon service upon the respondent.

(d) *Service: how made.* Service of an order suspending a registration shall be made pursuant to § 201.141(a). The person who serves the order shall promptly file a declaration of service identifying the person served, the method of service, the date of service, the address to which service was made and the person who made service; provided, however, failure to file such a declaration shall have no effect on the validity of the service.

(e) *Commission review.* At any time after the respondent has been served with an order suspending a registration, the respondent may apply to the Commission or the hearing officer to have the order set aside, limited, or suspended. The application shall set forth with specificity the facts that support the request.

§ 201.523 [Reserved].

§ 201.524 Suspension of registrations: duration.

Unless set aside, limited or suspended by order of the Commission, a court of competent jurisdiction, or a hearing officer acting pursuant to § 201.531, an order suspending a registration shall remain effective and enforceable until the earlier of:

(a) The completion of the proceedings whether the registration shall be permanently revoked; or

(b) 180 days, or such longer time as consented to by the respondent, after issuance of a briefing schedule order pursuant to § 201.540(b), if an initial decision whether the registration shall be permanently revoked is appealed.

§ 201.530 Initial decision on permanent order: timing for submitting proposed findings and preparation of decision.

Unless otherwise ordered by the Commission or hearing officer, if a temporary cease-and-desist order or suspension of registration order is in effect, the following time limits shall apply to preparation of an initial decision as to whether such order should be made permanent:

(a) Proposed findings and conclusions and briefs in support thereof shall be filed 30 days after the close of the hearing;

(b) The record in the proceedings shall be served by the Secretary upon the hearing officer three days after the date for the filing of the last brief called for by the hearing officer; and

(c) The initial decision shall be filed with the Secretary at the earliest possible time, but in no event more than 30 days after service of the record, unless the hearing officer, by order, shall extend the time for good cause shown for a period not to exceed 30 days.

§ 201.531 Initial decision on permanent order: effect on temporary order.

(a) *Specification of permanent sanction.* If, at the time an initial decision is issued, a temporary sanction is in effect as to any respondent, the initial decision shall specify:

(1) Which terms or conditions of a temporary cease-and-desist order, if any, shall become permanent; and

(2) Whether a temporary suspension of a respondent's registration, if any, shall be made a permanent revocation of registration.

(b) *Modification of temporary order.* If any temporary sanction shall not become permanent under the terms of the initial decision, the hearing officer shall issue a separate order setting aside, limiting or suspending the temporary sanction then in effect in accordance with the terms of the initial decision. The hearing officer shall decline to suspend a term or condition of a temporary cease-and-desist order if it is found that the continued effectiveness of such term or condition is necessary to effectuate any term of the relief ordered in the initial decision, including the payment of disgorgement, interest or penalties. An order modifying temporary sanctions shall be effective 14 days after service. Within one week of service of the order modifying temporary sanctions any party may seek a stay or modification of the order from the Commission pursuant to § 201.401.

§ 201.540 Appeal and Commission review of initial decision making a temporary order permanent.

(a) *Petition for review.* Any person who seeks Commission review of an initial decision as to whether a temporary sanction shall be made permanent shall file a petition for review pursuant to § 201.410, provided, however, that the petition must be filed within 10 days after service of the initial decision.

(b) *Review procedure.* If the Commission determines to grant or order review, it shall issue a briefing schedule order pursuant to § 201.450. Unless otherwise ordered by the Commission, opening briefs shall be filed within 21 days of the order granting or ordering review, and opposition briefs shall be filed within 14 days after opening briefs are filed. Reply briefs shall be filed within seven days after opposition briefs are filed. Oral argument, if granted by the Commission, shall be held within 90 days of the issuance of the briefing schedule order.

§ 201.550 Summary suspensions pursuant to Exchange Act Section 12(k)(1)(A).

(a) *Petition for termination of suspension.* Any person adversely affected by a suspension pursuant to Section 12(k)(1)(A) of the Exchange Act, 15 U.S.C. 78*l*(k)(1)(A), who desires to show that such suspension is not necessary in the public interest or for the protection of investors may file a sworn petition with the Secretary, requesting that the suspension be terminated. The petition shall set forth the reasons why the petitioner believes that the suspension of trading should not continue and state with particularity the facts upon which the petitioner relies.

(b) *Commission consideration of a petition.* The Commission, in its discretion, may schedule a hearing on the matter, request additional written submissions, or decide the matter on the facts presented in the petition and any other relevant facts known to the Commission. If the petitioner fails to cooperate with, obstructs, or refuses to permit the making of an examination by the Commission, such conduct shall be grounds to deny the petition.

Rules Regarding Disgorgement and Penalty Payments

§ 201.600 Interest on sums disgorged.

(a) *Interest required.* Prejudgment interest shall be due on any sum required to be paid pursuant to an order of disgorgement. The disgorgement order shall specify each violation that forms the basis for the disgorgement ordered; the date which, for purposes of calculating disgorgement, each such violation was deemed to have occurred; the amount to be disgorged for each such violation; and the total sum to be disgorged. Prejudgment interest shall be due from the first day of the month following each such violation through the last day of the month preceding the month in which payment of disgorgement is made. The order shall state the amount of prejudgment interest owed as of the date of the disgorgement order and that interest shall continue to accrue on all funds owed until they are paid.

(b) *Rate of interest.* Interest on the sum to be disgorged shall be computed at the underpayment rate of interest established under Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2), and shall be compounded quarterly. The Commission or the hearing officer may, by order, specify a lower rate of prejudgment interest as to any funds which the respondent has placed in an escrow or otherwise guaranteed for payment of disgorgement upon a final determination of the respondent's liability. Escrow and other guarantee arrangements must be approved by the Commission or the hearing officer prior to entry of the disgorgement order.

§ 201.601 Prompt payment of disgorgement, interest and penalties.

(a) *Timing of payments.* Unless otherwise provided, funds due pursuant to an order by the Commission requiring the payment of disgorgement, interest or penalties shall be paid no later than 21 days after service of the order, and funds due pursuant to an order by a hearing officer shall be paid on the first day after the order becomes final pursuant to § 201.360.

(b) *Stays.* A stay of any order requiring the payment of disgorgement, interest or penalties may be sought at any time pursuant to § 201.401.

§ 201.610 Submission of proposed plan of disgorgement.

The Commission or the hearing officer may, at any time, order any party to submit a plan for the administration and distribution of disgorgement funds. Unless ordered otherwise, the Division of Enforcement shall submit a proposed plan no later than 60 days after funds or other assets have been turned over by the respondent pursuant to a Commission disgorgement order and any appeals of the disgorgement order have been waived or completed, or appeal is no longer available.

§ 201.611 Contents of plan of disgorgement; provisions for payment.

(a) *Required plan elements.* Unless otherwise ordered, a plan for the administration of a disgorgement fund shall include the following elements:

(1) Procedures for the receipt of additional funds, including the specification of an account where funds will be held and the instruments in which the funds may be invested;

(2) Specification of categories of persons potentially eligible to receive proceeds from the fund;

(3) Procedure for providing notice to such persons of the existence of the fund and their potential eligibility to receive proceeds of the fund;

(4) Procedures for making and approving claims, procedures for handling disputed claims and a cut-off date for the making of claims;

(5) A proposed date for the termination of the fund, including provision for the disposition of any funds not otherwise distributed;

(6) Procedures for the administration of the fund, including selection, compensation and, as necessary, indemnification of a fund administrator to oversee the fund, process claims, prepare accountings, file tax returns and, subject to the approval of the Commission, make distributions from the fund to investors; and

(7) Such other provisions as the Commission or the hearing officer may require.

(b) *Payment to registry of the court or court-appointed receiver.* Subject to such conditions as the Commission or the hearing officer shall deem appropriate, a plan of disgorgement may provide for payment of disgorgement funds into a court registry or to a court-appointed receiver in any case pending in federal or state court against a respondent or any other person based upon a complaint alleging violations arising from the same or substantially similar facts as those alleged in the Commission's order instituting proceedings.

(c) *Payment to the United States Treasury under certain circumstances.* When, in the opinion of the Commission or the hearing officer, the cost of administering a plan of disgorgement relative to the value of the available disgorgement funds and the number of potential claimants would not justify distribution of the disgorgement funds to injured investors, the plan may provide that the funds shall be paid directly to the general fund of the United States Treasury.

§ 201.612 Notice of proposed plan of disgorgement and opportunity for comment by non-parties.

Notice of a proposed plan of disgorgement shall be published in the *SEC News Digest*, in the *SEC Docket*, and in such other publications as the Commission or the hearing officer may require. The notice shall specify how copies of the proposed plan may be obtained and shall state that persons desiring to comment on the proposed

plan may submit their views, in writing, to the Commission.

§ 201.613 Order approving, modifying or disapproving proposed plan of disgorgement.

At any time more than 30 days after publication of notice of a proposed plan of disgorgement, the hearing officer or the Commission shall, by order, approve, approve with modifications, or disapprove the proposed plan. In the discretion of the Commission or the hearing officer, a proposed plan of disgorgement that is substantially modified prior to adoption may be republished for an additional comment period pursuant to § 201.612. The order approving or disapproving the plan should be entered within 30 days after the end of the final period allowed for comments on the proposed plan unless the Commission or the hearing officer, by written order, allows a longer period for good cause shown.

§ 201.614 Administration of plan of disgorgement.

(a) *Appointment and removal of administrator.* The Commission or the hearing officer shall have discretion to appoint any person, including a Commission employee, as administrator of a plan of disgorgement and to delegate to that person responsibility for administering the plan. A respondent may be required or permitted to administer or assist in administering a plan of disgorgement, subject to such terms and conditions as the Commission or the hearing officer deem appropriate to ensure the proper distribution of funds. An administrator may be removed at any time by order of the Commission or hearing officer.

(b) *Administrator to post bond.* If the administrator is not a Commission employee, the administrator shall be required to obtain a bond in the manner prescribed by 11 U.S.C. 322, in an amount to be approved by the Commission. The cost of the bond may be paid for as a cost of administration. The Commission may waive posting of a bond for good cause shown.

(c) *Administrator's fees.* If the administrator is a Commission employee, no fee shall be paid to the administrator for his or her services. If the administrator is not a Commission employee, he or she may file an application for fees for completed services, and upon approval by the Commission or a hearing officer, may be paid a reasonable fee for those services. Any objections thereto shall be filed within 21 days of service of the application on the parties.

(d) *Source of funds.* Unless otherwise ordered, fees and other expenses of administering the plan of disgorgement shall be paid first from the interest earned on disgorged funds, and if the interest is not sufficient, then from the corpus.

(e) *Accountings.* During the first 10 days of each calendar quarter, or as otherwise directed by the Commission or the hearing officer, the administrator shall file an accounting of all monies earned or received and all monies spent in connection with the administration of the plan of disgorgement. A final accounting shall be submitted for approval of the Commission or hearing officer prior to discharge of the administrator and cancellation of the administrator's bond, if any.

(f) *Amendment.* A plan may be amended upon motion by any party or the plan administrator or upon the Commission's or hearing officer's own motion.

§ 201.620 Right to challenge order of disgorgement.

Other than in connection with the opportunity to submit comments as provided in § 201.612, no person shall be granted leave to intervene or to participate in a proceeding or otherwise to appear to challenge an order of disgorgement; or an order approving, approving with modifications, or disapproving a plan of disgorgement; or any determination relating to a plan of disgorgement based solely upon that person's eligibility or potential eligibility to participate in a disgorgement fund or based upon any private right of action such person may have against any person who is also a respondent in an enforcement proceeding.

§ 201.630 Inability to pay disgorgement, interest or penalties.

(a) *Generally.* In any proceeding in which an order requiring payment of disgorgement, interest or penalties may be entered, a respondent may present evidence of an inability to pay disgorgement, interest or a penalty. The Commission may, in its discretion, or the hearing officer may, in his or her discretion, consider evidence concerning ability to pay in determining whether disgorgement, interest or a penalty is in the public interest.

(b) *Financial disclosure statement.* Any respondent who asserts an inability to pay disgorgement, interest or penalties may be required to file a sworn financial disclosure statement and to keep the statement current. The financial statement shall show the respondent's assets, liabilities, income or other funds received and expenses or other payments, from the date of the first violation alleged against that respondent in the order instituting proceedings, or such later date as specified by the Commission or a hearing officer, to the date of the order requiring the disclosure statement to be filed. By order, the Commission or the hearing officer may prescribe the use of the Disclosure of Assets and Financial Information Form (*see* Form D–A at § 209.1 of this chapter) or any other form, may specify other time periods for which disclosure is required, and may require such other information as deemed necessary to evaluate a claim of inability to pay.

(c) *Confidentiality.* Any respondent submitting financial information pursuant to this section or § 201.410(c) may make a motion, pursuant to § 201.322, for the issuance of a protective order against disclosure of the information submitted to the public or to any parties other than the Division of Enforcement. Prior to a ruling on the motion, no party receiving information as to which a motion for a protective order has been made may transfer or convey the information to any other person without the prior permission of the Commission or the hearing officer.

(d) *Service required.* Notwithstanding any provision of § 201.322, a copy of the financial disclosure statement shall be served on the Division of Enforcement.

(e) *Failure to file required financial information: sanction.* Any respondent who, after making a claim of inability to pay either disgorgement, interest or a penalty, fails to file a financial disclosure statement when such a filing has been ordered or is required by rule may, in the discretion of the Commission or the hearing officer, be deemed to have waived the claim of inability to pay. No sanction pursuant to §§ 201.155 or 201.180 shall be imposed for a failure to file such a statement.

Informal Procedures and Supplementary Information Concerning Adjudicatory Proceedings

§ 201.900 Informal Procedures and Supplementary Information Concerning Adjudicatory Proceedings.

(a) *Guidelines for the timely completion of proceedings.*

(1) Timely resolution of adjudicatory proceedings is one factor in assessing the effectiveness of the adjudicatory program in protecting investors, promoting public confidence in the securities markets and assuring respondents a fair hearing. Establishment of guidelines for the timely completion of key phases of contested administrative proceedings provides a standard for both the Commission and the public to gauge the Commission's adjudicatory program on this criterion. The Commission has directed that, to the extent possible:

(i) An administrative law judge's initial decision should be filed with the Secretary within 10 months of issuance of the order instituting proceedings.

(ii) A decision by the Commission on review of an interlocutory matter should be completed within 45 days of the date set for filing the final brief on the matter submitted for review.

(iii) A decision by the Commission on a motion to stay a decision that has already taken effect or that will take effect within five days of the filing of the motion, should be issued within five days of the date set for filing of the opposition to the motion for a stay. If the decision complained of has not taken effect, the Commission's decision should be issued within 45 days of the date set for filing of the opposition to the motion for a stay.

(iv) A decision by the Commission with respect to an appeal from the initial decision of a hearing officer, a review of a determination by a self-regulatory organization, or a remand of a prior Commission decision by a court of appeals should be issued within 11 months from the date the petition for review, application for review, or mandate of the court is filed.

(2) The guidelines in this paragraph (a) do not create a requirement that each portion of a proceeding or the entire proceeding be completed within the periods described. Among other reasons, a proceeding at either the hearing stage or on review by the Commission may require additional time because it is unusually complex or because the record is exceptionally long. In addition, fairness is enhanced if the Commission's deliberative process is not constrained by an inflexible schedule. In some proceedings, deliberation may be delayed by the need to consider more urgent matters, to permit the preparation of dissenting opinions, or for other good cause. The guidelines will be used by the Commission as one of several criteria in monitoring and evaluating its adjudicatory program. The guidelines will be examined periodically, and, if necessary, readjusted in light of changes in the pending caseload and the available level of staff resources.

(b) *Reports to the Commission on pending cases.* The administrative law judges, the Secretary and the General Counsel have each been delegated authority to issue certain orders or adjudicate certain proceedings. *See* 17 CFR 200.30–1, *et seq.* Proceedings are also assigned to the General Counsel for the preparation of a proposed order or opinion which will then be recommended to the Commission for consideration. In order to improve accountability by and to the Commission for management of the docket, the Commission has directed that confidential status reports with respect to all filed adjudicatory proceedings shall be made periodically to the Commission. These reports will be made through the Secretary, with a minimum frequency established by the Commission. In connection with these periodic reports, if a proceeding assigned to an administrative law judge or pending before the Commission has not been concluded within 30 days of the guidelines established in paragraph (a) of this section, the Chief Administrative Law Judge or the General Counsel, respectively, shall specifically apprise the Commission of that fact, and shall describe the procedural posture of the case, project an estimated date for conclusion of the proceeding, and provide such other information as is necessary to enable the Commission to determine whether additional steps are necessary to reach a fair and timely resolution of the matter.

(c) *Publication of information concerning the pending case docket.* Ongoing disclosure of information about the adjudication program caseload increases awareness of the importance of the program, facilitates oversight of the program and promotes confidence in the efficiency and fairness of the program by investors, securities industry participants, self-regulatory organizations and other members of the public. The Commission has directed the Secretary to publish in the *SEC Docket* in the first and seventh months of each fiscal year summary statistical information about the status of pending adjudicatory proceedings and changes in the Commission's caseload over the prior six months. The report will include the number of cases pending before the administrative law judges and the Commission at the beginning and end of the six-month period. The report will also show increases in the caseload arising from new cases being instituted, appealed or remanded to the Commission and decreases in the caseload arising from the disposition of proceedings by issuance of initial decisions, issuance of final decisions issued on appeal of initial decisions, other dispositions of appeals of initial decisions, final decisions on review of self-regulatory organization determinations, other dispositions on review of self-regulatory organization determinations, and decisions with respect to stays or interlocutory motions. For each category of decision, the report shall also show the median age of the cases at the time of the decision and the number of cases decided within the guidelines for the timely completion of adjudicatory proceedings.

Table I to Subpart D—Adversary Adjudications Conducted by the Commission under 5 U.S.C. 554

Securities Exchange Act of 1934

Section 11A(b)(6), 15 U.S.C. 78k–1(b)(6) (suspension or revocation of registration, or censure of a securities information processor).

Section 11A(c)(3)(A), 15 U.S.C. 78k–1(c)(3)(A) (prohibition of transactions by brokers and dealers in registered securities other than on a national securities exchange).

Section 12(j), 15 U.S.C. 78*l*(j) (suspensions of effective date or revocation of registration of a security).

Section 15(b)(4), 15 U.S.C. 78*o*(b)(4) (suspension or revocation of registration, or censure of a broker or dealer).

Section 15(b)(6)(A), 15 U.S.C. 78*o*(b)(6)(A) (censure, suspension or bar an associate of a broker or a dealer).

Section 15B(c)(2), 15 U.S.C. 78*o*–4(c)(2) (suspension or revocation of registration, or censure of a municipal securities dealer).

Section 15B(c)(4), 15 U.S.C. 78*o*–4(c)(4) (censure, suspension or bar of an associate of a municipal securities broker or dealer).

Section 15B(c)(8), 15 U.S.C. 78*o*–4(c)(8) (removal or censure of member of the Municipal Securities Rulemaking Board).

Section 15C(c)(1)(A), 15 U.S.C. 78*o*–5(c)(1)(A) (suspension or revocation of registration, or censure of a government securities broker or dealer).

Section 15C(c)(1)(C), 15 U.S.C. 78*o*–5(c)(1)(C) (censure, suspension or bar of an associate of a government securities broker or dealer).

Section 17A(c)(3), 15 U.S.C. 78q–1(c)(3) (deny registration, censure, place limitation on, suspend, or revoke registration of a transfer agent).

Section 17A(c)(4)(C), 15 U.S.C. 78q–1(c)(4)(C) (censure, place limitations on, suspend or bar certain persons associated or seeking to associate with a transfer agent).

Section 19(h)(1), 15 U.S.C. 78s(h)(1) (suspension or revocation of registration, or censure of a self-regulatory organization).

Section 19(h)(2), 15 U.S.C. 78s(h)(2) (suspension or expulsion of a member of a self-regulatory organization).

Section 19(h)(3), 15 U.S.C. 78s(h)(3) (suspension or bar of a person from being associated with a national securities exchange or registered securities association).

Section 19(h)(4), 15 U.S.C. 78s(h)(4) (removal or censure of a director or officer of a self-regulatory organization).

Section 21B(a), 15 U.S.C. 78u–2(a) (imposition of civil penalties against any person for violation of the federal securities laws).

Ivestment Company Act of 1940

Section 9(d)(1), 15 U.S.C. 80a–9(d)(1) (imposition of civil penalties against any person for violation of the federal securities laws).

Investment Advisers Act of 1940

Section 203(e), 15 U.S.C. 80b–3(e) (suspension or revocation of registration, or censure of an investment adviser).

Section 203(f), 15 U.S.C. 80b–3(f) (censure, suspension, or bar of an associate of an investment adviser).

Section 203(i)(1), 15 U.S.C. 80b–3(i)(1) (imposition of civil penalties against any person for violation of the federal securities laws).

TABLE II TO SUBPART D—CROSS-REFERENCE TABLE SHOWING LOCATION OF RULES OF PRACTICE ADOPTED IN 1995 WITH FORMER RULES OF PRACTICE, RELATED RULES, AND STATUTORY PROVISIONS

New rules (17 CFR 201)	Former rules/Act §
100	1.
101	none.
102	2.
102(d)(4)	none.
103(a)–(c)	none.
104	5.
110	11(b).
111	11(d)–(e), 16(g).
112	11(c).
120	5 U.S.C. 554(d).
121	5 U.S.C. 554(d).
140(a)	22(h).
140(b)–(c)	22(k).
141(a)	6(a), (b), (f).
141(b)	23(d).
150(a)	23(a).
150(b)	2(d), (h).
150(c)	23(b).
150(d)	23(c).
151	12(b), 22(a).
152(a)–(e)	22(a)–(h).
152(f)	20(d).
153	7(f).
154	11(e).
155	12(d).
160	22(j), 23(b).
161	13.
180(a)	2(f).
180(b)–(c)	none.
190	25.
191	27, 28.
192	4.
193	29.
200(a)(1)	6(a), (b).
200(a)(2)	6(f).
200(b), (c)	6(a), (b).
200(d)	6(d).
200(e)	6(c).
201	10.
202	8(b), (c).
210	9.
220	7(a)–(e).
221(a)–(c), (e)	8(d)
221(d)	none.
221(f)	6(e).
222(a)	8(d).
222(b)	none.
230	none.
231(a)	11–1.
231(b)	none.
232(a)–(d)	14(b).
232(e)–(f)	14(b)(2), (c).
233	15(a)–(e).
234	15(g).
235	15(f).
240	8(a).
250	11(e).
300	11(a)–(b).
301	11(b).
302(a)	11(f).
302(b)	25(d).
302(c)	20(c).
310	6(e).
320	14(a).
321(a)	11(e).
321(b)	none.
322	none.
323	14(d).
324	none.
325	14(a).
326	14(a).
340	16(d)–(e).
350	20(a)–(b).
351	20(a)(4).
360(a)	16(b).
360(b)	16(a).
360(c)	16(f).
360(d), (e)	17(f).
400	12(a).
401	12(c).
401(d)(2)	15 U.S.C. 78s(d)(2).
410(a)	17(a).
410(b)	17(b).
410(c)	none.
410(d)	none.
410(e)	17(h).
411(a)	17(g)(2).
411(b)	17(d).
411(c)	17(c).
411(d)	17(g)(1).
411(e)	17(d).
411(f)	17(g)(3).
420(a), (b), (d)	17 CFR 240.19d–3(b).
420(c)	15 U.S.C. 78s(d)(2).
420(d)	58.
421(a)	15 U.S.C. 78s(e)–(f).
421(b)–(c)	none.
430	26(a), (c).
431(a)	none.
431(b)	26(b).
431(c)	26(d).
431(d)–(f)	26(e).
450(a)	17(e).
450(b)	18, 17 CFR 240.19d–3(c)–(g).
450(c)	22(d).
451	21.
452	21(d).
460	20, 21(c).
470	21(e).
490	23(e).
500	none.
510	none.
511	none.
512	none.
513	none.
514	none.
520	none.
521	none.
522	none.
524	none.
530	19.
531	none.
540	none.
550	17 CFR 202.8.
600	none.
601	none.
610	none.
611	none.
612	none.
613	none.
614	none.
620	none.
630	none.
900	none.

TABLE III TO SUBPART D—CROSS-REFERENCE TABLE SHOWING LOCATION OF FORMER RULES OF PRACTICE AND RELATED RULES WITH RULES OF PRACTICE ADOPTED IN 1995

Former rules	New rules (17 CFR 201)
1	100.
2	102.
2(d), (h)	150(b).
2(f)	180(a).
3 [reserved]	n/a.
4	192.
5	104.
6(a)	200(b).
6(a),(b),(f)	141(a).
6(a), (b)	200(a)(1).
6(b)	200(c).
6(c), (d)	200(d), (e).
6(e)	221(f), 310.
6(f)	200(a)(2).
7(a)–(e)	220.
7(f)	153.
8(a)	240.
8(b)–(c)	202.
8(d)	221, 222(a).
9	210.
10	201.
11(a)–(b)	300.
11(b)	110, 301.
11(c)	112.
11(d), (e)	111.
11(e)	154, 250, 321(a).
11(f)	302(a).
11–1	231(a).
12(a)	400.
12(b)	151(c).
12(c)	401.
12(d)	155.
13	161.
14(a)	320, 325, 326.
14(b)	232(a)–(d).
14(b)(2), (c)	232(e)–(f).
14(d)	323.
15(a)–(e)	233.
15(f)	235.
15(g)	234.
16(a)	360(b).
16(b)	360(a).
16(c) [reserved]	n/a.
16(d)–(e)	340.
16(f)	351, 360(c).
16(g)	111.
17(a)	410(a).
17(b)	410(b).
17(c)	411(c).
17(d)	411(b), (e).
17(e)	450(a), (d).
17(f)	360(d), (e).
17(g)	411(d), (a), (f).
17(h)	410(e).
18	450(b).
19	530.
20(a)–(b)	350, 351, 460.
20(c)	302(c).
20(d)	152(f).
21	451.
21(c)	460.
21(d)	452.
21(e)	470.
22(a)	151(a)–(c), 152.
22(b) [reserved]	n/a.
22(c)	152(d).
22(d)	152(e), 450(c).
22(e)–(g)	152(a)–(c).
22(h)	140(a).
22(i)	none.
22(j), (k)	160, 140(c).
22(k)	140(b).
23(a)	150(a).
23(b)	150(c), 160.
23(c)	150(d).
23(d)	141(b).
23(e)	490.
24	17 CFR 228.10(f), 17 CFR 229.10(d).
25	190.
25(d)	302(b).
26(a), (c)	430.
26(b)	431(b).
26(d)	431(c).
26(e)	431(d)–(f).
27	191.
28	191.
29	193.
17 CFR 202.8	550.
17 CFR 240.19d–2	401(a)–(b), (d).
17 CFR 240.19d–3(a)	420,421.
17 CFR 240.19d–3(b)	420(a), (b), (d).
17 CFR 240.19d–3(c)–(d).	450, 180(c).
17 CFR 240.19d–3(e)	452.
17 CFR 240.19d–3(f)	451.
17 CFR 240.19d–3(g)	100.

PART 202—INFORMAL AND OTHER PROCEDURES

40. The authority citation for Part 202 continues to read in part as follows:

Authority: 15 U.S.C. 77s, 77t, 78d–1, 78u, 78w, 78*ll*(d), 79r, 79t, 77sss, 77uuu, 80a–37, 80a–41, 80b–9, and 80b–11, unless otherwise noted.

* * * * *

§ 202.8 [Removed and reserved]

41. Section 202.8 is removed and reserved:

PART 203—RULES RELATING TO INVESTIGATIONS

42. The authority citation for Part 203 continues to read as follows:

Authority: 15 U.S.C. 77s, 78w, 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

§ 203.3 [Amended]

43. In § 203.3, remove the words "§ 201.2(e) of this chapter (Rule 2(e)", and, in their place, add the words "§ 201.102(e) of this chapter (Rule 102(e)".

§ 203.7 [Amended]

44. In § 203.7(b), remove the words "§ 201.2(b) of this chapter (Rule 2(b)", and, in their place, add the words "§ 201.101(a) of this chapter (Rule 101(a)".

§ 203.8 [Amended]

45. In § 203.8, remove the words "§ 201.14(b) of this chapter (Rule 14(b) of the Commission's rules of practice)", and, in their place, add the words "Rule 232(c) of the Commission's Rules of Practice, § 201.232(c) of this chapter".

46. Part 209 is added to read as follows:

PART 209—FORMS PRESCRIBED UNDER THE COMMISSION'S RULES OF PRACTICE

Sec.

209.0–1 Availability of forms.

209.1 Form D–A: Disclosure of assets and financial information.

Authority: 15 U.S.C. 77h–1, 77u, 78u–2, 78u–3, 78v, 78w, 80a–9, 80a–37, 80a–38, 80a39, 80a–40, 80a–41, 80a–44, 80b–3, 80b–9, 80b–11, and 80b–12, unless otherwise noted.

§ 209.0–1 Availability of forms.

(a) This part identifies and describes the forms for use under the Securities and Exchange Commission's Rules of Practice, part 201 of this chapter.

(b) Any person may obtain a copy of any form prescribed for use in this part by written request to the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Any person may inspect the forms at this address and at the Commission's regional and district offices. (See § 200.11 of this chapter for the addresses of the SEC regional and district offices.)

§ 209.1 Form D–A: Disclosure of assets and financial information.

(a) Rules 410 and 630 of the Rules of Practice (17 CFR 201.410 and 201.630) provide that under certain circumstances a respondent who asserts or intends to assert an inability to pay disgorgement, interest or penalties may be required to disclose certain financial information. Unless otherwise ordered, this form may be used by individuals required to supply such information.

(b) The respondent filing Form D–A is required promptly to notify the Commission of any material change in the answer to any question on this form.

(c) Form D–A may not be withheld from the interested division. A respondent making financial information disclosures on this form after the institution of proceedings may make a motion, pursuant to Rule 322 of the Commission's Rules of Practice (17 CFR 201.322), for the issuance of a protective order to limit disclosure to the public or parties other than the interested division of the information submitted on Form D–A. A request for a protective order allows the requester an opportunity to justify the need for

confidentiality. The making of a motion for a protective order, however, does not guarantee that disclosure will be limited.

(d) No party receiving information for which a motion for a protective order has been made may transfer or convey the information to any other person prior to a ruling on the motion without the prior permission of the Commission or a hearing officer.

(e) A person making financial information disclosures on Form D–A prior to the institution of proceedings, in connection with an offer of settlement or otherwise, may request confidential treatment of the information pursuant to the Freedom of Information Act. *See* the Commission's Freedom of Information Act ("FOIA") regulations, 17 CFR 200.83. A request for confidential treatment allows the requester an opportunity to substantiate the need for confidentiality. No determination as to the validity of any request for confidential treatment will be made until a request for disclosure of the information under FOIA is received.

Editorial Note: The text of Form D–A appears in the appendix to this document and will not appear in the Code of Federal Regulations.

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

47. The authority citation for Part 228 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78w, 78*ll*, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

48. By amending § 228.10 by adding paragraph (f) to read as follows:

§ 228.10 (Item 10) General.

* * * * *

(f) *Incorporation by Reference.* Where rules, regulations, or instructions to forms of the Commission permit incorporation by reference, a document may be so incorporated by reference to the specific document and to the prior filing or submission in which such document was physically filed or submitted. Except where a registrant or issuer is expressly required to incorporate a document or documents by reference, reference may not be made to any document which incorporates another document by reference if the pertinent portion of the document containing the information or financial statements to be incorporated by reference includes an incorporation by reference to another document. No document on file with the Commission for more than five years may be incorporated by reference except:

(1) Documents contained in registration statements, which may be incorporated by reference as long as the registrant has a reporting requirement with the Commission; or

(2) Documents that the registrant specifically identifies by physical location by SEC file number reference, provided such materials have not been disposed of by the Commission pursuant to its Records Control Schedule (17 CFR 200.80f).

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

49. The authority citation for Part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

* * * * *

50. By amending § 229.10 by adding paragraph (d) to read as follows:

§ 229.10 General.

* * * * *

(d) *Incorporation by Reference.* Where rules, regulations, or instructions to forms of the Commission permit incorporation by reference, a document may be so incorporated by reference to the specific document and to the prior filing or submission in which such document was physically filed or submitted. Except where a registrant or issuer is expressly required to incorporate a document or documents by reference, reference may not be made to any document which incorporates another document by reference if the pertinent portion of the document containing the information or financial statements to be incorporated by reference includes an incorporation by reference to another document. No document on file with the Commission for more than five years may be incorporated by reference except:

(1) Documents contained in registration statements, which may be incorporated by reference as long as the registrant has a reporting requirement with the Commission; or

(2) Documents that the registrant specifically identifies by physical location by SEC file number reference, provided such materials have not been disposed of by the Commission pursuant to its Records Control Schedule (17 CFR 200.80f).

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

51. The authority citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

§ 230.406 [Amended]

52. In § 230.406 paragraphs (e), (g), (h)(1) and (h)(2), remove the words "§ 201.26", and, in their place, add the words "§ 201.431".

§ 230.411 [Amended]

53. In §§ 230.411(b)(4), remove the words "Rule 24 of the Commission's Rules of Practice (§ 201.24 of this chapter)" and in paragraph (c) remove the words "Rule 24 of the Commission's Rules of Practice" and add, in their place, the words "§ 228.10(f) and § 229.10(d) of this chapter".

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

54. The authority citation for part 232 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a–8, 80a–29, 80a–30 and 80a–37.

§ 232.101 [Amended]

55. In § 232.101(c)(13), remove the words "Rules of Practice (§§ 201.1–201.29 of this chapter)", and add, in their place, the words "Subpart D of Part 201 of this chapter".

§ 232.102 [Amended]

56. In § 232.102(a), remove the words "Rule 24 of the Commission's Rules of Practice (§ 201.24 of this chapter)", and add, in their place, the words "§ 228.10(f) and § 229.10(d) of this chapter".

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

57. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

§ 240.12b–23 [Amended]

58. In § 240.12b–23(b), remove the words "Rule 24 of the Commission's Rules of Practice (§ 201.24 of this chapter)" and add, in their place, the words "§ 228.10(f) and § 229.10(d) of this chapter".

§ 240.12b–32 [Amended]

59. In § 240.12b–32(a), remove the words "§ 201.24 of this chapter" and add, in their place, "§ 228.10(f) and § 229.10(d) of this chapter".

§ 240.14a–101 [Amended]

60. In § 240.14a–101 NOTE D 1, remove the words "Rule 24 of the Commission's Rules of Practice (§ 201.24 of this chapter)" and add, in their place, the words "§ 228.10(f) and § 229.10(d) of this chapter".

61. Sections 240.19d–2 and 19d–3 are revised to read as follows:

§ 240.19d–2 Applications for stays of disciplinary sanctions or summary suspensions by a self-regulatory organization.

If any self-regulatory organization imposes any final disciplinary sanction as to which a notice is required to be filed with the Commission pursuant to Section 19(d)(1) of the Exchange Act, 15 U.S.C. 78s(d)(1), pursuant to Section 6(b)(6), 15A(b)(7) or 17A(b)(3)(G) of the Act (15 U.S.C. 78f(b)(6), 78*o*–3(b)(7) or 78q–1(b)(3)(G)), or summarily suspends or limits or prohibits access pursuant to Section 6(d)(3), 15A(h)(3) or 17A(b)(5)(C) of the Act (15 U.S.C. 78f(d)(3), 78*o*–3(h)(3) or 78q–1(b)(5)(C)), any person aggrieved thereby for which the Commission is the appropriate regulatory agency may file with the Commission a written motion for a stay of imposition of such action pursuant to Rule 401 of the Commission's Rules of Practice, § 201.401 of this chapter.

§ 240.19d–3 Applications for review of final disciplinary sanctions, denials of membership, participation or association, or prohibitions or limitations of access to services imposed by self-regulatory organizations.

Applications to the Commission for review of any final disciplinary sanction, denial or conditioning of membership, participation, bar from association, or prohibition or limitation with respect to access to services offered by a self-regulatory organization or a member thereof by any such organization shall be made pursuant to Rule 420 of the Commission's Rules of Practice, § 201.420 of this chapter.

§ 240.24b–2 [Amended]

62. In § 240.24b–2 paragraphs (d)(2), (e)(1), and (e)(2), remove the words "17 CFR 201.26", and, in their place, add the words "§ 201.431 of this chapter".

PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

63. The authority citation for part 250 continues to read as follows:

Authority: 15 U.S.C. 79c, 79f(b), 79i(c)(3), 79t, unless otherwise noted.

§ 250.22 [Amended]

64. In § 250.22(b)(1), remove the words "§ 201.24 of this chapter" and add, in their place, "§ 228.10(f) and § 229.10(d) of this chapter".

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

65. The authority citation for part 260 continues to read as follows:

Authority: 15 U.S.C. 77eee, 77ggg, 77nnn, 77sss, 78*ll*(d); 80b–3, 80b–4, and 80b–11.

§ 260.7a–29 [Amended]

66. In § 260.7a–29(a), remove the words "§ 201.24 of this chapter" and add, in their place, "§ 228.10(f) and § 229.10(d) of this chapter".

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

67. The authority citation for part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–37, 80a–39 unless otherwise noted.

* * * * *

§ 270.0–4 [Amended]

68. In § 270.0–4(a), remove the words "§ 201.24 of this chapter" and add, in their place, "§ 228.10(f) and § 229.10(d) of this chapter".

§ 270.8b–32 [Amended]

69. In § 270.8b–32(a), remove the words "§ 201.24 of this chapter" and add, in their place, "§ 228.10(f) and § 229.10(d) of this chapter".

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

70. The authority citation for part 275 continues to read in part as follows:

Authority: 15 U.S.C. 80b–3, 80b–4, 80b–6A, 80b–11, unless otherwise noted.

* * * * *

§ 275.0–6 [Amended]

71. In § 275.0–6 paragraph (a) and the NOTE at the end of the section, remove the words "§ 201.24 of this chapter" and add, in their place, "§ 228.10(f) and § 229.10(d) of this chapter".

By the Commission.

Dated: June 9, 1995.

Margaret H. McFarland,

Deputy Secretary.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix—Form D–A

BILLING CODE 8010–01–P

Form D-A

Model Disclosure of Assets and Financial Information Form

Instructions: The Commission's Rules of Practice provide that under certain circumstances a respondent who asserts or intends to assert an inability to pay disgorgement, interest or penalties may be required to disclose certain financial information. See Rules 410 and 630. Unless otherwise ordered, this form may be used by individuals required to supply such information. Partnerships, corporations or other entities should submit a financial statement, including an income statement, balance sheet and federal tax returns for each year from the year of the earliest violation alleged against the entity in the order instituting proceedings to the present.

The respondent filing this form is required promptly to notify the Commission of any material change in the answer to any question on this form.

A respondent making financial information disclosures on this form or in another manner pursuant to the requirements of Rule 410 or Rule 630 may submit the form with a motion for a protective order pursuant to Rule 322 of the Commission's Rules of Practice. Any other person submitting this form may request that the Commission afford the information submitted confidential treatment under the Freedom of Information Act under the Commission's Freedom of Information Act ("FOIA") regulations, see 17 CFR 200.83. A request for confidential treatment allows the requester an opportunity to justify the need for confidentiality. A request for confidential treatment does not, however, guarantee confidentiality.

Notwithstanding any request for a protective order or for confidential treatment, copies of the financial disclosure statement shall be served on the interested division and will be included in the record of the proceeding. See Rule 630(d). If confidential treatment is sought, notice that a financial disclosure statement and request for confidential treatment have been filed shall be served on all other parties.

No party receiving information for which confidential treatment has been requested may transfer or convey the information to any person or entity not a party to the proceeding without the prior permission of the Commission or a hearing officer.

United States of America
Before the
Securities and Exchange Commission

In the Matter of

_____

Administrative Proceeding File No. 3-_____

Part I: Summary Financial Disclosure Statement

Full Name: _____
Last First Middle

A. Net Worth

1. Assets: (from Part II.B.) _____
2. Liabilities: (from Part II.C.) _____
3. Net Worth: (from Part II.D.) _____

B. Income and Payments Received

1. Gross income reported on most recent federal tax filing: _____
2. Last 12 calendar months (from Part II.E.): _____ *

* If this amount, divided by 12, does not equal your current monthly income, please explain the discrepancy on an attached sheet.

C. Expenses

1. Last 12 calendar months (from Part II.F.): _____ *

* If this amount, divided by 12, does not equal your current monthly expenses, please explain the discrepancy on an attached sheet.

United States of America
Before the
Securities and Exchange Commission

In the Matter of

Administrative Proceeding File No. 3-_____

Part II: Detailed Financial Disclosure Information

Full Name: _____
Last First Middle

If this form is filled out by a respondent requesting a protective order pursuant to Rule of Practice 322 (17 CFR 201.322), please check the box below.

☐ PROTECTIVE ORDER REQUESTED. Disclosure of this document is prohibited unless specifically authorized below. This document should be placed in a nonpublic file.

For Use Only by the Secretary of the Commission:

☐ By order of _____ (date), the Commission authorized this form to be placed in a public file.

_____
(Signature of Secretary)

Last Name: _____

A. Scope of Information Requested:

Requests for information about you include a request for the same information about your spouse (unless you are legally separated and living apart), minor children and any other dependents.

B. Assets:

List all assets owned by you, directly or indirectly, and all assets that are subject to your enjoyment or control, regardless of whether legal title or ownership is held in your name.

1. Cash _____
2. Listed Securities _____
3. Surrender Value of Insurance _____
4. Loans, Notes, Accounts Receivable Due to You _____
5. Real Estate _____
6. Furniture _____
7. Jewelry, Art, Rugs, Silver Collectibles, Other Valuables _____
8. Automobiles _____
9. Unlisted Securities _____
10. Partnership Interests (non-securities) _____
11. Net Value of Ownership Interest in Business _____
12. IRA, Keogh, 401(k), Annuity or Pension Accounts _____
13. Other (Itemize):
    _____ _____
    _____ _____
14. **Total Assets** _____

C. Liabilities:

List all your liabilities including, but not limited to, the items listed below.

1. Mortgages _____
2. Auto Loans _____
3. Credit Card Debt _____
4. Margin Loans _____
5. Insurance Policy Loans _____
6. Installment Loans _____
7. Other Loans, Notes or Accounts Payable _____
8. Accrued Real Estate Taxes _____
9. Judgments/Settlements Owed _____
10. Other (Itemize):
    _____ _____
    _____ _____
11. **Total Liabilities** _____

Last Name: _____

D. Net Worth
(Assets Less Liabilities) _____

E. Income/Payments Received

List all income or other payments received from any source in the last 12 months by you, or by any other person or entity if you have any right, power or authority to control or enjoy the use of the money or property received by such other person or entity. Identify the source, the recipient and the amount of payment, including but not limited to the items listed below.

Description/Purpose	Source	Amount
1. Salary/Wages		
2. Commissions/Advances		
3. Bonuses		
4. Dividends		
5. Interest		
6. Distributions of Capital		
7. Annuity, Pension Payments		
8. Rents/Royalties (net)		
9. Sales of Assets (net)		
10. Repayment of Loans		
11. Alimony/Child Support		
12. Gifts over $1,000		
13. Payments by Others on Your Behalf (see section I below)		
14. Other (itemize):		
15. **Total Income/Receipts**		

16. If you anticipate unusual income in the coming 12 months, please explain.

Last Name: _____

F. Expenses/Disbursements

List all your expenditures for the past 12 months, including but not limited to the items listed below. Identify the purpose and the amount of each expenditure.

Description	Amount
1. Mortgage/Rent	
2. Food	
3. Utilities	
4. Payments on Loans	
5. Real Estate Taxes	
6. Insurance Premiums	
7. Medical Expenses	
8. Automobile Expenses	
9. Alimony/Child Support	
10. Income Taxes (federal, state and local)	
11. Other Expenses (itemize):	
12. **Total Expenses/Disbursements**	

13. If you anticipate unusual expenses in the coming 12 months, please describe them.

G. Asset Schedules

1. For each asset or class of assets included in Section II.B(5-13) with a fair market value greater than $2,000, describe the asset(s), state the form of ownership (e.g., individual, joint, beneficial interest), provide a fair market value, and explain how fair market value was determined (e.g., appraisal, comparison, estimate, etc.).

2. List all securities or commodities brokerage accounts and accounts at banks or other financial institutions in your name, under your control, in which you have or had a beneficial interest, or to

Last Name: _____

which you are or were a signatory since the date of the first violation alleged against you. For each account, specify the location of the account, account number, balance and balance date. Please identify all accounts, regardless of their location.

3. List all 401(k) plans, pension plans, Keogh plans, individual retirement accounts, profit sharing plans, thrift plans, life insurance policies or annuities in which you have an interest, vested or otherwise. For each account, specify the account name, the location of the account, account number, balance and balance date. For each account state whether you are permitted to borrow against or make withdrawals from the account.

4. Identify the location and account number of all your safe deposit boxes. Include any boxes in which you have property or papers, whether or not you are the account holder.

5. Identify all patents, trademarks, service marks, royalty agreements, licenses, or other general intangibles in which you have an interest.

H. Liability Schedules

1. For each liability greater than $2,000 listed in Section II.C., indicate the creditor, the account number, if any; the date incurred; the original amount of the liability; the length of the obligation; the interest rate; the collateral or security, if any; the outstanding balance; and the name(s) and address(es) of any other obligee(s). State whether you are related to or have a personal or social relationship with the creditor, its management or owners.

2. List all credit cards and lines of credit in your name or to which you are a signatory, including the name of the credit issuer, account number, credit limit, and amount of indebtedness.

3. List all contingent liabilities. Include any notes on which you are a co-maker, guarantor or endorser and all pending lawsuits in which you are named as a defendant.

I. Schedules of Income, Receipts and Disbursements

1. Disbursements by Others on Your Behalf. List any payments or disbursements having a value of $1,000 or greater made by any other person or entity to a third party on your behalf since the date of the first violation alleged against you. Include the amount of the disbursement and the name and address of the person or entity who made the disbursement. If no such disbursements have been made, please so state.

2. Fringe Benefits. List any fringe benefits, such as the lease of an automobile, currently provided by your employer.

3. Asset Transfers by You. List any assets or property with a cost or fair market value of $2,000 or more that you transferred or otherwise disposed of since the date of the first violation alleged against you. State the value of the asset, the consideration received, and your relationship with the transferee. If no such transfers have been made, please so state.

4. Additional Deposits by You. Identify any financial institution accounts (other than those identified in section G.2. above) in which you have deposited more than $2,000 since the date of the first violation alleged against you. If no such deposits have been made, please so state.

Last Name: _____

5. Trusts and Inheritances Already Vested. Describe any vested interest in a trust or will pursuant to which you are receiving or will receive a devise, bequest, other inheritance or distribution.

6. Current and Prior Business Relations. List any sole proprietorships, joint ventures, corporations or other business enterprises in which you are now or have been a principal, holder of 10 percent or more of the issued stock, officer, director, manager or chief operating officer at any time since the date of the first violation alleged against you.

J. Personal Information

Current residence: _____
street unit

_____
city state zip code

Current phone number(s): home: ( ) -
business: ( ) -
car: ( ) -
other: ( ) -

Social security number: - -

List any other names (including a maiden name) you have used.

If currently married, please state your spouse's name, age and social security number, whether or not he or she resides with you, and the date of your marriage.

If you have previously been married, please state the name of your former spouse(s) and the date of your marriage(s). If the date of a marriage was after the date of the first violation alleged against you, include your former spouse's social security number and last known address.

Identify all dependents. For each, please state his or her age, social security number, and whether or not he or she resides with you.

Identify any other members of your household. For each, please state his or her age and relationship to you.

K. Attachments:

1. Attach any federal tax returns filed by you (including personal, trust, or business returns) for the year of the first violation alleged against you and all subsequent years.

2. Attach any federal gift tax returns filed by you for the year of the first violation alleged against you and all subsequent years.

3. Attach any financial statement that you prepared for any purpose (e.g., a financial statement provided to a bank to secure a loan) in the year of the first violation alleged against you and all subsequent years.

Last Name: _____

4. If you are a trustee, executor or administrator, attach a copy of the instrument appointing you as such.

5. List of Attachments Submitted With This Form:

Please list all financial statements, tax returns and other materials submitted with this form. Do not submit originals. Make sure all copies are legible. Illegible copies do not satisfy the requirements for filing your financial disclosure information.

L. Declarations and Signature

I, _____, hereby declare under penalty of perjury that I have examined the information given in this statement and attached hereto and, to the best of my knowledge and belief, it is true, correct, and complete. I further declare that I have no assets, owned either directly or indirectly, or income of any nature other than as shown in, or attached to, this statement. I understand that any material misstatements or omissions made by me herein, or in any attachments hereto, may constitute criminal violations, punishable under 18 U.S.C. 1001 or other statutes.

The Securities and Exchange Commission and any of its staff are authorized to obtain any such information from credit bureaus, financial institutions or any other source as may be needed to verify the statements made on this form.

The statements herein and attached hereto represent my financial condition as of _____ (date).

_____ (signature) _____ (date)

Sworn before me this ___ day of _____, 199__.

[Seal]

_____
Notary Public

My commission expires on _____(date)

[FR Doc. 95–14750 Filed 6–22–95; 8:45 am]
BILLING CODE 8010–01–C

federal register

Friday
June 23, 1995

Part III

Department of Transportation

Coast Guard

46 CFR Part 160
Recreational Inflatable Personal Flotation Device Standards; Interim Rule
33 CFR Part 175, et al;
46 CFR Part 2, et al.
Inflatable Personal Flotation Devices (PFDs) for Recreational Boaters; Approval; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 160

[CGD 94–110]

RIN 2115–AE96

Recreational Inflatable Personal Flotation Device Standards

AGENCY: Coast Guard, DOT.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard is establishing regulations for approval of inflatable personal flotation devices (PFDs) for recreational boaters. These regulations establish structural and performance standards for inflatable PFDs, as well as the procedures for Coast Guard approval of inflatable PFDs. These standards are intended to allow for approval of inflatable PFDs which should be more amenable to continuous wear by recreational boaters than currently approved PFDs, thereby increasing use of PFDs by the boating public and saving lives.

DATES: This rule is effective on July 24, 1995. The Director of the Federal Register approves as of July 24, 1995 the incorporation by reference of certain publications listed in the regulations. Comments must be received on or before October 23, 1995.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA/3406) (CGD 94–110), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477. Comments on collection-of-information requirements must be mailed also to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

A copy of the material listed in "Incorporation by Reference" of this preamble is available for inspection at room 1404, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Mr. Samuel E. Wehr, U.S. Coast Guard, Survival Systems Branch (G–MVI–3), telephone (202) 267–1444, facsimile (202) 267–1069, or electronic mail "mvi-3/G-M18@cgsmtp.comdt.uscg.mil". A copy of this interim final rule may be obtained by calling the Coast Guard's toll-free Customer Infoline, 1–800–368–5647. In Washington, DC, call 267–0780.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 94–110) and the specific section of this rule to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES.** The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information

The principal persons involved in drafting this document are Mr. Samuel E. Wehr, Project Manager, U.S. Coast Guard, Office of Marine Safety, Security, and Environmental Protection, Survival Systems Branch (G–MVI–3) and Ms. Helen Boutrous, Project Counsel, Office of Chief Counsel.

Regulatory History

On November 9, 1993, the Coast Guard published an Advance Notice of Proposed Rulemaking (ANPRM) entitled "Inflatable Personal Flotation Devices" in the **Federal Register** (58 FR 59428). The Coast Guard received nine letters commenting on the ANPRM. One of the comments requested a public hearing, however, after consideration, the Coast Guard determined that no new issues would have been raised which would have materially assisted the Coast Guard in developing this rule. Therefore, no public hearing was held.

Regulatory Information

This rule is being published as an interim rule and is being made effective 30 days after the date of publication. The standards established by this IFR will give manufacturers the opportunity to make a significant number of Coast Guard-approved inflatable PFDs available to the boating public in 1996. Manufacturers require sufficient lead time to develop the PFDs in accordance with safety standards before they can actually offer products to boaters. It is the Coast Guard's position that boaters will be more likely to wear the less bulky inflatable PFDs than the more bulky designs currently available. Therefore, availability inflatable PFDs will save boaters lives.

Most of the standards adopted by this rulemaking are Underwriters Laboratories (UL) standards for inflatable PFDs and PFD components (UL 1180 and 1191) which were developed in accordance with the American National Standards Institute (ANSI) procedure for voluntary industry standards. In accordance with the ANSI procedures, interested parties were provided with an opportunity to participate in the development of the standards. The public was also given an opportunity to comment on the adoption of approval standards for inflatable PFDs in the ANPRM published on November 9, 1993 (58 FR 59428). All of the comments were generally in favor of the development of structural and performance standards for inflatable personal flotation devices (PFDs) and procedures for Coast Guard approval of inflatable PFDs. The ANPRM advised of the intention to use an industry consensus standard and encouraged interested, knowledgeable persons to participate in the ANSI standards making process. On February 24, 1994, notice was published in the Federal Register (59 FR 9015) of the Coast Guard's participation in the first consensus standards meeting with UL. This notice again invited interested technical experts knowledgeable in the field to participate in the meeting and process.

This IFR affords the opportunity for the public to comment on, and the Coast Guard to revise, the standards before they are finalized. Comments are invited on all aspects of this rule, and the Coast Guard specifically requests comments on particular issues throughout this preamble. Furthermore, carriage of inflatable PFDs will not be mandatory for boat owners, rather they are an allowable alternative to existing Coast Guard-approved PFDs. Coast Guard approval of inflatable PFDs represents a business opportunity for manufacturers, distributors, and retailers. For these reasons, the Coast Guard for good cause finds, under 5 U.S.C. 553(b)(B), that notice, and public procedure on the notice, before the effective date of this rule are unnecessary.

Background and Purpose

The November 9, 1993, ANPRM discussed the Coast Guard's intention to adopt structural and performance standards for inflatable personal flotation devices (PFD) used on recreational boats, as well as the procedures for approval, and carriage requirements. The ANPRM discussed the Coast Guard's intention to participate in the development of an Underwriters Laboratories (UL) standard for inflatable PFDs, which would be the basis for Coast Guard approval of these devices. The UL standard (UL 1180) is complete. A Notice of Proposed Rulemaking (NPRM) which proposes complementary rules governing the carriage, use, registration, and recall of inflatable PFDs for recreational boats, is published elsewhere in today's edition of the **Federal Register.** More comprehensive procedures for approval of inflatable devices, and other PFDs as well, are included in the NPRM.

These regulations are intended to allow approval of PFDs which may be more appealing to recreational boaters than currently approved PFDs, thereby increasing use of PFDs by the boating public and saving lives. However, the Coast Guard notes that the currently approved inherently buoyant PFDs have an excellent lifesaving record. The Coast Guard boating statistics show that the fatality rate has dropped from about 20 to 4 (per 100,000 boats) over the past 25 years, and this decrease is in part due to use of these inherently buoyant PFDs. The Coast Guard also notes that inherently buoyant PFDs are more appropriate for non-swimmers than inflatable PFDs. Moreover, there are a number of boating applications where inflatable PFDs are not suitable, as listed in the PFD information pamphlet. Therefore, inherently buoyant PFDs will continue to play a vital role in boating safety programs for the public.

Advisory Committee and Other Consultations

In developing these regulations the Coast Guard consulted with the National Boating Safety Advisory Council (NBSAC) and the National Association of State Boating Law Administrators (NASBLA). In May 1994, NBSAC passed a resolution recommending approval for Type I, II, III, IV, and V inflatable PFDs. In 1988, 1993 and 1994, NASBLA also passed resolutions urging that such approvals be granted as soon as possible. Additionally, the National Transportation Safety Board has recommended that the Coast Guard approve inflatable PFDs.

NBSAC formed a subcommittee to study the implementation of the various types of approvals that might be granted by the Coast Guard and developed an "inflatable PFD objectives statement" and "performance goals". Copies of these documents are included in the docket file for this rulemaking. The documents identified a number of goals that NBSAC determined to be appropriate in the effort to set standards for the manufacture and approval of inflatable PFDs. In November 1994, the full council passed a resolution supporting the objectives statement and goals. The regulations adopted by this IFR are fully consistent with the final resolution adopted by NBSAC.

Inflatable PFD Studies

The Coast Guard has sponsored two studies on the suitability of inflatable PFDs in the recreational boating environment—a 1981 Inflatable PFD Field Test, Report No. CG–M–84–1 and a 1993 study conducted by the BOAT/U.S. Foundation for Boating Safety. Each study involved the use of about 500 inflatable PFDs in a recreational boating environment. Copies of these studies are included in the docket file for this rulemaking. Initial review of these studies indicated that inflatable PFDs could not be approved without extensive servicing requirements or conditions on approval. However, as discussed below, developments in inflatable PFDs have allowed the Coast Guard to establish the approval standards for inflatable PFDs adopted in this IFR.

1981 Inflatable PFD Field Test

The 1981 Inflatable PFD Field Test revealed that the PFDs used by the participants lacked an armed inflation mechanism nearly 20 percent of the time. Based on this information, the Coast Guard determined that it was not appropriate to approve inflatable PFDs without a mandatory structured servicing program. In 1981, no satisfactory servicing program was available, nor could one be developed at a reasonable cost for recreational boaters. Therefore, totally inflatable recreational PFD's were not approved.

BOAT/U.S. Study

The 1993 BOAT/U.S. Foundation for Boating Safety, Inflatable PFD Study showed approximately the same result as the 1981 study discussed above. Boat/U.S. distributed inflatable PFDs to recreational boaters and asked them to use the PFDs during their boating activities. BOAT/U.S. then recalled the PFDs in "as is" condition. After an initial visual examination, about 45 percent of the PFDs were judged to be improperly armed. Upon further evaluation, it was concluded that one-third of the improperly armed PFDs may have appeared to the average boater as having been armed correctly, a potentially serious condition (p.8 of study). In addition, 11 percent of the PFDs which technicians judged to be properly armed, actually had spent inflation cartridges, a potentially very serious situation.

Of the 458 inflatable PFDs tested by the BOAT/U.S. Foundation, technicians determined that:

(a) 383 (84%) could be made operational when they were returned.

(b) 40 (8.7%) were found to have operational deficiencies which could result in diminished performance of the PFD. Of these 40 inflatable PFDs, 17 required a greater than average force to actuate the inflation assembly. Some of the PFDs were found to have air retention losses of over 20 percent after 24 hours and others had slow inflation times. The slow inflation and air loss were caused by secondary closures which failed to open or possible leaks in the inflation assembly. In particular, one manufacturer used snap closures that did not always open when the device was inflated.

(c) 35 (7.6%) had various operational deficiencies which actually diminished their performance. Of these 35 inflatable PFDs, 19 were inoperable when returned for testing after use by the participants.

New Developments in Inflatable PFDs and UL Standards

New developments in the manufacture of inflatable PFDs, along with work done in the area by UL since the testing was conducted in the above studies, have greatly improved the chances that inflatable PFDs will work when used and maintained by the average boater. The problems revealed by the two studies discussed above have been addressed in the UL standard. It is the Coast Guard's position that PFDs meeting the requirements of the new UL standard, along with certain additional requirements included in this IFR, do not have the problems that prevented

Coast Guard from approving recreational inflatable PFDs in the past.

The Coast Guard is proceeding with approval at this time based on the development of much more "user serviceable" inflatable PFDs. With these user serviceable PFDs there is a good chance that the user of the PFD will (1) recognize when the PFD needs servicing; and (2) be able to perform the servicing correctly. These improved PFDs are equipped with inflation mechanisms (inflators) that are user-friendly. User-friendly features are often referred to as mechanisms that are designed with "good human factors." Better human factors relates to the ease with which boaters can determine when their inflatable PFD needs rearming and the ease with which they can correctly rearm their PFD. Good human factors design will decrease the incidence of unarmed inflatable PFDs that were evident in the studies discussed above. This IFR requires inflatable PFDs to have inflators that a high proportion of the user population can quickly and correctly rearm with little or no reference to instructions or training.

In order to increase the likelihood that spent (or unarmed) inflators are readily distinguishable in actual use, the UL standards incorporated by this IFR require a status indicator that a high percentage of test subjects must correctly identify in the approval testing. Additionally, a high percentage of a pool of test subjects must be able to correctly rearm the device with no additional training, other than use of the owner's manual provided and toll-free calls to a manufacturer's help line, if one is available. The UL standard has two different levels for inflators, and the Coast Guard is allowing manufacturers to utilize different use restrictions and Type designations to alert boaters to the simplicity or complexity of the device that should be considered before purchase. The Coast Guard's goal is for PFDs to have inflators with such good human factors that boaters can tell if their PFD is armed as easily and quickly as they can tell the difference between a nickel and dime. This should then enable them to correctly rearm their inflatable PFDs almost every time.

As discussed below, other problems revealed in the study have also been addressed.

UL Standard 1180 includes a requirement for testing inflator assemblies after salt water spray tests to ensure that the inflators are capable of being easily actuated if left in a corrosive environment.

Many of the problems associated with partial deflation over 24 hours were attributed to sand or grit in the oral inflation tube, which allowed the valve in the tube to remain partially open and leak. The UL standard permits, but does not require, a dust cap on oral inflation tubes. Dust caps should prevent the entrance of some sand and grit into the inflator tube, and thus reduce the incidences of this minor problem. Other reasons for leaks included improper installation of the inflation assembly and holes in the bladder assembly itself. These problems will need to be dealt with by the boaters themselves as instructed by the owner's manual.

UL standards 1180 and 1191 also include a number of tests to ensure the durability of the bladder. The label will include a warning to perform a service test at least once each year.

Industry Standards Development

Underwriters Laboratories Inc. developed and revised UL standards 1180 and 1191, respectively, which are incorporated by reference in this rule, over the past year. The Coast Guard participated in this standards development process, which included two UL meetings and two UL comment periods. At the first meeting, which was announced in the **Federal Register** (February 24, 1994; 59 FR 9015), participants discussed concepts for the various kinds of PFDs that should be included in the standards, their minimum performance, and the performance of critical components such as the inflation mechanisms. UL then formulated complete draft proposals for the inflatable PFDs and their components and requested comments. An ad hoc advisory committee meeting was then held to discuss the comments received in detail. The Coast Guard outlined the most important characteristics of inflatable PFDs that it would examine when considering the devices for USCG approval. UL's minutes of this meeting are included in the docket for this rulemaking. Subsequent to the ad hoc advisory committee meeting, UL proposed revised standards for inflatable PFDs and their components and invited comments. The Coast Guard commented on this revised proposal, and UL, after considering the industry and Coast Guard comments, adopted the standards incorporated by reference in this interim final rule.

Discussion of Comments

The comments received in response to the ANPRM published November 9, 1993, that pertain to the approval procedures and other issues regarding inflatable PFD use are discussed in the NPRM (CGD 93–055) published elsewhere in today's edition of the **Federal Register**. The comments that pertain to the standards for inflatable PFDs and this IFR are discussed below.

The Coast Guard received eight letters commenting on the ANPRM before the close of the comment period. One supplemental letter that was received after the close of the comment period was also considered. The comments were received from a boat manufacturer, a cruise ship line, five PFD manufacturers and a boat owners association. All of the comments were generally in favor of the development of structural and performance standards for inflatable personal flotation devices (PFDs) and procedures for Coast Guard approval of inflatable PFDs.

Each of the comment letters received addressed a variety of issues regarding the approval of inflatable PFDs. Most of these issues were raised in a series of questions posed in the ANPRM. The issues addressed by these comments are discussed below.

General Comments

Most of the comments stated that because inflatable PFDs are lightweight and compact, and therefore cooler, they are more likely to be worn than most of the bulky inherently buoyant PFDs currently in use. These comments also stated, however, that increasing consumer interest is dependent upon lowering the relatively high cost of the inflatable models currently marketed. They acknowledged that Coast Guard approval of, and recommendations concerning, inflatable PFDs will also increase sales and help development of lower cost inflatable PFDs by increasing competition.

The Coast Guard agrees with these comments, but notes that increased wearing of PFDs also requires changing boaters' attitudes about the need for and value of PFD use. The Coast Guard emphasizes that, as with all PFDs, for inflatable PFDs to save lives, they must be worn. But also, inflatable PFDs must be cared for to a greater extent than other PFDs. The Coast Guard encourages boaters, manufacturers, State boating officials and boating safety organizations to promote the proper care of inflatable PFDs and increased wearing of PFDs in general. One of the significant advantages of inflatable PFDs, and the reason the Coast Guard has determined that inflatable PFD standards should be established as soon as possible, is that inflatable PFDs are comfortable enough to wear at all times while on the water. While two studies have indicated that improved comfort alone may not significantly increase the wear rate for PFDs, the Coast Guard's position is that the combination of

increased comfort and boater awareness of the crucial importance of wearing a PFD will increase the numbers of boaters wearing PFDs and save lives. That is why the Coast Guard is requiring that educational pamphlets and manuals, highlighting the importance of wearing a PFD which is appropriate for the user and the activity, be supplied with all Coast Guard-approved PFDs. Through this IFR and several PFD awareness initiatives such as the annual National Safe Boating Week Campaign, the Coast Guard is seeking to increase boater awareness of the importance of wearing PFD.

One PFD manufacturer stated that unfortunately the public perceives non-Coast Guard-approved safety equipment as inferior equipment. The comment pointed out the fact that the Coast Guard has not tried to prohibit, and has even strongly recommended that crew members working on deck on commercial vessels wear some type of PFD, including inflatable lifejackets which are not approved. To remedy this problem, the comment asked the Coast Guard to consider changing the PFD regulatory language from U.S. Coast Guard "Approved" to U.S. Coast Guard "Required."

The Coast Guard agrees that generally, unapproved equipment is better than no equipment. However, unapproved equipment does not satisfy inspection or equipment requirements. The Coast Guard acknowledges the public's misperception regarding products that are not "Coast Guard-approved". However, the Coast Guard is not adopting the recommendation to change "Approved" to "Required." Such a change in terminology would be misleading because it would imply that many items of equipment which are available options for meeting the carriage requirements would be "required" on vessels. Moreover the change is not likely to correct the misperception.

The comment also recommended that inflatable PFDs be considered as substitutes for inherently buoyant PFDs only in situations in which the vessel has space limitations which do not allow for the carriage of traditional Coast Guard-approved PFDs. The comment stated that all vessel operators should be allowed to petition the Coast Guard for an exemption from PFD carriage requirements which would allow the vessel to substitute inflatable lifejackets for traditional Coast Guard-approved PFDs. The comment further suggested that granting such an exemption be conditioned on the vessel operator's completion of an educational course in the use and maintenance of inflatable lifejackets.

The Coast Guard is not adopting these recommendations because the administrative burdens associated with granting individual exemptions and determining "space limitations" for all boat types would be unmanageable. Inflatable PFDs will be allowed to be carried in place of inherently buoyant devices based on their approval type (I, II, III, or V), with only Type Vs having some condition on their carriage. PFD types are discussed later in this preamble under "PFD *Approval Type vs. performance type*". Also, approval is limited to persons at least 16 years of age and weighing more than 80 pounds. This limitation to adults is deemed necessary to restrict the use of these devices to those who are capable of using them in an emergency situation. As discussed above, the need for education will be addressed by pamphlets and manuals provided with the PFDs.

Another PFD manufacturer cautioned against drafting fully inflatable PFD standards that would result in only unaffordable, "high-tech" Coast Guard-approved inflatable PFDs.

The Coast Guard agrees and is adopting standards for a range of devices with the minimum safety requirements necessary to meet the various needs of most recreational boaters.

The boat manufacturer stated that inflatable PFDs are far easier to adjust than the approved PFDs now available, noting that this feature, among others, contributes to the convenience of inflatable PFDs and would increase their potential for use.

The Coast Guard agrees with this comment. This IFR adopts standards intended to ensure that inflatable PFDs continue to have body straps and closures which are easy to adjust.

The comment received from the cruise ship line noted that it operates two coastal cruise ships which carry 106 and 138 passengers respectively. According to the cruise line, "expedition" type cruises involve ferrying passengers in tenders to visit remote areas. All passengers are required to don PFDs before boarding the tenders. The comment stated that the ability to use less bulky inflatable PFDs would greatly enhance the process and improve passenger comfort.

It must be noted that vessels operating as cruise ships are covered by PFD carriage requirements for commercial passenger carrying vessels, which are not the subject of this rulemaking project. The inflatable PFDs for such types of service may be approved under existing regulations in 46 CFR 160.176.

Specific Comments on Issues Raised in the ANPRM Self Inspection by Means of Indicating Devices

The ANPRM stated that because recreational boaters do not always maintain inflatable PFDs in an overall serviceable condition, the inflation system should include an "indicating device" which would allow the boater to be reasonably sure that the PFD is ready to function and perform when used, or to identify whether the inflatable PFD requires servicing or rearming.

One PFD manufacturer asserted that although a self-inspecting inflation system will indicate if the unit needs to be rearmed, the boater still has to be relied upon to look at the indicator each time the PFD is donned. Further, no self-inspection system will prevent a boater from donning a disarmed PFD.

The Coast Guard acknowledges that self-inspection systems do not guarantee that boaters will not don a disarmed PFD. However, because of the ease of inspection, it is the Coast Guard's position that these systems will greatly assist boaters in determining whether their inflatable PFD is properly armed and will promote more frequent checks on the status of inflation systems. Making the task of checking the status of the inflation system easy, and maximizing the chances of making a correct determination, are two key elements in improving the readiness and safe use of inflatable PFDs. Accordingly, the standards adopted by this IFR require one of two levels of performance for self-inspection systems that are designed with features to promote ease of use.

The comment also stated that the new specifications should not prohibit the use of disposable, one-time inflation systems that can be replaced after each use, when the indicator shows that the inflation system has been used.

The Coast Guard notes that disposable inflation mechanisms are currently the only available inflation systems that can provide complete arming status indication and the standards adopted in this IFR allow for the use of disposable inflation systems.

A comment from another PFD manufacturer agreed with the desirability of self-inspection, but stated that any such requirements would be beyond the "state-of-the-art," because there is no known reliable method to indicate the state of the CO_2 cylinder charge without removing the cylinder and inspecting the piercing face for evidence of a puncture. Therefore, the

comment considers the ability to determine cylinder charge status as part of the self-inspection criteria to be an unreasonable requirement.

The Coast Guard disagrees. As stated above, affordable, disposable inflators have been made that accomplish this task, making such a requirement reasonable. Additionally, reusable inflators have been demonstrated which should be available in the near future.

Another issue raised by this PFD manufacturer was that the inflatable PFD standard should not attempt to anticipate unlikely misuse, such as reinstallation of a spent cylinder, in the self-inspection requirements.

The Coast Guard notes that according to the PFD studies cited previously, users may have frequently reinstalled spent cylinders. The Coast Guard agrees that because of the limited number of systems available at this time which are capable of indicating the reinstallation of a spent cylinder, the standards should not require that all systems have such a capability. Only unconditionally approved PFDs (Type I, II, and III) must be capable of indicating this common misuse whether intentional or unintentional. Therefore, on these PFDs which do not have conditional approval, boaters will get the extra assurance of inflators that minimize possible misuse.

Three comments from PFD manufacturers suggested that available inflation mechanisms which indicate the activation of automatic or manual inflation systems by the presence or absence of a pin or clip, or a port window subject to a change in color are sufficient to indicate that the cylinder has been spent.

The two independent inflatable PFD studies mentioned above have shown the need for better human factors design in these systems. Under this IFR, the Coast Guard is adopting standards for systems that utilize user-installed pins or clips as a lower performing indicating system. The Coast Guard will continue to review new systems as they become available and, when appropriate, adopt upgraded standards as more designs become available that improve the chances of correct status determination of inflation system readiness.

These same PFD manufacturers stated that self-inspection issues are best addressed in user manuals or labels on the inflatable PFD rather than through standards on PFD designs. The Coast Guard disagrees. While instructions and labels can help, they are a poor substitute for designs of emergency equipment that take human nature into account. Systems designed with good human factors have indicators that most users understand instinctively and aid in proper rearming and operation of PFD inflation systems, thereby enhancing the PFD's lifesaving potential.

PFDs Approved Only When Worn.

In a discussion of the public's expected acceptance of inflatable PFDS, the November 9, 1993 ANPRM discussed industry's experience in marketing hybrid PFDs. The ANPRM stated that the hybrid PFD's lack of wide usage by the public may be due to the fact that hybrid PFDs do not count toward the satisfaction of carriage requirements unless they are worn. PFDs with such "conditional approval" are labelled "approved only when worn". This requirement was intended to ensure that these PFDs are properly maintained. The ANPRM suggested that if the inflation systems of inflatable PFDs were required to have indicating devices to show if the inflation system requires servicing or re-arming, the Coast Guard would consider not requiring inflatable PFDs to be worn. The ANPRM further suggested that an inflatable PFD which lacks an indicating device could be labelled as a Type V PFD and be approved only when worn, to increase the likelihood that such inflatable PFDs are maintained in a serviceable condition.

Nearly all of the PFD manufacturers and the boat owners association were opposed to an "approved only when worn" requirement for inflatable PFDs, because requiring constant wear would be a deterrent to buyers. Another comment from a PFD manufacturer stated that an "approved only when worn" criterion does not ensure that boaters will inspect their PFDs as was implied in the discussion of this issue in the ANPRM.

The Coast Guard agrees that boaters were discouraged from buying those hybrid PFDs which are "required to be worn," and that such a requirement only indirectly helps to encourage boaters to inspect their PFDs. Further, fewer sales of highly wearable inflatable PFDs will frustrate the Coast Guard's goal of increasing the total number of people wearing PFDs. Moreover, as discussed above, there have been many improvements to inflatable PFD designs. Therefore, the standards adopted by this IFR provide for approval of inflatable Type I, II, and III PFDs without conditions on their approval.

However, the Coast Guard notes that several factors contributed to the negative reaction to conditional approval of hybrid PFDs. For instance, the hybrid PFD designs were hot, bulky, and expensive. It is the Coast Guard's position that conditional approval can play a valuable role in the approval of unique and novel inflatable PFD designs which are much more cool, comfortable and less expensive than the hybrid designs. This role is discussed below under "*PFD lifesaving potential evaluation*" in the discussion of rules section.

A comment from the boat manufacturer stated that regulations need to be adopted requiring PFDs to be worn whenever an engine is in use, rather than the current requirement for PFDs to be on board.

The Coast Guard, in a future rulemaking, may consider a requirement for boaters to wear a PFD whenever the engine is running for specific PFD designs on a case-by-case basis during approval, and will consider the desirability of wider application of such a restriction in the future.

Another comment from a PFD manufacturer argued in favor of rules requiring individuals to wear a PFD, and allowing for the use of non-approved devices, including inflatables.

The Coast Guard is not adopting this suggestion. While Coast Guard regulations do not prohibit the carriage and use of non-approved PFDs, carrying such devices does not count toward meeting the carriage requirements. The quality and performance of PFDs that do not meet any specified standards is uncertain. The Coast Guard's position continues to be that in order to achieve the minimum acceptable level of safety and meet operational needs, only Coast Guard-approved devices, which must meet specified safety criteria, should be counted toward carriage requirements. A poorly manufactured device could fail to provide needed assistance, or a poorly designed device could actually perform such that the user is worse off than having no PFD.

Inflatable PFD Types

The ANPRM also stated that approval of Type I and II, as well as Type V inflatable PFDs with conditions on their use or that are intended for use in specific activities, will provide more choices suitable for a variety of different boating activities.

One comment from a PFD manufacturer stated that the Coast Guard should allow for approval of several inflatable PFD types rated at different levels of performance. The comment suggested that the highest performance inflatable PFD provide 35 pounds (150 N) of buoyancy, have dual chambers, an automatic, self-inspecting inflation system, and a high strength harness and lifting becket. The lowest performance inflatable PFD, according to the comment, should provide 17 pounds (75 N) of buoyancy, have a single chamber, manual inflation with no requirements for a self-inspecting inflation system, a lower strength plastic buckle, and its use would be restricted to inland, protected waters.

The Coast Guard generally agrees with this comment and the concept of approving several types of PFDs (as discussed elsewhere), and standards for several types of devices are adopted in this IFR. However, the Coast Guard does not plan to approve PFDs with levels of performance which are as low as the manufacturer suggested.

In addition, while allowing lower performing PFDs and restricting their use to certain waters appears desirable, there is presently no workable scheme for implementing such a concept. Therefore, the Coast Guard seeks comments on the desirability of future development of standards for such lower performing devices and appropriate restrictions to place on their use, such as the types of waters on which such devices should be allowed.

Another PFD manufacturer stated that inflatable PFDs should be required to provide in-the-water survival characteristics which are at least equivalent to those currently required for approval of a Type I PFD. According to the comment, the difference in bulk between an inflatable PFD which provides 16 pounds (70 N) of buoyancy and one which provides 35 pounds (150 N) is not significant enough to affect wearability and therefore the Coast Guard should consider requiring 35 pounds of buoyancy for inflatable PFDs to enhance safety. The comment also suggested that type classifications for inflatable PFDs should be based upon characteristics, other than buoyancy and associated in-the-water performance, such as strength and intended use.

In the standards adopted by the Coast Guard in this IFR, Type II PFDs are required to have an automatic inflation system and the same buoyancy as Type I inflatables (150 N). Therefore, Type II PFDs have in-water survival characteristics equivalent to current Type I PFDs, but, unlike Type I PFDs, have only one inflation chamber. Type III PFDs have the same buoyancy as Type I inherently buoyant PFDs (100 N, 22 lb), but have less ability to turn the wearer face-up, and some designs may require the user to actuate the inflation system in order to float. Provision of a high strength harness and lifting becket is optional for all Types of inflatable devices. A range of Type V devices provide lower inflation system serviceability and indicator requirements than Types I, II and III inflatables. Belt-pack style designs which may require the user to complete the donning process after inflation, even after falling in the water, may also be approved under the alternate "Life-Saving Index" (LSI) procedures and might be either Type III or Type V devices with conditions on their approvals such as approved only when worn. (LSI procedures are discussed below under "*PFD lifesaving potential evaluation*" in the "*Discussion of Rules*" section.)

Another comment from a PFD manufacturer suggested that for a Type V inflatable PFD, manufacturers should be allowed to claim Type II performance when fully inflated, even if an automatic inflation system is not provided.

The Coast Guard agrees. Under this IFR the label on a Type V PFD described by the comment may explain that the device provides Type II in-water performance only after being inflated by the user.

Two Inflation Chambers

The ANPRM asked whether the standards should exempt all but the highest performing inflatable PFDs (Type I) from the requirement for two chambers, thereby reducing the cost of inflatable PFDs intended for most recreational boaters.

Four of the PFD manufacturers and the boat owners association agreed that the requirement for two inflation chambers should apply to Type I devices only. The Coast Guard agrees, and this IFR the Coast Guard adopts standards which limit the requirement for two chambers to Type I inflatable PFDs.

A PFD manufacturer asserted that dual chamber inflatable PFDs should have 100 percent redundant systems. The comment suggested that allowing dual chamber inflatables with a common membrane, rather than completely independent systems, seems to conflict with the purported reason for having dual chambers: to ensure that if any aspect of one system within a chamber fails, the other chamber will not be affected.

While the Coast Guard agrees that completely independent chambers would provide an additional small increment of redundancy and thereby safety, such a requirement would present design problems and increase cost. For independent chambers to add significantly to the safety of the device, they would need to be separated by a cut- and puncture-resistant layer, which could significantly reduce the wearability of inflatable PFDs. Therefore, it is the Coast Guard's position that the benefits of a requirement for a 100 percent redundant system are outweighed by the negative impacts on design and costs. However, manufacturers may provide such a system.

Restrictions for Non-Swimmers and Children

The ANPRM solicited comments regarding appropriate restrictions to be placed on the use of inflatable PFDs by non-swimmers and children; whether an automatic inflation mechanism should be required on PFDs designed for non-swimmers and children; or whether there should be no approval of inflatable PFDs for people in these categories.

One PFD manufacturer and the boat owners association stated that no restrictions should be placed on the use of inflatable PFDs by non-swimmers or children. However, another PFD manufacturer noted that in attempting to design inflatable PFDs suitable for children, unique design problems would arise, such as a need for tamper-proofing. This comment concluded that at present, inflatable PFDs are not suitable for children. Another PFD manufacturer suggested allowing for orally inflatable PFDs for children. According to this comment, an adult would partially inflate the PFD prior to the child boarding the boat, providing the child with "inherent buoyancy". Two other PFD manufacturers suggested postponing development of approved inflatable PFD types for children. One of those comments stated that the desirability of an inflatable PFD standard for children should be considered only after a review of acceptance and reliability data gathered on adult users.

The Coast Guard agrees with those comments that suggested that approval of inflatable PFDs for children is not appropriate at this time. The Coast Guard does not share the view that a partially inflated PFD provides inherent buoyancy. The issue of inflatable PFDs for children can be revisited after more experience is gained with the approval of inflatable PFDs for adults. Accordingly, this IFR adopts standards that address inflatable PFDs for adults only.

One of the PFD manufacturers also suggested that a "child" be classified as a person under 12 years of age. The Coast Guard's position is that, because of the importance of understanding how to properly use PFDs, only persons over 16 years of age are considered adults.

Regarding non-swimmers, one PFD manufacturer was opposed to a requirement for an automatic inflation

mechanism for non-swimmers and asserted that even the best automatic systems are prone to misfires or failures to fire. Several PFD manufacturers' comments seemed to favor requiring PFDs with automatic inflation mechanisms. One of those manufacturers favoring a requirement for an automatic inflation mechanism for non-swimmers suggested that alternatively, a non-swimmer should be required to wear the inflatable PFD fully inflated. Inflatable PFDs for non-swimmers, according to one of the manufacturers should provide a minimum of Type I performance. Two of these manufacturers pointed out, however, that law enforcement agencies will not be able to make a determination concerning a person's swimming abilities.

The Coast Guard acknowledges that there is no practical way that law enforcement officials can conduct a field assessment of swimming abilities. This would make a restriction against use by non-swimmers unenforceable. Therefore the Coast Guard is not placing any restrictions on the use of inflatable PFDs by non-swimmers.

One PFD manufacturer favored revising the PFD pamphlet to make boaters aware of the PFD's limitations by suggesting that they select an automatically inflatable PFD. Similarly, the boat owners association stated that non-swimmers should be made aware of the limitations of an inflatable PFD on the package at the point of purchase.

In this interim final rule, the labeling and PFD information pamphlet for these PFDs are required to explicitly state that the devices are not recommended for use by non-swimmers.

The Coast Guard considers the marking required to be on the PFDs and the required owner's manual and information pamphlet sufficient to inform adult non-swimmers of the pertinent facts regarding PFDs to enable them to make an informed choice when purchasing a PFD. The Coast Guard will review PFD information pamphlets to ensure that they include a clear statement regarding the risks a non-swimmer faces in using a particular type of inflatable PFD.

Self-Inspecting Inflation Systems

The ANPRM also asked about the average boater's ability to determine whether an inflatable PFD is in a serviceable condition if it has a "self-inspecting" inflation system.

Three PFD manufacturers and the boat owners association indicated that most recreational boaters have the ability to perform simple checks and tests to determine if a PFD is in a serviceable condition, even if it has only the simplest of indicators.

The Coast Guard disagrees that most boaters can determine the condition of older style inflation systems (those inflators not meeting the higher standards adopted by this IFR). In an informal survey at the National Association of State Boating Law Administrators (NASBLA) annual meeting, only two out of 18 participants were able to correctly identify the serviceability of four older style inflation mechanisms. Therefore, in this IFR, the Coast Guard adopts new requirements and a new test for status indicator recognition which have been added to the UL standard adopted for inflation systems (UL 1191).

Inflatable PFD Complexity

The ANPRM also asked whether inflatable PFDs are too complicated for some people to operate in an emergency situation.

Comments received on this issue from three PFD manufacturers and the boat owners association acknowledged that there will always be some individuals who do not understand mechanisms, and indicated that foolproof-PFDs cannot be designed. However, these comments contended that most boaters would be able to operate an inflatable PFD in an emergency situation. One of the comments stated that people who have difficulty responding in an emergency are the ones who will refrain from choosing an inflatable PFD. Another PFD manufacturer felt that there is a greater likelihood that an inflatable PFD will be worn in anticipation of an emergency which removes the complication of donning it under the extreme conditions of an emergency.

It is the Coast Guard's position that a strong Federal, State, and industry education effort is important in order to minimize unintended outcomes associated with people panicking upon sudden immersion or upon the malfunction of a manual or an auto-inflation mechanism. The marking, pamphlet, and manual instructions required to be provided with the PFDs will contribute significantly to this needed education. The Coast Guard will review the warning statements to ensure that the public is given sufficient information to enable them to determine whether use of an inflatable PFD is appropriate.

Inflatable PFD Costs

The ANPRM also asked for comments on what price the average boater will pay to purchase an inflatable PFD.

One PFD manufacturer stated that wide use of approved inflatable PFDs will occur only if they are priced much lower than the current non-approved inflatable PFDs. With their obvious advantages, according to the comment, inflatable PFDs are significantly more expensive than inherently buoyant PFDs that are sold at discount stores for less than 15 dollars. Based on the company's market research, the manufacturer feels that the lowest performance inflatable PFD providing 17 pounds (75 N) of buoyancy, a single chamber, a plastic buckle harness (with approximately 150 pound (670 N) breaking strength), and a manual inflation system, must be priced at less than $40 in order for the industry to see growth in the market. A single cell inflatable PFD providing 35 pounds (150 N) of buoyancy with an automatic inflation mechanism and plastic buckles must be priced at less than $95.

Two other comments from PFD manufacturers stated that it is unlikely that inflatable PFDs can be sold at a price which compares favorably with the price of existing inherently buoyant PFD types, but that sales of automatics with many features are more than double the sales of basic, manually inflated models. According to one of the comments, consumers tend to measure value according to obvious features of the inflatable PFD, rather than basic characteristics. Also, according to the comment, consumers may tend to consider all inflatable PFDs as equivalent, regardless of PFD type classification.

Another comment from the boat owners association stated that the price for an approved inflatable PFD should be comparable to currently available Type I and II PFDs. Another PFD manufacturer stated that while some boaters will spend $150 or more for an inflatable PFD, the average boater will probably only pay $25 to $50 depending on features.

The challenge, according to one of the other PFD manufacturers will be to avoid driving up costs by placing burdensome approval requirements on devices, such as increased numbers of chambers and high levels of destructive testing per lot manufactured. The comment also suggested that the higher cost of an inflatable PFD may encourage purchasers to properly care for their PFDs.

The Coast Guard generally agrees with most of the comments but notes that there is no evidence which indicates that the high cost of an inflatable PFD will encourage proper care. The Coast Guard appreciates the cost and pricing information supplied by the comments. Such information is useful in developing standards that are cost efficient and in conducting regulatory evaluations. However, it should be understood that the Coast Guard has no authority to implement, nor will it engage in, regulation or other control of the price of inflatable PFDs, beyond avoiding the imposition of costly requirements for these PFDs that do not further the goal of achieving an appropriate level of safety.

Service Life for Inflatable PFDs

The ANPRM asked about the useful Service life that should be expected of inflatable PFDs.

A PFD manufacturer stated that based on the company's experience with inflatable aviation life vests, the average, well-maintained inflatable PFD has a useful service life of just under 10 years. According to this comment, generally, within 10 years, an inflatable PFD will be rendered non-serviceable due to fabric seal failure or fabric deterioration. This comment further explained that inflatable PFDs that are not well-maintained will fail due to holes or punctures within an average of five years. Another PFD manufacturer estimated a service life of at least eight years. A third PFD manufacturer stated that an inflatable PFD should have a service life of three years or more if properly maintained. Another comment from the boat owners association indicated that service life will be determined by the quality of care provided to the PFDs.

The Coast Guard is not prescribing a useful service life for inflatable PFDs. Instead, each manufacturer is given the flexibility to determine the service life appropriate to each inflatable PFD model and the manufacturer is required to state that service life in the owner's manual. The manufacturer must also provide information concerning appropriate care and storage of an inflatable PFD which will minimize damage or deterioration in the boating environment. The service life specified by the manufacturer is not an "expiration date" after which the PFD is no longer considered approved or serviceable. Rather, it is a guide for consumers making decisions about which PFD to buy, and how long they can expect it to be serviceable under the conditions described by the manufacturer.

Professional Servicing

The ANPRM asked whether a requirement for professional servicing of inflatable PFDs at "approved" servicing facilities would be appropriate.

Three inflatable PFD manufacturers supported professional PFD servicing; however, they suggested that professional servicing should not be mandatory and that the Federal government should not set up inspection facilities at taxpayer expense. Instead, the comments suggested that professional servicing be recommended rather than required and that the services be offered by the manufacturers or through licensed agents or both. One of these comments stated that the required owner's manual should provide instructions for owner inspection and identify where the owner can obtain help if needed. This comment further suggested that a fee schedule for common servicing procedures be provided if a manufacturer's toll free boater "help line" is not provided. Another of these comments stated that the Coast Guard should recommend annual user inspection for air leaks and that the manufacturer should offer servicing biannually at an affordable fee. The comment also stated that after 10 years the chamber should no longer be serviced and replacement should be recommended.

Another comment from the boat owners association stated that professional servicing would be unnecessary if quality is held to a high standard, and that requiring professional servicing would greatly increase the cost of owning an inflatable PFD.

The Coast Guard is not requiring professional servicing at this time. The PFD owner's manual is required to address both user servicing and provide information on how to obtain professional servicing. The Coast Guard strongly encourages manufacturers to offer professional servicing and to recommend it, in the owner's manual, no later than four years from the date of manufacture.

Discussion of Rules

The requirements for inflatable PFDs for use by recreational boaters adopted by this IFR are based primarily on the UL industry consensus standard discussed earlier and existing regulations for hybrid and inflatable PFDs. In several areas the regulations depart from these requirements as discussed below.

Approval Procedures

Many subparts of part 160 covering recreational PFDs require the use of recognized laboratories in conducting the tests and inspections required during the approval process. This rule requires that recognized laboratories enter into a memorandum of understanding (MOU) with the Coast Guard before conducting any approval activities with respect to an inflatable PFD. The NPRM (CGD 93–055) published elsewhere in today's edition of the **Federal Register** proposes the same requirement for other recreational PFDs. That NPRM contains a detailed discussion of the MOU requirements. The Coast Guard may modify the approval procedures for inflatable PFDs after consideration of the comments on the NPRM (CGD 93–055).

PFD Lifesaving Potential Evaluation

As an alternative to meeting the minimum performance requirements in UL 1180 as modified by this IFR, the Coast Guard, is allowing for the approval of PFD designs that have been evaluated according to the design's overall lifesaving potential. Each design would be evaluated against the "Life-Saving Index" (LSI). Under this method, specified characteristics are evaluated using a formula that would result in a number between zero and one. This number represents the design's lifesaving potential. For example, a device with an LSI of 0.43 would provide the user with a 43 percent chance of surviving an accident in which there is a potential for drowning. The Coast Guard has developed an initial set of LSIs for a number of currently approved PFD's and several broad categories of inflatable PFDs. A report of this work is included in the docket file for this rulemaking. To ensure that the characteristics of the PFD designs approved actually increase the probability that the PFDs reduce drownings in recreational boating, only designs that are found to have an LSI that is at least equal to the LSI of a Type III inherently buoyant device would be approved.

Using the formula in § 160.076–27, the Coast Guard has calculated the LSI for a Type III inherently buoyant PFD after assigning values for the terms in the LSI equation. The Coast Guard has established 0.375 as the LSI for this type of PFD. The assigned values are based on the characteristics of that PFD design and are included in the regulatory evaluation on file for this rulemaking. As provided by § 160.076–27, the Coast Guard will review the values used to calculate the Type III inherently buoyant PFD LSI annually, and publish any change of the LSI based on new boating statistics or other updated information.

A manufacturer seeking approval using the LSI evaluation will assign values to the various terms of the LSI equation which represent the various characteristics of the intended users and the PFD design, such as whether the likely users are swimmers or non-

swimmers; the chances that the PFD will be worn; and the probability that the inflation system will be properly activated. The values assigned for the characteristics of the manufacturer's proposed design would be reviewed by the recognized laboratory. The LSI equation would then be solved for the design. If the LSI of the manufacturer's design equals or exceeds the Coast Guard's assigned LSI value for a Type III inherently buoyant PFD, the manufacturer would submit to the Commandant the calculations, the values assigned to each term, statements justifying those values, and an explanation of any assumptions used in performing the calculation. The Commandant would review the material submitted by the manufacturer. The Commandant may then approve designs determined to validly demonstrate an LSI that is at least equal to the Coast Guard's assigned LSI of a Type III inherently buoyant design. The designs approved under the LSI evaluation method would not be required to meet certain provisions of the construction and performance requirements of § 160.076–23 and approval testing requirements of § 160.076–25.

One way to increase the LSI of a design is to require that the PFD be worn, and, accordingly, obtain approval for the device as a Type V PFD. For instance, preliminary calculations show that a belt-pack style PFD without conditional approval may have an LSI of 0.35. However, when the same PFD is approved only when worn, the belt-pack style PFD might have an LSI of 0.67. Therefore, manufacturers may designate conditions concerning use to achieve the LSI of a Type III inherently buoyant PFD. Manufacturers are free to fashion other methods that will enable their designs to achieve the required minimum LSI and submit the information for Commandant review.

The Coast Guard anticipates that examples of designs that would be readily approved under the UL requirements as modified by this IFR are: Type I with automatic inflation and indicator (of cylinder seal); Type II with automatic inflation and indicator. Examples of designs that would probably not meet the UL requirements as modified by this IFR but that may be able to be approved under the LSI evaluation are: Type III PFDs with type II performance, but with manual inflation and indicator; Type III yoke style PFDs with automatic inflation and indicator; Type V PFD with type II performance and automatic or manual inflation but without indicator (of cylinder seal); Type V yoke style PFD with type III performance and automatic inflation but without indicator; Type V yoke style PFD with performance type III and with manual inflation, with or without indicator; and Type V belt-pack style PFD with performance type III.

With the LSI evaluation, the Coast Guard will be able to approve unique and novel designs that offer lifesaving potential equal to or greater than that of approved devices, but that otherwise would not be made available to the boating public. These designs may prove to be very comfortable, affordable and popular with the boating public, and thereby increase the number of recreational boaters who wear PFDs. This will result in an increase in lives saved.

Because the designs approved under the LSI evaluation will be new and perhaps novel, the Coast Guard, manufacturers, and the public will not have the same level of experience and knowledge with the designs that they have with devices approved under the UL requirements as modified by this IFR. Therefore, to ensure that only designs that provide a sufficient level of safety to the boating public continue to hold Coast Guard approval, the Commandant will annually review the designs approved under the LSI evaluation. At that time, the devices will be compared to other approved devices and the Coast Guard will evaluate the relative weight and values of the various characteristics that were initially used in the LSI calculation. Recognized laboratories will maintain a ranking of the PFDs approved under this method and submit the information to the Commandant to assist in the annual reviews. If after the review the Coast Guard determines that the device does not provide a minimum level of lifesaving potential as required by § 160.076–27, the approval on that design may be terminated or suspended. To retain Coast Guard approval, the PFD design would have to be modified to meet the requirements of § 160.076–27. However, if an approval is terminated or suspended, the manufacturer's inventory of completed PFDs could continue to be sold unless the Coast Guard determines that the design presents a significant hazard to users of those PFDs.

User Awareness

The biggest problem in reducing the approximately 670 recreational boating drownings annually is that of getting the individual boater to take the preventive measure of wearing a PFD and, in the case of an inflatable PFD, keeping it in a serviceable condition. The approval of inflatables is not intended to make it easier for boaters to satisfy PFD carriage requirements, but rather to encourage boaters to change their current behavior patterns and provide them with a more convenient means to protect themselves from the tragedy of a serious boating accident. In establishing the LSI evaluation and conditional approvals, the Coast Guard hopes to approve new and unique designs that will encourage the wearing of PFDs by a greater number of boaters. This wide range of options should encourage boaters to make informed decisions that could save their lives.

The Coast Guard seeks to develop an incentive system to get both boaters and manufacturers more involved in preventing drowning. As mentioned above, manufacturers will be able to obtain conditional approvals for PFDs which might otherwise fail to meet some of the more stringent requirements. The practical effect for boaters purchasing PFDs with conditional approvals which, for example, are approved only when worn, is that boaters will be given the option of buying a less expensive PFD. The manufacturer will be responsible for clearly communicating the boater's responsibility for compliance with the approval conditions or, if the boater fails to comply with the conditions, the need to provide an additional PFD, without conditional approval, to meet the carriage requirements.

Since boaters appear to prefer unconditionally approved PFDs, this system will encourage manufacturers to develop innovative ways to increase the lifesaving potential of PFDs without relying on conditional approval.

Also, conditional approval used in this way will raise the awareness of boaters as to what they can do to contribute to improving boating safety, and will give them more freedom of choice.

PFD Information Pamphlet

Title 33 CFR 181, subpart G requires that an information pamphlet be provided with each PFD sold or offered for sale for use on recreational boats. UL standard 1180 does not yet contain pamphlet requirements for inflatable PFDs. However, UL has reserved a section and plans to add the pamphlet requirements at a later date. When an industry standard is available for such pamphlets the Coast Guard will review it and, if appropriate, propose it for incorporation in the Coast Guard rules. Section 160.076–35 established by this IFR requires inflatable PFD manufacturers to provide information pamphlets that have been submitted to and approved by the Commandant. The purpose of the information pamphlet is to ensure that prospective PFD purchasers receive information at the point of purchase necessary to select PFDs that are appropriate for them and their boating activities. Factors for boaters to consider include their body type, ability to swim, and the types of activities in which they will participate. The manufacturer is required to include an explanation in the pamphlet of the necessity to maintain an inflatable PFD in operational condition, and that if the user fails to appropriately maintain an inflatable PFD, it will not provide adequate safety.

Information in the pamphlets must be accessible to the prospective buyer at the point of sale. Once a pamphlet's contents are approved, each pamphlet provided by the manufacturer for the same PFD design must be printed exactly as approved by the Commandant or recognized laboratory. A sample layout with text is provided in appendix I to this IFR and copies may be obtained by contacting the Commandant as directed under **FOR FURTHER INFORMATION CONTACT.**

Owner's Manual

The owner's manual required by UL 1180 and § 160.076–37 must be submitted to the Coast Guard or recognized laboratory for review and approval. The Coast Guard will review the manual to ensure that it meets the requirements of § 160.076–37 and UL 1180. The owner's manual must warn against hazardous misuse, such as wearing the PFD under restrictive clothing. This IFR allows the pamphlet and owner's manual to be combined if selection and warning information are included on the PFD packaging.

PFD Approval Type vs. Performance Type

As written, UL 1180, which covers only wearable PFDs, designates PFDs in terms of their "performance type". The current Coast Guard PFD approval system designates PFDs in terms of a combination of the PFD's in-water performance and other characteristics. The Coast Guard approval types are: Types I, II, and III which are all wearable PFDs that have different in-water performance characteristics; Type IVs, which are all throwable PFDs; and Type Vs, which all have conditions on their approvals. Both the UL standard and this IFR introduce an additional classification factor forinflatable PFDs, i.e., their level of maintainability and serviceability.

This IFR departs from the UL standard in two important ways, as discussed below.

In the UL standard, PFDs with inflation system indicators with 2F and 3F use codes may be classified as performance Type II or III PFDs. However, the Coast Guard is requiring inflation system indicators with a 1F use code on all PFDs unless other features and methods are used to achieve the minimum LSI required by § 160.076–27. It is the position of the Coast Guard that a design with an inflation system indicator with 2F or 3F use code needs additional features to achieve adequate overall lifesaving potential, as discussed in the regulatory analysis on file in the rulemaking docket.

The other important departure from the UL standard in this IFR is that UL 1180 would allow belt-pack style PFDs that require secondary donning to be approved as performance type III PFDs. The Coast Guard's position, however, is that the difficulty in accomplishing second stage donning lowers the overall lifesaving potential of these PFDs. Therefore, additional features or methods are necessary to ensure that such a device provides adequate safety to the user. For example, a requirement that such PFDs be worn would elevate the LSI of the device such that it could be approved in accordance with the LSI requirements of § 160.076–27.

Meeting Uninspected Commercial Vessel Carriage Requirements

The Coast Guard is evaluating the desirability of allowing uninspected commercial vessels to use inflatable PFDs meeting the requirements of subpart 160.076 to meet the applicable PFD carriage requirements. Under the current regulations, these inflatable PFDs may only be carried and used on these vessels as additional equipment. Comments are therefore requested on two specific issues.

For uninspected vessels not carrying passengers for hire, the Coast Guard encourages crew members working in exposed locations to wear a PFD. PFDs meeting the requirements of subpart 160.076 could be worn while working. However, it is the Coast Guard's position that these PFDs should not be the only type of PFD carried and used unless they have been shown to have adequate durability for the intended service. Commercial hybrid PFDs are more suitable as the only required PFD. The Coast Guard requests comments on this matter.

Another matter on which the Coast Guard seeks comment pertains to uninspected vessels carrying passengers for hire. The Coast Guard is considering, as the subject of a future rulemaking, requiring the master to identify, by position, the person responsible for keeping the inflatable PFD devices serviceable and properly armed. Also, the Coast Guard seeks comments on whether the frequency of required inspections and checks should be established in the regulations. The Coast Guard seeks comments regarding these issues as well as the desirability of approving inflatable PFDs meeting the requirements of subpart 160.076 as the sole PFD for each person on board.

Number of Lives To Be Saved

In both 1992 and 1993, approximately 670 recreational boating fatalities due to drowning occurred each year. The Coast Guard estimates that if two-thirds of boaters wore the inflatable PFDs to be approved under this rule, there would be 210 fewer recreational boating fatalities due to drowning each year. Unfortunately, even if inflatable PFDs are accepted by boaters, it will take time for boaters to change their behavior and for inflatable PFDs to replace their current PFDs. There is also no guarantee that inflatable PFDs will be worn or that two-thirds of boaters will buy them. However, it is believed that by the end of 2007 approximately 210 lives per year can be saved if an average wear rate of 66 percent is achieved.

Other Additions and Exceptions to UL Standards

In this IFR, the Coast Guard has supplemented the UL standards for inflatable PFDs and their components in several areas.

In § 160.076–3, the Coast Guard states that PFDs approved under subpart 160.076 may be used on recreational submersible vessels. Such PFDs would most likely be approved under the unique and novel provisions of the subpart as Type V PFDs.

Under § 160.076–21, inflation chamber materials must be of the same general quality as those used to pass the approval tests. Also, adhesives must be suitable for the intended application, and inflation mechanisms must be marked with a unique model number to prevent substitutions of less reliable devices (§ 160.076–31(f)).

In § 160.076–23, the design must not cause significant discomfort to the wearer during or after inflation; and fabrics must be treated to minimize unraveling.

Donning time for unconditionally approved PFDs must be more carefully controlled than conditionally approved PFDs which are approved only when worn. In § 160.076–25, donning time is relaxed for such conditionally approved PFDs because emergency donning should not be an issue. The PFD must

be able to be repacked by the test subjects used in the approval testing. Also, in this section the PFD must allow for good visibility by the wearer in the water, and survivor locating aids must be above the water. Finally, Type II PFDs must have an average freeboard of 110 mm (4.25 inches), which is consistent with Type I and III PFD requirements.

In § 160.076–39, required markings are specified for Type V conditionally approved PFDs. All inflatable PFDs must be marked with "not approved for use on commercial vessels" and with the inflation system model number. Inflation systems must be marked with their unique model number to minimize the possibility of the user installing an inappropriate inflation system. Finally, in order to standardize a vital instruction, the manual inflation handle must be clearly marked "Jerk to inflate" unless a universal symbol is used.

Production Quality Control and Laboratory Oversight

Section 160.076–19 establishes production quality assurance and laboratory oversight requirements for inflatable PFDs that are essentially the same as the recently modified procedures for approval of hybrid PFDs in subpart 160.077 (59 FR 2482; January 9, 1995) with minor revisions to waterproof marking requirements.

Incorporation by Reference

The following material is incorporated by reference in § 160.076–11: Fully Inflatable Recreational Personal Flotation Devices (UL 1180), first edition, May 15, 1995; Components for Personal Flotation Devices (UL 1191), May 16, 1995; Marine Buoyant Devices (UL 1123), February 17, 1995; American Society for Testing and Materials, ASTM D 751–79, Standard Methods of Testing Coated Fabrics, 1979; ASTM D 1434–75, Gas Transmission Rate of Plastic Film and Sheeting, 1975; ASTM F 1166–88 Human Engineering Design of Marine Systems Equipment and Facilities, 1988; and Federal Standards, Federal Test Method Standard No. 191A, July 20, 1978. Copies of the material are available for inspection where indicated under **ADDRESSES.** Copies of the material are available from the sources listed in § 160.076–11.

The Director of the Federal Register has approved the material in § 160.076–11 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. The material is available as indicated in that section.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

A Regulatory Evaluation under paragraph 10e of the DOT regulatory policies and procedures has been prepared and is available in the docket for inspection or copying where indicated under **ADDRESSES.** The Evaluation is summarized as follows.

The requirements of this IFR open up a new marketing opportunity for inflatable PFD manufacturers by allowing them to obtain Coast Guard approval of recreational inflatable PFDs, if they so choose. The IFR will also allow boaters to purchase and use inflatable PFDs on their boats, if they wish to do so. Manufacturers may still make and sell unapproved inflatable PFDs, and boaters may continue to use such PFDs as additional equipment. Manufacturers who wish to obtain approval will have to pay for the approval testing at the recognized laboratory, pay the cost of the required quality control and oversight, and provide the information pamphlet and manuals required by this rule.

The estimated total initial approval cost per inflatable PFD design is expected to be approximately $18,500, excluding the cost of inflation system acceptance which could be amortized over several designs of PFDs. Costs to approve other types of PFDs are approximately $6,000, excluding component acceptance costs. The additional cost to approve inflatable PFDs could easily be absorbed in the cost of the units produced. The cost increase per device would be small considering the number of devices which could be produced under authorization of each approval certificate. The Coast Guard anticipates that it will approve five to ten inflatable PFD designs within the first year after issuing this rule.

Production inspection costs imposed by these regulations will be approximately $1,000 for the largest size lot of inflatable PFDs permitted. This cost is similar to that incurred for other types of approved PFDs.

The retail cost, per device, is expected to be $50–$200 for inflatable PFDs. Currently approved PFDs range in price from $7–$200. Type I devices that could be replaced by inflatable PFDs have an average cost of about $40.

If total costs for these requirements including overhead is $2.00 per device, the total cost to the industry would be only $100,000 annually if 50,000 units per year are produced. Comments are invited on this analysis.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. This rule does not require a general notice of proposed rulemaking and, therefore, is exempt from the requirements of the Act. Although this rule is exempt, the Coast Guard has reviewed it for potential impact on small entities.

The requirements of this IFR open up a new marketing opportunity for inflatable PFD manufacturers by allowing them to obtain Coast Guard approval of recreational inflatable PFDs. The IFR will also allow boaters to purchase and use inflatable PFDs on their boats. As discussed above, the economic impact of the new requirements are expected to be minimal.

Therefore, the Coast Guard's position is that this rule will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this rule will economically affect it.

Collection of Information

Under the Paperwork Reduction Act (44 U.S. C. 3501 *et seq.*), the Office of Management and Budget (OMB) reviews each rule that contains a collection-of-information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection-of-information requirements include reporting, recordkeeping, notification, labelling, and other, similar requirements.

This rule contains collection-of-information requirements in the sections listed below. The following particulars apply:

DOT No: 2115.

OMB Control No.: 2115–0141, 2115–0576, and 2115–0577.

Paperwork requirements	OMB control No.
a. § 160.076–13	2115–0619
b. § 160.076–21	2115–0619
c. § 160.076–29	2115–0619
d. § 160.076–31	2115–0619
e. § 160.076–33	2115–0619
f. § 160.076–35	2115–0619
g. § 160.076–37	2115–0619
h. § 160.076–39	2115–0619

Administration: U.S. Coast Guard.

Title: Reporting and Recordkeeping Requirements for Fire Fighting Equipment, Structural Fire Protection Materials, Lifesaving Equipment, and Marine Sanitation Devices; Instructional Material for Lifesaving, Fire Protection, and Emergency Equipment; Identification of Lifesaving, Fire Protection, and Emergency Equipment.

Need for Information: Production records are needed to verify compliance with the materials and quality control requirements in the production of this lifesaving equipment. Because PFDs are estimated to last up to 10 years, the Coast Guard is requiring manufacturers to retain production records for 120 months. Records that are also available from recognized laboratories are required to be retained for only 60 months (§ 160.076–33). Instructional materials are needed so that boaters can make an informed decision on the type of PFD best suited to their boating safety needs, and understand how to properly service their PFD or know when to get professional servicing or remove their inflatable PFD from service. Equipment identification (labelling) is needed to indicate that a PFD is Coast Guard approved, so that boaters know it is Coast Guard approved before buying it and to show boarding officers that the equipment meets the Coast Guard carriage requirements, any conditions on meeting those requirements, and so that boaters will be warned of possible dangerous conditions in using the PFDs. A Memorandum of Understanding (MOU) is needed to document the responsibilities of the laboratory and the Coast Guard in relation to equipment testing, inspection, and approval.

Proposed Use of Information: Production records will be used to verify that suitable materials are used and that quality control is exercised in production of this lifesaving equipment. Instructional materials are used to inform boaters of the types of PFD best suited to their boating safety needs, and how to properly service or know when to get professional service or remove their inflatable PFD from service. Equipment identification will be used to indicate to boaters which inflatable PFDs are approved, allow boaters to show that the PFDs meet the Coast Guard carriage requirements, convey any conditions on meeting those requirements and warn of possible dangerous conditions in using the PFDs. An MOU formally documents the responsibilities of the laboratory and the responsibilities of the Coast Guard in relation to equipment testing, inspection, and approval.

Frequency of Response: Production records are maintained by the manufacturers. No regular reporting is required. Instructional materials are provided with each PFD produced, but only reported to the recognized laboratory or the Coast Guard when approval is sought or when revised. Equipment identification is required on each PFD produced, but the initial label layout is the only response reported to the recognized laboratory or the Coast Guard when approval is sought or when revised.

An MOU is required only once, when a laboratory seeks to become a recognized laboratory for a particular classification of equipment.

Burden Estimate: The annual burden for the production of 50,000 inflatable PFDs by five manufacturers is estimated at approximately 100 hours for production records; 320 hours for instructional materials; and 83 hours for equipment identification industry-wide. The total annual burden for production of PFDs is estimated as 503 hours industry-wide.

The Coast Guard estimates that no more than one MOU per year would be developed. Drafting of the MOU should not require more than two weeks of effort for one person, for an annual burden of 80 hours. Copies of existing MOUs may be obtained from the Coast Guard and modified to meet the needs of the inividual laboratory and the Coast Guard.

Respondents: PFD production record respondents are the estimated five manufacturers that will produce Coast Guard approved inflatable PFDs for recreational boats.

MOU respondents are laboratories that seek to become recognized independent laboratories.

Form(s): No Federal forms are required.

Average Burden Hours per Respondent: 101 hours annually for each of the five manufacturers producing PFDs.

If the average recognized laboratory enters into a new or revised MOU once every five years, the average annual burden would be 16 hours.

The Coast Guard has submitted the requirements to OMB for review under section 3504(h) of the Paperwork Reduction Act. Persons submitting comments on the requirements should submit their comments both to OMB and to the Coast Guard where indicated under **ADDRESSES.**

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This rulemaking establishes procedures for Coast Guard approval of inflatable PFDs. The authority to establish these requirements are committed to the Coast Guard by Federal statutes. Furthermore, since PFDs are manufactured and used in the national marketplace, safety standards for PFDs should be national in scope to avoid burdensome variances. Therefore, the Coast Guard intends this rule to preempt State action on the same subject matter.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under paragraph 2.B.2 of Commandant Instruction M16475.lB, this rule is categorically excluded from further environmental documentation. This rule has no environmental impact other than the beneficial impact of reducing the volume of unicellular plastic foam going into landfills as inherently buoyant devices are discarded when no longer serviceable. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 46 CFR Part 160

Marine safety, Reporting and recordkeeping requirements, Incorporation by reference.

For the reasons set out in the preamble, the Coast Guard amends 46 CFR part 160 as follows:

PART 160—LIFESAVING EQUIPMENT

1. The authority citation for Part 160 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703 and 4302; E.O. 12234, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

2. Subpart 160.076, consisting of §§ 160.076–1 through 160.076–39, is added to read as follows:

Subpart 160.076—Inflatable Recreational Personal Flotation Devices

Sec.

160.076–1 Scope.
160.076–3 Applicability.
160.076–5 Definitions.
160.076–7 PFD approval Type.
160.076–9 Conditional approval.
160.076–11 Incorporation by reference.
160.076–13 Approval procedures for inflatable PFDs.
160.076–15 Suspension or termination of approval.
160.076–17 Approval of design or material changes.
160.076–19 Recognized laboratories.
160.076–21 Component materials.
160.076–23 Construction and performance requirements.
160.076–25 Approval testing.
160.076–27 LSI evaluation.
160.076–29 Production oversight.
160.076–31 Production tests and examinations.
160.076–33 Manufacturer records.
160.076–35 Information pamphlet.
160.076–37 Owner's manual.
160.076–39 Marking.

Subpart 160.076—Inflatable Recreational Personal Flotation Devices

§ 160.076–1 Scope.

(a) This subpart contains structural and performance standards for approval of inflatable recreational personal flotation devices (PFDs), as well as requirements for production follow-up inspections, associated manuals, information pamphlets, and markings.

(b) Inflatable PFDs approved under this subpart—

(1) Rely entirely upon inflation for buoyancy; and

(2) Are approved for use by adults only.

§ 160.076–3 Applicability.

Inflatable PFDs approved under this subpart may be used to meet the carriage requirements of 33 CFR 175.15 and 175.17 on the following types of vessels only:

(a) Recreational vessels.

(b) Uninspected recreational submersible vessels.

§ 160.076–5 Definitions.

As used in this part:

Commandant means the Chief of the Survival Systems Branch, U.S. Coast Guard Office of Marine Safety, Security, and Environmental Protection. Address: Commandant (G–MVI–3/14), U.S. Coast Guard Headquarters, 2100 Second St. SW., Washington, DC 20593–0001; phone: 202–267–1444; facsimile: 202–267–1069; electronic mail: "mvi–3/G–M18@cgsmtp.comdt.uscg.mil".

Conditional approval means a category of PFD which has condition(s) on its approval with which the user must comply in order for the PFD to be counted toward meeting the carriage requirements of the vessel being used. All conditionally approved PFDs are designated Approval Type V.

First quality workmanship means construction which is free from any defect materially affecting appearance or serviceability.

Inflation medium means any solid, liquid, or gas that, when activated, provides inflation for buoyancy.

Inspector means a recognized laboratory representative assigned to perform, supervise or oversee the duties described in §§ 160.076–29 and 160.076–31 of this subpart or any Coast Guard representative performing duties related to the approval.

LSI means the "Life-Saving Index", a number between zero and one, as determined in accordance with § 160.076–27, that represents the overall lifesaving potential of a particular PFD design.

MOU means memorandum of understanding which describes the approval functions a recognized independent laboratory performs for the Coast Guard, and the recognized independent laboratory's working arrangements with the Coast Guard.

Performance type means the in-water performance classification of the PFD (I, II, or III).

PFD means personal flotation device as defined in 33 CFR 175.13.

PFD Approval Type means the Type designation assigned by the Commandant, as documented in the approval certificate for the PFD, based primarily on the in-water performance and serviceability of the PFD.

Plans and specifications means the drawings, product description, construction specifications, and bill of materials submitted in accordance with § 160.076–13 for approval of a PFD design.

§ 160.076–7 PFD approval Type.

(a) An inflatable PFD may be approved without conditions as a Type I, II, or III PFD for persons over 36 kg (80 lb) if it—

(1) Meets the requirements of this subpart other than the requirements of § 160.076–27; or

(2) Meets the requirements of § 160.076–27 based on its Lifesaving Index (LSI).

(b) Each inflatable PFD that can be demonstrated to meet the in-water performance requirements of a type I, II or III PFD in UL 1180 during approval testing and the applicable requirements of this subpart provided that certain conditions are placed on its use, may be approved as a Type V PFD. Each such PFD has conditional approval.

§ 160.076–9 Conditional approval.

(a) A conditionally approved inflatable PFD is categorized as a Type V PFD and may be used to meet the Coast Guard PFD carriage requirements of 33 CFR part 175 only if the PFD is used in accordance with any requirements on the approval label. PFDs marked "Approved only when worn" must be worn whenever the vessel is underway and the intended wearer is not within an enclosed space if the PFD is intended to be used to satisfy the requirements of 33 CFR part 175. Note: Additional approved PFDs may be needed to satisfy the requirements of 33 CFR part 175 if "Approved only when worn" PFDs are not worn.

(b) Unless approved under the alternate LSI procedures in § 160.076–27 without conditions, PFDs meeting the performance specifications for type I, II, or III PFDs in UL 1180 may be classified as Type V, conditionally approved PFDs when—

(1) Indicator and serviceability use codes of less than 1F in accordance with UL 1191 are provided;

(2) The device requires secondary donning; or

(3) The Commandant determines that other performance or design characteristics of the PFD make such classification appropriate.

§ 160.076–11 Incorporation by reference.

(a) Certain materials are incorporated by reference into this subpart with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than the one listed in paragraph (b) of this section, the Coast Guard must publish notice of the change in the **Federal Register**, and the material must be available to the public. All approved material is available for inspection at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC and at the U.S. Coast Guard, Survival Systems Branch (G–MVI–3), 2100 Second Street, SW., Washington, DC 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The materials approved for incorporation by reference in this subpart, and the sections affected are:

American Society for Testing and Materials (ASTM)

1916 Race St., Philadelphia, PA 19103

ASTM D 751–79 Standard Methods of Testing Coated Fabrics, 1979	160.076–25;
ASTM D 1434–75 Gas Transmission Rate of Plastic Film and Sheeting, 1975	160.076–25;
ASTM F 1166–88 Human Engineering Design for Marine Systems, Equipment and Facilities, 1988.	160.076–37.

Federal Standards

Naval Publications and Forms Center, Customer Service, Code 1052, 5801 Tabor Ave., Philadelphia, PA 19120

In Federal Test Method Standard No. 191A (dated July 20, 1978) the following methods:

(1) Method 5100, Strength and Elongation, Breaking of Woven Cloth; Grab Method	160.076–25;
(2) Method 5132, Strength of Cloth, Tearing; Falling-Pendulum Method	160.076–25;
(3) Method 5134, Strength of Cloth, Tearing; Tongue Method	160.076–25.

Underwriters Laboratories (UL)

Underwriters Laboratories, Inc., P.O. Box 13995, Research Triangle Park, NC 27709–3995 (Phone (919) 549–1400; Facsimile: (919) 549–1842)

UL 1123, "Marine Buoyant Devices", February 17, 1995	160.076–35;
UL 1180, "Fully Inflatable Recreational Personal Flotation Devices", May 15, 1995	160.076–7; 160.076–21; 160.076–23; 160.076–25; 160.076–27; 160.076–29; 160.076–31; 160.076–37; 160.076–39;
UL 1191, "Components for Personal Flotation Devices", May 16, 1995	160.076–21; 160.076–25; 160.076–39.

§ 160.076–13 Approval procedures for inflatable PFDs.

(a) Manufacturers seeking approval of an inflatable PFD design shall follow the procedures of this section and subpart 159.005 of this chapter.

(b) Each application for approval of an inflatable PFD must contain the information specified in § 159.005–5 of this chapter. The application must be submitted to a recognized laboratory. One copy of the application and, except as provided in paragraph (c)(2) of this section, a prototype PFD must be submitted to the Commandant for preapproval review. If a similar design has already been approved, the Commandant may authorize the recognized laboratory to waive the preapproval review under §§ 159.005–5 and 159.005–7 of this chapter.

(c) The application must include the following:

(1) Plans and specifications containing the information required by § 159.005–12 of this chapter, including drawings, product description, construction specifications, and bill of materials.

(2) The information specified in § 159.005–5(a)(2) (i) through (iii) of this chapter must be included in the application, except that, if preapproval review has been waived, the manufacturer is not required to send a prototype PFD sample to the Commandant.

(3) The type of performance (Type I, II, or III) that the PFD is designed to provide along with the Approval Type sought (Type I, II, III, or V).

(4) Any special purpose(s) for which the PFD is designed and the vessel(s) or vessel type(s) on which its use is intended.

(5) Buoyancy, torque, and other relevant tolerances to be met during production.

(6) The text of any optional marking to be included on the PFD in addition to the markings required by § 160.076–39.

(7) A draft of the information pamphlet required by § 160.076–35.

(8) A draft of the owner's manual required by § 160.076–37.

(9) For any conditionally approved PFD, the intended approval condition(s).

(10) Whether approval is sought under the LSI provisions of § 160.076–27.

(d) The description required by § 159.005–9 of this chapter of quality control procedures may be omitted if the manufacturer's planned quality control procedures meet the requirements of §§ 160.076–29 and 160.076–31.

(e) *Manual and pamphlet.* Before granting approval of a PFD design, the Commandant may require changes to the manual and information pamphlet submitted for review to ensure compliance with the requirements of §§ 160.076–35 and 160.076–37.

(f) *Waiver of tests.* A manufacturer may request that the Commandant waive any test prescribed for approval under this subpart. To request a waiver, the manufacturer must submit to the Commandant and the recognized laboratory, one of the following:

(1) Satisfactory test results on a PFD of sufficiently similar design as determined by the Commandant.

(2) Engineering analysis demonstrating that the test for which a waiver is requested is not appropriate for the particular design submitted for approval or that, because of its design or construction, it is not possible for the PFD to fail that test.

(g) *Alternative requirements.* A PFD that does not meet the requirements of this subpart may be approved by the Commandant if the device—

(1) Meets other requirements prescribed by the Commandant in place of or in addition to the requirements of this subpart; and

(2) As determined by the Commandant, provides at least the same degree of safety provided by other PFDs that meet the requirements of this subpart.

§ 160.076–15 Suspension or termination of approval.

As provided in § 159.005–15 of this chapter, the Commandant may suspend or terminate the approval of an inflatable PFD design if the manufacturer fails to comply with this subpart or the recognized laboratory's accepted procedures or requirements.

§ 160.076–17 Approval of design or material changes.

(a) The manufacturer must submit any proposed changes in design, material, or construction to the recognized laboratory and the Commandant for approval before changing PFD production methods.

(b) Determinations of equivalence of design, construction, and materials may be made only by the Commandant or a designated representative.

§ 160.076–19 Recognized laboratories.

(a) *PFDs.* The following laboratories are recognized under § 159.010–9 of this chapter to perform the approval and production oversight functions required by this subpart:

Underwriters Laboratories, Inc., 12 Laboratory Drive, P.O. Box 13995,

Research Triangle Park, NC 27709–3995, (919) 549–1400.

(b) Components. The following laboratories are recognized under subpart 159.010 of this chapter and may perform the component material acceptance, production oversight, and certification functions required by § 160.076–21(a)(1):

Underwriters Laboratories, Inc., 12 Laboratory Drive, P.O. Box 13995, Research Triangle Park, NC 27709–3995, (919) 549–1400.

§ 160.076–21 Component materials.

(a) Each component material used in the manufacturer of an inflatable PFD must—

(1) Meet the applicable requirements of subpart 164.019 of this chapter, UL 1191, UL 1180, and this section; and

(2) Be of good quality and suitable for the purpose intended.

(b) The average permeability of inflation chamber material, determined in accordance with the procedures specified in § 160.076–25(d)(2)(iii) must not be more than 110% of the permeability of the materials determined in approval testing required by § 160.076–25(d)(2)(iii).

(c) The average grab breaking strength and tear strength of the inflation chamber material, determined in accordance with the procedures specified in §§ 160.076–25(d)(2)(i) and 160.076–25(d)(2)(ii), must be at least 90% of the grab breaking strength and tear strength determined from testing required by §§ 160.076–25(d)(2)(i) and 160.076–25(d)(2)(ii). No individual sample result for breaking strength or tear strength may be more than 20% below the results obtained in approval testing.

(d) Each adhesive must be waterproof, appropriate for use with the materials being bonded, durable over the expected range of temperatures and humidity in which the PFD may be used, and resistant to chemicals commonly encountered in recreational boating.

(e) Unless approved under the provisions of § 160.076–27, each manual, automatic, and manual-auto inflation mechanism on each unconditionally approved PFD must have an indicator and a serviceability rating consistent with use code 1F in accordance with UL 1191.

(f) Each manual, automatic, or manual-auto inflation mechanism must be marked in accordance with § 160.076–39(e).

§ 160.076–23 Construction and performance requirements.

(a) Each inflatable PFD design must—

(1) Meet the requirements in UL 1180 applicable to the PFD performance type for which approval is sought, or the LSI requirements of § 160.076–27;

(2) Not cause significant discomfort to the wearer during and after inflation; and

(3) Meet any additional requirements that the Commandant may prescribe to approve unique or novel designs.

(b) All cut edges of textile materials must be permanently treated or sewn to minimize ravelling.

§ 160.076–25 Approval testing.

(a) To obtain approval of an inflatable PFD design, approval tests specified in UL 1180 and this section must be conducted or supervised by a recognized laboratory using PFDs that have been constructed in accordance with the plans and specifications submitted with the application for approval.

(b) Each PFD design must pass the tests required by UL 1180 and this section that are applicable to the PFD performance type for which approval is sought.

(c) In addition to the testing requirements of UL 1180, each design tested must meet the following requirements during the test specified:

(1) *Donning test.* (i) For unconditionally approved PFDs, the average time for donning on the first attempt, when tested in accordance with UL 1180 section 6.2, must not exceed 45 seconds. At least two-thirds of the subjects must successfully don the PFD on the first attempt.

(ii) PFDs not intended for a special purpose for which conditional approval is sought, except belt-pack style PFDs, need not comply with the donning times specified in UL 1180 and paragraph (c)(1)(i) of this section, but must be able to be donned within an average of 1.5 minutes.

(iii) PFDs intended for a special purpose for which conditional approval is sought need not comply with the donning times specified in UL 1180 and paragraph (c)(1)(i) of this section, but must be able to be donned within an average of 2.0 minutes.

(iv) Under UL 1180 section 6.2, the Commandant must be notified if more than one-fourth of any initial group of test subjects is disqualified based on tests with the reference vest.

(2) *Repack evaluation.* Each test subject participating in the tests in UL 1180, section 6 shall demonstrate that he or she can repack the PFD such that it can be used in the manual activation tests, and donning tests in sections 6.2.3, 6.4.1, and 6.4.2.

(3) *Flotation stability static measurements.* At the end of each test conducted in accordance with in UL 1180, section 6.9, for each subject—

(i) The freeboard must be measured and reported;

(ii) The subject when looking to the side, must be able to see the water's surface at a point within 3 m (10 ft.) from the subject's position and beyond; and

(iii) If provided, the PFD light and at least 75% of the retroreflective material on the outside of the PFD must be above the water.

(4) *Average requirements.* When conducting tests specified in UL 1180, section 6.9—

(i) The average freeboard for performance type II PFDs for all subjects must be 110 mm (4.25 in).

(ii) For all subjects, the average of the lowest mark on a vertical scale, which is placed 6 m (20 ft.) from and in front of the subject such that the subject can see it without moving his or her head, must be no higher than 0.3 m (12 in.) from the water level.

(d) Each PFD design must pass the following tests and evaluations:

(1) *Visual examination.* The complete PFD must be visually examined for compliance with the construction and performance requirements of §§ 160.076–21 and 160.076–23 and UL 1180 and 1191.

(2) *Inflation chamber properties.* The following tests must be conducted after successful completion of all other approval tests. The test samples used in the following tests must come from one or more PFDs that were each used in all the Use Characteristics Tests required by UL 1180 section 6.

(i) *Grab breaking strength.* The grab breaking strength of chamber materials must be determined in accordance with Method No. 5100 of Federal Test Method Standard 191 or ASTM D 751.

(ii) *Tear strength.* The tear strength of chamber materials must be determined in accordance with Method No. 5132 or 5134 of Federal Test Method Standard 191 or ASTM D 751.

(iii) *Permeability.* The permeability of chamber materials must be determined in accordance with ASTM D 1434 using CO2 as the test gas.

(iv) *Seam strength.* The seam strength of the seams in each inflation chamber of at least one PFD must be determined in accordance with ASTM D 751 except that 25 by 200 mm (1 by 8 in.) samples may be used where insufficient length of straight seam is available.

(e) *Additional tests.* The Commandant may prescribe additional tests for approval of novel or unique designs.

§ 160.076–27 LSI evaluation.

(a) Each manufacturer seeking approval of a PFD design using the Lifesaving Index (LSI) must demonstrate, to the satisfaction of the Commandant, a minimum overall lifesaving potential, and a minimum effectiveness and reliability of the PFD design in accordance with this section.

(b) The manufacturer shall submit to the Commandant an analysis, accepted by a recognized laboratory, demonstrating the LSI of the design that includes—

(1) The LSI calculations using the formula provided in paragraph (d) of this section, and the value assigned to each term of the calculation;

(2) Statements justifying the value assigned to each term of the formula provided in paragraph (d) of this section; and

(3) Explanation of any assumptions used in performing the required calculation.

(c) *Minimum LSI.* Each PFD design approved under this section must be demonstrated to have an LSI that is not less than that of a Type III inherently buoyant PFD. The Commandant will determine the LSI of a Type III inherently buoyant PFD using the equation in paragraph (d) of this section and will publish the LSI value annually.

(d) *Equation and terms.* (1) The LSI must be determined by the following equation:

$$LSI = \sum_{i=1}^{8} P_i + P_k$$

Where:

P_i = Probability associated with the ith ou0tcome, where each outcome is a sequence of events where the PFD will aid in the user's survival. Each sequence of events must be mutually exclusive.

And P_i is defined by the following equations:

$P_1 = (S1)(W_{S1})(I1_{S1})(E)(R)$
$P_2 = (S1)(W_{S1})(I2_{S1})(SA1_{S1})(SDS1)(E)(R)$
$P_3 = (S1)(W_{S1})(I3_{S1})(SA1_{S1})(E)(R)$
$P_4 = (S1)(W_{S1})(I3_{S1})(SA2_{S1})(E_{S1,I3})(R)$
$P_5 = (S2)(W_{S2})(I1_{S2})(E)(R)$
$P_6 = (S2)(W_{S2})(I2_{S2})(SA1_{S2})(SD_{S2})(E)(R)$
$P_7 = (S2)(W_{S2})(I3_{S2})(SA1_{S2})(E)(R)$
$P_8 = (S2)(W_{S2})(I3_{S2})(SA2_{S2})(E_{S2,I3})(R)$

P_k = The probability of other sequences of events that significantly enhance the lifesaving potential of the PFD under consideration.

The terms used in the P_i equations are defined as follows:

S1 = Probability PFD user can swim.
S2 = Probability PFD user cannot swim.
W = Probability PFD is worn prior to an accident. (W_{S1} for swimmer; W_{S2} for non-swimmer)
I1 = Probability PFD is used in a fully inflated condition prior to accident.
I2 = Probability PFD is used in an uninflated condition prior to accident.
I3 = Probability PFD is used in a partially inflated condition prior to accident.
SA1 = Probability of PFD inflating, including the probabilities of correct inflator rearming; inflator status check; and inflator its activated automatically, manually, or orally, as applicable.
SA2 = Probability of PFD not inflating.
SD = Probability of completing the donning process after inflation, if required, when the PFD is worn. (SD = 1 when no additional donning required.)
E = Probability PFD is effective in the water when inflated. ($E_{S1,I3}$, $E_{S2,I3}$ for partially inflated PFD and swimmer, non-swimmer, respectively)
R = Probability PFD is reliable.

(2) *Application of equation.* To determine the LSI for a PFD using the equation in paragraph (d)(1) of this section, the calculations must be performed in accordance with the following:

(i) For inherently buoyant PFDs, use only equations P_1 and P_5, with I1 equal to 1.

(ii) For non-belt-style inflatable PFDs, all P_i equations apply.

(iii) For belt-pack style PFDs, use only equations P_1, P_2, P_5, and P_6, with I1 meaning that the PFD is fully donned and inflated.

(e) *Minimum effectiveness and reliability.* In addition to meeting the requirements of paragraph (c) of this section, each PFD design approved under this section must be demonstrated to possess the following characteristics:

(1) Inflated in-water effectiveness (E), that is not less than that of—

(i) A performance type I PFD in accordance with UL 1180 for Type I approval or equivalent;

(ii) A performance type II PFD in accordance with UL 1180 for Type II approval or equivalent; or

(iii) A performance type III PFD in accordance with UL 1180 for Type III approval or equivalent; and

(2) Reliability (R) that is not less than that of—

(i) A performance type I PFD in accordance with UL 1180 for Type I approval or equivalent; or

(ii) A performance type II PFD in accordance with UL 1180 for Type II and III approval or equivalent.

(f) *Ranking.* The recognized laboratory shall compile a ranking, according to the calculated LSI, of PFDs for which approval is sought under this section and submit to the Commandant the characteristics affecting wearability, effectiveness, and reliability of the PFDs ranked immediately above and immediately below the PFD for which approval is sought.

(g) *Review.* The Commandant may annually review each analysis and design approved under this section to determine whether the design continues to provide the minimum LSI and level of effectiveness and reliability required by paragraphs (c) and (e) of this section. The Commandant will compare the values assigned to the characteristics of the device to the values assigned to other approved devices in determining whether the values were appropriately assigned and whether the LSI should be recalculated. Where recalculated LSIs of approved designs fall below the minimum required LSI established by the Commandant in accordance with paragraph (c) of this section, the approval will be terminated or suspended in accordance with § 159.005–15 of this chapter.

§ 160.076–29 Production oversight.

(a) Production tests and inspections must be conducted in accordance with this section and subpart 159.007 of this chapter unless the Commandant authorizes alternative tests and inspections. The Commandant may prescribe additional production tests and inspections necessary to maintain quality control and to monitor compliance with the requirements of this subpart.

(b) Production oversight must be performed by the same laboratory that performs the approval tests unless the Commandant determines that the employees of an alternative laboratory have received training and have access to the same information as the inspectors of the laboratory that conducted the approval testing.

(c) In addition to responsibilities set out in part 159 of this chapter and the accepted Laboratory Follow-up Procedures, each manufacturer of an inflatable PFD and each recognized laboratory inspector shall comply with the following, as applicable:

(1) *Manufacturer.* Each manufacturer must—

(i) Except as provided in paragraph (e)(2) of this section, perform all required tests and examinations on each PFD lot before any required inspector's tests and inspection of the lot;

(ii) Follow established procedures for maintaining quality control of the materials used, manufacturing operations, and the finished product;

(iii) Implement a continuing program of employee training and a program for maintaining production and test equipment;

(iv) Admit the inspector to any place in the factory where work is done on PFDs or component materials, and where parts or completed PFDs are stored;

(v) Have an inspector observe the production methods used in producing the first PFD lot and observe any revisions in production methods made thereafter; and

(vi) Allow the inspector to take samples of completed PFDs or of component materials for tests required by this subpart and for tests relating to the safety of the design.

(2) *Recognized laboratory oversight.* An inspector from a recognized laboratory shall oversee production in accordance with the MOU. During production oversight, the inspector shall not perform or supervise any production test or inspection unless—

(i) The manufacturer has a valid approval certificate; and

(ii) The inspector has first observed the manufacturer's production methods and any revisions to those methods.

(3) The inspector must perform or supervise testing and inspection of at least one in each five lots of PFDs produced.

(4) During each inspection, the inspector must check for compliance with the manufacturer's quality control procedures.

(5) Except as provided in paragraph (c)(6) of this section, at least once each calendar quarter, the inspector must examine the manufacturer's records required by § 160.076–33 and observe the manufacturer perform each of the tests required by § 160.076–31(c).

(6) If less than six lots are produced during a calendar year, only one lot inspection and one records' examination and test performance observation are required during that year. Each lot tested and inspected under paragraph (c)(3) of this section must be within seven lots of the previous lot inspected.

(d) *PFD lots.* A lot number must be assigned in accordance with UL 1180 to each group of PFDs produced. Lots must be numbered serially. A new lot must be started whenever any change in materials or a revision to a production method is made, and whenever any substantial discontinuity in the production process occurs. Changes in lots of component materials must be treated as changes in materials. The lot number assigned, along with the approval number, must enable the PFD manufacturer, by referring to the records required by this subpart, to determine the supplier of the components used in the PFD and the component supplier's identifying information for the component lot.

(e) *Samples.* For the tests, examinations, and inspections required by § 160.076–31, inspectors and manufacturers shall select samples as provided in this paragraph.

(1) Samples shall be selected at random from a lot in which all PFDs or materials in the lot are available for selection. Except as provided in § 160.076–31(c), samples must be selected from completed PFDs.

(2) Different samples must be selected for the manufacturer's and inspector's tests, except, if the total production for any five consecutive lots does not exceed 250 PFDs, the manufacturer's and inspector's tests may be run on the same sample(s) at the same time.

(3) The number of samples selected per lot must be at least equal to the applicable number required by Table 160.076–29A for manufacturers or Table 160.076–29B for inspectors.

(4) The following additional requirements apply as indicated in Table 160.076–29A to individual sample selections by manufacturers:

(i) Samples must be selected from each lot of incoming material. The tests required under paragraphs 160.076–25(d)(2)(i) through 160.076–25(d)(2)(iv) prescribe the number of samples to select.

(ii) Samples selected for the indicated tests may not be used for more than one test.

(iii) If a sample fails the over-pressure test, the number of samples to be tested in the next lot produced must be at least two percent of the total number of PFDs in the lot or 10 PFDs, whichever is greater.

(iv) The indicated test must be conducted at least once each calendar quarter or whenever a new lot of material is used or a production process is revised.

(5) The following additional requirements apply as indicated in Table 160.076–29B to individual sample selections by inspectors:

(i) Samples selected for the indicated tests may not be used for more than one test.

(ii) The indicated test may be omitted if it was conducted by the manufacturer on the materials used and by the inspector on a previous lot within the past 12 months.

(iii) One sample of each means of marking on each type of fabric or finish used in PFD construction must be tested at least every six months or whenever a new lot of materials is used.

TABLE 160.076–29A—MANUFACTURER'S SAMPLING PLAN

	Number of samples per lot—lot size:					
	1–100	101–200	201–300	301–500	501–750	751–1000
Tests:						
Inflation Chamber Materials	See Note[a]					
Seam Strength	1	1	2	2	3	4
Over-pressure[a c]	1	2	3	4	6	8
Air Retention	Every Device in the Lot					
Buoyancy & Inflation, Medium Retention	1	2	3	4	6	8
Tensile Strength	See Note[d]					
Detailed Product Examination	2	2	3	4	6	8
Retest Sample Size[b]	.....	.....	13	13	20	20
Final Lot Inspection	Every Device in the Lot					

Notes to Table:
[a] See @ 160.076–29(e)(4)(i).
[b] See @ 160.076–29(e)(4)(ii)
[c] See @ 160.076–29(e)(4)(iii).
[d] See @ 160.076–29(e)(4)(iv).

TABLE 160.076–29A—MANUFACTURER'S SAMPLING PLAN—Continued

	Number of samples per lot—lot size:					
	1–100	101–200	201–300	301–500	501–750	751–1000
Final Lot Inspection	Every Device in the Lot					

Notes to Table:
[a] See @ 160.076–29(e)(4)(i).
[b] See @ 160.076–29(e)(4)(ii)
[c] See @ 160.076–29(e)(4)(iii).
[d] See @ 160.076–29(e)(4)(iv).

TABLE 160.076–29B—INSPECTOR'S SAMPLING PLAN

	Number of samples per lot—lot size:					
	1–100	101–200	201–300	301–500	501–750	751–1000
Tests:						
Over-pressure[a]	1	1	2	2	3	4
Air Retention	1	1	2	2	3	4
Buoyancy & Inflation, Medium Retention	1	1	2	2	3	4
Tensile Strength	See Note[b]					
Waterpoof marking	See Note[c]					
Detailed Product Examinaton	1	1	1	2	2	3
Retest Sample Size[a]	10	10	13	13	20	20
Final Lot Inspection	10	15	20	25	27	30

Notes to Table:
[a] See/@160.076–29(e)(5)(i).
[b] See/@160.076–29(e)(5)(ii).
[c] See/@160.076–29(e)(5)(iii).

(f) *Accept/reject criteria: manufacturer testing.* (1) A PFD lot passes production testing if each sample passes each test.

(2) In lots of 200 or less PFDs, the lot must be rejected if any sample fails one or more tests.

(3) In lots of more than 200 PFDs, the lot must be rejected if—

(i) One sample fails more than one test;

(ii) More than one sample fails any test or combination of tests; or

(iii) One sample fails one test and in redoing that test with the number of samples specified for retesting in Table 160.076–29A, one or more samples fail the retest.

(4) A rejected PFD lot may be retested only if allowed under § 160.076–31(e).

(g) *Accept/reject criteria: independent laboratory testing.* (1) A lot passes production testing if each sample passes each test.

(2) A lot must be rejected if—

(i) A sample fails more than one test;

(ii) More than one sample fails any test or combination of tests; or

(iii) One sample fails one test and in redoing that test with the number of samples specified for retesting in Table 160.076–29B, one or more samples fail the test.

(3) A rejected lot may be retested only if allowed under § 160.076–31(e).

(h) *Facilities and equipment.* (1) *General.* The manufacturer must provide the test equipment and facilities necessary for performing production tests, examinations, and inspections, unless Commandant has accepted testing at a location other than the manufacturer's facility.

(2) *Calibration.* The manufacturer must have the calibration of all test equipment checked at least every six months by a weights and measures agency or the equipment manufacturer, distributor, or dealer.

(3) *Facilities.* The manufacturer must provide a suitable place and the necessary equipment for the inspector to use in conducting or supervising tests. For the final lot inspection, the manufacturer must provide a suitable working environment and a smooth-top table for the inspector's use.

§ 160.076–31 Production tests and examinations.

(a) Samples used in testing must be selected in accordance with § 160.076–29(e).

(b) On each sample selected—

(1) The manufacturer must conduct the tests in paragraphs (c)(2) through (c)(8) of this section;

(2) The recognized laboratory inspector must conduct or supervise the tests in paragraphs (c)(4) through (c)(8) of this section; and

(3) In addition to meeting the requirements of this section, each test result must meet the requirements, if any, contained in the approved plans and specifications.

(c) When conducting the tests specified by this paragraph, the following conditions must be met:

(1) *Inflation chamber materials.* The average and individual results of testing the minimum number of samples prescribed by § 160.076–25(d)(2) must comply with the requirements in § 160.076–21 (b) and (c) for permeability, grab strength, and tear strength. Lots not meeting this requirement must be rejected and, unless authorized by the Commandant, may not be subdivided and retested.

(2) *Seam strength.* The seams in each inflation chamber of each sample must be tested in accordance with § 160.076–25(d)(2)(iv). The results for each inflation chamber must be at least 90% of the results obtained in approval testing.

(3) *Over-pressure.* Each sample must be tested in accordance with and meet UL 1180 section 7.15. Prior to initiating the test at the specified values, samples may be prestressed by inflating them to a greater pressure than the required test pressure.

(4) *Air retention.* Each sample must be tested in accordance with and meet UL 1180 section 7.16. Prior to initiating the

test at the specified values, test samples may be prestressed by inflating to a pressure greater than the design pressure, but not exceeding 50 percent of the required pressure for the tests in paragraph (c)(3) of this section. No alternate test method may be used that decreases the length of the test unless authorized by the Commandant. Such alternative test must require a proportionately lower allowable pressure loss and the same percentage sensitivity and accuracy as the standard allowable loss measured with the standard instrumentation.

(5) *Buoyancy and inflation medium retention.* Each sample must be tested in accordance with and meet UL 1180 section 7.2.2–7.2.10, except 7.2.5. Each buoyancy value must fall within the tolerances specified in the approved plans and specifications.

(6) *Tensile strength.* Each sample primary closure system must be tested in accordance with and meet UL 1180 section 7.4.1 and .2.

(7) *Detailed product examination.* Each sample PFD must be disassembled to the extent necessary to determine compliance with the following:

(i) All dimensions and seam allowances must be within tolerances prescribed in the approved plans and specifications.

(ii) The torque of each screw type mechanical fastener must be within its tolerance as prescribed in the approved plans and specifications.

(iii) The arrangement, markings, and workmanship must be as specified in the approved plans and specifications and this subpart.

(iv) The PFD must not contain any apparent defects.

(8) *Waterproof marking test.* Each sample must be completely submerged in 45–C (110–F) water with mild detergent for a minimum of 30 minutes, and then removed and immediately placed on a hard surface. The markings must be vigorously rubbed with the fingers for 15 seconds, and then placed on a soft surface and rubbed again in the same manner. If the printing becomes illegible, the sample must be rejected.

(d) *Final lot examination and inspection*—(1) *General.* On each PFD lot that passes production testing, the manufacturer shall perform a final lot examination and, on every fifth lot, a laboratory inspector shall perform a final lot inspection. Samples must be selected in accordance with paragraph § 160.076–29(e). Each final lot must demonstrate—

(i) First quality workmanship;

(ii) That the general arrangement and attachment of all components, such as body straps, closures, inflation mechanisms, tie tapes, and drawstrings, are as specified in the approved plans and specifications;

(iii) Compliance with the marking requirements in § 160.076–39; and

(iv) That the information pamphlet and owner's manual required by § 160.076–35 and 160.076–37, respectively, are securely attached to the device, with the pamphlet selection information visible and accessible prior to purchase.

(2) *Accept/reject criteria.* Each nonconforming PFD must be rejected. If three or more nonconforming PFDs are rejected for the same kind of defect, lot examination or inspection must be discontinued and the lot rejected.

(3) *Manufacturer examination.* This examination must be conducted by a manufacturer's representative who is familiar with the approved plans and specifications, the functioning of the PFD and its components, and the production testing procedures. This person must not be responsible for meeting production schedules or be supervised by someone who is. This person must prepare and sign the record required by 159.007–13(a) of this chapter and 160.076–33(b).

(4) *Independent laboratory inspection.* (i) The inspector must discontinue lot inspection and reject the lot if examination of individual PFDs or the records for the lot shows noncompliance with either this section or the laboratory's or the manufacturer's quality control procedures.

(ii) If the inspector rejects a lot, the inspector must advise the Commandant or the recognized laboratory within 15 days.

(iii) The inspector must prepare and sign the inspection record required by 159.007–13(a) of this chapter and 160.076–33(b). If the lot passes, the record must include the inspector's certification that the lot passed inspection and that no evidence of noncompliance with this section was observed.

(e) *Disposition of rejected PFD lot or PFD.* (1) A rejected PFD lot may be resubmitted for testing, examination or inspection if the manufacturer first removes and destroys each defective PFD or, if authorized by the Commandant, reworks the lot to correct the defect.

(2) Any PFD rejected in a final lot examination or inspection may be resubmitted for examination or inspection if all defects have been corrected and reexamination or reinspection is authorized by the Commandant.

(3) A rejected lot or rejected PFD may not be sold or offered for sale under the representation that it meets this subpart or that it is Coast Guard-approved.

§ 160.076–33 Manufacturer records.

(a) Each manufacturer of inflatable PFDs shall keep the records of production inspections and tests as required by § 159.007–13 of this chapter, except that they must be retained for at least 120 months after the month in which the inspection or test was conducted.

(b) In addition to the information required by § 159.007–13 of this chapter, the manufacturer's records must also include the following information:

(1) For each test, the serial number of the test instrument used if more than one test instrument was available.

(2) For each test and inspection, the identification of the samples used, the lot number, the approval number, and the number of PFDs in the lot.

(3) For each lot rejected, the cause for rejection, any corrective action taken, and the final disposition of the lot.

(4) For all materials used in production the—

(i) Name and address of the supplier;

(ii) Date of purchase and receipt;

(iii) Lot number; and

(iv) Where required by § 164.019–5 of this chapter, the certification received with standard components.

(5) A copy of this subpart.

(6) Each document incorporated by reference in § 160.076–11.

(7) A copy of the approved plans and specifications.

(8) The approval certificate obtained in accordance with § 2.75–1 and 2.75–5 of this chapter.

(9) Certificates evidencing calibration of test equipment, including the identity of the agency performing the calibration, date of calibration, and results.

(c) A description or photographs of procedures and equipment used in testing required by § 159.007–13(a)(4) of this chapter, is not required if the manufacturer's procedures and equipment meet the requirements of this subpart.

(d) The records required by paragraph (b)(4) of this section must be kept for at least 120 months after preparation. All other records required by paragraph (b) of this section must be kept for at least 60 months after the PFD approval expires or is terminated.

§ 160.076–35 Information pamphlet.

A pamphlet that is consistent in format to that specified in UL 1123 must be attached to each inflatable PFD sold or offered for sale in such a way that a prospective purchaser can read the pamphlet prior to purchase. The pamphlet text and layout must be submitted to the Commandant for approval. The text must be printed in each pamphlet exactly as approved by the Commandant. Additional information, instructions, or illustrations must not be included within the approved text and layout. Sample pamphlet text and layout may be obtained by contacting the Commandant. This pamphlet may be combined with the manual required by § 160.076–37 if PFD selection and warning information is provided on the PFD packaging in such a way that it remains visible until purchase.

§ 160.076–37 Owner's manual.

(a) *General.* The manufacturer must provide an owner's manual with each inflatable PFD sold or offered for sale. A draft of the manual for each model must be submitted for approval in accordance with § 160.076–13.

(b) *Manual contents.* Each owner's manual must contain the information specified in UL 1180 section 11 and—

(1) In addition to the information specified in UL 1180 section 11.2, instructions that a user may need to partially deflate the PFD to climb out of the water unaided;

(2) The manufacturer's expected service life of the device under normal use with a description of normal and abnormal use as well as conditions that are particularly deleterious;

(3) Warnings about possible misuse which could be hazardous, such as a warning against wearing a PFD that has automatic inflation under restrictive clothing. Warnings must be presented in a format consistent with ASTM F 1166, section 29;

(4) If the PFD is approved under the LSI provisions of § 160.076–27, an estimate of the user's chances of survival if the user complies with the conditions and assumptions upon which approval of the PFD was based, and an estimate of the chances of survival if the user does not comply; and

(5) If the PFD is conditionally approved, an explanation of the meaning of, and reasons for, the approval conditions.

§ 160.076–39 Marking.

(a) *General.* Each inflatable PFD must be marked as specified in UL 1180 section 10 and this section.

(b) PFD Type. Based on its approval certificate, each PFD must be marked as follows—

(1) "Type I PFD";

(2) "Type II PFD";

(3) "Type III PFD"; or

(4) "Type V [*insert exact text of description noted on the approval certificate, if any*] PFD—[*insert text required by paragraph (c) of this section*]. This PFD provides in-water performance equivalent to a Type [*insert performance type criteria noted on the approval certificate*] PFD."

(c) Unless otherwise specified on its approval certificate, a Type V, conditionally approved inflatable PFD must be marked "approved only when worn".

(d) *Additional markings.* (1) Unless otherwise noted on the approval certificate, each inflatable PFD must be marked with the following:

(i) "NOT APPROVED FOR USE ON COMMERCIAL VESSELS."

(ii) The unique model, style, or part number of the inflation mechanism approved for use on the PFD.

(2) Additionally, where appropriate, each inflatable PFD must be marked with a permanent and prominent warning against any foreseeable misuse of the PFD that will result in a particularly hazardous condition, such as wearing an automatically activated belt-pack style PFD on the back.

(e) *Inflation mechanisms.* Each manual, automatic, or manual-auto inflation mechanism must be permanently marked with its unique model number.

(f) Unless marked with a universal symbol accepted by the Commandant, the inflation handle of a manual inflation mechanism must be marked "Jerk to inflate". The marking must be waterproof, permanent, and quickly readable from a distance of 1.5 m (5 feet).

Dated: June 1, 1995.

J.C. Card,

Rear Admiral U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

BILLING CODE 4910–14–P

Appendix I -- Example inflatable PFD pamphlet

Note -- The following appendix will not appear in the Code of Federal Regulations.

Summary: The information contained in this appendix is for informational purposes only. The PFD pamphlet page layouts that follow are examples of the type of information that would be acceptable for meeting the requirements of § 160.076-35 for an inflatable, yoke style, manually activated Type III PFD. Section § 160.076-35 requires that the information be provided in a format and colors consistent with the requirements of UL 1123.

The following is an example of the front cover:

Think Safe

Choose the Right Personal Flotation Device (PFD)

Is this the right PFD for:

- The type of boating you do?
- Your swimming ability?
- Your body type? *(look inside)*





This is a USCG approved INFLATABLE Type III PFD (FLOTATION AID).

It's the most comfortable to wear when it's hot.

It requires maintenance and is not recommended for individuals who can't swim.

Note: Do not remove this pamphlet. No person may sell or offer a PFD for sale which lacks this pamphlet.

The following is an example of the inside front cover:

A Type III Inflatable PFD (Flotation Aid) is:

NOT FOR use by NON-SWIMMERS OR WEAK SWIMMERS, unless worn INFLATED.

NOT FOR USE BY CHILDREN younger than 16 years of age OR BY PERSONS WEIGHING LESS THAN 80 POUNDS.

WARNING

THIS PFD WILL NOT FLOAT WITHOUT INFLATION.

YOU MUST REARM THIS PFD AFTER EACH USE.

YOU MUST CHECK THE STATUS OF THE INFLATOR BEFORE EACH OUTING.

In order for this PFD to function properly, you must inflate it when flotation is needed.

See Owner's Manual for status check and rearming instructions.

Inflatable PFDs require more frequent checks than those which are inherently buoyant.

The following is an example of page 1:

Advantages:

Comfortable for continuous wear.

Least bulky of all designs.

Good flotation when inflated.

Most comfortable for use in hot weather.

After inflation, this PFD will support most wearers in a face-up position in the water.

Available in one universal adult size.

Disadvantages:

Needs proper rearming and maintenance in order to provide flotation.

Some users may need assistance to properly rearm inflator.

Will not provide flotation without inflation.

Intended Uses:

General boating activities by adults.

Inland waters, or where there is a good chance of a fast rescue.

Continuous wear so it's available in an emergency.

Do not wear an inflatable PFD under restrictive clothing, because automatic or accidental manual inflation could restrict breathing or injure you.

This PFD is not suitable for use in whitewater, with personal watercraft, or while waterskiing.

Insert pages similar to pages 1–8, and 13 of UL 1123 Appendix B and renumber accordingly.

The following is an example of the inside back cover:

PFDS -- IT'S YOUR CHOICE!

PFD Type	Application	Advantages
Type I Inflatable & Inherently Buoyant Types	Offshore Open water Coastal Cruising General Boating	Best for all water; 22 lbs. or more buoyancy; will float wearer in face up position.
Type II Inflatable & Inherently Buoyant Types	Inland waters or calm waters where there is a good chance of a fast rescue.	Good comfort; low cost; 15.5 lbs. or more buoyancy.
Type III Inflatable & Inherently Buoyant Types	Calm inland waters where there is a good chance of a fast rescue.	Most comfort; stylish; allows wearer to swim; many sizes and colors; 15.5 lbs. or more buoyancy.
Type IV Inherently Buoyant Only	Calm inland waters where help is always nearby.	Throwable; good backup to wearable PFDs; 16.5 lbs. or more buoyancy
Type V Inflatable & Inherently Buoyant Types	Special use. See its performance type marked on the label.	See pamphlet.

Requirements

All boats:
Must be equipped with one wearable Type I, II, III or V PFD for each person on board.

Boats greater than 16 feet in length:
In addition to above, must be equipped with one Type IV PFD.

Inflatable PFD
High performance in compact space, but requires regular user checks and maintenance.

Inherently Buoyant PFD
Rugged, low maintenance, but sometimes less comfortable to wear.

The following is an example of the back cover:

CAUTION

PFDs with CO2 auto inflation should not be fully inflated orally before auto inflation

Check the status of the inflation system of this inflatable PFD before each outing

Check this inflatable PFD for leaks at least once every two months

Rearm the inflation system of this inflatable PFD after each inflation

Frequent users of inflatable PFDs should check them more often, particularly if used around sharp equipment like fishing gear

INFLATABLE PFD CHECKLIST

When preparing for an outing, ask yourself:

- ☐ HAVE I CHECKED THE STATUS OF THE INFLATOR? Check it before each outing.
- ☐ Have I checked my inflatable PFD for leaks in the last two months?
- ☐ Do I have the right PFD for this activity?
- ☐ How does my PFD work in the water? Have I tested it this season?
- ☐ Do I have the right size PFDs for each person (according to the label) and do they fit snugly?
- ☐ Have I checked my other inflatable PFDs in the same manner in which I checked my own?

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 175, 179, and 181

46 CFR Parts 2, 159, and 160

[CGD 93–055]

RIN 2115–AE58

Approval of Inflatable Personal Flotation Devices (PFDs) for Recreational Boaters

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish approval procedures for recreational inflatable personal flotation devices (PFDs), revise the approval procedures for other kinds of recreational PFDs and make editorial changes. These procedures are intended to establish an efficient approval procedure for PFDs. The Coast Guard anticipates that recreational boaters will be more likely to wear inflatable PFDs than currently approved devices, thereby increasing use of PFDs by the boating public and saving lives.

DATES: Comments must be received on or before October 23, 1995.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 93–055), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477. Comments on collection-of-information requirements must be mailed also to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

A copy of the material listed in "Incorporation by Reference" of this preamble is available for inspection at room 1404, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Markle, U.S. Coast Guard, Survival Systems Branch (G–MVI–3), telephone (202) 267–1444, facsimile (202) 267–1069, or electronic mail "mvi–3/G-M@cgsmtp.comdt.uscg.mil". A copy of this proposed rule may be obtained by calling the Coast Guard's toll-free Customer Infoline, 1–800–368–5647. In Washington, DC, call 267–0780.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 93–055) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **"ADDRESSES."** The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Mr. Robert Markle, Project Manager, U.S. Coast Guard, Survival Systems Branch (G–MVI–3), and Ms. Helen Boutrous, Project Counsel, Office of Chief Counsel.

Regulatory History

On November 9, 1993, the Coast Guard published an Advance Notice of Proposed Rulemaking (ANPRM) entitled "Inflatable Personal Flotation Devices" in the **Federal Register** (58 FR 59428). The Coast Guard received nine letters commenting on the ANPRM. One of the comments requested a public hearing, however, after consideration, the Coast Guard determined that no new issues would have been raised which would have materially assisted the Coast Guard in developing this rule. Therefore, no public hearing was held.

Background and Purpose

The November 9, 1993, ANPRM discussed the Coast Guard's intention to adopt structural and performance standards for inflatable personal flotation devices (PFD) used on recreational boats, as well as the procedures for approval and carriage requirements. The ANPRM discussed the Coast Guard's intention to participate in the development of an Underwriters Laboratories (UL) standard for inflatable PFDs, which would be the basis for Coast Guard approval of these devices. The UL standard (UL 1180) is complete, with one section reserved. An interim final rule (IFR) which establishes Coast Guard approval standards for inflatable PFDs for recreational boats based on UL 1180, is published elsewhere in today's edition of the **Federal Register**. The reserved section of UL 1180 will contain text for information pamphlets to accompany inflatable PFDs. UL expects to complete this section within a year. The Coast Guard anticipates that it will incorporate those provisions by reference once they are completed. Proposed pamphlet requirements are discussed later in this preamble under "*Information pamphlet.*" UL 1180 was developed in accordance with the American National Standards Institute (ANSI) procedure for voluntary industry standards, providing opportunity for participation by interested parties. Publication of the IFR will permit manufacturers to proceed with the manufacture and approval of these devices. Limited procedures to allow for approval of inflatable devices are included in the IFR.

This notice proposes various other rule changes related to the approval of inflatable PFDs for recreational boats which would establish an approval procedure that would allow for the use of independent laboratories in the approval process. These proposed rules were not published as part of the IFR because they may affect the approval of other PFDs to a limited extent and the public has not yet had a chance to fully participate in their development.

Discussion of Comments

The issues raised by the comments received in response to the ANPRM that pertained to the standards for inflatable PFDs were discussed in the IFR (CGD 94–110) published elsewhere in today's edition of the **Federal Register**. The issues raised by the comments that pertained to the approval procedures for PFDs and other issues addressed in this NPRM are discussed below.

Serviceable Condition

The ANPRM asked if "serviceable" should be defined as an inflatable PFD with a properly armed inflation

mechanism to encourage the development of inflation mechanisms which are easy to use and easy to maintain.

One comment from a boat owners association simply supported adding a definition of "serviceable" to the regulations. Another comment also stated that a definition of "serviceable" would be helpful and further stated that the desirability of professional maintenance by the manufacturer or an authorized facility should be considered, perhaps after an extended period of service such as five years. Another comment stated that the user manual and product markings should clearly direct the user to pay proper attention to the inflatable PFD's state of readiness.

The Coast Guard agrees that an explanation of the term "serviceable" is needed, and proposes to add § 175.23 that would set a standard for "serviceable condition" that would apply to all PFDs, and would include additional specific requirements for inflatable PFDs and hybrid inflatable PFDs. The term is presently used in 33 CFR 175.21(a), but is not defined anywhere in part 175. The requirements involving serviceability for all PFDs and the more specific requirements for inherently buoyant PFDs are based on guidance currently used by Coast Guard commercial vessel inspectors, and by Coast Guard Auxiliary examiners. The standard for "serviceable" for inflatable PFDs is newly developed by the Coast Guard for inclusion in this NPRM.

The ANPRM also questioned whether the Coast Guard should require professional servicing for inflatable PFDs atapproved servicing facilities. Three inflatable PFD manufacturers supported professional servicing; however, they do not believe professional servicing should be mandatory, or that the government should set up inspection facilities at taxpayer expense. Instead, the comments suggested that professional servicing should be recommended or offered by the manufacturers or through licensed agents or both. One of these comments stated that the required owner's manual should provide instructions for owner inspection and identify where the owner can obtain help if needed. Another of these comments stated that the Coast Guard should recommend annual user inspection for air leaks, etc., and that the manufacturer should offer servicing every two years at an affordable fee. The comment also stated that after 10 years the chamber should no longer be serviced and replacement should be recommended. Another comment stated that professional servicing would be unnecessary if quality is held to a high standard, and that requiring professional servicing would greatly increase the cost of owning an inflatable PFD.

The Coast Guard is not proposing to require professional servicing at this time. It agrees that the PFD owner's manual should address both user servicing and advice on how to obtain professional servicing. The Coast Guard strongly encourages manufacturers to offer professional servicing. The Coast Guard also encourages, but does not propose to require, manufacturers to keep records on the condition of the devices received for servicing in order to aid in the successful introduction of inflatable PFDs.

Another comment suggested that an inflatable PFD which is worn inflated should be considered "serviceable" even if the CO2 system is unarmed. The Coast Guard agrees and has included this condition in proposed § 175.23(d). Wearing the PFD inflated is a prudent action to take if the materials are not available to rearm a PFD and is a reasonable way to ensure the safety of the user of an unarmed inflatable PFD.

A number of other issues related to serviceability were raised in response to the ANPRM. These other issues concerned the design of the PFD and its inflation mechanism, and were considered in the development of UL 1180 and UL 1191. These issues are further addressed in the preamble to the IFR discussed above.

Defect Notification

The ANPRM suggested making inflatable PFDs "associated equipment" and subject to the defect notification provisions of 33 CFR Part 179, in accordance with 46 U.S.C. 4310. It was suggested that this action would provide better accountability and a positive means to identify reliability problems which may arise as a result of approval of a potentially less reliable device. Five comments favored making inflatable PFDs "associated equipment" for the purpose of defect notification.

The Coast Guard's position is that designating inflatable PFDs as associated equipment would provide animportant means to help ensure the safety of inflatable PFDs used by the public. Therefore, this NPRM proposes designation of inflatable PFDs as associated equipment in 33 CFR part 179 in accordance with 46 U.S.C. 4310. This would require manufacturers to notify first purchasers of inflatable PFDs of any defects which may be discovered after the PFDs have been produced and sold.

Registration Card

The five comments that supported making inflatable PFDs "associated equipment" for the purpose of defect notification did not favor making retailers responsible for preparing first purchaser lists. Instead, the comments suggested a consumer registration card, and a requirement that the consumer be provided with information that makes it clear that it is in the consumer's interest to complete the card and return it to manufacturer.

The Coast Guard finds that this suggestion has merit. This NPRM proposes to add a new subpart H to 33 CFR part 181, requiring manufacturers to provide a postage prepaid registration card with each inflatable PFD. This appears to be the most reasonable way for manufacturers to obtain the names and addresses of first purchasers. Since most inflatable PFDs will be sold at retail or by mail order, it appears to be unreasonable to place the burden of preparing purchaser lists on the seller. Prepayment of the postage will encourage purchasers to complete and return the cards. The cards should ease the manufacturers' recordkeeping burden, since the cards merely need to be collected and stored for five years. They would need to be used only in the unusual circumstance where first purchasers have to be notified of a defect. The registration cards would be required to be securely attached to the PFD in the same manner as the information pamphlet, and could even be printed as a separable part of the pamphlet. Retention of registration cards would constitute compliance with the requirement to exercise due diligence in establishing and maintaining a list of purchasers, as required under 46 U.S.C. 4310(c)(1)(A).

Another comment stated that purchaser lists should be an interim requirement, based on voluntary return of a registration card, and that the value of continued use of a registration system should be reviewed periodically to determine whether it should be continued. The Coast Guard agrees. All Coast Guard regulations are reviewed on a periodic basis. This regulation, like all regulations affecting recreational boats will be reviewed periodically at public meetings of the National Boating Safety Advisory Council (NBSAC). NBSAC meeting announcements are published in the **Federal Register**, along with an agenda for the meeting.

Another comment stated that inflatable PFDs should be manufactured in batches and given sequential serial numbers to permit traceability and enable owners not on purchaser lists to determine if their PFDs are involved in a recall.The Coast Guard agrees with the suggestion regarding numbering PFDs in batches with sequential serial numbers and such a requirement is included in the regulations published in the IFR.

Editorial Revisions

A number of editorial changes to part 179 are also proposed. Most of these changes relate to elimination of references to the Federal Boat Safety Act of 1971, and replacing them with references to Title 46 of the United States Code (U.S.C.), which was recodified in 1983 and includes previously enacted provisions of the Federal Boat Safety Act of 1971.

Information Pamphlet

This NPRM proposes to revise 33 CFR part 181, subpart G to require that an appropriate information pamphlet be provided with inflatable PFDs, as they are for other kinds of PFDs. The proposed requirement for the pamphlet in § 181.705 refers to the information pamphlet requirements established by the IFR (CGD 94–110) published elsewhere in today's edition of the **Federal Register**. However, if the pamphlet requirements of UL 1180 are completed before publication of a final rule, that part of the UL standard would be incorporated by reference at that time.

A number of related editorial revisions to 33 CFR subpart G are also proposed in this NPRM.

Approval of Inflatable Personal Flotation Devices and Other Equipment

The following paragraphs describe minor proposed revisions which are related to the approval of inflatable personal flotation devices, but which are relevant to the approval of other items of equipment as well.

This NPRM proposes to revise §§ 2.75–1(f) and 159.005–13(a)(4) of Title 46 to eliminate the requirement that the Coast Guard publish approval actions in the Federal Register. No such listing has been published in recent years, and the Coast Guard has received no complaints. The Coast Guard's estimation is that the listing was rarely, if ever, used. It is the Coast Guard's position that its publication "Equipment Lists," published approximately every two years, is readily available through the Government Printing Office. More current information can be obtained directly from the Coast Guard from its computerized data base upon request. Accordingly, the revised §§ 2.75–1(f) and 159.005–13(a)(4) would identify the "Equipment Lists" publication and state that it is available from the Government Printing Office.

The Coast Guard proposes to remove §§ 2.75–17, 2.75–18, and 2.75–19. These sections deal with documents referenced in Coast Guard regulations, and have been made obsolete by the Office of the Federal Register's current policy on documents incorporated by reference. The Coast Guard also proposes to remove § 2.75–20 because the affidavit and certification program described in that section is no longer in use.

This NPRM also proposes to remove § 2.75–30. This section would be replaced by new and revised sections of 46 CFR parts 159 and 160 to more accurately describe the approval procedures for PFDs used on recreational boats. Section 2.75–30 was first published in 1964 when the Coast Guard started using independent laboratories to perform certain approval functions related to "Special purpose water safety buoyant devices." Much of this section is now obsolete, including its title. The proposed revisions to parts 159 and 160 are discussed in more detail, below.

Proposed revisions to § 2.75–50 would update the appeal process regarding denials, withdrawals and terminations of approval. The Merchant Marine Council referred to in the present section no longer exists. The proposed procedure would provide for appeal to the Chief of the Office of Marine Safety, Security, and Environmental Protection in accordance with the appeal procedures of 46 CFR subpart 1.03. Proposed revisions to § 159.001–2 would refer to revised § 2.75–50 as the appropriate appeal procedure.

The definitions in § 159.001–3 are proposed to be revised by deleting "Listed laboratory" and "Test plan". Definitions for "classification society", "independent laboratory", and "recognized independent laboratory" would be added. Except for "classification society", these proposed changes are necessary to conform to other revisions to part 159 discussed below.

A new § 159.001–4 would list documents incorporated by reference into part 159.

Inspection Functions

Classification societies perform many inspection functions related to commercial shipping in the United States and around the world. The maritime safety administrations of other governments, like the U.S. Coast Guard, also perform some of these inspection functions. Some of these classification societies and government agencies operate laboratory facilities, but others perform all of their inspections and tests at shipyards and other manufacturing sites. Classification societies meeting the standards set out in Resolution A.739(18) of the International Maritime Organization (IMO), and agencies of other governments involved in the inspection and testing of marine safety equipment, are capable of performing all of the functions of an independent laboratory for many items of approved equipment. Therefore, the Coast Guard proposes to clarify the definition of "independent laboratory" to include such classification societies and government agencies. The proposed definition is broad enough to include other agencies of the U.S. government, so that U.S. Navy and Department of Defense personnel, for example, could perform certain inspections of Coast Guard approved equipment being purchased by those agencies. Under proposed revisions § 159.010–5, independent laboratories would be required to submit specified information to the Coast Guard in order to be accepted. Commercial laboratories would be required to submit additional information which would be irrelevant for classification societies and government agencies.

Proposed § 159.001–5 would include a facsimile number and an electronic mail address for the Commandant (G-MVI) to provide optional methods of communication with the Coast Guard.

Subpart 159.010 would be revised to eliminate all references to "listing" of, and "listed" laboratories. When Subpart 159.010 was published, it was envisioned that such laboratories would prepare a detailed test plan for Coast Guard review and approval, and that such laboratories would be "listed" in the various subparts under which they had been accepted. This listing of laboratories never occurred, and the Coast Guard now considers the concept to be obsolete. These revisions affect the title of subpart 159.010, as well as §§ 159.010–1(a)(2) and –1(a)(3), 159.010–7 (to be removed), 159.010–9, 159.010–11 (to be removed), 159.010–17, 159.010–19, and 159.010–21. In addition, sections of various subparts which were to contain these laboratory listings are proposed to be removed. These are §§ 160.021–9, 160.022–9, 160.023–9, 160.024–9, 160.028–9, 160.031–9, 160.036–9, 160.037–9, 160.040–9, 160.057–9, and 160.066–18. A related revision is proposed for § 160.066–11(c).

All laboratories that qualify to perform testing and inspection for the Coast Guard under subpart 159.010 are

considered accepted "independent laboratories". For some classes of equipment, such as PFDs for recreational boats, the Coast Guard uses laboratories not only to test and inspect equipment, but also to perform other functions related to approval, such as standards development and design review. The Coast Guard refers to these laboratories as "recognized independent laboratories". Recognized independent laboratories must enter into a memorandum of understanding (MOU) with the Coast Guard as discussed later in this preamble.

Subpart 159.010 would be revised to incorporate requirements for "recognized" laboratories, which are currently addressed in 46 CFR 2.75–30. The Coast Guard intends to eventually have all of the requirements for independent laboratories in one place, and to limit the types of acceptances to just two, instead of the present three (accepted, listed, and recognized). Under the proposed revisions, laboratories would be "accepted" for testing equipment under 46 CFR subchapter Q. For certain items of equipment, particularly items with high production volumes, the Coast Guard would use accepted laboratories that are also "recognized" to perform certain approval functions on behalf of the Coast Guard. These functions would be specified in a Memorandum of Understanding (MOU) between each laboratory and the Coast Guard.

The Coast Guard and UL have signed the first such MOU, which covers testing and approval of PFDs. The Coast Guard wishes to implement this MOU for the approval of inflatable PFDs for recreational boats, as well as for the approval of other PFDs for which UL is already recognized. The MOU has been placed in the docket for this project and is available for inspection and copying. The UL MOU also can be obtained by writing to Commandant (G–MVI), U.S. Coast Guard, 2100 Second Street, S.W. Washington, DC, 20593–0001, or by sending a request via electronic mail to "s.wehr/g-m18@cgsmtp.comdt.uscg.mil".

Note that the NPRM does not propose to remove or revise 46 CFR 2.75–25 covering recognized laboratories for portable fire extinguishers. UL, Factory Mutual, and Underwriters Laboratories of Canada are all recognized for testing and approval of various types of portable fire extinguishers at present.

The proposed revisions to subpart 159.010 regarding recognized laboratories are described in the following paragraphs:

(a) Section 159.010–1 would be revised to indicate that recognized laboratories are covered in Subpart 159.010.

(b) Section 159.010–9 would be completely revised to contain a description of the required contents of an MOU, the requirements for laboratories that desire to enter into MOUs with the Coast Guard in order to become recognized laboratories, and information on how to obtain copies of existing MOUs and related information. This section proposes to require, as part of the MOU, comparison testing with other recognized laboratories for those items of equipment, such as PFDs, where subjective testing is involved. Because PFDs require testing with human subjects, the way the tests are run can significantly affect the results. Therefore, the Coast Guard is considering ways to make sure that recognized laboratories achieve comparable results. As drafted, the rule would simply require each laboratory to conduct comparison testing as directed by the Coast Guard, no more often than once every six months. Comments are requested on any or all of the following alternatives for assuring comparability of determinations and test results:

(1) Laboratories could be required to retain test PFDs for at least six months after testing is completed. The Coast Guard could call for these devices at any time before they are discarded, and provide them to another recognized laboratory or laboratory seeking recognition for testing. The second laboratory's results should be comparable to those of the first laboratory. If they are not, the Coast Guard would conduct an analysis to determine why the results are different and how to resolve the differences.

(2) The Coast Guard is considering including a provision in the MOU in which the recognized laboratory would agree to participate in an annual workshop. At such a workshop, laboratories could share information regarding methods used during approval testing. The Coast Guard expects that laboratories would take turns hosting workshops, and that test personnel from all recognized laboratories would attend. Problems identified by the Coast Guard, manufacturers, and the laboratories could be addressed at these workshops, and the various methods of conducting tests could be compared. Results could be compared using different types of test equipment and techniques.

(3) The Coast Guard also seeks to ensure that all recognized laboratories performing approval procedures consider not only the needs of manufacturers, but the needs of PFD users and potential accident victims as well. The Coast Guard seeks to ensure that laboratories appropriately consider the needs of PFD users while providing uniform approval testing services. The Coast Guard specifically seeks comments regarding incentives that could be established to encourage laboratories to maintain the proper balance between the needs of boaters and manufacturers.

(c) Sections 159.010–17, 159.010–19, and 159.010–21 would be revised to cover MOUs and recognized laboratories.

(d) Finally, revisions are proposed in several subparts of part 160 covering PFDs, to remove information that would be redundant or obsolete, as a result of the proposed changes to subpart 159.010 on recognized laboratories. The revisions would affect subparts 160.047, 160.048, 160.049, 160.052, 160.060, 160.064, and 160.077.

Commercial Vessels

Although the inflatable PFDs approved under the rules in the IFR are intended for recreational boats, the Coast Guard is considering permitting them to be used on certain small commercial vessels. Uninspected commercial vessels under 12.1 m (40 ft) in length, not carrying passengers, may presently carry the same types of PFDs used on recreational boats. The regulations for these vessels are in 46 CFR subchapter C. In addition, small passenger vessels inspected under 46 CFR subchapter T, may carry recreational boat PFDs as additional equipment for the optional use of passengers, who want to wear PFDs while underway. Under the IFR, inflatable PFDs for recreational boats will be required to be marked "NOT APPROVED FOR USE ON COMMERCIAL VESSELS." If, as a result of comments, the Coast Guard decides to permit the limited use of these devices on commercial vessels, the requirement for the marking will be removed.

Incorporation by Reference

The following material would be incorporated by reference in 33 CFR 181.4: Underwriters Laboratories Standard UL 1123, Marine Buoyant Devices, February 17, 1995; and Underwriters Laboratories Standard UL 1180, Fully Inflatable Recreational Personal Flotation Devices, edition 1, May 15, 1995. The following material would be incorporated by reference in 46 CFR 159.001–2: International Maritime Organization Resolution A.739(18), Guidelines for the Authorization of Organizations Acting on Behalf of the Administration,

November 22, 1993. Copies of the material are available for inspection where indicated under "ADDRESSES." Copies of the material are available from the sources listed in 33 CFR 181.4, and 46 CFR 159.001–2.

Before publishing a final rule, the Coast Guard will submit this material to the Director of the Federal Register for approval of the incorporation by reference.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The rules proposed in this notice are generally procedural, to enable boaters to purchase and use inflatable PFDs on their boats, only if they wish to do so. The only proposal that would require affected parties to do something they are not already doing, is the proposal to provide postage prepaid registration cards. Manufacturers are only being required to hold these cards for five years. No analysis or production of lists is required, unless a defect in an inflatable PFD is found. In that case, the registration cards will make it easier and less costly to locate owners, than it would be otherwise. The volume of these cards will not be such that manufacturers should have to add facilities or staff. The cards probably will be printed as part of the PFD information manual that is presently required for all PFDs. Postage would be 20 per card if stamps are used. If the total cost for this requirement, including overhead, is 50 per device, the total cost to the industry would be only $25,000 annually if 50,000 units per year are produced. Comments are invited on this analysis.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

The rules proposed in this notice are generally procedural, to enable boaters to purchase and use inflatable PFDs on their boats, only if they wish to do so. As discussed above the economic impact of the new requirements are expected to be minimal. Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the Office of Management and Budget (OMB) reviews each proposed rule that contains a collection-of-information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection-of-information requirements include reporting, recordkeeping, notification, and other, similar requirements.

This proposal contains collection-of-information requirements in the following sections: 33 CFR part 181, subpart H. The following particulars apply:

DOT No: 2115.

OMB Control No.: 2115–0141

Administration: U.S. Coast Guard.

Title: Reporting and recordkeeping requirements for fire fighting equipment, structural fire protection materials, lifesaving equipment, and marine sanitation devices.

Need for information: Registration cards are needed to enable manufacturers to notify first purchasers of any defects found in inflatable personal flotation devices.

A Memorandum of Understanding (MOU) is needed to document the responsibilities of the laboratory and the responsibilities of the Coast Guard in relation to equipment testing, inspection, and approval.

Proposed Use of Information: Manufacturers would use the registration card information to contact first purchasers of inflatable PFDs found to have defects.

An MOU formally documents the responsibilities of the laboratory and the responsibilities of the Coast Guard in relation to equipment testing, inspection, and approval.

Frequency of Response: Registration cards would be used only if a manufacturer's PFDs were found to have defects that required notification of first purchasers. No regular reporting is required.

An MOU is required only once, when a laboratory seeks to become a recognized laboratory for a particular classification of equipment.

Burden Estimate: Total annual burden for registration cards is approximately 1700 hours industry-wide.

The Coast Guard estimates that no more than one MOU per year would be developed. Drafting of the MOU should not require more than two weeks of effort for one person, for an annual burden of 80 hours. Copies of existing MOUs may be obtained from the Coast Guard and modified to meet the needs of the individual laboratory and the Coast Guard.

Respondents: Registration card respondents are the estimated five manufacturers that will produce Coast Guard approved inflatable PFDs for recreational boats.

MOU respondents are laboratories that want to be recognized independent laboratories. The Coast Guard estimates no more than one MOU respondent per year.

Form(s): No Federal forms are required.

Average Burden Hours Per Respondent: 340 hours annually for each of the five manufacturers holding registration cards.

If the average recognized laboratory enters into a new or revised MOU once every five years, the average annual burden would be 16 hours.

The Coast Guard has submitted the requirements to OMB for review under section 3504(h) of the Paperwork Reduction Act. Persons submitting comments on the requirements should submit their comments both to OMB and to the Coast Guard where indicated under **ADDRESSES.**

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This rulemaking establishes and revises procedures for Coast Guard approval of inflatable and other PFDs. The authority to establish these requirements are committed to the Coast Guard by Federal statutes. Furthermore, since PFDs are manufactured and used in the national marketplace, safety standards for PFDs should be national in scope to avoid burdensome variances. Therefore, the Coast Guard intends for this rule, if adopted, to preempt State action on the same subject matter.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. The proposal is procedural in nature, and contains nothing that would affect the environment.

List of Subjects

33 CFR Part 175

Marine safety.

33 CFR Part 179

Marine safety, Reporting and recordkeeping requirements.

33 CFR Part 181

Labeling, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 2

Marine safety, Reporting and recordkeeping requirements, vessels.

46 CFR Part 159

Business and industry, Laboratories, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 160

Marine safety, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR parts 175, 179 and 181; and 46 CFR parts 2, 159, and 160 as follows:

Title 33—[Amended]

PART 175—EQUIPMENT REQUIREMENTS

1. The authority citation for part 175 continues to read as follows:

Authority: 46 U.S.C. 4302; 49 CFR 1.46

2. In § 175.21, paragraph (a) is revised to read as follows:

§ 175.21 Condition; size and fit; approval marking.

* * * * *

(a) In serviceable condition as provided in § 175.23;

* * * * *

3. Section 175.23 is added to read as follows:

§ 175.23 Serviceable condition.

A PFD is considered to be in serviceable condition for purposes of § 175.21(a) only if the following conditions are met:

(a) No PFD may exhibit deterioration that could diminish the performance of the PFD, including—

(1) Metal or plastic hardware used to secure the PFD on the wearer that is broken, deformed, or weakened by corrosion;

(2) Webbings or straps used to secure the PFD on the wearer that are ripped, torn, or which have become separated from an attachment point on the PFD; or

(3) Any other rotted or deteriorated structural component that fails when tugged.

(b) In addition to meeting the requirements of paragraph (a) of this section, no inherently buoyant PFD, including the inherently buoyant components of a hybrid inflatable PFD, may exhibit—

(1) Rips, tears, or open seams in fabric or coatings, that are large enough to allow the loss of buoyant material;

(2) Buoyant material that has become hardened, non-resilient, permanently compressed, waterlogged, oil-soaked, or which shows evidence of fungus or mildew; or

(3) Loss of buoyant material or buoyant material that is not securely held in position.

(c) In addition to meeting the requirements of paragraph (a) of this section, an inflatable PFD, including the inflatable components of a hybrid inflatable PFD, must be equipped with—

(1) Except as provided in paragraph (d) of this section, a properly armed inflation mechanism, complete with a full inflation medium cartridge and all status indicators showing that the inflation mechanism is properly armed;

(2) Inflatable chambers that are all capable of holding air;

(3) Oral inflation tubes that are not blocked, detached, or broken;

(4) A manual inflation lanyard or lever that is not inaccessible, broken, or missing; and

(5) Inflator status indicators that are not broken or otherwise non-functional.

(d) The inflation system of an inflatable PFD need not be armed when the PFD is worn inflated and otherwise meets the requirements of paragraphs (a) and (c) of this section.

PART 179—DEFECT NOTIFICATION

4. The authority citation for Part 179 is revised to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 4302, 4307, 4310, and 4311; 49 CFR 1.46.

5. Section 179.01 is revised to read as follows:

§ 179.01 Purpose.

This part prescribes rules to implement 46 U.S.C. 4310, governing the notification of defects in boats and associated equipment.

6. Section 179.03 is revised to read as follows:

§ 179.03 Definitions.

Associated equipment means the following equipment as shipped, transferred, or sold from the place of manufacture and includes all attached parts and accessories:

(a) An inboard engine.

(b) An outboard engine.

(c) A stern drive unit.

(d) An inflatable personal flotation device approved under 46 CFR 160.076.

Boat means any vessel—

(a) Manufactured or used primarily for noncommercial use;

(b) Leased, rented, or chartered to another for the latter's noncommercial use; or

(c) Engaged in the carrying of six or fewer passengers.

Manufacturer means any person engaged in—

(a) The manufacture, construction, or assembly of boats or associated equipment;

(b) The manufacture or construction of components for boats and associated equipment to be sold for subsequent assembly; or

(c) The importation into the United States for sale of boats, associated equipment, or components thereof.

7. Section 179.05 is revised to read as follows:

§ 179.05 Manufacturer discovered defects.

Each manufacturer who is required to furnish a notice of a defect or failure to comply with a standard under 46 U.S.C. 4310(b), shall furnish that notice within 30 days after the manufacturer discovers the defect or failure to comply.

8. Section 179.07 is revised to read as follows:

§ 179.07 Notice given by "more expeditious means".

Each manufacturer who gives notice by more expeditious means as provided for in 46 U.S.C. 4310(c)(1)(C), must give such notice in writing.

9. In § 179.09 the introductory paragraph is revised to read as follows:

§ 179.09 Contents of notification.

Each notice required under 46 U.S.C. 4310(b) must include the following additional information:

* * * * *

10. Section 179.11 is revised to read as follows:

§ 179.11 Defects determined by the Commandant.

A manufacturer who is informed by the Commandant under 46 U.S.C. 4310(f) that a boat or associated equipment contains a defect relating to safety or failure to comply with a regulation issued under the authority of 46 U.S.C. 4302, shall within 30 days of receipt of the information—

(a) Furnish the notification described in 46 U.S.C. 4310(d) to the persons designated in 46 U.S.C. 4310(c), or

(b) Provide information to the Commandant by certified mail stating why the manufacturer believes there is no defect relating to safety or failure of compliance.

11. In § 179.13, paragraphs (a) introductory text, (a)(1), and (a)(2) are revised to read as follows:

§ 179.13 Initial report to the Commandant.

(a) When a manufacturer gives a notification required under 46 U.S.C. 4310, the manufacturer shall concurrently send to the Commandant by certified mail—

(1) A true or representative copy of each notice, bulletin, and other communication given to persons required to be notified under 46 U.S.C. 4310(c);

(2) The total number of boats or items of associated equipment potentially affected by the defect or failure to comply with a standard prescribed under 46 U.S.C. 4302; and

(3) * * *

* * * * * *

12. Section 179.17 is revised to read as follows:

§ 179.17 Penalties.

Each manufacturer who fails to comply with a provision of 46 U.S.C. 4310 or the regulations in this part, is subject to the penalties as prescribed in 46 U.S.C. 4311.

13. Section 179.19 is revised to read as follows:

§ 179.19 Address of the Commandant.

(a) Each report and communication sent to the Coast Guard and required by this part concerning boats and associated equipment other than inflatable personal flotation devices, must be submitted to Commandant (G–NAB–6),U.S. Coast Guard, 2100 Second St., S.W., Washington, DC 20593–0001.

(b) Each report and communication sent to the Coast Guard and required by this part concerning inflatable personal flotation devices, must be submitted to Commandant (G–MVI–3), U.S. Coast Guard, 2100 Second St., S.W., Washington, DC 20593–0001.

PART 181—MANUFACTURER REQUIREMENTS

14. The authority citation for part 181 is revised to read as follows:

Authority: 46 U.S.C. 4302 and 4310; 49 CFR 1.46.

Subpart A—General

15. In § 181.4, paragraph (b) is revised to read as follows:

§ 181.4 Incorporation by reference.

* * * * *

(b) The materials approved for incorporation by reference in this part, and the sections affected are:

Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, IL 60062

UL 1123, Marine Buoyant Devices—181.703 February 17, 1995.

UL 1180, Fully Inflatable Recreational Personal—181.705

Flotation Devices, edition 1, May 15, 1995.

16. Section 181.702 is revised to read as follows:

§ 181.702 Information pamphlet: requirement to furnish.

(a) Each manufacturer of a Type I, II, III, IV, or V personal flotation device (PFD) must furnish with each PFD that is sold or offered for sale for use on a recreational boat, an information pamphlet meeting the requirements of § 181.703, § 181.704, or § 181.705 of this subpart, as appropriate.

(b) No person may sell or offer for sale for use on a recreational boat, a Type I, II, III, IV, or V PFD unless an information pamphlet required by this section is attached in such a way that it can be read prior to purchase.

17. Section 181.703 is revised to read as follows:

§ 181.703 Information pamphlet: Contents.

Unless otherwise specified in this subpart, each information pamphlet must contain the information specified in sections 33, 34 and 35 of UL 1123.

18. Section 181.704 is added to read as follows:

§ 181.704 Contents of information pamphlet: Recreational hybrid PFD.

Each information pamphlet for a recreational hybrid PFD approved under 46 CFR 160.077 must contain the information specified in 46 CFR 160.077–27.

19. Section 181.705 is added to read as follows:

§ 181.705 Contents of information pamphlet: Recreational inflatable PFD.

Each information pamphlet for a recreational inflatable PFD approved under 46 CFR 160.077 must contain the information required by 46 CFR 160.076–35.

20. Subpart H is added to read as follows:

Subpart H—Registration Card for Inflatable Personal Flotation Devices

Sec.
181.801 Applicability.
181.805 Registration card.
181.810 Retention of registration cards.

Subpart H—Registration Card for Inflatable Personal Flotation Devices

§ 181.801 Applicability.

This subpart applies to all inflatable personal flotation devices approved under 46 CFR 160.076.

§ 181.805 Registration card.

(a) The manufacturer of each inflatable personal flotation device shall furnish with each such device that is sold or offered for sale, a postage prepaid registration card addressed to the manufacturer.

(b) The registration card required by paragraph (a) of this section must be attached to the inflatable personal flotation device in the same manner as the instruction pamphlet required under § 181.703 of this chapter. Alternatively, the registration card may be printed as part of the pamphlet, arranged to be easily separated, so that the pamphlet remains intact.

(c) Each person who sells or offers for sale a new inflatable personal flotation device, shall ensure that the registration card is attached at the time of purchase unless the seller of an inflatable personal flotation device prepares and mails the registration card for the purchaser.

(d) The following information must be provided on or with the registration card:

(1) A statement that the manufacturer is required by federal law to maintain information on first purchasers of inflatable personal flotation devices intended for use on recreational boats.

(2) A statement urging the purchaser to complete and mail this registration card to enable the manufacturer to notify the purchaser of any important safety information concerning the device.

(3) A statement encouraging the purchaser to notify the manufacturer of any change in the owner's name or address, should such a change occur in the future.

(4) A statement indicating that a purchaser of more than one device of the same model only needs to complete and mail one registration card.

(e) The registration card must include the following:

(1) Spaces for the purchaser's name, address, telephone number, and date of purchase.

(2) A way to indicate the quantity of the particular make and model of device purchased.

(3) Other information needed by the manufacturer to identify the manufacturing lot or serial numbers of the devices purchased.

§ 181.810 Retention of registration cards.

The manufacturer shall retain each completed registration card for a period of at least five years after it is received.

TITLE 46—[AMENDED]

PART 2—VESSEL INSPECTIONS

21. The authority citation for part 2 is revised to read as follows:

Authority: 33 U.S.C. 1903; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12334, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46; Subpart 2.45 also issued under the authority of Act Dec. 27, 1950, Ch. 1155, secs. 1, 2, 64 Stat. 1120 (see 46 U.S.C. App. note prec. 1).

22. In § 2.75–1, paragraph (f) is revised to read as follows:

§ 2.75–1 Approvals.

* * * * *

(f) A listing of current and formerly approved equipment and materials is published by the Coast Guard from time to time in "Equipment Lists" (COMDTINST M16714.3 series), which is available for sale from the Superintendent of Documents, Government Printing Office.

§ 2.75–17 [Removed]

23. Section 2.75–17 is removed.

§ 2.75–18 [Removed]

24. Section 2.75–18 is removed.

§ 2.75–19 [Removed]

25. Section 2.75–19 is removed.

§ 2.75–20 [Removed]

26. Section 2.75–20 is removed.

§ 2.75–30 [Removed]

27. Section 2.75–30 is removed.

28. In § 2.75–50, the section heading and paragraph (a) are revised and a new paragraph (c) is added to read as follows:

§ 2.75–50 Withdrawals or terminations of approvals and appeals.

(a) The Commandant may withdraw approval for any item which is found not to be in compliance with the conditions of approval, found to be unsuitable for its intended purpose, or does not meet the requirements of applicable regulations.

* * * * *

(c) Any person directly affected by a decision to deny, withdraw, or terminate an approval may appeal the decision to the Chief of the Office of Marine Safety, Security, and Environmental Protection (Commandant (G–M)) as provided in § 1.03–15 of this chapter.

PART 159—APPROVAL OF EQUIPMENT AND MATERIALS

29. The authority citation for part 159 is revised to readas follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.45, 1.46; Section 159.001–9 also issued under the authority of 44 U.S.C. 3507.

30. Section 159.001–2 is revised to read as follows:

§ 159.001–2 Right of appeal.

Any person directly affected by a decision or action taken under this subchapter, by or on behalf of the Coast Guard, may appeal to the Chief of the Office of Marine Safety, Security, and Environmental Protection (Commandant (G–M)) as provided in § 1.03–15 of this chapter.

31. Section 159.001–3 is revised to read as follows:

§ 159.001–3 Definitions.

As used in this part:

Classification society means an organization involved in the inspection of ships and ship equipment, and which, as determined by the Commandant, meets the standards in IMO Resolution A.739(18).

Independent laboratory means an organization which meets the standards for acceptance in § 159.010–3 of this part, and which is accepted by the Coast Guard for performing certain tests and inspections. In addition to commercial testing laboratories, the Commandant may also accept classification societies and agencies of governments that are involved in the inspection and testing of marine safety equipment that meet the requirements of § 159.010–3.

Memorandum of Understanding (MOU) is an agreement between the Coast Guard and a laboratory that specifies the approval functions a recognized independent laboratory performs for the Coast Guard and the recognized independent laboratory's working arrangements with the Coast Guard.

Recognized independent laboratory means an independent laboratory which meets the standards of § 159.010–3, and is accepted by the Coast Guard to perform certain equipment approval functions on behalf of the Coast Guard, as described in a Memorandum of Understanding signed by the laboratory and the Coast Guard in accordance with § 159.010–9(b).

32. Section 159.001–4 is added to read as follows:

§ 159.001–4 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register**; and the material must be available to the public. All approved material is available for inspection at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC, and at the U.S. Coast Guard, Survival Systems Branch (G-MVI–3), 2100 Second Street SW, Washington, DC 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part (subchapter) and the sections affected are as follows:

International Maritime Organization (IMO)

Publications Section, 4 Albert Embankment, London SE1 7SR, England

Resolution A.739(18), Guidelines for the Authorization of Organizations Acting on Behalf of the Administration, November 22, 1993—159.001–3

33. Section 159.001–5 is revised to read as follows:

§ 159.001–5 Correspondence and applications.

Unless otherwise specified, all correspondence and applications in connection with approval and testing of equipment and materials must be addressed to: Commandant (G–MVI), U.S. Coast Guard, 2100 Second St., S.W., Washington, DC 20593–0001, Telephone: (202) 267–1444, Facsimile: (202) 267–1069, Electronic mail: "MVI–3/G–M18@cgsmtp.comdt.uscg.mil".

Subpart 159.005—Approval Procedures

34. In § 159.005–13, paragraph (a)(4) is revised to readas follows:

§ 159.005–13 Equipment or material: approval.

(a) * * *

(4) Publishes a record of the approval in "Equipment Lists." The most recent edition of "Equipment Lists" U.S. Coast Guard Publication M16714.3 (series) is available from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954.

* * * * *

35. The title of subpart 159.010 is revised to read as follows:

Subpart 159.010—Independent Laboratory: Acceptance, Recognition, and Termination

36. Section 159.010–1 is revised to read as follows:

§ 159.010–1 Purpose.

This subpart contains the following:

(a) The standards and procedures under which the Coast guard accepts an independent laboratory that a manufacturer proposes to use.

(b) The standards and procedures under which a laboratory is accepted as a recognized laboratory under applicable subparts.

(c) The circumstances under which the acceptance or recognition of a laboratory is terminated.

37. Section 159.010–5 is revised to read as follows:

§ 159.010–5 Independent laboratory: application for acceptance.

(a) Each application for acceptance of an organization as an independent laboratory must contain the following:

(1) The name and address of the organization.

(2) A list of the equipment or material that the organization would inspect, or test, or both, under this subchapter.

(3) A description of the organization's experience and its qualifications for conducting the inspections and tests required in the applicable subpart.

(4) A description of the apparatus and facilities available to the organization for conducting those inspections and tests.

(5) If instruments are used in the required tests and inspections, a description of the instrument calibration program applying to those instruments.

(6) The position titles of personnel who are to perform, supervise, or witness those inspections or tests, along with the training and experience required for personnel in those positions.

(7) A statement signed by the chief officer of the organization or the chief officer's representative, that an official representative of the Coast Guard is allowed access to the place where tests and inspections take place, to verify the information submitted in the application, or to witness tests and inspections.

(b) Each application for acceptance as an independent laboratory from an organization that is not submitted by an agency of another government, or a classification society, must also contain the following:

(1) The name and address of each subsidiary and division of the organization or a statement that none are involved in the testing or manufacturing of equipment approved under this subchapter.

(2) The name, title, address, and principal business activity of each of the organization's officers and directors, and the name, address, and principal business activity of each person, company, or corporation that owns at least three-percent interest in the organization or in a company or corporation that controls the organization.

§ 159.010–7 [Removed]

38. Section 159.010–7 is removed.

39. Section 159.010–9 is revised to read as follows:

§ 159.010–9 Recognized independent laboratory: Memorandum of Understanding.

(a) Only laboratories that have entered into an MOU with the Coast Guard may perform the functions of a recognized laboratory under this chapter.

(b) An independent laboratory seeking to become a recognized independent laboratory must submit a signed MOU to the Commandant that includes—

(1) A statement of purpose;

(2) An identification and description of the parties involved;

(3) A description of the problem resolution and appeals processes;

(4) A description of the process for measuring effectiveness and efficiency of the program under the MOU;

(5) The effective date of the MOU and terms for its termination;

(6) A statement to the effect that the MOU is not an exclusive agreement between the recognized independent laboratory and the Coast Guard;

(7) An agreement to conduct comparison testing with other recognized laboratories as directed by the Coast Guard, no more often than twice each year, with the laboratory bearing the cost of sample acquisition and testing;

(8) A statement as to how the costs of implementing the MOU will be borne; and

(9) A description of each party's responsibilities for—

(i) Equipment review and approval;

(ii) Coast Guard oversight of the recognized independent laboratory's procedures and processes;

(iii) Coordination between the parties;

(iv) Developing and maintaining regulations and standards;

(v) Handling review and approval of new and novel items not anticipated by existing regulations and standards;

(vi) Testing and inspection facilities and procedures;

(vii) Production quality control; and

(viii) Maintenance of records.

(c) The signature on the MOU required by paragraph (b) of this section must be that of the chief officer of the independent laboratory or the chief officer's representative. The Commandant or an authorized representative of the Commandant will review the MOU to ensure it contains the information contained in paragraph (b) of this section and is consistent with other MOUs signed by the Commandant. If the Commandant determines that the MOU is acceptable and the independent laboratory is capable of carrying out the functions identified in the MOU, the Commandant or authorized representative will sign the MOU. Where qualitative tests or determinations are required for approval or follow-up, provision must be made for conducting comparison tests with other recognized laboratories.

(d) Copies of MOUs signed by the Commandant in accordance with this part and of lists of independent laboratories which have been accepted as recognized laboratories but which have not yet been added to the lists included in this subchapter may be obtained at the address listed in § 159.001–5.

§ 159.010–11 [Removed]

40. Section 159.010–11 is removed.

41. Section 159.010–17 is revised to read as follows:

§ 159.010–17 Changes in the laboratory's qualifications.

(a) If any of the information submitted under § 159.010–5(a) changes, the laboratory shall notify the Commandant in writing of each change within 30 days after the change has occurred.

(b) If any change in the independent laboratory occurs which affects its performance under the MOU required under § 159.010–9, the laboratory shall notify the Commandant in writing within 30 days after the change occurs. The Commandant may terminate the MOU, or may require amendments or revisions.

42. Section 159.010–19 is revised to read as follows:

§ 159.010–19 Termination of acceptance or recognition of an independent laboratory.

The acceptance or recognition of a laboratory terminates if the laboratory—

(a) Requests termination;

(b) Is no longer in business;

(c) Knowingly fails to perform or supervise an inspection or test, or both, as required in an applicable subpart;

(d) Knowingly attests to the lack of errors, omissions, or false statement of an approval test report that contains errors, omissions, or false statements;

(e) Does not meet the requirements of § 159.010–3(a);

(f) Does not comply with § 159.010–17;

(g) Contracts or transfers the performance or supervision of required inspections or tests to another laboratory or person without the approval of the Commandant; or

(h) Fails to, or in the opinion of the Commandant is unable to, carry out its responsibilities under an MOU required by § 159.010–9.

43. In § 159.010–21, the section heading and paragraph (a) are revised to read as follows:

§ 159.010–21 Termination of acceptance or recognition: Procedure.

(a) If the Coast Guard receives evidence of grounds for termination of acceptance or recognition of an independent laboratory under § 159.010–19, the Commandant will notify the laboratory that termination is under consideration. The notification will specify the reasons for which termination is considered. If a deficiency could materially affect the validity of an approval issued under an applicable subpart, the Commandant may immediately suspend the acceptance of the laboratory and may direct the holder of the certificate of approval to cease claiming that the items tested or inspected by the laboratory are Coast Guard approved, pending a final decision in the matter. The Commandant may direct an investigation into the matter.

* * * * *

PART 160—LIFESAVING EQUIPMENT

44. The authority citation for Part 160 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703, and 4302; E.O. 12234, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

Subpart 160.021—Hand Red Flare Distress Signals

§ 160.021–9 [Removed]

45. Section 160.021–9 is removed.

Subpart 160.022—Floating Orange Smoke Distress Signals (5 Minutes)

§ 160.022–9 [Removed]

46. Section 160.022–9 is removed.

Subpart 160.023—Hand Combination Flare and Smoke Distress Signals

§ 160.023–9 [Removed]

47. Section 160.023–9 is removed.

Subpart 160.024—Pistol-Projected Parachute Red Flare Distress Signals

§ 160.024–9 [Removed]

48. Section 160.024–9 is removed.

Subpart 160.028—Signal Pistols for Red Flare Distress Signals

§ 160.028–9 [Removed]

49. Section 160.028–9 is removed.

Subpart 160.031—Line-Throwing Appliance, Shoulder Gun Type (and Equipment)

§ 160.031–9 [Removed]

50. Section 160.031–9 is removed.

Subpart 160.036—Hand-Held Rocket-Propelled Parachute Red Flare Distress Signals

§ 160.036–9 [Removed]

51. Section 160.036–9 is removed.

Subpart 160.037—Hand Orange Smoke Distress Signals

§ 160.037–9 [Removed]

52. Section 160.037–9 is removed.

Subpart 160.040—Line-Throwing Appliance, Impulse-Projected Rocket Type (and Equipment)

§ 160.040–9 [Removed]

53. Section 160.040–9 is removed.

Subpart 160.047—Specifications for a Buoyant Vest, Kapok, or Fibrous Glass, Adult and Child

§ 160.047–6a [Removed]

54. Section 160.047–6a is removed.

§ 160.047–6b [Removed]

55. Section 160.047–6b is removed.

§ 160.047–6c [Removed]

56. Section 160.047–6c is removed.

57. Section 160.047–7 is revised to read as follows:

§ 160.047–7 Recognized Laboratory.

(a) A manufacturer seeking Coast Guard approval of a product under this subpart shall follow the approval procedures of subpart 159.005 of this chapter, and shall apply for approval directly to a recognized independent laboratory. The following laboratories are recognized under § 159.010–9 of this chapter, to perform testing and approval functions under this subpart:

Underwriters Laboratories, 12 Laboratory Drive, P.O. Box 13995, Research Triangle Park, NC 27709–3995, (919) 549–1400.

(b) Production oversight must be performed by the same laboratory that performs the approval tests unless, as determined by the Commandant, the employees of the laboratory performing production oversight receive training and support equal to that of the laboratory that performed the approval testing.

§ 160.047–9 [Removed]

58. Section 160.047–9 is removed.

§ 160.047–10 [Removed]

59. Section 160.047–10 is removed.

Subpart 160.048—Specification for a Buoyant Cushion, Fibrous Glass

§ 160.048–7 [Amended]

60. In § 160.048–7, remove paragraphs (a) and (d) and redesignate paragraphs (b), (c) and (e) as (a), (b) and (c), respectively.

§ 160.048–7a [Removed]

61. Section 160.048–7a is removed.

62. Section 160.048–8 is revised to read as follows:

§ 160.048–8 Recognized Laboratory.

(a) A manufacturer seeking Coast Guard approval of a product under this subpart shall follow the approval procedures of subpart 159.005 of this chapter, and shall apply for approval directly to a recognized independent laboratory. The following laboratories are recognized under § 159.010–9 of this chapter, to perform testing and approval functions under this subpart:

Underwriters Laboratories, 12 Laboratory Drive, P.O. Box 13995, Research Triangle Park, NC 27709–3995, (919) 549–1400.

(b) Production oversight must be performed by the same laboratory that performs the approval tests unless, as determined by the Commandant, the employees of the laboratory performing production oversight receive training and support equal to that of the laboratory that performed the approval testing.

§ 160.048–9 [Removed]

63. Section 160.048–9 is removed.

§ 160.048–10 [Removed]

64. Section 160.048–10 is removed.

Subpart 160.049—Specification for a Buoyant Cushion, Plastic Foam

§ 160.049–7 [Amended]

65. In § 160.049–7, revise the heading, remove paragraphs (a) and (d), and redesignate paragraphs (b), (c) and (e) as paragraphs (a), (b) and (c), respectively, to read as follows:

§ 160.049–7 Procedure for approval.

* * * * *

§ 160.049–7a [Removed]

66. Section 160.049–7a is removed.

67. Section 160.049–8 is revised to read as follows:

§ 160.049–8 Recognized Laboratory.

(a) A manufacturer seeking Coast Guard approval of a product under this subpart shall follow the approval procedures of subpart 159.005 of this chapter, and shall apply for approval directly to a recognized independent laboratory. The following laboratories are recognized under § 159.010–9 of this chapter, to perform testing and approval functions under this subpart:

Underwriters Laboratories, 12 Laboratory Drive, P.O. Box 13995, Research Triangle Park, NC 27709–3995, (919) 549–1400.

(b) Production oversight must be performed by the same laboratory that performs the approval tests unless, as determined by the Commandant, the employees of the laboratory performing production oversight receive training and support equal to that of the laboratory that performed the approval testing.

§ 160.049–9 [Removed]

68. Section 160.049–9 is removed.

§ 160.049–10 [Removed]

69. Section 160.049–10 is removed.

Subpart 160.052—Specification for a Buoyant Vest, Unicellular Plastic Foam, Adult and Child

§ 160.052–8a [Removed]

70. Section 160.052–8a is removed.

§ 160.052–8b [Removed]

71. Section 160.052–8b is removed.

§ 160.052–8c [Removed]

72. Section 160.052–8c is removed.

73. Section 160.052–9 is revised to read as follows:

§ 160.052–9 Recognized Laboratory.

(a) A manufacturer seeking Coast Guard approval of a product under this subpart shall follow the approval procedures of subpart 159.005 of this chapter, and shall apply for approval directly to a recognized independent laboratory. The following laboratories are recognized under § 159.010–9 of this chapter, to perform testing and approval functions under this subpart:

Underwriters Laboratories, 12 Laboratory Drive, P.O. Box 13995, Research Triangle Park, NC 27709–3995, (919) 549–1400.

(b) Production oversight must be performed by the same laboratory that performs the approval tests unless, as determined by the Commandant, the employees of the laboratory performing production oversight receive training and support equal to that of the laboratory that performed the approval testing.

§ 160.052–11 [Removed]

74. Section 160.052–11 is removed.

§ 160.052–12 [Removed]

75. Section 160.052–12 is removed.

Subpart 160.057—Floating Orange Smoke Distress Signals (15 Minutes)

§ 160.057–9 [Removed]

76. Section 160.057–9 is removed.

Subpart 160.060—Specification for a Buoyant Vest, Unicellular Polyethylene Foam, Adult and Child

§ 160.060–8a [Removed]

77. Section 160.060–8a is removed.

§ 160.060–8b [Removed]

78. Section 160.060–8b is removed.

§ 160.060–8c [Removed]

79. Section 160.060–8c is removed.

80. Section 160.060–9 is revised to read as follows:

§ 160.060–9 Recognized Laboratory.

(a) A manufacturer seeking Coast Guard approval of a product under this subpart shall follow the approval procedures of subpart 159.005 of this chapter, and shall apply for approval directly to a recognized independent laboratory. The following laboratories are recognized under § 159.010–9 of this chapter, to perform testing and approval functions under this subpart:

Underwriters Laboratories, 12 Laboratory Drive, P.O. Box 13995, Research Triangle Park, NC 27709–3995, (919) 549–1400.

(b) Production oversight must be performed by the same laboratory that performs the approval tests unless, as determined by the Commandant, the employees of the laboratory performing production oversight receive training and support equal to that of the laboratory that performed the approval testing.

§ 160.060–11 [Removed]

81. Section 160.060–11 is removed.

§ 160.060–12 [Removed]

82. Section 160.060–12 is removed.

Subpart 160.064—Marine Buoyant Devices

§ 160.064–5 [Removed]

83. Section 160.064–5 is removed.

§ 160.064–5a [Removed]

84. Section 160.064–5a is removed.

§ 160.064–5b [Removed]

85. Section 160.064–5b is removed.

86. Section 160.064–7 is revised to read as follows:

§ 160.064–7 Recognized Laboratory.

(a) A manufacturer seeking Coast Guard approval of a product under this subpart shall follow the approval procedures of subpart 159.005 of this chapter, and shall apply for approval directly to a recognized independent laboratory. The following laboratories are recognized under § 159.010–9 of this chapter to perform testing and approval functions under this subpart:

Underwriters Laboratories, 12 Laboratory Drive, P.O. Box 13995, Research Triangle Park, NC 27709–3995, (919) 549–1400.

(b) Production oversight must be performed by the same laboratory that performs the approval tests unless, as determined by the Commandant, the employees of the laboratory performing production oversight receive training and support equal to that of the laboratory that performed the approval testing.

§ 160.064–8 [Removed]

87. Section 160.064–8 is removed.

§ 160.064–9 [Removed]

88. Section 160.064–9 is removed.

Subpart 160.066—Distress Signal for Boats, Red Aerial Pyrotechnic Flare

89. In § 160.066–11, paragraph (c) is revised to read as follows:

§ 160.066–11 Approval procedures.

* * * * *

(c) The approval tests must be performed by an independent laboratory accepted by the Commandant under Subpart 159.010 of this chapter.

§ 160.066–18 [Removed]

90. Section 160.066–18 is removed.

Subpart 160.077—Hybrid Inflatable Personal Flotation Devices

91. Section 160.077–9 is revised to read as follows:

§ 160.077–9 Recognized Laboratory.

(a) A manufacturer seeking Coast Guard approval of a product under this subpart shall follow the approval procedures of subpart 159.005 of this

chapter, and shall apply for approval directly to a recognized independent laboratory. The following laboratories are recognized under § 159.010–9 of this chapter, to perform testing and approval functions under this subpart:

Underwriters Laboratories, 12 Laboratory Drive, P.O. Box 13995, Research Triangle Park, NC 27709–3995, (919) 549–1400.

(b) Production oversight must be performed by the same laboratory that performs the approval tests unless, as determined by the Commandant, the employees of the laboratory performing production oversight receive training and support equal to that of the laboratory that performed the approval testing.

Dated: June 1, 1995.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

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Friday
June 23, 1995

Part IV

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 151

Land Acquisitions (Nongaming); Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 151

RIN 1076–AC51

Land Acquisitions (Nongaming)

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: This final rule modifies three existing sections within Part 151 (Land Acquisitions) and creates a new section which contains additional criteria and requirements used by the Secretary in evaluating requests for the acquisition of lands by the United States in trust for federally recognized Indian tribes when lands are outside and noncontiguous to the tribes' existing reservation boundaries.

EFFECTIVE DATE: July 24, 1995.

FOR FURTHER INFORMATION CONTACT: Alice A. Harwood, Chief, Branch of Technical Services, Division of Real Estate Services, Bureau of Indian Affairs, Room 4522, Main Interior Building, 1849 C Street, NW, Washington, DC 20240, Telephone No. (202) 208–3604.

SUPPLEMENTARY INFORMATION: The primary authors of this document are Stan Webb, Lee Maytubby, and Alice A. Harwood along with the members of the Regulation Task Force.

On July 15, 1991, the proposed rule for off-reservation land acquisitions for Indian tribes was published in the **Federal Register** (Vol. 56, No. 135, pages 32278–32280).

The Department certifies to the Office of Management and Budget that these final regulations meet the standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778.

The Department has determined that this rule:

- does not have significant federalism effects.
- is not a major rule under Executive Order 12866 and will not require a review by the Office of Management and Budget.
- will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*) because this rule applies only to Indian applicants.
- does not have significant takings implications under E.O. 12630.
- does not have significant effects on the economy, nor will it result in increases in costs or prices for consumers, individual industries, Federal, State, or local governments, agencies, or geographical regions.
- does not have any adverse effects on competition, employment, investment, productivity, innovation, or the export/import market.
- is categorically excluded from the National Environmental Policy Act of 1969 because it is of an administrative, technical, and procedural nature. Therefore, neither an environmental assessment nor an environmental impact statement is warranted.

Office of Management and Budget approved the information requested in Sections 151.9, 151.10, 151.11(c) and 151.13 under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0100. This information is required from Indian tribes and individuals to acquire land in trust status and used to assist the Secretary in making a determination. Response to this request is required to obtain a benefit.

Public reporting for this information collection is estimated to average 4 hours per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information collection. Direct your comments regarding the burden estimate or any other aspect of this information collection to the Bureau of Indian Affairs, Information Collection Clearance Officer, Room 337–SIB, 18th and C Streets, NW., Washington, DC 20240; and the Office of Information and Regulatory Affairs (Project 1076–0100), Office of Management and Budget, Washington, DC 20502.

The annual number of tribal requests to place lands in trust is small. There will be some costs incurred by the requesting tribes in providing information to the Secretary.

Summary of Comments on Proposed Rule

Sixty-seven comments were submitted in response to the July 15, 1991, **Federal Register** publication of proposed amendments to 25 CFR Part 151.

A number of commenters expressed a fear that the regulations would undermine tribal sovereignty and self-determination and inhibit the development of reservation economies, and that they would be inconsistent with the Indian policy statement issued by President Bush on June 14, 1991. There is additional concern that the proposed rules would:

(1) afford state and local governments a virtual veto power over tribal governments;

(2) promote a "guardian-ward" relationship between the United States and the tribes, rather than the preferred "government-to-government" relationship; and

(3) force tribes to divert their limited resources into "unnecessary" efforts aimed at regulatory compliance;

(4) be inconsistent with the federal trust responsibility to Indian tribes, and

(5) further complicate an already cumbersome and time-consuming process by placing tribal interests lower than those of state and local governments.

One commenter argued that a "federalism assessment" would be needed under Executive Order 12612, and another maintained that a "compete regulatory analysis" would be required under the Regulatory Flexibility Act.

Due to comments received, the gaming section, proposed as 151.12 has been deleted and will be incorporated into a new CFR part under a separate rulemaking.

Section 151.10 On-Reservation Acquisition

Comment: It was suggested that 25 CFR 151.10(e) be revised to reflect the BIA's position that Indian-owned fee lands within the boundaries of a reservation should be exempt from state property.

Response: It should be noted that the United States Supreme Court recently held that (under certain circumstances) on-reservation fee lands *will* be subject to local property taxes. Therefore, 25 CFR 151.10(e) is not revised.

Comment: Comments suggested that *all* of the existing rules be made inapplicable to on-reservation acquisitions, and another requested a clarification that the strict notice and consultation requirements set forth in the proposed 25 CFR 151.11 would not apply to acquisitions of lands which are either within the boundaries of a reservation or contiguous thereto.

Response: It should be noted that the decision whether to accept title in trust status is a discretionary one, and that the Secretary has chosen to regulate the decision-making process in order to promote national uniformity.

The notice and comment procedures, which do not require formal consultation, were informally adopted in 1980. Notice and *comment* procedures are incorporated in the introductory paragraph to 25 CFR 151.10.

Comment: It was also suggested that the proposed rules be revised to accept legislatively-mandated acquisitions from compliance with 25 CFR 151.10 and the proposed 151.11. An alternatively suggested that they be revised to specify that certain provisions would apply even when a complete evaluation of the acquisition would be precluded by legislation.

Response: The introductory paragraph to both 25 CFR 151.10 and the new 25 CFR 151.11 exempts such legally mandated acquisitions.

Section 151.10(h) Hazardous Substances and NEPA Compliance

Comment: Commenters addressed the requirement that acquired property "be free of all hazardous and toxic material as required by 602 DM 2 Land Acquisitions: Hazardous Substances Determinations." It was suggested that an acquisition be allowed where the proposed use of the land would involve hazardous substances, or where identified substances have been safely isolated.

Response: It should be noted that the Secretary retains the power to approve any acquisition "for good cause," i.e., where the benefits of the acquisition would clearly outweigh the potential risks.

Comment: Commenters suggested that the proposed rule be modified to more accurately reflect the policy set forth at 602 DM 2.

Response: The policy set forth in the manual attempts to limit potential federal liability by prohibiting acquisitions where "an expenditure of Departmental funds is required for cleanup of such real estate, except at the direction of Congress, or for good cause with the approval of the Secretary." The rule is modified to reference the "extent to which the applicant has provided information that allows the Secretary to comply" with the Departmental Manual.

Comment: Commenters also stated that the regulation would be too restrictive, suggesting that exceptions be made when:

(1) the seller agrees to indemnify the acquiring tribe and the United States;

(2) the estimated remedial costs would be minimal, or the acquiring tribe has adopted a corrective action plan;

(3) the waste has been safely isolated, or the land value is "sufficient" to justify the acquisition; or

(4) the acquiring tribe wishes to utilize the land for such purposes as waste disposal, incineration, or recycling.

Response: 602 DM 2 suggests that the survey process must be completed in *all* cases (with indemnification to be *required* in those cases where contaminated lands are to be acquired).

602 DM 2 permits the acquisition of contaminated lands which can be restored without a reprogramming of funds.

Comment: It was suggested that the proposed rule be extended to *all* federal acquisitions, and another recommended that the rule specify the types of clearances needed and the extent to which the BIA would absorb the cost of site surveys.

Response: 602 DM 2 applies to all agencies within the Department of the Interior.

The guidelines provide for a three-tiered survey process, with approval authority retained by the Department. However, funding may be determined on a case by case basis.

Comment: It was recommended that the "rigorous" innocent purchaser provisions in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) be made applicable to tribal land acquisitions.

Response: It should be noted that such a defense only protects purchasers who "did not know and had no reason to know" that they were acquiring contaminated property. (The proposed BIA guidelines provide for a survey process which is intended to ensure the availability of this defense.)

Comment: Commenters suggested that the proposed rules be revised to require compliance with the National Environmental Policy Act of 1969 (NEPA).

Response: The new 25 CFR 151.10(h) also requires compliance with the BIA's "final revised implementing procedures" for NEPA. In 1988, the procedures were published in the **Federal Register** (after a public comment period) and added to the Departmental Manual at 516 DM 6, Appendix 4.

Section 151.11 Off-reservation Acquisitions

Comment: Comments addressed the general premise that more stringent rules are needed to govern the trust acquisition of lands which are "off-reservation" (hereinafter meaning lands "outside of and noncontiguous to" the boundaries of an existing reservation). Other comments suggested that lands which are contiguous to existing reservation boundaries should be treated as other lands outside such boundaries.

Response: It should be noted that the acquisition of contiguous lands may be analogized to annexations by municipalities. It should be noted that treatment may be afforded by the Secretary on a case-by-case basis.

Comment: Commenters voiced concerns relative to "the loss of regulatory control and removal of the property from the tax rolls." Specifically, they questioned whether the proposed rules would protect the states' power to regulate the appropriation and administration of water on acquired lands, and suggested that a mechanism for the collection of "appropriate" state taxes be incorporated in the rules.

Response: The BIA has instructed its field offices that proposed acquisitions of off-reservation contiguous lands for commercial purposes should be carefully scrutinized with consultation considered to avoid jurisdictional conflicts.

The new 25 CFR 151.11(d) establishes a consultation process which may give rise to agreements which could result in resolution of the above types of regulatory issues.

Comment: Other comments addressed the need for flexibility in applying the proposed rules to:

(1) newly recognized tribes, restored tribes, and landless tribes (including those whose land bases consist of scattered sites);

(2) lands within tribal consolidation areas, tribal service areas, and ancestral areas or tribal homelands; and

(3) acquisitions for non-commercial purposes, such as housing, recreation, and mineral development, resource protection or wildlife management.

Response: It should be noted that the revised introductory paragraph exempts acquisitions on behalf of newly recognized or restored tribes, when such acquisitions are "legally mandated" by legislation or court order.

Designated (off-reservation) tribal consolidation areas will be treated as other off-reservation lands, pending the issuance of further rules under the Indian Financing Act of 1974 and the Indian Land Consolidation Act (ILCA); tribal service areas will be treated as other off-reservation lands, unless such areas fall within the exception for "legally mandated" acquisitions. The new 25 CFR 151.11(b) allows landless tribes (i.e., those without any *trust* lands) to acquire land within their aboriginal homelands, subject to the other restrictions in 25 CFR 151.11.

Section 151.11(b) Geographic Limitations

Comment: Those provisions which prohibit off-reservation acquisitions of "out-of-state" lands (i.e., lands in a state other than that in which the acquiring tribe's "reservation or trust lands" are located) were opposed on the grounds that out-of-state lands may be historically significant, vital to tribal economic self-sufficiency, or within a designated tribal consolidation area or tribal service area. Specifically, some of

the commenters suggested that the proposed rule would discriminate against geographically isolated tribes, and should not apply to acquisitions for gaming purposes [due to preemption by the Indian Gaming Regulatory Act (IGRA)].

The exception on out-of-state acquisitions, was largely attacked as being too vague and inflexible. However, one commenter indicated that the exception should be modified to flatly prohibit *any* out-of-state acquisition for gaming purposes. Another commenter objected to the provision which would implicitly require that excepted tribes provide greater justifications for out-of-state acquisitions. Another comment suggested that the rule be expanded to require that such justifications include evaluations of alternative sites.

Response: The provisions which prohibit off-reservation acquisitions of "out-of-state" lands have been deleted. The portion of the proposed rule which referred to administrative costs has been deleted and other minor editorial changes (including the elimination of the term "current or former reservation") have been made in 25 CFR 151.11(b) of this Part.

The rule has not been relaxed for acquisitions of lands within tribal consolidation areas or tribal services areas, unless such acquisitions are legally mandated. The blanket exception for landless tribes has been narrowed to require that any lands to be acquried on behalf of such tribe be located in a state in which the tribe's aboriginal homelands are located. (Guidance in identifying "aboriginal homelands" may be obtained from federal court decisions and Indian Claims Commission proceedings.) It should be noted that the absence of more proximate economic opportunities would provide part of the "greater justification" required by 25 CFR 151.11(b) of this Part.

Comment: Comments about greater justifications as distance increases suggested that such distance should be irrelevant. Commenters questioned whether the use of the phrase "current or former reservation" was meant to distinguish the general definition of "Indian reservation" set forth in 25 CFR 151.2. They also questioned whether administrative costs should be considered, under either the existing 25 CFR 151.10 or the provision in the proposed rule which would suggest that such costs be addressed in tribal justifications.

Response: It should be noted that the BIA has informally required such justifications for acquisitions of distant lands since 1980. Section 20(c) of IGRA expressly restricts the Secretary's authority to acquire land for gaming purposes.

The rule's exception for acquisitions on behalf of tribes which "have lands in one state but are located near the border of another state" has been narrowed (to ensure that the land to be acquired is located near existing *trust* land). The term "near" has been retained (to be defined on a case-by-case basis, in the exercise of the Secretary's discretion).

Section 151.11(b) Acquisitions in Non-Indian Communities

Comment: Commenters objected to the provision which would require that tribes show that trust status is essential to the planned use of off-reservation property which is located "within an urbanized and primarily non-Indian community." Commenters noted that the proposed rule would have the following anomalous results:

(1) Off-reservation acquisitions which would *not* have adverse jurisdictional impacts (i.e., where trust status is not essential to the planned use) would be prohibited, even thought he apparent purpose of the rule was to discourage gaming acquisitions and other acquisitions which *would* have such impacts;

(2) "Low-impact" off-reservation acquisitions within urban communities might be prohibited, even through "high-impact" on-reservation acquisitions within similar communities would be permitted;

(3) Tribal members how have relocated to urban communities would be denied the opportunity to benefit directly from many potential tribal economic development projects; and

(4) The cost of many tribal initiatives and federal housing projects would be driven up due to the relatively higher infrastructure costs associated with on-reservation construction.

Commenters criticized the proposed rule on the ground that the phrase "urbanized and primarily non-Indian community" was vague and over-broad, and one of the commenters expressed concern that the rule could possibly be applied to limit acquisitions in areas which are primarily rural in character.

Another commenter noted that, while trust status might not be essential for a particular use, the economic benefits to be derived from such use (which would also be covered by the proposed rule) could depend on trust status; it was thus suggested that the "essential" requirement be more clearly defined.

Response: 25 CFR 151.11(c) has been revised and the last sentence has been deleted. This change is based on the fact that the new 25 CFR 151.11(b) will already require that tribes whose reservations are not located in urban communities provide a "greater justification" when lands in such communities are to be acquired. [It is also anticipated that "high-impact" acquisitions in urban communities will be limited by the consultation process set forth in 25 CFR 151.11(d) of this Part.] The deletion of the last sentence is also based on the specific criticisms set forth in the comments, i.e., that the proposed rule would be ambiguous, anti-growth, and detrimental to tribes whose reservations are located in urban communities (and other tribes whose justifications would otherwise suffice).

Section 151.11(c) Economic Development Plans

Comment: Commenters suggested that economic development plans should not be needed when land is being acquired for non-commercial purposes.

Response: An introductory clause has been added to exempt non-business acquisitions.

Comment: Commenters also indicated that the proposed rule would undermine tribal sovereignty and self-sufficiency by:

(1) Allowing the BIA to second-guess tribal leaders' business decisions;

(2) Forcing the disclosure of confidential business information; and

(3) Preventing tribes from acquiring investment properties for future development.

Response: It should be noted that the likelihood of success of an off-reservation project has long been considered by the Secretary in deciding whether to accept title to the underlying lands in trust status. [It should also be noted that the feasibility of the proposed use would already be considered pursuant to 25 CFR 151.10(c), which will be incorporated at 25 CFR 151.11(a) of this Part.]

Comment: Another commenter suggested that pre-acquisition planning would necessarily be so speculative as to be of minimal value, and one commenter recommended that the planning requirement be made applicable to only those acquisitions which are opposed by local governing bodies.

Response: 25 CFR 151.11(c) of this Part will merely require that the acquiring tribe has a plan for the *immediate* development or utilization of the property, and that the plan reflects that a prudent buyer would complete the acquisition (given the projected return on investment, incidental benefits, and risks associated with the proposed use). It should be noted that certain confidential business

information would be exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552.

Seciton 151.11(d) Ordinances

Comment: Commenters suggested that the scope of the proposed rule be narrowed to better reflect its apparent purpose (to protect the health, safety, and welfare of the general public); specifically, ti was suggested that the rule be made applicable only to acquisitions for commercial development purposes (or, alternatively, that it be made inapplicable to acquisitions for housing purposes).

Commenters criticized the proposed rule on the grounds that the "comparability" standard is too vague, and the incorporation of *all* local ordinances too broad. Individual commenters specifically asked whether the proposed rule would:

(1) mandate absolute compliance with local ordinances, or merely "a documented effort" to adopt *similar* standards (as suggested in the preamble to the proposed rules);

(2) require that tribes also adopt comparable implementation processes and enforcement capabilities, or modify their adopted ordinances in order to comply with local ordinances; and

(3) allow tribes to adopt higher standards than the relevant local governing bodies, or freely modify adopted ordinances to accommodate changes in land use. Individual commenters suggested that the rule cover only those ordinances which pertain to land use or construction, or those which are identified by local government through consultation.

Response: It is anticipated that the consultation process described in Section 25 CFR 151.11(d) of this Part will result in the negotiation of agreements between tribes and local government; relative to regulatory issues which pertain to public health, safety, and welfare. Where such agreements do not result, and jurisdictional issues remain unresolved, it will be left to the Secretary's discretion to balance the potential benefits to be derived by the acquiring tribe against the potential harm to the general public. (It should also be noted that lands which are acquired with federal funds may be subject to certain federal standards.) The deletion of the proposed 25 CFR 151.11(d) is also based on the criticisms set forth in the comments, i.e., that the proposed rule would be shortsighted, overly cumbersome, and largely unenforceable.

Comment: Commenters expressed concern that the delimiting language in the proposed rule would allow local government to tax off-reservation trust lands and the activities conducted thereon.

Response: It should be noted that the only taxation issues to be *directly* considered in the consultation process are those which relate to a proposed acquisition's potential impacts on real property taxes or special assessments. (Other tax impacts may also be considered, if they will curtail the local government's ability to provide *specific* community services.)

Comment: Commenters indicated that the proposed rule would contradict other federal policies supporting tribal sovereignty and self-determination. It was noted that local ordinances may reflect political considerations wholly unrelated to concerns about public health and safety. It was suggested that the rule flatly provide that the lands to be acquired would be subject to state regulatory jurisdiction. Commenters questioned whether the local ordinances would have to be formally adopted prior to the completion of the acquisition process.

Response: It should be noted that current law suggests that (in the absence of cooperative agreements) tribal, federal, and state/local jurisdiction over off-reservation trust lands will be mixed, depending on the activities and parties to be regulated. The proposed 25 CFR 151.11(d) has been deleted.

Section 151.11(e) Notice and Consultation

The proposed 25 CFR 151.11(e) will be re-designated as 25 CFR 151.11(d).

Comment: The provision which requires that "affected state and local governments" be notified of all proposed off-reservation acquisitions, and given thirty days in which to provide written comments, was criticized as being both too vague in its reference to "affected" governments and too restrictive in its definition of the comment period. Commenters suggested that the proposed rule be clarified to ensure that neighboring jurisdictions would be given an opportunity to comment, and another suggested that the rule specify which state and local offices would be contacted.

Response: Based on the BIA's past experience with its informal consultation procedures, the 30-day response time set forth in the proposed 25 CFR 151.11(e) (re-designated 151.11(d)) has been retained in the new rule.

Relative to these revisions, it should be noted that (1) the narrower definition of the "notified party" will generally mean city or county officials, but will also recognize the wide variation in the designations and functions of "local governments," as well as the fact that many such governments operate as administrative agents for the states (especially in rural settings); (2) the burden of obtaining additional information from state officials, neighboring jurisdictions, or other units of local governments (including special function districts, public authorities, or higher political subdivisions) will rest with the local officials who are directly notified by the BIA; and (3) the BIA notices will identify the land to be acquired and the acquiring tribe (as has been done under the informal notice and comment procedures), as well as the tribe's proposed use (which has generally not been identified in the past).

Comment: Provisions which would require tribes to consult with opposing local governments were objected to on the ground that it would undermine tribal sovereignty by granting state and local governments an effective veto power over tribal acquisitions. Commenters acknowledged that some consultation process would be essential to the tribes' implementation of a government-to-government relationship, others said that such a process would be marred by racial bias and discrimination.

Response: It should be noted that tribal governmental authority over land will generally not attach until the Secretary accepts title to this land in trust status. It should also be noted that the new 25 CFR 151.11(d) will not create a veto power, and that objections which are not made in good faith (or which are clearly biased) will be discounted in the decision-making process.

As for the assertion that the case precedent for the BIA's informal consultation procedures has been overruled, it should be noted that the preamble to the original 25 CFR 120a (now 25 CFR 151) cited the need for a uniform policy as the basis for its issuance; it should also be noted that (while the case cited by the commenter held that local governments are not entitled to formal notification as a matter of due process) the preamble to the proposed rules indicated that the notice requirement set forth in the proposed 25 CFR 151.11(e) (re-designated 151.11(d)) would be based primarily on principles of federalism.

Comment: Other commenters recommended that the comment period be extended, and requested that additional supplemental information be furnished with the notifications. Others suggested, however, that certain proposals would be unduly

compromised by the release of additional information, and another indicated that the case precedent for the BIA's existing (non-regulatory) notice requirement had been overruled.

Response: 25 CFR 151.11(d) has been revised to (1) *generally* identify the local government to be notified as the "lowest political subdivision having jurisdiction over the land to be acquired"; and (2) codify certain informal procedures (relative to the solicitation of specific information and the presumption of no impact when a response is not received within thirty days) which have been implemented by BIA since 1980.

Comment: Commenters addressed those provisions within the proposed rule which would describe the consultation process. (Where a state or local government formally opposes a proposed acquisition, or "raises concerns" relative thereto, the rule would require that the acquiring tribe "consult with them and attempt to resolve any conflicts including, but not limited to, issues concerning taxation, zoning and jurisdiction"; the proposed rule would also permit the tribe to submit documentation of its discussions with state or local governments, whether the formal consultation process is triggered or not.) It was suggested that the consultation process should be triggered only by good faith objections, rather than mere "concerns," and that the proposed rule be clarified to reflect that a tribe's burden would be met by a mere good faith *attempt* at resolution. Where differences remain unresolved after consultation, it was suggested that state and local governments should be allowed to submit their own documentation of consultation efforts. Another suggested that a formal dispute resolution process be incorporated in the proposed rule, and a (non-BIA) federal official recommended that the BIA assume a mediation role.

It was also recommended that the consultation process be terminated at the end of a specific time period. Other commenters said that the process should be made: (1) applicable to court-ordered acquisitions not otherwise subject to 25 CFR 151.10 or 151.11 of this Part; (2) inapplicable to acquisitions of off-reservation lands which have been designated in land consolidation plans approved pursuant to ILCA; and (3) consistent with provisions in the Federal Land Policy and Management Act (FLPMA) which require state approval.

Response: With respect to the comments which suggested that the rule provide for arbitration or mediation where differences remain unresolved after consultation, it should again be noted that such cases will be left to the Secretary's discretion (to balance the potential benefits to be derived by the acquiring tribe against the potential harm to the general public). With respect to the comments which suggested that the consultation process be made applicable to court-ordered acquisitions, it should again be noted that the introductory paragraph to 25 CFR 151.11 of this Part will *expressly* exempt such "legally mandated" acquisitions. With respect to the comment which suggested that the new rule be made inapplicable to acquisitions of off-reservation lands which have been designated in approved land consolidation plans, it should again be noted such lands will be treated as other off-reservation lands (and thus subject to 25 CFR 151.11) pending the promulgation of further rulemaking. With respect to the comment which suggested that the consultation process be made consistent with the Federal Land Policy and Management Act (FLPMA), it should be noted that Congress has clearly distinguished conveyances of public lands (which are subject to consultation, under FLPMA) for acquisitions on behalf of sovereign tribes (which are not subject to any statutory consultation requirements).

Section 151.11(e) Delegations of Authority and Appealability

Comment: Commenters objected to those provisions within the proposed 25 CFR 151.11(e) (re-designated 151.11(d)) which indicate that the Assistant Secretary-Indian Affairs would issue the above-described notifications of proposed off-reservation acquisitions. It was suggested that the authority to issue such notices and ultimately approve the acquisitions should be delegated to the BIA's agency or area office level, in order to comply with ongoing efforts to reorganize the BIA and decentralize its critical functions. One commenter questioned whether the proposed rule was meant to separate the local BIA staff from the entire acquisition process (where off-reservation lands are to be acquired), and whether the "final decision" to be made by the Assistant Secretary would be appealable. It was suggested that the proposed rule specifically provide that the Assistant Secretary's decision would be appealable to the Interior Board of Indian Appeals.

Response: All references to the "Assistant Secretary—Indian Affairs" in the proposed 25 CFR 151.11(e) (re-designated 151.11(d)) will be changed to "Secretary", as indicated above, and the final sentence in the proposed 25 CFR 151.11(e) (re-designated 151.11(d)) will be deleted.

This change will ensure that all actions will be taken by an authorized official, since 25 CFR 151.2(a) of this Part will define "Secretary" to mean "the Secretary of the Interior or authorized representative." It is anticipated that local BIA officials will continue to notify local governments of proposed off-reservation acquisitions, but that the authority to approve certain acquisitions may continue to be held by the Assistant Secretary—Indian Affairs or the BIA Area Directors. It is also anticipated that the recommendations of the intertribal group which recently reported on the possible reorganization of the BIA will be considered in determining which offices should have the ultimate approval authority.

In response to the comments which questioned whether decisions on off-reservation acquisition requests would be appealable, the final sentence in the proposed 25 CFR 151.11(e) (re-designated 151.11(d)) has been deleted. This change is needed to ensure that such decisions will be appealable if they are made below the Assistant Secretary—Indian Affairs' level. If the authority to make such decisions is held by the Assistant Secretary—Indian Affairs, the decision would be "final" for the Department of the Interior and therefore not appealable.

Section 151.12 Off-reservation Acquisitions for Gaming

In response to the comments received, it has been determined by the Bureau of Indian Affairs that the proposed section 151.12 of this part will not be adopted and a new part will be added to the 25 CFR pertaining to off-reservation acquisitions for gaming.

List of Subjects in 25 CFR Part 151

Indians—lands, Reporting and recordkeeping requirements.

For reasons set out in the preamble, Part 151 of Title 25, Chapter I of the Code of Federal Regulations is amended as set forth below.

PART 151—LAND ACQUISITIONS (NONGAMING)

1. The authority citation for Part 151 is revised to include 25 U.S.C. 2 and 9 as follows:

Authority: R.S. 161: 5 U.S.C. 301. Interpret or apply 46 Stat. 1106, as amended; 46 Stat. 1471, as amended; 48 Stat. 985, as amended; 49 Stat. 1967, as amended, 53 Stat. 1129; 63 Stat. 605; 69 Stat. 392, as amended; 70 Stat. 290, as amended; 70 Stat. 626; 75 Stat. 505; 77 Stat. 349; 78 Stat. 389; 78 Stat. 747; 82 Stat. 174, as amended, 82 Stat. 884; 84 Stat. 120; 84 Stat. 1874; 86 Stat. 216; 86 Stat. 530; 86 Stat. 744; 88 Stat. 78; 88 Stat. 81; 88 Stat. 1716; 88 Stat. 2203; 88 Stat. 2207; 25 U.S.C. 2, 9, 409a, 450h, 451, 464, 465, 487, 488, 489, 501, 502, 573, 574, 576, 608, 608a, 610, 610a, 622, 624, 640d–10, 1466, 1495, and other authorizing acts.

2. In § 151.2, paragraph (a) is revised to read as follows:

§ 151.2 Definitions.

(a) "Secretary" means the Secretary of the Interior or authorized representative.

* * * * *

Section 151.10 is amended by revising the section heading and introductory text and by adding a new paragraph (h) to read as follows:

§ 151.10 On-reservation acquisitions.

Upon receipt of a written request to have lands taken in trust, the Secretary will notify the state and local governments having regulatory jurisdiction over the land to be acquired, unless the acquisition is mandated by legislation. The notice will inform the state or local government that each will be given 30 days in which to provide written comments as to the acquisition's potential impacts on regulatory jurisdiction, real property taxes and special assessments. If the state or local government responds within a 30-day period, a copy of the comments will be provided to the applicant, who will be given a reasonable time in which to reply and/or request that the Secretary issue a decision. The Secretary will consider the following criteria in evaluating requests for the acquisition of land in trust status when the land is located within or contiguous to an Indian reservation, and the acquisition is not mandated:

* * * * *

(h) The extent to which the applicant has provided information that allows the Secretary to comply with 516 DM 6, Appendix 4, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations. (For copies, write to the Department of the Interior, Bureau of Indian Affairs, Branch of Environmental Services, 1849 C Street NW, Room 4525 MIB, Washington, DC 20240.)

§§ 151.11 through 151.14 [Redesignated as 151.12 through 151.15]

4. Sections 151.11 through 151.14 are redesignated as 151.12 through 151.15, respectively.

5. A new § 151.11 is added to read as follows:

§ 151.11 Off-reservation acquisitions.

The Secretary shall consider the following requirements in evaluating tribal requests for the acquisition of lands in trust status, when the land is located outside of and noncontiguous to the tribe's reservation, and the acquisition is not mandated:

(a) The criteria listed in Section 151.10 (a) through (c) and (e) through (h);

(b) The location of the land relative to state boundaries, and its distance from the boundaries of the tribe's reservation, shall be considered as the distance between the tribe's reservation and the land to be acquired increases, the Secretary shall give greater scrutiny to the tribe's justification of anticipated benefits from the acquisition. The Secretary shall give greater weight to the concerns raised pursuant to paragraph (d) of this section.

(c) Where land is being acquired for business purposes, the tribe shall provide a plan which specifies the anticipated economic benefits associated with the proposed use.

(d) Contact with state and local governments pursuant to 151.10 (e) and (f) shall be completed upon receipt of a tribe's written request to have lands taken in trust, the Secretary shall notify the state and local governments having regulatory jurisdiction over the land to be acquired. The notice shall inform the state and local government that each will be given 30 days in which to provide written comment as to the acquisition's potential impacts on regulatory jurisdiction, real property taxes and special assessments.

6. Newly designated § 151.15 is revised to read as follows:

§ 151.15 Information collection.

(a) The information collection requirements contained in Sections 151.9; 151.10; 151.11(2)(c), and 151.13 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0100. This information is being collected to acquire land into trust on behalf of the Indian tribes and individuals, and will be used to assist the Secretary in making a determination. Response to this request is required to obtain a benefit.

(b) Public reporting for this information collection is estimated to average 4 hours per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information collection. Direct comments regarding the burden estimate or any other aspect of this information collection to the Bureau of Indian Affairs, Information Collection Clearance Officer, Room 337–SIB, 18th and C Streets, NW., Washington, DC 20240; and the Office of Information and Regulatory Affairs [Project 1076–0100], Office of Management and Budget, Washington, DC 20502.

March 20, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–15215 Filed 6–22–95; 8:45 am]

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Federal Register

Friday
June 23, 1995

Part V

Department of the Treasury
Office of the Comptroller of the Currency
12 CFR Part 19

Federal Reserve System
12 CFR Part 263

Federal Deposit Insurance Corporation
12 CFR Part 308

Department of the Treasury
Office of Thrift Supervision
12 CFR Part 509

National Credit Union Administration
12 CFR Part 747

Uniform Rules of Practice and Procedure; Proposed Rules

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 19

[Docket No. 95–11]

RIN 1557–AB43

FEDERAL RESERVE SYSTEM

12 CFR Part 263

[Docket No. R–0878]

RIN 7100–AB23

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 308

RIN 3064–AB49

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 509

[Docket No. 95–116]

RIN 1550–AA79

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 747

Uniform Rules of Practice and Procedure

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; Office of Thrift Supervision, Treasury; and National Credit Union Administration.

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board of Governors), Federal Deposit Insurance Corporation (FDIC), Office of Thrift Supervision (OTS), and National Credit Union Administration (NCUA) are proposing changes to the Uniform Rules of Practice and Procedure for Administrative Hearings (Uniform Rules) and to their agency specific rules of administrative practice and procedure (Local Rules).

The proposal is intended to clarify certain provisions and to increase the efficiency and fairness of administrative hearings.

DATES: Comments must be received by August 22, 1995.

ADDRESSES: Comments should be directed to: *OCC:* Communications Division, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219, Attention: Docket No. 95–11. Comments may be inspected and photocopied at the same location.

Board of Governors: Mr. William Wiles, Secretary of the Board, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue NW., Washington, DC 20551, Attention: Docket No. R–0878 or delivered to Room B–2222, Eccles Building, between 8:45 a.m. and 5:15 p.m. Comments may be inspected in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board of Governor's rules regarding availability of information.

FDIC: Robert Feldman, Acting Executive Secretary, Attention: Room F–402, Federal Deposit Insurance Corporation, 550 17th, Street NW., Washington, DC 20429. Comments may be delivered to Room F–400, 1776 F Street NW., Washington, DC 20429, on business days between 8:30 a.m. and 5 p.m.; sent by facsimile transmission to FAX number 202–898–3838; or sent by Internet E-mail to Comments@Fdic.gov. Comments will be available for inspection and photocopying in Room 7118, 550 17th Street NW., Washington, DC between 8:30 a.m. and 5 p.m. on business days.

OTS: Chief, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, Attention Docket No. 95–116. These submissions may be hand delivered to 1700 G Street NW., from 9 a.m. to 5 p.m. on business days; they may be sent by facsimile transmission to FAX number 202–906–7755. Comments will be available for inspection at 1700 G Street NW., from 1 p.m. until 4 p.m. on business days.

NCUA: Becky Baker, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, VA, 22314–3428. Comments will be available for inspection at the same location.

FOR FURTHER INFORMATION CONTACT:

OCC: Daniel Stipano, Director, Enforcement and Compliance Division 202–874–4800, or Daniel Cooke, Attorney, Legislative and Regulatory Activities Division 202–874–5090.

Board of Governors: Douglas Jordan, Senior Attorney, Legal Division 202–452–3787, Ann Marie Kohlligian, Senior Counsel, Division of Banking Supervision and Regulation 202–452–3528, or Katherine Wheatley, Assistant General Counsel 202–452–3779. For the hearing impaired *only,* Telecommunication Device for the Deaf (TDD), Dorothea Thompson 202–452–3544.

FDIC: Nancy Alper, Counsel, Legal Division 202–898–3720 or Andrea Winkler, Counsel, Legal Division 202–898–3764.

OTS: Eliot Goldstein, Counsel, Division of Enforcement 202–906–7162; or Karen Osterloh, Counsel, Banking and Finance, Regulations and Legislation Division, Chief Counsel's Office 202–906–6639.

NCUA: Steven Widerman, Attorney, Office of General Counsel 703–518–6557.

SUPPLEMENTARY INFORMATION:

A. Background

Section 916 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), Pub. L. 101–73, 103 Stat. 183 (1989), required the OCC, Board of Governors, FDIC, OTS, and NCUA (agencies) to develop uniform rules and procedures for administrative hearings. The agencies each adopted final Uniform Rules in August, 1991.[1] Based on their experience since then, the agencies have identified sections of the Uniform Rules that should be modified. Amendments to those provisions are proposed today.

Each agency also has local rules of administrative adjudication (Local Rules) that are distinct from the Uniform Rules and unique to the individual agency. The OCC and OTS propose to amend certain sections of their Local Rules that they believe should be improved and clarified. The FDIC, Board of Governors, and NCUA are not proposing to amend their Local Rules at this time.

B. Uniform Rules

While most elements of the proposal are technical modifications or clarifications, two of the proposed changes are more substantive: (1) Proposed § ____.24, which clarifies the scope of document discovery; and (2) proposed § ____.35, which prohibits multiple counsel from examining a single witness.

The agencies invite comments on all aspects of this joint proposed rule.

[1] The agencies issued a joint notice of proposed rulemaking on Monday, June 17, 1991 (56 FR 27790). The agencies promulgated their final rules on the following dates: OCC on August 9, 1991 (56 FR 38024); Board of Governors on August 9, 1991 (56 FR 38052); FDIC on August 9, 1991 (56 FR 37975); OTS on August 12, 1991 (56 FR 38317); and NCUA on August 8, 1991 (56 FR 37767).

C. Local Rules

The OCC's and OTS's proposed changes to their Local Rules are discussed in separate section-by-section analyses. Comments on Local Rules should be sent only to the appropriate agency.

D. Section-by-Section Summary and Discussion of Amendments to the Uniform Rules

Section ____.1 Scope.

The proposal adds two statutory provisions to the list of civil money penalty provisions to which the Uniform Rules apply. These two provisions were enacted by the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), Pub. L. 103–325, 108 Stat. 2160.

The first provision, CDRI section 406, amends the Bank Secrecy Act (BSA) (31 U.S.C. 5321) to require the Secretary of the Treasury to delegate authority to the Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) to impose civil money penalties for BSA violations.

The second, CDRI section 525, amends section 102 the Flood Disaster Protection Act of 1973 (FDPA) (42 U.S.C. 4012a) to give each "Federal entity for lending regulation" authority to assess civil money penalties under the FDPA. Under the FDPA, the term "Federal entity for lending regulation" includes the agencies and the Farm Credit Administration.

Section ____.6 Appearance and practice in adjudicatory proceedings.

The proposal seeks to ensure that counsel is always available to accept service of process for a party even if that counsel withdraws from representation. The proposed change clarifies that counsel who withdraws after filing a notice of appearance on behalf of a party may be required by the administrative law judge (ALJ) to accept service of process for that party until a new counsel has filed a notice of appearance or until the party indicates that he or she will proceed on a *pro se* basis.

Section ____.8 Conflicts of interest.

Under the current Uniform Rules, counsel representing two or more parties to a proceeding or a party and an institution to which notice of the proceeding must be given must certify that: (1) Counsel has discussed the possibility of conflicts of interest with each party or institution; and (2) the parties and institution have advised counsel that there are no material or anticipated conflicts of interest and have waived the right to assert conflicts of interest. The proposal makes two changes to this provision.

First, the proposal expands the situations in which counsel must obtain a waiver and provide certification. The current Uniform Rules recognize the potential for conflicts for non-party institutions "to which notice of the proceedings must be given." Notice must be given to a non-party institution only in very limited circumstances.[2]

Thus, many situations involving institutions as to which a genuine potential for conflict exist are excluded from the certification and waiver process. The proposal addresses these situations by requiring counsel to obtain a waiver from, and provide certification for, any non-party that counsel represents on a matter relevant to an issue in the proceeding.

The agencies do not intend the proposal to supersede any state rules of professional responsibility that impose more stringent ethical standards.

Second, the proposal removes current § ____.8(b)(2), which requires that counsel certify that each party or institution has advised counsel that there are no material conflicts. The current Uniform Rules require counsel to certify both that each client has asserted that there are no conflicts and that each client has waived any conflict. The agencies believe that the provision that requires counsel to certify that each client has asserted that there are no material conflicts is superfluous because the responsibility for identifying potential conflicts resides with counsel not with counsel's client.

Section ____.11 Service of papers.

The current Uniform Rules permit parties, agency heads, and ALJs to serve a subpoena by delivering the subpoena to a person of suitable age and discretion at the subpoenaed person's residence and by any other manner reasonably calculated to give actual notice. The current Uniform Rules do not explicitly permit service to be made by delivery to the person's place of work.

The proposal expressly permits service by delivery to a person's place of work. The proposal adds the words "or place of work" after the word "residence" each time it appears, thereby clarifying that delivery to a person of suitable age and discretion at the subpoenaed person's place of work is reasonably calculated to give actual notice of service. The agencies believe that permitting service at a person's place of work is a more practical and efficient means of serving the individual.

[2] *See, e.g.,* 12 U.S.C. 1818(e) (requiring the appropriate Federal banking agency to serve a copy of a suspension order when an institution-affiliated party is suspended for engaging in unsafe and unsound practices, for a breach of fiduciary duty, or by reason of violation of a law or regulation, cease-and-desist order, imposed condition, or written agreement).

Section ____.12 Construction of time limits.

Under the current Uniform Rules, intermediate Saturdays, Sundays, and Federal holidays are not counted in the computation of time when the time period within which a party must perform an act is ten days or less. The current Uniform Rules also allow additional time when a party serves papers by mail, delivery service, or electronic media transmission. There has, however, been some confusion regarding whether this additional time counts for purposes of determining whether the time period within which a party must perform an act comes within the ten-day threshold.

The proposal clarifies that the additional time allotted for responding to papers served by mail, delivery service, or electronic media transmission under § ____.12(c) is not counted in determining whether an act is required to be performed within ten days.

In some instances, parties have also been unsure whether they must count Saturdays, Sundays, and holidays in the calculation of the additional time allotted for responding to papers served by mail, delivery service, or electronic media transmission under § ____.12(c). The proposal clarifies that the additional time in § ____.12(c) is in calendar days and, therefore, a party must count Saturdays, Sundays, and holidays.

Section ____.20 Amended pleadings.

Under the current Uniform Rules, a party is required to obtain leave of the ALJ to amend a notice or answer. In addition, if a party objects to the admission of certain evidence on the ground that the evidence is not within the issues raised in the notice or answer, the party seeking admission of the evidence must obtain leave of the ALJ to amend the notice or answer. The agencies believe that a motion to amend a notice or answer unnecessarily delays the administrative proceeding because, while these motions are generally granted, the opposing party takes time to respond to the motion and the ALJ takes time to rule on the motion.

The proposal permits a party to amend its pleadings without leave of the ALJ. It also permits the ALJ to admit

evidence over the objection of counsel that the evidence does not fall directly within the scope of the issues raised by a notice or answer. If the ALJ determines that the evidence is likely to assist in adjudicating the merits of the action and does not unfairly prejudice the opposing party's action or defense, the ALJ may admit the evidence.

The proposal is intended to expedite administrative hearings by precluding the need to amend notices and answers and to eliminate unnecessary delay. The agencies do not believe the proposal represents a significant change in practice because the ALJs, under the current Uniform Rules, grant leave to amend a notice or answer freely.

Section ____.24 Scope of document discovery.

The proposal clarifies the prohibition on the use of interrogatories in discovery and focuses the scope of document discovery.

The current Uniform Rules are silent on the use of interrogatories. The proposal expressly prohibits parties from using interrogatories. The agencies believe that discovery tools other than interrogatories are more efficient and less burdensome.

In the past, certain agencies have been burdened by overly broad document discovery requests. The proposal is intended to focus document discovery requests so that they are not unreasonable, oppressive, excessive in scope, or unduly burdensome to any of the parties.

The proposal continues to limit document discovery to documents that have material relevance. However, the proposal clarifies that a request should be considered unreasonable, oppressive, excessive in scope, or unduly burdensome if, among other things, it fails to include justifiable limitations on the time period covered and the geographic locations to be searched, the time provided to respond in the request is inadequate, or the request calls for copies of documents to be delivered to the requesting party and fails to include the requestor's written agreement to pay in advance for the copying, in accordance with § ____.25. Under the proposal, the scope of permissible document discovery is not as broad as that allowed under Federal Rule of Civil Procedure 26(b) (28 U.S.C. app.). Historically, given the specialized nature of enforcement proceedings in regulated industries, discovery in administrative proceedings has not been as expansive as it is in civil litigation.

The Uniform Rules do not address how parties should obtain materials that are publicly available from the agencies. Materials that are either publicly distributed by the agencies on request, available for public inspection and copying at the agencies, or available by request under the Freedom of Information Act (5 U.S.C. 552) (FOIA) should be obtained pursuant to those procedures before resorting to discovery mechanisms under the Uniform Rules.

Section ____.25 Request for document discovery from parties.

The proposal revises the document discovery provisions to reduce unnecessary burden and to expedite the discovery process.

The current Uniform Rules require a party to respond to document requests: (1) By producing documents as they are kept in the course of business; and (2) by organizing them to correspond with the categories in the document request. The agencies believe that these two requirements may sometimes conflict. Proposed paragraph (a) resolves this potential for conflict by permitting a party either to produce documents as they are kept or to organize them to correspond to the categories in the request.

Proposed paragraph (b) permits parties to require payment in advance for the costs of copying and shipping requested documents. The current Uniform Rules do not contain a like authorization. The agencies, on occasion, have faced difficulties in obtaining payments after having produced copies of requested documents.

Proposed paragraph (e) reduces the logistical burdens placed on the parties by voluminous document requests. Under the current rule, § ____.25(e) could be read to require a party to produce a privilege list that identifies each individual document withheld on a claim of privilege. Under the proposal, when similar documents that are protected by the deliberative process, attorney-client, or attorney-work-product privilege are voluminous, a party may identify them by category. However, the agencies intend the ALJ to retain discretion to determine when it is not appropriate for a party to identify documents by category or when a party's category description lacks adequate detail.

Proposed paragraph (g) clarifies that documents subject to an assertion of privilege may not be released or disclosed to the requesting party until the issue of privilege has been finally resolved. The current Uniform Rules are silent on this matter, with the result that, in past proceedings, some documents have been released prior to the ultimate determination of whether the documents are privileged. Specifically, the proposal amends the current Uniform Rules by providing that, even when an ALJ rules that the documents in question are not privileged, the documents cannot be released to the requesting party if the party asserting the privilege has stated an intention to file a motion for interlocutory review of that ruling. In such a case, the documents in question cannot be released until the motion for interlocutory review is decided.

The proposal also makes a technical change that is intended to conform proposed § ____.25(g) with proposed § ____.24(b). Proposed § ____.25(g) uses the same language as proposed § ____.24(b) to describe the standard for denial or modification of discovery requests, e.g., "[a request that] calls for irrelevant material, is unreasonable, oppressive, excessive in scope, unduly burdensome, repetitive of previous requests, or seeks to obtain privileged documents." The agencies intend this change to make clear that there is no difference in the standards prescribed by § ____.24 and § ____.25.

The proposal makes an additional technical change to § ____.25 that is intended to identify more precisely motions to stop document discovery. The current Uniform Rules use the phrase "motion to revoke" discovery. The proposal changes the word "revoke" to "strike" because the agencies believe it more accurately describes a motion to stop document discovery.

Section ____.27 Deposition of witness unavailable for hearing.

Under the current Uniform Rules, some confusion has arisen as to whether service of a deposition subpoena on a witness who is unavailable for a hearing is satisfied by service on an authorized representative of the witness. The current Uniform Rules do not specifically address this issue. Under the proposal, a party may serve a deposition subpoena on a witness who is unavailable by serving the subpoena on the witness's authorized representative.

Section ____.33 Public hearings.

Under the current Uniform Rules, it is unclear whether a party must file a motion for a private hearing with the agency head or the ALJ. The Uniform Rules provide that a party requesting a private hearing may file with the agency head, but also states that public hearing requests are governed by § ____.23, which requires parties to file motions with the ALJ.

The proposal revises this section to specify that a party must file a motion for a private hearing with the agency head and not the ALJ, since the agency has sole discretion to rule on a motion for a private hearing. The proposal also clarifies that a party must serve the ALJ with a copy of a motion for a private hearing.

Section ____.34 Hearing subpoenas.

The proposal revises the treatment of hearing subpoenas to: (1) Ensure that each party receives a copy of each subpoena issued and each motion to quash a subpoena; and (2) give each party the ability to move to quash any hearing subpoena.

The current Uniform Rules do not specifically require that a party inform all other parties when a subpoena to a non-party is issued. The proposal requires that, after a hearing subpoena is issued by the ALJ, the party that applied for the subpoena must serve a copy of it on each party. Any party may move to quash any hearing subpoena and must serve the motion on each other party. The changes to this section are intended to keep all parties informed of the issuance of a hearing subpoena and to permit any party to move to quash any hearing subpoena once it has been issued.

Section ____.35 Conduct of hearings.

The proposal limits the number of counsel permitted to examine a witness, clarifies that hearing transcripts may be obtained only from the court reporter, and clarifies that the same method of service must be used to notify each party that a transcript has been filed. The current Uniform Rules are silent on these issues.

The agencies have found that witnesses are sometimes subject to cross-examination by multiple counsel representing a single party. When more than one attorney conducts a cross-examination, the cross-examination often becomes repetitive and unreasonably stressful and intimidating for the witness.

The proposal conforms with the local rules of many courts by permitting only one counsel for each party to examine a witness, except in the case of extensive direct examination. In the case of extensive direct examination, the ALJ may permit more than one counsel for the party presenting the witness to conduct the examination. In addition, a party may have a different counsel conduct the direct and re-direct examination of a witness or the cross and re-cross examination of a witness.

The proposal also clarifies that parties may obtain copies of a hearing transcript only from the reporter. This change ensures that each party bears the cost of its own copy of the transcript.

Finally, as discussed below, the proposal removes certain requirements in § ____.35(b) and inserts them at proposed § ____.37(a).

Section ____.37 Post hearing filings.

The proposal changes the title of this section from "Proposed findings and conclusions" to "Post hearing filings" in order to describe more accurately the content of the section.

Under the current Uniform Rules, § ____.35(b) requires the ALJ to serve each party with notice that the certified transcript of the hearing, together with all hearing exhibits and exhibits introduced but not admitted into evidence at the hearing, has been filed. The proposal moves this provision to proposed § ____.37(a). The agencies believe that the provision more directly relates to § ____.37(a) because § ____.37 uses the ALJ's notice as the start date for a time limit. Under § ____.37, the party is permitted 30 days, after the party is served with the ALJ's notice, to file proposed findings of fact, proposed conclusions of law, and a proposed order.

In addition, under the current Uniform Rules, there is no express requirement that notice of the ALJ's filing of the certified transcript be served on each party by the same method. The proposal requires that the same method of service be used for each party to serve notice that a transcript, together with all hearing exhibits and exhibits introduced but not admitted into evidence at the hearing, has been filed. This change eliminates the inequities that can arise when different methods of service are used.

The current Uniform Rules suggest, but do not explicitly state, that the ALJ may order a longer period of time for parties to file proposed findings of fact and conclusions of law. It provides that parties must file within 30 days "unless otherwise ordered by the administrative law judge."

The proposal clearly states that the ALJ may, when appropriate, permit parties more than the allotted 30 days to file proposed findings of fact, proposed conclusions of law, and a proposed order.

Section ____.38 Recommended decision and filing of record.

Under the current Uniform Rules, when the ALJ files the record with the agency head, an index of the record is not always provided to the agency head. As a result, if a document is missing from the record, the agency head has no means of knowing that the document exists. The proposal requires that an index be filed with the record. The proposal also reorganizes this section to improve its clarity.

E. Section-by-Section Summary and Discussion of Proposed Amendments to the Local Rules of Each Agency

1. Proposed Amendments to the OCC Local Rules

Section 19.100 Filing Documents.

The proposal changes the heading of this section from "Scope" to "Filing documents", which more accurately describes the content of the section.

The proposal clarifies that ALJs will file the administrative record of a removal or prohibition case with the Board of Governors. The current OCC Local Rules state that all materials should be filed with the Hearing Clerk of the OCC and provide for no exception for removal and prohibition cases. Unlike all other OCC administrative actions, which are decided by the Comptroller, removal and prohibition cases are decided by the Board of Governors. ALJs, therefore, file hearing records with the Board of Governors in removal and prohibition cases.

Section 19.112 Informal Hearing.

The proposal changes § 19.112(b) to conform the informal hearing initiation provisions so that the same OCC official who sets the date, time, and place for an informal hearing also appoints the presiding officer. Under the current OCC Local Rules, the appropriate District Administrator or the Deputy Comptroller for Multinational Banking fixes the date, time, and place for a hearing, but the Comptroller appoints the presiding officer.

The OCC believes that it is more efficient for the same OCC official who sets the date, time, and place for a hearing to appoint the presiding officer. Under the proposal, the District Deputy Comptroller or Administrator, the Deputy Comptroller for Multinational, or the Deputy Comptroller or Director for Special Supervision, whoever is appropriate, fixes the date, time, and place for the hearing and chooses the presiding officer.

Proposed paragraph (c) makes clear that, if a petitioner waives the opportunity to present an oral argument at a hearing, the OCC may file written response submissions with the presiding officer no later than the date on which the hearing was to be held. The proposal also requires a petitioner who chooses to waive the opportunity to present oral argument to submit that waiver at the same time the petitioner

requests a hearing. The current OCC Local Rules are silent on these issues.

The OCC believes that the agency would be unfairly prejudiced if it is not given advance notice of whether the party will proceed with an oral argument or solely on written submissions.

Proposed paragraph (d) clarifies that, when a petitioner does not waive an oral hearing, both the petitioner and the OCC must make all filings of affidavits, memoranda, or other written material with the presiding officer at least ten days prior to the hearing or within a shorter time period if permitted by the presiding officer. Current § 19.112(d) could be interpreted to require only the petitioner to make all filings at least ten days prior to the hearing. The proposal makes clear that the requirement applies to both the petitioner and the OCC.

Unlike proposed paragraph (c), which permits the OCC an additional ten days to respond to the petitioner's written submissions, proposed paragraph (d) requires the OCC to file written submissions at the same time as the petitioner must file submissions. Under these proposed OCC Local Rules, the petitioner has the unilateral ability to waive an oral hearing. Therefore, the OCC believes that the OCC should have an additional ten days to file its submissions when a petitioner chooses to waive a hearing. The OCC will need to prepare its submissions as a response to the petitioner's submissions because the OCC will not have an opportunity to give oral argument. This system, parallels the submission of briefs in appellate argument.

Section 19.113 Recommended and Final Decisions.

Under the OCC Local Rules, the Comptroller must issue a final decision in a removal, suspension, or prohibition case, within 60 days of the hearing or within 60 days of receiving the petitioner's written submission. Section 8(g)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1818(g)(3)) requires the Comptroller, within 60 days of the hearing, to notify a petitioner of the Comptroller's final decision. Section 8(g)(3) does not state that the Comptroller may use the date of receipt of the petitioner's written submission as the start date of the 60-day time limitation.

The proposal clarifies that the OCC Local Rules conform to section 8(g)(3) by requiring the Comptroller to issue a final decision on a removal, suspension, or prohibition case within 60 days of the hearing and regardless of when the Comptroller received the petitioner's written submission.

To ensure that the Comptroller is able to meet this 60-day deadline, the proposal imposes a clear time deadline on the presiding officer to issue a recommended decision. The current OCC Local Rules do not contain a deadline for the presiding officer. The proposal requires the presiding officer to issue a recommended decision within 20 days from the hearing.

Section 19.160 Scope.

The proposal conforms this provision to a change the OCC proposed to make to 12 CFR 5.50(f)(5). *See* 59 FR 61034 (November 29, 1994). Both proposals clarify the time permitted the OCC to communicate its disapproval of a change-in-control notice to the proposed acquiring party (filer). Current § 19.160 suggests that the OCC must give written notice to a filer of the OCC's disapproval within three days of the decision. Because first class mail can take three days, the OCC would have little time to issue a notice before the regulatory deadline expired if the rule were interpreted to mean that written notice must be received within three days of a decision.

The proposal requires the OCC to mail the written notice within three days of making a disapproval decision.

Section 19.161 Notice of Disapproval and Hearing Initiation.

The proposal changes the title of this section from "Hearing request and answer" to "Notice of disapproval and hearing initiation" in order to describe more accurately the content of the section.

The proposal changes the initiation procedures for change-in-control proceedings. Under the current OCC Local Rules, the OCC's notice of disapproval is both a licensing communication and the initial pleading in the action. With the proposal, the OCC intends to make the procedure clearer by severing these functions.

Under the proposal, the notice of disapproval no longer serves as the OCC's initial pleading. Instead, when the Comptroller receives a notice of a request for a hearing in response to a notice of disapproval, the Comptroller will issue a hearing order. The hearing order serves as the OCC's pleading document and states the legal authority for the proceeding, the OCC's jurisdiction over the proceeding, and the matters of fact or law upon which the disapproval is based. The hearing order also states that a filer who seeks a hearing must file an answer to the hearing order with the Office of Financial Institution Adjudication (OFIA) within 20 days after service of the order on the filer.

The proposal also makes a technical correction by removing the phrase "in civil money penalty proceedings" from the title of former paragraph (c)(2).

Section 19.170 Discovery Depositions.

Under the current OCC Local Rules, it is unclear which methods may be used to record deposition testimony and under what conditions the parties must agree to have the court recorder use a particular method.

The proposal allows a party to have the court reporter record deposition testimony with a stenotype machine or an electronic sound recording device. The proposal also allows a party, for good cause and with leave of the ALJ or upon agreement of the parties, to have the court reporter use any other method to record the deposition testimony.

The proposal specifies that a written record of the witness's testimony must be made unless the parties agree otherwise. The proposal is intended to eliminate any confusion concerning when the parties must agree to transcribe the proceedings. The proposal also expressly provides that all parties are entitled to receive a transcript of the witness's testimony.

The proposal also requires that the party taking the deposition bear the cost of the recording and the transcription of that recording. The current OCC Local Rules are silent on who bears the cost of recording and transcription. The proposed change is the common practice in agency proceedings.

Section 19.171 Deposition Subpoenas.

The proposal changes the methods of service of a subpoena that a party may use for discovery depositions. The current rule only permits a party to serve the person named in the subpoena or that person's counsel by personal service, service by certified mail, or service by overnight delivery service.

The proposal adds to these methods of service the methods used in the Uniform Rules, § 19.11(c)(2) and (d). The Uniform Rules permit the following additional methods of service: service by delivery to an agent, by delivery to a person of suitable age and discretion at the subpoenaed person's residence (and, as amended by the proposal, at the subpoenaed person's place of work), by registered or certified mail to the person's last known address, or in such other manner as is reasonably calculated to give actual notice. The OCC believes the current rule is too narrow and that making additional methods of service available will reduce burden.

Section 19.184 Service of Subpoena and Payment of Witness Fees.

The proposal changes the methods of service of a subpoena that may be used in formal investigations under subpart J. The current rule only permits personal service or service by certified mail.

The proposal adopts the methods of service used in the Uniform Rules, § 19.11(c)(2) and (d). The Uniform Rules permit additional methods of service. They are service by delivery to an agent, by delivery to a person of suitable age and discretion at the subpoenaed person's residence (and, as amended by the proposal, at the subpoenaed person's place of work), by registered or certified mail to the person's last known address, or in such other manner as is reasonably calculated to give actual notice. The OCC believes the current rule is too narrow and that making additional methods of service available will reduce burden.

2. Proposed Amendments to the OTS Local Rules

Section 509.102 Discovery.

The OTS proposes to revise its local rule governing the service of discovery deposition subpoenas. The OTS would amend § 509.102(g)(2) to permit parties to serve deposition subpoenas by the methods listed in proposed Uniform Rule § ____.11(d). The current rule permits service by personal service, certified mail, or overnight delivery service. As noted above, proposed Uniform Rule § ____.11(d) would permit service by personal service, by delivery to an agent, by delivery to a person of suitable age and discretion at the subpoenaed person's residence or place of work, by registered or certified mail to the person's last known address, or in such other manner as is reasonably calculated to give actual notice.

The proposed rule also clarifies that subpoenas may be served on the person named in the subpoena *or* on that person's counsel. The current rule appears to require service of a copy of the subpoena on counsel, even when service is made on the person named in the subpoena. This proposed change would conform the OTS local rule to OCC local rule § 19.171 in this regard.

Section 509.104 Additional Procedures.

Under proposed Uniform Rule § ____.38(b), the ALJ is required to file an index of the record when he or she certifies the record to the Director. OTS local rule § 509.104(h) duplicates the proposed Uniform Rule and would be deleted.

F. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OCC, Board of Governors, FDIC, OTS, and NCUA, hereby independently certify that this joint proposed rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

This joint proposed rule improves the Uniform Rules of Practice and Procedure required by section 916 of FIRREA and facilitates the orderly determination of administrative proceedings. The agencies already have in place uniform rules of practice and procedure as well as Local Rules. The changes in this joint proposed rule are primarily clarifications and do not impose additional burdens on regulated institutions.

G. OCC AND OTS Executive Order 12866 Statement

The OCC and the OTS have independently determined that this joint proposed rule is not a significant regulatory action as defined in Executive Order 12866.

H. OCC and OTS Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act) (signed into law on March 22, 1995) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, Section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. As discussed in the preamble, this final rule is limited in application to procedural amendments to the rules of administrative practice before the OCC and OTS. The OCC and OTS have therefore determined that the final rule will not result in expenditures by State, local, or tribal governments or by the private sector of more than $100 million. Accordingly, the OCC and OTS have not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

I. NCUA Executive Order 12612 Statement

This joint proposed rule, like the current part 747 it is replacing, will apply to all Federally insured credit unions. The NCUA Board, pursuant to Executive Order 12612, has determined, however, that this joint proposed rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among various levels of government. Further, this joint proposed rule will not preempt provisions of state law or regulations.

Text of Proposed Uniform Rules (All Agencies)

The text of the proposed amendments to the Uniform Rules appears below:

Subpart A—Uniform Rules of Practice and Procedure

1. In § ____.1, paragraph (e)(9) is amended by removing "and" after the semicolon; and new paragraphs (e)(____) and (e)(____)[1] are added to read as follows:

§ ____.1 Scope.

* * * * *

(e) * * *

(____) Section 102 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a) or any order or regulation issued thereunder; and

(____) Any provision of law referenced in 31 U.S.C. 5321 or any order or regulation issued thereunder; and

* * * * *

2. In § ____.6, paragraph (a)(3) is revised to read as follows:

§ ____.6 Appearance and practice in adjudicatory proceedings.

(a) * * *

(3) *Notice of appearance.* Any individual acting as counsel on behalf of a party, including the [Agency head], shall file a notice of appearance with OFIA at or before the time that individual submits papers or otherwise appears on behalf of a party in the adjudicatory proceeding. The notice of appearance must include a written declaration that the individual is currently qualified as provided in paragraph (a)(1) or (a)(2) of this section and is authorized to represent the particular party. By filing a notice of appearance on behalf of a party in an adjudicatory proceeding, the counsel agrees and represents that he or she is authorized to accept service on behalf of the represented party and that, in the event of withdrawal from representation, he or she will, if

[1] The new paragraphs are not identified by number in the proposal because the number of paragraphs in each agency's scope section differs depending on the agency's particular statutory authority.

required by the administrative law judge, continue to accept service of process until new counsel has filed a notice of appearance or until the represented party indicates that he or she will proceed on a *pro se* basis.

* * * * *

3. In § ____.8, paragraph (b) is revised to read as follows:

§ ____.8 Conflicts of interest.

* * * * *

(b) *Certification and waiver.* If any person appearing as counsel represents two or more parties to an adjudicatory proceeding or also represents a non-party on a matter relevant to an issue in the proceeding, counsel must certify in writing at the time of filing the notice of appearance required by § ____.6(a):

(1) That the counsel has personally and fully discussed the possibility of conflicts of interest with each such party or non-party; and

(2) That each such party or non-party waives any right it might otherwise have had to assert any known conflicts of interest or to assert any non-material conflicts of interest during the course of the proceeding.

4. In § ____.11, paragraphs (c)(2) and (d) are revised to read as follows:

§ ____.11 Service of papers.

* * * * *

(c) * * *

(2) If a party has not appeared in the proceeding in accordance with § ____.6, the [Agency head] or the administrative law judge shall make service by any of the following methods:

(i) By personal service;

(ii) By delivery to a person of suitable age and discretion at the party's residence or place of work;

(iii) By registered or certified mail addressed to the party's last known address; or

(iv) By any other method reasonably calculated to give actual notice.

(d) *Subpoenas.* Service of a subpoenas may be made by personal service, by delivery to an agent, by delivery to a person of suitable age and discretion at the subpoenaed person's residence or place of work, by registered or certified mail addressed to the person's last known address, or in such other manner as is reasonably calculated to give actual notice.

* * * * *

5. In § ____.12, paragraphs (a) and (c)(1), (c)(2), and (c)(3) are revised to read as follows:

§ ____.12 Construction of time limits.

(a) *General rule.* In computing any period of time prescribed by this subpart, the date of the act or event that commences the designated period of time is not included. The last day so computed is included unless it is a Saturday, Sunday, or Federal holiday. When the last day is a Saturday, Sunday, or Federal holiday, the period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Intermediate Saturdays, Sundays, and Federal holidays are included in the computation of time. However, when the time period within which an act is to be performed is ten days or less, not including any additional time allowed for service by mail, delivery service, or electronic media transmission in § ____.12(c), intermediate Saturdays, Sundays, and Federal holidays are not included.

* * * * *

(c) * * *

(1) If service is made by first class, registered, or certified mail, add three calendar days to the prescribed period;

(2) If service is made by express mail or overnight delivery service, add one calendar day to the prescribed period; or

(3) If service is made by electronic media transmission, add one calendar day to the prescribed period, unless otherwise determined by the [Agency head] or the administrative law judge in the case of filing, or by agreement among the parties in the case of service.

6. Section ____.20 is revised to read as follows:

§ ____.20 Amended pleadings.

(a) *Amendments.* The notice or answer may be amended or supplemented at any stage of the proceeding. The respondent must answer an amended notice within the time remaining for the respondent's answer to the original notice, or within ten days after service of the amended notice, whichever period is longer, unless the [Agency head] or administrative law judge orders otherwise for good cause.

(b) *Amendments to conform to the evidence.* When issues not raised in the notice or answer are tried at the hearing by express or implied consent of the parties, they will be treated in all respects as if they had been raised in the notice or answer, and no formal amendments are required. If evidence is objected to at the hearing on the ground that it is not within the issues raised by the notice or answer, the administrative law judge may admit the evidence when admission is likely to assist in adjudicating the merits of the action and the objecting party fails to satisfy the administrative law judge that the admission of such evidence would unfairly prejudice that party's action or defense upon the merits. The administrative law judge may grant a continuance to enable the objecting party to meet such evidence.

7. In § ____.24, paragraphs (a)(1), (a)(2), and (b) are revised and paragraph (a)(3) is added to read as follows:

§ ____.24 Scope of document discovery.

(a) *Limits on discovery.* (1) Subject to the limitations set out in paragraphs (b), (c), and (d) of this section, a party to a proceeding under this subpart may obtain document discovery by serving a written request to produce documents. For purposes of a request to produce documents, the term "documents" may be defined to include drawings, graphs, charts, photographs, recordings, data stored in electronic form, and other data compilations from which information can be obtained, or translated, if necessary, by the parties through detection devices into reasonably usable form, as well as written material of all kinds.

(2) Discovery by use of deposition is governed by subpart [insert appropriate subpart] of this part.

(3) Discovery by use of interrogatories is not permitted.

(b) *Relevance.* A party may obtain document discovery regarding any matter, not privileged, that has material relevance to the merits of the pending action. Any request to produce documents that calls for irrelevant material, that is unreasonable, oppressive, excessive in scope, unduly burdensome, or repetitive of previous requests, or that seeks to obtain privileged documents will be denied or modified. A request is unreasonable, oppressive, excessive in scope or unduly burdensome if, among other things, it fails to include justifiable limitations on the time period covered and the geographic locations to be searched, the time provided to respond in the request is inadequate, or the request calls for copies of documents to be delivered to the requesting party and fails to include the requestor's written agreement to pay in advance for the copying, in accordance with § ____.25.

* * * * *

8. In § ____.25, paragraphs (a), (b), (e), and (g) are revised to read as follows:

§ ____.25 Request for document discovery from parties.

(a) *General rule.* Any party may serve on any other party a request to produce for inspection any discoverable documents that are in the possession, custody, or control of the party upon whom the request is served. The request must identify the documents to be produced either by individual item or by category, and must describe each item and category with reasonable particularity. Documents must be produced as they are kept in the usual course of business or must be organized to correspond with the categories in the request.

(b) *Production or copying.* The request must specify a reasonable time, place, and manner for production and performing any related acts. In lieu of inspecting the documents, the requesting party may specify that all or some of the responsive documents be copied and the copies delivered to the requesting party. If copying of fewer than 250 pages is requested, the party to whom the request is addressed shall bear the cost of copying and shipping charges. If a party requests 250 pages or more of copying, the requesting party shall pay for the copying and shipping charges. Copying charges are the current per-page copying rate imposed by part ____ of this chapter implementing the Freedom of Information Act (5 U.S.C. 552a). The party to whom the request is addressed may require payment in advance before producing the documents.

* * * * *

(e) *Privilege.* At the time other documents are produced, the producing party must reasonably identify all documents withheld on the grounds of privilege and must produce a statement of the basis for the assertion of privilege. When similar documents that are protected by deliberative process, attorney-work-product, or attorney-client privilege are voluminous, these documents may be identified by category instead of by individual document. The administrative law judge retains discretion to determine when the identification by category is insufficient.

* * * * *

(g) *Ruling on motions.* After the time for filing responses pursuant to this section has expired, the administrative law judge shall rule promptly on all motions filed pursuant to this section. If the administrative law judge determines that a discovery request, or any of its terms, calls for irrelevant material, is unreasonable, oppressive, excessive in scope, unduly burdensome, or repetitive of previous requests, or seeks to obtain privileged documents, he or she may deny or modify the request, and may issue appropriate protective orders, upon such conditions as justice may require. The pendency of a motion to strike or limit discovery or to compel production is not a basis for staying or continuing the proceeding, unless otherwise ordered by the administrative law judge. Notwithstanding any other provision in this part, the administrative law judge may not release, or order a party to produce, documents withheld on grounds of privilege if the party has stated its intention to file a timely motion for interlocutory review of the administrative law judge's order to produce the documents, and until the motion for interlocutory review has been decided.

* * * * *

9. In § ____.27, paragraph (a)(4) is revised to read as follows:

§ ____.27 Deposition of witness unavailable for hearing.

(a) * * *

(4) The party obtaining a deposition subpoena must serve the subpoena on the witness or an authorized representative of the witness and a copy of the subpoena on each party. Unless the administrative law judge orders otherwise, a party may not take a deposition under this section on fewer than ten days notice to the witness and all parties. A party may serve a deposition subpoena in any state, territory, possession of the United States, or the District of Columbia, on any person or company doing business in any state, territory, possession of the United States, or the District of Columbia, or as otherwise permitted by law.

* * * * *

10. In § ____.33, paragraph (a) is revised to read as follows:

§ ____.33 Public hearings.

(a) *General rule.* All hearings shall be open to the public, unless the [Agency head], in [Agency Head's or its] discretion, determines that holding an open hearing would be contrary to the public interest. Within 20 days of service of the notice or, in the case of change-in-control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)), within 20 days from service of the hearing order, any respondent may file with the [Agency head] a request for a private hearing, and any party may file a reply to such a request. A party must serve on the administrative law judge a copy of any request or reply the party files with the agency head. The form of, and procedure for, these requests and replies are governed by § ____.23. A party's failure to file a request or a reply constitutes a waiver of any objections regarding whether the hearing will be public or private.

* * * * *

11. In § ____.34, paragraphs (a) and (b)(1) are revised to read as follows:

§ ____.34 Hearing subpoenas.

(a) *Issuance.* (1) Upon application of a party showing general relevance and reasonableness of scope of the testimony or other evidence sought, the administrative law judge may issue a subpoena or a subpoena duces tecum requiring the attendance of a witness at the hearing or the production of documentary or physical evidence at the hearing. The application for a hearing subpoena must also contain a proposed subpoena specifying the attendance of a witness or the production of evidence from any state, territory, or possession of the United States, the District of Columbia, or as otherwise provided by law at any designated place where the hearing is being conducted. The party making the application shall serve a copy of the application and the proposed subpoena on every other party.

(2) A party may apply for a hearing subpoena at any time before the commencement of a hearing. During a hearing, a party may make an application for a subpoena orally on the record before the administrative law judge.

(3) The administrative law judge shall promptly issue any hearing subpoena requested pursuant to this section. If the administrative law judge determines that the application does not set forth a valid basis for the issuance of the subpoena, or that any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may refuse to issue the subpoena or may issue it in a modified form upon any conditions consistent with this subpart. Upon issuance by the administrative law judge, the party making the application shall serve the subpoena on the person named in the subpoena and on each party.

(b) *Motion to quash or modify.* (1) Any person to whom a hearing subpoena is directed or any party may file a motion to quash or modify the subpoena, accompanied by a statement of the basis for quashing or modifying the subpoena. The movant must serve the motion on each party and on the person named in the subpoena. Any party may respond to the motion within ten days of service of the motion.

* * * * *

12. In § ____.35, paragraph (a)(3) is redesignated as paragraph (a)(4), a new paragraph (a)(3) is added, and paragraph (b) is revised to read as follows:

§ ____.35 Conduct of hearings.

(a) * * *

(3) Examination of witnesses. Only one counsel for each party may conduct an examination of a witness, except that

in the case of extensive direct examination, the administrative law judge may permit more than one counsel for the party presenting the witness to conduct the examination. A party may have one counsel conduct the direct examination and another counsel conduct re-direct examination of a witness, or may have one counsel conduct the cross examination of a witness and another counsel conduct the re-cross examination of a witness.

* * * * *

(b) *Transcript.* The hearing must be recorded and transcribed. The reporter will make the transcript available to any party upon payment by that party to the reporter of the cost of the transcript. The administrative law judge may order the record corrected, either upon motion to correct, upon stipulation of the parties, or following notice to the parties upon the administrative law judge's own motion.

13. In § ____.37, the section heading and paragraph (a)(1) are revised to read as follows:

§ ____.37 Post hearing filings.

(a) *Proposed findings and conclusions and supporting briefs.* (1) Using the same method of service for each party, the administrative law judge shall serve notice upon each party, that the certified transcript, together with all hearing exhibits and exhibits introduced but not admitted into evidence at the hearing, has been filed. Any party may file with the administrative law judge proposed findings of fact, proposed conclusions of law, and a proposed order within 30 days following service of this notice by the administrative law judge, unless the administrative law judge orders a longer period.

* * * * *

14. Section ____.38 is revised to read as follows:

§ ____.38 Recommended decision and filing of record.

(a) *Filing of recommended decision and record.* Within 45 days after expiration of the time allowed for filing reply briefs under § ____.37(b), the administrative law judge shall file with and certify to the [Agency head] for decision the record of the proceeding. The record must include the administrative law judge's recommended decision, recommended findings of fact, recommended conclusions of law, and proposed order; all prehearing and hearing transcripts, exhibits, and rulings; and the motions, briefs, memoranda, and other supporting papers filed in connection with the hearing. The administrative law judge shall serve upon each party the recommended decision, findings, conclusions, and proposed order.

(b) *Filing of index.* At the same time the administrative law judge files with and certifies to the [Agency head] for final determination the record of the proceeding, the administrative law judge shall furnish to the [Agency head] a certified index of the entire record of the proceeding. The certified index shall include, at a minimum, an entry for each paper, document or motion filed with the administrative law judge in the proceeding, the date of the filing, and the identity of the filer. The certified index shall also include an exhibit index containing, at a minimum, an entry consisting of exhibit number and title or description for: Each exhibit introduced and admitted into evidence at the hearing; each exhibit introduced but not admitted into evidence at the hearing; each exhibit introduced and admitted into evidence after the completion of the hearing; and each exhibit introduced but not admitted into evidence after the completion of the hearing.

Proposed Adoption of Uniform Rules

The agency-specific adoptions of the amendments to the Uniform Rules, which appear at the end of the common preamble, appear below:

OFFICE OF THE COMPTROLLER OF THE CURRENCY

12 CFR Part 19

List of Subjects in 12 CFR Part 19

Administrative practice and procedure, Crime, Investigations, National banks, Penalties, Securities.

Authority and Issuance

For the reasons set out in the preamble, part 19 of chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 19—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 19 is revised to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 164, 505, 1817, 1818, 1820, 1831o, 1972, 3102, 3108(a), 3909, and 4717; 15 U.S.C. 78 (h) and (i), 78o–4(c), 78o–5, 78q–1, 78u, 78u–2, 78u–3, and 78w; 31 U.S.C. 330 and 5321; and 42 U.S.C. 4012a.

Subpart A—[Amended]

2. Subpart A of part 19 is amended as set forth at the end of the common preamble.

Subpart B—[Amended]

3. Section 19.100 is revised to read as follows:

§ 19.100 Filing documents.

All materials required to be filed with or referred to the Comptroller or the administrative law judge in any proceeding under this part must be filed with the Hearing Clerk, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. Filings to be made with the Hearing Clerk include the notice and answer; motions and responses to motions; briefs; the record filed by the administrative law judge after the issuance of a recommended decision; the recommended decision filed by the administrative law judge following a motion for summary disposition (except that in removal and prohibition cases, the administrative law judge will file the record and the recommended decision with the Board of Governors of the Federal Reserve System); referrals by the administrative law judge of motions for interlocutory review; exceptions and requests for oral argument; and any other papers required to be filed with the Comptroller or the administrative law judge under this part.

Subpart C—[Amended]

4. In § 19.112, paragraphs (a), (b), (c) and (d)(3)(i) are revised to read as follows:

§ 19.112 Informal hearing.

(a) *Issuance of hearing order.* After receipt of a request for hearing, the District Deputy Comptroller or Administrator, the Deputy Comptroller for Multinational Banking, or the Deputy Comptroller or Director for Special Supervision, whichever is appropriate, must notify the petitioner requesting the hearing, the OCC's Enforcement and Compliance Division, and the appropriate OCC District Counsel of the date, time, and place fixed for the hearing. The hearing must be scheduled to be held not later than 30 days from the date when a request for hearing is received unless the time is extended at the written request of the petitioner. The District Deputy Comptroller or Administrator, the Deputy Comptroller for Multinational Banking, or the Deputy Comptroller or Director for Special Supervision, whichever is appropriate, may extend the hearing date only for a specific period of time and must take appropriate action to ensure that the hearing is not unduly delayed.

(b) *Appointment of presiding officer.* The District Deputy Comptroller or Administrator, Deputy Comptroller for Multinational Banking, or the Deputy Comptroller or Director for Special Supervision, as appropriate, must appoint one or more OCC employees as the presiding officer to conduct the hearing. The presiding officer(s) may not have been involved in the proceeding, a factually related proceeding, or the underlying enforcement action in a prosecutorial or investigative role.

(c) *Waiver of oral hearing.*—(1) *Petitioner.* When the petitioner requests a hearing, the petitioner may elect to have the matter determined by the presiding officer solely on the basis of written submissions by serving on the District Deputy Comptroller or Administrator, Deputy Comptroller for Multinational Banking, or the Deputy Comptroller or Director for Special Supervision, whichever is appropriate, and all parties, a signed document waiving the statutory right to appear and make oral argument. The petitioner must present the written submissions to the presiding officer, and serve the other parties, not later than ten days prior to the date fixed for the hearing, or within such shorter time period as the presiding officer may permit.

(2) *OCC.* The OCC may respond to the petitioner's submissions by presenting the hearing officer with a written response, and by serving the other parties, not later than the date fixed for the hearing, or within such other time period as the presiding officer may require.

(d) * * *

(3) *Presentation.* (i) The OCC may appear and the petitioner may appear personally or through counsel at the hearing to present relevant written materials and oral argument. Except as permitted in paragraph (c) of this section, each party, including the OCC, must file a copy of any affidavit, memorandum, or other written material to be presented at the hearing with the presiding officer and must serve the other parties not later than ten days prior to the hearing or within such shorter time period as permitted by the presiding officer.

* * * * *

5. In § 19.113, paragraphs (a) and (b) are revised, paragraphs (c), (d), and (e) are redesignated as paragraphs (d), (e), and (f), respectively, and new paragraph (c) is added, to read as follows:

§ 19.113 Recommended and final decisions.

(a) The presiding officer must issue a recommended decision to the Comptroller within 20 days from the hearing or, when the petitioner waived an oral hearing, within 20 days from the date fixed for the hearing. The presiding officer must serve promptly a copy of the recommended decision on the parties to the proceeding. The decision must include a summary of the facts and arguments of the parties.

(b) Each party may, within ten days of being served with the presiding officer's recommended decision, submit to the Comptroller comments on the recommended decision.

(c) Within 60 days following the hearing or, when the petitioner waived an oral hearing within 60 days from the date fixed for the hearing, the Comptroller must notify the petitioner by registered mail as to whether the suspension or removal from office, and prohibition from participation in any manner in the affairs of the bank, will be affirmed, terminated, or modified. The Comptroller's decision must include a statement of reasons supporting the decision. The Comptroller's decision is a final and unappealable order.

* * * * *

Subpart H—[Amended]

§ 19.160 [Amended]

6. In § 19.160, paragraph (a) is amended in the second sentence by revising the phrase "notify the acquiring party in writing" to read "mail a written notification to the proposed acquiring person".

7. Section 19.161 is revised to read as follows:

§ 19.161 Notice of disapproval and hearing initiation.

(a) *Notice of disapproval.* The OCC's written disapproval of a proposed acquisition of control of a national bank must:

(1) Contain a statement of the basis for the disapproval; and

(2) Indicate that the filer may request a hearing.

(b) *Hearing request.* Following receipt of a notice of disapproval, a filer may request a hearing on the proposed acquisition. A hearing request must:

(1) Be in writing; and

(2) Be filed with the hearing clerk of the OCC within ten days after service on the filer of the notice of disapproval. If a filer fails to request a hearing with a timely written request, the notice of disapproval constitutes a final and unappealable order.

(c) *Hearing order.* Following receipt of a hearing request, the Comptroller issues, within 20 days, an order that sets forth:

(1) The legal authority for the proceeding and for the OCC's jurisdiction over the proceeding;

(2) The matters of fact or law upon which the disapproval is based; and

(3) The requirement for filing an answer to the hearing notice with OFIA within 20 days after service of the hearing order.

(d) *Answer.* An answer to a hearing order must specifically deny those portions of the order that are disputed. Those portions of the order that the filer does not specifically deny are deemed admitted by the filer. Any hearing under this subpart is limited to those portions of the order that are specifically denied.

(e) *Effect of failure to answer.* Failure of a filer to file an answer within 20 days after service of the hearing order constitutes a waiver of the filer's right to appear and contest the allegations in the hearing order. If a filer does not file a timely answer, enforcement counsel may file a motion for entry of an order of default. Upon a finding that no good cause has been shown for the failure to file a timely answer, the administrative law judge shall file with the Comptroller a recommended decision containing the findings and the relief sought in the hearing order. Any final order issued by the Comptroller based upon a filer's failure to answer is deemed to be an order issued upon consent and is a final and unappealable order.

§ 19.162 [Removed]

8. Section 19.162 is removed.

Subpart I—[Amended]

9. In § 19.170, paragraph (d) is revised, paragraphs (e) and (f) are redesignated as paragraphs (f) and (g), respectively, and a new paragraph (e) is added to read as follows:

§ 19.170 Discovery depositions.

* * * * *

(d) *Conduct of the deposition.* The witness must be duly sworn, and each party will have the right to examine the witness with respect to all non-privileged, relevant, and material matters of which the witness has factual, direct, and personal knowledge. Objections to questions or exhibits must be in short form and must state the grounds for the objection. Failure to object to questions or exhibits is not a waiver except where the grounds for the objection might have been avoided if the objection had been timely presented.

(e) *Recording the testimony.*—(1) *Generally.* The party taking the deposition must have a certified court reporter record the witness's testimony:

(i) By stenotype machine or electronic sound recording device;

(ii) Upon agreement of the parties, by any other method; or

(iii) For good cause and with leave of the administrative law judge, by any other method.

(2) *Cost.* The party taking the deposition must bear the cost of the recording and transcribing the witness's testimony.

(3) *Transcript.* Unless the parties agree that a transcription is not necessary, the court reporter must provide a transcript of the witness's testimony to the party taking the deposition and must make copies of the transcript available to all parties upon payment of cost to the appropriate court reporting service.

* * * * *

10. In § 19.171, paragraph (b) is revised to read as follows:

§ 19.171 Deposition subpoenas.

* * * * *

(b) *Service.* The party requesting the subpoena must serve it on the person named therein, or on that person's counsel, by personal service, by delivery to an agent, by delivery to a person of suitable age and discretion at the subpoenaed person's residence or place of work, by registered or certified mail addressed to the person's last known address, or in such other manner as is reasonably calculated to give actual notice. The party serving the subpoena must file proof of service with the administrative law judge.

* * * * *

Subpart J—[Amended]

11. Section 19.184 is revised to read as follows:

§ 19.184 Service of subpoena and payment of witness fees.

Service of a subpoena may be made by personal service, by delivery to an agent, by delivery to a person of suitable age and discretion at the subpoenaed person's residence or place of work, by registered or certified mail addressed to the person's last known address, or in such other manner as is reasonably calculated to give actual notice. A witness who is subpoenaed will be paid the same expenses in the same manner as witnesses in the district courts of the United States. The expenses need not be tendered at the time a subpoena is served.

Dated: April 13, 1995.

Eugene A. Ludwig,

Comptroller of the Currency.

FEDERAL RESERVE SYSTEM

12 CFR Part 263

List of Subjects in 12 CFR Part 263

Administrative practice and procedure, Claims, Crime, Equal access to justice, Federal Reserve System, Lawyers, Penalties.

Authority and Issuance

For the reasons set out in the preamble, part 263 of chapter II of title 12 of the Code of Federal Regulations, is proposed to be amended as set forth below:

PART 263—RULES OF PRACTICE FOR HEARINGS

1. The authority citation for part 263 is revised to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 248, 324, 504, 505, 1817(j), 1818, 1828(c), 1847(b), 1847(d), 1884(b), 1972(2)(F), 3105, 3107, 3108, 3907, 3909, and 4717; 15 U.S.C. 21, 78o–4, 78o–5, and 78u–2; 31 U.S.C. 5321; 42 U.S.C. 4012a.

Subpart A—[Amended]

2. Subpart A of part 263 is amended as set forth at the end of the common preamble.

By order of the Board of Governors of the Federal Reserve System, May 9, 1995.

William W. Wiles,

Secretary of the Board.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 308

List of Subjects in 12 CFR Part 308

Administrative practice and procedure, Banks, banking, Claims, Equal access to justice, Ex parte communications, Hearing procedure, Penalties, State nonmember banks.

Authority and Issuance

For the reasons set out in the preamble, part 308 of chapter III of title 12 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 308—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 308 is revised to read as follows:

Authority: 5 U.S.C. 554–557; 12 U.S.C. 1815(e) 1817 (a) and (j), 1818, 1820, 1828(j), 1829, 1831l, 1972(2)(F), 3108, 3909, 3349, 4717; 15 U.S.C. 78l(h), 78m, 78n(a), 78n(c), 78n(d), 78n(f), 78o–4(c)(5), 78p, 78q, 78q–1, 78s, 78u–2; 31 U.S.C. 5321; 42 U.S.C. 4012a.

Subpart A—[Amended]

2. Subpart A of part 308 is amended as set forth at the end of the common preamble.

Dated: May 30, 1995.

Robert E. Feldman,

Acting Executive Secretary, Federal Deposit Insurance Corporation.

OFFICE OF THRIFT SUPERVISION

12 CFR Part 509

List of Subjects in 12 CFR Part 509

Administrative Practice and Procedure, Penalties.

Authority and Issuance

For the reasons set out in the preamble, part 509 of subchapter A of chapter V of title 12 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 509—RULES OF PRACTICE AND PROCEDURE IN ADJUDICATORY PROCEEDINGS

1. The authority citation for part 509 is revised to read as follows:

Authority: 5 U.S.C. 554–557; 12 U.S.C. 1464, 1467, 1467a, 1468, 1817(j), 1818, 3349, 4717; 15 U.S.C. 78l, 78o–5, 78u–2; 31 U.S.C. 5321; 42 U.S.C. 4012a.

Subpart A—[Amended]

2. Subpart A of part 509 is amended as set forth at the end of the common preamble.

Subpart B—[Amended]

3. In § 509.102, paragraph (g)(2) is revised to read as follows:

§ 509.102 Discovery.

* * * * *

(g) * * *

(2) *Service.* The party requesting the subpoena shall serve it on the person named therein in accordance with § 509.11(d). The party serving the subpoena shall file proof of service with the administrative law judge.

* * * * *

§ 509.104 [Amended]

4. In § 509.104, paragraph (h) is removed and paragraph (i) is redesignated as paragraph (h).

Dated: May 26, 1995.

Jonathan L. Fiechter,

Acting Director, Office of Thrift Supervision.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 747

List of Subjects in 12 CFR Part 747

Administrative practice and procedure, Bank deposit insurance, Claims, Credit unions, Equal access to justice, Investigations, Lawyers, Penalties.

Authority and Issuance

For the reasons set out in the preamble, part 747 of chapter VII of title 12 of the Code of Federal Regulations, is proposed to be amended as set forth below:

PART 747—ADMINISTRATIVE ACTIONS, ADJUDICATIVE HEARINGS, RULES OF PRACTICE AND PROCEDURE, AND INVESTIGATIONS

1. The authority citation for part 747 is revised to read as follows:

Authority: 12 U.S.C. 1766, 1784, 1786, 1787; 42 U.S.C. 4012a.

Subpart A—[Amended]

2. Subpart A of part 747 is amended as set forth at the end of the common preamble.

Dated: June 9, 1995.

Becky Baker,

Secretary of the Board, National Credit Union Administration.

[FR Doc. 95–15059 Filed 6–22–95; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P; 7535–01–P

Federal Register

Friday
June 23, 1995

Part VI

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 261
Preservation of Antiquities; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 261

RIN 1076–AD10

Preservation of Antiquities

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs (BIA) is deleting from the Code of Federal Regulations those regulations that provide Bureau-specific procedures for the issuance and administration of archaeological permits under the Antiquities Act of 1906. These regulations have been superseded by regulations which cover BIA issuance and administration of such permits under the more comprehensive, Archaeological Resources Protection Act of 1979.

EFFECTIVE DATE: July 24, 1995.

FOR FURTHER INFORMATION CONTACT: Donald R. Sutherland on (202) 208–4791.

SUPPLEMENTARY INFORMATION: This rule deletion is parallel to uniform regulations in 43 CFR part 3, which set procedures for the issuance and administration of permits under the Antiquities Act of 1906 (16 U.S.C. 432). For example, the "field officer in charge" in 43 CFR part 3 becomes the "Superintendent" in 25 CFR part 261, and permits in part 261 are issued by the "Departmental Consulting Archaeologist" instead of the "the Secretary having jurisdiction."

Most of the permitting once done under the Antiquities Act is now done under the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa–470mm). The only use for a permit under the older act is for the excavation of archaeological sites that are less than 100 years old. These are not covered under the more recent act. On those rare occasions, the Bureau can follow the regulations in 43 CFR part 3.

No comments were received on the Proposed Rule, which was published November 29, 1994, in the **Federal Register.**

The Department of the Interior has determined that this rule does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

The Department of the Interior has determined that this rule is not a significant regulatory action under Executive Order 12866, and therefore will not require the approval of the Office of Management and Budget.

This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as it removes obsolete federal procedures that, in turn, pertain solely to the issuance and administration of permits for archeological research.

In accordance with E.O. 12630, the Department has determined that this rule does not have significant takings implications.

The Department has determined that this rule does not have significant federalism effects. There are no information collection requirements in 25 CFR part 261.

The primary author of this document is Donald R. Sutherland, Archaeologist, Environmental Services Staff, Office of Trust Responsibilities, Bureau of Indian Affairs.

List of Subjects in 25 CFR Part 261

Historic preservation, Indians—lands.

For the reasons set out in the preamble, part 261 of Title 25, Chapter I of the Code of Federal Regulations is removed.

Dated: June 6, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–15406 Filed 6–22–95; 8:45 am]

BILLING CODE 4310–02–P

Federal Register

Friday
June 23, 1995

Part VII

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notices

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[KOO360–95–35420]

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.9(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Wadatkuht Band of the Northern Paiutes of the Honey Lake Valley, P.O. Box 541, Susanville, CA 96130, has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA on January 26, 1995, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under § 83.9(a) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition.

Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Room 1362–MIB, 1849 C Street, NW., Washington, DC 20240, Phone: (202) 208–3592.

Dated: June 14, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–15404 Filed 6–22–95; 8:45 am]

BILLING CODE 4310–02–P

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. § 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Compact between the Sovereign Indian Nation of the Sac and Fox Tribe of the Mississippi in Iowa and the State of Iowa, which was executed on March 21, 1995.

DATES: This action is effective June 23, 1995.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4068.

Dated: May 18, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–15405 Filed 6–22–95; 8:45 am]

BILLING CODE 4310–02–P

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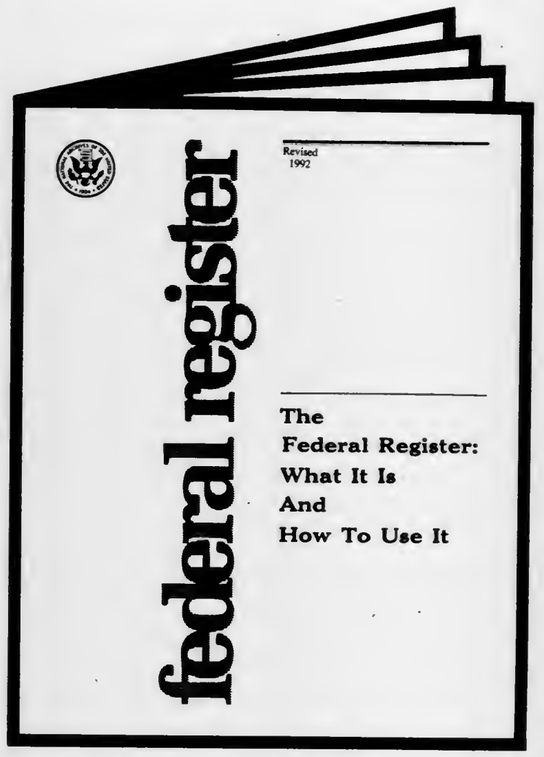
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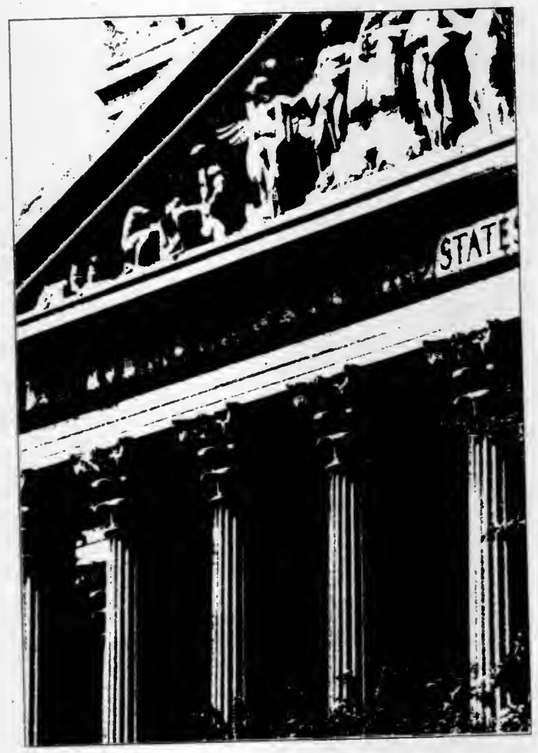
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Federal Register
Vol. 60, No. 122
Monday, June 26, 1995

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1405

RIN 0560–AD97

Crop Insurance Requirement

AGENCY: Commodity Credit Corporation (CCC), USDA.

ACTION: Final rule.

SUMMARY: This rule implements the requirement of the Federal Crop Insurance Reform Act of 1994 that producers obtain at least the catastrophic level of crop insurance for each crop of economic significance in order to be eligible for any price support, production adjustment benefit or payment for CRP acreage under contracts entered into after October 12, 1994.

EFFECTIVE DATE: October 13, 1994.

FOR FURTHER INFORMATION CONTACT: David M. Nix, CFSA, USDA, P.O. Box 2415, Washington, DC 20013–2415, (202) 720–9883.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866 and has been determined to be a "significant regulatory action" and has been reviewed by the Office of Management and Budget.

Federal Assistance Programs

The titles and numbers of the Federal Assistance Programs, as found in the Catalog of Federal Domestic Assistance, to which this final rule applies are: Commodity Loans and Purchases-10.051; Cotton Production Stabilization-10.052; Feed Grain Production Stabilization-10.055; Wheat Production Stabilization-10.058; Rice Production Program-10.065; Grain Reserve Program-10.067; and Conservation Reserve Program-10.069.

Regulatory Flexibility Act

It has been determined that this rule will not have a significant impact on a substantial number of small entities. In any event the rule simply codifies the eligibility requirement of the Federal Crop Insurance Reform Act of 1994. Therefore, the Regulatory Flexibility Act is not applicable to this final rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778. To the extent State and local laws are in conflict with this rule, this rule will prevail. The provisions of this rule are retroactive to conform to the Federal Crop Insurance Reform Act of 1994. Before any judicial action may be brought concerning the provisions of this rule, administrative review under 7 CFR Part 780 or regulations of the Department of Agriculture National Appeals Division must be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) and assigned OMB control numbers 0563–0001, 0563–0003 and 0563–0029.

Discussion

The Federal Crop Insurance Reform Act of 1994 amended the Federal Crop Insurance Act to require that producers obtain at least the catastrophic level of crop insurance in order to be eligible for any price support or production adjustment program or the Conservation Reserve Program.

It has been determined that publication of this rule for notice and comment is impractical, unnecessary and contrary to legislative intent. This rule simply implements the specific mandate of the Federal Crop Insurance Reform Act of 1994 and the agency does not have discretion with respect to its implementation.

List of Subjects in 7 CFR Part 1405

Crop insurance.

Accordingly, 7 CFR Part 1405 is amended as follows:

PART 1405—LOANS, PURCHASES AND OTHER OPERATIONS

1. The authority citation for part 1405 is revised to read as follows:

Authority: 7 U.S.C. 1506(l), 15 U.S.C. 714b and 714c.

2. Section 1405.6 is added to read as follows:

§ 1405.6 Crop insurance requirement.

(a) To be eligible for any benefits or payments under 7 CFR parts 723, 729, 1413, 1421, 1427, 1435, 1443, 1446, 1464 and payments under 7 CFR parts 704 and 1410 for CRP acreage under contracts entered into after October 12, 1994, the producer must obtain at least the catastrophic level of insurance for each crop of economic significance grown on each farm in the county in which the producer has an interest, if insurance is available in the county for the crop.

(b) Crop of economic significance. The term "crop of economic significance" means a crop that has contributed in the previous year, or is expected to contribute in the current crop year, 10 percent or more of the total expected value of all crops grown by the producer. However, notwithstanding the preceding sentence, if the total expected liability under the catastrophic risk protection endorsement is equal to or less than the administrative fee required for the crop, such crop will not be considered a crop of economic significance.

(c) In addition to the terms defined in this subsection, terms defined in part 719 of this title shall be applicable to this section.

Signed at Washington, DC, on June 19, 1995.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 95–15508 Filed 6–23–95; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–168–AD; Amendment 39–9263; AD 95–12–13]

Airworthiness Directives; Jetstream Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Jetstream Model ATP airplanes, that requires installation of modified engine de-ice timers, modification of the electrical wiring for the duct heat of the engine air intake, and installation of a time delay for the de-ice system in the air intake duct of the right engine. This amendment also requires associated revisions to the Airplane Flight Manual. This amendment is prompted by reports of ice that accreted in the engine air intake ducts and was ingested into the engine; this resulted in engine power rollback (loss of engine power). The actions specified by this AD are intended to prevent loss of multiple engine power during flight in icing conditions.

DATES: Effective July 26, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 26, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Jetstream Model ATP airplanes was published in the **Federal Register** on December 20, 1994 (59 FR 65516). That action proposed to require installation of new de-ice timers and an associated revision to the AFM; installation of a system that automates a 20-second delay between turning on the left engine intake de-ice system and turning on the right engine intake de-ice system; and installation of modified electrical wiring for the flexible ducts and lips of the engine air intake.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 72 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $43,200, or $4,320 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation or a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a),.1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–12–13 Jetstream Aircraft Limited (Formerly British Aerospace Commerical Aircraft, Limited): Amendment 39–9263. Docket 94–NM–168–AD.

Applicability: Model ATP airplanes having constructor numbers 2002 through 2063 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent engine power rollback during flight in icing conditions, due to ingestion of accreted ice, accomplish the following:

(a) For airplanes having constructor numbers 2002 through 2056 inclusive:

Within 90 days after the effective date of this AD, install modified de-ice timers for the left and right engines (Modification 30146A), in accordance with Jetstream Aircraft Limited Service Bulletin ATP–30–39–30146A, dated July 29, 1994; and revise the FAA-approved Airplane Flight Manual (AFM) to include the information specified in Temporary Revision T/41, Issue 1, dated November 15, 1994.

Note 2: The revision of the AFM required by this paragraph may be accomplished by inserting a copy of Temporary Revision T/41 in the AFM. When this temporary revision has been incorporated into general revisions of the AFM, the general revisions may be inserted in the AFM, provided that the information contained in the general revisions is identical to that specified in Temporary Revision T/41.

(b) For airplanes having constructor numbers 2002 through 2063 inclusive: Within 90 days after the effective date of this AD, accomplish paragraphs (b)(1) and (b)(2) of this AD:

(1) Install the modified electrical wiring for the flexible ducts and lips of the engine air intake (Modification 30143A) in accordance with Jetstream Aircraft Limited Service Bulletin ATP–30–37–30143A, dated August 1, 1994, or Revision 1, dated September 5, 1994.

(2) Install the automated 20-second delay system (Modification 35285A) to ensure that the left engine de-ice systems are turned on prior to turning on the right engine de-ice systems, in accordance with Jetstream Aircraft Limited Service Bulletin ATP–30–30–35285A, dated July 15, 1994; and revise the FAA-approved AFM to include the information specified in Temporary Revision T/40, Issue 1, dated August 3, 1994.

Note 3: The revision of the AFM required by this paragraph may be accomplished by inserting a copy of Temporary Revision T/40 in the AFM. When this temporary revision has been incorporated into general revisions of the AFM, the general revisions may be inserted in the AFM, provided that the information contained in the general revisions is identical to that specified in Temporary Revision T/40.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with section 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The installation shall be done in accordance with the following Jetstream service bulletins, as applicable, which contain the specified effective pages:

Service bulletin referenced and date	Page No.	Revision level shown on page	Date shown on page
ATP–30–39–30146A, Original Issue, July 29, 1994	1–7	Original	July 29, 1994.
ATP–30–37–30143A, Original Issue August 1, 1994	1–15	Original	August 1, 1994.
ATP–30–37–30143A, Revision 1, September 5, 1994	1–3, 5–10, 14–17	1	September 5, 1994.
	4, 11–13	Original	August 1, 1994.
ATP–30–30–35285A, Original Issue, July 15, 1994	1–19	Original	July 15, 1994.

The amendment of the AFM shall be done in accordance with Temporary Revision T/41, Issue 1, dated November 15, 1994; or Temporary Revision T/40, Issue 1, dated August 3, 1994; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on July 26, 1995.

Issued in Renton, Washington, on June 2, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–14051 Filed 6–23–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 94–NM–218–AD; Amendment 39–9265; AD 94–14–07 R1]

Airworthiness Directives; Jetstream Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to all Jetstream Model 4101 airplanes, that currently requires modification of the mounting structure of the elevator controls on the rear pressure bulkhead. That AD was prompted by results of a structural analysis which indicate that certain structure in the elevator control system may be subject to deformation when maximum load is exerted by the pilot(s) in the event of a jam in the elevator control cables. The actions specified in that AD are intended to prevent reduced controllability of the airplane due to structural deformation in the elevator control system. This amendment limits the applicability of the rule.

DATES: Effective July 26, 1995.

The incorporation by reference of Jetstream Service Bulletin J41–53–012–41262A, Revision 1, dated October 3, 1994, as listed in the regulations, is approved by the Director of the Federal Register as of July 26, 1995..

The incorporation by reference of Jetstream Service Bulletin J41–53–012, dated November 30, 1993, as listed in the regulations, was approved previously by the Director of the Federal Register as of August 10, 1994 (59 FR 35247, July 11, 1994).

ADDRESSES: The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal

Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Jetstream Model 4101 series airplanes was published in the **Federal Register** on February 15, 1995 (60 FR 8593). That action proposed to revise AD 94–14–07, amendment 39–8959 (59 FR 35247, July 11, 1994), to continue to require modification of the mounting structure of the elevator controls on the rear pressure bulkhead. That action proposed to limit the applicability of the AD to include only those airplanes that had not been previously modified in accordance with the requirements of the AD.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Since this amendment only limits (reduces) the applicability of an existing AD, it will not add any new additional economic burden on affected operators, other than the costs that are already associated with the requirements of the existing AD. These current costs are reiterated in their entirety, as follows, for the convenience of affected operators:

The FAA estimates that 8 airplanes of U.S. registry will be affected by this AD, that it will take approximately 17 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $8,160, or $1,020 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8959 (59 FR 35247, July 11, 1994), and by adding a new airworthiness directive (AD), amendment 39–9265, to read as follows:

94–14–07 R1 Jetstream Aircraft Limited: Amendment 39–9265. Docket 94–NM–218–AD. Revises AD 94–14–07, Amendment 39–8959.

Applicability: Model 4101 airplanes; as listed in Jetstream Service Bulletin J41–53–012–41262A, Revision 1, dated October 3, 1994; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane due to structural deformation in the elevator control system, accomplish the following:

(a) Within 6 months after August 10, 1994 (the effective date of AD 94–14–07, amendment 39–8959), modify the mounting structure of the elevator controls on the rear pressure bulkhead, in accordance with Jetstream Service Bulletin J41–53–012, dated November 30, 1993, or Jetstream Service Bulletin J41–53–012–41262A, Revision 1, dated October 3, 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with either of the following Jetstream service bulletins, which contain the specified effective pages:

Service bulletin referenced and date	Page No.	Revision level shown on page	Date shown on page
J41–53–012–41262A, Revision 1, October 3, 1994	1–4	1	October 3, 1994.
	5–18	Original	November 30, 1993.
J41–53–012, November 30, 1993	1–18	Original	November 30, 1993.

This incorporation by reference of Jetstream Service Bulletin J41–53–012–41262A, Revision 1, dated October 3, 1994, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The incorporation by reference of Jetstream Service Bulletin J41–53–012, dated November 30, 1993, was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of August 10, 1994 (59 FR 35247, July 11, 1994). Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on July 26, 1995.

Issued in Renton, Washington, on June 2, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–14053 Filed 6–23–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 81F–0105]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Epoxidized Soybean Oil

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of epoxidized soybean oil as a halogen stabilizer in brominated soybean oil. This action is in response to a petition filed by Unitech Chemical, Inc.

DATES: Effective June 26, 1995; written objections and requests for a hearing by July 26, 1995. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of certain publications in new § 172.723, effective June 26, 1995.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Martha D. Peiperl, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3077.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of April 28, 1981 (46 FR 23811), FDA announced that a food additive petition (FAP 7A3329) had been filed by Unitech Chemical, Inc., 115 West Jackson Blvd., Chicago, IL 60604. Subsequently, all rights to this petition were sold to American Chemical Service, Inc., P.O. Box 190, Griffith, IN 46319. The petition proposes that the food additive regulations be amended to provide for the safe use of epoxidized soybean oil as a halogen stabilizer at a level not to exceed 1 percent in brominated soybean oil intended for use in foods for human consumption. Brominated soybean oil is permitted in food on an interim basis under 21 CFR 180.30 (brominated vegetable oil), for use only as a stabilizer for flavoring oils used in fruit-flavored beverages in an amount not to exceed 15 parts per million in the finished beverage.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of the additive is safe, and that the food additive regulations should be amended by adding new § 172.723 as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this action as announced in the notice of filing for FAP 7A3329 (46 FR 23811, April 28, 1981). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required. In addition, based on information in a letter from the petitioner dated February 15, 1990, FDA prepared a new finding of no significant impact. Both the letter of February 15, 1990, and the new finding of no significant impact may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before July 26, 1995, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives, Incorporation by reference, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: Secs. 201, 401, 402, 409, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 348, 371, 379e).

2. New § 172.723 is added to subpart H to read as follows:

§ 172.723 Epoxidized soybean oil.

Epoxidized soybean oil may be safely used in accordance with the following prescribed conditions:

(a) The additive is prepared by reacting soybean oil in toluene with hydrogen peroxide and formic acid.

(b) It meets the following specifications:

(1) Epoxidized soybean oil contains oxirane oxygen, between 7.0 and 8.0 percent, as determined by the American Oil Chemists' Society (A.O.C.S.) method Cd 9–57, "Oxirane Oxygen," reapproved 1989, which is incorporated by reference in accordance with 5 U.S.C 552(a) and 1 CFR part 51. Copies are available from the American Oil Chemists' Society, P. O. Box 3489, Champaign, IL 61826–3489, or may be examined at the Division of Petition Control (HFS–215), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 1110 Vermont Ave. NW., suite 1200, Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(2) The maximum iodine value is 3.0, as determined by A.O.C.S. method Cd 1–25, "Iodine Value of Fats and Oils Wijs Method," revised 1993, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(1) of this section.

(3) The heavy metals (as Pb) content can not be more than 10 parts per million, as determined by the "Heavy Metals Test," Food Chemicals Codex, 3d ed. (1981), p. 512, Method II (with a 2-gram sample and 20 microgram of lead ion in the control), which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Box 285, Washington, DC 20055, or may be examined at the Division of Petition Control (HFS–215), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 1110 Vermont Ave. NW., suite 1200, Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(c) The additive is used as a halogen stabilizer in brominated soybean oil at a level not to exceed 1 percent.

Dated: June 14, 1995.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–15349 Filed 6–23–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR PART 184

[Docket No. 84G–0257]

Enzyme Preparations From Animal and Plant Sources; Affirmation of Gras Status as Direct Food Ingredients

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is affirming that certain enzyme preparations derived from animal and plant sources are generally recognized as safe (GRAS) for use as direct food ingredients. This action is a partial response to a petition filed by the Ad Hoc Enzyme Technical Committee (now the Enzyme Technical Association). The following enzyme preparations derived from animal sources are affirmed as GRAS in this final rule: Catalase (bovine liver), animal lipase, pepsin, trypsin, and pancreatin (as a source of protease activity). The following enzyme preparations derived from plant sources are affirmed as GRAS in this final rule: Bromelain, ficin, and malt.

DATES: Effective June 26, 1995. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of a certain publication listed in 21 CFR 184.1024(b), 184.1034(b), 184.1316(b), 184.1415(b), 184.1443a(b), 184.1583(b), 184.1595(b), and 184.1914(b), effective June 26, 1995.

FOR FURTHER INFORMATION CONTACT: Laura M. Tarantino, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3090.

SUPPLEMENTARY INFORMATION:

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I. Introduction

In accordance with the procedures described in § 170.35 (21 CFR 170.35), the Ad Hoc Enzyme Technical Committee (now the Enzyme Technical Association), c/o Miles Laboratories, Inc., 1127 Myrtle St., Elkhart, IN 46514, submitted a petition (GRASP 3G0016) requesting that the following enzyme preparations be affirmed as GRAS for use in food:

(1) Animal-derived enzyme preparations: Catalase (bovine liver); lipase, animal; pepsin; rennet; rennet, bovine; and trypsin.

(2) Plant-derived enzyme preparations: Bromelain; malt; and papain.

(3) Microbially-derived enzyme preparations: *Aspergillus niger*, var. (lipase, catalase, glucose oxidase, and carbohydrase); *Bacillus subtilis*, var. (carbohydrase and protease mixtures); *Rhizopus oryzae* (carbohydrase); and *Saccharomyces* species (carbohydrase).

FDA published a notice of filing of this petition in the **Federal Register** of April 12, 1973 (38 FR 9256), and gave interested persons an opportunity to submit comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. The petition was amended by notices published in the **Federal Register** of June 12, 1973 (38 FR 15471), proposing affirmation that microbially derived enzyme preparations (carbohydrase, lipase, and protease) from *A. oryzae* are GRAS for use in food; in the **Federal Register** of August 29, 1984 (49 FR 34305), proposing affirmation that the enzyme preparations ficin, obtained from species of the genus *Ficus* (fig tree), and pancreatin, obtained from bovine and porcine pancreas, are GRAS for use in food; and in the **Federal Register** of June 23, 1987 (52 FR 23607), proposing affirmation that the enzyme preparation protease from *A. niger* is GRAS for use in food. In the June 23, 1987, notice, FDA also noted the petitioner's assertion that pectinase enzyme preparation from *A. niger* and lactase enzyme preparation from *A. niger* are included under carbohydrase enzyme preparation from *A. niger*, and that invertase enzyme preparation from *Saccharomyces cerevisiae* and lactase enzyme preparation from *Kluyveromyces marxianus* are both included under carbohydrase enzyme preparation from species of the genus *Saccharomyces*. The agency further noted that, therefore, pectinase enzyme preparation from *A. niger*, lactase enzyme preparation from *A. niger*, invertase enzyme preparation from *S. cerevisiae*, and lactase enzyme preparation from *K. marxianus* were to be considered part of the petition. Interested persons were given an opportunity to submit comments to the Dockets Management Branch (address above) on each amendment.

After the petition was filed, the agency published, as part of its comprehensive safety review of GRAS substances, two GRAS affirmation regulations that covered three of the enzyme preparations from animal and plant sources included in the petition. These two regulations are: (1) § 184.1685 *Rennet (animal derived)* (21 CFR 184.1685), which was published in the **Federal Register** of November 7, 1983 (48 FR 51151) and includes the petitioned enzyme preparations rennet and bovine rennet; and (2) § 184.1585 *Papain* (21 CFR 184.1585), which was published in the **Federal Register** of October 21, 1983 (48 FR 48805). The agency concludes that rennet, bovine rennet, and papain are already affirmed as GRAS and listed in existing regulations and need not be addressed further.

In letters to FDA (Refs. 1 and 2), the petitioner asserted that the enzyme preparation malt (amylase) includes extracts from germinated (malted) barley or ungerminated (unmalted) barley. In addition, certain published references (Refs. 3 and 4) submitted by the petitioner describe the enzyme preparation pancreatin as a substance containing the enzymes amylase, lipase, and protease.

In a notice published in the **Federal Register** of September 20, 1993 (58 FR 48889), the agency announced that the petitioner had requested that the following enzyme preparations be withdrawn from the petition without prejudice to the filing of a future petition: (1) Pancreatin used for its lipase activity, (2) pancreatin used for its amylase activity, and (3) amylase derived from unmalted barley extract. In that notice, the agency stated that, in light of the petitioner's request, any future action by FDA on the petition would not include a determination of the GRAS status of these three enzyme preparations.

This final rule is a partial response to the petition and addresses only enzyme preparations from animal and plant sources. Microbial enzyme preparations will be dealt with separately in a future issue of the **Federal Register**. Furthermore, in accordance with the September 20, 1993, **Federal Register** notice, FDA's determination of the GRAS status of the enzyme preparation malt includes only the enzyme preparation derived from malted barley extracts. Likewise, FDA's determination of the GRAS status of the enzyme preparation pancreatin includes only the use of pancreatin as a protease.

II. Standards for GRAS Affirmation

Pursuant to § 170.30 (21 CFR 170.30) and 21 U.S.C. 321(s), general recognition of safety may be based only on the views of experts qualified by scientific training and experience to evaluate the safety of substances directly or indirectly added to food. The basis of such views may be either scientific procedures or, in the case of a substance used in food prior to January 1, 1958, experience based on common use in food. General recognition of safety based upon scientific procedures requires the same quantity and quality of scientific evidence as is required to obtain approval of a food additive and ordinarily is based upon published studies, which may be corroborated by unpublished studies and other data and information (§ 170.30(b)). General recognition of safety through experience based on common use in food prior to January 1, 1958, may be determined without the quantity or quality of scientific evidence required for approval of a food additive regulation, and ordinarily is based upon generally available data and information.

For the enzyme preparations from animal and plant sources that are the subject of this document, the Enzyme Technical Association based its request for affirmation of GRAS status on a history of safe food use prior to 1958. In the preamble to a proposed rule amending § 170.30, which was published in the **Federal Register** of July 2, 1985 (50 FR 27294) (final rule published in the **Federal Register** of May 10, 1988 (53 FR 16544)), FDA stated that general recognition of safety through experience based on common use in food requires a consensus on the safety of the substance among the community of experts who are qualified to evaluate the safety of food ingredients.

III. Background

A. Enzymes

Enzymes are proteins or conjugated proteins,[1] produced by plants, animals, and microorganisms, that function as biochemical catalysts (Ref. 5). Further, most enzymes are very specific in their ability to catalyze only certain chemical reactions; this high degree of specificity and strong catalytic activity are the most important functional properties of enzymes (Ref. 6). The practical applications of enzymes used in food processing include the conversion of starch to sugars in brewing, the tenderizing of sausage casings and meat, and the partial hydrolysis (breakdown) of proteins that would otherwise form a haze when beer is chilled (Ref. 7).

B. Enzyme Nomenclature

Enzymes were originally known principally by their trivial (common or historical) names. These trivial names typically were based on one of two methods of nomenclature: (1) By the addition of "-in" or "-ain" as a suffix to a root indicating the source of the enzyme (e.g., papain from papaya or pancreatin from pancreas); or (2) by the addition of the suffix "-ase" to a root indicating the substrate (specific reactant) for the enzyme (e.g., lactase, which acts on the substrate lactose) (Ref. 8). Some proteases, however, have trivial names that are not based on either of these two methods (e.g., trypsin).

In 1956, the Third International Congress of the International Union of Biochemistry (IUB) organized a Commission on Enzymes to devise a systematic strategy for naming enzymes. The system developed by the Commission on Enzymes combined a naming system and a numbering system (Ref. 8). With the exception of most proteases, the systematic name is derived from the names of the substrate, product, and type of reaction.[2] The systematic number is based on the class and subclasses to which the enzyme belongs. The two classes of enzymes in the numbering system relevant to this document are class 1, oxidoreductases (e.g., catalase), which are active in biological oxidation and reduction; and class 3, hydrolases (e.g., glycosidases (carbohydrases), lipases, and proteases), which catalyze the splitting of chemical bonds by the addition of water.

The following examples illustrate the trivial name, functions, and Enzyme Commission (EC) name and number of enzymes that are components of some of the enzyme preparations that are the subject of this document (Refs. 9 through 11).

α-amylase. Hydrolysis of α-1,4-glucan bonds in polysaccharides (starch, glycogen, etc.), yielding dextrins and oligo- and monosaccharides (1,4-α-D-glucan glucanohydrolase, EC 3.2.1.1).

Catalase. Decomposition of hydrogen peroxide (H_2O_2), yielding water and

[1] A conjugated protein is a protein that contains a nonamino acid moiety such as a carbohydrate.

[2] In general, proteolytic enzymes are not sufficiently defined to apply short systematic names.

molecular oxygen (H_2O_2:H_2O_2 oxidoreductase, EC 1.11.1.6).

C. Enzyme Preparations That Are the Subject of This Document

1. Introduction

The enzyme preparations that are the subject of this document are derived from animal or plant sources. They contain one or more active enzymes and may also contain diluents, preservatives, antioxidants, and other substances. Table 1 includes characterizing enzyme activities [3] of the animal- and plant-derived enzyme preparations that are the subject of this document, as well as their Chemical Abstracts Service Registry Numbers (CAS Reg. Nos.) and EC numbers as appropriate (Refs. 3, 4, and 9 through 11).

TABLE 1.—ENZYME ACTIVITIES, CAS REG. NOS., AND EC NUMBERS ASSOCIATED WITH SOME ENZYME PREPARATIONS

Enzyme preparation	Enzyme activity	CAS Reg. No.	EC No.
Catalase	Catalase	9001–05–2	1.11.1.6
Animal lipase	Lipase	9001–62–1	3.1.1.3
Pepsin	Protease	9001–75–6	3.4.23.1
Trypsin	Protease	9002–07–7	3.4.21.4
Pancreatin [1]	Protease	8049–47–6	N/A
	Amylase		
	Lipase		
Bromelain	Protease	9001–00–7	3.4.22.32
Ficin	Protease	9001–33–6	3.4.22.3
Malt [2]	α-amylase	N/A	3.2.1.1
	β-amylase		3.2.1.2

[1] Pancreatin is identified by a CAS Reg. No. but does not have an EC number.
[2] The α-amylase and β-amylase enzyme activities in malt are identified by EC number, but malt does not have a CAS Reg. No.

2. Animal-Derived Enzyme Preparations

a. *Sources.* The animal-derived enzyme preparations that are the subject of this document are derived from a variety of animal sources. Catalase is obtained from bovine liver (Ref. 9). Animal lipase is obtained from the edible forestomach tissue of calves, kids, or lambs, or from animal pancreatic tissue (Ref. 9). Pepsin is obtained from the glandular layer of hog stomach (Ref. 9). Trypsin is obtained from porcine or bovine pancreas (Ref. 9). Pancreatin is also obtained from porcine or bovine pancreas (Refs. 3 and 4). These source materials for bovine liver catalase, animal lipase, pepsin, trypsin, and pancreatin were described by Tauber in 1949 (Ref. 12) and by Reed, in Kirk and Othmer in 1957 (Ref. 13).

b. *Methods of manufacture.* The animal-derived enzyme preparations that are the subject of this document are produced either as tissue preparations (powders) or aqueous extracts of tissues from edible animals (Refs. 8, 9, 12, and 13). In the tissue preparation method, the animal tissue is ground with processing aids, such as sodium chloride and skim milk powder. In the aqueous extract method, the enzyme preparation may remain in aqueous solution, or it can be precipitated by adding a solvent such as acetone or methyl alcohol. For example, pepsin can be prepared by the aqueous extraction of animal tissue, while animal lipase can be prepared by the tissue preparation method as well as the aqueous extraction method.

c. *Technical effects.* Pre-1958 uses in food of animal-derived enzyme preparations are listed in Table 2, using terminology from the cited reference(s) published before or during 1958.

TABLE 2.—APPLICATIONS OF ANIMAL-DERIVED ENZYMES IN FOOD PRIOR TO 1958

Enzyme preparation	Enzyme activity	Food categories	Technical effect or industry application	References
Pepsin	Protease	Beer	Chillproofing	7, 13, 14, 15
		Condiments	Not reported	15
		Evaporated milk	Stabilization	15
Pancreatin	Protease	Milk	Prevention of oxidation flavor	13, 15
		Milk	Protein hydrolysis	13, 15
		Evaporated milk	Stabilization	15
Trypsin	Protease	Milk	Antioxidant	16
Lipase	Lipase	Italian type cheeses	Flavor production	13, 17, 18
Catalase	Catalase	Milk	Removal of peroxide after sterilization.	13, 15

3. Plant-Derived Enzyme Preparations

a. *Sources.* Bromelain is obtained from the pineapples *Ananas comosus* and *A. bracteatus* L. (Ref. 9). Ficin is obtained from the latex of species of the genus *Ficus* (fig tree) (Ref. 9). Malt is obtained from barley after controlled germination (Ref. 19). These source materials for bromelain, ficin, and malt were described by Tauber in 1949 (Ref. 12) and by Reed in 1957 (Ref. 13).

[3] The activity of a commercial product is a measurement of the rate of the reaction catalyzed by the enzyme of interest in the enzyme preparation, and is usually expressed in activity units per unit weight of the product (Ref. 8). The enzyme preparation is then diluted or concentrated until the activity is within a certain desired range.

b. *Methods of manufacture.* Bromelain is obtained from pineapple juice (pressed from the stems of pineapples that remain after harvesting the fruit) by precipitation with alcohol or ammonium sulfate (Refs. 8, 12, and 13). Ficin is obtained from the latex of a variety of tropical fig trees by precipitation with acetone or alcohol (Refs. 9, 12, and 14).

Malt is produced from germinated barley. The petition describes the following process for the manufacture of malt (Ref. 19). Barley is softened by a series of steeping operations in water at 10 °C to 30 °C until the moisture content of the kernels reaches 40 to 50 percent. The grain is then germinated under controlled conditions for a period of up to 7 days. Reducing substances are added to activate the enzymes. Solids are removed from the extract, which is concentrated, stabilized, and standardized. The resultant syrup is usually a brown, sweet, and viscous liquid with a specific gravity of approximately 1.1 to 1.3 at 25 °C.

c. *Technical effects.* Pre-1958 uses in food of plant-derived enzyme preparations are listed in Table 3, using terminology from the cited reference(s) published before or during 1958.

TABLE 3.—APPLICATIONS OF PLANT-DERIVED ENZYMES IN FOOD PRIOR TO 1958

Enzyme preparation	Enzyme activity	Food categories	Technical effect or industry application	References
Malt	Amylase	Bread	Baking	7, 14, 15
		Beer	Mashing	14, 15
		Precooked baby cereals	Not reported	15
		Breakfast cereals	Not reported	14, 15
		Distilled beverages	Mashing	15
Bromelain	Protease	Beer	Chillproofing	13, 14, 15
		Condiments	Not reported	15
		Milk	Protein hydrolysis	15
		Evaporated milk	Stabilization	15
		Meat	Tenderizing, softening tissue	13, 14, 15, 20
		Sausage casings	Tenderizing	14, 15
		Fish	Condensing fish solubles	15
Ficin	Protease	Meat	Softening	20

IV. Safety Evaluation

A. Pre-1958 History of Use in Food

Enzymes have been used for many years in the production and processing of food, for example, in the baking, dairy, and brewing industries (e.g., see Refs. 7, 13, and 14). The consumption of food produced using these enzymes has produced no evidence of an associated human health hazard.

The petitioner provided generally available information, including published papers and review articles, showing that the animal- and plant-derived enzyme preparations that are the subject of this document were commonly used in food prior to 1958. For example, the pre-1958 food uses shown in Tables 2 and 3 were documented in articles that were published in or before 1958; the cited references demonstrate that the use of these enzyme preparations in a variety of foods was widely recognized by 1958. Therefore, the agency concludes that the enzyme preparations that are the subject of this document were in common use in food prior to January 1, 1958.

B. Corroborating Evidence of Safety

1. The Enzyme Components

A wide variety of enzymes has always been present in human food. Moreover, many naturally occurring enzymes in the cells of animals and plants used for food remain active after cell death. For example, active enzymes are present in fresh fruits and vegetables and are not inactivated unless the fruits or vegetables are cooked (Refs. 6 and 21).

The enzymes that are the subject of this document are naturally occurring proteins that are ubiquitous in living organisms. They are derived from animals and plants that have been used as sources of food, and are identical or substantially similar [4] to enzymes that have been safely consumed as part of the diet throughout human history.

Issues relevant to a safety evaluation of proteins from food sources are potential toxicity and allergenicity. Pariza and Foster (Ref. 6) note that very few toxic agents have enzymatic properties, and those that do (e.g., diphtheria toxin and certain enzymes in the venom of poisonous snakes) catalyze unusual reactions that are not related to the types of catalysis that are common in food processing and that are the subject of this document. Further, the agency has recently noted, in the context of guidance to industry regarding the safety assessment of new plant varieties, that newly introduced enzymes do not generally raise safety concerns (Ref. 22). Exceptions include enzymes that produce substances that are not ordinarily digested and metabolized, or that produce toxic substances. The functions of the enzymes that are the subject of this document are well known; they split proteins, carbohydrates, lipids, or other substances (e.g., hydrogen peroxide) into smaller subunits that do not have toxic properties and that are readily metabolized by the human body.

The agency is not aware of any reports of allergic reactions associated with the ingestion in food of the enzymes that are the subject of this document. There have been, however, some reports of allergies and primary irritations from skin contact with enzymes or inhalation of dust from concentrated enzymes (for example, proteases used in the manufacture of laundry detergents) (Refs. 23 through 25). These reports relate primarily to workers in production plants (Ref. 24) and are not relevant to an evaluation of the safety of ingestion of such enzymes in food.

[4] Enzymes that have the same function and that are identified by the same name and EC number often differ slightly in structure and properties when they are obtained from different sources. For example, the structure of an enzyme isolated from one tissue (such as the liver) of one animal species, may differ slightly from that of the same enzyme isolated from a different tissue from the same species, or from the liver of another animal species. In part because of this variability, the diet routinely contains many thousands of different enzyme protein molecules. The concept of substantial similarity relative to food safety assessment has recently been discussed by several expert groups. For example, a report prepared by an expert group of the Organization for Economic Co-operation and Development (OECD) concluded, in part, "[I]f a new food or food component is found to be substantially equivalent to an existing food or food component, it can be treated in the same manner with respect to safety. No additional safety concerns would be expected." ("Safety Evaluation of Foods Derived by Modern Biotechnology: Concepts and Principles," OECD, 1993, Paris).

Moreover, Pariza and Foster (Ref. 6) note that there are no confirmed reports of primary irritations in consumers caused by enzymes used in food processing.

The 1977 report of the Select Committee on GRAS substances concerning the plant enzyme papain (Ref. 23) supports the view that the ingestion of an active protease at levels found in food products is not likely to affect the human gastrointestinal tract, where many proteases already exist at levels adequate to digest food:

> In common with other proteolytic enzymes, papain digests the mucosa and musculature of tissues in contact with the active enzyme for an appreciable period. Because there is no food use of papain that could result in the enzyme preparation occurring in sufficient amount in foods to produce these effects, this property does not pose a dietary hazard.

In summary, the enzyme components of the preparations that are the subject of this document are identical or substantially similar to enzymes that are known to have been safely consumed in the diet; they do not result in the production of toxic substances; and their use in food for many years has not been associated with reports of allergenicity or primary irritation. Therefore, the agency finds that the presence of the enzyme components does not create a basis for concern about the safety of the enzyme preparations.

2. Enzyme Sources and Processing Aids

The agency has concluded that the enzyme components of enzyme preparations do not raise safety concerns; therefore, the relevant safety issue becomes whether the enzyme preparations contain toxic contaminants. Enzyme preparations used in food processing are usually not chemically pure but contain, in addition to the enzyme component, materials that derive from the enzyme source, as well as from the manufacturing methods used to generate the finished enzyme preparation.

In accordance with § 170.30(h)(1), the enzyme preparations affirmed as GRAS in this document must comply with the general requirements and additional requirements for enzyme preparations in the Food Chemicals Codex, 3d ed. (Ref. 9). When the animal-derived enzyme preparations that are the subject of this document are produced in accordance with current good manufacturing practice (CGMP), they are obtained from animal tissues that comply with applicable Federal meat inspection requirements and that are handled in accordance with good hygienic practices (Ref. 9). Similarly, when produced in accordance with CGMP, the plant material used in the production of enzymes consists of components that leave no residues harmful to health in the finished food under normal conditions of use (Ref. 9).

The enzyme preparations may contain substances, such as salts, preservatives, or stabilizers, that are used in their preparation and purification. When used in accordance with CGMP, these processing aids are substances that are acceptable for general use in foods (Ref. 9). As always, any of these substances that are intended to become or become functional components of the enzyme preparation must be GRAS substances or food additives approved for use in the manufacture of enzyme preparations. Therefore, the agency concludes that the presence of added substances and impurities derived from the enzyme source or introduced by manufacturing does not present a basis for concern about the safety of the enzyme preparations.

3. Dietary Exposure

Because enzymes are highly efficient catalysts, they are needed in only minute quantities to perform their function. When used in accordance with CGMP, the amounts added to food represent only a minute fraction of the total food mass. The history of common use in food for many years of the enzyme preparations that are the subject of this document has produced no evidence of an associated hazard; further, there is no reason to believe that use of these enzyme preparations at levels needed to perform their functions would raise a safety concern. Therefore, the agency concludes that no limits other than CGMP are needed to ensure safe use.

V. Comments

FDA received seven letters in response to the filing notice and none in response to the amendment notices. Three comments concerned microbially derived enzyme preparations, which will be addressed in a separate document. Of the remaining four comments, one came from a food manufacturer, two from trade associations, and one from a consumer group. Three comments supported the petition for GRAS affirmation of the enzyme preparations included in the petition, stating that these enzyme preparations have a long history of use in foods such as cheese, bread, and corn syrup.

One comment asserted that enzyme preparations should not be considered GRAS, and their use should be declared on the label of foods to warn consumers about hazards inherent in their use. The comment stated that enzyme preparations are rarely purified to any significant degree and contain a variety of cellular constituents and metabolic debris. The comment further argued that, although enzyme preparations are used at low levels and are inactivated after the treatment of food, they may elicit allergic reactions and other biological activities which could be detrimental to human health. In support of this statement, the comment cited a published scientific article (Ref. 26) which reported that enzyme preparations from *B. subtilis* caused temporary weight loss and aggravated infection in mice when injected into the abdominal cavity and caused hemolysis and hemagglutination of sheep erythrocytes in in vitro studies. Because this article concerns microbially derived enzyme preparations injected directly into the abdominal cavity, it is not relevant to this rulemaking, which concerns animal- and plant-derived enzyme preparations consumed by mouth.

The agency also notes that under certain circumstances, applicable regulations already require use of an enzyme preparation in a food to be declared on the label, depending upon the nature of the enzyme preparation's use and technical effect in the food. These regulatory requirements are discussed below.

The Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(i)(2)) requires that all ingredients of multi-ingredient foods be listed on the label of the food. By regulation, FDA has exempted certain ingredients that are used only as processing aids from this requirement. Sections 101.100(a)(3)(ii)(a) and (a)(3)(ii)(c) (21 CFR 101.100(a)(3)(ii)(a) and (a)(3)(ii)(c)) provide an exemption from the ingredient listing requirement for processing aids that are added to a food for their technical or functional effect during processing, but are either removed from the food before packaging or are present in the finished food at insignificant levels and do not have any technical or functional effect in the finished food. Although many enzyme preparations are used as processing aids in food (e.g., the use of amylase preparations in the manufacture of glucose syrup and the use of protease preparations in the manufacture of protein hydrolyzates), other enzyme preparations are not used solely as processing aids in the manufacture of foods (e.g., the use of lipase preparations for flavor production in cheeses and the use of protease preparations in tenderizing meat). In these cases, the enzymes remain active

in the finished food product, functioning as an integral part of the food by enhancing body, flavor, and aroma (49 FR 29242, July 19, 1984). Because such effects in the finished food remove the enzymes from the ingredient listing exemption in § 101.100(a)(3)(ii)(c), the use of such enzymes must be declared on the label. Therefore, whether a label declaration is needed for the use of an enzyme preparation in a food will depend upon its function and effect in the food.

VI. Conclusions

The petitioner has provided generally available evidence demonstrating that the enzyme preparations under consideration were in common use in food prior to 1958. As provided for under § 170.30(a) and (c)(1), FDA has determined that this information provides an adequate basis upon which to conclude that the use of these enzyme preparations in food is generally recognized as safe among the community of experts qualified by scientific training and experience to evaluate the safety of food ingredients.

This evidence of common use in food prior to 1958 without any reported adverse effects from consumption is corroborated by the absence of any reports of toxicity resulting from use of the enzyme preparations in food since 1958, by information that the enzymes themselves and the sources from which they are derived are nontoxic, and by evidence that manufacturing will not introduce impurities that will adversely affect the safety of the finished enzyme preparations. Moreover, the enzyme preparations that are the subject of this document are substantially similar to enzymes naturally present in foods that have been safely consumed in the human diet for centuries.

Having evaluated the information in the petition, along with other available information that related to the use of these enzyme preparations, the agency concludes that the following enzyme preparations derived from animal or plant sources are GRAS under conditions of use consistent with CGMP: Bromelain, catalase (bovine liver), ficin, animal lipase, malt, pancreatin (as a source of protease activity), pepsin, and trypsin. The agency is basing its conclusion on evidence of a substantial history of safe consumption of the enzyme preparations in food by a significant number of consumers prior to 1958, corroborated by the other evidence summarized above.

FDA is therefore affirming that the use of the enzyme preparations that are the subject of this document is GRAS with no limits other than CGMP (21 CFR 184.1(b)(1)). The agency further concludes that the general and additional requirements for enzyme preparations in the Food Chemicals Codex, 3d ed. (1981), pp. 107–110, are adequate as minimum criteria for food-grade preparations of these enzymes.

To clarify the identity of each enzyme preparation, the agency is including in §§ 184.1024(a), 184.1034(a), 184.1316(a), 184.1415(a), 184.1443a(a), 184.1583(a), 184.1595(a), and 184.1914(a), the EC number(s) of the enzyme preparation or of the characterizing enzyme activity(ies) for food use of the preparation [5]. In order to make clear that the affirmation of the GRAS status of these enzyme preparations is based on the evaluation of specific uses, the agency is including in §§ 184.1024(c), 184.1034(c), 184.1316(c), 184.1415(c), 184.1443a(c), 184.1583(c), 184.1595(c), and 184.1914(c) the technical effect and the specific substances on which each enzyme preparation acts, although the data show no basis for a potential risk from any foreseeable use of these enzyme preparations.

VII. Environmental Impact

The agency has determined under 21 CFR 25.24(b)(7) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Economic Impact

FDA has examined the impact of this final rule affirming the GRAS status of enzyme preparations from animal and plant sources under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs Federal agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). The Regulatory Flexibility Act requires Federal agencies to minimize the economic impact of their regulations on small businesses.

The agency finds that this final rule is not a significant regulatory action as defined by Executive Order 12866. The rule requires no change in current industry practice concerning the manufacture and use of these substances. Compliance costs to firms are therefore estimated to be zero. The substances that are the subject of this document pose no health risks to consumers when used as intended. Costs to consumers are therefore also estimated to be zero.

In accordance with the Regulatory Flexibility Act, FDA also has determined that this final rule will not have a significant adverse impact on a substantial number of small businesses.

[5] The EC number is sufficient to define the characterizing activity in the enzyme preparation. Therefore, FDA is not including the EC systematic name in the regulation.

IX. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Comments of Ad Hoc Enzyme Technical Committee regarding FDA's draft final regulations, entitled "Enzymes Proposed for Affirmation as GRAS," with a letter dated December 21, 1984, from Roger D. Middlekauff, Ad Hoc Enzyme Technical Committee, to Kenneth A. Falci, FDA.
2. Letter dated September 20, 1985, from Roger D. Middlekauff, Enzyme Technical Association, to Lawrence J. Lin, FDA.
3. Monograph on "Pancreatin," U.S. Pharmacopeia, 21st revision, the United States Pharmacopeial Convention, Inc., Rockville, MD, pp. 777–778, 1985.
4. Monograph on "Pancreatin," U.S. Pharmacopeia, 6th supp., the United States Pharmacopeial Convention, Inc., Rockville, MD, pp. 2595–2597, 1987.
5. Morris, W., editor, The American Heritage Dictionary of the English Language, Houghton Mifflin Co., Boston, MA, p. 438, 1976.
6. Pariza, M. W., and E. M. Foster, "Determining the Safety of Enzymes Used in Food Processing," *Journal of Food Protection*, 46:453–468, 1983.
7. Reed, G., "Industrial Enzymes—Now Speed Natural Processes," *Food Engineering*, 24:105–109, 1952.
8. Scott, D., "Enzymes, Industrial," Encyclopedia of Chemical Technology, Mark, H. F. et al., editors, John Wiley and Sons, New York, 3d ed., 9:173–224, 1978.
9. Monograph on "Enzyme Preparations," Food Chemicals Codex, National Academy Press, Washington, DC, 3d ed., pp. 107–110, and 480–481, 1981.
10. IUB, "Enzyme Nomenclature 1992," Academic Press, New York, pp. 116, 307, 346, 388, 399, 402–403, 1992.
11. IUB, "Enzyme Nomenclature 1964," Academic Press, New York, pp. 66–67, 86–87, 126–131, 136–149, and 170–171, 1965.
12. Tauber, H., "The Chemistry and Technology of Enzymes," John Wiley and Sons, New York, pp. 25–26, 130–131, 140, 145–151, 163–167, 192–193, and 327–335, 1949.

13. Reed, G., "Enzymes, Industrial," Encyclopedia of Chemical Technology, Kirk. R. E. and D. F. Othmer, editors, Interscience Encyclopedia, Inc., New York, 1st supplemental vol., pp. 294–312, 1957.
14. Underkofler, L. A., and W. J. Ferracone, "Commercial Enzymes—Potent Catalyzers that Promote Quality," *Food Engineering*, 29:123, 125–126, 130, and 133, 1957.
15. Underkofler, L. A., R. R. Barton, and S. S. Rennet, "Microbiological Process Report—Production of Microbial Enzymes and Their Applications," *Applied Microbiology*, 6:212–221, 1958.
16. Smythe, C. V., "Microbiological Production of Enzymes and Their Practical Applications," *Economic Botany*, 5:126–144, 1951.
17. Harper, W. J. and J. E. Long, "Italian Cheese Ripening. IV. Various Free Amino and Fatty Acids in Commercial Provolone Cheese," *Journal of Dairy Science*, 39:129–137, 1956.
18. Long, J. E., and W. J. Harper, "Italian Cheese Ripening. VI. Effects of Different Types of Lipolytic Enzyme Preparations on the Accumulation of Various Free Fatty and Free Amino Acids and the Development of Flavor in Provolone and Romano Cheese." *Journal of Dairy Science*, 39:245–252, 1956.
19. Response of the Enzyme Technical Association to the letter dated June 26, 1986, of Lawrence J. Lin regarding GRASP 3G0016, received with a letter dated October 3, 1986, from Roger D. Middlekauff of the Enzyme Technical Association, to Lawrence J. Lin, FDA.
20. "List of Chemicals Approved Under Meat Inspection Act Before September 6, 1958, Which are Exempted from the 1958 Food Additives Amendment of the Federal Food, Drug, and Cosmetic Act," *Food Drug Cosmetic Law Journal*, 13:834–840, 1958.
21. De Becze, G. I., "Food Enzymes," *Critical Reviews in Food Technology*," 1:479–518, 1970.
22. FDA, "Statement of Policy: Foods Derived from New Plant Varieties," 57 FR 22984 at 23005; May 29, 1992.
23. "Evaluation of the Health Aspects of Papain as a Food Ingredient," Select Committee on GRAS Substances, Washington, DC, available through U.S. Department of Commerce, National Technical Information Service, Order No. PB–274–174, 1977.
24. Fulwiler, R. D., "Detergent Enzymes—An Industrial Hygiene Challenge," *American Industrial Hygiene Association Journal*, 32:73–81, 1971.
25. "Enzyme-containing Laundering Compounds and Consumer Health," National Research Council/National Academy of Sciences, National Technical Information Service, Washington, DC, Order No. PB–204–118, 1971.
26. Dubos, R., "Toxic Factors in Enzymes Used in Laundry Products," *Science*, 173:259–260, 1971.

List of Subjects in 21 CFR Part 184

Food ingredients, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 184 is amended as follows:

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR part 184 continues to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

2. Section 184.1024 is added to subpart B to read as follows:

§ 184.1024 Bromelain.

(a) Bromelain (CAS Reg. No. 9001–00–7) is an enzyme preparation derived from the pineapples *Ananas comosus* and *A. bracteatus* L. It is a white to light tan amorphous powder. Its characterizing enzyme activity is that of a peptide hydrolase (EC 3.4.22.32).

(b) The ingredient meets the general requirements and additional requirements for enzyme preparations in the Food Chemicals Codex, 3d ed. (1981), p. 110, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC, or may be examined at the Office of Premarket Approval (HFS–200), Food and Drug Administration, 200 C St. SW., Washington, DC, and the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as GRAS as a direct food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as an enzyme as defined in § 170.3(o)(9) of this chapter to hydrolyze proteins or polypeptides.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice.

3. Section 184.1034 is added to subpart B to read as follows:

§ 184.1034 Catalase (bovine liver).

(a) Catalase (bovine liver) (CAS Reg. No. 9001–05–2) is an enzyme preparation obtained from extracts of bovine liver. It is a partially purified liquid or powder. Its characterizing enzyme activity is catalase (EC 1.11.1.6).

(b) The ingredient meets the general requirements and additional requirements for enzyme preparations in the Food Chemicals Codex, 3d ed. (1981), p. 110, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the National Academy Press, 2101 Constitution Ave., NW., Washington, DC 20418, or may be examined at the Office of Premarket Approval (HFS–200), Food and Drug Administration, 200 C St., SW., Washington, DC, and the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as GRAS as a direct food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as an enzyme as defined in § 170.3(o)(9) of this chapter to decompose hydrogen peroxide.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice.

4. Section 184.1316 is added to subpart B to read as follows:

§ 184.1316 Ficin.

(a) Ficin (CAS Reg. No. 9001–33–6) is an enzyme preparation obtained from the latex of species of the genus *Ficus*, which include a variety of tropical fig trees. It is a white to off-white powder. Its characterizing enzyme activity is that of a peptide hydrolase (EC 3.4.22.3).

(b) The ingredient meets the general requirements and additional requirements for enzyme preparations in the Food Chemicals Codex, 3d ed. (1981), p. 110, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the National Academy Press, 2101 Constitution Ave., NW., Washington, DC 20418, or may be examined at the Office of Premarket Approval (HFS–200), Food and Drug Administration, 200 C St., SW., Washington, DC, and the Office of the Federal Register, 800 North Capitol St., NW., suite 700, Washington, DC.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as GRAS as a direct food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as an enzyme as defined in § 170.3(o)(9) of this chapter to hydrolyze proteins or polypeptides.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice.

5. Section 184.1415 is added to subpart B to read as follows:

§ 184.1415 Animal lipase.

(a) Animal lipase (CAS Reg. No. 9001–62–1) is an enzyme preparation obtained from edible forestomach tissue of calves, kids, or lambs, or from animal pancreatic tissue. The enzyme preparation may be produced as a tissue preparation or as an aqueous extract. Its characterizing enzyme activity is that of a triacylglycerol hydrolase (EC 3.1.1.3).

(b) The ingredient meets the general requirements and additional requirements for enzyme preparations in the Food Chemicals Codex, 3d ed. (1981), p. 110, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the National Academy Press, 2101 Constitution Ave., NW., Washington, DC 20418, or may be examined at the Office of Premarket Approval (HFS–200), Food and Drug Administration, 200 C St., SW., Washington, DC, and the Office of the Federal Register, 800 North Capitol St., NW., suite 700, Washington, DC.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as GRAS as a direct food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as an enzyme as defined in § 170.3(o)(9) of this chapter to hydrolyze fatty acid glycerides.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice.

6. Section 184.1443a is added to subpart B to read as follows:

§ 184.1443a Malt.

(a) Malt is an enzyme preparation obtained from barley which has been softened by a series of steeping operations and germinated under controlled conditions. It is a brown, sweet, and viscous liquid or a white to tan powder. Its characterizing enzyme activities are α-amylase (EC 3.2.1.1.) and β-amylase (EC 3.2.1.2).

(b) The ingredient meets the general requirements and additional requirements for enzyme preparations in the Food Chemicals Codex, 3d ed. (1981), p. 110, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the National Academy Press, 2101 Constitution Ave., NW., Washington, DC 20418, or may be examined at the Office of Premarket Approval (HFS–200), Food and Drug Administration, 200 C St., SW., Washington, DC, and the Office of the Federal Register, 800 North Capitol St., NW., suite 700, Washington, DC.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as GRAS as a direct food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as an enzyme as defined in § 170.3(o)(9) of this chapter to hydrolyze starch or starch-derived polysaccharides.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice.

7. Section 184.1583 is added to subpart B to read as follows:

§ 184.1583 Pancreatin.

(a) Pancreatin (CAS Reg. No. 8049–47–6) is an enzyme preparation obtained from porcine or bovine pancreatic tissue. It is a white to tan powder. Its characterizing enzyme activity that of a peptide hydrolase (EC 3.4.21.36).

(b) The ingredient meets the general requirements and additional requirements in the Food Chemicals Codex, 3d ed. (1981), p. 110, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or may be examined at the Office of Premarket Approval (HFS–200), Food and Drug Administration, 200 C St. SW., Washington, DC, and the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as GRAS as a direct food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as an enzyme as defined in § 170.3(o)(9) of this chapter to hydrolyze proteins or polypeptides.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice.

8. Section 184.1595 is added to subpart B to read as follows:

§ 184.1595 Pepsin.

(a) Pepsin (CAS Reg. No. 9001–75–6) is an enzyme preparation obtained from the glandular layer of hog stomach. It is a white to light tan powder, amber paste, or clear amber to brown liquid. Its characterizing enzyme activity is that of a peptide hydrolase (EC 3.4.23.1).

(b) The ingredient meets the general requirements and additional requirements for enzyme preparations in the Food Chemicals Codex, 3d ed. (1981), p. 110, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or may be examined at the Office of Premarket Approval (HFS–200), Food and Drug Administration, 200 C St. SW., Washington, DC, and the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as GRAS as a direct food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as an enzyme as defined in § 170.3(o)(9) of this chapter to hydrolyze proteins or polypeptides.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice.

9. Section 184.1914 is added to subpart B to read as follows:

§ 184.1914 Trypsin.

(a) Trypsin (CAS Reg. No. 9002–07–7) is an enzyme preparation obtained from purified extracts of porcine or bovine pancreas. It is a white to tan amorphous powder. Its characterizing enzyme activity is that of a peptide hydrolase (EC 3.4.21.4).

(b) The ingredient meets the general requirements and additional requirements for enzyme preparations in the Food Chemicals Codex, 3d ed. (1981), p. 110, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or may be examined at the Office of Premarket Approval (HFS–200), Food and Drug Administration, 200 C St. SW., Washington, DC, and the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good

manufacturing practice. The affirmation of this ingredient as GRAS as a direct food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as an enzyme as defined in § 170.3(o)(9) of this chapter to hydrolyze proteins or polypeptides.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice.

Dated: June 14, 1995.

Fred. R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–15239 Filed 6–23–95; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF EDUCATION

34 CFR Parts 75, 200, 201, 364, 365, 366, 367, 386, 388, 396, 403, 405, 406, 607, 641, 647, and 682

Announcement of Effective Dates

AGENCY: Department of Education.

ACTION: Notice of effective dates.

SUMMARY: Prior to its amendment by the Improving America's Schools Act of 1994 (IASA), section 431(d) of the General Education Provisions Act (GEPA) required that most Department of Education regulatory documents be published in the **Federal Register** for forty-five (45) calendar days, or longer if Congress took certain adjournments, before they became effective. Since future congressional adjournments could not be predicted with certainty when a document was published, the Department could not announce a specific effective date at the time of publication. This notice announces the effective dates for certain regulatory documents subject to the delayed effective date requirement of section 431(d) prior to its amendment.

DATES: For effective dates, see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Kenneth C. Depew, Division of Regulations Management, Office of the General Counsel, U.S. Department of Education, Room 5112, FB–10, 600 Independence Avenue SW., Washington, DC 20202–2241; telephone: (202) 401–8300.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: GEPA section 431(d) was amended by the IASA, Pub. L. 103–382, enacted October 20, 1994. Section 431 was also redesignated as section 437. As a consequence of the new legislation, regulations of the Department are no longer subject to a 45-day delayed effective date. This notice announces the effective dates for those regulations subject to the previous statutory requirement for the delayed effective date. In the future, as a result of the new legislation, it will not be necessary for the Department to publish a special announcement of effective dates.

The effective date provision for each of the regulatory documents included in the notice stated that the effective date would be announced in a notice published in the **Federal Register**. Accordingly, this notice announces the following effective dates:

1. 34 CFR Part 682, final regulations for the Federal Family Education Loan Program, published May 17, 1994 (59 FR 25744).
   DATES: *Effective date:* July 1, 1994.
2. 34 CFR Part 75, final regulations for Direct Grant Programs, published June 10, 1994 (59 FR 30258).
   DATES: *Effective date:* July 25, 1994.
3. 34 CFR Part 386, final regulations for Rehabilitation Training: Rehabilitation Long-Term Training, published June 16, 1994 (59 FR 31060).
   DATES: *Effective date:* July 31, 1994.
4. 34 CFR Part 641, final regulations for the Faculty Development Fellowship Program, published July 1, 1994 (59 FR 34198).
   DATES: *Effective date:* August 15, 1994.
5. 34 CFR Parts 403, 405, and 406, final regulations for the State Vocational and Applied Technology Education Program, National Tech-Prep Education Program, and State-Administer Tech-Prep Education Program, published July 28, 1994 (59 FR 38512).
   DATES: *Effective date:* September 21, 1994.
6. 34 CFR Part 388, final regulations for State Vocational Rehabilitation Unit In-Service Training, published August 5, 1994 (59 FR 40176).
   DATES: *Effective date:* September 21, 1994.
7. 34 CFR Parts 200 and 201, final regulations for the Chapter 1 Program in Local Educational Agencies and Chapter 1—Migrant Education Program, published August 10, 1994 (59 FR 41168).
   DATES: *Effective date:* September 24, 1994.
8. 34 CFR Parts 364, 365, 366, and 367, final regulations for State Independent Living Services Program and Centers for Independent Living Program: General Provisions, State Independent Living Services, Centers for Independent Living, and Independent Living Services for Older Individuals Who Are Blind, published August 15, 1994 (59 FR 41908).
   DATES: *Effective date:* September 29, 1994.
9. 34 CFR Part 607, final regulations for the Strengthening Institutions Program, published August 15, 1994 (59 FR 41914).
   DATES: *Effective date:* September 29, 1994.
10. 34 CFR Part 647, final regulations for the Ronald E. McNair Postbaccalaureate Achievement Program, published August 25, 1994 (59 FR 43986).
    DATES: *Effective date:* November 7, 1994.
11. 34 CFR Part 396, final regulations for Training Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind, published October 14, 1994 (59 FR 52218).
    DATES: *Effective date:* November 28, 1994.

Dated: June 21, 1995.

Judith A. Winston,

General Counsel.

[FR Doc. 95–15559 Filed 6–23–95; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–5225–9]

National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution (Stage I)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document makes clarifications and corrects errors in the regulatory text of the final rule for National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations) which appeared in the **Federal Register** on December 14, 1994 (59 FR 64303).

EFFECTIVE DATE: December 14, 1994.

FOR FURTHER INFORMATION CONTACT: For general and technical information concerning the final rule, contact Mr. Stephen Shedd, Waste and Chemical Processes Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone (919) 541–5397. For information regarding the test methods and procedures referenced in the rule, contact Mr. Roy Huntley, Emission Inventory and Factors Group, Emissions, Monitoring and Analysis Division (MD–14), U.S. Environmental Protection Agency, Research Triangle Park, NC 27704; telephone (919) 541–1060.

SUPPLEMENTARY INFORMATION: On December 14, 1994 (59 FR 64303), the EPA promulgated regulations requiring sources to achieve emission limits reflecting application of the maximum achievable control technology (MACT) consistent with section 112 of the Clean Air Act (Act). The final rule regulates all hazardous air pollutants (HAP) identified in the Act's list of 189 HAP that are emitted from new and existing bulk gasoline terminals and pipeline breakout stations at plant sites that are major sources of HAP. On February 8, 1995 (60 FR 7627), the Office of the Federal Register made three corrections to the regulatory text in the final rule. Today, four additional corrections are being made to correct and clarify requirements in the National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations).

The affected public has requested that the EPA clarify the date of compliance for testing, reporting, and recordkeeping requirements for reducing vapor leakage from gasoline cargo tanks (tank trucks and railcars) loading at major source bulk gasoline terminals affected by this rule. The regulatory text provided compliance dates for the equipment that collects and processes the vapor displaced from cargo tanks and inadvertently did not specify compliance dates for the cargo tank leak testing, reporting, and recordkeeping requirements. The vapor collection and processing equipment requirements in the final rule are required to be met by December 15, 1997 (three years from the effective date) for existing terminals and upon startup for new terminals. The EPA intended that the rule require that all the components of this vapor control system comply during the same compliance period, including cargo tanks. Today's notice is to clarify that the compliance date for both the cargo tank requirements and the other loading rack vapor control requirements occur no later than December 15, 1997 at existing terminals and upon startup at new terminals.

A typographical error was made on an equation in the regulatory text that calculates the minimum allowable final headspace pressure for the nitrogen pressure decay field test for cargo tanks. Additionally, the location of one variable in the subject equation was incorrectly specified. Today's notice corrects the typographical error in both the equation and the location of one of the equation's variables.

Dated: June 15, 1995.

Mary D. Nichols,

Acting Assistant Administrator for Air and Radiation.

The following corrections are being made in the regulatory text for: National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations) published in the **Federal Register** on December 14, 1994 (59 FR 64303).

§ 63.422 [Corrected]

1. In paragraph (b) of § 63.422 on page 64320, column 1, remove the second sentence "Each owner or operator shall comply as expeditiously as practicable, but no later than December 15, 1997 at existing facilities and upon startup for new facilities."

2. In § 63.422 on page 64320, column 1, add a new paragraph (d) as follows: "(d) Each owner or operator shall meet the requirements in all paragraphs of this section as expeditiously as practicable, but no later than December 15, 1997 at existing facilities and upon startup for new facilities."

§ 63.425 [Corrected]

3. The equation in the paragraph (g)(3) of § 63.425 on page 64321, column 3, is revised to read as follows:

* * * * *

$$P_F = 18\left(\frac{(18-N)}{18}\right)\left(\frac{V_s}{5(V_h)}\right)$$

* * * * *

4. The reference to Table 2 in paragraph (g)(3) of § 63.425 on page 64322, column 1, first two lines, is revised to read as follows: "column of Table 2 of § 63.425(e)(1), inches H_2O."

[FR Doc. 95–15431 Filed 6–23–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[AD-FRL–5226–7]

Clean Air Act Final Full Approval of Operating Permits Program; State of South Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final full approval.

SUMMARY: The EPA is promulgating full approval of the Operating Permits Program submitted by the State of South Carolina through the South Carolina Department of Health and Environmental Control (DHEC) for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources and to certain other sources.

EFFECTIVE DATE: July 26, 1995.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the final full approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 4, 345 Courtland Street NE, Atlanta, Georgia 30365, on the 3rd floor of the Tower Building. Interested persons wanting to examine these documents, contained in EPA docket number SC–94–01, should make an appointment at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Kelly Fortin, Title V Program Development Team, Air Programs Branch, Air Pesticides & Toxics Management Division, U.S. EPA Region 4, 345 Courtland Street NE, Atlanta, GA 30365, (404) 347–3555 extension 4223.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act ("the Act")), and implementing regulations at 40 Code of Federal Regulations (CFR) part 70 require that States develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to two years. If EPA has not

fully approved a program by two years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

On January 24, 1995, EPA proposed full approval of the operating permits program for the State of South Carolina. *See* 60 FR 4583. The January 24, 1995 notice also proposed approval of South Carolina's interim mechanism for implementing section 112(g) and for delegation of section 112 standards as promulgated. Public comment was solicited on these proposed actions. EPA received five letters commenting on the proposal, which are summarized and addressed below. In this document EPA is taking final action to approve the operating permits program and the 112(g) and 112(l) mechanisms noted above for the State of South Carolina.

II. Final Action and Implications

A. Analysis of State Submission and Response to Public Comments

On January 24, 1995, EPA proposed full approval of the State of South Carolina's Title V Operating Permit Program. *See* 60 FR 4583. The program elements discussed in the proposed notice are unchanged from the proposed notice and continue to fully meet the requirements of 40 CFR part 70.

All written comments received during the public comment period were reviewed and considered by EPA prior to taking final agency action. EPA received five comment letters that addressed four general issues: (1) the definition of title I modification; (2) the definition of insignificant activities; (3) prompt reporting of deviations; and (4) implementation of section 112(g). EPA's response to the comments and discussion of these issues is given in this section. The original comment letters can be found in the docket for this action, which is available for review at the address given above.

1. Definition of Title I Modification

DHEC regulations contain a definition of the phrase "title I modification" that does not include changes that occur under the State's minor new source review regulations approved into the South Carolina State Implementation Plan (SIP). All five commenters stated that they believed this "narrower" definition contained in the State's rule was the appropriate definition for the implementation of title V.

This issue is discussed in detail in EPA's January 24, 1995 proposal to approve South Carolina's program. *See* 60 FR 4583. As discussed in that notice, EPA has not yet determined that a narrower definition of "title I modification" is incorrect and thus a basis for disapproval or interim approval. For further rationale on EPA's position on the determination of what constitutes a "title I modification," see EPA's final interim approval of the State of Washington's part 70 operating permits program (59 FR 55813, November 9, 1994).

For the reasons discussed in the proposal, EPA is approving South Carolina's use of a narrower definition of "title I modification" at this time. However, should EPA make a final determination that such a narrow definition of "title I modification" is incorrect, South Carolina will be required to revise their regulations so that they are consistent with the federal definition, and EPA may propose further action on South Carolina's program so that the State's definition of "title I modification" could become grounds for interim approval.[1] A state program like South Carolina's that receives full approval of its narrower definition pending completion of EPA's rulemaking must ultimately be placed on an equal footing with states that receive interim approval under any revised interim approval criteria because of the same issue. EPA anticipates that any action to convert the full approval to an interim approval would be affected through an additional rulemaking; so as to ensure that there is adequate notice of change in the approval status and applicability requirements.

2. Definition of Insignificant Activities

One commenter stated that South Carolina's exemption list for insignificant activities is too restrictive and that by proposing "acceptable" levels to other states, EPA is improperly directing the adoption of arbitrarily low emission caps to define insignificant activities that clearly restricts permitting authority discretion.

In this action, EPA is approving the process established by DHEC to determine insignificant activities and emissions levels (South Carolina's Regulation 61–62.70.5(c)). DHEC had discretion to propose emission levels other than those used by other states and may adopt a program more stringent than any proposed by EPA. EPA disagrees that it is inappropriate for the Agency to provide guidance or suggested emission levels to state and local agencies.

3. "Prompt" Reporting of Deviations From Permit Limits

EPA received three comments that argued that state programs need not define "prompt" reporting deviations in their regulations and disagreed that prompt reporting must be more frequent than semi-annually. The commenters stated that the 24 hour limitation DHEC has committed to include as a standard permit condition is too restrictive and the permits should allow at least two working days for reporting, consistent with the time period allowed for emergencies under 40 CFR 70.6(g).

As discussed in EPA's proposed approval of South Carolina's program, part requires prompt reporting of deviations from permit requirements. Section 70.6(a)(3)(iii)(B) requires the permitting requirements. Section 70.6(a)(3)(iii)(B) requires the permitting authority to define prompt in relation to the degree and type of deviation likely to occur and the applicable requirements. Although the permit program regulations should define prompt for purposes of administrative efficiency and clarity, EPA stated in the proposal that an acceptable alternative is to define prompt in each individual permit.

EPA also stated that it believes that "prompt" should generally be defined as requiring reporting within two to ten days of the deviation, but that states could propose alternative time periods that they considered more appropriate. However, prompt reporting must be more frequent than the semiannual reporting requirement under 40 CFR 70.6(a)(3)(iii)(A), which is a distinct reporting obligation.

The State of South Carolina has not defined prompt in its program regulations with respect to reporting of deviations, but has committed to include such a requirement as a standard condition in permits. The state will require notification to the appropriate district office within 24 hours and written notification to the DHEC within 30 days. EPA may veto permits that do not require sufficiently prompt reporting of deviations.

4. Implementation of Section 112(g)

EPA received several comments regarding the proposed approval of the use of South Carolina's preconstruction permitting program for the purpose of implementing section 112(g) during the transition period between title V approval and adoption of a State rule implementing EPA's section 112(g) regulations. The commenters argued that South Carolina should not and cannot implement section 112(g) until: (1) EPA has promulgated a section 112(g) regulation, and (2) the State has a section 112(g) program in place. The commenters also argued that South Carolina's preconstruction review program can not serve as a means to implement section 112(g) because it was not designed for that purpose.

EPA's proposal was based in part on an interpretation of the Act that would require sources to comply with section 112(g) beginning on the date of approval of the title V program, regardless of whether EPA had completed its section 112(g) rulemaking. The EPA has since revised this interpretation of the Act in a **Federal Register** notice published on February 14, 1995. *See* 60 FR 8333. The revised interpretation postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The rationale for the revised interpretation is set forth in detail in the above referenced notice.

The section 112(g) interpretive notice explains that EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule so as to allow states time to adopt rules implementing the Federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), South Carolina must have a federally enforceable mechanism for implementing section 112(g) during the period between promulgation of the Federal section 112(g) rule and State adoption of implementing regulations.

EPA is aware that South Carolina lacks a program designed specifically to implement section 112(g). However, South Carolina does have a preconstruction review program that can serve as an adequate implementation vehicle during the transition period because it would allow South Carolina to select control measures that would meet maximum achievable control technology (MACT) and incorporate these measures into a federally enforceable preconstruction permit. South Carolina should be able to impose federally enforceable measures reflecting MACT for most, if not all, changes qualifying as modification, construction, or reconstruction under section 112(g), because most section 112(b) pollutants are also criteria pollutants. Moreover, measures designed to limit criteria pollutant emissions will often have the incidental effect of limiting non-criteria Hazardous Air Pollutants (HAPs). In the situation where South Carolina's preconstruction permit program cannot be used, the State may utilize its title V permitting program to make any required MACT determinations.

For this reason, EPA is finalizing its approval of the use of South Carolina's preconstruction review program for the purpose of implementing section 112(g) during the transition period between promulgation of the section 112(g) rule and adoption by South Carolina of rules established to implement section 112(g). The scope of this approval is narrowly limited to section 112(g) and does not confer or imply approval for purposes of any other provision under the Act. This approval will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State regulations are adopted. The duration of this approval is limited to 18 months following promulgation by EPA of the section 112(g) rule in order to provide adequate time for the State to adopt regulations consistent with the Federal requirements.

B. Final Action

EPA is promulgating full approval of the operating permits program submitted to EPA by the State of South Carolina on November 15, 1993. Among other things, the State of South Carolina has demonstrated that the program will be adequate to meet the minimum elements of a state operating permits program as specified in 40 CFR part 70.

The State of South Carolina's part 70 program approved in this document applies to all part 70 sources (as defined in the approved program) within the State of South Carolina, except any sources of air pollution over which an Indian Tribe has jurisdiction. *See, e.g.*, 59 FR 55813, 55815–55818 (Nov. 9, 1994). The term "Indian Tribe" is defined under the Act as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." *See* section 302(r) of the CAA; *see also* 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is also promulgating full approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations applies to sources covered by the part 70 program as well as nonpart 70 sources.

III. Administrative Requirements

A. Docket

Copies of the State's submittal and other information relied upon for the final full approval, including the five public comments received on the proposal and reviewed by EPA, are contained in docket number SC–94–01 maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final full approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated today does not

[1] State programs with a narrower "title I modification" definition that were approved by EPA before the Agency decision that such a narrower definition is inappropriate, would be considered deficient, but would be eligible for interim approval under revised 40 CFR 70.4(b).

include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: June 14, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Appendix A to part 70 is amended by adding the entry for South Carolina in alphabetical order to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

South Carolina

(a) Department of Health and Environmental Control: submitted on November 12, 1993; full approval effective on July 26, 1995.

(b) (Reserved)

* * * * *

[FR Doc. 95–15574 Filed 6–23–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1001

Health Care Programs: Fraud and Abuse; Technical Revision to the Scope and Effect of the OIG Exclusion Regulations

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Final rule.

SUMMARY: This document sets forth a technical revision to OIG regulations on program integrity for Medicare and State Health Care programs, concerning the scope and effect of the OIG's program exclusion regulations. Prior to this revision, the regulations provided that a program exclusion imposed under title XI of the Social Security Act was to affect future participation in all Federal nonprocurement programs. This revision specifically amends the language in the existing regulations to clarify that the scope of an exclusion is now applicable to all Executive Branch procurement and non-procurement programs and activities. This rule is consistent with the Federal Acquisition Streamlining Act, and the Department's Common Rule on debarment and suspension which is also being amended and published elsewhere in this issue of the **Federal Register**.

EFFECTIVE DATE: This regulation is effective on August 25, 1995.

FOR FURTHER INFORMATION CONTACT: Joel J. Schaer, Office of Management and Policy, (202) 619–0089.

SUPPLEMENTARY INFORMATION:

I. Technical Revision to 42 CFR 1001.1901

On January 29, 1992, the Department of Health and Human Services published a final rule (57 FR 3298) governing the Department's exclusion and civil money penalty authorities as established and amended by the Medicare and Medicaid Patient and Program Protection Act of 1987, Public Law 100–93. These authorities have been delegated to the Office of Inspector General (OIG) for implementation. Under these regulations, section 1001.1901—Scope and effect of exclusion—implemented Executive Order 12549 which provides that debarments, suspensions and other exclusionary actions taken by any Federal agency will have governmentwide effect with respect to all nonprocurement programs. Specifically, section 1001.1901 made clear that exclusions from Medicare and the State health care programs under title XI of the Social Security Act (42 U.S.C. 1320a–7) are also applicable with respect to "all other Federal nonprocurement programs."

With the enactment of the Federal Acquisition Streamlining Act (FASA) of 1994, Public Law 103–355, congress mandated and expanded the governmentwide effect of debarments, suspensions and other exclusionary actions to procurement as well as nonprocurement programs and activities. In addition to the amendments to the governmentwide Common Rule necessitated by the enactment of FASA, we are also specifically codifying in the Department's adoption of the Common Rule that exclusions imposed under title XI of the Social Security Act will have the same governmentwide effect as debarments initiated under the Common Rule, and will be recognized and given effect not only for all Departmental programs but also for all other Executive Branch procurement and nonprocurement programs and activities. In addition, because full due process is provided under the statute and the implementing regulations for those excluded under title XI—including the right to an administrative hearing and judicial review—additional due process under the Common Rule is not necessary nor available to excluded individuals and entities beyond that set forth in parts 1001 and 1005 of 42 CFR chapter V. This amendment to section 1001.1901 is intended to be consistent with the amendment of 45 CFR part 76 codifying the requirements of FASA.

II. Regulatory Impact Statement

The Office of Management and Budget has reviewed this final rule in accordance with the provisions of Executive Order 12866. As indicated above, the revisions contained in this technical rule are intended to clarify that the scope of an OIG exclusion is applicable to all Executive Branch procurement and nonprocurement programs and activities, consistent with FASA and the Department's Common Rule at 45 CFR part 76.

As indicated in the original final rule published on January 29, 1992, the amendments to 42 CFR part 1001, and this subsequent revision, are designed to clarify departmental policy with respect to the imposition of program exclusions upon individuals and entities who violate the statute. We believe that the vast majority of providers and practitioners do not engage in such prohibited activities and practices, and that the aggregate economic impact of these provisions should be minimal, affecting only those few who have engaged in prohibited behavior jeopardizing the Federal health care financing programs and beneficiaries. As such, these regulations should have no direct effect on the economy or on Federal or State expenditures.

In addition, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601 through 612), we certify that this rulemaking will not have a significant economic impact on a substantial number of small entities. While some sanctions may have an impact on small entities, we do not anticipate that a substantial number of these small entities will be significantly affected by this technical rule.

III. Effective Date and Waiver of Proposed Rulemaking

On December 20, 1994, all but one of the Federal agencies participating in the development of the Common Rule published a notice of proposed rulemaking (59 FR 65607) that proposed changes to the nonprocurement debarment and suspension Common Rule to provide for reciprocal effect between the procurement and nonprocurement debarments, suspensions and other exclusionary actions. Since this rulemaking is designed to clarify departmental procedures consistent with the final Common Rule being set forth in 45 CFR part 76, we are waiving the proposed notice and comment period and issuing this technical regulation as a final rule that will apply to all pending and future cases under this authority.

List of Subjects in 42 CFR Part 1001

Administrative practice and procedure, Health facilities, Health professions, Medicare, Peer Review Organizations, Penalties, Reporting and recordkeeping requirements.

Accordingly, 42 CFR chapter V, Part 1001 is amended as follows:

PART 1001—PROGRAM INTEGRITY—MEDICARE AND STATE HEALTH CARE PROGRAMS

1. The authority citation for part 1001 is revised to read as follows:

Authority: 42 U.S.C. 1302, 1320a–7, 1320a–7b, 1395u(j), 1395u(k), 1395y(d), 1395y(e), 1395cc(b)(2)(D), (E) and (F), and 1395hh; and sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note).

2. In § 1001.1901, paragraph (a) is revised to read as follows:

§ 1001.1901 Scope and effect of exclusion.

(a) *Scope of exclusion.* Exclusions of individuals and entities under this title will be from Medicare, State health care programs, and all other Executive Branch procurement and nonprocurement programs and activities. The OIG will exclude the individual or entity from the Medicare program and direct State agency administering a State health care program to exclude the individual or entity for the same period. In the case of an individual or entity not eligible to participate in Medicare, the exclusion will still be effective on the date, and for the period, established by the OIG.

* * * * *

Approved: May 31, 1995.

June Gibbs Brown,

Inspector General.

[FR Doc. 95–14727 Filed 6–23–95; 8:45 am]

BILLING CODE 4154–04–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–15]

Radio Broadcasting Services; Pago Pago, American Samoa

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Oceania Broadcasting Network, Inc., allots Channel 226C1 to Pago Pago, American Samoa, as the community's second local FM service. *See* 60 FR 6689, February 3, 1995. Channel 226C1 can be allotted to Pago Pago in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates –14–16–41 South Latitude and 170–42–09 West Longitude. With this action, this proceeding is terminated.

DATES: Effective August 3, 1995. The window period for filing applications will open on August 3, 1995, and close on September 4, 1995.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 95–15, adopted June 12, 1995, and released June 19, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under American Samoa, is amended by adding Channel 226C1 at Pago Pago.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–15477 Filed 6–23–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

(MM Docket No. 94–111; RM–8519)

Radio Broadcasting Services; Ingalls, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Dana J. Puopolo, allots Channel 290A to Ingalls, Kansas. *See* 59 FR 50719, October 5, 1994. Channel 290A can be allotted to Ingalls, Kansas, in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 290A at Ingalls are 37–49–48 and 100–27–06.

With this action, this proceeding is terminated.

DATES: Effective August 3, 1995. The window period for filing applications will open on August 3, 1995, and close on September 4, 1995.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 94–111, adopted June 7, 1995, and released June 19, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kansas, is amended adding Channel 290A at Ingalls.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–15478 Filed 6–23–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 94–57; RM–8467]

Radio Broadcasting Services; Sanger & Sherman, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Harmon G. Husbands and Durant Broadcasting Corporation, substitutes Channel 281C3 for Channel 281A at Sherman, Texas, and reallocates Channel 281C3 from Sherman to Sanger, Texas, and modifies Station KWSM(FM)'s license to specify Sanger as its community of license. *See* 59 FR 35894, July 14, 1994. Channel 281C3 can be allotted in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.3 kilometers (6.4 miles) northwest to accommodate petitioners' desired site. The coordinates for Channel 281C3 are 33–25–10 and 97–15–28.

With this action, this proceeding is terminated.

EFFECTIVE DATE: August 3, 1995.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 94–57, adopted June 12, 1995, and released June 19, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Sanger, Channel 281C3 and removing Channel 281A at Sherman.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–15479 Filed 6–23–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 575

RIN 2127–AE61

[Docket No. 92–65; Notice 2]

Consumer Information Regulations; Vehicle Stopping Distance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This rule amends the Consumer Information Regulations by rescinding the requirement that motor vehicle manufacturers provide information about vehicle stopping distance. Upon reevaluation of the vehicle stopping distance information requirements, NHTSA concludes that this information is of little safety value to consumers and might even be misleading. Rescinding the requirement eliminates an unnecessary Federal regulatory burden on the industry.

DATES: *Effective Date.* The amendment becomes effective July 26, 1995.

Petitions for Reconsideration: Any petitions for reconsideration of this rule must be received by NHTSA no later than July 26, 1995.

ADDRESSES: Petitions for reconsideration of this rule should refer to Docket 92–65; Notice 2 and should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Ms. Henrietta Spinner, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–366–4802).

SUPPLEMENTARY INFORMATION:

I. Background Information

Pursuant to the March 4, 1995 directive, "Regulatory Reinvention Initiative," from the President to the heads of departments and agencies, NHTSA has undertaken a review of all its regulations and directives. During the course of this review, the agency identified several requirements and regulations that are potential candidates for rescission. One candidate [1] was the consumer information regulation about a passenger car's or motorcycle's stopping distance performance.[2] Manufacturers are currently required to provide an information sheet at automobile dealers that specifies each model's stopping distance from at least 60 miles per hour (mph) on dry pavement with (a) fully operational service brakes under light load and maximum load conditions, (b) partially failed service brakes, and (c) inoperative brake power assist unit or brake power unit (i.e., the power assist part of the brake system is disabled).

In the November 1992 notice of proposed rulemaking (NPRM) preceding this rule, NHTSA explained that the information currently supplied by manufacturers pursuant to the stopping distance requirement did not help consumers compare between vehicles, because it did not meaningfully distinguish the relative stopping ability among different makes and models of vehicles. The information's lack of value was confirmed by the agency's dealership audits which found that little, if any, use was being made of the vehicle stopping distance information. The agency further stated that there was no feasible, cost effective method for obtaining stopping distance information that would properly compare differences in stopping ability among various vehicles. Costly and extensive testing of large samples of each model would be necessary to determine that two or more models really had different stopping distances. Since there was no information supporting a contrary decision, the agency re-identified the requirement as a candidate for rescission as part of the current review.

[1] Prior to the President's directive, NHTSA had previously identified the stopping distance requirement as a candidate for rescission and had published a notice proposing to rescind it (57 FR 54962, November 23, 1992).

[2] The *Consumer Information Regulations* (49 CFR part 575) are intended to provide prospective purchasers of new motor vehicles with information about vehicle safety performance in several areas. One type of information is the stopping distance of new passenger cars and motorcycles under specified speed, brake, loading, and pavement conditions (49 CFR 575.101).

II. Comments on the NPRM

In response to the NPRM, NHTSA received comments from motor vehicle manufacturers (American Honda, BMW, Chrysler, Fiat, Ford, General Motors (GM), and Volkswagen), advocacy groups (the Coalition for Consumer Health and Safety (Coalition) and Advocates for Highway and Auto Safety (Advocates)), the Association of International Automobile Manufacturers (AIAM), and an individual interested in automobile safety. Fiat, BMW, and Mr. John Kourik agreed with the agency's proposal to rescind the requirements related to stopping distance information. Honda, Chrysler, Volkswagen, GM, Ford, and AIAM believe that the current requirements were unnecessary but were concerned that States or local governments could require manufacturers to provide information about vehicle stopping distance if the Federal requirements were rescinded. In support of rescission, the manufacturers argued that the required information is potentially misleading, that the information is an unnecessary economic burden on vehicle manufacturers, and that the information is not actually used by consumers.

The Coalition and Advocates opposed the proposal to rescind the stopping distance information requirement. These commenters stated that rather than rescinding this consumer information regulation, NHTSA should expand and strengthen it. Advocates further stated that NHTSA must determine that dissemination of stopping distance information is no longer necessary to the furtherance of the National Traffic and Motor Vehicle Safety Act.[3]

III. Agency Response to Comments

A. Summary of Agency Decision and Rationale

After considering the comments and other available information, NHTSA has decided to rescind the stopping distance information requirements. The agency reached this decision after concluding that the current stopping distance requirement is not providing meaningful information to consumers about the differences between different vehicle models in stopping distance and that an upgraded requirement would be prohibitively expensive and might not provide significant safety benefits.

B. Rationale for Agency Decision to Rescind.

1. Current stopping distance information is not meaningful. NHTSA has decided to rescind the stopping distance information requirement of § 575.101 because it is not providing meaningful information to consumers about stopping ability among different models. The agency notes that Chrysler, Ford, and GM, which together manufacture over 60 percent of new passenger cars, list only the maximum allowable stopping distance permitted under Federal Motor Vehicle Safety Standard No. 105, *Hydraulic brake systems* for all of their cars. Information (e.g., GM and Chrysler's comments on the NPRM) indicates that manufacturers appear to do this in part out of a concern that listing specific stopping distance information could mislead vehicle owners about their vehicle's braking ability. The stopping distance measurements are taken under optimum conditions of vehicle loading, tire-to-road peak friction coefficient, environment, and driver braking skills. Manufacturers are concerned that a consumer could mistakenly believe that his or her vehicle will stop in the listed distance under conditions that are less than optimum, e.g., under wet road conditions with a unskilled driver. They have thus listed under § 575.101 the maximum allowable stopping permitted under Standard No. 105.

As a result of the practice of listing the maximum allowable stopping distances permitted under Standard No. 105, consumers cannot use stopping distance information to identify which vehicles have the best stopping distance. Given this, it is not surprising that dealers reported to NHTSA that consumers typically neither ask for stopping distance information nor rely upon it in making purchase decisions.

2. Improving stopping distance information would be prohibitively expensive. NHTSA believes that the requirement should be rescinded because improving stopping distance information would be prohibitively expensive. Several manufacturers stated their belief that there is no cost effective method for obtaining adequate stopping distance information. For instance, GM stated that there was no cost effective method for obtaining stopping distance information that properly compares differences in stopping ability among various models. In contrast, Advocates suggested that, as an alternative to rescission, NHTSA should adopt a "more stringent" requirement and require manufacturers to provide actual model-specific stopping distance information for each make and model.

In considering whether to rescind § 575.101, NHTSA analyzed several alternatives to rescission, including an alternative to require manufacturers to provide model-specific stopping information. NHTSA believes that such stopping distance information would be unduly burdensome for manufacturers to obtain, based on its assessment of the costs of such a program and the small safety benefits, if any, that might result. Tests measuring stopping distance would have to be conducted for each of over 400 car models. Each stopping distance test costs approximately $1000 to conduct, and manufacturers typically conduct tests on three or four different vehicles of the same model, since no two vehicles have the same stopping distance. Therefore, the aggregate costs of the 60 mph dry surface stops would be greater than a million dollars.

NHTSA has decided not to adopt more stringent stopping distance information requirements because it does not appear that consumers will use the stopping distance information in making their purchasing decisions. Consumers typically consider and value such attributes as reliability, styling, price, reputation, roominess, and safety. While stopping distance relates to safety, NHTSA does not believe the information would impact purchasing decisions because precise stopping distance information would in many, perhaps most, cases yield differences insufficiently large to make stopping distance a factor in consumers' selections among similar vehicle models. For example, based on compiled information from NHTSA compliance stopping distance tests for several passenger cars, these family size vehicles achieved the following stopping distances: Buick Park Avenue—161.7 feet; Chevrolet Caprice—166.3 feet; Volkswagen Passat—170 feet; and Nissan Infiniti G20—171.3 feet. These small differences are insignificant and are unlikely to provide any meaningful comparative data to consumers.

3. Alternative methods. In considering whether to rescind the stopping distance information requirements, NHTSA considered the suitability of alternative methods to characterize braking performance, including an array of stopping distance tests and braking efficiency tests. However, any comprehensive, meaningful information about braking performance could only

[3] Subsequent to the comments, Congress codified this Act at 49 U.S.C. section 30101 *et seq.*

be derived from a battery of tests that evaluated stopping performance at different speeds and on different surfaces. Monetary constraints have precluded (and in all likelihood will continue to preclude) the agency from spending additional money to further develop brake performance tests for consumer information.

4. NAS Study. While NHTSA has rescinded the stopping distance requirement, this decision does not signal that the agency disfavors consumer information. On the contrary, the agency believes that certain consumer information provides valuable information to the public. NHTSA is working with the National Academy of Sciences (NAS) to review and possibly expand the agency's consumer information efforts related to motor vehicle safety. According to the House Appropriations Committee report addressing the NAS study, "The study should focus on the validity of current programs, public and private, in providing accurate information to consumers on the real-world safety of vehicles, the possibility of improving the system in a cost effective and realistic manner, and the best methods of providing useful information to consumers." This study is currently in process with a legislative due date of March 31, 1996 for a final report on the NAS findings to the House and Senate Appropriations Committees. NHTSA will review the NAS study for insights into whether there is an effective means to provide consumers with information about vehicle stopping ability. However, since all parties agree that the current information is not meaningful or helpful to consumers, no purpose is served by retaining section 575.101.

C. Impacts of Rescission

1. *Economic costs and burdens of the regulation.* In the NPRM, NHTSA stated that rescinding the stopping distance information requirement would eliminate an unnecessary regulatory burden on vehicle manufacturers. The agency estimated that the costs associated with providing the stopping distance information to prospective customers was approximately $600,000 a year. The agency reasoned that rescinding this provision would relieve the automobile industry of this cost, without depriving consumers of any truly meaningful information.

Several manufacturers stated their belief that rescinding the requirement would eliminate administrative costs. Chrysler, Volkswagen, AIAM, and Mr. Kourik agreed that rescinding the stopping distance requirement would relieve administrative costs. Ford believed that no substantial cost results from requiring vehicle manufacturers to furnish stopping distance information to consumers.

NHTSA notes that the testing required by this requirement results in an unwarranted cost for the agency as well as the manufacturers. The agency incurs costs associated with monitoring the information reported by manufacturers. Similarly, manufacturers incur costs associated with testing to generate the stopping distance information as well as printing and distributing materials. These costs to the agency and manufacturers, while not large in absolute terms, serve no real safety purpose and are thus an unnecessary expense.

2. *Preemption.* Chrysler, GM, Ford, Honda, and Volkswagen were concerned about States or local jurisdictions issuing their own stopping distance information requirements if the Federal regulation was rescinded. Chrysler stated that where a Federal agency has determined that no regulation is appropriate, the United States Supreme Court has recognized a form of negative preemption. This led Chrysler to request that NHTSA "express its intent that all other levels of government be preempted from... establishing any related or similar regulation." AIAM also requested that the agency state that other levels of government would be preempted from establishing similar requirements. It stated that such a statement would be consistent with the previous position taken by NHTSA in its revocation of Standard No. 127, *Speedometers and Odometers,* (47 FR 7250, February 18, 1982).

NHTSA believes that the States and local governments should not adopt requirements similar to the current Federal stopping distance information requirement. As noted elsewhere in this notice, the agency has concluded that the current Federal requirement has been ineffective in providing meaningful information to consumers about the stopping performance of passenger vehicles. Similar State and local government requirements would be likewise ineffective.

However, NHTSA lacks the authority to preempt the States from adopting such requirements. The agency reaches this conclusion because there is no express preemption in the area of stopping distance information, as there is in connection with Federal motor vehicle safety standards. See 49 U.S.C. 30103(b). Likewise, there would be no implied preemption of State action in this area. The agency does not "occupy the field." Further, there would be no conflict between such a State or local government requirement and the Federal motor vehicle safety law.

The commenters appear to have an overly broad view of the potential for negative preemption under the Federal motor vehicle safety law. Contrary to Chrysler's apparent belief, negative preemption will not always be recognized when NHTSA has determined that no Federal standard or regulation on a particular subject is appropriate. A State information regulation addressing the same subject as a rescinded Federal information regulation would be preempted (under the doctrine of implied preemption) only if the State regulation conflicted with or otherwise frustrated the Federal statute or regulatory scheme. Moreover, according to recent judicial decisions, negative preemption will exist only if the Federal agency has affirmatively manifested an intention to shut out State action. See *Toy Manufacturers of America* v. *Blumenthol,* 986 F.2d 615 (2nd Cir 1992), citing *Hillsborough County* v. *Automated Medical Labs., Inc.,* 471 U.S. 707, 718, 105 S.Ct 2371, 2377, 85 L.Ed.2d 714 (1985). NHTSA is not taking that step here because the agency believes that there is no basis for asserting that State stopping distance information regulations would conflict with Federal law. Even if one State were to take one approach to informing its citizens about vehicle stopping distance and another State were to take a different approach, the agency does not believe that the differences in the approaches would conflict with any Federal program or have a deleterious effect on motor vehicle safety.

E. Effective Date

Each order is required to take effect no sooner than 180 days from the date the order is issued unless "good cause" is shown that an earlier effective date is in the public interest. Since this amendment eliminates a requirement with which manufacturers currently have to comply and since the public interest is served by not needlessly delaying when this rescission takes place, the agency has determined that there is good cause to adopt an effective date 30 days after publication of the final rule.

Rulemaking Analyses and Notices

Executive Order 12866 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." This action has been determined to be not "significant" under the Department of Transportation's regulatory policies and procedures. NHTSA believes that there would be no gain or loss of safety benefits as a result of rescission of the stopping distance information requirements. The main effect of the rulemaking is to relieve manufacturers of passenger cars and motorcycles of an unnecessary regulatory burden associated with providing information that is not meaningful to consumers.

The agency anticipates that the amendment will result in a cost savings because it will no longer be necessary for manufacturers to assemble, print, and distribute the data required under § 575.101. The agency estimates that the costs associated with providing the stopping distance information to prospective customers was approximately $600,000 in 1991. This estimate is derived from General Motors' estimate made in 1977 adjusted for the intervening inflation between 1977 and 1991. Accordingly, the agency believes that rescinding this provision will relieve the automobile industry of this cost, without depriving consumers of any truly meaningful comparative information.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the amendment will not have a significant economic impact on a substantial number of small entities. Few vehicle manufacturers qualify as small entities. Further, the small vehicle manufacturers will not be affected since impact of this rule on the cost of new vehicles will be negligible. Accordingly, a regulatory flexibility analysis has not been prepared.

Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule will not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

National Environmental Policy Act

The agency has considered the environmental implications of this rule in accordance with the National Environmental Policy Act of 1969 and determined that the rule will not significantly affect the human environment.

Civil Justice Reform

This rule will not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 575

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, Title 49 of the Code of Federal Regulations at part 575 is amended as follows:

PART 575—[AMENDED]

1. The authority citation for part 575 is revised to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

§ 575.101 [Removed and Reserved]

2. Section 575.101 is removed and reserved.

Issued on: June 20, 1995.

Ricardo Martinez,

Administrator.

[FR Doc. 95–15525 Filed 6–23–95; 8:45 am]
BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 60, No. 122
Monday, June 26, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 11

National Appeals Division Rules of Procedure

AGENCY: Office of the Secretary, National Appeals Division, USDA.

ACTION: Proposed rule; reopening and extension of comment period.

SUMMARY: This notice reopens and extends until July 6, 1995, the comment period on the proposed National Appeals Division Rules of Procedure that were published in the **Federal Register** on May 22, 1995 (60 FR 27044–27049). The original closing date for receipt of comments was June 21, 1995. Comments received during the interim between that date and the publication date of this notice also will be accepted. Respondents now are given a 45-day period from the original date of publication to comment.

DATES: Written comments via letter, facsimile, or Internet must be received on or before 5:00 p.m., July 6, 1995.

ADDRESSES: Comments should be sent to L. Benjamin Young, Jr., Office of the General Counsel, Research and Operations Division, AgBox 1415, United States Department of Agriculture, Washington, D.C. 20250–1415; fax number: 202/720–5837; Internet: hqdoma-in.lawpo.young@sies.wsc.ag.gov.

FOR FURTHER INFORMATION CONTACT: L. Benjamin Young, Jr., at the above address or 202/690–1979.

Done at Washington, D.C., this 21st day of June, 1995.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 95–15702 Filed 6–22–95; 12:32 pm]

BILLING CODE 3410–01–M

Agricultural Marketing Service

7 CFR Part 965

[Docket No. FV95–965–1PR]

Tomatoes Grown in the Lower Rio Grande Valley in Texas; Proposed Termination of Marketing Order 965

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to terminate the Federal marketing order for tomatoes grown in the Lower Rio Grande Valley in Texas (order) and the rules and regulations issued thereunder. In recent years, this industry has declined significantly in numbers of producers and handlers. In March 1959, when the order commenced, there were 2,488 producers and 61 handlers of tomatoes. Currently, there are approximately 10 producers, 5 of which are also handlers. The Texas Valley Tomato Committee (committee) last met on October 1, 1991, to conduct nominations. However, only a few of the former committee members are currently producers or handlers in the tomato industry and eligible to serve on the committee. Handling regulations have not been implemented since the 1973–74 fiscal period and there is no indication that the industry will be revived. Thus, there is no need for the Department of Agriculture to continue operation of this order.

DATES: Comments must be received by July 26, 1995.

ADDRESSES: Interested person are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS USDA, P.O. Box 96456, room 2523–S, Washington, D.C. 20090–6456; (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: James B. Wendland, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone (202) 720–2170, or Belinda G. Garza, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, Texas 78501, telephone (210) 682–2833.

SUPPLEMENTARY INFORMATION: This proposed rule is governed by the provisions of § 608c(16)(A) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act and § 965.84 of the order.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposed termination of the order has been reviewed under Executive Order 12778, Civil Justice Reform. This proposed rule is not intended to have retroactive effect. This proposed rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has a principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially

small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 10 producers, 5 of which are also handlers who would be subject to seasonal handling regulations under the order, but none have been recommended since the early 1970's. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of the remaining South Texas tomato producers and handlers may be classified as small entities.

The order was initially established in March 1959, to help the industry solve its marketing problems and maintain orderly marketing conditions. It was the responsibility of the Texas Valley Tomato Committee (committee), the agency established for local administration of the marketing order, to periodically investigate and assemble data on the growing, harvesting, shipping, and marketing conditions of tomatoes. The committee endeavored to achieve orderly marketing and improve acceptance of Texas tomatoes through establishment of minimum size and quality requirements. When regulated, fresh tomato shipments consisted only of those grades and sizes desired by consumers, thus, tending to increase returns to producers and handlers.

During the first year the order was in effect, there were 2,488 producers and 61 handlers of South Texas tomatoes. Over the years, commercial production and handling of tomatoes grown in South Texas have declined significantly. As a consequence, handling requirements have not been applied since the early 1970's and there is no indication that the industry will be revived or that regulations will be needed.

In September 1994, the Department conducted interviews with former and remaining industry members to determine whether they expected a revival of South Texas tomato production in the next two years. Industry members did not give any indication that the industry would be revived. Former industry members that were interviewed stated that they did not plan to resume tomato production. They reported that the decline in the industry was caused by a lack of new tomato varieties adaptable to South Texas, which could make it more competitive with Mexico and Florida.

Further, as stated above, there are currently only 10 producers, 5 of which are also handlers. Without an adequate number of producers and handlers, the Department cannot appoint the required committee of members and alternates, or otherwise continue the operation of the order.

The committee holds a certificate of deposit in the amount of $3,778.16, which matures on September 23, 1995, and a savings account that totals $514.23. At the last meeting in 1991, the committee recommended that any funds exceeding the expense of termination should be donated to an institution that conducts research for agriculture in the Lower Rio Grande Valley of South Texas.

Therefore, based on the foregoing, pursuant to § 608c(16)(A) of the Act and § 965.84 of the order, the Department is considering the termination of Marketing Order No. 965, covering tomatoes grown in the Lower Rio Grande Valley in Texas. If the Secretary decides to terminate the order, trustees would be appointed to continue in the capacity of concluding and liquidating the affairs of the former committee, until discharged by the Secretary.

Section 608c(16)(A) of the Act requires the Secretary to notify Congress 60 days in advance of the termination of a Federal marketing order.

Based on the foregoing, the Administrator of the AMS has determined that this action would not have a significant impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 965

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

For the reasons set forth in the preamble, 7 CFR part 965 is proposed to be removed.

PART 965—[REMOVED]

1. The authority citation for 7 CFR part 965 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Accordingly, 7 CFR part 965 is removed.

Dated: June 20, 1995

Lon Hatamiya,

Administrator.

[FR Doc. 95–15509 Filed 6–23–95; 8:45 am]

BILLING CODE 3410–02–P

Commodity Credit Corporation

7 CFR Part 1494 and 1570

Export Bonus Programs

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Advance Notice of Proposed Rule Making.

SUMMARY: This document requests comments on three options to reform the USDA/Commodity Credit Corporation's Export Bonus Programs: The Export Enhancement Program (EEP), the Dairy Export Incentive Program (DEIP), the Sunflower Oil Assistance Program (SOAP), and the Cottonseed Oil Assistance Program (COAP). Options for reform of these export bonus programs are being considered as an effort to respond to the General Agreement on Tariff and Trade (GATT) Uruguay Round Agreement that established new mandates for USDA/CCC's export subsidy programs. Additionally, the reform options considered could make these programs more flexible in responding to changing world market conditions and serve to fulfill policy goals for increased administrative efficiency and lower program costs.

DATES: Comments must be submitted on or before July 26, 1995.

ADDRESSES: Comments should be sent to L.T. McElvain, Director, CCC Operations Division, Export Credits, Foreign Agricultural Service, U.S. Department of Agriculture, AG Box 1035, Washington, D.C., 20250–1035; FAX (202) 720–2949 or 720–0938. All comments received will be available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: Christopher E. Goldthwait, General Sales Manager, at the address stated above. Telephone (202) 720–5173. The U.S. Department of Agriculture (USDA) prohibits discrimination in its programs on the basis of race, color, national origin, sex, religion, age, disability, political beliefs and marital or familial status. Persons with disabilities who require alternative means for communication of program information (braille, large print, audiotape, etc.) should contact the USDA Office of Communications at (202) 720–5881 (voice) or (202) 720–7808 (TAD).

SUPPLEMENTARY INFORMATION:

Background

Since 1985, USDA/CCC has operated export subsidy programs for a variety of commodities, including wheat and wheat flour, barley and barley malt, rice, poultry, table eggs, vegetable oils, pork and dairy products. Wheat and wheat flour have received the largest share of subsidy dollars, accounting for 75 percent of the total export subsidies in 1994.

The Uruguay Round Agreements Act (Public Law 103–465; 108 Stat. 4809) directs that U.S. export subsidies be used to encourage the commercial sale of U.S. agricultural commodities in world markets at competitive prices and not be limited to responding to unfair trade practices. Export subsidies will be progressively reduced to conform to the United States' GATT commitments. Meeting these mandates will require the development of a program that uses less subsidy but leaves U.S. commodities in a more competitive position at the end of the GATT phase-in period.

The Administration's 1995 Farm Bill Proposal announced program objectives that would guide its efforts to make USDA's export subsidy programs more responsive to world market conditions in the post-Uruguay Round period and to further fulfill certain policy goals. The following policy objectives were defined by the proposal:

1. Increase the cost-effectiveness of export subsidy programs by encouraging the lowest possible subsidies to achieve the maximum level of subsidized volume;

2. Increase the flexibility of exporters to respond to changing market conditions;

3. Reduce administrative complexity and cost;

4. Provide safeguards against fraud and exports of foreign-origin products; and

5. Be consistent with U.S. trade policy goals.

The Administration's Farm Bill Proposal announced that the Trade Policy Review Group (TPRG)(an interagency working group comprised of representatives from the Departments of Agriculture, State and Treasury; the Office of the U.S. Trade Representative; the Office of Management and Budget; the Council of Economic Advisors and the National Economic Council), would develop proposals for comment, including the auction concept described in the Farm Bill Proposal as an example of a concept that could fulfill those reform objectives.

The concepts developed by the TPRG for public consideration include: 1. The quarterly auction; 2. a pre-announced bonus mechanism; and 3. a market-oriented modification of the current program. Interested parties are invited to comment on these proposals, but need not limit their comments exclusively to the proposals outlined here. The Administration is seeking comment on a wide spectrum of concepts as it devises a program that embodies the reform principles stated above.

Quarterly Auction

The auction reform is designed to increase the cost-effectiveness of export subsidies by increasing competition in the subsidy allocation process. Such reform would permit the achievement of a given level of export promotion (and, hence, subsidy-related export sales) at minimum budgetary cost. It would also increase the cost-effectiveness of the subsidies by increasing industry flexibility in allocating subsidies across markets, while protecting U.S. foreign policy and trade interests. These gains will be achieved in a way that meets the Administration's commitment to subsidize agricultural exports up to the Uruguay Round ceilings. Specifically, for each subsidized commodity, an auction system would allocate subsidies as follows:

The interagency process would determine maximum annual subsidized export volumes for a set of different markets. The markets would be defined as broadly as possible subject to the promotion of foreign policy and trade objectives. Markets could be specific countries if deemed appropriate. The interagency process could also define select destinations that would be ineligible for any subsidy for reasons that could include the dominent presence of non-subsidized competition, important U.S. foreign policy considerations, and/or a determination that subsidies are not needed for U.S. export growth. The sum of the regional maxima, across all regions, would be no lower than the annual GATT ceiling on U.S. subsidized export volume.

For each of the markets distinguished in the interagency process, USDA/CCC would conduct quarterly auctions in which exporters make bids that specify a dollar amount of export subsidy and the quantity of commodity to be exported.

Quarterly Volumes. Prior to each auction, USDA/CCC would announce the proportion of the overall annual subsidized export volume that is to be auctioned. The quarterly allocations would be designed to avoid distortions in inter-seasonal trade. USDA/CCC would retain flexibility to award subsidies for less volume than it has announced if it faces bonus bids that are too high. Announced quarterly auction volumes would add up, over the GATT year and across all geographical regions, to the overall (worldwide) GATT maximum volume of subsidized exports. Regional volumes would add up to a total that is consistent with the interagency guidelines.

Successful Bids. USDA/CCC would allocate subsidy rights to the lowest bidders. Stated differently, USDA/CCC would choose winning bids in order to achieve the quarterly subsidized volume allocation at minimum cost in dollar subsidies.

Maximum Bonuses. Taking into account the same factors that are currently considered in accepting or rejecting bids—as well as GATT limits—USDA/CCC would set maximum bonus levels to be allowed in awarded bids for each auction. These maximum levels would be secret. Bids with bonus levels higher than the USDA/CCC-determined maximum levels would be rejected. If, because of these limits, a region's allocation of subsidized export volume is not met in a given quarter—and the next quarter is in the same GATT year—the balance of the allocation would be shifted to future quarters in the same GATT year.

Export Flexibility. Winning bidders would be required to export the agreed-upon quantity some time during the 12 months (or less) that follow the award. The exporters would be free to allocate the subsidies to individual sales as they choose. Under the Uruguay Round Agreement, subsidized sales should not be conditioned or linked to other (non-subsidized) sales. The export subsidy rights obtained by a winning bidder would be transferable/tradeable in whole or in part. In other words, a winning bidder could sell his or her right to the agreed-upon per-unit subsidy for either all of the agreed-upon subsidized export volume or part of this volume. USDA/CCC must be notified of any such transactions.

Subsidy Payments. Subsidy payments would be made, on a pro rata basis, at the time that verification of eligible exports is presented to USDA/CCC.

Commodity Definitions. For purposes of defining the commodity that is eligible for export subsidy in a given auction, USDA/CCC would seek to be as unrestrictive as possible subject to practicality, maintaining a minimal standard of product quality, and advancing trade and foreign policy objectives.

Penalties for Non-compliance. If an exporter has subsidy rights, but does not "exercise" these rights by exporting the requisite commodity volume, USDA/CCC will take authorized actions to encourage performance, such as debarment proceedings when an exporter exhibits a pattern of non-performance. Such a measure would be taken in order to discourage frivolous bids.

Interagency review and evaluation. If bonus levels are significantly different across markets (suggesting that regional restrictions may be too tight) or particularly high for certain commodities, interagency review would be called for, with opportunity for corrective action as deemed necessary.

Pre-Announced Bonus

Under the pre-announced bonus mechanism, for each commodity, USDA/CCC would publish a TPRG-cleared list of (regional) destinations. Particularly sensitive countries could have limits on the quantity of subsidized export sales or be excluded. On a periodic basis (weekly or biweekly) USDA/CCC would announce the eligibility of a quantity of commodity and the bonus level to be paid per metric ton (or other unit). A single bonus would apply to all qualities of a particular commodity.

Bonus Awards. Exporters would register for the bonus on a first-come, first-served, basis and awards would be made up to the announced quantity. The announced quantity would be available for a minimum of several business days, but at USDA/CCC's discretion, any unused bonus could remain available for offers until the next scheduled announcement. Differential adjustments would be available for regions where there is a significant freight disadvantage. Exporters would request differential adjustments when making an offer for the pre-announced bonus, and would be constrained to use the bonus within the specified region.

Export Reporting. After export, exporters would report to USDA/CCC the destinations, quantity and limited transaction information for the sales for which a bonus award was used. For sensitive destinations, exporters would need to report immediately on sales so that USDA/CCC could ensure compliance with limits on export volumes.

Export Flexibility. Comments are especially invited on whether pre-announced bonuses should be awarded with the requirement that exporters may only bid if they have firm export sales contracts, or whether there should be no such requirement. In the later case, a secondary market for the transfer of export bonus awards might be permitted among eligible exporters. Transactions in this secondary market would be required to be reported to USDA/CCC.

Market-Oriented Modifications

This reform option is designed to modify current USDA/CCC export subsidy programs to make them more efficient and more responsive to changing world market conditions. It incorporates several market-oriented changes into the existing program operation structure.

Current System. Currently, export subsidy program operations are conducted on a transaction-by-transaction basis. After TPRG clearance, USDA/CCC announces program allocations for each commodity at the beginning of that commodity's marketing year. Allocations specify the maximum quantity of exports that USDA/CCC is willing to subsidize to each country or region. Exporters then submit to USDA/CCC an offer for each export transaction, including proposed selling price and requested bonus per metric ton or other unit. First, USDA/CCC reviews the export sales price to ensure that it is not below world market levels. Second, USDA/CCC reviews the bonus to ensure that it does not exceed the difference between the higher U.S. domestic price and the approved sales price. If USDA/CCC approves both the price and bonus, the exporter is so notified by USDA/CCC. The exporter confirms the sale with the foreign buyer.

USDA/CCC encourages bids by competing exporters. Following each day's bonus awards, USDA/CCC publishes the quantity and the subsidy amount for each sale awarded.

Reform Option. The following market-oriented modifications in this system can better reach the objectives specified in the Administration's Farm Bill guidance. These modifications are designed to restore to the exporter the incentive to achieve higher selling prices and to reduce the current export subsidy program's market intrusiveness. The modifications might include the following:

Regional Allocations. Making all allocations regional or grouping countries by other, non-geographic, criteria, with few countries excluded from the program. Within regions, quantitative limits would be applied to specific sensitive destinations;

Programming. Full GATT authorized quantities would be announced at the beginning of the marketing year, but adjustments to allocations among regions could be made on short notice throughout the year;

Bonus Focus. The emphasis in USDA/CCC's price/bonus review would be more on bonus, with exporters better able to anticipate likely levels of bonus awards. This would be accomplished by: (a) Limiting differences in bonus awards within a particular region and shipping period; (b) announcing the average bonus approved on a regional basis rather than for each transaction; and (c) responding to trade inquiries with specific reference to USDA/CCC's view of changes in market conditions since the latest announced bonus award for a particular region;

Export Flexibility. Exporters would be permitted to shift a bonus award between different transactions within the same region and similar shipping period, with notification to USDA/CCC;

Program Graduation. Countries or regions would be "graduated" from their eligibility for subsidy if the U.S. becomes fully price competitive in some regions later in the GATT phase-in period.

Consideration of Comments

Additional comments on other program modifications that are responsive to the Uruguay Round Agreements Act and the policy principles outlined herein are encouraged. All comments submitted by interested parties will be carefully considered. After consideration of the comments received, USDA/CCC will consider what changes should be made to its export subsidy programs. Some of the above-described changes would require additional notice and consideration of comments from interested parties via the rulemaking process. Others, such as restructuring the programs by geographical regions, could be adopted by changing internal policies and procedures.

Signed at Washington, DC, on June 21, 1995.

Christopher E. Goldthwait,

General Sales Manager and Vice President, Commodity Credit Corporation.

[FR Doc. 95–15590 Filed 6–23–95; 8:45 am]

BILLING CODE 3410–10–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR PART 701

Fees Paid By Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comments.

SUMMARY: The NCUA Board is considering a restructuring of the operating fee scale for natural person federal credit unions. It is proposing that all such credit unions with assets of $500,000 and less be exempt from paying any operating fee. In addition, it is proposing that all natural person federal credit unions with assets over $500,000 but equal to or less than $750,000 pay a minimum operating fee of $100.

DATES: Comments must be postmarked or posted on NCUA's electronic bulletin board by August 25, 1995.

ADDRESSES: Mail comments to Becky Baker, Secretary of the Board, National

Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. Post comments to Ms. Baker on the bulletin board by dialing 703–518–6480.

FOR FURTHER INFORMATION CONTACT: Jane A. Walters, Controller, or Ron Aaron, Deputy Controller, at the above address, telephone (703) 518–6570.

SUPPLEMENTARY INFORMATION: In 1990, NCUA restructured the operating fee scale for natural person federal credit unions because it was felt the scale did not give due consideration to the ability of such credit unions to pay. The restructuring was a consolidation of the scale from 14 rate brackets to 2 rate brackets. In addition to the rate brackets, credit unions with assets greater than $50,000 but equal to or less than $371,885 paid a minimum fee of $100, and credit unions with assets equal to or less than $50,000 paid no fee. In 1992, a third rate bracket was added for credit unions exceeding $1 billion in assets.

The scale is indexed to and adjusted annually for projected asset growth in federal credit unions. Presently, the operating fee scale is as follows:

Total assets		Assessment rate
Over	But not more than	
$0	50,000	$0.00.
$50,000	371,885	100.00.
$371,885	383,837,000	0.0002689 × total assets.
$383,837,000	1,161,485,000	103,213.77 + 0.000784 × total assets over $383,837,000.
$1,161,485,000 and over	.....	164,181.37 + 0.0002617 x total assets over $1,161,485,000.

NCUA is concerned that the present operating fee scale does not give enough consideration to the ability of small credit unions to pay. As assets continue to grow, the burden on smaller credit unions becomes greater than the burden on larger credit unions. The following table, based upon December 31, 1994, NCUA 5300 report financial data, indicates that as both a percentage of total expenses and a percentage of average assets the operating fee is more burdensome on small credit unions than on larger credit unions:

Asset size category	Percent op fee expense to total operating expense	Percent op fee expense to average assets
Less than $500,000	1.51	.07
$500,000–$2,000,000 ..	.93	.04
$2,000,000–$10,000,000	.90	.03
$10,000,000–$50,000,000	.82	.03
$50,000,000–$100,000,000	.78	.03
Greater than $100,000,000	.73	.02

To reduce or eliminate this burden on small credit unions it is proposed that the asset size of credit unions eligible for an exemption from the operating fee be increased from $50,000 to $500,000. A total of 587 federal credit unions between $50,000 and $371,885 presently pay $100 and would benefit from this proposal. An additional 193 credit unions, with assets between $371,885 and $500,000, that pay an average fee of $117 would benefit from this proposal as well.

It is further proposed that the asset size of federal credit unions that pay a $100 fee be expanded to credit unions with assets over $500,000 but less than or equal to $750,000. A total of 349 federal credit unions in this category presently pay an average operating fee of $167. The restructuring of the operating fee scale will restore the fee to a more equitable assessment basis without imposing any significant, financial burden on larger credit unions. The total cost, in terms of reduced revenue, of this proposal is $104,747. This shortfall in revenue will be spread among all other federal credit unions (at an average cost of $16.63 per federal credit union), and will provide larger credit unions with an additional opportunity to help and support smaller credit unions which will strengthen the entire credit union movement. Finally, the proposed fee scale will comply more fully with the intent of the Federal Credit Union Act by assessing a fee based upon the credit union's ability to pay.

List of Subjects in 12 CFR Part 701

Credit, Credit union, Insurance, Mortgages.

Authority: 12 U. S. C. 1755, 31 U.S.C. 3717.

By the National Credit Union Administration Board on June 14, 1995.

Becky Baker,

Secretary of the Board.

[FR Doc. 95–15494 Filed 6–23–95; 8:45 am]

BILLING CODE 7535–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–97–AD]

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes Equipped With Pratt & Whitney Model PW4460 and PW4462 Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, that currently requires a visual inspection to detect cracks or discrepancies in the aft mount beam assembly of the engines; and replacement of the cracked or discrepant aft mount beam assembly with a new assembly, or a previously inspected and re-identified assembly. That amendment was prompted by reports of cracking in a certain aft mount beam assembly on Airbus Model A310 series airplanes. This action would continue to require the visual inspection, and corrective actions for findings of cracking or discrepancies. This action would require additional inspections to detect cracks or discrepancies in the subject area, and follow-on actions. The actions specified by the proposed AD are intended to prevent cracks in the aft mount beam assembly of the engines, which could result in loss of the capability of the aft mount beam assembly to support engine loads, and possible separation of the engine from the airplane.

DATES: Comments must be received by August 21, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–97–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5324; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–97–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–97–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On May 22, 1995, the FAA issued AD 95–11–13, amendment 39–9246 (60 FR 28527, June 1, 1995), applicable to certain McDonnell Douglas Model MD–11 series airplanes, to require a one-time visual inspection to detect cracks or discrepancies in the aft mount beam assembly of the engines; and replacement of the cracked or discrepant aft mount beam assembly with a certain new assembly, or a certain previously inspected and re-identified assembly. That action was prompted by reports of cracking in an aft mount beam assembly having part number (P/N) 221–0261–501 on Airbus Model A310 series airplanes. The requirements of that AD are intended to prevent cracks in the aft mount beam assembly of the engines, which could result in loss of the capability of the aft mount beam assembly to support engine loads, and possible separation of the engine from the airplane.

Aft mount beam assemblies having P/N 221–0261–501 also are installed on McDonnell Douglas Model MD–11 series airplanes equipped with Pratt & Whitney PW4460 and PW4462 engines. The FAA has determined that these airplanes are also subject to the addressed unsafe condition.

In the preamble to AD 95–11–13, the FAA indicated that it intended to supersede that AD to require fluorescent penetrant and eddy current inspections of the aft mount beam assembly, P/N 221–0261–501, of the engines within 4,000 flight cycles after accomplishing the visual inspection required by that AD. This action proposes to require the addition of these inspection requirements.

The FAA previously reviewed and approved McDonnell Douglas Alert Service Bulletin MD11–71A073, Revision 1, dated May 16, 1995, which describes procedures for a one-time visual inspection to detect cracks or discrepancies in the aft mount beam assembly, P/N 221–0261–501, of engine numbers 1, 2, and 3. This alert service bulletin also describes procedures for replacement of the cracked or discrepant aft mount beam assembly with a new assembly having P/N 221–0261–503, or a previously inspected and re-identified assembly having P/N 221–0261–501.

As a follow-on action to the visual inspection, this service bulletin describes procedures for etch fluorescent penetrant and eddy current inspections to detect cracks or discrepancies in the aft mount beam assembly, P/N 221–0261–501, of engine numbers 1, 2, and 3. This service bulletin also describes procedures for re-identifying and installing the aft mount beam assembly, if no cracks or discrepancies are detected during the fluorescent penetrant and eddy current inspections; and for replacement of any cracked or discrepant assembly found during these inspections.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 95–11–13 to continue to require a one-time visual inspection to detect cracks or discrepancies in the aft mount beam assembly, P/N 221–0261–501, of engine numbers 1, 2, and 3, and corrective actions for findings of cracking or discrepancies. The proposed AD would also require etch fluorescent penetrant and eddy current inspections to detect cracks or discrepancies in the subject area, and follow-on actions. The actions would be required to be accomplished in accordance with the alert service bulletin described previously.

This proposed AD would also require that operators report results of any inspection findings, positive or negative, to the FAA.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long-standing requirement.

Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. Post comments to Ms. Baker on the bulletin board by dialing 703–518–6480.

FOR FURTHER INFORMATION CONTACT: Jane A. Walters, Controller, or Ron Aaron, Deputy Controller, at the above address, telephone (703) 518–6570.

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$50,000,000–$100,000,000	.78	.03
Greater than $100,000,000	.73	.02

To reduce or eliminate this burden on small credit unions it is proposed that the asset size of credit unions eligible for an exemption from the operating fee be increased from $50,000 to $500,000. A total of 587 federal credit unions between $50,000 and $371,885 presently pay $100 and would benefit from this proposal. An additional 193 credit unions, with assets between $371,885 and $500,000, that pay an average fee of $117 would benefit from this proposal as well.

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List of Subjects in 12 CFR Part 701

Credit, Credit union, Insurance, Mortgages.

Authority: 12 U. S. C. 1755, 31 U.S.C. 3717.

By the National Credit Union Administration Board on June 14, 1995.

Becky Baker,

Secretary of the Board.

[FR Doc. 95–15494 Filed 6–23–95; 8:45 am]

BILLING CODE 7535–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–97–AD]

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes Equipped With Pratt & Whitney Model PW4460 and PW4462 Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, that currently requires a visual inspection to detect cracks or discrepancies in the aft mount beam assembly of the engines; and replacement of the cracked or discrepant aft mount beam assembly with a new assembly, or a previously inspected and re-identified assembly. That amendment was prompted by reports of cracking in a certain aft mount beam assembly on Airbus Model A310 series airplanes. This action would continue to require the visual inspection, and corrective actions for findings of cracking or discrepancies. This action would require additional inspections to detect cracks or discrepancies in the subject area, and follow-on actions. The actions specified by the proposed AD are intended to prevent cracks in the aft mount beam assembly of the engines, which could result in loss of the capability of the aft mount beam assembly to support engine loads, and possible separation of the engine from the airplane.

DATES: Comments must be received by August 21, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–97–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5324; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–97–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–97–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On May 22, 1995, the FAA issued AD 95–11–13, amendment 39–9246 (60 FR 28527, June 1, 1995), applicable to certain McDonnell Douglas Model MD–11 series airplanes, to require a one-time visual inspection to detect cracks or discrepancies in the aft mount beam assembly of the engines; and replacement of the cracked or discrepant aft mount beam assembly with a certain new assembly, or a certain previously inspected and re-identified assembly. That action was prompted by reports of cracking in an aft mount beam assembly having part number (P/N) 221–0261–501 on Airbus Model A310 series airplanes. The requirements of that AD are intended to prevent cracks in the aft mount beam assembly of the engines, which could result in loss of the capability of the aft mount beam assembly to support engine loads, and possible separation of the engine from the airplane.

Aft mount beam assemblies having P/N 221–0261–501 also are installed on McDonnell Douglas Model MD–11 series airplanes equipped with Pratt & Whitney PW4460 and PW4462 engines. The FAA has determined that these airplanes are also subject to the addressed unsafe condition.

In the preamble to AD 95–11–13, the FAA indicated that it intended to supersede that AD to require fluorescent penetrant and eddy current inspections of the aft mount beam assembly, P/N 221–0261–501, of the engines within 4,000 flight cycles after accomplishing the visual inspection required by that AD. This action proposes to require the addition of these inspection requirements.

The FAA previously reviewed and approved McDonnell Douglas Alert Service Bulletin MD11–71A073, Revision 1, dated May 16, 1995, which describes procedures for a one-time visual inspection to detect cracks or discrepancies in the aft mount beam assembly, P/N 221–0261–501, of engine numbers 1, 2, and 3. This alert service bulletin also describes procedures for replacement of the cracked or discrepant aft mount beam assembly with a new assembly having P/N 221–0261–503, or a previously inspected and re-identified assembly having P/N 221–0261–501.

As a follow-on action to the visual inspection, this service bulletin describes procedures for etch fluorescent penetrant and eddy current inspections to detect cracks or discrepancies in the aft mount beam assembly, P/N 221–0261–501, of engine numbers 1, 2, and 3. This service bulletin also describes procedures for re-identifying and installing the aft mount beam assembly, if no cracks or discrepancies are detected during the fluorescent penetrant and eddy current inspections; and for replacement of any cracked or discrepant assembly found during these inspections.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 95–11–13 to continue to require a one-time visual inspection to detect cracks or discrepancies in the aft mount beam assembly, P/N 221–0261–501, of engine numbers 1, 2, and 3, and corrective actions for findings of cracking or discrepancies. The proposed AD would also require etch fluorescent penetrant and eddy current inspections to detect cracks or discrepancies in the subject area, and follow-on actions. The actions would be required to be accomplished in accordance with the alert service bulletin described previously.

This proposed AD would also require that operators report results of any inspection findings, positive or negative, to the FAA.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long-standing requirement.

There are approximately 57 Model MD–11 series airplanes equipped with Pratt & Whitney Model PW4460 and PW4462 engines of the affected design in the worldwide fleet. The FAA estimates that 17 airplanes of U.S. registry would be affected by this proposed AD.

The visual inspection that was previously required by AD 95–11–13, and retained in this proposal, would take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of the visual inspection requirement on U.S. operators is estimated to be $2,040, or $120 per airplane. The FAA estimates that all affected U.S. operators have already accomplished this action; therefore, the future cost impact of this requirement is minimal.

The fluorescent penetrant and eddy current inspections that would be required by this proposal would take approximately 15 work hours per airplane to accomplish, at an average labor rate of 60 per work hour. Based on these figures, the total cost impact of the proposed fluorescent penetrant and eddy current inspection requirements of this AD on U.S. operators is estimated to be $15,300, or $900 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9246 (60 FR 28527, June 1, 1995), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 95–NM–97–AD. Supersedes AD 95–11–13, Amendment 39–9246.

Applicability: Model MD–11 series airplanes, equipped with Pratt & Whitney Model PW4460 and PW4462 engines; as listed in McDonnell Douglas Alert Service Bulletin MD11–71A073, Revision 1, dated May 16, 1995; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the capability of the aft mount beam assembly to support engine loads, and possible separation of the engine from the airplane, accomplish the following:

(a) Within 60 days after June 16, 1995 (the effective date of AD 95–11–13, amendment 39–9246), perform a visual inspection to detect cracks or discrepancies in the aft mount beam assembly, part number (P/N) 221–0261–501, of engine numbers 1, 2, and 3, in accordance with McDonnell Douglas Alert Service Bulletin MD11–71A073, Revision 1, dated May 16, 1995.

(1) If no cracks or discrepancies are detected, no further action is required by paragraph (a) of this AD.

(2) If any crack or discrepancy is detected, prior to further flight, replace the cracked or discrepant aft mount beam assembly with a new assembly having P/N 221–0261–503, or an assembly having P/N 221–0261–501 that has been previously inspected and re-identified, in accordance with paragraph 3.B., Phase 2, of the Accomplishment Instructions of the alert service bulletin. Replacement shall be accomplished in accordance with the procedures specified in the alert service bulletin.

(b) Within 4,000 flight cycles after accomplishing the visual inspection required by paragraph (a) of this AD, perform etch fluorescent penetrant and eddy current inspections to detect cracks or discrepancies in the aft mount beam assembly, P/N 221–0261–501, of engine numbers 1, 2, and 3, in accordance with McDonnell Douglas Alert Service Bulletin MD11–71A073, Revision 1, dated May 16, 1995.

(1) If no cracks or discrepancies are detected, prior to further flight, re-identify and install the aft mount beam assembly in accordance with the alert service bulletin.

(2) If any crack or discrepancy is detected, prior to further flight, replace the cracked or discrepant aft mount beam assembly with a new assembly having P/N 221–0261–503, or an assembly having P/N 221–0261–501 that has been previously inspected and re-identified, in accordance with paragraph 3.B., Phase 2, of the Accomplishment Instructions of the alert service bulletin. Replacement shall be accomplished in accordance with the procedures specified in the alert service bulletin.

(c) Within 10 days after accomplishing any inspection required by this AD, report inspection results, positive or negative, to the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California 90712; fax (310) 627–5210. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(d) As of June 16, 1995 (the effective date of AD 95–11–13, amendment 39–9246), no person shall install an aft mount beam assembly, P/N 221–0261–501, on any airplane, unless it has been previously inspected and re-identified in accordance with paragraph 3.B., Phase 2, of the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin MD11–71A073, Revision 1, dated May 16, 1995.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 20, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–15517 Filed 6–23–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Secret Service

31 CFR Part 411

[1505–AA69]

Color Illustrations of U.S. Currency

AGENCY: Secret Service, Treasury.

ACTION: Proposed rule.

SUMMARY: Pursuant to the Counterfeit Deterrence Act of 1992, the Secret Service proposes to permit color illustrations of United States currency. Currently, color illustrations of U.S. currency are not permitted. The intended effect of the proposed rule is to permit color illustrations of U.S. currency while maintaining the safeguards needed to prevent the counterfeiting of United States currency.

DATES: Comments must be submitted on or before August 25, 1995.

ADDRESSES: Written comments should be forwarded to John J. Kelleher, Chief Counsel, United States Secret Service, 1800 G Street, NW., Room 842, Washington, DC 20223.

FOR FURTHER INFORMATION CONTACT: Mark Mulligan, Attorney/Advisor, Office of Chief Counsel, U.S. Secret Service, 1800 G Street, NW., Room 842, Washington, DC 20223, (202) 435–5771.

SUPPLEMENTARY INFORMATION:

Background

Currently, illustrations of U.S. currency are permitted provided the illustration is in black and white and is of a size less than three-fourths or more than one and one-half, in linear dimension, of each part so illustrated, and provided the negatives and plates used in making the illustration are destroyed. 18 U.S.C. 504. The Counterfeit Deterrence Act of 1992, Pub. L. No. 102–550 (1992), amended 18 U.S.C. 504 by requiring "[t]he Secretary of the Treasury [to] prescribe regulations to permit color illustrations of such currency of the United States as the Secretary determines may be appropriate for such purposes." Treasury Directive Number 15–56, 58 FR 48539 (September 16, 1993), delegated the responsibility and authority to prescribe these regulations to the Director, United States Secret Service.

The proposed rule would allow the color illustration of U.S. currency. In developing this proposal, the Secret Service carefully weighed the interest in color illustrations with the federal government's compelling interest of preventing the counterfeiting of U.S. currency. The proposed rule is designed to allow the color illustration of U.S. currency in a manner which both prevents the possibility of these color illustrations being used as instruments of fraud and avoids the creation of conditions which may facilitate counterfeiting. In addition, the proposal recognizes technological advances in both computer graphics and other reprographics and requires that such methods comply with the requirements of the proposed rule.

The proposed rule would require the permitted color illustrations to comply with the current size restrictions set out in 18 U.S.C. 504. Any color illustration permitted under the proposed rule would also be required to have the term "non-negotiable" be prominently and conspicuously placed across the center portion of any illustration. In addition, the legend "non-negotiable" would be required to appear in clearly legible, bold, black, block letters, being a minimum of one quarter inch high, and covering at least one third of the linear length of the illustration. The legend "non-negotiable" must appear simultaneously with the creation, production, printing, publishing and transmission of the illustration on all copies of the illustration or any part thereof, and on all negatives, plates, positives, digitized storage medium, graphic files, magnetic medium, optical storage devices, or other reproductive method. In addition, such color illustrations would be required to be only one-sided.

The exceptions proposed by this rule, like the exceptions set out in 18 U.S.C. 504, apply notwithstanding any other provision of chapter 25 of Title 18 of the U.S. Code. It should specifically be noted that the requirement that the term "non-negotiable" appear simultaneously with the creation, production, printing, publishing and transmission of the illustration on all copies of the illustration or any part thereof, and on all negatives, plates, positives, digitized storage medium, graphic files, magnetic medium, optical storage devices, or other reproductive method does not waive or repeal the prohibition in 18 U.S.C. 333 against the mutilation or disfiguring of currency with the intent to render such currency unfit to be reissued. Also, the criminal liability imposed by 18 U.S.C. 474 and other applicable sections of chapter 25 of Title 18 of the U.S. Code could apply where a color illustration of U.S. currency fails to meet the requirements imposed by this proposed regulation.

Executive Order 12866

It has been determined that this document is not a significant regulatory action under Executive Order 12866. This proposed rule is intended to permit the color illustrations of certain U.S. currency, which at the present time are prohibited by law.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act and for the reasons set forth above, it is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

List of Subjects in 31 CFR Part 411

Color illustration, Currency.

For the reasons set out in the preamble, it is proposed that title 31, chapter IV of the Code of Federal Regulations be amended by adding part 411 as set forth below.

PART 411—COLOR ILLUSTRATIONS OF UNITED STATES CURRENCY

Authority: 18 U.S.C. 504; Treasury Directive Number 15–56, 58 FR 48539 (Sept. 16, 1993)

§ 411.1 Color illustrations authorized.

(a) Notwithstanding any provision of chapter 25 of Title 18 of the U.S. Code, authority is hereby given for the printing, publishing or importation, or the making or importation of the necessary plates or items for such printing or publishing, of color illustrations of U.S. currency provided that:

(1) The illustration be of a size less than three-fourths or more than one and one-half, in linear dimension, of each part of any matter so illustrated;

(2) The term "non-negotiable" be placed on any illustration in clearly legible, bold, black, block letters, being a minimum of one quarter inch high,

and prominently and conspicuously placed across the center portion of any illustration, covering at least one third of the linear length of the illustration. The term "non-negotiable" must appear simultaneously with the creation, production, printing, publishing and transmission of the illustration on all copies of the illustration or any part thereof and on all negatives, plates, positives, digitized storage medium, graphic files, magnetic medium, optical storage devices, or other reproductive method;

(3) The illustration be one-sided; and

(4) All negatives, plates, positives, digitized storage medium, graphic files, magnetic medium, optical storage devices, and any other thing used in the making of the illustration that contain an image of the illustration or any part thereof shall be destroyed and/or deleted or erased immediately after their final use in accordance with this section.

(b) [Reserved]

Paul A. Hackenberry,

Assistant Director, Office of Investigations.

[FR Doc. 95–15523 Filed 6–23–95; 8:45 am]

BILLING CODE 4810–42–P

ASSASSINATION RECORDS REVIEW BOARD

36 CFR Ch. 14

Rules Implementing the Government in the Sunshine Act

AGENCY: Assassination Records Review Board.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: The Assassination Records Review Board (Review Board) was established by the President John F. Kennedy Assassination Records Collection Act of 1992 (JFK Act). This NPRM will constitute the Review Board's second rulemaking. All of the Review Board's regulations will eventually be codified at 36 CFR Part 1400 *et seq.* This rulemaking is undertaken in response to the Government in the Sunshine Act (Sunshine Act). The Sunshine Act relates to meetings of agencies of the United States government that are headed by collegial bodies composed of two or more members, a majority of whom are appointed by the President with the advice and consent of the Senate. The Act provides that meetings, as defined in the Sunshine Act, shall be held in public except where stated exemptions apply. The Review Board invites comments from interested groups and members of the public on these proposed rules implementing the Sunshine Act.

DATES: To be considered, comments must be mailed or delivered to the address listed below by 5 p.m. on July 26, 1995.

ADDRESSES: Comments on these proposed regulations should be mailed, faxed, or delivered to the Assassination Records Review Board, 600 E Street, N.W., 2nd Floor, Washington, D.C. 20530 (Attention: Sunshine Act NPRM). All comments will be placed in the Review Board's public files and will be available for inspection between 8:30 a.m. and 4:30 p.m., Monday through Friday, in the Review Board's Public Reading Room at the same address. Comments should state prominently that they are being filed in response to the Review Board's Sunshine Act NPRM.

FOR FURTHER INFORMATION CONTACT: T. Jeremy Gunn, Acting General Counsel, Assassination Records Review Board, 600 E Street, N.W., 2nd Floor, Washington, D.C. 20530, (202) 724–0088.

SUPPLEMENTARY INFORMATION: To discharge its responsibilities, the Review Board gathers as a collegial body at its Washington, D.C., office and at other locations as appropriate. Since the Review Board, including its staff, is a small agency, Review Board Members work both personally and collectively in the discharge of the Review Board's responsibilities. Review Board activities include such matters as: reviewing classified and restricted government records relating to the assassination of President Kennedy; determining whether such classified and restricted records should be opened and made available to the public; identifying additional assassination records in the possession of governments and individuals; holding public hearings related to assassination records; and ensuring government office compliance with the JFK Act.

The Sunshine Act defines meetings and sets certain requirements for advance public notice of such meetings (5 U.S.C. § 552b(e)) and permits agencies to close meetings to public attendance and to withhold information regarding meetings where an agency finds that any of ten exemptions enumerated in the Sunshine Act applies, 5 U.S.C. § 552b(c). The Act further sets forth the procedures that must be followed by agencies in invoking one of these exemptions, 5 U.S.C. § 552b(d),(f). The Review Board is required to adopt, after opportunity for public comment, regulations to implement the Sunshine Act, 5 U.S.C. § 552b(g).

Consistent with the requirement of 5 U.S.C. § 552b(g), the proposed regulations implement the provisions of 5 U.S.C. § 552b(b)–(f). This NPRM has been made following a review of the Sunshine Act, regulations promulgated and implemented by other collegial bodies under the Sunshine Act, and the opinion of the Supreme Court of the United States in *FCC* v. *ITT World Communications, Inc.*, 466 U.S. 463 (1984). The proposed regulations are intended to follow the exemptions set forth in the Sunshine Act and to implement fully the Sunshine Act's procedural requirements regarding public notice of meetings, availability of transcripts or other records of meetings, and closure of meetings.

Paperwork Reduction Act Statement

The proposed rule is not subject to the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. § 3501, *et seq.*) because it does not contain any information collection requirements with the meaning of 44 U.S.C. § 3502(4).

Regulatory Flexibility Act Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. § 601–12, the Review Board certifies that this rule, if adopted, will not have a significant economic impact upon a substantial number of small entities and that a regulatory flexibility analysis need not be prepared. 5 U.S.C. § 605(b). The proposed rule would not impose any obligations, including any obligations on "small entities," as set forth in 5 U.S.C. § 601(3) of the Regulatory Flexibility Act, or within the definition of "small business," as found in 15 U.S.C. § 632, or within the Small Business Size Standards in regulations issued by the Small Business Administration and codified in 13 CFR part 121. Since the impact of the proposed rule is confined to the Review Board, the proposed rule does not fall within the purview of the Regulatory Flexibility Act.

List of the Subjects in 36 CFR Part 1405

Sunshine Act.

The Proposed Regulations

Chapter XIV of Title 36 of the Code of Federal Regulations (as proposed to be established at 60 FR 7507, February 8, 1995), is proposed to be amended by adding part 1405 to read as follows:

CHAPTER 14—ASSASSINATION RECORDS REVIEW BOARD

PART 1405—RULES IMPLEMENTING THE GOVERNMENT IN THE SUNSHINE ACT

Sec.

1405.1 Applicability.
1405.2 Definitions.
1405.3 Open meetings requirement.
1405.4 Grounds on which meetings may be closed or information be withheld.
1405.5 Procedures for closing meetings, or withholding information, and requests by affected persons to close a meeting.
1405.6 Procedures for public announcement of meetings.
1405.7 Changes affecting a meeting following the public announcement of a meeting.
1405.8 Availability and retention of transcripts, recordings, and minutes and applicable fees.
1405.9 Severability.

Authority: 5 U.S.C. 552b; 44 U.S.C. 2107.

§ 1405.1 Applicability.

(a) This part implements the provisions of the Government in the Sunshine Act (5 U.S.C. 552b). These procedures apply to meetings of the Review Board. The Review Board may waive the provisions set forth in this Part to the extent authorized by law.

(b) Requests for all documents other than the transcripts, recordings, and minutes described in § 1405.8 shall be governed by Review Board regulations pursuant to the Freedom of Information Act (5 U.S.C. 552).

§ 1405.2 Definitions.

As used in this part:

Chairperson means the Member elected by the Board to serve in said position pursuant to 44 U.S.C. 2107.7(f).

General Counsel means the Review Board's principal legal officer, or an attorney serving as Acting General Counsel.

Government office means any office of the Federal Government that has possession or control of assassination records as set forth in 44 U.S.C. 2107.3(5).

Meeting means the deliberations of three or more Members where such deliberations determine or result in the joint conduct or disposition of official Review Board business. A meeting does not include:

(1) Notation voting or similar consideration of business, whether by circulation of material to the Members individually in writing or by a polling of the Members individually by telephone.

(2) Action by three or more Members to:

(i) Open or to close a meeting or to release or to withhold information pursuant to § 1405.5;

(ii) Set an agenda for a proposed meeting;

(iii) Call a meeting on less than seven days' notice as permitted by § 1405.6(b); or

(iv) Change the subject matter or the determinations to open or to close a publicly announced meeting under § 1405.7(b).

(3) A session attended by three or more Members for which the purpose is to receive briefings from the Review Board's staff or expert consultants, provided that members of the Review Board do not engage in deliberations at such sessions that determine or result in the joint conduct of disposition of official Review Board business on such matters.

(4) A session attended by three or more Members for which the purpose is to receive informational briefings from representatives of government offices discussing classified or otherwise restricted information in accordance with the provisions of the JFK Act, provided that Members of the Review Board do not engage in deliberations at such sessions that determine or result in the joint conduct of disposition of official Review Board business on such matters.

(5) A gathering of three or more Members for the purpose of holding informal preliminary discussions or exchanges of views, but that does not effectively predetermine official Review Board action.

Member means a current member of the Review Board as provided by law.

Presiding Officer means the Chairperson or any other Member authorized by the Review Board to preside at a meeting.

Review Board means the Assassination Records Review Board created pursuant to 44 U.S.C. 2107.7.

§ 1405.3 Open meetings requirement.

Any meetings of the Review Board, as defined in § 1405.2, shall be conducted in accordance with this part. Except as provided in § 1405.4, the Review Board's meetings, or portions thereof, shall be open to public observation.

§ 1405.4 Grounds on which meetings may be closed or information may be withheld.

A meeting may be closed when the Review Board properly determines that an open meeting would disclose information that may be withheld under the criteria enumerated below. Similarly, information that otherwise would be required to be disclosed under §§ 1405.5, 1405.6, and 1405.7 may also be withheld under these criteria. All records of closed meetings shall, however, be disclosed at a future date consistent with the terms and requirements of the JFK act. The criteria for closing meetings are whether information disclosed at such meetings is likely to:

(a) Disclose matters that are:

(1) specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy; and

(2) in fact properly classified pursuant to such Executive order;

(b) Relate solely to the internal personnel rules and practices of the Review Board;

(c) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552), provided that such statute:

(1) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(2) establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(d) Disclose trade secrets and commercial or financial information obtained from a person and is privileged or confidential;

(e) Involve accusing any person of a crime, or formally censuring any person;

(f) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(g) Disclosure investigatory records compiled for law enforcement purposes, or information which, if written, would be contained in such records, but only to the extent that the production of such records or information would:

(1) interfere with enforcement proceedings;

(2) deprive a person of a right to a fair trial or an impartial adjudication;

(3) constitute an unwarranted invasion to personal privacy;

(4) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(5) disclose investigative techniques and procedures; or

(6) endanger the life or physical safety of law enforcement personnel;

(h) Specifically concern the Review Board's issuance of a subpoena, or the Review Board's participation in a civil action or proceeding, an action in a

foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Review Board of a particular case of formal agency adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing; or

(i) Disclose other information for which the Sunshine Act provides an exemption to the open meeting requirements of the Act.

§ 1405.5 Procedures for closing meetings, or withholding information, and requests by affected persons to close a meeting.

(a) A majority of all Members may vote to close a meeting or withhold information pertaining to that meeting. A separate vote shall be taken with respect to each action under § 1405.4. A majority of the Review Board may act by taking a single vote with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series. Each Member's vote under the paragraph shall be recorded and no proxies shall be permitted.

(b) Any person whose interests may be directly affected if a portion of a meeting is open may request the Review Board to close the portion of the meeting on the grounds referred to in § 1405.4(e), (f), or (g). Requests, with reasons in support thereof, should be submitted to the Office of the General counsel, Assassination Records Review Board, 600 E Street, NW., 2nd Floor, Washington, DC 20530. On the motion of any Member, the Review Board shall determine by recorded vote whether to grant the request.

(c) Within one working day of any vote taken pursuant to this section, the Review Board shall make publicly available a written copy of such vote reflecting the vote of each Member on the question. If a portion of a meeting is to be closed to the public, the Review Board shall make available a full written explanation of its action closing the meeting (or portion thereof) and a list of all persons expected to attend the meeting and their affiliation.

(d) For each closed meeting, the General Counsel shall publicly certify that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemptive provision. A copy of such certification shall be available for public inspection.

(e) For each closed meeting, the Presiding Officer shall issue a statement setting forth the time, place, and persons present. A copy of such statement shall be available for public inspection.

(f) For each closed meeting, with the exception of a meeting closed pursuant to 1405.4(h), the Review Board shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting. For meetings or portions thereof that are closed pursuant to § 1405.4(h), the Review Board may maintain a set of minutes in lieu of such transcript or recording. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any rollcall vote. The records of closed meetings, in addition to all other records of the Review Board, shall be included as permanent records in the JFK Collection at the National Archives as provided by the JFK Act.

§ 1405.6 Procedures for public announcement of meetings.

(a) For each meeting, the Review Board shall make public announcement, at least one week before the meeting, of the:

(1) Time of the meeting;

(2) Place of the meeting;

(3) Subject matter of the meeting;

(4) Whether the meeting is to be open or closed; and

(5) The name and business telephone number of the official designated by the Review Board to respond to requests for information about the meeting.

(b) The one week advance notice required by paragraph (a) of this section may be reduced only if:

(1) A majority of all Members determines by recorded vote that Review Board business requires that such meeting be scheduled in less than seven days; and

(2) The public announcement required by paragraph (a) of this section is made at the earliest practicable time.

§ 1405.7 Changes affecting a meeting following the public announcement of a meeting.

(a) After there has been a public announcement of a meeting, the time or place of such meeting may be changed only if the Review Board publicly announces such change at the earliest practicable time. Members need not approve such change by recorded vote.

(b) After there has been a public announcement of a meeting, the subject matter of such meeting, or the determination of the Review Board to open or to close a meeting or a portion thereof to the public may be changed only when:

(1) A majority of all Members determines, by recorded vote, that Review Board business so requires and that no earlier announcement of the change was possible; and

(2) The Review Board publicly announces such change and the vote of each Member thereof at the earliest practicable time.

(c) The deletion of any subject matter announced for a meeting is not a change requiring the approval of the Review Board under paragraph (b) of this section.

§ 1405.8 Availability and retention of transcripts, recordings, and minutes, and applicable fees.

In accordance with the provisions of the JFK Act, the Review Board shall retain the transcript, electronic recording, or minutes of the discussion of any item on the agenda or of any testimony received at a closed meeting for inclusion as a permanent record in the JFK Collection at the National Archives. the public shall have access to such records consistent with the terms of the JFK Act. Copies of any nonexempt transcript or minutes, or transaction of such recordings disclosing the identity of each speaker, shall be furnished to any person at the actual cost of transcription or duplication unless otherwise provided by the terms of the JFK Act. If at some later time the Review Board determines that there is no further justification for withholding a portion of a transcript, electronic recording, or minutes or other item of information from the public which had been previously withheld, such portion or information shall be made publicly available.

§ 1405.9 Severability.

If any provision of this part or the application of such provision to any person or circumstance, is held invalid, the remainder of this part of the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Dated: June 20, 1995.

David G. Marwell,

Executive Director.

[FR Doc. 95–15514 Filed 6–23–95; 8:45 am]

BILLING CODE 6820–TD–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–86, RM–8636]

Radio Broadcasting Services; Frankenmuth, MI

AGENCY: Federal Communications Commission

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Frankenmuth Broadcasting, Inc., proposing the allotment of Channel 229A to Frankenmuth, Michigan, as that community's first local FM broadcast service. The coordinates for Channel 229A are 43–18–21 and 83–33–28. There is a site restriction 14.9 kilometers (9.3 miles) southeast of the community. Canadian concurrence will be requested for the allotment of channel 229A at Frankenmuth.

DATES: Comments must be filed on or before August 10, 1995, and reply comments on or before August 25, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Harry C. Martin, Andrew S. Kersting, Reddy, Begley, Martin & McCormick, 1001 22nd Street, NW., Suite 350, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–86, adopted June 8, 1995, and released June 19, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–15484 Filed 6–23–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–88, RM–8641]

Radio Broadcasting Services; Rose Hill and Trenton, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Duplin County Broadcasters seeking the substitution of Channel 284C2 for Channel 284A at Rose Hill, NC, the reallotment of Channel 284C2 to Trenton, NC, and the modification of Station WBSY's license to specify Trenton as its community of license. The allotment of Channel 284C2 to Trenton could provide the community with its first local aural service. Channel 284C2 can be allotted to Trenton in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.4 kilometers (0.9 miles) west, at coordinates North Latitude 35–04–00 and West Longitude 77–22–00.

DATES: Comments must be filed on or before August 10, 1995, and reply comments on or before August 25, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Peter Gutmann, Esq., Pepper & Corazzini, L.L.P., 1776 K Street, NW., Suite 200, Washington, DC 20006 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–88, adopted June 8, 1995, and released June 19, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A Karousos,

Chief, Allocations Branch, Policy and Rules Division, Moss Media Bureau.

[FR Doc. 95–15485 Filed 6–23–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

(MM Docket No. 95–83, RM–8634)

Radio Broadcasting Services; Littlefield, Wolfforth and Tahoka, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by 21st Century Radio Ventures, Inc., seeking the reallotment of Channel 238C3 from Littlefield to Wolfforth, Texas, and the modification of Station KAIQ(FM)'s construction permit to specify Wolfforth as its community of license. In order to accommodate the reallotment, we seek comment on the deletion of vacant Channel 237A at Tahoka, Texas, or in the alternative, the substitution of Channel 278A for Channel 237A at Tahoka. *See* Supplemental Information, *infra.*

DATES: Comments must be filed on or before August 10, 1995, and reply comments on or before August 25, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant,

as follows: James L. Primm, 21st Century Radio Ventures, Inc., 713 Broadway, Santa Monica, California, 90401 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–83, adopted June 8, 1995, and released June 19, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Channel 238C3 can be allotted to Wolfforth in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.3 kilometers (5.8 miles) south. The coordinates for Channel 238C3 at Wolfforth are 33–25–48 and 102–03–35. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 238C3 at Wolfforth or require petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties. Channel 278A can be allotted to Tahoka in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.6 kilometers (3.5 miles) northeast. The coordinates for Channel 278A are Tahoka are 33–11–34 and 101–44–44.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–15486 Filed 6–23–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 95–89, RM–8639]

Radio Broadcasting Services; Healdsburg, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Phil Squyres, seeking the allotment of Channel 244A to Healdsburg, California, as that community's third local FM service. Coordinates used for this proposal are 38–43–53 and 122–49–07.

DATES: Comments must be filed on or before August 10, 1995, and reply comments on or before August 25, 1995.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Peter Gutmann, Esq., Pepper & Corazzini, L.L.P., 1776 K Street, NW., Suite 200, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–89, adopted June 8, 1995, and released June 19, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–15480 Filed 6–23–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 95–82, RM–8630]

Radio Broadcasting Services; Monticello, Perry, Quincy and Woodville, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Great South Broadcasting, Inc., licensee of Station WXSR(FM), Channel 268C2, Quincy, Florida, requesting the reallotment of Channel 268C2 from Quincy, Florida, to Woodville, Florida, and the modification of its license to specify Woodville as its community of license, in accordance with Section 1.420(i) of the Commission's Rules. The coordinates for Channel 268C2 at Woodville, Florida are North Latitude 30–18–53 and West Longitude 84–15–57. This proposal also requires the substitution of Channel 289C3 for Channel 270C3 at Monticello, Florida, at coordinates North Latitude 30–25–05 and West Longitude 83–50–18, and the substitution of Channel 221A for Channel 288A at Perry, Florida at coordinates North Latitude 30–06–27 and West Longitude 83–34–00.

DATES: Comments must be filed on or before August 10, 1995, and reply comments on or before August 25, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Gary S. Smithwick, Shaun A. Maher, Smithwick & Belendiuk, P.C., 1990 M Street, NW., Suite 510, Washington, DC 20036 (Attorneys for Petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–82, adopted June 7, 1995, and released June 19, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–15481 Filed 6–23–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 95–85, RM–8518]

Radio Broadcasting Services; Copeland, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Greater Plains Christian Radio, Inc., proposing the allotment of Channel 280C1 to Copeland, Kansas, and the reservation of Channel 280C1 for noncommercial use. Channel *280C1 can be allotted in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel *280C1 at Copeland are North Latitude 37–32–31 and West Longitude 100–37–45.

DATES: Comments must be filed on or before August 10, 1995, and reply comments on or before August 25, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Stephen C. Simpson, 1090 Vermont Avenue, NW., Suite 800, Washington, DC 20005 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–85, adopted June 7, 1995, and released June 19, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–15482 Filed 6–23–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 95–50; Notice 01]

RIN 2127–AF74

Federal Motor Vehicle Safety Standards; Reflecting Surfaces

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: NHTSA proposes to rescind Federal Motor Vehicle Safety Standard No. 107, *Reflecting Surfaces*. This proposed action is part of NHTSA's efforts to implement the President's Regulatory Reinvention Initiative to remove unnecessary regulations. The agency has tentatively concluded that market forces and product liability concerns will achieve the same results as Standard No. 107. Therefore, the Standard can be rescinded without affecting safety. Eliminating the Standard will remove the need to certify compliance with it.

DATES: Comments must be received on or before July 26, 1995.

ADDRESSES: Comments must refer to the docket and notice numbers cited at the beginning of this notice and be submitted to: Docket Section, Room 5109, NHTSA, 400 Seventh Street, S.W., Washington, D.C. 20590. It is requested, but not required, that 10 copies of the comments be provided. The Docket Section is open on weekdays from 9:30 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Van Iderstine, Office of Vehicle Safety Standards, Office of Safety Performance Standards, NHTSA, 400 Seventh Street, S.W., Washington, D.C. 20590. Mr. Van Iderstine's telephone number is (202) 366–5280, and his FAX number is (202) 366–4329.

SUPPLEMENTARY INFORMATION

President's Regulatory Reinvention Initiative

Pursuant to the March 4, 1995 directive "Regulatory Reinvention Initiative" from the President to the heads of departments and agencies, NHTSA has undertaken a review of its regulations and directives. During the course of this review, the agency identified several requirements and regulations that are potential candidates for rescission, including Federal Motor Vehicle Safety Standard No. 107, *Reflecting Surfaces* (49 CFR 571.107).

This document discusses why NHTSA believes Standard No. 107 can be rescinded without adversely affecting motor vehicle safety. That belief is based primarily on the vehicle manufacturers' established practice of using nonglossy materials and finishes on regulated and nonregulated components in the driver's forward field of view. Since the nonregulated components are not glossy, the agency believes that currently regulated components would not become glossy if they were deregulated.

Standard No. 107's Background

Standard No. 107 specifies reflecting surface requirements for certain "bright metal" components in the driver's forward field of view. The components are the windshield wiper arms and blades, inside windshield mouldings, horn ring and hub of the steering wheel assembly, and the inside rearview mirror frame and mounting bracket. The standard requires that the specular gloss of the surface of materials used in the components must not exceed 40 units when tested. ("Specular gloss" refers to the amount of light reflected from a test specimen.) The purpose of the standard is to reduce the likelihood that glare from the regulated components will distract drivers or interfere with their ability to view the driving environment ahead.

Previous Review of Need for Standard No. 107

In a rulemaking during the late 1980's, NHTSA considered and ultimately rejected the possibility of extending Standard No. 107's specular gloss limitations to non-metallic surfaces. The issues raised in that rulemaking are relevant to the issue of whether Standard No. 107 should be rescinded.

In the NPRM proposing to extend Standard No. 107 to non-metallic surfaces, NHTSA considered three issues: (1) Whether there were safety benefits in retaining Standard No. 107; (2) whether there is justification to apply the specular gloss requirement to non-metallic versions of the components already covered by Standard No. 107; and (3) whether there is a need to expand Standard No. 107 to apply to other component parts (such as instrument panel pads). (November 13, 1987, 52 FR 43628).

Addressing the first issue, NHTSA noted Standard No. 107 was issued because the agency believed that the reflection of sun and bright lights off metallic components into the driver's eyes presented a potential safety problem which could be reduced by limiting the specular gloss of those items. Since a driver could still experience glare from sunlight and other bright lights, NHTSA concluded that Standard No. 107's limits on highly reflective components (i.e., possible sources of glare) still addressed a safety problem for drivers.

Addressing the second issue, NHTSA proposed to expand the coverage of the Standard by eliminating the limitation to "metal" components. NHTSA tentatively concluded that the safety problem posed by glossy metallic components was indistinguishable from the problem posed by glossy non-metallic components. NHTSA proposed to extend the standard despite a manufacturer's comment that any material used for new components would not be highly reflective. The manufacturer stated its belief that surfaces in the driver's forward field of view in modern automobiles are seldom constructed of glossy components because bright finishes are "incompatible with the new trends of matte-finish componentry and trim * * *"

Addressing the third issue, NHTSA declined to propose extending Standard No. 107 to other vehicle components since it found no data showing that glare from unregulated components presents a safety problem. NHTSA also stated its belief that the absence of data showing that glare from unregulated components has presented a safety problem indicates that Standard No. 107 has correctly identified the components that are most likely to be the sources of hazardous glare.

In 1989, NHTSA terminated the rulemaking because there was no substantiation that there was a safety problem with glare from non-metallic surfaces (54 FR 35011, August 23, 1989). NHTSA concluded that because of the apparently insignificant nature of the safety problem (from reflected glare off non-metallic parts), and the costs of implementing the more expensive and complex test procedure necessary for non-metallic vehicle parts and materials, extending Standard No. 107 was not appropriate.

In 1991, NHTSA was petitioned by the Center for Auto Safety to include the instrument panel surface as one of the regulated items in Standard No. 107. The Center believed that such an action would "significantly limit dashboard reflections in windshields", and limit "veiling glare" as a "major source of vision impairment." NHTSA denied this petition (see 56 FR 40853, August 16, 1991), after determining that there was no visibility problem which warranted Federal rulemaking. The agency could find no information showing that such dashboard reflections constituted a safety hazard. At the time, a search of the NHTSA consumer complaint file found only 23 complaints that were related to light reflections from the dashboard in over 138,000 complaints (0.017 percent). In only one of those was there a possibility that the reflections may have contributed to an accident.

In 1995, an updated search of the current file found 52 complaints that were related to dashboard glare in over 241,000 complaints (0.021 percent). In only one of these was there a possibility that the reflections contributed to accidents. The insignificant change in the number of complaints reinforces the agency's prior determinations that there is no need to expand the scope of Standard No. 107.

Market Forces and Product Liability Concerns Have Eliminated the Need for Standard No. 107

NHTSA believes that market forces continue to favor matte finishes and surfaces for components in the driver's field of view, and are reinforced by product liability concerns. Evidence of the impacts of these factors may be found in the virtual disappearance of horn rings and metallic inside windshield mountings and in the use of matte finishes on unregulated components. The agency also notes that nonmetallic materials are typically lighter weight than metallic ones.

As a result of the use of matte finishes on regulated components in the driver's field of view, glare from those components has been substantially reduced. Increased use of matte-finished, non-metallic materials (hard plastic or rubber) for parts such as windshield wiper arms and blades, steering wheel assembly hubs, and inside rearview mirror frame and mounting brackets, mean fewer vehicle components must meet Standard No. 107.

The decreasing tendency to use metal is also evident with respect to components not regulated by Standard No. 107. Since 1987, vehicle interior styling practices have favored a combination of hard plastic and padded faux leather, materials that do not reflect sufficient light to create glare. NHTSA believes that market forces will continue to favor matte finishes in the future.

NHTSA's Authority Over Safety Related Defects

Although NHTSA believes future market forces will favor matte finishes, it is possible that motor vehicle designs, styles, and preferred materials will change. If such changes should result in motor vehicle components that may produce distracting glare in the driver's line of sight, NHTSA intends to review the situation through its statutory authority over safety related defects in motor vehicles and motor vehicle equipment.

Proposed Effective Date

Because the proposed removal of Standard No. 107 would relieve restrictions without compromising safety, the agency tentatively has determined that there is good cause for concluding that an effective date earlier than 180 days after issuance is in the public interest. Accordingly, the agency proposes that, if adopted, the effective date for the final rule be 30 days after its publication in the **Federal Register**.

Rulemaking Analyses and Notices

1. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule was not reviewed under Executive Order 12866 (Regulatory Planning and Review). NHTSA has analyzed the impact of this rulemaking action and determined that it is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. The agency anticipates that making this rule final would not affect the materials and finishes choices of the manufacturers with respect to the currently regulated components. NHTSA believes that this proposal would not impose any additional costs and would not yield any significant savings. Any cost impacts would be so slight that they cannot be quantified. The impacts would be so minimal as not to warrant preparation of a full regulatory evaluation.

2. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this proposed action on small entities. Based upon this evaluation, I certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. As noted above, this final rule would not affect the materials and finishes choices of the manufacturers with respect to the currently regulated components. Accordingly, this rule would not affect either vehicle or equipment manufacturers. Similarly, it would not affect purchasers of motor vehicles and motor vehicle equipment. Accordingly, an initial regulatory flexibility analysis has not been prepared.

3. Executive Order 12612 (Federalism)

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. The agency has determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

4. National Environmental Policy Act

The agency also has analyzed this proposed rule for the purpose of the National Environmental Policy Act, and determined that it would not have any significant impact on the quality of the human environment.

5. Executive Order 12778 (Civil Justice Reform)

The proposed rule would not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Procedures for Filing Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, tires.

In consideration of the following, NHTSA proposes to amend 49 CFR part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

§ 571.107 [Removed]

2. Section 571.107 would be removed in its entirety.

Issued on: June 20, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–15526 Filed 6–23–95; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[I.D. 062095A]

Atlantic Weakfish Fisheries; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearings; request for comments.

SUMMARY: NMFS will hold nine public hearings to receive comments from fishery participants and other members of the public regarding proposed regulations on the harvest and possession of weakfish in the exclusive economic zone of the Atlantic Ocean from Maine through Florida.

DATES: Written comments on the proposed rule must be received on or before August 2, 1995. The public hearings will be held during the month of July. See **SUPPLEMENTARY INFORMATION** for dates and times of the public hearings.

ADDRESSES: Written comments should be sent to William Hogarth, Office of Fisheries Conservation and Management (F/CM), National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Clearly mark the outside of the envelope "Atlantic Weakfish Comments." The public hearings will be held in North Carolina, Massachusetts, New York, Maryland, New Jersey, Florida, and Virginia. See **SUPPLEMENTARY INFORMATION** for the public hearing locations.

FOR FURTHER INFORMATION CONTACT: William Hogarth at 301–713–2339.

SUPPLEMENTARY INFORMATION: The proposed regulations are necessary to complement the rules already implemented by the coastal states through the Atlantic States Marine Fisheries Commission's Weakfish Management Plan, and to ensure the rebuilding of the weakfish stock along the east coast of the Atlantic Ocean.

A complete description of the measures, and the purpose and need for the proposed action, is contained in the proposed rule published June 20, 1995 and is not repeated here. Copies of the proposed rule may be obtained by writing (see **ADDRESSES**) or calling the contact person (see **FOR FURTHER INFORMATION CONTACT**).

To accommodate people unable to attend a hearing or wishing to provide additional comments, NMFS also solicits written comments on the proposed rule.

The public hearings will be held as follows:

Morehead City, NC

Monday, July 10, 1995, 7–9 p.m.

Joslyn Hall
Carteret Community College
3505 Arendell Street
Morehead City, NC 28557

Fall River, MA

Monday, July, 10, 1995, 7–9 p.m.

Fall River Heritage State Park Theater
Route 24, Davol Street
Fall River, MA 02202

Manteo, NC

Tuesday, July 11, 1995, 7–9 p.m.

North Carolina Aquarium
Airport Road
Manteo, NC 27954

Setauket, NY

Wednesday, July 12, 1995, 7–9 p.m.

New York State Department of Environmental Control
Division of Marine Resources Headquarters
Conference Room
205 Belle Mead Road
Setauket, NY 11790

Salisbury, MD

Wednesday, July 12, 1995, 7–9 p.m.

Wicomico Public Library
122 South Division Street
Salisbury, MD 21802

Cape May Court House, NJ

Wednesday, July 12, 1995, 7–9 p.m.

New Jersey Marine Advisory Service
Education Center - Cape May County
Dennisville Road, Route 657
Cape May Court House, NJ 08210

Mayport, FL

Thursday, July 13, 1995, 7–9 p.m.

Mayport Elementary School
Auditorium
2753 Shang-ri-la Drive
Mayport, FL 32233

Newport News, VA

Monday, July 17, 1995, 7–9 p.m.

Commission Hearing Room
4th Floor
2600 Washington Avenue
Newport News, VA 23607

Dover, DE

Tuesday, July 18, 1995, 7:30–9:30 p.m.

Department of Natural Resources and Environmental Control
Auditorium
89 Kings Highway
Dover, DE 19903

The purpose of this document is to alert the interested public of hearings and provide for public participation. These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to William Hogarth by July 3, 1995 (see **ADDRESSES**).

Authority: 16 U.S.C. 5101 *et seq.*

Dated: June 20, 1995.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–15522 Filed 6–21–95; 10:23 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 60, No. 122
Monday, June 26, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Washington Provincial Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Washington Provincial Advisory Committee will meet on July 12, 1995, in Randle, Washington, at the White Pass School on US Highway 12, 49 miles east of Interstate 5 via Exit No. 68. The meeting will begin at 9 a.m. and continue until 4:30 p.m.

Meeting purpose is to review processes applied in assessing watershed health conditions within the Cowlitz Basin. The Advisory Committee will determine how to use this information in advising Federal land managers on implementing the President's Northwest Forest Plan. Agenda items to be covered include: (1) Cowlitz Basin Pilot Project findings, (2) Public Open Forum, and (3) Forest Monitoring Program.

All Southwest Washington Provincial Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The "open forum" provides opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The "open forum" is scheduled near the conclusion of this meeting. Interested speakers will need to register at the door. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Mark Maggiora, Public Affairs Specialist, at (360) 750–5007, or write Forest Headquarters Office, Gifford Pinchot National Forest, 6926 E. Fourth Plain Blvd., P.O. Box 8944, Vancouver, WA 98668.

Dated: June 20, 1995.

Ted C. Stubblefield,

Forest Supervisor.

[FR Doc. 95–15552 Filed 6–23–95; 8:45 am]

BILLING CODE 3410–11–M

Intergovernmental Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Intergovernmental Advisory Committee (IAC) will meet on July 6, 1995, at the Wyndham Garden Hotel, 18188 Pacific Highway South, Seattle, Washington 98188. The purpose of the meeting is to continue discussions on the implementation of the Northwest Forest Plan. The meeting will begin at 9:00 a.m. on July 6 and continue until 4:30 a.m. Agenda items to be covered include: (1) Discussions on revisions to the federal watershed analysis guide; (2) a review of information management tasks; (3) further discussions on the final draft implementation monitoring plan; and (4) an update of information data sharing efforts on specific activities. The IAC meeting will be open to the public. Written comments may be submitted for the record at the meeting. Time will also be scheduled for oral public comments. Interested persons are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Questions regarding this meeting may be directed to Don Knowles, Executive Director, Regional Ecosystem Office, 333 SW 1st Avenue, P.O. Box 3623, Portland, OR 97208 (Phone: 503–326–6265).

Dated: April 8, 1995.

Donald R. Knowles,

Designated Federal Official.

[FR Doc. 95–15541 Filed 6–23–95; 8:45 am]

BILLING CODE 3410–11–M

ASSASSINATION RECORDS REVIEW BOARD

Notice of Formal Determinations

SUMMARY: The Assassination Records Review Board met in closed meeting on 06/07/95, and made formal determinations on the release of records under the President John F. Kennedy Assassination Records Collection Act of 1992. These determinations are listed below. The assassination records are identified by the record identification number assigned in the President John F. Kennedy Assassination Records Collection database maintained by the National Archives. For each document, the number of releases of previously redacted information is noted.

REVIEW BOARD DETERMINATIONS

Record No.	Status	Releases	New review date
104–10007–10037	Open in Full	18	N/A
104–10007–10040	Open in Full	7	N/A
104–10007–10043	Open in Full	3	N/A
104–10007–10046	Open in Full	6	N/A
104–10007–10195	Open in Full	1	N/A
104–10008–10109	Open in Full	10	N/A
104–10015–10052	Open in Full	4	N/A
104–10015–10093	Open in Full	12	N/A
104–10015–10153	Open in Full	5	N/A
104–10015–10154	Open in Full	8	N/A
104–10015–10165	Open in Full	6	N/A
104–10015–10181	Open in Full	7	N/A

REVIEW BOARD DETERMINATIONS—Continued

Record No.	Status	Releases	New review date
104–10050–10002	Open in Full	3	N/A
104–10050–10077	Open in Full	1	N/A
104–10054–10023	Open in Full	12	N/A
104–10054–10204	Open in Full	2	N/A

FOR FURTHER INFORMATION CONTACT:
T. Jeremy Gunn, Acting General Counsel and Associate Director for Research and Analysis, Assassination Records Review Board, Second Floor, 600 E Street, NW, Washington, DC 20530, (202) 724–0088, Fax: (202) 724–0457.

David G. Marwell,
Executive Director.

[FR Doc. 95–15515 Filed 6–23–95; 8:45 am]
BILLING CODE 6820–TD–M

COMMISSION ON CIVIL RIGHTS

Hearing on Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination; New York City

AGENCY: Commission on Civil Rights.

ACTION: Notice of hearing.

SUMMARY: Notice is hereby given pursuant to the provisions of the Civil Rights Commission Amendments of 1994, section 3, Public Law 103–419, 108 Stat. 4338, as amended, and 45 CFR 702.3, that a public hearing of the U.S. Commission on Civil Rights will commence on Wednesday, July 26, 1995, beginning at 8:30 a.m., in Ballroom 3 of the New New York Vista Hotel, located at 3 World Trade Center, New York, New York 10048.

The purpose of the hearing is to collect documents within the jurisdiction of the Commission, under 45 CFR 702.2, related to City policies and administration, immigration, and the securities industry in order to examine underlying causes of racial and ethnic tensions in the United States.

The Commission is authorized to hold hearings and to issue subpoenas for the production of documents and the attendance of witnesses pursuant to 45 CFR 701.2(c). The Commission is an independent bipartisan, factfinding agency authorized to study, collect, and disseminate information, and to appraise the laws and policies of the Federal Government, and to study and collect information concerning legal developments, with respect to discrimination or denials of equal protection of the laws under the constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice.

Hearing impaired persons who will attend the hearing and require the services of a sign language interpreter, should contact Betty Edmiston, Administrative Services and Clearinghouse Division, at (202) 376–8105 (TDD (202) 376–8116), at least five (5) working days before the scheduled date of the hearing.

FOR FURTHER INFORMATION CONTACT:
Barbara Brooks, Press and Communications (202) 376–8312.

Dated: June 21, 1995.

Miguel A. Sapp,
Acting Solicitor.

[FR Doc. 95–15588 Filed 6–23–95; 8:45 am]
BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket Nos. 5109–01, 5109–02, 5110–01, 5110–02, 5110–03]

Decision and Order

In the Matter of: Sidhartha Bose, also known as Dr. Bose individually and doing business as Perfect Technologies, Ltd. with an address at 211 Golders Green Road, London, NW11 9BY, England and Thirunavukkarasu Ragunathan individually and doing business as W.K. Agencies and as Computer Focus Services Pte. Ltd. with an address at 18 Jalan Kechil, #06–22 Eastern Mansion, Singapore 1543, Respondents

On May 31, 1995, the Administrative Law Judge (ALJ) entered his Recommended Decision and Default Order in the above-referenced matters. The Recommended Decision and Default Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. After describing the facts of the case and his findings based on those facts, the ALJ found that the Respondents had violated Sections 787.3(a) and 787.3(b) of the Export Administration Regulations (EAR) by conspiring with others to bring about acts that constituted violations of the EAR, by exporting or attempting to export U.S.-origin computers or computer parts from the United States, either directly or through Canada and/or Singapore, for ultimate destination in the then-Union of Soviet Socialist Republics, without the validated export licenses required by Section 772.1 of the EAR.

The ALJ found that the appropriate penalty for the violations should be that the Respondents and all successors, assignees, officers, representatives, agents and employees be denied for a period of ten years from this date all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving commodities or technical data exported or to be exported from the United States and subject to the Export Administration Regulations.

Based on my review of the entire record, I affirm the Recommended Decision and Default Order of the Administrative Law Judge.

This constitutes final agency action in this matter.

Dated: June 16, 1995.

William A. Reinsch,
Under Secretary for Export Administration.

Recommended Decision and Default Order

On July 20, 1994, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), issued separate charging letters initiating administrative proceedings against Sidhartha Bose, also known as Dr. Bose, individually and doing business as Perfect Technologies, Ltd.; and Thirunavukkarasu Ragunathan, individually and doing business as W.K. Agencies and as Computer Focus Services Pte. Ltd. (hereinafter "Bose" or "Ragunathan" or collectively referred to as respondents). Each charging letter alleged that the named respondent committee two violations of the Export Administration Regulations (currently codified at 15 CFR Parts 768–799 (1995)) (the Regulations),[1] issued pursuant to the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. §§ 2401–2420 (1991, Supp. 1993, and Pub. L. No. 103–277, July 5, 1994)) (the Act).[2]

Specifically, each charging letter alleged that the named respondents conspired with a network of business associates to bring about acts that constituted violations of the Regulations. The purpose of the conspiracy was to acquire U.S.-origin computers or computer parts which the conspirators would then export, or attempt to export, from the United States, either directly or through Canada, to India and/or Singapore, for ultimate destination in the then-Union of Soviet Socialist Republics (U.S.S.R.), without the validated export licenses required by Section 772.1 of the Regulations. Accordingly, the Department alleged that each respondent committed one violation of Section 787.3(a) and one violation of Section 787.3(b) of the Regulations.

On April 19, 1995, in light of the fact that neither Bose nor Ragunathan had answered the charging letter in accordance with the requirements of Section 788.7 of the Regulations, I ordered the Department to file separate default submissions, together with supporting evidence for the allegations made, by May 19, 1995. Because the two actions arose out of the same transactions or occurrences and the evidence supporting the Department's allegations in both cases is substantially the same, the Department moved on May 9, 1995 that I consolidate the proceedings and authorize the Department to file a single default submission. On May 10, 1995, I granted the Department's request. On May 18, 1995, the Department requested and I granted permission for the Department to file its default submission on or before May 24, 1995.

On the basis of the Department's submission and all of the supporting evidence presented, I have determined that Bose and Ragunathan violated Sections 787.3(a) and 787.3(b) of the Regulations by conspiring with others to bring about acts that constituted violations of the Regulations, by exporting or attempting to export from the United States, either directly or through Canada, to India and/or Singapore, for ultimte destination in the then-U.S.S.R. without the validated export licenses, as the Department alleges.

For those violations, the Department urges as a sanction that respondent's export privileges be denied for 10 years. I concur in the Department's recommendation.

Accordingly, it is therefore ordered,

First, that all outstanding individual validated licenses in which Sidhartha Bose, also known as Dr. Bose, individually and doing business at Perfect Technologies, Ltd., or Thirunavukkarasu Ragunathan, individually and doing business as W.K. Agencies and as Computer Focus Services, Pte. Ltd., appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Exporter Services for cancellation. Further, all of Bose and Ragunathan's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

Second, Sidhartha Bose, also known as Dr. Bose, individually and doing business as Perfect Technologies, Ltd., with an address at 211 Golders Green Road, London, NW11 9BY, England; and Thirunavukkarasu Ragunathan, individually and doing business as W.K. Agencies and as Computer Focus Services Pte. Ltd, with an address at 18 Jalan Kechil, #06–22 Eastern Mansion, Singapore 1543 (collectively referred to as "Bose and "Ragunathan"), and all successors, assigns, officers, representatives, agents, and employees, assigns, officers, representatives, agents, and employees, shall, for a period of 10 years from the date of final agency action, be denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, and subject to the Regulations.

A. Without limiting the generality of the foregoing, participating, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) as a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization, or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

B. After notice and opportunity for comment as provided in Section 788.3(c) of the Regulations, any person, firm, corporation, or business organization related to either Bose or Ragunathan by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

C. As provided by Section 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Exporter Services, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) in any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

Third, that a copy of this Order shall be served on Bose and Ragunathan and on the Department.

Fourth, that this Order, as affirmed or modified, shall become effective upon entry of the final action by the Under Secretary for Export Administration, in accordance with the Act (50 U.S.C.A. app. § 2412(c)(1)) and the Regulations (15 CFR 788.23).

[1] The alleged violations occurred between 1987 and 1989. The Regulations governing the violations are found in the 1987 version of the Code of Federal Regulations, codified at 15 CFR Parts 368–399 (1987); the 1988 version of the Code of Federal Regulations, codified at 15 CFR Parts 368–399 (1988); and the 1989 version of the Code of Federal Regulations, codified at 15 CFR Parts 768–799 (1989). Effective October 1, 1988, the Regulations were redesignated as 15 CFR Parts 768–799 (53 FR 37751, September 28, 1988). The transfer merely changed the first number of each Part from "3" to "7."

[2] The Act expired on August 20, 1994. Executive Order 12924 (59 FR 43437, August 23, 1994) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (1991)).

To be considered in the 30 day statutory review portion which is mandated by Section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th & Constitution Ave., N.W., Room 3898B, Washington, D.C., 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 788.23(b), 50 FR 53134(1985). Pursuant to Section 13(c)(3) of the Act, the order of the final order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

Dated: May 31, 1995.

Edward J. Kuhlmann,

Administrative Law Judge.

[FR Doc. 95–15587 Filed 6–23–95; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

Countervailing Duty Order; Amendment of Notice of Opportunity to Request a Section 753 Injury Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Amendment of Notice of Opportunity to Request a Section 753 Injury Investigation for Countervailing Duty Orders.

SUMMARY: On May 26, 1995, the Department of Commerce (the Department) notified domestic interested parties of their right to request an injury investigation under section 753 of the Tariff Act of 1930, as amended (the Act), for countervailing duty orders that were issued under former section 303 of the Act (60 FR 27963). This notice amends the Appendix to the previous notice which omitted six eligible countervailing duty orders.

EFFECTIVE DATE: June 26, 1995.

FOR FURTHER INFORMATION CONTACT: Cameron Cardozo, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–2786; or Vera Libeau, Office of Investigations, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone: (202) 205–3176.

SUPPLEMENTARY INFORMATION:

Background

This notice includes countervailing duty orders issued under former section 303 of the Act which were omitted from the Appendix to our previous notice dated May 26, 1995 (60 FR 27963). At the time these orders were issued, U.S. law did not require injury determinations as a prerequisite to their issuance. With the accession of the United States to the World Trade Organization (WTO) and the enactment of the Uruguay Round Agreements Act of 1994 (URAA), P.L. 103–465, U.S. law has changed. Under the URAA, the Government of the United States may not assess countervailing duties on imports from a WTO member country in the absence of an injury determination. Thus, as noted in the Statement of Administrative Action, new section 753 of the Act (as amended by the URAA) provides that for such orders ". . . a domestic interested party may request that the [International Trade] Commission initiate an investigation to determine whether an industry in the United States is likely to be materially injured by reason of imports of the merchandise subject to the CVD order if the order is revoked." See Statement of Administrative Action, URAA, p.272.

Opportunity to Request a Section 753 Injury Investigation

On January 1, 1995, Singapore and Thailand joined the WTO. Therefore, for each of the countervailing duty orders listed below, we are notifying all domestic interested parties, as described in sections 771(9) (C), (D), (E), (F), or (G) of the Act, of their right to request an injury investigation under section 753(a) from the U.S. International Trade Commission (the Commission). In accordance with sections 753(b)(3) and (4) of the Act, outstanding section 303 orders for which the Commission has not previously made an affirmative injury determination will be revoked by the Department unless a request for an injury investigation is submitted to the Commission within six months of the date on which the country covered by the order joins the WTO, and the Commission renders an affirmative injury determination pursuant to section 753(a)(1) of the Act. Requests for the following orders must be filed with the Commission no later than June 30, 1995.

Singapore: Ball Bearings	(C–559–802)
Singapore: Bearings, Cylindrical Roller	(C–559–802)
Singapore: Bearings, Needle Roller	(C–559–802)
Singapore: Bearings, Spherical Plane	(C–559–802)
Singapore: Bearings, Spherical Roller	(C–559–802)
Thailand: Ball Bearings	[1] (C–549–802)

Requests for injury investigations under section 753 must be filed with the Commission in accordance with 19 C.F.R. § 207.46(b), added by 60 FR 18, 22–23 (January 3, 1995). All requests should be addressed to: Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436.

[1] Applies only to the dutiable merchandise within the scope of the order.

Dated: June 21, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–15761 Filed 6–23–95; 8:45 am]

BILLING CODE 3510–DS–P

North American Free-Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On June 16, 1995 Cemex, S.A. de C.V. filed a First Request for Panel Review with the U.S. Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free-Trade Agreement. Panel review was requested of the final antidumping determination review made by the International Trade Administration in the administrative review respecting Gray Portland Cement and Cement Clinker from Mexico. This determination was published in the **Federal Register** on January 9, 1995 (60 FR 2378) and Amended on May 19, 1995 (60 FR 26865). The NAFTA Secretariat has assigned Case Number USA–95–1904–02 to this request.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") established a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the government of Canada and the government of Mexico established

Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter will be conducted in accordance with these Rules.

A first Request for Panel Review was filed with the U.S. Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on June 16, 1995, requesting panel review of the final antidumping duty administrative review described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is July 17, 1995);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is July 31, 1995); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: June 20, 1995.

James R. Holbein,

U.S. Secretary, NAFTA Secretariat.

[FR Doc. 95–15586 Filed 6–23–95; 8:45 am]

BILLING CODE 3510–GT–M

National Oceanic and Atmospheric Administration

National Weather Service Modernization and Associated Restructuring; Notice and Opportunity for Public Comment

SUMMARY: The National Weather Service (NWS) is publishing proposed certifications for:

(1) The proposed consolidation of the Galveston Weather Service Office (WSO) into the future Houston/Galveston Weather Forecast Office (WFO); and

(2) The proposed consolidation of the residual Los Angeles WSO into the future Los Angeles WFO.

In accordance with Pub. Law 102–567, the public will have 60 days in which to comment on these proposed certifications.

DATES: Comments are requested by August 25, 1995.

ADDRESSES: Requests for copies of the proposed consolidation packages should be sent to Janet Gilmer, Room 12316, 1325 East-West Highway, Silver Spring, MD 20910, telephone 301–713–0276. All comments should be sent to Janet Gilmer at the above address.

FOR FURTHER INFORMATION CONTACT: Julie Scanlon at 301–713–1413.

SUPPLEMENTARY INFORMATION: NWS anticipates consolidating:

(1) The Galveston WSO with the future Houston/Galveston WFO, and

(2) The residual Los Angeles WSO with the future Los Angeles WFO.

In accordance with section 706 of Pub. Law 102–567, the Secretary of Commerce must certify that these consolidations will not result in any degradation of service to the affected areas of responsibility and must publish the proposed consolidation certifications in the FR. The documentation supporting each proposed certification includes the following:

(1) A draft memorandum by the meteorologist-in-charge recommending the certification, the final of which will be endorsed by the Regional Director and the Assistant Administrator of the NWS if appropriate, after consideration of public comments and completion of consultation with the Modernization Transition Committee (the Committee);

(2) A description of local weather characteristics and weather-related concerns which affect the weather services provided within the service area;

(3) A comparison of the services provided within the service area and the services to be provided after such action;

(4) A description of any recent or expected modernization of NWS operation which will enhance services in the service area;

(5) An identification of any area within the affected service area which would not receive coverage (at an elevation of 10,000 feet) by the next generation weather radar network;

(6) Evidence, based upon operational demonstration of modernized NWS operations, which was considered in reaching the conclusion that no degradation in service will result from such action including the WSR–88D Radar Commissioning Report, User Confirmation of Services Report, and the Decommissioning Readiness Report; and

(7) A letter appointing the liaison officer.

These proposed certifications do not include any report of the Committee which could be submitted in accordance with sections 706(b)(6) and 707(c) of Public Law 102–567. At its June 14, 1995 meeting the Committee concluded that the information presented did not reveal any potential degradation of service and decided not to issue a report. The Committee did offer several recommendations on these proposed certifications, which are attached to this notice.

The documentation supporting the proposed certifications is too voluminous to publish in its entirety. Copies of the supporting documentation can be obtained through the contact listed above.

Attached to this notice are:

(1) Draft memoranda by the respective meteorologists-in-charge recommending the certifications, and

(2) Recommendations of the Committee on these proposed certifications.

Once all public comments have been received and considered, the NWS will complete consultation with the Committee and determine whether to proceed with the final certifications. If decisions to certify are made, the Secretary of Commerce must publish the final certifications in the FR and transmit the certifications to the appropriate Congressional committees prior to consolidating the offices.

Dated: June 20, 1995.

Nicholas R. Scheller,

National Implementation Staff.

Memorandum for: Harry S. Hassel, Director, Southern Region

From: Bill Read, MIC, NWSO Houston/Galveston

Subject: Recommendation for Consolidation Certification

After reviewing the attached documentation, I have determined, in my professional judgment, consolidation of the Galveston Weather Service Office (WSO) with the future Houston/Galveston Weather Forecast Offices (WFO) will not result in any degradation in weather services to the Galveston service area. This proposed certification is in accordance with the advance notification provided in the National Implementation Plan. Accordingly, I am recommending you approve this action in accordance with section 706 of Public Law 102–567 . If you concur, please endorse this recommendation and forward this package to the Assistant Administrator for Weather Services for final certification. If Dr. Friday approves, he will forward the certification to the Secretary for approval and transmittal to Congress.

My recommendation is based on my review of the pertinent evidence and application of the modernization criteria for consolidation of a field office. In summary:

1. A description of local weather characteristics and weather-related concerns affecting the weather services provided in the Galveston service area is included as attachment A. As discussed below, I find that providing the services which address these characteristics and concerns from Houston/Galveston WFO will not degrade these services.

2. A detailed list of the services currently provided within the Galveston service area from the Galveston WSO location and a list of services to be provided from the Houston/Galveston WFO location after consolidation is included as attachment B. Comparison of these services shows that all services currently provided will continue to be provided after the proposed consolidation. Also, the enclosed map shows the WSO Galveston Area of Responsibility (i.e. "Affected Service Area" and the future WFO Houston/Galveston Area of Responsibility. As discussed below, I find that there will be no degradation in the quality of these services as a result of the consolidation.

3. A description of the recent or expected modernization of National Weather Service (NWS) operations which will enhance services in the WSO Galveston service area is included as attachment C. The new technology (i.e. ASOS, WSR–88D, and AWIPS) has or will be installed and will enhance services.

4. A map showing planned NEXRAD coverage at an elevation of 10,000 feet for Texas is included as attachment D. NWS operational radar coverage for the Galveston service area will be increased and no area will be missed in coverage.

5. The following evidence, based upon operational demonstration of modernized NWS operations played a key role in concluding there will be no degradation of service.

A. The WSR–88D RADAR Commissioning Report, attachment E, validates that the WSR–88D meets technical specifications (acceptance test); is fully operational (satisfactory operation of system interfaces and satisfactory support of associated NWS forecasting and warning services); service backup capabilities are functioning properly; a full set of operations and maintenance documentation is available; and spare parts and test equipment and trained operations and maintenance personnel are available on site. Training was completed but two national work-arounds remain in effect.

B. The User Confirmation of Services, attachment F, documents that only two negative comments were received. Both of the negative comments have been answered to the satisfaction of the commentors as stated in the service Confirmation Report.

C. The Decommissioning Readiness Report, attachment G, verifies that the existing Galveston WSR–57 radar is no longer needed to support services or products for local office operations.

6. A memorandum assigning the liaison officer for the Galveston service area is included as attachment H.

I have considered recommendations of the Modernization Transition Committee (attachment I) and the _____ public comments received during the comment period (attachment J). On _____, the Committee voted to endorse the proposed consolidation (attachment K). I believe all negative comments have been addressed to the satisfaction of our customers and I continue to recommend this certification.

Endorsement

I Harry S. Hassel, Director, Southern Region, endorse this consolidation certification.

Harry S. Hassel

Date

Attachments

May 23, 1995.

Memorandum for: Thomas D. Potter, Director, Western Region

From: Todd Morris, AM/MIC, NWSFO Los Angeles

Subject: Recommendation for Consolidation Certification

A change of operations occurred at the Los Angeles Weather Service Forecast Office (WSFO) in October 1993 when most personnel were transferred to the facility of the future Los Angeles Weather Forecast Office (WFO) in Oxnard, California to operate the WSR–88D and assume forecast and warning responsibility for the Los Angeles service area. At the same time this office has been designated a Residual Weather Service Office (RWSO) at the original WSFO location to continue operating the existing WSR–74C radar.

After reviewing the attached documentation, I have determined, in my professional judgement, consolidation of the Los Angeles Residual Weather Service Office (RWSO) with the future Los Angeles/Oxnard Weather Forecast Office (WFO) will not result in any degradation in weather services to the Los Angeles service area. This proposed certification is in accordance with the advance notification provided in the National Implementation Plan. Accordingly, I am recommending that you approve this action in accordance with section 706 of Public Law 102–567. If you concur, please endorse this recommendation and forward this package to the Assistant Administrator for Weather Services for final certification. If Dr. Friday approves, he will forward the certification to the Secretary for approval and transmittal to Congress.

My recommendation is based on my review of the pertinent evidence and application of the modernization criteria for consolidation of a field office. In summary:

1. A description of local weather characteristics and weather-related concerns affecting the weather services provided in the pre-modernized Los Angeles service area is included as attachment A. As discussed below, I find that providing the services which address these characteristics and concerns from the Los Angeles/Oxnard WFO will not degrade these services.

2. A detailed list of the services currently provided from the Los Angeles RWSO location and comparable services to be provided from the Los Angeles/Oxnard WFO location after consolidation is included as attachment B. Comparison of these services shows that all services currently provided will continue to be provided after the proposed consolidation. I find that there will be no degradation in the quality of these services as a result of the consolidation.

3. A description of the recent or expected modernization of National Weather Service (NWS) operations which will enhance services in the pre-modernized Los Angeles service area is included as attachment C. The new technology (i.e. ASOS, WSR–88D, and AWIPS) has or will be installed and will enhance services.

4. A map showing planned NEXRAD coverage at an elevation of 10,000 feet for California is included as attachment D. NWS operational radar coverage for the Los Angeles service area will be vastly increased and will not degrade services.

It should be noted that neither the old Radar network nor the NEXRAD include coverage of a small mountainous area in the northeast corner of the service area. Therefore this does not represent a degradation of Radar coverage or services.

5. The following evidence, based upon operational demonstration of modernized NWS operations, played a key role in concluding there will be no degradation of service.

A. The WSR–88D RADAR Commissioning Report, attachment E, validates that the WSR–88D meets technical specifications (acceptance test); is fully operational (satisfactory operation of system interfaces and satisfactory support of associated NWS forecasting and warning services); service backup capabilities are functioning properly; a full set of operations and maintenance documentation is available; and spare parts and test equipment and trained operations and maintenance personnel are available on site. Training was completed. There were two national work-arounds. One of these has been satisfied while the other one remains in effect.

B. The User Confirmation of Services, attachment F, documents that only two negative comments were received. Both of the negative comments have been answered to the satisfaction of the commentors as stated in the service Confirmation Report.

C. The Decommissioning Readiness Report, attachment G, verifies that the existing Los Angeles WSR–74C radar is no longer needed to support services or products for local office operations.

6. A memorandum assigning the liaison officer for the Los Angeles service area is included as attachment H.

I have considered recommendations of the Modernization Transition Committee (attachment I) and the _____ public comments received during the comment period (attachment J). On _____, the Committee voted to endorse the proposed consolidation (attachment K). I believe all negative comments have been addressed to the satisfaction of our customers and I continue to recommend this certification.

Endorsement

I, Thomas D. Potter, Director, Western Region, endorse this consolidation certification.

Thomas D. Potter

Date

Attachments

Modernization Transition Committee

Completion of Initial Consultation on Proposed Consolidation for Galveston and Los Angeles

The Modernization Transition Committee (MTC) has reviewed the consolidation certifications for the Houston/Galveston and Los Angeles/Oxnard consolidations and has determined that these actions will not result in degradation of services. In fact, contrary to the degradation of service, the Committee has concluded that these consolidations have improved the levels of service in these areas.

In addition, the committee makes the following recommendations to further improve, and maintain such levels of service:

(1) Continue to improve precipitation data assimilation and analysis capabilities.

(2) The Los Angeles/Oxnard WFO local weather description summary should include reference to weather related threats to public safety such as fire and mudslides.

(3) The Los Angeles/Oxnard WFO should implement a program of nonstructural mitigation to minimize the effects of earthquakes and other collapsed structure incidents on the provision of weather forecasting services.

Dated: June 14, 1995.

Peter R. Leavitt,

Chair, Modernization Transition Committee.

[FR Doc. 95–15511 Filed 6–23–95; 8:45 am]

BILLING CODE 3510–12–M

[I.D. 062095B]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit 964 (P770#69), modification 5 to permit 825 (P513), modification 4 to permit 817 (P45K), and modification 2 to permit 823 (P503C).

SUMMARY: Notice is hereby given that NMFS has issued a permit and modifications to permits authorizing takes of listed species for the purpose of scientific research, subject to certain conditions set forth therein, to the Coastal Zone and Estuarine Studies Division (CZESD) of the Northwest Fisheries Science Center, NMFS, the Columbia River Inter-Tribal Fish Commission (CRITFC), the Northwest Biological Science Center of the National Biological Service (NBS), and the Idaho Department of Fish and Game (IDFG).

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301-713-1401); and

Environmental and Technical Services Division, F/NWO3, NMFS, 525 NE Oregon Street, Portland, OR 97232–4169 (503–230–5400).

SUPPLEMENTARY INFORMATION: Permit 964, modification 5 to permit 825, modification 4 to permit 817, and modification 2 to permit 823 were issued under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–222).

Notice was published on February 9, 1995 (60 FR 7752) that an application had been filed by CZESD (P770#69) for a permit to take listed species. CZESD requested authorization for a direct take of juvenile, listed, Snake River fall chinook salmon (*Oncorhynchus tshawytscha*) and an incidental take of juvenile, listed, Snake River sockeye salmon (*Oncorhynchus nerka*) and juvenile, listed, naturally-produced and artificially-propagated, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) associated with a juvenile fall chinook salmon transportation study. The purpose of the study is to compare the adult recoveries of run-of-the-river subyearling chinook salmon transported around the hydropower dams on the Columbia River using state-of-the-art facilities and technologies versus those migrating inriver under as favorable passage conditions as possible. Permit 964 was issued to CZESD on June 14, 1995. The duration of the research will be from approximately June 15 to September 15 for 3 of the next 5 years. The take of listed species associated with the research is authorized for 1995. Permit 964 expires on December 31, 1999.

Notice was published on April 26, 1995 (60 FR 20480) that an application had been filed by CRITFC (P513) for modification 5 to permit 825. Permit 825 authorizes a take of adult and juvenile, listed, naturally-produced and artificially-propagated, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) associated with five scientific research projects. For modification 5, CRITFC requested an additional take of juvenile, listed, Snake River spring/summer chinook salmon and a take of juvenile, listed, Snake River sockeye salmon (*Oncorhynchus nerka*) associated with a new scientific research project designed to provide fishery managers and hydropower system operators with real-time information on the distribution and incidence of gas bubble trauma symptoms experienced by migrating juvenile salmon during spills at Lower Monumental and Ice Harbor Dams on the Snake River and McNary and Bonneville Dams on the Columbia River. Modification 5 to permit 825 was issued on June 9, 1995 and is valid for the duration of the permit. Permit 825 expires on December 31, 1997.

Notice was published on March 20, 1995 (60 FR 14735) that an application had been filed by NBS (P45K) for modification 4 to permit 817. Permit 817 authorizes a take of juvenile, listed, Snake River fall and spring/summer chinook salmon (*Oncorhynchus tshawytscha*) associated with a study designed to assess the migration timing of juvenile anadromous salmon using passive integrated transponder (PIT) tags and Panjet marks. For modification 4, NBS requested an increase in the annual take authorized in the permit and approval to use an additional sampling gear type. The increase in the annual take was requested to obtain a sufficient sample size to estimate the migration timing of fish produced in the upper Snake and Clearwater Rivers to Lower Monumental Dam on the lower Snake River. In addition, NBS requested approval to use modified fyke nets instead of beach seines to capture fish for tagging and to assess nearshore movements of the marked fish in the Snake and Clearwater Rivers. Modification 4 to permit 817 was issued on June 5, 1995 and is valid for the duration of the permit. Permit 817 expires on December 31, 1996.

Notice was published on March 9, 1995 (60 FR 12913) that an application had been filed by IDFG (P503C) for modification 2 to permit 823. Permit 823 authorizes a take of adult and juvenile, listed, naturally-produced and artificially-propagated, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*), adult and juvenile, listed, Snake River fall chinook salmon (*Oncorhynchus tshawytscha*), and adult and juvenile, endangered, Snake River sockeye salmon (*Oncorhynchus nerka*) associated with a wide range of scientific research activities. For modification 2, IDFG requested an increase in the lethal take

of juvenile, endangered, Snake River sockeye salmon in Redfish Lake to optimize the evaluation of Redfish Lake fertilization/supplementation efforts in 1995 and beyond. In addition, IDFG requested to implement three other actions which would not require an increase in the take of listed species authorized in the permit. These three actions are: (1) A fish flush strategy designed to provide flushing flows through a seasonally dewatered stretch of the Lemhi River between the Barracks Lane Bridge and the Clark Steelhead Bridge during times of critical adult and juvenile salmon migrations; (2) the installation of a second juvenile fish trap upstream from the existing juvenile fish trap, the Sawtooth Hatchery weir, on the upper Salmon River to optimize trapping efficiency with the aim of developing more accurate estimates of anadromous fish survival rates and migration timing; and (3) the installation of a rotary screw trap in Rapid River upstream from the Rapid River Fish Hatchery to collect natural production information on wild steelhead salmon. Modification 2 to permit 823 was issued on June 13, 1995 and is valid for the duration of the permit. Permit 823 expires on November 30, 1997.

Issuance of these permit actions, as required by the ESA, was based on a finding that such actions: (1) Were applied for in good faith, (2) will not operate to the disadvantage of the listed species that are the subject of the permits, and (3) are consistent with the purposes and policies set forth in section 2 of the ESA and the NMFS regulations governing listed species permits.

Dated: June 20, 1995.

Robert C. Ziobro,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–15528 Filed 6–23–95; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Department of the Army

Environmental Assessment and Finding of No Significant Impact for the Creation of Artificial Reefs Within the U.S. Continental Shelf Using Surplus Armored Vehicles (REEF–EX)

AGENCY: Army Material Command, DOD.

ACTION: Notice of Availability.

SUMMARY: This notice of availability is for the Environmental Assessment (EA) and the Finding of No Significant Impact (FNSI) which were prepared for the program known as Reef-Ex. The EA analyzes the environmental impacts of transportation, cleaning, and offshore placement of obsolete surplus armored military vehicles into artificial reef placement sites pre-approved by the appropriate state and Federal regulatory authorities. The FNSI briefly presents the reasons why the proposed action will not significantly affect the human environment and why an Environmental Impact Statement (EIS) was not prepared.

FOR FURTHER INFORMATION CONTACT: Persons wishing to review or receive further information on the EA and FNSI should contact LTC Dale, (703) 274–7115, Headquarters, U.S. Army Materiel Command, ATTN: AMCSA–AR, 5001, Eisenhower Ave., Alexandria, VA 22333–0001. For due consideration, comments must be received no later than 30 days from publication of this notice in the Federal Register.

SUPPLEMENTARY INFORMATION: The purpose of Reef-Ex is to provide practical and challenging U.S. Reserve Component training while enhancing national fishery resources. Benefits to the military include training for the Reserve Component personnel responsible for preparing and implementing transportation plans, scheduling and conducting and cleaning operations, and executing the final placement of vehicles at designed reef sites. National fishery resources will benefit from the increase of valuable habitat. Reef-Ex will concentrate primarily on the offshore deployment of obsolete armored vehicles. The obsolete armored vehicles will come largely from two classes: tanks and combat vehicles. The primary tank considered for the Reef-Ex program will be the M60 main battle tank. The Viet Nam-era M60 tank became obsolete by the end of the cold war. In addition, earlier model tanks such as the M48 and M551 "Sheridan" tanks may also be used in the Reef-Ex program. The combat vehicles will consist of members from the M113 Family of Vehicles (FOV), which have been used for a variety of missions including transport of infantry and engineering units, medial evacuation, fire support, and command and control functions on the battlefield. Under this program, it is proposed that up to 1,000 surplus/obsolete armored vehicles and similar types of equipment will be deployed in offshore artificial reef sites annually. If a reef site lies within state waters, a state permit and a Federal (U.S. Army Corps of Engineers) permit are required. If a reef is established in Federal waters (beyond the 3 miles from the ocean shoreline), only a Corps of Engineers (COE) permit is required. The holder of the COE permit; i.e. a state agency, is responsible for complying with all terms and conditions of the artificial reef permit and obtaining the necessary regulatory approvals. No armored vehicles will be transported for artificial reef placement without the necessary regulatory approvals. Cleanup standards and inspection procedures for the M48 and M60 tanks were developed as a result of extensive coordination with Federal and state agencies. Similar cleanup standards and inspections procedures will be developed for combat vehicles and other types of tanks. In addition to the proposed action, the EA considered several alternatives. They were: (1) No action, (2) sell for scrap/salvage, (3) sales to other countries, and (4) mothballing. The direct, indirect, and cumulative impacts associated with implementation of the Reef-Ex program by the U.S. Reserve Component personnel will not have significant adverse effects on the quality of the human environment. No threatened or endangered species, historical sites, or known archaeological resources are expected to be adversely affected by any of the activities associated with the Reef-Ex program. Coordination and cooperation with regulatory and technical environmental agencies has and will ensure that this action will be environmentally beneficial by creating valuable habitat for undersea life and providing for enhanced offshore fishing and diving on the artificial reef and surrounding areas. Based upon the analysis of the economic, social, and environmental considerations addressed in the EA, it was determined that the Reef-Ex program will not cause any significant impacts to the environment. Therefore, no EIS is required and a FNSI was prepared.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–15491 Filed 6–23–95; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.310A]

Parental Assistance Program

ACTION: Clarification regarding eligible applicants.

SUMMARY: On May 25, 1995, the U.S. Secretary of Education published a notice in the **Federal Register** inviting applications for new awards for fiscal year 1995 under the Parental Assistance Program (60 FR 27836–54). The Parental Assistance Program is authorized by Title IV of the Goals 2000: Educate America Act (Pub. L. 103–227) (20 U.S.C. 5801 *et seq.*). In that notice, the Secretary noted that under the statutory provisions, nonprofit organizations, and nonprofit organizations in consortia with local educational agencies (LEAs), are eligible to apply for grants.

A number of potential applicants have contacted the U.S. Department of Education for clarification concerning the meaning of a nonprofit organization. The Education Department General Administrative Regulations at 34 CFR 77.1 define a nonprofit organization as one that is "* * * owned and operated by one or more corporations or associations whose net earnings do not benefit, and cannot lawfully benefit, any private shareholder or entity."

Specific questions have been raised concerning whether an institution of higher education (IHE) could qualify as a grantee. An IHE itself is not eligible to apply for a grant. However, a nonprofit foundation, or other entity established by an IHE and that meets the definition of "nonprofit" in 34 CFR 77.1 is eligible to apply as long as it meets the other application requirements in section 402(a) of the Goals 2000: Educate America Act.

FOR FURTHER INFORMATION CONTACT: Patricia Gore, U.S. Department of Education, 600 Independence Avenue, S.W., Portals Building, Room 4000, Washington, D.C. 20202–6135. Telephone: (202) 401–0039. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time.

Dated: June 20, 1995.

Thomas W. Payzant,

Assistant Secretary, Elementary and Secondary Education.

[FR Doc. 95–15560 Filed 6–23–95; 8:45 am]

BILLING CODE 4000–01–M

National Educational Research Policy and Priorities Board; Meeting

AGENCY: National Educational Research Policy and Priorities Board, Education.

ACTION: Notice of committee meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the National Educational Research Policy and Priorities Board's Committee on Research and Development Centers. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

DATE AND TIME: July 18, 1995, 8:30 a.m. to 4:00 p.m.

ADDRESSES: The Capitol Room, Washington Court Hotel, 525 New Jersey Avenue, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: John Christensen, Designated Federal Official, National Educational Research Policy and Priorities Board, 555 New Jersey Avenue, NW., Washington, DC 20208–7564. Telephone: (202) 219–2065; FAX: (202) 219–1466.

SUPPLEMENTARY INFORMATION: The National Educational Research Policy and Priorities Board is authorized by Section 921 of the Educational Research Development, Dissemination, and Improvement Act of 1994. The Board works collaboratively with the Assistant Secretary for the Office of Educational Research and Improvement to forge a national consensus with respect to a long-term agenda for educational research, development, and dissemination, and to provide advice and assistance to the Assistant Secretary in administering the duties of the Office.

The meeting of the Committee on the Research and Development Centers is open to the public. The agenda for the July 18, 1995 meeting provides for the review and comment by the Committee on the final notice of priorities for the National Research and Development Centers competition.

Records are kept of all Board proceedings, and are available for public inspection at the Office of the National Educational Research Policy and Priorities Board, 555 New Jersey Avenue, NW., Washington, DC 20208–7564.

Dated: June 21, 1995.

Sharon P. Robinson,

Assistant Secretary, Office of Educational Research and Improvement.

[FR Doc. 95–15589 Filed 6–23–95; 8:45 am]

BILLING CODE 4000–01–M

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of Arbitration Panel Decision Under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on November 8, 1993, an arbitration panel rendered a decision in the matter of Bessie Reece, Petitioner v. Missouri Bureau for the Blind, Division of Family Services, Respondent, Case No. R-S/92–5. This panel was convened by the Secretary of the U. S. Department of Education pursuant to 20 U.S.C. 107d-2, upon receipt of a complaint filed by petitioner Bessie Reece.

FOR FURTHER INFORMATION CONTACT: A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U. S. Department of Education, 600 Independence Avenue, S.W., Room 3230, Switzer Building, Washington, D.C. 20202–2738. Telephone: (202) 205–9317. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8298.

SUPPLEMENTARY INFORMATION: Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d-2(c)), the Secretary publishes a synopsis of arbitration panel decisions affecting the administration of vending facilities on Federal property.

Background

Bessie Reece, complainant, is a blind vendor licensed by the State of Missouri, Division of Family Services, which is the State licensing agency (SLA) under the Randolph-Sheppard Act. Ms. Reece began operating vending facility no. 84 at the Federal Court and Customs House in St. Louis, Missouri, in 1981.

The Division of Family Services terminated Ms. Reece's Level II license because she was unable to keep the cost of goods to be sold under 72% of net sales and generate a 19% profit on net sales in any of the years she operated the facility. Under State regulatory provisions, 13 CSR 40–91.010(11), each facility manager is required to maintain a minimum level of net profits from sales of 19% for a Level II facility. The State regulations require that the maximum percentage of the cost of goods to be sold shall not exceed 72% of net sales for a Level II facility. For the entire year of 1991, complainant's cost of goods to be sold averaged 92.6% of net sales and her profit on net sales was 5.7%.

Ms. Reece had problems filing her monthly statements with the SLA and received delinquency notices in January, February, March, April, May, and June of 1991. She received her termination notice in July of 1991, although she was not removed until January 4, 1992. The SLA pointed out to Ms. Reece that her failure to meet the minimum level of net profits resulted in a loss of revenue for the blind employee program, requiring the blind vendors in other locations to pay her share for management and to carry the cost of her benefits.

Ms. Reece complained of poor inventory when she took over the

facility and stated that she was not credited for inventory that had to be destroyed. Ms. Reece stated that her starting inventory was substantially less than it should have been and that she did not receive an inventory report from the SLA until one year later. Complainant also stated that there was a problem with theft. She testified that these circumstances contributed to her inability to generate a profit. The Division of Family Services stated that it attempted to assist the complainant in improving the operation of her facility by making personnel available to assist in correcting her problems. The SLA provided an electric cash register to help her maintain better records of her cash flow.

Ms. Reece sought the reinstatement of her license, lost earnings in the amount of $8,000, as well as reimbursement of attorney's fees. Complainant also sought to be reinstated at vending facility no. 84 at the Federal Court and Customs House. Complainant believed that, since the facility had been renovated and a security camera had been installed, she could operate the facility within the cost guidelines established by the SLA.

Arbitration Panel Decision

The panel found that Ms. Reece did not, in the 10 years that she operated the vending facility, achieve the set guidelines of 72% of net sales for the cost of goods to be sold and the 19% profit margin as required under 13 CSR 40–91.010(11). Her cost of goods to be sold exceeded 103% on several occasions and averaged in the 90 percent range. Her profit margin was never more than 5% or 6%, but most of the time that profit margin was less than 1% or a negative profit.

There was evidence that the SLA attempted to assist the vendor on several occasions in cutting her cost of goods sold and improving her margin of profit. The panel found that the SLA had just cause to terminate Ms. Reece's vendor's license. The panel suggested to the SLA that the vendor be permitted to apply for rehabilitation services and, upon completion of those services, that her bid be considered on a Level I facility when it becomes available.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U. S. Department of Education.

Dated: June 13, 1995.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 95–15512 Filed 6–23–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Financial Assistance: County of Lake, Special Districts Administration, Lakeport, CA

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy, Idaho Operations Office, announces that pursuant to the DOE Financial Assistance Rules 10 CFR 600.7, it intends to award a renewal for Grant Number DE–FG07–93HD13257 to the County of Lake, Lakeport, California. The objective of the work to be performed under this grant is to provide funds to continue design, engineering, and construction oversight activities on the Southwest Geysers Effluent Pipeline. The project plan is to use treated wastewater effluent for injection as a means of increasing the recovery of energy from The Geysers geothermal field. The Federal Domestic Catalog Number is 81.087.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Stallman, U.S. Department of Energy, Idaho Operations Office, 850 Energy Drive, MS 1221, Idaho Falls, Idaho 83401–1563, (208) 526–7038.

SUPPLEMENTARY INFORMATION: The statutory authority for the proposed award is the Geothermal Energy Research, Development & Demonstration Act (Pub. L. 93–410); the Department of Energy Organization Act (Pub. L. 95–91); and the Energy and Water Development Appropriation Bill of 1993 (Pub. L. 102–377). The proposal meets the criteria for "non-competitive" financial assistance as set forth in 10 CFR Part 600.7(b)(2)(i)(C). The applicant represents a unit of government and the activity to be supported is related to the performance of a government function within the subject jurisdiction. The County of Lake is the leader of this project and is the appropriate agency, since they will be the owner and operator of the pipeline carrying the effluent from the county wastewater treatment plant to The Geysers. The anticipated period to complete the award is eighteen (18) months. The Office of Utility Technologies has provided $1,800,000 to the DOE, Idaho Operations Office for support of this project. This grant would augment the County's funds associated with this project. The total estimated cost of this project is $30,000,000.

R. Jeffrey Hoyles,

Director, Procurement Services Division.

[FR Doc. 95–15545 Filed 6–23–95; 8:45 am]

BILLING CODE 6450–01–M

Refractory Containment Research, Development and Demonstration

AGENCY: Department of Energy, Idaho Operations Office.

ACTION: Solicitation for Financial Assistance: Refractory Containment Research, Development and Demonstration.

SUMMARY: The U.S. Department of Energy (DOE) Idaho Operations Office (ID), is seeking applications for cost-shared research, development and demonstration (field testing) of new refractories in state-of-the-art high temperature furnaces and molten material handling equipment to assist end-use industry sectors to remain competitive, and reduce energy consumption and environmental impacts. The research is to be directed toward those refractories used by the aluminum, glass, iron or steel industries. Applications shall include a demonstration (field test) in an end-use facility. A minimum 50% non-DOE cost-share is required. This is the complete solicitation document.

DATES: The deadline for receipt of applications is 4:00 p.m. MDT, August 17, 1995.

ADDRESSES: Applications shall be submitted to: B. G. Bauer, Contracting Officer; Procurement Services Division; U. S. Department of Energy; Idaho Operations Office; P.O. Box 52280; Idaho Falls, Idaho 83405–2280. [NUMBER DE-PS07–95ID13375]

FOR FURTHER INFORMATION CONTACT: Sharon Walker, Contract Specialist, Telephone (208) 526–5906, Facsimile (208) 526–5548.

SUPPLEMENTARY INFORMATION:

A. Background

Projects sponsored by the DOE Office of Industrial Technologies (OIT) are based on the needs and concerns of industry. The program advances technology to the point of commercialization. Historically, activities have focused on industrial competitiveness, the development of energy efficient, environmentally benign technology and equipment. As part of this program, this solicitation for DOE financial assistance applications is being issued. This solicitation is in accordance with Public Law 93–577, the Federal Non-nuclear Energy Research and Development Act of 1974.

B. Project Description

DOE anticipates awarding one or more Cooperative Agreements in accordance with DOE Financial Assistance regulations appearing at Title 10 of the Code of Federal Regulations, Chapter II Subchapter H, Part 600 as a result of this solicitation, and funds are available. Federal funds appropriated for this solicitation are approximately $890,000 and are to be used to fund the entire two year research effort. The Catalog of Federal Domestic Assistance Number for this program is 81.078. All projects shall be cost shared by DOE and the participant. Applicants should be aware that any awardee shall be required to have a cost share of not less than 50% of the total cost of the program. *No fee or profit will be paid to the award recipients.* Under Cooperative Agreements it is anticipated there will be substantial involvement by DOE.

DOE suggests, but does not require, a multi-task single phase approach. The first task would usually consist of refractory material selection and rationale for selecting the refractory materials formulation, followed by the second task consisting of field testing of the selected refractory formulation in an state-of-the art end-user application in one or more of the targeted industries. Project duration cannot exceed 2 years. Project(s) with durations of 2 years or less are eligible. All applications with project periods of 2 years or less will be given equal consideration. The period of performance for the first budget period is anticipated to be 12 months. If at the end of the first budget period, funds are available and the participant demonstrates a continuing need for federal assistance, shows sufficient progress in the research effort, has completed the work in compliance with a mutually agreed management plan, and identifies the new work planned, DOE may award a continuation to undertake further work to complete field testing. Successful applicants will be required to submit quarterly, annual and a final report to DOE.

The objective of this solicitation is to support research, development and demonstration (field testing) of new refractories in state-of-the-art high temperature furnaces and molten material handling equipment to assist end-use industry sectors to remain competitive, and reduce energy consumption and environmental impacts. The research is to be directed toward those refractories used by the aluminum, glass, iron or steel industries. Applications shall include a demonstration (field test) in an end-use facility.

New refractory systems are needed for use in existing industrial furnaces and for applications in new industrial processes (in the iron and steel, glass and aluminum end-use areas). Basic research to develop exotic new materials is not being sought. Improved refractories resulting from compositional changes or adaptations of existing materials are being sought for high temperature applications. Refractories with improved thermal, mechanical, and chemical characteristics are needed to improve longevity, adaptability, resistance to harsh environments, and ease of application. Development may include (but are not limited to) the following:

- Refractory materials installation systems
- Refractory for molten material and/or slag containment systems
- Longer service life
- Composites, coatings
- Materials with improved expansion/contraction characteristics
- Furnace repair refractories and glass stop materials
- Recuperator linings
- Refractories for oxy-fuel or gas reburn applications
- Stable refractories for high temperature applications

C. Application Requirements

Each Application shall contain the following information and use the following format:

1.0 EXECUTIVE SUMMARY
- 1.1 Proposed program and why it is appropriate for domestic industry and the relationship to the objectives of the solicitation
- 1.2 Organizational Plan
- 1.3 Specialized Experience
- 1.4 Total costs and non-federal cost-share commitments
- 1.5 Nonproprietary summary of proposed project including project benefits suitable for public release (maximum of two pages)

2.0 CRITICAL REVIEW OF TECHNOLOGY STATUS
- 2.1 Domestic Technology Status including Emerging Technologies
- 2.2 Worldwide Technology Status including Emerging Technologies
- 2.3 Why domestic industry is not pursing the proposed concept

3.0 PROJECT DESCRIPTION
- 3.1 Introduction including how industry has participated in the selection of the proposed R&D
- 3.2 Proposed concepts
- 3.3 Assumptions and detailed calculations of economic benefit to the overall domestic end-use industry
- 3.4 Assumptions and detailed calculations of energy savings in the overall domestic end-use industry
- 3.5 Technical feasibility and targets
- 3.6 Hurdles to be overcome by the proposed R&D
- 3.7 Environmental benefits of the proposed R&D

4.0 PROJECT PLAN
- 4.1 Project goals and scope
- 4.2 Statement of work
- 4.3 Work breakdown structure
- 4.4 Milestone plan, schedule integration
- 4.5 Technical targets, decision points and go/no-go decision criteria
- 4.6 Spending plan by task, phase and year
- 4.7 Sources of, and expectations concerning cost share and financing
- 4.8 Commercialization plan including technology transfer to industry and academia

5.0 TECHNICAL CAPABILITIES
- 5.1 Key personnel and responsibilities
- 5.2 Related experience
- 5.3 Facilities and equipment available
- 5.4 Justification for and description of needed facilities and estimated costs

6.0 PROJECT MANAGEMENT PLAN
- 6.1 Project organization and responsibilities
- 6.2 Task integration and project coordination
- 6.3 Project management structure including implementation and monitoring of R&D
- 6.4 Management philosophy
- 6.5 Reporting

D. Qualified Applicants

For profit and not for profit organizations, state and local governments, Indian tribes and institutions of higher learning. Applications may include national laboratories, but only as lower tier participants with funding for their expected costs provided through their existing arrangements with the Government.

E. Application Evaluation

a. Application Deadline

The deadline for receipt of applications is 4:00 p.m. MDT, August 17, 1995. Late applications will be handled in accordance with 10 CFR 600.13.

b. Selection of Applications

Only those applications which meet all of the requirements of this solicitation will be considered for selection. Selections will be made in accordance with the following selection criteria and programmatic considerations. All applications will be evaluated and point-scored in accordance with the following criteria. The applications should be fully responsive to each of the criteria.

Criterion 1: Research Concept and Plan—Factors to be considered are the clarity, completeness, responsiveness, and adequacy of the statement of work; the merit and depth of discussion of the proposed project (review of supporting data obtained in laboratory and/or pilot scale work completed to date) to determine if the proposed work is new and advanced, is based on sound scientific/engineering principles, advances refractory containment technologies which will assist one or more of the end-use industry sectors remain competitive, reduce energy consumption and envinonmental impacts, and the general applicability, timeliness and potential economic viability of the proposed technology; the planned levels of data acquisition, sampling and analyses; the schedule (sequence of project tasks, principal milestones, decision points, and adequacy of time for each task); and the planned assignment of responsibilities and level of manpower to complete the research.

Criterion 2: Applicant/Team Capabilities—Factors to be considered for the applicant and industrial partner team personnel are experience in research, development and demonstration of the project proposed; knowledge of past advanced developments in the work proposed; resources to perform the research, development and demonstration of the work proposed; ability to assemble a team of multi-disciplined individuals; qualifications of key individuals and the percentage of time devoted to the project; individual responsibilities, task assignments, and resource and manpower availability; and, project management methods.

Criterion 3: Facilities—Factors to be considered are the availability of laboratory and potential host facilities for performing research, development and demonstration work proposed; apparatus for performance of the tests, instrumentation, and data acquisition and control systems; and the availability of analytical support.

Criterion 4: Industrial Involvement—Factors to be considered are evidence of strong support by the refractory and end-user industry by identifying significant industry involvement in preparation of the application and in performing the research activities.

Criterion 5: Technology Transfer—The factor to be considered is the clear identification of a viable mechanism to facilitate the transfer of the technology to the end-user industry at the earliest practicable time;

Criterion 6: Cost Share—This solicitation requires a minimum of 50% non-DOE cost share. Additional cost share will be point scored in the following manner. Fifty percent cost share is valued at 0 points; 51% to 60% cost share is valued at 1 point; 61% to 70% cost share is valued at 2 points; 71% to 80% cost share is valued at 3 points; 81% to 90% cost share is valued at 4 points; and, above 91% cost share is valued at 5 points.

c. Weighting of Criteria

The Evaluation Criteria are weighted in the following manner: The criteria will be based on a maximum of 100 points. Criterion 1 and 2 each have a maximum point value of 25. Criterion 3, 4, and 5 each have a maximum point value of 15. Criterion 6 has a maximum point value of 5.

d. Programmatic Selection Considerations

In conjunction with the evaluation results and rankings of individual applications, the Government will make selections for negotiations and planned awards from among the highest ranking applications utilizing the following programmatic considerations:

(1) The total proposed cost of the project will not be point scored. Applicants are advised, however, that not withstanding the lower relative importance of the cost considerations, the evaluated cost may be the basis for selection. In making the selection decision, the apparent advantages of individual technical and business applications will be weighed against the probable cost to the government to determine whether the application approaches (excluding cost considerations) are worth the probable cost differences.

(2) It is desirable to implement each research and development project as a continuing collaborative effort in which the participants represent both the scientific/engineering research disciplines as well as members of the refractory and end-use industry.

(3) Applications that have the potential to save significant energy, reduce negative environmental impacts and provide significant cost benefits are preferred.

(4) Applications requiring DOE funding levels exceeding the availability of federal funds stated in the solicitation will not be evaluated.

e. Merit Reviews

All Applications will be evaluated under the procedure for "Objective Merit Review of Discretionary Financial Assistance Applications" which was published in the **Federal Register** on May 31, 1990 (Vol. 55, No. 105).

Selections for negotiations are expected to be made October 6, 1995, and financial assistance awards are expected to be made beginning November 26, 1995.

GENERAL CONDITIONS

The applications will be evaluated in accordance with the Office of Energy Efficiency and Renewable Energy Merit Review Procedure, and the criteria and programmatic considerations set forth in this solicitation. In conducting this evaluation, the Government may utilize assistance and advice from non-Government personnel. Applicants are therefore requested to state on the cover sheet of the applications if they do not consent to an evaluation by such non-Government personnel. The applicants are further advised that DOE may be unable to give full consideration to an application submitted without such consent. DOE reserves the right to support or not to support any, all, or any part of any application. All applicants will be notified in writing of the action taken on their applications in approximately 90 days after the closing date for this solicitation, provided no follow-up clarifications are needed. Status of any application during the evaluation and selection process will not be discussed with the applicants. Unsuccessful applications will not be returned.

A. Instructions for Preparation of Applications

Each application in response to this solicitation should be prepared in one volume. One original and nine copies of each application are required. Applications shall be a maximum of 40 pages excluding costing information and, assurance and certification forms provided in the DOE Application Instruction package. The application facesheet is the Standard Form 424. The application is to be prepared for the complete project period.

a. Proprietary Application Information

Applications submitted in response to this solicitation may contain trade secrets and/or privileged or confidential commercial or financial information which the applicant does not want used or disclosed for any purpose other than evaluation of the application. The use and disclosure of such data may be restricted provided the applicant marks the cover sheet of the application with the following legend, specifying the pages of the application which are to be restricted in accordance with the conditions of the legend:

"The data contained in pages _____ of this application have been submitted in confidence and contain trade secrets or proprietary information, and such data shall be used or disclosed only for evaluation purposes, provided that if this applicant receives an award as a result of or in connection with the submission of this application, DOE shall have the right to use or disclose the data herein to the extent provided in the award. This restriction does not limit the government's right to use or disclose data obtained without restriction from any source, including the applicant."

Further, to protect such data, each page containing such data shall be specifically identified and marked, including each line or paragraph containing the data to be protected with a legend similar to the following:

Use or disclosure of the data set forth above is subject to the restriction on the cover page of this application.

It should be noted, however, that data bearing the aforementioned legend may be subject to release under the provisions of the Freedom of Information Act (FOIA), if DOE or a court determines that the material so marked is not exempt under the FOIA. The Government assumes no liability for disclosure or use of unmarked data and may use or disclose such data for any purpose. Applicants are hereby notified that DOE intends to make all applications submitted available to non-Government personnel for the sole purpose of assisting the DOE in its evaluation of the applications. These individuals will be required to protect the confidentiality of any specifically identified information obtained as a result of their participation in the evaluation.

Proposer must submit with each application a brief nonproprietary (maximum two page) summary of the proposed project including anticipated benefits for release to the public (Part 1.5 of Executive Summary).

b. Budget

A budget period is an interval of time (usually 12 months) into which the project period is divided for funding and reporting purposes. Project period means the total approved period of time that DOE will provide support contingent upon satisfactory progress and availability of funds. The project period may be divided into several budget periods. The project period shall not exceed two years. Each application must contain Standard Forms 424 and 424A. The budget summary page only needs to be completed for the first budget period; all other periods of support requested should be shown on the total costs page. The application should contain full details of the costs regarding the labor, overhead, material, travel, subcontracts, consultants, and other support costs broken down by task and by year. Every cost item should be justifiable and further details of the costs may be required if the application is selected for the award. It is essential that requested details be submitted in a timely manner for the actual award. Items of needed equipment should be individually listed by description and estimated cost, inclusive of tax, and adequately justified. The destination and purpose of budgeted travel and its relation to the research, should be specified. Anticipated consultant services should be justified and information furnished on each individual's expertise, primary organizational affiliation, daily compensation rate and number of days of expected service. Consultant's travel costs should be listed separately under travel in the budget.

c. Cost Proposal

In the event there are multiple projects proposed in a submittal, a separate cost proposal should be included for each project proposed for funding. The cost proposal should have sufficient detail that an independent evaluation of the labor, materials, equipment and other costs as well as a verification of the proposed cost share can be performed.

B. Notices to Applicants

a. False Statements

Applications must set forth full, accurate, and complete information as required by this solicitation. The penalty for making false statements is prescribed in 18 U.S.C. 1001.

b. Application Clarification

DOE reserves the right to require applications to be clarified or supplemented to the extent considered necessary either through additional written submissions or oral presentations.

c. Amendments

All amendments to this solicitation will be mailed to recipients who submit a written request for the DOE Application Instruction package.

d. Applicant's Past Performance

DOE reserves the right to solicit from available sources relevant information concerning an applicant's past performance and may consider such information in its evaluation.

e. Commitment of Public Funds

The Contracting Officer is the only individual who can legally commit the Government to the expenditure of public funds in connection with the proposed award. Any other commitment, either explicit or implied, is invalid.

f. Effective Period of Application

All applications should remain in effect for at least 180 days from the closing date.

g. Availability of Funds

The actual amount of funds to be obligated in each fiscal year will be subject to availability of funds appropriated by Congress. DOE reserves the right to fund in whole or in part, any, all or none of the applications submitted in response to this solicitation.

h. Assurances and Certifications

DOE requires the submission of preaward assurances of compliance and certifications which are mandated by law. Prospective applicants intending to submit an application in response to this solicitation should request a DOE Application Instruction package, which includes standard forms, assurances and certifications, by notifying the DOE Contract Specialist. It is advised that prospective applicants submit their requests in writing no later than July 13, 1995.

i. Questions & Answers

Questions regarding this solicitation should be submitted in writing to the DOE Contract Specialist no later than July 17, 1995. Questions and answers will be issued in writing as an amendment to this solicitation.

j. Preaward Costs

The government is not liable for any costs incurred in preparation of an application. Awardees may incur preaward costs up to ninety (90) days prior to the effective date of award. Should the awardee take such action, it is done so at the awardee's risk and does not impose any obligation on the DOE to issue an award (10 CFR 600.103)

k. Patents, Data, and Copyrights

Applicants are advised that patents, data, and copyrights will be treated in accordance with 10 CFR 600.33.

l. Environmental Impact

An applicant environmental checklist will be provided in the DOE Application Instruction package. Award will not be made until all environmental requirements are completed.

m. EPACT

Applicants shall be required to comply with Section 2306 of the Energy

Policy Act of 1992 (EPACT) [42 U.S.C. 13525], in the event EPACT applies to financial assistance instruments issued as a result of this solicitation. A copy of Section 2306 will be included in the DOE Application Instruction package.

Procurement Request Number: 07–95ID13375.000.

Dated: June 9, 1995.

R. Jeffrey Hoyles,

Director, Procurement Services Division.

[FR Doc. 95–15546 Filed 6–23–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Fossil Energy

[FE Docket No. 95–41–NG]

Crestar Energy Marketing Corp.; Order Granting Blanket Authorization To Import and Export Natural Gas From and To Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Crestar Energy Marketing Corp. authorization to import and export up to a combined total of 50 Bcf of natural gas from and to Canada over a two-year term beginning on the date of the first import or export after July 12, 1995.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 13, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–15543 Filed 6–23–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 95–45–NG]

Pan-Alberta Gas (U.S.) Inc., Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Pan-Alberta Gas (U.S.) Inc. authorization to import up to 730 Bcf of natural gas from Canada over a two-year term beginning on the date of the first delivery after July 3, 1995.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., June 13, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–15544 Filed 6–23–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. CP95–565–000]

Equitrans, Inc.; Notice of Application

June 20, 1995.

Take notice that on June 15, 1995, Equitrans, Inc. (Equitrans), 3500 Park Lane, Pittsburgh, Pennsylvania 15275, filed in Docket No. CP95–500–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Equitrans to recove the costs associated with implementing a new technology for decreasing the investment in cushioning storage reservoirs by replacing the natural gas serving as cushion gas in Equitrans' Shirley reservoir in Tyler and Doddridge Counties, West Virginia with nitrogen, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Equitrans proposes to inject up to 300 Mmcf of nitrogen into the existing Shirley storage reservoir, but states that the reservoir will not be physically enlarged. According to Equitrans, less of the natural gas will need to remain in the reservoir to maintain the working capacity and deliverability of the reservoir, and the former cushion gas replaced with nitrogen will thereby be available for withdrawal, sale and public consumption. Equitrans proposes that the cushion natural gas withdrawn will be replaced by nitrogen at a lower cost to Equitrans' ratepayers.

In order to execute this procedure Equitrans state that it will contract with a third party to install temporary facilities at the surface of the Shirley reservoir to produce the nitrogen needed for injection. The nitrogen generation facilities will be installed and removed by the provider. It is stated that the cost of constructing these facilities will be included in the unit cost of nitrogen which will be purchased by Equitrans at the point of injection. Equitrans states that the wells that will be used in this project are owned and operated by an independent producer of natural gas. It is stated that these wells were dually completed to allow access by Equitrans to the storage formation. Under an existing operating and farmout agreement between Equitrans and the producer, Equitrans states that it will withdraw cushion natural gas from the storage reservoir for one year prior to injecting nitrogen. Equitrans proposes to commence nitrogen injection in late 1996 or early 1997.

Equitrans states that the natural gas that will be replaced as cushion gas by nitrogen under this proposal is currently reflected in Equitrans' ratebase at $1.10 per Mcf. Upon the sale of the natural gas that no longer needs to remain in the reservoir as cushion rates, Equitrans proposes to credit its "Account 117, Gas stored udnerground—noncurrent" by the amount that the gas is currently reflected in the rate base. Equitrans states that it will correspondingly debit the appropriate rate base account for the lower cost of the nitrogen. Equitrans contends that this rate base reduction will be included in rate base accounts chargeable to Equitrans' jurisdictional customers. It is stated that the cost of service impact of this rate base reduction will be included in Equitrans' next general Section 4(e) rate filing to be made in August of 1997, and will provide customers with rate benefits while maintaining the same level and reliability of storage service.

Equitrans further requests that the certificate issued herein provides that in the event of project failure, Equitrans be guaranteed recovery of the current book value of its Shirley facilities, together with a return on its investment in these facilities. Equitrans states that this regulatory protection is consistent with the Commission's treatment of the coal gasification projects undertaken in the 1970s.

Equitrans states that its proposal to offer its Shirley reservoir as a demonstration site will culminate the effort begun by the Gas Research Institute (GRI) in 1985 that has involved a variety of industry participants. It is stated that the potential benefits to the public of this project are significant, given the readily transferable nature of the technology to Equitrans' other storage reservoirs and to other storage operators in the industry.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 11, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20436, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held with further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Equitrans to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15505 Filed 6–23–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–568–000]

Williams Natural Gas Co.; Notice of Request Under Blanket Authorization

June 20, 1995.

Take notice that on June 16, 1995, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP95–568–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon by reclaim facilities originally installed to deliver sales gas to Farmland Industries (Farmland) and to the Kansas Public Service Haskell town border (KPS Haskell), both located in Douglas County, Kansas, under WNG's blanket certificate issued in Docket No. CP82–479–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

WNG states that the Farmland facilities were originally installed in 1954 and the KPS Haskell facilities were originally installed in 1938. In addition, WNG states that the Farmland setting has been blinded since 1983 and is no longer required to supply natural gas to the plant. WNG also states that the KPS Haskell setting has been blinded for several years, WNG having received authorization in Docket No. CP92–637–000 to install an additional tap for KPS in Douglas County which shifted the load from the low pressure distribution system serving the Haskell town border in anticipation of abandoning the town border. WNG further states that the reclaim of the Farmland and KPS Haskell facilities will also enable WNG to reclaim two regulator settings thereby eliminating unnecessary facilities.

WNG states that the total cost to reclaim the facilities at both locations is estimated to be $1,200 with an estimated salvage value of $0.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15506 Filed 6–23–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–108–003, et al]

Heartland Energy Services, Inc., et al; Electric Rate and Corporate Regulation Filings

June 16, 1995.

Take notice that the following filings have been made with the Commission:

1. Heartland Energy Services, Inc.

[Docket No. ER94–108–003]

Take notice that on April 28, 1995, Heartland Energy Services, Inc. tendered for filing a summary of its activity for the quarter ending March 31, 1995.

2. Valero Power Services Company

[Docket No. ER94–1394–003]

Take notice that on May 8, 1995, Valero Power Services Company tendered for filing a letter resubmitting a summary of its activity for the quarter ending March 31, 1995.

3. CNG Power Services Corporation

[Docket No. ER94–1554–003]

Take notice that on June 1, 1995, CNG Power Services Corporation (CNG Power) tendered for filing an amendment to its filing in this docket as required by the Commission's October 25, 1994, order in Docket No. ER94–1554–000. Copies of CNG Power's informational filing are on file with the Commission and are available for public inspection.

4. Northeast Utilities Service Company

[Docket No. ER94–1591–000]

Take notice that on May 26, 1995, Northeast Utilities Service Company tendered for filing an amendment in the above-referenced docket.

Comment date: June 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Mock Resources, Inc.

[Docket No. ER95–300–002]

Take notice that on June 2, 1995, Mock Resources, Inc. tendered for filing a letter stating that the power marketing business was transferred from Wickland Power Services to Mock Resources, Inc.

Comment date: June 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Ruffin Energy Service Inc.

[Docket No. ER95–1047–000]

Take notice that on June 7, 1995, Ruffin Energy Service, Inc. tendered for filing an amendment to its May 15, 1995, filing in the above-referenced docket.

Comment date: June 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Robert S. Jepson

[Docket No. ID–2908–000]

Take notice that on May 25, 1995, Robert S. Jepson (Applicant) tendered for filing an application under Section 305(b) of the Federal Power Act to hold the following positions:

Director—The Washington Water Power Company
Chairman of the Board/Chief Executive Officer—Kuhlman Corporation

Comment date: June 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15504 Filed 6–23–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER95–62–001, et al.]

TexPar Energy Inc., et al. Electric Rate and Corporate Regulation Filings

June 19, 1995.

Take notice that the following filings have been made with the Commission:

1. TexPar Energy, Inc.

[Docket No. ER95–62–001]

Take notice that on June 12, 1995, TexPar Energy, Inc. tendered for filing certain information as required by the Commission's letter order dated December 27, 1994. Copies of the informational filing are on file with the Commission and are available for public inspection.

2. CINergy Services, Inc.

[Docket No. ER95–1178–000]

Take notice that on June 8, 1995, CINergy Services, Inc. (CIN), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated May 1, 1995, between CIN, CG&E, PSI and Nor/Am Energy Services, Inc. (NES).

The Interchange Agreement provides for the following service between CIN and NES.

1. Exhibit A — Power Sales by NES
2. Exhibit B — Power Sales by CIN

CIN and NES have requested an effective date of June 12, 1995.

Copies of the filing were served on Nor/Am Energy Services, Inc., and interested state regulatory commissions.

Comment date: July 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Central Hudson Gas and Electric Corporation

[Docket No. ER95–1182–000]

Take notice that on June 8, 1995, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing a Service Agreement between CHG&E and Electric Clearinghouse, Inc. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1662. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: July 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Central Hudson Gas and Electric Corporation

[Docket No. ER95–1183–000]

Take notice that on June 8, 1995, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing a Service Agreement between CHG&E and Heartland Energy Services. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1662. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: July 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Central Hudson Gas and Electric Corporation

[Docket No. ER95–1184–000]

Take notice that on June 8, 1995, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing a Service Agreement between CHG&E and Utility-2000 Energy Corp. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1662. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: July 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Arkansas Public Service Commission v. Entergy Services, Inc.

[Docket No. EL95–53–000]

Take notice that on June 9, 1995, the Arkansas Public Service Commission filed a complaint under Sections 205 and 206 of the Federal Power Act, 16 U.S.C. §§ 824d and 8243 against Entergy Services, Inc. as the representative of Energy Corporation and its operating companies, Arkansas Power & Light Company (AP&L), Louisiana Power & Light Company (LP&L), Mississippi Power & Light Company (MP&L), Gulf States Utilities Company (GSU), and New Orleans Public Service, Inc. (NOPSI). The complaint seeks a revision of the Entergy System Agreement based upon allegations that the terms of that agreement, under current circumstances, are unjust, unreasonable and unduly discriminatory. Specifically, the complaint alleges that the allocation of nuclear decommissioning costs among AP&L, LP&L MP&L and NOPSI is unjust and unreasonable and results in cross-subsidization among the companies.

Comment date: July 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Electric Clearinghouse, Inc.

[Docket No. ER94–968–006]

Take notice that on June 8, 1995, Electric Clearinghouse, Inc., (Electric Clearinghouse) supplemented its filing of certain information as required by the Commission's April 7, 1994, order in Docket No. ER94–968–000. Copies of Electric Clearinghouse's informational filing are on file with the Commission and are available for public inspection.

8. Wisconsin Electric Power Company

[Docket No. ER95–1173–000]

Take notice that on June 7, 1995, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an Electric Service Agreement and a Transmission Service Agreement between itself and Howard Energy Company (Howard). The Electric Service Agreement provides for service under Wisconsin Electric's Coordination Sales Tariff. The Transmission Service Agreement allows Howard to receive transmission service under Wisconsin Electric's FERC Electric Tariff, Original Volume 1, Rate Schedule T–1.

Wisconsin Electric requests an effective date of sixty days from date of filing. Copies of the filing have been served on Howard, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: July 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Montana-Dakota Utilities Co., a division of MDU Resources Group, Inc.

[Docket No. ER95–1174–000]

Take notice that on June 7, 1995, Montana-Dakota Utilities Co., a division of MDU Resources Group, Inc. (Montana-Dakota), tendered for filing amendments to a certain Interconnection and Common Use Agreement entered into between Montana-Dakota and Basin Electric Power Cooperative, Inc. (Basin).

Montana-Dakota requests that the Commission waive the notice requirement to permit the amendments to be effective January 1, 1995.

Copies of the filing were served on Basin and on the interested utility regulatory agencies.

Comment date: July 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. East Texas Electric Cooperative, Inc.

[Docket No. ER95–1175–000]

Take notice that on June 7, 1995, East Texas Electric Cooperative, Inc. (ETEC), tendered for filing a proposed tariff change to add a competitive rate alternative designated ETEC Schedule C–1. The proposed tariff shall be available to ETEC's three member generation and transmission (G&T) cooperatives (Sam Rayburn G&T Electric Cooperative, Inc., Northeast Texas Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc.) for resale to the G&T's member distribution cooperatives with: (1) customers who have an economically viable ability to acquire, self-, or co-generate electricity at prices below the applicable retail rate of the distribution cooperative, and; (2) new customers with monthly loads of not less than 2,500 Kw or existing loads that add at least 2,500 Kw of monthly load. This rate is only available to these customers if ETEC is successful in acquiring new power supply resources to competitively serve the loads.

The tariff proposal is designed to pass the actual cost of serving each customer under the tariff directly to the ETEC member using a formula calculation and adding a small contribution for ETEC fixed costs.

Copies of the filing were served upon the public utility's customers, and the Public Utility Commission of Texas.

Comment date: July 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Consumers Power Company

[Docket No. ER95–1176–000]

Take notice that on June 8, 1995, Consumers Power Company (Consumers), tendered for filing a revision to the annual charge rate for charges due Consumers from Northern Indiana Public Service Company (Northern), under the terms of the Barton Lake-Batavia Interconnection Facilities Agreement (designated Consumers Power Company Electric Rate Schedule FERC No. 44).

The revised charge is provided for in Subsection 1.043 of the Agreement, which provides that the annual charge rate may be redetermined effective May 1, 1995, using year-end 1994 data with a new annual charge rate. As a result of the redetermination, the monthly charges to be paid by Northern were increased from $17,020.00 to $17,082.00. Consumers requests an effective date of May 1, 1995, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing were served upon Northern, the Michigan Public Service Commission and the Indiana Utility Regulatory Commission.

Comment date: July 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Entergy Power, Inc.

[Docket No. ER95–1177–000]

Take notice that on June 8, 1995, Entergy Power, Inc. (EPI), tendered for filing a Purchase and Sale Agreement with Louis Dreyfus Electric Power, Inc.

EPI requests an effective date for the Agreement that is one (1) day after the date filing, and respectfully requests waiver of the Commission's notice requirements in § 35.11 of the Commission's Regulations.

Comment date: July 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Wisconsin Electric Power Company

[Docket No. ER95–1179–000]

Take notice that on June 8, 1995, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an Electric Service Agreement between itself and Manitowoc Public Utilities (Manitowoc). The Electric Service Agreement provides for service under Wisconsin Electric's Coordination Sales Tariff.

Wisconsin Electric requests an effective date of sixty days from date of filing. Copies of the filing have been served on Manitowoc, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: July 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Wisconsin Electric Power Company

[Docket No. ER95–1180–000]

Take notice that on June 8, 1995, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an Electric Service Agreement between itself and Central Illinois Public Service Co. (CIPS). The Electric Service Agreement provides for service under Wisconsin Electric's Coordination Sales Tariff.

Wisconsin Electric requests an effective date of sixty days from date of filing. Copies of the filing have been served on CIPS, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: July 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Washington Water Power Company

[Docket No. ER95–1181–000]

Take notice that on June 8, 1995, Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, two signed service agreements, Grant County Public Utility District No. 2 and Public Utility District No. 1 of Snohomish County, previously accepted under Electric Tariff No. 4 as an unsigned service agreement and a signed service agreement under Service Schedule A only, respectively. Public Utility District No. 1 of Snohomish County includes a signed service agreement for all service schedules A through E. WWP requests waiver of the prior notice requirement and requests an effective date of July 1, 1995.

WWP also submits a new signed service agreement, Utility-2000 Energy Corp., to be accepted for filing with the Commission waiving the prior notice requirement and requesting an effective date of July 1, 1995.

Comment date: July 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Central Illinois Public Service Company

[Docket No. ER95–1189–000]

Take notice that on June 9, 1995, Central Illinois Public Service Company (CIPS), tendered for filing 1st Revised Schedule 1, "Electric Utilities Interconnected with CIPS," to the Power Supply Agreement between CIPS and Soyland Power Cooperative, Inc. (Soyland) dated February 11, 1986, and 1st Revised Schedule 1, "Electric Utilities Interconnected with CIPS," to the Transmission Services Agreement between CIPS and Soyland dated February 11, 1986. The revised schedules add Northern Indiana Public Service Company to the list of companies with which CIPS is interconnected.

CIPS requests an effective date of June 2, 1995 and, accordingly, asks waiver of the Commission's notice requirements. Copies of this filing have been served on Soyland and the Illinois Commerce Commission.

Comment date: July 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. San Diego Gas & Electric Company

[Docket No. ER95–1190–000]

Take notice that on June 9, 1995, San Diego Gas & Electric Company (SDG&E), tendered for filing and acceptance, pursuant to 18 CFR 35.12, an Interchange Agreement (Agreement) between SDG&E and Utility 2000 Energy Corporation (Utility-2000).

SDG&E requests that the Commission allow the Agreement to become effective on the 14th day of August, 1995 or at the earliest possible date.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Utility-2000.

Comment date: July 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. PacifiCorp

[Docket No. ER95–527–000]

Take notice that on June 1, 1995, PacifiCorp tendered for filing an amendment to its February 1, 1995, filing in the above-referenced docket.

Comment date: July 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

19. Dartmouth Power Associates Limited Partnership v. Commonwealth Electric Company

[Docket No. EL95–52–000]

Take notice that on June 8, 1995, Dartmouth Power Associates Limited Partnership tendered for filing a Complaint and Motion for Summary Judgment concerning violation of filed rate schedule and motion for penalties and expedited consideration.

Comment date: July 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15542 Filed 6–23–95; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5226–4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before July 26, 1995.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260–2740. Please refer to ICR #0167.05

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: "Verification of Test Parameters and Parts Lists for Light-Duty Vehicles and Light-Duty Trucks," (EPA ICR 0167.05; OMB #2060–0094). This ICR requests renewal of the existing clearance.

Abstract: In order to enforce compliance with the emission standards, under the emission recall program, EPA tests in-use vehicles using the Federal Test Procedures (FTP). The FTP specify parameters and parts list that vary with manufacturer and model. Therefore, EPA needs to verify with manufacturers that the specified parameters and parts lists are current for, and appropriate to, the vehicles being tested.

Burden Statement: The public reporting burden for this collection of information is estimated to average 2 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Motor vehicle manufacturers.

Estimated Number of Responses: 15.

Estimated Total Annual Burden: 150.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing burden, to:

Sandy Farmer, ICR #0167.05, Regulatory Information Division, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

and

Chris Wolz, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, N.W., Washington, D.C. 20530.

Dated: June 19, 1995.

Richard Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 95–15575 Filed 6–23–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5226–8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before July 26, 1995.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, please refer to EPA ICR #0941.05.

SUPPLEMENTARY INFORMATION:

Office of Research and Development

Title: Application for Quality Control Sample (QC) Request Form (OMB No. 2080–0016; EPA ICR No. 0941.05).

Abstract: This ICR is an extension of an existing information collection request to continue the use of EPA's QC Sample Request Form, a form that is used by laboratories to request biological, microbiological, and selected chemical samples from USEPA's QC Program. The requirements for QC sampling are set forth at 40 CFR Parts 136, 141, and 142 and described in EPA's *Manual for Certification of Laboratories Analyzing Public Drinking Water Supplies.*

Laboratories requesting chemical, biological or other reference samples from the EPA must complete the one page QC form that includes: (1) identification (name, address of laboratory) information, and (2) a check list of samples that are available from EPA. EPA will enter completed request forms into their automated system, prepare the samples, attach computer generated labels to these samples and send the samples to the requesting laboratory. The samples provided by EPA used by laboratories to evaluate their own data, validate their methods, and evaluate instruments and standards used in the laboratory.

Burden Statement: Public reporting burden for this collection of information is estimated to average 10 minutes per response, including the time for completing and reviewing the collection of information, and submitting the information to the EPA.

Respondents: State, local or private laboratories that perform drinking water testing.

Estimated Number of Respondents: 1,000.

Frequency of Collection: On occasion.

Estimated Number of Responses per Respondent: 4.

Estimoted Total Annual Burden on Respondents: 600 hours.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, (please refer to EPA ICR #0941.05 and OMB #2080–0016):

Sandy Farmer, EPA ICR #941.05, U.S. Environmental Protection Agency, Regulatory Information Division (2136), 401 M Street, SW., Washington, DC 20460.

and

Timothy Hunt, OMB #2080–0016, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: June 20, 1995.

Richard Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 95–15576 Filed 6–23–95; 8:45 am]

BILLING CODE 6560–50–M

[RL–5223–7]

42 U.S.C. Section 122(g) Proposed Settlement of Administrative Order on Consent

AGENCY: U.S. Environmental Protection Agency (U.S. EPA).

ACTION: Proposed *de minimis* settlement.

SUMMARY: U.S. EPA is proposing to settle a claim under Section 122 of CERCLA with a *de minimis* potentially responsible party for pasts costs and costs that will be incurred during removal activities at the Lead Battery Recycler site in Toledo, Lucas County, Ohio. The Respondent has agreed to pay a total of $78,624.99. The money will be used to reimburse the U.S. EPA for past costs and oversight costs which will be incurred during removal actions to be taken at the site. This action is being taken to settle all liability related to the Lead Battery Recycler site with this Respondent pursuant to the intent of Section 122(g) of CERCLA, as amended.

DATES: Comments on this proposed settlement must be received by no later than July 26, 1995.

ADDRESSES: A copy of the proposed settlement is available at the following address for review: (It is recommended that you telephone Richard Clarizio at (312) 886–0559, before visiting the Region V Office.) U.S. Environmental Protection Agency, Region V, Office of Superfund, Emergency and Enforcement Response Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

Comments on the proposed settlement should be addressed to: (Please submit an original and three copies, if possible.) Richard Clarizio, Assistant Regional Counsel, Office of Regional Counsel, U.S. Environmental Protection Agency, Region V, 77 West Jackson Boulevard (CS–29A), Chicago, Illinois 60604–3590 (312) 886–0559.

FOR FURTHER INFORMATION CONTACT: Richard Clarizio, Office of Regional Counsel, at (312) 886–0559.

SUPPLEMENTARY INFORMATION: From 1981 to 1983, Detroit Lead Recyclers, a partnership doing business as Battery Recyclers of Detroit and Battery Recyclers of Toledo, operated the 2.75 acre site as a battery recycling facility. The site is located at 5715 Angola Road, Toledo, Lucas County, Ohio, in a mixed residential/industrial area. While in operation, the Lead Battery Recycler site received batteries from numerous locations and companies for recycling. The facility has been closed since 1983.

The Respondent, Dallas and Mavis Forwarding Co., Inc. arranged for disposal of spent batteries at the Lead Battery Recycler site. The Respondent's share of the waste delivered to the site is believed not to exceed 1.0% of the total waste delivered to the site. A similar settlement agreement for four other de minimis responsible parties was noticed in the **Federal Register** on August 24, 1994.

A 30-day period, beginning on the date of publication of today's notice, is open pursuant to Section 122(i) of CERCLA for comments on the proposed settlement with this Respondent.

William E. Muno,

Director, Waste Management Division, U.S. Environmental Protection Agency, Region V.

[FR Doc. 95–15577 Filed 6–23–95; 8:45 am]

BILLING CODE 6560–50–M

[OPPTS–83004; FRL–4961–2]

Receipt of Request from Rhone-Poulenc for Waiver from Testing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt of request for waiver from testing.

SUMMARY: Regulations issued by EPA under section 4 of the Toxic Substances Control Act require that specified chemical substances be tested to determine if they are contaminated with halogenated dibenzo-*p*-dioxins (HDDs) or halogenated dibenzofurans (HDFs), and that results be reported to EPA. However, provisions have been made for exclusion and waiver from these requirements if an appropriate application is submitted to EPA and is approved. EPA has received a request for a waiver from these requirements from Rhone-Poulenc and will accept comments on this request. EPA will publish another **Federal Register** notice announcing its decisions on this request.

DATES: Submit written comments on or before July 11, 1995.

ADDRESS: Submit written comments in triplicate, identified with the document

control number OPPTS–83004, to: TSCA Docket Receipts, (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. G99, East Tower, 401 M St., SW., Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number OPPTS–83004. No CBI should be submitted through e-mail. Electronic comments on this waiver request may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Rm. E–543, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under 40 CFR part 766 (52 FR 2112, June 5, 1987), EPA requires testing of certain chemical substances to determine whether they may be contaminated with HDDs and HDFs. Under 40 CFR 766.32(a)(2)(i), a waiver may be granted if a responsible company official certifies that the chemical substance is produced only in quantities of 100 kilograms or less per year, and only for research and development purposes. Under 40 CFR 766.32(b), a request for a waiver must be made 60 days before resumption of manufacture or importation of a chemical substance not being manufactured, imported, or processed as of June 5, 1987.

Rhone-Poulenc requests a waiver under 40 CFR 766.32(a)(2)(i). Rhone-Poulenc plans to import 2,4-dichlorophenol (CAS No. 120–83–2), a substance subject to testing under 40 CFR part 766, solely for research and development purposes. Rhone-Poulenc will limit its import of 2,4-dichlorophenol to 100 kilograms per calendar year.

A public version of the record for this action, from which confidential business information has been deleted, is available for inspection in the TSCA Public Docket Office, Monday through Friday, excluding legal holidays, in Rm. NE B607, 401 M St. SW., Washington, DC 20460 from 12 p.m. to 4 p.m.

A record has been established for this action under docket number OPPTS–83004 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as confidential business information (CBI), is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:
ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record for this action which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

List of Subjects

Environmental protection, Chemical substances.

Dated: June 8, 1995.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 95–15169 Filed 6–23–95; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Being Reviewed By The Federal Communications Commission For Extension Under Delegated Authority 5 CFR 1320.9

June 15, 1995.

The Federal Communications Commission is reviewing the following information collection requirements for possible 3-year extension under delegated authority 5 CFR 1320.9, authority delegated to the Commission by the Office of Management and Budget (OMB) on October 6, 1994. These collections were all previously approved by OMB and are unchanged. Public comments are invited on any of these collections for a period ending July 26, 1995. Persons wishing to comment on these information collections should contact Dorothy Conway, Federal Communications Commission, 1919 M Street NW., Room 242–B, Washington, DC 20554. You may also send comments via Internet to DConway@fcc.gov. Upon approval FCC will forward supporting material and copies of these collections to OMB.

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800. For further information on these submissions contact Dorothy Conway, Federal Communications Commission, (202) 418–0217.

OMB Number: 3060–0391.
Title: Monitoring Program for Impact of Federal-State Joint Board Decisions.
Form No.: N/A.
Action: Extension of a currently approved collection.
Respondents: Business or other for-profit.
Frequency of Response: On occasion.
Estimated Annual Burden: 708 responses; 1.9 hours burden per response; 1,376 hours total annual burden.
Needs and Uses: The Monitoring Program is necessary for the Commission, the Joint Board, Congress, and the general public to access the impact of the Joint Board Decisions. Failure to implement the program would make it impossible to determine the impact of these decisions and to assure that they do not produce unanticipated results contrary to the public interest.

OMB Number: 3060–0515.
Title: Section 43.21(d) Miscellaneous Common Carrier and Record Carrier Annual Letter Filing Requirements.
Form No.: N/A.
Action: Extension of a currently approved collection.
Respondents: Business or other for-profit.
Frequency of Response: On occasion.
Estimated Annual Burden: 28 responses; 1,4 hours burden per response; 38 hours total annual burden.
Needs and Uses: Pursuant to Section 43.21(d) each miscellaneous common carrier with operating revenues over $100 million must file a letter showing its operating revenues for that year and the value of its total communications plant at the end of that year. Record carriers with operating revenues over $75 million for a calendar year must file a letter showing selected income statement and balance sheet items for that year. The letter must contain information pertaining to the carriers revenues, expenses, net income, assets, liabilities and owners' equity. The information is used by FCC staff to regulate and monitor the telephone industry and by the public to analyze the industry.

OMB Number: 3060–0166.
Title: Part 42 Preservation of Records of Communications Common Carriers.
Action: Extension of a currently approved collection.
Respondents: Business or other for-profit.
Frequency of Response: On occasion.
Estimated Annual Burden: 68 responses; 2 hours burden per response; 136 hours total annual burden.
Needs and Uses: Part 42 of the Commission's Rules prescribes guidelines to ensure that carriers maintain the records needed by the FCC for its regulatory obligations. Section 42.4 requires carriers to maintain at is operating company headquarters a master index of the records identifying the records retained. Carriers must explain, by adding a certified statement to the index, the premature loss or destruction of records pursuant to Section 42.4. Section 42.6 requires the retention of telephone toll records for 18 months providing the following billing information about telephone toll calls: the name, address, and telephone number of the caller, telephone number called, date, time and length of the call. Pursuant to Section 42.7 carriers are allowed to establish their own retention periods, expect for the case of telephone toll records and records relevant to complaint proceedings.

OMB Number: 3060–0504.
Title: Section 90.658 Loading data required for base station licensees of trunked specialized mobile radio systems to acquire additional channels.
Form No.: N/A.
Action: Extension of a currently approved collection.
Respondents: Business or other for-profit; Not-for-Profit Institutions; State, Local or Tribal Government.
Frequency of Response: On occasion
Estimated Annual Burden: 1,909 responses; 30 minutes burden per response; 955 hours total annual burden.
Needs and Uses: Section 90.658 requires licensees of trunked Specialized Mobile Radio (SMR) Systems to submit information regarding the number of mobile units served by each base station when applying for additional channels to expand an existing system, or to renew a trunked SMR System licensed in a waiting list area before June 1, 1993. The Commission licensing personnel use the information to ensure that licensees of trunked SMR Systems that apply for additional spectrum or renew certain licenses have satisfied the FCC loading requirements.

OMB Number: 3060–0024.
Title: Section 76.12 Special Temporary Authority.
Form No.: N/A.
Action: Extension of a currently approved collection.
Respondents: Businesses or other for-profit
Frequency of Response: On occasion
Estimated Annual Burden: 1 response; 3 hours burden per response; 3 hours total annual burden.
Needs and Uses: Section 76.12 states that a system community unit shall be authorized to commence operation only after filing a registration statement with the Commission. Section 76.12 states that in circumstances requiring the temporary use of community units for operations not authorized by the Commission's rules, a cable television system may request temporary authorization to operate. The Commission may grant temporary authority upon finding that the public interest would be served. The data is used by Commission staff to ensure that a grant of special temporary authority will not cause interference with other stations.

OMB Number: 3060–0022.
Title: Application for Permit of an Alien Amateur Radio License to Operate in the United States.
Form No.: 610A.
Action: Extension of a currently approved collection.
Respondents: Individuals or households.
Frequency of Response: On occasion.
Estimated Annual Burden: 4,000 responses; 5 minutes burden per response; 336 hours total annual burden.
Needs and Uses: FCC610A must be filed with the Commission by aliens who hold an Amateur Operator and Station License issued by his/her government and who wish to apply for a permit to operate an Amateur Radio in the United States.

OMB Number: 3060–0228.
Title: Section 80.59 Compulsory ship stations.
Form No.: N/A.
Action: Extension of a currently approved collection.
Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government
Frequency of Response: On occasion.
Estimated Annual Burden: 200 responses; 2 hours burden per response; 400 hours total annual burden.
Needs and Uses: The requirements in Section 80.59 permit the Commission to waive the required annual inspection of certain oceangoing ships for up to 30 days beyond the expiration of the date of a vessel's radio safety certificate

OMB Number: 3060–0265.
Title: Section 80.868 Card of Instruction.
Form No.: N/A.
Action: Extension of a currently approved collection.
Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions.
Frequency of Response: On occasion.
Estimated Annual Burden: 3,000 responses; 6 minutes burden per response; 300 hours total annual burden.
Needs and Uses: Section 80.868 is necessary to insure that radiotelephone distress procedures are readily available to the radio operator on board certain vessels (300–600 gross tons). This information is used by the radio operator during an emergency situation, and is designed to assist the radio operator to utilize proper distress procedures.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 95–15487 Filed 6–23–95; 8:45 am]
BILLING CODE 6712–01–F

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

June 20, 1995.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Dorothy Conway, Federal Communications Commission, (202) 418–0217 or via internet at DConway@FCC.GOV. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 10214 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0425.

Title: Sections 74.913 Selection procedure for multually exclusive ITFS applications.
Form No.: N/A.
Action: Revision of a currently approved collection.
Respondents: Not-for-profit institutions.
Frequency of Response: On occasion.
Estimated Annual Burden: 175 responses; 8 hours burden per response; 1,400 hours total annual burden.
Needs and Uses: Sections 74.913 requires applicants tied in a comparative selection proceeding for Instructional Television Fixed Service stations to submit an agreement to divide the use of the channels or a statement of student enrollment at its proposed receive locations. The data are used by FCC staff to detemmine the most qualified applicant.
OMB Number: 3060–0497.
Title: Mediator Survey and Party Survey Forms.
Form No.: FCC Form 91, and FCC Form 92.
Action: Extension of a currently approved collection.
Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.
Frequency of Response: On occasion.
Estimated Annual Burden: 1,620 responses; 30 minutes burden per response; 810 hours total annual burden.
Needs and Uses: These forms are necessary for the Commission to fulfill its responsibilities under the Administrative Dispute Resolutions Act. These forms provide feedback from the parties concerning the ADR Program and will enable the Commission to institute changes that will improve the program.
OMB Number: 3060–0498.
Title: Confidental Alternative Dispute Resolution Statement.
Form No.: FCC Form 90.
Action: Extension of a currently approved collection.
Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.
Frequency of Response: On occasion.
Estimated Annual Burden: 1,080 responses; 30 minutes burden per response; 540 hours total annual burden.
Needs and Uses: These forms are necessary for the Commission to fulfill its responsibilities under the Administrative Dispute Resolutions Act. This for will be filed with the neutral selected by the parties, it is necessary to provide the neutral with the background information to the case before the first ADR session.
OMB Number: 3060–0106.
Title: Section 43.61 Reports of Overseas Telecommunications Traffic.
Form No.: FCC Report 43.61.
Action: Revison of a currently approved collection.
Respondents: Business or other for-profit.
Frequency of Response: Annual.
Estimated Annual Burden: 160 responses; 17 hours burden per response; 2,370 hours total annual burden.
Needs and Uses: The telecommunications traffic data report is an annual reporting requirement imposed on common carriers engaged in the provision of overseas telecommunications services. The reported data is useful for international planning, facility authorization, monitoring emerging developments in communications services, analyzing market structures, tracking the balance of payments in international communications services, and market analysis purposes. The reported data enables the Commission to fulfill its regulatory responsibilites.
OMB Number: 3060–0512.
Title: ARMIS Quarterly Report.
Form No.: FCC Report 43–01.
Action: Extension of a currently approved collection.
Respondents: Business or other-for profit.
Frequency of Response: Quarterly.
Estimated Annual Burden: 600 responses; 220 hours burden per response; 132,000 hours total annual burden.
Needs and Uses: This report is needed to adminster our accounting, jurisdictional separations and access charge rules and the analyze revenue requirements and rates of return and to collect financial and operating data from all Tier 1 local exchange carriers. Automated reporting of these data greatly enhances the Commission's ability to process and analyze the extensive amount of data needed to administer its rules.
OMB Number: 3060–0511.
Title: ARMIS Access Report.
Form No.: FCC Report 43–04.
Action: Extension of a currently approved collection.
Respondents: Business or other for-profit.
Frequency of Response: Annual.
Estimated Annual Burden: 150 responses; 1,150 hours burden per response; 172,500 hours total annual burden.
Needs and Uses: The Access Report is needed to administer accounting, juridictional separations and access change rules, and to analyze revenue requirements and rates of return and to collection financial and operating data from tier I local exchange carriers.
OMB Number: N/A.
Title: Section 76.934(h) Small system cost-of-service showings.
Form No.: FCC 1230.
Action: New Collection.
Respondents: Business or other for-profit; State, Local or Tribal Government.
Frequency of Response: On occasion.
Estimated Annual Burden: 1,500 responses; 2.25 hours burden per response; 3,375 hours total annual burden.
Needs and Uses: On May 5, 1995 the Commission realeased a Sixth Report and Order and Eleventh Order on Reconsideration in MM Docket Nos. 92–266 and 93–215. In this rulemaking the Commission amends its definition of small cable entities and makes available to these systems a new regulatory schem to provide both rate relief and reduce adminstrative burden. To implement this scheme of rate regulation, the Commission has created FCC Form 1230 a one page form on which the systems are to calculate permitted cable rates.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 95–15468 Filed 6–23–95; 8:45 am]
BILLING CODE 6712-01-F

[DA 95–1368]

Mass Media Bureau

Assignment and Transfer Backlog Reduction and New Speed of Service Initiatives

The Mass Media Bureau has instituted a plan to eliminate the existing backlog of contested assignment and transfer applications and to reduce, to the maximum extent possible, the time between the filing of new assignment and transfer applications and action on such applications. Additionally, the Bureau is exploring improved procedural techniques to expedite review of all applications filed with it.

Backlog Reduction Effort

Under the sales backlog reduction plan the Bureau will:

- Maintain its current speed of service for all routine assignment and transfer applications (*i.e.*, applications that do not involve a waiver and are uncontested) at 60 days or less from the date of filing.
- By June 30, dispose of all non-routine assignment and transfer applications (*i.e.*, applications that are contested or involve a waiver) that have been pending for over 180 days, except for cases that are blocked because of circumstances beyond the Bureau's control.
- By July 31, dispose of all petitions for reconsideration of staff action on sales applications in cases where the petition has been pending for over 180 days; submit for Commission consideration draft decisions on all applications for review of staff action on sales applications in cases where the application for review has been pending for over 180 days.
- With regard to newly filed assignment and transfer applications, dispose of all non-routine applications in no more than 180 days from the date of filing, respond to all petitions for reconsideration of those decisions in no more than 180 days from the filing of the petition, and submit for Commission review draft documents responding to applications for review of such decisions in no more than 180 days from the filing of the application for review. The 180 day time-frame for initial action on a non-routine assignment and transfer application represents a worst-case scenario. The Bureau will act on most newly filed non-routine assignment and transfer applications in no more than 120 days. Frivolous petitions to deny will be acted on within 30 days of the close of the pleading cycle and frivolous informal objections will be acted on within 30 days of the close of the period established by the public notice announcing acceptance of the application. Applications will be approved simultaneously if otherwise grantable.

To achieve its backlog reduction plan, the Bureau has recently detailed several attorneys from other parts of the Bureau to the Audio Services Division, which receives the highest percentage of assignment and transfer applications. That Division is also reorganizing to permit its attorneys to focus on the more difficult legal issues raised in sales applications and to reduce the levels of internal review. These changes, coupled with certain procedural improvements, have within the last three months permitted the Division to reduce the number of non-routine sales cases over six months old by 65%, from 144 to 50, and the appeals of such cases by 20%, from 53 to 42. In the Video Services Division, the backlog of pending sales cases over six months old is currently 20 and, with the exception of a few complex cases, will be reduced according to the schedule above. On a separate matter, the Video Services Division, since June of 1994 when it assumed responsibility for processing MMDS applications, has reduced the number of applications for new or improved facilities by approximately 2200, or 33%, and has reduced the backlog of MMDS petitions for reconsideration from 5523 to 207, or 96%.

In addition to reallocating resources, the Bureau is applying improved procedural techniques to expedite review of all assignment and transfer applications filed with it and is exploring additional ways to facilitate timely processing:

- The Bureau will screen receipt all incoming pleadings to determine whether they conform to procedural rules and to assess the seriousness of the allegations. Petitions to deny, petitions for reconsideration, and applications for review that fail to comply with relevant procedural requirements including, for example, requirements concerning standing, jurisdiction, and supporting affidavits, will be summarily dismissed unless the staff determines that consideration of the document despite its procedural flaws is in the public interest. The Bureau urges attorneys to state with specificity, and to support with facts and legal authority, how each pleading filed complies with procedural requirements in the Commission's rules.
- Though all issues raised in pleadings will be carefully and thoroughly considered, staff decisions denying petitions to deny and petitions for reconsideration will generally contain a concise statement of reasons disposing of all substantial issues raised by the petition rather than a detailed issue-by-issue analysis. Decisions denying informal objections will generally indicate only that the objection failed to present a public interest reason for denying the application. Parties may submit draft decision documents to the staff together with their authorized pleadings.
- The Bureau plans to request expansion of its delegated authority to permit waivers of the multiple ownership rules and resolution of routine EEO complaints without full Commission review.

Action by the Chief, Mass Media Bureau.

FOR FURTHER INFORMATION CONTACT: Linda Blair or Stuart Bedell at 202–418–2788 or Clay Pendarvis at 202–418–1630.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 95–15537 Filed 6–23–95; 8:45 am]
BILLING CODE 6712-01-M

[Report No. 2080]

Petition for Reconsideration of Actions in Rulemaking Proceedings

Petition for reconsideration have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document are available for viewing and copying in Room 329, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to this petition must be filed July 11, 1995. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendments of Parts 15 and 90 of the Commission's Rules Provide Additional Frequencies for Cordless Telephone. (ET Docket No. 93–235)
Number of Petition Filed: 1

Federal Communications Commission
William F. Caton,
Acting Secretary.
[FR Doc. 95–15538 Filed 6–23–95; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1050–DR]

North Dakota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).
ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Dakota, (FEMA–1050–DR), dated May 16, 1995, and related determinations.

EFFECTIVE DATE: June 20, 1995.
FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.
SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of North Dakota dated may 16, 1995, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by

the President in his declaration of May 16, 1995:

The counties of Emmons, Renville and Sargent for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

G. Clay Hollister,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 95–15581 Filed 6–23–95; 8:45 am]

BILLING CODE 6718–01–M

[FEMA–1050–DR]

North Dakota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Dakota, (FEMA–1050–DR), dated May 16, 1995, and related determinations.

EFFECTIVE DATE: June 20, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of North Dakota dated May 16, 1995, is hereby amended to include Disaster Unemployment Assistance in the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 16, 1995:

Barnes, Benson, Bottineau, Burleigh, Cavalier, Dickey, Eddy, Foster, Griggs, Kidder, La Moure, Logan, McHenry, McIntosh, McLean, Nelson, Pembina, Pierce, Ramsey, Ransom, Rolette, Sheridan, Sioux, Steele, Stutsman, Towner, Traill, Walsh, and Wells for Disaster Unemployment Assistance under the Individual Assistance Program. (Already designated for Public Assistance)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

G. Clay Hollister,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 95–15582 Filed 6–25–95; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1052–DR]

South Dakota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of South Dakota (FEMA–1052–DR), dated May 26, 1995, and related determinations.

EFFECTIVE DATE: June 20, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective June 20, 1995.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

G. Clay Hollister,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 95–15583 Filed 6–23–95; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1054–DR]

Missouri; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri, (FEMA–1054–DR), dated June 2, 1995, and related determinations.

EFFECTIVE DATE: June 20, 1995.

FOR FURTHER INFORMATION CONTACT: Pouline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Missouri dated June 2, 1995, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 2, 1994:

The counties of Adair, Barry, Cooper, Jackson, Lewis, Newton, and Pemiscot for Individual Assistance.

The counties of Andrew, Atchinson, Bates, Chariton, Daviess, Dekalb, Gentry, Henry, Howard, Lafayette, Linn, Macon, Moniteau, Perry and Warren for Public Assistance.

The counties of Callaway, Cape Girardeau, Carroll, Mississippi, Montgomery, Ray, and Vernon for Public Assistance (already designated for Individual Assistance.)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

G. Clay Hollister,

Deputy Associate Director,

Response and Recovery Directorate.

[FR Doc. 95–15580 Filed 6–23–95; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Argosy Shipping, Co, 5572 Lutford Circle, Westminster, CA 92683, Shuh-Liang Huo, Sole Proprietor

P.E. Burke Moving and Storage Corp. 124 Prospect Street, Waltham, MA 02154, Officers: Philip E. Burke, III, President; Gerald A. Burke, Treasure.

Dated: June 20, 1995.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–15483 Filed 6–23–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MEDIATION AND CONCILIATION SERVICE

Notice of Rescheduled Meeting

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Notice of rescheduled meeting.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS) announces the rescheduling of the Labor-Management Cooperation Grants Program meeting. The committee will meet in Washington, D.C. from July 10, 1995 until July 14, 1995. It will stay in operation until the end of the fiscal year, September 30, 1995.

SUPPLEMENTARY INFORMATION: Under the Federal Advisory Committee Act, 5 U.S.C. Appx. 9, notice is given that the FMCS has established a federal advisory committee to evaluate and make recommendations to the agency about the FMCS Labor-Management Cooperation Grants Program. Congress specifically requested that FMCS conduct a review of this program for fiscal year 1995. This review will involve evaluating the overall program and issuing recommendations to improve it. The committee will also evaluate the grants process, specific applicants, and make recommendations on who should receive labor-management committee grants. The committee will be called the Grants Program Review and Advisory Committee.

Five grant review boards will sit to evaluate the applications. Each board will focus on a review of applications of the following areas: industry labor-management committees, area labor-management committees, in-plant committees, public (state and local) committees, and public education committees. Each board will consist of three individuals selected from the following pool of committee members: three representatives from state government labor-management programs, three former grantees, one member from a national trade union association, one from a national business or industry organization, one from the National Labor-Management Association, one from a professional association such as the Industrial Relations Research Association, and five federal mediators. One federal mediator will sit on each board. The boards will then convene as the full committee to discuss their findings and make recommendations to the agency.

The scope of the committee is limited to reviewing the current process, evaluating the direction of the grants program, and issuing recommendations for actual grants. FMCS will provide the necessary support for the committee. The full committee or the individual review boards will meet as often as necessary. The advisory committee will issue a final report on its findings and recommendations. The official to whom the committee will report is the Director of the Federal Mediation and Conciliation Service. The Grants Program Manager, Peter Regner, will serve as Chairman to the Committee. The advisory committee should not be needed after September 30, 1995

TIME AND DATES OF MEETINGS: The first meeting of the Grants Program Review and Advisory Committee will begin at 9:00 A.M. on July 10, 1995. The last session is scheduled to end at 3:00 P.M. on July 14, 1995. The public part of the meetings will begin on July 13, 1995.

PLACE OF MEETINGS: The meetings will be held at the national offices of the Federal Mediation and Conciliation Service, 2100 K Street NW., Washington, DC, Room 200.

STATUS OF MEETINGS: The portions of the meetings involving determinative decisions concerning specific grant applications will be closed to the public. The portions of the meetings concerning general evaluation and recommendations concerning the grants program will be open to the public.

MATTERS TO BE CONSIDERED AT MEETINGS: Review and evaluation of Labor-Management Cooperation Grants Program, and review and recommendations of labor-management grant applicants.

FOR FURTHER INFORMATION CONTACT:

Peter Regner, Grants Program Manager, Federal Mediation and Conciliation Service, 2100 K Street NW., Washington, DC 20427, 202–606–8181.

Dated: June 21, 1995.

Peter Regner,

Manager Program Services.

[FR Doc. 95–15591 Filed 6–23–95; 8:45 am]

BILLING CODE 6372–01–M

FEDERAL RESERVE SYSTEM

Roy H. Lambert, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 10, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Roy H. Lambert, the Roy H. Lambert Revocable Trust; and James R. Thompson, all of Vero Beach, Florida; collectively to acquire an additional 2.22 percent, for a total of 10.28 percent, of the voting shares of Citrus Financial Services, Inc., Vero Beach, Florida, and thereby indirectly acquire Citrus Bank, N.A., Vero Beach, Florida.

Board of Governors of the Federal Reserve System, June 20, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-15520 Filed 6-23-95; 8:45 am]

BILLING CODE 6210-01-F

First Financial Bancorp; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than July 20, 1995.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. First Financial Bancorp, Hamilton, Ohio; to merge with Bright Financial Services, Inc., Flora, Indiana, and thereby indirectly acquire Bright National Bank, Flora, Indiana.

Board of Governors of the Federal Reserve System, June 20, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-15518 Filed 6-23-95; 8:45 am]

BILLING CODE 6210-01-F

Intervest Bancshares Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of

Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 10, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Intervest Bancshares Corporation, New York, New York; to engage *de novo* through its subsidiary, Intervest Bancshares Corporation, New York, New York, in making, acquiring, participating in and/or servicing loans sercured by mortgages on real estate for Applicant's account or the account of others, pursuant to § 225.25(b)(1) of of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First Business Bancshares, Inc., Madison, Wisconsin; to engage *de novo* through its subsidiary, First Madison Capital Corp., Madison, Wisconsin, in commercial finance lending, pursuant to § 225.25(b)(1)(iv) of the Board's Regulation Y; and leasing of personal property, pursuant to § 225.25(b)(5) of The Board's Regulation Y. The proposed activity will be conducted throughout the state of Wisconsin.

2. GNB Bancorporation, Grundy Center, Iowa; to engage *de novo* through its subsidiary, GNB Financial Co., Grundy Center, Iowa, in leasing activities, pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 20, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–15519 Filed 6–23–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made final findings of scientific misconduct in the following case:

Farooq A. Siddiqui, Ph.D., Roswell Park Cancer Institute: The Division of Research Investigations (DRI) of the Office of Research Integrity (ORI) completed an investigation into possible scientific misconduct on the part of Dr. Siddiqui while he was an employee of Roswell Park Memorial Institute. ORI finds that Dr. Siddiqui committed scientific misconduct by misrepresenting data in a published article. The research was supported by a grant award from the National Cancer Institute, National Institutes of Health, Public Health Service (PHS).

Dr. Siddiqui agreed not to appeal the misconduct finding as part of a Voluntary Settlement Agreement under which, for a period of two years, he will not apply as a principal or coprincipal investigator in any nonprocurement transactions (grants and cooperative agreements) or as a principal or coprincipal in any contract or subcontract with the United States Government. Dr. Siddiqui also is prohibited from serving on any Public Health Service advisory committee, board, and/or peer review committee for a period of two years. Also, for a two-year period the institution where he is employed will supervise his performance of work on any covered transaction including a periodic review of primary data, and certify the accuracy of any such data used in any United States Government Public Health Service grant application, contract proposal, or which is otherwise publicly reported. He has agreed to submit a letter to the journal Biochemica et Biophysica Acta (BBA) to retract the article entitled "Purification and Immunological Characterization of DNA Polymerase-alpha from Human Acute Lymphoblastic Leukemia Cells" (BBA, 745:154–161, 1983).

FOR FURTHER INFORMATION, CONTACT: Director, Division of Research Investigations, Office of Research Integrity, 301–443–5330.

Lyle W. Bivens,

Director, Office of Research Integrity.

[FR Doc. 95–15475 Filed 6–23–95; 8:45 am]

BILLING CODE 4160–17–P

Administration for Children and Families

Changing the Culture of Welfare Demonstration

AGENCY: Administration for Children and Families, Department of Health and Human Services.

ACTION: Announcement of the availability of funds and request for applications to create and test various cultural change models for adoption by welfare offices throughout the nation.

SUMMARY: The Administration for Children and Families (ACF) announces the availability of Federal funding to participate in intensive joint planning and development activities that would reinforce the concept of the temporary nature of welfare, and promote self-sufficiency and employment. Funding under this announcement is authorized by section 1110 of the Social Security Act governing Social Services Research and Demonstration activities.

DATES: The closing date for submission of applications is August 25, 1995.

ADDRESSES: Application receipt point: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, S.W., 6th Floor, Mailstop 6C–462 Washington, DC 20447, William McCarron, Grants Officer.

Hand delivered applications are accepted during the normal working hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at: Administration for Children and Families, Division of Discretionary Grants, 6th Floor, ACF Guard Station, 901 D Street S.W., Washington DC 20447.

FOR FURTHER INFORMATION CONTACT: Yvonne C. Howard, Project Officer, Administration for Children and Families, Office of Family Assistance, 370 L'Enfant Promenade, S.W., 5th Floor, Washington, DC 20447. Telephone (202) 401–4619.

SUPPLEMENTARY INFORMATION: The Administration for Children and Families (ACF) announces that competing applications are being accepted for Federal financial assistance to participate in intensive joint planning and development activities that would reinforce the concept of the temporary nature of welfare, and promote self-sufficiency and employment. An initial financial award for 12 months, for up to 8 sites will be made under this announcement. The Department will fund up to four (4) grantees who will be selected on a competitive basis to receive second year continuation grants for implementation of cultural change models. The recipients will be expected to enter into a cooperative agreement with ACF.

This program announcement consists of four parts. Part I provides background information about the Changing the Culture of Welfare (CCW) demonstration. Part II describes the activities supported by this announcement and application requirements. Part III describes the application review process. Part IV provides information and instructions for the development and submission of applications. The forms to be used for submitting an application follow Part IV.

Part I—Introduction

Current welfare reform proposals emphasize work, responsibility and the temporary nature of welfare. The focus of the Aid to Families with Dependent Children (AFDC) program is changing from providing benefits to preventing welfare dependency. There is growing consensus that AFDC benefits should be transitional, time-limited assistance, requiring a goal-oriented partnership between the welfare agency and the AFDC client. Such a partnership should be designed to help the client recognize the value of work and construct a plan to enter the job market and/or training to quickly achieve economic self-sufficiency.

Welfare reform initiatives in the 1980s and 1990s exemplify States' efforts to seek alternative methods of reducing welfare dependency. Reform has primarily been sought through waivers of statutory provisions, seen as barriers to achieving economic independence. In the welfare debate, another emerging issue has been the need for a radical culture change in the welfare system and the methods of assistance provided to the AFDC families.

Part II—Project Design

Purpose

The purpose of the demonstration project is to provide an opportunity for State/local IV–A agencies who: (1) want to design and implement cultural change strategies or (2) are already implementing cultural change strategies successfully but want to further expand their initiatives, to focus more strongly on work, and make the system more supportive of self-sufficiency efforts.

State and local welfare agencies are on the front line of the needed culture change since change must begin where the client meets the worker. In focusing on what the client needs to become self-sufficient, workers, supervisors, and administrators must view their jobs in a broader context. Workers must be empowered to participate in changing the culture of the welfare office and helping clients move from dependence to independence.

This culture change may be achieved by a variety of different approaches, including changes in management style, staff training, performance measurement and changes to the AFDC and JOBS rules which are perceived to impede the transition from welfare dependency to economic self-sufficiency.

Sites will need to create and test cultural change models and look at the impacts, costs, and benefits of their models. They will need to demonstrate how the model can be expanded and provide up-front delivery of services to promote employment opportunities and portray welfare as a transitional program.

They will need to also demonstrate how the job of the AFDC worker has changed, or will change, from one of determining eligibility and payment accuracy to one of financial consultant/customer service agent. This role includes working with the client to explore options and alternatives to public assistance, resources available in the community to meet immediate client needs, demonstrating the financial benefits of employment vs. receipt of welfare, and marketing (employment opportunities to the client, and clients to potential employers) etc.

Eligible Applicants

Financial assistance under this announcement is limited to State and local IV–A agencies. An applications from a local IV–A agency must be approved by the State IV–A agency.

ACF is interested in providing financial support to IV–A agencies with experience in, or a demonstrated commitment to changing the culture of welfare. Examples of cultural change include:

1. Training management and staff, as part of a overall process redesign geared toward employment and self-sufficiency, including customer relations training.
2. Improving and modifying technology to support the line worker's ability to service clients.
3. Implementing performance standards for evaluating staff with an emphasis on job placement standards as an important criteria.
4. Establishing new criteria and incentives to reward staff participating in and promoting cultural change activities.
5. Implementing a competency-based case management system.
6. Reclassifying personnel positions to upgrade eligibility determination staff.
7. Co-locating administrative and client service delivery staff working on AFDC and JOBS. Combining income maintenance and JOBS responsibilities in one worker.
8. Implementing more intensive interventions to accommodate harder-to-serve populations which would include individuals with learning disabilities and/or developmental disabilities.
9. Establishing with educational institutions such as community colleges, training institutions and local employers, short term competency-based training programs linked to actual jobs.

Minimum Requirements for Project Design.

In order to compete successfully in response to this announcement, the applicant should develop a plan which:

- Includes an outline and discussion of current, or planned culture change activities at the proposed demonstration sites. This outline should include a description of the specific features/components and services that are involved with, or impacted by culture change activities, relevant demographics of the demonstration site, and the level of agency commitment and community collaboration.
- Describes how the applicant proposes to expand existing culture change strategies and how these strategies will involve a coordinated, integrated approach among, at minimum, AFDC/JOBS staff.
- Demonstrates how this model will increase the experiential/research information we now have of what AFDC clients need to become self-sufficient.
- Demonstrates how the model (or parts thereof) can be replicated in other localities.

• Includes methods for measuring the effects of the demonstration on AFDC/JOBS participants, e.g. increased participation, employment/earnings; reduced welfare dependency.
• Describes how a cost/benefit analysis will compare the direct and indirect costs with the financial and non-financial benefits of the program from the point of view of the participants; the government (Federal, State, and local); and the taxpayer.
• Includes the applicant's approach for providing assistance and training to State and county demonstration project staff, as needed.
• Provides information about other (State, local, community) resources the site will use to support this effort, including financial support (if any) for the demonstration, in addition to Federal funding.
• Provides for travel to Washington, DC (2 times) and one site visit to another project for up to three people.

In recognition of the scope of the initiative, the potential difficulty in successfully implementing and operationalizing agency culture change, and the significance of the initiative for public policy, ACF has determined that a close, cooperative working relationship between the ACF and the selected States will greatly further the public interest. Therefore, the awards made under this announcement will be cooperative agreements between ACF and the selected State IV–A agencies. It is anticipated that ACF will be involved in the performance of the initiative in the following manner:

• ACF, working in cooperation with the State, will review and comment on the agency's cultural change strategies to ensure that the project meets specified goals and objectives.
• ACF will conduct site visits, teleconferences, and meetings, as appropriate, to provide technical assistance.
• ACF will facilitate information sharing and discussions across sites.

The above-cited areas of involvement are illustrative of the anticipated level of Federal involvement with the selected States in the initiative. The exact activities will be detailed in the Cooperative Agreement which will be developed with each selected State.

Project Duration

The length of the project should not exceed two years (24 months). This announcement is soliciting applications for two-year projects. Awards, on a competitive basis, will be for an initial one-year budget period for the design and planning of the project. Up to eight recipients of this initial award will compete among themselves for the four (4) continuation awards. Four awards for project implementation, beyond the one-year budget period but within the two-year project period will be entertained, subject to availability of funds, satisfactory progress of the recipient, and a determination that continued funding would be in the best interest of the Government.

Federal Share of the Project

The maximum Federal share of the Project is not to exceed $1.8 million for the two-year project period, subject to the availability of funds. The maximum Federal share for the first year budget period will be $400,000 divided among up to eight recipients. The maximum Federal share for the second year continuation grants will be $1.4 million divided among four recipients.

Matching Requirement

Applicants must provide at least five (5) percent of the total cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $50,000 in Federal funds must include a match of at least $2,632 (i.e., 5 percent of the sum of the Federal and the non-Federal cost of the project). The successful applicant's match must be met by the completion of the project period.

The recipient will be required to provide the agreed upon non-Federal share, even if it exceeds the required match stated above. Therefore, applicants should ensure that any amount proposed as matching funds is committed to the project prior to inclusion in its budget.

Anticipated Number of Projects to be Funded

Up to eight projects will be funded under this announcement.

Part III—The Review Process

A. Review Process and Funding Decisions

Timely applications from eligible applicants will be reviewed and scored competitively. Reviewers will use the evaluation criteria listed below to review and score the application.

In addition ACF may refer applications to other Federal or non-Federal funding sources when it is determined to be in the best interest of the Federal Government or the applicant. It may also solicit comments from ACF Regional Office staff, other Federal agencies, interested foundations and national organizations. These comments along with those of the reviewers will be considered by ACF in making the funding decision.

In making a funding decision, ACF may give preference to applications which reflect experience in working with the cultural change strategies since such experience on the part of a recipient has the potential to substantially improve the development of a culture change model.

B. Evaluation Criteria

Using the evaluation criteria below, reviewers will review and score each application. Applicants should insure that they address each minimum requirement listed above.

Reviewers will determine the strengths and weaknesses of each application in terms of the appropriate evaluation criteria listed below, provide comments, and assign numerical scores. The point value following each criterion heading indicates the maximum numerical weight that each criterion may be given in the review process.

Review Criteria

(1) Knowledge of Changing the Culture of Welfare (25 points)

The applicant's proposal should demonstrate a good understanding of the project design and the tasks and objectives involved in the project. The application should provide: (a) evidence of organizational experience in changing the culture of welfare and/or (b) evidence of commitment to planning and implementing agency cultural change activities. The discussion should also reflect a clear understanding of "culture" change and the current emphasis on work and responsibility and transitional benefits.

(2) Approach and Project Design (30 points)

The application should include: (a) an outline of the project design which takes into account specific features the applicant wishes to address, the objectives, component(s) and services that will be impacted by the culture change strategies; (b) a description of how the applicant will involve agency staff (AFDC and JOBS) in the planning process, which staff (front-line worker/management etc.), and the level of staff involvement; and (c) the applicant's approach for providing assistance and training to agency staff to enable their full participation in the planning process.

(3) Public—Private Partnerships (15 points)

In order to maximize the potential resources of the community to provide options and alternatives to the public welfare system, the applicant should provide evidence of coordination and commitments by public, private, non-profit, community organizations and businesses to support changing the culture of welfare.

(4) Methodology (5 points)

The application should describe proposed methodology for measuring the effects of the planned demonstration on AFDC/JOBS participants and the extent to which the experiential/research knowledge will be increased.

(5) Staff Skills and Responsibilities (20 points)

It has been our experience that in order for demonstrations of this scope to be successful, the support and commitment of the administrators at the highest levels of the agency are necessary. Demonstrations such as this are under tight time constraints and require innovation and flexibility. For example, it may be necessary from time to time to provide exceptions to normal administrative processes or to establish expedited processes. Thus the support and commitment of senior official to accomplish the many tasks involved is critical. The application should discuss this issue and indicate the level of commitment to the demonstration which is proposed. The application should list key individuals who will work on the project along with a short description of the nature of their contribution. Summarize the background and experience of the project director and key project staff.

(6) Budget Appropriateness (5 points)

The application should demonstrate that the project's costs are reasonable in view of the anticipated results and benefits. Applicants may refer to the budget information presented in the Standard Forms 424 and 424A.

Part IV—Instructions for the Development and Submission of Applications

This part contains information and instructions for submitting applications in response to this announcement. Application forms are provided as part of this announcement along with a checklist for assembling an application package.

A. Required Notification of the State Single Point of Contact

This program announcement is covered under Executive Order 12372, Intergovernmental Review of Federal Programs, and 45 CFR Part 100, Intergovernmental Review of Department of Health and Human Services Program and Activities. Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Minnesota, Montana, Nebraska, Oklahoma, Oregon, Virginia, Pennsylvania, South Dakota, Washington, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs), listed at the end of this announcement. Applicants from these nineteen jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, S.W., 6th Floor, Mailstop 6C–462, Washington, D.C. 20447.

Refer to the beginning of this announcement under the heading **ADDRESSES**, for hand delivered applications.

B. Deadline for Submittal of Applications

The closing date for submittal of applications under this program announcement is found at the beginning of this announcement under the heading **DATES**. Applications shall be considered as meeting the announced deadline if they are either:

1. Received on or before the deadline date at the receipt point specified in this program announcement, or
2. Sent on or before the deadline date and received by ACF in time for the independent review. Applicants are cautioned to request a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late Applications: Applications which do not meet the criteria in 1 and 2 above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of Deadlines: ACF may extend the deadline for all applicants because of acts of God, such as floods, hurricanes, etc., or when there is widespread disruption of mails. However, if ACF does not extend the deadline for all applicants, it will not extend the deadline for any applicants.

C. Instructions for Preparing the Application

In order to assist applicants in completing the application, the Standard Forms 424 and 424A, required certifications, and a list of SPOCs have been included at the end of Part IV of this announcement. Please reproduce single-sided copies of these forms from the reprinted forms and type your information onto the copies.

Please prepare your application in accordance with the following instructions:

1. SF 424 Page 1, Application Cover Sheet

Please read the following instructions before completing the application cover sheet. An explanation of each item is included. Complete only the items specified.

Item 1. Type of Submission—Non-Construction.

Item 2. Date Submitted and Applicant Identifier—Date application is submitted to ACF and applicant's own internal control number, if applicable.

Item 3. Date Received By State—State use only (if applicable).

Item 4. Date Received by Federal Agency—Leave blank.

Item 5. Applicant Information.

Legal Name—Enter the legal name of applicant organization. For applications developed jointly, enter the name of the lead organization only. There must be a single applicant for each application.

Organizational Unit—Enter the name of the primary unit within the applicant organization which will actually carry out the project activity. If this is the same as the applicant organization, leave the organizational unit blank.

Address—Enter the complete address that the organization actually uses to receive mail, since this is the address to which all correspondence will be sent. Do not include both street address and P.O. box number unless both must be used in mailing.

Name and telephone number of the person to be contacted on matters involving this application (give area code)—Enter the full name and telephone number of a person who can respond to questions about the application. This person should be accessible at the address given.

Item 6. Employer Identification Number (EIN)—Enter the employer identification number of the applicant organization, as assigned by the Internal Revenue Service, including, if known, the Central Registry System suffix.

Item 7. Type of Applicant—Self-explanatory.

Item 8. Type of Application—New.

Item 9. Name of Federal Agency—DHHS/ACF.

Item 10. Catalog of Federal Domestic Assistance Number—93.647.

Item 11. Descriptive Title of Applicant's Project—Changing the Culture of Welfare.

Item 12. Areas Affected by Project—Leave Blank.

Item 13. Proposed Project—Enter the desired start date for the project and projected completion date. The project period must begin no later than September 30, 1995.

Item 14. Congressional District of Applicant/Project—Enter the number of the Congressional district where the applicant's principal office is located.

Items 15. Estimated Funding Levels—In completing 15a through 15f, the dollar amounts entered should reflect the total amount requested for the first 12-month budget period.

Item 15a. Enter the amount of Federal funds requested in accordance with the preceding paragraph. This amount should be no greater than the maximum amount available under this announcement for the first 12-month budget period.

Items 15b–e. Enter the amount(s) of funds from non-Federal sources that will be contributed to the proposed project. Items b–e are considered cost-sharing or matching funds.

Item 15f. Enter the estimated amount of income, if any, expected to be generated from the proposed project. Do not add or subtract this amount from the total project amount entered under item 15g. Describe the nature, source and anticipated use of this income in the Project Narrative Statement.

Item 15g. Enter the sum of items 15a–15e.

Item 16a. Is Application Subject to Review By State Executive Order 12372 Process?—Check Yes if your State participates in the E.O. 12372 process. Enter the date the application was made available to the State for review. Select the appropriate SPOC from the listing provided at the end of Part IV. The review of the application is at the discretion of the SPOC.

Item 16b. Is Application Subject to Review By State Executive Order 12372 Process?—Check No if the program has not been selected by State for review.

Item 17. Is the Applicant Delinquent on any Federal Debt?—Check the appropriate box. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include audit disallowances, loans and taxes.

Item 18. To the best of my knowledge and belief, all data in this application/preapplication are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.—To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for signature of this application by this individual as the official representative must be on file in the applicant's office, and may be requested from the applicant.

Item 18a–c. Typed Name of Authorized Representative, Title, Telephone Number—Enter the name, title and telephone number of the authorized representative of the applicant organization.

Item 18d. Signature of Authorized Representative—Signature of the authorized representative named in Item 18a. At least one copy of the application must have an original signature. Use colored ink (not black) so that the original signature is easily identified.

Item 18e. Date Signed—Enter the date the application was signed by the authorized representative.

2. SF 424A—Budget Information—Non-Construction Programs

This is a form used by many Federal agencies. For this application, Sections A, B, C, and E are to be completed. Sections D and F do not need to be completed.

Section A—Budget Summary. Line 1:
Column (a): Enter Changing the Culture of Welfare;
Column (b): Enter 93.647.
Columns (c) and (d): Leave blank.
Columns (e), (f) and (g): Enter the appropriate amounts needed to support the project for the first budget period.

Section B—Budget Categories. This budget should include the Federal as well as non-Federal funding for the proposed project for the first 12-month budget period. The budget should relate to item 15g, total funding, on the SF 424. Under column (5), enter the total requirements for funds (Federal and non-Federal) by object class category.

A separate budget justification should be included to explain fully and justify items, as indicated below. The types of information to be included in the justification are indicated under each category. The budget justification should immediately follow the second page of the SF 424A.

Personnel—Line 6a. Enter the total costs of salaries and wages of applicant/grantee staff. Do not include the costs of consultants, which should be included on line 6h, Other.

Justification: Identify the staff, if known, specify. Specify by title or name the percentage of time allocated to the project, the individual annual salaries, and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

Fringe Benefits—Line 6b. Enter the total costs of fringe benefits.

Justification: Provide a break-down of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, etc.

Travel—6c. Enter total costs of out-of-town travel (travel requiring per diem) for staff of the project. Do not enter costs for consultant's travel or local transportation, which should be included on Line 6h, Other.

Justification: Include the name(s) of traveler(s), total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

Equipment—Line 6d. Enter the total costs of all equipment to be acquired by the project. For grants governed by the administrative requirements of 45 CFR part 74, equipment means an article of nonexpendable tangible personal property having an acquisition cost of $5000 or more per unit and a useful life of more than one year. For grants governed by the administrative requirements of 45 CFR part 92, equipment is tangible, nonexpendable personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit.

Justification: Equipment to be purchased with Federal funds must be justified. The equipment must be required to conduct the project, and the applicant organization or its subgrantees must not have the equipment or a reasonable facsimile available to the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

Supplies—Line 6e. Enter the total costs of all tangible expendable personal property (supplies) other than those included on Line 6d.

Justification: Specify general categories of supplies and their costs.

Contractual—Line 6f. Enter the total costs of all contracts, including procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and contracts with secondary recipient organizations. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line.

Justification: Attach a list of contractors, indicating the names of the organizations, the purposes of the contracts, and the estimated dollar amounts of the awards as part of the budget justification. Whenever the applicant/grantee intends to delegate part or all of the program to another agency, the applicant/grantee must complete this section (Section B, Budget Categories) for each delegate agency by agency title, along with the supporting information. The total cost of all such agencies will be part of the amount shown on Line 6f. Provide backup documentation identifying the name of contractor, purpose of contract, and major cost elements.

Construction—Line 6g. Not applicable. New construction is not allowable.

Other—Line 6h. Enter the total of all other costs. Where applicable, such costs may include, but are not limited to: insurance; medical and dental costs; noncontractual fees and travel paid directly to individual consultants; local transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use; training costs, including tuition and stipends; training service costs, including wage payments to individuals and supportive service payments; and staff development costs. Note that costs identified as miscellaneous and honoraria are not allowable.

Justification: Specify the costs included.

Total Direct Charges—Line 6i. Enter the total of Lines 6a through 6h.

Indirect Charges—6j. Enter the total amount of indirect charges (costs). If no indirect costs are requested, enter none. Local and State governments should enter the amount of indirect costs determined in accordance with HHS requirements. When an indirect cost rate is requested, these costs are included in the indirect cost pool and should not be charged again as direct costs to the grant. In the case of training grants to other than State or local governments (as defined in title 45, Code of Federal Regulations, part 74), the Federal reimbursement of indirect costs will be limited to the lesser of the negotiated (or actual) indirect cost rate or 8 percent of the amount allowed for direct costs, exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

Justification: Enclose a copy of the indirect cost rate agreement, if applicable.

Total—Line 6k. Enter the total amounts of lines 6i and 6j.

Program Income—Line 7. Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount.

Justification: Describe the nature, source, and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources. This section summarizes the amounts of non-Federal resources that will be applied to the grant. On lines 8–11, list estimates for each projected budget period within the total project period (if an additional line is needed, use line 23 and label it appropriately). Enter total amounts on line 12.

In-kind contributions are defined in title 45 of the Code of Federal Regulations, Part 74.2., as the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

Justification: Describe third party in-kind contributions, if included.

Section D—Forecasted Cash Needs. Not applicable.

Section E—Budget Estimate of Federal Funds Needed For Balance of the Project. On lines 16–19, list estimates for Federal assistance required for future budget periods within the total project period. List estimated total amounts on line 20.

Section F—Other Budget Information. Not applicable.

3. Program Narrative Statement

The Program Narrative Statement should be clear, concise, and address the specific requirements mentioned under Part II. The narrative should also provide information concerning how the application meets the evaluation criteria using the following headings:

(a) *Knowledge of Changing the Culture of Welfare;*

(b) *Approach and Project Design;*

(c) *Public-Private Partnerships;*

(d) *Methodology;*

(e) *Staff Skills and Responsibilities;*

(f) *Budget Appropriateness.*

The specific information to be included under each of these headings is described in section B of Part III—Evaluation Criteria.

The narrative should be typed double-spaced. All pages of the narrative (including charts, references, footnotes, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with Organizational Experience. The length of the application, including the application forms and all attachments, should not exceed 125 pages.

4. Assurances/Certifications

Applicants are required to file an SF 424B, Assurances—Non-Construction Programs, and the Certification Regarding Lobbying. Both must be signed and returned with the application. In addition, applicants must certify their compliance with: (1) Drug-Free Workplace Requirements; and (2) Debarment and Other Responsibilities. These certifications are self-explanatory. Copies of these assurances and certifications are reprinted at the end of this announcement and should be reproduced, as necessary. A duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances and certifications. A signature on the SF 424 indicates compliance with Drug-Free Workplace and Debarment notices and Public Law 103–227, Part C—Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994.

D. Checklist for a Complete Application

The checklist below is for your use to ensure that your application package has been properly prepared.

—One original application, signed and dated, plus two copies.

—Complete application length should not exceed 125 pages.

—A complete application consists of the following items in this order:

- Application for Federal Assistance (SF 424);
- A completed SPOC certification with the date of SPOC contact entered in line 16, page 1 of the SF 424 if applicable;
- Budget Information—Non-construction programs (SF 424A);
- Budget Justification for SF 424A Section B—Budget Categories;
- Letter from the Internal Revenue Service to prove nonprofit status, if necessary;
- Copy of the applicant's approved indirect cost rate agreement, if appropriate;
- Program Narrative Statement (See Part III, Section C);
- Assurances—Non-construction programs (SF 424B); and
- Certification Regarding Lobbying.

E. Submitting the Application

Each application package must include an original and two copies of the complete application. Each copy should be stapled securely. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered. In order to facilitate handling, please do not use covers, binders, or tabs.

Applicant should include a self-addressed, stamped acknowledgment card. All applicants will be notified automatically about the receipt of their application.

Catalog of Federal Domestic Assistance 93.647.

Dated: May 22, 1995.

Lavinia Limon,

Director, Office of Family Assistance.

BILLING CODE 4184–01–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name: | Organizational Unit:

Address (give city, county, state, and zip code): | Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify) _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award; B. Decrease Award; C. Increase Duration; D. Decrease Duration; Other (specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ • ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date | Ending Date

14. CONGRESSIONAL DISTRICTS OF: a. Applicant | b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4184–01–C

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry:

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—"New" means a new assistance award.

—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184-01-P

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

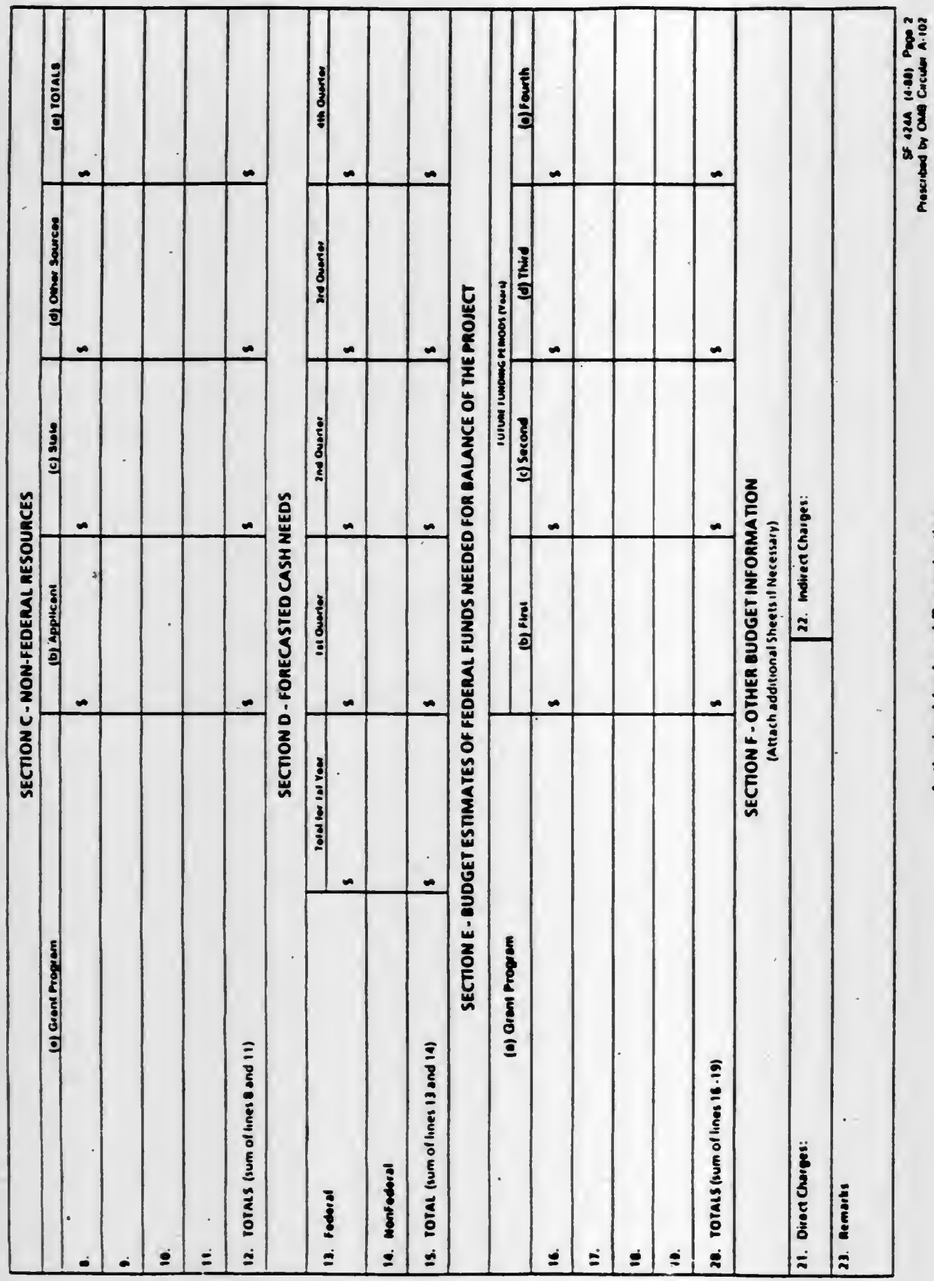
Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personal	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$				$

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Standard Form 424A (4-88)
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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Nonfederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years) (b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 - 19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION
(Attach additional Sheets if Necessary)

21. Direct Charges:

22. Indirect Charges:

23. Remarks

SF 424A (4-88) Page 2
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BILLING CODE 4184-01-C

Instructions for the SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary Lines 1–4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amounts(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Line 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in

accordance with generally accepted accounting standards or agency directive.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352 which prohibits discrimination on the basis of race, color or national origin: (b) Title IX of the Education Amendments of 1972, as amended (2) U.S.C. 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable with the provisions of the Davis-Bacon Act (40 U.S.C. 276a to 276a–7), the Copeland Act (40 U.S.C. 276c and 18 U.S.C. 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition if $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C 1451 *et seq.*); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. 7401 *et seq.*); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended. (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 *et seq.*) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C 2131 *et seq.*) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 *et seq.*). which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders regulations and policies governing this program.

Signature of Authorized Certifying Official

Applicant Organization

Title

Date Submitted

Executive Order 12373—State Single Points of Contact

Arizona

Mrs. Janice Dunn, ATTN: Arizona State Clearinghouse, 3800 N. Central Avenue, 14th Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315

Arkansas

Tracie L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 682–1074

California

Glenn Stober, Grants, Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480

Delaware

Ms. Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326

District of Columbia

Rodney T. Hallman, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street, N.W., Suite 500, Washington, D.C. 20005, Telephone (202) 727–6551

Florida

Florida State Clearinghouse, Intergovernmental Affairs Policy Unit, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399—0001, Telephone (904) 488–8441

Georgia

Mr. Charles H. Badger, Administrator, Georgia State Clearinghouse, 254 Washington Street, S.W., Atlanta, Georgia 30334, Telephone (404) 656–3855

Illinois

Steve Klokkenga, State Single Point of Contact, Office of the Governor, 107 Stratton Building, Springfield, Illinois 62706, Telephone (217) 782–1671

Indiana

Jean S. Blackwell, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610

Iowa

Mr. Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725

Kentucky

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601, Telephone (502) 564–2382

Maine

Ms. Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261

Maryland

Ms. Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490

Massachusetts

Karen Arone, State Clearinghouse, Executive Office of Communities and Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001

Michigan

Richard S. Pastula, Director, Michigan Department of Commerce, Lansing, Michigan 48909, Telephone (517) 373–7356

Mississippi

Ms. Cathy Mallette, Clearinghouse Officer, Office of Federal Grant Management and Reporting, 301 West Pearl Street, Jackson, Mississippi 39203, Telephone (601) 960–2174

Missouri

Ms. Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone (702) 687–4065, Attention: Ron Sparks, Clearinghouse Coordinator

New Hampshire

Mr. Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review, Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155

New Jersey

Gregory W. Adkins, Acting Director, Division of Community Resources, N.J. Department of Community Affairs, Trenton, New Jersey 08625–0803, Telephone (609) 292–6613

Please direct correspondence and questions to: Andrew J. Jaskolka, State Review Process, Division of Community Resources, CN 814, Room 609, Trenton, New Jersey 08625–0803, Telephone (609) 292–9025.

New Mexico

George Elliott, Deputy Director, State Budget Division, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3640, FAX (505) 827–3006

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605

North Carolina

Mrs. Chrys Baggett, Director, Office of the Secretary of Admin., N.C. State Clearinghouse, 116 W. Jones Street, Raleigh, North Carolina 27603–8003, Telephone (919) 733–7232

North Dakota

N.D. Single Point of Contact, Office of Intergovernmental Assistance, Office of Management and Budget, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone (701) 224–2094

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411, Telephone (614) 466–0698

Rhode Island

Mr. Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277–2656

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning.

South Carolina

Omeagia Burgess, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734–0494

Tennessee

Mr. Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741–1676

Texas

Mr. Thomas Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463–1778

Utah

Utah State Clearinghouse, Office of Planning and Budget, ATTN: Carolyn Wright, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538–1535

Vermont

Mr. Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828–3326

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, West Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348–4010

Wisconsin

Mr. William C. Carey, Federal/State Relations, Wisconsin Department of Administration, 101 South Webster Street, P.O. Box 7864, Madison, Wisconsin 53707, Telephone (608) 266–0267

Wyoming

Sheryl Jeffries, State Single Point of Contact, Herschler Building, 4th Floor, East Wing, Cheyenne, Wyoming 82002, Telephone (307) 777–7574

Guam

Mr. Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472–2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

Norma Burgos/Jose H. Caro, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Telephone (809) 727–4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802.

Please direct correspondence to: Linda Clarke, Telephone (809) 774–0750.

BILLING CODE 4184–01–P

U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 **Federal Register**, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the work,place(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"**Controlled substance**" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"**Conviction**" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"**Criminal drug statute**" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"**Employee**" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

Check __ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

BILLING CODE 4184-01-C

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction." provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions." without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Date

BILLING CODE 4184-01-P

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract ☐ b. grant ☐ c. cooperative agreement ☐ d. loan ☐ e. loan guarantee ☐ f. loan insurance	**2. Status of Federal Action:** ☐ a. bid/offer/application ☐ b. initial award ☐ c. post-award	**3. Report Type:** ☐ a. initial filing ☐ b. material change For Material Change Only: year _____ quarter ____ date of last report _____

4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier ____, *if known*: Congressional District, *if known*:	**5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:** Congressional District, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount,** *if known*: $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI)*:	**b. Individuals Performing Services** *(including address if different from No. 10a) (last name, first name, MI)*:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply)*: $ _____ ☐ actual ☐ planned	**13. Type of Payment** *(check all that apply)*: ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply)*: ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	**Signature:** _____ **Print Name:** _____ **Title:** _____ **Telephone No.:** _____ **Date:** _____
Federal Use Only:	Authorized for Local Reproduction Standard Form - LLL

BILLING CODE 4184-01-C

Certification Regarding Environmental Tobacco Smoke

Public Law 103–227, Part C—Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act. The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

[FR Doc. 95–15585 Filed 6–23–95; 8:45 am]

BILLING CODE 4184–01–P

Food and Drug Administration

[Docket No. 95N–0182]

KV Pharmaceutical Co.; Proposal To Withdraw Approval of Two Abbreviated New Drug Applications and One Abbreviated Antibiotic Drug Application; Opportunity for a Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is proposing to withdraw approval of two abbreviated new drug applications (ANDA's) and one abbreviated antibiotic application (AADA) held by KV Pharmaceutical Co., 2503 South Hanley Rd., St. Louis, MO 63144 (KV). The grounds for the proposed withdrawals are (1) that the applications contain untrue statements of material fact; and (2) that based upon new information evaluated together with the evidence available when the applications were approved, there is a lack of substantial evidence that the drugs will have the effect they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling.

DATES: A hearing request is due on July 26, 1995; data and information in support of the hearing request are due August 25, 1995.

ADDRESSES: A request for a hearing, supporting data, and other comments should be identified with Docket No. 95N–0182 and submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Harry T. Schiller, Center for Drug Evaluation and Research (HFD–366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

On February 4, 1992, FDA attempted to inspect KV to determine whether or not the firm was following current good manufacturing practice (CGMP) regulations. The firm, however, refused to provide necessary records as required under the Federal Food, Drug, and Cosmetic Act (the act). (See sections 505(k) and 704 of the act (21 U.S.C. 355(k) and 21 U.S.C. 374).) The agency, therefore, obtained inspection warrants and inspected KV between March 11 and April 23, 1992. Despite the inspection warrants, KV failed to provide all of the documents requested. FDA conducted another inspection of KV between July 31 and November 3, 1992.

During the two 1992 inspections, the agency compared documents and data found at the firm with records previously submitted to FDA in support of KV's AADA and ANDA applications. The agency discovered that KV had submitted false and misleading information in the following applications:

1. AADA 62–047, Erythromycin Ethylsuccinate Oral Suspension, 200 and 400 milligrams (mg);

2. ANDA 71–929, Disopyramide Phosphate Extended Release Capsules, 100 mg; and

3. ANDA 86–538, Nitroglycerin Extended Release Capsules, 2.5 mg.

In support of the AADA and the two ANDA's listed above, KV submitted analytical data necessary for approval and continued approval of the applications, including stability data. During its inspections of KV, the agency discovered documents that showed that KV had made untrue statements in some of the stability data it had submitted in supplements and amendments to the applications. The documents also showed that KV had made untrue statements concerning stability data in annual reports submitted to the applications.

In letters dated June 1, 1993, and November 12, 1993, FDA informed KV that the agency intended to downgrade the therapeutic equivalency rating of the products listed above in the agency's publication "Approved Drug Products with Therapeutic Equivalence Evaluations" (the "Orange Book") and to begin the administrative procedures necessary to withdraw approval of the products. Accordingly, as explained below, the Director of the Center for Drug Evaluation and Research (the Director) is proposing to withdraw approval of the products' applications.

II. Evidence That the Applications Contain Untrue Statements of Material Fact

The first ground for withdrawing the AADA and two ANDA's listed above is that the applications contain untrue statements of material fact (21 U.S.C. 355(e)(5)). This section presents FDA's general comments on untrue statements and materiality, and then sets forth the specific false and misleading information in the three abbreviated applications.

A. Untrue Statements

The untrue statements submitted by KV in its drug applications include both stability test results that are inconsistent with stability test results retained by the firm and selective or incomplete reporting of stability date.

1. Conflicts Between Information Submitted to the Agency and Information Retained by the Firm

The first type of untrue statement submitted in the drug applications listed above consists of data that differ from data and other primary source information discovered at the firm. The agency concludes in such cases that, in the absence of a satisfactory explanation, the discrepant information in the application is untrue.

Information in an AADA or ANDA, including the facts and data covered by this notice, is generally derivative information. Such information is often a restatement, summary, or copy of original data or other underlying information such as that found in laboratory notebooks not specifically included in the application. The agency believes that original or underlying data generally have a higher degree of reliability because they are the primary sources of the information that are usually created contemporaneously with the event the information describes. Restated, summarized, or copied information submitted in the application is transcribed, calculated, or otherwise derived from the original or underlying sources and is prepared after the events actually occurred and, therefore, is generally less reliable in the event of a discrepancy or inconsistency. Errors in the original or underlying data, even if discovered during the preparation of an application, should be corrected with a proper explanation.

2. Selective Reporting

The second type of untrue statement in the KV applications listed above consists of selective or incomplete reports of stability data. Selective reporting refers to reports that contain certain passing results only. Selective reporting does not consistently contain failing results and does not consistently contain a scientific justification for rejecting the failing data. Selective reporting thus misrepresents results, introduces bias into the studies' analysis, and may result in erroneous conclusions about the stability of the product.

B. Material Fact

KV's ANDA's and AADA, filed under sections 505(j), 505(b), and 507 of the act and implementing regulations, did not require for their approval the submission of animal toxicity studies, human safety studies, and adequate and well-controlled clinical effectiveness studies. Rather, the approval of an abbreviated application is based on a showing that the generic drug is equivalent to the innovator drug on certain key chemical and pharmacologic parameters, and, thus, will be therapeutically equivalent to the innovator drug throughout the shelf life of the generic product.

A finding that the generic and innovator drugs are chemically equivalent with respect to the active ingredient and bioequivalent with respect to the extent and rate of absorption of the active ingredient includes adequate proof that the generic product will remain stable throughout its labeled shelf life. Stability is demonstrated by showing that the drug product will remain within specifications established to ensure its identity, strength, quality, and purity throughout its specified shelf life. The stability data help, therefore, to provide assurance that a generic product will retain its physical, chemical, and bioequivalent characteristics throughout its labeled shelf life.

To obtain FDA approval, an application for a generic drug must demonstrate with reliable data and information (including stability data) that the generic drug is equivalent to the innovator drug so that the toxicity, safety, and effectiveness studies supporting the approval of the innovator drug also support approval of the generic drug. Moreover, FDA must have a reasonable basis on which to conclude that data based on test batches of a generic product are representative of the proposed commercial batches of that generic product.

To maintain continued approval of a drug, the sponsor must, among other things, comply with various post-marketing reporting requirements. Under 21 CFR 314.81, a sponsor must file annual reports, which then become a part of the application; the failure to file such annual reports may be grounds for withdrawing approval of the application.

A fact is material if it has the natural tendency to influence or be capable of affecting or influencing a government function. (See *U.S.* v. *Brittain*, 931 F.2d 1413, 1415 (10th Cir. 1991); *Gonzales* v. *United States*, 286 F.2d 118, 122 (10th Cir. 1960), *cert. denied*, 365 U.S. 878 (1961); *Weinstock* v. *United States*, 231 F.2d 699, 701–702 (D.C. Cir. 1956)). The statements submitted by KV about stability data are required information for the approval or continued approval of an ANDA or AADA (see 21 U.S.C. 355(j)(2)(A)(vi), 355(b)(1)(C), 355(b)(1)(D); 21 CFR 314.50(d)(1), 314.94(a)(9), 314.94(c), and 314.81).

Statements pertaining to stability are among the many statements in an abbreviated application on which FDA relies when deciding whether or not to approve an application for a generic product (see 21 U.S.C. 355(j)(3)(A) and 355(j)(3)(F); 21 CFR 314.94 and 314.125). Similarly, when allowing a proposed tentative expiration dating period, FDA relies on the manufacturer's written commitment in the application to conduct or continue shelf life stability studies on at least the first three production batches to establish the actual expiration dating period (see 21 CFR 314.94(a)(9), 314.94(c), and 314.50(d)(1)). Moreover, FDA relies on data submitted in annual reports to determine whether an application should continue to be approved (see 21 U.S.C. 355(e), 355(k); 21 CFR 314.81, 433.1).

Because the statements in the applications that are the subject of this notice were capable of affecting or influencing FDA's review of the applications, they are material.

C. Specific Untrue Statements of Material Fact Contained in Each Application

The specific untrue statements of material fact found in each application are described below. KV received written notice of many of these untrue statements in inspectional observations on Forms FDA–483 after FDA's inspections of March 11 through April 23, 1992, and July 31 through November 3, 1992.

1. AADA 62–047, Erythromycin Ethylsuccinate Oral Suspension, 200 and 400 mg

KV was not the original holder of this AADA. KV purchased the original holder and its approved applications, including AADA 62–047, the AADA for erythromycin ethylsuccinate oral suspension (EES). EES is a drug recognized in the United States Pharmacopeia (U.S.P.), and, therefore, the drug must meet the specifications regarding strength, quality, and purity prescribed in the U.S.P. unless the deviations are stated on the label. KV's EES product is labeled to indicate conformance with such U.S.P. specifications, not deviations.

On August 2, 1989, KV submitted to FDA two supplements to AADA 62–047, seeking approval for manufacturing changes (supplement S–006 for its 200 mg EES and supplement S–007 for its 400 mg EES). After evaluating KV's submissions, FDA issued a deficiency letter on September 14, 1989, regarding a number of issues, including KV's failure to provide adequate stability data for EES manufactured by KV's proposed new process. KV amended these supplements on August 14, 1990, and again on December 19, 1990. FDA approved the supplements in a letter dated April 12, 1991.

Subsequently, during the inspections of March 11 through April 23, 1992, and July 31 through November 3, 1992, FDA compared the data submitted in these supplements with records found at the firm. The comparisons demonstrated that the data submitted in response to FDA's 1989 deficiency letter omitted failing stability results and falsely reported failing results as passing. These data were false and misleading and material to the approval of the AADA supplements.

In the August 14, 1990, amendment to its then pending AADA supplement, KV provided results from freeze/thaw cycle stability studies for lot L2072 (200 mg) and lot L2071 (400 mg), which were performed by an independent contractor. Records discovered at KV, however, showed that KV did not report failing freeze/thaw results done by KV's lab. The selectively reported data submitted to FDA are misleading because they do not reflect all of the stability testing results of the lots, and,

thus, constitute untrue statements of material fact.

In the August 14, 1990, amendment to its then pending supplement, KV also selectively reported only a passing result for a 12-month stability test for lot L2071 (400 mg) for methylparaben, an inactive ingredient, although KV's records showed an initial unreported result in which the lot failed to meet the firm's specifications approved in the AADA for methylparaben.

In the August 14, 1990, amendment to its then pending supplement, KV falsely reported that lot L2072 (200 mg) passed a 6-month stability test for methylparaben. However, KV's records for the same time and storage conditions showed that L2072 failed to meet the firm's specifications as approved in the AADA.

FDA's inspection also established that KV made untrue statements in certain annual reports by submitting false stability study results and by omitting failing stability results for EES 200 mg and 400 mg. In KV's April 30, 1991, annual report for its 200 mg EES product, the firm falsely stated that lot L2510 passed an erythromycin assay at 3 months. However, records from the outside contract laboratory that conducted the 3-month assay show that the erythromycin assay results for lot L2510 were below the U.S.P. specifications.

In KV's September 26, 1991, annual report for EES 400 mg, the firm falsely reported that the assay of the active ingredient in lot L2071 passed stability testing at 18 months. Records at the firm, however, showed that lot L2071 failed testing at 18 months because the results were below U.S.P. specifications.

Records from KV show that EES lot L1791 (200 mg) failed assays for erythromycin and for an inactive ingredient at 18 months. KV, however, did not report these failures in its April 30, 1991, annual report as required under 21 CFR 314.81. On April 28, 1992, KV recalled both strengths of EES because of recurrent stability problems. Only after this recall, in the firm's June 2, 1992, annual report, did KV report the stability test failures of EES lot L1791.

The stability failures in 1990 and 1991 were capable of affecting FDA's continued approval of the AADA because they provide evidence directly relevant to the product's safety and effectiveness. KV's omission in the April 30, 1991, annual report of the available information about the 1990 and 1991 failures misrepresented the product's quality at that time and, therefore, the applications contain untrue statements of material fact.

2. ANDA 71–929, Disopyramide Phosphate Extended Release Capsules, 100 mg

FDA's inspections of KV revealed that the firm made untrue statements about the stability of its Disopyramide Phosphate Extended Release Capsules (100 mg) in its September 10, 1992, annual report, as explained below. Disopyramide Phosphate Extended Release Capsules must meet the specifications regarding strength, quality, and purity prescribed in the approved ANDA, as amended. The stability data submitted in the annual reports and discussed below are false and misleading and are material to the continued approval of the ANDA application.

First, KV reported that in December 1991, lot V1040 passed ANDA specifications for 18-month drug release testing at 1, 4, and 8-hour intervals. Records at the firm, however, showed that the six capsules tested by KV on December 11, 1991, failed the 4-hour test both individually and collectively. These failing data were lined through and the notation "Inconsistent with history and retest" was added. No other notation or explanation of KV's December 11, 1991, test results was recorded. KV did not report this failure in the September 10, 1992, annual record or record an explanation for omitting this failure from the annual report. Five days later, on December 16, 1991, KV tested another six capsules, which passed the 4-hour specifications. KV selectively reported only the average of the passing test results in the annual report, and the omission of failing data in the annual report was misleading.

KV also reported in the September 10, 1992, annual report that in April 1991, the 3-month drug release test for lot V1377 passed ANDA specifications at the 4-hour interval. Records at the firm, however, showed that on April 18, 1991, the aggregate average value of the six capsules tested was below drug release specifications for the 4-hour interval. Five of the six individual capsules were also below specifications at 4 hours. These failing data were not reported in the September 10, 1992, annual report.

Four months later, on August 18 and 19, 1991, KV reassayed the lot three times and selectively reported only the results from the first reassay. Furthermore, in the September 10, 1992, annual report, KV falsely reported that the drug release test result had been obtained at 3 months, but KV's records showed that it had been obtained at 7 months.

KV also reported in the September 10, 1992, annual report that lot V1497 passed both 4 and 8 hour, 12-month drug release tests in May 1992. KV's records, however, showed that a set of six capsules failed the 8 hour, 12-month ANDA drug release test on July 21, 1992. On August 3, 1992, a second set of six capsules passed both 4 and 8 hour drug release tests. However, these results were crossed out on the firm's stability data report form. A handwritten note next to these results reads "Void. See recal using correct shell factor." On August 8, 1992, KV recalculated both the 4-hour and 8-hour drug release test results. The aggregate averages for both 4 hour and 8 hour tests passed specifications. However, two of the six capsules failed at 4 hours and two of the six capsules failed at 8 hours. The notation "Recal" is written beside this third set of data. KV selectively reported only the passing 4 and 8 hour aggregate average results in the September 1992, annual report.

3. ANDA 86–538, Nitroglycerin Extended Release Capsules, 2.5 mg

FDA's inspections of KV revealed that the firm made untrue statements in certain annual reports about the stability of its Nitroglycerin Extended Release Capsules. These untrue statements consisted of false reporting and selective reporting of stability data, including content uniformity data, which are material to the continued conditional approval of the application.

In its April 29, 1988, annual report, KV reported that on July 28, 1987, the content uniformity test data for lot V8715 were not available at 24 months. KV's records, however, included content uniformity test results for this lot, which showed that lot V8715 failed to meet U.S.P. specifications at 24 months. Although Nitroglycerin Extended Release Capsules is not listed in the U.S.P., the standard test for content uniformity of any product is described in the U.S.P., and KV's submissions stated that it met the U.S.P. test.

In its June 6, 1989, annual report, KV reported that the 12-month assay for nitroglycerin in lot V8648 tested within the ANDA specifications. KV's records, however, showed that an assay result was outside the ANDA assay limits. The passing result KV reported was an average of the failing result and two additional assays it performed.

In the June 6, 1989, annual report, KV reported that a nitroglycerin assay purportedly conducted at 9 months after lot V9527 was within ANDA specifications. KV's records, however, showed that the KV lab test result, which was dated March 3, 1988, failed to meet ANDA specifications. KV records also showed that the stability test result KV reported in its annual report was the average of two retests performed by KV on April 19, 1988.

In the June 6, 1989, annual report, KV falsely reported that lot V9133 conformed to U.S.P. specifications in a content uniformity test conducted 6 months after the lot was manufactured. KV's records, however, showed that the first 10 capsules of the lot failed U.S.P. relative standard deviation (RSD) specifications and contained no evidence that KV tested an additional 20 capsules. Without further testing of an additional 20 capsules, the batch failed to meet U.S.P. specifications. Therefore, lot V9133 did not conform to U.S.P. specifications.

In its May 8, 1990, annual report KV reported that lot V9432 passed a 24-month stability test in April 1989. Records at the firm, however, show that the lot failed its stability test on May 15, 1989. During retesting on June 5, 1989, the lot passed stability testing and met assay specifications twice. KV averaged the passing tests and then improperly averaged that resultant average with the failing result. This final average was reported as a passing result in the May 8, 1990, annual report.

KV reported in its May 8, 1990, annual report that lot V9527 met ANDA assay specifications, purportedly in an 18-month stability test of nitroglycerin conducted in February 1989. Records at the firm, however, show that the lot failed the first stability test on May 15, 1989. The lot passed the second and third stability tests, done on June 5, 1989. KV improperly averaged the three test results and reported in the annual report the average as a passing result. Furthermore, the retests were conducted 21 and 22 months after the batch was manufactured, but KV reported in the annual report that the tests were conducted at 18 months.

KV reported in an August 6, 1992, letter to the agency that lot V9991 passed the 24-month content uniformity test and conformed to U.S.P. specifications. Records at the firm, however, showed that the group of capsules tested failed because its RSD was above U.S.P. RSD specifications. In addition, the results of two individual capsules were below U.S.P. specifications. According to U.S.P. specifications, such failing results require testing an additional 20 capsules, which KV did not do. Therefore, this lot did not conform to U.S.P. specifications.

KV reported in an August 1, 1990, supplement that lot V9527 passed a 12-month stability test for nitroglycerin. Records at the firm, however, show that the lot failed a stability test on September 22, 1988, and thus did not meet the ANDA assay specifications. KV then conducted two retests on October 4, 1988. KV selectively reported the result of only one of the passing retests, and also falsely reported the date of the test as August 15, 1988, which was 2 months before the actual test date.

D. Conclusion

On the basis of the foregoing findings, the Director finds that KV submitted untrue statements of material fact in the AADA and two ANDA's listed above, and, therefore, proposes to withdraw the approval of these applications under section 505(e)(5) of the act.

III. Evidence That the Drugs Lack Substantial Evidence of Effectiveness

Sction 505(e)(3) of the act provides that approval of an AADA or an ANDA shall be withdrawn if, on the basis of new information, evaluated together with the evidence available when the application was approved, there is a lack of substantial evidence that the drug will have the effect it purports or is represented to have. Because KV submitted untrue statements regarding the stability of its product in annual reports, supplements, and amendments to its applications, the agency cannot be assured of the products' stability. Moreover, the agency can no longer be assured as to the accuracy and validity of any of the data used to support approval and continued approval of these applications. Thus, the discovery of these untrue statements constitutes new information demonstrating that there is a lack of substantial evidence that the drugs will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling.

The reliability of stability data is of particular concern when, as here, the results of multiple stability tests, both reported and unreported, indicate a significant history of stability problems. Without reliable stability data, FDA cannot be assured that a drug will maintain the efficacy upon the basis of which the drug was approved. Similarly, in the case of stability problems with generic drugs, FDA cannot be assured that the drug will continue to be bioequivalent to the innovator drug over a given period of time. In either case, an unstable drug product may be more or less potent than the efficacy parameters that the agency approved.

Because there are no reliable data or information to demonstrate the stability and bioequivalence of these products to the listed drugs, the three products listed above lack substantial evidence of effectiveness.

IV. Proposed Action and Notice of Opportunity For a Hearing

The Director has evaluated the information discussed above concerning the filing of untrue statements of material fact by KV and, on the grounds stated, is proposing to withdraw approval of the following AADA and ANDA's:

1. AADA 62–047, Erythromycin Ethylsuccinate Oral Suspension, 200 and 400 mg;

2. ANDA 71–929, Disopyramide Phosphate Extended Release Capsules, 100 mg; and

3. ANDA 86–538, Nitroglycerin Extended Release Capsules, 2.5 mg.

Notice is hereby given to the holder of the AADA and ANDA's listed above and to all other interested persons that, based upon the information discussed above concerning the filing of untrue statements by KV and, on the grounds stated, the Director proposes to issue an order under section 505(e) of the act withdrawing approvals, including conditional approvals, of the foregoing AADA and ANDA's, and all amendments and supplements thereto. The Director finds that: (1) The applications contain untrue statements of material fact; and (2) on the basis of new information before her with respect to the drugs, evaluated together with the evidence available to her when the applications were approved, there is a lack of substantial evidence that the drugs will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling.

In accordance with section 505(e) of the act and 21 CFR part 314, the applicant is hereby given an opportunity for a hearing to show why approval of the AADA and ANDA's should not be withdrawn.

An applicant who decides to seek a hearing shall file: (1) On or before July 26, 1995, a written notice of appearance and request for a hearing, and (2) on or before August 25, 1995, the data, information, and analyses relied on to demonstrate that there is a genuine issue of material fact to justify a hearing. Any other interested person may also submit comments on this notice. The procedures and requirements governing this notice of opportunity for a hearing, a notice of appearance and request for a hearing, submission of information

and analyses to justify a hearing, other comments, and a grant or denial of a hearing, are contained in 21 CFR 314.200 (except that the limitations imposed by 21 CFR 314.200(d)(1) and (d)(2) do not apply) and in 21 CFR part 12.

The failure of the applicant to file a timely, written notice of appearance and request for a hearing, as required by 21 CFR 314.200, constitutes an election by that person not to use the opportunity for a hearing concerning the action proposed, and a waiver of any contentions concerning the legal status of that person's drug products. Any new drug product marketed without an approved new drug application is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. In order to raise a genuine and substantial issue of fact justifying a hearing on the issue of whether the application contains untrue statements, the applicant must specifically identify new evidence that supports its position. Mere allegations and denials, arguments by counsel, or the unsupported articulation of possible alternate inferences will not suffice to obtain a hearing. See 21 CFR 12.24(b)(2); see also *Cooper Laboratories, Inc.* v. *Commissioner, Federal Food and Drug Administration*, 501 F.2d 772, 785 (D.C. Cir. 1974); *Pineapple Growers Ass'n* v. *Food and Drug Administration*, 673 F.2d 1083–1085 (9th Cir. 1982); *Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 620–621 (1973).

In order to obtain a hearing, the new evidence must do more than reaffirm the applicant's belief that the information in the application is true. As explained above, the Director's conclusion that the applications contain an untrue statement of material facts is based on: (1) Selective reporting of stability data without justification, (2) omission of failing stability test results, and (3) actual conflicts between stability data reported to FDA and stability data retained by the firm.

In order to raise an issue of fact about whether the application contains truthful information, the applicant's evidence should be directed toward the basis of the Director's conclusion that the statements in the application are untrue. The applicant's failure to present evidence identifying a genuine and substantial issue of fact with respect to the Director's conclusion that the applications listed in this notice contain untrue statements of material fact, leaves the basis for the conclusion intact, and will result in the denial of a hearing on those issues.

In addition, the submission of truthful information to replace untrue statements will not result in a finding that the previously identified untrue statements are no longer material. If corrective information could nullify the materiality of untrue statements, then applicants could simply correct all untrue statements as soon as they were discovered.

Should a hearing be held on these issues, the participants requesting the hearing will bear the burden of proof with respect to whether the applications contain untrue statements of material fact and, ultimately, whether the drugs that are the subject of the applications listed in this notice have been shown to be safe and effective (21 CFR 12.87(d)).

If it conclusively appears from the face of the data, information, and factual analyses in the request for a hearing that there is no genuine and substantial issue of fact that precludes the withdrawal of approval of the applications, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request the hearing, making findings and conclusions, and denying a hearing.

Section 505(j)(6)(C) of the act requires that FDA remove from its approved product list contained in FDA's publication the Orange Book any drug that was withdrawn for grounds described in the first sentence of section 505(e) of the act. If the agency determines that withdrawal of the drugs subject to this notice is appropriate, FDA will announce the removal of the relevant drugs from the list in the **Federal Register** notice announcing the withdrawal of approval of the drugs.

All submissions pursuant to this notice of opportunity for hearing are to be filed in four copies. Except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, the submissions may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 505 (21 U.S.C. 355)) and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82).

Dated: June 13, 1995.

Murry A. Lumpkin,

Deputy Director, Center for Drug Evaluation and Research.

[FR Doc. 95–15539 Filed 6–23–95; 8:45 am]

BILLING CODE 4160–01–P

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of a Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Heart, Lung, and Blood Special Emphasis Panel (SEP) meeting:

Name of SEP: Lung Specific Drug Delivery Systems for Tuberculosis Treatment.
Date: July 18, 1995.
Time: 8:00 a.m.
Place: Hyatt Regency, Bethesda, Maryland.
Contact Person: Carl A. Ohata, Ph.D., 6701 Rockledge Drive, Room 7198, Bethesda, Maryland 20892–7924, (301) 435–0297.
Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: June 19, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–15561 Filed 6–23–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Dental Research; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Dental Research Special Emphasis Panel (SEP) meetings:

Name of SEP: National Institute of Dental Research Special Emphasis Panel-Delivery System for Periodontal Tissue Growth Factors (Telephone Review).
Dates: July 6, 1995.
Time: 12:00 noon.
Place: Natcher Building, Rm. 4AN–44F, National Institutes of Health, Bethesda, MD 20892.
Contact Person: Dr. George Hausch, Chief, Review Section, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.
Purpose/Agenda: To evaluate and review grant applications and/or contact proposals.
Name of SEP: National Institute of Dental Research Special Emphasis Panel-PT Intervention-An Effective Change Agent in TMD (Telephone Conference).
Dates: August 17, 1995.
Time: 12:00 noon.
Place: Natcher Building, Rm. 4AN–44F, National Institutes of Health, Bethesda, MD 20893.
Contact Person: Dr. George Hausch, Chief, Review Section, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.
Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

The meetings will be closed in accordance with the provision set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the extramural research review cycle.

(Catalog of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research)

Dated: June 20, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–15562 Filed 6–23–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: Environmental Health Sciences Review Committee.
Date: July 31–August 1, 1995.
Time: 8:30 a.m. to Adjournment.
Place: National Institute of Environmental Health Sciences, Building 101 Conference Rooms A,B, & C, South Campus, Research Triangle Park, North Carolina.
Contact Person: Dr. Ethel Jackson, Scientific Review Administrator, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–7826.
Purpose: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Research and Manpower Development, National Institutes of Health.)

Date: June 19, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–15563 Filed 6–23–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings:

Purpose: To review grant applications.
Committee Name: National Institute of General Medical Sciences, Special Emphasis Panel—Systems and Integrative Biology.
Date: July 20.
Time: 2 p.m.–8 p.m.
Place: Juliana Hotel, 590 Bush Street, San Francisco, CA 94108.
Contact Person: Dr. Bruce Wetzel, Scientific Review Administrator, NIGMS, 45 Center Drive, Room 1AS–19K, Bethesda, MD 20892–6200.

Committee Name: National Institute of General Medical Sciences, Special Emphasis Panel—Trauma and Burn.
Date: July 24.
Time: 2 p.m.–8 p.m.
Place: Holiday Inn, University Center, 100 Lytton Avenue, Pittsburgh, PA 15213.
Contact Person: Dr. Bruce Wetzel, Scientific Review Administrator, NIGMS, 45 Center Drive, Room 1AS-19K, Bethesda, MD 20892–6200.

Committee Name: National Institute of General Medical Sciences, Special Emphasis Panel—Pharmacology.
Date: July 28.
Time: 2 p.m.–8 p.m.
Place: Ramada Inn, 709 Spence Lane, Nashville, TN 37217.
Contact Person: Dr. Bruce Wetzel, Scientific Review Administrator, NIGMS, 45 Center Drive, Room 1AS-19K, Bethesda, MD 20892–6200.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS].

Dated: June 19, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–15564 Filed 6–23–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: Communication Disorders Review Committee.
Date: July 13, 1995.
Time: 8 a.m.–5 p.m.
Place: Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD.
Contact Person: Mary V. Nekola, Ph.D, Scientific Review Administrator, NIDCD/DEA/SRB, EPS Room 400C, 6120 Executive Boulevard, MSC 7180, Bethesda, MD 20892–7180, 301/496–8683.
Purpose/Agenda: To review and evaluate small grant applications.

The meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The application and/or proposal and the discussion could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review cycle.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: June 20, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–15565 Filed 6–23–95; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Notice of Special Meeting of the Biomedical Library Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of a special meeting of the Biomedical Library Review Committee on August 17, 1995, convening at 8:30 a.m. in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., and sec. 10(d) of Pub. L. 92–463, the meeting on August 17 will be closed to the public for the review, discussion, and evaluation of individual

planning grant applications for Health Sciences Librarians' Education and Training from 8:30 a.m. to adjournment. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Roger W. Dahlen, Scientific Review Administrator, and Chief, Biomedical Information Support Branch, Extramural Programs, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301–496–4221, will provide a roster of the committee members and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.879—Medical Library Assistance, National Institutes of Health.)

Dated: June 20, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95– 15566 Filed 6–23–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

National Institutes of Health

National Library of Medicine; Notice of Special Meeting of the Biomedical Library Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of a special meeting of the Biomedical Library Review Committee on July 19, 1995, convening at 8:30 a.m. in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., and sec. 10(d) of Pub. L. 92–463, the meeting on July 19 will be closed to the public for the review, discussion, and evaluation of individual grant applications for Internet Connections from 8:30 a.m. to adjournment. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Roger W. Dahlen, Scientific Review Administrator, and Chief, Biomedical Information Support Branch, Extramural Programs, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301–496–4221, will provide a roster of the committee members and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.879—Medical Library Assistance, National Institutes of Health.)

Dated: June 19, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–15567 Filed 6–23–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Clinical Sciences.
Date: July 14, 1995.
Time: 1:00 p.m.
Place: NIH, Rockledge II, Room 4128, Telephone Conference.
Contact Person: Dr. Anshumali Chaudhari, Scientific Review Admin., 6701 Rockledge Drive, Room 4128, Bethesda, MD 20892, (301) 435–1210.

Name of SEP: Microbiological and Immunological Sciences.
Date: July 17, 1995.
Time: 1:00 p.m.
Place: NIH, Rockledge II, Room 4196, Telephone Conference.
Contact Person: Dr. Marcel Pons, Scientific Review Administrator, 6701 Rockledge Drive, Room 4196, Bethesda, MD 20892, (301) 435–1217.

Name of SEP: Clinical Sciences.
Date: July 20, 1995.
Time: 8:00 a.m.
Place: Doubletree Hotel, Rockville, MD.
Contact Person: Dr. Shirley Hilden, Scientific Review Administrator, 6701 Rockledge Drive, Room 4218, Bethesda, MD 20892, (301) 435–1198.

Name of SEP: Biological and Physiological Sciences.
Date: July 21, 1995.
Time: 8:30 a.m.
Place: Georgetown Holiday Inn. Washington, DC.
Contact Person: Dr. Cheryl Corsaro, Scientific Review Administrator, 6701 Rockledge Drive, Room 6172, Bethesda, MD 20892, (301) 435–1045.

Name of SEP: Microbiological and Immunological Sciences.
Date: July 26, 1995.
Time: 1:00 p.m.
Place: NIH, Rockledge II, Room 4178, Telephone Conference.
Contact Person: Dr. Jean Hickman, Scientific Review Administrator, 6701 Rockledge Drive, Room 4178, Bethesda, MD 20892, (301) 435–1146.

Name of SEP: Microbiological and Immunological Sciences.
Date: August 23, 1995.
Time: 2:00 p.m.
Place: NIH, Rockledge II, Room 4184, Telephone Conference.
Contact Person: Dr. Martin Slater, Scientific Review Administrator, 6701 Rockledge Drive, Room 4184, Bethesda, MD 20892, (301) 435–1149.

Name of SEP: Biological and Physiological Sciences.
Date: August 30, 1995.
Time: 1:00 p.m.
Place: Holiday Inn, National Airport, VA.
Contact Person: Dr. Everett Sinnett, Scientific Review Administrator, 6701 Rockledge Drive, Room 5124, Bethesda, MD 20892; (301) 435–1016.
Purpose/Agenda: To review Small Business Innovation Research Program grant applications.

Name of SEP: Multidisciplinary Sciences.
Date: July 27–28, 1995.
Time: 1:00 p.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Harish Chopra, Scientific Review Administrator, 6701 Rockledge Drive, Room 5112, Bethesda, MD 20892, (301) 435–1169.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 19, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–15568 Filed 6–23–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–95–3877; FR–3855–N–02]

NOFA for the John Heinz Neighborhood Development Program; Amendment of Available Funding Amount

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding availability for fiscal year 1995; amendment of available funding amount.

SUMMARY: On February 24, 1995, HUD published a NOFA that announced the availability of $4,750,000 in funding for the FY 1995 John Heinz Neighborhood Development Program. The purpose of this notice is solely to advise that additional funding has been made available under the February 24, 1995 NOFA.

DATES: Except for amending the available funding amount, this notice does NOT revise, extend the application deadline set forth in the February 24, 1995 NOFA, or reopen the application period.

FOR FURTHER INFORMATION CONTACT: Ophelia Wilson or Gene Hix, Office of Community Planning and Development, Department of Housing and Urban Development, Room 7218, 451 Seventh Street SW., Washington, D.C. 20410; telephone number (202) 708–1189 and (202) 708–2562 (TDD). (These numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: On February 24, 1995 (60 FR 10438), HUD published a NOFA announcing the availability of $4,750,000 in funding for the FY 1995 John Heinz Neighborhood Development Programs. The amount appropriated for funding for this NOFA for FY 1995 was $5 million. Of this amount, $250,000 was set aside for technical assistance for the program. However, additional prior year uncommitted funds became available for use under the February 24, 1995 NOFA.

The purpose of this notice is solely to advise that additional funding in the range of $4.8 to $4.95 million was made available under this NOFA, which makes it possible to fund additional applicants responding to the February 24, 1995 NOFA.

Dated: June 21, 1995.

Mark C. Gordon,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 95–15614 Filed 6–21–95; 4:32 pm]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–014–015–1430–01; IDI–28632]

Realty Action, Exchange of Public Lands in Ada and Gem Counties, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of public lands in Ada and Gem Counties.

SUMMARY: The following described lands have been examined and through the public supported land use planning process have been determined to be suitable for transfer by land exchange pursuant to section 206 of the Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1716). Non-Federal lands to be acquired are described as:

Boise Meridian

T. 6 N., R. 1 W., B.M., Idaho.
Sec. 34; SE¼SW¼.
Containing 40 acres more or less.

Public lands to be transferred are described as:

Boise Meridian

T. 3 N., R. 3 E., B.M., Idaho.
Sec. 7; Lot 7.
Containing 20.65 acres more or less.

The purpose of this exchange is to acquire the non-Federal lands which contain important populations of *Allium aaseae* (Aase's onion) a C1 Candidate species to prevent possible listing of the species under the Endangered Species Act. The subject lands were previously identified for acquisition in the plan amendment designating ACECs for protection of Aase's onion and determining the management prescriptions under which the lands are to be managed. The subject lands will be added to the designated ACEC and will be managed with the same restrictions as the other public lands within the ACEC to protect the critical habitat.

The value of the lands to be exchanged will be equal or a cash payment may be made to equalize values.

Lands to be transferred from the United States will be subject to the following reservations, terms, and conditions:

Excepting and Reserving to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (26 Stat. 291; 43 U.S.C. 945).

Subject To:

1. Federal Power Commission Power Project #1971, authorized September 5, 1958, for a 150 foot wide powerline, will be subject to stipulations being provided by the Federal Energy Regulatory Commission.

ADDRESSES: Comments should be sent to the Field Manager, Bureau of Land Management, Boise District, 3948 Development Avenue, Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: Effie Schultsmeier, Cascade Resource Area Realty Specialist, at the above address or at (208) 384–3300.

DATES: Upon publication of this notice in the **Federal Register**, the lands described above will be segregated from appropriation under the public land laws, including the mining laws, except the exchange provision of the Federal Land Policy and Management Act. The segregative effect will end upon issuance of patent or two years from the date of publication, whichever occurs first.

COMMENTS: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Field Manager, at the above address. Any adverse comments will be reviewed by the Field Manager, who may vacate or modify this realty action to accommodate the protest. If the protest is not accommodated, the comments are subject to review of the State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Dated: June 16, 1995.

Tom Dyer,

Acting Field Manager.

[FR Doc. 95–15492 Filed 6–23–95; 8:45 am]

BILLING CODE 4310–GG–P

Fish and Wildlife Service

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife, Interior.

ACTION: Notice of extended comment period.

Extension of the Public Comment Period on a Draft Environmental Impact Report/Environmental Impact Statement for Issuance of a Permit to Allow Incidental Take of Threatened and Endangered Species within the Multiple Species Conservation Program (MSCP) Planning Area in San Diego County, California.

SUMMARY: This notice announces the extension of the public comment period on the above named draft joint Environmental Impact Report/ Environmental Impact Statement (DEIR/ DEIS) for the proposed incidental take of species listed pursuant to the Endangered Species Act of 1973, as amended (Act). The original public comment period that closed June 26, 1995 (60 CFR 25734), is extended by 2 weeks. The Fish and Wildlife Service (Service) has extended the comment period to allow adequate time for review and response by the public. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: The comment period is extended through July 10, 1995. Written comments on the DEIR/DEIS should be received on or before this date.

ADDRESSES: Comments should be addressed to Mr. Gail Kobetich, Field Supervisor, U.S. Fish and Wildlife Service, 2730 Loker Avenue, Carlsbad, California 92008. Comments also may be sent by facsimile to telephone (619) 431–9618.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Gilbert, Fish and Wildlife Biologist, at the above address, telephone (619) 431–9440. The Service encourages individuals to use copies of the DEIR/DEIS available at City and County libraries in the greater San Diego area; however, personal copies can be obtained by contacting Ms. Gilbert. In addition, copies of the draft MSCP Plan are available at public libraries or can be obtained by contacting the City of San Diego Clean Water Program, telephone (619) 533–4200.

Dated: June 20, 1995.

Vicki M. Finn,

Acting Deputy Regional Director, Region 1, Portland, Oregon.

[FR Doc. 95–15553 Filed 6–23–95; 8:45 am]

BILLING CODE 4310–65–P

Availability of an Environmental Assessment/Habitat Conservation Plans and Receipt of Applications for Incidental Take Permit for Construction of Single Family Residences in Williamson and Travis Counties, Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

PRT–801588, PRT–801823, PRT–801837, and PRT–801838

SUMMARY: Bobby S. Thomas and Albert Graci (Applicants) have applied to the Fish and Wildlife Service (Service) for incidental take permits pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant (Thomas) has been assigned permit number PRT–801588, and Applicant (Graci) has been assigned permit numbers PRT–801838, PRT–801837, and PRT–801823. The requested permits, which are for a period of 1 year and 2 years respectively, would authorize the incidental take of the endangered golden-cheeked warbler (*Dendroica chrysoparia*). The proposed take would occur as a result of the construction of a single family residence on each lot (Thomas) at Lot 28, Block B, Lake Georgetown Estates, Georgetown, Williamson County, Texas, and (Graci) Lot 17, 18, and 19, Six Twenty Oaks, Section 2, Travis County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plans (EA/HCP's) for the incidental take applications. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made before 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received no later than July 26 1995.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Joseph E. Johnston or Alma Barrera, Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0063). Documents will be available for public inspection by written request, by appointment only, during normal business hours (9:00 to 4:30) U.S. Fish and Wildlife Service, Austin, Texas.

Written data or comments concerning the application(s) and EA/HCP's should be submitted to the Acting Field Supervisor, Ecological Field Office, Georgetown, Texas (see **ADDRESS** above). Please refer to the appropriate permit number when submitting comments.

FOR FURTHER INFORMATION CONTACT: Joseph E. Johnston or Alma Barrera at the above Austin Ecological Service Field Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the golden-cheeked warbler. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant

The Applicant (Thomas) plans to construct a single family residence on Lot 28 on Hunters Point and Deer Field Drives, Lake Georgetown Estates Subdivision, Georgetown, Williamson County, Texas, and Applicant (Graci) plans to construct a single-family residence on each individual lot known as Lot 17, Lot 18, and Lot 19, Six Twenty Oaks Subdivision, Section 2, Travis County, Texas. These actions will eliminate less than one-half acre of land and indirectly impact less than one-half additional acres of golden-cheeked warbler habitat per residence. The applicants propose to compensate for this incidental take of golden-cheeked warbler habitat by placing $1,500 per residence into the City of Austin Balcones Canyonlands Conservation Fund to acquire/manage lands for the conservation of the golden-cheeked warbler.

Alternatives to this action were rejected because selling or not developing the subject property with federally listed species present was not economically feasible.

Nancy M. Kaufman,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 95–15554 Filed 6–23–95; 8:45 am]

BILLING CODE 4510–55–M

Availability of Environmental Assessment/Habitat Conservation Plans and Receipt of Applications for Incidental Take Permits for Construction of Single-Family Residences Within Travis County, Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

PRT–803131, PRT–803132, PRT–803133, AND PRT–803135

APPLICANT: Chris R. Milam, Austin, Texas.

SUMMARY: The following Applicant has applied to the Fish and Wildlife Service (Service) for incidental take permits pursuant to Section 10(a) of the Endangered Species Act (Act). The requested permits would authorize the incidental take of the endangered golden-cheeked warbler (*Dendroica chrysoparia).* The proposed take would occur as a result of the construction of four single-family residences on each individually owned lots within Travis County, Texas.

The Service has prepared Environmental Assessment/Habitat Conservation Plans (EA/HCP's) for the incidental take applications. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made before 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before July 26, 1995.

ADDRESSES: Persons wishing to review the application(s) may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the individual EA/HCP(s) may obtain a copy by contacting Joseph E. Johnston or Alma Barrera, Ecological Services Field Office, 10711 Burnet Road, Suite 200, Hartland Bank Building, Austin, Texas 78758 (512/490–0063). Documents will be available for public inspection by written request, by appointment only, during normal business hours (9:00 to 4:30) U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application(s) and EA/HCP(s) should be submitted to the Acting Field Supervisor, Ecological Services Field Office, Austin, Texas (see **ADDRESSES** above). Please refer to the applicable Permit Numbers when submitting comments.

FOR FURTHER INFORMATION CONTACT: Joseph E. Johnston or Alma Barrera at the above Austin Ecological Service Field Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the golden-cheeked warbler. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

The applicant plans to construct a single-family residence on each individual lots known as: Lot 3, Rimrock at River Hills Road; Lot 2, Rimrock at River Hills road; Lot 1, Rimrock at River Hills Road; and Lot 4, Rimrock at River Hills Road, Austin, Travis County, Texas. This action will eliminate less than one-half acre of land per residence and indirectly impact less than one-half additional acre per residence of golden-cheeked warbler habitat. The applicant proposes to compensate for this incidental take of golden-cheeked warbler habitat by placing $1,500 per residence into the City of Austin Balcones Canyonlands Conservation Fund to acquire/manage lands for the conservation of the golden-cheeked warbler.

Alternatives to these actions were rejected by the Applicant because selling or not developing the individually owned subject property with federally listed species present was not economically feasible.

Nancy M. Kaufman,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 95–15555 Filed 6–23–95; 8:45 am]

BILLING CODE 4510–55–M

Finding of No Significant Impact for Incidental Take Permits for the Construction of Single Family Residences at the Specific Site Locations Indicated Below in Travis County, Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has prepared an Environmental Assessments for issuance of a Section 10(a)(1)(B) permits for the incidental take of the Federally endangered golden-cheeked warbler (*Dendroica chrysoparia*) during the construction and operation of single-family residences in Travis County, Texas.

Proposed Action

The proposed action is the issuance of permits under Section 10(a)(1)(B) of the Endangered Species Act to authorize the incidental take of the golden-cheeked warbler.

The Applicant (Bette Craddock Pressler) plans to construct a single-family residence at the specific sites indicated: Lot 5, Lot 6, Lot 4, Lot 3, Lot 1, and Lot 2, West Lake Hills, Travis County, Texas, (Permit numbers PRT–800438, PRT–800439, PRT–800440, PRT–800441, PRT–800442, and PRT–800443 respectively).

The proposed construction and operation of the single-family residences will comply with all local, State, and Federal environmental regulations addressing environmental impacts associated with this type of development. Details of the mitigation are provided in the individual Environmental Assessment/Habitat Conservation Plans. These conservation plan actions ensure that the criteria established for issuance of an incidental take permits will be fully satisfied.

Alternatives Considered

1. No action,
2. Proposed action,
3. Sale of the property, and purchase of another parcel,
4. Alternative site layouts,
5. Wait for issuance of the regional Section 10(a)(1)(B) permit,

Determination

Based upon information contained in the Environmental Assessment/Habitat Conservation Plans, the Service has determined that these actions are not major Federal actions which would significantly affect the quality of the human environment with the meaning of Section 102(2)(c) of the National Environmental Policy Act of 1969. Accordingly, the preparation of Environmental Impact Statements on the proposed action is not warranted.

It is my decision to issue the Section 10(a)(1)(B) permits for the construction and operation of the single-family residences at the sites specified above in Travis County, Texas.

Lynn B. Starnes,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 95–15556 Filed 6–23–95; 8:45 am]

BILLING CODE 4310–65–M

DEPARTMENT OF THE INTERIOR

National Park Service

Indian Memorial Advisory Committee

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a scheduled meeting of the Indian Memorial Advisory Committee. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

MEETING DATE AND TIME: June 23–25, 1995, 8:00 a.m.–5:00 p.m.

ADDRESSES: Sheraton Billings Hotel, 27 North 27th Street, Billings, Montana 59101.

THE AGENDA OF THIS MEETING WILL BE: Review minutes of last meeting, discuss follow-up actions from previous meeting, introductions/opening remarks, review of design competition criteria and related proposal packages, and media/public relations.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with: Superintendent, Little Bighorn Battlefield National Monument, P.O. Box 39, Crow Agency, Montana 59022, telephone (406) 638–2621. Minutes of the meeting will be available for public inspection four weeks after the meeting at the Office of the Superintendent of Little Bighorn Battlefield National Monument.

SUPPLEMENTARY INFORMATION: The Advisory Committee was established under Title II of the Act of December 10, 1991, for the purpose of advising the Secretary on the site selection for a memorial in honor and recognition of the Indians who fought to preserve their land and culture at the Battle of Little Bighorn, on the conduct of a national design competition for the memorial, and "* * * to ensure that the memorial designed and constructed as provided in section 203 shall be appropriate to the monument, its resources and landscape, sensitive to the history being portrayed and artistically commendable."

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Sutteer, Indian Affairs Coordinator, Intermountain Field Area Office, National Park Service, 12795 W. Alameda Parkway, P.O. Box 25287, Denver, Colorado 80225–0287, (303) 969–2511.

Dated: May 22, 1995.

Dawn A. Carey,

Designated Federal Officer, Little Bighorn Battlefield National Monument, National Park Service.

[FR Doc. 95–15533 Filed 6–23–95; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Request for Proposals

The National Institute of Corrections, U.S. Department of Justice, is seeking applications from organizations and individuals able to develop a videotape highlighting the principles of podular direct supervision and the implementation of these principles in several jails. A cooperative agreement of up to $50,000 will be awarded for a 12-month period beginning September 1, 1995. Applications must be received by July 28, 1995. For more information and application procedures, contact Ginny Hutchinson, National Institute of Corrections, Jails Division, 1960 Industrial Circle, Suite A, Longmont, CO 80501; 1–800–995–6429 or fax 1–303–682–0469.

Morris L. Thigpen,

Director.

[FR Doc. 95–15493 Filed 6–23–95; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 95–46; Exemption Application No. D–09519, et al.]

Grant of Individual Exemptions; Westinghouse Pension Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Westinghouse Pension Plan (the Plan)

Located in Pittsburgh, Pennsylvania

[Prohibited Transaction Exemption 95–46; Application No. D–09519]

Exemption

The restrictions of sections 406(a)(1)(A) through (D), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the contribution of certain securities (the Securities) to the Plan on September 14, 1993 and October 29, 1993 by Westinghouse Electric Corporation (WEC), the Plan's sponsor and as such a party in interest with respect to the Plan, provided the following conditions are met:

(a) The Securities were valued at an amount which was no greater than their fair market value at the time of contribution, as established by an independent, qualified appraiser;

(b) The terms and conditions of the contributions were at least as favorable to the Plan as terms and conditions which the Plan could have obtained in a purchase of similar securities from an unrelated party;

(c) The Plan did not pay any commissions or other expenses with respect to the contributions;

(d) The fair market value of the Securities represents at all times an amount of the Plan's total assets which is consistent with the Plan's investment guidelines and objectives;

(e) Additional Plan assets are not used to purchase any new securities which are considered "alternative investments" to the extent that such purchases, when added to the outstanding fair market value of the Securities owned by the Plan, would cause more than 5.2 percent of the Plan's total assets to be invested in "alternative investments" (other than as may be occasioned merely by an increase in value);[1]

(f) Mellon Bank N.A. (Mellon), as an independent, qualified fiduciary for the Plan, determined that each contribution of the Securities to the Plan was in the best interests and protective of the Plan and its participants and beneficiaries at the time of the transactions;

(g) Mellon monitored each contribution made to the Plan and took all appropriate actions necessary to protect the interests of the Plan and its participants and beneficiaries;

(h) Mellon monitors the performance of the Securities as an investment for the Plan and takes whatever action is necessary to protect the interests of the Plan and its participants and beneficiaries;

(i) On the date on which the Plan no longer holds any of the Securities contributed by WEC on September 14 and October 29, 1993 (the Exercise Date), WEC shall contribute to the Plan the difference between the following:

(1) the sum of (i) the sales proceeds received by the Plan on the disposition of all of the Securities, plus (ii) interest accrued and interest and dividends received on the Securities; and

(2) the aggregate value of the Securities on the date that they were originally contributed to the Plan (i.e. $188,882,694), plus any adjustments to such aggregate value requested by Mellon to reflect changes in the Consumer Price Index (CPI) during the period that the Securities were held by the Plan, upon demand by Mellon as the Plan's independent fiduciary under the terms of a "makewhole agreement" with the Plan (the Makewhole Agreement). Mellon shall have sole authority to determine the amount due to the Plan under the Makewhole Agreement (the Makewhole Amount) at the time of the transaction;[2]

(j) On December 30, 1994, WEC made a cash contribution to the Plan in the amount of $25 million to support any amounts that may become due under the Makewhole Agreement, provided that this cash contribution is held as a separate credit balance in the Plan's funding standard account until the termination date of the Makewhole Agreement (as amended pursuant to paragraph (i) above) and is not used to offset any other funding obligation owed by WEC to the Plan until such date. Mellon, as the Plan's independent fiduciary, shall be responsible for investing the $25 million and ensuring that the Plan receives all interest and other income earned on the $25 million; and

(l) Mellon monitors the compliance by all parties with the terms and conditions of the exemption.

EFFECTIVE DATE: The exemption is effective for each contribution as of September 14 and October 29, 1993, respectively.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Proposal) published on November 14, 1994, at 59 FR 56537.

WRITTEN COMMENTS AND MODIFICATIONS: The Department received over 160 comment letters from interested persons. The matters raised in the comment letters concern: (1) Sufficiency of the notice to interested persons regarding the Proposal; (2) the decision made by WEC to contribute the Securities to the Plan rather than sell the Securities on the open market; (3) the effect of the contribution of the Securities on the Plan's funding status; (4) the investment performance of the Tops Securities since the Plan's acquisition of such Securities and the potential for losses by the Plan after the period covered by the Makewhole Agreement; and (5) the role of Mellon as the independent fiduciary for the Plan, particularly with respect to its obligations to enforce the terms and conditions of the Makewhole Agreement.

The Department notes that in a letter dated December 27, 1994, the International Brotherhood of Electrical Workers (IBEW) expressed particular concerns regarding: (i) The apparent discretionary nature of Mellon's obligations to enforce the terms of the Makewhole Agreement on behalf of the Plan; (ii) the need to extend the period covered by the Makewhole Agreement beyond September 14, 1996 for the Tops Securities owned by the Plan to prevent losses during the 8–10 year period when the Plan cannot dispose of all of the Tops Securities as a result of the timing and volume restrictions of SEC Rule 144; (iii) the need for an overall limitation on total Plan assets that can be committed to "alternative investments", including the Securities, which should not exceed 5.2 percent (other than as may be occasioned merely by an increase in value); and (iv) the need for the Proposal, if granted, to clarify that Mellon's decisions regarding whether to exercise the Plan's rights under the Makewhole Agreement will be fully subject to the fiduciary responsibility rules of the Act, and that the Department, by granting the exemption, would not be expressing an opinion regarding whether any actions taken by Mellon are consistent with its fiduciary obligations under the Act. Notwithstanding these concerns, the IBEW stated that it favored the granting of the exemption if modifications were made to address these issues.

By letter dated February 9, 1995, WEC responded to the issues raised by the comment letters.

With respect to the sufficiency of the notice to interested persons regarding the Proposal, WEC states that it provided the broadest possible notice to Plan participants. Notice to active employees was provided through either posting in workplaces, inter-office mail, or both. Notice was sent to retirees and vested separated participants at the most current address available to the Plan. WEC states that in the case of a benefit program as large as the Plan, it is not unusual for some participants to fail to keep current addresses on file with the Plan, especially where a plant closing has resulted in the dispersal of the local workforce. Although some of the commenters indicated that adequate and timely notice was not provided in every instance, WEC represents that it acted in good faith by taking all practicable steps to provide the required notice, as prescribed by the Department's regulations (see 29 CFR

[1] Alternative investments generally are relatively illiquid investments in an asset class other than traditional classes of cash, stock, fixed income securities and real estate.

[2] The Department notes that any decision made by Mellon as the Plan's independent fiduciary with respect to the exercise of the Plan's rights under the Makewhole Agreement shall be fully subject to the fiduciary responsibility provisions of the Act. However, by granting this exemption, the Department is not expressing an opinion regarding whether any actions taken by Mellon would be consistent with its fiduciary obligations under Part 4 of Title I of the Act. In this regard, section 404(a) of the Act requires, among other things, that a plan fiduciary act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making decisions on behalf of a plan.

2570.43), and that all participants were provided with a copy of the Proposal as published in the **Federal Register**. In this regard, WEC states that the success of its notification efforts was demonstrated by the fact that the Department received over 160 comment letters, most of which raised substantive issues regarding the Proposal.

With respect to the decision made by WEC to contribute the Securities to the Plan rather than sell the Securities on the open market, WEC states that the contribution enabled the Plan to satisfy a pre-existing, independently developed investment target for "alternative investments" without incurring significant transaction costs. As noted in Paragraph 2 of the Summary of Facts and Representations in the Proposal (the Summary), the Plan developed investment allocation guidelines in conjunction with the Frank Russell Company in 1990. These guidelines established an allocation target of approximately 5 percent for "alternative investments". WEC states that such an allocation appropriately reflects the role of such investments in a prudently diversified portfolio. In addition, WEC represents that there is no intention to increase this allocation of Plan assets to "alternative investments" above the current 5.2 percent.

In order to address the concerns raised by the commenters, WEC has agreed to adding a new condition to the Proposal which requires that additional Plan assets will not be used to purchase new "alternative investments" to the extent that such purchases would cause more than 5.2 percent of the Plan's total assets to be invested in "alternative investments" (see condition (e) above). Paragraph 2 of the Summary states that "alternative investments" typically include venture capital, buyout funds, distressed companies, mezzanine financing, oil and gas programs, timberland or farmland, and economically targeted investments addressing certain social policies.

With respect to the effect of the contribution of the Securities on the Plan's funding status, WEC states that five factors indicate that this transaction has had a positive effect on the Plan's funding. First, WEC did not satisfy any current funding obligation through the contribution of the Securities. The Plan has not had to forego any legally required cash contribution; rather, the contribution of the Securities was above and beyond what WEC was legally required to contribute to the Plan at the time of the transactions.

Second, the Securities issued by Tele-Media Company of Western Connecticut (the Tele-Media Securities), representing one-third of the original value of the Securities contributed by WEC, have already been sold at a profit (see Paragraph 6 of the Summary). The Plan, by realizing the proceeds of this sale, has received $4,050,000 in additional cash as the result of the contribution of the Tele-Media Securities.

Third, the Securities issued by First Britannia Mezzanine N.V. (the First Britannia Securities), while remaining stable in asset value, have generated significant income for the Plan. The Plan has thus far received approximately $2.4 million in interest on the debt portion and approximately $9.3 million in cash dividends on the equity portion of the First Britannia Securities. All of this income accrues to the benefit of the Plan and improves the Plan's funding situation.

Fourth, the Plan is protected from diminutions in the value of the Securities through the operation of the Makewhole Agreement. Such support for the value of the Securities would be non-existent if the Plan had purchased the Securities on the open market. Therefore, WEC states that the Plan is better protected in accomplishing its previously described goals for "alternative investments" as the result of the contribution of the Securities than had a cash contribution been used by the Plan to invest in such securities on the open market.

Finally, in support of the Makewhole Agreement, WEC has contributed an additional $25 million in cash to the Plan. This amount is above and beyond WEC's other contribution obligations to the Plan. WEC states that this $25 million contribution was made along with a $200 million cash contribution on December 30, 1994 as part of WEC's program to improve Plan funding, even though such amounts were not legally required to satisfy any current minimum funding obligations. Under the terms of the Makewhole Agreement, the additional $25 million will not be used to reduce WEC's future contribution obligations until the end of the term of the Makewhole Agreement.

Thus, WEC represents that the Plan has benefitted from, and the Plan's funding has been improved by, the contribution of the Securities.

With respect to the investment performance of the Tops Securities and the potential for losses by the Plan after the period covered by the Makewhole Agreement, WEC states that the publicly-traded price of these Securities has fluctuated widely and is currently trading at a price significantly below the price that existed on the date that the Securities were contributed to the Plan. Because of the trading restrictions on the Tops Securities, the Plan will be able to dispose of only a small portion of the shares each year. Many of the commenters suggested that WEC extend the period covered by Makewhole Agreement regarding the Tops Securities. In addition, the Department expressed concerns to WEC regarding the absence of additional guarantees for potential losses by the Plan in connection with the continued holding of both the First Britannia Securities and the Securities issued by Federated Investors (the Federated Securities), as well as for the Tops Securities, once the three-year period covered under the Makewhole Agreement expires on September 14, 1996.

Consequently, WEC has agreed to extend the term of the Makewhole Agreement until such time as the Plan's holdings of all of the Securities are totally liquidated. Thus, the new Exercise Date under the Makewhole Agreement, as amended, will be the date on which the Plan's holdings of all of the Securities contributed by WEC on September 14 and October 29, 1993, are liquidated. WEC states that the remaining provisions of the Makewhole Agreement relating to, among other things, the calculation of the Makewhole Amount will remain unchanged, except that such calculation will no longer need to be based on any appraisals of the fair market value of the Securities remaining in the Plan because all of the Securities will have been liquidated at that time. Further, the duration of the $25 million credit balance provision, which is being used to ensure payment of the Makewhole Amount to the Plan, will also be extended until the new Exercise Date under the Makewhole Agreement.

Therefore, in response to WEC's additional representations regarding the extension of the Makewhole Agreement, the Department has modified the language of the previous condition (h) in the Proposal (which has been redesignated as condition (i) above) by deleting the reference in the opening clause to " * * * the third anniversary of the date of the first contribution made to the Plan * * *" and substituting therefor the phrase "* * * the date on which the Plan no longer holds any of the Securities contributed by WEC on September 14 and October 29, 1993 (the Exercise Date) * * *" in order to redefine the end of the Makewhole Period and create a new Exercise Date. The Department has also deleted the phrase in the previous condition (h)(2) of the Proposal and other phrases thereafter in such condition referring to the fair market value of the Securities

remaining in the Plan, and the appointment of one or more independent appraisers to determine fair market value, for purposes of establishing the Makewhole Amount.

In addition, the Department has amended the language of the previous condition (i) in the Proposal (which has been redesignated as condition (j) above) to reflect the fact that the duration of the $25 million credit balance provision, which is being used to ensure payment of the Makewhole Amount to the Plan, will be extended until the new Exercise Date under the Makewhole Agreement.

With respect to the role of Mellon as the independent fiduciary for the Plan and its obligations to enforce the terms of the Makewhole Agreement, WEC states that it was always WEC's understanding that Mellon, whether acting as a Plan trustee, an independent fiduciary or an investment manager, would be a Plan fiduciary fully subject to the fiduciary responsibility rules of the Act. In this regard, WEC notes that some commenters, including the IBEW, have questioned the provision in the Makewhole Agreement committing exercise of the Plan's rights under the Agreement to Mellon's discretion. WEC states that the sole purpose of this provision was to make clear that Mellon, not WEC, would be representing the Plan with regard to the operation of the Makewhole Agreement, including the calculation of the Makewhole Amount and the triggering of the necessary payment to the Plan.

In a separate letter submitted by Mellon in response to the concerns raised by the comment letters, Mellon represents that any actions taken by Mellon on behalf of the Plan in its role as independent fiduciary will be subject to the provisions of Part 4 of Title I of the Act. With respect to Mellon's authority under the Makewhole Agreement, as amended by WEC and Mellon in response to concerns raised by the IBEW and other commenters, the Agreement requires the following:

(i) that WEC shall contribute the Makewhole Amount to the Plan upon demand from Mellon in its role as "the Independent Investment Manager" for the Plan;

(ii) that Mellon shall make such a demand in the event that a Makewhole Amount is due to the Plan;

(iii) that the Makewhole Amount must be equal to the amount determined by Mellon; and

(iv) that Mellon, in its role as "the Independent Investment Manager" for the Plan, shall (rather than "may" as stated previously in the Agreement prior to the amendment) exercise the rights under this Agreement on behalf of the Plan by the delivery of a notice (the "Notice of Exercise") to WEC no later than the sixtieth (60th) day after the Exercise Date.

Mellon states that these provisions are intended to set forth a specific procedure for the determination and payment of the Makewhole Amount (if any), and to make it clear that Mellon, not WEC, would be acting on behalf of the Plan with regard to the Makewhole Agreement. Thus, Mellon represents that if a payment is due under the Makewhole Agreement, Mellon will, on behalf of the Plan, require WEC to make such payment.

Accordingly, upon consideration of the entire exemption application file and record, the Department has determined to grant the proposed exemption as modified.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Mellon Bank, N.A. Located in Pittsburgh, Pennsylvania

[Prohibited Transaction Exemption 95–47; Application No. D–9523]

Section I—Exemption for In-Kind Transfer of CIF Assets

The restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply, as of November 5, 1993, to the in-kind transfer of assets of plans for which Mellon Bank, N.A. or any of its affiliates (Mellon) acts as a fiduciary (the Client Plans), other than plans established or maintained by Mellon for its own employees, that are held in certain collective investment funds maintained by Mellon (CIFs), in exchange for shares of the Laurel Funds [a/k/a Dreyfus or Premier Funds] (the Funds),[3] open-end investment companies registered under the Investment Company Act of 1940 (the 1940 Act), in situations where Mellon acts as investment advisor for the Fund as well as custodian, dividend disbursing agent, shareholder servicing agent, transfer agent, and/or Fund accountant, or provides some other "secondary service" to the Funds as defined in Section V(h), in connection with the termination or partial termination of such CIFs, provided that the following conditions and the general conditions of Section IV are met:

(a) No sales commissions or other fees are paid by the Client Plans in connection with the purchase of Fund shares through the in-kind transfer of CIF assets and no redemption fees are paid in connection with the sale of such shares by the Client Plans to the Funds.

(b) Each Client Plan receives shares of a Fund which have a total net asset value that is equal to the value of the Client Plan's pro rata share of the assets of the CIF on the date of the in-kind transfer, based on the current market value of the CIF's assets as determined in a single valuation performed in the same manner at the close of the same business day using independent sources in accordance with Rule 17a–7 of the Securities and Exchange Commission under the 1940 Act (see 17 CFR 270.17a–7) and the procedures established by the Funds pursuant to Rule 17a–7 for the valuation of such assets. Such procedures must require that all securities for which a current market price cannot be obtained by reference to the last sale price for transactions reported on a recognized securities exchange or NASDAQ be valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the Friday preceding the weekend of the CIF transfers (or, in the case of any weekday CIF transfers, the day of the transfer), determined on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of Mellon.

(c) All or a pro rata portion of the assets of a Client Plan held in a CIF are transferred in-kind to the Funds in exchange for shares of such Funds.

(d) A second fiduciary which is independent of and unrelated to Mellon (the Second Fiduciary) receives advance written notice of the in-kind transfer of assets of the CIFs and full written disclosure of information concerning the Funds (including a current prospectus for each of the Funds and a statement describing the fee structure) and, on the basis of such information, authorizes in writing the in-kind transfer of the Client Plan's assets to a corresponding Fund in exchange for shares of the Fund.

(e) For all transfers of CIF assets to a Fund following the publication of the proposed exemption in the **Federal Register** (i.e. January 30, 1995), Mellon sends by regular mail to each affected Client Plan the following information:

(1) Within 30 days after completion of the transaction, a written confirmation containing:

[3] The applicant represents that effective October 1994, the Laurel Funds changed their name to either "Dreyfus" or "Premier" as a result of Mellon's acquisition of the Dreyfus Corporation, the sponsor of the Dreyfus Funds.

(i) The identity of each security that was valued for purposes of the transaction in accordance with Rule 17a–7(b)(4);

(ii) The price of each such security involved in the transaction;

(iii) The identity of each pricing service or market maker consulted in determining the value of such securities; and

(2) Within 90 days after completion of each transfer, a written confirmation that contains:

(i) The number of CIF units held by the Client Plan immediately before the transfer, the related per unit value, and the total dollar amount of such CIF units; and

(ii) The number of shares in the Funds that are held by the Client Plan immediately following the transfer, the related per share net asset value, and the total dollar amount of such shares.

(f) The conditions set forth in paragraphs (e), (f), and (n) of Section II below are satisfied.

Section I—Exemption for Receipt of Fees

The restrictions of section 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (F) of the Code, shall not apply, as of November 5, 1993, to the receipt of fees by Mellon from the Funds for acting as an investment advisor for the Funds as well as for providing other services to the Funds which are "secondary services" as defined in Section V(h), in connection with the investment by the Client Plans in shares of the Funds, provided that the following conditions and the general conditions of Section IV are met:

(a) Each Client Plan receives a cash credit of such Plan's proportionate share of all fees charged to the Funds by Mellon for investment advisory services and "secondary services", including any investment advisory fees paid by Mellon to third party sub-advisers, no later than the same day as the receipt of such fees by Mellon. The crediting of all such fees to the Client Plans by Mellon is audited by an independent accounting firm on at least an annual basis to verify the proper crediting of the fees to each Client Plan.

(b) The price paid or received by a Client Plan for shares in a Fund is the net asset value per share at the time of the transaction, as defined in Section V(e), and is the same price which would have been paid or received for the shares by any other investor at that time.

(c) Mellon, including any officer or director of Mellon, does not purchase or sell shares of the Funds from or to any Client Plan.

(d) No sales commissions are paid by the Client Plans in connection with the purchase or sale of shares of the Funds and no redemption fees are paid in connection with the sale of shares by the Client Plans to the Funds.

(e) The combined total of all fees received by Mellon for the provision of services to a Client Plan, and in connection with the provision of services to the Funds in which the Client Plan may invest, are not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(f) Mellon does not receive any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with the transactions.

(g) The Client Plans are not employee benefit plans sponsored or maintained by Mellon (other than master or prototype plans sponsored by Mellon that are adopted by employers other than Mellon).

(h) The Second Fiduciary receives full and detailed written disclosure of information concerning the Funds (including a current prospectus for each of the Funds and a statement describing the fee structure) in advance of any investment by the Client Plan in a Fund.

(i) On the basis of the information described above in paragraph (h), the Second Fiduciary authorizes in writing the investment of assets of the Client Plan in each particular Fund and the fees to be paid by such Funds to Mellon.

(j) All authorizations made by a Second Fiduciary regarding investments in a Fund and the fees paid to Mellon are subject to an annual reauthorization wherein any such prior authorization referred to in paragraph (i) shall be terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by Mellon of written notice of termination. A form expressly providing an election to terminate the authorization described in paragraph (i) above (the Termination Form) with instructions on the use of the form must be supplied to the Second Fiduciary no less than annually. The instructions for the Termination Form must include the following information:

(1) The authorization is terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by Mellon of written notice from the Second Fiduciary; and

(2) Failure to return the Termination Form will result in continued authorization of Mellon to engage in the transactions described in paragraph (i) on behalf of the Client Plan.

(k) The Second Fiduciary of each Client Plan invested in a particular Fund receives full written disclosure in a Fund prospectus or otherwise of any increases in the rates of fees charged by Mellon to the Funds for investment advisory services or other services (i.e. "secondary services") even though such fees will be credited to the Client Plan as required by paragraph (a) above.

(l) On an annual basis, Mellon provides the Second Fiduciary of a Client Plan investing in the Funds with:

(1) A copy of the current prospectus for the Funds and, upon such fiduciary's request, a copy of the Statement of Additional Information for such Funds which contains a description of all fees paid by the Funds to Mellon;

(2) A copy of the annual financial disclosure report prepared by Mellon which includes information about the Fund portfolios as well as audit findings of an independent auditor within 60 days of the preparation of the report; and

(3) Oral or written responses to inquiries of the Second Fiduciary as they arise.

(m) With respect to each of the Funds in which a Client Plan invests, in the event such Fund places brokerage transactions with Mellon or an affiliate, Mellon will provide the Second Fiduciary of such Client Plan at least annually with a statement specifying:

(1) The total, expressed in dollars, brokerage commissions of each Fund's portfolio that are paid to Mellon by such Fund;

(2) The total, expressed in dollars, of brokerage commissions of each Fund's portfolio that are paid by such Fund to brokerage firms unrelated to Mellon;

(3) The average brokerage commissions per share, expressed as cents per share, paid to Mellon by each Fund portfolio; and

(4) The average brokerage commissions per share, expressed as cents per share, paid by each Fund portfolio to brokerage firms unrelated to Mellon.

(n) All dealings between the Client Plans and the Funds are on a basis no less favorable to the Client Plans than dealings with other shareholders of the Funds.

Section III—Exemption for Transfers of Client Plan Securities From Individual Portfolios

The restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (F) of the Code, shall not apply to an exchange (the

Exchange) by a Client Plan of securities for shares of the Funds (other than an exchange covered by Section I above), and to the receipt of fees by Mellon from the Funds for acting as investment adviser for the Funds as well as providing other services to the Funds which are "secondary services" as defined in Section V(h), in connection with such an investment by a Client Plan in the Funds, provided that the following conditions and the general conditions in Section IV are met:

(a) The terms of the transaction are at least as favorable to the Client Plan as those obtainable in an arm's-length transaction between unrelated parties.

(b) Each Exchange is a one-time transaction between a Client Plan and the Fund.

(c) All or a pro rata portion of the assets of a Client Plan held by Mellon in an investment account or portfolio that is selected by the Second Fiduciary of such Client Plan for an Exchange are transferred in-kind to the Funds in exchange for shares of such Funds.

(d) No sales commission or dealer mark-up is paid by the Client Plan in connection with the transaction.

(e) The Exchange meets the requirements of the particular Fund for an in-kind purchase of shares of the Fund.

(f) One of the following conditions is met:

(1) The Client Plan receives a cash credit of such Plan's proportionate share of all fees (including all investment advisory fees and all secondary service fees) charged to the Funds by Mellon, less any fees paid by Mellon to parties unrelated to Mellon for services other than investment advisory services provided to the Funds, no later than the same day as the receipt of such fees by Mellon;

(2) The assets of the Client Plan invested in the Funds are excluded from the assets on which the investment management fees paid by the Client Plan to Mellon are determined; or

(3) The Client Plan pays an investment management fee to Mellon based on total Plan assets from which a credit is subtracted representing only the Client Plan's pro rata share of the investment advisory fees paid by the Funds to Mellon.

(g) For purposes of the Exchange, the price of securities is established as of the close of business on the date for the Exchange specified in the written authorization by the Second Fiduciary, as follows:

(1) If the security is described in subparagraphs (b) (1) through (3) of Rule 17a–7 under the 1940 Act (see 17 CFR 270.17a–7(b) (1)–(3)), in accordance with the valuation procedures described in those paragraphs; or

(2) If the security is not described in paragraph (g)(1) above, by the recognized, independent pricing service or services disclosed to the Second Fiduciary described in paragraph (j) below prior to its written authorization of the Exchange. If no price is available from a recognized, independent pricing service for such date, or from a sufficient number of pricing services if more than one is to be used, Mellon will determine the price by averaging the mean of the closing bid and asked quotations from each of two or more recognized, independent market markers and/or pricing services for such securities on that date.

(h) For purposes of the Exchange, the price paid or received by a Client Plan for Fund shares is the net asset value per share at the time of the transaction, as defined in Section V(e), and Mellon determines the value of the securities exchanged and the net asset value of the Funds as of the close of business on the same day.

(i) Within 30 days after the authorization of the Exchange, the Second Fiduciary receives a written confirmation that reflects the price of each of the securities involved in the Exchange. For those securities described in paragraph (g)(2) above, the confirmation will include a written disclosure of the identity of the pricing service or market markers consulted in determining the value of the securities.

(j) The Second Fiduciary acting for the Client Plan—

(1) receives advance written disclosure of information concerning the Funds (including current prospectuses for the Funds and a statement describing the fee structure to be used to comply with paragraph (f) above) and, prior to the Exchange, receives in writing (A) the reasons why Mellon may consider such Exchanges to be appropriate for the Client Plan and a list of the securities held by the Client Plan that would be accepted by one or more Funds with respect to the Exchange, (B) the date the Exchange is to occur, and (C) an explanation of the procedures that would be followed for valuing the securities for purposes of the Exchange, including the identity of the recognized, independent pricing service or services that will value any of the securities described in paragraph (g)(2) above; and

(2) on the basis of such information, authorizes in writing the investment of assets of the Client Plan in the Funds through the Exchange and the fees to be paid by the Funds to Mellon.

(k) The authorization referred to in paragraph (j) is terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by Mellon of written notice of termination. A Termination Form expressly providing an election to terminate the authorization described in paragraph (j) with instructions on the use of the form must be supplied to the Second Fiduciary no less than annually. The instructions for the Termination Form must include the following information:

(1) The authorization is terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by Mellon of written notice from the Second Fiduciary; and

(2) Failure to return the form will result in continued authorization of the investment by the Client Plan in the Funds and the payment of fees by the Funds to Mellon.

(l) If the fee structure described in paragraph (f)(2) or (f)(3) above is followed, the Second Fiduciary is notified of any change in any of the rates of the fees payable to Mellon for investment advisory services or secondary services, that had been disclosed to the Second Fiduciary as described in paragraph (j) above, at least 30 days prior to the effective date of such change, and approves in writing the continued holding of any Fund shares acquired by the Client Plan prior to such change which are still held by the Plan. Such approval may be limited solely to the investment advisory and other fees paid by the Funds in relation to the fees paid by the Client Plan and need not relate to any other aspect of such investment.

(m) The conditions set forth in paragraphs (c), (e), (f), (g), (l), (m) and (n) of Section II above are satisfied.

Section IV—General Conditions

(a) Mellon maintains for a period of six years the records necessary to enable the persons described below in paragraph (b) to determine whether the conditions of this exemption have been met, except that: (1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Mellon, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than Mellon shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975 (a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b) below.

(b) (1) Except as provided below in paragraph (b)(2) and notwithstanding

any provisions of section 504(a)(2) of the Act, the records referred to in paragraph (a) are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(ii) Any fiduciary of the Client Plans who has authority to acquire or dispose of shares of the Funds owned by the Client Plans, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of the Client Plans or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraph (b)(1) (ii) and (iii) shall be authorized to examine trade secrets of Mellon, or commercial or financial information which is privileged or confidential.

Section V—Definitions

For purposes of this exemption:

(a) The term "Mellon" means the Mellon Bank, N.A. and any affiliate thereof as defined below in paragraph (b) of this section.

(b) An "affiliate" of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term "Fund" or "Funds" shall include the Laurel Funds, Inc. [a/k/a the Dreyfus Funds or the Premier Funds], or any other diversified open-end investment company or companies registered under the 1940 Act for which Mellon serves as an investment adviser and may also serve as a custodian, dividend disbursing agent, shareholder servicing agent, transfer agent, Fund accountant, or provide some other "secondary service" (as defined below in paragraph (h) of this Section) which has been approved by such Funds.

(e) The term "net asset value" means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in the Fund's prospectus and statement of additional information, and other assets belonging to the Fund or portfolio of the Fund, less the liabilities charged to each such portfolio or Fund, by the number of outstanding shares.

(f) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(g) The term "Second Fiduciary" means a fiduciary of a Client Plan who is independent of and unrelated to Mellon. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to Mellon if:

(1) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with Mellon;

(2) Such fiduciary, or any officer, director, partner, employee, or relative of the fiduciary is an officer, director, partner or employee of Mellon (or is a relative of such persons);

(3) Such fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this exemption.

If an officer, director, partner or employee of Mellon (or relative of such persons), is a director of such Second Fiduciary, and if he or she abstains from participation in (i) the choice of the Client Plan's investment adviser, (ii) the approval of any such purchase or sale between the Client Plan and the Funds, and (iii) the approval of any change in fees charged to or paid by the Client Plan in connection with any of the transactions described in Sections I, II and III above, then paragraph (g)(2) of this section shall not apply.

(h) The term "secondary service" means a service other than an investment management, investment advisory, or similar service, which is provided by Mellon to the Funds. However, for purposes of Sections II(a) and III(f)(1) this exemption, the term "secondary service" will not include any brokerage services provided to the Funds by Mellon for the execution of securities transactions engaged in by the Funds.

(i) The term "Termination Form" means the form supplied to the Second Fiduciary which expressly provides an election to the Second Fiduciary to terminate on behalf of a Client Plan the authorization described in paragraph (j) of Section II and paragraph (k) of Section III. Such Termination Form may be used at will by the Second Fiduciary to terminate an authorization without penalty to the Client Plan and to notify Mellon in writing to effect a termination by selling the shares of the Funds held by the Client Plan requesting such termination within one business day following receipt by Mellon of the form; provided that if, due to circumstances beyond the control of Mellon, the sale cannot be executed within one business day, Mellon shall have one additional business day to complete such sale.

EFFECTIVE DATE: The exemption is effective November 5, 1993, for those transactions described in Sections I and II above.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 30, 1995, at 60 FR 5704.

NOTICE TO INTERESTED PERSONS: The applicant represents that it was unable to notify interested persons within the time period specified in the **Federal Register** notice published on January 30, 1995. The applicant states that interested persons were notified, in the manner agreed upon between the applicant and the Department, by March 22, 1995. Interested persons were advised that they had until April 21, 1995 to comment on the proposed exemption.

WRITTEN COMMENTS AND MODIFICATIONS: The applicant submitted the following comments and requests for modifications regarding the notice of proposed exemption (the Proposal).

With respect to the use of the term "affiliate", the applicant states that both the beginning of Sections I and V(a) define the term "Mellon" to include its affiliates. Therefore, the applicant notes that references in the body of the Proposal to affiliates of Mellon would appear to be unnecessary, and their presence would raise the question of whether particular conditions are intended to apply to affiliates of Mellon's affiliates. In this regard, the applicant requests that Section II(c) of the Proposal be revised to read as follows:

"* * * Mellon, including any officer or director of Mellon, does not purchase or sell shares of the Funds from or to any Client Plan."

This revision would clarify that the condition does not extend to all affiliates of Mellon's affiliates, but does extend to Mellon and its "affiliates" as that term is defined in Section V(a) of the Proposal. In addition, the applicant requests that the statement "* * * or an affiliate", which appears after the first mention of Mellon in subparagraphs (1) and (3) of Section II(m), relating to the provision of brokerage services, is unnecessary and should be deleted. The Department concurs with the applicant's requested clarifications and has so modified the language of the Proposal.

With respect to the use of the term "Client Plans" in Section II(g) of the Proposal, the applicant states that this section, which also is incorporated by reference into Section III, excludes from the term "Client Plans" any employee benefit plans sponsored or maintained by Mellon. Mellon's understanding of this condition is that it is meant to exclude "in-house plans" of Mellon (i.e. plans maintained by Mellon for its own employees) from relief under the requested exemption. However, the applicant notes that Mellon is also the sponsor of master and prototype plans that are adopted by third parties. The applicant wishes to clarify that such plans were not meant to be excluded from relief under the exemption. Therefore, the applicant proposes the following change to Section II(g):

"* * * The Client Plans are not employee benefit plans sponsored or maintained by Mellon *(other than master or prototype plans sponsored by Mellon that are adopted by employers other than Mellon).* [emphasis added]

The applicant requests that the same parenthetical language referred to above be added to the opening paragraph of Section I, following the phrase "* * * other than plans established or maintained by Mellon". In this regard, the Department concurs with the applicant's requested clarifications, but for the opening paragraph of Section I has added the phrase "* * * for its own employees" instead of the parenthetical language used in Section II(g).

With respect to the definition of the term "Second Fiduciary" in Section V(g) of the Proposal, the applicant notes that the language following subparagraph (3) describes an exception for when a fiduciary is considered "independent" for purposes of the exemption. Part (iii) of this exception refers to approvals by a "Second Fiduciary" as described in Sections I and II. The applicant states that this sentence in Part (iii) should also refer to Section III because that section contains an approval requirement for a "Second Fiduciary" as well. The Department concurs with this clarification and has so modified the language of the Proposal.

With respect to the definition of the term "secondary service" in Section V(h) of the Proposal, the current definition excludes from the scope of that term any brokerage services provided to the Funds by Mellon for the execution of securities transactions engaged in by the Funds. In this regard, the applicant notes that this exclusion should not prohibit Mellon from providing brokerage services to the Funds because, to the contrary, Section II(m) of the Proposal requires certain disclosures to be made based on the fact that such services may be provided. However, the applicant states that Sections II(a) and III(f)(1) require Mellon to credit to the Client Plans all fees for the "secondary services" it provides to the Funds. Thus, the applicant wishes to clarify that brokerage services should be specifically excluded from treatment as a "secondary service" under these sections, so that, consistent with the purpose behind the disclosures required in Section II(m), Mellon is not required to credit its fees for brokerage services in the same manner that it is required to credit its fees for other secondary services. Therefore, the applicant requests that the second sentence in Section V(h) of the Proposal should read as follows:

"* * * However, for purposes of *Sections II(a) and III(f)(1)* of this exemption, the term "secondary service" will not include any brokerage services provided to the Funds by Mellon for the execution of securities transactions engaged in by the Funds." [emphasis added]

The Department concurs with this clarification and has so modified the language of the Proposal.

With respect to the definition of the term "Termination Form" in Section V(i) of the Proposal, the current definition refers to the condition describing that form in Section II(j). However, the applicant notes that the "Termination Form" is also described in Section III(k) of the Proposal, so that Section V(i) should refer specifically to "paragraph (k) of Section III" following the reference to Section II(j). The Department concurs with the applicant's requested clarification and has so modified the language of the Proposal.

Finally, the applicant states that Section III of the Proposal, dealing with transfers of Client Plan securities from individual portfolios, provides relief for both the "credit" fee structure described in Section II (which provides a full cash credit of *all* Fund-level fees) and the two fee structures described in Prohibited Transaction Exemption (PTE) 77–4 (42 FR 18732, April 8, 1977).[4] With regard to the fee structures described in PTE 77–4 (the PTE 77–4 Fee Structures), any change in fees received by Mellon from a Fund must be disclosed at least 30 days prior to the effective date of the change and be approved in writing. Mellon represents that the use of an "affirmative" approval requirement for the PTE 77–4 Fee Structures creates a number of problems. Mellon states that the Department has previously recognized the administrative difficulties caused by an affirmative approval requirement for increases in Fund-level fees. Mellon notes that the Department has allowed, through recent individual exemptions, the use of a "passive" approval condition under which the independent fiduciaries of Client Plans receive notice of any increase in Fund fees at least 30 days in advance of the effective date of such increase and a "Termination Form" which allows a Client Plan to withdraw from the Fund.[5] If the bank does not receive a "Termination Form" from a Client Plan prior to the effective date of the fee increase, the independent fiduciary of the Client Plan is deemed to have approved the fee increase.[6]

Therefore, Mellon requests that the final exemption contain a "passive" approval condition that would apply to both in-kind and cash investments in a Fund where any PTE 77–4 Fee Structure is used.

In this regard, the Department is not prepared, at this time, to include such a material change to the conditions of the Proposal as part of the final exemption for the transactions described herein. Upon the receipt of a

[4] PTE 77–4, in pertinent part, permits the purchase and sale by an employee benefit plan of shares of a registered, open-end investment company when a fiduciary with respect to the plan is also the investment adviser for the investment company, provided that, among other things, the plan does not pay an investment management, investment advisory or similar fee with respect to the plan assets invested in such shares for the entire period of such investment. Section II(c) of PTE 77–4 states that this condition does not preclude the payment of investment advisory fees by the investment company under the terms of an investment advisory agreement adopted in accordance with section 15 of the Investment Company Act of 1940. Section II(c) states further that this condition does not preclude payment of an investment advisory fee by the plan based on total plan assets from which a credit has been subtracted representing the plan's pro rata share of investment advisory fees paid by the investment company.

[5] The Department notes that this approval process for increases in Fund-level fees with the use of a "Termination Form" by Client Plans would be similar to the arrangement previously described by Mellon, and included in Section II of the Proposal, for annual reauthorizations of Fund investments by Client Plans where credits of all Fund-level fees are made. The Department notes further that the latter arrangement involving a full credit of Fund-level fees was the particular fee structure which Mellon designed at the time of the initial in-kind transfers of CIF assets to the Funds in order to be able to represent to the affected Client Plans that no increases in fees paid by such Plans would result from the transfer of such assets to the Funds.

[6] See PTE 94–86 (Bank of California, N.A.), 59 FR 65403, December 19, 1994; PTE 95–33 (BankSouth, N.A.), 60 FR 20773, April 27, 1995.

new exemption request pertaining to this issue, the Department is willing to consider the merits of such a change in the conditions pertaining to the PTE 77–4 Fee Structures used by Mellon. Such request, when received, would be processed as an amendment to the final exemption for the subject transactions involving the Funds.

No other comments, and no requests for a hearing, were received by the Department during the comment period, as extended pursuant to the applicant's notification of interested persons as discussed herein.

Accordingly, the Department has determined to grant the proposed exemption as modified.

FOR FURTHER INFORMATION CONTACT: Mr. E. F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Norwest Bank Minnesota, N.A., Located in Minneapolis, MN

[Prohibited Transaction Exemption 95–48; Exemption Application No. D–09595]

Exemption

Section I. Exemption for the In-Kind Transfer of Assets

The restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c) of the Code, shall not apply, as of September 30, 1994, to the in-kind transfer of assets of plans for which Norwest Bank Minnesota, N.A. or any of its affiliates (collectively, the Bank) serves as a fiduciary (the Client Plans), including plans established or maintained by the Bank (the Bank Plans; collectively, the Plans), that are held in certain collective investment funds (the CIFs) maintained by the Bank, in exchange for shares of the Norwest Funds (the Funds), an open-end investment company registered under the Investment Company Act of 1940 (the '40 Act), as amended, for which the Bank acts as investment adviser, custodian, and shareholder servicing agent, in connection with the termination of such CIFs provided that the following conditions are met:

(a) No sales commissions or other fees are paid by a Bank Plan or a Client Plan in connection with the purchase of shares of the Funds through the in-kind transfer of CIF assets and no redemption fees are paid in connection with the sale of such shares of the Funds.

(b) All of the assets of a Bank Plan or a Client Plan that are held in the CIFs are transferred in-kind to the Funds in exchange for shares of such Funds. A Plan not electing to participate in the Funds receives a cash payment representing a pro rata portion of the assets of the terminating CIF before the final liquidation takes place.

(c) Each Bank Plan and each Client Plan receives shares of the Funds which have a total net asset value that is equal to the value of such Plan's pro rata share of the assets of the CIF on the date of the transfer, based on the current market value of the CIF's assets, as determined in a single valuation performed in the same manner at the close of the same business day, using independent sources in accordance with the procedures set forth in Rule 17a-7(b) (Rule 17a-7) under the '40 Act and the procedures established by the Funds pursuant to Rule 17a-7 for the valuation of such assets. Such procedures must require that all securities for which a current market price cannot be obtained by reference to the last sale price for transactions reported on a recognized securities exchange or NASDAQ be valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the Friday preceding the weekend of the CIF transfers, determined on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of the Bank.

(d) A second fiduciary who is independent of and unrelated to the Bank (the Second Fiduciary) receives advance written notice of the in-kind transfer of assets of the CIFs and full written disclosure, which includes but is not limited to, the following information concerning the Funds:

(1) A current prospectus for each portfolio of the Funds in which a Bank Plan or a Client Plan is considering investing;

(2) A statement describing (i) the fees for investment advisory or similar services that are to be credited back to a Client Plan, (ii) the fees retained by the Bank for Secondary Services, as defined in paragraph (g) of Section III below, and (iii) all other fees to be charged to or paid by the Bank Plan or the Client Plan and by such Funds to the Bank or to unrelated third parties. Such statement also includes the nature and extent of any differential between the rates of the fees.

(3) The reasons why the Bank considers such investment to be appropriate for the Bank Plan or the Client Plan;

(4) A statement describing whether there are any limitations applicable to the Bank with respect to which assets of a Bank Plan or a Client Plan may be invested in the relevant Funds, and, if so, the nature of such limitations; and

(5) Upon request of the Second Fiduciary, a copy of the proposed exemption and/or a copy of the final exemption.

(e) On the basis of the foregoing information, the Second Fiduciary authorizes in writing the in-kind transfer of the Bank Plan's or the Client Plan's CIF assets to a Fund in exchange for shares of the Funds, the investment of such assets in corresponding portfolios of the Funds, the fees received by the Bank in connection with its services to the Funds and, in the case of a Client Plan only, the purchase by such Client Plan of additional shares of the corresponding Funds with the fees credited back to the Client Plan by the Bank. Such authorization by the Second Fiduciary will be consistent with the responsibilities, obligations and duties imposed on fiduciaries under Part 4 of Title I of the Act.

(f) For all subsequent transfers of CIF assets to a Fund following the publication of the proposed exemption in the **Federal Register**, the Bank sends by regular mail to each affected Bank Plan and Client Plan a written confirmation, not later than 30 days after the completion of the transaction, containing the following information:

(1) The identity of each security that was valued for purposes of the transaction in accordance with Rule 17a-7(b)(4) of the '40 Act;

(2) The price of each such security involved in the transaction; and

(3) The identity of each pricing service or market maker consulted in determining the value of such securities.

(g) For all subsequent transfers of CIF assets to a Fund following the publication of the proposed exemption in the **Federal Register**, the Bank sends by regular mail, no later than 90 days after completion of each transfer, a written confirmation that contains the following information:

(1) The number of CIF units held by the Plan immediately before the transfer, the related per unit value and the total dollar amount of such CIF units;

(2) The number of shares in the Funds that are held by the Plan following the conversion, the related per share net asset value and the total dollar amount of such shares.

(h) The conditions set forth in paragraphs (c), (d), (e), (o) and (p) of Section II below as they would relate to all Plans are satisfied.

Section II. Exemption for the Receipt of Fees

The restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c) of the Code, shall not apply, as of November 11, 1994, to: (1) The receipt of fees by the Bank from the Funds for acting as an investment adviser to the Funds; and (2) the receipt and proposed retention of fees by the Bank from the Funds for acting as custodian or shareholder servicing agent to the Funds, as well as for any other services provided to the Funds which are not investment advisory services (i.e., the Secondary Services), in connection with the investment in shares of the Funds by the Client Plans, other than the Bank Plans, for which the Bank serves as fiduciary.

The aforementioned transactions are subject to the following conditions:

(a) No sales commissions are paid by the Client Plans in connection with the purchase or sale of shares of the Funds and no redemption fees are paid in connection with the sale of shares by the Client Plans to the Funds.

(b) The price paid or received by the Client Plans for shares in the Funds is the net asset value per share, as defined in paragraph (d) of Section III, at the time of the transaction and is the same price which would have been paid or received for the shares by any other investor at that time.

(c) Neither the Bank nor an affiliate, including any officer or director, purchases from or sells to any of the Client Plans shares of any of the Funds.

(d) The combined total of all fees received by the Bank for the provision of services to the Client Plans, and in connection with the provision of services to any of the Funds in which the Client Plans invest, are not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(e) The Bank does not receive any fees payable, pursuant to Rule 12b–1 of the 1940 Act in connection with the transactions involving the Funds.

(f) Each Client Plan receives a credit, either through cash or, if applicable, the purchase of additional shares of the Funds, pursuant to an annual election, which may be revoked at any time, made by the Client Plan, of such Plan's proportionate share of all investment advisory fees charged to the Funds by the Bank, including any investment advisory fees paid by the Bank to third party sub-advisers, within not more than one business day after the receipt of such fees by the Bank.

(g) The Second Fiduciary receives, in advance of investment by a Client Plan in the Funds, full and detailed written disclosure of information concerning the relevant Funds as set forth above in Section I(d).

(h) On the basis of the information described in paragraph (d) of Section I, the Second Fiduciary authorizes in writing:

(1) The ongoing investment of assets of the Client Plans in shares of the Funds, in connection with the transactions set forth in Section II;

(2) The investment portfolios of the Funds in which the assets of the Client Plans may be invested; and

(3) The fees to be paid by the Funds in which Client Plans invest to the Bank and the purchase of additional shares of the Funds by the Client Plan with the fees credited to the Client Plan by the Bank.

(i) The authorization referred to in paragraph (h) is terminable at will by the Client Plan, without penalty to the Client Plan. Such termination will be effected by the Bank selling the shares of the Funds held by the affected Client Plan within the period of time specified by the Client Plan but not more than one business day following receipt by the Bank from the Second Fiduciary, of the termination form (the Termination Form), as defined in paragraph (h) of Section III below, or any other written notice of termination; provided that, if due to circumstances beyond the control of the Bank, the sale cannot be executed within one business day, the Bank shall have one additional business day to complete such sale.

(j) In the event of an increase in the contractual rate of any fees paid by the Funds to the Bank regarding investment advisory services or fees for similar services that had been authorized by the Second Fiduciary in accordance with paragraph (h) of this Section II, the Bank provides written notice to the Second Fiduciary in a prospectus for the Funds or otherwise, of any increases in the contractual rate of fees charged by the Bank to the Funds for investment advisory services even though such fees will be credited to the Client Plans as required by paragraph (f) of Section II.

(k) In the event of an additional Secondary Service, as defined in paragraph (g) of Section III below, provided by the Bank to the Funds for which a fee is charged or an increase in the contractual rate of any fee due from the Funds to the Bank for any Secondary Service, as defined in paragraph (g) of Section III below, that results from an increase in the rate of such fee or from the decrease in the number or kind of services performed by the Bank for such fee over an existing rate for such Secondary Service which had been authorized by the Second Fiduciary of a Client Plan in accordance with paragraph (h) of this Section II, the Bank will, at least 30 days in advance of the implementation of such additional service for which a fee is charged or fee increased, provide written notice to the Second Fiduciary explaining the nature and amount of the additional service for which a fee is charged or the nature and amount of the increase in fees of the affected Fund. Such notice will be accompanied by the Termination Form, as defined in paragraph (h) of Section III below.

(l) The Second Fiduciary is supplied with a Termination Form at the times specified in paragraphs (k) and (m) of this Section II, which expressly provides an election to terminate the authorization, described above in paragraph (h) of this Section II, with instructions regarding the use of such Termination Form including statements that:

(1) The authorization is terminable at will by any of the Client Plans, without penalty to such Plans. The termination will be effected by the Bank selling the shares of the Funds held by the Client Plans requesting termination within the period of time specified by the Client Plan, but not later than one business day following receipt by the Bank from the Second Fiduciary of the Termination Form or any written notice of termination; provided that if, due to circumstances beyond the control of the Bank, the sale of shares of such Client Plans cannot be executed within one business day, the Bank shall have one additional business day to complete such sale; and

(2) Failure by the Second Fiduciary to return the form on behalf of the Plan will be deemed to be an approval of the additional Secondary Service for which a fee is charged or increase in the rate of any fees and will result in the continuation of the authorization, as described in paragraph (h) of this Section II, of the Bank to engage in the transactions on behalf of the Client Plan.

(m) The Second Fiduciary is supplied with a Termination Form, at least once in each calendar year, beginning with the calendar year that begins after the date of the grant of this proposed exemption is published in the **Federal Register** and continuing for each calendar year thereafter; provided that the Termination Form need not be supplied to the Second Fiduciary, pursuant to paragraph (m) of this Section II, sooner than six months after such Termination Form is supplied pursuant to paragraph (k) of this Section

II, except to the extent required by said paragraph (k) of this Section II to disclose an increase in fees.

(n) On an annual basis, the Bank will provide the Second Fiduciary of a Client Plan investing in the Funds with:

(1) A copy of the current prospectus for the Funds and upon such fiduciary's request, a copy of the Statement of Additional Information which contains a description of all fees paid by the Funds to the Bank.

(2) A copy of the annual financial disclosure report prepared by the Bank which contains information about the portfolios of the Funds and includes audit findings of an independent auditor within 60 days of the preparation of the report.

In addition, the Bank will respond to oral or written responses to inquiries of the Second Fiduciary as they arise.

(o) All dealings between the Client Plans and the Funds are on a basis no less favorable to the Client Plans than dealings between the Funds and other shareholders holding the same class of shares as the Client Plans.

(p) The Bank maintains for a period of six years the records necessary to enable the persons described below in paragraph (q) to determine whether the conditions of this exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Bank, the records are lost or destroyed prior to the end of the six year period, and

(2) No party in interest shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (q) of Section II below; and

(q)(1) Except as provided in paragraph (p)(2) and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (p) are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission;

(ii) Any fiduciary of a Client Plan who has authority to acquire or dispose of shares of the Funds owned by the Client Plan, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of a Client Plan or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraphs (q)(1)(ii) and (iii) shall be authorized to examine trade secrets of the Bank, or commercial or financial information which is privileged or confidential.

Section III. Definitions

For purposes of this exemption:

(a) The term "Bank" means Norwest Bank Minnesota, N.A. and any affiliate of the Bank, as defined in paragraph (b) of this Section III.

(b) An "affiliate" of the Bank includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the Bank. (For purposes of this paragraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(2) Any officer, director, employee, relative or partner in such person, and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(c) The term "Fund" or "Funds" refers to the Norwest Funds or to any diversified open-end investment company or companies registered under the '40 Act for which the Bank serves as an investment adviser and may also serve as a custodian, shareholder servicing agent, transfer agent or provide some other "Secondary Service" (as defined below in paragraph (g) of this Section IV) which has been approved by such Funds.

(d) The term "net asset value" means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in a Fund's prospectus and statement of additional information, and other assets belonging to each of the portfolios in such Fund, less the liabilities chargeable to each portfolio, by the number of outstanding shares.

(e) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or member of the "family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(f) The term "Second Fiduciary" means a fiduciary of a plan who is independent of and unrelated to the Bank. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to the Bank if:

(1) Such Second Fiduciary directly or indirectly controls, is controlled by, or is under common control with the Bank;

(2) Such Second Fiduciary, or any officer, director, partner, affiliate, employee, or relative of such Second Fiduciary is an officer, director, partner or employee of the Bank (or is a relative of such persons);

(3) Such Second Fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this proposed exemption; provided, however that with respect to Bank Plans, the Second Fiduciary may receive compensation from the Bank in connection with the transactions contemplated herein, but the amount or payment of such compensation may not be contingent upon or be in any way affected by the Second Fiduciary's ultimate decision regarding whether the Bank Plans participate in such transactions.

With the exception of the Bank Plans, if an officer, director, partner, affiliate or employee of the Bank (or relative of such persons), is a director of such Second Fiduciary, and if he or she abstains from participation in: (i) The choice of the Plan's investment adviser, (ii) the approval of any such purchase or sale between the Client Plan and the Funds, and (iii) the approval of any change of fees charged to or paid by the Client Plan, any of the transactions described in Sections I and II above, then paragraph (f)(2) of this Section IV, shall not apply.

(g) The term "Secondary Service" means a service, other than investment advisory or similar services which is provided by the Bank to the Funds, including, but not limited to, custodial or shareholder services. However, the term "Secondary Service" does not include any brokerage services provided by the Bank to the Funds.

(h) The term "Termination Form" means the form supplied to the Second Fiduciary at the times specified in paragraphs (i), (k), (l) and (m) of Section II which expressly provides an election to the Second Fiduciary to terminate on behalf of a Plan the authorization described in paragraph (h) of Section II. Such Termination Form is to be used at will by the Second Fiduciary to terminate such authorization without penalty to the Plan and to notify the Bank in writing to effect such termination by selling the shares of the Fund held by the Plan requesting termination not later than one business day following receipt by the Bank of written notice of such request for termination; provided that if, due to circumstances beyond the control of the Bank, the shares of such Client Plans cannot be executed within one business day, the Bank shall have one additional business day to complete such sale.

EFFECTIVE DATE: This exemption is effective as of September 30, 1994 with respect to the transactions described in Section I and as of November 11, 1994 with respect to the transactions described in Section II.

Written Comments

The Department received two written comments with respect to the notice of proposed exemption and no requests for a public hearing. Both comments were submitted by the Bank. The first comment clarifies Section II(f) of the exemption and the parallel language contained in the Summary of Facts and Representations (the Summary). In pertinent part, Section II(f) states the following:

> Each Client Plan receives a credit, either through cash or, if applicable, the purchase of additional shares of the Funds, pursuant to an annual election, which may be revoked at any time, made by the Client Plan, of such Plan's proportionate share of all investment advisory fees charged to the Funds by the Bank, including any investment advisory fees paid by the Bank to a third party sub-adviser, within not more than one business day after the receipt of such fee by the Bank.

The Bank represents that in the future, some of the Funds may hire a third party sub-adviser directly. In this event, the Bank states that it will comply with the fee rebate mechanism described in the notice of proposed exemption with respect to any fees paid by the Funds to the third party sub-adviser. The Department does not have any objection to the proposed hiring arrangement, given that the same fee rebate mechanism will be in place. Accordingly, the Department concurs with the applicant's clarification of Section II(f) and the corresponding language in the Summary.

The second comment pertains to notification of interested persons. In this comment, the Bank represents that it did not comply with the notice to interested persons requirement for participants in the Bank Plans within the time frame stated in the exemption application. By letter dated May 23, 1995, the Bank explains that it reposted the notice of proposed exemption for an additional 16 days ending June 5, 1995 in each of the major work sites where the notice had been originally posted. No comments were received by the Department from Bank Plan participants.

After giving full consideration to the entire record, including the written comments that were submitted by the Bank, the Department has decided to grant the exemption as described and revised above. Comment letters have been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on March 13, 1995 at 60 FR 13457.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Paloma Securities L.P. (Paloma) and Boston Global Advisors, Inc. (BGA) Located in Boston, Massachusetts

[Prohibited Transaction Exemption 95–49; Application No. D–09660]

Exemption

The restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the lending of securities to Paloma by employee benefit plans (including commingled investment funds holding plan assets) for which BGA, an affiliate of Paloma, acts as securities lending agent (or sub-agent) and to the receipt of compensation by BGA in connection with these transactions, provided that the following conditions are met:

1. Neither BGA, Paloma nor an affiliate of either has discretionary authority or control with respect to the investment of the plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3–21(c) with respect to those assets;

2. Any arrangement for BGA to lend plan securities to Paloma in either an agency or sub-agency capacity will be approved in advance by a plan fiduciary who is independent of Paloma and BGA;

3. A plan may terminate the agency or sub-agency arrangement at any time without penalty on five business days notice;

4. The plan will receive from Paloma (either by physical delivery or by book entry in a securities depository, wire transfer or similar means) by the close of business on or before the day the loaned securities are delivered to Paloma, collateral consisting of cash, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, or irrevocable bank letters of credit issued by a person other than Paloma or an affiliate thereof, or any combination thereof, or other collateral permitted under PTE 81–6, having, as of the close of business on the preceding business day, a market value initially equal to at least 102 percent of the market value of the loaned securities and, if the market value of the collateral falls below 100 percent, Paloma will deliver additional collateral on the following day such that the market value of the collateral will again equal 102 percent;

5. All procedures regarding the securities lending activities will at a minimum conform to the applicable provisions of Prohibited Transaction Exemptions (PTEs) 81–6 and 82–63;

6. Paloma will indemnify the plan against any losses due to its use of the borrowed securities;

7. The plan will receive the equivalent of all distributions made to holders of the borrowed securities during the term of the loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits and rights to purchase additional securities, or other distributions;

8. Prior to any plan's approval of the lending of its securities to Paloma, a copy of this exemption, (and the notice of pendency) will be provided to the plan; and

9. Only plans with total assets having an aggregate market value of at least $50 million will be permitted to lend securities to Paloma.

Written Comments

The applicant submitted the following comments regarding the notice of pendency.

The applicant suggests that the last sentence of paragraph 18 of the notice of pendency which stated that, "BGA will lend securities to requesting borrowers on a first come, first served basis, as a means of assuring uniformity of treatment among borrowers," needs further clarification. The applicant suggests that this sentence should have been deleted and the following paragraph should have been inserted in its place, "[w]hile BGA will normally lend securities to requesting borrowers on a first come, first served basis, as a means of assuring uniformity of treatment among borrowers, it should be recognized that in some cases it may not be possible to adhere to a first come, first served allocation. This can occur,

for instance, where: (a) The credit limit established for such borrower by BGA and/or the client-plan has already been satisfied; (b) the "first in line" borrower is not approved as a borrower by the particular client- plan whose securities are sought to be borrowed; or (c) the "first in line" borrower cannot be ascertained, as an operational matter, because several borrowers spoke to different BGA representatives at or about the same time with respect to the same security. In situations (a) and (b), loans would normally be effected with the "second in line." In situation (c), securities would be allocated equitably among all eligible borrowers." The Department concurs with this comment.

The applicant further represents that, pursuant to discussions with the Department subsequent to the publication of the Proposal, it will make the following commitments with respect to the exempted transactions. BGA shall make and retain, for six (6) months, tape recordings evidencing all securities loan transactions with Paloma. Also, if requested by the lending customer, BGA shall provide daily confirmations of securities lending transactions; and BGA shall provide to lending customers monthly account reports, or if requested by the customer, weekly or daily reports, setting forth for each transaction made or outstanding during the relevant reporting period, the loaned securities, the related collateral, rebates and loan premiums and such other information in such format as shall be agreed to by the parties.

Accordingly, after giving full consideration to the entire record, including the written comment from the applicant, the Department has decided to grant the exemption, as described and concurred in above. In this regard, the comment letter submitted by the applicant to the Department has been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 14, 1995, at 60 FR 19086.

FOR FURTHER INFORMATION CONTACT: Louis Campagna of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

The First National Bank of Boston and Its Affiliates (Collectively, the Bank) Located in Boston, Massachusetts

[Prohibited Transaction Exemption 95–50; Application No. D–09682]

Section I—Exemption for Receipt of Fees

The restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (F) of the Code, shall not apply as of April 1, 1994 to: (1) The receipt by the Bank of fees from the 1784 Funds (the Funds), investment companies registered under the Investment Company Act of 1940 (the 1940 Act), for acting as an investment adviser to the Funds in connection with the investment by plans for which the Bank serves as a fiduciary (the Client Plans) in shares of the Funds; and (2) the receipt and retention of fees by the Bank from the Funds for acting as custodian and accountant to the Funds as well as for any other services to the Funds which are not investment advisory services (i.e. "secondary services" as defined in Section III(h) below) in connection with the investment by the Client Plans in shares of the Funds, provided that the following conditions and the General Conditions of Section II below are met:

(a) No sales commissions are paid by the Client Plans in connection with the purchase or sale of shares of the Funds and no redemption fees are paid in connection with the sale of shares by the Client Plans to the Funds.

(b) The price paid or received by a Client Plan for shares in a Fund is the net asset value per share at the time of the transaction, as defined in Section III(e), and is the same price which would have been paid or received for the shares by any other investor at that time.

(c) Neither the Bank nor an affiliate, including any officer or director of the Bank, purchases or sells shares of the Funds to any Client Plan.

(d) Each Client Plan receives a credit, through a cash rebate, of such Plan's proportionate share of all fees charged to the Funds by the Bank for investment advisory services, including any investment advisory fees paid by the Bank to third party sub-advisors, no later than one business day after the receipt of such fees by the Bank. The crediting of all investment advisory fees to the Client Plans by the Bank is audited by an independent accounting firm on at least an annual basis to verify the proper crediting of the fees to each Client Plan.

(e) The combined total of all fees received by the Bank for the provision of services to a Client Plan, and in connection with the provision of services to the Funds in which the Client Plan may invest, are not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.[7]

(f) The Bank does not receive any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with the transactions.

(g) The Client Plans are not employee benefit plans sponsored or maintained by the Bank.

(h) A second fiduciary acting for the Client Plan which is independent of and unrelated to the Bank (the Second Fiduciary) receives, in advance of any initial investment by the Client Plan in a Fund, full and detailed written disclosure of information concerning the Funds, including but not limited to:

(1) A current prospectus for each Fund in which a Client Plan is considering investing;

(2) A statement describing the fees for investment advisory or similar services, any secondary services as defined in Section III(h), and all other fees to be charged to or paid by the Client Plan and by the Funds, including the nature and extent of any differential between the rates of such fees;

(3) The reasons why the Bank may consider such investment to be appropriate for the Client Plan;

(4) A statement describing whether there are any limitations applicable to the Bank with respect to which assets of a Client Plan may be invested in the Funds, and if so, the nature of such limitations; and

(5) Upon request of the Second Fiduciary, a copy of the proposed exemption and/or a copy of the final exemption, once such documents are published in the **Federal Register.**

(i) After consideration of the information described above in

[7] In addition, the Department notes that Section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan. Thus, the Department believes that the Bank should ensure, prior to any investments made by a Client Plan for which it acts as a trustee or investment manager, that all fees paid by the Funds, including fees paid to parties unrelated to the Bank and its affiliates, are reasonable. In this regard, the Department is providing no opinion as to whether the total fees to be paid by a Client Plan to the Bank, its affiliates, and third parties under the arrangements described herein would be either reasonable or in the best interests of the participants and beneficiaries of the Client Plans.

paragraph (h) of Section I, the Second Fiduciary authorizes in writing the investment of assets of the Client Plan in each particular Fund, the fees to be paid by such Fund to the Bank, and the cash rebate to the Client Plan of fees received by the Bank from the Funds for investment advisory services.

(j) All authorizations made by a Second Fiduciary regarding investments in a Fund and the fees paid to the Bank are subject to an annual reauthorization wherein any such prior authorization referred to in paragraph (i) of Section I shall be terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by the Bank of written notice of termination. A form expressly providing an election to terminate the authorization described in paragraph (i) above (the Termination Form) with instructions on the use of the form must be supplied to the Second Fiduciary no less than annually. The instructions for the Termination Form must include the following information:

(1) The authorization is terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by the Bank of written notice from the Second Fiduciary; and

(2) Failure to return the Termination Form will result in continued authorization of the Bank to engage in the transactions described in paragraph (i) of Section I on behalf of the Client Plan.

(k) The Second Fiduciary of each Client Plan invested in a particular Fund receives full written disclosure, in a statement separate from the Fund prospectus, of any proposed increases in the rates of fees charged by the Bank to the Funds for secondary services at least 30 days prior to the effective date of such increase, accompanied by a copy of the Termination Form, and receives full written disclosure in a Fund prospectus or otherwise of any increases in the rates of fees charged by the Bank to the Funds for investment advisory services even though such fees will be rebated as required by paragraph (d) of Section I above.

(l) In the event that the Bank provides an additional secondary service to a Fund for which a fee is charged or there is an increase in the amount of fees paid by the Funds to the Bank for any secondary services resulting from a decrease in the number or kind of services performed by the Bank for such fees in connection with a previously authorized secondary service, the Bank will, at least thirty days in advance of the implementation of such additional service or fee increase, provide written notice to the Second Fiduciary explaining the nature and the amount of the additional service for which a fee will be charged or the nature and amount of the increase in fees of the affected Fund. Such notice shall be accompanied by the Termination Form, as defined in Section III(i) below. However, if the Termination Form has been provided to the Second Fiduciary pursuant to this paragraph or paragraph (k) above, then the Termination Form need not be provided again for an annual reauthorization pursuant to paragraph (j) above unless at least six months has elapsed since the form was provided in connection with the fee increase.

(m) On an annual basis, the Bank provides the Second Fiduciary of a Client Plan investing in the Funds with:

(1) A copy of the current prospectus for the Funds and, upon such fiduciary's request, a copy of the Statement of Additional Information for such Funds which contains a description of all fees paid by the Funds to the Bank;

(2) A copy of the annual financial disclosure report of the Funds in which such Client Plan is invested, which includes information about the Fund portfolios as well as audit findings of an independent auditor, within 60 days of the preparation of the report; and

(3) Oral or written responses to inquiries of the Second Fiduciary as they arise.

(n) All dealings between the Client Plans and the Funds are on a basis no less favorable to the Client Plans than dealings with other shareholders of the Funds.

Section II—General Conditions

(a) The Bank maintains for a period of six years the records necessary to enable the persons described below in paragraph (b) of Section II to determine whether the conditions of this exemption have been met, except that: (1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Bank, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than the Bank shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b) below.

(b)(1) Except as provided in paragraph (b)(2) and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (a) of Section II are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(ii) Any fiduciary of the Client Plans who has authority to acquire or dispose of shares of the Funds owned by the Client Plans, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of the Client Plans or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraph (b)(1)(ii) and (iii) shall be authorized to examine trade secrets of the Bank, or commercial or financial information which is privileged or confidential.

Section III—Definitions

For purposes of this exemption:

(a) The term "Bank" means The First National Bank of Boston and any affiliate thereof as defined below in paragraph (b) of Section III.

(b) An "affiliate" of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term "Fund" or "Funds" shall include the 1784 Funds, each series thereof, or any other diversified open-end investment company registered under the 1940 Act for which the Bank serves as an investment adviser and may also serve as a custodian, Fund accountant, transfer agent or provide some other "secondary service" (as defined below in paragraph (h) of this Section) which has been approved by such Funds.

(e) The term "net asset value" means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in the Fund's prospectus and statement of additional information, and other assets belonging to the Fund or portfolio of the Fund, less the liabilities charged to each such portfolio or Fund, by the number of outstanding shares.

(f) The term "relative" means a "relative" as that term is defined in

section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(g) The term "Second Fiduciary" means a fiduciary of a Client Plan who is independent of and unrelated to the Bank. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to the Bank if:

(1) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with the Bank;

(2) Such fiduciary, or any officer, director, partner, employee, or relative of the fiduciary is an officer, director, partner, employee or affiliate of the Bank (or is a relative of such persons);

(3) Such fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this exemption.

If an officer, director, partner, affiliate or employee of the Bank (or relative of such persons), is a director of such Second Fiduciary, and if he or she abstains from participation in (i) the choice of the Client Plan's investment adviser, (ii) the approval of any such purchase or sale between the Client Plan and the Funds, and (iii) the approval of any change in fees charged to or paid by the Client Plan in connection with any of the transactions described in Sections I and II above, then paragraph (g)(2) of Section III shall not apply.

(h) The term "secondary service" means a service other than an investment management, investment advisory, or similar service, which is provided by the Bank to the Funds. However, for purposes of this exemption, the term "secondary service" will not include any brokerage services provided to the Funds by the Bank for the execution of securities transactions engaged in by the Funds.

(i) The term "Termination Form" means the form supplied to the Second Fiduciary which expressly provides an election to the Second Fiduciary to terminate on behalf of a Client Plan the authorization described in paragraph (j) of Section II. The Termination Form shall be used at will by the Second Fiduciary to terminate an authorization without penalty to the Client Plan and to notify the Bank in writing to effect a termination by selling the shares of the Funds held by the Client Plan requesting such termination within one business day following receipt by the Bank of the form; provided that if, due to circumstances beyond the control of the Bank, the sale cannot be executed within one business day, the Bank shall have one additional business day to complete such sale.

EFFECTIVE DATE: This exemption is effective as of April 1, 1994.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on March 20, 1995 at 60 FR 14786.

WRITTEN COMMENTS AND MODIFICATIONS: The applicant submitted the following comments and requests for modifications regarding the notice of proposed exemption (the Proposal).

With respect to Section I(h) of the Proposal, the condition requires that a Second Fiduciary receive, in advance of any investment by the Client Plan in a Fund, full and detailed written disclosure of information concerning the Funds. However, the applicant states that the condition as written might be construed as requiring the disclosure of such information before every investment thereafter in the same Fund (i.e., if one reads "any investment" to mean "each and every investment"). The applicant requests that, in order to avoid confusion on this point, the phrase "* * * in advance of any investment" be changed to read "* * * in advance of any *initial* investment" (emphasis added). The Department concurs with the applicant's requested clarification and has so modified the language of Section I(h) of the Proposal.

With respect to Section I(i) of the Proposal, the applicant states that this condition, which in general requires the Second Fiduciary for each Client Plan to have authorized in writing the investment of assets of the Client Plan in a particular Fund, begins with the clause "[o]n the basis of the information described above in paragraph (h) of Section I." The applicant represents that while the Bank will be providing the information required by Section I(h), and anticipates that the Second Fiduciary will take such information into consideration in determining whether to approve any investment in a Fund, the Bank will not in every case be able to determine the precise basis on which a Second Fiduciary has approved use of a Fund as an investment vehicle. Thus, the applicant requests that this clause be either deleted or otherwise clarified. In this regard, the Department concurs with the applicant's requested clarification and has deleted the words "[o]n the basis of * * *" in the opening clause of Section I(i) and has substituted therefor the words "[a]fter consideration of * * *".

With respect to Section I(m)(2) of the Proposal, the condition requires that the Bank provide the Second Fiduciary of a Client Plan investing in the Fund with a copy of the "* * * annual financial disclosure report prepared by the Bank" which includes information about the Fund portfolios. The applicant requests that the information referred to here should be clarified to mean the annual financial reports of the Funds which are prepared by the Funds, not by the Bank. In addition, the applicant requests that the condition be clarified to require that only the annual reports of the Funds in which a Client Plan is invested need to be sent to the Second Fiduciary for that Client Plan. The Department concurs with the applicant's requested clarification and has modified the language of Section I(m)(2) by deleting the words "* * * prepared by the Bank" and substituting therefor the words "* * * of the Funds in which such Client Plan is invested".

With respect to Section III(d) of the Proposal, the applicant states that the 1784 Funds is a Massachusetts business trust with separate series recognized for tax purposes as a separate corporation, but which collectively is not recognized as a corporation. Thus, the applicant requests that the Department delete the word "Inc." after the reference to the 1784 Funds in the definition contained in Section III(d). In addition, the applicant notes that references throughout the Proposal to the "Fund" are in fact generally meant as references to one or more of the separate series of the 1784 Funds. In this regard, the applicant requests that the definition in Section III(d) indicate that the term "Fund" or "Funds" "* * * shall include the 1784 Fund, *each series thereof*, or any other * * *" (emphasis added). The Department concurs with the applicant's requested clarification and has so modified the language of Section III(d) of the Proposal.

Finally, pursuant to telephone conversations with representatives of the Department, the applicant has confirmed in writing that when the Bank is engaged to provide investment advisory services for a Fund under the requested exemption, such services will be performed by the Bank or a third party sub-advisor retained by the Bank. The applicant represents that no "sub-advisor" to the Bank will be retained directly by a Fund. In this regard, the Bank states that the fees payable by a Fund ultimately for the account of a sub-advisor to the Bank will be rebated by the Bank to the Client Plans, as discussed in the Proposal and required by Section I(d) above.

Accordingly, based on the current exemption application file and record, the Department has determined to grant the proposed exemption as modified.

FOR FURTHER INFORMATION CONTACT: Mr. E. F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

AT&T Corporation (AT&T), and AT&T Investment Corporation (ATTIMCO) Located in New York, New York

[Prohibited Transaction Exemption 95–51; Exemption Application Nos. D–09716 & D–09717]

Exemption

Part I—Exemption for Payment of Certain Fees to Asset Managers

The restrictions of section 406(b)(1) and (b)(2) of the Act and the taxes imposed by section 4975 of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply to the payment of Performance Fees by an AT&T Investment Fund to an Asset Manager in exchange for real estate management or advisory services rendered pursuant to an Agreement, provided that the conditions set forth in Parts II and III are satisfied.

Part II—General Conditions

(a) The Asset Manager is not an affiliate of AT&T and the terms of any Performance Fee are approved in writing by AT&T.

(b) The terms of any Performance Fee shall be at least as favorable to the AT&T Investment Fund as those obtainable in arm's-length transactions between unrelated parties.

(c) No AT&T Trust shall allocate, in the aggregate, more than twenty percent of its total assets to Arrangements which are the subject of this exemption, determined at the time any such Arrangement is established and at the time of any subsequent allocation of additional assets (including the reinvestment of assets) to such an Arrangement. The foregoing limitation shall not apply to an AT&T Plan Assets Entity. However, that percentage of the Assets of an AT&T Plan Assets Entity which is deemed to be "plan assets" of an AT&T Trust invested therein shall be treated as assets of such AT&T Trust for the purpose of applying the foregoing limitation to the AT&T Trust.

(d) AT&T shall receive the following written information with respect to assets subject to this exemption (Assets):

(1) annual audited financial statements prepared by independent certified public accountants approved by AT&T;

(2) quarterly and annual reports prepared by the Asset Manager relating to the overall financial position of the Assets (Each such report shall include a statement regarding the amount of fees paid to the Asset Manager during the period covered by such report); and

(3) annual reports indicating the fair market value of the Assets determined on the basis of the most recently available Independent Valuations.

(e) The total fees paid to an Asset Manager shall constitute no more than reasonable compensation.

(f) The Performance Fee shall be payable after Net Proceeds with respect to the Assets exceed the Threshold Amount. The Threshold Amount and the amount of the Performance Fee, expressed as a percentage (or percentages) of the Net Proceeds in excess of the Threshold Amount (or Threshold Amounts), shall be established by the Agreement. The Threshold Amount for any Performance Fee shall include at least a minimum rate of return to the AT&T Investment Fund, as described in Part III, Section (q).

(g) The provisions of this paragraph (g) shall apply only where an Asset Manager has discretion to sell Assets without prior approval of AT&T. For any sale of an Asset which gives rise to the payment of a Performance Fee to an Asset Manager prior to the Termination Date, the sales price of the Asset shall be at least equal to a Target Amount in order for the Asset Manager to sell the Asset and receive its Performance Fee without further approval. If the proposed sales price of the Asset is less than the applicable Target Amount, the proposed sale shall be disclosed to and subject to the approval of AT&T, in which event the Asset Manager shall be entitled to sell the Asset and receive its Performance Fee. If the proposed sales price is less than the applicable Target Amount and AT&T's approval is not obtained, the Asset Manager shall retain the authority to sell the Asset, provided that the Performance Fee that would have been payable to the Asset Manager by reason of the sale of the Asset shall be paid only at the termination of the Arrangement.

(h) In the event of termination of the Arrangement upon its Termination Date, the Asset Manager shall be entitled to receive a Performance Fee payable on the Termination Date. The amount of the Performance Fee upon termination shall be determined by assuming a sale for cash of the remaining Assets at their fair market value (determined on the basis of Independent Valuations) and no reinvestment of such cash in Assets subject to the Arrangement.

(i) In the event of the removal or resignation of an Asset Manager prior to the Termination Date, the Asset Manager shall be entitled to receive a Performance Fee payable on the Termination Date pursuant to this paragraph (i). The Performance Fee shall be calculated on a preliminary basis at the time of such removal or resignation by assuming a sale for cash of the remaining Assets at their fair market value (determined on the basis of Independent Valuations) and no reinvestment of such cash in Assets subject to the Arrangements. As of the Termination Date, the amount so determined on a preliminary basis shall be multiplied by a fraction, the numerator of which is the sum of: (1) The actual sales prices received by the AT&T Investment Fund on disposition of all Assets sold after the date of the Asset Manager's removal or resignation and prior to the Termination Date, and (2) in the case of Assets which have not been sold prior to the Termination Date, the value of the Assets as of the Termination Date (determined on the basis of Independent Valuations), and the denominator of which is the aggregate value of the Assets which was used in connection with the preliminary determination of the Performance Fee at the time of removal or resignation, provided that this fraction shall never exceed 1.0. The resulting amount shall be the Performance Fee payable to the Asset Manager upon the Termination Date.

(j) AT&T shall maintain or cause to be maintained with respect to the Assets, for a period of six years, the records necessary to enable the persons described in paragraph (k) of this Part II to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of AT&T, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest, other than AT&T, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975 (a) and (b) of the Code if the records are not maintained or are not available for examination as required by Part III, Section (k) below.

(k) Notwithstanding any provisions of Section 504(a)(2) and 504(b) of the Act, the records referred to in Section (j) of this Part II shall be unconditionally available at their customary location for examination during normal business hours by:

(1) any duly authorized employee or representative of the Department or the Internal Revenue Service;

(2) any contributing employer to any employee benefit plan the assets of which are held in the AT&T Investment Fund which has entered into the Arrangement or any duly authorized employee or representative of such employer;

(3) any participant or beneficiary of any employee benefit plan the assets of which are held in the AT&T Investment Fund or any duly authorized representative of such participant or beneficiary; and

(4) nothing in this paragraph (k) shall authorize any of the persons described in subsections (2) and (3) to examine any trade secrets of AT&T or information which is privileged or confidential.

Part III—Definitions

(a) An "affiliate" of a person means:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative of, or partner of any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(b) The term "Agreement" means the investment management, trust or other agreement entered into between an Asset Manager and AT&T for the provision of real estate management or advisory services.

(c) The term "Arrangement" means a fee arrangement entered into between AT&T and an Asset Manager pursuant to an Agreement providing for the payment of Performance Fees to the Asset Manager by an AT&T Investment Fund in exchange for real estate management or advisory services.

(d) The term "Asset Manager" means any person or entity providing real estate management or advisory services to an AT&T Investment Fund.

(e) The term "Assets" means assets of an AT&T Investment Fund which are the subject of an Arrangement with an Asset Manager.

(f) The term "AT&T" means AT&T Corporation, AT&T Investment Management Corporation and/or any Subsidiary.

(g) The term "AT&T Investment Fund" means an AT&T Trust or an AT&T Plan Assets Entity.

(h) The term "AT&T Plan Assets Entity" means any group trust, partnership or other entity (including without limitation the Telephone Real Estate Equity Trust), the assets of which are deemed to be "plan assets" by reason of the application of 29 C.F.R. 2510.3–101, but only if (1) fifty percent or more of the interests in such entity are held by one or more AT&T Trusts, and (2) AT&T is the named fiduciary or manager of the assets of such entity.

(i) The term "AT&T Trust" means the AT&T Master Pension Trust or any other trust (other than an AT&T Plan Assets Entity), one hundred percent of the assets of which are assets of employee benefit plans maintained by AT&T.

(j) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(k) The term "Independent Valuations" means valuations based on independent and objective third party sources acceptable to AT&T (including without limitation NASDAQ, newspapers, or other general publications, or brokers which are independent of the Asset Manager and its affiliates), or, if such sources are not available with respect to a particular asset or at the option of AT&T, valuations conducted by an appraiser independent of the Asset Manager and its affiliates which has been approved by AT&T; provided, however, that, solely for purposes of the reports described in Part II, Section (d)(3) above, no such appraisal will be required with respect to any Asset if AT&T determines, in its sole discretion, that such an appraisal is unnecessary.

(l) The term "Net Proceeds" means, with respect to an Arrangement, the aggregate amount of cash and other assets (valued at fair market value as determined on the basis of Independent Valuations) which cease to be Assets which are subject to such Arrangement, in accordance with the terms of the Agreement establishing such Arrangement.

(m) The term "Performance Fee" means a fee which equals a pre-specified percentage (or several pre-specified percentages) of all Net Proceeds in excess of the Threshold Amount (or several Threshold Amounts), subject to such limitations, if any, as AT&T may approve or impose.

(n) The term "Subsidiary" means a corporation, partnership, or other entity of which (or in which) fifty percent or more of:

(1) The combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of such corporation, (2) the capital interest or profits interest of such partnership, or (3) the beneficial interest of such other entity, is owned directly or indirectly by AT&T Corporation or AT&T Investment Management Corporation.

(o) The term "Target Amount" means a value assigned to each Asset either (1) at the time the Asset becomes subject to the Arrangement, by mutual agreement between the Asset Manager and AT&T, or (2) pursuant to an objective formula approved by the Asset Manager and AT&T at the time the Arrangement is established. However, in no event will the value be less than the value of the Asset at the time the Asset becomes subject to the Arrangement.

(p) The term "Termination Date" means the date, established in the Agreement, on which the Arrangement will terminate by reason of the passage of time, as the same may be amended from time to time with the approval of AT&T.

(q) The term "Threshold Amount" means with respect to any Arrangement an amount which equals one hundred percent of the AT&T Investment Fund's capital invested in the Assets plus a pre-specified annual compounded cumulative rate or rates of return, each of which is at least a minimum rate of return determined as follows:

(1) A non-fixed rate which is a least equal to the rate of change in the consumer price index (CPI) during the period from the time the Assets become subject to the Arrangement until Net Proceeds equal or exceed the applicable Threshold Amount; or

(2) a fixed rate which is at least equal to the average rate of change in the CPI over some period of time specified in the Agreement, which shall not exceed ten years.

EFFECTIVE DATE: This exemption is effective as of September 19, 1994, the date on which the notice of proposed exemption was published in the **Federal Register**.

For a more complete statement of the facts and representations supporting this exemption, refer to the notice of proposed exemption published on September 19, 1994 at 59 FR 47952.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Toyota Motor Sales, U.S.A., Inc. Money Purchase Pension Plan for Bargaining Unit Employees (the Plan) Located in Torrance, California

Exemption Application No. D–09875
Prohibited Transaction Exemption 95–52;

Exemption

The restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale by the Plan (the Sale) of group annuity contract No. GA–4564 (the GAC) issued by Mutual Benefit Life Insurance Company (Mutual Benefit), located in Newark, New Jersey, to Toyota Motor Sales, U.S.A., Inc., a California corporation, (the Employer), a party in interest with respect to the Plan; provided that: (1) The Sale is a one-time transaction for cash; (2) the Plan experiences no loss nor incurs any expense from the Sale; and (3) the Plan receives as consideration from the Sale the greater of either the fair market value of the GAC as determined by the trustee of the Plan on the date of the Sale, or an amount that is equal to the total funds expended by the Plan in acquiring and holding the GAC, plus the amount of interest earned and accrued by the Plan on the GAC to the date of the Sale, less all withdrawals from the Plan to the date of the Sale, and less all advances made to the Plan by the Employer to the date of the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 27, 1995, at 60 FR 20766.

WRITTEN COMMENTS: With respect to the Notice of Proposed Exemption, the applicant noted that the last sentence in the penultimate paragraph of Section 4 under the Summary of Facts and Representations represents that the fair market value of the GAC is $2,349,840, as of September 30, 1994. The applicant believes that the fair market value of the GAC, if ascertainable, is considerably lower because of the rehabilitation proceedings affecting Mutual Benefit, which significantly restrict the withdrawal and payment provisions of the GAC.

The applicant also noted that had the Sale taken place on September 30, 1994, the Plan would have been paid approximately $2,349,840, which is the amount that would have been determined in accordance with the terms and provisions of the Proposed Exemption as of that date. Since the Sale did not take place on September 30, 1994, the Plan will receive as consideration an amount determined on the date of the Sale in accordance with the terms and provisions of the Proposed Exemption.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Bob Murphy, Inc. Proft Sharing Plan (the Plan) Located in Boynton Beach, FL

[Prohibited Transaction Exemption 95–53; Exemption Application No. D–09949]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale of certain works of art (the Art Work) by the Plan to Robert J. Murphy, Jr., a disqualified person with respect to the Plan.[8]

This exemption is conditioned upon the following requirements: (1) All terms and conditions of the sale are at least as favorable to the Plan as those obtainable in an arm's length transaction between unrelated parties; (2) the sale is a one-time cash transaction; (3) the Plan is not required to pay any commissions, costs or other expenses in connection with the sale; and (4) the Plan receives a sales price equal to the fair market value of the Art Work on the date of the sale as determined by a qualified, independent appraiser.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on May 10, 1995 at 60 FR 24902.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Employees' Thrift Plan of Columbia Gas System (the Plan) Located in Wilmington, Delaware

[Exemption Application No. D–09959
Prohibited Transaction Exemption 95–54]

Exemption

The restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) The loan of funds (the Loan) to the Plan by the Columbia Gas System, Inc., the sponsor of the Plan, and its wholly-owned subsidiary, Columbia Gas Transmission Corporation, with respect to the Guaranteed Investment Contract No. 61969 (the GIC) issued by Confederation Life Insurance Company of Canada (Confederation); and (2) the potential repayment by the Plan of the Loan upon the receipt by the Plan of payments under the GIC; provided the following conditions are satisfied: (a) No interest and/or expenses are paid by the Plan in connection with the Loan; (b) all the terms and conditions of the proposed Loan are no less favorable to the Plan than those which the Plan could obtain in an arm's-length transaction with an unrelated party; (c) the Loan will be the accumulated book value of the GIC as of August 12, 1994, less any amounts received by the Plan from Confederation since August 12, 1994; (d) the repayment of the Loan will not exceed the total amount of the Loan; (e) the repayment of the Loan by the Plan will be restricted to funds paid to the Plan under the GIC by Confederation, or State Guaranty Funds, or other third-party sources; (f) the repayment of the Loan is waived to the extent the Loan exceeds the proceeds the Plan receives from the GIC; and (g) any proceeds or future interest credited under the GIC after August 12, 1994, in accordance with the Rehabilitation Plan by the State of Michigan, will be allocated and disbursed to the affected participants of the Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 27, 1995, at 60 FR 20771.

WRITTEN COMMENTS: With respect to the Notice of Proposed Exemption, the applicant noted that item 2(c) of the first paragraph of the Proposed Exemption did not take into account amounts received by the Plan since August 12, 1994, from Confederation prior to the date the Loan is made. The applicant states that Confederation has paid some limited amounts on its GICs for certain withdrawal events and may pay some more funds before the date of the Loan.

The applicant also noted that amounts received by the Plan from Confederation since August 12, 1994, were not considered in determining the amount of the Loan as described in the fourth sentence of Section 5 and item 6(c) in Section 6 of the Summary of Facts and Representations.

In consideration of the comments, item 2(c) of the Exemption is changed to reflect that the Loan will be the accumulated book value of the GIC as of August 12, 1994, less any amounts received by the Plan from Confederation since August 12, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section

[8] Because Mr. Murphy and his spouse, Gail F. Murphy, are the only participants in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, D.C., this 21st day of June, 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 95–15521 Filed 6–23–95; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting an expedited notice of information collection that will affect the public. Interested persons are invited to submit comments by July 24, 1995. Copies of materials may be obtained at the NSF address or telephone number shown below.

(A) *Agency Clearance Officer.* Herman G. Fleming, Division of Contracts, Policy and Oversight, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, or by telephone (703) 306–1243. Comments may also be submitted to:

(B) *OMB Desk Office.* Office of Information and Regulatory Affairs, ATTN: Jonathan Winer, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: Evaluation of the Instrumentation and Laboratory Improvement Program.

Affected Public: Not for Profit institutions.

Respondents/Reporting Burden: 1,500 respondents: average 38 minutes per response.

Abstract: This study will evaluate NSF's Instrumentation and Laboratory Improvement Program in the years 1988–1994. It will document and evaluate the scope and coverage of the program during this period and will assess its impacts on affected students, faculty, and institutions.

Dated: June 20, 1995.

Herman G. Fleming,

Reports Clearance Officer.

[FR Doc. 95–15498 Filed 6–23–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8027]

Sequoyah Fuels Corporation Facility in Gore, OK; Information Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meeting.

Information Meeting on the Remediation of Sequoyah Fuels Corporation Facility in Gore, Oklahoma.

SUMMARY: This notice is to inform the public of a meeting to share information related to the current status of and proposed decommissioning options for the Sequoyah Fuels Corporation (SFC) facility near Gore, OK. Interested individuals are invited to attend this meeting scheduled for June 27, 1995, at the Vian High School Auditorium. The purpose of the meeting is to bring together members of the U.S. Nuclear Regulatory Commission, U.S. Environmental Protection Agency (EPA) Region VI, SFC representatives, representatives from other Federal agencies, State officials, local officials, Cherokee Nation, and citizen groups to share information related to current and future actions at the SFC facility.

BACKGROUND: The Sequoyah Fuels facility is located in Sequoyah County, approximately 2 miles southeast of Gore, Oklahoma, above the Arkansas and Illinois Rivers. From 1970 through 1992, the SFC facility was used to convert uranium oxide (yellow cake) to uranium hexafluoride (UF_6) and from 1987 through 1993 to convert depleted UF_6 to depleted uranium tetrafluoride. In 1993, SFC ceased operations and submitted to NRC a preliminary plan that described a proposed remediation plan of the site.

During the operational period, radioactive materials generated at the Sequoyah Fuels facilities were disposed of on-site in accordance with the former 10 CFR 20.304, chemical and radioactively contaminated materials were transferred to on site ponds, and sludge and other process materials were disposed of by burial on-site. One remediation alternative under consideration by the licensee is an on-site disposal cell based on the criteria used at uranium mill tailings sites (10 CFR Part 40, Appendix A). SFC (the licensee) will be required to meet the NRC's decommissioning criteria, as described the Site Decommissioning Management Plan Action Plan (57 FR 13389, dated April 16, 1992) or the final requirements to be established through Enhanced Participatory Rulemaking (proposed rule published on August 22, 1994 [59 FR 43200]).

In 1990 and 1991, the licensee conducted characterization of the areas in the vicinity of the main process and solvent extraction buildings and the ponds. Results of this characterization effort are documented in the "Facility Environmental Investigation Findings Report" that was issued in July 1991. The licensee is currently performing characterization activities for the remainder of the site and will submit a Resource Conservation and Recovery Act Facility Investigation Report to EPA in December 1995, and a Site Characterization Report (SCR) to NRC in January 1996.

CONDUCT OF MEETING: NRC will conduct the first in a series of meetings on June 27, 1995, in the Vian High School Auditorium, 100 School St., Vian, OK (Exit 297 North from I–40). The meeting will begin at 7:00 p.m. and will end at 10:00 p.m. The meeting will be facilitated by F.X. Cameron, Special Counsel for Public Liaison at NRC. The purpose of this meeting is to share, with representative stakeholders and the public, information about the status of current actions at the SFC facility, projected schedules and plans for the decommission of the site, and the responsibilities of the NRC and other regulatory agencies in the decommissioning process. The meetings will consist of invited representatives from the following groups: NRC; EPA; other Federal agencies; State officials; Cherokee Nation; the licensee; local officials; and local citizen groups.

Invited representatives will present their views on the Sequoyah Fuels facility in a facilitated round-table discussion. An agenda for the meeting will be prepared and distributed to all invited representatives, as well as placed in the local public document room in advance of the meeting. Time will be provided for public comment during the meetings. Comments and questions will generally be limited to topics contained in the agenda. Future Information Meetings will be held periodically concerning other issues related to the SFC facility.

FOR FURTHER INFORMATION CONTACT: Jim Shepherd, Project Manager, Division of Waste Management, U.S. Nuclear Regulatory Commission, Mail Stop T7–F27, Washington, DC 20555, telephone (301) 415–6712.

Dated at Rockville, MD, this 16th day of June 1995.

For the U.S. Nuclear Regulatory Commission.

Michael F. Weber,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95–15532 Filed 6–23–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–282, 50–306, and 72–10]

Northern States Power Co.; Prairie Island Nuclear Generating Plant Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by letter dated June 5, 1995, the Nuclear Information and Resource Service (NIRS) and the Prairie Island Coalition Against Nuclear Storage (PICANS) request that the U.S. Nuclear Regulatory Commission (NRC) take immediate action with regard to primary pressure boundary examinations, the retrievability of irradiated (spent) fuel, and the retrievability of the reactor core at the Prairie Island Nuclear Generating Plant.

The Petitioners request immediate suspension of the operating licenses of Northern States Power Company's (NSP's) Prairie Island Units 1 and 2 until several actions are taken, including an examination of the Prairie Island Units 1 and 2 primary pressure boundaries, a safety analysis of the irradiated fuel retrievability plan and proper approval of the plan, additional crane testing, and, if any of their requests are denied, an evening public hearing in the geographic vicinity of the Prairie Island facility.

As the basis for this request, the Petitioners state that the Prairie Island steam generators are suffering from tube degradation and may rupture unless proper testing is conducted and corrective actions are taken. As additional basis, the Petitioners state that the Prairie Island reactor vessel head penetrations have stress corrosive cracks, which if not found and corrected may result in a catastrophic accident involving the reactor control rods. The Petitioners also raise concerns regarding the irradiated fuel retrievability plan and the use of the reactor core/spent fuel pool transfer channel. Finally, the Petitioners state that the physical integrity of the crane and its cable mechanisms are now in question due to the load of the cask hanging over the reactor pool for an extended period of time.

The Petition is being treated pursuant to 10 CFR 2.206 of the Commission's regulations and has been referred to the Director of the Office of Nuclear Reactor Regulation. As provided by 10 CFR 2.206, appropriate action will be taken on this Petition within a reasonable time. By letter dated June 19, 1995, the Director denied the request for immediate suspension of the operating licenses of the Prairie Island Units 1 and 2.

A copy of the Petition and the Director's letter are available for inspection at the Commission's Public Document Room at 2120 L Street, NW, Washington, DC, and at the Local Public Document Room, Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Dated at Rockville, Maryland, this 19th day of June 1995.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Deputy Director, Office of Nuclear Reactor Regulation.

[FR Doc. 95–15531 Filed 6–23–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–247 and 50–286]

Consolidated Edison Company of New York Power Authority of the State of New York; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by a Petition dated May 18, 1995, the Westchester People's Action Coalition (WESPAC) requests that the U.S. Nuclear Regulatory Commission (NRC) suspend the operating license of Indian Point Units 2 and 3 until completion of all the actions requested in NRC Generic Letter (GL) 95–03 "Circumferential Cracking of Steam Generator Tubes." WESPAC also asks that the NRC hold a public meeting to explain its response to the suspension request.

As the basis for this request, WESPAC notes that the NRC has issued GL 95–03 in response to the discovery of previously undetected steam generator tube cracks at the Maine Yankee plant. WESPAC further notes that although the GL calls for comprehensive examinations of steam generator tubes, it apparently permits licensees to postpone the examinations until the next scheduled steam generator tube inspections. On the basis that testing for cracks in steam generator tubes is both difficult and serious, in that a tube rupture could result in a radiological release from the primary system to the environment, WESPAC concludes that the additional time and expense resulting from completing the actions outlines in the GL now rather than at the next scheduled outages at Indian Point are outweighed by the risk of a core-melt accident.

WESPAC's requests are being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The Petition has been referred to the Director of Nuclear Reactor Regulation (NRR). As provided by Section 2.206, appropriate action will be taken on this Petition within a reasonable time. By letter dated June 16, 1995, the Director denied Petitioner's request for immediate suspension of the Indian Point operating licenses.

A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street NW., Washington, DC 20001.

Dated at Rockville, Maryland, this 16th day of June 1995.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Deputy Director, Office of Nuclear Reactor Regulation.

[FR Doc. 95–15530 Filed 6–23–95; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 21141; File No. 812–7271]

G.T. Global Growth Series, et al.; Notice of Application

June 16, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the investment company act of 1940 (the "Act").

APPLICANTS: G.T. Global Growth Series, G.T. Investment Funds, Inc., G.T. Investment Portfolios, Inc. (collectively, the "Investment Companies"), and G.T. Capital Management, Inc. (the "Adviser").

RELEVANT ACT SECTIONS: Applicants request an exemption under section 6(c) of the Act from section 15(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit the Adviser to have served as investment adviser to the Investment Companies for approximately one month under interim advisory agreements, without a shareholder vote, following a change in its ownership and to receive from the Investment Companies fees earned under interim advisory agreements.

FILING DATE: The application was filed on March 15, 1989, and amended on February 17, 1995 and May 2, 1995. Applicants have agreed to file an additional amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 11, 1995, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: 50 California Street, San Francisco, CA 94111.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574 or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulations).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Investment Companies are registered open-end management investment companies. The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940 and provides investment advisory services to the Investment Companies. The Adviser is an indirect subsidiary of G.T. Management PLC of London, England ("GTM").

2. On January 31, 1989, GTM and the Bank of Liechtenstein Aktiengesellschaft (the "Bank") announces terms for the acquisition of GTM by the Bank through an offer (the "Offer") for all the shares of GTM to be made on behalf of the Bank and its subsidiaries. (The Bank and its subsidiaries collectively are referred to as "BIL.") On March 23, 1989, BIL acquired a majority ownership interest in GTM, and thus acquired "control" over GTM and its various subsidiaries. The acquisition of such control resulted in the assignment of the investment advisory agreements of the Investment Companies, thus terminating such agreements in accord with their terms.

3. GTM and BIL had concluded, in light of the disruptions that could occur if an advisory firm announced the existence of acquisition negotiations, that the existence of negotiations and the terms be kept strictly confidential. Accordingly, access to the knowledge that negotiations were underway was restricted by GTM and BIL. Moreover, negotiations between GTM and BIL were subject to the secrecy rules under the United Kingdom law and the City Code on Takeovers and Mergers (the "U.K. Code"). Those rules required GTM and its subsidiaries, including the Adviser, to limit knowledge of the existence and substance of these negotiations to the maximum extent possible. Thus, during the period of negotiation, the Adviser's personnel were limited in their knowledge of the status and contents of the negotiations. Further, it was not certain that an agreement would be reached and approved by the GTM board until such agreement was reached and approval was obtained.

4. Once the Offer was made public, the board of directors took all reasonable steps to evaluate the probable impact of the purchase on the provision of investment advisory services to the Investment Companies and to secure the continued provision of such services in the event the purchase was consummated and an assignment of former advisory agreements (the "Former Advisory Agreements") occurred. The timing for the Offer and the purchase was dictated by the provisions of the U.K. Code. Those considerations did not allow applicants the ability to utilize a time schedule that assured the solicitation of shareholder approval of the new advisory agreements prior to the consummation of the purchase. These factors necessitated the use of interim investment advisory agreements (the "Interim Advisory Agreements") between the Investment Companies and the Adviser as a fair and reasonable solution to this unforeseen situation. Applicants request an exemption from section 15(a) of the Act that would permit the Adviser to have served as investment adviser to each of the Investment Companies during the period in which the Interim Advisory Agreements were in effect (from March 23, 1989 to April 19, 1989, the "Interim Period")[1] and to receive from each Investment Company fees for providing advisory services under the Interim Advisory Agreements.

5. On February 3, 1989, the board of directors of each Investment Company, including a majority of the members who were not "interested persons" of the Investment Company as that term is defined in section 2(a)(19) of the Act, approved the relevant Interim Advisory Agreements in compliance with the requirements of section 15(c) of the Act. The board of directors requested and evaluated the anticipated effects of the purchase on the Adviser's ability to provide investment advisory services to the Investment Companies. The Adviser and BIL assured the board of directors that there would be no diminution in the scope and quality of advisory and other services provided by the Adviser under the Interim Advisory Agreements, and that the services would be provided in the same manner by essentially the same personnel as they were before March 23, 1989. Applicants believe that there was no diminution in the scope and quality of services provided by the Adviser to the Investment Companies during the Interim Period.

6. The board of directors also concluded that the payment of advisory fees earned during the Interim Period would be fair considering that, among other things, (a) the Offer arose out of business considerations unrelated to the relationships between the Investment Companies and the Adviser, (b) because of the relatively short time frame involved, there was not reasonably sufficient time to seek shareholder approval of the Interim Advisory Agreements, and (c) the nonpayment of such fees would be unduly harsh result to the Adviser in view of the services provided by the Adviser under the Interim Advisory Agreements. Each Interim Advisory Agreement that was in effect during the Interim Period contained the same terms and conditions as the applicable Former Advisory Agreement. In addition, the amount payable to the Adviser under each Interim Advisory Agreement was unchanged from the fees paid under each Former Advisory Agreement. Fees earned during the Interim Period were placed in an escrow account pending ratification of the Interim Advisory Agreements by the Investment Companies' shareholders and issuance by the SEC of an order granting the relief requested herein. If the fees are not paid to the Adviser, the fees will revert to the Investment Companies.

7. On February 24, 1989, the board of directors approved new advisory agreements. Applicants held shareholders meetings of each Investment Company on April 19, 1989, at which the shareholders approved the Interim Advisory Agreements as well as new advisory agreements. The Adviser has paid or will pay, as applicable, the costs of preparing and filing this application and the allocable costs of the meeting of each Investment Company's shareholders necessitated by the assignment of the Former Advisory Agreement, including the cost of proxy solicitations.

[1] The filing of the amended application has been delayed by a number of factors, including a change in General Counsel and a change in outside counsel to G.T. Capital during the period from March 15, 1989 to February 17, 1995.

Applicants' Legal Conclusions

1. Section 15(a) prohibits an investment adviser from providing investment advisory services to an investment company except pursuant to a written contract approved by a majority of the voting securities of the investment company. The section further requires that such written contract provide for its automatic termination in the event of an assignment.

2. Under section 2(a)(4) of the Act, an assignment includes any direct or indirect transfer of a contract by the assignor or of a controlling block of the assignor's voting securities. Under Section 2(a)(9), a beneficial owner of more than 25 percent of the voting securities of a company is presumed to control such company. Because BIL acquired more than 25 percent of GTM, the Investment Companies' investment advisory agreements were assigned and, consequently, terminated pursuant to their terms.

3. Rule 15a–4 provides that, among other things, if an investment adviser's investment advisory contract is terminated by assignment, the adviser may continue to act as such for 120 days at the previous compensation rate if a new contract is approved by the board of directors of the investment company, and if the investment adviser or a controlling person of the investment adviser does not directly or indirectly receive money or other benefit in connection with the assignment. Because many of GTM's shareholders, including all its board of directors who owned GTM stock, received a benefit in connection with the assignment of the contracts, applicants may not rely on rule 15a–4.

4. Applicants believe that the exemptive relief requested is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Because the change of control of the Adviser caused the termination of the Former Advisory Agreements, the board of directors were required to consider appropriate actions in the best interests of the Investment Companies and their respective shareholders. Appplicants believe that approval of the Interim Advisory Agreements by the board of directors was in accord with the general views of the SEC that an investment adviser has a fiduciary duty to seek to avoid disruption to the operations of an investment company client during any "interim period" and that advisory services should continue to be provided. The Adviser and the board of directors concluded that denying the Adviser its fees during the Interim Period would be a harsh result and would not afford shareholders of the Investment Companies any extra protection or long-term benefit. Applicants represent that their respective Interim Advisory Agreements had the same terms, conditions and fees as the respective Former Advisory Agreements.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15500 Filed 6–23–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21144; 812–8756]

Hercules Funds Inc.; Notice of Application

June 19, 1995.

AGENCY: Securities and Exchange Commission (the "SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Hercules Funds Inc.

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 17(b) granting an exemption from section 17(a).

SUMMARY OF APPLICATION: Applicant seeks an exemption to permit certain securities dealers that are affiliated persons of affiliated persons ("second-tier affiliates") of each present or future portfolio of applicant (each a "Fund") to engage in principal transactions with a Fund solely because of subadvisory relationships with one or more other Funds.

FILING DATES: The application was filed on January 4, 1994, and amended on January 17, 1995, and June 16, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 17, 1995, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 222 South Ninth Street, Minneapolis, Minnesota 55402–3804.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 942–0581, or C. David Messman, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a Minnesota corporation registered under the Act as an open-end management investment

company. Applicant has eight existing Funds: Hercules European Value Fund, Hercules Pacific Basin Value Fund, Hercules Latin American Value Fund, Hercules World Bond Fund, Hercules Global Short-Term Fund, Hercules North American Growth and Income Fund, Hercules Emerging Markets Debt Fund, and Hercules Money Market Fund.

2. Hercules International Management L.L.C. ("Hercules") serves as investment adviser for each Fund. Hercules was organized under Delaware law and is owned equally by Piper Jaffray Companies Inc. ("Piper") and Midland Walwyn Capital Corporation ("MWCC").

3. Hercules has retained the services of several advisory organizations to serve as subadvisers to the individual Funds (each a "Subadviser"). The current Subadvisers are Pictet International Management Ltd., Edinburgh Fund Managers plc, Bankers Trust Company ("Bankers Trust"), Salomon Brothers Asset Management Limited, Salomon Brothers Asset Management Inc, Piper Capital Management Incorporated ("PCM"), Acci, and AGF Investment Advisors, Inc. Each Subadviser, pursuant to an agreement with Hercules, directs the investments of the Fund it subadvises in accordance with applicable law and the Fund's investment objectives, policies, and restrictions. The activities of the Subadvisers are subject to the supervision of Hercules, which has ultimate responsibility to select the Subadvisers.

4. On April 13, 1995, applicant's board of directors approved applicant entering into a new investment advisory and management agreement with PCM, subject to approval by shareholders of the Funds. A new agreement is necessary because Piper and MWCC have determined to dissolve Hercules. On the same date, the board approved PCM entering into new subadvisory agreements with the current Subadvisers, subject to approval by the shareholders of each Fund. The new agreement will be identical to the existing agreements in all material respects except that PCM will be substituted for Hercules as a party to the agreements. The term "Adviser" as used herein refers to Hercules, PCM, or such person that in the future serves as principal investment adviser to the Funds.

5. Applicant requests relief to permit an "Eligible Dealer," as defined below, to engage in principal transactions with a Fund in the ordinary course of business. An Eligible Dealer is a Subadviser of one or more Funds not engaging in the transaction that conducts advisory and securities dealer operations via the same legal entity that is a second-tier affiliate of the Fund engaging in the transaction solely by reason of being a Subadviser of one or more of the other Funds. An Eligible Dealer is not (a) an affiliated person of the Fund engaging in the transaction, (b) the Adviser, or an affiliated person of the Adviser, or (c) an officer, director, employee, promoter, or principal underwriter of any Fund, or an affiliated person of such officer, director, employee, promoter, or principal underwriter. Bankers Trust, as the only Subadviser that conducts advisory and dealer operations through the same legal entity, is currently the only Subadviser that satisfies the definition of an Eligible Dealer.

Applicant's Legal Analysis

1. Section 17(a), among other things, prohibits an affiliated person, principal underwriter, or promoter of a registered investment company, or any affiliated person of such persons, acting as principal, from (a) selling to or purchasing from such registered company, or any company controlled by such company, any security or other property, or (b) borrowing money or other property from such company. Section 2(a)(3) defines "affiliated person" of another person as including a person controlling, controlled by, or under common control with such other person, and, when such other person is an investment company, the investment adviser thereof.

2. Applicant asserts that the Funds may be affiliated persons of each other because they may be under the common control of (a) the Adviser, which makes decisions and fashions policies that impact all of the Funds, and (b) a single board of directors that overseas such policies. A Subadviser is an affiliated person of the Fund or Funds that it subadvises, and a second-tier affiliate of each other Fund. When such a Subadviser conducts dealer operations via the same entity, the dealer component also would be a second-tier affiliate of the Funds not subadvised by the Subadviser. Accordingly, relief from section 17(a) is required for an Eligible Dealer to engage in principal transactions with a Fund.

3. Applicant submits that the primary purpose of section 17(a) is to prevent persons with the power to control an investment company from using that power to such person's own pecuniary advantage, *i.e.*, to prevent self-dealing. Applicant believes that no element of self-dealing would be involved in the proposed transactions because the Subadviser recommending the transaction would be dealing with an entity that in economic reality is a competitor of the Subadviser. Each transaction between a Fund and an Eligible Dealer would be the product of arms-length bargaining, and the Subadviser recommending the transaction can neither lose nor gain financially on the basis of whether the transaction is beneficial or detrimental to the Eligible Dealer.

4. Section 17(b) provides that the SEC may exempt a transaction from the provisions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of the registered investment company concerned and with the general purposes of the Act. Applicant believes that the proposed transactions will meet the standards of section 17(b). Because the pecuniary interests of a Subadviser would be solely and directly aligned with those of the Fund it subadvises, it is reasonable to conclude that the consideration to be paid to or received by such Fund in connection with a principal transaction with an Eligible Dealer will be reasonable and fair.

5. Section 6(c) provides that the SEC may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provisions of the Act or of any rule thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant asserts that the proposed transactions would be consistent with the policies of the Fund involved. Further, applicant submits that the broader the universe of persons with which a Fund may engage in principal transactions, the easier it is to achieve best price and execution on such transactions and the better will be the Fund's overall investment performance.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15501 Filed 6–23–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–21143; 812–9436]

Pacific Mutual Life Insurance Company, et al.; Notice of Application

June 19, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Pacific Mutual Life Insurance Company ("Pacific Mutual"), Separate Account A (the "Separate Account"), and Pacific Equities Network ("PEN").

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) of the Act granting an exemption from sections 26(a)(2)(C) and 27(c)(2) of the Act.

SUMMARY OF APPLICATION: Applicants request an order permitting Pacific Mutual to deduct a mortality and expense risk charge from the assets of the Separate Account or any other separate account that Pacific Mutual establishes to fund certain individual flexible premium combination fixed/variable annuity contracts (the "Contracts").

FILING DATE: The application was filed on January 17, 1995, and was amended on June 13, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested person may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 14, 1995, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Robin Yonis Sandlaufer, Esq., Pacific Mutual Life Insurance Company, 700 Newport Center Drive, Newport Beach, California 92660.

FOR FURTHER INFORMATION CONTACT: Sarah A. Wagman, Staff Attorney, at (202) 942–0654, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Pacific Mutual, a mutual life insurance company, is organized in California, and is authorized to do business in the District of Columbia and all states except New York.

2. The Separate Account was established by Pacific Mutual as a funding medium for the Contracts. The Separate Account is registered with the SEC as a unit investment trust under the Act. Units of interest in the Separate Account under the Contracts will be registered under the Securities Act of 1933. Pacific Mutual is the depositor and sponsor of the Separate Account. Applicants request that the relief sought herein also apply to any other separate account ("Other Account") established by Pacific Mutual to fund the Contracts, as well as other contracts that are substantially similar in all material respects to the Contracts ("Future Contracts").

3. The Separate Account currently is divided into eleven subaccounts ("Subaccounts"), each of which will invest solely in shares of a corresponding series of Pacific Select Fund (the "Fund"), an open-end management investment company. Other series of the Fund, other investment companies or series of other investment companies, or other investment vehicles may be available for investment in the future through additional subaccounts and/or Other Accounts.

4. PEN, an indirect wholly-owned subsidiary of Pacific Mutual, will serve as principal underwriter of the Contracts. PEN is registered as a broker-dealer under the Securities Exchange Act of 1934, and is a member of the National Association of Securities Dealers, Inc. ("NASD"). Applicants request that the relief sought herein also apply to any other entity that is registered with the SEC as a broker-dealer, is a member of the NASD and that may, in the future, serve as the principal underwriter of the Contracts or any Future Contracts.

5. The Contracts, which include the Pacific Portfolios Contract and the Pacific One Contract, are individual flexible premium combination fixed/variable annuity contracts. They may be purchased on a non-tax qualified basis, or in connection with certain retirement plans that qualify for special federal income tax treatment under the Internal Revenue Code of 1986.

6. Each Contract requires certain minimum initial purchase payments and requires a certain minimum for any additional payments. A Pacific Portfolios Contract may be purchased with a minimum initial purchase payment of $5,000 in the case of a non-tax qualified Contract, or $2,000 in the case of a tax-qualified Contract. Minimum purchase payment requirements are waived in certain cases. Additional payments may be made at any time, but must be at least $250 ($25 in the case of a tax-qualified Contract). A Pacific One Contract may be purchased with a minimum initial purchase payment of $25,000. Additional payments must be at least $1,000. Purchase payments or amounts already allocated to the Subaccounts or the fixed option (these allocated amounts plus any amount held in Pacific Mutual's loan account to secure contract debt may be referred to as the "Contract Value") may be allocated to one or more of the Subaccounts of the Separate Account which have been established to support the Contracts or to the fixed option, which is funded by Pacific Mutual's general account.

7. Several annuity payout options, including both fixed and variable payment options, are available under the Contracts. Each Contract also will provide for a death benefit if the annuitant dies during the accumulation period. Generally, the death benefit will equal the greater of (a) total purchase payments (less prior withdrawals), or (b) the Contract Value. Death benefits may be higher under certain circumstances.

8. Pacific Mutual incurs certain costs in connection with the distribution of the Pacific Portfolios Contracts and the Pacific One Contracts. No sales charges are deducted from purchase payments under the Contracts prior to their allocation to the Contract Value.

9. Purchase payments on Pacific Portfolios Contracts are subject to a contingent deferred sales charge ("CDSC") on withdrawals prior to annuitization. The CDSC is calculated as a percentage of the total withdrawal subject to the CDSC and, in the case of partial withdrawals. is deducted from the Contract Value remaining after the Contract owner is paid the amount requested. The amount of the CDSC imposed on withdrawal will depend on the "age" of the amount withdrawn that is subject to the CDSC, as follows:

Age of payment	Deferred sales charge (percent)
1	7
2	7
3	6
4	5
5	3

Age of payment	Deferred sales charge (percent)
6	1
7 or more	0

A purchase payment is considered to have an "age" of 1 from the day it is effective until the next succeeding Contract anniversary. No CDSC is imposed on annuitized Contract Value or in connection with payment of death benefits. Nor will a CDSC be assessed (a) on earnings under a Contract, or (b) on withdrawals in any Contract year aggregating up to 10% of the Contract owner's purchase payments otherwise subject to a CDSC, measured at the time of withdrawal. In calculating any CDSC, or in calculating the 10% available for free withdrawal, Pacific Mutual will assume that a Contract owner's earnings are withdrawn first, followed by the Contract owner's purchase payments in the order in which they are paid. Pacific Mutual does not expect that the CDSC will be sufficient to cover the sales expenses of Pacific Portfolios Contracts. Pacific Mutual will pay any additional sales expenses relating to Pacific Portfolios Contracts.

10. Pacific One Contracts are not subject to sales charges. Pacific Mutual will pay sales expenses relating to Pacific One Contracts from its general account, which may include amounts derived from the mortality and expense risk charge.

11. Pacific Mutual may deduct a charge for premium taxes. The tax rates currently range from 1% to 4%. A premium tax may be imposed upon purchase payments at the time they are made, on Contract Value upon fully or partial withdrawals, upon annuitization, or when converted into another benefit payment.

12. Pacific Mutual does not currently impose a transaction charge on the Contracts for the administrative costs of transfers among the Subaccounts and to the fixed option, and withdrawals, but reserves the right to do so. These charges may be up to $15 on each transfer in excess of 15 transfers in any Contract year, and $15 on each partial withdrawal in excess of 15 partial withdrawals in any Contract year.

13. Pacific Mutual will charge an annual fee of $40 against each Contract to compensate it for administering the Contract, maintaining records, and preparing and distributing annual reports and statements. The annual fee will be assessed each anniversary of the Contract and at the time of a full withdrawal of any Contract Value not annuitized only if, in either case, the Contract Value is less than a specified amount on that date. The annual fee is guaranteed not to increase for the life of the Contract.

14. Pacific Mutual will impose a charge against the assets in the Separate Account to compensate it for issuance and administration of the Contracts and operation of the Separate Account. This charge will accrue daily against the value of the net assets of each Subaccount attributable to the Pacific Portfolios and Pacific One Contracts, at an annual rate guaranteed for the life of the Contract not to exceed .15%.

15. Applicants represent that the charges for administration of the Contracts and operation of the Separate Account, including any annual fee, the administrative fee, and any future transfer or withdrawal transaction fees, will be deducted from the Subaccounts or from the Contract Value allocated to the Subaccounts in reliance on rule 26a–1 under the Act, and will not be greater than the cost of the administrative services to be provided over the life of the Contract. Pacific Mutual does not expect or intend to make a profit from the annual fee, administrative fee, or any future transfer or withdrawal transaction fees.

16. Pacific Mutual proposes to assess a charge against the Contract Value allocated to the Subaccounts to compensate it for bearing certain mortality and expense risks under the Contracts. The aggregate mortality and expense risk charge will be equal, on an annual basis, to 1.25% of the value of the net assets in each Subaccount. Of this amount, approximately .80% will be charged to cover mortality risk and approximately .45% will be charged to cover expense risk. This rate of 1.25% will be guaranteed not to increase for the duration of a Contract.

17. The mortality risk arises from Pacific Mutual's contractual obligation, where a Contract owner selects an annuity option with a life contingency, to make periodic annuity payments regardless of how long all annuitants or any individual annuitant lives. Contract owners are thus assured that neither an annuitant's greater-than-expected longevity nor a greater-than-expected improvement in life expectancy generally will adversely affect the number or amount of annuity payments the annuitant will receive under the Contracts. Where a Contract has been purchased and a life contingency annuity option selected, this eliminates the annuitant's risk of outliving the accumulated funds. Pacific Mutual assumes a mortality risk in connection with payment of the death benefit under each Contract because the death benefit could exceed the Contract Value. Pacific Mutual also incurs a mortality risk in connection with the "step-up" of the guaranteed minimum amount of death benefits under each Contract under certain circumstances. There is no extra charge for this guarantee. The expense risk assumed by Pacific Mutual is that its actual expenses in issuing and administering the Contracts and operating the Separate Account will exceed the amount anticipated or recovered through the annual administrative charges.

18. If the mortality and expense risk charge is insufficient to cover the assumed risk, Pacific Mutual will bear the loss. Conversely, if the mortality and expense risk charge exceeds the amount necessary to cover the assumed risk, the excess may be used for, among other things, the payment of distribution, sales, and other expenses. Pacific Mutual currently anticipates a profit from the mortality and expense risk charge.

Applicants' Legal Analysis

1. Applicants request an exemption under section 6(c) of the Act from sections 26(a)(2)(C) and 27(c)(2) of the Act to permit the deduction of a mortality and expense risk charge from the assets of the Separate Account or any Other Account under the Contracts or Future Contracts.

2. Sections 26(a)(2)(C) and 27(c)(2), in relevant part, prohibit a principal underwriter for, or depositor of, a registered unit investment trust from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, on such certificates are deposited with a qualified trustee or custodian, within the meaning of section 26(a)(1), and are held under arrangements that prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the SEC may prescribe, for performing bookkeeping and other administrative duties normally performed by the trustee or custodian. Pacific Mutual's deduction of a mortality and expense risk charge from the assets of the Separate Account may be deemed to be a payment prohibited by sections 26(a)(2)(C) and 27(c)(2).

3. Section 6(c) authorizes the SEC, by order upon application, to conditionally or unconditionally grant an exemption from any provision of the Act, or any rule or regulation promulgated thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants believe that the requested order meets the standards of section 6(c). With respect to the exemption requested in connection with any Other Account and/or Future Contracts, applicants believe that the requested order would promote efficiency and competitiveness in the market for variable annuities by reducing the administrative costs and delay incurred by Pacific Mutual in seeking, what is essentially, redundant relief. Applicants believe that no incremental benefit or protection would inure to investors if Pacific Mutual were required to seek such further exemptive relief.

5. Applicants believe that Pacific Mutual is entitled to reasonable compensation for its assumption of mortality and expense risks. Applicants represent that the proposed mortality and expense risk charge is consistent with the protection of investors because it is a reasonable and proper insurance charge. The charge is a reasonable one to compensate Pacific Mutual for the risks that: (a) Annuitants under the Contracts will live longer individually or as a group than has been anticipated in setting the annuity rates guaranteed in the Contracts; (b) the Contract Value will be less than the death benefit; and (c) administrative expenses will be greater than amounts derived from the administrative charges.

6. Pacific Mutual represents that the 1.25% mortality and expense risk charge under the Contracts is within the range of industry practice for comparable annuity products. This representation is based upon Pacific Mutual's analysis of publicly available information about similar industry products, taking into consideration such factors as the current charge levels, existence of charge level guarantees, any death benefit guarantees, guaranteed annuity rates, and other policy options. Pacific Mutual will maintain at its administrative offices, and make available to the SEC upon request, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

7. Pacific Mutual also represents that the mortality and expense risk charge under any Future Contract will be within the range of industry practice for comparable annuity products at the time such Future Contract is first offered. Pacific Mutual will maintain at its administrative offices, and make available to the SEC upon request, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey undertaken in connection with such Future Contract.

8. Applicants acknowledge that, if a profit is realized from a mortality and expense risk charge, all or a portion of such profit may be available to pay Pacific Mutual's distribution expenses. Pacific Mutual has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements for the Contract will benefit the Separate Account or Other Accounts and the Contract owners. The basis for that conclusion is set forth in a memorandum that will be maintained by Pacific Mutual at its administrative offices and will be made available to the SEC upon request. Pacific Mutual will not offer any Future Contract subject to a mortality and expense risk charge unless and until it has concluded that there is a reasonable likelihood that the distribution financing arrangements proposed for such Future Contract will benefit the Separate Account or the applicable Other Account and the owners of such Future Contract. Pacific Mutual will maintain at its administrative offices, and will make available to the SEC upon request, a memorandum setting forth the basis for that conclusion.

9. Pacific Mutual represents that the Separate Account and any other Account will invest only in those management investment companies that undertake, in the event such company should adopt a plan under rule 12b–1 under the Act to finance distribution expenses, to have a board of directors (or trustees), a majority of whom are not "interested persons" of such company, formulate and approve any such plan.

Conclusion

For the reasons set forth above, applicants believe that the requested exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15502 Filed 6–23–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21142; 811–6470]

Smith Barney Shearson FMA℠ Trust; Notice of Application

June 19, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Smith Barney Shearson FMA℠ Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on May 24, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 17, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 388 Greenwich Street, New York, New York 10013.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company organized as a business trust under the laws of the Commonwealth of Massachusetts. On November 11, 1991, applicant registered under the Act, and on November 12, 1991, applicant filed a registration statement under section 8(b) of the Act and under the Securities Act of 1993. Applicant's Registration Statement became effective on January 24, 1992.

2. Applicant never made a public offering of its shares. Applicant's only shareholder was its sponsor, Shearson Lehman Brothers, which invested $100,000 in applicant as initial capital.

3. The Trustees of applicant, including the Trustees who are not interested persons, unanimously approved a Plan of Dissolution, Liquidation and Termination (the "Plan") providing for the dissolution of applicant, the liquidation of the applicant's assets and the distribution of all proceeds of such liquidation. Applicant's sole shareholder approved the Plan on July 21, 1994. Pursuant to the Plan, applicant's net assets were distributed in cash to applicant's sole shareholder.

4. No expenses of the Plan were borne by the shareholders of applicant. All such expenses were borne by applicant's adviser and administrator. Applicant has no known debts or other liabilities which remain outstanding.

5. Applicant has no shareholders and no assets. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged in, nor does it propose to engage in, any business activities other than those necessary to wind up its affairs. Applicant intends to file a Certificate of Cancellation with the Commonwealth of Massachusetts to terminate its existence.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15503 Filed 6–23–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21151; 812–9484]

American Partners Life Insurance Company, et al.

June 20, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: American Partners Life Insurance Company ("American Partners Life"), APL Variable Annuity Account 1 (the "Variable Account"), and American Express Financial Advisors Inc. ("American Express Financial").

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act that would exempt applicants from sections 26(a)(2)(C) and 27(c)(2) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit American Partners Life to deduct a mortality and expense risk charge from the assets of the Variable Account in connection with the offering of certain flexible premium individual deferred variable annuity contracts as well as other variable annuity contracts.

FILING DATE: The application was filed on February 16, 1995, and amended on June 6, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 17, 1995, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street N.W., Washington, D.C. 20549. Applicants, c/o Mary Ellyn Minenko, Counsel, American Partners Life Insurance Company, IDS Tower 10, Minneapolis, MN 55440.

FOR FURTHER INFORMATION CONTACT: James M. Curtis, Senior Counsel, at (202) 942–0563, or Robert A. Robertson, Branch Chief, (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. American Partners Life is a wholly-owned subsidiary of IDS Life Insurance Company ("IDS Life"). IDS Life is a stock life insurance company organized under the laws of the State of Minnesota. IDS Life is a wholly-owned subsidiary of American Express Financial Corporation, a Delaware corporation.

2. The Variable Account was established as a separate account under the laws of the State of Arizona to fund variable annuities issued by American Partners Life. The Variable Account is registered as a unit investment trust under the Act. The Variable Account has filed with the SEC a registration statement on Form N–4 in connection with the offering of certain flexible premium individual deferred variable annuity contracts ("Contracts") issued by American Partners Life. The Variable Account will be used to fund these Contracts.

3. Applicants request that exemptive relief permit the deduction of a mortality and expense risk charge from the assets of any subaccounts or variable accounts established by APL to support future individual deferred variable annuity contracts that are substantially similar in all material respects to the Contract.

4. Each subaccount of the Variable Account will invest solely in the shares of one of the corresponding funds of a registered investment company (the "Funds"). Currently, there are six subaccounts that will invest in the shares of six corresponding Funds. The Funds currently available for investment by the subaccounts are registered open-end management investment companies managed by IDS Life. American Partners Life plans to create additional subaccounts and/or variable accounts to invest in additional Funds which will be available as future investment options.

5. American Express Financial is the principal underwriter of the Variable Account. American Express Financial is registered as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc.

6. The Contracts are individual deferred combination fixed/variable annuity contracts. The Contracts allow the owners to elect to have contract values accumulate in the Variable Account as well as in a fixed account.

7. Contract owners must make an initial lump sum purchase payment or set up installment payments. Contract owners may make additional purchase payments under the Contracts. The initial purchase payment must be at least $2,000 for nonqualified Contracts and $1,000 for qualified Contracts. The installment payments must be set up for at least $100 monthly or $50 biweekly. Installment payments must total at least $1000 in the first year. After making the initial purchase payment or setting up the installment payments, Contract owners may make additional payments of at least $100 for nonqualified and qualified Contracts. The maximum first year payment(s) is $1 million up to age 75; $500,000 for ages 76–85; and $50,000 for ages 86–90. The maximum is based on the Contract owner's age or the age of the annuitant (whomever is older) on the effective date of the Contract. The maximum payment for each subsequent year is $50,000. American Partners Life reserves the right to increase maximum limits or reduce age limits. The Contracts provide for allocation of purchase payments to the subaccounts of the Variable Account and/or to a fixed account in even 1% increments. There is no minimum value requirement of a Contract owner's investment in a subaccount of the Variable Account or in the fixed account.

8. Prior to the annuity start date, the Contract owner can, at any time, surrender all or part of the Contract value held in one or more of the subaccounts of the Variable Account and the fixed account. There is no charge for a partial or total surrender. Upon retirement, annuity payments will be made on a fixed basis. Retirement benefits may be made in a lump sum, under one of five annuity payment plans or under any other arrangement acceptable to American Partners Life.

9. American Partners Life will assess an annual contract administrative charge of $30 for the Contracts on each contract anniversary. American Partners Life waives this contract administrative charge for any contract year where the total purchase payments (less partial surrenders) on the current contract anniversary is $10,000 or more or if, during the contract year, a death benefit is payable or the Contract is surrendered in full. This charge reimburses American Partners Life for the administrative services attributable to the Contracts. The annual contract administrative charge does not apply after retirement payments begin. This charge represents reimbursement for only the actual administrative costs expected to be incurred over the life of the Contracts. American Partners Life reserves the right to increase the administrative charges up to $50 if warranted by the expenses incurred. American Partners Life also reserves the right to assess the contract administrative charge against all Contracts.

10. American Partners Life and the Variable Account rely on rules 0–1(e), 6c–8, 26a–1, and 26a–2 under the Act in connection with the deduction of the contract administration charge and certain other charges under the Contracts. American Partners Life does not expect to profit from the contract administrative charge. In some cases, American Partners Life may expect to incur lower sales and administrative expenses or perform fewer services. In those cases, American Partners Life may, in its discretion, reduce or eliminate the contract administrative charge. American Partners Life expects this to occur infrequently, if at all.

11. Prior to the annuity start date, the Contract owner can, at any time, transfer all or part of the contract value held in one or more of the subaccounts of the Variable Account and fixed account to another one or more of the subaccounts. The minimum amount to be transferred to any one subaccount is $100. American Partners Life reserves the right to impose or change limits to amount and frequency of transfers. There is no charge for the first 12 transfers in a contract year, but American Partners Life will charge $25 for each transfer in excess of 12.

12. American Partners Life will make a charge against the contract value for any premium taxes to the extent the taxes are payable. No charges are currently made for federal, state or local taxes other than premium taxes. American Partners Life reserves the right to deduct such taxes from the Variable Account in the future.

13. To compensate American Partners Life for assuming mortality and expense risks, it will apply a daily mortality and expense risk charge to the Variable Account. This charge equals 1% of the average daily net assets of the subaccounts of the Variable Account on an annual basis. American Partners Life estimates that approximately two-thirds of this charge is for assumption of the mortality risk and one-third is for the assumption of the expense risk. This charge cannot be increased during the life of the Contracts.

14. American Partners Life assumes certain mortality risks by its contractual obligation to continue to make retirement payments for the entire life of the annuitant under annuity obligations which involve life contingencies. This assures each annuitant that neither the annuitant's own longevity nor an improvement in life expectancy generally will have an adverse effect on the retirement payments received under the Contracts. This relieves the annuitant from the risk of outliving the amounts accumulated for retirement. American Partners Life assumes additional mortality and certain expense risks under the Contracts by its contractual obligation to pay a death benefit in a lump sum (or in the form of an annuity payment plan) upon the death of the owner or the annuitant prior to the annuity start date. In addition, American Partners Life assumes an expense risk because the contract administrative charge may be insufficient to cover actual administrative expenses.

15. If the contract administrative charge and the mortality and expense risk charge are insufficient to cover the expenses and costs assumed, the loss will be borne by American Partners Life. Conversely, if the amount deducted proves more than sufficient, the excess will represent a profit to American Partners Life. American Partners Life does expect to profit from the mortality and expense risk charge.

Applicants' Legal Analysis

1. Applicants request an exemption under section 6(c) of the Act from sections 26(a)(2)(C) and 27(c)(2) of the Act to permit the deduction of a mortality and expense risk charge from the assets of the Separate Account under the Contracts.

2. Sections 26(a)(2)(C) and 27(c)(2) of the Act prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment plan certificates unless the proceeds of all payments (except such amounts as are deducted for sales load) are deposited with a trustee or custodian having the qualifications prescribed by Section 26(a)(1) of the Act and held under an agreement which provides that no payment to the depositor or principal underwriter shall be allowed except as a fee, not exceeding such reasonable amount as the SEC may prescribe, for bookkeping and other administrative services. American Partners Life's deduction of a mortality and expense risk charge from the assets of the Variable Account may be deemed to be a payment prohibited by sections 26(a)(2)(c) and 27(c)(2).

3. Section 6(c) authorizes the SEC to exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from the provisions of the Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants represent that the requested relief is appropriate in the public interest because it would promote competitiveness in the variable annuity market by eliminating the need for American Partners Life to file redundant exemptive applications, thereby reducing its administrative expenses and maximizing the efficient use of its resources. The delay and expense involved in having to request exemptive relief repeatedly would impair American Partners Life's ability to effectively take advantage of business opportunities that arise. Applicants represent that, for the same reasons, the requested relief is consistent with the purposes of the Act and the protection of investors. If American Partners Life were required to seek exemptive relief repeatedly with respect to the same issues addressed in this application,

investors would not receive any benefit or additional protection thereby. Indeed, they might be disadvantaged as a result of American Partners Life's increased overhead expenses.

5. Applicants represent that the level of the mortality and expense risk charge is within the range of industry practice for comparable variable annuity products. American Partners Life has reviewed publicly available information about other annuity products taking into consideration such factors as current charge levels, charge guarantees, sales loads, surrender charges, availability of funds, investment options available under annuity contracts, and market sector. American Partners Life represents that it will maintain at its executive office, and make available on request of the SEC or its staff, a memorandum setting forth its analysis, including its methodology and results.

6. American Partners Life has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit the Variable Account and investors in the Contracts. The basis for such conclusion is set forth in a memorandum which will be maintained by American Partners Life at its service office and will be available to the SEC or its staff on request.

7. American Partners Life represents that the Variable Account will invest only in an underlying mutual fund which, in the event it should adopt any plan under rule 12b–1 of the Act to finance distribution expenses, would have such a plan formulated and approved by a board of directors, a majority of the members of which are not interested persons of such fund within the meaning of Section 2(a)(19) of the Act.

Conclusion

For the reasons set forth above, applicants believe that the requested exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15570 Filed 6–23–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21154; 811–4887]

SLH Convertible Securities Fund; Notice of Application

June 20, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: SLH Convertible Securities Fund.

RELEVANT ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring it has ceased to be an investment company.

FILING DATES: The application was filed on May 23, 1995 and amended on June 26, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 17, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 388 Greenwich Street, New York, NY 10013.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Staff Attorney, at (202) 942–0562, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a registered open-end, diversified, management investment company under the Act and is organized as a business trust under the laws of the Commonwealth of Massachusetts. On October 24, 1986, applicant filed a Notification of Registration on Form N–8A pursuant to section 8(a) of the Act and a registration statement on Form N–1A under section 8(b) of the Act and under the Securities Act of 1933. The registration statement was declared effective on February 6, 1987 and applicant's initial public offering commenced shortly thereafter.

2. On March 27, 1990, applicant's Board of Trustee (the "Board") unanimously determined that applicant's continuation was no longer in the best interest of applicant or its shareholders. The Board determined that applicant's shareholders would be better served by a liquidation of applicant's assets. In making this determination, the Board considered a number of factors including the relatively small size of applicant's assets, applicant's resulting high expense ratio, and the improbability that sales of applicant's shares could be increased to raise applicant's assets to a more viable level. The Board voted to approve an Agreement and Plan of Liquidation and Termination (the "Plan") whereby the assets of applicant would be distributed in cash to applicant's shareholders in complete liquidation of applicant on June 13, 1990 (the "Liquidation Date").

3. On March 28, 1990, preliminary and definitive proxy materials were filed with the SEC. On April 11, 1990, definitive proxy materials were distributed to applicant's shareholders. On June 13, 1990, applicant's shareholders approved the Plan.

4. On the Liquidation Date, immediately preceding the liquidation, applicant had a total of 380,315.076 shares of beneficial interest outstanding. At such time, applicant's aggregate and per share net asset value was $3,460,867.19 and $9.10, respectively.

5. On the Liquidation Date, applicant reduced its assets to cash and transferred the proceeds to its shareholders at fair market value in cancellation of their shares. All assets of applicant were distributed to applicant's shareholders in connection with the liquidation after the payment of all outstanding obligations, taxes, and other accrued or contingent liabilities. No sales charge was imposed in connection with the transaction.

6. All expenses incurred in connection with applicant's liquidation was borne by the Smith Barney Inc., formerly Shearson Lehman Brothers Inc. ("Shearson"), applicant's principal underwriter. Such expenses, totalling $90,000, including legal, accounting, printing, and administrative fees. At the time of its liquidation, applicant had amortized all but approximately $49,370 of its organizational expenses. Such organizational expenses were absorbed by Shearson.

7. As of the date of the application, applicant had no assets, debts, or shareholders. Applicant is not a party to any litigation or administrative proceeding. Applicant is neither engaged in nor proposes to engage in any business activities other than those necessary for the winding-up of its affairs.

8. Applicant will terminate its existence as a business trust under Massachusetts law.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15571 Filed 6–23–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21153; No. 812–9498]

United of Omaha Life Insurance Company, et al.

June 20, 1995.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: United of Omaha Life Insurance Company ("United of Omaha"), United of Omaha Separate Account C ("Separate Account") and Mutual of Omaha Investors Services, Inc. ("Services").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act granting exemptions from the provisions of Sections 2(a)(32), 22(c), 26(a)(2)(C), 27(c)(1), and 27(c)(2) of the 1940 Act and Rule 22c–1 thereunder.

SUMMARY OF APPLICATION. Applicants seek an order to permit the deduction of a mortality and expense risk charge and an enhanced death benefit charge from the assets of the Separate Account or any other separate account ("Other Accounts") established by United of Omaha to support certain flexible premium individual deferred variable annuity contracts ("Contracts") as well as other variable annuity contracts that are substantially similar in all material respects to the Contracts ("Future Contracts"). In addition, Applicants propose that the order extend to any broker-dealer other than Services, that may in the future serve as principal underwriter for the Contracts or Future Contracts, the same exemptions granted to Services ("Future Broker-Dealers"). Any such broker-dealer will register under the Securities Exchange Act of 1934 ("1934 Act") as a broker-dealer and will be a member of the National Association of Securities Dealers, Inc. ("NASD").

FILING DATE: The application was filed on February 27, 1995, and was amended and restated on June 12, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 14, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Applicants, Thomas J. McCusker, Esq., Law Division—3rd Floor, United of Omaha Life Insurance Company, Mutual of Omaha Plaza, Omaha, Nebraska 68175–1008.

FOR FURTHER INFORMATION CONTACT: Pamela K. Ellis, Attorney, or Wendy Friedlander, Deputy Chief, both at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representatives

1. United of Omaha, a stock life insurance company, is organized in Nebraska and licensed to do business in the District of Columbia, all states except New York, and several foreign countries. United of Omaha is a wholly-owned subsidiary of Mutual of Omaha Insurance Company.

2. The Separate Account is a separate account established by United of Omaha to fund the Contracts. The Separate Account is registered with the Commission as a unit investment trust under the 1940 Act, and the Contracts are registered as securities under the Securities Act of 1933.

3. United of Omaha will establish for each investment option offered under the Contract a Separate Account subaccount ("Subaccount"), which will invest solely in a specific corresponding portfolio of certain designated investment companies ("Funds"). The Funds will be registered under the 1940 Act as open-end management investment companies. Each Fund series will have separate investment objectives and policies.

4. Services will serve as the distributor and principal underwriter of the Contracts, and also may serve in these capacities for the Future Contracts. Services, an affiliate of United of Omaha, is registered under the 1934 Act as a broker-dealer and a member of the NASD.

5. In addition, broker-dealers other than Services also may serve as distributors and principal underwriters of certain of the Contracts as well as the Future Contracts. Future broker-dealers will be registered under the 1934 Act as broker-dealers and will be members of the NASD.

6. The Contracts are individual flexible premium variable deferred annuity contracts. They may be purchased on a non-tax qualified basis ("Non-Qualified Contracts") or they may be purchased and used in connection with retirement plans that qualify for favorable federal income tax treatment ("Qualified Contracts"). Both the Non-Qualified Contracts and the Qualified Contracts may be purchased with an initial premium of $5,000, except under the electronic fund transfer program where the minimum initial purchase payments is $2,000.[1] The minimum subsequent premium for both the Unqualified and Qualified Contracts is $500 (or $100 if made in connection with the electronic fund transfer program). Net purchase payments may be allocated to one or more of the Separate Account Subaccounts that have been established to support the Contracts. The Contracts also provide for the allocation of net purchase payments to the general account of United of Omaha, where such purchase payments are credited with a predetermined fixed rate of interest.

7. The Contracts provide for a series of annuity payments beginning on the annuity date. The Contract owner may select from several payout options which provide periodic annuity payments on a fixed basis.

8. The Contracts provide for a death benefit if the annuitant dies during the accumulation period. Any applicable premium taxes not previously deducted will be deducted from the death benefit payable. The standard death benefit is the greater of: (1) The accumulation value (without deduction of the CDSC, as defined below) on the later of the date on which due proof of death or an election of payout option is received by

[1] United of Omaha reserves the right to increase or decrease this amount.

United of Omaha's service office less any charge for applicable premium taxes; or (2) the sum of all net purchase payments, less any partial withdrawals. If the Contract owner elected the enhanced death benefit and dies before age 81, United of Omaha will provide an enhanced death benefit that will equal the greater of: (1) The accumulation value as of the end of the valuation period during which due proof of death and an election of a payout option are received by United of Omaha's service center; (2) the greatest anniversary value,[2] plus any subsequent net purchase payments and less any subsequent partial withdrawals; and (3) the sum of all net purchase payments less any partial withdrawals, accumulated at a 4.5% annual rate of interest, up to a maximum of two times each purchase payment. If the Contract owner elected the enhanced death benefit and dies after attaining age 81, the enhanced death benefit under the Contract will equal the greatest of: (1) The accumulation value as of the end of the valuation period during which due proof of death and an election of a payout option are received by United of Omaha's service center; (2) the greatest anniversary value up to the last Contract anniversary before the Contract owner attains age 81, plus any subsequent purchase payments and less any subsequent partial withdrawals; and (3) the sum of all net purchase payments paid prior to the last Contract anniversary before the Contract owner attained age 81, less any partial withdrawals, accumulated at a 4.5% annual rate of interest, up to a maximum of two times each purchase payment.

9. Certain charges and fees are assessed under the Contracts. There is no transfer fee charged for transfers from the fixed account or for the first 12 transactions from Subaccounts of the Separate Account in each Contract year. Subsequent transfers within a Contract year, however, will be assessed a fee of $10 per transfer.

10. United of Omaha will deduct an administration charge from each Subaccount of the Separate Account. The charge is equal, on an annual basis, to .20% of the net asset value of each Subaccount.

11. An annual policy fee of $30 will be charged against each Contract. This charge will be deducted pro rata from each Subaccount in which the Contract owner is invested at the end of each Contract year prior to the annuity starting date (and upon a complete surrender) to compensate United of Omaha for the administrative services provided to Contract owners. Currently, this fee is waived if the accumulation value exceeds $50,000.

12. Applicants represent that the transfer fee, administration charge, and the annual policy fee will not increase regardless of the actual cost incurred. In addition, Applicants represent that these charges are at cost with no anticipation of profit.

13. A contingent deferred sales charge ("CDSC") may be imposed on certain withdrawals. The amount of the CDSC decreases annually from 7% to 0% over 8 Contract years. For the purposes of determining the CDSC, withdrawals will be allocated first to premiums on a first-in, first-out basis so that all withdrawals are allocated to premiums to which the lowest (if any) CDSC applies, then to earnings. In addition, there is a free withdrawal amount equal to up to 15% of accumulation value each Contract year.[3] Applicants state that the CDSC will not increase.

14. United of Omaha proposes to deduct a daily mortality and expense risk charge. United of Omaha represents that this charge is equal to an effective annual rate of 1.00% of the net asset value of the Separate Account, and that it will not increase. Of this amount, approximately .75% is for mortality risks and .25% is for expense risks.

15. United of Omaha assumes the mortality risk that the life expectancy of the annuitant will be greater than that assumed in the guaranteed annuity purchase rates, thus requiring United of Omaha to pay out more in annuity income than it had planned. Additional mortality risks assumed by United of Omaha are that it will waive the CDSC in the event of the death of the owner and United of Omaha's contractual obligation to provide a standard and an enhanced death benefit prior to the annuity date. Thus, United of Omaha assumes the risk that it may not be able to cover its distribution expenses and that the owner may die at a time when the amount of the death benefit payable exceeds the then net surrender value of the Contracts. The expense risk assumed by United of Omaha is that the contract administration charge will be insufficient to cover the cost of administering the Contracts.

16. In the event the mortality and expense risk charges are more than sufficient to cover United of Omaha's costs and expenses, any excess will be a profit to United of Omaha. The cost of distributing the Contracts will be met from funds derived from the CDSC and from United of Omaha's general account, which may include amounts derived from the mortality and expense risk charge.

17. There will be a charge made each year for expenses related to the enhanced death benefit. United of Omaha deducts this charge through the cancellation of accumulation units at each Contract anniversary and at surrender to compensate it for the increased risks associated with providing the enhanced death benefit. The charge at full surrender will be a pro-rata portion of the annual charge. United of Omaha guarantees that this charge will never exceed an annual rate of .35% of the average death benefit amount.[4]

18. Should the owner live in a jurisdiction that levies a premium tax, United of Omaha will pay the taxes when due. United of Omaha represents that state premium taxes may range up to 3.5% of purchase payments and are subject to change. United of Omaha reserves the right to deduct the amount of the tax either from the premiums as they are received, upon payment in connection with the surrender of the Contract, upon death of any owner, or upon application of proceeds to a payout option.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to conditionally or unconditionally grant an exemption from any provision, rule or regulation of the 1940 to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Sections 26(a)(2)(C) and 27(c)(2) of the 1940, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

[2] The anniversary value equals the accumulation value on the Contract anniversary and subsequent purchase payments less subsequent partial withdrawals and premium tax not yet deducted.

[3] United of Omaha may waive the CDSC under certain circumstances.

[4] The average death benefit amount is the mean of the death benefit amount on the most recent Contract anniversary and the death benefit amount on the immediately preceding Contract anniversary.

3. Applicants request exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction from the net assets of the Separate Account and the Other Accounts in connection with the Contracts and Future Contracts of the 1.00% charge for the assumption of mortality an expense risks, and .35% of the average death benefit amount for the enhanced death benefit charge, and to exempt Future Broker-Dealers.

4. Applicants assert that the terms of the relief requested with respect to any Future Contracts funded by the Separate Account or Other Accounts, as well as for Future Broker-Dealers, are consistent with the standards enumerated in Section 6(c) of the 1940 Act. Without the requested relief, Applicants would have to request and obtain exemptive relief for each new Other Account it establishes to fund any Future Contract, as well as for each Future Broker-Dealer that distributes the Contracts or the Future Contracts. Applicants submit that any such additional request for exemption would present no issues under the 1940 Act that have not already been addressed in this application, and that investors would not receive any benefit or additional protections thereby.

Applicants submit that the requested relief is appropriate in the public interest, because it would promote competitiveness in the variable annuity contract market by eliminating the need for Applicants to file redundant exemptive applications, thereby reducing their administrative expenses and maximizing the efficient use of their resources. The delay and expense involved in having repeatedly to seek exemptive relief would reduce Applicants' ability effectively to take advantage of business opportunities as they arise.

Applicants further submit that the requested relief is consistent with the purposes of the 1940 Act and the protection of investors for the same reasons. Applicants thus believe that the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

5. Applicants represent that the 1.00% per annum mortality and expense risk charge is within the range of industry practice for comparable annuity contracts. This representation is based upon an analysis of publicly available information about similar industry products, taking into consideration such factors as, among others, the current charge levels and benefits provided, the existence of expense charge guarantees, guaranteed death benefits, and guaranteed annuity rates. United of Omaha will maintain at its principal offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, Applicants' comparative review.

6. Applicants also assert that the charge equal to an annual rate of .35% of the average death benefit amount for Contracts and Future Contracts issued with the enhanced death benefit is reasonable in relation to the risks assumed by United of Omaha. In arriving at this determination, United of Omaha projected its expected cost in providing this benefit by using the price of put options which could be used to hedge the risk inherent in providing the enhanced death benefit. United of Omaha undertakes to maintain at its home office a memorandum, available to the Commission, setting forth in detail the methodology used in determining that the risk charge equal to an annual rate of .35% of the average death benefit amount under certain Contracts and Future Contracts for the enhanced death benefit is reasonable in relation to risks assumed by United of Omaha under the Contracts and Future Contracts.

7. United of Omaha has concluded that there is a reasonable likelihood that the Separate Accounts and Other Accounts' proposed distribution financing arrangements will benefit the Separate Accounts and their investors. United of Omaha represents that it will maintain and make available to the Commission upon request a memorandum setting forth the basis of such conclusion.

8. The Separate Account and Other Accounts will be invested only in management investment companies that undertake, in the event the company should adopt a plan for financing distribution expenses pursuant to Rule 12b–1 under the 1940 Act, to have such plan formulated and approved by the company's board members, the majority of whom are not "interested persons" of the management investment company within the meaning of Section 2(a)(19) of the 1940 Act.

9. Section 2(a)(32) of the 1940 Act defines a redeemable security as any security under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof. Section 27(c)(1) of the 1940 Act and Rule 22c–1 thereunder, in pertinent part, prohibit a registered investment company, its depositor, or principal underwriter, from selling periodic payment plan certificates unless such certificates are redeemable securities.

10. Applicants request exemptions from Sections 2(a)(32), 22(c), and 27(c)(1) of the 1940 Act, and Rule 22c–1 thereunder, to permit the deduction upon surrender of the prorated enhanced death benefit equal to .35% of the average death benefit.

11. Applicants assert that the enhanced death benefit charge is assessed to compensate United of Omaha for the increase risk it bears if the Contract owner elects the enhanced death benefit. The death benefit represents an optional insurance benefit that United of Omaha may provide through the life of the Contract or Future Contract for which it is entitled to receive compensation. Normally, the enhanced death benefit charge accrues each Contract year and is deducted retroactively on each Contract anniversary, for that prior Contract year. By deducting a prorated enhanced death benefit charge upon a Contract owner's surrender, the Contract owner compensates United of Omaha for the additional risk the company bears during the period between the last Contract anniversary and the date of surrender.

12. Applicants further assert that the assessment of the prorated enhanced death benefit charge upon surrender does not alter a Contract owner's current net asset value. As previously discussed, United of Omaha deducts the enhanced death benefit charge through the cancellation of a Contract owner's accumulation units. Accordingly, the assessment of the prorated enhanced death benefit charge upon surrender, or at any other time during the life of a Contract or Future Contract, will not alter the Contract or Future Contract's current net asset value.

13. In addition, Applicants assert that the assessment of a prorated enhanced death benefit charge upon a Contract owner's surrender, which is fully disclosed in the prospectus for the Contract, should not be construed as a restriction on redemption. Applicants maintain that the Contracts and Future Contracts are and will be redeemable securities and that the imposition of the prorated enhanced death benefit charge upon surrender represents nothing more than the proportionate deduction of an insurance charge that could otherwise be deducted daily through the life of the Contract or Future Contract. Moreover, as stated previously, Applicants only assess the charge if the Contract owner has elected the enhanced death benefit.

Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15572 Filed 6–23–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21152; 812–9592]

Van Kampen American Capital Equity Opportunity Trust, Series 10

June 20, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Van Kampen American Capital Equity Opportunity Trust, Series 10.

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act that would exempt applicant from section 12(d)(3) of the Act.

SUMMARY OF APPLICATION: Applicant requests an order on behalf of itself and subsequently established series (the "Series") to permit each Series to invest up to 10.5% of its total assets in securities of issuers that derived more than 15% of their gross revenues in their most recent fiscal year from securities related activities.

FILING DATE: The application was filed on May 10, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 17, 1995, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, Van Kampen American Capital Distributors, Inc., One Parkview Plaza, Oakbrook Terrace, Illinois 60181.

FOR FURTHER INFORMATION CONTACT: James M. Curtis, Senior Counsel, at (202) 942–0563, or Robert A. Robertson, Branch Chief, (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Each Series will be a series of applicant, a unit investment trust registered under the Act. Van Kampen American Capital Distributors, Inc. is applicant's depositor (the "Sponsor").

2. Each Series will invest approximately 10%, but in no event more than 10.5%,[1] of the value of its total assets in each of the ten common stocks in the FT Index or the Hang Seng Index, as the case may be, having the highest dividend yields in such respective index for a specified period (e.g. approximately one year).

3. The FT Index is comprised of 30 companies representative of British industry and commerce. The average shares outstanding for each FT Index company is 187,894,000. All of the FT Index companies are listed and traded on the London Stock Exchange. The Hang Seng Index is comprised of 33 companies representative of Hong Kong industry. The average number of shares outstanding for each Hang Seng Index company is 2,016,013.

4. The portfolio securities deposited in each Series will be chosen solely according to the formula described above, and will not necessarily reflect the research opinions or buy or sell recommendations of the Sponsor. The Sponsor will have no discretion as to which securities are purchased. Securities deposited in a Series may include securities of issuers that derived more than 15% of their gross revenues in their most recent fiscal year from securities related activities.

5. During the 90-day period following the initial date of deposit, the Sponsor may deposit additional securities, maintaining to the extent practicable the original proportionate relationship among the number of shares of each stock in the portfolio. Deposits made after the 90-day period following the initial date of deposit generally must replicate exactly the proportionate relationship among the face amounts of the securities comprising the portfolio at the end of the initial 90-day period, whether or not a stock continues to be among the ten highest dividend yielding stocks.

6. A Series's portfolio will not be actively managed. Sales of portfolio securities will be made in connection with redemptions and at termination of the trust on a date specified a year in advance. The Sponsor does not have discretion as to when securities will be sold except that the Sponsor is authorized to sell securities in extremely limited circumstances. For example, if an issuer defaults on the payment on any of its outstanding obligations or the price of a security has declined to such an extent or other such credit facts exist so that in the opinion of the Sponsor the retention of such securities would be detrimental to the Series, the Sponsor may sell the securities. The adverse financial condition of an issuer will not necessarily require the sale of its securities from a Series' portfolio.

Applicant's Legal Analysis

1. Section 12(d)(3) of the Act prohibits an investment company from acquiring any security in any company which is a broker, dealer, underwriter, or investment adviser. Rule 12d3–1 under the Act exempts the purchase of securities of an issuer that derived less than 15% of its gross revenues in its most recent fiscal year from securities related activities, provided that, among other things, immediately after such acquisition, the acquiring company has invested not more than 5% of the value of its total assets in securities of the issuer.

2. Section 6(c) of the Act provides that the SEC may exempt a person from any provision of the Act or any rule thereunder, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicant requests an exemption under section 6(c) from section 12(d)(3) to permit any Series to invest up to approximately 10%, but in no event more than 10.5%, of the value of its total assets in securities of an issuer that derives more than 15% of its gross revenues from securities related activities. Each Series undertakes to comply with all of the conditions of rule 12d3–1, except that each Series seeks to invest up to approximately 10%, but in no event more than 10.5%, of that value of any Series' assets at its initial date of deposit in the securities of any company that is an issuer of any of the ten highest dividend yielding stocks in the FT Index or the Hang Seng Index.

4. Section 12(d)(3) was intended to prevent investment companies from exposing their assets to the entrepreneurial risks of securities related businesses to prevent potential conflicts of interests, and to eliminate certain reciprocal practices between investment companies and securities related businesses. One potential conflict could occur if an investment company purchased securities or other interests in a broker-dealer to reward that broker-dealer for selling fund shares, rather than solely on investment merit. Applicant believes that this concern does not arise in connection with its application because neither applicant nor the Sponsors have discretion in choosing the portfolio securities or percentage amount purchased. The security must first be included in the FT Index or the Hang Seng Index, which indexes are unaffiliated with the Sponsors and applicant, and must also qualify as one of the ten highest dividend yielding securities.

5. Applicant also believes that the effect of a Series's purchase on the stock of parents of broker-dealers would be *de minimis*. The common stocks of securities related issuers represented in the FT Index or the Hang Seng Index are widely held, have active markets, and applicant believes that the purchases by any Series would represent an insignificant amount of the outstanding common stock and the trading volume of any of these issues. Accordingly, applicant believes that it is highly unlikely that Series purchases of these securities would have any significant impact on the securities' market value.

6. Another potential conflict of interest could occur if an investment company directed brokerage to a broker-dealer in which the company has invested to enhance the broker-dealer's profitability or to assist it during financial difficulty, even though that broker-dealer may not offer the best price and execution. To prelude this type of conflict, applicant and each Series agree, as a condition of this application, that no company held in a Series's portfolio nor any affiliate thereof will act as a broker for any Series in the purchase or sale of any security for its portfolio. In light of the above, applicant believes that its proposal meets the section 6(c) standards.

Applicant's Condition

Applicant and each Series agrees that any order granted under this application may be conditioned upon no company held in a Series's portfolio nor any affiliate thereof acting as broker for any Series in the purchase or sale of any security for a Series's portfolio.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15573 Filed 6–23–95; 8:45 am]

BILLING CODE 8010–01–M

[1] The objective for each Series is to purchase securities so that each of the ten common stocks represents approximately 10% of the value of the Series' total assets on the initial date of deposit. However, the Sponsor generally purchases the securities for each Series in 100 share lots; if necessary to come closer to having each stock represent 10% of the value of a Series' assets, it will purchase securities in 50 share lots. It is most efficient to buy securities in 100 share lots and 50 share lots because it allows each of the ten common stocks of any Series to represent close to 10% of the value of a Series' total assets, while still permitting the Sponsor to obtain the best price for the securities. Therefore, in order to accommodate these purchase requirements, at the time of deposit into a Series' portfolio, some stocks may represent up to 10.5% of the value of the Series' assets, while others may represent less than 10%.

[Release No. 34–35864; File No. SR–PHLX–95–31]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Compliance With Position and Exercise Limits for Non-PHLX Listed Options

June 19, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 22, 1995, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Currently, PHLX Rule 1001, "Position Limits,"[1] applies only to transactions by PHLX members or member organizations in Exchange-listed options. The PHLX proposes to amend PHLX Rules 1001 and 1002, "Exercise Limits,"[2] to require PHLX members who trade non-PHLX listed options and who are not members of the exchange where the options transactions are effected to comply with the applicable option position and exercise limits of the exchange where the options transactions are effected.

The text of the proposed rule change is available at the Office of the Secretary, PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposal is to eliminate a loophole in position and exercise limit jurisdiction among the option exchanges. According to the Exchange, a PHLX member entering into an opening transaction on another exchange in an option not listed on the PHLX and who is not a member of the exchange where the transaction is effected escapes the jurisdiction of both the PHLX and the other exchange for purposes of position limit compliance. The PHLX notes that Exchange Rule 1001 does not apply because the rule is limited to options dealt in on the PHLX. Likewise, if the transaction is effected by a non-member of the other exchange, the other exchange cannot enforce its position limit rule.

The PHLX believes that the proposed amendments to PHLX Rule 1001 should enable the PHLX to exercise jurisdiction over a PHLX member violating the position limit in a non-PHLX listed option. The PHLX believes that the same is true for exercise limits. The proposal applies to both equity options and index options.

[1] Position limits impose a ceiling on the number of option contracts which an investor or group of investors acting in concert may hold or write in each class of options on the same side of the market (*i.e.*,) aggregating long calls and short puts or long puts and short calls).

[2] Exercise limits prohibit an investor or group of investors acting in concert from exercising more than a specified number of puts or calls in a particular class within five consecutive business days.

In pursuing such position limit violations, the PHLX will apply the applicable position limit of the other exchange, together with any applicable exemption, interpretation or policy, to transactions in non-PHLX options by a PHLX member. When a PHLX member enters into an opening transaction on another exchange in a PHLX-listed option, the PHLX will continue to apply the position limits and exemptions set forth in the PHLX's rules.

The PHLX anticipates that the other options exchanges will file substantially similar proposals with the Commission.

The Exchange believes that the proposal is consistent with Section 6 of the Act, in general, and, in particular, with Section 6(b)(5), in that it is designed to remove impediments to and perfect the mechanism of a free and open market as well as to protect investors and the public interest by expanding option exchange position and exercise limit jurisdiction to uniformly cover excessive transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either received or requested.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested person are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 17, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15569 Filed 6–23–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 04/04–0261]

Pacific Capital, Limited Partnership; Notice of Issuance of a Small Business Investment Company License

On December 8, 1994, a notice was published in the Federal Register (59 FR 63399) stating that an application had been filed by Pacific Capital, Limited Partnership, 109 Westpark Drive, Suite 260, Brentwood, Tennessee, 37027–5032, with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 C.F.R. 107.102 (1994)) for a license to operate as a small business investment company. Interested parties were given fifteen days from the date of Notice publication to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 04/04–0261 on May 22, 1995 to Pacific Capital, Limited Partnership to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

[3] 17 CFR 200.30–3(a)(12) (1994).

Dated: June 20, 1995.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 95–15490 Filed 6–23–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 2224]

United States International Telecommunications Advisory Committee (ITAC); Notice of Meeting

The Department of State announces that a meeting of the United States International Telecommunications Advisory Committee (ITAC) will be held July 13, 1995, 10:00 a.m.–1:00 p.m., in the East Auditorium of the Department of State, 2201 "C" Street NW., Washington, D.C.

The purpose of ITAC is to advise the Department on policy, technical and operational matters and to provide strategic planning recommendations, with respect to international telecommunications and information issues. The agenda of this meeting will include: (1) consideration of report from ITAC's task group to examine ITU's relationship with other forums and organizations (particularly the Internet Society); (2) report of ITU Council actions (June 21–30), including decisions on the Policy Forum; (3) report of ITU Review Committee on Rights and Obligations of Members (May 29–31), and follow-up work program; (4) establishment of task group to consider the international implications of auctions for managing the radio frequency spectrum and other telecommunications resources (e.g., numbers); and (5) general discussion of ITAC activities with a view to improving efficiency and effectiveness. Questions regarding the agenda or ITAC in general may be directed to Richard Shrum, Department of State (202–647–0050).

Members of the general public may attend the meetings and join in the discussions, subject to the instructions of the chair and seating availability. In this regard, entrance to the building is controlled. If you wish to attend please call 202–647–0201 not later than 5 days before the scheduled meetings. One of the following valid photo ID's will be required for admittance: U.S. driver's license with picture, U.S. passport, U.S. government ID (company ID's are no longer accepted by Diplomatic Security). Enter from the "C" Street Main Lobby.

Dated: June 14, 1995.

Richard E. Shrum,

ITAC Executive Director.

[FR Doc. 95–15495 Filed 6–23–95; 8:45 am]

BILLING CODE 4710–45–M

[Public Notice 2225]

United States International Telecommunications Advisory Committee (ITAC) Standardization Sector, U.S. Study Group A and U.S. ITAC–T Study Group; Meeting Notice

The Department of State announces that the United States International Telecommunications Advisory Committee (ITAC), Telecommunications Standardization Sector (ITAC–T) Study Group A and the U.S. Study Group for ITAC–T (formerly the USNC) will meet on the following dates and times at the U.S. Department of State, 2201 C Street NW. Washington, D.C. 20520:

Study Group A, July 26, 1995, 930–300, Room 1205

ITAC–T National Group, August 23, 1995, 930–300, Room 1205

Study Group A, August 24, 1995, 930–300, Room 1205.

Detailed agendas will be provided prior to the meeting to the most recent attendees of the two U.S. ITAC–T Groups. The ITAC–T group agenda will deal primarily with preparations for the September meeting of the Telecommunications Standardization Advisory Group (TSAG) including any discussions relating to the joint RAG/TSAG refinement meeting (September 15 & 18) while the ITAC–T Study Group A meetings will include a debriefing of the Geneva, May 1995 ITU–T Study Group 1 meeting and the June ITU–T Study Group 3 meeting, plus preparations for the upcoming September meetings of CITEL's PCC–1 and ITU–T Study Group 2 meeting.

Members of the General Public may attend the meetings and join in the discussions, subject to the instructions of the chair. Admittance of public members will be limited to the seating available. In this regard, entrance to the Department of State is controlled. If you wish to attend please call 202–647–0201 not later than 5 days before the scheduled meetings. One of the following valid photo ID's will be required for admittance: U.S. driver's license with picture, U.S. passport, U.S. government ID (company ID's are no longer accepted by Diplomatic Security). Enter from the "C" Street Main Lobby.

Dated: June 8, 1995.

Earl S. Barbely,

Chairman, U.S. ITAC for Telecommunication Standardization.

[FR Doc. 95–15496 Filed 6–23–95; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement on the Long Island Transportation Corridor in New York City, New York

AGENCY: Federal Transit Administration (FTA), DOT; Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FTA, the FHWA and the MTA Long Island Rail Road (LIRR), are issuing this notice to advise the public and all other interested parties that in accordance with the National Environmental Policy Act (NEPA), they intend to prepare an Environmental Impact Statement (EIS) for transportation improvements in the Long Island Transportation Corridor of New York, Kings, Queens, Nassau and Suffolk Counties, New York. The Draft EIS (DEIS) will include a Major Investment Study (MIS) in accordance with 49 CFR part 613 and will be coordinated with other affected agencies. The LIRR will ensure that the EIS also satisfies the requirements of the New York State Environmental Quality Review Act (SEQRA) and serves as the Environmental Impact Statement (EIS) required by SEQRA.

Among the alternatives that the MIS/DEIS will evaluate are the No-Action and Transportation System Management (TSM) alternatives, reasonable highway alternatives and extensions of the existing LIRR transit network to a new East-Midtown Manhattan rail terminal. Any new alternatives generated through the scoping process in addition to the study goals, evaluation criteria and other relevant issues and comments will also be considered.

Scoping will be accomplished through correspondence with interested persons, organizations, and federal, state and local agencies, and through three public meetings.

COMMENT DUE DATES: Written comments on the scope of alternatives and impacts to be considered should be sent by September 5, 1995 to Ms. Pamela Burford, Director Special Projects, Long Island Rail Road, Jamaica Station Mail Code 1145, Jamaica, New York 11435.

SCOPING MEETINGS: Public scoping meetings will be held on Tuesday July 18, 1995 at 7:00 pm at the Long Island Association Headquarters, 80 Hauppauge Road, Commack, New York; Wednesday July 19, 1995 at 7:00 pm in the Nassau County Board of Supervisors Meeting Room, Nassau County Executive Building, 1 West Street, Mineola, New York; and on July 20, 1995 at 5:30 pm in the MTA's Fifth Floor Board Room, 347 Madison Avenue, New York, NY.

FOR FURTHER INFORMATION CONTACT: Letitia A. Thompson, Deputy Regional Administrator, Federal Transit Administration 26 Federal Plaza, New York, NY 10278, Phone: (212) 264–8162, Fax: (212) 264–8973, Harold J. Brown, Division Administrator, Federal Highway Administration, Leo W. O'Brien Federal Building, Albany, New York 12207, Phone: (518) 431–4127, Fax: (518) 431–4121, Pamela Burford, Director Special Projects, Long Island Rail Road, Jamaica Station Mail Code 1145 Jamaica, NY 11435, Phone: (718) 558–7520, Fax: (718) 558–8180.

SUPPLEMENTARY INFORMATION: FTA, FHWA and the MTA Long Island Rail Road invite interested individuals, organizations, and federal, state and local agencies to participate in defining the alternatives to be evaluated in the MIS/DEIS and identifying any social, economic, or environmental issues related to the alternatives. An information packet describing the purpose of the project, the proposed initial set of alternatives, the impact areas to be evaluated, the citizen involvement program, and the preliminary project schedule is being mailed to affected federal, state and local agencies and to interested parties on record. Others may request the scoping materials by contacting Ms. Pamela Burford at the address above or by calling her at (718) 558–7520. Scoping comments may be made verbally at the public scoping meetings or in writing. See the **SCOPING MEETING** section above for locations and times. During scoping, comments should focus on identifying specific social, economic or environmental concerns to be evaluated and suggesting alternatives which are less costly or less environmentally damaging while achieving similar transportation objectives. Scoping is not the appropriate time to indicate a preference for a particular alternative. Comments or preferences should be communicated after the MIS/DEIS has been completed. If you wish to be placed on the mailing list to review further information as the projects develops, contact Ms. Pamela Burford as previously described.

Description of Study and Area Project Need

Within the context of the Long Island Transportation Corridor MIS/DEIS the study corridor Is self-defining to a great extent owing to the geographic configuration of Long Island. The Long Island Study Corridor is therefore composed of the two suburban counties, Nassau and Suffolk; the two New York City counties, Queens and Kings (Brooklyn); and that portion of the New York County Central Business District generally referred to as Midtown Manhattan. Excluding the Mid-town Manhattan (CBD) portion of the study corridor the study area covers approximately 1377 square miles of land area with a population density of 6.8 million people.

The Long Island Study Corridor's access to the Mid-town Manhattan CBD is provided by the MTA Long Island Rail Road, an extensive highway network consisting of Interstate highways, expressways, parkways and the local street grid, the MTA New York City Transit and a number of private bus and ferry services as well as private automobiles.

Overall the above transportation facilities are operating at or above their respective design capacities during peak travel periods and experience excessive levels of congestion resulting in increased travel time, lost productivity, customer dissatisfaction and contravention of National Ambient Air Quality Standards. The region's high utilization of existing facilities, high population density and the physical constraints associated with the separation of Manhattan Island and Long Island by the East River necessitating bridge or tunnel connections all contribute to creating a problematic environment for addressing the Long Island Study Corridors mobility issues.

Currently, the LIRR has only one Manhattan terminal at Pennsylvania Station (Penn Station) on the West Side of Manhattan between 31st and 33rd Streets and 7th and 8th Avenues. However, this facility currently operates at capacity and is shared by three railroads—LIRR, New Jersey Transit (NJT), and Amtrak—each of which is seeking additional capacity for its present and projected patronage. Moreover, surveys indicated that a significant number of LIRR customers have East Midtown destinations and are therefore not adequately served by a Penn Station destination.

The primary goals of the Long Island Rail Road (LIRR) are to provide transport capacity, enhance mobility and reduce the number of vehicles on the region's congested highway, bridges and tunnels; unfortunately, the LIRR's ability to meet these goals is constrained by capacity limitations during peak hours, particularly at Pennsylvania Station. Therefore, the LIRR is impeded in its ability to attract and serve new riders, in the peak period.

The major highway corridors in Long Island Study Corridor are noted for their major congestion problems. According to the findings of the LIRR Network Strategy Study, 52% of the New York State's total vehicle hours of delay occurs on Long Island roadways. These conditions inhibit the region's ability to attain compliance under the federally imposed National Ambient Air Quality Standards (NAAQS) as required under the Clean Air Act.

All of the MTA New York City Transit's (NYCT) 25 subway routes serve portions of the Long Island Study Corridor including the busiest trunk lines in the city—the number 4, 5 and 6 services on the Lexington Avenue Line, the number 7 service on the Flushing Line, and the E, F and R services on the Queens Boulevard Line. Portions of the subway system parallel portions of the LIRR in Queens and Brooklyn. However, while these subway and LIRR routes parallel one another they do not necessarily compete with one another—the LIRR principally carries customers from Nassau and Suffolk Counties and the far eastern portion of Queens while the subways principally serve inner city passengers of Queens and Brooklyn.

The Queens Boulevard Line, which offers connecting express subway services at LIRR's Jamaica Station, is currently one of the top two most heavily used subway lines in the NYCT system. During the morning peak hour, approximately 30 trains per peak hour carry in excess of 66,000 passengers per hour, at a volume/capacity ration of 1.296 or 30% over capacity.

The Flushing Line, which offers connecting service at LIRR stations at Hunterspoint Avenue, Long Island City and Woodside Queens, is currently operating above capacity, carrying approximately 36,700 passengers into Manhattan at a volume/capacity ration of 1.083 or 8.3% over capacity.

Based upon U.S. Bureau of the Census data and New York Metropolitan Transportation Council (NYMTC) projections, population, labor force and employment in the five county Long Island Study Corridor have all experienced a net growth from 1980 to the present, and all are projected to continue to grow in the future. The increases indicated by these trends will increase the number of trips made, including commutation travel between the residential communities on Long Island and the commercial hub of Manhattan.

Alternatives

The alternatives proposed for evaluation include: No-action which involves no change to transportation services or facilities in the corridor beyond already committed projects of the 1992–1996 MTA Capital Program; the TSM alternative, which consists of low-to-medium cost improvements to the facilities and operations of the LIRR, NYCT and the highway network in addition to the currently planned highway and transit improvements in the corridor. All other reasonable alternatives proposed through the study scoping process will be considered.

Probable Effects

FTA, FHWA and the LIRR plan to evaluate in the MIS/DEIS all social, economic, and environmental impacts of the alternatives. Among the possible issues to be investigated are the potential increase in transit ridership, impacts on highway use, the capital outlays needed to implement an alternative, the cost of operating and maintaining the facilities created by an alternative, and the financial impacts on the funding agencies. Environmental and social impacts, both positive and negative, proposed for analysis include environmental justice, land use and neighborhood impacts, traffic, parking, and pedestrian impacts near stations, visual impacts, impacts on cultural resources, and noise and vibration impacts. Impacts on natural areas, rare and endangered species, air and water quality, ground water, hazardous waste and geologic forms will also be covered. The impacts will be evaluated both for the construction period and for the long-term period of operation. Measures to mitigate significant adverse impacts will be considered.

FTA and FHWA Procedures

In accordance with the Federal Transit Laws, the Federal Aid Highway Act and FTA/FHWA policy, the DEIS/MIS will be prepared in conjunction with an analysis of alternatives and Conceptual Engineering. After its publication, the MIS/DEIS will be available for public and agency review and comment, and a public hearing will be held. On the basis of the MIS/DEIS and the comments received, and with input from the Project Steering Committee, the Technical Advisory Committee, the Citizens Advisory Committee and the Metropolitan Transportation Authority Board, the MTA Long Island Rail Road will select a locally preferred alternative for its major investment strategy and seek approval from FTA and FHWA to continue with Preliminary Engineering and preparation of the Final EIS.

Issued on: June 20, 1995.

Thomas J. Ryan,

Regional Administrator, Federal Transit Administration.

[FR Doc. 95–15393 Filed 6–23–95; 8:45 am]

BILLING CODE 4910–57–P

[Docket No. 95–40; Notice 1]

National Highway Traffic Safety Administration

Vector Aeromotive Corporation Receipt of Application From Federal Motor Vehicle Safety Standard No. 208

Vector Aeromotive Corporation of Jacksonville, Florida, has applied to be exempted from paragraph S4.1.4 of Federal Motor Vehicle Safety Standard No. 208 *Occupant Crash Protection.* The basis of the application is that compliance will cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith.

This notice of receipt of an application is published in accordance with the requirements of 49 U.S.C. 30113(b)(2) and does not represent any judgment of the agency on the merits of the application.

Vector intends to begin production of a two-seat high performance sport car in September 1995 called the "Vector Avtech SC ("Avtech"). Design concept specifications were developed several years ago for the Avtech, and a prototype shown at the Geneva Automobile Show in March 1992. During this time, Vector produced a sports car called the Vector W8. This car went out of production in early 1993 after a run of 22 vehicles, and Vector has produced no motor vehicles since.

Vector's single largest shareholder is V'Power Corp., a Bahamian Corporation, which is also the controlling shareholder of Automobili Lamborghini S.p.A. Lamborghini, which manufactured 1,475 cars between 1989 and 1994, was recently granted a temporary exemption from Motor Vehicle Safety Standard No. 214 *Side Impact Protection* (59 FR 59458). V'Power will provide Vector with $5.5 million in funds to finance Vector's proposed development schedule over the next 12 months. Vector's cumulative net losses in the three years preceding the filing of its application were approximately $12,400,000.

Vector has received airbag development program cost estimates of approximately $1,500,000 from airbag suppliers. It has already spent $56,000 in pursuit of the project and an estimated 1000 man hours. Vector estimates that a year will be required in order to complete development, and that vehicles conforming to Standard No. 208 will be available in the time period June - September 1996. However, to allow for development problems, Vector has asked for an exemption until May 1, 1997. In the meantime, the Avtech will be equipped "with an active, three point, seat belt system that meets, or exceeds, all FMVSS performance requirements."

The applicant argues that an exemption would be in the public interest as its development and production "will result in additional employment at the factory, vendor, dealer, and service levels." Its success "should establish the US as a major source for ultrahigh performance vehicles and technology". The Avtech will be equipped with "the only twelve cylinder engine offered by a US manufacturer." An exemption would be consistent with traffic safety objectives because the vehicle will otherwise comply with all applicable Federal motor vehicle safety standards. In addition, the company's production will be limited. It estimates sales of 60 cars through the second quarter of 1996.

Interested persons are invited to submit comments on the application described above. Comments should refer to the docket number and the notice number, and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered.

Notice of final action on the application will be published in the **Federal Register** pursuant to the authority indicated below. Comment closing date: July 26, 1995.

(49 U.S.C. 30113; delegations of authority at 49 CFR 1.50. and 501.8)

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–15527 Filed 6–23–95; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Changes to the List of Specially Designated Nationals of Cuba

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice of additions and deletions to the list of blocked persons and specially designated nationals.

SUMMARY: The Treasury Department is designating four entities as specially designated nationals of Cuba and adding these entities to the List of Blocked Persons and Specially Designated Nationals. In addition, the Treasury Department is removing an entity previously designated from the list.

EFFECTIVE DATE: June 21, 1995.

FOR FURTHER INFORMATION: J. Robert McBrien, Chief, International Programs, Tel.: (202) 622–2420; Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, N.W., Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document is available as an electronic file on The Federal Bulletin Board the day of publication in the **Federal Register.** By modem dial 202/512–1387 and type "/GO/FAC" or call 202/512–1530 for disks or paper copies. This file is available in Postscript, WordPerfect 5.1 and ASCII formats.

Background

The Office of Foreign Assets Control ("FAC") is designating four entities as Specially Designated Nationals of Cuba and adding these entities to the List of Blocked Persons and Specially Designated Nationals and removing one entity from the list that was previously designated.

The Director of FAC has determined that the designated entities are owned or controlled by or act or purport to act directly or indirectly on behalf of the Government of Cuba and, therefore, pursuant to § 515.306 of the Cuban Assets Control Regulations, 31 CFR part 515 (the "Regulations"), are subject to the prohibitions applicable to the Government of Cuba. All unlicensed transactions with these entities or

transactions in property in which they have an interest are prohibited unless otherwise exempted or generally licensed in the Regulations.

Determinations that persons are Specially Designated Nationals of Cuba are effective upon the date of determination by the Director of FAC, acting under authority delegated by the Secretary of the Treasury. Public Notice of such a determination is effective upon the date of **Federal Register** publication or upon earlier actual notice.

The List of Blocked Persons and Specially Designated Nationals is not definitive or all-inclusive, and new **Federal Register** notices with regard to specially designated nationals or blocked persons may be published at any time. The absence of any particular person from the list is not to be construed as evidence that the person is not a component agency of a government subject to sanctions; or organized or located in a country subject to economic sanctions; or owned and controlled by persons that are organized or located in, or are nationals of, a country subject to economic sanctions; or owned or controlled by, or acting or purporting to act directly or indirectly on behalf of, the government of a country subject to economic sanctions. The Treasury Department regards it as incumbent upon all U.S. persons or persons subject to U.S. jurisdiction, depending upon the sanctions program, to take reasonable steps to ascertain for themselves whether persons with whom they enter into transactions fall into one of these categories.

Users are advised to check the **Federal Register** and The Federal Bulletin Board routinely for additional names or other changes to the list. Entities and individuals on the list are occasionally licensed by the Office of Foreign Assets Control to transact business with U.S. persons or persons subject to U.S. jurisdiction in anticipation of removal from the list or because of foreign policy considerations in unique circumstances. Current information on licenses issued with regard to blocked persons or specially designated nationals may be obtained by calling the Office of Foreign Assets Control, Licensing Division (202/622–2480).

The following name is removed from the List of Specially Designated Nationals and Blocked Persons and is no longer considered a specially designated national of Cuba:

COMPAGNIA MERCANTILE INTERNAZIONALE (a.k.a. COMEI SPA), Milan, Italy.

The following names are added to the List of Specially Designated Nationals and Blocked Persons as specially designated nationals of Cuba:

COBALT REFINERY CO. INC., Fort Saskatchewan, AB, Canada.

INTERNATIONAL COBALT CO. INC., Fort Saskatchewan, AB, Canada.

LA COMPANIA GENERAL DE NIQUEL (a.k.a. GENERAL NICKEL SA), Cuba.

MOA NICKEL SA, Cuba.

Dated: June 7, 1995.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: June 19, 1995.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 95–15624 Filed 6–21–95: 4:57 pm]

BILLING CODE 4810–25–P

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. The information collection activity involved with this program is conducted pursuant to the mandate given to the United States Information Agency under the terms and conditions of the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256. USIA is requesting approval for revisions made to the Office of Arts America, Artistic Ambassador Program, United States Information Agency, Artistic Ambassador Program Application under OMB control number 3116–0172 which expires May 31, 1995. The proposed revisions are suggested to enhance clarity of required information. Estimated burden hours per response is 1½ hours. Respondents will be required to respond only one time.

DATES: Comments are due on or before July 26, 1995.

COPIES: Copies of the Request for Clearance (OMB 83–1), supporting statement, transmittal letter and other documents submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Jeannette Giovetti, United States Information Agency, M/ADD, 301 Fourth Street SW., Washington, D.C. 20547, telephone (202) 619–4408; and OMB review: Mr. Jefferson Hill, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 1002, NEOB, Washington, D.C. 20503, telephone (202) 395–3176.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information (Paper Work Reduction Project: OMB No. 3116–0172) is estimated to average 1½ hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the United States Information Agency, M/ADD, 301 Fourth Street SW., Washington, D.C. 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10202, NEOB, Washington, D.C. 20503.

TITLE: Office of Arts America Artistic Ambassador Program United States Information Agency Artistic Ambassador Application Form.

FORM NUMBER: IAP–121.

ABSTRACT: The USIA form IAP–121 is intended to obtain information in order to evaluate an applicant's musical background and to assess his or her potential to serve successfully as a spokesperson for the United States in cross-cultural situations.

PROPOSED FREQUENCY OF RESPONSES: No. of Respondents–60; Total Annual Burden—105.

Dated: June 21, 1995.

Rose Royal,

Federal Register Liaison.

[FR Doc. 95–15507 Filed 6–23–95; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 122
Monday, June 26, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, June 27, 1995, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Final amendments to Part 360 of the Corporation's rules and regulations, entitled "Receivership Rules," which clarify that post-closing and certain pre-closing expenses may be paid as administrative expenses of the receiver in connection with the liquidation or other resolution of FDIC-insured institutions.

Memorandum and resolution re: Proposed amendments to Part 309 of the Corporation's rules and regulations, entitled "Disclosure of Information," which would revise the rules setting forth the procedures to be used by members of the public in requesting records maintained by the Corporation, the amount of fees charged by the Corporation for responding to requests, the procedures to be used when appealing a decision to deny access to records or for a waiver of fees, circumstances and procedures under which exempt records might be disclosed, and the method by which a party can serve legal process on the Corporation in order to obtain information.

Discussion Agenda:

Memorandum and resolution re: Proposed amendments to Part 346 of the Corporation's rules and regulations, entitled "Foreign Banks," which would restrict the amount and types of initial deposits of less than $100,000 which could be accepted by an uninsured state-licensed branch of a foreign bank.

Memorandum and resolution re: (1) Final amendments to Part 325 of the Corporation's rules and regulations, entitled "Capital Maintenance," which revise the risk-based capital standards to specify that evaluations of a bank's capital adequacy would include an assessment of the exposure to declines in the economic value of the bank's capital due to changes in interest rates, and (2) a request for comment on a proposed joint agency policy statement which would establish a uniform supervisory framework for measuring banks' interest rate risk exposures.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 942–3132 (Voice); (202) 942–3111 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Jerry L. Langley, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: June 20, 1995.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 95–15683 Filed 6–22–95; 11:29 am]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION BILLING CODE: 6715–01–M

"FEDERAL REGISTER" NUMBER: 95–15499.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, June 29, 1995, 10:00 a.m. Meeting Open to the Public.

THE FOLLOWING ITEM WAS ADDED TO THE AGENDA: Buchanan for President, Inc. Committee, Proposed Final Repayment Determination and Statement of Reasons (LRA #441).

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjories W. Emmons,

Secretary of the Commission.

[FR Doc. 95–15765 Filed 6–22–95; 3:27 am]

BILLING CODE 6715–01–M

FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

DATE AND TIME: June 28, 1995, 10:00 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro 633rd Meeting—June 28, 1995, Regular Meeting (10:00 a.m.)

CAH–1.
Docket No. P–2570–024, Ohip Power Company

CAH–2.
Docket No. P–2337–034, Pacificorp

CAH–3.
Docket No. P–3407–042, Magic Reservoir Hydroelectric, Inc.

CAH–4.
Docket No. P–10551–044, City of Oswego, New York

CAH–5.
Docket No. P–10058–007, Elaine Hitchcock

CAH–6.
Docket No. P–2506–002, Mead Corporation, Publishing Paper Division

CAH–7.
Docket No. P–2607–001, Duke Power Company

CAH–8.
Omitted

Consent Agenda—Electric

CAE–1.
Docket No. ER95–980–000, Pacific Gas and Electric Company

CAE–2.
Docket No. ER95–1007–000, Logan Generating Company, L.P.

CAE–3.
Docket No. ER95–111042–000, System Energy Resources, Inc.

CAE–4.
Docket No. ER95–615–000, Western Resources, Inc.

CAE–5.
Docket No. FA92–8–001, Pennsylvania Power & Light Company

CAE–6.
Docket No. EL91–32–004, Power Authority of the State of New York, et al., V. Long Island Lighting Company
Other Nos. EL91–34–004, Power Authority of the State of New York, et al., V. Long Island Lighting Company

CAE–7.

Docket No. ER95–181–002, Florida Power & Light Company
CAE–8.
Docket No. ER93–19–001, San Diego Gas & Electric Company V. Tucson Electric Power Company and Century Power Corporation
Other Nos. FA90–34–002, Tucson Electric Power Company
CAE–9.
Docket No. ER93–540–003, American Electric Power Service Corporation
Other Nos. EC94–7–002, El Paso Electric Company and Central and South West Services, Inc.
ER93–465–016, Florida Power & Light Company
ER94–475–002, Wisconsin Power & Light Company
ER94–898–002, El Paso Electric Company and Central and South West Services, Inc.
ER94–1045–004, Kansas City Power & Light Company
ER94–1113–002, Northern States Power Company (Minnesota and Wisconsin)
ER94–1348–002, Southern Company Services, Inc.
ER94–1380–005, Louisville Gas & Electric Company
ER94–1518–002, Commonwealth Electric Company
ER94–1561–002, Citizens Utilities Company
ER94–1637–002, Cinergy Services, Inc.
ER94–1639–002, Wisconsin Public Service Corporation
ER95–1698–003, Kentucky Utilities Company
ER95–112–003, Entergy Services, Inc.
ER95–203–002, Utilicorp United, Inc.
ER95–264–002, Wisconsin Electric Power Company
ER95–371–003, Commonwealth Edison Company
CAE–10.
Omitted
CAE–11.
Docket No. ER94–1348–001, Southern Company Services, Inc.

Other Nos. EL94–85–001, Southern Company Services, Inc.
CAE–12.
Docket Nos. AC93–117–000, Portland General Electric Company
CAE–13.
Docket No. EL94–92–000, Portland General Electric Company
CAE–14.
Omitted
CAE–15.
Docket No. EL95–41–000, Metropolitan Edison Company and Pennsylvania Electric Company
CAE–16.
Docket No. EL94–75–000, The Cleveland Electric Illuminating Company v. the City of Cleveland, Ohio; the City of Cleveland, Ohio v. the Cleveland Electric Illuminating Company; the City of Cleveland, Ohio v. the Cleveland Electric Illuminating Company
CAE–17.
Docket No. EL91–13–000, Northern States Power Company (Minnesota) v. Southern Minnesota Municipal Power Agency
CAE–18.
Omitted

Consent Agenda—Gas and Oil

CAG–1.
Docket No. RP92–137–038, Transcontinental Gas Pipe Line Corporation
Other Nos. RP93–136–006, Transcontinental Gas Pipe Line Corporation
CAG–2.
Docket No. RP95–315–000, ANR Pipeline Company
Other Nos. RP95–181–001, ANR Pipeline Company
CAG–3.
Docket No. RP95–316–000, ANR Pipeline Company
CAG–4.
Docket No. RP95–317–000, ANR Pipeline Company
Other Nos. RP95–241–000, ANR Pipeline Company
CAG–5.
Docket No. RP95–323–000, Southern Natural Gas Company
Other Nos. RP95–324–000, Southern Natural Gas Company
CAG–6.
Docket No. RP95–294–000, Northern Border Pipeline Company
CAG–7.
Docket No. RP95–303–000, Williams Natural Gas Company
CAG–8.
Docket No. RP95–313–000, Northern Natural Gas Company
CAG–9.
Docket No. RP95–326–000, Natural Gas Pipeline Company of America
CAG–10.
Omitted
CAG–11.
Omitted
CAG–12.
Omitted
CAG–13.
Docket No. RP95–331–000, Noram Gas Transmission Company
CAG–14.
Omitted
CAG–15.
Omitted
CAG–16.
Docket No. TM95–4–49–000, Williston Basin Interstate Pipeline Company
CAG–17.
Docket No. PR93–10–000, Louisiana State Gas Corporation
Other Nos. PR93–10–001, Louisiana State Gas Corporation
CAG–18.
Docket No. PR94–12–000, Overland Trail Transmission Company
Other Nos. PR94–12–000, Overland Trail Transmission Company
CAG–19.
Docket No. RP94–251–003, National Fuel Gas Supply Corporation
CAG–20.
Docket No. RP95–112–000, Tennessee Gas Pipeline Company
Other Nos. RP95–88–000, Tennessee Gas Pipeline Company
RP–95–88–001, Tennessee Gas Pipeline Company
RP–95–112–001, Tennessee Gas Pipeline Company
RP–95–112–002, Tennessee Gas Pipeline Company
RP–95–112–006, Tennessee Gas Pipeline Company
CAG–21.
Docket No. RP95–304–000, North Penn Gas Company
CAG–22.
Omitted
CAG–23.
Omitted
CAG–24.
Omitted
CAG–25.
Docket No. RP95–14–000, Noram Gas Transmission Company
Other Nos. RP94–343–009, Noram Gas Transmission Company
RP94–343–010, Noram Gas Transmission Company
RP95–14–001, Noram Gas Transmission Company
RP95–14–002, Noram Gas Transmission Company
RP95–53–001, Noram Gas Transmission Company
RP95–53,002, Noram Gas Transmission Company
CAG–26.
Docket No. RP95–210–000, Transwestern Pipeline Company
CAG–27.
Docket No. TM94–5–49–001, Williston Basin Interstate Pipeline Company
CAG–28.
Docket No. RP85–209–000, Koch Gateway Pipeline Company, et al.
CAG–29.
Docket No. RP94–164–006, Trunkline Gas Company
Other Nos. AC94–49–000, Trunkline Gas Company
CP92–498–000, Trunkline Gas Company
RP94–374–000, Trunkline Gas Company
RP94–374–001, Trunkline Gas Company
RP95–19–000, Trunkline Gas Company
CAG–30.
Docket No. RP94–43–013, ANR Pipeline Company
Other Nos. RP95–58–002, ANR Pipeline Company
CAG–31.
Docket No. RP94–43–014, ANR Pipeline Company
CAG–32.
Docket No. RP92–133–005, Gas Research Institute
CAG–33.
Docket No. RP94–365–004, Williams Natural Gas Company
CAG–34.
Docket No. RP95–216–002, Tennessee Gas Pipeline Company
CAG–35.
Docket No. RP95–231–001, Columbia Gas Transmission Corporation
CAG–36.
Docket No. RP95–31–005, National Fuel Gas Supply Corporation
CAG–37.

Omitted
CAG–38.
Omitted
CAG–39.
Docket No. RP93–187–010, Equitrans, Inc.
Other Nos. CP88–546–008, Equitrans, Inc.
RP93–62–013, Equitrans, Inc.
CAG–40.
Omitted
CAG–41.
Docket No. IS95–31–000, Kaneb Pipe Line Operating Partnership, L.P.
CAG–42.
Docket No. IS95–32–000, Explorer Pipeline Company
CAG–43.
Docket No. IS95–33–000, Colonial Pipeline Company
CAG–44.
Docket No. OR90–2–000, Conoco, Inc. and Oxy USA, Inc. v. Trans Alaska Pipeline System
CAG–45.
Docket No. MG92–3–002, Pacific Gas Transmission Company
CAG–46.
Omitted
CAG–47.
Docket No. CP95–11–002, William Natural Gas Company
Other Nos. CP95–12–001, Williams Gas Processing—Kansas Hugoton Company
CAG–48.
Docket No. CP93–505–005, Panhandle Eastern Pipeline Company
Other Nos. CP93–506–005, Panhandle Gathering Company
RP95–162–001, Panhandle Eastern Pipe Line Company
CAG–49.
Omitted
CAG–50.
Docket No. CP95–92–000, Atlantic Gas Systems, Inc.
CAG–51.
Docket No. CP95–94–000, Koch Gateway Pipeline Company
CAG–52.
Docket No. CP95–130–000, Northern Natural Gas Company
CAG–53.
Docket No. CP94–137–000, Tennessee Gas Pipeline Company
CAG–54.
Docket No. RP95–319–000, Iroquois Gas Transmission System, L.P.
CAG–55
Docket No. RP94–416–000, Northern Natural Gas Company
CAG–56.
Docket No. RP95–226–000, Mississippi River Transmission Corporation
CAG–57.
Docket No. CP94–682–002, Southern Natural Gas Company
CAG–58.
Docket No. CP95–304–000, Shell Western E&P Inc.
CAG–59.
Docket No. TM95–3–49–000, Williston Basin Interstate Pipeline Company

Hydro Agenda

H–1.
Reserved

Electric Agenda

E–1.
Docket No. ER95–19–000, Northwest Regional Transmission Association. Order on Regional Transmission Group

Oil and Gas Agenda

I.
Pipeline Rate Matters
PR–1.
Reserved
II.
Pipeline Certificate Matters
PC–1.
Reserved

Lois D. Cashell,

Secretary.

[FR Doc. 95–15684 Filed 6–22–95; 11:36 am]

BILLING CODE 6717–01–M

Corrections

Federal Register
Vol. 60, No. 122
Monday, June 26, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

7 CFR Chapter VI and Part 620

RIN 0578-AA15

Wetlands Reserve Program

Correction

In rule document 95–13161 beginning on page 28511, in the issue of Thursday, June 1, 1995, make the following corrections:

1. On page 28511, in the third column, under **SUMMARY:**, in the first line, insert a comma after "Food".

2. On the same page, in the same column, in the same paragraph, in the eighth line, "secretary" should read "Secretary".

3. On the same page, in the same column, in the same paragraph, in the 14th line, remove the comma after "1994".

4. On the same page, in the same column, in the same paragraph, in the 16th line, "service" should read "Service".

§620.2 [Corrected]

5. On page 28515, in the third column, in §620.2, in the definition for *Wetland functions and values*, in paragraph (1), in the first line, "Habit" should read "Habitat".

§620.4 [Corrected]

6. On page 28516, in the third column, in §620.4 (d) (3), in the fifth line, "is" should be removed.

7. On page 28517, in the first column, in §620.4 (d) (3) (iv), in the fifth line, "neutral" should read "natural".

8. On the same page, in the same column, in §620.4 (f), in the third line, "WKP" should read "WRP".

§620.12 [Corrected]

9. On page 28519, in the second column, in §620.12 (a) (1), in the third line, "manual" should read "mutual".

§620.14 [Corrected]

10. On the same page, in the third column, in §620.14 (d), in the first line, "states" should read "States".

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2525-004, 2595-005, 2522-002, 2546-001, 2560-001, 2581-002]

Wisconsin Public Service Corp.; Notice of Intent to Prepare a Multiple-Project Environmental Impact Statement and to Conduct Site Visits and Public Scoping Meetings

Correction

In notice document 95–14970 beginning on page 32148, in the issue of Tuesday, June 20, 1995, in the third column, the project numbers should read as set forth above.

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Electronic Filing of Part 84 Respirator Approval and Certification Applications; Meeting

Correction

In notice document 95–14493 appearing on page 31319 in the issue of Wednesday, June 14, 1995, make the following corrections:

In the second column:

(A) The *Date* entry of the June 29, 1995, meeting should correspond to the *Place* entry "Lakeview Resort & Conference Center, Governor's Ball Rooms 1-3, Morgantown, West Virginia 26505.

(B) The *Date* entry of the June 30, 1995, meeting should correspond to the *Place* entry "NIOSH Facility, 1095 Willowdale Road, Room 138, Morgantown, West Virginia 26505".

BILLING CODE 1505–01–D

federal register

Monday
June 26, 1995

Part II

Nonprocurement Debarment and Suspension; Notice and Final Rule and Interim Final Rule; and FAR Debarment and Suspension; Final Rule

Office of Management and Budget

Department of Agriculture
Department of Commerce
Department of Defense
Department of Education
Department of Energy
Department of Health and Human Services
Department of Housing and Urban Development
Department of the Interior
Department of Justice
Department of Labor
Department of State
Department of Transportation
Department of the Treasury
Department of Veterans Affairs
African Development Foundation
Corporation for National and Community Service
Environmental Protection Agency
Federal Emergency Management Agency
Federal Mediation and Conciliation Service
General Services Administration
Inter-American Foundation
International Development Cooperation Agency
Agency for International Development
National Aeronautics and Space Administration
National Archives and Records Administration
National Foundation on the Arts and Humanities
National Endowment for the Arts
National Endowment for the Humanities
Institute of Museum Services
National Science Foundation
Office of National Drug Control Policy
Office of Personnel Management
Peace Corps
Small Business Administration
United States Information Agency

Department of Defense
General Services Administration
National Aeronautics and Space Administration

OFFICE OF MANAGEMENT AND BUDGET

Memorandum for the Heads of Executive Departments and Agencies; Governmentwide Nonprocurement Suspension and Debarment

June 12, 1995.

The Office of Management and Budget (OMB) is further amending its guidelines governing implementation of Executive Order (E.O.) 12549, "Debarment and Suspension," to conform to the amendments to the agencies' governmentwide common rule.

In 1986, the President signed E.O. 12549 to establish governmentwide effect for an agency's nonprocurement debarment and suspension actions. Section 6 of this Order directed OMB to issue guidelines governing implementation of the Order, and section 3 of this Order directed the departments and agencies to promulgate final rules, consistent with these guidelines. In 1987, OMB issued its final guidelines (52 FR 20360).

In 1988, OMB amended its guidelines to conform to the agencies' governmentwide common rule (53 FR 19160). In 1989, the President signed E.O. 12689 to establish regulations providing for reciprocal governmentwide effect across procurement and nonprocurement for each agency's debarment and suspension actions, after technical differences between the procurement and nonprocurement regulations governing debarments and suspensions are resolved. On October 13, 1994, President Clinton signed the Federal Acquisition Streamlining Act. Section 2455 of that Act provides that the debarment, suspension, or other exclusion of a participant in a procurement activity under the Federal Acquisition Regulation (FAR), or in a nonprocurement activity under regulations issued pursuant to E.O. 12549, shall be given reciprocal governmentwide effect.

On December 20, 1994, the agencies proposed a common rule to ensure reciprocal governmentwide effect (59 FR 65607). Now, the agencies are amending both the FAR and the nonprocurement governmentwide common rule to achieve reciprocity. In connection with these actions, OMB is amending its guidelines to conform to the governmentwide common rule.

John A. Koskinen,

Deputy Director for Management.

[FR Doc. 95–14724 Filed 6–23–95; 8:45 am]

BILLING CODE 3110–01–M

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 970

DEPARTMENT OF AGRICULTURE

7 CFR Part 3017

DEPARTMENT OF ENERGY

10 CFR Part 1036

SMALL BUSINESS ADMINISTRATION

13 CFR Part 145

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1265

DEPARTMENT OF COMMERCE

15 CFR Part 26

OFFICE OF NATIONAL DRUG CONTROL POLICY

21 CFR Part 1404

DEPARTMENT OF STATE

22 CFR Part 137

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR Part 208

PEACE CORPS

22 CFR Part 310

UNITED STATES INFORMATION AGENCY

22 CFR Part 513

INTER-AMERICAN FOUNDATION

22 CFR Part 1006

AFRICAN DEVELOPMENT FOUNDATION

22 CFR Part 1508

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 24

DEPARTMENT OF JUSTICE

28 CFR Part 67

DEPARTMENT OF LABOR

29 CFR Part 98

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Part 1471

DEPARTMENT OF THE TREASURY

31 CFR Part 19

DEPARTMENT OF DEFENSE

32 CFR Part 25

DEPARTMENT OF EDUCATION

34 CFR Parts 85, 668, and 682

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1209

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 44

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 32

GENERAL SERVICES ADMINISTRATION

41 CFR Part 105–68

DEPARTMENT OF THE INTERIOR

43 CFR Part 12

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 17

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 76

NATIONAL SCIENCE FOUNDATION

45 CFR Part 620

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

45 CFR Part 1154

National Endowment for the Humanities

45 CFR Part 1169

Institute of Museum Services

45 CFR Part 1185

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Part 2542

DEPARTMENT OF TRANSPORTATION

49 CFR Part 29

Nonprocurement Debarment and Suspension

AGENCIES: Department of Agriculture; Department of Commerce; Department of Defense; Department of Education; Department of Energy; Department of Health and Human Services; Department of Housing and Urban Development; Department of the Interior; Department of Justice; Department of Labor; Department of State; Department Transportation; Department of the Treasury; Department of Veterans Affairs; African Development Foundation; Agency for International Development, International Development Cooperation Agency; Corporation for National and Community Service; Environmental Protection Agency; Federal Emergency Management Agency; Federal Mediation and Conciliation Service; General Services Administration; Institute of Museum Services, National Foundation on the Arts and Humanities (NFAH); Inter-American Foundation; National Aeronautics and Space Administration; National Archives and Records Administration; National Endowment for the Arts, NFAH; National Endowment for the Humanities, NFAH; National Science Foundation; Office of National Drug Control Policy; Office of Personnel Management; Peace Corps; Small Business Administration; United States Information Agency.

ACTION: Final Regulations and, for the Department of Transportation only, Interim Final Regulations with an opportunity to comment.

SUMMARY: This revision to the nonprocurement common rule is issued in response to Executive Order (E.O.) 12689 and section 2455 of the Federal Acquisition Streamlining Act of 1994. E.O. 12689 requires agencies to establish regulations for reciprocal governmentwide effect across procurement and nonprocurement debarment and suspension actions, after technical differences between the procurement and nonprocurement regulations governing debarments and suspensions are resolved. Section 2455 provides that the debarment, suspension, or other exclusion of a participant in a procurement activity under the Federal Acquisition Regulation, or in a nonprocurement activity under regulations issued pursuant to Executive Order 12549, shall be given reciprocal governmentwide effect. The final regulation establishes reciprocity between the procurement and nonprocurement debarment and suspension systems.

DATES: These final regulations and the Department of Transportation's (DOT's) interim final regulations become effective August 25, 1995. For comment

information on DOT's interim final regulations, see DOT's agency-specific preamble.

FOR FURTHER INFORMATION CONTACT: See preambles of individual agencies below.

SUPPLEMENTARY INFORMATION: On December 20, 1994, all but one of the agencies participating in the development of this final rule published a notice of proposed rulemaking (NPRM) that proposed to make changes to the nonprocurement debarment and suspension Common Rule (Common Rule) to provide for reciprocal effect between procurement and nonprocurement debarments, suspensions, and other exclusionary actions. The history of the nonprocurement debarment and suspension system and of the effort to establish reciprocity between the procurement and nonprocurement debarment and suspension systems was described in the December 20, 1994 NPRM. See 59 FR 65607.

The Department of Transportation, which did not join in publishing the NPRM, is joining in the publication of this regulation as an interim final rule. See the Department of Transportation's preamble to this regulation for a discussion regarding its participation in the Common Rule.

Technical changes to the regulations are generally not discussed in this preamble. The notice of proposed rulemaking (NPRM) proposed amendments to the Common Rule only as necessary to achieve the objectives of reciprocity or to correct printing errors in the original regulations. The NPRM used this approach to focus attention on those substantive matters that were directly affected by the reciprocity rule. In this final regulation, fuller text is provided, including, at a minimum, the entire paragraph where any change is made, so that readers may see the amendments in context. The text of the Common Rule amendments is set out at the end of this preamble and is followed by the agency-specific preambles and any agency-specific amendments to the Common Rule.

Response to Comments

Five commenters provided their views on the proposed amendments to the Common Rule. Eight comments were also submitted regarding the effect of the proposed rule on specific agencies or regarding specific additional changes to the Common Rule that were proposed by certain agencies. Those comments are addressed in the agency-specific preambles that follow the amendments to the Common Rule.

Request for Future Rulemaking

The Administrative Conference of the United States (ACUS) submitted a comment supporting the proposed reciprocity amendments and asked that the agencies participating in this rulemaking effort initiate a subsequent rulemaking effort to consider additional changes to the Common Rule and the Federal Acquisition Regulation (FAR), consistent with ACUS Recommendation 95–2, which that agency adopted on January 19, 1995. Another commenter mentioned the ACUS recommendation and asked that it be considered in a future rulemaking action, noting particularly that part of the recommendation regarding the need for agencies to consider mitigating and aggravating circumstances. The agencies participating in this rulemaking action agree that additional changes to the Common Rule should be considered and will consider Recommendation 95–2 along with other proposed changes to the Common Rule before the end of this year.

Should the FAR be amended so that proposed debarments would not be effective?

Comment: Three of the commenters were concerned about a difference between the procurement and nonprocurement rules that was not addressed by the NPRM. Under the FAR subpart 9.4, *Debarment, Suspension, and Ineligibility,* a proposed debarment has the effect of excluding a party from receiving a contract. In contrast, under the Common Rule, a proposed debarment has no effect on a person's eligibility to participate in a nonprocurement program. In each of the three comments, the commenter asked that the FAR rule be amended so that proposed debarments under subpart 9.4 would have no effect.

Discussion: While the three comments request changes to the FAR and do not technically request any change to the Common Rule, the agencies participating in this rulemaking action agree that there is no need to change either rule so that the effect of a proposed debarment is the same under both debarment and suspension systems. The request to make the two rules the same on this matter misconstrues the purpose and effect of the reciprocity effort.

The purpose of the proposed reciprocity rule is to ensure that, once one agency takes action to exclude a person and that person is placed on the *List of Parties Excluded from Federal Procurement and Nonprocurement Programs,* all agencies will honor that determination. In deciding whether to take an action to exclude a person, the agency considers whether a person's present responsibility is affected such that the person poses a risk to the Federal Government. The agencies did not intend that the decision to give reciprocity would require the agencies to change the two debarment and suspension systems and establish identical procedures for excluding persons under both the FAR and the Common Rule.

Change: None.

Comment: One commenter thought that the nonprocurement common rule's recognition of proposed debarments under the FAR went beyond the authority in section 2455 of the *Federal Acquisition Streamlining Act,* which provides that "Regulations shall be issued providing that provisions for the debarment, suspension, or other exclusion of a participant in a procurement activity under the Federal Acquisition Regulation (FAR), or in a nonprocurement activity under regulations issued pursuant to Executive Order 12549, shall have government-wide effect." The commenter pointed out that this statute does not list proposed debarments specifically and, therefore, argued that the nonprocurement rule could not give effect to proposed debarments entered under the FAR. The commenter suggested that the phrase "other exclusion" probably referred to voluntary exclusions under section _____.210 of the common rule.

Discussion: Section 2455 does not limit, as suggested by the commenter, the scope of the amendments that agencies may make to the Common Rule. The passage quoted by the commenter states that agencies shall give effect under the Common Rule to "debarment, suspension, *or other exclusion* of a participant in a procurement activity under the Federal Acquisition Regulation (FAR)" (emphasis added). A proposed debarment is an exclusion under the FAR, thus, section 2455 of the Streamlining Act authorizes agencies to promulgate nonprocurement rules that give effect to proposed debarments under the FAR. The commenter's suggestion that "other exclusion" referred to voluntary exclusions does not bear weight. There is no history that Congress intended to limit that term to a unique exclusion that exists in only one system. Rather, "other exclusion" must refer to any exclusion that has effect under either system.

Change: None.

Comment: One commenter raised a hypothetical situation which it believed demonstrated a difficulty between the two rules regarding the enforceability under the common rule of proposed debarments entered under the FAR. In the commenter's example, two dairy companies (Dairy X and Dairy Y) are attempting to enter into like transactions with the Federal Government. Dairy X has been proposed for debarment under the FAR while Dairy Y has been proposed for debarment under the nonprocurement regulations. Under the proposed regulations, Dairy Y could be considered for a contract under the FAR but Dairy X could not be considered for a contract under the FAR. The commenter was uncomfortable with the alleged disparate treatment of the two dairies.

Discussion: The commenter is correct that Dairy X would be excluded but Dairy Y would not be excluded. However, if Dairy Y posed an immediate threat to the Federal Government, the agency that proposed its debarment under the nonprocurement regulations could suspend Dairy Y under those regulations. In short, while the two systems use slightly different mechanisms to protect the Federal Government, those differences do not need to be eliminated in order to give reciprocity for actions taken under the two systems.

Change: None.

Section _____ .100 Purpose

Comment: One commenter noted that the list of excluded persons under paragraph (c) of section _____.100 differed from the list included in the definition for the *List of Parties Excluded from Federal Procurement and Nonprocurement Programs* included in § _____.105, focusing on the fact that paragraph (c) in section _____.100 did not mention voluntarily excluded persons.

Discussion: A review of the Common Rule, including those portions not amended by the proposed rule reveals that the purpose section does mention voluntary exclusions in its more detailed provisions implementing Executive Order 12549 (See section _____.100(b)(3)). These detailed provisions did not need to be set out again to indicate the actions under the FAR that would be added to the *List* as a result of the reciprocity rule.

Change: None.

Section _____ .105 Definitions

Comment: One commenter noted differences between the FAR definition and the Common Rule definition for the *List of Parties Excluded from Federal Procurement and Nonprocurement Programs* and requested that the Common Rule use the FAR language. This commenter also asked that the nonprocurement Common Rule definition of the *List* not refer to the authorizing executive orders because the authority for a debarment or suspension would be the regulations of the agency that took the action.

Discussion: The substance of the two definitions is identical and the reason for the different language used in the two definitions is the different contexts in which the definitions appear. The FAR definition refers to "parties" while the nonprocurement Common Rule refers to "persons." The term "parties" is used throughout the FAR to refer to contractors. The Common Rule refers to "persons" because many of the entities covered by a nonprocurement debarment or suspension do not have a relationship of privity with the Federal Government.

Regarding the request not to refer to the executive orders, no change is made because these executive orders address substantive, not merely procedural authority for the agency regulations under which a debarment or suspension is entered.

Change: None.

Section _____ .110, Coverage.

Comment: One commenter asked that the references to the executive orders and to section 2455 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355) be removed from the proposed reciprocity rule in § _____.110(c).

Discussion: The agencies participating in this rulemaking action believe that it is appropriate to cite the substantive authority for reciprocity in the actual paragraph that gives effect to that authority.

Change: None.

Comment: One commenter thought that a suspension imposed different burdens than a debarment. Thus, the commenter was concerned that the reciprocity phrase requiring a FAR debarment or suspension to "be recognized * * * as an exclusion" should be changed to require that a FAR debarment or suspension "be recognized * * * as a comparable action." This commenter had a similar concern regarding the recognition of governmentwide nonprocurement exclusions under the FAR.

Discussion: This comment starts from a mistaken view. Once a person or party is excluded from participation in a nonprocurement transaction or from entering into a contract, that person is treated the same way, whether the person entered that excluded state by being suspended or debarred. Thus, once a party or person is excluded, no agency may do business with the party or person unless the agency affirmatively makes a decision under the exception provision in § _____.215 and states the need for the exception. Because all persons or parties on the *List* are treated the same, there is no need to make the requested change.

Change: None.

Comment: One commenter suggested that the phrase "after [the effective date of this rule]" be added after the phrase "imposed under this regulation" so that the reciprocity provision regarding FAR recognition of nonprocurement exclusions would be parallel to the reciprocity provision regarding nonprocurement recognition of FAR exclusions.

Discussion: The agencies agree.

Change: The phrase "after [date 60 days after publication]" will be added after the phrase "imposed under this regulation" in the second sentence of § _____.110(c).

Comment: One commenter noted that the proposed reciprocity rule did not address how actions will be treated that are in process when the rule becomes effective. The commenter thought that these actions should be "grandfathered" under the current rule.

Discussion: Actions initiated by notices of proposed debarments or suspensions sent to respondents before the date this rule becomes effective generally will not be given reciprocity because these regulations require a notice of proposed debarment to specify the potential effect of a debarment or suspension (See § _____.312(e) and § _____.411(g)). However, some agencies already run simultaneous actions under both the FAR and the Common Rule, citing the authority of both and giving notice that the action will be effective under both the FAR and the Common Rule. For these agencies, their actions will be effective on both sides. Once the rule becomes effective, these agencies will no longer need to afford to respondents the procedures of both rules in order to give effect on both sides. However, after the effective date of these regulations, agencies will have to give notice that actions initiated under the Common Rule will affect an entity's ability to receive contracts under the FAR.

In order to clarify this result, § _____.110(c) is amended to state that the new rule applies to actions "initiated" after the effective date of the rule rather than applying the new reciprocity rule to actions "imposed" after the effective date of the reciprocity rule. A proposed debarment or suspension is initiated when an agency

sends notice of the action to the respondent.

Change: Section _____.110(c), as added by this rulemaking action, is amended to apply the new regulation to actions initiated on or after the effective date of the regulation.

Section _____.200 Debarment or Suspension

Comment: One commenter was particularly concerned about the differences in the flow down of an action under the FAR and the Common Rule. Under § _____.200(b), a debarment affects a person's ability to participate in lower tier covered transactions. In contrast, under the FAR rule, a debarment affects a party's ability to enter into contracts and places limitations on a Federal Government prime contractor's ability to contract with first tier subcontractors who have been debarred, suspended or proposed for debarment. The commenter wanted to know whether a debarment entered under the FAR would be limited in its flow down under the Common Rule and, conversely, whether a debarment entered under the Common Rule would have to be honored at a lower level under the FAR.

Discussion: The Reciprocity rule established under this rulemaking effort does not affect the flow down of either the FAR or the Common Rule. Once a person is excluded, that person will be treated the same under these regulations as any other person for purposes of determining the entity's ability to participate in any nonprocurement covered transaction. The fact that the person was excluded as a result of an action taken under the FAR does not make the person eligible under these regulations to enter into lower tier covered transactions. The same is true for treatment of a debarment under the FAR; the fact that a debarment was entered under the Common Rule does not prohibit the excluded person from entering into a first tier subcontract provided the Federal Government prime contractor notifies the Contracting Officer of its compelling reasons for doing business with the otherwise excluded subcontractor.

Change: For clarification, Section _____.200 is amended to add proposed for debarment under the FAR.

Section _____.215 Exception Provision.

Comment: One commenter recommended that the exception provision be amended to ensure that, under the Common Rule, agencies could give an exception permitting participation by a party that is proposed for debarment under the FAR.

Discussion: The agencies participating in this rulemaking effort agree with the concern that an agency should have the same amount of discretion to permit participation in a covered transaction of a party that has been proposed for debarment under the FAR as it would to permit participation by any other excluded entity.

Change: Section _____.215 is amended so that parties proposed for debarment under the FAR can be considered for participation in covered transactions under the exception rule.

Section _____.220 Continuation of covered transactions.

Comment: One commenter noted that a party that is proposed for debarment under the FAR should be treated the same as other excluded parties in that the party's proposed debarment should not affect the party's ability to participate in a covered transaction entered into before the proposed debarment was issued.

Discussion: The agencies participating in this rulemaking agree.

Change: Section _____.220 is amended to ensure that parties that have been proposed for debarment under the FAR will be treated the same under § _____.220 as other persons who have been excluded.

Appendices A and B

Discussion: Certain changes have been made in Appendices A and B, which contain the instructions for certifications and certifications for primary and lower tier participants. These technical changes recognize that proposed debarments entered under the FAR will be given effect under the Common Rule.

Change: A reference to proposed debarments initiated under the FAR has been added in appropriate places throughout the instructions in Appendices A and B.

Text of the Common Rule

The text of the common rule appears below:

PART _____—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. Section _____.100 is revised to read as follows:

§ _____.100 Purpose.

(a) Executive Order (E.O.) 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a governmentwide system for nonprocurement debarment and suspension. A person who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. Debarment or suspension of a participant in a program by one agency shall have governmentwide effect.

(b) These regulations implement section 3 of E.O. 12549 and the guidelines promulgated by the Office of Management and Budget under section 6 of the E.O. by:

(1) Prescribing the programs and activities that are covered by the governmentwide system;

(2) Prescribing the governmentwide criteria and governmentwide minimum due process procedures that each agency shall use;

(3) Providing for the listing of debarred and suspended participants, participants declared ineligible (see definition of "ineligible" in § _____.105), and participants who have voluntarily excluded themselves from participation in covered transactions;

(4) Setting forth the consequences of a debarment, suspension, determination of ineligibility, or voluntary exclusion; and

(5) Offering such other guidance as necessary for the effective implementation and administration of the governmentwide system.

(c) These regulations also implement Executive Order 12689 (3 CFR, 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Public Law 103–355, sec. 2455, 108 Stat. 3327) by—

(1) Providing for the inclusion in the *List of Parties Excluded from Federal Procurement and Nonprocurement Programs* all persons proposed for debarment, debarred or suspended under the Federal Acquisition Regulation, 48 CFR Part 9, subpart 9.4; persons against which governmentwide exclusions have been entered under this part; and persons determined to be ineligible; and

(2) Setting forth the consequences of a debarment, suspension, determination of ineligibility, or voluntary exclusion.

(d) Although these regulations cover the listing of ineligible participants and the effect of such listing, they do not prescribe policies and procedures governing declarations of ineligibility.

2. Section _____.105 is amended by adding introductory text, removing paragraph designations for the definitions and placing them in alphabetical order, removing the definition for "Nonprocurement List", adding, in alphabetical order, a definition for "List of Parties Excluded from Federal Procurement and Nonprocurement Programs", and revising the definitions for "Affiliate", "Conviction", and "Legal proceedings" to read as follows:

§ _____.105 Definitions.

The following definitions apply to this part:

Affiliate. Persons are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or, a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a person which has the same or similar management, ownership, or principal employees as the suspended, debarred, ineligible, or voluntarily excluded person.

* * * * *

Conviction. A judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.

* * * * *

Legal proceedings. Any criminal proceeding or any civil judicial proceeding to which the Federal Government or a State or local government or quasi-governmental authority is a party. The term includes appeals from such proceedings.

List of Parties Excluded from Federal Procurement and Nonprocurement Programs. A list compiled, maintained and distributed by the General Services Administration (GSA) containing the names and other information about persons who have been debarred, suspended, or voluntarily excluded under Executive Orders 12549 and 12689 and these regulations or 48 CFR part 9, subpart 9.4, persons who have been proposed for debarment under 48 CFR part 9, subpart 9.4, and those persons who have been determined to be ineligible.

* * * * *

3. Section _____.110 is amended by revising paragraph (c) to read as follows:

§ _____.110 Coverage.

* * * * *

(c) *Relationship to Federal procurement activities.* In accordance with E.O. 12689 and section 2455 of Public Law 103–355, any debarment, suspension, proposed debarment or other governmentwide exclusion initiated under the Federal Acquisition Regulation (FAR) on or after August 25, 1995 shall be recognized by and effective for Executive Branch agencies and participants as an exclusion under this regulation. Similarly, any debarment, suspension or other governmentwide exclusion initiated under this regulation on or after August 25, 1995 shall be recognized by and effective for those agencies as a debarment or suspension under the FAR.

4. Section _____.200 is revised to read as follows:

§ _____.200 Debarment or suspension.

(a) *Primary covered transactions.* Except to the extent prohibited by law, persons who are debarred or suspended shall be excluded from primary covered transactions as either participants or principals throughout the Executive Branch of the Federal Government for the period of their debarment, suspension, or the period they are proposed for debarment under 48 CFR part 9, subpart 9.4. Accordingly, no agency shall enter into primary covered transactions with such excluded persons during such period, except as permitted pursuant to § _____.215.

(b) *Lower tier covered transactions.* Except to the extent prohibited by law, persons who have been proposed for debarment under 48 CFR part 9, subpart 9.4, debarred or suspended shall be excluded from participating as either participants or principals in all lower tier covered transactions (see § _____.110(a)(1)(ii)) for the period of their exclusion.

(c) *Exceptions.* Debarment or suspension does not affect a person's eligibility for—

(1) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(2) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities;

(3) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(4) Federal employment;

(5) Transactions pursuant to national or agency-recognized emergencies or disasters;

(6) Incidental benefits derived from ordinary governmental operations; and

(7) Other transactions where the application of these regulations would be prohibited by law.

5. Section _____.215 is revised to read as follows:

§ _____.215 Exception provision.

[Agency] may grant an exception permitting a debarred, suspended, or voluntarily excluded person, or a person proposed for debarment under 48 CFR part 9, subpart 9.4, to participate in a particular covered transaction upon a written determination by the agency head or an authorized designee stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549 and § _____.200. However, in accordance with the President's stated intention in the Executive Order, exceptions shall be granted only infrequently. Exceptions shall be reported in accordance with § _____.505(a).

6. Section _____.220 is revised to read as follows:

§ _____.220 Continuation of covered transactions.

(a) Notwithstanding the debarment, suspension, proposed debarment under 48 CFR part 9, subpart 9.4, determination of ineligibility, or voluntary exclusion of any person by an agency, agencies and participants may continue covered transactions in existence at the time the person was debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, declared ineligible, or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(b) Agencies and participants shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, ineligible or voluntary excluded, except as provided in § _____.215.

7. Section _____.225 is revised to read as follows:

§ _____.225 Failure to adhere to restrictions.

(a) Except as permitted under § _____.215 or § _____.220, a participant shall not knowingly do

business under a covered transaction with a person who is—

(1) Debarred or suspended;

(2) Proposed for debarment under 48 CFR part 9, subpart 9.4; or

(3) Ineligible for or voluntarily excluded from the covered transaction.

(b) Violation of the restriction under paragraph (a) of this section may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies as appropriate.

(c) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, ineligible, or voluntarily excluded from the covered transaction (See Appendix B of these regulations), unless it knows that the certification is erroneous. An agency has the burden of proof that a participant did knowingly do business with a person that filed an erroneous certification.

8. Appendix A is revised to read as follows:

Appendix A to Part_____—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms *covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded*, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

9. Appendix B is revised to read as follows:

Appendix B to Part_____—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms *covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal,* and *voluntarily excluded*, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility on Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Adoption of Common Rule

The agency-specific adoptions of the common rule, which appears at the end of the common preamble, appear below.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 970

RIN 3206–AG51

FOR FURTHER INFORMATION CONTACT: Murray M. Meeker, Attorney, Office of the General Counsel, (202) 606–1980.

List of Subjects in 5 CFR Part 970

Administrative practice and procedure, Contract programs, Grant programs.

Lorraine A. Green,

Deputy Director.

Title 5 of the Code of Federal Regulations, part 970 is amended as follows.

PART 970—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

1. The authority for part 970 continues to read as follows:

Authority: Executive Order 12549 (51 FR 6370–71).

2. Section 970.100 is revised as set forth at the end of the common preamble.

3. Sections 970.105 and 970.110 are amended as set forth at the end of the common preamble.

4. Sections 970.200, 970.215, 970.220, and 970.225 and Appendices A and B to Part 970 are revised as set forth at the end of the common preamble.

BILLING CODE: 6325–01

DEPARTMENT OF AGRICULTURE

7 CFR Part 3017

RIN 0503–AA11

FOR FURTHER INFORMATION CONTACT: Gary W. Butler, Deputy Assistant General Counsel, Office of the General Counsel, (202) 720–2577.

List of Subjects in 7 CFR Part 3017

Administrative practice and procedure, Contract programs, Grant programs—Agriculture, Grants administration.

Dated: June 8, 1995.

Dan Glickman,

Secretary of Agriculture.

Title 7 of the Code of Federal Regulations, part 3017 is amended as follows.

PART 3017—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 3017 continues to read as follows:

Authority: E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 *et seq.*); 5 U.S.C. 301.

2. Section 3017.100 is revised as set forth at the end of the common preamble.

3. Sections 3017.105 and 3017.110 are amended as set forth at the end of the common preamble.

4. Sections 3017.200, 307.215, 3017.220, and 3017.225 and Appendices A and B to Part 3017 are revised as set forth at the end of the common preamble.

BILLING CODE: 3420–01–M

DEPARTMENT OF ENERGY

10 CFR Part 1036

RIN 1991–AA69

FOR FURTHER INFORMATION CONTACT: Cynthia Yee, Office of Clearance and Support, Office of Procurement and Assistance Management, Human Resources and Administration, 202–586–1140.

List of Subjects in 10 CFR Part 1036

Administrative practice and procedures, Contract programs, Grant programs.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

Title 10 of the Code of Federal Regulations, part 1036 is amended as follows:

PART 1036—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 1036 continues to read as follows:

Authority: E.O. 12689; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 *et seq.*); Secs. 644 and 646, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254 and 7256); Pub. L. 97–258, 98 Stat. 1003–1005 (31 U.S.C. 6301–6308).

2. Section 1036.100 is revised as set forth at the end of the common preamble.

3. Sections 1036.105 and 1036.110 are amended as set forth at the end of the common preamble.

4. Sections 1036.200, 1036.215, 1036.220, and 1036.225 and Appendices A and B to part 1036 are revised as set forth at the end of the common preamble.

BILLING CODE: 6450-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 145

RIN 3245-AD46

FOR FURTHER INFORMATION CONTACT: John W. Klein, Chief Counsel for Special Programs, Office of General Counsel, U.S. Small Business Administration, 409 3rd Street, SW, Washington, DC 20416, (202) 205-6645.

ADDITIONAL SUPPLEMENTARY INFORMATION: As stated in the supplementary information to the common rule, the purpose of this rule is to give reciprocal governmentwide effect to both nonprocurement and procurement debarment and suspension actions. SBA reads revised § 145.110(c) as having no effect on the exceptions from coverage already provided for in §§ 145.110(a)(2), 145.215, and 145.220. These exemptions include SBA disaster assistance.

List of Subjects in 13 CFR Part 145

Administrative practice and procedure, Contract programs, Debarment and suspension (nonprocurement), Grant programs, Loan programs—business.

Dated: June 2, 1995.

Philip Lader,

Administrator.

Title 13 of the Code of Federal Regulations, Part 145 is amended as follows:

PART 145—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for Part 145 continues to read as follows:

Authority: E.O. 12549; Secs. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 15 U.S.C. 634(b)(6).

2. Section 145.100 is revised as set forth at the end of the common preamble.

3. Sections 145.105 and 145.110 are amended as set forth at the end of the common preamble.

4. Sections 145.200, 145.215, 145.220, and 145.225 and Appendices A and B to Part 145 are revised as set forth at the end of the common preamble.

BILLING CODE: 8025-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1265

RIN 2700-AB99

FOR FURTHER INFORMATION CONTACT: Thomas J. Wheland, NASA Headquarters, Acquisition Liaison Division (Code HP), (202) 358-0475.

List of Subjects in 14 CFR Part 1265

Administrative practice and procedure, Contract programs, Cooperative agreements, Debarment and suspension (nonprocurement), Grant programs.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Title 14 of the Code of Federal Regulations, Part 1265 is amended as follows.

PART 1265—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 1265 continues to read as follows:

Authority: E.O. 12549; Secs. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 *et seq.*); National Aeronautics and Space Act, Pub. L. 85-568, July 29, 1958, as amended, sec. 203(c)(1).

2. Section 1265.100 is revised as set forth at the end of the common preamble.

3. Sections 1265.105 and 1265.110 are amended as set forth at the end of the common preamble.

4. Sections 1265.200, 1265.215, 1265.220 and 1265.225 and Appendices A and B to Part 1265 are revised as set forth at the end of the common preamble.

BILLING CODE: 7510-01-M

DEPARTMENT OF COMMERCE

15 CFR Part 26

RIN 0605-AA02

FOR FURTHER INFORMATION CONTACT: John J. Phelan, III, 202-482-4115.

List of Subjects in 15 CFR Part 26

Administrative practice and procedure, Contract programs, Grant administration, Grant programs, Reporting and recordkeeping requirements.

Sonya G. Stewart,

Director for Executive Budgeting and Assistance Management.

Title 15 of the Code of Federal Regulations, part 26 is amended as follows.

PART 26—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT—AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 26 is revised to read as follows:

Authority: 5 U.S.C. 301; 41 U.S.C. 701 *et seq.*; Sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549, 3 CFR, 1986 comp., p. 189; E.O. 12689, 3 CFR, 1989 comp., p. 235.

2. Section 26.100 is revised as set forth at the end of the common preamble.

3. Sections 26.105 and 26.110 are amended as set forth at the end of the common preamble.

4. Sections 26.200, 26.215, 26.220, and 26.225 and Appendices A and B to part 26 are revised as set forth at the end of the common preamble.

BILLING CODE: 3510-(FA)-M

OFFICE OF NATIONAL DRUG CONTROL POLICY

21 CFR Part 1404

RIN 3201-ZA00

FOR FURTHER INFORMATION CONTACT: Edward H. Jurith, General Counsel, (202) 395-6709.

List of Subjects in 21 CFR Part 1404

Administrative practice and procedure, Contract programs, Grant programs.

Lee P. Brown,

Director.

Title 21 of the Code of Federal Regulations, part 1404, is amended as follows:

PART 1404—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 1404 continues to read as follows:

Authority: Executive Order 12549, 3 CFR, 1986 Comp., p. 189; 5 U.S.C. 301; Sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D, 102 Stat. 4304; 41 U.S.C. 701 *et seq.*).

2. Section 1404.100 is revised as set forth at the end of the common preamble.

3. Sections 1404.105 and 1404.110 are amended as set forth at the end of the common preamble.

4. Sections 1404.200, 1404.215, 1404.220, and 1404.225 and Appendices A and B to part 1404 are revised as set forth at the end of the common preamble.

BILLING CODE: 3180-02-M

DEPARTMENT OF STATE

22 CFR Part 137

RIN 1400-AA55

FOR FURTHER INFORMATION CONTACT: Robert E. Lloyd, Office of the Procurement Executive, 703-516-1690.

List of Subjects in 22 CFR Part 137

Administrative practice and procedure, Contract programs, Grant programs.

Lloyd W. Pratsch,

Procurement Executive.

Title 22 of the Code of Federal Regulations, part 137, is amended as follows:

PART 137—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 137 continues to read as follows:

Authority: E.O. 12549; Sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 22 U.S.C. 2658.

2. Section 137.100 is revised as set forth at the end of the common preamble.

3. Sections 137.105 and 137.110 are amended as set forth at the end of the common preamble.

4. Sections 137.200, 137.215, 137.220, and 137.225 and Appendices A and B to Part 137 are revised as set forth at the end of the common preamble.

BILLING CODE: 4710-24-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR Part 208

RIN 0412-AA24

FOR FURTHER INFORMATION CONTACT: Kathleen J. O'Hara, M/OP/P, Telephone (703) 875-1534.

List of Subjects in 22 CFR Part 208

Administrative practice and procedure, Contract programs, Grant programs—foreign relations, Grant programs, Loan programs—foreign relations.

Marcus L. Stevenson,

Acting Procurement Executive.

Title 22 of the Code of Federal Regulations, part 208, is amended as follows:

PART 208—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 208 continues to read as follows:

Authority: E.O. 12549; Sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, title V, subtitle D; 41 U.S.C. 701 *et seq.*); Sec. 621, Foreign Assistance Act of 1961, 22 U.S.C. 2381.

2. Section 208.100 is revised as set forth at the end of the common preamble.

3. Sections 208.105 and 208.110 are amended as set forth at the end of the common preamble.

4. Sections 208.200, 208.215, 208.220, and 208.225 and Appendices A and B to Part 208 are revised as set forth at the end of the common preamble.

BILLING CODE: 6116-01-M

PEACE CORPS

22 CFR Part 310

RIN 0420-AA13

FOR FURTHER INFORMATION CONTACT: Kirby Mullen, 202-606-3114

List of Subjects in 22 CFR Part 310

Administrative practice and procedure, Contract programs, Grant programs.

Charles R. Baquet, III,

Acting Director.

Title 22 of the Code of Federal Regulations, part 310 is amended as follows.

PART 310—GOVERNMENTWIDE DEPARTMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 310 continues to read as follows:

Authority: E.O. 12549; Sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, subtitle D; 41 U.S.C. 701 et seq.); 22 U.S.C. 2503.

2. Section 310.100 is revised as set forth at the end of the common preamble.

3. Sections 310.105 and 310.110 are amended as set forth at the end of the common preamble.

4. Sections 310.200, 300.215, 310.220, and 310.225 and Appendices A and B to Part 310 are revised as set forth at the end of the common preamble.

BILLING CODE: 8051-01-M

UNITED STATES INFORMATION AGENCY

22 CFR Part 513

RIN 3116-AA07

FOR FURTHER INFORMATION CONTACT: GEORGIA HUBERT ON (202) 205-5404.

List of Subjects in 22 CFR Part 513

Administrative practice and procedure, Contract programs, Grant programs.

Henry Howard, Jr.,

Associate Director for Management.

The 22 of the code of Federal Regulations, Part 513 is amend as follows.

PART 513—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 513 is revised to read as follows:

Authority: 40 U.S.C. 486 (c); 41 U.S.C. 701 *et seq.*; Sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); E. O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 comp., p. 235.

2. Section 513.100 is revised as set forth at the end of the common preamble.

3. Sections 513.105 and 513.110 are amended as set forth at the end of the common preamble.

4. Sections 513.200, 513.215, 515.220, and 513.225 and Appendices A and B to Part 513 are revised as set forth at the end of the common preamble.

BILLING CODE: 8230-01-M

INTER-AMERICAN FOUNDATION

22 CFR Part 1006

FOR FURTHER INFORMATION CONTACT: Adolfo A. Franco, 703-841-3894.

List of Subjects in 22 CFR Part 1006

Administrative practice and procedure, Contract programs, Grant programs.

Adolfo A. Franco,

General Counsel.

Title 22 of the Code of Federal Regulations, part 1006 is amended as follows.

PART 1006—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 1006 continues to read as follows:

Authority: E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 22 U.S.C. 290f.

2. Section 1006.100 is revised as set forth at the end of the common preamble.

3. Sections 1006.105 and 1006.110 are amended as set forth at the end of the common preamble.

4. Sections 1006.200, 1006.215, 1006.220 and 1006.225 and Appendices A and B to Part 1006 are revised as set forth at the end of the common preamble.

BILLING CODE: 7025–01–M

AFRICAN DEVELOPMENT FOUNDATION

22 CFR Part 1508

FOR FURTHER INFORMATION CONTACT: Paul S. Magid, (202) 673–3916.

List of Subjects in 22 CFR Part 1508

Administrative practice and procedure, Contract programs, Grant programs—foreign relations.

William R. Ford,

President.

Title 22 of the Code of Federal Regulations, Part 1508 is amended as follows:

PART 1508—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 1508 is revised to read as follows:

Authority: 22 U.S.C. 290h; 41 U.S.C. 701 *et seq.*; E.O. 12549, 3 CFR, 1986 comp., p. 189.

2. Section 1508.100 is revised as set forth at the end of the common preamble.

3. Section 1508.105 and 1508.110 are amended as set forth at the end of the common preamble.

4. Sections 1508.200, 1508.215, 1508.220, and 1508.225 and Appendices A and B to Part 1508 are revised as set forth at the end of the common preamble.

BILLING CODE: 6117–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 24

RIN 2501–AB24

FOR FURTHER INFORMATION CONTACT: Emmett N. Roden, Assistant General Counsel for Administrative Proceedings, Office of General Counsel, U.S. Department of Housing and Urban Development, 451 7th Street, SW., Room 10251, Washington, DC 20410, telephone (202) 708–2350. The telephone number for the hearing impaired (TDD) is (202) 708–9300. These are not toll-free numbers.

ADDITIONAL SUPPLEMENTARY INFORMATION: In accordance with Executive Order 12549, the Department, along with other Federal agencies, promulgated governmentwide nonprocurement debarment and suspension regulations. The common rule, which is identical to the Office of Management and Budget's final guidelines, and the various agency-specific supplements to the common rule were published at the same time on May 26, 1988 (53 FR 19161). The provisions of the common rule that provide nonprocurement participants with the opportunity to contest suspensions and proposed debarments and the procedures by which suspending and debarring officials make final agency determinations are substantially similar to the procedures applicable to procurement contractors under the Federal Acquisition Regulation (FAR, 48 CFR, especially subpart 9.4 thereof). Although the Department adopted verbatim significant portions of the common rule, it did not include all of the provisions concerning suspension and debarment hearing procedures or the reconsideration or appeal of post-hearing determinations.

Executive Order 12689, issued in 1989, and section 2455 of the Federal Acquisition Streamlining Act of 1994 require that the debarment, suspension, or other exclusion of a participant in a procurement activity under the FAR, or in a nonprocurement activity under an agency's debarment regulations, shall, after regulations are issued, have the governmentwide effect of excluding the participant from both procurement and nonprocurement activities. Under current HUD rules, a debarment of a nonprocurement participant does not affect such person's participation in procurement activities with other agencies.

On December 20, 1994, HUD and other agencies participating in the development of this final rule published a notice of proposed rulemaking to implement Executive Order 12689 and section 2455 of the Federal Acquisition Streamlining Act. HUD's portion of the proposed rule, published at 59 FR 65612, also included revisions to conform the Department's hearing procedures to those of the common rule.

The Department's current hearing procedures, which depart from the generally applicable governmentwide provisions, have adversely affected the Department's ability to process suspensions and debarments in an efficient and cost-effective manner. The amount of time and expense currently involved in the Department's suspension and debarment proceedings benefit neither the Department nor the persons who are subject to such sanctions. In addition, the Department notes that the common rule procedures have not been successfully challenged in Federal court since their implementation in 1988.

The issuance of this rule will simplify and streamline the suspension, debarment, and limited denial of participation processes at HUD. Therefore, this rule will reduce, rather than increase, the regulatory burden on contractors and participants in the Department's programs.

The Department considers these changes necessary to comply with the President's directive to streamline agency operations throughout the Executive Branch. The revisions are also an element in the Government reinvention process at the Department.

Effective date: The final rule shall apply to notices of proposed debarment, suspension and limited denial of participation that are issued on or after the effective date of this rule.

Discussion of Public Comments

Comments on the proposed rule were received from one Federal Government organization, from one private professional organization, and from three individuals. The issues raised by the commenters are summarized below.

Recommendations by the Administrative Conference of the United States (ACUS)

Comment: Four of the five commenters refer to recommendations recently issued by ACUS (Recommendation 95–2, "Debarment and Suspension from Federal Programs," adopted January 19, 1995) and urge that HUD conform its regulations to the ACUS Recommendations. In particular, the commenters urge compliance with item II of the Recommendations. This item recommends that cases involving disputed issues of material fact be referred to administrative law judges, military judges, administrative judges of boards of contract appeals or similarly independent hearing officers for hearings and preparation of (1) findings of fact certified to the debarring official, or (2) a recommended decision to the debarring official, or (3) an initial decision, subject to agency appeal. Item II of the ACUS Recommendations also recommends that debarring officials be senior agency officials who are guaranteed sufficient independence to provide due process, and that such officials ensure that information used as the basis for a sanction appear in the administrative record of the decision.

The commenters expressed concern that the use of "hearing officials" who are not administrative judges would result in the deprivation of due process. They criticized these officials as being neither trained in the law nor versed in HUD's programs.

One commenter also urged HUD to adopt item III of the ACUS Recommendation. Item III lists various recommendations for future rulemaking: (1) that entities coordinating the FAR and the common rule, and individual agencies, provide for a list of mitigating and aggravating factors; (2) establishment of a process for determining a lead agency when a person deals with more than one agency; (3) minimum evidentiary thresholds for procurement debarment; (4) notice to effected persons of the impact of sanctions; and (5) use of "show cause" warning letters.

Response: The rule satisfies the ACUS recommendation that debarring officials be senior, independent agency officials. Notices of suspension and proposed debarment are, under delegations by the Secretary of HUD, issued by Assistant Secretaries, the Inspector General, and the President of the Government National Mortgage Association. These officials are the highest responsible officials for major components of the Department. They report directly to the Secretary. These officials are not subject to the supervision of, nor do they directly supervise, agency personnel who carry out investigative or prosecutive activities. Their ability to make independent debarment decisions is thus evident from their position.

The Department has revised the rule to address the comments concerning referral of disputes of material fact. The revision deletes the references to "hearing official." The specific HUD-only additions to the common rule, at §§ 24.314(b)(2)(i) and 24.413(b)(3), clarify that disputes of material fact may be referred to "hearing officers" who are defined as administrative law judges or members of the HUD Board of Contract Appeals. In accordance with the first option listed in ACUS Recommendation item II, the hearing officers will provide findings of fact to the suspending or debarring official. In addition, the final rule provides that the suspending or debarring official may, in his or her discretion, refer cases based upon indictment, conviction or civil judgment, or cases in which there is no dispute of material fact, to the hearing officer for appropriate findings.

The final rule is in conformity with the other elements of ACUS Recommendation 95–2 to the extent possible in the context of a coordinated governmentwide system. Recommendation item IV urges that all federal agencies adopt the common rule. By conforming its hearing procedures to those of the common rule, HUD has followed the ACUS suggestion. By coordinating procurement and non-procurement suspension and debarment, HUD has followed the suggestion of ACUS in Recommendation item I.

HUD has agreed to consider ACUS Recommendation item III, along with other proposed changes to the common rule, before the end of this year. Certain of the item III suggestions, such as appropriate notice to respondents and the use of "show cause" letters, will in any event be considered by HUD as new procedures are adopted under the regulatory revision.

Finally, ACUS Recommendation item V addresses Congress rather than the executive branch agencies.

Consideration of Mitigating Factors in Debarment Proceedings

Comment: Two commenters asserted that the proposed rule had eliminated all references to mitigating factors as an element of the suspension and debarment process.

Response: These comments may be based on the elimination of paragraph (d) in 24 C.F.R. § 24.115, which refers to consideration of mitigating factors in the debarment of contractors. This deletion is the result of coordination of procurement and non-procurement debarment.

Mitigation will, necessarily, continue to be an element in HUD's suspension and debarment process. Most importantly, 24 C.F.R. § 24.300 will continue to require consideration of the seriousness of the "person's" acts and "any mitigating factors." In addition, the provisions of 24 C.F.R. § 24.314, referring to the inclusion of "any evidence of mitigating circumstances," are expanded under the proposed rule and this final rule by requiring consideration of *"any information and argument"* submitted by the respondent. (See §§ 24.313(a) and 24.314(a) and (b)(1).) The opportunity to submit, for review, evidence of mitigation as well as any other information is thus well preserved.

Limits on Discovery and Use of Alternative Dispute Resolution

Comment: Two commenters proposed that the Department impose limits on discovery as a means of streamlining the hearing process. One commenter further recommended that the rule provide for the use of alternative dispute resolution. The commenters stated that these changes would reduce costs to the Department and to participants while increasing efficiency.

Response: The Department's current rule allows the use of discovery pursuant to the provisions of 24 CFR Part 26. In the final rule, cases that the suspending or debarring official does not refer to hearing officers shall not be subject to formal discovery, but instead shall be limited to information in the administrative record, including any submissions by the respondent. (See §§ 24.314(a) and (b) and 24.413(a) and (b).)

The discovery provisions of Part 26 shall continue to apply to those cases that are referred to a hearing officer for findings of fact. (See §§ 24.314(b)(2)(i) and 24.413(b)(3).) However, 24 CFR § 26.17 provides that "discovery shall not be permitted where it will unduly delay the hearing, thereby resulting in prejudice to the public interest or the rights of the parties." In addition, the final rule procedures at §§ 24.314(b)(2)(ii) and 24.413(b)(4) will require that the hearing in a case referred to the hearing officer commence within 45 days of referral, unless both parties agree to an extension of time. The Department is also required to compile an administrative record prior to hearing, and to provide a copy to the respondent. This record will contain all

information that the debarring official relied upon in issuing the suspension or proposed debarment.

The 45-day requirement and use of an administrative record, coupled with the existing part 26 restrictions, should eliminate protracted discovery. At the same time, the rule is sufficiently flexible to allow an extended period of discovery if the parties mutually agree to extend the 45-day limit. However, if these provisions prove inadequate, the Department agrees to consider limitations on discovery in future rulemaking.

The Department agrees with the comment recommending alternative dispute resolution. Provisions for voluntary use of alternative dispute resolution have been added to the final rule. The Department has determined that this section does not impose any restrictions on existing rights of HUD participants, but rather serves to expand the methods for resolving disputes. Accordingly, the Department believes there is good cause for promulgating this provision in a final rule, rather than through a proposed rule.

Creation of an Office To Chair Informal Conferences for Limited Denials of Participation

Comment: One commenter proposed that the Department establish a new office to chair informal conferences for limited denials of participation. The commenter stated that, under the existing process, the official presiding over the conference is often the person who initiated the sanction, and therefore may be biased against the respondent.

Response: The Department has addressed this concern by revising the proposed rule to allow the respondent to by-pass the informal conference and proceed directly to a hearing before a hearing officer.

List of Subjects in 24 CFR Part 24

Administrative practice and procedure, Contract programs, Drug abuse, Government contracts, Grant programs, Government procurement, Loan programs, Reporting and recordkeeping requirements.

Henry G. Cisneros,

Secretary.

Title 24 of the Code of Federal Regulations, part 24 is amended as follows:

PART 24—GOVERNMENT DEBARMENT AND SUSPENSION AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 24 is revised to read as follows:

Authority: 41 U.S.C. 701 *et seq.*; 42 U.S.C. 3535(d); E.O. 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 54 FR 34131, 3 CFR, 1989 Comp., p. 235.

2. Section 24.100 is revised as set forth at the end of the common preamble.

3. Sections 24.105 and 24.110 are amended as set forth at the end of the common preamble.

4. Sections 24.200, 24.215, 24.220, 24.225 and Appendices A and B to Part 24 are revised as set forth at the end of the common preamble.

5. Section 24.100 is further amended by adding paragraphs (e) and (f), to read as follows:

§ 24.100 Purpose.

* * * * *

(e) These regulations also:

(1) Prescribe policies and procedures governing the debarment and suspension of contractors and the limited denial of participation of participants and contractors;

(2) Provide for the listing of debarred, suspended and ineligible contractors; and

(3) Set forth the consequences of such listing.

(f) Although this part covers the listing of ineligible contractors, it does not prescribe policies and procedures governing declarations of ineligibility.

6. Section 24.105 is further amended by removing paragraphs (1) and (2) under the definitions of "Debarment," "Suspension" and "Voluntary exclusion or voluntarily excluded" and by revising the definitions for "Limited denial of participation," and "Respondent" to read as follows:

§ 24.105 Definitions.

* * * * *

Limited denial of participation. An action taken by a HUD official, in accordance with subpart G of these regulations, that immediately excludes or restricts a person from participating in HUD program(s) within a defined geographic area.

* * * * *

Respondent. A person against whom a debarment or suspension action has been initiated.

(1) A respondent is also a person against whom a limited denial of participation has been initiated.

(2) [Reserved].

* * * * *

7. Section 24.110 is further amended by adding a paragraph (a)(1)(i)(A)(*3*) and a paragraph (a)(3), and by revising the last sentence of paragraph (d), to read as follows:

§ 24.110 Coverage.

(a) * * *

(1) *Covered transaction.* * * *

(i) * * *

(A) * * *

(*3*) Any procurement transaction between HUD and a person.

* * * * *

(3) *Other exceptions.* (i) Sanctions against participants whose only involvement in HUD programs is as ultimate beneficiaries, such as subsidized tenants and subsidized mortgagors, may be taken only upon commission of one of the offenses set forth in § 24.305(a), unless the participant has otherwise been debarred or suspended by another Federal agency.

(ii) Sanctions under this part against mortgagees approved by HUD to participate in Federal Housing Administration programs may be initiated only with the approval of the Mortgagee Review Board.

* * * * *

(d) * * * The consequences of a debarment or suspension as set forth in § 24.200 apply to contractors in Federal procurement programs, and §§ 24.325 and 24.420 govern the extent to which a specific contractor or its organizational elements would be included within a debarment or suspension action.

* * * * *

§ 24.115 [Amended]

8. In § 24.115, paragraph (d) is removed.

9. Section 24.200 is further amended by adding new paragraphs (c)(8), (c)(9) and (d), to read as follows:

§ 24.200 Debarment or suspension.

* * * * *

(c) *Exceptions.* * * *

* * * * *

(8) Debarment for any of the causes set forth in § 24.305(f) shall have no governmentwide effect.

(9) Sanctions imposed on an individual participant under this part shall not preclude the participant from selling his or her principal residence to a purchaser using HUD/FHA financing.

(d) *Relationship to HUD administrative sanction procedures.*—(1) *Sanctions provided pursuant to contract provisions.* Nothing in this part shall impair or limit the right to impose any sanction provided for by contract, including guaranty agreements with the Government National Mortgage Association.

(2) *Other Departmental sanctions.* Where an office of the Department is required by statute, regulation, or Executive Order to follow administrative sanction procedures that may differ from the requirements of this part, the requirements of the statute, regulation, or Executive Order shall take precedence. These alternative procedures include, but are not limited to: 24 CFR part 200 Previous Participation Review and Clearance procedures, 24 CFR part 25 Mortgagee Review Board administrative actions, and 24 CFR part 570 Community Development Block Grant corrective and remedial actions.

10. In § 24.305, paragraph (d) is revised to read as follows:

§ 24.305 Causes for debarment.

* * * * *

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a person.

* * * * *

11. Section 24.313 is revised to read as follows:

§ 24.313 Opportunity to contest proposed debarment.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of proposed debarment, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(1) The information and argument should be addressed to the Debarment Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

(2) If the respondent does not contest the proposed debarment within the 30 day period, the proposed debarment shall become final.

(3) If the respondent desires a hearing, it shall submit a written request to the Debarment Docket Clerk within the 30-day period following receipt of the notice of proposed debarment.

(4) The parties may agree to engage in an alternative dispute resolution, including informal conference, mediation, conciliation, summary trial with binding decision, minitrial, or use of a settlement judge.

(b) *Additional proceedings as to disputed material facts.* (1) In actions not based upon a conviction or civil judgment, if the debarring official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the proposed debarment, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents.

(2) A transcribed record of any additional proceedings shall be made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

(i) Upon the agreement of the parties, the additional proceedings may be recorded using audiotape without transcription. The audiotape shall be made available at cost to the respondent.

(ii) [Reserved].

12. Section 24.314 is revised to read as follows:

§ 24.314 Debarring official's decision.

(a) *No additional proceedings necessary.* In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the debarring official extends this period for good cause.

(1) The debarring official may, in his or her discretion, refer actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, to a hearing officer or other official for review of the administrative record and appropriate findings. The hearing officer or other official shall issue such findings within 45 days after the referral, and the debarring official shall issue a decision within 15 days after the date of the findings, unless such periods are extended for good cause.

(2) [Reserved].

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(i) The debarring official may refer disputed material facts and issues of law to a hearing officer for findings of fact and conclusions of law.

(A) No appeal to the Secretary may be taken under §§ 26.24 through 26.26 of this title with respect to any order or decision by a hearing officer or other official.

(B) The debarring official shall provide the hearing officer or other official with all the information in the administrative record, including any information and argument submitted by the respondent. The administrative record and any documents admitted at the hearing shall constitute the exhibits in evidence.

(ii) Unless the parties mutually agree to extend this period, a proceeding before a hearing officer or other official shall commence within 45 days after referral of the case by the debarring official. The hearing officer or other official shall issue findings of fact within 30 days after the conclusion of such additional proceedings. The time limitations of this subparagraph may be extended upon issuance, by the debarring official, hearing officer or other official, of a written notice describing good cause for such extension.

(3) The debarring official's decision shall be made after the conclusion of the proceedings with respect to the disputed facts.

(i) Such decision shall be made within 15 days after the hearing officer or other official issues findings of fact.

(ii) [Reserved].

(c)(1) *Standard of proof.* In any debarment action, the cause for debarment must be established by a preponderance of the evidence. Where the proposed debarment is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

(2) *Burden of proof.* The burden of proof is on the agency proposing debarment.

(d) *Notice of debarring official's decision.* (1) If the debarring official decides to impose debarment, the respondent shall be given prompt notice:

(i) Referring to the notice of proposed debarment;

(ii) Specifying the reasons for debarment;

(iii) Stating the period of debarment, including effective dates; and

(iv) Advising that the debarment is effective for covered transactions throughout the executive branch of the

Federal Government unless an agency head or an authorized designee makes the determination referred to in § 24.215.

(A) Where a debarment is based solely on § 24.305(f), the notice of the debarring official's decision shall advise that the debarment is effective for programs or activities of the Department.

(B) [Reserved].

(2) If the debarring official decides not to impose debarment, the respondent shall be given prompt notice of that decision. A decision not to impose debarment shall be without prejudice to a subsequent imposition of debarment by any other agency.

§ 24.400 [Amended]

13. In § 24.400, paragraph (d) is removed.

§ 24.410 [Amended]

14. In § 24.410, paragraph (c) is removed.

15. Section 24.411 is revised to read as follows:

§ 24.411 Notice of suspension.

When a respondent is suspended, notice shall immediately be given:

(a) That the suspension has been imposed;

(b) That the suspension is based on an indictment, conviction, or other adequate evidence that the respondent has committed irregularities seriously reflecting on the propriety of further Federal Government dealings with the respondent;

(c) Describing any such irregularities in terms sufficient to put the respondent on notice without disclosing the Federal Government's evidence;

(d) Of the cause(s) relied upon under § 24.405 for imposing suspension;

(e) That the suspension is for a temporary period pending the completion of an investigation or ensuing legal, debarment or Program Fraud Civil Remedies Act proceedings;

(f) Of the provisions of §§ 24.411 through 24.413 and any other HUD procedures, if applicable, governing suspension decisionmaking; and

(g) Of the effect of the suspension.

16. Section 24.412 is revised to read as follows:

§ 24.412 Opportunity to contest suspension.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of suspension, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.

(1) The information and argument should be addressed to the Debarment Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

(2) If the respondent does not contest the suspension within the 30 day period, the suspension shall become final.

(3) If the respondent desires a hearing, it shall submit a written request to the Debarment Docket Clerk within the 30-day period following receipt of the notice of suspension.

(4) The parties may agree to engage in an alternative dispute resolution, including informal conference, mediation, conciliation, summary trial with binding decision, minitrial, or use of a settlement judge.

(b) *Additional proceedings as to disputed material facts.* (1) If the suspending official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the suspension, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witnesses the agency presents, unless:

(i) The action is based on an indictment, conviction or civil judgment; or

(ii) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(2) A transcribed record of any additional proceedings shall be prepared and made available at cost to the respondent, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

(i) Upon the agreement of the parties, the additional proceedings may be recorded using audiotape without transcription. The audiotape shall be made available at cost to the respondent.

(ii) [Reserved].

17. Section 24.413 is revised to read as follows:

§ 24.413 Suspending official's decision.

The suspending official may modify or terminate the suspension (see § 24.320(c) for reasons for reducing the period or scope of debarment) or may leave it in force. However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other agency or debarment by any agency. The decision shall be rendered in accordance with the following provisions:

(a) *No additional proceedings necessary.* In actions based upon an indictment, conviction, or civil judgment, in which there is no genuine dispute over material facts, or in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the suspending official extends this period for good cause.

(1) The suspending official may, in his or her discretion, refer actions based upon an indictment, conviction or civil judgment, or in which there is no genuine dispute over material facts, to a hearing officer or other official for review of the administrative record and appropriate findings. The hearing officer or other official shall issue such findings within 45 days after the referral, and the suspending official shall issue a decision within 15 days after the date of such findings, unless such periods are extended for good cause.

(2) [Reserved].

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary or capricious or clearly erroneous.

(3) The suspending official may refer disputed material facts and issues of law to a hearing officer for findings of fact and conclusions of law.

(i) No appeal to the Secretary may be taken under §§ 26.24 through 26.26 of this title with respect to any order or decision by a hearing officer or other official.

(ii) The suspending official shall provide the hearing officer or other official with all the information in the administrative record, including any information and argument submitted by

the respondent. The administrative record and any documents admitted at the hearing shall constitute the exhibits in evidence.

(4) Unless the parties mutually agree to extend this period, a proceeding before a hearing officer or other official shall commence within 45 days after referral of disputed material facts and issues of law by the suspending official. The hearing officer or other official shall issue findings of fact within 30 days after the conclusion of such additional proceedings. The time limitations of this subparagraph may be extended upon issuance, by the suspending official, other official or hearing officer, of a written notice describing good cause for such extension.

(5) The suspending official's decision shall be made within 15 days after the hearing officer or other official issues findings of fact.

(c) *Notice of suspending official's decision.* Prompt written notice of the suspending official's decision shall be sent to the respondent.

§ 24.415 [Amended]

18. In § 24.415, paragraph (d) is removed.

§ 24.705 [Amended]

19. In § 24.705, paragraph (c) is amended to remove the words "regional or field".

§ 24.710 [Amended]

20. In § 24.710, paragraph (a)(3) is amended to remove the words "the Deputy Assistant Secretary for Single Family Housing" and add, in their place, the words "an Assistant Secretary or Deputy Assistant Secretary".

21. Section 24.711 is revised to read as follows:

§ 24.711 Notice of limited denial of participation.

A limited denial of participation shall be made effective by advising the participant or contractor, and any specifically named affiliate, by mail, return receipt requested:

(a) That the limited denial of participation is being imposed;

(b) Of the cause(s) under § 24.705 for the sanction;

(c) Of the potential effect of the sanction, including the length of the sanction and the HUD program(s) and geographic area affected by the sanction;

(d) Of the right to request, in writing, within 30 days of receipt of the notice, a conference under § 24.712; and

(e) Of the right to contest the limited denial of participation under § 24.713.

22. Section 24.712 is revised to read as follows:

§ 24.712 Conference.

Within 30 days after receiving a notice of limited denial of participation, the respondent may request a conference with the official who issued such notice. If the respondent does not request a conference, the respondent shall nevertheless have the right to contest the limited denial of participation under the provisions of § 24.713. The conference shall be held within 15 days after the Department's receipt of the request for a conference, unless the respondent waives this time limit. The official who imposed the sanction, or his or her designee, shall preside. At the conference, the respondent may appear with a representative and may present all relevant information and materials to the official or designee. Within 20 days after the conference, or within 20 days after any agreed upon extension of time for submission of additional materials by the respondent, the official or designee shall, in writing, advise the respondent of the decision to terminate, modify, or affirm the limited denial of participation. If all or a portion of the remaining period of exclusion is affirmed, the notice of affirmation shall advise the respondent of the opportunity to contest the notice pursuant to § 24.713. If the official or designee does not issue a decision within the 20-day period, the respondent may contest the sanction under § 24.713.

23. Section 24.713 is revised to read as follows:

§ 24.713 Opportunity to contest the limited denial of participation.

(a) *Submission in opposition.* (1) The respondent may request a hearing before a hearing officer:

(i) Within 30 days after receipt of a notice of affirmation of all or a portion of the remaining period of exclusion under a limited denial of participation; or

(ii) Within 30 days after receipt of a notice of a limited denial of participation where the respondent elects not to request a conference under § 24.712.

(2) The request must be addressed to the Debarment Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

(3) If the respondent does not submit the request within the 30-day period, the sanction shall become final.

(b) *Procedures.* The hearing shall be conducted in accordance with the procedures of §§ 24.313 and 24.314 Within 15 days of the hearing officer's issuance of findings of fact and a recommended decision, the official who issued the limited denial of participation shall issue a decision.

(c) *Effect of suspension or debarment on limited denial of participation.* If a respondent has submitted a request for a hearing pursuant to paragraph (a) of this section, and if the respondent has also received, pursuant to subpart C or D of this part, a notice of proposed debarment or suspension that is based on the same transaction(s) or conduct as the limited denial of participation, the following rules shall apply:

(1) If the respondent has not contested the proposed debarment pursuant to § 24.313(a) or the suspension pursuant to § 24.412(a), the final imposition of the debarment or suspension shall also constitute a final decision with respect to the limited denial of participation to the extent that the debarment or suspension is based on the same transaction(s) or conduct as the limited denial of participation.

(2) If the respondent has contested the proposed debarment pursuant to § 24.313(a), or the suspension pursuant to § 24.412(a), the proceedings shall be consolidated and the debarring or suspending official shall issue a final decision as to both the limited denial of participation and the debarment or suspension.

24. A new section 24.714 is added to read as follows:

§ 24.714 Reporting of limited denial of participation.

When a limited denial of participation has been made final, or the period for requesting a conference pursuant to § 24.712 has expired without receipt of such a request, the official imposing the limited denial of participation shall notify the Director of the Participation and Compliance Division in the Office of Housing of the scope of the limited denial of participation.

BILLING CODE: 4210-32-P

DEPARTMENT OF JUSTICE

28 CFR Part 67

[A.G. Order No. 1972–95]

FOR FURTHER INFORMATION CONTACT: Cynthia J. Schwimer, Director, Financial Management Division, 202–307–3186.

List of Subjects in 28 CFR Part 67

Administrative practice and procedure, Contract programs, Grant programs.

Dated: June 1, 1995.

Janet Reno,

Attorney General.

Title 28 of the Code of Federal Regulations, part 67, is amended as follows:

PART 67—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 67 continues to read as follows:

Authority: E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 *et seq.*), Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3711 *et seq.* (as amended); Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601 *et seq.* (as amended); Victims of Crime Act of 1984, 42 U.S.C. 10601 *et seq.* (as amended); 18 U.S.C. 4042; and 18 U.S.C. 4351–4353.

2. Section 67.100 is revised as set forth at the end of the common preamble.

3. Sections 67.105 and 67.110 are amended as set forth at the end of the common preamble.

4. Sections 67.200, 67.215, 67.220, and 67.225 and Appendices A and B to Part 67 are revised as set forth at the end of the common preamble.

BILLING CODE: 4410–18–M

DEPARTMENT OF LABOR

29 CFR Part 98

RIN 1291–AA23

FOR FURTHER INFORMATION CONTACT: Melvin Goldberg, Chief, Division of Procurement and Grant Policy, (202) 219–9174.

List of Subjects in 29 CFR Part 98

Administrative practice and procedure, Contract programs, Grants programs.

Cynthia A. Metzler,

Assistant Secretary for Administration and Management.

Title 27 of the Code of Federal Regulations, part 98, is amended as follows:

PART 98—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 98 continues to read as follows:

Authority: E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, title V, subtitle D; 41 U.S.C. 701 *et seq.*); 5 U.S.C. 552–556.

2. Section 98.100 is revised as set forth at the end of the common preamble.

3. Sections 98.105 and 98.110 are amended as set forth at the end of the common preamble.

4. Sections 98.200, 98.215, 98.220, and 98.225 and Appendices A and B to Part 98 are revised as set forth at the end of the common preamble.

BILLING CODE: 4510–23–M

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Part 1471

RIN 3076–AA03

FOR FURTHER INFORMATION CONTACT: Peter Regner, (202) 606–8181.

List of Subjects in 29 CFR Part 1471

Administrative practice and procedure, Contract programs, Grant programs.

Floyd L. Wood,

Deputy Director.

Title 29 of the Code of Federal Regulations, part 1471 is amended as follows.

PART 1471—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 1471 continues to read as follows:

Authority: E.O. 12549; secs. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, title V, subtitle D; 41 U.S.C. 701 *et seq.*); Pub. L. 95–524, Oct. 27, 1978, 29 U.S.C. 175a.

2. Section 1471.100 is revised as set forth at the end of the common preamble.

3. Sections 1471.105 and 1471.110 are amended as set forth at the end of the common preamble.

4. Sections 1471.200, 1471.215, 1471.220, and 1471.225 and Appendices A and B to Part 1471 are revised as set forth at the end of the common preamble.

BILLING CODE: 6372–01–M

DEPARTMENT OF THE TREASURY

31 CFR Part 19

RIN 1505–AA57

FOR FURTHER INFORMATION CONTACT: William Murphy at (202) 622–0450.

List of Subjects in 31 CFR Part 19

Administrative practice and procedure, Contract programs, Grant programs.

George Muñoz,

Assistant Secretary for Management.

Title 31 of the Code of Federal Regulations, part 19 is amended as follows.

PART 19—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 19 continues to read as follows:

Authority: E.O. 12549; secs. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 *et seq.*); 31 U.S.C. 321.

2. Section 19.100 is revised as set forth at the end of the common preamble.

3. Sections 19.105 and 19.110 are amended as set forth at the end of the common preamble.

4. Sections 19.200, 19.215, 19.220, and 19.225 and Appendices A and B to Part 19 are revised as set forth at the end of the common preamble.

BILLING CODE: 4810–251–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 25

RIN 0790–AF68

FOR FURTHER INFORMATION CONTACT: Mark Herbst, (703) 614–0205.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of Defense adopts this amendment to the Governmentwide common rule on debarment and suspension for nonprocurement transactions. In adopting this rule, the Office of the Secretary of Defense, the Military Departments and the Defense Agencies will maintain uniform policies and procedures that are consistent with those of other Executive Departments and Agencies.

The Department of Defense originally codified this Governmentwide rule on May 26, 1988 (53 FR 19190 and 19204), at 32 CFR Part 280. On February 21, 1992 57 FR 6199), Part 280 was redesignated as Part 25. This rulemaking amends the redesignated part 25.

List of Subjects in 32 CFR Part 25

Administrative practice and procedure, Contract programs, Grant programs.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Title 32 of the Code of Federal Regulations, part 25 is amended as follows.

PART 25—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 25 is revised to read as follows:

Authority: 41 U.S.C. 701 *et seq.*; sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549, 3 CFR, 1986 Comp.; 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

2. Section 25.100 is revised as set forth at the end of the common preamble.

3. Sections 25.105 and 25.110 are amended as set forth at the end of the common preamble.

4. Sections 25.200, 25.215, 25.220, and 25.225 and Appendices A and B to Part 25 are amended as set forth at the end of the common preamble.

5. Section 25.105 is amended further by adding paragraphs (1) and (2) to the definition for *Agency*, by adding paragraph (3) to the definition for *Debarring official*, and by adding paragraph (3) to the definition for *Suspending official* to read as follows:

§ 25.105 Definitions.

* * * * *

Agency. * * *

(1) The meaning of *agency* in Subpart F of this part, Drug-Free Workplace Requirements, is given at § 25.605(b)(6) and is different than the meaning given in this section for subparts A through E of this part. *Agency* in Subpart F of this part means the Department of Defense or a Military Department only, and does not include any Defense Agency.

(2) [Reserved]

* * * * *

Debarring official. * * *

(3) DoD Components' debarring officials for nonprocurement transactions are the same officials identified in 48 CFR part 209, subpart 209.4, as debarring officials for procurement contracts.

* * * * *

Suspending official. * * *

(3) DoD Components' suspending officials for nonprocurement transactions are the same officials identified in 48 CFR part 209, subpart 209.4, as suspending officials for procurement contracts.

* * * * *

6. Section 25.610 is amended by adding paragraph (b)(1) to read as follows and by reserving paragraph (b)(2):

§ 25.610 Coverage.

* * * * *

(b) * * *

(1) Heads of Defense Agencies, Heads of DoD Field Activities, and their designees are authorized to make such determinations on behalf of the Secretary of Defense.

(2) [Reserved]

* * * * *

7. Section 25.616 is added to read as follows:

§ 25.616 Determinations of grantee violations.

Heads of Defense Agencies, Heads of DoD Field Activities, and their designees are authorized to make determinations of grantee violations under § 25.615.

BILLING CODE 5000.4–M

DEPARTMENT OF EDUCATION

34 CFR Parts 85, 668, and 682

RIN 1880–AA51

FOR FURTHER INFORMATION CONTACT: Mary Jane Kane, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3636 ROB–3, Washington, D.C. 20202–4700. Telephone: 708–7802. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

ADDITIONAL SUPPLEMENTARY INFORMATION: In addition to the amendments made by all participating agencies for the common rule, the Secretary amends the Department's debarment and suspension procedures to reflect certain changes made by the Higher Education Amendments of 1992 to those provisions of title IV of the Higher Education Act of 1965, as amended (title IV, HEA) that govern administrative proceedings to limit or terminate the eligibility of participants in programs under that title. The Secretary also amends subpart G of part 668, which contains the Department's procedures for Fine, Limitation, Suspension, and Termination proceedings, to do the following: make technical amendments to reflect the 1992 amendments to the HEA as they affect actions under that part giving effect to debarments or suspensions; amend subpart G of Part 682 in order to apply the same procedures to debarments or suspensions of lenders or loan servicers under the Federal Family Education Loan Programs (FFELP); and prescribe the weight to be accorded a debarment or suspension by the hearing official in proceedings under both subparts when the termination or suspension is based on an action under Executive Order 12549 (3 CFR, 1986 Comp., p. 189) or the Federal Acquisition Regulation (FAR), 48 CFR part 9, subpart 9.4.

The preamble to the notice of proposed rulemaking (NPRM) provided information about the background for this rulemaking action, including a discussion regarding the need to make changes to the Department's amendments that were made to the Common Rule when it was issued in 1988.

Educational institutions participating in the Title IV, HEA programs must execute a program participation agreement that includes, as Schedule Z, a certification by the institution that neither it nor its principals are currently debarred or suspended, and that it will obtain a similar certification from those parties, such as third-party servicers, with which it contracts. Those parties must notify the institution if they are subsequently debarred or suspended; however, the Department has no written agreement with servicers, or with lenders under the Federal Family Education Loan Program, in which a certification like that made by the institution could be included. The Secretary is considering the desirability of including in Title IV, HEA regulations a requirement that a debarred or suspended lender or servicer promptly report that action to the Department, and will take up this issue at the time that the Interagency Committee considers further amendments to the nonprocurement Debarment and Suspension Common Rule (See the response to the comments of the Administrative Conference of the United States in the preamble to the Common Rule.).

Technical Amendments

The Secretary makes certain technical amendments to the regulations in Part 85 that were not addressed in the preamble or set out in the text of the proposed amendments. These amendments are needed because the final common regulatory amendments

revise entire paragraphs rather than setting out only the text of those changes needed to achieve reciprocity (as was done in the NPRM). As a result, some of the Department's agency-specific amendments to the original debarment and suspension regulation needed to be restated to preserve their inclusion in the revised regulation. Other technical amendments are made to the final regulations to reflect the policies proposed in the NPRM, as discussed in the following analysis of the comments.

Analysis of Comments and Responses

Section 85.201 Treatment of Title IV, HEA Participation.

Comment: Several commenters urged that § 85.201 articulate the specific standards that the Secretary would use to determine whether the procedures used by another Federal agency to debar or suspend a lender, third-party servicer, or institution provided equivalent due process protections to those available under subpart G of Part 668 and Part 682.

Discussion: The comment is well-taken. Prior to the amendments made to the HEA in 1992, proceedings under subpart G of Parts 668 or 682 to suspend or terminate the participation of lenders, servicers, and institutions were required to be conducted "on the record" in accordance with the requirements of 5 U.S.C. 554–557. These regulations have since been modified to remove the provisions referring to the proceedings as conducted "on the record" and to the presiding official as an "administrative law judge," and may be further modified in the future.

The Secretary intends to give effect to debarments or suspensions by other agencies that provide the same level of due process to affected entities, without requiring that those procedures mirror each feature of subpart G procedures as they now stand or may stand in the future. The subpart G regulations assure affected entities certain procedural protections before actions that had the effect of suspending or terminating their Title IV, HEA participation could become effective. Where those protections have been made available under procedures used by another agency, the affected entity has no claim to any additional procedural protections under Title IV, HEA regulations before these actions are given effect with regard to Title IV, HEA activities.

This approach is consistent with the way courts treat the judgment of an administrative agency acting in an adjudicative capacity, regarding the adjudicative action as sufficient to bar the respondent from relitigating that matter in another proceeding either before the court or another agency. Courts do not require that the procedures used by the deciding agency mirror judicial procedures in order to bar relitigation of the matter, so long as the deciding agency follows typical adjudicative procedures. If adjudicative procedures are followed by the deciding agency, moreover, it is immaterial whether the entity subject to debarment or suspension under those procedures actually contested the action or made use of particular opportunities available under those procedures.

Consistent with the approach taken by courts in deciding whether an agency's procedures suffice to bar relitigation of its decision elsewhere, the Secretary identifies those procedural steps sufficient to make other agency procedures comparable to subpart G procedures as including: (1) written notice specifying the grounds on which action is taken; (2) an opportunity to present evidence and legal argument in opposition to the action and have that opposition considered by an impartial trier of fact not responsible for the investigation or prosecution of the action; (3) an opportunity, where material facts are in dispute, for an oral evidentiary hearing at which the agency bears the burden of persuasion by a preponderance of the evidence, at which the respondent may, where the hearing official considers such testimony needed in light of other available evidence and witnesses, obtain the presence of agency witnesses with personal knowledge of material facts, and of which a transcribed record is available; and (4) a written decision based on the evidence and argument presented that states the facts and legal conclusions on which the decision is based.

In determining whether the other agency's procedure comports with these standards, the Secretary will apply case precedent relevant to characterizing pertinent agency procedures in other, similar contexts. For example, as noted in Withrow v. Larkin, 421 U.S. 57, 56 (1975), an administrative official does not become an investigator or prosecutor simply by the act of determining that a notice of proposed debarment is supported by sufficient allegations and evidence to warrant issuance; that function resembles the traditional judicial function of considering and ruling on motions to dismiss.

Changes: The final rule articulates in § 85.201 the elements described here as those that the Secretary will consider sufficient to provide the same level of procedural due process to make another Federal agency exclusionary action binding with respect to Title IV, HEA participation. Conforming changes are made in §§ 668.82, 682.705, and 682.706. The regulations do not require that these elements be articulated in the other agency's published regulations, and the Secretary intends to consider whether a particular element, although not stated in agency regulations, is, in practice, part of the agency internal process used to decide the case in question. The regulations are further amended to state that the Secretary will notify an affected entity whether the debarment or suspension is regarded by the Department as binding with respect to Title IV, HEA participation, and specify the effective date of the action.

The rule provides no opportunity for an administrative appeal of that determination, and the Secretary therefore considers that determination to be the final action of the Department.

Section 668.90 Initial and Final Decisions.

Comment: Several commenters objected to the proposal in the NPRM to treat a proposed debarment under the FAR, when imposed under procedures considered equivalent to those in subpart G of Parts 668 and 682, as sufficient action to suspend the participation in Title IV, HEA programs of a lender, servicer, or institution.

Discussion: Both a proposed debarment under the FAR and a suspension under E.O. 12549 have the effect of suspending the entity as of the date on which the department or agency initiated the action by sending notice of the action to the respondent. This immediate effect differs from either termination or suspension actions under subpart G of Parts 668 or 682; the latter both assure the entity an opportunity to dispute the action prior to its taking effect, unless an emergency action is simultaneously taken against the entity. However, this difference does not necessarily prevent these debarment or suspension procedures from being considered equivalent to subpart G procedures.

If the agency's procedures otherwise provide the procedural due process protections described in § 85.201, this lack of an opportunity to object prior to the suspension taking effect becomes moot in two instances. First, if the respondent does not object to the action in a timely manner in accordance with the agency procedures, the suspension continues in effect by what can either be characterized as a default judgment or implicit consent by the respondent. Second, if the respondent timely objects and the debarring or suspending agency issues a decision rejecting that objection, the suspension thereafter continues in effect by virtue of that decision and not by virtue of the mere initiation of the action.

Changes: The final rule provides, in §§ 85.201(a), 668.82(f)(2), and 682.705 that if another agency, using procedures comparable to those under subpart G of Parts 668 or 682, has proposed debarment under the Federal Acquisition Regulation (FAR) or suspended an entity, the Secretary gives effect to that action as suspending the Title IV, HEA participation of a lender, servicer, or institution only after he determines either that the entity has not timely objected to the action, or has objected and received a decision from the agency upholding the action.

In addition, the final regulation has been revised to give finality only to those agency decisions that meet subpart G standards. Sections 668.90, 682.705 and 682.706 have been revised to provide that a debarment or suspension by another agency under procedures that the Secretary determines do not meet these standards does not bar the affected entity from contesting the grounds and justification for the suspension or debarment under subpart G procedures. However, the other agency's decision is at very least strong evidence that debarment or suspension is warranted, and the final regulations now provide that the decision constitutes a *prima facie* case that the comparable action is warranted under Department procedures.

Therefore, although the designated Department official continues to bear the burden of persuasion in actions to debar, terminate, or suspend a lender, servicer, or institution, the fact of suspension or debarment by another agency shifts to the respondent the burden of producing some credible evidence that the action is not warranted with respect to the Title IV, HEA programs. The designated Department official may then introduce rebuttal evidence to sustain his or her burden of proof; that evidence may include the evidence on which the other Federal agency relied in imposing the debarment or suspension.

Sections 668.90, 682.705, 682.706 Effective Date and Duration of Suspension or Termination Based on Suspension or Debarment

Comment: Several commenters urged that the regulations clarify the period for which the suspension or termination taken on the basis of a debarment, suspension or proposed debarment would be effective.

Discussion: Subpart G of Part 668, as amended April 29, 1994, 59 FR 22444, provides in § 668.82(f)(2) that a suspension by another agency under procedures comparable to those in subpart G suspends the participation of an institution or third-party servicer for 60 days from the date of that agency's action, unless the Secretary commences a limitation or termination action under subpart G within that period. In other instances, the commencement and duration of a suspension imposed by the Secretary is stated in § 668.85(b), which provides that the suspension commences 20 days after notice of the proposed suspension is mailed, unless the respondent timely objects and requests a hearing, and expires 60 days after it takes effect unless the Secretary commences a limitation or termination action within that period.

The duration of a termination on the basis of a debarment is similarly addressed in current §§ 668.82(f)(1) and 668.96(b)(2), which provide that a debarment under procedures comparable to subpart G procedures is effective as a termination for at least the duration of the debarment or 18 months, whichever is greater, after which the institution or servicer may request reinstatement.

The commencement and duration of suspensions and terminations with respect to lenders and loan servicers are similarly stated in current regulations. 34 CFR §§ 682.705, 682.706, and 682.711. These regulations do not specifically address the commencement and duration of a suspension or termination action taken based on actions pursuant to Executive Order 12549 or the FAR. Generally, current regulations provide and the proposed rule provided that a suspension or termination based on a suspension or debarment by another agency under procedures comparable to those provided under the respective subparts G of 34 CFR Parts 668 and 682 is effective, with respect to Title IV, HEA program transactions, on the date on which the other agency's action is effective. Under the proposed rule, the Secretary would notify the affected party whether that action had been taken under subpart G—type procedures. If the debarment or suspension had been taken under such procedures, the action would have been effective with respect to Title IV, HEA program transactions already taken by the party; if it had not, the Secretary would then bring an action under subpart G to suspend or terminate the party's participation; unless emergency action were taken, Title IV, HEA program transactions by that party would not be effected until the subpart G proceeding was complete. Under the proposed rule, then, the debarred or suspended party would not know whether it could properly initiate new Title IV, HEA program transactions—awarding and disbursing grant, loan, or work study funds, or certifying new loan applications—after the date of the other agency action until it received notice of the Secretary's determination.

The Secretary has decided to change this outcome so that a debarment or suspension entered by another agency under procedures that meet the standards in § 85.201 will not be effective against an institution or other affected entity until 20 days after the Department mails notice of its determination that the other agency's action would be recognized under Title IV, HEA.

Changes: Section 85.201 is amended in the final rule to provide that where the Secretary gives effect to a suspension or debarment pursuant to the action of another agency, the notice of that determination will state the effective date and duration of those actions. The effective date in such instances will be 20 days after the date the notice is mailed. No revision is needed to address the commencement and duration of other actions initiated by the Secretary consistent with subpart G of Part 668. Changes are made in 34 CFR §§ 682.705 and 682.711 to conform the periods of exclusion from FFELP participation to those under Part 668. In addition, the final rule revises §§ 85.201 and 85.220 to clarify the effect of debarment on Title IV, HEA participation by stating that the particular transactions from which a debarred or suspended entity is excluded under Title IV, HEA are the loans, grants, or work study assistance disbursed, awarded, acquired or serviced by that entity. Thus, only those transactions listed in revised § 85.201 are fully subject to debarment and termination. The revised § 85.220 also addresses the effect of the debarment and termination on continuing transactions by referring to current provisions of 34 CFR 668.26, 682.702, and 668.94, which describe the kinds of actions that an affected party may take after the effective date of its termination.

List of Subjects in 34 CFR Part 85

Administrative practice and procedure, Contract programs, Grant programs, Grant administration Grant programs—education.

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities,

Consumer protection, Grant programs—education, Loan programs—education, Student aid.

List of Subjects in 34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Richard W. Riley,

Secretary of Education.

Title 34 of the Code of Federal Regulations, Parts 85, 668, and 682 are amended as follows.

PART 85—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 85 is revised to read as follows:

Authority: 20 U.S.C. 1221e-3 and 3474; 41 U.S.C. 701 *et. seq.*; sec. 2455, Pub. L. 103–355, 108 Stat. 3243 at 3327; E.O. 12549, 3 CFR, 198.6 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

2. Section 85.100 is revised as set forth at the end of the common preamble.

3. Sections 85.105 and 85.110 are amended as set forth at the end of the common preamble.

4. Sections 85.200, 85.215, 85.220, and 85.225 and Appendices A and B to Part 85 are revised as set forth at the end of the common preamble.

5. Section 85.100 is further amended by revising paragraph (a) and the authority citation to read as follows:

§ 85.100 Purpose.

(a) Executive Order (E.O.) 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a governmentwide system for nonprocurement debarment and suspension. A person who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. Except as provided in § 85.200, Debarment or Suspension, § 85.201, Treatment of Title IV HEA participation, and § 85.215, Exception provision, debarment or suspension of a participant in a program by one agency shall have governmentwide effect.

* * * * *

(Authority: E.Os. 12549 and 12689; 20 U.S.C. 1082, 1094, 1221e-3 and 3474; and Sec. 2455, Pub. L. 103–355, 108 Stat. 3243 at 3327)

6. Section 85.200 is further amended by revising paragraphs (a) and (b) and the authority citation to read as follows:

§ 85.200 Debarment or suspension.

(a) *Primary covered transactions.* Except to the extent prohibited by law and subject to § 85.201, Treatment of Title IV HEA participation, persons who are debarred or suspended shall be excluded from primary covered transactions as either participants or principals throughout the executive branch of the Federal Government for the period of their debarment, suspension or the period they are proposed for debarment under 48 CFR part 9, subpart 9.4. Accordingly, ED shall not enter into primary covered transactions with such excluded persons during such period, except as permitted pursuant to § 85.215.

(b) *Lower tier covered transactions.* Except to the extent prohibited by law and subject to § 85.201, Treatment of Title IV HEA participation, persons who have been proposed for debarment under 48 CFR part 9, subpart 9.4, debarred or suspended shall be excluded from participating as either participants or principals in all lower tier covered transactions (see § 85.110(a)(1)(ii)) for the period of their exclusion. Such persons shall also be excluded from all contracts to provide federally-required audit services, regardless of contract amount.

* * * * *

(Authority: E.Os. 12549 and 12689; 20 U.S.C. 1082, 1094, 1221e-3 and 3474; and Sec. 2455, Pub. L. 103–355, 108 Stat. 3243 at 3327)

7. Section 85.201 is revised to read as follows:

§ 85.201 Treatment of Title IV, HEA participation.

(a)(1) The debarment of an educational institution, lender, or third party servicer under E.O. 12549 by an agency other than the Department pursuant to procedures described in paragraph (c) of this section terminates the eligibility of the entity to enter into transactions under any student financial assistance program authorized by Title IV of the Higher Education Act of 1965, as amended, for the duration of the debarment.

(2)(i) The suspension of an educational institution, lender, or servicer under E.O. 12549 or pursuant to a proposed debarment under the Federal Acquisition Regulation (FAR), 48 CFR part 9, subpart 9.4, by an agency other than the Department under procedures described in paragraph (c) of this section suspends the eligibility of the entity to enter into transactions under any student financial assistance program authorized by Title IV of the Higher Education Act of 1965, as amended.

(ii) The suspension of Title IV eligibility as a result of a suspension described in paragraph (a)(2) of this section lasts for a period of 60 days, beginning on the later of the date of the decision of the suspending official of the other agency in response to an objection to the suspension or, if no objection to that suspension was raised, on the 35th day after the notice of suspension was issued by that agency. The suspension described here does not expire on the 60th day if the suspended entity and the Secretary agree to an extension or if the Secretary initiates a limitation or termination proceeding against the entity under 34 CFR Part 668, subpart G, or Part 682, subpart G, as applicable, prior to the 60th day.

(3) A transaction under a Title IV, HEA program includes—

(i) The disbursement or delivery of funds provided under a Title IV, HEA program to a student or borrower;

(ii) The certification by an educational institution of eligibility for a loan under at Title IV, HEA program;

(iii) The acquisition of a loan made under a Title IV, HEA program; and

(iv) The acquisition of any servicing responsibility for a grant, loan, or work study assistance under a Title IV, HEA program.

(b)(1) The Secretary notifies the institution, lender, or servicer that has been debarred or suspended by another Federal agency whether the debarment or suspension takes effect in accordance with paragraph (a) of this section and states the effective date and duration of that action.

(2)(i) If the Secretary proposes to give effect to a suspension or debarment against an educational institution, lender, or third-party servicer that does not meet the standards in paragraph (c) of this section, the Secretary initiates a debarment or suspension proceeding under § 85.316 or § 85.414, respectively, against that entity.

(ii) The effective date of a debarment or suspension that takes effect under paragraph (a) of this section shall be 20 days after the date the notice is mailed. The Secretary gives effect to a suspension described in paragraph (a)(2) of this section only after the suspending official of the other agency has issued a decision in response to an objection to the suspension or, if no objection to that suspension was raised, on the 35th day after the notice of suspension was issued by that agency. The suspension lasts for a period of 60 days, beginning on the effective date specified in the notice, unless the suspended entity and the Secretary agree to an extension or the Secretary initiates a limitation or termination proceeding against the entity under 34 CFR Part 668, subpart G, or Part 682, subpart G, as applicable, prior to the 60th day.

(3) If an institution, lender, or a third party servicer is suspended by ED or another Federal agency, the Secretary determines whether grounds exist for the initiation of an emergency action against the entity under 34 CFR Part 668, subpart G, or Part 682, subpart G, as applicable.

(c) An institution, lender, or third-party servicer that is debarred or suspended by another agency, or proposed for debarment under 48 CFR part 9, subpart 9.4 by another Federal agency, is debarred, terminated or suspended, as provided under this part, 34 CFR part 668, and 34 CFR part 682, as applicable, if that agency took this action under procedures that afforded the excluded party the following:

(1) Notice of the proposed action;

(2) An opportunity to submit and have considered evidence and argument in opposition to the proposed action;

(3) An opportunity to obtain a hearing on its objection—

(i) At which the agency bears the burden of persuasion, by a preponderance of the evidence;

(ii) Conducted by an impartial person who does not also exercise prosecutorial or investigative responsibilities with respect to that action;

(iii) At which the entity may, unless the hearing official determines that no genuine dispute of material fact exists, present testimony and secure the attendance of those agency witnesses with personal knowledge of material facts whose testimony the hearing official determines to be needed, in light of other available evidence and witnesses; and

(iv) Of which a transcribed record is available upon request; and

(4) A written decision stating findings of fact and conclusions of law on which the decision is rendered.

(d) The Title IV, HEA programs are those programs listed in 34 GFR 668.1(c).

(**Authority:** E.Os. 12549 and 12689; 20 U.S.C. 1082, 1094, 1221e–3 and 3474; and Sec. 2455, Pub. L. 103–355, 108 Stat. 3243 at 3327)

8. Section 85.220 is revised to read as follows:

§ 85.220 Continuation of covered transactions.

(a) Notwithstanding the debarment, suspension, proposed debarment under 48 CFR part 9, subpart 9.4, determination of ineligibility, or voluntary exclusion of any person by an agency and except as provided in § 85.201, agencies and participants may continue covered transactions in existence at the time the person was debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, declared ineligible, or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(b) Agencies and participants shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, ineligible or voluntary excluded, except as provided in § 85.215.

(c) An educational institution, lender, or servicer may continue a Title IV, HEA transaction after the effective date of a debarment as determined under § 85.201 only as provided in 34 CFR 668.26, 682.702, or 668.94, as applicable.

(**Authority:** E.Os. 12549 and 12689; 20 U.S.C. 1082, 1094, 1221e–3 and 3474; and Sec. 2455, Pub. L. 103–355, 108 Stat. 3243 at 3327)

9. Section 85.314 is amended by revising paragraph (d) and the authority citation to read as follows:

§ 85.314 Debarring official's decision.

* * * * *

(d) Notice of debarring official's decision.

(1) If the debarring official decides to impose debarment, the respondent shall be given prompt notice—

(i) Referring to the notice of proposed debarment;

(ii) Specifying the reasons for debarment;

(iii) Stating the period of debarment, including effective dates; and

(iv) Advising that the debarment is effective for covered transactions throughout the executive branch of the Federal Government unless an agency head or authorized designee makes the determination referred to in § 85.215.

(2) If the debarring official decides not to impose debarment, the respondent shall be given prompt notice of that decision. A decision not to impose debarment shall be without prejudice to a subsequent imposition of debarment by any other agency.

(Authority: E.Os. 12549 and 12689; 20 U.S.C. 1082, 1094, 1221e–3 and 3474; and Sec. 2455, Pub. L. 103–355, 108 Stat. 3243 at 3327)

10. Section 85.316 is revised to read as follows:

§ 85.316 Procedures for Title IV, HEA debarments.

(a) If the Secretary initiates a debarment action against an educational institution, lender or third-party servicer under E.O. 12549, the Secretary uses the following procedures in connection with the debarment to ensure that the debarment also precludes participation under Title IV of the Higher Education Act of 1965, as amended:

(1) The procedures in § 85.312, Notice of proposed debarment, and § 85.314(d), Notice of debarring official's decision.

(2) Instead of the procedures in § 85.313 and § 85.314(a)–(c), the procedures in 34 CFR part 668, subpart G, or 34 CFR part 682, subpart G, as applicable.

(b) On appeal from a decision debarring an educational institution, lender, or third-party servicer, the Secretary issues a final decision after all parties have filed their written materials with the Secretary.

(c) In a proceeding under this section, in addition to the findings and conclusions required by 34 CFR part 668, subpart G, or 682, subpart G, the debarring official, and, on appeal, the Secretary, determine whether there exist sufficient grounds for debarment as set forth in § 85.305.

(Authority: E.Os. 12549 and 12689; 20 U.S.C. 1082, 1094, 1221e–3 and 3474; and Sec. 2455, Pub. L. 103–355, 108 Stat. 3243 at 3327)

11. Section 85.414 is revised to read as follows:

§ 85.414 Procedures for Title IV, HEA suspensions under E.O. 12549.

(a) *Title IV E.O. 12549 suspensions.* (1) If the Secretary initiates a suspension against an educational institution, lender or third-party servicer under E.O. 12549, the Secretary uses the following procedures in connection with the suspension to ensure that the suspension precludes participation under Title IV of the Higher Education Act of 1965, as amended:

(i) The procedures in § 85.411, Notice of suspension.

(ii) Instead of the procedures in §§ 85.412, 85.413 and 85.415, the procedures in 34 CFR part 668, subpart G, or 34 CFR part 682, subpart G, as applicable.

(2) In a proceeding under this section, in addition to the findings and conclusions required by 34 CFR part 668, subpart G, or 34 CFR part 682, subpart G, the suspending official, and, on appeal, the Secretary, determine whether there exist sufficient grounds for suspension as set forth in § 85.405.

(b) *Continued assistance under Title IV, HEA.* The institution, lender, or

third-party servicer may continue its participation in the Title IV programs until the procedures described in paragraph (a) of this section, except for those relating to appeals to the Secretary, have been completed, unless the Secretary takes an emergency action under 34 CFR part 668, subpart G, or 34 CFR part 682, subpart G.

(Authority: E.Os. 12549 and 12689; 20 U.S.C. 1082, 1094, 1221e–3 and 3474; and Sec. 2455, Pub. L. 103–355, 108 Stat. 3243 at 3327)

12. Insert "ED" where [agency] appears in § 85.215.

13. The authority citation for sections 85.105, 85.110, 85.115, 85.205, 85.210, 85.215, 85.225, 85.300, 85.305, 85.310, 85.311, 85.312, 85.313, 85.315, 85.320, 85.325, 85.400, 85.405, 85.410, 85.411, 85.412, 85.413, 85.415, 85.420, 85.500, 85.505, and 85.510, is revised to read as follows:

(Authority: E.Os. 12549 and 12689; 20 U.S.C. 1221e–3 and 3474; Sec. 2455, Pub. L. 103–355, 108 Stat. 3243 at 3327)

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority for part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099c, and 1141, unless otherwise noted.

2. Section 668.82 is amended by removing from paragraph (f)(1) introductory text the words "that comply with 5 U.S.C. 554–557 (formal adjudication requirements under the Administrative Procedure Act)," and adding, in their place, "described in 34 CFR 85.201(c)" by removing the words "by the Secretary" in paragraphs (f)(1) introductory text and (f)(2)(i) introductory text, by removing from paragraph (f)(2)(i) introductory text "that comply with 5 U.S.C. 554–557" and adding, in their place, "described in 34 CFR § 85.201(c)" and by revising paragraph (f)(2)(ii) introductory text and adding a new paragraph (f)(3), to read as follows:

§ 668.82 Standard of conduct.

* * * * *

(f) * * *

(2) * * *

(ii) A suspension described in paragraph (f)(2) of this section lasts for a period of 60 days, beginning on the effective date specified in the notice by the Secretary under 34 CFR 85.201(b), unless—

* * * * *

(3) A debarment or suspension not described in (f)(1) or (f)(2) of this section of a participating institution or third-party servicer by another Federal agency constitutes prima facie evidence in a proceeding under this subpart that cause for suspension or debarment and termination, as applicable, exists.

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAMS

1. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

2. Section 682.705 is amended by redesignating paragraphs (c)(6), (c)(7), and (c)(8) as paragraphs (c)(7), (c)(8), and (c)(9), respectively, and adding new paragraphs (a)(3) and (c)(6), to read as follows:

§ 682.705 Suspension proceedings.

(a) * * *

(3) A suspension described in 34 CFR 85.201(c) lasts for a period of 60 days, beginning on the effective date specified in the notice by the Secretary under 34 CFR 85.201(b), except as provided in paragraph (a)(1)(i) or (ii) of this section.

* * * * *

(c) * * *

(6) In a suspension action against a lender or third-party servicer based on a suspension under Executive Order 12549 or a proposed debarment under the Federal Acquisition Regulation (FAR), 48 CFR part 9, subpart 9.4, that does not meet the standards described in 34 CFR 85.201(c), the presiding official finds that the suspension or proposed debarment constitutes prima facie evidence that cause for suspension under this subpart exists.

* * * * *

3. Section 682.706 is amended by redesignating paragraphs (b)(7), (b)(8), and (b)(9) as paragraphs (b)(8), (b)(9), and (b)(10), respectively, and adding a new paragraph (b)(7), to read as follows:

§ 682.706 Limitation or termination proceedings.

* * * * *

(b) * * *

(7) In a termination action against a lender or third-party servicer based on a debarment under Executive Order 12549 or under the Federal Acquisition Regulation (FAR), 48 CFR part 9, subpart 9.4 that does not meet the standards described in 34 CFR 85.201(c), the presiding official finds that the debarment constitutes prima facie evidence that cause for debarment and termination under this subpart exists.

* * * * *

4. Section 682.711 is amended by revising paragraph (a) to read as follows:

§ 682.711 Reinstatement after termination.

(a) A lender or third-party servicer whose eligibility has been terminated by the Secretary in accordance with the procedures of this subpart may request reinstatement of its eligibility after the later of—

(1) Eighteen months from the effective date of the termination; or

(2) The expiration of the period of debarment under Executive Order 12459 or the Federal Acquisition Regulation (FAR), 48 CFR part 9, subpart 9.4.

* * * * *

BILLING CODE: 4000–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1209

RIN 3095–AA38

FOR FURTHER INFORMATION CONTACT: Mary Ann Hadyka, Policy and Information Resources Management, 301–713–6730.

List of Subjects in 36 CFR Part 1209

Administrative practice and procedure, Contract programs, Grant programs—archives and records.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

Title 36 of the Code of Federal Regulations, part 1209 is amended as follows.

PART 1209—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 1209 continues to read as follows:

Authority: E.O. 12549; sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 101–690, title V, subtitle D; 41 U.S.C. 701 *et seq.*); 44 U.S.C. 2104(a).

2. Section 1209.100 is revised as set forth at the end of the common preamble.

3. Section 1209.105 and 1209.110 are amended as set forth at the end of the common preamble.

4. Sections 1209.200, 1209.215, 1209.220, and 1209.225 and Appendices A and B to Part 1209 are revised as set forth at the end of the common preamble.

BILLING CODE: 7515–01

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 44

FOR FURTHER INFORMATION CONTACT: Ms. Judith A. Caden, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, Washington, DC 20420, (202) 273–7368.

List of Subjects in 38 CFR Part 44

Administrative practice and procedure, Contract programs, Grant programs, Housing, Loan Programs-housing and community development, Reporting and recordkeeping requirements, Veterans.

Jesse Brown,

Secretary of Veterans Affairs.

Title 38 of the Code of Federal Regulations, part 44 is amended as follows.

PART 44—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 44 continues to read as follows:

Authority: 38 U.S.C. 501(a) and 3703(c); E.O. 12549; E.O. 12689.

2. Section 44.100 is revised as set forth at the end of the common preamble.

3. Sections 44.105 and 44.110 are amended as set forth at the end of the common preamble.

4. Sections 44.200, 44.215, 44.220, and 44.225 and Appendices A and B to Part 44 are revised as set forth at the end of the common preamble.

BILLING CODE: 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 32

RIN 2030–AA39

FOR FURTHER INFORMATION CONTACT: Robert F. Meunier, Director, Suspension and Debarment Division (3902F), 401 M Street, S.W., Washington, D.C. 20460, telephone: (202) 260–8025.

ADDITIONAL SUPPLEMENTARY INFORMATION: Inquiries may also be submitted via electronic mail (e-mail) to: meunier.robert@epamail.epa.gov. Electronic inquiries must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Inquiries will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. No Confidential Business Information (CBI) should be submitted through e-mail.

List of Subjects in 40 CFR Part 32

Administrative practice and procedure, Contract programs, Debarment and suspension, Grant programs.

Dated: May 26, 1995.

Carol M. Browner,

Administrator.

Title 40 of the Code of Federal Regulations, Part 32 is amended as follows:

PART 32—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for Part 32 is revised to read as follows:

Authority: 7 U.S.C. 136 *et seq.*; 15 U.S.C. 2601 *et seq.*; 20 U.S.C. 4011 *et seq.*; 33 U.S.C. 1251 *et seq.*; 41 U.S.C. 701 *et seq.*; 42 U.S.C. 300f, 4901, 6901, 7401, 9801; sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549, 3 CFR, 1986 Comp.; 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

2. Section 32.100 is revised as set forth at the end of the common preamble.

3. Sections 32.105 and 32.110 are amended as set forth at the end of the common preamble.

4. Sections 32.200, 32.215, 32.220, and 32.225 and Appendices A and B to Part 32 are revised as set forth at the end of the common preamble.

BILLING CODE: 6560–50–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 105–68

RIN 3090–AF65

FOR FURTHER INFORMATION CONTACT: Donald Suda, (202) 501–1224.

List of Subjects in 41 CFR Part 105–68

Administrative practice and procedure, Contract programs, Grant programs.

Roger W. Johnson,

Administrator.

Title 41 of the Code of Federal Regulations, Part 105–68 is amended as follows.

PART 105–68—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 105–68 continues to read as follows:

Authority: E.O. 12549; sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 *et seq.*); 40 U.S.C. 486(c).

2. Section 105–68.100 is revised as set forth at the end of the common preamble.

3. Sections 105–68.105 and 105–68.110 are amended as set forth at the end of the common preamble.

4. Sections 105–68.200, 105–68.215, 105–68.220, and 105–68.225 and Appendices A and B to Part 105–68 are revised as set forth at the end of the common preamble.

BILLING CODE: 6820–61–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 12

RIN 1090–AA49

FOR FURTHER INFORMATION CONTACT: Dean A. Titcomb, (Chief, Acquisition and Assistance Division), (202) 208–6431.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department published an agency-specific preamble as part of the final nonprocurement debarment and suspension common rule on May 26, 1988 (53 FR 19159), which indicated that, due to the expanded scope of transactions covered under the rule, coverage of its nonprocurement debarment and suspension system was limited to transactions included in section 12.110(a)(1) of its proposed rule (52 FR 39042).

The Department also indicated that a review of the Department's other nonprocurement program activities would be made to determine whether such activities would be included in the coverage. The review was made; however, plans to issue a notice of proposed rulemaking to obtain public comment on covered transactions on or before October 1, 1988, were dropped.

Issues of concern to the Department were addressed through the subcommittee of the Interagency Committee on Debarment and Suspension (Interagency Group) which reviewed the scope of the nonprocurement debarment system. Although the revision of the proposed

common rule did not address the issue of scope, the Department proposed to include the results of the resolution of this issue as part of the December 20, 1994, publication as discussed below.

New exceptions for certain types of transactions under natural resource management programs were proposed. These exceptions attempted to make clear that permits, licenses, exchanges and other acquisitions of real property, rights-of-way, and easements, under natural resource management programs were excluded from coverage.

For example, when the Federal Government seeks to acquire real property, including through use of an exchange of real property elsewhere, the transaction will not be subject to these regulations. In such cases, where the success of the agency program depends on a specific parcel of land, the application of the debarment and suspension system could harm the public interest. Moreover, public land management activities require the use of certain transactions for land and resource management without regard to the identity of the recipient. Accordingly, range management transactions, such as grazing permits and rights-of-way, are excluded by the proposed exception language. Similarly, virtually all recreation management and public land access transactions are not covered.

In addition, the Department proposed to amend section 12.110(a)(3) of its final rule to include nonprocurement debarment system coverage for Federal acquisition of a leasehold interest or any other interest in real property, concession contracts, and disposition of Federal real and personal property and natural resources.

The scope of the Department's nonprocurement debarment system will include transactions associated with natural resources management programs and the disposition of natural resources with the following exceptions: permits, licenses, exchanges and other acquisitions of real property, rights-of-way, easements, mineral patent claims administered by the Bureau of Land Management and water service contracts and repayment contracts awarded by the Bureau of Reclamation. Patents issued under the Mining Law of 1872, 30 U.S.C. 22 *et seq.*, as amended are statutory entitlements and, therefore, are exempt under the terms of Executive Order 12549. The award of water service contracts and repayment contracts is mandatory, provided by the Reclamation Project Act of 1939, as amended, set forth at 43 U.S.C. 485.

One comment was received from the private sector, and one comment was received from another Federal agency in response to the proposed rule. The private sector commenter stated that the Department's proposal to include nonprocurement debarment system coverage for disposition of Federal real and personal property and natural resources was unwarranted and that the preamble provided no articulated basis for the proposal. The commenter also stated that the Department was under no statutory compulsion to make this change. The commenter stated that there is no policy basis for including asset sales in the nonprocurement debarment system, particularly given the expanded scope of the system to include reciprocal procurement and nonprocurement government-wide effect. The commenter expressed the view that including asset sales in the nonprocurement debarment system works a punishment on potential buyers who would be deemed ineligible, contrary to the express purposes of the nonprocurement system.

The amendment of section 12.110(a)(3) as to covered transactions does not add disposition of real and personal property and natural resources. It is our interpretation that these transactions were already covered as part of the general language adopted in the final common rule published on May 26, 1988. Because of new exceptions from coverage, as set forth in section 12.110(a)(2), however, the language in section 12.110(a)(3) was added to attempt to clarify those covered transactions previously excluded.

The U.S. Forest Service (USFS) addressed the compatibility of this rule with the debarment provisions of the Forest Resources Conservation and Shortage Relief Act of 1990 (Export Act). USFS states that in enacting the Export Act, Congress "anticipated no governmentwide effect would be imposed on persons debarred pursuant to the Export Act." USFS relies for this proposition solely on the provision of the Export Act that debarment thereunder may be decided only by the Secretaries of Commerce and of the Interior. We reject this interpretation. By participating in this common rule making, agencies are agreeing only to give reciprocal effect to debarments and suspensions effectuated by other agencies. This is not the same as the other agencies debarring or suspending a party under the Export Act. Similarly, the Export Act gives both Commerce and Interior discretion to deny applications for unprocessed timber that are filed under the Export Act. Accordingly, we see no prohibition in that Act against giving reciprocal effect to governmentwide debarments or suspensions to applications under the Export Act.

USFS also stated a concern that due to differing requirements of this rule and the Export Act, separate debarment systems will have to be maintained, and that all timber-related debarments should be "under one system." We do not understand what USFS intends when it refers to separate debarment systems. As long as the source of the debarment is apparent, we see no reason why the differing effects of debarments under the Export Act and this rule would require the maintenance of two separate systems.

Next, USFS queries whether sale of miscellaneous forest products, such as Christmas trees, posts and poles, and boughs, will be covered. We would exclude such sales as incidental benefits.

Finally, USFS recommends that there should only be a self-certification process for individuals and families, not also a check by Federal agencies of the *List of Parties Excluded from Federal Procurement and Nonprocurement Programs* for the individual or corporation and all its aliases or affiliates. We believe that Federal agencies have an obligation to ensure that the Federal Government is only doing business with responsible parties; therefore, we are not changing the Common Rule's requirement for Federal agencies to check the List.

Therefore, the Department will exclude all transactions concerning permits, licenses, exchanges and other acquisitions of real property, rights-of-way, easements, mineral patent claims, water service contracts, and repayment contracts from its nonprocurement debarment and suspension system.

A corresponding change is also being made in Section 12.200(c) to add a reference to these excluded transactions.

List of Subjects in 43 CFR Part 12

Administrative practice and procedure, Contract programs, Cooperative agreements, Grant programs, Grants administration, Reporting and recordkeeping requirements.

Dated: May 25, 1995.

Bonnie R. Cohen,

Assistant Secretary—Policy, Management and Budget.

Title 43 of the Code of Federal Regulations, part 12 is amended as follows:

PART 12—ADMINISTRATIVE AND AUDIT REQUIREMENTS AND COST PRINCIPLES FOR ASSISTANCE PROGRAMS

1. The authority for part 12 is revised to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 6101 note, 7501; 41 U.S.C. 252a, 701 *et seq.*; sec. 501, Pub.L. 103–316, 108 Stat. 1723; sec. 307, Pub.L. 103–332, 108 Stat. 2499; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12674, 3 CFR, 1989 Comp., 215; E.O. 12689, 3 CFR, 1989 Comp., p. 235; E.O. 12731, 3 CFR, 1990 Comp., p. 306; OMB Circular A–102; OMB Circular A–110; OMB Circular A–128; and OMB Circular A–133.

Subpart D—Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)

2. Section 12.100 is revised as set forth at the end of the common preamble.

3. Sections 12.105 and 12.110 are amended as set forth at the end of the common preamble.

4. Sections 12.200, 12.215, 12.220, and 12.225 and Appendices A and B to Subpart D of Part 12 are revised as set forth at the end of the common preamble.

5. Section 12.110 is further amended by adding paragraphs (a)(2)(ix), (x), and (xi), and revising paragraph (a)(3) to read as follows:

§ 12.110 Coverage.

(a) * * *

(2) * * *

(ix) Under natural resources management programs, permits, licenses, exchanges and other acquisitions of real property, rights-of-way, and easements.

(x) Transactions concerning mineral patent claims entered into pursuant to 30 U.S.C. 22 *et seq.*

(xi) Water service contracts and repayment contracts entered into pursuant to 43 U.S.C. 485.

(3) Department of the Interior covered transactions. These Department of the Interior regulations apply to the Department's domestic assistance covered transactions (whether by a Federal agency, recipient, subrecipient, or intermediary) including, except as noted in paragraph (a)(2) of this section: grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, donation agreements, Federal acquisition of a leasehold interest or any other interest in real property, concession contracts, dispositions of Federal real and personal property and natural resources, subawards, subcontracts and transactions at any tier that are charged as direct or indirect costs, regardless of type (including subtier awards under awards which are statutory entitlement or mandatory awards), and any other nonprocurement transactions between the Department and a person.

* * * * *

6. Section 12.200 is further amended by adding paragraphs (c) (8), (9), (10), and (11) as follows:

§ 12.200 Debarment or suspension.

* * * * *

(c) * * *

(8) Transactions entered into pursuant to Public Law 93–638, 88 Stat. 2203.

(9) Under natural resources management programs, permits, licenses, exchanges and other acquisitions of real property, rights-of-way, and easements.

(10) Mineral patent claims entered into pursuant to 30 U.S.C. 33 *et seq.*

(11) Water service contracts and repayment contracts entered into pursuant to 43 U.S.C. 485.

BILLING CODE: 4310–RF–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 17

FOR FURTHER INFORMATION CONTACT: Robert R. Boyer, Operations Support Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2976.

List of Subjects in 44 CFR Part 17

Administration practice and procedure, Contract programs, Drug abuse, Grant programs, Loan programs, Reporting and recordkeeping requirements.

Dated: June 7, 1995.

Harvey G. Ryland,

Deputy Director.

Title 44 of the Code of Federal Regulations, part 17 is amended as follows.

PART 17—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 17 is revised to read as follows:

Authority: 41 U.S.C. 701 *et seq.*; E.O. 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 54 FR 34131, 3 CFR, 1989 Comp., p. 235.

2. Section 17.100 is revised as set forth at the end of the common preamble.

3. Sections 17.105 and 17.110 are amended as set forth at the end of the common preamble.

4. Sections 17.200, 17.215, 17.220, and 17.225, and Appendices A and B to part 17 are revised as set forth at the end of the common preamble.

BILLING CODE 6718–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 76

RIN 0991–AA78

FOR FURTHER INFORMATION CONTACT: Neil Steyskal, Office of Grants and Acquisition Management, 202–690–5729; TDD 202–690–6415.

ADDITIONAL SUPPLEMENTARY INFORMATION: On January 29, 1992, HHS published a final rule governing the Department's exclusion and civil monetary penalty authorities, as codified by the Medicare and Medicaid Patient and Program Protection Act of 1987, Pub. L. 100–93. These authorities have been delegated to the Inspector General for implementation. 42 CFR 1001.1901 implements Executive Order 12549 which provides that debarments, suspensions, and other exclusionary actions taken by any Federal agency will have governmentwide effect with respect to all nonprocurement programs. Specifically, 42 CFR 1001.1901 makes clear that exclusions from Medicare and State health care programs under Title XI of the Social Security Act, 42 U.S.C. 1320a–7, are also applicable with respect to "all other Federal nonprocurement programs."

With the enactment of the Federal Acquisition Streamlining Act of 1994 (FASA), Pub. L. 103–355, Congress mandated and expanded the governmentwide effect of debarments, suspensions, and other exclusionary actions to procurement as well as nonprocurement programs. In addition to the amendments to the Common Rule which the enactment of FASA necessitates, we are also taking this opportunity to codify in the Department's adoption of the Common Rule, the Department's policy that exclusions imposed under Title XI of the Social Security Act have the same governmentwide effect as debarments initiated under the Common Rule, and shall be recognized and given effect, not only for all Departmental programs, but also for all other Executive Branch procurement and nonprocurement programs and activities. Moreover,

because full due process is provided under the statute and the implementing regulations for those excluded under Title XI, including the right to an administrative hearing and judicial review, additional due process under the Common Rule is not necessary nor available to excluded individuals and entities beyond that set forth in 42 CFR Parts 1001 and 1005.

List of Subjects in 45 CFR Part 76

Administrative practice and procedure, Contract programs, Grant programs.

Dated: June 5, 1995.

Donna A. Shalala,

Secretary.

Title 45 of the Code of Federal Regulations, part 76 is amended as follows.

PART 76—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 76 is revised to read as follows:

Authority: 5 U.S.C. 301; 41 U.S.C. 701 *et seq.*; Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

2. Section 76.100 is revised as set forth at the end of the common preamble.

3. Sections 76.105 and 76.110 are amended as set forth at the end of the common preamble.

4. Sections 76.200, 76.215, 76.220, and 76.225 and Appendices A and B to Part 76 are revised as set forth at the end of the common preamble.

5. Section 74.110 is further amended by adding a new paragraph (d) to read as follows:

§ 74.110 Coverage.

* * * * *

(d) *Relationship to Medicare and State Health Care Program Exclusions.* Any exclusion from Medicare and State health care program participation by HHS under Title XI of the Social Security Act, 42 U.S.C. 1320a–7, (see also 42 CFR 1001.1901) on or after August 25, 1995 shall be recognized by and effective, not only for all HHS programs, but also for all other Executive Branch procurement and nonprocurement activities.

BILLING CODE: 4150–04–M

NATIONAL SCIENCE FOUNDATION

45 CFR Part 620

RIN 3145–AA28

FOR FURTHER INFORMATION CONTACT: Anita Eisenstadt, Assistant General Counsel, Office of the General Counsel, 703–306–1060.

List of Subjects in 22 CFR Part 620

Administrative practice and procedure, Contract programs, Grant programs.

Lawrence Rudolph,

General Counsel.

Title 45 of the Code of Federal Regulations, part 620 is amended as follows.

PART 620—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 620 is revised to read as follows:

Authority: 41 U.S.C. 701 *et seq.*; 42 U.S.C. 1870(a); E.O. 12549, 3 CFR, 1986 Comp., p. 189.

2. Section 620.100 is revised as set forth at the end of the common preamble.

3. Sections 620.105 and 620.110 are amended as set forth at the end of the common preamble.

4. Sections 620.200, 620.215, 620.220, and 620.225 and Appendices A and B to Part 620 are revised as set forth at the end of the common preamble.

BILLING CODE: 7555–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

45 CFR Part 1154

RIN 3135–AA12

FOR FURTHER INFORMATION CONTACT: Ms. Donna DiRicco, Acting Grants Officer, National Endowment for the Arts, (202) 682–5403.

List of Subjects in 45 CFR Part 1154

Administrative practice and procedure, Contract programs, Drug abuse, Grant programs, Loan programs, Reporting and recordkeeping requirements.

Laurence Baden,

Deputy Chairman for Management.

Title 45 of the Code of Federal Regulations, Part 1154 is amended as follows.

PART 1154—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 1154 is revised to read as follows:

Authority: 20 U.S.C. 959(a)(1); 41 U.S.C. 701 *et seq.*; E.O. 12549, 3 CFR, 1986 comp., p. 189.

2. Section 1154.100 is revised as set forth at the end of the common preamble.

3. Sections 1154.105 and 1154.110 are amended as set forth at the end of the common preamble.

4. Sections 1154.200, 1154.215, 1154.220, and 1154.225 and Appendices A and B to Part 1154 are revised as set forth at the end of the common preamble.

BILLING CODE 7537–01–M

National Endowment for the Humanities

45 CFR Part 1169

RIN 3136–AA20

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Deputy General Counsel, National Endowment for the Humanities, Room 530, Washington, DC 20506, (202) 606–8322.

List of Subjects in 45 CFR Part 1169

Administrative practice and procedure, Contract programs, Drug abuse, Grant programs, Loan programs, Reporting and recordkeeping requirements.

Sheldon Hackney,

Chairman.

Title 45 of the Code of Federal Regulations, part 1169 is amended as follows.

PART 1169—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 1169 is revised to read as follows.

Authority: 20 U.S.C. 959(a)(1); 41 U.S.C. 701 *et seq.*; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

2. Section 1169.100 is revised as set forth at the end of the common preamble.

3. Sections 1169.105 and 1169.110 are amended as set forth at the end of the common preamble.

4. Sections 1169.200, 1169.215, 1169.220 and 1169.225 and Appendices A and B to Part 1169 are revised as set froth at the end of the common preamble.

BILLING CODE 7036–01–M

INSTITUTE OF MUSEUM SERVICES

45 CFR Part 1185

FOR FURTHER INFORMATION CONTACT: Rebecca Danvers, Program Director, 202–606–8539.

List of subjects in 45 CFR Part 1185

Administrative practice and procedure, Contract programs, Drug abuse, Grant programs, Loan programs, Reporting and recordkeeping requirements.

Diane B. Frankel,

Director.

Title 45 of the Code of Federal Regulations, Part 1185 is amended as follows.

PART 1185—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 1185 is revised to read as follows:

Authority: 20 U.S.C. 961–968; 41 U.S.C. 701 *et seq.*; E.O. 12549, 3 CFR, 1986 Comp., p. 189.

2. Section 1185.100 is revised as set forth at the end of the common preamble.

3. Sections 1185.105 and 1185.110 are amended as set forth at the end of the common preamble.

4. Sections 1185.200, 1180.215, 1190.220, and 118.225 and Appendices A and B to Part 1185 are revised as set forth at the end of the common preamble.

BILLING CODE 7036–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Part 2542

RIN 3045–AA11

FOR FURTHER INFORMATION CONTACT: Michael Kenefick, Director of Grants and Contracts, 202–606–5000 ext. 101.

List of Subjects in 45 CFR Part 2542

Administrative practice and procedure, Contract programs, Government contracts, Grant programs.

Gary Kowalczyk,

Acting Chief Financial Officer.

Title 45 of the Code of Federal Regulations, part 2542 is amended as follows.

PART 2542—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 2542 continues to read as follows:

Authority: 42 U.S.C. 12501 *et seq.*

2. Section 2542.10 [_____ .100] is revised as set forth at the end forth at the end of the common preamble.

3. Sections 2542.20 [_____ .105] and 2542.30 [_____ .110] are amended as set forth at the end of the common preamble.

4. Sections 2542.100 [_____ .200], 2542.130 [_____ .215], 2542.140 [_____ .220], and 2542.150 [_____ .225] and Appendices A and B to Part 2542 are revised as set forth at the end of the common preamble.

5. Section 2542.10 is further amended in paragraph (b)(3) by removing "§_____ .105" and adding "§ 2542.20" in its place.

6. Section 2542.100 is further amended in paragraph (a) by removing "§_____ .215" and adding "§ 2542.130" in its place and in paragraph (c) by removing "§_____ .110(a)(1)(ii)" and adding "§ 2542.30(a)(1)(ii)" in its place.

7. Section 2542.130 is further amended by removing "§_____ .200" and "§_____ .505(a)" and adding "§ 2542.100" and "§ 2542.410(a)", respectively.

8. Section 2542.140 is further amended in paragraph (b) by removing "§_____ .215" and adding "§ 2542.130" in its place.

9. Section 2542.150 is further amended in paragraph (a) by removing "§_____ .215 or § _____ .220" and adding "§ 2542.130" or § 2542.140" in its place.

BILLING CODE 6050–28–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 29

RIN 2105–AC25

ACTION: Interim final rule with an opportunity to comment.

DATES: This interim final rule is effective August 25, 1995. Comments should be received by July 26, 1995. Late filed comments will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Paul B. Larsen, Office of the General Counsel, C–10, Room 10102, (202) 366–9161, or Ladd Hakes, Office of Acquisition and Grants Management, M–62, Room 9401, (202) 366–4268, Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590.

ADDITIONAL SUPPLEMENTARY INFORMATION:

Background

The Department of Transportation's implementation of the governmentwide common rule adds a requirement for reciprocity between procurement and nonprocurement debarment and suspension actions.

The Department's rule is interim final because the Department did not clear the governmentwide Notice of Proposed Rule Making (NPRM) in time for publication. For the sake of uniformity and to avoid confusion, the Department now needs to join in the governmentwide rule.

The Department of Transportation is responsible for administering both procurement and nonprocurement debarment and suspension actions. Prior to October 1, 1994, the individual DOT Operating Administrations administered both procurement and nonprocurement actions. Beginning October 1, 1994, the DOT Office of Acquisition and Grant Management became responsible for administering procurement actions.

List of Subjects in 49 CFR Part 29

Administrative practice and procedure, Contract programs, Drug abuse, Grant programs, Loan programs, Reporting and recordkeeping requirements.

Federico Peña,

Secretary of Transportation.

Title 49 of the Code of Federal Regulations, part 29 is amended as follows.

PART 29—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 29 is revised to read as follows:

Authority: 41 U.S.C. 701 *et seq.*; 49 U.S.C. 322(a); E.O. 12549, 3 CFR, 1986 Comp., p. 189.

2. Section 29.100 is revised as set forth at the end of the common preamble.

3. Sections 29.105 and 29.110 are amended as set forth at the end of the common preamble.

4. Sections 29.200, 29.215, 29.220, and 29.225, and Appendices A and B to Part 29 are revised as set forth at the end of the common preamble.

[FR Doc. 95–14725 Filed 6–23–95; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 9, 22, 28, 44, and 52

[FAC 90–28; FAR Case 94–801]

RIN 9000–AG22

Federal Acquisition Regulation; Debarment, Suspension, and Ineligibility (Ethics)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This final rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994, Public Law 103–355 (the Act). The Federal Acquisition Regulatory Council is amending the Federal Acquisition Regulation (FAR) to reflect the policy of ensuring that suspensions, debarments, and other exclusions from procurement and nonprocurement activities receive reciprocal Government-wide effect as directed by Executive Order (E.O.) 12689, dated August 16, 1989, and Section 2455, Uniform Suspension and Debarment, of the Act. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: August 25, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Julius Rothlein, Ethics Team Leader, at (703) 697–4349 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 90–28, FAR case 94–801.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act (FASA) of 1994, Pub. L. 103–355 (the Act), provides authorities that streamline the acquisition process and minimize burdensome Government-unique requirements. Major changes in the acquisition process as a result of the Act's implementation include changes in the areas of Commercial Item Acquisition, Simplified Acquisition Procedures, the Truth in Negotiations Act, and introduction of the Federal Acquisition Computer Network (FACNET). In order to promptly achieve the benefits of the provisions of the Act, the Government is issuing implementing regulations on an expedited basis.

FAR case 94–801 originated because Section 2455 of Public Law 103–355 was enacted to remedy the current situation where suspensions, debarments, and other exclusions from procurement and nonprocurement activities do not have reciprocal Government-wide effect. The concept of reciprocity for procurement and nonprocurement suspension and debarment actions is not new. Since August 1989 there has been an effort to do by executive order (*i.e.*, E.O. 12689), what section 2455 now prescribes by law. That earlier effort was worked on by a committee known as the "Interagency Committee on Debarment and Suspension." This Interagency Committee is made up of 16 of the Federal executive agencies that impose nonprocurement suspensions and debarments. By October 1994 the agencies in an ad hoc group reached agreement on the language that would implement the concept of reciprocity and be consistent with the principles of the *National Performance Review*. The language in FAR 9.401, Applicability, has been coordinated with the ad hoc group of agencies. The changes to the procurement and nonprocurement rules implement Section 2455 and E.O. 12689 by ensuring that suspensions, debarments, and other exclusions from procurement and nonprocurement activities have reciprocal Government-wide effect.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because only a very small percentage of Federal contractors are debarred or suspended.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Public Comments

A proposed rule was published on December 20, 1994, at 59 FR 65623. Ten substantive comments were received from six commenters. The FASA Implementation Team fully considered all comments received. However, no changes to the case were considered necessary as a result of the public comments. The team's full analysis and disposition of the comments may be obtained from the FAR Secretariat. The most significant comment and its disposition follows:

Comment: One commenter recommended the deletion of the category "proposed for debarment" from the FAR procurement procedures, in order to ensure consistency with the nonprocurement rule which does not place that category on the GSA List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

Response: Disagree. The agencies do not believe there is a need to change the rule so that the effect of a proposed debarment is the same under both debarment and suspension systems. The request to make the two rules the same on this matter misconstrues the purpose and effect of the reciprocity effort.

The purpose of the proposed reciprocity rule is to ensure that, once one agency takes action to exclude a person and that person is placed on the *List of Parties Excluded from Federal Procurement and Nonprocurement Programs*, all agencies will honor that determination. In deciding whether to take an action to exclude a person, the agency considers whether a person's present responsibility is affected such that the person poses a risk to the Federal Government. It was not the intent that the decision to give reciprocity would require the agencies to change the two debarment and suspension systems and establish identical procedures for excluding persons under both the FAR and the Common Rule.

Finally, to ensure uniformity with the Nonprocurement Common Rule (published at 59 FR 65607, December 20, 1994), other technical changes were made to section 9.401.

List of Subjects in 48 CFR Parts 9, 22, 28, 44, and 52

Government procurement.

Dated: May 30, 1995.

Capt. Barry L. Cohen, SC, USN,

Project Monager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 90–28 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90–28 is effective August 25, 1995.

Eleanor R. Spector,

Director, Defense Procurement.

Ada M. Ustad,

Associate Administrator for Acquisition Policy, General Services Administration.

Tom Luedtke,

Deputy Associate Administrator for Procurement, NASA, May 18, 1995.

Therefore, 48 CFR Parts 9, 22, 28, 44, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 9, 22, 28, 44, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 9—CONTRACTOR QUALIFICATIONS

2. Section 9.105–1(c)(1) is revised to read as follows:

9.105–1 Obtaining information.

* * * * *

(c) * * *

(1) The List of Parties Excluded from Federal Procurement and Nonprocurement Programs maintained in accordance with subpart 9.4.

* * * * *

3. Section 9.207(a)(9) is revised to read as follows:

9.207 Changes in status regarding qualification requirements.

* * * * *

(a) * * *

(9) The source is on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs (see subpart 9.4); or

* * * * *

4. Section 9.401 is revised to read as follows:

9.401 Applicability.

In accordance with Public Law 103–355, Section 2455 (31 U.S.C. 6101, note), and Executive Order 12689, any debarment, suspension or other Government-wide exclusion initiated under the Nonprocurement Common Rule implementing Executive Order 12549 on or after August 25, 1995 shall be recognized by and effective for Executive Branch agencies as a debarment or suspension under this subpart. Similarly, any debarment, suspension, proposed debarment or other Government-wide exclusion initiated on or after August 25, 1995 under this subpart shall also be recognized by and effective for those agencies and participants as an exclusion under the Nonprocurement Common Rule.

5. Section 9.403 is amended by removing the definition *Parties Excluded from Procurement Programs* and adding, in alphabetical order, the definitions *List of Parties Excluded from Federal Procurement and Nonprocurement Programs and Nonprocurement Common Rule* to read as follows:

9.403 Definitions.

* * * * *

List of Parties Excluded from Federal Procurement and Nonprocurement Programs means a list compiled, maintained and distributed by the General Services Administration (GSA) containing the names and other information about parties debarred, suspended, or voluntarily excluded under the Nonprocurement Common Rule or the Federal Acquisition Regulation, parties who have been proposed for debarment under the Federal Acquisition Regulation, and parties determined to be ineligible.

Nonprocurement Common Rule means the procedures used by Federal Executive Agencies to suspend, debar, or exclude individuals or entities from participation in nonprocurement transactions under Executive Order 12549. Examples of nonprocurement transactions are grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, and donation agreements.

* * * * *

6. Section 9.404 is amended—

—by revising the section heading to read as set forth below;

—by revising paragraphs (a)(1), (b) introductory text, (c)(5), (d) introductory text, (d)(3); and

—in paragraph (c)(3) by removing the word "consolidated". The revised text reads as follows:

9.404 List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(a) * * *

(1) Compile and maintain a current list of all parties debarred, suspended, proposed for debarment, or declared ineligible by agencies or by the General Accounting Office;

* * * * *

(b) The List of Parties Excluded from Federal Procurement and Nonprocurement Programs shall indicate—

* * * * *

(c) * * *

(5) Establish procedures to provide for the effective use of the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, including internal distribution thereof, to ensure that the agency does not solicit offers from, award contracts to, or consent to subcontracts with contractors on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, except as otherwise provided in this subpart; and

* * * * *

(d) Information on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs is available as follows:

* * * * *

(3) A telephone inquiry service to answer general questions about entries on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs is also available by calling GSA at (202) 501–4873 or 501–4740. The inquiry will be answered within one working day.

9.405 [Amended]

7. Section 9.405 is amended—

—in paragraph (b) by removing the phrase "Parties Excluded from Procurement Programs" and inserting in its place "List of Parties Excluded from Federal Procurement and Nonprocurement Programs";

—in paragraph (d)(1) by removing the phrase "Procurement Programs" and inserting in its place "Federal

Procurement and Nonprocurement Programs".

9.405–2 [Amended]

8. Section 9.405–2 is amended—

—in the third sentence of paragraph (b) introductory text by removing the phrase "parties' inclusion on the list of Parties Excluded from Procurement Programs" and inserting in its place "party's inclusion on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs";

—in paragraphs (b)(2) and (b)(3) by removing the phrase "list of Parties Excluded from Procurement Programs" and inserting in its place "List of Parties Excluded from Federal Procurement and Nonprocurement Programs".

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1025 [Amended]

9. Section 22.1025 is amended in the first sentence by removing the phrase "lists of Parties Excluded from Federal Procurement or" and inserting in its place "List of Parties Excluded from Federal Procurement and".

PART 28—BONDS AND INSURANCE

28.203–7 [Amended]

10. Section 28.203–7 is amended in paragraphs (c) and (d) by removing the phrase "list entitled Parties Excluded from Procurement Programs" and inserting in its place "List of Parties Excluded from Federal Procurement and Nonprocurement Programs".

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

44.202–2 [Amended]

11. Section 44.202–2 is amended in paragraph (a)(13) by removing the phrase "Consolidated List of Debarred, Suspended, and Ineligible Contractors" and inserting in its place "List of Parties Excluded from Federal Procurement and Nonprocurement Programs".

44.303 [Amended]

12. Section 44.303 is amended in paragraph (c) by removing the phrase "list of Parties Excluded from Procurement Programs" and inserting in its place "List of Parties Excluded from Federal Procurement and Nonprocurement Programs".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.209–6 [Amended]

13. Section 52.209–6 is amended by revising the date in the heading of the clause to read "(AUG 1995)" and in paragraphs (c) introductory text, (c)(2), and (c)(3) by removing the phrase "Procurement Programs" and inserting in its place "Federal Procurement and Nonprocurement Programs".

[FR Doc. 95–14726 Filed 6–23–95; 8:45 am]
BILLING CODE 6820–EP–P

federal register

Monday
June 26, 1995

Part III

Department of the Interior

Bureau of Indian Affairs

The Twenty-Nine Palms Band of Mission Indians Liquor Control Ordinance; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

The Twenty-Nine Palms Band of Mission Indians Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM8, and in accordance with the Act of August 15, 1953, 67 Stat 586, 18 U.S.C. 1161. I certify that the Twenty-Nine Palms Band of Mission Indians Liquor Ordinance was duly adopted by the Twenty-Nine Palms Band of Mission Indians on October 6, 1994, and amended twice, by resolution No. 950608 of June 8, 1995, and by resolution No. 950615A of June 15, 1995. The Ordinance provides for the regulation, distribution, possession, sale, and consumption of liquor on lands held in trust belonging to the Twenty-Nine Palms Band of Mission Indians.

DATES: This ordinance is effective as of June 26, 1995.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Judicial Services, Division of Tribal Government Services, 1849 C Street, NW., MS 2611–MIB, Washington, DC 20240–4001; telephone 202/208–4400.

SUPPLEMENTARY INFORMATION: The Twenty-Nine Palms Band of Mission Indians Liquor Control Ordinance is to read as follows:

Liquor Ordinance of the Twenty-Nine Palms Band of Mission Indians

Chapter I—Introduction

101. *Title.* This ordinance shall be known as the "Liquor ordinance of the Twenty-Nine Palms Band of Mission Indians."
102. *Authority.* This ordinance is enacted pursuant to the Act of August 15, 1953 (Pub. L. 83–277, 67 Stat. 588, 18 U.S.C. 1161) and Article 6A(5) of the Twenty-Nine Palms Band of Mission Indians Articles of Association.
103. *Purpose.* The purpose of this ordinance is to regulate and control the possession and sale of liquor on the Twenty-Nine Palms Indian Reservation. The enactment of a tribal ordinance governing liquor possession and sale on the reservation will increase the ability of the tribal government to control reservation liquor distribution and possession, and at the same time will provide an important source of revenue for the continued operation and strengthening of the tribal government and the delivery of tribal government services.

Chapter II—Definitions

201. As used in this ordinance, the following words shall have the following meanings unless the context clearly requires otherwise.
202. "Alcohol." Means that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions of this substance.
203. "Alcoholic Beverage." Is synonymous with the term "Liquor" as defined in Section 208 of this Chapter.
204. "Bar." Means any establishment with special space and accommodations for sale by the glass and for consumption on the premises of beer, as herein defined.
205. "Beer." Means any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain of cereal in pure water containing not more than four percent of alcohol by volume. For the purposes of this title, any such beverage, including ale, stout, and porter, containing more than four percent of alcohol by weight shall be referred to as "strong beer."
206. "Committee." Means the Business Committee of the Twenty-nine Palms Band of Mission Indians.
207. "General Council." Means the general council of the Twenty-nine Palms Band of Mission Indians which is composed of the voting membership of the Tribe as a whole.
208. "Liquor." Includes the four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented spirituous, vinous, or malt liquor or combination thereof, and mixed liquor, or otherwise intoxicating; and every liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption and any liquid, semisolid, solid, or other substances, which contain more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating.
209. "Liquor Store." Means any store at which liquor is sold and, for the purposes of this ordinance, including stores only a portion of which are devoted to sale of liquor or beer.
210. "Malt Liquor." Means beer, strong beer, ale stout, and porter.
211. "Package." Means any container or receptacle used for holding liquor.
212. "Public Place." Includes state or county or tribal or federal highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; soft drink establishment, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theater, gaming facilities, entertainment centers, store garages, and filling stations which are open to and/or are generally used by the public and to which the public is permitted to have unrestricted access; public conveyances of all kinds of character; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public. For the purposes of this ordinance, "Public Place" shall also include any establishment other than a single family home which is designed for or may be used by more than just the owner of the establishment.
213. "Reservation." Means land held in trust by the United States Government for the benefit of the Twenty-nine Palms Band of Mission Indians (see also Tribal Land).
214. "Sale" and "Sell." Include exchange, barter, and traffic; and also include the selling or supplying or distributing by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor or wine by any person to any person.
215. "Spirits." Means any beverage, which contains alcohol obtained by distillation, including wines exceeding seventeen percent of alcohol by weight.
216. "Tribe." Means the Twenty-nine Palms Band of Mission Indians.
217. "Tribal Land." Means any land within the exterior boundaries of the Reservation which is held in trust by the United States for the Tribe as a whole, including and such land leased to other parties.

218. "Wine." Means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, etc.) or other agricultural product containing sugar, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than seventeen percent of alcohol by weight, including sweet wines fortified with wine spirits such as port, sherry, muscatel, and angelica, not exceeding seventeen percent of alcohol by weight.
219. "Trust Account." Means the account designated by the tribal treasurer for deposit of proceeds from the tax from the sale of alcoholic beverages.
220. "Trust Agent." Means the tribal Chairperson or a designee of the Chairperson.

Chapter III—Powers of Enforcement

301. *Powers.* The Committee, in furtherance of this ordinance, shall have the following powers and duties:
   a. To publish and enforce the rules and regulations governing the sale, manufacture, and distribution of alcoholic beverages on the Reservation;
   b. To employ managers, accountants, security personnel, inspectors, and such other persons as shall be reasonably necessary to allow the Committee to perform its functions. Such employees shall be tribal employees;
   c. To issue licenses permitting the sale or manufacture or distribution of liquor on the Reservation;
   d. To hold hearings on violations of this ordinance or for the issuance or revocation of licenses hereunder;
   e. To bring suit in the appropriate court to enforce this ordinance as necessary;
   f. To determine and seek damages for violation of this ordinance;
   g. To make such reports as may be required by the General Council;
   h. To collect taxes and fees levied or set by the Committee, and to keep accurate records, books and accounts; and
   i. To exercise such other powers as are delegated by the General Council.
302. *Limitation on Powers.* In the exercise of its powers and duties under this ordinance, the Committee and its individual members shall not accept any gratuity, compensation or other thing of value from any liquor wholesaler, retailer, or distributor or from any licensee.
303. *Inspection Rights.* The premises on which liquor is sold or distributed shall be open for inspection by the Committee at all reasonable times for the purposes of ascertaining whether the rules and regulations of this ordinance are being complied with.

Chapter IV—Sales of Liquor

401. *Licenses Required.* No sales of alcoholic beverages shall be made within the exterior boundaries of the Reservation, except at a tribally-licensed or tribally-owned business operated on tribal land within the exterior boundaries of the Reservation.
402. *Sales Only on Tribal Land.* All liquor sales within the exterior boundaries of the Reservation shall be on Tribal Land, including leases thereon.
403. *Sales for Cash.* All liquor sales within the Reservation boundaries shall be on a cash only basis and no credit shall be extended to any person, organization, or entity, except that this provision does not prevent the use of major credit cards such as Visa, American Express, etc.
404. *Sale for Personal Consumption.* All sales shall be for the personal use and consumption of the purchaser. Resale of any alcoholic beverage purchased within the exterior boundaries of the Reservation is prohibited. Any person who is not licensed pursuant to this ordinance who purchases an alcoholic beverage within the boundaries of the Reservation and sells it, whether in the original container or not, shall be guilty of a violation of this ordinance and shall be subjected to paying damages to the Tribe as set forth herein.

Chapter V—Licensing

501. *Applicable for Tribal Liquor License Requirements.* No tribal license shall issue under this ordinance except upon a sworn application filed with the Committee containing a full and complete showing of the following:
   a. Satisfactory proof that the applicant is or will be duly licensed by the State of California.
   b. Satisfactory proof that the applicant is of good character and reputation among the people of the Reservation and that the applicant is financially responsible.
   c. The description of the premises in which the intoxicating beverages are to be sold, proof that the applicant is the owner of such premises, or lessee of such premises, for at least the term of the license.
   d. Agreement by the applicant to accept and abide by all conditions of the tribal license.
   e. Payment of $250.00 fee as prescribed by the Committee.
   f. Satisfactory proof that neither the applicant nor the applicant's spouse has ever been convicted of a felony.
   g. Satisfactory proof that notice of the application has been posted in a prominent, noticeable place on the premises where intoxicating beverages are to be sold for at least 30 days prior to consideration by the Committee and has been published at least twice in such local newspaper serving the community that may be affected by the license of the Tribal Chairman or Secretary may authorize. The notice shall state the date, time, and place when the application shall be considered by the Committee pursuant to section 502 of this ordinance.
502. *Hearing on Application for Tribal Liquor License.* All applications for a tribal liquor license shall be considered by the Committee in open session at which the applicant, his attorney, and any person protesting the application shall have the right to be present, and to offer sworn oral or documentary evidence relevant to the application. After the hearing, the Committee, by secret ballot, shall determine whether to grant or deny the application based on:
   (1) Whether the requirements of section 501 have been met; and
   (2) Whether the Committee, in its discretion, determines that granting the license is in the best interests of the Tribe.

In the event that the applicant is a member of the General Council, or a member of the immediate family of a General Council member, such member shall not vote on the application or participate in the hearings as a Committee member.

503. *Temporary Permits.* The Committee or their designee may grant a temporary permit for the sale of intoxicating beverages for a period not to exceed three (3) days to any person applying for the same in connection with a tribal or community activity, provided that the conditions prescribed in Section 504 of this ordinance shall be observed by the permittee. Each permit issued shall specify the types of intoxicating beverages to be

sold. Further, a fee of $25.00 will be assessed on temporary permits.

504. *Conditions of the Tribal License.* Any tribal license issued under this title shall be subject to such reasonable conditions as the Committee shall fix, including, but not limited to the following:
   a. The license shall be for a term not to exceed 1 year.
   b. The license shall at all times maintain an orderly, clean, and neat establishment, both inside and outside the licensed premises.
   c. The State of California shall have jurisdiction over offenses and civil causes of action committed on the licensed premises to the same extent that it has jurisdiction over offenses civil causes of action committed elsewhere within California, and the California criminal laws, and civil laws of general applicability to private persons or private property, shall have the same force and effect on the licensed premises as they have elsewhere in California.
   d. The licensed premises shall be subject to patrol by the tribal police department, and such other law enforcement officials as may be authorized under federal, California, or tribal law.
   e. The licensed premises shall be open to inspection by duly authorized tribal officials at all times during the regular business hours.
   f. Subject to the provisions of subsection "g" of this section, no intoxicating beverages shall be sold, served, disposed of, delivered, or given to any person, or consumed on the licensed premises except in conformity with the hours and days prescribed by the laws of the State of California, and in accordance with the hours fixed by the Committee, provided that the licensed premises shall not operate or open earlier or operate or close later than is permitted by the laws of the State of California.
   g. No liquor shall be sold within 200 feet of a polling place on tribal election days, or when a referendum is held of the people of the Tribe, and including special days of observation as designated by the Committee.
   h. All acts and transactions under authority of the tribal liquor license shall be in conformity with the laws of the State of California, and shall be in accordance with this ordinance and any tribal license issued pursuant to this ordinance.
   i. No person under the age permitted under the laws of the State of California shall be sold, served, delivered, given, or allowed to consume alcoholic beverages in the licensed establishment and/or area.
   j. There shall be no discrimination in the operations under the tribal license by reason of race, color, or creed.

505. *License Not a Property Right.* Notwithstanding any other provision of this ordinance, a tribal liquor license is a mere permit for a fixed duration of time. A tribal liquor license shall not be deemed a property right or vested right of any kind, nor shall the granting of a tribal liquor license give rise to a presumption of legal entitlement to the granting of such license for a subsequent time period.

506. *Assignment or Transfer.* No tribal license issued under this ordinance shall be assigned or transferred without the written approval of the Committee expressed by formal resolution.

Chapter VI—Rules, Regulations, and Enforcement

601. *Sales or Possession With Intent to Sell Without a Permit.* Any person who shall sell or offer for sale or distribute or transport in any manner, any liquor in violation of this ordinance, or who shall operate or shall have liquor in his possession with intent to sell or distribute without a permit, shall be guilty of a violation of this ordinance.

602. *Purchases From Other Than Licensed Facilities.* Any person within the boundaries of the Reservation who buys liquor from any person other than at a properly licensed facility shall be guilty of a violation of this ordinance.

603. *Sales to Persons Under the Influence of Liquor.* Any person who sells liquor to a person apparently under the influence of liquor shall be guilty of a violation of this ordinance.

604. *Consuming Liquor in Public Conveyance.* Any person engaged wholly or in part in the business of carrying passengers for hire, and every agent, servant or employee or such person who shall knowingly permit any person to drink any liquor in any public conveyance shall be guilty of an offense. Any person who shall drink any liquor in a public conveyance shall be guilty of a violation of this ordinance.

605. *Consumption or Possession of Liquor by Persons Under 21 Years of Age.* No person under the age of 21 years shall consume, acquire or have in his possession any alcoholic beverage. No person shall permit any other person under the age of 21 to consume liquor on his premises or any premises under his control except in those situations set out in this section. Any person violating this section shall be guilty of a separate violation of this ordinance for each and every drink so consumed.

606. *Sales of Liquor to Persons Under 21 Years of Age.* Any person who shall sell or provide liquor to any person under the age of 21 years shall be guilty of a violation of this ordinance for each sale or drink provided.

607. *Transfer of Identification to Minor.* Any person who transfers in any manner an identification of age to a minor for the purpose of permitting such minor to obtain liquor shall be guilty of an offense; provided, that corroborative testimony of a witness other than the minor shall be a requirement of finding a violation of this ordinance.

608. *Use of False or Altered Identification.* Any person who attempts to purchase an alcoholic beverage through the use of false or altered identification which falsely purports to show the individual to be over the age of 21 years shall be guilty of violating this ordinance.

609. *Violations of This Ordinance.* Any person guilty of a violation of this ordinance shall be liable to pay the Tribe a penalty not to exceed $500 per violation as civil damages to defray the Tribe's cost of enforcement of this ordinance. In addition to any penalties so imposed, any license issued hereunder may be suspended or cancelled by the Committee for the violation of any of the provisions of this ordinance, or of the tribal license, upon hearing before the Committee after 10 days notice to the licensee. The decision of the Committee shall be final.

610. *Acceptable Identification.* Where there may be a question of a person's right to purchase liquor by reason of his age, such person shall be required to present any one of the following issued cards of identification which shows his correct age and bears his signature and photograph:
   1. Driver's license of any state or identification card issued by any State Department of Motor Vehicles;
   2. United States Active Duty Military;
   3. Passport

611. *Possession of Liquor Contrary to This Ordinance.* Alcoholic beverages which are possessed contrary to the terms of this ordinance are declared to be contraband. Any tribal agent, employee, or officer who is authorized by the Committee to enforce this section shall have the authority to, and shall seize, all contraband.

612. *Disposition of Seized Contraband.* Any officer seizing contraband shall preserve the contraband in accordance with the appropriate California law code. Upon being found in violation of the ordinance by the Committee, the party shall forfeit all right, title and interest in the items seized which shall become the property of the Tribe.

Chapter VII—Taxes

701. *Sales Tax.* There is hereby levied and shall be collected a tax on each sale of alcoholic beverages on the Reservation in the amount of one percent (1%) of the amount actually collected, including payments by major credit cards. The tax imposed by this section shall apply to all retail sales of liquor on the Reservation and shall preempt any tax imposed on such liquor sales by the State of California.

702. *Payment of Taxes to Tribe.* All taxes from the sale of alcoholic beverages on the Reservation shall be paid over to the trust agent of the Tribe.

703. *Taxes Due.* All taxes for the sale of alcoholic beverages on the Reservation are due within thirty (30) days of the end of the calendar quarter for which the taxes are due.

704. *Reports.* Along with payment of the taxes imposed herein, the taxpayer shall submit an accounting for the quarter of all income from the sale or distribution of said beverages as well as for the taxes collected.

705. *Audit.* As a condition of obtaining a license, the licensee must agree to the review or audit of its books and records relating to the sale of alcoholic beverages on the Reservation. Said review or audit may be done annually by the Tribe through its agents or employees whenever, in the opinion of the Committee, such a review or audit is necessary to verify the accuracy of reports.

Chapter VIII—Profits

801. *Disposition of Proceeds.* The gross proceeds collected by the Committee from all licensing provided from the taxation of the sales of alcoholic beverages on the Reservation shall be distributed as follows:
   a. For the payment of all necessary personnel, administrative costs, and legal fees for the operation and its activities.
   b. The remainder shall be turned over to the Trust Account of the Tribe.

Chapter IX—Severability and Miscellaneous

901. *Severability.* If any provision or application of this ordinance is determined by review to be invalid, such adjudication shall not be held to render ineffectual the remaining portions of this title or to render such provisions inapplicable to other persons or circumstances.

902. *Prior Enactments.* And all prior enactments of the Committee which are inconsistent with the provisions of this ordinance are hereby rescinded.

903. *Conformance with California Laws.* All acts and transactions under this ordinance shall be in conformity with the laws of the State of California as that term is used in 18 U.S.C. 1161.

904. *Effective Date.* This ordinance shall be effective on June 26, 1995, such date as the Secretary of the Interior certifies this ordinance and publishes the same in the **Federal Register**.

Chapter X—Amendment

1001. This ordinance may only be amended by a majority vote of the General Council.

Chapter XI—Sovereign Immunity

1101. Nothing contained in this ordinance is intended to, nor does in any way limit, alter, restrict, or waive the Tribe's sovereign immunity from unconsented suit or action.

Dated: June 16, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–15529 Filed 6–23–95; 8:45 am]

BILLING CODE 4310–02–P

federal register

Monday
June 26, 1995

Part IV

Department of Education

Applications for New Awards for Fiscal Year 1995; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.294A]

Elementary School Foreign Language Incentive Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1995

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for an award under this program.

Purpose of Program: This program provides incentive payments for each public elementary school that provides students attending such school a program designed to lead to communicative competency in a foreign language.

Eligible Applicants: Public elementary schools. The Secretary strongly recommends that local educational agencies apply on behalf of schools within their jurisdiction.

Deadline for Transmittal of Applications: July 24, 1995.

Deadline for Intergovernmental Review: September 22, 1995.

Available Funds: $3,000,000.

Project Period: 12 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 75 (Direct Grant Programs).

(2) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(4) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(5) 34 CFR Part 81 (General Education Provisions Act—Enforcement).

(6) 34 CFR Part 82 (New Restrictions on Lobbying).

(7) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

Description of Program

In order to be eligible for an incentive payment under this program, a public elementary school must meet the requirements in section 7205 of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994 (Pub. L. 103–382, enacted October 20, 1994). A program shall be considered to be designed to lead to communicative competency in a foreign language if the program is comparable to one that provides at least 45 minutes of instruction in a foreign language at least four days per week throughout the academic year. The amount of a public elementary school's incentive payment is based on the number of students participating in the school's program that is designed to lead to communicative competency in a foreign language. An application must include the following: (1) Information that establishes the eligibility of the foreign language program at each of the elementary schools included in the application; and (2) the number of students participating in those programs at each of the elementary schools included in the application.

As used in section 7205 of the Act, a program designed to lead to communicative competency in a foreign language refers to a program that has a primary focus on foreign language instruction and not on other subject matters. The Secretary does not award incentive payments for programs that teach Native American languages.

To provide for the fair distribution of funds available under this program and for uniform counts across schools, the Secretary requests that a public elementary school indicate the number of students that were participating, as of the 1994–95 academic year, in its program that leads to communicative competency in a foreign language.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on March 13, 1995 (60 FR 16713).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA #84.294A, U.S. Department of Education, Room 6213, 600 Independence Avenue, SW., Washington, D.C. 20202–6510.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Eastern time) on the date indicated in this notice.

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS. INSTRUCTIONS FOR TRANSMITTAL OF APPLICATIONS:*

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA #84.294A, Washington, D.C. 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, D.C. time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA #84.294A, Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, D.C. 20202–4725.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt

Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–8493.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts, plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

PART I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

PART II: Budget Information—Non-Construction Programs (ED Form 524A) and instructions.

PART III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

School and Student Data Report Form.

Assurances—Non-Construction Programs (Standard Form 424B).

Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and Instructions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and Instructions. (NOTE: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and Instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A.)

All forms and instructions are included as Appendix A of this notice.

All applicants must submit ONE original signed application, including ink signatures on all forms and assurances and TWO copies of the application. Please mark each application as original or copy. No grant may be awarded unless a complete application form has been received.

For Further Information Contact: Petraine Johnson, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 600 Independence Avenue, SW. (Room 5627, Switzer Building), Washington, D.C. 20202–7242. Telephone (202) 205–8766. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 7515.

Dated: June 16, 1995.

Eugene E. Garcia,

Director, Office of Bilingual Education and Minority Languages Affairs.

BILLING CODE 4000–01–M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:
Application: ☐ Construction ☒ Non-Construction
Preapplication: ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name: | Organizational Unit:

Address (give city, county, state, and zip code): | Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify): _____

8. TYPE OF APPLICATION:
☒ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award; B. Decrease Award; C. Increase Duration; D. Decrease Duration; Other (specify): _____

9. NAME OF FEDERAL AGENCY:
U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 9 4A
TITLE: Elementary School Foreign Language Incentive Program

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date | Ending Date

14. CONGRESSIONAL DISTRICTS OF: a. Applicant | b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

SF 424 (REV 4-88) Back

U.S. DEPARTMENT OF EDUCATION BUDGET INFORMATION NON-CONSTRUCTION PROGRAMS	OMB Control No. 1875-0102 Expiration Date: 9/30/95
Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e):
For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f):
Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e):
Show the total budget request for each project year for which funding is requested.

Line 12, column (f):
Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Instructions for ED Form 524 (cont.)

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e):
For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f):
Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e):
Show the total matching or other contribution for each project year.

Line 12, column (f):
Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

BILLING CODE 4000-01-C

Instructions for Part III Application Narrative

Before preparing the Application Narrative an applicant should read carefully the authorizing statute and the information in this notice.

The narrative should provide sufficient information for the Secretary to determine that the foreign language program at each of the public elementary schools included in the application meets the requirements in section 7205 of the Elementary and Secondary Education Act.

The Secretary strongly suggests that the applicant submit charts or other visuals to provide information on the foreign language program at each of the public elementary schools included in the application.

The application narrative must not exceed 5 double-spaced, typed (on one side only) pages. The page limit applies only to the application narrative and not to the application forms and assurances. *Applications with narratives that exceed these page limits will not be considered for funding.*

Instruction for Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 23 to 32 hours per response, with an average of 25.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1885–0531, Washington, D.C. 20503.

(Information collection approved under OMB control number 1885–0531. Expiration date: 6/98.)

BILLING CODE 4000–01–M

U.S DEPARTMENT OF EDUCATION
OFFICE OF BILINGUAL EDUCATION AND MINORITY LANGUAGES AFFAIRS
ELEMENTARY FOREIGN LANGUAGE INCENTIVE PROGRAM

SCHOOL AND STUDENT DATA REPORT

INSTRUCTIONS: The SCHOOL AND STUDENT DATA REPORT FORM is to be used by local educational agencies to identify each public elementary school that provides a program that is designed to lead to communicative compentency in a foreign language and report the number of students participating in each program. A program shall be considered to be designed to lead to communicative competency if the program is comparable to a program that provides not less than 45 minutes of instruction in a foreign language not less than four days per week throughout the academic year (section 7205). Student data reported should be based on the number of students participating as of the 1994-95 academic year.

NAME OF LOCAL EDUCATIONAL AGENCY_____

NAME OF SCHOOL	GRADES	LANGUAGES	NUMBER OF STUDENTS
TOTAL NUMBER OF STUDENTS			

TYPE OR PRINT NAME OF AUTHORIZED LEA REPRESENTATIVE
SIGNATURE OF LEA REPRESENTATIVE

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted–

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known:* Congressional District, *if known:*	Congressional District, *if known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:* _____
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying Entity (*if individual, last name, first name, MI*):	b. Individuals Performing Services (*including address if different from No. 10a*) (*last name, first name, MI*):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment (*check all that apply*):	13. Type of Payment (*check all that apply*):
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment (*check all that apply*): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ Date: _____

Federal Use Only:

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Standard Form - LLL

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

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Standard Form - LLL-A

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503

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federal register

Monday
June 26, 1995

Part V

The President

Executive Order 12964—Commission on United States-Pacific Trade and Investment Policy

Federal Register
Vol. 60, No. 122
Monday, June 26, 1995

Presidential Documents

Title 3—

The President

Executive Order 12964 of June 21, 1995

Commission on United States-Pacific Trade and Investment Policy

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App.) (the "Act"), and in order to establish a Commission on United States-Pacific Trade and Investment Policy, it is hereby ordered as follows:

Section 1. *Establishment.* (a) There is established the Commission on United States-Pacific Trade and Investment Policy ("Commission"). The Commission shall be composed of 15 members to be appointed by the President. Members shall (1) be chosen from the private sector (businesses, unions, academic institutions, and nonprofit corporations); and (2) have substantial experience with selling agricultural products, manufactured goods, or high-value-added services to Asian and Pacific markets or be knowledgeable from their personal or professional experience about the trade barriers or their industry and government policies and practices, formal and informal, that have restricted access by U.S. business to Asian and Pacific markets.

(b) The President shall designate a Chairperson and Vice Chairperson from among the members of the Commission.

Sec. 2. *Functions.* (a) On or before February 1, 1996, the Commission shall report to the President on the steps the United States should take to achieve a significant opening of Japan, China, and other Asian and Pacific markets to U.S. business. The report also shall identify trade and investment impediments to U.S. business in Asian and Pacific markets and provide recommendations for reducing the impediments. The report's recommendations shall reflect the goal of securing increased access for U.S. business to Asian and Pacific markets, by the turn of the century, in such a way that a maximum number of high-wage jobs are created and maintained in the United States. The Commission also shall recommend to the President (1) measures to strengthen, if necessary, ongoing programs for regular monitoring of progress toward this goal, including the periodic assessment of the nature and scope of trade and investment impediments; and (2) realistic measurements of trade and investment activity in Asia and the Pacific, which consider all relevant factors, including the composition of trade and intracompany trade and investment patterns.

(b) The Commission shall decide by a three-fifths vote which recommendations to include in the report. At the request of any Commission member, the report will include that Commission member's dissenting views or opinions.

(c) The Commission may, for the purpose of carrying out its functions, hold meetings at such times and places as the Commission may find advisable.

Sec. 3. *Administration.* (a) To the extent permitted by law, the heads of executive departments, agencies, and independent instrumentalities shall provide the Commission, upon request, with such information as it may require for the purposes of carrying out its functions.

(b) Upon request of the Chairperson of the Commission, the head of any Federal agency or instrumentality shall, to the extent permitted by law and subject to the discretion of such head, (1) make any of the facilities and services of such agency or instrumentality available to the Commission;

and (2) detail any of the personnel of such agency or instrumentality to the Commission to assist the Commission in carrying out its duties.

(c) Members of the Commission shall serve without compensation for their work on the Commission. While engaged in the work of the Commission, members appointed from the private sector may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service (5 U.S.C. 5701–5707) to the extent funds are available for such purposes.

(d) To the extent permitted by law and subject to the availability of appropriations, the Department of Commerce shall provide the Commission with administrative services, facilities, staff, and other support services necessary for performance of the Commission's functions.

(e) The United States Trade Representative shall perform the functions of the President under the Act, except that of reporting to the Congress, in accordance with the guidelines and procedures established by the Administrator of General Services.

(f) The Commission shall adhere to the requirements set forth in the Act. All executive branch officials assigned duties by the Act shall comply with its requirements with respect to the Commission.

Sec. 4. *General Provision.* The Commission shall terminate 30 days after submitting its final report.

William J. Clinton

THE WHITE HOUSE,
June 21, 1995.

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CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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1, 2 (2 Reserved)	(869–026–00001–8)	$5.00	Jan. 1, 1995
3 (1994 Compilation and Parts 100 and 101)	(869–026–00002–6)	40.00	Jan. 1, 1995
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1995. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1994. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1994. The CFR volume issued January 1, 1993, should be retained.

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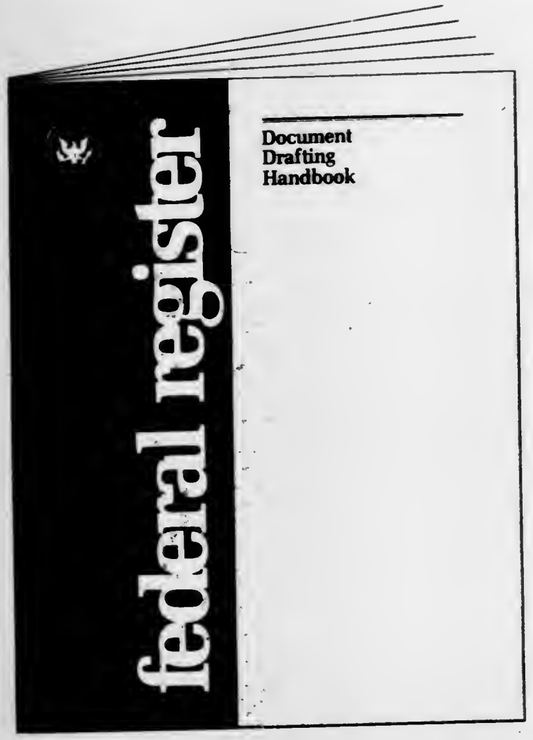
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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 451, 531, 550, 551, 591, and 630

RIN 3206–AG15

Incentive Awards; Pay and Leave Administration

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to incorporate certain incentive awards and pay and leave administration rules contained in the provisionally retained Federal Personnel Manual (FPM) material, which expired on December 31, 1994, into the Code of Federal Regulations (CFR) and to remove certain recordkeeping and reporting requirements.

DATES: The final rules are effective on July 27, 1995.

FOR FURTHER INFORMATION CONTACT: Barbara Colchao, (202) 606–2720, concerning questions about the final regulations for incentive awards in 5 CFR part 451, and Bryce Baker (202) 606–2858, concerning questions about the final regulations for pay and leave administration in 5 CFR parts 531, 550, 551, 591, and 630.

SUPPLEMENTARY INFORMATION: On December 28, 1994, OPM published interim regulations (59 FR 66629) to incorporate a small number of miscellaneous incentive awards and pay and leave administration provisions in the provisionally retained FPM, which expired on December 31, 1994, into the CFR.

The rules relate to—

(1) Incentive awards—cash award limitations, documentation of informal recognition items, and eligible award recipients;

(2) Application of the two-step promotion rule for promotions from GS–1 and GS–2 positions;

(3) Application of leave without pay towards the completion of waiting periods for within-grade increases;

(4) Counting travel time as "hours of work;"

(5) Sunday premium pay for periods of paid leave and excused absence;

(6) Payments during evacuation;

(7) Back pay computations;

(8) Computing cost-of-living allowances for employees receiving pay retention; and

(9) Leave for uncommon tours of duty.

These rules did not establish any new requirements, and they removed the recordkeeping requirements related to waiving the biweekly pay cap on premium pay and the reporting requirements for payments during evacuation.

The 60-day comment period ended on February 27, 1995. OPM received comments from one agency, one employee organization, and one individual. These comments, as well as certain technical changes in the final regulations, are summarized below.

Incentive Awards

An agency noted that the former, provisionally retained FPM material (FPM Chapter 451, Subchapter 3, section 3–2c) encouraging agencies to establish honorary awards for private citizens was not incorporated in regulation. The agency asked under what authority agencies could continue to grant awards to private citizens. Agencies may grant such awards under agency-specific authorities that would be appropriate depending on the nature of the contribution to be recognized. However, awards authorized by chapter 45 of title 5, United States Code, may be granted only to Federal employees or former Federal employees for contributions made while in the Federal service. To clarify that former Federal employees may receive awards authorized by 5 U.S.C. chapter 45 and reflect expired FPM material and statutory intent, OPM is amending 5 CFR 451.104(f) to include separated employees, as well as the legal heirs or estates of deceased employees, as eligible award recipients.

Sunday Premium Pay for Periods of Paid Leave and Excused Absence

An individual commented that part-time employees are not entitled to Sunday premium pay. OPM agrees. To clarify this, we have revised 5 CFR 550.171 and the definition of *Sunday work* in 5 CFR 550.103(o). This clarification is consistent with the information in expired Federal Personnel Manual Letter 550–79, which stated that part-time employees and employees who work intermittently are not entitled to premium pay for Sunday work; it also reflects a Comptroller General opinion regarding the compensation of part-time employees (46 Comp. Gen. 337 (1966)).

Leave for Uncommon Tours of Duty

An employee organization commented that the manner in which leave is to be charged to employees on uncommon tours of duty—specifically, firefighters who work 24-hour shifts—is not clear. In 5 CFR 630.210, the interim regulation provides agencies with the authority to require that an employee with an uncommon tour of duty must accrue and use leave on the basis of that uncommon tour of duty. Leave accrual must be directly proportional to the leave accrual rates in 5 U.S.C. 6303(a). Also, leave must be charged on an hour-for-hour basis for each hour of absence from the uncommon tour of duty. The regulation in 5 CFR 630.210 does not change the methodology for charging leave to employees on uncommon tours of duty that was previously published in the Federal Personnel Manual.

A firefighter whose leave is administered on the basis of a 144-hour biweekly tour of duty, and who has 15 or more years of service, accrues 374 hours of annual leave over a period of 26 biweekly pay periods (25 pay periods times 14 hours, plus 1 pay period times 24 hours), which equals 10 percent of the number of hours in 26 biweekly pay periods (3,744 hours). Similarly, an employee whose leave is administered on the basis of an 80-hour biweekly tour of duty, and who has 15 or more years of service, accrues 208 hours of annual leave over a period of 26 biweekly pay periods (26 pay periods times 8 hours), which also equals 10 percent of the number of hours in 26 biweekly pay periods (2,080 hours). This proportional relationship between the annual leave

accrual rates of the affected employees ensures equitable treatment.

In the interim regulations, section 630.210(a) states that "[o]ne hour (or appropriate fraction thereof) of leave shall be charged for each hour (or appropriate fraction thereof) of absence from the uncommon tour of duty." Since the leave accrual rates for firefighters on uncommon tours of duty have been adjusted to fully reflect their longer work schedule, an hour-for-hour charging methodology is necessary to maintain an equitable relationship with other employees. When an employee with 15 or more years of service who works 80 hours per day period takes 1 *week* of annual leave, the employee is charged 40 hours, or about 19 percent of the leave accrued in 1 year. Similarly, when a firefighter with 15 or more years of service who works 144 hours per pay period takes 1 week of annual leave, the employee is charged 72 hours, or about 19 percent of the leave accrued in 1 year. OPM believes the manner in which leave must be charged for employees on uncommon tours of duty was clearly stated in the interim regulation. Therefore, no change has been made in this provision of the final regulations.

Miscellaneous Amendments

The authority cited in 5 CFR 531.401(c) for within-grade increase purposes is being revised to give the correct citation. (The Executive order previously cited has been revoked.) The definition of *acceptable level of competence* in 5 CFR 531.403, for within-grade increase purposes, is being revised to refer to the next higher *rate* within the grade, as well as the next higher *step* of the grade, in order to address the situation of GM employees, whose rates of basic pay are between General Schedule step rates.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal employees and agencies.

List of Subjects in 5 CFR Parts 451, 531, 550, 551 and 630

Administrative practice and procedure, Claims, Decorations, medals, awards, Government employees, Law enforcement officers, Travel and transportation expenses, Wages.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, the interim rule amending parts 451, 531, 550, 551, 591, and 630 of title 5 of the Code of Federal Regulations, which was published at 59 FR 66629 on December 28, 1994, is adopted as final with the following changes:

PART 451—INCENTIVE AWARDS

1. The authority citation for part 451 continues to read as follows:

Authority: 5 U.S.C. 4501–4507.

2. In § 451.104, paragraph (f) is revised to read as follows:

§ 451.104 Policy.

* * * * *

(f) An award under this subpart may be granted to a separated employee or the legal heir(s) or estate of a deceased employee.

* * * * *

PART 531—PAY UNDER THE GENERAL SCHEDULE

3. The authority citation for part 531 is revised to read as follows:

Authority: 5 U.S.C. 5115, 5307, and 5338; sec. 4 of Pub. L. 103–89, 107 Stat. 981; and E.O. 12748, 56 FR 4521, 3 CFR 1991 Comp., p. 316;

Subpart A also issued under 5 U.S.C. 5304, 5305, and 5553; section 302 of the Federal Employees Pay Comparability Act of 1990 (FEPCA), Pub. L. 101–509, 104 Stat. 1462; and E.O. 12786, 56 FR 67453, 3 CFR, 1991 Comp., p. 376;

Subpart B also issued under 5 U.S.C. 5303(g), 5333, 5334(a), and 7701(b)(2);

Subpart C also issued under 5 U.S.C. 5304, 5305, and 5553; sections 302 and 404 of FEPCA, Pub. L. 101–509, 104 Stat. 1462 and 1466; and section 3(7) of Pub. L. 102–378, 106 Stat. 1356;

Subpart D also issued under 5 U.S.C. 5335(g) and 7701(b)(2);

Subpart E also issued under 5 U.S.C. 5336;

Subpart F also issued under 5 U.S.C. 5304, 5305(g)(1), and 5553; and E.O. 12883, 58 FR 63281, 3 CFR 1993 Comp., p. 682.

Subpart D—Within-Grade Increases

4. In § 531.401, paragraph (c) is revised to read as follows:

§ 531.401 Principal authorities.

* * * * *

(c) Section 5338 of title 5, United States Code, provides that "The Office of Personnel Management may prescribe regulations necessary for the administration" of General Schedule pay rates, including within-grade increases.

* * * * *

5. In § 531.403, the definition of *acceptable level of competence* is revised to read as follows:

§ 531.403 Definitions.

* * * * *

Acceptable level of competence means fully successful performance by an employee of the duties and responsibilities of his or her assigned position that warrants advancement of the employee's rate of basic pay to the next higher step of the grade or the next higher rate within the grade (as defined in this section) of his or her position, subject to the requirements of § 531.404 of this subpart.

* * * * *

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart A—Premium Pay

6. The authority citation for part 550, subpart A, is revised to read as follows:

Authority: 5 U.S.C. 5304 note, 5305 note, 5541(2)(iv), 5548, and 6101(c); E.O. 12748, 3 CFR 1991 Comp., p. 316.

7. In § 550.103, paragraph (o) is revised to read as follows:

§ 550.103 Definitions.

* * * * *

(o) *Sunday work* means nonovertime work performed by a full-time employee during a regularly scheduled daily tour of duty when any part of that daily tour of duty is on a Sunday. For any such tour of duty, not more than 8 hours of work are Sunday work, unless the employee is on a compressed work schedule, in which case the entire regularly scheduled daily tour of duty constitutes Sunday work.

* * * * *

8. Section 550.171 is revised to read as follows:

§ 550.171 Authorization of pay for Sunday work.

A full-time employee is entitled to pay at his or her rate of basic pay plus premium pay at a rate equal to 25 percent of his or her rate of basic pay for each hour of Sunday work (as defined in § 550.103(o)) and each hour that would be Sunday work but for the placement of the employee in paid leave or excused absence status.

[FR Doc. 95–15534 Filed 6–26–95; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[Docket No. TB–95–08]

Tobacco Fees and Charges for Mandatory Inspection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Tobacco Inspection Act requires the Secretary to fix and collect fees and charges for inspection and certification, the establishment of standards, and other services, including administrative and supervisory costs, at designated tobacco auction markets in all tobacco producing areas. The fees collected must, as nearly as possible, cover the Department's costs of performing these services and also maintain a reserve sufficient to cover at least 4 months of operation. The present fee of $.0070 per pound has been in effect since July 11, 1991, and is no longer sufficient to recover the costs of operating this activity. This final rule increases the fee to $.0083 per pound to reflect increased program costs and replenish the operating reserve. This increase does not affect the fees for import, export, or permissive inspection.

EFFECTIVE DATE: June 27, 1995.

FOR FURTHER INFORMATION CONTACT: John P. Duncan III, Director, Tobacco Division, AMS, USDA, Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 205–0567.

SUPPLEMENTARY INFORMATION: Notice was given (60 FR 25624–25625, Friday, May 12, 1995) that the Department proposed to amend the regulations governing the fee charged for mandatory inspection and certification of producer tobacco sold at designated auction markets throughout the tobacco producing areas. The proposed amendment would increase the fees and charges assessed by the Department for providing inspection and certification of tobacco at designated auction markets, establishment of standards, and other services. The new fee would cover the increased cost of operating the program, including administrative and supervisory cost, and replenish the operating reserve which has been drawn down for several years to cover the difference between revenue and obligations and is now below the required level of 4 months. Authority for these regulations is contained in the Tobacco Inspection Act (7 U.S.C. 511–511q). Interested parties were given an opportunity to comment on the proposed rule.

A total of 21 comments was received; 17 comments—the majority of which came from individual producers supported the increase; 2 comments from organizations representing producers opposed the increase, and 2 comments—1 from an organization representing producers and 1 from an individual who expressed concern over increasing costs to producers and recommended the Department look for ways to operate more efficiently.

The Department conducts a yearly review of the financial status of this program to determine whether the fee is sufficient. At the end of the 1994–95 marketing season, obligations are estimated at $12,969,000 but revenues are expected to reach only $11,647,000 resulting in a loss of $1,322,000 and reducing the operating reserve to 3.8 months. At the current level of service and fee structure, obligations for the 1995–96 marketing season are estimated at $13,754,000 with revenue of $12,155,000 for a loss of $1,599,000 and a further reduction in the operating reserve to 2.2 months. If the same level of service and fee structure continues for the 1996–97 season, the estimated loss would exceed $2,000,000 and the operating reserve would fall below 1 month.

The major items affecting obligations are increases in salaries, benefits, travel cost and overall administrative costs in each year since 1991. Revenue depends on the amount of tobacco sold on the designated auction markets. Production quotas for flue-cured and burley were relatively stable for the 1992 and 1993 crops; fell sharply in 1994 and were unchanged for burley for 1995 but increased 16 percent for flue-cured. However, the cost of providing the service has continued to rise.

An analysis of available data indicated that a fee of $.0083 per pound effective for the 1995 crop would provide sufficient revenue to exceed obligations by $560,000 for the 1995–96 marketing season and bring the operating reserve up to 4 months.

Information on program income and expenses was presented to the National Advisory Committee for Tobacco Inspection Services at a meeting on January 19, 1995, in Lexington, Kentucky, and again on April 6, 1995, in Raleigh, North Carolina. The National Advisory Committee, consisting of 14 members representing tobacco producers, and appointed by the Secretary of Agriculture, was established by law in 1981 to advise the Secretary on the level of services needed and the fees necessary to cover those services. The Committee recommended that the level of services remain unchanged and that the fee be increased to $.0075 per pound.

In considering the Committee's recommendation and the comments opposing the increase, the Department notes that while a fee of $.0075 per pound will result in smaller losses for the 1995 and 1996 marketing years, the operating reserve will continue to fall and would be below 2 months at the end of the 1996 season.

In view of the comments received, and since neither the current fee of $.0070 or the recommended fee of $.0075 per pound will cover the cost of providing the requested service and provide an adequate reserve, the Department is implementing a fee of $.0083 per pound beginning with the 1995 marketing season.

This rule has been determined not significant for purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Additionally, in conformance with the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) full consideration has been given to the potential economic impact upon small business. Most of the firms which would be affected by the rule are small businesses. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having gross annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The Administrator, Agricultural Marketing Service, has determined that this action would not have a significant economic impact on a substantial number of small entities. This rule would not substantially affect the normal movement of the commodity in the marketplace. Compliance with this rule would not impose substantial direct economic costs, recordkeeping, or personnel workload changes on small entities, and would not alter the market share or competitive positions of small entities relative to the large entities and would in no way affect normal

competition in the marketplace. Furthermore, the Department is required by law to fix and collect fees and charges to cover the Department's cost in operating the tobacco inspection program.

In addition, good cause has been found to make this rule effective less than 30 days after publication because it is necessary that the new fee be effective at the beginning of the marketing season which begins in mid-July. Therefore, in order to treat all types of tobacco on an equal basis, this final rule is made effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 29

Administrative practice and procedure, Advisory committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping requirements, Tobacco.

For the reasons set forth in the preamble, the regulations at 7 CFR part 29 are amended as follows:

Part 29—Tobacco Inspection

1. The authority citation for part 29, subpart B continues to read as follows:

Authority: 7 U.S.C. 511m and 511r.

§ 29.123 [Amended]

2. In § 29.123 paragraph (a) is amended by removing the words "$.0070 per pound" and adding in its place "$.0083 per pound."

Dated: June 21, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–15625 Filed 6–26–95; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 93–058–1]

Tuberculosis in Cattle and Bison; State Designation

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations concerning the interstate movement of cattle and bison because of tuberculosis by raising the designation of Kansas from a modified accredited State to an accredited-free State. We have determined that Kansas meets the criteria for designation as an accredited-free State.

DATES: Interim rule effective June 27, 1995. Consideration will be given only to comments received on or before August 28, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 93–058–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 93–058–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Mitchell A. Essey, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, 4700 River Road Unit 36, Riverdale, MD 20737–1231, (301) 734–7727.

SUPPLEMENTARY INFORMATION:

Background

The "Tuberculosis" regulations, contained in 9 CFR part 77 (referred to below as "the regulations"), regulate the interstate movement of cattle and bison because of tuberculosis. Bovine tuberculosis is the contagious, infectious, and communicable disease caused by *Mycobacterium bovis*. The requirements of the regulations concerning the interstate movement of cattle and bison not known to be affected with, or exposed to, tuberculosis are based on whether the cattle and bison are moved from jurisdictions designated as accredited-free States, modified accredited States, or nonmodified accredited States.

The criteria for determining the status of States (the term "State" is defined to mean any State, territory, the District of Columbia, or Puerto Rico) are contained in a document captioned "Uniform Methods and Rules—Bovine Tuberculosis Eradication," which has been made part of the regulations via incorporation by reference. The status of States is based on the rate of tuberculosis infection present and the effectiveness of a tuberculosis eradication program. A State must have no findings of tuberculosis in any cattle or bison in the State for at least 5 years to be designated as an accredited-free State.

Before publication of this interim rule, Kansas was designated in § 77.1 of the regulations as a modified accredited State. However, Kansas now meets the requirements for designation as an accredited-free State. Therefore, we are amending the regulations by removing Kansas from the list of modified accredited States in § 77.1 and adding it to the list of accredited-free States in that section.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted to change the regulations so that they accurately reflect the current tuberculosis status of Kansas as an accredited-free State. This will provide prospective cattle and bison buyers with accurate and up-to date information, which may affect the marketability of cattle and bison since some prospective buyers prefer to buy cattle and bison from accredited-free States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

Cattle and bison are moved interstate for slaughter, for use as breeding stock, or for feeding. There are 40,100 herds in Kansas with approximately 5,950,000 cattle and bison. Approximately 90 percent of the herd owners would be considered small businesses. Changing the status of Kansas may affect the marketability of cattle and bison from the State, since some prospective cattle and bison buyers prefer to buy cattle and bison from accredited-free States. This may result in some beneficial economic impact on some small entities. However, based on our experience in similar designations of other States, the impact should not be significant.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

Accordingly, 9 CFR part 77 is amended as follows:

PART 77—TUBERCULOSIS

1. The authority citation for part 77 continues to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, and 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 77.1 [Amended]

2. In § 77.1, in the definition for "Modified accredited state", paragraph (2) is amended by removing "Kansas,".

3. In § 77.1, in the definition for "Accredited-free state", paragraph (2) is amended by adding "Kansas," immediately before "Kentucky,".

Done in Washington, DC, this 20th day of June 1995.

Dale F. Schwindaman,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–15592 Filed 6–26–95; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–ANE–33; Amendment 39–9288; AD 95–13–08]

Airworthiness Directives; Pratt & Whitney Canada Model PT6A–67D Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Pratt & Whitney Canada (PWC) PT6A–67D turboprop engines, that currently requires inspections of the compressor turbine (CT) disk and blades for cracking and other irregularities using visual inspections and fluorescent penetrant inspections (FPI). That AD also requires amending the Beech Model 1900D Airplane Flight Manual (AFM) and installing a placard that alerts the pilot of a requirement to restrict continuous engine operation above 94.0% and below 97.1% N1 (Gas Generator RPM). In addition, that AD requires the installation of parts having an improved design including a CT stator assembly, a CT shroud housing, CT turbine blades, feather seals, and a small exit duct assembly . This amendment continues the requirements of the current AD and adds the requirements to remove the placard from the cockpit and to remove the amendment to the AFM after installation of the improved engine components. This amendment is prompted by reports from operators and the manufacturer stating that the engine RPM operating restriction is not required after installation of the improved engine components, and that this engine operating restriction can impact aircraft handling. The actions specified by this AD are intended to prevent aircraft handling problems due to imposition of the engine RPM restriction.

DATES: Effective July 12, 1995.

The incorporation by reference of certain publications listed in the regulations was approved by the Director of the Federal Register as of June 15, 1994.

Comments for inclusion in the Rules Docket must be received on or before August 28, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–ANE–33, 12 New England Executive Park, Burlington, MA 01803–5299.

The service information referenced in this AD may be obtained from . This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark A. Rumizen, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7137, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: On May 16, 1994, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 94–10–02, Amendment 39–8909 (59 FR 25295, May 16, 1994), applicable to Pratt & Whitney Canada (PWC) PT6A–67D turboprop engines, to require deblading the compressor turbine (CT) disk; and inspecting the entire disk surface area and fir tree areas of the CT blades for cracking and the trailing edge of the blade airfoil section for irregularities, using visual inspections and fluorescent penetrant inspections (FPI). These inspections are required until installation of parts having an improved design turbine blades, feather seals, and a small exit duct assembly. That AD also requires amending the Beech Model 1900D Airplane Flight Manual (AFM) by inserting requirements that describe restricting continuous engine operation above 94.0% and below 97.1% N1 (Gas Generator RPM); and installing a placard that alerts the pilot of this restriction. That action was prompted by reports of CT blade failures due to high cycle fatigue (HCF) fractures in the fir tree area of the blade while exposed to normal engine vibrations and by the manufacturer developing new design improvements that will reduce the susceptibility of the CT blades to HCF damage. That condition, if not corrected, could result in aircraft handling problems due to imposition of the engine RPM restriction.

Since the issuance of that AD, operators of Beech 1900D aircraft and the manufacturer have stated that the engine RPM operating restriction is not required after installation of the improved engine components, and that the engine operating restriction can impact aircraft handling. The placard and AFM amendment currently restrict continuous engine operation above 94.0% and below 97.1% N1, where continuous operation is defined as time

periods exceeding 5 minutes. In some situations, this restriction could require the pilot to adjust the engine power level during critical flight segments, such as takeoff, thus increasing pilot workload. Therefore, this superseding AD repeats the compliance requirements of the current AD, and adds the requirement to remove the placard from the cockpit and remove the amendment to the AFM after installation of the improved engine components.

This engine model is manufactured in Canada and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

PWC has issued Service Bulletin (SB) No. 14128, Revision 3, dated April 19, 1993, that specifies procedures for CT blade inspections; SB No. 14132, Revision 1, dated May 12, 1993, that specifies procedures for CT stator vane replacement; and SB 14142, Revision 1, dated May 12, 1993, that specifies procedures for CT blade replacement. Transport Canada classified these service bulletins as mandatory and issued AD CF–92–25–R1, dated June 1, 1993, in order to assure the airworthiness of these PWC PT6A–67D engines in Canada.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of this same type design, this AD supersedes AD 94–10–02 to continue the requirements of the current AD and add the requirements to remove the placard from the cockpit and to remove the amendment to the AFM after installation of the improved engine components. The actions are required to be accomplished in accordance with the SB's described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–ANE–33." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–8909, (59 FR 25295, May 16, 1994), and by adding a new airworthiness directive, Amendment 39–9288, to read as follows:

95–13–08 Pratt & Whitney Canada: Amendment 39–9288. Docket 95–ANE–33. Supersedes AD 94–10–02, Amendment 39–8909.

Applicability: Pratt & Whitney Canada (PWC) Model PT6A–67D turboprop engines with serial numbers prior to PC–E114100, installed on but not limited to Beech Model 1900D airplanes.

Note: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (o) to request approval from the Federal Aviation Administration (FAA). This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any engine from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent aircraft handling problems due to imposition of the engine RPM restriction, accomplish the following:

(a) For those operators that have previously complied with AD 94–10–02, this AD requires compliance with only paragraph (n).

(b) Prior to further flight, amend the Beech Model 1900D Aircraft Flight Manual (AFM), Part Number (P/N) 129–590000–3, by inserting the following requirements between pages 2–4 and 2–5:

"ENGINE OPERATING LIMITATIONS

Gas Generator RPM (N1)—Continuous operation of the gas generator between 94.0% and 97.1% is prohibited.

Notes

1. This limitation does not prohibit the use of N1's between 94.0% and 97.1% when the pilot in command determines that the power setting is required for the safe operation of the airplane. If such occurrences exceed 5 minutes, the engine(s) must be inspected in accordance with Pratt & Whitney Canada Service Bulletin No. 14128, Revision 3, dated April 19, 1993.

2. This limitation does not prohibit the use of static Take-Off Power and Maximum Continuous Power between 94.0% and 97.1% N1 to meet the required Take-Off performance. If such occurrences exceed 5 minutes, the engine(s) must be inspected in accordance with Pratt & Whitney Canada Service Bulletin No. 14128, Revision 3, dated April 19, 1993.

3. Operation at 94.0% and below, and at 97.1% and above are permitted. Continuous operation at 94.1% through 97.0% is prohibited.

4. "Continuous Operation" means time periods exceeding 5 minutes.

5. High Speed Cruise Power Tables found in the Pilot's Operating Manual may produce N1's in the prohibited range. Flights should be planned using Intermediate or Long Range Power settings.

6. The goal of the operator should be to keep the total time of operation in the prohibited range to the absolute minimum, since the effects of operating between N1's of 94.0% and 97.1% are cumulative.

PLACARDS

Located in front of the pilot on the aft edge of the glareshield between the Master Caution annunciator and the fire extinguisher control switch:

CONTINUOUS OPERATION BETWEEN 94.0% AND 97.1% N1 IS PROHIBITED SEE AFM"

(c) Compliance with the requirements of paragraph (b) of this AD may also be accomplished by inserting a copy of this AD into the Beech Model 1900D AFM.

(d) Prior to further flight, install the placard as specified in paragraph (b) of this AD.

(e) For engines that have not been inspected prior to the effective date of this AD in accordance with PWC SB No. 14128, Revision 1, dated November 13, 1992, or debladed and inspected in accordance with PWC SB No. 14128, Revision 2, dated December 22, 1992, or PWC SB No. 14128, Revision 3, dated April 19, 1993, accomplish the following:

(1) For engines with Serial Numbers PC-E114001 to PC-E114044, within 25 hours time in service (TIS) after the effective date of AD 94–10–02, June 15, 1994, deblade the CT disk, inspect the entire disk surface area and fir tree area of the CT blades for cracking and the trailing edge of the blade airfoil section for irregularities, and replace, if necessary, with serviceable parts, in accordance with the Accomplishment Instructions of PWC SB No. 14128, Revision 3, dated April 19, 1993.

(2) For engines with Serial Numbers PC–E114045 to PC–E114099, within 50 hours TIS after the effective date of AD 94–10–02, June 15, 1994, deblade the CT disk, inspect the entire disk surface area and fir tree area of the CT blades for cracking, and replace, if necessary, with serviceable parts, in accordance with the Accomplishment Instructions of PWC SB No. 14128, Revision 3, dated April 19, 1993.

(f) For engines that have been inspected in accordance with PWC SB No. 14128, Revision 1, dated November 13, 1992, prior to the effective date of this AD, deblade the CT disk, inspect the entire disk surface area and fir tree area of the CT blades for cracking, and replace, if necessary, with serviceable parts, in accordance with the Accomplishment Instructions of PWC SB No. 14128, Revision 3, dated April 19, 1993, as follows:

(1) For blade sets with greater than 600 hours TIS since new on the effective date of AD 94–10–02, June 15, 1994, deblade, inspect, and replace, if necessary, within the next 50 hours TIS after the effective date of AD 94–10–02, June 15, 1994.

(2) For blade sets with greater than or equal to 250 hours TIS, and less than or equal to 600 hours TIS, since new, on the effective date of AD 94–10–02, June 15, 1994, deblade, inspect, and replace, if necessary, within the next 100 hours TIS after the effective date of AD 94–10–02, June 15, 1994.

(3) For blade sets with less than 250 hours TIS since new on the effective date of AD 94–10–02, June 15, 1994, deblade, inspect, and replace, if necessary, within the next 250 hours TIS after the effective date of AD 94–10–02, June 15, 1994.

(g) For uninstalled CT disk and blade assemblies that have not been inspected in accordance with the Accomplishment Instructions of PWC SB No. 14128, Revision 2, dated December 22, 1992, or PWC SB No. 14128, Revision 3, dated April 19, 1993, in the preceding 250 hours TIS from the effective date of AD 94–10–02, June 15, 1994, deblade the CT disk, inspect the entire disk surface area and fir tree area of CT blades for cracking, and replace, if necessary, with serviceable parts, in accordance with the Accomplishment Instructions of PWC SB No. 14128, Revision 3, dated April 19, 1993, prior to installation.

(h) For engines with CT disk and blade assemblies that have been debladed and inspected in accordance with the Accomplishment Instructions of PWC SB No. 14128, Revision 2, dated December 22, 1992, or PWC SB No. 14128, Revision 3, dated April 19, 1993, prior to the effective date of AD 94–10–02, June 15, 1994, within 250 hours TIS, since the last deblading and inspection, deblade the CT disk, inspect the entire disk surface area and fir tree area of CT blades for cracking, and replace, if necessary, with serviceable parts, in accordance with the Accomplishment Instructions of PWC SB No. 14128, Revision 3, dated April 19, 1993.

(i) For CT disk and blade assemblies that have been debladed and inspected in accordance with paragraphs (e), (f), (g), and (h) of this AD, deblade the CT disk, reinspect the entire disk surface area and fir tree area of CT blades for cracking, and replace, if necessary, with serviceable parts, in accordance with the Accomplishment Instructions of PWC SB No. 14128, Revision 3, dated April 19, 1993, at intervals not to exceed 250 hours TIS since the last deblading and inspection performed in accordance with the Accomplishment Instructions of PWC SB No. 14128, Revision 3, dated April 19, 1993.

(j) Install a CT stator assembly, a CT shroud housing, and a small exit duct assembly in accordance with PWC SB No. 14132, Revision 1, dated May 12, 1993, at the next shop visit after the effective date of this AD, or within 30 days after the effective date of this AD, whichever occurs first.

(k) Install CT blades and feather seals in accordance with PWC SB No. 14142, Revision 1, dated May 12, 1993, at the next shop visit after the effective date of this AD, or 30 days after the effective date of this AD, whichever occurs first.

(l) For the purpose of this AD, a shop visit is defined as when major engine flanges are separated.

(m) Installation of improved hardware in accordance with paragraphs (j) and (k) of this AD constitutes terminating action for the inspections required by paragraphs (e) through (i) of this AD.

(n) For aircraft equipped with engines that have complied with paragraphs (j) and (k) of this AD, or AD 94–10–02, accomplish the following:

(1) Remove the amendment to the Beech Model 1900D AFM, P/N 129–590000–3, described in paragraphs (b) or (c) of this AD.

(2) Remove the placard described in paragraph (d) of this AD.

(o) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative method of compliance with this AD, if any, may be obtained from the Engine Certification Office.

(p) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(q) The inspections and modifications shall be done in accordance with the following SB's:

Document No.	Pages	Revision	Date
PWC SB No. 14128 ..... Total pages: 5.	1–5	3	April 19, 1993.
PWC SB No. 14132 ..... Total pages: 6.	1–6	1	May 12, 1993.
PWC SB No. 14142 ..... Total pages: 7.	1–7	1	May 12, 1993.

This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney Canada, 1000 Marie-Victorin, Longueil, Quebec, Canada J4G 1A1. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

(r) This amendment becomes effective on July 12, 1995.

Issued in Burlington, Massachusetts, on June 15, 1995.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–15558 Filed 6–23–95; 10:11 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 92–AWA–6]

Alteration of the Charlotte Class B Airspace Area; North Carolina

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: On May 17, 1995, the Federal Aviation Administration (FAA) published a final rule altering the Class B airspace area at Charlotte, NC. This action delays the effective date of the final rule to coincide with the scheduled publication date of the appropriate aeronautical chart.

EFFECTIVE DATE: Effective on publication. The effective date of the final rule at 60 FR 26594 is delayed until 0901 UTC, August 17, 1995.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION: On May 17, 1995, the FAA published a final rule altering the Charlotte, NC, Class B airspace area (60 FR 26594) with an effective date of July 20, 1995. This action delays the effective date for the final rule to August 17, 1995, to coincide with the scheduled publication date of the appropriate aeronautical chart.

Because the public needs to be aware of the postponement immediately, notice and public procedure are impracticable and good cause exists for making postponement effective in less than 30 days.

Correction of Final Rule

In consideration of the foregoing, effective on the date of this publication, the effective date of Airspace Docket No. 92–AWA–6 altering the Charlotte, NC, Class B airspace area (60 FR 26594; May 17, 1995); is delayed from 0701 UTC, July 20, 1995, to 0901 UTC, August 17, 1995.

Issued in Washington, DC, on June 13, 1995.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–15714 Filed 6–26–95; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 71

[Airspace Docket No. 95–ASO–10]

Amendment to Class E Airspace; Memphis, TN

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment modified the Class E airspace area at Memphis, TN, to accommodate a VOR RWY 16 Standard Instrument Approach Procedure (SIAP) for the General DeWitt Spain Airport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for instrument flight rules (IFR) operations at the airport. The operating status of the airport will change from VFR to include IFR operations concurrent with the publication of the SIAP.

EFFECTIVE DATE: 0901 UTC, September 14, 1995.

FOR FURTHER INFORMATION CONTACT: Stanley Zylowski, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

History

On April 10, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by modifying Class E airspace at Memphis, TN (60 FR 18038). This action would provide adequate Class E airspace for IFR operations at General DeWitt Spain Airport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies Class E airspace at Memphis, TN, to accommodate a VOR RWY 16 SIAP and for IFR operations at the General DeWitt Spain Airport. The operating status of the airport will change from VFR to include IFR operations concurrent with publication of the SIAP.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subject in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, effective September 16, 1994, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet Above the Surface of the Earth

* * * * *

ASO TN E5 Memphis, TN

Memphis International Airport, TN
(Lat. 35°02'45" N, long. 89°58'41" W)
Twinkle Town Airport
(Lat. 34°56'00" N, long. 90°10'00" W)
Olive Branch Airport
(Lat. 34°58'44" N, long. 89°47'13" W)
West Memphis Municipal Airport
(Lat. 35°08'11" N, long. 90°14'04" W)
General DeWitt Spain Airport
(Lat. 35°12'05" N, long. 90°03'05" W)
Elvis NDB
(Lat. 34°57'13" N, long. 89°58'26" W)
West Memphis NDB
(Lat. 35°08'22" N, long. 90°13'57" W)

That airspace extending upward from 700 above the surface within an 8-mile radius of Memphis International Airport, and within 4 miles each side of the 179° bearing from the Elvis NDB extending from the 8-mile radius to 7 miles south of the NDB, and within a 6.5-mile radius of Twinkle Town Airport, and within a 7.5-mile radius of Olive Branch Airport, and within a 6.5-mile radius of West Memphis Municipal Airport, and within 2.5 miles each side of the 198° and 352° bearings from the West Memphis NDB extending from the 6.5-mile radius to 7.4 miles north and south of the NDB, and within a 6.4-mile radius of General DeWitt Spain Airport; excluding that airspace within the Millington, TN Class E Airspace Area.

* * * * *

Issued in College Park, Georgia, on June 14, 1995.

Stanley Zylowski,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 95–15717 Filed 6–26–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 95–ASO–4]

Amendment to Class E Airspace; Smithfield, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the airspace description and the geographic position coordinates of a final rule that was published in the **Federal Register** on April 27, 1995, Airspace Docket No. 95–ASO–4. The description as published in the Federal Register on April 27, 1995, inadvertantly states that the airspace extends upward from the surface instead of from 700 feet above the surface, and incorrectly depicts the latitude of the Jnall NDB as 35°26'25" instead of 35°36'25".

EFFECTIVE DATE: 0901 UTC, July 20, 1995.

FOR FURTHER INFORMATION CONTACT: Stanley Zylowski, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 95–10390, Airspace Docket No. 95–ASO–4, published on April 27, 1995 (60 FR 20623), modified Class E airspace at Smithfield, NC, to provide adequate Class E airspace for IFR operations at Johnston County Airport. The description as published in the **Federal Register** on April 27, 1995, inadvertantly states that the airspace extends upward from the surface instead of from 700 feet above the surface, and incorrectly depicts the latitude of the Jnall NDB as 35°26'25" instead of 35°36'25". This action corrects these errors.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the airspace description and the geographic position coordinates for the Class E airspace area at Smithfield, NC, as published in the **Federal Register** on April 27, 1995 (60 FR 20623), (Federal Register Document 95–10390; page 20623, column 3), and the description in FAA Order 7400.9B, which is incorporated by reference in 14 CFR 71.1, are corrected as follows:

§ 71.7 [Corrected]

* * * * *

ASO NC E5 Smithfield, NC [Corrected]

Johnston County Airport, NC
(Lat. 35°32'27" N, long. 78°23'25" W)
Jnall NDB
(Lat. 35°36'25" N, long. 78°21'16" W)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Johnston County Airport and within 2.4 miles each side of the 024° bearing from the Jnall NDB, extending from the 7.5-mile radius to 7 miles northeast of the NDB.

* * * * *

Issued in College Park, Georgia, on June 9, 1995.

Stanley Zylowski,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 95–15716 Filed 6–26–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 93–ASO–20]

Establishment of Class E Airspace, Cocoa, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes Class E airspace at Cocoa, FL. A NDB RWY 11 Standard Instrument Approach Procedure (SIAP) has been developed for Merritt Island Airport. Controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for instrument flight rules (IFR) operations at the airport. The operating status of the airport will change from VFR to include IFR operations concurrent with publication of the SIAP.

EFFECTIVE DATE: 0901 UTC, September 14, 1995.

FOR FURTHER INFORMATION CONTACT: Stanley Zylowski, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

History

On October 26, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace at Cocoa, FL, (58 FR 57570). This action

will provide adequate Class E airspace for IFR operations at Merritt Island Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Cocoa, FL, to accommodate at NDB RWY 11 SIAP and for IFR operations at Merritt Island Airport. The operating status of the airport will be changed from VFR to include IFR operations concurrent with publication of the SIAP.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet Above the Surface of the Earth

* * * * *

ASO FL E5 Cocoa FL [New]

Merritt Island Airport, FL
(Lat 28°20'30"N, long. 80°41'08"W)
Merritt Island NDB
(Lat 28°20'27"N, long. 80°41'18"W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Merritt Island Airport and within 2.5 miles each side of the 127° bearing from the Merritt Island NDB, extending from the 6.3-mile radius to 7 miles northeast of the NDB; excluding that airspace within the Titusville, FL, and Melbourne, FL, Class E airspace areas.

* * * * *

Issued in College Park, Georgia, on June 16, 1995.

Stanley Zylowski,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 95–15715 Filed 6–26–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 189

[Docket Nos. 82P–0371 and 91N–0165]

Lead-Soldered Food Cans

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its food additive regulations to prohibit the use of lead solder to manufacture cans for packaging foods. FDA concludes that the available toxicological and exposure data for lead demonstrate that the use of lead solder to manufacture cans for packaging food may be injurious to the public health, particularly that of fetuses, infants, and children. This final regulation also responds to a citizen petition requesting that the agency require that warning labels be placed on food cans that contain lead solder.

DATES: *Effective:* December 27, 1995. Written objections and requests for a hearing by July 27, 1995. Compliance date for affected products initially introduced or initially delivered for introduction into interstate commerce is December 27, 1995. Existing stocks of lead-soldered canned foods will be allowed to be offered for sale until June 27, 1996, so long as the level of lead in the food packaged in such cans is not such that the food may be rendered injurious to health.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Sandra L. Varner, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3093.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 21, 1993 (58 FR 33860), FDA published a proposal to prohibit the use of lead solder to manufacture food cans. The proposal was in response to the agency's determination that: (1) The current daily dietary lead intakes of infants and children approach or may exceed the provisional total tolerable intake level (PTTIL) that the agency has established for lead for these population groups; (2) the use of lead solder in food cans adds lead to food which may render it injurious to health, particularly that of fetuses, infants, and children; and (3) lead solder is not required to manufacture food cans and can be avoided. Therefore, the agency proposed not to codify in its regulations the prior sanction for lead solder used in food cans but to prohibit this use.

In a notice published in the **Federal Register** of April 1, 1993 (58 FR 17233), the agency announced emergency action levels for lead in food packaged in lead-soldered cans. These action levels are an interim measure to protect infants and young children from adverse effects that could result from regular consumption of foods packaged in lead-soldered cans, pending completion of the rulemaking to prohibit the use of lead solder in food cans. After the 1-year period allowed for sale of existing stocks of lead-soldered canned foods, these emergency action levels will no longer be needed and will be considered as withdrawn by the agency.

This final rule amends the food additive regulations to prohibit the use of lead solder in cans to package food. In addition, with completion of this rulemaking, FDA is responding to a citizen petition requesting that the agency require warning labels on food cans that contain lead solder, because the ban on the use of lead solder in food cans renders the labeling issue moot.

II. Discussion of Comments

In response to the notice of proposed rulemaking to prohibit the use of lead solder in food cans, FDA received eight comments. The comments were from a labor union, a State Government, an individual, two nonprofit public interest organizations, and three trade associations representing the can manufacturing industry, the food industry, and the Danish meat-canning industry.

One comment agreed that documentation clearly supports FDA's finding that a prior sanction exists for lead solder used in metal food packaging. All eight comments supported FDA's proposal to prohibit the use of lead solder in cans that are used to hold food. One comment submitted economic data on the cost to Danish meat canners of switching to other canning technologies. This comment is discussed in section IV. of this document. Other issues raised by the comments, and the agency's responses to them, are set forth below.

1. One comment stated that lead solder is incorrectly described in the proposed regulation as being "* * * used in the construction of the metal ends of food cans." The comment explained that, although lead solder was historically used to seal both the end and side seams of metal cans, current production of lead-soldered containers involves use of lead solder only to seal side seams of the container. The comment suggested that the regulation state that "Lead solders * * * are used in the construction of the side seams of food cans."

The agency agrees that the language in the regulation should be clarified. However, even though lead solder is currently used to seal only side seams of containers, FDA is prohibiting all uses of lead solder in food cans. Therefore, FDA is modifying the regulation to read: "Lead solders are alloys of metals that include lead and are used in the construction of metal food cans." This language clarification does not affect the intent or scope of the regulation.

2. One comment disagreed with language in the June 21, 1993, proposed rule, characterizing the agency's proposed action to ban the use of lead solder in food cans as a proposal to "revoke" the prior sanction for this use of lead solder. The comment contended that although §§ 181.1(b) and 181.5(c) (21 CFR 181.1(b) and 181.5(c)) provide that the agency may prohibit the use of a prior-sanctioned ingredient if scientific data or information show that use of the ingredient may be injurious to health, the agency cannot "revoke" a prior sanction. The comment stated that a prior sanction for the use of a food ingredient is based solely on its recognized use prior to enactment of the Food Additives Amendment of 1958 (to the Federal Food, Drug, and Cosmetic Act (the act)), and that revocation of a prior sanction is inconsistent with the meaning and intent of the law.

FDA considers the comment to be making a semantic point that ultimately has no effect on the agency's action. As the comment recognizes, FDA's regulations in § 181.1(b) provide that if scientific data or information show that use of a prior-sanctioned food ingredient may be injurious to health, and thus is in violation of section 402 of the act (21 U.S.C. 342), FDA can prohibit use of the ingredient in food. If the agency prohibits use of a prior-sanctioned food ingredient, this action has the effect of revoking the prior sanction for that use of the ingredient.

Further, § 181.5(c) states that known prior sanctions for food ingredients shall be the subject of a regulation, and that this regulation may be revoked to prohibit use of the ingredient to prevent adulteration of food in violation of section 402 of the act. If a regulation for the prior-sanctioned use of a food ingredient is revoked to prevent such adulteration, the prior sanction for that use is in effect also revoked.

Thus, the agency believes that revocation of a prior-sanctioned use is consistent with the intent of the regulations and the act. To disagree with this conclusion is tantamount to saying that FDA does not have the authority to determine whether a food ingredient can be used safely. This is obviously not true.

3. One comment requested that the effective date for the ban on the introduction or delivery for introduction of lead-soldered canned foods into interstate commerce be extended to 24 months after publication of a final rule in the **Federal Register**. The comment requested the extension to allow conversion of the meat can soldering lines in Denmark to other canning technologies. The comment estimated that the conversion of the meat can lines would be completed by the end of 1995.

The effective date for banning the use of lead solder in food cans, that FDA proposed in the document published in the **Federal Register** of June 21, 1993 (58 FR 33860), was based on a recognition that it might take some time for the domestic and foreign food industries to convert their equipment. However, the agency's primary concern in establishing an effective date for this action is the protection of the public health. As stated in the June 21, 1993, proposed rule, FDA has determined that there is a need to control dietary lead intake, especially for fetuses, infants, and children, because exposure to very low lead levels has been associated with adverse health effects. The current daily dietary lead intakes of infants and children approach or may exceed the PTTIL that the agency has established for lead for these population groups. (Lead levels that exceed the PTTIL are likely to result in adverse health effects.) The use of lead solder in food cans adds lead to food, and available toxicological and exposure data establish that the lead may render the food injurious to health and, therefore, adulterated under section 402(a)(1) of the act. Further, lead solder is not required to manufacture food cans, and therefore, its use is avoidable.

Over the years, the agency has expressed its concern about dietary exposure to lead resulting from the use of lead-soldered cans for food. In the 1970's, the agency worked with the evaporated milk industry, the infant food industry, and manufacturers of juices for infants to establish voluntary quality assurance programs to reduce the levels of lead in their canned products. These efforts were discussed in an advanced notice of proposed rulemaking (ANPRM) published in the **Federal Register** of August 31, 1979 (44 FR 51233). In this ANPRM, FDA also announced its intent to establish action levels for food packaged in lead-soldered cans. The agency's goal was to reduce the dietary lead intake resulting from use of lead-soldered food cans by at least 50 percent within 5 years.

FDA has been in direct contact with foreign countries, including Denmark, that might export food in lead-soldered cans to the United States. Beginning in mid-1990, the agency sent letters to over 65 nations, reminding U.S. trading partners that FDA has made efforts over the past two decades to reduce the levels of lead in the U.S. food supply, and that U.S. food manufacturers were voluntarily discontinuing the use of lead solder in cans for packaging food. The agency also said that it was concerned about dietary lead exposure from lead-soldered canned foods imported from other countries. The agency has also held numerous discussions at world forums over the past few years regarding the need to reduce dietary exposures to lead, particularly that resulting from use of lead-soldered cans for food.

At a meeting held on July 7, 1992, the Mexican Government informed FDA that its food industry intended to eliminate use of lead-soldered cans by October, 1992. (In a followup letter dated June 8, 1993, the agency was informed that 90 percent of Mexican can manufacturers do not use lead solder (Ref. 1).) In response to our letters of 1990 and 1991 sent to U.S. trading partners, Brazil projected that lead-soldered cans would not be used in that country by early 1991 (Ref. 2). Information received from Poland (Ref. 3) and Guatemala (Ref. 4) indicated that their food industries were intending to convert to nonlead packaging in 1992. The Hungarian Government estimated that no foods would be packaged in lead-soldered cans in its country by the end of 1993, at the latest (Ref. 5).

Thus, through cooperative programs with food industries, notices and proposed rules published in the **Federal Register**, letters to foreign nations, and discussions held at world forums, FDA has provided adequate notice of its concerns about the use of lead solder in cans used for food. In addition, U.S. food manufacturers have already eliminated use of lead solder in cans for food, and several foreign governments have stated that their food industries intended to discontinue use of lead-soldered cans by the end of 1993, at the latest. The agency therefore concludes that the effective date of 6 months after the publication of a final rule for the ban on the use of lead solder in food cans is achievable and equitable. The agency also notes that, given the date of publication of this final rule, the ban will not be effective any earlier than the beginning of 1996. This timeframe coincides with the time in which the comment predicted that conversion of the meat can lines in Denmark would be completed.

Based on the above considerations, in particular the need to protect the public health, the agency concludes that the effective date for the final rule prohibiting the use of lead solder in food cans from being introduced or delivered for introduction into interstate commerce should not be extended to 24 months after publication of a final rule in the **Federal Register**, as requested by the comment.

4. One comment from a trade association supported FDA's proposal to prohibit foods in lead-soldered cans from being introduced or delivered for introduction into interstate commerce 6 months after publication in the **Federal Register** of a final rule on this action and to allow existing stocks of lead-soldered canned foods to be offered for sale within 1 year of the date of publication of the final rulemaking. The comment stated that if the 6-month effective date applies to initial introduction or initial delivery for introduction into interstate commerce, the proposed effective dates are equitable for both domestic and foreign food manufacturers.

The agency confirms that the 6-month effective date is applicable to initial introduction and initial delivery for introduction into interstate commerce of foods in lead-soldered cans. Based on this comment and the issues raised in addressing comment 3 above, the agency concludes that the ban on the initial introduction and initial delivery for introduction into interstate commerce of foods in lead-soldered cans should be effective 6 months after publication of a final rule in the **Federal Register**, and that existing stocks of lead-soldered canned foods should be allowed to be offered for sale within 1 year of the date of publication of the final rulemaking, so long as the level of lead in the food packaged in such cans is not such that the food may be rendered injurious to health. Guidance on the level of lead in food that may render the food injurious to health is provided by the emergency action levels, that were announced in the April 1, 1993, notice, of 80 micrograms per kilogram (80 parts per billion (ppb)) for lead in fruit beverages packed in lead-soldered cans and 250 ppb for all other foods packed in lead-soldered cans.

III. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the proposed rule published in the **Federal Register** of June 21, 1993. No new information or comments have been received that would affect the agency's previous determination that prohibiting the use of lead solder in food cans will not have a significant impact on the human environment, and that an environmental impact statement is not required.

IV. Economic Impact and Comment on the Economic Issues Raised in the June 21, 1993, Proposed Rule

FDA has examined the economic impacts of this final rule to amend the food additive regulations to prohibit the use of lead solder to manufacture cans that contain food, as required by Executive Order 12866 and the Regulatory Flexibility Act. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives, and when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). The Regulatory Flexibility Act (Pub. L. 96–354) requires analyzing options for regulatory relief for small businesses.

FDA finds that this final rule is not a significant regulatory action as defined by Executive Order 12866. In compliance with the Regulatory Flexibility Act, the agency certifies that the final rule will not have a significant impact on a substantial number of small businesses.

The June 21, 1993, proposed rule included an analysis of the economic impact of the proposed ban on the use of lead-soldered food cans under the previous Executive Order (E.O. 12291). FDA determined that this rule would result in little or no additional cost to domestic can manufacturers and food processors. In addition, the agency estimated that the one-time, upper-bound cost for foreign countries, that export lead-soldered canned foods to the United States, to convert to cans without lead solder would be from $33 million to $70 million. The total benefit gained from the reduction in blood lead levels resulting from the ban on the use of lead-soldered food cans was estimated to be $80 million for the next 20 years (discounted at a 6 percent interest rate).

The agency received one comment on the June 21, 1993, proposed rule that supplied data on the cost to Danish meat canners of switching from lead-soldered cans to other canning technologies. The agency's evaluation of the data submitted is set forth below:

5. The comment from the Danish meat-canning industry estimated that the conversion of the meat-can soldering lines in Denmark to other canning technologies would cost approximately 30 million Danish kroner (approximately $4.4 million using the exchange rate quoted in the *Washington Post* of November 24, 1993). As discussed in comment three above, this industry also requested that the effective date for the ban on the initial introduction or delivery for introduction of lead-soldered food cans into interstate commerce be extended to 24 months after publication of a final rule in the **Federal Register**. The comment stated that meat packaged in large cans is wrapped in a plastic bag inside the can, which would effectively inhibit lead migration into the meat.

FDA analyzed the economic impact of the request to extend the effective date for the ban on the use of lead-soldered food cans and determined that granting an extension to Danish canned meat exporters would not be necessary because the effective date of the ban and the requested date coincide. Because FDA's estimate of the one-time, upper-bound cost for the conversion of canning lines in foreign countries was so broad ($33 million to $70 million), the cost information supplied by the Danish industry would not significantly alter the previous estimate.

V. Conclusions

FDA finds that a prior sanction exists for the use of lead solder in food cans. However, the available toxicological and exposure data on lead demonstrate that this use of lead solder may be injurious to the public health, particularly that of fetuses, infants, and children. Therefore, the agency is not codifying in its regulations the prior sanction for lead solder used in food cans and is instead amending its food additive regulations to prohibit this use of lead solder.

For clarification, FDA is modifying the language in proposed § 189.240(a) to read "Lead solders are alloys of metals that include lead and are used in the construction of metal food cans."

The ban on the initial introduction and initial delivery for introduction into interstate commerce of foods in lead-soldered cans will be effective 6 months after publication in the **Federal Register** of a final rule on this action. Existing stocks of lead-soldered canned foods will be allowed to be offered for sale within 1 year of the date of publication of the final rulemaking, so long as the level of lead in the food packaged in such cans is not such that the food may be rendered injurious to health.

FDA has now responded to a citizen petition (Docket No. 82P–0371/CP) requesting that the agency require warning labels on food cans that contain lead solder because the labeling issue will be moot with completion of this rulemaking.

VI. Objections

Any person who will be adversely affected by this regulation may at any time on or before July 27, 1995, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Letter from Mercedes Juan (Secretariat of Health, Mexico) to Jane E. Henney (FDA), dated June 3, 1993.

2. Letter from Myrna Sabino (Secretariat of Health, Brazil) to Jerry A. Burke (FDA), dated August 9, 1990.

3. Letter from Kazimierz Karlowski (National Institute of Hygiene, Poland) to Jerry A. Burke (FDA), dated December 21, 1990.

4. Letter from Alberto Rodas Maltez (Alimentos Kern, Guatemala) to Economics Staff (FDA), dated April 24, 1991.

5. Letter from Judith Sohar (National Institute of Food-Hygiene, Hungary) to Jerry A. Burke (FDA), dated September 26, 1990.

List of Subjects in 21 CFR Part 189

Food ingredients, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 189 is amended as follows:

PART 189—SUBSTANCES PROHIBITED FROM USE IN HUMAN FOOD

1. The authority citation for 21 CFR part 189 continues to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

2. New § 189.240 is added to subpart C to read as follows:

§ 189.240 Lead solders.

(a) Lead solders are alloys of metals that include lead and are used in the construction of metal food cans.

(b) Food packaged in any container that makes use of lead in can solder is deemed to be adulterated in violation of the Federal Food, Drug, and Cosmetic Act, based upon an order published in the **Federal Register** of June 27, 1995.

Dated: June 17, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–15593 Filed 6–26–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Parts 510 and 522

Animal Drugs, Feeds, and Related Products; Xylazine Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Chanelle Pharmaceuticals Manufacturing Ltd. The ANADA provides for intravenous and intramuscular use of xylazine injection in horses and intramuscular use in *Cervidae* spp. to produce sedation accompanied by a shorter period of analgesia.

EFFECTIVE DATE: June 27, 1995.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center For Veterinary Medicine (HFV–114), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1617.

SUPPLEMENTARY INFORMATION: Chanelle Pharmaceuticals Manufacturing Ltd., Loughrea, County Galway, Ireland, filed ANADA 200–139 which provides for intravenous and intramuscular use of Chanazine® (100 milligrams/milliliter (mg/mL)) Injectable (xylazine hydrochloride equivalent to 100 mg xylazine per mL) in horses and intramuscular use in *Cervidae* spp. (fallow deer, mule deer, Sika deer, white-tailed deer, and elk) to produce sedation accompanied by a shorter period of analgesia. The drug is limited to use by or on the order of a licensed veterinarian.

Approval of ANADA 200–139 for Chanelle's Chanazine® (xylazine 100 mg/mL) Injectable is as a generic copy of Miles' NADA 047–956 for Rompun® (xylazine 100 mg/mL) Injectable. The ANADA is approved as of May 16, 1995, and the regulations are amended by revising 21 CFR 522.2662(b) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, Chanelle Pharmaceuticals Manufacturing Ltd. has not previously been listed in the animal drug regulations as the sponsor of an approved application. At this time, 21 CFR 510.600(c) is amended to add entries for the firm.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 522 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding a new entry for "Chanelle Pharmaceuticals Manufacturing Ltd.," and in the table in paragraph (c)(2) by numerically adding a new entry for "061651" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Chanelle Pharmaceuticals Manufacturing Ltd., Loughrea, County Galway, Ireland.	061651
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
061651	Chanelle Pharmaceuticals Manufacturing Ltd., Loughrea, County Galway, Ireland

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

4. Section 522.2662 is amended by revising the first sentence in paragraph (b) to read as follows:

§ 522.2662 Xylazine hydrochloride injection.

* * * * *

(b) *Sponsor.* See 000856 and 061651 in § 510.600(c) of this chapter for use as horses, wild deer, and elk. * * *

* * * * *

Dated: June 15, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–15594 Filed 6–26–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–206]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with two exceptions, an amendment to the Kentucky regulatory program (hereinafter referred to as the "Kentucky program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions to the Kentucky Revised Statutes (KRS) pertain to remining, permits, definitions, appeal rights, water replacement, and permit revisions. The amendment is intended to revise the Kentucky program to be consistent with SMCRA.

EFFECTIVE DATE: June 27, 1995.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, OSM, 2675 Regency Road, Lexington, Kentucky 40503. Telephone: (606) 233–2896.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Kentucky Program

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the May 18, 1982, **Federal Register** (47 FR 21404). Subsequent actions concerning conditions of approval and program amendments can be found at 30 CFR 917.11, 917.13, 917.15, 917.16, and 917.17.

II. Submission of the Proposed Amendment

By letter dated April 29, 1994 (Administration Record No. KY–1279), Kentucky submitted a proposed amendment to its program pursuant to SMCRA. Kentucky proposed to revise the following sections of its statutes: KRS 42, 177, 211, 350, 351, and 352. The revisions pertain to remining, permits, definitions, appeal rights, water replacement, and permit revisions and are contained in Senate Bills 208, 214, 249, and House Bills 338 and 707.

OSM announced receipt of the proposed amendment in the May 20, 1994, **Federal Register** (59 FR 26472), and in the same document, opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on June 20, 1994.

By letter dated September 1, 1994 (Administrative Record No. KY–1319), Kentucky submitted additional explanatory information. Because the information merely clarified certain provisions of the proposed revisions, OSM did not reopen the comment period.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-reference and paragraph notations to reflect organizational changes resulting from this amendment.

A. Senate Bill 208

Senate Bill 208, deals for the most part, with the new remining provisions of the Energy Policy Act of 1992. The Energy Policy Act of 1992, enacted on October 24, 1992, amended section 404 of SMCRA and added sections 510(e), 515(b) (20)(B), 701(33) and 701(34) of SMCRA. It should be noted that OSM has proposed rules on remining to reflect the changes enacted by the Energy Policy Act of 1992. These rules are not final. Therefore, the Kentucky regulatory program may need to be amended if it is later found to be inconsistent with the federal rules.

1. At KRS 350.010(22), Kentucky proposes to define "unanticipated event or condition" as an event or condition encountered in a remining operation that was not contemplated by the applicable surface coal mining and reclamation permit. At KRS 350.010(23), Kentucky proposes to define "lands eligible for remining as those lands that would otherwise be eligible for expenditures under KRS 350.560 (1) or (2) (Lands and Waters Eligible for Reclamation or Drainage Abatement Expenditures).

The Director finds the proposed definitions at KRS 350.010 (22) and (23) substantively identical to sections 701 (33) and (34) of SMCRA and therefore no less stringent than these sections.

2. At KRS 350.085(7), Kentucky proposes that if a permit applicant has a violation resulting from an unanticipated event or condition at a surface coal mining operation eligible for and under a remining permit, then the applicant would not be permit blocked for such a violation. The term "violation would mean the same as in KRS 350.085(6) and as Kentucky stated in a September 1, 1994 letter, the exemption from permit blocking would only apply to violations on remining operations which occurred after July 15, 1994. This exemption would expire on September 30, 2004.

The Energy Policy Act of 1992, enacted on October 24, 1992, added section 510(e) of SMCRA. As of October 24, 1992, section 510(e) of SMCRA exempts permit applicants from permit blocks for violations resulting from unanticipated events or conditions that occurred on lands eligible for remining which were under a permit by the permit applicant. The Director finds that KRS 350.087 is no less stringent than 510(e) of SMCRA because the Kentucky statute, as interpreted by Kentucky's Natural Resources and Environmental Protection Cabinet, would only allow the permit block exemption for violations resulting from an unanticipated event or condition occurring after July 15, 1994 on lands eligible for remining.

3. At KRS 350.095(1), Kentucky proposes that the permittee shall assume responsibility for successful revegetation for a period of five full years after the last year in which augmented seeding, fertilizing, irrigation, or other work occurs.

The Director finds the proposed revision at KRS 350.095(1) substantively identical to and therefore no less stringent than the language at section 515(b)(20)(A) of SMCRA.

At KRS 350.095(2), Kentucky proposes that on lands eligible for remining, the permittee shall assume responsibility for successful revegetation for a period of two full years after the last year in which augmented seeding, fertilizing, irrigation, or other work occurs in order to assure compliance with the applicable standards. The authority for this section terminates on September 30, 2004.

The Director finds the proposed revision at KRS 350.095(2) substantively identical to and therefore no less stringent than section 515(b)(20)(B) of SMCRA.

4. At KRS 350.560(1), Kentucky proposes that surface coal mining operations on lands eligible for remining not affect the eligibility of those lands for reclamation and restoration after the release of the bond or deposit for a remining operation. In the event the bond or deposit for a surface coal mining operation on lands eligible for remining is forfeited, available funds maybe used if the amount of the bond or deposit is not sufficient to provide for adequate reclamation or abatement.

The Director finds the proposed revision at 350.560(1) substantively identical to and therefore no less stringent than the language of section 404 of SMCRA.

B. Senate Bill 214

1. At new KRS 350.0285 and KRS 351.070(14), Kentucky proposes to require that the Cabinet and the Commissioner of the Department of Mines and Minerals (Department) notify the Transportation Cabinet every six months of permits issued for mine openings and mine closings under their authority. At KRS 352.420(3), Kentucky proposes to require that the operator or superintendent of a mine notify the Commissioner every six months of a mine opening and a mine closure under his authority.

The Federal rules contain no counterpart requirements. The Director finds the proposed provisions at KRS 350.0285, KRS 351.070(14), and KRS 352.420(3) not inconsistent with the requirements of SMCRA and the Federal regulations.

2. At KRS 42.470(1)(c), Kentucky proposes to require that all counties receive an annual payment from the local government economic assistance fund which is based on the average of total ton miles within the county during the most recent three-year period.

The Federal rules contain no counterpart requirements. The Director finds the proposed revisions at KRS 42.470(1)(c) not inconsistent with the requirements of SMCRA and the Federal regulations.

3. At KRS 177.977(2), Kentucky proposes to require that a copy of the information furnished to the Cabinet pursuant to the provisions of section 1 of this Act and a copy of the information furnished to the Department pursuant to the provisions of sections 2 and 3 of this Act be submitted to the Transportation Cabinet.

The Federal rules contain no counterpart requirements. The Director finds the proposed provisions at KRS 177.977(2) not inconsistent with the requirements of SMCRA and the Federal regulations.

4. At KRS 211.390(1), Kentucky proposes to revise its definition of "fluidized bed energy production facility" to mean a fluidized bed combustion unit installed in a plant facility, subject to certain conditions.

The Federal rules contain no counterpart definition. The Director finds the proposed revision at KRS 211.390(1) not inconsistent with the requirements of SMCRA and the Federal regulations.

5. At KRS 211.392(1), Kentucky proposes to substitute "fluidized bed combustion unit" for "structure" and to delete the provision that the Governor's Office for Coal and Energy Policy will provide technical assistance and factual

information as requested in writing by the Revenue Cabinet.

The Federal rules contain no counterpart provisions. The Director finds the proposed revisions at KRS 211.392(1) not inconsistent with the requirements of SMCRA and the Federal regulations.

6. At KRS 211.392(2), Kentucky proposes to require that before the denial, revocation, or modification of a fluidized bed combustion technology tax exemption certificate, the Revenue Cabinet is required to give the applicant written notice and afford the applicant an opportunity for a hearing. The requirement that the special assistant to the Governor for coal and energy policy be notified of the hearing along with the applicant is deleted.

The Federal rules contain no counterpart provisions. The Director finds the proposed revisions at KRS 211.392(2) not inconsistent with the requirements of SMCRA and the Federal regulations.

7. At KRS 211.392(5), Kentucky proposes to delete the requirement that the notice of issuance or notice of denial, revocation, or modification of the tax exemption certificate be sent to the special assistant to the Governor for coal and energy policy. Also deleted is the designation of the above-referenced special assistant and applicant as parties for the purposes of review in appeals. At KRS 211.392(6), Kentucky proposes to specify that any applicant or holder of certificate aggrieved by the refusal to issue, revocation, or modification of a fluidized bed combustion tax exemption certificate has certain appeal rights. At KRS 211.392(8), Kentucky proposes to delete the requirement that in the event that the purpose for which a combustion unit with an exemption certificate is held changes, the above-referenced special assistant must be notified by the holder of the certificate.

The Federal rules contain no counterpart provisions. The Director finds the proposed revisions at KRS 211.392(5), (6), and (8) not inconsistent with the requirements of SMCRA and the Federal regulations.

8. At KRS 211.392(9), Kentucky proposes to allow a fluidized bed combustion facility to be exempt from 211.392 as well as sections KRS 132, 136, 138, and 139. Kentucky also proposes to require that each exemption certificate remain in force for a period of eight years from the date of issuance and elapse at the end of the said period. Any fluidized bed combustion unit previously exempt shall not be eligible for recertification upon completion of the eight year certificate period.

The Federal rules contain no counterpart provisions. The Director finds the proposed revisions at KRS 211.392(9) not inconsistent with the requirements of SMCRA and the Federal regulations.

C. Senate Bill 249

1. At KRS 350.010(1), Kentucky proposes to clarify that excavation for the purpose of obtaining coal includes extraction of coal from refuse piles is included in the definition of "surface coal mining operations."

The Director finds the proposed definition of "surface coal mining operation" at 350.010(1) substantively identical to and therefore no less stringent than the Federal definition at 701(28) of SMCRA.

2. At KRS 350.010(9), in response to the required amendment at 30 CFR 917.16(j)(2), see 58 FR 42001 (August 6, 1993), Kentucky proposes to revise the definition of "person" to mean any individual, partnership, corporation, association, society, joint stock company, firm, company, or other business organization; and shall also include any agency, unit, instrumentality of Federal, State, or local government including any publicly owned utility or publicly owned corporation of Federal, State, or local government.

The Director finds the proposed definition of "person" substantively identical to and therefore no less effective than the Federal definition at 30 CFR 700.5. He is removing the required amendment at 30 CFR 917.16(j)(2), which required Kentucky to revise its definition of "person" to include all entities encompassed by the Federal definition.

3. At KRS 350.0301(4), Kentucky is proposing to require that all hearings be open to the public. The phrase "except as ordered by the hearing officer" is deleted in response to the required amendment at 30 CFR 917.16(j)(1) which required Kentucky to delete the phrase. Therefore, the Director finds that the deletion of the phrase renders this section no less stringent than 525 of SMCRA. The Director is removing the required amendment at 30 CFR 917.16(j)(1).

At KRS 350.0305(1), Kentucky is proposing to delete its hearing provisions and transfer them, with minor revisions, to 350.0301(1). At KRS 350.0305, Kentucky is proposing to require that judicial review of a final order resulting from a hearing on the issuance of a notice of noncompliance, the issuance of an order for cessation and immediate compliance, the assessment of civil penalties, or a bond forfeiture be in compliance with KRS 350.032. At KRS 350.032(2), Kentucky is proposing to permit any person aggrieved by a final order of the Cabinet resulting from a hearing on the issuance of a notice of noncompliance, the issuance of an order for cessation and immediate compliance, the assessment of civil penalties, or a bond forfeiture to obtain a review of the order by filing a written petition in the appropriate county circuit court.

Section 526(e) of SMCRA requires that actions of the State Regulatory Authority be subject to judicial review by a court of competent jurisdiction. Kentucky is providing judicial review of its enforcement actions and therefore the Director finds KRS 350.0305 and 350.032(a) to be in accordance with 526(e) of SMCRA.

D. House Bill 338

At KRS 350.421 (1) and (2), Kentucky proposes to extend its water rights and replacement provisions to water resources and supplies affected by underground mining, as well as surface mining.

It should be noted that KRS 350.255(2) is deleted. This deletion was previously approved by OSM on August 6, 1993 at 58 FR 42001, 42003. Consequently, the deletion does not need to be addressed in this rulemaking.

The Federal law at section 720(a)(2) requires the prompt replacement of any drinking, domestic or residential water supply from a well or spring in existence prior to the application for a surface coal mining permit which has been affected by contamination, diminution or interruption resulting from underground coal mining operations. The Kentucky statute also provides for the replacement of any drinking, domestic or residential water supply but is silent on whether or not the replacement of water supplies will be prompt. Therefore, the Director finds KRS 350.421 no less stringent than 720(a)(2) of SMCRA except to the extent that the Kentucky statute does not provide for the prompt replacement of water supplies.

He is requiring that Kentucky amend its program to provide for prompt replacement. In its letter dated September 1, 1994, Kentucky stated that it is not authorized by State law to retroactively apply the water replacement requirements to water losses which occurred between October 24, 1992, and July 15, 1994, the effective date of House Bill 338. The Director is deferring decision on the enforcement of the provisions of SMCRA section 720(a) during the period from the effective date of SMCRA section 720 (October 24, 1992) to the effective date of KRS 350.421 (1) and (2) (July 15, 1994). Pursuant to newly promulgated 30 CFR 843.25, OSM intends to publish by July 31, 1995, for each State with a regulatory program, including Kentucky, final rule notices concerning the enforcement of the provisions of the Energy Policy Act in those States.

E. House Bill 707

At KRS 350.070(1), Kentucky proposes to permit extensions of the underground mining area that are not incidental boundary revisions and do not include planned subsidence or other new proposed surface disturbances to be made by application for a major revision to the permit.

The Federal rules do not require that areas overlying proposed underground workings be included in the permit area if no surface disturbance is planned. The Director finds the proposed revisions at KRS 350.070(1) not inconsistent with the requirements of SMCRA and the Federal rules.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. Two public comments were received. Because no one requested an opportunity to speak at a public hearing, no hearing was held.

The Coal Operators and Associates Inc. expressed its general support for the amendment. The Kentucky Resources Council, Inc. (KRC) had several comments:

1. *House Bill 383*—The KRC was concerned with the practical implementation of the new protections of KRS 350.421 (1) and (2). The KRC anticipates proof difficulties where mine related water loss or quality diminution occurs. The KRC then recommended several courses of action. The Director notes that the scope of this amendment are the revisions to the Kentucky statutes and that the concerns raised by the KRC are beyond the scope of this rulemaking and do not pertain to KRS 350.421, which the KRC found to be consistent with SMCRA.

2. *Senate Bill 208*—The KRC stated that this Bill does not provide a commencement date for the operation of the statute's provisions and could be construed to require waiving permit blocking for violations that occurred before 1992 on pre-1992 permitted remining sites. KRC asserts that Congress did not intend section 510(e) to apply either to violations which occurred prior to October 24, 1992 or to permits issued before that date. KRC posits the purpose of section 510(e) is to provide solely post-enactment date incentives for remining. KRC also cautioned of the difficulty of establishing the existence of unanticipated events or conditions at permits issued before October 24, 1992.

OSM disagrees with part of the comment. As to the date the violation occurs, Kentucky will exempt permit applicants from permit blocks for violations that occurred after July 15, 1994 as a result of an unanticipated event or condition on lands eligible for remining.

Regarding the date the remining permit is issued, the plain language of section 510(e) of SMCRA does not require that the remining permit have been issued after October 24, 1992, only that the application for the new permit be on or after October 24, 1992. While the legislative history of section 2503 of the Energy Policy Act indicates that the remining amendments to SMCRA were, as a whole, meant to provide incentives to industry to extract coal which would otherwise be bypassed, the text of section 510(e) is also consistent with Congressional awareness of, and a need to correct the inequality of permit applicants being permit blocked for a violation resulting from an event or condition at a remining site which they could not have reasonably anticipated nor over which they had any control, regardless of the date of permit issuance.

The application of section 510(e) should also not be limited on the basis of the potential difficulty of establishing unanticipated events or conditions on permits issued before October 24, 1992. As with any permit requirement, the burden is on the applicant to make the required demonstration. Regulatory authorities will decide whether to apply section 510(e) based upon information set forth in the permit application. Moreover, any difficulty a regulatory authority night experience in evaluating whether the event or condition underlying the potentially permit blocking violation was reasonably unanticipated or whether the violation occurred on lands eligible for remining would be no greater on October 23, 1992, the day before section 510(e) was enacted, than on the following day. Accordingly, OSM does not interpret this section to impose a post-October 24, 1992 limitation on when permits must have been issued. This issue may, however, become increasingly academic for there are ever fewer pre-October 24, 1992 remining permits which are still in active mining reclamation.

The KRC was concerned that revisions to KRS 350.032, 350.0301 and 350.0305 may be construed to eliminate the ability to obtain under KRS 350.032(4) temporary relief of cabinet orders and determinations that are not related to bond forfeitures or enforcement orders. In a letter dated September 1, 1994, Kentucky stated that KRS 350.032(4), its temporary relief provision, applies to orders issued "under this chapter." Kentucky interprets KRS 350.032(4) to authorize temporary relief in appeals under both KRS 350.0305 and KRS 350.032. The Director agrees with Kentucky's interpretation since the phrase "under this chapter" means Chapter 350 and sections 350.032, 350.0301 and 350.0305 all are within Chapter 350.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Kentucky program. The U.S. Department of the Interior, Bureau of Land Management and Bureau of Mines; the U.S. Department of Labor, Mine Safety and Health Administration; and the U.S. Department of Agriculture, Soil Conservation Service, concurred without comment. The U.S. Department of the Interior, Fish and Wildlife Service, commented that the reduction in the period of responsibility for revegetation success for remining sites from five years to two years would result in lost opportunities to assure vegetative success on highly erosive sites. It recommended that the regulation remain unchanged. The Director notes Kentucky's proposed revision is identical to SMCRA's standards at section 515(b)(20)(B).

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

On May 13, 1994, OSM solicited EPA's concurrence with the proposed amendment. By letter dated May 17, 1995, EPA concurred with the provisions of the proposed amendment.

V. Director's Decision

Based on the above findings, the Director approves, with two exceptions, the proposed amendment as submitted by Kentucky on April 29, 1994. As

noted in Finding D concerning the proposed revisions at KRS 350.421(1) and (2), the Director is requiring that Kentucky amend its program to provide for the prompt replacement of water supplies. He is deferring decision on the enforcement of the provisions of SMCRA section 720 during the period from the effective date of SMCRA section 720 (October 24, 1992) to the effective date of KRS 350.421(1) and (2) (July 15, 1994). As noted in Finding C, the Director is also removing the required amendments at 30 CFR 917.16(j)(1) and (j)(2).

On March 31, 1995, OSM published final rules on subsidence to reflect the changes enacted by the Energy Policy Act of 1992, Pub. L. 102–486 (60 FR 16722). OSM intends to publish by July 31, 1995, for each State with a regulatory program, including Kentucky, final rule notices concerning the enforcement of the provisions of the Energy Policy Act in those States. Therefore, those portions of the Kentucky amendment that reflect changes because of the Energy Policy Act of 1992, are approved with the understanding that Kentucky may have to amend its program to correct any inconsistencies that may arise after the publication of the Federal final rules on July 31, 1995.

The Federal regulations at 30 CFR Part 917, codifying decisions concerning the Kentucky program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Kentucky program, the Director will recognize only the statutes, regulations and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Kentucky of only such provisions.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 43332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulotory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 16, 1995.

Robert A. Penn,

Acting Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 917—KENTUCKY

1. The authority citation for part 917 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 917.15 is amended by adding paragraph (yy) to read as follows:

§ 917.15 Approval of regulatory program amendments.

* * * * * * *

(yy) The following statutes, as submitted to OSM on April 29, 1994, and supplemented with additional explanatory information on September 1, 1994, are approved effective June 27, 1995, except to the extent that KRS 350.421 does not provide for the prompt replacement of water supplies:

KRS 350.010(2), (16), (22), (23).	Definitions.
KRS 350.421	Water Supplies.
KRS 350.085(1), (7) ..	Violations.
KRS 350.095(1), (2) ..	Revegetation.
KRS 350.560(1)	Bonds.
KRS 350.0285	Notification Procedures.
KRS 351.070(14)	Notification Procedures.
KRS 352.420(3)	Notification Procedures.
KRS 42.470(1)(c)	Reimbursement.
KRS 211.390(1)	Definitions.
KRS 211.392(1), (2) ..	Exemption Application.
KRS 211.392(5)	Exemption Certificate.
KRS 132, 136, 138, 139.	Term of Certificate.
KRS 350.010(1)	Definitions.
KRS 350.010(9)	Definitions.
KRS 350.0301(1) and (4).	Hearing Procedures.
KRS 350.0305	Judicial Review.
KRS 350.032(2), (4) ..	Hearing Procedures.
KRS 350.421(1), (2) ..	Water Replacement.
KRS 350.070(1)	Permit Revision.
KRS 177.977	Coal Transportation.
KRS 351.070(13)	Authority Provisions.
KRS 211.392(6), (8) ..	Exemption Certificates.

The Director is deferring decision on the enforcement of the provisions on SMCRA section 720 during the period from the effective date of SMCRA section 720 (October 24, 1992) to the effective date of KRS 350.421(1) and (2) (July 15, 1994).

3. Section 917.16 is amended to remove and revise paragraph (j) and to add paragraph (m) to read as follows:

§ 917.16 Required regulatory program amendments.

* * * * *

(j) [Reserved]

* * * * *

(m) By August 28, 1995, Kentucky shall submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption of proposed revisions to its program to specify that Kentucky's program provide for the prompt replacement of water supplies.

[FR Doc. 95–15344 Filed 6–26–95; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–95–026]

Special Local Regulations for Marine Events; Welcome America Fireworks and Lighted Boat Parade; Delaware River, Philadelphia, PA

AGENCY: Coast Guard, DOT.

ACTION: Notice of Implementation of 33 CFR 100.509.

SUMMARY: This notice implements 33 CFR 100.509 for the Welcome America Fireworks Display and Lighted Boat Parade. The boat parade will begin at Penn Treaty Park and conclude at Penn's Landing, Delaware River, Philadelphia, Pennsylvania on July 1, 1995. The fireworks display will be launched from barges anchored off Penns Landing, Delaware River, Philadelphia, Pennsylvania on July 3, 1995. The regulations in 33 CFR 100.509 are needed to control vessel traffic in the immediate vicinity of the event due to the confined nature of the waterway and expected spectator craft congestion during the event. The regulations restrict general navigation in the area for the safety of life and property on the navigable waters during the event.

EFFECTIVE DATES: The regulations in 33 CFR 100.509 are effective from 8 p.m. to 11 p.m., July 1, 1995 and from 8:30 p.m. to 11:30 p.m., July 3, 1995. If inclement weather causes the postponement of the event, the regulations are effective from 8 p.m. to 11 p.m., July 2, 1995 and from 8:30 p.m. to 11:30 p.m., July 4, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204, or Commander, Coast Guard Group Philadelphia (215) 271–4825.

DRAFTING INFORMATION: The drafters of this notice are QM2 Gregory C. Garrison project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and CDR C.A. Abel, project attorney, Fifth Coast Guard District Legal Staff.

DISCUSSION OF REGULATIONS: The Welcome America Committee submitted an application to hold the Welcome America Fireworks Display and Lighted Boat Parade. The display will be launced from barges anchored off Penns Landing, Delaware River, Philadelphia, Pennsylvania. Since many spectator vessels are expected to be in the area to watch the fireworks, the regulations in 33 CFR 100.509 are being implemented for this event. The fireworks will be launched from within the regulated area. The waterway will be closed during the display. Since the closure will not be for an extended period, commerical traffic should not be severely disrupted.

Dated: June 12, 1995.

W. J. Ecker,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 95–15754 Filed 6–26–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 100

[CGD 05–95–036]

Special Local Regulations for Marine Events; Great American Picnic and Fireworks, Elizabeth River, Town Point, Norfolk and Portsmouth, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of Implementation of 33 CFR 100.501.

SUMMARY: This notice implements 33 CFR 100.501 for the Great American Picnic and Fireworks Display to be held in the Waterside area of the Elizabeth River between Norfolk and Portsmouth, Virginia. These special local regulations are needed to control vessel traffic within the immediate vicinity of Waterside due to the confined nature of the waterway and the expected vessel congestion during the event. The effect will be to restrict general navigation in the regulated area for the safety of participants and spectators.

EFFECTIVE DATES: The regulations in 33 CFR 100.501 are effective from 12:01 p.m. to 11 p.m., July 4, 1995.

FOR FURTHER INFORMATION CONTACT:

Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District 431 Crawford Street, Portsmouth, Virginia 23705 (804) 398–6204, or Commander, Coast Guard Group Hampton Roads (804) 483–8559.

DRAFTING INFORMATION: The drafters of this notice are QM2 Gregory C. Garrison, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and CDR C.A. Abel, project attorney, Fifth Coast Guard District Legal Staff.

DISCUSSION OF REGULATION: Norfolk Festevents, Ltd. has submitted an application to hold the Great American Picnic in the Waterside area of the Elizabeth River. This area is described by 33 CFR 100.501 and generally includes the waters of the Elizabeth River between Town Point Park, Norfolk, Virginia, the mouth of the Eastern Branch of the Elizabeth River, and Hospital Point, Portsmouth, Virginia. Since this event is of the type contemplated by this regulation and the safety of the participants and spectators viewing this event will be enhanced by the implementation of special local regulations for the Elizabeth River, 33 CFR 100.501 will be in effect during the Great American Picnic. The waterway will be closed during the fireworks displays and air shows. Since the waterway will not be closed for an extended period, commercial traffic should not be severely disrupted. In addition to regulating the area for the safety of life and property, this notice of implementation also authorizes the Patrol Commander to regulate the operation of the Berkley drawbridge in accordance with 33 CFR 117.1007(b), and authorizes spectators to anchor in the special anchorage areas described in 33 CFR 110.72aa.

Dated: June 14, 1995.

W. J. Ecker,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 95–15755 Filed 6–26–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD01–95–062]

RIN 2115–AA97

Safety Zone: Brick Summerfest, Bricktown Race, Metedeconk River, Brick, NJ

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on July 4, 1995, in the Metedeconk River, for the Bricktown Race. This safety zone prevents vessels not participating in the race from transiting a portion of the Metedeconk River, Brick, New Jersey.

EFFECTIVE DATE: This rule is effective on July 4, 1995, from 11:30 a.m. until 4:30 p.m., unless extended or terminated sooner by the Captain of the Port, New York.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) K. Messenger, Maritime Planning Staff Chief, Coast Guard Group, New York, (212) 668–7934.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are LTJG K. Messenger, Project Manager, Coast Guard Group New York and LCDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing an NPRM, and for making it effective less than 30 days after **Federal Register** publication. Due to the date this application was received, there was insufficient time to draft and publish an NPRM that allows for a reasonable comment period prior to the event. The delay encountered if normal rulemaking procedures were followed would effectively cancel this event. Cancellation of this event is contrary to the public interest.

Background and Purpose

The Coast Guard received an Application for Approval of Marine Event to hold a powerboat race on the Metedeconk River as part of the Bricktown Summerfest Celebration. This event is sponsored by the East Coast Boat Racing Club of New Jersey. This regulation establishes a temporary safety zone in the waters of the Metedeconk River on July 4, 1995, from 11:30 a.m. until 4:30 p.m., unless extended or terminated sooner by the Coast Guard Captain of the Port, New York. This safety zone prevents vessels not participating in this event from transiting a portion of the Metedeconk River, Brick, New Jersey. Vessels participating in this event include race participants and race committee craft. All other vessels, swimmers, and personal watercraft of any nature are precluded from entering or moving within the safety zone. The rectangular safety zone area includes all waters extending 400 yards off of the Windward Beach shoreline from the Metedeconk River Light "6" to a point approximately 1200 yards west at or near 40°03′31″ N latitude, 074°07′00″ W longitude (NAD 1983). This regulation is needed to protect the boating public from the hazards associated with high speed power boats racing in confined waters. A second safety zone, for a fireworks display will be in place on these waters from 8 p.m. to 10 p.m. on the same date and has been published separately.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This safety zone closes this portion of the Metedeconk River to through vessel traffic on July 4, 1995, from 11:30 a.m. until 4:30 p.m., unless extended or terminated sooner by the Captain of the Port, New York. Although this regulation prevents traffic from transiting this area, the effect of this regulation is not significant for several reasons: the limited duration of the event; that mariners can transit to the south or to the east of this area; this portion of the river is used mainly by recreational craft; and the extensive, advance advisories that will be made. Accordingly, the Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seg.), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under Section 3 of the Small Business Act (15 U.S.C. 632).

For reasons given in the Regulatory Evaluation, the Coast Guard expects the impact of this regulation to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulation contains no collection of information requirements under the Paper Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not raised sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2.e. of Commandant Instruction M16475.1B, revised 59 FR 38654, July 29, 1994, the promulgation of this regulation is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist are included in the docket. An appropriate environmental analysis of the powerboat race under the National Environmental Policy Act will be conducted in conjunction with the marine event permitting process.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Final Regulation

For reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A temporary section, 165.T01–062 is added to read as follows:

§ 165.T01–062 Safety Zone; Brick Summerfest Bricktown Race, Metedeconk River, Brick, New Jersey.

(a) *Location.* All waters of the Metedeconk River within a rectangular area extending 400 yards off of the Windward Beach shoreline from the Metedeconk River Light "6" to a point approximately 1200 yards west at or near 40°03′31″ N latitude, 074°07′00″ W longitude (NAD 1983).

(b) *Effective period.* This section is in effect on July 4, 1995, from 11:30 a.m. until 4:30 p.m., unless extended or terminated sooner by the Captain of the Port, New York.

(c) *Regulations.* (1) Vessels not participating in this event, swimmers, and personal watercraft of any nature are precluded from entering or moving within the safety zone.

(2) The general regulations contained in 33 C.F.R. 165.23 apply to this safety zone.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: June 15, 1995.

T. H. Gilmour,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 95–15756 Filed 6–26–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD01–95–082]

Safety Zone: Bristol Harbor, RI

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in Bristol Harbor, Bristol, RI for the Bristol Fourth of July Fireworks celebration. The event, sponsored by the Bristol's Fourth of July Committee, will take place on Tuesday, July 4, 1995 from 9:30 p.m. until 10 p.m. This safety zone will preclude all vessels from transiting a small portion of Bristol Harbor and is needed to protect the boating public from the hazards associated with the exploding of pyrotechnics in the area.

EFFECTIVE DATE: This rule is in effect from 9:30 p.m. until 10 p.m. on July 4, 1995.

FOR FURTHER INFORMATION CONTACT: LT J.C. Wong, Coast Guard Marine Safety Field Office, New Bedford, at (508) 999–0072.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are LT J.C. Wong, Project Manager, Captain of the Port, Providence and CDR J. Astley, Project Counsel, First Coast Guard District Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Complying with standard procedures would effectively cancel the event. Due to this event's historic significance and role in the nation's celebration of Independence Day, any delays which would result in cancellation would be undesirable. Publishing a notice of proposed rulemaking and delaying the events would be contrary to the public's interest since the event is the oldest Independence Day celebration in this country, and an event viewed with patriotic zeal and pride by thousands of people travelling great distances to participate in the event. Immediate action is necessary to respond to any potential hazards associated with the conduct of this event.

Background and Purpose

The town of Bristol in Rhode Island annually provides a fireworks program to mark Independence Day. The celebration is an important event for the town of Bristol as it draws numerous people to the area for the weekend, increasing tourism and economically benefiting the town.

The Coast Guard is establishing a temporary safety zone regulation in the waters of Bristol Harbor within a 350 yard radius from the center point of a fireworks barge anchored at or near N 41–39′.8 latitude, W 071–16′.92 longitude. The exclusionary zone will be in effect for a 30 minute period during the evening of July 4, 1995. The safety zone will preclude all vessels from transiting this portion of Bristol Harbor and is necessary to protect the fireworks barge and attending tug, spectator craft, and other vessels or personnel in the area, from the hazards associated with explosive laden barges and the display itself. No vessel will be permitted to enter or move within the effected area unless expressly authorized to do so by the Captain of the Port, Providence.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Although this regulation will prevent vessels from transiting the effected area, the Coast Guard expects the economic impact of this proposal to be minimal for several reasons. Due to the fact that the time period for the safety zone is extremely limited, the event is conducted during the evening hours of a federal holiday in a remote portion of Narragansett Bay, as well as the fact that extensive, advance advisories will be made to the affected maritime community, the impact of this regulation is expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under Section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons outlined in the Regulatory Evaluation above, the Coast Guard expects the impact to be minimal on all entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.)

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this rule and has concluded that under section 2.B.2.e. of Commandant Instruction M16475.1B, revised by 59 FR 38654 dated July 29, 1994, the promulgation of this regulation is categorically excluded from further environmental documentation. An environmental analysis checklist and categorical exclusion determination will be made available in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Final Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A temporary section, 165.T01–082, is added to read as follows:

§ 165.T01–082 Safety Zone: Bristol Harbor, Rhode Island

(a) *Location.* The safety zone includes all waters within a 350 yard radius around the fireworks barge. The barge will be anchored at N.41–39'.8 latitude, W 071–16'.92 longitude, which is approximately 200 yards north of the Bristol Harbor Middle Ground Buoy (light list no. 18175) (NAD 83).

(b) *Effective period.* This section is effective from 9:30 p.m. until 10 p.m. on July 4, 1995.

(c) *Regulations.* The general regulations governing safety zones contained in 33 CFR Section 165.23 apply. Entry into any portion of the described zones is prohibited unless authorized by the Captain of the Port.

Dated: June 14, 1995.

P.A. Turlo,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 95–15752 Filed 6–26–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD01–95–003]

RIN 2115–AA97

Safety Zone: Heritage of Pride Fireworks Display, Hudson River, NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent safety zone for the annual Heritage of Pride fireworks display located on the Hudson River, New York. The safety zone is in effect annually on the last Sunday in June from 9:30 p.m. until 11:30 p.m. The safety zone temporarily closes all waters of the Hudson River within a 300 yard radius of the fireworks platform anchored approximately 330 yards west of the Manhattan pierhead line between Pier 45 and Pier 49.

EFFECTIVE DATE: This rule is effective on June 25, 1995.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) K. Messenger, Maritime Planning Staff Chief, Coast Guard Group New York (212) 668–7934.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LTJG K. Messenger, Project Manager, Coast Guard Group New York and LCDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

Regulatory History

On March 22, 1995, the Coast Guard published a notice of proposed rulemaking (NPRM) in the **Federal Register** (60 FR 15101). Interested persons were requested to submit comments on or before May 22, 1995. No comments were received. A public hearing was not requested and one was not held. The Coast Guard is promulgating this final rule as proposed. Due to the NPRM comment period deemed necessary to give adequate public notice, there was insufficient time to publish this final rule 30 days prior to the event. Good cause exists for making this rule effective less than 30 days after publication. Adequate measures are being taken to ensure mariners are made aware of this regulation. This rule will be locally published in the First Coast Guard District's Local Notice to Mariners and announced via Safety Marine Information Broadcasts.

Background and Purpose

For the last several years, Heritage of Pride Inc., has submitted an application to hold a fireworks program on the Hudson River. This regulation establishes a safety zone in the waters of the Hudson River within a 300 yard radius of the fireworks platform anchored approximately 330 yards west of the Manhattan pierhead line between Pier 45 and Pier 49. The safety zone is in effect annually on the last Sunday in June from 9:30 p.m. until 11:30 p.m., unless extended or terminated sooner by the Captain of the Port New York. The safety zone precludes all vessels from transiting this area of the Hudson River and is needed to protect mariners from the hazards associated with fireworks exploding in the area. The effective period of the safety zone will be announced annually via Safety Marine Information Broadcasts and locally issued notices.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. The safety zone closes a portion of the Hudson River to all vessel traffic annually on the last Sunday in June from 9:30 p.m. until 11:30 p.m., unless extended or terminated sooner by the Captain of the Port New York. Although this regulation prevents traffic from transiting this area located on the eastern side of the Hudson River, the effect of this regulation is not significant for several reasons: the limited duration of the event; the late hour of the event; the extensive, advance advisories that will be made; that traffic can safely transit to the west of this safety zone; and that this event has been held annually for the past several years without incident or complaint. Accordingly, the Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under Section 3 of the Small Business Act (15 U.S.C. 632).

For reasons set forth in the Regulatory Evaluation, the Coast Guard expects the impact of this regulation to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2.e. of Commandant Instruction M16475.1B, revised 59 FR 38654, July 29, 1994, it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist are included in the docket. An appropriate environmental analysis of the fireworks program under the National Environmental Policy Act will be conducted in conjunction with the marine event permitting process each year.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Final Regulation

For reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Section 165.170, is added to read as follows:

§ 165.170 Safety Zone; Heritage of Pride Fireworks Display, Hudson River, New York.

(a) *Location.* All waters of the Hudson River within a 300 yard radius of a fireworks platform anchored approximately 330 yards west of the Manhattan pierhead line between Pier 45 and Pier 49.

(b) *Effective period.* This section is in effect annually on the last Sunday in June from 9:30 p.m. until 11:30 p.m., unless extended or terminated sooner by the Captain of the Port New York. The effective period will be announced annually via Safety Marine Information Broadcasts and locally issued notices.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: June 5, 1995.

T.H. Gilmour,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 95–15753 Filed 6–26–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD01–95–073]

RIN 2115–AA97

Safety Zone: Main Stay Funds Fireworks, Upper New York Bay, NY and NJ

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for a fireworks program located in Federal Anchorage 20C in Upper New York Bay, New York. This safety zone will be in effect on June 30, 1995, from 9:45 p.m. until 11 p.m. The safety zone will temporarily close all waters of the Upper New York Bay within a 300 yard radius of the fireworks barges anchored approximately 300 yards east of Liberty Island, New York.

EFFECTIVE DATE: This rule is effective on June 30, 1995, from 9:45 p.m. until 11 p.m., unless extended or terminated sooner by the Captain of the Port, New York.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) K. Messenger, Maritime Planning Staff Chief, Coast Guard Group New York (212) 668–7934.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LTJG K. Messenger, Project Manager, Coast Guard Group New York and LCDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing an NPRM, and for making this regulation effective less than 30 days after Federal Register publication. Due to the date this application was received, there was insufficient time to draft and publish a notice of proposed rulemaking that allows for a reasonable comment period prior to the event. The delay encountered if normal rulemaking procedures were followed would effectively cancel this event. Cancellation of this event is contrary to the public interest.

Background and Purpose

On May 18, 1995, Fireworks by Grucci submitted an application to hold a fireworks program in the waters of Upper New York Bay, off of Liberty Island, New York. This fireworks program is sponsored by Main Stay Funds. This regulation establishes a temporary safety zone in all waters of the Upper New York Bay within a 300 yard radius of the fireworks barges anchored approximately 300 yards east of Liberty Island, New York, at or near 40°41'17" N latitude, 074°02'25" W longitude (NAD 1983). The safety zone is in effect on June 30, 1995, from 9:45 p.m. until 11 p.m., unless extended or terminated sooner by the Captain of the Port, New York. This safety zone prevents vessels from transiting this portion of the Upper New York Bay along the eastern coastline of Liberty Island, New York, and is needed to protect mariners from the hazards associated with fireworks exploding in the area.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040;

February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This safety zone closes a portion of the Upper New York Bay to vessel traffic on June 30, 1995, from 9:45 p.m. until 11 p.m., unless extended or terminated sooner by the Captain of the Port, New York. Although this regulation prevents traffic from transiting this area, the effect of this regulation will not be significant for several reasons: the safety zone is located within an anchorage area; the duration of the event is limited; the event is at a late hour; all vessel traffic may safely pass to the east of this safety zone; and the extensive, advance advisories that will be made. Accordingly, the Coast Guard expects the impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under Section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons given in the Regulatory Evaluation, the Coast Guard expects the impact of this regulation to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2.e. of Commandant Instruction M16475.1B, revised 59 FR 38654, July 29, 1994, the promulgation of this regulation is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist are included in the docket. An appropriate environmental analysis of the fireworks program will be conducted in conjunction with the marine event permitting process.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measurers, Waterways.

Final Regulation

For reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A temporary section, 165.T01–073 is added to read as follows:

§ 165.T01–073 Safety Zone; Main Stay Funds Fireworks, Upper New York Bay, New York and New Jersey.

(a) *Location.* All waters of Federal Anchorage 20C, Upper New York Bay, within a 300 yard radius of the fireworks barges anchored approximately 300 yards east of Liberty Island, New York, at or near 40°41'17"N latitude, 074°02'25"W longitude (NAD 1983).

(b) *Effective period.* This section is in effect on June 30, 1995, from 9:45 p.m. until 11 p.m., unless extended or terminated sooner by the Captain of the Port, New York.

(c) *Regulations.* (1) The general regulations contained in 33 CFR Section 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: June 19, 1995.

T.H. Gilmour,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 95–15759 Filed 6–26–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD13–95–028]

Security and Safety Zone Regulation: Sinclair Inlet, Puget Sound, Bremerton, WA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a combined security and safety zone on the waters of Sinclair Inlet adjacent to the Puget Sound Naval Shipyard (PSNY), Bremerton, Washington. This action is necessary to safeguard U.S. Navy vessels and repair facilities from sabotage and other subversive acts, accidents, or other incidents of a similar nature. This action is also necessary to protect vessels and individuals from the dangers associated with the industrial waterfront facilities at the shipyard. Entry into this zone is prohibited unless otherwise authorized by these regulations or the Captain of the Port.

EFFECTIVE DATE: This regulation becomes effective on June 12, 1995, and remains in effect until September 9, 1995, unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LCDR J. A. Bigley, c/o Commander, Thirteenth Coast Guard District (mps), 915 Second Avenue, Seattle, Washington 98134, (206) 220–7210.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective less than 30 days after the date of publication in the **Federal Register.** Publishing an NPRM and delaying the effective date of this regulation would be contrary to the public interest because immediate action is necessary to safeguard the security of the Puget Sound Naval Shipyard and to ensure public safety on the navigable waters of the United States. A recent Federal court decision indicates that the Naval Restricted Area (NRA) regulation for the Puget Sound Naval Shipyard, as presently codified at 33 CFR 334.1240, is not sufficient to meet the needs of national security and public safety. Immediate regulatory action is therefore needed as an interim measure until such time as the NRA regulation can be amended by the U.S. Army Corps of Engineers (COE). Amendment of the NRA regulation by COE may take as long as 90 days. For these reasons, following normal rulemaking procedures in this case would have been impracticable.

Drafting Information

The drafters of this notice are LCDR J. A. Bigley, Project Officer, and LCDR John Odell, Project Attorney, Thirteenth Coast Guard District Legal Office.

Discussion of Regulation

In the past, the U.S. Navy has relied on Naval Restricted Area (NRA) regulations established by the U.S. Army Corps of Engineers (COE) to meet the needs of national security and public safety on the waters of Sinclair Inlet adjacent to the Puget Sound Naval Shipyard (PSNY). These NRA regulations are codified at 33 CFR 334.1240. A recent Federal court decision indicates that these regulations do not apply to swimmers, divers, and other individuals not embarked on vessels.

In light of this court decision, the Commanding Officer, Puget Sound Naval Shipyard, reviewed the physical security and safety conditions around the shipyard's active piers and drydocks. Based in this review, the Commanding Officer concluded that swimmers, divers, and other individuals not embarked in vessels may pose a serious threat to the security of the shipyard if these individuals are allowed to enter the waters of Sinclair Inlet adjacent to the shipyard. Moreover, persons swimming or diving in these waters may be exposed to numerous dangers associated with the industrial waterfront facilities at the shipyard. These dangers include maneuvering U.S. Navy vessels, underwater pump suctions and discharges, rotating propellers, and rigging and crane operations over the water. Based on this review of the security and safety conditions at the shipyard, the U.S. Navy requested the Coast Guard to establish a limited access area in the waters surrounding the shipyard.

In response to the U.S. Navy's request, the Coast Guard is establishing a combined security and safety zone on the waters of Sinclair Inlet adjacent to the Puget Sound Naval Shipyard. This combined security and safety zone approximates and overlaps the existing NRA.

The Coast Guard has determined that a security zone is warranted and appropriate because a security zone is intended for the protection of assets which are vital to the national interest. Vessels moored or drydocked at the shipyard can easily be approached from the water and are vulnerable to acts of sabotage. Regulating access to the water areas aroumd the shipyard provides a means of countering this threat without unnecessarily interfering with the public's use of the waterway. The security zone will keep unauthorized persons and vessel away from vessels and facilities at the shipyard and will allow early detection of unauthorized entry.

The Coast Guard has determined that a safety zone is also warranted because a safety zone is intended to ensure the safety of the public on the navigable waters of the United States. Persons and vessels operating in and on the waters of Sinclair Inlet adjacent to the shipyard are exposed to the numerous hazards associated with a waterfront industrial facility. Excluding unauthorized persons and vessels from this area of Sinclair Inlet will reduce the risk of accidents and injuries involving members of the public without unnecessarily interfering with the public's use of the waterway.

These regulations exempt certain categories of persons and vessels from some or all of the restrictions imposed by the security and safety zone. Other exemptions may be granted where the Captain of the Port, Puget Sound, and Commanding Officer, Puget Sound Naval Shipyard, have agreed that access to the shipyard does not pose a threat to security or safety at the shipyard and it is in the national interest. Persons and vessels requesting an exemption to enter the security and safety zone must request and receive authority from the Captain of the Port, Puget Sound, via the Security Officer, Puget Sound Naval Shipyard, Bremerton, Washington.

This combined security and safety zone will be enforced by the Captain of the Port, Puget Sound, and by his designated representatives. Designated representatives of the Captain of the Port may include Coast Guard commissioned officers and petty officers. The U.S. Navy may assist the Coast Guard in the patrol, monitoring, and enforcement of the security and safety zone.

Regulatory Evaluation

This action is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 CFR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This expectation is based on the fact that the NRA regulations already prohibit commercial navigation from entering the waters adjacent to the shipyard.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this action will have a significant impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons stated under the Regulatory Evaluation above, the Coast Guard expects the impact of this action to be minimal on all entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this action will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This temporary final rule contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this action under the principals and criteria contained in Executive Order 12612 and has determined that this action does not have sufficient federal implications to warrant the preparation of a Federal Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under paragraph 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying were indicated under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended as follows: 1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A new Section 165T.13–026 is added to read as follows:

§ 165.T13–026 Security and Safety Zone; Sinclair Inlet, WA

(a) *Location.* The following area is a combined security and safety zone:

All waters of Sinclair Inlet, Puget Sound, Bremerton, Washington, bounded by a line commencing at latitude 47°33'04" N, longitude 122°39'41" W; thence to latitude 47°33'04" N, longitude 122°39'07" W; thence to latitude 47°33'07" N, longitude 122°38'59" W; thence to latitude 47°33'07" N, longitude 122°38'29" W; thence to latitude 47°33'23" N, longitude 122°37'45" W; thence to latitude 47°33'39" N, longitude 122°37'27" W; thence to latitude 47°33'42" N, longitude 122°37'28" W; and thence along the shoreline to the point of origin.

This combined security and safety zone roughly conforms to the configuration of the shoreline of the Puget Sound Naval Shipyard, measuring approximately 3500 yards along the shoreline and extending approximately 150 yards into Sinclair Inlet.

[Datum: NAD 83]

(b) *Regulations.* (1) In accordance with the general regulations in Sections 165.23 and 165.33 of this part, no person or vessel may enter or remain in this zone unless specifically listed in subparagraph (b)(2) of this section or authorized by the Captain of the Port, Puget Sound, or his designated representatives.

(2) The general regulations in Sections 165.23 and 165.33 of this part do not apply to the following persons or vessels;

(i) Public vessels of the United States.

(ii) Vessels performing work at Puget Sound Naval Shipyard under contract with the United States Navy.

(iii) Any other vessel or person mutually agreed upon in advance by the Captain of the Port, Puget Sound, and Commanding Officer, Puget Sound Naval Shipyard. Vessels or persons entering the security and safety zone under this exemption must have previously obtained a copy of a certificate of exemption permitting their entry in the zone from the Security Office, Puget Sound Naval Shipyard, Bremerton, Washington. This written exemption shall state the date(s) on which it is effective and may contain any further restrictions on movement and activities within the zone as have been previously agreed upon by the Captain of the Port, Puget Sound, and Commanding Officer, Puget Sound Naval Shipyard. The certificate of exemption shall be maintained onboard the exempted vessel or on the person of the exempted individual at all times when present in the zone.

(c) *Enforcement.* This combined security and safety zone will be enforced by the Captain of the Port, Puget Sound, and by his designated representatives. Designated representatives of the Captain of the Port may include Coast Guard commissioned officers and petty officers. The U.S. Navy may assist the Coast Guard in the patrol, monitoring, and enforcement of the security and safety zone.

(d) *Effective dates.* This section becomes effective on June 12, 1995 at 5 p.m. (PDT) and terminates on September 9, 1995 at 4:30 p.m. unless sooner terminated by the Captain of The Port.

Dated: June 12, 1995.

J. A. Pierson,

Capt., U.S. Coast Guard Commander, Thirteenth Coast Guard District, Acting.

[FR Doc. 95–15757 Filed 6–26–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–5226–1]

National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This action corrects errors and clarifies regulatory text in the final rule published on January 25, 1995, at 60 FR 4948 concerning national emission standards for chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks.

EFFECTIVE DATE: These corrections become effective June 27, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Lalit Banker, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5420.

SUPPLEMENTARY INFORMATION: On January 25, 1995, the EPA promulgated in the **Federal Register** (60 FR 4948) final national emission standards for chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks. These standards were promulgated as subpart N in 40 CFR part 63. As published, the final regulations contain errors which may prove to be misleading and are in need of clarification. This document contains corrections to editorial errors in the final standards.

List of Subjects in 40 CFR Part 63

Environmental Protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: June 15, 1995.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

For the reasons set out in the preamble, title 40, chapter I, part 63 subpart N of the Code of Federal Regulations is corrected as follows:

PART 63—[CORRECTED]

1. On page 4963, in the first column, the designations (b)(4) and (5) are corrected to read (b)(5) and (6) in § 63.14 and amendatory instruction number 2 is corrected to read:

"2. Section 63.14 is amended by adding paragraphs (b)(5) and (6) to read as follows:"

2. On page 4966, in the second column, § 63.342 in paragraph (f)(3)(iv) line 8, is corrected to read "for that even and shall report by phone such".

3. On page 4966, in the third column, § 63.343 in paragraph (a)(2) last line, is corrected to read "schedule of § 63.6 (b)(1)."

4. On page 4967, in the second column, § 63.343 in paragraph (a)(5) last line, is corrected to read "that the large designation is met, or by the compliance date specified in paragraph (a)(1)(ii) of this section, whichever is later."

5. On page 4979, in the first column, paragraph 1.2, after the first sentence add the sentence "The sample time has to be at least 2 hours."

6. On page 4986, in the third column, paragraph 3.1.1, in line 2, the word "inner" is corrected to read "inside."

7. On page 4988, in the first column, paragraph 3.1.4, in line 4, the word "absorbing" is corrected to read "pollutant in the absorbing." Also, in line 8, the word "bleak-tight" is corrected to read "leak-tight."

8. On page 4988, in the third column, paragraph 5.1.1.1, in line 9, the word "velocity" is corrected to read "velocity pressure."

9. On page 4990, in the second column, paragraph 5.1.1.3, in lines 4 and 5, remove the words "using velocity traverse data obtained earlier in the day."

10. On page 4990, in the third column, paragraph 5.1.1.3, in line 1, remove the word "velocity."

11. On page 4990, in the second column, paragraph 5.1.1.5, in lines 2 and 3, remove the words "before sampling."

12. On page 4992, in the first column, paragraph 5.1.2.2, in line 2, the words "and turn" are corrected to read "and seal the port. Turn."

13. On page 4993, in the second column, paragraph 1.2, in line 7, the word "bathreduces" is corrected to read "bath reduces."

14. On page 4993, in the second column, paragraph 2.2, in line 1, the words "Preciser Tensiometer: A Preciser" are corrected to read "Tensiometer: A."

15. On page 4993, in the second column, paragraph 3.1, in lines 2 and 5, remove the words "Preciser."

16. On page 4993, in the third column, paragraph 3.2.(b), in line 2, the figure "40" is corrected to read "45."

17. On page 4993, in the third column, paragraph 4.2, in line 6, remove the word "Preciser."

[FR Doc. 95–15430 Filed 6–26–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 413

[BPD–689–F]

RIN 0938–AE80

Medicare Program; Uniform Electronic Cost Reporting System for Hospitals

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule responds to comments on the May 25, 1994, final rule with comment period that implemented a standardized electronic cost reporting system for all hospitals under the Medicare program. In that rule, we solicited comments on the requirement that cost reporting software be able to detect changes made to the electronic file after the provider has submitted it to the fiscal intermediary. This final rule responds to comments on that requirement and clarifies that although changes to the "as-filed" electronic cost report are prohibited, an intermediary makes a working copy of the as-filed electronic cost report for use in the settlement process.

EFFECTIVE DATE: These regulations are effective on July 27, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas Talbott (410) 966–4592.

SUPPLEMENTARY INFORMATION:

I. Background

A. General

Under Medicare, hospitals are paid for inpatient hospital services that they furnish to beneficiaries under Part A (Hospital Insurance). Currently, most hospitals are paid for their inpatient hospital services under the prospective payment systems for operating and capital costs in accordance with sections 1886(d) and (g) of the Social Security Act (the Act) and 42 CFR Part 412. Under these systems, Medicare payment is made at a predetermined, specific rate for each hospital discharge based on the information contained on actual bills submitted.

Section 1886(f)(1)(A) of the Act provides that the Secretary will maintain a system for reporting costs of hospitals paid under the prospective payment systems. Section 412.52 requires all hospitals participating in the prospective payment systems to meet the recordkeeping and cost reporting requirements of §§ 413.20 and 413.24, which include submitting a cost report for each 12-month period.

The hospitals and hospital units that are excluded from the prospective payment systems are generally paid an amount based on the reasonable cost of services furnished to beneficiaries. The inpatient operating costs of these hospitals and hospital units are subject to the ceiling on the rate of hospital cost increases in accordance with section 1886(b) of the Act and § 413.40.

Sections 1815(a) and 1833(e) of the Act provide that no payments will be made to a hospital unless it has furnished the information, requested by the Secretary, needed to determine the amount of payments due the hospital under the Medicare program. In general, hospitals submit this information through cost reports that cover a 12-month period.

All hospitals participating in the Medicare program, whether they are paid on a reasonable cost basis or under the prospective payment systems, are required under § 413.20(a) to "maintain sufficient financial records and statistical data for proper determination of costs payable under the program." In addition, hospitals must use standardized definitions and follow accepted accounting, statistical, and reporting practices. Under the provisions of §§ 413.20(b) and 413.24(f), hospitals are required to submit cost reports annually, with the reporting period based on the hospital's accounting year.

Section 1886(f)(1)(B)(i) of the Act provides that the Secretary will place into effect a standardized electronic cost reporting format for hospitals under Medicare. This standardized electronic cost reporting format does not require any additional data from hospitals. Section 1886(f)(1)(B)(ii) of the Act provides that the Secretary may delay or waive the implementation of the electronic format in instances where such implementation would result in financial hardship for a hospital (for example, a hospital with a small percentage of inpatients entitled to Medicare benefits). These provisions apply to hospital cost reporting periods beginning on or after October 1, 1989.

B. Provisions of the August 19, 1991 Proposed Rule

On August 19, 1991, we published a proposed rule (56 FR 41110) to implement sections 1886(f)(1)(B)(i) and (ii) of the Act. We proposed that cost reports be submitted in a standardized electronic format. We proposed that the hospital's cost report software must be able to produce a standardized output file in American Standard Code for Information Interchange (ASCII) format. We proposed that all intermediaries have the ability to read this standardized file and produce an accurate cost report. We proposed rules for suspension of Medicare payment if a hospital refuses to submit the cost report electronically. We also specified that if a hospital believes that implementation of the electronic submission requirement would cause a financial hardship, the hospital should submit a written request for a waiver or a delay of these requirements, with supporting documentation, to the hospital's intermediary. See section III of the proposed rule (56 FR 41111 through 41112).

C. Provisions of the May 25, 1994 Final Rule With Comment Period

On May 25, 1994, we published a final rule with comment period to confirm the proposed regulations and respond to public comments on the proposed rule (59 FR 26960). As a result of public comments on the proposed rule, we eliminated the requirement that providers file a hard copy cost report in addition to the electronic file. Instead, we required that, in addition to the electronic file, a hospital must submit hard copies of a settlement summary, a statement of certain worksheet totals found in the electronic file, and a signed statement certifying the accuracy of the

electronic file or the manually prepared cost report.

The purpose of these changes was to reduce the burden on providers and ensure the accuracy of the data contained in the electronic file. However, we also needed to ensure the electronic cost report is not altered once it leaves the provider. Thus, in conjunction with the changes made based on public comments, we implemented several changes designed to preserve the integrity of the electronic cost report once the provider files it with the intermediary. We required in § 413.24(f)(4)(ii) that the provider's software must be capable of disclosing that changes have been made to the cost report file after the provider has submitted it to the intermediary. We stated that electronic cost reporting software will be modified so that the cost report will calculate a "hash total," that is, a number representing the sum of the worksheet totals contained in the provider's as-filed cost report. If any data in the electronic file are changed after the hash total is calculated, the electronic file will disclose that a change has been made. We also required that an intermediary may not alter a cost report once it has been filed by a hospital and must reject any cost report that does not pass all specified edits and return it to the provider for correction.

Because providers may not have anticipated the changes needed to preserve the integrity of the cost report, we solicited comments on the requirement in § 413.24(f)(4)(ii) that all cost reporting software must be able to disclose changes made to the electronic file after the provider has submitted its cost report to the intermediary.

II. Discussion of Public Comments

In response to the May 25, 1994 final rule with comment period, we received three timely items of correspondence related to the requirement that cost reporting software be able to detect changes to the electronic cost report after the provider has submitted it to the intermediary.

Comment: One commenter pointed out that a strict interpretation of the requirement in § 413.24(f)(4)(ii) that the "intermediary may not alter the cost report once it has been filed by the hospital" would mean that the intermediary could not make audit adjustments to the provider's as-filed electronic cost report. Another commenter asked whether the intermediary can adjust the cost report for additional information not required for acceptability but needed in such cases as Hospital Cost Report Information System (HCRIS) preparation.

Response: We did not intend to imply that the intermediary may not make audit adjustments to a provider's cost report. To clarify this point, we are revising § 413.24(f)(4)(ii) to state that the as-filed cost report may not be altered, but the intermediary must make a working copy of the as-filed cost report to be used for the settlement process.

Specifically, we are revising § 413.24(f)(4)(ii) to require that—

- The fiscal intermediary store the hospital's as-filed electronic cost report and not alter that file for any reason.
- The fiscal intermediary make a working copy of the as-filed electronic cost report to be used, as necessary, throughout the settlement process (that is, desk review, processing audit adjustments, final settlement, etc).

The fiscal intermediary may also employ a working copy of the as-filed electronic cost report for making any adjustments needed for HCRIS purposes.

Comment: Two commenters suggested that, to maintain the integrity of the provider's electronic file, HCFA should require the establishment of a print file submitted on diskette as a substitute for the hard copy cost report. Another commenter supported the use of "hash totals" in the electronic cost report (ECR) if the vendors are able to create ECR files that cannot be edited without detection. The commenter suggested that the "hash totals" in the ECR be printed in cost report text and on the hard copy certification page. The commenter also indicated that time and date stamps on the ECR file and printed cost report are not useful.

Response: As stated in the final rule with comment period, hospitals are no longer required to submit hard copies of the cost report in addition to the electronic file. We agree with the commenters' suggestion that an electronic file containing the complete printed text of the provider's cost report should be submitted in place of the hard copy. Since the ASCII file contains input data only, the print file will be helpful in settling discrepancies between the fiscal intermediary's settlement amounts and the provider's settlement amounts. Therefore, we intend to publish in the Provider Reimbursement Manual (HCFA Pub. 15–II) the requirement that providers submit an electronic file containing the entire printed text and an encryption file (hash totals) of the provider's cost report in addition to the ASCII file used for electronic cost reporting.

We disagree that the time and date stamps on the electronic cost report are not useful. The time and date stamps on the electronic cost report file must agree with the certification page that accompanies the electronic cost report file. This requirement assures us that the cost report has been reviewed and accepted and has not been altered after certification by the signing officer. This requirement coupled with the encryption file will ensure that the integrity of the file has been maintained.

Comment: One commenter suggested that the regulation mention what the responsibility of each of the 11 vendors will be to maintain consistency between software programs, particularly in the implementation of edits. The commenter indicated that if the ADR vendor establishes additional edits not specified by HCFA, the electronic cost report file created by the provider's software vendor system may result in rejection by the intermediary. This possibility places an undue burden on the provider who filed under the assumption that all errors were detected and corrected before submission.

Response: All vendors will be responsible for providing their clients with the software to create a print file, an encryption file, and the electronic cost report file. In addition, the three Automated Desk Review (ADR) vendors are responsible for developing a software program that will accept the filing of all three files, as mentioned above, with the intermediary. All of the software programs will maintain consistent edits that, when specified edits are failed, will result in the intermediary rejecting the cost report. These edits are established by HCFA and published in section 130 of the Provider Reimbursement Manual (HCFA Pub. 15–II). An ADR vendor may establish additional edits, but failure to meet such edits may not result in rejection of the cost report by the intermediary.

III. Technical Changes

We received several inquiries implying that it is unclear in the regulations when an electronic cost report is considered timely filed. Therefore, in § 413.24(f)(4)(ii), we are clarifying that, for purposes of the due date requirements specified in § 413.24(f)(2), an electronic cost report is not considered to be filed until it is accepted by the intermediary.

In the May 25, 1994 final rule with comment period, we eliminated the requirement that providers file a hard copy of the cost report. We stated that effective for cost reporting periods ending on or after October 1, 1994, this requirement is replaced with the submittal of a hard copy of a settlement summary, a statement of certain worksheet totals found within the electronic file, and a certification statement. After publication, we realized that making this requirement effective for cost reporting periods ending on or after October 1, 1994, did not make sense since cost reporting periods generally end on the last day of a month. To eliminate any confusion associated with this requirement, we are making a technical correction to § 413.24(f)(4)(iii) to specify that the replacement of the submission of a hard copy of the cost report with the revised documentation is effective for cost reporting periods ending on or after September 30, 1994, rather than for periods ending on or after October 1, 1994.

IV. Collection of Information Requirements

As discussed in our May 25, 1994 final rule with comment period (59 FR 26963), § 413.24 contains information collection and recordkeeping requirements related to cost reporting that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The overall recordkeeping and information collection burden associated with filing the hospital cost report has been approved by OMB through August 31, 1996 under OMB No. 0938–0050.

In the May 25, 1994 final rule with comment period, we revised § 413.24 to implement the statutory requirement that hospitals submit their cost reports in a uniform electronic format. As we stated in the May 25, 1994 document, approximately 90 percent of hospitals participating in Medicare already file their cost reports electronically and thus are essentially unaffected by the requirement that hospitals submit cost reports in an electronic format. For the remaining hospitals, we stated that it was possible they would initially experience a small additional reporting burden. However, once these hospitals become familiar with electronic reporting, there will no longer be an additional burden and there may be a decrease in burden since the time needed to compute the cost report will no longer be required.

This final rule responds to comments on the May 25, 1994 document and makes only minor technical changes to § 413.24. We received no comments relating to the discussion in the May 25, 1994 document of the information collection and recordkeeping burden. The technical changes contained in this final rule have no effect for information collection and recordkeeping purposes. However, as stated in the May 25, 1994 final rule with comment period, the information collection and recordkeeping requirements contained in § 413.24 are not effective until they have been approved by OMB. A notice will be published in the **Federal Register** when approval is obtained. Organizations and individuals desiring to submit comments on the information collection and recordkeeping requirements set forth in § 413.24 should direct them to the Office of Information and Regulatory Affairs, Office of Management and Budget, Human Resources and Housing Branch, Room 10235, New Executive Office Building, Washington, D.C. 20503, Attention: Allison Herron Eydt, HCFA Desk Officer.

V. Impact Statement

Unless we certify that a final rule will not have a significant economic impact on a substantial number of small entities, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612). For purposes of the RFA, all hospitals and small businesses that distribute cost-report software to hospitals are considered to be small entities. Intermediaries are not included in the definition of a small entity.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a final rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that has fewer than 50 beds and is located outside of a Metropolitan Statistical Area.

This final rule is merely making clarifying and technical changes to the regulations and will not have a significant effect on Medicare-participating hospitals or software suppliers. Therefore, a regulatory flexibility analysis is not required. We are not preparing a rural impact statement since we certify that this final rule will not have a significant economic impact on the operation of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was not reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR part 413 is amended as follows:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1122, 1814(b), 1815, 1833(a), (i), and (n), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1302a–1, 1395f(b), 1395g, 13951(a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww).

Subpart B—Accounting Records and Reports

2. In § 413.24, the headings for paragraphs (f) and (f)(4) are republished, paragraph (f)(4)(ii) and the first sentence of paragraph (f)(4)(iii) are revised to read as follows:

§ 413.24 Adequate cost data and cost finding.

* * * * *

(f) *Cost reports.* * * *

(4) *Electronic submission of cost reports.* * * *

(ii) The fiscal intermediary stores the hospital's as-filed electronic cost report and may not alter that file for any reason. The fiscal intermediary makes a "working copy" of the as-filed electronic cost report to be used, as necessary, throughout the settlement process (that is, desk review, processing audit adjustments, final settlement, etc). The hospital's electronic program must be able to disclose if any changes have been made to the as-filed electronic cost report after acceptance by the intermediary. If the as-filed electronic cost report does not pass all specified edits, the fiscal intermediary rejects the cost report and returns it to the hospital for correction. For purposes of the requirements in paragraph (f)(2) of this section concerning due dates, an electronic cost report is not considered to be filed until it is accepted by the intermediary.

(iii) Effective for cost reporting periods ending on or after September 30, 1994, a hospital must submit a hard copy of a settlement summary, a statement of certain worksheet totals found within the electronic file, and a statement signed by its administrator or chief financial officer certifying the accuracy of the electronic file or the manually prepared cost report. * * *

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: May 22, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 95–14782 Filed 6–26–95; 8:45 am]

BILLING CODE 4120–01–P

42 CFR Part 413

[BPD–366–F]

RIN 0938–AD01

Medicare Program; Clarification of Medicare's Accrual Basis of Accounting Policy

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule revises the Medicare regulations to clarify the concept of "accrual basis of accounting" to indicate that expenses must be incurred by a provider of health care services before Medicare will pay its share of those expenses. This rule does not signify a change in policy but, rather, incorporates into the regulations Medicare's longstanding policy regarding the circumstances under which we recognize, for the purposes of program payment, a provider's claim for costs for which it has not actually expended funds during the current cost reporting period.

EFFECTIVE DATE: This final rule is effective July 27, 1995.

FOR FURTHER INFORMATION CONTACT: John Eppinger, (410) 966–4518.

SUPPLEMENTARY INFORMATION:

I. Background

Generally, under the Medicare program, health care providers not subject to prospective payment are paid for the reasonable costs of the covered items and services they furnish to Medicare beneficiaries. This policy pertains to all services furnished by providers other than inpatient hospital services (section 1886(d) of the Social Security Act (the Act)) and certain inpatient routine services furnished by skilled nursing facilities choosing to be paid on a prospective payment basis (section 1888(d) of the Act.) Additionally, there are other limited services not paid on a reasonable cost basis, to which this policy would not apply. Section 1861(v)(1)(A) of the Act defines reasonable cost as the cost actually incurred, excluding any cost unnecessary in the efficient delivery of needed health services. That section of the Act also provides that reasonable costs must be determined in accordance with regulations that establish the methods to be used and the items to be included for purposes of determining which costs are allowable for various types or classes of institutions, agencies, and services. In addition, section 1861(v)(1)(A) of the Act specifies that regulations implementing the principles of reasonable cost payment may provide for the use of different methods in different circumstances. Implementing regulations at 42 CFR 413.24 establish the methods to be used and the adequacy of data needed to determine reasonable costs for various types or classes of institutions, agencies, and services.

Section 413.24(a) requires providers receiving payment on the basis of reasonable cost to maintain financial records and statistical data sufficient for the proper determination of costs payable under the program and for verification of costs by qualified auditors. The cost data are required to be based on an approved method of cost finding and on the accrual basis of accounting. Currently, § 413.24(b)(2) provides that under the accrual basis of accounting, revenue is reported in the period in which it is earned, regardless of when it is collected, and expenses are reported in the period in which they are incurred, regardless of when they are paid.

As explained in the October 9, 1991 proposed rule (56 FR 50834), under the current definition of the accrual basis of accounting, some providers have claimed costs without evidence of having incurred actual expenditures or the assurance that liabilities associated with accrued costs will ever be fully liquidated through an actual expenditure of funds. For example, under the terms of some provider employment contracts, nonprobationary employees are entitled to accumulate a certain number of sick leave days annually and carry forward a maximum accumulated amount of unused sick leave time. These sick leave days are typically vested (although not funded) but nevertheless are subject to forfeiture. That is, unused accumulated sick leave days are subject to redemption for cash if the employee retires, resigns, or is discharged in good standing, but may be forfeited if the employee is discharged for cause. In the latter case, under the current rule, some providers have sought Medicare payment for sick leave days for which the provider never became liable.

As a result of the lack of clarification in the regulations regarding Medicare payment for certain accrued costs, the Medicare program has settled approximately $4.0 million worth of accrued costs in sick leave, FICA taxes, deferred compensation, and unpaid mortgage interest expense cases. We believe that a clarification to the regulations to incorporate longstanding Medicare policy regarding timely liquidation of liabilities associated with these accrued costs will minimize the unwarranted payment of Federal funds. That is, the regulations will clarify that in cases in which a provider does not timely liquidate the liabilities, Medicare recovers its payment for the accrued costs claimed by the provider.

As discussed in the proposed rule, an alternative would be to forego incorporating in regulations our policy regarding the circumstances under which Medicare accepts a provider's claim for costs for which it has not actually expended funds during the current reporting period.

However, without a change to the regulations, some providers would believe that, for Medicare purposes, they could continue to rely solely upon the generic definition of the accrual basis of accounting, whereby revenue is reported in the period it is earned, regardless of when it is collected, and expenses are reported in the period in which they are incurred, regardless of when they are paid. HCFA would have to continue to defend the policy without specific support in the regulations. To the extent that challenges to this policy were successful, we would be forced to pay currently for accrued liabilities that either may not be liquidated timely or may never be liquidated. Although we believe that, in light of the recent decision of the United States Supreme Court in *Shalala* v. *Guernsey Memorial Hosp.*, 115 S. Ct. 1232 (1995), the likelihood of successful challenges has decreased, we believe it is appropriate to publish these regulations to avoid any confusion regarding the policy.

In summary, despite the clear statements of Medicare payment principles found in Medicare manuals (for example, section 2305 of the Provider Reimbursement Manual), the lack of clarification to the regulations continues to impair HCFA's ability to defend against challenges to the regulations for accrued costs of sick pay, vacation pay, FICA and other payroll taxes, owners' compensation, deferred compensation, pension plans, nonpaid workers' services, and unpaid mortgage interest, as well as other accrued costs. The end result, to the extent that HCFA cannot defend challenges to the policy, is that the Medicare program makes payments for costs not incurred by providers, in violation of section 1861(v)(1)(A) of the Act.

II. Summary of Proposed Rule

On October 9, 1991, we published a proposed rule (56 FR 50834) to revise § 413.24 by adding a new paragraph to describe the conditions under which certain accrued costs would be recognized for purposes of Medicare payment. Our intention in specifying these conditions was not to change policy. Rather, it was to incorporate into the regulations our longstanding policy on the timely liquidation of liabilities, as contained in sections 704.3, 704.5, 906.4, 2140, 2144.8, 2144.9, 2146, 2162.9, and 2305 of the Provider Reimbursement Manual. Under this longstanding policy, accrued costs are included in Medicare allowable costs in the year of accrual, provided the related liabilities are liquidated timely, in accordance with the liquidation requirements for the particular type of accrued cost. If the liabilities are not liquidated timely, an adjustment is required to disallow the costs. Generally, the adjustment is made in the year of accrual except for vacation and all-inclusive paid days off, in which case the adjustment generally is made in the year in which the payment for the accrued vacation or all-inclusive paid days off should have been made. [The Provider Reimbursement Manual provides additional instructions, not incorporated in the regulations, regarding later recognition, if any, with respect to costs associated with liabilities not liquidated in accordance with the liquidation of liabilities requirements.)

As we indicated in the proposed rule, we believe this clarification will significantly contribute to the uniform application of our policies concerning recognizing accrued costs for Medicare payment and will preclude misinterpretation of the policies in the future. A change to the regulations is necessary to ensure that providers are paid for their actual costs as intended under section 1861(v)(1)(A) of the Act, and 42 CFR 413.9(c)(3), which state that the reasonable cost basis of payment contemplates that providers of services are to be paid the actual costs of providing quality care.

Accordingly, in order for accrued costs to be recognized for Medicare payment, we proposed that the following requirements be met with respect to the liquidation of liabilities:

- In a new § 413.24(c)(3)(i), we proposed that a short-term liability generally must be liquidated within 1 year after the end of the cost reporting period in which the liability is incurred, with an exception in cases in which the intermediary is furnished, within the 1-year time limit, sufficient written justification, based upon documented evidence, for nonpayment. An extension not to exceed 3 years beyond the end of the cost reporting year in which the liability was incurred could be granted for good cause.
- In a new § 413.24(c)(3)(ii), we proposed that if the provider's vacation policy is consistent for all employees, we would require that payment be made within the period provided for by that policy. If the provider's vacation policy is not consistent for all employees, we would require that payment be made within 2 years after the close of the cost reporting period in which the liability is accrued. Under this paragraph, we also proposed that the policy applicable to vacation pay also would apply to all-inclusive paid days off (for example, total time off in a given period for unspecified occasions, including illness, vacations, and family bereavement).
- In a new § 413.24(c)(3)(iii), we proposed that if sick pay is vested and funded in a deferred compensation plan, liabilities related to the contributions to the fund would be liquidated in accordance with the policy stated above for a short-term liability. However, if the sick leave plan grants employees the right to demand cash payment for unused sick leave at the end of each year, we proposed that the sick pay be includable in allowable costs, without funding, in the cost reporting period when it is earned.
- In a new § 413.24(c)(3)(iv), with regard to compensation of owners other than sole proprietors and partners (that is, employees, officers and directors owning stock in closely-held corporations or with a substantial ownership or equity in publicly-traded corporations, and certain employees of trusts), we proposed that any related accrued liability be liquidated within 75 days after the close of the cost reporting period in which the liability occurs.
- In a new § 413.24(c)(3)(v), we proposed that obligations incurred under a legally-enforceable agreement to remunerate an organization of nonpaid workers be discharged no later than the end of the provider's cost reporting period following the period in which the services were furnished.
- In a new § 413.24(c)(3)(vi), we proposed that the employer's share of FICA and other payroll taxes that the provider becomes obligated to remit to governmental agencies may be included in allowable costs only during the cost reporting period in which payment, upon which the tax is based, is actually made to the employee. For example, no legal obligation exists for the provider-employer to pay FICA taxes until such time as the employee is paid and the specific amount of payroll liability is known.
- In a new § 413.24(c)(3)(vii), we proposed that accrued liabilities related to contributions to a funded deferred compensation plan must be liquidated in accordance with the policy stated above in § 413.24(c)(3)(i) for a short-term liability. However, if the plan is not funded, reasonable provider payments made to employees under deferred compensation plans would be considered an allowable cost only during the cost reporting period in which actual payment is made to the participating employee.
- In a new § 413.24(c)(3)(viii), we proposed that accrued liability related to contributions under a self-insurance program that are systematically made to a funding agency, and that cover malpractice and comprehensive general liability, unemployment compensation, workers' compensation insurance losses, or employee health benefits, must be liquidated within 75 days after the close of the cost reporting period.

III. Discussion of Public Comments

In response to the October 9, 1991 proposed rule, we received 17 timely items of correspondence. The comments were submitted by eight providers or provider associations, two trade associations, five consultants or accounting firms, one State, and one law firm. Our responses are presented below:

A. General

Comment: Several commenters raised questions regarding the relationship between Medicare payment policy and generally accepted accounting principles (GAAP). Some commenters believe that the proposed rule conflicts with GAAP and that HCFA is bound to use GAAP.

Response: The regulations at § 413.24(a) establish the general principle that cost data be based on the accrual basis of accounting, a concept also integral to GAAP. However, regarding application of the accrual basis of accounting, Medicare payment policy does not always follow GAAP exactly because Medicare payment policy and GAAP have different objectives. Medicare's objective for cost payment purposes is to pay providers appropriately for the reasonable and proper cost of furnishing services to Medicare beneficiaries in a specific fiscal period. On the other hand, the primary goal of GAAP is the full and proper presentation of accounting data through statements and reports.

Medicare's longstanding position on the relationship between Medicare payment policy and GAAP is that GAAP will be followed only in cost situations not covered by the Medicare statute, regulations, rulings, manual provisions, or program policy (*American Medical Int'l v. Secretary of Health, Educ., and Welfare*, 466 F. Supp. 605, 624 n.21 (D.D.C. 1979), *aff'd* 677 F.2d 118 (D.C. Cir. 1981)). This position has long been stated in the Foreword to the Provider Reimbursement Manual and elsewhere (41 Fed. Reg. 46, 291–2 (Oct. 20, 1976)) and is consistent with the Medicare statute.

Section 1861(v)(1)(A) requires the Secretary, in defining reasonable cost, to "consider, among other things, the principles generally applied by national organizations or established prepayment organizations (which have developed such principles).* * *" At most, the statute requires the Secretary to consider certain principles. Moreover, the principles that must be considered are not generally accepted accounting principles, but are payment principles developed by national insurance or prepayment organizations in the health services sector. Therefore, we disagree with the commenter's belief that HCFA is bound to use GAAP in determining what costs are allowable. Instead, GAAP, which includes accrual accounting, is used by providers in maintaining their records and reporting their costs. When reporting their costs, providers register their trial balance in accordance with their records and subsequently make reclassification and adjustments to the trial balance in certain situations (for example, when Medicare payment policies depart from GAAP). (See section 2407 of the Provider Reimbursement Manual, Part II.)

The Supreme Court recently upheld Medicare's longstanding position on the relationship between Medicare Payment Policy and GAAP in *Shalala* v. *Guernsey Memorial Hosp.*, 115 S. Ct. 1232 (1995). The Court agreed that neither the Medicare statute nor the regulations (42 C.F.R. §§ 413.20 and 413.24) mandate Medicare payment according to GAAP. The Court also accepted the Secretary's position that the regulations require only that providers use GAAP for recordkeeping.

Because of the apparent confusion regarding the relationship between Medicare payment policy and GAAP, we have decided to move the provisions beginning with § 413.24(b)(3) of the proposed rule into a new § 413.100, Special Treatment of Certain Accrued Costs, in 42 CFR Subpart F, Specific Categories of Costs. We believe that leaving these payment provisions in § 413.24 of Subpart B, Accounting Records and Reports, which does not address allowable Medicare costs, would continue to create confusion about the role of GAAP in determining whether a cost is allowable under the Medicare program. Leaving the provisions in § 413.24 would fail to recognize the distinction between the role of GAAP in recordkeeping and reporting, where providers adhere to GAAP (including accrual accounting), and the role of GAAP in determining allowable costs, where GAAP applies only if there is no Medicare policy covering the cost situation. (See section IV of this preamble for a crosswalk between the regulation text citations for provisions of the proposed rule and the corresponding provisions of the final rule.)

Comment: Some commenters objected to the establishment of time limits for the liquidation of an accrued liability since such time limits are not required under GAAP. One commenter asserted that it was inefficient to require hospitals to follow Medicare's unique accrual policies when all other users of hospital financial statements accept GAAP.

Response: The fact that Medicare payment policies may at times differ from GAAP is neither unusual nor unintentional. This rule is a case in point. We recognize that the accrual basis of accounting, as defined in § 413.24(b)(2), is essential for the proper reporting of costs. However, as the commenters pointed out, GAAP does not impose time limits for liquidating accrued liabilities. Time limits for liquidating accrued liabilities are essential to ensure that Medicare recognizes only costs associated with a liability that is liquidated timely through an actual expenditure of funds. Medicare policy does not prevent a provider from maintaining its books and records in accordance with GAAP. Rather, for Medicare purposes, payment for a claimed accrual must be recovered if the accrual is not timely liquidated.

Comment: Some commenters stated that they opposed the proposal because it adds to the burden and cost to providers without any demonstrated need to do so, while providing relatively small benefit to HCFA.

Response: This rule should not add to the burden and costs to providers. It merely conforms regulations to present policies and longstanding practices regarding the circumstances under which Medicare recognizes, for purposes of program payment, a provider's claim for costs for which the provider has not actually expended funds during the current cost reporting period. It does not require changes in reporting or recordkeeping.

We do not agree that this rule provides a relatively small benefit to HCFA. Incorporation in the regulations of our longstanding policies will clarify that Medicare does not make payment for provider expenses for which the associated liabilities are not liquidated timely.

Comment: Several commenters stated that the proposed rule constituted a policy change, rather than just a codification of existing policy. They believe that the proposed changes to the regulations improperly deny payment for substantial costs incurred in furnishing services to Medicare beneficiaries. They opposed any changes to the existing definition of the accrual basis of accounting in regulations at § 413.24(b)(2). In addition, some commenters stated that we do not have authority to implement changes in Medicare regulations retroactively. They believe that this new provision may not be applied to services provided before the effective date of this final rule.

Response: This final rule does not implement a change in Medicare policy. Rather, it incorporates into the regulations our longstanding policy on the timely liquidation of liabilities, as contained in sections 704.3, 704.5, 906.4, 2140, 2144.8, 2144.9, 2146, 2162.9, and 2305 of the Provider Reimbursement Manual. Accordingly, this final rule does not represent a retroactive change in Medicare payment policy. Program manuals contain HCFA's guidelines for implementing the statute and regulations, that is, on how we interpret the statute and regulations. Our policy guidelines on the timely liquidation of liabilities have been included in the Provider Reimbursement Manual for many years. These guidelines are now being incorporated into the Code of Federal Regulations, as of the prospective effective date of this final rule.

Comment: One commenter believes the proposed rule places intermediaries in the role of "policemen" to determine whether a provider is a "going concern".

Response: Under this rule, providers simply would be required to liquidate liabilities timely in accordance with our longstanding policies, in order for them to be allowable costs for Medicare payment purposes. The rule adds no new requirements regarding whether a provider is a going concern. As always, intermediaries will monitor a provider's furnishing of patient care services. If a provider goes out of business, it is still necessary for the provider to timely liquidate liability for expenses paid by the Medicare program.

Comment: According to one commenter, when HCFA implemented the prospective payment system for hospitals in 1983, we stated that after capital and outpatient cost reimbursement were folded into the prospective payment system, the hospital cost reports would become obsolete and could be phased out. In light of this statement, the commenter believes that the cost reporting burden on providers should not be expanded, and objects to HCFA's proposal to expand the burden of cost reporting by no longer allowing GAAP.

Response: Section 1886(f) of the Act requires the Secretary to maintain a system of cost reporting for hospitals receiving payments under the prospective payment system. Thus, the submission of cost reports continues to be a statutory requirement. Moreover, even if cost reporting were not necessary for prospective payment purposes, cost reporting continues to be required to determine Medicare payment for outpatient services in prospective payment hospitals and for services in other types of providers.

We are not expanding the burden of cost reporting. Providers have always been required to maintain sufficient financial records and statistical data of costs payable under the program (§ 413.20(a)). This rule simply codifies in the regulations Medicare's longstanding policy regarding the timing of payment for accrued costs by requiring timely liquidation of liabilities in order to receive Medicare payment. This policy is intended to prevent the outlay of Federal trust funds before they are needed to pay the costs of providers' actual expenditures. It does not require changes in reporting or recordkeeping and, therefore, does not expand the burden of cost reporting.

Comment: One commenter stated that the proposed rule conflicts with the requirements of the Medicare law and regulations, and noted that HCFA has recognized that the Medicare law requires it to determine payment in accordance with standardized accounting practices widely accepted in the hospital and related fields. Furthermore, the commenter pointed out that, in *National Medical Enterprises* v. *Bowen*, 851 F. 2d 291, 294 (9th Cir. 1988), the United States Court of Appeals for the Ninth Circuit concluded that the accounting standards used by hospitals to calculate and record costs are integral parts of Medicare regulations regarding what is a reasonable cost under Medicare.

Response: The rule implements already existing policy. We believe it does not conflict with the authority in the law or the regulations that implement the law. On the contrary, section 1861(v)(1)(A) of the Act defines reasonable cost as cost actually incurred, and states that reasonable costs shall be determined in accordance with regulations. Thus, the Secretary has broad discretion to define reasonable cost by regulation.

We are aware of the court's decision in *National Medical Enterprises* regarding the applicability of accepted accounting standards (such as GAAP) in determining reasonable cost under Medicare. However, *National Medical Enterprises* does not hold that generally accepted accounting principles supersede explicit Medicare instructions stated in the regulations. GAAP is important to a provider in maintaining its books and records and is relevant to the determination of Medicare payment when there is no Medicare policy on point. However, as discussed in our response to an earlier comment, GAAP and Medicare payment policy have different purposes. Unlike GAAP, which is intended to be used to present the financial position of an organization, Medicare policy specifically deals with paying providers for costs incurred in furnishing care to Medicare beneficiaries. For payment purposes, the Medicare Trust Funds should not be required to pay a provider for costs associated with liabilities that are not liquidated timely. Thus, we do not believe that Medicare policy must fully incorporate GAAP. To the extent that the *National Medical Enterprises* case differs with our policy on GAAP, we believe that case is inconsistent with the decision of the Supreme Court in *Shalala* v. *Guernsey Memorial Hosp.*, 115 S. Ct. 1232 (1995). (We note that we are developing a notice of proposed rulemaking to clarify the general applicability of GAAP to Medicare payment policy.)

Comment: One commenter asserted that HCFA's purpose in proposing the rule change is solely financial. The commenter stated further that courts have held that HCFA may not create an interpretation of the Medicare statute or regulations simply as a means of saving money (*Villa View Community Hospital, Inc.* v. *Heckler*, 720 F. 2d 1086, 1094 (9th Cir. 1983)).

Response: The primary purpose of the rule is to codify in regulations longstanding policy precluding Medicare payment for otherwise allowable costs in cases in which a provider has not liquidated timely the liability associated with the expense. For HCFA not to recover its payment for a cost accrued by a provider when the provider fails to make an expenditure to liquidate timely its liability on an obligation is not appropriate. In effect, the provider would be paid by Medicare for an expense for which it has had no outlay of funds, which is not consistent with the law. Thus, this rule does not constitute an interpretation of Medicare statute or regulations simply designed to save money, and, therefore, it is not in conflict with the reasoning of *Villa View Community Hospital*.

Comment: Several commenters stated that the proposal violates principles of accrual accounting and would force an already over-regulated industry to maintain two sets of books. They also alleged that provider costs would escalate dramatically as a result of providers being forced to spend untold hours converting to cash basis accounting.

Response: This change does not violate the principles of accrual accounting; rather, it provides time limitations by which liabilities must be liquidated in order to receive Medicare payment for the year of accrual. Providers initially record their costs in their books and records in accordance with GAAP and, subsequently, make necessary reclassifications and adjustments in their Medicare cost reports to conform with Medicare policy. The incorporation into regulations of already-functioning time limitations related to accrued costs would not change providers' established accounting systems or their preparation of Medicare cost reports. Therefore, a provider would not have to maintain two sets of books to comply with this regulation, nor would the regulations require conversion to cash basis accounting.

Comment: One commenter stated that the proposed change will prove to be detrimental to providers due to the wide variety of possible interpretations by fiscal intermediaries.

Response: We believe that the commenter's contention that this rule raises the possibility of a wide variety of interpretations by fiscal intermediaries is unfounded. The purpose of the rule is to avoid this possibility by explicitly setting forth in regulations longstanding policy that mandates specific time frames for liquidation of liabilities.

Comment: One commenter suggested that we include in the final rule examples of workers' compensation plans structured to lend themselves to unwarranted payment of Federal funds, for example, (1) situations in which a provider's workers' compensation

insurance premium payments are funneled back to a reinsurer related to the provider, or (2) situations in which a provider may have the option of paying less than the insurance premium billed to it (that is, claim an accrual for the billed premium but eventually pay the insurer a smaller amount). The commenter felt the regulations should be clear that a provider's costs are payable only to the extent that the provider has actually paid a premium.

Response: We have chosen not to incorporate the commenter's examples in the regulations. However, we agree that Medicare cannot properly pay a provider unless the provider has actually incurred a cost. In the first example, the provider's intermediary must examine the situation of an insurer reinsuring with a party related to the provider. To the extent the intermediary determines the provider's premiums are unnecessarily or improperly funneled back to a party related to the provider, the premiums would be unallowable. In the second example, to the extent that a provider does not fully liquidate its accrual, that portion of the accrual would be unallowable.

Comment: One commenter took exception to the proposal's claim that no additional information collection requirements would be imposed as a result of the proposed changes to the regulations. The commenter stated that the requirement that unfunded deferred compensation (for example) be an allowable cost only during the period in which actual payment was made to the employee would necessitate additional recordkeeping by providers who must convert their financial reporting systems.

Response: Medicare policy for unfunded deferred compensation plans remains unchanged. If deferred compensation is unfunded, Section 2140.2 of the Provider Reimbursement Manual has long indicated that the provider does not claim an expense until actual payment is made to the employee (or accrued and liquidated timely). Any necessary recordkeeping should already be in place to comply with existing policy. No new or additional recordkeeping would be required under this rule.

Comment: One commenter believes the proposal addressed a concern with over-accrual of costs but failed to provide for under-accrual of costs. The commenter indicated that if payment subsequent to filing the cost report exceeds the accrual, there is no ready mechanism to correct the under-accrued costs and to obtain proper payment. Similarly, the rule should be clarified to allow the provider to increase its interest expense in a situation in which accrued investment income is offset against interest costs but payment is not subsequently received.

Response: If the amount actually expended is greater than the accrual, the excess amount may be treated as paid on a cash basis. Similarly, if the amount of investment income actually realized is less than the amount of the accrual, the amount received serves as the basis for making an appropriate adjustment (that is, to allow additional interest expense).

Comment: One commenter stated that if this rule were adopted, providers would incur costs in treating Medicare patients that would not be paid by Medicare, thus forcing providers to shift incurred costs to other patients. The commenter noted that such cost shifting is prohibited by section 1861(v)(1)(A) of the Act.

Response: In accordance with our policy involving the accrual basis of accounting, Medicare has always paid a provider for incurred costs for which the related liability has been properly accrued, even though the provider has not transferred actual assets to satisfy its obligation. That is, Medicare, through interim payments and eventually through the cost report settlement process, has paid its share of the cost even though the provider in some cases has not yet expended any funds. To the extent that Medicare pays before the provider expends funds, Medicare has made an advance payment for the cost. The purpose of this rule is to recover Medicare's payment after permitting the provider a reasonable period of time in which to liquidate its obligation, if liquidation has not occurred within the required time period. To recover Medicare payments for costs for which the provider has not timely liquidated its obligation does not shift incurred costs to non-Medicare patients.

Comment: One commenter stated that the rule should be clarified to reflect that providers are entitled to be paid for the current period's amortized portion of costs that are not liquidated within 1 year, such as bond discount or bond issue costs.

Response: We do not agree that clarification is necessary. The regulation addresses costs for which liabilities are incurred and must be liquidated timely in order to receive Medicare payment for the year of accrual. It is not intended to apply to the current year's amortized portion of costs, which do not require current liquidation.

Comment: One commenter believed that the savings to the program cited in the proposed rule are suspect because in the vast majority of cases for the items in question, payment to the provider merely will be deferred to a later period. Therefore, a savings to the government would not be permanent.

Response: We did not identify any "savings" in the proposed rule. Rather, we stated that the lack of clarification in the regulations involving the accrual basis of accounting forced the Medicare program to settle cases involving accrued sick leave, FICA taxes, deferred compensation, and unpaid mortgage interest. We indicated our belief that without a change to the regulations, the Medicare program could be forced to pay additional amounts of accrued liabilities even though providers may not liquidate the liabilities on a current (that is, timely) basis.

This rule will result in a clearer statement in the regulations of our policy precluding Medicare payment for expenses in a cost reporting period for which the associated liability is not liquidated timely. If the liability is not liquidated timely, Medicare will recover payment it made for the year of accrual. (Generally, recovery is applicable to the actual year of accrual, although it could apply to a later period in some cases, such as for vacation pay.) Should the liability thereafter be liquidated and our policy provides for Medicare payment in that subsequent period, there will be a Medicare outlay for that period. In cases in which the liability is never liquidated, Medicare does not share in the cost, in the current period or a later period.

B. Self-Insurance

Comment: Some commenters noted that under the proposal, self-insurance program costs would have to be paid within 75 days after the close of the cost reporting period. They suggested that we modify the proposed change to allow program payment in the cost reporting period in which the provider incurs the cost, provided that payment by the provider is made within the timeframes specified in the provider's self-insurance funding plan.

Response: The commenter suggests that the program should recognize a provider's own established time frames in liquidating liabilities for contributions to a self-insurance fund. This would defeat the purpose of the rule, which requires a consistent time frame to be used by all providers, in accordance with longstanding program policy.

Comment: One commenter stated that the proposed rule was not clear as to Medicare's policy in cases in which a self-insurer provides advance funding under State law, and the account is maintained and administered by the provider.

Response: By definition, self-insurance is a means whereby a provider undertakes the risk of protecting itself against anticipated liabilities by providing equivalent funds to liquidate those liabilities. In order for the contributions to a self-insurance fund to be recognized under Medicare, the self-insurance fund must be established with an independent fiduciary such as a bank, a trust company, or a private benefit administrator. In the case of a State or local governmental provider or pool, the State in which the provider or pool is located may act as a fiduciary. In either case, section 2162.7 of the Provider Reimbursement Manual sets forth stringent criteria that must be met in order to gain program recognition as a self-insurance fund. These criteria are designed to ensure the soundness and independent integrity of the fund. The situation alluded to, in which the account is maintained and administered by the provider, would not qualify.

C. All-Inclusive Paid Days Off

Comment: One commenter suggested that we modify the proposal to allow for differences in benefit plans across entities within a company. In some of the provider's facilities, according to the commenter, the benefit plan permits employees to accrue leave or payment in lieu of leave for any combination of types of leave, with some employees accruing leave over an extended period of time. The commenter believes that the proposal creates discrimination among employees even when the different plans do not, and that the proposed change may cause companies to remove the flexibility and control that employees currently have over their benefit plans.

Response: Our intent is not to remove the flexibility a provider's employees may have over their benefit plans. If a provider's vacation policy or its all-inclusive paid days off policy is consistent among all employees, liquidation of the liability is not limited by the proposal. The accrued costs of benefits in the period earned remain costs of that period provided that liquidation of the benefits is made within the period provided for by the provider's policy. Consistent application under a policy may provide for increased benefits based on years of service, provided it applies in the same manner to all employees.

We believe that consistent application of the provider's policy ensures that an employee actually takes the vacation or all-inclusive paid days off benefits for the costs that are claimed.

D. Short-Term Liability

Comment: One commenter believes that if consistency and assurance of payment for actual costs are the goals, it is inappropriate to allow a 3-year extension for "good cause" for payment of short-term liabilities. The commenter views such a determination as being highly subjective and largely dependent upon the good will of the fiscal intermediary. Instead, the commenter suggested that we allow liquidation of liabilities consistent with GAAP and in conformity with existing provider agreements and policies regardless of whether those policies cover accrued benefits, self-insurance, or deferred compensation payments.

Response: We do not agree with the commenter's suggestion to allow liquidation of liabilities in accordance with GAAP and in conformity with existing provider agreements and policies. The purpose of the regulation is to assure that Medicare recognizes only costs associated with a liability that is timely liquidated through an actual expenditure of funds. GAAP does not offer this assurance for Medicare.

Although the end of the year following the year of accrual permits adequate time for timely liquidation of liabilities in the vast majority of cases, we believe that an extension of up to 2 additional years is appropriate if a provider can support its need for additional time in accordance with instructions in the Provider Reimbursement Manual. We do not believe the granting of an extension is subjective or dependent on the goodwill of the intermediary.

Comment: One commenter suggested that we clarify that if short-term liabilities are the subject of dispute or litigation, they need not be discharged within 1 or even 3 years.

Response: Even in disputed cases or cases that are in litigation, our policy on the timely liquidation of liabilities still applies. The policy does not disadvantage a provider even if the liability is not discharged within 1 year, or up to 3 years in the case of an extension granted by the intermediary for cause. While the cost cannot be paid by Medicare in the year of accrual in the absence of timely liquidation of the liability, the cost can be claimed in the cost reporting period when the liquidation of the liability occurs, that is, when an actual expenditure takes place, as currently described in section 2305 of the Provider Reimbursement Manual.

Comment: One commenter suggested that we permit providers terminated from Medicare to obtain payment for all properly accrued costs incurred during their final cost reporting period (together with costs incurred after termination authorized under section 2176 of the Provider Reimbursement Manual).

Response: All properly accrued allowable costs are recognized for a provider that is terminating from the Medicare program. However, the rules for liquidation of liabilities contained in the proposed regulation continue to apply. That is, although a provider is terminating, the intermediary must still assure that the liability is timely liquidated.

Comment: One commenter suggested that the final rule should explicitly provide that the regulations are intended to address only short-term liabilities, that is, amounts normally paid within 1 year of the date the cost report is filed, and not the discharge of long-term liabilities.

Response: In this final rule, we have revised § 413.24(c)(3)(i) of the proposed rule (now § 413.100(c)(2)(i)) to provide that short-term liabilities include the current portion of long-term liabilities, such as the mortgage interest due to be paid in the current year. That is, the portion of a long-term liability due in the current year is a short-term liability for the year. Section 413.100(c)(2)(i) of this rule does not apply to portions of long-term liabilities due in future periods.

E. Compensation of Owners

Comment: One commenter stated that the proposed rule appears to indicate that the liability must be liquidated in the form of cash within 75 days after the close of the cost reporting period. The commenter noted that section 906.4 of the Provider Reimbursement Manual recognizes a promissory note as liquidation and recommended that the language in the regulations should be consistent with that in the Provider Reimbursement Manual. Another commenter stated that if we intend to propose more restrictive requirements on compensation of owners, we should also specifically provide in regulations that the issuance of an enforceable note to the owner for the amount of compensation should constitute liquidation of the accrued liability.

Response: The proposed rule stated simply that liquidation of an owner's compensation accrual must occur within 75 days after the close of the cost reporting period in which the liability occurs. We do not plan to specify in the regulations the manner of liquidation,

but rather have chosen to continue to address those specifics in the Provider Reimbursement Manual. Therefore, the proposed regulation did not provide a more restrictive liquidation policy than existing policy in the Provider Reimbursement Manual.

However, we intend to revise section 906.4 of the Provider Reimbursement Manual to deny recognition of the liquidation of liabilities by use of a promissory note without the actual transfer of assets within 75 days of the close of the cost reporting period. Revised section 906.4 then will be consistent with instructions in section 2305 of the Provider Reimbursement Manual concerning requirements for liquidating liabilities. Those instructions (albeit with different time limitations) require that a liability actually be liquidated by the end of the appropriate time period, rather than being extended by way of another liability, for example, a promissory note.

F. FICA and Other Payroll Taxes

Comment: One commenter asserted that accrual of employer-related FICA liabilities is clearly appropriate under GAAP as well as under § 413.24(b)(2), and that HCFA should continue to allow recognition of these costs especially as they relate to the accrual of year-end wages.

Response: We believe that employer-related FICA taxes should be accrued and claimed for Medicare payment only in the period in which actual payment to the employee is made. It is not until that point that the liability for the employer-related FICA tax is incurred.

Comments: One commenter pointed out that the preamble language in the proposed rule stated that FICA and other payroll taxes related to vacation pay and nonpaid workers would be paid only in the period in which payment is actually made to the employee. Yet, the language of proposed § 413.24(c)(3)(vi) indicated that all FICA and payroll taxes would be handled in the same way. The commenter suggested that we clarify the discrepancy in the final rule.

Response: Even though the preamble language for the proposed rule specifically addressed only payroll taxes related to vacation pay and nonpaid workers, our intent was to prohibit the accrual and claim for Medicare payment of such taxes for all types of payments until the period in which payment (on which the tax is based) is actually made to the employee. Thus, as the commenter suggests, and as the regulations text has always specified, this policy applies to all FICA and payroll taxes.

Comment: Some commenters stated that the applicable FICA and other payroll taxes should be accrued during the same period that the employee benefits are earned and accrued. One commenter stated that FICA and other payroll accruals apply equally to accrued vacation, holiday, and sick pay benefits. Another commenter suggested that if such payments are not made to employees in subsequent years, Medicare may recover the excess cost in subsequent years.

Response: We continue to believe that such taxes should not be accrued and claimed for Medicare payment until the period in which actual payment to the employees is made. It is at that point that the liability for the related payroll taxes is incurred.

G. Sick Pay

Comment: Regarding the sick leave example in the proposed rule (56 FR 50835), one commenter believes that providers would not typically accrue for forfeitable sick leave. Even if providers do so, the commenter believes that Medicare could avoid payment by requiring forfeitures to be offset against subsequent sick pay costs.

Response: We agree with the commenter that providers should not accrue forfeitable sick leave. However, we disagree that where forfeitable sick leave is accrued and claimed for Medicare payment, Medicare would avoid payment by requiring forfeitures to be offset against sick pay costs incurred during the period in which the forfeitures occur. Handling forfeitable sick leave in this manner would result in Medicare recognizing and paying for excessive sick leave costs up until the point of forfeiture.

As a result of this comment, we have made two revisions to this final rule. First, we have clarified under § 413.100(c)(2)(iii)(A) that if sick leave is funded in a deferred compensation plan, the contributions to the fund must take into account forfeitures. Second, if an employee has the right to demand cash payment at the end of the year, we believe that forfeitures are not an issue because the employee has earned a nonforfeitable right. Accordingly, we also have specified under § 413.100(c)(2)(iii)(B) that if a provider's sick leave plan grants employees the nonforfeitable right to demand cash payment for unused sick leave at the end of each year, sick pay is includable in allowable costs, without funding, in the cost reporting period in which it is earned.

Comment: One commenter asserted that providers should not be financially disadvantaged by disallowance of accrued benefits that are vested but subject to forfeiture clauses. The commenter stated that such clauses are financially prudent and result in lower Medicare program costs.

Response: We believe the commenter is concerned that if forfeitures are possible, Medicare would not recognize any accrual of sick leave. On the contrary, as discussed in the response to the preceding comment, if sick leave is funded in a deferred compensation plan, the contributions to the fund must take into account forfeitures. That is, the accrual of the contributions to the deferred compensation fund reflects anticipated forfeitures. However, the issue of forfeitable sick leave occurs only in the context of contributions to a deferred compensation fund. In a situation in which an employee has the right to demand cash at the end of the year for unused sick leave, the employee has earned a nonforfeitable right. In all other situations, sick pay can be claimed for Medicare payment only on a cash basis for the year in which the benefits are paid; therefore, the issue of accrual of forfeitable sick leave does not arise.

In proposing to incorporate Medicare's policy on sick leave costs (contained in section 2144.8 of the Provider Reimbursement Manual) into the regulations, we believe it was understood that sick pay costs can be claimed for payment only in the cost reporting period in which paid, unless the sick leave is funded in a deferred compensation plan or unless an employee has the nonforfeitable right to demand cash at the end of the year for unused sick leave. This policy has been included in section 2144.8 for many years. Nevertheless, we have revised the regulations by specifying under § 413.100(c)(2)(iii)(C) that sick pay costs can be claimed only on a cash basis if paid on any bases other than those in § 413.100(c)(2)(iii) (A) or (B) (that is, through a funded deferred compensation plan, or in situations in which the sick leave plan grants employees the nonforfeitable right to demand cash payment for unused sick leave at the end of each year).

Comment: One commenter stated that although timing differences will occur in any accrual method of accounting, in total, the program is not overpaying since any overestimate of expenses in one year is offset by reduction in accrued expenses in a subsequent period when the sick leave, vacation, and other types of leave are determined to be overaccrued.

Response: The purpose of the longstanding policy on liquidation of liabilities, which we proposed to incorporate in the regulations, is to assure that a provider properly claims costs during each cost reporting period. Costs claimed during a period for which the related liability may never be liquidated result in overpayment of the costs in the year the costs are claimed. Reduction in accrued expenses in a subsequent period when sick leave is determined to be overaccrued results in Medicare's recognizing and paying for excessive costs up until the point when accrued expenses are reduced in the subsequent period.

However, in the case of vacation benefits, we are incorporating into the regulations the policy that is currently included in the Provider Reimbursement Manual regarding liquidation of the vacation accrual. In proposing to incorporate the requirements of section 2146, Medicare's policy on vacation costs, into the regulations, we believe it was understood that if payment is not made within the required time period or if benefits are forfeited by the employee, the adjustment to disallow the cost is made in the current period (that is, the latest year in which payment should have been made or the year in which the benefits are forfeited) rather than in the period in which the cost was accrued and claimed for Medicare payment. (However, an intermediary may choose to require adjustment in the period in which the cost was accrued and claimed for Medicare payment if the cost report for that period is open or can be reopened, and if the intermediary believes the adjustment is more appropriate in that period.) This policy has been included in section 2146.2 for many years. The new § 413.100(c)(2)(ii)(C) codifies this longstanding policy.

Comment: One commenter asserted that administrative costs associated with a funded deferred compensation plan (required when sick pay is not payable at year end) would prohibit the implementation of such plans in numerous facilities—effectively eliminating this form of "short-term disability insurance."

Response: If a provider is unable to afford the administrative costs associated with establishing a deferred compensation plan, the provider could simply claim its sick pay costs at the time when payment is made to the employee, in accordance with § 413.100(c)(2)(iii)(C). Of course, under this arrangement, the provider would not be permitted to claim accrued sick pay costs. However, under § 413.100(c)(2)(iii)(B), if a provider's sick leave plan grants employees the nonforfeitable right to demand cash payment for unused sick leave at the end of each year, sick pay is includable in allowable costs, without funding, in the cost reporting period in which it is earned.

H. Vacation Pay

Comment: One commenter stated that the consistency requirement for vacations is unclear and has no relationship to the probability or timing of payment, and requested that the term "consistent" be limited to the time frame for liquidation of the vacation liability and not be extended to the rate of accrual. The commenter believes that as vacation pay benefits are vested, the accrual should be recognized—consistency between classes of employees is irrelevant.

Response: This rule codifies long-standing Medicare policy (section 2146 of the Provider Reimbursement Manual) regarding payment for vacation benefits. This policy recognizes the accrual of vacation benefits, and permits payment for the accrual in the cost reporting period in which the benefit is earned, if the provider's vacation policy regarding when the vacation must be taken—or when payment is made in lieu of the vacation—is consistent for all employees. If the policy regarding when vacation must be taken is not consistent among all employees, vacation must be taken or payment in lieu of vacation must be made within 2 years after the close of the cost reporting period in which the vacation was accrued in order for the accrual to be allowed in the year in which the vacation is earned.

We agree with the commenter that, for purposes of this Medicare vacation policy, a provider's vacation policy that is "consistent among all employees" addresses the provider's policy regarding the time frame in which vacation benefits must be used. The provider's policy may provide for different amounts of vacation accrual depending upon such factors as an employee's length of service, or whether the employee is managerial or nonmanagerial. We now believe our statement in the proposed rule that a provider's consistent policy is one in which no provision of the policy provides for different amounts of vacation benefits for certain positions and types of employees was an overextension of the language "consistent among all employees".

Medicare's vacation policy is intended to assure that a provider actually liquidates its accrued costs for vacation benefits. We believe the policy is clear and permits a high degree of flexibility for a provider. In situations in which a provider's vacation policy is not consistent for all employees regarding when vacation must be taken, Medicare's policy permits a reasonable time frame—2 years after the close of the cost reporting period in which the vacation was accrued—for liquidating vacation accruals in order for the accruals to be allowed in the year when the vacation is earned.

I. Deferred Compensation

Comment: One commenter expressed concern that the proposal would require hospitals to devote staff to track the payment of deferred compensation for 10, 20, or possibly more years in order to obtain payment.

Response: The proposed regulation did not change our current policy on deferred compensation, which has been in section 2140 of the Provider Reimbursement Manual for many years. If a provider's deferred compensation plan is funded in accordance with that policy, program payment has long been based on the current period contributions to the fund, provided liabilities related to the contributions are timely liquidated (usually within 1 year after the close of the current cost reporting period). Benefit payments from the deferred compensation fund, which can occur many years later, are part of the operation of the fund and do not affect program payments in the later periods when payments are actually made from the fund.

If a provider's deferred compensation is not funded in accordance with requirements in section 2140 of the Provider Reimbursement Manual, the manual instructions have long permitted program payment only during the period in which actual payment is made.

Therefore, these regulations require no more staff time to track deferred compensation payments than is used by providers under our current, longstanding policy.

Comment: One commenter asked that we add the word "Plans" to the title of § 413.24(c)(3)(vii) of the proposed rule, to read "Deferred Compensation Plans" and that we add a new paragraph (vii)(C), to read "Deferred compensation plans under this section do not include accrued salaries and/or accrued bonuses that are allowable in the year earned, provided they are liquidated no later than the end of the provider's cost reporting period following the period in which the salary and bonuses were earned."

Response: We believe it is clear that the salaries and bonuses referred to in the comment, which are earned currently and which are liquidated timely under this rule with no attempt to defer payment, are not treated as

deferred compensation. Therefore, we have not adopted the commenter's suggestion to address salaries and bonuses in the text of the regulation.

IV. Provisions of the Final Rule

This final rule generally confirms the provisions of the proposed rule, with the clarifying changes discussed above in the responses to comments. In addition, upon further consideration of the regulations text set forth in the proposed rule, we believe that one additional policy clarification is necessary.

Section 413.24(c)(2) of the proposed rule consisted of an example that indicated that the accrual of postretirement health benefits under Medicare cannot be recognized unless the liability for the benefits is liquidated timely. That example referred to Statement of Financial Accounting Standards (SFAS) No. 106 (December 1990), Employers' Accounting for Postretirement Benefits Other Than Pensions, without explicitly citing SFAS No. 106. SFAS No. 106, generally effective for fiscal years beginning after December 15, 1992, requires an employer to accrue the expected cost of providing postretirement benefits to employees (and the employees' beneficiaries and covered dependents) during the years the employees provide the necessary services. However, it does not provide for timely liquidation of the accruals in accordance with Medicare policy. Accordingly, the example clarified, consistent with Medicare policy, that the accrual of postretirement benefits (addressed in SFAS No. 106) cannot be recognized in allowable costs in the year of the accrual without timely liquidation of the related liability.

We now believe that the original example is unnecessary in the final rule. Because payment for postretirement benefits is deferred, the benefits are deferred compensation. Therefore, Medicare policy on deferred compensation, funded and unfunded, applies to postretirement benefit deferred compensation plans as well as to other types of deferred compensation plans. The deferred compensation policy is found in section 2140 of the Provider Reimbursement Manual and also, with regard to liquidation of liabilities related to accrued deferred compensation costs, in § 413.100(c)(2)(vii) of this final rule. The deferred compensation policy sets forth the requirements to be met, including timely liquidation of liabilities, in order to receive Medicare payment for deferred compensation.

Under SFAS No. 106, a provider may have postretirement benefit obligations applicable to more than one year, for example, prior service costs, or a transition obligation (which, under SFAS No. 106, the provider may elect to accrue immediately or on a delayed basis). For purposes of Medicare payment, the deferred compensation policy provides, in Provider Reimbursement Manual section 2140.3.B.1 (by reference to section 2142.5, Pension Costs for Past and Current Service), that past service costs applicable to more than one cost reporting year must be amortized over a minimum of 10 years, even if the related liability for the accrual has been liquidated timely.

Therefore, in lieu of the example in proposed § 413.24(c)(2), we have clarified in § 413.100(c)(2)(vii)(C) of this final rule that postretirement benefit plans addressed in SFAS No. 106 are deferred compensation arrangements to which all the provisions of Medicare's deferred compensation policy apply.

We believe it should have been clear to readers of the proposed rule that Medicare's deferred compensation policy applies to all deferred compensation arrangements, including postretirement benefit plans. However, although the proposed rule addressed postretirement health benefits, clarifying that the accrual of such benefits cannot be recognized for Medicare payment in the year of the accrual without timely liquidation of the liability for the benefits, it did not emphasize the applicability of the deferred compensation policy in all respects to postretirement benefit plans.

Therefore, there could be situations in which a provider that has elected to accrue postretirement benefit past service costs over more than 10 years for accounting and reporting purposes (that is, for non-Medicare purposes) in conformity with SFAS No. 106, mistakenly believed it needed to use the same period for amortizing the costs for Medicare purposes. If, for Medicare purposes, the provider now wants to amortize the costs over fewer years, but not fewer than 10 years, it may request its intermediary, subject to the requirements in the regulations at § 405.1885, to make the change to applicable cost reporting periods in accordance with the longstanding policy in section 2140.3.B.1 of the Provider Reimbursement Manual. In all cases, Medicare payment is subject to the policy in this final rule and in Provider Reimbursement Manual section 2140.4 regarding timely liquidation of the associated accruals for the deferred compensation.

Correspondingly, if a provider has amortized the costs over fewer than 10 years for Medicare purposes without the express permission of its intermediary, the intermediary is required, subject to § 405.1885, to make necessary adjustments to conform the amortization to the policy in section 2140.3.B.1. of the Provider Reimbursement Manual. (We note that if a provider has been permitted by its intermediary to amortize such costs for Medicare purposes over fewer than 10 years, assuming timely liquidation of the associated accruals, the intermediary will not now make adjustments to reflect amortization over at least 10 years, nor is the provider required to make such a change.)

The other clarifying changes to the proposed rule that are set forth in this final rule, as discussed in our responses to public comments in Section IV of this final rule, are as follows:

- In § 413.100(c)(2)(i) of this rule, we have clarified that short-term liabilities also include the current portion of long-term liabilities, such as the mortgage interest due to be paid in the current year.
- We have added new § 413.100(c)(2)(ii)(C) to address necessary adjustment to a provider's cost report if accruals for vacation pay and all-inclusive paid days off are not properly liquidated. The new material incorporates policy currently in section 2146.2 of the Provider Reimbursement Manual, which provides that the adjustment to disallow accrued cost generally is made in the current period if payment for the vacation or all-inclusive paid days off is not made in the required time period or if benefits are forfeited by the employee.
- In § 413.100(c)(2)(iii)(A) concerning sick pay, we have clarified that contributions to the deferred compensation plan must be reduced to reflect estimated forfeitures.
- In § 413.100(c)(2)(iii)(B), we have clarified that only if an employee has a *nonforfeitable* right to demand cash for unused sick leave at the end of each year can the sick pay be includable in allowable costs, without funding, in the cost reporting period in which it is earned. We believe that, typically, an employee's right to demand cash for unused sick leave is nonforfeitable. However, in a situation in which an employee has a right to demand cash but, later, for any reason may not be entitled to receive the cash (that is, the amount is forfeitable under certain conditions), a provider cannot accrue the sick leave benefit and make a current year claim for Medicare payment under § 413.100(c)(2)(iii)(B) because that section applies only to situations in which an employee's right to demand cash is nonforfeitable. Rather, the provider can claim the cost only in the year when paid to the employee, unless it meets the provisions of § 413.100(c)(2)(iii)(A).
- We have added new § 413.100(c)(2)(iii)(C) to clarify in the regulations Medicare's policy in section 2144.8 of the Provider Reimbursement Manual, that sick pay paid can be claimed for Medicare payment only on a cash basis if paid on any basis other than those in § 413.100(c)(2)(iii) (A) or (B) (that is, through a funded deferred compensation plan, or in situations in which the sick leave plan grants employees the nonforfeitable right to demand cash payment for unused sick leave at the end of each year).
- In § 413.100(c)(2)(viii), we have removed the language included in the proposed rule that addressed the allowability in subsequent periods of self-insurance accruals liquidated after the time limit provided in that section. We did not address that issue for any of the other types of accrued costs addressed in the proposed rule and thus we do not believe it would be consistent to address that issue here. This issue is already addressed in implementing manual instructions.
- We have revised the wording of §§ 413.100(c)(2)(i), (c)(2)(iii), and (c)(2)(vii)) of this rule to clarify that a request for extension to the 1-year time limit for liquidating a liability must be made within the 1-year time period. We believe it was clear that a provider could not reasonably request an extension after having failed to liquidate within the 1-year period. The regulation now specifically addresses this point.

In the same sections of the rule, we have removed the language included in the proposed rule describing "good cause" for an extension. Such description is already covered in section 2305 of the Provider Reimbursement Manual.

Finally, as explained in section III of this final rule, we are moving the proposed provisions of § 413.24(b)(3) and (4), and § 413.24(c) into a new § 413.100, Special Treatment of Certain Accrued Costs. For the convenience of the reader, presented below is a crosswalk that shows the regulatory citations for the provisions of the proposed rule and for the corresponding provisions of this final rule.

Proposed	Final
§ 413.24(b)(2)	§ 413.24(b)(2) § 413.100(a)
§ 413.24(b)(3)	§ 413.100(b)(1)
§ 413.24(b)(4)	§ 413.100(b)(2)
§ 413.24(c)	§ 413.100(c)
§ 413.24(c)(1)	§ 413.100(c)(1)
§ 413.24(c)(2)	delete
§ 413.24(c)(3)	§ 413.100(c)(2)
§ 413.24(c)(3)(i)(A)(B)	§ 413.100(c)(2)(i)(A)(B)
§ 413.24(c)(3)(ii)(A)(B)(C)	§ 413.100(c)(2)(ii)(A)(B)(C)
§ 413.24(c)(3)(iii)(A)(B)(C)	§ 413.100(c)(2)(iii)(A)(B)(C)
§ 413.24(c)(3)(iv)	§ 413.100(c)(2)(iv)
§ 413.24(c)(3)(v)	§ 413.100(c)(2)(v)
§ 413.24(c)(3)(vi)	§ 413.100(c)(2)(vi)
§ 413.24(c)(3)(vii)(A)(B)	§ 413.100(c)(2)(vii)(A)(B)(C)
§ 413.24(c)(3)(viii)	§ 413.100(c)(2)(viii)

V. Impact Statement

Unless we certify that a final rule will not have a significant economic impact on a substantial number of small entities, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612). For purposes of the RFA, we consider all hospitals, long-term care facilities, and other providers to be small entities.

Also, section 1102(b) of the Act requires us to prepare a regulatory impact statement if a final rule may have a significant economic impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. With the exception of hospitals located in certain rural counties adjacent to urban areas, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds.

Our intention in this rule is not to signify a change in policy but, rather, to incorporate in regulations our longstanding policy regarding the circumstances under which Medicare accepts a provider's claim for costs for which it has not actually expended funds during the current cost reporting period. Because this rule merely conforms regulations to present policies and practices, we have determined, and certified, that this rule will not have a significant effect on the operations of a substantial number of small entities or small rural hospitals. Therefore, we have not prepared a regulatory flexibility analysis or an analysis of the impact of this rule on small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was not reviewed by the Office of Management and Budget.

VI. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects in 42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR part 413 is amended as follows:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

1. The authority citation for part 413 is revised to read as follows:

Authority: Secs. 1102, 1861(v)(1)(A), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x(v)(1)(A), and 1395hh).

2. In § 413.1, the following changes are made:

a. The heading of paragraph (a) is revised to read as set forth below.

b. Paragraph (a)(2) is redesignated as paragraph (a)(3).

c. Paragraph (a)(1) is redesignated as paragraph (a)(2), and the heading "General summary." is removed and the heading "Scope." is added in its place.

d. A new paragraph (a)(1) is added to read as follows:

§ 413.1 Introduction.

(a) *Basis, scope, and applicability*—(1) *Statutory basis.* (i) *Basic provisions.* Section 1815 of the Act requires that the Secretary make interim payments to providers and periodically determine the amount that should be paid under Part A of the Medicare program to each provider of services for services it furnished. Section 1814(b) of the Act (for Part A) and section 1833(a) of the Act (for Part B) provide for payment on the basis of the lesser of a provider's reasonable costs or customary charges. Section 1861(v) of the Act defines "reasonable cost."

(ii) *Additional provisions.* Section 1814(j) of the Act provides for exceptions to the "lower of cost or charges" provisions. Section 1833 (a)(4) and (i)(3) of the Act provide for payment of a blended amount for certain surgical services furnished in a hospital's outpatient department. Section 1833(n) of the Act provides for payment of a blended amount for outpatient hospital diagnostic procedures such as radiology. Section 1834(c)(1)(C) of the Act establishes the method for determining Medicare payment for screening mammograms performed by hospitals. Section 1881 of the Act authorizes payment for services furnished to ESRD patients. Section 1883 of the Act provides for payment for post-hospital SNF care furnished by rural hospitals having swing-bed approval. Section 1886(h) of the Act provides for payment to a hospital for the services of interns and residents in approved teaching programs on the basis of a "per resident amount."

* * * * *

Subpart B—Accounting Records and Reports

3. Section 413.24 is amended by revising paragraph (b)(2) to read as follows:

§ 413.24 Adequate cost data and cost finding.

* * * * *

(b) *Definitions*—

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(2) *Accrual basis of accounting.* As used in this part, the term *accrual basis of accounting* means that revenue is reported in the period in which it is earned, regardless of when it is collected; and an expense is reported in the period in which it is incurred, regardless of when it is paid. (See § 413.100 regarding limitations on allowable accrued costs in situations in which the related liabilities are not liquidated timely.)

* * * * *

Subpart F—Specific Categories of Costs

4. Section 413.100 is added to read as follows:

§ 413.100 Special treatment of certain accrued costs.

(a) *Principle.* As described in § 413.24(b)(2), under the accrual basis of accounting, revenue is reported in the period in which it is earned and expenses are reported in the period in which they are incurred. In the case of accrued costs described in this section, for Medicare payment purposes the costs are allowable in the year in which the costs are accrued and claimed for Medicare payment only under the conditions set forth in paragraph (c) of this section.

(b) *Definitions.* (1) *All-inclusive paid days off benefit.* An all-inclusive paid days off benefit replaces other vacation and sick pay plans. It is a formal plan under which, based on actual hours worked, all employees accrue vested leave or payment in lieu of vested leave for any combination of types of leave, such as illness, medical appointments, holidays, and vacations.

(2) *Self-insurance.* Self-insurance is a means by which a provider independently or as part of a group undertakes the risk of protecting itself against anticipated liabilities by providing funds in an amount equal to anticipated liabilities, rather than by purchasing insurance coverage.

(c) *Recognition of accrued costs.*—(1) *General.* Although Medicare recognizes, in the year of accrual, the accrual of costs for which a provider has not actually expended funds during the current cost reporting period, for purposes of payment Medicare does not recognize the accrual of costs unless the related liabilities are liquidated timely.

(2) *Requirements for liquidation of liabilities.* For accrued costs to be recognized for Medicare payment in the year of the accrual, the requirements set forth below must be met with respect to the liquidation of related liabilities. If liquidation does not meet these requirements, the cost is disallowed, generally in the year of accrual, except as specified in paragraph (c)(2)(ii) of this section.

(i) *A short-term liability.*

(A) Except as provided in paragraph (c)(2)(i)(B) of this section, a short-term liability, including the current portion of a long-term liability (for example, mortgage interest payments due to be paid in the current year), must be liquidated within 1 year after the end of the cost reporting period in which the liability is incurred.

(B) If, within the 1-year time limit, the provider furnishes to the intermediary sufficient written justification (based upon documented evidence) for nonpayment of the liability , the intermediary may grant an extension for good cause. The extension may not exceed 3 years beyond the end of the cost reporting year in which the liability was incurred.

(ii) *Vacation pay and all-inclusive paid days off.*

(A) If the provider's vacation policy, or its policy for all-inclusive paid days off, is consistent for all employees, liquidation of the liability must be made within the period provided for by that policy.

(B) If the provider's vacation policy, or its policy for all-inclusive paid days off, is not consistent for all employees, liquidation of the liability must be made within 2 years after the close of the cost reporting period in which the liability is accrued.

(C) If payment is not made within the required time period or if benefits are forfeited by the employee, an adjustment to disallow the accrued cost is made in the current period (that is, the latest year in which payment should have been made or the year in which the benefits are forfeited) rather than in the period in which the cost was accrued and claimed for Medicare payment. However, an intermediary may choose to require the adjustment in the period in which the cost was accrued and claimed for Medicare payment if the cost report for that period is open or can be reopened as provided in § 405.1885 of this chapter, and if the intermediary believes the adjustment is more appropriate in that period.

(iii) *Sick pay.*

(A) If sick leave is vested and funded in a deferred compensation plan, liabilities related to the contributions to the fund must be liquidated, generally within 1 year after the end of the cost reporting period in which the liability is incurred. If, within the 1-year time limit, the provider furnishes to the intermediary sufficient written justification (based upon documented evidence) for nonpayment of the liability, the intermediary may grant an extension for good cause. The extension may not exceed 3 years beyond the end of the cost reporting year in which the liability was incurred. Contributions to the deferred compensation plan must be reduced to reflect estimated forfeitures. Actual forfeitures above or below estimated forfeitures must be used to adjust annual contributions to the fund.

(B) If the sick leave plan grants employees the nonforfeitable right to demand cash payment for unused sick leave at the end of each year, sick pay is includable in allowable costs, without funding, in the cost reporting period in which it is earned.

(C) Sick pay paid on any basis other than that specified in paragraphs (c)(2)(iii) (A) or (B) of this section can be claimed for Medicare payment only on a cash basis for the year in which the benefits are paid.

(iv) *Compensation of owners.* Accrued liability related to compensation of owners other than sole proprietors and partners must be liquidated within 75 days after the close of the cost reporting period in which the liability occurs.

(v) *Nonpaid workers.* Obligations incurred under a legally-enforceable agreement to remunerate an organization of nonpaid workers must be discharged no later than the end of the provider's cost reporting period following the period in which the services were furnished.

(vi) *FICA and other payroll taxes.* The provider's share of FICA and other payroll taxes that the provider becomes obligated to remit to governmental agencies is included in allowable costs only during the cost reporting period in which payment (upon which the tax is based) is actually made to the employee. For example, no legal obligation exists for a provider-employer to pay FICA taxes until the employee is paid and the specific amount of liability known.

(vii) *Deferred compensation.*

(A) Reasonable provider payments made under unfunded deferred compensation plans are included in allowable costs only during the cost reporting period in which actual payment is made to the participating employee.

(B) Accrued liability related to contributions to a funded deferred compensation plan must be liquidated within 1 year after the end of the cost reporting period in which the liability is incurred. An extension, not to exceed 3 years beyond the end of the cost reporting year in which the liability was incurred, may be granted by the intermediary for good cause if the provider, within the 1-year time limit, furnishes to the intermediary sufficient written justification for non-payment of the liability.

(C) Postretirement benefit plans (including those addressed in Statement of Financial Accounting Standards No. 106 (December 1990)) are deferred compensation arrangements and thus are subject to the provisions of this section regarding deferred compensation and to applicable program instructions for determining Medicare payment for deferred compensation.

(viii) *Self-insurance.* Accrued liability related to contributions to a self-insurance program that are systematically made to a funding agency and that cover malpractice and comprehensive general liability, unemployment compensation, workers' compensation insurance losses, or employee health benefits, must be liquidated within 75 days after the close of the cost reporting period.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: April 20, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 95–15341 Filed 6–26–95; 8:45 am]

BILLING CODE 4120–01–P

42 CFR Part 413

[BPD–794–F]

RIN 0938–AG55

Medicare Program; Date for Filing Medicare Cost Reports

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule extends the time frame providers have to file cost reports from no later than 3 months after the close of the period covered by the report to no later than 5 months after the close of that period. This change is necessary to ensure that providers have an adequate amount of time to file complete and accurate cost reports. We are also defining what HCFA considers to be an "acceptable" cost report submission.

EFFECTIVE DATE: These regulations are effective June 27, 1995. Thus, for cost reporting periods ending before June 27, 1995, cost reports continue to be due no later than 3 months following the close of the cost reporting period. For cost reporting periods ending on or after June 27, 1995, cost reports are due no later than 5 months following the close of the cost reporting period.

FOR FURTHER INFORMATION CONTACT: Katie Walker (410) 966–7278.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1815(a) of the Social Security Act (the Act) requires that each provider participating in the Medicare program submit information (as requested by the Secretary) in order to determine the amount of payment due to the provider for services furnished under the Medicare program. Implementing regulations at 42 CFR 413.24(f) require that participating providers submit cost reports that generally cover a consecutive 12-month period of the provider's operations. Section 102 of the Provider Reimbursement Manual, Part II (PRM-II), states that a provider may select any annual period for Medicare cost reporting purposes regardless of the reporting period it uses for other purposes. Once a provider has informed the Health Care Financing Administration (HCFA) of its selection, HCFA requires it to report annually thereafter for periods ending on the same date unless that provider's intermediary approves a change in the provider's reporting period. The intermediary makes interim payments to the provider during the provider's cost reporting year. Based on the annual cost report, a retroactive adjustment is made after the end of the provider's cost reporting year to bring the interim payments made during the period into agreement with the reimbursable amount payable to the provider. Section 413.24(f)(2)(i) specifies that cost reports are due on or before the last day of the third month following the close of the period covered by the report. Section 413.24(f)(2)(ii) states that the intermediary may grant a 30-day extension of the due date, for good cause, after first obtaining the approval of HCFA. Section 104.A.2 of the PRM requires that in order to obtain an extension, the provider must submit a written request and obtain written approval from its intermediary before the cost report due date.

A provider that voluntarily or involuntarily terminates its participation in the Medicare program, or experiences a change of ownership, must file a cost report no later than 45 days following the effective date of the termination of the provider agreement or the change of ownership, as required by § 413.24(f)(2)(iii). HCFA will not grant an extension of the cost report due date in either of these situations.

To ensure timely receipt of the cost reports, section 2231.1 of the Medicare Intermediary Manual, Part 2, requires that the intermediary send a "reminder" letter to the provider at the end of the second month following the end of the

cost reporting period. The letter advises the provider of the due date for filing the cost report and informs the provider that its interim payments will be reduced or suspended if the cost report is not received on or before the last day of the third month following the close of the period covered by the report. However, under § 413.24(f)(2)(ii), the provider may, for good cause, request that the intermediary grant a 30-day extension of the due date of the cost report. If the intermediary does not receive the cost report by the required due date (including an extension if approved), the intermediary sends the first of three "demand" letters to the provider requesting the submission of the provider's cost report and informing the provider of the percentage by which its interim payment rate will be reduced. The letter also states that further delay in filing the cost report will result in an additional reduction in the interim rate and, ultimately, a suspension of interim payments.

HCFA regulations at 42 CFR 405.376 set forth specific rules for the payment of interest on Medicare overpayments and underpayments. Interest is assessed unless the intermediary recoups the overpayment or the intermediary pays the provider an amount equal to the underpayment within 30 days of a "final determination." When a provider does not file its cost report timely, all interim payments advanced for the period are considered overpayments, and a final determination is deemed to occur on the day after the date the cost report was due. Interest accrues on the deemed overpayment until the provider files the cost report; after which the usual audit rules and procedures regarding overpayment determinations apply.

HCFA has established a Provider Statistical and Reimbursement System (PS&R) to assist intermediaries in reconciling provider cost reports. This system provides a number of reports to be used in developing and auditing provider cost reports. HCFA prepares the reports for each participating provider. These reports contain Medicare charge and reimbursement information compiled by the provider's fiscal year. One of these reports, the Provider Summary Report, is sent to providers by their intermediaries in order to assist the providers in preparing their cost reports. The Provider Summary Report contains information about charges, Medicare patient days, coinsurance, etc. HCFA requires the intermediaries to furnish the Provider Summary Report to each provider within 60 days following the end of the provider's fiscal year. The provider then has 30 days to submit its completed cost report to its intermediary (60 days if an extension has been granted.)

Another system that provides useful cost report data is the Hospital Cost Report Information System (HCRIS). For purposes of maintaining the HCRIS data base, Medicare intermediaries currently must submit an extract of provider cost report data to HCFA within either 180 days of the end of the hospital cost reporting period or 60 days of receipt of the cost report from the provider, whichever is later.

II. Summary of Provisions of the Proposed Regulation

On May 25, 1994, we published a proposed rule in the **Federal Register** (59 FR 26998) to extend the due date for filing Medicare cost reports from 3 months following the close of a provider's cost reporting period to 5 months following the close of a provider's cost reporting period. The proposed rule also defined what HCFA considers to be an "acceptable" cost report submission. Presented below is a detailed explanation of these proposals and several related issues that were discussed in the proposed rule.

A. Due Dates for Filing Cost Report

In response to objections from providers that believe the current 3-month time frame for filing cost reports creates an undue burden on their financial departments, we proposed to increase the amount of time a provider has to file its cost report. Presently, under § 413.24(f)(2)(i), a provider must file its cost report on or before the last day of the third month following the close of the period covered by the report. We proposed that a provider would be required to file an acceptable cost report, as defined at new § 413.24(f)(5), on or before the last day of the fifth month following the close of the period covered by the report. For cost reporting periods ending on a day other than the last day of a month, cost reports would be due 150 days after the last day of the cost reporting period. (In accordance with § 405.376(e)(3), interest would not begin to accrue until the day following the due date of the report.)

We also proposed to change the regulations at § 413.24(f)(2)(ii) that allow an intermediary to grant, for good cause, a 30-day extension of the due date after first obtaining the approval of HCFA. Instead, we proposed that extensions may be granted by the intermediary only when a provider's operations are significantly adversely affected due to extraordinary circumstances over which the provider has no control. An example of such extraordinary circumstances might be a flood or a fire that forced a provider to cease operations and transfer its patients temporarily to other providers outside of the impacted area. The intermediary would still be required to obtain HCFA approval.

In conjunction with these changes, we proposed to delete § 413.24(f)(2)(iii), which now states that the cost report from a provider that voluntarily or involuntarily ceases to participate in the Medicare program or experiences a change of ownership is due no later than 45 days following the effective date of the termination of the provider agreement or change of ownership. Instead, providers in these circumstances would be permitted the same amount of time to file a cost report as other providers.

B. Acceptable Cost Report Submissions

We proposed to define at § 413.24(f)(5) what HCFA considers to be an acceptable cost report submission. Provisions of the proposed definition are as follows:

- All providers: The provider must complete and submit the required cost reporting forms, including all necessary signatures, and also must submit all supporting documentation required by the intermediary (for example, the HCFA Form 339, Provider Cost Report Reimbursement Questionnaire, and copies of audited financial statements).
- Providers that are required to file electronic cost reports: In addition to completing and submitting the required cost reporting forms, the provider also must submit its cost report in an electronic cost report format in conformance with the requirements contained in section 130 of the Electronic Cost Report (ECR) Specifications Manual (unless the provider has received an exemption from HCFA.) These requirements include the electronic file passing all of the level-1 edits contained in the ECR Specifications Manual. An acceptable cost report submission also must include all of the appropriate signatures. (Additional instructions concerning electronic submission of cost reports can be found at § 413.24(f)(4), as set forth in our May 25, 1994 final rule with comment period (59 FR 26960).)

In addition, we proposed that the intermediary is to make a determination of acceptability within 30 days of receipt of the cost report. If the intermediary considers the cost report unacceptable, the intermediary returns it to the provider with a letter explaining the reasons for the rejection (for example, the cost report failed a level-1 edit or included incomplete documentation). When the cost report is rejected, it is deemed an unacceptable submission and treated as if a report had never been filed. The intermediary would also inform the provider of the consequences of filing a late cost report, that is, interest would be assessed on all overpayments. Furthermore, if a provider does not file its cost report timely, all interim payments advanced for the period are considered overpayments, and the provider's interim payments would be suspended. Given the additional filing time, we believe providers should have sufficient time to complete and submit an acceptable cost report. Thus, we proposed to suspend all payments if the cost report is not filed within the 5-month timeframe. The provider should make the necessary corrections to the cost report and resubmit the cost report to the intermediary as quickly as possible.

C. Related Issues

As a result of the proposed regulation changes, the timing of provider reminder letters, PS&R Summary Reports and the submission of HCRIS data would also be affected. Therefore, we stated our intention to revise the Medicare Intermediary Manual and the PRM as necessary to account for these changes.

- Reminder Letters. Because we proposed to lengthen the amount of time a provider has to file its cost report, we also indicated that we would change the deadline for the intermediaries to send reminder letters to providers to notify them that cost reports are due. The revised deadline would be by the end of the fourth month after the close of the cost reporting period. The reminder letter may be sent at the same time an intermediary sends the PS&R Summary Report to the providers, but an intermediary may not send the reminder letter before sending the PS&R Summary Report. The reminder letter will inform the provider that if the cost report is not received by the end of the fifth month following the close of the cost reporting period (or 150 days, whichever is applicable), the provider's interim payments will be suspended in their entirety the following day, rather than just reduced (as the Medicare Intermediary Manual now provides).
- PS&R Summary Report. In conjunction with the change in the cost report due dates, we also stated our intention to revise our Manual instructions to extend the time that HCFA allows the intermediaries to furnish the PS&R Summary Report to providers. Intermediaries would be required to furnish the PS&R Summary Report by the last day of the fourth month following the end of the provider's cost reporting period, instead of 60 days following the end of the provider's cost reporting period, as is currently the practice. For cost reporting periods ending on a day other than the last day of a month, intermediaries would be required to furnish the PS&R Summary Report by the 120th day following the end of a provider's cost reporting period. If the provider receives the PS&R Summary Report later than the last day of the fourth month (or the 120th day, if applicable) following the end of its cost reporting period, the provider would have 30 days from receipt to file its cost report. Thus, under the proposed policy, a provider still would have 30 days after receipt of the PS&R Summary Report to complete and submit the cost report to the intermediary.
- HCRIS Data. Presently, the intermediary must submit HCRIS data to HCFA within either 180 days of the end of the hospital cost reporting period or 60 days of receipt of the cost report from the provider, whichever is later. In conjunction with the proposed extension of the deadline for filing a cost report, we indicated that we would revise the Medicare Intermediary Manual to instruct intermediaries to submit HCRIS data to HCFA within 210 days of the last day of the hospital cost reporting period.

In addition, we stated our intention to revise our Manual instructions to specify that if the intermediary is late in sending the PS&R Summary Report to the providers, the amount of time for the intermediary to submit the HCRIS data would be reduced by the same number of days the PS&R Summary Report was late. For example, if the intermediary sends the PS&R Summary Report to the provider 10 days late, the provider would still have 30 days from receipt of the PS&R Summary Report to file its cost report. However, the time remaining for the intermediary to submit the HCRIS data would be reduced by a corresponding 10 days (that is, from 60 to 50 days following receipt of the cost report.) In such cases, the intermediary still would have a total of 210 days from the end of the hospital cost reporting period to submit HCRIS data to HCFA.

As noted above, the overall effect of the proposal to extend the time frame for providers to file cost reports would be that HCFA would not have access to updated HCRIS data until 210 days after the end of a given cost reporting period. This change would not delay significantly the availability of the analytical files (which are updated quarterly) in HCRIS, and it should improve the accuracy of initial cost report data.

III. Discussion of Public Comments

We received 43 timely comments on the May 25, 1994 proposed rule (59 FR 26998) from providers, intermediaries, certified public accounting firms, and others. In general, commenters expressed strong support for our proposals. Specific questions raised by commenters are addressed below.

Comment: Many commenters asked when the new deadline for filing cost reports would take effect.

Response: This final rule is effective June 27, 1995. How the new 5-month deadline affects individual providers will depend on when a provider's cost reporting period ends. That is, a provider with a cost reporting period that ends before the effective date of this final rule must file its report on or before the last day of the third month following the close of the period covered by the report. A provider with a cost reporting period that ends on or after the effective date of this final rule must file its cost report on or before the last day of the fifth month following the close of the period covered by the report (or, if applicable, within 150 days of the last day of the cost reporting period).

Comment: One commenter asked that we clarify when a cost report is considered to be filed, for purposes of meeting the filing deadline. The commenter believes that the timeliness of a cost report should be determined based on when a provider sends the report rather than when the intermediary receives it. The commenter also requested clarification on when the 30-day period begins for an intermediary to determine the acceptability of a cost report.

Response: In accordance with section 2219.4C of the Medicare Intermediary Manual, a cost report must be postmarked by its due date to be considered timely filed. This requirement applies regardless of whether the provider furnishes a hard copy of its cost report or a diskette version. If a cost report is due on a Saturday, Sunday, or Federal holiday, the cost report is considered timely filed if postmarked by the following work day.

The 30 days for an intermediary to determine the acceptability of a cost report begins on the date that the intermediary receives the cost report, rather than the date the provider files it. (We generally allow up to a 7-day grace period between the postmarked date and the date the cost report is received

by the intermediary.) If a provider files a cost report early and receives a notice of rejection before the end of the fifth month, the provider would have the remaining days in that 5-month period to file a corrected cost report. If the corrected cost report is filed by the end of the fifth month, it would be considered timely. If a provider files a cost report that is rejected by the intermediary, and the provider subsequently is unable to file a corrected report before the 5-month period has elapsed, the cost report is considered late. The intermediary then initiates the suspension of interim payments and assessment of interest against payments made to the provider for the fiscal period.

Comment: One commenter suggested that we eliminate the instructions in Section 2413.A.3 of the PRM-I that permit an additional 30 days for filing a certified cost report.

Response: Under the new due date policy set forth in this rule, all cost reports are due no later than 5 months following the close of a provider's cost reporting period. In view of this change, we believe that the additional 30 days for filing a certified cost report is no longer necessary. Thus, as the commenter suggested, we intend to revise the manual accordingly.

Comment: Several commenters pointed out that providers may be required to file cost reports sooner than 5 months after the close of a cost reporting period. For example, one commenter cited a New York State requirement that providers file cost reports within 4 months of the close of their cost reporting periods, rather than within the Federal deadline of 5 months. Thus, the commenter believes that affected providers would need the PS&R Summary Reports no later than 3 months following the end of their cost reporting periods instead of the 4 months reflected in our revised policy.

Another commenter believes that providers that are reimbursed on a cost basis may choose to file their cost reports sooner than 5 months after the close of their cost reporting periods in order to avoid possible delays in lump sum adjustments and interim rate adjustments.

Response: We recognize that there may be State requirements, or other requirements, that a provider file its cost report sooner than 5 months from the last day of its cost reporting period. In these situations, a provider should contact the intermediary and request that the intermediary furnish the PS&R Summary Report to the provider 30 days before the due date of the cost report. We emphasize that it is the provider's responsibility to ascertain from the intermediary the amount of time needed for the intermediary to submit the PS&R Summary Report. The provider should make any such request early enough (as determined by the intermediary) to give the intermediary sufficient time to provide the PS&R Summary Report to the provider in time for the provider to meet its filing due date. Once again, each intermediary determines the amount of time it needs to submit the PS&R to the provider.

Thus, our general policy in situations where providers need their PS&R Summary Reports before they would normally receive them is that each provider should contact its intermediary to obtain the PS&R on an expedited basis. However, this policy could prove cumbersome in situations where most or all of an intermediary's providers face a similar State-imposed deadline, possibly resulting in a large volume of individual requests for expedited PS&Rs. In such a situation, we would strongly encourage the State to work with affected intermediaries and providers to develop a more efficient means of addressing a widespread need for PS&Rs before the reports are required under Medicare.

As a commenter suggested, some providers may wish to file their cost reports earlier than the 5-month deadline of their own accord. These providers too should contact their intermediaries with their requests that the PS&R Summary Reports be furnished earlier than the usual timeframe of 4 months after the close of a provider's cost reporting period. The providers should request the PS&R in time to allow the fiscal intermediary no less than 30 days to prepare the PS&R.

We note that an intermediary is required to provide only one PS&R Summary Report to each provider. If a provider that requests its PS&R Summary Report early subsequently requests a later PS&R, the subsequent version of the PS&R will be furnished by the intermediary at the provider's expense.

Comment: Several commenters believe that we should include situations that reasonably impact the provider's ability to file its cost report timely, such as changes in key provider personnel, among the acceptable "circumstances beyond the provider's control" for granting an extension to a provider for filing its cost report. Other commenters are concerned that an intermediary's operations (such as audits, desk reviews, and settlements) could impact on a provider's ability to timely file cost reports.

Response: Under revised § 413.24(f)(2)(ii), an extension of the due date for filing a cost report may be granted by the intermediary only when a provider's operations are significantly adversely affected due to extraordinary circumstances over which the provider has no control, such as flood or fire. Although this policy constitutes a more stringent standard for a filing extension than the "good cause" criterion that has been in effect, we believe that this change is reasonable and necessary in conjunction with the change to a 5-month deadline for filing the cost report. Even for providers that routinely have obtained 30-day "good cause" filing extensions beyond the previous 3-month deadline, the new 5-month deadline allows approximately 30 additional days to file a cost report.

We recognize that personnel changes create workload problems for the provider. In general, however, we consider personnel changes and varying workload demands to be acknowledged parts of any provider's business operations rather than "circumstance over which a provider has no control."

With regard to the commenters' concern that an intermediary's operations may impact on a provider's ability to file cost reports on a timely basis, we note that in any case where an intermediary is late in furnishing a PS&R Summary Report, a provider would always be allowed 30 days after receipt of the PS&R Summary Report to complete and submit its cost report to the intermediary.

As always, intermediaries and HCFA will consider requests for extensions on a case-by-case basis. As the regulations reflect, however, in view of the additional time now permitted for filing a cost report, we believe the standard for requesting an extension should be stringent.

Comment: Two commenters objected to our proposal that the deadline for a provider that is changing ownership or terminating to file its cost report be extended from 45 days to 5 months following change of ownership or termination. The commenters believe that this change may result in the intermediary finding it difficult to collect overpayments made to the provider.

Response: Our experience is that the current 45-day timeframe for a provider that is changing ownership or terminating often is not sufficient for an intermediary to supply the provider with its PS&R Summary Report and then for the provider to submit an accurate cost report to its intermediary. We believe that extending the due date for these providers' cost reports to 5 months following the date of termination or change of ownership, consistent with the requirement for other providers, will allow these providers sufficient time to gather and reconcile their data and submit complete and accurate cost reports. Although we recognize that the extension in the filing timeframe may result in difficulties in collecting overpayments, on balance, we believe that these potential problems are outweighed by the advantages of a consistent policy and more accurate reporting. Intermediaries should be aware of the potential for overpayment and, in the event of an overpayment, should begin collection of any overpayment at the earliest possible time.

Comment: Many commenters addressed our proposal that an intermediary submit the PS&R Summary Report to a provider within 4 months (or 120 days) of the close of the provider's cost reporting period. Several commenters requested that the due date for the PS&R Summary Report continue to be 60 days following the close of a provider's cost reporting period; others requested that the due date be extended to 90 days rather than the proposed 120 days. These commenters believe that extending the due date for the PS&R Summary Report from 60 days to 120 days offers obvious benefits to the intermediary. However, the commenters stated that it is not equitable to give the intermediary an additional 2 months to provide the PS&R Summary Report to the provider, while the provider must continue to file its cost report within 30 days of receipt of the PS&R Summary Report.

Response: The purpose of the PS&R Summary Report is to assist the providers in reconciling their data so that they can prepare and file an accurate and timely cost report. We realize that providers would like to receive the PS&R Summary Reports as early as possible. We note, however, that the providers should be maintaining ongoing records to be used for cost reporting purposes and the PS&R Summary Report should be used as a tool in reconciling these ongoing records. In our opinion, 30 days is ample time for this reconciliation.

We believe that providing an additional 60 days for intermediaries to submit PS&R Summary Reports to providers ensures that intermediaries can furnish more accurate and complete PS&R data to providers, which in turn results in providers requiring less time to reconcile the PS&R data with their records. In addition, under the new timeframes, providers will have 2 more months to prepare their books and records, complete the necessary audits, and develop the financial statements and reports that are needed before they can complete the cost reporting forms.

Of course, if the PS&R is received later than 120 days after the end of the cost reporting period, a provider still would have 30 days from the date of receipt to file its cost report.

Comment: One commenter requested that manual instructions be updated to assist intermediaries in completing the PS&R Summary Report.

Response: The Medicare Intermediary Manual, Part 2, is being revised to provide updated instructions for completing the PS&R Summary Report.

Comment: Several commenters believe that 210 days is insufficient time for an intermediary to submit HCRIS data to HCFA.

Response: Presently, the intermediary must submit HCRIS data to HCFA within either 180 days of the end of the hospital cost reporting period or 60 days of receipt of the cost report from the provider, whichever is later. The current 180-day deadline for an intermediary to submit HCRIS data to HCFA is based on the following: (1) 90 days for a provider to file its cost report, (2) 30 days for an extension of time to file (available to providers with good cause), and (3) an additional 60 days for the intermediary to submit HCRIS data to HCFA. In conjunction with the extension of the deadline for filing a cost report, we are revising the Intermediary Manual to instruct intermediaries to submit HCRIS data to HCFA within 210 days of the last day of the hospital cost reporting period. The revised deadline is based on the following: (1) 150 days for filing a cost report; and (2) 60 days for submission of HCRIS data to HCFA.

Thus, both the current process, and the new process being implemented through this final rule, give intermediaries 60 days after cost reports are filed to submit HCRIS data to HCFA. The change from an overall time frame for the submission of HCRIS data of 180 days after the close of a cost reporting period to 210 days after the close of a cost reporting period is a logical end product of the 2-month increase in the timeframe for a provider to file its cost report combined with the elimination of the routine 30-day filing extension.

These changes in no way increase the burden or time constraints on intermediaries. Rather, we believe that these changes will ease the burden on intermediaries by allowing them additional time to prepare PS&R Summary Reports, resulting in more accurate and complete PS&R data to the providers, in turn producing more accurate cost reports back to the intermediaries. We note that the continuing growth in the proportion of cost reports being filed electronically should also produce more accurate cost reporting. With these increases in accuracy, intermediaries should have to expend fewer resources in determining the acceptability of cost reports, and intermediary requests to providers for additional data to meet HCRIS requirements should be minimized. Therefore, we believe the overall 210-day timeframe for reporting HCRIS data is sufficient.

Comment: Several intermediaries are concerned about workload demands that result from a large percentage of providers having cost reporting periods that end at the same time. The commenters are concerned that, with a large percentage of their providers having common year ending dates, the time allotted for the intermediary to determine the acceptability of these cost reports is insufficient.

One commenter is concerned that its current workload patterns will be disrupted by our revised policy of allowing providers an additional 2 months to submit their cost reports.

Response: We recognize that some intermediaries have many providers with common year-ending dates, resulting in cyclical increases in an intermediary's workload. The change in the cost reporting deadline will have an impact on when these cyclical periods of increased workload occur, but not on the amount of work involved. In fact, as discussed above, the extended time frames for cost report submission should result in increased accuracy and, consequently, fewer resources being expended by the intermediary in determining the acceptability of the provider's cost report. The requirement that hospitals file their cost reports electronically (see our May 25, 1994 final rule (59 FR 26960)), combined with the continued growth in electronic filing among other providers, will also contribute to reducing the workload associated with determining the acceptability of cost reports. Thus, we believe that intermediaries should be able to determine the acceptability of cost reports within 30 days of receiving them, even when the intermediary receives many reports concurrently.

We recognize that the current workload patterns of intermediaries will undergo a one-time disruption as a result of the new cost reporting deadline. In the short-term, this change may inconvenience some intermediaries, while benefiting others, depending to some extent on when cost reporting years end for each

intermediary's various providers. In the long run, however, we believe that extending the cost reporting deadline and the accompanying increases in the accuracy of cost reports, should prove advantageous to both intermediaries and providers.

Comment: A commenter is concerned that electronically-filed cost reports may not be compatible with intermediary software, possibly making it difficult for an intermediary to produce a hard copy of the cost report. The commenter also requested further clarification regarding rejection of the cost report for failure to pass level-1 edits as well as for failure to furnish the supporting documentation that a provider must submit with the cost report.

Response: As discussed in section II.B of this preamble, a provider that files an electronic cost report must submit its cost report in an electronic format in conformance with the requirements contained in section 130 of the Electronic Cost Report (ECR) Specifications Manual (unless the provider has received an exemption from HCFA.) These requirements include the electronic file passing all of the fatal (level-1) edits contained in the ECR Specifications Manual.

The criteria for an acceptable electronic cost report also are addressed in chapter 1 of the PRM–II, which discusses the required format for electronic filing and the procedures for specialized providers, such as providers with all-inclusive rate structures and low-Medicare utilization providers. (See Chapter 28 of the PRM–II for the specified level-1 edits.) All Automated Data Reporting (ADR) vendors and commercial vendors must adhere to these edits when developing the software used by the provider to create the electronic cost report file. In view of the requirement that vendor, provider and intermediary software be compatible, and the requirement that an acceptable cost report must pass all level-1 edits, we do not anticipate that intermediaries will have difficulty in producing a hard copy of the cost reports.

The requirements for supporting documentation that each provider type must submit with its cost report are set forth in various chapters of the PRM–II. In the May 25, 1994 proposed rule (59 FR 27002), we specified under proposed § 413.24(f)(5)(i) that in order for a cost report submission to be considered acceptable, a provider must submit the required cost reporting forms and all supporting documentation required by program instructions. Under proposed 413.24(f)(5)(iii), any cost report not considered acceptable would be rejected and thus treated as if it had never been filed.

As we considered the public comments and developed this final rule, we realized that it was not necessary or efficient for an intermediary to reject a cost report summarily based solely on the initial absence of complete supporting documentation. Therefore, we have revised proposed § 413.24 by deleting the provision that a cost report must include all required supporting documentation to be considered acceptable and thus avoid rejection. We believe that this change will benefit both intermediaries and providers by permitting the intermediary's review process to continue in cases where a provider inadvertently fails to submit complete supporting documentation.

We emphasize that, despite this change, providers remain responsible for submitting all supporting documentation required under applicable program instructions. However, we are instructing intermediaries that a cost report is to be rejected for lack of supporting documentation only if it does not include the Provider Cost Reimbursement Questionnaire (HCFA Form 339). Additionally, cost reports for teaching hospitals will be rejected for lack of supporting documentation if the cost report does not include a copy of the Intern and Resident Information System (IRIS) diskette. These requirements now are specified in the Uniform Desk Review Program published in Part 4 of the Medicare Intermediary Manual, and we are now setting them forth under § 413.24(f)(5) as well. Otherwise, if a cost report does not include required supporting documentation, the intermediary contacts the provider in writing and requests the missing supporting documentation. If the documentation is not received from the provider within 15 days from the date of receipt of the intermediary request (allowing 7 days for mailing), the intermediary may begin suspending payments until the supporting documentation is received. We are revising the Medicare Intermediary Manual and chapter 1 of the PRM–II to reflect this policy.

Comment: One commenter stated that the requirement that a provider submit supporting documentation may be in conflict with the American Institute of Certified Public Accountant (AICPA) recommendations concerning proper disclosure. The commenter believes that the required supporting documentation could be considered confidential.

Response: To carry out the settlement process, an intermediary must request sufficient documentation to assure the accuracy and allowability of costs reported on the cost report. We do not believe that this information is necessarily confidential in nature. Nevertheless, the intermediary will retain the data and maintain its confidentiality. Generally, the release of provider information is limited to that information contained in the provider's cost report. Supporting documentation, or documentation obtained through audit, is not considered releasable to the public under the Freedom of Information Act.

IV. Provisions of the Final Regulations

This rule adopts the provisions of the proposed rule as final with the exception of one change at § 413.24(f)(5)(i) concerning our proposed definition of an acceptable cost report submission. As discussed above in section III, we have eliminated the proposed requirement that a cost report must include all supporting documentation in order to be considered an acceptable submission.

V. Impact Statement

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless we certify that a final rule will not have a significant economic impact on a substantial number of small entities. This final rule extends from 3 months to 5 months after the close of a cost reporting period the time frame for providers to file their cost reports. It also defines what HCFA considers to be an "acceptable" cost report submission. Neither of these changes will have a significant economic impact on providers. Therefore, we have determined, and we certify, that this rule would not have a significant effect on a substantial number of small entities. Thus, we are not preparing a regulatory flexibility analysis.

Section 1102(b) of the Act requires us to prepare a regulatory impact statement if a final rule may have a significant economic impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We are not preparing a regulatory impact statement since we have determined, and we certify, that this final rule would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was not reviewed by the Office of Management and Budget.

VI. Other Required Information

A. Waiver of 30-Day Delay in Effective Date

We normally provide a delay in the effective date of 30 days after publication for final rules. However, we may waive the delay in the effective date if we find good cause that a delay in the effective date is impracticable, unnecessary, or contrary to the public interest.

As explained above, this final rule extends the time frame for providers to file cost reports from 3 months after the close of a cost reporting period to 5 months after the close of a cost reporting period. We believe this change will be beneficial to providers and that a delay in implementing this change would serve no purpose. Thus, we have concluded that in this instance it would be unnecessary and contrary to the public interest to provide for a 30-day delay in the effective date of this final rule. Therefore, we find good cause to waive the usual 30-day delay in effective date.

B. Paperwork Reduction Act

Section 413.24 contains information collection and recordkeeping requirements concerning provider cost reports that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The burdens associated with filing cost reports have been approved by OMB. This final rule merely changes the date on which cost reports are due and thus has no effect on the information collection and recordkeeping burden. However, the information collection and recordkeeping requirements contained in § 413.24 are not effective until they have been approved by OMB. We will publish a notice in the **Federal Register** when OMB approval has been obtained. Organizations and individuals desiring to submit comments on the information collection and recordkeeping requirements set forth in § 413.24 should direct them to the Office of Management and Budget, Human Resources and Housing Branch, Room 10235, New Executive Office Building, Washington, D.C., 20503, Attention: Allison Eydt (desk officer for HCFA).

List of Subjects in 42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Chapter IV, part 413, is amended as follows:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1122, 1814(b), 1815, 1833 (a), (i), and (n), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1320a–1, 1395f(b), 1395g, 13951 (a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww).

Subpart B—Accounting Records and Reports

2. In § 413.24, paragraph (f)(2) is revised, and a new paragraph (f)(5) is added to read as follows:

§ 413.24 Adequate cost data and cost finding

* * * * *

(f) * * *

(2) *Due dates for cost reports.* (i) Cost reports are due on or before the last day of the fifth month following the close of the period covered by the report. For cost reports ending on a day other than the last day of the month, cost reports are due 150 days after the last day of the cost reporting period.

(ii) Extensions of the due date for filing a cost report may be granted by the intermediary only when a provider's operations are significantly adversely affected due to extraordinary circumstances over which the provider has no control, such as flood or fire.

* * * * *

(5) An acceptable cost report submission is defined as follows:

(i) All providers—The provider, must complete and submit the required cost reporting forms, including all necessary signatures. A cost report is rejected for lack of supporting documentation only if it does not include the Provider Cost Reimbursement Questionnaire. Additionally, a cost report for a teaching hospital is rejected for lack of supporting documentation if the cost report does not include a copy of the Intern and Resident Information System diskette.

(ii) For providers that are required to file electronic cost reports—In addition to the requirements of paragraphs (f)(4) and (f)(5)(i) of this section, the provider must submit its cost reports in an electronic cost report format in conformance with the requirements contained in the Electronic Cost Report (ECR) Specifications Manual (unless the provider has received an exemption from HCFA).

(iii) The intermediary makes a determination of acceptability within 30 days of receipt of the provider's cost report. If the cost report is considered unacceptable, the intermediary returns the cost report with a letter explaining the reasons for the rejection. When the cost report is rejected, it is deemed an unacceptable submission and treated as if a report had never been filed.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 30, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 95–15340 Filed 6–26–95; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–24; RM–8583]

Radio Broadcasting Services; Clarendon, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of ROHO Broadcasting, allots Channel 257C2 to Clarendon, Texas, as the community's first local aural transmission service. *See* 60 FR 10534, February 27, 1995. Channel 257C2 can be allotted to Clarendon, Texas, in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 257C2 at Clarendon are 34–56–16 and 100–53–16. With this action, this proceeding is terminated.

DATES: Effective August 7, 1995. The window period for filing applications will open on August 7, 1995, and close on September 7, 1995.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 95–24, adopted June 13, 1995, and released June 22, 1995. The full text of this

Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Clarendon, Channel 257C2.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–15672 Filed 6–26–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 91–259; RM–7309, RM–7942, RM–7943, RM–7944, RM–7948]

Radio Broadcasting Services; Canovanas, Culebra, Las Piedras, Mayaguez, Quebradillas, San Juan, and Vieques, PR, and Christiansted and Frederiksted, VI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Carlos J. Colon-Ventura, substitutes Channel 252A for Channel 255B at Vieques, PR, reallots Channel 252A from Vieques to Las Piedras, PR, and modifies the license of Station WSAN to specify operation on Channel 252A at Las Piedras. At the request of Jose J. Arzuaga, the Commission substitutes Channel 258A for Channel 252A at Quebradillas, PR, and modifies the license of Station WQQZ to specify operation on the alternate Class A channel. At the request of Amor Family Broadcasting Group, the Commission allots Channel 251A to Santa Isabel, PR, as the community's first local aural transmission service. At the request of V.I. Stereo Communications Corp., the Commission reallots Channel 291B from Christiansted, V.I. to Vieques, PR, and modifies the license of Station WVIS to specify Vieques as its community of license, substitutes Channel 254A for Channel 293A at Culebra, PR, and modifies the outstanding construction permit of Aurio A. Matos to specify operation on the alternate Class A channel. At the request of Luis Hernandez, the Commission allots Channel 253A to Frederiksted, V.I., as the community's second local aural transmission service. To accommodate the above allotments, the Commission also substitutes Channel 254B for Channel 256B at Mayaguez, PR, modifies the license of Station WKJB-FM to specify operation on the alternate Class B channel, substitutes Channel 256B for Channel 253B at San Juan, PR, and modifies the license of Station WPRM-FM to specify operation on the alternate Class B channel. *See also* Supplementary Information, *infra*. With this action, this proceeding is terminated.

DATES: Effective August 7, 1995. The window period for filing applications will open on August 7, 1995, and close on September 7, 1995.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 91–259, adopted June 13, 1995, and released June 22, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Channel 251A can be allotted to Santa Isabel with a site restriction of 3.6 kilometers (2.3 miles) east, at coordinates North Latitude 17–58–12 and West Longitude 66–22–09, to avoid a short-spacing to Channel 254B at Mayaguez. Channel 291B can be allotted to Vieques without the imposition of a site restriction, at 18–19–39; 65–18–05. Channel 254A can be allotted to Culebra without the imposition of a site restriction, at 18–18–18; 65–18–06. Channel 252A can be allotted to Las Piedras with a site restriction of 14.6 kilometers (9.1 miles) northwest, at 18–16–14; 65–45–33, to avoid short-spacings to Station WBRQ, Channel 249A, Cidra, PR, and to Channel 251A at Santa Isabel. Channel 258A can be allotted to Quebradillas at Station WQQZ's present transmitter site, at 18–23–33; 66–59–46. Channel 254B can be allotted to Mayaguez at Station WKJB's present transmitter site at 18–09–05; 66–59–19. Channel 256B can be allotted to San Juan at Station WPRM-FM's present transmitter site, at 18–06–45; 66–03–07. Channel 253A can be allotted to Frederiksted, V.I., without the imposition of a site restriction, at 17-42-48; 64–53–00.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Puerto Rico, is amended by removing Channel 293A and adding Channel 254A at Culebra, removing Channel 256B and adding Channel 254B at Mayaguez; removing Channel 252A and adding Channel 258A at Quebradillas; removing Channel 253B and adding Channel 256B at San Juan; removing Channel 255B and adding Channel 291B at Vieques, and by adding Las Piedras, Channel 252A, by adding Santa Isabel, Channel 251A.

3. Section 73.202(b), the Table of FM Allotments under the Virgin Islands, is amended by removing Channel 291B at Christiansted and adding Channel 253A at Frederiksted.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–15671 Filed 6–26–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF DEFENSE

48 CFR Part 246

Defense Federal Acquisition Regulation Supplement; Contract Quality Requirements

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comment.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to encourage increased use of commercial quality standards in DoD contracts.

DATES: *Effective date:* June 13, 1995.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before August 28, 1995, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Mr. Richard G. Layser, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 95–D007 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Layser, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

Current DoD initiatives to merge the Defense and private sector industrial base require increased use of commercial standards and recognition of contractor quality systems. This interim rule amends DFARS Part 246 to encourage increased use of commercial quality standards by removing existing requirements to use military quality standards in DoD contracts. The rule revises the definition of "quality program"; replaces direct references to MIL–I–45208 and MIL–Q–9858 with references to higher-level quality requirements; and deletes Table 46–1, Contract Quality Requirements Guide.

B. Regulatory Flexibility Act

This interim rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule encourages increased use of commercial quality standards. The rule will enable contractors to use a single quality system in their facilities, rather than maintaining duplicative commercial and military quality systems. This is expected to result in lower costs, as well as improved process capability, process controls, and product quality. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and may be obtained from the address stated herein. A copy of the IRFA has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. Comments from small entities concerning the affected DFARS subparts will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 95–D007 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this interim rule does not impose any new information collection requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that compelling reasons exist to publish this interim rule prior to affording the public an opportunity to comment. This action is necessary to permit the Government and industry to realize, as soon as possible, the significant cost savings anticipated from allowing contractors to maintain a single quality system in their facilities. Comments received in response to the publication of this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Part 246

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 246 is amended as follows:

1. The authority citation for 48 CFR Part 246 is revised to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 246—QUALITY ASSURANCE

2. Section 246.101 is amended by revising the definition of "Quality program" to read as follows:

246.101 Definitions.

* * * * *

Quality program is a program which is developed, planned, and managed to carry out cost-effectively all efforts to effect the quality of materials and services from concept exploration and definition through demonstration and validation, engineering and manufacturing development, production and deployment, and operations and support.

3. Section 246.102 is amended by adding a second sentence in paragraph (4) to read as follows:

246.102 Policy.

* * * * *

(4) * * * Contractor quality programs may be modeled on military, commercial, national, or international quality standards.

4. Section 246.202–3 is revised to read as follows:

246.202–3 Higher-level contract quality requirements.

(i) Higher-level contract quality requirements are used in addition to a standard inspection requirement.

(ii) Higher-level contract quality requirements, including nongovernment quality system standards adopted to meet DoD needs, are listed in the DoD Index of Specifications and Standards.

5. Section 246.204 is revised to read as follows:

246.204 Application of criteria.

When purchasing a commercial item, the technical, quality assurance, and contracting activities must work together to tailor contract quality requirements to—

(1) Eliminate or minimize special Government testing, quality control, and inspection requirements. Consider—

(i) The item's application;

(ii) The cost objectives of the acquisition; and

(iii) The item's reliability as established in the commercial market;

(2) Maximize use of the certificate of conformance consistent with FAR 46.504; and

(3) Provide for examination and acceptance at the most economical point (source or destination).

6. Section 246.704 is amended by revising paragraph (4) to read as follows:

246.704 Authority for use of warranties.

* * * * *

(4) Supplies and services in fixed-price type contracts containing quality assurance provisions that reference higher-level contract quality requirements (see 246.202–3); or

* * * * *

[FR Doc. 95–15252 Filed 6–26–95; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 544

[Docket No. 95–004; Notice 3]

RIN 2127–AE94

Insurer Reporting Requirements; List of Insurers Required to File Reports

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: In this final rule, NHTSA publishes an update to its list in

Appendices A, B, and C of part 544 of passenger motor vehicle insurers that are required to file reports on their motor vehicle theft loss experiences, pursuant to 49 U.S.C. section 33112. Each insurer listed in these appendices must file a report for the 1992 calendar year not later than October 25, 1995. Further, as long as they remain listed, they must submit reports on each subsequent October 25.

DATES: The final rule on this subject is effective July 27, 1995.

Reporting Date: Insurers listed in the appendices are required to submit reports on their calendar year 1992 experience, which is due October 25, 1995. Previously listed insurers whose names are removed by this notice need not submit reports for that year. Insurers newly listed in this final rule must submit their reports for calendar year 1992 on or before October 25, 1995. Under part 544, as long as an insurer is listed, it must file reports each October 25. Thus, any insurer listed in the appendices as of the date of the most recent final rule must file a report on the following October 25, and on each succeeding October 25, absent a further amendment removing the insurer's name from the appendices.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Gray, Office of Market Incentives, NHTSA, 400 Seventh St., SW., Washington, DC 20590. Ms. Gray's telephone number is (202) 366–1740. Her fax number is (202) 366–4329.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 49 U.S.C. section 33112, *Insurer reports and information,* NHTSA requires certain passenger motor vehicle insurers to file an annual report with NHTSA unless the agency exempts the insurer from filing such reports. Each insurers' report includes information about thefts and recoveries of motor vehicles, the rating rules used by the insurer to establish premiums for comprehensive coverage, the actions taken by the insurer to reduce such premiums, and the action taken by the insurer to reduce or deter theft. Under the agency's implementing regulation, part 544, the following insurers are subject to the reporting requirements: (1) Those issuers of motor vehicle insurance policies whose total premiums account for 1 percent or more of the total premiums of motor vehicle insurance issued within the United States; (2) those issuers of motor vehicle insurance policies whose premiums account for 10 percent or more of total premiums written within any one State; and (3) rental or leasing companies with a fleet of 20 or more vehicles not covered by theft insurance policies issued by insurers of motor vehicles, other than any governmental entity.

Pursuant to its statutory exemption authority, the agency has exempted smaller passenger motor vehicle insurers from the reporting requirements.

A. Small Insurers of Passenger Motor Vehicles

Section 33112(f)(2) provides that the agency shall exempt small insurers of passenger motor vehicles if NHTSA finds that such exemptions will not significantly affect the validity or usefulness of the information in the reports, either nationally or on a State-by-State basis. The term "small insurer" is defined in section 33112(f)(1)(A) and (B) as an insurer whose premiums for motor vehicle insurance issued directly or through an affiliate, including pooling arrangements established under State law or regulation for the issuance of motor vehicle insurance account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. However, that section also stipulates that if an insurance company satisfies this definition of a "small insurer," but accounts for 10 percent or more of the total premiums for all motor vehicle insurance issued in a particular State, the insurer must report about its operations in that State.

As described in the final rule establishing the requirement for insurer reports (52 FR 59, January 2, 1987), in 49 CFR part 544, NHTSA exercises its exemption authority by listing in Appendix A each insurer which must report because it had written at least 1 percent of the motor vehicle insurance premiums nationally. Listing the insurers subject to reporting instead of each insurer exempted from reporting because it had less than 1 percent of the premiums nationally is administratively simpler since the former group is much smaller than the latter. In Appendix B, NHTSA lists those insurers that are required to report for particular States because each insurer had a 10 percent or greater market share of motor vehicle premiums in those States. In the January 1987 final rule, the agency stated that Appendices A and B will be updated annually. It has been NHTSA's practice to update the appendices based on data voluntarily provided by insurance companies to A. M. Best, and made available to the agency each spring. The agency uses the data to determine the insurers' market share nationally and in each State.

B. Self-Insured Rental and Leasing Companies

In addition, upon making certain determinations, NHTSA is authorized to grant exemptions to self insurers, i.e., any person who has a fleet of 20 or more vehicles (other than any governmental entity) which are used primarily for rental or lease and which are not covered by theft insurance policies issued by insurers of passenger motor vehicles, 49 U.S.C. 33112(e) (1) and (2). NHTSA may exempt a self insurer from reporting, if the agency determines:

(1) The cost of preparing and providing the information is excessive in relation to the size of the insurer's business; and

(2) the information from that insurer will not contribute significantly to carrying out chapter 331.

Conversely, NHTSA may not exempt a self insurer solely based on meeting the definition of insurer as defined in section 33112(b)(1).

In a final rule published June 22, 1990 (55 FR 25606), the agency granted a class exemption to all companies that rent or lease fewer than 50,000 vehicles because it believed that reports from only the largest companies would sufficiently represent the theft experiences of rental and leasing companies. NHTSA concluded that reports by the many smaller rental and leasing companies do not significantly contribute to carrying out NHTSA's statutory obligations, and that exempting such companies will relieve an unnecessary burden on most companies that potentially must report. As a result of the June 1990 final rule, the agency added a new Appendix C, which consists of an annually updated list of the self insurers that are subject to part 544.

Following the same approach as in the case of Appendix A, NHTSA has included in Appendix C each of the relatively few self insurers which are subject to reporting instead of listing relatively numerous self insurers that are exempted. NHTSA updates Appendix C based on information from the publications *Automotive Fleet Magazine* and *Travel Business Travel News.*

Notice of Proposed Rulemaking

(1) Insurers of Passenger Motor Vehicles

On January 19, 1995, NHTSA published a notice of proposed rulemaking (NPRM) to update the list of insurers in Appendices A, B, and C required to file reports (See 60 FR 3830). Based on the 1992 calendar year market share data provided by A.M. Best, NHTSA proposes to amend the listing in Appendix A of insurers which must report because each had written at least one percent of the motor vehicle insurance premiums on a national basis. The list was last amended in a notice published on December 1, 1993 (See 58 FR 63299). One company, United States F & G Group, included in the December 1993 listing, was proposed to be removed from Appendix A. Three companies, General ACC Group, Hanover Insurance Companies, and Safeco Insurance Companies, that were not listed in Appendix A, were proposed to be added.

Each of the 19 insurers listed in Appendix A in this notice would be required to file a report not later than October 25, 1995, setting forth the information required by part 544 for each State in which it did business in the 1992 calendar year. As long as those 19 insurers remain listed, they would be required to submit reports on each subsequent October 25 for the calendar year ending slightly less than 3 years before.

Appendix B lists those insurers that would be required to report for particular States for the calendar year 1992, because each insurer had a 10 percent or greater market share of motor vehicle premiums in those States. Based on the 1992 calendar year A.M. Best data for market shares, it was proposed that one company, Farm Bureau Mutual Insurance Company, Inc., (Kansas Farm Bureau Group (Farm Bureau)), reporting on its activities in the State of Kansas be added to Appendix B.

The 12 insurers listed in Appendix B of this notice would be required to report on their calendar year 1992 activities in every State in which they had a 10 percent or greater market share. These reports must be filed no later than October 25, 1995, and set forth the information required by part 544. As long as those 12 insurers remain listed, they would be required to submit reports on each subsequent October 25 for the calendar year ending slightly 3 years before.

(2) Rental and Leasing Companies

Based on information in *Automotive Fleet Magazine* and *Travel Trade Business Travel News* for 1992, the most recent year that data are available, NHTSA proposes no changes be made in Appendix C. Accordingly, each of the 10 companies (including franchisees and licensees) listed in this notice in Appendix C would be required to file reports for the calendar year 1992 no later than October 25, 1995, and set forth the information required by part 544. As long as those 10 companies remain listed, they would be required to submit reports on each subsequent October 25 for the calendar year ending slightly less than 3 years before.

NHTSA notes that on July 5, 1994, the Cost Savings Act, (including Title VI-Theft Prevention) was revised and codified "without substantive change." The passenger motor vehicle theft insurers' reporting provisions, formerly at 15 U.S.C. 2032 are now at 49 U.S.C. 33112. This final rule amends part 544 to reflect the changed statutory authority.

Public Comments and Final Determination

1. Insurers of Passenger Motor Vehicles

In response to the NPRM, the agency received responses from two commentors. Both commentors were companies listed in the January 1995 NPRM. Each commentor questioned the appropriateness of its inclusion in one of the appendices.

No comments were received objecting to the deletion of United States F & G Groups from Appendix A. Accordingly, it has been deleted.

Hanover Insurance Companies (Hanover) wrote to request that it not be included in Appendix A. As stated, NHTSA's proposal to include Hanover was based on market share data provided by A. M. Best. Hanover wrote that for 1992 the total premiums for all forms of motor vehicle insurance issued by Hanover and its affiliates were 1,031,862,294 or .97 percent of the entire market. Hanover believes that because the company and its affiliates wrote less than one percent of the total motor vehicle insurance premiums written by all insurers in 1992 that granting an exemption would not significantly affect the validity or usefulness of the information of the reports.

The agency notes that Hanover's total written premiums are less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States in 1992. Since Hanover does not meet the criteria for inclusion, NHTSA determines that Hanover should not be added to Appendix A.

Farm Bureau Mutual Insurance Company, Inc., (Kansas Farm Bureau Group (Farm Bureau)) wrote that it not be included in Appendix B. As a rationale, Farm Bureau stated that its market share for 1992 was 10.3 percent, however for 1993 the market share was 9.8 percent.

Farm Bureau stated that because a moratorium was placed on its new auto business in 1993, it believes its market share will decrease for 1994. Thus, Farm Bureau stated it met the 10 percent requirement for only one year. Farm Bureau believes because it has "very few" auto theft claims, and since it will be reporting for only one year, it questions the relevance of providing its statistical data for the purposes of the law. Additionally, Farm Bureau stated that major catastrophes struck the property casualty industry. In 1992, storm claims (tornados) were paid in Kansas totalling in excess of one billion dollars. Farm Bureau has been faced with major financial responsibilities to its policyholders. Therefore, it believes the cost of preparing and furnishing this report (for only one year) is excessive in relation to the size of its business.

As required by 49 U.S.C. 33112(f)(1)(B), a small insurer means an insurer whose premiums for motor vehicle insurance account for less than 10 percent of the total premiums for all forms of motor vehicle insurance issued by insurers in any State. Additionally, section 33112 provides that if an insurance company satisfies the section's definition of small insurer nationally, but accounts for 10 percent or more of the total premiums for all forms of motor vehicle insurance issued by insurers within a particular State, such insurer must report this information about its operation in that State. Therefore, Farm Bureau does not qualify as a "small insurer" because its total premiums written exceeds 10 percent of the total written in Kansas. Since Farm Bureau does not meet the exemption criterion of less than 10 percent of the total premiums written within the State, Farm Bureau should remain listed on Appendix B. However, section 33112(f)(2) states that the Secretary (NHTSA) "* * * shall exempt by regulation a small insurer from this section if the Secretary finds that the exemption will not significantly affect the validity or usefulness of the information collected and compiled under this section, nationally or State-by-State."

Based on Farm Bureau's petition that auto theft claims are 1.3 percent and less than .75 of the 1 percent of its total claims paid, coupled with the financial burdens inflicted on the industry (in Kansas), the agency has determined the exemption authority provided in section 33112(e)(1) and (2) can be applied. Therefore, the agency believes that the cost of preparing and furnishing this report would be excessive in relation to the size of the insurer's business, and the information would not contribute *significantly* to carrying out NHTS's statutory obligations. Further, by exempting Farm Bureau, it will be relieved of an unnecessary burden.

Given that Farm Bureau Mutual Insurance Co., is removed from Appendix B.

2. Rental and Leasing Companies

Based on information in Automotive Fleet Magazine and Travel Trade Business Travel News for 1992, the most recent year for which data are available, NHTSA proposes no changes in Appendix C. Accordingly, each of the 10 companies (including franchisees and licensees) listed in the final rule in Appendix C are required to file reports for calendar year 1992 no later than October 25, 1995, and set forth in the information required by part 544. As long as those 10 companies remain listed, they are required to submit reports on or before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

After reviewing the public comments and, as discussed above, making the appropriate adjustments to Appendices A and B, NHTSA has determined that each of the 18 insurers listed in Appendix A, each of the 11 insurers listed in Appendix B, and each of the 10 insurers listed in Appendix C, are required to submit an insurers report under part 544. Each listed insurer must report on its experience for calendar year 1992, and set forth the information required by 49 CFR part 544.

Regulatory Impacts

(1) Costs and Other Impacts

This notice has not been reviewed under Executive Order 12866. NHTSA has considered the impact of this final rule and has determined the action not to be "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. This rule implements the agency's policy of ensuring that all insurance companies that are statutorily eligible for exemption from the insurer reporting requirements are in fact exempted from those requirements. Only those companies that are not statutorily eligible for an exemption are expressly required to file reports.

NHTSA does not believe that this rule, reflecting more current data, affects the impacts described in the final regulatory evaluation prepared for the final rule establishing part 544 (52 FR 59, January 2, 1987). Accordingly, a separate regulatory evaluation has not been prepared for this rulemaking action. Using the cost estimates in the 1987 final regulatory evaluation, the agency estimates that the cost of compliance will be about $50,000 for any insurer that is added to Appendix A, about $20,000 for any insurer added to Appendix B, and about $5,770 for any insurer added to Appendix C. In this final rule, for Appendix A, the agency removed one insurer and added two insurers; for Appendix B, the agency made no changes; and for Appendix C, the agency made no changes. The agency therefore estimates that the net effect of this final rule will be a cost increase to insurers, as a group, of less than $100,000.

Interested persons may wish to examine the 1987 final regulatory evaluation. Copies of that evaluation have been placed in Docket No. T86–01; Notice 2. Any interested person may obtain a copy of this evaluation by writing NHTSA, Docket Section, Room 5109, 400 Seventh Street S.W., Washington D.C. 20590, or by calling (202) 366–4949.

(2) Paperwork Reduction Act

The information collection requirements in this final rule have been submitted to and approved by the Office of Management and Budget (OMB) pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501*et seq.*) This collection of information has been assigned OMB Control Number 2127–0547 ("Insurer Reporting Requirements") and has been approved for use through October 31, 1996.

(3) Regulatory Flexibility Act

The agency has also considered the effect of this rulemaking under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) I certify that this final rule will not have a significant economic impact on a substantial number of small entities. The rationale of this certification is that none of the companies included on Appendices A, B, or C would be construed to be a small entity within the definition of the RFA. "Small insurer" is defined in part under 49 U.S.C. 33112 as any insurer whose premiums for motor vehicle insurance account for less than one percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States, or any insurer whose premiums within any State, account for less than 10 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the State. This notice would exempt all insurers meeting those criteria. Any insurer too large to meet those criteria is not a small entity. In addition, in this rulemaking, the agency has exempted, by rule, all "self insured rental companies" that have fleets of fewer than 50,000 vehicles. Any self insured rental and leasing company too large to meet that criterion is not a small entity.

(4) Federalism

This action has been analyzed in accordance with the principle and criteria contained in Executive Order 12612, and it has been determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

(5) Environmental Impacts

In accordance with the National Environmental Policy Act, NHTSA has considered the environmental impacts of this final rule and determined that it will not have a significant impact on the quality of the human environment.

(6) Civil Justice Reform

This final rule does not have any retroactive effect, and it does not preempt any State law. 49 U.S.C. 33117 provides that judicial review of this rule may be obtained pursuant to 49 U.S.C. 32909. Section 32909 does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 544

Crime, Insurance companies, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 544 is amended as follows:

PART 544—[AMENDED]

1. The authority citation for part 544 is revised to read as follows:

Authority: 49 U.S.C. 33112; delegation of authority at 49 CFR 1.50.

2. Section 544.2 *Purpose.* is revised to read as follows:

§ 544.2 Purpose.

The purpose of these reporting requirement is to aid in implementing and evaluating the provisions of 49 U.S.C. chapter 331 Theft Prevention to prevent or discourage the theft of motor vehicles, to prevent or discourage the sale or distribution in interstate commerce of used parts removed from stolen motor vehicles, and to help reduce the cost to consumers of comprehensive insurance coverage for motor vehicles.

3. Paragraph (a) of § 544.4 Definitions is revised to read as follows:

§ 544.4 Definitions.

(a) *Statutory terms.* All terms defined in 49 U.S.C. 33101 and 33112 are used in accordance with their statutory meanings unless otherwise defined in paragraph (b) of this section.

* * * * *

4. Paragraph (a) of § 544.5 is revised to read as follows:

§ 544.5 General requirements for reports.

(a) Each insurer to which this part applies shall submit a report annually not later than October 25, 1986. The report shall contain the information required by § 544.6 of this part for the calendar year three years previous to the year in which the report is filed (e.g., the report due October 25, 1995 shall contain the required information for the 1992 calendar year).

* * * * *

5. Appendix A to part 544 is revised to read as follows:

Appendix A—Insurers of Motors Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business

Aetna Life & Casualty Group
Allstate Insurance Group
American Family Group
American International Group
California State Auto Association
CNA Insurance Companies
Farmers Insurance Group
Geico Corporation Group
General ACC Group*
ITT Hartford Insurance Group
Liberty Mutual Group
Nationwide Group
Progressive Group
Prudential of America Group
Safeco Insurance Companies*
State Farm Group
Travelers Insurance Group
USAA Group

6. Appendix B to part 544 is revised to read as follows:

Appendix B—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements Only in Designated States

Alfa Insurance Group (Alabama)
Amica Mutual Insurance Company (Rhode Island)
Arbella Mutual Insurance (Massachusetts)
Auto Club of Michigan Group (Michigan)
Commerce Group, Inc. (Massachusetts)
Commercial Union Insurance Companies (Maine)
Concord Group Insurance Companies (Vermont)
Erie Insurance Companies (Pennsylvania)
Kentucky Farm Bureau Group (Kentucky)
Southern Farm Bureau Casualty Group (Arkansas, Mississippi)
Tennessee Farmers Companies (Tennessee)

7. Appendix C to part 544 is republished to read as follows:

* Indicates a newly listed insurer which must file a report beginning with the report due October 25, 1995.

Appendix C—Motor Vehicle Rental and Leasing Companies (Including Licensees and Franchisees) Subject to the Reporting Requirements of Part 544

Alamo Rent-A-Car, Inc.
American International Rent-A-Car Corp./ ANSA
Avis, Inc.
Budget Rent-A-Car Corporation
Dollar Rent-A-Car Systems, Inc.
Hertz Rent-A-Car Division (subsidiary of Hertz Corporation)
National Car Rental System, Inc.
Penske Truck Leasing Company
Ryder System, Inc. (both rental and leasing operations)
U-Haul International, Inc. (subsidiary of AMERCO)

Issued on: June 16, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–15524 Filed 6–26–95; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 950509041–5041–01; I.D. 061995C]

Groundfish of the Gulf of Alaska; Pacific Ocean Perch in the Central Regulatory Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific ocean perch (POP) in the Central Regulatory Area in the Gulf of Alaska (GOA). This action is necessary to use the total allowable catch (TAC) for POP in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), July 3, 1995, until 12 midnight, A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the annual TAC for POP in the Central Regulatory Area was established by the final 1995 harvest specifications of groundfish (60 FR 8470, February 14, 1995) as 2,702 metric tons (mt). At the same time, the directed fishery for POP in the Central Regulatory Area was closed under § 672.20(c)(2)(ii) in order to reserve amounts anticipated to be needed for incidental catch in other fisheries (60 FR 8470, February 14, 1995). NMFS has determined that as of June 3, 1995, 2,376 mt remain unharvested.

The Director, Alaska Region, NMFS, has determined that the 1995 TAC for POP in the Central Regulatory Area has not been reached. Therefore, NMFS is terminating the previous closure and is opening directed fishing for POP in the Central Regulatory Area.

All other closures remain in full force and effect.

Classification

This action is taken under § 672.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 21, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–15688 Filed 6–26–95; 8:45 am]

BILLING CODE 3510–22–F

50 CFR Part 672

[Docket No. 950509041–5041–01; I.D. 061995D]

Groundfish of the Gulf of Alaska; Pacific Ocean Perch in the Western Regulatory Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific ocean perch (POP) in the Western Regulatory Area in the Gulf of Alaska (GOA). This action is necessary to use the total allowable catch (TAC) for POP in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), July 3, 1995, until 12 midnight, A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management

Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the annual TAC for POP in the Western Regulatory Area was established by the final 1995 harvest specifications of groundfish (60 FR 8470, February 14, 1995) as 1,014 metric tons (mt). At the same time, the directed fishery for POP in the Western Regulatory Area was closed under § 672.20(c)(2)(ii) in order to reserve amounts anticipated to be needed for incidental catch in other fisheries (60 FR 8470, February 14, 1995). NMFS has determined that as of June 3, 1995, 995 mt remain unharvested.

The Director, Alaska Region, NMFS, has determined that the 1995 TAC for POP in the Western Regulatory Area has not been reached. Therefore, NMFS is terminating the previous closure and is opening directed fishing for POP in the Western Regulatory Area.

All other closures remain in full force and effect.

Classification

This action is taken under § 672.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 21, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–15689 Filed 6–26–95; 8:45 am]

BILLING CODE 3510–22–F

50 CFR Part 675

[Docket No. 950206040–5040–01; I.D. 061995E]

Groundfish of the Bering Sea and Aleutian Islands Area; Atka Mackerel in the Central Aleutian District

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for Atka mackerel in the Central Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to use the total allowable catch (TAC) for Atka mackerel in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), July 1, 1995, until 12 midnight, A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii), the TAC for Atka mackerel in the Central Aleutian District was established by the final 1995 harvest specifications of groundfish as 50,000 metric tons (mt), as amended (60 FR 8479, February 14, 1995). The directed fishery for Atka mackerel was closed on April 25, 1995 in order to reserve amounts anticipated to be needed for incidental catch in other fisheries (60 FR 20916, April 28, 1995). NMFS has determined that as of June 3, 1995, 4,055 mt remain unharvested.

The Director, Alaska Region, NMFS, has determined that the 1995 TAC for Atka mackerel in the Central Aleutian District has not been reached. Therefore, NMFS is terminating the previous closure and is opening directed fishing for Atka mackerel in the Central Aleutian District.

All other closures remain in full force and effect.

Classification

This action is taken under § 675.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C 1801 *et seq.*

Dated: June 21, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–15690 Filed 6–26–95; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 123
Tuesday, June 27, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–0883]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for comments.

SUMMARY: The Board is soliciting comment on how rules for credit advertising could be modified to increase consumer benefit and decrease creditor costs. Comment is also requested on how current rules could be modified, if at all, for radio and television advertisements without diminishing consumer protection. The Riegle Community Development and Regulatory Improvement Act of 1994 directs the Board to submit a report to the Congress regarding these issues. Under present law, creditors that state a rate in an advertisement must state the annual percentage rate (APR). Stating the APR or other terms triggers additional disclosure requirements such as annual fees imposed on a credit line or the repayment terms for an installment loan.

DATES: Comments must be received on or before August 11, 1995.

ADDRESSES: Comments should refer to Docket No. R–0883, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street NW. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding the availability of information.

FOR FURTHER INFORMATION CONTACT: Jane E. Ahrens, Senior Attorney, or Jose M. Gabilondo, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for the hearing impaired *only*, Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

Section 336 of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325, 108 Stat. 2160, enacted into law on September 23, 1994, directs the Board to submit a report to the Congress on existing rules for credit advertising and how current rules could be modified in a way that increases consumer benefit and decreases, specifically for radio advertisements.

II. Current Rules for Credit Advertising

The Truth in Lending Act (15 U.S.C. 1601 et seq.) contains rules about consumer credit advertisements. The act is implemented by the Board's Regulation Z (12 CFR part 226). Regulation Z defines an advertisement as a commercial message in any medium that promotes a credit transaction, directly or indirectly. Examples of advertisements include direct mail literature, messages in newspapers or on computer screens, and telephone solicitations. Direct personal contacts, such as cost estimates for a specific transaction being negotiated, are not advertisements.

Regulation Z covers advertisements for all consumer credit transactions. Creditors advertising specific credit terms must state those actually offered to consumers. Stating certain credit terms triggers the disclosure of additional terms. The specific requirements differ somewhat for closed-end loans (typically, installment loans) and open-end plans (for example, credit card plans or home-secured credit lines).

Special rules govern multi-page advertisements. If a multi-page advertisement contains a term that triggers additional disclosures, the advertisement may clearly state the additional disclosures in a table or schedule on one page, so long as the pages where the triggering term appears refers to the page where the table or schedule is printed. The table or schedule must represent the creditor's more commonly sold higher-price property or services.

Closed-end Credit

If creditors advertise a rate, it must be stated as the APR. A simple annual interest rate also may be stated, but not more conspicuously than the APR.

The following terms in an advertisement trigger additional disclosures: (1) The amount or percentage of a downpayment (in an advertisement for a credit sale), (2) the number of payments or period of repayment, (3) the amount of any payment, and (4) the amount of any finance charge. If an advertisement contains a trigger term, creditors must also state the following: (1) The APR, using that term (and if the rate may increase, that fact), (2) the terms of repayment, and (3) in an advertisement for a credit sale, the amount or percentage of a downpayment. Creditors need not state every loan available—creditors may advertise an example of one or more typical loans, as long as all the terms for the example are listed.

Open-end Credit

General

Disclosures are triggered for open-end plans if creditors advertise any of the terms required to be furnished in account-opening disclosures, such as how the finance charge on an open-end plan may be determined. For example, a creditor advertising "service charge on balances" describes how the finance charge will be determined and triggers the following additional disclosure requirements: (1) Any minimum or fixed charge, (2) the periodic rate used to compute the finance charge (expressed as an APR), (3) if the rate may increase, that fact, and (4) any membership fee, such as an annual fee.

Home Equity Lines of Credit

Creditors advertising home-secured credit lines have extra responsibilities. Advertisements cannot refer to home equity plans as "free money" (or similar terms) or cannot discuss the tax consequences of interest deductions in a misleading way.

Creditors trigger additional disclosures if they advertise—affirmatively or negatively—account-opening disclosures relating to finance charges and other significant charges or

repayment terms for the plan. If a home equity plan advertisement contains a trigger term, creditors must also state the following: (1) the periodic rate used to compute the finance charge (expressed as an APR), (2) loan fees that are a percentage of the credit limit along with an estimate of other plan fees, and (3) the maximum APR that could be imposed in a variable-rate plan.

If a minimum payment for the home equity line is stated, the advertisement must also state if a balloon payment will result. And if an advertisement for a variable-rate plan states a rate other than one based on the contract's index and margin, the advertisement must also state how long the introductory rate will be in effect. The APR figured on the current index and margin must be disclosed with equal prominence to the introductory rate.

III. Request for Comments

The Board requests comment on how existing credit advertising rules could be modified to increase consumer benefit and decrease creditor costs. Comment is also requested if the current rules could be modified, if at all, for radio advertisements without diminishing consumer protection. For example, Section 336 of the Riegle Community Development and Regulatory Improvement Act of 1994 provides for an abbreviated disclosure scheme for radio leasing advertisements. Before the statutory revisions, if a trigger term (such as a payment amount) were used in a leasing advertisement, as many as six additional disclosures were required to be given. Under the statutory amendments, lessors may substitute a reference to a toll-free telephone number or to a specified print advertisement for the disclosures about purchase options and end of term liability. If consumers call the toll-free number, they must receive all the required disclosures (not simply the ones omitted from the radio advertisement). Alternatively, all of the disclosures could be provided in a publication of general circulation in the community served by the radio station.

Comment is requested on whether the use of toll-free numbers in lieu of providing specific disclosures is warranted. Comment is also requested on whether changes to radio advertisements should be extended to other broadcast media (such as television), given similar time constraints for delivering disclosures.

The Board will submit its report to the Congress in early fall 1995, based on the comments of interested parties and its own analysis.

By order of the Board of Governors of the Federal Reserve System, June 21, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–15681 Filed 6–26–95; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–AWA–3]

Proposed Establishment of Class C Airspace and Revocation of Class D Airspace, Cyril E. King Airport; VI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a Class C airspace area and revoke the existing Class D airspace area at the Cyril E. King Airport, Charlotte Amalie St. Thomas, VI. The Cyril E. King Airport is a public-use facility with a Level II control tower served by Limited Radar Approach Control. The establishment of this Class C airspace area would require pilots to maintain two-way radio communications with air traffic control (ATC) while in Class C airspace. Implementation of the Class C airspace area would promote the efficient control of air traffic and reduce the risk of midair collision in the terminal area.

DATES: Comments must be received on or before August 4, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC–10], Airspace Docket No. 95–AWA–3, 800 Independence Avenue, SW., Washington, DC 20591.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, P.O. Box 20636, Atlanta, GA 30320.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–AWA–3." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

Background

On April 22, 1982, the National Airspace Review (NAR) plan was published in the **Federal Register** (47 FR 17448). The plan encompassed a review of airspace use and procedural aspects of the ATC system. Among the main objectives of the NAR was the improvement of the ATC system by

increasing efficiency and reducing complexity. In its review of terminal airspace, NAR Task Group 1–2 concluded that Terminal Radar Service Areas (TRSA's) should be replaced. Four types of airspace configurations were considered as replacement candidates, of which Model B, since redesignated Airport Radar Service Area (ARSA), was recommended by a consensus of the task group.

The FAA published NAR Recommendation 1-2.2.1, "Replace Terminal Radar Service Areas with Model B Airspace and Service" in Notice 83–9 (July 28, 1983; 48 FR 34286) proposing the establishment of ARSA's at the Robert Mueller Municipal Airport, Austin, TX, and the Port of Columbus International Airport, Columbus, OH. ARSA's were designated at these airports on a temporary basis by SFAR No. 45 (October 28, 1983; 48 FR 50038) to provide an operational confirmation of the ARSA concept for potential application on a national basis.

Following a confirmation period of more than a year, the FAA adopted the NAR recommendation and, on February 27, 1985, issued a final rule (50 FR 9252; March 6, 1985) defining ARSA airspace and establishing air traffic rules for operation within such an area.

Concurrently, by separate rulemaking action, ARSA's were permanently established at the Austin, TX, Columbus, OH, and the Baltimore/Washington International Airports (50 FR 9250; March 6, 1985). The FAA stated that future notices would propose ARSA's for other airports at which TRSA procedures were in effect.

Additionally, the NAR Task Group recommended that the FAA develop quantitative criteria for proposing to establish ARSA's at locations other than those which were included in the TRSA replacement program. The task group recommended that these criteria include, among other things, traffic mix, flow and density, airport configuration, geographical features, collision risk assessment, and ATC capabilities to provide service to users. These criteria have been developed and are being published via the FAA directives system.

The FAA has established ARSA's at 121 locations under a paced implementation plan to replace TRSA's with ARSA's. This is one of a series of notices to implement ARSA's at locations with TRSA's or locations without TRSA's that warrant implementation of an ARSA. Airspace Reclassification, effective September 16, 1993, reclassified ARSA's as Class C airspace areas. This change in terminology is reflected in the remainder of this NPRM.

This notice proposes Class C airspace designation at a location which was not identified as a candidate for Class C in the preamble to Amendment No. 71–10 (50 FR 9252). Other candidate locations will be proposed in future notices published in the **Federal Register**.

The Cyril E. King Airport is a public-use airport with an operating Level II control tower served by Limited Radar Approach Control. Passenger enplanements reported at Cyril E. King Airport were 640,642, 583,817, and 602,373, respectively, for calendar years 1993, 1992, and 1991. This volume of passenger enplanements and aircraft operations meets the FAA criteria for establishing Class C airspace to enhance safety.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a Class C airspace area and revoke the Class D airspace area at the Cyril E. King Airport, Charlotte Amalie, St. Thomas, VI. Cyril E. King Airport is a public airport with a Level II operating control tower served by Limited Radar Approach Control.

The FAA published a final rule (50 FR 9252; March 6, 1985) which defines Class C airspace, and prescribes operating rules for aircraft, ultralight vehicles, and parachute jump operations in Class C airspace areas. The final rule provides, in part, that all aircraft arriving at any airport in Class C airspace or flying through Class C airspace must: (1) prior to entering the Class C airspace, establish two-way radio communications with the ATC facility having jurisdiction over the area; and (2) while in Class C airspace, maintain two-way radio communications with that ATC facility. For aircraft departing from the primary airport within Class C airspace area, or a satellite airport with an operating control tower, two-way radio communications must be established and maintained with the control tower and thereafter as instructed by ATC while operating in Class C airspace. For aircraft departing a satellite airport without an operating control tower and within Class C airspace, two-way radio communications must be established with the ATC facility having jurisdiction over the area as soon as practicable after takeoff and thereafter maintained while operating within the Class C airspace area (14 CFR 91.130).

Pursuant to Federal Aviation Regulations section 91.130 (14 CFR part 91) all aircraft operating within Class C airspace are required to comply with sections 91.129 and 91.130. Ultralight vehicle operations and parachute jumps in Class C airspace areas may only be conducted under the terms of an ATC authorization.

The FAA adopted the NAR Task Group recommendation that each Class C airspace area be of the same airspace configuration insofar as is practicable. The standard Class C airspace area consists of that airspace within 5 nautical miles of the primary airport, extending from the surface to an altitude of 4,000 feet above that airport's elevation, and that airspace between 5 and 10 nautical miles from the primary airport from 1,200 feet above the surface to an altitude of 4,000 feet above that airport's elevation. Proposed deviations from this standard have been necessary at some airports because of adjacent regulatory airspace, international boundaries, topography, or unusual operational requirements. The proposed Class C airspace area for the Cyril E. King Airport would consist of that airspace extending upward from the surface to and including 4,000 feet MSL within a 5-mile radius of the airport, and that airspace extending upward from 1,900 feet MSL to and including 4,000 feet MSL within a 10-mile radius of the airport.

Definitions and operating requirements applicable to Class C airspace may be found in section 71.51 of part 71 and sections 91.1 and 91.130 of part 91 of the Federal Aviation Regulations (14 CFR parts 71, 91). The coordinates for this airspace docket are based on North American Datum 83. Class C and Class D airspace designations are published, respectively, in paragraphs 4000 and 5000 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class C airspace designation listed in this document would be published subsequently in the Order and the Class D airspace designation listed in this document would be removed subsequently from the Order.

Regulatory Evaluation Summary

The FAA has determined that this rulemaking is not a "significant rulemaking action," as defined by Executive Order 12866 (Regulatory Planning and Review). The anticipated costs and benefits associated with this notice are summarized below. (A detailed discussion of costs and benefits is contained in the full evaluation in the docket for this notice.)

Costs

The establishment of the proposed St. Thomas Class C airspace area would impose a one-time FAA administrative cost of $600. For the aviation community (namely, aircraft operators and fixed-based operators), the NPRM would impose little, if any, operating or equipment cost. The potential costs are presented below.

For the proposed Class C airspace area, the FAA does not expect to incur any additional costs for ATC staffing, training, or facility equipment. The FAA is confident that it can handle any additional traffic that would participate in radar services through more efficient use of personnel at the current staffing level.

The FAA holds an informal public meeting at each proposed Class C airspace area location. These meetings provide pilots with the best opportunity to learn both how a Class C airspace area works and how it would affect their local operations. The expenses associated with these public meetings are incurred regardless of whether a Class C airspace area is ultimately established. Thus, they are more appropriately considered routine FAA costs. If the proposed Class C airspace area becomes a final rule, any subsequent public information costs would be strictly attributed to the proposal. For instance, the FAA would distribute a Letter To Airmen to all pilots residing within 50 miles of the Class C airspace area site. The Letter to Airmen would cost approximately $600. This one-time negligible cost would be incurred upon the initial establishment of the proposed Class C airspace area.

The FAA anticipates that some pilots who currently transit the terminal area without establishing radio communications may choose to navigate around the proposed airspace. However, the FAA contends that these operators could navigate around, over, or, in certain cases, under the airspace without significantly deviating from their regular flight paths.

The FAA recognizes that delays might develop at St. Thomas following the initial establishment of the Class C airspace area. However, those delays that do occur are typically transitional in nature. The FAA contends that any potential delays would eventually be more than offset by the increased flexibility afforded controllers in handling traffic as a result of Class C separation standards. This has been the experience at other Class C airspace areas.

Aircraft operating in the vicinity of the proposed airspace already have a requirement for two-way radio communications capability and, therefore, would not be expected to incur any additional costs.

If the proposed Class C airspace area becomes a final rule, operators would be subject to the Mode C Rule. That rule requires all aircraft to be equipped with an operable transponder with Mode C capability when operating in and above a Class C airspace area (up to 10,000 feet mean sea level (MSL)). Some aircraft operators may have to acquire (or upgrade to) a Mode C transponder as a result of the proposed airspace. However, the cost of acquiring a Mode C transponder for all aircraft in the U.S was completely accounted for as a cost of the Mode C Rule.

The FAA has also adopted regulations requiring certain aircraft operators to install Traffic Collision Avoidance System (TCAS), which allows air carriers to determine the position of other aircraft from the signal emitted by Mode C transponders. TCAS issues conflict resolution advisories as to what evasive actions are most appropriate for avoiding potential midair collisions. The TCAS Rule would not contribute to the potential costs of the proposed Class C airspace area, but it would contribute to the potential safety benefits. The benefits of the proposed St. Thomas Class C airspace area are discussed below.

Benefits

The primary benefit of the proposed St. Thomas Class C airspace area would be enhanced aviation safety for the increasing number of passengers carrying aircraft transiting through this airspace. The volume of passenger enplanements at St. Thomas has risen dramatically. Enplanements in 1995 are projected to be 648,000, up from 491,000 in 1990; by the year 2000, enplanements are projected to be 810,000. This high volume of passenger enplanements has made St. Thomas eligible to become a Class C airspace area. The complexity of aircraft operations at St. Thomas has also increased. Complexity refers to air traffic conditions resulting from a mix of controlled or uncontrolled aircraft (pilots that are not in contact with ATC) that vary widely in speed and maneuverability. As this mix increases, so does the potential for midair collisions.

To study the effect that Class C airspace areas has on reducing this risk of midair collisions, the FAA looked at the occurrences of near-midair collisions (NMAC). In a study of NMAC data, the FAA's Office of Aviation Safety found that approximately 15 percent of reported NMAC's occur in airspace similar to that at St. Thomas. This study found that about half of all NMAC's occur in the 1,000- to 5,000-foot altitude range, which is closely comparable to the altitudes where aircraft operate around airports that qualify for Class C airspace areas. This study also found that over 85 percent of NMAC's occur in visual flight rules (VFR) conditions when visibility is 5 miles or greater. Finally, the study found that the largest number of NMAC reports are associated with instrument flight rules (IFR) operators under radar control conflicting with VFR traffic during VFR flight conditions below 12,500 feet. The mandatory participation requirements of the Class C airspace area and the radar services provided by ATC to VFR as well as IFR pilots would help alleviate such conflicts.

Ordinarily, the benefit of a reduction in the risk of midair collisions from establishing a Class C airspace area would be attributed entirely to establishing the proposed Class C airspace area. However, an indeterminate amount of the benefits has to be credited to the interaction of the proposed Class C airspace area (and the Class C airspace area program in general) with the Mode C Rule, which in turn, interacts with the TCAS Rule. The proposed Class C airspace area, as well as other designated airspace actions that require Mode C transponders, cannot be separated from the benefits of the Mode C and TCAS Rules. These four actions would share potential benefits totaling $4.4 billion.

Comparison of Costs and Benefits

The proposed rule to establish a Class C airspace area at St. Thomas, VI, would impose a negligible cost of $600 on the agency. When this cost estimate of $600 is added to the total cost of establishing the other Mode-C-dependent airspace classes and the Mode C Rule and TCAS Rule, the costs would still be less than their total potential safety benefits. The proposal would also generate some benefits in the form of enhanced operational efficiency while imposing little, if any, additional operating costs on pilots who choose to remain clear of the proposed airspace. Thus, the FAA believes that the proposed rule would be cost-beneficial.

International Trade Impact Assessment

The proposal would only affect U.S. terminal airspace operating procedures at and in the vicinity of St. Thomas, VI. The proposal would not impose a competitive trade disadvantage on foreign firms in the sale of either foreign aviation products or services in the United States. In addition, domestic firms would not incur a competitive trade disadvantage in either the sale of United States aviation products or services in foreign countries.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. Small entities are independently owned and operated small businesses and small not-for-profit organizations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities."

Under FAA Order 2100.14A entitled *Regulatory Flexibility Criteria and Guidance*, a significant economic impact means annualized net compliance cost to an entity, which when adjusted for inflation, is greater than or equal to the threshold cost level for that entity. A substantial number of small entities means a number that is eleven or more and is more than one-third the number of the small entities subject to a proposed or existing rule.

For the purpose of this evaluation, the small entities that would be potentially affected by the proposed rule are fixed-base operators, flight schools, banner towing, seaplane shuttle bases, and other small aviation businesses located at and around St. Thomas. By using cutouts, special procedures, and Letters of Agreement between ATC and the affected parties, the FAA would make an effort to eliminate any adverse affect practicable on the operations of small entities in the vicinity of St. Thomas. The FAA has utilized such arrangements extensively in implementing other Class C airspace areas in the past. In addition, any delay problems that may initially develop following implementation would be transitory. This has been the experience at other Class C airspace areas. Thus, the proposed rule would not result in a significant economic impact on a substantial number of small entities.

Federalism Implications

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposed rule would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed under "Regulatory Evaluation," the FAA has determined that this rule (1) is not a "significant regulatory action" under Executive Order 12866; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is also certified that this rule does not require preparation of a Regulatory Flexibility Analysis under the RFA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 4000 Subpart C—Class C Airspace

* * * * *

ASO VI C Charlotte Amalie St. Thomas, VI [New]

Cyril E. King Airport
(lat. 18°20'19" N., long. 64°58'11" W.)

That airspace extending upward from the surface to and including 4,000 feet MSL within 5-mile radius of the Cyril E. King Airport; and that airspace extending upward from 1,900 feet to 4,000 feet MSL within a 10-mile radius of the airport from the 075° bearing from the airport clockwise to the 020° bearing from the airport. This Class C airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 5000 Subpart D—Class D Airspace

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ASO VI D Charlotte Amalie Cyril E. King Airport, St. Thomas, VI [Removed]

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Issued in Washington, DC, on June 12, 1995.

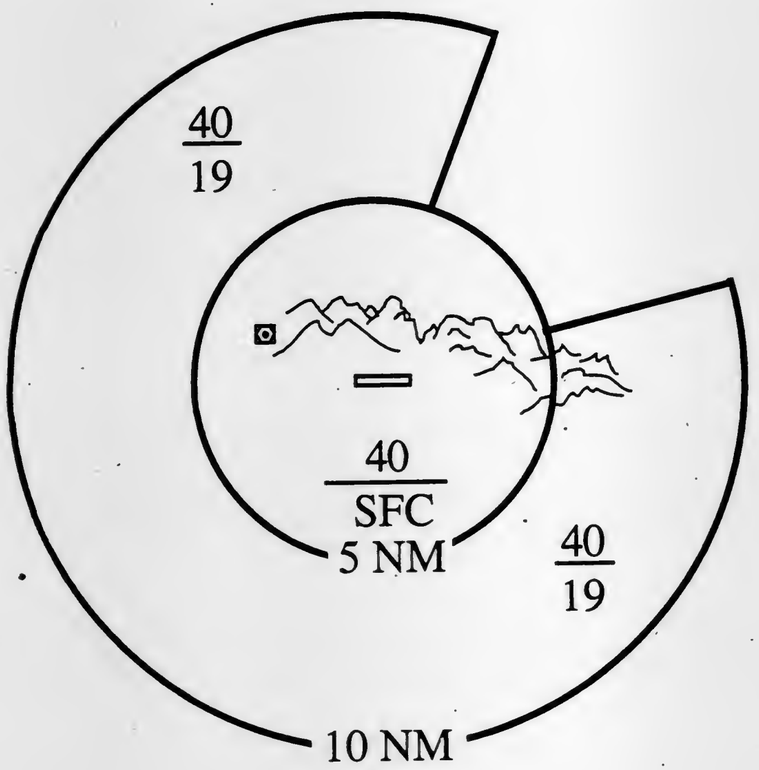
Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

BILLING CODE 4910–13–P

ST. THOMAS CLASS C AIRSPACE AREA

(Not to be used for navigation)



Prepared by the
FEDERAL AVIATION ADMINISTRATION
Publications Branch
ATP-210

[FR Doc. 95–15719 Filed 6–26–95; 8:45 am]
BILLING CODE 4910–13–BC

14 CFR Part 71

[Airspace Docket No. 95–ASO–11]

Proposed Establishment of Class D and Class E2 Airspace; Lawrenceville, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class D airspace at Lawrenceville, GA. A non-federal control tower is being commissioned at the Lawrenceville/Gwinnett County-Briscoe Field Airport. Class D airspace is required when the control tower is open to accommodate current Standard Instrument Approach Procedures (SIAPs) and for instrument flight rules (IFR) operations at the airport. This action would also establish Class E2 airspace when the tower is closed and approach control service is provided by Atlanta Tower.

DATES: Comments must be received on or before August 7, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 95–ASO–11, Manager, System Management Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Stanley Zylowski, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–ASO–11." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Council for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch, ASO–530, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class D and Class E2 airspace at Lawrenceville, GA. A non-federal control tower is being commissioned at the Lawrenceville/Gwinnett County-Briscoe Field Airport. Class D airspace is required when the control tower is open to accommodate current SIAPs and IFR operations at the airport. This action would also establish Class E2 airspace when the tower is closed and approach control service is provided by Atlanta Tower. Class D airspace designations and Class E airspace areas designated as a surface area for an airport are published in Paragraphs 5000 and 6002 respectively of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11044; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.7 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

ASO GA D Lawrenceville, GA [New]

Lawrenceville/Gwinnett County-Briscoe Field Airport, GA
(lat. 33°58′41″ N, long. 83°57′45″ W)

That airspace extending upward from the surface to and including 3600 feet MSL within a 4.6-mile radius of the Lawrenceville/Gwinnett County-Briscoe Field Airport. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

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Paragraph 6002 Class E Airspace Areas Designated as a Surface Area for an Airport.

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ASO GA E2 Lawrenceville, GA [New]

Lawrenceville/Gwinnett County-Briscoe Field Airport, GA
(lat. 33°58'41" N, long. 83°57'45" W)

Within a 4.6-mile radius of the Lawrenceville/Gwinnett County-Briscoe Field Airport. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

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Issued in College Park, Georgia, on June 14, 1995.

Stanley Zylowski,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 95–15720 Filed 6–26–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ASW–5]

Proposed Alteration of VOR Federal Airways; Texas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would alter eleven Federal airways located in the vicinity of Dallas, TX. This proposal, which supports the Dallas/Fort Worth Metroplex Plan, is necessary due to the decommissioning of four Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) facilities and the commissioning of four new VORTAC's in the near future. In addition, this action would enhance the flow of air traffic, simplify routings, increase safety and reduce pilot/controller workload.

DATES: Comments must be received on or before August 4, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASW–500, Docket No. 93–ASW–5, Federal Aviation Administration, 2601 Meacham Blvd, Fort Worth, TX 76193–0500.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Bil Nelson, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9295.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–ASW–5." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter eleven Federal airways located in the vicinity of Dallas, TX. The proposed alterations to the airways surrounding the Dallas/Fort Worth (DFW) International Airport, which are essential to support the Dallas/Fort Worth Metroplex Plan, are necessary because of the future decommissioning of the existing Bridgeport, Blue Ridge, Scurry and Action VORTAC's and the commissioning of the Bowie, Bonham, Cedar Creek and Glen Rose VORTAC's. This proposed action would enhance the flow of the air traffic, simplify routings, increase safety, and reduce pilot/controller workload. Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The airways listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389, 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways

* * * * *

V–163 [Revised]

From Matamoros, Mexico; via Brownsville, TX; 27 miles standard width, 37 miles 7 miles wide (3 miles E and 4 miles W of centerline); Corpus Christi, TX; Three Rivers, TX; INT Three Rivers 345° and San Antonio, TX, 168° radials; San Antonio; Lampasas, TX; Glen Rose, TX; Millsap, TX; Bowie, TX; Ardmore, OK; to Will Rogers, OK. The airspace within Mexico is excluded.

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V–194 [Revised]

From Cedar Creek, TX; College Station, TX; INT College Station 151° and Hobby, TX, 290° radials; Hobby; Sabine Pass, TX; Lafayette, LA; Baton Rouge, LA; McComb, MS; INT McComb 055° and Meridian, MS; 221° radials; Meridian. From Liberty, NC, via Raleigh-Durham, NC; Tar River, NC, Cofield, NC, to INT Cofield 077° and Norfolk, VA, 209° radials.

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V–278 [Revised]

From Texico, NM, via Plainview, TX; Guthrie, TX; Bowie, TX; Bonham, TX; Paris, TX; Texarkana, AR; Monticello, AR; Greenville, MS; Sidon, MS; Bigbee, MS; to Vulcan, AL.

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V–355 [Revised]

From Bowie, TX; to Wichita Falls, TX.

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V–358 [Revised]

From San Antonio, TX, via Stonewall, TX; Lampasas, TX; INT Lampasas 041° and Waco, TX, 249° radials; Waco; Glen Rose, TX; Millsap, TX; Bowie, TX; Ardmore, OK; INT Ardmore 327° and Will Rogers, OK, 195° radials; to Will Rogers.

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V–369 [Revised]

From Dallas-Fort Worth, TX; to Navasota, TX.

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V–477 [Revised]

From Leona, TX; to Cedar Creek, TX.

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V–568 [Revised]

From Corpus Christi, TX, via INT Corpus Christi 296° and Three Rivers, TX, 165° radials; Three Rivers; INT Three Rivers 327° and San Antonio, TX, 183° radials; San Antonio; Stonewall, TX; Llano, TX; INT Llano 026°T(018°M) and Glen Rose, TX, 216°T(210°M) radials; Glen Rose; Millsap, TX; to Whichita Falls, TX.

V–569 [Revised]

From Beaumont, TX, via INT Beaumont 338° and Lufkin, TX, 146° radials; Lufkin; Frankston, TX; to Cedar Creek, TX.

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V–571 [Revised]

From Humble, TX, via Navasota, TX; Leona, TX; INT Leona 331°T(323°M) and Cedar Creek, TX, 186°T(180°M) radials; to Cedar Creek.

* * * * *

V–583 [Revised]

From Austin, TX; INT Austin 062° and College Station, TX, 270° radials; College Station; Leona, TX; Frankston, TX; Quitman, TX; Paris, TX; to McAlester, OK.

* * * * *

Issued in Washington, DC, on June 14, 1995.

Harold W. Becker,

Manager, Airspoce-Rules and Aeronautical Information Division.

[FR Doc. 95–15724 Filed 6–26–95; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 93–ASW–4]

Proposed Alteration of VOR Federal Airways; Texas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would alter twelve Federal airways located in the vicinity of Dallas, TX. This proposal, which supports the Dallas/Fort Worth Metroplex Plan, is necessary due to the decommissioning of four Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) facilities and the commissioning of four new VORTAC's in the near future. In addition, this action would enhance the flow of air traffic, simplify routings, increase safety and reduce pilot/controller workload.

DATES: Comments must be received on or before August 4, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASW–500, Docket No. 93–ASW–4, Federal Aviation Administration, 2601 Meacham Blvd, Fort Worth, TX 76193–0500.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Bill Nelson, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9295.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–ASW–4." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter twelve Federal airways located in the vicinity of Dallas, TX. The proposed alterations to the airways surrounding the Dallas/Fort Worth (DFW) International Airport, which are essential to support the Dallas/Fort Worth Metroplex Plan, are necessary because of the future decommissioning of the existing Bridgeport, Blue Ridge, Scurry and Action VORTAC's and the commissioning of the Bowie, Bonham, Cedar Creek and Glen Rose VORTAC's. This proposed action would enhance the flow of the air traffic, simplify routings, increase safety, and reduce pilot/controller workload. Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The airways listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389, 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways

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V–15 [Revised]

From Hobby, TX, via Navasota, TX; College Station, TX; Waco, TX; Cedar Creek, TX; Bonham, TX; Ardmore, OK; Okmulgee, OK, to Neosho, MO. From Sioux City, IA; INT Sioux City 340° and Sioux Falls, SD, 169° radials; Sioux Falls; Huron, SD; Aberdeen, SD; Bismarck, ND; to Minot, ND.

V–16 [Revised]

From Los Angeles, CA; Paradise, CA; Palm Springs, CA; Blythe, CA; Buckeye, AZ; Phoenix, AZ; INT Phoenix 155° and Stanfield, AZ, 105° radials; Tucson, AZ; Cochise, AZ; Columbus, NM; El Paso, TX; Salt Flat, TX; Wink, TX; Wink 066° and Big Spring, TX, 260° radials; Big Spring; Abilene, TX; Millsap, TX; Glen Rose, TX; Cedar Creek, TX; Quitman, TX; Texarkana, AR; Pine Bluff, AR; Holly Springs, MS; Jacks Creek, TN; Shelbyville, TN; Hinch Mountain, TN; Volunteer, TN; Holston Mountain, TN; Pulaski, VA; Roanoke, VA; Lynchburg, VA; Flat Rock, VA; Richmond, VA; INT Richmond 039° and Patuxent, MD, 228° radials; Patuxent; Smyrna, DE; Cedar Lake, NJ; Coyle, NJ; INT Coyle 036° and Kennedy, NY, 209° radials; Kennedy; Deer Park, NY; Calverton, NY; Norwich, CT; Boston, MA. The airspace within Mexico and the airspace below 2,000 feet MSL outside the United States is excluded. The airspace within Restricted Areas R–5002A, R–5002C, and R–5002D is excluded during their times of use. The airspace within Restricted Areas R–4005 and R–4006 is excluded.

V–17 [Revised]

From Brownsville, TX, via Harlingen, TX; McAllen, TX; 29 miles 12 AGL, 34 miles 25 MSL, 37 miles 12 AGL; Laredo, TX; Cotulla, TX; INT Cotulla 046° and San Antonio, TX, 198° radials; San Antonio; INT San Antonio 042° and Austin, TX, 229° radials; Austin; Waco, TX; Glen Rose, TX; Milsap, TX; Bowie, TX Duncan, OK; Will Rogers, OK; Gage, OK; Garden City, KS; to Goodland, KS.

V–18 [Revised]

From Guthrie, TX, via INT Guthrie 156° and Millsap, TX, 274° radials; Millsap; Glen Rose, TX; Cedar Creek, TX; Quitman, TX; Belcher, LA; Monroe, LA; Jackson, MS; Meridian, MS; Tuscaloosa, AL; Vulcan, AL; Talladega, AL; Atlanta, GA; Colliers, SC; Charleston, SC.

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V–54 [Revised]

From Waco, TX; Cedar Creek, TX; Quitman, TX; Texarkana, AR; INT Texarkana 052° and Little Rock, AR, 235° radials; Little Rock; Holly Springs, MS; Muscle Shoals, AL; Rocket, AL; Choo Choo, GA; Harris, GA; Spartanburg, SC; Charlotte, NC; Sandhills, NC; INT Sandhills 146° and Fayetteville, NC, 267° radials; Fayetteville; to Kinston, NC.

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V–62 [Revised]

From Gallup, NM; INT Gallup 089° and Santa Fe, NM, 268° radials; Santa Fe; Anton Chico, NM; Texico, NM; Lubbock, TX; Abilene, TX; INT Abilene 109°T(099°M) and Glen Rose, TX, 273°T(267°M) radials; Glen Rose.

V–63 [Revised]

From Bonham, TX, via McAlester, OK; Razorback, AR; Springfield, MO; Hallsville, MO; Quincy, IL; Burlington, IA; Moline, IL; Davenport, IA; Rockford, IL; Janesville, WI; Badger, WI; Oshkosh, WI; Stevens Point, WI; Wausau, WI; Rhinelander, WI, to Houghton, MI. The airspace at and above 10,000 feet MSL from Quincy to 32 miles north, is excluded during the time that the Allen MOA is activated by NOTAM.

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V–66 [Revised]

From Mission Bay, CA, Imperial, CA; 13 miles, 24 miles, 25 MSL, Bard, AZ; 12 miles 35 MSL INT Bard 089° and Gila Bend, AZ, 261° radials; 46 miles, 35 MSL, Gila Bend; Tucson, AZ, 7 miles wide (3 miles south and 4 miles north of centerline); Douglas, AZ; INT Douglas 064° and Columbus, NM, 277° radials; Columbus; El Paso, TX; 6 miles wide, INT El Paso 109° and Hudspeth 287° radials; 6 miles wide, Hudspeth; Pecos, TX; Midland, TX; INT Midland 083° and Abilene, TX, 252° radials; Abilene; Bowie, TX; Bonham, TX; Sulphur Springs, TX; Texarkana, AR. From Tuscaloosa, AL, Brookwood, AL; LaGrange, GA; INT LaGrange 120° and Columbus, GA, 068° radials; INT Columbus 068° and Athens, GA, 195° radials; Athens; Greenwood, SC; Sandhills, NC; Raleigh-Durham, NC; Franklin, VA, excluding the airspace above 13,000 feet MSL from the INT of Tucson, AZ, 122° and Cochise, AZ, 257° radials to the INT of Douglas, AZ, 064° and Columbus, NM, 277° radials.

* * * * *

V–94 [Revised]

From Blythe, CA, INT Blythe 094° and Gila Bend, AZ, 299° radials; Gila Bend; Stanfield, AZ; 55 miles, 74 miles, 95 MSL, San Simon, AZ; Deming, NM; Newman, TX; Salt Flat, TX; Wink, TX; Midland, TX; Tuscola, TX; Glen Rose, TX; Cedar Creek, TX; Gregg County, TX; Elm Grove, LA; Monroe, LA; Greenville, MS; Holly Springs, MS; Jacks Creek, TN; Bowling Green, KY. The airspace within R–5103A is excluded.

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V–114 [Revised]

From Amarillo, TX, via Childress, TX; Wichita Falls, TX; Bonham, TX; Quitman, TX; Gregg County, TX; Alexandria, LA; INT Baton Rouge, LA, 307° and Lafayette, LA, 042° radials; 7 miles wide (3 miles north and 4 miles south of centerline); Baton Rouge; New Orleans, LA; INT New Orleans 070° and Gulfport, MS, 247° radials; Gulfport; INT Gulfport 344° and Eaton, MS, 171° radials; to Eaton, excluding the portion within R–3801B and R–3801C.

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V–124 [Revised]

From Bonham, TX, via Paris, TX; Hot Springs, AR; Little Rock, AR; Gilmore, AR; Jacks Creek, TN; to Graham, TN.

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V–161 [Revised]

From Three Rivers, TX, via Center Point, TX; Llano, TX; INT Llano 026° and Millsap, TX, 193° radials; Millsap; Bowie, TX; Ardmore, OK; Okmulgee, OK; Tulsa, OK; Oswego, KS; Butler, MO; Napoleon, MO; Lamoni, IA; Des Moines, IA; Mason City, IA; Rochester, MN; Farmington, MN; Gopher, MN; Brainerd, MN; Grand Rapids, MN; International Falls, MN; to Winnipeg, MB, Canada, excluding the portion within Canada.

* * * * *

Issued in Washington, DC, on June 14, 1995.

Harold W. Becker

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–15723 Filed 6–26–95; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 71

[Airspace Docket No. 94–ASW–22]

Proposed Amendment to Class E Airspace; Guymon, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class E airspace extending upward from 700 feet above ground level (AGL) at Guymon, OK. A new Global Position Satellite (GPS) standard instrument approach procedure (SIAP) to Runway (RWY) 36 at Guymon Municipal Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS SIAP to RWY 36.

DATES: Comments must be received on or before September 14, 1995.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 94–ASW–22, Fort Worth, TX 76193–0530. The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 am and 3:00 pm, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, System Management Branch, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES.** Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 94–ASW–22." The postcard will be dated and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Forth Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revised the Class E airspace, controlled airspace extending upward form 700 feet AGL, at Guymon Municipal Airport, Guymon, OK. A new GPS SIAP to RWY 36 has made necessary this proposal to amend the controlled airspace. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the SIAP.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9B, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963

Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, *Airspace Designations and Reporting Points*, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASW OK E5 Guymon, OK [Revised]

Guymon Municipal Airport, OK
(Lat. 36°41'03" N, long. 101°30'26" W)
Guymon NDB
(Lat. 36°42'19" N, long. 101°30'18" W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Guymon Municipal Airport and within 2.4 miles each side of the 006° bearing from the Guymon NDB extending from the 6.6-mile radius to 7.4 miles north of the airport.

* * * * *

Issued in Forth Worth, TX on June 7, 1995.

Helen Fabian Parke,

Manager, Air Traffic Division Southwest Region.

[FR Doc. 95–15721 Filed 6–26–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 95–ASW–01]

Proposed Establishment of Class E Airspace; Seymour, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace extending upward from 700 feet above ground level (AGL) at Seymour Municipal Airport, Seymour, TX. The development of a Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway (RWY) 17 has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace to contain Instrument Flight Rules (IFR) operations at Seymour Municipal Airport, Seymour, TX.

DATES: Comments must be received on or before September 14, 1995.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 95–ASW–01, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 am and 3:00 pm, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, System Management Branch, Air Traffic Division, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES.** Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 95–ASW–01." The postcard will be date and time stamped and returned to the commenter. All communications received, on or before the specified closing date, for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, Department of Transportation, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace, controlled airspace extending upward from 700 feet AGL at Seymour Municipal Airport, Seymour, TX. The development of a GPS RWY 17 SIAP has made this proposal necessary. Designated airspace extending upward from 700 feet above the ground (AGL) is Class E airspace. The intended effect of this proposal is to provide adequate Class E airspace for inbound aircraft executing the GPS RWY 17 SIAP as well as to provide adequate Class E airspace for departing IFR aircraft at Seymour Municipal Airport, Seymour, TX.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, *Airspace Designations and Reporting Points*, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ASW TX E5 Seymour, TX [New]

Seymour, Seymour Municipal Airport, TX
(Lat. 33°38'55" N., long. 99°15'41" W.)

* * * * *

Issued in Fort Worth, TX on June 7, 1995.

Helen Fabian Parke,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 95–15722 Filed 6–26–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 91

[Docket No. 28213; Notice No. 95–6]

RIN 2120–AE82

Stage 2 Airplane Operations

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document contains a correction to a notice of proposed rulemaking (NPRM), Stage 2 Airplane Operations, published in the **Federal Register** on May 11, 1995 (60 FR 25554). That document contained an incorrect notice number.

FOR FURTHER INFORMATION CONTACT: Mr. Alan V. Trickey, Policy and Regulatory Division (AEE–300), Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3496.

SUPPLEMENTARY INFORMATION: On May 11, 1995, the Federal Aviation Administration published a notice of proposed rulemaking, Docket No. 28213 (60 FR 25554), which proposed revisions to airplane operating rules to provide reporting requirements for operators of Stage 2 airplanes in Hawaii. The notice number in the heading of the document was incorrect.

Correction to NPRM

The NPRM published as **Federal Register** document number 95–11273 on May 11, 1995 (60 FR 25554), is corrected by changing the notice number in the heading on page 25554, from "Notice No. 95–6" to "Notice No. 95–8".

Issued in Washington, DC on June 16, 1995.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

[FR Doc. 95–15718 Filed 6–26–95; 8:45 am]

BILLING CODE 4910–13–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1274

RIN 2700–AC07

Cooperative Agreements with Commercial Firms

AGENCY: Office of Procurement, Contract Management Division, National Aeronautics and Space Administration.

ACTION: Proposed rule.

SUMMARY: Current NASA regulations at 14 CFR part 1260 describe the use of cooperative agreements with educational institutions and non-profit organizations. The proposed regulation will establish the requirements for cooperative agreements with commercial firms.

DATES: Comments are due on or before August 28, 1995.

ADDRESSES: Headquarters, NASA, Washington, DC 20546, ATTN: CODE HK/MR. T. Deback. Comments on the paperwork burden should also be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer for NASA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. T. Deback, (202) 358–0431.

SUPPLEMENTARY INFORMATION:

Background

As a result of the National Performance Review, participation in ARPA's Technology Reinvestment Program, the High Performance Computing Initiative, and a strong sense within NASA that cooperative agreements with industry are an appropriate way to carry out certain assistance type activities, use of cooperative agreements is being increased. As part of this increase, cooperative agreements with industry are being utilized for the first time.

Regulatory Flexibility Act

NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted to the Office of Management and Budget for review under 44 U.S.C. 3504(h). NASA requires certain reporting and recordkeeping of commercial firms in order to determine eligibility for selection and compliance with the provisions of the cooperative agreements. The estimated total annual reporting and recordkeeping burden is 6680 hours. The estimated average burden hours per response is 6 hours. The rule proposes annual reporting for patents, property, and technical results. Other reports are required at the conclusion of the agreement or the occurrence of other events. The estimated number of likely respondents is 175 firms submitting proposals per year resulting in the award of 50 cooperative agreements per year.

List of Subjects in 14 CFR Part 1274

Grant programs, Business and industry.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 14 CFR part 1274 is proposed to be added as follows:

PART 1274—COOPERATIVE AGREEMENTS WITH COMMERCIAL FIRMS

Subpart A—General

1274.101 Purpose.
1274.102 Definitions.
1274.103 Effect on other issuances.
1274.104 Deviations.
1274.105 Approval of Cooperative Agreement Notices (CANs) and cooperative agreements.

Subpart B—Pre-Award Requirements

1274.201 Purpose.
1274.202 Solicitations and proposals.
1274.203 Invention and patent rights.
1274.204 Evaluation and selection.

1274.205 Award procedures.
1274.206 Document format and numbering.
1274.207 Distribution of cooperative agreements.

Subpart C—Administration

1274.301 Delegation of administration.
1274.302 Transfers, novations, and change of name agreements.

Subpart D—Government Property

1274.401 Government property.

Subpart E—Procurement Standards

1274.501 Subcontracts.

Subpart F—Reports and Records

1274.601 Retention and access requirements for records.

Subpart G—Suspension or Revocation

1274.701 Suspension or revocation.

Subpart H—After-the-Award Requirements

1274.801 Purpose.
1274.802 Closeout procedures.
1274.803 Subsequent adjustments and continuing responsibilities.

Subpart I—Other Provisions and Special Conditions

1274.901 Other provisions and special conditions.
1274.902 Purpose (XXX 1995)
1274.903 Responsibilities (XXX 1995)
1274.904 Resource Sharing Requirements (XXX 1995)
1274.905 Rights in Data (XXX 1995)
1274.906 Designation of New Technology Representative and Patent Representative (XXX 1995)
1274.907 Disputes (XXX 1995)
1274.908 Milestone Payments (XXX 1995)
1274.909 Term of this Agreement (XXX 1995)
1274.910 Authority (XXX 1995)
1274.911 Patent Rights (XXX 1995)
1274.912 Patent Rights—Retention by the Contractor (Large Business) (XXX 1995)
1274.913 Patent Rights—Retention by the Contractor (Small Business) (XXX 1995)
1274.914 Requests for Waiver of Rights—Large Business (XXX 1995)
1274.915 Restrictions on Sale or Transfer of Technology to Foreign Firms or Institutions (XXX 1995)
1274.916 Liability and Risk of Loss (XXX 1995)
1274.917 Additional Funds (XXX 1995)
1274.918 Incremental Funding (XXX 1995)
1274.919 Cost Principles and Accounting Standards (XXX 1995)
1274.920 Responsibilities of the NASA Technical Officer (XXX 1995)
1274.921 Publications and Reports: Non-Proprietary Research Results (XXX 1995)
1274.922 Suspension or Revocation (XXX 1995)
1274.923 Equipment and Other Property (XXX 1995)
1274.924 Civil Rights (XXX 1995)
1274.925 Subcontracts (XXX 1995)
1274.926 Clean Air-Water Pollution Control Acts (XXX 1995)
1274.927 Debarment and Suspension and Drug-Free Workplace (XXX 1995)
1274.928 Foreign National Employee Investigative Requirements (XXX 1995)
1274.929 Restrictions on Lobbying (XXX 1995)
1274.930 Travel and Transportation (XXX 1995)
1274.931 Officials Not to Benefit (XXX 1995)
1274.932 Electronic Funds Transfer Payment Methods (XXX 1995)
1274.933 Retention and Examination of Records (XXX 1995)
Appendix A—Contract Provisions
Appendix B—Reports
Appendix C—Listing of Exhibits

Authority: 31 U.S.C. 6301 to 6308; 42 U.S.C. 2451, et seq.

Subpart A—General

§ 1274.101 Purpose.

This regulation establishes uniform administrative requirements for NASA cooperative agreements awarded to commercial firms. Cooperative agreements are ordinarily entered into with commercial firms to—

(1) Support research and development,

(2) Provide technology transfer from the Government to the recipient, or

(3) Develop a capability among U.S. firms to potentially enhance U.S. competitiveness.

(b) Award to foreign firms is not precluded; however, an award may not be made to a foreign government.

§ 1274.102 Definitions.

Administrator. The Administrator or Deputy Administrator of NASA.

Associate Administrator for Procurement. The head of the Office of Procurement, NASA Headquarters (Code H).

Cash contributions. The recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

Closeout. The process by which a NASA determines that all applicable administrative actions and all required work of the award have been completed by the recipient and NASA.

Cooperative agreement. As defined by 31 U.S.C. 6305, cooperative agreements are financial assistance instruments used to stimulate or support activities for authorized purposes and in which the Government participates substantially in the performance of the effort. This regulation covers only cooperative agreements with commercial firms. Cooperative agreements with universities and non-profit organizations are covered by 14 CFR part 1260.

Cost sharing or matching. That portion of project or program costs not borne by the Federal Government except that the recipient's contribution may be reimbursable under other Government awards as allowable IR&D costs pursuant to 48 CFR (NFS) 1831.205–18 (59 FR 22521, May 2, 1994).

Date of completion. The date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which NASA sponsorship ends.

Days. Calendar days, unless otherwise indicated.

Government furnished equipment. Equipment in the possession of, or acquired directly by, the Government and subsequently delivered, or otherwise made available, to a Recipient.

Grant Officer. A Government employee who has been delegated the authority to negotiate, award, or administer grants or cooperative agreements.

Incremental funding. A method of funding a cooperative agreement where the funds initially allotted to the cooperative agreement are less than the award amount. Additional funding is added as described in § 1274.918.

Recipient. An organization receiving financial assistance under a cooperative agreement to carry out a project or program. A recipient may be an individual firm, a consortium, a partnership, etc.

Resource contribution. The total value of resources provided by either party to the cooperative agreement including both cash and in-kind contributions.

Revocation. The cancellation of NASA sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

Support contractor means a NASA contractor performing part or all of the NASA responsibilities under a cooperative agreement.

Suspension. An action by NASA that temporarily withdraws sponsorship under an award, pending corrective action by the recipient or pending a decision to revoke the award by NASA. Suspension of an award is a separate action from suspension under Federal agency regulations implementing E.O.'s 12549 and 12689, "Debarment and Suspension."

Technical officer. The official of the cognizant NASA office who is responsible for monitoring the technical aspects of the work under a cooperative agreement.

§ 1274.103 Effect on other issuances.

For awards subject to this regulation, all administrative requirements of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with the requirements of this Regulation shall be superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in § 1274.104.

§ 1274.104 Deviations.

(a) The Associate Administrator for Procurement may grant exceptions for classes of or individual cooperative agreements from the requirements of this Regulation when exceptions are not prohibited by statute.

(b) *Applicability.* A deviation is required for any of the following:

(1) When a prescribed provision set forth in this regulation for use verbatim is modified or omitted.

(2) When a provision is set forth in this regulation, but not prescribed for use verbatim, and the installation substitutes a provision which is inconsistent with the intent, principle, and substance of the prescribed provision.

(3) When a NASA form or other form is prescribed by this regulation, and that form is altered or another form is used in its place.

(4) When limitations, imposed by this regulation upon the use of a provision, form, procedure, or any other action, are not adhered to.

(c) *Request for deviations.* Requests for authority to deviate from this regulation will be forwarded to Headquarters, Program Operations Division (Code HS). Such requests, signed by the Procurement Officer, shall contain as a minimum:

(1) A full description of the deviation and identification of the regulatory requirement from which a deviation is sought.

(2) Detailed rationale for the request, including any pertinent background information.

(3) The name of the recipient and identification of the cooperative agreement affected, including the dollar value.

(4) A statement as to whether the deviation has been requested previously, and, if so, circumstances of the previous request(s).

(5) A description of the intended effect of the deviation.

(6) A copy of legal counsel's concurrence or comments.

§ 1274.105 Approval of Cooperative Agreement Notices (CANs) and cooperative agreements.

(a) As soon as possible after the initial decision is made by program or procurement personnel to use the CAN process, the cognizant program office or procurement office, shall notify the Associate Administrator for Procurement (Code HS), of the intent to use a CAN in all cases where the total Government funds to be awarded in response to CAN proposals is expected to equal or exceed $10 million. All such notifications, as described below, shall be concurred in by the Procurement Officer. This requirement also applies in those cases where an unsolicited proposal is received and a decision is made to award a cooperative agreement in which the recipient (or one or more of a "team" of recipients) is a commercial firm and the total Government funds are expected to equal or exceed $10 million.

(b) The required notification is to be accomplished by sending an electronic mail (e-mail) message to the following address at NASA Headquarters: can@mercury.hq.nasa.gov. The notification must include the following information, as a minimum:

(1) Identification of the cognizant center and program office,

(2) Description of the proposed program for which proposals are to be solicited,

(3) Rationale for decision to use a CAN rather than other types of solicitations,

(4) The amount of Government funding to be available for awards,

(5) Estimate of the number of cooperative agreements to be awarded as a result of the CAN,

(6) The percentage of cost-sharing to be required, and

(7) Tentative schedule for release of CAN and award of cooperative agreements

(c) Code HS will respond by e-mail message to the sender, with a copy of the message to the Procurement Officer, within 5 working days of receipt of this initial notification. The response will address the following:

(1) Whether Code HS agrees or disagrees with the appropriateness for using a CAN for the effort described,

(2) Whether Code HS will require review and approval of the CAN before its issuance,

(3) Whether Code HS will require review and approval of the selected offeror's cost sharing arrangement (e.g., cost sharing percentage; type of contribution (cash, labor, intellectual property, etc.)), and

(4) Whether Code HS will require review and approval of the resulting cooperative agreement(s).

(d) If a response from Code HS is not received within 5 working days of notification, the program office or center may proceed with release of the CAN and award of the cooperative agreements as described.

Subpart B—Pre-Award Requirements

§ 1274.201 Purpose.

Sections 1274.202 through 1274.207 prescribe forms and instructions and addresses other pre-award matters.

§ 1274.202 Solicitations and proposals.

(a) Consistent with 31 U.S.C. 6301(3), NASA uses competitive procedures to award cooperative agreements whenever possible. An award will normally be made as a result of a Cooperative Agreement Notice (CAN) which envisions a cooperative agreement as the award instrument. A Commerce Business Daily synopsis will be used to publicize the CAN.

(b) *Unsolicited proposals.*

(1) An award may be made as a result of an unsolicited proposal. The unsolicited proposal must evidence a unique and innovative idea or approach which is not the subject of a current or anticipated solicitation. When a cooperative agreement is awarded as a result of an unsolicited proposal, a Commerce Business Daily synopsis must be published to provide an opportunity for other firms/consortia to express an interest in the agreement unless the exception in 48 CFR (FAR) 5.202(a)(8) applies. Respondents should be given a minimum of thirty days to respond. If interest is expressed, a decision must be made to proceed with the award or to issue a solicitation for competitive proposals.

(2) Prior to an award made as the result of an unsolicited proposal, the award must be approved by the Procurement Officer if NASA's total resource contribution is below $5 million. Center Director approval is required if NASA's total resource contribution is $5 million or more. For Headquarters cooperative agreements, approval by the Associate Administrator for Procurement is required if NASA's total resource contribution is $5 million or more.

(c) *Cost and payment matters*

(1) The allowability of costs incurred by the recipient is determined in accordance with 48 CFR (FAR) Part 31, "Contract Cost Principles and Procedures."

(2) Cost sharing. A substantial resource contribution on the part of the Recipient is required. The Recipient is expected to contribute at least 50% of the total resources required to accomplish the cooperative agreement. Recipient contributions may be in either cash or in-kind or both. In those cases in which a contribution of less than 50% is anticipated from the Recipient, approval of the Associate Administrator for Procurement (Code HS) is required

prior to award. The request for approval should address the evaluation factor in the solicitation and how the proposal accomplishes those objectives to such a degree that a share ratio of less than 50% is warranted.

(3) Fixed Funding. Cooperative agreements are funded by NASA in a fixed amount. Payments in fixed amounts will be made by NASA in accordance with "Milestone Billings" which are discussed in paragraph (c)(4) of this section. If the Recipient completes the final milestone, final payment is made, and NASA will have completed its financial responsibilities under the agreement. However, if the cooperative agreement is revoked prior to achievement of all milestones, NASA's funding will be limited to milestone payments already made plus NASA's share of costs incurred by the Recipient since the last milestone payment as reflected in the cost share agreement. In no event shall these additional costs or payment exceed the amount of the next payable milestone billing amount.

(4) Milestone billings is the method of payment to the Recipient under cooperative agreements. Performance based milestones are used as the basis of establishing a set of verifiable milestones for payment purposes. Each milestone payment shall be established so that the Government payment is at the same share ratio as the cooperative agreement share ratio. If the Recipient is a consortium, the Articles of Collaboration is required to contain an extensive list of performance based milestones that the consortium has agreed to. Generally, payments should not be made more than once monthly; ideally, payments will be made about every 60 to 90 days but in all cases should be made on the basis of verifiable, significant events as opposed to the passage of time. The last payment milestone should be large enough to ensure that the Recipient completes its responsibilities under the cooperative agreement (or funds should be reserved for payment until after completion of the cooperative agreement). The Government technical officer must verify completion of each milestone to the Grants Officer as part of the payment process. If the Government's projected cash contribution to a cooperative agreement exceeds $5 million, approval of the Milestone Payment clause, including the milestones and anticipated payments, by the Associate Administrator for Procurement (Code HS)is required prior to award. The request for approval should contain substantially the same information required by 48 CFR (NFS) 1832.7006.

(5) Incremental funding. Cooperative agreements with anticipated annual funding exceeding $5 million may be incrementally funded subject to the following:

(i) Two increments per fiscal year are authorized. The second increment will be the balance of funding for the year.

(ii) The incremental funding provision contained in § 1274.918 is included in the cooperative agreement.

(6) Cost sharing. Cost sharing requirements on cooperative agreements with commercial firms are based on section 23 of the Attachment to OMB Circular A–110, November 23, 1993 (58 FR 62992, November 29, 1993). Only cash or cash equivalent resources are acceptable sources for the Recipient contribution to a cooperative agreement. This includes such items as purchased equipment, equipment, labor, office space, etc. The actual or imputed value of intellectual property such as patent rights, data rights, trade secrets, etc., are not acceptable as sources for the Recipient contribution.

(7) Recipients shall not be paid a profit under cooperative agreements. Profit may be paid by the Recipient to subcontractors, if the subcontractor is not part of the offering team and the subcontract is an arms-length relationship.

(8) The Recipient's resource share of the cooperative agreement may be allocated as part of its IR&D program in accordance with a class deviation pursuant to 48 CFR (NFS) 1831.205–18 (59 FR 22521, May 2, 1994).

(9) The CAN must provide a description of the non-cash Government contribution (personnel, equipment, facilities, etc.) as part of the Government's contribution to the cooperative agreement in addition to funding. The offeror may propose that additional non-monetary Government resources be provided under two conditions. First, the offeror is responsible for verifying the availability of the resources and their suitability for their intended purpose and, second, those resources are considered part of the Government contribution and paid for directly by the awarding organization.

(d) *Consortia as recipients.*

(1) The use of consortia as Recipients for cooperative agreements is encouraged. Consortia will tend to bring to a cooperative agreement a broader range of capabilities and resources. A consortium is a group of organizations that enter into an agreement to collaborate for the purposes of the cooperative agreement with NASA. The agreement to collaborate can take the form of a legal entity such as a partnership or joint venture but it is not necessary that such an entity be created. A consortium may be made up of firms which normally compete for commercial or Government business or may be made up of firms which perform complementary functions in a given industry. The inclusion of a non-profit or educational institutions, small businesses, or small disadvantaged businesses in the consortium could be particularly valuable in ensuring that the results of the consortium's activities are disseminated.

(2) Key to the success of the cooperative agreement with a consortium is the consortium's Articles of Collaboration, which is a definitive description of the roles and responsibilities of the consortium's members. It should also address to the extent appropriate: commitments of financial, personnel, facilities and other resources, a detailed milestone chart of consortium activities, accounting requirements, subcontracting procedures, disputes, term of the agreement, insurance and liability issues, internal and external reporting requirements, management structure of the consortium, obligations of organizations withdrawing from the consortia, allocation of data and patent rights among the consortia members, agreements, if any, to share existing technology and data, the firm which is responsible for the completion of the consortium's responsibilities under the cooperative agreement and has the authority to commit the consortium and receive payments from NASA, employee policy issues, etc.

(3) An outline of the Articles of Collaboration should be required as part of the proposal and evaluated during the source selection process.

(e) *Metric system of measurement.* The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205) declares that the metric system is the preferred measurement system for U.S. trade and commerce. NASA's policy with respect to the metric measurement system is stated in NMI 8010.2A, Use of the Metric System of Measurement in NASA Programs, dated June 11, 1991.

§ 1274.203 Invention and patent rights.

(a) A cooperative agreement covers the disposition of rights relating to inventions and patents between NASA and the Recipient. If the Recipient is a consortium or partnership, rights flowing between multiple organizations in a consortium must be negotiated separately and formally documented, preferably in the Articles of Collaboration.

(b) Patent rights clauses exist for Recipients of the Agreement whether they are:

(1) other than small business or nonprofit organizations (generally referred to as large businesses) or

(2) small businesses or nonprofit organizations. The clauses are required by statute and regulation.

(c) There are five situations in which inventions may arise under a cooperative agreement: Recipient Inventions, Subcontractor Inventions, NASA Inventions, NASA Support Contractor Inventions, and Joint Inventions with Recipient.

(d)(1) *Recipient inventions.*

(i) A Recipient, if a large business, is subject to section 305 of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457) relating to property rights in inventions. The term "invention" includes any invention, discovery, improvement, or innovation. Title to an invention made under a cooperative agreement by a large business Recipient initially vests with NASA. The Recipient may request a waiver under the NASA Patent Waiver Regulations to obtain title to inventions made under the Agreement. Such a request may be made in advance of the Agreement (or 30 days thereafter) for all inventions made under the Agreement. Alternatively, requests may be made on a case-by-case basis any time an individual invention is made. Such waivers are liberally and expeditiously granted after review by NASA's Invention and Contribution Board and approval by NASA's General Counsel. When a waiver is granted, any inventions made in the performance of work under the Agreement are subject to certain reporting, election and filing requirements, a royalty-free license to the Government, march-in rights, and certain other reservations.

(ii) A Recipient, if a small business or nonprofit organization, may elect to retain title to its inventions. The term "nonprofit organization" is defined in 35 U.S.C. 201(i) and includes universities and other institutions of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code. The Government obtains an irrevocable, nonexclusive, royalty-free license.

(2) *Subcontractor Inventions.*

(i) Large Business. If a Recipient enters a subcontract (or similar arrangement) with a large business organization for experimental, developmental, research, design or engineering work in support of the Agreement to be done in the United States, its possessions, or Puerto Rico, Subpart 305 of the Space Act applies. The clause applicable to large business organizations is to be used (suitably modified to identify the parties) in any subcontract. The subcontractor may request a waiver under the NASA Patent Waiver Regulations to obtain rights to inventions made under the subcontract just as a large business Recipient can (see paragraph (d)(1)(i) of this section). It is strongly recommended that a prospective large business subcontractor contact the NASA installation Patent Counsel or Intellectual Property Counsel to assure that the right procedures are followed. Just like the Recipient, any inventions made in the performance of work under the Agreement are subject to certain reporting, election and filing requirements, a royalty-free license to the Government, march-in rights, and certain other reservations.

(ii) Non-profit organization or Small Business. In the event the Recipient enters into a subcontract (or similar arrangement) with a domestic nonprofit organization or a small business firm for experimental, developmental, or research work to be performed under the Agreement, the requirements of 35 U.S.C. 200 et seq. regarding "Patent Rights in Inventions Made With Federal Assistance," apply. The subcontractor has the first option to elect title to any inventions made in the performance of work under the Agreement, subject to specific reporting, election and filing requirements, a royalty-free license to the Government, march-in rights, and certain other reservations that are specifically set forth.

(iii) Work outside the United States. If the Recipient subcontracts for work to be done outside the United States, its possessions or Puerto Rico, the NASA installation Patent Counsel or Intellectual Property Counsel should be contacted for the proper patent rights clause to use and the procedures to follow.

(iv) Notwithstanding the above, and in recognition of the Recipient's substantial contribution, the Recipient is authorized, subject to rights of NASA set forth elsewhere in the Agreement, to:

(A) Acquire by negotiation and mutual agreement rights to a subcontractor's subject inventions as the Recipient may deem necessary, or

(B) If unable to reach agreement pursuant to paragraph (d)(2)(iv)(A) of this section, request that NASA invoke exceptional circumstances as necessary pursuant to 37 CFR 401.3(a)(2) if the prospective subcontractor is a small business firm or nonprofit organization, or for all other organizations, request that such rights for the Recipient be included as an additional reservation in a waiver granted pursuant to 14 CFR 1245.1. The exercise of this exception does not change the flow down of the applicable patent rights clause to subcontractors. Applicable laws and regulations require that title to inventions made under a subcontract must initially reside in either the subcontractor or NASA, not the Recipient. This exception does not change that. The exception does authorize the Recipient to negotiate and reach mutual agreement with the subcontractor for the grant-back of rights. Such grant-back could be an option for an exclusive license or an assignment, depending on the circumstances.

(3) *NASA Inventions.* NASA will use reasonable efforts to report inventions made by its employees as a consequence of, or which bear a direct relation to, the performance of specified NASA activities under an Agreement. Upon timely request, NASA will use its best efforts to grant Recipient first option to acquire either an exclusive or partially-exclusive, revocable, royalty-bearing license, on terms to be negotiated, for any patent applications and patents covering such inventions. This exclusive or partially-exclusive license to the Recipient will be subject to the retention of rights by or on behalf of the Government for Government purposes.

(4) *NASA Support Contractor Inventions.* It is preferred that NASA support contractors be excluded from performing any of NASA's responsibilities under the Agreement since the rights obtained by a NASA support contractor could work against the rights needed by the Recipient. In the event NASA support contractors are tasked to work under the Agreement and inventions are made by support contractor employees, the support contractor will normally obtain rights in such inventions. However, if NASA has the right to acquire or has acquired title to such inventions, upon timely request, NASA will use its best efforts to grant Recipient first option to acquire either an exclusive or partially exclusive, revocable, royalty-bearing license, upon terms to be negotiated, for any patent applications and patents covering such inventions. This exclusive or partially-exclusive license to the Recipient will be subject to the retention of rights by or on behalf of the Government for Government purposes.

(5) *Joint Inventions.*

(i) NASA and the Recipient agree to use reasonable efforts to identify and report to each other any inventions made jointly between NASA employees (or employees of NASA support contractors) and employees of Recipient. For large businesses, the

Headquarters General Counsel may agree that the United States will refrain, for a specified period, from exercising its undivided interest in a manner inconsistent with Recipient's commercial interest. For small business firms and nonprofit organizations, the Associate General Counsel (Intellectual Property) may agree to assign or transfer whatever rights NASA may acquire in a subject invention from its employee to the Recipient as authorized by 35 U.S.C. 202(e). The grant officer negotiating the Agreement with small business firms and nonprofit organizations can agree, up front, that NASA will assign whatever rights it may acquire in a subject invention from its employee to the small business firm or nonprofit organization. Requests under this paragraph shall be made through the Center Patent Counsel.

(ii) NASA support contractors may be joint inventors. If a NASA support contractor employee is a joint inventor with a NASA employee, the same provisions apply as those for NASA Support Contractor Inventions. The NASA support contractor will retain or obtain nonexclusive licenses to those inventions in which NASA obtains title. If a NASA support contractor employee is a joint inventor with a Recipient employee, the NASA support contractor and Recipient will become joint owners of those inventions in which they have elected to retain title or requested and have been granted waiver of title. Where the NASA support contractor has not elected to retain title or has not been granted waiver of title, NASA will jointly own the invention with the Recipient.

(e) *Licenses to Recipient(s).*

(1) Any exclusive or partially exclusive commercial licenses are to be royalty-bearing consistent with Government-wide policy in licensing its inventions. It also provides an opportunity for royalty-sharing with the employee-inventor, consistent with Government-wide policy under the Federal Technology Transfer Act.

(2) Upon application in compliance with 37 CFR part 404—Licensing of Government Owned Inventions, all Recipients shall be granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government obtains title. Because cooperative agreements are cost sharing cooperative arrangements with a purpose of benefiting the public by improving the competitiveness of the Recipient and the Government receives an irrevocable, nonexclusive, royalty-free license in each Recipient subject invention, it is only equitable that the Recipient receive, at a minimum, a revocable, nonexclusive, royalty-free license in NASA inventions and NASA contractor inventions where NASA has acquired title.

(3) Notice Requirements. Once a Recipient has exercised its option to apply for an exclusive or partially exclusive license, a notice, identifying the invention and the Recipient, is published in the **Federal Register**, providing the public opportunity for filing written objections for 60 days.

(f) Preference for United States Manufacture. Despite any other provision, the Recipient agrees that any products embodying subject inventions or produced through the use of subject inventions shall be manufactured substantially in the United States. The intent of this provision is to support manufacturing jobs in the United States regardless of the status of the Recipient as a domestic or foreign controlled company. However, in individual cases, the requirement to manufacture substantially in the United States, may be waived by the Associate Administrator for Procurement (Code HS) upon a showing by the Recipient that under the circumstances domestic manufacture is not commercially feasible.

(g) Space Act Agreements. Invention and patent rights in cooperative agreements must comply with statutory and regulatory provisions. Where circumstances permit, a Space Act Agreement is available as an alternative instrument which can be more flexible in the area of invention and patent rights.

(h) Data Rights. Data rights provisions can and should be tailored to best achieve the needs and objectives of the respective parties concerned.

(1) The data rights clause at § 1274.905 assumes a substantially equal cost sharing relationship where collaborative research, experimental, developmental, engineering, demonstration, or design activities are to be carried out, such that it is likely that "proprietary" information will be developed and/or exchanged under the agreement. If cost sharing is unequal or no extensive research, experimental, developmental, engineering, demonstration, or design activities are likely, a different set of clauses may be appropriate.

(2) The primary question that must be answered when developing data clauses is what does each party need or intend to do with the data developed under the agreement. Accordingly, the data rights clauses may be tailored to fit the circumstances. Where conflicting goals of the parties result in incompatible data provisions, grant officers for the Government must recognize that private companies entering into cooperative agreements bring resources to that relationship and must be allowed to reap an appropriate benefit for the expenditure of those resources. However, since serving a public purpose is a major objective of a cooperative agreement, care must be exercised to ensure the Recipient is not established as a long term sole source supplier of an item or service and is not in a position to take unfair advantage of the results of the cooperative agreement. Therefore, a reasonable time period (two to seven years depending on the technology) should be established after which the data rights will be made public.

(3) Data can be generated from different sources and can have various restrictions placed on its dissemination. Recipient data furnished to NASA can exist prior to, or be produced outside of, the agreement or be produced under the agreement. NASA can also produce data in carrying out its responsibilities under the agreement. Each of these areas need to be covered.

(4) For data, including software, first produced by the Recipient under the agreement, the Recipient may assert copyright. Data exchanged with a notice showing that the data is protected by copyright must include appropriate licenses in order for NASA to use the data as needed.

(5) Recognizing that the dissemination of the results of NASA's activities is a primary objective of a cooperative agreement, the parties should specifically delineate what results will be published and under what conditions. This should be set forth in the clause of the cooperative agreement entitled "Publication and Reports." Any such agreement on the publication of results should be stated to take precedence over any other clause in the cooperative agreement.

(6) In accordance with section 303(b) of the Space Act, any data first produced by NASA under the agreement which embodies trade secrets or financial information that would be privileged or confidential if it had been obtained from a private participant, will be marked with an appropriate legend and maintained in confidence for an agreed to period of up to five years (the maximum allowed by law). This does not apply to data other than that for which there has been agreement regarding publication or distribution. Also, NASA itself may use the marked data (under suitable protective conditions) for agreed-to purposes.

§ 1274.204 Evaluation and selection.

(a) A single technical evaluation factor is typically used for CANs. That evaluation factor may be one of the following: providing research and development or technology transfer, enhancing U.S. competitiveness, or developing a capability among U.S. firms. Award to foreign firms is not precluded if the evaluation factor is satisfied. Subfactors could include such things as fostering U.S. leadership, potential to advance technologies anticipated to enhance U.S. competitiveness, timeliness of proposed accomplishments, private sector commitment to commercialization, identification of specific potential commercial markets, appropriateness of business risk, potential for broad impact on the U.S. technology and knowledge base, level of commitment (contribution of private resources to the project), appropriateness of team member participation and relationships, appropriateness of management planning, relevant experience, qualifications and depth of management and technical staff, quality and appropriateness of resources committed to the project, performance bench marks, technical approach, business approach/resource sharing, past performance, the articles of collaboration, etc.

(b) Technical evaluation.

(1) The technical officer will evaluate proposals in accordance with the criteria in the CAN. Proposals selected for award will be supported by documentation as described in paragraph (c)(1) of this section. When evaluation results in a proposal not being selected, the proposer will be notified in accordance with the CAN.

(2) The technical evaluation of proposals may include peer reviews. Since the business sense of a cooperative agreement proposal is critical to its success, NASA should reserve the right to utilize appropriate outside evaluators to assist in the evaluation of such proposal elements as the business base projections, the market for proposed products, and/or the impact of anticipated product price reductions. The use of outside evaluators shall be approved in accordance with 48 CFR (NFS) 1815.413–2(c)(2). It is strongly recommended that a numerical scoring system be established to rank proposals.

(3) Unsolicited proposals. Evaluation of unsolicited proposals must consider whether: the subject of the proposal is available to NASA from another source without restriction; the proposal closely resembles a pending competitive acquisition; and the research proposed demonstrates an innovative and unique method, approach, or concept. Organizations submitting unaccepted proposals will be notified in writing.

(c) Documentation requirements. For proposals selected for award, the technical officer will prepare and furnish to the grant officer the following documentation:

(1) For a competitively selected proposal, a signed selection statement and technical evaluation based on the evaluation criteria stated in the solicitation.

(2) For an unsolicited proposal, a justification for acceptance of an unsolicited proposal (JAUP) prepared by the cognizant technical office. The JAUP shall be submitted for the approval of the grant officer after review and concurrence at a level above the technical officer. The evaluator shall consider the following factors, in addition to any others appropriate for the particular proposal:

(i) Unique and innovative methods, approaches or concepts demonstrated by the proposal.

(ii) Overall scientific or technical merits of the proposal.

(iii) The offeror's capabilities, related experience, facilities, techniques, or unique combinations of these which are integral factors for achieving the proposal objectives.

(iv) The qualifications, capabilities, and experience of the proposed key personnel who are critical in achieving the proposal objectives.

(v) Current, open solicitations under which the unsolicited proposal could be evaluated.

(d) Cost evaluation.

(1) The grant officer and technical team will determine whether the overall proposed cost of the project is reasonable and that the Recipient's contribution is valid, verifiable, and available. Commitments should be obtained and verified to the extent practical from the offeror or members of the consortia that the proposed contributions can and will be made as specified in the proposal or statement of work.

(i) If the Recipient's verified share on a cooperative agreement equals or exceeds 50% of the total cost of the agreement and the total value of the agreement is less than $5 million, the cost evaluation of the offeror's proposal should focus on the overall reasonableness and timing of the proposer's contribution. Cost and pricing data should not normally be required.

(ii) If the Recipient's share is projected to be less than 50% or the total value of the agreement is more than $5 million, a more in-depth analysis of the proposed costs should be undertaken. Cost and pricing data should be required although certification is not required. An analysis consistent with 48 CFR (FAR) 15.805–3 through 15.805–5 should be performed.

(e) If the cooperative agreement is to be awarded to a consortium, a completed, formally executed Articles of Collaboration is required prior to award.

(f) Printing, binding, and duplicating. Proposals for effort which involve printing, binding, and duplicating in excess of 25,000 pages are subject to the regulations of the Congressional Joint Committee on Printing. The technical office will refer such proposals to the Installation Central Printing Management Officer (ICPMO) to ensure compliance with NMI 1490.1. The grant officer will be advised in writing of the results of the ICPMO review.

§ 1274.205 Award procedures.

(a) *General.* Multiple year cooperative agreements are encouraged, but normally they should not extend beyond two years.

(b) *Award above proposed amount.* Awards of cooperative agreements in response to competitive solicitations will not result in providing more NASA funds or resources than was anticipated in the Recipient's proposal. If additional funds or resources are deemed necessary, they will be provided by the Recipient and the Government cost share will be adjusted downward.

(c) *Changes to cooperative agreements.* Cost growth or in-scope changes shall not increase the amount of NASA's contribution. Additional costs which arise during the performance of the cooperative agreement are the responsibility of the Recipient. Funding for work required beyond the scope of the cooperative agreement must be sought through the submission of a proposal which will be treated as an unsolicited proposal.

(d) *Bilateral award.* All cooperative agreements awarded under this regulation will be awarded on a bilateral basis.

(e) *Certifications and representations.* (1) Unless prohibited by statute or codified regulation, Recipients will be encouraged to submit certifications and representations required by statute, executive order, or regulation on an annual basis, if the Recipients have ongoing and continuing relationships with the agency. Annual certifications and representations shall be signed by responsible officials with the authority to ensure Recipients' compliance with the pertinent requirements.

(2) Civil rights requirements—nondiscrimination in certain Federally-funded programs. Recipients must furnish assurances of compliance with civil rights statutes specified in 14 CFR parts 1250 through 1252. Such assurances are not required for each cooperative agreement, if they have previously been furnished and remain current and accurate. Certifications to NASA are normally made on NASA Form 1206, which may be obtained from the grant officer. Upon acceptance, the grant officer will forward assurances to the NASA Office of Equal Opportunity Programs for recording and retention purposes.

(3) NASA cooperative agreements are subject to the provisions of 14 CFR part 1265, Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide requirements for Drug-Free Workplace (Grants), unless excepted by §§ 1265.110 1265.610.

(4) *Lobbying Certification.* A Lobbying Certification in accordance with 14 CFR part 1271 will be obtained prior to award.

(f) Indemnification under Pub. L. 85–804 is not authorized for cooperative agreements.

§ 1274.206 Document format and numbering.

(a) *Formats.* Grant officers are authorized to use the format in Exhibit A of Appendix C to this part 1274 for the award of all cooperative agreements. Computer-generated versions and omission of inapplicable items are allowed.

(b) *Cooperative agreement numbering.* The identification numbering system for all cooperative agreements shall conform to 48 CFR (NFS) 1804.7102–3, except that a NCC prefix will be used in lieu of the NAS prefix.

§ 1274.207 Distribution of cooperative agreements.

Copies of cooperative agreements and modifications will be provided to: Payment office, technical officer, administrative grant officer when delegation has been made, NASA Center for Aerospace Information (CASI), Attn: Document Processing Subpart, 800 Elkridge Landing Road, Linthicum Heights, Maryland 21090–2934, and any other appropriate recipient. Copies of the statement of work, contained in the Recipient's proposal and accepted by NASA, will be provided to the administrative grant officer and CASI. The cooperative agreement file will contain a record of the addresses for distributing agreements and supplements.

Subpart C—Administration

§ 1274.301 Delegation of administration.

Normally, cooperative agreements will be administered by the awarding activity.

§ 1274.302 Transfers, novations, and change of name agreements.

(a) *Transfer of cooperative agreements.* Novation is the only means by which a cooperative agreement may be transferred from one Recipient to another.

(b) *Novation and change of name.* All novation agreements and change of name agreements of the Recipient, prior to execution, shall be reviewed by NASA legal counsel for legal sufficiency prior to approval.

Subpart D—Government Property

§ 1274.401 Government property.

The accomplishment of a cooperative agreement may require the purchase of equipment for a wide range of purposes. If this equipment is purchased with Government funds, i.e., as part of the Government contribution to the cooperative agreement, it becomes Government property and must be disposed of in accordance with 48 CFR (FAR) Part 45 at the conclusion of the cooperative agreement. In some cases, this may meet the needs of the parties. If, however, the Recipient may need the equipment to continue commercial efforts following the cooperative agreement, it should be purchased by the Recipient and included as an in-kind contribution of the Recipient. In this way, it is not procured, not even in part, with Government funds and the Government acquires no ownership interest. Procurement by the Recipient may be before or during the performance of the cooperative agreement.

Subpart E—Procurement Standards

§ 1274.501 Subcontracts.

All contracts, including small purchases, awarded by Recipients and their contractors shall contain the procurement provisions of Appendix A to this part, as applicable.

Subpart F—Reports and Records

§ 1274.601 Retention and access requirements for records.

(a) This Subpart sets forth requirements for record retention and access to records for awards to Recipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final invoice. The only exceptions are the following:

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

(3) When records are transferred to or maintained by NASA, the 3-year retention requirement is not applicable to the Recipient.

(4) Indirect cost rate proposals, cost allocations plans, etc. as specified in paragraph (g) of this section.

(c) Copies of original records may be substituted for the original records if authorized by NASA.

(d) NASA shall request transfer of certain records to its custody from Recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate record keeping, NASA may make arrangements for Recipients to retain any records that are continuously needed for joint use.

(e) NASA, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of Recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a Recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

(f) Unless required by statute, NASA shall not place restrictions on Recipients that limit public access to the records of Recipients that are pertinent to an award, except when NASA can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to NASA.

(g) *Indirect cost rate proposals, cost allocations plans, etc.* This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) *If submitted for negotiation.* If the Recipient submits to NASA or the subrecipient submits to the Recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of such submission.

(2) *If not submitted for negotiation.* If the Recipient is not required to submit to NASA or the subrecipient is not required to submit to the Recipient the proposal, plan, or other computation for negotiation purposes, then the 3-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

Subpart G—Suspension or Revocation

§ 1274.701 Suspension or revocation.

A cooperative agreement provides both NASA and the Recipient the ability to revoke the agreement if it is in their best interests to do so. For example, NASA may revoke the agreement if the Recipient is not making anticipated technical progress or if the Recipient materially fails to comply with the terms of the agreement. Similarly, the Recipient may revoke the agreement if technical progress is not being made, if the firms are shifting their technical emphasis, or if other technological advances have made the effort obsolete. NASA may also suspend the cooperative agreement for a short period of time if an assessment needs to be made as to whether the agreement should be revoked or not.

Subpart H—After-the-Award Requirements

§ 1274.801 Purpose.

Sections 1274.802 and 1274.803 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

§ 1274.802 Closeout procedures.

(a) Recipients shall submit, within 90 calendar days after the date of completion of the cooperative agreement, all financial, performance, and other reports as required by the terms and conditions of the award. Extensions may be approved when requested by the Recipient.

(b) The Recipient shall account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with Subpart D of this part.

§ 1274.803 Subsequent adjustments and continuing responsibilities.

The closeout of an award does not affect any of the following:

(a) Audit requirements in § 1274.933.

(b) Property management requirements in subpart D of this part.

(c) Records retention as required in § 1274.601.

Subpart I—Other Provisions and Special Conditions

§ 1274.901 Other provisions and special conditions.

The provisions set forth in this subpart are to be incorporated in and made a part of all cooperative agreements. The provisions at §§ 1274.902 through 1274.909 are to be incorporated in full text substantially as stated in this regulation. The provisions at §§ 1274.910 through 1274.933 will be incorporated by reference in an enclosure to each cooperative agreement (see Exhibit A as listed in Appendix C to this part). For inclusion of provisions in subcontracts, see Subpart E—Procurement Standards of this part.

§ 1274.902 Purpose (XXX 1995)

The purpose of this cooperative agreement is to conduct a shared resource project that will lead to _____. This cooperative agreement will advance the technology developments and research which have been performed on _____. The specific objective is to _____. This work will culminate in _____.

§ 1274.903 Responsibilities (XXX 1995).

(a) This cooperative agreement will include substantial NASA participation during performance of the effort. NASA and the Recipient agree to the following Responsibilities, a statement of cooperative interactions to occur during the performance of this effort. NASA and the Recipient shall exert all reasonable efforts to fulfill the responsibilities stated below.

(b) *NASA Responsibilities.* Since NASA contractors may obtain certain intellectual property rights arising from work for NASA in support of this agreement, NASA will inform Recipient whenever NASA intends to use NASA contractors to perform technical engineering services in support of this agreement. The following responsibilities are hereby set forth with anticipated start and ending dates, as appropriate:

Responsibility	Start	End

(c) *Recipient Responsibilities.* The Recipient shall be responsible for particular aspects of project performance as set forth in the technical proposal dated _____, attached hereto (or Statement of Work dated _____, attached hereto.) The following responsibilities are hereby set forth with anticipated start and ending dates, as appropriate:

Responsibility	Start	End

§ 1274.904 Resource Sharing Requirements (XXX 1995).

(a) NASA and the Recipient will share in providing the resources necessary to perform the agreement. NASA funding and non-cash contributions (personnel, equipment, facilities, etc.) and the dollar value of the Recipient's cash and/or in-kind contribution will be on a _____ (NASA)–_____ (Recipient) basis. Criteria and procedures for the allowability and allocability of cash and in-kind contributions shall be governed by Section 23, "Cost Sharing or Matching," of the Attachment to OMB Circular A–110 (58 FR 62992, November 29, 1993). The "applicable federal cost principles" cited in OMB Circular A–110 are 48 CFR (FAR) Part 31, entitled "Contract Cost Principles and Procedures."

(b) The Recipient's share shall not be charged to the Government under this agreement or under any other contract, grant, or cooperative agreement, except that the Recipient's contribution may be considered as allowable IR&D costs pursuant to 48 CFR (NFS) 1831.205–18.

§ 1274.905 Rights in Data (XXX 1995)

(a) Definitions.

Data means recorded information, regardless of form, the media on which it may be recorded, or the method of recording. The term includes, but is not limited to, data of a scientific or technical nature, computer software and documentation thereof, and data comprising commercial and financial information.

(b) Data Categories.

(1) *General:* Data exchanged between NASA and Recipient under this cooperative agreement will be exchanged without restriction as to its disclosure, use or duplication except as otherwise provided below in this provision.

(2) Civil rights requirements—nondiscrimination in certain Federally-funded programs. Recipients must furnish assurances of compliance with civil rights statutes specified in 14 CFR parts 1250 through 1252. Such assurances are not required for each cooperative agreement, if they have previously been furnished and remain current and accurate. Certifications to NASA are normally made on NASA Form 1206, which may be obtained from the grant officer. Upon acceptance, the grant officer will forward assurances to the NASA Office of Equal Opportunity Programs for recording and retention purposes.

(3) NASA cooperative agreements are subject to the provisions of 14 CFR part 1265, Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide requirements for Drug-Free Workplace (Grants), unless excepted by §§ 1265.110 1265.610.

(4) *Lobbying Certification.* A Lobbying Certification in accordance with 14 CFR part 1271 will be obtained prior to award.

(f) Indemnification under Pub. L. 85–804 is not authorized for cooperative agreements.

§ 1274.206 Document format and numbering.

(a) *Formats.* Grant officers are authorized to use the format in Exhibit A of Appendix C to this part 1274 for the award of all cooperative agreements. Computer-generated versions and omission of inapplicable items are allowed.

(b) *Cooperative agreement numbering.* The identification numbering system for all cooperative agreements shall conform to 48 CFR (NFS) 1804.7102–3, except that a NCC prefix will be used in lieu of the NAS prefix.

§ 1274.207 Distribution of cooperative agreements.

Copies of cooperative agreements and modifications will be provided to: Payment office, technical officer, administrative grant officer when delegation has been made, NASA Center for Aerospace Information (CASI), Attn: Document Processing Subpart, 800 Elkridge Landing Road, Linthicum Heights, Maryland 21090–2934, and any other appropriate recipient. Copies of the statement of work, contained in the Recipient's proposal and accepted by NASA, will be provided to the administrative grant officer and CASI. The cooperative agreement file will contain a record of the addresses for distributing agreements and supplements.

Subpart C—Administration

§ 1274.301 Delegation of administration.

Normally, cooperative agreements will be administered by the awarding activity.

§ 1274.302 Transfers, novations, and change of name agreements.

(a) *Transfer of cooperative agreements.* Novation is the only means by which a cooperative agreement may be transferred from one Recipient to another.

(b) *Novation and change of name.* All novation agreements and change of name agreements of the Recipient, prior to execution, shall be reviewed by NASA legal counsel for legal sufficiency prior to approval.

Subpart D—Government Property

§ 1274.401 Government property.

The accomplishment of a cooperative agreement may require the purchase of equipment for a wide range of purposes. If this equipment is purchased with Government funds, i.e., as part of the Government contribution to the cooperative agreement, it becomes Government property and must be disposed of in accordance with 48 CFR (FAR) Part 45 at the conclusion of the cooperative agreement. In some cases, this may meet the needs of the parties. If, however, the Recipient may need the equipment to continue commercial efforts following the cooperative agreement, it should be purchased by the Recipient and included as an in-kind contribution of the Recipient. In this way, it is not procured, not even in part, with Government funds and the Government acquires no ownership interest. Procurement by the Recipient may be before or during the performance of the cooperative agreement.

Subpart E—Procurement Standards

§ 1274.501 Subcontracts.

All contracts, including small purchases, awarded by Recipients and their contractors shall contain the procurement provisions of Appendix A to this part, as applicable.

Subpart F—Reports and Records

§ 1274.601 Retention and access requirements for records.

(a) This Subpart sets forth requirements for record retention and access to records for awards to Recipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final invoice. The only exceptions are the following:

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

(3) When records are transferred to or maintained by NASA, the 3-year retention requirement is not applicable to the Recipient.

(4) Indirect cost rate proposals, cost allocations plans, etc. as specified in paragraph (g) of this section.

(c) Copies of original records may be substituted for the original records if authorized by NASA.

(d) NASA shall request transfer of certain records to its custody from Recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate record keeping, NASA may make arrangements for Recipients to retain any records that are continuously needed for joint use.

(e) NASA, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of Recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a Recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

(f) Unless required by statute, NASA shall not place restrictions on Recipients that limit public access to the records of Recipients that are pertinent to an award, except when NASA can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to NASA.

(g) *Indirect cost rate proposals, cost allocations plans, etc.* This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) *If submitted for negotiation.* If the Recipient submits to NASA or the subrecipient submits to the Recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of such submission.

(2) *If not submitted for negotiation.* If the Recipient is not required to submit to NASA or the subrecipient is not required to submit to the Recipient the proposal, plan, or other computation for negotiation purposes, then the 3-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

Subpart G—Suspension or Revocation

§ 1274.701 Suspension or revocation.

A cooperative agreement provides both NASA and the Recipient the ability to revoke the agreement if it is in their best interests to do so. For example, NASA may revoke the agreement if the Recipient is not making anticipated technical progress or if the Recipient materially fails to comply with the terms of the agreement. Similarly, the Recipient may revoke the agreement if technical progress is not being made, if the firms are shifting their technical emphasis, or if other technological advances have made the effort obsolete. NASA may also suspend the cooperative agreement for a short period of time if an assessment needs to be made as to whether the agreement should be revoked or not.

Subpart H—After-the-Award Requirements

§ 1274.801 Purpose.

Sections 1274.802 and 1274.803 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

§ 1274.802 Closeout procedures.

(a) Recipients shall submit, within 90 calendar days after the date of completion of the cooperative agreement, all financial, performance, and other reports as required by the terms and conditions of the award. Extensions may be approved when requested by the Recipient.

(b) The Recipient shall account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with Subpart D of this part.

§ 1274.803 Subsequent adjustments and continuing responsibilities.

The closeout of an award does not affect any of the following:

(a) Audit requirements in § 1274.933.

(b) Property management requirements in subpart D of this part.

(c) Records retention as required in § 1274.601.

Subpart I—Other Provisions and Special Conditions

§ 1274.901 Other provisions and special conditions.

The provisions set forth in this subpart are to be incorporated in and made a part of all cooperative agreements. The provisions at §§ 1274.902 through 1274.909 are to be incorporated in full text substantially as stated in this regulation. The provisions at §§ 1274.910 through 1274.933 will be incorporated by reference in an enclosure to each cooperative agreement (see Exhibit A as listed in Appendix C to this part). For inclusion of provisions in subcontracts, see Subpart E—Procurement Standards of this part.

§ 1274.902 Purpose (XXX 1995)

The purpose of this cooperative agreement is to conduct a shared resource project that will lead to _____. This cooperative agreement will advance the technology developments and research which have been performed on _____. The specific objective is to _____. This work will culminate in _____.

§ 1274.903 Responsibilities (XXX 1995).

(a) This cooperative agreement will include substantial NASA participation during performance of the effort. NASA and the Recipient agree to the following Responsibilities, a statement of cooperative interactions to occur during the performance of this effort. NASA and the Recipient shall exert all reasonable efforts to fulfill the responsibilities stated below.

(b) *NASA Responsibilities.* Since NASA contractors may obtain certain intellectual property rights arising from work for NASA in support of this agreement, NASA will inform Recipient whenever NASA intends to use NASA contractors to perform technical engineering services in support of this agreement. The following responsibilities are hereby set forth with anticipated start and ending dates, as appropriate:

Responsibility	Start	End

(c) *Recipient Responsibilities.* The Recipient shall be responsible for particular aspects of project performance as set forth in the technical proposal dated _____, attached hereto (or Statement of Work dated _____, attached hereto.) The following responsibilities are hereby set forth with anticipated start and ending dates, as appropriate:

Responsibility	Start	End

§ 1274.904 Resource Sharing Requirements (XXX 1995).

(a) NASA and the Recipient will share in providing the resources necessary to perform the agreement. NASA funding and non-cash contributions (personnel, equipment, facilities, etc.) and the dollar value of the Recipient's cash and/or in-kind contribution will be on a _____ (NASA)–_____ (Recipient) basis. Criteria and procedures for the allowability and allocability of cash and in-kind contributions shall be governed by Section 23, "Cost Sharing or Matching," of the Attachment to OMB Circular A–110 (58 FR 62992, November 29, 1993). The "applicable federal cost principles" cited in OMB Circular A–110 are 48 CFR (FAR) Part 31, entitled "Contract Cost Principles and Procedures."

(b) The Recipient's share shall not be charged to the Government under this agreement or under any other contract, grant, or cooperative agreement, except that the Recipient's contribution may be considered as allowable IR&D costs pursuant to 48 CFR (NFS) 1831.205–18.

§ 1274.905 Rights in Data (XXX 1995)

(a) Definitions.

Data means recorded information, regardless of form, the media on which it may be recorded, or the method of recording. The term includes, but is not limited to, data of a scientific or technical nature, computer software and documentation thereof, and data comprising commercial and financial information.

(b) Data Categories.

(1) *General:* Data exchanged between NASA and Recipient under this cooperative agreement will be exchanged without restriction as to its disclosure, use or duplication except as otherwise provided below in this provision.

(2) *Background Data*: In the event it is necessary for Recipient to furnish NASA with Data which existed prior to, or produced outside of, this cooperative agreement, and such Data embodies trade secrets or comprises commercial or financial information which is privileged or confidential, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence and disclosed and used by NASA and its contractors (under suitable protective conditions) only for the purpose of carrying out NASA's responsibilities under this cooperative agreement. Upon completion of activities under this agreement, such Data will be disposed of as requested by Recipient.

(3) *Data first produced by Recipient*: In the event Data first produced by Recipient in carrying out Recipient's responsibilities under this cooperative agreement is furnished to NASA, and Recipient considers such Data to embody trade secrets or to comprise commercial or financial information which is privileged or confidential, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence and disclosed and used by ["NASA" or "the Government," as appropriate] and its contractors (under suitable protective conditions) only for [insert appropriate purpose; for example: experimental; evaluation; research; development, etc.] by or on behalf of ["NASA" or "the Government" as appropriate]. In order that ["NASA" or the "Government", as appropriate] and its contractors may exercise the right to use such Data for the purposes designated above, NASA, upon request to the Recipient, shall have the right to review and request delivery of Data first produced by Recipient. Delivery shall be made within a time period specified by NASA.

(4) *Data first produced by NASA:* As to Data first produced by NASA in carrying out NASA's responsibilities under this cooperative agreement and which Data would embody trade secrets or would comprise commercial or financial information that is privileged or confidential if obtained from the Recipient, such Data will, to the extent permitted by law, be appropriately marked with a notice or legend and maintained in confidence for a period of ( ) years [INSERT A PERIOD UP TO 5 YEARS] after development of the information, with the express understanding that during the aforesaid period such Data may be disclosed and used (under suitable protective conditions) by or on behalf of the Government for Government purposes only, and thereafter for any purpose whatsoever without restriction on disclosure and use. Recipient agrees not to disclose such Data to any third party without NASA's written approval until the aforementioned restricted period expires.

(5) *Copyright*. In the event Data is exchanged with a notice indicating the Data is protected under copyright as a published copyrighted work, or are deposited for registration as a published work in the U.S. Copyright Office, the following paid-up licenses shall apply:

(i) If it is indicated on the Data that the Data existed prior to, or was produced outside of, this agreement, the receiving party and others acting on its behalf, may reproduce, distribute, and prepare derivative works for the purpose of carrying out the receiving party's responsibilities under this cooperative agreement; and

(ii) If the furnished Data does not contain the indication of paragraph (b)(5)(i) of this section, it will be assumed that the Data was first produced under this agreement, and the receiving party and others acting on its behalf, shall be granted a paid up, nonexclusive, irrevocable, world-wide license for all such Data to reproduce, distribute copies to the public, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the receiving party. For Data that is computer software, the right to distribute shall be limited to potential users in the United States. When claim is made to copyright, the Recipient shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship to the data when and if the data are delivered to the Government.

(6) *Oral and visual information*. If information which the Recipient considers to embody trade secrets or to comprise commercial or financial information which is privileged or confidential is disclosed orally or visually to NASA, such information must be reduced to tangible, recorded form (i.e., converted into Data as defined herein), identified and marked with a suitable notice or legend, and furnished to NASA within 10 days after such oral or visual disclosure, or NASA shall have no duty to limit or restrict, and shall not incur any liability for, any disclosure and use of such information.

(7) *Disclaimer of Liability*. Notwithstanding the above, NASA shall not be restricted in, nor incur any liability for, the disclosure and use of:

(i) Data not identified with a suitable notice or legend as set in paragraph (b)(2) of this section; nor

(ii) Information contained in any Data for which disclosure and use is restricted under paragraphs (b)(2) or (3) of this section, if such information is or becomes generally known without breach of the above, is known to or is generated by NASA independently of carrying out responsibilities under this agreement, is rightfully received from a third party without restriction, or is included in data which Participant has, or is required to furnish to the U.S. Government without restriction on disclosure and use.

(c) *Marking of Data*. Any Data delivered under this cooperative agreement, by NASA or the Recipient, shall be marked with a suitable notice or legend indicating the data was generated under this cooperative agreement.

(d) *Lower Tier Agreements*. The Recipient shall include this provision, suitably modified to identify the parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work.

§ 1274.906 Designation of New Technology Representative and Patent Representative (XXX 1995).

(a) For purposes of administration of the clause of this cooperative agreement entitled "PATENT RIGHTS—RETENTION BY THE CONTRACTOR (LARGE BUSINESS)" or "PATENT RIGHTS—RETENTION BY THE CONTRACTOR (SMALL BUSINESS)" the following named representatives are hereby designated by the Grant Officer to administer such clause:

Title	Office code	Address
—		
New Technology Representative		
Patent Representative		

(b) Reports of reportable items, and disclosure of subject inventions, interim reports, final reports, utilization reports, and other reports required by the clause, as well as any correspondence with respect to such matters, should be directed to the New Technology Representative unless transmitted in response to correspondence or request from the Patent Representative. Inquiries or requests regarding disposition of rights, election of rights, or related matters should be directed to the Patent Representative. This clause shall be included in any subcontract hereunder requiring "PATENT RIGHTS—RETENTION BY THE CONTRACTOR (LARGE BUSINESS)" clause or "PATENT RIGHTS—RETENTION BY THE CONTRACTOR (SMALL BUSINESS)" clause, unless otherwise authorized or directed by the Grant Officer. The respective responsibilities and authorities of the above-named representatives are set forth in 48 CFR (NFS) 1827.375–3.

§ 1274.907 Disputes (XXX 1995).

(a) The parties to this agreement shall communicate with one another in good faith and in a timely and cooperative manner when raising issues under this provision.

(b) Any dispute, which for the purposes of this provision includes any disagreement or claim, between NASA and the Recipient concerning questions of fact or law arising from or in connection with this agreement and whether or not involving alleged breach of this agreement, may be raised only under this provision.

(c) Whenever a dispute arises, the parties shall attempt to resolve the issues involved by discussion and mutual agreement as soon as practicable. In no event shall a dispute which arose more than three (3) months prior to the notification made under the following paragraph of this provision constitute the basis for relief under this article unless NASA waives this requirement.

(d) Failing resolution by mutual agreement, the aggrieved party shall document the dispute by notifying the other party in writing of the relevant facts, identify unresolved issues, and specify the clarification or remedy sought. Within five (5) working days after providing written notice to the other party, the aggrieved party may, in writing, request a decision by _____ [Suggest this be the Center Director], the Dispute Resolution Official. The other party shall submit a written position on the matters in dispute within thirty (30) calendar days after being notified that a decision has been requested. The dispute resolution official shall conduct a review of the matters in dispute and render a decision in writing within thirty (30) calendar days of receipt of such written position. Such resolution is not subject to further administrative review and, to the extent permitted by law, shall be final and binding.

§ 1274.908 Milestone Payments (XXX 1995)

(a) By submission of the first invoice, the Recipient is certifying that it has an established accounting system which complies with generally accepted accounting principles, with the requirements of this agreement, and that appropriate arrangements have been made for receiving, distributing, and accounting for Federal funds received under this agreement.

(b) Payments will be made upon the following milestones: [The schedule for obligation may be based upon the Recipient's completion of specific tasks, submission of specified reports, or whatever is appropriate.]

Date	Payment milestone	Amount

(c) Upon submission by the Recipient of invoices in accordance with the provisions of the agreement and upon certification by NASA of completion of the payable milestone, the grant officer shall authorize payment.

(d) A payment milestone may be successfully completed in advance of the date appearing in paragraph (b) of this section. However, payment shall not be made prior to that date without the written consent of the Grant Officer.

(e) The contractor is not entitled to partial payment for partial completion of a payment milestone.

(f) All preceding payment milestones must be completed before payment can be made for the next payment milestone.

(g) Invoices hereunder shall be submitted in the original and five copies to the grant officer for certification.

§ 1274.909 Term of this Agreement (XXX 1995).

The agreement commences on the effective date indicated on the attached cover sheet and continues until the expiration date indicated on the attached cover. If all resources are expended prior to the duration, the parties have no obligation to continue performance and may elect to cease at that point. The parties may extend the expiration date if additional time is required to complete the milestones at no increase in Government resources. Provisions of this Agreement, which, by their express terms or by necessary implication, apply for periods of time other than that specified as the agreement term, shall be given effect, notwithstanding expiration of the term of the agreement.

§ 1274.910 Authority (XXX 1995).

This is a cooperative agreement as defined in 31 U.S.C. 6305 (the Chiles Act) and is entered into pursuant to the authority of 42 U.S.C. 2451, et seq. (the Space Act).

§ 1274.911 Patent Rights (XXX 1995).

(a) *Definitions.*

(1) *Contract* means any actual or proposed contract, cooperative agreement, agreement, understanding, or other arrangement, and includes any assignment, substitution of parties, or subcontract executed or entered into thereunder.

(2) *Contracting Officer* means the contracting officer or grant officer executing this agreement on behalf of the Government.

(3) *Invention* means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.

(4) *Made* when used in relation to any invention means the conception or first actual reduction to practice such invention.

(5) *Nonprofit organization* means a domestic university or other institution of higher education or an organization of the type described in Subpart 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under Subpart 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any domestic nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

(6) *Practical application* means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(7) *Recipient* means:

(i) [Identify the signatory party or parties] or;

(ii) The [identify the Consortium], where the Consortium has been formed for carrying out their responsibilities under this agreement.

(8) *Small Business Firm* means a domestic small business concern as defined at 15 U.S.C. 632 and implementing regulations of the Administrator of the Small Business Administration. (For the purpose of this definition, the size standard contained in 13 CFR 121.3–8 for small business contractors and in 13 CFR 121.3–12 for small business subcontractors will be used.)

(9) *Subject Invention* means any invention of a Recipient and/or Government employee conceived or first actually reduced to practice in the performance of work under this contract.

(b) *Allocation of Principal Rights.*

(1) *Contractor Inventions.* For other than Small Business Firm or Nonprofit organization Recipients, the "PATENT RIGHTS—RETENTION BY CONTRACTOR (LARGE BUSINESS)" provision applies. For Small Business Firm and Nonprofit organization Recipients, the "PATENT RIGHTS—RETENTION BY CONTRACTOR (SMALL BUSINESS)" provision applies.

(2) *NASA Inventions.* NASA will use reasonable efforts to report inventions made by NASA employees as a consequence of, or which bear a direct relation to, the performance of specified NASA activities under this cooperative agreement and, upon timely request, will grant the Recipient, the first option to acquire either an exclusive or partially exclusive, revocable, royalty-bearing license, on terms to be subsequently negotiated, for any patent applications and patents covering such inventions, and subject to the license reserved in paragraph (b)(5)(i) of this section. Upon application in compliance with 37 CFR Part 404—Licensing of Government Owned Inventions, the Recipient or each Consortium Member (if applicable), shall be granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government acquires title. Each nonexclusive license may extend to subsidiaries and affiliates, if any, within the corporate structure of the licensee and includes the right to grant sublicenses of the same scope to the extent the licensee was legally obligated to do so at the time the cooperative agreement was signed.

(3) *NASA Contractor Inventions.* In the event NASA contractors are tasked to perform work in support of specified NASA activities under this cooperative agreement and inventions are made by contractor employees, and NASA has the right to acquire or has acquired title to such inventions, NASA will use reasonable efforts to report such inventions and, upon timely request, will grant the Recipient or designated Consortium Member (if applicable), the first option to acquire either an exclusive or partially exclusive, revocable, royalty-bearing license, upon terms to be subsequently negotiated, for any patent applications and patents covering such inventions, and subject to the license reserved in paragraph (b)(5)(ii) of this section. Upon application in compliance with 37 CFR part 404—Licensing of Government Owned Inventions, the Recipient or each Consortium Member (if applicable), shall be granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government acquires title. Each nonexclusive license may extend to subsidiaries and affiliates, if any, within the corporate structure of the licensee and includes the right to grant sublicenses of the same scope to the extent the licensee was legally obligated to do so at the time the cooperative agreement was signed.

(4) *Joint NASA and Recipient Inventions.* NASA and Recipient agree to use reasonable efforts to identify and report to each other any inventions made jointly between NASA employees (or employees of NASA contractors) and employees of Recipient.

(i) For other than small business firms and nonprofit organizations the Administrator may agree that the United States will refrain from exercising its undivided interest in a manner inconsistent with Recipient's commercial interest and to cooperate with Recipient in obtaining patent protection on its undivided interest on any waived inventions subject, however, to the condition that Recipient makes its best efforts to bring the invention to the point of practical application at the earliest practicable time. In the event that the Administrator determines that such efforts are not undertaken, the Administrator may void NASA's agreement to refrain from exercising its undivided interest and grant licenses for the practice of the invention so as to further its development. In the event that the Administrator decides to void NASA's agreement to refrain from exercising its undivided interest and grant licenses for this reason, notice shall be given to the Inventions and Contributions Board as to why such action should not be taken. Either alternative will be subject to the applicable license or licenses reserved in paragraph (b)(5) of this section.

(ii) For small business firms and nonprofit organization, NASA may assign or transfer whatever rights it may acquire in a subject invention from its employee to the Recipient as authorized by 35 U.S.C. 202(e).

(5) *Minimum rights reserved by the Government.* Any license or assignment granted Recipient pursuant to paragraphs (b)(2), (b)(3), or (b)(4) of this section will be subject to the reservation of the following licenses:

(i) As to inventions made solely or jointly by NASA employees, the irrevocable, royalty-free right of the Government of the United States to practice and have practiced the invention by or on behalf of the United States; and

(ii) As to inventions made solely by, or jointly with, employees of NASA contractors, the rights in the Government of the United States as set forth in paragraph (b)(5)(i) of this section, as well as the revocable, nonexclusive, royalty-free license in the contractor as set forth in 14 CFR 1245.108.

(6) *Preference for United States manufacture.* The Recipient agrees that any products embodying subject inventions or produced through the use of subject inventions shall be manufactured substantially in the United States. However, in individual cases, the requirement to manufacture substantially in the United States may be waived by NASA upon a showing by the Recipient that under the circumstances domestic manufacture is not commercially feasible.

(7) Work performed by the Recipient under this cooperative agreement is considered undertaken to carry out a public purpose of support and/or stimulation rather than for acquiring property or services for the direct benefit or use of the Government. Accordingly, such work by the Recipient is not considered "by or for the United States" and the Government assumes no liability for infringement by the Recipient under 28 U.S.C. 1498.

§ 1274.912 Patent Rights—Retention by the Contractor (Large Business) (XXX 1995)

(a) *Definitions.*

(1) *Administrator,* as used in this clause, means the Administrator of the National Aeronautics and Space Administration (NASA) or duly authorized representative.

(2) *Contract,* as used in this clause, means any actual or proposed contract, cooperative agreement, agreement, under-standing, or other arrangement, and includes any assignment, substitution of parties, or subcontract executed or entered into thereunder.

(3) *Contracting Officer* means the contracting officer or grant officer executing this agreement on behalf of the Government.

(4) *Invention,* as used in this clause, means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the U.S.C.

(5) *Made,* as used in relation to any invention, means the conception or first actual reduction to practice such invention.

(6) *Nonprofit organization,* as used in this clause, means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any domestic nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

(7) *Practical application,* as used in this clause, means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in case of a machine or system; and, in each, case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(8) *Reportable item,* as used in this clause, means any invention, discovery, improvement, or innovation of the contractor, whether or not the same is or may be patentable or otherwise protectable under Title 35 of the United States Code, conceived or first actually reduced to practice in the performance of any work under this contract or in the performance of any work that is reimbursable under any clause in this contract providing for reimbursement of costs incurred prior to the effective date of this contract.

(9) *Small business firm,* as used in this clause, means a domestic small business concern as defined at 15 U.S.C. 632 and implementing regulations of the Administrator of the Small Business Administration. (For the purpose of this definition, the size standard contained in 13 CFR 121.3–8 for small business contractors and in 13 CFR 121.3–12 for small business subcontractors will be used.)

(10) *Subject invention,* as used in this clause, means any reportable item which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, *et seq*).

(b) *Allocation of principal rights.*—(1) *Presumption of title.* (i) Any reportable item that the Administrator considers to be a subject invention shall be presumed to have been made in the manner specified in paragraph (1) or (2) of Section 305(a) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457(a)) (hereinafter called "the Act"), and the above presumption shall be conclusive unless at the time of reporting the reportable item the Recipient submits to the Contracting Officer a written statement, containing supporting details, demonstrating that the reportable item was not made in the manner specified in paragraph (1) or (2) of Section 305(a) of the Act.

(ii) Regardless of whether title to a given subject invention would otherwise be subject to an advance waiver or is the subject of a petition for waiver, the Contractor may nevertheless file the statement described in paragraph (b)(1)(i) of this section. The Administrator will review the information furnished by the Contractor in any such statement and any other available information relating to the circumstances surrounding the making of the subject invention and will notify the Contractor whether the Administrator has determined that the subject invention was made in the manner specified in paragraph (1) or (2) of Section 305(a) of the Act.

(2) *Property rights in subject inventions.* Each subject invention for which the presumption of paragraph (b)(1)(i) of this section is conclusive or for which there has been a determination that it was made in the manner specified in paragraph (1) or (2) of section 305(a) of the Act shall be the exclusive property of the United States as represented by NASA unless the Administrator waives all or any part of the rights of the United States, as provided in paragraph (b)(3) of this section.

(3) *Waiver of rights.* (i) Section 305(f) of the Act provides for the promulgation of regulations by which the Administrator may waive the rights of the United States with respect to any invention or class of inventions made or that may be made under conditions specified in paragraph (1) or (2) of section 305(a) of the Act. The promulgated NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1, have adopted the Presidential memorandum on Government Patent Policy of February 18, 1983, as a guide in acting on petitions (requests) for such waiver of rights.

(ii) As provided in 14 CFR part 1245, subpart 1, Contractors may petition, either prior to execution of the contract or within 30 days after execution of the contract, for advance waiver of rights to any or all of the inventions that may be made under a contract. If such a petition is not submitted, or if after submission it is denied, the Contractor (or an employee inventor of the Contractor may petition for waiver of rights to an identified subject invention within eight months of first disclosure of invention in accordance with paragraph (e)(2) of this section or within such longer period as may be authorized in accordance with 14 CFR 1245.105. Further procedures are provided in the REQUESTS FOR WAIVER OF RIGHTS—LARGE BUSINESS provision.

(c) *Minimum rights reserved by the Government.* (1) With respect to each contractor subject invention for which a waiver of rights is applicable in accordance with 14 CFR part 1245, subpart 1, the Government reserves—

(i) An irrevocable, royalty-free license for the practice of such invention throughout the world by or on behalf of the United States or any foreign government in accordance with any treaty or agreement with the United States; and

(ii) Such other rights as stated in 14 CFR 1245.107.

(2) Nothing contained in this paragraph shall be considered to grant to the Government any rights with respect to any invention other than a subject invention.

(d) *Minimum rights to the Contractor.* (1) The Contractor is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a contractor subject invention and any resulting patent in which the Government acquires title, unless the Contractor fails to disclose the subject invention within the times specified in paragraph (e)(2) of this section. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure ofich the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Administrator except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by the Administrator to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with 14 CFR part 1245, subpart 2, Licensing of NASA Inventions. This license will not be revoked in that field of use or the geographical areas in which the Recipient has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Administrator to the extent the Recipient, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the Contractor will be provided a written notice of the Administrator's intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by the Administrator for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with 14 CFR 1245.211, any decision concerning the revocation or modification of its license.

(e) *Invention identification, disclosures, and reports.* (1) The Contractor shall establish and maintain active and effective procedures to assure that reportable items are promptly identified and disclosed to Contractor personnel responsible for the administration of this clause within six months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of the reportable items, and records that show that the procedures for identifying and disclosing reportable items are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(2) The Contractor will disclose each reportable item to the Contracting Officer within two months after the inventor discloses it in writing to Contractor personnel responsible for the administration of this clause or, if earlier, within six months after the Recipient becomes aware that a reportable item has been made, but in any event for subject inventions before any on sale, public use, or publication of such invention known to the Recipient. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the reportable item was made and the inventor(s) or innovator(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the reportable item. The disclosure shall also identify any publication, on sale, or public use of any subject invention and whether a manuscript describing such invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Contractor will promptly notify the agency of the acceptance of any manuscript describing a subject invention for publication or of any on sale or public use planned by the Contractor for such invention.

(3) The Contractor shall furnish the Contracting Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing reportable items during that period, and certifying that all reportable items have been disclosed (or that there are no such inventions) and that the procedures required by paragraph (e)(1) of this section have been followed.

(ii) A final report, within three months after completion of the contracted work, listing all reportable items or certifying that there were no such reportable items, and listing all subcontracts at any tier containing a patent rights clause or certifying that there were no such subcontracts.

(4) The Contractor agrees, upon written request of the Contracting Officer, to furnish additional technical and other information available to the Recipient as is necessary for the preparation of a patent application on a subject invention and for the prosecution of the patent application, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions.

(5) The Contractor agrees, subject to 48 CFR (FAR) 27.302(j), that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) *Examination of records relating to inventions.* (1) The Contracting Officer or any authorized representative shall, pursuant to the Retention and Examination of Records provision of this cooperative agreement, have the right to examine any books (including laboratory notebooks), records, and documents of the Recipient relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether—

(i) Any such inventions are subject inventions;

(ii) The Contractor has established and maintained the procedures required by paragraph (e)(1) of this section; and

(iii) The Contractor and its inventors have complied with the procedures.

(2) If the Contracting Officer learns of an unreported Contractor invention that the Contracting Officer believes may be a subject invention, the Contractor may be required to disclose the invention to the agency for a determination of ownership rights.

(3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

(g) *Subcontracts.* (1) Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall—

(i) Include this provision PATENT RIGHTS—RETENTION BY THE CONTRACTOR—(LARGE BUSINESS) (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with other than a small business firm or nonprofit organization for the performance of experimental, developmental, or research work; and

(ii) Include the provision PATENT RIGHT—RETENTION BY THE CONTRACTOR—(SMALL BUSINESS) (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with a small business firm or nonprofit organization for the performance of experimental, developmental, or research work.

(2) In the event of a refusal by a prospective subcontractor to accept such a clause the Contractor—

(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontract without the written authorization of the Contracting Officer.

(3) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

(4) The subcontractor will retain all rights provided for the Contractor in the clause of paragraph (g)(1)(i) or (1)(ii) of this section, whichever is included in the subcontract, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(5) Notwithstanding paragraph (g)(4) of this section, and in recognition of the contractor's substantial contribution of funds, facilities and/or equipment to the work performed under this cooperative agreement, the contractor is authorized, subject to the rights of NASA set forth elsewhere in this clause, to:

(i) Acquire by negotiation and mutual agreement rights to a subcontractor's subject inventions as the contractor may deem necessary to obtaining and maintaining of such private support; and

(ii) Request, in the event of inability to reach agreement pursuant to paragraph (g)(5)(i) of this section, that NASA invoke exceptional circumstances as necessary pursuant to 37 CFR 401.3(a)(2) if the prospective subcontractor is a small business firm or organization, or for all other organizations, request that such rights for the contractor be included as an additional reservation in a waiver granted pursuant to 14 CFR part 1245, subpart 1. Any such requests to NASA should be prepared in consideration of the following guidance and submitted to the contract officer.

(A) *Exceptional circumstances:* A request that NASA make an "exceptional circumstances" determination pursuant to 37 CFR 401.3(a)(2) must state the scope of rights sought by the contractor pursuant to such determination; identify the proposed subcontractor and the work to be performed under the subcontract; and state the need for the determination.

(B) *Waiver petition:* The subcontractor should be advised that unless it requests a waiver of title pursuant to the NASA Patent Waiver Regulations (14 CFR part 1245, subpart 1), NASA will acquire title to the subject invention (42 U.S.C. 2457, as amended, Sec. 305). If a waiver is not requested or granted, the contractor may request a license from NASA (see licensing of NASA inventions, 14 CFR part 1245, subpart 2). A subcontractor requesting a waiver must follow the procedures set forth in the attached clause REQUESTS FOR WAIVER OF RIGHTS—LARGE BUSINESS.

(h) *Preference for United States manufacture.* The Contractor agrees that any products embodying subject inventions or produced through the use of subject inventions shall be manufactured substantially in the United States. However, in individual cases, the requirement to manufacture substantially in the United States may be waived by NASA upon a showing by the Contractor that under the circumstances domestic manufacture is not commercially feasible.

(i) *March-in rights.* The Contractor agrees that, with respect to any subject invention in which it has acquired title, NASA has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Subcontractor, assignee, or exclusive licensee refuses such a request NASA has the right to grant such a license itself if the Federal agency determines that—

(1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

§ 1274.913 Patent Rights—Retention by the Contractor (Small Business) (XXX 1995)

(a) *Definitions.*

(1) *Contract,* as used in this clause, means any actual or proposed contract, cooperative agreement, agreement, under-standing, or other arrangement, and includes any assignment, substitution of parties, or subcontract executed or entered into thereunder.

(2) *Contracting Officer* means the contracting officer or grant officer executing this agreement on behalf of the Government.

(3) *Invention,* as used in this clause, means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the U.S.C.

(4) *Made,* as used in this clause, when used in relation to any invention means the conception or first actual reduction to practice such invention.

(5) *Nonprofit organization,* as used in this clause, means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(6) *Practical application,* as used in this clause, means to manufacture, in the case of a composition of product; to practice, in the case of a process or method, or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(7) *Small business firm,* as used in this clause, means a small business concern as defined at Subpart 2 of Pub. L. 85–536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3–8 and 13 CFR 121.3–12, respectively, will be used.

(8) *Subject invention,* as used in this clause, means any invention of the Subcontractor conceived or first actually reduced to practice in the performance of work under this contract.

(b) *Allocation of principal rights.* The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) *Invention disclosure, election of title, and filing of patent application by Contractor.* (1) The Contractor will disclose subject invention to NASA within two months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. This disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the

physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Contractor will promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any sale or public use planned by the Contractor.

(2) The Contractor will elect in writing whether or not to retain title to any such invention by notifying NASA within two years of disclosure to the Federal agency. However, in any case where publication, on sale or public use has initiated the one-year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Contractor will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor will file patent applications in additional countries or international patent offices within either 10 months of the corresponding initial patent application of six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure election, and filing under paragraphs (c)(1), (2), and (3) of this section may, at the discretion of the agency, be granted.

(d) *Conditions when the Government may obtain title.* The Contractor will convey to NASA, upon written request, title to any subject invention—

(1) If the Contractor fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this section, or elects not to retain title; provided that the agency may only request title within 60 days after learning of the failure of the Contractor to disclose or elect within the specified times.

(2) In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) of this section; provided, however, that if the Contractor has filed a patent application in a country after the times specified in paragraph (c) of this section, but prior to its receipt of the written request of the Federal agency, the Contractor shall continue to retain title in that country.

(3) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) *Minimum rights to Contractor and protection of the Contractor right to file.* (1) The Contractor will retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the invention within the times specified in paragraph (c) of this section. The Contractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of NASA, except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by NASA to the extent necessary to achieve expeditious practical application of subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and agency licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the Subcontractor has achieved practical application and continues to make the benefits of the invention reasonable accessible to the public. The license in any foreign country may be revoked or modified at the discretion of NASA to the extent the Subcontractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license NASA will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by NASA for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and NASA Reg 14 CFR subpart 1245.2, concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

(f) *Contractor action to protect the Government's interest.* (1) The Contractor agrees to execute or to have executed and promptly deliver to NASA all instruments necessary to:

(i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Subcontractor elects to retain title, and,

(ii) convey title to the Federal agency when requested under paragraph (d) of this section to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this section, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by paragraph (c)(1) of this section. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Contractor will notify NASA of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Contractor agrees to include, within the specification of the United States patent application and any patent issuing thereon covering a subject invention the following statement, "This invention was made with Government support under (identify the agreement) awarded by NASA. The Government has certain rights in the invention."

(5) The Contractor shall provide the Contracting Officer the following:

(i) A listing every 12 months (or such longer period as the Contracting Officer may specify) from the date of the contract, of all subject inventions required to be disclosed during the period.

(ii) A final report prior to closeout of the contract listing all subject inventions or certifying that there were none.

(iii) Upon request, the filing date, serial number, and title, a copy of the patent application, and patent number and issue date for any subject invention in any country in which the contractor has applied for patents.

(iv) An irrevocable power to inspect and make copies of the patent application file, by the Government, when a Federal Government employee is a co-inventor.

(g) *Subcontracts.* (1) Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall—

(i) Include this provision (PATENT RIGHTS—RETENTION BY THE CONTRACTOR (SMALL BUSINESS)), suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or domestic nonprofit organization.

(ii) Include in all other subcontracts, regardless of tier, for experimental, developmental, or research work the patent rights clause (PATENT RIGHTS—RETENTION BY THE CONTRACTOR (LARGE BUSINESS)).

(2) In the event of a refusal by a prospective subcontractor to accept such a clause the Contractor—

(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontract without the written authorization of the Contracting Officer.

(3) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

(4) The subcontractor will retain all rights provided for the Contractor in the clause under paragraph (g)(1)(i) or (g)(1)(ii) of this section, whichever is included in the subcontract, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(5) Notwithstanding paragraph (g)(4) of this section, and in recognition of the contractor's substantial contribution of funds, facilities and/or equipment to the work performed under this cooperative agreement, the contractor is authorized, subject to the rights of NASA set forth elsewhere in this clause, to:

(i) Acquire by negotiation and mutual agreement rights to a subcontractor's subject inventions as the contractor may deem necessary to obtaining and maintaining of such private support; and

(ii) Request, in the event of inability to reach agreement pursuant to paragraph (g)(5)(i) of this section that NASA invoke exceptional circumstances as necessary pursuant to 37 CFR 401.3(a)(2) if the prospective subcontractor is a small business firm or organization, or for all other organizations, request that such rights for the contractor be included as an additional reservation in a waiver granted pursuant to 14 CFR part 1245, subpart 1. Any such requests to NASA should be prepared in consideration of the following guidance and submitted to the contract officer.

(A) *Exceptional circumstances:* A request that NASA make an "exceptional circumstances" determination pursuant to 37 CFR 401.3(a)(2) must state the scope of rights sought by the contractor pursuant to such determination; identify the proposed subcontractor and the work to be performed under the subcontract; and state the need for the determination.

(B) *Waiver petition:* The subcontractor should be advised that unless it requests a waiver of title pursuant to the NASA Patent Waiver Regulations (14 CFR part 1245, subpart 1), NASA will acquire title to the subject invention (42 U.S.C. 2457, as amended, Sec. 305). If a waiver is not requested or granted, the contractor may request a license from NASA (see licensing of NASA inventions, 14 CFR part 1245, subpart 2). A subcontractor requesting a waiver must follow the procedures set forth in the REQUESTS FOR WAIVER OF RIGHTS—LARGE BUSINESS provision.

(h) *Reporting on utilization of subject inventions.* The Contractor agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the agency may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceeding undertaken by the agency in accordance with paragraph (i) of this section. As required by 35 U.S.C. 202(c)(5), the agency agrees it will not disclose such information to persons outside the Government without permission of the Contractor.

(i) *Preference for United States manufacture.* The Contractor agrees that any products embodying subject inventions or produced through the use of subject inventions shall be manufactured substantially in the United States. However, in individual cases, the requirement to manufacture substantially in the United States may be waived by NASA upon a showing by the Contractor that under the circumstances domestic manufacture is not commercially feasible.

(j) *March-in rights.* The Contractor agrees that, with respect to any subject invention in which it has acquired title, NASA has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Subcontractor, assignee, or exclusive licensee refuses such a request NASA has the right to grant such a license itself if the Federal agency determines that—

(1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this section has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject

invention in the United States is in breach of such agreement.

(k) *Special provisions for contracts with nonprofit organizotions.* If the Contractor is a nonprofit organization, it agrees that—

(1) Rights to a subject invention in the United States may not be assigned without the approval of NASA, except where such assignment is made to an organization which has one of its primary functions the management of inventions; *provided,* that such assignee will be subject to the same provisions as the Contractor;

(2) The Contractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when NASA deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and that it will give a preference to a small business firm when licensing a subject invention if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; *provided* that the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the contractor. However, the Contractor agrees that the Secretary of Commerce may review the Contractor's licensing program and decisions regarding small business applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when the Secretary's review discloses that the Contractor could take reasonable steps to more effectively implement the requirements of this paragraph.

(l) A copy of all submissions or requests required by this clause, plus a copy of any reports, manuscripts, publications, or similar material bearing on patent matters, shall be sent to the installation Patent Counsel in addition to any other submission requirements in the cooperative agreement. If any reports contain information describing a "subject invention" for which the contractor has elected or may elect title, NASA will use reasonable efforts to delay public release by NASA or publication by NASA in a NASA technical series, in order for a patent application to be filed, provided that the Contractor identify the information and the "subject invention" to which it relates at the time of submittal. If required by the Contracting Officer, the Contractor shall provide the filing date, serial number and title, a copy of the patent application, and a patent number and issue date for any "subject invention" in any country in which the Contractor has applied for patents.

§ 1274.914 Requests for waiver of rights—large business (XXX 1995).

(a) In accordance with the NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1, waiver of rights to any or all inventions made or that may be made under a NASA contract or subcontract with other than a small business firm or a domestic nonprofit organization may be requested at different time periods. Advance waiver of rights to any or all inventions that may be made under a contract or subcontract may be requested prior to the execution of the contract or subcontract, or within 30 days after execution by the selected contractor. In addition, waiver of rights to an identified invention made and reported under a contract or subcontract may be requested, even though a request for an advance waiver was not made or, if made, was not granted.

(b) Each request for waiver of rights shall be by petition to the Administrator and shall include an identification of the petitioner; place of business and address; if petitioner is represented by counsel, the name, address, and telephone number of the counsel; the signature of the petitioner or authorized representative; and the date of signature. No specific forms need be used, but the request should contain a positive statement that waiver of rights is being requested under the NASA Patent Waiver Regulations; a clear indication of whether the request is for an advance waiver or for a waiver of rights for an individual identified invention; whether foreign rights are also requested and, if so, the countries, and a citation of the specific Subpart or Subparts of the regulations under which such rights are requested; and the name, address, and telephone number of the party with whom to communicate when the request is acted upon. Requests for advance waiver of rights should, preferably, be included with the proposal, but in any event in advance of negotiations.

(c) Petitions for advance waiver, prior to contract execution, must be submitted to the Contracting Officer. All other petitions will be submitted to the Patent Representative designated in the contract.

(d) Petitions submitted with proposals selected for negotiation of a contract will be forwarded by the Contracting Officer to the installation Patent Counsel for processing and then to the Inventions and Contributions Board. The Board will consider these petitions and where the Board makes the findings to support the waiver, the Board will recommend to the Administrator that waiver be granted, and will notify the petitioner and the Contracting Officer of the Administrator's determination. The Contracting Officer will be informed by the Board whenever there is insufficient time or information or other reasons to permit a decision to be made without unduly delaying the execution of the contract. In the latter event, the petitioner will be so notified by the Contracting Officer. All other petitions will be processed by installation Patent Counsel and forwarded to the Board. The Board shall notify the petitioner of its action and if waiver is granted, the conditions, reservations, and obligations thereof will be included in the Instrument of Waiver. Whenever the Board notifies a petitioner of a recommendation adverse to, or different from, the waiver requested, the petitioner may request reconsideration under procedures set forth in the Regulations.

§ 1274.915 Restrictions on sale or transfer of technology to foreign firms or institutions (XXX 1995).

(a) The parties agree that access to technology developments under this Agreement by foreign firms or institutions must be carefully controlled. For purposes of this clause, a transfer includes a sale of the company, or sales or licensing of the technology. Transfers do not include:

(1) Sales of products or components,

(2) Licenses of software or documentation related to sales of products or components, or

(3) Transfers to foreign subsidiaries of the Recipient for purposes related to this Agreement.

(b) The Recipient shall provide timely notice to the Contracting Officer in writing of any proposed transfer of technology developed under this Agreement. If NASA determines that the transfer may have adverse consequences to the national security interests of the United States, or to the establishment of a robust United States industry, NASA and the Recipient shall jointly endeavor to find alternatives to the proposed transfer which obviate or mitigate potential adverse consequences of the transfer.

§ 1274.916 Liability and risk of loss (XXX 1995).

(a) With regard to activities undertaken pursuant to this agreement, neither party shall make any claim against the other, employees of the other, the other's related entities (e.g., contractors, subcontractors, etc.), or employees of the other's related entities for any injury to or death of its own employees or employees of its related entities, or for damage to or loss of its own property or that of its related entities, whether such injury, death, damage or loss arises through negligence or otherwise, except in the case of willful misconduct.

(b) To the extent that a risk of damage or loss is not dealt with expressly in this agreement, each party's liability to the other party arising out of this Agreement, whether or not arising as a result of an alleged breach of this Agreement, shall be limited to direct damages only, and shall not include any loss of revenue or profits or other indirect or consequential damages.

§ 1274.917 Additional funds (XXX 1995).

Pursuant to this agreement, NASA is providing a fixed amount of funding for activities to be undertaken under the terms of this cooperative agreement. NASA is under no obligation to provide additional funds. Under no circumstances shall the Recipient undertake any action which could be construed to imply an increased commitment on the part of NASA under this cooperative agreement.

§ 1274.918 Incremental funding (XXX 1995).

(a) Of the award amount indicated on the cover page of this agreement, only the obligated amount indicated on the cover page of this agreement is available for payment. NASA anticipates making additional allotments of funds as required,

(b) These funds will be obligated as appropriated funds become available without any action required of the Recipient. NASA is not obligated to make payments in excess of the total funds obligated.

§ 1274.919 Cost principles and accounting standards (XXX 1995).

The expenditure of Government funds by the Recipient and the allowability of costs recognized as a resource contribution by the Recipient (See clause entitled "Resource Sharing Requirements") shall be governed by the FAR cost principles, 48 CFR part 31. (If the Recipient is a consortium which includes non-commercial firm members, cost allowability for those members will be determined as follows: Allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A–87, "Cost Principles for State and Local Governments." The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A–122, "Cost Principles for Non-Profit Organizations." The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A–21, "Cost Principles for Educational Institutions." The allowability of costs incurred by hospitals is determined in accordance with the provisions of Appendix E of 45 CFR part 74, "Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals.") Recipient's method for accounting for the expenditure of funds must be consistent with Generally Accepted Accounting Principles.

§ 1274.920 Responsibilities of the NASA technical officer (XXX 1995).

(a) The NASA Grant Administrator and Technical Officer for this cooperative agreement are identified on the cooperative agreement cover sheet.

(b) The Grant Specialist shall serve as NASA's authorized representative for the administrative elements of all work to be performed under the agreement.

(c) The Technical Officer shall have the authority to issue written Technical Advice which suggests redirecting the project work (e.g., by changing the emphasis among different tasks), or pursuing specific lines of inquiry likely to assist in accomplishing the effort. The Technical Officer shall have the authority to approve or disapprove those technical reports, plans, and other technical information the Recipient is required to submit to NASA for approval. The Technical Officer is not authorized to issue and the Recipient shall not follow any Technical Advice which constitutes work which is not contemplated under this agreement; which in any manner causes an increase or decrease in the resource sharing or in the time required for performance of the project; which has the effect of changing any of the terms or conditions of the cooperative agreement; or which interferes with the Recipient's right to perform the project in accordance with the terms and conditions of this cooperative agreement.

§ 1274.921 Publications and reports: Non-proprietary research results (XXX 1995)

(a) NASA encourages the widest practicable dissemination of research results at all times during the course of the investigation consistent with the other terms of this agreement.

(b) All information disseminated as a result of the cooperative agreement, shall contain a statement which acknowledges NASA's support and identifies the cooperative agreement by number.

(c) Prior approval by the NASA Technical Officer is required only where the Recipient requests that the results of the research be published in a NASA scientific or technical publication. Two copies of each draft publication shall accompany the approval request.

(d) Reports shall contain full bibliographic references, abstracts of publications and lists of all other media in which the research was discussed. The Recipient shall submit the following technical reports:

(1) A performance report for every year of the cooperative agreement (except the final year). Each report is due 60 days before the anniversary date of the cooperative agreement and shall describe research accomplished during the report period.

(2) A summary of research, which is due by 90 days after the expiration date of the cooperative agreement, regardless of whether or not support is continued under another cooperative agreement. This report is intended to summarize the entire research accomplished during the duration of the cooperative agreement.

(e) Performance reports and summaries of research shall display the following on the first page:

(1) Title of the cooperative agreement.

(2) Type of report.

(3) Period covered by the report.

(4) Name and address of the Recipient's organization.

(5) Cooperative agreement number.

(f) An original and two copies, one of which shall be of suitable quality to permit micro-reproduction, shall be sent as follows:

(1) Original—Grant Officer.

(2) Copy—Technical Officer

(3) Micro-reproducible copy—NASA Center for Aerospace Information (CASI), Attn: Accessioning Department, 800 Elkridge Landing Road, Linthicum Heights, Maryland 21090–2934.

§ 1274.922 Suspension or revocation (XXX 1995).

(a) This cooperative agreement may be suspended by NASA or revoked in whole or in part by the Recipient or by NASA after consultation with the other party. NASA may revoke the agreement, for example, if the Recipient is not making anticipated technical progress, if the Recipient materially fails to comply with the terms of the agreement, or if appropriated funds are not available to support the program.

(b) Suspension of the cooperative agreement by NASA may occur when the Recipient has failed to comply with the terms of the cooperative agreement. Upon reasonable notice to the Recipient, NASA may temporarily suspend the cooperative agreement and withhold further payments, pending corrective action by the Recipient or a decision by NASA to revoke the cooperative agreement.

(c) In the event of revocation, the Recipient shall not be entitled to additional funds or payments except as may be required by the Recipient to meet commitments which had in the judgment of NASA become firm prior to the effective date of revocation and are otherwise appropriate. In no event, shall these additional funds or payments exceed the amount of the next payable milestone billing amount.

§ 1274.923 Equipment and other property (XXX 1995).

(a) NASA cooperative agreements permit acquisition of technical property required for the conduct of research. Acquisition of property costing in excess of $5,000 and not included in the approved proposal budget requires the prior approval of the Grant Officer unless the item is merely a different model of an item shown in the approved proposal budget.

(b) Recipients may not purchase, as a direct cost to the cooperative agreement, items of non-technical property, examples of which include but are not limited to office equipment and furnishings, air conditioning equipment, reproduction and printing equipment, motor vehicles, and automatic data processing equipment. If the Recipient requests an exception, the Recipient shall submit a written request for Grant Officer approval, prior to purchase by the Recipient, stating why the Recipient cannot charge the property to indirect costs.

(c) Under no circumstances shall cooperative agreement funds be used to acquire land or any interest therein, to acquire or construct facilities (as defined in 48 CFR (FAR) 45.301), or to procure passenger carrying vehicles.

(d) The government shall have title to equipment and other personal property acquired with government funds. Such property shall be disposed of pursuant to 48 CFR (FAR) 45.603. The Recipient shall have title to equipment and other personal property acquired with Recipient funds. Such property shall remain with the Recipient at the conclusion of the cooperative agreement.

(e) Title to Government furnished equipment (including equipment, title to which has been transferred to the Government pursuant to 14 CFR 1260.408(d) prior to completion of the work) will remain with the Government.

(f) The Recipient shall establish and maintain property management standards for nonexpendable personal property and otherwise manage such property as set forth in 14 CFR 1260.507.

(g) Annually by October 31, the Recipient shall submit 2 copies of an inventory report which lists all Government furnished equipment and equipment acquired with Government funds in their custody as of September 30. The Recipient shall submit 2 copies of a final inventory report by 60 days after the expiration date of the cooperative agreement. The final inventory report shall contain a list of all Recipient acquired equipment and a list of Government furnished equipment. Annual and final inventory reports shall reflect the elements required in 14 CFR 1260.507(a)(1)(i), (ii), (iii), (v) through (viii) and beginning and ending dollar value totals for the reporting period and be submitted to the grant officer. When Government furnished equipment is no longer needed, the Recipient shall notify the Contracting Officer, who will provide disposition instructions.

§ 1274.924 Civil rights (XXX 1995).

Work on NASA cooperative agreements is subject to the provisions of Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352; 42 U.S.C. 2000d–l), Title IX of the Education Amendments of 1972 (20 U.S.C. 1680 *et seq.*), section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), and the NASA implementing regulations (14 CFR parts 1250, 1251, and 1252).

§ 1274.925 Subcontracts (XXX 1995).

(a) NASA Grant Officer consent is required for subcontracts over $100,000, if not accepted by NASA in the original proposal, and may be requested through the Contract Administrator. The Recipient shall provide the following information to the Contract Administrator for forwarding to the Grant Officer:

(1) A copy of the proposed subcontract.

(2) Basis for subcontractor selection.

(3) Justification for lack of competition when competitive bids or offers are not obtained.

(4) Basis for award cost or award price.

(b) The Recipient shall utilize small business concerns, small disadvantaged business concerns, Historically Black Colleges and Universities, minority educational institutions, and women-owned small business concerns as subcontractors to the maximum extent practicable. The Federal Acquisition Streamlining Act (FASA) requires that NASA obligate in each fiscal year five percent (5%) of the total value of all prime and subcontract awards to small disadvantaged businesses. FASA also established that NASA would participate in the Government-wide objective to award at least five percent (5%) of the total value of all prime and subcontract awards to small businesses owned and controlled by women.

§ 1274.926 Clean Air-Water Pollution Control Acts (XXX 1995).

If this cooperative agreement or supplement thereto is in excess of $100,000, the Recipient agrees to notify the Contract Administrator promptly of the receipt, whether prior or subsequent to the Recipient's acceptance of this cooperative agreement, of any communication from the Director, Office of Federal Activities, Environmental Protection Agency (EPA), indicating that a facility to be utilized under or in the performance of this cooperative agreement or any subcontract thereunder is under consideration to be listed on the EPA "List of Violating Facilities" published pursuant to 40 CFR 15.20. By acceptance of a cooperative agreement in excess of $100,000, the Recipient:

(a) Stipulates that any facility to be utilized thereunder is not listed on the EPA "List of Violating Facilities" as of the date of acceptance;

(b) agrees to comply with all requirements of section 114 of the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.* as amended by Pub. L. 91–604) and 308 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.* as amended by Pub. L. 92–500) relating to inspection, monitoring, entry, reports and information, and all other requirements specified in the aforementioned sections, as well as all regulations and guidelines issued thereunder after award of and

applicable to the cooperative agreement; and

(c) agrees to include the criteria and requirements of this clause in every subcontract hereunder in excess of $100,000, and to take such action as the Contract Administrator may direct to enforce such criteria and requirements.

§ 1274.927 Debarment and suspension and drug-free workplace (XXX 1995).

NASA cooperative agreements are subject to the provisions of 14 CFR part 1265, Government-wide Debarment and Suspension (Nonprocurement) and Government-wide requirements for Drug-Free Workplace, unless excepted by 14 CFR 1265.110 or 1265.610.

§ 1274.928 Foreign national employee investigative requirements (XXX 1995).

(a) The Recipient shall submit a properly executed Name Check Request (NASA Form 531) and a completed applicant fingerprint card (Federal Bureau of Investigation Card FD–258) for each foreign national employee requiring access to a NASA Installation. These documents shall be submitted to the Installation's Security Office at least 75 days prior to the estimated duty date. The NASA Installation Security Office will request a National Agency Check (NAC) for foreign national employees requiring access to NASA facilities. The NASA Form 531 and fingerprint card may be obtained from the NASA Installation Security Office.

(b) The Installation Security Office will request from NASA Headquarters, International Relations Division (Code IR), approval for each foreign national's access to the Installation prior to providing access to the Installation. If the access approval is obtained from NASA Headquarters prior to completion of the NAC and performance of the cooperative agreement requires a foreign national to be given access immediately, the Technical Officer may submit an escort request to the Installation's Chief of Security.

§ 1274.929 Restrictions on lobbying (XXX 1995).

This award is subject to the provisions of 14 CFR part 1271 "New Restrictions on Lobbying."

§ 1274.930 Travel and transportation (XXX 1995).

(a) For travel funded by the government under this agreement, section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 App. U.S.C. 1517) (Fly America Act) requires the Recipient to use U.S.-flag air carriers for international air transportation of personnel and property to the extent that service by those carriers is available.

(b) Department of Transportation regulations, 49 CFR part 173, govern Recipient shipment of hazardous materials and other items.

§ 1274.931 Officials not to benefit (XXX 1995).

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this agreement, or to any benefit arising from it. However, this clause does not apply to this agreement to the extent that this agreement is made with a corporation for the corporation's general benefit.

§ 1274.932 Electronic funds transfer payment methods (XXX 1995).

Payments under this cooperative agreement will be made by the Government either by check or electronic funds transfer (through the Treasury Fedline Payment System (FEDLINE) or the Automated Clearing House (ACH)), at the option of the Government. After award, but no later than 14 days before an invoice is submitted, the Recipient shall designate a financial institution for receipt of electronic funds transfer payments, and shall submit this designation to the Grant Officer or other Government official, as directed.

(a) For payment through FEDLINE, the Recipient shall provide the following information:

(1) Name, address, and telegraphic abbreviation of the financial institution receiving payment.

(2) The American Bankers Association 9-digit identifying number for wire transfers of the financing institution receiving payment if the institution has access to the Federal Reserve Communication System.

(3) Payee's account number at the financial institution where funds are to be transferred.

(4) If the financial institution does not have access to the Federal Reserve Communications System, name, address, and telegraphic abbreviation of the correspondent financial institution through which the financial institution receiving payment obtains wire transfer activity. Provide the telegraphic abbreviation and American Bankers Association identifying number for the correspondent institution.

(b) For payment through ACH, the Recipient shall provide the following information:

(1) Routing transit number of the financial institution receiving payment (same as American Bankers Association identifying number used for FEDLINE).

(2) Number of account to which funds are to be deposited.

(3) Type of depositor account ("C" for checking, "S" for savings).

(4) If the Recipient is a new enrollee to the ACH system, a "Payment Information Form," SF 3881, must be completed before payment can be processed.

(c) In the event the Recipient, during the performance of this cooperative agreement, elects to designate a different financial institution for the receipt of any payment made using electronic funds transfer procedures, notification of such change and the required information specified above must be received by the appropriate Government official 30 days prior to the date such change is to become effective.

(d) The documents furnishing the information required in this clause must be dated and contain the signature, title, and telephone number of the Recipient official authorized to provide it, as well as the Recipient's name and contract number.

(e) Failure to properly designate a financial institution or to provide appropriate payee bank account information may delay payments of amounts otherwise properly due.

§ 1274.933 Retention and examination of records (XXX 1995).

Financial records, supporting documents, statistical records, and all other records (or microfilm copies) pertinent to this cooperative agreement shall be retained for a period of 3 years, except that if any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved, and records for nonexpendable property acquired with cooperative agreement funds shall be retained for 3 years after its final disposition. The retention period starts from the date of the submission of the final invoice. The Administrator of NASA and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of the Recipient and of subcontractors to make audits, examinations, excerpts, and transcripts. All provisions of this clause shall apply to any subcontractor performing substantive work under this cooperative agreement.

Appendix A—Contract Provisions

All contracts awarded by a Recipient, including small purchases, shall contain the following provisions if applicable:

1. Equal Employment Opportunity—All contracts shall contain a provision requiring compliance with E.O. 11246,

"Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

2. Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c)—All contracts and subgrants in excess of $2,000 for construction or repair awarded by Recipients and subrecipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The Recipient shall report all suspected or reported violations to NASA.

3. Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333)—Where applicable, all contracts awarded by Recipients in excess of $2,000 for construction contracts and in excess of $2,500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Subsection 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Subsection 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

4. Rights to Inventions Made Under a Contract or Agreement—Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the Recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

5. Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*), as amended—Contracts and subgrants of amounts in excess of $100,000 shall contain a provision that requires the Recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 *et seq.*). Violations shall be reported to NASA and the Regional Office of the Environmental Protection Agency (EPA).

6. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Recipient.

7. Debarment and Suspension (E.O.'s 12549 and 12689)—No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

Appendix B—Reports

1. Individual procurement action report (NASA Form 507).

The grant officer is responsible for submitting NASA Form 507 for all cooperative agreement actions.

2. Inventory listings of equipment.

As provided in paragraph (g) of § 1274.923, an annual inventory listing of Government furnished equipment will be submitted by October 31 of each year. Upon receipt of each annual inventory listing, the administrative grant officer will provide 1 copy to the NASA installation financial management officer and 1 copy to the NASA installation industrial property officer. A final inventory report of Government furnished equipment and grantee acquired equipment is due 60 days after the end of the cooperative agreement, in accordance with subpart I. Upon receipt of the final inventory report, the administrative grant officer will provide 1 copy to the technical officer and 1 copy to the NASA Installation industrial property officer.

3. Disclosure of lobbying activities (SFLLL).

(a) Grant officers shall provide one copy of each SF LLL furnished under 14 CFR 1271.110 to the Procurement Officer for transmittal to the Director, Analysis Division (Code HC).

(b) Suspected violations of the statutory prohibitions implemented by 14 CFR part 1271 shall be reported to the Director, Contract Management Division (Code HK).

Appendix C—Listing of Exhibits

Exhibit A—Format for Cooperative Agreement

National Aeronautics and Space Administration Cooperative Agreement

1. To:
2. Cooperative Agreement No.:
3. Supplement No.:
4. Effective Date:
5. Expiration Date:
6. For Research Entitled:
7. Award History
   Previous Amount:
   This Action:
   Total to Date:
   Funding History
   Previous Obligation:
   This Action:
   Total to Date:
8. NASA Procurement Request No.:
   PPC Code:
   Appropriation:
9. Points of Contact:
   Technical Officer:
   Grant Administrator:
   Payment:

United States of America

Recipient

Grants Officer
Date:

Authorized Representative
Date:

[FR Doc. 95–15536 Filed 6–26–95; 8:45 am]
BILLING CODE 7510–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Chapter II

Meetings of the Indian Gas Valuation Negotiated Rulemaking Committee

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of meetings.

SUMMARY: The Secretary of the Department of the Interior (Department) has established an Indian Gas Valuation Negotiated Rulemaking Committee (Committee) to develop specific recommendations with respect to Indian gas valuation under its responsibilities imposed by the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. 1701 *et seq.* (FOGRMA). The Department has determined that the establishment of this Committee is in the public interest and will assist the Agency in performing its duties under FOGRMA.

DATES: The Committee will have meetings on the dates and at the times shown below:

Wednesday, July 12, 1995—9:30 a.m. to 5:00 p.m.
Thursday, July 13, 1995—8:00 a.m. to 5:00 p.m.
Wednesday, August 9, 1995—9:30 a.m. to 5:00 p.m.
Thursday, August 10, 1995—8:00 a.m. to 5:00 p.m.

ADDRESSES: The July meetings will be held in the 25th floor board room at Council of Energy Resource Tribes (CERT), 1999 Broadway, Denver, Colorado 80203.

The August meetings will be held in the 45th floor meeting room at Holme Roberts & Owen LLC, 1700 Lincoln, Suite 4100, Denver, Colorado 80203.

Written statements may be submitted to Mr. Donald T. Sant, Deputy Associate Director for Valuation and Operations, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS–3100, Denver, CO 80225–0165.

FOR FURTHER INFORMATION CONTACT: Mr. Donald T. Sant, Deputy Associate Director for Valuation and Operations, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS–3100, Denver, Colorado, 80225–0165, telephone number (303) 231–3899, fax number (303) 231–3194. At Holme Roberts & Owen LLC, you may contact Marla Williams at (303) 861–7000 or Lynn Malloy (303) 866–0482. At CERT you may contact (303) 297–2378.

SUPPLEMENTARY INFORMATION:

The location and dates of future meetings will be published in the **Federal Register**.

The meetings will be open to the public without advanced registration. Public attendance may be limited to the space available. Members of the public may make statements during the meetings, to the extent time permits, and file written statements with the Committee for its consideration.

Written statements should be submitted to the MMS address listed above. Minutes of Committee meetings will be available for public inspection and copying 10 days following each meeting at the Denver Federal Center, Bldg. 85, Denver, CO 80225. In addition, the materials received to date during the input sessions are available for inspection and copying at the same address.

Dated: June 20, 1995.

James W. Shaw

Associate Director for Royalty Management

[FR Doc. 95–15770 Filed 6–26–95; 8:45 am]
BILLING CODE 4310–MR–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 140 through 147

[CGD 95–016]

Outer Continental Shelf Activities

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: The Coast Guard is considering amending its regulations on Outer Continental Shelf (OCS) activities. Possible amendments may include improvements to the personnel safety regulations for fixed OCS facilities, new regulations governing the operation of mobile inland drilling units (MIDUs) on the OCS, and an alignment of the requirements for foreign vessels engaged in OCS activities with those for U.S. vessels similarly engaged. The Coast Guard requests comments on these as well as other subjects related to OCS activities.

DATES: Comments must be received on or before September 25, 1995.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 95–016), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this project. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. James M. Magill, Offshore Activities Branch, (202) 267–2307.

SUPPLEMENTARY INFORMATION:

Submission of Comments

Persons submitting comments should include their names and addresses, identify this project (CGD 95–016), and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard plans no public meeting. Persons may request a public meeting by writing to the Marine Safety Council at the address under **ADDRESSES.** The request should include the reasons why a meeting would be beneficial. If it determines that the opportunity for oral presentations will aid this project, the Coast Guard will hold a public meeting at a time and place announced by a later notice in the **Federal Register.**

Discussion of Project

The Coast Guard is considering revising its regulations on Outer Continental Shelf (OCS) activities (33 CFR parts 140 through 147) to address new developments in the offshore industry; to implement, more fully, existing legislation and interagency agreements; and to respond to recommendations from previous requests for comments and from casualty investigations. The major areas under consideration include workplace safety and health, design and equipment, lifesaving equipment, fire protection, and operations, particularly on fixed OCS facilities. One concept

under review is the alignment of the requirements applicable to foreign vessels engaged in OCS activities with those applicable to U.S. vessels similarly engaged. Also, the Coast Guard is considering regulations for mobile inland drilling units (MIDUs). Under current Coast Guard policy, MIDUs are allowed to operate on the OCS out to a defined boundary line if they meet requirements for lifesaving, firefighting, and operations similar to those for fixed OCS facilities.

Comments are requested on these and other subjects related to safety on the OCS. After review of the comments, the Coast Guard will determine whether to go forward with this project. If the Coast Guard decides to go forward, it will publish an NPRM in a later issue of the **Federal Register** for review and comment by the public.

Dated: June 15, 1995.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–15758 Filed 6–26–95; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[I.D. 061995B]

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Authorization for Commercial Fisheries; Proposed List of Fisheries; Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearings; request for comments.

SUMMARY: NMFS is announcing dates and locations for nine public hearings that will address the proposed rule to implement the new regime under the Marine Mammal Protection Act to govern the taking of marine mammals incidental to commercial fishing operations and the proposed list of fisheries (LOF) included in the proposed rule.

DATES: Written comments on the proposed rule and the interactions between commercial fisheries and ESA-listed stocks must be submitted by July 31, 1995. Written comments on the proposed list of fisheries will be accepted until September 14, 1995. Public hearings on all aspects of the proposed rule will be held in June and July. See **SUPPLEMENTARY INFORMATION** for specific dates and times of the hearings.

ADDRESSES: Written comments should be sent to, and copies of the proposed rule are available from, Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910 (FAX: 301–713–0376). Copies of the environmental assessment are available from the above address or by accessing NMFS "Home Page" on the World Wide Web at http://kingfish.ssp.nmfs.gov:80/home-page.html. Public hearings will be held in Alaska, California, Maryland, Massachusetts, New Jersey, New York, North Carolina, and Washington. See **SUPPLEMENTARY INFORMATION** for dates and locations of the hearings.

FOR FURTHER INFORMATION CONTACT: Margot Bohan, Office of Protected Resources, 301–713–2322; Dan Morris, Northeast Region, 508–281–9388; Jeff Brown, Southeast Region, 813–570–5301; Jim Lecky, Southwest Region, 310–980–4015; Brent Norberg, Northwest Region, 206–526–6140; Bridget Mansfield, Alaska Region, 907–586–7235.

SUPPLEMENTARY INFORMATION: On June 16, 1995, NMFS issued a proposed rule (60 FR 31666) to establish a new regime for the taking of marine mammals incidental to commercial fishing operations, pursuant to section 118 of the MMPA. Among other things, issues addressed in the proposed rule include: The authorization process for the incidental take of species and stocks of marine mammals by vessels engaged in commercial fishing, the issuance of a proposed LOF categorized according to frequency of incidental serious injury and mortality of marine mammals, new classification criteria for the categorization of commercial fisheries based on level of take relative to potential biological removal, the new requirements for commercial fishers to report any marine mammal incidental injury and/or mortality within 48 hours of the end of a fishing trip, and the definition of zero mortality rate goal.

The public will have an opportunity to provide oral or written testimony at the public hearings. NMFS requests that persons planning to speak at the hearings provide a written copy of their testimony to NMFS at the hearing. These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the appropriate regional contact (see **FOR FURTHER INFORMATION CONTACT**).

The hearings on the proposed rule and the proposed LOF will be held as follows:

1. Wednesday, June 28, 1995, 6:00 p.m. to 9:00 p.m.—King's Grant Inn, Route 128 at Trask Lane, Danvers, MA 01923;

2. Thursday, July 6, 1995, 6:30 p.m. to 9:30 p.m.—Forsythe National Wildlife Refuge Auditorium, Gray Creek Road (off Route 9), Oceanville, NJ 08230;

3. Monday, July 10, 1995, 3:00 p.m. to 5:00 p.m.—1325 East-West Highway, Bldg. SSMC2, Rm. 2358, Silver Spring, MD 20910;

4. Wednesday, July 12, 1995, 6:30 p.m. to 9:30 p.m.—Carousel Hotel and Resort, 118th Street and Coastal Highway, Ocean City, MD 21842;

5. Wednesday, July 12, 1995, 1:00 p.m. to 4:00 p.m.—Renaissance Hotel, 111 East Ocean Boulevard, Long Beach, CA 90802;

6. Wednesday, July 12, 1995, 7:30 p.m. to 10:00 p.m.—Holiday Inn, 3845 Veteran's Highway, Ronkonkoma, NY 11779;

7. Tuesday, July 18, 1995, 9:00 a.m. to 12 noon—Federal Building, Tlingit Room (1st floor), 222 West 7th Avenue, Anchorage, AK 99513;

8. Wednesday, July 19, 1995, 7:00 p.m. to 10:00 p.m., Duke University Marine Lab Auditorium, Pivers Island Rd., Beaufort, NC 28516; and

9. Wednesday, July 19, 1995, 10:00 a.m. to 12:00 p.m., 7600 Sand Point Way, NE., Building 9 Auditorium, Seattle, WA 98115.

Dated: June 20, 1995.

Patricia Montanio,

Acting Office Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–15682 Filed 6–22–95; 12:40 pm]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 60, No. 123

Tuesday, June 27, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Access Board; Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has scheduled its regular business meetings to take place in Washington, DC on Tuesday and Wednesday, July 11–12, 1995 at the times and location noted below.

DATES: The schedule of events is as follows:

Tuesday, July 11, 1995

9:00–12 Noon Vision Statement Work Group.

1:00–5:30 pm Rulemaking Priorities and Strategy Work Group (closed meeting).

Wednesday, July 12, 1995

10:00–11:30 am Technical Programs Committee.

1:30–3:30 pm Board Meeting.

ADDRESSES: The meetings will be held at: Marriott at Metro Center, 775 12th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact Lawrence W. Roffee, Executive Director, (202) 272–5434 ext. 714 (voice) and (202) 272–5449 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting, the Access Board will consider the following agenda items:

- Approval of the Minutes of the May 12, 1995 Board Meeting.
- Executive Director's Report.
- Vision Statement Work Group Status Report.
- Report on Rulemaking Priorities and Strategy Work Group.
- Federal Facilities Rulemaking—Objective, Strategy, and Priority.
- Rulemaking Plan.
- Fiscal Years 1994 and 1995 Research Projects.
- Fiscal Year 1996 Research Planning.
- Removal of Obsolete Rule on Employee Responsibilities and Conduct.

Some meetings or items may be closed to the public as indicated above. All meetings are accessible to persons with disabilities. Sign language interpreters and an assistive listening system are available at all meetings.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 95–15698 Filed 6–26–95; 8:45 am]

BILLING CODE 8150–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 751]

Expansion of Foreign-Trade Zone 9, Oahu, Hawaii

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the Department of Business, Economic Development & Tourism of the State of Hawaii, grantee of Foreign-Trade Zone 9, for authority to expand its general-purpose zone to include three sites on the island of Oahu, Hawaii, was filed by the Board on August 24, 1994 (FTZ Docket 28–94, 59 FR 46390, 9/8/94); and

Whereas, notice inviting public comment was given in **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board has found that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 9 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 19th day of June 1995.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest: John J. Da Ponte, Jr., Executive Secretary.

[FR Doc. 95–15609 Filed 6–26–95; 8:45 am]

BILLING CODE 3510–DS–P

[Docket 32–95]

Foreign-Trade Zone 49, Newark, NJ; Proposed Foreign-Trade Subzone; Bayway Refining Company (Oil Refinery), Linden, NJ

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port Authority of New York and New Jersey, grantee of FTZ 49, requesting special-purpose subzone status for the oil refinery complex of Bayway Refining Company (Bayway) (subsidiary of Tosco Corporation), located in Linden, New Jersey. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on June 19, 1995.

The refinery complex (1,250 acres) is located at 1400 Park Avenue, Linden (Union County), New Jersey, some 10 miles south of Newark. The refinery (220,000 barrels of crude oil per day; 950 employees) is used to produce fuels and petrochemical feedstocks. Fuels produced include gasoline, jet fuel, diesel fuel, fuel oil, kerosene, and naphtha. Petrochemical feedstocks include butane, butylene, propane, ethylene, propylene, and petroleum gas. Refinery by-products include petroleum coke. All of the crude oil (80% of inputs), some feedstocks and some blendstocks are sourced abroad.

Zone procedures would exempt Bayway from Customs duty payments on the foreign products used in its exports. On domestic sales, the company would be able to choose the finished product duty rate (nonprivileged foreign status—NPF) on certain petrochemical feedstocks and refinery by-products (duty-free). The duty on crude oil ranges from 5.25 to 10.5/barrel. The application indicates that the savings from zone procedures

would help improve the refinery's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 28, 1995. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to September 11, 1995).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, Room 3718, Federal Office Building, 26 Federal Plaza, New York, NY 10278

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: June 19, 1995.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–15608 Filed 6–26–95; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–588–707]

Granular Polytetrafluoroethylene Resin from Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of Antidumping Duty Administrative Review.

SUMMARY: On January 30, 1995, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of its 1992–93 administrative review of the antidumping duty order on granular polytetrafluoroethylene (PTFE) resin from Japan (60 FR 5622). The review covers one manufacturer/exporter. The review period is August 1, 1992, through July 31, 1993. We gave interested parties an opportunity to comment on our preliminary results. Based upon our analysis of the comments received we have changed the margin calculation. The final margin for Daikin Industries (Daikin) is listed below in the section "Final Results of Review."

EFFECTIVE DATE: June 27, 1995.

FOR FURTHER INFORMATION CONTACT: Charles Riggle or Michael Rill, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On January 30, 1995, the Department published in the **Federal Register** the preliminary results of its 1992–93 administrative review of the antidumping duty order on granular PTFE resin from Japan. There was no request for a hearing. The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Applicable Statutes and Regulations

Unless otherwise stated, all citations to the statutes and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Scope of the Review

The antidumping duty order covers granular PTFE resins, filled or unfilled. The order explicitly excludes PTFE dispersions in water and PTFE fine powders. During the period covered by this review, such merchandise was classified under item number 3904.61.90 of the Harmonized Tariff Schedule (HTS). We are providing this HTS number for convenience and Customs purposes only. The written description of scope remains dispositive.

The review covers one manufacturer/exporter of granular PTFE resin, Daikin. The review period is August 1, 1992, through July 31, 1993.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received a case brief from petitioner, E. I. Du Pont de Nemours & Company (Du Pont), and case and rebuttal briefs from Daikin.

Issues Raised by Du Pont

Comment 1: Du Pont argues that, although the Department determined that Daikin's U.S. sales included both purchase price and exporter's sales price (ESP) transactions, the Department should treat all of Daikin's U.S. sales as ESP transactions. Du Pont claims that Daikin's wholly-owned U.S. subsidiary, Daikin America, Inc. (DAI), is actively involved in all critical aspects of Daikin's U.S. sales process. Du Pont claims that DAI has become a full-fledged sales, marketing and technical services organization, and that DAI now runs Daikin's PTFE business in the United States. Du Pont claims that DAI's activities and responsibilities go beyond the more limited "paper pusher" role of a related party in purchase price transactions.

Daikin argues that the Department correctly determined that some of Daikin's U.S. sales were purchase price sales, and that the facts surrounding Daikin's purchase price sales are easily distinguishable from those sales treated as ESP transactions. Daikin argues that, as in the first review, the Department applied its three-prong test for determining whether a transaction should be treated as a purchase price or as an ESP sale. Daikin notes that, as in the first review, the Department determined that sales meeting the criteria set forth in the test were properly treated as purchase price sales. *See Granular Polyvtetrafluoroethylene Resin From Japan; Final Results of Antidumping Duty Administrative Review*, 58 FR 50343 (September 27, 1993) (*PTFE I*).

DOC Position: We agree with Daikin. In reaching our preliminary results of review, we examined DAI's role to determine whether Daikin's sales were purchase price or ESP. *See Granular Polytetrafluoroethylene Resin From Japan; Preliminary Results of Antidumping Duty Administrative Review*, 60 FR 5622 (January 30, 1995). We applied a three-part test, as outlined in the preliminary results, and in *PTFE I*, 58 FR at 50344. For certain sales, DAI merely facilitated the sales process, which was handled directly by Daikin in Japan. Daikin controlled pricing and selling decisions, while DAI acted as a communication link between Daikin and unrelated commission agents responsible for making sales. There is no evidence that would indicate that DAI performed more than routine selling functions with regard to these sales, which we therefore continue to regard as purchase price transactions.

For other sales we found that DAI had inventoried the subject merchandise in warehouses in the United States based upon anticipated demand.

We determined that these sales were ESP sales, which Daikin has not challenged.

Comment 2: Du Pont claims that the Department failed to include several ESP sales in the preliminary results. The Department analyzed ESP transactions with entry dates that fell within the period of review (POR). Du Pont argues that the Department's established policy is to analyze ESP sales by date of sale rather than date of entry, because ESP sales frequently enter the United States prior to the actual date of sale. Du Pont argues that the Department should revise its calculations to analyze ESP sales by sale date instead of entry date.

Daikin agrees that the Department's calculations should be revised in order to capture all ESP transactions with sale dates during the POR.

DOC Position: We agree. We erroneously analyzed ESP sales by entry date rather than sale date, as is our established practice. We have revised the calculations for these final results.

Issue Raised by Daikin

Comment 3: Daikin argues that the Department should reduce the quantity sold on U.S. sales by the quantity of returned merchandise in order to account for losses incurred by Daikin for the replacement of defective merchandise, which, Daikin stated, cannot be resold. Daikin notes that, according to the Department's analysis memorandum, the Department intended to adjust the quantity sold by the quantity of returned merchandise.

Antidumping Duty Order on Granular Polytetrafluoroethylene Resin from Japan—Analysis Memorandum for Preliminary Results of Second Review of Daikin Industries (December 2, 1994) (Analysis Memorandum).

Daikin states that such an adjustment is necessary in order to avoid double counting the costs and expenses associated with returned merchandise, because all expenses related to returns are reported under separate variables and are already incorporated in the margin calculation. According to Daikin, failure to make the adjustment would result in the same merchandise contributing a second time to an increase in dumping duties when the Department calculates duties for the returned quantity. Furthermore, Daikin argues that the Department routinely adjusts for returns by deducting the amount returned from the original transaction.

DOC Position: We agree with Daikin. We intended to adjust the quantity of U.S. sales by deducting the quantity of returned defective merchandise. *Analysis Memorandum* at 2. The returned merchandise can be tied to the related sale by invoice number. We made a similar adjustment for returns associated with home market sales. We have revised our calculations for these final results to adjust U.S. sales quantities to account for returns.

Final Results of the Review

As a result of the comments received, we have revised our preliminary results and determine that the following margin exists:

Manufacturer/exporter	Period	Margin (percent)
Daikin Industries	08/01/92–07/31/93.	23.33

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a)(1) of the Tariff Act:

(1) The cash deposit rate for Daikin will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be 91.74 percent, the "all others" rate from the LTFV investigation, for the reasons explained in *PTFE I*

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOS) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d)(1). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: June 21, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–15610 Filed 6–26–95; 8:45 am]

BILLING CODE 3510–DS–P

Beckman Research Institute et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 95–001. *Applicant:* Beckman Research Institute of the City of Hope, Duarte, CA 91010. *Instrument:* Mass Spectrometer, Model MAT 900. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* See notice at 60 FR 5166, January 26, 1995. *Reasons:* The foreign instrument provides: (1) capability of switching modes between scans based on results of the previous scan, (2) magnetic sector operations and (3) high sensitivity with electrospray. *Advice Received From:* National Institutes of Health, April 25, 1995.

Docket Number: 95–002. *Applicant:* Metropolitan Water District of Southern California, La Verne, CA 91750. *Instrument:* Mass Spectrometer, Model Autospec. *Manufacturer:* Fisons, United Kingdom. *Intended Use:* See notice at 60 FR 7168, February 7, 1995. *Reasons:* The foreign instrument provides

magnetic sector design permitting both high and low energy MS/MS with resolution to 60 000 and accuracy to ±0.002 dalton to eliminate chemical interferences. *Advice Received From:* National Institutes of Health, April 25, 1995.

Docket Number: 95–006. *Applicant:* Northwestern University, Evanston, IL 60208-2150. *Instrument:* Mass Spectrometer, Model OPTIMA. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* See notice at 60 FR 9662, February 21, 1995. *Reasons:* The foreign instrument provides: (1) on-line and dual-microinlet sample preparation and (2) high accuracy, high precision simultaneous multi-isotope measurements of gaseous species. *Advice Received From:* National Institutes of Health, April 25, 1995.

Docket Number: 95–009. *Applicant:* University of Texas at Austin, Austin, TX 78712. *Instrument:* Precise Range and Range-rate Equipment Satellite Tracking Ground Station. *Manufacturer:* Dornier GmbH, Germany. *Intended Use:* See notice at 60 FR 13700, March 14, 1995. *Reasons:* The foreign instrument provides: (1) a regenerative, coherent X-band transponder for precise range and range rate measurements and (2) an S-band receiver for measurement of S/X-band delay difference to permit operation as a ground station for the ERS-2 satellite. *Advice Received From:* The Satellite Research Lab, NOAA, April 25, 1995.

The National Institutes of Health and The Satellite Research Lab advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel

Director, Statutory Import Programs Staff

[FR Doc. 95–15611 Filed 6–26–95; 8:45 am]

BILLING CODE 3510–DS–F

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 94–145R. *Applicant:* Miami University, Office of Purchasing, 213 Roudebush Hall, Oxford, OH 45056. *Instrument:* Cryostage. *Manufacturer:* Linkham Scientific Instruments, Ltd., United Kingdom. *Intended Use:* Original notice of this resubmitted application was published in the FEDERAL REGISTER of January 4, 1995.

Docket Number: 95–043. *Applicant:* Indiana University Medical Center, Department of Radiation Oncology, 535 Barnhill Drive, Indianapolis, IN 46202-5289. *Instrument:* Radiation Therapy Simulator, Model Simulix-MC. *Manufacturer:* Oldelft, The Netherlands. *Intended Use:* The instrument will be used for training resident radiation oncologists and student radiation therapists in the use and operation of this equipment. *Application Accepted by Commissioner of Customs:* June 2, 1995.

Docket Number: 95–044. *Applicant:* The University of Iowa, Department of Chemical and Biochemical Engineering, Iowa City, IA 52242. *Instrument:* Laser Light Scattering Correlator and Monomode Fiber Optical Goniometer System. *Manufacturer:* AL - Laser Vertriebsgesellschaft mbH, Germany. *Intended Use:* The instrument will be used to study polyphenolics, polycarbohydrates, proteins, surfactants of varying types, and whole cells (yeast, bacteria and insect cells). The experiments will consist of measurements of polymer characteristics (mass, size, force) to confirm or assess the state of purity of commercially purchased samples or samples prepared in the labs which are used as standards during other tests. The instrument will also be used extensively in Ph.D. Dissertation coursework by students operating the instrument collecting and analyzing the data, and characterizing the various samples. *Application Accepted by Commissioner of Customs:* June 2, 1995.

Docket Number: 95–045. *Applicant:* The Scripps Research Institute, 10666 N. Torrey Pines Road, La Jolla, CA 92037. *Instrument:* Mass Spectrometer System, Model API 100. *Manufacturer:* PE Sciex, Canada. *Intended Use:* The instrument will be used to conduct studies of proteins, peptides, oligonucleotides and carbohydrates, natural and synthetic products and components of biological fluids. The goal of the investigations is to further develop electrospray mass spectrometry as a tool for biological and biochemical research. *Application Accepted by Commissioner of Customs:* June 5, 1995.

Docket Number: 95–047. *Applicant:* Georgia State University, University Plaza, Atlanta, GA 30303. *Instrument:* Laser Ablation System, Model 266. *Manufacturer:* Finnigan MAT, United Kingdom. *Intended Use:* The instrument will be used in a pilot study to determine trace elements, including rare earth elements in fluid inclusions. The goals of this study are to: (1) fully develop the crush-leach ICPMS for analyzing bulk inclusions for REE and other petrologically and economically important trace metals, (2) evaluate the full potential of LA-ICPMS for the study of single fluid inclusions, and (3) conduct a detailed ICPMS study on bulk fluid inclusions and LA-ICPMS study on single fluid inclusions from the Bingham, base metal porphyry system in order to determine which fluids carried the bulk of the metals in this system. *Application Accepted by Commissioner of Customs:* June 6, 1995.

Frank W. Creel

Director, Statutory Import Programs Staff

[FR Doc. 95–15612 Filed 6–26–95; 8:45 am]

BILLING CODE 3510–DS–F

DEPARTMENT OF DEFENSE

Department of the Air Force

Intent to Grant an Exclusive Patent License

Pursuant to the provisions of Part 404 of Title 37, Code of Federal Regulations, which implements Public Law 96–517, the Department of the Air Force announces its intention to grant Diffracto Limited, a corporation of the Province of Ontario, Canada, an exclusive license under: U.S. Patent Application Serial No. 08/415,407 for a "System And Method For Measuring Crazing In A Transparency".

The license described above will be granted unless an objection thereto, together with a request for an opportunity to be heard, if desired, is received in writing by the addressee set forth below within sixty (60) days from the date of publication of this Notice. Copies of the patent application may be obtained, on request, from the same addressee.

All communications concerning this Notice should be sent to: Mr. Samuel B. Smith, Jr., Chief, Intellectual Property Branch, Commercial Litigation Division, Air Force Legal Services Agency, AFLSA/JACNP, 1501 Wilson Blvd., Suite 805, Arlington, VA 22209–2403, Telephone No. (703) 696–9050.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–15595 Filed 6–26–95; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; William D. Ford Federal Direct Loan Program

AGENCY: Department of Education.

ACTION: Notice of interest rates for the William D. Ford Federal Direct Loan Program for the period July 1, 1995, through June 30, 1996.

SUMMARY: The Assistant Secretary for Postsecondary Education announces the interest rates for variable rate loans made under the William D. Ford Federal Direct Loan (Direct Loan) Program for the period July 1, 1995, through June 30, 1996.

FOR FURTHER INFORMATION CONTACT: Barbara F. Grayson, Program Specialist, William D. Ford Federal Direct Loan Program, Division of Policy and Program Development, Office of Postsecondary Education, U.S. Department of Education, Room 3045, ROB–3, 600 Independence Avenue, SW, Washington, DC 20202–5400. Telephone: (202)708–6876. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The formulas for determining the interest rates for Direct Loan Program Loans are provided under section 455 of the Higher Education Act of 1965, as amended (the Act) (20 U.S.C. 1087e), and in §§ 685.202 (a) and 685.215(g) of the final regulations published in the **Federal Register** on December 1, 1994 (59 FR 61693 and 61704, respectively). Section 455(b) of the Act provides that a variable interest rate applies to loans made under the Direct Loan Program and disbursed on or after July 1, 1994. The variable rate applies for each 12-month period beginning July 1 and ending June 30. For Federal Direct Stafford/Ford (Direct Subsidized) and Federal Direct Unsubsidized Stafford/Ford (Direct Unsubsidized) Loans, and Federal Direct Subsidized and Federal Direct Unsubsidized Consolidation Loans, the interest rate may not exceed 8.25 percent. For Federal Direct PLUS and Federal Direct PLUS Consolidation Loans the interest rate may not exceed 9.00 percent.

Interest Rates for Direct Subsidized, Direct Unsubsidized, Direct Subsidized Consolidation, and Direct Unsubsidized Consolidation Loans

Loans first disbursed prior to July 1, 1995. Pursuant to section 455(b)(1) of the Act, the Assistant Secretary has determined the interest rate for the period July 1, 1995, through June 30, 1996, to be 8.25 percent.

Loans first disbursed on or after July 1, 1995. (a) During the in-school, grace, and deferment periods. Pursuant to section 455(b)(2) of the Act, the Assistant Secretary has determined the interest rate for the period July 1, 1995, through June 30, 1996, to be 8.25 percent.

(b) During all other periods. Pursuant to section 455(b)(1) of the Act, the Assistant Secretary has determined the interest rate for the period July 1, 1995, through June 30, 1996, to be 8.25 percent.

Interest Rates for Direct PLUS and Direct PLUS Consolidation Loans

Pursuant to section 455(b)(4) of the Act, the Assistant Secretary has determined the interest rate for the period July 1, 1995, through June 30, 1996, to be 8.98 percent.

(20 U.S.C. 1087e)

Dated: June 21, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–15627 Filed 6–26–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL95–55–000, et al.]

Plains Electric Generation and Transmission Cooperative, Inc., et al.; Electric Rate and Corporate Regulation Filings

June 20, 1995

Take notice that the following filings have been made with the Commission:

1. Plains Electric Generation and) Transmission Cooperative, Inc.) v. Public Service Company of New Mexico

[Docket No. EL95–55–000]

Take notice that on June 13, 1995, Plains Electric Generation and Transmission Cooperative, Inc. (Plains) filed a complaint under Section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, alleging that the rates currently being charged by Public Service Company of New Mexico (PNM) for firm, point-to-point transmission service under Service Schedule G to the PNM-Plains Master Interconnection Agreement and the Agreement for Electric Service between PNM and Plains are unjust, unreasonable or otherwise unlawful. Plains further requests that the Commission institute an investigation and hearing into the justness and reasonableness of rates charged under Service Schedule G and the Agreement for Electric Service, determine just and reasonable rates and establish a refund effective date not later than sixty days after the filing of Plains' complaint.

PNM's currently effective rates at issue in Plains' complaint were accepted for filing as to Service Schedule G in Docket No. ER87–360–000 on July 6, 1987 (as extended in Docket No. ER95–329–000, accepted for filing on February 27, 1995), and as to the Agreement for Electric Service in Docket No. ER91–644–000 on October 18, 1991. Plains estimates that PNM's maximum just and reasonable rate for firm, point-to-point transmission service under the referenced agreements should be approximately 45 percent less than PNM's currently effective rates. Based largely on data taken from PNM's Form 1 report for 1994, Plains has performed an initial transmission rate analysis using the levelized fixed charge rate methodology, and claims that the maximum just and reasonable rates for firm, point-to-point transmission service under the referenced agreements should not exceed $1.34 per Kw-month.

Comment date: July 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Niagara Mohawk Power Corporation

[Docket No. ER95–1070–000]

Take notice that Niagara Mohawk Power Corporation (Niagara Mohawk) on June 16, 1995, tendered for filing an amendment to an agreement between Niagara Mohawk and Rainbow Energy Marketing Corp. (Rainbow) dated May 18, 1995 providing for certain transmission services to Rainbow.

Copies of this filing were served upon Rainbow and the New York State Public Service Commission.

Comment date: July 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Central Hudson Gas and Electric Corporation

[Docket No. ER95–1185–000]

Take notice that on June 8, 1995, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing a Service Agreement between CHG&E and New England Power Company. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1662. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: July 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. San Diego Gas & Electric Company

[Docket No. ER95–1193–000]

Take notice that on June 9, 1995, San Diego Gas & Electric Company (SDG&E), tendered for filing and acceptance, pursuant to 18 CFR 35.12, an Interchange Agreement (Agreement) between SDG&E and InterCoast Power Marketing Company (IPM).

SDG&E requests that the Commission allow the Agreement to become effective on August 14, 1995, or at the earliest possible date.

Copies of this filing were served upon the Public Utilities Commission of the State of California and IPM.

Comment date: July 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Jamaica Energy Partners

Docket No. EG95–57–000

On June 14, 1995, Jamaica Energy Partners, c/o Wartsila Diesel Development Corp., Inc., 201 Defense Highway, Suite 100, Annapolis, Maryland 21401 (Applicant), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations (the Application).

Applicant will own an approximately 76 MW floating diesel-engine-powered electric generating facility located in Old Harbour Bay, Jamaica. The Facility's electricity will be sold exclusively at wholesale, with the possible exception of some retail sales in Jamaica. None of the electric energy generated by the Facility will be sold to consumers in the United States.

Comment date: July 14, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. Concord Electric Company

[Docket No. ER94–692–003]

Take notice that on June 9, 1995, Concord Electric Company tendered for filing its refund report in the above-referenced docket.

Comment date: July 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Montaup Electric Company

[Docket No. ER94–1062–002]

Take notice that on May 30, 1995, Montaup Electric Company tendered for filing its refund report in the above-referenced docket.

Comment date: July 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. UtiliCorp United Inc., Aquila Power Corporation

[Docket No. ER95–203–003] and ER95–216–003 (Not Consolidated)

Take notice that on June 16, 1995, UtiliCorp United Inc. ("UtiliCorp") tendered for filing a Network Integration Service tariff for its West Virginia Power division in compliance with the Commission's May 18, 1995 order in these proceedings.

A copy of the filing was served on each party to these proceedings and the Public Service Commission of the State of West Virginia.

Comment date: July 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Delmarva Power & Light Company

[Docket No. ER95–222–001]

Take notice that on June 15, 1995, Delmarva Power & Light Company (Delmarva) made its compliance filing pursuant to the Commission's order issued May 17, 1995. Delmarva's filing includes the following:

A. Sample formula calculations;

B. Revised tariff sheets which include the rates for ancillary services; a rate of return on equity with cost support; and revised provisions substituting "or" pricing for "and" pricing; and

C. Cost support for the ancillary rates.

Comment date: July 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. American Electric Power Service Corporation

[Docket No. ER95–497–000]

Take notice that on June 16, 1995, the American Electric Power Service Corporation (AEPSC) amended its filing in the above referenced Docket to modify the method by which AEPSC will determine the cost of emission allowances and including provisions where AEPSC may require a purchasing company to declare, at the beginning of a transaction, whether they will pay in cash or return allowances in-kind.

A copy of the filing was served upon the parties affected by the amendment and the affected state regulatory commissions.

Comment date: July 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Kentucky Utilities Service

[Docket No. ER95–595–000]

Take notice that Northeast Utilities Service Company, (NUSCO) filed on behalf of Kentucky Utilities on June 16, 1995, a Service Agreement to provide non-firm transmission service to Rainbow Energy Marketing Corporation (Rainbow) under the NU System Companies' Transmission Service Tariff No. 2.

NUSCO states that a copy of this filing has been mailed to Rainbow.

NUSCO requests that the Service Agreement become effective sixty (60) days after receipt of this filing by the Commission.

Comment date: July 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Connecticut Valley Electric Company, Central Vermont Public Service Corporation

Docket Nos. ER95–679–000 and No. ER95–680–000

Take notice that on June 14, 1995, Connecticut Valley Electric Company and Central Vermont Public Service Corporation tendered for filing an amendment to its filing in response to the Commission's April 28, 1995, deficiency letter.

Comment date: July 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Louisville Gas and Electric Company

[Docket No. ER95–928–000]

Take notice that on June 15, 1995, Louisville Gas and Electric Company tendered for filing an amendment to its April 19, 1995 filing in the above-referenced docket.

Comment date: July 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Louisville Gas and Electric Company

[Docket No. ER95–997–000]

Take notice that on June 15, 1995, Louisville Gas and Electric Company tendered for filing an amendment to its May 1, 1995 filing in the above-referenced docket.

Comment date: July 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. American Electric Power Service Corporation

[Docket No. ER95–1121–000]

Take notice that on June 14, 1995, the American Electric Power Service Corporation (AEPSC) amended its filing in the above referenced docket to (1) comply with the Commission's order directing revisions to recovery of costs for emission allowances and (2) submit to the Commission, Service Schedule A—AEP Transmission Service, which was inadvertently omitted from the initial filing.

A copy of the filing was served upon the parties affected by the amendment and the affected state regulatory commissions.

Comment date: July 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Central Illinois Public Service Company

[Docket No. ER95–1187–000]

Take notice that on June 8, 1995, Central Illinois Public Service Company (CIPS), submitted a Service Agreement, dated May 30, 1995, establishing Madison Gas and Electric Company as a customer under the terms of CIPS' Coordination Sales Tariff CST–1 (CST–1 Tariff).

CIPS requests an effective date of May 30, 1995 for the service agreement, and, accordingly, seeks waiver of the Commission's notice requirements. Copies of this filing were served upon Madison Gas and Electric Company and the Illinois Commerce Commission.

Comment date: July 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Louisville Gas and Electric Company

[Docket No. ER95–1191–000]

Take notice that on May 22, 1995, Louisville Gas and Electric Company tendered for filing a copy of a service agreement between Louisville Gas and Electric Company and ENRON Power Marketing, Inc., under Rate GSS.

Comment date: July 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. Louisville Gas and Electric Company

[Docket No. ER95–1192–000]

Take notice that on June 9, 1995, Louisville Gas and Electric Company, tendered for filing a copy of a service agreement between Louisville Gas and Electric Company and Enron Power Marketing, Inc. under Rate GSS.

Comment date: July 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

19. Crockett Cogeneration, a California Limited Partnership

[Docket No. QF84–429–003]

On June 14, 1995, Crockett Cogeneration, A California Limited Partnership, tendered for filing an amendment to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The amendment provides additional information pertaining to the ownership and technical characteristics of the facility.

Comment date: July 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

20. Air Products Hycal Company, L.P.

[Docket No. QF95–260–000]

On June 16, 1995, Air Products Hycal Company, L.P., (Air Products) tendered for filing an amendment to its filing in this docket.

The amendment pertains to information relating to the technical aspects of Air Products' cogeneration facility. No determination has been made that the submittal constitutes a complete filing.

Comment date: July 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

21. Indiana Michigan Power Company

[Docket No. ER95–1164–000]

Take notice that on June 6, 1995, American Electric Power Service Corporation (AEPSC), tendered for filing a service agreement for transmission service to be made available to Indiana Municipal Power Agency pursuant to AEPSC FERC Electric Tariff Original Volume No. 1. Waiver of Notice requirements was requested to accommodate an effective date of June 1, 1995.

A copy of the filing was served upon IMPA and the affected state regulatory commission.

Comment date: July 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15628 Filed 6–26–95; 8:45 am]

BILLING CODE 6717–01–P

[Project Nos. 2530–014, *et al.*]

Hydroelectric Applications [Central Maine Power Company, et al.]; Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1. a. Type of Application: Amendment of Licenses.

b. Project Nos. P–2530–014, P2531–020, P–2194–001.

c. Date Filed: May 18, 1995.

d. Applicant: Central Maine Power Company.

e. Name of Projects: Hiram Project, West Buxton Project, Bar Mills Project.

f. Location: Cumberland, York and Oxford Counties, Maine.

g. Filed Pursuant To: Federal Power Act, 16 U.S.C. Sec. 792(a)–825(r).

h. Applicant Contact: Sarah A. Verville, Esq., Central Maine Power Company, Edison Drive, Augusta, ME 04330, (207) 623–3521.

i. FERC Contact: Robert Grieve, (202) 219–2655.

j. Comment Date: August 7, 1995.

k. Description of Amendment: Central Maine Power Company (CMP) filed applications to amend existing licenses for the Hiram, West Buxton, and Bar

Mills Projects to incorporate the provisions of the May 24, 1994 Saco River Fish Passage Agreement (Agreement) into each project license. The Agreement sets forth the steps and time table agreed to by the parties (CMP, Maine Atlantic Sea Run Salmon Commission, Maine State Planning Office, Saco River Salmon Club, U.S. Fish and Wildlife Service, National Marine Fisheries Service, Trout Unlimited, Atlantic Salmon Federation, American Rivers, Inc., Maine Council Atlantic Salmon Federation, Maine Council Trout Unlimited, City of Saco, City of Biddeford, New Hampshire Department of Fish and Game, and Swan Falls Corp.) regarding fish passage facilities at CMP's dams on the Saco River.

l. This notice also consists of the following standard paragraphs: B, C1, D2.

2. a. Type of Application: Minor License.

b. Project No. 11546–000.

c. Date Filed: May 31, 1995.

d. Applicant: City of Thief River Falls Municipal Utilities.

e. Name of Project: Municipal Power Dam.

f. Location: On Red Lake River in the City of Thief River Falls, Pennington County, Minnesota.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact: Arlo L. Rude, P.O. Box 528, Thief River Falls, Minnesota 56701, (218) 681–5816.

i. FERC Contact: Charles T. Raabe (dt) (202) 219–2811.

j. Comment Date: July 31, 1995.

k. Description of Project: The existing, operating project consists of: (1) A reservoir with a storage capacity of approximately 1,133 acre-feet; (2) an existing 193-foot-long, 24.5-foot-high concrete gravity dam, having three 17.75-foot-wide, 11-foot-high steel tainter gates and four overflow sections with flashboards; (3) a concrete and brick powerhouse, containing one 250-kilowatt (Kw) generating unit and one 300-Kw generating unit; and (4) appurtenant facilities.

l. With this notice, we are initiating consultation with the State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

m. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's Regulations, if any resource agency, SHPO, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merits, the resource agency, SHPO, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on the applicant.

3. a. Type of Application: Transfer of License.

b. Project No. 2058–010.

c. Date Filed: June 9, 1995.

d. Applicant: The Washington Water Power Company/Resources West Energy Corporation.

e. Name of Projects: Cabinet Gorge.

f. Location: On Clark Fork River about 9 miles upstream from Pend Oreille Lake, in Bonner County, Idaho and Sanders County, Montana.

g. Filed Pursuant to: Federal Power Act, 16 USC Section 791(a)–825(r).

h. Applicant Contact: Ms. Terry L. Syms, 1411 East Mission Avenue, Spokane, WA 99220–3727, (509) 489–0500.

i. FERC Contact: Diane M. Murray, (202) 219–2682.

j. Comment Date: August 9, 1995.

k. Description: Application for transfer of the license from Washington Water Power Company to Resources West Energy Corporation.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

4 a. Type of Application: Transfer of License.

b. Project No: 2075–010.

c. Date Filed: June 9, 1995.

d. Applicant: The Washington Water Power Company/Resources West Energy Corporation.

e. Name of Project: Noxon Rapids.

f. Location: On Clark Fork River, in Sanders County, Montana.

g. Filed Pursuant to: Federal Power Act, 16 USC Sections 791(a)–825(r).

h. Applicant Contact: Ms. Terry L. Syms, 1411 East Mission Avenue, Spokane, WA 99220–3727, (509) 489–0500.

i. FERC Contact: Diane M. Murray, (202) 219–2682.

j. Comment Date: August 9, 1995.

k. Description: Application for transfer of the license from Washington Water Power Company to Resources West Energy Corporation.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

5 a. Type of Application: Transfer of License.

b. Project No: 2544–014.

c. Date Filed: June 9, 1995.

d. Applicant: The Washington Water Power Company/Resources West Energy Corporation.

e. Name of Project: Meyers Falls.

f. Location: On Colville River, in Stevens County, Washington, near the town of Kettle Falls.

g. Filed Pursuant to: Federal Power Act, 16 USC Section 791(a)–825(r).

h. Applicant Contact: Ms. Terry L. Syms, 1411 East Mission Avenue, Spokane, WA 99220–3727, (509) 489–0500.

i. FERC Contact: Diane M. Murray, (202) 219–2682.

j. Comment Date: August 9, 1995.

k. Description: Application for transfer of the license from Washington Water Power Company to Resources West Energy Corporation.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

6 a. Type of Application: Transfer of License.

b. Project No: 2545–048.

c. Date Filed: June 9, 1995.

d. Applicant: The Washington Water Power Company/Resources West Energy Corporation.

e. Name of Project: Spokane River.

f. Location: On Spokane River, in Spokane, Stevens, and Lincoln Counties, Washington.

g. Filed Pursuant to: Federal Power Act, 16 USC Sections 791(a)–825(r)

h. Applicant Contact: Ms. Terry L. Syms, 1411 East Mission Avenue, Spokane, WA 99220–3727, (509) 489–0500.

i. FERC Contact: Diane M. Murray, (202) 219–2682

j. Comment Date: August 9, 1995

k. Description: Application for transfer of the license from Washington Water Power Company to Resources West Energy Corporation.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

7 a. Type of Application: Surrender of Exemption.

b. Project No: 6136–006.

c. Date Filed: June 6, 1995.

d. Applicant: Ordell O. & Rita A. Portwood.

e. Name of Project: Old Oak Ranch Power.

f. Location: North Fork Tule River, Tulare County, California, near Milo.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact: Ordell O. & Rita A. Portwood, P.O. Box 736, Springville, CA 93265, (209) 539–2480.

i. FERC Contact: Mark Hooper, (202) 219–2680.

j. Comment Date: August 9, 1995.

k. Description of Application: The project consists of: (1) A 5.5-foot-high diversion structure with a 12-inch-diameter outlet pipe; (2) a 4,750-foot-long, 34-inch-diameter steel conduit; (3) a powerhouse; and (4) a 1,000-foot-long, 12 Kv transmission line connected to an SCE transmission line.

Applicant wishes to surrender their exemption because of the inability to find a buyer or keep the project operating.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

Standard Paragraphs

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: June 21, 1995, Washington, D.C.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15709 Filed 6–26–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–344–000]

Algonquin Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

June 21, 1995.

Take notice that on June 15, 1995, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of pits FERC Gas Tariff, the following revised tariff sheets, effective July 15, 1995:

Fourth Revised Volume No. 1

First Revised Sheet No. 3
First Revised Sheet No. 4
Fourth Revised Sheet No. 20
Twenty-first Revised Sheet No. 20A
Fifth Revised Sheet No. 30
Fifth Revised Sheet No. 32
Seventh Revised Sheet No. 33
Sixth Revised Sheet No. 34
First Revised Sheet No. 95
First Revised Sheet No. 96
Fourth Revised Sheet No. 97
Third Revised Sheet No. 98
First Revised Sheet No. 98B
First Revised Sheet No. 98D
First Revised Sheet No. 98F
First Revised Sheet No. 99A
First Revised Sheet No. 100
First Revised Sheet No. 115
First Revised Sheet No. 135
First Revised Sheet No. 151
First Revised Sheet No. 181
First Revised Sheet No. 201
First Revised Sheet No. 208
First Revised Sheet No. 220
Third Revised Sheet No. 600
First Revised Sheet No. 611
First Revised Sheet No. 624
First Revised Sheet No. 625
First Revised Sheet No. 662
First Revised Sheet No. 663
Second Revised Sheet No. 678
Second Revised Sheet No. 679
Second Revised Sheet No. 680
First Revised Sheet No. 680A
Second Revised Sheet No. 686
Fifth Revised Sheet No. 705
Second Revised Sheet No. 706
First Revised Sheet No. 799
First Revised Sheet No. 850
First Revised Sheet No. 870
First Revised Sheet No. 880
First Revised Sheet No. 890

Original Volume No. 2

16 Rev Sheet No. 1–A
Fifth Revised Sheet No. 1B
Third Revised Sheet No. 169
First Revised Sheet No. 240
First Revised Sheet No. 244
First Revised Sheet No. 248
First Revised Sheet No. 252
Second Revised Sheet No. 277
Second Revised Sheet No. 295
First Revised Sheet No. 400

Algonquin states that the purpose of this filing is to (i) cancel certain rate schedules and rate sheets that are no longer in effect, and (ii) correct other typographical errors and ambiguities in its tariff.

Algonquin further states that copies of this filing were mailed to all affected customers of Algonquin and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20406, in accordance with 18 CFR Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such notions or protests should be filed on or before June 28, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15631 Filed 6–26–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–345–000]

Algonquin Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

June 21, 1995.

Take notice that on June 16, 1995, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of July 16, 1995:

Twenty-second Revised Sheet No. 20A
Original Sheet No. 99C

Algonquin states that the purpose of this filing is to flow through a refund from National Fuel Gas Supply Corporation related to its Account Nos. 191 and 186, as filed in National Fuel's Docket No. RP95–80–000.

Algonquin states that copies of this filing were mailed to all firm customers of Algonquin and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 28, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene: Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15632 Filed 6–26–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–347–000]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

June 21, 1995.

Take notice that on June 16, 1995, CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet, with a proposed effective date of July 11, 1995:

Third Revised Sheet No. 58

CNG requests an effective date for this tariff sheet of July 11, 1995; to that end, CNG seeks waiver of Section 154.22 of the Commission's Regulations. This accelerated effective date will enable CNG to reduce its customers' obligations during the next available invoice cycle.

CNG states that the purpose of this filing is to flow back to CNG's customers a principal credit amount of $9,297,862, which is related to CNG's unrecovered purchased gas and sales-related transportation costs ("Section 18.1 Transition Costs"). This credit reflects amounts that have been booked to CNG's Account Nos. 191 and 186 since CNG's previous Section 18.1 Transition Cost filing (in Docket No. RP94–300).

CNG states that copies of this letter of transmittal and enclosures are being mailed to CNG's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR Sections 385.214 and 385.211. All motions or protests should be filed on or before June 28, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15634 Filed 6–26–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–226–006]

Kern River Gas Transmission Company; Notice of Refund Report

June 21, 1995.

Take notice that on June 15, 1995, Kern River Gas Transmission Company (Kern River), filed refund report made in compliance with the October 19, 1994, Stipulation and Agreement (Settlement) and the Commission's January 25, 1995 and April 4, 1995, orders approving the Settlement in the above referenced docket.

Kern River stated that on May 31, 1995, a total refund of $48,518,974.15 was sent to its eighteen customers. The report provides details of the refunds of amounts collected in excess of the rates established by the settlement. It is stated that the refunds are further based on changes to the interruptible transportation revenue credits provided during period from March 1, 1993 through July 31, 1993 and from the period August 1, 1993 through April 30, 1995. Such changes (1) reflect the reduced interruptible revenue credit levels resulting from the Settlement; and (2) implement, effective January 1, 1994, the revised interruptible revenue crediting methodology established by Article I Section 6 of the Settlement.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before June 28, 1995. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15633 Filed 6–26–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–242–001]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

June 21, 1995

Take notice that on June 19, 1995, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the below listed tariff sheets to be effective May 21, 1995:

Substitute First Revised Sheet No. 204
Original Sheet No. 204A
Substitute First Revised Sheet No. 206

Natural states that the purpose of this filing is to comply with the Commission's May 18, 1995 order in Docket No. RP95–242–000. The Commission's order accepted Natural's proposed transition procedures to new services to be effective May 21, 1995, subject to refund and conditions. The conditions required Natural to change the date for election of services, that elections are non-binding and subject to modification, that Natural shall have the right to file for recovery of the cost of cushion gas and to justify the proposed July 1, 1996 effective date for the cushion gas filing.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective May 21, 1995.

Natural states that copies of the filing are being mailed to Natural's jurisdictional customers, interested state regulatory agencies and intervenors in Docket No. RP95–242–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before June 28, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15636 Filed 6–26–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–328–001]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

June 21, 1995.

Take notice that on June 13, 1995, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets with a proposed effective date of July 1, 1995:

Sub 2nd Revised 17th Revised Sheet No. 50
Sub 2nd Revised 17th Revised Sheet No. 51

Northern states that the above-referenced tariff sheets are being filed to correct the Reverse Auction (GSR–RA) surcharge which was filed on June 1, 1995.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before June 28, 1995. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15637 Filed 6–26–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–166–028]

Northwest Pipeline Corp.; Notice of Compliance Filing in FERC Gas Tariff

June 21, 1995.

Take notice that on June 19, 1995, in conformity with Part 154 of the Regulations of the Federal Energy Regulatory Commission Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, all the preferred tariff sheets listed in Appendices 1 and 3 to the filing. Northwest states that the tariff sheets submitted in Appendices 2 and 3 to the filing are submitted as alternate tariff sheets in the event that the Commission does not accept the "preferred" tariff sheets.

Northwest states that the purpose of this filing is to comply with the Commission's May 18, 1995, Order Denying Rehearing and Rejecting Compliance Filing ("Order") in Docket Nos. RP91–166–026 and –027. The Commission ordered Northwest to make a compliance filing within 30 days of the Order. Northwest states that the preferred methodology excludes ACA surcharges from the discount calculation and the alternate methodology includes ACA surcharges in the discount calculation.

Northwest states that the Order resolved the issue of the appropriate level of throughput to be used to calculate the supplier settlement payment ("SSP") commodity surcharges that Northwest may collect for the period from July 1, 1991 through March 31, 1993. The corrected billing amounts which result from the revised surcharges are summarized by individual customer on proposed Sheet Nos. 13–A through 13–C.

Northwest states that a copy of this filing has been served upon all intervenors in Docket No. RP91–166–000, Northwest's affected jurisdictional customers and relevant state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before June 28, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15638 Filed 6–26–95; 8:45 am]

BILING CODE 6717–01–M

[Docket No. RP95–348–000]

Panhandle Eastern Pipe Line Company; Notice of Filing

June 21, 1995.

Take notice that on June 19, 1995, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing, pursuant to Section 4 of the Natural Gas Act, a notice of termination of gathering service upon the transfer of Panhandle's gathering facilities to Panhandle Field Services (Field Services). Field Services will continue to offer gathering service to all existing shippers. Panhandle states that this filing is in compliance with Commission orders issued February 14, 1995, May 23, 1995 and June 15, 1995 in Docket Nos. CP90–1050–000, *et al.*, CP94–151–000 *et al.*, and CP94–152–000.

Panhandle has proposed an effective date of August 1, 1995 for the termination of gathering services on its West End gathering facilities which will be transferred to Field Services.

Panhandle states that in accordance with the Commission's regulations, a copy of the filing has been mailed to all of Panhandle's customers and interested state commissions as well as to all parties to the proceedings Docket Nos. CP94–151–000, *et al.* and CP94–152–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before June 28, 1995. Protests will be

considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15639 Filed 6–26–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–567–000]

Panhandle Eastern Pipe Line Company; Notice of Request Under Blanket Authorization

June 21, 1995.

Take notice that on June 16, 1995, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP95–567–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to install three delivery points for Amarillo Natural Gas, Inc. (ANG), an intrastate pipeline company, under Panhandle's blanket certificate issued in Docket No. CP83–83–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

The proposed delivery points for ANG would be used to provide, (1) up to 530 MMBtu/day of natural gas to Seaboard Farms-Whitaker in Hansford County, Texas; (2) up to 400 MMBtu/day of natural gas to Seaboard Farms-Becker in Texas County, Oklahoma; and (3) up to 400 MMBtu/day of natural gas to Seaboard Farms-DePuy in Texas County, Oklahoma.

Panhandle states the estimated cost to construct the proposed facilities is approximately $150,000, and will be reimbursed 100% by ANG.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15640 Filed 6–26–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–252–001]

Texas Eastern Transmission Corporation: Notice of Proposed Changes In FERC Gas Tariff

June 21, 1995.

Take notice that on June 15, 1995, pursuant to and in compliance with the Commission's May 25, 1995 order in Docket No. RP95–252–000, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets:

Third Revised Sheet No. 464
Original Sheet No. 464A
Third Revised Sheet No. 465
Third Revised Sheet No. 467

Texas Eastern states that the tariff sheets submitted herewith reflect the revisions to Texas Eastern's capacity release provisions and will require Texas Eastern to: (1) Post capacity for bidding that was released in the prior month to the same prearranged shipper at a discounted price and (2) permit release transactions to the same prearranged shipper at less than the maximum rate during two or more consecutive months which doesn't utilize the same capacity or overlapping capacity.

Texas Eastern requests that the above referenced tariff sheets become effective on July 15, 1995.

Texas Eastern states that copies of the filing were served on firm customers of Texas Eastern and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before June 28, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15641 Filed 6–26–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–346–000 and RP95–274–001]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

June 21, 1995.

Take notice that on June 16, 1995, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1. The proposed effective date of the revised tariff sheet are May 4, 1995 and July 10, 1995.

Transco states that the purpose of the instant filing is to revise Transco's capacity release tariff provisions set forth in Section 42 of the General Terms and Conditions of its Volume No. 1 Tariff to comply with Order Nos. 577 and 577–A. On May 3, 1995, Transco filed tariff sheets in Docket No. RP95–274 (May 3 Filing) to comply with Order No. 577. On June 1, 1995 (June 1 Order) the Commission issued an order accepting the May 3 Filing, subject to Transco modifying Sections 42.4 and 42.5 as discussed in the order. Transco has included revised tariff sheets proposed to be effective May 4, 1995, reflecting the changes required by the Commission's June 1 Order.

Additionally, Transco is submitting in the instant filing revised tariff sheets proposed to be effective July 10, 1995 to comply with Order No. 577–A issued May 31, 1995 in Docket No. RM95–5–001.

Transco states that it is serving copies of the instant filing to its customers, State commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 28, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15642 Filed 6–26–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–12–29–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes In FERC Gas Tariff

June 21, 1995.

Take notice that on June 16, 1995, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, First Ravised Twenty Second Revised Fourth Revised Sheet No. 50 which tariff sheet is proposed to be effective April 1, 1995.

Transco states that the purpose of the instant filing is to track a rate change attributable to transportation service purchased from Texas Gas Transmission Corporation (Texas Gas) under its Rate Schedule FT, which service underlies the service provided by Transco under its Rate Schedule FT–NT. The tracking filing is being made pursuant to Section 4 of Transco's Rate Schedule FT–NT.

Included in Appendix A attached to the filing is an explanation of the rate change and details regarding the computation of the revised FT–NT rates.

Transco states that copies of the filing are being mailed to each of its FT–NT customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E. Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 28, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15643 Filed 6–26–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–343–000]

Trunkline Gas Company; Notice of Proposed Changes In FERC Gas Tariff

June 21, 1995.

Take notice that on June 14, 1995, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1 the following revised tariff sheet proposed to be effective July 8, 1995:

Third Revised Sheet No. 191

Trunkline states that this filing is being made in compliance with the Commission's Order Granting Rehearing (Order No. 577–A) issued May 31, 1995 in Docket No. RM95–5–001.

Specifically, the tariff sheet reflects the revision in the term of capacity releases at less than maximum rate that are exempt from advance posting and bidding requirements by substituting "31 days" for "calendar month."

Trunkline states that copies of this filing are being mailed to firm shippers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 28, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15644 Filed 6–26–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Notice of Cases Filed During the Week of May 8 Through May 12, 1995

During the Week of May 8 through May 12, 1995, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: June 16, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of May 8 through May 12, 1995]

Date	Name and location of applicant	Case No.	Type of submission
5/8/95	Oak Ridge Operations Office, Oak Ridge, Tennessee.	VSO–0035	Request for Hearing under 10 C.F.R. Part 710. If granted: An individual whose security clearance was suspended by the Oak Ridge Operations Office would receive a hearing under 10 C.F.R. Part 710.
5/9/95	Major Brands, Bethesda, Maryland	RR321–179	Request for Modification/Rescission in the Texaco Refund Proceeding. If granted: The March 9, 1995 Decision and Order, Case No. RF321–16972, issued to Major Brands would be modified regarding the firm's application for refund submitted in the Texaco Refund Proceeding.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of May 8 through May 12, 1995]

Date	Name and location of applicant	Case No.	Type of submission
5/10/95	Richard M. Ross, Lauderhill, Florida	VFA–0041	Appeal of an Information Request Denial. If granted: The April 6, 1995 Freedom of Information Request Denial issued by the DOE Oakland Operations Office would be rescinded, and Richard M. Ross would receive access to certain DOE information.
5/11/95	Albuquerque Operations Office, Albuquerque, New Mexico.	VSO–0036	Request for Hearing under 10 C.F.R. Part 710. If granted: An individual whose security clearance was suspended by the Albuquerque Operations Office would receive a hearing under 10 C.F.R. Part 710.
5/12/95	Gasolinera Melendez, Inc., San Juan, Puerto Rico.	RR321–180	Request for Modification/Rescission in the Texaco Refund Proceeding. If granted: The April 18, 1995 Decision and Order, Case No. RF321–2109, issued to Gasolinera Melendez, Inc. would be modified regarding the firm's application for refund submitted in the Texaco Refund Proceeding.
5/12/95	Richard M. Ross, Lauderhill, Florida	VFA–0042	Appeal of an Information Request Denial. If granted: The April 6, 1995 Freedom of Information Request Denial issued by the Oakland Operations Office would be rescinded, and Richard M. Ross would receive access to certain DOE information.

REFUND APPLICATIONS RECEIVED

[Week of May 8 to May 12, 1995]

Date received	Name of refund proceeding/name of refund application	Case No.
5/8 thru 5/12/95	Crude Oil Refund Applications	RG272–199 thru RG272–231.

[FR Doc. 95–15704 Filed 6–26–95; 8:45 am]

BILLING CODE 6450–01–P

Notice of Cases Filed During the Week of May 1 Through May 5, 1995

During the Week of May 1 through May 5, 1995, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: June 16, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of May 1 through May 5, 1995]

Date	Name and location of applicant	Case No.	Type of submission
5/2/95	Dalco Petroleum, Inc., W. Darryl Zang, and Louis Porter, Washington, DC.	VEF–0016	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to C.F.R., Part 205, Subpart V, to distribute funds received from Dalco Petroleum, Inc., W. Darryl Zang, and Louis Porter pursuant to bankruptcy court-approved settlements between these parties and DOE.
5/2/95	U.S. Solar Roof, Washington, DC.	VFA–0037	Appeal of an Information Request Denial. If granted: The April 6, 1995 Freedom of Information Request Denial issued by the Office of Photovoltaic Technology Division would be rescinded, and U.S. Solar Roof would receive access to certain Department of Energy information.
5/3/95	Rocky Flats Field Office, Golden, Colorado	VSO–0032	Request for Hearing under 10 C.F.R. Part 710. If granted: An individual whose security clearance was suspended by the Rocky Flats Field Office would receive a hearing under 10 C.F.R. Part 710.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of May 1 through May 5, 1995]

Date	Name and location of applicant	Case No.	Type of submission
5/4/95	Better Roads, Inc., Santa Barbara, California.	RR272–200	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If granted: The April 6, 1995 Dismissal, Case No. RF272–90949, issued to Better Roads, Inc. would be modified regarding the firm's application for refund submitted in the Crude Oil Refund Proceeding.
5/4/95	Elizabeth H. Donnelly, Henderson, Nevada	VFA–0039	Appeal of an Information Request Denial. If granted: The April 3, 1995 Freedom of Information Request Denial issued by the Office of Public Affairs would be rescinded, and Elizabeth H. Donnelly would receive access to certain Department of Energy Information.
5/4/95	Gayle M. Adams, Spokane, Washington	VFA–0040	Appeal of an Information Request Denial. If granted: The April 7, 1995 Freedom of Information Request Denial issued by the Richland Operations Office would be rescinded, and Gayle M. Adams would receive access to certain Department of Energy information.
5/4/95	J. Eileen Price, Fort Collins, Colorado	VFA–0038	Appeal of an Information Request Denial. If granted: The February 27, 1995 Freedom of Information Request Denial issued by the Western Area Power Administration would be rescinded, and J. Eileen Price would receive access to certain Department of Energy Information.
5/4/95	Louisiana, Baton Rouge, Louisiana	VEG–0001	Petition for Special Redress. If granted: The Office of Hearings and Appeals would review the use of the Stripper Well Settlement Agreement funds to establish and staff a "Louisiana Core Repository, Research and Information Center."
5/5/95	Oak Ridge Operations Office, Oak Ridge, Tennessee.	VSO–0034	Request for Hearing under 10 C.F.R. Part 710. If granted: An individual whose security clearance was suspended by the Oak Ridge Operations Office would receive a hearing under 10 C.F.R. Part 710.
5/5/95	Rocky Flats Field Office, Golden, Colorado	VSO–0033	Request for Hearing under 10 C.F.R. Part 710. If granted: An individual whose security clearance was suspended by the Rocky Flats Field Office would receive a hearing under 10 C.F.R. Part 710.

REFUND APPLICATIONS RECEIVED

[Week of May 1 to May 5, 1995]

Date received	Name of refund proceeding/name of refund application	Case No.
04/27/95	Parker K. Bailey & Sons, Inc	RC272–290.
5/1/95 thru 5/5/95	Crude Oil Refund Applications	RG272–177 thru RG272–198.
5/1/95	McKelvey Trucking Co	RC272–291.
5/2/95	Union Carbide Corp	RF345–36.
5/5/95	Joe Long's Texaco	RF321–21065.
5/5/95	Elm Garage, Inc	RF321–21066.
5/5/95	Elm Garage, Inc	RF321–21067.
5/5/95	East Main Street	RF321–21068.

[FR Doc. 95–15705 Filed 6–26–95; 8:45 am]

BILLING CODE 6450–01–P 3

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–81023A; FRL–4962–3]

TSCA Chemical Substance Inventory Removal of 36 Incorrectly Reported Chemical Substances from the TSCA Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In an earlier notice published in the **Federal Register**, EPA announced its intent to remove from the Toxic Substances Control Act (TSCA) Chemical Substance Inventory 38 chemical substances which were believed to have been incorrectly reported and listed. Nine comments were received in response to the October 24, 1994 notice. EPA has determined that two of the chemical substances mentioned in the October 24, 1994 notice have been manufactured or imported for distribution in commerce prior to the date of the notice. The remaining 36 chemical substances were incorrectly reported or identified and listed on the Inventory. The 36 chemical substances listed in this document are deleted from the TSCA Inventory as of June 27, 1995.

EFFECTIVE DATE: The 36 chemical substances listed in this document are deleted from the TSCA Inventory as of June 27, 1995.

ADDRESSES: A record of the nonconfidential versions of the comments is available for viewing and photocopying in the TSCA

Nonconfidential Information Center, Rm. NE Mall B607, 401 M St., SW., Washington, DC. Documents may be viewed from 12 noon to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551, e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

EPA announced in the **Federal Register** of October 24, 1994 (59 FR 53461), its intent to remove from the Toxic Substances Control Act (TSCA) Chemical Substance Inventory 38 chemical substances which were believed to have been incorrectly reported and listed. Prior to the October 24, 1994 notice, persons who had originally reported the 38 chemical substances informed EPA that the chemical identities they reported to the Agency and included on the Inventory were incorrect. The corrected identities for these 38 chemical substances have been provided by the original submitters and added to the Agency's Master Inventory File. EPA reviewed each of these 38 chemical substances, as originally reported, to determine whether any other person had also reported the same chemical substance for the Inventory. No other manufacturers were found at the time. Therefore, in accordance with the established EPA policy that an erroneously or incorrectly reported chemical substance should be removed from the Inventory, EPA announced its intent to remove these chemical substances from the Inventory in the **Federal Register** of October 24, 1994.

The **Federal Register** of October 24, 1994, solicited public comments on the proposed removal action. EPA was specifically interested in knowing whether any of the 38 chemical substances had been manufactured, imported, or processed for TSCA commercial purposes other than research and development, as defined in the Inventory Reporting Regulation (40 CFR 710.2), by anyone between the period of January 1, 1975 through October 24, 1994. EPA was also interested in knowing whether any person could show that any of the 38 chemical substances could have been properly reported for the Inventory. EPA also solicited comments from anyone who believed that any of the chemical substances should not be removed from the TSCA Inventory for any reason.

EPA received nine comments in response to the October 24, 1994 notice. The comments requested that two of the substances, those identified by Chemical Abstract Service Registry Numbers (CASRNs) 5153–63–9 and 26184–07–6, not be removed from the Inventory.

II. Substances Not To Be Removed

The Agency decided to retain CASRNs 5153–63–9 and 26184-07-6 on the Inventory because several of the submitters of the comments concerning these two chemical substances provided evidence indicating that these substances have been in commercial production or importation prior to October 24, 1994.

The CASRNs and Chemical Abstracts Service (CAS) Index Names of the aforementioned two chemical substances not to be removed from the TSCA Inventory are as follows:

CASRN	CAS Index Name
5153–63–9	Acetic acid, compd. with pyridine (1:1)
26184–07–6	2-Propenoic acid, 2-methyl-, polymer with butyl 2-methyl-2-propenoate, butyl 2-propenoate and methyl 2-methyl-2-propenoate

III. Substances That Are Removed From the Inventory

The Agency concluded that the remaining 36 chemical substances were not manufactured, imported, or processed for commercial purposes between January 1, 1975 and October 24, 1994, and thus are not eligible for continued inclusion on the Inventory. Therefore, Premanufacture Notification (PMN) requirements of section 5(a) of TSCA would apply to future manufacture or import of any of these 36 chemical substances. The 36 chemical substances to be removed from the Inventory are listed below in ascending CASRN sequence, and by their corresponding CAS Index Names:

Chemical Substances Removed from the TSCA Inventory

CASRN	CAS Index Name
6178–32–1	Oxirane, [(4-nonylphenoxy)methyl]-
6359–62–2	1H-Pyrazole-3-carboxylic acid, 4-[(2,4-dimethyl-6-sulfophenyl)azo]-4,5-dihydro-5-oxo-1-(4-sulfophenyl)-, trisodium salt
30377–70–9	1H-Benzimidazolium, 5-chloro-2-[3-[5-chloro-3-ethyl-1,3-dihydro-1-(3-sulfopropyl)-6-(trifluoromethyl)-2H-benzimidazol-2-ylidene]-1-propenyl]-3-ethyl-1-(3-sulfopropyl)-6-(trifluoromethyl)-, inner salt
40795–41–3	1,2-Benzenedicarboxylic acid, 4-[(4-aminophenyl)hydroxymethyl]-,monomethyl ester
56619–23–9	Benzenesulfonic acid, hydroxy-, monosodium salt, polymer with formaldehyde and urea
65072–14–2	Hexanedioic acid, dimethyl ester, polymer with 1,2-ethanediol and 1,3-isobenzofurandione, benzoate
65733–77–9	Formaldehyde, polymer with 1,3-benzenediol, 4-(1,1-dimethylethyl)phenol and 4,4'-(1-methylethylidene)bis[phenol]
67827–62–7	1,2-Propanediol, 3,3'-[[4-[(2-chloro-4,6-dinitrophenyl)azo]-1-naphthalenyl]imino]bis-
67923–97–1	2-Propenoic acid, 2-methyl-, methyl ester, polymer with ammonium 2-methyl-2-propenoate and ethyl 2-propenoate

Chemical Substances Removed from the TSCA Inventory

CASRN	CAS Index Name
67989–80–4	1,3-Benzenedicarboxylic acid, polymer with 2-(dimethylamino)ethanol, 2,2-dimethyl-1,3-propanediol, 2,2-dimethylpropanoic acid and nonanedioic acid
68002–78–8	Fatty acids, C16-18 and C18-unsatd., triesters with trimethylolpropane
68479–21–0	Poly(oxy-1,2-ethanediyl), α-hydro-ω-hydroxy-, ether with N-[2-[bis(2-hydroxyethyl)methylammonio]ethyl]-N,N'-bis(2-hydroxyethyl)-N'-[2-hydroxy-3-(9-octadecenyloxy)propyl]-N,N'-dimethyl-1,2-ethanediaminium tris(methyl sulfate) (4:1), (Z)-
68551–46–2	Carboxylic acids, C6-18 and C9-15-di-, polymers with adipic acid, ethylene glycol, glutaric acid and succinic acid, 2-ethylhexyl esters
68607–79–4	Silica gel, reaction products with chlorodimethyloctylsilane
68610–78–6	Acetic acid, anhydride, reaction products with boron trifluoride and 1,5,9-trimethyl-1,5,9-cyclododecatriene
68814–84–6	Fatty acids, tall-oil, polymers with isophthalic acid and 1,3,5-tris(2-hydroxyethyl)-1,3,5-triazine-2,4,6(1H,3H,5H)-trione
68958–73–6	Hexanedioic acid, polymer with 1,6-diisocyanato-2,2,4-trimethylhexane, oxybis[propanol] and α,α',α"-1,2,3-propanetriyltris[ω-hydroxypoly[oxy(methyl-1,2-ethanediyl)]]
70528–75–5	Cashew, nutshell liq., polymer with formaldehyde, linseed oil and phenol
71243–48–6	Amines, C14-18 and C16-18-unsatd. alkyl, ethoxylated, compds. with polyethylene glycol mono(nonylphenyl) ether phosphate
71735–58–5	Chromate(2-), [1-[(5-chloro-2-hydroxyphenyl)azo]-2-naphthalenolato(2-)][3-hydroxy-4-[(2-hydroxy-3,5-dinitrophenyl)azo]-7-[(4-methoxyphenyl)amino]-2-naphthalenesulfonato(3-)]-, disodium
71735–65–4	Cuprate(4-), [8-hydroxy-7-[[2-hydroxy-7-sulfo-6-[[4-[(2,5,6-trichloro-4-pyrimidinyl)amino]phenyl]azo]-1-naphthalenyl]azo]-1,3,6-naphthalenetrisulfonato(6-)]-, tetrasodium
72245–32–0	Propanoic acid, 2-hydroxy-, compds. with 2-(dimethylamino)ethanol-hexyl [(2-isocyanato-1,4,4-trimethylcyclopentyl)methyl]carbamate adduct
72479–99–3	Decanoic acid, mixed pentaesters with octadecanoic acid and triglycerol
73138–55–3	Fatty acids, tall-oil, polymers with glycerol, phthalic anhydride, safflower oil and trimethylolpropane
73138–84–8	Safflower oil, polymer with benzoic acid, glycerol, phthalic anhydride and trimethylolpropane
79771–00–9	Safflower oil, polymer with benzoic acid, bisphenol A, epichlorohydrin and styrene
79771–01–0	Safflower oil, polymer with benzoic acid, bisphenol A and epichlorohydrin
93905–47–6	1,4-Benzenedicarboxylic acid, dimethyl ester, polymer with 1,2-ethanediol, distn. residues
102923–79–5	Fatty acids, C18-unsatd., dimers, polymers with dicyclopentadiene, diethylene glycol, isophthalic acid, maleic anhydride and propylene glycol
104133–74–6	Siloxanes and Silicones, di-Me, polymers with 3-hydroxy-2,2-dimethylpropyl 3-hydroxy-2,2-dimethylpropanoate, isophthalic acid, maleic anhydride, Ph silsesquioxanes and trimethylolpropane
105883–53–2	1,2,3-Propanetriol, polymer with 1,3-diisocyanatomethylbenzene, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, methyloxirane and oxirane, hydrolyzed, amine-terminated
115271–31–3	Propanoic acid, 3-hydroxy-2-(hydroxymethyl)-2-methyl-, polymer with N-(2-aminoethyl)-1,2-ethanediamine, 2,2-dimethyl-1,3-propanediol, diphenyl carbonate, 1,2-ethanediamine, 1,6-hexanediol, 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane and 1,1'-methylenebis[4-isocyanatocyclohexane], polyethylene-polypropylene glycol mono-Bu ether-blocked, compds. with triethylamine
116265–70–4	9-Octadecenoic acid (Z)-, reaction products with formaldehyde, phenol polybutenyl derivs., tetraethylenepentamine and triethylenetetramine
125804–20–8	2-Propenoic acid, 2-methyl-, 3-(trimethoxysilyl)propyl ester, reaction products with iso-Pr alc., 2-methyl-2-propanol and silica
135313–74–5	2-Propenoic acid, ethyl ester, homopolymer, C>14-alkyl docosylstearyl esters
135429–20–8	Dodecanedioic acid, polymer with carbonic dichloride, 4,4'-(1-methylethylidene)bis[phenol] and 4-(1-methyl-1-phenylethyl)phenol

Accordingly, the 36 chemical substances listed above are deleted from the TSCA Inventory as of June 27, 1995.

List of Subjects

Environmental protection.

Dated: June 20, 1995.

Larry E. Longanecker,

Acting Director, Economics, Exposure and Technology Division, Office of Pollution Prevention and Toxics.

[FR Doc. 95–15740 Filed 6–26–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[DA 95–1284]

Reconsideration of Denial of Equipment Authorization

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission is seeking comment on a petition requesting reconsideration of the denial of equipment authorization for cable system terminal devices. This action is taken pursuant to 47 CFR Section 1.115 in order to obtain a complete record prior to responding to the petition.

DATES: Oppositions to the petition may be filed on or before June 26, 1995. Replies to oppositions may be filed on or before July 6, 1995.

FOR FURTHER INFORMATION CONTACT: Richard Fabina, Office of Engineering and Technology, (301) 725–1585, ext. 220.

SUPPLEMENTARY INFORMATION: The Office of Engineering and Technology (OET) has received a Petition for Reconsideration and Request for Referral to the Commission regarding denial of applications filed by Everquest, Inc. for certification of five different models of cable system terminal devices. The petition is available for public inspection during normal business hours in OET's Technical Reference Library, 2000 M Street NW., Room 230, Washington, DC and in the Applications Processing Branch at the FCC Laboratory, 7435 Oakland Mills Road, Columbia, MD 21046. Copies of the petition may also be obtained from International Transcription Service, Inc., (202) 857–3800.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–15674 Filed 6–26–95; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of Information Collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review for the information collection system identified below.

Type of Review: Extension of expiration date without any change in substance or method of collection.

Title: Real Estate Lending Standards.

Form Number: N/A.

OMB Number: 3064–0112.

Expiration Date of Current OMB Clearance: December 31, 1995.

Frequency of Response: On occasion.

Respondents: Insured depository institutions.

Number of Respondents: 7,400.

Total Annual Responses: 7,400.

Total Annual Burden Hours: 148,000.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Paperwork Reduction Project 3064–0112, Washington, D.C. 20503.

FDIC Contact: Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, Room F–400, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before August 28, 1995.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: Insured depository institutions must establish maximum loan-to-value ratios for real estate lending, as mandated by section 18(o) of the Federal Deposit Insurance Act (12 U.S.C. 1828).

Dated: June 21, 1995.

Federal Deposit Insurance Corporation.

Steven F. Hanft,

Assistant Executive Secretary (Administration).

[FR Doc. 95–15697 Filed 6–26–95; 8:45 am]

BILLING CODE 6714–01–M

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of Information Collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review for the information collection system identified below.

Type of Review: Extension of expiration date without any change in substance or method of collection.

Title: Financial Report.

Form Number: FDIC 6200/06.

OMB Number: 3064–0006.

Expiration Date of Current OMB Clearance: February 29, 1996.

Frequency of Response: On occasion.

Respondents: Directors or officers of proposed or operating financial institutions applying for Federal deposit insurance as a state-chartered bank or savings association.

Number of Respondents: 2,000.

Total Annual Responses: 2,000.

Total Annual Burden Hours: 4,000.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Paperwork Reduction Project 3064–0006, Washington, DC 20503.

FDIC Contact: Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, Room F–400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before August 28, 1995.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: The FDIC is required by statute to evaluate the general character and financial condition of certain individuals involved in the management or control of depository institutions. Form 6200/06 is used by each individual director or officer of a proposed or operating financial institution applying for Federal deposit insurance, by each individual proposing to acquire control of an insured state nonmember bank, and by each proposed new director or proposed new senior executive officer of an insured state nonmember bank which (a) became insured or has undergone a change of control within the past two years or (b) is not in compliance with the applicable capital requirements or is otherwise in a troubled condition.

Dated: June 21, 1995.

Federal Deposit Insurance Corporation.

Steven F. Hanft,

Assistant Executive Secretary (Administration).

[FR Doc. 95–15696 Filed 6–26–95; 8:45 am]

BILLING CODE 6714–01–M

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of Information Collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review for the information collection system identified below.

Type of Review: Extension of expiration date without any change in substance or method of collection.

Title: Notification of Addition of Directors and Senior Executive Officers of Certain Depository Institutions.

Form Number: FDIC 6810/01.

OMB Number: 3064–0097.

Expiration Date of Current OMB Clearance: February 29, 1996.

Frequency of Response: On occasion.

Respondents: Certain insured state nonmember banks.

Number of Respondents: 1,250.

Total Annual Responses: 1,250.

Total Annual Burden Hours: 650.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Paperwork Reduction Project 3064–0097, Washington, DC 20503.

FDIC Contact: Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, Room F–400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before August 28, 1995.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 requires an insured depository institution to notify the appropriate Federal banking agency of the proposed addition of any individual to the board of directors or the employment of any individual as a senior executive officer of such institution at least thirty days before such addition or employment becomes effective, if the insured depository institution (a) became insured or has undergone a change in control within the past two years, or (b) is not in compliance with the applicable capital requirements or is otherwise in a troubled condition. The FDIC implements this statutory mandate through the Form 6810/01.

Dated: June 21, 1995.

Federal Deposit Insurance Corporation.

Steven F. Hanft,

Assistant Executive Secretary (Administration).

[FR Doc. 95–15695 Filed 6–26–95; 8:45 am]

BILLING CODE 6714–01–M

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of Information Collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review for the information collection system identified below.

Type of Review: Extension of expiration date without any change in substance or method of collection.

Title: Application to Participate in a Conversion Transaction.

Form Number: N/A.

OMB Number: 3064–0098.

Expiration Date of Current OMB Clearance: March 31, 1996.

Frequency of Response: On occasion.

Respondents: Insured depository institutions wishing to transfer deposits between the Savings Association Insurance Fund ("SAIF") and the Bank Insurance Fund ("BIF"), or vice versa.

Number of Respondents: 10.

Total Annual Responses: 10.

Total Annual Burden Hours: 30.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Paperwork Reduction Project 3064–0098, Washington, DC 20503.

FDIC Contact: Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, Room F–400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before August 28, 1995.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: Insured depository institutions are required to submit a letter application to the FDIC to obtain consent before participating in a conversion transaction involving the transfer of deposits between the SAIF and the BIF, or vice versa.

Dated: June 21, 1995.

Federal Deposit Insurance Corporation.

Steven F. Hanft,

Assistant Executive Secretary (Administration).

[FR Doc. 95–15694 Filed 6–26–95; 8:45 am]

BILLING CODE 6714–01–M

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of Information Collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review for the information collection system identified below.

Type of Review: Extension of expiration date without any change in substance or method of collection.

Title: Monthly Consolidated Foreign Currency Report of Banks in United States.

Form Number: FFIEC 035.

OMB Number: 3064–0105.

Expiration Date for Current OMB Clearance: December 31, 1995.

Frequency of Response: Monthly.

Respondents: State nonmember banks with more than $1 billion in commitments to purchase foreign currencies and U.S. dollar exchange.

Number of Respondents: 4.

Total Annual Responses: 48.

Total Annual Burden Hours: 480.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Paperwork Reduction Project 3064–0105, Washington, DC 20503.

FDIC Contact: Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, Room F–400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before August 28, 1995.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: U.S. banks with more than $1 billion in commitments to purchase foreign currencies and U.S. dollar exchange must file monthly reports with their regulators. The reports help monitor foreign exchange exposures and identify changing market practices and bank reactions to disruptions in exchange markets.

Dated: June 21, 1995.

Federal Deposit Insurance Corporation.

Steven F. Hanft,

Assistant Executive Secretary (Administration).

[FR Doc. 95–15693 Filed 6–26–95; 8:45 am]

BILLING CODE 6714–01–M

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of Information Collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review for the information collection system identified below.

Type of Review: Extension of expiration date without any change in substance or method of collection.

Title: Procedures for Monitoring Bank Secrecy Act Compliance.

Form Number: N/A.

OMB Number: 3064–0087.

Expiration Date of Current OMB Clearance: March 31, 1996.

Frequency of Response: On occasion.

Respondents: Insured state nonmember banks.

Number of Respondents: 8,400.

Total Annual Responses: 8,400.

Total Annual Burden Hours: 4,200.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Paperwork Reduction Project 3064–0087, Washington, DC 20503.

FDIC Contact: Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, Room F–400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before August 28, 1995.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: Insured state nonmember banks are required to establish and maintain written procedures to assure and monitor compliance with the Bank Secrecy Act (31 U.S.C. 5311 *et seq.*) and Department of Treasury regulations at 31 CFR 103.

Dated: June 21, 1995.

Federal Deposit Insurance Corporation.

Steven F. Hanft,

Assistant Executive Secretary (Administration).

[FR Doc. 95–15692 Filed 6–26–95; 8:45 am]

BILLING CODE 6714–01–M

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of Information Collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review for the information collection system identified below.

Type of Review: Extension of expiration date without any change in substance or method of collection.

Title: Activities and Investments of Insured State Banks.

Form Number: N/A.

OMB Number: 3064–0111.

Expiration Date of Current OMB Clearance: August 31, 1995.

Frequency of Response: On occasion.

Respondents: Insured state nonmember banks wishing to engage in activities or make investments not permissible for national banks or subsidiaries of national banks.

Number of Respondents: 10.

Total Annual Responses: 10.

Total Annual Burden Hours: 160.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Paperwork Reduction Project 3064–0111, Washington, DC 20503.

FDIC Contact: Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, Room F–400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before August 28, 1995.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: This collection of information establishes application procedures whereby an insured state bank may request the FDIC's consent to engage in activities or make investments not permissible for national banks or subsidiaries of national banks.

Dated: June 21, 1995.

Federal Deposit Insurance Corporation.

Steven F. Hanft,

Assistant Executive Secretary (Administration).

[FR Doc. 95–15691 Filed 6–26–95; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Guidelines for Relying on State Examinations

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Notice and final guidelines.

SUMMARY: The Federal Financial Institutions Examination Council (FFIEC) announces the adoption of its Guidelines for Relying on State Examinations pursuant to section 349 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act), codified at 12 U.S.C. 1820(d)(9). This section requires the FFIEC to issue guidelines establishing standards for the purpose of determining the acceptability of State reports of examination under section 10(d)(3) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1820(d)(3). Under section 10(d)(3), a Federal banking agency may conduct an annual, on-site examination of an insured depository institution in alternate 12-month periods (except those insured institutions with total assets of less than $250 million for which an 18-month examination cycle is permitted) if the Federal banking agency determines that a State examination of that institution conducted during the intervening period is adequate. Section 349 of the CDRI Act states that the standards issued by the FFIEC are to be used at the discretion of the appropriate Federal banking agency.

EFFECTIVE DATE: These guidelines are effective on June 27, 1995.

FOR FURTHER INFORMATION CONTACT: *Board:* Frederick M. Struble, Associate Director, (202/452–3794), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

FDIC: Daniel M. Gautsch, Examination Specialist, (202/898–6912), Office of Policy, Division of Supervision, or Ken A. Quincy, Section Chief, (202/942–3083), Consumer Compliance & Analysis Branch, Division of Compliance and Consumer Affairs. For legal issues, Lisa R. Chavarria, Attorney, (202/898–6891), Supervision and Legislation Branch, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OCC: Bill Morris, National Bank Examiner, (202/874–5190), Office of the Chief National Bank Examiner, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

OTS: Scott M. Albinson, Special Assistant to the Director of Supervision, (202/906–7984), Supervision, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The supervisory divisions of the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System and the Office of Thrift Supervision (Federal banking agencies) responsible for the examination of state-chartered, insured depository institutions, and the branches and agencies of foreign banks that have been chartered by the States have a long history of coordinating with the State banking departments[1] in fulfilling a mutual goal of promoting a safe and sound banking system.[2] It is recognized that this close cooperation between the Federal and State regulators promotes efficiency in the examination process, reduces the regulatory burden on state-chartered, insured depository institutions, and improves the supervisory process.

The Federal and State banking agencies have worked together, to varying degrees, in the following areas:

- Conducting alternate, joint and concurrent safety and soundness examinations of insured depository institutions and of the branches and agencies of foreign banks that have been chartered by the States.
- Processing safety and soundness examination reports and applications on a timely basis.
- Using common examination report and application forms.
- Developing and issuing informal (e.g., board resolutions, memoranda of understanding or other similar agreements) and formal enforcement actions.
- Exchanging supervisory information.
- Offering Federal agency training programs to State Examiners.
- Providing access to the Federal agency data beses.

The Federal banking agencies intend to continue these cooperative efforts to the maximum extent possible. It is recognized, however, that the adequacy of State budgeting, examiner staffing, and training are important factors to enhancing Federal and State coordination. Currently, the Federal banking agencies, individually, have entered into formal or informal arrangements or working agreements with most State banking departments. These working agreements or informal arrangements generally address the following areas:

- The number of state-chartered, insured institutions to be examined on an alternating basis by the State banking department and by the Federal banking agency.
- The frequency of safety and soundness examinations.
- The type of examinations to be conducted (independent, joint, or concurrent) by each agency.
- The pre-examination procedures to be performed.
- The responsibilities of each agency for processing reports of examination.
- The responsibilities of each agency for conducting specialty examinations (compliance, information systems, trust, etc.).
- The procedures for coordinating informal and formal enforcement actions.
- The procedures for processing joint applications.
- The procedures for sharing supervisory information. These working agreements or informal arrangements are structured to permit both Federal and State agencies the flexibility to conduct an independent examination subject only to notification to the other party. Generally, only institutions rated "1" or "2" are examined on an alternating basis allowing for a reasonable interval between examinations. The appropriate Federal banking agency and the State banking department periodically meet and coordinate examination schedules.[3]

A hallmark of the successful program to date has been this flexibility to tailor cooperation to the particulars of each State and to the specifics of individual banks within a State, plus the reality of changing circumstances at both the Federal and the State levels. The FFIEC guidelines strive to maintain that flexibility.

Therefore, the FFIEC issues the following guidelines pursuant to 12 U.S.C. 1820(d)(9):

GUIDELINES FOR RELYNG ON STATE EXAMINATIONS: The Federal banking agencies will accept and rely on State reports of examination in all cases in which it is determined that State examinations enable the Federal banking agencies to effectively carry out their supervisory responsibilities. The following criteria may be considered, in whole or in part, by a Federal banking agency when determining the acceptability of a State report of examination under section 10(d) of the Federal Deposit Insurance Act:

- The completeness of the State examination report. The State report of examination of a state-chartered, insured depository institution or a state-chartered branch or agency of a foreign bank should contain sufficient information to permit a reviewer to make an independent determination on the overall condition of the institution as well as each component factor and composite rating assigned under the "Uniform Financial Institutions Rating System" used for insured depository institutions and commonly referred to as the "CAMEL" rating system or the ROCA rating system used for branches and agencies of foreign banks.
- The adequacy of documentation maintained routinely by State examiners

[1] The term "State banking department" includes any separate thrift department or division of a State.

[2] The Office of the Comptroller of the Currency is not responsible for the supervision and regulation of any state-chartered, insured depository institutions.

[3] In 1992, the FDIC and the Federal Reserve, individually, entered into joint resolutions with the Conference of State Bank Supervisors designed to encourage the negotiation and formation of working agreements with the State banking departments. The objective of these agreements is to foster closer supervisory cooperation between the State departments and the FDIC or the Federal Reserve. The working agreements generally identify those state-chartered banks that will be examined on an alternating basis, and other banks that will be examined on a joint or concurrent basis, if practicable.

to support observations made in examination reports.

• The ability over time of a State banking department to achieve examination objectives. At a minimum, the Federal banking agencies will consider the adequacy of State budgeting, examiner staffing and training, and the overall review and follow-up examination process of a State banking department. Accreditation of a State banking department by the Conference of State Bank Supervisors is among the factors that also will be considered.

• The adequacy of any formal or informal arrangement or working agreement between a State banking department and a Federal banking agency.

The Federal banking agencies, as part of their routine review of State examination reports, will assess the quality and scope of the reports to determine whether they continue to meet the above general criteria. The Federal banking agencies retain the option in cases in which a State examination report appears insufficient or the condition of an insured institution, as indicated in the examination report or other sources, appears to be seriously deteriorating, to conduct a follow-up examination.

The appropriate Federal banking agency and State banking department will continue to share, discuss and work to resolve any problems or concerns regarding the acceptability of each other's work or the operation of these guidelines and the alternating examination program, as well as other issues of mutual interest.

Dated: June 22, 1995.

Joe M. Cleaver,

Executive Secretary/Federal Financial institutions Examination Council.

[FR Doc. 95–15734 Filed 6–26–95; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010776–095.

Title: Asia North America Eastbound Rate Agreement.

Parties:

American President Lines, Ltd.
Hapag-Lloyd Aktiengesellschaft
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha Line
Orient Overseas Container Line, Inc.
Sea-land Service, Inc.

Synopsis: The proposed amendment modifies Article 5.3(f), pertaining to the Indian Subcontinent Trade, to clarify that certain provisions of the Agreement will now apply to that trade.

Agreement No.: 203–011504.

Title: Columbus/Alianca/Ivaran Agreement.

Parties:

A/S Ivarans Rederi d/b/a Ivaran Lines
Hamburg-Sudamerikanische Eggert & Amsinck d/b/a/ Columbus Line
Empresa De Navegacao Alianca S/A d/b/a Alianca

Synopsis: The proposed Agreement authorizes the parties to consult and agree upon the deployment and utilization of vessels, to charter space from one another, and to rationalize sailings in the trade between U.S. Atlantic Coast ports and points and ports and points in Brazil, Uruguay, Argentina, Paraguay and Bolivia. In addition, the parties may discuss, exchange information, agree, and establish rates, charges, rules and practices related to their services. Adherence to any agreement reached on rates is voluntary.

Dated: June 21, 1995.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–15668 Filed 6–26–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

A. E. Bancorp, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 21, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. A. E. Bancorp, Buffalo Grove, Illinois, a *de novo*, bank; to become a bank holding company by acquiring 100 percent of the voting shares of American Enterprise Bank, Buffalo Grove, Illinois, (in organization).

2. Libertyville Bancorp, Inc., Lake Forest, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Libertyville Bank & Trust Company, Libertyville, Illinois (in organization).

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Community First Financial Group, Inc., English, Indiana; to acquire at least 50.01 percent of the voting shares of Peninsula Banking Group, Inc., Rolling Hills Estates, California, and thereby indirectly acquire at least an additional 15.60 percent of the voting shares of Peninsula National Bank, Rolling Hills Estates, California; and 100 percent of the voting shares of Bay Cities National Bank, Redondo Beach, California.

In connection with this application, Peninsula Banking Group, Inc., Rollings Hills, California; also has applied to become a bank holding company by acquiring 100 percent of the voting shares of Peninsula National Bank, Rolling Hills Estates, California, and 100 percent of the voting shares of Bay Cities National Bank, Redondo Beach, California.

Board of Governors of the Federal Reserve System, June 21, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–15669 Filed 6–26–95; 8:45 am]

BILLING CODE 6210–01–F

The Bank of New York Company, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than July 11, 1995.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. The Bank of New York Company, Inc., New York, New York; to acquire through its subsidiary, The Bank of New York Trust Company of California, Los Angeles, California, certain trust assets of BankAmerica Corporation and its subsidiaries, and thereby engage in trust activities, pursuant to § 225.25(b)(3) of the Board's Regulation Y.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Community Trust Financial Services Corporation, Hiram, Georgia; to acquire Community Loan Company, Hiram, Georgia, a joint venture with Danny H. Drummond, which will acquire Credit Services of Woodstock, Woodstock, Georgia, and thereby engage in consumer finance activities, pursuant to § 225.25(b)(1)(i) of the Board's Regulation Y. The proposed activity will be conducted throughout the State of Georgia.

Board of Governors of the Federal Reserve System, June 21, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–15670 Filed 6–26–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Employee Thrift Advisory Council; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), a notice is hereby given of the following committee meeting:

Name: Employee Thrift Advisory Council.
Time: 10:00 a.m.
Date: July 11, 1995.
Place: Fourth Floor, Conference Room, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC.
Status: Open.
Matters to be Considered:

1. Approve minutes of the January 24, 1995, meeting.
2. Report of the Executive Director on Thrift Savings Plan status.
3. May 15–July 31, 1995, Thrift Savings Plan Open Season activities.
4. Legislation.
5. New Business.

Any interested person may attend, appear before, or file statements with the Council. For further information contact John J. O'Meara, Committee Management Officer, on (202) 942–1660.

Dated: June 21, 1995.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 95–15630 Filed 6–26–95; 8:45 am]

BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Linking State Administrative Data

AGENCY: Office of the Assistant Secretary for Planning and Evaluation, HHS.

CORRECTION: This action corrects the announcement for "Request for applications to support State efforts to link case-level administrative data across multiple low-income assistance programs" appearing in the Monday, May 31, 1995 **Federal Register** Notice, 28419, second column. Due to an administrative oversight the address for requesting an application was omitted. The following two paragraphs are added to this announcement.

FOR FURTHER INFORMATION CONTACT: Application instructions and forms should be requested from and submitted to: Grants Officer, Office of the Assistant Secretary for Planning and Evaluation. Department of Health and Human Services, 200 Independence Avenue, S.W., Room 405–F, Hubert H. Humphrey Building, Washington, D.C. 20201, Phone (202) 690–8794. Requests for forms and technical questions will be accepted and responded to up to 15 days prior to the closing date of receipt of applications. Technical questions should be directed to Gary Hyzer, DHHS, ASPE, Telephone 202–401–6639. Questions may also be faxed to 202–690–6562. Written technical questions should be addressed to Mr. Hyzer at the above address. Application submissions may not be faxed.

ELIGIBLE APPLICANTS: The Department seeks applications from local non-profit and for profit organizations. For profit organizations are advised that no funds may be paid as profit to any receipt of a grant or sub-grant. Profit is any amount in excess of allowable direct and indirect costs of the grantee.

All other conditions of the original grant announcement remain unchanged.

Dated: June 21, 1995.

David T. Ellwood,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 95–15699 Filed 6–26–95; 8:45 am]

BILLING CODE 4151–04–M

Office of the Assistant Secretary for Planning and Evaluation

Grants for Policy Research on Selected Poverty and Dependency Topics

AGENCY: Office of the Assistant Secretary for Planning and Evaluation.

ACTION: Request for applications to conduct policy research concerning low wage labor markets, parental responsibility and support, child development outcomes, and adolescent pregnancy.

SUMMARY: Office of the Assistant Secretary for Planning and Evaluation announces the availability of funds and invites applications for short-term policy research projects with emphasis on four priority areas.

CLOSING DATE: The closing date for submitting applications under this announcement is August 28, 1995.

FOR APPLICATION KITS OR FURTHER INFORMATION CONTACT: Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue, S.W., Room 405F, Hubert H. Humphrey Building, Washington, D.C. 20201, Phone (202) 690–8794.

Part I. Background and Purpose

A. Purpose of Grant Program

The purpose of these grants is to stimulate interest in conducting policy relevant research on a broad range of topics related to poverty, welfare dependency, labor markets, child and youth development and parental responsibility. These grants are for short-term efforts which are designed to be completed within one year. Our intent is to sponsor research efforts and not to fund the provision of services. While research may be conducted in service settings, proposals of this nature will be carefully scrutinized to assure that these funds are not used for other purposes, no matter how worthwhile. Within the context of this announcement, the term "parent" and "family" should be understood to include both mothers and fathers whether living together or apart.

B. Eligible Applicants and Funding

Pursuant to section 1110 of the Social Security Act, any public and private nonprofit organizations including universities and other institutions of higher education may apply. Applications may also be submitted by private for-profit organizations. However, no grant funds may be paid as profit, i.e., any amount in excess of allowable direct and indirect costs of the recipient (45 CFR 74.705). As a result of this competition between 10 and 15 awards are expected to be made from funds appropriated for fiscal years 1995 and another five awards with funds for 1996 provided funds are available. Awards will be limited to one year of support. The average award is expected to be approximately $75,000.

Part II. Topics of Priority Interest

A. Research on Low-wage Labor Markets, Employment and Training Programs

The employment problems of families receiving welfare encompass fundamental questions which are at the heart of the current debate regarding the direction of welfare reform. Whether these problems primarily reflect problems on the demand or the supply sides of the labor market frequently drives disagreements over interpretation of evidence and policy prescriptions. Some commentators emphasize that the structural changes in the economy have left those with poor skills, health, and transportation with few available jobs. Others would argue that low-wage jobs are readily available, and that what is lacking is willingness to search for and accept jobs at these wages. This view would hold that the existence of welfare payments is a decisive disincentive to work.

Recent shifts in employment away from traditional industrial sectors, such as manufacturing, from occupations requiring less skill and education, and from inner-city areas have allegedly resulted in a "mismatch" between the required skills and/or geographic locations of employers, on the one hand, and the skills and residential locations of many AFDC recipients, on the other.

For families receiving AFDC, these mismatches caused by demand shifts may be particularly severe, due to their greater relative concentrations in sectors or areas that are declining (such as jobs requiring less education or located in the inner-cities), their greater dependence on particular industries (like manufacturing) for obtaining better wages, or their greater difficulty in relocating to other sectors or areas in response to demand shifts (due to discrimination or higher skill requirements in the growing sectors).

In addition, the prospective policy of time-limited benefits under the proposed welfare reform raises many questions about the operation of the labor markets for current recipients of AFDC.

The result is a broad array of issues that can be explored in support of reducing poverty, assuring economic security, and encouraging self-reliance. Researchers are encouraged to submit their own ideas for potential topics. The topics listed below are given only for purposes of illustration:

The low wage labor market, particularly for women, is characterized by intermittent periods of being out of the labor force and, if in the labor forced, in and out of employment.

- What are the influences of welfare and unemployment insurance systems on keeping low skilled women with children out of poverty?
- What policy changes might make these systems a better safety net for these woman given the operation of the labor market? What effect might these policy changes have on the poverty rate of children?
- To what extent does low wage work reduce poverty or welfare receipt?
- What is the link between the training that welfare recipients are offered and the types of jobs that are available? Are welfare recipients being trained for jobs that are realistically available to them?
- Do entrants into low wage jobs have an opportunity to advance? What are the determinants of workers' success once they enter the low wage labor market?
- What types of training are most successful in preparing welfare recipients for jobs and in job retention?
- What is the experience with subsidized work strategies of the past? What steps are critical to the creation of subsidized jobs for welfare recipients? How much can be done by the private sector? What can be done by nonprofits? When are subsidized jobs most likely to lead to long term unsubsidized employment?
- What are the implications for an increase in the minimum wage for welfare recipients?
- What are the experiences of low skilled/educated men and how do they compare with that of women?
- What are the relationships between unemployment, low wages and family formation/dissolution?

Technical questions concerning this topic should be directed to Audrey Mirsky at 202–401–6640.

B. Research on Parental Responsibility and Support

Child support is a critical component for ensuring economic stability for millions of single-parent families. While many single parents can and do raise their children on their own, the financial burden of serving as the family's sole provider puts children at risk of living in poverty. The present child support system too often functions poorly and fails to ensure that support for children comes from both parents. But parental responsibility is not limited to the payment of support. Non-custodial parents can also make other important contributions to their children's well-being.

There are a large number of issues that impinge upon the ability and willingness of non-custodial parents to assume responsibility for their children's well-being. Researchers are encouraged to submit their own ideas for potential topics. The topics listed below are given only for purposes of illustration.

In-Hospital Paternity—All states are now required to have paternity programs in every hospital that provides birthing services. Reports indicate that the rates of paternity establishment vary widely among hospitals within and across states. Many parents remain unwilling to take advantage of the opportunity to establish paternity voluntarily. What are the concerns of mothers and fathers at the hospital? What strategies and outreach activities promote positive paternity establishment outcomes?

Medical Support Awards—What is the potential for medical support awards, especially for welfare dependent and other low-income children? Do low-income non-custodial fathers have access to family coverage? Do medical support awards result in custodial families having less cash support? Are there better alternatives for assuring health care coverage, especially in interstate cases (for example Medicaid buy-ins, making the custodial parent the primary insurer)?

Informal Child Support—Relatively little is known about informal child support payments. What kinds of support are contributed? How much is contributed? How reliable are these contributions? How do these contributions compare to formal child support obligations? Do payments and other contributions typically end if the relationship sours or ends? Are payments more reliable when the contributor is sure the money is going to the family, rather than to reimburse the government? What factors influence the provisions of informal support and the decision not to pursue formal support payments?

Nurturing/Parenting in Separated Households—The issues of nurturing and parenting when the parents do not live together are very complex. Much of what is known comes from our assessment of co-parenting failures: non-custodial fathers (and mothers) who just disappear; parents who feel they are being denied access to their children; parents who have to be taught what it means to be a responsible parent. Interventions to fix these problems are being tried and some are being evaluated. We know very little about successful co-parenting in families where parents live apart. Who are the successful co-parents? How do they differ from unsuccessful co-parents? What factors contribute to this success? Is there a positive impact on their children's well-being? Can we learn anything from these successes that can help develop interventions when co-parenting doesn't work?

Fathers in Prison—Some studies are beginning to show that a significant proportion of the fathers of AFDC children are in prison or have criminal records. What are the implications of this for child support payments and for father involvement? How does the current child support enforcement system handle such cases? Are there innovative programs that we can learn from?

Domestic Violence and Child Support—The number of AFDC cases applying for and receiving good cause exemption for refusing to cooperate in establishing paternity and securing support has always been very small (less than 1% of the caseload). This rate is considerably lower than the estimated prevalence of domestic violence among low-income women. It may be that the child's father is not the perpetrator of the violence experienced by many of these women. Alternatively, this low rate may be a function of the ease with which AFDC applicants and recipients can avoid meeting the cooperation requirements. With stricter cooperation requirements, one of the likely outcomes of welfare reform, it is important to have a much better understanding of the dynamics between enforcement of support and the threat of physical retaliation by the child's biological father. What is the incidence of domestic violence among AFDC recipients? How much of the violence is attributable to the children's father? Can we expect requests for good cause exemptions to increase? Are there successful strategies for pursuing support and not placing families at risk?

Technical questions concerning this topic should be directed to Linda Mellgren at 202–690–6806.

C. Research on Linkages Between Child Development and Changes in Family Economic Self-Sufficiency

Anti-poverty policies have as their major aim the improvement of poor children's life circumstances and future prospects. These policies have generated programs designed to assist poor children and their families in three primary ways: (1) programs which focus on enhancing child development and strengthening the parent-child relationship, (2) programs which primarily provide economic support and emphasize job development for parents, and (3) comprehensive child and family programs which are two generational in their service intervention focus and address families' needs in all areas including child development and economic self-sufficiency. Comprehensive program approaches are becoming more prominent now and are built on the belief that changes must be supported for both children and their families and that longer term improvements for children will not occur unless their families also change and achieve greater economic self-sufficiency.

Research has yielded some evidence as to the effectiveness of each of these program approaches, but the knowledge base is limited in a number of ways. Studies of employment and training programs have focused on outcomes for adults and have not usually examined impacts on children's development. Studies of child development programs, such as Head Start, have focused on child outcomes and rarely have examined economic of other outcomes for parents. Developmental theory suggests, however, that changes for children and changes for parents will be interrelated. Interventions which effectively promote children's well-being and the parent-child relationship may benefit parents' development in ways that are related to the economic well-being of their families. Conversely changes in family economic well-being, resulting from interventions or naturally occurring events, may affect the course of children's development.

There are research findings which suggest that it would be fruitful to develop these lines of inquiry further. Recent findings from experimental research by Olds and his colleagues (1994) indicate that low-income mothers who have participated in home visiting child development programs spend less time on welfare and earn more income two years after the intervention than low-income mothers who have not received such services. Findings from nonexperimental research on changes in income, poverty status and welfare status suggest that such changes have a number of consequences for children's development (Conger & Elder, 1994; Moore, Morrison, Zaslow, Glei, 1994). Research the Department is now funding on the impacts of mothers' participation in the Jobs Opportunities and Basic Skills (JOBS) Training

Program will provide new experimental evidence on the impacts of employment interventions on both parents and children.

The goal of this grant area is to develop new knowledge about the possible linkages between intervening to support children's development (in childhood or adolescence) and intervening to promote families' economic self-sufficiency and about the conditions under which linkages occur or can be created. We seek knowledge which can inform policy formulation at national, state, and local levels and can guide the design of service interventions.

Topics of interest include:

- Changes in parents' poverty or welfare dependency as a function of the provision of child development services (such as child care, after school care, and more intensive child and youth development programs);
- Changes in children's development as a function of changes in family poverty or welfare dependency;
- Variations in home environments or in child and youth development as a function of low-income parents' transitions from welfare to employment and participation in work or training programs;
- Variations in children's time use and parents' supervision and monitoring of children's activities as a function of AFDC parents' participation in work or training;
- Relationships between developing employability skills and developing parenting skills;
- Characteristics of low-wage jobs or employment and training programs which affect parents' continued participation in work or training because of their influence on the home environment and parents' ability to manage their child-rearing responsibilities; and
- Effects of participation of low-income youth in employment and training on family relationships and economic self-sufficiency.

Technical questions concerning this topic should be directed to Martha Moorehouse at 202–690–6939.

D. Research on Adolescent Pregnancy and Parenting

Teen pregnancy and teen parenthood have raised great concerns among policy makers and the general public. Teen parenthood is associated with many negative outcomes such as welfare dependency and school dropout for young mothers and low birth weight and other problems for their children. Given the potential consequences of teen pregnancy, the issue has been at the center of many recent policy debates.

While our knowledge about the factors related to teen pregnancy and parenthood are limited, we do have some information on trends in sexual activity and childbearing and have identified some possible antecedents. Earlier physical maturation, increasing teen sexual activity, and the incidence of non-consensual sexual intercourse have increased the risk of exposure to pregnancy among adolescents. It is important to recognize that teens report 84% of all pregnancies in 1990 were unintended. The primary factors that are associated with teenage sexual activity and parenthood are socioeconomic disadvantage, school failure, behavior problems and risk-taking.

The most recent synthesis of the literature, *Beginning Too Soon: Adolescent Sexual Behavior Pregnancy and Parenthood* by K. Moore and her associates (in press) identifies the different roles people, institutions and policies play in influencing the decisions of teen mothers. We are only beginning to learn the relative roles of peers, partners, siblings, parents, media, neighborhood influences, biological development and public policy and programs on the timing of first sexual intercourse and other decisions related to sexual activity, pregnancy and parenthood. More research in each of these areas is necessary.

The topics listed below could fill some of the knowledge gaps we face, but are given only for purposes of illustration. Authors are encouraged to submit their own ideas for potential topics.

- What is the impact of involuntary sex on teens? Is it an antecedent of adolescent parenthood? What is the role of non-sexual child abuse?
- Do we know if vulnerable teen populations (e.g., youth living away from their parents, incarcerated youth, and runaway or homeless youth) have an increased chance of becoming teen parents?
- What impact do the media have on teens' decisions related to sexual activity and/or childbearing? What is the impact of the popular media? What is the impact of the use of media to support healthy decision making and activity?
- What is the role of religious institutions? What is the impact of religiosity in general? Does it vary across religions?
- What is known about the relationship between youths' participation in youth development activities and pregnancy or parenthood?
- What do we know about the male partners of sexually active teenagers? What types of interventions should target teen males? What interventions (if any) have targeted or could target older males? What is the impact of child support policies on their intention to become fathers?
- What is known about the impact of the presence/absence of significant adults on teens' decisions that lead to adolescent pregnancy and parenthood? What are particular elements of this factor? What are the roles of parents? Peers? Other caring adults?
- What impact does a teen's perception of future opportunity have on decisions regarding sexual activity, pregnancy and parenthood?
- What are the roles of schools as social and community settings for adolescent development? What do school reform intervention efforts tell us about the relationship between school functioning, students' academic success and teen pregnancy and parenthood?
- What is the role of labor market opportunities in decisions related to adolescent fertility?
- What do we know about how adolescents decide whether to place their children for adoption? Why don't more adolescents select adoption as the outcome of their pregnancy?
- What do we know about interventions specifically to reduce the number of second pregnancies or births to teens?

Technical questions concerning this topic should be directed to Elisa Koff at 202–690–5932.

E. Other Topics Related to Poverty and Dependency

In making decisions about which proposals to fund, priority attention will be given to projects which address concerns within the topical areas listed above. However, we do invite researchers to propose projects which are not included above, but which directly address the overall themes of poverty and dependence.

ASPE also encourages applicants to propose projects that analyze the various service delivery approaches or intervention strategies in use in a field. Appropriate fields include early childhood development, family economic development, child welfare services, youth services, or other social service areas of interest to HHS.

Such projects would describe and categorize service delivery approaches and intervention strategies now being used in a field and would explain their relationship to one another and to interventions in other service fields. This would create a framework for policy makers to assess how newly proposed service interventions relate to existing interventions and to other efforts in a field.

Research evidence of impacts on children or families is one basis policy makers use to assess what an intervention has to offer. Yet, other issues are also important. What underlying theories of human development, behavior and change are implicit in the strategy? How does the intervention relate to the unmet needs of the potential clientele? What resources are required for the intervention? What is the fit between the intervention and existing programs and service systems? How are the duration and intensity of the intervention related to the observed effects? What are the advantages or disadvantages over alternative approaches?

For example, in the field of infant and toddler services, we do not fully understand when and where different models of service are best applied. A range of new approaches is being tried, including Parents as Teachers, the Infant Health and Development Demonstration, Home Visiting Demonstrations, and Hawaii's Healthy Start program. The new Early Head Start initiative also will introduce services for infants and toddlers and their families. What factors are important for policy makers to consider in deciding when and where these or other models can best be used?

We invite researchers to propose to create a "map" of a field of child or family services that will serve as a framework for answering such questions.

Technical questions concerning this topic should be directed to Richard Silva at 202–401–6660.

Part III. Application Preparation and Evaluation Criteria

This part contains information on the preparation of an application for submission under this announcement, the forms necessary for submission and the evaluation criteria under which the applications will be reviewed. Potential applicants should read this part carefully in conjunction with the information provided in Part II.

Application Forms. See section entitled "Components of a Complete Application." All of these documents must accompany the application package.

Length of Application. Applications should be as brief and concise as possible, but assure communication of the applicant's proposal to the reviewers. In no case shall the project narrative exceed 30 double spaced pages exclusive of appropriate attachments. Only relevant attachments should be included, for example, resumes of key personnel. Videotapes, brochures, and other promotional materials will be discarded and not reviewed. Project narratives should be formatted with 1 inch margins, double spaced lines, 12 point type, with consecutively numbered pages.

Applications should be assembled as follows:

1. *Abstract:* Provide a one-page summary of the proposed project. The abstract should clearly identify which priority topic listed in Part II above the application intends to address.
2. *Goals, Objectives, and Usefulness of Project:* Include an overview which describes the need for the proposed project; indicates the background and policy significance of the issue area(s) to be researched; outlines the specific quantitative and qualitative questions to be investigated; and describes how the proposed project will advance scientific knowledge and policy development.
3. *Methodology and Design:* Provide a description and justification of how the proposed research project will be implemented, including methodologies, approach to be taken, data sources to be used, and proposed research and analytic plans. Identify any theoretical or empirical basis for the methodology and approach proposed. In addition, provide evidence of access to data set(s) proposed to be studied.
4. *Experience of Personnel/ Organizational Capacity:* Briefly describe the applicant's organizational capabilities and experience in conducting pertinent research projects. Identify the key staff who are expected to carry out the research project and provide a curriculum vitae for each person. Provide a discussion of how key staff will contribute to the success of the project.
5. *Work Plan:* A work plan should be included which describes the start and end dates of the project, the responsibilities of each of the key staff, and a time line which shows the sequence of tasks necessary for the completion of the project. Identify the other time commitments of key staff members, for example, their teaching or managerial responsibilities as well as other projects that they are involved in. The Work plan should include a discussion of any plans for dissemination of the results of the study, e.g., articles in journals and presentations at conferences.
6. *Budget:* Submit a request for Federal funds using Standard Form 424A and provide a proposed budget using the categories listed on this form. A narrative explanation of the budget should be included which explains in more detail what the funds will be used for. If other sources of funds are being received to support aspects of this research, the source, amount, and other relevant details must be included.

Review Process and Funding information. Applications will be initially screened for compliance with the timeliness and completeness requirements. Three (3) copies of each application are required. Applicants are encouraged to send an additional three (3) copies of their application to ease processing, but applicants will not be penalized if these extra copies are not included. If judged in compliance, the application then will be reviewed by government personnel, augmented by outside experts where appropriate.

The panel will review the applications using the evaluation criteria listed below to score each application. These review results will be the primary element used by the ASPE in making funding decisions.

HHS reserves the option to discuss applications with other Federal agencies, Central or Regional Office staff, specialists, experts, States and the general public. Comments from these sources, along with those of the reviewers, may be considered in making an award decision.

As a result of this competition, between 10 and 15 awards are expected to be made from funds appropriated for fiscal years 1995, and an additional five awards may be made with funds for fiscal year 1996 within the limits of the available funding. Awards will be limited to one year of support. The average award is expected to be approximately $75,000.

Deadline for Submission of Applications. The closing date for submission of applications under this announcement is August 28, 1995. An application will be considered as meeting the deadline if it is either: (1) received at, or hand-delivered to, the mailing address on or before August 28, 1995, or (2) postmarked before midnight five days prior to August 28, 1995 and received in time to be considered during the competitive review process (within two weeks of the deadline date). Applications will not be accepted which are transmitted by fax.

When mailing application packages, applicants are strongly advised to obtain a legibly dated receipt from a commercial carrier (such as UPS, Federal Express, etc.), or from the U.S. Postal Service as proof of mailing by the deadline date. If there is a question as to when an application was mailed,

applicants will be asked to provide proof of mailing by the deadline date. When proof is not provided, an application will not be considered for funding. Private metered postmarks are not acceptable as proof of timely mailing.

Hand-delivered applications will be accepted Monday through Friday prior to and on August 28, 1995 during the hours of 9:00 a.m. to 4:30 p.m. in the lobby of the Hubert H. Humphrey building located at 200 Independence Avenue, SW., in Washington, D.C. when hand delivering an application, call 690–8794 from the lobby for pickup. A staff person will be available to receive applications. Applications which do not meet the August 28, 1995 deadline will not be considered or reviewed. HHS will send a letter to this effect to each late applicant.

HHS reserves the right to extend the deadline for all applications if there is widespread disruption of the mail because of extreme weather conditions or natural disasters or if HHS determines an extension to be in the best interest of the Government. However, HHS will not waive or extend the deadline for any applicant unless the deadline is waived or extended for all applicants.

Selection Process and Evaluation Criteria

Selection of the successful applicants will be based on the technical criteria laid out in this announcement. Reviewers will determine the strengths and weaknesses of each application in terms of the evaluation criteria listed below, provide comments and assign numerical scores. The review panel will prepare a summary of all applicant scores, strengths, weaknesses and recommendations.

The point value following each criterion heading indicates the maximum numerical weight that each section will be given in the review process. An unacceptable rating on any individual criterion may render the application unacceptable. Consequently, applicants should take care to ensure that all criteria are fully addressed in the applications. Applications will be reviewed as follows:

Evaluation Criteria

1. *Goals, Objectives, and Potential Usefulness of the Analyses.* (25 points). The potential usefulness of the objectives and how the anticipated results of the proposed project will advance scientific knowledge and policy development.

2. *Methodology and Design.* (35 points). The appropriateness, soundness, and cost-effectiveness of the methodology, including the research design, statistical techniques, analytical strategies, the selection of existing data sets, and other procedures.

3. *Qualifications of Personnel and Organizational Capability.* (25 points). The qualifications of the project personnel for conducting the proposed research as evidenced by professional training and experience, and the capacity of the organization to provide the infrastructure and support necessary for the project.

4. *Work Plan and Budget.* (15 points). Is the plan reasonable? Are the activities sufficiently detailed to ensure successful, timely implementation? Do they demonstrate an adequate level of understanding by the applicant of the practical problems of conducting such a project? Is the proposed budget reasonable and sufficient to ensure completion of the study?

Disposition of Applications

1. *Approval, disapproval, or deferral.* On the basis of the review of an application, the ASPE will either (a) approve the application in whole, as revised, or in part for an amount of funds and subject to such conditions as are deemed necessary or desirable for the research project; or (b) disapprove the application; or defer action on the application for such reasons as a lack of funds or a need for further review.

2. *Notification of disposition.* The ASPE will notify the applicants of the disposition of their application. A signed notification of the award will be issued to notify the applicant of the approved application.

3. *The Assistant Secretary's Discretion.* Nothing in this announcement should be construed as to obligate the Assistant Secretary for Planning and Evaluation to make any awards whatsoever. Awards and the distribution of awards among the priority areas are contingent on the needs of the Department at any point in time and the quality of the applications which are received.

Components of a Complete Application. A complete application consists of the following items in this order:

1. Application for Federal Assistance (Standard Form 424, Revised 4–88);
2. Budget Information—Non-construction Programs (Standard Form 424A, Revised 4–88);
3. Assurances—Non-construction Programs (Standard Form 424B; Revised 4–88);
4. A table of Contents;
5. Budget Justification for Section B—Budget Categories;
6. Proof of nonprofit status, if appropriate;
7. A copy of the applicant's approved indirect cost rate agreement if necessary;
8. Project Narrative Statement, organized in five sections addressing the following topics:
   (a) Abstract,
   (b) Goals, Objectives and Usefulness of the Project,
   (c) Methodology and design,
   (d) Background of the Personnel and Organizational Capabilities and
   (e) Work plan (timetable);
9. Any appendices/attachments;
10. Certification Regarding Drug-Free Work place;
11. Certification Regarding Debarment, Suspension and Other Responsibility Matters;
12. Certification and, if necessary, Disclosure Regarding Lobbying;

Reports. The grantee must submit quarterly progress reports and a final report. The specific format and content for these reports will be provided by the project officer.

State Single Point of Contact (E.O. No. 12372). The Department of Health and Human Services has determined that this program is not subject to Executive Order No. 12372, Intergovernmental Review of Federal Programs, because it is a program that is national in scope and does not directly affect State and local governments. Applicants are not required to seek intergovernmental review of their applications within the constraints of E.O. No. 12372.

Dated: June 21, 1995.

David T. Ellwood,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 95–15700 Filed 6–26–95; 8:45 am]

BILLING CODE 4151–04–M

Agency for Toxic Substances and Disease Registry

[Announcement 530]

The Great Lakes Human Health Effects Research Program

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces that grant applications will be accepted to conduct research on the impact on human health of fish consumption from the Great Lakes. ATSDR's mission includes the prevention of adverse health effects resulting from human exposure to hazardous substances in the environment. The ATSDR Great Lakes Human Health Effects Research Program will focus on identified populations that have a potentially higher risk of long-term adverse health effects from exposure to contaminants in Great Lakes fish, i.e., Native Americans, sport anglers, urban poor, the elderly, Asian Americans and other racial/ethnic minority populations, and fetuses and nursing infants of mothers who consume contaminated Great Lakes fish.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of "Healthy People 2000," see the Section **Where to Obtain Additional Information.**)

Authority

This program is authorized in sections 104(i)(5)(A) and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) [42 U.S.C. 9604(i)(5)(A) and (15)]; and section 106, subsection 118(e) of the Great Lakes Critical Programs Act of 1990 [33 U.S.C. 1268(e)].

Smoke-Free Workplace

PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Eligible applicants are the Great Lakes States and political subdivisions thereof, including federally-recognized Indian tribal governments. State organizations, including State universities, State colleges, and State research institutions, must affirmatively establish that they meet their respective State's legislative definition of a State entity or political subdivision to be considered an eligible applicant. The Great Lakes States include Illinois, Indiana, Michigan, Minnesota, Ohio, Pennsylvania, New York, and Wisconsin, consistent with section 106, subsection 118(e) of the Great Lakes Critical Programs Act of 1990 [33 U.S.C. 1268(e)]. ATSDR encourages collaborative efforts among these potential applicants.

Availability of Funds

Approximately $4 million is available in fiscal year (FY) 1995 to fund approximately 9 re-competing and 1 to 2 new awards. It is expected that the average award will be $250,000 ranging from $200,000 to $300,000. It is expected that the awards will be made on or about September 30, 1995. It is anticipated that the new as well as the re-competing awards will be for a 12-month budget period with a proposed project period of 3 years. Funding estimates may vary and are subject to change.

The continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Use of Funds

Funds may be expended for reasonable program purposes, such as personnel, travel, supplies and services. Funds for contractual services may be requested; however, the grantee, as the direct and primary recipient of PHS grant funds, must perform a substantive role in carrying out project activities and not merely serve as a conduit for an award to another party or provide funds to an ineligible party. Equipment may be purchased with grant funds; however, the equipment must be appropriate and reasonable for the research activity to be conducted. Property may be acquired only when authorized in the grant. The grantee, as part of the application process, should provide a justification of need to acquire property, the description, and the cost of purchase versus lease.

Purpose

The purpose of this announcement is to solicit scientific proposals designed to investigate and characterize the association between the consumption of contaminated Great Lakes fish and potential long-term adverse health effects. The research objectives of this program are to: (1) Build upon and amplify the results from past and on-going research in the Great Lakes basin; (2) develop information, databases and research methodology that will provide long-term benefit to human health effects research in the Great Lakes basin; (3) provide direction for future health effects research; (4) provide health information to State and local health officials, the concerned public and their medical health care professionals; and (5) in concert with State and local health officials, increase the public awareness regarding the potential health implications of toxic pollution in the Great Lakes basin; and (6) coordinate as necessary with relevant Public Health Service (PHS) research programs and activities, including those of the Food and Drug Administration (FDA), Centers for Disease Control and Prevention (CDC), National Institutes of Health (NIH), and the Indian Health Service (IHS), as well as the Environmental Protection Agency (EPA) and State and local health departments, to ameliorate adverse public health impacts of persistent toxic substances in the Great Lakes basin.

Program Requirements

ATSDR will provide financial assistance to applicants in conducting studies on potential human health effects which result from human consumption of contaminated fish from the Great Lakes basin, particularly in the 31 areas of concern within the U.S. boundaries identified by the International Joint Commission. ATSDR encourages the submission of applications that emphasize research that will extend existing studies. ATSDR is also interested in funding applicant programs that identify populations which have a higher risk of short- and long-term adverse health effects from exposure to Great Lakes contaminants in fish, i.e., Native Americans, sport anglers, urban poor, the elderly, Asian Americans, racial/ethnic minority populations, and fetuses and nursing infants of mothers who consume contaminated Great Lakes fish. Priority areas of research for this program include:

1. Characterizing exposure and determining the profiles and levels of Great Lakes contaminants in biological tissues and fluids in high-risk populations;
2. Identifying sensitive and specific human health endpoints, i.e., reproductive/developmental, behavioral, endocrinologic, and immunologic effects and correlating them to exposure to Great Lakes contaminants; and
3. Determining the short- and long-term risk(s) of adverse health effects in children which result from parental exposure to Great Lakes contaminants.

Proposed projects covering these priority areas should include strategies (risk communication) to inform susceptible populations about the potential human health impact of consuming contaminated fish from the Great Lakes.

Based upon research findings, longer term priority areas may include, but are not limited to:

1. Investigating the feasibility of, or establishing, registries and/or surveillance cohorts in the Great Lakes region; and
2. Establishing a chemical mixtures database with emphasis on tissue and blood levels to identify new cohorts, conduct surveillance and health effects studies, and establish registries and/or surveillance cohorts.

In awarding grants pursuant to the ATSDR Great Lakes Human Health Effects Research Program, ATSDR shall consider proposed projects that will help fill information gaps and address research needs regarding the human health impact of consumption of contaminated fish from the Great Lakes. ATSDR encourages collaborative efforts among potential applicants in pursuing these research needs.

Evaluation Criteria

New and re-competing applications will be reviewed and evaluated according to the following criteria:

1. *Scientific and Technical Review Criteria of New and Re-competing Continuation Applications*

a. PROPOSED PROGRAM—60%
The extent to which the applicant's proposal addresses:
(1) the scientific merit of the hypothesis of the proposed project, including the originality of the approach and the feasibility, adequacy, and rationale of the design (the design of the study should ensure statistical validity for comparison with other research projects);
(2) the technical merit of the methods and procedures for the proposed project (analytic procedures should be state of the art, including quality assurance and quality control methods for comparison with other research projects; additionally, the applicant is expected to participate in a tissue bank as part of the quality assurance quality control program) including the degree to which the project can be expected to yield results that meet the program objective as described in the Purpose section of this announcement;
(3) the proposed project schedule, including clearly established and obtainable project objectives for which progress toward attainment can and will be measured;
(4) the proposed mechanism to be utilized to address community concerns and opinion, and create lines of communication; and
(5) the proposed method to disseminate the study results to State and local public health officials, tribal governments, and the other Federal agencies, community residents, and other concerned individuals and organizations.

b. PROGRAM PERSONNEL—30%
The extent to which the proposal describes:
(1) the qualifications, experience, and commitment of the Principal Investigator, and his/her ability to devote adequate time and effort to provide effective leadership; and
(2) the competence of associate investigators to accomplish the proposed study; their commitment and time devoted to the study.

c. APPLICANT CAPABILITY—10%
Description of the adequacy and commitment of the institutional resources to administer the program and the adequacy of the facilities as they impact on performance of the proposed study.

d. PROGRAM BUDGET—(NOT SCORED)
The extent to which the budget is reasonable, clearly justified, and consistent with intended use of grant funds.

2. *Review of Continuation Applications*

Continuation awards within the project period will be made on the basis of the following criteria:
a. Satisfactory progress in meeting project objectives;
b. Realistic, specific, and measurable objectives for the new budget period;
c. Applicability and feasibility of proposed changes in meeting long-term objectives; methods of operation, need for grant support, and/or evaluation procedures to achieve project objectives; and
d. Budget request is clearly justified and consistent with the intended use of grant funds.

Funding Preferences

ATSDR will give funding preference to the nine competitive continuation grants funded during FY 1994 on the basis of satisfactory progress.

Executive Order 12372

The applications submitted under this announcement are not subject to the Intergovernmental Review of Federal Programs as governed by Executive Order 12372.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.161, Health Programs for Toxic Substances and Disease Registry.

Other Requirements

1. *Protection of Human Subjects*

If the proposed project involves research on human subjects, the applicants must comply with Department of Health and Human Services Regulations (45 CFR Part 46) regarding the protection of human subjects. Assurances must be provided that the project will be subject to initial and continuing review by the appropriate institutional review committees. In addition to other applicable committees, Indian Health Service (IHS) institutional review committees also must review the project if any component of IHS will be involved or will support the research. If any Native American community is involved, its tribal government must also approve that portion of the project applicable to it. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and forms provided in the application kit.

2. *Cost Recovery*

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), provides for the recovery of costs incurred for health-related activities at each Superfund site from potentially responsible parties. The recipient will agree to maintain an accounting system that will keep an accurate, complete, and current accounting of all financial transactions on a site-specific basis, i.e., individual time, travel, and associated costs, including indirect cost, as appropriate for the site. The recipient will retain the documents and records to support these financial transactions for possible use in a cost recovery case for a minimum of ten (10) years after submission of a final financial status report, unless there is a litigation, claim, negotiation, audit, or other action involving the specific site. The records will then be maintained until resolution of all issues on the specific site. Note: Recipients of awards must maintain all records for 10 years following submission of the final Financial Status Report unless otherwise directed by the Cost Recovery Activity, OPOM, ATSDR, and must obtain written approval from the Cost Recovery Activity Official before destroying any records.

3. *Third Party Agreements*

Project activities which are approved for contracting pursuant to the prior approval provisions shall be formalized in a written agreement that clearly establishes the relationship between the grantee and the third party.

The written agreement shall at a minimum:

1. State or incorporate by reference all applicable requirements imposed on the contractors under the grant by the terms of the grant, including requirements concerning peer review (ATSDR selected peer reviewers), ownership of data, and the arrangement for copyright when publications, data, or other copyrightable works are developed under or in the course of work under a PHS grant-supported project or activity;
2. State that any copyrighted or copyrightable works shall be subject to a royalty-fee, nonexclusive, and irrevocable license to the Government to reproduce, publish, or otherwise use them, and to authorize others to do so for Federal Government purposes;
3. State that whenever any work subject to this copyright policy may be developed in the course of a grant by a contractor under grant, the written agreement (contract) must require the contractor to comply with these requirements and can in no way diminish the Government's right in that work; and
4. State the activities to be performed, the time schedule for those activities, the policies and procedures to be followed in carrying out the agreement, and the maximum amount of money for which the grantee may become liable to the third party under the agreement.

The written agreement required shall not relieve the grantee of any part of its responsibility or accountability to PHS under the grant. The agreement shall therefore retain sufficient rights and control to enable the grantee to fulfill this responsibility and accountability.

Application Submission and Deadline Dates

The original and two copies of the application PHS Form 5161–1 (Revised 7/92, OMB Control Number 0937–0189) must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, Georgia 30305 by August 10, 1995. (By formal agreement, the CDC Procurement and Grants Office will act for and on behalf of ATSDR on this matter.)

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:
a. Received on or before the deadline date or,
b. Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked your name, address, and phone number and will need to refer to Announcement Number 530. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Georgia Jang, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mail Stop E–13, Atlanta, Georgia 30305 or by calling (404) 842–6814. Programmatic technical assistance may be obtained from Dr. Heraline Hicks, Research Implementation Branch, or Michael Youson, Office of the Director, Division of Toxicology, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mail Stop E–29, Atlanta, Georgia 30333 or by calling (404) 639–6306 or 6300.

Please refer to announcement number 530 when requesting information and submitting an application.

Potential applicants may obtain a copy of "Healthy People 2000," (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000," (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: June 20, 1995.

Claire V. Broome,

Deputy Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 95–15658 Filed 6–26–95; 8:45 am]
BILLING CODE 4163–70–P

[ATSDR–95]

Proposed Procedures for Combined Analyses of Epidemiologic Studies as Part of the Great Lakes Human Health Effects Research Program

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: This notice announces the procedures ATSDR will use for conducting combined research analyses as part of the ATSDR Great Lakes Human Health Effects Research Program.

SUMMARY: This notice describes the proposed procedures, meta- analyses and pooled data analyses, to be used by ATSDR to conduct combined analyses of epidemiologic studies supported by the ATSDR Great Lakes Human Health Effects Research Program. ATSDR may choose to utilize one or both procedures, depending on the data and the results of the future feasibility studies. The procedures will be used for both new and existing research investigations. Comments on this notice are requested. The procedures outlined herein will be used on an interim basis, subject to change based on comments received and experience gained during implementation of these procedures.

DATES: Public comments concerning this **Federal Register** notice must be received on or before December 26, 1995.

ADDRESSES: Comments on this notice should bear the docket control number ATSDR–95 and should be submitted to: Division of Toxicology, Research Implementation Branch, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Comments on this notice will be available for public inspection at the Agency for Toxic Substances and Disease Registry, Building 4, Suite 2400, Executive Park Drive, Atlanta, Georgia (not a mailing address), from 8 a.m. until 4:30 p.m., Monday through Friday, except for Federal legal holidays.

FOR FURTHER INFORMATION CONTACT: Dr. William Cibulas, Research Implementation Branch, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road NE., Atlanta, Georgia 30333, telephone (404) 639–6306.

SUPPLEMENTARY INFORMATION:

Background

The ATSDR Great Lakes Human Health Effects Research Program is

authorized in sections 104(I)(5)(A) and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) [42 U.S.C. 9604(I)(5)(A) and (15)]; and section 106, subsection 118(e) of the Great Lakes Critical Programs Act of 1990 [33 U.S.C. 1268(e)]. This research program is designed to investigate and characterize the association between the consumption of contaminated Great Lakes fish and associated short- and long-term harmful health effects. The research objectives of the program are to (1) build upon and amplify the results from past and ongoing research in the Great Lakes basin; (2) develop information databases and research methodology that will provide long-term benefit to human health effects research in the Great Lakes basin; (3) provide direction for future health effects research; (4) provide health information to State and local health officials, and to the concerned public and their medical health care professionals; and (5) in concert with State and local officials, increase the public awareness regarding the potential health implications of toxic pollution in the Great Lakes basin; and (6) coordinate as necessary with relevant Public Health Service (PHS) research programs and activities, including those of the Food and Drug Administration (FDA), Centers for Disease Control and Prevention (CDC), National Institutes of Health (NIH), and the Indian Health Service (IHS), as well as the Environmental Protection Agency (EPA), and State and local health departments, to ameliorate adverse public health impacts of persistent toxic substances in the Great Lakes basin.

Toward this end, ATSDR has developed a Great Lakes Health Effects Research Strategy. The goals of this strategy are to identify human populations residing in the Great Lakes basin that may be at greater risk of exposure to chemical contaminants present in one or more of the Great Lakes, and to ameliorate or prevent any adverse health effects. This strategy is built upon the five traditional elements of disease prevention: identification, evaluation, control, dissemination, and infrastructure. This strategy has been endorsed by the Council of Great Lakes Research Managers and has been adopted by the International Joint Commission as a framework for the study of human health and other ecosystem effects in the Great Lakes basin.

In fiscal year 1992, ATSDR funded nine research grants to study the potential adverse human health effects of consuming contaminated fish. These studies include eight epidemiologic investigations in presumed susceptible populations, that is, Native Americans, sport anglers, the urban poor, pregnant women, fetuses and nursing infants of mothers who consume contaminated Great Lakes fish, infants and children, and the elderly. The ninth study focuses on developing more sensitive methods to detect persistent Great Lakes contaminants, such as polychlorinated biphenyls, dioxins, alkylated lead, mirex, and methylmercury, in human biologic tissues and fluids. In fiscal year 1993 ATSDR funded ten grants which included nine continuation awards for investigations funded in 1992 and one new award that established an interlaboratory-based, quality assurance/control program for the ATSDR research program. In fiscal year 1994, ATSDR funded continuation awards for all 10 research grants.

The impact of this research program will be felt most directly by the communities within the Great Lakes basin. Collectively, these 10 research projects will (1) build upon and extend six existing human health studies in the Great Lakes basin that include high-risk populations; (2) establish two new subpopulations that include African-American women, and men and women of reproductive age between 18 and 34; (3) improve analytical methodology for detecting low levels of Great Lakes contaminants in human biologic tissues and fluids and in environmental media; (4) characterize exposure to all 11 critical Great Lakes contaminants identified by the International Joint Commission, as well as other pollutants; (5) determine profiles and levels (body burden) of Great Lakes contaminants in high-risk populations; (6) identify sensitive human health end points from exposure to Great Lakes pollutants, i.e., behavioral, developmental, reproductive, neurologic, endocrinologic, and immunologic effects; (7) investigate paternal and maternal exposure to Great Lakes pollutants and assess the potential for related health effects in their children (transgenerational effects); (8) increase collaboration, cooperation, and communication between the researchers in the Great Lakes basin; and (9) provide public health information to the study populations, health care providers, and State and local health departments concerning human health effects that may result from exposure to Great Lakes pollutants by fish consumption.

Additionally, the research conducted by this program will help delineate the relationships among contaminant levels in the environment, exposure pathways, tissue levels, and potential human health effects; allow for evaluation and interpretation of data across human health studies to facilitate a basin-wide analysis of the pollution problem in the Great Lakes; and provide a "model" for other ecosystem-level studies intended to determine human health impacts of hazardous waste.

Rationale for Combined Analyses of ATSDR Research Investigations

Combined analyses of the research studies of the ATSDR Great Lakes Human Health Effects Research Program will provide qualitative and quantitative research synthesis of the ATSDR-supported investigations. It is expected that combined analyses of the studies will improve the science base for investigations of consumption of fish contaminated with persistent toxic compounds from the Great Lakes, strengthen the scientific foundation for informed decision-making regarding public policy, and improve coordination and linkages between research activities and public health practices.

Procedures for Combined Analyses of ATSDR Research Studies

The combined analyses (research synthesis) of epidemiologic investigations may be accomplished by meta-analysis of published results or pooled analysis of primary data. Both methods use explicit criteria, can be replicated, and provide a quantitative result. The following procedures will address key methodologic issues that are relevant to both methods of research synthesis, as well as their advantages and limitations.

Meta-analyses attempt to analyze and combine the results of previous independent studies of a given scientific issue. Meta- analyses can be used to increase the power of statistical tests for important end points and subgroups, to resolve uncertainty when studies have conflicting conclusions, and to improve estimates of effect size. Meta-analyses rely on the published reports of previous studies and are relatively easy and inexpensive to perform. However, they are also susceptible to many sources of bias and are influenced by statistical methods. Six major areas have been identified as critical elements of scientifically valid meta-analyses. Proposed meta-analyses of ATSDR studies will be conducted according to a predetermined protocol which will address the six major areas as follows: (1) study design, including protocol and literature search; (2) combinability of results of separate studies; (3) control and measurement of potential bias; (4) statistical analysis including significance tests and point and interval estimation; (5) sensitivity analysis to confirm final results; and (6) application of results which provides perspective of pooled results.

Pooled data analyses attempt to analyze and combine the results of individual subject level data across studies. Pooled data analyses can facilitate the study of rare exposures as well as confounding and interactions between established and suspected risk factors. Common definitions, coding, cutpoints for variables, and adjustment for the same confounders can be accomplished in pooled data analyses. Consistency of findings and previously unrecognized errors, inconsistencies, and associations may also be examined. However, pooled data analyses are more difficult to conduct because they are labor- and time-intensive. In addition, important methodologic issues remain regarding the influence of study populations and methods on the results of the pooled data analyses, and the integration of qualitative assessments of research studies with quantitative estimates of the results. Guidelines for a systematic methodology for the pooled analysis of subject level data from previously conducted epidemiologic studies focus on eight critical areas. Proposed pooled data analyses for ATSDR studies will be conducted according to a predetermined protocol which will address the eight critical areas as follows: (1) location of all studies conducted on the topic of interest; (2) selection of the studies for the pooling project; (3) obtaining the primary data from original investigators and preparing the data for the pooled analysis; (4) estimation of study-specific effects; (5) examination of heterogeneity of these study-specific effects and how they should be pooled; (6) estimation of the pooled effects with the appropriate statistical model; (7) examination of heterogeneity between studies if this exists; and (8) conduct of a sensitivity analysis.

Dated: June 20, 1995.

Claire V. Broome,

Deputy Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 95–15659 Filed 6–26–95; 8:45 am]

BILLING CODE 4163–70–P

Centers for Disease Control and Prevention

[Announcement No. 563]

Cooperative Agreements for Investigational Consortium for Research in Laboratory Medicine

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1995 funds for the establishment of an Investigational Consortium for Research in Laboratory Medicine to pursue new and evolving frontiers in laboratory quality research.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality, and to improve quality of life. This announcement is related to the priority area of Surveillance and Data Systems. In December 1991, an institute was convened by CDC and the Association of State and Territorial Public Health Laboratory Directors (ASTPHLD) entitled "Laboratory Initiatives for the Year 2000 (LIFT 2000)" to develop consensus on laboratory components which are essential to achieving the "Healthy People 2000" national health objectives. (For ordering a copy of "Healthy People 2000" and "LIFT 2000," see the section **Where to Obtain Additional Information.**)

Authority

This program is authorized under section 317(k)(2) [42 U.S.C., 247(k)(2)] of the Public Health Service Act, as amended.

Smoke-Free Workplace

PHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and government and their agencies. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, State and local governments or their bona fide agents, federally recognized Indian tribal organizations, and small, minority- and/or women-owned businesses are eligible to apply.

Availability of Funds

Approximately $600,000 is available in FY 1995 to fund up to three cooperative agreements. It is expected that the award will begin on or about September 29, 1995, and will be made for a 12-month budget period within a project period of up to two years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The principal purposes of these cooperative agreements are a) to provide assistance in developing an Investigative Consortium for Research in Laboratory Medicine, and b) to increase the capability of laboratorians and clinicians interested in laboratory medicine to engage in outcome-based laboratory research. The results of the research conducted by such a laboratory-based consortium will include increased knowledge of:

1. Improved methods for measuring patient outcome and performance of laboratory services.
2. The relationship between performance of laboratory services and patient outcome.
3. More comprehensive and improved assessment of the impact that changes in analytical technologies and test site locations have on patient outcome and laboratory practice.
4. Improved methods for defining required and desirable analytical goals that would have medical relevance for patient care.

Applications should explore new or evolving areas of critical research about quality measurements and components influencing quality in laboratory medicine. Also sought are applications from professional organizations interested in conducting outcome-based research in laboratory medicine. Applications dealing with clinical utility of specific tests are not sought unless they show direct relevance to specific areas of laboratory quality, and especially those enumerated above.

Benefits of the Cooperative Agreement

Individual participants in this investigational consortium are expected to benefit from the collaboration, communication and information exchange among themselves, the recipients of these cooperative agreements, and CDC. The recipients of these cooperative agreements are

expected to benefit by initiating research programs that may lead to future research efforts and similar consortia on their own. The public will benefit from CDC-established additional linkages to frontier research efforts dealing with quality of laboratory services impacting patient outcome and the increased knowledge gained in evaluating and improving the critical components of laboratory testing that impact public health.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and CDC will be responsible for the activities under B. (CDC Activities).

A. Recipient Activities

1. Either alone or through their constituents, carry out the research projects that were developed as stated in the application for assistance and as evaluated and prioritized by both CDC and the recipient.

2. Provide leadership in the design and implementation of research methodologies and protocols used to assess quality of laboratory testing and patient outcome.

3. Provide leadership in optimal data collection and analysis using the best epidemiological, statistical, and mathematical approaches available. Participant identification information may be omitted from these data if the consortium manager or research director is able to respond to questions concerning the validity of the data without providing participant information.

4. Use a mechanism for the sharing of the raw and analyzed data both within the consortium and with CDC.

5. Prepare manuscripts, along with the principal investigators of the individual projects if appropriate, for peer-reviewed publications that describe the results of some or all of the activities listed above. Manuscripts should benefit the public; the papers must also note the source of the funding for the project.

B. CDC Activities

1. Assist in the selection of projects that have the greatest public health concerns and in the evaluation of the detailed projects after their solicitation.

2. Provide technical input in the refinement of research protocol and methodologies proposed by the recipients and individual researchers including data collection, statistical analyses, and epidemiological approaches.

3. Collaborate in the development of a mutually defined data set standard for transmission of raw data, analyzed data, and reports within the consortium and with CDC.

4. Provide technical input and participate in the presentation of data at professional forums, meetings, and conferences as needed.

5. Provide technical assistance and input in the preparation of manuscripts related to the activities of the funded projects.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. Responsiveness of the overall application and its constituent projects to the objectives of the cooperative agreement including: a) applicant's understanding of the objectives of the proposed cooperative agreement and each proposed project; b) relevance of the projects to the stated objectives; c) public health benefits of the proposed research projects; and d) relationship to previous studies if applicable. (25 points)

2. Ability to provide staff, knowledge, and other resources required to provide oversight of the investigators—responsibilities in the individual projects. Of paramount importance are the assessed quality of the individual projects and ability of the individual investigators to carry out the functions as stated in their projects. The qualifications and time allocations of key personnel to be assigned to the cooperative agreement as well as the facilities, equipment, and other resources available to provide oversight of the constituent projects. (30 points)

3. The methods to be used in carrying out the responsibilities of the cooperative agreement and the projects contained therein and the steps to be taken in the planning and implementation of the projects. Scope of the studies in addition to the statistical and epidemiological methods to be used if applicable. (35 points)

4. Schedule for the activities of the cooperative agreement and the individual projects therein and methods for evaluating the accomplishments including detailed research plan to meet the objectives of the projects. (10 points)

5. In addition, consideration will be given to the extent to which the budget is reasonable, clearly justified, and consistent with the intended use of the funds. (Not scored)

Executive Order 12372 Review

This program is not subject to the Executive Order 12372 review.

Public Health Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.283.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from ten or more individuals and funded by the cooperative agreement will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If any of the proposed projects involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit. In addition to other applicable committees, Indian Health Service (IHS) institutional review committees also must review the project if any component of IHS will be involved or will support the research. If any Native American community is involved, its tribal government must also approve that portion of the project applicable to it.

Application Submission and Deadline

The original and two copies of the application Form PHS 5161–1 (OMB Control Number 0937–0189) must be submitted to Henry S Cassell III, Acting Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30305, Attention: Marsha D. Driggans, Grants Management Specialist, Mailstop E16, on or before August 7, 1995.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either: (a) Received on or before the deadline date; or (b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Application:* Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, application package and business management technical assistance may be obtained from Marsha D. Driggans, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 305, Mailstop E16, Atlanta, Georgia 30305, telephone (404) 842–6523, facsimile (404) 842–6513, or via Internet: mdd2@opspgo1.em.cdc.gov.

Programmatic technical assistance may be obtained from Dr. Shahram Shahangian, Supervisory Health Scientist, Division of Laboratory Systems, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop G23, Atlanta, Georgia 30341, telephone (404) 488–7680, facsimile (404) 488–7693, or via Internet: sns9@phpdls1.em.cdc.gov.

Please refer to Announcement Number 563 when requesting information and submitting an application.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1) referenced in the **INTRODUCTION** through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800. A copy of "Laboratory Initiatives for the Year 2000" may be obtained through Division of Laboratory Systems, CDC, Mailstop G25, Atlanta, Georgia 30341–3724, telephone (404) 488–7660.

Dated: June 21, 1995.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–15660 Filed 6–26–95; 8:45 am]

BILLING CODE 4163–18–P

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Occupational Radiation and Energy-Related Health Research Grants—Program Announcement 521: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Disease, Disability, and Injury Prevention and Control SEP: Occupational Radiation and Energy-Related Health Research Grants—Program Announcement 521.

Time and Dates: 8 a.m.–5 p.m., July 20, 1995.

Place: Executive Park Courtyard by Marriott, Meeting Room A, 1236 Executive Park Drive, Atlanta, Georgia 30329

Status: Closed.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement 521, entitled Occupational Radiation and Energy-Related Health Research Grants.

The meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Pub. L. 92–463.

Contact Person for More Information: Pervis C. Major, Ph.D, Health Science Administrator, Office of Extramural Coordination and Special Projects; Office of the Director, NIOSH, CDC, 1095 Willowdale Road, Morgantown, West Virginia 26505.

Dated: June 21, 1995.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–15661 Filed 6–26–95; 8:45 am]

BILLING CODE 4163–18–M

Health Care Financing Administration

[ORD–076–N]

New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: April 1995

AGENCY: Health Care Financing Administration (HCFA).

ACTION: Notice.

SUMMARY: This notice lists new proposals for Medicaid demonstration projects submitted to the Department of Health and Human Services during the month of April 1995 under the authority of section 1115 of the Social Security Act. This notice also lists proposals that were approved, disapproved, pending, or withdrawn during this time period. (This notice can also be accessed on the Internet at HTTP://WWW.SSA.GOV/HCFA/HCFAHP2.HTML.)

COMMENTS: We will accept written comments on these proposals. We will, if feasible, acknowledge receipt of all comments, but we will not provide written responses to comments. We will, however, neither approve nor disapprove any new proposal for at least 30 days after the date of this notice to allow time to receive and consider comments. Direct comments as indicated below.

ADDRESSES: Mail correspondence to: Susan Anderson, Office of Research and Demonstrations, Health Care Financing Administration, 2230 Oak Meadows, 6325 Security Boulevard, Baltimore, MD 21207.

FOR FURTHER INFORMATION CONTACT: Susan Anderson (410) 966–3996.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 1115 of the Social Security Act (the Act), the Department of Health and Human Services (HHS) may consider and approve research and demonstration proposals with a broad range of policy objectives. These demonstrations can lead to improvements in achieving the purposes of the Act.

In exercising her discretionary authority, the Secretary has developed a number of policies and procedures for reviewing proposals. On September 27, 1994, we published a notice in the **Federal Register** (59 FR 49249) that specified (1) the principles that we ordinarily will consider when approving or disapproving demonstration projects under the authority in section 1115(a) of the Act; (2) the procedures we expect States to use in involving the public in the development of proposed demonstration projects under section 1115; and (3) the procedures we ordinarily will follow in reviewing demonstration proposals. We are committed to a thorough and expeditious review of State requests to conduct such demonstrations.

II. Listing of New, Pending, Approved, and Withdrawn Proposals for the Month of April 1995

As part of our procedures, we publish a notice in the **Federal Register** with a monthly listing of all new submissions, pending proposals, approvals, disapprovals, and withdrawn proposals. Proposals submitted in response to a grant solicitation or other competitive process are reported as received during the month that such grant or bid is

awarded, so as to prevent interference with the awards process.

A. Comprehensive Health Reform Programs

1. New Proposals

No new comprehensive health reform proposals were received during the month of April.

2. Pending Proposals

Demonstration Title/State: Arizona Health Care Cost Containment System (AHCCCS)—Arizona.

Description: Arizona proposes to expand eligibility under its current section 1115 AHCCCS program to persons with incomes up to 100 percent of the Federal poverty level.

Date Received: March 17, 1995.

State Contact: Mabel Chen, M.D., Director, Arizona Health Care Cost Containment System, 801 East Jefferson, Phoenix, Arizona 85034, (602) 271–4422.

Federal Project Officer: Mike Fiore, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: The Diamond State Health Plan—Delaware.

Description: Delaware proposes to expand eligibility for Medicaid to persons with incomes up to 100 percent of the Federal poverty level and require that the Medicaid population enroll in managed care delivery systems. The State's current section 1115 demonstration project, the Delaware Health Care Partnership for Children, would be incorporated into the statewide program as an optional provider for eligible children.

Date Received: July 29, 1994.

State Contact: Kay Holmes, DSHP Coordinator, DHSS Medicaid Unit, Biggs Building, P.O. Box 906, New Castle, Delaware 19720, (302) 577–4900.

Federal Project Officer: Rosana Hernandez, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: MediPlan Plus—Illinois.

Description: Illinois seeks to develop a managed care delivery system using a series of networks, either local or statewide, to tailor its Medicaid delivery system to the needs of local urban neighborhoods or large rural areas.

Date Received: September 15, 1994.

State Contact: Tom Toberman, Manager, Federal/State Monitoring, 201 South Grand Avenue East, Springfield, Illinois 62763, (217) 782–2570.

Federal Project Officer: Gina Clemons, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: Community Care of Kansas—Kansas.

Description: Kansas proposes to implement a "managed cooperation demonstration project" in four predominantly rural counties, and to assess the success of a non-competitive managed care model in rural areas. The demonstration would enroll recipients currently eligible in the AFDC and AFDC-related eligibility categories, and expand Medicaid eligibility to children ages 5 and under with family incomes up to 200 percent of the Federal poverty level.

Date Received: March 23, 1995.

State Contact: Karl Hockenbarger, Kansas Department of Social and Rehabilitation Services, 915 SW Harrison Street, Topeka, Kansas 66612, (913) 296–4719.

Federal Project Officer: Jane Forman, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: Louisiana Health Access—Louisiana.

Description: Louisiana proposes to implement a fully capitated statewide managed care program. A basic benefit package and a behavioral health and pharmacy wrap-around would be administered through the managed care plans. The State intends to expand Medicaid eligibility to persons with incomes up to 250 percent of the Federal poverty level (FPL); those with incomes above 133 percent of the FPL would pay all or a portion of premiums.

Date Received: January 3, 1995.

State Contact: Carolyn Maggio, Executive Director, Bureau of Research and Development, Louisiana Department of Health and Hospitals, Post Office 2870, Baton Rouge, Louisiana 70821–2871, (504) 342–2964.

Federal Project Officer: Gina Clemons, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: Missouri.

Description: Missouri proposes to require Medicaid beneficiaries to enroll in managed care delivery systems, and extend Medicaid eligibility to persons with incomes below 200 percent of the Federal poverty level. As part of the program, Missouri would create a fully capitated managed care pilot program to serve non-institutionalized persons with permanent disabilities on a voluntary basis.

Date Received: June 30, 1994.

State Contact: Donna Checkett, Director, Division of Medical Services, Missouri Department of Social Services, P.O. Box 6500, Jefferson City, Missouri 65102–6500, (314) 751–6922.

Federal Project Officer: Nancy Goetschius, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: The Granite State Partnership for Access and Affordability in Health Care—New Hampshire

Description: New Hampshire proposes to extend Medicaid eligibility to adults with incomes below the AFDC cash standard and to create a public insurance product for low income workers. The State also seeks to implement a number of pilot initiatives to help redesign its health care delivery system.

Date Received: June 14, 1994.

State Contact: Barry Bodell, New Hampshire Department of Health and Human Services, Office of the Commissioner, 6 Hazen Drive, Concord, New Hampshire 03301–6505, (603) 271–4332.

Federal Project Officer: Maria Boulmetis, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: SoonerCare—Oklahoma.

Description: Oklahoma proposes to implement a 5-year statewide managed care demonstration using both fully and partially capitated delivery systems. The emphasis of the program is to address access problems in rural areas by encouraging the development of rural-based managed care initiatives. The State will employ traditional fully capitated managed care delivery models for urban areas and will introduce a series of partial capitation models in the rural areas of the State. All currently eligible, non-institutionalized Medicaid beneficiaries will be enrolled during the first 2 years of the project.

Date Received: January 6, 1995.

State Contact: Dr. Garth Splinter, Oklahoma Health Care Authority, Lincoln Plaza, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105, (405) 530–3439.

Federal Project Officer: Helaine I. Fingold, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: Health Access Plan Demonstration—Vermont.

Description: Vermont proposes to integrate Medicaid recipients into managed care plans and expand coverage to uninsured individuals up to 150 percent of the Federal poverty level. The State also proposes to provide pharmacy coverage to low income Medicare beneficiaries.

Date Received: February 24, 1995.

State Contact: Veronica Celani, Health Policy Director, Vermont Agency of Human Services, 103 State Street, Waterbury, Vermont 05671, (802) 828–2949.

Federal Project Officer: Sherrie Fried, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

3. Approved Conceptual Proposals (Awards of Waivers Pending)

No conceptual proposals were approved during the month of April.

4. Approved Grant Proposals (Award of Waivers Pending)

No grant proposals were awarded during the month of April.

5. Approved Proposals

Demonstration Title/State: MassHealth—Massachusetts.

Description: Massachusetts plans to implement a range of strategies to extend Medicaid coverage of its low-income citizens, including the employed and the unemployed. The program would employ direct provision of health services and promote market forces to address the needs of the uninsured, including providing subsidies to employers and employees with incomes up to 200 percent of the Federal poverty level.

Date Received: April 15, 1994.

Date Approved: April 24, 1995.

State Contact: Laurie Burgess, Director, Managed Care Program Development, Division of Medical Assistance, 600 Washington Street, Boston, Massachusetts 02111, (617) 348–5695.

Federal Project Officer: Ed Hutton, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: MinnesotaCare—Minnesota.

Description: Minnesota plans to expand its Medicaid managed care delivery system and to extend Medicaid eligibility to children with incomes up to 275 percent of the Federal poverty level.

Date Received: July 28, 1994.

Date Approved: April 27, 1995.

State Contact: Maria Gomez, Commissioner, Health Care Services Delivery, Minnesota Department of Human Services, 444 Lafayette Road N, St. Paul, Minnesota 55155, (612) 297–4113.

Federal Project Officer: Penny Pine, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

6. Disapproved Proposals

No comprehensive health reform proposals have been disapproved since January 1, 1993.

7. Withdrawn Proposals

No comprehensive health reform proposals were withdrawn during the month of April.

B. Other Section 1115 Demonstration Proposals

1. New Proposals

No new proposals were received during the month of April.

2. Pending Proposals

Demonstration Title/State: Georgia's Children's Benefit Plan—Georgia.

Description: Georgia submitted a Section 1115 proposal entitled "Georgia Children's Benefit Plan" to provide preventive and primary care services to children aged 1 through 5 living in families between 133 percent and 185 percent of the Federal poverty level. The duration of the project is 5 years with proposed project dates of July 1, 1995 to June 30, 2000.

Date Received: December 12, 1994.

State Contact: Jacquelyn Foster-Rice, Georgia Department of Medical Assistance, 2 Peachtree Street NW, 201 South Grand Avenue East, Atlanta, Georgia 30303–3159, (404) 651–5785.

Federal Project Officer: Maria Boulmetis, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: High Cost User Initiative—Maryland.

Description: Maryland proposes to implement an integrated case management system for high-cost, high-risk Medicaid recipients.

Date Received: July 8, 1994.

State Contact: John Folkemer, Maryland Department of Health and Mental Hygiene, Office of Medical Assistance Policy, 201 West Preston Street, Baltimore, Maryland 21201, (410) 225–5206.

Federal Project Officer: Rosana Hernandez, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: Family Planning Services Section 1115 Waiver Request—Michigan.

Description: Michigan seeks to extend Medicaid coverage for family planning services to all women of childbearing age living in families with incomes at or below 185 percent of the Federal poverty level, and to provide an additional benefit package consisting of home visits, outreach services to identify eligibility, and reinforced support for utilization of services. The duration of the project is 5 years.

Date Received: March 27, 1995.

State Contact: Gerald Miller, Director, Department of Social Services, 235 South Grand Avenue, Lansing, Michigan 48909, (517) 335–5117.

Federal Project Officer: Suzanne Rotwein, Ph.D., Health Care Financing Administration, Office of Research and Demonstrations, 2306 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: Family Planning Proposal—New Mexico.

Description: New Mexico proposes to extend Medicaid eligibility for family planning services to all women of childbearing age with incomes at or below 185 percent of the Federal poverty level.

Date Received: November 1, 1994.

State Contact: Bruce Weydemeyer, Director, Division of Medical Assistance, P.O. Box 2348, Santa Fe, New Mexico 87504–2348, (505) 827–3106.

Federal Project Officer: Alisa Adamo, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: CHOICES—Citizenship, Health, Opportunities, Interdependence, Choices and Supports—Rhode Island.

Description: Rhode Island proposes to consolidate all current State and Federal funding streams for adults with developmental disabilities under one program using managed care/managed competition.

Date Received: April 5, 1994.

State Contact: Susan Babin, Department of Mental Health, Retardation, and Hospitals, Division of Developmental Disabilities, 600 New London Avenue, Cranston, Rhode Island 02920, (401) 464–3234.

Federal Project Officer: Melissa McNiff, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows,

6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: Wisconsin.

Description: Wisconsin proposes to limit the amount of exempt funds that may be set aside as burial and related expenses for SSI-related Medicaid recipients.

Date Received: March 9, 1994.

Date Approved: April 27, 1995.

State Contact: Jean Sheil, Division of Economic Support, Wisconsin Department of Health and Social Services, 1 West Wilson Street, Room 650, P.O. Box 7850, Madison, Wisconsin 53707, (608) 266–0613.

Federal Project Officer: J. Donald Sherwood, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

3. Approved Conceptual Proposals (Award of Waivers Pending)

No conceptual proposals were awarded during the month of April.

4. Approved Proposals

Demonstration Title/State: Minnesota Long-Term Care Options Project—Minnesota.

Description: Minnesota plans to integrate long-term care and acute care services under combined Medicare and Medicaid capitation payments for elderly dual eligibles.

Date Received: April 18, 1994.

Date Approved: April 27, 1995.

State Contact: Pamela Parker, Minnesota Department of Human Services, Human Services Building, 444 Lafayette Road North, St. Paul, Minnesota 55155, (612) 296–2140.

Federal Project Officer: Melissa McNiff, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

5. Disapproved Proposals

No proposals were disapproved during the month of April.

6. Withdrawn Proposals

The following proposal was withdrawn from consideration.

Demonstration Title/State: KIDS CARE—Virginia

Description: Virginia proposed to expand Medicaid eligibility to children in the State-funded KIDS CARE program, and provide them with a limited Medicaid benefit restricted to ambulatory services.

Date Received: May 18, 1994.

Date Withdrawn: April 27, 1995.

State Contact: Janet Kennedy, Suite 1300, 600 East Broad Street, Richmond, Virginia 23219, (804) 371–8855.

Federal Project Officer: Maria Boulmetis, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

III. Requests for Copies of a Proposal

Requests for copies of a specific Medicaid proposal should be made to the State contact listed for the specific proposal. If further help or information is needed, inquiries should be directed to HCFA at the address above.

(Catalog of Federal Domestic Assistance Program, No. 93.779; Health Financing Research, Demonstrations, and Experiments.)

Dated: June 14, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 95–15342 Filed 6–26–95; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Proposed Policy on Giant Panda Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that the comment period on the proposed policy for issuance of permits for import of giant panda will be reopened for 30 days to obtain further comments.

DATES: Public comments received on or before July 27, 1995 will be considered by the Service.

ADDRESSES: Comments may be submitted to the Acting Chief of the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Kenneth Stansell, Acting Chief, Office of Management Authority, at the above address, or call (703)358–2093; fax (703)358–2280.

SUPPLEMENTARY INFORMATION: The Service published a proposed pclicy on issuance of permits for giant panda imports on March 30, 1995 (60 FR 16487). The original comment period ended on May 30, 1995. The Service received a request from the American Zoo and Aquarium Association, Bethesda, Maryland, to extend the comment period to allow further clarification of issues central to policy development. Interested organizations and the public are invited to comment on concerns as outlined in the March 30 **Federal Register** and any other issues related to panda conservation.

Authority: This notice was prepared under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 16, 1995.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–15626 Filed 6–26–95; 8:45 am]

BILLING CODE 4310–55–P

[DES 95–31]

Availability of Draft Environmental Impact Statement for Proposed Reintroduction of Mexican Wolf to Historic Range in Southwestern United States

AGENCY: Fish and Wildlife Service, Department of Interior.

ACTION: Notice of availability of a draft Environmental Impact Statement (EIS) for the proposed reintroduction of the Mexican wolf within its historic range in the southwestern United States.

DATES: Comments will be accepted until October 31, 1995. See table below for dates of public meetings.

ADDRESSES: Comments should be sent to U.S. Fish and Wildlife Service, Mexican Wolf EIS, P.O. Box 1306, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: David Parsons, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (telephone (505) 766–2914; facsimile (505) 766–8063).

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the draft EIS may be obtained by contacting the above address. Copies of the draft EIS summary will be sent to everyone currently on the U.S. Fish and Wildlife Service's mailing list for information on the Mexican Wolf Recovery Program. Copies of the draft EIS summary are available upon request.

Copies of the draft EIS are available for inspection at public and University libraries in the following counties: In Arizona, Apache, Cochise, Gila, Graham, Greenlee, Navajo, Pima, and Santa Cruz Counties; in New Mexico, Catron, Doña Ana, Grant, Lincoln, Hidalgo, Otero, Sierra and Socorro Counties; and in Texas, Brewster County. They are also available at libraries in Phoenix, Arizona; Tucson, Arizona; Albuquerque, New Mexico; and Santa Fe, New Mexico.

Public open-house meetings will be held at the following locations on the days indicated:

Arizona:		
Alpine	September 20	Alpine Elementary School, County Road 2052.
Clifton	September 6	Courthouse Conference Room, 5th Street and Leonard.
Douglas	September 12	Police Department Conference Room, 300 W. 14th St.
Phoenix	September 9	Holiday Inn—N. Central, 4321 N. Central Pinetop.
Lakeside	September 18	Pinetop Council Chambers, 1360 N. Niels Hansen Rd., Lakeside.
Safford	September 7	Safford Library, 808 7th Avenue.
Tucson	September 11	Viscount Suites, 4855 E. Broadway.
New Mexico:		
Alamogordo	August 29	Holiday Inn, 1401 White Sands Blvd.
Albuquerque	August 22	Indian Pueblo Cultural Center, 2401 12th Street NW.
Las Cruces	August 24	Holiday Inn, 201 E. University.
Reserve	September 21	Reserve Community Center, Across from High School.
Silver City	September 5	Holiday Motor Hotel, 342 Highway 180 East.
Truth Or Consequences	September 14	T or C Civic Center, 400 West 4th Street.
Texas:		
Alpine	August 26	Alpine Civic Center, 102 West Holland.

Dated: June 15, 1995.

Nancy M. Kaufman,

Regional Director, Region 2, U.S. Fish and Wildlife Service.

Dated: June 21, 1995.

Willie Taylor,

Director, Office of Environmental Policy and Compliance, Department of the Interior.

[FR Doc. 95–15629 Filed 6–26–95; 8:45 am]

BILLING CODE 4310–55–P

U.S. Geological Survey

Interagency Advisory Committee on Water Data; Intergovernmental Task Force on Monitoring Water Quality

AGENCY: U.S. Geological Survey (USGS), U.S. Department of the Interior.

ACTION: Notice of an open meeting of the Intergovernmental Task Force on Monitoring Water Quality (ITFM).

SUMMARY: Notice is hereby given of a meeting of the ITFM. The purpose of the meeting will be to discuss and lay the foundation for the transition of the ITFM to the National Council for Monitoring Water Quality. The proposed agenda for the meeting includes a brief report of the future plans for continuing workgroups, discussion of the future need of the workgroups and breakout groups that will address the water-quality monitoring needs at various geographic scales. The ITFM is a partnership of representatives from Federal, State, Native American, and interstate governmental organizations. Working since January 1992 in consultation with representatives of other public and private organizations, the ITFM is developing an integrated, nationwide, voluntary strategy for water-quality monitoring.

DATES: The meeting will convene at 8:30 a.m., on Tuesday, July 18, 1995, and will adjourn at 5 p.m., on Wednesday, July 19, 1995.

ADDRESSES: Sheraton Reston Hotel, 11810 Sunrise Valley Drive, Reston, Virginia, 22091.

FOR FURTHER INFORMATION CONTACT: Nancy Lopez, Chief, Office of Water Data Coordination, USGS, 417 National Center, Reston, VA 22092, (703) 648–5014. Also, for information about the ITFM, you may contact the chairperson of ITFM, Elizabeth Fellows, at (202) 260–7062. Ms. Fellows is the Chief, Monitoring Branch, Office of Wetlands, Oceans, and Watersheds, Office of Water, U.S. Environmental Protection Agency.

SUPPLEMENTARY INFORMATION: This meeting is open to the public. A half hour at the end of the meeting on Wednesday is being set aside for public comment. Persons wishing to make a brief presentation (up to 5 minutes) are asked to provide a written request with a description of the general subject area to Nancy Lopez at the above address no later than noon, July 12, 1995, to reserve space on the agenda. It is requested that 30 copies of a written statement for the record be submitted to Ms. Lopez at the time of the meeting. We will distribute these copies to the members of the ITFM and place them in the official file.

John N. Fischer,

Associate Chief Hydrologist.

[FR Doc. 95–15596 Filed 6–26–95; 8:45 am]

BILLING CODE 4310–31–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 17, 1995. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by July 12, 1995.

Carol D. Shull,

Keeper of the National Register.

FLORIDA

Dade County

Hialeah Seaboard Air Line Railway Station, 1200 SE., 10th Ct., Hialeah, 95000854

LOUISIANA

Natchitoches Parish

Keegan House, 143 Chaplin Loop, Robeline, 95000853

MINNESOTA

Pennington County

Minneapolis St. Paul and Sault Ste. Marie Depot, Jct. of Third St. and Atlantic Ave., Thief River Falls, 95000852

MISSISSIPPI

Adams County

Holy Family Catholic Church Historic District, Roughly along Aldrich, Old D'Evereux, St. Catherine, Abbott and Byrne Sts., Natchez, 95000855

NEW YORK

Niagara County

Carnegie Library, 249 Goundry St., North Tonawanda, 95000851

PUERTO RICO

Adjuntas Municipality

Las Cabanas Bridge (Historic Bridges of Puerto Rico MPS), PR 135 over Rio Vaces, Barrios Capaez and Garza, Adjuntas vicinity, 95000838

Arecibo Municipality

Cambalache Bridge (Historic Bridges of Puerto Rico MPS), Over Rio Grande de

Arecibo, W of PR 2, Barrios Tanama and Cambalache, Arecibo vicinity, 95000831

Bayamon Municipality

Marques de la Serna Bridge (Historic Bridges of Puerto Rico MPS), PR 890 over Rio de Bayamon, Barrio Juan Sanchez, Bayamon vicinity, 95000850

Plata Bridge (Historic Bridges of Puerto Rico MPS), PR 167 over Rio de la Plata, Barrios Nuevo and Dajao, Nuranjito and Bayamon, Naranjito vicinity, 95000849

Canovanas Municipality

Villaran Bridge (Historic Bridges of Puerto Rico MPS), PR 9959 over Rio Canovanas, Barrios Pueblo and Canovanas, Canovanas vicinity, 95000835

Cayey Municipality

Arenas Bridge (Historic Bridges of Puerto Rico MPS), PR 735 over Rio de la Plata, Barrios Montellano and Arenas, Cayey vicinity, 95000843

La Liendre Bridge (Historic Bridges of Puerto Rico MPS), PR 735 over Quebrada Beatriz Barrios Vegas and Arenas, Cayey vicinity, 95000844

Rio Maton Bridge (Historic Bridges of Puerto Rico MPS), PR 14 over Rio Maton, Barrio Maton Abajo, Cayey vicinity, 95000841

Ciales Municipality

Manati Bridge at Mata de Platano (Historic Bridges of Puerto Rico MPS), PR 6684 over Rio Manati, Barrio Hato Viejo, Ciales vicinity, 95000847

Coamo Municipality

General Mendez Vigo Bridge (Historic Bridges of Puerto Rico MPS), PR 14 over Rio Las Minas, Barrio San Ildefonso, Coamo vicinity, 95000839

Padre Inigo Bridge (Historic Bridges of Puerto Rico MPS), PR 14 over Rio Coamo, Barrio Palmarejo, Coamo vicinity, 95000840

Comerio Municipality

Rio Hondo Bridge (Historic Bridges of Puerto Rico MPS), PR 156 over Rio Hondo, Barrio Rio Hondo, Comerio vicinity, 95000842

Corozal Municipality

Mavilla Bridge (Historic Bridges of Puerto Rico MPS), PR 159 over Rio Mavilla, Barrios Palmarejo and Abras, Corozal vicinity, 95000848

Guayama Municipality

Cayey Bridge (Historic Bridges of Puerto Rico MPS), PR 15 over Rio Guamani, Guayana vicinity, 95000845

Hormigueros Municipality

Silva Bridge (Historic Bridges of Puerto Rico MPS), PR 114 over Rio Guanajibo, Barrio Guanajibo, Hormigueros vicinity, 95000834

Maricao Municipality

Del Treinta Bridge (Historic Bridges of Puerto Rico MPS), PR 128 over Rio Prieto, Barrio Indiera Alta, Maricao vicinity, 95000846

Naguabo Municipality

Bridge No. 122 (Historic Bridges of Puerto Rico MPS), PR 3 over Rio Blanco, Barrio Rio Hucares, Naguabo vicinity, 95000836

San Juan Municipality

General Norzagaray Bridge (Historic Bridges of Puerto Rico MPS), PR 873 over the Quebrada Frailes, Barrios Tortugo and Monacillos, San Juan vicinity, 95000833

Rio Piedras Bridge (Historic Bridges of Puerto Rico MPS), PR 8839 over Rio Piedras, Barrios El Cinco and Hato Rey, San Juan vicinity, 95000832

Utuado Municipality

Blanco Bridge (Historic Bridges of Puerto Rico MPS), PR 10 over Rio Pellejas, Barrio Arenas, Utuado vicinity, 95000837

WASHINGTON

King County

Tracy House, 18971 Edgecliff Dr. SW., Seattle, 95000830

[FR Doc. 95–15607 Filed 6–26–95; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–363–364 and 731–TA–711–717 (Final)]

OCTG From Argentina, Austria, Italy, Japan, Korea, Mexico and Spain; Notice of Commission Determination to Conduct a Portion of the Hearing In Camera

AGENCY: U.S. International Trade Commission.

ACTION: Closure of a portion of a Commission hearing to the public.

SUMMARY: Upon request of respondents in the above-captioned final investigations, the Commission has unanimously determined to conduct a portion of its hearing scheduled for June 27, 1995, *in camera*. *See* Commission rules 207.23(d), 201.13(m) and 201.35(b)(3) (19 CFR 207.23(d), 201.13(m) and 201.35(b)(3)). The remainder of the hearing will be open to the public. The Commission unanimously has determined that the seven-day advance notice of the change to a meeting was not possible. *See* Commission rule 201.35(a), (c)(1) (19 CFR § 201.35(a), (c)(1)).

FOR FURTHER INFORMATION CONTACT: Anjali K. Singh, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–3117.

Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission believes that the respondents from the subject countries have justified the need for a closed session. A full discussion of price competition in the industry and the domestic industry's financial condition can only occur if a portion of the hearing is held *in camera*. Because certain information is not publicly available, any discussion of issues relating to this information will necessitate disclosure of business proprietary information (BPI). Thus, such discussions can only occur if a portion of the hearing is held *in camera*. In making this decision, the Commission nevertheless reaffirms its belief that whenever possible its business should be conducted in public.

The hearing will include the usual public presentations by petitioners and by respondents, with questions from the Commission. In addition, the hearing will include an *in camera* session for a presentation that discusses BPI by respondents and for questions from the Commission relating to the BPI, followed by a similar *in camera* presentation by petitioners. For any *in camera* session the room will be cleared of all persons except those who have been granted access to BPI under a Commission administrative protective order (APO) and are included on the Commission's APO service list in this investigation. *See* 19 CFR 201.35(b)(1), (2). In addition, to the extent petitioners' BPI will be discussed in the *in camera* session, personnel of the petitioning firms whose data will be discussed may also be granted access to the closed session while such data is discussed. The time for the parties' presentations and rebuttals in the *in camera* session will be taken from their respective overall allotments for the hearing. All persons planning to attend the *in camera* portions of the hearing should be prepared to present proper identification.

Authority: The General Counsel has certified, pursuant to Commission Rule 201.39 (19 CFR 201.39) that, in her opinion, a portion of the Commission's hearing in *OCTG from Argentina, Austria, Itoly, Japon, Korea, Mexico and Spain*, Inv. Nos. 701–TA–363–364 and 731–TA–711–717 (Final) may be closed to the public to prevent the disclosure of BPI.

Issued: June 21, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–15685 Filed 6–26–95; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–723 (Final)]

Certain Drawer Slides From China

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–723 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China of partial extension commercial roller drawer slides of steel, provided for in subheading 8302.42.30 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: June 5, 1995.

FOR FURTHER INFORMATION CONTACT: Olympia Hand (202–205–3182), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of partial extension commercial roller drawer slides of steel from China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on October 31, 1994, by Hardware Designers, Inc., Danbury, CT.

Participation in the investigation and public service list.—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in this investigation will be placed in the nonpublic record on October 10, 1995, and a public version will be issued thereafter, pursuant to section 207.21 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on October 23, 1995, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before October 16, 1995. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on October 18, 1995, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigation as possible any requests to present a portion of their hearing testimony *in camera*.

Written submissions.—Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is October 17, 1995. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is October 31, 1995; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before October 31, 1995. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

Issued: June 21, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–15687 Filed 6–26–95; 8:45 am]

BILLING CODE 7020–02–P

[Investigation 332–362]

U.S.-Africa Trade Flows and Effects of the Uruguay Round Agreements and U.S. Trade and Development Policy

AGENCY: United States International Trade Commission.

ACTION: Rescheduling of public hearing.

EFFECTIVE DATE: June 20, 1995.

SUMMARY: The public hearing on this matter, scheduled for July 25, 1995, has been rescheduled to July 26, 1995. The public hearing will be held at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC, beginning at 9:30 a.m. on July 26, 1995. All persons will have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary,

United States International Trade Commission, 500 E Street SW, Washington, DC 20436, no later than 5:15 p.m., July 13, 1995. The dates for filing documents have not changed: Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., July 13, 1995, and the deadline for filing post-hearing briefs or statements is 5:15 p.m., August 1, 1995. Notice of institution of the investigation and the earlier scheduled hearing date was published in the **Federal Register** of May 10, 1995 (60 FR 24884).

In the event that, as of the close of business on July 13, 1995, no witnesses are scheduled to appear at the hearing, the hearing will be cancelled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary of the Commission (202–205–2000) after July 13, 1995, to determine whether the hearing will be held.

FOR FURTHER INFORMATION CONTACT: Cathy Jabara, Office of Industries (202–205–3309) or Jean Harman, Office of Industries (202–205–3313), or William Gearhart, Office of the General Counsel (202–205–3091) for information on legal aspects. The media should contact Margaret O'Laughlin, Office of Public Affairs (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810).

WRITTEN SUBMISSIONS: As provided for in the Commission's prior notice, in lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on August 1, 1995. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Issued: June 21, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–15686 Filed 6–26–95; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Application of Tempotary Protected Status.

(2) FORM I–821. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals and households. Others: None. The information provided will be used by the Immigration and Naturalization Service to determine whether an applicant for Temporary Protected Status meets the eligibility requirements.

(4) 10,000 annual respondents at .5 hours per response.

(5) 5,000 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: June 21, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–15646 Filed 6–26–95; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collections(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the

estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance officer, Systems Policy Staff/Information Resources Management/Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Application of Temporary Replacement Card.

(2) FORM I–695. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals and households. Others: None. The information collected by this application will be used by the Immigration and Naturalization Service to consider application for replacement of temporary resident card. Also used to request a new card when previously issued, lost, stolen or destroyed.

(4) 100,000 annual respondents at .166 hours per response.

(5) 16,600 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: June 21, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–15645 Filed 6–26–95; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Application for Waiver of Grounds of Excludability.

(2) FORM I–690. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals and households. Others: None. The information furnished on the application will be used by the Immigration and Naturalization Service in considering eligibility for legalization under Section 210 and 245A of the Immigration and Naturalization Act, during the processing of both the application for temporary resident status and the application for permanent resident status.

(4) 52,800 annual respondents at .250 hours per response.

(5) 13,000 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: June 21, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–15651 Filed 6–26–95; 8:45 am]

BILLING CODE 4410–01–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with thee collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Certificate of Eligibility for Nonimmigrant Student (F–1) Status—For Academic and Language Students.

(2) FORM I–20AB/ID. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals and households. Others: None. This Form will be used to collect information from nonimmigrant students attending schools in the United States in order that the Immigration and Naturalization Service can monitor the students' immigration status and ensure that the students do not violate the condition imposed by their nonimmigrant status while attending school.

(4) 210,000 annual respondents at .50 hours per response.

(5) 105,000 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: June 21, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–15650 Filed 6–26–95; 8:45 am]

BILLING CODE 4410–01–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Medical Examination of Aliens Seeking Adjustment of Status.

(2) FORM I–693. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals and households. Others: None. The information contained on this form/application will be used by the Immigration and Naturalization Service in considering eligibility for adjustment of status under section 219, 245, and 245A of the Immigration and Naturalization Act.

(4) 800,000 annual respondents at 1.50 hours per response.

(5) 1,200,000 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: June 21, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–15652 Filed 6–26–95; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Freedom of Information/Privacy Act Request.

(2) FORM G–639. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals and households. Others: None. This form is provided as a convenient means for persons to provide data necessary for identification of a particular record desired under the Freedom of Information/Privacy Act.

(4) 25,000 annual respondents at .25 hours per response.

(5) 6,250 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: June 21, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–15649 Filed 6–26–95; 8:45 am]

BILLING CODE 4410–01–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Waiver of Rights, Privileges, Exemptions and Immunities.

(2) FORM I–508. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals and households. Others: None. The information furnished will be used by the Immigration and Naturalization Service to determine the eligibility of an alien applicant to retain the status of an alien lawfully admitted to the United States for permanent residence.

(4) 1,800 annual respondents at .083 hours per response.

(5) 150 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: June 21, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–15648 Filed 6–26–95; 8:45 am]

BILLING CODE 4410–01–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Notice of Naturalization Oath Ceremony.

(2) FORM N–445. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals and households. Others: None. The information furnished on the application refers only to what may have happened to the applicant after the preliminary interview and prior to the taking of the oath. Several months may elapse within those two events; the purpose for requesting the information is to enable the Immigration and Naturalization examiner to make and render an appropriate decision on the application.

(4) 380,000 annual respondents at .083 hours per response.

(5) 31,540 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: June 21, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–15647 Filed 6–26–95; 8:45 am]

BILLING CODE 4410–10–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ATP Collaboration Team

Notice is hereby given that, on April 17, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the ATP Collaboration Team ("Team") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of involving the Act's provisions limiting the recovery of

antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties to the Joint Venture are: Texas Instruments Incorporated, Dallas, TX; and PlasmaQuest, Inc., Richardson, TX.

The objective of the Team is to engage in cooperative research in the use of thin film technology for piezoelectric resonators and filters.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–15597 Filed 6–26–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to National Cooperative Research and Production Act of 1993—Automotive Collision Avoidance Systems Consortium

Notice is hereby given that, on April 21, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Automotive Collision Avoidance Systems Consortium has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Delco Electronics Corporation, Kokomo, IN; General Motors Corporation, Detroit, MI; Hughes Electronics Corporation, Los Angeles, CA; Environmental Institute of Michigan (ERIM), Ann Arbor, MI; Systems Technology, Inc. (STI), Hawthorne, CA; University of California—Davis, Davis, CA. The general area of planned activity is to develop vehicle technology involving sensors and electronics for application in collision avoidance.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–15598 Filed 6–26–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Information Infrastructure Testbed

Notice is hereby given that, on January 3, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the National Information Infrastructure Testbed ("NIIT") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the additional members of NIIT are: 3M Company, Austin, TX; American Medical Outcomes Repository, Torrance, CA; Caterpillar, Inc., East Peoria, IL; Denver Health & Hospitals/ Denver General Hospital, Denver, CO; Institute for Defense Analyses, Alexandria, VA; Lancet Online Corporation, Cambridge, MA; the Lewis Group, Woodinville, WA; Mid-continent Regional Educational Laboratory, Englewood, CO; NASA Commercial Remote Sensing Program, Stennis Space Center, MS; Network & Systems Consulting, Hermosa Beach, CA; and Pacific Northwest Laboratory, Richland, WA.

No other changes have been made in the membership, nature and objectives of the consortium. Membership in NIIT remains open, and the consortium intends to file additional written notifications disclosing all changes in membership.

On December 7, 1993, NIIT filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 18, 1994 (59 FR 25960).

The last notification was filed with the Department on August 9, 1994. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 23, 1995 (60 FR 15306).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–15601 Filed 6–26–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—CommerceNet Consortium

Notice is hereby given that, on April 25, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), CommerceNet Consortium, (the "Consortium") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing certain changes in its membership. CommerceNet Consortium has had a name change. It was formerly known as Smart Valley CommerceNet Consortium, Inc. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the additional members at the sponsor level are: Allan-Bradley Company, Inc., Albuquerque, NM; Electronic Data Systems, Plano, TX; Netscape Communications Corporation, Mountain View, CA; Nynex Corporation, Middleton, MA; Oracle Corporation, Redwood Shores, CA; Pitney Bowes, Shelton, CT; and Verifone Inc., Redwood City, CA.

The following organizations have joined the Consortium as associate members: Financial Services Technology Consortium, New York, NY; Frontier Technologies Corporation, Mequon, WI; First Data Corp., Palo Alto, CA; I/Pro, Palo Alto, CA; Los Alamos National Laboratory, Los Alamos, NM; National Automated Clearinghouse Assoc., Herndon, VA; Network Computing Devices, Mountain View, CA; Nihongo Yellow Pages, Inc. (ISM Services) San Jose, CA; Premier Industries, Chicago, IL; Union Bank, Monterey Park, CA; and Waltrip & Associates, Sacramento, CA. The following organizations have joined as international associate members: CSIR Information Services, Pretoria, SOUTH AFRICA; Japan Research Institute, Ltd, Tokyo, JAPAN; Kansai Institute of Information Systems, Osaka, JAPAN; Nippon Telephone & Telegraph Corporation, Tokyo, JAPAN; NEC Corporation, Tokyo, JAPAN; and Olivetti Telemedia S.P.A., Iveria (TO), ITALY. The following organizations were formerly sponsors but are now associates: American Express Company, Phoenix, AZ; Bellcore, Morristown, NJ; Dun & Bradstreet, Westport, CT; and The Santa Cruz Operation, Inc., Santa Cruz, CA.

No other changes have been made in either the membership or planned activities of the Consortium. Membership remains open, and the Consortium intends to file additional written notifications disclosing all changes in membership.

On June 13, 1994 the Consortium filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 31, 1994 (59 FR 45012).

The last notification was filed with the Department on January 18, 1995. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 20, 1995 (60 FR 14780).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–15599 Filed 6–26–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Instream Corporation/ Axint Technologies Corporation Joint Venture

Notice is hereby given that, on February 22, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Instream Corporation/Axint Technologies Corporation Joint Venture has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: InStream Corporation, Woburn, MA; and Axint Technologies Corporation, Auburndale, MA.

The purpose of this venture is to develop, demonstrate, and produce an advanced technology product which converts paper-based commerce within the healthcare industry to an easy to use, low cost, accessible electronic format.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–15600 Filed 6–26–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petrotechnical Open Software Corporation

Notice is hereby given that, on April 19, 1995, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301, *et seq.* ("the Act"), Petrotechnical Open Software Corporation ("POSC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following additional parties have become new, non-voting members of POSC: Mincom, Inc., Houston, TX; Informix Software, Inc., Irving, TX; University of Petroleum, Beijing, PEOPLES REPUBLIC OF CHINA; U.S. Department of Interior, Bureau of Indian Affairs, Golden, CO; Paras, Isle of Wight, U.K.; Tobin Data Graphics, Denver, CO; Quinary, S.p.A., Milan, ITALY; Empress Software, Inc., Markham, Ontario, CANADA; CADDETC Operated By University of Leeds Innovations Ltd. Headingly, Leeds, U.K.; Los Alamos National Laboratory, Los alamos, NM; Steria, Velizy, FRANCE; Nanjing University, Nanjing, PEOPLES REPUBLIC OF CHINA; Global Software Corporation, Beijing, PEOPLES REPUBLIC OF CHINA.

No other changes have been made in either the membership or planned activity of POSC.

On January 14, 1991, POSC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 7, 1991, (56 FR 5021).

The last notification was filed with the Department on January 17, 1995. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 23, 1995, (60 FR 15305).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–15602 Filed 6–26–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Short Wavelength Optical Storage Consortium

Notice is hereby given that, on April 18, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Short Wavelength Optical Storage Consortium (the "Consortium") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties to the Joint Venture are: Minnesota Mining and Manufacturing Company, St. Paul, MN; International Business Machines Corporation, San Jose, CA; Philips Electronics N.V., Eindhoven, THE NETHERLANDS; and Philips Electronics North American Corporation, Briarcliff Manor, NY.

The objective of the venture is to perform a research program with the goal of development of advanced optical recording technologies achieving areal densities of 8 Gbit/in2 using Blue/Green Laser Diodes by the year 2000.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–15603 Filed 6–26–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—SmartOffice Industry Consortium

Notice is hereby given that, on March 31, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), SmartOffice Industry Consortium (the "Joint Venture") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) The identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties to the Joint Venture are: Advanced Peripherals Technologies, Inc., JAPAN; Canon Inc., JAPAN; Eastman Kodak Company, Rochester, NY; Fuji Xerox Co., Ltd., JAPAN; Fujitsu Limited, JAPAN; IBM Japan Ltd., JAPAN; Integrated Systems, Inc., Monterey CA; International Business Machines Corporation, Armonk, NY; Lexmark International, Inc., Lexington, KY; Matsushita Electric Industrial Co., Ltd., JAPAN; Minolta Co., Ltd., JAPAN; Mita Industrial Co., Ltd., JAPAN; Mitsubishi Electric Corporation, JAPAN; Murata Machinery, Ltd., JAPAN; Novell, Inc., Provo, UTAH; Ricoh Company, Ltd., JAPAN; Sanyo Electric Co., Ltd., JAPAN; Sharp Corporation, JAPAN; and Toshiba Corporation, JAPAN.

The objectives of the venture are to promote interoperability among devices, applications and services, across paper management, telephony, and computing domains; to support the goal of accessing information through interconnection of heterogeneous information appliances, independent of network and application providers, with a goal of perpetuating an exchange of information anytime, anywhere; and to

provide an open forum for discussion of topics related to its purpose.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–15604 Filed 6–26–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—TwinStar Semiconductor Incorporated

Notice is hereby given that, on April 17, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), TwinStar Semiconductor Incorporated ("TwinStar") a joint venture, has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Texas Instruments Incorporated, Dallas, TX; Amro Participation Company N.V., Curacao, NETHERLANDS ANTILLES; The Bank of Tokyo, Ltd., Tokyo, JAPAN; The Dai-Ichi Kangyo Bank, Ltd., Tokyo, JAPAN; The Industrial Bank of Japan, Ltd., Tokyo, JAPAN; The Mitsubishi Trust and Banking Corp., Tokyo, JAPAN; Hitachi, Ltd., Tokyo, JAPAN; Atlantic Equity Corporation, Charlotte, NC; Citicorp, New York, NY; The Fuji Bank, Ltd., Tokyo, JAPAN; The Mitsubishi Bank, Ltd., Tokyo, JAPAN; The Nippon Credit Bank, Ltd., Tokyo, JAPAN; The Sanwa Bank, Ltd., Tokyo, JAPAN; The Yasuda Trust and Banking Co., Ltd., Tokyo, JAPAN; and The Tokai Bank, Ltd., Nagoya, JAPAN.

The purpose of this venture is the manufacture of dynamic random-access memory devices (16 megabit and above) and other semiconductor products and sale of such devices to Texas Instruments Incorporated and Hitachi, Ltd.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–15605 Filed 6–26–95; 8:45 am]

BILLING CODE 4410–01–M

Foreign Claims Settlement Commission

Claims Against Albania; Notice of Deadline for Filing of Claims

AGENCY: Foreign Claims Settlement Commission of the United States; Justice.

ACTION: Notice.

SUMMARY: This notice announces the commencement of the period for the filing of claims against the Government of Albania for the nationalization, expropriation, confiscation, or other taking of property of United States nationals by the former Albanian Communist regime, and the deadline for filing of such claims. Awards granted in the claims will be paid out of a $2 million compensation fund received from the Government of Albania under the terms of a claims settlement agreement concluded between the United States and Albania on March 10, 1995, effective April 18, 1995.

DATES: The deadline for filing of claims against the Government of Albania with the Foreign Claims Settlement Commission shall be October 31, 1995.

FOR FURTHER INFORMATION CONTACT: David E. Bradley, Chief Counsel, Foreign Claims Settlement Commission of the United States, U.S. Department of Justice, 600 E St. N.W., Room 6002, Washington, DC 20579, Tel. (202) 616–6975, FAX (202) 616–6993.

Notice of Time for Filing of Claims

I. Pursuant to section 4(b) of Title I of the International Claims Settlement Act of 1949, as amended (22 U.S.C. 1623(b)), the Foreign Claims Settlement Commission hereby gives notice that the period for the filing of claims against the Government of Albania for the nationalization, expropriation, confiscation, or other taking of property of United States nationals by the former Albanian Communist regime will begin on the date of publication of this notice and will end on October 31, 1995.

Any person or entity wishing to file such claims *must* request and complete an official Statement of Claim form (Form FCSC 1–95). The filing of a registration form in the Commission's 1992 claim survey will *not* be treated as sufficient to meet this requirement.

Requests for forms should be addressed to: Foreign Claims Settlement Commission of the United States, U.S. Department of Justice, 600 E St. N.W., Room 6002, Washington, DC 20579. Forms may also be requested by telephone, at (202) 616–6975, or by facsimile, at (202) 616–6993.

Completed forms and supporting documentation must be submitted no later than October 31, 1995. In particular, the following evidence and information must be included:

(1) Name and mailing address of each claimant and of his or her attorney, if any

(2) Evidence of United States nationality of the claimant and his or her predecessor(s), as applicable

(a) Individuals

(i) Native born—copy of birth certificate or passport

(ii) Naturalized—copy of naturalization certificate

(iii) Other (e.g., by birth abroad to U.S. citizens or through marriage to a U.S. citizen)—copies of relevant documents substantiating date of acquiring citizenship

Important Note: All individuals must also provide evidence establishing the date they began residence in the United States

(b) Corporations

(i) Certified copy of articles of incorporation;

(ii) Sworn statement of an officer of the corporation that natural persons who are citizens of the United States owned, directly or indirectly, at least 50 percent of the outstanding stock or other beneficial interest in the corporation at the time the claim arose and continuously thereafter until April 18, 1995, the effective date of the U.S.-Albania claims settlement agreement

(c) Partnerships or other legal entities

(i) Certified copy of the partnership agreement or articles of association; and

(ii) Evidence, as described in paragraphs (a) and (b) above, of the citizenship of those partners who were United States nationals at the times relevant to the claim.

(3) Evidence of ownership and value of property claimed

(a) Documents substantiating ownership of the property, such as purchase contracts, deeds, bills of sale, land register extracts. In the case of movable property, secondary evidence such as sworn statements describing the property may also be submitted, as well as any other relevant evidence. Regarding value, evidence such as photographs and drawings may also be submitted, as well as such other proof as evidence of value of comparable properties in the vicinity of the property in question.

(4) Evidence of the date and circumstances of the nationalization, expropriation, confiscation or other taking of the property claimed, including the amount of compensation, if any, received for that property

(5) Any other evidence or information in the possession of the claimant relevant to the facts of his or her claim

Additional information and supporting evidence may be required after a claim has been filed.

Approval has been obtained from the Office of Management and Budget for the collection of this information (OMB Control No. 1105–0062).

The Commission will conduct this program and render decisions therein in accordance with its regulations, which are published in Chapter V of Title 45, Code of Federal Regulations (45 CFR parts 500–531). In particular, attention is directed to § 531.6(d) of those regulations, which provides that the claimant shall bear the burden of proof on all elements of his or her claim. A copy of the regulations is available from the Commission on request.

Delissa A. Ridgway,

Chair.

[FR Doc. 95–15653 Filed 6–26–95; 8:45 am]

BILLING CODE 4410–01–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of June, 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,924; Astronautics Corp of America, Plant #2 and Plant #2, Milwaukee, WI

TA–W–31,081; B&G Equipment Co., Plumsteadville, PA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–31,012; Rogerson Aircroft Corp., Port Angeles, WA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,943; MK Rail, Boise, ID

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations for Worker Adjustment Assistance

TA–W–31,020; Boeing of Wichita, Wichita, KS

A certification was issued covering all workers separated on or after May 3, 1994.

TA–W–31,117; Dante Fashions Corp., Jeannette, PS

A certification was issued covering all workers separated on or after May 22, 1994.

TA–W–31,024; Legends Manufacturing, Inc., Throop, PA

A certification was issued covering all workers separated on or after April 20, 1994.

TA–W–30,892; Central Products Co., Linden, NJ

A certification was issued covering all workers separated on or after March 22, 1994.

TA–W–30,884; Pine Grove Woolens, Inc., Pine Grove, PA

A certification was issued covering all workers separated on or after March 24, 1994.

TA–W–31,086; & A; Carus Chemical Co., Peru, IL & LaSalle, IL

A certification was issued covering all workers separated on or after May 19, 1994.

TA–W–31,062; ABC Manufacturing Corp., Ashland, MS

A certification was issued covering all workers separated on or after May 10, 1994.

TA–W–30,901; Caron International Rochelle, IL

A certification was issued covering all workers separated on or after March 21, 1994.

TA–W–31,068; Clinton Swan Clothes, Inc., Carlstad, NJ

A certification was issued covering all workers separated on or after April 25, 1994.

TA–W–30,985; FHF Apparel, Miami, FL

A certification was issued covering all workers separated on or after April 24, 1994.

TA–W–31,031; Mahan Western Industries, Inc., A/K/A Miller Manufacturing, El Paso, TX

A certification was issued covering all workers separated on or after May 4, 1994.

TA–W–30,941; Miller Brewing Co., Fulton, NY

A certification was issued covering all workers separated on or after April 6, 1994.

TA–W–31,026; Hubbell-Bell, Inc., Fogelsville, PA

A certification was issued covering all workers separated on or after February 5, 1994.

TA–W–31,040; Mobile Tech, Inc., Abingdon, VA

A certification was issued covering all workers separated on or after May 9, 1994.

TA–W–30,910; Lakeview Lumber Products Co., Lakeview, OR

A certification was issued covering all workers separated on or after March 22, 1994.

TA–W–31,127; Norcross Footwear, Inc., Paterson, NJ

A certification was issued covering all workers separated on or after June 6, 1994.

TA–W–30,915; Circuit Tech, Inc., Wareham, MA

A certification was issued covering all workers separated on or after March 28, 1994.

TA–W–30,931; Waymart Knitting Co., Inc., Waymart, PA

A certification was issued covering all workers separated on or after April 1, 1994.

TA–W–31,095; Titanium Metals Corp (TIMET), Tremont Div., Henderson, NV

A certification was issued covering all workers separated on or after April 7, 1994.

TA–W–30,911; Ferno Washington, Soft Goods Dept/Extrication Devices Wilmington, OH

A certification was issued covering all workers separated on or after March 23, 1994.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of June 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(A) that sales or production, or both, of such firm or subdivision have decreased absolutely

(B) that imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased.

(C) that the increase in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(2) that there has been a shift in production by such workers' firm or subdivislon to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

NAFTA–TAA–00458; The Travelers, Voorhees, NJ

The investigation revealed that criteria (3) and (4) were not met. There was no shift in the processing of medical claims from The Travelers, Voorhees, NJ to Mexico or Canada during the period under investigation. A portion of this work is being transferred to other domestic locations.

NAFTA–TAA–00474; Scout Trucking, Inc., Spring City, PA

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

NAFTA–TAA–00456; Noll Printing, Inc., Huntington, IN

The investigation revealed that criteria (3) and (4) were not met. Major customers of the subject firm were surveyed regarding their purchases of printed material. All respondents reported that they did not import the product in question from Mexico or Canada.

NAFTA–TAA–00464; Penn Ventilator Co., Inc., Keyser, WV

The investigation revealed that criteria (2), (3) and (4) were not met. Management decisions have been made to outsource dampers from two domestic companies. A departmental survey conducted with the tow companies revealed that they produce 100% of all dampers domestically.

NAFTA–TAA–00452; Rogerson Aircraft Corp., Rogerson Hiller/ Aerocomposites, Port Angeles, WA

The investigation revealed that criteria (3) and (4) were not met. There was no shift in production of aircraft parts from the Port Angeles, WA plant to Canada or Mexico during the period under investigation. U.S. imports of aircraft parts from Canada and Mexico declined in December through November, 1993–1994, compared with the same period one year earlier.

NAFTA–TAA–00454; Riley Stoker Corp., Div. of DB Riley Consolidated, Inc., Erie Plant, Erie, PA

The investigation revealed that criteria (3) and (4) were not met. There was no shift in production from the subject plant to Mexico or Canada during the period under investigation, nor were boilers and related equipment imported to Mexico or Canada by the subject firm.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–00459; Usher Products International, Inc., San Antonio, TX

A certification was issued covering all workers at Usher Products International, Inc., San Antonio, TX separated on or , after May 15, 1994.

NAFTA–TAA–00478; Rich Products Corp., Dayton, OH

A certification was issued covering all workers at Rich Products Corp., Dayton, OH separated on or after May 30, 1994.

NAFTA–TAA–00455; Ada Block Co., Ada, OK

A certification was issued covering all workers at Ada Block Co., Ada, OK separated on or after May 5, 1994.

NAFTA–TAA–00451; FHF Apparel Corp., Miami, FL

A certification was issued covering all workers at FHF Apparel Corp., Miami, FL separated on or after May 4, 1994.

NAFTA–TAA–00476; Esselte Pendaflex Corp., Syracuse, NY

A certification was issued covering all workers at Esselte Pendaflex Corp., Syracuse, NY separated on or after May 25, 1994.

NAFTA–TAA–00460; Blind Design, Inc., Tempe, AR

A certification was issued covering all workers at Blind Design, Inc., Tempe, AR separated on or after May 15, 1994.

NAFTA–TAA–00330; Melnor, Inc., Moonachie, NJ

A certification was issued covering all workers at Melnor, Inc., Moonachie, NJ separated on or after December 21, 1993.

NAFTA–TAA–00373; Cleveland Twist Drill Co., Cynthiana, KY

A certification was issued covering all workers at Cleveland Twist Drill Co., Cynthiana, KY separated on or after February 14, 1994.

NAFTA–TAA–00384; Pillowtex Corp., Dallas, TX

A certification was issued covering all workers at Pollowtex Corp., Dallas, TX separated on or after February 28, 1994.

I hereby certify that the aforementioned determinations were issued during the months of June, 1995. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: June 20, 1995.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–15747 Filed 6–26–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,975]

Halliburton, Midland, TX; Notice of Revocation of Negative Determination

This notice revokes the Notice of Negative Determination Regarding Eligibility to Apply For Worker Adjustment Assistance issued May 24, 1995 for petition TA–W–30,975. The notice will soon be published in the **Federal Register.**

The notice is revoked since it was issued prematurely. The workers of Halliburton, Midland, Texas are covered under an existing certification, TA–W–30,031B.

Signed in Washington, DC., this 14th day of June 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–15742 Filed 6–26–95; 8:45 am]

BILLING CODE 4510–30–M

Notice of Termination of Investigation

TA–W–31,053—OXY USA, Incorporated Midland, Texas
TA–W–31,054—Hobbs, New Mexico
TA–W–31,055—Bakersfield, California

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 22, 1995 in response to a worker petition which was filed on behalf of workers at OXY USA, Incorporated.

All workers of the subject firms are covered under existing certification (TA–W–31,049; TA–W–31,051 and TA–W–31,052). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, D.C. this 20th day of June, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–15744 Filed 6–26–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00405]

Paragon Trade Brands, Incorporated City of Industry, California; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Program Manager of the Office of Trade Adjustment Assistance for workers at Paragon Trade Brands, Inc., City of Industry, California. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

NAFTA–00405; Paragon Trade Brands, Incorporated City of Industries; CA (June 14, 1995)

Signed at Washington, D.C. this 19th day of June, 1995.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services Office of Trade Adjustment Assistance.

[FR Doc. 95–15746 Filed 6–26–95; 8:45 am]

BILLING CODE 4510–30–M

Job Training Partnership Act: Migrant and Seasonal Farmworker Programs; Final Allocations

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of final allocations.

SUMMARY: The Employment and Training Administration is publishing final allocations for Program Year (PY) 1995 (July 1, 1995 through June 30, 1996) for the Job Training Partnership Act section 402 migrant and seasonal farmworker program.

FOR FURTHER INFORMATION CONTACT: Mr. Charles C. Kane, Chief, Division of Seasonal Farmworker Programs. Telephone: (202) 219–5500 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Employment and Training Administration publishes the final allocation for Program Year 1995 (July 1, 1995–June 30, 1996).

The allocations set forth in the appendix to this notice were computed according to the allocation formula published at 59 FR 17577 (April 13, 1994). For PY 1995, $85,710,000 were appropriated for migrant and seasonal farmworker programs. This amount is an increase of $134,000 above the appropriation for PY 1994. This appropriation is subject to reduction depending upon possible rescissions for FY 1995. Each year since 1987, additional funds have been included to meet the demand for training and employment services to Special Agricultural Workers (SAWs) who became eligible for the program as a result of the Immigration Reform and Control Act of 1986. In addition, the reports of the House of Representatives and the Senate Committees on Appropriations on the Department of Labor's 1995 appropriations state that the committees expect the Department to continue the farmworker housing program. The Department concurs with this request.

The allocation formula is being applied to $81,832,000. The remaining $3,878,000 of the PY 1995 section 402 appropriation is being held in the section 402 national account to fund the housing program ($3,000,000), the Hope, Arkansas, Migrant Rest Center ($300,000), and other training and technical assistance projects.

Allocation Formula

As stated above, the $81,832,000 formula total was allocated on a State-by-State basis using the same formula that was applied in PY 1994. This ensures programmatic stability.

Formula Allocations in Future Years

The Department intends to update the allocation formula to incorporate more current data on the farmworker population. To this end, in April 1994, a special task force was convened to explore options for revising the formula and its bases. Findings from this task force will be reflected in a new proposed allocation formula which will be published in the **Federal Register** for comment.

Signed at Washington, DC, this 21st day of June, 1995.

Paul A. Mayrand,

Director, Office of Special Targeted Programs.

[FR Doc. 95–15745 Filed 6–26–95; 8:45 am]

BILLING CODE 4510–30–M

Pension and Welfare Benefits Administration

Work Group on Defined Contribution Adequacy Advisory Council on Employee Welfare and Pension Benefits Plan; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Work Group on Defined Contribution Adequacy of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on July 18, 1995, in Room N3437 A&B, U.S. Department of Labor Building, Third and Constitution Avenue, N.W., Washington, DC 20210.

The purpose of the meeting, which will begin at 9:30 a.m., is to obtain further evidence and data concerning defined contribution plans as an adequate source of retirement income when serving as primary plans. The Work Group will also address the potential policy issues, such as:

1. In terms of the adequacy of overall retirement income, are 401(k) plans simply substituting for other types of savings, such as other pension plans or personal savings? Have 401(k)s led to expanded pension coverage? What is the evidence?

2. Is the trend towards 401(k) plans likely to contribute to greater pension inequities between low and higher income workers—even with the current contribution limits?

3. What are the main barriers to improving contribution rates besides education—i.e., stagnant wages and other economic trends, and is it realistic to assume that we can meet contribution levels that are even close to the target levels?

4. What regulatory and tax law changes have had, and would likely

have, the greatest impact on our pension savings goals?

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before July 10, 1995 to Linda Jackson, Acting Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Advisory Council should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to ten minutes, but an extended statement may be submitted for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before July 10, 1995.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 95–15678 Filed 6–26–95; 8:45 am]

BILLING CODE 4510–29–M

Pension and Welfare Benefits Administration

Work Group on Real Estate Investment Advisory Council on Employee, Welfare and Pension Benefits Plan; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Real Estate Investment Work Group of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on July 18, 1995, in Room N3437 A&B, U.S. Department of Labor Building, Third and Constitution Avenue, N.W., Washington, DC 20210.

The purpose of the meeting, which will begin at 1:00 p.m. is to explore real estate valuation methods and process: Is it adequate? Is it clear? What are the current best practices? The work group will hear testimony from witnesses representing the independent appraisal community, a real estate investment adviser, the clearinghouse for the secondary market and a pension plan sponsor that includes real estate in its plan's investment portfolio.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before July 10, 1995 to Linda Jackson, Acting Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue, N.W., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Advisory Council should forward there request to the acting Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to ten minutes, but an extended statement may be submitted for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the acting Executive Secretary of the Advisory Council at the above address. papers will be accepted and included in the record of the meeting if received on or before July 10, 1995.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 95–15679 Filed 6–26–95; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Establishment of New Membership on the NASA/Industry Process Action Team for Procurement Issues

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice.

SUMMARY: Notice is given of the establishment of the FY 1996 NASA/Industry Process Action Team. NASA is soliciting the names of NASA Contractor personnel who desire to serve on this team.

DATES: Requests for membership must be received on or before September 1, 1995.

FOR FURTHER INFORMATION CONTACT: Tom O'Toole, NASA Headquarters, Code HC, 300 E Street SW., Washington, DC 20546, telephone (202) 358–0478.

SUPPLEMENTARY INFORMATION: The Associate Administrator for Procurement has established a working group of NASA and industry representatives called the NASA/Industry Process Action Team (PAT). The PAT provides a forum for the examination and discussion of issues and concerns associated with improving the operational aspects of current procurement policies and procedures. Members are afforded the opportunity to identify issues and concerns to be addressed by NASA during the PAT's tenure and to provide their individual or organizational viewpoints on procurement policy and procedure changes developed by NASA. Based on the issues and concerns discussed during the PAT meetings, PAT members may be asked to assist in the presentation of an industry-wide conference on procurement issues. Membership is open to NASA contractors of any size willing to commit two people (primary/alternate) for a one year term. The planned PAT will consist of approximately 20 members from industry, both large and small businesses, four NASA representatives, a member from the U.S. Chamber of Commerce, and a member from a law firm with Government contracts experience. The PAT will meet quarterly, unless the number and complexity of policy issues under consideration merit more frequent meetings.

NASA contractors and law firms that desire membership on the PAT should contact the person listed under the caption **FOR FURTHER INFORMATION CONTACT** not later than September 1, 1995.

Thomas J. O'Toole,

NASA/Industry PAT Chairperson.

[FR Doc. 95–15743 Filed 6–26–95; 8:45 am]

BILLING CODE 7510–01–M

[Notice 95–042]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Astrophysics Subcommittee (ASC), Meeting.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science Advisory Committee, Astrophysics Subcommittee.

DATES: Thursday, July 27, 1995, 8:30 a.m. to 5:00 p.m.; and Friday, July 28, 1995, 8:30 a.m. to 3:30 p.m.

ADDRESSES: NASA Headquarters, Conference Room MIC 6–A/B West, 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Guenter Riegler, Code SZ, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0339.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Overview of Astrophysics Division Status
—Status of NASA HQ Streamlining/Reorganization
—Branch Reports
—Mission Reports
—Update on Recent Proposal Reviews
—Update on Educational Strategic Planning
—Discussion and Formulation of Recommendations/Action Items

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: June 20, 1995.

Danalee Green,

Chief, Management Controls Office.

[FR Doc. 95–15663 Filed 6–26–95; 8:45 am]

BILLING CODE 7510–01–M

[Notice 95–043]

NASA Advisory Council (NAC), Minority Business Resource Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Minority Business Resource Advisory Committee.

DATES: July 20, 1995, 9 a.m. to 4 p.m.

ADDRESSES: NASA, Jet Propulsion Laboratory, Building 180, Room 101, Pasadena, California 91109–8099.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph C. Thomas, III, Office of Small and Disadvantaged Business Utilization, National Aeronautics and Space Administration, Room 9K70, 300 E Street SW., Washington, DC 20546, (202) 358–2088.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Call to Order
—Reading of Minutes
—Overview of Jet Propulsion Laboratory SDB Program
—Report on Supreme Court Decision
—Subcommittee Reports
—Update on NASA SDB Program
—Report on Action Items from Last Meeting
—Public Comment
—Adjournment

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Dated: June 20, 1995.

Danalee Green,

Chief, Management Controls Office.

[FR Doc. 95–15662 Filed 6–26–95; 8:45 am]

BILLING CODE 7510–01–M

[Notice 95–045]

Notice of Intent To Grant a Partially Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant a patent license.

SUMMARY: NASA hereby gives notice of intent to grant Photo Emission Technology, Inc., 766 Lakefield Road, Suite H, Westlake Village, CA 91361, a license to practice the invention protected by U.S. Patent No. 5,393,980, entitled "Quality Monitor And Monitoring Technique Employing Optically Stimulated Electron Emission," which was issued on February 28, 1995, to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The partially exclusive license will contain appropriate terms and conditions to be negotiated in accordance with "Licensing of Government Owned Inventions," (37 CFR 404.1 *et seq.*). NASA will negotiate the final terms and conditions and grant the license unless, within 60 days of the date of this notice, the cognizant Patent Attorney receives written objections to the grant, together with supporting documentation. The Patent Attorney will review all written responses to this notice and then recommend to the Associate General Counsel for Intellectual Property whether to grant the license.

DATES: Responses to the notice must be received by August 28, 1995.

ADDRESSES: NASA Langley Research Center, 3 Langley Boulevard, Mail Stop 212, Hampton, VA 23681–0001.

FOR FURTHER INFORMATION CONTACT: Kimberly A. Chasteen, Patent Attorney, 804–864–3227.

Dated: June 20, 1995.

Edward A. Frankle,

General Counsel.

[FR Doc. 95–15664 Filed 6–26–95; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

Proposed Generic Communication; Relocation of Selected Technical Specifications Requirements Related to Instrumentation

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to issue a generic letter regarding the relocation of selected technical specifications requirements related to instrumentation. The NRC is seeking comment from interested parties regarding both the technical and regulatory aspects of the proposed generic letter presented under the Supplementary Information heading. This proposed generic letter and supporting documentation were endorsed for publication in the **Federal Register** by the Committee to Review Generic Requirements (CRGR) on June 15, 1995. The relevant information that was sent to the CRGR to support their review of the proposed generic letter is available in the NRC Public Document Room under accession number 9506160308. The NRC will consider comments received from interested parties in the final evaluation of the proposed generic letter. The NRC's final evaluation will include a review of the technical position and, when appropriate, an analysis of the value/impact on licensees. Should this generic letter be issued by the NRC, it will become available for public inspection in the NRC Public Document Room.

DATES: Comment period expires July 27, 1995. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Submit written comments to Chief, Rules Review and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Written comments may also be delivered to 11545 Rockville Pike, Rockville, Maryland, from 7:30 am to 4:15 pm, Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: William D. Reckley, (301) 415–1314.

SUPPLEMENTARY INFORMATION:

NRC Generic Letter 95–XX: Relocation of Selected Technical Specifications Requirements Related to Instrumentation

Addressees

All holders of operating licenses or construction permits for nuclear power reactors except Crystal River, Grand Gulf, Clinton, and Hatch, Units 1 and 2.

Purpose

The U.S. Nuclear Regulatory Commission (NRC) is issuing this generic letter to advise those licensees that have not converted or are not in the process of converting to the improved Standard Technical Specifications that they may request a license amendment to relocate selected instrumentation requirements from their Technical Specifications (TS).

Description of Circumstances

This line-item TS improvement was developed in response to TS amendments proposed by licensees and ongoing NRC TS improvement programs. The intent of this generic letter is to reduce the time and costs spent by licensees and the NRC staff in amending requirements related to the selected instrumentation-related TS. Licensees will reduce cost by relocating requirements to a licensee-controlled document or program so that future changes to those requirements would not necessarily involve a license amendment. The time and cost of NRC staff review is reduced by the use of internal guidance for the review of generic letter-related amendments and the reduction in the number of plant-specific changes to the affected TS.

Discussion

Section 182a of the Atomic Energy Act (the Act) requires applicants for nuclear power plant operating licenses to include TS as part of the license. In Section 50.36 of Title 10 of the Code of Federal Regulations (10 CFR 50.36), the Commission established the regulatory requirements related to the content of TS. That regulation requires that the TS include items in five specific categories, including (1) safety limits, limiting safety system settings and limiting control settings; (2) limiting conditions for operation; (3) surveillance requirements; (4) design features; and (5) administrative controls. However, the regulation does not specify the particular requirements to be included in TS.

The NRC developed criteria, as described in the "Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors" (58 FR 39132), to determine which of the design conditions and associated surveillances should be located in the TS as limiting conditions for operation. The four criteria provided in the Final Policy Statement are:

(1) Installed instrumentation that is used to detect, and indicate in the control room, a significant abnormal degradation of the reactor coolant pressure boundary;

(2) a process variable, design feature, or operating restriction that is an initial condition of a Design Basis Accident or Transient analysis that either assumes the failure of or presents a challenge to the integrity of a fission product barrier;

(3) a structure, system, or component that is part of the primary success path and which functions or actuates to mitigate a Design Basis Accident or Transient that either assumes the failure of or presents a challenge to the integrity of a fission product barrier;

(4) a structure, system, or component which operating experience or probabilistic safety assessment has shown to be significant to public health and safety.

The Commission recently promulgated a proposed change to 10 CFR 50.36 pursuant to which the rule would be amended to codify and incorporate these criteria (see Proposed Rule, "Technical Specifications," 59 FR 48180 (September 20, 1994)).

The Commission's Final Policy Statement acknowledged that its implementation may cause some requirements presently in TS to be moved out of existing TS to documents and programs controlled by licensees. This generic letter addresses the relocation of selected TS requirements related to instrumentation as a result of the consideration of the final policy statement criteria. Upon review of typical TS for nuclear power reactors, the staff determined that, in accordance with the policy statement criteria, several specifications did not warrant inclusion in TS. The staff also concluded that the instrumentation addressed by these specifications are not related to dominant contributors to plant risk. The following typical TS are among the candidates for relocation to licensee-controlled documents:

- Incore Detectors (Movable Incore Detectors, Transversing Incore Probe).
- Seismic Monitoring Instrumentation.
- Meteorological Monitoring Instrumentation.
- Chlorine Detection System.
- Loose-Part Detection System.
- Explosive Gas Monitoring Instrumentation.
- Turbine Overspeed Protection.

Requested Information

Licensees who voluntarily choose to use the guidance in this generic letter will need to submit license amendment requests in order to relocate the affected technical specifications. These licensees are encouraged to propose TS changes consistent with the guidance in Attachment 1 to this generic letter.

Licensees who do not wish to amend technical specifications are not expected to submit any response to this generic letter.

Required Response

Licensees who voluntarily choose to use the guidance in this generic letter are required to submit license amendment requests in order to relocate affected technical specification requirements.

Licensee requests should be submitted to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555, under the provisions of 10 CFR 50.90.

Backfit Discussion

This generic letter only requests information under the provisions of 10 CFR 50.90 from addressees who voluntarily choose to use the contained guidance to seek an amendment of an operating license. Any action by licensees to propose TS changes in accordance with the guidance of this generic letter is voluntary and, therefore, not a backfit under 10 CFR 50.109. Therefore, the staff has not performed a backfit analysis.

Attachment 1—Guidance for a Proposed License Amendment to Relocate Selected Technical Specifications Requirements Related to Instrumentation

Introduction

The NRC is issuing the following guidance for preparing a proposed license amendment to relocate from Technical Specifications (TS) selected requirements related to instrumentation. As discussed in the Final Policy Statement, licensees submitting amendment requests should identify the location of and controls for the relocated requirements. It is expected that most of the TS addressed by this generic letter will be relocated to the Updated Final Safety Analysis Report (UFSAR) and changes to those provisions will be performed in accordance with 10 CFR 50.59, "Changes, tests and experiments." If requirements are relocated to other documents (e.g., the emergency plan), controls may be provided by regulatory requirements such as 10 CFR 50.54, "Conditions of licenses." The adequacy of controls for relocated provisions which do not fit in the above categories will be reviewed and approved by the NRC staff on a case-by-case basis.

License amendment requests should contain a commitment to relocate each selected requirement to a particular licensee-controlled document or program, (e.g., the UFSAR or the emergency plan). The commitment should also address the submittal of the revised documents to the NRC in accordance with the applicable regulation (e.g., 10 CFR 50.71(e)). In the amendment request, the licensee should clearly describe the program it will use to control changes to relocated provisions (e.g., 10 CFR 50.59 or 50.54(q)). Control of the relocated provisions in accordance with the applicable regulation ensures that NRC review and approval will be requested for changes exceeding the stated regulatory threshold (e.g., unreviewed safety question or decrease in effectiveness).

Licensees should note that this generic letter supersedes TS-related guidance contained in several previously issued NRC documents, such as regulatory guides and the Standard Review Plan (NUREG–0800). Commitments contained in the UFSAR or other docketed correspondence may need to be revised to reflect the deviations from these NRC documents. However, this generic letter addresses only the need to include requirements related to the affected systems in TS. Staff positions on matters other than TS content that are contained in the regulatory guides or other documents are not affected by the issuance of this generic letter.

The NRC has approved the relocation of most of these specific instrumentation requirements in various amendments issued to specific licensees. The improved standard TS also reflect the staff position that these requirements do not satisfy the final policy statement criteria for inclusion in TS. The staff has also concluded that these provisions are not related to dominant contributors to plant risk. Additional discussions follow for each of the selected relocated instrumentation requirements.

Incore Detectors

The relocation of requirements related to incore neutron detectors affects the TS sections entitled "Incore Detectors" or "Movable Incore Detectors," for pressurized water reactors (PWRs), or "Transversing Incore Probe," for boiling water reactors (BWRs). Incore instrumentation is used periodically to calculate power peaking factors in order to verify nuclear design predictions, ensure operation within established fuel performance limits, and to calibrate other nuclear instrumentation. The measurements are used in a confirmatory manner and do not provide direct input to reactor protection system or engineered safety features actuation system functions.

These instruments are neither used for, nor capable of, detecting a significant abnormal degradation of the reactor coolant pressure boundary prior to a design basis accident nor do they function as a primary success path to mitigate events which assume the failure of or challenge the integrity of fission product barriers. Although the core power distributions (measured by the incore detectors) constitute an important initial condition to design basis accidents and therefore need to be addressed by TS, the detectors themselves are not an active design feature needed to preclude analyzed accidents or transients. The staff has determined therefore, that the incore detector requirements do not satisfy the criteria of the Final Policy Statement for inclusion in TS. Licensees may propose to relocate the incore detector requirements to the UFSAR and control changes to those provisions in accordance with 10 CFR 50.59.

Relocation of the incore detector requirements from the TS to the UFSAR does not imply any reduction in their importance in confirming that core power distributions are bounded by safety analysis limits. It is expected that licensees will continue to maximize the number of available incore detectors. Evaluations related to changes in incore detector requirements are expected to consider such factors as the need to identify the inadvertent loading of a fuel assembly into an improper location, the calibration of protection systems using incore measurements, and the allowances for measurement and nuclear design uncertainties. Should these or other considerations lead to the identification of a proposed change as an unreviewed safety question, the licensee should request NRC review and approval in accordance with 10 CFR 50.59(c).

Seismic Monitoring Instrumentation

Section VI(a)(3) of Appendix A to 10 CFR Part 100 requires that seismic monitoring instrumentation be provided to promptly determine the response of those nuclear power plant features important to safety in the event of an earthquake. This capability is required to allow for a comparison of the measured response to that used in the design basis for the unit. Comparison of such data is needed to (1) determine whether the plant can continue to be operated safely, and (2) permit such timely action as may be appropriate. However, seismic instrumentation does not actuate any protective equipment or serve any direct role in the mitigation of an accident.

The capability of the plant to withstand a seismic event or other design-basis accident is determined by the initial design and construction of systems, structures, and components. The instrumentation is used to alert operators to the seismic event and evaluate the plant response. The Final Policy Statement explained that instrumentation to detect precursors to reactor coolant pressure boundary leakage, such as seismic instrumentation, is not included in the first criterion. As discussed above, the seismic instrumentation does not serve as a protective design feature or part of a primary success path for events which challenge fission product barriers. The staff has concluded that the seismic monitoring instrumentation does not satisfy the final policy statement criteria and need not be included in the TS. Licensees may propose to relocate the seismic monitoring instrumentation requirements to the UFSAR and control changes to those provisions in accordance with 10 CFR 50.59.

Meteorological Monitoring Instrumentation

In 10 CFR 50.47, "Emergency Plans," and 10 CFR Part 50, Appendix E, "Emergency Planning and Preparedness for Production and Utilization Facilities," the Commission requires power plant licensees to provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. Timely access to accurate local meteorological data is important for estimating potential radiation doses to the public and for determining appropriate protective measures. In 10 CFR 50.36a(a)(2), the Commission requires nuclear power plant licensees to submit annual reports specifying the quantity of each of the principal radionuclides released to unrestricted areas in liquid and airborne effluents and such other information as may be required by the NRC to estimate maximum potential annual radiation doses to the public. A knowledge of meteorological conditions in the vicinity of the reactor is important in providing a basis for estimating annual radiation doses resulting from

radioactive materials released in airborne effluents. Accordingly, the meteorological monitoring instrumentation serves a useful function in estimating radiation doses to the public from either routine or accidental releases of radioactive materials to the atmosphere.

The meteorological monitoring instrumentation does not serve such a primary protective function as to warrant inclusion in the TS in accordance with the criteria of the final policy statement. The instrumentation does not serve to ensure that the plant is operated within the bounds of initial conditions assumed in design basis accident and transient analyses or that the plant will be operated to preclude transients or accidents. Likewise, the meteorological instrumentation does not serve as part of the primary success path of a safety sequence analysis used to demonstrate that the consequences of these events are within the appropriate acceptance criteria. Accordingly, the staff has concluded that the meteorological instrumentation does not satisfy the final policy statement criteria and need not be included in TS. The staff has determined that requirements related to the meteorological monitoring instrumentation can be moved from the TS to the UFSAR, and that any subsequent changes to the provisions would be controlled pursuant to 10 CFR 50.59. Licensees may alternately choose to relocate the meteorological monitoring instrumentation requirements from the TS to the facility's emergency plan. In this case, subsequent changes would be made in accordance with 10 CFR 50.54(q).

Chlorine Detection System

Chlorine detection systems ensure that sufficient capability is available to promptly detect and initiate protective action to isolate the control room in the event of an accidental chlorine release. Some plants may also have systems to detect other toxic gases which have the potential to hamper plant operation in the case of their accidental release from onsite or offsite sources. The relocation of TS related to other toxic gas detection systems is included in this discussion for the typical chlorine detection systems. Staff positions regarding the relationship of the chlorine detection systems to the general design criteria (GDC) appear in NUREG–0800, "Standard Review Plan" (SRP); Regulatory Guide (RG) 1.78, "Assumptions for Evaluating the Habitability of a Nuclear Power Plant Control Room During a Postulated Hazardous Chemical Release"; and RG 1.95, "Protection of Nuclear Power Plant Control Room Operators Against an Accidental Chlorine Release."

As discussed above, chlorine detection systems may serve an important role in the protection of control room personnel from internal or external hazards related to toxic gases. However, the release of chlorine or other hazardous chemicals is not part of an initial condition of a design basis accident or transient analysis that assumes a failure of or presents a challenge to the integrity of a fission product barrier. Since the release of toxic gases is not assumed to initiate or occur simultaneously with design basis accidents or transients involving challenges to fission product barriers, the chlorine detection system is not part of a success path for the mitigation of those accidents or transients. The staff has, therefore, concluded that requirements for this system do not satisfy the final policy statement criteria and need not be included in TS. Licensees may propose to relocate the chlorine detection system requirements to the UFSAR and control changes to those provisions in accordance with 10 CFR 50.59.

Loose-Part Detection System

The loose-part detection system identifies the existence of possible loose parts in the reactor coolant system. Early detection can provide operators time to take corrective actions and avoid or mitigate damage to or malfunctions of primary system components. However, as discussed in the final policy statement, the loose-part detection system does not function to detect significant abnormal degradation of the reactor coolant pressure boundary. The loose-part detection system does not serve as an active design feature for establishing initial conditions or mitigation of design basis accidents or transients. The staff has concluded that requirements for this system do not satisfy the final policy statement criteria and need not be included in TS.

Licensees may propose to relocate the requirements related to the loose-part detection system from the TS to the UFSAR and control changes to those provisions in accordance with 10 CFR 50.59.

Explosive Gas Monitoring Instrumentation

The relocation of most of the instrumentation related to radioactive gaseous effluent monitoring was addressed in Generic Letter 89–01, "Implementation of Programmatic Controls for Radiological Effluent Technical Specifications (RETS) in the Administrative Controls Section of the Technical Specifications and the Relocation of Procedural Details of RETS to the Offsite Dose Calculation Manual or the Process Control Program." Relocation of the requirements for explosive gas monitoring instrumentation was not addressed in the guidance provided by Generic Letter 89–01. Staff positions regarding the monitoring of explosive gases within the radioactive waste management systems are outlined in SRP Section 11.3 and Branch Technical Position ETSB–11–5, "Postulated Radioactive Releases Due to a Waste Gas System Leak or Failure."

The actions required by existing TS typically require alternate sampling, limited operation of the gaseous waste system, and submittal of a special report if the explosive gas monitoring instrumentation does not conform to the limiting condition for operation. The explosive gas monitoring instrumentation requirements address detection of possible precursors to the failure of a waste gas system but do not prevent or mitigate design basis accidents or transients which assume a failure of or present a challenge to a fission product barrier. Acceptable concentrations of explosive gases are actually controlled by other limiting conditions for operation (e.g., Gaseous Effluents, Explosive Gas Mixture) or by programs described in the "Administrative Controls" section of TS. The requirements related to explosive gas monitoring instrumentation do not conform to the final policy statement criteria for inclusion in the TS. Therefore, licensees may propose to relocate the explosive gas monitoring instrumentation requirements to the UFSAR and control changes to those provisions in accordance with 10 CFR 50.59.

Turbine Overspeed Protection

Existing TS typically include limiting conditions for operation and surveillance requirements for the turbine overspeed protection system. The turbine is equipped with control valves and stop valves which control turbine speed during normal plant operation and protect it from overspeed during abnormal conditions. The turbine overspeed protection system consists of separate mechanical and electrical sensing mechanisms which are capable of initiating fast closure of the control and stop valves. Current TS may require particular operability and surveillance requirements for these steam control and stop valves to minimize the potential for fragment missiles that might be generated as the result of a turbine overspeed event.

General Design Criterion 4 of Appendix A to 10 CFR Part 50 requires that structures, systems, and components important to safety be appropriately protected from the effects of missiles that may result from equipment failures. Application of the design criteria to turbine missiles is described in SRP Section 10.2 and in subsequent safety evaluations related to probabilities of turbine failures, turbine orientations, and surveillance requirements for turbine overspeed protection systems. In NUREG–1366, "Improvements to Technical Specifications Surveillance Requirements," the staff discusses the benefits, resultant costs, and the safety impact of performing turbine overspeed protection surveillances.

Although the design basis accidents and transients include a variety of system failures and conditions which might result from turbine overspeed events and potential missiles striking various plant systems and equipment, the system failures and plant conditions are much more likely to be caused by events other than turbine failures. In view of the low likelihood of turbine missiles, assumptions related to the turbine overspeed protection system are not part of an initial condition of a design basis accident or transient that either assumes the failure of or presents a challenge to the integrity of a fission product barrier. The turbine overspeed protection system is not relied upon in the design basis accident or transient analyses as a primary success path which functions or actuates to mitigate such events.

Probabilistic safety assessments and operating experience have demonstrated that proper maintenance of the turbine overspeed control valves is important to minimize the potential for overspeed events and turbine damage; however that experience has also demonstrated that there is low likelihood of significant risk to public health and safety because of turbine overspeed events. Further, the potential for and consequences of turbine overspeed events are diminished by factors such as the orientation of the turbine relative to plant structures and equipment, licensee inservice testing programs, which must comply with 10 CFR 50.55(a), and surveillance programs for the turbine control and stop valves derived from the manufacturer's recommendations.

Accordingly, the staff has concluded that the turbine overspeed protection system does not satisfy the final policy statement criteria and need not be included in TS. Licensees may propose to relocate the turbine overspeed protection requirements to the UFSAF requirements to the UFSAR and control changes to those provisions in accordance with 10 CFR 50.59.

Dated at Rockville, Maryland, this 20th day of June 1995.

Brian K. Grimes,

Director, Division of Project Support, Office of Nuclear Reactor Regulation.

[FR Doc. 95–15677 Filed 6–26–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket 70–1257]

Finding of No Significant Impact and Notice of Opportunity for a Hearing Renewal of Special Nuclear Material License SNM–1227 Siemens Power Corporation Richland Engineering and Manufacturing Facility Richland, Washington

The U.S. Nuclear Regulatory Commission is considering the renewal of Special Nuclear Material License SNM–1227 for the continued operation of the Siemens Power Corporation's (SPC) Engineering and Manufacturing Facility located in Richland, Washington. The facility manufactures low-enriched uranium fuel for commercial nuclear power reactors.

Summary of the Environmental Assessment

Identification of the Proposed Action

The proposed action is the renewal of SPC's special nuclear material license for 10 years. With this renewal, SPC will continue to operate the Richland Engineering and Manufacturing Facility to fabricate fuel assemblies for commercial nuclear power reactors. SPC is authorized to possess and use up to 25,000 kilograms of uranium-235 in compounds enriched up to 5 weight percent in the U–235.

The facility converts low-enriched uranium hexafluoride (UF_6) to uranium dioxide (UO_2) powder, presses the UO_2 into pellets, loads the pellets into rods, and assembles the rods into final fuel assemblies. Most of the UF_6-to-UO_2 conversion is performed using the ammonium diuranate (ADU) process; however, with this license renewal, SPC will significantly expand its existing dry conversion capacity and shut down most of the ADU process capacity. The environmental assessment considers both the impacts of continued operation of the ADU process and the impacts of the expanded dry conversion capacity, which are expected to be significantly reduced.

The Need for the Proposed Action

SPC performs a necessary service for the commercial nuclear power industry by fabricating fuel assemblies. Currently, the SPC facility is one of four such producers of low-enriched uranium fuel that operates within the United States. Denial of the license renewal application is an alternative available to the NRC but would result in either the expansion of production capacity or transfer of fuel production activities at another facility.

Environmental Impacts of the Proposed Action

The continued operation of the SPC facility will result in the continued release of low levels of hazardous and radioactive constituents. Under accident conditions, the facility could release higher concentrations over a short period of time. The facility uses a number of controls to reduce the release of hazardous and radioactive materials to the environment and performs monitoring of effluents and the environment. These controls and the monitoring program are described below.

The radiological environmental impacts of normal operations and postulated accidents were evaluated for the SPC facility. These impacts are summarized following the description of controls and monitoring.

Effluent Controls and Monitoring

The SPC facility produces gaseous, liquid, and solid effluent streams. Gaseous effluents are controlled by minimizing the amount of airborne radioactive materials within the plant and by the use of stack scrubbers and High Efficiency Particulate Air (HEPA) filters. Liquid effluents are controlled by the use of waste water retention lagoons and treatment systems that reduce the concentration of radioactive materials prior to discharge to the Richland city sewer system. Solid effluents are controlled by segregation of radioactive wastes from trash and hazardous wastes; containment of wastes in drums or boxes on site; treatment by decontamination, compaction, or incineration, as appropriate; and final disposal off site.

SPC monitors these effluents at or just prior to the points of release. Gaseous stack effluents are sampled continuously at isokinetic flow conditions, and the samples are analyzed for radioactivity. Liquid effluents are sampled at the lift station at the point of discharge to the sewer, and the samples are analyzed for uranium and other constituents. Solid wastes are surveyed prior to treatment or off-site disposal.

Action levels have been selected for each of these effluents, in accordance

with applicable NRC, Environmental Protection Agency (EPA), and State regulations, and are incorporated into the renewed license. These action levels specify radionuclide concentrations at which investigations would be initiated and operations would be shut down.

The effluent monitoring program will cover the expanded dry conversion process, including monitoring of new process off-gas and building ventilation systems.

Environmental Monitoring

SPC also performs monitoring to detect accumulation of radioactive materials in the environment. Off-site soils are sampled from two stations quarterly and are analyzed for uranium. Off-site vegetation is sampled from two stations monthly during the growing season and is analyzed for fluoride as an indicator of plant emissions. Ambient air is sampled continuously at two stations and analyzed for fluoride.

The lagoon liner systems are inspected monthly for the presence of liquids. If liquids are present, a sample is taken and analyzed for constituents present in the lagoon. If the liquids are identified as lagoon contents, the lagoon would be emptied and the liner repaired.

Ground water near the lagoons is sampled on a quarterly basis, and the samples analyzed for gross alpha and beta and for chlorides, nitrate nitrogen, ammonia nitrogen, and pH. If the ground water data indicate a lagoon leak, then the lagoon would be emptied and the liner repaired.

Richland city sewage plant sludge is sampled monthly and analyzed for uranium. If a running average of the analyses over a 6-month period exceeds 25 pico-curies per gram, or any single confirmed result equals or exceeds 30 pico-curies per gram discharges to the sewer will be stopped and an investigation will be performed.

The environmental monitoring program will not change as a result of the dry conversion process expansion.

Environmental Impacts From Normal Operations

The release of radioactive material to air and water represents a potential negative impact on the health and safety of the surrounding population. This impact results in a very small increase in the risk of cancer due to low levels of radiation exposure. The risk has been calculated and presented in terms of committed effective dose equivalent and organ doses resulting from a single year of operation. For doses resulting from inhalation or ingestion of uranium, this quantity is the total effective dose equivalent or organ dose that will accrue to an individual over a 50-year period beginning with the year the intake occurs. Doses to a hypothetical maximally exposed individual and collective dose to the population living within an 80 kilometer (50 mile) radius of the SPC facility were calculated and are summarized below.

Based on effluent data for the past 5 years, the SPC facility is expected to release approximately 15 microcuries per year (μCi/yr) of alpha activity and 1.4 μCi/yr of beta activity via gaseous emissions and less than 0.06 curies per year of uranium via sewer discharges. The amount of gaseous alpha emissions is expected to be reduced significantly when the change from ADU conversion to dry conversion is completed.

Doses to the maximally exposed individual via the atmospheric and aqueous release pathways were calculated using the Hanford Environmental Dosimetry Software system (GENII code) and realistic and conservative assumptions.

The total effective dose to a hypothetical resident at the site boundary would be 0.024 millirems per year from atmospheric emissions. The total effective dose to the nearest existing downwind residence, 3.4 kilometers (2.1 miles) southeast of the plant, is calculated at 0.0002 millirem per year from atmospheric emissions. These doses are far below the 25 millirem per year standard in 40 CFR Part 190 for organ doses from fuel cycle operations and the 10 millirem per year standard in 40 CFR Part 61, Subpart I, for doses from atmospheric releases.

The collective dose to the population from routine atmospheric releases is estimated at 0.0035 person-rem per year, less than 0.00005 percent of the 85,000 person-rem per year that the same population is exposed to from natural background sources.

Radioactive material released from the SPC facility to the Richland sewer system, and ultimately to the Columbia River, may result in radiation exposure to humans through a variety of pathways. The primary pathways considered in the analysis were ingestion of drinking water from the Columbia River, consumption of fish from the river and terrestrial foodstuffs irrigated with river water, and exposure during recreational activities such as swimming and boating. Doses to a maximally exposed individual living near the site and to the population within 80 kilometers (50 miles) downstream were calculated. The radionuclide release rates used in the analysis are from measurements of the effluent discharged to the sewer system. Because most of the reported concentrations were at or below the lower limit of detection for the analytical procedure, the aqueous release used in the dose calculation conservatively overestimates the actual release. The total effective dose from aqueous effluents to the Columbia River from the ADU conversion process was calculated at 0.00056 millirem, which is well below applicable regulatory standards in 40 CFR Part 190 and 10 CFR Part 20, Subpart D. Most of the dose is from U–234, and the bone surface receives the highest dose. Liquid releases from the dry conversion process, after the lagoon contents are processed, are expected to average about 30 percent of the current levels.

The dose to the surrounding population from aqueous releases is estimated at 0.074 person-rem per year. This dose is less than 0.004 percent of the 21,000 person-rem per year from natural background radiation sources to the downstream population.

The treatment in the city sewage treatment plant of liquid releases results in some reconcentration of uranium in sewage sludge. Sludge from the sewage plant is shipped daily to the Richland city landfarm where it is mixed with approximately equal amounts of petroleum-contaminated soils and native soils. After 6 months, the mixture is used as intermediate cover at the city landfill. SPC samples the sludge on a monthly basis and analyzes it for uranium content. The concentration of uranium in the sludge has been on the order of 10 picocuries per gram (pCi/g) of sludge (wet weight basis), and SPC has committed to action levels of 25 pCi/g for any 6-month running average or 30 pCi/g for a single sample. If these action levels are exceeded, discharges to the sewer will be halted and an investigation performed.

Environmental Impacts From Accidental Releases

Release of radioactive or hazardous materials under off-normal or accident conditions poses a potential risk to public health and safety and the environment. The potential consequences of these accidents include personal injury, health effects from acute exposures to toxic materials, non-stochastic effects from acute radiation exposure, and risk of latent cancer fatality from exposure to radioactive material.

A set of four accidents spanning the range of potential consequences was selected and evaluated. Three of the four scenarios evaluated the accidental release of radioactive materials. The intakes and predicted doses for the three radiological accident scenarios were small, with negligible associated health effects, or below the level normally assumed for the onset of clinically observed effects. The fourth accident analyzed, the release of gaseous ammonia, would be expected to produce noticeable, but not life-threatening effects both on site and off site. Given the low likelihood of these accidents, it is concluded that the license renewal will not have a significant impact on the general population.

Socioeconomic Impacts

SPC employs 1,000 people at the Richland plant, which is approximately 1.5 percent of the 68,000 people employed in the Tri-Cities area. Renewal of the license will allow the continued operation of the facility and continued employment of these 1,000 people.

Alternatives to the Proposed Action

If the license is not renewed, the facility would cease operation and begin decontamination and decommissioning. SPC would perform a survey of the site grounds and buildings and develop a detailed decontamination and decommissioning plan. This plan would include the decontamination of buildings, lagoons, and other outdoor areas; generation and off-site disposal of significant quantities of low-level radioactive waste; and excavation of contaminated soils. Decontamination and decommissioning operations would result in the release of small amounts of radioactivity to the atmosphere and to the Columbia River. Specific estimates of the quantities that would be released and associated doses are too speculative to predict, but the expected range could be about the same as for continued operation to one order of magnitude less. Consequently, the doses to the maximally exposed individual and to the general population would be about the same to an order of magnitude less.

The decontamination and decommissioning operations would require fewer employees than plant operations, resulting in an immediate negative socioeconomic impact. This negative socioeconomic impact would increase when decontamination and decommissioning operations were completed and the facility closed.

The cessation of operations would also result in there being one less operating fuel fabrication facility in the U.S., with a potential impact on the commercial nuclear power industry.

Agencies and Persons Consulted

To prepare the Environmental Assessment, the staff used the license renewal application dated August 1992; Revision 4 to the Supplement to Applicant's Environmental Report dated July 1994; additional information dated September 12 and October 21, 1994, and March 31, 1995; and independent data and analyses. In addition, discussions were held with the Washington Department of Health, Radiation Protection Division; the Washington Department of Ecology Nuclear Waste Program and Water Quality Section; the Benton County Clean Air Authority; the United States Environmental Protection Agency, Region X; the City of Richland Department of Water and Waste Utilities; the Washington State Archeologist; the Bureau of Indian Affairs, Yakama Agency; and the Yakama Indian Nation.

Conclusion

The NRC staff concludes that the environmental impacts associated with the proposed license renewal for continued operation of SPC's Richland facility are expected to be insignificant.

Finding of No Significant Impact

The Commission has prepared an Environmental Assessment related to the renewal of Special Nuclear Material License SNM–1227. On the basis of this assessment, NRC has concluded that environmental impacts that would be created by the proposed licensing action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a finding of no significant impact is appropriate.

Opportunity for a Hearing

Any person whose interest may be affected by the issuance of this license renewal may file a request for a hearing. Any request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this notice in the **Federal Register**; must be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852), and on the licensee (Siemens Power Corporation, 2101 Horn Rapids Road, Richland, WA 99352–0130); and must comply with the requirements for requesting a hearing set forth in the Commission's regulation 10 CFR Part 2, Subpart L, "Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings."

These requirements, which the requestor must address in detail, are:

1. The interest of the requestor in the proceeding;
2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing;
3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and
4. The circumstances establishing that the request for hearing is timely, that is, filed within 30 days of the date of this notice.

In addressing how the requestor's interest may be affected by the proceeding, the request should describe the nature of the requestor's right under the Atomic Energy Act of 1954, as amended, to be made a party to the proceeding; the nature and extent of the requestor's property, financial, or other (i.e., health, safety) interest in the proceeding; and the possible effect of any order that may be entered in the proceeding upon the requestor's interest.

Dated at Rockville, Maryland, this 20th day of June 1995.

For the Nuclear Regulatory Commission.

Robert C. Pierson,

Chief, Licensing Branch, Division of Fuel Cycle Safety and Safeguards, NMSS.

[FR Doc. 95–15675 Filed 6–26–95; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Release of Canadian Tax Information.
(2) *Form(s) submitted:* G–261.
(3) *OMB Number:* N/A.
(4) *Expiration date of current OMB clearance:* N/A.
(5) *Type of request:* New Collection.
(6) *Respondents:* Individuals or households.
(7) *Estimated annual number of respondents:* 50.
(8) *Total annual responses:* 50.
(9) *Total annual reporting hours:* 4.
(10) *Collection description:* The proposed information collection will request Canadian taxpayers who are

either RRB disability annuitants or recent unemployment and sickness claimants to consent to the release of their individual tax records from Revenue Canada to the RRB. The information will be used by the RRB to monitor their eligibility for benefits.

Additional Information or Comments: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 95–15606 Filed 6–26–95; 8:45 am]

BILLING CODE 7905–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2785]

Declaration of Disaster Loan Area; Kentucky

As a result of the President's major declaration on June 13, 1995, I find that Bath, Clark, Hardin, Jessamine, Meade, Mercer, Montgomery, and Rowan Counties in the State of Kentucky constitute a disaster area due to damages caused by tornadoes, severe wind and hail storm, torrential rain, and flooding which occurred May 13, 1995 through May 19, 1995. Applications for loans for physical damages may be filed until the close of business on August 12, 1995, and for loans for economic injury until the close of business on March 13, 1996, at the address listed below: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Floor, Niagara Falls, NY 14303, or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location. Anderson, Bourbon, Boyle, Breckinridge, Bullitt, Carter, Elliott, Estill, Fayette, Flemming, Garrard, Grayson, Hart, Jefferson, Larue, Lewis, Madison, Menifee, Morgan, Nelson, Nicholas, Powell, Washington, and Woodford Counties in Kentucky, and Crawford, Harrison, and Perry Counties in Indiana.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses with non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organization) with credit available elsewhere	7.125
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 278512. For economic injury the numbers are 854200 for Kentucky and 8543 for Indiana.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: June 19, 1995.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 95–15710 Filed 6–26–95; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2786]

Declaration of Disaster Loan Area; Tennessee

Lawrence County and the contiguous counties of Giles, Lewis, Maury, and Wayne in the State of Tennessee constitute a disaster area as a result of damages caused by tornadoes, severe storms, and flooding which occurred on May 18, 1995. Applications for loans for physical damage may be filed until the close of business on August 18, 1995 and for economic injury until the close of business on March 19, 1996 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308, or other locally announced locations.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 278606 and for economic injury the number is 854400.

Any counties contiguous to the above-named county and not listed herein have been previously declared under a separate declaration for the same occurrence.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: June 19, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–15711 Filed 6–26–95; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2784]

Declaration of Disaster Loan Area; Texas

As a result of the President's major disaster declaration on June 13, 1995, I find that Tom Green County in the State of Texas constitutes a disaster area due to damages caused by severe thunderstorms, flooding, hail, and tornadoes which occurred May 28, 1995 through May 31, 1995. Applications for loans for physical damages may be filed until the close of business on August 14, 1995, and for loans for economic injury until the close of business on March 13, 1996, at the address listed below: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155, or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous counties in the State of Texas may be filed until the specified date at the above location: Coke, Concho, Irion, Menard, Reagan, Runnels, Schleicher, and Sterling.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 278411 and for economic injury the number is 854100.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: June 19, 1995.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 95–15712 Filed 6–26–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; New Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of new task assignment for the Aviation Rulemaking Advisory Committee (ARAC).

SUMMARY: Notice is given of a new task assigned to and accepted by the Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of ARAC.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Christie, Director, Office of Rulemaking, FAA, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267–9677.

SUPPLEMENTARY INFORMATION:

Background

The FAA has established an Aviation Rulemaking Advisory Committee to provide advice and recommendations to the FAA Administrator, through the Associate Administrator for Regulation and Certification, on the full range of the FAA's rulemaking activities with respect to aviation-related issues.

The Task

This notice is to inform the public that the FAA has asked ARAC to provide advice and a recommendation on the following task:

Review National Transportation Safety Board (NTSB) Safety Recommendations 95–25, 95–26, and 95–27, pursuant to Flight Data Recorder (FDR) parameters and amendments to 14 CFR 121.343, 125.225, and 135.152, and recommend disposition of the NTSB recommendations. The ARAC recommendation should be in the form of a Notice of Proposed Rulemaking (NPRM).

The FAA has asked that ARAC provide a final document, including background and economic analysis, to justify and carry out its recommendation.

ARAC Acceptance of Task

ARAC has accepted the task and has chosen to establish a Flight Data Recorder Working Group. The working group will serve as staff to ARAC to assist ARAC in the analysis of the assigned task. Working group recommendations must be reviewed and approved by ARAC. If ARAC accepts the working group's recommendations, it forwards them to the FAA as ARAC recommendations.

Working Group Activity

The Flight Data Recorder Working Group is expected to comply with the procedures adopted by ARAC. As part of the procedures, the working group is expected to:

1. Recommend a work plan for completion of the tasks, including the rationale supporting such a plan, for consideration at the Executive Committee meeting held following publication of this notice.

2. Give a detailed conceptual presentation of the proposed recommendations, prior to proceeding with the work stated in item 3 below.

3. Draft appropriate regulatory documents with supporting economic and other required analyses, and/or any other related guidance material or collateral documents the working group determines to be appropriate; or, if new or revised requirements or compliance methods are not recommended, a draft report stating the rationale for not making such recommendations.

4. Provide a status report at each Executive Committee meeting.

The Secretary of Transportation has determined that the formation and use of ARAC is necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of ARAC will be open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Flight Data Recorder Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on June 12, 1995.

Chris A. Christie,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 95–15725 Filed 6–26–95; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee; General Aviation Operations Issues—Revised Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of revised task assignment for the Aviation Rulemaking Advisory Committee (ARAC).

SUMMARY: Notice is given of a change in the task assigned to and accepted by the Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of ARAC.

FOR FURTHER INFORMATION CONTACT: Mr. Louis C. Cusimano, Assistant Executive Director for General Aviation Operations Issues, Aviation Rulemaking Advisory Committee, Flight Standards Service (AFS–800), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8452; fax (202) 267–5094.

SUPPLEMENTARY INFORMATION:

Background

The FAA has established an Aviation Rulemaking Advisory Committee to provide advice and recommendations to the FAA Administrator, through the Associate Administrator for Regulation and Certification, on the full range of the FAA's rulemaking activities with respect to aviation-related issues. This includes obtaining advice and recommendations on the FAA's commitment to harmonize its Federal Aviation Regulations (FAR) and practices with its trading partners in Europe and Canada.

One area ARAC deals with is general aviation operations issues. These issues involve the operation of general aviation aircraft and certification of airmen in 14 CFR parts 61, 91, 103, 125, 133, 137,141, and 143.

The Revised Task

This notice is to inform the public that the FAA has revised a task previously assigned to ARAC. The revised task has been accepted by ARAC. The FAA has asked ARAC to provide advice and recommendation on the following revised task:

Part 103 (Ultralight Vehicles): Review part 103 of the Federal Aviation Regulations and make a recommendation to the Federal Aviation Administration concerning whether

new or revised standards, under part 103 or other regulations that may be affected, are appropriate. In reviewing part 103, the ARAC should consider:

a. United States Ultralight Association's petition to amend part 103 (Docket No. 25591) and all comments submitted regarding the petition; and

b. Adding definitions and operating rules to apply to rotorcraft.

The FAA also has asked that ARAC determine if rulemaking action (e.g., NPRM) should be taken or advisory material should be issued. If so, ARAC has been asked to prepare the necessary documents, including economic analysis, to justify and carry out its recommendation(s).

ARAC Acceptance of Revised Task

ARAC has accepted the revised task and has chosen to assign it to the existing Part 103 (Ultralight Vehicles) Working Group. The working group will serve as staff to ARAC to assist ARAC in the analysis of the assigned task. Working group recommendations must be reviewed and approved by ARAC. If ARAC accepts the working group's recommendations, it forwards them to the FAA as ARAC recommendations.

Working Group Activity

The Part 103 (Ultralight Vehicles) Working Group is expected to comply with the procedures adopted by ARAC. As part of the procedures, the working group is expected to:

1. Recommend a work plan for completion of the tasks, including the rationale supporting such a plan, for consideration by ARAC.

2. Give a detailed conceptual presentation of the proposed recommendations, prior to proceeding with the work stated in item 3 below.

3. For each task, draft appropriate regulatory documents with supporting economic and other required analyses, and/or any other related guidance material or collateral documents the working group determines to be appropriate; or, if new or revised requirements or compliance methods are not recommended, a draft report stating the rationale for not making such recommendations.

4. Provide a status report at each meeting of ARAC held to consider general aviation operations issues.

Participation in the Working Group

The Part 103 (Ultralight Vehicles) Working Group is composed of experts having an interest in the assigned task. A working group member need not be a representative of a member of the full committee.

An individual who has expertise in the subject matter and wishes to become a member of the working group should write to the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task, and stating the expertise he or she would bring to the working group. The request will be reviewed by the assistant chair, the assistant executive director, and the working group chair, and the individual will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the formation and use of ARAC are necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of ARAC will be open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Part 103 (Ultralight Vehicles) Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on June 16, 1995.

Louis C. Cusimano,

Assistant Executive Director for General Aviation Operations Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 95–15726 Filed 6–26–95; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; Special Committee 184, Minimum Performance and Installation Standards for Taxi-Hold Position Lights

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 184 meeting to be held July 27–28, 1995, starting at 9:00 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036.

The agenda will be as follows:

(1) Administrative Announcements (Report results of TMC meeting concerning TOR);
(2) Chairman's Introductory Remarks;
(3) Review and Approval of Meeting Agenda;
(4) Review and Approve Minutes of the Meeting Held June 5–6, 1995;
(5) Review Status of Action Items;
(6) Review of Draft Document Inputs;
(7) Work Group Drafting Session;
(8) Other Business;
(9) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting.

Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 16, 1995.

Janice L. Peters,

Designated Official.

[FR Doc. 95–15731 Filed 6–26–95; 8:45 am]

BILLING CODE 4810–13–M

RTCA, Inc.; Special Committee 183; Standards for Airport Security Access Control Systems

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 183 meeting to be held July 25–26, 1995. The first day Plenary session will begin at 9:30 a.m.; the second day Editorial Working Group session will be from 9:30–11:30 a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC, 20036.

The agenda will include:

(1) Administrative Announcements;
(2) General Introductions;
(3) Review and Approval of Agenda;
(4) Review and Approval of Minutes of the Meeting held June 12;
(5) Review of SC–183 Meeting Schedule August-September 1995;
(6) Review of Draft Material;
(7) Working Group Issues;
(8) Other Business;
(9) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 16, 1995.

Janice L. Peters,

Designated Official.

[FR Doc. 95–15730 Filed 6–26–95; 8:45 am]

BILLING CODE 4810–13–M

RTCA, Inc.; Special Committee 165, Minimum Operational Performance Standards for Aeronautical Mobile Satellite Services

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 165 meeting to be held July 19–21, 1995, starting at 9:30 a.m. The meeting will be held at the RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will be as follows:

(1) Welcome and Introductions;
(2) Approval of the Summary of the Previous Meeting;
(3) Chairman's Remarks;
(4) Review of SC–165 Working Group Progress: a. Working Group 1 (MOPS), b. Working Group 3 (MASPS), and c. Working Group 5 (SatVoice);
(5) Consideration of Documents for Approval: a. DO–210, AMSS Airborne Equipment MOPS; and b. DO–2XX, Design Guidelines and Recommended Standards for the Implementation and Use of AMS(R)S Voice Services in a Data Link Environment;
(6) Other Business;
(7) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suit 1020, Washington, DC 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 16, 1995.

Janice L. Peters,

Designated Officiol.

[FR Doc. 95–15729 Filed 6–26–95; 8:45 am]

BILLING CODE 4810–13–M

Civil Tiltrotor Development Advisory Committee

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act Public Law (72–362); 5 U.S.C. (App. I), notice is hereby given of the cancellation of a meeting of the Federal Aviation Administration (FAA) sponsored Civil Tiltrotor Development Advisory Committee (CTRDAC) previously announced for June 29 in Washington DC. The meeting will be rescheduled on a later date. A **Federal Register** announcement will be published once a date has been chosen.

For further information, contact Ms. Karen Braxton (202) 267–9451.

Dated: June 14, 1995.

Richard A. Weiss,

Designated Federal Official, Civil Tiltrotor Development Advisory Committee.

[FR Doc. 95–15728 Filed 6–26–95; 8:45 am]

BILLING CODE 4810–13–M

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss transport airplane and engine issues.

DATES: The meeting will be held on July 11 and 12, 1995 beginning at 8:30 a.m. on July 12. Arrange for oral presentations by June 30, 1995.

ADDRESS: The meeting will be held at Boeing Company, 535 Garden Ave. North, Renton, Washington 98055, in building 10–16, Conference room 12C4.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Office of Rulemaking, FAA, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9682.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is given of a meeting of the Aviation Rulemaking Advisory Committee to be held July 11 and 12, 1995 at Boeing Company, 535 Garden Ave. North, Renton, Washington 98055; in building 10–16, Conference room 12C4.

The agenda for the meeting will include:

- Opening remarks.
- Review of action items.
- Reports of working groups.
- Vote on a draft Advisory Circular on "Design Considerations for Minimizing Hazards Caused By Uncontained Turbine Engine and Auxillary Power Unit Rotor Failure."
- Vote on a draft Advisory Circular on "Compliance with Rotor Burst Rule."
- Vote on a draft Advisory Circular on "Flight Attendant Direct View."

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by June 30, 1995, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director for Transport Airplane and Engine Issues or by bringing the copies to him at the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on June 19, 1995.

Chris A. Christie,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 95–15727 Filed 6–26–95; 8:45 am]

BILLING CODE 4910–13–M

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In May 1995, there were five applications approved. Additionally, three approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of 49 U.S.C. 40117 (Pub. L. 103–272) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph (d) of § 158.29.

PFC Applications Approved

Public Agency: Bradford Regional Airport Authority, Lewis Run, Pennsylvania.

Applicotion Number: 95–01–C–00–BFD.

Application Type: Impose and use PFC revenue.

PFC Level: $3.00.

Totol Approved Net PFC Revenue: $572,259.

Charge Effective Date: August 1, 1995.

Estimated Charge Expiration Date: June 1, 2008.

Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators exclusively filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the Bradford Regional Airport Authority's application, the FAA has determined the proposed class accounts for less than 1 percent of Bradford Regional Airport's total annual enplanements.

Brief Description of Project Approved for Collection and Use:
Apron rehabilitation,
Deicing pad,
Aircraft rescue and firefighting (ARFF) vehicle,
Runway 14–32 lighting,
Automobile parking,
Snow removal equipment building expansion,
Snow removal equipment,
Water system upgrade,
Parking lot overlay,
Airport signs,
Terminal building.

Brief Description of Project Approved in Part for Collection and Use: Project (PFC) formulation and administrative expense.

Determination: Approved in part. The approved amount is less than that requested by the public agency. The public agency requested $15,000 per year for 18 years for administrative costs, however, the FAA has determined that $7,000 per year is adequate to reimburse the public agency for the actual annual expenses. The duration of the annual expenses is also limited to the approved duration of collection, just under 13 years, rather than the 18 years requested. The public agency also states, in the letter to the FAA transmitting the application, that the requested amount includes $699 for miscellaneous expenses. This amount is disapproved in total since the public agency did not provide enough information to allow the FAA to make a determination on the eligibility of these costs.

Brief Description of Projects Approved for Collection Only:
Parallel taxiway runway 14–32 (phase I),
Parallel taxiway runway 14–32 (phase II),
Runway 5–23 lighting.

Brief Description of Projects Withdrawn:
Master plan update,
Runway 14–32 rehabilitation.

Determination: These projects were withdrawn by the public agency by letter dated April 21, 1995. Therefore, the FAA will not rule on these projects at this time.

Decision Date: May 3, 1995.

For Further Information Contact: L.W. Walsh, Harrisburg Airports District Office, (717) 975–3423.

Public Agency: City of Worcester, Massachusetts.

Application Number: 95–02–U–00–ORH.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $2,301,382.

Charge Effective Date: October 1, 1992.

Estimated Charge Expiration Date: October 1, 1997.

Class of Air Carriers not Required to Collect PFC'S: None.

Brief Description of Projects Approved for Use of PFC Revenue:
Reconstruct terminal apron and taxiway B,
Install lighting and groove runway 11–29,
Install perimeter fencing.

Decision Date: May 5, 1995.

For Further Information Contact: Priscilla Soldan, New England Region Airports Division, (617) 238–7614.

Public Agency: City of Lewiston and Nez Perce County, Lewiston, Idaho.

Application Number: 95–02–00–LWS.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $835,458.

Charge Effective Date: May 1, 1994.

Estimated Charge Expiration Date: July 1, 2003.

Class of Air Carriers not Required to Collect PFC'S: The City of Lewiston and Nez Perez County have previously been approved to exclude a class of carriers in the February 3, 1994, Record of Decision.

Determination: No change from previously approved application.

Brief Description of Project Approved for Use of PFC Revenue: Terminal building expansion/renovation/remodeling.

Decision Date: May 12, 1995.

For Further Information Contact: Sandra Simmons, Seattle Airports District Office, (206) 227–2656.

Public Agency: Springfield Airport Authority, Springfield, Illinois.

Application Number: 95–04–U–00–SPI.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $4,585,443.

Charge Effective Date: February 1, 1994.

Estimated Charge Expiration Date: February 1, 2006.

Class of Air Carriers not Required to Collect PFC'S: The Springfield Airport Authority has previously been approved to exclude a class of carriers in the November 24, 1993, Record of Decision.

Determination: No change from previously approved application.

Brief Description of Project Approved for Use of PFC Revenue:
Land acquisition—parcels 9–1–MM, 9–4–I, and 9–4–NN,
Rehabilitate entrance road,
Acquisition of proximity suits,
Acquisition of a front end loader.

Brief Description of Project Disapproved for Use of PFC Revenue: Terminal building expansion.

Determination: The public agency requested authority to use PFC revenue on a portion of the terminal building expansion which was not included in the scope of the project presented in the impose application (93–01–I–00–SPI). The project as presented in the use application is considered to be maintenance in accordance with paragraph 501 of FAA Order 5100.38A and, therefore, ineligible under Airport Improvement Program criteria. The original project, approved in the 93–01–I–00–SPI decision, remains PFC eligible.

Decision Date: May 26, 1995.

For Further Information Contact: Louis H. Yates, Chicago Airports District Office, (708) 294–7335.

Public Agency: Lebanon Municipal Airport, Lebanon, New Hampshire.

Application Number: 95–01–C–00–LEB.

Application Type: Impose and use PFC revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $449,256.

Charge Effective Date: August 1, 1995.

Estimated Charge Expiration Date: July 1, 1998.

Class of Air Carriers not Required to Collect PFC'S: None.

Brief Description of Projects Approved for Collection and Use:
Reconstruction of runway 7–25,
Runway 7–25 safety area improvements.
Design taxiway Alpha extension/purchase snow removal equipment.
Environmental assess runway 18–36, phases I and II, and design runway 18–36 reconstruction,
ARFF vehicle,
Snow removal equipment—rotary plow.

Brief Description of Projects Approved for Collection:
Construct taxiway Alpha extension,
Runway 18–36 rehabilitation and relocation,
General aviation ramp expansion south ramp,
Taxiway Alpha reconstruction.

Decision Date: May 26, 1995.

For further Information Contact: Priscilla Soldan, New England Reginal Airports Division, (617) 238–7614.

AMENDMENTS TO PFC APPROVALS

Amendment No. city, state	Amendment approved date	Amended approved net PFC revenue	Original approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
92–C–02–SJC, San Jose, CA	05/23/95	$34,231,826	30,083,826	08/01/95	08/01/95
93–C–01–SJC, San Jose, CA	05/23/95	17,245,000	16,245,000	05/01/97	05/01/97
92–01–I–02–HSV, Huntsville, AL	05/25/95	20,831,051	20,831,051	11/01/08	11/01/08

Issued in Washington, DC, on June 20, 1995.

Sheryl Scarborough,

Acting Manager, Passenger Facility Charge Branch.

[FR Doc. 95–15732 Filed 6–26–95; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

Limited Competitive Cooperative Agreements to Medical Organizations to Support Campaign Safe & Sober

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of Limited Competitive Cooperative Agreements to Medical Organizations to Support Campaign Safe & Sober.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces the availability of FY 1995 limited competitive cooperative agreements to support the Secretary of Transportation's goals of increasing safety belt use to 75 percent and reducing the proportion of alcohol-related fatalities by 35 percent (to 11,000 annually) by the year 2005. This notice solicits applications from national, nonprofit medical organizations that are interested in developing and implementing projects under this program. Project emphasis will be placed on promoting legislation to upgrade safety belt laws, actively supporting the traffic safety efforts of the law enforcement community, promoting injury prevention, and enhancing capacity-building among the selected medical organizations' membership to work with the media to publicize Campaign Safe & Sober activities.

DATE: Applications must be received at the office designated below on or before August 18, 1995.

ADDRESSES: Applications must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD–30), ATTN: Rose Watson, 400 Seventh Street, SW., Room 5301, Washington, DC 20590. All applications submitted must include a reference to NHTSA Limited Competitive Cooperative Agreement Program No. DTNH22–95–H–05202. Interested applicants are advised that no separate application package exits beyond the contents of this announcement.

FOR FURTHER INFORMATION CONTACT: General administrative questions may be directed to Rose Watson, Office of Contracts and Procurement, at (202) 366–9557. Programmatic questions relating to this cooperative agreement should be directed to Ms. Fran Hurtado, Highway Safety Specialist, Room 5118 (NTS–11), 400 Seventh Street, SW., Washington, DC 20590, at (202) 366–1108.

SUPPLEMENTARY INFORMATION:

Background

Traffic crashes are consistently the leading cause of death for persons between the ages of 5 and 32, and are a significant cause of death for all ages. About 40,000 people die in traffic crashes each year and 5 million persons are injured. Many of the deaths and injuries that occur on our roads are not the result of unavoidable incidents. Instead, the consequences of these crashes are the result of the failure to take proper precautions such as wearing safety belts and bicycle helmets, and exhibiting unsafe driving behaviors such as speeding and impaired driving. Reducing the number of deaths and injuries due to motor vehicle crashes is a significant problem warranting the attention not only of traffic safety professionals, but of medical, nursing and public health professionals as well.

Wearing safety belts is the most immediate and effective way of cutting the highway death toll—and strong occupant protection laws are the most effective way of increasing safety belt use. Highway deaths could be cut dramatically if all 50 states had primary safety belt use laws in effect. The Agency recognizes that usage rates are higher, and fatality rates are lower in states with primary enforcement.

(**Note:** With a primary enforcement law, a citation can be written whenever a law officer observes an unbelted driver or passenger. Nine States and Puerto Rico currently have primary belt laws; all have use rates that exceed 70 percent.)

Because of the combination of population size and current usage rates, the Agency further recognizes that some States are likely to contribute more than others to reaching a national use rate of 75 percent by 1997. NHTSA believes that targeted Agency expertise and resources, as well as new private/public sector partnerships should be utilized to actively encourage and support high-potential States to set and achieve challenging, but reasonable use rates.

The importance of strengthening the partnership between the traffic safety and medical communities in motor vehicle related injury prevention programming has been recognized by both parties. Highway safety objectives have been included in "Healthy People 2000," the national health promotion and disease prevention objectives for the year 2000. NHTSA has included the establishment of cooperative traffic safety-medical-injury control programs in its priority plan. In addition, any future health care reform legislation in the Congress will have a major impact. Whatever action is finally taken, wellness and preventive health care initiatives are likely to be in the forefront of any effort to reduce the medical costs associated with illness and injury. This grant provides new opportunities for the Agency to solicit the involvement of the medical community in promoting motor vehicle injury prevention activity.

In 1993, Secretary of Transportation Federico Peña announced two new national highway safety goals: to reduce the proportion of highway fatalities that are alcohol-related to 43 percent, and to increase the national safety belt use rate to at least 75 percent by 1997. In 1994, the nation met and exceeded the Secretary's alcohol goals, and he has subsequently announced an aggressive new alcohol goal of reducing the proportion of alcohol-related fatalities by 35 percent (to 11,000 annually) by the year 2005.

In support of these goals, NHTSA is currently implementing an initiative called "Campaign Safe & Sober" that has become the centerpiece of the

Agency's traffic safety program over the next several years. It defines the federal strategy for reaching the Secretary's alcohol and belt use goals. Campaign activities will be supplemented by outreach programs involving public and private sector organizations.

Generally, however, Campaign Safe & Sober has three components:

- Public information and education to increase public awareness of the risks and costs of traffic crashes and to support enforcement efforts through highly visible media
- Improved legislation to provide enforceable traffic laws
- Enhanced enforcement to reduce alcohol-impaired driving and increase compliance with belt use laws through special Traffic Enforcement Programs (STEPS)

To further the overall goals of Campaign Safe & Sober, NHTSA is seeking increased participation of the injury control communities, including medical, nursing and public health organizations. The Agency has a long history of working with health and medical professionals, civic groups, and private sector organizations who can motivate people, through their interpersonal contacts, to exhibit safe driving behaviors. One of the most effective means of educating the public about various highway safety issues has been through these organizations. Many organizations have been committed to occupant protection and impaired driving issues over the years and have, individually, made contributions of time, materials, resources and effort to promote the cause.

In efforts to achieve the Secretary's goals, NHTSA proposes to initiate cooperative efforts with two national, nonprofit medical organizations. Each of the two organizations will develop a motor vehicle injury prevention program specific to the respective organization for implementation in mutually selected states and communities across the country. The program will focus on alcohol and occupant protection issues, but may be expanded to include activities in pedestrian, bicycle and motorcycle safety. Program efforts will be concentrated on working with the organization's members to effectively communicate with their legislators, colleagues, patients, the community and law enforcement officials in an effort to increase safety belt use.

The medical community plays a key role in influencing local and state decision makers and elected officials to promote programs and policies that discourage unhealthy behaviors (smoking, alcohol or other drug abuse, etc.) and encourage healthy behaviors (wearing seat belts, bicycle and motorcycle helmets, use of child safety seats, etc.). However, the potential for medical leadership in the public policy arena often goes unrealized. Capacity-building in the medical community needs to be encouraged to augment existing advocacy, legislative and media skills.

Objectives

Under this cooperative agreement, the concepts of injury control, through the promotion of safe traffic safety behaviors, will be advanced. Specific objectives for this cooperative agreement program are as follows:

1. To promote effective traffic safety legislation, with special emphasis on primary safety belt use law upgrades and on broader child safety seat legislation.
2. To work effectively with the media to support the efforts of police to enforce occupant protection (and alcohol-impaired driving) laws.
3. To motivate members of these two national medical organizations and members of the public they serve to adopt traffic-related behaviors that promote safety and health.

Anticipated activities of this cooperative agreement for each of the two medical organizations are:

1. An assessment of existing motor vehicle/injury control prevention activity currently being conducted by the organization.
2. The development, pilot testing and evaluation of a capacity-building workshop for the organization's membership to enhance the media and advocacy skills necessary to support targeted legislative and enforcement activities; and other Campaign Safe & Sober initiatives.
3. Development of policy statements for the organization in support of traffic safety legislation and enforcement.
4. Development and implementation of a focused, mutually-agreed upon strategy (or strategies) targeting high potential States to support legislative and enforcement efforts. Possible approaches include: identification and development of "resource members" to provide technical assistance (on-site, by telephone or by mail) to individual State/local organizations to prepare letter-writing campaigns, to prepare and deliver testimony at legislative hearings, to make personal appearances at key meetings/events and in media interviews, etc.

Anticipated outcomes include:

1. An increase in the number and quality of motor prevention activities conducted by the organizations' members (ie., civic and professional presentations; media appearances; placement of editorials and articles in organizational publications and in the print media).
2. An observable increase in support for local and statewide (alcohol and safety belt) law enforcement efforts in selected sites.
3. An increase in the number of medical professionals who are involved in traffic safety legislative advocacy activities (ie. preparation and delivery of testimony, engaging in dialogue with legislators, taking leadership roles in traffic safety advocacy coalitions.)

Specific Tasks

1. The contractor shall meet with the COTR within one week after the award of the contract to review details of the contractor's proposed work plan and schedules for this project.
2. The contractor shall work with NHTSA to mutually identify high potential States that are likely to contribute to reaching a national safety belt use rate of 75 percent by 1997.
3. The contractor shall adapt or develop materials to be used to educate members in high potential States.
4. The contractor shall develop a "capacity-building" strategy for member to work with the media in high potential States to provide support for legislative, enforcement and other ongoing prevention efforts (including media efforts, letter-writing capacity, presenting testimony, etc.)
5. The contractor shall identify and train members in high potential States to deliver support for legislative and enforcement activities.
6. The contractor or affiliates shall pilot test the capacity-building strategies and resulting traffic safety advocacy using members selected by the medical organization.
7. A description of pilot activities will be required by the COTR before the pilot testing commences. Contingent with the submission of the test plan, the contractor shall present the COTR a detailed method of evaluating the effectiveness of the strategies.
8. The contractor shall implement these support activities.
9. It is imperative that the contractor make provisions in his/her organization to continue the implementation of the strategies developed after the termination of this cooperative agreement within each of the target areas for at least two years. Emphasis should be placed on making this an ongoing program that is self-sufficient. NHTSA will be prepared to offer suggestions that may assist the contractor to achieve this goal.
10. Quarterly progress reports will be provided. The contractor shall, upon completion of this project, present to NHTSA a detailed report of the entire project.

Deliverables

A final list of required deliverables will be developed in accordance with the accepted proposal prior to award. For planning purposes, the Agency anticipates that the required deliverables will include the following:
Work Plan and Schedules—1 Week, 3 Weeks and 4 Weeks after award
Progress Reports—Quarterly
Final Report (Draft)—1 Year after award
Plan for Self-sustenance, Final Report—2 Months after project completion

NHTSA Role in Activities

The NHTSA Office of Occupant Protection (OOP), National Organizations Division (NTS–11) will be involved in all activities undertaken as part of this cooperative agreement program and will:

1. Provide a project officer to participate in the planning and management of the cooperative agreement and to coordinate activities between the organization and OOP
2. Make available information and technical assistance from government sources, including a copy of the previously conducted NHTSA study. Additional assistance shall be within resources available
3. Provide liaison with government and private agencies as appropriate.

Evaluation Criteria and Review Process

Proposals must demonstrate that the applicant meet all eligibility requirements listed above. Proposals will be evaluated based upon bid price and upon the following weighted six factors:

1. Potential Project Impact—25 points. What the organization proposes to accomplish and the potential of the proposed project to significantly contribute to achieving the Secretary's national alcohol and belts goals through Campaign Safe & Sober
2. Proposed Approach or Strategy—25 points. The extent to which the project addresses foreseeable barriers to gaining significant involvement of the medical professionals in motor vehicle injury prevention advocacy programs. These barriers include awareness, motivation, instruction, and personal and financial limitations.
3. Experience and Capability of Organization—20 points. The overall experience, capability and commitment of the organization to facilitate involvement of its membership in the promotion of motor vehicle injury control.
4. Soundness of the Proposed Work Plan—15 points. The soundness and feasibility of the proposed approach or work plan, including the evaluation to assess program effectiveness and outcomes.
5. Proposed Administrative Plan—10 points. How the organization will provide the administrative capability and staff expertise necessary to complete the proposed project.
6. Proposed Coordination Plan—5 points. The proposed coordination with and use of other available resources, including collaboration with state highway safety offices and other existing or planned state and community motor vehicle injury control programs.

Upon receipt of applications by the agency, they will be screened to assure that all eligibility requirements have been met. Applications will be reviewed by NHTSA staff using the criteria outlined above. The results of this review will be recommendations to the agency management for Competitive Cooperative Agreement award.

Support, Terms and Conditions

Contingent on the availability of funds, satisfactory performance, and continued demonstrated need, this cooperative agreement may be awarded for a project period of up to twelve months. The application for the funding period (12 months) should address what is proposed and can be satisfactorily accomplished during that period.

The anticipated funding level for this cooperative agreement in FY 95 is $150,000, or $75,000 for each of two (2) organizations. Federal funds should be viewed as seed money to assist organizations in the development of traffic safety initiatives. Monies allocated in this cooperative agreement are not intended to cover all of the costs that will be incurred in completing this project. Applicants should demonstrate a commitment of financial and in-kind resources to the support of this project.

The organizations participating in this cooperative agreement program may use awarded funds to support salaries of individuals assigned to the project, the development or purchase of direct program materials, direct program-related activities, or for travel related to the cooperative agreement.

The award recipient will be required to submit quarterly progress reports on a schedule to be determined after award. In addition, the recipient will be required to submit a detailed final summary report describing the project and its outcomes no later than two (2) months after termination of this agreement.

Eligibility Requirements

In order to be eligible to participate in this cooperative agreement, an organization must meet the following requirements:

1. Be a private, national, non-profit medical organization;
2. Have an established membership structure with state/local chapters or affiliates in a broad geographic region of the country;
3. Have in place a schedule of annual regional/state conference or conventions and a variety of communication mechanisms that are appropriate for educating and motivating members and other constituents to become involved in legislative advocacy and implementation support of occupant protection laws;
4. Demonstrate an understanding of occupant protection issues: and
5. Demonstrate top level support within the organization for the project and, where appropriate, demonstrate similar support from the membership or local affiliates.

Application Procedures

1. All applications must be covered by a signed copy of OMB Standard Form 424 (revised 4/88, including 424A and 424B) "Application for Federal Assistance" with the required information filled in and the certified assurances included. This form is available from the NHTSA Office of Contracts and Procurement (NAD–30), 400 Seventh Street, SW., Washington, DC 20590, (202 366–0607). Form 424–A deals with budget information, and Section B identifies Budget Categories, the available space does not permit for a level of detail which is sufficient to provide for a useful evaluation of the proposed costs. A supplemental sheet should be provided which presents a detailed breakdown of the proposed costs.

2. Applications shall include a program narrative statement which addresses the following:

A. Goals and Objectives

(i) Demonstrates the need for the assistance and states the principle and subordinate objectives of the project. Supporting documentation from concerned interests other than the applicant can be used. Any relevant data based on planning studies should be included or footnoted.

(ii) Identifies the results and benefits to be derived.

B. Approach

(i) Outlines a plan of action pertaining to the scope and detail on how the proposed work will be accomplished. Include the reasons for taking this approach as opposed to other approaches.

(ii) Describes any unusual features, such as design or technological innovations and extraordinary social/community involvement.

(iii) Provides quantitative projections of the accomplishments to be achieved, if possible, or lists the activities in chronological order to show the schedule of accomplishments and their target dates.

(iv) Identifies the kinds of data to be collected and maintained, and discusses the criteria to be used to evaluate the results. Explains the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved.

(v) Lists each organization, corporation, consultant, or other individual who will work on the project along with a short description of the nature of their effort or contribution and relevant experience.

3. Applications must be typed on one side of the page only. The original and two copies of each application must be submitted. An applicant may submit an additional four copies to facilitate the review process, but there is no requirement or obligation to do so.

Terms and Conditions of the Award

Prior to the award, each recipient must comply with the certification requirements of 49 CFR part 29—Department of Transportation. During the effective period of the cooperative agreement awarded as a result of this notice, the agreements shall be submitted to general administrative requirements of OMB Circular A–110 (or the "common rule", if effected prior to the award), the cost principles of OMB Circular A–21 or A–22, as applicable to the recipient, and the provisions of 49 CFR part 29, Governmentwide Debarment and Suspension (nonprocurement).

Issued On: June 21, 1995.

James H. Hedlund,

Acting Associate Administrator, Traffic Safety Programs.

[FR Doc. 95–15667 Filed 6–26–95; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

June 20, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Departmental Offices/Office of Data Management

OMB Number: 1505–0017.
Form Number: International Capital Form BC, International Capital Form BC(SA).
Type of Review: Extension.
Title: Reporting Bank's Own Claims and Selected Claims of Broker or Dealer, On Foreigners, Denominated in Dollars.
Description: This report is required by law (22 U.S.C. 95a, 286f and 3103) for timely and accurate information on U.S. international capital movements including data on the dollar claims of banks, other depositorsy institutions, brokers and dealers *vis-a-vis* foreigners.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 825.
Estimated Burden Hours Per Response: 7 hours.
Frequency of Response: Monthly.
Estimated Total Reporting Burden: 69,300 hours.

OMB Number: 1505–0019.
Form Number: International Capital Form BL–1, International Capital Form BL–1(SA).
Type of Review: Extension.
Title: Reporting Bank's Own Liabilities, and Selected Liabilities of Broker or Dealer, To Foreigners, Denominated in Dollars.
Description: This report is required by law (22 U.S.C. 95a, 22 U.S.C. 286f and 3103) for timely and accurate information on U.S. international capital movements, including data on the dollar liabilities of banks, other depository institutions, brokers and dealers *vis-a-vis* foreigners.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 900.
Estimated Burden Hours Per Response: 7 hours.
Frequency of Response: Monthly.
Estimated Total Reporting Burden: 75,600 hours.
Clearance Officer: Lois K. Holland, (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–15735 Filed 6–26–95; 8:45 am]

BILLING CODE 4810–25–P

Public Information Collection Requirements Submitted to OMB for Review

June 20, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Financial Management Service (FMS)

OMB Number: 1510–0007.
Form Number: Standard Form 1199A.
Type of Review: Extension.
Title: Direct Deposit Sign-Up Form.
Description: The Direct Deposit Sign-Up Form is used by recipients to authorize the deposit of Federal payments into their accounts at financial institutions. This information is used to route the Direct Deposit payment to the correct account at the correct financial institution. It identifies persons who have processed the form.
Respondents: Individuals or households, Business or other for-profit, Federal Government.
Estimated Number of Respondents: 3,850,000.
Estimated Burden Hours Per Response: 10 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 654,500 hours.

OMB Number: 1510–0027.
Form Number: POD 1681.
Type of Review: Extension.
Title: Application for Payment of a Deceased Depositor's Postal Savings.

Description: This form is required in cases of deceased Postal Savings depositors with accounts of $50 or less. The form is used by relatives of the deceased depositors showing the relationship to the depositor and the date of depositors death. The information helps to determine who is entitled to payment.
Respondents: Individuals or households.
Estimated Number of Respondents: 150.
Estimated Burden Hours Per Response: 15 minutes.
Frequency of Response: Other.
Estimated Total Reporting Burden: 38 hours.

OMB Number: 1510–0035.
Form Number: None.
Type of Review: Extension.
Title: Assignment Form.
Description: This form is used when awardholders wish to assign or transfer all or a portion of their award to another person. In doing so, awardholder forfeits all future rights to the portion assigned.
Respondents: Individuals or households.
Estimated Number of Respondents: 150.
Estimated Burden Hours Per Response: 30 minutes.
Frequency of Response: Other (as needed).
Estimated Total Reporting Burden: 75 hours.
Clearance Officer: Jacqueline R. Perry (301) 344–8577, Financial Management Service, 3361–L 75th Avenue, Landover, MD 20785.
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–15736 Filed 6–26–95; 8:45 am]

BILLING CODE 4810–35–P

Public Information Collection Requirements Submitted to OMB for Review

June 19, 1995.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request: In order to conduct the survey described below in early July, the Department of the Treasury is requesting Office of Management and Budget (OMB) review and approval of this information collection by June 30, 1995. To obtain a copy of this survey, please write to the IRS Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.
Project Number: PC:V 95–011–G.
Type of Review: Revision.
Title: Ensuring Compliance Business Customer Satisfaction with IRS Examination Contact Survey.
Description: This survey will gather information about some fundamental experiences that business taxpayers have had, such as: how long they expected the process to take, how long it actually took, how many contacts were made and their frequency. Some basic opinions will also be obtained, regarding the taxpayer's satisfaction with the various aspects of the process, as well as the taxpayer's awareness of various aspects of the process, and their suggestions on improving the process.
Respondents: Business or other for-profit.
Estimated Number of Respondents:
Questionnaire—1,600
Screener Questionnaire—5,000
Pretest—150
Estimated Burden Hours Per Respondent:
Questionnaire—10 minutes
Screener Questionnaire—3 minutes
Pretest—10 minutes
Frequency of Response: Other.
Estimated Total Reporting Burden: 541 hours.
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–15737 Filed 6–26–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

June 19, 1995.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0409.
Form Number: IRS Forms 211 and 211(SP).
Type of Review: Revision.
Title: Application for Reward for Original Information (Form 211); Solicitud de Recompensa por Información Original (Spanish Version) (Form 211(SP).
Description: Forms 211 and 211(SP) are the official application forms used by persons requesting rewards for submitting information concerning alleged violations of the tax laws by other persons. Such rewards are authorized by Internal Revenue Code (IRC) 7623. The data is used to determine and pay rewards to those persons who voluntarily submit information.
Respondents: Individuals or households.
Estimated Number of Respondents: 11,200.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 2,800 hours.

OMB Number: 1545–0800.
Regulation ID Number: Reg. 601.601.
Type of Review: Extension.
Title: Rules and Regulations.
Description: Persons wishing to speak at a public hearing on a proposed rule must submit written comments and an outline within prescribed time limits, for use in preparing agendas and allocating time. Persons interested in the issuance, amendment, or repeal of a rule may submit a petition for this. IRS considers the petitions in its deliberations.
Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.
Estimated Number of Respondents: 600.
Estimated Burden Hours Per Respondent: 1 hour, 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 900 hours.

OMB Number: 1545–0904.
Regulation ID Number: INTL–45–86 Final (T.D. 8125).
Type of Review: Extension.
Title: Foreign Management and Foreign Economic Processes Requirements of Foreign Sales Corporation.
Description: The regulations provide rules for complying with foreign management and foreign economic process requirements to enable Foreign Sales Corporations to produce foreign trading gross receipts and qualify for reduced tax rates. Rules are included for maintaining records substantiate compliance. Affected public is limited to large corporations that export goods or services.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 11,001.
Estimated Burden Hours Per Recordkeeper: 2 hours.
Frequency of Response: Other.
Estimated Total Recordkeeping Burden: 22,001 hours.

OMB Number: 1545–0982.
Regulation ID Number: LR–77–86 Temporary (T.D. 8124).
Type of Review: Extension.
Title: Certain Elections Under the Tax Reform Act of 1986.
Description: These regulations establish various elections with respect to which immediate interim guidance on the time and manner of making the election is necessary. These regulations enable taxpayers to take advantage of the benefits of various Code provisions.
Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, State, Local or Tribal Government.
Estimated Number of Respondents: 114,710.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 28,678 hours.

OMB Number: 1545–1148.
Regulation ID Number: EE–113–90 Temporary and Final Regulations (T.D. 8324).
Type of Review: Extension.
Title: Employee Business Expenses-Reporting and Withholding on Employee Business Expense Reimbursements and Allowances.
Description: These temporary and final regulations provide rules concerning the taxation of and reporting withholding on employee business expense reimbursements and other expense allowance arrangements.
Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.
Estimated Number of Respondents: 1,419,456.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: Other.
Estimated Total Reporting Burden: 709,728 hours.

OMB Number: 1545–1317.
Regulation ID Number: INTL–79–91 Final.
Type of Review: Extension.
Title: Information Returns Required of United States Persons with Respect to Certain Foreign Corporations.
Description: These regulations clarify certain requirements of section 1.6035–1, 1.6038–2 and 1.6046–1 of the Income Tax Regulations relating to Form 5471 and would affect controlled foreign corporations and their United States shareholders.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents: 1.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 1 hour.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 95–15738 Filed 6–26–95; 8:45 am]
BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

June 20, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0172.
Form Number: IRS Form 4562.
Type of Review: Revision.
Title: Depreciation and Amortization (Including Information on Listed Property).
Description: Taxpayers use Form 4562 to: (1) Claim a deduction and/or amortization; (2) make a section 179 election to expense depreciable assets; and (3) answer questions regarding the use of automobiles and other listed property to substantiate the business use under section 274(d).
Respondents: Business or other for-profit, Individuals or households, Farms.
Estimated Number of Respondents/Recordkeepers: 6,500,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—33 hr., 58 min.
Learning about the law or the form—4 hr., 40 min.
Preparing and sending the form to the IRS—5 hr., 26 min.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 287,057,500 hours.

OMB Number: 1545–1142.
Regulation ID Number: INTL–0939–86 NPRM.
Type of Review: Extension.
Title: Insurance Income of a Controlled Foreign Corporation for Taxable Years Beginning After December 31, 1986.
Description: The information is required to determine the location of moveable property; allocate income and deductions to the proper category of insurance income, determine those amounts for computing taxable income that are derived from an insurance company annual statement, and permit a Controlled Foreign Corporation (CFC) to elect to treat related person insurance income as income effectively connected with the conduct of a U.S. trade or business. The respondents will be businesses or other for-profit institutions.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 1.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 1 hour.

OMB Number: 1545–1266.
Form Number: IRS Form 8829.
Type of Review: Extension.
Title: Expenses for Business Use of Your Home.
Description: Internal Revenue Code (IRC) section 280A limits the deduction for business use of a home to the gross income from the business use minus certain business deductions. Amounts not allowed due to the limitations can be carried over to the following year. Form 8829 is used to verify that the deduction is properly figured.
Respondents: Individuals or households.
Estimated Number of Respondents/Recordkeepers: 4,000,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—52 min.
Learning about the law or the form—7 min.
Preparing the form—1 hr., 16 min.
Copying, assembling, and sending the form to the IRS—20 min.
Frequency of Response: Annually.
Estimated Total Reporting Recordkeeping Burden: 10,360,000 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 95–15739 Filed 6–26–95; 8:45 am]
BILLING CODE 4830–01–P

Sunshine Act Meetings

Federal Register

Vol. 60, No. 123

Tuesday, June 27, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, June 28, 1995.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

Baby Walkers

The staff will brief the Commission on the status of the baby walker project.

For a recorded message containing the latest agenda information, call (301) 504-0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504-0800.

Dated: June 22, 1995.

Sadye E. Dunn,

Secretary.

[FR Doc. 95-15899 Filed 6-23-95; 3:28 pm]

BILLING CODE 6355-01-M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 2:00 p.m., Thursday, June 29, 1995.

LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

1. Civil Penalty OS# 5401

The staff will brief the Commission on issues related to Civil Penalty OS# 5401.

2. Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504-0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504-0800.

Dated: June 22, 1995.

Sadye E. Dunn,

Secretary.

[FR Doc. 95-15900 Filed 6-23-95; 3:28 pm]

BILLING CODE 6355-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Friday, June 30, 1995.

PLACE: William McChesney Martin, Jr. Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

Note: Until further notice, open meetings will be held in the *Martin Building*, not the Eccles Building.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. (a) Proposed revisions to the Board's risk-based capital guidelines to incorporate interest rate risk (IRR) (proposed earlier for public comment; Docket No. R-0802), and (b) publication for comment of a proposed policy statement describing how IRR will be measured and evaluated for supervisory purposes.
2. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: June 23, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-15820 Filed 6-23-95; 10:14 am]

BILLING CODE 6210-01-P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:00 a.m., Friday, June 30, 1995, following a recess at the conclusion of the open meeting.

PLACE: William McChesney Martin, Jr. Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Restatement of the Federal Reserve Board's pension plan.
2. Consideration of pension plan transfers.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 23, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-15821 Filed 6-23-95; 10:14 am]

BILLING CODE 6210-01-P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 12:00 noon, Monday, July 3, 1995.

PLACE: William McChesney Martin, Jr. Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 23, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-15901 Filed 6-23-95; 3:28 pm]

BILLING CODE 6210-01-P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of June 26, July 3, 10, and 17, 1995.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of June 26

Thursday, June 29

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting)

a. Final Rule on "Clarification of Decommissioning Funding Assurance Requirements" (Tentative) (postponed from June 22)

(Contact: Andrew Bates, 301-415-1963)

Week of July 3—Tentative

There are no meetings scheduled for the Week of July 3.

Week of July 10—Tentative

Wednesday, July 12

10:00 a.m.

Briefing on Status of Watts Bar and Browns Ferry 3 (Public Meeting)

(Contact: Fred Hebdon, 301-415-1485)

Week of July 17—Tentative

There are no meetings scheduled for the Week of July 17.

ADDITIONAL INFORMATION: By a vote of 4-0 on June 22, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Curators of the University of Missouri—Petitions for Reconsideration of CLI-95-01" (Public Meeting) be held on June 22, and on less than one week's notice to the public.

Note: Beginning July 2, 1995, the Nuclear Regulatory Commission will be operating under a delegation of authority to chairman Shirley A. Jackson, because with three vacancies on the Commission, it will be temporarily without a quorum. As a legal matter, therefore, the Sunshine Act does not apply; but in the interests of openness and public accountability, the Commission will continue to conduct business as though the Sunshine Act were applicable.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415-1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415-1661.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301) 415-1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

Dated: June 23, 1995.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 95-15886 Filed 6-23-95; 3:28 pm]

BILLING CODE 7590-01-M

Corrections

Federal Register
Vol. 60, No. 123
Tuesday, June 27, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 96

Block Grant Programs

Correction

In rule document 95–9915 beginning on page 21322 in the issue of Monday, May 1, 1995, make the following corrections:

1. On page 21323, first column, under **Subpart E--Enforcement**, the eighth line, "used" should read "use".

On the same page, third column, second paragraph, the sixth line, "the" should read "and".

2. On page 21324, first column, in the heading for *Section 96.83*, the second line, "*Sued*" should read "*Used*".

3. On the same page, third column, the heading should read "*Comment and Response*".

4. On page 21326, 1st column, 3rd paragraph, the 17th line, "commented" should read "committed".

5. On page 21328, first column, the heading should read "*Public Inspection and Comment*".

6. On the same page, second column, first paragraph, the sixth line, "what" should read "that".

7. On pages 21329 and 21330, third column and first column respectively, remove beginning and ending quotation marks from the paragraphs at the bottom of the page.

8. On page 21334, 1st column, 4th paragraph, the 27th line, "bribe" should read "tribe".

9. On page 21336, second column, the heading should read "*Changes and Recommendation*".

10. On page 21338, first column, third paragraph 3, beginning at the fifth line remove beginning and ending quotation marks.

11. On the same page, 2d column, 3rd paragraph, the 19th line, "do" should read "does".

12. On page 21345, second column, sixth paragraph, the third line, "or" should read "of".

13. On page 21346, third column, second paragraph, the eighth line, "programs" should read "program".

14. On page 21347, 3rd column, 1st paragraph, the 20th line, "funds" should read "fund".

15. On page 21351, 1st column, 1st paragraph, the 18th line, "on" should read "one".

16. On page 21355, 2d column, the 15th line, "leveraged" should read "leveraging".

17. On the same page, same column, 2d paragraph, the 29th line, "recipient" should read "recipients".

18. On page 21357, 2d column, 1st paragraph, the 18th line, "requirement" should read "requirements".

§ 96.83 [Corrected]

19. On page 21358, third column, § 96.83(c)(5), in the second line, "(c)(2)(ii)" should read "(c)(2)(iii)".

20. On page 21359, second column, § 96.83(f), in the fifth line, "45-day" should read "45 days".

§ 96.87 [Corrected]

21. On page 21359, third column, § 96.87 (a)(1), in the third line, "(42 U.S.C.8626(a)" should read "(42 U.S.C. 8626a)".

22. On page 21360, first column, § 96.87(b)(4)(iii), in the third line, "or" should read "of".

23. On page 21360, first column, § 96.87(b)(6), in the first line, "mean" should read "means".

24. On page 21360, 2d column, § 96.87(c)(1), in the 14th and 21st lines respectively, "of" should read "or" and "8625" should read "8626".

25. On page 21360, third column, § 96.87(d)(2)(iii), in the seventh line, "8624(c)(1)(A)" should read "8624(c)(1)(A))".

26. On page 21361, second column, § 96.87(d)(2)(iii)(H), in the eighth line, "program/" should read "program".

27. On page 21361, third column, § 96.87(e)(1)(vi), in the ninth line, "are" should read "were".

28. On page 21361, third column, § 96.87(e)(1)(vii), in the fourth line,"smoke fire" should read "smoke/fire".

29. On page 21361, third column, § 96.87(e)(1)(vii), in the seventh line, "cost" should read "costs".

30. On page 21361, same column, § 96.87(e)(1)(vii)(2), in the first line, "to" should read "and".

31. On page 21361, same column, § 96.87(e)(1)(vii)(2), in the fifth line, "costs" should read "costs,".

32. On page 21361, same column, § 96.87(e)(1)(vii)(2), in the 14th line, insert a colon after "reduction".

33. On page 21362, first column, § 96.87(e)(1)(vi)(3)(i), in the third line, "liquefied" was misspelled.

34. On page 21362, third column, § 96.87(f)(2), the sixth line should read, "be increased, or if other charges(s) to the recipient were or will be".

35. On page 21362, 3rd column, § 96.87(f)(3), the 11th line, "within", should read "with".

36. On page 21363, third column, § 96.87(h)(1), in the seventh line, "proceedings" should read "preceding".

BILLING CODE 1505–01–D

Federal Register

Tuesday
June 27, 1995

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 417, et al.
Medicare and Medicaid Programs; Advance Directives; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 417, 430, 431, 434, 483, 484, and 489

[BPD–718–F]

RIN 0938–AF50

Medicare and Medicaid Programs; Advance Directives

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule responds to public comments on the March 6, 1992 interim final rule with comment period that amended the Medicare and Medicaid regulations governing provider agreements and contracts to establish requirements for States, hospitals, nursing facilities, skilled nursing facilities, providers of home health care or personal care services, hospice programs and managed care plans concerning advance directives. An advance directive is a written instruction, such as a living will or durable power of attorney for health care, recognized under State law, relating to the provision of health care when an individual's condition makes him or her unable to express his or her wishes. The intent of the advance directives provisions is to enhance an adult individual's control over medical treatment decisions. This rule confirms the interim final rule with several minor changes based on our review and consideration of public comments.

DATES: *Effective date:* This final rule is effective on July 27, 1995.

FOR FURTHER INFORMATION CONTACT: Julie Stankivic, (410) 966–5725.

SUPPLEMENTARY INFORMATION:

I. Background

Advance directives are written instructions recognized under State law relating to the provision of health care when adult individuals are unable to communicate their wishes regarding medical treatment.

Note: For purposes of this final rule, the terms "individual," "patient," or "resident" refer only to adults as defined by State law.

The advance directive may be a written document authorizing another person, such as a relative or close friend, to make decisions on an individual's behalf (a durable power of attorney for health care), a written statement (a living will), or some other form of instruction recognized under State law specifically addressing the provisions of health care. The various legal devices that exist serve to enhance the ability of individuals to have their desires carried out in the event that they become unable to make their own medical treatment decisions.

Most States have enacted legislation defining an individual's right to make decisions regarding medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives. However, prior to the enactment on November 5, 1990, of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90), Public Law 101–508, there were no requirements relating to advance directives under Federal Medicare or Medicaid laws.

II. Legislative Amendments

A. Medicare Provisions

Section 1866 of the Social Security Act (the Act) requires that providers of services under Medicare enter into an agreement (that is, provider agreements) with the Secretary and comply with the requirements specified in that section. Section 4206(a) of OBRA '90 amended section 1866(a)(1) of the Act relating to Medicare provider agreements by adding a new subparagraph (Q), which specifies that to participate in the Medicare program, hospitals, skilled nursing facilities, home health agencies, and hospice programs must file an agreement with the Secretary to comply with the statutory requirements in new subsection 1866(f) of the Act concerning advance directives. Section 1866(f)(3) of the Act defines an advance directive as a written instruction, such as a living will or durable power of attorney for health care, recognized under State law, relating to the provision of health care when an individual is incapacitated. The State law may either be established by statute or as recognized by the courts of the State.

Section 1866(f)(1) of the Act specifies that a provider of services or prepaid or eligible organization (that is, a health maintenance organization (HMO), competitive medical plan (CMP) as defined in section 1876(b) of the Act, or a health care prepayment plan (HCPP) as defined in section 1833(a)(1)(A) of the Act) must maintain written policies and procedures on advance directives with respect to all adult individuals receiving medical care through the provider or organization. The provider or organization must provide written information to each individual concerning an individual's rights under State law to make decisions concerning medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate, at the individual's option, advance directives. The provider or organization must also furnish each individual with the written policies of the provider or organization with respect to the implementation of advance directives.

Section 1866(f)(2) of the Act requires that this written information must be provided at the time an individual is admitted as an inpatient to a hospital, at the time of admission to a skilled nursing facility, before an individual comes under the care of a home health agency, at the time of initial receipt of hospice care, or at the time of enrollment of the individual with an eligible prepaid health care organization or HCPP.

Section 1866(f)(1) of the Act also contains provisions that require the provider or organization to document in the individual's medical record whether or not the individual has executed an advance directive, not to discriminate against individuals based on whether or not they have executed an advance directive, to ensure compliance with State law, and to provide for education of staff and community on issues concerning advance directives.

Section 4206(b)(1) of OBRA '90 amended section 1876(c) of the Act by adding a new paragraph (8), which provides that the contract between the Secretary and an eligible organization must provide that the organization meets the advance directives requirements specified in section 1866(f) of the Act.

Section 4206(b)(2) of OBRA '90 also amended section 1833 of the Act by adding a new subsection (r), which specifies that the Secretary may not provide for payment under the Medicare program to an organization unless the organization provides assurances satisfactory to the Secretary that the organization meets the requirements relating to the maintenance of written policies and procedures regarding advance directives in section 1866(f) of the Act.

Section 4206(c) of OBRA '90 provides that sections 4206(a) and (b) do not prohibit the application of a State law that allows for an objection on the basis of conscience for any health care provider or any agent of such provider which, as a matter of conscience, cannot implement an advance directive.

Section 4206(d) made conforming amendments to sections 1819(c)(1) and 1891(a) of the Act, requiring that skilled nursing facilities and home health agencies, respectively, comply with the advance directives requirements in section 1866(f) of the Act. Enforcement procedures are explained in section II.D of this preamble.

B. Medicaid Provisions

Section 1902 of the Act sets forth State plan requirements for medical assistance that must be submitted to the Secretary for approval. Section 4751 of OBRA '90 amended section 1902 of the Act relating to requirements for State plans by adding provisions concerning advance directives similar to the Medicare provisions in section 4206 of OBRA '90. Specifically, section 4751 of OBRA '90 amended section 1902 of the Act by adding new paragraph (57) to subsection (a) and a new subsection (w). Section 1902(a)(57) of the Act mandates, as a State Medicaid plan requirement, compliance with section 1902(w), which requires all hospitals, nursing facilities, providers of home health care and personal care services, hospices, or health maintenance organizations (as defined in section 1903(m)(1)(A) of the Act) that are receiving funds under a State plan to maintain written policies and procedures to inform, educate, and distribute written information on advance directives to all adult individuals receiving medical care by or through the provider or organization, in the manner described in the law.

Section 4751(a) also amended section 1902 of the Act by adding a new paragraph (58) to subsection (a) to require that States, acting through a State agency, association, or other private non-profit entity, develop a written description of the State law concerning advance directives for distribution to Medicaid providers and coordinated care plans.

Section 4751(b) made conforming amendments to sections 1903(m)(1)(A) and 1919(c)(2) of the Act. These requirements are to be enforced under applicable State plan provisions.

C. Public Educotion Requirements

Section 4751(d) of OBRA '90 requires the Secretary to conduct a public education campaign on advance directives. HCFA, primarily through our Office of Beneficiary Services, has worked in concert with State and local agencies and consumer groups to carry out this requirement. Examples of public awareness activities include:

• *Information Kit and Press Package.* An information kit was forwarded to major beneficiary organizations and the national news media. We also have issued a press package that includes a bibliography of related publications, as well as a list of organizations that have addressed the statutory requirements concerning advance directives.

• *Medicare Hotline:* 1–800–638–6833. Information concerning advance directives is available through the Medicare hotline. Staff members provide basic information from the information kit, answer questions, and forward booklets concerning advance directives upon request.

• *Articles.* A kit containing standard articles concerning advance directives was sent to all suburban daily and weekly papers. This material generated 244 articles in 25 States with a readership of an estimated 4 million persons. We also sent materials to national and local broadcast organizations, including articles and scripts and/or slides for radio and television public service announcements. The radio material is known to have been used on 258 radio stations that cumulatively reach 4.8 million homes servicing 15 million listeners. The TV material is known to have appeared on 32 stations in 23 States, cumulatively reaching 37.3 million homes.

• *Other Publications.* The following is a brief list of other publications concerning advance directives:

* *Medicare Handbook.* The Medicare Handbook now includes information regarding advance directives. We routinely send this publication, available in both English and Spanish, to each new Medicare enrollee (about 200,000 individuals per month) and more than 1 million other copies have been distributed to current beneficiaries through HCFA publication distribution channels.

* *Medicare and Advance Directives Leaflet.* Approximately 500,000 copies of this leaflet have been distributed to hospitals, beneficiary groups, agencies on aging and similar offices, as well as to some supermarkets with a high concentration of elderly clients.

* *Cartoon Booklet.* HCFA has distributed approximately 10,000 copies of an easy-to-read cartoon booklet on advance directives that is designed for audiences with low literacy levels.

In addition to these activities, we are continuing to plan and carry out further initiatives related to our public service responsibilities that are designed to further educate the public concerning advance directives.

We note that the Office of the Inspector General (OIG) conducted an early implementation study in December, 1992, to determine compliance with the advance directive provision and facility and patient responses (OEI–06–91–01130 and OEI–06–91–01131). This study found that at that time, two-thirds of the patients in the facilities studied had some understanding of advance directives. We believe that this finding indicates that HCFA, in concert with other members of the health care industry, has made significant strides towards educating the public on advance directives.

D. Enforcement Procedures

For hospitals and hospices, compliance with the advance directives requirements is considered part of the provider agreement with HCFA. The provider agreement obligates a provider to comply with the applicable requirements of title XVIII of the Act and includes some specific provisions, such as the advance directives requirements. The Secretary may refuse to enter into a provider agreement or may refuse to renew or may terminate an agreement after the Secretary: (1) Determines that the provider fails to comply substantially with the provisions of the agreement or with the provisions of title XVIII and the implementing regulations; (2) determines that the provider fails substantially to meet the applicable provisions of section 1861 of the Act (definition of services, institutions, etc.); or (3) has excluded the provider from participation under sections 1128 or 1128A of the Act (exclusion and civil monetary penalty provisions).

On-site surveys of providers are performed by State agency or Federal surveyors to determine compliance with the advance directive requirements or the conditions of participation. However, providers are assumed to be in compliance with the general requirements of the provider agreement as set forth in title XVIII. HCFA does not routinely seek information to confirm that the provider is complying with specific requirements of the provider agreement. If information concerning a provider's compliance with the agreement of the provisions of title XVIII is needed, it may be obtained in several ways, including the performance of an on-site survey.

Each hospital and hospice provider has been informed of its obligation to comply with the advance directive provisions and that these provisions are required as a part of its provider agreement with HCFA. Compliance with these provisions is necessary for continued participation in the Medicare and Medicaid programs. These providers were required to inform HCFA, in writing, of the date they achieve compliance.

Our regional offices recently completed random surveys to determine the percentage of providers who have complied with the advance directive

requirements. Based on results from 8 regions, reported compliance rates range between 97 and 100 percent. (We anticipate similar findings for the other two regions).

For hospices, and hospitals not accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or the American Osteopathic Association (AOA), compliance is verified as part of the routine survey process.

Periodic Federal recertification surveys are not conducted in hospitals that are accredited by JCAHO and/or AOA because such hospitals are "deemed" to meet Medicare's certification requirements. However, since the advance directive requirements for hospitals and hospices are part of the provider agreement requirement, we will investigate complaints and conduct surveys at these hospitals as needed. We will verify compliance with the advance directive provisions at accredited hospitals in response to complaints and at the time of these surveys.

For skilled nursing facilities (SNFs), nursing facilities (NFs) and home health agencies (HHAs), enforcement procedures employ the Federal on-site survey process. State agency or Federal surveyors are responsible for evaluating compliance with the Medicare and Medicaid requirements for SNFs and NFs or conditions of participation for HHAs. Therefore, State agency or Federal surveyors are able to evaluate on-site compliance with the advance directive requirements through the use of the survey protocol for SNFs, NFs and HHAs. Also, JCAHO and Community Health Accreditation Program, Inc. (CHAP) standards address for long-term care facilities and HHAs advance directive issues, which should enhance compliance with these rules by educating these entities concerning advance directives and suggesting methods of complying with statutory and regulatory advance directive requirements.

A facility that does not comply with the provisions of its provider agreement may be terminated by HCFA. HCFA must give the provider notice of termination at least 15 days before the effective date of termination of the provider agreement. This notice must state the reasons for, and effective date of termination and explain the extent to which services may continue after that date. A provider may appeal the termination of its provider agreement in accordance with 42 CFR part 498.

Under Medicaid, a provider must enter into an agreement with the State Medicaid agency. State agency surveyors or Federal surveyors (during a validation or "look-behind" survey) perform a function similar to that under Medicare. However, the State Medicaid agency is responsible for assuring compliance with the Medicaid provider agreement and the advance directive requirements contained therein.

For eligible or prepaid health care organizations, initial approval of a Medicare contract under sections 1833 and 1876 of the Act requires compliance with the advance directives requirements. The organization's continued adherence to these requirements is reviewed by HCFA during routine monitoring activities which include site visits, and examination of marketing materials and provider contracts. Failure to comply with the advance directives requirements may result in termination of the organization's contract with HCFA.

E. Effective Dates

The amendments made by sections 4206(a) and (d) of OBRA '90 pertaining to Medicare providers are effective with respect to services furnished on or after December 1, 1991.

The amendments made by section 4206(b) of OBRA '90 pertaining to prepaid and eligible organizations participating in the Medicare program (that is, contracts with HMOs and CMPs under section 1876(b), and Medicare payments to HCPPs under section 1833(a)(1)(A) of the Act) are effective December 1, 1991.

The amendments made by section 4751 of OBRA '90 pertaining to the Medicaid program are effective with respect to services furnished on or after December 1, 1991.

III. Provisions of the March 6, 1992 Interim Final Rule

On March 6, 1992, we published an interim final rule with comment period that set forth in regulations the new advance directive provisions (57 FR 8194). The March 6, 1992 interim final rule implemented the provisions of sections 4206 and 4751 of OBRA '90 by requiring that all hospitals, skilled nursing facilities, nursing facilities, providers of home health care or personal care services, hospices, and prepaid health plans provide written information to each adult individual receiving medical care through the provider or organization concerning his or her rights under State law to make decisions concerning medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate, at the individual's option, advance directives.

General Requirements

Under these regulations, the term "advance directive" is defined as a written instruction, such as a living will or durable power of attorney for health care, recognized under State law, relating to the provision of health care when the individual is incapacitated. These regulations do not require an individual to execute an advance directive prior to the provision of treatment and services. Furthermore, we note that these requirements do not apply to providers of outpatient hospital services.

The provider must inform the individual, in writing, of State laws regarding advance directives; inform the individual, in writing, of the policies of the provider regarding the implementation of advance directives, including if permitted under State law, a clear and precise explanation of any objection a provider (or any agent of such provider) may have, on the basis of conscience, to honoring an individual's directive; document in the individual's medical record whether or not the individual has executed an advance directive; educate staff on issues concerning advance directives; and provide for community education on issues concerning advance directives. In accordance with OBRA'90, the interim final rule required providers to communicate information to individuals about their right to accept or refuse medical treatment and the right to formulate an advance directive by furnishing written descriptions of State law and provider policies and practices regarding the implementation of such rights. However, with the exception of these general notification requirements, the law has a narrow and explicit focus solely on the handling of written directives for medical care made by persons who later become incapacitated. Therefore, the interim final rule did not address other related issues such as informed consent to medical care, determination of mental capacity, provision of medical care to minors, wills leaving property, or organ donation.

Content and Format of Written Information

The interim final rule also did not prescribe the content and format of the written information to be provided to each adult individual. However, in connection with our technical assistance responsibilities to States in meeting the Medicaid requirements of the law, HCFA's Administrator sent a letter to each State Medicaid Director to which was attached a sample public information document for use in informing adult individuals about advance directives.

Note: The materials contained in the HCFA Administrator's information package, including the sample public information document, were published as Appendix I to the preamble of the interim final rule. These materials are not being republished in this final rule.

This sample public information document is suggestive of what we believe an acceptable document should include. As stated in the interim final rule, it would be consistent with the statute to develop a considerably shorter discussion than that contained in the sample document. It would also be possible to use a short summary notice, several paragraphs rather than pages long, that notified the patient that a longer and more specific document was available upon request. However, the summary notice would have to cover the legally required elements (for example, describing the purpose and the concept of an advance directive, an individual's rights under State law to accept or refuse medical or surgical treatment, the right to formulate an advance directive, and the provider's policies concerning the implementation of those rights).

As also discussed in the March 6, 1992 document, we are aware that State law on advance directives is not always clear or comprehensive. Nonetheless, Congress has mandated that, as of December 1, 1991, providers and organizations participating in Medicare or Medicaid must distribute the required materials that inform an individual of his or her right under State law to accept or refuse medical treatment and the right to formulate advance directives. This requirement relates to current State law. Therefore, changes in State law, by statute or court case, must be incorporated into subsequent provider information packages. We specifically sought public comments on what would be a reasonable period of time within which such changes should be made.

Timing for Dissemination of Written Information

Written information on advance directives must be provided to an individual upon each admission to a medical facility and each time an individual comes under the care of an HHA, personal care provider, or hospice. For example, if a person is admitted first as an inpatient to a hospital and then to a nursing home, both the hospital and the nursing home would be required to provide information on advance directives to the individual. We suggested that if an individual is being transferred from a hospital to a nursing home, the hospital discharge planner may provide the information (including the nursing home's policies regarding the implementation of advance directives) on behalf of the nursing home in the course of coordinating the smooth transfer of the patient. However, we reemphasize that the nursing home is still responsible for inquiring about the existence of an advance directive and documenting in the individual's medical record whether or not the individual has executed an advance directive.

If a patient is incapacitated at the time of admission and is unable to receive information (due to the incapacitating condition or a mental disorder) or articulate whether or not he or she has executed an advance directive, the facility should give advance directive information to the patient's family or surrogate to the extent that it issues other materials about policies and procedures to the family of the incapacitated patient or to a surrogate or other concerned persons in accordance with State law. This does not, however, relieve the facility of its obligation to provide this information to the patient once he or she is no longer incapacitated or unable to receive such information.

Description of State Laws Concerning Advance Directives

As a part of the Medicaid requirements contained in section 4751 of OBRA '90, we also required in the interim final rule that each State, acting through a State agency, association, or other private nonprofit entity, develop a written description of the State law (that is, statutory or otherwise recognized in the courts) concerning advance directives for distribution by providers. Given the requirements in the Federal law, we noted that States have a wide range of options in describing State law and in prescribing informational materials for use by providers. For example, the State materials describing an individual's rights to accept or refuse medical or surgical treatment and the right to formulate an advance directive may include lengthy or extended requirements for executing an advance directive, or they may be a short, simple statement expressing the individual's rights concerning advance directives.

The interim final rule also included some discussion of possible approaches that States and providers may take in providing the required information and that we believed would produce results consistent with the statutory requirements. In accordance with the requirements of section 4751 of OBRA '90, States may require that Medicaid providers use the State-developed description of State law only. Alternatively, States may allow providers to incorporate the general information contained in the State-developed description of State law into the providers' own package of materials that include the providers' written policies regarding the implementation of an individual's rights. Although the statute does not specifically require that Medicare providers use the State-developed description of State law, we encouraged States and providers, and organizations to work together to ensure that a complete and accurate description of State law is distributed consistently to all adult patients or residents.

Sources of Information and Technical Assistance

As mentioned earlier, HCFA provided technical assistance to the States, including the technical assistance information package released by HCFA's Administrator in September 1991. At that time, HCFA also released a State Medicaid Manual issuance (HCFA-Pub. 45–2, Transmittal #73) concerning advance directive requirements to inform the States of their responsibilities in this area. Copies can be obtained by the general public by contacting the National Technical Information Service (NTIS), ORDER #PB88–952399. You may call to order at (703) 487–4630 or send a request to NTIS Subscription Department, 5285 Port Royal Road, Springfield, VA 22161.

Finally, we note that a number of other private entities have prepared pertinent documents that States may find helpful. HCFA's Administrator issued a press package that included a bibliography of these publications, as well as a list of organizations that have addressed the statutory requirement that providers disseminate information to individuals regarding their rights under State law to accept or refuse medical treatment and the right to formulate advance directives. These materials were printed as Appendix II to the preamble of the interim final rule and are not being reprinted in this final rule.

Methods of Complying With Advance Directive Requirements

The law requires that the existence of an advance directive be documented in an individual's medical record. We recognize, particularly in the case of prepaid health care organizations, that such documentation will occur when the medical record is created. Although the statute does not specifically require

providers or organizations to have direct dialogue with each adult individual to ascertain whether he or she has executed an advance directive, we believe that this type of interaction is an acceptable method for obtaining this information.

Although it is acceptable that the patient be asked and respond to a specific question, we recognized that these procedures are not the only appropriate methods for obtaining the information needed to document medical records. It is also acceptable for providers to include in preadmission materials a form, to be completed by the patient, that sets forth whether or not the patient has executed an advance directive. Such form, when completed and returned by the patient at the time of admission, would supply the provider the information needed to document the medical record, or the form itself could be attached to such record. There are, however, issues with respect to whether these methods may impose too great a burden on the patient or may not result in eliciting the desired information from a sufficient number of patients. Therefore, we requested comments on these and other methods of obtaining the information needed to document the medical record.

As discussed in the interim final rule, there are also several options available to accomplish the requirement that a provider or organization provide for community education. The educational materials must inform the public of their rights under State law to make decisions concerning the receipt of medical care by or through the provider or organization; the right to formulate advance directives; and the provider's or organization's implementation policies concerning an individual's advance directive.

Under the interim final regulations, the provider or organization cannot condition the provision of care or discriminate against an individual based on whether or not the individual has executed an advance directive. For example, all patients are generally entitled to the medically necessary care ordered by a physician which a provider, under normal procedures, would be required to furnish and cannot delay or withhold because the individual has not executed an advance directive or the provider is waiting for an advance directive to be executed. However, once it is documented that an advance directive has been executed, then the directive takes precedence over the facility's normal procedures, to the extent required by State law.

As specified in the statute, we also required prepaid or eligible health care organizations to provide information on advance directives to enrollees at the time of enrollment. Organizations must give enrollees the advance directive material prior to the effective date of coverage. However, we encouraged organizations to give enrollees the material as early as possible after the application for enrollment is received.

We recognize that an organization may have contracts with a variety of providers (in order to assure widespread access to care), and that some of these providers may have policies with respect to advance directives that are more limited than others (for example, a hospital exercising an objection on the basis of conscience that is consistent with State law). In such cases, the organization could adopt a policy that embraces the variety of practices of its providers, and disseminate the information regarding those various practices to its enrollees as prescribed by the interim final rule. This information would be provided along with the written description of State law. On the other hand, the organization could simply note, in the material regarding State law and provider practices, that its providers have, in accordance with State law, varying practices regarding the implementation of an individual's advance directive. In this case, such varying practices must be made available to each adult individual selecting or receiving care from such providers.

For a description of the specific changes to the regulations text that were necessary to implement the above statutory provisions, see the March 6, 1992 interim final rule, 57 FR 8198.

IV. Discussion of Public Comments

In response to the March 6, 1992 interim final rule with comment period, we received 85 timely items of correspondence. We have summarized the comments and are presenting them below along with our responses.

Section IV.A contains our response to general comments. In responding to comments, the term "provider" generally encompasses hospitals, skilled nursing facilities (SNFs), nursing facilities (NFs), hospices, and home health agencies (HHAs). When the comments and responses deal with a specific provider type, the appropriate term is used.

Section IV.B responds to comments that deal specifically with what the statute refers to as "prepaid or eligible organizations" (that is, HMOs, CMPs, and HCPPs). In responding to comments, we generally use the term "managed care plans" to refer to these types of organizations. (We note that on July 15, 1993, we published a final rule (57 FR 38072) that replaced the term "prepaid or eligible organization" with the term "HMOs and CMPs" throughout 42 CFR part 417. Thus, all references in the regulation text now use the term HMOs and CMPs.)

In addition, we received some comments concerning Appendices I and II to the interim final rule. These documents were included in the interim final rule as a source of technical assistance only and are not being republished in this final rule; however, a discussion of these comments is contained in section IV.C.

A. General

Scope of Regulations

Comment: Two commenters asserted that these regulations are inconsistent with the requirement in sections 1866(f)(1)(A)(i) and 1902(w)(1)(A)(i) of the Act that providers give patients written information concerning an individual's rights under State law to make decisions concerning medical care including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives. Specifically, the commenters objected to the following statements in the preamble of the interim final rule:

> "Nothing in either the statute or this interim final rule addresses patient or provider rights or decisions regarding medical or non-medical care, except when the patient has left written instructions which become effective only after the individual becomes incapacitated". For example, this regulation neither creates nor affects requirements with respect to informed consent to medical care * * * These and many other significant subjects are not addressed under OBRA '90. The law has a narrow and explicit focus concerning the handling of written directives for medical care made by persons who later become incapacitated. (57 FR 8196)

The commenters asserted that to be more consistent with the statute these regulations should require providers to disseminate information concerning: (1) The right to accept or refuse treatment both "contemporaneously and in advance, the latter via advance directives;" (2) informed consent; and (3) the fact that the effective dates of advance directives may vary in accordance with applicable State law.

Response: Sections 1866(f)(3) and 1902(w)(4) of the Act make clear that the term "advance directive" relates to the provision of health care when an individual is incapacitated. We agree that the statute also requires providers to furnish individuals with written information about their rights under State law to direct their medical treatment before incapacitation (that is, the right to accept or refuse medical or surgical treatment). However, we do not believe that the statute authorizes us to broaden the scope of these regulations as suggested by the commenter nor do we believe that the law intends that hospitals provide patients with an exhaustive briefing about medical decision making under State law. States and providers are free to provide additional information that might further educate patients about additional rights regarding medical decision-making that exist under State law.

Comment: Two commenters requested that HCFA limit the scope of the law so that providers and organizations need to provide only Medicare and Medicaid patients with information on advance directives.

Response: Sections 1866(f)(1) and 1902(w)(1) of the Act specify that information on advance directives be provided to all adult individuals. Narrowing the scope of the requirement to Medicare and Medicaid patients would not be consistent with the explicit language of the law and could not be done without a statutory change.

Comment: Two commenters opposed the statutory definition of an advance directive because it includes only written instructions recognized under State law. The commenter believes this definition is too narrow and precludes the recognition of other types of instructions, such as oral instructions given by competent patients, which are already commonly used in many States.

Response: Sections 1866(f)(3) and 1902(w)(4) of the Act clearly specify that the term "advance directive" applies only to "written instructions"; legislative action would be necessary to amend this definition. It is important to note, however, that in describing an individual's right to make decisions concerning medical care, sections 1866(f)(1)(A)(i) and 1902(w)(1)(A)(i) of the Act recognize both the "right to accept or refuse medical or surgical treatment" and "the right to formulate advance directives". Thus, we believe that the statute does not preclude an individual from making oral instructions or a provider from executing such instructions, consistent with State law.

Comment: Several commenters requested that we define certain terms for purposes of these rules, such as "admission," "adult," "incapacitation," "incompetence," "mental disorder," and others. The commenters offered many examples of applicable State definitions, particularly with regard to the meaning of "incapacitation" for decision-making purposes. Another commenter suggested that we should require States to furnish their Medicaid providers with a written description of all applicable State laws that determine the circumstances under which an individual under 18 is entitled to make his or her own decisions concerning advance directives and other medical care issues under the purview of this regulation.

Response: We recognize that many of these terms have already been given varying definitions under State law. In that the statute is silent on defining these terms, we believe that Congress intended to defer to State law. Therefore, we are not defining these terms in the regulations. Section 1902(a)(58) of the Act already requires that the State, acting through a State agency, association, or other private nonprofit entity, develop a written description of the law of the State (whether statutory or as recognized by the courts of the State) concerning advance directives that would be distributed by providers or organizations. Sections 1866(f)(1)(a) and 1902(w)(1) of the Act require that providers furnish written information to each individual concerning an individual's rights under State law to accept or refuse medical or surgical treatment and to formulate an advance directive. If there were a State law in effect that addressed the rights of individuals under the age of 18 to formulate an advance directive and make medical treatment decisions, a description of this law should be furnished to all Medicaid providers. As stated above, terms such as adult individual are defined in accordance with applicable State law.

Comment: Two commenters questioned the effectiveness of oral instructions, especially those given before the enactment of the advance directive provisions. The commenters know of some long-term care residents who are unable to execute an advance directive, but have already given oral instructions to their physicians (for example, no tubes, no cardiopulmonary resuscitation), and this has been clearly documented in the medical record. Also, a commenter noted that some physicians and attorneys believe that if there is no written advance directive, then the patient has lost his or her right to choice and these patients are therefore subject to the physician's decision based on accepted medical standards.

Response: Sections 1866(f)(3) and 1902(w)(4) of the Act define an advance directive as a written instruction recognized by the State and relating to the provision of health care when an individual is incapacitated. The advance directives provisions apply to patients admitted after December 1, 1991. As we have repeatedly noted, however, this statute in no way abridges any rights a patient may have under Federal or State law to specify or refuse medical treatment. The statute simply establishes requirements with respect to the dissemination of specific information about individuals' rights regarding medical treatment, including an individual's right to accept or refuse medical or surgical treatment and the right to formulate an advance directive. Individuals are not required to execute an advance directive. In fact, providers are specifically prohibited from conditioning the provision of care on whether or not an individual has executed an advance directive. Moreover, the provider must disseminate copies of its written policies respecting the implementation of such rights.

These regulations in no way contravene any existing instructions concerning an individual's medical treatment. Therefore, previous instructions remain in effect, unless amended or altered by subsequent instructions submitted in accordance with State law. Generally, such subsequent instructions can be in the form of the patient's oral instructions or the discovery of new instructions contained in or authorized by a new advance directive, subject to applicable State law.

Comment: Several commenters asserted that the statutory requirements concerning advance directives are derived from the more fundamental right of the competent individual to accept or refuse any suggested medical intervention. These commenters believe that to require notification of the derivative right to formulate an advance directive without explanation of the underlying right is likely to result in an incomplete and potentially misleading statement of patients' rights.

The commenters further asserted that our suggestion that the statute applies only to circumstances in which the individual has left written instructions that become effective only after the individual becomes incapacitated construes the definition of advance directive too narrowly. They believe that the statutory language is intentionally general and should not be interpreted as a specific limitation on the date an advance directive becomes effective. In some States, a durable power of attorney for health care may be effective when signed, rather than effective only upon the determination of

incapacity. Although the instrument may be effective immediately, the individual still maintains the power to control health care decisions while competent; so, as a practical matter, the instrument may not be used until the principal loses capacity. Nevertheless, legally the instrument is effective when signed. Since the statute is not intended to change substantive State law or limit the kinds of advance directives recognized by the States, the limiting language in the preamble of the interim final rule should be avoided.

Other commenters argued that the regulations should emphasize that providers and organizations must give equal weight to the right to accept or refuse treatment, the right to sign or not sign a directive, and the right to sign a legal directive other than the form drawn up by the State so long as that directive comports with State law.

Response: We recognize that every individual has an underlying right to accept or refuse any suggested medical intervention. These regulations are not intended to place limitations on this right. We agree with the commenters that there is nothing in the law or these regulations that diminishes an existing right to make or execute a directive (or to request or to refuse medical treatment) under current State or Federal law. We did not intend to give the impression that this was the case in the preamble to the March 6, 1992 interim final rule. In this final rule, we emphasize in several responses to comments that an individual's right to accept or refuse medical treatment is not limited by these advance directive provisions, and we have been very careful to ensure that our regulations do not extend a broader reach to these provisions than the law allows. In fact, sections 1866(f) and 1902(w) of the Act and §§ 417.436(d)(1)(i) and 489.102(a)(1)(i) of the regulations specifically require that the written instructions disseminated to adult individuals must include information about an individual's rights under State law to accept or refuse medical and surgical treatment and the right to formulate advance directives.

As noted above, sections 1866(f) and 1902(w) of the Act define an advance directive as "Written instructions, such as a living will or durable power of attorney for health care, recognized under State law (whether statutory or as recognized by the courts of the State) and relating to the provision of such care when the individual is incapacitated."

Thus, we continue to believe that the focus of these regulations is two-fold: to ensure the dissemination of information about an individual's right to accept or refuse medical or surgical treatment and about an individual's right to formulate an advance directive.

Comment: A commenter suggested that we clarify the statement in the preamble to the March 6, 1992 interim final rule that "care cannot be delayed or withheld because the individual has not executed an advance directive or the provider is waiting for an advance directive" (57 FR 8198). Another commenter suggested that we make it clear that the restriction against delaying care applies only to treatment decisions made by providers. If the patient requests that care be delayed because he or she is waiting for an advance directive to be executed (or for any other reason), the provider must, by law, respect the patient's wishes.

Response: Under sections 1866(f)(1)(c) and 1902(w)(1)(c) of the Act, providers may not condition the provision of care or otherwise discriminate against an individual based on whether or not the individual has executed an advance directive. Thus, in general, a patient is entitled to receive the necessary care ordered by a physician that a provider under normal procedures must furnish. In addition, a provider cannot delay or deny care while waiting for an advance directive to be executed, unless otherwise instructed by the patient in accordance with applicable State law. However, the last sentence of both section 1866(f)(1) and 1902(w) of the Act makes clear that a provider cannot be required to furnish care that conflicts with an advance directive. Therefore, once the provider learns that an advance directive has been executed that stipulates refusal of care, that directive takes precedence over any physician orders or normal provider procedures, unless there is a State law that permits a provider, or any agent of such provider, to conscientiously object to implementing an advance directive.

We agree that the patient always has the option to refuse treatment, and the advance directive regulations do not impede an individual from exercising that option. Thus, as long as a patient is capable of communicating his or her wishes regarding treatment, the contents of an advance directive may not be controlling. By definition, implementation of an advance directive takes place at the time the individual is incapable of communicating his or her preference to accept or refuse medical or surgical treatment.

Written Information Provided to Individuals

Comment: Several commenters suggested that we permit the use of as many health care disciplines as possible to distribute and obtain information on advance directives from patients. Another commenter suggested that only qualified healthcare professionals (for example, nurses, physicians, social workers, etc.) be used. This would preclude admission clerks, nursing assistants, and other support personnel from disseminating and collecting information on advance directives.

Response: Sections 1866(f)(1)(A) and 1902(w)(1)(A) of the Act require the dissemination of written information concerning both State law and provider policies. However, these sections do not identify any particular disciplines or persons to disseminate this information, and we do not believe that any particular training is required to disseminate written materials or obtain information from patients regarding whether or not they have executed an advance directive. Therefore, we do not believe it is appropriate to restrict providers and other eligible organizations in terms of the type of personnel they decide to use to meet these requirements. We recognize that many providers may wish to accompany advance directives materials with an explanation and direct personal contact. However, an accompanying explanation and direct personal contact are not required by the statute, but are left to the provider's discretion and to applicable State law.

Comment: One commenter suggested that we require individuals to discuss their wishes regarding future medical care with their physician. In addition, the commenter believes that these regulations should require that physicians be responsible for documenting this discussion in detail in the patient's medical record. In accordance with State law, this document would serve as an advance directive if no actual written document is drawn up and executed.

Response: Sections 1866(f)(1)(A) and 1902(w)(1)(A) of the Act clearly place the obligation to provide information and document the existence of an advance directive on certain specific health care providers, with which the Medicare and Medicaid programs have agreements. We believe it would be inconsistent with the statute to implement a requirement as broad as that suggested by the commenter.

Comment: One commenter asserted that, when disseminating information about advance directives, a provider's staff should not be required or expected to give detailed explanations of State law, regulation or judicial decisions or to assist the client to develop an advance directive. The commenter believes that most agencies and facilities do not have the legal expertise necessary to perform these activities. In addition, the commenter suggests that HCFA's interpretive guidelines should address an individual's right to refuse to discuss the subject of advance directives (for example, when an individual's religious or personal beliefs preclude discussion).

Response: Sections 1866(f)(1)(A) and 1902(w)(1)(A) of the Act require providers to provide written information concerning an individual's rights under State law (whether statutory or as recognized by the courts of the State) concerning the right to accept or refuse medical or surgical treatment and to formulate an advance directive. These sections do not require detailed explanations of State law concerning such rights. We believe that the exact content and complexity of laws concerning these rights vary from State to State and thus it may be burdensome for some States to provide detailed explanations of State law. As we stated in the interim final rule, we believe that it would be consistent with the statute to use a summary notice that covered the legally-required elements (that is, describing the purpose and the concept of an advance directive and the individuals' rights under State law to accept or refuse medical or surgical treatment under State law, and describe the provider's policy and procedures). However, we do not wish to discourage providers from voluntarily training staff to assist patients in developing an advance directive, in any way permissible by State law. We do not believe it is necessary to state explicitly in our guidelines that an individual may refuse to discuss advance directives. We expect that providers or other eligible organizations will address this sort of situation merely by documenting in the medical record that the individual was provided written information concerning advance directives and chose not to discuss his or her rights in this area.

Comment: One commenter suggested that a hospital should not be required to distribute exact copies of its policies and procedures to patients upon admission to the hospital. Instead, the commenter suggested that it should be sufficient to supply a statement that the hospital follows the State law and a statement concerning the availability of the hospital's policy and procedures. Other commenters expressed concern that the provision of exact copies of policies and procedures to individuals would mean that they would receive voluminous materials that they would probably find somewhat meaningless, confusing and much less useful than they would find prepared summaries written more for their understanding. Several commenters believe that furnishing patients with written policies with respect to implementation of advance directives can be time-consuming because existing medical policy documents would have to be converted into more easily understood summaries. Yet, these more easily understood summaries may inordinately simplify a complex decision-making process.

Response: We agree that exact copies of medical staff policy documents need not be provided to patients. Sections 1866(f)(1)(A) and 1902(w)(1)(A) of the Act require that the individual receive certain basic information concerning an individual's rights under State law, including the right to accept or refuse medical and surgical treatment, the right to formulate advance directives, and the policy of the hospital or other provider with respect to implementing such rights under the law. While we recognize that preparing this material may be a challenge, the law requires that it be done, and providers must take the necessary steps to ensure the written information is understandable to the patients. We provided a detailed bibliography of published materials on this matter in the March 6, 1992 interim final rule (57 FR 8200), and a number of national groups have continued to work to provide materials that will assist hospitals and other providers in this task. Although we do not intend to prescribe the content and format of the written information, it must clearly convey to individuals the required basic information about the individual's rights under State law to accept or refuse medical or surgical treatment, the right to formulate advance directives and the provider's written policies respecting the implementation of such rights. Further explanation of an individual's rights pertaining to advance directives should be made available upon request.

Comment: One commenter believes that good patient/physician decision-making practices may be hampered since other disciplines such as nurses actually may be disseminating advance directive material to the patient, as well as answering any questions the patient may have concerning advance directives. To avoid misunderstandings and potential trauma to patients, the commenter suggested that physicians or State health officials distribute this information to a patient before admission to a hospital.

Response: We believe that a clear understanding of an individual's rights in this area should improve the quality of patient/physician decision-making, regardless of who disseminates the information. We agree that the optimum time for the individual to receive this sort of information is before entering the hospital and presume that the community education programs will accomplish this over time. As noted above, we have no statutory authority to designate specific disciplines to present this information to individuals and, in the absence of State law, we believe that this matter should be left to the discretion of the provider.

Comment: One commenter opposed the statement in the interim final rule that when a patient is being transferred from a hospital to a nursing home, the hospital discharge planner may provide the information (including the nursing home's policies regarding the implementation of advance directives) on behalf of the nursing home in the course of coordinating the smooth transfer of the patient (57 FR 8197). The commenter believes that such coordination promotes the possibility that some patients may not receive the information. In addition, the commenter expressed concern that these arrangements may result in disputes between hospitals and nursing facilities concerning responsibility for errors in disseminating required information.

Response: While we recognize that coordination between hospitals and nursing homes with respect to advance directives should be carefully planned and implemented, we do not believe that these arrangements should be prohibited. However, providers and organizations are by no means relieved of their responsibility for meeting all advance directive requirements when they enter into a coordinated arrangement such as the one discussed above between a hospital and a nursing home. Any deficiencies found on the part of a hospital or nursing home in complying with the advance directive requirements will be subject to the enforcement procedures described above in section II.D. We note that the illustration of a hospital providing a nursing facility's information about rights under State law on behalf of the nursing facility was an example of permissible coordinating efforts and not a requirement. We have revised §§ 489.102(a)(1)(i) and 483.10(b)(8) to state that providers are permitted to contract with other entities to furnish this information but are still legally responsible for ensuring that the advance directive requirements are met.

Comment: One commenter suggested that there is a potential conflict between the implementation of an advance

directive executed by a client of a home health agency (HHA) and the requirements for a physician order under 42 CFR 484.18. Those regulations require that HHAs administer drugs and treatment only under the orders of a physician. A conflict may occur if the patient's physician refuses to provide orders to enable the HHA to implement the patient's advance directive. To resolve this potential conflict, the commenter suggests that documentation of contact with the physician and of the physician's orders or refusal of orders to implement the client's directive be recognized as sufficient to comply with the advance directive requirements.

Response: The potential conflict identified by the commenter can be addressed in the written information regarding the HHA's policies. This information should alert the patient to the HHA's reliance on physician orders to effectuate an advance directive or otherwise respond to a patient's request to accept or refuse treatment. It also would explain how its employees would routinely follow those orders or whether an objection on the basis of conscience (by the physician or the HHA) would prevent it. Therefore, if a patient is informed that the HHA would rely on the physician's orders to effectuate the advance directive, a patient should, prior to beginning to receive care, discuss his or her advance directive with the physician. If the patient is informed that the physician, due to an objection on the basis of conscience, would not implement the advance directive, then the patient may request either treatment from another physician who would honor the advance directive or transfer to another HHA.

A related issue involves HHA compliance with the advance directive requirements. Compliance with the advance directive provisions is a condition of participation. If an HHA fails to honor an advance directive and it has not informed the patient of a reservation of conscience permitted by State law, the HHA would be in violation of a standard under the HHA patient rights condition of participation (see § 484.10(c)(2)(ii)). If it failed to correct the deficiency, the HHA would be subject to termination of the provider agreement under § 489.53.

Comment: One commenter stated that there should be a hospital billing code for counseling the patient regarding rights to have an advance directive.

Response: The advance directive provisions do not include authority to modify the current hospital payment system in order to assist providers in complying with the advance directives requirements. Therefore, we have not included provisions relating to payment (or billing codes) in this regulation. However, hospitals as well as other providers reimbursed under the cost reimbursement system can receive reimbursement for the incurred administrative costs associated with the advance directive requirements. No separate billing code is necessary.

Comment: One commenter suggested that we revise the regulations to require that a hospital disseminate information on organ donation at the same time it disseminates information on advance directives.

Response: Section 1138(a)(1) of the Act requires hospitals to have organ procurement protocols, including procedures for approaching appropriate donors or their families. We have carefully considered requiring that hospitals disseminate information on both subjects at the same time. However, unlike section 1866(f)(2)(A) of the Act, section 1138 of the Act does not require that a hospital disseminate organ donation information upon admission. Consequently, we believe that organ donation information should be disseminated when it is deemed most appropriate by the provider.

Documenting the Medical Record

Comment: Two commenters suggested that any information documented in an individual's medical record concerning the execution of an advance directive be kept confidential to protect each individual's privacy interests.

Response: Information about advance directives that is documented in an individual's medical record would be subject to the same confidentiality protection as other information in the medical record. For example, under the "Medical record services" hospital condition of participation, § 482.24(b)(3) specifies that hospitals must ensure the confidentiality of patient medical records and that information from or copies of records may be released only to authorized individuals. Hospitals are also required to ensure that unauthorized individuals cannot gain access to or alter patient records. These requirements apply to information entered into the medical record as a result of the advance directive requirement. Similar confidentiality protections are set forth in the regulations governing other providers.

Comment: We received a number of comments concerning access to the advance directive. One commenter questioned the logistics of how a provider will gain access to an individual's advance directive. The commenter suggested that the regulations should establish a mechanism through which the contents of a person's advance directive document are communicated to the health care provider. Two commenters suggested that we require that providers collect a copy of the individual's advance directive or information as to where the advance directive can be located. One commenter recommended that we require providers to document any known changes to or rescissions of previous advance directives.

Response: These comments suggest that HCFA should specify procedures and requirements that are beyond the scope of this legislation. The statute does not address the issue of how a provider will locate or gain access to an advance directive. Sections 1866(f)(1)(B) and 1902(w)(1)(B) of the Act require only that the provider document in the medical record whether or not an individual has executed an advance directive. The statute does not require the collection of copies of an advance directive or the collection of information about the location of an advance directive, nor does it require a provider to document known changes or rescissions to prior advance directives. However, section 1866(f)(1)(D) of the Act does specify that providers must maintain policies and procedures that ensure compliance with requirements of State law. Thus, providers must comply with State laws that may require the documentation of information concerning the location of and access to advance directives, and copies of advance directives would need to be located and possibly held by the provider when the State law requires this result.

In summary, we believe that the document will be provided by the patient when asked or will be located when its use becomes necessary. Moreover, the statute intended to defer to State law the questions about the creation and preservation of advance directives. Providers should look to State statutory and case law for guidance on access to advance directives. We encourage providers to incorporate State statutory and case law into their written policies.

Comment: One commenter stated that our suggestions in the preamble to the interim final rule (57 FR 8197) on possible methods for ascertaining whether or not an individual has executed an advance directive, for example, the use of direct dialogue and preadmission forms, would, if made mandatory, place an unfair burden upon providers. Another commenter suggested that in order to prevent an administrative burden and potential liability issue, the final regulations require that providers make reasonable efforts to acquire information as to whether or not an individual has an advance directive and document this information in the medical record. The commenter requests clarification regarding a provider's liability if it could not determine if an individual has executed an advance directive and later learns that one does exist. The commenter requests more information about the provider's responsibility for any treatment decisions that may have been taken that may run counter to the advance directive.

Response: We recognize that there are many possible methods by which providers may determine the existence of an advance directive. The interim final rule did not mandate any method but suggested several alternatives. We agree that a provider should have to make only a reasonable effort to determine if an adult individual has an advance directive. Except when an individual is incapacitated at the time of admission, a reasonable effort can be defined as simply giving out the information and documenting in the medical record whether or not the individual has executed an advance directive. If the patient is incapacitated at the time of admission, then the provider should have follow-up procedures to determine if the patient has an advance directive or when the patient may be given the information directly. (This issue is further discussed below under the heading "Individuals Incapacitated at Admission.")

For Federal compliance and enforcement purposes, we would not hold a provider responsible for failing to ensure compliance with an advance directive if the patient never furnished it to the provider or responded negatively when the inquiry was made about having an advance directive. However, in accordance with State law, the provider may be liable for treatment decisions made after learning that an advance directive exists, that may run counter to the advance directive. Also, we note, that if State law holds providers to a higher standard, State law would prevail.

Comment: Two commenters asserted that the requirement in § 489.102(a)(2) that providers "document in the individual's medical record whether or not the individual has executed the implementation of such rights" was unclear. The commenters suggested that the phrase "implementation of such rights" be replaced with "an advance directive in accordance with State law." The commenters believe that the requirement as written could be broadly interpreted to include documenting all acceptances and refusals of treatment, thus resulting in an increased burden on providers and a waste of direct care nursing time, as well as increasing costs associated with these requirements.

Response: We agree that § 489.102(a)(2) is unclear and are revising it to state that providers must "Document in the individual's medical record whether or not the individual has executed an advance directive."

Comment: Three commenters suggested that the final regulations require that providers ask patients if they have executed an advance directive.

Response: The statute does not specifically require that direct dialogue be the method for obtaining the information. Although we believe that this is frequently the most effective way to obtain the information, we are also aware of situations in which other methods may be appropriate. For example, some health maintenance organizations deal with new enrollees primarily by mail, including providing and obtaining information concerning advance directives by mail. Thus, we do not believe that the regulations should prohibit the use of methods other than direct dialogue to discover whether or not an individual has executed an advance directive.

Comment: Several commenters supported our suggestion in the interim final rule that providers could use the preadmission process to obtain the information necessary to document in the medical record the existence of an advance directive. One of these commenters suggested that another method to obtain information regarding the existence of an advance directive is at the time of preadmission testing. Another commenter suggested that more guidance be issued concerning other possible methods of obtaining this information.

One commenter suggested that if a provider chooses to obtain information about whether individuals have advance directives through its preadmission process, HCFA should not specify the type of form to be used. The commenter recommended that we leave this decision to the discretion of the provider.

Response: We agree that information concerning whether or not an individual has executed an advance directive may be obtained at the time of preadmission testing. In addition, we agree that there are many ways to determine whether or not an individual has executed an advance directive. However, we have not required any particular method in order to enhance provider flexibility in this area.

Although we suggested in the interim final rule that providers may use forms to obtain advance directive information, we do not intend to specify any form for the provider's use.

Information Collection Estimate

Comment: We estimated in the interim final rule that the information collection burden associated with the requirement that providers document in the medical record whether an advanced directive exists would be approximately 3 minutes per medical record. Many commenters stated that the 3-minute estimate appears to account only for making notation in the medical record and does not include the time needed to help individuals understand their rights, consult with other disciplines, for example, doctors, nurses, social workers, pastoral care clergy, etc. Others believe our estimate should include time spent in responding to phone calls and written inquiries by affected individuals. Some commenters suggested that it would take at least 15 to 30 minutes to explain the characteristics of advance directives, obtain the required signatures and follow up to assure compliance. Another commenter asserted that it will take an immeasurable amount of time to accomplish this documentation; therefore, it is an unfair burden to enforce this requirement, especially without separate reimbursement.

Response: The 3-minute estimate only takes into account the amount of time required to document in the medical record whether an advance directive exists. The Paperwork Reduction Act is concerned only with the burden of recordkeeping under this requirement as a result of these regulations. This estimate is not based on the time necessary to develop policies and procedures, printing costs and assembling of the material for the information packets for adult individuals. This estimate does not include the time spent explaining an individual's rights under Federal and State laws, nor any consultation with other disciplines to help the individual execute an advance directive that the provider or organization may choose to provide. The statute merely requires the dissemination of information, obtaining information as to whether the individual has executed an advance directive and the documentation of this information in the individual's medical record. Therefore, we believe that the estimated burden of 3 minutes per medical record is accurate.

Comment: In light of the requirement placed upon nursing facilities by the Omnibus Budget Reconciliation Act of 1987 (OBRA '87) that rights must be explained to residents in a manner that they can understand, a commenter asserted that the 3-minute information estimate is inaccurate for nursing facilities. The commenter believes that the burden imposed on these facilities is at least 30 minutes to explain the advance directives requirement in a manner the resident can understand.

Response: The commenter is correct that, in accordance with resident rights provisions of OBRA '87, § 483.10(b) requires facilities to inform residents both orally and in writing in a language that the resident understands of his or her rights, including the advance directive provision. However, as explained above, the information collection estimate does not include time to explain the advance directives requirements. Therefore, the burden to which the commenter refers is not appropriately part of the advance directives estimate.

Comment: One commenter misinterpreted the estimate of 15 million individuals used in the calculation of the information collection burden as representing the number of individuals who have executed advance directives.

Response: Fifteen million did not represent the number of persons who have executed advance directives, rather it represented the projected number of Medicare beneficiaries and Medicaid recipients who were expected to receive services from providers and organizations subject to these regulations. In other words, in the interim final rule, we projected that in FY 1992 providers and eligible organizations would be required to meet the advance directive requirements, including proper documentation of the medical record, for at least 15 million Medicare and Medicaid beneficiaries/recipients.

Discrimination Based on Advance Directive

Comment: Although opposed to the statutory requirements concerning advance directives because they appear to place the Federal government in the role of advancing euthanasia in the United States, one commenter urged HCFA to promulgate regulations that ensure that providers and organizations are prohibited from exerting any form of coercion, or undue influence to make an individual feel that he or she must execute an advance directive. In addition, the commenter believes we should make it clear that States are not obligated by these regulations to pass laws addressing advance directives.

Response: Sections 1866(f)(1)(C) and 1902(w)(1)(C) of the Act, as well as our implementing regulations, clearly prohibit any type of discrimination against individuals based on whether or not an individual has executed an advance directive. Thus, we agree with the commenter that providers and organizations are not permitted to coerce or pressure any individual into executing an advance directive. As stated in the sample public information document published in the interim final rule (57 FR 8199), the law does not require an individual to execute an advance directive. Similarly, we agree with the commenter that these rules do not require States to enact legislation to address advance directive requirements.

Comment: Two commenters recommended that we make it clear that discriminating against an individual because he or she has an advance directive is strictly prohibited. One commenter believes there is a real danger that an advance directive may deprive patients of the normal care that they would receive if there were no advance directive.

Response: Again, sections 1866(f)(1)(C) and 1902(w)(1)(C) of the Act and the regulations both prohibit any discrimination based on whether or not the individual has an advance directive. In addition, in the event that problems are encountered, individuals have the right to submit a complaint to the State agency or regional office for investigation.

Provider Responsibilities To Ensure Compliance With the Requirements of State Law Concerning Advance Directives

Comment: A commenter suggested that the regulations require that a facility's policies for objections on the basis of conscience be reviewed annually for compliance with State law. In addition, the commenter suggested that the facility's advance directive informational packages should contain a statement that its policies have been reviewed and found in compliance with State law and should cite the State law authority.

Response: Under sections 1866(f)(1) and 1902(w)(1) of the Act, providers have been required since December 1, 1991 to maintain and distribute written policies and procedures concerning an individual's rights under State law to accept or refuse medical or surgical treatment and to formulate advance directives, and the providers' policies for ensuring compliance with such rights. Section 489.102(a)(1)(ii) specifies that providers must provide written information to all adult individuals concerning its written policies respecting the implementation of such rights, including a clear and precise statement of limitation if the provider cannot implement an advance directive on the basis of conscience. As discussed in further detail below, we are revising § 489.102(a)(1)(i) to require that providers must update and disseminate amended information as soon as possible, but no later than 90 days from the effective date of the changes to State law. Therefore, we do not believe it is necessary to require a separate annual review of compliance with State laws concerning objections on the basis of conscience. HCFA has various mechanisms, such as certification surveys, for assessing provider compliance with rules and regulations. We do not believe it is necessary for a provider's documents to contain a statement addressing approval findings of compliance surveys. In general, we will rely upon the State (for example, during its licensure inspections) to determine if its advance directives laws are being enforced properly.

Comment: Two commenters suggested that the regulations address the extent of the provider's responsibility to determine the validity of an advance directive. They believe that the advance directive is valid if it appears to meet the formal requirements of applicable State law, unless the provider knows, or has reason to know, otherwise. Also, the commenters suggested that a provider's written policy should explain the extent to which advance directives that are prepared in other jurisdictions will be honored if they meet the formal requirements of applicable State law. One commenter suggested that we clarify that the most recently executed advance directive should be the one the provider relies upon in making determinations relating to health care delivery.

Response: The statute does not address the issues raised by these commenters. As a practical matter, State laws typically govern the procedures for determining the validity of advance directives and how such documents from other jurisdictions will be honored. In general, we would expect that providers will comply with the advance directives of individuals from other States, unless the directive conflicts with State law or the provider conscientiously objects, in accordance with State law. In addition, although not required by the statute, we believe it is appropriate for providers to confirm with individuals the contents of their advance directive to ensure that the provider is relying upon the most recently executed advance directive.

Comment: One commenter argued that it is inappropriate to require providers to ensure compliance with State law because the commenter believes that a provider is prohibited from practicing law and interpreting the meaning of statutes and case law. The commenter suggested that the requirement of § 489.102(a)(4) that providers "ensure compliance with requirements of State law" be revised to read "Review the advance directive to ascertain whether or not there are advance directive requirements in the execution of the document that have not been met."

Response: Sections 1866(f)(1)(D) and 1902(w)(1)(D) of the Act specify that providers are required to ensure compliance with the requirements of State law. Thus, the regulations implementing these provisions are not discretionary. Moreover, we do not agree with the commenter that this requirement involves the unauthorized practice of law by providers. It has been a long-standing policy of the Medicare and Medicaid programs to hold participating providers responsible for compliance with applicable State and Federal laws related to the overall health and safety of patients. For example, § 482.11 establishes compliance with Federal, State and local laws as a condition of Medicare participation for hospitals.

Comment: One commenter suggested amending § 489.102(a)(4) to clarify that interference with a physician's conduct toward his or her patient is prohibited. The commenter believes that this provision may be interpreted as constituting the practice of medicine by the hospital and would, therefore, be illegal under State laws prohibiting the "corporate practice of medicine." Another commenter asserted that since we are not giving guidance to providers on what is meant by the phrase "ensure compliance with requirements of State law regarding advance directives", we need to acknowledge that providers cannot control the medical judgement of physicians in individual cases.

Response: We do not agree that existing language at § 489.102(a)(4) is illegal under State laws prohibiting the "corporate practice of medicine". While it may be true that a hospital or other provider may not direct the specific actions of an individual physician in a case, a provider may determine who may or may not be a member of its medical staff and may set conditions for membership. We believe that it may be prudent for a provider's advance directives policy to be developed with input from its medical staff and that, during the process of granting admitting privileges to physicians, it would be reasonable to require physicians to comply with provider policies and State law on the matter of advance directives. Therefore, because most hospitals include compliance with advance directives requirements as a condition of membership for physicians, we do not believe it is necessary to issue regulations regarding this issue.

Comment: One commenter requested we amend § 489.102(a) by adding new language to require that a documented advance directive would "take precedence over the facility's normal procedures, to the extent required by State law".

Response: We agree that an advance directive should take precedence over a facility's normal procedures to the extent authorized by State law. However, we believe existing regulations at §§ 489.102(c) and 417.436(d)(2)(i), which state that providers and organizations are not required to provide care that conflicts with an advance directive, already establish that advance directives take precedence over a facility's normal procedures.

Comment: Some commenters had questions concerning our discussion in the interim final rule (57 FR 8197) of situations in which State law on advance directives is not clear or where there is no State law addressing advance directives. Two commenters asserted that in the absence of State law on the subject, it is imperative that the regulations be flexible enough to include common law and institutional practices. Two other commenters questioned our suggestion to rely on "institutional practice" in lieu of a State statute. The commenters believe that few institutions or organizations have had enough direct experience to dictate the best way to accomplish statutory requirements concerning advance directives. These commenters noted that the American Bar Association has stated that many providers have interpreted State laws concerning advance directives in an overly restrictive manner. The commenters believe that, as a result, many providers have failed to develop a full range of effective patient-oriented decision-making practices. The commenters suggested that providers be encouraged to interpret statutory silence as an invitation to develop "best practice" procedures based on emerging notions of good clinical practice and professional standards.

Response: Sections 1866(f)(1)(D) and 1902(w)(1(D) of the Act specify that providers are to ensure compliance with requirements of State law (whether statutory or as recognized by the courts of the State). We agree that common law and institutional practices can be of assistance when the law is unclear or there is no State law regarding advance directives and believe that these regulations are flexible enough to include common law and institutional practices along with statutory law.

Also, we encourage providers to develop "best practice" procedures based on emerging notions of good clinical practice and professional standards. We also encourage the American Bar Association and other professional organizations to continue working with providers and State legislatures to ensure that State laws are clearly written, revised and updated where necessary, and to ensure that the Federal advance directives requirements are implemented in accordance with applicable State law.

Community Education

Comment: Two commenters asserted that the interim final rule lacks guidance on what constitutes minimally sufficient educational efforts. The commenters suggested that the final rule should require that the provider's written community education plan include at a minimum: (1) its intended target audiences, (2) the frequency of its educational efforts, and (3) the expected penetration of the target population to be attained by the educational efforts.

Response: We believe that the intent of the community education requirement is to educate as large a number of individuals as would be reasonable for that provider. However, as noted by the commenters, the interim final rule did not specify a minimum level of activity for the community education effort. In an effort to determine if further guidance was needed in this area, our regional offices recently conducted a survey of a small sample of providers to determine the level of community education efforts among providers. For sample purposes, the regional offices accepted copies of any document generated to publicize and conduct community education efforts. The results indicated that providers are using a variety of methods, for example, workshops, seminars, public meetings, health fairs, civic affairs, and the media.

Our review of the many methods and types of community education documentation maintained by providers leads us to believe that providers are reaching targeted audiences, are conducting frequent campaigns, and raising the advance directive issue

before new audiences. Therefore, most of the commenter's suggestions are currently being achieved by providers without explicit guidance.

Based on the survey, we do not feel it is necessary to establish the type of prescriptive requirements suggested by the commenters. Instead, we are revising the regulations at §§ 417.436(d)(1)(B)(vii) and 489.102(a)(6) to require that providers must be able to document their community education efforts. Although we are not limiting provider flexibility in meeting this requirement, one possible method for a provider to document its efforts would be to maintain copies of any materials used as part of its community education programs. We believe that the maintenance of community education documentation will strengthen our ability to enforce the community education requirement without limiting provider flexibility in this area.

While we believe that the requirement that providers maintain documentation will assist us in evaluating the level of community education efforts achieved by providers, we considered whether it would be an added burden to require the maintenance of such documentation. However, in all likelihood, providers will maintain copies of the materials used as part of their community education efforts for their own purposes, and we are not limiting the type of documentation that would be acceptable. Thus, we do not believe that this requirement constitutes an added burden.

Comment: One commenter suggests that physicians be targeted for much of the national educational campaigns conducted by Federal and State governments. The commenter believes that a national educational campaign for physicians would ensure that terms such as medical and surgical treatment are explicitly defined and consistently applied. The commenter believes that this is necessary, particularly in nursing facilities, because physicians are the critical link in implementing an individual's advance directives. The commenter believes that a national educational campaign would ensure that all parties (physicians, residents, surrogate decision-makers) are knowledgeable concerning the advance directives requirements.

Response: National educational campaigns are being addressed separately from these rules. However, in accordance with sections 1866(f)(1)(E) and 1902(w)(1)(E), providers are responsible for the education of physicians who are provider staff members or under contract concerning advance directives. Also, we note that medical schools and professional associations are providing training and education to physicians on issues concerning advance directives and patient's rights. With respect to what constitutes medical or surgical treatment, State laws typically govern the definition of these terms.

Comment: One commenter suggested that for any written or oral presentation concerning State law, a provider be required to: (1) Obtain approval by the State; (2) use State material or; (3) conduct joint presentations with State-recognized experts in the field.

Response: Individual States have the latitude to stipulate the use of specific documents but may also permit providers, at their discretion, to use other methods of informing patients. Also, we do not believe it would be appropriate to require State approval of presentations or to mandate the use of State-recognized experts in this field. We believe adopting the commenter's suggestions would place an unfair burden on both the State and providers. Therefore, we have left this matter up to the discretion of the individual States.

Comment: One commenter asserted that enforcement of the community education requirements would violate a provider's First Amendment rights to freedom of religion. Therefore, the commenter recommended that providers be allowed to exempt themselves from any community education activities based on conscience.

Response: The statute does not permit providers to exempt themselves from the community education requirement. However, both sections 4206(c) of OBRA '90 and 1902(w)(3) of the Act permit a provider, in accordance with State law, to object to implementing an advance directive on the basis of conscience. Accordingly, we believe it would be appropriate for a provider to register that objection as it conducts its community education requirement. That is, the provider must meet its obligation to conduct community education on advance directives, but may inform the community that the State law offers a choice that, because of a conscientious objection, it would not honor. We believe that this information is valuable for community members to have since it may affect their choice of a provider. Therefore, we are not adopting the suggestion that providers be allowed exemptions from the community education requirements.

Comment: One commenter believes that the community education requirement is duplicative, inefficient, and does not provide any further information to consumers concerning advance directives. Therefore, the commenter suggested this requirement should be eliminated. Another commenter suggested that this requirement is an undue burden on hospitals and believes the responsibility to educate the community should be borne only by Federal and State governments. Another commenter objected to the requirement that facilities engage in community education presentations or outreach efforts as a condition of participation in Medicare. Rather, the commenter believes that surveyors should find a facility in compliance with this requirement if it produces evidence that it provides written materials to individuals who come to the facility to investigate admission or to visit family members.

Response: Section 1866(a)(1)(A) of the Act requires that in order to participate in Medicare, any provider of services must meet the advance directives requirements set forth in section 1866(f) of the Act. Section 1902(a)(57) of the Act establishes a similar requirement for Medicaid participation. Thus, the elimination of the community education portion of the advance directive requirement would require statutory changes. As to the scope of community education activities, we do not believe it is appropriate to restrict this to individuals expressing interest in admission, since many individuals in the community who ultimately may require admission would profit from the chance to learn about State laws on advance directives.

Comment: Several commenters requested clarification of the statement in the preamble to the March 6, 1992 interim final rule (57 FR 8197) that "whatever method is used, it must be in writing and subject to survey review for compliance with Federal requirements." The commenters believe that many readers would presume "in writing" to refer to a provider's description of activities with respect to community education, rather than the educational materials to be distributed. Finally, some facilities believe that distributing copies of their policies to the general public may be viewed as a form of unwanted advertising by those individuals who are not interested in particular facilities.

Another commenter objected to our suggestion that written information distributed could be similar to what is required to be disseminated to individuals upon admission. The commenter asserted that Congressional intent is simply to foster discussion about advance directives instead of actively encouraging individuals to execute an advanced directive.

Response: As discussed above, we have revised §§ 417.436(d)(1)(B)(vii) and 489.102(a)(6) to require that providers must be able to document their community education efforts. The community education itself may be carried out through a variety of methods or formats, at the discretion of the provider. We are not requiring the distribution of any particular written material as part of a provider's community education efforts, although we recognize that many providers may choose to distribute written descriptions of their policies.

While we recognize that some individuals may view these programs as a form of unwanted advertising, we note that community education is a requirement under sections 1866(f)(1)(E) and 1902(w)(1)(E) of the Act and thus, we have no discretion to permit exceptions to these provisions.

We agree Congress intended to foster discussion about advanced directives, but we do not believe that community education constitutes encouraging individuals to execute advance directives. Again, community education concerning advance directives should involve not only a discussion of an individual's right to execute an advance directive, but also of a patient's broader right to accept or refuse medical or surgical treatment.

Comment: One commenter asserted that when community education is done in concert with other providers and organizations, it would be inappropriate for the attendees to receive written information detailing policies and procedures specific to each provider participating in community education efforts. Also, some commenters believe that creativity among providers and organizations, such as the use of lectures, seminars, videotaped programs and health fairs, will be discouraged if they are required to use the same material distributed to patients upon admission. Therefore, the commenter suggested that we modify § 489.102(a)(6), which requires that community education materials regarding advance directives include a provider's written policies regarding an individual's rights under State law and a provider's policies concerning the implementation of those rights. The commenter believes that we should instead require a provider to make the information about its policies on the implementation of the advance directives provisions available to attendees only upon request.

Response: We agree with the commenter that, for community education purposes, it may not be appropriate for a provider to distribute the same documents as are used by the provider to meet its internal advance directive obligations, especially when community education presentations are conducted by several different providers or provider types. The interim final rule merely presented several acceptable options aimed at assuring providers that they would not necessarily need to develop separate materials for both advance directive and community education purposes. Clearly, separate materials could be developed for each purpose, at the discretion of providers, and they would not need to use the same written materials in all contexts. We have amended §§ 489.102(a)(6) and 417.436(d)(1)(vii) to clarify that separate materials may be developed for both the advance directive and community education requirements.

Comment: One commenter, although in support of the community education requirement, was concerned that some health care providers, particularly small rural hospitals and other isolated or financially struggling institutions, may have problems meeting this requirement. Therefore, the commenter suggested that HCFA provide funding support for the educational initiatives.

Response: The advance directive provisions do not include authority to modify the current hospital payment system in order to assist providers in complying with the advance directives requirements. Therefore, we have not included provisions relating to payment in this regulation. However, hospitals as well as other providers reimbursed under the cost reimbursement system can receive reimbursement for incurred administrative costs, associated with the advance directive requirements.

Comment: One commenter believes that the use of the public relations offices to educate the community would preclude providers from obtaining State and Federal funding for advertisement campaigns. Another commenter believes the regulations should be revised to specify that the use of Federal and State funds is permitted for reimbursement of advance directive community education activities. The commenter believes that the cost of advance directive activities should be considered an allowable cost.

Response: Medicare policy has long provided that a provider's costs of advertising to the general public are not allowable if the advertising seeks to increase utilization of the provider's services. However, advertising costs incurred in connection with a provider's public relations activities are allowable if they are directly or indirectly related to patient care. (See section 2136 of the Provider Reimbursement Manual.) Thus, our suggestion in the interim final rule that public relations offices be used to inform the community about advance directives was not intended to suggest that we believe the associated costs should be disallowed. To the contrary, we believe public relations activities to inform the community on advance directives should be common and accepted activities in the provider community and that their costs generally would be related to patient care. In summary, we agree with the commenter that for Medicare providers that are paid on the basis of cost, the cost of advance directives activities could be considered an allowable cost related to patient care.

For Medicaid purposes, Federal financial participation at the 50 percent matching rate is available for expenses paid for by the State for administrative costs the State incurs for implementing the Medicaid requirements of this section. To the extent that States make additional payments to providers for their costs of advance directives activities, Federal financial participation is available at the Federal Medicaid Assistance Percentage.

Comment: Two commenters requested that the final rule explicitly define the size and parameters of the community for purposes of defining a provider's obligation to participate in community education efforts. The commenters suggested that, for nursing homes, these regulations limit the facility's community education program responsibilities to residents, their family members, resident and family councils (if any) and staff. Another commenter believes that education of the public at large should be solely the responsibility of the Secretary of the Department of Health and Human Services (HHS).

Response: In general, we believe that Congress intended that the concept of community encompass members of the general population that could potentially be served by a provider, rather than the much narrower interpretation suggested by the commenters. We believe that the concept of "community" as embodied in the law relates to the catchment area of the individual provider, which means that an HMO and a hospital, for example, would likely have community areas very different in scope. However, we do not intend to define the size and parameters of a community for each facility subject to this final rule because it would be cumbersome and overly prescriptive.

We note that the location, size, and other characteristics of the population served by different providers are some

of the factors that would impact on the manner in which a provider defines its community for purposes of the community education requirement. The various possible combinations of these factors make developing a fair, equitable definition of community difficult. For example, the use of geographical distances might place an unfair financial burden on rural, isolated hospitals while it might not further educate the public in urban areas where there are frequently multiple facilities in closer proximity who may possibly serve some of the same patients.

Moreover, as noted above, we believe that our survey of community education efforts by providers indicates that establishing more prescriptive requirements in this area is not necessary. Providers are already utilizing many different formats, working jointly to minimize the financial costs associated with community education and have done an excellent job without explicit guidance. Therefore, except with regard to managed care plans, we do not intend to define the term "community" for the purposes of this regulation but instead will afford providers the flexibility to define their own "community". As noted below in section IV, community has been defined as "service area" for managed care plans.

With regard to the suggestion that community education should be solely the responsibility of the Secretary of HHS, we believe that Congressional intent is clear on this subject. Sections 1866(f)(1)(E) and 1902(w)(1)(E) of the Act require that providers conduct community education activities, and section 4751(d) of Public Law 101–508 directs the Secretary to conduct a national campaign addressing public and medical and legal professions. The Secretary's public education responsibilities clearly are separate and distinct from provider responsibilities in this area. We note that providers, for example would bear the responsibility for informing the public about applicable State law requirements, which would be impossible to address in a national public education campaign.

Comment: One commenter suggested that the final rule require nursing facilities to conduct community education activities in the context of the resident rights requirements that were established under the nursing home reform provisions of OBRA '87. The commenter believes that community education programs should include diverse points of view on the issue of advance directives, including the right not to make an advance directive, and that providers should not limit a patient's options or influence patients as to the specific content of their advance directive. In addition, providers should ensure that all material presented is consistent with State law.

Response: Each nursing facility has the discretion to develop and conduct education programs that best suit their targeted population, and we encourage providers to coordinate their efforts to educate their residents and the community. When Congress enacted the advance directives provisions, it also amended the resident rights provisions of the statute (1819(c)(1)(E) of the Act) to effectuate the advance directives requirement for nursing homes. Therefore, it is expected that nursing facilities will incorporate advance directive information into their policies for informing residents of their rights. We note that § 483.10(b)(8) already specifies that facilities must "inform and provide written information to all adult residents concerning the right to accept or refuse medical or surgical treatment and, at the individual's option, formulate an advance directive." In addition, § 483.10(b)(8) requires that facilities include "a written description of the facility's policies to implement advance directives and applicable State law."

Comment: Two commenters noted that the outpatient setting is the optimal forum for initial discussion of advance directives, rather than at the time of acute illness. Accordingly, one commenter suggested that we stress the need for providers to distribute information regarding patients' rights under State law to the widest audience possible, including outpatients and minors who have the capacity to be involved in decision-making.

Response: Sections 1866(f)(1)(E) and 1902(w)(1)(E) specify that a provider of services or eligible organization must provide (individually or with others) for education for staff and the community on issues concerning advance directives. As the commenter suggests, we believe that the clear intent of these provisions is that information concerning advance directives be made available to the widest possible audience. We have not provided more explicit guidelines on this matter because we believe that there must be sufficient flexibility to accommodate a variety of community and provider responses to this requirement.

As discussed above, sections 1866(f)(2) and 1902(w)(2) of the Act specify that hospitals, SNFs, and NFs must provide written information concerning an individual's rights under State law to accept or refuse medical or surgical treatment, including the right to formulate an advance directive to all adult individuals upon admission. However, we agree with the commenter that it would be beneficial to hospital patients and nursing home residents if information concerning advance directives were available before admission. Again, we believe that this eventually will be achieved through the providers' community education activities and the Secretary's national education campaign.

Comment: Although generally supportive of the need for the community education requirement, three commenters objected to permitting providers to use community education activities to fulfill their requirement to document the medical record concerning whether or not an individual had executed an advance directive. In particular, the commenters disagreed with our suggestion in the interim final rule that providers may ask attendees if they have executed an advance directive and then later document this information in the medical record (57 FR 8197). The commenters generally believe that these campaigns are primarily oral presentations to community groups and any attendee may or may not be subsequently admitted to the facility represented by the speaker. Thus, there would be great logistical problems as well as confidentiality problems in implementing our suggestion. Also, the commenter notes that providers do not have record systems to accommodate information regarding individuals who are not patients.

Response: We believe that the commenter raises several valid points. Therefore, in this final rule, we have omitted any suggestion that providers consider using the community education forum to obtain information as to whether or not an individual has executed an advance directive. We note that information about advance directives that is documented in an individual's medical record would be subject to the same confidentiality protection as other information in the medical record. For example, the regulations setting forth conditions for hospital participation in Medicare, § 482.24(b)(3) specify that hospitals must ensure the confidentiality of patient medical records and that information from or copies of records may be released only to authorized individuals. Hospitals are also required to ensure that unauthorized individuals cannot gain access to or alter patient records. These requirements apply to information entered into the medical record as a result of the advance directive requirement.

Comment: Three commenters were concerned that the regulations neither require nor encourage providers to address the level of literacy for written English, the use of non-technical language in developing informational materials, etc., to ensure that the materials disseminated would be easily understood by the recipients. Many of the recipients of this information may not speak English or may speak English as a second language. Therefore, the commenter suggested that the regulations require that basic patient information materials be developed in other languages where the community composition warrants it. In addition, the commenter recommended that language barriers be anticipated, understood and handled appropriately with the assistance of interpreters.

Response: We believe that the statute and regulations require that providers distribute material that is clear and understandable to each patient. Sections 1866(f) and 1902(w) of the Act, and implementing regulations, specifically require that providers develop and disseminate to adult individuals written information about an individual's rights under State law to accept or refuse medical and surgical treatment and the right to formulate advance directives. Providers must also describe and distribute their written policies respecting the implementation of such rights. To meet the intent of the law (that is, to educate individuals concerning such rights), the written information must be clear and understandable. Therefore, we believe that it is inherent in the distribution requirement that the information be communicated in a language that the patient understands.

If the patient's knowledge of English or the predominate language of the facility is inadequate for comprehension, a means to communicate the information concerning patient rights and providers responsibility and practices must be available and implemented. For foreign languages commonly encountered in a provider locale, the provider should have written translations of its description of State law and its statement of procedures, and should, when necessary, make the services of an interpreter available. In the case of less commonly encountered foreign languages, providers may rely on the patient's representative to attest that he or she has explained the material to the patient.

Comment: Three commenters believe these regulations should consider differences in patients' cultural backgrounds. They stated that patients in today's American health system have diverse cultural and religious backgrounds and that, for some patients, discussions of even the possibility of death, whether imminent or remote, are a violation of their own cultural mores. The commenters view these regulations as an imposition on personal beliefs and values and believe that patients should be exempted on this basis; otherwise, clergy or other relevant staff members need appropriate experience or training in dealing with individuals on these sensitive issues.

Response: Although the law does not deal with these issues, we would expect a provider to be sensitive to the cultural differences in its community. We do not, however, believe the law provides for an exception to the requirement that all adult individuals receiving care be informed about their rights to accept or refuse medical or surgical treatment or to formulate an advance directive. We note that disseminating information and inquiring about the existence of an advance directive does not necessarily require that an individual discuss issues related to death. Instead, the focus should be on offering individuals information about their rights to enhance their control over medical treatment.

Comment: One commenter acknowledged that area hospitals, with or without outside help, have endeavored to instruct the public about advance directive requirements in order to avoid undue concerns when the patient is hospitalized. The commenter requested that HCFA distribute, or make available, publications that describe how hospitals have successfully instructed the community about this topic.

Response: In Appendix II to the preamble of the interim final rule, we identified a sampling of organizations and publications that could provide technical assistance on advance directive issues. While the statute does not require HCFA to become a "depository" for publications developed under this requirement, HCFA does maintain numerous materials concerning advance directives, as summarized in the preamble. Some materials may be obtained through the Medicare Hotline and others are disseminated to new Medicare enrollees. In addition to the resources that we have, we strongly encourage area providers and organizations to share experience and expertise in order to help one another develop the best informational packages possible for any given community.

Dissemination of Information

Comment: Several commenters requested clarification as to whether the requirement that hospitals provide information about an individual's right to accept or refuse medical or surgical treatment and to formulate advance directives to individuals upon admission also applied to "providers of outpatient hospital services." Among the areas of concern were applicability to "in-and-out" surgical suites, dialysis facilities, and any patients undergoing general anesthesia, regardless of setting. Another commenter believes that emergency medical technicians or paramedics performing emergency services and ambulance transports should be subject to this regulation. The commenter argued that it is grossly unfair for the patient to receive CPR in the ambulance so that he can be "allowed to die" at the hospital.

Response: Sections 1866(f)(2)(A) and 1902(w)(2) of the Act specify that written information concerning an individual's rights to accept or refuse medical or surgical treatment and to formulate advance directives should be provided to an adult individual, in the case of a hospital, at the time of admission as an inpatient. We agree with the commenters that there are other health care situations in which it might be appropriate for a patient to be advised about advance directives; however, the statute is very specific concerning the settings to which these requirements apply. We note that these regulations do not preclude a State from requiring or a provider from voluntarily providing this information in any case where it believed it to be appropriate.

Section 1866(f) and 1902(w) do not require information to be provided in any outpatient settings except for home health, hospice, and personal care services. Thus, the statute does not require emergency medical technicians and paramedics to implement the advance directives requirements, although there is nothing in it that would prevent the operators of these services from giving individuals this information.

Comment: One commenter suggested that, for certain types of patients, a hospital be permitted to modify its procedures in order to implement this rule logically. For example, the commenter believes that it is inappropriate to disseminate advance directive information to hospital patients being admitted for labor/delivery, or to repeatedly disseminate information to multiple admissions patients. If these procedures are not modified, multiple admission patients

may find themselves collecting large numbers of the same brochure on advance directives. The commenter also recommended that we not require hospitals to disseminate advance directives information to individuals undergoing same-day outpatient surgery or emergency room treatment.

Response: Sections 1866(f)(2)(A) and 1902(w)(2)(A) of the Act explicitly require that hospitals disseminate advance directive information to individuals at the time of their admission as inpatients. Neither the statute nor the regulations require the dissemination of this information to outpatients or emergency room patients unless they are admitted to the hospital. When a patient is admitted, however, we have no discretion to permit exceptions to this requirement. We note that hospitals repeat many admission procedures as part of every separate admission, often in accordance with applicable State and Federal laws. Even in multiple admission cases, the dissemination of information and inquiry about the existence of an advance directive should not impose a significant burden on hospitals and helps ensure that the patient is knowledgeable about his or her rights, along with verifying that the hospital has the most recent copy of an individual's advance directive. Patients are always free to return the brochure or refuse the information if they have already received it.

Comment: Some commenters suggested that the final rule address the tendency of individuals, once presented with this written information, to desire to execute advance directives upon admission or "on the spot." The commenters believe that the time of admission may not always be the best time to complete and execute advance directives because of the tension, anxiety and depression often experienced by individuals about to be admitted. The commenters added that advance directives should be executed only after prudent reflection.

Response: The commenter has raised several valuable points. A hospital could address the commenter's concerns by providing advance directives information on a preadmission basis (for elective admissions) and also through its efforts to educate the community as to the advance directives options available under State law. Although these regulations do not prevent a provider from assisting a patient in completing an advance directive if the patient so desires and the hospital is willing, the provider should ensure that there are no State laws that may preclude this activity. We would stress that the law and this regulation contain a limited range of requirements relating to advance directives. We do not believe it is appropriate to extend the requirements of this final rule beyond the confines of law. Instead, we believe it is appropriate that providers retain the flexibility to continue to refine their application of the advance directive provisions based on their experience.

Comment: Two commenters strongly suggested that the final rule expressly direct providers not to disseminate or execute advance directive forms routinely at the point of admission, but only upon request. Another commenter suggested that if copies of advance directives forms are given out, that a representative sample be given, or be made available upon request, so that the patient can be fully aware of the various kinds available. Finally, a few commenters argued that while it may be legally permissible for providers to disseminate advance directive forms, actively assisting an individual in the preparation of a will, a durable power of attorney, or other documents of legal import would constitute the practice of law. Therefore, the commenters recommended that the final rule should explicitly forbid the provider from drafting, interpreting, advising and assisting individuals in the execution of such documents by persons who are not licensed to do so under State law.

Response: This final rule neither requires providers to disseminate advance directives forms upon admission nor does it prohibit them from doing so. We know that different groups of hospitals have adopted different policies as to the appropriateness of this practice, and we also believe that State laws may bear on this activity. Again, the statute and this rule focus on ensuring that individuals are informed of their rights with regard to the advance directives, not on prescribing procedures for executing directives.

We decided not to adopt the suggestion that we require providers to supply a representative sample of forms since we have no statutory authority to do so. Also, this final rule does not address the issue of whether assisting an individual in preparing a living will, a durable power of attorney or other documents of legal import would constitute an unauthorized practice of law. Providers should look to State laws that may address the legality of these actions.

Comment: Several commenters suggested that the widest latitude be offered for providers to disseminate information to patients about their advance directives rights under State law and the provider's policies concerning the implementation of those rights. One commenter specifically suggested that the timing for dissemination of materials be adjusted by the nursing facility according to its admissions practices. For example, one facility's "admission process" may not involve the level of personnel who would have the education and training to provide advance directive information in a manner most helpful to patients. Yet, another facility's "admission process" may include the use of qualified staff, such as a nurse, and may involve an initial nursing/comprehensive assessment that is usually completed within 6 hours of admission. Another commenter suggested that these regulations be applied in conjunction with other nursing home requirements, for example, the free choice provision under the resident rights requirement (§ 483.10(d)) or the scope of services provisions under the plan of care requirement (§ 483.20(d)(1)), which would provide the additional time needed to disseminate information regarding advance directives. The commenters further suggested that the advance directive documentation should be done as part of the care plan and revisited at the quarterly care planning meetings. Finally, the commenters suggested that, for home health agencies and personal care providers, the required information should be disseminated during the first visit but before actual delivery of care, in the same manner as other patient rights information.

Response: We have attempted to address these concerns in this final rule within the confines of the statute. Hospitals and nursing facilities must follow the explicit language of sections 1866(f)(2) and 1902(w)(2) of the Act, which require that information concerning advance directives be provided "at the time of admission." We do not believe that the statute affords us the discretion to implement any of the commenters' suggestions for revising the meaning of "at the time of admission" as it applies to nursing homes.

For HHAs, sections 1866(f)(2) and 1902(w)(2) of the Act require that the information be provided "in advance of the individual coming under the care of the agency," without specifying a particular time. We believe it is reasonable to permit this function to be performed at the time of the first home visit, as long as the information is given before care is provided. This visit traditionally encompasses patient assessment and the administrative details necessary for the start of home care, and we believe it would be appropriate to comply with the advance directive requirements at this time. Therefore, we have amended regulations at §§ 484.10(c)(2)(ii) and 489.102(b)(3)(i) to clarify that an HHA may furnish advance directive information to a patient at the time of the first home visit, as long as the information is furnished before care is provided.

A similar requirement has been adopted with regard to personal care providers. We have amended regulations at §§ 489.102(b)(3)(ii) to clarify that they may furnish advance directive information to a patient at the time of the first home visit, as long as the information is furnished before care is provided. (For further discussion of the timing issue as it concerns HMOs and CMPs, see Section II.B of this preamble below).

Comment: One commenter asserted that some nursing home patients are unable to receive this information immediately upon admission and noted that, in accordance with OBRA '87, nursing homes have an added requirement to advise these individuals in a way that they will understand. The commenter believes that the best method to achieve this is through some sort of discussion. Some patients have experienced emotional breakdowns upon being informed of their rights with regards to advance directives because they think they are about to die. The commenter suggested that for SNF and NF residents who appear likely to be threatened by this conversation at the time of admission, these regulations permit the dissemination of information and discussion to occur at some time between entry to the facility and completion of the initial minimum data set (or resident assessment). Therefore, the commenter suggested that we define "at the time of admission" to mean that the information must be given promptly upon (but no later than 14 days after the date of admission), which is in accordance with the meaning of "upon admission" under section 1819(b)(3)(C)(i) of the Act.

Response: We do not believe that it is appropriate to permit information routinely to be delayed simply because it is of a sensitive nature. However, some residents may well be incapacitated by virtue of a physical or mental disorder, in which case the information could be provided at a later time, if feasible. We believe this is a medical decision to be made by the facility after considering the patient's medical condition and the likelihood of any negative effect upon the patient. This determination should be made on a case-by-case basis by the facility in accordance with State law. This issue also is discussed below under the heading "Individuals Incapacitated at Admission".

Sections 1819(b)(3)(C)(i) and 1919(b)(3)(C)(i) of the Act specify that a SNF and NF must conduct a comprehensive resident assessment for each individual promptly upon admission, but not later than 14 days after the date of admission. In general, nursing homes use registered nurses or other trained personnel to conduct resident assessments, and depending on the medical condition of the resident, this assessment may become a lengthy process. In contrast, sections 1866(f)(1) and 1902(w)(1) of the Act do not specify any particular health care discipline or trained personnel to disseminate information on advance directives or to document in the resident's medical record whether or not the individual has executed an advance directive. Therefore, we believe that it is not necessary or consistent with the advance directives statute to revise the regulations to routinely allow up to 14 days to disseminate this information as the commenter suggests.

Individuals Incapacitated at Admission

Great concern was voiced by commenters concerning the provision of advance directive information to psychiatric patients, and to patients suffering from Alzheimer's disease or other diseases affecting an individual's decision-making capacity. In particular, commenters suggested that the advance directive information may exacerbate the symptoms of mental illness and hamper psychiatric treatment, especially for suicidal patients. The commenters offered the following suggestions to address the overall issue of individuals incapacitated at the time of admission and other related issues.

Comment: One commenter suggested that the regulations implementing the advance directive requirements include a provision for a "good faith exception to the Act" for all psychiatric hospital admissions or, at a minimum, for those persons involuntarily admitted for psychiatric treatment because they have been determined to be dangerously mentally ill.

Response: Sections 1866(f)(1) and 1902(w)(1) of the Act specify that the advance directives requirements apply to all adult individuals receiving medical care. Therefore, we believe that a general "good faith" exception is precluded by the law. Although we recognize that certain individuals may not be able to receive information about advance directives due to incapacity, we believe that such a determination must always be made on a case-by-case basis by the facility in accordance with State law.

Comment: Two commenters noted that the interim final rule did not specify the personnel that would be responsible for determining whether or not an individual was capable of receiving information concerning advance directives. The commenters believe that further guidance is needed in this area and suggested that the final rule require that the professional judgment of a qualified healthcare professional (such as a physician, nurse or social worker) be used to determine when an individual can receive this information.

Response: Since the statute is silent on this issue, we do not believe it would be appropriate to impose on providers by regulation a requirement that only a physician or nurse is permitted to make the professional judgment concerning an individual's capacity to receive this information. Therefore, we defer to State law addressing the subject. Where there are no State laws concerning this subject, then the institution may make the decision.

Comment: Some commenters interpreted the discussion of the incapacitation issue in the interim final rule (57 FR 8197) as requiring hospitals to disseminate information concerning a patient's right to accept or refuse medical or surgical treatment and to formulate an advance directive to family members or surrogates when the individual is incapacitated upon admission. They stated that such a requirement would extend beyond the scope of the statute and suggested it be deleted. One commenter stated that, in some States, third parties (for example, family and/or surrogates) may execute advance directives or otherwise act without meaningful restriction on behalf of an incapacitated patient, in the absence of an advance directive executed by the patient. The commenter suggested that the regulations explicitly state that the advance directive requirements only apply to an individual patient's rights; thus third parties should have no further role but to receive the information on behalf of the incapacitated individual.

Response: We did not require that family members or surrogates receive advance directives information in place of incapacitated patients. We merely suggested that providing them with this information, to the extent the facility provides such individuals with other information related to the patient's care, would be appropriate and might help the provider discover the existence of an advance directive. We agree that

sections 1866(f) and 1902(w) of the Act apply only to individual patient's rights and that these statutory provisions do not create a right for third parties to receive information on advance directives or to execute advance directives on behalf of incapacitated patients. However, we are aware that some States permit third parties to execute advance directives on behalf of an incapacitated patient. We believe that defining rights of third parties as the commenter suggested would conflict with Congressional intent that issues not addressed through explicit provisions of the statute be decided under State law.

Comment: One commenter stated that there has been some confusion among facilities concerning the implementation of advance directive requirements for incapacitated patients. As a result, some facilities are requiring the appointment of a guardian over their residents for purposes of meeting these requirements. The commenter suggests we address this issue.

Response: The determination of whether or not an individual is incapacitated and unable to receive advance directives information and the role of surrogate third parties are issues that involve both the individual's medical condition and State law regarding decision-making authority in such cases. We defer to State law on these issues. The appointment of a guardian is not required by the statute but is left to the discretion of the facility in accordance with applicable State law.

Comment: One commenter suggested that the regulations clarify that no assumptions be made by third parties regarding an incapacitated resident's right to accept or refuse medical or surgical treatment in the event the resident has not executed an advance directive.

Response: The statute does not grant authority for actions on the part of the family or surrogate for the incapacitated individual. Therefore, providers should look to State laws that address responsibility for treatment decisions in those instances where an individual is incapacitated.

Comment: One commenter suggested that, in order to facilitate the development of policies concerning incapacitated individuals, we allow national organizations such as the American Psychiatric Association, the National Association of Private Psychiatric Hospitals and the American Hospital Association to develop guidelines or recommendations on how to address incapacitated patients in providers' written policies concerning advance directives.

Response: Providers and organizations should have already completed their policies and procedures on these advance directive requirements. However, particularly in light of the changes in the regulations included in this final rule concerning providing advance directives information to surrogate decision-makers, we encourage national organizations to work with providers to help them refine their policies concerning this portion of the advance directive requirements.

Comment: We received several comments on the statement in the preamble of the interim final rule that indicated that providers are obligated to track patients who are unconscious on admission in order to determine when they are able to receive information concerning advance directives (57 FR 8197). Some commenters stated that this requirement was unnecessary in cases in which hospitals provided the information upon admission to family members, or surrogates, since it is likely that the family would pass the information on to the patient when he or she regained consciousness. Other commenters supported the requirement and suggested that we require periodic reassessments of comatose patients to determine when they are able to receive the information. One commenter asserted that some patients may never regain decision-making capacity while hospitalized and are often discharged without ever having been in a condition to receive the required information. The commenter suggested we specifically address whether a facility still is obligated to provide the information under these conditions.

Response: Sections 1866(f)(1)(A) and 1902(w)(1)(A) of the Act specify that it is the patient's right to formulate an advance directive and the provider's obligation to inform the patient of that right. We do not believe that a provider can meet this obligation by providing information to surrogate decision-makers or family members. In this final rule, we have clarified this point by adding language at §§ 417.436(d)(1)(ii), 483.10(b)(8), and 489.102(e) to specify that facilities may give advance directive information to the patient's family or surrogate, but this does not relieve the facility of its obligation to provide this information to the patient once he or she is no longer incapacitated or unable to receive such information. Therefore, the provider will need to develop follow-up procedures to determine if and when the patient may be given the information directly.

We agree that it would be appropriate to conduct periodic reassessments of comatose patients; however, we believe that the timing of reassessments should be determined by the provider based on the medical condition of the individual patient. If an individual remains incapacitated throughout an entire hospital stay, we recognize that there may never be an opportunity for the advance directives information to be provided. In such cases, we would expect the provider to document in the patient's medical record its awareness of its obligation and its continuing judgment that the patient's medical condition does not permit the information to be provided.

Objections Based on Conscience

Comment: Several commenters requested additional information on our policy in situations in which a health care provider, as a matter of conscience, cannot implement an advance directive. Specifically, the commenters requested that we clarify the requirement under §§ 417.436(d)(1)(i)(B) and 489.102(a)(1)(ii) that the written policies of a provider or organization include "a clear and precise statement of limitation if the provider cannot implement an advance directive on the basis of conscience." One commenter suggested that the explanation of State law concerning objections on the basis of conscience mirror either the State law or the State-developed description of the State law concerning this topic. Two other commenters suggested that, where State law permits a conscientious objection, the regulations should require that the provider's explanation: (1) Clarify any differences between institution-wide conscience objections and those that may be raised by individual physicians; (2) explain the basis for the objection (that is, whether it is based on various religious, moral, or professional grounds); (3) identify the State legal authority permitting such objection; (4) describe the range of medical conditions or procedures affected by the conscience objection; (5) describe what steps will be taken to transfer or otherwise accommodate individuals whose wishes are impeded by the institution's policy; and (6) describe what, if any, burden will be placed on the patient or the patient's surrogate decision-maker to help effectuate the implementation of the advance directive. Finally, one commenter asked whether Medicare and Medicaid payments would be terminated if an entire institution objects to implementing advance directives on the basis of conscience.

Response: Sections 1866(f)(1)(A) and 1902(w)(1)(A) of the Act require that providers and organizations furnish individuals receiving medical care with written information concerning an individual's rights under State law and the provider's policies concerning the implementation of these rights. Also, section 4206(c) of OBRA '90 and section 1902(w)(3) of the Act provide that the statutory advance directive requirements do not prohibit the application of a State law that allows for an objection on the basis of conscience for any provider (or its agent) that, as a matter of conscience, cannot implement an advance directive. As the commenter noted, implementing regulations at § 417.436(d)(1)(i)(B) and 489.102(a)(1)(iii) require that this information include a statement of limitation if a provider cannot implement an advance directive on the basis of conscience. We agree that the written information may mirror State-developed descriptions of State law concerning advance directives. However, we do not believe that requiring a provider to supply copies of applicable State law is necessary, because the statute requires the dissemination of descriptions of State laws. We believe that Congress imposed this requirement because many State statutes may be written in technical terms that may be misunderstood. We have reviewed the six suggested requirements for statements of limitation. We believe that the commenters have highlighted some important minimum points of information that should be given to all affected individuals, but we also believe some of the suggestions go beyond the intent of this law. As a result, we have decided to implement the first, third and fourth of the commenters' suggested requirements.

We have several reasons for not adopting the second, fifth and sixth suggested requirements. We have not adopted the second suggestion because the basis for the objection is not necessarily material as long as the objection raised is permitted by State law. A provider may wish to explain an institutional policy; however, an individual physician or practitioner may not wish to do so, and neither of them is required by this law to do so. We have not adopted the commenter's fifth suggestion concerning transfers for a similar reason. The law does not require this level of information. We note that if an individual is given information regarding the provider's conscientious objection, and he or she does not request a transfer, the provider is not obligated to implement any elements of an individual's advance directive that conflict with the provider's conscientious objection. However, it is reasonable to expect that assistance would be provided for a transfer at the patient's request. We did not accept the commenter's last recommendation because we do not believe it would be reasonable to require that a provider speculate on what, if any, burden would be placed on patients or surrogate decision-makers to help effectuate the implementation of an advance directive. Therefore, we are revising the regulations at §§ 417.436(d)(1)(i)(B) and 489.102(A)(1)(ii) to include only the first, third, and fourth points.

Finally, when a entire facility opts to object on the basis of conscience, assuming the objection is permitted under State law and the facility complies with all other provisions of the statute and regulations, neither Medicare nor Medicaid reimbursement will be interrupted.

Comment: One commenter requested that we clarify that a provider is not required to implement an advance directive to which the provider objects on the basis of conscience when the State law is silent or does not specifically prohibit such objection.

Response: The advance directives legislation does not give us authority to make such a clarification. We believe that, unless State law allows a provider to object to implementing an advance directive as a matter of conscience, the provider is required to honor the advance directive as written. As discussed in the preceding response, we have revised §§ 417.436(d)(1)(i)(B)(3) and 489.102(a)(1)(ii)(C) to specify that a provider's statement of limitation must identify the "State legal authority" permitting an objection on the basis of conscience.

We note that State statutory law may be silent on a particular issue, such as whether a provider may decline to follow a directive to which it objects on the basis of conscience. As we suggested in the interim final rule, in the absence of statutory law, providers should look to common law or case law for guidance (57 FR 8197).

Comment: One commenter asserted that religiously-sponsored facilities have the right to exercise an objection on the basis of conscience to the requirement that facilities conduct community education. Otherwise, enforcement of the community education requirement would violate provider's First Amendment rights to adhere to their religious beliefs.

Response: Section 1902(w)(3) of the Act and section 4206(c) of OBRA '90 specifically refer to the application of State laws regarding conscientious objections. These statutory provisions permit exceptions to implementing advance directives based on a conscientious objection as prescribed under applicable State law. No provision is made for an exception to sections 1866(f)(1)(E) and 1902(w)(1)(E) of the Act concerning community education efforts. Thus, the provider must meet the requirements relating to community education; that is, the provider must furnish information to the community concerning State law regarding the right to accept or refuse medical or surgical treatment and to formulate an advance directive, even if the provider simultaneously informs the community that it is exercising a conscience objection that would permit it to refuse to honor an advance directive.

Comment: One commenter believes that it would be difficult if not impossible for many providers, especially Roman Catholic facilities, to provide a precise statement of limitation if a provider cannot implement an advance directive on the basis of conscience. According to the commenter, there are various ethical, religious and moral restrictions on whether or not a particular advance directive can be implemented at a Catholic facility. Another commenter believes that providers may not always be able to write clear and precise statements of limitation when objecting on the basis of conscience and requested that the regulations permit alterations to the written policy based upon case-by-case determinations of issues not previously considered by the facility.

Response: As discussed above, we have revised the regulations at §§ 417.436(d)(i)(B) and 489.102(a)(1)(ii) to provide further clarification on the content of the statement of limitation. Regardless of their religious affiliation, facilities may comply with the law by providing patients with written materials containing the minimum points of information required by these regulations. These revisions describe the minimum amount of information that should be included in the statement of limitation. For the most part, we believe that the statement of limitation can be written to accommodate or reflect the case-by-case approach. Although we cannot readily envision a situation in which the required information, if properly provided, would not adequately inform the patient, we agree that such a situation would permit an individualized notice.

Where an individualized notice is needed, facilities may comply with the law by providing patients with written materials indicating the basis upon which decisions will be made, that each decision would be unique, and how the patient may predict the decision in his or her own case. It is not necessary that the written material distributed to patients contain enough information to permit the patients to make a definitive determination about what action the provider will take in every situation. It is only necessary for the provider to state its policy with respect to complying with the provisions of State law regarding an adult individual's right to accept or refuse medical or surgical treatment or formulate an advance directive, even if that policy is to make individual decisions based on religious rules.

Comment: Two commenters requested more guidance on how providers are to deal with individual health care professionals who object to executing an advance directive on the basis of conscience. One commenter stated that although the interim final rule did not require that lists of members of a hospital medical staff be provided to individuals, the regulation text should clarify that hospitals are not expected to provide information about the moral reservations of individual members of the medical staff. Any document describing each physician's position on advance directives would be potentially lengthy, constantly in need of updating, and of little use to patients, who typically choose their physicians before entering the hospital.

Response: We believe a provider may well have a policy under which an individual physician or its medical staff may determine (consistent with State law) whether to honor advance directives. If this is the case, the provider would need to inform the patient of this policy, so that the patient could consult with his or her physician on the subject, as necessary. It would be up to the patient, having been informed of the provider's policy, to consult with the physician.

Although a hospital with a complicated policy may need detailed documents to describe it, we do not believe that this would always be the case. In addition, as the commenter noted, many individuals choose their physicians long before admission and may already have discussed these issues with them. However, although we agree with the commenter that a document describing the positions of individual physicians concerning advance directives would be quite lengthy and of little use to patients, we do not believe it is necessary or appropriate to state in regulations that hospitals are not expected to provide information about the moral reservations of medical staff.

Comment: One commenter noted that the requirements at §§ 417.436(d)(2) and 489.102(a)(1)(ii) specify that a provider is not required to provide care that would conflict with an advance directive and is not required to implement an advance directive if, as a matter of conscience, the provider cannot implement an advance directive and State law allows any health care provider or any agent of such provider to conscientiously object. The commenter believes that these requirements would permit the transfer of a patient when a provider cannot honor his or her advance directive and thus are in conflict with the "anti-dumping" rules, which prohibit the transfer of emergency patients except under limited conditions. The commenter suggested that the advance directive provisions be amended to prohibit patient transfers, except under the permissible circumstances in the anti-dumping rules concerning stabilizing the patient.

Response: We disagree with the commenter's assertion that the provisions of this regulation permitting a patient transfer would violate the "anti-dumping" statute. The anti-dumping statute (section 1867 of the Act) provides for patient-initiated transfers so long as they are properly documented and done in accordance with applicable Federal and State law. Therefore, we do not believe that a transfer that is requested by a patient after being informed by a provider that it cannot honor an advance directive on a basis of conscience (to a provider who will honor the advance directive) would violate the "anti-dumping" statute.

Comment: One commenter believes that physicians are not normally considered agents of health care providers, and thus providers are not responsible for the actions of their individual physicians. The commenter suggested that the final rule clearly acknowledge the need for a collaborative judgment between providers, their agents, and physicians as to when a provider or its agent chooses to exercise an objection on the basis of conscience.

Response: As noted above, section 4206(c) of OBRA '90 and section 1902(w)(3) of the Act do not prohibit the application of State laws that allow for an objection on the basis of conscience for any provider or any agent of a provider that, as a matter of conscience, cannot implement an advance directive. The meaning of the term "agent" varies from State to State, and Congress did not define this term in the advance directives provisions. Therefore, for purposes of this final rule, the term "agent" is defined by applicable State law.

Regardless of whether or not State law defines a physician as an agent of the provider, sections 1866(f)(1) and 1902(w)(1) of the Act clearly establish that it is the health care provider's responsibility to have a policy on advance directives and to assure that it is followed. Implementing regulations at §§ 417.436(d) and 489.102(a)(1)(ii) require that a provider's policies include a statement of limitation if the provider cannot implement an advance directive as a matter of conscience. To the extent that close collaboration between provider medical staff and other staff is necessary to implement the provider's advance directive policies, it is the responsibility of the provider to assure that it occurs. Ordinarily providers assure compliance through such mechanisms as medical staff by-laws, which physicians agree to observe in return for staff privileges.

Comment: One commenter stated that before a patient's admission, providers should be required to publicize their position on any advance directive they cannot fulfill. As part of this process, the commenter suggested we require providers and organizations to place this information in preadmission packages to be received by the individuals within 10 days before elective admission.

Response: As we have noted elsewhere, we do not believe that the provisions of this regulation should limit individual provider choices on such issues as when to send out pre-admission information packages. Sections 1866(f)(1)(A) and 1902(w)(1)(A) of the Act require that providers provide written information to each individual concerning an individual's rights under State law to accept or refuse medical treatment, the right to formulate an advance directive, and the written policies of the provider respecting the implementation of these rights. Sections 1866(f)(2)and 1902(w)(2) specify when this information must be furnished. These requirements are also set forth in regulations. Also, as discussed in detail above, we require that if a provider cannot implement an advance directive due to a conscientious objection, its written policies must include a clear and precise statement of limitation, as described under §§ 417.436(d)(1)(i)(B) and 489.102(a)(1)(ii).

We believe that these requirements are sufficient to ensure that there is a

timely exchange of information between providers and patients with respect to advance directives, without unnecessarily limiting provider flexibility. Thus, although we encourage providers to include any statement of limitation in pre-admission materials, we do not believe it would be appropriate to impose requirements concerning pre-admission materials.

Descriptions of State Law

Comment: One commenter suggested that we prescribe in regulations the process that States must follow when developing the written descriptions of State law concerning advance directives. At a minimum, the commenter believes that the process should include participation by providers, consumers, community advocacy groups, bar association groups and others. The commenter believes that the written description of the State's advance directive requirements should be reviewed in draft form to ensure that it can be understood by non-experts of average reading ability. Also, the description should be certified as to its accuracy by the State's Attorney General or other legal advisor with the necessary expertise in this area (for example, a commission, committee, court, judicial panel, etc.). Other commenters recommended that information distributed to patients should be subject to review by the State agency upon the receipt of any complaint that the information does not comply with the standard of strict objectivity in describing State law.

Response: The requirement that each State develop a written description of its law concerning advance directives has been in effect since December 1, 1991, and States have followed varying practices in meeting the requirements of the law. At least a few States have consulted widely while other States have issued requirements prepared by the State's Attorney General. This is in keeping with alternatives offered by the statute, and we do not believe it would be appropriate to limit State flexibility on this matter in this final rule. We note that State survey agencies would have the opportunity to review the contents of provider advance directive packages, which could include ensuring that descriptions of State law are accurate.

Comment: One commenter suggested that we request that the Attorney General in each State publish a written description of the State law concerning advance directives and update it regularly.

Response: Section 1902(a)(58) of the Act requires that each State, "acting through a State agency, association, or other private nonprofit entity, develop a written description of the law of the State (whether statutory or as recognized by the courts of the State) concerning advance directives that would be distributed by providers or organizations under . . . [the Medicaid requirements]." While we are not making this a requirement, a State may use its Attorney General to prepare the description of State law. In addition, we note that under the Medicaid program, we are requiring that States revise their descriptions of State law and furnish copies of revised descriptions to providers and managed care plans within 60 days from the effective date of a change in State law (see revised § 431.20(b)). Under both Medicare and Medicaid, managed care plans and all providers must provide updated written information to adult individuals within 90 days of the effective date of any new State law.

Comment: Two commenters suggested that we require Medicare providers to use the State-developed description of State law in their informational materials. The commenters believe that Congress intended to mandate the use of the State-developed description similar to the requirement for Medicaid providers and that the lack of such a requirement in section 1866(f) of the Act was a Congressional oversight. The commenters suggested we amend § 431.20(b) to implement this requirement.

Response: As the commenters point out, section 1902(a)(58) of the Act specifically mandates the use of the State-developed description for Medicaid providers, but there is no statutory provision regarding the use of the State-developed description for Medicare providers. Also, we have found no evidence in the legislative history that the Congress intended to implement this requirement for the Medicare program. Therefore, we have not mandated the use of the State-developed description for Medicare providers.

Comment: Four commenters disagreed with our suggestion in the interim final rule that States may prescribe the content of the information disseminated by Medicaid providers, including requiring "that Medicaid providers use the State-developed descriptions of State law only" (57 FR 8197). These commenters urged that we withdraw this suggestion in the final rule. Another commenter asserted that providers may misconstrue our suggestion to mean that they should use the State's description only, when providers should be allowed to supplement these descriptions with their own materials as needed. This commenter suggested that we avoid the use of the word "only" in this context. Alternatively, States could allow providers to incorporate the general information contained in the State-developed descriptions of State law into their own packages of materials that include their written policies regarding the implementation of an individual's rights under the advance directive provision.

Response: States have the authority to administer the Medicaid program under broad Federal guidelines coupled with each State's own statutory and regulatory requirements. The advance directive provisions of the statute, as well as the implementing regulations, have been designed to ensure that States maintain maximum autonomy and flexibility in this area. The discussion in the preamble to the interim final rule merely reflected possible approaches that States could take in providing the required information, and we continue to believe that the approaches are consistent with the statutory requirements. Therefore, each State's law determines if providers are restricted to using only the State-developed descriptions of State law regarding advanced directives or if providers are permitted to supplement these descriptions with their written policies concerning advanced directives.

Comment: Several commenters suggested that, to the extent that providers are allowed to develop their own descriptions of State law, the final rule should require States to have a process in place to evaluate and pre-approve the provider's particular version of the description of the State's law. The commenter believes that without such a requirement, the various descriptions being used by different providers may be inaccurate or inconsistent. To ensure uniformity, the commenter suggested that HCFA actively encourage States to use a single, uniform State description.

Response: We believe it to be beyond the intent of the statute to require that States evaluate and pre-approve the provider's versions of any description of State law. The States themselves are best equipped to determine whether or not they should evaluate and pre-approve a provider's description of State law, and we have preserved the flexibility for them to do so in this final regulation. However, it is important to note that section 1902(a)(58) of the Act requires that the State, acting through a State agency, association, or other private non-profit entity, develop a written description of the State law

concerning advance directives to be distributed to Medicaid providers and HMOs. HCFA believes that the availability of this document and the coordination among all providers will ensure that the descriptions are accurate and consistent.

Comment: Many commenters responded to our request for recommendations on what would be a reasonable time period for States and providers to incorporate descriptions of changes in State law into provider information packages and for providers to distribute this information. The recommended time periods varied widely, ranging from as soon as practicable, to 60 days, not less than 90 days, not more than 4 to 6 months, annually (requested by HMOs, in particular, to coincide with the annual schedule for reprinting and distribution of enrollment materials, also see section II.B, below), and no later than by the time of the effective date of individual State law. In addition, a number of commenters suggested a two-step time frame—a deadline on States to revise the State description of the law and issue copies to providers and organizations and a second deadline on providers to revise and disseminate their materials to adult individuals coming under their care. Two commenters suggested that we prescribe the timing requirements in the regulations.

In addition, one commenter expressed concern that providers may think they have some obligation for monitoring and interpreting changes in State law. This commenter believes that it is inappropriate to depend on providers to monitor or interpret changes in State law and that Congress would not require States to develop descriptions of their laws without the implicit intent that States would also be responsible for updating the descriptions. Unless States are required to update their own description, the commenter believes that consistency will be lost over time. The commenter suggested that HCFA clarify that it is the responsibility of States, not the providers, to update these descriptions.

Response: In general, we believe that States, as well as providers and managed care plans, will wish to revise advance directive information packages promptly in order to ensure that they disseminate the most accurate information possible concerning State law changes relating to advance directive issues. Realistically, however, we know that it will take some time to receive the information, revise their summary descriptions of State law, and print and disseminate these updated summaries. Based on our review of all recommendations, we are imposing two new independent requirements for States and providers for updating descriptions of State law. First, under the Medicaid program, we are requiring that States revise their descriptions of State law and furnish copies of revised descriptions to providers and managed care plans within 60 days from the effective date of a change in State law. Second, under both Medicare and Medicaid, managed care plans and all providers must provide updated written information to adult individuals within 90 days of the effective date of any new State law. Thus, in situations where States have an obligation under the Medicaid program to develop descriptions of State law, we are allowing providers an additional 30 days in order to permit them sufficient time to adopt language from State law or State-developed descriptions where necessary.

We are revising §§ 431.20(b) and 489.102(a)(1)(i) to reflect these two requirements. (See the discussion in section II.B below regarding timeframes for managed care plans.) States or providers that disseminate outdated materials during the grace periods established by this regulation would not be violating the Federal requirements regarding the dissemination of written information about an individual's rights under State law only. However, this grace period will not protect a provider from an action in State or Federal court resulting from any harm caused by the dissemination of outdated material. In addition, States are free to impose more restrictive requirements on the dissemination of updated materials.

Also, § 430.12(c)(1)(ii) requires that a State amend its State plan to reflect material changes in State law. Since the State is required to include a written description of its law concerning advance directives in its State plan, any changes in State law concerning advance directives must not only be furnished to providers participating in the Medicaid program, but must also be included in the State plan. To be consistent, we are revising § 430.12(c)(1)(ii) to require the amendment to be submitted as soon as possible, but no later than 60 days from the effective date of the law.

Comment: Another commenter suggested that the Secretary be given 60 days to notify State Medicaid agencies, licensure agencies and providers of changes in Federal law, and that these groups then have 60 days from the date of Federal notification to implement corresponding changes in their respective responsibilities.

Response: Changes in Federal law take effect in accordance with the effective dates established by the Congress in the statute in which they are enacted. The Secretary generally is not responsible for notifying States or providers of statutory changes; nor are the effective dates of statutory changes generally subject to the Secretary's discretion.

Comment: One commenter suggested that the determination of when State case law has changed for purposes of mandatory alteration of policies and procedures be uniformly fixed at the highest appellate court of a State, so that informational materials may be amended at a consistent time throughout affected States. However, the commenter also believes that some provision should be made for discretionary changes in the statement of State law disseminated by the State, based upon an analysis of intermediate appellate or trial court decisions.

Response: We have already outlined the timeframes for providers to incorporate descriptions of State law into their policies and procedures. With regards to revisions or amendments that may occur as a result of appellate or trial court decisions, we believe that States are best suited to respond timely to such changes. Therefore, States should be responsible, on a case-by-case basis, for determining when State law has changed and thus, when providers must revise informational materials. Medicare and Medicaid providers may have wide discretion in designing informational materials for dissemination to patients and residents, or States may institute more specific requirements under either or both programs. We do not choose to abridge State flexibility on this issue.

Provider Agreements

Comment: One commenter expressed concern that § 431.107(b)(4) of the interim final rule appears to require that the State Medicaid agency revise provider agreements to incorporate the requirement that providers comply with the advance directives requirements. The commenter believes that this requirement can be made binding upon the State Medicaid agencies and providers without the administrative burden associated with issuing new provider agreements.

Response: Section 431.107(b)(4) requires that a State plan must provide for an agreement between the Medicaid agency and each provider or organization furnishing services under the plan in which the provider or organization agrees to comply with the applicable advance directive

requirements. The changes to § 431.107(b)(4) do not require that States issue new provider agreements. States frequently use provider agreements that are general in nature but that bind the provider to adhere to the provider requirements stipulated in the State's regulations or manuals. It is not our intention to change, by this regulation, the mechanics by which States impose requirements upon their Medicaid providers.

States have flexibility to prescribe procedures for complying with additional Federal requirements relating to its provider agreement. A determination should be made by each State regarding whether revisions or new provider agreements are necessary, or whether the agreement is all-inclusive, that is, the provider agrees to comply with all additional Federal requirements, and no revisions are needed.

Enforcement Procedures

Comment: Some commenters requested further instructions on the statement in the preamble of the interim final rule that hospitals and hospices must inform HCFA in writing of the "date they achieve compliance" (57 FR 8195), while another believes this requirement is unnecessary. One commenter suggested that §§ 417.436(d) and 483.10 be amended to include an address and telephone number at which HCFA will receive non-compliance complaints.

Response: The process for hospitals and hospices to inform HCFA of the day they achieved compliance was set forth through instructions issued by HCFA in October, 1992. The reporting process is now complete. The purpose of this process was to provide us with evidence that hospitals and hospices were maintaining policies that would provide written information to adult individuals of their rights to accept or refuse medical or surgical treatment and to formulate an advance directive. These rights are subsequently referred to as the "advance directive requirements". This mechanism was designed so we would not need to conduct immediate on-site inspections of the nearly 8,000 hospitals and hospices to determine compliance with the advance directive requirements.

In addition, we note that to ensure that HHAs, SNFs and NFs are complying with the advance directives requirements, these entities will be assessed for compliance during the next routine on-site survey. The advance directive requirements are part of the resident rights requirements at § 483.10(b)(8) for SNFs and NFs and the patient rights condition of participation at § 484.10(c)(2)(ii) for HHAs.

Concerning where an individual can file a complaint for non-compliance, we have decided to follow the usual procedure and delegate the responsibility to receive complaints and initiate investigations to the State survey and certification agency under the authority of Regional Administrators. We have added new provisions at §§ 417.436(d)(3) and 489.102(a)(4) to require that providers and HMOs and CMPs must inform individuals that complaints concerning non-compliance with the advance directive requirements may be filed with the State survey and certification agency. This may be accomplished, for example, by posting a statement of an individual's rights under the advance directives requirements of the law and the name, address and telephone number of the State survey and certification agency to which the individual should file his or her complaint. In addition, we are amending § 483.10(b)(7)(iv) to require a facility to include in its written description of a resident's legal right a statement that the resident may file a complaint with the survey and certification agency concerning noncompliance with the advance directives requirements. Section 484.10(f) of the HHA patient rights condition of participation also has been amended to specify that the patient also has the right to use the home health hotline to lodge complaints concerning the implementation of the advance directive requirements. In addition, the Medicare Hotline (1–800–638–6833) is another avenue to register complaints.

Comment: One commenter asked how soon after a hospital adds a new unit or service would it have to report to HCFA regarding achieving compliance with the advance directive requirements.

Response: We are not requiring hospitals to notify HCFA concerning compliance with the advance directive requirements each time a new unit or service is added. However, any new unit or service that is added to a hospital would be expected to meet the advance directive requirements for all new admissions as soon as it began operation and would be monitored in accordance with the normal enforcement procedures, as outlined above.

Comment: One commenter suggested that we grant hospitals that are accredited by the Joint Committee on the Accreditation of Hospitals (JCAHO) deemed status for advance directive requirements now that the JCAHO has incorporated advance directives requirements into its standards. Another commenter questioned if HCFA will ask State departments of health to monitor compliance with the advance directive requirements within the context of the Medicare validation survey process.

Response: National organizations that have been granted recognition of their accrediting programs are required to provide reasonable assurance to HCFA that the providers that they accredit meet the Medicare conditions of participation. However, since the advance directives requirements are not part of the Medicare conditions of participation for hospitals, accredited hospitals are not deemed to meet this requirement based on an accreditation survey.

Instead, each hospital and hospice must comply with the advance directive requirements as part of its provider agreement with HCFA. As discussed above, each hospital (including any accredited by JCAHO or AOA) was required to inform HCFA, in writing, of the date that it achieved compliance with the advance directive requirements. As part of the compliance process, each hospital submitted an attestation statement signed and dated by its hospital administrator that informed HCFA of compliance. Compliance with the advance directive requirements is verified as part of the next routine on-site survey for hospices and non-accredited hospitals. For accredited hospitals, compliance is verified during any complaint investigation and at the time of validation surveys. This verification is a one-time event for both hospitals and hospices, unless a specific complaint is received about advance directives. All complaints about advance directives are investigated; failure to comply with the advance directives requirements is a cause for termination of a hospice's or hospital's provider agreement.

Comment: Two commenters suggested we extend the time period for the State agency to conduct an investigation to determine if a facility is in compliance with the advance directives provisions to the date when the provider agreement with HCFA is terminated. Currently, the time period for written notification of deficiencies is 15 days from the initial visit and the commenters are requesting that this be changed to 30 days. The commenters believe that 15 days is not sufficient time to permit adequate communication with all entities involved in many health care systems, particularly when providers are members of hospital chains, where information needs to be exchanged between corporate headquarters, attorneys, and the particular facility cited.

Response: Although we give providers 15 days' advance notice before termination of the provider agreement, the provider usually has 90 days to correct a deficiency, between the time of the survey and the effective date of termination. Furthermore, enforcement procedures for deficiencies in meeting the advance directives requirements are handled in the same manner as other types of deficiencies. Medicare operational guidelines establish procedures and timeframes that we believe allow a provider ample opportunity to make corrections and to exchange information related to the deficiencies before the effective date of the actual termination. The communication needs cited by the commenters are not unique to situations involving non-compliance with the advance directives provisions, and thus we do not believe that changes in our termination procedures are warranted.

Miscellaneous Issues

Comment: One commenter expressed concern with the applicability of the provider obligations contained in the advance directive requirements to independent personal care providers, as opposed to a home health agency, and the consequences of requiring individual personal care providers to comply with these requirements. The commenter asserted that independent personal care providers typically are semi-skilled workers who, in many instances, perform non-medical functions. The commenter believes that in many cases these individuals would not be able to comply with the advance directive requirements for providers. Therefore, the commenter requested that R.N. supervisors, rather than the personal care attendants, fulfill the requirements for personal care services. Furthermore, the commenter asserted that the obligations of the statute appear to apply only to providers and organizations that furnish "medical care." Since independent personal care providers generally do not furnish medical care, they are not subject to the statute.

Response: Section 1902(a)(57) of the Act specifically requires that each State Medicaid program assure that all affected providers, including personal care providers, meet the requirements of section 1902(w) of the Act as well as all other Medicaid requirements. The statute does not prohibit a personal care provider from contracting with another entity to carry out the advance directive requirements, but personal care providers should enter into these contracts with the knowledge that they will still be legally responsible for ensuring that advance directive requirements are met. To clarify this point, we have revised § 489.102(b)(3)(ii) to specify that all providers, including personal care providers, are permitted to contract with another entity to furnish this information but are still legally responsible for ensuring that advance directive requirements are met.

Thus, a personal care provider may either perform the requirements of the advance directive provisions, or it may work with others to fulfill the requirements of this provision. If a personal care provider enters into a contract or other written agreement with another entity (for example, case manager, local home health agency, hospital discharge planner, or others) to satisfy the requirements of section 1902(w) of the Act, we suggest that such a written agreement specify that the person or entity is satisfying the requirements of section 1902(w) of the Act. Thus, the agreement should specify that the person or entity would (1) furnish written information (usually prepared by the State) to individuals receiving care regarding their rights under State law to make decisions concerning medical care; (2) furnish the providers written policies respecting the implementation of such rights (including any conscientious objections allowed by State law); (3) document in the individual's medical record whether or not the individual has executed an advance directive; (4) not discriminate against an individual based on whether or not the individual has executed an advance directive; (5) ensure compliance with State law; and (6) educate staff (if applicable) and community (which can be defined as the population served) on issues concerning advance directives.

Although the commenter's question centered on the applicability of the provider obligations for personal care providers, we have revised §§ 489.102(a)(1)(i), 417.436(d)(1)(i)(A) and 483.10(b)(8) to permit all providers to enter into agreements such as the one described above.

Comment: One commenter expressed confusion over what he believes to be an apparent conflict between the advance directive provisions of this regulation and the election procedures for Medicare hospice patients. Medicare-certified hospice programs are required to inform new patients at the time they elect hospice care of what types of care the hospice provides. At that point, the patient exercises a choice with respect to services that may include an acknowledgement that life sustaining treatment would be withheld.

Response: We do not believe that there is an inconsistency between the advance directives provisions of this regulation and the election procedures for Medicare hospice patients. In fact, we believe these requirements are entirely consistent with the intended exchange of views and information that takes place when an individual elects hospice care. Hospice patients may appropriately be asked if they have an advance directive even though their choice of hospice care reflects a preference for palliative rather than curative treatment. We rely upon the hospice to inform the patient fully at the time of the hospice election as to the nature of the care. The hospice, after being informed of the patient's choice, will inform the patient of its treatment plan, policies and whether the patient's advance directive may be implemented. As part of the process, the patient will be informed if the advance directive will not be honored because State law permits the facility to object to implementing an advance directive on the basis of conscience.

B. Comments Specific to Managed Care Plans

Scope

Comment: One commenter questioned whether the advance directive requirements apply to both risk-based and cost-reimbursed Medicare HMOs and CMPs.

Response: Section 1866(f)(1) of the Act specifies that a provider of services or prepaid or eligible organization (that is, a health maintenance organization (HMO), competitive medical plan (CMP) as defined in section 1876(b) of the Act, or a health care prepayment plan (HCPP) as defined in section 1833(a)(1)(A) of the Act) must maintain written policies and procedures concerning the right to accept or refuse medical or surgical treatment and to formulate an advance directives with respect to all adult individuals receiving medical care through the provider or organization. These requirements apply to both risk-based and cost-reimbursed Medicare HMOs and CMPs. In addition, organizations providing services to Medicaid enrollees, such as health insurance organizations, prepaid health plans and Medicaid HMOs, also must meet these requirements. The statute does not authorize exceptions for certain model types.

Advance Directives Information Provided by Managed Care Plans

Comment: Several commenters suggested that HMOs and CMPs be allowed to provide information concerning an adult individual's right to accept or refuse medical or surgical treatment and to formulate an advance directive only to the subscriber of the plan, who would then share this information with his or her covered dependents. This would prevent multiple mailings of material to the same address.

Response: We concur with the commenter that HMOs and CMPs are permitted to provide information concerning advance directives only to the subscriber of the plan. Typically, HMOs and CMPs send enrollment packages to the subscriber who in turn shares the information with his or her dependents. All the information that a subscriber needs, including membership cards, evidence of coverage, and listings of participating providers are usually sent in this package. Sections 1866(f)(1) and 1902(w)(1) of the Act require that written materials concerning an individual's right to accept or refuse medical or surgical treatment and to formulate an advance directive be provided to all adult individuals receiving medical care by or through the provider or organization. However, since it is customary for subscribers to share membership material with adult dependents, we believe that permitting HMOs and CMPs to send advance directives material only to subscribers (who would then be instructed to share the material with adult dependents) would fulfill the statutory requirement. The membership material should indicate to subscribers that they are expected to share the advance directives information with adult dependents.

Comment: One commenter requested clarification as to what kind of documentation an HMO or CMP is required to keep to prove that written information regarding advance directives was provided to new enrollees (for example, a patient's signature acknowledging receipt).

Response: Section 1866(f)(2)(E) of the Act requires HMOs or CMPs to provide written information to adult individuals concerning their rights under State law to accept or refuse medical or surgical treatment and to formulate an advance directive to enrollees at the time of enrollment. Although we encourage recordkeeping actions such as a notation in the beneficiaries' medical record, we are not requiring that an HMO document that it has provided the material to each individual enrollee. Rather, we will verify compliance with this requirement by reviewing the materials provided to new enrollees and examining an HMO's or CMP's systems and procedures to ensure that it provides the materials timely.

Comment: A few commenters expressed concern over the meaning of "at the time of enrollment." Many individuals join HMOs or CMPs through their employers. However, employers often do not relay enrollment information to health care plans until after the effective date of coverage, making the requirement impossible to meet. In addition, the requirement that information be provided at the time of enrollment could force health care plans to mail the advance directive information before other membership materials, such as membership cards and directories, creating unnecessary added costs.

Response: In accordance with section 1866(f)(1)(B) of the Act, § 417.436(d)(1)(ii) requires that an HMO or CMP provide written information concerning its policies that implement advance directives to adult individuals at the time of enrollment (57 FR 8198). In view of the comments we received on this issue, we recognize that it would be helpful to clarify how managed care plans may meet this requirement. For enrollees that join managed care plans as individuals, the meaning of "at the time of enrollment" is relatively straightforward, that is, as soon as possible after the application is received, but before the effective date of coverage. However, for individuals that join managed care plans through an employer group, we are clarifying that "at the time of enrollment" means at the time that the employer group enrolls the beneficiary into the plan. In such situations, the managed care plan may not be informed of the enrollment immediately; therefore, to implement the requirements of the statute, we believe it would be permissible for the employer group to provide, on behalf of the organization, information concerning an adult individual's right to accept or refuse medical or surgical treatment and to formulate an advance directive. In keeping with other provisions of this rule, the HMO or CMP may incorporate such information into the marketing material that the managed care plan supplies to employer groups so that the information is disseminated when the employer distributes other plan marketing materials to potential enrollees.

Comment: One commenter questioned whether "at the time of enrollment" referred not only to individuals' initial enrollments but also to individuals' annual re-enrollments.

Response: We believe that the intent of the legislation is to require that the written advance directives information be provided at the time of initial enrollment. Therefore, we are not requiring that written advance directives material be provided for individuals renewing their enrollments. We have revised § 417.436(d)(1)(ii) to clarify that this information needs to be provided only at the time of initial enrollment.

Comment: Several commenters requested clarification regarding whether a managed care plan's written policies on advance directives must provide detailed information regarding the advance directive policies of its contracting providers. Commenters believe that requiring a plan to disseminate information regarding the policies of its contracting providers would be overly burdensome and duplicative. These commenters believe that health care plans should be allowed to inform enrollees that each provider has its own policies and that enrollees may request more information from the individual provider.

Response: We believe that information regarding whether contracting providers will implement advance directives is an integral part of each managed care plan's advance directives policies. Without such information, enrollees will not be able to make informed decisions regarding advance directives. The interim final rule provided two options describing contracting providers' policies. The first option allows a managed care plan to develop a policy that embraces all of its providers' policies. The second option allows a managed care plan to simply note that differences among its providers policies exist, and that more information is available from the organization upon request. These options do not necessarily require detailed information regarding each provider's policies. For example, if all contracting providers implement all advance directives that meet State requirements, the plan could simply note this information. On the other hand, if one or more of the contracting providers have a more limited policy (for example, a hospital exercising a reservation of conscience), the plan may either (1) provide a written policy that states the restrictions these providers placed on advance directives or (2) note that some providers may object to implementing an advance directive, but that more information is available upon request. At a minimum, plans should have information available upon request as to which contracting institutions place limits on implementing advance directives.

Comment: One commenter believes that the discussion in the preamble to the interim final rule concerning the content and format of the written

information to be provided to each adult individual exceeded the provisions of section 1866(f) of the Act. (See 57 FR 8196.) Specifically, the commenter objected to our statement that the legally required elements of the written information would include a description of the provider's "policies and procedures". The commenter believes that the term "policies and procedures" overstates the provisions of section 1866(f) of the Act.

Response: We believe that the commenter has misinterpreted a parenthetical statement in the interim final rule that the summary notice would need to contain the legally required elements, including a description of the provider's policy and procedures. In accordance with section 1866(f) of the Act, §§ 417.436(d)(1)(i)(B) and 489.102(a)(1)(ii) specify that the written information provided to each adult individual include a description of "the written policies" of an organization or a provider concerning the organization's policies respecting the implementation of an individual's advance directive rights. The information provided to enrollees should be specific to the plan, and include information on the organization's written policies regarding the execution of a beneficiary's advance directive.

Comment: One commenter questioned whether the regulations require physicians that contract with HMOs to develop policies regarding advance directives or if physicians are required to comply with the HMO policy.

Response: The statute and our regulations do not address this issue. The individual physician's role and responsibilities will be determined by State law and the HMO's contracts and policy. For plans that operate in more than one State, the HMO should insure that contracting physicians follow the applicable statutes of the State or States in which they practice.

Comment: One commenter suggested that managed care plans should have to maintain written policies and procedures only for individuals for whom they provide care directly. Thus, plans that arrange for services, but do not provide them directly, would not have to develop policies.

Response: Under sections 1866(f)(1), 1902(a)(57), and 1902(w) of the Act, all managed care plans with Medicare or Medicaid contracts are required to maintain written policies concerning advance directives, with respect to all adult individuals receiving medical care by or through the organization. As noted above, the statute does not authorize exceptions for certain model types.

Comment: One commenter asserted that HMOs and CMPs should not be solely responsible for locating alternate providers if a provider will not honor an advance directive as a matter of conscience.

Response: In accordance with section 1866(f)(1)(B) of the Act, § 417.436(d)(1)(iii) requires that an HMO or CMP document in the medical record whether or not an individual has executed an advance directive. Section 417.436(d)(1)(iii) also specifies that HMOs and CMPs are not required to implement an advance directive if, as a matter of conscience, the provider cannot implement an advance directive and State law allows any health care provider to conscientiously object. However, neither the statute nor the regulations require an HMO or CMP to locate alternative providers when a provider chooses, as a matter of conscience, not to honor an individual's advance directive. We do not believe it is appropriate to require this. However, it is reasonable to expect that assistance would be provided for a transfer at the patient's request. We note that an HMO or CMP would be required to comply with any applicable State law to that effect.

Description of State Law

Comment: One commenter requested that we explicitly state that the requirement for managed care plans to provide information to their enrollees concerning an individual's rights under State law applies only to the law of the State in which the HMO or CMP provides services.

Response: We concur and have revised § 417.436(d)(1)(i)(A) to clarify that HMOs or CMPs are required to provide information that relates to the law of the State in which services are being provided. For plans that have multi-state provider networks, the information should reference the advance directive laws of all States in the service area.

Documentation in Individual Medical Records

Comment: Several commenters questioned who should be ultimately responsible for documenting in an enrollee's medical record whether or not the individual has executed an advance directive—the physician or physician group. Most of these commenters recommended that physicians that practice in HMOs or CMPs should be held responsible, and that the HMO or CMP should not have to ensure that these physicians document the medical record. Another commenter asserted that physicians should not be required to obtain advance directives information on behalf of HMOs or CMPs. This commenter believes that a HMO or CMP should be required to maintain its own advance directives records and relay the information to the physicians.

Response: Sections 1866(f)(1), 1902(a)(57) and 1902(w)(1) of the Act clearly specify that the advance directives requirements apply to "providers and organizations". Thus, we believe that an HMO or CMP is ultimately responsible for ensuring that the existence of an advance directive is documented in an enrollee's medical records. HMOs or CMPs may use any procedures they wish, consistent with State law, to ensure that this requirement is met. We do not believe it would be consistent with the intent of the statute to require any particular process. One possible process would be for the HMO or CMP to amend contracts with its physicians to require them to obtain the information. However, the HMO or CMP would still need to verify that its physicians document in the medical record whether or not an individual has executed an advance directive.

Comment: One commenter requested confirmation that HMOs or CMPs will not be out of compliance with the requirement to document the medical record if some enrollees never have a medical record because they never used medical services.

Response: We agree that if a medical record is not created, the requirement to document in the medical record whether or not an advance directive exists would not apply.

Comment: Several commenters stated that the requirement concerning the documentation of medical records should not be made applicable to individual practice associations (IPAs), network-model or group-model HMOs because these organizations characteristically do not generate or have access to patient medical records. Therefore, these organizations cannot fulfill the requirement that they document in the enrollee's medical record whether or not the individual has executed an advance directive. One commenter suggested that managed care plans, particularly IPAs, should be allowed to use a centralized recordkeeping system rather than the individual medical record to document whether or not the individual has executed an advance directive.

Response: Under sections 1866(f)(1)(B) and 1902(w)(1)(B) of the Act, all managed care organizations must document in the individual's medical record whether or not the individual has executed an advance directive. Managed care plans may use a centralized recordkeeping system to maintain information on whether or not an individual has executed an advance directive. However, the use of a centralized recordkeeping system may not necessarily meet the requirement that managed care plans document in each enrollee's medical record whether or not the individual has executed an advance directive. If the central file is a medical record file, then the use of the centralized file would meet the requirement. If the central file is not a medical file (for example, it only contains enrollment and general policy information concerning advance directives), the managed care plan also would have to document in the medical record whether or not an individual has executed an advance directive. Again, the statute does not authorize exemptions for certain managed care plans due to their organizational structure.

Comment: Several commenters stated that clarification is needed regarding the reasonable steps a managed care plan must take to document in the member's record whether or not the member has executed an advance directive. Several commenters believed that enrollees should be responsible for notifying their health care plan as to whether they have executed an advance directive.

Response: As noted above, the statute requires that each enrollee's medical record contain documentation as to whether or not the enrollee has executed an advance directive. The interim final rule gives several examples of appropriate methods for obtaining the information needed to document medical records (57 FR 8197). For example, a managed care plan may modify its contracts with its primary care providers to require that the advance directive information be recorded when an enrollee's medical record is created. Alternatively, plans could request members to provide this information by mail. Whatever method the plan uses, it must obtain some response from the enrollee. If an enrollee refuses to disclose information regarding whether or not he or she has an advance directive, the managed care plan should record the enrollees refusal to answer.

Comment: One commenter asked if a managed care plan is required to contact patients and ask definitive questions concerning life-sustaining treatment.

Response: Section 417.436(d)(1)(iii) requires only that an HMO or CMP document in the medical record whether or not an enrollee has executed an advance directive. It does not require HMOs or CMPs to document the type of advance directive or ask specific questions regarding an enrollee's wishes for life-sustaining treatment. As we have noted earlier, an HMO or CMP would be required to comply with any applicable State law or other Federal requirement that may make it necessary to take additional steps such as those discussed by the commenter.

Comment: One commenter noted that the interim final rule is unclear as to whether or not the documentation must be done for all current enrollees as well as for all new enrollees.

Response: Section 4206(e)(2) of OBRA '90 specifies that for managed care plans, the advance directive provisions took effect on December 1, 1991. Therefore, documentation of the medical record is required only for new enrollees since that date.

Comment: One commenter expressed concern that managed care plans may face liability if enrollees change, cancel or execute new advance directives after the plan has documented the medical record, since the plan's information may not match the enrollees' wishes.

Response: Neither the statutory provisions nor the regulations concerning advance directives address the issue of liability in cases where the patient changes an advance directive. We would defer to State law for a decision on liability in this type of situation.

Sections 1866(f)(1)(B) and 1902(w)(1)(B) of the Act and implementing regulations require only that the managed care plan document whether or not the enrollee has executed an advance directive, not necessarily the contents of the advance directive. After the medical record is documented, we are not imposing further medical record documentation requirements on managed care plans in this rule. However, if an enrollee informed the plan that he or she had changed or cancelled an advance directive, we would expect a health plan to update the medical record information. In addition, the plan would be responsible for complying with applicable State and Federal requirements regarding the implementation of the new advance directive.

Time Required To Update Descriptions of State Law

Comment: Many managed care plans responded to our request for an estimate of an appropriate amount of time to update information on advance directives after changes in State law. The estimated time frames ranged from 30 days to 1 year after all approvals are obtained.

Response: We have thoroughly reviewed the many suggestions concerning timeframes for updating information on advance directives after changes in State law. Since information concerning advance directives is often included in marketing material, which is reviewed by federal or State regulators on an annual basis, we considered permitting plans to update their advance directive information on an annual basis. For some individuals, however, one of the factors that may contribute to the selection of a plan may be the individual's belief that the plan would honor its advance directive. We believe that distributing erroneous or outdated advance directive information to potential enrollees could unfairly influence their decision to enroll in a given plan. Therefore, as discussed above in section IV.A, managed care plans, like all other providers, are required to update their advance directives information as soon as possible but no later than 90 days after the effective date of a change in State law. Applying the 90-day time limit for plans to update changes in State laws will ensure that potential enrollees are provided with accurate information before enrolling in a plan while at the same time providing managed care plans with a reasonable amount of time in which to update their information. We have revised §§ 417.436(d)(1)(i)(A) and 434.28 to reflect this requirement.

We also have revised § 431.20(b) to require that revisions to the written descriptions of State law must be incorporated in such advance directive information and distributed to Medicaid providers, and HMOs and CMPs, as soon as possible, but no later than 60 days from the effective date of the change. We believe that this requirement is necessary to keep potential and existing enrollees informed about advance directive changes that could affect their care decisions. We note that, in addition to the use of marketing materials, plans may disseminate information about changes in State law concerning advance directive by using their community education programs and procedures, mailing information directly to all enrollees, or using any other method they believe may help further provide enrollees with updated information.

Ensuring Compliance With State Law

Comment: One commenter believes that organizations that contract with providers to provide health care, but do not provide health care directly, should not be required to ensure that providers comply with State law.

Response: Sections 1866(f)(1)(D) and 1902(w)(1)(D) of the Act and implementing regulations at § 417.436(d)(1)(i)(A) require that a prepaid or eligible organization maintain written policies and procedures that ensure compliance with the requirements of applicable State law regarding an adult individual's right under State law to accept or refuse medical or surgical treatment and to formulate an advance directive. As discussed above, there is no statutory basis under which we could exempt certain prepaid health care plans due to their organizational structure.

Comment: One commenter wanted general standards for managed care plans to use in ensuring compliance with State law.

Response: We note that plans have followed varying practices in complying with State law and we do not believe it is necessary or appropriate to prescribe standards to achieve this. State survey agencies would have the opportunity to ensure that plans have complied with State law concerning an adult individual's rights under State law to accept or refuse medical or surgical treatment and to formulate an advance directive.

Education of Staff and Community

Comment: One commenter requested that we define "community" for purposes of a managed care plan's community education responsibilities.

Response: Typically, the community served by a managed care plan is defined as the organization's service area.

Comment: One commenter suggested that HMOs and other health care providers be allowed to combine their community education programs to meet the community education requirement.

Response: In accordance with sections 1866(f)(1)(E) and 1902(w)(1)(E) of the Act, § 417.436(d)(1)(vii) specifically permits HMOs or CMPs to provide community education regarding advance directives either directly or in concert with other providers.

Comment: One commenter requested clarification on what constitutes community education in the case of managed care plans. Specifically, the commenter questioned whether including information on advance directives in the marketing brochure would be adequate.

Response: The meaning of community education is no different for managed care plans than it is for other Medicare and Medicaid providers. Plans can distribute educational materials to the public on advance directives, or they can provide seminars to the public. As mentioned earlier, the community education requirement does not need to be conducted through a community relations department, but information on advance directives must be conveyed to the community. A marketing brochure that contains the required information, and is distributed to the relevant community, may contribute to the statute's community education goals. Although we will evaluate the community education efforts of each managed care plan on an individual basis, generally we believe that activities such as seminars or direct community mailing, in combination with the distribution of marketing materials regarding advance directives, would be needed to satisfy the community education requirements. In summary, there are numerous methods for conducting community education, and we encourage creativity among the plans to reach as large a number of individuals as would be reasonable for their service area.

Comment: One commenter requested clarification regarding whether the educational materials must be approved by HCFA.

Response: Any marketing material that discusses the risk-based or cost-reimbursed HMO programs and is provided to Medicare beneficiaries must be approved by HCFA. Material that discusses advance directives, but does not discuss these programs, does not need to be approved. We do not approve marketing material for HCPPs and Medicaid organizations; however, these organizations must comply with applicable State requirements regarding approval for materials.

Comment: Two commenters questioned how HMOs and CMPs could obtain information on the existence of advance directives through the community education campaigns.

Response: The interim final rule stated that it may prove acceptable for a provider or organization to obtain information on the existence of advance directives through a community education campaign (57 FR 8197). The point of this statement was that we do not wish to limit the alternatives available to a provider or an HMO or CMP for obtaining this information. Thus, if an HMO finds it feasible to collect such information from some of its enrollees during a community education campaign, we would not object. The interim final rule discussed several other more likely methods for obtaining information about the existence of an advance directive, and we urge providers and organizations to use the approach that they find most effective.

Comment: One commenter requested clarification of the requirement for educating staff concerning advance directives.

Response: Sections 1866(f)(1)(E) and 1902(w)(1)(E) of the Act require that a provider or organization educate both staff and the community on issues concerning advance directives. In general, we would expect an organization to provide parallel educational information to its staff as it does for the community, that is, inform the public of their rights under State law to make decisions concerning the receipt of medical care by or through the provider or organization; the right to formulate advance directives; and the provider or organization's implementation policy concerning advance directives. Thus, a managed care plan is responsible for providing staff education to ensure that its advance directive policies and procedures are executed timely and correctly.

C. Comments on Appendices

Comment: Two commenters requested that in our public information document, "Advance Directives—The Patient's Right to Decide", which was published as Appendix I to the interim final rule, nurses should be specifically mentioned as one of the disciplines individuals may wish to talk to. Another commenter suggested that, under the question "What Should I Do With My Advance Directive If I Choose to Have One?", we should recommend that individuals review their advance directives at least annually and communicate any revisions to their physicians. In addition, several organizations submitted suggestions for additions to the organizations and publications listed as "National Resources on Advance Directives", which was published as Appendix II to the preamble of the interim final rule.

Response: We are not reprinting either of these two documents in this final rule. However, we have passed these suggestions on to HCFA's Office of Public Affairs, which is responsible for the development and distribution of this information. We note that the following organizations and publications were suggested by commenters for addition to the national resource list on advance directive issues:

"American Life League, Inc.", P.O. Box 1350, Stafford, Virginia 22554, (703) 659–4171.

"Advance Directive Protocols and the Patient Self-Determination Act: A Resource Manual for the Development of Institutional Protocols." Choice in Dying, 200 Varick Street, New York 10014.

"Patient Self-Determination Act of 1990, Implementation Issues." This document deals specifically with long-term care issues. American Association of Homes and Services for the Aging, 901 E. Street, N.W., Suite 500, Washington, D.C. 20004–2037.

V. Changes to Provisions of the Interim Final Rule

As discussed above in section IV of this preamble, we are making several changes to the regulations based on public comments. The specific revisions to the current advance directive regulations are as follows:

- We are revising §§ 417.436(d)(1)(i)(A), 483.10(b)(8), and 489.102(a)(1)(i) to clarify that providers and HMOs or CMPs are permitted to contract with other entities to furnish information concerning the advance directive requirements but are still legally responsible for ensuring that the statutory requirements are met.
- We are revising §§ 417.436(d)(1)(i)(A), 430.12(c)(1)(ii), 431.20(b), 434.28, and 489.102(a)(1)(i) to clarify our requirements when changes to State advance directive laws are enacted.

When changes to State laws are enacted, States are required under § 431.20(b) to provide revised copies of their descriptions of State law to Medicaid providers and HMOs and CMPs as soon as possible, but no later than 60 days from the effective date of the law. Within that same timeframe, States are required under § 430.12(c)(ii) to amend their State plan.

In turn, providers are required under § 489.102(a)(1)(i) to revise and disseminate the amended informational materials as soon as possible, but no later than 90 days from the effective date of the change in State law. Under §§ 417.436(d)(1)(i)(A)) and 434.28, HMOs and CMPs are required to revise their informational material as soon as possible, but no later than 90 days from the effective date of a change in State law.

- In §§ 417.436(d)(1)(i)(B) and 489.102(a)(1)(ii), we are adding a description of the minimum information that should be contained in a provider's, HMO's, or CMP's statement of limitation if an advance directive cannot be implemented because of an objection on the basis of conscience.
- We are revising §§ 417.436(d)(1)(ii), 483.10(b)(8), and 489.102(e) to clarify our policy on the provision of information about advance directives to family members or a surrogate when an individual is incapacitated. This change codifies in the regulations policy that was set forth in the preamble to the interim final rule.
- We are revising §§ 417.436(d)(1)(vii) and 489.102(a)(6) to clarify that a provider, HMO, or CMP is not required to disseminate during community education efforts the same material it gives to adult individuals at admission. Providers, HMOs and CMPs are not restricted to disseminating the same type of information in all settings; but at a minimum the community education materials should define what constitutes an advance directive, emphasizing that an advance directive is designed to enhance an incapacitated individual's control over medical treatment, and describe applicable State law concerning advance directives. In addition, we have added the requirement that a provider, HMO, or CMP must be able to document its community education efforts.
- We have added new § 417.436(d)(3) and revised § 489.102(a)(4) to require that providers and HMOs or CMPs must inform individuals that complaints concerning non-compliance with the advance directive requirements may be filed with the State survey and certification agency. We have also revised § 484.10(f) to specify that a patient has the right to use the home health hotline to lodge complaints concerning the implementation of the advance directives requirements.
- In §§ 484.10(c)(2)(ii) and 489.102(b)(3)(i), we are specifying that an HHA may furnish advance directive information to a patient at the time of the first home visit, as long as the information is furnished before care is provided. In addition, we are revising § 489.102(b)(3)(ii) to specify that providers of personal care services may furnish advance directive information to a patient at the time of the first home visit, as long as the information is furnished before care is provided. Personal care providers are permitted to contract with another entity to furnish advance directives information but are still legally responsible for ensuring that the advance directive requirements are met.

VI. Impact Statement

For final rules such as this, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a final rule will not have a significant impact on a substantial number of small entities. For purposes of the RFA, we do not consider States or individuals to be small entities.

In our March 6, 1992 interim final rule, we set forth regulations amending the Medicare and Medicaid regulations governing provider agreements and contracts by implementing certain changes made by OBRA '90. Those regulations establish requirements concerning advance directives for States, hospitals, nursing facilities, skilled nursing facilities, providers of home health care or personal care services, hospice programs and managed care plans such as HMOs and CMPs. In our analysis of the impact of the interim final rule, we concluded that performing the functions necessary to meet the requirements of the interim final rule, as required by the statute, would not cause a consequential expenditure of time and effort. Although we received several comments regarding our estimate of the information collection burden associated with these requirements (see section IV of this preamble), commenters generally did not object to our overall conclusion that the advance directives requirements set forth in the interim final rule would not cause a consequential increase in expenditure of time and effort.

This final rule largely confirms provisions of the interim final rule with comment. This final rule makes only minor changes to the current advance directives regulations, such as clarifying our policy on incapacitated individuals. None of the changes to the interim final rule has more than a marginal effect on the overall costs or benefits of the advance directive requirements.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final rule will have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that has fewer than 50 beds and is located outside a Metropolitan Statistical Area.

We have determined, and the Secretary certifies, that this final rule will not have a significant economic impact on the operations of a substantial number of small entities or small rural hospitals. Therefore, we have not prepared a regulatory flexibility analysis or an analysis of the impact of this rule on small rural hospitals.

This regulation was not reviewed by the Office of Management and Budget.

VII. Collection of Information Requirements

Sections 417.436(d)(iii), 417.801(b)(5), 431.107(b)(4), 434.28, 483.10(b)(8), 484.10(c)(2)(ii), and 489.102(a)(2) of the

interim final rule imposed information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These information collections require hospitals, nursing facilities, skilled nursing facilities, providers of home health care or personal care services, hospice programs and HMOs and CMPs to document in the medical record whether or not an individual has executed an advanced directive. We received several comments on our estimates of the collection burdens involved. The comments and our responses are presented in detail in section IV.A of the preamble to this final rule. OMB has approved the information collection requirements set forth in our March 6, 1992 interim final rule through June 30, 1996 (Approval Number 0938–610).

List of Subjects

42 CFR Part 417

Administrative practice and procedure, Health maintenance organizations (HMOs), Medicare, Reporting and recordkeeping requirements.

42 CFR Part 430

Grants to States for Medical Assistance Programs.

42 CFR Part 431

Grant programs—health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 434

Grant programs—health, Health maintenance organizations (HMO), Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 483

Grant programs—health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 484

Administrative practice and procedure, Health facilities, Health professions, Home health agencies, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 489

Health facilities, Medicare, Reporting and recordkeeping requirements.

42 CFR chapter IV is amended as follows:

A. Part 417 is amended as set forth below:

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

1. The authority citation for part 417 continues to read as follows:

Authority: Secs. 1102, 1833(a)(1)(A), 1861(s)(2)(H), 1871, 1874, and 1876 of the Social Security Act (42 U.S.C. 1302, 13951(a)(1)(A), 1395x(s)(2)(H), 1395hh, 1395kk, and 1395mm); sec. 114(c) of Pub. L. 97–248 (42 U.S.C. 1395mm note); secs. 1301 through 1318 of the Public Health Service Act (42 U.S.C. 216 and 300e through 300e–17), unless otherwise noted.

2. In § 417.436, the introductory text of paragraph (d)(1) is republished, paragraphs (d)(1)(i), (d)(1)(ii) and (d)(1)(vii) are revised, the introductory text of paragraph (d)(2) is republished, paragraph (d)(2)(ii) is revised, and paragraph (d)(3) is added to read as follows:

§ 417.436 Rules for enrollees.

* * * * *

(d) *Advance directives.* (1) An HMO or CMP must maintain written policies and procedures concerning advance directives, as defined in § 489.100 of this chapter, with respect to all adult individuals receiving medical care by or through the HMO or CMP and are required to:

(i) Provide written information to those individuals concerning—

(A) Their rights under the law of the State in which the organization furnishes services (whether statutory or recognized by the courts of the State) to make decisions concerning such medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate, at the individual's option, advance directives. Providers are permitted to contract with other entities to furnish this information but are still legally responsible for ensuring that the requirements of this section are met. Such information must reflect changes in State law as soon as possible, but no later than 90 days after the effective date of the State law; and

(B) The HMO's or CMP's written policies respecting the implementation of those rights, including a clear and precise statement of limitation if the HMO or CMP cannot implement an advance directive as a matter of conscience. At a minimum, this statement should:

(*1*) Clarify any differences between institution-wide conscience objections and those that may be raised by individual physicians;

(*2*) Identify the state legal authority permitting such objection; and

(*3*) Describe the range of medical conditions or procedures affected by the conscience objection.

(ii) Provide the information specified in paragraphs (d)(1)(i) of this section to each enrollee at the time of initial enrollment. If an enrollee is incapacitated at the time of initial enrollment and is unable to receive information (due to the incapacitating condition or a mental disorder) or articulate whether or not he or she has executed an advance directive, the HMO or CMP may give advance directive information to the enrollee's family or surrogate in the same manner that it issues other materials about policies and procedures to the family of the incapacitated enrollee or to a surrogate or other concerned persons in accordance with State law. The HMO or CMP is not relieved of its obligation to provide this information to the enrollee once he or she is no longer incapacitated or unable to receive such information. Follow-up procedures must be in place to ensure that the information is given to the individual directly at the appropriate time.

* * * * *

(vii) Provide for community education regarding advance directives that may include material required in paragraph (d)(1)(i)(A) of this section, either directly or in concert with other providers or entities. Separate community education materials may be developed and used, at the discretion of the HMO or CMP. The same written materials are not required for all settings, but the material should define what constitutes an advance directive, emphasizing that an advance directive is designed to enhance an incapacitated individual's control over medical treatment, and describe applicable State law concerning advance directives. An HMO or CMP must be able to document its community education efforts.

(2) The HMO or CMP—(i) * * *

(ii) Is not required to implement an advance directive if, as a matter of conscience, the HMO or CMP cannot implement an advance directive and State law allows any health care provider or any agent of such provider to conscientiously object.

(3) The HMO or CMP must inform individuals that complaints concerning non-compliance with the advance directive requirements may be filed with the State survey and certification agency.

B. Part 430 is amended as set forth below:

PART 430—GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

1. The authority citation for part 430 continues to read as follows:

Authority: Sec. 1202 of the Social Security Act (42 U.S.C. 1302).

Subpart B—State Plans

2. In § 430.12, the introductory text of paragraph (c)(1) is republished, and paragraph (c)(1)(ii) is revised to read as follows:

§ 430.12 Submittal of State plan and plan amendments.

* * * * *

(c) *Plan amendments.* (1) The plan must provide that it will be amended whenever necessary to reflect—

* * * * *

(ii) Material changes in State law, organization, or policy, or in the State's operation of the Medicaid program. For changes related to advance directive requirements, amendments must be submitted as soon as possible, but no later than 60 days from the effective date of the change to State law concerning advance directives.

* * * * *

C. Part 431 is amended as set forth below:

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

1. The authority citation for part 431 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

Subpart A—Single State Agency

2. In § 431.20, paragraph (b) is revised to read as follows:

§ 431.20 Advance directives.

* * * * *

(b) A State Plan must provide that the State, acting through a State agency, association, or other private nonprofit entity, develop a written description of the State law (whether statutory or as recognized by the courts of the State) concerning advance directives, as defined in § 489.100 of this chapter, to be distributed by Medicaid providers and health maintenance organizations (as specified in section 1903(m)(1)(A) of the Act) in accordance with the requirements under part 489, subpart I of this chapter. Revisions to the written descriptions as a result of changes in State law must be incorporated in such descriptions and distributed as soon as possible, but no later than 60 days from the effective date of the change in State law, to Medicaid providers and health maintenance organizations.

D. Part 434 is amended as set forth below:

PART 434—CONTRACTS

1. The authority citation for part 434 continues to read as follows:

Authority: 1102 of the Social Security Act (42 U.S.C. 1302).

Subpart C—Contracts with HMOs and PHPs: Contract Requirements

2. In subpart C, § 434.28 is revised to read as follows:

§ 434.28 Advance Directives.

A risk comprehensive contract with an HMO must provide for compliance with the requirements of subpart I of part 489 of this chapter relating to maintaining written policies and procedures respecting advance directives. This requirement includes provisions to inform and distribute written information to adult individuals concerning policies on advance directives, including a description of applicable State law. Such information must reflect changes in State law as soon as possible, but no later than 90 days after the effective date of the State law.

E. Part 483 is amended as set forth below:

PART 483—REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

1. The authority citation for part 483 continues to read as follows:

Authority: Secs. 1102, 1819(a)–(d), 1861 (j) and (l), 1863, 1871, 1902(a)(28), 1905 (a),(c), and (d), and 1919(a)–(f) of the Social Security Act (U.S.C. 1302, 1395(i)(3)(a)–(f), 1395x (j) and (l), 1395z, 1395hh, 1396a(a)(28), 1396d (a),(c) and (d) and 1396r(a)–(f)), unless otherwise noted.

Subpart B—Requirements for Long-Term Care Facilities

2. In § 483.10, paragraph (b)(7) introductory text is republished, and paragraphs (b)(7)(iv) and (b)(8) are revised to read as follows:

§ 483.10 Resident rights.

* * * * *

(b) *Notice of rights and services.*

* * *

(7) The facility must furnish a written description of legal rights that includes— * * *

(iv) A statement that the resident may file a complaint with the State survey and certification agency concerning resident abuse, neglect, misappropriation of resident property in the facility, and non-compliance with the advance directives requirements.

(8) The facility must comply with the requirements specified in subpart I of part 489 of this chapter relating to maintaining written policies and procedures regarding advance directives. These requirements include provisions to inform and provide written information to all adult residents concerning the right to accept or refuse medical or surgical treatment and, at the individual's option, formulate an advance directive. This includes a written description of the facility's policies to implement advance directives and applicable State law. Facilities are permitted to contract with other entities to furnish this information but are still legally responsible for ensuring that the requirements of this section are met. If an adult individual is incapacitated at the time of admission and is unable to receive information (due to the incapacitating condition or a mental disorder) or articulate whether or not he or she has executed an advance directive, the facility may give advance directive information to the individual's family or surrogate in the same manner that it issues other materials about policies and procedures to the family of the incapacitated individual or to a surrogate or other concerned persons in accordance with State law. The facility is not relieved of its obligation to provide this information to the individual once he or she is no longer incapacitated or unable to receive such information. Follow-up procedures must be in place to provide the information to the individual directly at the appropriate time.

* * * * *

F. Part 484 is amended as set forth below:

PART 484—CONDITIONS OF PARTICIPATION: HOME HEALTH AGENCIES

1. The authority citation for part 484 continues to read as follows:

Authority: Sec. 1102, 1861, 1866(a), 1871, and 1891 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395cc(a), 1395hh, and 1395bbb).

Subpart B—Administration

2. In § 484.10, paragraphs (c)(2)(ii) and (f) are revised to read as follows:

§ 484.10 Condition of participation: Patient rights.

* * * * *

(c) * * *

(2) * * *

(ii) The HHA complies with the requirements of subpart I of part 489 of this chapter relating to maintaining written policies and procedures

regarding advance directives. The HHA must inform and distribute written information to the patient, in advance, concerning its policies on advance directives, including a description of applicable State law. The HHA may furnish advance directives information to a patient at the time of the first home visit, as long as the information is furnished before care is provided.

* * * * *

(f) *Standard: Home health hotline.* The patient has the right to be advised of the availability of the toll-free HHA hotline in the State. When the agency accepts the patient for treatment or care, the HHA must advise the patient in writing of the telephone number of the home health hotline established by the State, the hours of its operation, and that the purpose of the hotline is to receive complaints or questions about local HHAs. The patient also has the right to use this hotline to lodge complaints concerning the implementation of the advance directives requirements.

G. Part 489 is amended as set forth below:

PART 489—PROVIDER AND SUPPLIER AGREEMENTS

1. The authority citation for part 489 continues to read as follows:

Authority: Secs. 1102, 1861, 1864, 1866, 1867, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395aa, 1395cc, 1395dd, and 1395hh) and sec. 602 (k) of Pub. L. 98–21 (42 U.S.C. 1395ww note).

Subpart I—Advance Directives

2. In § 489.102, paragraph (a) introductory text is republished, paragraphs (a)(1), (a)(2), (a)(4) and (a)(6) are revised, paragraph (b) introductory text is republished, paragraph (b)(3) is revised, paragraph (c) introductory text is republished, paragraph (c)(2) is revised, and paragraph (e) is added to read as follows:

§ 489.102 Requirements for providers.

(a) Hospitals, rural primary care hospitals, skilled nursing facilities, nursing facilities, home health agencies, providers of home health care (and for Medicaid purposes, providers of personal care services), and hospices must maintain written policies and procedures concerning advance directives with respect to all adult individuals receiving medical care by or through the provider and are required to:

(1) Provide written information to such individuals concerning—

(i) An individual's rights under State law (whether statutory or recognized by the courts of the State) to make decisions concerning such medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate, at the individual's option, advance directives. Providers are permitted to contract with other entities to furnish this information but are still legally responsible for ensuring that the requirements of this section are met. Providers are to update and disseminate amended information as soon as possible, but no later than 90 days from the effective date of the changes to State law; and

(ii) The written policies of the provider or organization respecting the implementation of such rights, including a clear and precise statement of limitation if the provider cannot implement an advance directive on the basis of conscience. At a minimum, a provider's statement of limitation should:

(A) Clarify any differences between institution-wide conscience objections and those that may be raised by individual physicians;

(B) Identify the state legal authority permitting such objection; and

(C) Describe the range of medical conditions or procedures affected by the conscience objection.

(2) Document in the individual's medical record whether or not the individual has executed an advance directive;

* * * * *

(4) Ensure compliance with requirements of State law (whether statutory or recognized by the courts of the State) regarding advance directives. The provider must inform individuals that complaints concerning the advance directive requirements may be filed with the State survey and certification agency;

* * * * *

(6) Provide for community education regarding issues concerning advance directives that may include material required in paragraph (a)(1) of this section, either directly or in concert with other providers and organizations. Separate community education materials may be developed and used, at the discretion of providers. The same written materials do not have to be provided in all settings, but the material should define what constitutes an advance directive, emphasizing that an advance directive is designed to enhance an incapacitated individual's control over medical treatment, and describe applicable State law concerning advance directives. A provider must be able to document its community education efforts.

(b) The information specified in paragraph (a) of this section is furnished: * * *

(3) (i) In the case of a home health agency, in advance of the individual coming under the care of the agency. The HHA may furnish advance directives information to a patient at the time of the first home visit, as long as the information is furnished before care is provided.

(ii) In the case of personal care services, in advance of the individual coming under the care of the personal care services provider. The personal care provider may furnish advance directives information to a patient at the time of the first home visit, as long as the information is furnished before care is provided.

* * * * *

(c) The providers listed in paragraph (a) of this section—* * *

(2) Are not required to implement an advance directive if, as a matter of conscience, the provider cannot implement an advance directive and State law allows any health care provider or any agent of such provider to conscientiously object.

* * * * *

(e) If an adult individual is incapacitated at the time of admission or at the start of care and is unable to receive information (due to the incapacitating conditions or a mental disorder) or articulate whether or not he or she has executed an advance directive, then the provider may give advance directive information to the individual's family or surrogate in the same manner that it issues other materials about policies and procedures to the family of the incapacitated individual or to a surrogate or other concerned persons in accordance with State law. The provider is not relieved of its obligation to provide this information to the individual once he or she is no longer incapacitated or unable to receive such information. Follow-up procedures must be in place to provide the information to the individual directly at the appropriate time.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; Program No. 93.774, Medicare—Supplementary Medical Insurance Program; and Program No. 93.778, Medical Assistance Program)

Dated: May 31, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 95–15550 Filed 6–26–95; 8:45 am]

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List of Subjects in 34 CFR Part 263

Grant programs-education, Indians-education, Reporting and recordkeeping requirements, Scholarships and fellowships.

(Catalog of Federal Domestic Assistance Numbers: 84.087 Indian Education—Fellowships for Indian Students; and 84.299 Indian Education—Special Programs)

Dated: June 9, 1995.

Thomas W. Payzant,

Assistant Secretary for Elementary and Secondary Education.

The Secretary amends Title 34 of the Code of Federal Regulations by revising Part 263 to read as follows:

PART 263—INDIAN FELLOWSHIP AND PROFESSIONAL DEVELOPMENT PROGRAMS

Subpart A—General

Sec.

263.1 What are the Indian Fellowship and Professional Development Programs?
263.2 Who is eligible to apply under the Indian Fellowship Program?
263.3 What definitions apply to the Indian Fellowship and Professional Development Programs?
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263.37 What are the payback reporting requirements?

Subpart D—How are Fellowship Payments Made?

263.40 How are payments made?

Authority: 20 U.S.C. 7832 and 7833, unless otherwise noted.

Subpart A—General

§ 263.1 What are the Indian Fellowship and Professional Development Programs?

(a) The Indian Fellowship Program provides fellowships to enable Indian students to pursue a course of study leading to—

(1) A postbaccalaureate degree in medicine, law, education, psychology, clinical psychology, or related field; or

(2) An undergraduate or postbaccalaureate degree in business administration, engineering, natural resources, or a related field.

(b) The Professional Development Program provides grants to eligible entities to—

(1) Increase the number of qualified Indian individuals in professions that serve Indian people;

(2) Provide training to qualified Indian individuals to become teachers, administrators, teacher aides, social workers, and ancillary educational personnel; and

(3) Improve the skills of qualified Indian individuals who serve in the capacities described in paragraph (b)(2) of this section.

(c) The Indian Fellowship and Professional Development Programs require individuals who receive training under either program to—

(1) Perform work related to the training received under either program and that benefits Indian people, or to repay all or a prorated part of the assistance received under the program; and

(2) Report to the Secretary on the individual's compliance with the work requirement.

(Authority: 20 U.S.C. 7832 and 7833)

§ 263.2 Who is eligible to apply under the Indian Fellowship Program?

In order to be eligible for a fellowship an applicant must be—

(a) An Indian as defined in § 263.3 of this part;

(b) A United States citizen; and

(c)(1) Currently in attendance or have been accepted for admission as a full-time undergraduate or graduate student at an accredited institution of higher education in one of the fields listed in § 263.4 or a related field; and

(2) Recognized by the institution as a degree candidate.

(d) Eligible under 34 CFR 75.60.

(Authority: 20 U.S.C. 7833; 20 U.S.C. 1221e-3(a)(1) and 3474)

§ 263.3 What definitions apply to the Indian Fellowship and Professional Development Programs?

The following definitions apply to the Indian Fellowship and the Professional Development Programs:

Department means the U.S. Department of Education.

Dependent allowance means costs for the care of minor children who reside with the Fellow.

Expenses means tuition and required fees; required university health insurance; room, personal living expenses, and board at or near the institution; dependent allowance; instructional supplies; and reasonable travel and research costs associated with doctoral dissertation completion.

Fellow means the recipient of a Fellowship under the Indian Fellowship Program. The term "Fellow" also includes individual project participants under the Professional Development Program with regard to the payback provisions contained in sections 263.35–263.37 of this part.

Fellowship means an award under the Indian Fellowship Program.

Full course load means the number of credit hours that the institution requires of a full-time student.

Full-time student means a student who—

(1) Is a degree candidate;

(2) Carries a full course load; and

(3) Is not employed for more than 20 hours a week.

Good standing means a cumulative grade point average of at least 2.0 on a 4.0 grade point scale in which failing grades are computed as part of the average, or another appropriate standard established by the institution.

Graduate degree means a postbaccalaureate degree awarded by an institution of higher education beyond the undergraduate level.

Indian means an individual who is—

(1) A member of an Indian tribe or band, as membership is defined by the Indian tribe or band, including any tribe or band terminated since 1940, and any tribe or band recognized by the State in which the tribe or band resides; or

(2) A descendant, in the first or second degree, of an individual described in paragraph (1) of this definition; or

(3) Considered by the Secretary of the Interior to be an Indian for any purpose; or

(4) An Eskimo, Aleut, or other Alaska Native; or

(5) A member of an organized Indian group that received a grant under the Indian Education Act of 1988 as it was in effect October 19, 1994.

Institution of higher education means an accredited college or university within the United States leading to a baccalaureate or postbaccalaureate degree.

Payback means work-related service or cash reimbursement to the Department of Education for the training received under the Indian Fellowship or Professional Development Program.

Secretary means the Secretary of the Department of Education or an official

or employee of the Department acting for the Secretary under a delegation of authority.

Stipend means that portion of an award that is used for room and board and personal living expenses.

Undergraduate degree means a baccalaureate (bachelor's) degree awarded by an institution of higher education.

(Authority: 20 U.S.C. 7832 and 7833)

§ 263.4 What are the allowable fields of study in the Indian Fellowship Program?

(a) The following are allowable fields for an undergraduate degree under this program:

(1) Business Administration.
(2) Engineering.
(3) Natural Resources.

(b) The following are allowable fields for a graduate degree under this program:

(1) Medicine.
(2) Clinical Psychology.
(3) Law.
(4) Education.
(5) Psychology.
(6) Engineering.
(7) Natural Resources.
(8) Business Administration.

(c) The Secretary considers under paragraphs (a) and (b), on a case-by-case basis, the eligibility of applications for fellowships in related fields of study.

(Authority: 20 U.S.C. 7833)

§ 263.5 What does a fellowship award include?

(a) The Secretary awards a fellowship in an amount up to, but not more than, the expenses as defined in this part. The assistance provided by the program either—

(1) Fully finances a student's educational expenses; or

(2) Supplements other financial aid, including Federal funding, other than loans, for meeting educational expenses.

(b) The Secretary announces the expected maximum amounts for subsistence and other fellowship costs in the annual application notice published in the **Federal Register**.

(Authority: 20 U.S.C. 7833)

§ 263.6 What is the time period for a fellowship award?

(a) The Secretary awards a fellowship for a period of time not exceeding—

(1) Four academic years for an undergraduate or doctorate degree; and

(2) Two academic years for a master's degree.

(b) With prior approval from the Secretary, summer school may be allowed for eligible continuation students after completion of the first academic year.

(Authority: 20 U.S.C. 7833)

Subpart B—How Does the Secretary Select Fellows?

§ 263.20 What priority is given to certain applicants?

The Secretary awards not more than 10 percent of the fellowships, on a priority basis, to persons receiving training in guidance counseling with a specialty in the area of alcohol and substance abuse counseling and education.

(Authority: 20 U.S.C. 7833)

§ 263.21 What should the fellowship application contain?

In addition to the requirements specified in § 263.22 of this part, an applicant shall provide evidence that—

(a) The applicant is Indian as defined in § 263.3 of this part. Evidence may be in the form of—

(1)(i) A copy of the applicant's documentation of tribal enrollment or membership; or

(ii) A copy of the parent's or grandparent's documentation of tribal enrollment or membership, with supporting birth certificates or similar documents showing the applicant's descendence from the enrolled member;

(2) A letter of certification on official letterhead with the appropriate signature from a Federally or State recognized tribe or band; or

(3) A certificate of degree of Indian blood (CDIB) issued by an authorized representative of the Bureau of Indian Affairs or an official of a Federally recognized tribe.

(b)(1) The applicant is currently in attendance or has been accepted for admission as a full-time student at an accredited institution of higher education in one of the eligible fields of study listed in § 263.4; or

(2) For an applicant who has not yet been accepted for admission, documentation that the applicant is accepted by an accredited institution of higher education by a date to be specified by the Secretary.

(c)(1) The most current official high school and, if appropriate, undergraduate transcripts, for undergraduate applicants; or

(2) The most current official undergraduate and, if appropriate, graduate transcripts, for graduate applicants.

(d) The certification required under 34 CFR 75.61.

(Approved by the Office of Management and Budget under control number 1810–0020)

(Authority: 20 U.S.C. 7833; 20 U.S.C. 1221e-3(a)(1) and 3474).

§ 263.22 How does the Secretary evaluate applications?

(a) The Secretary reviews and ranks an application with other applications for the same field and related fields of study.

(b) The following criteria, with the total number of points available in parenthesis, are used to evaluate an application for a new fellowship award:

(1) *Official academic record (60 points).* The Secretary considers the quality of the applicant's academic record by reviewing—

(i) The applicant's grade point average and, if applicable, standardized test scores, such as the Scholastic Aptitude Test (SAT), American College Testing Assessment Program (ACT), Graduate Record Examination (GRE), Law School Admissions Test (LSAT), Medical College Admission Test (MCAT), and achievement tests.

(ii) The applicant's official transcripts and any grade reports.

(2) *Letters of recommendation (15 points).* The Secretary considers the applicant's potential for success in completing the academic requirements for his or her field of study by reviewing one letter of recommendation from each of the following categories—

(i) A school principal, teacher, academic or non-academic instructor or counselor, a college professor, or academic advisor;

(ii) A member of the community or civic leader who has observed the applicant in educational, social or civic activities; and

(iii) A tribal representative or an Indian community member.

(3) *Commitment essay (25 points).* The Secretary considers the applicant's commitment by reviewing an essay, written by the applicant, that addresses—

(i) The applicant's career goals and why the chosen field of study will benefit Indian people;

(ii) The applicant's life experiences, and personal and family expectations that will enhance the applicant's anticipated career accomplishments; and

(iii) The applicant's anticipated commitment to providing service to Indian people.

(Approved by the Office of Management and Budget under control number 1810–0020)

(Authority: 20 U.S.C. 7833)

Subpart C—What Conditions Must be Met by Fellows?

§ 263.30 What are the basic requirements of a Fellow?

A Fellow shall—

(a) Start school during the first semester of the award at the institution named on the grant award document and complete at least one full academic term;

(b) Submit to the Secretary two copies of his or her official grade report at the close of each academic term, and upon completion of the training program, at that institution;

(c) Submit an annual continuation application, in the form and timeframes specified by the Secretary, to request funding for each remaining academic year approved under the initial application;

(d) Request a written leave of absence at least 30 days prior to withdrawal, unless in an emergency situation, from the Secretary for any interruption in his or her program of academic studies; and

(e) Sign an agreement, at the time of the award, with the Department to meet the provisions of the payback requirement.

(Approved by the Office of Management and Budget under control number 1810–0020)

(Authority: 20 U.S.C. 7833)

§ 263.31 What information must be submitted after a fellowship is awarded?

To verify further the accuracy of the information provided in the application, the applicant shall provide all information and documents as requested by the Secretary, including information on other financial aid sources for educational purposes. The applicant's failure to provide the requested information and documents invalidates the application and the Secretary will not consider it for funding.

(Approved by the Office of Management and Budget under control number 1810–0020)

(Authority: 20 U.S.C. 7833)

§ 263.32 What are the requirements for a leave of absence?

(a) The Secretary may approve a leave of absence, for a period not longer than one academic year, provided a Fellow has successfully completed at least one academic year.

(b) A written request for a leave of absence shall be submitted to the Secretary not less than 30 days prior to withdrawal or completion of a grading period, unless an emergency situation has occurred and the Secretary waives the prior notification requirement.

(c) The Secretary permits a leave of absence only if the institution certifies that the Fellow is eligible to resume his or her course of study at the end of the leave absence.

(d) The Secretary shall withdraw any remaining funds of the Fellow's award when a leave of absence has occurred prior to the end of an academic term.

(Approved by the Office of Management and Budget under control number 1810–0020)

(Authority: 20 U.S.C. 7833)

§ 263.33 What is required for continued funding under a fellowship?

(a) The Secretary reviews the status of each Fellow at the end of each year and continues support only if the Fellow—

(1) Has complied with requirements under this part;

(2) Has remained a full-time student in good standing in the field in which the fellowship was awarded; and

(3) Has submitted a noncompeting continuation application requesting additional support.

(b) A fellowship terminates when the Fellow receives the degree being sought or after the Fellow has received the fellowship for the maximum number of years allowed as defined in § 263.6 of this part, whichever comes first.

(Authority: 20 U.S.C. 7833)

§ 263.34 When is a fellowship discontinued?

(a) The Secretary may discontinue the fellowship, if the Fellow—

(1) Fails to comply with the provisions under this part, including failure to obtain an approved leave of absence under § 263.32, or with the terms and conditions of the fellowship award; or

(2) Fails to report any change in his or her academic status.

(b) The Secretary will discontinue a fellowship only after providing reasonable notice and an opportunity for the Fellow to rebut, in writing or in an informal meeting with the responsible official in the Department of Education, the basis for the decision.

(Authority: 20 U.S.C. 7833)

§ 263.35 What are the payback requirements?

(a) Individuals receiving assistance under the Indian Fellowship Program or the Professional Development Program are required to—

(1) Perform work related to the training received and that benefits Indian people; or

(2) Repay all or a prorated part of the assistance received.

(b) The period of time required for a work-related payback is equivalent to the total period of time for which training was actually received under the Indian Fellowship Program or Professional Development Program.

(c) The cash payback required shall be equivalent to the total amount of funds received and expended for training received under either of these programs and may be prorated based on any approved work-related service the participant performs.

(Approved by the Office of Management and Budget under control number 1810–0020)

(Authority: 20 U.S.C. 7832 and 7833)

§ 263.36 When does payback begin?

(a) For all fellows who complete their training under the Indian Fellowship Program or Professional Development Program, except for medical degree and doctoral degree candidates, payback shall begin within six months from the date of completion of the training.

(1) For fellows in a doctoral degree program requiring a dissertation, payback shall begin not later than two years after the program's academic course work has been completed or the institution determines the student is no longer eligible to participate in the training program, whichever occurs first.

(i) After academic course work has been completed, fellows in doctoral degree programs shall submit an annual written report to the Secretary on the status of the dissertation.

(ii) Fellows will provide written notification to the Secretary, within 30 days, of completion of the dissertation and the participant's plans for completing a work-related or cash payback.

(2) For fellows in a doctoral degree program with clinical or internship requirements, payback shall begin within 6 months after the clinical or internship requirements have been met or the institution determines the student is no longer eligible to participate in the training program, whichever occurs first.

(i) After academic course work has been completed, fellows in a doctoral degree program with clinical or internship requirements shall submit an annual written report to the Secretary on the status of completion of the clinical or internship requirements.

(ii) Fellows will provide written notification to the Secretary, within 30 days, of completion of the clinical or internship requirements and the participant's plans for completing a work-related or cash payback.

(3) For fellows in a medical degree program, payback shall begin six months from the date that all residency requirements of the program have been met or the institution determines the student is no longer eligible to participate in the training program, whichever occurs first.

(i) After academic course work has been completed, fellows in a medical degree program shall submit an annual written report to the Secretary on the status of completion of the residency requirements of the program.

(ii) Fellows will provide written notification to the Secretary, within 30 days, of completion of the residency requirements and the participant's plans for completing a work-related or cash payback.

(b) For fellows who do not complete their training under the Indian Fellowship Program or Professional Development Program, payback shall begin within six months from the date the Fellow leaves the Indian Fellowship or Professional Development Program, unless he or she continues as a full-time student without interruption, in a program leading to a degree in an accredited institution of higher education.

(1) If the Fellow leaves the Indian Fellowship Program or Professional Development Program, but plans to continue his or her education as a full-time student, the Secretary may defer the payback requirement until the participant has completed his or her educational program. Written requests for deferment shall be submitted to the Secretary within 30 days of leaving the Indian Fellowship Program or the Professional Development Program and shall provide the following information—

(i) The name of the accredited institution the student will be attending;

(ii) A copy of the letter of admission from the institution;

(iii) The degree being sought; and

(iv) The projected date of completion.

(2) After approval by the Secretary for deferment of the payback provision on the basis of continuing as a full-time student, former fellows are required to submit to the Secretary a status report from an academic advisor or other authorized representative of the institution of higher education, showing verification of enrollment and status, after every grading period.

(Approved by the Office of Management and Budget under control number 1810–0020)

(Authority: 20 U.S.C. 7832 and 7833)

§ 263.37 What are the payback reporting requirements?

(a) *Written notice.* Participants shall submit to the Secretary, within 30 days of completion of their training program, a written notice of intent to complete a work-related or cash payback, or to continue in a degree program as a full-time student.

(b) *Work-related payback.* If the participant proposes a work-related payback, the written notice of intent shall include information explaining how the work-related service is related to the training received and benefits Indian people.

(1) For work-related service, the Secretary shall review each participant's payback plan to determine if the work-related service is related to the training received and benefits Indian people. The Secretary approves the payback plan if a determination is made that the work-related service to be performed is related to the training received and benefits Indian people, meets all applicable statutory and regulatory requirements, and is otherwise appropriate.

(2) The payback plan for work-related service shall identify where, when, the type of service, and for whom the work will be performed.

(3) A participant shall notify the Secretary in writing of any change in the work-related service being performed within 30 days of such change.

(4) For work-related payback, individuals shall submit a status report every six months beginning from the date the work-related service is to begin. The reports shall include a certification from the participant's employer that the service or services have been performed without interruption.

(4) Upon written request, and if appropriate, the Secretary may extend the period for completing a work-related payback by a total of 18 months.

(5) For participants that initiate, but cannot complete, a work-related payback, the payback reverts to a cash payback.

(c) *Cash payback.* If a cash payback is to be made, the Department will contact the participant to establish an appropriate schedule for payments.

(Approved by the Office of Management and Budget under control number 1810–0020)

(Authority: 20 U.S.C. 7832 and 7833)

Subpart D—How are Fellowship Payments Made?

§ 263.40 How are payments made?

(a) Fellowship payments are made directly to the institution of higher education where a Fellow is enrolled, with stipends provided to the Fellow in installments by the institution. No fewer than two installments per academic year may be made.

(b) If a Fellow transfers to another institution, the fellowship may also be transferred provided the Fellow maintains basic eligibility for the award.

(c) A Fellow who officially or unofficially withdraws or is expelled from an institution before completion of a term shall refund a prorated portion of the stipends received, as determined by the Secretary. The Secretary will require the institution to return any unexpended funds.

(Authority: 20 U.S.C. 7833)

[FR Doc. 95–15655 Filed 6–26–95; 8:45 am]

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Federal Register

Tuesday
June 27, 1995

Part III

Department of Education

34 CFR Part 263

Indian Fellowship and Professional Development Programs; Final Rule and New Awards Applications for FY 1995; Notice

DEPARTMENT OF EDUCATION

RIN 1810–AA79

34 CFR Part 263

Indian Fellowship and Professional Development Programs

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations that govern the competition of new fiscal year (FY) 1995 grants for the Indian Fellowship Program. This program is authorized under Title IX of the Elementary and Secondary Education Act (ESEA) of 1965, as amended by the Improving America's Schools Act of 1994, enacted October 20, 1994. These regulations identify eligible applicants for the program and the specific application and other program requirements that must be met in order to be considered for funding. These regulations also provide the requirements for the new payback provisions that apply to both the Indian Fellowship Program and the Professional Development Program. These regulations will govern the grant application process for new FY 1995 awards for the Indian Fellowship Program. In addition, the new payback provisions apply to the FY 1995 Professional Development Program.

EFFECTIVE DATE: These regulations take effect July 27, 1995.

FOR FURTHER INFORMATION CONTACT: Cathie Martin. Telephone: (202) 260–1683. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On October 20, 1994, the Professional Development Program and the Indian Fellowship Program were substantially revised and recodified as, respectively, sections 9122 and 9123 of Subpart 2 of Part A of Title IX of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 103–382. These regulations identify eligible applicants for the Indian Fellowship program and address the specific program requirements, including application requirements and requirements concerning the new payback provisions that apply to the Indian Fellowship Program, that must be met in order to be considered for funding.

In addition, certain of these regulations govern the Professional Development Program (Section 263.3 *Definitions*, and sections 263.1(b)–(c) and 263.35–263.37, concerning the new payback provisions that also apply to this program).

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Department of Education to offer interested parties the opportunity to comment on proposed regulations. However, in order to make timely grant awards in fiscal year (FY) 1995, the Assistant Secretary, in accordance with section 437(d)(1) of the General Education Provisions Act, has decided to issue these final regulations, which will apply only to the FY 1995 grant competitions in the Indian Fellowship and Professional Development Programs. These regulations are being published as final regulations in their entirety (rather than amending portions of the existing regulations) for the convenience of the applicants in these competitive grant programs. In addition, certain provisions of these regulations govern the FY 1995 Professional Development Program.

The Assistant Secretary will publish, later this year, a notice of proposed rulemaking (NPRM) for these programs and will offer interested parties the opportunity to comment. After comments are considered, another final rule will be published that will govern the grant competitions for FY 1996 and succeeding fiscal years. In developing the NPRM, the Assistant Secretary is interested in receiving suggestions for improving these regulations. Please send your suggestions to Cathie Martin, Office of Indian Education, U.S. Department of Education, 600 Independence Avenue, SW, Portals Building, Room 4300, Washington, D.C. 20202–6335.

Executive Order 12866

These regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with these regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the heading Paperwork Reduction Act of 1980.

In assessing the potential costs and benefits—both quantitative and qualitative—of these regulations, the Secretary has determined that the benefits of the regulations justify the costs.

Assessment of Educational Impact

Based on the Department's review, the Secretary has determined that these regulations do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 263

Grant programs-education, Indians-education, Reporting and recordkeeping requirements, Scholarships and fellowships.

(Catalog of Federal Domestic Assistance Numbers: 84.087 Indian Education—Fellowships for Indian Students; and 84.299 Indian Education—Special Programs)

Dated: June 9, 1995.

Thomas W. Payzant,

Assistant Secretary for Elementary and Secondary Education.

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(2) An undergraduate or postbaccalaureate degree in business administration, engineering, natural resources, or a related field.

(b) The Professional Development Program provides grants to eligible entities to—

(1) Increase the number of qualified Indian individuals in professions that serve Indian people;

(2) Provide training to qualified Indian individuals to become teachers, administrators, teacher aides, social workers, and ancillary educational personnel; and

(3) Improve the skills of qualified Indian individuals who serve in the capacities described in paragraph (b)(2) of this section.

(c) The Indian Fellowship and Professional Development Programs require individuals who receive training under either program to—

(1) Perform work related to the training received under either program and that benefits Indian people, or to repay all or a prorated part of the assistance received under the program; and

(2) Report to the Secretary on the individual's compliance with the work requirement.

(Authority: 20 U.S.C. 7832 and 7833)

§ 263.2 Who is eligible to apply under the Indian Fellowship Program?

In order to be eligible for a fellowship an applicant must be—

(a) An Indian as defined in § 263.3 of this part;

(b) A United States citizen; and

(c)(1) Currently in attendance or have been accepted for admission as a full-time undergraduate or graduate student at an accredited institution of higher education in one of the fields listed in § 263.4 or a related field; and

(2) Recognized by the institution as a degree candidate.

(d) Eligible under 34 CFR 75.60.

(Authority: 20 U.S.C. 7833; 20 U.S.C. 1221e-3(a)(1) and 3474)

§ 263.3 What definitions apply to the Indian Fellowship and Professional Development Programs?

The following definitions apply to the Indian Fellowship and the Professional Development Programs:

Department means the U.S. Department of Education.

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Expenses means tuition and required fees; required university health insurance; room, personal living expenses, and board at or near the institution; dependent allowance; instructional supplies; and reasonable travel and research costs associated with doctoral dissertation completion.

Fellow means the recipient of a Fellowship under the Indian Fellowship Program. The term "Fellow" also includes individual project participants under the Professional Development Program with regard to the payback provisions contained in sections 263.35–263.37 of this part.

Fellowship means an award under the Indian Fellowship Program.

Full course load means the number of credit hours that the institution requires of a full-time student.

Full-time student means a student who—

(1) Is a degree candidate;

(2) Carries a full course load; and

(3) Is not employed for more than 20 hours a week.

Good standing means a cumulative grade point average of at least 2.0 on a 4.0 grade point scale in which failing grades are computed as part of the average, or another appropriate standard established by the institution.

Graduate degree means a postbaccalaureate degree awarded by an institution of higher education beyond the undergraduate level.

Indian means an individual who is—

(1) A member of an Indian tribe or band, as membership is defined by the Indian tribe or band, including any tribe or band terminated since 1940, and any tribe or band recognized by the State in which the tribe or band resides; or

(2) A descendant, in the first or second degree, of an individual described in paragraph (1) of this definition; or

(3) Considered by the Secretary of the Interior to be an Indian for any purpose; or

(4) An Eskimo, Aleut, or other Alaska Native; or

(5) A member of an organized Indian group that received a grant under the Indian Education Act of 1988 as it was in effect October 19, 1994.

Institution of higher education means an accredited college or university within the United States leading to a baccalaureate or postbaccalaureate degree.

Payback means work-related service or cash reimbursement to the Department of Education for the training received under the Indian Fellowship or Professional Development Program:

Secretary means the Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

Stipend means that portion of an award that is used for room and board and personal living expenses.

Undergraduate degree means a baccalaureate (bachelor's) degree awarded by an institution of higher education.

(Authority: 20 U.S.C. 7832 and 7833)

§ 263.4 What are the allowable fields of study in the Indian Fellowship Program?

(a) The following are allowable fields for an undergraduate degree under this program:

(1) Business Administration.

(2) Engineering.

(3) Natural Resources.

(b) The following are allowable fields for a graduate degree under this program:

(1) Medicine.

(2) Clinical Psychology.

(3) Law.

(4) Education.

(5) Psychology.

(6) Engineering.

(7) Natural Resources.

(8) Business Administration.

(c) The Secretary considers under paragraphs (a) and (b), on a case-by-case basis, the eligibility of applications for fellowships in related fields of study.

(Authority: 20 U.S.C. 7833)

§ 263.5 What does a fellowship award include?

(a) The Secretary awards a fellowship in an amount up to, but not more than, the expenses as defined in this part. The assistance provided by the program either—

(1) Fully finances a student's educational expenses; or

(2) Supplements other financial aid, including Federal funding, other than loans, for meeting educational expenses.

(b) The Secretary announces the expected maximum amounts for subsistence and other fellowship costs in the annual application notice published in the **Federal Register**.

(Authority: 20 U.S.C. 7833)

§ 263.6 What is the time period for a fellowship award?

(a) The Secretary awards a fellowship for a period of time not exceeding—

(1) Four academic years for an undergraduate or doctorate degree; and

(2) Two academic years for a master's degree.

(b) With prior approval from the Secretary, summer school may be allowed for eligible continuation students after completion of the first academic year.

(Authority: 20 U.S.C. 7833)

Subpart B—How Does the Secretary Select Fellows?

§ 263.20 What priority is given to certain applicants?

The Secretary awards not more than 10 percent of the fellowships, on a priority basis, to persons receiving training in guidance counseling with a specialty in the area of alcohol and substance abuse counseling and education.

(Authority: 20 U.S.C. 7833)

§ 263.21 What should the fellowship application contain?

In addition to the requirements specified in § 263.22 of this part, an applicant shall provide evidence that—

(a) The applicant is Indian as defined in § 263.3 of this part. Evidence may be in the form of—

(1)(i) A copy of the applicant's documentation of tribal enrollment or membership; or

(ii) A copy of the parent's or grandparent's documentation of tribal enrollment or membership, with supporting birth certificates or similar documents showing the applicant's descendance from the enrolled member;

(2) A letter of certification on official letterhead with the appropriate signature from a Federally or State recognized tribe or band; or

(3) A certificate of degree of Indian blood (CDIB) issued by an authorized representative of the Bureau of Indian Affairs or an official of a Federally recognized tribe.

(b)(1) The applicant is currently in attendance or has been accepted for admission as a full-time student at an accredited institution of higher education in one of the eligible fields of study listed in § 263.4; or

(2) For an applicant who has not yet been accepted for admission, documentation that the applicant is accepted by an accredited institution of higher education by a date to be specified by the Secretary.

(c)(1) The most current official high school and, if appropriate, undergraduate transcripts, for undergraduate applicants; or

(2) The most current official undergraduate and, if appropriate, graduate transcripts, for graduate applicants.

(d) The certification required under 34 CFR 75.61.

(Approved by the Office of Management and Budget under control number 1810–0020)

(Authority: 20 U.S.C. 7833; 20 U.S.C. 1221e-3(a)(1) and 3474).

§ 263.22 How does the Secretary evaluate applications?

(a) The Secretary reviews and ranks an application with other applications for the same field and related fields of study.

(b) The following criteria, with the total number of points available in parenthesis, are used to evaluate an application for a new fellowship award:

(1) *Official academic record (60 points).* The Secretary considers the quality of the applicant's academic record by reviewing—

(i) The applicant's grade point average and, if applicable, standardized test scores, such as the Scholastic Aptitude Test (SAT), American College Testing Assessment Program (ACT), Graduate Record Examination (GRE), Law School Admissions Test (LSAT), Medical College Admission Test (MCAT), and achievement tests.

(ii) The applicant's official transcripts and any grade reports.

(2) *Letters of recommendation (15 points).* The Secretary considers the applicant's potential for success in completing the academic requirements for his or her field of study by reviewing one letter of recommendation from each of the following categories—

(i) A school principal, teacher, academic or non-academic instructor or counselor, a college professor, or academic advisor;

(ii) A member of the community or civic leader who has observed the applicant in educational, social or civic activities; and

(iii) A tribal representative or an Indian community member.

(3) *Commitment essay (25 points).* The Secretary considers the applicant's commitment by reviewing an essay, written by the applicant, that addresses—

(i) The applicant's career goals and why the chosen field of study will benefit Indian people;

(ii) The applicant's life experiences, and personal and family expectations that will enhance the applicant's anticipated career accomplishments; and

(iii) The applicant's anticipated commitment to providing service to Indian people.

(Approved by the Office of Management and Budget under control number 1810–0020)

(Authority: 20 U.S.C. 7833)

Subpart C—What Conditions Must be Met by Fellows?

§ 263.30 What are the basic requirements of a Fellow?

A Fellow shall—

(a) Start school during the first semester of the award at the institution named on the grant award document and complete at least one full academic term;

(b) Submit to the Secretary two copies of his or her official grade report at the close of each academic term, and upon completion of the training program, at that institution;

(c) Submit an annual continuation application, in the form and timeframes specified by the Secretary, to request funding for each remaining academic year approved under the initial application;

(d) Request a written leave of absence at least 30 days prior to withdrawal, unless in an emergency situation, from the Secretary for any interruption in his or her program of academic studies; and

(e) Sign an agreement, at the time of the award, with the Department to meet the provisions of the payback requirement.

(Approved by the Office of Management and Budget under control number 1810–0020)

(Authority: 20 U.S.C. 7833)

§ 263.31 What information must be submitted after a fellowship is awarded?

To verify further the accuracy of the information provided in the application, the applicant shall provide all information and documents as requested by the Secretary, including information on other financial aid sources for educational purposes. The applicant's failure to provide the requested information and documents invalidates the application and the Secretary will not consider it for funding.

(Approved by the Office of Management and Budget under control number 1810–0020)

(Authority: 20 U.S.C. 7833)

§ 263.32 What are the requirements for a leave of absence?

(a) The Secretary may approve a leave of absence, for a period not longer than one academic year, provided a Fellow has successfully completed at least one academic year.

(b) A written request for a leave of absence shall be submitted to the Secretary not less than 30 days prior to withdrawal or completion of a grading period, unless an emergency situation has occurred and the Secretary waives the prior notification requirement.

(c) The Secretary permits a leave of absence only if the institution certifies that the Fellow is eligible to resume his or her course of study at the end of the leave absence.

(d) The Secretary shall withdraw any remaining funds of the Fellow's award when a leave of absence has occurred prior to the end of an academic term.

(Approved by the Office of Management and Budget under control number 1810–0020)

(Authority: 20 U.S.C. 7833)

§ 263.33 What is required for continued funding under a fellowship?

(a) The Secretary reviews the status of each Fellow at the end of each year and continues support only if the Fellow—

(1) Has complied with requirements under this part;

(2) Has remained a full-time student in good standing in the field in which the fellowship was awarded; and

(3) Has submitted a noncompeting continuation application requesting additional support.

(b) A fellowship terminates when the Fellow receives the degree being sought or after the Fellow has received the fellowship for the maximum number of years allowed as defined in § 263.6 of this part, whichever comes first.

(Authority: 20 U.S.C. 7833)

§ 263.34 When is a fellowship discontinued?

(a) The Secretary may discontinue the fellowship, if the Fellow—

(1) Fails to comply with the provisions under this part, including failure to obtain an approved leave of absence under § 263.32, or with the terms and conditions of the fellowship award; or

(2) Fails to report any change in his or her academic status.

(b) The Secretary will discontinue a fellowship only after providing reasonable notice and an opportunity for the Fellow to rebut, in writing or in an informal meeting with the responsible official in the Department of Education, the basis for the decision.

(Authority: 20 U.S.C. 7833)

§ 263.35 What are the payback requirements?

(a) Individuals receiving assistance under the Indian Fellowship Program or the Professional Development Program are required to—

(1) Perform work related to the training received and that benefits Indian people; or

(2) Repay all or a prorated part of the assistance received.

(b) The period of time required for a work-related payback is equivalent to the total period of time for which training was actually received under the Indian Fellowship Program or Professional Development Program.

(c) The cash payback required shall be equivalent to the total amount of funds received and expended for training received under either of these programs and may be prorated based on any approved work-related service the participant performs.

(Approved by the Office of Management and Budget under control number 1810–0020)

(Authority: 20 U.S.C. 7832 and 7833)

§ 263.36 When does payback begin?

(a) For all fellows who complete their training under the Indian Fellowship Program or Professional Development Program, except for medical degree and doctoral degree candidates, payback shall begin within six months from the date of completion of the training.

(1) For fellows in a doctoral degree program requiring a dissertation, payback shall begin not later than two years after the program's academic course work has been completed or the institution determines the student is no longer eligible to participate in the training program, whichever occurs first.

(i) After academic course work has been completed, fellows in doctoral degree programs shall submit an annual written report to the Secretary on the status of the dissertation.

(ii) Fellows will provide written notification to the Secretary, within 30 days, of completion of the dissertation and the participant's plans for completing a work-related or cash payback.

(2) For fellows in a doctoral degree program with clinical or internship requirements, payback shall begin within 6 months after the clinical or internship requirements have been met or the institution determines the student is no longer eligible to participate in the training program, whichever occurs first.

(i) After academic course work has been completed, fellows in a doctoral degree program with clinical or internship requirements shall submit an annual written report to the Secretary on the status of completion of the clinical or internship requirements.

(ii) Fellows will provide written notification to the Secretary, within 30 days, of completion of the clinical or internship requirements and the participant's plans for completing a work-related or cash payback.

(3) For fellows in a medical degree program, payback shall begin six months from the date that all residency requirements of the program have been met or the institution determines the student is no longer eligible to participate in the training program, whichever occurs first.

(i) After academic course work has been completed, fellows in a medical degree program shall submit an annual written report to the Secretary on the status of completion of the residency requirements of the program.

(ii) Fellows will provide written notification to the Secretary, within 30 days, of completion of the residency requirements and the participant's plans for completing a work-related or cash payback.

(b) For fellows who do not complete their training under the Indian Fellowship Program or Professional Development Program, payback shall begin within six months from the date the Fellow leaves the Indian Fellowship or Professional Development Program, unless he or she continues as a full-time student without interruption, in a program leading to a degree in an accredited institution of higher education.

(1) If the Fellow leaves the Indian Fellowship Program or Professional Development Program, but plans to continue his or her education as a full-time student, the Secretary may defer the payback requirement until the participant has completed his or her educational program. Written requests for deferment shall be submitted to the Secretary within 30 days of leaving the Indian Fellowship Program or the Professional Development Program and shall provide the following information—

(i) The name of the accredited institution the student will be attending;

(ii) A copy of the letter of admission from the institution;

(iii) The degree being sought; and

(iv) The projected date of completion.

(2) After approval by the Secretary for deferment of the payback provision on the basis of continuing as a full-time student, former fellows are required to submit to the Secretary a status report from an academic advisor or other authorized representative of the institution of higher education, showing verification of enrollment and status, after every grading period.

(Approved by the Office of Management and Budget under control number 1810–0020)

(Authority: 20 U.S.C. 7832 and 7833)

§ 263.37 What are the payback reporting requirements?

(a) *Written notice.* Participants shall submit to the Secretary, within 30 days of completion of their training program, a written notice of intent to complete a work-related or cash payback, or to continue in a degree program as a full-time student.

(b) *Work-related payback.* If the participant proposes a work-related payback, the written notice of intent shall include information explaining how the work-related service is related to the training received and benefits Indian people.

(1) For work-related service, the Secretary shall review each participant's payback plan to determine if the work-related service is related to the training received and benefits Indian people. The Secretary approves the payback plan if a determination is made that the work-related service to be performed is related to the training received and benefits Indian people, meets all applicable statutory and regulatory requirements, and is otherwise appropriate.

(2) The payback plan for work-related service shall identify where, when, the type of service, and for whom the work will be performed.

(3) A participant shall notify the Secretary in writing of any change in the work-related service being performed within 30 days of such change.

(4) For work-related payback, individuals shall submit a status report every six months beginning from the date the work-related service is to begin. The reports shall include a certification from the participant's employer that the service or services have been performed without interruption.

(4) Upon written request, and if appropriate, the Secretary may extend the period for completing a work-related payback by a total of 18 months.

(5) For participants that initiate, but cannot complete, a work-related payback, the payback reverts to a cash payback.

(c) *Cash payback.* If a cash payback is to be made, the Department will contact the participant to establish an appropriate schedule for payments.

(Approved by the Office of Management and Budget under control number 1810–0020)

(Authority: 20 U.S.C. 7832 and 7833)

Subpart D—How are Fellowship Payments Made?

§ 263.40 How are payments made?

(a) Fellowship payments are made directly to the institution of higher education where a Fellow is enrolled, with stipends provided to the Fellow in installments by the institution. No fewer than two installments per academic year may be made.

(b) If a Fellow transfers to another institution, the fellowship may also be transferred provided the Fellow maintains basic eligibility for the award.

(c) A Fellow who officially or unofficially withdraws or is expelled from an institution before completion of a term shall refund a prorated portion of the stipends received, as determined by the Secretary. The Secretary will require the institution to return any unexpended funds.

(Authority: 20 U.S.C. 7833)

[FR Doc. 95–15655 Filed 6–26–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.087]

Indian Fellowship Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1995

Purpose of Program: To provide fellowships enabling Indian students to pursue postbaccalaureate degrees in medicine, psychology, law, education, clinical psychology, and related fields, or undergraduate or postbaccalaureate degrees in business administration, engineering, natural resources, and related fields. Individuals receiving training under this program are required to perform work that is related to the training received under this program and benefits Indian people, or repay all or a prorated part of the assistance received.

Deadline for Transmittal of Applications: July 31, 1995.

Applications Available: June 30, 1995.

Available Funds: Approximately $1,000,000.

Estimated Range of Awards: $2,500–$37,000.

Estimated Average Size of Award: $16,500.

Estimated Number of New Awards: 60.

Project Period: The Secretary awards a fellowship for a period of time not exceeding four academic years for an undergraduate or doctorate degree, and two academic years for a master's degree.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75 (§§ 75.60–75.61), 82, and 85; and (b) the regulations for this program in 34 CFR Part 263 as published in this issue of the **Federal Register.**

Fiscal Information: For the payment of stipends to fellows, the Secretary expects to set the stipend maximum at $1,000 per month for full-time students and $125 allowance per month per dependent, during the academic year. The following terms are defined in 34 CFR 263.3: "stipend," "full-time student," and "dependent allowance."

For Applications or Information Contact: Dr. John Derby, Chief, Indian Fellowship Program, Office of Indian Education, U.S. Department of Education, 600 Independence Avenue, SW, Washington, D.C. 20202–6335. Telephone (202) 260–1719. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Program Authority: 20 U.S.C. 7833.

Dated: June 21, 1995.

Thomas W. Payzant,

Assistant Secretary, Elementary and Secondary Education.

[FR Doc. 95–15656 Filed 6–26–95; 8:45 am]

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federal register

Tuesday
June 27, 1995

Part IV

Department of Health and Human Services

Centers for Disease Control and Prevention

CDC Recommendations for Civilian Communities Near Chemical Weapons Depots: Guidelines for Medical Preparedness; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

CDC Recommendations for Civilian Communities Near Chemical Weapons Depots: Guidelines for Medical Preparedness

AGENCY: Centers for Disease Control and Prevention (CDC), Public Health Service, HHS.

ACTION: Publication of final recommendations.

SUMMARY: On July 27, 1994, CDC published in the **Federal Register**, 59 FR 38191, "CDC Recommendations for Civilian Communities Near Chemical Weapons Depots: Guidelines for Medical Preparedness" and requested public comment. Seven people sent comments; many were responding on behalf of governments or other institutions in affected communities. These comments are available upon request. These recommendations incorporate changes made in response to the comments received and constitutes CDC's final recommendations for minimum standards for prehospital and hospital emergency medical services' readiness in communities near the eight locations where the U.S. stockpile of lethal chemical weapons is stored. The eight locations are: Umatilla Army Depot Activity, Oregon; Tooele Army Depot, Utah; Pueblo Army Depot Activity, Colorado; Pine Bluff Arsenal, Arkansas; Newport Army Ammunition Plant, Indiana; Anniston Army Depot, Alabama; Lexington Bluegrass Depot Activity, Kentucky; and Edgewood Area, Aberdeen Proving Ground, Maryland.

These recommendations were prepared to assist emergency planners in determining emergency medical services' readiness in communities near the 8 locations where the U.S. stockpile of lethal chemical weapons is stored. These guidelines should not be used for any purpose other than planning for the Chemical Stockpile Emergency Preparedness Program.

FOR FURTHER INFORMATION CONTACT: Linda W. Anderson, Chief, Special Programs Group, National Center for Environmental Health (NCEH), CDC, 4770 Buford Highway, NE., Mailstop F29, Atlanta, GA 30341–3724, telephone number (404) 488–7071, Facsimile Number (404) 488–4127, or Internet Address lwa3@cehod1.em.cdc.gov.

SUPPLEMENTARY INFORMATION:

CDC Recommendations for Civilian Communities Near Chemical Weapons Depots: Guidelines for Medical Preparedness

I. Executive Summary

In 1985, Congress mandated that unitary chemical warfare agents be destroyed in such a manner as to provide maximum protection for the environment, the public, and personnel involved in destroying the agents. The Centers for Disease Control and Prevention (CDC) was delegated review and oversight responsibility for any Department of the Army (DA) plans to dispose of or transport chemical weapons (Public Law 91–121 and 91–441, Armed Forces Appropriation Authorization of 1970 and 1971).

As part of its ongoing efforts to improve medical preparedness within the medical sector of civilian communities surrounding chemical agent depots, CDC has developed the following medical preparedness and response guidelines. These guidelines represent minimum standards of medical preparedness for civilian communities that might be exposed to chemical warfare agents during the incineration or storage process. These guidelines were developed in cooperation with a panel of recognized experts in the fields of emergency medicine, disaster preparedness, nursing, chemical warfare preparedness, and the prehospital emergency medical system.

II. Background

In 1985, Congress mandated that unitary chemical warfare agents be destroyed in such a manner as to provide maximum protection for the environment, the public, and the personnel involved in destroying the agents. This mandate was further defined in the Department of Defense (DOD) Authorization Act of 1986, Pub. L. 99–145. Consistent with its desire to promote the most environmentally safe method of destroying chemical agents, the National Research Council determined that incineration is the best method for disposing of the weapons (1). In 1988, the Authorization Act was amended to permit DA to set up a prototype incineration facility on Johnston Island in the Pacific in order to verify the safety of such an operation. To date, more than 700,000 pounds of chemical agent have been safely incinerated there.

CDC was delegated the responsibility of reviewing and overseeing any DA plans to dispose of or transport chemical weapons (Pub. L. 91–121 and 91–441, Armed Forces Appropriation Authorization of 1970 and 1971). In addition, an interagency agreement between CDC and DA requires CDC to provide technical assistance to the DA in protecting the public health in nearby communities during the destruction of unitary chemical agents and weapon systems.

Currently, large quantities of chemical warfare agents are stored in eight facilities [1] in the continental United States. These chemical stockpiles consist primarily of nerve agents, mustard agents, or a combination of both. In Tooele, Utah, construction of the chemical agent incinerator is now complete, and destruction of the weapons and chemicals in this depot is scheduled to begin in the Fall of 1995. To improve the ability of local health care personnel to handle emergencies related to a chemical agent release, CDC has presented medical preparedness courses to civilian medical personnel on sites adjacent to the 8 chemical weapons depots on 13 occasions. Emergency physicians, nurses, internists, surgeons, hospital administrators, and prehospital emergency medical responders have attended these courses.

As part of its ongoing efforts to improve medical readiness in civilian communities surrounding chemical agent depots, CDC developed medical preparedness and response guidelines. These guidelines represent minimum standards for medical preparedness in civilian communities that might be inadvertently exposed to chemical warfare agents during the incineration or storage process. These guidelines were developed in cooperation with a working group of recognized experts in the fields of emergency medicine, disaster preparedness, nursing, chemical stockpile emergency preparedness, and prehospital emergency medical systems. These guidelines do not supersede current medical or public health practices and requirements (e.g., precautions for handling bodily fluids). Local health and emergency management officials, working with Army personnel, must analyze the nature of possible releases at each location, determine what kinds of intoxication and what level of contamination might be possible, and match local or regional resources to the potential task.

[1] Umatilla Army Depot Activity, Oregon; Tooele Army Depot, Utah, Pueblo Army Depot Activity, Colorado; Pine Bluff Arsenal, Arkansas; Newport Army Ammunition Plant, Indiana; Anniston Army Depot, Alabama; Lexington-Bluegrass Depot Activity, Kentucky; and Edgewood Area, Aberdeen Proving Ground, Maryland.

The following recommendations for civilian community response to the release of a chemical agent are divided into prehospital and hospital arenas. The recommendations are designed to ensure medical preparedness for chemical agent emergencies. Appendix A is a summary of important questions to ask when evaluating medical preparedness in the civilian prehospital and hospital environments. The prehospital environment encompasses all response areas which are outside both the installation boundaries and the hospital grounds. People potentially affected in the prehospital environment include the general public and first responders. First responders include police, sheriff's, and fire department personnel, hazardous materials response teams, and medical response teams (including emergency medical technicians, paramedics, and any other medically trained personnel responding to the site of injury with the ambulance teams). The hospital environment includes primarily the emergency department but encompasses outdoor areas on the hospital grounds that might be used for triage and decontamination and other hospital departments that might support the hospital's response.

We cannot emphasize too strongly that actions taken within the scope of these guidelines must also comply with all other applicable regulations. In particular, responders considered in this paper falls under the provisions of the Occupational Safety and Health Administration's (OSHA) Hazardous Waste Operations and Emergency Response (HAZWOPER) regulations (29 CFR 1910.120), the respiratory protection regulations (29 CFR 1910.134), and other regulations pertaining to personal protective equipment (29 CFR 1910.132, 133, 135, and 136).

III. Recommendations for Prehospital Medical Preparedness

- Integrate all local medical emergency response plans related to the release of a chemical agent into the all-hazards State and local disaster response plans.
- Provide protective equipment for all members of the local medical response team.
- Train members of the local medical response team in these measures:

—prevention of secondary contamination from chemically exposed patients.
—decontamination procedures.
—evaluation of the medical needs of chemically exposed patients.
—treatment of large groups of patients.
—transportation of victims to a medical facility.

1. Personal Protective Equipment (PPE)

Chemical protective clothing and respiratory protection enable responders to care for patients exposed to chemicals while protecting themselves from secondary contamination.

- Ensure that such equipment protects the skin, eyes, and respiratory tracts of the emergency responders.
- HHS have recommended the use of DA battledress overgarments (BDOs) and portable air-purifying respirators (PAPRs) with a combined high-efficiency particulate (HEPA) and organic vapor cartridge to protect civilians from chemical warfare agents. OSHA is reviewing this matter and will make a determination when the review process is completed. BDOs can be used for up to 24 hours in an agent-contaminated environment at levels of up to 10 grams of agent per square meter of surface area. This recommendation should not be construed as discouraging civilian emergency responders from using more protective equipment, such as completely encapsulating suits with supplied air respirators, providing that they have and normally use such equipment in conformity with applicable regulations and can perform their required duties in that equipment.
- Train personnel required to use personal protective equipment when responding to chemical agent-related emergencies in accordance with the guidelines published by OSHA.
- Establish and use work practice guidelines to ensure that responders remain outside areas where their equipment might not be fully protective and that they leave immediately if conditions change such that there is uncertainty about the safety of the environment.
- Use new cartridges or canisters when entering an area where agent may be present and change them before the next use of the respirator.
- Use a buddy system and provide adequate communications and rescue capability for each responder working near a plume area. If a worker should experience symptoms of agent exposure and require assistance leaving the area, rescue should be accomplished using level A protection only.

2. First Responders

- Ensure that all persons (e.g., medics, paramedics, fire fighters, or medical personnel) designated by the State or local disaster plans as members of the initial medical team that responds to a chemical warfare agent release have the appropriate level of PPE and are trained in its proper use (2).
- Ensure that equipment of first responders is adequately maintained and available at all times.
- Schedule frequent drills and training sessions designed to maintain first responders' familiarity with equipment and their role in State and local disaster plans.

3. The Public

CDC does not recommend distributing PPE (e.g., gas masks or protective suits) to the public. In the unlikely event that a chemical agent release threatens the civilian population adjacent to a military facility, CDC recommends the following graded emergency response:

- Evacuate the population at risk in accordance with State or local disaster management guidelines. If no local guidelines exist, follow the Federal Emergency Management Agency (FEMA) and DA joint guidelines for evacuating civilian populations threatened by chemical warfare agents (3).
- Follow FEMA and DA recommendations for sheltering the population in place (e.g., keep people in their homes, institutions, or places of business and seal windows and doors from an external vapor threat) if it is not practical to evacuate the population (3).

4. Decontamination

Decontamination is the careful and systematic removal of hazardous substances from victims, equipment, and the environment. Transporting contaminated patients exposes emergency response personnel to chemical warfare agents and contaminates rescue vehicles. Proper decontamination prevents secondary contamination and chemical injury to medical and rescue personnel. Acceptable decontamination guidelines for persons who may possibly have been exposed to chemical warfare agents are published by FEMA and DA (3,4). Decontamination must comply with the HAZWOPER regulation, 29 CFR 1910.120(k).

- Decontamination of patients can be achieved by mechanically removing, diluting, absorbing, or neutralizing the chemical agent.
- Decontaminate all persons who are believed to be contaminated with a chemical warfare agent before they are transported to a hospital.
- Decontamination substances should be readily available. Suitable decontamination substances include soap, water, and 5% hypochlorite.
- To protect the environment, include in State and local disaster plans a

method for containing and disposing of contaminated runoff. CDC does not recommend establishing fixed decontamination units in prehospital areas because of the expense and inflexibility of such units.

5. Level of Medical Preparedness Training

- At a minimum, train persons designated as prehospital medical responders in evaluating patients exposed to chemical warfare agents, managing patients' airways (excluding intubation), transporting patients, and decontaminating patients.
- Train prehospital responders who have been designated in State or local disaster plans to operate in environments contaminated by a chemical warfare agent in the proper use of PPE in accordance with OSHA guidelines (2).
- Ensure that, at a minimum, physicians who have been designated in State and local disaster plans to provide medical supervision for prehospital emergency responders and to provide medical care for victims of a chemical agent release receive specialized training through continuing education in the emergency response areas specified for prehospital responders.

6. Patient Triage

The basic premise of patient triage, to provide maximum benefit to the greatest number of victims, is of utmost importance during a mass-casualty event involving chemical agents.

- Have the responder most experienced in evaluating patients conduct the triage.
- Base decisions regarding patient triage on local resources, the extent of patient contamination, the type of chemical warfare agent to which the patient is exposed, the patient's clinical status, and the likelihood of additional traumatic injuries.

7. Public Information

- Provide the Joint Information Center (JIC) with appropriate information to inform the public accurately and rapidly about chemical agent-exposures that have or may have occurred. If possible, monitor information coming from the JIC and assist in ensuring the accuracy and timeliness of that information.
- Establish, through the local emergency medical services (EMS) and hospital community, a coordinated public information policy for all chemical emergencies.
- Work with public health and emergency management officials to contact local and regional news media in advance and establish an accurate and rapid way of disseminating critical information to the public concerning a chemical agent emergency.
- Ensure that hospital and EMS personnel coordinate their plans to provide public information with the plans of those who have overall responsibility for emergency response.

8. Communication

Medical personnel must have access to the emergency communication network 24 hours a day. Such a network should link the chemical agent depot, local and regional EMS, and all potential receiving hospitals. During any evaluation of preparedness for a chemical warfare release into civilian communities:

- Have medical personnel demonstrate the ability to access the emergency communications network.
- Ensure that the hospitals' emergency communications system allows hospital personnel to verify rapidly whether a chemical warfare agent release has occurred.

9. Transporting Exposed Victims

- Coordinate the transportation of chemical agent-exposed victims with the overall disaster response plan and include a method for tracking transported patients during an emergency response.
- Transport contaminated patients only after they have been properly decontaminated.
- Transport decontaminated patients to medical facilities (e.g., hospitals, clinics, and urgent care centers).
- Formal agreements such as memorandums of understanding (MOUs) between organizations that transport patients and the medical facilities that receive them must be part of the planning process. Medical facilities designated to receive these patients should be capable of evaluating and managing those exposed to chemical agents as described later in the hospital section (Section IV) of this document.
- Base decisions regarding urgent and emergency transfers of decontaminated patients on the capabilities of the receiving facilities, transportation resources, demand for hospital services, and the clinical condition of the patients. Certain medical care (e.g., for burns, pediatric emergencies, trauma, or pulmonary complications) might require prearrangements for patients to be transferred to a tertiary treatment center. CDC recommends that transfer and evacuation plans for victims exposed to chemical warfare agents call for land—rather than air—transportation.

10. Medical Evaluation and Treatment

- Train medical response personnel specifically to assess and manage patients exposed to chemical agents stored at the nearby military depot.
- Decontaminate all exposed patients as described above.
- Provide medical treatment (during or after contamination), according to accepted treatment modalities, to patients exposed to nerve or mustard agents. If antidotes to nerve agents are used in the field by civilian medical responders as designated in State or local disaster plans, CDC recommends using single-dose, pre-armed auto injectors, unless a higher level of medical response has already been integrated into EMS operations. Additional information on the effects of chemical warfare agents and accepted medical protocols for caring for patients exposed to mustard or nerve agents is available (5–14).

IV. Recommendations for Hospital Preparedness

1. Primary Receiving Hospitals

A primary receiving hospital is a hospital that is designated by State or local disaster plans to provide initial medical care to the civilian population in the event of a chemical warfare agent release. Such hospitals must have established protocols detailing evaluation, decontamination, and treatment procedures for patients exposed to chemical warfare agents. These hospitals should include:

- Evaluation, treatment, and decontamination protocols in the hospitals' disaster plans.
- Chemical warfare agent scenarios in disaster drills for hospitals that have been designated in State or local disaster plans to receive patients exposed to chemical warfare agents.

2. Triage Considerations

- Do not allow patients exposed to a chemical warfare agent to enter the emergency department without adequate evaluation and decontamination. Signs of mustard agent exposure, in particular, may require 24–48 hours before they become clinically evident.
- Train medical staff designated by the hospital disaster plan to perform triage during an emergency related to chemical warfare agents to recognize the physical signs and symptoms of patients who have been exposed to such agents.
- Base modifications to patient triage procedures on the extent of patient contamination, the type of chemical warfare agent to which the patient has been exposed, the patient's clinical status, and the possibility of additional traumatic injuries. Priorities for medical treatment of patients should be determined by the most appropriately trained and experienced medical professional.

3. Security

- Address issues related to emergency department security during disasters in the hospital disaster plan.
- Restrict access to the hospital to prevent contaminated patients from entering the hospital. During a chemical agent release, security personnel should direct all patients to enter the hospital only through the triage area.

4. Decontamination

- Decontaminate all persons who may have been contaminated with a chemical warfare agent. Proper decontamination prevents secondary contamination and chemical injury to medical and rescue personnel. Acceptable decontamination guidelines for persons exposed to chemical warfare agents are published by FEMA and DA (3,4). Decontamination must comply with the HAZWOPER regulation, 29 CFR 1910.120(k).
- Have decontamination substances readily available. Suitable decontamination substances include soap, water, and 5% hypochlorite.
- In the hospital disaster plan, detail a method for catching contaminated runoff from patients whether decontamination is done inside or outside the hospital.
- At a minimum, be capable of decontaminating at least one non-ambulatory patient.
- During and after chemical agent releases that cause mass casualties, decontaminate patients outdoors. Having indoor decontamination facilities does not obviate a hospital's need to have plans for decontaminating patients outdoors during mass casualty situations. Outdoor facilities must have a means of containing the runoff from the decontamination process until it can be tested and disposed of safely.
- Design hospital disaster plans, keeping in mind the possibility of integrating local emergency response resources. Such resources could include hazardous materials emergency response teams or portable decontamination vehicles or facilities.
- In cold weather, set up temporary shelters and heaters to protect patients from extreme environmental conditions when undergoing decontamination outdoors.
- Have in place a method of controlling the flow of air in the decontamination area to prevent such air from contaminating other areas of the hospital.
- Set up a system to allow medical personnel in the decontamination area to be in continuous communication with other medical personnel in the emergency department.

5. Personal Protective Equipment (PPE)

Chemical protective clothing and respiratory protection enable responders to care for chemically exposed patients while protecting themselves from secondary contamination. This equipment must protect the skin, eyes, and respiratory tracts of the responders.

- HHS have recommended the use of DA BDOs and PAPRs with a combined high-efficiency particulate (HEPA) and organic vapor cartridge to protect civilians from chemical warfare agents. OSHA is reviewing this matter and will make a determination when the review process is completed. BDOs can be used for up to 24 hours in an agent-contaminated environment at levels of up to 10 grams of agent per square meter of surface area. This recommendation should not be construed as discouraging civilian emergency responders from using more protective equipment such as completely encapsulating suits with supplied air respirators, providing that they have and normally use such equipment in conformity with applicable regulations and can perform their required duties in that equipment.
- Hospital personnel should follow Environmental Protection Agency (EPA) and National Institute for Occupational Safety and Health (NIOSH) guidelines when managing patients exposed to unknown chemicals.
- This recommendation should not be construed as discouraging civilian emergency responders from using more protective equipment such as completely encapsulating suits with supplied air respirators, providing that they have and normally use such equipment in conformity with applicable regulations and can perform their required duties in that equipment.
- Response personnel should be trained to use PPE when responding to a chemical agent emergency according to OSHA guidelines (2).

6. Level of Training

- Medical staff designated by the hospital disaster plan should be trained to provide direct patient care during a chemical warfare agent emergency to a level of medical preparedness that allows them to assess, decontaminate, and manage the treatment of victims of chemical warfare agent releases.
- Medical staff who are required to wear decontamination attire in decontamination procedures must receive training in the use of PPE according to OSHA regulations (2–4).

7. Transportation of Patients to other Medical Facilities

- Have prearranged written agreements with those medical facilities that agree to accept patients who are exposed to military chemical agents.
- Do not transfer patients without notifying the hospital and having the patient accepted by a physician.
- Have standardized forms available to record patient information and management status.

8. Specific Antidotes

- Have decontaminating solutions available in the emergency department. If nerve agents are stored adjacent to the civilian community, have atropine in multiple-dose units available in the emergency department and in the hospital pharmacy. In addition, have the hospital pharmacy stock atropine and pralidoxime in sufficient quantities to cope with the anticipated number of patients who could be managed by that facility in response to a chemical warfare agent release. Atropine and pralidoxime should be administered intravenously in the emergency environment.

9. Hospital Disaster Plan

- Include plans for providing medical care for patients exposed to chemical agents in the hospital's disaster plan.
- Have in place a method for using the emergency communication system so that reports of a chemical warfare agent release can be verified rapidly. Also, include provisions to coordinate activities with State and local disaster plans for mass decontamination.
- Include in disaster drills scenarios in which patients have become exposed to chemical warfare agents.
- Use the hospital quality assurance program to review disaster drills and decontamination procedures and to assist in maintaining the professional skills of hospital personnel necessary to treat the effects of exposure to a chemical warfare agent.

10. Tertiary Hospitals

A tertiary receiving hospital is a hospital that receives referrals from primary receiving hospitals. Additional services such as burn care, psychiatric service, and toxicologic consultation are available at the tertiary level of care.

- Ensure that tertiary hospitals designated by State or local disaster plans to provide care for persons exposed to chemical warfare agents have, at a minimum, emergency

response capabilities similar to those of the primary receiving hospital.

• Ensure that tertiary hospitals coordinate their disaster plans with State and local disaster plans for mass decontamination of persons exposed to chemical warfare agents.

V. References

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Dated: June 20, 1995.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

Appendix A

Summary of Important Medical Preparedness Considerations for Communities Surrounding Chemical Agent Stockpiles

1. Do the communities that surround chemical warfare agent depots have a disaster plan that details the role of the prehospital and hospital medical community during a chemical warfare agent emergency?

2. If medical personnel are designated to treat chemical warfare agent casualties, do they have adequate training to meet minimal standards for evaluating, decontaminating, and treating victims of a chemical warfare agent release?

3. Do medical personnel who are designated by State, local, and hospital disaster plans to use PPE in response to an emergency related to chemical warfare agents have the necessary OSHA level of training to use these devices effectively and safely?

4. If the local disaster plan has provisions to evacuate or transfer patients to other hospitals for further treatment and evaluation, do existing MOUs cover the transfer of chemically contaminated patients?

5. Do hospitals named in the State or local disaster plans have an adequate stockpile of antidotes and decontamination solutions to provide complete medical treatment to at least one chemically contaminated patient?

6. Are the hospitals that are designated in the State or local disaster plans able to decontaminate at least one non-ambulatory patient exposed to chemical warfare agent?

7. Do the disaster plans of hospitals designated to receive patients by State and local disaster plans have specific provisions that detail how they will control access to their medical facilities during a chemical warfare agent emergency?

8. Are all levels of the medical community that are designated by State or local disaster plans to respond to a chemical warfare agent emergency able to communicate via either the State or local disaster communication network?

Appendix B

Working Group Participants

Mr. Lawrence Gallagher, Associate Director, Plant Technology and Management, Joint Committee on Accreditation of Health Care Organizations, Oakbrook, Illinois.
Mr. Kenneth Gray, Fire Chief, Confederate Tribes of the Umatilla Indian Reservation, Pendleton, Oregon
Mr. Howard Kirkwood, Jr., Chief, Emergency Response Services, Oregon Department of Human Resources, Portland, Oregon
Mr. Denzel Fisher, Emergency Preparedness Officer, Office of the Assistant Secretary of the Army, (Installations, Logistics, and Environment), Washington, D.C.
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[FR Doc. 95–15657 Filed 6–26–95; 8:45 am]
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Federal Register

Tuesday
June 27, 1995

Part V

Federal Emergency Management Agency

Changes to the Hotel and Motel Fire Safety Act National Master List; Notice

FEDERAL EMERGENCY MANAGEMENT AGENCY

Changes to the Hotel and Motel Fire Safety Act National Master List

AGENCY: United States Fire Administration, FEMA.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA or Agency) gives notice of additions and corrections/changes to, and deletions from, the national master list of places of public accommodations which meet the fire prevention and control guidelines under the Hotel and Motel Fire Safety Act.

EFFECTIVE DATE: July 27, 1995.

ADDRESSES: Comments on the master list are invited and may be addressed to the Rules Docket Clerk, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, D.C. 20472, (fax) (202) 646–4536. To be added to the National Master List, or to make any other change to the list, please see Supplementary Information below.

FOR FURTHER INFORMATION CONTACT: John Ottoson, Fire Management Programs Branch, United States Fire Administration, Federal Emergency Management Agency, National Emergency Training Center, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1272.

SUPPLEMENTARY INFORMATION: Acting under the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. 2201 note, the United States Fire Administration has worked with each State to compile a national master list of all of the places of public accommodation affecting commerce located in each State that meet the requirements of the guidelines under the Act. FEMA published the national master list in the **Federal Register** on Friday, December 2, 1994, 59 FR 61932, with corrections published Monday, February 27, 1995, 60 FR 10636, and published changes approximately monthly since then.

Parties wishing to be added to the National Master List, or to make any other change, should contact the State office or official responsible for compiling listings of properties which comply with the Hotel and Motel Fire Safety Act. A list of State contacts was published in 59 FR 50132 on September 30, 1994. If the published list is unavailable to you, the State Fire Marshal's office can direct you to the appropriate office. Periodically FEMA will update and redistribute the national master list to incorporate additions and corrections/changes to the list, and deletions from the list, that are received from the State offices.

Each update contains or may contain three categories: "Additions;" "Corrections/changes;" and "Deletions." For the purposes of the updates, the three categories mean and include the following:

"Additions" are either names of properties submitted by a State but inadvertently omitted from the initial master list or names of properties submitted by a State after publication of the initial master list;

"Corrections/changes" are corrections to property names, addresses or telephone numbers previously published or changes to previously published information directed by the State, such as changes of address or telephone numbers, or spelling corrections; and

"Deletions" are entries previously submitted by a State and published in the national master list or an update to the national master list, but subsequently removed from the list at the direction of the State.

Copies of the national master list and its updates may be obtained by writing to the Government Printing Office, Superintendent of Documents, Washington, DC 20402–9325. When requesting copies please refer to stock number 069–001–00049–1.

The update to the national master list follows below.

Dated: June 21, 1995.

John P. Carey,

General Counsel.

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST 06/19/95 UPDATE

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST 06/19/95 UPDATE

Index property name	PO box/Rt No./Street address	City	State/Zip	Telephone
Additions				
Alaska:				
AK0045 Gustavus Inn	1 Mile Gustavus Rd.	Gustavus	AK 99826	(907) 697–2254
AK0044 Juneau Airport Travelodge	9200 Glacier	Juneau	AK 99801	(907) 789–9700
California:				
CA1448 Super 8 Motel	2460 Whipple Rd.	Hayward	CA 94544	(510) 489–3888
CA1450 Red Roof Inn	204 N. Village Ct	San Dimas	CA 91773	(909) 599–2362
CA1449 Holiday Inn Golden Gateway	1500 Van Ness Ave	San Francisco	CA 94109	(415) 441–4000
CA1447 Super 8 Motel	101 Allison Ct.	Vacaville	CA 95688	(707) 449–8884
CO0296 Golden Buff Lodge	1725 28TH St.	Boulder	CO 80301	(303) 442–7450
CO0297 Holiday Inn	3836 E Mulberry	Fort Collins	CO 80526	(970) 484–4660
Indiana:				
IN0419 Days Inn	2180/E King St	Franklin	IN 46131	(317) 736–8000
IN0418 Quality Inn Castleton	8275/Craig St	Indianapolis	IN 46250	(317) 841–9700
Maryland:				
MD0290 Holiday Inn Cromwell	1100 Cromwell Bridge Rd	Towson	MD 21204	(410) 823–4410
MD0289 Days Inn Waldorf	11370 Days Ct	Waldorf	MD 20603	(301) 932–9200
North Dakota:				
ND0082 Rodeway Inn	4001 Gateway Drive	Grand Forks	ND 58203	(701) 795–9960
ND0083 Ranch House Motel	408 Business Loop W	Jamestown	ND 58401	(701) 252–0222
New York:				
NY0613 Days Hotel	790 8th Avenue	New York	NY 10019	(212) 581–7000
NY0614 Howard Johnson Plaza Hotel	851 8th Avenue	New York	NY 10019	(212) 581–4100
Texas:				
TX0642 Sheraton Hotel	707 North Shoreline Blvd	Corpus Christi	TX 78401	(512) 882–1700
TX0641 Ashmore Inn and Suites	4019 S Loop 289	Lubbock	TX 79423	(806) 785–0060
TX0640 Seven Oaks Resort/Conference Center.	1400 Austin Highway	San Antonio	TX 78209	(210) 824–5371
Washington:				
WA0291 Rodeway Inn	3710 Meridian St	Bellingham	WA 98225	(206) 738–6000

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST 06/19/95 UPDATE—Continued

Index property name	PO box/Rt No./Street address	City	State/Zip	Telephone
WA0290 Silver Cloud Inn Lynnwood	19332 36th Ave W	Lynnwood	WA 98036	(206) 775–7600
WA0252 Econo Lodge	40 NE 2nd St	Stevenson	WA 98648	(509) 427–5628
West Virginia:				
WV0204 Pioneer Motel	Rt 152	Wayne	WV 25570	(304) 272–9999
Changes/Corrections				
California:				
CA1444 Wyndham Bel Age	1020 N. San Vicente Blvd	West Hollywood	CA 90069	(310) 854–1111
Indiana:				
IN0402 Holiday Inn Express	201 Frontage Road	Lafayette	IN 47905	(317) 499–4808
Maryland:				
MD0251 Holiday Inn International Airport	890 Elkridge Landing Rd	Linthicum	MD 21090	(410) 859–8400
New York:				
NY0439 Radisson Hotel at Rochester Plaza.	70 State St	Rochester	NY 14614	(716) 546–3451
Deletions				
None				

[FR Doc. 95–15733 Filed 6–26–95; 8:45 am]

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federal register

Tuesday
June 27, 1995

Part VI

Department of the Interior

Bureau of Indian Affairs

Confederated Salish and Kootenai Tribes, Montana; Acceptance of Retrocession of Jurisdiction; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Confederated Salish and Kootenai Tribes, Montana; Acceptance of Retrocession of Jurisdiction

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Pursuant to the authority vested in the Secretary of the Interior by Executive Order No. 11435 of November 21, 1968 (33 FR 17339) and redelegated to the Assistant Secretary—Indian Affairs by 209 DM 8, I hereby accept as of 12:01 a.m. PST, July 1, 1995, retrocession to the United States of partial criminal jurisdiction over the Confederated Salish and Kootenai Tribes, which was acquired by the state of Montana pursuant to Public Law 83–280, 67 Stat. 588, 18 U.S.C. § 1162, 28 U.S.C. § 1360.

The retrocession herein accepted was offered by Proclamation by the Governor for the State of Montana on September 30, 1994, and transmitted to the Secretary on November 18, 1994. By Resolution No. 94–123 dated April 1, 1994, the Confederated Salish and Kootenai Tribes requested that the State of Montana retrocede partial criminal jurisdiction to the Tribes.

FOR FURTHER INFORMATION CONTACT: Mr. Theodore R. Quasula, Chief, Bureau of Indian Affairs, Division of Law Enforcement Services, 1849 C Street, N.W., Mailstop 1308–MIB, Washington, D.C. 20240, telephone number (202) 208–5786.

Dated: June 9, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–15706 Filed 6–26–95; 8:45 am]

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federal register

Tuesday
June 27, 1995

Part VII

Department of Justice

Bureau of Prisons

28 CFR Part 524

Classification and Programs Review; Final Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 524

[BOP–1026–F]

RIN 1120–AA30

Classification and Program Review

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is amending its regulations on Classification and Program Review to require program reviews for an inmate at least once every 90 days when an inmate is within twelve months of the projected release date. This amendment is intended to allow for the more efficient use of Bureau staff.

EFFECTIVE DATE: July 27, 1995.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its regulations on Classification and Program Review. A proposed rule on this subject was published in the **Federal Register** November 1, 1994 (59 FR 54782).

Program reviews provide the inmate with an opportunity to discuss staff's assessment of the inmate's performance in the institution's programming. Previously, regulations in 28 CFR 524.12(b) had required a program review for an inmate every 180 days until the inmate was within two years of the projected release date. When an inmate was within two years of projected release, a program review was required at least once every ninety days. In the interest of making better use of staff resources, the Bureau proposed to continue the conducting of program reviews every 180 days until the inmate is within twelve months of the projected release date.

Three comments were received on the proposed rule. One commenter supported the adoption of the proposed rule, and two commenters either opposed or offered suggested revisions to the proposed rule.

One commenter objected to the use of the phrase "projected release date," stating that it was not appropriate to inmates convicted under the Sentencing Guidelines. This commenter recommended use of the phrase "Mandatory Release Date" or "projected date for change of Classification or Transfer to Lower Level or CCC [community corrections center]," urged retention of the phrase "following initial classification," and argued that the times allowed for consideration and processing are such that the 90 day schedule should be maintained. Other questions raised by this commenter pertained to the implementation at Bureau institutions of specific provisions of 28 CFR part 524, subpart B. These latter questions are appropriately addressed through the Bureau's Administrative Remedy Program (28 CFR part 542) rather than through this rulemaking procedure.

Another commenter acknowledged that the proposed rule would save time for unit staff, but questioned whether inmates would be adversely affected in the consideration and planning for community corrections center placement (for example as part of a work cadre program or as part of release to the community). This commenter recommended that the 90 day schedule be instituted at the 18 month mark, rather than at the 12 month mark.

The Bureau disagrees that the phrase "projected release date" is not appropriate for inmates sentenced under the guidelines United States Sentencing Commission. The statutory release date under such guidelines may need to be recalculated in accordance with the status of an inmate's good conduct time. Consequently, the phrase "projected release date" adequately expresses the contingent nature of a statutory release date. The Bureau also believes the phrase "following initial classification" is not necessary, given the logical expectation when a review would occur.

With respect to the scheduling of program reviews, the Bureau believes that a program review every 180 days until the final year before release is more than adequate. Monitoring work cadre availability, relocation efforts, community corrections center processing, or other critical release-related matters have always been carefully monitored by unit team staff outside of program review meetings. Should the inmate, during the second year before release, wish to discuss one of these issues or another important matter with the unit team before his or her next 180 day scheduled review, there is a provision in rules (§ 524.14) to allow staff to hold additional and special program reviews when necessary. Additionally, the status of release preparation paperwork has always been communicated to inmates through individual counseling, and not solely through unit team meetings. Reducing the frequency of program reviews during the second year before release will increase the amount of time staff have for the processing of such paperwork.

In this final rule, the Bureau is also correcting a typographical error ("and" rather than "an") in § 524.14 which was noted by one of the commenters.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of Executive Order 12866, and accordingly was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Public Law 96–354), does not have a significant impact on a substantial number of small entities.

Members of the public may submit comment concerning this rule by writing the previously cited address. These comments will be considered but will receive no response in the **Federal Register.**

List of Subjects in 28 CFR Part 524

Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 524 in subchapter B of 28 CFR chapter V is amended as set forth below.

Subchapter B—Inmate Admission, Classification, and Transfer

PART 524—CLASSIFICATION OF INMATES

1. The authority citation for 28 CFR part 524 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3521–3528, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 21 U.S.C. 848; 28 U.S.C. 509, 510; title V, Pub. L. 91–452, 84 Stat. 933 (18 U.S.C. chapter 223); 28 CFR 0.95–0.99.

2. In § 524.12, paragraph (b) is revised to read as follows:

§ 524.12 Initial classification and program reviews.

* * * * *

(b) Staff shall conduct a program review for each inmate at least once every 180 days. When an inmate is within twelve months of the projected release date, a program review shall be conducted at least once every 90 days.

* * * * *

3. Section 524.14 is amended by revising the second sentence to read as follows:

§ 524.14 Unscheduled reviews.

* * * Upon request of either the inmate or staff, and with the concurrence of the team chairperson, an advanced program review may occur.

[FR Doc. 95–15748 Filed 6–26–95; 8:45 am]

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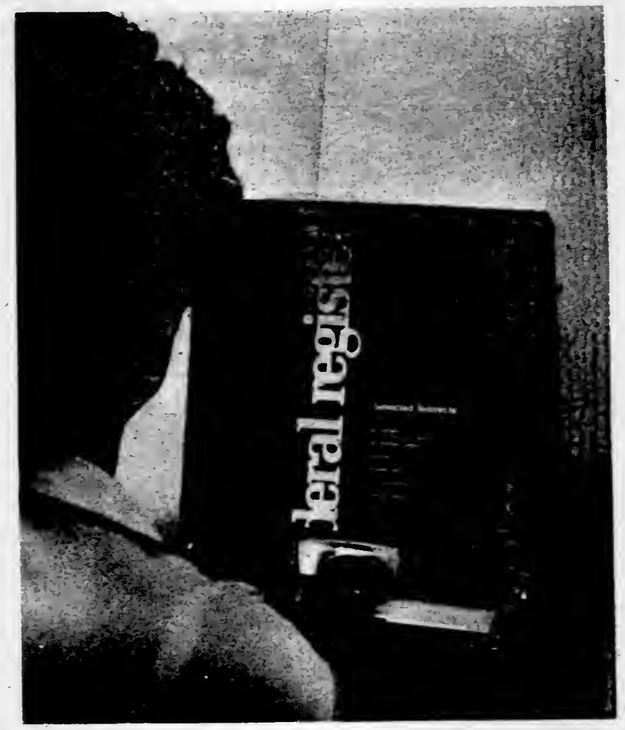
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Federal Register
Vol. 60, No. 124
Wednesday, June 28, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 531 and 575

RIN 3206–AF86

Recruitment and Relocation Bonuses and Retention Allowances

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final regulations to provide agencies with greater flexibility in paying recruitment and relocation bonuses and retention allowances (the 3 R's).

EFFECTIVE DATE: These regulations are effective July 28, 1995, except the amendment to 5 CFR 531.101, which is effective on the first day of the first applicable pay period beginning on or after January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Bryce Baker, (202) 606–2858.

SUPPLEMENTARY INFORMATION: On July 5, 1994, the Office of Personnel Management (OPM) published proposed revisions in the current regulations on recruitment and relocation bonuses and retention allowances (59 FR 34393). Interested parties were invited to comment for a 30-day period. OPM received comments from 13 agencies. Eleven agencies expressed support for the majority of the proposed changes and commented favorably on the increased flexibility provided by the proposed regulations. Comments included support for the overall goal of eliminating regulatory restrictions and administrative requirements in the spirit of the National Performance Review. Specific comments are discussed below along with a description of changes made in the final regulations.

Recruitment Bonuses

Service Agreement

One agency proposed that there be no minimum time limit for a service agreement for payment of a recruitment bonus. Another agency proposed keeping the 12-month minimum requirement and stated that it would be difficult for the agency to specify an agency requirement of 12 months if the regulations require a minimum of 6 months. We have not adopted either of these suggestions. The final regulations require a service agreement for a minimum period of 6 months, as proposed, in order to increase agency flexibility while maintaining a requirement for a reasonable minimum period. An agency may require a longer minimum period in its recruitment bonus plan.

Break in Service

One agency commented that the exception to the break-in-service requirement for a temporary appointment in paragraph (b) of the definition of "newly appointed" in 5 CFR 575.103 should not be limited to a temporary appointment that is not full-time and not the employee's principal employment. The agency also suggested that a 30-day special need appointment should be an exception to the break-in-service requirement. We have not adopted these suggestions. Allowing payment of a recruitment bonus following an appointment that is not full-time and not the employee's principal employment assists agencies in recruiting candidates for difficult-to-fill positions who have worked for the Federal Government for brief periods, such as physicians who have served as members of boards or advisory committees. However, an employee's acceptance of a full-time temporary appointment without a bonus, such as a special need appointment to begin work before the examining process can be completed, is an indication that a bonus is not needed as a recruitment incentive.

A technical correction has been made in the definition of "newly appointed" (§ 575.103) to reflect the recent consolidation of student employment programs into one program entitled the Student Educational Employment Program. (See 5 CFR 213.3202, as revised on December 16, 1994 (59 FR 64839).) Employment in a cooperative work-study program and employment under the Stay-in-School program have been removed and replaced by employment under the Student Educational Employment Program. The Student Educational Employment Program has two components—the Student Temporary Employment Program and the Student Career Experience Program. Employment under either program will not be considered service for purposes of the 90-day break-in-service rule.

An agency questioned whether the term "principal employment" in the last paragraph of the definition of "newly appointed" in § 575.103 refers to the majority of an individual's hours of employment or to the majority of an individual's income from employment. "Principal employment" refers to either the majority of hours of employment or income from employment. If an individual is engaged in Federal employment that accounts for a majority of his or her hours of employment or his or her income from employment, a recruitment bonus is not warranted, and such employment is not an exception to the 90-day break-in-service required to meet the definition of "newly appointed."

One agency said it was unclear whether the appointments listed in paragraph (b) of the definition of "newly appointed" in § 575.103 are allowed or precluded during the 90-day break-in-service requirement in that paragraph. We believe paragraph (b) clearly indicates that the appointments listed do not count as service in applying the break-in-service requirement for payment of a recruitment bonus.

Candidate Quality

An agency commented that recruitment bonuses should be available for difficult-to-fill positions *or* for highly-qualified candidates. In order to pay a recruitment bonus, it must be determined that an agency would be likely, in the absence of such a bonus, to encounter difficulty in filling the position, as required by 5 U.S.C. 5753(a). Therefore, the requirement that the candidate must be highly qualified is not sufficient, by itself, to justify the payment of a recruitment bonus. (Often, there are many highly qualified canadidates for positions that are not difficult to fill.)

An agency commented that the regulations should continue to require that a candidate be highly qualified for

payment of both recruitment and relocation bonuses. OPM has not adopted this recommendation. OPM has advised agencies to consider using the 3 R's before requesting any new or increased special salary rates because, unlike the 3 R's, special rates are basic pay and, in most situations, are more expensive than the 3 R's. As explained in the supplementary information for the proposed regulations, the requirement that a candidate be highly qualified is being removed because it has been cited as a barrier to considering the payment of recruitment bonuses before requesting new or increased special salary rates under 5 U.S.C. 5305. Provided that minimum qualification requirements established by OPM are met, agencies may tailor qualification requirements to meet the specific needs of the agency. Also, it is up to each agency to determine the level of candidate quality it should target when offering a recruitment or relocation bonus. Another agency questioned whether this change means that bonuses could be offered to candidates who are not well qualified. It does not. Any candidate offered a recruitment bonus must meet the qualification requirements established for the position and be among the best qualified in order to be selected.

Definition of Commuting Area

An agency commented that the definition of "commuting area" should not be removed from the regulations for recruitment bonuses because this term appears in the definition of "involuntarily separated." We agree. The definition will not be removed.

Definition of "Employee"

An agency commented that the definition of "employee" for purposes of recruitment bonuses was not clearly worded with respect to the coverage of certain individuals prior to commencement of their appointments. We have revised the definition to make clear that, prior to the starting date of actual employment, only those individuals who have accepted an offer to be newly appointed and who have signed the required service agreement are eligible to be paid recruitment bonuses.

Relocation Bonuses

Case-by-Case Determination

There are certain exceptions to the requirement for case-by-case approval of relocation bonuses, such as relocation of a major organizational unit for which continued operation must be ensured without undue disruption. The positions to which employees are relocated in this circumstance must be determined to be difficult to fill, as required by 5 U.S.C. 5753(a), in order to pay relocation bonuses. One agency requested that an exception be added for a facility that is closing. We have not adopted this suggestion. If a facility closes, employees of that facility who relocate to other positions are typically in various occupations and move to positions in various locations, including locations in the same commuting area. We believe this situation requires approval on a case-by-case basis because the positions in various occupations and locations to which these employees move may or may not meet the "difficult-to-fill" requirement in law and may or may not be in a different commuting area. A relocation bonus may be paid only to an employee who must relocate to accept a position in a different commuting area, and the employee must establish residence in the new commuting area before the bonus may be paid. (See §§ 575.201 and 575.205(c).)

Another agency requested an exception to the requirement for case-by-case approval on the basis of category during a reorganization. We have not adopted this suggestion because specificity is required to determine whether the position in a new commuting area to which an employee is moving is a position that is difficult to fill. Therefore, case-by-case approval is necessary.

Definition of "Employee"

An agency commented that the definition of "employee" for purposes of relocation bonuses should include the phrase "without a break in service." We agree and have revised the definition accordingly.

Service Agreement

An agency commented that, as in the case of recruitment bonuses, a minimum service agreement of 6 months also should be required for payment of a relocation bonus. We have not adopted this suggestion. The regulations already include a provision in § 575.206 allowing agencies to determine any length of time to be appropriate for a service agreement in the case of a relocation bonus paid for a temporary change in duty station. A 6-month minimum requirement would be more restrictive. Agencies, of course, may include criteria for establishing time periods in the agency plan for relocation bonuses.

Candidate Quality

An agency commented that the term "high-quality employee" should not be removed. We have not adopted this suggestion for the same reasons discussed above for recruitment bonuses.

Retention Allowances

Reason for Being Likely to Leave

Three agencies expressed concern that allowing retention allowances to be paid to employees who would leave the Federal service for any reason, including retirement, could be subject to abuse. We believe the previous provision that allowed payment only to employees who leave the Federal service for other employment was too narrow and that additional flexibility is warranted. An agency may limit the circumstances under which a retention allowance may be paid in the criteria in the agency's plan for payment of retention allowances.

One agency expressed concern that the proposed changes in the retention allowance regulations could lead to costly competition among Federal agencies. This is not the case, since the regulations continue to restrict payment of a retention allowance to employees who would otherwise leave the Federal service. Therefore, a retention allowance may not be paid to an employee who would leave one Federal agency to go to another Federal agency. A second agency commented that the regulations should allow payment of a retention allowance to an employee who is leaving for another Federal agency. A third agency commented that the regulations should allow payment of a retention allowance by an agency that is closing to an employee who would otherwise leave for another Federal agency, if the closing agency needs to retain the employee until the closure date because the employee's leaving would create an undue disruption in an essential function of the closing agency. We have not adopted these suggestions because we must be cognizant of the needs of every agency and do not believe it would be desirable to allow Federal agencies to enter into bidding wars.

An agency suggested that payment of a retention allowance to an employee who is planning to leave for retirement should be limited to 1 year because this would allow time for management to find a replacement. We have not included this limitation in the regulations because agencies already are authorized to limit the circumstances under which a retention allowance may be paid as a part of their own retention allowance plans. Also, as required by § 575.306(c), agencies must review each determination to pay a retention allowance at least annually. To continue payment of a retention allowance, the conditions giving rise to the original determination to pay the allowance must still exist.

In view of the change allowing payment of a retention allowance when an employee would leave the Federal Government for a reason other than employment, an agency commented that, for consistency, we should remove a phrase in § 575.305(c)(1) referring to employment. We agree and have removed the phrase.

Aggregate Limitation

One agency commented that payment of a retention allowance should be allowed even if it would cause an employee's aggregate compensation to exceed the aggregate limit (level I of the Executive Schedule) at the end of the calendar year. We have not adopted this suggestion. The requirement in § 575.306(b) prohibiting authorization of a retention allowance that would cause the aggregate compensation of an employee to exceed the rate payable for level I of the Executive Schedule was established (1) to prevent accumulation of large amounts that would be carried over from one calendar year to the next and paid only upon separation or death, thus potentially obligating the expenditure of appropriated funds for several years in advance, and (2) because accumulation of a large amount that would be payable in a lump sum upon separation could be an incentive for an employee to leave.

Miscellaneous

Executive Order 12944 of December 29, 1994, deleted the San Francisco-Oakland-San Jose, CA Consolidated Metropolitan Statistical Area (CMSA) as an interim geographic adjustment area because locality pay rates implemented in January 1995 for the San Francisco CMSA are greater than interim geographic adjusted rates for 1995. Therefore, OPM is removing the San Francisco CMSA from the definition of *interim geographic adjustment area* in § 531.101.

Waiver of Notice of Proposed Rule Making and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B) and 5 U.S.C. 553(d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking for the rule in 5 CFR 531.101 and making this rule effective retroactively. Executive Order 12944 of December 29, 1994, deleted the San Francisco-Oakland-San Jose, CA Consolidated Metropolitan Statistical Area as an interim geographic adjustment area effective on the first day of the first applicable pay period beginning on or after January 1, 1995. The amendment to 5 CFR 531.101 is being made effective on the effective date of the Executive order.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Parts 531 and 575

Government employees, Law enforcement officers, Wages.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending parts 531 and 575 of title 5 of the Code of Federal Regulations as follows:

PART 531—PAY UNDER THE GENERAL SCHEDULE

1. The authority citation for part 531 is revised to read as follows:

Authority: 5 U.S.C. 5115, 5307, and 5338; sec. 4 of Pub. L. 103–89, 107 Stat. 981; and E.O. 12748, 56 FR 4521, February 4, 1991, 3 CFR, 1991 Comp., p. 316;

Subpart A also issued under 5 U.S.C. 5304, 5305, and 5553; section 302 of the Federal Employees Pay Comparability Act of 1990 (FEPCA), Pub. L. 101–509, 104 Stat. 1462; and E.O. 12786, 56 FR 67453, December 30, 1991, 3 CFR 1991 Comp., p. 376;

Subpart B also issued under 5 U.S.C. 5303(g), 5333, 5334(a), and 7701(b)(2);

Subpart C also issued under 5 U.S.C. 5304, 5305, and 5553; sections 302 and 404 of FEPCA, Pub. L. 101–509, 104 Stat. 1462 and 1466; and section 3(7) of Pub. L. 102–378, 106 Stat. 1356;

Subpart D also issued under 5 U.S.C. 5335(g) and 7701(b)(2);

Subpart E also issued under 5 U.S.C. 5336;

Subpart F also issued under 5 U.S.C. 5304, 5305(g)(1), and 5553; and E.O. 12883, 58 FR 63281, November 29, 1993, 3 CFR 1993 Comp., p. 682.

2. In § 531.101, the definition of interim geographic adjustment area is revised to read as follows:

§ 531.101 Definitions.

* * * * *

Interim geographic adjustment area means either of the following Consolidated Metropolitan Statistical Areas (CMSA's), as defined by the Office of Management and Budget (OMB):

(a) New York-Northern New Jersey-Long Island, NY–NJ–CT–PA; or

(b) Los Angeles-Riverside-Orange County CA.

* * * * *

PART 575—RECRUITMENT AND RELOCATION BONUSES; RETENTION ALLOWANCES; SUPERVISORY DIFFERENTIALS

3. The authority citation for part 575 continues to read as follows:

Authority: 5 U.S.C. 1104(a)(2), 5753, 5754, and 5755; sec. 302 and 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509) 104 Stat. 1462 and 1466, respectively; E.O. 12748, February 1, 1991, 3 CFR, 1992 Comp. p. 316.

4. Section 575.101 is revised to read as follows:

§ 575.101 Purpose.

This subpart provides regulations to implement 5 U.S.C. 5753, which authorizes payment of a recruitment bonus of up to 25 percent of the annual rate of basic pay to a newly appointed employee, provided there is a determination that, in the absence of such a bonus, difficulty would be encountered in filling the position.

5. In § 575.103, the definitions of *employee* and *newly appointed* are revised to read as follows:

§ 575.103 Definitions.

* * * * *

Employee means—

(a) An employee in or under an agency who is newly appointed; or

(b) An individual not yet employed who has received a written offer to be newly appointed and has signed a written service agreement in accordance with § 575.106 prior to payment of the recruitment bonus.

* * * * *

Newly appointed refers to—

(a) The first appointment, regardless of tenure, as an employee of the Federal Government; or

(b) An appointment as an employee of the Federal Government following a break in service of at least 90 days from the candidate's last period of Federal employment, other than—

(1) Employment under the Student Educational Employment Program under § 213.3202;

(2) Employment as a law clerk trainee under § 213.3102(e) of this chapter;

(3) Employment while a student during school vacations under a short-term temporary appointing authority;

(4) Employment under a provisional appointment designated under

§ 316.403 if the new appointment is permanent and immediately follows the provisional appointment; or

(5) Employment under a temporary appointment that is neither full-time nor the principal employment of the candidate.

* * * * *

6. In § 575.104, paragraphs (b)(2), (c)(1), and (c)(2) (i) and (iii) are revised to read as follows:

§ 575.104 Agency recruitment bonus plans; higher level review and approval; and criteria for payment.

* * * * *

(b) * * *

(2) When necessary to make a timely offer of employment, a higher level official may establish criteria for offering recruitment bonuses in advance and authorize the recommending official to offer a recruitment bonus (in any amount within a pre-established range) to any candidate without further review or approval.

(c) *Criteria for payment.* (1) Each bonus paid under this subpart shall be based on a written determination that, in the absence of such a bonus, the agency would encounter difficulty in filling the position. Such a determination shall be made before the employee actually enters on duty in the position for which he or she was recruited. An agency may target groups of positions that have been difficult to fill in the past or that may be difficult to fill in the future and may make the required written determination to offer a recruitment bonus on a group basis.

(2) * * *

(i) The success of recent efforts to recruit candidates for similar positions, including indicators such as offer acceptance rates, the proportion of positions filled, and the length of time required to fill similar positions;

* * * * *

(iii) Labor-market factors that may affect the ability of the agency to recruit candidates for similar positions now or in the future;

* * * * *

7. Section 575.105 is revised to read as follows:

§ 575.105 Payment of recruitment bonus.

A recruitment bonus shall be calculated as a percentage of the employee's annual rate of basic pay (not to exceed 25 percent) and paid as a lump sum. It shall not be considered part of an employee's rate of basic pay for any purpose.

8. Section 575.106 is revised to read as follows:

§ 575.106 Service agreement.

(a) Before a recruitment bonus may be paid, an agency shall require that the employee sign a written service agreement to complete a specified period of employment with the appointing agency (or successor agency in the event of a transfer of function).

(b) The minimum period of employment to be established under a service agreement for a recruitment bonus shall be 6 months.

9. Section 575.108 is revised to read as follows:

§ 575.108 Internal monitoring.

Each agency shall monitor the use of recruitment bonuses to ensure that its recruitment bonus plan conforms to the requirements established under this subpart and that the payment of recruitment bonuses conforms to the criteria established under this subpart.

10. Section 575.201 is revised to read as follows:

§ 575.201 Purpose.

This subpart provides regulations to implement 5 U.S.C. 5753, which authorizes payment of a relocation bonus of up to 25 percent of the annual rate of basic pay to an employee who must relocate to accept a position in a different commuting area, provided there is a determination that, in the absence of such a bonus, difficulty would be encountered in filling the position.

11. In § 575.203, the definitions of *employee* and *service agreement* are revised to read as follows:

§ 575.203 Definitions.

* * * * *

Employee means an employee in or under an agency who is appointed without a break in service to a position in a different commuting area or whose duty station is changed permanently or temporarily to a different community area.

* * * * *

Service agreement means a written agreement between an agency and an employee under which the employee agrees to a specified period of employment with the agency at the new duty station to which relocated in return for payment of a relocation bonus.

12. In § 575.204, paragraphs, (c)(1), (c)(2)(i), (c)(2)(iii), and (d) are revised to read as follows:

§ 575.204 Agency relocation bonus plans; higher level review and approval; criteria for payment; and exceptions to case-by-case approval.

* * * * *

(c) *Criteria for payment.* (1) Each bonus paid under this subpart shall be based on a written determination that, in the absence of such a bonus, the agency would encounter difficulty in filling the position. Each such determination shall be made before the employee actually enters on duty in the position to which he or she was relocated. An agency may target groups of positions that have been difficult to fill in the past or that may be difficult to fill in the future. However, except as provided in paragraph (d) of this section, any determination to pay a bonus shall be made on a case-by-case basis for each employee.

(2) * * *

(i) The success of recent efforts to recruit candidates for similar positions, including indicators such as offer acceptance rates, the proportion of positions filled, and the length of time required to fill similar positions;

* * * * *

(iii) Labor market factors that may affect the ability of the agency to recruit candidates for similar positions now or in the future; and

* * * * *

(d) *Exceptions to case-by-case approval.* The head of an agency may waive, for a specified period of time, the case-by-case approval requirement for any employee whose rating of record is at least Level 3 ("Fully Successful" or equivalent), when—

(1) The employee is a member of a specified group of employees subject to a mobility agreement, and the head of the agency determines that relocation bonuses are necessary to ensure the agency's ability to retain employees subject to such an agreement; or

(2) A major organizational unit of the agency is relocated to a different commuting area, and the head of the agency determines that relocation bonuses are necessary for specified groups of employees to ensure the continued operation of that unit without undue disruption of an activity or function that is deemed essential to the agency's mission and/or without undue disruption of service to the public.

13. In § 575.205, paragraphs (a) and (b) are revised to read as follows:

§ 575.205 Payment of relocation bonus.

(a) A relocation bonus shall be calculated as a percentage of the employee's annual rate of basic pay and paid as a lump sum. Except as provided in paragraph (b) of this section, the amount of a relocation bonus may not exceed 25 percent of the employee's annual rate of basic pay. It shall not be considered part of an employee's rate of basic pay for any purpose.

(b) The amount of a relocation bonus may not exceed the greater of $15,000 or 25 percent of a law enforcement officer's annual rate of basic pay in the case of—

(1) A law enforcement officer, as defined in § 550.103 of this chapter, with respect to whom the provisions of chapter 51 of title 5, United States Code, apply;

(2) A member of the United States Secret Service Uniformed Division;

(3) A member of the United States Park Police;

(4) A special agent within the Diplomatic Security Service;

(5) A probation officer (referred to in section 3672 of title 18, United States Code; and

(6) A pretrial services officer (referred to in section 3153 of title 18, United States Code).

* * * * *

14. Section 575.206 is revised to read as follows:

§ 575.206 Service agreement.

Before a relocation bonus may be paid, an agency shall require that the employee sign a written service agreement to complete a specified period of employment with the appointing agency (or the successor agency in the event of a transfer of function) at the new duty station.

15. Section 575.208 is revised to read as follows:

§ 575.208 Internal monitoring.

Each agency shall monitor the use of relocation bonuses to ensure that its relocation bonus plan conforms to the requirements established under this subpart and that the payment of relocation bonuses conforms to the criteria established under this subpart.

16. In § 575.302, paragraph (c) is revised to read as follows:

§ 575.302 Delegation of authority.

* * * * *

(c) The head of an Executive agency may request that OPM authorize the payment of a retention allowance to one or more categories of employees of his or her agency not otherwise covered by 5 U.S.C. 5754 or this subpart.

* * * * *

17. In § 575.303, the definition of *employee* is revised to read as follows:

§ 575.303 Definitions.

* * * * *

Employee means an employee in or under an agency.

* * * * *

18. In § 575.304, paragraphs (a) and (b) are revised to read as follows:

§ 575.304 Conditions for payment.

(a) An agency may not begin payment of a retention allowance during a period of employment established under any service agreement required by payment of a recruitment bonus under subpart A of this part or relocation bonus under subpart B of this part. After retention allowance payments have commenced, a relocation bonus may be paid without affecting the payment of a retention allowance.

(b) An agency may pay a retention allowance to an employee if the employee is likely to leave the Federal service for any reason.

* * * * *

19. In § 575.305, paragraph (c)(1) is revised to read as follows:

§ 575.305 Agency retention allowance plans; higher level review and approval; and criteria for payment.

* * * * *

(c) *Criteria for payment.* (1) Each allowance paid under this subpart shall be based on a written determination that the unusually high or unique qualifications of the employee or a special need of the agency for the employee's services makes it essential to retain the employee and that, in the absence of such an allowance, the employee would be likely to leave the Federal service.

* * * * *

20. In § 575.306, a new paragraph (d) is added to read as follows:

§ 575.306 Payment of retention allowance.

* * * * *

(d) A retention allowance is not pay for purposes of a lump-sum payment for annual leave under 5 U.S.C. 5551 or 5552.

21. Section 575.308 is revised to read as follows:

§ 575.308 Internal monitoring.

Each agency shall monitor the use of retention allowances to ensure that its retention allowance plan conforms to the requirements established under this subpart and that the payment of retention allowances conforms to the criteria established under this subpart.

[FR Doc. 95–15713 Filed 6–27–95; 8:45 am]

BILLING CODE 6325–01–M

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5 CFR Part 630

RIN 3206–AG48

Absence and Leave; SES Annual Leave Accumulation

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final rules governing annual leave accumulation for members of the Senior Executive Service (SES). SES members are now subject to a 90-day (720-hour) maximum limitation on the amount of annual leave that may be carried over from one leave year to the next.

EFFECTIVE DATE: July 28, 1995.

FOR FURTHER INFORMATION CONTACT: Frank Derby, (202) 606–2858.

SUPPLEMENTARY INFORMATION: On December 21, 1994, the Office of Personnel Management (OPM) issued interim regulations (59 FR 65704) implementing section 201of the Government Management Reform Act of 1994 (Pub. L. 103–356, enacted October 13, 1994). Section 201 amended 5 U.S.C. 6304(f) to provide a 90-day (720-hour) limit on the amount of annual leave a member of the Senior Executive Service (SES) may carry over from one leave year to the next. Section 201 also contained a grandfather clause to allow SES members who had accumulated more than 90 days (720 hours) of annual leave as of the first day of the first pay period beginning after October 13, 1994, to retain the higher amount as a personal leave ceiling. The personal leave ceiling is the maximum amount of accrued annual leave an affected SES member may carry over from one leave year to the next. The personal leave ceiling is subject to reduction under 5 U.S.C. 6304(c) if the SES member uses more leave than he or she earns in a leave year.

The 60-day comment period ended on February 21, 1995. OPM received one comment from an agency that requested information on how to apply the statutory and regulatory limitations on annual leave accrual for individuals entering the SES. We agree that this information is necessary and have added this information to 5 CFR 630.301(b). (Previously, this information was provided in former FPM Supplement 920–1, Operations Handbook for the Senior Executive Service, which expired on December 31, 1994.)

Employees in non-SES positions are subject to a 30-day or 45-day maximum annual leave ceiling under 5 U.S.C. 6304 (a), (b), or (c), as appropriate. When an employee in a non-SES position moves to a position in the Senior Executive Service, any annual leave accumulated prior to movement remains to the employee's credit. Annual leave in excess of the 30-day or 45-day leave ceilings that accrued prior to the employee's entry into the SES and that is not used by the beginning of the next leave year is subject to forfeiture. Annual leave that is not in excess of the

30-day or 45-day maximum limitations and any annual leave accrued while serving in the SES is carried forward and becomes subject to the 90-day maximum limitation on accrued annual leave for SES members.

Example: A GS–15 employee who has 300 hours of accumulated annual leave (i.e., 60 hours in excess of the 240-hour (30-day) leave ceiling) is appointed to an SES position on June 14, 1995. The employee earns 100 additional hours of annual leave in the SES before the end of the 1995 leave year. If the SES member uses only 40 of the 60 hours of excess annual leave during the remainder of the 1995 leave year, his or her leave balance at the beginning of the 1996 leave year will be 340 hours (the maximum 240 hours carried over as a GS–15 employee, plus the 100 hours earned while in the SES). The remaining 20 hours of excess leave will be forfeited at the beginning of the 1996 leave year. If the SES member uses more than 60 hours of excess annual leave (e.g., 80 hours) during the remainder of the 1995 leave year, his or her leave balance at the beginning of the 1996 leave year will be 320 hours (the maximum 240 hours carried over as a GS–15 employee, plus the 100 hours earned while in the SES, minus the 20 hours of leave used above the 60 hours of excess annual leave).

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 630

Absence and leave.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending 5 CFR part 630 as follows:

PART 630—ABSENCE AND LEAVE

1. The authority citation for part 630 is revised to read as follows:

Authority: 5 U.S.C. 6311; § 630.301 also issued under Pub. L. 103–356, 108 Stat. 3410; § 630.303 also issued under 5 U.S.C. 6133(a); §§ 630.306 and 630.308 also issued under 5 U.S.C. 6304(d)(3), Pub. L. 102–484, 106 Stat. 2722 and Pub. L. 103–337, 108 Stat. 2663; subpart D also issued under Pub. L. 103–329, 108 Stat. 2423; § 630.501 and subpart F also issued under E.O. 11228, 30 FR 7739, 3 CFR, 1974 Comp., p. 163; subpart G also issued under 5 U.S.C. 6305; subpart H issued under 5 U.S.C. 6326; subpart I also issued under 5 U.S.C. 6332 and Pub. L. 100–566, 102 Stat. 2834 and 103–103, 107 Stat. 1022; subpart J also issued under 5 U.S.C. 6362 and Pub. L. 100–566 and 103–103; subpart K also issued under Pub. L. 102–25, 105 Stat. 92; and subpart L also issued under 5 U.S.C. 6387 and Pub. L. 103–3, 107 Stat. 23.

Subpart C—Annual Leave

2. In § 630.301, paragraph (b) is revised to read as follows:

§ 630.301 Annual leave accumulation—Senior Executive Service.

* * * * *

(b) When an employee in a position outside of the Senior Executive Service moves to a position in the Senior Executive Service, any annual leave accumulated prior to movement shall remain to the employee's credit.

(1) Annual leave accumulated prior to movement to the Senior Executive Service that is in excess of the amount allowed for the former position by 5 U.S.C. 6304 (a), (b), or (c) and that is not used by the beginning of the first full biweekly pay period in the next leave year shall be subject to forfeiture.

(2) If an employee serves less than a full pay period under an appointment in the Senior Executive Service, only that portion of accrued annual leave that is attributable to service in the Senior Executive Service shall be subject to the 90-day (720-hour) limitation on accumulation of annual leave provided in paragraph (a) of this section. Annual leave accrued during the remainder of the pay period shall be subject to the limitations in 5 U.S.C. 6304(a), (b), and (c), as appropriate.

* * * * *

[FR Doc. 95–15535 Filed 6–27–95; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

[FV–94–705FR]

Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This amendment will expand the scope and applicability of the Department of Agriculture's uniform rules of practice governing adjudicatory proceedings to include actions initiated under the Fluid Milk Promotion Act of 1990; the Fresh Cut Flowers and Fresh Cut Greens Promotion and Consumer Information Act of 1993; the Lime Research, Promotion, and Consumer Information Act of 1990, as amended; the Mushroom Promotion, Research, and Consumer Information Act of 1990; the Pecan Promotion and Research Act of 1990; the Sheep Promotion, Research, and Information Act of 1994; and the Soybean Promotion, Research, and Consumer Information Act.

EFFECTIVE DATE: June 28, 1995.

FOR FURTHER INFORMATION CONTACT: Richard Schultz, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2535–S, Washington, D.C. 20090–6456, telephone: (202) 720–5976.

SUPPLEMENTARY INFORMATION: The Fluid Milk Promotion Act of 1990 [Pub. L. 101–624, 7 U.S.C. 6401–6417]; the Fresh Cut Flowers and Fresh Cut Greens Promotion and Consumer Information Act of 1993 [Pub. L. 103–190, 7 U.S.C. 6801–6814]; the Lime Research, Promotion, and Consumer Information Act of 1990, as amended, [Pub. L. 101–624, 7 U.S.C. 6201–6212]; the Mushroom Promotion, Research, and Consumer Information Act of 1990 [Pub. L. 101–624, 7 U.S.C. 6101–6112]; the Pecan Promotion and Research Act of 1990 [Pub. L. 101–624, 7 U.S.C. 6001–6013]; the Sheep Promotion, Research, and Information Act of 1994 [7 U.S.C. 7101–7111]; and the Soybean Promotion, Research, and Consumer Information Act [Pub. L. 101–624, 7 U.S.C. 6301–6311]; each authorizes the assessment of civil penalties and the issuance of cease and desist orders against any person found to be in violation of the respective Act, order, plan, or regulation issued thereunder.

The Department of Agriculture has established uniform rules of practice [7 CFR part 1, subpart H], which govern the conduct of adjudicatory proceedings under numerous statutes. In order to insure consistency and uniformity in the conduct of the Department's administrative proceedings, it has been determined that proceedings initiated under the Acts listed above should also be governed by these uniform procedures.

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect, and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

The provisions of the Administrative Procedure Act concerning notice and opportunity for comment on agency rulemaking [5 U.S.C. 553] do not apply to the promulgation of agency rules of practice. Further, this action simply extends the applicability of the Department's uniform rules of practice

to newly passed statutes. Accordingly, this action is made effective upon publication in the **Federal Register**.

In consideration of the foregoing, 7 CFR part 1, subpart H, is amended as follows:

PART 1—AMENDED

1. The authority citation for part 1, subpart H is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 61, 87e, 149, 150gg, 162, 163, 164, 228, 268, 499o, 608c(14), 1592, 1624(b), 2151, 2621, 2714, 2908, 3812, 4610, 4815, 4910, 6009, 6107, 6207, 6307, 6411, 6808, 7107; 15 U.S.C. 1828; 16 U.S.C. 620d, 1540(f), 3373; 21 U.S.C. 104, 111, 117, 120, 122, 127, 134e, 134f, 135a, 154, 463(b), 621, 1043; 43 U.S.C. 1740; 7 CFR 2.35, 2.41.

§ 1.131 [Amended]

Section 1.131(a) is amended by inserting the following statutory references in the list of statutes in alphabetical order: Fluid Milk Promotion Act of 1990, section 1999L [7 U.S.C. 6411], Fresh Cut Flowers and Fresh Cut Greens Promotion and Consumer Information Act of 1993, section 9 [7 U.S.C. 6808], Lime Research, Promotion, and Consumer Information Act of 1990, as amended, section 1958 [7 U.S.C. 6207], Mushroom Promotion, Research, and Consumer Information Act of 1990, section 1928 [7 U.S.C. 6107], Pecan Promotion and Research Act of 1990, section 1914 [7 U.S.C. 6009], Sheep Promotion, Research, and Information Act of 1994 [7 U.S.C. 7107], and Soybean Promotion, Research, and Consumer Information Act, section 1972 [7 U.S.C. 6307].

Dated: June 22, 1995.

Lon Hatamiya,

Administrator, Agricultural Marketing Service.

[FR Doc. 95–15856 Filed 6–27–95; 8:45 am]

BILLING CODE 3410–02–P

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV95–905–2IFR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Expenses and Assessment Rate for 1995–96 Fiscal Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenses and establishes an assessment rate for the 1995–96 fiscal year under Marketing Order No. 905. Authorization of this budget enables the Citrus Administrative Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective August 1, 1995, through July 31, 1996. Comments received by July 28, 1995, will be considered prior to any finalization on this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456 or by Fax: (202) 720–5698. Three copies of all written material shall be submitted, and they will be made available for public inspection in the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–5127; or William Pimenthal, Southeast Marketing Field Office, Fruit & Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883–2276; telephone: (813) 299–4770.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Marketing Order No. 905 (7 CFR part 905), as amended, regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, oranges, grapefruit, tangerines, and tangelos grown in Florida are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable citrus fruit during the 1995–96 fiscal year, beginning August 1, 1995, through July 31, 1996. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 citrus handlers subject to regulation under the marketing order covering fresh oranges, grapefruit, tangerines, and tangelos grown in Florida, and approximately 10,200 producers of these fruits in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. A minority of these handlers and a majority of these producers may be classified as small entities.

This marketing order, administered by the Department, requires that the assessment rate for a particular fiscal period shall apply to all assessable citrus fruit handled from the beginning of such period. An annual budget of expenses and assessment rate is prepared by the Committee and submitted to the Department for

approval. The Committee members are handlers and producers of Florida citrus. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate appropriate budgets. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by the expected cartons (⅘ bushels) of fruit shipped. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. The annual budget and assessment rate are usually recommended by the Committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the Committee will have funds to pay its expenses.

The Committee met May 23, 1995, and unanimously recommended expenses of $215,000 for the 1995–96 fiscal year, with an assessment rate of $0.00325 per ⅘ bushel carton of fresh fruit shipped.

In comparison, 1994–95 budget expenses were $210,000 with an approved assessment of $0.003. Thus, for the 1995–96 fiscal year, expenses are being increased $5,000 and the assessment rate is being increased $0.00025 from the levels established in 1994–95.

The assessment rate, when applied to anticipated shipments of 66,000,000 cartons of assessable fruit, will yield a total of $214,500 in assessment income. Interest income for 1995–96 is estimated at $3,500. Income will be adequate to cover budgeted expenses. Funds in the reserve at the end of the 1995–96 fiscal year, estimated at $100,000, will be within the maximum permitted by the order of approximately one-half of one fiscal year's expenses.

Major expense categories for the 1995–96 fiscal year include $101,740 for salaries, $36,000 for the Manifest Department, and $13,350 for insurance and bonds.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1995–96 fiscal year begins on August 1, 1995, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable oranges, grapefruit, tangerines, and tangelos handled during the fiscal year; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other budget actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Note: This section will not appear in the Code of Federal Regulations.

2. A new § 905.234 is added to read as follows:

§ 905.234 Expenses and assessment rate.

Expenses of $215,000 by the Citrus Administrative Committee are authorized and an assessment rate of $0.00325 per ⅘ bushel carton of assessable fruit is established for the fiscal year ending July 31, 1996. Any unexpended funds may be carried over as a reserve.

Dated: June 22, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–15859 Filed 6–27–95; 8:45 am]

BILLING CODE 3410–02–P

Consolidated Farm Service Agency

7 CFR Parts 718, 790, and 791

Commodity Credit Corporation

7 CFR Parts 1413, 1414, 1415, and 1416

RIN 0560–AD 72, AD00

1994 Wheat, Feed Grains, Cotton and Rice Programs

AGENCIES: Consolidated Farm Service Agency and Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The statutory requirements that relate to the feed grains, rice, upland and extra long staple cotton, and wheat programs were amended by the Agricultural Reconciliation Act of 1993 (the 1993 Act). An interim rule was published on November 16, 1994, (59 FR 59280) to set forth changes necessary to implement these provisions. Accordingly, this rule adopts the interim rule as final.

EFFECTIVE DATE: June 28, 1995.

FOR FURTHER INFORMATION CONTACT: Bruce D. Hiatt, Agricultural Program Specialist, CFSA, USDA, P.O. Box 2415, Washington, DC 20013–2415, telephone 202–690–2798.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not-significant for purposes of Executive Order 12866 and therefore has not been reviewed by OMB.

Final Regulatory Impact Analyses

Final Regulatory Impact Analyses were prepared with respect to the programs for the 1994 crops of wheat, feed grains, cotton, and rice. Copies of the analyses are available to the public from Tom Witzig, CFSA–USDA, Room 3741, South Agriculture Building, 14th and Independence, P.O. Box 2415, Washington, DC 20013–2415.

Federal Assistance Numbers

The titles and numbers of the Federal assistance programs, as found in the Catalog of Federal Domestic Assistance, to which this final rule applies are Cotton Production Stabilization—10.052; Feed Grain Production Stabilization—10.055; Wheat Production Stabilization—10.058; and Rice Production Program—10.065.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since neither the Consolidated Farm Service Agency (CFSA) nor Commodity Credit Corporation (CCC) is required by 5 U.S.C. 553 or any other provision of the law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of this final rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. The provisions of this rule are not retroactive. Before any judicial action may be brought concerning the provisions of this rule, the administrative remedies at 7 CFR part 780 must be exhausted.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The information collection requirements contained in these regulations have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35, and assigned OMB No. 0560–0004 and 0560–0092.

Background

The interim rule published on November 16, 1994 set forth amendments: to conform to the provisions of the 1993 Act; to make certain technical corrections; to delete references to obsolete provisions; to add references relating to current policy, to set forth the provisions for the Options Pilot Program (OPP) and Voluntary Production Limitation Program (VPLP); and to improve the operations of these programs through the 1994 through 1997 crop years.

Discussion of Comments

No comments were received relevant to the publication of the interim regulation published on November 16, 1994. Agency review of the interim rule revealed that 7 CFR 1413.49 had been inadvertently left out of the interim rule.

List of Subjects in 7 CFR Part 1413

Acreage allotments, Appeals, Feed grains, Price support programs, Reporting and recordkeeping requirements, Soil conservation.

Accordingly, under the authority of 7 U.S.C. 1308, 1308a, 1309, 1441–2, 1444–2, 1444f, 1445b–3a, 1461–1469; 15 U.S.C. 714b and 714c, the interim rule amending 7 CFR parts 718, 790, 791, 1413, 1414, 1415, and 1416 which was published at 59 FR 59280 on November 16, 1994, is adopted as a final rule with the following change:

PART 1413—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, WHEAT AND RELATED PROGRAMS

1. The authority for part 1413 continues to read as follows:

Authority: 7 U.S.C. 1308, 1308a, 1309, 1441–2, 1444–2, 1444f, 1445-b–3a, 1461–1469, 15 U.S.C. 714b, and 714c.

2. Subpart H is amended by adding a new § 1413.49 to read as follows:

Subpart H—Program Agreement and Enrollment Provisions

§ 1413.49 Nature of agreement.

(a) The agreement shall provide that the operator and each producer on the farm shall agree to limit the acreage of the crop planted for harvest and devote an eligible acreage of land to approved conservation uses as may be required by the commodity program for the crop as announced by the Secretary and as provided in this part. The agreement shall provide for recording the shares for division of payments for the crop. The operator shall agree to file timely a report of acreage on Form ASCS–578 accurately listing the ACR and the acreage of the program crop(s) planted for harvest on the farm, and such other acreages as are subject to the terms and conditions of the agreement.

(b) CCC shall agree that harvested production of the crop shall be eligible for loans and purchases in accordance with parts 1421 and 1427 of this chapter. CCC shall also agree that deficiency payments, if it is determined that a final deficiency payment will be greater than zero, and any applicable diversion payments shall be made to such operator and producers.

(c) The agreement shall contain such other provisions as CCC determines appropriate to carry out programs established by this part.

(d) The agreement shall provide for the payment of liquidated damages in the event that the operator or any other producers fail to comply with their obligations under the agreement. The purpose of an acreage reduction, or land diversion program is to obtain a reduction of acreage from the production of the applicable crops of commodities in order to adjust the total national acreage of such commodities to desirable goals. Once an agreement has been entered into between CCC and producers, USDA, and other segments of the agricultural community act based upon the assumption that the agreement will be fulfilled and the reduction in acreage will be obtained. The actions of CCC include budgeting and planning for programs in subsequent crop years. A producer's failure to comply with an agreement undermines the basis for these actions, damages the credibility of USDA's programs with other segments of the agricultural community, and requires additional expenditures in subsequent crop years to offset the effect of the increased production in the current crop year. While the adverse effects on CCC of the producer's failure to comply with an agreement are obvious, it would be impossible to compute the actual damages suffered by CCC.

(e) Producers who elect to rescind an agreement to participate in an annual program, or producers who violate an agreement, and the COC makes no determination of good faith, must pay liquidated damages to CCC as provided in the CCC–477. Such producers shall be considered as nonparticipating in the acreage reduction program established for such crop.

(f) If a producer violates the provisions of this part or the CCC–477, and the COC determines a good faith effort was made to comply, standard payment reductions will apply. The reduction will be calculated as the difference between the reported and determined acreage of the crop, multiplied by the program payment yield, multiplied by 50 percent of the established price for the crop.

* * * * *

Signed in Washington, DC on June 18, 1995.

Bruce R. Weber,

Acting Administrator, Consolidated Farm Service Agency, and Acting Executive Vice-President, Commodity Credit Corporation.

[FR Doc. 95–15862 Filed 6–27–95; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 125CE, Special Condition 23–ACE–81]

Special Conditions; Twin Commander Model 695 Airplane

AGENCY Federal Aviation Administration (FAA), DOT.

ACTION; Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Twin Commander Model 695 airplane modified by Garrett Aviation Services, Augusta, Georgia. This airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic displays for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

EFFECTIVE DATE: The effective date of these special conditions is June 28, 1995. Comments must be received on or before July 28, 1995.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. 125CE, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 125CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ervin Dvorak, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–6941.

SUPPLEMENTARY INFORMATION:

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety, and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on these special conditions.

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the rules docket for examination by interested parties, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments, submitted in response to this request, must include a self-addressed and stamped postcard on which the following statement is made: "Comments to Docket No. 125CE." The postcard will be date stamped and returned to the commenter.

Background

On October 31, 1994, Garrett Aviation Services, 1550 Hangar Road, Augusta, Georgia 30906, made an application to the FAA for a supplemental type certificate (STC) for the Twin Commander Model 695 airplane. The proposed modification incorporates a novel or unusual design feature, such as digital avionics consisting of an electronic flight instrument system (EFIS), that is vulnerable to HIRF external to the airplane.

Type Certification Basis

The type certification basis for the Twin Commander Model 695 Airplane is given in Type Certification Data Sheet No. 2A4 plus the following:

§ 23.1301 of Amendment 23–20; §§ 23.1309, 23.1311, and 23.1321 of Amendment 23–41 and § 23.1322 of Amendment 23–43; exemptions, if any; and the special conditions adopted by this remaking action.

Discussion

The FAA may issue and amend special conditions, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards, designated according to § 21.101(b), do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations. Special conditions are normally issued according to § 11.49, after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and become a part of the type certification basis in accordance with § 21.101(b)(2).

Garrett Aviation Services, plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include electronic systems, which are susceptible to the HIRF environment, that were not envisaged by the existing regulations for this type of airplane.

Protection of Systems From High Intensity Radiated Fields (HIRF): Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

FIELD STRENGTH VOLTS/METER

Frequency	Peak	Average
10–100 KHz	50	50
100–500	60	60
500–2000	70	70
2–30 MHz	200	200
30–70	30	30
70–100	30	30
100–200	150	33
200–400	70	70
400–700	4020	935
700–1000	1700	170
1–2 GHz	5000	990
2–4	6680	840
4–6	6850	310
6–8	3600	670
8–12	3500	1270
12–18	3500	360
18–40	2100	750

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter, peak electrical field strength, from 10 KHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify electrical and/or electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarly with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Conclusion

In view of the design features discussed for the Twin Commander Model 695 Airplane, the following special conditions are issued. This action is not a rule of general applicability and affects only those applicants who apply to the FAA for approval of these features on these airplanes.

The substance of these special conditions has been subject to the notice and public comment procedure in several prior rulemaking actions. For example, the Dornier 228–200 (53 FR 14782, April 26, 1988), the Cessna Model 525 (56 FR 49396, September 30, 1991), and the Beech Model 200, A200, and B200 airplanes (57 FR 1220, January 13, 1992). It is unlikely that additional public comment would result in any significant change from those special conditions already issued and commented on. For these reasons, and because a delay would significantly affect the applicant's installation of the system and certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions without notice. Therefore, these special conditions are being made effective upon publication in the **Federal Register.** However, as previously indicated, interested persons are invited to comment on these special conditions if they so desire.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols

Citation

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49.

Adoption of Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the modified Twin Commander Model 695 airplane:

1. *Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF).* Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri on June 1, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–15889 Filed 6–27–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 94–NM–252–AD; Amendment 39–9285; AD 95–13–05]

Airworthiness Directives; Boeing Model 747 Series Airplanes Equipped with Rolls Royce Model RB211 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that requires modification of the nacelle strut and wing structure, inspections and checks to detect discrepancies, and correction of discrepancies. This amendment is

prompted by the development of a modification of the strut and wing structure that improves the damage tolerance capability and durability of the strut-to-wing attachments, and reduces reliance on inspections of those attachments. The actions specified by this AD are intended to prevent failure of the strut and subsequent loss of the engine.

DATES: Effective July 28, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 28, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2776; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes was published in the **Federal Register** on February 7, 1995 (60 FR 7140). That action proposed to require modification of the nacelle strut and wing structure, inspections and checks to detect discrepancies in the adjacent structure, and correction of discrepancies.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters support the proposed rule.

Revision of Descriptive Language

One commenter notes that the description of the unsafe condition that appeared in the Discussion section of the preamble to the notice refers to "the structural fail-safe capability of the strut-to-wing attachment." The commenter states that this description is inaccurate, since it implies that the strut-to-wing attachment is inadequate The commenter suggests that a more accurate description would be "damage tolerance capability of the strut-to-wing attachment." The FAA acknowledges that the commenter's wording is more accurate. The pertinent wording in the preamble to the final rule has been revised to reflect this change. Furthermore, the FAA considers the new structure of the strut as meeting the damage tolerance requirements of amendment 45 of section 25.571, "Damage—tolerance and fatigue evaluation of structure of the Federal Aviation Regulations (14 CFR 25.571, amendment 45), which provides an even higher level of safety than simply fail-safe requirements.

This same commenter provides additional information to describe the purpose of the proposed modification of the nacelle strut and wing structure. This commenter suggests that the rule should specify that the modification not only significantly improves the load-carrying and durability of the strut-to-wing attachments, but "reduces the reliance on non-routine inspections," as well. The FAA concurs with this suggestion and has revised the Summary section of the preamble to this final rule to include wording relevant to this aspect.

This commenter also provides further clarification of the description of the requirements of the existing AD's that address unsafe conditions associated with the strut attachment assemblies on Model 747 series airplanes equipped with Rolls Royce Model RB211 series engines. The description in the Discussion section of the preamble to the proposal states that the existing AD's require "sections of the strut, and strut-to-wing attachment structure." The commenter states that a more complete description of the existing AD's would be "inspections of the strut fuse pins, and strut-to-wing attachment structure." The FAA concurs that the commenter's wording is clearer. However, the following provides a more complete description: The existing AD's require "inspections of the diagonal brace and midspar fuse pins, and strut-to-wing attachment structure." Since the Discussion section is not restated in this final rule, no change to the final rule is necessary.

AD's Terminated by this Final Rule

Additionallly, this commenter requests a revision of proposed paragraph (c), which lists the AD's that will be terminated upon accomplishment of the proposed modification of the nacelle strut and wing structure. The commenter states that since AD 79–17–07, amendment 39–3533, is not applicable to Model 747 series airplanes equipped with Rolls Royce Model RB211 series engines, that AD should be removed from the list. The FAA concurs; paragraph (c) of the final rule has been revised accordingly.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Estimate

Currently, there are no Model 747 series airplanes of the affected design, equipped with Rolls Royce Model RB211 series engines, on the U.S. Register. However, should an affected airplane be imported and placed on the U.S. Register in the future, it will require approximately 6,545 work hours to accomplish the required actions, at an average labor charge of $60 per work hour. The manufacturer will incur the cost of labor, on a pro-rated basis, with 20 years being the expected life of these airplanes. The median age for the fleet of Model 747 series airplanes equipped with Rolls Royce Model RB211 series engines is estimated to be 6 years. Required parts will be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of this AD will be $117,810 per airplane.

This cost impact figure does not reflect the cost of the terminating actions described in the service bulletins listed in paragraph I.C., Table 2, "Prior or Concurrent Service Bulletins," on page 5 of Boeing Alert Service Bulletin 747–54A2157, dated January 12, 1995, that are required to be accomplished prior to, or concurrently with, the modification of the nacelle strut and wing structure. Since some operators may have accomplished certain modifications on some or all of the airplanes in its fleet, while other operators may not have accomplished any of the modifications on any of the airplanes in its fleet, the FAA is unable to provide a reasonable estimate of the cost of accomplishing the terminating actions described in the service bulletins listed in Table 2 of the Boeing alert service bulletin.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The FAA recognizes that the obligation to maintain aircraft in an airworthy condition is vital, but sometimes expensive. Because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain aircraft in an airworthy condition, this appearance is deceptive. Attributing these costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining safe aircraft, prudent operators would accomplish the required actions even if they were not required to do so by the AD.

A full cost-benefit analysis has not been accomplished for this AD. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-beneficial. When the FAA, as in this AD action, makes a finding of an unsafe condition, this means that the original cost-beneficial level of safety is no longer being achieved and that the required actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost-beneficial, a full cost-benefit analysis for this AD would be redundant and unnecessary.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–13–05 Boeing: Amendment 39–9285. Docket 94–NM–252–AD.

Applicability: Model 747 series airplanes having line positions 292 through 1033 inclusive, equipped with Rolls Royce Model RB211 series engines; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the strut and subsequent loss of the engine, accomplish the following:

(a) Accomplish the modification of the nacelle strut and wing structure in accordance with Boeing Alert Service Bulletin 747–54A2157, dated January 12, 1995, at the time specified in either paragraph (a)(1) or (a)(2) of this AD, as applicable. All of the terminating actions described in the service bulletins listed in paragraph I.C., Table 2, "Prior or Concurrent Service Bulletins," on page 5 of Boeing Alert Service Bulletin 747–54A2157, dated January 12, 1995, must be accomplished in accordance with those service bulletins prior to, or concurrently with, the accomplishment of the modification of the nacelle strut and wing structure required by this paragraph.

(1) For Model 747–400 series airplanes having line positions 705 through 1033 inclusive, equipped with Rolls Royce Model RB211–524G and H engines: Within 80 months after the effective date of this AD.

(2) For all other Model 747 series airplanes equipped with Rolls Royce Model RB211 series engines not subject to the requirements of paragraph (a)(1) of this AD: Within 56 months after the effective date of this AD.

(b) Perform the inspections and checks specified in paragraph III, NOTES 8, 9, and 13 of the Accomplishment Instructions on pages 109 and 110 of Boeing Alert Service Bulletin 747–54A2157, dated January 12, 1995, concurrently with the modification of the nacelle strut and wing structure required by paragraph (a) of this AD. Prior to further flight, correct any discrepancies found in accordance with the alert service bulletin.

(c) Accomplishment of the modification of the nacelle strut and wing structure in accordance with Boeing Alert Service Bulletin 747–54A2157, dated January 12, 1995, constitutes terminating action for the inspections required by the following AD's:

AD No.	Amendment No.	Federal Register citation	Date of publication
93–17–07	39–8678	58 FR 45827	Aug. 31, 1993.
93–03–14	39–8518	58 FR 14513	Mar. 18, 1993.
92–24–51	39–8439	57 FR 60118	Dec. 18, 1992.
90–20–20	39–6725	55 FR 37859	Sept. 14, 1990.
89–07–15	39–6167	54 FR 11693	Mar. 22, 1989

AD No.	Amendment No.	Federal Register citation	Date of publication
87-04-13 R1	39-5836	53 FR 2005	Jan. 26, 1988.
86-05-11 R1	39-5334	51 FR 21900	June 17, 1986.
86-23-01	39-5450	51 FR 37712	Oct. 26, 1986.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The modification, inspections, checks, and correction of discrepancies shall be done in accordance with Boeing Alert Service Bulletin 747-54A2157, dated January 12, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on August 28, 1995.

Issued in Renton, Washington, on June 16, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95-15298 Filed 6-27-95; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 94-NM-208-AD; Amendment 39-9287; AD 95-13-07]

Airworthiness Directives; Boeing Model 747 Series Airplanes Equipped with General Electric Model CF6-45 or -50 Series Engines, or Pratt & Whitney Model JT9D-70 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that requires modification of the nacelle strut and wing structure, inspections and checks to detect discrepancies, and correction of discrepancies. This amendment is prompted by the development of a modification of the strut and wing structure that improves the damage tolerance capability and durability of the strut-to-wing attachments, and reduces reliance on non-routine inspections of those attachments. The actions specified by this AD are intended to prevent failure of the strut and subsequent loss of the engine.

DATES: Effective July 28, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of July 28, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2776; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes was published in the Federal Register on January 3, 1995 (60 FR 66). That action proposed to require modification of the nacelle strut and wing structure, inspections and checks to detect discrepancies in the adjacent structure, and correction of discrepancies.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters support the proposed rule.

One commenter notes that the description of the unsafe condition that appeared in the Discussion section of the preamble to the notice refers to "the structural fail-safe capability of the strut-to-wing attachment." The commenter states that this description is inaccurate since it implies that the strut-to-wing attachment is inadequate. The commenter suggests that a more accurate description would be "damage tolerance capability of the strut-to-wing attachment." The FAA acknowledges that the commenter's wording is more accurate. The pertinent wording in the preamble to the final rule has been revised to reflect this change. Furthermore, the FAA considers that the new structure of the strut meets the damage tolerance requirements of amendment 45 of section 25.571, "Damage—tolerance and fatigue evaluation of structure," of the Federal Aviation Regulations (14 CFR 25.571, amendment 45), which provides an even higher level of safety than simply fail-safe requirements.

This same commenter provides further information to describe the purpose of the proposed modification of the nacelle strut and wing structure. This commenter suggests that the rule should specify that the modification not only significantly improves the load-carrying and durability of the strut-to-wing attachments, but "reduces the reliance on non-routine inspections," as well. The FAA concurs with this suggestion and has revised the Summary section of the preamble to the final rule to include relevant wording.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 145 Model 747 series airplanes equipped with General Electric Model CF6-45 or -50 series engines or Pratt & Whitney Model JT9D-70 series engines of the affected design in the worldwide fleet. The FAA estimates that 12 airplanes of U.S. registry will be affected by this AD.

The full strut modification required by this AD will take as many as 6,600 to 7,151 work hours to accomplish, depending upon the configuration of the airplane. The manufacturer will incur the cost of labor, on a pro-rated basis, with 20 years being the expected life of these airplanes. The total cost impact of this AD on U.S. operators is based on the median age for the fleet of Model 747 series airplanes equipped with General Electric Model CF6-45 or -50 series engines or Pratt & Whitney Model JT9D-70 series engines, which is estimated to be 15 years. The average labor rate is estimated to be $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operator. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be between $3,564,000 ($297,000 per airplane) and $3,861,540 ($321,795 per airplane).

This cost impact figure does not reflect the cost of the terminating actions described in the service bulletins listed in paragraph I.C., Table 2, "Prior or Concurrent Service Bulletins," on page 7 of Boeing Alert Service Bulletin 747-54A2158, dated November 30, 1994, that are required to be accomplished prior to or concurrently with the modification of the nacelle strut and wing structure. Since some operators may have accomplished certain modifications on some or all of the airplanes in its fleet, while other operators may not have accomplished any of the modifications on any of the airplanes in its fleet, the FAA is unable to provide a reasonable estimate of the cost of accomplishing the terminating actions described in the service bulletins listed in Table 2 of the Boeing alert service bulletin.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, the FAA is aware that some operators have already installed the strut modification that is required by this AD; therefore, the future economic cost impact of this rule on U.S. operators is reduced by that amount.

The FAA recognizes that the obligation to maintain aircraft in an airworthy condition is vital, but sometimes expensive. Because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining safe aircraft, prudent operators would accomplish the required actions even if they were not required to do so by the AD.

A full cost-benefit analysis has not been accomplished for this AD. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-beneficial. When the FAA, as in this AD, makes a finding of an unsafe condition, this means that the original cost-beneficial level of safety is no longer being achieved and that the required actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost-beneficial, a full cost-benefit analysis for this AD would be redundant and unnecessary.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95-13-07 Boeing: Amendment 39-9287. Docket 94-NM-208-AD.

Applicability: Model 747 series airplanes, equipped with General Electric Model CF6-45 or -50 series engines, or Pratt & Whitney Model JT9D-70 series engines, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD.

In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the strut and subsequent loss of the engine, accomplish the following:

(a) Accomplish the modification of the nacelle strut and wing structure in accordance with Boeing Alert Service Bulletin 747-54A2158, dated November 30, 1994, within 56 months after the effective date of this AD. All of the terminating actions described in the service bulletins listed in paragraph I.C., Table 2, "Prior or Concurrent Service Bulletins," on page 7 of Boeing Alert Service Bulletin 747-54A2158, dated November 30, 1994, must be accomplished in accordance with those service bulletins prior to, or concurrently with, the accomplishment

of the modification of the nacelle strut and wing structure required by this paragraph.

(b) Perform the inspections and checks specified in paragraph III, NOTES 8, 9, 10, and 11 of the Accomplishment Instructions on page 129 of Boeing Alert Service Bulletin 747–54A2158, dated November 30, 1994, concurrently with the modification of the nacelle strut and wing structure required by paragraph (a) of this AD. Prior to further flight, correct any discrepancies found in accordance with the alert service bulletin.

(c) Accomplishment of the modification of the nacelle strut and wing structure in accordance with Boeing Alert Service Bulletin 747–54A2158, dated November 30, 1994, constitutes terminating action for the inspections required by the following AD's:

AD No.	Amendment No.	Federal Register citation	Date of publication
94–22–08	39–9057	59 FR 58761	Nov. 15, 1994.
93–17–07	39–8678	58 FR 45827	Aug. 31, 1993.
93–03–14	39–8518	58 FR 14513	Mar. 18, 1993.
92–24–51	39–8439	57 FR 60118	Dec. 18, 1992.
90–20–20	39–6725	55 FR 37859	Sept. 14, 1990.
89–07–15	39–6167	54 FR 11693	Mar. 22, 1989.
87–04–13 R1	39–5836	53 FR 2005	Jan. 26, 1988.
86–23–01	39–5450	51 FR 37712	Oct. 24, 1986.
86–08–03	39–5289	51 FR 12836	Apr. 16, 1986.
86–07–06	39–5270	51 FR 10821	Mar. 31, 1986.
86–05–11 R1	39–5334	51 FR 21900	June 17, 1986.
80–08–02	39–3738	45 FR 24450	Apr. 10, 1980.
79–17–07	39–3533	44 FR 50033	Aug. 27, 1979.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The modification, inspections, checks, and correction of discrepancies shall be done in accordance with Boeing Alert Service Bulletin 747–54A2158, dated November 30, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on July 28, 1995.

Issued in Renton, Washington, on June 16, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–15299 Filed 6–27–95; 8:45 am]

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Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–224–AD; Amendment 39–9286; AD 95–13–06]

Airworthiness Directives; Boeing Model 747 Series Airplanes Equipped With General Electric Model CF6–80C2 Series Engines or Pratt & Whitney Model PW4000 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that requires modification of the nacelle strut and wing structure, inspections and checks to detect discrepancies, and correction of discrepancies. This amendment is prompted by the development of a modification of the strut and wing structure that improves the damage tolerance capability and durability of the strut-to-wing attachments, and reduces reliance on non-routine inspections of those attachments. The actions specified by this AD are intended to prevent failure of the strut and subsequent loss of the engine.

DATES: Effective July 28, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 28, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2776; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes was published in the **Federal Register** on January 6, 1995 (60 FR 2033). That action proposed to require modification of the nacelle strut and wing structure, inspections and checks to detect discrepancies in the adjacent structure, and correction of discrepancies.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

Revision of Descriptive Language

One commenter provides additional information to describe the purpose of the proposed modification of the nacelle strut and wing structure. This commenter suggests that the rule should specify that the modification not only significantly improves the load-carrying and durability of the strut-to-wing attachments, but "reduces the reliance on non-routine inspections," as well. The FAA concurs with this suggestion and has revised the Summary section of the preamble to the final rule to include relevant wording.

This same commenter notes that the description of the unsafe condition that appeared in the Discussion section of the preamble to the notice refers to "the structural fail-safe capability of the strut-to-wing attachment." The commenter states that this description is inaccurate since it implies that the strut-to-wing attachment is inadequate.

The commenter suggests that a more accurate description would be "damage tolerance capability of the strut-to-wing attachment." The FAA acknowledges that the commenter's wording is more accurate. The pertinent wording in the preamble to the final rule has been revised to reflect this change. Furthermore, the FAA considers that the new structure of the strut meets the damage tolerance requirements of amendment 45 of section 25.571, "Damage—tolerance and fatigue evaluation of structure," of the Federal Aviation Regulations (14 CFR 25.571, amendment 45), which provides an even higher level of safety than simply fail-safe requirements.

This commenter also provides further clarification of the description of the requirements of the existing AD's that address unsafe conditions associated with the strut attachment assemblies on Model 747 series airplanes equipped with General Electric Model CF6–80C2 series engines or Pratt & Whitney Model PW4000 series engines. The description in the Discussion section of the preamble to the proposal states that the existing AD's require "inspection of the strut, midspar fittings, diagonal brace, and midspar fuse pins." The commenter states that a more complete description of the existing AD's would be "inspection of the strut midspar fittings, spring beam lugs, diagonal brace, and midspar fuse pins." The FAA acknowledges that the commenter's description of the requirements of the existing AD's is more succinct. However, since the Discussion section is not restated in this final rule, no change to the final rule is necessary.

Further, this commenter states that the description of the modification that appeared in the Explanation of Service Information section of the preamble to the proposal is detailed differently from the wording that appears in the alert service bulletin that is referenced in the proposal as the appropriate source of service information. The FAA acknowledges that paragraph I.C., Description, on page 6 of Boeing Alert Service Bulletin 747–54A2156, dated December 15, 1994, provides another description of the actions involved in accomplishing the subject modification. However, although the service bulletin's description is worded somewhat differently, its intent is comparable to and consistent with the description that appeared in the preamble to the proposal.

Clarification of Note 1

One commenter requests that Note 1 of the proposal be clarified since it is too vague to determine exactly when FAA approval of alternative methods of compliance (AMOC) is necessary. The FAA concurs. Although every effort is made to keep the language simple and clear, it is apparent that some additional explanation is necessary to clarify the intent of Note 1. Performance of the requirements of this final rule is "affected" if an operator is unable to perform those requirements in the manner described in this AD. For example, if an AD requires a visual inspection in accordance with a certain service bulletin, and the operator cannot perform that inspection because of the placement of a repair doubler over the structure to be inspected, then "performance of the AD is affected."

In addition, performance of the requirements of an AD is "affected" if it is physically possible to perform the requirements, but the results achieved are different from those specified in the AD. For example, if the AD requires an NDT inspection in accordance with a certain service bulletin, and the operator is able to move the NDT probe over the specified area in the specified manner, but the results are either meaningless or inaccurate because of the repair doubler over that area, then "performance of the AD is affected."

While Note 1 itself is not capable of addressing every possible situation, "affected" is normally an easy standard to apply: either it is possible to perform the requirements as specified in the AD and achieve the specified results, or it is not possible. Therefore, if the requirements of this AD cannot be performed, then operators must submit a request for an approval of an AMOC from the FAA, in accordance with the provision of paragraph (d) of this final rule.

Accomplishment of any modification requirement of an AD, such as the modification of the nacelle strut and wing structure required by this final rule, does not "affect performance of the AD;" it is performance of the AD. Every AD includes a provision, with which operators are familiar, that states, "Compliance required as indicated, unless accomplished previously." If an operator performs such a requirement before the AD is issued, the FAA is confident that the operator will recognize that it has already complied with the AD and no further action (including obtaining approval of an AMOC) is required. This is consistent with current law and practice, which Note 1 is not intended to change.

Compliance Time for Modification

One commenter requests that the compliance time of proposed paragraph (a), which requires modification of the nacelle strut and wing structure, be extended by 4 months. The commenter notes that a 4-month extension of the compliance time would coincide with the time recommended in the referenced Boeing Alert Service Bulletin 747–54A2156 for that modification. Further, this commenter alleges that a difference of 4 months will "significantly impact" its operations.

The FAA does not concur with the commenter's request. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the manufacturer's recommendation as to an appropriate compliance time, the availability of required parts, and the practical aspect of installing the required modification within a maximum interval of time allowable for all affected airplanes to continue to operate without compromising safety. Further, the FAA took into account the 7-year compliance time recommended by the manufacturer, as well as the number of days required for the rulemaking process; in consideration of these factors, the FAA finds that 80 months after the effective date of this final rule will fall approximately at the same time for compliance as recommended by the manufacturer.

However, under the provisions of paragraph (b) of the final rule, any operator may submit requests for adjustments to the compliance time along with data demonstrating that such requests will not compromise safety. In evaluating such requests for adjustments to the compliance time, the FAA will closely examine the operator's explanation of why an extension is needed. The FAA will also consider the operator's good faith attempt at complying within the compliance time contained in this final rule, which can be demonstrated by accomplishing the modification on a significant percentage of the airplanes in the operator's fleet prior to submitting a request for adjustment to the compliance time. The FAA will take into consideration the

number of airplanes in the operator's fleet on which the modification has been accomplished and the number of unmodified airplanes remaining in the operator's fleet. Additionally the operator would be asked to submit a schedule for accomplishing the modification on the airplanes remaining in its fleet.

Requirements Redundant to Part 121

One commenter requests that proposed paragraph (b) be deleted since the proposed inspection and repair of components (referenced in Notes 8, 9, and 10 of the Accomplishment Instructions on page 91 of Boeing Alert Service Bulletin 747–54A2156, dated December 15, 1994) are redundant to the requirements of part 121 of the Federal Aviation Regulations (14 CFR 121).

The FAA does not concur with the commenter that the requirements of paragraph (b) should be deleted from the final rule. According to section 39.1 of the Federal Aviation Regulations (14 CFR 39.1), the issuance of an AD is based on the finding that an unsafe condition exists or is likely to develop in aircraft of a particular type design.

Further, it is within the FAA's authority to issue an AD to require actions to address unsafe conditions that are not otherwise being addressed (or addressed inadequately) by normal maintenance procedures. The FAA points out that fatigue cracking and corrosion in the strut-to-wing attachments have resulted in several incidents and catastrophic accidents. Although 14 CFR 121 addresses damage found on components during other maintenance activities, the FAA has determined that the catastrophic consequences of the unsafe condition are such that reiterating the necessity of performing inspections and repairs when any damage or corrosion is found while performing the modification of the nacelle strut and wing structure is warranted and necessary. The AD is the appropriate vehicle for mandating such actions.

Clarification of Note 11 in the Alert Service Bulletin

This same commenter also notes that a torque check would be more appropriate to detect loose fasteners of the diagonal brace fittings (referenced in Note 11 of the alert service bulletin). Further, the commenter asserts that these torque checks should be accomplished in accordance with the actual Accomplishment Instructions of the Boeing Alert Service Bulletin 747–54A2156, rather than in accordance with a Note that precedes the actual Accomplishment Instructions as stated in proposed paragraph (b).

The FAA concurs that a torque check would be more appropriate to detect loose fasteners. The FAA's intent was to require a torque check and the follow-on corrective action indicated in Note 11 of the alert service bulletin. Obviously, the torque check was inadvertently omitted from that version of the alert service bulletin; however, the follow-on action to "torque any loose fasteners" was included in that version of the alert service bulletin. The manufacturer has notified the FAA that Revision 1 of the alert service bulletin, planned for release later this year, will correct this omission. However, the FAA does not consider that delaying this action until after the release of the revision of the service bulletin is warranted. Therefore, paragraph (b) of the final rule has been revised to clarify that a torque check must be performed to detect loose fasteners.

Clarification of Cost Estimate Information

One commenter requests that the cost estimate be revised to include the cost of out-of-service time for each aircraft during the time that the modification is accomplished, and the additional fuel costs that would be incurred due to the additional weight added to each aircraft by the modification hardware. Another commenter, Boeing, requests that the cost estimate be revised to indicate that it will absorb the cost of labor to accomplish the proposed modification of the nacelle strut and wing structure. However, the commenter states that any costs in excess of those quoted in Boeing Alert Service Bulletin 747–54A2156, dated December 15, 1994, will be borne by the operator.

The FAA concurs that a revision to the cost estimate is necessary to remove the labor costs that the manufacturer will incur; therefore, the economic impact information, below, has been revised accordingly. However, the FAA does not concur that a revision is necessary to include the costs for out-of-service time or the costs for additional fuel. The appropriate number of hours required to accomplish the required actions, specified as 6,253 work hours in the economic impact information, below, was developed with data provided by the manufacturer.

Note: The manufacturer has informed the FAA that it will incur labor costs up to a maximum of 6,253 work hours.

This number represents the time required to gain access, remove parts, inspect, modify, install, and close up. The cost analysis in AD rulemaking actions typically does not include out-of-service time for each aircraft or additional fuel costs, as was suggested by the commenter. These costs would be impossible to calculate accurately due to the differences in out-of-service time for each operator. Furthermore, the increase in fuel costs due to the weight added by the modification, would vary greatly from operator to operator, depending upon airplane utilization.

The Air Transport Association of America (ATA) requests that the FAA include costs "beyond just parts and labor costs" when calculating the estimated costs to accomplish the proposed actions. The ATA points out that the FAA should consider such costs to avoid requiring actions that the ATA considers inconsequential.

The FAA does not concur. Contrary to the ATA's assertion, in establishing the requirements of all AD's, the FAA does consider cost impact to operators beyond the estimates of parts and labor costs contained in AD preambles. For example, where safety considerations allow, the FAA attempts to impose compliance times that generally coincide with operator's maintenance schedules. However, because operators' schedules vary substantially, the FAA is unable to accommodate every operator's optimal scheduling in each AD. Each AD does allow individual operators to obtain approval for extensions of compliance times, based on a showing that the extension will not affect safety adversely. Therefore, the FAA does not consider it appropriate to attribute to the AD, the costs associated with the type of special scheduling that might otherwise be required.

Furthermore, because the FAA generally attempts to impose compliance times that coincide with operator's scheduled maintenance, the FAA considers it inappropriate to attribute the costs associated with aircraft "downtime" to the cost of the AD, because, normally, compliance with the AD will not necessitate any additional downtime beyond that of a regularly scheduled maintenance hold. Even if, in some cases, additional downtime is necessary for some airplanes, the FAA does not possess sufficient information to evaluate the number of airplanes that may be so affected or the amount of additional downtime that may be required. Therefore, attempting to estimate such costs would be futile.

The FAA points out that this AD is an excellent example of the fact that costs to operators are fully considered beginning at the earliest possible stages of AD development. In this case, the alert service bulletin that is referenced in this final rule was developed by Boeing only after extensive and detailed consultations with large numbers of operators of Model 747 series airplanes. The compliance times and various optional means of compliance presented in his AD are based on those consultations, and were developed in order to minimize the economic impacts on operators to the extent possible consistent with the service bulletin's and this AD's safety objectives. Therefore, the costs that the ATA asserts were not considered by the FAA have, in fact, been a major consideration throughout this AD process; the fact that the FAA has not attempted to quantify speculative costs does not diminish the extent of this consideration.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 257 Model 747 series airplanes equipped with General Electric Model CF6–80C2 series engines or Pratt & Whitney Model PW4000 series engines of the affected design in the worldwide fleet. The FAA estimates that 36 airplanes of U.S. registry will be affected by this AD.

The full strut modification required by this AD will take approximately 6,253 work hours per airplane to accomplish, at an average labor cost of $60 per work hour. The manufacturer will incur the cost of labor up to a maximum of 6,253 work hours per airplane. However, if the operator exceeds 6,253 work hours to accomplish the modification, the additional labor costs must be borne by the operator. The FAA does not have the ability to predict those additional work hours for operators to accomplish the modification. Therefore, attempting to estimate such costs would be futile. Required parts will be supplied by the manufacturer at no cost to the operators. Based on the above data, the requirements of this AD may have no cost impact to U.S. operators.

However, the cost impact, above, does not reflect the cost of the terminating actions described in the service bulletins listed in paragraph I.C., Table 2, "Prior or Concurrent Service Bulletins," on page 7 of Boeing Alert Service Bulletin 747–54A2156, dated December 15, 1994, that are required to be accomplished prior to, or concurrently with, the modification of the nacelle strut and wing structure. Since some operators may have accomplished certain modifications on some or all of the airplanes in its fleet, while other operators may not have accomplished any of the modifications on any of the airplanes in its fleet, the FAA is unable to provide a reasonable estimate of the cost of accomplishing the terminating actions described in the service bulletins listed in Table 2 of the Boeing alert service bulletin.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federal Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rule Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–13–06 Boeing: Amendment 39–9286. Docket 94–NM–224–AD.

Applicability: Model 747 series airplanes having line positions 679 through 1046 inclusive, equipped with General Electric Model CF6–80C2 series engines or Pratt & Whitney Model PW4000 series engines; certificated in any category.

Note 1: This Ad applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the strut and subsequent loss of the engine, accomplish the following:

(a) Within 80 months after the effective date of this AD, accomplish the modification of the nacelle strut and wing structure in accordance with Boeing Alert Service Bulletin 747–54A2156, dated December 15, 1994. All of the terminating actions described in the service bulletins listed in paragraph I.C., Table 2, "Prior or Concurrent Service Bulletins," on page 7 of Boeing Alert Service Bulletin 747–54A2156, dated December 15, 1994, must be accomplished in accordance with those service bulletins prior to, or concurrently with, the accomplishment of the modification of the nacelle strut and wing structure required by this paragraph.

(b) Perform the inspections and checks (including a torque check to detect loose fasteners) specified in paragraph III, Notes 8, 9, 10, and 11 of the Accomplishment Instructions on page 91 of Boeing Alert Service Bulletin 747–54A2156, dated December 15, 1994, concurrently with the modification of the nacelle strut and wing structure required by paragraph (a) of this AD. Prior to further flight, correct any discrepancies in accordance with the alert service bulletin.

(c) Accomplishment of the modification of the nacelle strut and wing structure in accordance with Boeing Alert Service Bulletin 747–54A2156, dated December 15, 1994, constitutes terminating action for the inspections required by the following AD's:

AD No.	Amendment No.	Federal Register citation	Date of publication
93–17–07	39–8678	58 FR 45827.	Aug. 31, 1993.
93–03–14	39–8518	58 FR 14513.	Mar. 18, 1993.
93–24–51	39–8439	57 FR 60118.	Dec. 18, 1992.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The modification, inspections, checks, and correction of discrepancies shall be done in accordance with Boeing Alert Service Bulletin 747–54A2156, dated December 15, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on July 28, 1995.

Issued in Renton, Washington, on June 16, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–15300 Filed 6–27–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 558

Animal Drugs, Feeds, and Related Products; Nicarbazin Type A Medicated Article

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Planalquimica Industrial Ltda. The ANADA provides for the use of a nicarbazin-containing Type A medicated article in making Type C medicated chicken feeds for the prevention of coccidiosis.

EFFECTIVE DATE: June 28, 1995.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1643.

SUPPLEMENTARY INFORMATION: Planalquimica Industrial Ltda., Rua das Magnolias nr. 2405, Jardim das Bandeiras, CEP 13053–120, Campinas, Sao Paulo, Brazil, has filed ANADA 200–027, which provides for the use of a nicarbazin-containing Type A medicated article in making Type C medicated chicken feeds as an aid in preventing outbreaks of cecal and intestinal coccidiosis.

Planalquimica's ANADA 200–027 for a 113.5-gram-per-pound nicarbazin Type A medicated article (Nicarmix) is approved as a generic copy of Merck Research Laboratories' NADA 9–476 for Nicarb®. The ANADA is approved as of June 28, 1995, and the regulations are amended in 21 CFR 510.600(c) and 558.366(a) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding a new entry for "Planalquimica Industrial Ltda." and in the table in paragraph (c)(2) by numerically adding a new entry for "060728" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
Planalquimica Industrial Ltda., Rua das Magnolias nr. 2405, Jardim das Bandeiras, CEP 13053–120, Campinas, Sao Paulo, Brazil	060728

(2) * * *

Drug labeler code	Firm name and address
060728	Planalquimica Industrial Ltda., Rua das Magnolias nr. 2405, Jardim das Bandeiras, CEP 13053–120, Campinas, Sao Paulo, Brazil

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.366 [Amended]

4. Section 558.366 *Nicarbazin* is amended in paragraph (a) by removing the phrase "000006 and 000986" and adding in its place "000006, 000986, and 060728".

Dated: June 21, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–15768 Filed 6–27–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, and 1926

RIN: 1218–AB25

Occupational Exposure to Asbestos

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Final rule; extension of start-up dates for compliance.

SUMMARY: OSHA is extending the start-up dates for some provisions of the asbestos standards until October 1, 1995 to give the public more time to implement compliance.

DATES: These amendments take effect on June 28, 1995. For Part 1910—General Industry, for § 1910.1001, the start-up dates for compliance for paragraph (d)(2)—initial monitoring, for paragraph (e)—regulated area, for paragraph (f)—methods of compliance, for paragraph (g)—respiratory protection, for paragraph (i)—hygiene facilities, for paragraph (j)—communication of hazards, and for paragraph (l)—medical surveillance are extended to October 1, 1995. For Part 1915—Shipyards, for § 1915.1001, the start-up dates for compliance for paragraph (g)—methods of compliance, for paragraph (h)—respiratory protection, for paragraph (j)—hygiene facilities, for paragraph (k)—communication of hazards, for paragraph (l)—housekeeping, for paragraph (m)—medical surveillance and for paragraph (o)—qualified person are extended to October 1, 1995. For Part 1926—Construction, for § 1926.1101, the start-up dates for compliance for paragraph (g)—methods of compliance, for paragraph (h)—respiratory protection, for paragraph (j)—hygiene facilities, for paragraph (k)—communication of hazards, for paragraph (l)—housekeeping, for paragraph (m)—medical surveillance and for paragraph (o)—competent person are extended to October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Liblong, Director of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3647, 200 Constitution Avenue NW., Washington, DC 20210, telephone (202) 219–8151.

SUPPLEMENTARY INFORMATION: OSHA issued improved asbestos standards for general industry, construction and shipyards on August 10, 1994 at 59 FR 40964 to better protect workers from lung cancer, asbestosis and other diseases caused by asbestos exposure. The new standards took effect on October 11, 1994 and that date was the start-up date for some provisions such as the new lower exposure limit of 0.1 f/cc. However, various other provisions such as the new medical surveillance, respiratory protection and training provisions and the engineering control requirements had start-up dates from between January 9, 1995 and April 10, 1995.

Various members of the public have requested that OSHA grant more time for the public to comply with some provisions. OSHA is publishing a correction and clarification notice and various compliance and training materials to assist in the understanding of the new standard.

OSHA has concluded that it is appropriate to give the public additional time to implement some of the provisions of the new asbestos standards which may require more time for implementation. Other provisions such as the new exposure limit had a start-up date of October 11, 1994 and again, OSHA is not extending the start-up date of those provisions. In the interim, the provisions of the preexisting asbestos standards remain in effect for those provisions of the new standards whose start-up dates have been extended.

The provisions extended are listed above in the **DATES** section of this preamble. OSHA has concluded that October 1, 1995 is a reasonable time for employers to fully come into compliance with the provisions for

which the start-up dates have been extended.

All of the provisions whose start-up dates have been extended will be enforced on October 1, 1995.

OSHA is publishing this as an amendment to the new standards so that the new start-up dates will be codified in the Code of Federal Regulations. OSHA finds that there is good cause to issue this extension without notice and public procedure because such is impractical, unnecessary or contrary to the public interest. It is necessary to issue the extension to permit employers sufficient time to come into full compliance and notice and comment would delay the issuance of the extension until past the new start-up dates. For the same reasons OSHA finds good cause for the extension of the start-up date to take immediate effect.

List of Subjects in 29 CFR Parts 1910, 1915, and 1916

Asbestos, Occupational safety and health.

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Accordingly, pursuant to sections 4, 6(b), 8(c), and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act, 40 U.S.C. 333); Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); 5. U.S.C. Sec. 553; and 29 CFR part 1911; 29 CFR parts 1910, 1915, and 1926 are amended as set forth below.

Signed at Washington, DC this 22nd day of June, 1995.

Joseph A. Dear,

Assistant Secretary, Occupational Safety and Health Administration.

OSHA hereby amends 29 CFR parts 1910, 1915, and 1926 as follows:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The authority citation of subpart Z of 29 CFR part 1910 is revised to read as follows:

Authority: Sections 6 and 8 Occupational Safety and Health Act, 29 U.S.C. 655, 657: Secretary of Labor's Order 12071 (36 FR 8754), 9–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033), as applicable; and 29 CFR part 1911.

All of subpart Z issued under section 6(b) of the Occupational Safety and Health Act, except those substances which have exposure limits listed in Tables Z–1, Z–2, and Z–3 of 29 CFR 1910.1000. The latter were issued under section 6(a) [29 U.S.C. 655(a)].

Section 1910.1000, Tables Z–1, Z–2, and Z–3 also issued under 5 U.S.C. 553. Section 1910.1000, Table Z–1, Z–2, and Z–3 not issued under 29 CFR part 1911 except for the arsenic (organic compounds), benzene, and cotton dust listings.

Section 1910.1001 also issued under section 107 of Contract Work Hours and Safety and Standards Act, 40 U.S.C. 333 and 5 U.S.C. 553.

Section 1910.1002 not issued under 29 U.S.C. or 29 CFR part 1911; also issued under 5 U.S.C. 553.

Section 1910.1003 through 1910.1018 also issued under 29 CFR 653.

Section 1910.1025 also issued under 29 U.S.C. 653 and 5 U.S.C. 553.

Section 1910.1028 also issued under 29 U.S.C. 653.

Section 1910.1030 also issued under 29 U.S.C. 653.

Section 1910.1043 also issued under 5 U.S.C. 551 et seq.

Section 1910.1045 and 1910.1047 also issued under 29 U.S.C. 653.

Section 1910.1048 also issued under 29 U.S.C. 653.

Secitons 1910.1200, 1910.1499, and 1910.1500 also issued under 5 U.S.C. 553.

Section 1910.1450 is also issued under sec. 6(b), 8(c) and 8(g)(2), Pub. L. 91–596, 84 Stat. 1593, 1599, 1600; U.S.C. 655, 657.

2. Section 1910.1001 is amended by revising paragraph (o) to read as follows:

§ 1910.1001 Asbestos.

* * * * *

(o) *Dates.* (1) *Effective date.* This standard shall become effective October 11, 1994.

(2) The provisions of 29 CFR 1910.1001 remain in effect until the start-up dates of the equivalent provisions of this standard.

(3) *Start-up dates.* All obligations of this standard commence on the effective date except as follows:

(i) *Exposure monitoring.* Initial monitoring required by paragraph (d)(2) of this section shall be completed by October 1, 1995.

(ii) *Regulated areas.* Regulated areas required to be established by paragraph (e) of this section as a result of initial monitoring shall be set up by October 1, 1995.

(iii) *Respiratory protection.* Respiratory protection required by paragraph (g) of this section shall be provided by October 1, 1995.

(iv) *Hygiene and lunchroom facilities.* Construction plans for change rooms, showers, lavatories, and lunchroom facilities shall be completed by October 1, 1995.

(v) *Communication of hazards.* Identification, notification, labeling and sign posting, and training required by paragraph (j) of this section shall be provided by October 1, 1995.

(vi) *Medical surveillance.* Medical surveillance not previously required by paragraph (1) of this section shall be provided by October 1, 1995.

(vii) *Compliance program.* Written compliance programs required by paragraph (f)(2) of this section shall be completed and available for inspection and copying by October 1, 1995.

(viii) *Methods of compliance.* The engineering and work practice controls as required by paragraph (f) shall be implemented by October 1, 1995.

* * * * *

PART 1915—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIPYARD EMPLOYMENT

3. The authority citation of 29 CFR part 1915 continues to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers Compensation Act (33 U.S.C. 941); sections 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); sec. 4 of the Administrative Procedure Act (5 U.S.C. 553); Secretary of Labor's Order No. 12–71 (36 FR 6754), 8–76 (41 FR 35736) or 1–90 (55 FR 9033), as applicable; 29 CFR part 1911.

4. Section 1915.1001 is amended by revising paragraph (q) to read as follows:

§ 1915.1001 Asbestos.

* * * * *

(q) *Dates.* (1) This standard shall become effective October 11, 1994.

(2) The provisions of 29 CFR 1926.58 and 29 CFR 1910.1001 remain in effect until the start-up dates of the equivalent provisions of this standard.

(3) *Start-up dates.* All obligations of this standard commence on the effective date except as follows:

(i) *Methods of compliance.* The engineering and work practice controls required by paragraph (g) of this section shall be implemented by October 1, 1995.

(ii) *Respiratory protection.* Respiratory protection required by paragraph (h) of this section shall be provided by October 1, 1995.

(iii) *Hygiene facilities and practices for employees.* Hygiene facilities and practices required by paragraph (j) of this section shall be provided by October 1, 1995.

(iv) *Communication of hazards.* Identification, notification, labeling and sign posting, and training required by paragraph (k) of this section shall be provided by October 1, 1995.

(v) *Housekeeping.* Housekeeping practices and controls required by paragraph (l) of this section shall be provided by October 1, 1995.

(vi) Medical surveillance required by paragraph (m) of this section shall be provided by October 1, 1995.

(vii) The designation and training of qualified persons required by paragraph (o) of this section shall be completed by October 1, 1995.

* * * * *

PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

5. The authority citation of subpart Z of 29 CFR Part 1926 is revised to read as follows:

Authority: Sections 6 and 8, Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Orders Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9003) as applicable; and 29 CFR part 1911.

Section 1926.1101 also issued under 5 U.S.C. 553.

Section 1926.1102 not issued under 29 U.S.C. 655 or 29 CFR part 1911; also issued under 5 U.S.C. 553.

Section 1926.1103 through 1926.1118 also issued under 29 U.S.C. 653.

Section 1926.1128 also issued under 29 U.S.C. 653.

Section 1926.1145 and 1926.1147 also issued under 29 U.S.C. 653.

Section 1926.1148 also issued under 29 U.S.C. 653.

6. Section 1926.1101 is amended by revising paragraph (q) to read as follows:

§ 1926.1101 Asbestos.

* * * * *

(q) *Dates.* (1) This standard shall become effective October 11, 1994.

(2) The provisions of 29 CFR 1926.58 remain in effect until the start-up dates of the equivalent provisions of this standard.

(3) *Start-up dates.* All obligations of this standard commence on the effective date except as follows:

(i) *Methods of compliance.* The engineering and work practice controls required by paragraph (g) of this section shall be implemented by October 1, 1995.

(ii) *Respiratory protection.* Respiratory protection required by paragraph (h) of this section shall be provided by October 1, 1995.

(iii) *Hygiene facilities and practices for employees.* Hygience facilities and practices required by paragraph (j) of this section shall be provided by October 1, 1995.

(iv) *Communication of hazards.* Identification, notification, labeling and sign posting, and training required by paragraph (k) of this section shall be provided by October 1, 1995.

(v) *Housekeeping.* Housekeeping practices and controls required by paragraph (l) of this section shall be provided by October 1, 1995.

(vi) Medical surveillance required by paragraph (m) of this section shall be provided by October 1, 1995.

(vii) The designation and training of competent persons required by paragraph (o) of this section shall be completed by October 1, 1995.

* * * * *

[FR Doc. 95–15790 Filed 6–27–95; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF EDUCATION

34 CFR Part 685

RIN 1840–AC05

William D. Ford Federal Direct Loan Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the William D. Ford Federal Direct Loan Program to add the Office of Management and Budget (OMB) control number to certain sections of the regulations. Those sections contain information collection requirements approved by OMB. The Secretary takes this action to inform the public that these requirements have been approved, and therefore affected parties must comply with them.

EFFECTIVE DATE: Information collection requirements in the final regulations are effective on July 1, 1995.

FOR FURTHER INFORMATION CONTACT: Rachel Edelstein, Policy Development Division, Office of Postsecondary Education, U.S. Department of Education, 600 Independence Avenue, SW., (Room 3053, ROB–3), Washington, DC, 20202–5400. Telephone (202) 708–9406. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Final regulations for the William D. Ford Federal Direct Loan Program were published on December 1, 1994 (59 FR 61664). Compliance with information collection requirements in these regulations was delayed until those requirements were approved by OMB under the Paperwork Reduction Act of 1980. OMB approved the information collection requirements on December 7, 1994. Those requirements will therefore become effective with the other provisions of the regulations on July 1, 1995.

Waiver of Proposed Rulemaking

It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the publication of OMB control numbers is purely technical and does not establish substantive policy. Therefore, the Secretary has determined under 5 U.S.C. 553(b)(B), that public comment on the regulations is unnecessary and contrary to the public interest.

List of Subjects in 34 CFR Part 685

Administrative practice and procedure, Colleges and universities, Educatión, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: June 23, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

The Secretary amends Part 685 of Title 34 of the Code of Federal Regulations as follows:

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

1. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1087a *et seq.*, unless otherwise noted.

2. Sections 685.204, 685.206, 685.209, 685.213, 685.214, 685.215, 685.301, 685.302, 685.303, 685.309, and 685.401 are amended by adding the OMB control number following the section to read as follows:

(Approved by the Office of Management and Budget under control number 1840–0672)

[FR Doc. 95–15844 Filed 6–27–95; 8:45 am]

BILLING CODE 4000–01–P

ASSASSINATION RECORDS REVIEW BOARD

36 CFR Chapter XIV

Guidance on Interpreting and Implementing the President John F. Kennedy Assassination Records Collection Act of 1992

AGENCY: Assassination Records Review Board.

ACTION: Final regulations.

SUMMARY: These final interpretive regulations provide guidance on the interpretation of certain terms included in the President John F. Kennedy Assassination Records Collection Act of 1992 and on implementation of certain of the statute's provisions. The final interpretive regulations make effective the proposed interpretive regulations previously published by the Assassination Records Review Board (Review Board). The Review Board revised the proposed interpretive

regulations after considering public comment received in writing and through testimony at public hearings convened by the Review Board.

EFFECTIVE DATE: These interpretative regulations are effective June 28, 1995.

FOR FURTHER INFORMATION CONTACT: T. Jeremy Gunn, Acting General Counsel, Assassination Records Review Board, 600 E Street, N.W., 2nd Floor, Washington, D.C. 20530, (202) 724–0088, fax (202) 724–0457.

SUPPLEMENTARY INFORMATION:

Background and Statutory Authority

The President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. 2107 (as amended) (JFK Act), established the President John F. Kennedy Assassination Records Collection (JFK Assassination Records Collection) at the National Archives and Records Administration (NARA). In establishing a process for public disclosure of all records relating to the assassination, Congress created an independent Federal agency, the Assassination Records Review Board, that consists of five citizens appointed by the President and confirmed by the Senate in 1994. Under the JFK Act, the Review Board is empowered to decide "whether a record constitutes an assassination record." 44 U.S.C. 2107.7(i)(2)(A). Congress intended that the Review Board "issue guidance to assist in articulating the scope or universe of assassination records." President John F. Kennedy Assassination Records Collection Act of 1992, S. Rep. 102–328, 102d Cong., 2d Sess. (1992) at 21. These final interpretive regulations, a proposed version of which were published at 60 FR 7506–7508 (Feb. 8, 1995), comply with that mandate.

The Review Board's goal in issuing this guidance is to implement congressional intent that the JFK Collection contain "the most comprehensive disclosure of records related to the assassination of President Kennedy." S. Rep. 102–328, *supra* at 18. The Board is also mindful of Congress's instruction that the Board apply a "broad and encompassing" working definition of "assassination record" in order to achieve the goal of assembling the fullest historical record on this tragic event in American history and on the investigations that were undertaken in the assassination's aftermath. The Board recognizes that many agencies began to organize and review records responsive to the JFK Act even before the Board was appointed and began its work. Nevertheless, the Board's aim is that this guidance will aid in the ultimate assembly and public disclosure of the fullest possible historical record on this tragedy and on subsequent investigations and inquiries into it.

The final interpretive regulations are intended to identify comprehensively the range of records reasonably related to the assassination of President Kennedy and investigations undertaken in its aftermath. The final interpretive regulations are also intended to aid in the consistent, effective, and efficient implementation of the JFK Act and to establish procedures for including assassination records in the JFK Assassination Records Collection established by Congress and housed at NARA's facility in College Park, Maryland.

Notice and Comment Process

The Review Board sought public comment on its proposed interpretive regulations and set a thirty-day period, which ended on March 10, 1995, for the purpose of receiving written comments. The Review Board also heard testimony at public hearings on aspects of the proposed interpretive regulations. In addition, the Review Board sent copies of the proposed interpretive regulations to agencies known to have an interest in and to be affected by the Review Board's work, particularly those that either created or now hold assassination records, and to the appropriate oversight committees in Congress. The Review Board also sent notices of the proposed interpretive regulations and request for comments to many organizations and individuals who have demonstrated an interest in the release of materials under the JFK Act or who have engaged in research into the assassination of President Kennedy.

The Review Board received written comments on the proposed interpretive regulations from four Federal agencies, three state and local government entities, and twenty-one private individuals and organizations with an interest in the Review Board's work. Federal agencies providing written comments include the Federal Bureau of Investigation (FBI), the Central Intelligence Agency (CIA), NARA, and the Department of State. State or local government entities providing written comments include the Dallas (Texas) County Commissioner's Court, the Dallas County Historical Foundation, and the City of Dallas Records Management Division of the Office of the City Secretary.

Prior to publication of the proposed interpretive regulations, the Review Board heard testimony at a public hearing held at the Review Board's offices on December 14, 1994, from representatives of NARA on the question of including artifacts in the scope of the term "assassination record." After publication of the proposed interpretive regulations and before expiration of the comment period, the Review Board heard testimony at a public hearing on March 7, 1995, from the FBI and from several individuals and representatives of private organizations on their views regarding the text of the proposed interpretive regulations. Copies of all written comments received and transcripts of public testimony on the proposed interpretive regulations were placed in the public reading room at the Review Board's offices and made available for inspection and copying by the public upon request.

At a public meeting held on May 3, 1995, for which notice was timely published in the **Federal Register** pursuant to the provisions of the Government in the Sunshine Act, the Review Board considered a final draft of these interpretive regulations. That discussion draft incorporated many of the comments received by the Review Board on the proposed interpretive regulations. The Review Board unanimously voted to adopt the text of the discussion draft as its final interpretive regulations. The approved text is, with a few minor corrections that do not change the substance, published here.

Response to Comments

The Review Board found very helpful the thoughtful and, in many cases, very detailed comments submitted on the proposed interpretive regulations. Nearly all of the commentators expressed support for what they characterized as the proposed interpretive regulations' comprehensiveness and flexibility. All comments submitted were carefully studied and considered by the Review Board. Submitters made both substantive and technical suggestions, many of which were incorporated into the interpretive regulations as issued here in final form. The summary below includes the principal substantive comments received and the Review Board's responses thereto.

Comment: The proposed language of § 1400.1(a) is unduly restrictive because the phrase "may have led to the assassination" requires at least a potential causal link to the assassination. Moreover, determining whether there is a causal link would require the Review Board to evaluate the validity of competing accounts of what

led to the assassination of President Kennedy.

Response: A number of commentators put forward criticisms along these lines. Some of these commentators suggested that some form of a "reasonably related" standard be substituted for the "may have led to" language, while others suggested alternative formulations (*e.g.*, "that may shed light on the assassination"). In adopting and eventually applying a "reasonably related" standard, the Review Board does not seek to endorse or reject any particular theory of the assassination of President Kennedy, although such theories may inform the Review Board's search for records reasonably related to the assassination and investigations into it. The Review Board believes that § 1400.1(a), as now worded, advances that effort and will promote a consistent broad interpretation and implementation of the JFK Act.

Comment: The proposed language of § 1400.1(a) is too broad and open-ended. A more specific nexus to the assassination of President Kennedy should be required.

Response: As its text and legislative history make clear, the JFK Act contemplates that the Review Board extend its search for relevant records beyond what has been compiled or reviewed by previous investigations. It is inevitable, therefore, that the Review Board must exercise judgment in determining whether such records constitute "assassination records." The Review Board regards its "reasonably related" standard as sufficient to ensure that agencies are not overburdened with identifying and reviewing records that, if added to the JFK Assassination Records Collection, would not advance the purposes of the JFK Act.

Comment: Section 1400.1 should specifically include as assassination records any records pertaining to particularly identified individuals, organizations, events, etc.

Response: The Review Board determined that, in almost every case, the types of records commentators sought to add were already adequately covered by § 1400.1 as proposed. Accordingly, the Review Board declined to include records or record groups at the level of specificity urged by these commentators because doing so might limit the scope of the interpretive regulations as applied initially by other agencies, or otherwise might prove duplicative or confusing. However, the Review Board welcomes and encourages suggestions from the public as to specific records or record groups that may constitute assassination records, and intends to pursue such leads, including those provided in the written comments to the proposed interpretive regulations.

Comment: Section 1400.2(a) is vague and overly broad in describing the scope of additional records and information.

Response: The Review Board has added language to clarify that the purpose of requesting additional records and information under § 1400.2(a) is to identify, evaluate, or interpret assassination records, including assassination records that may not initially have been identified as such by an agency. The Review Board also has added language to indicate that it intends to implement this section through written requests signed by its Executive Director. The Review Board contemplates that, with regard to such requests, its staff will work closely with entities to which such requests are addressed to implement the JFK Act effectively and efficiently.

Comment: The scope of additional records and information should specifically include records and information that:

—describe agencies' methods of searching for records;
—describe reclassification, transfer, destruction, or other disposition of records; or
—do not constitute assassination records, but have the potential to enhance, enrich, and broaden the historical record of the assassination.

Response: To the extent that the inclusion of records and information of the types described would assist the Review Board in meeting its responsibilities under the JFK Act, the Review Board has adopted the suggested language.

Comment: The scope of "assassination records" under § 1400.1 and "additional records and information" under § 1400.2 should not extend to state and local government or to private records that are not in the possession of the Federal government.

Response: The Review Board considered such comments carefully, but concluded that the terms of the JFK Act preclude the narrower reading of the Review Board's responsibilities urged by such comments. Section 1400.6 allows the Review Board, in its discretion, to accept copies in lieu of originals. The Review Board believes that this flexibility addresses the concerns of some commentators about the removal of original records already housed, for example, in state or local archives.

Comment: Section 1400.3 should include as sources of assassination records and additional records and information individuals and corporations that possess such material even if not obtained from sources identified in paragraphs (a) through (e) thereof, and should specifically include individuals and corporations that contracted to provide goods or services to the government.

Response: The Review Board has added paragraph (f) to this section in response to these comments. The Review Board has concluded that, in view of paragraph (f), specifically identifying government contractors or other private persons would be unnecessary and redundant.

Comment: NARA contended that § 1400.4 should not include artifacts among the types of materials included in the term "record." Treating artifacts as "records" would be contrary to NARA's accustomed practice and the usage of the term "records" in other areas of Federal records law and would result in substantial practical difficulties.

Response: The Review Board has carefully considered NARA's objections to the inclusion of artifacts as "records," but decided that this inclusion is necessary to achieve the purposes of the JFK Act. The Review Board notes that artifacts that became exhibits to the proceedings of the Warren Commission have long been in the custody of NARA, and decided that these artifacts should remain in the JFK Assassination Records Collection. The Review Board further believes that the unique issues of public trust and credibility of government processes that prompted enactment of the JFK Act require that artifacts be included within the JFK Assassination Records Collection. The strong support that commenting members of the public gave to this position reinforces this conclusion. The Review Board included in its proposed regulations, and retained in § 1400.7(b)–(c) of the final interpretive regulations, language intended to address NARA's concerns about potential copying requirements and preservation issues unique to artifacts.

Comment: Section 1400.5 should be modified to allow agencies to withhold from the JFK Assassination Records Collection material that is not related to the assassination of President Kennedy, even though it appears in a record that contains other material that is related to the assassination of President Kennedy.

Response: It remains the intent of this section to make clear to agencies that, as a rule, entire records, and not parts thereof, are to become part of the JFK Assassination Records Collection. The purpose of requiring that records be produced in their entirety is to ensure

that the context and integrity of the records be preserved. Only in rare instances will the Review Board assent to withholding particular information within an assassination record on the ground that such information is not relevant to the assassination. Section 1400.5 has been modified to clarify that, although the Review Board may allow this practice in extraordinary circumstances, this determination is within the sole direction of the Review Board.

Comment: The discussion of originals and copies in § 1400.6 is, in various respects, unclear and confusing.

Response: The Review Board made extensive changes to this section to address these concerns and to achieve greater internal consistency. The Review Board's intent in this section is to express its strong preference for including original records in the JFK Assassination Records Collection, but also its understanding that, for a variety of reasons, there may be situations where a copy instead of the original of an assassination record may be more appropriate for inclusion in the Collection.

Comment: Section 1400.6 should be clarified as to whether "record copies" of Federal agency may be included in the JFK Assassination Records Collection.

Response: The Review Board has modified § 1400.6(a)(1) to clarify that the Review Board may determine that record copies may be included in the Collection.

Comment: The Catalog of Assassination Records (COAR) described in § 1400.8 should consist of, or be replaced by, the database and finding aids prepared by the Federal agencies in possession of assassination records.

Response: This and other comments received regarding the proposed § 1400.8 indicated some confusion as to the intent and operation of the mechanism established in this section. For this reason, the Review Board decided to replace the term "Catalog of Assassination Records" with the term "Notice of Assassination Record Determination" (NARD), and to redraft this section to clarify the Review Board's intent to use the NARD mechanism simply to document the Review Board's ongoing determinations that, in addition to records explicitly enumerated in the JFK Act as assassination records (*e.g.*, records reviewed by the HSCA) or identified by Federal agencies in their own searches, certain other records also are assassination records to be included in the JFK Assassination Records Collection.

Section by Section Analysis

Scope of Assassination Record

As discussed above with regard to the public comments, subparagraph (a) of § 1400.1 has been modified to adopt a "reasonably related" standard and the term "Catalog of Assassination Records" has been replaced with "Notice of Assassination Record Determination" in subparagraph (b)(3). The final interpretive regulations also incorporate suggested technical changes, including edits for clarification and revision of this section's title to make it more precise.

Scope of Additional Records and Information

The title of § 1400.2 was revised to conform to the new title of § 1400.1. Additional editing changes were made for clarity. A new subpart (6) was added to subparagraph (e) and a new subparagraph (f) was added after consideration of comments that noted the potential exclusion of certain categories from the scope of this section in the proposed interpretive regulations. The Review Board has added language in the final interpretive regulations to clarify that the purpose of this section is to aid in identifying, evaluating or interpreting assassination records, including assassination records that may not initially have been identified by an agency. The Review Board also has added language to suggest that it intends to implement this section through written requests signed by the Review Board's Executive Director.

Sources of Assassination Records and Additional Records and Information

A new subparagraph (g) was added to § 1400.3 after consideration of comments noting the potential exclusion of records created by individuals or corporations or obtained from sources other than those already identified in the previous subparagraphs.

Types of Materials Included in Scope of Assassination Record and Additional Records and Information

No substantive change has been made to § 1400.4 as it appeared in the proposed interpretive regulations.

Requirement That Assassination Records be Released in Their Entirety

Language has been added to § 1400.5 to permit the Review Board, in its sole discretion, to allow release of only part of an assassination record where such partial release is sufficient to comply with the intent and purposes of the JFK Act.

Originals and Copies

Extensive changes were made to § 1400.6 for reasons of clarify and internal consistency. The Review Board also incorporated in the final interpretive regulations language clarifying that "record copies" of Federal agency records may be included in the JFK Assassination Records Collection and addressing the important issue of preservation requirements. In this respect, the Review Board sought to treat records in various media in a means appropriate to the unique characteristics of each medium.

Additional Guidance

In the light of comments received, the Review Board extensively revised § 1400.7. Subparagraph (d), as it appeared in the proposed interpretive regulations, has been broken into three subparagraphs—new subparagraphs (d), (e), and (f)—to avoid potential confusion and to add clarity. The intent of these subparagraphs is to make clear that all files on an individual, event, organization or activity are to be made available to the Review Board regardless of the labels on the files, where the records may be found, or whether they reflect the true name or identifier of the individual, event organization, or activity.

Subparagraphs (b) and (c) § 1400.7 were included in the proposed interpretive regulations and retained in the final interpretive regulations in order to address concerns expressed by NARA regarding the inclusion of artifacts in the scope of the material deemed "assassination records." By including these subparagraphs, the Review Board wishes to make it clear that it believes the JFK Act establishes unique standards as to the records to be included in the JFK Assassination Records Collection. By including artifacts as a type of "assassination record," the Review Board seeks to fulfill its mandate from Congress to assemble all materials reasonably related to the assassination in the JFK Assassination Records Collection. It is not intended that the inclusion here of artifacts for purposes of implementing the JFK Act should be construed to affect the implementation of other records laws. Subparagraph (c) is intended to ensure that all artifacts in the collection are preserved for posterity and that public access be provided to those artifacts in a manner consistent with their preservation. The Review Board encourages NARA to set out in writing the terms and conditions under which access to such materials shall be allowed.

Implementing the JFK Act—Notice of Assassination Records Determination

The Review Board has replaced the term "Catalog of Assassination Records" that appeared in the proposed interpretive regulations and redrafted § 1400.8 to clarify the Review Board's intent. In the final interpretive regulations, the Review Board substitutes the term NARD for prior references to a "catalog."

Paperwork Reduction Act Statement

The regulation is not subject to the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) because it does to contain any information collection requirements within the meaning of 44 U.S.C. 3502(4).

Regulatory Flexibility Act Certification

As required by the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612), the Board certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities and that, therefore, a regulatory flexibility analysis need not be prepared, 5 U.S.C. 605(b). The proposed rule would not impose any obligations, including any obligations on "small entities," as set forth in 5 U.S.C. 601(3) of the Regulatory Flexibility Act, or within the definition of "small business," as found in 15 U.S.C. 632, or within the Small Business Size Standards in regulations issued by the Small Business Administration and codified in 13 CFR part 121.

Review by OMB

This regulation has been reviewed by OMB under Executive Order 12866.

List of Subjects in 36 CFR Part 1400

Administrative practice and procedure, Archives and records.

Accordingly, the review Board hereby establishes a new chapter XIV in title 36 of the Code of Federal Regulations to read as follows:

CHAPTER XIV—ASSASSINATION RECORDS REVIEW BOARD

PART 1400—GUIDANCE FOR INTERPRETATION AND IMPLEMENTATION OF THE PRESIDENT JOHN F. KENNEDY ASSASSINATION RECORDS COLLECTION ACT OF 1992 (JFK ACT)

Sec.

1400.1 Scope of assassination record.
1400.2 Scope of additional records and information.
1400.3 Sources of assassination records and additional records and information.
1400.4 Types of materials included in scope of assassination record and additional records and information.
1400.5 Requirement that assassination records be released in their entirety.
1400.6 Originals and copies.
1400.7 Additional guidance.
1400.8 Implementing the JFK Act—Notice of Assassination Record Designation.

Authority: 44 U.S.C. 2107.

§ 1400.1 Scope of assassination record.

(a) An *assassination record* includes, but is not limited to, all records, public and private, regardless of how labeled or identified, that document, describe, report on, analyze or interpret activities, persons, or events reasonably related to the assassination of President John F. Kennedy and investigations of or inquiries into the assassination.

(b) An *assassination record* further includes, without limitation:

(1) All records as defined in Section 3(2) of the JFK Act;

(2) All records collected by or segregated by all Federal, state, and local government agencies in conjunction with any investigation or analysis of or inquiry into the assassination of President Kennedy (for example, any intra-agency investigation or analysis of or inquiry into the assassination; any interagency communication regarding the assassination; any request by the House Select Committee on Assassinations to collect documents and other materials; or any inter- or intra-agency collection or segregation of documents and other materials);

(3) Other records or groups of records listed in the Notice of Assassination Record Designation, as described in § 1400.8 of this chapter.

§ 1400.2 Scope of additional records and information.

The term *additional records and information* includes:

(a) All documents used by government offices and agencies during their declassification review of assassination records as well as all other documents, indices, and other material (including but not limited to those that disclose cryptonyms, code names, or other identifiers that appear in assassination records) that the Assassination Records Review Board (Review Board) has a reasonable basis to believe may constitute an assassination record or would assist in the identification, evaluation or interpretation of an assassination record. The Review Board will identify in writing those records and other materials it intends to seek under this section.

(b) All training manuals, instructional materials, and guidelines created or used by the agencies in furtherance of their review of assassination records.

(c) All records, lists, and documents describing the procedure by which the agencies identified or selected assassination records for review.

(d) Organizational charts of government agencies.

(e) Records necessary and sufficient to describe the agency's:

(1) Records policies and schedules;

(2) Filing systems and organization;

(3) Storage facilities and locations;

(4) Indexing symbols, marks, codes, instructions, guidelines, methods, and procedures;

(5) Search methods and procedures used in the performance of the agencies' duties under the JFK Act; and

(6) Reclassification to a higher level, transfer, destruction, or other information (*e.g.*, theft) regarding the status of assassination records.

(f) Any other record that does not fall within the scope of assassination record as described in § 1400.1, but which has the potential to enhance, enrich, and broaden the historical record of the assassination.

§ 1400.3 Sources of assassination records and additional records and information.

Assassination records and additional records and information may be located at, or under the control of, without limitation:

(a) Agencies, offices, and entities of the executing, legislative, and judicial branches of the Federal Government;

(b) Agencies, offices, and entities of the executive, legislative, and judicial branches of state and local governments;

(c) Record repositories and archives of Federal, state, and local governments, including presidential libraries;

(d) Record repositories and archives of universities, libraries, historical societies, and other similar organizations;

(e) Individuals who possess such records by virtue of service with a government agency, office, or entity;

(f) Persons, including individuals and corporations, who have obtained such

records from sources identified in paragraphs (a) through (e) of this section;

(g) Persons, including individuals and corporations, who have themselves created or have obtained such records from sources other than those identified in paragraphs (a) through (e) of this section;

(h) Federal, state, and local courts where such records are being held under seal; or

(i) Foreign governments.

§ 1400.4 Types of materials included in scope of assassination record and additional records and information.

The term *record* in *assassination record* and *additional records and information* includes, for purposes of interpreting and implementing the JFK Act:

(a) papers, maps, and other documentary material;

(b) photographs;

(c) motion pictures;

(d) sound and video recordings;

(e) machine readable information in any form; and

(f) artifacts.

§ 1440.5 Requirement that assassination records be released in their entirety.

An assassination record shall be released in its entirety except for portions specifically postponed pursuant to the grounds for postponement of public disclosure of records established in § 2107.6 of the JFK Act, and no portion of any assassination record shall be withheld from public disclosure solely on grounds of non-relevance unless, in the Review Board's sole discretion, release of part of a record is sufficient to comply with the intent and purposes of the JFK Act.

§ 1400.6 Originals and copies.

(a) For purposes of determining whether originals or copies of assassination records will be made part of the President John F. Kennedy Assassination Records Collection (JFK Assassination Records Collection) established under the JFK Act, the following shall apply:

(1) In the case of papers, maps, and other documentary materials, the Review Board may determine that record copies of government records, either the signed original, original production or a reproduction that has been treated as the official record maintained to chronicle government functions or activities, may be placed in the JFK Assassination Records Collection;

(2) In the case of other papers, maps, and other documentary material, the Review Board may determine that a true and accurate copy of a record in lieu of the original may be placed in the JFK Assassination Records Collection;

(3) In the case of photographs, the original negative, whenever available (otherwise, the earliest generation print that is a true and accurate copy), may be placed in the JFK Assassination Records Collection;

(4) In the case of motion pictures, the camera original, whenever available (otherwise, the earliest generation print that is a true and accurate copy), may be placed in the JFK Assassination Records Collection;

(5) In the case of sound and video recordings, the original recording, whenever available (otherwise, the earliest generation copy that is a true and accurate copy), may be placed in the JFK Assassination Records Collection;

(6) In the case of machine-readable information, a true and accurate copy of the original (duplicating all information contained in the original and in a format that permits retrieval of the information), may be placed in the JFK Assassination Records Collection; and

(7) In the case of artifacts, the original objects themselves may be placed in the JFK Assassination Records Collection.

(b) To the extent records from foreign governments are included in the JFK Assassination Records Collection, copies of the original records shall be sufficient for inclusion in the collection.

(c) In cases where a copy, as defined in paragraph (a) of this section, is authorized by the Review Board to be included in the JFK Assassination Records Collection, the Review Board may require that a copy be certified if, in its discretion, it determines a certification to be necessary to ensure the integrity of the JFK Assassination Records Collection. In cases where an original, as defined in paragraph (a) of this section, is required for inclusion in the JFK Assassination Records Collection, the Review Board may, at its discretion, accept the best available copy. In such cases that records included in the JFK Assassination Records Collection, whether originals or copies, contain illegible portions, such records shall have attached thereto a certified transcription of the illegible language to the extent practicable.

(d) For purposes of implementing the JFK Act, the term *copy* means a true and accurate photocopy duplication by a means appropriate to the medium of the original record that preserves and displays the integrity of the record and the information contained in it.

(e) Nothing in this section shall be interpreted to suggest that additional copies of any assassination records contained in the JFK Assassination Records Collection are not also assassination records that, at the Review Board's discretion, may also be placed in the JFK Assassination Records Collection.

(f) Nothing in this section shall be interpreted to prevent or to preclude copies of any electronic assassination records from being reformatted electronically in order to conform to different hardward and/or software requirements of audiovisual or machine readable formats if such is the professional judgment of the National Archives and Records Administration.

§ 1400.7 Additional guidance.

(a) A government agency, office, or entity includes, for purposes of interpreting and implementing the JFK Act, all current, past, and former departments, agencies, offices, divisions, foreign offices, bureaus, and deliberative bodies of any Federal, state, or local government and includes all inter- or intra-agency working groups, committees, and meetings that possess or created records relating to the assassination of President John F. Kennedy.

(b) The inclusion of artifacts in the scope of the term assassination record is understood to apply solely to the JFK Assassination Records Collection and to implement fully the terms of the JFK Act and has no direct or indirect bearing on the interpretation or implementation of any other statute or regulation.

(c) Whenever artifacts are included in the JFK Assassination Records Collection, it shall be sufficient to comply with the JFK Act if the public is provided access to photographs, drawings, or similar materials depicting the artifacts. Additional display of or examination by the public of artifacts in the JFK Assassination Records Collection shall occur under the terms and conditions established by the National Archives and Records Administration to ensure their preservation and protection for posterity.

(d) The terms and, or, any, all, and the plural and singular forms of nouns shall be understood in their broadest and most inclusive sense and shall not be understood to be terms of limitation.

(e) Unless the Review Board in its sole discretion directs otherwise, records that are identified with respect to a particular person shall include all records ralating to that person that use or reflect the true name or any other name, pseudonym, codeword, symbol number, cryptonym, or alias used to identify that person.

(f) Unless the Review Board in its sole discretion directs otherwise, records that are identified by the Review Board with respect to a particular operation or program shall include all records, pertaining to that program by any other name, pseudonym, codeword, symbol, number, or cryptonym.

§ 1400.8 Implementing the JFK Act—Notice of Assassination Record Designation.

(a) A Notice of Assassination Record Designation (NARD) shall be the mechanism for the Review Board to announce publicly its determination that a record or group of records meets the definition of assassination records.

(b) Notice of all NARDs will be published in the **Federal Register** within 30 days of the decision to designate such records as assassination records.

(c) In determining to designate such records as assassination records, the Review Board must determine that the record or group of record will more likely than not enhance, enrich, and broaden the historical record of the assassination.

Dated: June 22, 1995.

David G. Maxwell,

Executive Director Assassination Records Review Board.

[FR Doc. 95–15819 Filed 6–27–95; 8:45 am]

BILLING CODE 6820–TD–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AC14

National Capital Region Parks; Special Regulations; Correction

AGENCY: National Park Service, Interior.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to the final regulations which were published Friday, April 7, 1995 (60 FR 17639). The regulations limit the sales on Federal park land to books, newspapers, leaflets, pamphlets, buttons and bumper stickers and set standards for sites, stands and structures used in such sales within National Capital Region Parks.

EFFECTIVE DATE: May 8, 1995.

FOR FURTHER INFORMATION CONTACT: Sandra Alley, Associate Regional Director, Public Affairs and Tourism, National Capital Region, National Park Service, 1100 Ohio Drive SW., Washington, D.C. (202) 619–7223.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, the final rule contains one error which may prove to be misleading and is in need of correction.

Correction of Publication

Accordingly, the publication on Friday, April 7, 1995 (60 FR 17639) of the final regulation, FR Doc. 95–8599, for National Capital Region, is corrected as follows:

In the FR Doc. 95–8599, appearing on page 17649 in the issue of Friday, April 7, 1995, the words "the introductory text of" need to be added after the word "revising" that appears in the first column, beginning on the ninth line, which now reads "2. Section 7.96 is amended by revising paragraph (k)(2) to read as follows:" is corrected to read "2. Section 7.96 is amended by revising the introductory text of paragraph (k)(2) to read as follows:"

Dated: June 22, 1995.

Rick Gale,

Acting Chief, Ranger Activities Division.

[FR Doc. 95–15741 Filed 6–21–95; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[A–1–FRL–5249–5]

Clean Air Act Promulgation of Extension of Attainment Date for Ozone Nonattainment Area; Maine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is extending the attainment date for the Hancock and Waldo Counties, a marginal ozone nonattainment area in Maine to November 15, 1994. This extension is based in part on monitored air quality readings for the national ambient air quality standard for ozone during 1993. This notice also updates tables in 40 CFR 52.1024 and 40 CFR 81.320 concerning attainment dates in the State of Maine.

EFFECTIVE DATE: This extension becomes effective July 28, 1995.

FOR FURTHER INFORMATION CONTACT: Richard P. Burkhart, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Phone: 617–565–3244.

SUPPLEMENTARY INFORMATION: On Feb. 22, 1995 (60 FR 9813), EPA published a notice of proposed rulemaking (NPR) for the State of Maine. The NPR proposed extending the attainment deadline for ozone for Hancock and Waldo Counties, and asked for public comment. No comments were received.

CAA Requirements and EPA Actions Concerning Designation and Classification

Section 107(d)(4) of the Clean Air Act as amended in 1990 (CAA) required the States and EPA to designate areas as attainment, nonattainment, or unclassifiable for ozone as well as other pollutants for which national ambient air quality standards (NAAQS) have been set. Section 181(a)(1) (table 1) required that ozone nonattainment areas be classified as marginal, moderate, serious, severe, or extreme, depending on their air quality.

In a series of **Federal Register** notices, EPA completed this process by designating and classifying all areas of the country for ozone. See, *e.g.*, 56 FR 58694 (Nov. 6, 1991); 57 FR 56762 (Nov. 30, 1992); 59 FR 18967 (April 21, 1994).

Areas designated nonattainment for ozone are required to meet attainment dates specified under the Act. For areas classified marginal through extreme, the attainment dates range from November 15, 1993 through November 15, 2010. A discussion of the attainment dates is found in 57 FR 13498 (April 16, 1992) (the General Preamble).

The Hancock and Waldo Counties, Maine area was designated nonattainment and classified marginal for ozone pursuant to 56 FR 58694 (Nov. 6, 1991). By this classification, its attainment date became November 15, 1993.

CAA Requirements and EPA Actions Concerning Meeting the Attainment Date

Section 181(b)(2)(A) requires the Administrator, within six months of the attainment date, to determine whether ozone nonattainment areas attained the NAAQS. For ozone, EPA determines attainment status on the basis of the expected number of exceedances of the NAAQS over the three-year period up to, and including, the attainment date. See General Preamble, 57 FR 13506. In the case of ozone marginal nonattainment areas, the three-year period is 1991–93. CAA section 181(b)(2)(A) further states that, for areas classified as marginal, moderate, or serious, if the Administrator determines that the area did not attain the standard by its attainment date, the area must be reclassified upwards.

However, CAA section 181(a)(5) provides an exemption from these bump

up requirements. Under this exemption, EPA may grant up to two one-year extensions of the attainment date under specified conditions:

Upon application by any State, the Administrator may extend for 1 additional year (hereinafter referred to as the "Extension Year") the date specified in table 1 of paragraph (1) of this subsection if—

(A) the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan, and

(B) no more than 1 exceedance of the national ambient air quality standard level for ozone has occurred in the area in the year preceding the Extension Year.

No more than 2 one-year extensions may be issued under this paragraph for a single nonattainment area.

EPA interprets this provision to authorize the granting of a one-year extension under the following, minimum, conditions: (i) The State requests a one-year extension, (ii) all requirements and commitments in the EPA-approved SIP for the area have been complied with, and (iii) the area has no more than one measured exceedance of the NAAQS during the year that includes the attainment date (or the subsequent year, if a second one-year extension is requested).

EPA Action

On February 22, 1994 (60 FR 9813) EPA proposed to grant a one-year extension of the attainment date for the Hancock and Waldo Counties, Maine nonattainment area. Air quality monitors for this area revealed two exceedances of the ozone National Ambient Air quality Standard during the three year period from 1991 to 1993. Both exceedances occurred in 1991, at a monitor located in Hancock County at a site operated by the National Park Service. The site had data capture problems in both 1991 and 1992. In 1993 the Maine Department of Environmental Protection took over maintenance of the site and data capture improved greatly. Since 1991 the site has not had any exceedances of the NAAQS. EPA received no comments on this proposal.

Today EPA is granting the request for extension. Accordingly, EPA is proposing to establish a new attainment date for the Hancock and Waldo Counties, Maine area as November 15, 1994.

Regulatory Process

Under E.O. 12866, this action has been exempted from the Office of Management and Budget's review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. Attainment date extensions under section 181(a)(5) of the CAA do not create any new requirements; therefore, I certify that this action will not have a significant impact on small entities.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: May 22, 1995.

John P. DeVillars,

Regional Administrator, Region I.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart U—Maine

2. Section 52.1024 is revised to read as follows:

§ 52.1024 Attainment dates for national standards.

The following table presents the latest dates by which the national standards are to be attained.

ATTAINMENT DATES ESTABLISHED BY CLEAN AIR ACT OF 1990

Air quality control region and nonattainment area	Pollutant					
	SO_2		PM–10	NO_2	CO	O_3
	Primary	Secondary				
AQCR 107:						
Androscoggin County	(a)	(b)	(a)	(a)	(a)	(g)
Kennebec County	(a)	(b)	(a)	(a)	(a)	(g)
Knox County	(a)	(b)	(a)	(a)	(a)	(g)
Lincoln County	(a)	(b)	(a)	(a)	(a)	(g)
Waldo County	(a)	(b)	(a)	(a)	(a)	(d)
Oxford Cnty. (Part) See 40 CFR 81.320	(a)	(b)	(a)	(a)	(a)	(c)
Franklin Cnty. (Part) See 40 CFR 81.320	(a)	(b)	(a)	(a)	(a)	(c)
Somerset Cnty. (Part) See 40 CFR 81.320	(a)	(b)	(a)	(a)	(a)	(c)
AQCR 108:						
Aroostook Cnty. (Part) See 40 CFR 81.320	(a)	(b)	(c)	(a)	(a)	(a)
Remainder of AQCR	(a)	(b)	(a)	(a)	(a)	(a)
AQCR 109:						
Hancock County	(a)	(b)	(a)	(a)	(a)	(d)
Millinocket	(c)	(c)	(a)	(a)	(a)	(a)
Remainder of AQCR	(a)	(b)	(a)	(a)	(a)	(a)
AQCR 110:						
York County	(a)	(b)	(a)	(a)	(a)	(g)
Cumberland County	(a)	(b)	(a)	(a)	(a)	(g)
Sagadahoc County	(a)	(b)	(a)	(a)	(a)	(g)
Oxford Cnty. (Part) See 40 CFR 81.320	(a)	(b)	(a)	(a)	(a)	(c)
AQCR 111	(a)	(b)	(a)	(a)	(a)	(a)

[a] Air quality levels presently below primary standards or area is unclassifiable.

[b] Air quality levels presently below secondary standards or area is unclassifiable.
[c] 12/31/94.
[d] 11/15/94 (one-year extension granted).
[e] 11/15/95.
[g] 11/15/96.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.320 the ozone table is amended by revising the entry for "Hancock County and Waldo County Area" to read as follows:

§ 81.320 Maine.

MAINE—OZONE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Hancock County and Waldo County Area:				
Hancock County		Nonattainment ..		Marginal 2.
Waldo County		Nonattainment ..		Marginal 2.

[1] This date is November 15, 1990, unless otherwise noted.
[2] Attainment date extended to 11/15/94.

* * * * *

[FR Doc. 95–15871 Filed 6–27–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[PP 3E4249/R2141; FRL–4958–4]

RIN 2070–AB78

Fenarimol; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for the combined residues of the fungicide fenarimol in or on the imported raw agricultural commodity bananas at 0.5 part per million (ppm). Not more than 0.25 ppm shall be present in the pulp after the peel is removed. DowElanco petitioned for this regulation to establish a maximum permissible level for combined residues of the fungicide.

EFFECTIVE DATE: This regulation becomes effective June 28, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 3E4249/R2141], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 3E4249/R2141]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Connie B. Welch, Product Manager (PM) 21, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6900; e-mail: welch.connie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 29, 1995 (60 FR 20471), EPA issued a proposed rule that gave notice that DowElanco, 9002 Purdue Rd., Indianapolis, IN 46268-1189, had submitted a pesticide petition, (PP) 3E4249, to EPA requesting that the Administrator, pursuant to section 408(e) of the FFDCA, 21 U.S.C. 346a(e), amend 40 CFR 180.421 to establish an import tolerance for the combined residues of the fungicide fenarimol, [*alpha*-(2-chlorophenyl)-*alpha*-(4-chlorophenyl)-5-pyrimidinemethanol] and its metabolites [*alpha*-(2-chlorophenyl)-*alpha*-(4-chlorophenyl)-1,4-dihydro-5-pyrimidinemethanol and 5-(2-chlorophenyl)-(4-chlorophenyl)methyl]-3,4-dihydro-4-pyrimidinol measured as the total of fenarimol and 5-[(2-chlorophenyl)-(4-chlorophenyl)methyl]pyrimidine (calculated as fenarimol)], in or on the

raw agricultural commodity bananas at 0.5 part per million (ppm). Not more than 0.25 ppm shall be present in the pulp after the peel is removed.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted with the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 3E4249/R2141] (including any objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 3E4249/R2141], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 9, 1995.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.421(b), by revising the table therein to read as follows:

§ 180.421 Fenarimol; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million
Bananas[1]	0.5 (Not more than 0.25 ppm shall be present in the pulp after peel is removed)
Cherries	1.0
Grapes	0.2
. . . . .	

[1]There are no United States registrations for bananas as of April 26, 1995.

[FR Doc. 95–15441 Filed 6–27–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Parts 180 and 186

[PP 3F4204 and FAP 3H5670/R2145; FRL–4960–8]

RIN 2070–AB78

Cyfluthrin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes time-limited tolerances with an expiration date of November 15, 1997, for residues of the synthetic pyrethroid cyfluthrin in or on the raw agricultural commodity (RAC) sugarcane at 0.05 ppm and in or on the processed feed sugarcane molasses at 0.2 ppm. Bayer Corp., Animal Products (formerly Miles Corp.), requested the regulations to establish maximum permissible levels for residues of the insecticide.

EFFECTIVE DATE: This regulation becomes effective June 28, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 3F4204 and FAP 3H5670/R2145], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number, [PP 3F4024 and FAP 3H5670/R2145]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: George T. LaRocca, Product Manager (PM) 13, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 200, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6100; e-mail: larocca.george@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of October 21, 1993 (58 FR 54353), which announced that the Bayer Corp. had submitted pesticide petition (PP) 3F4204 and feed additive petition (FAP) 3H5670 to EPA requesting that the Administrator, pursuant to sections 408(d) and 409(b) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d) and 348(b), establish tolerances for residues of the insecticide cyfluthrin, cyano(4-fluoro-3-phenoxyphenyl)-methyl-3-(2,2-dicloroethenyl)-2,2-dimethylcyclopropanecarboxylate, in or on the raw agricultural commodities sugarcane at 0.05 ppm and the feed commodities sugarcane bagasse (0.2 ppm) and sugarcane molasses (0.2 ppm). The proposed tolerance for sugarcane bagasse was subsequently withdrawn since bagasse in not considered a feed item.

No comments were received in response to the notice of filing.

The data base for cyfluthrin is essentially complete. Data lacking but desirable are a new 21-day subchronic dermal study, an acute neurotoxicity study in rats, and a 90-day neurotoxicity study in rats. Although these data are lacking, the Agency believes it has sufficient toxicity data to support the proposed tolerance, and these missing data will not significantly change its risk assessment. In a letter dated April 20, 1995, Bayer Corp. has committed to submit the 21-day subchronic dermal study by June 1996, the acute neurotoxicity study by December 1996, and the 90-day neurotoxicity study by May 1997.

In addition, the Agency is requiring submission of a processing study for blackstrap molasses. The submitted sugarcane processing studies show that only molasses was produced. No residue data were submitted for blackstrap molasses. In commercial processing, as molasses is further concentrated to recover more sugar, blackstrap is produced. Although blackstrap is an animal feed commodity (about 10% of diet), minor amounts can enter the human diet. In a letter dated January 25, 1995, Bayer Corp. submitted additional information confirming that residues of cyfluthrin do not concentrate in molasses. Thus it is unlikely residues will be concentrated in blackstrap. However, Bayer Corp has initiated an additional sugarcane processing study to obtain residue data for blackstrap which will be submitted by December 31, 1996. In the interim, Bayer Corp. proposes that the 0.2 ppm tolerance in molasses should cover any potential for the concentration of residues in blackstrap.

Based upon the submitted data in molasses, the Agency does not believe that residues will concentrate in blackstrap; however, since there is a potential for concentration, the Agency will establish a time-limited tolerance in molasses. After submission and evaluation of the blackstrap processing study, the Agency will determine the need for a permanent feed additive tolerance.

The scientific data submitted in the petition and other relevant material have been evaluated. The toxicology data submitted in support of the tolerance include:

1. A 12-month chronic feeding study in dogs with a no-observed-effect level (NOEL) of 4 mg/kg/day. The lowest-effect level (LEL) for this study is established at 16 mg/kg/day, based on slight ataxia, increased vomiting, diarrhea, and decreased body weight.

2. A 24-month chronic feeding/carcinogenicity study in rats with a NOEL of 2.5 mg/kg/day and LEL of 6.2 mg/kg/day, based on decreased body weights in males and females, decreased food consumption in males, and inflammatory foci in the kidneys in females. There were no carcinogenic effects observed under the conditions of the study.

3. A 24-month carcinogenicity study in mice. There were no carcinogenic effects observed under the conditions of the study.

4. An oral developmental toxicity study in rats with a maternal and fetal NOEL of 10 mg/kg/day (highest dose tested). An oral developmental toxicity study in rabbits with a maternal NOEL of 20 mg/kg/day and a maternal LEL of 60 mg/kg/day, based on decreased body weight gain and decreased food consumption during the dosing period. A fetal NOEL of 20 mg/kg/day and a fetal LEL of 60 mg/kg/day were also observed in this study. The LEL was

based on increased resorption and increased postimplantation loss.

5. A developmental toxicity study in rats by the inhalation route of administration with a maternal NOEL of 0.0011 mg/L and an LEL of 0.0047 mg/L, based on reduced mobility, dyspnea, piloerection, ungroomed coats, and eye irritation. The fetal NOEL is 0.00059 mg/L, and the fetal LEL is 0.0011 mg/L, based on sternal anomalies and increased incidence of runts. A second developmental toxicity study in rats by the inhalation route of administration is currently under review. The issue of whether cyfluthrin directly induces fetotoxicity under these conditions is unresolved at this time.

6. A three-generation reproduction study in rats with a systemic NOEL of 2.5 mg/kg/day and a systemic LEL of 7.5 mg/kg/day due to decreased parent and pup body weights. The reproductive NOEL and LEL are 7.5 mg/kg/day and 22.5 mg/kg/day, respectively.

7. Mutagenicity tests, including several gene mutation assays (reverse mutation and recombination assays in bacteria and a Chinese hamster ovary(CHO)/HGPRT assay); a structural chromosome aberration assay (CHO/sister chromatid exchange assay); and an unscheduled DNA synthesis assay in rat hepatocytes. All tests were negative for genotoxicity.

8. A metabolism study in rats showing that cyfluthrin is rapidly absorbed and excreted, mostly as conjugated metabolites in the urine, within 48 hours. An enterohepatic circulation was observed.

A chronic dietary exposure/risk assessment was performed for cyfluthrin using a Reference Dose (RfD) of 0.025 mg/kg bwt/day, based on a no-observed-effect level (NOEL) of 50 ppm (2.5 mg/kg bwt/day) and an uncertainty factor of 100. The NOEL was determined in a 2-year rat feeding study. The endpoint effects of concern were decreased body weights in males and inflammation of the kidneys in females at the LEL of 150 ppm (6.2 mg/kg/day). The current estimated dietary exposure for the overall U.S. population resulting from established tolerances is 0.002730 mg/kg/bwt day, which represents 11% of the RfD. Established tolerances utiiize 32% of the RfD in the subgroup population with the highest exposure levels, nonnursing infants less than 1-year old. The proposed use on sugarcane would not significantly contribute to the dietary exposure of the overall U.S. population or nonnursing infants. Generally speaking, EPA has no cause for concern if total residue contribution for published and proposed tolerances is less than the RfD. EPA concludes that the chronic dietary risk of cyfluthrin, as estimated by the dietary risk assessment, does not appear to be of concern.

Because there was a sign of developmental effects seen in animal studies, the Agency used the rabbit developmental toxicity study with a maternal NOEL of 20 mg/kg/day to assess acute dietary exposure and determine a margin of exposure (MOE) for the overall U.S. population and certain subgroups. Since the toxicological end-point pertains to developmental toxicity, the population group of concern for this analysis is women aged 13 and above, the subgroup which most closely approximates women of child-bearing age. The MOE is calculated as the ratio of the NOEL to the exposure. For this analysis the Agency calculated the MOE for women ages 13 and above to be 1,250. Generally speaking, MOE's greater than 100 for data derived from animal studies are acceptable to the Agency.

The established tolerances of 0.40 ppm for residues of cyfluthrin in/on fat, meat, and meat byproducts of cattle, goats, hogs, horses, and sheep and 0.01 ppm in/on fat, meat, and meat byproducts of poultry and eggs are adequate to cover secondary residues resulting from the proposed use as delineated in 40 CFR 180.6(a)(2).

The metabolism of cyfluthrin in plants and livestock for this use is adequately understood. The residue of concern is cyfluthrin per se. An adequate analytical method, gas-liquid chromatography, is available for enforcement purposes. The enforcement methodology has been submitted to the Food and Drug Administration for publication in the Pesticide Analytical Manual, Vol. II (PAM II). Because of the long lead time for publication of the method in PAM II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Response and Program Resources Branch, Field Operations Divisions (7506C), Office of Pesticide Programs, Environmental Protection Agency 401 M St., Washington, DC 20460. Office location and telephone number: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5232.

On August 5, 1988, EPA issued a conditional registration and time-limited tolerance for cyfluthrin for use on cottonseed with an expiration date of October 31, 1991 (see the **Federal Register** of August 15, 1988 (53 FR 30676)). On November 12, 1992, the conditional registration was amended and extended to November 15, 1993, and the tolerance on cottonseed extended to November 15, 1994 (see the **Federal Registers** of October 20, 1993 (58 FR 54094) and February 22, 1994 (54 FR 9411)). On November 15, 1993, EPA amended the conditional registration on cottonseed by extending the expiration date to November 15, 1996, and extending the timelimited tolerance to November 15, 1997. The conditional registration was amended and extended to allow time for submission and evaluation of additional environmental effects data. In order to evaluate the effects of cyfluthrin on fish and aquatic organisms and its fate in the environment, additional data were required to be collected and submitted during the period of conditional registration. Such requirements included a sediment bioavailability and toxicity study and a small-plot runoff study that must be submitted to the Agency by July 1, 1996. To be consistent with the conditional registration and extension on cottonseed, the Agency is proposing to issue a conditional registration with an expiration date of November 15, 1996, and establish a time-limited tolerance on sugarcane and sugarcane molasses with an expiration date of November 15, 1997, to cover residues expected to result from use during the period of conditional registration.

Residues remaining in or on the above commodities after expiration of these tolerances will not be considered actionable if the pesticide is legally applied during the term of and in accordance with provisions of the conditional registration.

There are currently no actions pending against the continued registration of this chemical.

The pesticide is considered useful for the purposes for which it is sought and capable of achieving its intended physical or technical effect. Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR part 180 would protect the public health and that use of the pesticide in accordance with the tolerance established by amending 40 CFR part 186 would be safe. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 3F4204 and FAP 3H5670/R2145] (including objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30.p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 3F4204 and FAP 3H5670/R2145], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:
opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements, or establishing or raising food additive regulations do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 180 and 186

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 9, 1995.

Peter Caulkins,
Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation of part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. By amending § 180.436 in the table therein, by adding and alphabetically inserting an entry for the commodity sugarcane, to read as follows:

§ 180.436 Cyfluthrin; tolerances for residues.

* * * * *

Commodity	Parts per million	Expiration date
* * * * *		
Sugarcane	0.05	Do.
* * * * *		

PART 186—[AMENDED]

2. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 186.1250, by amending paragraph (a) in the table therein by adding and alphabetically inserting an entry for the commodity sugarcane molasses as follows:

§ 186.1250 Cyfluthrin.

(a) * * *

Commodity	Parts per million	Expiration date
* * * * *		
Sugarcane, molasses	0.2	Do.
* * * * *		

* * * * *

[FR Doc. 95–15578 Filed 6–27–95; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Parts 180 and 186

[PP 4F4340 and FAP 5H5722/R2146; FRL–4961–7]

RIN 2070–AB78

Clethodim; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: These regulations establish tolerances for the residues of the herbicide clethodim [(E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one] and its metabolites containing the 5-(2-ethylthiopropyl)-cyclohexen-3-one and 5-(2-ethylthiopropyl)-5-hydroxycyclohexen-3-one moieties and their sulphoxides and sulphones, expressed as clethodim, in or on the raw agricultural commodities sugar beet roots at 0.20 ppm; sugar beet tops at 0.50 ppm; and onions (dry bulb) at 0.20 ppm; and in or on the food additive commodity sugar beet molasses at 2.0 ppm. Valent U.S.A. Corp. submitted petitions for these regulations that establish maximum permissible levels for residues of the herbicide in or on the commodities.

EFFECTIVE DATE: These regulations become effective June 28, 1995.

ADDRESSES: Written objections, identified by the document control number, [PP 4F4340 and FAP 5H5722/R2146], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 4F4370 and FAP 5H5722/R2146]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Product Manager (PM-23), Registration Division (7505C), Environmental Protection Agency, 401 M St., SW. Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-7830; e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 2, 1994 (59 FR 54906), EPA issued a notice announcing that Valent U.S.A. Corp., 1333 North California Blvd., Walnut Creek, CA, had submitted a pesticide petition (PP 4F4340) to EPA under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a), proposing to amend 40 CFR part 180 by establishing tolerances for residues of the herbicide clethodim and its metabolites containing the 2-cyclohexen-1-one moiety in or on sugar beet, roots, at 0.2 ppm, sugar beet, tops, 0.2 ppm, and onion (dry bulb) at 0.5 ppm. On March 13, 1995, Valent subsequently submitted a revision to PP 4F4340 to amend the proposed tolerances on sugar beet, tops from 0.20 to 0.50 ppm and onions (dry bulb) from 0.50 to 0.20 ppm. In addition, EPA issued a notice, published in the **Federal Register** of May 3, 1995 (60 FR 21816), which announced that Valent had submitted a food additive petition (FAP 5H5722) to EPA under section 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 348), proposing to amend 40 CFR part 186 by establishing a regulation to permit the residues of the herbicide clethodim [(E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one] and its metabolites containing the 5-(2-ethylthiopropyl)cyclohexen-3-one and 5-(2-ethylthiopropyl)-5-hydroxycyclohexen-3-one moieties and their sulphoxides and sulphones, expressed as clethodim, in or on sugar beet molasses at 2.0 ppm.

There were no comments or requests for referral to an advisory committee received in response to the notices of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data described below were considered in support of these tolerances and food additive regulations.

1. Several acute toxicology studies placing the technical-grade herbicide in Toxicity Category III.

2. A 2-year rat chronic toxicity/carcinogenicity study found the compound to be noncarcinogenic to rats under the conditions of the study. The systemic no-observed-effect level (NOEL) was 500 ppm (approximately 19 mg/kg/day), and the systemic lowest-observed-effect level (LOEL) was 2,500 ppm (approximately 100 mg/kg/day) based on the observed body wight gain, the increases in liver weights, and the presence of centrilobular hepatic hypertrophy.

3. An 18-month mouse carcinogenicity study which showed the compound to be noncarcinogenic to mice under the conditions of the study. The systemic NOEL was 200 ppm (8 mg/kg/day), and the systemic LOEL was 1,000 ppm (50 mg/kg/day) based on treatment-related effects on survival; red cell mass, absolute and relative liver weights, and microscopic findings in liver and lung.

4. A 1-year feeding study in dogs with a systemic NOEL of 1 mg/kg/day in both sexes and an LOEL of 75 mg/kg/day based on increased absolute and relative liver weights, and alteration and clinical chemistry.

5. A developmental toxicity study in rats with a developmental and maternal NOEL and LOEL of 100 and 350 mg/kg/day, respectively. The NOEL and LOEL for developmental toxicity were based on reductions in fetal body weight and increases in skeletal anomalies.

6. A developmental toxicity study in rabbits with a maternal toxicity NOEL and LOEL of 25 and 100 mg/kg/day, respectively. Maternal toxicity was manifested as clinical signs of toxicity and reduced weight gain and food consumption during treatment. Developmental toxicity was not observed, and therefore the developmental toxicity NOEL was 300 mg/kg/day (HDT).

7. A two-generation reproduction study in the rat with parental toxicity NOEL and LOEL of 500 and 2,500 ppm (51 and 263 mg/kg/day), respectively, based on reductions in body weight in males, and decreased food consumption in both generations. The NOEL for reproductive toxicity was 2,500 ppm (263 mg/kg/day, HDT).

8. A mutagenicity test with *Salmonella* Ames assay showed nonmutagenicity in three strains. Clethodim imine sulfone was negative for reverse gene mutation in *Salmonella* and *E. coli* exposed up to 10,000 ug/plate with or without activation. Clethodim was negative for chromosomal damage in bone marrow cells of rats treated orally up to toxic dose (1,500 mg/kg).

The Office of Pesticide Programs' Health Effects Division's Carcinogenicity Peer Review Committee (CPRC) has classified clethodim in Group E carcinogen (no evidence of carcinogenicity) under the Agency's "Guidelines for Carcinogen Risk Assessment," published in the **Federal Register** of September 24, 1986 (51 FR 33992). In its evaluation, CPRC gave consideration to the weight change in the 2-year feeding study in rats and the 18-month feeding study in mice.

The Reference dose (RfD) is established at 0.01 mg/kg body weight/day based on a NOEL of 1.0 mg/kg/body weight/day from the 1-year feeding study in dogs and an uncertainty factor of 100. Using anticipated residues and 100 percent crop treated, the Anticipated Residue Contribution (ARC) from the current action is estimated at 0.00087 mg/kg/body weight/day for the general population, or 8.7 percent of the RfD for the general U.S. population. The ARC for the most exposed subgroups is 0.002527 mg/kg body weight/day for nonnursing infants (less than 1 year old) and 0.001776 mg/kg body weight/day for children (1 to 6 years old), or 25.27 and 17.76 percent of the RfD, respectively. Therefore, no appreciable risk is expected from chronic dietary intake since the RfD is not exceeded for either the general population or any subgroup.

The nature of the residue is adequately understood for the purposes of the tolerance.

An adequate analytical method is available for enforcement purposes. A common moiety analytical method for tolerance enforcement (gas chromatography with a flame photometric detector in the sulfur mode) was satisfactorily tested and is available. This method, however, cannot distinguish between clethodim and sethoxydim, a closely related herbicide with tolerances established under 40 CFR 180.412. A compound-specific confirmatory method (HPLC with a UV detector) that can distinguish between derivatives of clethodim and sethoxydim was confirmed.

The enforcement methodology has been submitted to the Food and Drug Administration for publication in the Pesticide Analytical Manual, Vol.II (PAM II). Because of the long lead time for publication of the method in PAM II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested for: Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5232.

The pesticide is considered useful for the purpose for which the tolerances are sought, and the tolerances are capable of achieving the intended physical or technical effect. There are currently no actions pending against the registration of this chemical.

Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR parts 180 and 186 will protect the public health and that use of the pesticide in accordance with the terms of the proposed food additive tolerance will be safe. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted show the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 4F4340 and FAP 5H5722/R2146] (including objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 4F4340 and FAP 5H5722/R2146], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:
opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect

of the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined the regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of subjects in 40 CFR Parts 180 and 186

Environmental protection, Administrative practice and procedure, Agricultural commodities, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 9, 1995.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR parts 180 and 186 are amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. In § 180.458, by designating the existing text as paragraph (a) and adding new paragraph (b), to read as follows:

§ 180.458 Clethodim ((E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one); tolerances for residues.

(a) * * *

(b) Tolerances are established for the herbicide clethodim [(E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one] and its metabolites containing the 5-[2-ethylthiopropyl)cyclohexen-3-one and 5-(2-ethylthiopropyl]-5-hydroxycyclohexen-3-one moieties and their sulphoxides and sulphones, expressed as clethodim tolerance residues for the following raw agricultural commodities:

Commodity	Parts per million
Onions (dry bulb)	0.20
Sugar beet, roots	0.20
Sugar beet, tops	0.50

PART 186—[AMENDED]

2. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 186.1075, by revising the section heading, designating the existing text as paragraph (a), and adding new paragraph (b), to read as follows:

§ 186.1075 Clethodim ((E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one).

(a) * * *

(b) Tolerances are established for the herbicide clethodim [(E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one] and its metabolites containing the 5-(2-ethylthiopropyl)cyclohexen-3-one and 5-(2-ethylthiopropyl)-5-hydroxycyclohexen-3-one moieties and their sulphoxides and sulphones, expressed as clethodim tolerance residues for the following feeds:

Commodity	Parts per million
Sugar beet, molasses	2.0

[FR Doc. 95–15579 Filed 6–27–95; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Parts 185 and 186

[PP 5H5712/R2140; FRL–4957–1]

RIN 2070–AB78

Cyfluthrin; Food/Feed Additive Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule amends a regulation for residues of the synthetic pyrethroid cyfluthrin in food/feed areas of food/feed-handling establishments. Miles Corp., Agricultural Division, petitioned EPA to amend the food/feed additive regulations to allow the use of a dust formulation in crack and crevice treatment. This rule was requested pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA).

EFFECTIVE DATE: This regulation becomes effective June 28, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [FAP 5H5712/R2140], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [FAP 5H5712/R2140]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: George T. Larocca, Product Manager (PM 13), Registration Division (7505C), Office of Pesticide Programs, Enviromental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 204, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6100; e-mail: larocca.george@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice in the **Federal Register** of February 8, 1995 (60 FR 7541), which announced that Miles, Corp., Agricultural Division, had submitted a food/feed additive petition, [FAP) 5H5712, to EPA requesting that the Administrator, pursuant to section 409(e) of the FFDCA (21 U.S.C. 348), amend 40 CFR 185.1250 and 186.1250 by amending the food/feed additive regulation for residues of the synthetic pyrethroid cyfluthrin by adding conditions for use of a dust formulation in crack or crevice treatment in areas of food/feed-handling establishments. The petition was subsequently amended to include spot treatment also.

No new data were submitted in support of this amendment. Food and feed additive regulations are established under 40 CFR 185.1250(c) and 186.1250(c), respectively, permitting residues of cyfluthrin at up to 0.05 ppm in food/feed commodities exposed to the insecticide during treatment of food/feed handling establishments. Residue data submitted in support of general surface treatment with cyfluthrin in food/feed-handling establishments under pesticide petition (PP) 6H5515 (51 FR 43663, Dec. 3, 1986) are adequate to demonstrate that residues resulting from use of a dust formulation will not exceed the established tolerance of 0.05 ppm. The toxicological and metabolism data and analytical methods for enforcement purposes considered in support of this amended regulation are discussed in detail in related documents published in the **Federal Register** of April 12, 1995 (60 FR 18563).

The reference dose (RfD) for cyfluthrin is 0.025 mg/kg bwt/day and is based on the no-observeable-effect level (NOEL) of 2.5 mg/kg/day in the 2-year rat feeding study. An uncertainty factor (UF) of 100 was used to calculate the RfD. The Theoretical Maximum Residue Contribution (TMRC) from established tolerances utilizes 11% of the RfD for the U.S. population and 32% of the RfD for nonnursing infants less than 1-year old, the subgroup with the highest estimated exposure to cyfluthrin residues. The use of a dust formulation in food/feed handling establishments does not contribute any more to the dietary exposure for the general population or nonnursing infants than general surface treatment.

There are currently no actions pending against the continued registration of this chemical.

Based on the information and data considered, the Agency has determined that the amending of 40 CFR 185.1250 and 186.1250 will be safe. Therefore, the regulation is amended as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register,** file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [FAP 5H5712/R2140] (including any objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [FAP 5H5712/R2140], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance

requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 185 and 186

Environmental protection, Administrative practice and procedure, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 14, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 185—[AMENDED]

1. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

b. In § 185.1250, paragraph (c)(2) is revised to read as follows:

§ 185.1250 Cyfluthrin.

* * * * *

(c) * * *

(2) Crack and crevice or spot treatments shall be limited to a maximum of 0.1 percent of the active ingredient by weight, applied with a low-pressure system with a pinpoint or variable-pattern nozzle. Dust formulation shall be limited to a maximum of 0.1 percent of the active ingredient by weight, applied using a hand duster, power duster, or other equipment capable of applying dust insecticide directly into voids and cracks and crevices. Dust applications should be made in a manner to avoid deposits on exposed surfaces or introducing the material into the air. Cover exposed food or remove food from premises. Do not apply directly to food. Reapplications may be made at 10-day intervals.

* * * * *

PART 186—[AMENDED]

2. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 186.1250, paragraph (c)(2) is revised to read as follows:

§ 186.1250 Cyfluthrin.

* * * * *

(c) * * *

(2) Crack and crevice or spot treatments shall be limited to a maximum of 0.1 percent of the active ingredient by weight, applied with a low-pressure system with a pinpoint or variable-pattern nozzle. Dust formulation shall be limited to a maximum of 0.1 percent of the active ingredient by weight, applied using a hand duster, power duster, or other equipment capable of applying dust insecticide directly into voids and cracks and crevices. Dust applications should be made in a manner to avoid deposits on exposed surfaces or introducing the material into the air. Cover exposed feed or remove feed from premises. Do not apply directly to feed. Reapplications may be made at 10-day intervals.

* * * * *

[FR Doc. 95–15439 Filed 6–27–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 300

[FRL–5249–1]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of Alpha Chemical Corporation Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region IV announces the deletion of the Alpha Chemical Corporation Site in Lakeland, Florida, from the National Priorities List (NPL). The NPL is codified as appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the State of Florida Department of Environmental Protection (FDEP) have determined that the Site poses no significant threat to public health or the environment and therefore, no further response pursuant to CERCLA is appropriate.

EFFECTIVE DATE: June 28, 1995.

FOR FURTHER INFORMATION CONTACT: Joe Franzmathes, Director, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta, Georgia 30365, (404)347–3454. Comprehensive information on this Site is available at two information repositories located at: Lakeland Public Library, 100 Lake Morton Drive, Lakeland, Florida 33801, (813) 499–8242 and U.S EPA Record Center, 345 Courtland Street, N.E. Atlanta, Georgia 30365 (404)347–0506.

SUPPLEMENTARY INFORMATION: The Alpha Chemical Corporation Site in Lakeland, Florida, is being deleted from the NPL.

A Notice of Intent to Delete for this site was published on May 3, 1995 (60 FR 21786). The closing date for comments on the Notice of Intent to Delete was June 2, 1995. EPA received no comments and therefore did not prepared a Responsiveness Summary.

The EPA identifies sites which appear to present a significant risk to public health welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be subject of Hazardous Substance Response Trust Fund (Fund-) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 301.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL in the unlikely event that conditions at the site warrant such action. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous substances, Hazardous Waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: June 15, 1995.

Patrick M. Tobin,

Acting Regional Administrator, USEPA Region IV.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 is revised to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp. p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp. p. 193.

Appendix B—[Amended]

2. Table 1 of appendix B to part 300 is amended by removing the Site "Alpha Chemical Corporation, Lakeland, Florida".

[FR Doc. 95–15874 Filed 6–27–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–16]

Radio Broadcasting Services; Leone, American Samoa

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on its own motion, substitutes Channel 230C1 for Channel 266C1 at Leone, American Samoa, in order to avoid a short-spacing to a recently authorized station on Channel 266A in Western Samoa. *See* 60 FR 9001, February 16, 1995. Channel 230C1 can be allotted to Leone in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates –14–20–38 South Latitude and 170–47–06 West Longitude. With this action, this proceeding is terminated.

DATES: Effective August 7, 1995. The window period for filing applications will open on August 7, 1995, and close on September 7, 1995.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 95–16, adopted June 12, 1995, and released June 23, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under American Samoa, is amended by removing Channel 266C1 and adding Channel 230C1 at Leone.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–15829 Filed 6–27–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 88–540, RM–6546]

Radio Broadcasting Services; Rapid City, SD

AGENCY: Federal Communications Commission.

ACTION: Final rule; application for review.

SUMMARY: This document denies the application for review filed by Spitzer Communications, Inc. and affirms the staff's action allotting Channel 254C1 to Rapid City, downgrading Channel 282C to Channel 281C1 at Rapid City, and modifying the construction permit of Tom-Tom Communications to specify operation on Channel 281C1. *See Report and Order*, 55 FR 07496 (March 2, 1990). With this action, this proceeding is terminated.

EFFECTIVE DATE: June 28, 1995.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 776–1660.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order*, MM Docket No. 88–540, adopted June 8, 1995 and released June 23, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–15830 Filed 6–27–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–23; RM–8578]

Radio Broadcasting Services; Madisonville, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Leon Hunt, d/b/a Hunt Broadcasting allots Channel 263A to Madisonville, Texas. *See* 60 FR 10534, February 27, 1995. Channel 263A can be allotted to Madisonville, Texas, in compliance with the Commission' minimum distance separation requirements with a site restriction of 8.0 kilometers (5.0 miles) northwest to avoid a short-spacing conflict with the licensed site of Station KILT(FM), Channel 262C, Houston, Texas. The coordinates for Channel 263A at Madisonville are 31–00–50 and 95–57–06. With this action, this proceeding is terminated.

DATES: Effective August 7, 1995. The window period for filing applications will open on August 7, 1995, and close on September 7, 1995.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 95–23, adopted June 14, 1995, and released June 23, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 263A, at Madisonville.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–15831 Filed 6–27–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 950106003–5070–02; I.D. 062195C]

Pacific Halibut Fisheries; North Washington Coast Sport Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason action.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission (IPHC), publishes this inseason action pursuant to IPHC regulations approved by the U.S. Government to govern the Pacific halibut fishery. This action is intended to enhance the conservation of the Pacific halibut stock in order to help sustain it at an adequate level in the northern Pacific Ocean and Bering Sea.

EFFECTIVE DATE: 0800, July 1, 1995, through 1800, July 1, 1995.

FOR FURTHER INFORMATION CONTACT: Steven Pennoyer, 907-586-7221; William W. Stelle, Jr., 206-526-6140; or Donald McCaughran, 206-634-1838.

SUPPLEMENTARY INFORMATION: The IPHC, under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has issued this inseason action pursuant to IPHC regulations governing the Pacific halibut fishery. The regulations have been approved by NMFS (60 FR 14651, March 20, 1995). On behalf of the IPHC, this inseason action is published in the **Federal Register** to provide additional notice of its effectiveness, and to inform persons subject to the inseason action of the restrictions and requirements established therein.

Inseason Action

1995 Halibut Landing Report Number 6

North Washington Coast Sport Fishery Reopens for 1 Day

The north Washington coast (waters west of the Bonilla-Tatoosh line and south to the Queets River) sport halibut harvest that closed May 27, 1995, fell 11,020 lb (4.99 metric tons (mt)) short of the 71,410 lb (32.39 mt) catch limit. Private boat effort during the last week of fishing was less than expected, possibly because of the May 25 opening date for halibut fishing in the Strait of Juan de Fuca and Puget Sound (waters east of the Bonilla-Tatoosh line). The average weight of halibut landed was also lower than anticipated. Therefore, this area will reopen for 1 day, Saturday July 1. The daily bag limit will be one halibut per person, with no size limit. If enough catch limit remains after July 1, an additional opening may be announced.

Dated: June 23, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–15867 Filed 6–27–95; 8:45 am]

BILLING CODE 3510–22–F

50 CFR Part 301

[Docket No. 950106003–5070–02; I.D. 062195B]

Pacific Halibut Fisheries; Close Southern Oregon Sport Season

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason action.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission (IPHC), publishes this inseason action pursuant to IPHC regulations approved by the U.S. Government to govern the Pacific halibut fishery. This action is intended to enhance the conservation of the Pacific halibut stock in order to help sustain it at an adequate level in the northern Pacific Ocean and Bering Sea.

EFFECTIVE DATE: 11:59 p.m. June 1, 1995, through December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Steven Pennoyer, 907-586-7221; William W. Stelle, Jr., 206-526-6140; or Donald McCaughran, 206-634-1838.

SUPPLEMENTARY INFORMATION: The IPHC, under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has issued this inseason action pursuant to IPHC regulations governing the Pacific halibut fishery. The regulations have been approved by NMFS (60 FR 14651, March 20, 1995). On behalf of the IPHC, this inseason action is published in the **Federal Register** to provide additional notice of its effectiveness, and to inform persons subject to the inseason action of the restrictions and requirements established therein.

Inseason Action

1995 Halibut Landing Report Number 5

Southern Oregon Sport Season to Close June 1

The preliminary catch estimate for the 1995 sport halibut fishery between the Florence North Jetty (Siuslaw River, 4°01′08″ N. lat.) and the California border (42°00′00″ N. lat.) indicates the 5,999 lb (2.72 metric tons (mt)) catch limit for the early fishery will be reached on June 1. Therefore, the sport halibut fishery in this area will close at 11:59 p.m. on June 1. Additional effort due to excellent weather significantly increased the harvest during May 25 through 27, 1995, allowing only a short notice before the closure.

Sport fishing for Pacific halibut will reopen on June 2, 7 days a week, only in the area inside the 30–fathom curve nearest to the coastline as plotted on National Ocean Service charts numbered 18520, 18580, and 18600 from the Florence North Jetty (Siuslaw River) to the California border. The fishery will close August 2 or when 1,500 lb (.68 mt) are estimated to have been taken, whichever occurs first. Any poundage remaining unharvested after the earlier season will be added to this season. The daily bag limit remains two Pacific halibut per person, one with a minimum overall size limit of 32 inches (81.3 cm) and the second with a minimum overall size limit of 50 inches (127.0 cm).

Dated: June 22, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–15868 Filed 6–28–95; 8:45 am]

BILLING CODE 3510–22–F

50 CFR Part 301

[Docket No. 950106003; I.D. 062195E]

Pacific Halibut Fisheries; North Washington Sport Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason action.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission (IPHC), publishes notice of this inseason action pursuant to IPHC regulations approved by the U.S. Government to govern the Pacific halibut fishery. This action is intended to enhance the conservation of the Pacific halibut stock in order to help sustain it at an adequate level in the northern Pacific Ocean and Bering Sea.

EFFECTIVE DATE: 11:59 p.m. May 27, 1995, through December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Steven Pennoyer, 907-586-7221; William W. Stelle, Jr., 206-526-6140; or Donald McCaughran, 206-634-1838.

SUPPLEMENTARY INFORMATION: The IPHC, under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has issued this inseason action pursuant to IPHC regulations governing the Pacific halibut fishery. The regulations have been approved by NMFS (60 FR 14651, March 20, 1995). On behalf of the IPHC, this inseason action is published in the **Federal Register** to provide additional notice of its effectiveness, and to inform persons subject to the inseason action of the restrictions and requirements established therein.

Inseason Action

1995 Halibut Landing Report Number 4

North Washington Coast Sport Fishery to Close

The north Washington coast (waters west of the Bonilla-Tatoosh line and south to the Queets River) sport halibut harvest through May 21, 1995, is 43,041 lb (19.52 metric tons (mt)). Preliminary indications suggest that three factors will contribute to higher than average catches in the week of May 22 through 28, 1995: (1) Larger fish recruiting to the fishery, (2) increased effort from a holiday weekend, and (3) continued good weather. Allowing additional fishing days after May 27 could result in exceeding the catch limit of 71,410 lb (32.39 mt). Therefore, the sport halibut fishery in this area will close at 11:59 p.m. on May 27, 1995. Sport fishing opportunities on the south Washington coast (waters south of the Queets River) and on the Strait of Juan de Fuca and Puget Sound (waters east of the Bonilla-Tatoosh line) are unaffected by this closure.

Fishing remains open in Canadian waters with a two-fish daily bag limit and no size restriction. Anglers desiring to fish in Canadian waters are urged to contact Canada Department of Fisheries and Oceans at (604) 666–0383/0583 for sport fishing information concerning licensing and the nautical description of closed areas.

Dated: June 22, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–15869 Filed 6–27–95; 8:45 am]

BILLING CODE 3510–22–F

50 CFR Part 301

[Docket No. 950106003–5070–02; I.D. 062195D]

Pacific Halibut Fisheries; Oregon Sport Season Closure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason action.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission (IPHC), publishes this inseason action pursuant to IPHC regulations approved by the U.S. Government to govern the Pacific halibut fishery. This action is intended to enhance the conservation of the Pacific halibut stock in order to help sustain it at an adequate level in the northern Pacific Ocean and Bering Sea.

EFFECTIVE DATE: 11:59 p.m. May 27, 1995, through December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Steven Pennoyer, 907-586-7221; William W. Stelle, Jr., 206-526-6140; or Donald McCaughran, 206-634-1838.

SUPPLEMENTARY INFORMATION: The IPHC, under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has issued this inseason action pursuant to IPHC regulations governing the Pacific halibut fishery. The regulations have been approved by NMFS (60 FR 14651, March 20, 1995). On behalf of the IPHC, this inseason action is published in the **Federal Register** to provide additional notice of its effectiveness, and to inform persons subject to the inseason action of the restrictions and requirements established therein.

Inseason Action

1995 Halibut Landing Report Number 3

First Oregon Sport Season to Close May 27

The preliminary catch estimate for the 1995 sport halibut fishery between Cape Falcon (45°46′00″ N. lat.) and the Florence North Jetty (Siuslaw River, 44°01′08″ N. lat.) indicates the 67,706 lb (30.71 metric tons (mt)) catch limit will be reached on May 27, 1995. Therefore, the sport halibut fishery in this area will close at 11:59 p.m. on May 27.

Sport fishing for Pacific halibut will reopen on May 28, 1995, and remain open through August 2, 1995, 7 days a week, only in the area inside the 30–fathom curve nearest to the coastline as plotted on National Ocean Service charts numbered 18520, 18580, and 18600 from Cape Falcon to the Florence North Jetty (Siuslaw River), or until 3,314 lb (1.50 mt) are estimated to have been taken and the season is closed by the IPHC, whichever occurs first. Any poundage remaining unharvested after the earlier season will be added to this season. The daily bag limit remains two halibut per person, one with a minimum overall size limit of 32 inches (81.3 cm) and the second with a minimum overall size limit of 50 inches (127.0).

Dated: June 22, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–15870 Filed 6–27–95; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 124
Wednesday, June 28, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–112; Notice No. SC–95–5–NM]

Special Condition: Gulfstream Aerospace Corporation, Model Gulfstream V, High Altitude Operations

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: The document proposes special conditions for the Gulfstream Model Gulfstream V airplane. This new airplane will be capable of operating at a maximum altitude of 51,000 feet. The applicable regulations do not contain adequate or appropriate safety standards for the protection of the fuselage structure or passengers and crew from the effects of high altitude operations. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before August 14, 1995.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7), Docket No. NM–112, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM–112. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Robert L. Salas, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before further rulemaking action is taken on these proposals. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM–112." The postcard will be date stamped and returned to the commenter.

Background

On February 26, 1992, Gulfstream Aerospace Corporation, P.O. Box 2206, Savannah, GA 31402–2206, applied for an amended type certificate in the transport airplane category for the Model Gulfstream V airplane. The Gulfstream V is a T-tail, low swept wing, business jet airplane powered by two Rolls-Royce BR710–48 turbofan engines mounted on pylons extending from the aft fuselage. Each engine will be capable of delivering 14,750 pounds thrust. The flight controls will be powered and capable of manual reversion. The airplane has a seating capacity of up to nineteen passengers, and a maximum takeoff weight of 89,000 pounds. Gulfstream has requested certification for operations up to 51,000 feet.

Type Certification Basis

Under the provisions of § 21.101 of the FAR, Gulfstream must show, except as provided in § 25.2, that the Model Gulfstream V meets the applicable provisions of part 25, effective February 1, 1965, as amended by Amendments 25–1 through 25–75. In addition, the proposed certification basis for the Model Gulfstream V includes part 34, effective September 10, 1990, plus any amendments in effect at the time of certification, and part 36 effective December 1, 1969, as amended by Amendment 36–1 through the amendment in effect at the time of certification. No exemptions are anticipated. The special conditions that may be developed as a result of this notice will form an additional part of the type certification basis. In addition, the certification basis may include other special conditions that are not relevant to these proposed special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Gulfstream V because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Model Gulfstream V will be certificated for operations at a maximum altitude of 51,000 feet. This unusually high operating altitude constitutes a novel or unusual design feature for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards.

There are no specific regulations that address protection requirements for the airplane fuselage pressure vessel or passengers and crew, in the event of a rapid decompression, during high altitude operations. The potential adverse impact from rapid decompression at high altitudes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are proposed for the Gulfstream V which would require compliance with additional requirements to provide protection from the direct and indirect effects of high altitude operations.

Damage tolerance methods are proposed to be used to ensure pressure vessel integrity while operating at the higher altitudes. Crack growth data are used to prescribe an inspection program which will detect cracks before an opening in the pressure vessel would allow rapid decompression. Initial crack sizes for detection are determined under § 25.571, Amendment 25–72. The cabin altitude after failure may not exceed the limits specified in Figures 3 and 4.

In order to ensure that there is adequate fresh air to crewmembers to perform their duties, to provide reasonable passenger comfort, and to enable occupants to better withstand the effects of decompression at high altitudes, the ventilation system must be designed to provide 10 cubic feet of fresh air per minute per person during normal operations. Therefore, these special conditions require that crewmembers and passengers be provided with 10 cubic feet of fresh air per minute per person. In addition, during the development of the supersonic transport special conditions, it was noted that certain pressurization failures resulted in hot ram or bleed air being used to maintain pressurization. Such a measure can lead to cabin temperatures that exceed human tolerance. Therefore, these special conditions would require airplane interior temperature limits following probable and improbable failures.

Continuous flow passenger oxygen equipment is certificated for use up to 40,000 feet; however, for rapid decompressions above 24,000 feet, reverse diffusion leads to low oxygen partial pressure in the lungs, to the extent that a small percentage of passengers may lose useful consciousness at 35,000 feet. The percentage increases to an estimated 60 percent at 40,000 feet, even with the use of the continuous flow system. To prevent permanent physiological damage, the cabin altitude must not exceed 25,000 feet for more than two minutes. The maximum peak cabin altitude of 40,000 feet is consistent with the standards established for previous certification programs. In addition, at these altitudes the other aspects of decompression sickness have a significant detrimental effect on pilot performance (for example, a pilot can be incapacitated by internal expanding gases).

Decompression above 27,000 feet can result in cabin altitudes that approach the physiological limits of the average person; therefore, every effort must be made to provide the pilots with adequate oxygen equipment to withstand these severe decompressions. Reducing the time interval between pressurization failure and the time the pilot receives oxygen will provide a safety margin against being incapacitated and can be accomplished by the use of mask-mounted regulators. The proposed special condition therefore requires pressure demand masks with mask-mounted regulators for the flightcrew. This combination of equipment will provide the best practical protection for the failures covered by the proposed special conditions and for improbable failures not covered by the special conditions, provided the cabin altitude is limited.

As discussed above, the proposed special conditions would be applicable initially to the Model Gulfstream V. Should Gulfstream apply at a later date for a change to the type of certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well, under the provisions of § 21.101(a)(1).

Conclusion

This action affects certain design features only on the Gulfstream V airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these proposed special conditions is as follows:

Authority: 49 U.S.C. app. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Proposed Special Condition

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Gulfstream Model Gulfstream V series airplanes.

1. Pressure Vessel Integrity

(a) The maximum extent of failure and pressure vessel opening that can be demonstrated to comply with paragraph 4 (Pressurization) of this special condition must be determined. It must be demonstrated by crack propagation and damage tolerance analysis supported by testing that a larger opening or a more severe failure than demonstrated will not occur in normal operations.

(b) Inspection schedules and procedures must be established to assure that cracks and normal fuselage leak rates will not deteriorate to the extent that an unsafe condition could exist during normal operation.

(c) With regard to the fuselage structural design for cabin pressure capability above 45,000 feet altitude, the pressure vessel structure, including doors and windows, must comply with § 25,365(d), using a factor of 1.67 instead of the 1.33 factor described.

2. *Ventilation.* In lieu of the requirements of § 25.831(a), the ventilation system must be designed to provide a sufficient amount of uncontaminated air to enable the crewmembers to perform their duties without undue discomfort or fatigue, and to provide reasonable passenger comfort during normal operating conditions and also in the event of any probable failure to any system which could adversely affect the cabin ventilating air. For normal operations, crew members must be provided with at least 10 cubic feet of fresh air per minute per person, or the equivalent in filtered, recirculated air based on the volume and composition at the corresponding cabin pressure altitude of not more than 8,000 feet.

3. *Air Conditioning.* In lieu of the requirements of § 25.831, paragraphs (b) through (e), the cabin cooling system must be designed to meet the following conditions during flight above 15,000 feet mean sea level (MSL).

(a) After any probable failure, the cabin temperature-time history may not exceed the values shown in Figure 1.

(b) After any improbable failure, the cabin temperature-time history may not exceed the values shown in Figure 2.

4. *Pressurization.* In addition to the requirements of FAR 25.841, the following apply:

(a) The pressurization system, which includes for this purpose bleed air, air conditioning, and pressure control systems, must prevent the cabin altitude from exceeding the cabin altitude-time history shown in Figure 3 after each of the following:

(1) Any probable malfunction or failure of the pressurization system. The existence of undetected, latent malfunctions, or failures in conjunction with probable failures must be considered.

(2) Any single failure in the pressurization system combined with the occurrence of a leak produced by a complete loss of a door seal element, or a fuselage leak through an opening having an effective area 2.0 times the effective area that produces the maximum permissible fuselage leak rate approved for normal operation, whichever produces a more severe leak.

(b) The cabin altitude-time history may not exceed that shown in Figure 4 after each of the following:

(1) The maximum pressure vessel opening resulting from an initially detectable crack propagating for a period encompassing four normal inspection intervals. Mid-panel cracks and cracks through skin-stringer and skin-frame combinations must be considered.

(2) The pressure vessel opening or duct failure resulting from probable damage (failure effect) while under maximum operating cabin pressure differential due to a tire burst, engine rotor burst, loss of antennas or stall warning vanes, or any probable equipment failure (bleed air, pressure control, air conditioning, electrical source(s), etc.) that affects pressurization.

(3) Complete loss of thrust from all engines.

(c) In showing compliance with paragraphs d.1. and d.2. of these special conditions (Pressurization), it may be assumed that an emergency descent is made by approved emergency procedure. A 17-second crew recognition and reaction time must be applied between cabin altitude warning and the initiation of an emergency descent.

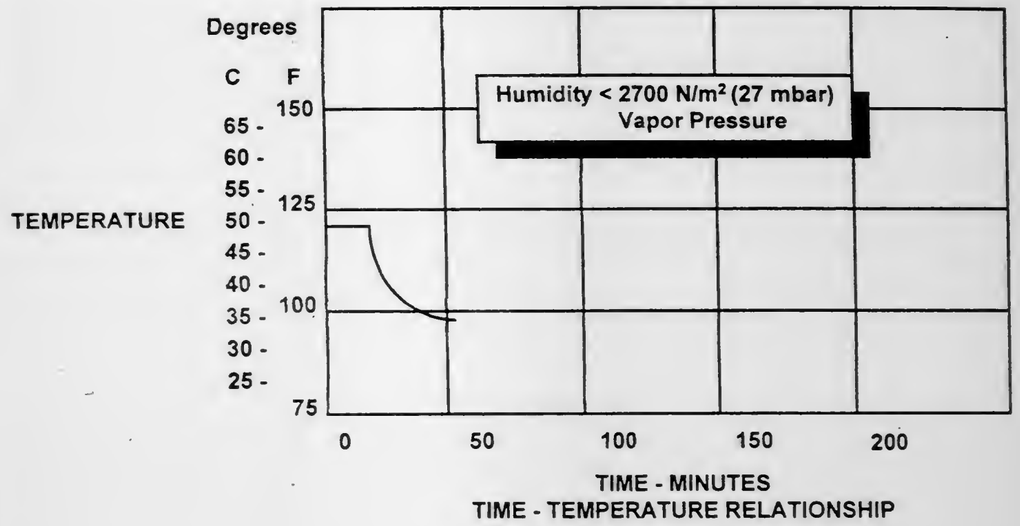
5. *Oxygen equipment and supply.*

(a) A continuous flow oxygen system must be provided for the passengers.

(b) A quick donning pressure demand mask with mask-mounted regulator must be provided for each pilot. Quick donnning from the stowed position must be demonstrated to show that the mask can be withdrawn from stowage and donned within 5 seconds.

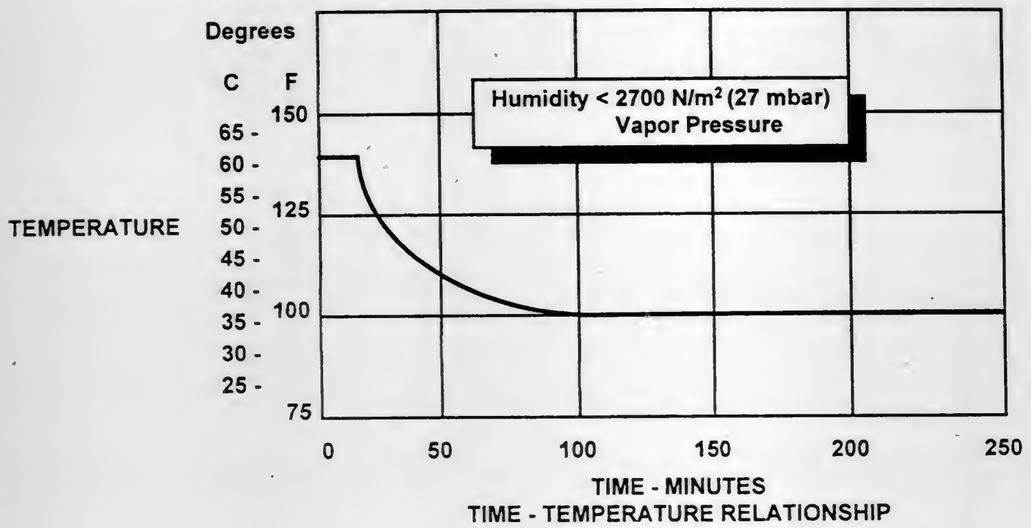
BILLING CODE 4910–13–M

Figure 1



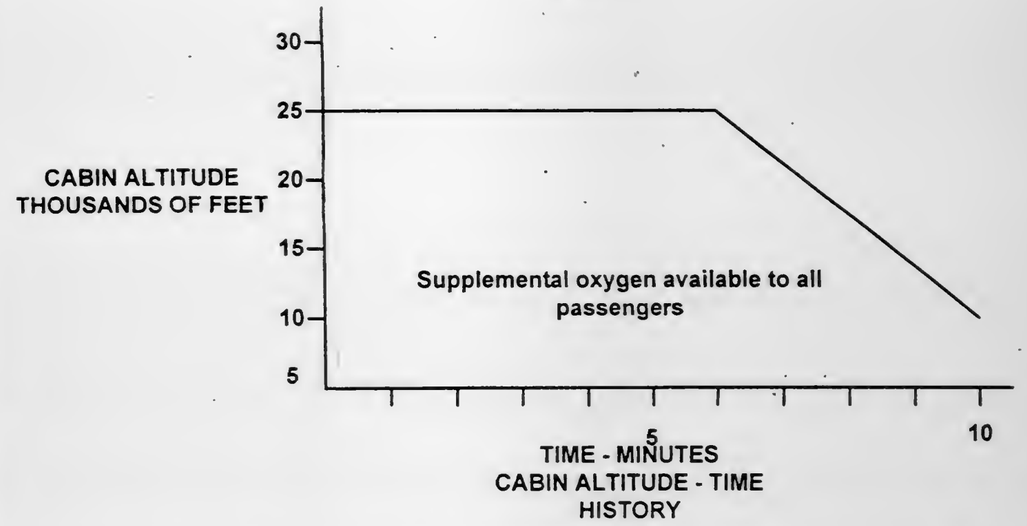
TIME - TEMPERATURE RELATIONSHIP

Figure 2



TIME - TEMPERATURE RELATIONSHIP

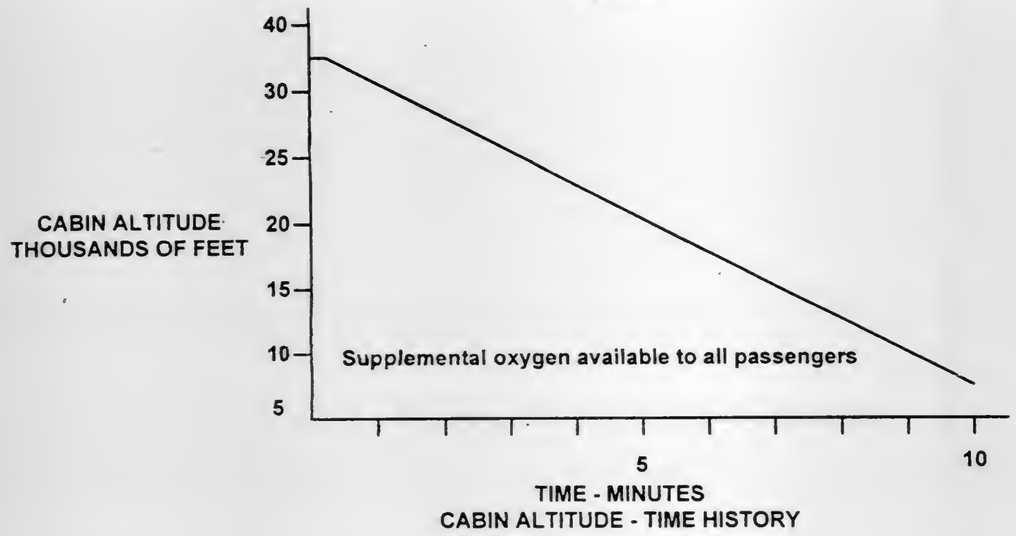
Figure 3



CABIN ALTITUDE - TIME
HISTORY

NOTE: For figure 3, time starts at the moment cabin altitude exceeds 8,000 feet during depressurization. If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following alternate limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 30,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is 2 minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.

Figure 4



CABIN ALTITUDE - TIME HISTORY

NOTE: For figure 4 , time starts at the moment cabin altitude exceeds 8,000 feet during depressurization. If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following alternate limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 40,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is 2 minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.

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Issued in Renton, Washington, on June 15, 1995.

Darrell M. Pederson,

Acting Manoger, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 95–15890 Filed 6–27–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 95–NM–22–AD]

Airworthiness Directives; Boeing Model 747–100, –200, –300, and SP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–100, –200, –300, and SP series airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to prohibit the use of the autoland function. This proposed AD would also require installation of a diode and a marker on shelves, making wiring changes to the flight mode annunciator (FMA) of the autopilot/flight director system, which would terminate the requirements for the AFM revision; and follow-on operational tests. This proposal is prompted by a report indicating that, during a triple channel approach, the autoland system failed to flare a Model 747–200 series airplane for landing, which resulted in a hard landing. The actions specified by the proposed AD are intended to prevent failure of the autoland system to flare the airplane for landing, which could subsequently result in a hard landing.

DATES: Comments must be received by August 22, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–22–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Hania Younis, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2764; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–22–AD." The postcard will be date stamped and returned to the commenter:

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–22–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that, during a triple channel approach, the autoland system failed to flare a Boeing Model 747–200 series airplane for landing, which resulted in a hard landing. Investigation revealed that the approach was initiated with an inoperative number 3 NAV receiver (thereby making the channel "C" autopilot inoperative). Investigation also revealed that a separate failure caused the channel "B" autopilot to automatically disengage at the start of the flare. This resulted in loss of the autopilot function due to the disagreement between channel "A" and channel "C."

The integrity of the autoland system depends on a fault annunciator system. An invalid discrete signal from the number 3 NAV receiver should cause the glideslope (G/S) flag located on the P2 panel to illuminate. Along with this G/S flag on the P2 panel, the channel "C" autopilot system should have annunciated a steady amber autopilot warning light on the captain's and first officer's flight mode annunciator (FMA). This warning light would alert the flightcrew that the autopilot had changed from fail-operational to fail-passive mode. The subsequent dual channel autopilot failure should have been annunciated by a steady red warning light, warning the flightcrew that the autopilot had changed from fail-passive mode to complete autopilot disconnect.

Further investigation revealed that the autopilot warning light on the captain's and first officer's FMA did not illuminate during this dual channel fault incident. The cause of this lack of annunciation has been attributed to the faulty logic of the autopilot/flight director system.

This condition, if not corrected, could result in failure of the autoland system to flare the airplane for landing, which may result in a hard landing.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–22A2212, Revision 1, dated April 27, 1995, and Boeing Alert Service Bulletin 747–22A2213, Revision 1, dated April 27, 1995, which describe procedures for installing a diode and a marker on the E1–4, E1–5, and E1–6 shelves, and making wiring changes to the FMA of the autopilot/flight director system. These service bulletins also describe procedures for performing operational tests of the newly installed diodes. This installation and wiring change will ensure the illumination of a steady amber autopilot warning light on the captain's and the first officer's FMA's when a sensor fails after commencement of a triple autopilot approach.

The autopilot/flight director system installed on Boeing Model 747–200 series airplanes is similar in design to the autopilot/flight director system installed on Model 747–100, –300, and SP series airplanes; therefore, the FAA finds that Model 747–100, –300, and SP series airplanes are subject to the same unsafe condition identified in this proposal.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to prohibit the use of the LAND mode, if there is a flag on any channel. This proposed AD would also require installing a diode and a marker on certain shelves, and making wiring

changes to the FMA of the autopilot/flight director system, which would terminate the requirement for an AFM revision. Additionally, this proposed AD requires operational tests of the newly installed diodes. The installation, wiring changes, and operational tests would be required to be accomplished in accordance with the alert service bulletins described previously.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long-standing requirement.

There are approximately 172 Model 747–100, –200, –300, and SP series airplanes of the affected design in the worldwide fleet. The FAA estimates that 11 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 11 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $613 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $14,003, or $1,273 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 95–NM–22–AD.

Applicability: Model 747–100, –200, –300, and SP series airplanes, equipped with triple channel autoland autopilots; as listed in Boeing Alert Service Bulletin 747–22A2212, Revision 1, dated April 27, 1995, and Boeing Alert Service Bulletin 747–22A2213, Revision 1, dated April 27, 1995; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the autoland system to flare the airplane for landing, which may result in a hard landing, accomplish the following:

(a) Within 3 months after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

"Pay close attention to all 3 NAV receiver flags after FLARE ARM is annunciated on the FMA's. If there is a flag on ANY channel, the approach must be down-graded to dual channel, CAT II configuration, and the autopilot must be disconnected prior to landing."

(b) Within 18 months after the effective date of this AD, install a diode and a marker on the E1–4, E1–5, and E1–6 shelves, and make wiring changes to the flight mode annunciator of the autopilot/flight director system, in accordance with Boeing Alert Service Bulletin 747–22A2212, Revision 1, dated April 27, 1995, or Boeing Alert Service Bulletin 747–22A2213, Revision 1, dated April 27, 1995; as applicable. After this installation and wiring change is accomplished, the AFM revision required by paragraph (a) of this AD may be removed from the AFM.

(c) Prior to further flight after accomplishment of paragraph (b) of this AD, perform an operational test of the newly installed diodes, in accordance with Boeing Alert Service Bulletin 747–22A2212, Revision 1, dated April 27, 1995, or Boeing Alert Service Bulletin 747–22A2213, Revision 1, dated April 27, 1995; as applicable. Thereafter, repeat the operational test at intervals not to exceed 20,000 flight hours.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished. Issued in Renton, Washington, on June 22, 1995.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–15851 Filed 6–27–95; 8:45 am]

BILLING CODE 4910–13–U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239, 270, and 274

[Release Nos. 33–7181; 34–35881; IC–21157; File No. S7–10–95]

RIN 3235–AG43

Improving Descriptions of Risk by Mutual Funds and Other Investment Companies—Extension of Comment Period

AGENCY: Securities and Exchange Commission.

ACTION: Concept release and request for comments; extension of comment period.

SUMMARY: The Commission is extending from July 7, 1995, to July 28, 1995, the comment period for Investment Company Act Release No. 20974, which sought comments and suggestions on how to improve the descriptions of risk provided to investors by mutual funds and other management investment companies.

DATES: The SEC requests comments on or before July 28, 1995.

ADDRESSES: Three copies of your comments should be submitted to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. All comment letters should refer to File No. S7–10–95. All comments received will be available for public inspection and copying in the SEC's Public Reference Room, 450 Fifth Street NW., Washington, D.C. 20549. If you are an individual investor and do not have access to a copier machine, you may send in one copy of your comments.

FOR FURTHER INFORMATION CONTACT: Roseanne Harford, Senior Counsel, (202) 942–0689, Division of Investment Management.

SUPPLEMENTARY INFORMATION: On March 29, 1995, the Commission issued Investment Company Act Release No. 20974 [60 FR 17172 (Apr. 4, 1995)] ("Release No. 20974"), which sought comments and suggestions on how to improve the descriptions of risk provided to investors by mutual funds and other management investment companies. In order to encourage individual investor comments and suggestions, the SEC included in Release No. 20974 an appendix directed to investors ("Investor Summary"), to be reprinted separately and distributed to investors.

Recently, the Commission was notified by an investment adviser that the adviser proposed to distribute the Investor Summary to shareholders of its funds in late June. In order to permit these investors a reasonable period to submit their comments, and in light of the importance of investment company risk disclosure and of investor comments on this subject, the Commission believes a 21-day extension is appropriate.

The comment period for responding to Release No. 20974 is extended to July 28, 1995.

Dated: June 22, 1995.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15797 Filed 6–27–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 141 and 388

[Docket No. RM95–9–000]

Real-Time Information Networks; Notice of Informal Technical Conference

June 22, 1995.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of technical conference.

SUMMARY: The Federal Energy Regulatory Commission previously issued a Notice of Technical Conference and Request for Comments, published at 60 FR 17726 (April 7, 1995). That earlier notice stated that the date, place, and time of the technical conference would be announced later. Today's notice announces that a technical conference will be held on Thursday and Friday, July 27 and 28, 1995, starting both days at 10:00 A.M., in Hearing Room 1, 810 First Street NE., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Marvin Rosenberg (Technical Information), Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–1283

William Booth (Technical Information), Office of Electric Power Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–0666

Gary D. Cohen (Legal Information), Electric Rates and Corporate Regulation, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–0321.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3104 at 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the text of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400 or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this document will be available on CIPS for 60 days from the date of issuance in ASCII and Wordperfect 5.1 format. After 60 days, the document will be archived, but still accessible. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3104, 941 North Capitol Street NE., Washington, DC 20426.

Notice of Technical Conference

June 22, 1995.

Take notice that on Thursday, July 27, 1995 and Friday, July 28, 1995, the Commission's Staff will hold a technical conference to discuss the process for developing Real-time Information Networks (RINs) requirements. The conference will begin on both days at 10:00 A.M., and is scheduled for Hearing Room 1, 810 First Street, NE., Washington, DC 20426.

This conference is being held pursuant to the Notice of Technical Conference and Request for Comments, which was issued by the Commission in this docket on March 29, 1995, and published at 60 FR 17726 (April 7, 1995). The conference is being convened to enlist the participation of all segments of the electric industry (including wholesale sellers, buyers, transmission owners, etc.) in the development of RINs requirements, and particularly to hear views on how to proceed in this process. Staff expects that there will be subsequent conferences with industry and other interested persons to reach consensus on RINs-related issues.

Persons who wish to attend the conference should, no later than July 6, 1995, notify Marvin Rosenberg by telephone at (202) 208–1283 (or by facsimile at (202) 208–1010) or William

Booth by telephone at (202) 208–0849 (or by facsimile at (202) 208–0180). Persons who wish to speak at the conference should, no later than July 6, 1995, notify Mr. Rosenberg or Mr. Booth, by a facsimile (at either of the facsimile numbers listed above) that provides a *concise* (not to exceed one page) description of the topics/issues they wish to discuss.

Additionally, Staff has received several requests by persons wishing to demonstrate information systems of possible interest to the RINs development process. Staff will provide an opportunity to those wishing to demonstrate such systems to participants in the Technical Conference on July 28, 1995. Persons wishing to demonstrate an information system should, no later than July 6, 1995, notify Mr. Rosenberg or Mr. Booth, by a facsimile (at either of the facsimile numbers listed above) that provides a *concise* (not to exceed one page) description of their information system.

After reviewing the preliminary comments that are due on July 6, 1995, as well as the requests to speak and to demonstrate information systems, Staff will publish a notice of the agenda for the conference.

If there is sufficient interest, the Commission will attempt to arrange for local or national broadcast of the Technical Conference. Persons interested in a local or national broadcast should contact Julia Morelli or Shirley Al-Jarani at The Capitol Connection (703–993–3100) no later than July 10, 1995.

For additional information, interested persons may call Mr. Rosenberg at (202) 208–1283 or Mr. Booth at (202) 208–0849.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–15796 Filed 6–27–95; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 159a

Information Security Program Regulation

AGENCY: Department of Defense.

ACTION: Proposed rule.

SUMMARY: The Department of Defense proposes to issue this amendment to accommodate Congressional language incorporated into the Fiscal Year 1994 Appropriations Act which specifies that new purchases of combination locks for GSA-approved security containers, vault doors, and secure rooms shall conform to Federal Specifications FF–L–2740 as well as the findings and recommendations of a senior panel established by the Deputy Secretary of Defense regarding physical security measures required to adequately safeguard classified information in the possession of DoD activities.

DATES: Comments must be received by August 28, 1995.

ADDRESSES: Forward comments to the Office of the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence, 6000 Defense Pentagon, Washington, DC 20301–6000.

FOR FURTHER INFORMATION CONTACT: Mr. W. Bell, OUSD(P), 703–695–2289.

SUPPLEMENTARY INFORMATION: It has been determined that this amendment is not a significant regulatory action. It has also been determined that this amendment is not subject to the Regulatory Flexibility Act and does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980.

List of Subjects in 32 CFR Part 159a

Classified information.

Accordingly, 32 CFR part 159a is proposed to be amended to read as follows:

PART 159a—INFORMATION SECURITY PROGRAM REGULATION

1. The authority citation for part 159a continues to read as follows:

Authority: E.O. 12356, 5 U.S.C. 301.

§ 159a.9 [Amended]

2. In § 159a.9, paragraph(s), *DoD Component*, is amended by removing "Organization" and adding in its place "Chairman", by removing "(OJCS)" and by removing "and Specified" and adding in its place "Combatant".

§ 159a.12 [Amended]

3. Section 159a.12 is amended in paragraph (c)(1)(i)(A) by removing "Office of the Deputy Under Secretary of Defense (Policy), (ODUSD(P))," and adding in its place "Office of the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence, (OASD(C3I))", paragraph (c)(1)(i)(B) and (c)(1)(ii)(B) by removing "including Specified Commands", paragraph (c)(1)(i)(B) by removing "wo" and adding in its place "who", and paragraphs (c)(1)(ii)(C) by removing "OJCS" and adding in its place "Chairman of the Joint Chiefs of Staff".

§ 159a.26 [Amended]

4. Section 159a.26(e)(7) is amended by removing "ASD(PA)" and adding in its place "ATSD(PA)" and removing "OJCS" and adding in its place "the Chairman of the Joint Chiefs of Staff".

§ 159a.33 [Amended]

5. Section 159a.33(e)(2) is amended by removing "7920.1" and adding in its place "8120.1".

§ 159a.35 [Amended]

6. Section 159a.35(g) is amended by adding "O-" before "5230.22".

7. Subpart F is revised to read as follows:

Subpart F—Safekeeping and Storage

Sec.

159a.37 Storage and storage equipment.
159a.38 Custodial precautions.
159a.39 Installation entry and exit inspection program.

Subpart F—Safekeeping and Storage

§ 159a.37 Storage and storage equipment.

(a) *General policy.* Classified information shall be secured under conditions adequate to prevent access by unauthorized persons. The requirements specified in this part represent acceptable security standards. Exceptions to these requirements should be approved by the responsible DoD Component Senior Information Security Authority. This approval authority may be delegated to major commanders. Supplemental or compensatory security measures must be implemented to compensate for the inability to meet the baseline standard. DoD policy concerning the use of force for the protection of classified information is specified in DoD Directive 5210.56.[17] Weapons or sensitive items such as funds, jewels, precious metals or drugs shall not be stored in the same container used to safeguard classified information. Security requirements for Sensitive Compartmented Information Facilities (SCIFs) are established by the Director of Central Intelligence. Current holdings of classified material shall be reduced to the minimum required for mission accomplishment.

(b) *Standards for storage equipment.* The GSA establishes and publishes minimum standards, specifications, and supply schedules for containers, vault doors, alarm systems, and associated security devices suitable for the storage and protection of classified information. DoD Directive 3224.3 [18] describes acquisition requirements for physical

[17] See footnote 2 to § 159a.3.

[18] See footnote 2 to § 159a.3.

security equipment used within the Department of Defense.

(c) *Storage of classified information.* Classified information is to be guarded or stored in a locked security container, vault, room, or area, as follows:

(1) *Top Secret.* Top Secret information shall be stored in the following:

(i) A GSA-approved security container or modular vault, in a vault; or in the U.S., in a secure room if under U.S. Government control (see appendix F to this part). Other rooms that were approved for the storage of Top Secret in the U.S. may continue to be used. When located in areas not under U.S. Government control, the storage container, vault, or secure room must be protected by an intrusion detection system or guarded when unoccupied. U.S. Government control means access to the classified material is controlled by an appropriately cleared U.S. Government civilian, military, or contractor employee. An intrusion detection system (IDS) used for this purpose shall meet the requirements of appendix G to this part. Security forces shall respond to the alarmed location within 15 minutes from time of notification.

(ii) New purchases of combination locks for GSA-approved security containers, vault doors and secure rooms shall conform to Federal Specification FF–L–2740. Existing mechanical combination locks will not be repaired. If they should fail, they will be replaced with locks meeting FF–L–2740.

(iii) Under field conditions during military operations, the commander may prescribe the measures deemed adequate to meet the storage standard contained in paragraphs (a) and (b) of this section.

(iv) Protection of Top Secret outside the United States requires application of one or more supplementary controls, i.e., continuous guard or duty personnel, inspections of locked containers/vaults or an alarm system.

(2) *Secret and Confidential.* Secret and Confidential information shall be stored in the manner prescribed for Top Secret; or in secure rooms that were approved for the storage of Secret or Confidential material by the DoD Components prior to October 1, 1995. Until October 1, 2002, Secret and Confidential information may also be stored in unapproved or obsolete steel filing cabinets having a built-in combination lock or secured with a lockbar and approved combination padlock in areas under U.S. Government control, or in areas not under U.S. Government control provided the area is protected by an IDS or is guarded when unoccupied. Where IDS is used to protect such information it should meet the requirements of appendix G to this part. Security forces shall respond to the alarmed location within 45 minutes from time of notification.

(3) *Specialized security equipment—*(i) *Military platforms or classified munition items.* The Heads of the DoD Components shall, consistent with this part, delineate the appropriate security measures required to protect classified information stored in containers on military platforms or for classified minution items.

(ii) *Special purpose containers.* GSA-approved field safes and special purpose one and two drawer light-weight security containers approved by the GSA are used primarily for storage of classified information in the field and in military platforms. Such containers shall be securely fastened to the structure or under constant surveillance to prevent their theft. Use of these containers in ordinary office environmentas, or their procurement for this purpose, must be approved by major commands or equivalents.

(iii) *Map and plan files.* GSA-approved map and plan files are available for storage of odd-sized items such as computer media, maps, charts, and classified equipment.

(iv) *Modular vaults.* GSA-approved modular vaults meeting Federal Specification AA–V–2737 may be used to store classified information as an alternative to vault requirements described in Appendix F to this part.

(4) *Replacement of combination locks.* The mission and location of the activity, the classification level and sensitivity of the information, and the overall security posture of the activity determines the priority for replacement of existing combination locks. All system components and supplemental security measures including electronic security systems (e.g., intrusion detection systems, automated entry control subsystems, and video assessment subsystems), and level of operations must be evaluated by the commander when determining the priority for replacement of security equipemnt. Appendix H to this part provides a matrix illustrating a prioritization scheme for the replacement of existing combination locks on GSA-approved security containers and vault doors. Priority 1 requires immediate replacement.

(5) *Storage of bulky material.* Storage areas for bulky material containing classified information may have access openings secured by GSA-approved changeable combination padlocks (Federal Specification FF–P–110 series) or high security key-operated padlocks (Military Specification MIL–P–43607). Other security measures are required, in accordance with paragraph (c)(1) of this section.

(i) The Heads of the DoD Components shall establish administrative procedures for the control and accountability of keys and locks whenever key-operated, high-security padlocks are utilized. The level of protection provided such keys shall be equivalent to that afforded the classified information being protected by the padlock.

(ii) 10 U.S.C. 1386 makes unauthorized possession of keys, key-blanks, keyways or locks adopted by any part of the Department of Defense for use in the protection of conventional arms, ammunition, or explosives, special weapons, and classified equipment, a criminal offense punishable by fine or imprisonment for up to 10 years, or both.

(d) *Procurement of new storage equipment.*—(1) New security storage equipment shall be procured from those items listed on the GSA Federal Supply Schedule. Exceptions may be made by the heads of the DoD Components, with notification to the ASD(C31). Components should retain and apply serviceable storage equipment made available as consequence of draw downs, contractor turn-in of government furnished equipment, or other events; promptly report excess containers to property disposal; and fulfill requirements for added equipment through property disposal when that is cost beneficial.

(2) Current holdings of classified material shall be reduced to the minimum required for mission accomplishment.

(3) Nothing in this subpart shall be construed to modify existing Federal supply class management assignments made under DoD Directive 5030.47 [19]

(e) *Equipment designations and combinations—*(1) *Numbering and designating storage facilities.* There will be no external mark revealing the level of classified information authorized to be or actually stored in a given contianer or vault. Priorities for emergency evacuation and destruction will not be marked or posted on the exterior of storage containers or vaults.

(2) *Combinations to containers and vaults.* (i) *Changing.* Combinations to security containers, vaults and secure rooms shall be changed only by individuals having that responsibility and an appropriate security clearance. Combinations shall be changed:

[19] See footnote 2 to § 159a.3.

(A) When placed in use;
(B) Whenever an individual knowing the combination no longer requires access;
(C) When the combination has been subject to possible compromise;
(D) At least once every two years; or
(E) When taken out of service. Built-in combination locks shall be reset to the standard combination 50–25–50; combination padlocks shall be reset to the standard combination 10–20–30.

(ii) *Selecting combinations.* Combinations for each lock shall be unique to that lock and shall have no systematic relationship to other combinations used within a specific office. Combination numbers shall not be derived from numbers otherwise associated with the specific office or its personnel. The number within a combination shall be selected on a random basis without deliberate relationship of one to the other except to provide appropriate variance to operate the lock properly.

(iii) *Classifying combinations.* The combination of a container, vault or secure room used for the storage of classified information shall be assigned a security classification equal to the highest category of the classified information stored therein. Any written record of the combination shall be marked with the classification. Declassification of combinations occurs at the time they are changed.

(iv) *Recording storage facility data.* A record shall be maintained for each vault or secure room door, or container used for storage of classified information, showing location of the door or container, and the names, home addresses, and home telephone numbers of the individuals having knowledge of the combination. Standard Form 700, "Security Container Information," shall be used for this purpose.

(A) Part 1 of the SF 700, when completed, shall be placed in an interior location in security cabinets and on vault or secure room doors. To the extent practical, Part 1 shall be on the inside face of the locking drawer of file cabinets, and on the inside surface of map and plan cabinet and vault doors.

(B) SF 700, Parts 2 and 2A, shall be marked conspicuously on their front with the highest level of classification and any special access notice applicable to the information authorized for storage in the container and will be stored in a security container other than the one to which they apply.

(C) Internal security procedures shall provide for prompt notification to the official responsible for the area if a container is found unsecured and unattended or show evidence of unauthorized entry attempt or SF 700 is inaccessible or not available.

(D) Listings of persons having knowledge of the combination shall be continued as necessary on an attachment to Part 2.

(E) *Dissemination.* Access to the combination of a vault or container used for the storage of classified information shall be granted only to those individuals who are authorized access to the classified information to be stored therein.

(3) *Access controls.* Entrances to secure rooms or areas should be under visual control at all times during duty hours to preclude entry by unauthorized personnel or equipped with electric, mechanical or electromechanical access control devices to limit access during duty hours. Appendix I to this part provides standards for these access control devices; the use of automated systems described therein is encouraged.

(f) *Repair of damaged security containers.* Neutralization of lock-outs or repair of any damage that affects the integrity of a security container approved for storage of classified information shall be accomplished only by authorized persons who have been the subject of a trustworthiness determination in accordance with 32 CFR part 154 and are continuously escorted while so engaged.

(1) With the exception of frames bent through application of extraordinary stress, a GSA-approved security container manufactured prior to October 1991 (identified by a silver GSA label with black lettering affixed to the exterior of the container) is considered to have been restored to its original state of security integrity as follows:

(i) All damaged or altered parts, for example, the locking drawer, drawer head, or lock, are replaced; or

(ii) Has been drilled immediately adjacent to or through the dial ring to neutralize a lockout, a replacement lock meeting FF–L–2740 is used, and the drilled hole is repaired with a tapered, hardened tool-steel pin, or a steel dowel, drill bit, or bearing with a diameter slightly larger than the hole and of such length that when driven into the hole there shall remain at each end of the rod a shallow recess not less than ⅛ inch nor more than 3/16 inch deep to permit the acceptance of substantial welds, and the rod is welded both on the inside and outside surfaces. The outside of the drawer head must then be puttied, sanded, and repainted in such a way that no visible evidence of the hole or its repair remains on the outer surface.

(2) In the interests of cost efficiency, the procedures identified in paragraph (f)(2)(1)(i) of this section should not be used for GSA-approved security containers purchased after October 1991 (distinguished by a silver GSA label with red lettering affixed to the outside of the container control drawer) until it is first determined whether warranty protection still applies. To make this determination, it will be necessary to contact the manufacturer and provide the serial number and date of manufacture of the container. If the container is under warranty, a lock-out will be neutralized using the procedures described in the Naval Facilities Engineering Service Center (NFESC) Technical Data Sheet (TDS) 2000-SHR.

(3) Unapproved modification or repair of security containers and vault doors is considered a violation of the container's or door's integrity and the GSA label shall be removed. Thereafter, they may not be used to protect classified information except as otherwise authorized in this part.

(g) *Maintenance and operating inspections*—(1) *Maintenance.* The Heads of the DoD Components shall establish procedures concerning maintenance of classified material security containers and vaults to accomplish the following:

(i) Permit only those persons who have been the subject of a trustworthiness determination in accordance with 32 CFR part 154 to perform maintenance which affects the protective features of the container or vault.

(ii) Require a record of all maintenance performed on a container or vault be maintained by the using activity and retained with the container or vault. The record shall reflect the operating problem requiring maintenance, the date maintenance was performed, the name and organization of the maintenance technician, the work accomplished, and the activity official certifying the subsequent proper operation of the container or vault. These records shall be retained for the service life of the container or vault.

(iii) Refer any discovery of unauthorized tampering or modification of a container or vault to the supporting counterintelligence organization for investigation.

(iv) Provide a preventive maintenance program for containers and vaults to detect and correct operating problems affecting their security.

(2) *Operating inspections.* Containers and vaults shall be inspected before being used, and periodically thereafter, and whoever discovered open and unattended or evidence of actual or attempted unauthorized forced or covert entry is present to assure the presence and proper operation of their protective security features before they may continue in use to store classified material.

§ 159a.38 Custodial precautions.

(a) *Responsibilities of custodians.* Anyone who has been duly authorized/appointed to maintain classified information is responsible for its safekeeping, to include storing the material in approved storage containers or facilities when it is not in use or under the supervision of an authorized person.

(b) *Residentiol storage arrangements.* Only the Head of a DoD Component, or single designee at the Component headquarters and major command levels, may authorize removal of classified material from designated working areas in off-duty hours, for work at home or otherwise, provided that a GSA-approved security container is furnished and appropriate regulations otherwise provide for the maximum protection possible under the circumstances. Any such arrangements approved before the effective date of this part shall be reevaluated and, if continued approval is warranted, compliance with this paragraph is necessary.

(c) *Care during working hours.* (1) Classified material removed from storage shall be kept under constant surveillance by persons authorized access and having a need to know thereto and, when not in use, protected from unauthorized view of its classified contents until returned to storage. Such protection shall be provided, as applicable, by the material's unclassified cover or by an appropriate cover sheet. Cover sheets shall be Standard Forms 703, 704 and 705 for, respectively, Top Secret, Secret, and Confidential documents.

(2) Preliminary drafts, carbon sheets, plates, stencils, stenographic notes, worksheets, computer and typewriter ribbons, transfer medium and other items containing classified information shall be safeguarded according to the level of classified information they contain and shall be accordingly destroyed after they have served their purpose. Transfer medium include drums, cartridges, belts, sheets, memory, and other material in copiers, printers, facsimile and other devices of items which receive or come in contact with classified information.

(3) Destruction of personal computer printer or typewriter ribbons from which classified information can be obtained shall be accomplished in the manner prescribed for classified working papers of the same classification. After the upper and lower sections have been cycled through and overprinted five times in all ribbon or impact or typing positions, fabric ribbons may be treated as unclassified regardless of their previous classified use. Carbon and plastic ribbons and carbon paper that have been used in the production of classified information shall be destroyed in the manner prescribed for working papers of the same classification after initial usage. However, any typewriter ribbon that uses technology which enables the ribbon to be struck several times in the same area before it moves to the next position may be treated as unclassified.

(d) *End-of-day security checks.* The Heads of activities that process or store classified information shall establish a system of security checks at the close of each working day to ensure that the area is secure. Standard Form 701, "Activity Security Checklist," shall be used to record such checks. Standard Form 702. "Security Container Check Sheet," shall be used to record the use of all vaults, secure rooms and containers used for the storage of classified material.

(e) *Emergency planning.* (1) Plans shall be developed for the protection, removal, or destruction of classified material in case of fire, natural disaster, civil disturbance, terrorist activities, or enemy action. Such plans shall establish detailed procedures and responsibilities for the protection of classified material to ensure that the material does not come into the possession of unauthorized persons. These plans shall include the treatment of classified information located in foreign countries. Emergency destruction procedures are not needed for activities located inside the 50 states.

(2) These emergency planning procedures do not apply to material related to COMSEC Planning for the emergency protection including emergency destruction under no-notice conditions of classified COMSEC material shall be developed in accordance with requirements of NACSI 4006.

(3) Emergency plans shall provide for the protection of classified material in a manner that will minimize the risk of injury or loss of life to personnel. In the case of fire or natural disaster, the immediate placement of authorized personnel around the affected area, preinstructed and trained to prevent the removal of classified material by unauthorized personnel, is an acceptable means of protecting classified material and reducing casualty risk. Such plans shall provide for emergency destruction to preclude capture of classified material when determined to be required in overseas locations.

(f) *Telecommunications conversations.* (1) Classifed information shall not be discussed in telephone conversations except over approved secure communications circuits, that is, cryptographically protected circuits or protected distributions systems installed in accordance with National COMSEC Instruction 4009.

(2) The Secure Telephone Unit–III (STU–III) is approved for classified discussions within the limitations displayed by the STU–III. The need-to-know must be established before discussing classified information.

(3) Users of secure telephones shall assure that only persons with appropriate clearance and need-to-know are within hearing range of their conversation.

(g) *Removal of classified storage and information processing equipment.* All classified storage containers and information processing equipment shall be inspected by properly cleared personnel before removal from protected areas or unauthorized persons are allowed access to them. The inspection shall be accomplished to assure no classified information remains within the equipment. Some examples of equipment which shall be inspected are:

(1) Reproduction or facsimile machines and AIS components and other office equipment used to process classified information.

(2) GSA-approved security containers, filing cabinets, or other storage containers used for safeguarding classified information; and

(3) Other items of equipment that may inadvertently contain classified information.

(h) *Classified discussions, meetings and conferences.* Security requirements and procedures governing disclosure of classified information at conferences, symposia, conventions, and similar meetings, and those governing the sponsorship and attendance of U.S. and foreign personnel at such meetings, are set forth in DoD Directive 5200.12,[20] DoD Instruction 5230.20,[21] DoD 5220.22–R,[22] and DoD 5220.22–M.[23]

(i) *Safeguarding of U.S. classified information located in foreign countries.* Except for classified information that has been authorized for release to a foreign government or international

[20] See footnote 2 to § 159a.3.
[21] See footnote 2 to § 159a.3.
[22] See footnote 2 to § 159a.3.
[23] See footnote 3 to § 159a.3.

organization pursuant to DoD Directive 5230.11 [24] and is under the security control of such government or organization, the retention of U.S. classified material in foreign countries may be authorized only when that material is necessary to satisfy specific U.S. Government requirements. This includes classified material temporarily transferred into a foreign country through U.S. Government personnel authorized to escort or handcarry such material pursuant to § 159a.59, as applicable. Whether permanently or temporarily retained, the classified materials shall be stored under U.S. Government control, as follows. See § 159a.37(c) additional guidance on Top Secret information.

(1) At a U.S. military installation, or a location where the United States enjoys extraterritorial status, such as an embassy or consulate.

(2) At a U.S. Government activity located in a building used exclusively by U.S. Government tenants, if the building is under 24-hour control by U.S. Government personnel.

(3) At a U.S. Government activity located in a building not used exclusively by U.S. Government tenants nor under host-government control, provided the classified material is stored in security containers approved by the GSA and is placed under 24-hour control by U.S. Government personnel.

(4) At a U.S. Government activity located in a building not used exclusively by U.S. Government tenants, but which is under host-government control, provided the classified material is stored in GSA-approved security containers that are further secured in a locked room or area to which only U.S. personnel have access.

(5) When host government and U.S. personnel are collocated, U.S. classified material that has not been authorized for release to the host government under DoD Directive 5230.11, shall, be segregated from releasable classified material to facilitate physical control and prevent inadvertent compromise. U.S. classified material that is releasable to the host country need not be subject to the 24-hour U.S. control requirement provided the host government exercises its own control measures over the pertinent areas or containers during nonduty hours.

(6) Foreign nationals shall be escorted while in areas where nonreleasable U.S. classified material is handled or stored. When required by operational necessity, foreign nationals may be permitted, during duty hours unescorted entry to such areas provided the nonreleasable information is properly stored or is under the direct personal supervision and control of cleared U.S. personnel who can prevent unauthorized access.

(7) Under field conditions during military operations, the commander may prescribe the measures deemed adequate to protect classified material.

(j) *Non-COMSEC classified information processing equipment.* The Department of Defense has a variety of non-COMSEC approved equipment to process classified information. This includes copiers, fascimile machines, printers, scanners, cameras, printers for AISs, AISs, electronic typewriters, and other word processing systems among others. Because much of this equipment has known security vulnerabilities, its use can cause unauthorized disclosure.

(1) Activities must identify those features, parts, or functions of equipment used to process classified information which may retain all or part of the information. Activity security procedures must prescribe safeguards to:

(i) Prevent unauthorized access to that information.

(ii) Replace and destroy equipment parts as classified material when the information cannot be removed from them. Alternatively, the equipment may be designated as "classified" and protected at least at the retained information's classification level.

(2) Activities will select equipment that performs the needed function and presents the lowest acceptable risk to the classified information the equipment processes.

(3) Activities will comply with guidance on security vulnerabilities issued by appropriate authority and must report equipment problems and failures.

(k) *Reporting equipment problems and vulnerabilities.* (1) The equipment that the Department of Defense uses to safeguard, destroy or process classified information can fail to function properly or otherwise perform in a way that threatens that information. When that occurs, responsible individuals within the using activities must promptly:

(i) Restore the protection to the information.

(ii) Report the incident to their Component security office. Such report shall:

(A) Be classified or transmitted by secure means, as warranted by the nature of the problem.

(B) Describe the problem; the equipment's type, manufacturer, and any serial number; the number of equipment units involved; and any means found to overcome the problem.

(C) Be in addition to those made to logistics, supply, or contracting offices, or those made in reporting security violations.

(2) Component security offices receiving such reports shall assess the impact on other Component activities and advise them accordingly. They shall also promptly send a copy of the initial and any subsequent reports to the Director, Counterintelligence and Security Programs, ODASD(I&S), OASD(C3I). They shall include their assessment of the impact and a summery of the related Component actions.

(3) Problems or vulnerabilities with COMSEC equipment and controlled Cryptographic Items shall be reported as prescribed by the controlling COMSEC authorities rather than under this paragraph. The COMSEC authority shall promptly coordinate these reports and correcting actions with the Director, Counterintelligence and Security Programs, OASD(C3I), when the problems or vulnerabilities are common to all such equipment.

§ 159a.39 Installation entry and exit inspection program.

(a) *Policy.* Commanders shall prescribe procedures for inspecting persons, their property and vehicles at entry and exit points of installations or at designated secure areas within an installation and for search of persons and their possessions while on an installation.

(1) This shall include determination of whether inspections are randomly conducted or mandatory for all, and shall prescribe procedures to ensure the safeguarding of classified information.

(2) Examinations of individuals and their possessions while on the installation for the primary purpose of obtaining evidence is classified as a "search" under the fourth amendment and separate guidance regarding the conduct of these searches shall be issued.

(3) All procedures shall be reviewed for legal sufficiency by the general counsel or legal advisor before issuance. These procedures shall require Commanders to consult with their servicing Judge Advocate or other legal advisor before authorizing gate inspections.

(b) [Reserved]

Appendix C to Part 159a [Amended]

7. Appendix C to Part 159a, paragraphs 1.a. and 2.a., paragraphs 2.b.(d)(4), introductory text, and 2.b.(d)(5)(b) paragraph c.(4)(b), and paragraphs 4.a. and 4.c. are amended by

[24] See footnote 2 to § 159a.3.

adding "Chairman of the" before "Joint Chiefs of Staff"

8. Appendices F through I to part 159a are added as follows:

Appendix F to Part 159a—Vault and Secure Room Construction Standards

1. *Vault*

a. *Floor and Walls.* Eight inches of concrete reinforced to meet current structural standards. Walls are to extend to the underside of the roof slab above.

b. *Roof.* Monolithic reinforced concrete slab of thickness to be determined by structural requirements, but not less than the floor and walls.

c. *Ceiling.* The roof or ceiling must be reinforced concrete of a thickness to be determined by structural requirements, but not less than the floors and walls.

d. Vault door and frame unit should conform to Federal Specification AA–D–2757 Class 8 vault door, or Federal Specification AA–D–600 Class 5 vault door.

2. *Secure Room*

a. The walls, floor, and roof construction of secure rooms must be of permanent construction materials; i.e., plaster, gypsum wallboard, metal panels, hardboard, wood, plywood, or other materials offering resistance to, and evidence of unauthorized entry into the area. Walls shall be extended to the true ceiling and attached with permanent construction materials, wire mesh or 18 gauge expanded steel screen.

b. *Ceiling.* The ceilings shall be constructed of plaster, gypsum, wallboard material, hardwood, or any other acceptable material.

c. *Doors.* The access door to the room shall be substantially constructed of wood or metal. The hinge pins of outswing doors shall be peened, brazed, or spot welded to prevent removal. Door should be equipped with a built-in GSA-approved combination lock meeting Federal Specification FF–L–2740.

d. *Windows.* Windows which are less than 18 feet above the ground measured from the bottom of the window, or are easily accessible by means of objects directly beneath the windows, shall be constructed from or covered with materials which will provide protection from forced entry. The protection provided to the windows need be no stronger than the strength of the contiguous walls.

e. *Openings.* Utility openings such as ducts and vents should be kept at less than man-passable (96 square inches) opening. Openings larger than 96 square inches will be hardened in accordance with Military Handbook 1013/1A.

Appendix G to Part 159a—IDS Standards

1. An IDS must detect an unauthorized penetration in the secured area. An IDS complements other physical security measures and consists of the following:

a. *Intrusion Detection Equipment (IDE).*

b. *Security forces.*

c. *Operating procedures.*

2. *System functions.*

a. *IDS components operate as a system with the following four distinct phases:*

(1) *Detection.*

(2) *Communications.*

(3) *Assessment.*

(4) *Response.*

b. These elements are equally important, and none can be eliminated if an IDS is to provide an acceptable degree of protection.

(1) *Detection:* The detection phase begins as soon as a detector or sensor reacts to stimuli it is designed to detect. The sensor alarm condition is then transmitted over cabling located within the protected area to the Premise Control Unit (PCU). The PCU may service many sensors. The PCU and the sensors it serves comprise a "zone" at the monitor station. This shall be used as the definition of an alarmed zone for purposes of this part.

(2) *Reporting:* The PCU receives signals from all sensors in a protected area and incorporates these signals into a communication scheme. Another signal is added to the communication for supervision to prevent compromise of the communication scheme. This supervised signal is intended to disguise the information and protect the IDS against tampering or injection of false information by an intruder. The supervised signal is sent by the PCU through the transmission link to the monitor station. Inside the monitor station either a dedicated panel or central processor monitors information from the PCU signals. When an alarm occurs, an annunciator generates an audible and visible alert to security personnel. Alarms result normally from intrusion, tampering, component failure, or system power failure.

(3) *Assessment:* The assessment period is the first phrase that requires human interaction. When alarm conditions occur, the operator assesses the situation and dispatches the response force.

(4) *Response:* The response phase begins as soon as the operator assesses an alarm condition. A response force must immediately respond to all alarms. The response phase must also determine the precise nature of the alarm and take all measures necessary to safeguard the secure area.

3. *Use of IDS*

a. As determined by the commander all areas that reasonably afford access to the container, or where classified data is stored should be protected by IDS unless continually occupied. Prior to the installation of an IDS, commanders shall consider the threat, vulnerabilities, in-depth security measures and shall perform a risk analysis.

b. Acceptability of Equipment: All IDE must be UL-listed (or equivalent) and approved by the DoD Component or government contractor. Government installed, maintained, or furnished systems are acceptable.

4. *Equipment*

a. *Transmission Line Security:* When the transmission line leaves the facility and traverses an uncontrolled area, Class I or Class II line supervision shall be used.

(1) Class I: Class I line security is achieved through the use of DES or an algorithm based on the cypher feedback or cypher block chaining mode of encryption. Certification by NIST or another independent testing laboratory is required.

(2) Class II: Class II line supervision refers to systems in which the transmission is based on pseudo random generated tones or digital encoding using an interrogation and response scheme throughout the entire communication, or UL Class AA line supervision. The signal shall not repeat itself within a minimum 6 month period. Class II security shall be impervious to compromise using resistance, voltage, current, or signal substitution techniques.

b. *Internal Cabling:* The cabling between the sensors and the PCU should be dedicated to IDE and must comply with national and local code standards.

c. *Entry Control Systems:* If an entry control system is integrated into an IDS, reports from the automated entry control system should be subordinate in priority to reports from intrusion alarms.

d. *Maintenance Mode:* When an alarm zone is placed in the maintenance mode, this condition shall be signaled to the monitor station. This signal must appear as an alarm or maintenance message at the monitor station and the IDS shall not be securable while in the maintenance mode. The alarm or message must be continually visible at the monitor station throughout the period of maintenance. A standard operating procedure must be established to address appropriate actions when maintenance access is indicated at the panel. All maintenance periods shall be archived in the system. A self-test feature shall be limited to one second per occurrence.

e. *Annunciation of Shunting or Masking Condition:* Shunting or masking of any internal zone or sensor must be appropriately logged or recorded in archive. A shunted or masked internal zone or sensor must be displayed as such at the monitor station throughout the period the condition exists whenever there is a survey of zones or sensors.

f. Indications of alarm status shall be revealed at the monitoring station and optionally within the confines of the secure area.

g. *Power Supplies:* Primary power of all IDE shall be commercial AC or DC power. In the event of commercial power failure at the protected area or monitor station, the equipment shall change power sources without causing an alarm indication.

(1). *Emergency Power.* Emergency power shall consist of a protected independent backup power source that provides a minimum of 4 hours operating power battery and/or generator power. When batteries are used for emergency power, they shall be maintained at full charge by automatic charging circuits. The manufacturer's periodic maintenance schedule shall be followed and results documented.

(2) *Power Source and Failure Indication:* An illuminated indication shall exist at the PCU of the power source in use (AC or DC). Equipment at the monitor station shall indicate a failure in power source, a change in power source, and the location of the failure or change.

h. *Component Tamper Protection:* IDE components located inside or outside the secure area should be evaluated for a tamper protection requirement. If access to a

junction box or controller will enable an unauthorized modification, tamper protection should be provided.

5. *System Requirements*

a. *Independent Equipment.* When many alarmed areas are protected by one monitor station, secure room zones must be clearly distinguishable from the other zones to facilitate a priority response. All sensors shall be installed within the protected area.

b. *Access and/or Secure Switch and PCU:* No capability should exist to allow changing the access status of the IDS from a location outside the protected area. All PCUs must be located inside the secure area and should be located near the entrance. Assigned personnel should initiate all changes in access and secure status. Operation of the PCU may be restricted by use of a device or procedure that verifies authorized use. In the secure mode, any unauthorized entry into the space shall cause an alarm to be transmitted to the monitor station.

c. *Motion Detection Protection:* Secure areas that reasonably afford access to the container or where classified data is stored should be protected with motion detection sensors; e.g., ultrasonic and passive infrared. Use of dual technology is authorized when one technology transmits an alarm condition independent from the other technology. A failed detector shall cause an immediate and continuous alarm condition.

d. *Protection of Perimeter Doors:* Each perimeter door shall be protected by a balanced magnetic switch (BMS) that meets the standards of UL 634.

e. *Windows:* All readily accessible windows (within 18 feet of ground level) shall be protected by an IDS, either independently or by the motion detection sensors in the space.

f. *IDS Requirements for Continuous Operations Facilities:* A continuous operations facility may not require an IDS. This type of secure area should be equipped with an alerting system if the occupants cannot observe all potential entrances into the room. Duress devices may also be required.

g. *False and/or Nuisance Alarm:* Any alarm signal transmitted in the absence of detected intrusion or identified as a nuisance alarm is a false alarm. A nuisance alarm is the activation of an alarm sensor by some influence for which the sensor was designed but which is not related to an intrusion attempt. All alarms shall be investigated and the results documented. The maintenance program for the IDS should ensure that incidents of false alarms should not exceed 1 in a period of 30 days per zone.

6. *Personnel*

a. *IDS Installation and Maintenance Personnel:* Alarm installation and maintenance should be accomplished by U.S. citizens who have been subjected to a trustworthiness determination in accordance with 32 CFR part 154.

b. *Monitor Station Staffing:* The monitor station should be supervised continuously by U.S. citizens who have been subjected to a trustworthiness determination in accordance with 32 CFR part 154.

Appendix H to Part 159a—Priority for Replacement

Priorities range from 1 to 4, with 1 being the highest and 4 the lowest.

LOCK REPLACEMENT PRIORITIES IN THE UNITED STATES AND ITS TERRITORIES

Item	TS/SAP	TS	S/SAP	S–C
Vault Doors	1	1	3	4
Containers (A) [1]	3	4	4	4
Containers (B) [2]	1	1	1	2
Crypto	1	1	2	2

LOCK REPLACEMENT PRIORITIES OUTSIDE THE UNITED STATES AND ITS TERRITORIES

Item	TS/SAP	TS	S/SAP	S–C
Vault Doors	1	1	2	2
Containers (A) [1]	2	2	3	3
Containers (B) [2]	1	1	1	2
Crypto	1	1	2	2
High Risk Areas	1	1	1	1

[1] A—Located in a controlled environment where the Department of Defense has the authority to prevent unauthorized disclosure of classified information. The Government may control or deny access to the space, post guards, require identification, challenge presence, inspect packages, program elevators, or take other reasonable measures necessary to deny unauthorized access.
[2] B—Located in an uncontrolled area without perimeter security measures.

Appendix I to Part 159a—Access Controls

1. *Access Controls:* The perimeter entrance should be under visual control at all times during working hours to preclude entry by unauthorized personnel. This may be accomplished by several methods (e.g., employee work station, guard, and CCTV). Regardless of the method utilized, an access control system shall be used on the entrance. Uncleared persons are to be escorted within the facility by a cleared person who is familiar with the security procedures at the facility.

a. *Automated Entry Control Systems:* An automated entry control system may be used to control admittance during working hours instead of visual control, if it meets the criteria stated below.

The automated entry control system must identify an individual authenticate that person's authority to enter the area through the use of an identification (ID) badge or card, and number or by personal identity verification. Exist should also be recorded.

(1) *ID Badges or Key Cards.* The ID badge or key card must use embedded sensors, integrated circuits, magnetic stripes or other means of encoding data that identifies the facility and the individual to whom the card is issued.

(2) *Personal Identity Verification.* Personel identity verification (biometrics device) identifies the individual requesting access by some unique personal characteristic, such as:

(a) *Fingerprinting*
(b) *Hand Geometry*
(c) *Handwriting*
(d) *Retina*
(e) *Voice recognition.* A biometrics device may be required for access to most sensitive information.

2. In conjunction with subparagraph 1.a(2)(a), above, a personal identification number (PIN) may be required. The PIN must be separately entered into the system by each individual using a keypad device and shall consist of four or more digits, randomly selected, with no known or logical association with the individual. The PIN must be changed when it is believed to have been compromised or subjected to compromise.

3. Authentication of the individual's authorization to enter the area must be accomplished within the system by the inputs from the ID badge and/or card or the personal identity verification device or the keypad with an electronic data base of individuals authorized into the area. A procedure must be established for removal of the individual's authorization to enter the area upon reassignment, transfer or termination, or when the individual's access is suspended, revoked, or downgraded to a level lower than required.

4. Protection must be established and continuously maintained for all devices and/or equipment that constitute the system. The level of protection may vary depending on the type of devices and/or equipment being protected with the basic intent of utilizing the security controls already in effect within the facility.

a. Location where authorization data, card encoded data, and personal identification or verification data is input, stored, or recorded must be protected.

b. Card readers, keypads, communication, or interface devices located outside the entrance to a controlled area shall have tamper resistant enclosures, and be securely fastened to a wall or other structure. Control panels located within a controlled area shall require only a minimal degree of physical security protection sufficient to preclude unauthorized access to the mechanism.

c. Keypad devices shall be designed or installed in such a manner that an unauthorized person in the immediate vicinity cannot observe the selection of input numbers.

d. Systems that utilize transmission lines to carry access authorizations, personal identification, or verification data between devices/equipment located outside the controlled area shall have line supervision.

e. Electric strikes used in access control systems shall be heavy duty industrial grade.

5. Access to records and information concerning encoded ID data and PINs shall be restricted. Access to identification or authorization data, operating system software or any identifying data associated with the access control system shall be limited to the fewest number personnel as possible. Such data or software shall be kept secure when unattended.

6. Records shall be maintained reflecting active assignment of ID badge and/or card, PIN, level of access, access, and similar system-related records. Records concerning personnel removed form the system shall be retained for 90 days. Records of entries shall be retained for at least 90 days or until investigations of system violations and incidents have been successfully resolved and recorded.

7. Personnel entering or leaving an area shall be require to immediately secure the entrance or exit point. Authorized personnel who permit another individual to enter the area are responsible for confirming the individual's access and need-to-know. The Heads of the DOD components may approve the use of standardized AECS, which meet the following criteria:

a. For a Level 1 key card system, the AECS must provide a 0.95 probability of granting access to an authorized user providing the proper identifying information within three attempts. Additionally, the system must ensure an unauthorized user is granted access with less than 0.05 probability after three attempts to gain entry have been made.

b. For a Level 2 key card and PIN system, the AECS must provide a 0.97 probability of granting access to an authorized user providing the proper identifying information within three attempts. Additionally, the system must ensure an unauthorized user is granted access with less than 0.010 probability after three attempts to gain entry have bee made.

c. For a Level 3 key card and PIN and biometrics identifier system, the AECS must provide a 0.99 probability of granting access to an authorized user providing the proper identifying information within three attempts. Additionally, the system must ensure an unauthorized user is granted access with less than 0.005 probability after three attempts to gain entry have been made.

1. *Electric, Mechanicol, or Electromechonicol Access Control Devices.* Electric, mechanical, or electromechanical devices which meet the criteria stated in subparagraphs 7.c.2. and 3, below, may be used to control admittance to secure areas during duty hours if the entrance is under visual control. These devices are also acceptable to control access to compartmented areas within a secure area. Access control devices must be installed in the following manner:

2. The electronic control panel containing the mechanical mechanism by which the combination is set is to be located inside the area. The control (located within the area) shall require only minimal degree of physical security designated to preclude unauthorized access to the mechanism.

3. The control panel shall be installed in such a manner, or have a shielding device mounted, so that an unauthorized person in the immediate vicinity cannot observe the setting or changing of the combination.

4. The selection and setting of the combination shall be accomplished by an individual cleared at the same level as the highest classified information controlled within.

5. Electrical components, wiring included, or mechanical links (cables, rods, etc.) should be accessible only from inside the area, or if they traverse an uncontrolled area they should be secured within protecting covering to preclude surreptitious manipulation of components.

Dated: June 22, 1995.

L.M. Bynum,

Alternote OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–15707 Filed 6–27–95; 8:45 am]

BILLING CODE 5000–04–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300389; FRL–4960–5]

Sodium Propionate, Methoprene, and Heliothis zea Npv; Proposed Tolerance Actions

AGENCY: Environmental Protection Agency (EPA or "the Agency")

ACTION: Proposed rule.

SUMMARY: For each of the pesticides subject to the actions listed in this proposed rule, EPA has completed the reregistration process and issued a Reregistration Eligibility Document (RED). In the reregistration process, all information to support a pesticide's continued registration is reviewed for adequacy and, when needed, supplemented with new scientific studies. Based on the RED tolerance assessments for the pesticide chemicals subject to this proposed rule, EPA is proposing the following tolerance actions: to amend the exemptions from the requirement of a tolerance for methoprene; to revoke exemptions for sodium propionate; and make wording changes to the exemption from the requirement of a tolerance for *Heliothis zea* NPV. With this proposal to amend the exemptions from the requirement of tolerances for methoprene, the Agency is correcting its position in the RED, which stated that the exemptions should be revoked. The Agency believes that exemptions from the requirement of tolerances for these uses are appropriate.

DATES: Written comments, identified by the OPP document control number [OPP–300389], must be received on or before July 28, 1995.

ADDRESSES: By mail, submit comments to Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. In person, deliver comments to Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number "OPP–300389." No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this document may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit III of this document.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA

without prior notice. All written comments will be available for public inspection in Rm. 1132 at the Virginia address given above from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Philip Poli, Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Station #1, 3rd floor, 2800 Crystal Drive, Arlington, VA, (703) 308–8038, poli.philip@epamail.epa.gov.

I. Legal Authorization

The Federal Food, Drug, and Cosmetic Act (FFDCA) [21 U.S.C. 301 et seq.] authorizes the establishment of tolerances (maximum legal residue levels) and exemptions from the requirement of a tolerance for residues of pesticide chemicals in or on raw agricultural commodities pursuant to section 408 [21 U.S.C. 346(a)]. Without such tolerances or exemptions, a food containing pesticide residues is considered to be "adulterated" under section 402 of the FFDCA, and hence may not legally be moved in interstate commerce [21 U.S.C. 342]. To establish a tolerance or an exemption under section 408 of the FFDCA, EPA must make a finding that the promulgation of the rule would "protect the public health" [21 U.S.C. 346a(b)]. For a pesticide to be sold and distributed the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under the Federal Insecticide, Fungicide, and Rodenticide Act [FIFRA, 7 U.S.C. 136 et seq.].

In 1988, Congress amended FIFRA and required EPA to review and reassess the potential hazards arising from currently registered uses of pesticides registered prior to November 1, 1984. As part of this process, the Agency must determine whether a pesticide is eligible for reregistration and if any subsequent actions are required to fully attain reregistration status. EPA has chosen to include in the reregistration process a reassessment of existing tolerances or exemptions from the need for a tolerance. Through this reassessment process, EPA can determine whether a tolerance must be amended, revoked, or established, or whether an exemption from the requirement of one or more tolerances must be amended or is necessary.

The procedure for establishing, amending, or repealing tolerances or exemptions from the requirement of tolerances is set forth in the Code of Federal Regulations 40 CFR parts 177 through 180. The Administrator of EPA or any person may initiate an action proposing to establish, amend, revoke, or exempt a tolerance for a pesticide registered for food uses. The proposal must explain the grounds for such a proposed action and will be published as a public notice. Each petition or request for a new tolerance, an amendment to an existing tolerance, or a new exemption from the requirement of a tolerance must be accompanied by a fee or a request for a waiver of such fee. Current Agency policy on tolerance actions identified during the reregistration process is to administratively process without requiring payment of a fee tolerance actions for revision or revocation of an established tolerance, or if the proposed exemption from the requirement of a tolerance requires the concurrent revocation of an approved tolerance. Comments submitted in response to the Agency's published proposals are reviewed; the Agency then publishes its final determination regarding the specific tolerance actions.

II. Chemical-Specific Information and Proposed Actions

A. Methoprene: Amendment to 40 CFR 180.1033 and Revocation of Exemption under 40 CFR 185.4150

1. *Regulatory background.* Methoprene was first registered under FIFRA in 1975; a Registration Standard was issued in February 1982. Subsequent to the issuance of the Registration Standard, methoprene was reclassified by EPA from a conventional to a biochemical pesticide based on its mode of action and chemical structure. The Reregistration Eligibility Document (RED) for methoprene was issued in March 1991. At the time of the RED, a number of sites were registered for mosquito control. For these sites, which included both food and non-food, exemptions from the requirement of tolerances had been established. In the RED, the Agency recommended that these exemptions be revoked based on the following rationale:

> The mosquito vector control uses that were exempt from the requirement of a tolerance under 40 CFR 180.1033 and 185.4150 are now considered non-food uses. Thus, the exemptions are no longer applicable and will be revoked.

Subsequent to the issuance of the RED, other mosquito vector control uses were added to the methoprene label; these included vineyards, date palm orchards, nut orchards, berry orchards, and fruit orchards. No tolerances or exemptions from the requirement of tolerances were established.

2. *Proposed action.* Amendment to 40 CFR 180.1033. The 1991 RED document erroneously reclassifies many of the mosquito vector control uses for food sites as non-food, and recommends that the exemptions from the requirements of a tolerance be revoked because they are unnecessary. The Agency has reviewed its position and determined that the exemptions for all food sites should remain or be established. Because methoprene exhibited low toxicity and showed no oncogenic potential in chronic feeding studies (Ref. 1), and because methoprene has low potential for exposure when used as a mosquito larvae control, the Agency is proposing that methoprene be exempt from the requirement of a tolerance in or on all raw agricultural commodities, including pastures, rice fields, vineyards, date palm orchards, nut orchards, berry orchards, and fruit orchards, when used to control mosquito larvae.

With this proposal, the Agency is acknowledging its error in the RED and is also amending the RED determination that the mosquito vector control uses are non-food. The Agency believes that these uses are indeed food uses, and as such, should have the appropriate clearances for residues on food under the Federal Food, Drug, and Cosmetic Act.

Revocation of exemption under 40 CFR 185.4150(a). Revoke this exemption, deleting paragraph (a), because the Agency no longer requires tolerances for potable water.

B. Sodium Propionate: Revocation of Exemptions under 40 CFR Sections 180.2(a) and 180.1015

1. *Regulatory background.* EPA first registered propionic acid-containing products in the early 1970's. The currently registered products are used as fungicides and bactericides, and have been used for both human food and animal feed. In 1975, EPA exempted sodium propionate from tolerances for residues following post-harvest application in grains or hays (40 CFR 180.1023). Sodium propionate is also exempt from the requirement of a tolerance when applied (as an inert ingredient) to growing crops or to raw agricultural commodities after harvest as described in 40 CFR 180.1001(c). Sodium propionate is Generally Recognized As Safe (GRAS) (21 CFR part 1081), by the Food and Drug Admininstration (FDA) for use in food.

The Reregistration Eligibility Document (RED) was issued for propionic acid and its salts in 1991. The RED document recommended revoking the exemption from the requirement of tolerances for all active ingredients containing sodium and calcium propionate since no pesticide products contain these pesticides. There are no exemptions from the requirement of tolerances for calcium propionate listed in the 40 CFR.

2. *Proposed action.* The Agency is proposing to revoke the exemptions for sodium propionate under 40 CFR 180.1015 and 180.1027 since there are no registrations for pesticide products containing this active ingredient.

C. Heliothis zea NPV: Changes to the Existing Language Under 40 CFR 180.1027

1. *Regulatory background. Heliothis zea* NPV was first registered by the Agency in 1975 as a microbial pesticide for use on cotton and tobacco to control the cotton bollworm and the tobacco budworm. In June 1984, the Registration Standard entitled "Guidance for the Reregistration of Pesticide Products Containing Nuclear Polyhedrosis Virus of Heliothis Zea as the Active Ingredient" (NTIS No. PB85134393) was issued for *Heliothis zea* NPV, which summarized the available data supporting its registration and concluded that additional scientific data were needed to evaluate this microbial pesticide. The Reregistration Eligibility Document (RED) was issued for *Heliothis zea* NPV in December 1990. In this document, the Agency conducted a thorough review of the scientific data base and all relevant information supporting the reregistration of *Heliothis zea* NPV, including the data submitted in response to the Registration Standard. The Agency concluded as a result of the reregistration review that the exemption from the requirement for a tolerance on all agricultural commodities continues to be appropriate.

2. *Proposed action.* To better reflect the current viral identification and testing technology, the Agency is at this time proposing to amend the existing language of 40 CFR 180.1027. As specified in the Pesticide Assessment Guideline, Subdivision O, Residue Chemistry, the use of a pesticide on tobacco does not require a tolerance or an exemption from the requirement of a tolerance, so the commodity tobacco will no longer be listed under § 180.1027(c).

III. Public Comment Procedures

Interested persons are invited to submit written comments, information, or data in response to this proposed rule. Comments must be submitted by [insert date 30 days after date of publication in the **Federal Register**]. Comments must bear a notation indicating the document control number. Three copies of the comments should be submitted to either location listed under **ADDRESSES.**

Information submitted as a comment concerning this document may be claimed confidential by marking any or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of a comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

A record has been established for this proposal under docket number "OPP–300389" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this proposal, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this proposed rule in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

To satisfy requirements for analysis specified by Executive Order 12866 and the Regulatory Flexibility Act, EPA has analyzed the impacts of this proposal. This analysis is available for public inspection in Rm. 1132 at the Virginia address given above.

IV. References

U.S. Environmental Protection Agency. Reregistration Eligibility Document for Isopropyl (2E,4E)-11-Methoxy-3,7,11-Trimethyl-2,4 Dodecadienoate (Referred to as Methoprene). Case 0030. March 1991.

V. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, it has been determined that this proposed rule is not a "significant regulatory action," because it does not meet any of the regulatory-significance criteria listed above.

B. Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 [Pub. L. 96-354; 94 Stat. 1164, 5 U.S.C. 601 et seq.] and EPA has determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations.

Accordingly, I certify that this proposed rule does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

C. Paperwork Reduction Act

This proposed regulatory action does not contain any information collection requirements subject to review by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 15, 1995.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

Therefore, 40 CFR, chapter I, is proposed to be amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 would continue to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. Section 180.2 is revised to read as follows:

§ 180.2 Pesticide chemicals considered safe.

(a) As a general rule, pesticide chemicals other than benzaldehyde (when used as a bee repellent in the harvesting of honey), ferrous sulfate, lime, lime-sulfur, potassium carbonate, potassium polysulfide, potassium sorbate, sodium carbonate, sodium chloride, sodium hypochlorite, sodium polysulfide, sodium sesquicarbonate, sorbic acid, sulfur, and when used as plant desiccants, sodium metasilicate (not to exceed 4 percent by weight in aqueous solution) and when used as post-harvest fungicides, citric acid, fumaric acid, oil of lemon, oil of orange, and sodium benzoate are not for the purposes of section 408(a) of the Act generally recognized as safe.

(b) Upon written request, the Registration Division will advise interested persons whether a pesticide chemical should be considered as poisonous or deleterious, or one not generally recognized by qualified experts as safe.

(c) The training and experience necessary to qualify experts to evaluate the safety of pesticide chemicals for the purposes of section 408(a) are essentially the same as training and experience necessary to qualify experts to serve on advisory committees prescribed by section 408(g). (See § 180.11.)

§ 180.1015 [Removed]

c. Section 180.1015 is removed.

d. Section 180.1027 is revised to read as follows:

§ 180.1027 Nuclear polyhedrosis virus of Heliothis zea; exemption from the requirement of a tolerance.

(a) For the purposes of this section, the viral insecticide must be produced with an unaltered and unadulterated inoculum of the single-embedded *Heliothis zea* nuclear polyhedrosis virus (HzSNPV). The identity of the seed virus must be assured by periodic checks.

(b) Each lot of active ingredient of the viral insecticide shall have the following specifications:

(1) The level of extraneous bacterial contamination of the final unformulated viral insecticide should not exceed 10^7 colonies per gram as determined by an aerobic plate on trypticase soy agar.

(2) Human pathogens, e.g., Salmonella, Shigella, or Vibrio, must be absent.

(3) Safety to mice as determined by an intraperitoneal injection study must be demonstrated.

(4) Identity of the viral product, as determined by the most sensitive and standardized analytical technique, e.g., restriction endonuclease and/or SDS-PAGE analysis, must be demonstrated.

(c) Exemptions from the requirement of a tolerance are established for the residue of the microbial insecticide *Heliothis zea* NPV, as specified in paragraphs (a) and (b) of this section, in or on all agricultural commodities including: corn, cottonseed, beans, lettuce, okra, peppers, sorghum, soybeans, and tomatoes.

e. Section 180.1033 is revised to read as follows:

§ 180.1033 Methoprene; exemption from the requirement of a tolerance.

Methoprene is exempt from the requirement of a tolerance in or on all raw agricultural commodities when used to control mosquito larvae including pastures, rice fields, vineyards, date palm orchards, nut orchards, berry orchards, and fruit orchards.

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 180 would continue to read as follows:

Authority: 21 U.S.C. 348.

b. Section 185.4150 is revised to read as follows:

§ 185.4150 Methoprene.

A tolerance of 10 parts per million is established for residues of isopropyl (E,E)-11-methoxy-3,7,11-trimethyl-2,4-dodecadienoate) in or on the food additive commodity cereal grain milled fractions (except flour and rice hulls).

[FR Doc. 95–15438 Filed 6–27–95; 8:45 am]

BILLING CODE 6560–60–F

40 CFR Parts 185 and 186

[FAP 4H5683/P616; FRL–4959–1]

RIN 2070–AC18

Hexazinone; Food/Feed Additive Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes food and feed additive regulations for residues of the herbicide hexazinone (3-cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4(1*H*,3*H*)-dione) and its metabolites (calculated as hexazinone) in sugarcane molasses. Owing to a transmission error, a previous proposal and final rule stipulated a tolerance of 0.5 part per million (ppm), but the tolerance should have been stipulated as 5.0 ppm. EPA is proposing the food/feed additive regulations to establish the tolerance that E.I. du Pont de Nemours & Co., Inc., petitioned for under the Federal Food, Drug and Cosmetic Act

DATES: Comments, identified by the document control number [PP 4H5683/P616], must be received on or before July 28, 1995.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [FAP 4H5683/P616]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Product Manager (PM) 23, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-305-7830; e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 22, 1995 (60 FR 15113), EPA issued a proposed rule that gave notice that E.I. du Pont de Nemours & Co., Inc., had petitioned EPA under sections 408 and 409 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 346a and 348), to amend 40 CFR parts 180, 185, and 186 to establish tolerances with regional registration for combined residues of the herbicide hexazinone (3-cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4(1*H*,3*H*)-dione) and its metabolites (calculated as hexazinone) in or on the raw agricultural commodity sugarcane at 0.2 part per million (ppm), the food additive commodity sugarcane molasses at 0.5 ppm, and the feed additive commodity sugarcane molasses at 0.5 ppm. The tolerance and food/feed additive regulations were published as a final rule in the **Federal Register** of May 17, 1995 (60 FR 26361). Because of a tranmission error in the preparation of the prior **Federal Register** notices, EPA established tolerances of 0.5 ppm for hexazinone in 40 CFR 185.3575 and 186.3575, but the correct tolerance petitioned for by DuPont is 5.0 ppm. (The tolerance of 0.2 ppm for sugarcane in 40 CFR 180.396 is correct.)

EPA is proposing amendments to 40 CFR 185.3575 and 186.3575 to establish the 5.0 ppm tolerances petitioned for by DuPont. The data and other relevant material submitted with the petition (FAP 4H5683) and discussed in the proposed rule of March 22, 1995 (60 FR 15113) remain applicable to this proposal. EPA's prior risk assessment assumed the sugarcane molasses tolerance would be set at 5.0 ppm.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered capable of achieving its intended physical or technical effect. The toxicological data considered in support of the proposed tolerance are discussed in the proposal of March 22, 1995 (60 FR 15113).

Based on the above information considered by the Agency, the Agency believes that use of the pesticide in accordance with tolerances established by amending 40 CFR 185.3575 and 186.3575 would be safe. Therefore, it is proposed that the food/feed additive regulations be established as set forth below.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [FAP 6H5683/P616]. All written comments filed in response to this petition will be available in the Public Information Branch, at the address given above from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

A record has been established for this rulemaking under docket number [FAP 4H5683/P616] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 185 and 186

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Food additives, Feed additives, Reporting and recordkeeping requirements.

Dated: June 9, 1995.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR parts 185 and 186 be amended as follows:

PART 185—[AMENDED]

1. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

b. By revising § 185.3575, to read as follows:

§ 185.3575 Hexazinone; tolerances for residues.

A food additive tolerance with regional registration, as defined in § 180.1(n) and which excludes use of hexazinone on sugarcane in Florida, is established for combined residues of the herbicide hexazinone (3-cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4(1*H*,3*H*)-dione) and its metabolites (calculated as hexazinone) in or on the following food commodity:

Commodity	Parts per million
Sugarcane, molasses	5.0

[FR Doc. 95–15440 Filed 6–27–95; 8:45 am]
BILLING CODE 6560–50–F

PART 186—[AMENDED]

2. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. By revising § 186.3575, to read as follows:

§ 186.3575 Hexazinone; tolerances for residues.

A feed additive tolerance with regional registration, as defined in § 180.1(n) and which excludes use of hexazinone on sugarcane in Florida, is established for combined residues of the herbicide hexazinone (3-cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4(1*H*,3*H*)-dione) and its metabolites (calculated as hexazinone) in or on the following feed commodity:

Commodity	Parts per million
Sugarcane, molasses	5.0

[FR Doc. 95–15440 Filed 6–27–95; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–99, RM–8612]

Radio Broadcasting Services; Buffalo Gap, VA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by D.J. Broadcasting, Inc., licensee of Station WKDE(FM), Channel 288A, Altavista, Virginia, and Ridle Radio, Inc., licensee of Station WSKO(FM), Channel 288A, Buffalo Gap, Virginia, seeking the substitution of Channel 238A for Channel 288A at Buffalo Gap, Virginia, and modification of Station WSKO(FM)'s license to reflect the alternate Class A channel. Channel 238A can be allotted to Buffalo Gap in compliance with the Commission's minimum distance separation requirements and be used at the transmitter site specified in Station WKSO(FM)'s authorization. The coordinates for Channel 238A at Buffalo Gap are 38–10–55 and 79–13–34.

DATES: Comments must be filed on or before August 14, 1995, and reply comments on or before August 29, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: York David Anthony, Lambert & Anthony, Consulting Engineers, 2613 Craig Avenue, Concord, North Carolina, 28027–4107 (consulting engineer for petitioners).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–99, adopted June 15, 1995, and released June 23, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–15832 Filed 6–27–95; 8:45 am]
BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–100, RM–8635]

Radio Broadcasting Services; Blackstone and Dillwyn, VA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Denbar Communications, Inc., licensee of Station WBBC(FM), Channel 228A, Blackstone, Virginia, proposing the substitution of Channel 228C3 for Channel 228A at Blackstone and modification of Denbar's authorization to specify operation on the higher powered channel. In order to accommodate the upgrade at Blackstone, we also propose to substitute Channel 287A for vacant Channel 229A at Dillwyn, Virginia. Channel 228C3 and Channel 287A can be allotted to Blackstone and Dillwyn, respectively, in compliance with the Commission's minimum distance separation requirements. Channel 228C3 can be allotted to Blackstone at the licensed site of Station WBBC(FM). Channel 287A can be allotted to Dillwyn with a site restriction of 15.0 kilometers (9.3 miles) northwest. The coordinates for Channel 228C3 at Blackstone are 37–03–14 and 78–01–15. The coordinates for Channel 287A at Dillwyn are 37–35–18 and 78–37–01.

DATES: Comments must be filed on or before August 14, 1995, and reply comments on or before August 29, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: M. Scott Johnson and Lauren Drake, Esq., Gardner, Carton & Douglas, 1301 K Street, NW., Suite 900E, Washington, DC 20005 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–100, adopted June 7, 1995, and released June 23, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–15833 Filed 6–27–95; 8:45 am]
BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 94–137; RM–8532]

Radio Broadcasting Services; Romney, WV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial of.

SUMMARY: The Commission denies the petition of The West Virginia Schools for the Deaf and the Blind, proposing the substitution if Channel *281A for Channel 201A at Romney, West Virginia, its reservation for noncommercial educational use, and the modification of Station WJGF(FM)'s license accordingly. *See* 59 FR 62390, December 5, 1994. We find that the proposed substitution does not meet the Commission's criteria for the reservation of a commercial channel for noncommercial educational use. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 94–137, adopted June 15, 1995, and released June 23, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW.. Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–15834 Filed 6–27–95; 8:45 am]
BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–98; RM–8603]

Radio Broadcasting Services; Cheyenne and Saratoga, WY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition jointly filed by Rule Communications and KRAE, Inc., proposing the allotment of Channel 260A at Cheyenne, Wyoming, as the community's fifth local FM transmission service. To accommodate the allotment, petitioners propose the deletion of vacant Channel 260C at Saratoga, Wyoming, or in the alternative, the substitution of Channel 277C for Channel 260C at Saratoga. Petitioners also request, if the channel is allotted, that Rule Communications be allow to amend its pending application for Channel 285A at Cheyenne to reflect the new channel, retaining its cut-off protection. Channel 260A can be allotted to Cheyenne in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, provided Channel 260C at Saratoga is deleted. The coordinates for Channel 260A at Cheyenne are North Latitude 41–08–18 and West Longitude 104–48–48. *See* Supplementary Comments, *infra*.

DATES: Comments must be filed on or before August 14, 1995 and reply comments on or before August 29, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John F. Garziglia, Esq., Pepper & Corazzini, L.L.P., 1776 K Street, NW., Suite 200, Washington, DC 20006 (Counsel for Rule Communications); and Tom Bauman, President, KRAE, Inc., 2109 East Tenth Street, Cheyenne, Wyoming 82003 (Petitioner for KRAE, Inc.).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–98, adopted June 12, 1995, and released June 23, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Alternatively, Channel 277C can be allotted at Saratoga in compliance with the Commission's minimum distance separation requirements at petitioners' requested site with a site restriction of 9.3 kilometers (5.8 miles) northwest to avoid a short-spacing to Station KOAQ(FM), Channel 278C, Denver, Colorado. The coordinates for Channel 277C at Saratoga are North Latitude 41–30–12 and West Longitude 106–53–50.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–15835 Filed 6–27–95; 8:45 am]
BILLING CODE 6712–01–F

Notices

Federal Register

Vol. 60, No. 124

Wednesday, June 28, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

June 23, 1995.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) Who will be required or asked to report; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, D.C. 20250, (202) 690–2118.

New

- Food and Consumer Service
- WIC/Head Start Coordination Study
- State, Local or Tribal Government; Individuals or households; 297 responses; 123 hours
- Tamra Kinkner, (703) 305–2550
- Foreign Agricultural Service
- Supplier Credit Guarantee Program (7 CFR 1493, Subpart D)
- Business or other for-profit; 7,822 responses; 2,086 hours
- L.T. McElvain, (202) 720–6225

Revision

- Food Distribution Regulations and Forms
- FCS–7, 52, 53, 57, 152, 153, 155, 155A, 513, 513A, 516, 519A, 519B, 586A, 586B, 663
- Individuals or households; Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government; 1,099,490 responses; 1,173,797 hours
- Robert DeLorenzo, (703) 305–2661
- Federal Crop Insurance Corporation
- Nursery Frost, Freeze and Cold Damage Exclusion Option
- FCI–577
- Farms; Individuals or households; 3,000 responses; 1,500 hours
- Bonnie L. Hart, (202) 254–8393

Extension

- Agricultural Research Service
- Patent License Application
- Form AD–761
- Business or other for-profit; Individuals or households; Not-for-profit institutions; Farms; Federal Government; State, Local or Tribal Government; 150 responses; 450 hours
- D. June Blalock, (301) 504–5989
- Forest Service
- Collection and Analysis of Timber Purchasers' Cost and Sales Data
- Business or other for-profit; 60 responses; 100 hours
- Rex Baumback, (202) 205–0855

Larry K. Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 95–15857 Filed 6–27–95; 8:45 am]

BILLING CODE 3410–01–M

Agricultural Research Service

Intent to Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of Intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Union Camp Corporation of Wayne, New Jersey, an exclusive license for all uses in the field of adhesives to U.S. Patent Application Serial No. 08/233,173 filed April 26, 1994, "Non-Separable Starch-Oil Compositions." Notice of Availability was published in the **Federal Register** on October 24, 1994.

DATES: Comments must be received on or before August 27, 1995.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, Room 401, Building 005, BARC-West, Baltimore Boulevard, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Union Camp Corporation has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

R.M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 95–15860 Filed 6–27–95; 8:45 am]

BILLING CODE 3410–03–M

Animal and Plant Health Inspection Service

[Docket No. 95–043–1]

Availability of Environmental Assessments and Findings of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that two environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of the genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1237; (301) 734–7612. For copies of the environmental assessments and findings of no significant impact, write to Mr. Clayton Givens at the same address. Please refer to the permit numbers listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained or a notification acknowledged before a regulated article may be introduced into the United States. The regulations set forth the permit application requirements and the notification procedures for the importation, interstate movement, and release into the environment of a regulated article.

In the course of reviewing each permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits to allow the field testing of the following genetically engineered organisms:

Permit No.	Permittee	Date issued	Organisms	Field test location
95–031–01	Oregon State University	5–25–95	Poplar trees genetically engineered to express reproductive sterility and herbicide tolerance.	Oregon
95–065–01	University of Chicago	5–30–95	*Atropa belladonna* plants genetically engineered to express an altered alkaloid profile for insect resistance.	Illinois

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372; 60 FR 6000–6005, February 1, 1995).

Done in Washington, DC, this 21st day of June, 1995.

Alfred S. Elder,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–15861 Filed 6–27–95; 8:45 am]

BILLING CODE 3410–34–P

[Docket No. 95–045–1]

National Animal Damage Control Advisory Committee; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the National Animal Damage Control Advisory Committee.

PLACE, DATES, AND TIME OF MEETING: The meeting will be held in Ballrooms C and D of the Holiday Inn, 10000 Baltimore Boulevard, College Park, MD 20740, (301) 345–6700. The Committee will meet on September 27–29, 1995. Sessions will be held from 8 a.m. to 5 p.m. on September 27 and 28, and from 8 a.m. to noon on September 29.

FOR FURTHER INFORMATION CONTACT: Mr. William Clay, Director, Operational Support Staff, ADC, APHIS, Suite 6B02, 4700 River Road Unit 87, Riverdale, MD 20737–1234, (301) 734–7921.

SUPPLEMENTARY INFORMATION: The National Animal Damage Control Advisory Committee (Committee) advises the Secretary of Agriculture concerning policies, program issues, and research needed to conduct the Animal Damage Control (ADC) program. The Committee also serves as a public forum enabling those affected by the ADC program to have a voice in the program's policies.

Tentative topics for discussion at the upcoming meeting will include, among other things, research at the Denver Wildlife Research Center (DWRC), status of DWRC's move to Fort Collins, CO, compliance with the National Environmental Policy Act, and follow-up of previous Committee recommendations.

The meeting will be open to the public. However, due to time constraints, the public will not be allowed to participate in the Committee's discussions. Written statements concerning meeting topics may be filed with the Committee before or after the meeting by sending them to Mr. William Clay at the address listed under **FOR FURTHER INFORMATION CONTACT,** or may be filed at the meeting. Please refer to Docket No. 95–045–1 when submitting your statements.

This notice of meeting is given pursuant to section 10 of the Federal Advisory Committee Act (Pub. L. 92–463).

Done in Washington, DC, this 20th day of June 1995.

Dale F. Schwindaman,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–15763 Filed 6–27–95; 8:45 am]

BILLING CODE 3410–34–P

Forest Service

Western Washington Cascades Provincial Interagency Executive Committee (PIEC) Advisory Committee; Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Western Washington Cascades PIEC Advisory Committee will meet on July 18, 1995 at the Mount Baker-Snoqualmie National Forest Headquarters, 21905 64th Avenue West, in Mountlake Terrace, Washington. The meeting will begin at 9:00 a.m. and continue until 4:30 p.m. Agenda items to be covered include: (1) Discussion of projects subject to watershed analysis and opportunities for exemption of some projects from analysis; (2) discussion of criteria to be used to identify and select watersheds for analysis by the Mt. Baker-Snoqualmie National Forest in fiscal year 1996; (3) additional discussion of the recommendation that the Forest Service pursue the opportunity for watershed analysis in the Cascade watershed in fiscal year 1995; (4) other topics as appropriate; and (5) open public forum. All Western Washington Cascades Province Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Bob Dunblazier, Province Liaison, USDA, Mt. Baker-Snoqualmie National Forest, 21905 64th Avenue West, Mountlake Terrace, Washington 98043, 206–744–3270.

Dated: June 20, 1995.

Dennis E. Bschor,

Forest Supervisor.

[FR Doc. 95–15847 Filed 6–27–95; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Louisiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Louisiana Advisory Committee will be held on July 20, 1995, from 6 to 8 p.m., at the Holiday Inn Crowne Plaza, 333 Poydras Street, New Orleans, LA 70130. The purpose of the meeting is to provide orientation for new members and to plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TTD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 21, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–15771 Filed 6–27–95; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

Intent To Prepare an Environmental Impact Statement/Environmental Impact Report for the Disposal and Reuse of the Former Naval Shipyard Hunters Point, San Francisco, CA

Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508) and the California Environmental Quality Act (CEQA), the Department of the Navy in coordination with the City and County of San Francisco is preparing a joint Environmental Impact Statement (EIS)/Environmental Impact Report (EIR) for the disposal and potential reuse of the former Naval Shipyard, Hunters Point property and structures located in San Francisco, California. The Navy shall be the EIS lead agency and the City of San Francisco shall be the EIR lead agency. The Defense Base Closure and Realignment Act (Pub. L. 101–510) of 1990, as implemented by the 1993 base closure process, directed the U.S. Navy to close Naval Station Treasure Island and its off-station property, Hunters Point Annex (the former Naval Shipyard, Hunters Point). This EIS/EIR shall be prepared for the disposal and reuse of former Naval Shipyard Hunters Point. A separate EIS/EIR shall be prepared for the disposal and reuse of Naval Station, Treasure Island.

The former Naval Shipyard is within the jurisdiction of the City of San Francisco. It covers approximately 500 acres of the southeast San Francisco waterfront. The property is developed with industrial ship repair facilities and associated buildings, including limited support facilities (residential, recreational). The EIS/EIR will address disposal of the property and the potential impacts associated with potential reuses of the property.

The EIS/EIR will address the potential significant impacts to the environment that may result from the implementation of two reuse alternatives and a "no action" alternative. The Hunters Point Shipyard Reuse Plan (based on a Hunters Point Land Use Draft Plan dated March 1995 developed by the City and County of San Francisco Planning Department with the San Francisco Redevelopment Agency in conjunction with the Mayor's Citizens Advisory Committee) will constitute the preferred alternative. The preferred alternative has been endorsed by the San Francisco Planning & Redevelopment Commissions and the Citizens Advisory Committee. The preferred reuse alternative would provide approximately 6,500 jobs, 1,300 residential units, 1.1 million square feet of industrial use (such as ship repair, ship maintenance, trucking and courier services, equipment leasing, printing and publishing, motion picture production, etc.), 300,000 square feet of research & development use (such as data processing, telecommunication, etc.) 555,000 square feet of cultural/institutional use (such as large education and training facilities, museums, theaters, galleries, restaurants, etc.), 1.1 million square feet of mixed use (such as artist studios, live/work space, recording studios, research and development, hotel/conference facilities, retail, etc.), and 6.1 million square feet of open space. The second alternative would be a reduced development of approximately 5,000 jobs, 600 residential units, 900,000 square feet of industrial use, 250,000 square feet of research & development use, 425,000 square feet of cultural/institutional use, 850,000 square feet of mixed use, and 6.1 million square feet of open space. The "no action" alternative would have the former Naval Shipyard remain federal government property, in a continuing caretaker status.

Federal, state, and local agencies, and interested individuals are encouraged to participate in the scoping process for the EIS/EIR to determine the range of issues and alternatives to be addressed. A public scoping meeting to receive oral

and written comments will be held at 5:00 p.m. on Wednesday, July 12, 1995, at the Southeast Community Facility, 1800 Oakdale Avenue, San Francisco, California. In the interest of available time, each speaker will be asked to limit oral comments to five (5) minutes. Longer comments should be summarized at the public meeting or mailed to the address listed at the end of this announcement. All written comments should be submitted within 30 days of the published date of this notice to Ms. Mary Doyle (Code 185), Engineering Field Activity West, Naval Facilities Engineering Command, 900 Commodore Drive, San Bruno, California 94066–5006, telephone (415) 244–3024, fax (415) 244–3737. For information concerning the EIR, please contact Ms. Barbara Sahm, of the San Francisco Planning Department, Office of Environmental Review, telephone (514) 558–6381. For further information regarding the Hunters Point Shipyard Land Use Plan, please contact Mr. Byron Rhett, Hunters Point Project Manager of the San Francisco Redevelopment Agency, telephone (415) 749–2576 or Mr. Paul Lord, Hunters Point Planning Manager of the San Francisco Planning Department, telephone (415) 538–6311.

Dated: June 23, 1995.

L.R. McNees,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 95–15846 Filed 6–27–95; 8:45 am]

BILLING CODE 3810–FF–M

Naval Research Advisory Committee; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Naval Research Advisory Committee Panel on Reduced Manning will meet on June 27, 28, and 29, 1995. The meeting will be held at the Office of Naval Research, 800 North Quincy Street, Room 915, Arlington, Virginia, on June 27 and 28; and will be held aboard the USNS SAN DIEGO and the USS ESTOCIN at the Naval Shipyard, Norfolk, Virginia, on June 29, 1995. The first session will commence at 10:00 a.m. and terminate at 5:30 p.m. on June 27; the second session will commence at 8:00 a.m. and terminate at 5:00 p.m. on June 28; and the third session will commence at 8:00 a.m. and terminate at 2:30 p.m. on June 29, 1995. All sessions of the meeting will be open to the public.

The purpose of the meeting is to provide the Navy with an assessment on reduced manning concepts and associated technologies which will enable Navy ship manning reductions of 30% or more.

The meeting will include briefings and discussions relating to advanced training, manpower planning, ship systems automation, shipboard manning, ship coatings, and damage control.

This Notice is being published late because of administrative delays which constitute an exceptional circumstance, not allowing Notice to be published in the **Federal Register** at least 15 days before the date of the meeting.

For further information concerning this meeting contact: Ms. Diane Mason-Muir, Office of Naval Research, Ballston Center Tower One, 800 North Quincy Street, Arlington, VA 22217–5660, telephone number: (703) 696–4870.

Dated: June 23, 1995.

L.R. McNees,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 95–15931 Filed 6–27–95; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Federal Work-Study Programs

AGENCY: Department of Education.

ACTION: Notice of closing dates for institutions that participate in the Federal Work-Study (FWS) Program to submit the Campus-Based Reallocation Form (ED Form E40–4P).

SUMMARY: The Secretary gives notice to institutions of higher education of the deadlines for an institution that participated in the FWS Program for the 1994–95 award year (July 1, 1994 through June 30, 1995) to submit its Campus-Based Reallocation Form. An institution that participated in the FWS Program for the 1994–95 award year must complete and submit the Campus-Based Reallocation Form. The Campus-Based Reallocation Form collects FWS community service information for the 1994–95 award year. The information collected is used to determine whether an institution is eligible to receive supplemental FWS funds for the 1995–96 award year (July 1, 1995 through June 30, 1996) and whether an institution met the minimum 5 percent community service expenditure requirement for the 1994–95 award year.

DATES: *Closing Dates for Submitting a Campus-Based Reallocation Form.* If an institution that participated in the FWS Program for the 1994–95 award year wants to ensure that it will be considered for supplemental FWS funds for the 1995–96 award year, the institution must submit the Campus-Based Reallocation Form by July 28, 1995. If an institution that participated in the FWS Program for the 1994–95 award year does not want to be considered for supplemental FWS funds for the 1995–96 award year, the institution must submit the Campus-Based Reallocation Form by November 3, 1995. The institution must return the ED Form E40–4P containing an original signature. The Department will not accept a form submitted by facsimile transmission.

ADDRESSES: *Campus-Based Reallocation Form Delivered by Mail.* The Campus-Based Reallocation Form delivered by mail must be addressed to the U.S. Department of Education, SFAP, AFMS, Institutional Financial Management Division, (Room 4714, ROB–3), 600 Independence Avenue, SW., Washington, D.C. 20202–5458. An applicant must show proof of mailing consisting of one of the following: (1) A legibly dated U.S. Postal Service postmark; (2) a legible mail receipt with the date of the mailing stamped by the U.S. Postal Service; (3) a dated shipping label, invoice, or receipt from a commercial carrier; or (4) any other proof of mailing acceptable to the Secretary of Education.

If a Campus-Based Reallocation Form is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office. An institution is encouraged to use certified or at least first-class mail.

Campus-Based Reallocation Form Delivered by Hand. A Campus-Based Reallocation Form delivered by hand must be taken to Ms. Carolyn Short, Campus-Based Financial Operations Branch, Institutional Financial Management Division, Accounting and Financial Management Service, Student Financial Assistance Programs, U.S. Department of Education, Room 4714, Regional Office Building 3, 7th and D Streets, S.W., Washington, D.C. Hand-delivered reallocation forms will be accepted between 8:00 a.m. and 4:30 p.m. (Eastern time) daily, except Saturdays, Sundays, and Federal holidays. A Campus-Based Reallocation form that is delivered by hand will not be accepted after 4:30 p.m. on the appropriate closing date.

SUPPLEMENTARY INFORMATION: The Department will reallocate unexpended FWS Federal funds from the 1994–95 award year as supplemental allocations for the 1995–96 award year under the FWS program. Supplemental allocations will be issued this fall in accordance with the reallocation procedures contained in the Higher Education Act of 1965, as amended (HEA). Under section 442(e) of the HEA, unexpended FWS funds returned to the Secretary must be reallocated to eligible institutions that used at least 10 percent of the total FWS Federal funds granted to the institution to compensate students employed in community services. Because reallocated FWS funds will be distributed on the basis of fair share shortfall criteria, institutions must also have a fair share shortfall to receive these funds. Institutions must use all the reallocated FWS Federal funds to compensate students employed in community services. To ensure consideration for supplemental FWS Federal funds for the 1995–96 award year, an institution must submit the Campus-Based Reallocation Form by July 28, 1995.

The Department will determine if an institution participating in the FWS program met the statutory requirement of expending at least 5 percent of its total 1994–95 FWS Federal funds to pay students employed in community service jobs. Under section 443(b)(2)(A) of the HEA, for the 1994–95 award year and succeeding award years, an institution must use at least 5 percent of the total amount of FWS Federal funds granted to such institution to compensate students employed in community service, unless the Secretary approves a waiver. A participating FWS institution that does not want to be considered for supplemental FWS Federal funds for the 1995–96 award year must submit the Campus-Based Reallocation Form by November 3, 1995.

Applicable Regulations

The following regulations apply to the Federal Work-Study program:

(1) Student Assistance General Provisions, 34 CFR Part 668.

(2) Federal Work-Study Programs, 34 CFR Part 675.

(3) Institutional Eligibility Under the Higher Education Act of 1965, as amended, 34 CFR Part 600.

(4) New Restrictions on Lobbying, 34 CFR Part 82.

(5) Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 34 CFR Part 85.

(6) Drug-Free Schools and Campuses, 34 CFR Part 86.

FOR FURTHER INFORMATION CONTACT: For technical assistance concerning the Campus-Based Reallocation Form or other operational procedures of the campus-based programs, contact Ms. Carolyn Short, Campus-Based Financial Operations Branch, Institutional Financial Management Division, Accounting and Financial Management Service, Student Financial Assistance Programs, U.S. Department of Education, 600 Independence Avenue, S.W., (Room 4714, ROB–3), Washington, D.C. 20202–5458, Telephone (202) 708–9756. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

(Authority: 42 U.S.C. 2756(b))

(Catalog of Federal Domestic Assistance Number: 84.033 Federal Work-Study Program)

Dated: June 23, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–15845 Filed 6–28–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Industry Coupled Geothermal Exploration Drilling

AGENCY: Idaho Operations Office, Department of Energy.

ACTION: Solicitation for financial assistance: Industry Coupled Geothermal Exploration Drilling.

SUMMARY: The U.S. Department of Energy (DOE) Idaho Operations Office (ID) is seeking applications for cost-shared research and development of locating, drilling and testing of new geothermal exploration wells in the United States. A minimum 50 percent non-federal cost share for the project is required. This notice is the complete solicitation document DE-PS07–95ID13348.

DATES: The deadline for receipt of applications is 3:00 p.m. MST, August 11, 1995. Late applications will be handled in accordance with 10 CFR 600.13.

Prospective applicants should request an application package by July 7, 1995, (which includes necessary forms, assurances and certifications), by writing to the DOE Contract Specialist. Facsimile requests are acceptable. Questions regarding this solicitation should be submitted in writing to the DOE Contract Specialist no later than July 14, 1995. Questions and answers will be issued in writing as an amendment to this solicitation. Preproposal conferences may be available if a sufficient number of applicants request one. Preproposal conference requests should be made no later than July 14, 1995.

DOE anticipates that this solicitation will result in the award of one or more cooperative agreements. Substantial involvement by DOE is anticipated. All awards are expected to be made by September 30, 1995.

ADDRESSES: Applications shall be submitted to: Procurement Services Division; Attention: SOL DE-PS07–95ID13348 (Huggins/Bauer); U.S. DOE, Idaho Operations Office; PO Box 52280; Idaho Falls, Idaho 83405–2280.

FOR FURTHER INFORMATION CONTACT: Wendy L. Huggins, Contract Specialist, telephone (208) 526–2808, facsimile (208) 526–5548. The Contracting Officer is Brad Bauer, (208) 526–0090.

SUPPLEMENTARY INFORMATION:

Introduction

This solicitation is issued pursuant to Pubic Law 93–410, Geothermal Energy Research, Development, and Demonstration Act of 1974; and Section 2306 of the Energy Policy Act of 1992 (EPACT). The Catalog of Federal Domestic Assistance Number for this program is 81.087.

Energy efficiency and renewable energy projects entered into by both the public and private sectors are the cornerstone of DOE's Energy Partnerships for a Strong Economy. The purpose of various Energy Partnerships programs is to strengthen the economy and reduce greenhouse gas emissions. In support of this objective, DOE in collaboration with the geothermal industry and the electric utilities, has developed an initiative for furthering the commercialization of geothermal power. A primary strategy of the initiative is the acceleration of geothermal development through cost-shared projects.

This solicitation requests applications from industry for one or more collaborative efforts to support the development of new geothermal resources. These efforts are aimed towards the commercialization of this energy source, and an increase in the amount of electrical power generated from geothermal energy. The U.S. Department of Energy, Office of Utility Technologies, will provide at least $1,000,000 in funding for one or more projects.

Objectives

The objectives of this solicitation are to promote the commercialization of geothermal energy for the production of electrical power, and to reduce the emission of greenhouse gases in the United States. By accomplishing these objectives, it is anticipated that jobs will be created and that the nation's geothermal industry will be better positioned to compete and win in the global marketplace. The potential sale of the new power generated by the cost-shared project(s) and further growth of the geothermal industry will off-set the use of fossil fuels to generate electrical power, thereby reducing the nation's emissions of greenhouse gases.

Priorities

To promote the commercialization of geothermal energy, DOE's geothermal exploration initiative identified the exploration of previously undiscovered geothermal resources as specific areas for emphasis in the solicitation of applications for new geothermal power capacity.

DOE Funding and Cost-Sharing

The project(s) will be cost-shared, with participant(s) providing a minimum of 50 percent of the costs. Total DOE funding is currently $1,000,000. DOE will cost share 50 percent of well drilling and drill site data acquisition costs up to the amount available at the time of award.

It is intended that the federal funds should be used to help mitigate a portion of the initial risk associated with the development of geothermal energy. It is not intended that the project success be based upon a continuing subsidy of federal dollars. The funds for this solicitation shall be used for activities directly related to drilling new geothermal wells and characterizing the geothermal resource.

Qualified Applicants

For profit and not for profit organizations, state and local governments, Indian tribes and institutions of higher learning. Applications may include national laboratories, but only as lower tier participants with funding for their expected costs provided through their existing arrangements with the Government.

Preparation of Applications

Each application shall be submitted in two volumes. One original and eight copies of each application are to be submitted. It is recommended that the total number of pages for the two volumes not exceed 200 pages. Each Volume should be a "stand alone" document. Volumes one and two of the proposal should be organized with headings and sub headings that match those in the Evaluation Criteria section of the Statement of Work.

Applications submitted in response to this solicitation must provide detailed program management, personnel, drilling and drill hole data collection, site selection, environmental and budget information as further specified in this solicitation. The applications should contain the following information as completely and concisely as possible consistent with being complete.

1. Cover Page: The cover page is to include the signature, title, address, telephone number, and fax number of the applicant's authorized representative. The cover page also is to contain the copy number of the volume, with the original volume identified as "Original: Copy No. 1," and subsequent copies identified as "Copy No. 2," "Copy No. 3," etc.

2. Table of Contents: The application is to include a table of contents and page numbers corresponding to the elements outlined in these preparation guidelines.

3. Technical Summary: The application is to provide a one page summary that furnishes a concise and informative description of the proposed project. This summary should contain information which is releasable to the public.

4. Environmental: The application is to include relevant information on leasing, permitting, and/or other legal, environmental, and commercial issues which may effect resource testing and development.

5. Management Discussion:

a. Program and Management Plan, Organization, and Key Personnel. A program management plan is to be provided that includes a statement of work detailing the activities necessary to complete the project. This plan is to include a project schedule identifying major milestones associated with the proposed cost-shared portion of the project, and how these milestones are incorporated into the remaining overall project work scope.

The management plan is to include the name and roles of the applicant and each of the participants involved in the project, including the contractual arrangements between the applicant and participants. The capabilities and responsibilities of the applicant and each participant; experience, qualifications, expected time commitment, and responsibilities of key personnel; and any unique facilities and/or capabilities which would assure the success of the project are to be provided, along with information regarding the applicant's (or appropriate participant's) experience in geothermal exploration and drilling.

The application is to discuss the composition of the organization of the applicant and participants from the standpoint of being involved in, and/or representative of the geothermal industry.

b. Financial Information. The application is to provide a description of the applicant and all other participants in the project, including the type of business, history, size, and discussion of the ownership and/or controlling interest, along with a listing of current or recent (within the past two years) government contracts, grants, cooperative agreements, and/or other work by the applicant in this or related fields. This listing is to include the names of the sponsoring agency or firm, instrument number, amount of the instrument, subject area of the instrument, and the name and telephone number of the contracting officer, or contract specialist. DOE reserves the right to solicit from available sources relevant information concerning a proposer's past performance and may consider such information in its evaluation.

Financial data on the applicant and participants, identifying the source of cost sharing and the available financial resources, are to be provided. These data are to include annual financial statements (balance sheet and income and expense statement) for the past 3 years for the applicant, as well as for the participants providing cost sharing and/or performing work.

An estimated cost to perform the tasks as identified in the proposed statement of work for the overall project is to be provided along with the basis or rationale supporting these costs. It will be used to evaluate the reasonableness of the project cost, the probable cost to the government, as well as to provide an understanding of the magnitude of the effort required.

6. Cost Sharing: The requested amount of DOE funds to be cost-shared is to be identified, along with how these funds will be used and the year in which they will be utilized. The percentage level of the DOE funds to the total project cost is to be defined. The impact of DOE's cost share to the viability of the project is to be addressed.

The application is to provide an estimate of the monetary value of all labor and cash contributions to the project by year and by party (DOE, applicant, and participants). If cost

share is provided by someone other than the applicant, the application must include a statement by the providing entity which specifically commits the labor and cash cost share for use on the project. Note that non-federal "cost sharing" is limited to monetary and labor investment. Payment of actual costs in the final agreement will only include those costs that are allocable to the program and allowable as determined in accordance with the applicable cost principles prescribed in 10 CFR 600.127 for the respective participants and in the cost share ratios to be defined in the negotiations.

7. Budget: A budget period is an interval of time into which the project period is divided for funding and reporting purposes. Project period means the total approved period of time that DOE will provide support, contingent upon satisfactory progress and availability of funds. The project periods may be divided into one or more budget periods. Project periods are not expected to exceed two years. Each application must contain Standard Forms 424 and 424A. The budget summary page must be completed for each of the proposed budget periods. The application should contain full details of the costs regarding the labor, overhead, material, travel, subcontracts, consultants, and other support costs broken down by task and by year. Every cost item should be justified. Further details of the costs may be required if the application is selected for the award. Items of necessary equipment should be individually listed by description and estimated cost, inclusive of tax. The destination and purpose of budgeted travel and its relevance to the research should be specified. Anticipated consultant services should be justified and information furnished on each individual's expertise, primary organizational affiliation, daily compensation rate and number of days of expected service. Consultant's travel costs should be listed separately under travel in the budget.

8. Cost Application: In the event there are multiple projects proposed in a submittal, a separate cost application should be included for each project proposed for funding. The cost application should have sufficient detail that an independent evaluation of the labor, materials, equipment and other costs as well as verification of the proposed cost share can be performed.

Proprietary Application Information

Applications submitted in response to this solicitation may contain trade secrets and/or privileged or confidential commercial or financial information which the applicant does not want used or disclosed for any purpose other than evaluation of the application. The use and disclosure of such data may be restricted provided the applicant marks the cover sheet of the application with the following legend, specifying the pages of the application which are to be restricted in accordance with the conditions of the legend:

"The data contained in pages _____ of this application have been submitted in confidence and contain trade secrets or proprietary information, and such data shall be used or disclosed only for evaluation purposes, provided that if this applicant receives an award as a result of or in connection with the submission of this application, DOE shall have the right to use or disclose the data herein to the extent provided in the award. This restriction does not limit the government's right to use or disclose data obtained without restriction from any source, including the applicant."

Further, to protect such data, each page containing such data shall be specifically identified and marked, including each line or paragraph containing the data to be protected with a legend similar to the following:

"Use or disclosure of the data set forth above is subject to the restriction on the cover page of this application."

It should be noted, however, that data bearing the aforementioned legend may be subject to release under the provisions of the Freedom of Information Act (FOIA), if DOE or a court determines that the material so marked is not exempt under the FOIA. The Government assumes no liability for disclosure or use of unmarked data and may use or disclose such data for any purpose. Applicants are hereby notified that DOE intends to make all applications submitted available to non-Government personnel for the sole purpose of assisting the DOE in its evaluation of the applications. These individuals are required to protect the confidentiality of any specifically identified information obtained as a result of their participation in the evaluation.

Statement of Work

1.0 Introduction

DOE hopes to encourage the exploration for, and the development of, new geothermal resources within the United States by supporting research determining the nature and location of hydrothermal resources. By obtaining and providing this information publicly, DOE hopes to stimulate additional geothermal exploration. In order to attain these goals, DOE seeks to obtain data from exploration drilling in new geothermal areas.

2.0 Scope

DOE will pay the Awardee in this solicitation for the data package associated with locating, drilling and testing of new geothermal exploration wells in the United States. Total DOE funding is currently $1,000,000. DOE will cost share 50 percent, up to the amount available at the time of award, of the cost of drilling a well and acquiring the minimum required data package as listed below. Highest evaluation will be given to proposed wells that are truly exploration wells and are wells in locations that will add the most to the exploration knowledge base of geothermal resources, rather than step-out wells. The wells must be at least 3,000 feet in depth and have a bottom hole temperature of at least 250 degrees celsius. Wells may be either "slim holes" or production-diameter wells.

Data will be collected from the top of the well to the total depth of the well. In order to participate in this program the well must be drilled after July 1, 1995, and the data collected must be transferred to DOE within one year after award.

The Awardee will collect and provide DOE with the following minimum data package:

- Daily drilling reports, drilling and casing program, well survey plat.
- Drill cuttings from the entire drilled interval at a minimum of each 5 meters (15 feet) in four splits of 500 grams each and an accompanying lithologic drilling log, and daily drilling report. Cuttings should not be washed. If the well is cored, a split of any core recovered is to be delivered to DOE.
- Lost circulation amounts, times and depths.
- In the case of artesian flow, or if a pumped or otherwise stimulated flow test is performed, representative samples of formation water should be collected for chemical analysis. At least 2 liters of clear, filtered water should be collected in plastic bottles and sealed to prevent evaporative loss. A 2-liter sample of the drilling fluids in use prior to sampling should accompany each sample. Chemical analyses of the samples will be provided to DOE.
- Pressure and temperature logs of the hole from approximately 500 feet to total depth are required, prior to setting casing at all depths below 500 feet.

Proposers are encouraged to provide results from any initial well tests in the data set, including flowrate, pressures from surface metering instrumentation, and raw pressure transient data. Such tests are to be witnessed by an experienced geothermal engineer.

Additional data to be collected by the proposer (such as borehole televiewer logs, sonic logs, electrical logs, etc.) may also be offered to DOE. The identification of additional data to be collected and provided to DOE will be used to evaluate the value of the data package to DOE during the proposal evaluation.

If the Awardee(s) determines and justifies that the completed hole(s) are of no economic value, the Awardee(s) shall plug and abandon the hole(s) and restore the site(s) in accordance with governing regulations. If for any reason the hole is not plugged and abandoned within 6 months after well completion, the hole shall become the legal and financial responsibility solely of the Awardee(s).

The Awardee will identify all reports, plans, permits, licenses and other items required by governmental regulatory agencies for the performance of this work, the agency whose requirement the item fulfills, and the actual or projected submittal and agency approval dates. Any costs incurred prior to award will not be considered project costs, even though the effort was in fulfillment of this task.

The Proposer shall confirm that all financial arrangements for implementation of the project and provide DOE with evidence that project financing is sufficient to complete the project prior to performance of any work under this Agreement. Details may be negotiated.

Qualification Criteria

To qualify for consideration under this financial assistance, the proposer must meet the following qualification criteria. Prior to the detailed evaluation, each proposal will undergo a preliminary review to assure the qualification criteria are satisfied. Proposals which do not meet the qualification criteria will not receive a comprehensive evaluation and will be eliminated from further consideration. Proposers of eliminated proposals will be notified in writing.

a. The proposed site must be within the United States.

b. The data must come from a well at least 3,000 feet deep.

c. The proposer must agree to minimum data collection requirements (see Statement of Work, Part 2.0).

d. The well must be drilled after July 1, 1995.

e. The proposer must provide assurance that the well will be drilled and data submitted to DOE within two years after award.

f. The proposer must provide documentation in the form of a lease, agreement or ownership providing a legal right of access to drill the hole at the proposed location.

g. The proposer must demonstrate the ability to successfully meet National Environmental Policy Act and other local, State, and Federal requirements for similar projects.

Evaluation Criteria

Proposals that meet the Qualification Criteria will undergo a comprehensive evaluation in accordance with the Evaluation Criteria listed below and considering any relevant public information. The Evaluation Criteria parallel the information required in Volume I and Volume II of the submitted proposals as outlined below. This information forms the basis for evaluation. The criteria are listed in descending order of importance within each volume.

Criterion 1 comprises half the weight while Criterion 2 and 4 are equal in weight and twice as much as Criterion 3.

Volume I—Evaluotion Criteria

Criterion 1: Resource Potential—The potential of the location to add to the inventory of developable geothermal sites will be evaluated based on submitted exploration data, technical analysis and rationale provided in the proposal considering the following factors:

a. Locations in previously undrilled areas will be given priority over locations considered to be step-outs or in-fill locations. The greatest weight will be given to locations that have a high potential of being a new "field discovery."

b. The potential that the well and its proposed location will provide data that will expand or enhance the present knowledge of the resource potential and exploration methods within the United States.

c. The potential that the proposed depth of the hole will provide for evaluation of a deep subsurface geothermal system.

d. The amount of surface and subsurface data contained in the proposal that is of high quality and relevant to evaluating geothermal potential exploration methods, including geophysical, hydrological, and geological reconnaissance data and results.

e. The quantity and quality of previously unreleased data contained in the proposal that can be made available to the public domain.

Criterion 2: Technical approach to the project—

a. The quality, type and quantity of data to be gathered during the project in addition to the minimum data requirements of the Statement of Work, Part 2.0.

b. The content, adequacy and completeness of data collection plans.

c. The suitability of planned hole completion and maintenance for the data collection proposed, plugging and abandonment and site maintenance (including drilling fluid disposal, health, safety and environmental considerations) and restoration plans.

d. The lack of any restrictions on release of data collected during and subsequent to the drilling of the well and included in the proposed data package.

e. The lack of restriction on release and publishing by DOE of interpretation or integration of the data collected.

Criterion 3: Business approach to the project—

a. Qualifications of the proposer, subcontractors and key personnel including the extent of experience in geothermal well drilling, data collection, business related area and capabilities to carry out the data collection proposed.

b. The completeness and adequacy of the proposed management plan, including institutional concerns, proposed solutions and impact on the project.

Volume II—Evaluation Criteria

Criterion 4: Financial Considerations—

a. Cost-share plan—The plan for cost-sharing will be evaluated on the percentage in excess of 50 percent of the drilling and data acquisition costs to be borne by the proposer. More consideration may be given to projects with a greater-than-50 percent cost share. DOE cost share is limited to well drilling and drill site data acquisition activities. The applicant must cost share those portions of the project that are excluded from DOE cost share. The application will be evaluated on the nature and amount of cost-sharing. The applicant must demonstrate how it will meet its cost share. This demonstration will occur through the adequacy (e.g., completeness, relevancy, substantiation) of the cost portion of the application. Cash and cash-equivalent items (e.g., direct labor) are required.

b. Data package—The plan will be evaluated on the data to be collected and reported relative to the total DOE cost for the project.

c. Project financial plan—The project financial plan will be evaluated for the ability of the proposer to commit resources to finance the non-DOE share of the entire project and the adequacy of the proposer's financial condition.

Project cost/budget summary—This information should be provided for the proposed project. Reasonableness of cost to the government will be considered. The project cost/budget summary will be considered as an indication of the offeror's understanding of the job.

Evaluation of Applications

Applications submitted will be subject to a preliminary review by DOE to check for completeness and accuracy. Applications that are clearly non-responsive or do not provide evidence of cost-sharing agreements, will be rejected.

DOE reserves the right to support all, none, or certain parts of the applications submitted in response to this solicitation.

The information presented in the each application will be evaluated to determine the degree to which the stated objectives and priorities of this solicitation are met. The following is a summary listing of the criteria which will be considered in the evaluation and relative importance in the ranking process: resource potential, technical approach, cost- sharing, and business approach.

Issues relating to leasing, permitting, and related activities for the project development will be considered along with the environmental restrictions. The environmental evaluation will consider the impact of the proposed activities at the project site.

The proposed cost of the project will not be point scored. Applicants are advised, however, that notwithstanding the lower relative importance of the cost considerations, the evaluated cost may be the basis for selection. In making the selection decision, the apparent advantages of individual technical and business applications will be weighed against the probable cost to the government to determine whether the technical and business approaches (excluding cost considerations) are worth the probable cost differences.

Merit Reviews

All applications will be evaluated under the procedure for "Objective Merit Review of Discretionary Financial Assistance Applications", **Federal Register**, May 31, 1990, Vol. 55, No. 105 (copy provided upon request), and the criteria and programmatic considerations set forth in this solicitation. In conducting this evaluation, the Government may utilize assistance and advice from non-Government personnel. Applicants are therefore requested to state on the cover sheet of the applications if they do not consent to an evaluation by such non-Government personnel. The applicants are further advised that DOE may be unable to give full consideration to an application submitted without such consent.

General Conditions and Notice to Applicants

a. Applicants: All applicants will be notified in writing of the action taken on their applications in approximately 90 days after the closing date for this solicitation, provided no follow-up clarifications are needed. Status of any application during the evaluation and selection process will not be discussed with the applicants. Unsuccessful applications will not be returned.

b. False Statements: Applications must set forth full, accurate, and complete information as required by this solicitation. The penalty for making false statements is prescribed in 18 U.S.C. 1001.

c. Application Clarification: DOE reserves the right to require applications to be clarified or supplemented to the extent considered necessary either through additional written submissions or oral presentations.

d. Amendments: All amendments to this solicitation will be mailed to recipients who submit a written request for the DOE application package.

e. Applicant's Past Performance: DOE reserves the right to solicit from available sources relevant information concerning an applicant's past performance and may consider such information in its evaluation.

f. Commitment of Public Funds: The Contracting Officer is the only individual who can legally commit the Government to the expenditure of public funds in connection with the proposed award. Any other commitment, either explicit or implied, is invalid.

g. Effective Period of Application: All applications should remain in effect for at least 180 days from the closing date.

h. Availability of Funds: The actual amount of funds to be obligated will be subject to availability of funds appropriated by Congress.

i. Loans under DOE Minority Economic Impact (MEI) Loan Program: Applicants are advised that loans under the DOE Minority Economic Impact (MEI) Loan Program are not available to finance the cost of preparing an application pursuant to this solicitation.

j. Assurances and Certifications: DOE requires the submission of preaward assurances of compliance and certifications which are mandated by law. The assurance and certification forms will be provided in the application package.

k. Questions and Answers: Questions regarding this solicitation should be submitted in writing to the DOE Contract Specialist no later than July 14, 1995. Any answers will be issued in writing.

l. Preaward Costs: The government is not liable for any costs incurred in preparation of an application. Awardees may incur preaward costs up to ninety (90) days prior to the effective date of award. Should the awardee take such action, it is done so at the awardee's risk and does not impose any obligation on the DOE to reimburse such costs if an award is not made.

m. Patents, Data, and Copyrights: Applicants are advised that patents, data, and copyrights will be treated in accordance with 10 CFR 600.33.

n. Environmental Impact: An applicant environmental checklist will be provided in the DOE application package. Award will not be made until the environmental checklist is completed. Review of the environmental checklist and the application will be conducted by DOE as required by 10 CFR 1021.216.

o. EPACT: Applicants shall be required to comply with Section 2306 of the Energy Policy Act of 1992 (EPACT) [42 U.S.C. 13525], as applicable.

p. Buy American Act: Any organization receiving an award under this solicitation must comply with the Buy American Provisions of Section 307 of Public Law 103–332, Department of the Interior and Related Agencies Appropriations Act of 1995.

Dated: June 16, 1995.

R.J. Hoyles,

Director, Procurement Services Division.

[FR Doc. 95–15888 Filed 6–27–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket Nos. ST95–2316–000 et al.]

Amoco Gas Co.; Notice of Self-Implementing Transactions

June 22, 1995.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations, Sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA) and Section 7 of the NGA and Section 5 of the Outer Continental Shelf Lands Act.[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction.

A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to Section 284.102 of the Commission's Regulations and Section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to Section 284.122 of the Commission's Regulations and Section 311(a)(2) of the NGPA.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to Section 284.142 of the Commission's Regulations and Section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to Section 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to Section 284.163 of the Commission's Regulations and Section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to Section 284.222 and a blanket certificate issued under Section 284.221 of the Commission's Regulations.

A "G–I" indicates transportation by an intrastate pipeline company pursuant to a blanket certificate issued under Section 284.227 of the Commission's Regulations.

A "G–S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to Section 284.223 and a blanket certificate issued under Section 284.221 of the Commission's Regulations.

A "G–LT" or "G–LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under Section 284.224 of the Commission's Regulations.

A "G–HT" or "G–HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under Section 284.224 of the Commission's Regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to Section 284.303 of the Commission's Regulations.

A "K–S" indicates transportation of natural gas on the Outer Continental Shelf by an intrastate pipeline on behalf of shippers other than interstate pipelines pursuant to Section 284.303 of the Commission's Regulations.

Linwood A. Watson, Jr.,

Acting Secretary.

Docket No.	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity	Aff. Y/A/N	Rate Sch.	Date commenced	Projected termination date
ST95–2316	Amoco Gas Co	Western Gas Resources, Inc.	05–01–95	G–HT	40,000	N	I	02–15–95	02–01–96
ST95–2317	Natural Gas P/L Co. of America.	NGC Transportation, Inc.	05–01–95	G–S	50,000	N	F	04–01–94	10–31–95
ST95–2318	Williston Basin Int. P/L Co.	Interenergy Resources Corp.	05–01–95	G–S	70	N	F	04–01–95	03–31–96
ST95–2319	Williston Basin Int. P/L Co.	Rainbow Gas Co	05–01–95	G–S	125,000	A	I	04–01–95	03–31–97
ST95–2320	Williston Basin Int. P/L Co.	Interenergy Resources Corp.	05–01–95	G–S	150,000	A	I	04–01–95	03–31–97
ST95–2321	Williston Basin Int. P/L Co.	KN Gas Supply Services, Inc.	05–01–95	G–S	20,000	A	I	04–01–95	03–31–97
ST95–2322	Great Lakes Gas Transmission L.P.	Kimball/Trippe Energy Associates.	05–01–95	G–S	12,000	N	F	04–01–95	11–30–09
ST95–2323	Great Lakes Gas Transmission L.P.	Westcoast Gas Services (America).	05–01–95	G–S	2,025	N	F	04–01–95	10–31–02
ST95–2324	Great Lakes Gas Transmission L.P.	Michigan Consolidated Gas Co.	05–01–95	G–S	300,000	N	F	04–01–95	10–31–95
ST95–2325	Great Lakes Gas Transmission L.P.	ANR Pipeline Co	05–01–95	B/G	49,918	Y	F	04–01–95	03–31–13
ST95–2326	Mississippi River Trans. Corp.	National Steel Corp	05–01–95	G–S	4,600	N	F	04–01–95	06–30–95
ST95–2327	Mississippi River Trans. Corp.	Chevron U.S.A., Inc	05–01–95	G–S	15,000	Y	I	04–01–95	Indef.
ST95–2328	Mississippi River Trans. Corp.	Fina Natural Gas Co.	05–01–95	G–S	20,000	Y	I	04–11–95	Indef.
ST95–2329	Columbia Gas Transmission Corp.	Amoco Energy Trading Corp.	05–01–95	G–S	150,000	N	I	04–01–95	Indef.
ST95–2330	Transcontinental Gas P/L Corp.	Baltimore Gas & Electric Co.	05–01–95	G–S	3,750	N	F	04–01–95	02–02–98
ST95–2331	Transcontinental Gas P/L Corp.	NUI Corp	05–01–95	G–S	2,500	A	F	04–04–95	04–01–99

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.

Docket No.	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity	Aff. Y/A/N	Rate Sch.	Date commenced	Projected termination date
ST95–2332	Transcontinental Gas P/L Corp.	Exxon Corp	05–01–95	G–S	75,000	N	F	04–01–95	11–01–00
ST95–2333	Transcontinental Gas P/L Corp.	NUI Corp	05–01–95	G–S	1,393	A	F	04–04–95	02–02–98
ST95–2334	Transcontinental Gas P/L Corp.	Exxon Corp	05–01–95	G–S	50,000	N	F	04–01–95	11–01–98
ST95–2335	Transcontinental Gas P/L Corp.	New Jersey Natural Gas Co.	05–01–95	G–S	3,798	N	F	04–01–95	02–02–98
ST95–2336	Transcontinental Gas P/L Corp.	Noble Gas Marketing, Inc.	05–01–95	G–S	50,000	N	I	04–01–95	Indef.
ST95–2337	Florida Gas Transmission Co.	Pennunion Energy Services, L.L.C.	05–01–95	G–S	100,000	N	I	04–01–95	Indef.
ST95–2338	Florida Gas Transmission Co.	Aquila Energy Marketing Corp.	05–01–95	G–S	50,000	N	I	04–01–95	Indef.
ST95–2339	Florida Gas Transmission Co.	Prior Intrastate Corp	05–01–95	G–S	10,000	N	I	04–01–95	Indef.
ST95–2340	Algonquin Gas Tranmission Co.	Seitel Gas & Energy Corp.	05–01–95	G–S	4,000	N	F	04–03–95	10–31–95
ST95–2341	Algonquin Gas Tranmission Co.	Conslidated Edison Co. of New York.	05–01–95	B	9,261	N	F	04–01–95	Indef.
ST95–2342	Algonquin Gas Tranmission Co.	Associated Gas Services, Inc.	05–01–95	G–S	1,000	N	F	04–01–95	04–30–95
ST95–2343	Panhandle Eastern Pipe Line Co.	KN Gas Marketing, Inc.	05–01–95	G–S	50,000	N	I	02–11–95	08–31–95
ST95–2344	Transcontinental Gas P/L Corp.	Sara Lee Hosiery, Inc.	05–01–95	G–S	1,250	A	I	04–13–95	Indef.
ST95–2345	Transcontinental Gas P/L Corp.	Eastern Energy Marketing, Inc.	05–01–95	G–S	500,000	N	I	04–05–95	Indef.
ST95–2346	Transcontinental Gas P/L Corp.	Washington Gas Light Co.	05–01–95	G–S	6,250	N	F	04–01–95	02–02–98
ST95–2347	Transcontinental Gas P/L Corp.	Frito Lay, Inc	05–01–95	G–S	1,700	A	I	04–13–95	Indef.
ST95–2348	Transcontinental Gas P/L Corp.	Williams Energy Systems Co.	05–01–95	G–S	500,000	Y	I	04–01–95	Indef.
ST95–2349	Transcontinental Gas P/L Corp.	Pennsylvania Gas & Water Co.	05–01–95	G–S	23,900	N	F	04–01–95	04–01–99
ST95–2350	Enogex Inc	ANR Pipeline Co., et al.	05–01–95	C	25,000	N	I	04–01–95	Indef.
ST95–2351	Tejas Gas Pipeline Co.	Texas Eastern Pipeline Co.	05–01–95	C	65,000	N	I	03–01–95	Indef.
ST95–2352	Enogex Inc	ANR Pipeline Co., et al.	05–01–95	C	10,000	N	I	04–13–95	Indef.
ST95–2353	Tennessee Gas Pipeline Co.	Seagull Marketing Services, Inc.	05–03–95	G–S	4	N	F	04–12–95	Indef.
ST95–2354	Tennessee Gas Pipeline Co.	Pennunion Energy Services, L.L.C.	05–03–95	G–S	10,000	N	I	04–06–95	Indef.
ST95–2355	Northwest Pipeline Corp.	Meridian Oil Trading Inc.	05–04–95	G–S	40,000	N	F	04–05–95	Indef.
ST95–2356	National Fuel Gas Supply Corp.	American Energy Management, Inc.	05–04–95	B	1,000	N	I	05–01–95	05–01–00
ST95–2357	Viking Gas Transmission Co.	Coastal Gas Marketing Co.	05–04–95	G–S	58,152	N	F	03–04–95	Indef.
ST95–2358	Viking Gas Transmission Co.	Interlink	05–04–95	G–S	50,000	N	I	04–01–95	Indef.
ST95–2359	Viking Gas Transmission Co.	Poco Petroleums Ltd.	05–04–95	G–S	5,000	N	F	05–01–95	Indef.
ST95–2360	Viking Gas Transmission Co.	Conagra Energy Services Co.	05–04–95	G–S	900	N	F	04–01–95	Indef.
ST95–2361	Viking Gas Transmission Co.	Northern States Power Co.	05–04–95	G–S	9,063	Y	F	05–01–95	Indef.
ST95–2362	Colorado Interstate Gas Co.	Conoco, Inc	05–05–95	G–S	5,000	N	F	05–01–95	08–31–95
ST95–2363	Colorado Interstate Gas Co.	Western Gas Resources, Inc.	05–05–95	G–S	10,000	N	F	05–01–95	08–31–95
ST95–2364	Colorado Interstate Gas Co.	Amoco Energy Trading Corp.	05–05–95	G–S	10,000	N	F	05–01–95	09–30–95
ST95–2365	Colorado Interstate Gas Co.	Aquila Energy Marketing Corp.	05–05–95	G–S	10,000	N	F	05–01–95	08–31–95
ST95–2366	Colorado Interstate Gas Co.	Walden Capital Leasing Corp.	05–05–95	G–S	700	N	F	04–27–95	02–28–00

Docket No.	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity	Aff. Y/A/N	Rate Sch.	Date commenced	Projected termination date
ST95–2367	Panhandle Eastern Pipe Line Co.	Citizens Gas & Coke Utility.	05–08–95	B	25,000	N	I	04–06–95	04–30–98
ST95–2368	Panhandle Eastern Pipe Line Co.	Amgas, Inc	05–08–95	G–S	7,000	N	F	04–01–95	03–31–96
ST95–2369	Alabama-Tennessee Natural Gas Co.	Minnesota Mining & Manufacturing Co.	05–08–95	G–S	4,500	N	I	05–01–95	Indef.
ST95–2370	Sea Robin Pipeline Co.	Enron Gas Marketing, Inc.	05–08–95	G–S	10,000	Y	F	05–01–95	12–31–95
ST95–2371	Sea Robin Pipeline Co.	Wickford Energy Marketing, L.C.	05–08–95	G–S	1,600	Y	I	05–01–95	Indef.
ST95–2372	South Georgia Natural Gas Co.	Occidental Chemical Corp.	05–08–95	G–S	5,400	Y	F	05–01–95	09–30–95
ST95–2373	Southern Natural Gas Co.	Texican Natural Gas Co.	05–08–95	G–S	7,500	N	F	05–01–95	04–30–96
ST95–2374	Southern Natural Gas Co.	City of Quitman	05–08–95	G–S	300	N	F	05–01–95	10–31–96
ST95–2375	National Fuel Gas Supply Corp.	UGI Utilities, Inc	05–09–95	G–S	12,000	N	F	05–01–95	10–31–95
ST95–2376	Transok, Inc	ANR Pipeline Co., et al.	05–09–95	C	10,000	N	I	04–12–95	Indef.
ST95–2377	Columbia Gulf Transmission Co.	GGR Energy	05–09–95	G–S	2,500	N	F	11–01–94	Indef.
ST95–2378	Columbia Gulf Transmission Co.	GGR Energy	05–09–95	G–S	2,500	N	F	11–01–94	Indef.
ST95–2379	Columbia Gulf Transmission Co.	GGR Energy	05–09–95	G–S	5,000	N	F	11–01–94	04–30–95
ST95–2380	Columbia Gulf Transmission Co.	Petron Oil Corp	05–09–95	G–S	30,000	N	I	05–01–95	Indef.
ST95–2381	Columbia Gulf Transmission Co.	Torch Gas LC	05–09–95	G–S	10,000	N	F	11–01–94	Indef.
ST95–2382	Columbia Gas Transmission Corp.	Enron Access Corp	05–09–95	G–S	50,000	N	F	04–01–95	10–31–95
ST95–2383	Columbia Gas Transmission Corp.	Cenergy, Inc	05–09–95	G–S	10,000	N	F	04–01–95	05–31–95
ST95–2384	Columbia Gas Transmission Corp.	United States Gypsum Co.	05–09–95	G–S	2,100	N	F	04–01–95	10–31–95
ST95–2385	Columbia Gas Transmission Corp.	ANR Pipeline Co	05–09–95	G–S	100,000	N	I	04–01–95	Indef.
ST95–2386	Midwestern Gas Transmission Co.	Mobil Natural Gas, Inc.	05–10–95	G–S	5,000	N	F	05–01–95	Indef.
ST95–2387	Tennessee Gas Pipeline Co.	Noble Gas Marketing, Inc.	05–10–95	G–S	4	N	F	05–01–95	Indef.
ST95–2388	National Fuel Gas Supply Corp.	Progas U.S.A., Inc	05–10–95	G–S	12,000	N	I	04–01–95	04–01–15
ST95–2389	Algonquin Gas Transmission Co.	Boston Edison Co	05–10–95	B	100	N	F	04–10–95	04–30–95
ST95–2390	Algonquin Gas Transmission Co.	Chesapeake Energy Corp.	05–10–95	G–S	5,500	N	F	04–10–95	04–14–95
ST95–2391	Transtexas Gas Corp.	Florida Gas Transmission Co., et al.	05–10–95	C	30,000	N	I	12–07–94	Indef.
ST95–2392	Transtexas Gas Corp.	Florida Gas Transmission Co., et al.	05–10–95	C	30,000	N	I	01–01–94	Indef.
ST95–2393	Transtexas Gas Corp.	Florida Gas Transmission Co., et al.	05–10–95	C	30,000	N	I	12–09–94	Indef.
ST95–2394	Transtexas Gas Corp.	Florida Gas Transmission Co., et al.	05–10–95	C	30,000	N	I	12–23–94	Indef.
ST95–2395	Transtexas Gas Corp.	Florida Gas Transmission Co., et al.	05–10–95	C	30,000	N	I	12–01–94	Indef.
ST95–2396	Transtexas Gas Corp.	Florida Gas Transmission Co., et al.	05–10–95	C	30,000	N	I	02–15–94	Indef.
ST95–2397	Transtexas Gas Corp.	Florida Gas Transmission Co., et al.	05–10–95	C	30,000	N	I	09–02–94	Indef.
ST95–2398	Williston Basin Int. P/L Co.	Conoco, Inc	05–11–95	G–S	50,000	A	I	04–11–95	03–31–97
ST95–2399	Columbia Gas Transmission Corp.	Fuel Services Group	05–12–95	G–S	1,000	N	I	05–01–95	Indef.

Docket No.	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity	Aff. Y/A/N	Rate Sch.	Date commenced	Projected termination date
ST95–2400	Columbia Gas Transmission Corp.	Panda-Brandywine LP.	05–12–95	G–S	24,240	N	I	05–01–95	Indef.
ST95–2401	Trunkline Gas Co ...	Appalachian Gas Sales, Inc.	05–12–95	G–S	30,000	N	I	05–01–95	Indef.
ST95–2402	Williston Basin Int. P/L Co.	Prairielands Energy Marketing, Inc.	05–12–95	G–S	100,000	A	I	04–14–95	03–31–97
ST95–2403	Northern Border Pipeline Co.	Associated Gas Services, Inc.	05–12–95	G–S	50,000	N	I	04–23–95	02–28–97
ST95–2404	Columbia Gas Transmission Corp.	NGC Transportation, Inc.	05–12–95	G–S	10,000	N	F	05–01–95	12–31–95
ST95–2405	Columbia Gas Transmission Corp.	Coenergy Trading Co.	05–12–95	G–S	N/A	N	I	05–01–95	Indef.
ST95–2406	Columbia Gas Transmission Corp.	Anadarko Trading Co.	05–12–95	G–S	N/A	N	I	05–01–95	Indef.
ST95–2407	ANR Pipeline Co	NGC Transportation, Inc.	05–12–95	G–S	80,000	N	F	04–01–95	10–31–95
ST95–2408	ANR Pipeline Co	North Shore Gas Co	05–12–95	G–S	36,661	N	F	04–01–95	03–31–00
ST95–2409	ANR Pipeline Co	Peoples Gas, Light & Coke Co.	05–12–95	G–S	21,997	N	F	04–01–95	03–31–00
ST95–2410	ANR Pipeline Co	NGC Transportation, Inc.	05–12–95	G–S	3,000	N	F	04–01–95	10–31–95
ST95–2411	ANR Pipeline Co	City of Gallatin	05–12–95	G–S	223	N	F	04–28–95	09–01–95
ST95–2412	ANR Pipeline Co	CMS Gas Marketing Co.	05–12–95	G–S	2,200	N	F	04–01–95	10–31–96
ST95–2413	ANR Pipeline Co	Pennzoil Exploration & Prod. Co.	05–12–95	G–S	N/A	N	I	04–01–95	Indef.
ST95–2414	ANR Pipeline Co	H&N Gas Ltd	05–12–95	G–S	N/A	N	I	04–02–95	Indef.
ST95–2415	ANR Pipeline Co	Aurora Natural Co ..	05–12–95	G–S	N/A	N	I	04–01–95	Indef.
ST95–2416	ANR Pipeline Co	Columbia Gas Development Co.	05–12–95	G–S	N/A	N	I	04–01–95	Indef.
ST95–2417	ANR Pipeline Co	LIG Chemical Co	05–12–95	G–S	N/A	N	I	04–01–95	Indef.
ST95–2418	ANR Pipeline Co	Pennunion Energy Services.	05–12–95	G–S	N/A	N	I	04–01–95	Indef.
ST95–2419	ANR Pipeline Co	Wickford Energy Marketing Co.	05–12–95	G–S	N/A	N	I	04–01–95	Indef.
ST95–2420	ANR Pipeline Co	KCS Energy Co	05–12–95	G–S	N/A	N	F	04–01–95	Indef.
ST95–2421	ANR Pipeline Co	Pennunion Energy Services.	05–12–95	G–S	N/A	N	F	04–19–95	Indef.
ST95–2422	ANR Pipeline Co	NGC Transportation, Inc.	05–12–95	G–S	67,000	N	F	04–01–95	Indef.
ST95–2423	ANR Pipeline Co	Baltimore Gas & Electric Co.	05–12–95	G–S	12,336	N	F	04–01–95	Indef.
ST95–2424	Columbia Gulf Transmission Co.	Chevron USA, Inc ..	05–15–95	G–S	50,000	N	F	12–01–93	12–31–95
ST95–2425	NORAM Gas Transmission Co.	Conagra Boiler Co ..	05–15–95	G–S	1,790	N	F	04–01–95	Indef.
ST95–2426	Texas Eastern Transmission Corp.	New Jersey Natural Gas Co.	05–15–95	G–S	12,000	N	F	05–01–95	Indef.
ST95–2427	Panhandle Eastern Pipe Line Co.	CONOCO, Inc	05–15–95	G–S	100,000	N	I	05–01–95	04–30–97
ST95–2428	Panhandle Eastern Pipe Line Co.	Eastex Hydrocarbons, Inc.	05–15–95	G–S	100,000	N	I	05–01–95	10–10–98
ST95–2429	Panhandle Eastern Pipe Line Co.	Koch Gas Services Co.	05–15–95	G–S	50,000	N	I	05–01–95	02–28–97
ST95–2430	Panhandle Eastern Pipe Line Co.	Oxy USA Inc	05–15–95	G–S	10,000	N	F	05–01–95	05–31–95
ST95–2431	Panhandle Eastern Pipe Line Co.	BP Oil Co	05–15–95	G–S	1,500	N	F	05–01–95	10–31–95
ST95–2432	Panhandle Eastern Pipe Line Co.	Westcoast Gas Services (U.S.A.).	05–15–95	G–S	10,000	N	F	05–01–95	10–31–95
ST95–2433	Panhandle Eastern Pipe Line Co.	Anadarko Petroleum Corp.	05–15–95	G–S	30,000	N	F	05–01–95	05–31–95
ST95–2434	Questar Pipeline Co	Conoco, Inc	05–15–95	G–S	3,500	N	F	05–01–95	05–31–95
ST95–2435	DOW Pipeline Co ...	Channel Gas Marketing Co.	05–15–95	G–I	5,000	N	I	02–01–95	01–01–97

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ST95–2436	Lone Star Gas Co ..	El Paso Natural Gas Co., Et Al.	05–15–95	C	30,000	N	I	04–22–95	Indef.
ST95–2437	Transok, Inc	ANR Pipeline Co., Et Al,.	05–15–95	C	20,000	N	I	05–01–95	Indef.
ST95–2438	Transok, Inc	ANR Pipeline Co., Et Al.	05–15–95	C	10,000	N	I	05–01–95	Indef.
ST95–2439	Transok, Inc	ANR Pipeline Co., Et Al.	05–15–95	C	5,000	N	I	05–01–95	Indef.
ST95–2440	Midwestern Gas Transmission Co.	Resource Energy Services Co.	05–16–95	G–S	19,993	N	F	04–28–95	Indef.
ST95–2441	High Island Offshore System.	Columbia Gas Development Corp.	05–16–95	K–S	5,000	N	I	04–01–95	Indef.
ST95–2442	High Island Offshore System.	Union Pacific Fuels, Inc.	05–16–95	K–S	80,000	N	I	04–01–95	Indef.
ST95–2443	U–T Offshore System.	Columbia Gas Development Corp.	05–16–95	K–S	5,000	N	I	04–01–95	Indef.
ST95–2444	Canyon Creek Compression Co.	Midcon Gas Services Corp.	05–16–95	G–S	10,000	N	F	05–01–95	05–31–95
ST95–2445	Tennessee Gas Pipeline Co.	Belden & Blake Corp.	05–17–95	G–S	4,150	N	F	05–01–95	Indef.
ST95–2446	Natural Gas P/L Co. of America.	Amoco Energy Trading Co.	05–17–95	G–S	30,000	N	F	05–01–95	05–31–95
ST95–2447	Natural Gas P/L Co. of America.	Associated Natural Gas, Inc.	05–17–95	G–S	160,000	N	F	05–01–95	03–31–00
ST95–2448	Tennessee Gas Pipeline Co.	CO Energy Trading Co.	05–18–95	G–S	4	N	F	05–01–95	Indef.
ST95–2449	Tennessee Gas Pipeline Co.	Valero Gas Marketing LP.	05–18–95	G–S	4	N	F	04–20–95	Indef.
ST95–2450	Valero Transmission, L.P.	El Paso Natural Gas Co., Et Al.	05–18–95	C	71,000	N	I	05–01–95	05–01–96
ST95–2451	Valero Transmission, L.P.	Transwestern Pipe Line Co.	05–18–95	C	1,000	N	I	05–01–95	Indef.
ST95–2452	Rocky Mountain Natural Gas Co.	Northwest Pipeline Co., Et Al.	05–18–95	G–HT	6,000	N	I	03–01–95	Indef.
ST95–2453	Pacific Gas Transmission Co.	Pacific Interstate Transmission Co.	05–18–95	G–S	246,960	N	I	05–01–95	Indef.
ST95–2454	Pacific Gas Transmission Co.	Suncor, Inc	05–18–95	G–S	50,000	N	I	05–01–95	Indef.
ST95–2455	K N Interstate Gas Trans. Co.	Universal Resources Corp.	05–18–95	G–S	10,000	N	F	04–01–95	04–04–95
ST95–2456	K N Interstate Gas Trans. Co.	Continental Natural Gas, Inc.	05–18–95	G–S	50,000	N	I	04–01–95	Indef.
ST95–2457	Florida Gas Transmission Co.	Tiger Bay Limited Partnership.	05–18–95	G–S	22,400	N	F	05–01–95	02–28–15
ST95–2458	Florida Gas Transmission Co.	Premier Enterprises, Inc.	05–18–95	G–S	5,000	N	I	05–01–95	Indef.
ST95–2459	Trunkline Gas Co ...	Tennessee Gas Pipeline Co.	05–18–95	G	400,000	N	I	02–18–95	Indef.
ST95–2460	Mississippi River Trans. Corp.	NGC Transportation, Inc.	05–18–95	G–S	200,000	N	I	04–20–95	Indef.
ST95–2461	Texas Gas Transmission Corp.	Shell Gas Trading Co.	05–18–95	G–S	10,000	Y	I	05–01–95	Indef.
ST95–2462	Algonquin Gas Transmission Co.	Chesapeake Energy Corp.	05–19–95	G–S	11,500	N	F	04–17–95	04–21–95
ST95–2463	Trailblazer Pipeline Co.	Conoco, Inc	05–19–95	G–S	5,000	N	F	05–01–95	08–31–95
ST95–2464	Trailblazer Pipeline Co.	Western Gas Resources, Inc.	05–19–95	G–S	10,000	N	F	05–01–95	08–31–95
ST95–2465	Trailblazer Pipeline Co.	Aquila Energy Marketing Corp.	05–19–95	G–S	10,000	N	F	05–01–95	08–31–95
ST95–2466	Trailblazer Pipeline Co.	National Gas Resources L.P.	05–19–95	G–S	50,000	N	I	05–01–95	Indef.
ST95–2467	Delhi Gas Pipeline Corp.	ANR Pipeline Co., et al.	05–19–95	C	5,000	N	I	04–19–95	Indef.
ST95–2468	Transcontinental Gas P/L Corp.	Pennunion Energy Services, L.L.C.	05–19–95	G–S	3,912,600	N	I	04–19–95	Indef.
ST95–2469	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–19–95	G–S	40,000	A	I	04–21–95	03–31–97
ST95–2470	Columbia Gas Transmission Corp.	Enogex, Inc	05–23–95	B	160	N	F	05–10–95	Indef.

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ST95–2471	Columbia Gas Transmission Corp.	Jones Hamilton Co .	05–23–95	G–S	154	N	F	03–01–95	Indef.
ST95–2472	Columbia Gas Transmission Corp.	Transylvania University.	05–23–95	G–S	N/A	N	I	05–01–95	Indef.
ST95–2473	Columbia Gas Transmission Corp.	Transylvania University.	05–23–95	G–S	1,500	N	I	05–01–95	Indef.
ST95–2474	Columbia Gas Transmission Corp.	Petron Oil Corp	05–23–95	G–S	30,000	N	I	05–01–95	Indef.
ST95–2475	Columbia Gas Transmission Corp.	Petron Oil Corp	05–23–95	G–S	N/A	N	I	05–01–95	05–01–96
ST95–2476	Transwestern Pipeline Co.	Teco Gas Marketing Co.	05–23–95	B	35,765	N	F	04–04–95	04–30–95
ST95–2477	Transwestern Pipeline Co.	Coastal Gas Marketing Co.	05–23–95	G–S	15,000	N	F	04–04–95	04–30–95
ST95–2478	Transwestern Pipeline Co.	Richardson Products Co.	05–23–95	G–S	5,000	N	F	04–04–95	04–30–95
ST95–2479	Transwestern Pipeline Co.	Enron Capital & Trade Res. Corp.	05–23–95	G–S	10,000	Y	F	04–06–95	04–30–95
ST95–2480	Transwestern Pipeline Co.	Enron Capital & Trade Res. Corp.	05–23–95	G–S	10,000	Y	F	04–11–95	04–17–95
ST95–2481	Transwestern Pipeline Co.	Enron Capital & Trade Res. Corp.	05–23–95	G–S	28,000	Y	F	05–01–95	05–31–95
ST95–2482	Transwestern Pipeline Co.	Tristar Gas Marketing Co.	05–23–95	G–S	45,000	N	F	04–01–95	04–30–95
ST95–2483	Transwestern Pipeline Co.	Richardson Products Co.	05–23–95	G–S	44,000	N	F	04–01–95	04–30–95
ST95–2484	Transwestern Pipeline Co.	NGC Transportation Inc.	05–23–95	G–S	1,900	N	F	04–01–95	04–30–95
ST95–2485	Transwestern Pipeline Co.	Amoco Energy Trading Corp.	05–23–95	G–S	39,476	N	F	04–01–95	07–31–95
ST95–2486	Transwestern Pipeline Co.	Phillips Gas Marketing Co.	05–23–95	G–S	15,000	N	F	04–01–95	06–30–95
ST95–2487	Transwestern Pipeline Co.	Coastal Gas Marketing Co.	05–23–95	G–S	10,000	N	F	04–01–95	04–30–95
ST95–2488	Transwestern Pipeline Co.	Phillips Gas Marketing Co.	05–23–95	G–S	15,000	N	F	04–01–95	07–31–95
ST95–2489	Delhi Gas Pipeline Corp.	Texas Eastern Trans. Corp., et al.	05–24–95	C	20,000	N	I	05–01–95	Indef.
ST95–2490	Ong Transmission Co.	Ozark Pipeline Co ..	05–24–95	C	50,000	N	I	04–01–95	Indef.
ST95–2491	Texas Eastern Transmission Corp.	Pennunion Energy Services, L.L.C.	05–24–95	G–S	240,000	N	I	05–01–95	Indef.
ST95–2492	Texas Eastern Transmission Corp.	Mobil Natural Gas Inc.	05–24–95	G–S	10,000	N	I	05–01–95	Indef.
ST95–2493	Texas Eastern Transmission Corp.	Peco Energy Co	05–24–95	G–S	27,865	N	F	05–08–95	Indef.
ST95–2494	Trailblazer Pipeline Co.	Coastal Gas Marketing Co.	05–24–95	G–S	12,000	N	F	04–01–95	10–31–95
ST95–2495	Natural Gas P/L Co. of America.	Tenneco Gas Marketing Co.	05–24–95	G–S	10,000	N	F	05–01–95	05–31–95
ST95–2496	Natural Gas P/L Co. of America.	Koch Gas Services Co.	05–24–95	G–S	12,000	N	F	05–01–95	04–30–00
ST95–2497	Natural Gas P/L of America.	Aquila Energy Marketing Corp.	05–24–95	G–S	10,000	N	F	05–01–95	05–31–95
ST95–2498	Natural Gas P/L of America.	Ashland Exploration, Inc.	05–24–95	G–S	100,000	N	I	05–01–95	Indef.
ST95–2499	El Paso Natural Gas Co.	Enron Capital & Trade Res. Corp.	05–24–95	G–S	200,000	N	I	04–26–95	Indef.
ST95–2500	Northwest Pipeline Corp.	Phillips Gas Marketing Co.	05–24–95	G–S	10,000	N	F	05–01–95	Indef.
ST95–2501	Koch Gateway Pipeline Co.	Alabama River Pulp Co., Inc.	05–24–95	G	3,500	N	F	05–01–95	05–01–96

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ST95–2502	Koch Gateway Pipeline Co.	Egan Gas Storage Co.	05–24–95	B	N/A	N	I	04–26–95	Indef.
ST95–2503	Koch Gateway Pipeline Co.	Fina Natural Gas Co.	05–24–95	G–S	150,000	N	F	04–26–95	10–01–97
ST95–2504	Koch Gateway Pipeline Co.	Koch Gas Services Co.	05–24–95	G–S	N/A	N	I	04–20–95	Indef.
ST95–2505	Koch Gateway Pipeline Co.	Noble Gas Marketing, Inc.	05–24–95	G–S	N/A	N	I	05–01–95	Indef.
ST95–2506	Koch Gateway Pipeline Co.	Elf Exploration, Inc .	05–24–95	G–S	N/A	N	I	04–26–95	Indef.
ST95–2507	Koch Gateway Pipeline Co.	Prior Intrastate Corp	05–24–95	G–S	7,000	N	F	05–01–95	04–01–96
ST95–2508	Koch Gateway Pipeline Co.	Florida Gas Transmission Co.	05–24–95	G	N/A	N	I	05–03–95	Indef.
ST95–2509	Koch Gateway Pipeline Co.	Progas, Inc	05–24–95	G–S	N/A	N	I	05–26–95	Indef.
ST95–2510	Koch Gateway Pipeline Co.	Fina Natural Gas Co.	05–24–95	G–S	N/A	N	I	04–26–95	10–01–97
ST95–2511	Columbia Gas Transmission Corp.	University of Kentucky.	05–24–95	G–S	N/A	N	I	05–01–95	Indef.
ST95–2512	Columbia Gas Transmission Corp.	University of Kentucky.	05–24–95	G–S	7,500	N	I	05–01–95	Indef.
ST95–2513	Louisiana Resources Pipeline Co.	ANR Pipeline Co., et al.	05–25–95	C	20,000	N	I	03–01–95	Indef.
ST95–2514	Louisiana Resources Pipeline Co.	ANR Pipeline Co., et al.	05–25–95	C	10,000	N	I	02–01–95	Indef.
ST95–2515	Louisiana Resources Pipeline Co.	ANR Pipeline Co., et al.	05–25–95	C	10,000	N	I	02–01–95	Indef.
ST95–2516	Louisiana Resources Pipeline Co.	ANR Pipeline Co., et al.	05–25–95	C	28,000	N	I	02–01–95	Indef.
ST95–2517	Louisiana Resources Pipeline Co.	ANR Pipeline Co., et al.	05–25–95	C	10,000	N	I	03–01–95	Indef.
ST95–2518	Kentucky West Virginia Gas Co.	J.W. Kinzer Drilling Co.	05–25–95	G–S	100	N	I	01–01–95	Indef.
ST95–2519	Delhi Gas Pipeline Corp.	Texas Eastern Transmission Corp.	05–25–95	C	20,000	N	I	05–01–95	Indef.
ST95–2520	Delhi Gas Pipeline Corp.	Texas Eastern Transmission Corp.	05–25–95	C	20,000	N	I	05–01–95	Indef.
ST95–2521	Delhi Gas Pipeline Corp.	Texas Eastern Transmission Corp.	05–25–95	C	20,000	N	I	05–01–95	Indef.
ST95–2522	Delhi Gas Pipeline Corp.	Texas Eastern Transmission Corp.	05–25–95	C	20,000	N	I	05–01–95	Indef.
ST95–2523	Northern Illinois Gas Co.	ANR Pipeline Co., et al.	05–26–95	G–HT	50,000	N	I	04–21–95	03–31–96
ST95–2524	Tejas Gas Pipeline Co.	Trunkline Pipeline Co.	05–26–95	C	20,000	N	I	04–01–95	Indef.
ST95–2525	Tejas Gas Pipeline Co.	Tejas Power/Tomcat System.	05–26–95	C	20,000	N	I	04–01–95	Indef.
ST95–2526	Lone Star Gas Co ..	El Paso Natural Gas Co., et al.	05–26–95	C	50,000	N	I	05–01–95	Indef.
ST95–2527	Lone Star Gas Co ..	El Paso Natural Gas Co., et al.	05–26–95	C	50,000	N	I	05–01–95	Indef.
ST95–2528	Panhandle Eastern Pipe Line Co.	Vesta Energy Co	05–26–95	G–S	1,268	N	F	05–01–95	05–31–95
ST95–2529	Panhandle Eastern Pipe Line Co.	Coastal Gas Marketing Co.	05–26–95	G–S	2,626	N	F	05–01–95	05–31–95
ST95–2530	Panhandle Eastern Pipe Line Co.	Associated Gas Services, Inc.	05–26–95	G–S	2,000	Y	F	05–01–95	05–31–95
ST95–2531	Panhandle Eastern Pipe Line Co.	Thermic Refractories, Inc.	05–26–95	G–S	200	N	F	05–01–95	04–30–96

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ST95–2532	Panhandle Eastern Pipe Line Co.	Anadarko Trading Co.	05–26–95	G–S	228–600	N	F	05–01–95	11–30–95
ST95–2533	Panhandle Eastern Pipe Line Co.	Dayton Power and Light Co.	05–26–95	B	626	N	F	05–01–95	05–31–95
ST95–2534	Panhandle Eastern Pipe Line Co.	Citizens Energy Services Corp.	05–26–95	G–S	10,000	N	F	05–01–95	06–30–95
ST95–2535	Panhandle Eastern Pipe Line Co.	Associated Gas Services, Inc.	05–26–95	G–S	1,500	Y	F	05–01–95	05–31–95
ST95–2536	Panhandle Eastern Pipe Line Co.	Natural Gas Clearinghouse.	05–26–95	G–S	10,000	N	F	05–01–95	05–31–95
ST95–2537	Panhandle Eastern Pipe Line Co.	Coastal Gas Marketing Co.	05–26–95	G–S	6,514	N	F	05–01–95	05–31–95
ST95–2538	Panhandle Eastern Pipe Line Co.	Amoco Energy Trading Corp.	05–26–95	G–S	2,300	N	F	05–01–95	10–31–95
ST95–2539	Panhandle Eastern Pipe Line Co.	Coenergy Trading Co.	05–26–95	G–S	10,000	N	F	05–01–95	05–31–95
ST95–2540	Panhandle Eastern Pipe Line Co.	Coenergy Trading co.	05–26–95	G–S	10,000	N	F	05–01–95	05–31–95
ST95–2541	Panhandle Eastern Pipe Line Co.	Amgas, Inc	05–26–95	G–S	4,000	N	F	05–01–95	05–31–95
ST95–2542	Trunkline Gas Co ...	Northern Indiana Public Service Co.	05–26–95	G–S	6,180	N	F	04–01–95	Indef.
ST95–2543	Trunkline Gas Co ...	Northern Indiana Public Service Co.	05–26–95	G–S	28,950	N	F	04–01–95	Indef.
ST95–2544	Transcontinental Gas P/L Corp.	Pennunion Energy Services, L.L.C..	05–25–95	G–S	3,200,000	N	I	05–01–95	Indef.
ST95–2545	Transcontinental Gas P/L Corp.	Amoco Energy Trading Corp.	05–25–95	G–S	30,000	N	F	05–01–95	06–30–00
ST95–2546	Transcontinental Gas P/L Corp.	Mobil Natural Gas Inc.	05–25–95	G–S	26,537	N	F	05–01–95	06–30–98
ST95–2547	Transcontinental Gas P/L Corp.	Petroleum Source & System Group.	05–25–95	G–S	4,000	N	I	05–01–95	Indef.
ST95–2548	Delhi Gas Pipeline Corp.	ANR Pipeline Co., et al.	05–30–95	C	20,000	N	I	05–01–95	Indef.
ST95–2549	Delhi Gas Pipeline Corp.	ANR Pipeline Co., et al.	05–30–95	C	35,000	N	I	05–01–95	Indef.
ST95–2550	ONG Transmission Co.	Ozark Pipeline Co ..	05–30–95	C	50,000	N	I	05–01–95	Indef.
ST95–2551	Tejas Gas Pipeline Co.	Texas Eastern Pipeline Co.	05–30–95	C	5,000	N	I	04–01–95	Indef.
ST95–2552	Amoco Gas Co	Centana Intrastate Pipeline Co.	05–30–95	G–HT	70,000	N	I	04–01–95	03–31–96
ST95–2553	Michigan Gas Storage Co.	Consumers Power Co.	05–30–95	B	150,000	Y	I	05–01–95	Indef.
ST95–2554	Consumers Power Co.	Michigan Gas Storage Co, et al.	05–30–95	G–HT	150,000	Y	I	05–01–95	Indef.
ST95–2555	Sabine Pipe Line Co.	Noble Gas Marketing, Inc.	05–30–95	G–S	100,000	N	I	05–23–95	Indef.
ST95–2556	Tennessee Gas Pipeline Co.	GGR Energy	05–30–95	G–S	4	N	F	05–03–95	Indef.
ST95–2557	Gasdel Pipeline System Inc.	Energy Development Corp.	05–30–95	G–S	14,432	N	I	01–01–95	Indef.
ST95–2558	Gas Co. of New Mexico.	Transwestern Natural Gas Co.	05–30–95	G–HT	5,000	N	I	05–01–95	Indef.
ST95–2559	Algonquin Gas Transmission Co.	Boston Edison Co ..	05–30–95	B	100	N	F	05–01–95	05–31–95
ST95–2560	Algonquin Gas Transmission Co.	CNG Gas Services Corp.	05–30–95	G–S	1,017	N	F	02–12–95	Indef.
ST95–2561	Algonquin Gas Transmission Co.	Bay State Gas Co ..	05–30–95	B	10,000	N	F	01–05–95	04–30–95
ST95–2562	Iroquois Gas Transmission System.	CNG Energy Servvices, Corp.	05–30–95	G–S	35,000	N	F	05–01–95	05–01–96
ST95–2563	Channel Industries Gas Co.	Tennessee Gas Pipeline Co.	05–31–95	C	5,000	Y	I	05–01–95	05–01–96
ST95–2564	Southern Natural Gas Co.	City of Quitman	05–31–95	G–S	778	N	F	05–03–95	10–31–96
ST95–2565	Mississippi River Trans. Corp.	Cerro Copper Products Co.	05–31–95	G–S	1,306	N	F	05–01–95	Indef.
ST95–2566	Mississippi River Trans. Corp.	National Steel Corp	05–31–95	G–S	778	N	F	05–01–95	Indef.

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ST95–2567	Mississippi River Trans. Corp.	National Steel Corp	05–31–95	G–S	40	N	F	05–01–95	Indef.
ST95–2568	Transwestern Pipeline Co.	Enron Capital & Trade Res. Corp.	05–31–95	G–S	10,000	Y	F	04–04–95	04–30–95
ST95–2569	Transwestern Pipeline Co.	Enron Capital & Trade Res. Corp.	05–31–95	G–S	15,000	Y	F	04–04–95	04–10–95
ST95–2570	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2571	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2572	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2573	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2574	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2575	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2576	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2577	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2578	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2579	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2580	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2581	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2582	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2583	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2584	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2585	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2586	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2587	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2588	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2589	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2590	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2591	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2592	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2593	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2594	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2595	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2596	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2597	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2598	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2599	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2600	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2601	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97

Docket No.	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity	Aff. Y/A/N	Rate Sch.	Date commenced	Projected termination date
ST95–2602	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2603	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2604	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2605	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2606	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2607	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2608	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2609	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2610	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2611	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2612	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2613	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2614	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2615	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2616	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2617	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2618	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2619	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2620	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2621	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97

*Notice of transactions does not constitute a determination that filings comply with commission regulations in accordance with order No. 436 (final rule and notice requesting supplemental comments, 50 FR 42,372, 10/10/85).
**Estimated maximum daily volumes includes volumes reported by the filing company in MMBTU, MCF and DT.
***Affiliation of reporting company to entities involved in the transaction. A "Y" indicates affiliation, an "A" indicates marketing affiliation, and a "N" indicates no affiliation.

[FR Doc. 95–15798 Filed 6–27–95; 8:45 am]
BILLING CODE 6717–01–P

[Docket No. RP95–349–000]

The Brooklyn Union Gas Company v. CNG Transmission Corporation; Notice of Complaint

June 22, 1995.

Take notice that on June 20, 1995, pursuant to Rule 212 of the Commission's Rules of Practice and Procedures, The Brooklyn Union Gas Company (Brooklyn Union) filed a motion seeking an order from the Commission directing CNG Transmission Corporation (CNG) to refrain from requiring Brooklyn Union to comply with an operational flow order (OFO) that has required and will require Brooklyn Union to deliver gas transported by Transcontinental Gas Pipe Line Corporation (Transco) to CNG at Leidy, Pennsylvania for simultaneous redelivery by CNG back to Transco at Leidy for transportation and redelivery to Brooklyn Union.

Brooklyn Union states that during the 1994–1995 winter, CNG issued an OFO (Leidy OFO) which required Brooklyn Union to utilize up to its full X–56 capacity on Transco to deliver gas to Leidy if, and to the extent that, Brooklyn Union nominated FTNN service from CNG. Brooklyn Union states that the gas was then simultaneously "redelivered" to Transco at Leidy to be transported to Brooklyn Union's city gate.

Brooklyn Union states that the issuance of the Leidy OFO by CNG during the 1994–1994 winter imposed unjustified additional costs and administrative burdens on Brooklyn Union. Brooklyn Union was required to pay fuel charges to CNG and within-Zone-6 usage and fuel charges to Transco to reflect the fact that gas was being transported to CNG at Leidy and from CNG to Leidy to Brooklyn Union's city gate. Brooklyn Union submits that the application of the OFO to Brooklyn Union is not reasonably needed by CNG to permit it to maintain system reliability or provide firm service to its other customers.

Brooklyn Union requests the Commission to issue an order directing CNG to cease and desist from requiring Brooklyn Union to comply with the Leidy OFO to the extent that it requires Brooklyn Union to deliver gas at Leidy where that gas will be simultaneously redelivered to Brooklyn Union at Leidy.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214, 385.211. All such motions or protests should be filed on or before July 6, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to this complaint shall be due on or before July 6, 1995.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 95–15799 Filed 6–27–95; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. RP93–186–005]

Carnegie Interstate Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

June 22, 1995.

Take notice that on June 20, 1995, Carnegie Interstate Pipeline Company (CIPCO) made a compliance filing in response to the order in the above-captioned proceeding issued by the Commission on June 8, 1995.[1] CIPCO states that Ordering Paragraph (C) of that order required CIPCO to file a revised Section 32.2(e) of its tariff to provide for the refunding of overrecovered amounts remaining in its surcharge accounts following the last amortization period, with interest pursuant to Section 154.67 of the Commission's Regulations. Carnegie states that this requirement was satisfied when Carnegie made its January 6, 1995 compliance filing in this proceeding.

On December 2, 1994, the Commission issued in this proceeding an order accepting tariff sheets subject to a number of modifications, including the requirement of refunding with interest overrecovered amounts remaining in Carnegie's surcharge accounts following the last amortization period. On January 3, 1995, Carnegie filed a request for rehearing and clarification of some of the requirements of the December 2 order. On January 6, 1995, Carnegie filed in compliance with other requirements of the order. Carnegie did not seek rehearing of the refund with interest requirement; instead it filed in compliance with that requirement.

Thus, as part of its January 6, 1995 compliance filing, Carnegie submitted Second Revised Sheet No. 144, which included the revisions to Section 32.2(e) of the tariff in accordance with the Commission's order. That sheet, and a red-lined version of the sheet, are attached to the subject June 20, 1995 compliance filing, just as they were attached to the January 6 filing. The Commission accepted Second Revised Sheet No. 144 in a letter order dated May 1, 1995.

CIPCO states that Substitute Original Sheet No. 144, filed on June 20, 1995 is identical to Carnegie's Second Revised Sheet No. 144, except for the changes required by the corporate reorganization. A copy of CIPCO's Substitute Original Sheet No. 144 is also attached. Accordingly, CIPCO believes that it is currently in compliance with the Commission's June 8 order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR Section 385.211). All such protests should be filed on or before June 29, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 95–15800 Filed 6–27–95; 8:45 am]
BILLING CODE 6717–01–M

[1] 71 FERC ¶61,310 (1995).

[Docket No. GT95–24–001]

Colorado Interstate Gas Company; Notice of Filing of Refund Report

June 22, 1995.

Take notice that on June 13, 1995, Colorado Interstate Gas Company (CIG) filed a second refund report in Docket Nos. GP83–11, RI83–9, et al. CIG states that the filing and refunds were made to comply with the Commission's orders of December 1, 1993 and May 19, 1994.

CIG states that initial refunds were paid by CIG on December 14, 1994 and the second refund was made on April 12, 1995.

CIG notes that the refund report summarizes the Kansas ad valorem tax refund amounts related to tax bills rendered for production on or after June 28, 1988 pursuant to the Commission's December 1, 1993 and May 19, 1994 Orders. Lump-sum cash refunds were made by CIG to its former jurisdictional sales customers within 30 days of receipt from the producers. As provided for in the Orders, no additional interest was required to be paid.

CIG states that copies of CIG's filing have been served on CIG's former jurisdictional sales customers, interested states commissions, and all parties to the proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR Section 385.211). All such protests should be filed on or before June 29, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 95–15801 Filed 6–27–95; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. PR95–11–000]

Egan Hub Partners, L.P.; Notice of Petition for Rate Approval

June 22, 1995.

Take notice that on May 11, 1995, Egan Hub Partners, L.P. (Egan) filed pursuant to Section 284.123(b)(2) of the Commission's Regulations, a petition for rate approval requesting that the Commission approve as fair and equitable market-based rates for firm and interruptible storage and transportation services, including hub services, performed under Section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Egan states that it is an intrastate pipeline that is subject to regulation by the Louisiana Office of Conservation. Egan proposes an effective date of September 1, 1995.

Pursuant to Section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the proposed rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150-

day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before July 7, 1995. The petition for rate approval is on file with the Commission and is available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–15802 Filed 6–27–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5227–8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before July 28, 1995.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260–2740, please refer to EPA ICR #1051.06.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Reporting and Recordkeeping Requirements for the New Source Performance Standard (NSPS) for Portland Cement Industry (Subpart F)—(EPA No. 1051.06, OMB No. 2060–0025).

Abstract: This ICR is for an extension of an existing information collection in support of the Clean Air Act, as described under the general NSPS at 40 CFR 60.7–60.8 and the specific NSPS, for particulate and visible emissions from portland cement plants, at 40 CFR 60.60. The information will be used by the EPA to direct monitoring, inspection, and enforcement efforts, thereby ensuring facility compliance with the NSPS.

Owners or operators of all new facilities subject to this NSPS must provide EPA, or a delegated State or local authority, with: (1) Notification of the date of construction or reconstruction, (2) notification of the anticipated and actual dates of the start-up, (3) notification of the date of initial performance test, and (4) a copy of the initial performance test results. Owners and operators of new facilities that must conduct continuous opacity monitoring (COM) will be required to submit: (1) Notification of the COM system demonstration, and (2) notification that COM system data will be used during the initial performance test. Facilities that, as an alternative, are permitted to conduct opacity observations using EPA method 9 must notify EPA of the anticipated date for conducting these observations.

Owners and operators of all facilities must provide EPA, or a delegated State or local authority, with: (1) semiannual reports of malfunctions and excess emissions; and (2) notification of any physical or operational change to their facility which may result in an increase in the regulated pollutant emission rate. All facilities must also maintain records on the facility operation that document: (1) the occurrence and duration of any start-ups, shutdowns, and malfunctions; (2) initial performance test results; (3) all visible emissions from continuous opacity monitoring (COM) or, where applicable, from daily observations taken in accordance with EPA Method 9.

Presently there are an estimated 88 subject facilities with an average annual growth of 4 new facilities over the next three years. All subject facilities must maintain records related to compliance for 2 years.

Burden Statement: Public reporting burden for facilities subject to this collection of information is estimated to average 3 hours per year for each respondent, including time for reviewing instructions, searching existing data sources, gathering and maintaining data, and completing and reviewing the collection of information. Public recordkeeping burden for each respondent is estimated to average 69 hours annually. The total annual public reporting burden is estimated to be 6750 hours.

Respondents: Businesses or other for-profit organizations.

Estimated Number of Respondents: 94.

Estimated Number of Responses Per Respondent: 1.

Frequency of Collection: Semiannual reporting for existing facilities in non-compliance, with additional one-time reporting requirements for new facilities. Daily recordkeeping for all facilities.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, (please refer to EPA ICR #1051.06 and OMB #2060–0025) to:

Sandy Farmer, EPA ICR #1051.06, U.S. Environmental Protection Agency, Regulatory Information Division (2136), 401 M. Street, S.W., Washington, D.C. 20460.

and

Chris Wolz, OMB #2060–0025, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, N.W., Washington, D.C. 20503.

Dated: June 21, 1995.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 95–15878 Filed 6–27–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5227–6]

Public Water Supervision Program: Program Revisions for the State of Maine

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the state of Maine is revising its approved State Public Water Supervision Primacy Program. Maine has adopted four drinking water regulations for: (1) Volatile organic chemicals, (2) public notification, (3) for controlling lead and copper and (4) volatile organic chemicals, synthetic organic chemicals, and inorganic chemicals (known as Phase II, IIB, and V); that correspond to the National Primary Drinking Water Regulations promulgated by EPA on (1) July 8, 1987 (52 FR 25690), (2) October 18, 1987 (52 FR 41534), (3) June 7, 1991 (56 FR 26460) and (4) January 30, 1991 (56 FR 3526), July 1, 1991 (56 FR 30266) and July 17, 1992 (57 FR 31776). EPA has determined that the state program revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA has tentatively decided to approve these state program revisions.

All interested parties are invited to request a public hearing. A request for a public hearing must be submitted by July 28, 1995 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by July 28, 1995, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective July 28, 1995.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization or other entity requesting a hearing. (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intended to submit at such hearing. (3) The signature of the individual making the request: or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday, at the following offices:

Maine Department of Human Services, Drinking Water Program, 157 Capitol Street, Augusta, ME 04333

and

U.S. Environmental Protection Agency—New England, Water Management Division, Ground Water Management and Water Supply Branch, One Congress Street—11th Floor, Boston, MA 02203

FOR FURTHER INFORMATION CONTACT: Chris Ryan, U.S. Environmental Protection Agency—Region I, Ground Water Management and Water Supply Branch, JFK Federal Building, Boston, MA 02203, Telephone: (617) 565–3609.

Authority: Section 1413 of the Safe Drinking Water Act as amended, 42 U.S.C. 300f *et seq.*, and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Dated: June 13, 1995.

John P. DeVillars,

Regional Administrator.

[FR Doc. 95–15879 Filed 6–27–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5227–9]

Underground Injection Control Program; Hazardous Waste Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection; Disposal Systems, Inc.

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Decision on Petition Reissuance.

SUMMARY: Notice is hereby given that reissuance of an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to Disposal Systems, Inc., for the Class I injection wells located at Deer Park, Texas. As required by 40 CFR part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by Disposal Systems, Inc., of the specific restricted hazardous waste identified in the exemption reissuance, into the Class I hazardous waste injection wells at the Deer Park, Texas facility specifically identified in the reissued exemption, for as long as the basis for granting an approval of this exemption remains valid, under provisions of 40 CFR 148.24. As required by 40 CFR 124.10, a public notice was issued April 26, 1995. The public comment period ended on June 12, 1995. All comments have been addressed and have been considered in the final decision. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of June 21, 1995.

ADDRESSES: Copies of the reissued petition and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Management Division, Water Supply Branch (6W–SU), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Phil Dellinger, Unit Leader, UIC State Programs/Land Ban, EPA—Region 6, telephone (214) 665–7142.

Robert Mannesschlager,

Acting Director, Water Management Division (6W).

[FR Doc. 95–15877 Filed 6–27–95; 8:45 am]

BILLING CODE 6565–50–M

[AD–FRL–5249–4; Docket No. AQM–95–01]

Conference on Air Quality Modeling

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of Conference.

SUMMARY: EPA announces the Sixth Conference on Air Quality Modeling. Such a conference is required by Section 320 of the Clean Air Act (CAA) to be held every 3 years. The purpose of the Sixth Conference is to provide a forum for public review of modeling techniques that may be candidates for use in regulatory applications.

DATES: The sixth conference will be held on August 9–10, 1995 from 9:00 a.m. to 5:00 p.m. As needed to allow for presentation of all verbal comments, the conference may extend to noon of the next day. Requests to speak at the conference should be submitted to the individuals listed below by July 26, 1995. All written comments must be submitted by COB October 10, 1995.

ADDRESSES: Conference: The conference will be held in the GSA Auditorium, GSA National Capitol Region Building, 7th and D Streets, SW., Washington, DC.

Comments: Written statements or comments not presented at the conference should be submitted (in duplicate if possible) to: OAR Regulatory Docket (6102), Room M–1500, Waterside Mall, Attention: OAR Regulatory Docket AQM–95–01, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Copies of technical review materials may be obtained from several sources. Copies of all materials may be obtained from the docket. Many materials will also be available from the National Technical Information Service (NTIS), U.S. Dept. of Commerce, Springfield, VA 22161; (703) 487–4650. In addition, many materials may be obtained from the Support Center for Regulatory Air Models Bulletin Board System by downloading the appropriate file. To register or access this electronic bulletin board, users with a personal computer should dial (919) 541–5742.

Docket: Items referenced in this notice as well as comments received are maintained in Docket AQM–95–01. The docket is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at the address above. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Joseph A. Tikvart, Chief, Air Quality Modeling Group (MD–14), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711;

telephone (919) 541–5562 or C. Thomas Coulter, telephone (919) 541–0832.

SUPPLEMENTARY INFORMATION

Background

The Guideline on Air Quality Models (Revised)(hereafter, "Guideline" [1]) is used by EPA, States, and private industry in the review and preparation of new source permits and SIP revisions. The Guideline serves as a means by which consistency is maintained in air quality analyses. It was first incorporated in the Code of Federal Regulations in 1978 and was subsequently revised in 1986 to include knowledge concerning modeling analyses that developed since the original guidance was issued. In 1988 four techniques were added as supplement A to the Guideline as a result of public comments on the 1986 revisions. In 1993, the Guideline was further revised with supplement B, and supplement C is expected to be promulgated soon.

To support the process of developing and revising the Guideline during the period 1977–1988, the First, Second and Third Conferences on Air Quality Modeling were held as required by Section 320 of the Clean Air Act to help standardize modeling procedures. These modeling conferences provided EPA with comments on the Guideline and associated revisions, thereby facilitating introduction of improved modeling techniques into the regulatory process.

In October 1988, the Fourth Conference on Air Quality Modeling was held. Its purpose was to advise the public on new modeling techniques and to solicit comments to guide EPA's consideration of any rulemaking needed to further revise the Guideline. The new models provide techniques for situations where specific procedures had not previously been available, and also improve several previously adopted techniques.

The Fifth Conference on Air Quality Modeling, held in March 1991, served as the public hearing for the proposed supplement B revisions to the Guideline (aforementioned). Since the Fifth Conference and the imminent adoption of supplement C, EPA believes it is time to consider a wide range of modeling issues in order to update its available modeling tools with state-of-the-science techniques. The Agency believes the Sixth Conference will appropriately serve as an ideal forum for the airing of these issues and the public offering of new ideas. The public feedback from such a conference is invaluable.

[1] The Guideline is published as appendix W to 40 CFR part 51.

Public Participation

The Sixth Conference on Air Quality Modeling will be open to the public; no admission fee is charged. The conference will begin the first morning with introductory remarks by EPA officials. The conference will continue with prepared presentations on several key modeling areas, i.e., long range transport modeling under the Interagency Workgroup on Air Quality Modeling (IWAQM [2]) and the development of an enhanced Gaussian dispersion model with boundary layer parameterization (AERMOD [3]). In the afternoon, invited speakers will discuss special topics, i.e., the Electric Power Research Institute's building downwash program, as well as several new and developing models (CAMRAQ, MODELS3, HPDM).

The second morning, discussion of special topics will continue based on voluntary presentations. Such presentations may include topics such as air models for accidental releases, fires, etc., air models for risk assessment of toxic pollutants, model evaluation, candidate models for Guideline appendix B, and miscellaneous models/data processing systems. These presentations will be followed by a critical review/discussion of the IWAQM and AERMOD modeling systems facilitated jointly by the Air & Waste Management Association's AB–3 Committee and the American Meteorological Society's Committee of Meteorological Aspects of Air Pollution. That afternoon representatives of State and local air pollution control agencies, appropriate Federal agencies, and professional and constituency groups will be invited to make statements. The conference will then be opened to statements and comments from the general public.

For the new models and modeling techniques described, EPA will be asking the public to address the following questions:

- What is the scientific merit of the models presented?
- What is their accuracy?
- What should be the regulatory use of individual models for specific applications?
- What implementation issues are apparent and what additional guidance is needed?
- What are the resource requirements of modeling systems presented?
- What additional analyses or information are needed?

Persons wishing to speak at the conference, whether to volunteer a presentation on a special topic or to offer general comment on any of the modeling techniques scheduled for presentation, should contact EPA at the address given in the **FURTHER INFORMATION** section no later than July 26. Such persons should identify the organization (if any) on whose behalf they are speaking and the length of presentation. An early contact regarding voluntary presentations of special topics, as well as time required and any materials that can be made publicly available, would help facilitate organization of the conference. If a presentation of general comments is projected to be longer than 10 minutes, the presenter should also state why a longer period is needed. Persons failing to submit a written notice but desiring to speak at the conference should notify the presiding officer immediately before the conference and will be scheduled on a time-available basis.

The conference will be conducted informally and chaired by an EPA official. There will be no sworn testimony or cross examination. A verbatim transcript of the conference proceedings will be produced and placed in the docket. Speakers should bring extra copies of their presentation for inclusion in the docket, for the convenience of the reporter. Speakers will be permitted to enter into the record any additional written comments that are not presented orally. Additional written statements or comments should be sent to the OAR Regulatory Docket (see **ADDRESSES** section). A transcript of the proceedings and a copy of all written comments will be maintained in Docket AQM–95–01 which will remain open until October 10, 1995 for the purpose of receiving additional comments.

Dated: June 21, 1995.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 95–15875 Filed 6–27–95; 8:45 am]

BILLING CODE 6560–50–P

[2] IWAQM was formed in 1991 to provide a focus for development of technically sound regional air quality models for regulatory assessments of pollutant source impacts on federal Class I areas. IWAQM is an interagency collaboration that includes efforts by EPA, U.S. Forest Service, National Park Service, and Fish and Wildlife Service.

[3] AMS/EPA Regulatory Model; AERMOD is being developed by AERMIC: AMS/EPA Regulatory Model Improvement Committee.

[FRL–5249–3]

Committee Meetings of the Grand Canyon Visibility Transport Commission

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of Meeting.

SUMMARY: The United States Environmental Protection Agency (U.S. EPA) is announcing meetings of the Alternatives Assessment, Public Advisory, and Operations Committees of the Grand Canyon Visibility Transport Commission (Commission).

The Alternatives Assessment Committee (AAC) will meet on Monday, July 24, 8:30 am–5:00 pm, Tuesday, July 25, 8:30 am–5:00 pm, and on Wednesday, July 26, 8:30 am–12:00 noon. The meetings of the AAC will be held at the Doubletree Hotel, 4100 Admirality Way, Marina Del Ray, California. The purpose of these meetings will be to review the emission management scenarios being developed by the Commission's contractors.

The Public Advisory Committee (PAC) will meet on Wednesday, July 26, 3:00 pm–5:00 pm, Thursday, July 27, 8:30 am–5:30 pm, and Friday, July 28, 8:30 am–5:00 pm. The PAC meetings will be held at the Doubletree Hotel, 4100 Admirality Way, Marina Del Ray, California. The Wednesday session is intended as a briefing for new members on technical documents and policy issues under discussion. Thursday and Friday sessions will be on the main PAC meeting and workshops on fire management, and issues of restructuring of utility markets.

The Operations Committee will meet on Monday, July 31, 12:00 noon–5:00 pm, Tuesday, August 1, 3:00 pm–5:00 pm. The Operation Committee meetings will be held at the Doubletree Hotel, 4100 Admirality Way, Marina Del Ray, California. The Operations Committee will consider approving emissions management scenarios for further development.

The Commission was established by U.S. EPA on November 13, 1991 (see 56 FR 57522, November 12, 1991). All meetings are open to the public. These meetings are not subject to the provisions of the Federal Advisory Committee Act, Public Law 92–463, as amended.

FOR FURTHER INFORMATION CONTACT: Mr. John Leary, Project Manager for the Grand Canyon Visibility Transport Commission, Western Governors' Association, 600 17th Street, Suite 1705, South Tower, Denver, Colorado 80202; telephone number (303) 623–9378; facsimile machine number (303) 534–7309.

Dated: June 19, 1995.

David P. Havekamp,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region 9.

[FR Doc. 95–15876 Filed 6–27–95; 8:45 am]

BILLING CODE 6560–50–F

[PP 4G4347/T678; FRL 4960–1]

Abbott Laboratories; Establishment of a Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established a temporary tolerance for residues of the plant growth regulator, (*S*)-trans-2-Amino-4-(2-aminoethoxy)-3-butenoic acid hydrochloride in or on the raw agricultural commodity apples at 0.075 parts per million (ppm).

DATES: This temporary tolerance expires June 1, 1996.

FOR FURTHER INFORMATION CONTACT: By mail: Acting James Stone, Product Manager (PM) 22, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number:, Rm. 229, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–7740; e-mail: stone.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Abbott Laboratories, 1401 Sheridan Road, North Chicago, IL 60064–4000, has requested in pesticide petition (PP) 4G4347, the establishment of a temporary tolerance for residues of the plant growth regulator, (*S*)-trans-2-Amino-4-(2-aminoethoxy)-3-butenoic acid hydrochloride in or on the raw agricultural commodity apples at 0.075 parts per million (ppm). This temporary tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of the experimental use permit 275–EUP–80, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Abbott Laboratories, must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires June 1, 1996. Residues not in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pest, Reporting and recordkeeping requirements.

Dated: June 13, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–15305 Filed 6–27–95; 8:45]

BILLING CODE 6560–50–F

[PP 4G4350/T679; FRL 4960–2]

American Cyanamid Co.; Establishment of a Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established a temporary tolerance for residues of the herbicide AC 299,263 ()-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-methoxymethyl-3-

pyridinecaboxylic acid in or on the raw agricultural commodity soybean seed.

DATES: This temporary tolerance expires April 17, 1997.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 245, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–6800; e-mail: taylor.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: American Cyanamid Company, P.O. Box 400, Princeton, NJ 08543, has requested in pesticide petition (PP) 4G4350 the establishment of a temporary tolerance for residues of the herbicide AC 299,263 ( )-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-methoxymethyl-3-pyridinecaboxylic acid in or on the raw agricultural commodity soybean seed. This temporary tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of the experimental use permit (EUP) 241–EUP–127, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of a temporary tolerance will protect the public health. Therefore, the temporary tolerance has been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. American Cyanamid Company, must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires April 17, 1997. Residues remaining in or on the above raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 14, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–15306 Filed 6–27–95; 8:45]

BILLING CODE 6560–50–F

[OPP–30386; FRL–4951–1]

Certain Companies; Applications To Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by July 28, 1995.

ADDRESSES: By mail submit comments identified by the document control number [OPP–30386] and the registration/file number, attention Product Manager (PM) named in each application at the following address: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30386]. No "Confidential Business Information" (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submission can be found below in this document.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Attn: (Product Manager (PM) named in each registration), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

In person: Contact the PM named in each registration at the following office location/telephone number:

Product Manager	Office location/telephone number	Address
PM 22 James M. Stone (Acting),	Rm. 229, CM #2 (703–305–5540); e-mail: stone.james@unixmail.epa.gov.	Environmental Protection Agency 1921 Jefferson Davis Hwy Arlington, VA 22202
PM 31 Marion Johnson (Acting),	Rm. 270, CM #2 (703–305–6757); e-mail: johnson.marion@unixmail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients Not Included in Any Previously Registered Products

1. File Symbol: 352–LTL. Applicant: E.I. duPont de Nemours and Company, Barley Mill Plaza, Walker Mill Bldg., 37 Wilmington, DE 19880–0038. Product name: Dupont KIH-2031 (DPX-PE350) Technical. Herbicide. Active ingredient: Pyrthiobac-sodium; sodium 2-chloro-6-(4,6-dimethoxypyrimidin-2-ylthio)benzoate at 96.4 percent. Proposed classification/Use: General. For formulation of herbicides only. (PM 22)

2. File Symbol: 352–LTA. Applicant: E.I. duPont de Nemours and Co. Product name: Dupont Staple Herbicide. Herbicide. Active ingredient: Pyrthiobac-sodium; sodium 2-chloro-6-(4,6-dimethoxypyrimidin-2-ylthio)benzoate at 85 percent. Proposed classification/Use: General. For use on cotton. (PM 22)

3. File Symbol: 6836–ENO. Applicant: Lonza Inc., 17–17, Route 208, Fair Lawn, NJ 07410. Product name: Bardac 2180. Antimicrobial. Active ingredient: Decyl isononyl dimethyl ammonium chloride at 80 percent Proposed classification/Use: None. For formulation or repackaging of disinfectants, santizers, fungicides, and water treatment microbiocides. (PM 31)

4. File Symbol: 66465–R. Applicant: Premier Medical Technology, Inc., 9800 Northwest Freeway, Suite 302, Houston, TX 77092. Product name: Formula 15. Antimicrobial. Active ingredient: Calcium oxide at 40 percent Proposed classification/Use: Restricted. For medical waste treament; it must be used in conjunction with the PMT500 processing unit. (PM 31)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

A record has been established for this notice under docket number [OPP–30386] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operation Division office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the FOD office (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: June 9, 1995.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–15307 Filed 6–27–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30380A; FRL–4961–4]

LipaTech Inc.; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications to register the pesticide products Difethialone Technical, Generation Pellets, Generation Pellets Placepacks, and Generation Rodenticide Bait Packs (Pellets), containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Forrest, Product Manager (PM) 14, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 219, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703)–305–6600; e-mail: forrest.robert@unixmail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of February 22, 1995 (60 FR 9838), which announced that LipaTech, Inc., 3101 West Custer Ave., Milwaukee, WI 53209, had submitted applications to register the pesticide products Difethialone Technical, Difethialone Pellets, and Difethialone Pellets Place Packs (EPA File Symbols 7173–ENU, 7173–ENL, and 7173–ENA), containing the active ingredients [(bromo-4'-[biphenyl-1-1']-yl-4)-3-tetrahydro-1,2,3,4-naphthyl-1]-3-hydroxy-4, 2*H*-1-benzothiopyran-one-2 at 97.6, 0.0025, and 0.0025 percent respectively, active ingredients not

included in any previously registered products.

EPA subsequently received an application from LipaTech, to register the pesticide product Generation Rodenticide Bait Packs (Pellets) (File Symbol 7173–ERR), containing the active ingredients [(bromo-4'-[biphenyl-1-1']-yl-4) -3-tetrahydro-1,2,3,4-naphthyl-1]-3-hydroxy-4, 2*H*-1-benzothiopyran-one-2 at 0.0025 percent. However, since the notice of receipt of application did not publish in **Federal Register** as required by FIFRA, as amended, interested parties may submit written comments within 30 days from the date of publication of this notice for this product only. Comments and data may also be submitted electronically by sending electronic mail (e-mail to: opp-docket@epamail.epa.gov. More detailed information is contained in all documents requesting comments as of May 1995.

On May 3, 1995, EPA approved one technical and three end-use products as follows:

1. Difethialone Technical for formulation only into registered end-use rodenticides used in and around buildings and in transport vehicles (EPA Registration Number 7173–204).

2. Generation Pellets (formerly Difethialone Pellets) for indoor and outdoor (around buildings in urban areas) rodent control of house mice, Norway rats, and warfarin resistant Norway rats (EPA Registration Number 7173–205).

3. Generation Pellets Placepacks (formerly Difethialone Pellets Place Packs) for indoor and outdoor (around buildings in urban areas) rodent control of house mice, Norway rats, and warfarin resistant Norway rats (EPA Registration Number 7173–206).

4. Generation Rodenticide Bait Packs (Pellets) for indoor and outdoor (around buildings in urban areas) rodent control of house mice, Norway rats, and warfarin resistant Norway rats (EPA Registration Number 7173–211).

The Agency has considered all required data on risks associated with the proposed use of [(bromo-4'-[biphenyl-1-1']-yl-4)-3-tetrahydro-1,2,3,4-naphthyl-1]-3-hydroxy-4, 2*H*-1-benzothiopyran-one-2, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health safety determinations which show that use of [(bromo-4'-[biphenyl-1-1']-yl-4)-3-tetrahydro-1,2,3,4-naphthyl-1]-3-hydroxy-4, 2*H*-1-benzothiopyran-one-2 when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

More detailed information on these registrations is contained in a Chemical Fact Sheet on [(bromo-4'-[biphenyl-1-1']-yl-4)-3-tetrahydro-1,2,3,4-naphthyl-1]-3-hydroxy-4, 2*H*-1-benzothiopyran-one-2.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: June 13. 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–15309 Filed 6–27–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30389; FRL–4959–4]

Certain Companies; Applications To Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing active ingredients not included in any previously registered products and products involving a change use pattern, pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by July 28, 1995.

ADDRESSES: By mail submit comments identified by the document control number [OPP–30389] and the registration/file number, attention Product Manager (PM) named in each application at the following address: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30389]. No "Confidential Business Information" (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submission can be found below in this document.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Attn: (Product Manager (PM) named in each registration), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

In person: Contact the PM named in each registration at the following office location/telephone number:

Product Manager	Office location/telephone number	Address
PM 21 Connie Welch,	Rm. 227, CM #2 (703–305–6900); e-mail: welch.connie@unixmail.epa.gov.	Environmental Protection Agency 1921 Jefferson Davis Hwy Arlington, VA 22202
PM 31 Marion Johnson,	Rm. 250, CM #2 (703–305–6757); e-mail: johnson.marion@unixmail.epa.gov.	Do.
PM 10 Richard Keigwin,	Rm. 713, CM #2 (703–305–7618); e-mail: keigwin.richard@unixmail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products and products involving a change use pattern pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

I. Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 48210–E. Applicant: Sankyo Company Ltd., c/o Rockwell Enterprises, Inc., 3331 Esplanade Circle S.E., Rio Rancho, NM 87124. Product name: Tachigaren Technical. Fungicide. Active ingredient: Hymexazol (5-methylisoxazol-3-ol) at 99.0 percent. Proposed classification/Use: General. For manufacturing or formulation use as a seed treatment of sugar beet seeds. (PM 21)

2. File Symbol: 65331–R. Applicant: Rhone Merieux, Inc., 115 Transtech Drive,, Athens, GA 30601. Product name: Frontline Spray Treatment. Insecticide. Active ingredient: Fipronil (5-amino-1-[2,6-dichloro-4-(trifluoromethyl)phenyl]-4-[(1R,S)-(trifluoromethyl)sulfinyl]-1H-pyrazole-3-carbonitrile at 0.29 percent. Proposed classification/Use: General. For the control of ticks and fleas on dogs, puppies, cats, and kittens. (PM 10)

II. Products Involving a Change Use Pattern

1. File Symbol: 6836–EER. Applicant: Lonza, Inc. 17-17 Route 208, Fair Lawn, NJ 07410. Product name: Bardac RW-50. Algaecide. Active ingredient: Decyl isononyl dimethyl ammonium chloride at 50 percent. Proposed classification/Use: None. To include in its presently registered use a new use to control algae in swimming pools and spas. (PM 31)

2. File Symbol: 6836–EEN. Applicant: Lonza, Inc. Product name: Bardac CW-50. Microbiocide. Active ingredient: Decyl isononyl dimethyl ammonium chloride at 50 percent. Proposed classification/Use: None. To include in its presently registered use a new use for industrial water treatment, paper processing, and cooling systems. (PM 31)

3. File Symbol: 6836–ERI. Applicant: Lonza, Inc. Product name: Bardac RW-10. Algaecide. Active ingredient: Decyl isononyl dimethyl ammonium chloride at 10 percent. Proposed classification/Use: None. To include in its presently registered use a new use to control algae in swimming pools and spas. (PM 31)

4. File Symbol: 6836–ERO. Applicant: Lonza, Inc. 17-17 Route 208, Fair Lawn, NJ 07410. Product name: Bardac CW-10. Microbiocide. Active ingredient: Decyl isononyl dimethyl ammonium chloride at 10 percent. Proposed classification/Use: None. To include in its presently registered use a new use for industrial water treatment, paper processing, and cooling systems. (PM 31)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

A record has been established for this notice under docket number [OPP–30389] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division at the address provided from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. It is suggested that persons interested in reviewing the application file, telephone this office at (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: June 15, 1995.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–15443 Filed 6–27–95; 8:45 am]

BILLING CODE 6560–50–F

[PP 6G3306/T675A; FRL 4959–7]

Triclopyr; Renewal of Temporary Tolerances, Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In FR Doc. 95–11147 in the Federal Register of May 10, 1995, at page 24855, the following correction is made: in the second paragraph under "Supplementary Information" change "The company has requested a 1-year renewal of the temporary tolerances" to read " The company has requested a 2-year renewal of the temporary tolerances."

FOR FURTHER INFORMATION CONTACT: By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 245, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–6800; e-mail: taylor.robert@epamail.epa.gov.

Dated: June 13, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–15308 Filed 6–27–95; 8:45 am]

BILLING CODES 6560–50–F

[FRL 5227–4]

Notice of Proposed Administrative Cost Recovery Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), notice is hereby given of a proposed administrative cost recovery settlement under Section 122(h)(1) of CERCLA concerning the Liquid Dynamics, Inc., site in Chicago, Illinois. The settlement was proposed by U.S. EPA, Region 5 on February 17, 1995. The settlement resolves an EPA claim under Section 107(a) of CERCLA against Accutronics, Inc., Acme Galvanizing, Inc., Allied Tube & Conduit Corporation, American Waste Processing, Inc., Ashland Chemical Company, Bethlehem Steel Corporation, BorgWarner Corporation, C. M. Products, Inc., Chicago Steel & Wire (Division of Valhi, Inc.), Chicago Tribune Company, Ford Motor Company, General Tube Corporation, Gould Electronics, H.H. Howard Corporation, Kaiser Aluminum & Chemical Corporation, Mid-West Manufacturing Company, Outboard Marine Corporation, Panduit Corporation, Regal Tube Company (Division of Copperweld Tubing Products Co.), Reliable Galvanizing Company, Rollins Leasing Corporation, Signode Corporation, Moen, Inc. (f/k/a Standyne, Inc.), Stuart Industrial Coatings (f/k/a Stuart Paint), Verson Allsteel Press Company, Wayne Circuits, Inc., and Zenith Electronics Corporation. The settlement requires the settling parties to pay $57,000.00 to the Hazardous Substances Superfund.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the U.S. EPA Office of Regional Counsel, 29th Floor, 200 West Adams, Chicago, Illinois 60606.

DATES: Comments must be submitted on or before July 28, 1995.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at the U.S. EPA Office of Regional Counsel, 29th Floor, 200 West Adams, Chicago, Illinois 60606. A copy of the proposed settlement may be obtained from Reginald A. Pallesen, Associate Regional Counsel, Office of Regional Counsel (CM–29A), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Comments should reference the Liquid Dynamics, Inc., site, Chicago, Illinois, and should be addressed to Reginald A. Pallesen, Associate Regional Counsel, Office of Regional Counsel (CM–29A), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Reginald A. Pallesen at (312) 886–0555.

Dated: June 8, 1995.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 95–15880 Filed 6–27–95; 8:45 am]

BILLING CODE 6560–50–M

[OPP–00412; FRL–4962–8]

State FIFRA Issues Research and Evaluation Group (SFIREG); Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State FIFRA Issues Research and Evaluation Group (SFIREG) will hold a 2–day meeting, beginning on Monday, July 10, 1995, and ending on Tuesday, July 11, 1995. This notice announces the location and times for the meeting and sets forth tentative agenda topics. The meeting is open to the public.

DATES: The SFIREG will meet on Monday, July 10, 1995, from 8:30 a.m. to 5:00 p.m., and Tuesday, July 11, 1995, from 8:30 a.m. to 12:00 p.m.

ADDRESSES: The meeting will be held at: The DoubleTree Hotel, National Airport - Crystal City, 300 Army-Navy Drive, Arlington, Virginia 22202, 703–892–4100.

FOR FURTHER INFORMATION CONTACT: By mail: Shirley M. Howard, Office of Pesticide Programs (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1101, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703–305–5306.

SUPPLEMENTARY INFORMATION: The tentative agenda of the SFIREG includes the following:

1. Reports from the SFIREG working committees.
2. Regional SFIREG reports.
3. Discussion of old and new issue papers.
4. Update on acetochlor registration partnership.
5. Status of Endangered Species Program and American Crop Protection Association (ACPA) task force.
6. FY '96 Cooperative agreement guidance and funding update.
7. Discussion of laboratory issues & National Enforcement Information Center updates.
8. Bulk packaging initiative program report.
9. Update on worker protection standard and implementation.
10. Discussion of homeowner pesticide marketing.
11. Biopesticides management and enforcement status report.
12. Other topics as appropriate.

List of Subjects

Environmental protection.

Dated: June 20, 1995.

William L. Jordan,

Director, Field Operations Division, Office of Pesticide Programs.

[FR Doc. 95–16020 Filed 6–27–95; 8:45 am]

BILLING CODE 6560–50–F

EXECUTIVE OFFICE OF THE PRESIDENT

Open Meeting of Policy Dialog Advisory Committee To Assist in the Development of Measures to Significantly Reduce Greenhouse Gas Emissions From Personal Motor Vehicles

AGENCY: Executive Office of the President.

ACTION: Meeting of Policy Dialog Advisory Committee.

SUMMARY: The Executive Office of the President has established a Policy Dialog Advisory Committee to assist in the development of measures to significantly reduce greenhouse gas emissions from personal motor vehicles. The tenth meeting of this committee will be held on July 11 and 12, 1995. The committee's meetings are open to the public without need for advance registration.

DATES: The committee will meet on July 11, 1995 from 9:30 a.m. to 5:30 p.m., on July 12, 1995 from 8:30 a.m. to 4:00 p.m.

ADDRESSES: Both sessions of the meeting will be held in Room 2230 at the United States Department of Transportation, 400 7th Street, S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: For information pertaining to the substantive issues to be dealt with by the advisory committee, contact: Ellen Seidman, Special Assistant to the President for Economic Policy, Washington, D.C. 20500, phone (202) 456–2802, fax (202) 456–2223; Henry Kelly, Assistant Director for Technology, Office of Science and Technology Policy, phone (202) 456–6034, fax (202) 456–6023; Wesley Warren, Associate Director, Council on Environmental Quality, phone (202) 456–6224, fax (202) 456–2710; or Michael Toman, Senior Economist, Council of Economic Advisors, phone (202) 395–5012, fax (202) 395–6853. For information pertaining to administrative matters contact: Deborah Dalton, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, phone (202) 260–5495.

Information about the Committee is also available on the Technology Transfer Network of the Office of Air Quality Planning & Standards of the Environmental Protection Agency, which can be accessed electronically by calling (919) 541–5742. Help in accessing the system can be obtained by calling (919) 541–5384 between 1:00 and 5:00 Eastern Standard Time. Neither of these numbers is a toll-free number. The Committee's total-free information line—1–800–884–9190—provides recorded information about the Committee, including meeting dates and locations. (In the local Washington, DC area, call (202) 366–2373.)

AGENDA FOR THE MEETING: At the meeting, the Committee will discuss:

- Potential policies in the areas of vehicle miles traveled, alternative fuels and alternative fuel vehicles, and vehicle and stock fuel economy;
- Analysis of the cost of potential policy options;
- Potential combinations of policies; and
- Initial drafts of the committee's final report.

Dated: June 15, 1995.

W. Bowman Cutter,

Deputy Assistant to the President for Economic Policy.

John H. Gibbons,

Director, Office of Science and Technology Policy.

Kathleen A. McGinty,

Choir, Council on Environmental Quality.

[FR Doc. 95–16089 Filed 6–26–95; 4:17 pm]

BILLING CODE 3195–01–M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended:

Society Expeditions, Inc. and Discoverer Reederei GmbH, 2001 Western Avenue, Suite 300, Seattle, Washington 98121

Vessel: WORLD DISCOVERER

Dated: June 22, 1995.

Joseph C. Poking,

Secretary.

[FR Doc. 95–15791 Filed 6–27–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Carroll County Bancshares, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 12, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Carroll County Bancshares, Inc., Carroll, Iowa; to acquire Carroll Credit, Inc., Carroll, Iowa, and thereby engage in purchasing retail sales finance contracts and receivables from retailers. Carroll Credit, Inc., will be an industrial loan company, pursuant to § 225.25(b)(2) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 22, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-15823 Filed 6-27-95; 8:45 am]

BILLING CODE 6210-01-F

New England Community Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 21, 1995.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. New England Community Bancorp, Inc., Windsor, Connecticut (formerly known as Olde Windsor Bancorp, Inc., Windsor, Connecticut); to acquire 100 percent of the voting shares of The Equity Bank, Wethersfield, Connecticut.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis Minnesota; to acquire 100 percent of the voting shares of Alice Bancshares, Inc., Alice, Texas.

Board of Governors of the Federal Reserve System, June 22, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-15824 Filed 6-27-95; 8:45 am]

BILLING CODE 6210-01-F

John Mark Whitfield; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than July 12, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. John Mark Whitfield, Jasper, Georgia; to retain 10.27 percent, for a total of 10.27 percent, of the voting shares of JBC Bancshares, Inc., Jasper, Georgia, and thereby indirectly acquire Jasper Banking Company, Jasper, Georgia.

Board of Governors of the Federal Reserve System, June 22, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-15825 Filed 6-27-95; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

Acquisition Operations and Electronic Commerce Center; Cancellation of Optional Form

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: Because of low usage, Optional Form 274 Equipment Warranty Label is canceled.

FOR FURTHER INFORMATION CONTACT: Ms. Rosa McCullough, Acquisition Operations and Electronic Commerce Center (703) 305–7557.

DATES: Effective June 28, 1995.

Dated: June 20, 1995.

John R. Roehmer,

Director, Acquisition Operations and Electronic Commerce Center.

[FR Doc. 95–15773 Filed 6–27–95; 8:45 am]

BILLING CODE 6820–24–M

Interagency Sharing of Indefinite-Delivery/Indefinite Quantity Contracts for Information Technology

AGENCY: Information Technology Service, GSA.

ACTION: Notice with request for comments.

SUMMARY: GSA will be considering changes to the Federal Information Resources Management Regulation (FIRMR) to provide agencies more flexibility in making future contracts for information technology (IT) available for use by all agencies. Some companies have requested, however, that existing contracts for IT products and services be amended to open them up for use by all agencies. GSA is seeking comments on whether it would be appropriate to consider a policy that would allow existing IT contracts to be amended for use by other agencies.

DATES: Comments are due: August 28, 1995.

ADDRESSES: Comments may be mailed to GSA/KAR, 18th and F Streets, NW., room 3224, Washington, DC 20405, Attn: B. Walter MacDermid, or delivered to that address between 8:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: B. Watler MacDermid, GSA, Office of Information Technology Policy and Leadership (KAR), 18th and F Streets, NW., room 3224, Washington, DC 20405, telephone FTS/Commercial (202) 501–3194 (v) or (202) 501–0657 (tdd).

SUPPLEMENTARY INFORMATION: GSA is responsible under the Federal Property and Administrative Services Act of 1949, as amended, for the economic and efficient acquisition of IT resources. In conformance with that objective, GSA will be proposing FIRMR changes to provide agencies more flexibility in making future IT contracts available for use by all agencies. However, during the past year, several companies requested that certain existing contracts for IT products and services be amended to open them up for use by all agencies.

GSA has taken the position that this would not be fair to other companies, and contract scope changes of this magnitude should not be made after contract award. Others have suggested that a policy covering all existing contracts would, in fact, be fair to all companies. As a result, GSA is seeking comments from a broader universe and especially from IT companies and other interested parties on the following proposal:

Policy Proposal: GSA is considering allowing agencies to open up all existing indefinite-delivery indefinite quantity type contracts for information technology products and services awarded under the authority of Public law 89–306 for the use of all agencies to a maximum of 20% of the total contract amount.

Dated: June 14, 1995.

Francis A. McDonough,

Deputy Commissioner for Information Technology Policy and Leadership.

[FR Doc. 95–15774 Filed 6–27–95; 8:45 am]

BILLING CODE 6820–25–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Notice of Health Care Policy and Research Special Emphasis Panel Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2) announcement is made of the following special emphasis panel scheduled to meet during the month of July 1995:

Name: Health Care Policy and Research Special Emphasis Panel.

Date and Time: July 27–28, 1995, 8:30 a.m.

Place: Ramada Inn, 1775 Rockville Pike, Georgetown Room, Rockville, MD 20852.

Open July 27, 8:30 a.m. to 9:00 a.m.

Closed for remainder of meeting.

Purpose: This Panel is charged with conducting the initial review of grant applications on research that will examine the effects on patient outcomes of various proposed or existing mechanisms for managing selection, utilization, and cost of pharmaceutical therapies and services.

Agenda: The open session of the meeting on July 27, from 8:30 a.m. to 9:00 a.m., will be devoted to a business meeting covering administrative matters. During the closed session, the committee will be reviewing and discussing grant applications dealing with health research issues. In accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6), it has been determined that this latter session will be closed because the discussions are likely to reveal personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members or other relevant information should contact Gerald E. Calderone, Ph.D., Agency for Health Care Policy and Research, Suite 400, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–2462.

Agency items for this meeting are subject to change as priorities dictate.

Dated: June 20, 1995.

Lisa Simpson,

Acting Administrator.

[FR Doc. 95–15842 Filed 6–27–95; 8:45 am]

BILLING CODE 4160–90–M

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Public Health Service (PHS) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program ("the Program"), as required by section 2112(b)(2) of the PHS Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program generally, contact the Clerk, United States Court of Federal Claims, 717 Madison Place, N.W., Washington, D.C. 20005, (202) 219–9657. For information on the Public Health Service's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 8A35, Rockville, MD 20857, (301) 443–6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of title XXI of the PHS Act, 42 U.S.C. 300aa-10 et seq, provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to PHS. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at section 2114 of the PHS Act. This Table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested after the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa-12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a partial list of petitions received by PHS on November 21, 1991 through December 31, 1992.

Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, written information" relating to the following:

1. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition," and

2. Any allegation in a petition that the petitioner either:

(a) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Table but which was caused by" one of the vaccines referred to in the Table, or

(b) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed

above (under the heading **FOR FURTHER INFORMATION CONTACT**), with a copy to PHS addressed to Director, Bureau of Health Professions, 5600 Fishers Lane, Room 8–05, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions

1. Elayne De Maria on behalf of Paige Galasso, Deceased, Hackensack, New Jersey, Claims Court Number 91–1625 V.
2. Deborah Leone, Trinidad, Colorado, Claims Court Number 91–1634 V.
3. Elizabeth Pipkins on behalf of Daniel Pipkins, Deceased, Avondale, Arizona, Claims Court Number 91–1635 V.
4. Thomas Brown on behalf of Amanda Brown Norwich, Connecticut, Claims Court Number 91–1636 V.
5. Pamela Gall on behalf of Karlea Gall, Deceased, Bismarck, North Dakota, Claims Court Number 91–1642 V.
6. Michelle Geery on behalf of Mitchell Geery, Deceased, Newhall, California, Claims Court Number 91–1659 V.
7. Alfred Hindle on behalf of Alfred Hindle, III, Deceased Woodbury, New Jersey, Claims Court Number 91–1660 V.
8. Bruce Hunter on behalf of Emily Hunter, Attleboro, Massachusetts Claims Court Number 91–1664 V.
9. Ann Engelbrektson on behalf of Brett Engelbrektson, Deceased, Fargo, North Dakota, Claims Court Number 91–1665 V.
10. Anita Jenkins on behalf of Curtis Jenkins, Leominster, Massachusetts, Claims Court Number 91–1668 V.
11. Lee Audau on behalf of James Audau, Staten Island, New York, Claims Court Number 91–1669 V.
12. Rita Lindsay on behalf of Margaret Lindsay, Deceased, Oklahoma City, Oklahoma, Claims Court Number 91–1670 V.
13. Kenneth Roberson on behalf of Corey Roberson, Deceased, Portsmouth, Virginia, Claims Court Number 91–1677 V.
14. Terrence Carroll on behalf of Cody Carroll, Houston, Texas, Claims Court Number 91–1694 V.
15. Edith Buenavista on behalf of Edward Buenavista, Stockton, California, Claims Court Number 91–1701 V.
16. David Henley on behalf of Alex Henley, Denver, Colorado, Claims Court Number 91–1702 V.
17. Timothy Swope on behalf of Brice Swope, Salt Lake City, Utah, Claims Court Number 91–1712 V.
18. Wayne Shands on behalf of Megan Shands, Flint, Michigan, Claims Court Number 91–1713 V.
19. Jeff Cannon on behalf of Casey Cannon, Deceased, Powell, Wyoming, Claims Court Number 91–1714 V.
20. James Velez on behalf of Larissa Velez, Renton, Washington, Claims Court Number 91–1718 V.
21. Turner Turnbull on behalf of Samantha Turnbull, Fayetteville, North Carolina, Claims Court Number 92–0002 V.
22. Stephen Davis on behalf of Sarah Davis, Dayton, Ohio, Claims Court Number 92–0003 V.
23. Darlene Arito, Downers Grove, Illinois, Claims Court Number 92–0004 V.
24. Lori Misenko on behalf of Lynette Misenko, Deceased, Ashtabula, Ohio, Claims Court Number 92–0013 V.
25. Lori Crouse on behalf of Adam Crouse, Fort Dodge, Iowa, Claims Court Number 92–0018 V.
26. Israel Ntaganzwa, Fishkill, New York, Claims Court Number 92–0023 V.
27. Julie Cortes on behalf of Erick Cortes, Deceased, Savannah, Georgia, Claims Court Number 92–0024 V.
28. Wendy Jones, Preston, Georgia Claims Court Number 92–0028 V.
29. Debra Stone on behalf of Thomas Stone, Lock Haven, Pennsylvania, Claims Court Number 92–0029 V.
30. Nelson Menard on behalf of Belle Menard, Lafayette, Louisiana, Claims Court Number 92–0031 V.
31. Dawn Barnes on behalf of Christopher Barnes, Seminole, Florida, Claims Court Number 92–0032 V.
32. Cathy Hersom on behalf of Crystal Marchlewski, Deceased, Cleburne, Texas, Claims Court Number 92–0037 V.
33. Linda Thomas on behalf of Lavell Thomas, Lake City, South Carolina, Claims Court Number 92–0046 V.
34. Laurie Collins, Glendale, Arizona, Claims Court Number 92–0047 V.
35. Thomas Konsitzke on behalf of Aaron Konsitzke, Elm Grove, Wisconsin, Claims Court Number 92–0048 V.
36. Teresa Farmer on behalf of Bradley Farmer, Bakersfield, California, Claims Court Number 92–0056 V.
37. Harvey Wilcox on behalf of Terry Wilcox, Mobile, Alabama, Claims Court Number 92–0057 V.
38. Margo Clarke on behalf of LaShawn Clarke, Deceased, Washington, D.C., Claims Court Number 92–0058 V.
39. Terri Wodicker on behalf of Ashley Wodicker, Fenton, Missouri, Claims Court Number 92–0064 V.
40. Gene Palmer on behalf of Kyle Palmer, Cincinnati, Ohio, Claims Court Number 92–0066 V.
41. Patricia Johnson, Idaho Falls, Idaho, Claims Court Number 92–0067 V.
42. Christina Bertels, Durham, North Carolina, Claims Court Number 92–0075 V.
43. Gwendolyn Hawkins on behalf of Christian Bazuaye, Washington, D.C., Claims Court Number 92–0078 V.
44. Lillian Awad, Bronx, New York, Claims Court Number 92–0079 V.
45. Valarie Baker on behalf of Serenity Baker, Salt Lake City, Utah, Claims Court Number 92–0080 V.
46. Hellen Jack, Los Angeles, California, Claims Court Number 92–0083 V.
47. Christine Murphy, Weymouth, Massachusetts, Claims Court Number 92–0087 V.
48. Michael Kotowski on behalf of Tyler Kotowski, Santa Barbara, California, Claims Court Number 92–0088 V.
49. Lydia Tang on behalf of Kathleen Tang, Deceased, Meriden, Connecticut, Claims Court Number 92–0094 V.
50. Avital Kornblum, Brooklyn, New York, Claims Court Number 92–0095 V.
51. Kathleen Bailey, Safford, Arizona, Claims Court Number 92–0101 V.
52. Jan May on behalf of Alicia Rice, Newburyport, Massachusetts, Claims Court Number 92–0105 V.
53. Harmony Abrams on behalf of Jared Abrams, Deceased, Fort Bragg, California, Claims Court Number 92–0109 V.
54. Roger Russell on behalf of Ethan Russell, Deceased, Salyersville, Kentucky, Claims Court Number 92–0111 V.
55. Cherly Ann Smith on behalf of Reginald Smith, Deceased, Shreveport, Louisiana, Claims Court Number 92–0113 V.
56. Wynell Manshack on behalf of Travis Chase Manshack, Channelview, Texas, Claims Court Number 92–0119 V.
57. Sandra Britton on behalf of Joseph Britton, Warrenton, Virginia, Claims Court Number 92–0132V.
58. Julie Dwyer on behalf of Sean Dwyer, Denver, Colorado, Claims Court Number 92–0135 V.
59. Lisa Leo on behalf of Scott Leo, Waterville, Maine, Claims Court Number 92–0139 V.
60. Kippy Schuler, Great Falls, Montana, Claims Court Number 92–0140 V.
61. Jaime Fuentes on behalf of Alba Fuentes, Deceased, San Antonio, Texas, Claims Court Number 92–0162 V.

62. Linda Nelson on behalf of Kenneth Nelson, Marlton, New Jersey, Claims Court Number 92–0177 V.
63. Janet Glassman on behalf of Jennifer Glassman, Simsbury, Connecticut, Claims Court Number 92–0183 V.
64. Brian Bruneau on behalf of Andrea Bruneau, Deceased, Phoenix, Arizona, Claims Court Number 92–0196 V.
65. Rozie Warner, Detroit, Michigan, Claims Court Number 91–0201 V.
66. Veronica Gilbert on behalf of Steven Gilbert, Oscoda, Michigan, Claims Court Number 92–0204 V.
67. Sandra Small on behalf of Benjamin Hatfield, Kerrville, Texas, Claims Court Number 92–0207 V.
68. Milton English on behalf of Jacqueline English, Bakersville, North Carolina, Claims Court Number 92–0208 V.
69. Suzanne Staats on behalf of Phillip Staats, Old Bethpage, New York, Claims Court Number 92–0210 V.
70. Barbara Parsons, Arcadia, California, Claims Court Number 92–0221 V.
71. Marilyn Lavender on behalf of Erica Cooley, Forest Park, Georgia, Claims Court Number 92–0222 V.
72. Sherri Brown on behalf of Christopher Brown, Payette, Idaho, Claims Court Number 92–0226 V.
73. Teresa Gibson, Orlando, Florida, Claims Court Number 92–0234 V.
74. Kimberly Bender on behalf of Kimberlie Ann Bender, Deceased, Pittsburgh, Pennsylvania, Claims Court Number 92–0238 V.
75. Ruby Flowers on behalf of Melissa Malone, Deceased, Akron, Ohio, Claims Court Number 92–0239 V.
76. Milan Zeman on behalf of Milan Zeman, III, LaGrange, Illinois, Claims Court Number 92–0240 V.
77. David Maasch on behalf of Jonathon Maasch, San Diego, California, Claims Court Number 92–0241 V.
78. James Bullock, Sr. on behalf of James Bullock, Jr., Deceased, Buffalo, New York, Claims Court Number 92–0258 V.
79. Sharon Mandel, Binghamton, New York, Claims Court Number 92–0260 V.
80. Suk Soon Song on behalf of Nicholas Song, Staten Island, New York, Claims Court Number 92–0279 V.
81. Phillip Tiemeier on behalf of Brett Tiemeier, Phoenix, Arizona, Claims Court Number 92–0280 V.
82. Christina Mahmood, Seattle, Washington, Claims Court Number 92–0282 V.
83. Magda Guirguis, Lincoln, Rhode Island, Claims Court Number 92–0287 V.
84. Gilbert Higgins on behalf of Zachary Higgins, Deceased, Dagus Mines, Pennsylvania, Claims Court Number 92–0313 V.
85. Curtis Crosier on behalf of Zane Crosier, Golden, Colorado, Claims Court Number 92–0316 V.
86. John Eli on behalf of Nicholas Eli, Baltimore, Maryland, Claims Court Number 92–0324 V.
87. Etta McGhee on behalf of Ashley McGhee, Jacksboro, Tennessee, Claims Court Number 92–0332 V.
88. Andre Doszpoly on behalf of Dezso Doszpoly, Bryn Mawr, Pennsylvania, Claims Court Number 92–0333 V.
89. Ron Vant Erve on behalf of Christian Vant Erve, Montgomery, Alabama, Claims Court Number 92–0341 V.
90. Stephen Goldman on behalf of David Goldman, Cherry Hill, New Jersey, Claims Court Number 92–0342 V.
91. Gladys Williams on behalf of Roxie Hollis, Deceased, Dorchester, Massachusetts, Claims Court Number 92–0343 V.
92. Richard Sepulveda, Denver, Colorado, Claims Court Number 92–0349 V.
93. Michael Kraus on behalf of Matthew Kraus, Howell, New Jersey, Claims Court Number 92–0352 V.
94. Beth Newton on behalf of Kate Newton, Lincoln, Nebraska, Claims Court Number 92–0353 V.
95. Melanie Long, Birmingham, Alabama, Claims Court Number 92–0357 V.
96. Patricia Haislop on behalf of Christa Haislop, Tampa, Florida, Claims Court Number 92–0366 V.
97. Teresa Gasper on behalf of Marissa Gasper, San Antonio, Texas, Claims Court Number 92–0368.
98. Debra Morack on behalf of Angela Rovak, Boulder, Colorado, Claims Court Number 92–0374 V.
99. William Halperin on behalf of Stacey Halperin, Palm Beach Gardens, Florida, Claims Court Number 92–0381 V.
100. Elizabeth Mooney, Albuquerque, New Mexico, Claims Court Number 92–0383 V.
101. Janice Freeman on behalf of Victoria Freeman, Melbourne, Florida, Claims Court Number 92–0384 V.
102. Kathryn Lee, Clifton Park, New York, Claims Court Number 92–0386 V.
103. Nikki Anderson on behalf of Nikkell Anderson, Deceased, Memphis, Tennessee, Claims Court Number 92–0388 V.
104. Kristina Steele on behalf of Ashton Steele, Paris, Tennessee, Claims Court Number 92–0394 V.
105. Lawrence Burns on behalf of Justin Burns, San Antonio, Texas, Claims Court Number 92–0404 V.
106. Archie Clark on behalf of Cabe Clark, Wellpinit, Washington, Claims Court Number 92–0405 V.
107. Joyce Jones on behalf of Corey Jones, Farmville, Virginia, Claims Court Number 92–0408 V.
108. Susan Seber on behalf of Alex Seber, Freehold, New Jersey, Claims Court Number 92–0422.
109. Arlene Norber, Banning, California, Claims Court Number 92–0426 V.
110. Alecia Bilotti, Kalamazoo, Michigan, Claims Court Number 92–0429 V.
111. Mark Sparks on behalf of Rita Sparks, Spruce Pine, North Carolina, Claims Court Number 92–0443 V.
112. Richardo Lee on behalf of Andrew Lee, La Habra, California, Claims Court Number 92–0454 V.
113. Lisa Ditlev-Aste on behalf of Mikael Ditlev-Aste, Salt Lake City, Utah, Claims Court Number 92–0456 V.
114. Danny Brown, Sr. on behalf of Danny Brown, Jr., Bowling Green, Kentucky, Claims Court Number 92–0460 V.
115. Patrick Boland on behalf of Andrew Boland, Sumter, South Carolina, Claims Court Number 92–0465 V.
116. Kimberly Harris, Baltimore, Maryland, Claims Court Number 92–0471 V.
117. Patricia Johnson, Idaho Falls, Idaho, Claims Court Number 92–0478 V.
118. Rebecca Maranz, Marlton, New Jersey, Claims Court Number 92–0487 V.
119. Kathryn Redder, Cincinnati, Ohio, Claims Court Number 92–0490 V.
120. Susan Siljee, Ridgewood, New Jersey, Claims Court Number 92–0493 V.
121. Evelyn Marcelis on behalf of Erica Marcelis, Philadelphia, Pennsylvania, Claims Court Number 92–0498 V.
122. Patti Haulot, Phoenix, Arizona, Claims Court Number 92–0502 V.
123. Katrina Tobias on behalf of Ashley Tobias, Deceased, San Diego, California, Claims Court Numbers 92–0509/0510 V.
124. Ana Hernandez on behalf of Karen Hernandez, Wayne, New Jersey, Claims Court Number 92–0511 V.
125. Lee Delia on behalf of Erick Delia, Nutley, New Jersey, Claims Court Number 92–0513 V.
126. David Marsh on behalf of Jacob Marsh, Sturgis, Michigan, Claims Court Number 92–0519 V.
127. Anna Noel on behalf of Christian Noel, East Los Angeles, California, Claims Court Number 92–0520 V.
128. Michael Schroeder on behalf of Travis Schroeder, Ottawa, Ohio, Claims Court Number 92–0521 V.

129. Olga Krel on behalf of Rinata Krel, Panorama City, California, Claims Court Number 92–0528 V.
130. D. Keith Jones on behalf of Morgan Jones, Deceased, Lawrence, Kansas, Claims Court Number 92–0529 V.
131. James Smith on behalf of Dreama Smith, Binghamton, New York, Claims Court Number 92–0539 V.
132. Richard Homuth on behalf of Brady Homuth, Olean, New York, Claims Court Number 92–0543 V.
133. Rafael Taveras on behalf of Pamela Taveras, Tampa, Florida, Claims Court Number 92–0544 V.
134. Mark Kern on behalf of Kristen Kern, Deceased, Saint Louis, Missouri, Claims Court Number 92–0545.
135. Pamela Cleveland, Enid, Oklahoma, Claims Court Number 92–0549 V.
136. Linda Mikos, Park Ridge, Illinois, Claims Court Number 92–0558 V.
137. Marsha Sampica on behalf of Benjamin Sampica, Cedar Rapids, Iowa, Claims Court Number 92–0568 V.
138. Carolyn Harris on behalf of Amberly Harris, Columbus, Mississippi, Claims Court Number 92–0573 V.
139. Linda Smart on behalf of Jonathan Smart, Mobile, Alabama, Claims Court Number 92–0576 V.
140. Karen Sanders, Miami Lakes, Florida, Claims Court Number 92–0587 V.
141. Jaylene Majourau on behalf of Jaycee Rae Faria, San Bernardino, California, Claims Court Number 92–0589 V.
142. Michele Hatcher, Mesa, Arizona, Claims Court Number 92–0621 V.
143. Alan Hoopes on behalf of Justin Hoopes, Deceased, Las Vegas, Nevada, Claims Court Number 92–0628 V.
144. Stacey Vogel on behalf of Kaylynn Nuss, Denver, Colorado, Claims Court Number 92–0629 V.
145. John Boyer on behalf of Joseph Boyer, Reading, Pennsylvania, Claims Court Number 92–0632 V.
146. Cassandra Plott on behalf of William Plott, San Francisco, California, Claims Court Number 92–0633 V.
147. Adrienne Jackson on behalf of Nikisha Jackson, Dallas, Texas, Claims Court Number 92–0634 V.
148. Gail Imeson on behalf of Dusti Imeson, Valparaiso, Indiana, Claims Court Number 92–0639 V.
149. Paul Mead on behalf of Lisa Michelle Mead, Cortez, Colorado, Claims Court Number 92–0640 V.
150. Tammy Stewart on behalf of Cherise Stewart, Seattle, Washington, Claims Court Number 92–0643 V.
151. Lucy Luisi on behalf of Erin Luisi, Tarzana, California, Claims Court Number 92–0645 V.
152. Lamour McCall on behalf of Sharon McCall Woodbridge, Virginia, Claims Court Number 92–0651 V.
153. Francisco Garcia on behalf of Isabel Garcia, Haverstraw, New York, Claims Court Number 92–0658 V.
154. Debra Lenander on behalf of Steven G. Lenander, Warren, Michigan, Claims Court Number 92–0659 V.
155. Janet Zuhlke on behalf of Rachel Zuhlke, Rockledge, Florida, Claims Court Number 92–0674 V.
156. LaShelle Haider on behalf of Jessi Winters, Portland, Oregon, Claims Court Number 92–0692 V.
157. Michelle Lodge, Milwaukee, Wisconsin, Claims Court Number 92–0697 V.
158. Donna Sholberg on behalf of Brittany Sholberg, Deceased, Vacaville, California, Claims Court Number 92–0698 V.
159. Ethel Sindi Klemsz, Wahoo, Nebraska, Claims Court Number 92–0702 V.
160. Richard Mathisen on behalf of Andrew Mathisen, Maplewood, Minnesota, Claims Court Number 92–0703 V.
161. Debra Anderson, Gadsden, Alabama, Claims Court Number 92–0704 V.
162. Darlene and Randall Moses on behalf of Megan B. Moses, Gainesville, Florida, Claims Court Number 92–0711 V.
163. Denise L. Carr, Neenah, Wisconsin, Claims Court Number 92–0722 V.
164. Marjorie E. Lyons, Springfield, Massachusetts, Claims Court Number 92–0723 V.
165. Cathy and Leroy Johnson on behalf of Chauncey Johnson, Alamance, North Carolina, Claims Court Number 92–0724 V.
166. Linda Ann Cook, Atlanta, Georgia, Claims Court Number 92–0725 V.
167. Richard Sorensen on behalf of Tyler Sorensen, Deceased, Salt Lake City, Utah, Claims Court Number 92–0729.
168. Robin and Geoff Brittain on behalf of Caleb Brittain, Summerville, South Carolina, Claims Court Number 92–0730 V.
169. David Boulton on behalf of Natasha J. Boulton, Deceased, Scottsdale, Arizona, Claims Court Number 92–0745 V.
170. Victoria Watson on behalf of Michael Duane Yarborough, Jr., Deceased, Portland, Oregon, Claims Court Number 92–0754 V.
171. Tracey Statz on behalf of Audra Statz, Evansville, Indiana, Claims Court Number 92–0755 V.
172. William McCarren, Sr. on behalf of William McCarren, Jr., Baltimore, Maryland, Claims Court Number 92–0764 V.
173. Carol Jacobs on behalf of Joshua Jacobs, West Columbia, South Carolina, Claims Court Number 92–0778 V.
174. Henry and Elizabeth Richards on behalf of Catherine Richards, New Orleans, Louisiana, Claims Court Number 92–0779.
175. Steve G. Burkholder on behalf of Kylie J. Burkholder, Deceased, Lancaster, Pennsylvania, Claims Court Number 92–0792 V.
176. Mitchell Josephs on behalf of Rachel Josephs, Haddonfield, New Jersey, Claims Court Number 92–0795 V.
177. Ron L. Marquette on behalf of Eric C. Marquette, Houston, Texas, Claims Court Number 92–0796 V.
178. Carol L. Davies, Washington, D.C., Claims Court Number 92–0800 V.
179. Karen Davis on behalf of Glenia Athleen Davis, Portsmouth, Virginia, Claims Court Number 92–0804 V.
180. Bradford Irwin Sr. on behalf of Bradford Irwin Jr., Charleston, Mississippi, Claims Court Number 92–0805 V.
181. Clara and Dwayne Walker on behalf of Darvis Walker, Milwaukee, Wisconsin, Claims Court Number 92–0814 V.
182. Susan and Mickey Damian on behalf of Joshua Damian, Lincoln, Nebraska, Claims Court Number 92–0831 V.
183. Jack M. Farrington on behalf of Michael J. Farrington, Metairie, Louisiana, Claims Court Number 92–0833 V.
184. Amanda Sword on behalf of Dana Sword, Corry, Pennyslvania, Claims Court Number 92–0834 V.
185. Ronald F. and Kay Nummy on behalf of Jessica Nummy, Montgomery, Alabama, Claims Court Number 92–0835 V.
186. Donald T. and Helen Hutchings on behalf of Donald T. Hutchings, Atlanta, Georgia, Claims Court Number 92–0836 V.
187. Charles Eades on behalf of Elliott Donald Eades, Deceased, Storm Lake, Iowa, Claims Court Number 92–0842 V.
188. Kay Vargo on behalf of Jordan Vargo, Flint, Michigan, Claims Court Number 92–0854
189. Kimberly Akers on behalf of Ashley Akers, Bristol, Tennessee, Claims Court Number 92–0867 V.
190. Kendra Holmes on behalf of Patrick and Torris Freeman, Houston, Texas, Claims Court Number 92–0868 V.
191. Laura L. Torres, Midland, Michigan, Claims Court Number 92–0877 V.
192. Kelly Olsen on behalf of Christopher Olsen, Baldwin, New York, Claims Court Number 92–0881 V.
193. John R. Moeding, Greeley, Colorado, Claims Court Number 92–0882 V.

Dated: June 22, 1995.

Ciro V. Sumaya,

Administrator.

[FR Doc. 95–15843 Filed 6–27–95; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Cancer Institute; Notice of Meeting of the Subcommittee on Activities and Agenda, National Cancer Advisory Board

Pursuant to Public Law 92–463, notice is hereby given of the meeting of National Cancer Advisory Board Subcommittee on Activities and Agenda, July 14, 1995 at the Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

The entire meeting will be open to the public from 9 am to adjournment. Discussions will address the Board's format, potential future agenda items and activities of the National Cancer Advisory Board. Attendance by the public will be limited to space available.

Ms. Carole Frank, Committee Management Specialist, National Cancer Institute, National Institutes of Health, Executive Plaza North, Room 630M, MSC 7405, 9000 Rockville Pike, Bethesda, Maryland 20892–7405 (301/496–5708), will provide a summary of the meeting and a roster of the Subcommittee members upon request.

Dr. Marvin R. Kalt, Executive Secretary, Subcommittee on Activities and Agenda, National Cancer Advisory Board, National Cancer Institute, National Institutes of Health, Executive Plaza North, Room 600, Bethesda, Maryland 20892 (301/496–4128), will furnish substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Marvin R. Kalt on (301/496–4128) in advance of the meeting.

Dated: June 21, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–15803 Filed 6–27–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.
Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: July 13, 1995.
Time: 4 p.m.
Place: Parklawn Building, Room 9C–04, 5600 Fishers Lane, Rockville, MD 20857.
Contact Person: Greg Zimmerman, Grant Technical Assistant, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1340.

Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: July 21, 1995.
Time: 8:30 a.m.
Place: DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Greg Zimmerman, Grant Technical Assistant, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1340.

Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: July 21, 1995.
Time: 12:30 p.m.
Place: DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Greg Zimmerman, Grant Technical Assistant, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1340.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers 93.126, Small Business Innovation Research; 93.176, ADAMHA Small Instrumental Program Grants; 93.242, Mental Health Research Grants; 93.281, Mental Research Scientist Development Award and Research Scientist Development Award for Clinicians; 93.282, Mental Health Research Service Awards for Research Training; and 93.921, ADAMHA Science Education Partnership Award.)

Dated: June 21, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–15804 Filed 6–27–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.
Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: July 19–20, 1995.
Time: 7 p.m.
Place: DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Phyllis L. Zusman, Grant Technical Assistant, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1340.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers 93.126, Small Business Innovation Research; 93.176, ADAMHA Small Instrumental Program Grants; 93.242, Mental Health Research Grants; 93.281, Mental Research Scientist Development Award and Research Scientist Development Award for Clinicians; 93.282, Mental Health Research Service Awards for Research Training; and 93.921, ADAMHA Science Education Partnership Award.)

Dated: June 21, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–15805 Filed 6–27–95; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health

National Cancer Institute; Notice of Meeting President's Cancer Panel

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the President's Cancer Panel, National Cancer Institute, on July 20, 1995, at the Hotel Intercontinental Chicago, 505 North Michigan Avenue, Chicago, Illinois 60611.

This meeting will be open to the public on July 20, 1995 from 8 a.m. to approximately 5 p.m. Attendance by the public will be limited to space available. The topic will be Progress in Leukemia.

Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations should contact Ms. Nora Winfrey, (301–496–1148), in advance of the meeting.

Dr. Maureen O. Wilson, Executive Secretary, President's Cancer Panel, National Cancer Institute, Building 31, Room 4B43, National Institutes of Health, Bethesda, Maryland 20892 (301–496–1148) will provide a roster of the Panel members and substantive program information upon request.

Dated: June 21, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–15806 Filed 6–27–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Chemistry and Related Sciences.

Date: July 15, 1995.

Time: 1:00 p.m..

Place: NIH, Rockledge II, Room 4144, Telephone Conference.

Contact Person: Dr. Paul Strudler, Scientific Review Administrator 6701 Rockledge Drive, Room 4144, Bethesda, MD 20892, (301) 435–1716.

Name of SEP: Clinical Sciences.

Date: July 19, 1995.

Time: 10:00 a.m.

Place: NIH, Rockledge II, Room 4106, Telephone Conference.

Contact Person: Ms. Josephine Pelham, Scientific Review Admin., Bethesda, MD 20892, (301) 435–1786.

Name of SEP: Microbiological and Immunological Sciences.

Date: July 19, 1995.

Time: 3:00 p.m.

Place: NIH, Rockledge II, Room 4186, Telephone Conference.

Contact Person: Dr. Gerald Liddel, Scientific Review Administrator, 6701 Rockledge Drive, Room 4186, Bethesda, MD 20892, (301) 435–1150.

Name of SEP: Clinical Sciences.

Date: July 21, 1995.

Time: 11:00 a.m.

Place: NIH, Rockledge II, Room 4138, Telephone Conference.

Contact Person: Dr. Anthony Chung, Scientific Review Administrator, 6701 Rockledge Drive, Room 4138, Bethesda, MD 20892, (301) 435–1213.

Name of SEP: Clinical Sciences.

Date: July 25, 1995.

Time: 3:00 p.m.

Place: NIH, Rockledge II, Room 4140, Telephone Conference.

Contact Person: Dr. Larry Pinkus, Scientific Review Administrator, 6701 Rockledge Drive, Room 4140, Bethesda, MD 20892, (301) 435–1214.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 21, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–15807 Filed 6–27–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–803695

Applicant: Ward E. Jones II, Irving, TX.

The applicant requests a permit to import one sport-hunted bontebok (*Damaliscus pygarcus dorcas*) culled from the approved captive-bred herd maintained by Mr. D.B. Pohl, Republic of South Africa, for the purpose of enhancement of the species.

PRT–803444

Applicant: Calvin L. Tipton, Ridgefield, WA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygarcus dorcas*) culled from the captive herd maintained by Walter Murray, Groothock, Graaff-Reinet, Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–803810

Applicant: Ringling Bros.-Barnum & Bailey, Vienna, VA.

The applicant requests a permit to import and reexport two captive-born male tigers (*Panthera tigris*), from Chipperfield Enterprises Ltd., Oxon, United Kingdom to enhance the survival of the species through conservation education. This notificatation covers activities conducted by the applicant over a three-year period.

PRT–803692

Applicant: Brookfield Zoo, Brookfield, IL.

The applicant requests a permit to import up to 115 blood and plasma samples collected from wild American crocodiles (*Crocodylus acutus*) at four sample sites in Mexico to enhance the survival of the species through scientific research.

PRT–803779

Applicant: John Glover, Colerain, NC.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygarcus dorcas*) culled from the captive herd maintained by F.W.M. Bowker, Thornkoof, Grahamstown, Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–803993

Applicant: Zoo Atlanta, Atlanta, GA.

The applicant requests a permit to import one male captive-born drill (*Mandrillus leucophaeus*) from Touroparc, Lyon Satolas, Romaneche Thorins, France for the purpose of enhancement of the species through captive propagation.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: 703/358–2104; FAX: 703/358–2281.

Dated: June 23, 1995.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 95–15826 Filed 6–27–95; 8:45 am]

BILLING CODE 4310–55–P

Receipt of Application(s) for Permit

The following Applicant(s) have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*)

PRT–803839

Applicant: LCDR A.S. Griffith, Naval Air Station Kingsville, Kingsville, Texas.

The Applicant requests a permit to take the South Texas ambrosia (*Ambrosia cheiranthifolia*) in Texas, for the purpose of scientific research, recovery actions, and survival of the species as prescribed by Service recovery documents.

ADDRESSES: Written data or comments should be submitted to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, and must be received by the Assistant Regional Director within 30 days from the date of this publication.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the above office within 30 days of the date of publication of this notice. (See **ADDRESSES** above.)

James A. Young,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 95–15848 Filed 6–27–95; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[CA–050–1430–01; CACA 12930]

Termination of Recreation and Public Purposes Classification and Opening Order; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates Recreation and Public Purposes Classification, CACA 12930. The land will be opened to the operation of the public land laws including the mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. The land has been and remains open to the operation of the mineral leasing laws.

EFFECTIVE DATE: Termination of the classification is effective on June 28, 1995. The land will be open to entry at 10 a.m. on July 28, 1995.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office (CA–931.4), 2800 Cottage Way, Room E–2845, Sacramento, California 95825–1889; telephone number 916–979–2858.

SUPPLEMENTARY INFORMATION: On July 2, 1982, I.O.O.F. Lodge No. 75 submitted an application to purchase 1.12 acres of land for expansion of the existing French Gulch Cemetery. On January 17, 1983, the land described below was classified as suitable for lease or sale under the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*). The land was segregated from appropriation under the public lands laws and the general mining laws. The Classification Decision was published in the **Federal Register**, on February 1, 1983 (48 FR 2559). On December 27, 1983, because the applicant had failed to comply with the terms of the lease offer, the application was denied. No appeal was filed within the time allowed and the case was closed. Pursuant to the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*), and the regulations contained in 43 CFR 2091.7–1(b)(1)(ii), Recreation and Public Purposes Classification, CACA 12930, is hereby terminated in its entirety and the segregation for the following described land is hereby terminated:

Mount Diablo Meridian

T. 33 N., R. 7 W.,

Sec. 22, that portion of lot 9, further described as adjoining the present cemetery and lying directly to the west. Conforming with the present north-south measurement of 163 feet and a westerly extension of 300 feet containing approximately 1.12 acres.

The classification no longer serves a needed purpose as to the land described above and is hereby terminated.

At 10 a.m. on July 28, 1995, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provision of existing withdrawals, other segregations of record, and the requirement of applicable law. All valid applications received at or prior to 10 a.m. on July 28, 1995 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

At 10 a.m. on July 28, 1995, the land will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

Dated: June 19, 1995.

David McIlnay,

Chief, Branch of Lands.

[FR Doc. 95–15776 Filed 6–27–95; 8:45 am]

BILLING CODE 4310–40–P

National Park Service

Gettysburg National Military Park Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the date of the fifteenth meeting of the Gettysburg National Military Park Advisory Commission.

DATE: The Public meeting will be held on July 20, 1995, from 7:00 p.m.—9:00 p.m.

Location: The meeting will be held at Gettysburg Hotel One Lincoln Square Gettysburg, Pennsylvania 17325.

AGENDA: Sub-Committee Reports, the Environmental Impact Statement—deer management, briefing on Gettysburg College land exchange alternative study, the National Museum of the American Civil, War, recent land activities and land acquisition issues, and an operational update on park activities.

FOR FURTHER INFORMATION CONTACT: John A. Latschar, Superintendent, Gettysburg National Military Park, 97 Taneytown Road, Gettysburg, Pennsylvania 17325.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to the Advisory Commission, Gettysburg National Military Park, 97 Taneytown Road, Gettysburg, Pennsylvania 17325. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Gettysburg National Military Park located at 97 Taneytown Road, Gettysburg, Pennsylvania 17325.

Dated: June 19, 1995.

Anthony M. Corbisiero,

Field Director, Northeast Field Area.

[FR Doc. 95–15884 Filed 6–27–95; 8:45 am]

BILLING CODE 4310–70–M

Notice of Inventory Completion for Human Remains in the Possession of Pipe Spring National Monument, National Park Service, Moccasin, AZ

AGENCY: National Park Service, Interior.
ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003(d), of completion of Inventory for Native American human remains in the possession of the National Park Service at Pipe Spring National Monument, Moccasin, AZ.

The human remains represent four individuals. The first set of remains (accession PISP–00155, catalog PISP 667) has been identified as male and consists of a cranium. The second set of remains (accession PISP–00155) has been identified as male and consists of a cranium and mandible (catalog PISP 668); a tibial shaft segment (catalog PISP 675); and a fibular fragment (catalog PISP 676). Accession records indicate that both sets of remains were excavated from south of the Pipe Spring fortified ranch house, and given to the National Park Service by former Monument Custodian Leonard Heaton in 1939.

The third set of remains—unaccessioned and uncatalogued—has been identified as female and consists of a cranium, one phalange, one metatarsal, four small rib fragments, and two disarticulated pieces of the left temporal. The fourth set of remains—also unaccessioned and uncatalogued—has been identified as female and consists of twelve cranial fragments and a fragment of the head of a femur. National Park Service records do not indicate the location where these sets of remains were found, or information on how the remains came into the possession of the Monument. The Monument is asserting control over these human remains.

The Kaibab Paiute Tribe expressed interest in repatriation of these remains as early as July 1992 and have agreed to efforts to date and identify the cultural affiliation of the remains. As a result, the National Park Service arranged for an assessment of the remains by Dr. Mark Taylor, Professor of Anthropology, Northern Arizona University, in December 1992. Dr. Taylor concluded that all four sets of remains were of prehistoric Native Americans, who died over seven-hundred years before present.

Given the standing interest of the Kaibab Paiute Tribe in repatriation of these remains and the findings of Dr. Taylor, additional consultations with the Kaibab Paiute and Hopi tribes were conducted in 1993. There is archaeological evidence for ties between both Kaibab Paiute and Hopi culture and prehistoric Puebloan culture in the Arizona Strip area north of the Grand Canyon. Both tribes also have oral traditions linking their cultures to prehistoric occupants of the area. National Park Service consultations with the Hopi tribe resulted in agreement that the Hopi tribe would defer to the Kaibab Paiute regarding this repatriation given that the remains came from Kaibab Paiute traditional lands. The Kaibab Paiute Tribe formally requested repatriation of the human remains on January 4, 1995. Based upon the Kaibab Paiute aboriginal occupancy of the area where the human remains appear to have been found, and a preponderance of the evidence supporting a cultural affiliation of the remains with the Kaibab Paiute Tribe, as well as Hopi concurrence in repatriation to the Kaibab Paiute Tribe, the National Park Service has concluded that repatriation to the Kaibab Paiute Tribe is appropriate.

Inventory of the human remains and funerary objects and review of accompanying documentation from the four sets of Native American human remains listed above indicate that no known individuals were identifiable.

Based on the above mentioned information, officials of the National Park Service have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between the Native American human remains and the Kaibab Paiute Tribe.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact John W. Hiscock, Superintendent, Pipe Spring National Monument, HC 65 Box 5, Fredonia, AZ 86022, telephone, (520) 643–7105, before July 28, 1995. Repatriation of the four sets of human remains to the Kaibab Paiute Tribe of Arizona will begin after that date if no additional claimants come forward.

Dated: June 22, 1995.

Veletta Canouts,

Acting Departmental Consulting Archeologist and Acting Chief, Archeological Assistance Division

[FR Doc. 95–15883 Filed 6–27–95; 8:45 am]
BILLING CODE 4310–70–F

Notice of Availability

SUMMARY: Notice is hereby given that pursuant to the provisions of Section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and according to provisions of Section 9.17 of 36 CFR 9A, Steve Hicks has filed plans of operations in support of proposed appraisal sampling operations on lands embracing the Howtay Association Claims 1a and 2a, the Lee Bench Howtay Association Claims 1–6, the Caribou-Howtay Claims 1–4, the Little Audrey Claims 1–4, and the Alder Claims 1–4. These unpatented mining claims are located within Denali National Park and Preserve.

ADDRESSES: This plan is available for inspection during normal business hours at the following locations:

Denali National Park and Preserve, Park Headquarters, Denali National Park, Alaska

Alaska System Support Office, Minerals Management Division, National Park Service, 2525 Gambell Street, Room 107, Anchorage, Alaska 99503–2892

FOR FURTHER INFORMATION CONTACT: Linda Toms, Assistant Superintendent, Denali National Park and Preserve, (907) 683–2294, or Floyd Sharrock, Chief, Minerals Management Division, (907) 257–2626, at the addresses above.

David B. Ames,

Acting Field Director, Alaska Field Office.

[FR Doc. 95–15885 Filed 6–27–95; 8:45 am]
BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–732–733 (Preliminary)]

Circular Welded Non-Alloy Steel Pipe From Romania and South Africa

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from Romania and South Africa of circular welded non-alloy steel pipe, provided for in subheadings 7306.30.10 and 7306.30.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On April 26, 1995, petitions were filed with the Commission and the Department of Commerce by Allied Tube, Harvey, IL; Armco/Sawhill, Sharon, PA; LTV Steel, Youngstown, OH; Sharon Tube, Sharon, PA; Laclede Steel, St. Louis, MO; Wheatland Tube, Collingswood, NJ; and Century Tube, Pine Bluff, AR, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of circular welded non-alloy steel pipe from Romania and South Africa. Accordingly, effective April 26, 1995, the Commission instituted antidumping investigations Nos. 731–TA–732–733 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of May 3, 1995 (60 FR 21828). The conference was held in Washington, DC, on May 17, 1995, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in these investigations to the Secretary of Commerce on June 12, 1995. The views of the Commission are contained in USITC Publication 2899 (June 1995), entitled "Circular Welded Non-Alloy Steel Pipe from Romania and South Africa: Investigations Nos. 731–TA–732–733 (Preliminary)."

Issued: June 22, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–15855 Filed 6–27–95; 8:45 am]
BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

[2] Chairman Watson and Commissioner Crawford dissenting.

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 290 (Sub No. 5) (95–3)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Interstate Commerce Commission.

ACTION: Approval of rail cost adjustment factor and decision.

SUMMARY: The Commission has approved a third quarter 1995 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The third quarter RCAF (Unadjusted) is 1.080. The third quarter RCAF (Adjusted) is 0.816, a decrease of 0.5% from the second quarter 1995 RCAF (Adjusted). Maximum third quarter 1995 RCAF rate levels may not exceed 99.5% of maximum second quarter 1995 rate levels.

EFFECTIVE DATE: July 1, 1995.

FOR FURTHER INFORMATION CONTACT: Robert C. Hasek, (202) 927–6239 or H. Jeff Warren, (202) 927–6243. TDD for the hearing impaired: (202) 927–5721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Washington, DC 20423, or telephone (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: June 16, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–15764 Filed 6–27–95; 8:45 am]
BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) the title of the form/collection;

(2) the agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) who will be asked or required to respond, as well as a brief abstract;

(4) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) an estimate of the total public burden (in hours) associated with the collection; and,

(6) an indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Reinstatement, With Changes, of a Previously Approved Collection for Which Approval Has Expired

(1) Survey of Inmates of Local Jails.

(2) Form SIJ–43, Form SIJ–50. Bureau of Justice Statistics.

(3) Primary=Individuals and households. Others: State, Local or Tribal Government. This survey will profile jail inmates nationwide; determine trends in inmate composition, criminal histories, and drug use; report on guns and crime as well as victims of crime. The data will be used by the Bureau of Justice Statistics, Congress, researchers, practitioners, and others in the criminal justice community.

(4) 6,430 total annual respondents at 1.0 hours per response.

(5) 6,430 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: June 22, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–15794 Filed 6–27–95; 8:45 am]
BILLING CODE 4410–18–M

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Partial Consent Decree in *United States* v. *Consolidated Rail Corp. ("Conrail")*, Civil Action No.

94–1437 (E.D.Pa.), was lodged on June 20, 1995, with the United States District Court for the Eastern District of Pennsylvania. The decree addresses Conrail's violations of Section 112 of the Clean Air Act (the "Act"), 42 U.S.C. 7412, and certain provisions of the National Emission Standard for Hazardous Air Pollutants for asbestos ("Asbestos NESHAP") which occurred at the Port Richmond Grain Elevator facility located at 2870 E. Allegheny Avenue, Philadelphia, PA. Conrail owns the Grain Elevator, which was being renovated during the time the violations occurred, in late 1992 and early 1993. Conrail's violations included failure to notify the City of Philadelphia or EPA of asbestos removal activities involved in the renovation, failure to wet adequately the asbestos that was being removed from the facility, and failure to assure that no visible emissions were released into the outdoor atmosphere.

Under the proposed Partial Consent Decree, Conrail has agreed to pay a civil penalty of $800,000 to resolve its liability in the instant District Court action as well as its liabilities in an unrelated administrative asbestos NESHAP action involving another Conrail facility in Philadelphia.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Partial Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Consolidated Rail Corp.*, DOJ Ref. #90–5–2–1–1883.

The proposed consent decree may be examined at the office of the United States Attorney, 615 Chestnut Street, 13th Floor, Suite 1300, Philadelphia Life Building; Philadelphia, Pennsylvania 19106; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $7.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Acting Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–15777 Filed 6–27–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Partial Consent Decree for Claims Under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Department policy and 28 CFR 50.7, notice is hereby given that on June 15, 1995, a proposed Partial Consent Decree in *United States* v. *Smuggler-Durant Mining Corporation, et al.*, Civil Action No. 89–C–1802, was lodged with the United States District Court of the District of Colorado. The Complaint in this case was brought under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9601 *et seq.*, against several parties who are owners or operators of facilities at which hazardous substances are being released into the environment, or who owned or operated facilities at a time when hazardous substances were disposed of there. The United States' Complaint sought recovery of costs incurred and to be incurred by the United States in connection with the clean up of hazardous substances at the Smuggler Mountain Superfund Site ("Site") in and adjacent to the City of Aspen, Colorado.

The proposed partial Consent Decree involves the Smuggler Durant Mining Corporation ("SDMC"). This decree settles claims brought by the United States against SDMC under Section 107(a) of CERCLA, 42 U.S.C. 9607(a), and provides SDMC a convenant not to sue for past and future response costs or response actions under Sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), and Section 7003 of RCRA, 42 U.S.C. 6973, regarding Operable Unit 1 of the Site. The proposed partial consent decree dismissed without prejudice the claims of the United States against SDMC regarding Operable Unit 2 of the Site. In return, SDMC will reimburse the United States $400,000 for response costs incurred in connection with the Site. Finally, the decree resolves potential counterclaims by SDMC against the United States for any activities conducted on-Site by any instrumentality of the United States.

The Department of Justice will receive for a period of thirty (30) days from the date of entry of this publication comments relating to the proposed Partial Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Smuggler-Durant Mining Corporation, et al.*, DOJ Ref. No. 90–11–2–174. In accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d), commenters may request a public meeting in the affected area.

The proposed Partial Consent Decree may be examined at the Environment and Natural Resources Division, Department of Justice Field Office, Suit 945, 999 18th Street—North Tower, Denver, Colorado 80202 and at the Region VIII Office of the Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado 80202. Copies of the proposed Partial Consent Decree may also be examined at or obtained by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. In requesting a copy please refer to the referenced case and enclose a check in the amount of $7.00 for the decree (additional charges may apply if attachments are requested) (twenty-five cents per page reproduction costs) payable to the "Consent Decree Library."

Bruce S. Gelber,

Acting Chief, Environmental Enforcement Section.

[FR Doc. 95–15778 Filed 6–27–95; 8:45 am]

BILLING CODE 4401–01–M

Notice of Lodging of Consent Decree in United States v. Ford Motor Company Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a proposed consent decree in *United States* v. *James H. Spiegelberg*, Civil Action No. 95 CV 72450DT, was lodged with the United States District Court for the Eastern District of Michigan, Flint Office on June 19, 1995. This action was brought pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601, *et seq.* to recover costs expended by the United States in connection with the "Spiegelberg Superfund Site" (See the National Priorities List in 40 CFR Part 300, Appendix B) which is located on Spicer Road, in Green Oak Township, Livingston County, Michigan. Under the proposed decree, Spiegelberg has agreed to pay $97,000 in partial reimbursement of past response costs incurred by the United States in connection with the Spiegelberg Site.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530. All comments should refer to *United States* v. *James H. Spiegelberg*, DJ Ref. #90–11–2–285B.

The proposed consent decree may be examined at the Office of the United States Attorney for the Eastern District of Michigan, Flint Office, 600 Church Street, Room 206, Federal Building, Flint, Michigan 48502; the Region V Office of the U.S. Environmental Protection Agency, 77 West Jackson Street, Seventh Floor, Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $4.50 (twenty-five cents per page reproduction costs) payable to the Consent Decree Library.

Bruce S. Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–15779 Filed 6–27–95; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Bell Communications Research, Inc.

Notice is hereby given that, on May 31, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") has filed written notifications on behalf of Bellcore; Tektronix, Inc. ("Tektronix"); and The University of Pennsylvania ("UPenn") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Bellcore, Livingston, NJ; Tektronix, Beaverton, OR; and UPenn, Philadelphia, PA. Bellcore, Tektronix, and UPenn entered into Articles of Collaboration, effective as of May 2, 1995, establishing a consortium to engage in a collaborative research effort of limited duration in order to gain further knowledge in the area of asynchronous transfer mode ("ATM") interoperability technology and to better understand the applications of such technology for telecommunications networks, particularly exchange and exchange access service networks.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–15780 Filed 6–27–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cable Television Laboratories, Inc.; Scientific Atlanta Inc.

Notice is hereby given that, on May 11, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Cable Television Laboratories, Inc. ("CableLabs"); and Scientific Atlanta Inc. ("SA"), filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are CableLabs, Boulder, CO; and SA, Norcross, GA.

The area of planned activity is to conduct certain tests of a prototype modem for digital signal transmission on North American cable television systems.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–15781 Filed 6–27–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1933—Corporation for Open Systems International

Notice is hereby given that, on March 31, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Corporation for Open Systems International has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Booz-Allen & Hamilton, Inc., Central and South West Services, Inc., DSET Corporation, the General Services Administration, Hewlett-Packard Company, HP Idacom (formerly known as Idacom Electronics Ltd.), Life Cycle Technology Corporation, Tekelec, Inc., and Unified Communications, Inc., ceased membership in COS effective December 31, 1994. Applied Digital Access, Inc., San Diego, CA, became an Associate of COS SONET Interoperability Forum (the "Forum") effective January 3, 1995; National Computing Centre, Manchester, UNITED KINGDOM; The Oasys Group, LLC, Los Gatos, CA, became Auditing Members of the Forum effective January 3, 1995; COS has established the DVHT EIG to conduct research regarding communications and interoperability between digital video home terminals and networks and other equipment in an open digital video network.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Corporation for Open Systems International intends to file additional written notification disclosing all changes in membership.

On May 14, 1986, the Corporation for Open Systems International filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 1, 1986 (51 FR 21260).

The last notification was filed with the Department on December 22, 1994. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 23, 1994 (60 FR 15307).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–15792 Filed 6–27–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—"EHC Technologies Consortium Electrical Energy-Source Alternatives," a Cooperative Industry Research Study

Notice is hereby given that, on April 13, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute (SwRI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Centro Ricerche Fiat has withdrawn from participation; and the period of performance has been extended to February 28, 1995.

No other changes have been made in either the membership or planned activity of the group research project. Membership in the project remains open, and SwRI intends to file additional written notification disclosing all changes in membership.

On October 18, 1993 SwRI filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 14, 1994 (59 FR 2438–9). The last notification was filed with the Department on January 27, 1994. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 23, 1995 (65 FR 15307).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–15787 Filed 6–27–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Financial Services Technology Consortium, Inc.

Notice is hereby given that, on April 20, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Financial Services Technology Consortium, Inc. (the "Consortium") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. The following party was admitted as Principal Member: Barnett Bank, Jacksonville, FL. The following parties were admitted as Associate Members of the Consortium: CU Cooperative Systems, Inc., Pomona, CA; Bolt Beranek and Newman Inc., Cambridge, MA; Unisys Corporation, Plymouth, MI; Digital Equipment Corporation, Merrimack, NH; The Tower Group, Wellesley, MA; CommerceNet, Menlo Park, CA; and Cybercash, Reston, VA. The following party was admitted as an Advisory Member of the Consortium: United States Postal Service, Washington, DC.

No other changes have been made in either the membership or planned activity of the Consortium. Membership remains open, and the Consortium intends to file additional written notifications disclosing all changes in membership.

On October 21, 1993, the Consortium filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 14, 1993 (58 FR 65399).

The last notification was filed with the Department on January 18, 1995. A notice for this filing has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–15782 Filed 6–27–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993, Fuel Cell Commercialization Group

Notice is hereby given that, on May 31, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Fuel Cell Commercialization Group ("FCCG") has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing the resignation and withdrawal of six members of the FCCG. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the FCCG advised that Public Service Electric and Gas Company; General Public Utilities Service Corporation; Southern California Gas Company; Arizona Electric Power Cooperative; City of Palo Alto Utilities Department; and City of Riverside Public Utilities Department are no longer members of the FCCG.

No other changes have been made in either the membership or planned activity of the FCCG. Membership in the FCCG remains open, although certain membership benefits are based in part on the date on which the member joined the organization. The FCCG intends to file additional written notification disclosing all changes in its membership.

On September 21, 1990, the FCCG filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on October 25, 1990, 55 FR 43050. The last notification was filed with the Department on March 3, 1994. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 11, 1994, 59 FR 17110.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–15783 Filed 6–27–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Health Information Initiative Consortium

Notice is hereby given that, on March 30, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Health Informatics Initiative Consortium (the "Consortium") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of a research and production venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: The Koop Foundation, Inc. Hanover, NH; AT&T Corporation, Basking Ridge, NJ; Booz-Allen & Hamilton, Inc., McLean, VA; Corporation for Studies and Analysis (CSA), Centreville, VA; D. Appleton Company, Inc. (DACOM), Manhattan Beach, CA; Logicon, Inc. Arlington, VA; Meta Software, Cambridge, MA; Oracle Corporation, Redwood Shores, CA; Science Applications International Corporation (SAIC), Falls Church, VA; Systems Research and Applications Corporation (SRA), Arlington, VA; Western Consortium for Public Health, Berkeley, CA; and Wizdom Systems, Inc., Naperville, IL.

The nature and objectives of the Consortium are to collaborate on research and development of emerging information technologies in the health care industry.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–15793 Filed 6–27–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Microelectronics and Computer Technology Corporation

Notice is hereby given that, on May 24, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Microelectronics and Computer Technology Corporation ("MCC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the changes are as follows: Digital Equipment Corporation, Marlboro, MA, has agreed to participate in MCC's TRICE Project; Express Star Systems, Austin, TX, has agreed to participate in MCC's Infosleuth Project; and EINet Acquisition Corporation, Austin, TX, has agreed to become an Associate Member. Bell Communications Research Corporation and Unisys Corporation have not renewed their Associate memberships with MCC.

On December 21, 1984, MCC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 17, 1985 (50 Fed. Reg. 2633).

The last notification was filed with the Department on November 17, 1994. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 13, 1995 (60 FR 18857).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–15784 Filed 6–27–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Network Management Forum

Notice is hereby given that, on June 6, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Network Management Forum ("the Forum") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to its membership. The additional notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new members to the venture are as follows: ISICAD, Anaheim, CA; LDDS Communications, Inc., Tulsa, OK; and SBC Communications Inc., St. Louis, MO are Corporate Members. DSI PTY Ltd., Toowong, Queensland, AUSTRALIA; Gruppe Fur Angewandte Informatik Ag, Herrenschwanden, SWITZERLAND; ISR Global Telecom, Orlando, FL; Samsung Electronics Co., Ltd., Seoul, KOREA; and TCSI, Berkeley, CA are Associate Members. National Aeronautics and Space Agency, Greenbelt, MD; Nova Lepidoptera Ltd., Ilford, Essex, UK; Open Technology Pty Ltd., North Sydney, AUSTRALIA; Stanford Telecom, Reston, VA; and Technology Partners International, Columbus, OH are Affiliate Members.

No other changes have been made since the last notification filed with the Department, in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Forum intends to file additional written notification disclosing all changes in membership.

On October 21, 1988, the Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on March 14, 1995. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 24, 1995 (60 FR 27559).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–15785 Filed 6–27–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1933—Cooperative Research and Development Agreement No. SC92/1074 Seismic Source Development

Notice is hereby given that, on May 26, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301, *et seq.* ("Act"), the Participants in the Cooperative Research and Development Agreement No. SC92/1074 ("CRADA") titled "Seismic Source Development," have filed written notifications simultaneously with the Attorney General and with the Federal Trade Commission disclosing (1) the identities of the parties to CRADA, and (2) the nature and objectives of the venture. The notification were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the current parties participating in the CRADA are Amoco Production Company, Tulsa, OK; Chevron Petroleum Technology Company, Houston, RX; Conoco, Inc., Houston, TX; Exxon Production Research Production Company, Houston, TX; E-Systems, Montek Division, Salt Lake City, UT; Gas Research Institute, Chicago, IL; Pelton Company, Inc., Ponca City, OK; and Sandia Corporation, Albuquerque, NM.

The objective of this Project is to investigate the feasibility with respect to the technical definition and establishment of as well as the development of a downhole seismic source. The general objectives of the Project are to develop a seismic source having an advanced hydraulic system with high-temperature electronics along with a high frequency seismic receiver. This technology is useful to image the region between two boreholes, to determine the geologic structure, rock properties, and possibly the fluid statuation between the boreholes. The seismic source developed hereunder is positioned in one borehole and the seismic receiver is positioned in the other, to permit the generation of a topographic image of the earth. The results of the Project will be evaluated to demonstrate the potential for commercial use of the technologies developed thereunder and to identify which limiting factors might restrict this application.

Participation in this venture will remain open to all interested persons and organizations until the Project Completion Date, which is presently anticipated to occur approximately March 1, 1996. The Participants intend to file additional written notifications disclosing all changes in the membership of the group of Participants involved in this Project.

Information regarding participation in the Project may be obtained from Robert F. Heming, Chevron Petroleum

Technology Company, 2811 Hayes Road, Houston, TX 77082.

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 95–15786 Filed 6–27–95; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

[Docket No. 94–58]

Lawson A. Akpulonu, M.D.; Revocation of Registration

On May 16, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Lawson A. Akpulonu, M.D. (Respondent), who currently holds DEA Certificates of Registration in Los Angeles, Culver City, South Gate and El Monte, California, proposing to revoke his DEA Certificates of Registration, AA9426481, BA3296286, BA3386679 and BA3295931, as a practitioner, pursuant to 21 U.S.C. 824(a)(5). Specifically the Order to Show Cause alleged: between January 1981 and December 1990, Respondent submitted false Medicaid claims to the California Medical Assistance Program and, as a result, Respondent obtained over $15,000 to which he was not entitled; in March 1991, Respondent pled quality to and was convicted of one count of Section 14107 of the California Welfare and Institution Code, presenting a false Medicaid claim, in the Municipal Court of Los Angeles Judicial District Court and as a result of such conviction, Respondent paid a $5,000 fine and was placed on probation; and effective October 15, 1992, the Office of Inspector General, United States Department of Health and Human Services, excluded Respondent from participating in the Medicare program and in any State health care program pursuant to 42 U.S.C. 1320a–7(a), for a period of five years.

The Order to Show Cause was sent to Respondent by registered mail and Respondent submitted a timely request for a hearing. Pursuant to an order of the administrative law judge, the Government filed its prehearing statement. Although Respondent requested and was granted an extension of time in which to file his prehearing statement, he failed to file a prehearing statement or a second motion to extend the time to file his prehearing statement. Consequently, on October 20, 1994, the administrative law judge terminated the proceedings.

Pursuant to 21 CFR 1301.54(d) and 1301.54(e), Respondent is deemed to have waived his opportunity for a hearing. Accordingly, the Deputy Administrator now enters his final order in this matter without a hearing and based upon the investigative file. 21 CFR 1301.57.

The investigative file reveals that the Division of Medical Quality, Medical Board of California, Department of Consumer Affairs, State of California (Medical Board) suspended Respondent's medical license and his privilege to handle controlled substances, effective April 14, 1995. Although the Medical Board had a pending accusation against Respondent based upon allegations which included those set forth in the Order to Show Cause, the recent suspension was based upon new allegations that Respondent had committed sexual battery against female patients while these patients were under sedation.

Since Respondent is not authorized to prescribe, dispense, administer or otherwise handle controlled substances in the State of California, the Deputy Administrator concludes that DEA does not have the statutory authority under the Controlled Substances Act to continue or renew the registrations if the registrant is without state authority to handle controlled substances. 21 U.S.C. 802(21) and 823(f). The DEA has consistently so held. See Roman Pla, M.D., Docket No. 86–54, 51 FR 41168 (1986); George S. Heath, M.D., Docket No. 86–24, 51 FR 26610 (1986); Dale D. Shahan, D.D.S., Docket No. 85–57, 51 FR 23481 (1986); and cases cited therein.

Since this suspension is extant, it is not necessary to make findings pertaining to the allegations in the Order to Show Cause. Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificates of Registration, AA9426481, BA3296286, BA3386679 and BA3295931, previously issued to Lawson A. Akpulonu, M.D., be, and they hereby are, revoked, and any pending applications for the renewal of such registrations be, and they hereby are, denied. This order is effective July 28, 1995.

Dated: June 21, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95–15865 Filed 6–27–95; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 93–74]

Richard C. Matzkin, M.D., Grant of Continued Registration; Correction

In notice document 95–14369 appearing on page 31166 in the issue of Tuesday, June 13, 1995, make the following correction:

On page 31167, in the third column, last paragraph, in the eleventh line "AM2432631" should read "AM2532631".

Dated: June 21, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95–15866 Filed 6–27–95; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Glass Ceiling Commission; Open Meeting

SUMMARY: Pursuant to Title II of the Civil Rights Act of 1991 (Pub. L. 102–166) and Section 9 of the Federal Advisory Committee Act (FACA) (Pub. L. 92–462, 5 U.S.C. App. II) a Notice of establishment of the Glass Ceiling Commission was published in the **Federal Register** on March 30, 1992 (57 FR 10776). Pursuant to section 10(a) of FACA, this is to announce a meeting of the Commission which is to take place on Friday, July 21, 1995 and Saturday, July 22, 1995. The purpose of the Commission is to, among other things, focus greater attention on the importance of eliminating artificial barriers to the advancement of minorities and women to management and decisionmaking positions in business. The Commission has the practical task of: (a) Conducting basic research into practices, policies, and manner in which management and decisionmaking positions in business are filled; (b) conducting comparative research of businesses and industries in which minorities and women are promoted or are not promoted; and (c) recommending measures to enhance opportunities for and the elimination of artificial barriers to the advancement of minorities and women to management and decisionmaking positions.

TIME AND PLACE: The meeting will be held on Friday, July 21, 1995 in Room S2508 at the Department of Labor, 200 Constitution Avenue, NW Washington, DC 20210 beginning at 4 pm and continuing until approximately 10 pm (EDT) and again on Saturday, July 22, 1995 beginning at 8 am and continuing until resolution of the outstanding issues and concluding no later than 10 pm (EDT).

The Commission will be meeting and discussing recommendations for its final report.

Individuals with disabilities who wish to attend should contact Ms. Loretta Davis (202) 219–7342 if special accommodations are needed.

FOR FURTHER INFORMATION CONTACT: Rene A. Redwood, Executive Director, The Glass Ceiling Commission, c/o U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–2313, Washington, DC 20210. Telephone (202) 219–7342.

Signed at Washington, DC., this 23 day of June 1995.

Rene A. Redwood,

Executive Director, Glass Ceiling Commission.

[FR Doc. 95–15853 Filed 6–27–95; 8:45 am]

BILLING CODE 4510–23–17

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

June 22, 1995.

The Department of Labor has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act (44 U.S.C. Chapter 35) of 1980, as amended (Pub. L. 96–511). Copies may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O'Malley ([202) 219–5095). Comments and questions about the ICRs listed below should be directed to Ms. O'Malley, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OAW/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 10325, Washington, DC 20503 ([202) 395–7316).

Individuals who use a telecommunications device for the deaf (TTY/TDD) may call [202] 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

Type of Review: New.

Agency: Occupational Safety and Health Administration.

Title: Logging Operations (29 CFR 1910.226).

OMB Number: 1218–0 new.

Affected Public: Business or other for-profit.

Category	Frequency	Respond-ents	Estimated time per respondent
Operator's Manual	One-time	11,658	.17 hour.
CPR	Annual	11,658	4 hours.
First-Aid	Every 3rd year	11,658	4 hours.

Total Burden Hours: 55,016.

Description: Section 1910.266(f)(iii) requires employers to assure that operating and maintenance instructions are available on the machine or in the area when the machine is being operated. Also, paragraph 1910.266(i)(7)(ii) requires that all employers assure that each employee receives first-aid training at least every three years and receives CPR training at least annually.

Type of Review: Reinstatement.

Agency: Occupational Safety and Health Administration.

Title: Mechanical Power Press Standard (29 CFR 1910.217).

OMB Number: 1218–0143.

Frequency: Annual.

Affected Public: Business or other for-profit.

Number of Respondents: 2.238.

Estimated Time Per Respondent: 11.43 hours.

Total Burden Hours: 25,578.

Description: The prohibition on the use of Presence Sensing Devices Initiation (PSDI) has been removed. To assure the safety of the system, this regulation requires a certification program. The manufacturers and employers who choose to the PSDI will have to maintain some records in order to meet the requirements of this standard.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Report of Changes that may Affect your Black Lung Benefits.

OMB Number: 1215–0084.

Agency Number: CM–929.

Frequency: Annual.

Affected Public: Individuals or households.

Number of Respondents: 80,000.

Estimated Time Per Respondent: 5 to 8 minutes.

Total Burden Hours: 7,067.

Description: The CM–929 is used to help determine continuing eligibility of primary beneficiaries receiving benefits from the Black Lung Disability Trust Fund. It is also used to verify and update on an annual basis factor that affect a beneficiary's entitlement to benefits, including income, marital status, receipt of State worker's compensation, and dependents' status.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Agency: Pension Welfare Benefits Administration.

Title: Alternative Method of Compliance for Certain Simplified Employee Pensions.

OMB Number: 1210–0034.

Frequency: Annual.

Affected Public: Business or other for-profit.

Number of Respondents: 1,393.

Estimated Time Per Respondent: 10 minutes.

Total Burden Hours: 116.

Description: In keeping with Section 408(k) the Internal Revenue Code, the regulation provides an alternative type of reporting and disclosure arrangement for Simplified Employee Pensions (SEPs) that is easier to establish and administer than otherwise required under the Employee Retirement Income Security Act.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Agency: Pension Welfare Benefits Administration.

Title: Suspension of Benefits Regulation.

OMB Number: 1210–0048.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 57,374.

Estimated Time Per Respondent: 15 minutes.

Total Burden Hours: 13,344.

Description: This regulation allows a plan to suspend an individual's pension benefits if the individual continues to work or returns to work. The plan is required to notify the individual during the first calendar month or payroll

period in which the plan withholds payment.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Agency: Pension Welfare Benefits Administration.

Title: Class Exemption 77–4 for Certain Transactions Between Investment Companies and Employee Benefit Plans.

OMB Number: 1210–0049.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 624.

Estimated Time Per Respondent: 10 minutes.

Total Burden Hours: 4,212.

Description: This class exemption exempts from the prohibited transaction restrictions of Employee Retirement Income Security Act the purchase and sale by an employee benefit plan of shares of a registered, open-end mutual fund when a fiduciary with respect to the plan (e.g. an investment manager) is also investment adviser for the mutual fund.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Agency: Pension Welfare Benefits Administration.

Title: Prohibited Transaction Exemption 90–1—Certain Transactions Involving Insurance Company Pooled Separate Accounts (formerly 78–19).

OMB Number: 1210–0054.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 1

Estimated Time Per Respondent: 1 hour.

Total Burden Hours: 1.

Description: This exemption allows parties in interest of an employee benefit plan that invests in an insured pooled separate account to engage in transactions with the separate account if the plan's participation in the separate account does not exceed certain limits. Six year recordkeeping is required.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Agency: Pension Welfare Benefits Administration.

Title: Prohibited Transaction Exemption 81–8.

OMB Number: 1210–0061.

Frequency: 5 per year.

Affected Public: Business or other for-profit.

Number of Respondents: 18,245.

Estimated Time Per Respondent: 10 minutes.

Total Burden Hours: 15,204

Description: This class exemption exempts from the prohibited transaction restrictions of the Employee Retirement Income Security Act the investment of plan assets which involve the purchase or other acquisition, holding, sale, exchange or redemption by or on behalf of an employee benefit plan of certain types of short-term investments.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Agency: Pension Welfare Benefits Administration.

Title: Prohibited Transaction Exemption 77–8

OMB Number: 1210–0063.

Frequency: Annually.

Affected Public: Business or other for-profit.

Number of Respondents: 18,712.

Estimated Time Per Respondent: 10 minutes.

Total Burden Hours: 1,352.

Description: This class exempts from the prohibited transaction restrictions of the Employee Retirement Income Security Act (ERISA) the sale of individual life insurance of annuity contracts by a plan to participants, relatives or participants, employers any of whose employees are covered by the plan or other employee benefit plans which are parties in interest.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Agency: Pension Welfare Benefits Administration.

Title: Prohibited Transaction Class Exemption 81–6

OMB Number: 1210–0065.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 18,245.

Estimated Time Per Respondent: 10 minutes.

Total Burden Hours: 3,041.

Description: This class exemption allows banks and registered broker-dealers to borrow securities that are assets of employee benefit plans.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Agency: Pension Welfare Benefits Administration.

Title: Adoption of ERISA Class Exemption for Purposes of FERSA.

OMB Number: 1210–0074.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 1.

Estimated Time Per Respondent: 1 hour.

Total Burden Hours: 1.

Description: The adoption of this class exemption under the Employee Retirement Income Security Act (ERISA) for purposes of the Federal Employees' Retirement System Act (FERSA) would permit fiduciaries with respect to the FERS Thrift Savings Fund to engage in certain transactions that would otherwise be prohibited under FERSA.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Agency: Pension Welfare Benefits Administration.

Title: Participant Loans.

OMB Number: 1210–0076.

Frequency: One time.

Affected Public: Business or other for-profit.

Number of Respondents: 7,000.

Estimated Time Per Respondent: 3 hours.

Total Burden Hours: 21,000.

Description: This regulation clarifies requirements under the Employee Retirement Income Security Act of 1974 with respect to loans from pension plans which are made to plan participants and beneficiaries who are parties in interest with respect to the plan.

Type of Review: Revision of a currently approved collection.

Agency: Pension Welfare Benefits Administration.

Title: Transaction between Individual Retirement Accounts and Authorized Purchasers of American Eagle coins Class Exemptions, PTE 91–55.

OMB Number: 1210–0079.

Frequency: on occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 12.

Estimated Time Per Respondent: 1.5 minutes.

Total Burden Hours: 36,666.

Description: This proposed class exemption provides relief from certain taxes imposed by the Internal Revenue Code on broker-dealers who are disqualified persons under the code with respect to certain individual retirement accounts, regarding transactions involving American Eagle Coins.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Unemployment Insurance Quality Control Program.

OMB Number: 1205–0245.

Agency Number: ETA Handbook No. 395.

Frequency: Weekly.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents: 52.

Estimated Time Per Respondent: 2,575 hours.

Total Burden Hours: 133,900.

Description: An extension of the existing Benefits Quality Control (BQC) data collection with no change in size or methods is being requested. The BQC program provides reliable estimates of the accuracy of benefit payments in the unemployment insurance program, and identifies the sources of mispayments so that their causes can be eliminated.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Occupational Code Request.

OMB Number: 1205–0137.

Agency Number: ETA 741.

Frequency: As needed:

Affected Public: State, Local or Tribal Government.

Number of Respondents: 55.

Estimated Time Per Respondent: 30 minutes.

Total Burden Hours: 28.

Description: ETA 741, Occupational Code Request (OCR), is provided as a public service to the States to obtain occupational codes and titles for jobs not included in the Dictionary of Occupational Titles.

Type of Review: Revision.

Agency: Bureau of Labor Statistics.

Title: Employee Benefits Survey.

OMB Number: 1220–0084.

Frequency: Annual (varies).

Affected Public: State and local governments and small private establishments in even-numbered years; Medium and large private establishments in odd-numbered years; Business or other for-profit organizations; Not-for-profit institutions.

Number of Respondents:

Estimated Time Per Respondent:

1996, 1998: 3,550 respondents; 1.12 hours per respondent; 3,975 Total Burden Hours

1997: 2,300 respondents; 1.25 hours per respondent; 2,875 Total Burden Hours

Description: The Employee Benefits Survey (EBS) will present data on employee benefits in small (1–99 employees) private establishments and in State and local governments in 1996 and 1998, and in medium and large private establishments in 1997. The EBS, which covers State and local governments, and small, medium, and large private establishments in private industry, is used by Federal agencies and the Congress to determine policy affecting benefits of all workers; and by the private sector and State and local governments in benefits administration, union negotiations, and research.

Type of Review: New.

Agency: Bureau of Labor Statistics.

Title: National Longitudinal Survey of Youth 1996.

OMB Number: 1220–0new.

Form Number	Frequency	Affected Public	Respondents	Average time respondent (minutes)
Screeners	Once	Individuals	91,433	5.09
Youth Questionnaire and Pretest	Annual	...do	15,733	64
Parent Questionnaire and Pretest	Annual	...do	12,633	60.72
School Survey	Annual	Schools	8,333	40.79
CAT–ASVAB	Once	Individuals	21,030	120.85
Interest Finder	Once	...do	20,490	44
On-Line Eval.	Once	...do	20,490	15
ASVAB Pencil and Paper	Once	...do	540	180
DOD Subset of Youth Questions	Once	...do	9,570	15

Total Burden Hours: 109,499.

(Note: Total number of respondents does not equal the sum of the numbers in the same column above because of overlap. There will be about 75,800 household screeners where there is no youth in scope, about 12,633 parents interviewed (screener and parent interview) for the main BLS sample and Learning Disabled (LD) oversample, 6,000 screeners in households having only an ASVAB respondents (but not in BLS sample), 8,333 schools, 15,733 youths in the BLS main or LD oversamples and 9,570 youths in the ASVAB study but not in either the BLS main sample of LD oversample.)

Description: The information provided in this survey will be used by the Department of Labor and other government agencies to help understand the school to work transition of young men and women in this age group. It will also be used by the Department of Defense to assess the pool of potential entrants to the Armed Forces.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 95–15852 Filed 6–27–95; 8:45 am]

BILLING CODE 4510–29–M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Birdeye Coal Company, Inc.

[Docket No. M–95–83–C]

Birdeye Coal Company, Inc., HC 66, Box 494, Artemus, Kentucky 40903 has filed a petition to modify the application of 30 CFR 75.342 (methane monitors) to its No. 4 Mine (I.D. No. 15–17676) located in Knox County, Kentucky. The petitioner proposes to monitor continuously with a hand-held methane and oxygen detector instead of using machine-mounted methane monitors on three-wheel tractors with drag bottom buckets. The petitioner states that this petition request is based on the safety of the miners involved.

2. Old Ben Coal Company

[Docket No. M–95–84–C]

Old Ben Coal Company, P.O. Box 270, Edgarton, West Virginia 25672 has filed a petition to modify the application of 30 CFR 75.364(b) (1) and (2) (weekly examination) to its Mine No. 20 (I.D. No. 46–02052) located in Mingo County, West Virginia. Due to deteriorating roof conditions in the intake and return air courses of the Alma "C" seam (lower seam), the area cannot be traveled

safely. The petitioner proposes to establish evaluation points to measure the quantity and direction of airflow entering and leaving each airway in the affected area; to have a certified person examine the check points on a weekly basis and record the results in an approved record book; to provide a date board at the evaluation points; to maintain the evaluation stations and the approaches to the station in safe condition; and to investigate immediately any change in air quantity and quality. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

3. Westmoreland Coal Company

[Docket No. M–95–85–C]

Westmoreland Coal Company, P.O. Box 553, Charleston, West Virginia 25322 has filed a petition to modify the application of 30 CFR 75.380(f)(1) (escapeways; bituminous and lignite mines) to its Pierrepont Mine (I.D. No. 44–06206) located in Wise County, Virginia. The petitioner proposes to have battery charging stations in the primary escapeway; to install a low-level early warning smoke detection sensor in all intake aircourses used as primary escapeways and to have the sensor located so that the air is monitored at a point 50 feet inby the crosscut; and to have the intake air ventilating the crosscuts coursed into the return be of sufficient velocity to prevent rollback around the check curtains, and not be used to ventilate working places. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 28, 1995. Copies of these petitions are available for inspection at that address.

Dated: June 20, 1995.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 95–15788 Filed 6–27–95; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (95–046)]

National Environmental Policy Act; Ames Research Center Aerodynamics Testing Program

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of availability of draft environmental impact statement.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 150–1508), and NASA policy and procedures (14 CFR part 1216, subpart 1216.3), NASA has prepared and issued a draft environmental impact statement (DEIS) for the proposed Aerodynamics Testing Program at Ames Research Center (ARC), Moffett Field, California. This document serves as a programmatic environmental impact statement for proposed wind tunnel testing of high performance aircraft in the National Full-scale Aerodynamics Complex (NFAC) at ARC.

DATES: Comments on the DEIS must be provided in writing to NASA on or before August 14, 1995 or 45 days from the date of publication in the **Federal Register** of the U.S. Environmental Protection Agency's notice of availability of the Ames Research Center Aerodynamics Testing Program DEIS, whichever is later.

ADDRESSES Comments should be addressed to Sandy Olliges, Mail Stop 218–1, NASA Ames Research Center, Moffett Field, CA 94035–1000. The DEIS may be reviewed at the following locations:

(a) NASA Headquarters, Library, Room 1J20, 300 E Street SW, Washington, DC 20546.

(b) Sunnyvale Public Library, 665 West Olive Street, Sunnyvale, CA 94086.

In addition, the DEIS may be examined at the following NASA locations by contacting the pertinent Freedom of Information Act Office:

(c) NASA, Ames Research Center, Moffett Field, CA 94035 (415–604–4191).

(d) NASA, Dryden Flight Research Center, Edwards, CA 93523 (805–258–3047).

(e) NASA, Goddard Space Flight Center, Greenbelt, MD 20771 (301–286–0730).

(f) Jet Propulsion Laboratory, NASA Resident Office, 4800 Oak Grove Drive, Pasadena, CA 91109 (818–354–5179).

(g) NASA, Johnson Space Center, Houston, TX 77058 (713–483–8612).

(h) NASA, Kennedy Space Center, FL 32899 (407–867–2468).

(i) NASA, Langley Research Center, Hampton, VA 23665 (804–864–6125).

(j) NASA, Lewis Research Center, 21000 Brookpark Road, Cleveland, OH 44135 (216–433–2902).

(k) NASA, Marshall Space Flight Center, AL 35812 (205–544–5252).

(l) NASA, Stennis Space Center, MS 39529 (601–688–2164).

Limited copies of the DEIS are available by contacting Sandy Olliges at the address or telephone number indicated herein.

FOR FURTHER INFORMATION CONTACT: Sandy Olliges, 415–604–3355.

SUPPLEMENTARY INFORMATION: The overall purpose of the proposed ARC Aerodynamics Testing Program is to support the development of future generations of civilian and military aircraft through large- and full-scale wind tunnel testing of these aircraft and aircraft components. The Aerodynamics Testing Program would occur in the 40- to 80-Foot Wind tunnel and the 80- by 120-Foot Wind Tunnel of the NFAC. The DEIS considers the alternatives associated with the proposed Aerodynamics Testing Program and their related environmental impacts. Potentially significant impacts of the purposed action and reasonable alternatives are principally related to an increase in noise and vibration. The first proposed tests under the Aerodynamics Testing Program in the NFAC could begin in early 1996.

Public meetings will be held in late July or early August, 1995. The specific meeting time(s) and location(s) will be published in the San Jose Mercury News and the La Oferta Review. The meeting schedule can also be obtained from Sandy Olliges at the address or telephone number stated above.

Dated: June 22, 1995.

Benita A. Cooper,

Associate Administrator for Management Systems and Facilities.

[FR Doc. 95–15815 Filed 6–27–95; 8:45 am]

BILLING CODE 7510–01–M

[Notice (95–047)]

NASA Advisory Council (NAC), NAC Task Force on the Shuttle-Mir Rendezvous and Docking Missions; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NAC Task Force on the Shuttle-Mir Rendezvous and Docking Missions.

DATES: July 19, 1995, 9 a.m. to 5 p.m.

ADDRESSES: Room #966, Building 1, Lyndon B. Johnson Space Center, National Aeronautics and Space Administration, 2101 NASA Road 1, Houston, Texas 77058–3696.

FOR FURTHER INFORMATION CONTACT: Mr. Gilbert Kirkham, Code MOC, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–1692.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Review the upcoming Shuttle-Mir rendezvous and docking missions from the following perspectives: Planning, training, operations, management and communications.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: June 22, 1995.

Danalee Green,

Chief, Management Controls Office.

[FR Doc. 95–15816 Filed 6–27–95; 8:45 am]

BILLING CODE 7510–01–M

[Notice 95–044]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that Automated Dynamics Corporation of 407 Front Street, Schenectady, New York 12305 has applied for an exclusive license to practice the inventions described and claimed in: U.S. Patent No. 5,395,477 entitled "An Apparatus for Consolidating a Pre-Impregnated, Filament-Reinforced Polymeric Prepreg Material," which was issued on March 7, 1995, to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration; U.S. Patent No. 5,057,338 entitled "Process for Application of Power Particles to Filamentary Materials," which was issued October 15, 1991, to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration; and U.S. Patent Application Serial No. 08/425,005 entitled "A Dry Process for making Uni-Tape Prepreg from Powder Coated Towpreg," which was filed on April 10, 1995, by the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license to Automated Dynamics Corporation should be sent to George F. Helfrich, Patent Counsel, NASA Langley Research Center.

DATES: Responses to this Notice must be received by August 28, 1995.

FOR FURTHER INFORMATION CONTACT: George F. Helfrich, Patent Counsel, NASA Langley Research Center, Mail Code 212, Hampton, Virginia 23681–0001; (804) 864–3227.

Dated: June 19, 1995.

Edward A. Frankle,

General Counsel.

[FR Doc. 95–15814 Filed 6–27–95; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Public Information Collection Requirements Submitted to OMB for Review

June 20, 1995.

The National Credit Union Administration submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission may be obtained by calling the NCUA Clearance Officer listed. Comments regarding information collections should be addressed to the OMB reviewer listed and to the NCUA Clearance Officer, NCUA, Office of Administration, room 4009, 1775 Duke Street, Alexandria, VA 22314–3428.

National Credit Union Administration

OMB Number: 3133–0011.

Form Number: NCUA 9600.

Type of Review: Extension of currently approved collection.

Title: Application for Insurance of Accounts of State-chartered Credit Unions.

Description: The Federal Credit Union Act and NCUA's regulations require that state-chartered credit unions seeking federal insurance of accounts must apply for the insurance. This also applies to federal credit unions converting to a state charter and wish to maintain federal insurance.

Respondents: Credit unions making application for federal insurance.

Estimated Number of Respondents: 107.

Estimated Burden Hours per Response: 3 hours.

Frequency of Response: One time.

Estimated Total Reporting Burden: 336 hours.

OMB Number: 3133–0114.

Form Number: None.

Type of Review: Extension of currently approved collection.

Title: Payments on Shares by Public Units and Non-members.

Description: Non-member and public unit deposits in federally-insured credit unions may not exceed 20 percent of the credit union's shares. This information collection will be used by NCUA to determine whether or not a particular credit union will be granted an exemption to the 20 percent limit on non-member and public unit deposits.

Respondents: Credit unions requesting an exemption to the 20 percent limit on non-member and public unit deposits.

Estimated Number of Respondents: 20.

Estimated Burden Hours per Response: 2 hours.

Frequency of Response: Once per year.

Estimated Total Reporting Burden: 40 hours.

Clearance Officer: Wilmer A. Theard or Betty P. May (703) 518–6410, National Credit Union Administration, Room 4009, 1775 Duke Street, Alexandria, VA 22314–3428.

OMB Reviewer: Milo Sunderhauf (202) 395–5167, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Becky Baker,

Secretary of the NCUA Board.

[FR Doc. 95–15789 Filed 6–27–95; 8:45 am]

BILLING CODE 7535–01–M

COMMISSION OF FINE ARTS

Notice of Meeting

The Commission of Fine Arts' next meeting is scheduled for July 27, 1995 at 10:00 a.m., in the Commission's offices in the Pension Building, Suite 312, Judiciary Square, 441 F Street, N.W., Washington, D.C. 20001 to discuss various projects affecting the appearance of Washington, D.C., including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to

Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, D.C., June 16, 1995.

Charles H. Atherton,

Secretary.

[FR Doc. 95–15772 Filed 6–27–95; 8:45 am]

BILLING CODE 6330–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Membership of the Performance Review Board (PRB)

AGENCY: Office of the United States Trade Representative.

SUMMARY: The following staff members are designated to serve on the Performance Review Board:

Performance Review Board (PRB)

Chair—Jim Murphy
Alternate Chair—Chris Marcich
Members:
Howard Reed
Ken Freiberg
Bob Cassidy
Dorothy Dwoskin
Don Abelson
Executive Secretary—Lorraine Green

EFFECTIVE DATE: June 13, 1995.

FOR FURTHER INFORMATION CONTACT: Lorraine Green, Director, Human Resources, (202) 395–7350.

John Hopkins,

Assistant United States Trade Representative for Administration.

[FR Doc. 95–15766 Filed 6–27–95; 8:45 am]

BILLING CODE 3190–01–M

POSTAL SERVICE

Cashing Domestic Postal Money Orders

AGENCY: Postal Service.

ACTION: Notice of procedure.

SUMMARY: The Postal Service published a final rule in the **Federal Register** on February 2, 1995, that restricted the negotiation of domestic postal money orders to the United States and its possessions and territories and to the Freely Associated States. 60 FR 7912–7913. This final rule took effect March 1, 1995, and amended section 391.11 of the International Mail Manual, incorporated by reference in the Code of Federal Regulations (see 39 CFR 20.1).

In response to this rule, the Postal Service will print domestic postal money orders with the endorsement "NEGOTIABLE ONLY IN THE U.S. AND POSSESSIONS" on the face (front) and reverse (back). This restrictive endorsement will appear in bold, red lettering on the lower right face and in bold, black lettering on the reverse.

These printing changes to the domestic postal money order do not alter current regulations established by the final rule. In addition, current domestic postal money orders printed without this restrictive endorsement will continue to be valid and negotiable for international use.

The Postal Service intends to charge back any domestic postal money order bearing the restrictive endorsement accepted by a bank in any foreign country that is not identified as a U.S. possession or territory or as part of the Freely Associated States. This charge will be handled in accordance with the standard commercial banking procedures in the United States.

EFFECTIVE DATE: June 28, 1995.

FOR FURTHER INFORMATION CONTACT: Al Gillum, (703) 905–3818.

SUPPLEMENTARY INFORMATION: Because the Postal Service receives numerous complaints from foreign postal administrations regarding the acceptance of domestic postal money orders by the banking systems in those countries, and because the domestic postal money order is being used in international money laundering schemes, the Postal Service determined to restrict the negotiation of domestic postal money orders to the United States and its possessions and territories and to the Freely Associated States. This change prevents the practice of circumventing the policies and procedures for the acceptance of international postal money orders agreed to within the Universal Postal Union, and minimizes the use of domestic postal money orders in international money laundering activities.

The Postal Service is committed to complying with the agreements with its foreign partners, and to taking proactive measures to minimize the use of its products and services in illegal activities. A concerted effort is being made to restrict the negotiation of domestic postal money orders to the United States and its possessions and territories and to the Freely Associated States.

U.S. possessions and territories are American Samoa (including Manua Island, Swain's Island, Tutuila Island); Baker Island; Guam; Howland Island; Jarvis Island; Johnston Island; Kingman Reef; Midway Island; Navassa Island; Northern Marianas Islands (including Rota, Saipan, and Tinian); Palmyra Island; Puerto Rico; Sand Island; U.S. Virgin Islands (including St. Croix, St. John, and St. Thomas); and Wake Island.

The Freely Associated States are Marshall Islands (including Ebeye and Majuro Island); Palau (including Koror Island); and Micronesia (including Chuuk (Truk) Island, Kosrae Island, Pohnepi Island, Yap Island).

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–15767 Filed 6–27–95; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35874; File No. SR–NASD–94–60]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Applicable Position Limits for OTC Collar Transactions

June 21, 1995.

I. Introduction

On October 27, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its options position limit rule to provide that positions in conventional put and call options establishing OTC collars meeting certain qualifications need not be aggregated for position limit purposes ("OTC Collar Aggregation Exemption").[3] The NASD filed Amendment No. 1 to the proposed rule change on December 14, 1994 ("Amendment No. 1").[4] Notice of the proposal and Amendment No. 1 appeared in the **Federal Register** on December 29, 1994.[5] No comment letters were received on the proposed

[1] 15 USC § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

[3] Section 33(b)(3) of the NASD Rules of Fair Practice provides that "options contracts of the put and call class on the same side of the market covering the same underlying security" are aggregated for position limit purposes. Accordingly, long calls and short puts are aggregated and short calls and long puts are aggregated.

[4] See Letter from Thomas R. Gira, Assistant General Counsel, NASD, to Stephen M. Youhn, Derivative Products Regulation, SEC, dated Dec. 14, 1994. See *infra* note. 8.

[5] Securities Exchange Act Release No. 35134 (Dec. 21, 1994), 59 FR 67359.

rule change. On May 19, 1995, the NASD filed Amendment No. 2 ("Amendment No. 2") to the proposal to clarify in the language of the proposed exemption the maximum number of contracts that may comprise a collar that is governed by the OTC Collar Aggregation Exemption.[6] The effect of Amendment No. 2 is to clarify that the exemption from aggregation only applies to the hedge exemption portion of the position limit. This order approves the NASD's proposal, as amended.

II. Description of Proposal

An OTC collar transaction involves the purchase (sale) of a put and the sale (purchase) of a call on the same underlying security to hedge a long (short) stock position. The proposal would amend Section 33 of the NASD Rules of Fair Practice, the NASD's position limit rule for standardized and conventional options, in the following manner:

Section 33 of the NASD By-Laws

Section (b)(3) Position Limits

(A)(1)–(5) No change.

(A)(6) OTC Collar Aggregation Exemption

(a) For purposes of this subsection, the term OTC collar shall mean a conventional equity option position comprised of short (long) calls and long (short) puts overlying the same security that hedge a corresponding long (short) position in that security.

(b) Notwithstanding the aggregation provisions for short (long) call positions and long (short) put positions contained in subsections (A)(1)–(A)(3) above, the conventional options positions involved in a particular OTC collar transaction established pursuant to the position limit hedge exemption in subsection (A)(5) need not be aggregated for position limit purposes, provided the following conditions are satisfied:[7]

1. the conventional options can only be exercised if they are in-the-money;

2. neither conventional option can be sold, assigned, or transferred by the holder without the prior written consent of the writer;

3. the conventional options must be European-style (*i.e.*, only exercisable upon expiration) and expire on the same date;

4. the strike price of the short call can never be less than the strike price of the long put; and

5. neither side of the transaction can be in-the-money when the collar is established.[8]

6. the size of the conventional options in excess of the applicable basic position limit for the options established pursuant to subsections (A)(1)–(3) above must be hedged on a one-to-one basis with the requisite long or short stock position for the duration of the collar, although the same long or short stock position can be used to hedge both legs of the collar.

(c) For multiple OTC collars on the same security meeting the conditions set forth in subsection (b) above, all of the short (long) call options that are part of such collars must be aggregated and all of the long (short) put options that are part of such collars must be aggregated, but the short (long) calls need not be aggregated with the long (short) puts.

(d) Except as provided above in subsections (b) and (c), in no event may a member fail to aggregate any conventional or standardized options contract of the put class and the call class overlying the same equity security on the same side of the market with conventional option positions established in connection with an OTC collar.

Nothing in this subsection (6) changes the applicable position limit for a particular equity security.

According to the NASD, market participants typically establish OTC collars to hedge price exposure to long stock positions. However, the NASD states that the current position limit aggregation rules constrain members seeking to establish OTC collar positions for their customers. For example, if a customer wanted to hedge 900,000 shares in XYZ with an OTC collar (assuming XYZ is subject to a position limit of 4,500 contracts), and if the calls and puts associated with the collar must be aggregated, the customer could only establish the collar for 450,000 shares (*i.e.*, 4,500 short calls and 4,500 long puts).[9] As a result, the remaining 450,000 shares of XYZ would remain unhedged.

Accordingly, in order to facilitate the needs of market participants seeking to hedge their long stock positions with OTC collars, the NASD proposes to waive the position limit aggregation rules for certain OTC collar transactions meeting specific criteria. Specifically, the OTC Collar Aggregation Exemption will provide that puts and calls on the same side of the market (*e.g.*, short calls and long puts) which are established pursuant to Section 33(b)(3)(A)(5), the equity option position limit hedge exemption rule ("equity option position limit hedge exemption") are not required to be aggregated for position limit purposes if they are part of an OTC collar transaction meeting all of the conditions of proposed Section 33(b)(3)(A)(6) above.[10]

Consistent with the NASD's equity option position limit hedge exemption rule, to the extent that the size of the controversial options involved in a particular OTC collar exceed the size of the applicable basic position limit for that option, the proposed OTC Collar Aggregation Exemption provides that such options positions must be hedged on a one-for-one basis with the corresponding long/short stock position for the duration of the collar. The NASD also notes that the OTC Collar Aggregation Exemption will not affect the NASD's other aggregation rules for options positions on the same side of the market. Thus, the NASD will aggregate all standardized and conventional options positions with options positions established pursuant to the OTC Collar Aggregation Exemption, as well as options positions established in multiple OTC collars on the same security.

The proposal also contains provisions governing the aggregation of conventional options positions establishing multiple OTC collars. Specifically, for multiple OTC collars on the same security meeting the conditions for the OTC Collar Aggregation Exemption, all of the short (long) call options that are part of such collars must be aggregated and all of the long (short) put options that are part of such collars must be aggregated, but the short (long) calls need not be aggregated with the long (short) puts.

The following examples are intended to illustrate the operation of the OTC Collar Aggregation Exemption (assume a position limit of 4,500 contracts and an applicable hedge exemption of 4,500 contracts):

A. An investor has no established conventional or standardized option position. The investor may establish an OTC collar consisting of 6,750 short calls and 6,750 long puts. Pursuant to proposed Section 33(b)(3)(A)(6)(b)(6), the options

[6] See Letter from Thomas R. Gira, Assistant General Counsel, NASD, to Stephen M. Youhn, Derivative Products Regulation, SEC, dated May 19, 1995.

[7] See Amendment No. 2.

[8] The NASD originally proposed that one side of the collar could be in-the-money when the collar was established. Amendment No. 1 changes this requirement by stating that neither side of a particular OTC collar may be in-the-money at the time the collar is established.

[9] In this instance, 4,500 of the 9,000 contracts are permissible under the basic position limit contained Section 33(b)(3)(A)(1) of the NASD Rules of Fair Practice and the remaining 4,500 contracts are permissible because they are hedged by the 900,000 shares of XYZ and, therefore, fall within the NASD's hedge exemption contained in Section 33(b)(3)(A)(5).

[10] Under Section 33(b)(3)(A)(5), the Equity Hedge Exemption rule, the hedge exemption may not exceed twice the position limit established under NASD rules. Position limits are set at either 4,500, 7,500 or 10,500 contracts on the same side of the market, depending on the characteristics of the stock.

comprising the collar in excess of the applicable basic position limit (*i.e.*, 4,500) must be hedged on a one-for-one basis with 450,000 shares. The total number of allowable option contracts on the same side of the market in this example would be 13,500.

B. An investor is short 1,000 calls. The investor may establish an OTC collar consisting of 6,250 short calls and 6,250 long puts. Pursuant to proposed Section 33(b)(3)(A)(6)(b)(6), the options comprising the collar in excess of the applicable basic position limit (*i.e.*, 4,500) must be hedged on a one-for-one basis with 450,000 shares. The total number of allowable option contracts on the same side of the market in this example would be 13,500.

C. An investor is short 6,500 calls (4,500 pursuant to the position limit and 2,000 pursuant to the hedge exemption) and long 200,000 shares of stock. An OTC collar consisting of 2,500 short calls and 2,500 long puts may be established. Pursuant to proposed Section 33(b)(3)(A)(6)(b)(6), the options comprising the collar in excess of the applicable basic position limit (*i.e.*, 4,500) must be hedged on a one-for-one basis with an additional stock position of 250,000 shares. The total number of allowable option contracts on the same side of the market in this example would be 11,500.

D. An investor is short 9,000 calls (4,500 pursuant to the position limit and 4,500 pursuant to the hedge exemption) and long 450,000 shares of stock. An OTC collar may not be established since the investor has already reached the maximum allowable position limit.

III. Commission Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) of the Art. Specifically, the Commission believes the conditions and limitations contained in the proposal strike a reasonable balance between the need to facilitate legitimate hedging needs of market participants and the need to have rules in place that do not compromise the regulatory purposes served by the equity option position limit rules. In particular, because the conditions and limitations for the OTC Collar Aggregation Exemption effectively provide that neither leg of the OTC collar can be in-the-money at the time the collar is established and that no more than one leg of the collar can ever be exercised throughout the term of the collar, the Commission does not believe that the larger options position resulting from the proposed non-aggregation of short (long) calls and long (short) puts for the hedge exemption portion of the position limit pursuant to the OTC Collar Aggregation Exemption will increase the potential for market manipulation or disruption.[11]

In addition, even though the conventional options positions involved in a particular OTC collar transaction do not have to be aggregated (if the collar meets the standards for the aggregation exemption), the collar position must be aggregated with all other standardized and conventional options on the same side of the market overlying the same security. In this respect, the Commission notes that while the NASD's proposal does not change the recognized position limit levels (*i.e.*, 4,500, 7,500, 10,500), it does alter the manner in which contracts are aggregated for position limits purposes, with the net result being an increase in certain situations in the number of contracts an investor may hold on the same side of the market from 9,000 to 13,500 (assuming a position limit of 4,500). While the maximum number of contracts an investor may hold is effectively increased, the proposal's requirements ensure that the amount of stock that may be controlled by an investor's option position is not increased. Instead, the proposal merely facilitates the use of an OTC collar by not aggregating the positions for determining the number of contracts pursuant to the hedge exemption. To the extent that investors have greater latitude to use a collar for hedging purposes, the proposal will enhance investors' risk management of stock positions.[12]

The Commission also believes that the larger options positions available by virtue of the proposal will not result in disruptions to the underlying stock market due to the conditions and limitations that must be met to be eligible for the aggregation exemption, and the NASD's surveillance program. In this connection, the Commission notes the NASD will monitor the use of the OTC Collar Aggregation Exemption to ensure that NASD members are complying with the requirements of the exemption.

The Commission finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 2 has the effect of limiting and clarifying the maximum number of contracts that may comprise a particular OTC collar established pursuant to the OTC Collar Aggregation Exemption, and as a result, should further reduce any speculative or manipulative impact caused by the net increase in the number of options held by an investor. Therefore, the Commission believes there is good cause to approve Amendment No. 2 to the proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by July 19, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, [13] that the proposed rule change (SR–NASD–94–60) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15810 Filed 6–27–95; 8:45 am]

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[11] Furthermore, in order to ensure that the positions covered by this proposal are maintained in a collar transaction, the proposal requires that all of the conventional options comprising the OTC collar must be European-style and expire on the same date.

[12] As noted above, the non-aggregation of collar positions only applies to positions established pursuant to the existing hedge exemption. *See supra* note 10.

[13] 15 USC 78s(b)(2) (1988).

[14] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35875; File No. SR–NASD–95–27]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Adjustment of Open Orders

June 21, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 19, 1995,[1] the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend Article III, Section 46 of the Rules of Fair Practice to provide that where the issuer of a security declares a cash dividend or other distribution of less than one cent ($.01) members will not adjust open orders for such securities. Below is the text of the proposed rule change. Proposed new language is italics.

Rules of Fair Practice

Article III

Adjustment of Open Orders

Sec. 46.

(a) A member holding an open order from a customer or another broker/dealer shall, prior to executing or permitting the order to be executed, reduce, increase or adjust the price and/or number of shares of such order by an amount equal to the dividend, payment or distribution, on the day that the security is quoted ex-dividend, ex-rights, ex-distribution or ex-interest, *except where a cash dividend or distribution is less than one cent ($.01)*, as follows:

(i) In the case of a cash dividend or distribution, the price of the order shall be reduced by subtracting the dollar amount of the dividend or distribution from the price of the order and rounding the result to the next lower ⅛ of a dollar;

(ii) In the case of a stock dividend or split, the price of the order shall be reduced by rounding the dollar value of the stock dividend or split to the next higher ⅛ of a dollar and subtracting that amount from the price of the order; provided, further, that the size of the order shall be increased by (1) multiplying the size of the original order by the numerator of the ratio of the dividend or split, (2) dividing the result by the denominator of the ratio of the dividend or split, and (3) rounding the result to the next lower round lot; and

(ii) In the case of a dividend payable in either cash or securities at the option of the stockholder, the price of the order shall be reduced by the dollar value of the cash or securities, whichever is greater, according to the formulas in (a)(i) or (a)(ii), above; provided, that if the stockholder opts for securities, the size of the order shall be increased pursuant to the formula in (a)(ii), above.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Article III, Section 46 of the Rules of Fair Practice requires members holding open orders to proportionally reprice such orders according to the value of the dividend or distribution on the date the security is quoted ex-dividend, ex-rights, ex-distribution or ex-interest. Shortly after the rule became effective in September 1994, several member firms questioned the necessity of complying with Section 46 if a dividend or other distribution was less than one cent ($.01).

The NASD has examined the matter and determined that where dividends of less than one cent ($.01) are involved inefficiencies and costs associated with complying with Section 46 may exceed any benefit to be gained. The impact of such a small dividend on the price of the security is probably *de minimis* in nature and the likelihood that unadjusted orders will result in bad executions for customers is low. Accordingly, the NASD is proposing to amend Section 46 to state that where a dividend or other distribution is less than one cent ($.01) the price of the order shall not be adjusted.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[2] in that the elimination of the costs and inefficiencies associated with mandating the repricing of orders where the dividend or distribution is less than one cent ($.01) will refine the functioning of Section 46 to the benefit of the market and investors.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (iii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All

[1] The NASD originally submitted the proposed rule change on May 23, 1995. On June 19, 1995, the NASD submitted Amendment No. 1 which amendment made technical changes to the proposal.

[2] 15 U.S.C. 78o–3

submissions should refer to File Number SR–NASD–95–27 and should be submitted by July 19, 1995.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15811 Filed 6–27–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35877; File No. SR–NASD–95–28]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Regarding Trading in Anticipation of the Issuance of a Research Report

June 21, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 25, 1995, the National Association of Securities Dealers, Inc. ("NASD" or Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Act, the NASD hereby proposes to amend Article III, Section 1 of the NASD Rules of Fair Practice [1] by adding a new Interpretation regarding a prohibition against purposeful trading that affects a member firm's inventory position in a given security prior to the firm's issuance of a research report in that same security. Below is the text of the proposed rule change. Proposed new language is in italics.

Trading Ahead of Research Reports Interpretation to Article III, Section 1 of the NASD Rules of Fair Practice

The Board of Governors, under its statutory obligation to protect investors and enhance market quality, is issuing an Interpretation to the Rules of Fair Practice regarding a member firm's trading activities that occur in anticipation of a firm's issuance of a research report regarding a security. The Board of Governors is concerned with activities of member firms that purposefully establish or adjust firm's inventory position in Nasdaq-listed securities, an exchange-listed security traded in the OTC market, or a derivative security based primarily on a specific Nasdaq or exchange-listed security in anticipation of the issuance of a research report in that same security. For example, a firm's research department may prepare a research report recommending the purchase of a particular Nasdaq-listed security. Prior to the publication and dissemination of the report, however, the trading department of the member firm might purposefully accumulate a position in that security to meet anticipated customer demand for that security. After the firm had established its position, the firm would issue the report, and thereafter fill customer orders from the member firm's inventory positions.

The NASD believes that such activity is conduct which is inconsistent with just and equitable purposes of trade, and not in the best interests of investors. Thus, this Interpretation prohibits a member from purposefully establishing, creating or changing the firm's inventory position in a Nasdaq-listed stock, and exchange-listed stock traded in the third market, or a derivative security related to the underlying equity security, in anticipation of the issuance of a research report regarding such security by the member firm.

Article III, Section 1 of the Rules of Fair Practice states that:

A member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.

In accordance with Article VII, Section 1(a)(2) of the NASD By-laws, the NASD Board of Governors has approved the following Interpretation of Article III, Section 1:

Trading activity purposefully establishing, increasing, decreasing, or liquidating a position in a Nasdaq security, an exchange-listed security traded in the over-the-counter market, or a derivative security based primarily upon a specific Nasdaq or exchange-listed security, in anticipation of the issuance of a research report in that security is inconsistent with just and equitable principles of trade and is a violation of Article III, Section 1 of the Rules of Fair Practice.

For the purposes of this Interpretation, a "purposeful" change in the firm's inventory position means any trading activities undertaken with the intent of altering a firm's position in a security in anticipation of accommodating investor interest once the research report has been published. Hence, the Interpretation does not apply to changes in an inventory position related to unsolicited order flow from a firm's retail or broker-dealer client base or to research done solely for in-house trading and not in any way used for external publication.

Under this Interpretation, the Board recommends, but does not require, that member firms develop and implement policies and procedures to establish effective internal control systems and procedures that would isolate specific information within research and other relevant departments of the firm so as to prevent the trading department from utilizing the advance knowledge of the issuance of a research report. Firms that choose not to develop "Chinese Wall" procedures bear the burden of demonstrating that the basis for changes in inventory positions in advance of research reports was not purposeful.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Background

At times, broker-dealers that have research departments prepare research reports that recommend that customers take certain actions with respect to certain identified securities. The research reports may advise the firm's customers to buy or sell the security that is the subject of the research report. For instance, prior to publication of a research report, some firms would intentionally establish a proprietary position in the security that was to be the subject of a report in anticipation of meeting expected customer demand in response to the research report. Once the firm had accumulated stock, it would issue the research report and commence solicitation of orders, expecting to fill customer orders from the inventory position it had accumulated.

[3] 17 CFR 200.30–3(a)(12).

[1] *NASD Manual*, Rules of Fair Practice, Art. III, Sec. 1 (CCH) ¶2151.

In 1991, the New York Stock Exchange ("NYSE"), in NYSE Information Memo 91–8, issued a policy statement regarding stock accumulations by a NYSE member organization in advance of that member's issuance of research reports. NYSE Information Memo 91–8 stated that where an NYSE member organization intended to purposefully acquire a position in an NYSE-listed security in contemplation of its issuance of a favorable research report, the NYSE would find such conduct to be inconsistent with just and equitable principles of trade.

At that time, the NASD also considered the issue of trading activity in anticipation of the issuance of research reports but determined to address the issue on a case-by-case basis. Thus, in response to individual member firm requests for a position on the issue, the NASD staff informally had taken the position that trading based upon material, non-public market information could be considered a violation of just and equitable principals of trade. In 1994, however, the NASD solicited member comment in Notice To Members 94–40 ("NTM 94–40") on the development of a formal policy that clearly would state that trading in anticipation of a research report would be deemed a violation of Article III, Section 1 of the Rules of Fair Practice. The NASD Board, in proposing this new Interpretation, also sought comment on a policy to recommend, but not require, that member firms develop and implement "Chinese Wall" restrictions that would isolate research and trading activities within individual departments of the firm.

(b) Comments Received

In response to its proposal on trading ahead of research reports, the NASD received eleven comments that were fairly evenly split between support of and opposition to the proposed policy. Three firms either fully supported the proposal or suggested very minor changes. These firms believed that the proposed Interpretation would: (1) Clarify a member firm's obligations in Nasdaq and third market securities; (2) promote consistency among self-regulatory organization rules; (3) ease the compliance burden on the firms; and (4) engender greater investor confidence that the investor will not be disadvantaged by the professional.[2] Two other firms[3] supported the proposed policy in part, but expressed certain reservation. For example, A.G. Edwards believed that it was important that an Interpretation be developed to address issues related to a firm's unfair trading in advance of a research report. The firm also believed that any Interpretation should be extended to third Market trading in advance of research report on NYSE-listed companies. However, Edwards was concerned that the proposal could harm small capitalized issues with limited liquidity and it could undercut a firm's interest in developing research reports, especially with low liquidity stocks. J.P. Morgan's letter raised similar concerns.

Finally, six comments[4] opposed the adoption of the proposed Interpretation. These comments expressed two principle concerns with the proposal: (1) It would adversely affect the liquidity and pricing of Nasdaq SmallCap stocks because firms would not be able to develop a readily available inventory in such stock to meet investor demand after the issuance of the report; and (2) member firms likely would diminish their research efforts because their own customers would not be able to benefit from securities that the firm had been able to secure at advantageous prices.

(c) Discussion

As noted above, the NASD has carefully examined its policies regarding the trading practices for member firms in anticipation of the issuance of a firm's research reports. The NASD believes that purposeful inventory adjustments made in anticipation of customer trading activity as a result of the firm's research report could appear to, and at times would, conflict with the firm's fiduciary duties toward its customers. The NASD, after weighing the issues related to the matter, has determined that in the interests of investor protection, it would be deemed a violation of just and equitable principles of trade if a member firm purposefully adjusts its inventory position in a Nasdaq security, in an exchange listed security that is traded in the third market, or in a derivative product of any such securities in anticipation of the issuance of a research report in that security. At the least, such purposeful activity creates an appearance of impropriety that harms the perception of the marketplace and could lead to a loss of investor confidence. The NASD notes that it is important that investors understand that they will not be disadvantaged by professionals, and accordingly, it seeks to further enhance its rules and policies that promote the fair treatment of investors and maintain the confidence of such investors. This new policy should enhance the overall perception of Nasdaq and the third market and encourage investors to participate in those markets, thereby promoting liquidity. In addition, because the NASD believes that the proposed Interpretation is consistent with the policy found in NYSE Information Memorandum 91–8, this clear statement of NASD policy will promote consistency among self-regulatory organizations and help to alleviate compliance burdens for member firms that operate in multiple markets.

After considering the comments on the proposal in NTM 94–40, the NASD Board determined to refine the proposal slightly to incorporate comments recommending that the proposed Interpretation address third market trading in listed securities that are the subject of a firm's research report. The NASD believes it important from an investor protection viewpoint to clearly state that it would be a violation of just and equitable principles of trade if a member firm trading in the third market in anticipation of the issuance of a research report were to establish, increase, or decrease a position in an exchange-listed security. Without the inclusion of exchange-listed securities traded in the third market, there could be a significant gap in customer protection rules on this issue. Similarly, the NASD has amended its policy as proposed in NTM 94–40 to clarify that it would also be a violation if the firm were to decrease or liquidate its position in a security because it was about to issue a negative research report. This amendment to the proposed policy also closed a potential gap in the policy and clarified the intent of the NASD.

Finally, the NASD, in reaction to a comment letter [5] decided to include in the proposed Interpretation a prohibition regarding a member firm's attempts to do indirectly what it is not permitted to do directly. Accordingly, the proposed Interpretation prohibits a member firm from purposefully establishing, increasing, decreasing or liquidating a derivative security position in anticipation of the firm's issuance of a research report on the security underlying the derivative position. The NASD's concern is, for example, that by trading in options on an underlying security that is to be the subject of a research report, the member

[2] See letters from Merrill Lynch; Lehman Bros.; and the Association for Investment Management and Research ("AIMR").

[3] See letters from J.P. Morgan Securities and A.G. Edwards.

[4] See letters from Kemper Securities, Inc.; Brown & Wood; Pacific Growth Equities; Conning & Co.; First Albany; and Rauscher Pierce Refsnes, Inc.

[5] See Lehman Bros. letter.

firm is doing by means of an economically equivalent transaction that which it would otherwise be prohibited from doing. Such activity would undermine the effectiveness of the proposed Interpretation.

The proposed Interpretation specifically notes that the intent of the prohibition is to cover situations where the member firm is "purposefully" altering its inventory position in anticipation of the issuance of a favorable or unfavorable research report. In accord with that intent, the proposed Interpretation is not intended to halt all of a firm's trading activity in that security. Even if the trading desk knows of a forthcoming research report on a particular security, the trading desk is fully permitted to continue to trade with its retail customers or with other broker-dealers if such trading arises from unsolicited order flow. Similarly, the proposed Interpretation would not apply to situations where the firm conducts research solely for in-house use and such research is not made available for external distribution.

In addition, the proposed Interpretation encourages but does not require firms to establish Chinese Wall procedures to control the flow of information between their research and trading departments. Such Chinese Wall procedures are risk management control adopted by securities firms that include physical and informational barriers between different departments of firms to enhance the likelihood that knowledge of upcoming events will be isolated within a single group and not disclosed to other groups that might trade on or otherwise benefit from the information. Because many firms today already use Chinese Wall restrictions between the research and trading departments of their firms, the NASD decided that the policy should encourage but not require the use of Chinese Walls as the preferred method of complying with the new policy.

While the NASD's proposed Interpretation would not require a member to develop Chinese Wall procedures, the NASD believes that Chinese Wall restrictions are the most effective means for a member firm to demonstrate that any trading activity before its issuance of a research report had not been in violation of the proposed Interpretation. Accordingly, if a member decides not to implement Chinese Wall procedures, it would carry the significantly greater burden of proving that stock accumulations or liquidations prior to the issuance of a research report had not been purposeful if an NASD investigation into the firm's buying or selling activity were initiated. Chinese Wall procedures are therefore, the recommended and preferred approval, but members are allowed to analyze their own environments and determine where Chinese Wall procedures were appropriate for their firm.

While some commenters on NTM 94–40 objected to the proposed policy, the NASD notes that such comments were almost equally balanced by comments expressing strong support for the proposed policy. Indeed, even those commenters objecting to the proposal recognized that there were significant investor protection concerns that could arise when a firm adjusted its inventory positions in anticipation of its issuance of a research report. While not disregarding such investor protection issues, such commenters were more concerned about how they believed the proposed Interpretation would impact the liquidity of less well-capitalized stocks, and the potential dissemination of research into such smaller companies. Several firms raising this issue argued that they should be permitted to "passively" accumulate inventory positions and pass along the advantageous cost of acquisition to its customers when the research report was released.

Such comments, however, did not deal with two fundamental issues: (1) Trading ahead of customers based on non-public information; and (2) fair pricing in subsequent resales. Accordingly, because the practice of purposefully adjusting inventory in anticipation of research report issuance raises such significant potential for disadvantaging public investors, the NASD believes that the better practice is to prohibit such activity as violative of just and equitable principles of trade.[6] Accordingly, the NASD believes that the proposed rule change is consistent with Section 15A(b)(6) in that these proposed changes are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to facilitate transactions in these securities, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest. The NASD believes that any potential negative effects of the policy will be significantly outweighed by the increased confidence of investors and their corresponding willingness to trade with member firms.

[6] The issuance of research reports also may raise issues under the Securities Act of 1933 and the Act. *See, e.g.*, Section 5 of, and Rules 137, 138 and 139 under, the Securities Act of 1933 and Rule 10b–6 under the Act.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments regarding the NASD's proposal in NTM 94–40 are summarized above.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to SR–NASD–95–28 and should be submitted by July 19, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15812 Filed 6–27–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35879; File No. SR–MSRB–95–11]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Interpretation of Rule G–37 on Political Contributions and Prohibitions on Municipal Securities Business

June 21, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), and Rule 19b–4 thereunder, notice is hereby given that on June 16, 1995, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Board. The purpose of the proposed rule change is to provide interpretative guidance concerning rule G–37 on political contributions and prohibitions on municipal securities business. The Board has designated this proposal as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Board under Section 19(b)(3)(A) of the Act, which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing the proposed rule change to provide interpretative guidance concerning rule G–37 on political contributions and prohibitions on municipal securities business.[1]

[1] The Board plans to publish the interpretations in MSRB Reports Vol. 15, no. 2, at 3 (July 1995). The interpretations also are available for inspection and copying at the Commission's public reference room and at the Board.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

On April 7, 1994, the Commission approved Board rule G–37, concerning political contributions and prohibitions on municipal securities business.[2] Since that time, the Board has received numerous inquiries concerning the application of the rule. In order to assist the municipal securities industry and, in particular, brokers, dealers and municipal securities dealers in understanding and complying with the provisions of the rule, the Board published four prior notices of interpretation which set forth, in question-and-answer format, general guidance on rule G–37.[3] In prior filings with the Commission, the Board stated that it will continue to monitor the application of rule G–37, and, from time to time, will publish additional notices of interpretations, as necessary.[4] In light of questions recently received from market participants concerning the applicability of the rule to contributions to issuer officials seeking election to the U.S. Presidency, as well as the operation of the exemption provision set forth in section (i) of rule G–37, the Board has determined that it is necessary to provide further guidance to the municipal industry. Accordingly, the Board is publishing this fifth set of questions and answers.

[2] Securities Exchange Act Release No. 33868 (April 7, 1994), 59 FR 17621 (April 13, 1994). The rule applies to contributions made on and after April 25, 1994.

[3] *See* Securities Exchange Act Release No. 34161 (June 6, 1994), 59 FR 30379 (June 14, 1994); Securities Exchange Act Release No. 34603 (Aug. 25, 1994), 59 FR 45049 (Aug. 31, 1994); Securities Exchange Act Release No. 35128 (Dec. 20, 1994), 59 FR 66989 (Dec. 28, 1994) and Securities Exchange Act Release No. 35544 (Mar. 28, 1995), 60 FR 16896 (Apr. 3, 1995). See also MSRB Reports Vol. 14, No. 3 at 11–16 (June 1994); Vol. 14, No. 4 at 31–32 (August 1994); Vol. 14, No. 5 at 8 (December 1994) and Vol. 15, No. 1 (April 1995) at 21; MSRB Manual, General Rules, Rule G–37 (CCH) ¶ 3681.

[4] File Nos. SR–MSRB–94–6, SR–MSRB–94–15, SR–MSRB–94–16 and SR–MSRB–95–02.

The Board believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which provides that the Board's rules shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in manicipal securities, and, in general; to protect investors and the public interest.

B. Self-Regulatory Organization's Statement of Burden on Competition

Because the proposed rule change would apply equally to all brokers, dealers and municipal securities dealers, the Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Act and subparagraph (e) of Rule 19b–4 thereunder because the rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Board.

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW.,

Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Board. All submissions should refer to File No. SR–MSRB–95–11 and should be submitted by July 19, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15809 Filed 6–27–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35876; File No. SR–CBOE–95–29]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Exchange Fees for the Provision of Last Sales Data

June 21, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 23, 1995, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE hereby gives notice that it is establishing a fee, pursuant to Rule 2.22 ("Other Fees or Charges"), for the provision to members of last sales tape data ("Time and Sales" data) over the CBOE Trade Match ("CTM")[1] terminal network. This service will replace the Exchange's present service whereby Time and Sales data is provided on microfiche. Consequently, the Exchange is also eliminating the fee associated with the microfiche service.

The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to establish a fee for a new service the Exchange is offering to its members to enable the members to obtain Time and Sales data.

The Exchange has been providing a service to its members whereby the Exchange would reproduce on microfiche the last sales tape, which reports all of the daily sales on the Exchange and the time of those sales. The fee for this service has been $335 per month. However, the cost of reproducing this report on microfiche has continued to rise to the point that the Exchange has been unable to cover its expenses at this price. Consequently, the Exchange has decided to discontinue this service, which has been used by few members due to its cost.

In place of this microfiche report, the Exchange is now offering to its members the opportunity to access the Time and Sales data on-line on the CTM terminal network.[2] The fee for this service will be $175 per month. In addition, a firm will be charged $5 for each recall of data older than three days. There will be no charge for the first five such historical recalls in a given month.

In addition to reducing costs to members and eliminating a cost to the Exchange, this new proposal provides a number of other advantages. This service provides immediate access to information using terminals that are already present in members' back offices, eliminates fiche storage, and allows the printing of specific pages when necessary.

The CBOE represents that the proposed rule change is consistent with Section 6 of the Act, in general, and Section 6(b)(4), in particular, in that it provides for the equitable distribution of reasonable fees and other charges among members using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The rule change described herein establishes or changes a due, fee, or other change imposed by the Exchange and therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e) thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW.,

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[1] The CTM is a comparison system for trades, used to resolve any discrepancies between price, quantity, parties, and contract terms. Subsequent to the execution of a trade on the Exchange, the Exchange, through computer runs, matches the trade information data recorded by the purchasing member with the information recorded by the selling member. Clearing members are advised of transactions for which matching buy and sell data has not been submitted. After allowing the relevant clearing members to submit corrections or changes, the matched transaction data is sent by the CBOE to the Options Clearing Corporation for clearance and settlement. *See* Securities Exchange Act Release No. 30000 (November 26, 1991) 56 FR 63531 (December 4, 1991).

[2] The CTM terminal network is an internal on-line network of the Exchange through which clearing firm members of the Exchange can access information on matched and unmatched trades. Back office personnel of clearing firm members generally have access to the CTM terminal network in their offices.

Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR–CBOE–95–29 and should be submitted by July 19, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15808 Filed 6–27–95; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Air-Cure Environmental, Inc., Common Stock, $.001 Par Value, Redeemable Warrants) File No. 1–10668

June 22, 1995.

Air-Cure Environmental, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities ("Securities") from listing and registration on the Boston Stock Exchange, Inc. ("BSE").

The reasons alleged in the application for withdrawing the Securities from listing and registration include the following:

According to the Company, its common stock is listed on the American Stock Exchange, Inc. ("Amex") and its redeemable warrants are quoted on Nasdaq. The issuer cannot justify the expense of having the securities dually and therefore, wishes to withdraw from the BSE.

Any interested person may, on or before July 14, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the BSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–15839 Filed 6–27–95; 8:45 am]

BILLING CODE 8010–01–M

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[3] 17 CFR 200.30–3(a)(12) (1994).

[Rel. No. IC–21156; 811–8232]

Nationar Funds, Inc.; Notice of Application

June 21, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Nationar Funds, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on May 22, 1995 and amended on June 5, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 17, 1995 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 330 Madison Avenue, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company organized as a New York corporation. On December 21, 1993, applicant registered under the Act and filed a registration statement under the Securities Act of 1933 to register its shares. The registration statement became effective on June 13, 1994, and the initial public offering commenced on June 16, 1994.

2. On February 6, 1995, the Acting Superintendent for the Banks of the State of New York took possession of Nationar, applicant's investment adviser, a commercial bank organized under the laws of the State of New York. During a telephonic board meeting held on February 13, 1995, applicant's board of directors considered what was the appropriate action to be taken regarding the applicant and its funds. At that time, the board of directors took formal action to close applicant's Money Market Portfolio as all of the shareholds other than Nationar had redeemed their shares. At a subsequent telephonic meeting of applicant's board of directors held on February 17, 1995, the chairman reported that he had been contacted by most, if not all, of the shareholders in each of applicant's other funds and had been advised that all of them were contemplating redeeming their shares. Throughout the period February 6, 1995 through February 17, 1995, officers of Nationar, fund counsel and applicant's accountants had been communicating with the SEC and the New York State Banking Department in order to determine what action should be taken with respect to applicant and its funds. By unanimous written consent dated March 1, 1995, the board of directors adopted resolutions authorizing the officers of the applicant to take all such action as necessary to cease offering shares of applicant's Money Market Portfolio, Government Securities Portfolio, and U.S. Mortgage Securities Portfolio.

3. All assets of applicant have been distributed to shareholders through individual redemptions. Immediately prior to the redemptions, each fund's assets were converted into cash. No brokerage commissions or other fees were paid in connection with the redemptions or the conversion of portfolio securities into cash.

4. All expenses incurred in connection with the liquidation,

approximately $37,500, consisting of legal fees and trustee fees, were paid by applicant. Certain deferred organizational expenses of $79,116 were assumed and paid by the Adviser.

5. As of the date of the application, applicant had no debts or liabilities and is not a party to any litigation or administrative proceeding.

6. Applicant is neither engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding-up of its affairs. Applicant intends to file a certificate of dissolution with the State of New York.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15813 Filed 6–27–95; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Dockets 50252 and 50253]

Applications of Prime Air, Inc., d/b/a Transmeridian Airlines, for Issuance of New Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 95–6–25).

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order (1) finding Prime Air, Inc. d/b/a TransMeridian Airlines fit, willing, and able, and (2) awarding it certificates of public convenience and necessity to engage in interstate and foreign charter air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than June 29, 1995.

ADDRESSES: Objections and answers to objections should be filed in Dockets 50252 and 50253 and addressed to the Documentary Services Division (C–55, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Janet A. Davis, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590, (202) 366–9721.

Dated: June 22, 1995.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 95–15822 Filed 6–27–95; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Receipt of Revision To Approved Noise Compatibility Program and Request for Review; Reno/Tahoe International Airport, Reno, NV

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed revision to the approved noise compatibility program that was submitted for Reno/Tahoe International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) (hereinafter referred to as "the Act") and 14 CFR Part 150 by the Airport Authority of Washoe County, Nevada. The Noise Compatibility Program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR Part 150 for Reno/Tahoe International Airport were in compliance with applicable requirements effective February 22, 1991. The Noise Compatibility Program for Reno/Tahoe International Airport was approved by the FAA on September 1, 1993. The proposed revision to the approved noise compatibility program will be approved or disapproved on or before December 10, 1995.

EFFECTIVE DATE: The effective date of the start of FAA's review of the revision to the approved noise compatibility program is June 13, 1995. The public comment period ends July 13, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Elisha Novak, Senior Planner, SFO–612, Federal Aviation Administration, San Francisco Airports District Office, 831 Mitten Road, Burlingame, California 94010–1303, Telephone 415/876–2928. Comments on the proposed revision to the approved noise compatibility program should be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed revision to the approved noise compatibility program for Reno/Tahoe International Airport which will be approved or disapproved on or before December 10, 1995. This notice also announces the availability of this revision for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the revision to the approved noise compatibility program for Reno/Tahoe International Airport, effective June 13, 1995. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under Section 104(b) of the Act. On September 1, 1993, the FAA approved the noise compatibility program for Reno/Taho International Airport. An announcement of FAA's approval of the noise compatibility program was published in the Federal Register on September 24, 1993. Preliminary review of the submitted material for the revision indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180-days, will be completed on or before December 10, 1995.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, Section 150.33. The primary considerations in the evaluation process are whether the proposed measure may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed revision with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed revision to the approved noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, National Headquarters, 800 Independence Avenue, SW., Room 617, Washington, D.C. 20591

Federal Aviation Administration, Western-Pacific Region, Airports Division, Room 3012, 15000 Aviation Boulevard, Hawthrone, California 90261

Federal Aviation Administration, San Francisco Airports District Office, 831 Mitten Road, Burlingame, California 94010–1303

Mr. Robert C. White, Director of Aviation, Airport Authority of Washoe County, Nevada, Box 12490, Reno, Nevada 89510

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California on June 13, 1995.

Herman C. Bliss,

Manager, Airports Division, AWP–600, Western-Pacific Region.

[FR Doc. 95–15891 Filed 6–27–95; 8:45 am]

BILLING CODE 4910–13–M

T.F. Green State Airport; Providence, Warwick, RI; Noise Exposure Map Notice

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Rhode Island Department of Transportation (RIDOT) for T.F. Green State Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is June 15, 1995.

FOR FURTHER INFORMATION CONTACT: John Silva, FAA New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for T.F. Green State Airport are in compliance with applicable requirements of Part 150, effective June 15, 1995.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by RIDOT. The specific maps under consideration are Figure 6–1, 1993 Baseline DNL Contours, and Figure 6–7, 1998 Forecast DNL Contours Using Airport Master Plan Forecasts, each of which is published in "Revised Noise Exposure Maps for T.F. Green State Airport", dated April 1995. FAA has determined that these maps for T. F. Green State Airport are in compliance with applicable requirements. This determination is effective on June 15, 1995. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours; or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, New England Region, Airports Division, 16 New England Executive Park, Burlington, Massachusetts 018033

Rhode Island Airport Corporation, T. F. Green State Airport, Warwick, Rhode Island 02886

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Burlington, Massachusetts, June 15, 1995.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 95–15892 Filed 6–27–95; 8:45 am]

BILLING CODE 4910–13–M

Notice of Public Conference

AGENCY: Federal Aviation Administration, DOT.

SUMMARY: This notice announces an International Conference on Cabin Safety Research, which is being held by the Federal Aviation Administration (FAA) for the purpose of presenting the agency's Cabin Safety Research Program (CSRP) plan, and soliciting input from the public on the content of the plan. The CSRP and the conference are being jointly sponsored by the Joint Aviation Authorities (JAA) of Europe, and Transport Canada Aviation (TCA).

DATES: The Conference is scheduled for Tuesday thru Thursday, November 14–16, 1995. Registration will begin at 7:30 a.m., November 14 and the Conference will begin at 8:30 a.m.

REGISTRATION: Persons planning to attend the public conference are encouraged to pre-register by contacting the person identified later in this notice as the contact for further information. Pre-registration is requested by October 13, 1995.

ADDRESSES: The public conference will be held at Harrahs Casino-Hotel, 1725 Brigantine Boulevard, Atlantic City, New Jersey 08401, telephone 1–800–242–7724 (outside the United States: 609–441–5600).

FOR FURTHER INFORMATION CONTACT: April Horner, Galaxy Scientific Corporation, c/o FAA Technical Center, Fire Safety Branch, AAR–422, Bldg. 287, Atlantic City International Airport, New Jersey 08405, telephone 609–485–4471, fax 609–646–5229, or on internet at: smtplink%april__horner__at__ct27@admin.tc.faa.gov.

SUPPLEMENTARY INFORMATION: Notice is given of a public conference November 14–16, 1995 at the Harrahs Casino-Hotel, 1725 Brigantine Boulevard, Atlantic City, New Jersey 08401. The purpose of this conference is to present the proposed joint FAA/JAA/TCA Cabin Safety Research Program plan to the interested public, and provide an opportunity for public comment and provide input on the content of the plan.

Cabin safety has long been the focus of extensive research. This research has historically taken two primary forms: (1) Study of means to increase the speed at which evacuation from an airplane is possible, and (2) Study of means to prolong the time available for evacuation. Examples of the former include exit sizes and access provisions, escape slide performance and effects of interior features. Examples of the latter include material flammability and fire protection systems. In addition, research into human tolerance and impact protection has more recently assumed a greater overall role in the research program.

Until recently this research has at various times been focused on very specific areas and has been conducted mostly independently of other cabin safety research. Evacuation research at the FAA is conducted at the Civil Aeromedical Institute (CAMI) in Oklahoma City, Oklahoma; fire safety research is conducted at the Technical Center in Atlantic City, New Jersey. Research into crash dynamics is conducted at both facilities, with CAMI concentrating on human tolerance and seating systems and the Technical Center concentrating on airframe structural performance. Various facilities in Europe and Canada conduct research in specific areas.

While research up to now has been very productive and has resulted in improved safety standards, it has been largely carried out in piecemeal fashion, outside of a systematic framework. There has been no formal vehicle to integrate all cabin safety research so that the benefits are maximized, and the available funds are spent most efficiently. The FAA has developed such a vehicle to improve both the efficiency and quality of future cabin safety research. Because research will often result in new guidance or regulation, and because the aviation industry is largely an internation entity, this potential regulatory impact must be harmonized between regulatory authorities. Therefore, the FAA has coordinated on the development of the CSRP with the joint Aviation Authorities and Transport Canada Aviation.

The agenda for the conference will include:

Tuesday, November 14, 1995

Morning Session

- Opening Address (Addresses)
- Overview of Program and Plan
- Presentations pertaining to overall Program

Afternoon Session

- Presentations and discussion on Evacuation

Wednesday, November 15, 1995

Morning Session

- Presentations and discussion on Crash Dynamics
- Presentations and discussion on Inflight Emergencies

Afternoon Session

- Presentations and discussion on Fire Safety

Thursday, November 16, 1995

Morning Session

- Break Out Sessions

Afternoon Session

- Reconvene and present recommendations
- Closing statements

Attendance is open to the interested public, but will be limited to the space available.

Conference Procedures

Hotel room reservations should be made in advance. A block of rooms has been reserved at Harrahs Hotel-Casino at a Conference rate. Persons wishing to attend the Conference are encouraged to make reservations by October 13, 1995, by contracting the Hotel direct at 1–800–242–7724 (outside the United States: 609–441–5600).
Be sure to identify yourself as an FAA Cabin Safety Conference attendee to receive the special rate.

Persons in Canada that wish to pre-register, may contact the following, in lieu of the person listed under **FOR FURTHER INFORMATION CONTACT**, if that would be more convenient: Mr. Claude Lewis, Transport Canada Aviation, Airworthiness Branch—AARDH, Ottawa, Ontario, Canada KIA 0N8, Telephone: 613–990–5906.

Persons who plan to attend the Conference should be aware of the following procedures which are established to facilitate the workings of the conference.

1. The Conference will be open on a space available basis to all persons registered.
2. There is no fee for attending the conference however, no meals/refreshments will be provided.
3. Following each presentation, a brief question and answer period will be allowed and all persons will be given the opportunity to open discussions on the presentation, within the time available. In addition, there will be separate, break-out sessions on each of the technical areas for open discussion.
4. Statements made by FAA participants at the conference will not be taken as expressing final FAA positions.

Issued in Renton, Washington, on June 16, 1995.

Darrell M. Pederson,
Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 95–15893 Filed 6–27–95; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

DEPARTMENT OF THE INTERIOR

National Parks Service

[Docket No. 25149]

Airspace Management Over the Grand Canyon National Park; Public Meeting

AGENCY: Federal Aviation Administration (FAA), DOT and National Parks Service (NPS), DOI.

ACTION: Notice of meeting.

SUMMARY: This notice announces the date, time, and location of a public meeting to address issues related to Special Federal Aviation Regulations for the Grand Canyon (SFAR No. 50–2). In October 1994, the National Parks Service submitted its Report to Congress as required by Public Law 100–91. The purpose of this meeting is to provide the public with the opportunity to provide comments on improving SFAR No. 50–2 with respect to safety and mitigating the noise impacts of aircraft overflights of the Grand Canyon.

DATES: The meeting will be held on August 30, 1995, in two sessions. The first session will begin at 1 p.m.; the second session will begin at 7 p.m.

ADDRESSES: The meeting will be held at the Best Western Woodlands Plaza Hotel, 1175 West Route 66, Flagstaff, Arizona (520) 773–8888.

Persons unable to attend the meeting may mail their comments in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Rules Docket (AGC–200), Docket No. 25149, 800 Independence Avenue, SW., Washington, DC 20591. Written comments are invited and must be received on or before September 8, 1995

FOR FURTHER INFORMATION CONTACT: Requests to present a statement at the meeting or questions regarding the logistics of the meeting should be directed to Effie Upshaw, FAA, Office of Rulemaking, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7626.

Questions concerning the subject matter of the meeting should be directed to Ellen Crum, telephone (202) 267–8783, FAA, Air Traffic Rules Branch, 800 Independence Avenue, SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Background

On March 26, 1987, the FAA issued SFAR No. 50 (subsequently amended on June 15, 1987; 52 FR 22734) establishing flight regulations in the vicinity of the Grand Canyon. The purpose of the SFAR was to reduce the risk of midair collision, reduce the risk of terrain contact accidents below the rim level, and reduce the impact of aircraft noise on the park environment.

On August 18, 1987, Congress enacted legislation that, in part, required a study of aircraft noise impacts at a number of national parks and imposed flight restrictions at three parks: Grand Canyon National Park in Arizona, Yosemite National Park in California, and Haleakala National Park in Hawaii (Pub. L. 100–91, the National Park Overflights Act of 1987).

As part of Public Law 100–91, the NPS was required to evaluate whether the Grand Canyon airspace management plan (now known as SFAR 50–2) "has succeeded in substantially restoring the natural quiet in the park;" and "such other matters, including possible revisions in the plan, as may be of interest." In that legislation, Congress found that "Noise associated with aircraft overflights at the Grand Canyon National Park is causing a significant adverse effect on the natural quiet and experience of the park * * *."

Further, Public Law 100–91 required the FAA to prepare and issue a final plan for the management of air traffic above the Grand Canyon. In December 1987, the DOI transmitted to the FAA its recommendations for an aircraft management plan at the Grand Canyon which included both rulemaking and nonrulemaking actions. If the FAA determined that executing the recommendations would adversely affect aviation safety, the FAA was required to revise the DOI recommendations to resolve the safety impact and to issue regulations implementing the revised recommendations in the plan.

On May 27, 1988, the FAA issued SFAR No. 50–2 revising the procedures for operation of aircraft in the airspace above the Grand Canyon (53 FR 20264, June 2, 1988). The rule implemented DOI's preliminary recommendations for an airspace management plan with some modifications that the FAA initiated in the interest of aviation safety.

A further requirement of Public Law 100–91 relative to the FAA's plan (SFAR No. 50–2) was that the NPS study and discuss: "(A) whether the plan has succeeded in substantially restoring the natural quiet in the park; and (B) such other matters, including possible revisions in the plan, as may be of interest." The NPS submitted its Report to Congress in October 1994. On June 15, 1995, the FAA extended the expiration date of SFAR No. 50–2 from June 15, 1995, to June 15, 1997, to allow the FAA sufficient time to review thoroughly the NPS recommendations as to their impact on the safety of air traffic at the Grand Canyon National Bank (60 FR 31608).

The FAA and the NPS have sought to keep this process open to the public. The two agencies jointly published an advance notice of proposed rulemaking (ANPRM) (59 FR 12740) on March 17, 1994, seeking public comment on general policy and specific recommendations for voluntary and regulatory actions to address the impact of aircraft overflights of national parks. That same month, the two agencies hosted a workshop entitled, "Finding a Balance" at Flagstaff, Arizona for all interested parties. This meeting is a part of the commitment to continuing that open process.

The NPS report makes recommendations for changes to the SFAR, primarily related to achieving and maintaining the substantial restoration of natural quiet over time and in respect to a growing air tour industry. While the FAA evaluates the NPS recommendations, both agencies are seeking public comment on how the SFAR can be improved with respect to better achieving the congressional intent of "providing for substantial restoration of natural quiet and experience of the park and protection of public health and safety * * *" and how this can be done safely for the benefit of everyone involved.

The NPS report recommendations involved (1) expansion of flight-free zones, (2) introduction of quiet aircraft technology, and (3) other measures designed to minimize the impact of aircraft noise on the park. Based on these recommendations, public comment at the meeting is sought on the following specific questions:

- Can air tour operations be regulated differently, in ways that will better contribute to restoring or maintaining the substantial restoration of natural quiet while maintaining or improving safety? How? What are the implications of those changes?
- Should the future growth of the air tour industry be managed to maintain the natural quiet of the park? How?
- How effectively can quiet aircraft technology contribute to the substantial restoration of natural quiet at Grand Canyon? In what timeframe should this technology be considered? What would be the impact on tour operators to acquire and use quiet aircraft technology? How many tour operators currently use or have plans to use quiet aircraft technology? If beneficial, what incentives need to be considered?
- Given appropriate timeframes, can a viable air tour industry be maintained with the establishment of "quiet aircraft" routes? With the future closure of the Dragon Flight Corridor and rerouting of traffic on a new route to the east?
- How can enlargement of the flight-free zones effectively contribute to the restoration of natural quiet at the Grand Canyon? Are there any economic impacts associated with these types of actions?
- What, if any, impact would result from the imposition of one-way traffic on commercial tour routes in the flight corridors across the Grand Canyon (a measure recommended to mitigate noise in some corridors)?
- Would establishment of "no fly" periods impact air tour operators and other visitors to the park? What time periods should be considered?
- Would expanding the special flight rules area ceiling from 14,499 to 17,999 feet mean sea level effectively

contribute to aiding or maintaining a substantial restoration of natural quiet at Grand Canyon? Is there a more appropriate altitude? Are there safety concerns associated with this?

• What other actions can be taken to assist in maintaining safety and the "natural quiet" of the park environment?

Participation at the Meeting

Requests from persons who wish to present oral statements at the public meeting should be received by the FAA no later than August 24, 1995. Such requests should be submitted to Effie Upshaw as listed in the section titled **FOR FURTHER INFORMATION CONTACT**, and should include a written summary of oral remarks to be presented and an estimate of time needed for the presentation. Requests received after the date specified above will be scheduled if time is available during the meeting; however, the names of those individuals may not appear on the written agenda. The FAA will prepare an agenda of speakers who will be available at the meeting. To accommodate as many speakers as possible, the amount of time allocated to each speaker may be less than the amount of time requested.

Meeting Procedures

The following procedures are established to facilitate the meeting:

(1) There will be no admission fee or other charge to attend or to participate in the meeting. The meeting will be open to all persons who have requested in advance to present statements or who register on the day of the meeting subject to availability of space in the meeting room. (Registration will open 30 minutes before the beginning of each session.)

(2) The meeting may adjourn early if scheduled speakers complete their statements in less time than currently is scheduled for the meeting.

(3) An individual, whether speaking in a personal or a representative capacity on behalf of an organization, may be limited to a 10-minute statement. If possible, we will notify the speaker if additional time is available.

(4) The FAA/NPS will try to accommodate all speakers. If the available time does not permit this, speakers generally will be scheduled on a first-come-first-served basis. However, the FAA/NPS reserves the right to exclude some speakers if necessary to present a balance of viewpoints and issues.

(5) Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested at the above number 10 calendar days before the meeting.

(6) Representatives of the FAA and NPS will preside over the meeting. A panel of FAA and NPS personnel involved in this issue will be present.

(7) The meeting will be recorded by a court reporter. A transcript of the meeting and any material accepted by the panel during the meeting will be included in the public docket. Any person who is interested in purchasing a copy of the transcript should contact the court reporter directly. This information will be available at the meeting.

(8) Position papers or material presenting views or information on airspace management over the Grand Canyon will be accepted at the discretion of the presiding officer and subsequently placed in the public docket. The FAA/NPS requests that persons participating in the meeting provide 10 copies of all materials to be presented for distribution to the panel members; other copies may be provided to the audience at the discretion of the participant.

(9) Statements made by members of the meeting panel are intended to facilitate discussion of the issues or to clarify issues. Any statement made during the meeting by a member of the panel is not intended to be, and should not be construed as, a position of the FAA/NPS.

(10) The meeting is designed to solicit public views and more complete information on the airspace management at the Grand Canyon. Therefore, the meeting will be conducted in an informal and nonadversarial manner. No individual will be subject to cross-examination by any other participant; however, panel members may ask questions to clarify a statement and to ensure a complete and accurate record.

Issued in Washington, DC on June 16, 1995.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division, Federal Aviation Administration.

Dr. Wesley R. Henry,

Overflight Issues Coordinator, National Park Service.

[FR Doc. 95–15897 Filed 6–27–95; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Use the Revenues From a Passenger Facility Charge (PFC) at Charlottesville-Albermarle Airport, Charlottesville, VA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenues from a PFC at Charlottesville-Albermarle Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before July 28, 1995.

ADDRESSES: Comments on the application may be mailed or delivered in triplicate to the FAA at the following address: Washington Airport District Office, 101 West Broad Street, Suite 300, Falls Church, Virginia 22046.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bryan Elliot, Director of Aviation, Charlottesville-Albermarle Airport Authority, at the following address: Charlottesville-Albermarle Airport Authority, 201 Bowen Loop, Charlottesville, Virginia 22901.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Charlottesville-Albermarle Airport Authority under Section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Robert Mendez, Manager, Washington Airports District Office, 101 West Broad Street, Suite 300, Falls Church Virginia 22046. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Charlottesville-Albermarle Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). On April 26, 1995, the FAA determined that the application to use the revenue from a PFC submitted by the Charlottesville-Albermarle Airport Authority was substantially complete within the requirements of Section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no latter than July 26, 1995.

The following is a brief overview of the application.

Level of the proposed PFC: $2.00.

Proposed charge effective date: April 1, 1995.

Proposed charge expiration date: June 15, 2001.

Total estimated PFC revenue: $2,697,646.

Brief description of proposed project(s): PFC will be use to fund the sponsor share of the following projects.

—Purchase Snow Blower and Broom
—Purchase Snow Loader/Plow
—Overlay Runway 3–21
—Purchase Aircraft Rescue and Firefighting Vehicle
—Purchase Runway Deicing Vehicle Device

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/commercial operators filing FAA Form 1800–31 and foreign air carriers.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Charlottesville-Albermarle Airport Authority.

Issued in Jamaica, New York on June 16, 1995.

Anthony P. Spera,

Acting Manager, Airports Division, Eastern Region.

[FR Doc. 95–15894 Filed 6–27–95; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Rhinelander—Oneida County Airport, Rhinelander, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at the Rhinelander—Oneida County Airport at the following address: Rhinelander—Oneida County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before July 28, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address:

Federal Aviation Administration, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Joseph Brauer, Manager of the Rhinelander—Oneida County Airport at the following address: Rhinelander—Oneida County Airport, 3375 Airport Road, Rhinelander, Wisconsin 54501.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Rhinelander—Oneida County Airport under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Franklin D. Benson, Manager, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450, (612) 725–4221. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at the Rhinelander—Oneida County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On June 13, 1995, the FAA determined that the application to use the revenue from a PFC submitted by the Rhinelander—Oneida County Airport was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 14, 1995.

The following is a brief overview of the application.

Level of the PFC: $3.00.

Actual charge effective date: January 1, 1994.

Estimated charge expiration date: March 30, 1996.

Total approved net PFC revenue: $200,451.

Brief description of proposed projects: Acquire snow removal vehicle, and install sanitary sewer and water to the terminal building.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Part 135 air taxi/commercial operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Rhinelander—Oneida County Airport.

Issued in Des Plaines, Illinois on June 19, 1995.

Benito De Leon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 95–15895 Filed 6–27–95; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenues From a Passenger Facility Charge (PFC) at Tri-State Airport, Huntington, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Tri-State Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before July 28, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Beckley Airports Field Office, Main Terminal Building—Room 101, 469 Airport Circle, Beaver, West Virginia 25813–9759.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Larry G. Salyers, Airport Manager for the Tri-State Airport Authority, at the following address: Tri-State Airport Authority, 1449 Airport Road, Unit 1, Box 12, Huntington, West Virginia 25704–9043.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Tri-State Airport Authority under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Elonza Turner, Acting Manager, Beckley Airports Field Office, Main Terminal

Building—Room 101, 469 Airport Circle, Beaver, West Virginia 25813–9759. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Tri-State Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On June 16, 1995, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Tri-State Airport Authority was substantially complete within the requirements of Section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 7, 1995.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: July 1, 1995.

Proposed charge expiration date: September 30, 1997.

Total estimated PFC revenue: $591,300

Brief description of proposed project(s):

—Modification to the existing terminal building and roadway system to provide handicap accessibility and passenger convenience. A canopy will be provided along the handicap accessibility curb front to offer covered drop-off and pick-up of passenger and baggage.
—Replace old engine generators (4 units) with one new engine generator to provide emergency power for the terminal facility and the ARFF building.
—Purchase a truck mounted sweeper unit to remove snow from Runways and Taxiways.
—Purchase snow blower to displace snow for the airport operational services.
—Reconstruct a section of the Taxiway (approx. 2,300′ x 50′) parallel to Runway 12/30 and widen Taxiway fillets.
—Reimburse Airport Authority for the preparation and coordination of PFC application.

Class or classes of air carriers which the public agency has requested not be required to collect PFC: Air Taxi/commercial operators filing FAA Form 1800–31 and Unscheduled Part 135 and Part 121 operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Tri-State Airport Authority.

Issued in Jamaica, New York on June 20, 1995.

Anthony P. Spera,

Acting Manager, Airports Division, Eastern Region.

[FR Doc. 95–15896 Filed 6–27–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

[Treasury Directive Number 27–01]

Organization and Functions of the Office of the Assistant Secretary (Management) and Chief Financial Officer (CFO)

June 22, 1995.

1. *Purpose.* This Directive describes the organization of the Office of the Assistant Secretary (Management) and CFO.

2. *The Assistant Secretary (Management) and CFO.* The following are the functions of the Assistant Secretary (Management) and CFO (the "Assistant Secretary").

a. Serves as the CFO of the Department of the Treasury, with authorities and functions pursuant to the Chief Financial Officers Act of 1990, Pub. L. 101–576 ("the Act"), and, as CFO, is responsible for carrying out the following functions for the Department and all bureaus (described as Departmentwide in this Directive).

(1) Oversees Departmentwide financial management, accounting policy, internal controls, cash management, credit management, debt management, coordination of responses to General Accounting Office (GAO) activities relating to financial management, and corrective actions related to audit recommendations.

(2) Specifies the format, content and frequency of financial reports and statements, including overseeing the development of performance measurement indicators prepared by bureau program and financial components.

(3) Reviews and approves the development, implementation, and maintenance of an integrated agency and bureau financial management system(s), as defined by Office of Management and Budget (OMB) Circular A–127, to ensure that such systems produce information in compliance with generally accepted accounting principles, standards, and requirements for all Departmentwide administrative and program areas.

(4) Reviews and approves financial statements and reports prepared at the bureau or Departmental level prior to submission to external parties.

(5) Prepares and transmits to the Secretary and OMB an annual report which includes items specified in 31 U.S.C. 902(a)(6).

(a) Description and analysis of the status of financial management, Departmentwide.

(b) Annual financial statements and reports prepared and audited pursuant to the Act.

(c) Summary of the Federal Managers' Financial Integrity Act (FMFIA) Report.

(d) Other information that warrants communication to the President and Congress concerning Departmentwide financial management.

(6) Develops and manages the Department's budget for the Secretary and Deputy Secretary.

(7) Directs the biennial review of fees, royalties, rents and other charges imposed by the Department or a bureau and recommends changes.

(8) Reviews, in accordance with the procedures established in Treasury Directive (TD) 28–02, "Legislative Procedures," all legislative items related to or concerning financial management matters subject to review and coordination pursuant to TD 28–02, to provide advice and comments on financial management issues, including costs and benefits.

(9) Provides direction and policy guidance to program managers on financial management matters.

(10) Develops Departmentwide policies and provides oversight related to qualifications, recruitment, training, selection and retention of financial management personnel.

(11) Chairs the Departmentwide Treasury Chief Financial Officers Council.

(12) Assumes any other function conferred upon the CFO by statute, governmentwide regulation, or Treasury Orders and Directives.

b. Serves as the principal policy adviser to the Secretary and Deputy Secretary on matters involving the internal management of the Department and its bureaus. The Assistant Secretary oversees the Department's management programs, which include: personnel and training; affirmative action and equal employment opportunity; security; property management, procurement and contracting; strategic planning and organizational improvement; and program reviews of legislative proposals, in accordance with TD 28–02, to provide advice to the Secretary on cost and benefit estimates.

c. Oversees bureau proposals related to the development of budgetary resources for information systems.

d. Provides comprehensive administrative services to Departmental Offices and other components of the Department, as appropriate.

e. Provides Departmental oversight and supervision of the Treasurer of the United States.

f. Monitors financial execution of the budget and ensures the issuance of timely performance reports to management officials.

3. *Organization Structure.* The Assistant Secretary supervises the Treasurer of the United States, the Director, Office of Security, the Deputy CFO, and three Deputy Assistant Secretaries: (a) Departmental Finance and Management; (b) Information Systems; and (c) Administration. An organization chart is attached.

4. *The Treasurer of the United States* advises the Assistant Secretary, Deputy Secretary and the Secretary on matters relating to coinage, currency and the production of other instruments issued by the United States and serves as the National Honorary Director for the Savings Bond program; serves as the principal policy official on all matters concerning general coinage and currency policy; and provides Departmental oversight of the United States Mint and the Bureau of Engraving and Printing by monitoring key bureau operations and activities, identifying problem areas, and tracking corrective actions. In this capacity, the Treasurer represents the Department on major media programs and other public forums. The Treasurer reviews currency issues and redemptions and signs currency. The Treasurer's signature, along with the Secretary of the Treasury's, appears on all currency issued by the United States.

5. *The Deputy Chief Financial Officer* reports directly to the Assistant Secretary and has Departmentwide responsibility for implementing the provisions of the Chief Financial Officers Act of 1990 and the Government Management Reform Act of 1994. The Deputy CFO also has Departmentwide responsibility for accounting policy and procedures; management controls; financial management systems and reports; and financial execution of the budget. The Deputy CFO supervises the following offices.

a. *The Office of Accounting and Internal Controls* develops, implements and evaluates Departmentwide accounting policy, designs form and content guidelines which are used to prepare financial statements; develops and reviews financial performance measures; reviews and coordinates accounting policy guidance developed by the Federal Accounting Standards Advisory Board; oversees Departmentwide compliance with the Federal Managers' Financial Integrity Act, Prompt Payment Act, Cash Management Improvement Act, and Federal Debt Collection Act; monitors the resolution and implementation of audit findings and recommendations; provides centralized coordination and monitoring of all Treasury related GAO audit activities; prepares the Department's CFO Annual Report; provides policy direction and oversight of the travel management and advisory committee management programs; and coordinates all activities associated with Treasury's financial management oversight of the Institute of American Indian Art.

b. *The Office of Financial Systems and Reports* guides and develops policies, procedures, and standards for integrating financial management and revenue systems Departmentwide; provides for automated financial reporting; reviews Departmentwide financial reports and financial statements; provides technical advice to bureaus on financial and revenue systems design and implementation; reviews and provides advice on financial management and revenue systems proposals submitted by bureaus under TD 32–02, "Approval of Financial Management Systems;" serves as systems administrator for Departmental level financial management systems; codifies the process for financial systems reviews and documentation; coordinates Departmentwide committees, user groups, task forces, and project teams that focus attention on financial management systems; and coordinates with the Joint Financial Management Improvement Program on development of governmentwide financial management systems requirements and standard general ledger requirements.

c. *The Office of Financial and Budget Execution* provides advice, guidance, and instructions on budget execution matters; maintains the Treasury Budget Manual in coordination with the Office of Budget; issues budget execution reports on Full Time Equivalents, budget authority, outlays, and receipts; coordinates the status of funds reviews, reprogramming and fund transfers; monitors congressional and OMB directives; validates and reconciles appropriations and budgetary resources; and supports budget formulation.

d. *The CFO Liaison Officer* serves as liaison between the Assistant Secretary, Deputy CFO, and the fund directors responsible for the Working Capital Fund, the Treasury Forfeiture Fund, and the Departmental Offices' reimbursable programs (exchange accounts); reviews financial systems, management controls, and resource allocations of those funds; coordinates and provides advice related to financial plans; and oversees FMFIA corrective actions.

6. *The Deputy Assistant Secretary (Departmental Finance and Management)* has Departmentwide responsibility for the Treasury Reinvention Team; personnel policies; budget formulation; customer assistance; program evaluation; planning policy and Treasury organization; the Treasury Executive Institute; equal opportunity programs; Treasury integrated management information systems, including automated payroll/personnel systems; procurement program management; real and personal property; and supports the Assistant Secretary on legislative matters. The Deputy Assistant Secretary supervises the following offices.

a. *The Office of Personnel Policy* provides leadership in developing Departmentwide personnel management policies and procedures and in oversight, consultation and evaluation activities; develops, recommends and implements functional personnel programs such as: employment and staffing, including Senior Executive Service (SES); classification and compensation; employee development, appraisal, recognition and benefits; employee and labor relations; and drug-free workplace, including drug testing.

b. *The Office of Equal Opportunity Program* provides leadership in developing Departmentwide polices and procedures pertaining to equal employment opportunity; provides for the consideration and disposition of complaints involving issues of discrimination on grounds of race, color, religion, sex, national origin, age and disability; oversees, evaluates, and sets standards for the operation of the four Treasury Regional Complaint Centers which process complaints of discrimination for all bureaus; and directs and administers Departmentwide affirmative employment and special emphasis programs, such as the Hispanic Employment Program, the Federal

Women's Program, the Historically Black Colleges and Universities Program, and the Individuals with Disabilities Program.

c. *The Office of Treasury Integrated Management Information Systems* manages, operates and maintains the payroll/personnel system for bureaus; develops, conducts and maintains a full curriculum of technical training for bureau payroll/personnel staff; provides continuing user support, including user assistance in problem resolution and Departmentwide reporting; and ensures that the system meets the technical requirements of the Treasury community through the identification and development of system requirements and the negotiation of system modifications.

d. *The Treasury Executive Institute* operates under the sponsorship of the Treasury Career Advisory Panel (TCAP), which assists the Assistant Secretary by advising on and recommending developmental, educational and recognition programs to enhance the performance and competency of members of the SES. The TCAP is comprised of the highest ranking career SES member in each Treasury bureau and Departmental Offices.

e. *The Office of Real and Personal Property Management* provides policy and technical guidance for space management, real and personal property, fleet management, energy and water conservation, environmental quality and pollution abatement, historic preservation, metrication, recycling, workers compensation, occupational safety and health, precious metals recovery and audiovisual management programs; and reviews and evaluates bureau operations within these program areas.

f. *The Office of Procurement* provides leadership and policy guidance for Departmentwide procurement programs and systems; evaluates bureau procurement operations; directs the use of streamlined, cost effective means of procurement, including the purchase card; implements the Federal Acquisition Streamlining Act of 1994; oversees the activities of the Departmental Advocate for Competition; administers a Departmentwide career management program; and implements an effective, Departmentwide contract administration program.

g. *The Office of Small and Disadvantaged Business Utilization* implements the statutory mandate that agencies award a fair proportion of their acquisitions to small business concerns; promotes the participation of small businesses, small disadvantaged businesses, minority business concerns, and women-owned small businesses in prime and subcontract opportunities; promotes increased contracting with non-profit agencies for advancement of people who are blind or severely disabled; and assists bureaus to implement their small and minority business programs.

h. *The Office of Strategic Planning* coordinates the Department's strategic planning process to forecast and prepare for future problems and opportunities; guides bureaus in developing long-range plans; establishes Departmental priorities and strategic objectives; analyzes current goals, objectives and activities in terms of the future; develops basic objectives about missions, assumptions, long-range goals, strategies and the general range of required resources; conducts studies of issues with long-term or strategic impact on Treasury operations; and maintains the Departmental planning process.

i. *Office of Organizational Improvement* develops customer service and management improvement plans; provides guidance and direction in the development of performance indicators; conducts program evaluations to improve Departmentwide operations and the allocation of resources by the Departmentwide budget process; promotes quality management and continuous process improvement efforts within the bureaus; reviews bureau reorganization proposals submitted to the Assistant Secretary for approval; supports the Assistant Secretary on matters relating to legislation; coordinates the Department's streamlining initiatives and provides staff support for studies conducted for the President's Council on Management Improvement; prepares and publishes Treasury Orders, Directives, and Handbooks.

j. *The Office of Treasury Reinvention* serves as a consultant group to the Department to assist in achieving reinvention goals and provides focus and guidance on reinvention goals to bureaus and Departmental Offices process owners; encourages bureau and Departmental process owners to formulate and implement long-term strategies for achieving results in accordance with those envisioned in the National Performance Review report; and assists senior officials in finding ways to improve work processes.

k. *The Office of Budget* analyzes bureau resource requests and completes financial analyses related to resource allocations; makes recommendations to policy officials concerning budget priorities and strategy; maintains the Treasury Budget Manual in coordination with the Office of Financial and Budget Execution; and represents the Department on budget matters in contacts with OMB, congressional committees and other Government agencies.

7. *The Deputy Assistant Secretary (Information Systems)* serves as the Department's Senior Official for Information Resources Management and has Departmentwide responsibility for policy, oversight, and improvement of information systems, including hardware and software, communications systems, and privacy and security issues relating to information systems. The Deputy Assistant Secretary (Information Systems) provides policy and program management for the development of the Treasury Information Infrastructure (applications, services, technology), promoting the efficient and effective use of information technology and resources to enhance mission and employee performance. The Deputy Assistant Secretary supervises the Office of Information Resources Management and the Office of Telecommunications Management.

a. *The Office of Information Resources Management* manages a broad range of information resources management functions specified in the Brooks Act and the Paperwork Reduction Act, except for management issues related to telecommunications; coordinates and makes recommendations for information systems planning and budgeting; develops and coordinates policy and standards; approves and coordinates acquisitions and systems management; conducts information management reviews; manages Treasury Information Infrastructure development; provides electronic Commerce/Electronic Data Interchange (EC/EDI) program management; coordinates disabled accommodation programs and systems; provides information dissemination; manages data integrity board activities; promotes business process reengineering; provides leadership to appropriate interagency, reinvention projects; administers provisions of the Computer Security Act; conducts inventories of bureau sensitive systems and reviews security plans; develops and reviews computer security awareness training guidelines; and reviews and approves public reporting requirements; and coordinates Treasury external directories, forms, reports, records, and mail management program activities.

b. *The Office of Telecommunications Management* develops and manages the Departmentwide telecommunications program for local and wide area communications systems and services; develops policies for cost-effective utilization of telecommunications resources by bureaus; provides management and financial oversight on Executive Agent telecommunications programs implemented by Treasury bureaus; reviews and coordinates the acquisition of communications systems and services throughout the Department; establishes and oversees program offices for voice, data, video, and wireless communications, including radio frequency spectrum engineering and management, to meet Departmentwide requirements; manages participation in intergovernmental telecommunications programs; and represents the Department on telecommunications matters in contacts with OMB and other agencies.

8. *The Deputy Assistant Secretary (Administration)* has responsibility for the Departmental Offices' administrative and management operating programs which include: administrative services; automated systems; facilities; budget formulation and execution; accounting and internal controls; management advisory services; personnel, payroll, and equal employment opportunity; printing and graphics; and procurement. The Deputy Assistant Secretary (Administration) is responsible for managing the Departmentwide disclosure services program, Working Capital Fund, Gifts and Bequest Fund, printing program and reimbursable agreement operations, which cross bureau lines. The Deputy Assistant Secretary (Administration) also serves as the Departmental Offices' liaison for activities required to comply with the CFO Act. Unless another Treasury Order, Directive, or delegation specifically states otherwise with respect to a specific function, the Deputy Assistant Secretary (Administration) is the head of the Departmental Offices for all administrative and management functions. The Deputy Assistant Secretary supervises the following offices.

a. *The Administrative Operations Division* provides a range of administrative support services to the Departmental Offices to include: building access security; environmental and physical safety; parking facilities; dining room; library and information services; domestic and international travel; Secretarial delegation travel; and management coordination for special projects. The Division manages the Departmentwide disclosure services program.

b. *The Automated Systems Division* provides automated information system services to Departmental Offices including: security; office automation; data processing; user support; applications development; and telecommunications services.

c. *Office of the Curator* provides coordination and direction for the restoration of the Treasury Building; conservation and maintenance of its historic collections; historical research on the building and collections to facilitate the development of special exhibits and other educational activities; and administers the Treasury Building tour program for the general public, as well as VIP tours for guests of the Department. The Office of the Curator falls within the immediate office of the Deputy Assistant Secretary (Administration).

d. *The Facilities Management Division* directs and coordinates the management of the Main Treasury Building, Treasury Annex, and related grounds, including space management, construction, maintenance, custodial care, personal property, mail, messenger and motor pool services, and Departmental Offices rental space.

e. *The Financial Management Division* formulates, presents, executes and manages the Departmental Offices' budget; maintains a comprehensive integrated financial management and accounting system in support of the financial resources under the jurisdiction of the Deputy Assistant Secretary (Administration); develops and directs the internal controls activities of the Departmental Offices; and supports the Deputy Assistant Secretary (Administration) in providing information to comply with the CFO Act. In addition, the Division provides financial management for the Department's Working Capital Fund and reimbursable programs which cross bureau lines.

f. *Office of Management Advisory Services* provides centralized short-term management advisory assistance to Departmental Offices and bureaus on a broad range of issues having Departmentwide or bureauwide impact, as well as cross-functional management operational support for the implementation of critical initiatives.

g. *The Personnel Resources Division* formulates and administers the operating personnel management and training programs for the Departmental Offices, including the Equal Employment Opportunity Discrimination Complaint Program and the Multi-Year Affirmative Action Plan Program, and provides payroll liaison services for Departmental Office employees.

h. *The Printing and Graphics Division* provides Departmentwide printing, graphics and printing procurement services; develops printing and copy machine management policy; and represents the Department on oversight agencies and interagency committees.

i. *The Procurement Services Division* provides operational procurement support for the Departmental Offices and manages certain Departmentwide procurements.

9. *The Office of Security* develops and administers Departmentwide policies for personnel, physical, and systems security and for emergency preparedness. Physical security includes industrial and information security, and systems security includes the following functional areas: computer security, telecommunications security, operations security (threat/vulnerability assessments), emissions security (TEMPEST), certificate management, and electronic authentication. The DO Personnel Security Branch under the Office of Security performs the operating personnel security functions for the Departmental Offices, including initiating and adjudicating investigations and granting security clearances for access to classified information. The Office of Security also represents the Department on committees organized under the Security Policy Board and the Overseas Security Policy Board and consults and coordinates with other agencies to fulfill program responsibilities.

10. *Cancellation.* TD 27–01, "Organization and Functions—Office of the Assistant Secretary (Management)/ Chief Financial Officer," dated January 19, 1993, is superseded.

11. *Expiration.* This Directive shall expire three years from the date of issuance unless superseded or cancelled prior to that date.

12. *Office of Primary Interest.* Office of Organizational Improvement, Office of the Deputy Assistant Secretary (Departmental Finance and Management), Office of the Assistant Secretary (Management) & CFO.

George Muñoz,

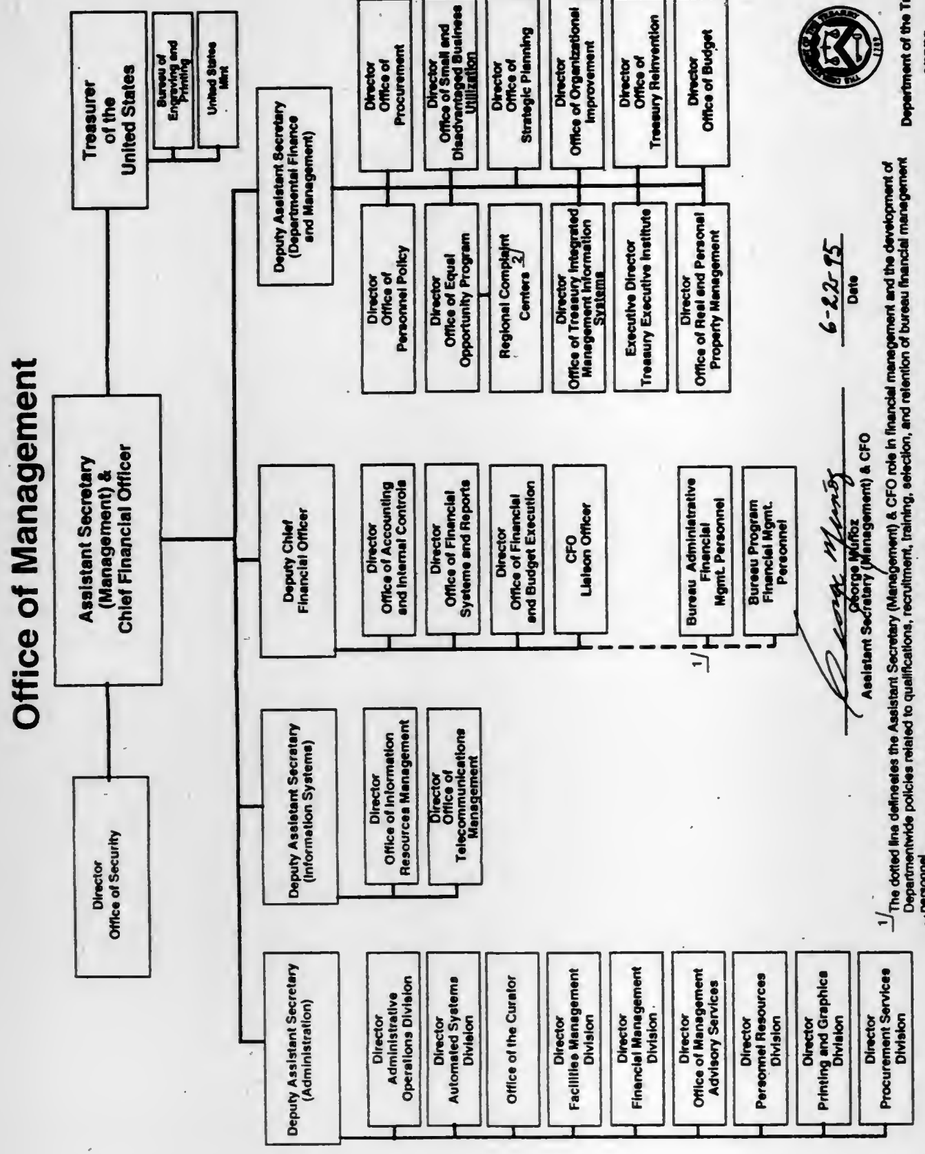
Assistant Secretary (Management) and CFO.

Attachment.

BILLING CODE 4810–25–P

TD 27-01
06-22-95

Attachment



[FR Doc. 95–15881 Filed 6–27–95; 8:45 am]
BILLING CODE 4810–25–C

Sunshine Act Meetings

Federal Register
Vol. 60, No. 124
Wednesday, June 28, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NATIONAL COUNCIL ON DISABILITY

TYPE: Quarterly Meeting (Change of Venue)

SUMMARY: This notice announces a change of venue and sets forth the schedule and proposed agenda of the forthcoming quarterly meeting of NCD. Notice of this meeting is required under Section 522b (e)(1) of the Government in the Sunshine Act, (P.L. 94–409).

DATES: July 24–26, 1995, 8:30 a.m. to 5:00 p.m.

LOCATION: President's Committee on Employment of People with Disabilities, Training Room, 1331 F Street NW, 3rd Floor, Washington, DC.

FOR INFORMATION CONTACT: Mark S. Quigley, Public Affairs Specialist, NCD 1331 F Street, NW, Suite 1050, Washington, DC 20004–1107, Telephone: (202) 272–2004, (202) 272–2074 (TT).

AGENCY MISSION: NCD is an independent federal agency led by 15 members appointed by the President of the United States and confirmed by the U.S. Senate. The overall purpose of NCD is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature of severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

ACCOMMODATIONS: Those needing interpreters or other accommodations should notify NCD by July 21, 1995.

ENVIRONMENTAL ILLNESS: People with environmental illness must reduce their exposure to volatile chemical substances in order to attend this meeting. In order to reduce such exposure, we ask that you not wear perfumes or scents at the meeting. We also ask that you smoke only in designated areas and the privacy of your room. Smoking is prohibited in the meeting room and surrounding area.

OPEN MEETING: This quarterly meeting of NCD shall be open to the public.

AGENDA: The proposed agenda includes:

Report from the Chairperson and the Executive Director
Committee Meetings and Committee Reports
ADA Town Meeting Tour Update
ADA Fifth Anniversary
ADA Report
National Disability Summit
Unfinished Business
New Business
Announcements
Adjournment

Records shall be kept of all NCD proceedings and shall be available after the meeting for public inspection at NCD.

Signed in Washington, DC, on June 26, 1995

Speed Davis,
Acting Executive Director.

[FR Doc. 95–16074 Filed 6–26–95; 3:42 pm]
BILLING CODE 6820–BS–M

NUCLEAR REGULATORY COMMISSION

DATE: Thursday, June 29, 1995.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Thursday, June 29

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Final Rule on "Clarification of Decommissioning Funding Assurance Requirements" (Tentative)
(Contact: Andrew Bates, 301–415–1963)

Note: Beginning July 2, 1995, the Nuclear Regulatory Commission will be operating under a delegation of authority to Chairman Shirley A. Jackson, because with three vacancies on the Commission, it will be temporarily without a quorum. As a legal matter, therefore, the Sunshine Act does not apply; but in the interests of openness and public accountability, the Commission will continue to conduct business as though the Sunshine Act were applicable.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording) (301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: BILL HILL (301) 415–1661.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

William M. Hill, Jr.,
SECY Tracking Officer, Office of the Secretary.

[FR Doc. 95–16006 Filed 6–26–95; 1:06 pm]
BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 60, No. 124
Wednesday, June 28, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 9

OMB Approval Numbers Under the Paperwork Reduction Act

Correction

In rule document 95–13790 appearing on page 29954 in the issue of Tuesday, June 6, 1995, make the following corrections:

§ 9.1 [Corrected]

On page 29954, in § 9.1, in the 3rd column, the 11 entries at the end of the table should read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
• • • • •	
Approval of State Underground Storage Tank Programs	
281.120(a)	2050–0068
281.120(g)	2050–0068
281.121	2050–0068
281.122	2050–0068
281.124	2050–0068
281.125	2050–0068
281.140	2050–0068
281.143(a)	2050–0068
281.150	2050–0068
281.152	2050–0068
281.161	2050–0068
• • • • •	

BILLING CODE 1505–01–D

NUCLEAR REGULATORY COMMISSION

10 CFR Part 171

Revision of Fee Schedules; 100% Fee Recovery, FY 1995

Correction

In rule document 95–14879 beginning on page 32218 in the issue of Tuesday, June 20, 1995, make the following corrections:

1. On page 32231, in Table IV, in the last column, "108 reactors= $2,427,000 per reactor" which now appears as the text of footnote 3 should have appeared as the last entry in the table.

§ 171.16 [Corrected]

2. On page 32245, in the second column, in § 171.16(c), in the table, in the first column, the first five lines should read "Small businesses not engaged in manufacturing and small not-for-profit".

BILLING CODE 1505–01–D

federal register

Wednesday
June 28, 1995

Part II

Department of Defense

48 CFR Parts 211, 227, and 252
Defense Federal Acquisition Regulation Supplement; Rights in Technical Data: Final Rule

DEPARTMENT OF DEFENSE

48 CFR Parts 211, 227, and 252

[Defense Acquisition Circular (DAC) 91–8]

Defense Federal Acquisition Regulation Supplement; Rights in Technical Data

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: A proposed rule prescribing the final technical data regulations required by 10 U.S.C. 2320, Rights in Technical Data, was published in the **Federal Register** on June 20, 1994. Public comments were solicited. This final rule amends the Defense Federal Acquisition Regulation Supplement to prescribe those regulations. It includes changes to the proposed rule necessitated by the Federal Acquisition Streamlining Act of 1994 and changes made in response to public comments.

DATES: *Effective Date:* This rule is effective June 30, 1995.

Applicability Date: This rule is applicable for solicitations issued on or after September 29, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena Moy, OUSD(A&T)DDP/MPI, Room 3E144, The Pentagon, Washington, DC 20301–3060, Telephone 703–604–5875. Please cite DAR Case 91–312.

SUPPLEMENTARY INFORMATION:

A. Background

A total of 286 comments were received from 43 commentors. Each comment was analyzed and, in some cases, the comments are incorporated in this final rule. Approximately 75% of the comments fell into fourteen general topic areas. The analysis and disposition of those comments, and a description of other changes made as a result of law or public comment, follow (Note: The DFARS subparts numbered as 227.4 and 227.5 in the proposed rule published on June 20, 1994, have been renumbered to 227.71 and 227.72, respectively, in this final rule):

1. Government Purpose/Government Purpose Rights

Forty comments address these topics:

(a) Government Purpose

Several commentors suggested narrowing the definition of government purposes to U.S. Government contracts. One suggested expanding the definition to include the acquisition of replenishment parts, repair, and maintenance by third parties. These changes are not adopted. A more narrow definition of government purpose ignores U.S. Government international responsibilities and foreign government or international organization development contributions made under cooperative agreements. The suggested expanded definition inappropriately converts third party commercial transactions to government purposes.

(b) Government Purpose Rights

(i) *Time period.* Some commentors suggested the five year exclusivity period is too short, should be measured from contract or subcontract payment, closure, or completion rather than award, and there is no need for the government to obtain unlimited rights in mixed funded data upon expiration of the exclusivity period. One commentor suggested the final rule should require negotiations in mixed funded situations. Those comments are not adopted. As several commentors observed, the five year exclusivity period is not mandatory. Paragraphs 227.7103–5(b) and 227.7203–5(b) identify that period as a nominal period and describe the circumstances under which longer periods should be negotiated. A limited exclusivity period balances the private and public development contributions by providing the private developer the sole opportunity to use the data for commercial purposes for a private developer the sole opportunity to use the data for commercial purposes for a specified time while assuring that all persons will have the opportunity to use the data for commercial purposes within a reasonable time.

(ii) *Extent of development contribution.* Several commentors observed that a contractor could restrict the availability of data for commercial purposes by making a minimal development contribution. Some suggested requiring a 50% contractor contribution as the basis for a government purpose rights license. Conversely, one commentor observed that an insignificant government contribution would enable the government to obtain a government purpose rights license in an otherwise private expense development. A commentor proposed an incentive formula which would link the period of a government purpose rights license to the funding contributed by the developer. These comments are not accepted. Generally, the Government will obtain a government purpose license when the private and government development contributions cannot be segregated (when costs are segregable, the developer may provide data or software developed exclusively at private expense with appropriate restrictions). It would be unnecessarily burdensome and extremely impracticable to attempt to measure the exact contribution by each party when development costs cannot be segregated. The suggested incentive formula raises similar problems. Each government purpose rights license must display an expiration date after which any applicable restrictions do not apply. That marking must appear on the data or software when they are delivered. But, late charges or other accounting corrections reported after data delivery might change the expiration date derived by the proposed formula resulting in copies of the same data marked with different expiration dates.

2. Indirect Cost Treatment

Twenty-four comments addressed this topic. Several commentors expressed concern that developers will use creative techniques, manipulate accounting systems, or find "loopholes" to restrict the Government's ability to make technical data available for reprocurement purposes. Such cost accounting practices would be inconsistent with the cost principles in FAR Part 31 and the cost accounting standards in FAR Appendix B. Therefore, the proposed regulations have not been changed to accommodate those concerns. Two commentors suggested that developers might restrict the Government's rights in data and, consequently, the amount of data available to the developers' potential competitors, by charging manufacturing and production engineering costs to indirect cost accounts. Manufacturing and production engineering costs that can be identified with a particular final cost objective are direct costs and cannot be allocated to indirect cost accounts. Although FAR 31.202 permits an exception for a direct cost of minor dollar amount, that exception must be consistently applied to all final cost objectives and produce substantially the same result as treating the cost as a direct cost.

A commentor suggests all contracts have indirect cost allocations and, consequently, the Government's rights in data will be affected. The comment overlooks the fact that the definition of "developed at private expense" deals only with development costs. The allocation of officers' salaries, guard services, employee benefits, or similar expenses will not affect the allocation of data rights.

Another commentor suggests establishing a government participation threshold. Indirect development costs (excluding independent research and development and bid or proposal costs) charged in excess of the threshold would be considered mixed funding. The suggestion is not practicable. There is no basis for equitably estimating the government participation threshold prior to contract award. Burdensome accounting and audit surveillance procedures would be required to determine which item or items, and consequently data rights, were affected by the over threshold contribution.

3. Commercial Items

Twenty-two comments addressed this topic. A commentor suggests the proposed "Technical Data—Commercial Items" clause (252.227–7015) limits the data that DoD can acquire for commercial items and presumes that commercial items were developed at private expense. The clause in the proposed rule did neither but has been modified to provide that presumption as required by the Federal Acquisition Streamlining Act of 1994.

A commentor suggests modifying the clause to permit disclosure of commercial data to third parties so that those persons might operate or maintain the commercial item and contends that 227.7102–1(a)(1) prohibits DoD from acquiring technical data needed for rework and spare parts replacement. The suggestion and comment are not adopted. Paragraph 227.7102–1(a)(1) does not prohibit the acquisition of rework data. Disclosure to third parties might jeopardize a contractor's financial interest in its product and, therefore, is inconsistent with DoD policy to encourage contractors to offer commercial products to satisfy DoD requirements. However, DoD may negotiate to acquire the rights to do so under 252.227–7015(c). The commentor also suggests the definition of commercial items is too broad. The definition of commercial items has been modified to reflect the definition contained in the Federal Acquisition Streamlining Act of 1994. Several commentors suggest modifying 227.7102 to clarify that the restrictions in paragraph 227.7102–2(a) do not apply when the Government's data rights are not restricted. They also suggest modifying 252.227–7015(b)(1) to conform with 10 U.S.C. 2320 which does not permit a contractor to restrict the Government's rights in data necessary for operation, maintenance, installation, or training. The suggestions are adopted.

One commentor suggests the license rights granted the Government by the clause at 252.227–7015 are inconsistent with those granted to commercial customers. The suggestion is not adopted. Rights under that clause are consistent with 10 U.S.C. 2320.

A commentor suggests substituting "written" for "express" in 227.7102–2(a) to provide a substantive record. The suggestion is adopted. The commentor's suggestion to conform the last sentence in 227.7102–2(b) with corresponding language in the clause at 252.227–7015 is partially adopted. That commentor's suggestions to: (i) add a new paragraph 227.7102–2(c) to require contractors subject to the clause at 252.227–7013 to use the clause at 252.227–7015 in its contracts with subcontractors or suppliers furnishing technical data for commercial items is partially adopted by modifying 252.227–7013(k); (ii) include "components" in 227.7102–3 and make editorial changes to 252.227–7015(a)(1) and (b)(1)(i) are adopted; (iii) expand the restriction in 252.227–7015(b)(2)(i) is partially adopted; (iv) limit form, fit, and function data to data describing the commercial end unit is inconsistent with the commentor's suggestion to include "components" in 227.7102–3 and consequently not adopted; (v) require written permission prior to a release, disclosure, or authorized use of technical data for emergency repair or overhaul is not adopted because it is impracticable in emergency situations; and, (vi) delete 252.227–7015(c) is not adopted because the paragraph, which permits the parties to negotiate suitable license rights, is consistent with commercial practice.

4. Markings

Eighteen comments addressed this topic. Several commenters suggested that the marking provisions at 252.227–7013 and 252.227–7014 are mandatory, overly complex, and burdensome. One commentor recommended replacing the prescribed markings with a single, simplified marking that would appear only on the "first page of the technical data or computer software." Other commentors also questioned the need to mark the portions of a page of printed material containing technical data or computer software for which restrictions are asserted.

Marking is not mandatory but contractors must mark when they desire to restrict the Government's rights to use, modify, reproduce, release, perform, display, or disclose data or software. Such markings are commonly used in commercial practice to protract proprietary data or trade secrets. The suggested simplified marking, which would be placed only on the first page of printed material is not practicable because it would unnecessarily restrict release or disclosure of unrestricted information submitted with the restricted information.

A commentor suggests the clause at 252.227–7014 will require commercial software manufacturers to place government markings on such software and 227.7203–10(c) will result in the Government's obtaining unlimited rights in unmarked commercial computer software. Neither the clause at 252.227–7014 nor paragraph 227.7203–10(c) apply to commercial computer software. However, if a contractor intends to satisfy a government requirement for noncommercial computer software with derivative software created by integrating commercial computer software with computer software developed with Government funds under a contract that contains the clause at 252.227–7014, the contractor might consider using a marking authorized by 252.227–7014, or a marking agreed to by the contracting officer, to protect its commercial interests in the derivative software.

One commentor suggests the requirement to mark each page of technical data deliverable with less than unlimited rights will reduce the amount of useful information that might be displayed on a page. Marking each page enhances protection of the contractor's data. That commentor also suggests that the prohibition on marking non-commercial computer software with legends that might interfere with or delay the operation of the software places the contractor in an untenable position regarding protection of its software rights. As expressed in 227.7203–10(b)(1), the prohibition was intended only for non-commercial computer software that will or might be used in combat situations or under conditions that simulate combat situations. Therefore, 252.227–701(f)(1) has been modified accordingly.

Two commentors suggest the marking procedures will be unworkable in digital environments. They also suggest that data might not be protected adequately in a digital environment because the markings might be extracted from the data or not seen by the user. Those comments are not accepted. However, 252.227–7013(f)(1) and 252.227–7014(f)(1) have been changed to clarify markings when such data are transmitted. Extractable markings are not unique to the digital environment and contractors have appropriate forums for redress if their data or software are improperly used, released, or disclosed.

A suggestion to add "subcontractor/supplier" to each legend is not adopted. The first sentence of 252.227–7013(f) clearly covers subcontractors and suppliers.

A commentor suggests changing the phrase "correction or cancel" in 252.227–7013(h)(1) to "correct or strike". That suggestion is adopted. The commentor's suggestion to modify that paragraph by providing the Government the unilateral right to correct or strike nonconforming markings when it is impracticable to return technical data to the contractor is not adopted. The Government has that right under (h)(1) for unjustified markings and (h)(2) for nonconforming markings.

A commentor suggests modifying 227.7103–12(a)(2) to require contracting officers to go through the validation process before striking a nonconforming markings. The suggestion is not adopted. The validation procedures in 252.227–7037 are intended to resolve questions concerning asserted restrictions. The nonconforming marking procedures address only the proper format for a marking.

A commentor's suggested editorial changes to 227.7103–10(b)(2) and 227.7203–10(b) are considered unnecessary.

5. Competition

Sixteen comments addressed competition. Most did not comment on specific portions of the regulations. One commentor recommended retaining the 1988 interim rule. That recommendation is not adopted. One commentor suggests that 227.7103–1(e) conflicts with 227.7103–2(b)(1) and the Competition in contracting Act (CICA). The suggestion is not adopted. The policy in 227.7103–1(e) expresses requirements under 10 U.S.C. 2305 for major weapon systems and generally protects private expense development. It does not conflict with either 227.7103–2(b)(1) or CICA.

6. License Rights

Fifteen comments addressed license rights generally. A commentor suggests including "release" or "disclose" in 227.7102–2 is confusing because those terms were traditionally used in connection with persons outside the government. The context in which the terms are used is clear and changes are not necessary.

A commentor suggests requiring a written justification requiring approval at a level above the contracting officer if the Government wants to acquire rights not conveyed under licenses customarily provided to the public. The suggestion is not adopted. Existing procedures for determining the Government's needs are adequate.

A commentor suggests all technical data and computer software should be delivered under a license that provides government purpose rights for 5 years after which the data or software would be available with unlimited, government purpose, limited, or restricted rights as applicable. The suggestion is inconsistent with statutory requirements and not adopted.

A commentor suggests the provisions permitting negotiated licenses might preclude award without discussions, reduce opportunities to use sealed bidding procedures, and extend acquisition lead times. The comments are not adopted. If the Government knows it will require nonstandard license rights it might not be in a position to use sealed bidding procedures. When using other contracting methods, award without discussions is not precluded if the Government's requirements are articulated in the solicitation and responsive offers are received from responsible offerors.

A commentor suggests the basis for allocating data rights is acceptable if it is clear that government rights are conveyed by a license granted by the data creator. No change is required.

A commentor suggests that, although not improper, permitting third parties to have access to and modify noncommercial computer software will act as a disincentive to the private development of software intended only for the Government. The comment is not adopted. The clause at 252.227–7014 permits the Government, in a narrow range of circumstances and subject to considerable constraints, to have support service contractors modify computer software delivered with restricted rights. Two of the permitted circumstances deal with military exigencies. The other two circumstances reflect maintenance needs when the Government's rights are restricted in only a portion of the deliverable software.

A commentor suggests two changes to 227.7103–5(d)(1) that are intended to clarify the role of subcontractors when special license rights are negotiated and a change to 227.7103–5(d)(2) to identify the negotiation of long term reprocurement spare parts pricing agreements as an alternative to negotiating for additional rights in limited rights data. The clarifications are not necessary. The term "contractor" is defined to include subcontractors and suppliers at any tier and 227.7103–5 and the clause at 252.227–7013 make it clear that the prime contractor might not be the data owner or licensor. The suggested change to 227.7103–5(d)(2) is inconsistent with the circumstances under which negotiations for additional rights are permitted. The commentor also suggests modifying 252.227–7013(b)(4) to clarify the role of subcontractors when negotiating special license rights. For the reasons discussed above, the comment is not adopted.

A commentor suggests modifying 227.7103–4(a)(1) to include the full listing of government rights. The modification is not necessary. The commentor also suggests expanding 227.7103–4(a)(2) to match the scope of 252.227–7013(b)(1)(ii) and (iii). The suggestion is not adopted. The situation covered in 252.227–7013(b)(1)(ii) is addressed in 227.7103–4(a)(1). The example in 227.7103–4(a)(2) applies to 252.227–7013(b)(1)(iii) only.

7. Elimination of the "Required for Performance Criterion"

Fourteen comments addressed elimination of the required for performance criterion. DoD's 1988 regulations grant the Government unlimited rights in technical data pertaining to items, components, or processes developed at private expense if development was required for the performance of a government contract or subcontract. Seven commentors, submitted essentially identical comments suggesting that data resulting from development of a defense end product should not be the property of an original equipment manufacturer. Two commentors suggest eliminating the required for performance criterion will result in less data available without restrictions. In a similar comment, a commentor suggests that eliminating the "required for performance" criterion will reduce competition. Four comments were received from the American Bar Association, the Council of Government Relations, the Integrated Dual-Use Commercial companies, and a large manufacturer supporting the policies contained in the proposed rule. The suggestions to retain the criterion are not adopted. DoD believes that the criterion should be eliminated to protect private expense development, encourage developers of new technologies or products, many of whom are small businesses, to offer their products to the Government, encourage dual use development, and balance the interests of data users and data developers.

8. Computer Software

Thirteen comments addressed computer software. Three commentors suggest the definition of "commercial computer software" is too broad. One also suggests that the definition's broad scope will make it difficult to understand and interpret and contractors will be able to restrict the

Government's rights in software developed exclusively at Government expense by satisfying one of the criteria that define commercial computer software. Those suggestions are not adopted. The definition of commercial computer software has been modified to reflect requirements in the Federal Acquisition Streamlining Act of 1994. The Government will not lose rights obtained in software developed at government expense if that software subsequently qualifies as commercial computer software. That situation is covered by 252.227–7014(b)(5) and (c).

Two commentors suggest GSA should amend its rules to permit these regulations to apply to DoD procurements under GSA schedule contracts. That suggestion cannot be accommodated in these DoD specific regulations.

Two commentors suggest the criterion for determining whether software is commercial should be the source of development funds rather than the market for which the software was developed. That suggestion is not consistent with the thrust of the Federal Acquisition Streamlining Act of 1994.

A commentor suggests there may be a conflict between the definition of commercial computer software, which might include software developed with Government funds, and the policy in 227.7202–1(a) to acquire commercial computer software and documentation under the licenses customarily provided to the public. If Government funds are used to develop software or documentation, the development contract will determine the Government's rights in that software or documentation. Those rights are protected if the software subsequently qualifies as commercial software. The commentor expresses concern that when both commercial and noncommercial software are deliverable under a contract, the requirements in 252.227–7014 will be applied to the commercial software. That result is not intended. The clause title, "Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation", clearly indicates that the clause is not applicable to commercial software or documentation. The commentor's suggestion to define commercial computer software documentation in terms of development at private expense is unnecessary and not adopted. The commentor also suggest modifying 227.7202–1(c)(1) to limit the paragraph's scope to modifications made at Government expense. The suggestion is partially adopted and a corresponding change made to 227.7102–1(a)(3). The commentor observes that throughout 227.7203 the terms computer software and computer software documentation are used without the modifier "noncommercial." Generally, the modifier is not necessary because that paragraph only applies to noncommercial software or documentation. Where it is used, it is intended to provide additional, specific emphasis.

Two commentors suggest it might be inappropriate for the Government to obtain unlimited rights in all noncommercial computer software documentation required to be delivered under a contract. Computer software documentation is technical data. It is defined narrowly to include only owner's manuals, user's manuals, installation instructions, operating instructions, and similar items that explain the capabilities of computer software or provide instructions for using the software. Such data is necessary for operation, maintenance, installation, or training. Consequently, under 10 U.S.C. 2320, a contractor may not restrict the Government's rights to release or disclose such data or to permit others to use the data.

A commentor states that the definition of restricted rights in 252.227–7014(a)(14)(i) might not provide sufficient latitude to use software programs in military situations such as "the engine control aboard a fleet of aircraft." When the Government has a requirement to time share a program or have the program accessed by more than one terminal or central processing unit at a time, the requirement must be identified in the acquisition contract to permit proper program design and pricing. Therefore, the comment is not adopted.

A commentor suggests revising the definition of computer software in 252.211–7012 and 252.227–7013 by substituting "computer program" for "software" in the phrase "...and related material that would enable the software to be reproduced, recreated, or recompiled." The suggestion is not adopted. Computer programs are not the only software that can be reproduced, recreated, or recompiled.

9. Identification of Asserted Restrictions

Tweleve comments dealt with this topic. A commentor suggests modifying 252.227–7013(e) to make it clear that a failure to identify data that will be delivered with restricted rights does not prevent a contractor from asserting restrictions relevant to that data and contracting officers should be required to add data items to the list of data in which restrictions are asserted until the Government has successfully challenged an assertion. Another contractor also suggested the mandatory listing of subsequent assertions. The suggestions are not adopted. The paragraph prevents delivery of such data but does not affect a contractor's right to assert restrictions. The constraints in 252.227–7013(e) are intended to discourage deliberate commissions that might affect source selection decisions.

A commentor suggests not requiring an identification of the item, component, or process. The suggestion is not adopted because the source of funds used to develop an item, component, or process generally determines whether a contractor may assert restrictions on the Government's rights in the data pertaining to the it4ems, components, or processes.

A commentor suggests deleting the statement in 227.7103–10(a)(5) that information provided in response to the provision at 252.227–7017 may be used in the source selection processes because it is inconsistent with the portions of the regulation prohibiting the Government from requiring contractors to relinquish data rights in order to obtain a contract and modifying the solicitation provision accordingly. Another commentor suggested modifying 252.227–7013(e)(3) because the source selection constraint is inconsistent with 10 U.S.C. 2320(a)(2)(F). Those suggestions are not adopted. Considering data rights during the source selection process is neither inconsistent with the policy expressed in the regulations nor the requirements of 10 U.S.C. 2320(a).

A commentor suggested editorial changes in the format of the Attachment including a statement that the explanatory notes need not be repeated on the attachment. The suggestions are not adopted. Paragraph (e)(3) requires only an identification of the technical data.

A commentor suggests modifying 252.227–7017(b) by replacing "notification and identification" with "identification and assertion." The suggestion is adopted. The commentor also suggests adding the phrase "and after request by the contracting officer" following the word "offer" in 252.227–7017(e) and adding a new paragraph at the end of 252.227–7017 that would provide for post award assertions. The suggestions are not adopted. The addition to 252.227–7017(e) is not necessary and post award assertions are addressed in the clause at 252.227–7013.

10. Unlimited Rights

Eleven comments dealt with this topic. A commentor suggests the Government have unlimited rights in technical data only when work was exclusively funded with direct Government contract funds. The suggestion is inconsistent with 10 U.S.C. 2320 and not adopted.

A commentor suggests that the term "publicly available" in 252.227–7014(b)(1)(iv) and 227.7203–5(a)(4) might provide the Government unlimited rights in commercial computer software. The suggestion is not adopted. Those portions of the regulations only apply to non-commercial computer software.

A commentor expresses concern that 252.227–7013(b)(1)(ii) might provide the Government unlimited rights in third party material. The third party copyright owner is not required to grant a license. Paragraph 252.227–7013(d) prohibits the use of third party copyrighted data in deliverable technical data unless the contracting officer's approval to do so has been obtained and the contractor has obtained from the copyright owner a license of appropriate scope.

A commentor suggests expanding 227.7103–5(a)(3) to provide unlimited rights in all data created exclusively with government funds whether or not the contract requires development, manufacture, construction, or production of items, components, or processes. For technical data that pertain to items or processes, the suggestion is inconsistent with 10 U.S.C. 2320 and, consequently, not adopted.

A commentor suggests that government purpose rights convey all rights needed by the Government and unlimited rights should be eliminated because they have an adverse affect on businesses, including small businesses, that are data or software creators. The suggestion is not adopted. When the taxpayer exclusively funds development of an item or process, it is difficult to appreciate the suggested adverse affect on data or software creators.

A commentor suggests that there is no affirmative guidance encouraging contractors to commercialize technology it develops with federal funds. The contractor also suggests that when the Government has unlimited rights in technical data or computer software, the data or software might be lost to foreign competition. The suggestions are not adopted. Many other commentors observed that opportunities to commercialize federally funded technologies are maximized when the Government has unlimited rights in technical data. The fact that data or software might be available, if otherwise properly releasable, to foreign governments, foreign nationals, or international organizations does not diminish domestic commercialization opportunities.

A commentor suggests modifying 227.7103–5(a)(2) and 252.227–7013(b)(1)(ii) to permit the Government to obtain unlimited rights in the identified data only when the data will be developed exclusively with Government funds. The suggestions are not adopted. Those paragraphs provide the Government unlimited rights in studies, analyses, test data, or similar data produced in the performance of a contract and specified as an element of performance. The "produced in" and "specified as" criteria clearly indicate that the Government intends to exclusively fund development of the data. The commenter suggests 227.7103–5(a)(3) and 227.7103–5(b)(1)(ii) are not clear because they convey rights based upon specific contractual situations. The suggestion is not adopted. Except for 227.7103–5(a)(1) and 227.7103(b)(1)(i), all other circumstances in which the Government will be granted unlimited or government purpose rights address specific situations or types of data. The commentor also recommends deleting 227.7103–5(a)(9). The recommendation is not adopted. When restrictions on the Government's rights have expired, the Government has unlimited rights in the data.

A commentor recommends changing 227.7103–4(b) to permit a contractor to assert limited rights in data that otherwise qualify for unlimited rights. The recommendation is not adopted. It is inconsistent with 10 U.S.C. 2320 and would result in unnecessary, burdensome, and costly data challenges.

11. Use and Non-disclosure Agreements

Ten comments were received in this area. A commentor suggests the indemnification liabilities under 252.227–7025 should be shifted from the contractor who has been provided the information to the third party who has improperly used, released, or disclosed the information. The suggestion is not adopted. The contractor faces similar liabilities in nongovernmental transactions.

A commentor suggests: (i) The requirement at 227.7103–5(b)(4)(i) to provide prior notification, other than in emergency situations, of an intended release or disclosure of its limited rights data is not necessary; (ii) the format prescribed at 227.7103–7(c) for non-disclosure agreements is not appropriate for foreign governments; (iii) a contractor's permission should not be required to release or disclose limited rights data; (iv) deleting the requirements at 227.7103–16 and 227.7203–16 for foreign governments, foreign contractors, and international organizations to have executed a use and non-disclosure agreement containing the provisions included in 227.7103–7(c), and the requirements in 252.227–7013 satisfied, prior to a release or disclosure to a foreign entity; (v) it is impossible for contractors needing access to the major data bases to notify all persons asserting restrictions; (vi) in 227.7103–7(c)(8), the specific ending date for the non-disclosure agreement should be replaced with "at such time as the data are no longer required for the performance of work under the contract, the contract is completed or terminated, or access is terminated for cause."; and, (vii) the clause at 252.227–7025 should be expanded to require contractors to sign any non-disclosure agreement that is required by a Government agency. The suggestions are not adopted. The reasons are keyed to the comment number: (i) The Government, with two exceptions, is required by 10 U.S.C. 2320 to obtain a contractor's permission prior to releasing or disclosing the contractor's limited rights data. Except in emergency situations, there is no logical reason to not provide prior notification of an intended release of limited rights data; (ii) 227.7103–16 permits the use of the non-disclosure agreements with foreign governments, foreign contractors, or international organizations that are not in the prescribed format; (iii) The suggestion is inconsistent with 10 U.S.C. 2320; (iv) The suggested revisions to 227.7103–16(b) and 227.7203–16(b) do not adequately address constraints on the recipient regarding further release or disclosure of information in which the U.S. Government has limited rights in data or restricted rights in software; (v) Paragraph (a) of the prescribed non-disclosure agreement requires a contractor to specifically identify the data it needs. If the Government agrees to provide that data, it is listed in an attachment to the agreement. Therefor, the notification requirements in paragraphs (b) and (c) should not be difficult to comply with. Furthermore, information provided to the Government with asserted restrictions should not be included in a generally accessible database. Such data must be protected in accordance with 252.227–7013, 252.227–7014, and 252.227–7018; (vi) The prescribed non-disclosure agreement is not limited to contracts but covers all requests for data or software in which restrictions have been asserted; and, (vii) The clause at 252.227–7025 addresses government furnished information that will be provided to a contractor for performance of a specific contract. These regulations should not address agency peculiar requirements or technical data that does not pertain to items, components, or processes developed for the U.S. Government.

A commentor suggests the requirement at 227.7103–7(c)(8) to destroy the data covered by a non-disclosure agreement does not provide adequate flexibility. The comment is not adopted. Destroying the data avoids packaging and shipping costs and significantly reduces the possibility of an inadvertent unauthorized release or disclosure.

A commentor suggests that the notification requirement in 227.7103–7(c)(1) gives the item manufacturer a competitive advantage by making the manufacturer aware of competitive requirements and its potential competitor's identity. The suggestion is not adopted. The notification requirement applies only to limited rights data. Such data cannot be used for competitive purposes without the owner's or licensor's permission.

A commentor suggests modifying 227.7103–7(c)(1)(b) by replacing "Contractor" with "owner of the data" and making the Government rather than the recipient responsible for notification. The suggestions are not adopted. The term "owner" does not include a licensor. As used in the agreement, 227.7103–7(c)(1)(a), the term "Contractor" refers to the person whose name appears on the restrictive legend. The recipient's notification supplements the Government's notification. It gives the person asserting limited rights additional information that person might need to monitor the subsequent use, release, or disclosure of its data.

12. Effect on Older Systems Through Upgrades

Eight commentors addressed this topic. Seven submitted essentially identical suggestions that the spare parts market might be affected because these regulations will apply to upgrades or enhancements of existing systems. One suggested that minor revisions to manufacturing processes charged as indirect expense would prevent alternate sources from competing. The suggestions are not adopted. Contractors are required to allocate expenses in a consistent manner. FAR 31.203(a) does not permit an indirect cost allocation "* * * if other costs incurred for the same purpose in like circumstances have been included as a direct cost of that or any other final cost objective."

13. Policy

Nine comments addressed this topic. A commentor suggests modifying 227.7102–1(a) to permit the acquisition of the data and rights necessary to satisfy agency needs. The suggestion is not adopted. The concept is covered in 252.227–7015(c) and 227.7102–2(b). The commentor also suggests modifying 227.7103–1(e) to indicate that the Government may request a contractor to sell data rights. The suggestion is not adopted. The concept is addressed in 252.227–7013(b)(3)(iii), (b)(4), 227.7103–5, and 227.7103–5(d)(2).

A commentor suggests modifying 227.7103–1 and 227.7203–1 to encourage contractors to identify more cost efficient alternatives to the Government's proposed data rights requirements, require solicitations to include as much information regarding the Government's needs for technical data rights as is practicable, and require resolution of all requirements, restrictions, and limitations prior to contract award. Most of the suggestions are embodied in this final rule. If the Government needs data rights that differ from the standard license rights conveyed by the contract, it must negotiate for those rights. But, it often is impracticable to require a resolution of all restrictions on the Government's right prior to contract award. Most items, processes, or software will not be developed at that time and, consequently, rights in the pertinent technical data or computer software are not determinable completely. The justification and challenge process required by 10 U.S.C. 2321 will, in many cases, preclude an early resolution of restrictions.

Two commentors, in essentially identical comments, contend the requirement in 227.7103–1(b)(2) is vague and suggest an alternative. The suggestion is not adopted. The requirement is clear. But, procedures and specific criteria must vary to accommodate the particular contracting situation. Consequently, the regulations should not provide greater specificity.

A commentor suggests modifying 227.7103–1(e) because it believes the paragraph conflicts with 227.7103–2(b)(1) and adding "and associated life cycle costs" at the end of the first sentence in 227.7103–2(b)(1). The paragraphs do not conflict and the comment is not adopted. Proposals that would enable the Government to acquire competitively items identical to items developed at private expense would entail significantly more detailed information than form, fit, or function data. Generally, form, fit, or function data will produce functionally equivalent but not identical items. The suggested additional language is not necessary. The concept is addressed within the paragraph. The commentor also suggests that these regulations do not address the Government's ability to evaluate data rights during the source selection process. The suggestion is not adopted. The concept is addressed at 227.7103–10(a)(5).

14. Validation of Asserted Restrictions

Eight comments addressed this topic. A commentor objects to the requirement to issue a contracting officer's final decision when an asserted restriction has been justified. Section 2321(f)(1) of Title 10 U.S.C. requires contracting officers to issue a decision when a contractor fails to submit a justification for an asserted restriction. Section (f)(2) requires a contracting officer's decision within sixty days following receipt of any submitted justification.

A commentor suggests modifying 227.7103–13(a) and 227.7203–13(a) to require contracting officers, when using provisioning procedures to acquire replenishment parts, to carefully examine during the challenge period the need to initiate challenge and validation procedures. The suggestion is not adopted. Adequate procedures are contained in 227.7103–13(c) and 227.7203–13(d).

A commentor's suggestions to modify 227.7103–13(c)(2)(i) by replacing the phrase "determine the validity of the assertion" with "ascertain the basis of the restrictive markings" and modify 227.7103–13(c)(2)(ii) by adding "any other available information pertaining to the validity of a restrictive marking" are adopted.

15. Typographical and Editorial Comments

A commentor identified several typographical errors and recommended some minor editorial changes. The typographical errors have been corrected and some of the editorial recommendations adopted. The recommended change to 227.7103–10(a) is not adopted because there might be more than one successful offer. The recommendation to reverse the order of the second and third sentences in 227.7103–12(a)(1) is not adopted. The existing second sentence conveys emphasis the recommendation lacks. The comment regarding the reference to 227.7103–13 within 227.7203–13(d)(2) ignores the fact that computer software

documentation is technical data. The reference is appropriate because technical data challenge and validation procedures are in 227.7103–13.

16. Changes Required by Statute

(a) Subpart 227.71

The Federal Acquisition Streamlining Act of 1994 defines commercial items, modifies 10 U.S.C. 2320(b) to provide a presumption of development at private expense for commercial items, and adds a new subsection (f) to 10 U.S.C. 2321 that, under contracts for commercial items, requires a contracting officer to presume private expense development whether or not the contractor submits a justification in response to a challenge notice. The subsection also provides that challenges under contracts for commercial can be sustained only if information provided by the Department of Defense demonstrates that the item was not developed exclusively at private expense. The clause at 252.227–7037 has been modified accordingly and corresponding changes made to 227.7102–2.

(b) Subpart 211.70

A process action team has been formed to draft FAR implementation of the Federal Acquisition Streamlining Act's commercial products provisions. Therefore, the changes to Subpart 211.70 contemplated by the proposed rule, other than deletion of the DFARS 211 technical data provisions, will not be made.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* applies to this final rule and a Final Regulatory Flexibility Analysis has been performed. A copy of the Analysis may be obtained from Ms. Angelena Moy, OUSD(A&T)DDP/MPI, Room 3E144, The Pentagon, Washington, DC 20301–3060 (telephone 703–604–5875, facsimile 703–604–6709).

C. Paperwork Reduction Act

The Office of Management and Budget has approved the information collection requirements associated with Subparts 227.71 and 227.72 through September 30, 1995 (OMB Control Number 0704–0369).

Defense Acquisition Circular (DAC) 91–8 amends the Defense FAR Supplement (DFARS) 1991 edition. The amendments are summarized as follows:

Item I—Rights In Technical Data And Computer Software

This final rule revises the existing DFARS guidance on rights in technical data, and adds new guidance on rights in computer software and computer software documentation. The following is a summary and explanation of the regulatory changes contained in this final rule.

1. Rights in Technical Data

a. General

DFARS Subpart 227.4, Rights in Data and Copyrights, is deleted and replaced with Subpart 227.71, Rights in Technical Data. The Government's rights are identified as specific, non-exclusive license rights. All rights not granted the Government are retained by the contractor.

b. Commercial Items or Processes

(1) Section 227.7102 provides guidance on the acquisition of technical data pertaining to commercial items, components, or processes. For data rights purposes, the term "commercial item" is defined in the clause at 252.227–7015, Technical Data—Commercial Items. The definition is consistent with Section 8001 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355), but specifically excludes computer software. Under 10 U.S.C. 2320, contractors may not restrict the Government's rights in certain technical data pertaining to items or processes developed at private expense. However, 10 U.S.C. 2320 does not apply to computer software. The modified definition of "commercial item" is intended to prevent misapplication of the technical data provisions to computer software.

(2) The clause at 252.227–7015 provides the Government specific license rights in technical data pertaining to commercial items, components, or processes. Generally, such data may be used, modified, reproduced, released, performed, displayed, or disclosed only within the Government, may not be used to manufacture additional quantities of the commercial items, and, except for emergency repair or overhaul, may not be released or disclosed to third parties without the contractor's written permission. In accordance with 10 U.S.C. 2320, these restrictions do not apply to publicly available data, form, fit, or function data, data necessary for operation, maintenance, installation, or training, or changes or corrections to Government-furnished data. The Government must negotiate to obtain additional license rights and may not require contractors to relinquish or provide additional rights except under mutually acceptable terms.

c. Noncommercial Items or Processes

(1) Section 227.7103 provides guidance on the acquisition of technical data pertaining to noncommercial items, components, or processes. Standard license rights (unlimited, government purpose, or limited rights) are based upon the source of development funds for the item, component, or process. When data are created during performance of a contract for a conceptual design or similar effort that does not require manufacture, construction, or production of items, components, or processes, the Government's license rights are determined by the source of funds used to create the data.

(2) When the standard license rights are not appropriate for a particular procurement, the parties can negotiate non-standard license rights. Rights in copyrighted material are contained within the data rights licenses. The final rule eliminates the requirement for the Government to obtain unlimited rights in technical data if development of the data was required for the performance of a Government contract or subcontract. The treatment of indirect costs is revised to identify all indirect development costs as private expenses. Other indirect costs do not affect the determination that an item, component, or process was developed at Government, private, or mixed expense. Technical data provided to the Government with restrictions on use, modification, reproduction, release, performance, display, or disclosure may not be released to other persons unless, prior to receipt, the recipient has completed a use and non-disclosure agreement or is a Government contractor receiving access to the data for performance of a Government contract that contains the clause at 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

2. Rights in Computer Software and Computer Software Documentation

a. General

A new subpart is added at DFARS 227.72 to provide separate guidance for computer software and computer software documentation, notwithstanding that such documentation is considered technical data. The definition of "computer software documentation" is limited to manuals, instructions, and similar items. The definitions of "commercial computer software," "computer data base," "computer program," "computer software," and "computer software documentation" are substantially different from those previously contained in DFARS Subpart 227.4, and the definition of "computer" is deleted.

b. Commercial Computer Software and Computer Software Documentation

The guidance at 227.7202 is intended to replicate commercial practice. Commercial computer software and commercial computer software documentation shall be acquired under the licenses customarily provided to the public unless such licenses are inconsistent with Federal procurement law or do not otherwise satisfy user needs. In those situations, contracting officers may negotiate licenses of an appropriate scope. However, offerors and contractors are not required to relinquish rights to the Government or provide the Government with rights to use, modify, reproduce, release, or disclose commercial software or documentation that is not customarily provided to the public unless a transfer of such rights is mutually agreed upon. A specific contract clause is not prescribed because the Government's rights will be specified in a license.

c. Noncommercial Computer Software and Computer Software Documentation

(1) The guidance at 227.7203 parallels the non-commercial technical data guidance at 227.7103. Any Government rights in software or documentation are license rights. The contractor or licensor retains all rights not granted to the Government. The scope of the Government's software license generally depends upon the source of funds used to develop the software. Standard license rights are unlimited rights (developed exclusively at Government expense), restricted rights (developed exclusively at private expense), and government purpose rights (mixed development). Computer software documentation is defined as manuals, operating instructions, and similar items. The Government's rights in such technical data may not be restricted under 10 U.S.C. 2320 regardless of the source of development funds. Therefore, documentation licenses generally provide unlimited rights. When the standard license rights are not appropriate for a particular procurement, special licenses can be negotiated.

(2) The clause at 252.227–7014 defines "developed" for computer programs, computer software, and computer software documentation; "minor modification"; and "noncommercial computer software." The definition of "restricted rights" is substantially revised. The link between software and a particular computer is replaced with the common commercial practice of permitting a computer program to be used with one computer at a time. The Government is permitted to modify restricted rights software and, under certain conditions which include tactical situations and emergency repairs or overhauls, have contractors or subcontractors performing service contracts in support of a procurement use or modify the software. The third-party use and modification rights are intended to balance protection for privately developed portions of noncommercial software with the Government's need to use the software as a complete item for its intended purpose, particularly in military situations.

3. Contracting for Commercial Items

DFARS Subpart 211.70 is amended for consistency with the technical data requirements in Subparts 227.71 and 227.72.

4. Solicitation Provisions and Contract Clauses

New provisions/clauses are added at 252.227–7014, 252.227–7015, 252.227–7016, 252.227–7017, and 252.227–7025. Revisions are made in the provisions/clauses at 252.211–7021, 252.227–7013, 252.227–7018, 252.227–7019, 252.227–7020, 252.227–7028, and 252.227–7037. The following clauses are deleted: 252.211–7015, 252.211–7016, 252.211–7017, 252.227–7029, and 252.227–7031.

List of Subjects in 48 CFR Parts 211, 227 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Amendments to 48 CFR Chapter 2 (Defense FAR Supplement)

48 CFR Chapter 2 (the Defense FAR Supplement) is amended as set forth below.

1. The authority citation for 48 CFR Parts 211, 227, 252 is revised to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 211—ACQUISITION AND DISTRIBUTION OF COMMERCIAL PRODUCTS

211.7004–1 [Amended]

2. Section 211.7004–1 is amended by removing and reserving paragraph (h); and by revising in paragraph (p)(2)(ii) in the title in the clause list under the clause number FAR 52.223–1 the word "Clear" to read "Clean."

211.7004–6 [Amended]

3. Section 211.7004–6(a)(3) is amended to revise the word "parts" to read "part."

211.7005 [Amended]

4. Section 211.7005 is amended by removing paragraph (a)(29) and by redesignating paragraphs (a)(30) through (a)(33) as paragraphs (a)(29) through (32), respectively; by revising in paragraph (b)(18) the name "Healy" to read "Healey;" by removing paragraphs (b)(34 and (35); by redesignating paragraphs (b)(36) through (51) as paragraphs (b)34) through (49), respectively; by redesignating paragraphs (b)(52) through (54) as paragraphs (b)(51) through (53), respectively; by adding a new paragraph (b)(50); and by revising in paragraph (c)(6) the name "Healy" to read "Healey;" and by revising in paragraph (c)(10) the word "Clear" to read "Clean" to read as follows:

211.7005 Contract clauses

(a) * * *
(b) * * *
(50) 252.227–7015 Technical Data—Commercial Items.
* * * * *

PART 227—PATENTS, DATA, AND COPYRIGHTS

5. Subpart 227.4 is revised to read as follows:

Subpart 227.4—Rights in Data and Copyrights

227.400 Scope of subpart.

DoD activities shall use the guidance in subparts 227.71 and 227.72 instead of the guidance in FAR subpart 27.4.

6. Subpart 227.71 is added to read as follows:

Subpart 227.71—Rights in Technical Data

Sec.
227.7100 Scope of subpart.
227.7101 Definitions.
227.7102 Commercial items, components, or processes.
227.7102–1 Policy.
227.7102–2 Rights in technical data.
227.7102–3 Contract clause.
227.7103 Noncommercial items or processes.
227.7103–1 Policy.
227.7103–2 Acquisition of technical data.
227.7103–3 Early identification of technical data to be furnished to the Government with restrictions on use, reproduction or disclosure.
227.7103–4 License rights.
227.7103–5 Government rights.
227.7103–6 Contract clauses.
227.7103–7 Use and non-disclosure agreement.
227.7103–8 Deferred delivery and deferred ordering of technical data.

227.7103–9 Copyright.
227.7103–10 Contractor identification and marking of technical data to be furnished with restrictive markings.
227.7103–11 Contractor procedures and records.
227.7103–12 Government right to establish conformity of markings.
227.7103–13 Government right to review, verify, challenge and validate asserted restrictions.
227.7103–14 Conformity, acceptance, and warranty of technical data.
227.7103–15 Subcontractor rights in technical data.
227.7103–16 Providing technical data to foreign governments, foreign contractors, or international organizations.
227.7103–17 Overseas contracts with foreign sources.
227.7104 Contracts under the Small Business Innovative Research (SBIR) Program.
227.7105 Contracts for the acquisition of existing works.
227.7105–1 General.
227.7105–2 Acquisition of existing works without modification.
227.7105–3 Acquisition of modified existing works.
227.7106 Contracts for special works.
227.7107 Contracts for architect-engineer services.
227.7107–1 Architectural designs and data clauses for architect-engineer or construction contracts.
227.7107–2 Contracts for construction supplies and research and development work.
227.7107–3 Approval of restricted designs.
227.7108 Contractor data repositories.

Subpart 227.71—Rights in Technical Data

227.7100 Scope of subpart.

This subpart—

(a) Prescribes policies and procedures for the acquisition of technical data and the rights to use, modify, reproduce, release, perform, display, or disclose technical data. It implements requirements in the following laws and Executive Order:

(1) 10 U.S.C. 2302(4).
(2) 10 U.S.C. 2305 (subsection (d)(4)).
(3) 10 U.S.C. 2320.
(4) 10 U.S.C. 2321.
(5) 10 U.S.C. 2325.
(6) Pub. L. 103–355.
(7) Executive Order 12591 (Subsection 1(b)(6)).

(b) Does not apply to computer software or technical data that is computer software documentation (see subpart 227.72).

227.7101 Definitions.

(a) As used in this subpart, unless otherwise specifically indicated, the terms "offeror" and "contractor" include an offeror's or contractor's subcontractors, suppliers, or potential subcontractors or suppliers at any tier.

(b) The terms "commercial items" and "minor modification," as those terms are used with commercial items, are defined in the clause at 252.227–7015, Technical Data—Commercial Items.

(c) Other terms used in this subpart are defined in the clause at 252.227–7013, Rights in Technical Data—Noncommercial Items.

227.7102 Commercial items, components, or processes.

Section 2320(b)(1) of Title 10 U.S.C. establishes a presumption that commercial items are developed at private expense whether or not a contractor submits a justification in response to a challenge notice. Therefore, do not challenge a contractor's assertion that a commercial item, component, or process was developed at private expense unless the Government can demonstrate that it contributed to development of the item, component or process. Follow the procedures in 227.7103–13 and the clause at 252.227–7037, Validation of Restrictive Markings on Technical Data, when information provided by the Department of Defense demonstrates that an item, component, or process was not developed exclusively at private expense. However, when a challenge is warranted, a contractor's or subcontractor's failure to respond to the challenge notice cannot be the sole basis for issuing a final decision denying the validity of an asserted restriction.

227.7102–1 Policy.

(a) DoD shall acquire only the technical data customarily provided to the public with a commercial item or process, except technical data that—

(1) Are form, fit, or function data;

(2) Are required for repair or maintenance of commercial items or processes, or for the proper installation, operating, or handling of a commercial item, either as a stand alone unit or as a part of a military system, when such data are not customarily provided to commercial users or the data provided to commercial users is not sufficient for military purposes; or

(3) Describe the modifications made at Government expense to a commercial item or process in order to meet the requirements of a Government solicitation.

(b) To encourage offerors and contractors to offer or use commercial products to satisfy military requirements, offerors, and contractors shall not be required, except for the technical data described in paragraph (a) of this subsection, to—

(1) Furnish technical information related to commercial items or processes that is not customarily provided to the public; or

(2) Relinquish to, or otherwise provide, the Government rights to use, modify, reproduce, release, perform, display, or disclose technical data pertaining to commercial items or processes except for a transfer of rights mutually agreed upon.

227.7102–2 Rights in technical data.

(a) The clause at 252.227–7015, Technical Data—Commercial Items, provides the Government specific license rights in technical data pertaining to commercial items or processes. DoD may use, modify, reproduce, release, perform, display, or disclose data only within the Government. The data may not be used to manufacture additional quantities of the commercial items and, except for emergency repair or overhaul, may not be released or disclosed to, or used by, third parties without the contractor's written permission. Those restrictions do not apply to the technical data described in 227.7102–1(a).

(b) If additional rights are needed, contracting activities must negotiate with the contractor to determine if there are acceptable terms for transferring such rights. The specific additional rights granted to the Government shall be enumerated in a license agreement made part of the contract.

227.7102–3 Contract clause.

(a) Except as provided in paragraph (b) of this subsection, use the clause at 252.227–7015, Technical Data—Commercial Items, in all solicitations and contracts when the contractor will be required to deliver technical data pertaining to commercial items, components, or processes.

(b) Use the clause at 252.227–7013, Rights in Technical Data—Noncommercial Items, in lieu of the clause at 252.227–7015 if the Government will pay any portion of the development costs.

(c) Use the clause at 252.227–7037, Validation of Restrictive Markings on Technical Data, in all solicitations and contracts for commercial items that include the clause at 252.227–7015 or the clause at 252.227–7013.

227.7103 Noncommercial items or processes.

227.7103–1 Policy.

(a) DoD policy is to acquire only the technical data, and the rights in that data, necessary to satisfy agency needs.

(b) Solicitations and contracts shall—

(1) Specify the technical data to be delivered under a contract and delivery schedules for the data;

(2) Establish or reference procedures for determining the acceptability of technical data;

(3) Establish separate contract line items, to the extent practicable, for the technical data to be delivered under a contract and require offerors and contractors to price separately each deliverable data item; and

(4) Require offerors to identify, to the extent practicable, technical data to be furnished with restrictions on the Government's rights and require contractors to identify technical data to be delivered with such restrictions prior to delivery.

(c) Offerors shall not be required, either as a condition of being responsive to a solicitation or as a condition for award, to sell or otherwise relinquish to the Government any rights in technical data related to items, components or processes developed at private expense except for the data identified at 227.7103–5(a)(2) and (a)(4) through (9).

(d) Offerors and contractors shall not be prohibited or discouraged from furnishing or offering to furnish items, components, or processes developed at private expense solely because the Government's rights to use, modify, release, reproduce, perform, display, or disclose technical data pertaining to those items may be restricted.

(e) As provided in 10 U.S.C. 2305, solicitations for major systems development contracts shall not require offerors to submit proposals that would permit the Government to acquire competitively items identical to items developed at private expense unless a determination is made at a level above the contracting officer that—

(1) The offeror will not be able to satisfy program schedule or delivery requirements; or (2) The offeror's proposal to meet mobilization requirements does not satisfy mobilization needs.

227.7103–2 Acquisition of technical data.

(a) Contracting officers shall work closely with data managers and requirements personnel to assure that data requirements included in solicitations are consistent with the policy expressed in 227.7103–1.

(b)(1) Data managers or other requirements personnel are responsible for identifying the Government's minimum needs for technical data. Data needs must be established giving consideration to the contractor's economic interests in data pertaining to items, components, or processes that have been developed at private expense; the Government's costs to acquire, maintain, store, retrieve, and protect the data; reprocurement needs; repair, maintenance and overhaul philosophies; spare and repair part considerations; and whether procurement of the items, components, or processes can be accomplished on a form, fit, or function basis. When it is anticipated that the Government will obtain unlimited or government purpose rights in technical data that will be required for competitive spare or repair parts procurements, such data should be identified as deliverable data items. Reprocurement needs may not be a sufficient reason to acquire detailed manufacturing or process data when items or components can be acquired using performance specifications, form, fit and function data, or when there are a sufficient number of alternate sources which can reasonably be expected to provide such items on a performance specification or form, fit, or function basis.

(2) When reviewing offers received in response to a solicitation or other request for data, data managers must balance the original assessment of the Government's data needs with data prices contained in the offer.

(c) Contracting officers are responsible for ensuring that, wherever practicable, solicitations and contracts—

(1) Identify the type and quantity of the technical data to be delivered under the contract and the format and media in which the data will be delivered;

(2) Establish each deliverable data item as a separate contract line item (this requirement may be satisfied by listing each deliverable data item on an exhibit to the contract);

(3) Identify the prices established for each deliverable data item under a fixed-price type contract;

(4) Include delivery schedules and acceptance criteria for each deliverable data item; and

(5) Specifically identify the place of delivery for each deliverable item of technical data.

227.7103–3 Early identification of technical data to be furnished to the Government with restrictions on use, reproduction or disclosure.

(a) 10 U.S.C. 2320 requires, to the maximum extent practicable, an identification prior to delivery of any technical data to be delivered to the Government with restrictions on use.

(b) Use the provision at 252.227–7017, Identification and Assertion of Use, Release, or Disclosure Restrictions, in all solicitations that include the clause at 252.227–7013, Rights in Technical Data—Noncommercial Items. The provision requires offerors to identify any technical data for which restrictions, other than copyright, on use, release, or disclosure are asserted and to attach the identification and assertions to the offer.

(c) Subsequent to contract award, the clause at 252.277–7013 permits a contractor, under certain conditions, to make additional assertions of use, release, or disclosure restrictions. The prescription for the use of that clause and its alternate is at 227.7103–6 (a) and (b).

227.7103–4 License rights.

(a) *Grant of license.* The Government obtains rights in technical data, including a copyright license, under and irrevocable license granted or obtained for the Government by the contractor. The contractor or licensor retains all rights in the data not granted to the Government. For technical data that pertain to items, components, or processes, the scope of the license is generally determined by the source of funds used to develop the item, component, or process. When the technical data do not pertain to items, components, or processes, the scope of the license is determined by the source of funds used to create the data.

(1) *Techical data pertaining to items, components, or processes.* Contractors or licensors may, with some exceptions (see 227.7103–5(a)(2) and (a)(4) through (9)), restrict the Government's rights to use, modify, release, reproduce, perform, display or disclose technical data pertaining to items, components, or processes developed exclusively at private expense (limited rights). They may not restrict the Government's rights in items, components, or processes developed exclusively at Government expense (unlimited rights) without the Government's approval. When an item, component, or process is developed with mixed funding, the Government may use, modify, release, reproduce, perform, display or disclose the data pertaining to such items, components, or processes within the Government without restriction but may release or disclose the data outside the Government only for government purposes (government purpose rights).

(2) *Technical data that do not pertain to items, components, or processes.* Technical data may be created during the performance of a contract for a conceptual design or similar effort that does not require the development, manufacture, construction, or production of items, components or processes. The Government generally obtains unlimited rights in such data when the data were created exclusively with Government funds, government purpose rights when the data were created with mixed funding, and limited

rights when the data were created exclusively at private expense.

(b) *Source of funds determination.* The determination of the source of development funds for technical data pertaining to items, components, or processes should be made at any practical sub-item or subcomponent level or for any segregable portion of a process. Contractors may assert limited rights in a segregable sub-item, sub-component, or portion of a process which otherwise qualifies for limited rights under the clause at 252.227–7013, Rights in Technical Data—Noncommercial Items.

227.7103–5 Government rights.

The standard license rights that a licensor grants to the Government are unlimited rights, government purpose rights, or limited rights. Those rights are defined in the clause at 252.227–7013, Rights in Technical Data—Noncommercial Items. In unusual situations, the standards rights may not satisfy the Government's needs or the Government may be willing to accept lesser rights in data in return for other consideration. In those cases, a special license may be negotiated. However, the licensor is not obligated to provide the Government greater rights and the contracting officer is not required to accept lesser rights than the rights provided in the standard grant of license. The situations under which a particular grant of license applies are enumerated in paragraphs (a) through (d) of this subsection.

(a) *Unlimited rights.* The Government obtains unlimited rights in technical data that are—

(1) Data pertaining to an item, component, or process which has been or will be developed exclusively with Government funds;

(2) Studies, analyses, test data, or similar data produced in the performance of a contract when the study, analysis, test, or similar work was specified as an element of performance;

(3) Created exclusively with Government funds in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes;

(4) Form, fit, and function data;

(5) Necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);

(6) Corrections or changes to technical data furnished to the contractor by the Government;

(7) Publicly available or have been released or disclosed by the contractor or subcontractor without restrictions on further use, release or disclosure other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the software to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(8) Data in which the Government has obtained unlimited rights under another Government contract or as a result of negotiations; or

(9) Data furnished to the Government, under a Government contract or subcontract thereunder, with—

(i) Government purpose license rights or limited rights and the restrictive condition(s) has/have expired; or

(ii) Government purpose rights and the contractor's exclusive right to use such data for commercial purposes has expired.

(b) *Government purpose rights.* (1) The Government obtains government purpose rights in technical data—

(i) That pertain to items, components, or processes developed with mixed funding except when the Government is entitled to unlimited rights as provided in paragraphs (a)(2) and (a)(4) through (9) of this subsection; or

(ii) Created with mixed funding in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes.

(2) The period during which government purpose rights are effective is negotiable. The clause at 252.227–7013 provides a nominal five-year period. Either party may request a different period. Changes to the government purpose rights period may be made at any time prior to delivery of the technical data without consideration from either party. Longer periods should be negotiated when a five-year period does not provide sufficient time to apply the data for commercial purposes or when necessary to recognize subcontractors' interests in the data.

(3) The government purpose rights period commences upon execution of the contract, subcontract, letter contract (or similar contractual instrument), contract modification, or option exercise that required the development. Upon expiration of the Government rights period, the Government has unlimited rights in the data including the right to authorize others to use the data for commercial purposes.

(4) During the government purpose rights period, the government may not use, or authorize other persons to use, technical data marked with government purpose rights legends for commercial purposes. The Government shall not release or disclose data in which it has government purpose rights to any person, or authorize others to do so, unless—

(i) Prior to release or disclosure, the intended recipient is subject to the use and non-disclosure agreement at 227.7103–7; or

(ii) The intended recipient is a Government contractor receiving access to the data for performance of a Government contract that contains the clause at 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(5) When technical data marked with government purpose rights legends will be released or disclosed to a Government contractor performing a contract that does not include the clause at 252–227–7025, the contract may be modified, prior to release or disclosure, to include that clause in lieu of requiring the contractor to complete a use and non-disclosure agreement.

(6) Contracting activities shall establish procedures to assure that technical data marked with government purpose rights legends are released or disclosed, including a release or disclosure through a Government solicitation, only to persons subject to the use and non-disclosure restrictions. Public announcements in the Commerce Business Daily or other publications must provide notice of the use and non-disclosure requirements. Class use and non-disclosure agreements (e.g., agreements covering all solicitations received by the XYZ company within a reasonable period) are authorized and may be obtained at any time prior to release or disclosure of the government purpose rights data. Documents transmitting government purpose rights data to persons under class agreements shall identify the technical data subject to government purpose rights and the class agreement under which such data are provided.

(c) *Limited rights.* (1) The Government obtains limited rights in technical data—

(i) That pertain to items, components, or processes developed exclusively at private expense except when the Government is entitled to unlimited rights as provided in paragraphs (a)(2) and (a)(4) through (9) of this subsection; or

(ii) Created exclusively at private expense in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes.

(2) Data in which the Government has limited rights may not be used, released, or disclosed outside the Government without the permission of the contractor asserting the restriction except for a use, release or disclosure that is—

(i) Necessary for emergency repair and overhaul; or

(ii) To a foreign government, other than detailed manufacturing or process data, when use, release, or disclosure is in the interest of the United States and is required for evaluation or informational purposes.

(3) The person asserting limited rights must be notified of the Government's intent to release, disclose, or authorize others to use such data prior to release or disclosure of the data except notification of an intended release, disclosure, or use for emergency repair or overhaul which shall be made as soon as practicable.

(4) When the person asserting limited rights permits the Government to release, disclose, or have others use the data subject to restrictions on further use, release, or disclosure, or for a release under paragraph (c)(2)(i) or (ii) of this subsection, the intended recipient must complete the use and non-disclosure agreement at 227.7103–7 prior to release or disclosure of the limited rights data.

(d) *Specifically negotiated license rights.* (1) Negotiate specific licenses when the parties agree to modify the standard license rights granted to the government or when the government wants to obtain rights in data in which it does not have rights. When negotiating to obtain, relinquish, or increase the Government's rights in technical data, consider the acquisition strategy for the item, component, or process, including logistics support and other factors which may have relevance for a particular procurement. The Government may accept lesser rights when it has unlimited or government purpose rights in data but may not accept less than limited rights in such data. The negotiated license rights must stipulate what rights the Government has to release or disclose the data to other persons or to authorize others to use the data. Identify all negotiated rights in a license agreement made part of the contract.

(2) When the Government needs additional rights in data acquired with government purpose or limited rights, the contracting officer must negotiate with the contractor to determine whether there are acceptable terms for transferring such rights. Generally, such negotiations should be conducted only when there is a need to disclose the data outside the Government or if the additional rights are required for competitive reprocurement and the anticipated savings expected to be obtained through competition are estimated to exceed the acquisition cost of the additional rights. Prior to negotiating for additional rights in limited rights data, consider alternatives such as—

(i) Using performance specifications and form, fit, and function data to acquire or develop functionally equivalent items, components, or processes;

(ii) Obtaining a contractor's contractual commitment to qualify additional sources and maintain adequate competition among the sources; or

(iii) Reverse engineering, or providing items from Government inventories to contractors who request the items to facilitate the development of equivalent items through reverse engineering.

227.7103–6 Contract clauses.

(a) Use the clause at 252.227–7013, Rights in Technical Data—Noncommercial Items, in solicitations and contracts when the successful offeror(s) will be required to deliver technical data to the Government. Do not use the clause when the only deliverable items are computer software or computer software documentation (see 227.72), commercial items (see 227.7102–3), existing works (see 227.7105), special works (see 227.7106), or when contracting under the Small Business Innovative Research Program (see 227.7104). Except as provided in 227.7107–2, do not use the clause in architect-engineer and construction contracts.

(b) Use the clause at 252.227–7013 with its Alternate I in research contracts when the contracting officer determines, in consultation with counsel, that public dissemination by the contractor would be—

(1) In the interest of the government; and

(2) Facilitated by the Government; and

Facilitated by the Government relinquishing its right to publish the work for sale, or to have others publish the work for sale on behalf of the Government.

(c) Use the clause at 252.227–7025, Limitations on the Use or Disclosure of Government Furnished Information Marked with Restrictive Legends, in solicitations and contracts when it is anticipated that the Government will provide the contractor, for performance of its contract, technical data marked with another contractor's restrictive legend(s).

(d) Use the provision at 252.227–7028, Technical Data or Computer Software Previously Delivered to the Government, in solicitations when the resulting contract will require the contractor to deliver technical data. The provision requires offerors to identify any technical data specified in the solicitations as deliverable data items that are the same or substantially the same as data items the offeror has delivered or is obligated to deliver, either as a contractor or subcontractor, under any other federal agency contract.

(e) Use the following clauses in solicitations and contracts that include the clause at 252.227–7013:

(1) 252.227–7016, Rights in Bid or Proposal Information;

(2) 252.227–7030, Technical Data—Withholding of Payment;

(3) 252.227–7036, Certification of Technical Data Conformity; and

(4) 252.227–7037, Validation of Restrictive Markings on Technical Data (paragraph (e) of the clause contains information that must be included in a challenge).

227.7103–7 Use and non-disclosure agreement.

(a) Except as provided in paragraph (b) of this subsection, technical data or computer software delivered to the Government with restrictions on use, modification, reproduction, release, performance, display, or disclosure may not be provided to third parties unless the intended recipient completes and signs the use and non-disclosure agreement at paragraph (c) of this subsection prior to release, or disclosure of the data.

(1) The specific conditions under which an intended recipient will be authorized to use, modify, reproduce, release, perform, display, or disclose technical data subject to limited rights or computer software subject to restricted rights must be stipulated in an attachment to the use and non-disclosure agreement.

(2) For an intended release, disclosure, or authorized use of technical data or computer software subject to special license rights, modify paragraph (1)(d) of the use and non-disclosure agreement to enter the conditions, consistent with the license requirements, governing the recipient's obligations regarding use, modification, reproduction, release, performance, display or disclosure of the data or software.

(b) The requirement for use and non-disclosure agreements does not apply to Government contractors which require access to a third party's data or software for the performance of a Government contract that contains the clause at 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished

Information Marked with Restrictive Legends.

(c) The prescribed use and non-disclosure agreement is:

Use and Non-Disclosure Agreement

The undersigned, _____ (Insert Name) _____, an authorized representative of the _____ (Insert Company Name) _____, (which is hereinafter referred to as the "Recipient") requests the Government to provide the Recipient with technical data or computer software (hereinafter referred to as "Data") in which the Government's use, modification, reproduction, release, performance, display or disclosure rights are restricted. Those Data are identified in an attachment to this Agreement. In consideration for receiving such Data, the Recipient agrees to use the Data strictly in accordance with this Agreement:

(1) The Recipient shall—

(a) Use, modify, reproduce, release, perform, display, or disclose Data marked with government purpose rights or SBIR data rights legends only for government purposes and shall not do so for any commercial purpose. The Recipient shall not release, perform, display, or disclose these Data, without the express written permission of the contractor whose name appears in the restrictive legend (the "Contractor"), to any person other than its subcontractors or suppliers, or prospective subcontractors or suppliers, who require these Data to submit offers for, or perform, contracts with the Recipient. The Recipient shall require its subcontractors or suppliers, or prospective subcontractors or suppliers, to sign a use and non-disclosure agreement prior to disclosing or releasing these Data to such persons. Such agreement must be consistent with the terms of this agreement.

(b) Use, modify, reproduce, release, perform, display, or disclose technical data marked with limited rights legends only as specified in the attachment to this Agreement. Release, performance, display, or disclosure to other persons is not authorized unless specified in the attachment to this Agreement or expressly permitted in writing by the Contractor. The Recipient shall promptly notify the Contractor of the execution of this Agreement and identify the Contractor's Data that has been or will be provided to the Recipient, the date and place the Data were or will be received, and the name and address of the Government office that has provided or will provide the Data.

(c) Use computer software marked with restricted rights legends only in performance of Contract Number _____ (insert contract number(s)) _____. The recipient shall not, for example, enhance, decompile, disassemble, or reverse engineer the software; time share, or use a computer program with more than one computer at a time. The recipient may not release, perform, display, or disclose such software to others unless expressly permitted in writing by the licensor whose name appears in the restrictive legend. The Recipient shall promptly notify the software licensor of the execution of this Agreement and identify the software that has been or will be provided to the Recipient, the date and place the software were or will be received, and the name and address of the Government office that has provided or will provide the software.

(d) Use, modify, reproduce, release, perform, display, or disclose Data marked with special license rights legends (To be completed by the contracting officer. See 227.7103–7(a)(2). Omit if none of the Data requested is marked with special license rights legends).

(2) The Recipient agrees to adopt or establish operating procedures and physical security measures designed to protect these Data from inadvertent release or disclosure to unauthorized third parties.

(3) The Recipient agrees to accept these Data "as is" without any Government representation as to suitability for intended use or warranty whatsoever. This disclaimer does not affect any obligation the Government may have regarding Data specified in a contract for the performance of that contract.

(4) The Recipient may enter into any agreement directly with the Contractor with respect to the use, modification, reproduction, release, performance, display, or disclosure of these Data.

(5) The Recipient agrees to indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including attorneys fees, court costs, and expenses arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of Data received from the Government with restrictive legends by the Recipient or any person to whom the Recipient has released or disclosed the Data.

(6) The Recipient is executing this Agreement for the benefit of the Contractor. The Contractor is a third party beneficiary of this Agreement who, in addition to any other rights it may have, is intended to have the rights of direct action against the Recipient or any other person to whom the Recipient has released or disclosed the Data, to seek damages from any breach of this Agreement or to otherwise enforce this Agreement.

(7) The Recipient agrees to destroy these Data, and all copies of the Data in its possession, no later than 30 days after the date shown in paragraph (8) of this Agreement, to have all persons to whom it released the Data do so by that date, and to notify the Contractor that the Data have been destroyed.

(8) This Agreement shall be effective for the period commencing with the Recipient's execution of this Agreement and ending upon _____ (Insert Date) _____. The obligations imposed by this Agreement shall survive the expiration or termination of the Agreement.

Recipient's Business Name _____

By _____

Authorized Representative

_____

Date

Representative's Typed Name _____

and Title _____

(End of use and non-disclosure agreement)

227.7103–8 Deferred delivery and deferred ordering of technical data.

(a) *Deferred delivery.* Use the clause at 252.227–7026, Deferred Delivery of Technical Data or Computer Software, when it is in the Government's interests to defer the delivery of technical data. The clause permits the contracting officer to require the delivery of technical data identified as "deferred delivery" data at any time until two years after acceptance by the Government of all items (other than technical data or computer software) under the contract or contract termination, whichever is later. The obligation of subcontractors or suppliers to deliver such technical data expires two years after the date the prime contractor accepts the last item from the subcontractor or supplier for use in the performance of the contract. The contract must specify which technical data is subject to deferred delivery. The contracting officer shall notify the contractor sufficiently in advance of the desired delivery date for such data to permit timely delivery.

(b) *Deferred ordering.* Use the clause at 252.227–7027, Deferred Ordering of Technical Data or Computer Software, when a firm requirement for a particular data item(s) has not been established prior to contract award but there is a potential need for the data. Under this clause, the contracting officer may order any data that has been generated in the performance of the contract or any subcontract thereunder at any time until three years after acceptance of all items (other than technical data or computer software) under the contract or contract termination, whichever is later. The obligation of subcontractors to deliver such data expires three years after the date the contractor accepts the last item under the subcontract. When the data are ordered, the delivery dates shall be negotiated and the contractor compensated only for converting the data into the prescribed form, reproduction costs, and delivery costs.

227.7103–9 Copyright.

(a) *Copyright license.* (1) The clause at 252.227–7013, Rights in Technical Data—Noncommercial Items, requires a contractor to grant or obtain for the Government license rights which permit the Government to reproduce data, distribute copies of the data, publicly perform or display the data or, through the right to modify data, prepare derivative works. The extent to which the Government, and others acting on its behalf, may exercise these rights varies for each of the standard data rights licenses obtained under the clause. When non-standard license rights in technical data will be negotiated, negotiate the extent of the copyright license concurrent with negotiations for the data rights license. Do not negotiate a copyright license that provides less rights than the standard limited rights license in technical data.

(2) The clause at 252.227–7013 does not permit a contractor to incorporate a third party's copyrighted data into a deliverable data item unless the contractor has obtained an appropriate license for the Government and, when applicable, others acting on the Government's behalf, or has obtained the contracting officer's written approval to do so. Grant approval to use third party copyrighted data in which the Government will not receive a copyright license only when the Government's requirements cannot be satisfied without the third party material or when the use of the third party material will result in cost savings to the Government which outweigh the lack of a copyright license.

(b) *Copyright considerations—acquisition of existing and special works.* See 227.7105 or 227.7106 for copyright considerations when acquiring existing or special works.

227.7103–10 Contractor identification and marking of technical data to be furnished with restrictive markings.

(a) *Identification requirements.* (1) The solicitation provision at 252.227–7017, Identification and Assertion of Use, Release, or Disclosure Restrictions, requires offerors to identify to the contracting officer, prior to contract award, any technical data that the offeror asserts should be provided to the Government with restrictions on use, modification, reproduction, release or disclosure. This requirement does not apply to restrictions based solely on copyright. The notification and identification must be submitted as an attachment to the offer. If an offeror fails to submit the attachment or fails to complete the attachment in accordance with the requirements of the solicitation provision, such failure shall constitute a minor informality. Provide offerors an opportunity to remedy a minor informality in accordance with the procedures at FAR 14.405 or 15.607. An offeror's failure to correct the informality within the time prescribed by the contracting officer shall render the offer ineligible for award.

(2) The procedures for correcting minor informalities shall not be used to obtain information regarding asserted restrictions or an offeror's suggested asserted rights category. Questions regarding the justification for an asserted restriction or asserted rights category must be pursued in accordance with the procedures at 227.7103–13.

(3) The restrictions asserted by a successful offeror shall be attached to its contract unless, in accordance with the procedures at 227.7103–13, the parties have agreed that an asserted restriction is not justified. The contract attachment shall provide the same information regarding identification of the technical data, the asserted rights category, the basis for the assertion, and the name of the person asserting the restrictions as required by paragraph (d) of the solicitation provision at 252.227–7017. Subsequent to contract award, the clause at 252.227–7013, Rights in Technical Data—Noncommercial Items, permits the contractor to make additional assertions under certain conditions. The additional assertions must be made in accordance with the procedures and in the format prescribed by that clause.

(4) Neither the pre- or post-award assertions made by the contractor, nor the fact that certain assertions are identified in the attachment to the contract, determine the respective rights of the parties. As provided at 227.7103–13, the Government has the right to review, verify, challenge and validate restrictive markings.

(5) Information provided by offerors in response to the solicitation provision may be used in the source selection process to evaluate the impact on evaluation factors that may be created by restrictions on the Government's ability to use or disclose technical data. However, offerors shall not be prohibited from offering products for which the offeror is entitled to provide the Government limited rights in the technical data pertaining to such products and offerors shall not be required, either as a condition of being responsive to a solicitation or as a condition for award, to sell or otherwise relinquish any greater rights in technical data when the offeror is entitled to provide the technical data with limited rights.

(b) *Contractor marking requirements.* The clause at 252.227–7013, Rights in Technical Data—Noncommercial Items—

(1) Requires a contractor that desires to restrict the Government's rights in technical data to place restrictive markings on the data, provides instructions for the placement of the restrictive markings, and authorizes the use of certain restrictive markings; and

(2) Requires a contractor to deliver, furnish, or otherwise provide to the Government any technical data in which the Government has previously obtained rights with the Government's pre-existing rights in that data unless the parties have agreed otherwise or restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired. When restrictions are still applicable, the contractor is permitted to mark the data with the appropriate restrictive legend for which the data qualified.

(c) *Unmarked technical data.* (1) Technical data delivered or otherwise provided under a contract without restrictive markings shall be presumed to have been delivered with unlimited rights and may be released or disclosed without restriction. To the extent practicable, if a contractor has requested permission (see paragraph (c)(2) of this subsection) to correct an inadvertent omission of markings, do not release or disclose the technical data pending evaluation of the request.

(2) A contractor may request permission to have appropriate legends placed on unmarked technical data at its expense. The request must be received by the contracting officer within six months following the furnishing or delivery of such data, or any extension of that time approved by the contracting officer. The person making the request must:

(i) Identify the technical data that should have been marked;

(ii) Demonstrate that the omission of the marking was inadvertent, the proposed marking is justified and conforms with the requirements for the marking of technical data contained in the clause at 252.227–7013; and

(iii) Acknowledge, in writing, that the Government has no liability with respect to any disclosure, reproduction, or use of the technical data made prior to the addition of the marking or resulting from the omission of the marking.

(3) Contracting officers should grant permission to mark only if the technical data were not distributed outside the Government or were distributed outside the Government with restrictions on further use or disclosure.

227.7103–11 Contractor procedures and records.

(a) The clause at 252.227–7013, Rights in Technical Data—Noncommercial Items, requires a contractor, and its subcontractors or suppliers that will deliver technical data with other than unlimited rights, to establish and follow written procedures to assure that restrictive markings are used only when authorized and to maintain records to justify the validity of asserted restrictions on delivered data.

(b) The clause at 252.227–7037, Validation of Restrictive Markings on Technical Data requires contractors and their subcontractors at any tier to maintain records sufficient to justify the validity of restrictive markings on technical data delivered or to be delivered under a Government contract.

227.7103–12 Government right to establish conformity of markings.

(a) *Nonconforming markings.* (1) Authorized markings are identified in the clause at 252.227–7013, Rights in Technical Data—Noncommercial Items. All other markings are nonconforming markings. An authorized marking that is not in the form, or differs in substance, from the marking requirements in the clause at 252.227–7013 is also a nonconforming marking.

(2) The correction of nonconforming markings on technical data is not subject to 252.227–7037, Validation of Restrictive Markings on Technical Data. To the extent practicable, the contracting officer should return technical data bearing nonconforming markings to the person who has placed the nonconforming markings on such data to provide that person an opportunity to correct or strike the nonconforming marking at that person's expense. If that person fails to correct the nonconforming data within 60 days following the person's receipt of the data, the contracting officer may correct or strike the nonconformity at that person's expense. When it is impracticable to return technical data for correction, contracting officers may unilaterally correct any nonconforming markings at Government expense. Prior to correction, the data may be used in accordance with the proper restrictive marking.

(b) *Unjustified markings.* (1) An unjustified marking is an authorized marking that does not depict accurately restrictions applicable to the Government's use, modification, reproduction, release, performance, display, or disclosure of the marked technical data. For example, a limited rights legend placed on technical data pertaining to items, components, or processes that were developed under a Government contract either exclusively at Government expense or with mixed funding (situations under which the Government obtains unlimited or government purpose rights) is an unjustified marking.

(2) Contracting officers have the right to review and challenge the validity of unjustified markings. However, at any time during performance of a contract and notwithstanding existence of a challenge, the contracting officer and the person who has asserted a restrictive marking may agree that the restrictive marking is not justified. Upon such agreement, the contracting officer may, at his or her election, either—

(i) Strike or correct the unjustified marking at that person's expense; or

(ii) Return the technical data to the person asserting the restriction for correction at that person's expense. If the data are returned and that person fails to correct or strike the unjustified restriction and return the corrected data to the contracting officer within 60 days following receipt of the data, the unjustified marking shall be corrected or stricken at that person's expense.

227.7103–13 Government right to review, verify, challenge and validate asserted restrictions.

(a) *General.* An offeror's assertion(s) of restrictions on the Government's rights to use, modify, reproduce, release, or disclose technical data do not, by themselves, determine the extent of the Government's rights in the technical data. Under 10 U.S.C. 2321, the Government has the right to challenge asserted restrictions when there are reasonable grounds to question the validity of the assertion and continued adherence to the assertion would make it impractical to later procure competitively the item to which the data pertain.

(b) *Pre-award considerations.* The challenge procedures required by 10 U.S.C. 2321 could significantly delay awards under competitive procurements. Therefore, avoid challenging asserted restrictions prior to a competitive contract award unless resolution of the assertion is essential for successful completion of the procurement.

(c) *Challenge and validation.* Contracting officers must have reasonable grounds to challenge the current validity of an asserted restriction. Before issuing a challenge to an asserted restriction, carefully consider all available information pertaining to the assertion. All challenges must be made in accordance with the provisions of the clause at 252.227–7037, Validation of Restrictive Markings on Technical Data.

(1) *Challenge period.* Asserted restrictions should be reviewed before acceptance of technical data deliverable under the contract. Assertions must be challenged within three years after final payment under the contract or three years after delivery of the data, whichever is later. However, restrictive markings may be challenged at any time if the technical data—

(i) Are publicly available without restrictions;

(ii) Have been provided to the United States without restriction; or

(iii) Have been otherwise made available without restriction other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data to another party or the sale or transfer of some or all of a business entity or its assets to another party.

(2) *Pre-challenge requests for information.* (i) After consideration of the situation described in paragraph (c)(3) of this subsection, contracting officers may request the person asserting a restriction to furnish a written explanation of the facts and supporting documentation for the assertion in sufficient detail to enable the contracting officer to ascertain the basis of the restrictive markings. Additional supporting documentation may be requested when the explanation provided by the person making the assertion does not, in the contracting officer's opinion, establish the validity of the assertion.

(ii) If the person asserting the restriction fails to respond to the contracting officer's request for information or additional supporting documentation, or if the information submitted or any other available information pertaining to the validity of a restrictive marking does not justify the asserted restriction, a challenge should be considered.

(3) *Transacting matters directly with subcontracts.* The clause at 252.227–7037 obtains the contractor's agreement that the Government may transact matters under the clause directly with a subcontractor, at any tier, without creating or implying privity of contract. Contracting officers should permit a subcontractor or supplier to transact challenge and validation matters directly with the Government when—

(i) A subcontractor's or supplier's business interests in its technical data would be compromised if the data were disclosed to a higher tier contractor;

(ii) There is reason to believe that the contractor will not respond in a timely manner to a challenge and an untimely response would jeopardize a subcontractor's or suppliers right to assert restrictions; or

(iii) Requested to do so by a subcontractor or supplier.

(4) *Challenge notice.* Do not issue a challenge notice unless there are reasonable grounds to question the validity of an assertion. Assertions may be challenged whether or not supporting documentation was requested from the person asserting the restriction.

Challenge notices must be in writing and issued to the contractor or, after consideration of the situations described in paragraph (c)(3) of this subsection, the person asserting the restriction. The challenge notice must include the information in paragraph (e) of the clause at 252.227–7037.

(5) *Extension of response time.* The contracting officer, at his or her discretion, may extend the time for response contained in a challenge notice, as appropriate, if the contractor submits a timely written request showing the need for additional time to prepare a response.

(6) *Contracting officer's final decision.* Contracting officers must issue a final decision for each challenged assertion, whether or not the assertion has been justified.

(i) A contracting officer's final decision that an assertion is not justified must be issued a soon as practicable following the failure of the person asserting the restriction to respond to the contracting officer's challenge within 60 days, or any extension to that time granted by the contracting officer.

(ii) A contracting officer who, following a challenge and response by the person asserting the restriction, determines that an asserted restriction is justified, shall issue a final decision sustaining the validity of the asserted restriction. If the asserted restriction was made subsequent to submission of the contractor's offer, add the asserted restriction to the contract attachment.

(iii) A contracting officer who determine that the validity of an asserted restriction has not been justified shall issue a contracting officer's final decision within the time frames prescribed in 252.227–7037. As provided in paragraph (g) of that clause, the Government is obligated to continue to respect the asserted restrictions through final disposition of any appeal unless the agency head notifies the person asserting the restriction that urgent or compelling circumstances do not permit the Government to continue to respect the asserted restriction.

(7) *Multiple challenges to an asserted restriction.* When more than one contracting officer challenges an asserted restriction, the contracting officer who made the earliest challenge is responsible for coordinating the Government challenges. That contracting officer shall consult with all other contracting officers making challenges, verify that all challenges apply to the same asserted restriction and, after consulting with the contractor, subcontractor, or supplier asserting the restriction, issue a schedule that provides that person a reasonable opportunity to respond to each challenge.

(8) *Validation.* Only a contracting officer's final decision, or actions of an agency board of contract appeals or a court of competent jurisdiction, that sustain the validity of an asserted restriction constitute validation of the asserted restriction.

227.7103–14 Conformity, acceptance, and warranty of technical data.

(a) *Statutory requirements.* 10 U.S.C. 2320—

(1) Requires contractors to furnish written assurance, at the time technical data are delivered or are made available to the Government, that the technical data are complete, accurate, and satisfy the requirements of the contract concerning such data;

(2) Provides for the establishment of remedies applicable to technical data found to be incomplete, inadequate, or not to satisfy the requirements of the contract concerning such data; and

(3) Authorizes agency heads to withhold payments (or exercise such other remedies an agency head considers appropriate) during any period if the contractor does not meet the requirements of the contract pertaining to the delivery of technical data.

(b) *Conformity and acceptance.* (1) Solicitations and contracts requiring the delivery of technical data shall specify the requirements the data must satisfy to be acceptable. Contracting officers, or their authorized representatives, are responsible for determining whether technical data tendered for acceptance conform to the contractual requirements.

(2) The clause at 252.227–7030, Technical Data—Withholding of Payment, provides for withholding up to 10 percent of the contract price pending correction or replacement of the nonconforming technical data or negotiation of an equitable reduction in contract price. The amount subject to withholding may be expressed as a fixed dollar amount or as a percentage of the contract price. In either case, the amount shall be determined giving consideration to the relative value and importance of the data. For example—

(i) When the sole purpose of a contract is to produce the data, the relative value of that data may be considerably higher than the value of data produced under a contract where the production of the data is a secondary objective; or

(ii) When the Government will maintain or repair items, repair and maintenance data may have a considerably higher relative value than data that merely describe the item or provide performance characteristics.

(3) Do not accept technical data that do not conform to the contractual requirements in all respects. Except for nonconforming restrictive markings (see paragraph (b)(4) of this subsection), correction or replacement of nonconforming data or an equitable reduction in contract price when correction or replacement of the nonconforming data is not practicable or is not in the Government's interests, shall be accomplished in accordance with—

(i) The provisions of a contract clause providing for inspection and acceptance of deliverables and remedies for nonconforming deliverables; or

(ii) The procedures at FAR 46.407(c) through (g), if the contract does not contain an inspection clause providing remedies for nonconforming deliverables.

(4) Follow the procedures at 227.7103–12(a)(2) if nonconforming markings are the sole reason technical data fail to conform to contractual requirements. The clause at 252.227–7030 may be used to withhold an amount for payment, consistent with the terms of the clause, pending correction of the nonconforming markings.

(c) *Warranty.* (1) The intended use of the technical data and the cost, if any, to obtain the warranty should be considered before deciding to obtain a data warranty (see FAR 46.703). The fact that a particular item, component, or process is or is not warranted is not a consideration in determining whether or not to obtain a warranty for the technical data that pertain to the item, component, or process. For example, a data warranty should be considered if the Government intends to repair or maintain an item and defective repair or maintenance data would impair the Government's effective use of the item or result in increased costs to the Government.

(2) As prescribed in 246.710, use the clause at 252.246–7001, Warranty of Data, and its alternates, or a substantially similar clause when the Government needs a specific warranty of technical data.

227.7103–15 Subcontractor rights in technical data.

(a) 10 U.S.C. 2320 provides subcontractors at all tiers the same protection for their rights in data as is provided to prime contractors. The clauses at 252.227–7013, Rights in Technical Data—Noncommercial Items, and 252.227–7037, Validation of Restrictive Markings on Technical Data, implement the statutory requirements.

(b) 10 U.S.C. 2321 permits a subcontractor to transact directly with the Government matters relating to the validation of its asserted restrictions on the Government's rights to use or disclose technical data. The clause at 252.227–7037 obtains a contractor's agreement that the direct transaction of validation or challenge matters with subcontractors at any tier does not establish or imply privity of contract. When a subcontractor or supplier exercise its right to transact validation matters directly with the Government, contracting officers shall deal directly with such persons, as provided at 227.7103–13(c)(3).

(c) Require prime contractors whose contracts include the following clauses to include those clauses, without modification except for appropriate identification of the parties, in contracts with subcontractors or suppliers, at all tiers, who will be furnishing technical data in response to a Government requirement:

(1) 252.227–7013, Rights in Technical Data—Noncommercial Items;

(2) 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;

(3) 252.227–7028, Technical Data or Computer Software Previously Delivered to the Government; and

(4) 252.227–7037, Validation of Restrictive Markings on Technical Data.

(d) Do not require contractors to have their subcontractors or suppliers at any tier relinquish rights in technical data to the contractor, a higher tier subcontractor, or to the Government, as a condition for award of any contract, subcontract, purchase order, or similar instrument except for the rights obtained by the Government under the Rights in Technical Data—Noncommercial Items clause contained in the contractor's contract with the Government.

227.7103–16 Providing technical data to foreign governments, foreign contractors, or international organizations.

Technical data may be released or disclosed to foreign governments, foreign contractors, or international organizations only if release or disclosure is otherwise permitted both by Federal export controls and other national security laws or regulations. Subject to such laws and regulations, the Department of Defense—

(a) May release or disclose technical data in which it has obtained unlimited rights to such foreign entities or authorize the use of such data by those entities; and

(b) Shall not release or disclose technical data for which restrictions on use, release, or disclosure have been asserted to foreign entities, or authorize the use of technical data by those entities, unless the intended recipient is subject to the same provisions as included in the use and non-disclosure agreement at 227.7103–7 and the requirements of the clause at 252.227–7103, Rights in Technical Data—Noncommercial Items, governing use, modification, reproduction, release, performance, display, or disclosure of such data have been satisfied.

227.7103–17 Overseas contracts with foreign sources.

(a) The clause at 252.227–7032, Rights in Technical Data and Computer Software (Foreign), may be used in contracts with foreign contractors to be performed overseas, except Canadian purchases (see paragraph (c) of this subsection), in lieu of the clause at 252.227–7013, Rights in Technical Data—Noncommercial Items, when the Government requires the unrestricted right to use, modify, reproduce, perform, display, release or disclose all technical data to be delivered under the contract. Do not use the clause in contracts for existing or special works.

(b) When the Government does not require unlimited rights, the clause at 252.227–7032 may be modified to accommodate the needs of a specific overseas procurement situation. The Government should obtain rights in the technical data that are not less than the rights the Government would have obtained under the data rights clause(s) prescribed in this part for a comparable procurement performed within the United States or its possessions.

(c) Contracts for Canadian purchases shall include the appropriate data rights clause prescribed in this part for a comparable procurement performed within the United States or its possessions.

227.7104 Contracts under the Small Business Innovative Research (SBIR) Program.

(a) Use the clause at 252.227–7018, Rights in Noncommercial Technical Data and Computer Software—Small Business Innovative Research (SBIR) Program, when technical data or computer software will be generated during performance of contracts under the SBIR program.

(b) Under the clause at 252.227–7018, the Government obtains a royalty-free license to use technical data marked with an SBIR data rights legend only for government purposes during the period commencing with contract award and ending five years after completion of the project under which the data were generated. Upon expiration of the five-year restrictive license, the Government has unlimited rights in the SBIR data. During the license period, the Government may not release or disclose SBIR data to any person other than its support services contractors except—

(1) For evaluational purposes;

(2) As expressly permitted by the contractor; or

(3) A use, release, or disclosure that is necessary for emergency repair or overhaul of items operated by the Government.

(c) Do not make any release or disclosure permitted by paragraph (b) of this section unless, prior to release or disclosure, the intended recipient is subject to the use and nondisclosure agreement at 227.7103–7.

(d) Use the clause at 252.227–7018 with its Alternate I in research contracts when the contracting officer determines, in consultation with counsel, that public dissemination by the contractor would be—

(1) In the interest of the Government; and

(2) Facilitated by the Government relinquishing its right to publish the work for sale, or to have others publish the work for sale on behalf of the Government.

(e) Use the following provision and clauses in SBIR solicitations and contracts that include the clause at 252.227–7018:

(1) 252.227–7016, Rights in Bid or Proposal Information;

(2) 252.227–7017, Identification and Assertion of Use, Release, or Disclosure Restrictions;

(3) 252.227–7019, Validation of Asserted Restrictions—Computer Software;

(4) 252.227–7030, Technical Data—Withholding of Payment;

(5) 252.227–7036, Certification of Technical Data Conformity; and

(6) 252.227–7037, Validation of Restrictive Markings on Technical Data (paragraph (e) of the clause contains information that must be included in a challenge).

(f) Use the following clauses and provision in SBIR solicitations and contracts in accordance with the guidance at 227.7103–6 (c) and (d):

(1) 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends; and

(2) 252.227–7028, Technical Data or Computer Software Previously Delivered to the Government.

227.7105 Contracts for the acquisition of existing works.

227.7105–1 General.

(a) Existing works include motion pictures, television recordings, video recordings, and other audiovisual works in any medium; sound recordings in any medium; musical, dramatic, and literary works; pantomimes and choreographic works; pictorial, graphic, and sculptural works; and works of a similar nature. Usually, these or similar works were not first created, developed, generated, originated, prepared, or produced under a Government contract. Therefore, the Government must obtain a license in the work if it intends to reproduce the work, distribute copies of the work, prepare derivative works, or perform or display the work publicly. When the Government is not responsible for the content of an existing work, it should require the copyright owner to indemnify the Government for liabilities that may arise out of the content, performance, use, or disclosure of such data.

(b) Follow the procedures at 227.7106 for works which will be first created, developed, generated, originated, prepared, or produced under a Government contract and the Government needs to control distribution of the work or has a specific need to obtain indemnity for liabilities that may arise out of the creation, content, performance, use, or disclosure of the work or from libelous or other unlawful material contained in the work. Follow the procedures at 227.7103 when the Government does not need to control distribution of such works or obtain such indemnities.

227.7105–2 Acquisition of existing works without modification

(a) Use the clause at 252.227–7021, Rights in Data—Existing Works, in lieu of the clause at 252.227–7013, Rights in Technical Data—Noncommercial Items, in solicitations and contracts exclusively for existing works when—

(1) The existing works will be acquired without modification; and

(2) The Government requires the right to reproduce, prepare derivative works, or publicly perform or display the existing works; or

(3) The Government has a specific need to obtain indemnity for liabilities that may arise out of the content, performance, use, or disclosure of such data.

(b) The clause at 252.227–7021 provides the Government, and others acting on its behalf, a paid-up, non-exclusive, irrevocable, world-wide license to reproduce, prepare derivative works and publicly perform or display the works called for by a contract and to authorize others to do so for government purposes.

(c) A contract clause is not required to acquire existing works such as books, magazines and periodicals, in any storage or retrieval medium, when the Government will not reproduce the books, magazines or periodicals, or prepare derivative works.

227.7105–3 Acquisition of modified existing works.

Use the clause at 252.227–7020, Rights in Special Works, in solicitations and contracts for modified existing works in lieu of the clause at 252.227–7021, Rights in Data—Existing Works.

227.7106 Contracts for special works.

(a) Use the clause at 252.227–7020, Rights in Special Works, in solicitations and contracts where the Government has a specific need to control the distribution of works first produced, created, or generated in the performance of a contract and required to be delivered under that contract, including controlling distribution by obtaining an assignment of copyright, or a specific need to obtain indemnity for liabilities that may arise out of the creation, delivery, use, modification, reproduction, release, performance, display, or disclosure of such works. Use the clause—

(1) In lieu of the clause at 252.227–7013, Rights in Technical Data—Noncommercial Items, when the Government must own or control copyright in all works first produced, created, or generated and required to be delivered under a contract; or

(2) In addition to the clause at 252.227–7013 when the Government must own or control copyright in a portion of a work first produced, created, or generated and required to be delivered under a contract. The specific portion in which the Government must own or control copyright must be identified in a special contract requirement.

(b) Although the Government obtains an assignment of copyright and unlimited rights in a special work under the clause at 252.227–7020, the contractor retains use and disclosure rights in that work. If the Government needs to restrict a contractor's rights to use or disclose a special work, it must also negotiate a special license which specifically restricts the contractor's use or disclosure rights.

(c) The clause at 252.227–7020 does not permit a contractor to incorporate into a special work any works copyrighted by others unless the contractor obtains the contracting officer's permission to do so and obtains for the Government a non-exclusive, paid up, world-wide license to make and distribute copies of that work, to prepare derivative works, to perform or display publicly any portion of the work, and to permit others to do so for government purposes. Grant permission only when the Government's requirements cannot be satisfied unless the third party work is included in the deliverable work.

(d) Examples of works which may be procured under the Rights in Special Works clause include, but are not limited, to audiovisual works, computer data bases, computer software documentation, scripts, soundtracks, musical compositions, and adaptations; histories of departments, agencies, services or units thereof; surveys of Government establishments; instructional works or guidance to Government officers and employees on the discharge of their official duties; reports, books, studies, surveys or similar documents; collections of data containing information pertaining to individuals that, if disclosed, would violate the right of privacy or publicity of the individuals to whom the information relates; or investigative reports.

227.7101 Contracts for architect-engineer services.

This section sets forth policies and procedures, pertaining to data, copyrights, and restricted designs unique to the acquisition of construction and architect-engineer services.

227.7101–1 Architectural designs and data clauses for architect-engineer or construction contracts.

(a) Except as provided in paragraph (b) of this subsection and in 227.7107–2, use the clause at 252.227–7022, Government Rights (Unlimited), in solicitations and contracts for architect-engineer services and for construction involving architect-engineer services.

(b) When the purpose of a contract for architect-engineer services, or for construction involving architect-engineer services, is to obtain a unique architectural design of a building, a monument, or construction of similar nature, which for artistic, aesthetic or other special reasons the Government does not want duplicated, the Government may acquire exclusive control of the data pertaining to the design by including the clause at 252.227–7023, Drawings and Other Data to Become Property of Government, in solicitations and contracts.

(c) The Government shall obtain unlimited rights in shop drawings for construction. In solicitations and contracts calling for delivery of shop drawings, include the clause at 252.227–7033, Rights in Shop Drawings.

227.7102–2 Contracts for construction supplies and research and development work.

Use the provisions and clauses required by 227–7103–6 and 227.7203–6 when the acquisition is limited to—

(a) Construction supplies or materials;

(b) Experimental, developmental, or research work, or test and evaluation studies of structures, equipment, processes, or materials for use in construction; or

(c) Both.

227.7107–3 Approval of restricted designs.

The clause at 252.227–7024, Notice and Approval of Restricted Designs, may be included in architect-engineer contracts to permit the Government to make informed decisions concerning noncompetitive aspects of the design.

227.7108 Contractor data repositories.

(a) Contractor data repositories may be established when permitted by agency procedures. The contractual instrument establishing the data repository must require, as a minimum, the data repository management contractor to—

(1) Establish and maintain adequate procedures for protecting technical data delivered to or stored at the repository from unauthorized release or disclosure;

(2) Establish and maintain adequate procedures for controlling the release or disclosure of technical data from the repository to third parties consistent with the Government's rights in such data;

(3) When required by the contracting officer, deliver data to the Government on paper or in other specified media;

(4) Be responsible for maintaining the currency of data delivered directly by Government contractors or subcontractors to the repository;

(5) Obtain use and non-disclosure agreements (see 227.7103–7) from all persons to whom government purpose rights data is released or disclosed; and

(6) Indemnify the Government from any liability to data owners or licensors resulting from, or as a consequence of, a release or disclosure of technical data made by the data repository contractor or its officers, employees, agents, or representatives.

(b) If the contractor is or will be the data repository manager, the contractor's data management and distribution responsibilities must be identified in the contract or the contract must reference the agreement between the Government and the contractor that establishes those responsibilities.

(c) If the contractor is not and will not be the data repository manager, do not require a contractor or subcontractor to deliver technical data marked with limited rights legends to a data repository managed by another contractor unless the contractor or subcontractor who has asserted limited rights agrees to release the data to the repository or has authorized, in writing, the Government to do so.

(d) Repository procedures may provide for the acceptance, delivery, and subsequent distribution of technical data in storage media other than paper, including direct electronic exchange of data between two computers. The procedures must provide for the identification of any portions of the data provided with restrictive legends, when appropriate. The acceptance criteria must be consistent with the authorized delivery format.

Subpart 227.72—Rights in Computer Software and Computer Software Documentation

7. A new subpart 227.72 is added to read as follows:

Subpart 227.72—Rights in Computer Software and Computer Software Documentation

Sec.

227.7200 Scope of subpart.
227.7201 Definitions.
227.7202 Commercial computer software and commercial computer software documentation.
227.7202–1 Policy.
227.7202–2 Obtaining commercial computer software or commercial computer software documentation.
227.7202–3 Rights in commercial computer software or commercial computer software documentation.
227.7202–4 Contract clause.
227.7203 Noncommercial computer software and noncommercial computer software documentation.
227.7203–1 Policy.
227.7203–2 Acquisition of noncommercial computer software and computer software documentation.
227.7203–3 Early identification of computer software or computer software documentation to be furnished to the Government with restrictions on use, reproduction or disclosure.
227.7203–4 License rights.
227.7203–5 Government rights.
227.7203–6 Contract clauses.
227.7203–7 Reserved.
227.7203–8 Deferred delivery and deferred ordering or computer software and computer software documentation.
227.7203–9 Copyright.
227.7203–10 Contractor identification and marking of computer software or computer software documentation to be furnished with restrictive markings.
227.7203–11 Contractor procedures and records.
227.7203–12 Government right to establish conformity of markings.
227.7203–13 Government right to review, verify, challenge and validate asserted restrictions.
227.7203–14 Conformity, acceptance, and warranty of computer software and computer software documentation.
227.7203–15 Subcontractor rights in computer software or computer software documentation.
227.7203–16 Providing computer software or computer software documentation to foreign governments, foreign contractors, or international organizations.
227.7203–17 Overseas contracts with foreign sources.
227.7204 Contracts under the Small Business Innovative Research Program.
227.7205 Contracts for special works.
227.7206 Contracts for architect-engineer services.
227.7207 Contractor data repositories.

Subpart 227.72—Rights in Computer Software and Computer Software Documentation

227.7200 Scope of subpart.

This subpart—

(a) Prescribes policies and procedures for the acquisition of computer software and computer software documentation, and the rights to use, modify, reproduce, release, perform, display, or disclose such software or documentation. It implements requirements in the following laws and Executive Order:

(1) 10 U.S.C. 2302(4).

(2) 10 U.S.C. 2305 (subsection (d)(4)).

(3) 10 U.S.C. 2320.

(4) 10 U.S.C. 2321.

(5) 10 U.S.C. 2325.

(6) Executive Order 12591 (subsection 1(b)(6)).

(b) Does not apply to computer software or computer software documentation acquired under GSA schedule contracts.

227.7201 Definitions.

(a) As used in this subpart, unless otherwise specifically indicated, the terms "offeror" and "contractor" include an offeror's or contractor's subcontractors, suppliers, or potential subcontractors or suppliers at any tier.

(b) Other terms used in this subpart are defined in the clause at 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation.

227.7202 Commercial computer software and commercial computer software documentation.

227.7202–1 Policy.

(a) Commercial computer software or commercial computer software documentation shall be acquired under the licenses customarily provided to the public unless such licenses are inconsistent with Federal procurement law or do not otherwise satisfy user needs.

(b) Commercial computer software and commercial computer software documentation shall be obtained competitively, to the maximum extent practicable, using firm-fixed-price contracts or firm-fixed-priced orders under available pricing schedules.

(c) Offerors and contractors shall not be required to—

(1) Furnish technical information related to commercial computer software or commercial computer software documentation that is not customarily provided to the public except for information documenting the specific modifications made at Government expense to such software or documentation to meet the requirements of a Government solicitation; or

(2) Relinquish to, or otherwise provide, the Government rights to use, modify, reproduce, release, perform, display, or disclose commercial computer software or commercial computer software documentation except for a transfer of rights mutually agreed upon.

227.7202–2 Obtaining commercial computer software or commercial computer software documentation.

Commercial computer software or commercial computer software documentation shall be acquired, to the maximum extent practicable, using the procedures in subpart 211.70.

227.7202–3 Rights in commercial computer software or commercial computer software documentation.

(a) The Government shall have only the rights specified in the license under which the commercial computer software or commercial computer software documentation was obtained.

(b) If the Government has a need for rights not conveyed under the license customarily provided to the public, the Government must negotiate with the contractor to determine if there are acceptable terms for transferring such rights. The specific rights granted to the Government shall be enumerated in the contract license agreement or an addendum thereto.

227.7202–4 Contract clause.

A specific contract clause governing the Government's rights in commercial computer software or commercial computer software documentation is not prescribed. As required by 227.7202–3, the Government's rights to use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation shall be identified in a license agreement.

227.7203 Noncommercial computer software and noncommercial computer software documentation.

227.7203–1 Policy.

(a) DoD policy is to acquire only the computer software and computer software documentation, and the rights in such software or documentation, necessary to satisfy agency needs.

(b) Solicitations and contracts shall—

(1) Specify the computer software or computer software documentation to be delivered under a contract and the delivery schedules for the software or documentation;

(2) Establish or reference procedures for determining the acceptability of computer software or computer software documentation;

(3) Establish separate contract line items, to the extent practicable, for the computer software or computer software documentation to be delivered under a contract and require offerors and contractors to price separately each deliverable data item; and

(4) Require offerors to identify, to the extent practicable, computer software or computer software documentation to be furnished with restrictions on the Government's rights and require contractors to identify computer software or computer software documentation to be delivered with such restrictions prior to delivery.

(c) Offerors shall not be required, either as a condition of being responsive to a solicitation or as a condition for award, to sell or otherwise relinquish to the Government any rights in computer software developed exclusively at private expense except for the software identified at 227.7203–5(a) (3) through (6).

(d) Offerors and contractors shall not be prohibited or discouraged from furnishing or offering to furnish computer software developed exclusively at private expense solely because the Government's rights to use, modify, release, reproduce, perform, display, or disclose the software may be restricted.

227.7203–2 Acquisition of noncommercial computer software and computer software documentation.

(a) Contracting officers shall work closely with data managers and requirements personnel to assure that computer software and computer software documentation requirements included in solicitations are consistent with the policy expressed in 227.7203–1.

(b)(1) Data managers or other requirements personnel are responsible for identifying the Government's minimum needs. In addition to desired software performance, compatibility, or other technical considerations, needs determinations should consider such factors as multiple site or shared use requirements, whether the Government's software maintenance philosophy will require the right to modify or have third parties modify the software, and any special computer software documentation requirements.

(2) When reviewing offers received in response to a solicitation or other request for computer software or computer software documentation, data managers must balance the original assessment of the Government's needs with prices offered.

(c) Contracting officers are responsible for ensuring that, wherever practicable, solicitations and contracts—

(1) Identify the types of computer software and the quantity of computer programs and computer software documentation to be delivered, any requirements for multiple users at one site or multiple site licenses, and the format and media in which the software or documentation will be delivered;

(2) Establish each type of computer software or computer software documentation to be delivered as a separate contract line item (this requirement may be satisfied by an exhibit to the contract);

(3) Identify the prices established for each separately priced deliverable item of computer software or computer software documentation under a fixed-price type contract;

(4) Include delivery schedules and acceptance criteria for each deliverable item; and

(5) Specifically identify the place of delivery for each deliverable item.

227.7203–3 Early identification of computer software or computer software documentation to be furnished to the Government with restrictions on use, reproduction or disclosure.

(a) Use the provision at 252.227–7017, Identification and Assertion of Use, Release, or Disclosure Restrictions, in all solicitation that include the clause at

252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation. The provision requires offerors to identify any computer software or computer software documentation for which restrictions, other than copyright, on use, modification, reproduction, release, performance, display, or disclosure are asserted and to attach the identification and assertion to the offer.

(b) Subsequent to contract award, the clause at 252.227–7014 permits a contractor, under certain conditions, to make additional assertions of restrictions. The prescriptions for the use of that clause and its alternates are at 227.7203–6(a).

227.7203–4 License rights.

(a) *Grant of license.* The Government obtains rights in computer software or computer software documentation, including a copyright license, under an irrevocable license granted or obtained by the contractor which developed the software or documentation or the licensor of the software or documentation if the development contractor is not the licensor. The contractor or licensor retains all rights in the software or documentation not granted to the Government. The scope of a computer software license is generally determined by the source of funds used to develop the software. Contractors or licensors may, with some exceptions, restrict the Government's rights to use, modify, reproduce, release, perform, display, or disclose computer software developed exclusively or partially at private expense (see 227.7203–5 (b) and (c)). They may not, without the Government's agreement (see 227.7203–5(d)), restrict the Government's rights in computer software developed exclusively with Government funds or in computer software documentation required to be delivered under a contract.

(b) *Source of funds determination.* The determination of the source of funds used to develop computer software should be made at the lowest practicable segregable portion of the software or documentation (e.g., a software sub-routine that performs a specific function). Contractors may assert restricted rights in a segregable portion of computer software which otherwise qualifies for restricted rights under the clause at 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation.

227.7203–5 Government rights.

The standard license rights in computer software that a licensor grants to the Government are unlimited rights, government purpose rights, or restricted rights. The standard license in computer software documentation conveys unlimited rights. Those rights are defined in the clause at 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation. In unusual situations, the standard rights may not satisfy the Government's needs or the Government may be willing to accept lesser rights in return for other consideration. In those cases, a special license may be negotiated. However, the licensor is not obligated to provide the Government greater rights and the contracting officer is not required to accept lesser rights than the rights provided in the standard grant of license. The situations under which a particular grant of license applies are enumerated in paragraphs (a) through (d) of this subsection.

(a) *Unlimited rights.* The Government obtains an unlimited rights license in—

(1) Computer software developed exclusively with Government funds;

(2) Computer software documentation required to be delivered under a Government contract;

(3) Corrections or changes to computer software or computer software documentation furnished to the contractor by the Government;

(4) Computer software or computer software documentation that is otherwise publicly available or has been released or disclosed by the contractor or subcontractor without restrictions on further use, release or disclosure other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the software to another party or the sale or transfer of some or all of a business entity or it assets to another party;

(5) Computer software or computer software documentation obtained with unlimited rights under another Government contract or as a result of negotiations; or

(6) Computer software or computer software documentation furnished to the Government, under a Government contract or subcontract with—

(i) Restricted rights in computer software, limited rights in technical data, or government purpose license rights and the restrictive conditions have expired; or

(ii) Government purpose rights and the contractor's exclusive right to use such software or documentation for commercial purposes has expired.

(b) *Government purpose rights.* (1) Except as provided in paragraph (a) of this subsection, the Government obtains government purpose rights in computer software developed with mixed funding.

(2) The period during which government purpose rights are effective is negotiable. The clause at 252.227–7014 provides a nominal five-year period. Either party may request a different period. Changes to the government purpose rights period may be made at any time prior to delivery of the software without consideration from either party. Longer periods should be negotiated when a five-year period does not provide sufficient time to commercialize the software or, for software developed by subcontractors, when necessary to recognize the subcontractors' interests in the software.

(3) The government purpose rights period commences upon execution of the contract, subcontract, letter contract (or similar contractual instrument), contract modification, or option exercise that required development of the computer software. Upon expiration of the government purpose rights period, the Government has unlimited rights in the software including the right to authorize others to use data for commercial purposes.

(4) During the government purpose rights period, the Government may not use, or authorize other persons to use, computer software marked with government purpose rights legends for commercial purposes. The Government shall not release or disclose, or authorize others to release or disclose, computer software in which it has government purpose rights to any person unless—

(i) Prior to release or disclosure, the intended recipient is subject to the use and non-disclosure agreement at 227.7103–7; or

(ii) The intended recipient is a Government contractor receiving access to the software for performance of a Government contract that contains the clause at 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(5) When computer software marked with government purpose rights legends will be released or disclosed to a Government contractor performing a contract that does not include the clause at 252.227–7025, the contract may be modified, prior to release or disclosure, to include such clause in lieu of requiring the contractor to complete a use and non-disclosure agreement.

(6) Contracting activities shall establish procedures to assure that computer software or computer software documentation marked with government purpose rights legends are released or disclosed, including a

release or disclosure through a Government solicitation, only to persons subject to the use and non-disclosure restrictions. Public announcements in the Commerce Business Daily or other publications must provide notice of the use and non-disclosure requirements. Class use and non-disclosure agreements (e.g., agreements covering all solicitations received by the XYZ company within a reasonable period) are authorized and may be obtained at any time prior to release or disclosure of the government purpose rights software or documentation. Documents transmitting government purpose rights software or documentation to persons under class agreements shall identify the specific software or documentation subject to government purpose rights and the class agreement under which such software or documentation are provided.

(c) *Restricted rights.* (1) The Government obtains restricted rights in noncommercial computer software required to be delivered or otherwise provided to the Government under a contract that were developed exclusively at private expense.

(2) Contractors are not required to provide the Government additional rights in computer software delivered or otherwise provided to the Government with restricted rights. When the Government has a need for additional rights, the Government must negotiate with the contractor to determine if there are acceptable terms for transferring such rights. List or describe all software in which the contractor has granted the Government additional rights in a license agreement made part of the contract (see paragraph (d) of this subsection). The license shall enumerate the specific additional rights granted to the Government.

(d) *Specifically negotiated license rights.* Negotiate specific licenses when the parties agree to modify the standard license rights granted to the Government or when the Government wants to obtain rights in computer software in which it does not have rights. When negotiating to obtain, relinquish, or increase the Government's rights in computer software, consider the planned software maintenance philosophy, anticipated time or user sharing requirements, and other factors which may have relevance for a particular procurement. If negotiating to relinquish rights in computer software documentation, consider the administrative burden associated with protecting documentation subject to restrictions from unauthorized release or disclosure. The negotiated license rights must stipulate the rights granted the Government to use, modify, reproduce, release, perform, display, or disclose the software or documentation and the extent to which the Government may authorize others to do so. Identify all negotiated rights in a license agreement made part of the contract.

(e) *Rights in derivative computer software or computer software documentation.* The clause at 252.227–7014 protects the Government's rights in computer software, computer software documentation, or portions thereof that the contractor subsequently uses to prepare derivative software or subsequently embeds or includes in other software or documentation. The Government retains the rights it obtained under the development contract in the unmodified portions of the derivative software or documentation.

227.7203–6 Contract clauses.

(a)(1) use the clause at 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation, in solicitations and contracts when the successful offeror(s) will be required to deliver computer software or computer software documentation. Do not use the clause when the only deliverable items are technical data (other than computer software documentation), commercial computer software or commercial computer software documentation, commercial items (see 227.7102–3), special works (see 227.7205), or contracts under the Small Business Innovative Research Program (see 227.7104), Except as provided in 227.7107–2, do not use the clause in architect-engineer and construction contracts..

(2) Use the clause at 252.227–7014 with its Alternate I in research contracts when the contracting officer determines, in consultation with counsel, that public dissemination by the contractor would be—

(i) In the interest of the Government; and

(ii) Facilitated by the Government relinquishing its right to publish the work for sale, or to have others publish the work for sale on behalf of the Government.

(b) Use the clause at 252.227–7016, Rights in Bid or Proposal Information, in solicitations and contracts that include the clause at 252.227–7014.

(c) Use the clause at 252.227–7019, Validation of Asserted Restrictions—Computer Software, in solicitations and contracts that include the clause at 252.227–7014. The clause provides procedures for the validation of asserted restrictions on the Government's rights to use, release, or disclose computer software.

(d) Use the provision at 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, in solicitations and contracts when it is anticipated that the Government will provide the contractor, for performance of its contract, computer software or computer software documentation marked with another contractor's restrictive legend(s).

(e) Use the provision at 252.227–7028, Technical Data or Computer Software Previously Delivered to the Government, in solicitations when the resulting contract will require the contractor to deliver computer software or computer software documentation. The provision requires offerors to identify any software or documentation specified in the solicitation as deliverable items that are the same or substantially the same as software or documentation which the offeror has delivered or is obligated to deliver, either as a contractor or subcontractor, under any other federal agency contract.

(f) Use the clause at 252.227–7037, Validation of Restrictive Markings on Technical Data, in solicitations and contracts that include the clause at 252.227–7014 when the contractor will be required to deliver noncommercial computer software documentation (technical data). The clause implements statutory requirements under 10 U.S.C. 2321. Paragraph (e) of the clause contains information that must be included in a formal challenge.

227.7203–7 [Reserved]

227.7203–8 Deferred delivery and deferred ordering of computer software and computer software documentation.

(a) *Deferred delivery.* Use the clause at 252.227–7026, Deferred Delivery of Technical Data or Computer Software, when it is in the Government's interests to defer the delivery of computer software or computer software documentation. The clause permits the contracting officer to require the delivery of data identified as "deferred delivery" data or computer software at any time until two years after acceptance by the Government of all items (other than technical data or computer software) under the contract or contract termination, whichever is later. The obligation of subcontractors or suppliers to deliver such data expires two years after the date the prime contractor accepts the last item from the subcontractor or supplier for use in the performance of the contract. The contract must specify the computer

software or computer software documentation that is subject to deferred delivery. The contracting officer shall notify the contractor sufficiently in advance of the desired delivery date for such software or documentation to permit timely delivery.

(b) *Deferred ordering.* Use the clause at 252.227–7027, Deferred Ordering of Technical Data or Computer Software, when a firm requirement for software or documentation has not been established prior to contract award but there is a potential need for computer software or computer software documentation. Under this clause the contracting officer may order any computer software or computer software documentation generated in the performance of the contract or any subcontract thereunder at any time until three years after acceptance of all items (other than technical data or computer software) under the contract or contract termination, whichever is later. The obligation of subcontractors to deliver such technical data or computer software expires three years after the date the contractor accepts the last item under the subcontract. When the software or documentation are ordered, the delivery dates shall be negotiated and the contractor compensated only for converting the software or documentation into the prescribed form, reproduction costs, and delivery costs.

227.7203–9 Copyright.

(a) *Copyright license.* (1) The clause at 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation, requires a contractor to grant, or obtain for the Government license rights which permit the Government to reproduce the software or documentation, distribute copies, perform or display the software or documentation and, through the right to modify data, prepare derivative works. The extent to which the Government, and others acting on its behalf, may exercise these rights varies for each of the standard data rights licenses obtained under the clause. When non-standard license rights in computer software or computer software documentation will be negotiated, negotiate the extent of the copyright license concurrent with negotiations for the data rights license. Do not negotiate copyright licenses for computer software that provide less rights than the standard restricted rights in computer software license. For computer software documentation, do not negotiate a copyright license that provides less rights than the standard limited rights in technical data license.

(2) The clause at 252.227–7013, Rights in Technical Data—Noncommercial Items, does not permit a contractor to incorporate a third party's copyrighted software into a deliverable software item unless the contractor has obtained an appropriate license for the Government and, when applicable, others acting on the Government's behalf, or has obtained the contracting officer's written approval to do so. Grant approval to use third party copyrighted software in which the Government will not receive a copyright license only when the Government's requirements cannot be satisfied without the third party material or when the use of the third party material will result in cost savings to the Government which outweigh the lack of a copyright license.

(b) *Copyright considerations—special works.* See 227.7205 for copyright considerations when acquiring special works.

227.7203–10 Contractor identification and marking of computer software or computer software documentation to be furnished with restrictive markings.

(a) *Identification requirements:* (1) The solicitation provision at 252.227–7017, Identification and Assertion of Use, Release, or Disclosure Restrictions, requires offerors to identify, prior to contract award, any computer software or computer software documentation that an offeror asserts should be provided to the Government with restrictions on use, modification, reproduction, release or disclosure. This requirement does not apply to restrictions based solely on copyright. The notification and identification must be submitted as an attachment to the offer. If an offeror fails to submit the attachment or fails to complete the attachment in accordance with the requirements of the solicitation provision, such failure shall constitute a minor informality. Provide offerors an opportunity to remedy a minor informality in accordance with the procedures at FAR 14.405 or 15.607. An offeror's failure to correct an informality within the time prescribed by the contracting officer shall render the offer ineligible for award.

(2) The procedures for correcting minor informalities shall not be used to obtain information regarding asserted restrictions or an offeror's suggested asserted rights category. Questions regarding the justification for an asserted restriction or asserted rights category must be pursued in accordance with the procedures at 227.7203–13.

(3) The restrictions asserted by a successful offeror shall be attached to its contract unless, in accordance with the procedures at 227.7203–13, the parties have agreed that an asserted restriction is not justified. The contract attachment shall provide the same information regarding identification of the computer software or computer software documentation, the asserted rights category, the basis for the assertion, and the name of the person asserting the restrictions as required by paragraph (d) of the solicitation provision at 252.227–7017. Subsequent to contract award, the clause at 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation, permits a contractor to make additional assertions under certain conditions. The additional assertions must be made in accordance with the procedures and in the format prescribed by that clause.

(4) Neither the pre- or post-award assertions made by the contractor nor the fact that certain assertions are identified in the attachment to the contract, determine the respective rights of the parties. As provided at 227.7203–13, the Government has the right to review, verify, challenge and validate restrictive markings.

(5) Information provided by offerors in response to the solicitation provision at 252.227–7017 may be used in the source selection process to evaluate the impact on evaluation factors that may be created by restrictions on the Government's ability to use or disclose computer software or computer software documentation.

(b) *Contractor marking requirements.* The clause at 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation—

(1) Requires a contractor who desires to restrict the Government's rights in computer software or computer software documentation to place restrictive markings on the software or documentation, provides instructions for the placement of the restrictive markings, and authorizes the use of certain restrictive markings. When it is anticipated that the software will or may be used in combat or situations which simulate combat conditions, do not permit contractors to insert instructions into computer programs that interfere with or delay operation of the software to display a restrictive rights legend or other license notice; and

(2) Requires a contractor to deliver, furnish, or otherwise provide to the Government any computer software or computer software documentation in which the Government has previously obtained rights with the Government's pre-existing rights in that software or documentation unless the parties have agreed otherwise or restrictions on the Government's rights to use, modify, produce, release, or disclose the software or documentation have expired. When restrictions are still applicable, the contractor is permitted to mark the software or documentation with the appropriate restrictive legend.

(c) *Unmarked computer software or computer software documentation.* (1) Computer software or computer software documentation delivered or otherwise provided under a contract without restrictive markings shall be presumed to have been delivered with unlimited rights and may be released or disclosed without restriction. To the extent practicable, if a contractor has requested permission (see paragraph (c)(2) of this subsection) to correct an inadvertent omission of markings, do not release or disclose the software or documentation pending evaluation of the request.

(2) A contractor may request permission to have appropriate legends placed on unmarked computer software or computer software documentation at its expense. The request must be received by the contracting officer within six months following the furnishing or delivery of such software or documentation, or any extension of that time approved by the contracting officer. The person making the request must—

(i) Identify the software or documentation that should have been marked;

(ii) Demonstrate that the omission of the marking was inadvertent, the proposed marking is justified and conforms with the requirements for the marking of computer software or computer software documentation contained in the clause at 252.227–7014; and

(iii) Acknowledge, in writing, that the Government has no liability with respect to any disclosure, reproduction, or use of the software or documentation made prior to the addition of the marking or resulting from the omission of the marking.

(3) Contracting officers should grant permission to mark only if the software or documentation were not distributed outside the Government or were distributed outside the Government with restrictions on further use or disclosure.

227.7203–11 Contractor procedures and records.

(a) The clause at 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation, requires a contractor, and its subcontractors or suppliers that will deliver computer software or computer software documentation with other than unlimited rights, to establish and follow written procedures to assure that restrictive markings are used only when authorized and to maintain records to justify the validity of restrictive markings.

(b) The clause at 252.227–7019, Validation of Asserted Restrictions—Computer Software, requires contractors and their subcontractors or suppliers at any tier to maintain records sufficient to justify the validity of markings that assert restrictions on the use, modification, reproduction, release, performance, display, or disclosure of computer software.

227.7203–12 Government right to establish conformity of markings.

(a) *Nonconforming markings.* (1) Authorized markings are identified in the clause at 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation. All other markings are nonconforming markings. An authorized marking that is not in the form, or differs in substance, from the marking requirements in the clause at 252.227–7014 is also a nonconforming marking.

(2) The correction of nonconforming markings on computer software is not subject to 252.227–7019, Validation of Asserted Restrictions—Computer Software, and the correction of nonconforming markings on computer software documentation (technical data) is not subject to 252.227–7037, Validation of Restrictive Markings on Technical Data. To the extent practicable, the contracting officer should return computer software or computer software documentation bearing nonconforming markings to the person who has placed the nonconforming markings on the software or documentation to provide that person an opportunity to correct or strike the nonconforming markings at that person's expense. If that person fails to correct the nonconformity and return the corrected software or documentation within 60 days following the person's receipt of the software or documentation, the contracting officer may correct or strike the nonconformity at the person's expense. When it is impracticable to return computer software or computer software documentation for correction, contracting officers may unilaterally correct any nonconforming markings at Government expense. Prior to correction, the software or documentation may be used in accordance with the proper restrictive marking.

(b) *Unjustified markings.* (1) An unjustified marking is an authorized marking that does not depict accurately restrictions applicable to the Government's use, modification, reproduction, release, or disclosure of the marked computer software or computer software documentation. For example, a restricted rights legend placed on computer software developed under a Government contract either exclusively at Government expense or with mixed funding (situations under which the Government obtains unlimited or government purpose rights) is an unjustified marking.

(2) Contracting officers have the right to review and challenge the validity of unjustified markings. However, at any time during performance of a contract and notwithstanding existence of a challenge, the contracting officer and the person who has asserted a restrictive marking may agree that the restrictive marking is not justified. Upon such agreement, the contracting officer may, at his or her election, either——

(i) Strike or correct the unjustified marking at that person's expense; or

(ii) Return the computer software or computer software documentation to the person asserting the restriction for correction at that person's expense. If the software or documentation are returned and that person fails to correct or strike the unjustified restriction and return the corrected software or documentation to the contracting officer within 60 days following receipt of the software or documentation, the unjustified marking shall be corrected or stricken at that person's expense.

227.7203–13 Government right to review, verify, challenge and validate asserted restrictions.

(a) *General.* An offeror's or contractor's assertion(s) of restrictions on the Government's rights to use, modify, reproduce, release, or disclose computer software or computer software documentation do not, by themselves, determine the extent of the Government's rights in such software or documentation. The Government may require an offeror or contractor to submit sufficient information to permit an evaluation of a particular asserted restriction and may challenge asserted restrictions when there are reasonable grounds to believe that an assertion is not valid.

(b) *Requests for information.* Contracting officers should have a reason to suspect that an asserted restriction might not be correct prior to requesting information. When

requesting information, provide the offeror or contractor the reason(s) for suspecting that an asserted restriction might not be correct. A need for additional license rights is not, by itself, a sufficient basis for requesting information concerning an asserted restriction. Follow the procedures at 227.7203–5(d) when additional license rights are needed but there is no basis to suspect that an asserted restriction might not be valid.

(c) *Transacting matters directly with subcontractors.* The clause at 252.227–7019, Validation of Asserted Restrictions—Computer Software, obtains the contractor's agreement that the Government may transact matters under the clause directly with a subcontractor or supplier, at any tier, without creating or implying privity of contract. Contracting officers should permit a subcontractor or supplier to transact challenge and validation matters directly with the Government when—

(1) A subcontractor's or supplier's business interests in its technical data would be compromised if the data were disclosed to a higher tier contractor.

(2) There is reason to believe that the contractor will not respond in a timely manner to a challenge and an untimely response would jeopardize a subcontractor's or supplier's right to assert restrictions; or

(3) Requested to do so by a subcontractor or supplier.

(d) *Challenging asserted restrictions.* (1) *Pre-award considerations.* The challenge procedures in the clause at 252.227–7019 could significantly delay competitive procurements. Therefore, avoid challenging asserted restrictions prior to a competitive contract award unless resolution of the assertion is essential for successful completion of the procurement.

(2) *Computer software documentation.* Computer software documentation is technical data. Challenges to asserted restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose computer software documentation must be made in accordance with the clause at 252.227–7037, Validation of Restrictive Markings on Technical Data, and the guidance at 227.7103–13. The procedures in the clause at 252.227–7037 implement requirements contained in 10 U.S.C. 2321. Resolution of questions regarding the validity of asserted restrictions using the process described at 227.7103–12(b)(2) is strongly encouraged.

(3) *Computer software.* (i) Asserted restrictions should be reviewed before acceptance of the computer software deliverable under a contract. The Government's right to challenge an assertion expires three years after final payment under the contract or three years after delivery of the software, whichever is later. Those limitations on the Government's challenge rights do not apply to software that is publicly available, has been furnished to the Government without restrictions, or has been otherwise made available without restrictions.

(ii) Contracting officers must have reasonable grounds to challenge the current validity of an asserted restriction. Before challenging an asserted restriction, carefully consider all available information pertaining to the asserted restrictions. Resolution of questions regarding the validity of asserted restrictions using the process described at 227.7203–12(b)(2) is strongly encouraged. After consideration of the situations described in paragraph (c) of this subsection, contracting officers may request the person asserting a restriction to furnish a written explanation of the facts and supporting documentation for the assertion in sufficient detail to enable the contracting officer to determine the validity of the assertion. Additional supporting documentation may be requested when the explanation provided by that person does not, in the contracting officer's opinion, establish the validity of the assertion.

(iii) Assertions may be challenged whether or not supporting documentation was requested. Challenges must be in writing and issued to the person asserting the restriction.

(4) *Extension of response time.* The contracting officer, at his or her discretion, may extend the time for response contained in a challenge, as appropriate, if the contractor submits a timely written request showing the need for additional time to prepare a response.

(e) *Validating or denying asserted restrictions.* (1) Contracting officers must promptly issue a final decision denying or sustaining the validity of each challenged assertion unless the parties have agreed on the disposition of the assertion. When a final decision denying the validity of an asserted restriction is made following a timely response to a challenge, the Government is obligated to continue to respect the asserted restrictions through final disposition of any appeal unless the agency head notifies the person asserting the restriction that urgent or compelling circumstances do not permit the Government to continue to respect the asserted restriction. See 252.227–7019(g) for restrictions applicable following a determination of urgent and compelling circumstances.

(2) Only a contracting officer's final decision, or actions of an agency Board of Contract Appeals or a court of competent jurisdiction, that sustain the validity of an asserted restriction constitute validation of the restriction.

(f) *Multiple challenges to an asserted restriction.* When more than one contracting officer challenges an asserted restriction, the contracting officer who made the earliest challenge is responsible for coordinating the Government challenges. That contracting officer shall consult with all other contracting officers making challenges, verify that all challenges apply to the same asserted restriction and, after consulting with the contractor, subcontractor, or supplier asserting the restriction, issue a schedule that provides that person a reasonable opportunity to respond to each challenge.

227.7203–14 Conformity, acceptance, and warranty of computer software and computer software documentation.

(a) *Computer software documentation.* Computer software documentation is technical data. See 227.7103–14 for appropriate guidance and statutory requirements.

(b) *Computer software.* (1) *Conformity and acceptance.* Solicitations and contracts requiring the delivery of computer software shall specify the requirements the software must satisfy to be acceptable. Contracting officers, or their authorized representatives, are responsible for determining whether computer software tendered for acceptance conforms to the contractual requirements. Except for nonconforming restrictive markings (follow the procedures at 227.7203–12(a) if nonconforming markings are the sole reason computer software tendered for acceptance fails to conform to contractual requirements), do not accept software that does not conform in all respects to applicable contractual requirements. Correction or replacement of nonconforming software, or an equitable reduction in contract price when correction or replacement of the nonconforming data is not practicable or is not in the Government's interests, shall be accomplished in accordance with—

(i) The provisions of a contract clause providing for inspection and acceptance of deliverables and remedies for nonconforming deliverables; or

(ii) The procedures at FAR 46.407(c) through (g), if the contract does not contain an inspection clause providing remedies for nonconforming deliverables.

(2) *Warranties.* (i) *Weapon systems.* Computer software that is a component of a weapon system or major subsystem should be warranted as part of the weapon system warranty. Follow the procedures at 246.770.

(ii) *Non-weapon systems.* Approval of the chief of the contracting office must be obtained to use a computer software warranty other than a weapon system warranty. Consider the factors at FAR 46.703 in deciding whether to obtain a computer software warranty. When approval for a warranty has been obtained, the clause at 252.246–7001, Warranty of Data, and its alternates, may be appropriately modified for use with computer software or a procurement specific clause may be developed.

227.7203–15 Subcontractor rights in computer software or computer software documentation.

(a) Subcontractors and suppliers at all tiers should be provided the same protection for their rights in computer software or computer software documentation as are provided to prime contractors.

(b) The clauses at 252.227–7019, Validation of Asserted Restrictions—Computer Software, and 252.227–7037, Validation of Restrictive Markings on Technical Data, obtain a contractor's agreement that the Government's transaction of validation or challenge matters directly with subcontractors at any tier does not establish or imply privity of contract. When a subcontractor or supplier exercises its right to transact validation matters directly with the Government, contracting officers shall deal directly with such persons, as provided at 227.7203–13(c) for computer software and 227.7103–13(c)(3) for computer software documentation (technical data).

(c) Require prime contractors whose contracts include the following clauses to include those clauses, without modification except for appropriate identification of the parties, in contracts with subcontractors or suppliers who will be furnishing computer software in response to a Government requirement (see 227.7103–15(c) for clauses required when subcontractors or suppliers will be furnishing computer software documentation (technical data)):

(1) 252.227.7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation;

(2) 252.227.7019, Validation of Asserted Restrictions—Computer Software;

(3) 252.227.7025, Limitations on the Use or Disclosure of Government Furnished Information Marked with Restrictive Legends; and

(4) 252.227.7028, Technical Data or Computer Software Previously Delivered to the Government.

(d) Do not require contractors to have their subcontractors or suppliers at any tier relinquish rights in technical data to the contractor, a higher tier subcontractor, or to the Government, as a condition for award of any contract, subcontract, purchase order, or similar instrument except for the rights obtained by the Government under the provisions of the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause contained in the contractor's contract with the Government.

227.7203–16 Providing computer software or computer software documentation to foreign governments, foreign contractors, or international organizations.

Computer software or computer software documentation may be released or disclosed to foreign governments, foreign contractors, or international organizations only if release or disclosure is otherwise permitted both by Federal export controls and other national security laws or regulations. Subject to such laws and regulations, the Department of Defense—

(a) May release or disclose computer software or computer software documentation in which it has obtained unlimited rights to such foreign entities or authorize the use of such data by those entities; and

(b) Shall not release or disclose computer software or computer software documentation for which restrictions on use, release, or disclosure have been asserted to such foreign entities or authorize the use of such data by those entities, unless the intended recipient is subject to the same provisions as included in the use and non-disclosure agreement at 227.7103–7 and the requirements of the clause at 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation, governing use, modification, reproduction, release, performance, display, or disclosure of such data have been satisfied.

227.7203–17 Overseas contracts with foreign sources.

(a) The clause at 252.227–7032, Rights in Technical Data and Computer Software (Foreign), may be used in contracts with foreign contractors to be performed overseas, except Canadian purchases (see paragraph (c) of this subsection) in lieu of the clause at 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation, when the Government requires the unrestricted right to use, modify, reproduce, release, perform, display, or disclose all computer software or computer software documentation to be delivered under the contract. Do not use the clause in contracts for special works.

(b) When the Government does not require unlimited rights, the clause at 252.227–7032 may be modified to accommodate the needs of a specific overseas procurement situation. The Government should obtain rights to the computer software or computer software documentation that are not less than the rights the Government would have obtained under the software rights clause(s) prescribed in this part for a comparable procurement performed within the United States or its possessions.

(c) Contracts for Canadian purchases shall include the appropriate software rights clause prescribed in this part for a comparable procurement performed within the United States or its possessions.

227.7204 Contracts under the Small Business Innovative Research Program.

When contracting under the Small Business Innovative Research Program, follow the procedures at 227–7104.

227.7205 Contracts for special works.

(a) Use the clause at 252.227–7020, Rights in Special Works, in solicitations and contracts where the Government has a specific need to control the distribution of computer software or computer software documentation first produced, created, or generated in the performance of a contract and required to be delivered under that contract, including controlling distribution by obtaining an assignment of copyright, or a specific need to obtain indemnity for liabilities that may arise out of the creation, delivery, use, modification, reproduction, release, performance, display, or disclosure of such software or documentation. Use the clause—

(1) In lieu of the clause at 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation, when the Government must own or control copyright in all computer software or computer software documentation first produced, created, or generated and required to be delivered under a contract; or

(2) In addition to the clause at 252.227–7014 when the Government must own or control copyright in some of the computer software or computer software documentation first produced, created, or generated and required to be delivered under a contract. The specific software or documentation in which the Government must own or control copyright must be identified in a special contract requirement.

(b) Although the Government obtains an assignment of copyright and unlimited rights in the computer software or computer software documentation delivered as a special work under the clause at 252.227–7020, the contractor retains use and disclosure rights in that software or documentation. If the Government needs to restrict a contractor's rights to use or disclose a special work, it must also negotiate a special license which specifically restricts the contractor's use or disclosure rights.

(c) The clause at 252.227–7020 does not permit a contractor to incorporate into a special work any work copyrighted by others unless the contractor obtains the contracting officer's permission to do so and obtains for the Government a non-exclusive, paid up, world-wide license to make and distribute copies of that work, to prepare derivative works, to perform or display any portion of that work, and to permit others to do so for government purposes. Grant permission only when the Government's requirements cannot be satisfied unless the third party work is included in the deliverable work.

(d) Examples of other works which may be procured under the clause at 252.227–7020 include, but are not limited to, audiovisual works, scripts, soundtracks, musical compositions, and adaptations; histories of departments, agencies, services or units thereof; surveys of Government establishments; instructional works or guidance to Government officers and employees on the discharge of their official duties; reports, books, studies, surveys or similar documents; collections of data containing information pertaining to individuals that, if disclosed, would violate the right of privacy or publicity of the individuals to whom the information relates; or investigative reports.

227.7206 Contracts for architect-engineer services.

Follow 227.7107 when contracting for architect-engineer services.

227.7207 Contractor data repositories.

Follow 227.7108 when it is in the Government's interests to have a data repository include computer software or to have a separate computer software repository. Contractual instruments establishing the repository requirements must appropriately reflect the repository manager's software responsibilities.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.211–7015 [Removed and Reserved]

8. Section 252.211–7015 is removed and reserved.

252.211–7016 [Removed and Reserved]

9. Section 252.211–7016 is removed and reserved.

252.211–7017 [Removed and Reserved]

10. Section 252.211–7017 is removed and reserved.

252.211–7021 [Amended]

11. Section 252.211–7021 is amended by revising the clause date to read "(JUN 1995)" in lieu of "(MAY 1991); by revising in paragraph (b)(1) in the title in the clause list under the clause number 252.225–7001 the word "Payment" to read "Payments;" by adding in paragraph (b)(1) an additional clause at the end of the clause list to read "252.227–7015 Technical Data—Commercial Items;" and by revising in paragraph (b)(2) in the title in the clause list under the clause number FAR 52.223–1 the word "Clear" to read "Clean;"

12. Section 252.227–7013 is revised to read as follows:

252.227–7013 Rights in technical data—Noncommercial items.

As prescribed in 227.7103–6(a), use the following clause:

Rights in Technical Data—Noncommercial Items (June 1995)

(a) *Definitions.* As used in this clause:

(1) *Computer data base* means a collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.

(2) *Computer program* means a set of instructions, rules, or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

(3) *Computer software* means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer data bases or computer software documentation.

(4) *Computer software documentation* means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

(5) *Detailed manufacturing or process data* means technical data that describe the steps, sequences, and conditions of manufacturing, processing or assembly used by the manufacturer to produce an item or component or to perform a process.

(6) *Developed* means that an item, component, or process exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component, or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered "developed," the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component, or process be actually reduced to practice within the meaning of Title 35 of the United States Code.

(7) *Developed exclusively at private expense* means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a government contract, or any combination thereof.

(i) Private expense determinations should be made at the lowest practicable level.

(ii) Under fixed-price contracts, when total costs are greater than the firm-fixed-price or ceiling price of the contract, the additional development costs necessary to complete development shall not be considered when determining whether development was at government, private, or mixed expense.

(8) *Developed exclusively with government funds* means development was not accomplished exclusively or partially at private expense.

(9) *Developed with mixed funding* means development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a government contract, and partially with costs charged directly to a government contract.

(10) *Form, fit, and function data* means technical data that describes the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

(11) *Government purpose* means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data for commercial purposes or authorize others to do so.

(12) *Government purpose rights* means the rights to—

(i) Use, modify, reproduce, release, perform, display, or disclose technical data within the Government without restriction; and

(ii) Release or disclose technical data outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for United States government purposes.

(13) *Limited rights* means the rights to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture, or authorize the technical data to be used by another party, except that the Government may reproduce, release or disclose such data or authorize the use or reproduction of the data by persons outside the Government if reproduction, release, disclosure, or use is—

(i) Necessary for emergency repair and overhaul; or

(ii) A release or disclosure of technical data (other than detailed manufacturing or process data) to, or use of such data by, a foreign government that is in the interest of the Government and is required for evaluational or informational purposes;

(iii) Subject to a prohibition on the further reproduction, release, disclosure, or use of the technical data; and

(iv) The contractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.

(14) *Technical data* means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

(15) *Unlimited rights* means rights to use, modify, reproduce, perform, display, release, or disclose technical data in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

(b) *Rights in technical data.* The Contractor grants or shall obtain for the Government the following royalty free, world-wide, nonexclusive, irrevocable license rights in technical data other than computer software documentation (see the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause of this contract for rights in computer software documentation):

(1) *Unlimited rights.*

The Government shall have unlimited rights in technical data that are—

(i) Data pertaining to an item, component, or process which has been or will be developed exclusively with Government funds;

(ii) Studies, analyses, test data, or similar data produced for this contract, when the study, analysis, test, or similar work was specified as an element of performance;

(iii) Created exclusively with Government funds in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes;

(iv) Form, fit, and function data;

(v) Necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);

(vi) Corrections or changes to technical data furnished to the Contractor by the Government;

(vii) Otherwise publicly available or have been released or disclosed by the Contractor or subcontractor without restrictions on further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(viii) Data in which the Government has obtained unlimited rights under another Government contract or as a result of negotiations; or

(ix) Data furnished to the Government, under this or any other Government contract or subcontract thereunder, with—

(A) Government purpose license rights or limited rights and the restrictive condition(s) has/have expired; or

(B) Government purpose rights and the Contractor's exclusive right to use such data for commercial purposes has expired.

(2) *Government purpose rights.*

(i) The Government shall have government purpose rights for a five-year period, or such other period as may be negotiated, in technical data—

(A) That pertain to items, components, or processes developed with mixed funding except when the Government is entitled to unlimited rights in such data as provided in paragraphs (b)(ii) and (b)(iv) through (b)(ix) of this clause; or

(B) Created with mixed funding in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes.

(ii) The five-year period, or such other period as may have been negotiated, shall commence upon execution of the contract, subcontract, letter contract (or similar contractual instrument), contract modification, or option exercise that required development of the items, components, or processes or creation of the data described in paragraph (b)(2)(i)(B) of this clause. Upon expiration of the five-year or other negotiated period, the Government shall have unlimited rights in the technical data.

(iii) The Government shall not release or disclose technical data in which it has government purpose rights unless—

(A) Prior to release or disclosure, the intended recipient is subject to the non-disclosure agreement at 227.7103–7 of the Defense Federal Acquisition Regulation Supplement (DFARS); or

(B) The recipient is a Government contractor receiving access to the data for performance of a Government contract that contains the clause at DFARS 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(iv) The Contractor has the exclusive right, including the right to license others, to use technical data in which the Government has obtained government purpose rights under this contract for any commercial purpose during the time period specified in the government purpose rights legend prescribed in paragraph (f)(2) of this clause.

(3) *Limited rights.*

(i) Except as provided in paragraphs (b)(1)(ii) and (b)(1)(iv) through (b)(1)(ix) of this clause, the Government shall have limited rights in technical data—

(A) Pertaining to items, components, or processes developed exclusively at private expense and marked with the limited rights legend prescribed in paragraph (f) of this clause; or

(B) Created exclusively at private expense in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes.

(ii) The Government shall require a recipient of limited rights data for emergency repair or overhaul to destroy the data and all copies in its possession promptly following completion of the emergency repair/overhaul and to notify the Contractor that the data have been destroyed.

(iii) The Contractor, its subcontractors, and suppliers are not required to provide the Government additional rights to use, modify, reproduce, release, perform, display, or disclose technical data furnished to the Government with limited rights. However, if the Government desires to obtain additional rights in technical data in which it has limited rights, the Contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All technical data in which the Contractor has granted the Government additional rights shall be listed or described in a license agreement made part of the contract. The license shall enumerate the additional rights granted the Government in such data.

(4) *Specifically negotiated license rights.*

The standard license rights granted to the Government under paragraphs (b)(1) through (b)(3) of this clause, including the period during which the Government shall have government purpose rights in technical data, may be modified by mutual agreement to provide such rights as the parties consider appropriate but shall not provide the Government lesser rights than are enumerated in paragraph (a)(13) of this clause. Any rights so negotiated shall be identified in a license agreement made part of this contract.

(5) *Prior government rights.*

Technical data that will be delivered, furnished, or otherwise provided to the Government under this contract, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the pre-existing rights, unless—

(i) The parties have agreed otherwise; or

(ii) Any restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired or no longer apply.

(6) *Release from liability.*

The Contractor agrees to release the Government from liability for any release or disclosure of technical data made in accordance with paragraph (a)(13) or (b)(2)(iii) of this clause, in accordance with the terms of a license negotiated under paragraph (b)(4) of this clause, or by others to whom the recipient has released or disclosed the data and to seek relief solely from the party who has improperly used, modified, reproduced, released, performed, displayed, or disclosed Contractor data marked with restrictive legends.

(c) *Contractor rights in technical data.* All rights not granted to the Government are retained by the Contractor.

(d) *Third party copyrighted data.* The Contractor shall not, without the written approval of the Contracting Officer, incorporate any copyrighted data in the technical data to be delivered under this contract unless the Contractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses in the deliverable data of the appropriate scope set forth in paragraph (b) of this clause, and has affixed a statement of the license or licenses obtained on behalf of the Government and other persons to the data transmittal document.

(e) *Identification and delivery of data to be furnished with restrictions on use, release, or disclosure.* (1) This paragraph does not apply to restrictions based solely on copyright.

(2) Except as provided in paragraph (e)(3) of this clause, technical data that the Contractor asserts should be furnished to the Government with restrictions on use, release, or disclosure are identified in an attachment to this contract (the Attachment). The Contractor shall not deliver any data with restrictive markings unless the data are listed on the Attachment.

(3) In addition to the assertions made in the Attachment, other assertions may be identified after award when based on new information or inadvertent omissions unless the inadvertent omissions would have materially affected the source selection decision. Such identification and assertion shall be submitted to the Contracting Officer as soon as practicable prior to the scheduled date for delivery of the data, in the following format, and signed by an official authorized to contractually obligate the Contractor: Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Technical Data.

The Contractor asserts for itself, or the persons identified below, that the Government's rights to use, release, or disclose the following technical data should be restricted—

Technical data to be furnished with restrictions[1]	Basis for assertion[2]	Asserted rights category[3]	Name of person asserting restrictions[4]
(LIST) ..	(LIST)	(LIST)	(LIST)

[1] If the assertion is applicable to items, components or processes developed at private expense, identify both the data and each such item, component, or process.

[2] Generally, the development of an item, component, or process at private expense, either exclusively or partially, is the only basis for asserting restrictions on the Government's rights to use, release, or disclose technical data pertaining to such items, components, or processes. Indicate whether development was exclusively or partially at private expense. If development was not at private expense, enter the specific reason for asserting that the Government's rights should be restricted.

[3] Enter asserted rights category (e.g., government purpose license rights from a prior contract, rights in SBIR data generated under another contract, limited or government purpose rights under this or a prior contract, or specifically negotiated licenses).

[4] Corporation, individual, or other person, as appropriate.

Date _____

Printed Name and Title _____

_____

Signature _____

(End of identification and assertion)

(4) When requested by the Contracting Officer, the Contractor shall provide sufficient information to enable the Contracting Officer to evaluate the Contractor's assertions. The Contracting Officer reserves the right to add the Contractor's assertions to the Attachment and validate any listed assertion, at a later date, in accordance with the procedures of the Validation of Restrictive Markings on Technical Data clause of this contract.

(f) *Marking requirements.* The Contractor, and its subcontractors or suppliers, may only assert restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data to be delivered under this contract by marking the deliverable data subject to restriction. Except as provided in paragraph (f)(5) of this clause, only the following legends are authorized under this contract: the government purpose rights legend at paragraph (f)(2) of this clause; the limited rights legend at paragraph (f)(3) of this clause; or the special license rights legend at paragraph (f)(4) of this clause; and/or a notice of copyright as prescribed under 17 U.S.C. 401 or 402.

(1) *General marking instructions.* The Contractor, or its subcontractors or suppliers, shall conspicuously and legibly mark the appropriate legend on all technical data that qualify for such markings. The authorized legends shall be placed on the transmittal document or storage container and, for printed material, each page of the printed material containing technical data for which restrictions are asserted. When only portions of a page of printed material are subject to the asserted restrictions, such portions shall be identified by circling, underscoring, with a note, or other appropriate identifier. Technical data transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. Reproductions of technical data or any portions thereof subject to asserted restrictions shall also reproduce the asserted restrictions.

(2) *Government purpose rights markings.* Data delivered or otherwise furnished to the Government purpose rights shall be marked as follows:

Government Purpose Rights

Contract No. _____

Contractor Name _____

Contractor Address _____

_____

Expiration Date _____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (b)(2) of the Rights in Technical Data—Noncommercial Items clause contained in the above identified contract. No restrictions apply after the expiration date shown above. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(3) *Limited rights markings.* Data delivered or otherwise furnished to the Government with limited rights shall be marked with the following legend:

Limited Rights

Contract No. _____

Contractor Name _____

Contractor Address _____

_____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (b)(3) of the Rights in Technical Data—Noncommercial Items clause contained in the above identified contract. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such data must promptly notify the above named Contractor.

(End of legend)

(4) *Special license rights markings.* (i) Data in which the Government's rights stem from a specifically negotiated license shall be marked with the following legend:

Special License Rights

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these data are restricted by Contract No. _____ (Insert contract number) _____, License No. _____ (Insert license identifier) _____. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(ii) For purposes of this clause, special licenses do not include government purpose license rights acquired under a prior contract (see paragraph (b)(5) of this clause).

(5) *Pre-existing data markings.* If the terms of a prior contract or license permitted the Contractor to restrict the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data deliverable under this contract, and those restrictions are still applicable, the Contractor may mark such data with the appropriate restrictive legend for which the data qualified under the prior contract or license. The marking procedures in paragraph (f)(1) of this clause shall be followed.

(g) *Contractor procedures and records.* Throughout performance of this contract, the Contractor and its subcontractors or suppliers that will deliver technical data with other than unlimited rights, shall—

(1) Have, maintain, and follow written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of this clause; and

(2) Maintain records sufficient to justify the validity of any restrictive markings on technical data delivered under this contract.

(h) *Removal of unjustified and nonconforming markings.* (1) *Unjustified technical data markings.* The rights and obligations of the parties regarding the validation of restrictive markings on technical data furnished or to be furnished under this contract are contained in the Validation of Restrictive Markings on Technical Data clause of this contract. Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may ignore or, at the Contractor's expense, correct or strike a marking if, in accordance with the procedures in the Validation of Restrictive Markings on Technical Data clause of this contract, a restrictive marking is determined to be unjustified.

(2) *Nonconforming technical data markings.* A nonconforming marking is a marking placed on technical data delivered or otherwise furnished to the Government under this contract that is not in the format authorized by this contract. Correction of nonconforming markings is not subject to the Validation of Restrictive Markings on Technical Data clause of this contract. If the Contracting Officer notifies the Contractor of a nonconforming marking and the Contractor fails to remove or correct such marking within sixty (60) days, the Government may ignore or, at the Contractor's expense, remove or correct any nonconforming marking.

(i) *Relation to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(j) *Limitation on charges for rights in technical data.* (1) The Contractor shall not charge to this contract any cost, including, but not limited to, license fees, royalties, or similar charges, for rights in technical data to be delivered under this contract when—

(i) The Government has acquired, by any means, the same or greater rights in the data; or

(ii) The data are available to the public without restrictions.

(2) The limitation in paragraph (j)(1) of this clause—

(i) Includes costs charged by a subcontractor or supplier, at any tier, or costs incurred by the Contractor to acquire rights in subcontractor or supplier technical data, if the subcontractor or supplier has been paid for such rights under any other Government contract or under a license conveying the rights to the Government; and

(ii) Does not include the reasonable costs of reproducing, handling, or mailing the documents or other media in which the technical data will be delivered.

(k) *Applicability to subcontractors or suppliers.* (1) The Contractor shall ensure that the rights afforded its subcontractors and suppliers under 10 U.S.C. 2320, 10 U.S.C. 2321, and the identification, assertion, and delivery processes of paragraph (e) of this clause are recognized and protected.

(2) Whenever any noncommercial technical data is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in the subcontract or other contractual instrument, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. The Contractor shall use the Technical Data—Commercial Items clause of this contract to obtain technical data pertaining to commercial items, components, or processes. No other clause shall be used to enlarge or diminish the Government's, the Contractor's, or a higher-tier subcontractor's or supplier's rights in a subcontractor's or supplier's technical data.

(3) Technical data required to be delivered by a subcontractor or supplier shall normally be delivered to the next higher-tier contractor, subcontractor, or supplier. However, when there is a requirement in the prime contract for data which may be submitted with other than unlimited rights by a subcontractor or supplier, then said subcontractor or supplier may fulfill its requirement by submitting such data directly to the Government, rather than through a higher-tier contractor, subcontractor, or supplier.

(4) The Contractor and higher-tier subcontractors or suppliers shall not use their power to award contracts as economic leverage to obtain rights in technical data from their subcontractors or suppliers.

(5) In no event shall the Contractor use its obligation to recognize and protect subcontractor or supplier rights in technical data as an excuse for failing to satisfy its contractual obligations to the Government.

(End of clause)

Alternate I (June 1995)

As prescribed in 227.7103–6(b), add the following paragraph (l) to the basic clause:

(l) *Publication for sale.*

(1) This paragraph only applies to technical data in which the Government has obtained unlimited rights or a license to make an unrestricted release of technical data.

(2) The Government shall not publish a deliverable technical data item or items identified in this contract as being subject to paragraph (l) of this clause or authorize others to publish such data on its behalf if, prior to publication for sale by the Government and within twenty-four (24) months following the date specified in this contract for delivery of such data or the removal of any national security or export control restrictions, whichever is later, the Contractor publishes that item or items for sale and promptly notifies the Contracting Officer of such publication(s). Any such publication shall include a notice identifying the number of this contract and the Government's rights in the published data.

(3) This limitation on the Government's right to publish for sale shall continue as long as the data are reasonably available to the public for purchase.

13. Section 252.227–7014 is added to read as follows:

252.227–7014 Rights in noncommercial computer software and noncommercial computer software documentation.

As prescribed in 227.7203–6(a)(1), use the following clause.

Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation (June 1995)

(a) *Definitions.* As used in this clause:

(1) *Commercial computer software* means software developed or regularly used for nongovernmental purposes which—

(i) Has been sold, leased, or licensed to the public;

(ii) Has been offered for sale, lease, or license to the public;

(iii) Has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this contract; or

(iv) Satisfies a criterion expressed in paragraph (a)(1) (i), (ii), or (iii) of this clause and would require only minor modification to meet the requirements of this contract.

(2) *Computer database* means a collection of recorded data in a form capable of being processed by a computer. The term does not include computer software.

(3) *Computer program* means a set of instructions, rules, or routines, recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

(4) *Computer software* means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer databases or computer software documentation.

(5) *Computer software documentation* means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

(6) *Developed* means that—

(i) A computer program has been successfully operated in a computer and tested to the extent sufficient to demonstrate to reasonable persons skilled in the art that the program can reasonably be expected to perform its intended purpose:

(ii) Computer software, other than computer programs, has been tested or analyzed to the extent sufficient to demonstrate to reasonable persons skilled in the art that the software can reasonably be expected to perform its intended purpose; or

(iii) Computer software documentation required to be delivered under a contract has been written, in any medium, in sufficient detail to comply with requirements under that contract.

(7) *Developed exclusively at private expense* means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a government contract, or any combination thereof.

(i) Private expense determinations should be made at the lowest practicable level.

(ii) Under fixed-price contracts, when total costs are greater than the firm-fixed-price or ceiling price of the contract, the additional development costs necessary to complete development shall not be considered when determining whether development was at government, private, or mixed expense.

(8) *Developed exclusively with government funds* means development was not accomplished exclusively or partially at private expense.

(9) *Developed with mixed funding* means development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a government contract, and partially with costs charged directly to a government contract.

(10) *Government purpose* means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation for commercial purposes or authorize others to do so.

(11) *Government purpose rights* means the rights to—

(i) Use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation within the Government without restriction; and

(ii) Release or disclose computer software or computer software documentation outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose the software or documentation for United States government purposes.

(12) *Minor modification* means a modification that does not significantly alter the nongovernmental function or purpose of the software or is of the type customarily provided in the commercial marketplace.

(13) *Noncommercial computer software* means software that does not qualify as commercial computer software under paragraph (a)(1) of this clause.

(14) *Restricted rights* apply only to noncommercial computer software and mean the Government's rights to—

(i) Use a computer program with one computer at one time. The program may not be accessed by more than one terminal or central processing unit or time shared unless otherwise permitted by this contract;

(ii) Transfer a computer program to another Government agency without the further permission of the Contractor if the transferor destroys all copies of the program and related computer software documentation in its possession and notifies the licensor of the transfer. Transferred programs remain subject to the provisions of this clause;

(iii) Make the minimum number of copies of the computer software required for safekeeping (archive), backup, or modification purposes;

(iv) Modify computer software provided that the Government may—

(A) Use the modified software only as provided in paragraphs (a)(14) (i) and (iii) of this clause; and

(B) Not release or disclose the modified software except as provided in paragraphs (a)(14) (ii), (v) and (vi) of this clause;

(v) Permit contractors or subcontractors performing service contracts (see 37.101 of the Federal Acquisition Regulation) in support of this or a related contract to use computer software to diagnose and correct deficiencies in a computer program, to modify computer software to enable a computer program to be combined with, adapted to, or merged with other computer programs or when necessary to respond to urgent tactical situations, provided that—

(A) The Government notifies the party which has granted restricted rights that a release or disclosure to particular contractors or subcontractors was made;

(B) Such contractors or subcontractors are subject to the use and non-disclosure agreement at 227.7103–7 of the Defense Federal Acquisition Regulation Supplement (DFARS) or are Government contractors receiving access to the software for performance of a Government contract that contains the clause at DFARS 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;

(C) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(14)(iv) of this clause, for any other purpose; and

(D) Such use is subject to the limitation in paragraph (a)(14)(i) of this clause; and

(vi) Permit contractors or subcontractors performing emergency repairs or overhaul of items or components of items procured under this or a related contract to use the computer software when necessary to perform the repairs or overhaul, or to modify the computer software to reflect the repairs or overhaul made, provided that—

(A) The intended recipient is subject to the use and non-disclosure agreement at DFARS 227.7103–7 or is a Government contractor receiving access to the software for performance of a Government contract that contains the clause at DFARS 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends; and

(B) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(14)(iv) of this clause, for any other purpose.

(15) *Unlimited rights* means rights to use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation in whole or in part, in any manner and for any purpose whatsoever, and to have or authorize others to do so.

(b) *Rights in computer software or computer software documentation.* The Contractor grants or shall obtain for the Government the following royalty free, world-wide, nonexclusive, irrevocable license rights in noncommercial computer software or computer software documentation. All rights not granted to the Government are retained by the Contractor.

(1) *Unlimited rights.* The Government shall have unlimited rights in—

(i) Computer software developed exclusively with Government funds;

(ii) Computer software documentation required to be delivered under this contract;

(iii) Corrections or changes to computer software or computer software documentation furnished to the Contractor by the Government;

(iv) Computer software or computer software documentation that is otherwise publicly available or has been released or disclosed by the Contractor or subcontractor without restriction on further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the software to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(v) Computer software or computer software documentation obtained with unlimited rights under another Government contract or as a result of negotiations; or

(vi) Computer software or computer software documentation furnished to the Government, under this or any other Government contract or subcontract thereunder with—

(A) Restricted rights in computer software, limited rights in technical data, or government purpose license rights and the restrictive conditions have expired; or

(B) Government purpose rights and the Contractor's exclusive right to use such software or documentation for commercial purposes has expired.

(2) *Government purpose rights.* (i) Except as provided in paragraph (b)(1) of this clause, the Government shall have government purpose rights in computer software development with mixed funding.

(ii) Government purpose rights shall remain in effect for a period of five years unless a different period has been negotiated. Upon expiration of the five-year or other negotiated period, the Government shall have unlimited rights in the computer software or computer software documentation. The government purpose rights period shall commence upon execution of the contract, subcontract, letter contract (or similar contractual instrument), contract modification, or option exercise that required development of the computer software.

(iii) The Government shall not release or disclose computer software in which it has government purpose rights to any other person unless—

(A) Prior to release or disclosure, the intended recipient is subject to the use and non-disclosure agreement at DFARS 227.7103–7; or

(B) The recipient is a Government contractor receiving access to the software or documentation for performance of a Government contract that contains the clause at DFARS 252.227–7025, Limitations on the Use or Disclosure of Government Furnished Information Marked with Restrictive Legends.

(3) *Restricted rights.* (i) The Government shall have restricted rights in noncommercial computer software required to be delivered or otherwise provided to the Government under this contract that were developed exclusively at private expense.

(ii) The Contractor, its subcontractors, or suppliers are not required to provide the Government additional rights in noncommercial computer software delivered or otherwise provided to the Government with restricted rights. However, if the Government desires to obtain additional rights in such software, the Contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All noncommercial computer software in which the Contractor has granted the Government additional rights shall be listed or described in a license agreement made part of the contract (see paragraph (b)(4) of this clause). The license shall enumerate the additional rights granted the Government.

(4) *Specifically negotiated license rights.* (i) The standard license rights granted to the Government under paragraphs (b)(1) through (b)(3) of this clause, including the period during which the Government shall have government purpose rights in computer software, may be modified by mutual agreement to provide such rights as the parties consider appropriate but shall not provide the Government lesser rights in computer software than are enumerated in paragraph (a)(14) of this clause or lesser rights in computer software documentation than are enumerated in paragraph (a)(13) of the Rights in Technical Data—Noncommercial Items clause of this contract.

(ii) Any rights so negotiated shall be identified in a license agreement made part of this contract.

(5) *Prior government rights.* Computer software or computer software documentation that will be delivered, furnished, or otherwise provided to the Government under this contract, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the pre-existing rights, unless—

(i) The parties have agreed otherwise; or

(ii) Any restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired or no longer apply.

(6) *Release from liability.* The Contractor agrees to release the Government from liability for any release or disclosure of computer software made in accordance with paragraph (a)(14) or (b)(2)(iii) of this clause, in accordance with the terms of a license negotiated under paragraph (b)(4) of this clause, or by others to whom the recipient has released or disclosed the software, and to seek relief solely from the party who has improperly used, modified, reproduced, released, performed, displayed, or disclosed Contractor software marked with restrictive legends.

(c) *Rights in derivative computer software or computer software documentation.* The Government shall retain its rights in the unchanged portions of any computer software or computer software documentation delivered under this contract that the Contractor uses to prepare, or includes in, derivative computer software or computer software documentation.

(d) *Third party copyrighted computer software or computer software documentation.* The Contractor shall not, without the written approval of the Contracting Officer, incorporate any copyrighted computer software or computer software documentation in the software or documentation to be delivered under this contract unless the Contractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses in the deliverable software or documentation of the appropriate scope set forth in paragraph (b) of this clause, and prior to delivery of such—

(1) Computer software, has provided a statement of the license rights obtained in a form acceptable to the Contracting Officer; or

(2) Computer software documentation, has affixed to the transmittal document a statement of the license rights obtained.

(e) *Identification and delivery of computer software and computer software documentation to be furnished with restrictions on use, release, or disclosure.* (1) This paragraph does not apply to restrictions based solely on copyright.

(2) Except as provided in paragraph (e)(3) of this clause, computer software that the Contractor asserts should be furnished to the Government with restrictions on use, release, or disclosure is identified in an attachment to this contract (the Attachment). The Contractor shall not deliver any software with restrictive markings unless the software is listed on the Attachment.

(3) In addition to the assertions made in the Attachment, other assertions may be identified after award when based on new information or inadvertent omissions unless the inadvertent omissions would have materially affected the source selection decision. Such identification and assertion shall be submitted to the Contracting Officer as soon as practicable prior to the scheduled data for delivery of the software, in the following format, and signed by an official authorized to contractually obligate the Contractor: Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Computer Software.

The Contractor asserts for itself, or the persons identified below, that the Government's rights to use, release, or disclose the following computer software should be restricted:

Computer Software to be Furnished With Restrictions*	Basis for Assertion**	Asserted Rights Category***	Name of Person Asserting Restrictions****
(LIST)	(LIST)	(LIST)	(LIST)

*Generally, development at private expense, either exclusively or partially, is the only basis for asserting restrictions on the Government's rights to use, release, or disclose computer software.

**Indicate whether development was exclusively or partially at private expense. If development was not at private expense, enter the specific reason for asserting that the Government's rights should be restricted.

***Enter asserted rights category (e.g., restricted or government purpose rights in computer software, government purpose license rights from a prior contract, rights in SBIR software generated under another contract, or specifically negotiated licenses).

****Corporation, individual, or other person, as appropriate.

Date _____

Printed Name and Title _____

_____

Signature _____

(End of identification and assertion)

(4) When requested by the Contracting Officer, the Contractor shall provide sufficient information to enable the Contracting Officer to evaluate the Contractor's assertions. The Contracting Officer reserves the right to add the Contractor's assertions to the Attachment and validate any listed assertion, at a later date, in accordance with the procedures of the Validation of Asserted Restrictions—Computer Software clause of this contract.

(f) *Marking requirements.* The Contractor, and its subcontractors or suppliers, may only assert restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose computer software by marking the deliverable software or documentation subject to restriction. Except as provided in paragraph (f)(5) of this clause, only the following legends are authorized under this contract: the government purpose rights legend at paragraph (f)(2) of this clause; the restricted rights legend at

paragraph (f)(3) of this clause; or the special license rights legend at paragraph (f)(4) of this clause; and/or a notice of copyright as prescribed under 17 U.S.C. 401 or 402.

(1) *General marking instructions.* The Contractor, or its subcontractors or suppliers, shall conspicuously and legibly mark the appropriate legend on all computer software that qualify for such markings. The authorized legends shall be placed on the transmitted document or software storage container and each page, or portions thereof, of printed material containing computer software for which restrictions are asserted. Computer software transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. However, instructions that interfere with or delay the operation of computer software in order to display a restrictive rights legend or other license statement at any time prior to or during use of the computer software, or otherwise cause such interference or delay, shall not be inserted in software that will or might be used in combat or situations that simulate combat conditions, unless the Contracting Officer's written permission to deliver such software has been obtained prior to delivery. Reproductions of computer software or any portions thereof subject to asserted restrictions, shall also reproduce the asserted restrictions.

(2) *Government purpose rights markings.* Computer software delivered or otherwise furnished to the Government with government purpose rights shall be marked as follows:

GOVERNMENT PURPOSE RIGHTS

Contract No. _____

Contractor Name _____

Contractor Address _____

_____

Expiration Date _____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by paragraph (b)(2) of the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause contained in the above identified contract. No restrictions apply after the expiration date shown above. Any reproduction of the software or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(3) *Restricted rights markings.* Software delivered or otherwise furnished to the Government with restricted rights shall be marked with the following legend:

RESTRICTED RIGHTS

Contract No. _____

Contractor Name _____

Contractor Address _____

_____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by paragraph (b)(3) of the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause contained in the above identified contract. Any reproduction of computer software or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such software must promptly notify the above named Contractor.

(End of legend)

(4) *Special license rights markings.* (i) Computer software or computer documentation in which the Government's rights stem from a specifically negotiated license shall be marked with the following legend:

SPECIAL LICENSE RIGHTS

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by Contract No. _____(Insert contract number)_____, License No._____(Insert license identifier)_____. Any reproduction of computer software, computer software documentation, or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(ii) For purposes of this clause, special licenses do not include government purpose license rights acquired under a prior contract (see paragraph (b)(5) of this clause).

(5) *Pre-existing markings.* If the terms of a prior contract or license permitted the Contractor to restrict the Government's rights to use, modify, release, perform, display, or disclose computer software or computer software documentation and those restrictions are still applicable, the Contractor may mark such software or documentation with the appropriate restrictive legend for which the software qualified under the prior contract or license. The marking procedures in paragraph (f)(1) of this clause shall be followed.

(g) *Contractor procedures and records.* Throughout performance of this contract, the Contractor and its subcontractors or suppliers that will deliver computer software or computer software documentation with other than unlimited rights, shall—

(1) Have, maintain, and follow written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of this clause; and

(2) Maintain records sufficient to justify the validity of any restrictive markings on computer software or computer software documentation delivered under this contract.

(h) *Removal of unjustified and nonconforming markings.* (1) *Unjustified computer software or computer software documentation markings.* The rights and obligations of the parties regarding the validation of restrictive markings on computer software or computer software documentation furnished or to be furnished under this contract are contained in the Validation of Asserted Restrictions—Computer Software and the Validation of Restrictive Markings on Technical Data clauses of this contract, respectively. Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may ignore or, at the Contractor's expense, correct or strike a marking if, in accordance with the procedures of those clauses, a restrictive marking is determined to be unjustified.

(2) *Nonconforming computer software or computer software documentation markings.* A nonconforming marking is a marking placed on computer software or computer software documentation delivered or otherwise furnished to the Government under this contract that is not in the format authorized by this contract. Correction of nonconforming markings is not subject to the Validation of Asserted Restrictions—Computer Software or the Validation of Restrictive Markings on Technical Data clause of this contract. If the Contracting Officer notifies the Contractor of a nonconforming marking or markings and the Contractor fails to remove or correct such markings within sixty (60) days, the Government may ignore or, at the Contractor's expense, remove or correct any nonconforming markings.

(i) *Relotion to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(j) *Limitation on charges for rights in computer software or computer software documentation.* (1) The Contractor shall not charge to this contract any cost, including but not limited to license fees, royalties, or similar charges, for rights in computer software or computer software documentation to be delivered under this contract when—

(i) The Government has acquired, by any means, the same or greater rights in the software or documentation; or

(ii) The software or documentation are available to the public without restrictions.

(2) The limitation in paragraph (j)(1) of this clause—

(i) Includes costs charged by a subcontractor or supplier, at any tier, or costs incurred by the Contractor to acquire rights in subcontractor or supplier computer software or computer software documentation, if the subcontractor or supplier has been paid for such rights under any other Government contract or under a license conveying the rights to the Government; and

(ii) Does not include the reasonable costs of reproducing, handling, or mailing the documents or other media in which the software or documentation will be delivered.

(k) *Applicability to subcontractors or suppliers.* (1) Whenever any noncommercial computer software or computer software documentation is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in its subcontracts or other contractual instruments, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. No other clause shall be used to enlarge or diminish the Government's, the Contractor's, or a higher tier subcontractor's or supplier's rights in a subcontractor's or supplier's computer software or computer software documentation.

(2) The Contractor and higher tier subcontractors or suppliers shall not use their power to award contracts as economic leverage to obtain rights in computer software or computer software documentation from their subcontractors or suppliers.

(3) The Contractor shall ensure that subcontractor or supplier rights are recognized and protected in the identification, assertion, and delivery processes required by paragraph (e) of this clause.

(4) In no event shall the Contractor use its obligation to recognize and protect subcontractor or supplier rights in computer software or computer software documentation as an excuse for failing to satisfy its contractual obligation to the Government.

(End of clause)

ALTERNATE I (JUN 1995)

As prescribed in 227.7203–6(a)(2), add the following paragraph (l) to the basic clause:

(l) *Publicotion for sale.*

(1) This paragraph only applies to computer software or computer software documentation in which the Government has obtained unlimited rights or a license to make an unrestricted release of the software or documentation.

(2) The Government shall not publish a deliverable item or items of computer software or computer software documentation identified in this contract as being subject to paragraph (l) of this clause or authorize others to publish such software or documentation on its behalf if, prior to publication for sale by the Government and within twenty-four (24) months following the date specified in this contract for delivery of such software or documentation, or the removal of any national security or export control restrictions, whichever is later, the Contractor publishes that item or items for sale and promptly notifies the Contracting Officer of such publication(s). Any such publication shall include a notice identifying the number of this contract and the Government's rights in the published software or documentation.

(3) This limitation on the Government's rights to publish for sale shall continue as long as the software or documentation are reasonably available to the public for purchase.

14. Section 252.227–7015 is added to read as follows:

252.227–7015 Technical Data—Commercial Items.

As prescribed in 227.7102–3, use the following clause:

TECHNICAL DATA—COMMERCIAL ITEMS (JUN 1995)

(a) *Definitions.* As used in this clause:

(1) *Commercial item* means—

(i) Any item, other than real property or computer software, that customarily is used by the public for nongovernmental purposes and that—

(A) Has been sold, leased, or licensed to the public; or

(B) Has been offered for sale, lease, or license to the public;

(ii) Any item that evolved from an item described in paragraph (a)(1)(i) of this clause through advances in technology or performance and will be available in the commercial marketplace in time to satisfy the delivery requirements specified in this contract;

(iii) Any item that would satisfy a criterion expressed in paragraph (a)(1)(i) or (ii) of this clause, but for—

(A) Modifications of a type customarily available in the commercial marketplace; or

(B) Minor modifications made to meet Federal Government requirements;

(iv) Any combination of items meeting the requirements of paragraph (a)(1)(i), (ii), (iii), or (v) of this clause that are of a type customarily combined and sold in combination to the public;

(v) Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraph (a)(1)(i), (ii), (iii), or (iv) of this clause, and the source of such services—

(A) Offers such services to the public and the Federal Government contemporaneously and under similar terms and conditions; and

(B) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;

(vi) Services, offered and sold competitively, in substantial quantities, in the commercial marketplace based on established catalog prices for specific tasks performed under standard commercial terms and conditions;

(vii) Any item, combination of items, or service referred to in paragraphs (a)(1) (i) through (vi) of this clause notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor; or

(viii) Other nondevelopmental items, if the Contracting Officer determines that the item was developed exclusively at private expense and has been sold in substantial quantities, on a competitive basis, to multiple state and local governments.

(2) *Component* means any item supplied to the government as part of an end item or of another component.

(3) *Contractor* includes the Contractor's subcontractors and suppliers at any tier.

(4) *Form, fit, and function data* means technical data that describes the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

(5) The term *item* includes components or processes.

(6) *Minor modification* means a modification that does not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process.

(7) *Technical data* means recorded information, regardless of the form or method of recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

(b) *License.* (1) The Government shall have the unrestricted right to use, modify, reproduce, release, perform, display, or disclose technical data, and to permit others to do so, that—

(i) Have been provided to the Government or others without restrictions on use, modification, reproduction, release, or further disclosure other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(ii) Are form, fit, and function data;

(iii) Are a correction or change to technical data furnished to the Contractor by the Government;

(iv) Are necessary for operation, maintenance, installation, or training (other than detailed manufacturing or process data); or

(v) Have been provided to the Government under a prior contract or licensing agreement through which the Government has acquired the rights to use, modify, reproduce, release, perform, display, or disclose the data without restrictions.

(2) Except as provided in paragraph (b)(1) of this clause, the Government may use, modify, reproduce, release, perform, display, or disclose technical data within the Government only. The Government shall not—

(i) Use the technical data to manufacture additional quantities of the commercial items; or

(ii) Release, perform, display, disclose, or authorize use of the technical data outside the Government without the Contractor's written permission unless a release, disclosure or permitted use is necessary for emergency repair or overhaul of the commercial items furnished under this contract.

(c) *Additional license rights.* The Contractor, its subcontractors, and suppliers are not required to provide the Government additional rights to use, modify, reproduce, release, perform, display, or disclose technical data. However, if the Government desires to obtain additional rights in technical data, the Contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All technical data in which the Contractor has granted the Government additional rights shall be listed or described in a special license agreement made part of this contract. The license shall enumerate the additional rights granted the Government in such data.

(d) *Release from liability.* The Contractor agrees that the Government, and other persons to whom the Government may have released or disclosed technical data delivered or otherwise furnished under this contract, shall have no liability for any release or disclosure of technical data that are not marked to indicate that such data are

licensed data subject to use, modification, reproduction, release, performance, display, or disclosure restrictions.

(End of clause)

15. Section 252.227–7016 is added to read as follows:

252.227–7016 Rights in bid or proposal information.

As prescribed in 227.7103–6(e)(1), 227.7104(e)(1), or 227.7203–6(b), use the following clause:

RIGHTS IN BID OR PROPOSAL INFORMATION (JUN 1995)

(a) *Definitions.*

(1) For contracts that require the delivery of technical data, the terms "technical data" and "computer software" are defined in the Rights in Technical Data—Noncommercial Item clause of this contract or, if this is a contract awarded under the Small Business Innovative Research Program, the Rights in Noncommercial Technical Data and Computer Software—Small Business Innovative Research (SBIR) Program clause of this contract.

(2) For contracts that do not require the delivery of technical data, the term "computer software" is defined in the Rights in Noncommercial Computer and Noncommercial Computer Software Documentation clause of this contract or, if this is a contract awarded under the Small Business Innovative Research Program, the Rights in Noncommercial Technical Data and Computer Software—Small Business Innovative Research (SBIR) Program clause of this contract.

(b) *Government rights to contract award.* By submission of its offer, the Offeror agrees that the Government—

(1) May reproduce the bid or proposal, or any portions thereof, to the extent necessary to evaluate the offer.

(2) Except as provided in paragraph (d) of this clause, shall use information contained in the bid or proposal only for evaluational purposes and shall not disclose, directly or indirectly, such information to any person including potential evaluators, unless that person has been authorized by the head of the agency, his or her designee, or the Contracting Officer to receive such information.

(c) *Government rights subsequent to contract award*—The Contractor agrees—

(1) Except as provided in paragraphs (c)((2), (d), and (e) of this clause, the Government shall have the rights to use, modify, reproduce, release, perform, display, or disclose information contained in the Contractor's bid or proposal within the Government. The Government shall not release, perform, display, or disclose such information outside the Government without the Contractor's written permission.

(2) The Government's right to use, modify, reproduce, release, perform, display, or disclose information that is technical data or computer software required to be delivered under this contract are determined by the Rights in Technical Data—Noncommercial Items, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation, or Rights in Noncommercial Technical Data and Computer Software—Small Business Innovative Research (SBIR) Program clause(s) of this contract.

(d) *Government-furnished information.* The Government's rights with respect to technical data or computer software contained in the Contractor's bid or proposal that were provided to the Contractor by the Government are subject only to restrictions on use, modification, reproduction, release, performance, display, or disclosure, if any, imposed by the developer or licensor of such data or software.

(e) *Information available without restrictions.* The Government's rights to use, modify, reproduce, release, perform, display, or, disclose information contained in a bid or proposal, including technical data or computer software, and to permit others to do so, shall not be restricted in any manner if such information has been released or disclosed to the Government or to other persons without restrictions other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the information to another party or the sale or transfer of some or all of a business entity or its assets to another party.

(f) *Flowdown.* Contractor shall include this clause in all subcontracts or similar contractual instruments and require its subcontractors or suppliers to do so without alteration, except to identify the parties.

(End of clause)

16. Section 252.227–7017 is added to read as follows:

252.227–7017 Identification and assertion of use, release, or disclosure restrictions.

As prescribed in 227.7103–3(b), 227.7104(e)(2), or 227.7203–3(a), use the following provision:

IDENTIFICATION AND ASSERTION OF USE, RELEASE, OR DISCLOSURE RESTRICTIONS (JUN 1995)

(a) The terms used in this provision are defined in following clause or clauses contained in this solicitation—

(1) If a successful offeror will be required to deliver technical data, the Rights in Technical Data—Noncommercial Items clause, or, if this solicitation contemplates a contract under the Small Business Innovative Research Program, the Rights in Noncommercial Technical Data and Computer Software—Small Business Innovative Research (SBIR) Program clause.

(2) If a successful offeror will not be required to deliver technical data, the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause, or, if this solicitation contemplates a contract under the Small Business Innovative Research Program, the Rights in Noncommercial Technical Data and Computer Software—Small Business Innovative Research (SBIR) Program clause.

(b) The identification and assertion requirements in this provision apply only to technical data, including computer software documents, or computer software to be delivered with other than unlimited rights. For contracts to be awarded under the Small Business Innovative Research Program, the notification requirements do not apply to technical data or computer software that will be generated under the resulting contract. Notification and identification is not required for restrictions based solely on copyright.

(c) Offers submitted in response to this solicitation shall identify, to the extent known at the time an offer is submitted to the Government, the technical data or computer software that the Offeror, its subcontractors or suppliers, or potential subcontractors or suppliers, assert should be furnished to the Government with restrictions on use, release, or disclosure.

(d) The Offeror's assertions, including the assertions of its subcontractors or suppliers or potential subcontractors or suppliers shall be submitted as an attachment to its offer in the following format, dated and signed by an official authorized to contractually obligate the Offeror:

Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Technical Data or Computer Software.

The Offeror asserts for itself, or the persons identified below, that the Government's rights to use, release, or disclose the following technical data or computer software should be restricted:

Technical Data or Computer Software to be Furnished With Restrictions*	Basis for Assertion**	Asserted Rights Category***	Name of Person Asserting Restrictions****
(LIST)*****	(LIST)	(LIST)	(LIST)

*For technical data (other than computer software documentation) pertaining to items, components, or processes developed at private expense, identify both the deliverable technical data and each such items, component, or process. For computer software or computer software documentation identify the software or documentation.

**Generally, development at private expense, either exclusively or partially, is the only basis for asserting restrictions. For technical data, other than computer software documentation, development refers to development of the item, component, or process to which the data pertain. The Government's rights in computer software documentation generally may not be restricted. For computer software, development refers to the software. Indicate whether development was accomplished exclusively or partially at private expense. If development was not accomplished at private expense, or for computer software documentation, enter the specific basis for asserting restrictions.

***Enter asserted rights category (e.g., government purpose license rights from a prior contract, rights in SBIR data generated under another contract, limited, restricted, or government purpose rights under this or a prior contract, or specially negotiated licenses).

****Corporation, individual, or other person, as appropriate.

*****Enter "none" when all data or software will be submitted without restrictions.

Date _____

Printed Name and Title _____

_____

Signature _____

(End of identification and assertion)

(e) An offeror's failure to submit, complete, or sign the notification and identification required by paragraph (d) of this provision with its offer may render the offer ineligible for award.

(f) If the Offeror is awarded a contract, the assertions identified in paragraph (d) of this provision shall be listed in an attachment to that contract. Upon request by the Contracting Officer, the Offeror shall provide sufficient information to enable the Contracting Officer to evaluate any listed assertion.

(End of provision)

17. Section 252.227–7018 is revised to read as follows:

252.227–7018 Rights in noncommercial technical data and computer software—Small Business Innovative Research (SBIR) Program.

As prescribed in 227.7104(a), use the following clause:

RIGHTS IN NONCOMMERCIAL TECHNICAL DATA AND COMPUTER SOFTWARE—SMALL BUSINESS INNOVATIVE RESEARCH (SBIR) PROGRAM (JUN 1995)

(a) *Definitions.* As used in this clause:

(1) *Commercial computer software* means software developed or regularly used for nongovernmental purposes which—

(i) Has been sold, leased, or licensed to the public;

(ii) Has been offered for sale, lease, or license to the public;

(iii) Has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this contract; or

(iv) Satisfies a criterion expressed in paragraph (a)(1)(i), (ii), or (iii) of this clause and would require only minor modification to meet the requirements of this contract.

(2) *Computer database* means a collection of recorded data in a form capable of being processed by a computer. The term does not include computer software.

(3) *Computer program* means a set of instructions, rules, or routines, recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

(4) *Computer software* means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, re-created, or recompiled. Computer software does not include computer databases or computer software documentation.

(5) *Computer software documentation* means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

(6) *Detailed manufacturing or process data* means technical data that describe the steps, sequences, and conditions of manufacturing, processing or assembly used by the manufacturer to produce an item or component or to perform a process.

(7) *Developed* means—

(i) (Applicable to technical data other than computer software documentation.) An item, component, or process, exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component, or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered "developed," the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component or process be actually reduced to practice within the meaning of Title 35 of the United States Code;

(ii) A computer program has been successfully operated in a computer and tested to the extent sufficient to demonstrate to reasonable persons skilled in the art that the program can reasonably be expected to perform its intended purpose;

(iii) Computer software, other than computer programs, has been tested or analyzed to the extent sufficient to demonstrate to reasonable persons skilled in the art that the software can reasonably be expected to perform its intended purpose; or

(iv) Computer software documentation required to be delivered under a contract has been written, in any medium, in sufficient detail to comply with requirements under that contract.

(8) *Developed exclusively at private expense* means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a government contract, or any combination thereof.

(i) Private expense determinations should be made at the lowest practicable level.

(ii) Under fixed-price contracts, when total costs are greater than the firm-fixed-price or ceiling price of the contract, the additional development costs necessary to complete development shall not be considered when determining whether development was at government, private, or mixed expense.

(9) *Developed exclusively with government funds* means development was not accomplished exclusively or partially at private expense.

(10) *Developed with mixed funding* means development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a government contract, and partially with costs charged directly to a government contract.

(11) *Form, fit, and function data* means technical data that describe the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

(12) *Generated* means technical data or computer software first created in the performance of this contract.

(13) *Government purpose* means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software for commercial purposes or authorize others to do so.

(14) *Limited rights* means the rights to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture, or permit the technical data to be used by another party, except that the Government may reproduce, release or disclose such data or permit the use or reproduction of the data by persons outside the Government if reproduction, release, disclosure, or use is—

(i) Necessary for emergency repair and overhaul; or

(ii) A release or disclosure of technical data (other than detailed manufacturing or process data) to, or use of such data by, a foreign government that is in the interest of the Government and is required for evaluational or informational purposes;

(iii) Subject to a prohibition on the further reproduction, release disclosure, or use of the technical data; and

(iv) The Contractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.

(15) *Minor modification* means a modification that does not significantly alter the nongovernmental function or purpose of computer software or is of the type customarily provided in the commercial marketplace.

(16) *Noncommercial computer software* means software that does not qualify as

commercial computer software under paragraph (a)(1) of this clause.

(17) *Restricted rights* apply only to noncommercial computer software and mean the Government's rights to—

(i) Use a computer program with one computer at one time. The program may not be accessed by more than one terminal or central processing unit or time shared unless otherwise permitted by this contract;

(ii) Transfer a computer program to another Government agency without the further permission of the Contractor if the transferor destroys all copies of the program and related computer software documentation in its possession and notifies the licensor of the transfer. Transferred programs remain subject to the provisions of this clause;

(iii) Make the minimum number of copies of the computer software required for safekeeping (archive), backup, or modification purposes;

(iv) Modify computer software provided that the Government may—

(A) Use the modified software only as provided in paragraphs (a)(17) (i) and (iii) of this clause; and

(B) Not release or disclose the modified software except as provided in paragraphs (a)(17) (ii), (v) and (vi) of this clause;

(v) Permit contractors or subcontractors performing service contracts (see 37.101 of the Federal Acquisition Regulation) in support of this or a related contract to use computer software to diagnose and correct deficiencies in a computer program, to modify computer software to enable a computer program to be combined with, adapted to, or merged with other computer programs or when necessary to respond to urgent tactical situations, provided that—

(A) The Government notifies the party which has granted restricted rights that a release or disclosure to particular contractors or subcontractors was made;

(B) Such contractors or subcontractors are subject to the non-disclosure agreement at 227.7103–7 of the Defense Federal Acquisition Regulation Supplement (DFARS or are Government contractors receiving access to the software for performance of a Government contract that contains the clause at DFARS 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;

(C) The Government shall not permit the recipient to decompile disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(17)(iv) of this clause, for any other purpose; and

(D) Such use is subject to the limitation in paragraph (a)(17)(i) of this clause; and

(vi) Permit contractors or subcontractors performing emergency repairs or overhaul of items or components of items, procured under this or a related contract to use the computer software when necessary to perform the repairs or overhaul, or to modify the computer software to reflect the repairs or overhaul made, provided that—

(A) The intended recipient is subject to the non-disclosure agreement at DFARS 227.7103–7 or is a Government contractor receiving access to the software for performance of a Government contract that contains the clause at DFARS 252.227–7025, Limitations on the Use or Disclosure of Government Furnished Information Marked with Restrictive Legends; and

(B) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(17)(iv) of this clause, for any other purpose.

(18) *SBIR data rights* means a royalty-free license for the Government, including its support service contractors, to use, modify, reproduce, release, perform, display, or disclose technical data or computer software generated and delivered under this contract for any United States Government purpose.

(19) *Technical data* means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

(20) *Unlimited rights* means rights to use, modify, reproduce, release, perform, display, or disclose, technical data or computer software in whole or in part, in any manner and for any purpose whatsoever, and to have or authorize others to do so.

(b) *Rights in technical data and computer software.* The Contractor grants or shall obtain for the Government the following royalty-free, world-wide, nonexclusive, irrevocable license rights in technical data or noncommercial computer software. All rights not granted to the Government are retained by the Contractor.

(1) *Unlimited rights.* The Government shall have unlimited rights in technical data, including computer software documentation, or computer software generated under this contract that are—

(i) Form, fit, and function data;

(ii) Necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);

(iii) Corrections or changes to Government-furnished technical data or computer software;

(iv) Otherwise publicly available or have been released or disclosed by the Contractor or a subcontractor without restrictions on further use, release or disclosure other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data or computer software to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(v) Data or software in which the Government has acquired previously unlimited rights under another Government contract or through a specific license; and

(vi) SBIR data upon expiration of the SBIR data rights period.

(2) *Limited rights.* The Government shall have limited rights in technical data, that were not generated under this contract, pertain to items, components or processes developed exclusively at private expense, and are marked, in accordance with the marking instructions in paragraph (f)(1) of this clause, with the legend prescribed in paragraph (f)(2) of this clause.

(3) *Restricted rights in computer software.* The Government shall have restricted rights in noncommercial computer software required to be delivered or otherwise furnished to the Government under this contract that were developed exclusively at private expense and were not generated under this contract.

(4) *SBIR data rights.* (i) Except for technical data, including computer software documentation, or computer software in which the Government has unlimited rights under paragraph (b)(1) of this clause, the Government shall have SBIR data rights in all technical data or computer software generated under this contract during the period commencing with contract award and ending upon the date five years after completion of the project from which such data were generated.

(ii) The Government may not release or disclose SBIR data to any person, other than its support services contractors, except—

(A) As expressly permitted by the Contractor;

(B) For evaluation purposes; or

(C) A release, disclosure, or use that is necessary for emergency repair or overhaul of items operated by the Government.

(iii) A release or disclosure of SBIR data to the Government's support services contractors, or a release or disclosure under paragraph (b)(4)(ii)(B) or (C) of this clause, may be made only if, prior to release or disclosure, the intended recipient is subject to the use and non-disclosure agreement at DFARS 227.7103–7 or is a Government contractor receiving access to the technical data or software for performance of a Government contract that contains the clause at DFARS 252.227–7025, Limitations on the Use of Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(5) *Specifically negotiated license rights.* The standard license rights granted to the Government under paragraphs (b)(1) through (b)(4) of this clause may be modified by mutual agreement to provide such rights as the parties consider appropriate but shall not provide the Government lesser rights in technical data, including computer software documentation, than are enumerated in paragraph (a)(14) of this clause or lesser rights in computer software than are enumerated in paragraph (a)(17) of this clause. Any rights so negotiated shall be identified in a license agreement made part of this contract.

(6) *Prior government rights.* Technical data, including computer software documentation, or computer software that will be delivered, furnished, or otherwise provided to the Government under this contract, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the pre-existing rights, unless—

(i) The parties have agreed otherwise; or

(ii) Any restrictions on the Government's rights to use, modify, release, perform, display, or disclose the technical data or computer software have expired or no longer apply.

(7) *Release from liability.* The Contractor agrees to release the Government from liability for any release or disclosure of technical data, computer software, or computer software documentation made in accordance with paragraph (a)(14), (a)(17), or (b)(4) of this clause, or in accordance with the terms of a license negotiated under paragraph (b)(5) of this clause, or by others to whom the recipient has released or disclosed the data, software, or documentation and to seek relief solely from the party who has improperly used, modified, reproduced, released, performed, displayed, or disclosed Contractor data or software marked with restrictive legends.

(c) *Rights in derivative computer software or computer software documentation.* The Government shall retain its rights in the unchanged portions of any computer software or computer software documentation delivered under this contract that the Contractor uses to prepare, or includes in, derivative software or documentation.

(d) *Third party copyrighted technical data and computer software.* The Contractor shall not, without the written approval of the Contracting Officer, incorporate any copyrighted technical data, including computer software documentation, or computer software in the data or software to be delivered under this contract unless the Contractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses in the deliverable data or software of the appropriate scope set forth in paragraph (b) of this clause and, prior to delivery of such—

(1) Technical data, has affixed to the transmittal document a statement of the license rights obtained; or

(2) Computer software, has provided a statement of the license rights obtained in a form acceptable to the Contracting Officer.

(e) *Identification and delivery of technical data or computer software to be furnished with restrictions on use, release, or disclosure.* (1) This paragraph does not apply to technical data or computer software that were or will be generated under this contract or to restrictions based solely on copyright.

(2) Except as provided in paragraph (e)(3) of this clause, technical data or computer software that the Contractor asserts should be furnished to the Government with restrictions on use, release, or disclosure is identified in an attachment to this contract (the Attachment). The Contractor shall not deliver any technical data or computer software with restrictive markings unless the technical data or computer software are listed on the Attachment.

(3) In addition to the assertions made in the Attachment, other assertions may be identified after award when based on new information or inadvertent omissions unless the inadvertent omissions would have materially affected the source selection decision. Such identification and assertion shall be submitted to the Contracting Officer as soon as practicable prior to the scheduled date for delivery of the technical data or computer software, in the following format, and signed by an official authorized to contractually obligate the Contractor:

Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Technical Data or Computer Software.

The Contractor asserts for itself, or the persons identified below, that the Government's rights to use, release, or disclose the following technical data or computer software should be restricted:

Technical data or computer software to be furnished with restrictions [1]	Basis for assertion [2]	Asserted rights category [3]	Name of person asserting restrictions [4]
(LIST) ..	(LIST)	(LIST)	(LIST)

[1] If the assertion is applicable to items, components, or processes developed at private expense, identify both the technical data and each such item, component, or process.

[2] Generally, development at private expense, either exclusively or partially, is the only basis for asserting restrictions on the Government's rights to use, release, or disclose technical data or computer software. Indicate whether development was exclusively or partially at private expense. If development was not at private expense, enter the specific reason for asserting that the Government's rights should be restricted.

[3] Enter asserted rights category (e.g., limited rights, restricted rights, government purpose rights, or government purpose license rights from a prior contract, SBIR data rights under another contract, or specifically negotiated licenses).

[4] Corporation, individual, or other person, as appropriate.

Date _____

Printed Name and Title _____

Signature _____

(End of identification and assertion)

(4) When requested by the Contracting Officer, the Contractor shall provide sufficient information to enable the Contracting Officer to evaluate the Contractor's assertions. The Contracting Officer reserves the right to add the Contractor's assertions to the Attachment and validate any listed assertions, at a later date, in accordance with the procedures of the Validation of Asserted Restrictions—Computer Software and/or Validation of Restrictive Markings on Technical Data clauses of this contract.

(f) *Marking requirements.* The Contractor, and its subcontractors or suppliers, may only assert restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software to be delivered under this contract by marking the deliverable data or software subject to restriction. Except as provided in paragraph (f)(6) of this clause, only the following markings are authorized under this contract: the limited rights legend at paragraph (f)(2) of this clause; the restricted rights legend at paragraph (f)(3) of this clause, the SBIR data rights legend at paragraph (f)(4) of this clause, or the special license rights legend at paragraphs (f)(5) of this clause; and/or a notice of copyright as prescribed under 17 U.S.C. 401 or 402.

(1) *General marking instructions.* The Contractor, or its subcontractors or suppliers, shall conspicuously and legibly mark the appropriate legend to all technical data and computer software that qualify for such markings. The authorized legends shall be placed on the transmittal document or storage container and, for printed material, each page of the printed material containing technical data or computer software for which restrictions are asserted. When only portions of a page of printed material are subject to the asserted restrictions, such portions shall be identified by circling, underscoring, with a note, or other appropriate identifier. Technical data or computer software transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. However, instructions that interfere with or delay the operation of computer software in order to display a restrictive rights legend or other license statement at any time prior to or during use of the computer software, or otherwise cause such interference or delay, shall not be inserted in software that will or might be used in combat or situations that simulate combat conditions, unless the Contracting Officer's written permission to deliver such software has been obtained prior to delivery. Reproductions of technical data, computer software, or any portions thereof subject to asserted restrictions shall also reproduce the asserted restrictions.

(2) *Limited rights markings.* Technical data not generated under this contract that pertain to items, components, or processes developed exclusively at private expense and delivered or otherwise furnished with limited rights shall be marked with the following legend:

Limited Rights

Contract No. _____

Contractor Name _____

Contractor Address _____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (b)(2) of the Rights in Noncommercial Technical Data and Computer Software—Small Business Innovative Research (SBIR) Program clause contained in the above identified contract. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such data must promptly notify the above named Contractor.

(End of legend)

(3) *Restricted rights markings.* Computer software delivered or otherwise furnished to the Government with restricted rights shall be marked with the following legend:

Restricted Rights

Contract No. _____

Contractor Name _____

Contractor Address _____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by paragraph (b)(3) of the Rights in Noncommercial Technical Data and Computer Software—Small Business Innovative Research (SBIR) Program clause contained in the above identified contract. Any reproduction of computer software or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such data must promptly notify the above named Contractor.

(End of legend)

(4) *SBIR data rights markings:* Except for technical data or computer software in which the Government has acquired unlimited rights under paragraph (b)(1) of this clause, or negotiated special license rights as provided in paragraph (b)(5) of this clause, technical data or computer software generated under this contract shall be marked with the following legend. The Contractor shall enter the expiration date for the SBIR data rights period on the legend:

SBIR Data Rights

Contract No. _____

Contractor Name _____

Address _____

Expiration of SBIR Data Rights Period _____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software marked with this legend are restricted during the period shown as provided in paragraph (b)(4) of the Rights in Noncommercial Technical Data and Computer Software—Small Business Innovative Research (SBIR) Program clause contained in the above identified contract. No restrictions apply after the expiration date shown above. Any reproduction of technical data, computer software, or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(5) *Special license rights markings.* (i) Technical data or computer software in which the Government's rights stem from a specifically negotiated license shall be marked with the following legend:

Special License Rights

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this technical data or computer software are restricted by Contract No. _____ (Insert contract number), _____, License No. _____ (Insert license identifier), _____. Any reproduction of technical data, computer software, or portions thereof marked with this legend must also reproduce the markings.

(end of legend)

(ii) For purposes of this clause, special licenses do not include government purpose license rights acquired under a prior contract (see paragraph (b)(6) of this clause).

(6) *Pre-existing data markings.* If the terms of a prior contract or license permitted the Contractor to restrict the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software, and those restrictions are still applicable, the Contractor may mark such data or software with the appropriate restrictive legend for which the data or software qualified under the prior contract or license. The marking procedures in paragraph (f)(1) of this clause shall be followed.

(g) *Contractor procedures and records.* Throughout performance of this contract, the Contractor, and its subcontractors or suppliers that will deliver technical data or computer software with other than unlimited rights, shall—

(1) Have, maintain, and follow written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of this clause; and

(2) Maintain records sufficient to justify the validity of any restrictive markings on technical data or computer software delivered under this contract.

(h) *Removal of unjustified and nonconforming markings.*

(1) *Unjustified markings.* The rights and obligations of the parties regarding the validation of restrictive markings on technical data or computer software furnished or to be furnished under this contract are contained in the Validation of Restrictive Markings on Technical Data and the Validation of Asserted Restrictions—Computer Software clauses of this contract, respectively. Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may ignore or, at the Contractor's expense, correct or strike a marking if, in accordance with the applicable procedures of those clauses, a restrictive marking is determined to be unjustified.

(2) *Nonconforming markings.* A nonconforming marking is a marking placed on technical data or computer software delivered or otherwise furnished to the Government under this contract that is not in the format authorized by this contract. Correction of nonconforming markings is not subject to the Validation of Restrictive Markings on Technical Data or the Validation of Asserted Restrictions—Computer Software clause of this contract. If the Contracting Officer notifies the Contractor of a nonconforming marking or markings and the Contractor fails to remove or correct such markings within sixty (6)) days, the Government may ignore or, at the Contractor's expense, remove or correct any nonconforming markings.

(i) *Relation to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(j) *Limitation on charges for rights in technical data or computer software.* (1) The Contractor shall not charge to this contract any cost, including but not limited to, license fees, royalties, or similar charges, for rights in technical data or computer software to be delivered under this contract when—

(i) the Government has acquired, by any means, the same or greater rights in the data or software; or

(ii) The data are available to the public without restrictions.

(2) The limitation in paragraph (j)(1) of this clause—

(i) Includes costs charged by a subcontractor or supplier, at any tier, or costs incurred by the Contractor to acquire rights in subcontractor of supplier technical data or computer software, if the subcontractor or supplier has been paid for such rights under any other Government contract or under a license conveying the rights to the Government; and

(ii) does not include the reasonable costs of reproducing, handling, or mailing the documents or other media in which the technical data or computer software will be delivered.

(k) *Applicability to subcontractors or suppliers.* (1) the Contractor shall assure that the rights afforded its subcontractors and suppliers under 10 U.S.C. 2320, 10 U.S.C. 2321, and the identification, assertion, and delivery processes required by paragraph (e) of this clause are recognized and protected.

(2) Whenever any noncommercial technical data or computer software is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in the subcontract or other contractual instrument, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. The Contractor shall use the Technical Data—Commercial Items clause of this contract to obtain technical data pertaining to commercial items, components, or processes. No other clause shall be used to enlarge or diminish the Government's, the Contractor's, or a higher tier subcontractor's or supplier's rights in a subcontractor's or supplier's technical data or computer software.

(3) Technical data required to be delivered by a subcontractor or supplier shall normally be delivered to the next higher tier contractor, subcontractor, or supplier. However, when there is a requirement in the prime contract for technical data which may be submitted with other than unlimited rights by a subcontractor or supplier, then said subcontractor or supplier may fulfill its requirement by submitting such technical data directly to the Government, rather than through a higher tier contractor, subcontractor, or supplier.

(4) The Contractor and higher tier subcontractors or suppliers shall not use their power to award contracts as economic leverage to obtain rights in technical data or computer software from their subcontractors or suppliers.

(5) In no event shall the Contractor use its obligation to recognize and protect subcontractor or supplier rights in technical data or computer software as an excuse for failing to satisfy its contractual obligation to the Government.

(End of clause)

Alternate I (June 1995)

As prescribed in 227.7104(d), add the following paragraph (l) to the basic clause:

(l) *Publication for sale.* (1) This paragraph applies only to technical data or computer software delivered to the Government with SBIR data rights.

(2) Upon expiration of the SBIR data rights period, the Government will not exercise its right to publish or authorize others to publish an item of technical data or computer software identified in this contract as being subject to paragraph (l) of this clause if the Contractor, prior to the expiration of the SBIR data rights period, or within two years following delivery of the data or software item, or within twenty-four months following the removal of any national security or export control restrictions, whichever is later, publishes such data or software item(s) and promptly notifies the Contracting Officer of such publication(s). Any such publication(s) shall include a notice identifying the number of this contract and the Government's rights in the published data.

(3) This limitation on the Government's right to publish for sale shall continue as long as the technical data or computer software are reasonably available to the public for purchase.

18. Section 252.227–7019 is revised to read as follows:

252.227–7019 Validation of asserted restrictions—Computer software.

As prescribed in 227.7104(e)(3) or 227.7203–6(c), use the following clause:

Validation of Asserted Restrictions—Computer Software (June 1995)

(a) *Definitions.* (1) As used in this clause, unless otherwise specifically indicated, the term "Contractor" means the Contractor and its subcontractors or suppliers.

(2) Other terms used in this clause are defined in the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause of this contract.

(b) *Justification.* The Contractor shall maintain records sufficient to justify the validity of any markings that assert restrictions on the Government's rights to use, modify, reproduce, perform, display, release, or disclose computer software delivered or required to be delivered under this contract and shall be prepared to furnish to the Contracting Officer a written justification for such restrictive markings in response to a request for information under paragraph (d) or a challenge under paragraph (f) of this clause.

(c) *Direct contact with subcontractors or suppliers.* The Contractor agrees that the Contracting Officer may transact matters under this clause directly with subcontractors or suppliers at any tier who assert restrictions on the Government's right to use, modify, reproduce, release, perform, display, or disclose computer software. Neither this clause, nor any action taken by the Government under this clause, creates or implies privity of contract between the Government and the Contractor's subcontractors or suppliers.

(d) *Requests for information.* (1) The Contracting Officer may request the Contractor to provide sufficient information to enable the Contracting Officer to evaluate the Contractor's asserted restrictions. Such information shall be based upon the records required by this clause or other information reasonably available to the Contractor.

(2) Based upon the information provided, if the—

(i) Contractor agrees that an asserted restriction is not valid, the Contracting Officer may—

(A) Strike or correct the unjustified marking at the Contractor's expense; or

(B) Return the computer software to the Contractor for correction at the Contractor's expense. If the Contractor fails to correct or strike the unjustified restrictions and return the corrected software to the Contracting Officer within sixty (60) days following receipt of the software, the Contracting Officer may correct the strike the markings at the Contractor's expense.

(ii) Contracting Officer concludes that the asserted restriction is appropriate for this contract, the Contracting Officer shall so notify the Contractor in writing.

(3) The Contractor's failure to provide a timely response to a Contracting Officer's request for information or failure to provide sufficient information to enable the Contracting Officer to evaluate an asserted restriction shall constitute reasonable grounds for questioning the validity of an asserted restriction.

(e) *Government right to challenge and validate asserted restrictions.* (1) The Government, when there are reasonable grounds to do so, has the right to review and challenge the validity of any restrictions asserted by the Contractor on the Government's rights to use, modify, reproduce, release, perform, display, or disclose computer software delivered, to be delivered under this contract, or otherwise provided to the Government in the performance of this contract. Except for software that is publicly available, has been furnished to the Government without restrictions, or has been otherwise made available without restrictions, the Government may exercise this right only within three years after the date(s) the software is delivered or otherwise furnished to the Government, or three years following final payment under this contract, whichever is later.

(2) The absence of a challenge to an asserted restriction shall not constitute validation under this clause. Only a Contracting Officer's final decision or actions of an agency Board of Contract Appeals or a court of competent jurisdiction that sustain the validity of an asserted restriction constitute validation of the restriction.

(f) *Challenge procedures.* (1) A challenge must be in writing and shall—

(i) State the specific grounds for challenging the asserted restriction;

(ii) Require the Contractor to respond within sixty (60) days;

(iii) Require the Contractor to provide justification for the assertion based upon records kept in accordance with paragraph (b) of this clause and such other documentation that are reasonably available to the Contractor, in sufficient detail to enable the Contracting Officer to determine the validity of the asserted restrictions; and

(iv) State that a Contracting Officer's final decision, during the three-year period preceding this challenge, or action of a court of competent jurisdiction or Board of Contract Appeals that sustained the validity of an identical assertion made by the Contractor (or a licensee) shall serve as justification for the asserted restriction.

(2) The Contracting Officer shall extend the time for response if the Contractor submits a written request showing the need for additional time to prepare a response.

(3) The Contracting Officer may request additional supporting documentation if, in the Contracting Officer's opinion, the Contractor's explanation does not provide sufficient evidence to justify the validity of the asserted restrictions. The Contractor agrees to promptly respond to the Contracting Officer's request for additional supporting documentation.

(4) Notwithstanding challenge by the Contracting Officer, the parties may agree on the disposition of an asserted restriction at any time prior to a Contracting Officer's final decision or, if the Contractor has appealed that decision, filed suit, or provided notice of an intent to file suit, at any time prior to a decision by a court of competent jurisdiction or Board of Contract Appeals.

(5) If the Contractor fails to respond to the Contracting Officer's request for information or additional information under paragraph (f)(1) of this clause, the Contracting Officer shall issue a final decision, in accordance with the Disputes clause of this contract, pertaining to the validity of the asserted restriction.

(6) If the Contracting Officer, after reviewing the written explanation furnished pursuant to paragraph (f)(1) of this clause, or any other available information pertaining to the validity of an asserted restriction, determines that the asserted restriction has—

(i) Not been justified, the Contracting Officer shall issue promptly a final decision, in accordance with the Disputes clause of this contract, denying the validity of the asserted restriction; or

(ii) Been justified, the Contracting Officer shall issue promptly a final decision, in accordance with the Disputes clause of this contract, validating the asserted restriction.

(7) A Contractor receiving challenges to the same asserted restriction(s) from more than one Contracting Officer shall notify each Contracting Officer of the other challenges. The notice shall also state which Contracting Officer initiated the first in time unanswered challenge. The Contracting Officer who initiated the first in time unanswered challenge, after consultation with the other Contracting Officers who have challenged the restrictions and the Contractor, shall formulate and distribute a schedule that provides the contractor a reasonable opportunity for responding to each challenge.

(g) *Contractor appeal—Government obligation.* (1) The Government agrees that, notwithstanding a Contracting Officer's final decision denying the validity of an asserted restriction and except as provided in paragraph (g)(3) of this clause, it will honor the asserted restriction—

(i) For a period of ninety (90) days from the date of the Contracting Officer's final decision to allow the Contractor to appeal to the appropriate Board of Contract Appeals or to file suit in an appropriate court;

(ii) For a period of one year from the date of the Contracting Officer's final decision if.

within the first ninety (90) days following the Contracting Officer's final decision, the Contractor has provided notice of an intent to file suit in an appropriate court; or

(iii) Until final disposition by the appropriate Board of Contract Appeals or court of competent jurisdiction, if the Contractor has: (A) appealed to the Board of Contract Appeals or filed suit an appropriate court within ninety (90) days; or (B) submitted, within ninety (90) days, a notice of intent to file suit in an appropriate court and filed suit within one year.

(2) The Contractor agrees that the Government may strike, correct, or ignore the restrictive markings if the Contractor fails to—

(i) Appeal to a Board of Contract Appeals within ninety (90) days from the date of the Contracting Officer's final decision;

(ii) File suit in an appropriate court within ninety (90) days from such date; or

(iii) File suit within one year after the date of the Contracting Officer's final decision if the Contractor had provided notice of intent to file suit within ninety (90) days following the date of the Contracting Officer's final decision.

(3) The agency head, on a nondelegable basis, may determine that urgent or compelling circumstances do not permit awaiting the filing of suit in an appropriate court, or the rendering of a decision by a court of competent jurisdiction or Board of Contract Appeals. In that event, the agency head shall notify the Contractor of the urgent or compelling circumstances.

Notwithstanding paragraph (g)(1) of this clause, the Contractor agrees that the agency may use, modify, reproduce, release, perform, display, or disclose computer software marked with (i) government purpose legends for any purpose, and authorize others to do so; or (ii) restricted or special license rights for government purposes only. The Government agrees not to release or disclose such software unless, prior to release or disclosure, the intended recipient is subject to the use and non-disclosure agreement at 227.7103–7 of the Defense Federal Acquisition Regulation Supplement (DFARS), or is a Government contractor receiving access to the software for performance of a Government contract that contains the clause at DFARS 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. The agency head's determination may be made at any time after the date of the Contracting Officer's final decision and shall not affect the Contractor's right to damages against the United States, or other relief provided by law, if its asserted restrictions are ultimately upheld.

(h) *Final disposition of appeal or suit.* If the Contractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is:

(1) Sustained—

(i) Any restrictive marking on such computer software shall be struck or corrected at the contractor's expense or ignored; and

(ii) If the asserted restriction is found not to be substantially justified, the Contractor shall be liable to the Government for payment of the cost to the Government of reviewing the asserted restriction and the fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Government in challenging the restriction, unless special circumstances would make such payment unjust.

(2) Not sustained—

(i) The Government shall be bound by the asserted restriction; and

(ii) If the challenge by the Government is found not to have been made in good faith, the Government shall be liable to the Contractor for payment of fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Contractor in defending the restriction.

(i) *Flowdown.* The Contractor shall insert this clause in all contracts, purchase orders, and other similar instruments with its subcontractors or suppliers, at any tier, who will be furnishing computer software to the Government in the performance of this contract. The clause may not be altered other than to identify the appropriate parties.

(End of clause)

19. Section 252.227–7020 is revised to read as follows:

252.227–7020 Rights in special works.

As prescribed in 227.7105–3, 227.7106(a) or 227.7205(a), use the following clause:

Rights in Special Works (June 1995)

(a) *Applicability.* This clause applies to works first created, generated, or produced and required to be delivered under this contract.

(b) *Definitions.* As used in this clause:

(1) "Computer data base" means a collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.

(2) "Computer program" means a set of instructions, rules, or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

(3) "Computer software" means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer data bases or computer software documentation.

(4) "Computer software documentation" means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

(5) "Unlimited rights" means the rights to use, modify, reproduce, perform, display, release, or disclose a work in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

(6) The term "works" includes computer data bases, computer software, or computer software documentation; literary, musical, choreographic, or dramatic compositions; pantomimes; pictorial, graphic, or sculptural compositions; motion pictures and other audiovisual compositions; sound recordings in any medium; or, items of similar nature.

(c) *License rights.* (1) The Government shall have unlimited rights in works first produced, created, or generated and required to be delivered under this contract.

(2) When a work is first produced, created, or generated under this contract, and such work is required to be delivered under this contract, the Contractor shall assign copyright in those works to the Government. The Contractor, unless directed to the contrary by the Contracting Officer, shall place the following notice on such works: "© (*Year date of delivery*) United States Government, as represented by the Secretary of (*department*). All rights reserved."

For phonorecords, the "©" markings shall be replaced by a "P".

(3) The Contractor grants to the Government a royalty-free, world-wide, nonexclusive, irrevocable license to reproduce, prepare derivative works from, distribute, perform, or display, and to have or authorize others to do so, the Contractor's copyrighted works not first produced, created, or generated under this contract that have been incorporated into the works deliverable under this contract.

(d) *Third party copyrighted data.* The Contractor shall not incorporate, without the written approval of the Contracting Officer, any copyrighted works in the works to be delivered under this contract unless the Contractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license of the scope identified in paragraph (c)(3) of this clause and, prior to delivery of such works—

(1) Has affixed to the transmittal document a statement of the license rights obtained; or

(2) For computer software, has provided a statement of the license rights obtained in a form acceptable to the Contracting Officer.

(e) *Indemnification.* The Contractor shall indemnify and save and hold harmless the Government, and its officers, agents and employees acting for the Government, against any liability, including costs and expenses, (1) for violation of proprietary rights, copyrights, or rights of privacy or publicity, arising out of the creation, delivery, use, modification, reproduction, release, performance, display, or disclosure of any works furnished under this contract, or (2) based upon any libelous or other unlawful matter contained in such works.

(f) *Government-furnished information.* Paragraphs (d) and (e) of this clause are not applicable to information furnished to the Contractor by the Government and incorporated in the works delivered under this contract.

(End of clause)

252.227–7021 [Amended]

20. Section 252.227–7021 is amended by revising the introductory text to read "As prescribed at 227.7105–2(a), use the following clause:".

252.227–7022 [Amended]

21. Section 252.227–7022 is amended by revising the introductory text to read "As prescribed at 227.7107–1(a), use the following clause:".

252.227–7023 [Amended]

22. Section 252.227–7023 is amended by revising the introductory text to read "As prescribed at 227.7107–1(b), use the following clause:".

252.227–7024 [Amended]

23. Section 252.227–7024 is amended by revising the introductory text to read "As prescribed at 227.7107–3, use the following clause:".

24. Section 252.227–7025 is added to read as follows:

252.227–7025 Limitations on the use or disclosure of government-furnished information marked with restrictive legends.

As prescribed in 227.7103–6(c), 227.7104(f)(1), or 227.7203–6(d), use the following clause:

Limitations on the Use or Disclosure of Government-Furnished Information Marked With Restrictive Legends (June 1995)

(a)(1) For contracts requiring the delivery of technical data, the terms "limited rights" and "Government purpose rights" are defined in the Rights in Technical Data—Noncommercial Items clause of this contract.

(2) For contracts that do not require the delivery of technical data, the terms "government purpose rights" and "restricted rights" are defined in the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause of this contract.

(3) For Small Business Innovative Research program contracts, the terms "limited rights" and "restricted rights" are defined in the Rights in Noncommercial Technical Data and Computer Software—Small Business Innovative Research (SBIR) Program clause of this contract.

(b) Technical data or computer software provided to the Contractor as Government furnished information (GFI) under this contract may be subject to restrictions on use, modification, reproduction, release, performance, display, or further disclosure.

(1) *GFI marked with limited or restricted rights legends.* The Contractor shall use, modify, reproduce, perform, or display technical data received from the Government with limited rights legends or computer software received with restricted rights legends only in the performance of this contract. The Contractor shall not, without the express written permission of the party whose name appears in the legend, release or disclose such data or software to any person.

(2) *GFI marked with government purpose rights legends.* The Contractor shall use technical data or computer software received from the Government with government purpose rights legends for government purposes only. The Contractor shall not, without the express written permission of the party whose name appears in the restrictive legend, use, modify, reproduce, release, perform, or display such data or software for any commercial purpose or disclose such data or software to a person other than its subcontractors, suppliers, or prospective subcontractors or suppliers, who require the data or software to submit offers for, or perform, contracts under this contract. Prior to disclosing the data or software, the Contractor shall require the persons to whom disclosure will be made to complete and sign the non-disclosure agreement at 227.7103–7 of the Defense Federal Acquisition Regulation Supplement (DFARS).

(3) *GFI marked with specially negotiated license rights legends.* The Contractor shall use, modify, reproduce, release, perform, or display technical data or computer software received from the Government with specially negotiated license legends only as permitted in the license. Such data or software may not be released or disclosed to other persons unless permitted by the license and, prior to release or disclosure, the intended recipient has completed the non-disclosure agreement at DFARS 227.7103–7. The Contractor shall modify paragraph (1)(c) of the non-disclosure agreement to reflect the recipient's obligations regarding use, modification, reproduction, release, performance, display, and disclosure of the data or software.

(c) *Indemnification and creation of third party beneficiary rights.* The Contractor agrees—

(1) To indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including attorneys fees, court costs, and expenses, arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of technical data or computer software received from the Government with restrictive legends by the Contractor or any person to whom the Contractor has released or disclosed such data or software; and

(2) That the party whose name appears on the restrictive legend, in addition to any other rights it may have, is a third party beneficiary who has the right of direct action against the Contractor, or any person to whom the Contractor has released or disclosed such data or software, for the unauthorized duplication, release, or disclosure of technical data or computer software subject to restrictive legends.

(End of clause)

252.227–7026 [Amended]

25. Section 252.227–7026 is amended by revising the introductory text to read "As prescribed at 227.7103–8(a), use the following clause:".

252.227–7027 [Amended]

26. Section 252.227–7027 is amended by revising the introductory text to read "As prescribed at 227.7103–8(b), use the following clause:".

27. Section 252.227–7028 is revised to read as follows:

252.227–7028 Technical data or computer software previously delivered to the government.

As prescribed in 227.7103–6(d), 227.7104(f)(2), of 227.7203–6(e), use the following provision:

Technical Data or Computer Software Previously Delivered to the Government (June 1995)

The Offeror shall attach to its offer an identification of all documents or other media incorporating technical data or computer software it intends to deliver under this contract with other than unlimited rights that are identical or substantially similar to documents or other media that the Offeror has produced for, delivered to, or is obligated to deliver to the Government under any contract or subcontract. The attachment shall identify—

(a) The contract number under which the data or software were produced;

(b) The contract number under which, and the name and address of the organization to whom, the data or software were most recently delivered or will be delivered; and

(c) Any limitations on the Government's rights to use or disclose the data or software, including, when applicable, identification of the earliest date the limitations expire.

(End of provision)

252.227–7029 [Removed and Reserved]

28. Section 252.227–7029 is removed and reserved.

252.227–7030 [Amended]

29. Section 252.227–7030 is amended by revising the introductory text to read "As prescribed at 227.7103–6(f)(2) or 227.7104(e)(4), used the following clause:".

252.227–7031 [Removed and Reserved]

30. Section 252.227–7031 is removed and reserved.

252.227–7032 [Amended]

31. Section 252.227–7032 is amended by revising the introductory text to read "As prescribed in 227.7103–17, use the following clause:".

252.227–7033 [Amended]

32. Section 252.227–7033 is amended by revising the introductory text to read "As prescribed in 227.7107–1(c), use the following clause:".

252.227–7036 [Amended]

33. Section 252.227–7036 is amended by revising the introductory text to read "As prescribed in 227.7103–6(e)(3) or 227.7104(e)(5), use the following clause:".

34. Section 252.227–7037 is revised to read as follows:

252.227–7037 Validation of restrictive markings on technical data.

As prescribed in 227.7102–3(c), 227.7103(e)(4), 227.7104(e)(6), or 227.7203–6(f), use the following clause:

Validation of Restrictive Markings on Technical Data (June 1995)

(a) *Definitions.* The terms used in this clause are defined in the Rights in Technical Data—Noncommercial Items clause of this contract.

(b) *Contracts for commercial items—presumption of development at private expense.* Under a contract for a commercial item, component, or process, the Department of Defense shall presume that a Contractor's asserted use or release restrictions are justified on the basis that the item, component, or process was developed exclusively at private expense. The Department shall not challenge such assertions unless information the Department demonstrates that the item, component, or process was not developed exclusively at private expense.

(c) *Justification.* The Contractor or subcontractor at any tier is responsible for maintaining records sufficient to justify the validity of its markings that impose restrictions on the Government and others to use, duplicate, or disclose technical data delivered or required to be delivered under the contract or subcontract. Except under contracts for commercial items, the Contractor or subcontractor shall be prepared to furnish to the Contracting Officer a written justification for such restrictive markings in response to a challenge under paragraph (e) of this clause.

(d) *Prechallenge request for information.* (1) The Contracting Officer may request the Contractor or subcontractor to furnish a written explanation for any restriction asserted by the Contractor or subcontractor on the right of the United States or others to use technical data. If, upon review of the explanation submitted, the Contracting Officer remains unable to ascertain the basis of the restrictive marking, the Contracting Officer may further request the Contractor or subcontractor to furnish additional information in the records of, or otherwise in the possession of or reasonably available to, the Contractor or subcontractor to justify the validity of any restrictive marking on technical data delivered or to be delivered under the contract or subcontract (e.g., a statement of facts accompanied with supporting documentation). The Contractor or subcontractor shall submit such written data as requested by the Contracting Officer within the time required or such longer period as may be mutually agreed.

(2) If the Contracting Officer, after reviewing the written data furnished pursuant to paragraph (d)(1) of this clause, or any other available information pertaining to the validity of a restrictive marking, determines that reasonable grounds exist to question the current validity of the marking and that continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the technical data relates, the Contracting Officer shall follow the procedures in paragraph (e) of this clause.

(3) If the Contractor or subcontractor fails to respond to the Contracting Officer's request for information under paragraph (d)(1) of this clause, and the Contracting Officer determines that continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the technical data relates, the Contracting Officer may challenge the validity of the marking as described in paragraph (e) of this clause.

(e) *Challenge.* (1) Notwithstanding any provision of this contract concerning inspection and acceptance, if the Contracting Officer determines that a challenge to the restrictive marking is warranted, the Contracting Officer shall send a written challenge notice to the Contractor or subcontractor asserting the restrictive markings. Such challenge shall—

(i) State the specific grounds for challenging the asserted restriction;

(ii) Require a response within sixty (60) days justifying and providing sufficient evidence as to the current validity of the asserted restriction;

(iii) State that a DoD Contracting Officer's final decision, issued pursuant to paragraph (g) of this clause, sustaining the validity of a restrictive marking identical to the asserted restriction, within the three-year period preceding the challenge, shall serve as justification for the asserted restriction if the validated restriction was asserted by the same Contractor or subcontractor (or any licensee of such Contractor or subcontractor) to which such notice is being provided; and

(iv) State that failure to respond to the challenge notice may result in issuance of a final decision pursuant to paragraph (f) of this clause.

(2) The Contracting Officer shall extend the time for response as appropriate if the Contractor or subcontractor submits a written request showing the need for additional time to prepare a response.

(3) The Contractor's or subcontractor's written response shall be considered a claim within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 601, et seq.), and shall be certified in the form prescribed at 33.207 of the Federal Acquisition Regulation, regardless of dollar amount.

(4) A Contractor or subcontractor receiving challenges to the same restrictive markings from more than one Contracting Officer shall notify each Contracting Officer of the existence of more than one challenge. The notice shall also state which Contracting Officer initiated the first in time unanswered challenge. The Contracting Officer initiating the first in time unanswered challenge after consultation with the Contractor or subcontractor and the other Contracting Officers, shall formulate and distribute a schedule for responding to each of the challenge notices to all interested parties. The schedule shall afford the Contractor or subcontractor an opportunity to respond to each challenge notice. All parties will be bound by this schedule.

(f) *Final decision when Contractor or subcontractor fails to respond.* Upon a failure of a Contractor or subcontractor to submit any response to the challenge notice, other than a failure to respond under a contract for commercial items, the Contracting Officer will issue a final decision to the Contractor or subcontractor in accordance with the Disputes clause of this contract pertaining to the validity of the asserted restriction. This final decision shall be issued as soon as possible after the expiration of the time period of paragraph (e)(1)(ii) or (e)(2) of this clause. Following issuance of the final decision, the Contracting Officer will comply with the procedures in paragraphs (g)(2) (ii) through (iv) of this clause.

(g) *Final decision when Contractor or subcontractor responds.* (1) If the Contracting Officer determines that the Contractor or subcontractor has justified the validity of the restrictive marking, the Contracting Officer shall issue a final decision to the Contractor or subcontractor sustaining the validity of the restrictive marking, and stating that the Government will continue to be bound by the restrictive marking. This final decision shall be issued within sixty (60) days after receipt of the Contractor's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the Contractor or subcontractor that the Government will require. The notification of a longer period for issuance of a final decision will be made within sixty (60) days after receipt of the response to the challenge notice.

(2)(i) If the Contracting Officer determines that the validity of the restrictive marking is not justified, the Contracting Officer shall issue a final decision to the Contractor or subcontractor in accordance with the Disputes clause of this contract. Notwithstanding paragraph (e) of the Disputes clause, the final decision shall be issued within sixty (60) days after receipt of the Contractor's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the Contractor or subcontractor of the longer period that the Government will require. The notification of a longer period for issuance of a final decision will be made within sixty (60) days after receipt of the response to the challenge notice.

(ii) The Government agrees that it will continue to be bound by the restrictive marking of a period of ninety (90) days from the issuance of the Contracting Officer's final decision under paragraph (g)(2)(i) of this clause. The Contractor or subcontractor agrees that, if it intends to file suit in the United States Claims Court it will provide a notice of intent to file suit to the Contracting Officer within ninety (90) days from the issuance of the Contracting Officer's final decision under paragraph (g)(2)(i) of this clause. If the Contractor or subcontractor fails to appeal, file suit, or provide a notice of intent to file suit to the Contracting Officer within the ninety (90)-day period, the Government may cancel or ignore the restrictive markings, and the failure of the Contractor or subcontractor to take the required action constitutes agreement with such Government action.

(iii) The Government agrees that it will continue to be bound by the restrictive marking where a notice of intent to file suit in the United States Claims Court is provided to the Contracting Officer within ninety (90) days from the issuance of the final decision under paragraph (g)(2)(i) of this clause. The Government will no longer be bound, and the Contractor or subcontractor agrees that the Government may strike or ignore the restrictive markings, if the Contractor or subcontractor fails to file its suit within one (1) year after issuance of the final decision. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, that urgent or compelling circumstances will not permit waiting for the filing of a suit in the United States Claims Court, the Contractor or subcontractor agrees that the agency may, following notice to the Contractor or subcontractor, authorize release or disclosure of the technical data. Such agency determination may be made at any time after issuance of the final decision and will not affect the Contractor's or subcontractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(iv) The Government agrees that it will be bound by the restrictive marking where an appeal or suit is filed pursuant to the Contract Disputes Act until final disposition by an agency Board of Contract Appeals or the United States Claims Court. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, following notice to the Contractor that urgent or compelling circumstances will not permit awaiting the decision by such Board of Contract Appeals or the United States Claims Court, the Contractor or subcontractor agrees that the agency may authorize release or disclosure of the technical data. Such agency determination may be made at any time after issuance of the final decision and will not affect the Contractor's or subcontractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(h) *Final disposition of appeal or suit.* (1) If the Contractor or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is sustained—

(i) The restrictive marking on the technical data shall be cancelled, corrected or ignored; and

(ii) If the restrictive marking is found not to be substantially justified, the Contractor or subcontractor, as appropriate, shall be liable to the Government for payment of the cost to the Government of reviewing the restrictive marking and the fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Government in challenging the marking, unless special circumstances would make such payment unjust.

(2) If the Contractor or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is not sustained—

(i) The Government shall continue to be bound by the restrictive marking; and

(ii) The Government shall be liable to the Contractor or subcontractor for payment of fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Contractor or subcontractor in defending the marking, if the challenge by the Government is found not to have been made in good faith.

(i) *Duration of right to challenge.* The Government may review the validity of any restriction on technical data, delivered or to be delivered under a contract, asserted by the Contractor or subcontractor. During the period within three (3) years of final payment on a contract or within three (3) years of delivery of the technical data to the Government, whichever is later, the Contracting Officer may review and make a written determination to challenge the restriction. The Government may, however, challenge a restriction on the release, disclosure or use of technical data at any time if such technical data—

(1) Is publicly available;

(2) Has been furnished to the United States without restriction; or

(3) Has been otherwise made available without restriction. Only the Contracting Officer's final decision resolving a formal challenge by sustaining the validity of a restrictive marking constitutes "validation" as addressed in 10 U.S.C. 2321.

(j) *Decision not to challenge.* A decision by the Government, or a determination by the Contracting Officer, to not challenge the restrictive marking or asserted restriction shall not constitute "validation."

(k) *Privity of contract.* The Contractor or subcontractor agrees that the Contracting Officer may transact matters under this clause directly with subcontractors at any tier that assert restrictive markings. However, this clause neither creates nor implies privity of contract between the Government and subcontractors.

(l) *Flowdown.* The Contractor or subcontractor agrees to insert this clause in contractual instruments with its subcontractors or suppliers at any tier requiring the delivery of technical data.

(End of clause)

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Federal Register

Wednesday
June 28, 1995

Part III

Department of Energy

Privacy Act of 1974; Amendment of Existing Systems of Records; Notice

DEPARTMENT OF ENERGY

Privacy Act of 1974; Amendment of Existing Systems of Records

AGENCY: Department of Energy (DOE).

ACTION: Amendment of Existing Systems of Records.

SUMMARY: Federal Agencies are required by the Privacy Act of 1974 (Pub.L. 93–579, 5 U.S.C. 552a) to publish notice in the **Federal Register** of proposed amendments to the routine uses of existing systems of records. The Department of Energy proposes to amend twelve existing systems of records to permit disclosure to health studies advisory entities and disclosure for epidemiological and other health studies and surveys as a routine use of data contained in these systems. In certain of these systems, the proposed amended routine use disclosures will replace previously established routine uses pertaining to health studies so that these systems will reflect the Department's health studies program as it is currently constituted. The text of this notice itemizes the previously established routine uses and the proposed new routine uses for each of the twelve systems.

The systems of records to be amended are: DOE–01, DOE Personnel and General Employment Records; DOE–05, Personnel Records of Former Contractor Employees; DOE–13, Payroll and Leave Records; DOE–33, Personnel Medical Records; DOE–35, Personnel Radiation Exposure Records; DOE–36, Statistical Analysis Using Personnel Security Questionnaire (Health and Mortality Study); DOE–38, Occupational and Industrial Accident Records); DOE–40, Contractor Employees Insurance Claims; DOE–67, Participants in Experiments, Studies, and Surveys; DOE–71, The Radiation Accident Registry; DOE–72, The Department of Energy Radiation Study Registry; and DOE–73, The US-DTPA Registry.

DATES: The proposed revisions will become effective without further notice 40 days after publication in the **Federal Register** (August 7, 1995), unless comments are received on or before that date that would result in a contrary determination and a notice is published to that effect.

ADDRESSES: Written comments should be directed to the following address: Director, FOIA/Privacy Act Division, Office of Executive Secretariat, U.S. Department of Energy, HR–78, 1000 Independence Avenue, SW, Washington, DC 20585. Written comments will be available for inspection at the above address between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: (1) Heather Stockwell, Acting Director, Office of Epidemiologic Studies, EH–62, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, (301) 903–3721 or (2) GayLa D. Sessoms, Director, FOIA/Privacy Act Division, HR–78, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–5955 or (3) Harold Halpern, Office of General Counsel, GC–80, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–7406.

SUPPLEMENTARY INFORMATION: The Department proposes to amend the routine uses of twelve existing systems of records to permit information contained in those systems to be used in epidemiological studies and surveys. The text of this notice contains a description of each of these twelve systems of records, which was published by the National Archives and Records Administration's Office of the Federal Register in Volume I of the Federal Register's 1993 Privacy Act Issuances and Compilations. The text of this notice also includes the proposed new routine uses for each system of records.

The Department has established an epidemiology and health surveillance program to determine the health effects of the Department's activities on workers and populations having access, or in proximity, to the Department's facilities. Epidemiological studies are an important means of improving public health. They permit the scientific evaluation of the effects of exposure to potentially harmful materials by determining and quantifying health effects associated with such exposures. Health surveys, which are used to assess immediate health issues, are designed to discover the occupational source of outbreaks of illness, injury, or death, and to describe the extent of exposure to specific substances at a single point in time. Surveillance is used to identify new and emerging health problems by monitoring groups of workers, who have the same job or exposures, for changes in their illness and injury patterns over time.

Seven of these systems already have routine uses for epidemiological and health studies: DOE–5, DOE–35, DOE–36, DOE–67, DOE–71, DOE–72, DOE–73. The proposed amendments to the existing routine uses of these seven systems and the addition of these routine uses to the other five systems of records will assist the Department in studying and monitoring individual and aggregate population health risks from exposures to radiation or other hazards that may have occurred as a result of the Department's operations and other energy related activities.

Pursuant to Memoranda of Understanding with the Department of Health and Human Services ("HHS"), 56 FR 9701, March 7, 1991, and the Agency for Toxic Substances and Disease Registry ("ATSDR"), October 10, 1990, studies, surveys and surveillances will be conducted by units of the Public Health Service, including the National Institute for Occupational Safety and Health and the National Center for Environmental Health of the Centers for Disease Control and Prevention (CDC), and ATSDR, their contractors, grantees, and cooperative agreement holders.

The studies are focussed on a variety of areas that are important for assessing the real and potential health risks to workers and the public resulting from the Department's energy-related technologies and activities. The studies should provide information that is necessary for long-range energy planning pursuant to continued development of the national energy strategy. The health studies include all Department facilities and workers, including contractor employees, and other special populations that have relevance to the Department's mission. States also may perform studies as the Department's or the Department of Health and Human Services' contractors, grantees, or cooperative agreement holders.

The proposed additional routine uses to the twelve systems are:

(1) A record from this system of records may be disclosed to facilitate health hazard evaluations, epidemiological studies, or public health activities required by law performed by personnel, contractor personnel, grantees, and cooperative agreement holders of components of the Department of Health and Human Services, including the National Institute for Occupational Safety and Health and the National Center for Environmental Health of the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry pursuant to Memoranda of Understanding between the Department and the Department of Health and Human Services or its components.

(2) Subject to the same Privacy Act limitations applicable to employees of the Department, a record from this system of records may be disclosed as a routine use to contractors, grantees, participants in cooperative agreements, collaborating researchers, or their employees in performance of health studies or related health or environmental duties pursuant to their contracts, grants, and cooperating or collaborating research agreements. In order to perform such studies, the Department, its contractors, grantees, participants in cooperative agreements, and collaborating researchers may disclose a record to: Federal, state, and local health and medical agencies or authorities; to subcontractors in order to determine a subject's vital status or cause of death; to health care providers to verify a diagnosis or cause of death; or to third parties to obtain current addresses for participants in health-related studies, surveys and surveillances. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the above described research purposes.

(3) A record from this system of records may be disclosed to members of DOE advisory committees, the Department of Health and Human Services Advisory Committee on Projects Related to Department of Energy Facilities, and to designated employees of Federal, State, or local government or government-sponsored entities authorized to provide advice to the Department concerning health, safety or environmental issues. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the purpose of providing advice to the Department or to the Department of Health and Human Services.

The proposed amendments should not have adverse privacy consequences. Health studies tend to benefit persons in the studied populations by identifying possible toxic agents. Individuals are never identified in published studies and the studies are not used to support determinations concerning any individual's rights, benefits, or privileges.

Furthermore, privacy interests will be protected by a number of means. As a condition of releasing individually identifiable information for studies, surveys or surveillances conducted for DOE, persons conducting studies will be required to: (1) Keep personal information confidential; (2) use personal information only for purposes of studies in which there is no publication of the identity of any individual subject; (3) consult with DOE prior to any release of personally identifiable information obtained from DOE; (4) establish reasonable administrative, technical and physical safeguards to prevent unauthorized use or disclosure of the record; (5) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project under these same conditions and with written authorization of the Department, (c) for disclosure to an authorized person for the purpose of an audit related to the research project, and (d) when required by law. Additionally, the Department will secure a written statement attesting to the recipient's understanding of, and willingness to abide by, these provisions. The provisions in this paragraph apply to DOE collaborating researchers, not those studies being performed by the Department of Health and Human Services.

Privacy safeguards are in place regarding the studies to be conducted pursuant to the Memoranda of Understanding with Department of Health and Human Services or its components. Department of Health and Human Services has agreed: (1) Not to use or disclose any personally-identifiable information obtained from DOE or its contractors and grantees except for research purposes or other public health activities required by law; (2) not to use information in identifiable form to make any determination about the rights, benefits, or privileges of any individual; (3) to use and disclose information in accord with agreements under which the personally-identifiable information was obtained by the Department or its contractors, provided such use or disclosure is consistent with applicable law; (4) to notify the Department of any efforts to use or obtain personally-identifiable information for purposes other than research or other public health activities required by law; (5) to use and take appropriate steps to prevent improper disclosure; (6) to establish or modify Privacy Act systems of records broadening the "Categories of Individuals" section to specifically address information provided by DOE, as necessary, and consult with the Department concerning provisions of Privacy Act systems of records notices. Additionally, Department of Health and Human Services requires its contractors, grantees, and cooperative agreement holders performing epidemiological studies and other public health activities to abide by conditions similar to those imposed by the Department, as described in this paragraph.

The types of records needed will be determined by the design and goals of each particular study. Examples of possible types of data needed from the twelve systems of records include, questionnaires, demographic information, work history, medical and reproductive history, birth data, radiation and other exposure history, laboratory test results, data from prior health studies, surveys, and surveillances; and alcohol and tobacco use history. Data of this type are found in records such as health study or personnel files and lists, training files, medical records, legal case files, bioassay records, industrial hygiene files, radiation and other hazard exposure records, occupational and industrial accident records, employee medical insurance claims, personnel security clearance questionnaires, and employee and visitor access control records.

In 1989, the Department published a proposed establishment of two routine uses for DOE–5, DOE–33, DOE–35, DOE–71, DOE–72, and DOE–73 (54 FR 47808 dated November 17, 1989). The two proposed routine uses were published as follows: (1) "A record from this system of records may be disclosed to researchers for the purpose of conducting an epidemiological study of workers at a DOE facility if their proposed studies have been reviewed by the National Academy of Sciences and deemed appropriate for such access. A researcher granted access to these records shall be required to sign an agreement to protect the confidentiality of the data and be subject to the same restrictions applicable to DOE officers and employees under the Privacy Act." (2) "A record from this system of records may be disclosed to a member of an advisory committee for purposes of conducting a review of the DOE's epidemiologic program. Members of an advisory committee who obtain access to the records shall be subject to the same restrictions applicable to DOE officers and employees under the Privacy Act." The Department received comments to the contrary on the proposed routine uses, but did not publish a response to the comments. This notice eliminates the above-mentioned routine uses and proposes to establish new routine uses for the twelve systems of records for the purposes of performing epidemiological studies.

The Department is submitting the report required by Office of Management and Budget Circular A–130 concurrently with the publication of

this notice. The text of this notice contains the information required by section (e)(4)(d) of the Privacy Act, 5 U.S.C. 552a(e)(4)(d).

Issued in Washington, DC this 19th day of June, 1995.

Thomas T. Tamura,

Principal Deputy Assistant Secretary for Human Resources and Administration.

DOE–1

SYSTEM NAME:

DOE Personnel and General Employment Records.

SYSTEM LOCATION:

U.S. Department of Energy, Alaska Power Administration, 2770 Sherwood Lane, Juneau, AK 99801–8545
U.S. Department of Energy, Albuquerque Operations Office, PO Box 5400, Albuquerque, NM 87185–5400
U.S. Department of Energy, Bartlesville Project Office, 220 North Virginia Avenue, PO Box 1398, Bartlesville, OK 74003
U.S. Department of Energy, Bonneville Power Administration, PO Box 3621, Portland, OR 97208
U.S. Department of Energy, Chicago Operations Office, 9800 South Cass Avenue, Argonne, IL 60439
U.S. Department of Energy, Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401
U.S. Department of Energy, Grand Junction, PO Box 2567, Grand Junction, CO 81502–2567
U.S. Department of Energy, Headquarters, Washington, DC 20585
U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, ID 83401
U.S. Department of Energy, Morgantown Energy Technology Center, 3610 Collins Ferry Road, PO Box 880, Morgantown, WV 26507–0880
U.S. Department of Energy, Nevada Operations Office, PO Box 98518, Las Vegas, NV 89193–8518
U.S. Department of Energy, Oak Ridge Operations Office, PO Box 2001, Oak Ridge, TN 37831
U.S. Department of Energy, Oakland Operations Office, 1301 Clay Street, Oakland, CA 94612–52019
U.S. Department of Energy, Ohio Field Office, 1 Mound Road, Miamisburg, OH 45342
U.S. Department of Energy, Pittsburgh Energy Technology Center, PO Box 10940, Pittsburgh, PA 15236–0940
U.S. Department of Energy, Pittsburgh Naval Reactors, PO Box 109, West Mifflin, PA 15122–0109
U.S. Department of Energy, Richland Operations Office, 825 Jadwin Avenue, PO Box 550, Richland, WA 99352
U.S. Department of Energy, Rocky Flats Office, PO Box 928, Golden, CO 80402–0928
U.S. Department of Energy, Savannah River Operations Office, PO Box A, Aiken, SC 29801
U.S. Department of Energy, Schenectady Naval Reactors Office, PO Box 1069, Schenectady, NY 12301
U.S. Department of Energy, Southeastern Power Administration, Samuel Elbert Building, Public Square, Elberton, GA 30635
U.S. Department of Energy, Southwestern Power Administration, PO Box 1619, Tulsa, OK 74101
U.S. Department of Energy, Strategic Petroleum Reserve Project Office, 900 Commerce Road East, New Orleans, LA 70123
U.S. Department of Energy, Western Area Power Administration, PO Box 3402, Golden, CO 80401

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees, consultants, board members, and applicants (only to the extent they are considered for competitive selection), specifically including all such personnel of the Federal Energy Regulatory Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, social security number, sex, grade level, occupational code, Official Personnel Folders (SF–66), Service Record Cards (SF–7), records on suggestions and awards, training request and authorization data, training course evaluation statements, appraisals resulting from annual supervisor-employee review, pay requests and dispositions, reduction in-force registers (including associated records of competitive levels and competitive areas), reemployment and repromotion priority lists, retirement-associated eligibility and calculations, records on competitive selections (Form 178, Standard Form 39, and supporting documents), central copy of approved position descriptions, correspondence related to and copies of employee appeals, grievances, and complaints, including records of hearings or examiners reports, lists of separated employees, correspondence from employees requesting transfer or reassignment, average grade data, minority group code, data related to and derived from the Payroll/Personnel System (PAY/PERS) and Energy, Manpower and Personnel Reporting Information System (EMPRIS).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. In the event that a record within this system of records maintained by this agency indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program pursuant thereto, the relevant records in the system of records may be referred as a routine use to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

2. A record from this system of records may be disclosed as a routine use to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information, such as current licenses, if necessary, to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract or the issuance of a license, grant, or other benefit.

3. A record from this system of record may be disclosed, as a routine use, to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

4. A record from this system of records may be disclosed, as a routine use, (a) to appropriate parties engaged in litigation or in preparation of possible litigation, such as potential witnesses, for the purpose of securing their testimony when necessary; (b) to courts, magistrates or administrative tribunals; (c) to parties and their attorneys for the purpose of proceeding with litigation or settlement of disputes; and (d) to individuals seeking information by using established discovery procedures, whether in connection with civil, criminal, or regulatory proceedings.

5. A record maintained by this agency to carry out its functions which relates to civil and criminal proceedings may be disclosed to the news media in accordance with guidelines contained in Department of Justice regulations 28 CFR 50.2.

6. A record maintained by this agency to carry out its functions may be disclosed to foreign governments in accordance with treaty obligations.

7. A record from this system of records may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

8. A record from this system of records may be disclosed, as a routine use, to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

9. A record in this system of records may be disclosed, as a routine use, to a member of Congress submitting a request involving the individual when the individual is a constituent of the member and has requested assistance from the member with respect to the subject matter of the record.

10. A record in this system of records which contains medical and/or psychological information may be disclosed, as a routine use, to the physician or mental health professional of any individual submitting a request for access to the record under the Privacy Act of 1974 and DOE's Privacy Act regulations if, in its sole judgment and good faith, DOE believes that disclosure of the medical and/or psychological information directly to the individual who is the subject of the record could have an adverse effect upon that individual, in accordance with the provisions of 5 U.S.C. 552a(f)(3) and applicable DOE regulations.

11. A record from this system of records may be disclosed to facilitate health hazard evaluations, epidemiological studies, or public health activities required by law performed by personnel, contractor personnel, grantees, and cooperative agreement holders of components of the Department of Health and Human Services, including the National Institute for Occupational Safety and Health and the National Center for Environmental Health of the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry pursuant to Memoranda of Understanding between the Department and the Department of Health and Human Services or its components.

12. Subject to the same Privacy Act limitations applicable to employees of the Department, a record from this system of records may be disclosed as a routine use to contractors, grantees, participants in cooperative agreements, collaborating researchers, or their employees, in performance of health studies or related health or environmental duties pursuant to their contracts, grants, and cooperating or collaborating research agreements. In order to perform such studies, the Department, its contractors, grantees, participants in cooperative agreements, and collaborating researchers may disclose a record to: Federal, state and local health and medical agencies or authorities; to subcontractors in order to determine a subject's vital status or cause of death; to health care providers to verify a diagnosis or cause of death; or to third parties to obtain current addresses for participants in health-related studies, surveys and surveillances. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the above described research purposes.

13. A record from this system of records may be disclosed to members of DOE advisory committees, the Department of Health and Human Services Advisory Committee on Projects Related to Department of Energy Facilities and to designated employees of Federal, State, or local government or government-sponsored entities authorized to provide advice to the Department concerning health, safety or environmental issues. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the purpose of providing advice to the Department or to the Department of Health and Human Services.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, computer printouts, punched cards, magnetic tape and disk, and microfilm.

RETRIEVABILITY:

By name and social security number.

SAFEGUARDS:

Records are maintained in locked file cabinets in controlled access rooms. Computerized records are maintained in the DOE computer center with access limited to those with a need-to-know.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the General Records Schedule and DOE records schedules which have been approved by the National Archives and Records Administration. Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Director, Office of Personnel, HR–32, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The managers and directors of personnel in the locations where the records are maintained are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURE:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, FOIA and Privacy Act Division, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate Field Office; in accordance with DOE 's Privacy Act regulations (10 CFR part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, and, if appropriate, the geographic location(s) and organization(s) where requester believes such record may be located, social security number, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The subject individual, supervisors, other Government agencies, former employers, and references provided by subject individual.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Secretary has exempted this system from subsection (c)(3), (d), (e)(1), (e)(4), (G), (H), (I) and (f) of 5 U.S.C. 552a under the Privacy Act of 1974. This exemption applies only to information in this system of records which is exempt pursuant to 5 U.S.C. 552a (k)(2), and (6).

DOE–5

SYSTEM NAME:

Personnel Records of Former Contractor Employees.

SYSTEM LOCATION:

U.S. Department of Energy, Albuquerque Operations Office, PO Box 5400, Albuquerque, NM 87115
U.S. Department of Energy, Chicago Operations Office, 9800 South Cass Avenue, Argonne, IL 60439
U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, ID 83402
U.S. Department of Energy, Nevada Operations Office, PO Box 98518, Las Vegas, NV 89193–8518
U.S. Department of Energy, Oakland Operations Office, 1301 Clay Street, Oakland, CA 94612–52019
U.S. Department of Energy, Oak Ridge Operations Office, PO Box E, Oak Ridge, TN 37830
U.S. Department of Energy, Pittsburgh Naval Reactors, PO Box 109, West Mifflin, PA 15122–0109
U.S. Department of Energy, Richland Operations Office, 825 Jadwin Avenue, PO Box 550, Richland, WA 99352
U.S. Department of Energy, Savannah River Operations Office, PO Box A, Aiken, SC 29801
U.S. Department of Energy, Schenectady Naval Reactors Office, PO Box 1069, Schenectady, NY 12301
U.S. Department of Energy, Southeastern Power Administration, Samuel Elbert Building, Public Square, Elberton, GA 30635
U.S. Department of Energy, Southwestern Power Administration, PO Box 1619, Tulsa, OK 74101
U.S. Department of Energy, Western Area Power Administration, PO Box 3402, Golden, CO 80401

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Former contractor employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, employment history, earnings, medical history, and other related information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine uses of records include employment history verification, radiation exposure records for medical and litigation purposes, and issuance of clearances.

1. In the event that a record within this system of records maintained by this agency indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program pursuant thereto, the relevant records in the system of records may be referred as a routine use to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

2. A record from this system of records may be disclosed as a routine use to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information, such as current licenses, if necessary, to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract or the issuance of a license, grant, or other benefit.

3. A record from this system of records may be disclosed, as a routine use, to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

4. A record from this system of records may be disclosed, as a routine use, (a) to appropriate parties engaged in litigation or in preparation of possible litigation, such as potential witnesses, for the purpose of securing their testimony when necessary; (b) to courts, magistrates or administrative tribunals; (c) to parties and their attorneys for the purpose of proceeding with litigation or settlement of disputes; and (d) to individuals seeking information by using established discovery procedures, whether in connection with civil, criminal, or regulatory proceedings.

5. A record maintained by this agency to carry out its functions which relates to civil and criminal proceedings may be disclosed to the news media in accordance with guidelines contained in Department of Justice regulations at 28 CFR 50.2.

6. A record maintained by this agency to carry out its functions may be disclosed to foreign governments in accordance with treaty obligations.

7. A record from this system of records may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

8. A record from this system of records may be disclosed, as a routine use, to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

9. A record in this system of records may be disclosed, as a routine use, to a member of Congress submitting a request involving the individual when the individual is a constituent of the member and has requested assistance from the member with respect to the subject matter of the record.

10. A record in this system of records which contains medical and/or psychological information may be disclosed, as a routine use, to the physician or mental health professional of any individual submitting a request for access to the record under the Privacy Act of 1974 and DOE's Privacy Act regulations if, in its sole judgment and good faith, DOE believes that disclosure of the medical and/or psychological information directly to the individual who is the subject of the record could have an adverse effect upon that individual, in accordance with the provisions of 5 U.S.C. 552a(f)(3) and applicable DOE regulations.

11. A record from this system of records may be disclosed to facilitate health hazard evaluations, epidemiological studies, or public health activities required by law performed by personnel, contractor personnel, grantees, and cooperative agreement holders of components of the Department of Health and Human Services, including the National Institute for Occupational Safety and Health and the National Center for Environmental Health of the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry pursuant to Memoranda of Understanding between the Department and the Department of Health and Human Services or its components.

12. Subject to the same Privacy Act limitations applicable to employees of the Department, a record from this system of records may be disclosed as a routine use to contractors, grantees, participants in cooperative agreements, collaborating researchers, or their employees, in performance of health studies or related health or environmental duties pursuant to their contracts, grants, and cooperating or collaborating research agreements. In order to perform such studies, the Department, its contractors, grantees, participants in cooperative agreements, and collaborating researchers may disclose a record to: Federal, state and local health and medical agencies or authorities; to subcontractors in order to determine a subject's vital status or cause of death; to health care providers to verify a diagnosis or cause of death; or to third parties to obtain current addresses for participants in health-related studies, surveys and surveillances. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the above described research purposes.

13. A record from this system of records may be disclosed to members of DOE advisory committees, the Department of Health and Human Services Advisory Committee on Projects Related to Department of Energy Facilities and to designated employees of Federal, State, or local government or government-sponsored entities authorized to provide advice to the Department concerning health, safety or environmental issues. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the purpose of providing advice to the Department or to the Department of Health and Human Services.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Records are maintained in locked or guarded buildings.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the General Records Schedule and DOE records schedules which have been approved by the National Archives and Records Administration. Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Director, Office of Contractor Human Resource Management, HR–524 U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585

Field Offices: The managers and directors of personnel in the locations where the records are maintained are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURE:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, FOIA and Privacy Act Division, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate field office in accordance with DOE's Privacy Act regulations (10 CFR part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, the geographic location(s) and organization(s) where requester believes such record may be located, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The subject individual's employer.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–13

SYSTEM NAME:

Payroll and Leave Records.

SYSTEM LOCATION:

U.S. Department of Energy, Alaska Power Administration, 2770 Sherwood Lane, Juneau, AK 99801–8545
U.S. Department of Energy, Albuquerque Operations Office, PO Box 5400, Albuquerque, NM 87185–5400
U.S. Department of Energy, Bartlesville Project Office, 220 North Virginia Avenue, PO Box 1398, Bartlesville, OK 74003
U.S. Department of Energy, Bonneville Power Administration, PO Box 3621, Portland, OR 97208
U.S. Department of Energy, Chicago Operations Office, 9800 South Cass Avenue, Argonne, IL 60439
U.S. Department of Energy, Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401
U.S. Department of Energy, Grand Junction, PO Box 2567, Grand Junction, CO 81502–2567
U.S. Department of Energy, Headquarters, Washington, DC 20585
U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, ID 83401
U.S. Department of Energy, Morgantown Energy Technology Center, 3610 Collins Ferry Road, PO Box 880, Morgantown, WV 26507–0880
U.S. Department of Energy, Nevada Operations Office, PO Box 98518, Las Vegas, NV 89193–8518
U.S. Department of Energy, Oak Ridge Operations Office, PO Box 2001, Oak Ridge, TN 37831
U.S. Department of Energy, Oakland Operations Office, 1301 Clay Street, Oakland, CA 94612–52019
U.S. Department of Energy, Ohio Field, Office, 1 Mound Road, Miamisburg, OH 45342
U.S. Department of Energy, Pittsburgh Energy Technology Center, PO Box 10940, Pittsburgh, PA 15236–0940
U.S. Department of Energy, Pittsburgh Naval Reactors, PO Box 109, West Mifflin, PA 15122–0109
U.S. Department of Energy, Richland Operations Office, 825 Jadwin Avenue, PO Box 550, Richland, WA 99352
U.S. Department of Energy, Rocky Flats Office, PO Box 928, Golden, CO 80402–0928
U.S. Department of Energy, Savannah River Operations Office, PO Box A, Aiken, SC 29801
U.S. Department of Energy, Schenectady Naval Reactors Office, PO Box 1069, Schenectady, NY 12301
U.S. Department of Energy, Southeastern Power Administration, Samuel Elbert Building, Public Square, Elberton, GA 30635
U.S. Department of Energy, Southwestern Power Administration, PO Box 1619, Tulsa, OK 74101
U.S. Department of Energy, Strategic Petroleum Reserve Project Office, 900 Commerce Road East, New Orleans, LA 70123
U.S. Department of Energy, Western Area Power Administration, PO Box 3402, Golden, CO 80401

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DOE personnel and consultants, specifically including personnel and consultants of the Federal Energy Regulatory Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Time and attendance records, earning records, payroll actions, deduction information requests, authorizations for overtime, and night differential, and Office of Personnel Management retirement records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Treasury Department—To collect withheld taxes, print payroll checks and issue savings bonds.

2. Internal Revenue Service—To process Federal income tax.
3. State and Local Governments—To process state and local income tax processing.
4. Office of Personnel Management—Retirement records and benefits.
5. Social Security Administration—Social Security records and benefits.
6. Department of Labor—To process Workmen's Compensation claims.
7. Department of Defense—Military Retired Pay Offices—To adjust Military Retirement.
8. Savings Institutions—To credit accounts for savings made through payroll deductions.
9. Employee Unions—To credit accounts for employees with union dues deductions.
10. Health Insurance Carriers—To process insurance claims.
11. General Accounting Office—Audit—To verify accuracy and legality of disbursement.
12. Veterans' Administration—To evaluate veteran's benefits to which the individual may be entitled.
13. States' Departments of Employment Security—To determine entitlement to unemployment compensation or other state benefits.
14. In the event that a record within this system of records maintained by this agency indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program pursuant thereto, the relevant records in the system of records may be referred as a routine use to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.
15. A record from this system of records may be disclosed as a routine use to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information, such as current licenses, if necessary, to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract or the issuance of a license, grant, or other benefit.
16. A record from this system of record may be disclosed, as a routine use, to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.
17. A record from this system of records may be disclosed, as a routine use, (a) to appropriate parties engaged in litigation or in preparation of possible litigation, such as potential witnesses, for the purpose of securing their testimony when necessary; (b) to courts, magistrates or administrative tribunals; (c) to parties and their attorneys for the purpose of proceeding with litigation or settlement of disputes; and (d) to individuals seeking information by using established discovery procedures, whether in connection with civil, criminal, or regulatory proceedings.
18. A record maintained by this agency to carry out its functions which relates to civil and criminal proceedings may be disclosed to the news media in accordance with guidelines contained in Department of Justice regulations 28 CFR 50.2.
19. A record maintained by this agency to carry out its functions may be disclosed to foreign governments in accordance with treaty obligations.
20. A record from this system of records may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.
21. A record from this system of records may be disclosed, as a routine use, to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties subject to the same limitations applicable to DOE officers and employees under the Privacy Act.
22. A record in this system of records may be disclosed, as a routine use, to a member of Congress submitting a request involving the individual when the individual is a constituent of the member and has requested assistance from the member with respect to the subject matter of the record.
23. A record in this system of records which contains medical and/or psychological information may be disclosed, as a routine use, to the physician or mental health professional of any individual submitting a request for access to the record under the Privacy Act of 1974 and DOE's Privacy Act regulations if, in its sole judgment and good faith, DOE believes that disclosure of the medical and/or psychological information directly to the individual who is the subject of the record could have an adverse effect upon that individual, in accordance with the provisions of 5 U.S.C. 552a(f)(3) and applicable DOE regulations.
24. A record from this system of records may be disclosed to facilitate health hazard evaluations, epidemiological studies, or public health activities required by law performed by personnel, contractor personnel, grantees, and cooperative agreement holders of components of the Department of Health and Human Services, including the National Institute for Occupational Safety and Health and the National Center for Environmental Health, of the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry pursuant to Memoranda of Understanding between the Department and the Department of Health and Human Services or its components.
25. Subject to the same Privacy Act limitations applicable to employees of the Department, a record from this system of records may be disclosed as a routine use to contractors, grantees, participants in cooperative agreements, collaborating researchers, or their employees, in performance of health studies or related health or environmental duties pursuant to their contracts, grants, and cooperating or collaborating research agreements. In order to perform such studies, the Department, its contractors, grantees, participants in cooperative agreements, and collaborating researchers may disclose a record to: federal, state and local health and medical agencies or authorities; to subcontractors in order to determine a subject's vital status or cause of death; to health care providers to verify a diagnosis or cause of death; or to third parties to obtain current addresses for participants in health-related studies, surveys and surveillances. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the above described research purposes.
26. A record from this system of records may be disclosed to members of DOE advisory committees, the Department of Health and Human Services Advisory Committee on Projects Related to Department of Energy Facilities and to designated employees of Federal, State, or local government or government-sponsored entities authorized to provide advice to the Department concerning health, safety or environmental issues. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the purpose of providing advice to the Department or to the Department of Health and Human Services.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, punched cards, magnetic tape and disc, and microfiche.

RETRIEVABILITY:

By name, social security number, and payroll number.

SAFEGUARDS:

Access to magnetic tapes and disc files is controlled through established DOE computer center procedures (personnel screening and physical security). Paper records are maintained in locked cabinets and desks. Access to any record is on a need-to-know basis.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the General Records Schedule and DOE records schedules which have been approved by the National Archives and Records Administration. Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Office of the Chief Financial Officer, CR–1, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The managers and directors of field locations are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURE:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, FOIA and Privacy Act Division, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate field location; in accordance with DOE's Privacy Act regulations (10 CFR part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, social security number, location(s) of employment, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The subject individual, supervisors, timekeepers, official personnel records, and the IRS.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–33

SYSTEM NAME:

Personnel Medical Records.

SYSTEM LOCATION:

U.S. Department of Energy, Alaska Power Administration, 2770 Sherwood Lane, Juneau, AK 99801–8545
U.S. Department of Energy, Albuquerque Operations Office, PO Box 5400, Albuquerque, NM 87185–5400
U.S. Department of Energy, Allied-Signal, Kansas City Division, PO Box 419159, Kansas City, MO 64141
U.S. Department of Energy, Amarillo Area Office, PO Box 30030, Amarillo, TX 79120–0030
U.S. Department of Energy, Ames Laboratory, Iowa State University, Ames, Iowa 50011
U.S. Department of Energy, Argonne Area Office, 9800 South Cass Avenue, Argonne, IL 60439
U.S. Department of Energy, Bartlesville Project Office, 220 North Virginia Avenue, PO Box 1398, Bartlesville, OK 74003
U.S. Department of Energy, Batavia Area Office, PO Box 2000, Batavia, IL 60510
U.S. Department of Energy, Bettis Atomic Power Laboratory, PO Box 79, Pittsburgh, PA 15122–0079
U.S. Department of Energy, Bonneville Power Administration, PO Box 3621, Portland, OR 97208
U.S. Department of Energy, Brookhaven Area Office, 53 Bell Avenue, Bldg 464, Upton, NY 11973
U.S. Department of Energy, Chicago Operations Office, 9800 South Cass Avenue, Argonne, IL 60439
U.S. Department of Energy, Continuous Electron Beam Accelerator Facility, 12000 Jefferson Avenue, Newport News, Virginia 23606
U.S. Department of Energy, Dayton Area Office, PO Box 66, Miamisburg, OH 45342–0066
U.S. Department of Energy, EG&G Mound Applied Technologies, PO Box 3000, Miamisburg, Ohio 45343–3000
U.S. Department of Energy, Environmental Measurements Laboratory, 376 Hudson Street, New York, NY 10014–3621
U.S. Department of Energy, Fermi National Accelerator Laboratory, PO Box 500, Batavia, Illinois 60510
U.S. Department of Energy, Fernald Environmental Restoration Management Corporation, PO Box 398704, Cincinnati, Ohio 45239–8704
U.S. Department of Energy, Fernald Field Office, 7400 Willey Road, Cincinnati, OH 45030
U.S. Department of Energy, Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401
U.S. Department of Energy, Grand Junction, PO Box 2567, Grand Junction, CO 81502–2567
U.S. Department of Energy, Headquarters, Washington, DC 20585
U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, ID 83401
U.S. Department of Energy, Inhalation Toxicology Research Institute, PO Box 5890, Albuquerque, New Mexico 87185
U.S. Department of Energy, Kansas City Area Office, PO Box 410202, Kansas City, MO 64141–0202
U.S. Department of Energy, Kirtland Area Office, PO Box 5400, Albuquerque, NM 87185–5400
U.S. Department of Energy, Knolls Atomic Power Laboratory, PO Box 1072, Schenectady, NY 12301
U.S. Department of Energy, Lawrence Livermore National Laboratory, PO Box 808, Livermore, California 94551
U.S. Department of Energy, Lawrence Berkeley Laboratory, One Cyclotron Road, Building 26, Room 143, Berkeley, California 94720
U.S. Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87544
U.S. Department of Energy, Lockheed Martin Energy Systems, Inc., Y–12 Plant, PO Box 2009, Oak Ridge, Tennessee 37831–8103
U.S. Department of Energy, Lockheed Martin Energy Systems, Inc., K–25 Plant, PO Box 2003, Oak Ridge, Tennessee 37831–7422
U.S. Department of Energy, MK Ferguson of Oak Ridge Company, PO Box 2011, Oak Ridge, Tennessee 37831–2011
U.S. Department of Energy, Morgantown Energy Technology Center, 3610 Collins Ferry Road, PO Box 880, Morgantown, WV 26507–0880
U.S. Department of Energy, National Institute for Petroleum and Energy Research, BDM-Oklahoma, Inc., PO Box 2565, Bartlesville, Oklahoma 74005
U.S. Department of Energy, National Renewable Energy Laboratory Area

Office, 1617 Cole Boulevard, Golden, CO 80401–3393
U.S. Department of Energy, Naval Petroleum and Oil Shale Reserves, 907 N. Poplar, Suite 150, Casper, WY 82601
U.S. Department of Energy, Naval Petroleum Reserves in California, 28590 Highway 119, PO Box 11, Tupman, CA 93276
U.S. Department of Energy, Naval Reactors Representative Office, Naval Base Branch Post Office, General Delivery, Charleston Naval Shipyard, Charleston, SC 29408–5615
U.S. Department of Energy, Naval Reactors Representative Office, PO Box 7021, Groton, CT 06340
U.S. Department of Energy, Naval Reactors Representative Office, Mare Island Naval Shipyard, PO Box 2053, Vallejo, CA 94592
U.S. Department of Energy, Naval Reactors Representative Office, Newport News Shipbuilding & Dry Dock Company, PO Box 973, Newport News, VA 23607
U.S. Department of Energy, Naval Reactors Representative Office, Norfolk Naval Shipyard, PO Box 848, Portsmouth, VA 23705–0848
U.S. Department of Energy, Naval Reactors Representative Office, Pearl Harbor Naval Shipyard, PO Box 128, Pearl Harbor, HI 96860
U.S. Department of Energy, Naval Reactors Representative Office, Portsmouth Naval Shipyard, Naval Base Branch, PO Box 2008, Portsmouth, NH 03801–2008
U.S. Department of Energy, Naval Reactors Representative Office, Puget Sound Naval Shipyard Substation, PO Box 1A, Bremerton, WA 98314
U.S. Department of Energy, Nevada Test Site, Mercury, Mercury, NV 89023
U.S. Department of Energy, Nevada Operations Office, PO Box 98518, Las Vegas, NV 89193–8518
U.S. Department of Energy, New Brunswick Laboratory, 9800 South Cass Avenue, Argonne, IL 60439
U.S. Department of Energy, Oak Ridge Operations Office, PO Box 2001, Oak Ridge, TN 37831
U.S. Department of Energy, Oakland Operations Office, 1301 Clay Street, Oakland, CA 94612–52019
U.S. Department of Energy, Ohio Field Office, 1 Mound Road, Miamisburg, OH 45342
U.S. Department of Energy, Phoenix Area Office, PO Box 6457, Phoenix, AZ 85005
U.S. Department of Energy, Pinellas Area Office, PO Box 2900, Largo, FL 34649
U.S. Department of Energy, Pittsburgh Naval Reactors Office, PO Box 109, West Mifflin, PA 15122–0109
U.S. Department of Energy, Pittsburgh Energy Technology Center, PO Box 10940, Pittsburgh, PA 15236–0940
U.S. Department of Energy, Plasma Physics Laboratory, James Forrestal Campus, Princeton University, PO Box 451, Princeton, New Jersey 08543
U.S. Department of Energy, Portsmouth Enrichment Office, PO Box 700, Piketon, OH 45661
U.S. Department of Energy, Princeton Area Office, PO Box 102, Princeton, NJ 08542
U.S. Department of Energy, Radiological and Environmental Sciences Laboratory, 785 DOE Place, Idaho Falls, ID 83402
U.S. Department of Energy, Richland Operations Office, 825 Jadwin Avenue, PO Box 550, Richland, WA 99352
U.S. Department of Energy, Rocketdyne—Rockwell Aerospace, 6633 Canoga Avenue, PO Box 7922, Department 056 EA08, Canoga Park, California 91309–7922
U.S. Department of Energy, Rocky Flats Office, PO Box 928, Golden, CO 80402–0928
U.S. Department of Energy, Sandia National Laboratories, PO Box 5800; Albuquerque, NM 87115
U.S. Department of Energy, Savannah River Operations Office, PO Box A, Aiken, SC 29801
U.S. Department of Energy, Schenectady Naval Reactors Office, PO Box 1069, Schenectady, NY 12301
U.S. Department of Energy, Southeastern Power Administration, Samuel Elbert Building, Public Square, Elberton, GA 30635
U.S. Department of Energy, Southwestern Power Administration, PO Box 1619, Tulsa, OK 74101
U.S. Department of Energy, Stanford Linear Accelerator Center, PO Box 4349, Stanford, California 94309
U.S. Department of Energy, Strategic Petroleum Reserve Project Office, 900 Commerce Road East, New Orleans, LA 70123
U.S. Department of Energy, Waste Isolation Pilot Plant, Westinghouse Electric Company, Waste Isolation Division, PO Box 2078, Carlsbad, New Mexico 88220
U.S. Department of Energy, Weldon Spring Site Remedial Action Project, 7295 Highway 94 South, St. Charles, Missouri 63304
U.S. Department of Energy, West Valley Nuclear Service Company, Inc., 10282 Rock Springs Road, PO Box 191, MS: F, West Valley, New York 14171
U.S. Department of Energy, Waste Isolation Pilot Project Office, PO Box 3090, Carlsbad, NM 88221
U.S. Department of Energy, Western Area Power Administration, PO Box 3402, Golden, CO 80401
U.S. Department of Energy, Westinghouse Electric Corporation, Bettis Atomic Power Laboratory, Naval Reactors Facility, PO Box 2068, Idaho Falls, ID 83403–2068

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former DOE employees and DOE contractor employees. This system includes individuals admitted to or treated at Kadlec Hospital, Richland, prior to September 9, 1956.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical histories on employees resulting from medical examination and radiation exposure. In cases of injury, description of injury occurrence and treatment. In addition, medical records of periodic physical examinations and psychological testing, blood donor program records, audiometric testing, routine first aid, and other visits. Also, hospital in-patients at Kadlec Hospital. Records kept on the results of work place and medical monitoring of individuals for exposure to chemical and physical agents (not covered in DOE–35) and related work history data.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Physicians, U.S. Department of Labor, various state departments of labor and industry groups, and contractors use information (a) to ascertain suitability of an employee for job assignments with regard to health, (b) to provide benefits under Federal programs or contracts, and (c) to maintain a record of occupational injuries or illnesses and the performance of regular diagnostic and treatment services to patients.

2. In the event that a record within this system of records maintained by this agency indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program pursuant thereto, the relevant records in the system of records may be referred as a routine use to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

3. A record from this system of records may be disclosed as a routine use to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information, such as current licenses, if necessary, to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract or the issuance of a license, grant, or other benefit.

4. A record from this system of record may be disclosed, as a routine use, to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

5. A record from this system of records may be disclosed, as a routine use, (a) to appropriate parties engaged in litigation or in preparation of possible litigation, such as potential witnesses, for the purpose of securing their testimony when necessary; (b) to courts, magistrates or administrative tribunals; (c) to parties and their attorneys for the purpose of proceeding with litigation or settlement of disputes; and (d) to individuals seeking information by using established discovery procedures, whether in connection with civil, criminal, or regulatory proceedings.

6. A record maintained by this agency to carry out its functions which relates to civil and criminal proceedings may be disclosed to the news media in accordance with guidelines contained in Department of Justice regulations 28 CFR 50.2.

7. A record maintained by this agency to carry out its functions may be disclosed to foreign governments in accordance with treaty obligations.

8. A record from this system of records may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

9. A record from this system of records may be disclosed, as a routine use, to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

10. A record in this system of records may be disclosed, as a routine use, to a member of Congress submitting a request involving the individual when the individual is a constituent of the member and has requested assistance from the member with respect to the subject matter of the record.

11. A record in this system of records which contains medical and/or psychological information may be disclosed, as a routine use, to the physician or mental health professional of any individual submitting a request for access to the record under the Privacy Act of 1974 and DOE's Privacy Act regulations if, in its sole judgment and good faith, DOE believes that disclosure of the medical and/or psychological information directly to the individual who is the subject of the record could have an adverse effect upon that individual, in accordance with the provisions of 5 U.S.C. 552a(f)(3) and applicable DOE regulations.

12. A record from this system of records may be disclosed to facilitate health hazard evaluations, epidemiological studies, or public health activities required by law performed by personnel, contractor personnel, grantees, and cooperative agreement holders of components of the Department of Health and Human Services, including the National Institute for Occupational Safety and Health and the National Center for Environmental Health of the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry pursuant to Memoranda of Understanding between the Department and the Department of Health and Human Services or its components.

13. Subject to the same Privacy Act limitations applicable to employees of the Department, a record from this system of records may be disclosed as a routine use to contractors, grantees, participants in cooperative agreements, collaborating researchers, or their employees, in performance of health studies or related health or environmental duties pursuant to their contracts, grants, and cooperating or collaborating research agreements. In order to perform such studies, the Department, its contractors, grantees, participants in cooperative agreements, and collaborating researchers may disclose a record to: Federal, state and local health and medical agencies or authorities; to subcontractors in order to determine a subject's vital status or cause of death; to health care providers to verify a diagnosis or cause of death; or to third parties to obtain current addresses for participants in health-related studies, surveys and surveillances. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the above described research purposes.

14. A record from this system of records may be disclosed to members of DOE advisory committees, the Department of Health and Human Services Advisory Committee on Projects Related to Department of Energy Facilities and to designated employees of Federal, State, or local government or government-sponsored entities authorized to provide advice to the Department concerning health, safety or environmental issues. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the purpose of providing advice to the Department or to the Department of Health and Human Services.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer printouts, magnetic tape, paper, computer disc, and microfilm.

RETRIEVABILITY:

By name, social security number, and plant area.

SAFEGUARDS:

Active records are maintained in locked file cabinets in locked buildings. Inactive records are maintained in locked storage vaults.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the General Records Schedule and DOE records schedules which have been approved by the National Archives and Records Administration. Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Assistant Secretary for Environment, Safety, Health, EH–1, Washington, DC 20585.

Field Offices: The managers and directors of field locations where the records are maintained are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURE:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, FOIA and Privacy Act Division, Department of Energy (Headquarters), or the Privacy

Act Officer at the appropriate field office in accordance with DOE's Privacy Act regulations (10 CFR part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Applicable location or locations where individual is or was employed, full name or where requester believes such record may be located, social security number, employer(s), and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The individual who is the subject of the record, physicians, medical institutions, Office of Workers Compensation Programs, military retired pay systems records, Federal civilian retirement systems, Office of Personnel Management retirement life insurance and health benefits records system, and the Office of Personnel Management personnel management records systems.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–35

SYSTEM NAME:

Personnel Radiation Exposure Records.

SYSTEM LOCATION:

U.S. Department of Energy, Alaska Power Administration, 2770 Sherwood Lane, Juneau, AK 99801–8545
U.S. Department of Energy, Albuquerque Operations Office, PO Box 5400, Albuquerque, NM 87185–5400
U.S. Department of Energy, Allied-Signal, Kansas City Division, PO Box 419159, Kansas City, MO 64141
U.S. Department of Energy, Amarillo Area Office, PO Box 30030, Amarillo, TX 79120–0030
U.S. Department of Energy, Ames Laboratory, Iowa State University, Ames, Iowa 50011
U.S. Department of Energy, Argonne Area Office, 9800 South Cass Avenue, Argonne, IL 60439
U.S. Department of Energy, Bartlesville Project Office, 220 North Virginia Avenue, PO Box 1398, Bartlesville, OK 74003
U.S. Department of Energy, Batavia Area Office, PO Box 2000, Batavia, IL 60510
U.S. Department of Energy, Bettis Atomic Power Laboratory, PO Box 79, Pittsburgh, PA 15122–0079
U.S. Department of Energy, Bonneville Power Administration, PO Box 3621, Portland, OR 97208
U.S. Department of Energy, Brookhaven Area Office, 53 Bell Avenue, Bldg 464, Upton, NY 11973
U.S. Department of Energy, Chicago Operations Office, 9800 South Cass Avenue, Argonne, IL 60439
U.S. Department of Energy, Continuous Electron Beam Accelerator Facility, 12000 Jefferson Avenue, Newport News, Virginia 23606
U.S. Department of Energy, Dayton Area Office, PO Box 66, Miamisburg, OH 45342–0066
U.S. Department of Energy, EG&G Mound Applied Technologies, PO Box 3000, Miamisburg, Ohio 45343–3000
U.S. Department of Energy, Environmental Measurements Laboratory, 376 Hudson Street, New York, NY 10014–3621
U.S. Department of Energy, Fermi National Accelerator Laboratory, PO Box 500, Batavia, Illinois 60510
U.S. Department of Energy, Fernald Environmental Restoration Management Corporation, PO Box 398704, Cincinnati, Ohio 45239–8704
U.S. Department of Energy, Fernald Field Office, 7400 Willey Road, Cincinnati, OH 45030
U.S. Department of Energy, Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401
U.S. Department of Energy, Grand Junction, PO Box 2567, Grand Junction, CO 81502–2567
U.S. Department of Energy, Headquarters, Washington, DC 20585
U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, ID 83401
U.S. Department of Energy, Inhalation Toxicology Research Institute, PO Box 5890, Albuquerque, New Mexico 87185
U.S. Department of Energy, Kansas City Area Office, PO Box 410202, Kansas City, MO 64141–0202
U.S. Department of Energy, Kirtland Area Office, PO Box 5400, Albuquerque, NM 87185–5400
U.S. Department of Energy, Knolls Atomic Power Laboratory, PO Box 1072, Schenectady, NY 12301
U.S. Department of Energy, Lawrence Livermore National Laboratory, PO Box 808, Livermore, California 94551
U.S. Department of Energy, Lawrence Berkeley Laboratory, One Cyclotron Road, Building 26, Room 143, Berkeley, California 94720
U.S. Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87544
U.S. Department of Energy, Lockheed Martin Energy Systems, Inc., Y–12 Plant, PO Box 2009, Oak Ridge, Tennessee 37831–8103
U.S. Department of Energy, Lockheed Martin Energy Systems, Inc., K–25 Plant, PO Box 2003, Oak Ridge, Tennessee 37831–7422
U.S. Department of Energy, MK Ferguson of Oak Ridge Company, PO Box 2011, Oak Ridge, Tennessee 37831–2011
U.S. Department of Energy, Morgantown Energy Technology Center, 3610 Collins Ferry Road, PO Box 880 Morgantown, WV 26507–0880,
U.S. Department of Energy, National Institute for Petroleum and Energy Research, BDM-Oklahoma, Inc., PO Box 2565, Bartlesville, Oklahoma 74005
U.S. Department of Energy, National Renewable Energy Laboratory Area Office, 1617 Cole Boulevard, Golden, CO 80401–3393
U.S. Department of Energy, Naval Petroleum and Oil Shale Reserves, 907 N. Poplar, Suite 150, Casper, WY 82601
U.S. Department of Energy, Naval Petroleum Reserves in California, 28590 Highway 119, PO Box 11, Tupman, CA 93276
U.S. Department of Energy, Naval Reactors Representative Office, Naval Base Branch Post Office, General Delivery, Charleston Naval Shipyard, Charleston, SC 29408–5615
U.S. Department of Energy, Naval Reactors Representative Office, PO Box 7021, Groton, CT 06340
U.S. Department of Energy, Naval Reactors Representative Office, Mare Island Naval Shipyard, PO Box 2053, Vallejo, CA 94592
U.S. Department of Energy, Naval Reactors Representative Office, Newport News Shipbuilding & Dry Dock Company, PO Box 973, Newport News, VA 23607
U.S. Department of Energy, Naval Reactors Representative Office, Norfolk Naval Shipyard, PO Box 848, Portsmouth, VA 23705–0848
U.S. Department of Energy, Naval Reactors Representative Office, Pearl Harbor Naval Shipyard, PO Box 128, Pearl Harbor, HI 96860
U.S. Department of Energy, Naval Reactors Representative Office, Portsmouth Naval Shipyard, Naval Base Branch, PO Box 2008, Portsmouth, NH 03801–2008
U.S. Department of Energy, Naval Reactors Representative Office, Puget Sound Naval Shipyard Substation, PO Box 1A, Bremerton, WA 98314

U.S. Department of Energy, Nevada Test Site, Mercury, Mercury, NV 89023
U.S. Department of Energy, Nevada Operations Office, PO Box 98518, Las Vegas, NV 89193–8518
U.S. Department of Energy, New Brunswick Laboratory, 9800 South Cass Avenue, Argonne, IL 60439
U.S. Department of Energy, Oak Ridge Operations Office, PO Box 2001, Oak Ridge, TN 37831
U.S. Department of Energy, Oakland Operations Office, 1301 Clay Street, Oakland, CA 94612–52019
U.S. Department of Energy, Ohio Field Office, 1 Mound Road, Miamisburg, OH 45342
U.S. Department of Energy, Phoenix Area Office, PO Box 6457, Phoenix, AZ 85005
U.S. Department of Energy, Pinellas Area Office, PO Box 2900, Largo, FL 34649
U.S. Department of Energy, Pittsburgh Naval Reactors Office, PO Box 109, West Mifflin, PA 15122–0109
U.S. Department of Energy, Pittsburgh Energy Technology Center, PO Box 10940, Pittsburgh, PA 15236–0940
U.S. Department of Energy, Plasma Physics Laboratory, James Forrestal Campus, Princeton University, PO Box 451, Princeton, New Jersey 08543
U.S. Department of Energy, Portsmouth Enrichment Office, PO Box 700, Piketon, OH 45661
U.S. Department of Energy, Princeton Area Office, PO Box 102, Princeton, NJ 08542
U.S. Department of Energy, Radiological and Environmental Sciences Laboratory, 785 DOE Place, Idaho Falls, ID 83402
U.S. Department of Energy, Richland Operations Office, 825 Jadwin Avenue, PO Box 550, Richland, WA 99352
U.S. Department of Energy, Rocketdyne—Rockwell Aerospace, 6633 Canoga Avenue, PO Box 7922, Department 056 EA08, Canoga Park, California 91309–7922
U.S. Department of Energy, Rocky Flats Office, PO Box 928, Golden, CO 80402–0928
U.S. Department of Energy, Sandia National Laboratories, PO Box 5800, Albuquerque, NM 87115
U.S. Department of Energy, Savannah River Operations Office, PO Box A, Aiken, SC 29801
U.S. Department of Energy, Schenectady Naval Reactors Office, PO Box 1069, Schenectady, NY 12301
U.S. Department of Energy, Southeastern Power Administration, Samuel Elbert Building, Public Square, Elberton, GA 30635
U.S. Department of Energy, Southwestern Power Administration, PO Box 1619, Tulsa, OK 74101
U.S. Department of Energy, Stanford Linear Accelerator Center, PO Box 4349, Stanford, California 94309
U.S. Department of Energy, Strategic Petroleum Reserve Project Office, 900 Commerce Road East, New Orleans, LA 70123
U.S. Department of Energy, Waste Isolation Pilot Plant, Westinghouse Electric Company, Waste Isolation Division, PO Box 2078, Carlsbad, New Mexico 88220
U.S. Department of Energy, Weldon Spring Site Remedial Action Project, 7295 Highway 94 South, St. Charles, Missouri 63304
U.S. Department of Energy, West Valley Nuclear Service Company, Inc., 10282 Rock Springs Road, PO Box 191, MS: F, West Valley, New York 14171
U.S. Department of Energy, Waste Isolation Pilot Project Office, PO Box 3090, Carlsbad, NM 88221
U.S. Department of Energy, Western Area Power Administration, PO Box 3402, Golden, CO 80401
U.S. Department of Energy, Westinghouse Electric Corporation, Bettis Atomic Power Laboratory, Naval Reactors Facility, PO Box 2068, Idaho Falls, ID 83403–2068

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. Department of Energy employees and contractor employees, and any other persons having access to certain DOE facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

U.S. Department of Energy and contractor personnel and other individuals' radiation exposure records, and other records, in connection with registries of uranium, transuranics, or other elements encountered in the nuclear industry.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. U.S. Navy uses these records to monitor radiation exposure of Naval and other personnel.

2. Nuclear Regulatory Commission uses these records to monitor radiation exposure of DOE contractor personnel. U.S. Department of Energy and its contractors and consultants, other contractors, and organizations, including various states' departments of labor and industry groups, use these records to monitor radiation exposure.

3. Department of Defense uses these records for the purpose of identifying DOD and DOD-contractor personnel exposed to ionizing radiation during nuclear testing and for conducting epidemiological studies of radiation effects on individuals so identified.

4. A record from this system of records may be disclosed to facilitate health hazard evaluations, epidemiological studies, or public health activities required by law performed by personnel, contractor personnel, grantees, and cooperative agreement holders of components of the Department of Health and Human Services, including the National Institute for Occupational Safety and Health and the National Center for Environmental Health of the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry pursuant to Memoranda of Understanding between the Department and the Department of Health and Human Services or its components.

5. Subject to the same Privacy Act limitations applicable to employees of the Department, a record from this system of records may be disclosed as a routine use to contractors, grantees, participants in cooperative agreements, collaborating researchers, or their employees, in performance of health studies or related health or environmental duties pursuant to their contracts, grants, and cooperating or collaborating research agreements. In order to perform such studies, the Department, its contractors, grantees, participants in cooperative agreements, and collaborating researchers may disclose a record to: Federal, state and local health and medical agencies or authorities; to subcontractors in order to determine a subject's vital status or cause of death; to health care providers to verify a diagnosis or cause of death; or to third parties to obtain current addresses for participants in health-related studies, surveys and surveillances. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the above described research purposes.

6. A record from this system of records may be disclosed to members of DOE advisory committees, the Department of Health and Human Services Advisory Committee on Projects Related to Department of Energy Facilities and to designated employees of Federal, State, or local government or government-sponsored entities authorized to provide advice to the Department concerning health, safety or environmental issues. All recipients of such records are required to comply with the Privacy Act, to

follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the purpose of providing advice to the Department or to the Department of Health and Human Services.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer printouts, paper records, index cards, magnetic tape, punched cards, microfilm, and disc.

RETRIEVABILITY:

By name, alphanumeric code, and social security number.

SAFEGUARDS:

Records are maintained in locked file cabinets, locked safes, guarded areas, and secured buildings, with access on a need-to-know basis.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the General Records Schedule and DOE records schedules which have been approved by the National Archives and Records Administration. Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Assistant Secretary for Environment, Safety, Health, EH–1, Washington, DC 20585.

Field Offices: The managers and directors of field locations where the records are maintained are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURE:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, FOIA and Privacy Act Division, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate field location, in accordance with DOE's Privacy Act regulations (10 CFR part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, and geographic location(s) and organization(s) where requester believes such record may be located, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The subject individual, accident-incident investigations, film badges, dosimetry records, and previous employee records.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–36

SYSTEM NAME:

Statistical Analysis Using Personnel Security Questionnaire (Health and Mortality Study).

SYSTEM LOCATION:

U.S. Department of Energy, Oak Ridge Operations Office, PO Box 2001, Oak Ridge, TN 37831.

U.S. Department of Energy, Richland Operations Office, 825 Jadwin Avenue, PO Box 550, Richland, WA 99352.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DOE and predecessor agency employees, consultants and contractor employees, and consultants who were granted access authorizations (clearances).

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of employees of the Manhattan Engineering District Project, Atomic Energy Commission, Energy Research and Development Administration, and DOE, including copies of Personnel Security Questionnaires completed after termination of employment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system of records may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

2. A record from this system of records may be disclosed, as a routine use, to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

3. A record in this system of records may be disclosed, as a routine use, to a member of Congress submitting a request involving the individual when the individual is a constituent of the member and has requested assistance from the member with respect to the subject matter of the record.

4. A record from this system of records may be disclosed to facilitate health hazard evaluations, epidemiological studies, or public health activities required by law performed by personnel, contractor personnel, grantees, and cooperative agreement holders of components of the Department of Health and Human Services, including the National Institute for Occupational Safety and Health and the National Center for Environmental Health of the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry pursuant to Memoranda of Understanding between the Department and the Department of Health and Human Services or its components.

5. Subject to the same Privacy Act limitations applicable to employees of the Department, a record from this system of records may be disclosed as a routine use to contractors, grantees, participants in cooperative agreements, collaborating researchers, or their employees, in performance of health studies or related health or environmental duties pursuant to their contracts, grants, and cooperating or collaborating research agreements. In order to perform such studies, the Department, its contractors, grantees, participants in cooperative agreements, and collaborating researchers may disclose a record to: Federal, state and local health and medical agencies or authorities; to subcontractors in order to determine a subject's vital status or cause of death; to health care providers to verify a diagnosis or cause of death; or to third parties to obtain current addresses for participants in health-related studies, surveys and surveillances. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the above described research purposes.

6. A record from this system of records may be disclosed to members of DOE advisory committees, the Department of Health and Human Services Advisory Committee on Projects Related to Department of Energy Facilities and to designated employees of Federal, State, or local government or government-sponsored entities authorized to provide advice to the Department concerning health, safety or environmental issues. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the purpose of providing advice to the Department or to the Department of Health and Human Services.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records.

RETRIEVABILITY:

By name and social security number.

SAFEGUARDS:

Records are maintained in alarm storage areas in locked file cabinets. Access is limited to individuals having a need-to-know.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the General Records Schedule and DOE records schedules which have been approved by the National Archives and Records Administration. Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Field Offices: The managers and directors of field locations at Oak Ridge and Richland Operations Offices are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURE:

a. Request by an individual to determine if a system of records contains information about him/her should be directed to the Director, FOIA and Privacy Act Division, Department of Energy (Headquarters), or Privacy Act Officer at the appropriate field office in accordance with DOE's Privacy Act regulations (10 CFR part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, social security number and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

Clearance histories of Manhattan Engineering District, Atomic Energy Commission, Energy Research and Development Administration, and DOE employees; access permittees' security clearances; and reports from investigative agencies.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–38

SYSTEM NAME:

Occupational and Industrial Accident Records.

SYSTEM LOCATION(S):

U.S. Department of Energy, Alaska Power Administration, 2770 Sherwood Lane, Juneau, AK 99801–8545

U.S. Department of Energy, Albuquerque Operations Office, PO Box 5400, Albuquerque, NM 87185–5400

U.S. Department of Energy, Allied-Signal, Kansas City Division, PO Box 419159, Kansas City, MO 64141

U.S. Department of Energy, Amarillo Area Office, PO Box 30030, Amarillo, TX 79120–0030

U.S. Department of Energy, Ames Laboratory, Iowa State University, Ames, Iowa 50011

U.S. Department of Energy, Argonne Area Office, 9800 South Cass Avenue, Argonne, IL 60439

U.S. Department of Energy, Bartlesville Project Office, 220 North Virginia Avenue, PO Box 1398, Bartlesville, OK 74003

U.S. Department of Energy, Batavia Area Office, PO Box 2000, Batavia, IL 60510

U.S. Department of Energy, Bettis Atomic Power Laboratory, PO Box 79, Pittsburgh, PA 15122–0079

U.S. Department of Energy, Bonneville Power Administration, PO Box 3621, Portland, OR 97208

U.S. Department of Energy, Brookhaven Area Office, 53 Bell Avenue, Bldg. 464, Upton, NY 11973

U.S. Department of Energy, Chicago Operations Office, 9800 South Cass Avenue, Argonne, IL 60439

U.S. Department of Energy, Continuous Electron Beam Accelerator Facility, 12000 Jefferson Avenue, Newport News, Virginia 23606

U.S. Department of Energy, Dayton Area Office, PO Box 66, Miamisburg, OH 45342–0066

U.S. Department of Energy, EG&G Mound Applied Technologies, PO Box 3000, Miamisburg, Ohio 45343–3000

U.S. Department of Energy, Environmental Measurements Laboratory, 376 Hudson Street, New York, NY 10014–3621

U.S. Department of Energy, Fermi National Accelerator Laboratory, PO Box 500, Batavia, Illinois 60510

U.S. Department of Energy, Fernald Environmental Restoration Management Corporation, PO Box 398704, Cincinnati, Ohio 45239–8704

U.S. Department of Energy, Fernald Field Office, 7400 Willey Road, Cincinnati, OH 45030

U.S. Department of Energy, Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401

U.S. Department of Energy, Grand Junction, PO Box 2567, Grand Junction, CO 81502–2567

U.S. Department of Energy, Headquarters, Washington, DC 20585

U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, ID 83401

U.S. Department of Energy, Inhalation Toxicology Research Institute, PO Box 5890, Albuquerque, New Mexico 87185

U.S. Department of Energy, Kansas City Area Office, PO Box 410202, Kansas City, MO 64141–0202

U.S. Department of Energy, Kirtland Area Office, PO Box 5400, Albuquerque, NM 87185–5400

U.S. Department of Energy, Knolls Atomic Power Laboratory, PO Box 1072, Schenectady, NY 12301

U.S. Department of Energy, Lawrence Livermore National Laboratory, PO Box 808, Livermore, California 94551

U.S. Department of Energy, Lawrence Berkeley Laboratory, One Cyclotron Road, Building 26, Room 143, Berkeley, California 94720

U.S. Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87544

U.S. Department of Energy, Lockheed Martin Energy Systems, Inc., Y–12 Plant, PO Box 2009, Oak Ridge, Tennessee 37831–8103

U.S. Department of Energy, Lockheed Martin Energy Systems, Inc., K–25 Plant, PO Box 2003, Oak Ridge, Tennessee 37831–7422

U.S. Department of Energy, MK Ferguson of Oak Ridge Company, PO Box 2011, Oak Ridge, Tennessee 37831–2011

U.S. Department of Energy, Morgantown Energy Technology Center, 3610 Collins Ferry Road, PO Box 880, Morgantown, WV 26507–0880

U.S. Department of Energy, National Institute for Petroleum and Energy Research, BDM-Oklahoma, Inc., PO Box 2565, Bartlesville, Oklahoma 74005

U.S. Department of Energy, National Renewable Energy Laboratory Area Office, 1617 Cole Boulevard, Golden, CO 80401–3393

U.S. Department of Energy, Naval Petroleum and Oil Shale Reserves, 907 N. Poplar, Suite 150, Casper, WY 82601

U.S. Department of Energy, Naval Petroleum Reserves in California, 28590 Highway 119, PO Box 11, Tupman, CA 93276
U.S. Department of Energy, Naval Reactors Representative Office, Naval Base Branch Post Office, General Delivery, Charleston Naval Shipyard, Charleston, SC 29408–5615
U.S. Department of Energy, Naval Reactors Representative Office, PO Box 7021, Groton, CT 06340
U.S. Department of Energy, Naval Reactors Representative Office, Mare Island Naval Shipyard, PO Box 2053, Vallejo, CA 94592
U.S. Department of Energy, Naval Reactors Representative Office, Newport News Shipbuilding & Dry Dock Company, PO Box 973, Newport News, VA 23607
U.S. Department of Energy, Naval Reactors Representative Office, Norfolk Naval Shipyard, PO Box 848, Portsmouth, VA 23705–0848
U.S. Department of Energy, Naval Reactors Representative Office, Pearl Harbor Naval Shipyard, PO Box 128, Pearl Harbor, HI 96860
U.S. Department of Energy, Naval Reactors Representative Office, Portsmouth Naval Shipyard, Naval Base Branch, PO Box 2008, Portsmouth, NH 03801–2008
U.S. Department of Energy, Naval Reactors Representative Office, Puget Sound Naval Shipyard Substation, PO Box 1A, Bremerton, WA 98314
U.S. Department of Energy, Nevada Test Site, Mercury, Mercury, NV 89023
U.S. Department of Energy, Nevada Operations Office, PO Box 98518, Las Vegas, NV 89193–8518
U.S. Department of Energy, New Brunswick Laboratory, 9800 South Cass Avenue, Argonne, IL 60439
U.S. Department of Energy, Oak Ridge Operations Office, PO Box 2001, Oak Ridge, TN 37831
U.S. Department of Energy, Oakland Operations Office, 1301 Clay Street, Oakland, CA 94612–52019
U.S. Department of Energy, Ohio Field Office, 1 Mound Road, Miamisburg, OH 45342
U.S. Department of Energy, Phoenix Area Office, PO Box 6457, Phoenix, AZ 85005
U.S. Department of Energy, Pinellas Area Office, PO Box 2900, Largo, FL 34649
U.S. Department of Energy, Pittsburgh Naval Reactors Office, PO Box 109, West Mifflin, PA 15122–0109
U.S. Department of Energy, Pittsburgh Energy Technology Center, PO Box 10940, Pittsburgh, PA 15236–0940
U.S. Department of Energy, Plasma Physics Laboratory, James Forrestal Campus, Princeton University, PO Box 451, Princeton, New Jersey 08543
U.S. Department of Energy, Portsmouth Enrichment Office, PO Box 700, Piketon, OH 45661
U.S. Department of Energy, Princeton Area Office, PO Box 102, Princeton, NJ 08542
U.S. Department of Energy, Radiological and Environmental Sciences Laboratory, 785 DOE Place, Idaho Falls, ID 83402
U.S. Department of Energy, Richland Operations Office, 825 Jadwin Avenue, PO Box 550, Richland, WA 99352
U.S. Department of Energy, Rocketdyne—Rockwell Aerospace, 6633 Canoga Avenue, PO Box 7922, Department 056 EA08, Canoga Park, California 91309–7922
U.S. Department of Energy, Rocky Flats Office, PO Box 928, Golden, CO 80402–0928
U.S. Department of Energy, Sandia National Laboratories, PO Box 5800, Albuquerque, NM 87115
U.S. Department of Energy, Savannah River Operations Office, PO Box A, Aiken, SC 29801
U.S. Department of Energy, Schenectady Naval Reactors Office, PO Box 1069, Schenectady, NY 12301
U.S. Department of Energy, Southeastern Power Administration, Samuel Elbert Building, Public Square, Elberton, GA 30635
U.S. Department of Energy, Southwestern Power Administration, PO Box 1619, Tulsa, OK 74101
U.S. Department of Energy, Stanford Linear Accelerator Center, PO Box 4349, Stanford, California 94309
U.S. Department of Energy, Strategic Petroleum Reserve Project Office, 900 Commerce Road East, New Orleans, LA 70123
U.S. Department of Energy, Waste Isolation Pilot Plant, Westinghouse Electric Company, Waste Isolation Division, PO Box 2078, Carlsbad, New Mexico 88220
U.S. Department of Energy, Weldon Spring Site Remedial Action Project, 7295 Highway 94 South, St. Charles, Missouri 63304
U.S. Department of Energy, West Valley Nuclear Service Company, Inc., 10282 Rock Springs Road, PO Box 191, MS: F, West Valley, New York 14171
U.S. Department of Energy, Waste Isolation Pilot Project Office, PO Box 3090, Carlsbad, NM 88221
U.S. Department of Energy, Western Area Power Administration, PO Box 3402, Golden, CO 80401
U.S. Department of Energy, Westinghouse Electric Corporation, Bettis Atomic Power Laboratory, Naval Reactors Facility, PO Box 2068, Idaho Falls, ID 83403–2068

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DOE employees, contractor employees, and any other persons having access to DOE facilities who have had accidents on DOE facilities. Also individuals involved in accidents with employees or contractor employees or other persons having access to DOE facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Accident/incident information, occupational injury and illness experience, property damage experience, and motor vehicle accidents.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Pertinent provisions of 29 CFR 1904.7 apply to the records maintained in this system of records.

1. Physicians: For purpose of treating patients.

2. Property owners and insurance companies: For purpose of processing insurance claims.

3. DOE contractors and consultants, state departments of labor and industries and other state agencies, U.S. Department of Labor, National Drivers Registry, and Department of Transportation: For purposes of processing insurance claims and accident reporting.

4. In the event that a record within this system of records maintained by this agency indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program pursuant thereto, the relevant records in the system of records may be referred as a routine use to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

5. A record from this system of records may be disclosed as a routine use to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information, such as current licenses, if necessary, to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract or the issuance of a license, grant, or other benefit.

6. A record from this system of records may be disclosed, as a routine use, to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

7. A record from this system of records may be disclosed, as a routine use, (a) to appropriate parties engaged in litigation or in preparation of possible litigation, such as potential witnesses, for the purpose of securing their testimony when necessary; (b) to courts, magistrates or administrative tribunals; (c) to parties and their attorneys for the purpose of proceeding with litigation or settlement of disputes; and (d) to individuals seeking information by using established discovery procedures, whether in connection with civil, criminal, or regulatory proceedings.

8. A record maintained by this agency to carry out its functions which relates to civil and criminal proceedings may be disclosed to the news media in accordance with guidelines contained in Department of Justice regulations 28 CFR 50.2.

9. A record maintained by this agency to carry out its functions may be disclosed to foreign governments in accordance with treaty obligations.

10. A record from this system of records may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

11. A record from this system of records may be disclosed, as a routine use, to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

12. A record in this system of records may be disclosed, as a routine use, to a member of Congress submitting a request involving the individual when the individual is a constituent of the member and has requested assistance from the member with respect to the subject matter of the record.

13. A record in this system of records which contains medical and/or psychological information may be disclosed, as a routine use, to the physician or mental health professional of any individual submitting a request for access to the record under the Privacy Act of 1974 and DOE's Privacy Act regulations if, in its sole judgment and good faith, DOE believes that disclosure of the medical and/or psychological information directly to the individual who is the subject of the record could have an adverse effect upon that individual, in accordance with the provisions of 5 U.S.C. 552a(f)(3) and applicable DOE regulations.

14. A record from this system of records may be disclosed to facilitate health hazard evaluations, epidemiological studies, or public health activities required by law performed by personnel, contractor personnel, grantees, and cooperative agreement holders of components of the Department of Health and Human Services, including the National Institute for Occupational Safety and Health, the National Center for Environmental Health, of the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry pursuant to Memoranda of Understanding between the Department and the Department of Health and Human Services or its components.

15. Subject to the same Privacy Act limitations applicable to employees of the Department, a record from this system of records may be disclosed as a routine use to contractors, grantees, participants in cooperative agreements, collaborating researchers, or their employees, in performance of health studies or related health or environmental duties pursuant to their contracts, grants, and cooperating or collaborating research agreements. In order to perform such studies, the Department, its contractors, grantees, participants in cooperative agreements, and collaborating researchers may disclose a record to: Federal, state and local health and medical agencies or authorities; to subcontractors in order to determine a subject's vital status or cause of death; to health care providers to verify a diagnosis or cause of death; or to third parties to obtain current addresses for participants in health-related studies, surveys and surveillances. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the above described research purposes.

16. A record from this system of records may be disclosed to members of DOE advisory committees, the Department of Health and Human Services Advisory Committee on Projects Related to Department of Energy Facilities and to designated employees of Federal, State, or local government or government-sponsored entities authorized to provide advice to the Department concerning health, safety or environmental issues. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the purpose of providing advice to the Department or to the Department of Health and Human Services.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape, punched cards, paper records, and microfilm.

RETRIEVABILITY:

By name and by alphabetic, numeric, or alphanumeric code.

SAFEGUARDS:

Records are maintained in locked file cabinets, locked safes, guarded areas, and secured buildings with access limited to personnel with a need to know.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the General Records Schedule and DOE records schedules which have been approved by the National Archives and Records Administration. Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Assistant Secretary for Environment, Safety and Health, EH–1, Washington, DC 20585.

Field Offices: The managers and directors of field offices in the locations where the records are maintained are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, FOIA and Privacy Act Division, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate field location; in accordance with DOE's Privacy Act regulations (10 CFR part 1008 (45 FR 61576; September 16, 1980)).

b. Required identifying information: Complete name, social security number,

and/or birth date, geographic location of the accident, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The subject individual, the individual's supervisor, medical officers or personal physicians, accident investigators, investigation boards, investigating law enforcement officers, the National Drivers Registry, and previous employer records.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–40

SYSTEM NAME:

Contractor Employees Insurance Claims.

SYSTEM LOCATION:

U.S. Department of Energy, Headquarters, Washington, DC 20585
U.S. Department of Energy, Albuquerque Operations Office, PO Box 5400, Albuquerque, NM 87185–5400
U.S. Department of Energy, Chicago Operations Office, 9800 South Cass Avenue, Argonne, IL 60439
U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, ID 83401
U.S. Department of Energy, Nevada Operations Office, PO Box 98518, Las Vegas, NV 89193–8518
U.S. Department of Energy, Oak Ridge Operations Office, PO Box 2001, Oak Ridge, TN 37831
U.S. Department of Energy, Oakland Operations Office, 1301 Clay Street, Oakland, CA 94612–52019
U.S. Department of Energy, Pittsburgh Naval Reactors Office, PO Box 109, West Mifflin, PA 15122–0109
U.S. Department of Energy, Richland Operations Office, 825 Jadwin Avenue, PO Box 550, Richland, WA 99352
U.S. Department of Energy, Savannah River Operations Office, PO Box A, Aiken, SC 29801
U.S. Department of Energy, Schenectady Naval Reactors Office, PO Box 1069, Schenectady, NY 12301

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Claimants under worker's compensation insurance and third-party claimants against DOE contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Accident reports, physician statements, pictures, maps, sketches, claimant and witness statements, doctor and hospital bills, reports from engineering firms, and claims activity reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Insurance companies—in administering claims against DOE Contractors and DOE.
2. State and local agencies—for consideration of insurance claims.
3. Physicians—for claims evaluations.
4. Lawyers—for claims evaluations.
5. State industrial commissions—for claim evaluations.
6. Claims—adjustment services firms—for claim evaluations.
7. In the event that a record within this system of records maintained by this agency indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program pursuant thereto, the relevant records in the system of records may be referred as a routine use to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.
8. A record from this system of records may be disclosed as a routine use to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information, such as current licenses, if necessary, to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract or the issuance of a license, grant, or other benefit.
9. A record from this system of record may be disclosed, as a routine use, to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.
10. A record from this system of records may be disclosed, as a routine use, (a) to appropriate parties engaged in litigation or in preparation of possible litigation, such as potential witnesses, for the purpose of securing their testimony when necessary; (b) to courts, magistrates or administrative tribunals; (c) to parties and their attorneys for the purpose of proceeding with litigation or settlement of disputes; and (d) to individuals seeking information by using established discovery procedures, whether in connection with civil, criminal, or regulatory proceedings.
11. A record maintained by this agency to carry out its functions which relates to civil and criminal proceedings may be disclosed to the news media in accordance with guidelines contained in Department of Justice regulations 28 CFR 50.2.
12. A record maintained by this agency to carry out its functions may be disclosed to foreign governments in accordance with treaty obligations.
13. A record from this system of records may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.
14. A record from this system of records may be disclosed, as a routine use, to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties subject to the same limitations applicable to DOE officers and employees under the Privacy Act.
15. A record in this system of records may be disclosed, as a routine use, to a member of Congress submitting a request involving the individual when the individual is a constituent of the member and has requested assistance from the member with respect to the subject matter of the record.
16. A record in this system of records which contains medical and/or psychological information may be disclosed, as a routine use, to the physician or mental health professional of any individual submitting a request for access to the record under the Privacy Act of 1974 and DOE's Privacy Act regulations if, in its sole judgment and good faith, DOE believes that disclosure of the medical and/or psychological information directly to the individual who is the subject of the record could have an adverse effect upon that individual, in accordance with the provisions of 5 U.S.C. 552a(f)(3) and applicable DOE regulations.
17. A record from this system of records may be disclosed to facilitate health hazard evaluations, epidemiological studies, or public health activities required by law performed by personnel, contractor personnel, grantees, and cooperative agreement holders of components of the Department of Health and Human Services, including the National Institute for Occupational Safety and Health and the National Center for Environmental Health of the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry pursuant to Memoranda of Understanding between the Department and the Department of Health and Human Services or its components.
18. Subject to the same Privacy Act limitations applicable to employees of the Department, a record from this system of records may be disclosed as a routine use to contractors, grantees, participants in cooperative agreements, collaborating researchers, or their employees, in performance of health studies or related health or environmental duties pursuant to their contracts, grants, and cooperating or collaborating research agreements. In order to perform such studies, the Department, its contractors, grantees, participants in cooperative agreements, and collaborating researchers may disclose a record to: federal, state and local health and medical agencies or authorities; to subcontractors in order to determine a subject's vital status or cause of death; to health care providers to verify a diagnosis or cause of death; or to third parties to obtain current addresses for participants in health-related studies, surveys and surveillances. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the above described research purposes.
19. A record from this system of records may be disclosed to members of DOE advisory committees, the Department of Health and Human Services Advisory Committee on Projects Related to Department of Energy Facilities and to designated employees of Federal, State, or local government or government-sponsored entities authorized to provide advice to the Department concerning health, safety or environmental issues. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the purpose of providing advice to the Department or to the Department of Health and Human Services.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and computer printouts.

RETRIEVABILITY

By contractor, name and claim number.

SAFEGUARDS:

Records are maintained in a locked building.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the General Records Schedule and DOE records schedules which have been approved by the National Archives and Records Administration. Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Director, Office Contractor Human Resource Management, HR–524, Washington, DC 20585.

Field offices: The managers and directors of field locations where the records are maintained are the systems managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, FOIA and Privacy Act Division, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate field location, in accordance with DOE's Privacy Act regulations (10 CFR part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, the geographic location(s) and organization(s) where requester believes such record may be located, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

Claimants, witnesses, and insurance company claim files.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–67

SYSTEM NAME:

Participants in Experiments, Studies, and Surveys.

Subsystem A: EIA Survey Reports.

Subsystem B: Hanford Clinical Epidemiologic Studies.

SYSTEM LOCATION:

Subsystem A: U.S. Department of Energy, Office of Oil and Gas, 1000 Independence Avenue, SW., Washington, DC 20585.

Subsystem B: Richland Operations Office, Post Office Box 550, Richland, WA 99352.

Portions of the system may be located with contractors or other entities involved in conducting the experiments, studies or surveys, or in any DOE office.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are participants in experiments, studies, and surveys undertaken in furtherance of authorized DOE research activities.

Subsystem A: Operators of oil and/or natural gas wells.

Subsystem B: All present and former DOE and DOE contractor Richland Operations employees, their spouses and offspring, and selected controls.

CATEGORIES OF RECORDS IN THE SYSTEM:

Subsystem A: Company name and identification, address and data relating to oil and gas reserves and production.

Subsystem B: Name, age, birth date, place of birth, sex, race, social security number, home address and telephone number, business address and telephone number, education, income, occupation, family size and composition, patterns of product use, and such other information as is necessary, to be determined by the subject matter and purpose of the experiment, study or survey, including data derived from participants' responses during the course of the authorized research. System also consists of a variety of records pertinent to the health status of individuals and their families: Medical history; reproductive history; birth records; developmental history; occupational history and work environment; demographic information; and selected items such as smoking habits, alcohol use, family medical history, and location of residence.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Subsystem A:

1. Information in this system may, on occasion, be disclosed to Federal

agencies and other entities which are participating in research in connection with which the data were obtained. Information in the possession of the Energy Information Administration must be disclosed, upon request, to any DOE office which determines the information relates to its functions.

2. A record from this system may be disclosed as a routine use, to DOE contractors in performance of their contracts, and their officers and employee have a need for the record in the performance of their duties subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

3. A record from this system may be disclosed to a member of Congress submitting a request involving the individual when the individual is a constituent of the member and has requested assistance from the member with respect to the subject matter of the record.

Subsystem B:

1. A record from this system of records may be disclosed to facilitate health hazard evaluations, epidemiological studies, or public health activities required by law performed by personnel, contractor personnel, grantees, and cooperative agreement holders of components of the Department of Health and Human Services, including the National Institute for Occupational Safety and Health and the National Center for Environmental Health of the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry pursuant to Memoranda of Understanding between the Department and the Department of Health and Human Services or its components.

2. Subject to the same Privacy Act limitations applicable to employees of the Department, a record from this system of records may be disclosed as a routine use to contractors, grantees, participants in cooperative agreements, collaborating researchers, or their employees, in performance of health studies or related health or environmental duties pursuant to their contracts, grants, and cooperating or collaborating research agreements. In order to perform such studies, the Department, its contractors, grantees, participants in cooperative agreements, and collaborating researchers may disclose a record to: federal, state and local health and medical agencies or authorities; to subcontractors in order to determine a subject's vital status or cause of death; to health care providers to verify a diagnosis or cause of death; or to third parties to obtain current addresses for participants in health-related studies, surveys and surveillances. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the above described research purposes.

3. A record from this system of records may be disclosed to members of DOE advisory committees, the Department of Health and Human Services Advisory Committee on Projects Related to Department of Energy Facilities and to designated employees of Federal, State, or local government or government-sponsored entities authorized to provide advice to the Department concerning health, safety or environmental issues. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the purpose of providing advice to the Department or to the Department of Health and Human Services.

4. A record from this system of records may be disclosed, as a routine use, to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

5. A record in this system of records may be disclosed, as a routine use, to a member of Congress submitting a request involving the individual when the individual is a constituent of the member and has requested assistance from the member with respect to the subject matter of the record.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Generally paper records in file folders, electromagnetic storage material, and microfiche.

Subsystem A: Paper records, microfiche, disk, and tape.

Subsystem B: Paper records, computer printouts, index cards, microfilm, and disk.

RETRIEVABILITY:

Subsystem A: By data element, name, or control number.

Subsystem B: By name, alphanumeric code, and social security number.

SAFEGUARDS:

Generally during business hours, the records at DOE sites are maintained in secured buildings with access limited to those whose official duties require access; during nonbusiness hours, the records are in secured rooms with access controlled by security guards. Any records maintained by other entities will be maintained in a similar fashion in accordance with DOE specifications. Records are maintained in lockable cabinets, in secured buildings. Access is limited to individuals having a need-to-know.

Subsystem A: The contract stipulates that the contractor will exercise all diligence in controlling access to the records maintained under the program and that only authorized members of the contractor, and DOE will be allowed to use the data. All personnel that handle or process the data are instructed and cautioned as to the confidentiality of the data and its proper disposition.

Subsystem B: Records are maintained in lockable cabinets, in secured buildings. Access is limited to individuals having a need-to-know.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the General Records Schedule and DOE records schedules which have been approved by the National Archives and Records Administration. Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Subsystem A: U.S. Department of Energy, Administrator, Energy Information Administration, 1000 Independence Avenue, SW., Washington, DC 20585.

Subsystem B: U.S. Department of Energy, Richland Operations Office, PO Box 550 Richland, WA 99352.

NOTIFICATION PROCEDURE:

Subsystem A: Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, FOIA and Privacy Act Division, U.S. Department of Energy, 1000 Independence Ave., S.W., Washington, DC 20585.

Subsystem B: Requests by an individual to determine if a system of records contains information about him/her should be directed to, the Privacy Act Officer, U.S. Department of Energy, Richland Operations Office, PO Box 550, Richland, WA 99352, in accordance with DOE's Privacy Act regulations (10 CFR part 1008, 45 FR 61576, September 16, 1980).

b. Required identifying information: Complete name at the time of study, birthday, social security number, current name, address, and telephone number.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

Subject individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–71

SYSTEM NAME:

The Radiation Accident Registry.

SYSTEM LOCATION:

U.S. Department of Energy, Oak Ridge Operations Office, PO Box 2001, Oak Ridge, TN 37831.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Those persons accidentally exposed to acute doses of ionizing radiation as defined by exposure dose criteria agreed to by the DOE and the Nuclear Regulatory Commission (NRC) by an interagency agreement. The dose criteria established by this agreement include one or more of the following: Greater than or equal to 25 REM (Roentgen Equivalent in Man) to the whole body, active blood forming organs or gonads; greater than or equal to 600 REM to skin of the whole body or extremities; greater than or equal to 75 REM to other tissues or organs from an external source; and greater than or equal to 1/2 NCRP maximum permissible organ burden internally; all those medical misadministrations of radioisotopes that result in a dose or organ burden equal to or greater than those given above.

To those individuals known to have been involved in an event in which one or more other persons received a dose equal to or in excess of the DOE/NRC criteria but whose personal dose was less than these criteria. The histories of these individuals contribute control population data.

CATEGORIES OF RECORDS IN THE SYSTEM:

Official accident reports including reports of those accidents that have occurred within the jurisdiction of the NRC and have been transferred to the DOE for the Accident Registry according to the DOE/NRC agreement; names, addresses, social security numbers, date of birth, and sex; medical records compiled at the time of the accident (such records include physician and hospital records, diagnostic and laboratory test reports, radiographs, EKGs, and radiation exposure report); medical records of illnesses, examinations, including routine follow-up examinations, and investigations that have occurred since the radiation exposure; photographs or facsimiles of radiation-induced injuries; search and contact information for registrants not identified and/or located; consent to release information forms completed by registrants; death certificates; anecdotal information; correspondence relating to the accident and/or the individuals involved.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. To provide a current record of radiation accidents for use by the DOE, and its contractors and consultants; to identify specific populations for use in epidemiological and clinical studies; and to conduct medical surveillance during the lifetime of the registrants.

2. A record from this system of records may be disclosed to facilitate health hazard evaluations, epidemiological studies, or public health activities required by law performed by personnel, contractor personnel, grantees, and cooperative agreement holders of components of the Department of Health and Human Services, including the National Institute for Occupational Safety and Health and the National Center for Environmental Health of the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry pursuant to Memoranda of Understanding between the Department and the Department of Health and Human Services or its components.

3. Subject to the same Privacy Act limitations applicable to employees of the Department, a record from this system of records may be disclosed as a routine use to contractors, grantees, participants in cooperative agreements, collaborating researchers, or their employees, in performance of health studies or related health or environmental duties pursuant to their contracts, grants, and cooperating or collaborating research agreements. In order to perform such studies, the Department, its contractors, grantees, participants in cooperative agreements, and collaborating researchers may disclose a record to: Federal, state and local health and medical agencies or authorities; to subcontractors in order to determine a subject's vital status or cause of death; to health care providers to verify a diagnosis or cause of death; or to third parties to obtain current addresses for participants in health-related studies, surveys and surveillances. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the above described research purposes.

4. A record from this system of records may be disclosed to members of DOE advisory committees, the Department of Health and Human Services Advisory Committee on Projects Related to Department of Energy Facilities and to designated employees of Federal, State, or local government or government-sponsored entities authorized to provide advice to the Department concerning health, safety or environmental issues. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the purpose of providing advice to the Department or to the Department of Health and Human Services.

5. A record from this system of records may be disclosed, as a routine use, (a) to appropriate parties engaged in litigation or in preparation of possible litigation, such as potential witnesses, for the purpose of securing their testimony when necessary; (b) to courts, magistrates or administrative tribunals; (c) to parties and their attorneys for the purpose of proceeding with litigation or settlement of disputes; and (d) to individuals seeking information by using established discovery procedures, whether in connection with civil, criminal, or regulatory proceedings.

6. A record from this system of records may be disclosed, as a routine use, to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

7. A record in this system of records may be disclosed, as a routine use, to a member of Congress submitting a request involving the individual when the individual is a constituent of the member and has requested assistance from the member with respect to the subject matter of the record.

8. A record in this system of records which contains medical and/or psychological information may be disclosed, as a routine use, to the physician or mental health professional of any individual submitting a request

for access to the record under the Privacy Act of 1974 and DOE's Privacy Act regulations if, in its sole judgment and good faith, DOE believes that disclosure of the medical and/or psychological information directly to the individual who is the subject of the record could have an adverse effect upon that individual, in accordance with the provisions of 5 U.S.C. 552a(f)(3) and applicable DOE regulations.

POLICIES, AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, computer tapes, computer printouts, punched cards, disc, magnetic tape, and microfilm.

RETRIEVABILITY:

By name and social security number.

SAFEGUARDS:

Records are maintained in locked security areas in locked file cabinets. Access is limited to individuals whose official duties require access.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the General Records Schedule and DOE records schedules which have been approved by the National Archives and Records Administration. Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

U.S. Department of Energy, Oak Ridge Operations Office, PO Box 2001, Oak Ridge, TN 37831.

NOTIFICATION PROCEDURE:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Privacy Act Officer, Department of Energy, Oak Ridge Operation Office, PO Box 2001, Oak Ridge, TN 37831, in accordance with DOE's Privacy Act regulations (10 CFR part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Name, social security number, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The individual, medical records, physicians, medical institutions, and reports of incident/accident/accident investigations from private and public sources, radiation dosimetry records, security clearance records, and employment records.

SYSTEM EXEMPTED FROM CERTAIN PROVISION OF THE ACT:

None.

DOE–72

SYSTEM NAME:

The Department of Energy Radiation Study Registry.

SYSTEM LOCATION:

U.S. Department of Energy, Oak Ridge Operations Office, PO Box 2001, Oak Ridge, TN 37831.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Registrants are those present and former employees of contractors of the DOE and its predecessor organizations including the Manhattan District, USAEC, and ERDA, and present and former civilian employees in the DOE Naval Reactor Program who received a whole body exposure of ionizing radiation equal to or in excess of 5 REM in any 1 year.

CATEGORIES OF RECORDS IN THE SYSTEM:

Rosters of names of individuals meeting the above criteria for inclusion in the Registry submitted through the DOE field operation officers from DOE owned and operated facilities and sites. In addition to names of such individuals, these rosters include social security number or other identifying information, sex, race, date of birth, date and/or place of death, first date of hire, last date of termination, continuity of hire, year in which they received first dose greater than or equal to 5 REM, actual radiation dose in excess of 5 REM, and total career radiation exposure dose.

Original or copied lifetime medical records from plant and private physicians and hospitals including routine physical examinations, reports of diagnostic and laboratory tests, radiographs, EKG's, etc., or abstracted portions of such records as are required for the purposes of this study.

Search and contact information for registrants who are no longer employed at qualified sites or who are deceased.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. To provide a current record of registrants for use by DOE, its contractors, and consultants; to identify specific populations for use in epidemiological and clinical studies; to conduct medical surveillance during the lifetime of the registrants.

2. A record from this system of records may be disclosed to facilitate health hazard evaluations, epidemiological studies, or public health activities required by law performed by personnel, contractor personnel, grantees, and cooperative agreement holders of components of the Department of Health and Human Services, including the National Institute for Occupational Safety and Health and the National Center for Environmental Health of the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry pursuant to Memoranda of Understanding between the Department and the Department of Health and Human Services or its components.

3. Subject to the same Privacy Act limitations applicable to employees of the Department, a record from this system of records may be disclosed as a routine use to contractors, grantees, participants in cooperative agreements, collaborating researchers, or their employees, in performance of health studies or related health or environmental duties pursuant to their contracts, grants, and cooperating or collaborating research agreements. In order to perform such studies, the Department, its contractors, grantees, participants in cooperative agreements, and collaborating researchers may disclose a record to: Federal, state and local health and medical agencies or authorities; to subcontractors in order to determine a subject's vital status or cause of death; to health care providers to verify a diagnosis or cause of death; or to third parties to obtain current addresses for participants in health-related studies, surveys and surveillances. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the above described research purposes.

4. A record from this system of records may be disclosed to members of DOE advisory committees, the Department of Health and Human Services Advisory Committee on Projects Related to Department of Energy Facilities and to designated employees of Federal, State, or local government or government-sponsored entities authorized to provide advice to the Department concerning health, safety or environmental issues. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the purpose of providing advice to the Department or to the Department of Health and Human Services.

5. A record from this system of records may be disclosed, as a routine use, (a) to appropriate parties engaged in litigation or in preparation of possible litigation, such as potential witnesses, for the purpose of securing their testimony when necessary; (b) to courts, magistrates or administrative tribunals; (c) to parties and their attorneys for the purpose of proceeding with litigation or settlement of disputes; and (d) to individuals seeking information by using established discovery procedures, whether in connection with civil, criminal, or regulatory proceedings.

6. A record from this system of records may be disclosed, as a routine use, to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

7. A record in this system of records may be disclosed, as a routine use, to a member of Congress submitting a request involving the individual when the individual is a constituent of the member and has requested assistance from the member with respect to the subject matter of the record.

8. A record in this system of records which contains medical and/or psychological information may be disclosed, as a routine use, to the physician or mental health professional of any individual submitting a request for access to the record under the Privacy Act of 1974 and DOE's Privacy Act regulations if, in its sole judgment and good faith, DOE believes that disclosure of the medical and/or psychological information directly to the individual who is the subject of the record could have an adverse effect upon that individual, in accordance with the provisions of 5 U.S.C. 552a(f)(3) and applicable DOE regulations.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, computer tapes, computer printouts, punched cards, discs, magnetic tape, and microfilm.

RETRIEVABILITY:

By name and social security number.

SAFEGUARDS:

Records are maintained in locked security areas in locked file cabinets. Access is limited to individuals whose official duties require access.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the General Records Schedule and DOE records schedules which have been approved by the National Archives and Records Administration. Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

U.S. Department of Energy, Oak Ridge Operations Office, PO Box 2001, Oak Ridge, TN 37831.

NOTIFICATION PROCEDURE:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Privacy Act Officer, Department of Energy, Oak Ridge Operations Office, PO Box 2001, Oak Ridge, TN 37831, in accordance with DOE's Privacy Act regulations (10 CFR part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, social security number, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The individual, medical records, physicians, medical institutions, and reports of incident/accident investigations from private and public sources, radiation dosimetry records, security clearance records, and employment records.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–73

SYSTEM NAME:

The US-DTPA Registry.

SYSTEM LOCATION:

U.S. Department of Energy, Oak Ridge Operations Office, PO Box 2001, Oak Ridge, TN 37831.

CATEGORIES OF INDIVIDUAL COVERED BY THE SYSTEM:

Registrants are those individuals who, because of real or suspected internal contamination with transuranic elements, have received diethylenetriaminepentaacetic acid (DTPA), in the calcium or zinc form during the course of chelation therapy. Administration of the agent DTPA is limited to physicians who are co-investigators with the DOE contractor staff on the Investigative New Drug License of the Food and Drug Administration.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records compiled by the physician administering DTPA in the event of an exposure that was known to have or was suspected of having caused transuranic contamination internally requiring chelation therapy with DTPA. These records include a description of the exposure, the results of serial bioassays and investigations conducted to evaluate the level of internal contamination and the efficacy of subsequent chelation by DTPA. The form of DTPA and the route and frequency of administration are recorded together with any untoward effects of the therapy.

Name, social security numbers or other identifiers and vital status of treated persons. The last known address and the name of the private physicians of individuals who have relocated or who are no longer within the practice of the administering physician(s) are included in the DTPA Registry to facilitate the search and contact of these individuals; medical records of illnesses, examinations, including routine follow-up examinations, investigations, etc., that have occurred since the initial administration of DTPA; and death certificate.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. To provide a current record of individuals treated with DTPA for use by the DOE and its contractors and consultants; identify by epidemiological methods any long-term untoward effects associated with DTPA therapy; to provide information to FDA in accord with the IND license and issuances.

2. A record from this system of records may be disclosed to facilitate health hazard evaluations, epidemiological studies, or public health activities required by law performed by personnel, contractor personnel, grantees, and cooperative agreement holders of components of the Department of Health and Human Services, including the National Institute for Occupational Safety and Health and the National Center for Environmental Health of the Centers for

Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry pursuant to Memoranda of Understanding between the Department and the Department of Health and Human Services or its components.

3. Subject to the same Privacy Act limitations applicable to employees of the Department, a record from this system of records may be disclosed as a routine use to contractors, grantees, participants in cooperative agreements, collaborating researchers, or their employees, in performance of health studies or related health or environmental duties pursuant to their contracts, grants, and cooperating or collaborating research agreements. In order to perform such studies, the Department, its contractors, grantees, participants in cooperative agreements, and collaborating researchers may disclose a record to: Federal, state and local health and medical agencies or authorities; to subcontractors in order to determine a subject's vital status or cause of death; to health care providers to verify a diagnosis or cause of death; or to third parties to obtain current addresses for participants in health-related studies, surveys and surveillances. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the above described research purposes.

4. A record from this system of records may be disclosed to members of DOE advisory committees, the Department of Health and Human Services Advisory Committee on Projects Related to Department of Energy Facilities and to designated employees of Federal, State, or local government or government-sponsored entities authorized to provide advice to the Department concerning health, safety or environmental issues. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the purpose of providing advice to the Department or to the Department of Health and Human Services.

5. A record from this system of records may be disclosed, as a routine use, (a) to appropriate parties engaged in litigation or in preparation of possible litigation, such as potential witnesses, for the purpose of securing their testimony when necessary; (b) to courts, magistrates or administrative tribunals; (c) to parties and their attorneys for the purpose of proceeding with litigation or settlement of disputes; and (d) to individuals seeking information by using established discovery procedures, whether in connection with civil, criminal, or regulatory proceedings.

6. A record from this system of records may be disclosed, as a routine use, to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

7. A record in this system of records may be disclosed, as a routine use, to a member of Congress submitting a request involving the individual when the individual is a constituent of the member and has requested assistance from the member with respect to the subject matter of the record.

8. A record in this system of records which contains medical and/or psychological information may be disclosed, as a routine use, to the physician or mental health professional of any individual submitting a request for access to the record under the Privacy Act of 1974 and DOE's Privacy Act regulations if, in its sole judgment and good faith, DOE believes that disclosure of the medical and/or psychological information directly to the individual who is the subject of the record could have an adverse effect upon that individual, in accordance with the provisions of 5 U.S.C. 552a(f)(3) and applicable DOE regulations.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, computer tapes, computer printouts, punched cards, discs, magnetic tape, and microfilm.

RETRIEVABILITY:

By name and social security number.

SAFEGUARDS:

Records are maintained in locked security areas in locked file cabinets. Access is limited to individuals whose official duties require access.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the General Records Schedule and DOE records schedules which have been approved by the National Archives and Records Administration. Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

U.S. Department of Energy, Oak Ridge Operations Office, PO Box 2001, Oak Ridge, TN 37831.

NOTIFICATION PROCEDURE:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Privacy Act Officer, Department of Energy, Oak Ridge Operations Office, PO Box 2001, Oak Ridge, TN 37831, in accordance with the DOE's Privacy Act regulations (10 CFR part 1008 (45 FR 61576, September 16, 1980)).

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The individual, medical records, physicians, medical institutions, and reports of incident/accident investigations from private and public sources, radiation dosimetry records, security clearance records, and employment records.

SYSTEM EXEMPT FROM CERTAIN PROVISIONS OF THE ACT:

None.

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BILLING CODE 6450–01–P

Federal Register

Wednesday
June 28, 1995

Part IV

Department of Commerce

International Trade Administration

Countervailing and Antidumping Notices; Oil Country Tubular Goods; Notices

DEPARTMENT OF COMMERCE

International Trade Administration

[C–433–806]

Final Affirmative Countervailing Duty Determination: Certain Oil Country Tubular Goods ("OCTG") From Austria

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 28, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Yeske or Daniel Lessard, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0189 or 482–1778, respectively.

Final Determination

The Department of Commerce ("the Department") determines that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended ("the Act"), are being provided to manufacturers, producers, or exporters in Austria of certain oil country tubular goods ("OCTG"). For information on the estimated net subsidy, please see the *Suspension of Liquidation* section of this notice.

Case History

Since the publication of the notice of the preliminary determination in the **Federal Register** (60 FR 4600, January 24, 1995), the following events have occurred. On February 2, 1995, pursuant to a request by Voest-Alpine Stahlrohr Kindberg ("Kindberg"), the Department postponed the final determination in the companion antidumping investigation (60 FR 6512) until not later than June 19, 1995. Because this investigation is aligned with the companion antidumping investigation, we notified parties that the final determination in this investigation would also be made no later than June 19, 1995.

We conducted verification of the responses submitted by the Government of Austria ("GOA") and Voest-Alpine Stahlrohr Kindberg ("Kindberg") from February 27 through March 8, 1994. Both respondents and petitioners submitted case and rebuttal briefs on May 23 and May 30, 1995, respectively. A hearing was not requested.

Scope of the Investigation

For purposes of this investigation, OCTG are hollow steel products of circular cross-section, including oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The OCTG subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.20.10.10, 7304.20.10.20, 7304.20.10.30, 7304.20.10.40, 7304.20.10.50, 7304.20.10.60, 7304.20.10.80, 7304.20.20.10, 7304.20.20.20, 7304.20.20.30, 7304.20.20.40, 7304.20.20.50, 7304.20.20.60, 7304.20.20.80, 7304.20.30.10, 7304.20.30.20, 7304.20.30.30, 7304.20.30.40, 7304.20.30.50, 7304.20.30.60, 7304.20.30.80, 7304.20.40.10, 7304.20.40.20, 7304.20.40.30, 7304.20.40.40, 7304.20.40.50, 7304.20.40.60, 7304.20.40.80, 7304.20.50.15, 7304.20.50.30, 7304.20.50.45, 7304.20.50.60, 7304.20.50.75, 7304.20.60.15, 7304.20.60.30, 7304.20.60.45, 7304.20.60.60, 7304.20.60.75, 7304.20.70.00, 7304.20.80.30, 7304.20.80.45, 7304.20.80.60, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50.

After the publication of the preliminary determination, we found that HTSUS item numbers 7304.20.10.00, 7304.20.20.00, 7304.20.30.00, 7304.20.40.00, 7304.20.50.10, 7304.20.50.50, 7304.20.60.10, 7304.20.60.50, and 7304.20.80.00 were no longer valid HTSUS item numbers. Accordingly, these numbers have been deleted from the scope definition.

Although the *HTSUS* subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994. References to the Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments, 54 FR 23366 (May 31, 1989) ("Proposed Regulations"), which has been withdrawn, are provided solely for further explanation of the Department's CVD practice.

Injury Test

Because Austria is a "country under the Agreement" within the meaning of section 701(b) of the Act, the U.S. International Trade Commission ("ITC") must determine whether imports of OCTG from Austria materially injure, or threaten material injury to, a U.S. industry. On August 24, 1994, the ITC published its preliminarily determination that there is a reasonable indication that an industry in the United States is being materially injured or threatened with material injury by reasons of imports from Austria of the subject merchandise (59 FR 43591, August 24, 1994).

Corporate History of Respondent Kindberg

Prior to 1987, the subject merchandise was produced in the steel division of Voest-Alpine AG ("VAAG"), a large conglomerate which also had engineering and finished products divisions. In 1987, VAAG underwent a major restructuring and several new companies were formed from the three major divisions of VAAG. The steel division was incorporated as Voest-Alpine Stahl GmbH, Linz ("VA Linz"). Among VA Linz's separately incorporated subsidiaries were Kindberg and Voest-Alpine Stahl Donawitz GmbH ("Donawitz"). VAAG became a holding company for VA Linz and its other former divisions.

In 1988, VAAG transferred its ownership interest in VA Linz to Voest-Alpine Stahl AG ("VAS"). At the same time, Kindberg became a subsidiary of Donawitz. Donawitz and other companies were owned by VAS, which in turn was owned by VAAG.

In 1989, VAS and all other subholdings of VAAG were transferred to Industrie und Beteiligungsverwaltung GmbH ("IBVG"). In 1990, IBVG, in turn, was renamed Austrian Industries AG ("AI"). VAAG remained in existence, but separate from IBVG and AI, holding only residual liabilities and non-steel assets.

In 1991, as part of the reorganization of the long products operations, Donawitz was split. The rail division remained with the existing company (*i.e.*, Donawitz), however, the name of the company was changed to Voest-Alpine Schienen GmbH ("Schienen"). In addition to producing rails, Schienen also became the holding company for Kindberg and the other Donawitz subsidiaries. The metallurgical division of the former Donawitz was incorporated as a new company and was

named Voest-Alpine Stahl Donawitz ("Donawitz II").

Equityworthiness

As discussed below, we have determined that the GOA provided equity infusions, through the state-owned industry holding company, Österreichische Industrieholding-Aktiengesellschaft ("ÖIAG"), to VAAG in the years 1983, 1984, and 1986, and to Kindberg in 1987. In order for the Department to find an equity infusion countervailable, it must be determined that the infusion is provided on terms inconsistent with commercial considerations. Petitioners have alleged that VAAG and Kindberg were unequityworthy in the years in which they received equity infusions and that the equity infusions were, therefore, inconsistent with commercial considerations. According to § 355.44(e)(2) of the Department's *Proposed Regulations*, for a company to be equityworthy it must show the ability to generate a reasonable rate of return within a reasonable period of time. A detailed equityworthiness analysis can be found in the Department's Concurrence Memorandum dated June 19, 1995. A summary of that analysis follows.

In the Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria, 58 FR 37217 (July 9, 1993) ("Certain Steel"), the Department found VAAG to be unequityworthy in the years 1978–84 and 1986. Respondents have not questioned this determination and no additional information concerning that period has come to light. Therefore, we determine VAAG to be unequityworthy during the period 1978–84, and for 1986.

With respect to the equityworthiness of Kindberg in 1987, we have further examined the information provided regarding Kindberg's future prospects. This information included a more detailed excerpt of the VA Neu study than was available at the time of the preliminary determination, ÖIAG Finance Concepts, and an internal operating forecast performed by Kindberg. Although the forecasts show a trend toward profitability, they fail to establish that Kindberg would generate a reasonable rate of return in a reasonable period of time. Therefore, we determine that the 1987 equity infusion into Kindberg was inconsistent with commercial considerations. We also reaffirm our preliminary determination, based on our analysis from Certain Steel, that VAAG's poor performance prior to the restructuring supports a finding that the 1987 infusion into Kindberg was inconsistent with commercial considerations.

Allocation of Non-Recurring Benefits

We have determined that the subsidies received by Kindberg are "non-recurring" because the benefits are exceptional and the recipient could not expect to receive them on an ongoing basis (see, the *General Issues Appendix* to the Final Countervailing Duty Determination: Certain Steel Products from Austria ("GIA"), 58 FR 37225, 37226 (July 9, 1993)). Consequently, as explained in § 355.49 of the *Proposed Regulations*, we have allocated the benefits over a period equal to the average useful life of assets in the industry.

A company-specific discount rate was not available for the allocation. Therefore, we have used the bond rate designated as being for "Industry and other Austrian Issuers" in the Austrian National Bank's Annual Report. Although respondents reported an alternative borrowing rate to be used as the discount rate, we verified that their proposed rate reflected large government borrowings. Because we are measuring the benefit to the recipient company, we prefer a commercial benchmark. Therefore, we have rejected the rate dominated by government borrowing and selected instead a rate which reflects what it costs businesses to borrow.

Calculation of the Benefit

For purposes of this final determination, the period for which we are measuring subsidies (the POI) is calendar year 1993. In determining the benefits received under the various programs described below, we used the following calculation methodology. We first calculated the benefit attributable to the POI for each countervailable program, using the methodologies described in each program section below. For each program, we then divided the benefit attributable to Kindberg in the POI by Kindberg's total sales revenue. Next, we added the benefits for all programs to arrive at Kindberg's total subsidy rate. Because Kindberg is the only respondent company in this investigation, this rate is also the country-wide rate.

Based upon our analysis of the petition, responses to our questionnaires, verifications and comments made by interested parties, we determine the following:

A. Programs Determined To Be Countervailable

We determine that subsidies are being provided to manufacturers, producers, or exporters in Austria of OCTG under the following programs:

1. Equity Infusions to Voest-Alpine AG (VAAG): 1983, 1984 and 1986

The GOA provided equity infusions through ÖIAG to VAAG in 1983, 1984 and 1986, while VAAG owned the facilities which became Kindberg, the producer of the subject merchandise. The 1983 and 1984 infusions were given by ÖIAG pursuant to Law 589/1983. The 1986 equity infusion was given as an advance payment for funds to be provided under Law 298/1987 (the ÖIAG Financing Act). Law 589/1983 and Law 298/1987 provide authority for disbursement of funds solely to companies of ÖIAG, of which VAAG is one.

In Certain Steel, the Department determined these equity infusions to be *de jure* specific. Respondents did not provide any information disputing these findings in this proceeding. Moreover, since we have determined that VAAG was unequityworthy in these years, we determine that these infusions were provided to VAAG on terms inconsistent with commercial considerations.

Respondents argue that subsidies received by VAAG prior to the 1987 restructuring are not appropriately attributable to Kindberg. However, we have determined that these subsidies continue to benefit Kindberg's production of OCTG, in accordance with restructuring methodology discussed in the *GIA*, at 37265–8. (See *Comment Two*, below, for a discussion of respondents' comments and the Department's position on this matter.)

To calculate the portion of these subsidies to VAAG which is attributable to Kindberg, we divided Kindberg's asset value on January 1, 1987, by VAAG's total asset value on December 31, 1986 (*i.e.*, pre-restructuring). This ratio best reflects the proportion of VAAG's total 1986 assets that became Kindberg in 1987.

We then applied this ratio to VAAG's subsidy amount to calculate the portion of these infusions allocable to Kindberg. To calculate the benefit for the POI, we treated each of the equity amounts as a grant and allocated the benefits over a 15 year period beginning in the years the equity was received by VAAG. Our treatment of equity as grants is discussed in the *GIA*, at 37239. We then divided the benefit by total sales of Kindberg during the POI. On this basis, we determine the net subsidies for these equity infusions to be 1.37 percent *ad valorem* for all manufacturers, producers, and exporters in Austria of OCTG.

2. Grants Provided to VAAG: 1981–86

The GOA provided grants to VAAG through ÖIAG pursuant to Law 602/1981, Law 589/1983, and Law 298/1987. In Certain Steel, the Department found grants disbursed under Law 602/1981, Law 589/1983 and Law 298/1987 to be provided specifically to the steel industry and, hence, countervailable (58 FR 37221). Respondents have not challenged the countervailability of these grants in this proceeding.

The grant received in 1981 was less than 0.50 percent of VAAG's sales in that year. Hence, as explained in § 355.44(a) of our *Proposed Regulations* and the *GIA*, at 37217, we have expensed the grant received in 1981 in that year. To calculate the benefit from the other grants, we used the methodology described in *Equity Infusions to VAAG: 1983–84, 1986* section, above. On this basis, we determine the net subsidies under this program to be 3.68 percent *ad valorem* for all manufacturers, producers, and exporters in Austria of OCTG.

3. Assumption of Losses at Restructuring by VAAG on Behalf of Kindberg

In Certain Steel, we determined that, in connection with the 1987 restructuring, VAAG retained all the losses carried forward on its balance sheet and that no losses were assigned to its newly created subsidiaries. VAAG later received funds from the GOA under Law 298/1987 to offset these losses. We found that VAAG's subsidiaries benefitted because VAAG retained these losses when the company was restructured. In the present investigation, petitioners allege that this assumption of losses provided a countervailable subsidy to Kindberg, a subsidiary of VAAG.

In our preliminary determination, respondents argued that the assumption of losses did not provide a benefit to Kindberg because Kindberg could have used such losses to reduce income-tax liabilities in the future. We stated that this argument would be more closely analyzed for our final determination.

At verification, we learned that Austrian Commercial Law and Austrian Tax Law distinguish between two types of losses: tax losses and commercial losses. Kindberg's tax losses *were* carried forward after the restructuring and were used to offset income taxes in future years. The losses which were retained by VAAG and countervailed in Certain Steel, were commercial losses. All commercial losses were retained by VAAG after the restructuring. Hence we conclude that the losses retained by VAAG could not be used to reduce the future tax liabilities of Kindberg.

Respondents now argue that these commercial losses were not generated by Kindberg and, therefore, the assumption of losses by VAAG does not benefit Kindberg. At verification, however, respondents were unable to identify how the losses which remained on VAAG's books were incurred. Moreover, Kindberg's auditor's report states that Kindberg incurred significant commercial losses in 1985 and 1986. Hence, we find no basis for concluding that the losses retained by VAAG should not be attributed in part to Kindberg.

We concluded in Certain Steel that, "if VAAG had assigned these losses to its new companies, then each of the new companies would have been in a * * * precarious financial position" (Certain Steel, 37221). Similarly, we determine that the assumption of losses provided a benefit to Kindberg.

To calculate the benefit, we have treated the losses not distributed to Kindberg as a grant received in 1987. Kindberg's share of the losses was determined by reference to its asset value relative to total VAAG assets. To allocate the benefit, we used the methodology described in *Equity Infusions to VAAG: 1983–84, 1986* section, above. On this basis, we determine the net subsidies for this program to be 1.26 percent *ad valorem* for all manufacturers, producers, and exporters in Austria of OCTG.

4. Equity Infusion to Kindberg: 1987

A direct equity infusion from ÖIAG to Kindberg was made on January 1, 1987, pursuant to Law 298/1987. As under Law 589/1983, funds under Law 298/1987 were provided solely to the steel industry. Therefore, we find this infusion to be specific. Moreover, since we have determined that Kindberg was unequityworthy in 1987, this infusion was made on terms inconsistent with commercial considerations. Thus, we determine this infusion to be countervailable.

To calculate the benefit for the POI, we treated the equity amount as a grant and allocated the benefit over 15 years. Because the equity investment was made directly in Kindberg, and because Kindberg was separately incorporated as of that year, the entire benefit has been attributed to Kindberg. The portion allocated to the POI was divided by total sales of Kindberg during the POI to determine the *ad valorem* benefit. On this basis, we determine the net subsidies for this program to be 5.13 percent *ad valorem* for all manufacturers, producers, and exporters in Austria of OCTG.

B. Programs Determined not to Benefit the Subject Merchandise

We included in our investigation subsidies provided after 1987 to VA Linz, VAAG and VAS based on petitioners' allegation that subsidies to these companies benefitted Kindberg. Based on information provided in the responses and our findings at verification, we determine that no subsidies were being transmitted to Kindberg from its related companies. Therefore, the following programs did not bestow a benefit on Kindberg. For a discussion of the transmittal of subsidies, see the Department's Concurrence Memorandum dated June 19, 1995.

1. 1987 Equity Infusion to VA Linz.
2. Post-Restructuring Equity Infusions to VAAG.
3. Post-Restructuring Grants to VAAG.
4. Post-Restructuring Grants to VAS.

C. Analysis of Upstream Subsidies

The petitioners have alleged that manufacturers, producers, or exporters of OCTG in Austria receive benefits in the form of upstream subsidies. Section 771A(a) of the Tariff Act of 1930, as amended (the Act), defines upstream subsidies as follows:

The term "upstream subsidy" means any subsidy * * * by the government of a country that:

(1) Is paid or bestowed by that government with respect to a product (hereinafter referred to as an "input product") that is used in the manufacture or production in that country of merchandise which is the subject of a countervailing duty proceeding;

(2) In the judgment of the administering authority bestows a competitive benefit on the merchandise; and

(3) Has a significant effect on the cost of manufacturing or producing the merchandise.

Each of the three elements listed above must be satisfied in order for the Department to find that an upstream subsidy exists. The absence of any one element precludes the finding of an upstream subsidy. As discussed below, respondents have shown that a competitive benefit does not exist. Therefore, we have not addressed the first and third criteria.

Competitive Benefit

In determining whether subsidies to the upstream supplier(s) confer a competitive benefit within the meaning of section 771A(a)(2) on the subject merchandise, section 771A(b) directs that:

* * * a competitive benefit has been bestowed when the price for the input product * * * is lower than the price that the manufacturer or producer of merchandise which is the subject of a countervailing duty proceeding would otherwise pay for the product in obtaining it from another seller in an arms-length transaction.

The *Proposed Regulations* offer the following hierarchy of benchmarks for determining whether a competitive benefit exists:

* * * In evaluating whether a competitive benefit exists pursuant to paragraph (a)(2) of this section, the Secretary will determine whether the price for the input product is lower than:

(1) The price which the producer of the merchandise otherwise would pay for the input product, produced in the same country, in obtaining it from another unsubsidized seller in an arm's length transaction; or

(2) A world market price for the input product.

In this instance, there is not another supplier in Austria of the input product, steel blooms. However, Kindberg does purchase the input product from an unrelated foreign supplier. Therefore, we have used the prices charged to Kindberg by the foreign supplier as the benchmark world market price.

Because the foreign supplier's prices are delivered, we made an upward adjustment to the domestic supplier's prices to account for the cost of freight between Kindberg and that supplier. Based on our comparison of these delivered prices for identical grades of steel blooms, we found no competitive benefit was bestowed on Kindberg during the POI. Therefore, we determine that Kindberg did not receive an upstream subsidy.

Interested Party Comments

Comment One: Attribution of VAAG subsidies to Kindberg

Respondents argue that in *British Steel plc* v. *United States*, the CIT established that "a subsidy cannot be provided to a 'productive unit' or 'travel' with it unless the 'productive unit' is itself an artificial person capable of receiving a subsidy." Prior to 1987, Kindberg was not a separately incorporated company—Kindberg was not an "artificial person." Therefore, respondents claim that subsidies received by VAAG prior to 1987 could not "travel" with Kindberg after the restructuring. Moreover, they argue that the requirements in British Steel also preclude the Department from attributing losses assumed at restructuring by VAAG to Kindberg because only subsidies received directly by Kindberg after its incorporation are countervailable.

Petitioners assert that British Steel is irrelevant to Kindberg because it involved cases where subsidized state-owned companies were privatized. However, in this investigation, the Austrian government still owns 100% of Kindberg (*i.e.*, Kindberg has not been privatized). Petitioners note that two types of corporate restructuring were identified in Certain Steel. Privatizations (*i.e.*, mergers, spin-offs, and acquisitions) were one type of corporate restructuring, while internal corporate restructurings were the other type. The 1987 VAAG restructuring was identified as an internal corporate restructuring. Petitioners note that an internal restructuring does not constitute a sale for purposes of evaluating the extent to which subsidies passed through to a new entity. Therefore, they assert that none of the issues addressed in British Steel are relevant.

DOC Position

Respondents' reliance on *British Steel PLC* v. *United States*, Slip Op. 95–17 (CIT February 9, 1995) is misplaced. First, British Steel is not a final decision of the CIT, and no decision has been made regarding whether any issue contained in that opinion should be appealed. Therefore, the Department is not bound by that opinion.

Further, even if British Steel were a final decision, the issues contained in the opinion which relate to privatization are inapposite in this case. The entire British Steel opinion is premised on an actual privatization of a company, *i.e.*, a sale of all or part of the government's interest. In this case, Kindberg has not been privatized. Although the immediate parent of Kindberg changed through the restructuring, the ultimate equity owner was and remains the GOA. The *British Steel* opinion did not address a situation in which a company was restructured, but there was no sale of the government's interest.

Comment Two: Allocation Time-Period

Respondents argue that allocating benefits from nonrecurring grants and equity infusions over fifteen years, based on the IRS tables, contravenes established judicial precedent, as well as congressional intent. They state that a recent CIT decision (*i.e.*, *British Steel plc* v. *the United States*) held that this allocation methodology, used in *Certain Steel*, was contrary to law. Respondents argue that the Department should employ an allocation methodology which reasonably reflects the relevant commercial and competitive advantages enjoyed by Kindberg. Specifically, the Department should allocate benefits using the 3, 5, and 10-year schedules of depreciation found in Kindberg's balance sheet and statement of profit and loss.

Petitioners claim that the the CIT did not find that the Department's allocation methodology was unlawful *per se*. The court's specific concern was that the Department had not adequately explained how the IRS tables reflected the benefit from subsidies used for purposes other than the purchase of physical assets. The court recognized that, after engaging in an examination of the firms under investigation, the Department might still find that the IRS tables could serve as a proxy for allocating subsidy benefits.

Petitioners argue that Kindberg has not provided sufficient evidence that fifteen years does not reflect the benefit to Kindberg from non-recurring subsidies. Petitioners note that Kindberg did not provide cites for the 3, 5, and 10 year depreciation schedules. Moreover, Kindberg did not explain the relevance of these depreciation schedules, nor did it identify the assets that are subject to the depreciation schedules. Given the lack of contrary evidence in the record, the Department should determine that the 15-year allocation period reasonably represents the benefit to Kindberg from non-recurring subsidies.

DOC Position

As noted previously, respondents' reliance on *British Steel PLC* v. *United States*, Slip Op. 95–17 (CIT February 9, 1995) is misplaced. British Steel is not a final decision of the CIT, and no decision has been made regarding whether any issue contained in that opinion should be appealed. Therefore, the Department is not bound by that opinion.

Furthermore, renewable physical assets are essential to the continuation of a company's productive activity, which in turn affects the commercial and competitive position of a company. Therefore, the Department has determined that the average useful life of renewable physical assests is an appropriate measure of the commercial and competitive benefits from non-recurring subsidies (see, GIA, at 37227).

Comment Three: Assumption of Losses

Respondents argue that the evidence on record does not support the Department's preliminary finding that VAAG's assumption of losses provided a countervailable subsidy to Kindberg. According to respondents, it was determined at verification that the losses which remained on VAAG's books after the restructuring were incurred by other units of Voest-Alpine. Respondents claim that "absent substantial evidence on the record attributing VAAG's losses to Kindberg,

the Department's final determination should not result in a net subsidy calculation for these fictive benefits."

According to petitioners, the Department was told at verification that the majority of the losses in question were incurred by divisions other than Kindberg, and that Kindberg's portion would therefore be small. Petitioners note that respondents were unable to document or even to determine the actual amount of the losses which were attributable to Kindberg. Petitioners further argue that, had any of VAAG's losses been allocated to Kindberg, the newly formed company would have required additional capital in order to avoid insolvency. They conclude that at least some of the losses assumed by VAAG may have been incurred by Kindberg and should, therefore, have been allocated to Kindberg. The assumption of those losses provided a countervailable subsidy to Kindberg.

DOC Position

We agree with petitioners. At verification, VAAG officials explained that the amount of VAAG's losses attributable to Kindberg is not determinable. While we did see evidence that substantial losses were incurred by other divisions of VAAG prior to the restructuring, it does not follow that no losses were created by Kindberg. Moreover, an excerpt from Kindberg's 1987 auditor's report notes that Kindberg incurred operating losses in the amounts of AS 781 million in 1985 and AS 289 million in 1986. Thus, the evidence on the record indicates that Kindberg incurred losses prior to 1987.

Comment Four: 1987 Equityworthiness of Kindberg

Respondents assert that the Department should not rely solely on the past financial performance of VAAG in determining whether Kindberg was equityworthy in 1987. The Department's determination should take into consideration Kindberg's expected future performance—as outlined in the VA Neu study, the FGG reports, and Kindberg's operating forecasts. Respondents claim that these sources all predicted profitability within three years of the date of incorporation.

Furthermore, respondents argue that the company's performance both prior to and after its effective incorporation date should be considered. With respect to Kindberg's actual performance, respondents note that as early as the third quarter of 1987, Kindberg's performance showed marked improvement over 1986. Therefore, even before Kindberg's equity infusion was provided, future financial prospects for the firm had improved significantly. Moreover, they state that Kindberg's performance continued to improve during 1988 and 1989 and that by 1990, Kindberg was operating at a profit. They contend that at the time of the equity infusion, a reasonable private investor would have recognized that Kindberg was capable of generating a sizable return on investment in a reasonable amount of time.

Petitioners claim that the Department's stated policy in the *GIA* is to place greater reliance on past indicators than on studies of future expected performance. The starting point of the Department's analysis, therefore, should be a review of VAAG's past performance—which would lead to a finding that Kindberg was unequityworthy in 1987.

With respect to the VA Neu Study, petitioners argue that the information is inadequate to establish whether Kindberg was equityworthy. They argue that the Department cannot properly analyze the study because respondents only submitted excerpts containing general discussions of possible cost savings.

Additionally, petitioners assert that Kindberg's predicted profitability does not establish that the company would generate a reasonable rate of return within a reasonable time—particularly in light of the substantial losses that Kindberg was expected to incur prior to achieving profitability.

Finally, petitioners stress that the Department does not consider the actual performance of the company subsequent to the receipt of an equity infusion. Kindberg's actual performance after 1987 is irrelevant for purposes of an equityworthiness determination because such information would not have been available to a private investor at that time.

DOC Position

We agree with respondents that the Department should not rely solely on the past financial performance of VAAG to determine whether the 1987 equity infusion in Kindberg was consistent with commercial considerations. As stated in the *GIA*, as 37244, in circumstances such as a restructuring it may be appropriate to place greater weight on certain factors (such as future prospects), than others (past performance). Hence, the Department has examined closely the expected results of the restructuring for Kindberg. At the same time, we reaffirm our earlier conclusion as to VAAG's performance.

We also disagree with petitioners that the information provided by respondents regarding future prospects is inadequate. While the VA Neu study by itself might not be sufficient, largely because it was internally generated and because it was undertaken for different purposes, we have not relied solely on that study. In addition, we have relied on the estimates provided in conjunction with the FGG's "oversight" activities in the restructuring. Although the FGG is part of the Austrian Finance Ministry, there is no indication that it did not operate independently in its assessments of the restructuring process.

We do, however, agree with petitioners that these forecasts do not provide a basis for concluding that the GOA would receive a reasonable return within a reasonable amount of time. Heavy losses were predicted for the early years and the best year showed only that the company would break even (or possibly return a small profit). Although these estimates showed a trend toward profitability, they also showed a negative net return over the time horizon they covered.

We also agree with petitioners that Kindberg's actual performance after the equity infusion is irrelevant to this determination. Our examination focuses on what the investor could have expected to receive at the time the investment was made.

Comment Five: Amount of the 1987 Equity Infusion

Petitioners argue that the Department should find the total amount of equity received by Kindberg in 1987 (*i.e.*, both the direct infusion from ÖIAG and the initial equity contribution by VAAG) to be a countervailable subsidy.

DOC Position

The equity on Kindberg's opening balance sheet for 1987 was composed of initial start-up capital provided by VAAG, an increase in VAAG's equity position due to a revaluation of the assets contributed by VAAG to Kindberg, and the 1987 equity infusion by ÖIAG. VAAG was later reimbursed by ÖIAG for its initial equity contribution.

In Certain Steel, the Department concluded that VAAG's contributions of equity capital to its newly formed subsidiaries in 1987 did not constitute countervailable equity infusions. Rather, VAAG merely distributed its pre-existing assets and liabilities to its subsidiaries. Because the method used to allocate assets and liabilities to the new subsidiaries was reasonable, the Department found that no countervailable benefit was conferred in this action. The initial equity received by Kindberg was part of that redistribution of VAAG's assets. Therefore, consistent with Certain Steel, we have found that the assets provided by VAAG to Kindberg are not a subsidy. However, as discussed above, the losses retained by VAAG did give rise to a subsidy to Kindberg.

Comment Six: Bayou Steel Corporation ("BSC")

Respondents assert that the Department should not countervail the equity infusions and grants received by VAAG in 1983 and 1984 because these funds were used to cover losses incurred by BSC in the United States. Moreover, because BSC was sold in 1986, Kindberg cannot be receiving any benefits from those funds.

Petitioners argue that in Certain Steel, the Department found that the funds in question were provided to cover VAAG's worldwide losses, including those associated with Bayou Steel. Therefore, the subsidies are attributable to all of VAAG, including Kindberg.

DOC Position

We agree with petitioner. In Certain Steel, we determined that these funds were provided to cover VAAG's worldwide losses. Respondents have not provided information that these funds were intended solely to benefit BSC (see GIA, at 37236). With respect to the sale of BSC, we have applied the spin off methodology applied in the Certain Steel cases. A portion of the subsidies received by VAAG would have been allocated to BSC at the time of its sale, but the payment VAAG received for BSC was sufficiently large that all of the subsidies reverted to VAAG. Hence, these subsidies continue to be, in part, attributable to Kindberg.

Verification

In accordance with section 776(b) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, and examination of relevant accounting records and original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

Suspension of Liquidation

In accordance with our affirmative preliminary determination, we instructed the U.S. Customs Service to suspend liquidation of all entries of OCTG from Austria, which were entered or withdrawn from warehouse for consumption, on or after January 24, 1995, the date our preliminary determination was published in the **Federal Register**.

Under Article 5, paragraph 3 of the GATT Subsidies Code, provisional measures cannot be imposed for more than 120 days without final affirmative determinations of subsidization and injury. Therefore, we instructed the U.S. Customs Service to discontinue suspension of liquidation on the subject merchandise beginning May 24, 1995, but to continue suspension of liquidation of all entries, or withdrawals from warehouse, for consumption of the subject merchandise entered from January 24 through May 23, 1995. We will reinstate suspension of liquidation under section 703(d) of the Act, if the ITC issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amount indicated below.

OCTG

Country-Wide *Ad Valorem Rate:* 11.44 percent

ITC Notification

In accordance with section 705(c) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, these proceedings will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order directing Customs officers to assess countervailing duties on OCTG from Austria.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 705(d) of the Act and 19 CFR 355.20(a)(4).

Dated: June 19, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–15762 Filed 6–27–95; 8:45 am]

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[A–357–810]

Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods From Argentina

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 28, 1995.

FOR FURTHER INFORMATION CONTACT: John Beck or Jennifer Stagner, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3646 or (202) 482–1673, respectively.

Final Determination

The Department of Commerce (the Department) determines that oil country tubular goods (OCTG) from Argentina are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the Suspension of Liquidation section of this notice.

Case History

Since the amended preliminary determination on March 6, 1995 (60 FR 13119, March 10, 1995), the following events have occurred.

In March and April 1995, the Department verified the cost and sales questionnaire responses of Siderca S.A.I.C. and Siderca Corp. (collectively Siderca). Verification reports were issued in May 1995. On May 10 and 17, 1995, the interested parties submitted case and rebuttal briefs, respectively. On May 18, 1995, a public hearing was held. On May 23, 1995, Siderca submitted a revised sales tape pursuant to the Department's request correcting for minor errors discovered at verification.

Scope of the Investigation

For purposes of this investigation, OCTG are hollow steel products of circular cross-section, including oil well

casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The OCTG subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.20.10.10, 7304.20.10.20, 7304.20.10.30, 7304.20.10.40, 7304.20.10.50, 7304.20.10.60, 7304.20.10.80, 7304.20.20.10, 7304.20.20.20, 7304.20.20.30, 7304.20.20.40, 7304.20.20.50, 7304.20.20.60, 7304.20.20.80, 7304.20.30.10, 7304.20.30.20, 7304.20.30.30, 7304.20.30.40, 7304.20.30.50, 7304.20.30.60, 7304.20.30.80, 7304.20.40.10, 7304.20.40.20, 7304.20.40.30, 7304.20.40.40, 7304.20.40.50, 7304.20.40.60, 7304.20.40.80, 7304.20.50.15, 7304.20.50.30, 7304.20.50.45, 7304.20.50.60, 7304.20.50.75, 7304.20.60.15, 7304.20.60.30, 7304.20.60.45, 7304.20.60.60, 7304.20.60.75, 7304.20.70.00, 7304.20.80.30, 7304.20.80.45, 7304.20.80.60, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50.

After the publication of the preliminary determination, we were informed by Customs that HTSUS item numbers 7304.20.10.00, 7304.20.20.00, 7304.20.30.00, 7304.20.40.00, 7304.20.50.10, 7304.20.50.50, 7304.20.60.10, 7304.20.60.50, and 7304.20.80.00 were no longer valid HTSUS item numbers. This was confirmed by examination both of the Customs module and the published 1995 HTSUS tariff schedule. Accordingly, these numbers have been deleted from the scope of this investigation.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is January 1, 1994, through June 30, 1994.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Such or Similar Comparisons

We have determined for purposes of the final determination that the OCTG covered by this investigation comprises a single category of "such or similar" merchandise within the meaning of section 771(16) of the Act. Where there were no sales of identical merchandise in the third country [1] to compare to U.S. sales, we made similar merchandise comparisons on the basis of the product characteristics listed in Appendix V of the Department's antidumping questionnaire, as modified and discussed in the preliminary determination. In two instances, the revised product concordance submitted by Siderca did not follow exactly the product comparisons made in the preliminary determination. We have corrected the product concordance for these instances (see Comment 5 in the "Interested Party Comments" section of this notice).

We made adjustments, where appropriate, for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act.

Fair Value Comparisons

To determine whether Siderca's sales of OCTG from Argentina to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We calculated USP according to the methodology described in our preliminary determination, with the following exceptions:

1. For the cost of production (COP) of the merchandise that was further manufactured in the United States, we included in the cost of manufacture (COM) the research and development (R&D) expense excluded by respondent and computed general and administrative (G&A) expense on an annual basis from Siderca's March 31, 1994, income statement.

2. We applied the net financial expense of the consolidated parent to the further manufacturing costs of the related further manufacturer.

3. We made deductions from gross unit price for movement variances that represent the difference between the accrual and actual movement costs.

4. We recalculated inventory carrying cost to use the interest rate of the entity during the time period when that entity holds title to the goods. That is, we used the Argentine interest rate during the period from production to Siderca S.A.I.C.'s transfer of title to Siderca Corp. and the U.S. interest rate during the period the merchandise is held by Siderca Corp.

In order to calculate credit expenses for certain sales which had either not yet been shipped or paid for, we followed the methodology used in our preliminary determination and assigned the average number of credit days when shipment and payment dates were missing, but now used the date of the final determination, June 19, 1995, as the assumed payment date when only payment dates were missing.

Foreign Market Value

As stated in the preliminary determination, we found that the home market was not viable for sales of OCTG and based FMV on sales to the People's Republic of China (PRC). During the course of this investigation, the petitioners questioned the legitimacy of certain sales made by Siderca to the Chinese market. The Department closely examined these sales at verification and found no reason to alter its determination that PRC sales are the appropriate basis for FMV (see Comment 1 in the "Interested Party Comments" section of this notice).

Cost of Production Analysis

As we indicated in our preliminary determination, the Department initiated an investigation to determine whether Siderca's sales in the PRC were made below their COP. We calculated the COP according to the methodology described in our preliminary determination, with the following exceptions:

1. We included in the COM the R&D expense excluded by Siderca.

2. We computed G&A expense on an annual basis from Siderca's March 31, 1994, income statement.

3. We excluded duties from the COP since the price to which COP was compared was also exclusive of duties.

After computing COP, we compared product-specific COP net of direct and indirect selling expenses to reported third-country prices that were net of movement charges and direct and indirect selling expenses.

[1] The home market in this case is not viable. Sales to the People's Republic of China (PRC) are being used as the basis for the FMV and COP analysis.

Results of COP Analysis

In accordance with section 773(b) of the Act, we followed our standard methodology as described in the preliminary determination to determine whether the third country sales of each product were made at prices below their COP. Based on this methodology, none of Siderca's PRC sales were found to be below cost. Accordingly, we calculated FMV according to the methodology described in our preliminary determination, with the following exceptions:

1. We recalculated credit using the U.S. interest rate since all third country sales were denominated in U.S. dollars.

2. We made a circumstance-of-sale adjustment to FMV to account for the difference in the average effective reintegro (rebate) rate included in the U.S. price (see Comment 6 in the "Interested Party Comments" section of this notice).

In order to calculate credit expenses for unshipped or unpaid Chinese sales, we applied the same methodology described above for USP.

Currency Conversion

Because certified exchange rates for Argentina were unavailable from the Federal Reserve, we made currency conversions for expenses denominated in Argentine pesos based on the official monthly exchange rates in effect on the dates of the U.S. sales as published by the International Monetary Fund in accordance with 19 CFR 353.60(a).

Verification

As provided in section 776(b) of the Act, we verified the information used in making our final determination.

Interested Party Comments

Comment 1: Third Country Sales

The petitioners argue that information obtained from Siderca reveals that the date of sale of many of Siderca's third-country sales falls outside the POI, making the home market viable. The petitioners state that Siderca did not adhere to the Department's definition of date of sale for the majority of its third-country sales. They argue that Siderca's refusal to produce written agreements with a certain Chinese customer or price lists pursuant to those agreements leads one to conclude that there were two binding contracts between Siderca and the Chinese customer, one inside the POI and one outside the POI. The petitioners argue that the shipments pursuant to both of those agreements should be excluded from the Department's viability analysis.

Regarding the first agreement, the petitioners argue that the price and quantity were agreed to before the POI, in accordance with the terms specified in Siderca's 1991 Framework Agreement with its customer. Therefore, the POI shipments should be associated with pre-POI sales and excluded from the Department's analysis.

The petitioners argue that Siderca's contention that the 1991 Framework Agreement resulted only in periodic "general agreements" on quantity and on "general price levels" is an attempt to discount the authority of the 1991 Framework Agreement. They state that nothing in the 1991 Framework Agreement makes any mention of Siderca's claim that the general agreements entered into periodically with the customer were not final. Furthermore, the petitioners state that changes in some sales terms, as mentioned by Siderca to support its claim that the general agreements were not final sales agreements, do not invalidate the parties' intent to establish definite sales terms in the general agreements for the rest of the merchandise.

The petitioners further state that in the Final Determination of Sales at Less Than Fair Value: Steel Bar from India (59 FR 66915, December 28, 1994), the Department found that shipments under a sale agreement were a valid sale as of the date of the agreement, even though the sale was subsequently cancelled. The petitioners argue that if the cancellation of a contract does not alter the date of sale with regard to other merchandise covered by the contract, then ordering a new product does not alter the date of sale, at least for all other types of merchandise, evidenced by the general agreements in question. Therefore, the periodic agreements must be considered actual sales agreements.

As a result, the petitioners maintain that only the second agreement with the Chinese customer was entered into during the POI. However, the petitioners argue that the shipments pursuant to this second agreement should also be excluded from the Department's viability analysis because the terms of delivery for the total tonnage ordered were not met by Siderca, and the quantity shipped is not even close to the shipment terms agreed to by the parties. The petitioners state that the delivery term was an essential term of the agreement and was changed; therefore, the Department must exclude these sales from its viability analysis. Alternatively, if the Department does not exclude all the sales pursuant to this agreement, it must, at a minimum, exclude the merchandise where shipment was not even close to the shipment term agreed to by the parties. Additionally, the petitioners contend that the merchandise that remained unordered under the second agreement should also not be considered as POI sales and should be excluded from the viability analysis.

Regarding a non-Chinese third country sale, the petitioners state that the documentation placed on the record demonstrates that the correct date of sale is outside the POI, since the documentation references a sales acknowledgement dated outside the POI. Therefore, the Department must also exclude this sale from its viability analysis.

Finally, the petitioners argue that because a proper analysis of third country sales results in a viable home market, the Department must base its determination on the best information available, which in this case is the information contained in the petition.

Siderca states that to determine the date of sale, the Department relies on the first written memorialization of the sales agreement setting forth the essential contract terms. Siderca argues that there were no written agreements with the Chinese customer pursuant to the periodic negotiations and that there is nothing in the record to support the petitioners' claims that written agreements or price lists pursuant to the periodic negotiations exist.

Siderca states that it holds periodic negotiations with its customer regarding sales of OCTG, pursuant to the 1991 Framework Agreement, which end with a general agreement on the tonnage to be purchased during the next six months, and on general price levels. However, the product mix is not specified in these agreements, nor is there any firm commitment to purchase the total quantity. Sometimes the customer orders the total quantity discussed in the negotiations, sometimes it does not. Siderca states that production does not begin until the contracts pursuant to the general agreements are signed. It further states that it reported all contracts which were signed by both parties during the POI as POI sales.

Siderca argues that its sales process was fully verified by the Department. Siderca states that information was provided on the record which supports Siderca's treatment of the contract date as the date of sale, such as an internal document requesting guidance on the price to offer a certain customer during the POI. Siderca further states that the verification showed that it was consistent in its approach to the date of sale; for example, not treating as POI sales those shipments during the POI

that were pursuant to a contract signed before the POI.

Siderca further argues that there is evidence on the record which proves that the periodic negotiations with the Chinese customer do not end in a formal commitment to buy or sell. This is evidenced by a purchase order showing no terms for a particular product and also by the fact that, while the second agreement listed a certain quantity, only a portion of that quantity was actually ordered and shipped.

Siderca contends that the record supports its position that the specific terms of sale are established when the customer's purchase order is received. It notes that the original contracts were examined at the verification.

Regarding the merchandise that was shipped after the delivery date stipulated in the contract, Siderca argues that the delivery date influenced the timing of the negotiations and the timing of the contract signing. Siderca contends that the customer wanted shipment by a particular month but then experienced logistical problems and arranged for subsequent delivery. It states that the parties did not change the merchandise, price, quantity or other material terms of the contract. It also states that the petitioners could cite no cases where this type of modification had been interpreted as changing the date of sale.

Siderca then addresses the petitioners' argument that, at a minimum, the Department should exclude the merchandise where the shipment terms were not even close to those agreed to by the parties. Siderca argues that the petitioners provided no precedent to support their theory that these sales do not constitute sales during the POI. It argues that a delivery term is only a material term if the parties treat it as one and that the evidence on the record shows that all merchandise was eventually shipped.

Next, Siderca addresses the petitioners' argument that the merchandise that remained unordered under the second agreement should also not be considered as POI sales and excluded from the viability analysis. Siderca states that this merchandise was never ordered because it was never sold. Therefore, it does not need to be excluded from the viability analysis because it was never included.

Finally, Siderca addresses the petitioners' argument that the documentation placed on the record demonstrates that the correct date of sale for a non-Chinese third country sale is outside the POI, since the documentation references a sales acknowledgement dated outside the POI. It argues that the sales acknowledgement was only an "observation/clarification" of the customer's purchase order and that the record does not show any change or modification in the material terms.

DOC Position

We agree with Siderca. This issue was argued extensively by the parties and examined very closely by the Department at the verification. At verification, we found no evidence of written price agreements or price lists pursuant to the periodic negotiations which might result in certain reported sales being outside the POI. A review of the 1991 Framework Agreement also showed no basis to discount Siderca's claim that the periodic agreements with the Chinese customer were only "general agreements" where terms were not finalized. Thus, the 1991 Framework Agreement was akin to a memorandum of understanding between the parties, setting forth no definite material contract terms. It is clear from information on the record that the purchase order sets the price and quantity of the sale. Therefore, respondent's reporting of the purchase order date as the date of sale was consistent, and in accordance, with the Department's practice (see, e.g., Final Determination of Sales at Less than Fair Value: Certain Forged Steel Crankshafts from the United Kingdom (52 FR 18992, July 28, 1987).

Furthermore, changes in the delivery term of the contract at the end of the POI do not constitute changes to a term of the contract significant enough to alter the date of sale, unlike terms such as price and quantity. This is evidenced by the fact that the parties themselves did not treat the delivery term as a material one. Moreover, the petitioners could show no cases to support the opposite conclusion. Therefore, these sales were also properly within the POI.

Regarding the petitioners' argument that the merchandise that remained unordered under the second agreement should also not be considered as POI sales and should be excluded from the viability analysis, this merchandise was never sold nor reported; therefore, this issue is moot.

Regarding the petitioners' argument that the documentation placed on the record demonstrates that the correct date of sale for a non-Chinese sale is outside the POI, the acknowledgement in question references no change in the material contract terms. Furthermore, even if the petitioners' argument was correct, excluding this sale alone would not change the viability analysis.

Accordingly, the use of best information available, as suggested by the petitioners, is not warranted. We will use all PRC sales as reported by Siderca in our analysis.

Comment 2: Related Customer Allegation

The petitioners argue that Siderca and a certain Chinese customer are related parties and, therefore, the sales to the Chinese customer must be excluded from the Department's analysis. They state that the Department's questionnaire specifies that companies are considered related when one or more of the same individuals are members of the board of directors of both companies or other entities which control those companies. The petitioners also argue that in the Final Results of Administrative Review: Roller Chain, Other than Bicycle, from Japan (57 FR 56319, November 27, 1992) (Roller Chain), the Department found that two companies were related when they shared one director on each board. Thus, the petitioners contend that shared board members and officers have long been equated with common control of companies.

The petitioners state that when different individuals sit on the boards of two different companies, but serve as representatives of a common corporation, it results in interlocking directors which may violate section 8 of the Clayton Act, instituted to prevent a restraint of trade from being effected. The petitioners state that this is the situation that exists between Siderca and the Chinese customer through the management of several companies. They claim that Siderca failed to rebut the documentary evidence of relatedness placed on the record by the petitioners.

The petitioners contend that the ownership of Siderca is closely tied to that of many other companies, through Siderca's parent companies. They then argue that information on the record demonstrates shared management between Siderca and the Chinese customer. The petitioners note that all evidence they placed on the record to show the interrelationship between the management of these companies are certified copies of extracts from commercial registers. The petitioners then state that Siderca's attempts to rebut this evidence at verification are inadequate for the following reasons.

First, the petitioners discuss Siderca's attempt to obtain ownership information from the Chinese customer. They argue that Siderca has shared management with the Chinese customer and, therefore, it could have done more to obtain information from this customer than just to send the customer a letter.

Second, the petitioners discuss Siderca's explanation of its alleged connection with the representative of the Chinese customer. They question Siderca's characterization of the president of Siderca's ultimate parent as only serving as local agent of the representative of the Chinese customer. The petitioners also claim that, under Swiss law, which applies to the representative of the Chinese customer, persons authorized to represent a company have the right to carry out all acts that may be covered by the company's aims. In addition, the petitioners claim that Siderca's explanation for the common board member between the Chinese customer and its representative fails to rebut the presumption of a relationship.

Third, the petitioners discuss Siderca's explanation of the alleged relationship with the local Argentine office of its Chinese customer. They argue that Siderca's characterization of a legal representative as that of an employee with no powers of a director or officer of the company is incorrect. The petitioners contend that, under Argentine law, persons authorized to represent a company are "obliged to it for all the acts that are not manifestly outside the company's objectives." Furthermore, the petitioners argue that the self-serving oral explanations at verification are not sufficient to rebut the documentary evidence provided by the petitioners.

Fourth, the petitioners discuss the charts provided by Siderca to illustrate its relationships with other companies. The petitioners contend that these charts are inadequate to rebut the claim of relatedness between Siderca and the Chinese customer because the charts are incomplete and have no supporting documentation.

The petitioners conclude that the Department must exclude Siderca's sales to this particular Chinese customer from its analysis because they were made to a related party and because Siderca has made no effort to prove that the sales to this customer were at arm's length.

Siderca argues that the petitioners' argument is results-oriented and that the Department should follow established standards for determining whether parties are related. Moreover, the fact that the sales to the customer in question are similar to U.S. sales makes the Chinese market a better comparison market than those where Siderca did not sell similar merchandise (*i.e.*, plain end OCTG).

Siderca argues that the Tariff Act of 1930, as amended (19 U.S.C. 1677(13)), focuses on either some financial relationship through stock ownership or otherwise, or the exercise of some control over the other business, to show relatedness. Siderca maintains that neither it nor its related commissionaire own or control the Chinese customer and are, therefore, not related to that customer.

Siderca maintains that the verification documents support the following conclusions. First, there is no corporate relationship between the Chinese customer and its representative, which the Chinese customer uses for certain corporate services, such as the collection of mail. Second, there is no corporate relationship between the customer and Siderca, either by ownership or control. Third, the only information that links Siderca and its Chinese customer is a good relationship that is not uncommon between a supplier and a client. Siderca states that it is because of this good relationship that the customer approached an officer of one of Siderca's related parties for advice on setting up a subsidiary in another country. Siderca maintains that this individual agreed to have his name placed on the incorporation documents as an attorney-in-fact. As a result, Siderca states that its related company and this customer each had a subsidiary in the same country with the same individual involved in both. In addition, Siderca argues that its related company and its customer appointed some of the same citizens to serve as corporate directors in fulfillment of local law requirements regarding the citizenship and residency of corporate directors.

Fourth, the Chinese customer expanded its activities in Argentina by opening a branch there, and hired an employee to serve as its local representative. This employee was not involved at any time in the ownership or management of the Chinese customer, and was never employed at the same time by the Chinese customer and Siderca's related companies. Siderca argues that this person switched jobs to one of Siderca's related companies, and recommended another person to wind down the operations of the Argentine branch of the Chinese customer. This other person was a retired employee of one of Siderca's related parties, who was allowed to use one of the office buildings belonging to the organization.

Siderca concludes from the above-cited evidence that there is no evidence of corporate control, through stock ownership, common management, or otherwise.

Siderca then states that the Department's questionnaire never mentions the term "shared management," even though the petitioners use this term to define related parties. It also states that Roller Chain says nothing about "shared management" and refers to individuals on multiple boards being one of the indicia of control, not control in and of itself. Siderca argues that Roller Chain based relatedness by control on many factors, including financial relationship and the sharing of two of five board members. It states that the Department mentioned common board members as "further evidence that the potential to control was present" and this was not the only or major reason for its decision. Siderca also argues that modern corporate boards are routinely comprised of individuals who sit on boards of other unrelated companies. It says that this does not make the companies related.

Siderca concludes that the petitioners' relationship allegations do not satisfy a balanced statement of the applicable statutory provision, nor even the "shared management control" standard that the petitioners, themselves, have invented. It states that the petitioners have shown no ownership, financial dealings, coordinated management or cross investments.

DOC Position

We agree with Siderca. To determine whether Siderca's customer is related to Siderca, we examined whether the definition of "exporter" was met by the customer within the meaning of section 771(13) of the Act. First, regarding the petitioners' argument that since Siderca has shared management with the Chinese customer, Siderca could have done more to obtain information than simply to send a letter, we note that, as stated below, no shared management between these parties has been demonstrated by the record evidence.

Second, regarding the petitioners' claim that under Swiss law, persons authorized to represent a company have the right to carry out all acts that may be covered by the company's aims, we acknowledge that, under Swiss law, a representative acts in the same capacity as a board member. However, with regard to the president of the ultimate parent of Siderca, this only shows that the Siderca's parent company and the customer's agent had a common board member. As shown below, this is not enough to establish control of Siderca over the Chinese customer.

Regarding the other individuals listed by the petitioners as showing a relationship between Siderca and its

customer, only one has conclusively been shown to be on the board of a company related to Siderca through its parent companies and also on the board of a subsidiary of Siderca's customer. All other individuals characterized by the petitioners to be common board members have what is known as a "power of attorney." We found no evidence that under Swiss law, the "power of attorney" capacity equates with being a member of a board of directors.

Few past cases address the issue of indirect control. In Roller Chain, cited by the petitioners, the Department found that a company was related to its customer within the meaning of 771(13) of the Act, noting that since two company officials were members of the customer's board of directors and that the company in question provided a majority (60%) of the capital used to establish the customer. Thus, in Roller Chain, it was the significant financial connection, coupled with the two common board members, that provided the basis for the Department's determination of relatedness. In this case, there is only one common board member and no proof of outlay of capital to establish the customer. Therefore, the circumstances present in this case are not analogous to those found by the Department in Roller Chain. Furthermore, there is no proof of any stock ownership between the companies.

Third, with regard to the alleged relationship between Siderca and the local Argentine office of its Chinese customer, the Department acknowledges that, under Argentine law, persons authorized to represent a company are "obliged to it for all the acts that are not manifestly outside the company's objectives." However, the employee in question was never employed at the same time by the Chinese customer and Siderca's related companies.

Also, the other person mentioned by the petitioners was characterized by Siderca as having been hired to wind down the operations of the Argentine branch of the Chinese customer. This other person was also characterized as a retired employee of one of Siderca's related parties, who was allowed to use one of the office buildings belonging to the organization. We note for the record that the Department was informed at verification that this person was not completely retired from one of Siderca's related parties but was still on the payroll as a consultant when he was hired by the Argentine branch of the Chinese customer. However, even if he was on Siderca's payroll as a consultant at the same time he was winding down the operations of the Argentine branch of the Chinese customer, this employee/consultant capacity is not the same thing as board membership or management and is not enough to establish control.

Fourth, regarding the petitioners' contention that the charts provided by Siderca to illustrate its relationships with other companies are inadequate to rebut the claim of relatedness, at the verification the team also examined the corporate books that listed the management of these companies. Nothing to discredit Siderca's claims was found.

Finally, we also note that the petitioners have shown, and we have found, no ownership between the parties.

In sum, the record evidence does not demonstrate that the Chinese customer and Siderca are related companies within the meaning of section 771(13) of the Act.

Comment 3: Ordinary Course of Trade

The petitioners state that section 773(a)(1)(A) of the Act requires that FMV of imported merchandise be based on sales made in the ordinary course of trade. According to the petitioners, the U.S. Court of International Trade noted that the ordinary course of trade requirement is meant to "prevent dumping margins which are not representative" of sales in the home market (*Cemex, S.A.* v. *United States*, Slip. Op. 95–72 at 6, April 24, 1995). The petitioners contend that, in the past, the Department has considered the following factors to determine whether sales were made in the ordinary course of trade.

First, the petitioners discuss the channels of sale. The petitioners argue that since the Chinese customer was not located in China, used the services of another company not located in China, and had intertwined control with Siderca, the sales to this customer are not representative of Siderca's sales practices in China.

Second, the petitioners discuss product uses. The petitioners argue that the products sold by Siderca to this Chinese customer had different characteristics from Siderca's other sales of OCTG to the Chinese market and therefore were not in the ordinary course of trade. The petitioners cite the Final Results of Administrative Review: Certain Welded Carbon Steel Standard Pipes and Tubes from India (57 FR 54360, November 18, 1992) (Standard Pipes) to show a case where products with different physical characteristics were excluded as being outside the ordinary course of trade.

Third, the petitioners discuss the frequency and volume of sales. The petitioners argue that the frequency and volume of sales to this particular Chinese customer, when compared to the frequency and volume of sales to another customer, and when considering the other factors mentioned by the petitioners, demonstrates that these sales were not in the ordinary course of trade.

Fourth, the petitioners discuss the shipping arrangements. The petitioners contend that the difference in the average time between order and shipment for the sales to this particular customer, when compared to the other reported Chinese sales, is evidence that these sales are not in the ordinary course of trade.

Finally, the petitioners state that Siderca's characterization of its relationship with the Chinese customer is not one of an ordinary business relationship, even a "friendly" one, between a producer and a buyer. The petitioners argue that in the ordinary course of trade producers do not lend the services of their officers to set up subsidiary companies for their buyers and serve as attorneys in fact for the resulting subsidiaries.

Siderca argues that petitioners' points fail to show that this sale is outside the ordinary course of trade. First, regarding the channels of sale, Siderca contends that there is no abnormality in the customer not being located in China, as it is a trading company. Siderca asserts that trading companies rarely take delivery in the country where they do business. Siderca states that this particular customer purchased OCTG for other markets during the POI as well. Siderca argues that the use of trading companies is a normal practice in the steel trade.

Second, regarding product uses, Siderca states that, while the merchandise to this customer did have different, albeit not abnormal, physical characteristics than the other merchandise sold to this market, it did have the same end use. Siderca states that the trading company's customer in China simply did not need, or could not use, the type of product Siderca sold to the other Chinese customers. Siderca argues that the Department only excludes sales as outside the ordinary course of trade where the product use is very dissimilar. Siderca states that in Standard Pipes, the Department found that the physical differences had a direct bearing on use.

Third, regarding the frequency and volume of sales, Siderca argues that these sales cannot be considered aberrant. Siderca states that the sales to this particular customer are similar in size and frequency to the sales to another Chinese customer, to which the petitioners do not object. Therefore, Siderca states that the sales to the customer in question were consistent with other sales in the Chinese market.

Fourth, regarding the shipping arrangements, Siderca states that in examining shipping arrangements for the purpose of an ordinary course of trade determination, the Department examines factors such as shipments over substantial distances, the unusual absorption of high freight costs or a complete change in shipping terms, none of which is relevant to the customer in question. Furthermore, Siderca notes that shipment was made within the period stipulated in the purchase order.

DOC Position

We agree with Siderca. In making the determination whether sales should be excluded by being outside the ordinary course of trade within the meaning of section 773 of the Act and section 353.46 of the Department's regulations, the Department examines several factors (see the Final Determinations of Sales at Less than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Corrosion-Resistant Carbon Steel Flat Products from Japan (58 FR 37154, July 9, 1993).

Regarding channels of sale, there is nothing unusual with selling to a trading company located in a third country. As noted by Siderca, we consider these sales to be Chinese sales because Siderca knew the ultimate destination of the merchandise. Regarding product uses, the petitioners, although showing that the products sold to different customers in China had certain different physical characteristics, in no way proved, and we did not find, that the products had different end uses.

Regarding the frequency and volume of sales, since the frequency and volume of sales to the customer in question were similar to that of another Chinese customer, we don't find that there is an abnormality. Regarding the shipping arrangements, differences in average time between order and shipment alone is not evidence that the sales were outside the ordinary course of trade. No cases were cited by the petitioners, nor found by us, to support this position and the shipments were made within the period stipulated in the purchase order. Therefore, the Department finds that these sales are not outside the ordinary course of trade within the meaning of section 773(a)(1)(A) of the Act.

Comment 4: Home Market Sales

The petitioners contend that certain home market sales reported as being made prior to the POI were actually made during the POI. According to the petitioners, the prices for Siderca's sales to a specific home market customer do not correspond with the prices listed in the sales agreement with this customer. Since the prices do not match, the petitioners contend that these sales were made during the POI and not pursuant to the pre-POI sales agreement. The petitioners claim that adding the home market sales to this particular customer in the viability analysis would make the home market viable.

Siderca argues that the petitioners are wrong in claiming that the prices for Siderca's sales to a specific home market customer do not correspond with the prices listed in the sales agreement with this customer. Siderca states that the petitioners did not take into consideration an article in the contract that explained a large part of the discrepancy. Siderca also states that minor calculation errors were made by the petitioners due to poor copy quality of the contract. Siderca argues that correcting for these errors results in the price charged being the same as the price agreed upon in the contract.

Siderca claims that it correctly reported the home market sales during the POI. It states that information was provided which supported its position that: (1) Exporting to world-wide markets has dominated Siderca's sales in each six month interval; (2) short-term sales were the norm in the 18 month period from January 1, 1993 to June 30, 1994; (3) the POI, with private end-user clients, was representative of the post-privatization market that was the context for Siderca's home market sales practices during the 18 month period; (4) there was no sale pursuant to a long-term contract in the POI; and (5) Siderca's home market sales practices prior to 1993 reflected a different era, characterized by a single, state-owned oil and gas monopoly.

Siderca states that its definition of the date of sale and the Department's preliminary determination that the home market was not viable during the POI was supported by the evidence presented at verification. It states that the Department reviewed the long-term contracts in detail, including a complete list of the purchase orders associated with a given contract and, for selected purchase orders, the shipments made against the order. Siderca states that the Department also verified the actual volume and value of Siderca's home market sales and no discrepancies were found.

DOC Position

We agree with Siderca. At the public hearing, the petitioners conceded that their argument was based on an incomplete reading of the contract (namely, failure to take into account an article in the contract), as well as an illegible copy of the contract. Therefore, there was no price discrepancy. Furthermore, we examined the home market sales process (especially price and quantity terms in the purchase orders pursuant to the long-term contracts) in detail at the verification and no discrepancies were found. Therefore, the record continues to show that the home market is not viable.

Comment 5: Model Match

The petitioners argue that the Department should rely on its own product matching decisions outlined in a January 24, 1995, product matching memorandum and used in the preliminary determination instead of Siderca's proposed model matches.

Siderca argues that a certain Chinese product, although more similar to the U.S. products based on a strict application of the Department's model-matching methodology, is not the most similar overall based on physical characteristics, production and commercial value. Siderca states that while the two third country selections are nearly equally dissimilar to the U.S. products based on a higher-ranking characteristic, its match is more similar based on lower-ranking characteristics, which should be taken into consideration.

Siderca argues that there is nothing that prevents the Department from adapting the hierarchy to a particular set of facts, especially where there is a clear reason to modify the approach and the statutory definition of similar merchandise warrants the modification. Siderca contends that in the past the Department has deviated from the published hierarchy when the respondent has demonstrated that it is necessary to achieve the proper comparison.

DOC Position

We agree with the petitioners. The matching of the U.S. products based on the January 24, 1995, memorandum, is consistent with the purpose of a matching hierarchy; i.e., more weight is given to higher-ranked characteristics and less weight to lower-ranked characteristics. Following a strict application of the matching hierarchy

also allows for more predictable results. Lower-ranked characteristics are taken into consideration only when higher-ranked characteristics are equal. This is not the case here.

Comment 6: Reintegro (Rebate)

The petitioners argue that the Department must deduct from the COP only that portion of the reintegro (a rebate upon export of indirect taxes imposed during production of the merchandise) attributable to material inputs. The petitioners note that current law does not address the issue of rebates such as the reintegro in COP situations. The petitioners argue that the statutory silence on the issue of indirect taxes relating to items other than materials indicates that such taxes should remain in the product's cost and, therefore, the full rebate should not be deducted from the COP. Both the Department's regulations (19 CFR 353.50(a)(1)) and section 773(e)(1)(A) of the Act provide that, when calculating constructed value, the cost of materials is to exclude internal taxes applied directly to the cost of such materials when the taxes are refunded upon exportation. The petitioners argue that under current law only the Department's practice of excluding value added taxes paid on raw material inputs offers guidance in the area of COP.

The petitioners also argue that the Department must average the market specific tax rebate so that only one cost of production is reported for each product. The petitioners maintain that the Department's long standing practice is that cost differences based on shipping destination should not enter into the company's cost of production for a particular product.

Siderca argues it properly reduced the actual cost of production by the average rebate received on sales to China. Siderca states that both final stage and prior stage indirect taxes appear in its records as costs and, therefore, the rebate of the tax must be applied as an offset to this cost. Siderca argues it presented to the Department the same indirect tax study it presents annually to the Argentine government to prove the amount of rebate it is entitled to under the reintegro program. Siderca notes the study was tested and reviewed during the cost verification and that Department personnel have reviewed the study on six previous occasions.

Siderca concedes the precise percentage of material cost accounted for by cumulative indirect taxes cannot be known, but argues that the study provides a reasonable estimate. Moreover, there is no double counting of the exclusion, because the total level of taxes paid exceeds the rebate. Further, the 1993 tax study, upon which the 1994 rebate was based, accurately reflects the amount of taxes paid while the tax was in effect during 1993. Siderca states that it presented support for the actual cash rebate received on sales to the U.S. and China.

Siderca maintains that its approach is consistent with the Department's practice of using actual costs, and cites to the Final Determination of Sales at Less Than Fair Value: Fresh Chilled Atlantic Salmon from Norway (58 FR 37915, July 14, 1993), where the Department stated its preference for the use of the actual cost of the subject merchandise, whenever possible. Siderca also cites Final Determination of Sales at Less Than Fair Value: Aramid Fiber Formed of Poly-phenylene Terephthalamide from the Netherlands (59 FR 23684, May 6, 1994) in which the Department treated government grants as an offset to the respondent's fixed overhead costs.

Siderca does not dispute that its methodology results in two different net costs, but argues that this is always the case when duties are rebated on export sales. Siderca states that the cost of the home market product is tax inclusive, and the cost of the export product is exclusive of the tax after export. Because the COP comparisons are based on sales to a specific market, the calculation should take into account only rebated taxes relevant to that market.

Finally, Siderca argues the effect of the differential should not be a source of double jeopardy. The differential exists because Siderca has foregone a portion of the rebate for exports to the United States in deference to the U.S. countervailing duty regime.

DOC Position

We agree with Siderca, in part. Regarding the issue of allowing only the portion of the reintegro attributable to material inputs, the Department's Offices of Countervailing Investigations and Countervailing Compliance normally test to determine whether or not the reintegro is countervailable (see, *e.g., American Alloys, Inc.* v. *United States*, 30 F.3d 1469 (Fed. Cir. 1994). To be non-countervailable, the rebate must be for taxes on merchandise which was physically incorporated into the exported product and the rebate must be no greater than the actual taxes imposed.

The last countervailing determination concerning OCTG from Argentina for which results have been published is the 1988–89 Counteryailing Duty Administrative Review. In the preliminary results of that review, the Department determined that Siderca was entitled to the entire reintegro without incurring countervailing duties (56 FR 50855, October 9, 1991). This issue was not discussed and, therefore, was not changed, in the final results (56 FR 64493, December 10, 1991). The reimbursement percentage on OCTG was then raised in 1992. However, Siderca only accepts the pre-1992 rebate percentage on U.S. sales because the current U.S. countervailing duty order is still in place. Based on the fact that the Department has previously determined that Siderca was entitled to a rebate without incurring countervailing duties and because it currently accepts a lower rebate, it is reasonable to assume that the entire reintegro is attributable only to material inputs.

We agree with Siderca regarding the issue of averaging the market specific tax rebates so that only one cost of production is reported for each product. For the cost test, the Department noted that the cost of production is the cost of the product as sold in the third country. This cost is being compared to the third country price. Since Siderca receives the entire rebate on sales to the third country, the cost of the third country product should be lowered by the entire amount of the rebate received upon exportation of the product to the third country.

Therefore, for COP, we have made no changes from the preliminary determination and have deducted the full rebate percentage from the COP.

Although not mentioned by the interested parties, the impact of the reintegro in the context of the price-to-price comparisons must be addressed. Included in Siderca's manufacturing costs of OCTG are taxes paid to the Argentine government. Siderca received a rebate of these taxes upon exportation of the merchandise. However, the amount of the rebate claimed by Siderca for the two export markets was not identical. For sales to the PRC, Siderca chose to accept the entire rebate. For sales to the United States, Siderca chose to accept only a partial rebate. Because only a partial rebate is taken for U.S. sales, a portion of the tax imposed by the Argentine government remains in the U.S. price (the difference between the total rebate and the partial rebate taken). Because these rebates are directly related to the sales of the merchandise in the two markets, it is necessary to make a circumstance-of-sale adjustment to FMV to account for the different amount of taxes included in the Chinese and U.S. prices. This procedure is consistent with *Zenith Electronics* v. *United States*, 988 F.2d 1573, 1581 (Fed. Cir. 1993).

In calculating dumping margins, the Department equalizes the effective tax rates in each market. Normally (where the home market sale is taxed, but the export sale to the United States is not taxed) this is accomplished by applying the home market tax rate to the U.S. price at the same point in the chain of commerce at which the home market tax is imposed. Here, where the pipe exported to the United States was taxed in excess of the tax on the pipe exported to China, the comparable procedure would be to subtract the differential from the price charged in the United States. Because the statute provides no mechanism for removing tax from the U.S. price, however, we achieved the necessary equivalence in tax rates by adding the difference between the effective rebate percentages claimed by Siderca between the two prices to the price of the pipe exported to China as a circumstance-of-sale adjustment, pursuant to section 773(a)(4)(B) of the Act and 19 CFR 353.56(a). This prevented Siderca's acceptance of a complete tax rebate on the sales to China, but only a partial export tax rebate on the sales to the United States from masking any tax-net dumping margin.

Comment 7: Revenues Earned on Sales of Secondary Pipe

The petitioners argue Siderca should not reduce the reported costs for the subject merchandise by revenues earned on sales of secondary pipe. The petitioners argue that Siderca is treating secondary pipe as a by-product, when it should be treated as a co-product. According to the petitioners, in *IPSCO Inc.* v. *United States* (*IPSCO*) (965 F.2d 1056, 1060–61 (Fed. Cir. 1992)) the Court of Appeals for the Federal Circuit upheld the Department's treatment of second quality pipe when the Department fully allocated costs evenly over output tons. The petitioners argue that the classification of secondary pipe as a co-product precludes Siderca's offset of costs by revenue from secondary pipe.

Siderca argues it properly offset the cost of production by the revenue earned on sales of secondary pipe. Siderca contends the secondary pipe in question is a by-product, not a co-product, and is pulled from the scrap pile when a particular customer periodically stops by to purchase material. It further contends by-products are defined as products that have a low sales value compared with the sales value of the main product. Siderca notes that revenue from the sale of these products account for a small percentage of its total revenue for the period. Siderca rebuts the petitioners' reliance on *IPSCO* by asserting that *IPSCO* concerned limited service pipe, not scrap pipe. It argues that if the Department treats the secondary pipe as a co-product, then it must increase the production quantity over which production costs have been allocated, thereby lowering the cost of all products.

DOC Position

We disagree with the petitioners that IPSCO applies in this case. IPSCO dealt with limited service merchandise, an OCTG product with a quality sufficient enough to allow its use in some drilling applications. We also note that during the relevant period in that case, IPSCO produced and sold limited service products in significant quantities. Although Siderca overstates its assertion that these pipes are scrap sales, this is not a product that could be used for normal pipe applications. In this case, the merchandise in question was purchased because of its form, not because of its ability to act as a conduit for fluids.

The distinction as to whether a joint product is a by-product or a co-product of the subject merchandise is important because the Department treats by-products and co-products differently in calculating the COP of the subject merchandise. Central to our determination as to whether a product is a by-product or a co-product of the subject merchandise is the determination of the "split-off" point, which is the point in the production process where the co-product becomes a separately identifiable product. All costs incurred up to and including the split-off point are considered common to producing all co-products. Accordingly, where the Department determines a product to be a co-product, common costs incurred up to and including the split-off point are allocated among all the co-products, with none allocated to by-products. Alternatively, where the Department determines a product to be a by-product, it allocates all common costs to the primary merchandise and subtracts the amount of the revenue from the sale of by-products from the total COM of the chief product (see, e.g., the Preliminary Determination of Sales at Less than Fair Value and Postponement of the Final Determination: Sebacic Acid from the People's Republic of China (Sebacic Acid) (59 FR 565 (January 5, 1994)).

The most important factor in determining whether a product is a co-product or a by-product is its relative sales value compared with that of the other main products produced in the joint processes (see Sebacic Acid). By-products are defined as "products of joint processes that have minor sales value as compared with that of the chief product" by Charles T. Horngren in Cost Accounting, Fifth Edition. In this case, the record evidence demonstrates that the relative value of secondary pipe is insignificant compared to OCTG and line pipe, and accounts for only a small percentage of Siderca's sales.

Additional factors that the Department may examine include: the respondent's normal accounting treatment; whether significant additional processing occurs after the split-off point; whether management controls the quantity produced of the product in question; and whether its production is an unavoidable consequence of the production process (see Sebacic Acid; see also the Final Determination of Sales at Less than Fair Value: Titanium Sponge from Japan (49 FR 38687, October 1, 1987) and the Final Determination of Sales at Less than Fair Value: Frozen Concentrated Orange Juice from Brazil (52 FR 8324, March 17, 1987).

The respondent's normal accounting treatment indicates its opinion as to whether the product in question is a by- or co-product. A respondent's normal treatment is not considered persuasive if the Department has evidence indicating that it would be unreasonable for purposes of an antidumping analysis. In this case the respondent treats the product in question as a by-product. We find that this treatment does not distort the antidumping analysis. Significant additional processing of a magnitude that would raise the value of the product in question to a point where its relative value to the other main products is significant may indicate that the product should be treated as a co-product. In this case no additional processing takes place. Additionally, if management takes steps to intentionally produce the product, then it would be an indication that the product may be a co-product. If the production of a product is unavoidable, the product could be either a by-product or co-product. Other factors would have to be considered to make the determination. In this case, the management of Siderca takes steps to avoid the production errors which cause pipes to become seconds. It is only where production errors exist that the secondary pipe is produced. After careful consideration of all of the relevant factors, the Department concludes that the product in question was properly treated as a by-product in this investigation.

Comment 8: Fixed Fabrication and Depreciation Cost

The petitioners argue the difference between the company-wide average and the average of the reported fixed fabrication and depreciation cost indicates Siderca understated the reported amounts. The petitioners assert fixed costs are normally higher for OCTG than for other types of pipe because of substantially higher finishing costs for OCTG. The petitioners state differences in fixed costs could only result if different production lines are used or if different capacity utilization rates are realized, but neither situation applies to Siderca. The petitioners reference Siderca's production flow charts, which show that subject and non-subject merchandise share the same production lines. Where subject and non-subject merchandise do not share the same production line, the equipment used for downstream processing is similar.

Siderca argues it properly allocated depreciation expense in the reported product-specific costs. Siderca asserts the results of the gross comparison test can be explained. First, the test compares an average of all products to an average from only two OCTG markets. Siderca's plain-end pipes carry a smaller portion of fixed fabrication and depreciation, while the remaining production carries a greater amount of these costs, because of their complexity. Siderca argues the overall product mix of the merchandise sold to the United States and China is at the lower end of the complexity range. It is natural, they argue, that the average fixed fabrication and depreciation costs allocated to OCTG sold in the United States and China would be lower. The more complex products include pipe that is cold-drawn, custom threaded, buttress threaded, and also pup joints.

Second, the Department's verification report notes that the total depreciation expense was traced to each cost center and that Siderca demonstrated how the per-unit costs were determined using the productivity of each product in a given cost center. Siderca also notes the Department looked at several product comparisons which show the relative amounts of fixed fabrication costs allocated to each product.

Siderca contends that it was able to demonstrate the flow of fixed factory costs and depreciation from the financial statements to the amounts input into the computer for each cost center. Siderca notes that the Department verified the allocation factors used to apply fixed factory costs and depreciation and that they were the same factors used to allocate factory costs under normal circumstances. In addition, they note that the Department was able to recalculate the cost of manufacturing for the test products and compared the allocation of costs between various products, including line pipe. Siderca further argues that plain end pipes account for a significant portion of its U.S. sales, but account for only a small proportion of its overall sales.

DOC Position

We agree with Siderca. At verification, while we could not reconcile the total of the individual per unit fixed fabrication and depreciation costs to the total expense, we were able to perform alternative procedures in place of that reconciliation. If the Department is satisfied that the respondent described the systems abilities accurately, that the system was used in the normal course of business, and that the data could be verified through alternative procedures, then the Department normally does not adjust the reported information. In this case, the system used to allocate the fixed factory cost and depreciation is the same system used in the normal course of business to derive the variable factory costs. We performed the following alternative procedures in place of the reconciliation.

Our analysis compared a company-wide average of fixed factory overhead and depreciation expense to an average of these variables for only the U.S. and PRC markets. Additionally, our test of reasonableness compared a weighted-average figure of fixed factory overhead and depreciation expense to a simple average figure of these variables. We do not find that the Department's reasonableness test nor other evidence on the record indicated Siderca's methodology distorted the reported per unit costs. Consequently, we used the per unit fixed factory costs and depreciation reported by Siderca.

Comment 9: Treatment of Quality Control Costs

The petitioners argue the Department may not treat inspection costs as selling expenses. The petitioners contend that the costs in question are quality control costs incurred at the end of the production process and in varying degrees are incurred on all products. The petitioners cite the Final Determination of Sales at Less than Fair Value: Gray Portland Cement and Clinker from Japan (56 FR 12156, 12162, March 22, 1991), in which the Department held that quality control costs incurred at respondent's plant did not constitute selling expenses. The petitioners argue that the record does not demonstrate that the testing was a condition of sale. In the Final Determination of Sales at Less than Fair Value: Forged Stainless Steel Flanges from India (59 FR 68853, 68858, December 29, 1993), the petitioners argue that the Department found that there was no evidence on the record to support the assertion that the testing was a condition of sale, and the Department included the quality control costs in the cost of manufacturing.

Siderca argues that it correctly treated these particular inspection costs as selling expenses. It argues that its normal records treat these inspection costs as selling expenses, and notes that the Department verified Siderca's ability to identify the extra inspection costs associated with sales to China. It further argues that the Department has treated inspection costs as a selling expense in prior cases. Siderca cites the Final Results of Antidumping Duty Administrative Review and Revocation in Part of an Antidumping Duty Order: Antifriction Bearings from Japan (Industrial Belts) (58 FR 39729, 39750, July 26, 1993) and Final Results of Antidumping Duty Administrative Review: Industrial Belts and Components and Parts Thereof Whether Cured or Uncured, from Japan (58 FR 30018, 30024, May 25, 1993).

DOC Position

We agree with Siderca. We find that these costs are incurred commensurate with Siderca's corporate goal to continue to develop sales of OCTG to the PRC, a situation similar to that in Industrial Belts (Comment 12). At the sales verification, we looked at correspondence and other documentation between Siderca and the Chinese customer and were able to confirm that quality control issues were discussed in great detail.

At the cost verification, we were able to verify that Siderca tested OCTG destined for China significantly more than OCTG destined for other markets. Finally, Siderca is only claiming the quality control testing costs which can be specifically identified to a particular market. Siderca included quality control testing costs incurred at earlier production steps as a cost of production. These quality control testing costs incurred at the earlier production stage were incurred regardless of market and, therefore, were properly included in the COP. The quality control costs incurred at the end of production could be differentiated based on the market to which the merchandise was shipped.

Comment 10: Threading Technology Research and Development

The petitioners argue that the reported costs must include the amounts Siderca spent on threading technology R&D. The petitioners argue that Siderca's assertion that it properly excluded R&D costs is completely unsupported. The company brochure indicates Siderca's research center focuses on research into basic physical phenomena and research directly related to production techniques. It is clear, they argue, that R&D advancements in threading technology would benefit all OCTG products and are, therefore, not market specific.

Siderca argues it properly excluded non-related R&D costs from the cost of production. Siderca argues the R&D expenses did not relate to any of the products sold in the United States or China during the POI. The expenditures were targeted at the development of special threading for extreme conditions. Siderca argues that the brochure only refers to the capabilities of the R&D facility, not to specific R&D efforts. Siderca asserts that if the Department decides to include these R&D costs, the amount incurred in 1993 should be added, not the 1994 amount.

DOC Position

We agree with the petitioners. Siderca provided no support for its assertion that the R&D expenses relate only to OCTG products sold in markets other than the United States and China. More importantly, the R&D costs in question were for products included in the scope of the investigation, even if they were not sold in the United States or China during the period of investigation. Research into technologies for specific products within the scope of the investigation can reasonably be assumed to provide collateral benefits for other products within scope. It would be infeasible for the Department to identify model-specific distinctions in R&D expenditures. Generally, the Department has only made distinctions between research into subject and non-subject merchandise, as shown in the Final Determination of Sales at Less Than Fair Value: Antifriction Bearings and Parts Thereof From France, *et al.* (60 FR 10900, 101921, February 28, 1995). The Department normally does not make distinctions between research into specific models. We, therefore, included the R&D expenses as part of the cost of manufacturing.

Comment 11: Asset Taxes, Restructuring Costs and Social Security Taxes

The petitioners argue Siderca understated G&A expense by excluding a portion of asset taxes and by normalizing restructuring costs and social security taxes. Siderca calculated a G&A rate from the audited financial statements for the year ending March 31, 1994, but in doing so adjusted these three types of expenses. The petitioners argue the Department's long-standing practice requires G&A expenses to be calculated from the financial statements which most closely correspond to the period of investigation, as shown in Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From Thailand (Furfuryl Alcohol) (60 FR 22557, 22560, May 8, 1995).

In Furfuryl Alcohol, the Department reasoned G&A expenses are tied more closely to the time period than to the revenues earned during the period and, therefore, an average rate representing one full business cycle of the company is a reasonable basis on which to calculate the G&A rate. The Department concluded the G&A rate should be calculated from annual audited financial statements because G&A expenses: (1) Are incurred sporadically throughout the fiscal year; (2) are frequently based on estimates that are adjusted to actual expenses at fiscal year end; and (3) are typically incurred in connection with the company's overall operations. The salient point, the petitioners argue, is that Department methodology already smooths out fluctuations and captures a representative picture of respondent's G&A costs. The petitioners also note the Department's questionnaire instructed Siderca to calculate its G&A rate from the audited financial statements for the year which most closely corresponds to the POI.

Siderca argues the Department is mistaken about the amount of asset taxes excluded from G&A expense, and that it was proper to exclude this portion. Siderca argues the government repealed the asset tax four months prior to the POI and, therefore, the asset tax does not relate to the products under investigation.

In Argentina, the private pension funds took over the social security functions previously administered by the Argentine government. Individuals close to the retirement age were given the option of remaining under the old system. The retirement age was increased by five years. As a result, a significant number of individuals chose to retire early. This led to a larger than normal number of retirements for Siderca. These higher costs were recognized by Siderca in 1994.

Siderca argues that because of this, severance expenses and social security expenses were adjusted to reflect what they otherwise would have been if the government had not changed the labor law at the end of 1993. Because of the privatization, Siderca argues it incurred in fiscal 1993 labor costs that it otherwise would have incurred in a future period.

DOC Position

We agree with the petitioners. As the petitioners note, the Department's methodology intends to smooth out fluctuations and capture a representative picture of respondent's G&A costs (*see e.g.*, Furfuryl Alcohol). The Department's long-standing practice is to calculate G&A expenses from the audited financial statements which most closely correspond to the POI. Neither the change in the tax law nor the restructuring costs incurred during the period are extraordinary events that warrant a departure from the Department's practice. The events are neither unusual in nature nor infrequent in occurrence. Companies frequently must react to changes in the laws of the countries in which they conduct business. The specific change may not occur frequently, but tax laws which affect the company and its employees are continuously changing. Therefore, consistent with our normal methodology, as set forth in Furfuryl Alcohol, we have excluded Siderca's normalization of costs, and recalculated the G&A rate from audited financial statements for the year ending March 31, 1994.

Comment 12: Offsetting G&A With Intermediary Sales Revenues

The petitioners argue that Siderca inappropriately offset G&A expense with revenues from the sale of non-subject merchandise. Reported total G&A expense included other income and expenses. The detail of other income and expenses shows revenues from the sale of miscellaneous products, none of which were pipe. The petitioners argue the Department's long-standing policy is to deduct from G&A only the portion of miscellaneous income related to the production of subject merchandise. The petitioners cite the Final Results of Antidumping Duty Administrative Reviews: Certain Brass Sheet and Strip From Italy (57 FR 9235, March 17, 1992), in which the Department disallowed miscellaneous income because it did not relate to the subject merchandise.

Siderca argues that the revenue from the sale of intermediate products can be used to offset G&A expense because they were produced in the same integrated facility with the OCTG products. Siderca argues that the costs associated with the revenue are included in the reported costs, and therefore the G&A should be offset by the revenue. Siderca claims that the petitioners' focus on "production of the subject merchandise" is misleading. Siderca argues there does not have to be a direct link to OCTG, only to the production facilities where the merchandise was produced. Siderca cites the Final Determination of Sales at Not Less Than Fair Value: Saccharin from Korea (59 FR 58826, 58828, November 15, 1994), in which the Department stated that miscellaneous income should be permitted as an offset to G&A because the income was related to respondent's production operations.

DOC Position

We agree with Siderca. The insignificant size of the offset indicates the revenue is miscellaneous in nature and should be included in G&A. The costs associated with this revenue are captured in the company's overall variance and, therefore, have been included in the reported costs. As the Department noted in Saccharin from Korea, miscellaneous income relating to production operations of the subject merchandise may be permitted as an offset to G&A. Intermediate products, sold in small quantities, are considered to be related to production operations. We have included in G&A the miscellaneous revenue from the sale of intermediate products.

Comment 13: G&A Expense of Siderca Corp.

The petitioners argue the Department must treat the G&A expense of Siderca Corp. as further manufacturing costs and not as indirect selling expenses. They state that Siderca Corp. plays an integral part in the further manufacturing process, claiming it negotiates and oversees the work of the unrelated subcontractors, functions as a purchasing agent for Texas Pipe Threaders (TPT) and the unrelated subcontractor, and shares with TPT office space and the same company president. The petitioners argue that, because Siderca failed to demonstrate which of Siderca Corp.'s G&A expenses relate to further manufacturing, the Department should make an adverse inference, and include all of the costs in further manufacturing.

Siderca argues that it properly included Siderca Corp.'s G&A expenses as a selling expense. Siderca concedes that Siderca Corp. does purchase material for use in further manufacturing, and arranges when necessary for the further processing to occur at TPT and other processors. However, Siderca argues that Siderca Corp.'s activities are directed toward selling merchandise.

DOC Position

We agree with Siderca. Siderca Corp. may direct the movement of materials to the related and unrelated further manufacturers, but all production activities are carried out by the further manufacturers. These further manufacturers charge Siderca Corp. for their services. These charges have been reported as further manufacturing costs. We have treated the G&A expenses of Siderca Corp. as a selling expense, since the primary function of Siderca Corp. is one of a selling agent.

Comment 14: Interest Expense on Further Manufactured Merchandise

The petitioners argue that Siderca calculated and applied interest expense incorrectly on sales of further manufactured merchandise. The petitioners also argue Siderca inappropriately applied the interest factor to fabrication costs only, and thereby understated costs. Finally, the petitioners argue Siderca should calculate the rate from the consolidated financial statements of Siderca, rather than the financial statements of Siderca Corp.

Siderca maintains that Siderca Corp.'s interest expense is the appropriate measure of interest expense on sales of further manufactured merchandise. Siderca argues that Siderca Corp. has a direct line of credit with a bank in the United States to finance its operations. Siderca also argues that it is unnecessary to apply any financing to TPT's activities as the cash balance at TPT is sufficient to handle its requirements.

DOC Position

The Department's methodology for calculating financial expense is well-established (*see, e.g.*, the Final Determination of Sales at Less than Fair Value: New Minivans from Japan (57 FR 21937, May 26, 1992) and the Final Determination of Sales at Less than Fair Value: Small Business Telephones from Korea (54 FR 53141, December 27, 1989)). The Department's preference for using the consolidated financial statements of the organization, because of the fungibility of money, applies equally in further manufacturing situations. Both TPT and Siderca Corp. are consolidated with their parent, Siderca S.A.I.C.. Therefore, the appropriate rate to apply to the further manufacturing costs is the rate from the parent's consolidated financial statements.

The petitioners are incorrect in their assertion the rate should be applied to the cost of the materials (*i.e.*, the cost of the product produced by Siderca in Argentina which is further manufactured in the United States). The Department accounts for the interest expense associated with the product produced in Argentina as part of the financing cost of the product. It would effect a double counting of financial expenses if the Department applied the financial expense rate first to the product produced in Argentina and then to the total of the further manufactured product.

We applied the financial expense percentage calculated from the audited consolidated financial statements of Siderca to the cost of the foreign manufactured product and the cost of the U.S. further manufacturing.

Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we will instruct the Customs Service to require a cash deposit or posting of a bond equal to the estimated final dumping margins, as shown below for entries of OCTG from Argentina that are entered, or withdrawn from warehouse, for consumption from the date of publication of this notice in the **Federal Register**. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted-average margin percentage
Siderca S.A.I.C.	1.36
All Others	1.36

International Trade Commission (ITC) Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. The ITC will make its determination whether these imports materially injure, or threaten injury to, a U.S. industry within 75 days of the publication of this notice, in accordance with section 735(b)(3) of the Act. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that material injury or threat of material injury does exist, the Department will issue an antidumping duty order.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) in this investigation of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)) and 19 CFR 353.20.

Dated: June 19, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

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[A–433–805]

Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Austria

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 28, 1995.

FOR FURTHER INFORMATION CONTACT: Bill Crow or James Maeder, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230; telephone (202) 482–0116 or 482–3330, respectively.

Final Determination

We determine that oil country tubular goods ("OCTG") from Austria are being sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination of sales at less than fair value in this investigation on January 26, 1995 (60 FR 6512, February 2, 1995), the following events have occurred.

In February and April 1995, the Department conducted its sales and cost verifications of the respondent, Voest-Alpine Stahlrohr Kindberg GmbH ("Kindberg"). Verification reports were issued on April 17, 1995, April 26, 1995, and April 27, 1994.

On May 12, 1995, Koppel Steel Corporation, U.S. Steel Group (a unit of USX Corporation) and USS/Kobe Steel Company ("the petitioners") and Kindberg submitted case briefs. Rebuttal briefs were submitted by both parties on May 19, 1995. No hearing was held, as petitioners withdrew their request on April 12, 1995.

Scope of Investigation

For purposes of this investigation, OCTG are hollow steel products of circular cross-section, including oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The OCTG subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.20.10.10, 7304.20.10.20, 7304.20.10.30, 7304.20.10.40, 7304.20.10.50, 7304.20.10.60, 7304.20.10.80, 7304.20.20.10, 7304.20.20.20, 7304.20.20.30, 7304.20.20.40, 7304.20.20.50, 7304.20.20.60, 7304.20.20.80, 7304.20.30.10, 7304.20.30.20, 7304.20.30.30, 7304.20.30.40, 7304.20.30.50, 7304.20.30.60, 7304.20.30.80, 7304.20.40.10, 7304.20.40.20, 7304.20.40.30, 7304.20.40.40, 7304.20.40.50, 7304.20.40.60, 7304.20.40.80, 7304.20.50.15, 7304.20.50.30, 7304.20.50.45, 7304.20.50.60, 7304.20.50.75, 7304.20.60.15, 7304.20.60.30, 7304.20.60.45, 7304.20.60.60, 7304.20.60.75, 7304.20.70.00, 7304.20.80.30, 7304.20.80.45, 7304.20.80.60, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50.

After the publication of the preliminary determination, we were informed Customs that HTSUS item numbers 7304.20.10.00, 7304.20.20.00, 7304.20.30.00, 7304.20.40.00, 7304.20.50.10, 7304.20.50.50, 7304.20.60.10, 7304.20.60.50, and 7304.20.80.00 were no longer valid HTSUS item numbers. This was confirmed by examination both of the Customs module and the published 1995 HTSUS tariff schedule. Accordingly, these numbers have been deleted from the scope definition.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is January 1, 1994, through June 30, 1994.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Such or Similar Comparisons

For purposes of the final determination, we have determined that the OCTG covered by this investigation comprises a single category of "such or similar" merchandise within the meaning of section 771(b) of the Act. We modified the matching hierarchy outlined in Appendix V of the Department's antidumping questionnaire as described in the preliminary determination.

Fair Value Comparisons

To determine whether sales of OCTG from Austria to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. When comparing the U.S. sales to sales of similar merchandise in the third country, we made adjustments for differences in physical characteristics, pursuant to 19 CFR 353.57. Further, in accordance with 19 CFR 353.58, we made comparisons at the same level of trade, where possible.

United States Price (USP)

We calculated USP according to the methodology described in our preliminary determination with the following exceptions: (1) We recalculated U.S. indirect selling expenses incurred in Austria to adjust for cost variances; (2) we recalculated U.S. indirect selling expenses incurred by Kindberg's Houston Texas related sales agent, VATC, to adjust for cost variances and to correct for an incorrect allocation of VATC's personnel costs; (3) we made corrections and adjustments to reported foreign brokerage charges; (4) we made corrections and adjustments to U.S. duty, wharfage and brokerage expenses, where necessary; and (5) we recalculated U.S. imputed credit to use an interest rate tied to U.S. dollar lending.

Foreign Market Value

As stated in the preliminary determination, we found that the home market was not viable for sales of OCTG and based FMV on third country sales to Russia.

Cost of Production (COP)

As we indicated in our preliminary determination, on October 5, 1994, the Department initiated an investigation to determine if sales in the third-country market were made below the cost of production (COP). In order to determine whether the third country prices were below COP within the meaning of section 773(b) of the Act, we calculated the COP based on the sum of Kindberg's cost of materials, fabrication, general expenses, and packing, in accordance with 19 CFR 353.51(c). Kindberg had reported four cost variances prior to the preliminary determination, but provided insufficient explanation and incomplete documentation. In fact, some of the information on the record at the date of the preliminary determination concerning the reported variances was self-contradictory.

We sent Kindberg several supplemental questionnaires. The last supplemental questionnaire due date fell after the preliminary determination, therefore we could only consider the corrections submitted pursuant to the last supplemental questionnaire for purposes of this final determination. Additionally, the nature of the variances was confirmed during the course of the cost verification. Therefore, for purposes of the preliminary determination, we did not adjust the reported standard costs for the reported variances because Kindberg had not, at that time, properly explained and documented these variances. Based on clarifications timely submitted after the preliminary determination and reviewed at verification, we analyzed the variances submitted by Kindberg for purposes of the final determination.

Kindberg's four reported variances are as follows: (1) The "Recalculating" (Verrechnungsergebnis) variance, which adjusts standard costs to actual costs, (2) the "Reconciling" (Überleitung) variance, which reconciles the cost accounting system results with Kindberg's financial statements, (3) the "Plant Idling" (Betriebstillstand) variance, which adjusts actual period factory overhead to reverse the decreased efficiencies of scale caused by factory idling, and (4) the "profit-sharing" (Gewinnausschüttung) variance, which adjusts actual period costs to reverse Kindberg's state-mandated bonus pay.

For our final determination, we made the following adjustments to Kindberg's costs:

1. We used only the "Recalculating" and "Reconciling" variances to adjust Kindberg's reported standard costs because the remaining two variances reflect an improper hypothetical normalization of actual costs incurred during the POI. A detailed and proprietary analysis of the nature of Kindberg's reported cost variances is contained in the Department's June 12, 1995, final concurrence memorandum. Also, see the Cost Comments section of the notice, below.

2. We have recalculated the variance as a percentage of the POI cost of manufacturing (COM) and applied that percentage to each per-unit cost of manufacturing. See also the Cost Comments section of the notice, below.

3. We calculated a revised (G&A) rate from the annual financial statements and applied this revised rate to the per-unit cost of manufacturing.

4. We removed from the COM of one model sold in the United States, to a separate packing expense field, the significant packing costs incorrectly included by Kindberg in COM.

5. We recalculated Kindberg's financial expenses using the 1993 annual audited financial statements of its parent organization, Ö.I.A.G. A detailed and proprietary analysis of this adjustment is contained in the Office of Accounting's June 13, 1995, memorandum.

After computing COP, we compared product-specific COP to reported third-country prices that were net of movement charges and direct and indirect selling expenses.

Results of COP Analysis

In accordance with Section 773(b) of the Act, we followed our standard methodology to determine whether the third country sales of each product were made at prices below their COP in substantial quantities over an extended period of time, and whether such sales were made at prices that would permit recovery of all costs within a reasonable period of time in the normal course of trade, as described in the preliminary determination.

Based on this methodology, for certain products sold in the United States, there were adequate numbers of third country sales made above the cost of production to serve as FMV. For U.S. sales of other products, there were not. In such cases, we matched U.S. sales to constructed value (CV).

Constructed Value

In accordance with section 773(e) of the Act, we calculated CV as described in the preliminary determination, with the same adjustments for purposes of this final determination as listed in the "Cost of Production" section above, with one additional change: We offset the financial expense calculated from Ö.I.A.G.'s financial statements by the ratio of trade receivables and inventory over total assets.

For CV to U.S. price comparisons, we made deductions from CV, where appropriate, for the weighted-average third country direct selling expenses. We also deducted the weighted-average third country indirect selling expenses. We limited this adjustment by the amount of indirect selling expenses incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(2).

Third-Country Sales Comparisons

Where appropriate, we calculated FMV based on delivered prices to unrelated customers in Russia and to unrelated international trading companies whose customers in Russia were known to Kindberg at the time of Kindberg's sale to the trading company.

In light of the Court of Appeals for the Federal Circuit's (CAFC) decision in *Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement* v. *United States*, 13 F.3d 398 (Fed. Cir. 1994), the Department no longer can deduct third-country movement charges from FMV pursuant to its inherent power to fill in gaps in the antidumping statute. Instead, we will adjust for those expenses under the circumstance-of-sale provision of 19 CFR 353.56(a), as appropriate. Accordingly, in the present case, we deducted post-sale third-country inland freight, inland insurance and foreign inland insurance from FMV as direct selling expenses under the circumstance-of-sale provision of 19 CFR 353.56(a).

We deducted third-country packing costs and added U.S. packing costs in accordance with section 773(a)(1) of the Act. We also made circumstance-of-sale adjustments for differences in direct selling expenses, which included credit, warranties, guarantees and commissions, in accordance with 19 CFR 353.56(a)(2). We deducted commissions incurred on third-country sales and added total U.S. indirect selling expenses, capped by the amount of third-country commissions; those total U.S. indirect selling expenses included U.S. inventory carrying costs, indirect selling expenses incurred in Austria on U.S. sales and indirect selling expenses incurred in the United States.

Based on information obtained at verification, we made corrections and adjustments to certain charges claimed by Kindberg. We recalculated indirect selling expenses incurred in Austria for Russian sales to adjust for cost variances. We also recalculated imputed credit on Russian sales to use an interest rate tied to U.S. dollar lending, since Russian sales were denominated in U.S. dollars. Based on information obtained at verification, we allowed an adjustment for occasional early payment discounts, where applicable.

We discovered at verification that Kindberg failed to report a limited number of Russian sales. However, taking into considering the relatively insignificant volume of these sales and the FMV of these sales relative to the FMV of reported sales, we find that the omission does not distort our margin calculation. Therefore, we made no modification to our analysis to account for their inadvertent exclusion. See also *Sales Comment 1*, below.

Currency Conversion

We made currency conversions based on the official exchange rates, as certified by the Federal Reserve Bank of New York, in effect on the dates of the U.S. sales, pursuant to 19 CFR 353.60.

Verification

As provided in section 776(b) of the Act, we verified the information used in making our final determination.

Interested Party Comments

Sales Comments

Comment 1—Kindberg's Failure To Report Certain Russian Sales

The petitioners maintain that the Department should use best information available (BIA) to remedy Kindberg's failure to report Russian sales which account for a portion of the total volume of POI sales to Russia. According to the petitioners, the information on the record is not sufficient to determine what effect these sales would have on the calculation of third country prices or on dumping margins. The petitioners urge the Department to employ a methodology similar to that used in Final Determination of Sales at Less Than Fair Value: Fresh Kiwifruit from New Zealand (57 FR 13695, April 17, 1992), ("Kiwifruit") whereby the Department distributed the volume of the missing sales equally across all pricing periods, and assigned to each portion of the added volume the highest net price in the pricing period that was found in each kiwifruit category.

Kindberg maintains that its omission of these sales should be treated as a clerical error pursuant to section 735(e) of the Act and therefore should be corrected for purposes of the final determination. Kindberg rejects the petitioners' suggestion for use of BIA, stating that the failure to report these sales was unintentional and that their inclusion would have actually benefitted Kindberg. The respondent states that Kiwifruit as cited by the petitioners is not germane for several reasons: (1) The omission of the Russian sales was inadvertent; (2) Kindberg is not requesting that the sales be disregarded; (3) Kiwifruit involved the omission of a significantly larger portion of sales; and (4) Kiwifruit involved sales over six distinct pricing periods where the price did not change during those periods, whereas no analogous pricing structure exists for OCTG. Kindberg maintains that the Department should use its discretion to modify the record and not reject the new sales data, and argues that the courts have never reversed a decision by the Department to accept late information rather than use BIA.

DOC Position

We disagree with the petitioners in that we are not using BIA for these unreported sales. We also disagree with respondent, in that we have not corrected the database to account for the missing transactions. The amount of sales inadvertently omitted is relatively insignificant.

The Department has, in the past, disregarded sales inadvertently omitted from the database for FMV when such unreported sales were of insignificant quantity and value. In the Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from France, (58 FR 37131, comment 16, July 9, 1993), we disregarded previously unreported home market sales, both those presented at the outset of, and those discovered during the course of, the Department's verification, because they were of insignificant quantity and value.

Further, based on our analysis of sampled missing invoices, the gross prices of the omitted transactions were considerably lower than similar sales reported. As such, the record indicates that the omission of these third-country sales is in fact, adverse to respondent's interests. Accordingly, no further adverse action is warranted.

Comment 2—Discounts on Russian Sales

The petitioners argue that the Department should not allow any adjustment to third country prices for discounts. According to the petitioners, because Kindberg did not report discounts in its database sales listing, but rather only referred to their possible existence in the body of its narrative response, it never truly reported the discounts. The petitioners acknowledge that the Department was able to successfully test the discount program at verification; however, the petitioners also point out that the verification report records the verifier's notice to company officials that examination of the administration of the discount program did not constitute acceptance of the adjustment for purposes of the final determination. Indeed, they object to any such acceptance. The petitioners cite to the Department's regulation that factual information must be submitted no later than seven days before the scheduled date on which the verification is to commence (19 CFR 353.31(a)(i)), maintaining that the inclusion of the discounts is not warranted because the discounts are not a minor revision to the responses but instead are substantial new information.

Kindberg maintains that its omission from the computer listing of these discounts should be treated as a clerical error pursuant to section 735(e) of the Act and therefore corrected for purposes of the final determination. Kindberg maintains that it did report these discounts in its response, though it inadvertently did not include them on its submitted computer tape. Kindberg states that the Department corroborated the applicability of the discounts at verification.

DOC Position

We disagree with the petitioners. Kindberg did report the circumstances in which this discount apply and the percentage thereof, but failed to include the transaction-specific amounts in its computerized sales listing. The detailed information submitted by Kindberg enabled the Department to analyze the pertinent Russian sales prior to verification. Thus, the verification team had at its disposal the subset of such sales in a format which allowed relatively easy review of the omitted discounts. Kindberg officials recognized and alerted verifiers to their mistake early in the verification. The sample selected for verification by the team tied correctly and the correction placed no administrative burden on the Department. Given these particular

circumstances, we modified the final programming to deduct the discount from those sales with the corresponding payment code.

Comment 3—Exchange Rates

The petitioners contend that the Department should follow its normal practice and apply the Federal Reserve exchange rates in its final margin calculations and reject Kindberg's logic for using the "secured exchange rates" reported in its sales listings. The petitioners maintain that the Department's regulations governing currency conversions state clearly that the Department will use the quarterly exchange rates published by the Treasury Department on the applicable date of sale. First, the petitioners claim that the Department's decision in the administrative review of Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, *et. al.*, 60 FR 10900, 10921 (February 25 1995), confirms that the Department will not use the exchange rate a company allegedly received through hedging operations, citing our position in that review that the Department is required by 19 CFR 353.60 to make currency conversions using the Federal Reserve rates. Second, the petitioners allege that verification revealed that many sales were not secured by forward contracts, but were entered into Kindberg's books using either a mixed rate consisting of the secured exchange rate and the daily exchange rate quoted in the Wiener Zeitung or the Wiener Zeitung daily rate alone.

Kindberg maintains that the mix of daily and hedged currency conversion rates should be treated as a clerical error pursuant to section 735(e) of the Act (19 USC 1673d(e)) and therefore corrected for purposes of the final determination. Kindberg argues that the reported exchange rate contracts lock in sales that are denominated in U.S. dollars and that these rates are integrally linked to Kindberg's cost accounting and financial accounting systems.

DOC Position

We disagree with the respondent. First, the Department should not use Kindberg's parent-company's partial currency hedging exchange rates in lieu of official exchange rates. The Department is required by 19 CFR 353.60 to make currency conversions using the Federal Reserve rates.

Second, the petitioners are correct in pointing out that verification revealed that many sales were not secured by forward contracts, but were entered into Kindberg's books using either a mixed rate consisting of the secured exchange rate and the daily exchange rate quoted in the Wiener Zeitung or the Wiener Zeitung daily rate alone. Kindberg is incorrect to classify a question of fundamental calculation methodology as a "clerical" error. The error herein is Kindberg's inaccuracy in describing the use of "secured" exchange rates. The Department cannot accurately use Kindberg's mix of reported exchange rates, since the databases for U.S. and third-country sales do not indicate which transactions were "secured," which were recorded with daily newspaper rates and which were recorded with part-secured/part-daily rates.

Comment 4—Third Country Commissions

The petitioners argue that the Department should not adjust Kindberg's third country prices for commissions because Kindberg failed to submit adequate information regarding commissions paid on sales to the Russian market. According to the petitioners, Kindberg failed to provide meaningful details on the payment of charges it claims as commissions in its response. Additionally, the petitioners argue that Kindberg failed to submit any usable information regarding commissions until verification. The petitioners maintain that the information presented at verification by Kindberg indicates that the commissions may not be linked to individual sales or even calculated on the basis of sales.

Kindberg maintains that it reported in its response that commissions on sales to Russia are negotiated individually and may vary for each commissionaire depending on the agreement negotiated with Kindberg. Further, Kindberg states that, regardless of the extent of their services, all commissionaires provide Kindberg with client contact and client cultivation directly relating to sales that are the subject of this investigation. Kindberg therefore urges the Department to make a downward adjustment to foreign market value to account for these commissions.

DOC Position

We disagree with the petitioners. The payments examined in the context of the selected Russian sales were documented by Kindberg as having been administered as commissions. These payments were made in recognition of the selling functions of the trading companies, which are located in market economies, and are by nature sales commissions. The general purpose and administration of these payments is fully consistent with the characteristics of commissions outlined in the Final Determination of Sales at Less Than Fair Value: Stainless Steel Angle from Japan, (60 FR 16608, 16611, March 31, 1995). These characteristics are consistent in that: (1) These adjustments are designed and agreed upon in writing with the commissionaires; (2) commissions were earned directly on sales made, based on flat rates or percentage rates applied to the value of individual orders; (3) the commissions take into consideration the expenses which the trading companies must incur to cultivate and maintain successful relationships with Russian purchasers; and (4) Kindberg relies on the external sales and marketing abilities of these commissionaires in lieu of establishing its own larger Eastern European sales force. We are, therefore, continuing to treat these reported adjustments as commissions, deducting them from FMV and adding to FMV indirect selling expenses incurred by Kindberg on U.S. sales, capped by the amount of third-country commissions.

Comment 5—Value Allocation of U.S. Indirect Selling Expenses

The petitioners maintain that in calculating U.S. price, the Department should divide the total U.S. indirect selling expenses reported by Kindberg by the value of sales to obtain the proper allocation, rather than use the per-ton charges originally reported by Kindberg.

DOC Position

We agree with the petitioners, and are calculating indirect selling expenses, both on U.S. and Russian sales, as a percentage of sales.

Comment 6—U.S. Credit Expenses

The petitioners note that in reporting U.S. sales, Kindberg calculated imputed credit using an Austrian interest rate of 4.6 percent. They point out that in the preliminary determination, the Department based its calculation of U.S. imputed credit on the late payment charge formula used by VATC on its invoices, of "prevailing New York prime plus 1 percent." According to the petitioners, the Department has stated in the past that for a given interest rate to be used, a respondent must show that it actually had access to funds at that interest rate. The petitioners maintain that Kindberg has provided no information that it or VATC in access to funds at the prevailing New York prime rate plus one percent. The petitioners urge the Department to use the higher interest rate on Kindberg's invoices to VATC to calculate U.S. imputed credit.

In response, Kindberg maintains that the Department should not use the late payment rate set forth on its invoices to VATC because this rate is not a borrowing rate but rather a punitive rate established by Kindberg to encourage timely payment by their related sales agent. Asserting that this rate does not reflect the actual cost to it for extending credit to customers in the United States, Kindberg urges the Department to use instead the 4.6 percent interest rate it reported which was based on its deferred interest deposits in Austrian schillings.

DOC Position

We disagree with both parties. Petitioners object to using the U.S. interest rate noted on the VATC invoice to the U.S. customer, and would have us use a higher rate noted on the pro-forma invoice from Kindberg to VATC. Yet the higher rate set forth on the pro-forma invoice does not represent actual borrowing by Kindberg any more than does the rate on the VATC invoices. However, the rate on the VATC invoice is used by VATC to establish the time value of credit it extends when receiving late payment by the first unrelated U.S. customer, the purchaser who defines the actual U.S. transaction. Additionally, the rate on the VATC invoice to the U.S. customer is tied to an objective market rate, the N.Y. prime interest rate.

In contrast, the nominal late payment interest rate shown on the Kindberg to VATC invoices is for delinquent intra-company repatriation of funds from VATC to Kindberg, and is not tied to any objective benchmark related to the lending market, such as a U.S. prime rate. Thus, it is even further removed from objective commercial criteria.

We are not using the reported rate of 4.6 percent because this Austrian rate is denominated in schillings, and both U.S. and Russian sales are denominated and paid for in U.S. dollars. A company selling in a given currency (such as sales denominated in dollars) is effectively lending to its purchasers in the currency in which its receivables are denominated (in this case, in dollars) for the period from shipment of its goods until the date it receives payment from its purchaser. Thus, when sales are made in, and future payments are expected in, a given currency, the measure of the company's extension of credit should be based on an interest rate tied to the currency in which its receivables are denominated. Only then does establishing a measure of imputed credit recognize both the time value of money and the effect of currency fluctuations on repatriating revenue.

Since the purchaser of record in the investigation is the first unrelated customer in the United States, the appropriate interest rate reflecting imputed credit expenses by Kindberg through VATC is a rate denominated in U.S. dollars. The New York prime rate plus one percent is the rate set during the POI by which Kindberg's related U.S. sales agent measured the time value of late revenue on U.S. sales. In a parallel manner, the Department's imputed credit expense measures the cost to Kindberg, via VATC, of extending credit to that U.S. customer. Additionally, since sales to Russia are also denominated in U.S. dollars, and since this is the only dollar-denominated interest rate indicated by Kindberg's actual business practices, we are also calculating imputed interest for those sales at the New York prime interest rate plus one percent.

Comment 7—Price Changes on Certain U.S. Sales

The petitioners note that the Department discovered that for certain U.S. sales, VATC did not simply re-invoice the prices recorded in Kindberg's invoice to it, but re-invoiced the first unrelated U.S. customer at a higher price, based on renegotiated extended payment terms and, on one occasion, on extraordinary freight expenses incurred by VATC. The petitioners urge the Department not to make any adjustment to these price changes in its final antidumping calculations.

Kindberg states that for the sales where VATC had to re-invoice the customer, the new payment terms were contained in the purchase orders sent from VATC to Kindberg, but omitted from the invoice sent from Kindberg. Kindberg urges the Department to adjust these U.S. prices upward..

DOC Position

We agree with the petitioners. Kindberg did not identify the invoice reporting error to the Department, rather, this inaccuracy was discovered by the Department. We note, however, that the occasional freight charges incurred were passed on exactly to the U.S. customer and that the upward adjustment to U.S. price for extended payment terms was offset by the increased cost of the extended credit. Thus Kindberg's failure to report the subset of changed VATC invoice prices and related charges had no effect on the margin calculations. Additionally, Kindberg's mistake was inadvertent. For these reasons, we did not make any adjustment to the reported gross price on those sales, nor did we apply partial BIA.

Comment 8—Unincorporated Russian Debit and Credit Memoranda

Citing from the Austrian Sales Verification Report, Kindberg notes that it had not matched several debit and credit memos to the Russian sales that they modified. Kindberg stresses that the net effect of the unincorporated memoranda was an over-reporting of certain third-country sales prices and urges, therefore, that the mistakes identified at verification be corrected.

DOC Position

We disagree with the respondent. First, it is not the Department's practice to make substantial and complicated revisions, nor is it the Department's responsibility to reconstruct a response. Correction of the omission of these debit and credit memoranda would require extensive matching and recalculation of specific prices by matching missing memoranda to invoices through mill orders.

Second, in this specific instance, the net effect of Kindberg's omissions is a marginally higher FMV than the correct amount, which we note is slightly adverse to the respondent. We are therefore keeping the reported third-country prices unchanged for purposes of the final determination.

Comment 9—Double-counting of Transportation Insurance Expenses in U.S. and Russian Indirect Selling Expenses

Kindberg notes that the Department found at verification that Kindberg had double-counted transportation insurance expenses by reporting these individually and also as a sub-component of indirect selling expenses, both for sales to the United States and to Russia. Kindberg urges that the mistakes identified at verification be corrected.

DOC Position

We disagree with the respondent. We agree that, where significant, double-counting may be addressed. We note, however, that the inadvertent inclusion of insurance costs comprises a very minute per-ton amount. Additionally, we note that this small error affects equally both U.S. price and FMV. We did not collect the rather extensive documentation required to correct this minor inclusion. Because it is not the Department's practice to reconstruct major portions of a response, which would be required in order to back out these costs from indirect selling

expenses, we are using the expenses as reported.

Comment 10—Packing Costs

The petitioners argue that the Department confirmed at verification that Kindberg incorrectly included packing costs in its calculation of the variable cost of manufacturing used for COP, CV and difference-in merchandise (DIFMER) calculations. According to the petitioners, it is a well-established principle that packing costs are not a cost of manufacturing, and are not included in the variable costs or the difmer calculation, but should instead be reported separately.

However, they also maintain that for all but one model of OCTG the impact of these misplaced packing costs are immaterial. The petitioners state that for that one remaining model where the packing is in wooden boxes, a uniquely expensive method, the actual costs needed for the margin calculations are not on the record. They therefore urge the Department to assign, as partial BIA, to all U.S. sales of this model, a packing cost based on the difference between the highest total cost (sum of material costs, labor costs and variable overhead) of any U.S. sale, which is packing inclusive, and the total cost for the same model as sold in the third country, which is packing exclusive. Calculating this difference isolates from total COM the packing charges which were only included in COM for the U.S. sales of this model.

Kindberg maintains that the special packing costs for this one U.S. model should not be included in the variable cost of manufacturing or in the calculation of differences in merchandise, but that they should be reported as packing costs based on actual cost. Kindberg does not agree with the petitioners' contention that the highest difference in total manufacturing costs for this model should be used as BIA. Kindberg does not state how it would recommend remedying the incorrect reporting.

DOC Position

We agree with the petitioners that the packing costs should not have been reported as a component of manufacturing costs. We also agree with the petitioners that the packing costs should be removed from the reported manufacturing costs and reported independently as packing charges for the specific model in question. We do not agree with the petitioners' recommendation for partial BIA. We have instead calculated the packing expenses for this model from cost of manufacturing based on the data collected at verification, as noted in greater detail in the June 13, 1995, Office of Accounting memorandum. The Department identified the difference between the average unpacked COM reported in the COP database for this OCTG model when sold to Russia and the average packed COM reported in the CV database for sales to the United States. This data allowed the Department to compute a POI-average packing cost for the U.S. sales of this model.

Cost Comments

Comment 1—Cost of Steel Billets

The petitioners object to the use of transfer prices from Kindberg's related supplier, VA Stahl Donawitz, in determining the cost of production and constructed value. They maintain that the use of the reported transfer prices to determine either COP or CV would be contrary to the Act.

With respect to COP, according to the petitioners, Kindberg never provided cost data for raw material purchased from Donawitz, despite the fact that Kindberg and Donawitz are both under common control. The petitioners question the validity of Kindberg's submission of general cost data pertaining to Donawitz's production of various types of blooms and billets, which the petitioners characterize as being untranslated and incomprehensible. The petitioners maintain that these documents do not establish the COP of the billets purchased by Kindberg. Therefore, the petitioners argue that Kindberg has failed to meet the statutory requirement for the use of transfer prices in COP.

With respect to CV, the petitioners maintain that U.S. law only allows the use of transfer prices if two conditions are met: (1) The transfer price reflects market value, and (2) for major inputs, the transfer price is shown to be above the cost of producing the input. They cite to the Department's administrative review of Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom, 58 FR 39729, 39754–5, July 26, 1993.

The petitioners contend that Kindberg has not fulfilled the first condition because it did not demonstrate that the POI purchases of Donawitz billets were at market value, but instead made a comparison of market prices and transfer prices for the year prior to the POI. The petitioners also argue that Kindberg has also failed to meet the second condition, since they presented no actual COP data on billets, the single most significant input for OCTG production.

To remedy this alleged deficiency, the petitioners recommend that the Department follow the statutory instruction to construct cost on the best evidence available as to what costs would have been if the transaction had occurred between unrelated parties. The petitioners suggest that the Department increase the raw material variable overhead for each control number by an amount equal to the average cost of manufacture reported by Donawitz, multiplied by the statutory ten percent for SG&A.

Kindberg contends that it has provided both a comparative analysis of market prices and Donawitz's average cost of production per ton per billet during the POI for the record in this investigation. According to Kindberg, the information provided demonstrates that the transfer prices are above Donawitz's cost of production and that Donawitz was profitable during the full year 1994. Kindberg claims that the documentation shows specifically that Donawitz sold raw materials to it at a profit. Kindberg therefore urges the Department to utilize the reported transfer prices in its calculation of cost of production and constructed value.

Kindberg maintains that the petitioners' suggestion that the Department should increase the variable overhead cost of raw materials by a hypothetical amount is totally without merit. Kindberg claims that this suggestion was made without citation to administrative precedents, judicial precedents or statutory authority; further, the suggestion runs counter to the antidumping law. Kindberg maintains that the Department is required to, and has a practice of, using actual market prices when related party prices are found to be unreliable. According to Kindberg, the information on record clearly establishes that market prices are lower than those paid by Kindberg to its related party supplier.

DOC Position

We disagree with the petitioners. Kindberg: (1) Was able to show benchmark market prices using both a 1994 contract for purchases of billets from an unrelated party; and (2) provided cost data from Donawitz showing the average cost of producing billets to be below all of the transfer prices reported. Therefore, we used the transfer price from Donawitz to Kindberg for purposes of the final determination.

Comment 2—The Plant Idling Variance

The petitioners maintain that Kindberg's calculation of net cost variance improperly included a reduction in costs calculated to reflect idle plant expenses due to problems with a major contract. The petitioners contend that this element, which Kindberg called its "Plant-Idling variance" is not truly a cost variance. According to the petitioners, Kindberg is using this amount to adjust actual costs to hypothetical costs, *i.e.*, those costs which would have been incurred if it had not encountered contract problems and thus had operated its factory at "normal" levels in 1994. The petitioners cite to Final Determination of Sales at Less Than Fair Value: Titanium Sponge from Japan, 49 FR 39687, 38689, October 1, 1984, to support their contention that the Department has in the past specifically rejected adjustments to actual costs, where the adjustments were designed to convert actual production costs to those of a "hypothetical efficient cost model." Second, the petitioners maintain that the Department requires respondents to report a fully absorbed cost of production, including costs associated with down time and with low capacity utilization. The petitioners contend that, based on this principle, the Department requires respondents to include depreciation costs of idled equipment and labor costs of idled staff. According to the petitioners, such costs are included in COP regardless of the cause of plant idling.

According to Kindberg, the reported variance includes costs which are not associated with temporary down-time or low capacity utilization or other costs incurred due to general business conditions such as strikes or production problems or factory modernization. Kindberg maintains that the freezing of the contract, particularly for an extended period of time, forced the factory to incur unforeseeable costs that are not normally associated with general business conditions. Kindberg argues that, because these costs do not reflect its actual cost of production, the Department should include this variance in the calculation of cost of production and constructed value.

DOC Position

We disagree with the respondent. We are rejecting the adjustment to fixed factory overhead costs for the "Plant Idling" variance. Rejecting this claimed adjustment corrects fixed factory overhead to the levels actually incurred in the POI. The Department's practice is to calculate the respondent's fully absorbed cost of production for the POI. By fully absorbed cost the Department means actual cost incurred in the POI, including period costs such as SG&A, financial expense and all non-operating costs. The purpose of the COP test is to determine if the respondent's home market or third-country price is sufficient to recover all of its costs, including period costs.

Kindberg recognized the total overhead costs as an operating expense in their income statement, not as an extraordinary expense. Under Austrian GAAP, these expenses were not considered extraordinary, and, in fact, they were not reported as extraordinary expenses in Kindberg's financial statements. As noted in Final Results of Antidumping Duty Administrative Review: Color Picture Tubes from Japan (55 FR 37924, September 14, 1990, the Department does not normally accept the use of expected or budgeted production quantities. Although the cause of Kindberg's loss of the export guarantee was unique, the resulting delay in a major sale was not itself an extraordinary event. Moreover, Kindberg did not provide any evidence to establish their normal production level. The Department may normalize production costs in extraordinary circumstances if the respondent provides several years of production data, establishing their normal historical production level. Kindberg only submitted its year-end yield accounts. Without the historical cost data, we would not have been able to analyze a benchmark for the "normal" production level of Kindberg, even if we had determined that normalization was appropriate.

Comment 3—The Profit Sharing Variance

The petitioners maintain that Kindberg's calculation of net cost variance improperly included a reduction in costs calculated to adjust for its distribution of profit to employees. The petitioners contend that this element, which Kindberg called its "profit-sharing variance" is not truly a cost variance. According to the petitioners, Kindberg is using this amount to remove from the reported manufacturing costs, the expense of paying its employees as mandated by Austrian law. The petitioners cite to the final determinations in the administrative reviews of Porcelain-on-Steel Cooking Ware from Mexico (Mexican Cooking Ware), (60 FR 2378, 2839 January 9, 1995) and (58 FR 43327, 43331–43332, August 16, 1993) as well to the Final Determination of Sales at Less Than Fair Value: Carbon Steel Flat Products from Canada, (58 FR 37099, 37113–37114, July 9, 1993), to support their claim that the Department has consistently required such payment to be included in COP.

Kindberg argues that it properly removed from production costs the bonuses paid to employees under the profit sharing plan. Kindberg states that the Austrian Government sets statutory wage rates and salaries for different jobs in the iron and steel industry and that the profit distribution is a regular incentive given to employees, even if the company incurs a loss. Kindberg argues that the amounts should not be included in the reported costs, because the profit distributions exceed the statutory wages Kindberg is required to pay.

DOC Position

We disagree with respondent. We are rejecting Kindberg's adjustment to manufacturing costs for the "Profit-Sharing" variance. Rejecting this variance restates Kindberg's conversion costs to amounts reflecting the actual costs incurred in the POI.

In general, from an economic standpoint, there are several benefits that a company receives through the adoption of a profit sharing plan. The company's fixed wages are reduced allowing it to remain cost efficient in tough economic conditions. The promise of sharing profits in prosperous periods can be used to gain wage concessions from unions. Therefore, profit sharing plans are directly related to wages and salaries.

From an accounting perspective, profit distributions to employees are treated in a manner similar to bonuses. They are typically recorded as an expense and are shown on the income statement. Kindberg included these nominal "profit-sharing" distributions as an operating expense on its financial statements. In contrast, dividends, which are true distributions of profit, affect only the equity section of the balance sheet and do not flow through the income statement. This distinction implies that profit sharing distributions are more closely associated with expenses, rather than with earnings. Kindberg admits in its case brief that the profit-sharing distributions are regular incentives to employees and that the distributions increase the operating loss.

Consistent with our determinations in consecutive administrative reviews of Mexican Cooking Ware, the Department determines that these mandatory payments represent compensation to the employees for their efforts in the production of merchandise and the administration of the company.

Comment 4—Allocation of Net Variance

The petitioners take exception to the allocation of Kindberg's net variance. Kindberg divided the total of all of its variances by the total tons produced in the POI. This fixed amount per ton was applied as an offset to each specific per unit standard cost reported to the Department.

The petitioners argue that the Department must apply the cost variances to the cost of manufacturing as a percentage, rather than as a fixed amount per ton. The variance must be applied as a percentage in order to obtain an applied variance proportional to the manufacturing costs. The petitioners argue the fixed amount per ton distorts the reported costs, because it understates the variance applied to products with higher manufacturing costs and overstates the variance applied to products with lower manufacturing costs. The petitioners cite Carbon Steel Alloy Steel Wire Rod from Canada, 59 FR 18791 (April 20, 1994), in which the Department disallowed the use of tonnage to allocate melt shop costs, because it resulted in the same cost per ton regardless of steel grade.

DOC Position

We agree with the petitioners. We have recalculated the variance from standard cost as a percentage of the POI cost of manufacturing and applied the rate to each per-unit cost of manufacturing. The petitioners are correct in their assertion that Kindberg's methodology "smooths" costs by applying a smaller proportion of the variance to products with higher production costs. The variance relates to all production costs and should be allocated proportionally among product costs.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1)of the Act 19 USC 1673b(d)(1), we directed the Customs Service to suspend liquidation of all entries of OCTG from Austria, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after February 2, 1995.

Pursuant to the results of this final determination, we will instruct the Customs Service to require a cash deposit or posting of a bond equal to the estimated final dumping margin, as shown below for entries of OCTG from Austria that are entered, or withdrawn from warehouse, for consumption from the date of publication of this notice in the **Federal Register**. The suspension of liquidation will remain in effect until further notice.

Producer/manufacturer/exporter	Margin percentage
Voest-Alpine Stahlrohr Kindberg GmbH	12.72
All Others	12.72

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. The ITC will make its determination whether these imports materially injure, or threaten injury to, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) in this investigation of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)) and 19 CFR 353.20.

Dated: June 19, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–15617 Filed 6–27–95: 8:45 am]

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[A–475–816]

Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 28, 1995.

FOR FURTHER INFORMATION CONTACT: Bill Crow or Stuart Schaag, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0116 or (202) 482–0192, respectively.

Final Determination

The Department of Commerce (the Department) determines that oil country tubular goods (OCTG) from Italy are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d). The estimated margins are shown in the Suspension of Liquidation section of this notice.

Scope of the Investigation

For purposes of this investigation, OCTG are hollow steel products of circular cross-section, including oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The OCTG subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.20.10.10, 7304.20.10.20, 7304.20.10.30, 7304.20.10.40, 7304.20.10.50, 7304.20.10.60, 7304.20.10.80, 7304.20.20.10, 7304.20.20.20, 7304.20.20.30, 7304.20.20.40, 7304.20.20.50, 7304.20.20.60, 7304.20.20.80, 7304.20.30.10, 7304.20.30.20, 7304.20.30.30, 7304.20.30.40, 7304.20.30.50, 7304.20.30.60, 7304.20.30.80, 7304.20.40.10, 7304.20.40.20, 7304.20.40.30, 7304.20.40.40, 7304.20.40.50, 7304.20.40.60, 7304.20.40.80, 7304.20.50.15, 7304.20.50.30, 7304.20.50.45, 7304.20.50.60, 7304.20.50.75, 7304.20.60.15, 7304.20.60.30, 7304.20.60.45, 7304.20.60.60, 7304.20.60.75, 7304.20.70.00, 7304.20.80.30, 7304.20.80.45, 7304.20.80.60, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50.

After the publication of the preliminary determination, we found that HTSUS item numbers 7304.20.10.00, 7304.20.20.00, 7304.20.30.00, 7304.20.40.00, 7304.20.50.10, 7304.20.50.50, 7304.20.60.10, 7304.20.60.50, and 7304.20.80.00 were no longer valid HTSUS item numbers. Accordingly, these numbers have been deleted from the scope of this investigation.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is January 1, 1994, through June 30, 1994.

Case History

Since our preliminary determination (60 FR 6515, February 2, 1995) the following events have occurred. On February 3, 1995, one of the respondents, Dalmine S.p.A. (Dalmine), requested a postponement of the final determination. This request was granted (60 FR 8632, February 15, 1995), and the final was postponed by the Department until no later than June 19, 1995. On May 2, 1995, Dalmine submitted its case brief. On May 3, 1995, petitioner submitted its case brief and on May 10, 1995, petitioner submitted its rebuttal.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Best Information Available

In accordance with section 776(c) of the Act (19 U.S.C. 1677e(c)), we have determined that the use of best information available (BIA) is appropriate for all companies. Given that none of the three named companies responded fully to the Department's questionnaire, we find that no respondents have cooperated in this investigation.

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents who cooperate in an investigation, and margins based on more adverse assumptions for those respondents who do not cooperate in an investigation. If the Department deems a respondent to be non-cooperative, that respondent's final margin for the relevant class or kind of merchandise is the higher of either (1) the highest margin in the petition, or (2) the highest calculated margin of any respondent (see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany: Final Determination of Sales at Less Than Fair Value (54 FR 18992, 19033, May 3, 1989)). The Department's two-tier methodology for assigning BIA based on the degree of respondents' cooperation has been upheld by the U.S. Court of Appeals for the Federal Circuit. (*See Allied Signal Aerospace Co.* v. *United States*, 996 F.2d 1185 (Fed. Cir. 1993); see also *Krupp Stahl, AG et al.* v. *United States*, 822 F. Supp. 789 (CIT 1993).)

In this investigation, the mandatory respondents have refused to cooperate by failing to respond, either entirely, or in large part, to the Department's questionnaire. Therefore, in accordance with our standard practice, the Department has assigned the highest margin in the petition to all respondents. The assigned BIA margin is the same margin that was assigned for the preliminary determination.

Fair Value Comparisons

To determine whether sales of subject merchandise from Italy to the United States were made at less than fair value, we compared United States price (USP) to foreign market value (FMV) as reported in the petition. See Initiation of Antidumping Duty Investigation of Oil Country Tubular Goods Pipe from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain (59 FR 37962, July 26, 1994).

Comment 1—Comments Regarding Dalmine S.p.A.

Dalmine urges the Department to reverse its November 4, 1994, decision that Dalmine's home market is viable (see November 4, 1995, Memorandum from Richard W. Moreland to Barbara R. Stafford). As a basis for this reversal, Dalmine refers to arguments made in its November 14, 1994, submission. In this submission, Dalmine challenged the legality of the Department's determination that Dalmine's home market is viable. Dalmine asserted that the Department's standing policy is not to use related party sales in its home market viability calculation. Dalmine also requests that the Department take into account its December 1994 announcement concerning the Department's reconsideration of its policy regarding downstream related party sales (see December 27, 1994 Letter from Roland L. MacDonald, Director, Office of Agreements Compliance, to Dofasco Inc.). In the event that the Department reverses its November 4 viability determination, Dalmine urges the Department to request, review, and verify Dalmine's third country sales data. Although such a task would extend past the Department's deadline for the final determination in this investigation, Dalmine argues that the Department's deadlines are hortatory and not mandatory and, therefore, the Department may take the time that is needed to receive and verify new responses.

Petitioner argues that Dalmine's case brief merely refers to previous submissions that have already been rejected by the Department. Additionally, petitioner argues that downstream sales are not an issue in this investigation and, therefore, Dalmine's request that the Department reconsider its home market viability decision based on the Department's review of its policy regarding the reporting of downstream customers is irrelevant. Petitioner maintains that Dalmine's refusal to comply with the Department's explicit instructions to report home market sales can only be characterized as noncooperative and that the Department has no option but to use the highest margin alleged in the petition as BIA.

DOC Position

We re-affirm our previous decision that Dalmine's home market is viable and that Dalmine's refusal to comply with the Department's request for home market sales information constitutes uncooperative behavior.

In its November 4 determination, the Department decided that the nature of the relationship between Dalmine, its home market customers, and the Government of Italy, was not pertinent to the Department's home market viability analysis. The record contains no information that would cause the Department to change this decision. Additionally, the Department's announcement that it was reviewing its present policy regarding sales to downstream customers has no bearing on its policy to use sales to both related and unrelated parties in its viability analysis.

Comment 2

In order to preserve the viability issue in the event that Dalmine decides to appeal the Department's determination, Dalmine urges the Department to clarify, in this notice the extent of Dalmine's cooperation in this investigation and the reasons for Dalmine's decision not to report home market sales data. Specifically, Dalmine requests the Department to acknowledge that Dalmine informed the Department that its home market was not viable and that the Department rejected Dalmine's proposal because it considered Dalmine's home market to be viable. Additionally, Dalmine asks that the Department respond to the legal arguments addressed in Dalmine's November 14 submission and that the Department's analysis take into account the policy announcement that the

Department made on December 27, 1994, regarding the Department's requirement to report downstream related party sales.

Petitioner argues that there is no need for the Department to revisit its decision regarding the viability of Dalmine's home market.

DOC Position

The information regarding the extent of Dalmine's participation in this investigation is already a matter of public record. In the event that Dalmine appeals the Department's actions, the Department's previous decision to request home market information, Dalmine's subsequent arguments concerning the Department's decision, and Dalmine's refusal to supply the Department with requested information are all on record in the official file in the Central Records Unit of the Department.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) of the Act (19 USC 1673b(d)(1)), we directed the Customs Service to suspend liquidation of all entries of OCTG from Italy, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after February 2, 1995.

Pursuant to the results of this final determination, we will instruct the Customs Service to require a cash deposit or posting of a bond equal to the estimated final dumping margin, as shown below, for entries of OCTG from Italy that are entered, or withdrawn from warehouse, for consumption from the date of publication of this notice in the **Federal Register**. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted-average margin percentage
Dalmine S.p.A.	49.78
Acciaierie Tubificio Arvedi S.p.A.	49.78
General Sider Europa S.p.A.	49.78
All Others	49.78

International Trade Commission (ITC) Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. The ITC will make its determination whether these imports materially injure, or threaten injury to, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) in this investigation of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20(a)(4).

Dated: June 18, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–15618 Filed 6–27–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–835]

Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 28, 1995.

FOR FURTHER INFORMATION CONTACT: John Beck or Stuart Schaag, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone (202) 482–3646 or (202) 482–0192, respectively.

Final Determination

The Department of Commerce (the Department) determines that oil country tubular goods (OCTG) from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d). The estimated margins are shown in the Suspension of Liquidation section of this notice.

Scope of the Investigation

For purposes of this investigation, OCTG are hollow steel products of circular cross-section, including oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The OCTG subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.20.10.10, 7304.20.10.20, 7304.20.10.30, 7304.20.10.40, 7304.20.10.50, 7304.20.10.60, 7304.20.10.80, 7304.20.20.10, 7304.20.20.20, 7304.20.20.30, 7304.20.20.40, 7304.20.20.50, 7304.20.20.60, 7304.20.20.80, 7304.20.30.10, 7304.20.30.20, 7304.20.30.30, 7304.20.30.40, 7304.20.30.50, 7304.20.30.60, 7304.20.30.80, 7304.20.40.10, 7304.20.40.20, 7304.20.40.30, 7304.20.40.40, 7304.20.40.50, 7304.20.40.60, 7304.20.40.80, 7304.20.50.15, 7304.20.50.30, 7304.20.50.45, 7304.20.50.60, 7304.20.50.75, 7304.20.60.15, 7304.20.60.30, 7304.20.60.45, 7304.20.60.60, 7304.20.60.75, 7304.20.70.00, 7304.20.80.30, 7304.20.80.45, 7304.20.80.60, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50.

After the publication of the preliminary determination, we found that HTSUS item numbers 7304.20.10.00, 7304.20.20.00, 7304.20.30.00, 7304.20.40.00, 7304.20.50.10, 7304.20.50.50, 7304.20.60.10, 7304.20.60.50, and 7304.20.80.00 were no longer valid HTSUS item numbers. Accordingly, these numbers have been deleted from the scope definition.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is January 1, 1994, through June 30, 1994.

Case History

There has been no activity in this investigation since the preliminary determination (60 FR 6506, February 2, 1995).

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Best Information Available

In accordance with section 776(c) of the Act (19 U.S.C. 1677e(c)), we have determined that the use of best information available (BIA) is appropriate for both Nippon Steel Corp. and Sumitomo Metal Industries, Ltd. Given that neither of the named companies responded to the Department's questionnaire, we find that no respondents have cooperated in this investigation.

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents who cooperate in an investigation, and margins based on more adverse assumptions for those respondents who do not cooperate in an investigation. If a respondent is non-cooperative, that respondent's final margin for the relevant class or kind of merchandise is the higher of either (1) the highest margin in the petition, or (2) the highest calculated margin of any respondent (see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany: Final Determination of Sales at Less Than Fair Value (54 FR 18992, 19033, May 3, 1989)). The Department's two-tier methodology for assigning BIA conditioned on the degree of respondents' cooperation has been upheld by the U.S. Court of Appeals for the Federal Circuit. (See *Allied Signal Aerospace Co.* v. *United States*, 996 F.2d 1185 (Fed. Cir. 1993); see also *Krupp Stahl, AG et al.* v. *United States*, 822 F. Supp. 789 (CIT 1993).)

In this investigation, the two respondents refused to cooperate by failing to respond to the Department's questionnaire. Therefore, in accordance with our standard practice, the Department has assigned the highest margin in the petition to both respondents. The assigned BIA margin is the same margin that was assigned for the preliminary determination.

Fair Value Comparisons

To arrive at the BIA margin referred to above, we compared United States price (USP) to foreign market value (FMV) as reported in the petition. See Initiation of Antidumping Duty Investigation of Oil Country Tubular Goods Pipe from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain (59 FR 37962, July 26, 1994).

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) of the Act 19 U.S.C. 1673b(d)(1), we directed the Customs Service to suspend liquidation of all entries of OCTG from Japan, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after February 2, 1995.

Pursuant to the results of this final determination, we will instruct the Customs Service to require a cash deposit or posting of a bond equal to the estimated final dumping margin, as shown below, for entries of OCTG from Japan that are entered, or withdrawn from warehouse, for consumption from the date of publication of this notice in the **Federal Register**. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted-average margin percentage
Nippon Steel Corporation	44.20
Sumitomo Metal Industries, Ltd	44.20
All Others	44.20

International Trade Commission (ITC) Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. The ITC will make its determination whether these imports materially injure, or threaten injury to, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) in this investigation of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20(a)(4).

Dated: June 19, 1995.

Paul L. Joffe,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 95–15619 Filed 6–27–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–580–825]

Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 28, 1995.

FOR FURTHER INFORMATION CONTACT: Brian C. Smith or John Beck, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–1766 or (202) 482–3464, respectively.

Final Determination:

The Department of Commerce (the Department) determines that oil country tubular goods (OCTG) from Korea are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

Since the January 26, 1995, preliminary determination (60 FR 6507, February 2, 1995), the following events have occurred.

On February 3, 1995, we issued a supplemental questionnaire to Hyundai Steel Pipe Company, Ltd. (HSP). We received HSP's response on February 27, 1995.

In March 1995, we conducted the sales and cost verifications in Houston, Texas, and Seoul, Korea. We issued the verification reports in April 1995. On May 2 and May 3, 1995, HSP and the petitioners submitted their case briefs, respectively. On May 10, 1995, both parties submitted their rebuttal briefs. A public hearing was held on May 16, 1995.

Scope of Investigation

For purposes of this investigation, OCTG are hollow steel products of circular cross-section, including oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or

non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The OCTG subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.20.10.10, 7304.20.10.20, 7304.20.10.30, 7304.20.10.40, 7304.20.10.50, 7304.20.10.60, 7304.20.10.80, 7304.20.20.10, 7304.20.20.20, 7304.20.20.30, 7304.20.20.40, 7304.20.20.50, 7304.20.20.60, 7304.20.20.80, 7304.20.30.10, 7304.20.30.20, 7304.20.30.30, 7304.20.30.40, 7304.20.30.50, 7304.20.30.60, 7304.20.30.80, 7304.20.40.10, 7304.20.40.20, 7304.20.40.30, 7304.20.40.40, 7304.20.40.50, 7304.20.40.60, 7304.20.40.80, 7304.20.50.15, 7304.20.50.30, 7304.20.50.45, 7304.20.50.60, 7304.20.50.75, 7304.20.60.15, 7304.20.60.30, 7304.20.60.45, 7304.20.60.60, 7304.20.60.75, 7304.20.70.00, 7304.20.80.30, 7304.20.80.45, 7304.20.80.60, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50.

After the publication of the preliminary determination, we found that HTSUS item numbers 7304.20.10.00, 7304.20.20.00, 7304.20.30.00, 7304.20.40.00, 7304.20.50.10, 7304.20.50.50, 7304.20.60.10, 7304.20.60.50, and 7304.20.80.00 were no longer valid HTSUS item numbers. Accordingly, these numbers have been deleted from the scope definition.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is January 1, 1994, through June 30, 1994.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Best Information Available

In accordance with section 776(c) of the Act, we have determined that the use of best information available (BIA) is appropriate for sales of OCTG by Union Steel Manufacturing Company (Union). Given that Union did not respond to the Department's questionnaire, we find that it has not cooperated in this investigation.

In determining what to use as BIA, the Department follows a two-tiered methodology whereby the Department normally assigns lower margins to those respondents who cooperate in an investigation, and margins based on more adverse assumptions for those respondents who do not cooperate in an investigation. If a respondent is non-cooperative, that respondent's final margin for the relevant class or kind of merchandise is the higher of either 1) the highest margin in the petition, or 2) the highest calculated margin of any respondent (see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany: Final Determination of Sales at Less Than Fair Value (54 FR 18992, 19033, May 3, 1989)). The Department's two-tier methodology for assigning BIA based on the degree of the respondents' cooperation has been upheld by the U.S. Court of Appeals for the Federal Circuit. (See *Allied-Signal Aerospace Co. v. the United States*, 996 F.2d 1185 (Fed. Cir. 1993); see also *Krupp Stahl AG. et al. v. the United States*, 822 F. Supp. 789 (CIT 1993).

In this investigation, Union refused to cooperate by failing to respond to the Department's questionnaire. Therefore, in accordance with our standard practice, the Department has assigned the highest margin in the petition to Union. The assigned BIA margin is the same margin that was assigned for the preliminary determination.

Such or Similar Comparisons

We have determined for purposes of the final determination that the OCTG covered by this investigation comprises a single category of "such or similar" merchandise within the meaning of section 771(16) of the Act. All comparisons of U.S. to third-country [1] sales involved identical merchandise.

Fair Value Comparisons

To determine whether HSP's sales of OCTG from Korea to the United States were made at less than fair value, we compared United States price (USP) to foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We calculated USP according to the methdology described in our preliminary determination, with the following exceptions as a result of verification:

1. We removed two types of bank charges from the U.S. indirect selling expense calculation and treated them as a direct expense; we included a third type of bank charge in the indirect selling expense calculation (see Comment 7).
2. We recalculated U.S. and non-U.S. indirect selling expenses;
3. We recalculated inventory carrying costs using HSP's revised cost data and the appropriate interest rates (see Comment 6).
4. We recalculated foreign brokerage and handling expenses.
5. We deducted a related party's interest charge from USP (see Comment 8).

Foreign Market Value

As stated in the preliminary determination, we found that the home market was not viable for sales of OCTG and based FMV on sales to Canada.

Cost of Production (COP) Analysis

As we indicated in our preliminary determination, the Department initiated an investigation to determine whether HSP's sales in Canada were made below their COP. In order to determine whether the third-country prices were below the COP, we calculated the COP based on the sum of HSP's reported cost of materials, fabrication, general expenses, and packing, in accordance with 19 CFR 353.51(c). We did not add duties paid on the coil to the cost of manufacture (COM)(see Comment 3). We made the following adjustments to HSP's COP data:

1. We increased the material costs relating to the settlement received for the purchase of defective coil. We adjusted the settlement amount to account for only that portion that was pertinent to production of the subject merchandise during the POI (see Comment 10);
2. We increased the general and administrative expenses to exclude income and expenses resulting from investment activities of the company (see Comment 11); and
3. We increased the COM to reflect the allocation of overhead on the basis of actual hours rather than standard hours (see Comment 12).

After computing COP, we compared product-specific COP to reported third-country prices that were net of movement charges and direct and indirect selling expenses.

[1] The home market in this case is not viable. Sales to Canada are being used as the basis for FMV and the cost of production analysis.

Results of COP Analysis

In accordance with section 773(b) of the Act, we followed our standard methodology as described in the preliminary determination to determine whether the third country sales of each product were made at prices below their COP.

Based on this methodology, we found that none of HSP's Canadian sales were at prices below the COP.

Third Country Price Comparisons

For third country price to U.S. price comparisons, we calculated FMV according to the methodology described in our preliminary determination, with the following exceptions as a result of verification:

1. We recalculated foreign brokerage and handling expenses.
2. We recalculated U.S. and non-U.S. indirect selling expenses by removing antidumping legal expenses from HSP's calculation.
3. We recalculated inventory carrying costs using HSP's revised cost data and the appropriate interest rates (see Comment 6).
4. We recalculated Canadian credit expenses (see Comment 8).

Currency Conversion

Pursuant to 19 CFR 353.60, we made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we verified the information used in making our final determination.

Comment 1—Interested Party Comments: Whether Best Information Available (BIA) Is Appropriate for HSP Based on Transaction-Specific Data Arguments

The petitioners argue that the verification report findings and the record evidence demonstrate that the respondent should have reported vessel-specific (*e.g.*, transaction-specific data) instead of POI average charges and adjustments for its U.S. sales during the POI. In summary, the petitioners maintain that: (1) The respondent was asked for transaction-specific information; (2) the respondent stated that such data would be impossible to provide; (3) the Department verified that the respondent could provide such data; (4) the respondent provided such information at verification; and (5) the transaction-specific data the respondent provided at verification differs from the POI average figures submitted prior to verification. The petitioners maintain that because the respondent could have reported transaction-specific information but failed to do so, the respondent has been uncooperative, significantly impeding the investigation and casting doubt on the reliability of its questionnaire response. The petitioners argue that since the respondent ignored the questionnaire requirement to report transaction-specific information, the Department should resort to the application of adverse BIA.

The respondent maintains that its calculation of weighted-average POI movement expenses for its U.S. sales was reasonable because: (1) It cannot always trace the actual product from Korea to a sale because it does not have access to the records of the stockyard (*e.g.*, an unrelated party) where it stores its OCTG prior to sale; (2) the tracing method outlined in the verification report for determining transaction-specific movement expense data is not always accurate; and (3) sales-specific tracing would have been unduly burdensome. Moreover, the respondent points out that the difference between the transaction-specific movement expenses reviewed at verification and the weighted-average movement expenses reported is *de minimis*. Therefore, the respondent maintains that the Department should accept its movement expense allocation methodology.

DOC Position

We agree with the respondent. We have accepted HPA's average expense reporting methodology because (1) it is representative and non-distortive of transaction-specific data; and (2) it would be contrary to our practice to require an unrelated party that is not a party subject to this proceeding (*i.e.*, the stockyard) to provide information. We disagree with the petitioners that HPA has been uncooperative, that it has significantly impeded the investigation, or that it misled or made misrepresentations to the Department.

The Department's preference is for a respondent to report transaction-specific sales information unless a respondent can demonstrate that doing so is overly burdensome or that its alternative methodology is representative and non-distortive of transaction-specific sales information. (In this case, transaction-specific information is equivalent to vessel-specific information.) HSP's U.S. subsidiary, HPA, maintained from the outset of this investigation that it could not report transaction-specific movement expenses for its sales of OCTG made during the POI because its accounting system does not contain such information. At verification, this statement was clarified to mean that HPA could not physically trace the OCTG through its sales documentation from the vessel, through the stockyard (which is an unrelated party), and then to the ultimate U.S. customer. Though HPA uses stock numbers to record movement of OCTG to and from the stockyard and on sales documentation sent to its U.S. customers, we have determined that HPA used the stock numbers simply as a technique to account for the OCTG it sent to its stockyard (an unrelated party) prior to release to its customers, and for determining what portion of unsold OCTG remained at the stockyard. At no time after HPA had the OCTG delivered to the stockyard from the U.S. port of entry did HPA retain records which would allow it to physically account for the movement of the OCTG from the stockyard to the first unrelated customer.

While the stockyard is required by the American Petroleum Institute (API) to be able to trace, at any time, any piece of OCTG released to HPA's first unrelated customer back to the specific production run, such information could not be confirmed from HPA's accounting system or sales documentation. Only the stockyard's records would likely contain the information to link the actual OCTG removed from a given vessel to an actual HPA sale. However, because the stockyard is an unrelated party to HPA, that information was not obtainable. HPA is therefore correct when it states that its records cannot physically trace the OCTG from the vessel to the customer. For this reason, we do not find that HPA sought to impede the investigation by not providing such data. Thus, the issue of whether it was burdensome for HPA to report transaction-specific information is moot.

Finally, after an analysis of business proprietary data and our findings at verification, we have determined that HPA's methodology of reporting average POI movement expenses is non-distortive and representative of the expenses it incurred during the POI on sales of OCTG. The difference between the vessel-specific movement expenses we requested at verification and the weighted-average movement expenses reported is negligible.

Comment 2—Whether BIA Is Appropriate for HSP Based On Alleged Data Deficiency Arguments

The petitioners maintain that verification revealed several serious deficiencies in the respondent's questionnaire response. For example, the petitioners allege that the

respondent incorrectly included movement expenses, bank charges, and antidumping legal expenses in its indirect selling expenses and that there were serious discrepancies between actual production hours and the standard production hours used to allocate costs. The petitioners maintain that the corrections are so numerous and substantial that the data provided by the respondent is unusable, and argue, therefore, that the Department should assign the petition margin as BIA.

The respondent contends that every expense was verified, as the verification reports make clear. In addition, the respondent points out that it produced complete information which was entirely verified by the Department. Therefore, the respondent maintains that the Department should use its response in the final determination and not resort to BIA.

DOC Position

We agree with the respondent. We tested the respondent's sales databases and established that the errors mentioned above were inadvertent and relatively minor. The respondent either brought these errors to our attention, or we discovered them as a result of the respondent providing all requested information. We were able to correct these errors. The errors mentioned above were not ones which lead us to question the reliability of the response. These are the types of errors the Department generally encounters in a typical investigation and it is the Department's normal practice to correct such minor errors for purposes of its analysis and less-than-fair-value calculations. Therefore, we are using the respondent's response in the final determination and not resorting to BIA.

Comment 3—Exclusion of Duties from the COM

The respondent maintains that the Department must exclude duties paid from the COP and exclude duty drawback from the Canadian price because to do otherwise is contrary to Department practice. The respondent cites *Carlisle Tire & Rubber Co.* v. *United States*, 634 F.Suppl. 419, 424 (CIT 1986), and Final Determination of Sales at Less Than Fair Value: Sweaters Wholly or in Chief Weight of Man-Made Fiber from the Korea (55 FR 32659, 32666, August 10, 1990) (Sweaters from Korea) in support of its argument.

The petitioners argue that it would be inappropriate to exclude duties from the COP because the drawback received on a majority of the Canadian sales is different from the duties HSP paid on the imported coil incorporated into the exported pipe.

DOC Position

We agree with the respondent. Our practice, as enunciated in Sweaters from Korea, is to calculate a COP exclusive of duties and compare this COP to a duty-exclusive price. Thus, the fact that there may be a difference between the amount of duty paid and the amount of drawback received is irrelevant because neither amount is used for purposes of the COP test involving third country sales. Consequently, other issues which relate to the duty calculation are moot.

Comment 4—Duty Drawback on U.S. Sales

The petitioners contend that the respondent should have calculated U.S. duty drawback using shipment-specific drawback data instead of the average drawback received on all shipments during the period July-December 1993. They further contend that such reporting would not have been burdensome because the respondent provided this information at verification. In addition, the petitioners assert that the respondent's averaging methodology was not reasonable because it does not accurately capture the correct universe of duty drawback received. Therefore, the petitioners request that the Department deny the allocated duty drawback adjustment to U.S. price.

The respondent maintains that in *Laclede Steel Co.* v. *United States*, Slip Op. 94–160 (CIT 1994) (*Laclede*), the CIT upheld HSP's drawback methodology which is virtually identical to the methodology HSP is using in this instant case. The respondent points out that based on *Laclede*, HSP is not required to perform sales-specific calculations of Korean duty drawback. Moreover, the respondent maintains that it cannot trace the amount of drawback received on a particular exportation of OCTG back to a particular imported coil upon which duty has previously been paid because of the very nature of the Korean drawback system. Additionally, the respondent contends that the issue of whether it would have been burdensome to provide transaction-specific data is irrelevant because there is no relationship between coil inputs to the OCTG exports. Finally, the respondent argues that its allocation methodology is reasonable because the amount of drawback assigned to each vessel bears no relationship to the sales that are made of the OCTG transported on that vessel.

DOC Position

We agree with the respondent. Contrary to the petitioners' assertions, we verified that HSP is unable to trace the amount of drawback received upon a particular exportation of OCTG back to a particular imported coil upon which duty has previously been paid because of the nature of the Korean drawback system. Specifically, the Korean duty drawback system is set up such that HSP is allowed to use a FIFO (first in first out) method in matching import permits for raw materials used to produce OCTG to export permits showing OCTG shipments. When it submits its application for duty drawback, HSP is not required by the Korean government to link the amount it paid in duty for a specific amount of imported coil to the OCTG it actually exported.

However, even if HSP were able to provide transaction-specific amounts for duty drawback, the *Laclede* decision is clear that a respondent is not required to report sales-specific calculations for duty drawback relating to sales in a particular market.

Regarding whether HSP's duty drawback allocation methodology is reasonable, we examined at verification alternative allocation methods HSP could have used. We determined, based on verification, that the methodology HSP selected reasonably allocated its duty drawback amounts and was non-distortive based on the following facts: (1) While HSP cannot determine on a sales specific basis which coil imported actually was used to produce a specific product for export, it can in general determine which coil was used to produce U.S.-destined OCTG and Canadian-destined OCTG; (2) HSP applies for duty drawback in the ordinary course of business by taking the oldest coil import permits and linking them to export permits so that it receives all of the drawback due to it; and (3) there was an insignificant difference between using HSP's method and using an alternative method based on the drawback received on OCTG sold during the POI. Regarding petitioners' request that the duty drawback amount be limited to the actual amount of duties included in CV and the COP, this issue is moot since we have excluded duties from the COP calculation and we are not resorting to CV as a basis for FMV.

Therefore, we are accepting the respondent's duty drawback allocation methodology because it is in accordance with the *Laclede* decision and Department practice.

Comment 5—Dual Prices for Identical Merchandise

The petitioners maintain that the respondent failed to adequately support its claim that it can and does charge two different prices to the same customer for the same product on the same day. Absent evidence to the contrary, the petitioners contend that the real reason for the change in prices may relate to differences in physical characteristics or to market conditions. The petitioners argue that if the Department is not going to resort to BIA, it may have to make a difference-in-merchandise or circumstance-of-sale adjustment.

The respondent maintains that the Department thoroughly examined this issue at verification and found no evidence that HPA charges different prices for the same product based on physical characteristics or market conditions. The respondent contends that the petitioners' statements on this issue are unsupported speculation and should be disregarded.

DOC Position

We agree with the respondent. At verification we examined invoices which contained different prices for the same product specification to the same customer. We found that, in fact, HPA will charge two different prices for identical product from the same stock number to the same customer on the same invoice. In looking at how the continuous negotiation process between HPA and its customers works (which is described in the ESP verification report), export documentation from Korea, and import documentation into the United States, we find no reason to suspect that HPA is mislabelling a product's physical characteristics in the invoice. Therefore, we have accepted HPA's reported prices and used them in our analysis.

Comment 6—U.S. Inventory Carrying Costs

HSP sells the OCTG to Hyundai Corporation (HC), a related party (also in Korea), which in turns sells the OCTG to Hyundai Pipe of America (HPA), HSP's U.S. subsidiary.

The petitioners maintain that when HSP calculated U.S. inventory carrying costs, it should have used the won-denominated interest rate applicable while the merchandise was in Korea and then used HC's interest rate before the merchandise entered HPA's inventory.

The respondent contends that the Federal Circuit's decision in *LMI-LaMetalli Industriale* v. *United States*, 912 F.2d 455 (1990), requires that HSP use its subsidiary's, HPA's, U.S. interest rate.

DOC Position

We agree with the petitioners. Respondent's use of the U.S. interest rate to calculate its inventory carrying costs is not in accordance with Department practice (see Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand (60 FR 10552, February 27, 1995), and the September 24, 1994, memorandum in that case from Susan Kuhbach, Director, Office of Countervailing Duty Investigations to Barbara R. Stafford, Deputy Assistant Secretary for Investigations). The Department's current practice is to use the interest rate denominated in the currency of the transaction.

A company selling in a given currency (such as sales denominated in dollars) is effectively lending to its purchasers in the currency in which its receivables are denominated (in this instance in won and dollars) for the period from shipment of its goods until the date it receives payment from its purchaser. Thus, when sales are made, and future payments are expected, in a given currency, the measure of the company's extension of credit should be based on an interest rate tied to the currency in which its receivables are denominated. This recognizes both the time value of money and the effect of currency fluctuations on repatriating revenue. Such an approach comports with the Federal Circuit's decision in *LMI-La Metalli*, wherein the court noted that "[i]f the cost of credit is imputed in the first instance to conform with commercial reality, it must be imputed on the basis of usual and reasonable commercial behavior." 912 F.2d at 461.

In this instance, HSP sold the merchandise in Korea to the Korean company HC in a won-denominated transaction. In turn, HC sold the merchandise to HPA, the U.S. affiliate, in a dollar-denominated transaction. Finally, HPA sold the merchandise to the first unrelated U.S. customer in a dollar-denominated transaction. Accordingly, we have used (1) the Korean interest rate during the period from production to HSP's sale of the merchandise; and (2) HPA's U.S. interest rate during the period it was held by HPA. For the period of time between HC's purchase of the merchandise and its sale of the merchandise to HPA, we have used an actual expense and not the imputed expense (see Comment 8 for a further discussion).

Comment 7—HPA's Bank Charges

The respondent maintains that the three types of bank charges which it included in its U.S. indirect selling expense calculation are not direct expenses because they cover shipments which include both OCTG and non-subject merchandise. Therefore, the respondent contends that the bank charges are not directly associated with individual products.

The petitioners maintain that the bank charges at issue are direct expenses for both OCTG and non-subject merchandise and can be attributed to specific shipments. Moreover, even though in some cases the charge must be allocated between OCTG and non-subject merchandise within a particular shipment, the charge is still a direct expense because it is a charge HPA incurs regardless of what product is sold.

DOC Position

We agree in part with the petitioners. The respondent incurs the following three types of bank charges on U.S. sales of OCTG: (1) Charges for opening a letter of credit (*e.g.*, L/C open commission); (2) charges for an analysis of its bank account (*e.g.*, account analysis charge); and (3) charges from the bank for checking the sales documents for HPA (*e.g.*, a negotiation commission). Based on our verification findings, it is clear that the account analysis charges are indirect selling expenses because they are not associated with the direct sale of OCTG. As for the L/C open commission, it is a telex charge for opening a letter of credit for each sale. Therefore, it is a direct selling expense. Regarding the negotiation commissions, these are expenses associated with the transfer of sales documentation from HC to HPA, and are directly related to the sale of the subject merchandise, as well as non-subject merchandise, because these commissions are the fees that HPA's bank charges HPA for reviewing the sales documentation between HC and HPA. Moreover, HPA's bank determines the amount of the charge based on a percentage of the value of the merchandise. Therefore, we have included the account analysis charges as part of HPA's U.S. indirect selling expense calculation. However, we have removed the negotiation commissions and letter of credit fees from the indirect selling expense calculation and treated these as direct selling expenses. We allocated these direct expenses between the OCTG and the non-subject merchandise based on a percentage of the sales values between HC and HPA.

Comment 8—HC's Interest Charges

HSP reported that it "sells" the OCTG to HC, which in turn "sells" the OCTG to HPA, HSP's U.S. subsidiary. The respondent maintains that HC pays a certain percentage of the transfer price in interest charges to compensate the Korean bank for the time value of the money resulting from the time lag between the Korean bank's payment to HC and the payment to the Korean bank from the U.S. bank. HSP maintains that these interest charges to finance the internal movement within Hyundai of OCTG while in physical transit from Korea to the United States. Therefore, the respondent contends that, because HPA makes ESP sales out of its U.S. inventory, HC's interest charges cannot be associated with goods which are subject to a later sale.

The respondent contends that this interest charge calculated by HSP is duplicated by HPA's inventory carrying cost calculation and HSP's Canadian credit expense calculation because it compensates the Korean bank for the short delay in HC's receipt of payment under the letter of credit posted by HPA. The respondent also contends that this type of charge is included in HPA's indirect selling expenses and therefore must be removed from them. Otherwise, the respondent maintains that the Department is double counting this expense.

The petitioners maintain that the interest charges and inventory carrying costs must be fully and separately reported and deducted from U.S. price.

DOC Position

We agree in part with the respondent. Based on verification of HPA's ESP sales process, we have determined that HC's interest charges cannot be specifically traced to the U.S. sale of OCTG to the first unrelated customer. Therefore, this charge is clearly associated with the internal movement of the subject merchandise from Korea to the United States and not associated with a specific sale. Accordingly, we have treated this expense as an indirect selling expense in the final determination.

Regarding the respondent's claim that an imputed amount capturing the delay in payment must be deducted from inventory carrying expense and/or credit expense, HPA's bank will not pay HC's bank until HPA provides the shipment documents received after receipt of the OCTG from HC. Therefore, we find that the interest charge is associated with the delay in payment between HC's bank and HPA's bank and that this is a result of the time delay between when HC releases the OCTG and when HPA receives the OCTG. We find that the interest charge represents part of the inventory carrying expense calculation and does not represent an additional expense. Since the deduction of both this interest charge and the time during which the OCTG is in HC's inventory would represent double counting, we have removed the inventory days during which the OCTG is in HC's inventory from the inventory carrying expense calculation.

Regarding the respondent's claim that HC's interest charge amount must be deducted from HPA's indirect selling expenses, we disagree because HC's expenses are not captured in HPA's indirect selling expenses calculation.

Finally, regarding the respondent's claim that the interest charge (which is also incurred on Canadian sales of OCTG), is duplicated by HSP's Canadian credit expense calculation, HPA's bank will not pay HC's bank until the Canadian customer pays HPA and this transaction occurs after the customer receives the shipment documents. However, HC's bank will still pay HC based on the letter of credit opened by HPA, and HC's bank will charge HC an interest charge for the advance receipt of the value of the OCTG. Therefore, we find that the interest charge is an actual credit expense which is associated with receiving payment for the OCTG before the Canadian customer pays HPA for the OCTG. Although this interest charge does not cover the entire credit period (*e.g.*, shipment from Korea until HPA's receipt of payment from the Canadian customer), we have accounted for the additional credit period by imputing a credit expense which is based on the use of HPA's interest rate and the difference between HPA's and HC's sales prices of OCTG to the U.S. market.

Comment 9—Packing Expense

The petitioners contend that HSP has improperly applied its conversion factor to packing expenses. Specifically, the petitioners allege that since HSP allocated packing costs over the total tonnage of OCTG sold rather than produced, it was unnecessary to use a conversion factor to determine the expenses. The actual packing costs have already been allocated on a theoretical weight basis.

The respondent maintains that verification demonstrated that HSP allocated packing costs over the total actual volume of small pipe sales, and then applied a conversion factor to restate the costs on a nominal weight basis.

DOC Position

We agree with the respondent. We find that HSP did not use its conversion factor twice to determine its packing expenses. Verification demonstrated that HSP applied a conversion factor to the actual tonnage of OCTG produced to determine its packing costs. HSP used the quantity figures from its inventory ledger, (which record the actual tonnage), and not its sales ledger, as the basis for its packing expense allocation methodology. Therefore, we have accepted HSP's packing expense methodology.

Comment 10—Settlement Adjustment on Defective Coil Purchase

The petitioners argue that some of the coils on which HSP received settlement for defective material were consumed before the POI. Accordingly, the petitioners maintain that only the settlement revenue received by HSP and associated with coil consumed in the POI should be used to offset materials.

The respondent argues that it received all the settlement payment, which was to compensate HSP for defective material, during the POI, and that it should be offset against HSP's POI coil cost.

DOC Position

We agree with the petitioners. We found at verification that some of the defective material was used in production in 1993. The actual material cost for the POI equals the total net amount paid. This amount equals the amount paid on the material used during the POI, less the proportional amount of the settlement. In January 1994, HSP knew the amount it would receive and it knew the specific materials associated with the settlement. Therefore, we have adjusted the settlement amount for defective material to account for the production that occurred prior to the POI, and have considered only that portion of the settlement pertinent to production during the POI.

Comment 11—Adjustment of G&A Calculation

The petitioners argue that the gains and losses on investment securities and other investment related expense and income items should be excluded from the calculation of general and administrative (G&A) expenses. They contend that all non-operating items must be excluded from the SG&A calculation.

The respondent states the inclusion of investment related items is consistent with its financial statements.

DOC Position

We agree with the petitioners. The Department's practice has been not to include investment-related gains, losses and expenses in the calculation of G&A for purposes of COP or CV calculations. The Department's purpose in COP and CV situations is to determine the cost to produce the subject merchandise. The cost to produce the subject merchandise does not include unrelated production or investment activities. The Department accounts for investment activities which relate to financing a company's working capital as part of the financial expense. The financial expense is calculated on a consolidated company-wide basis. Therefore, we have recalculated G&A expenses by excluding HSP's company-wide investment related items.

Comment 12—Allocation Based on Standard Vs. Actual Hours for Overhead

The petitioners argue that the respondent, by using standard hours rather than actual hours for the allocation of overhead, has miscalculated the allocation of actual costs between subject and non-subject merchandise. The petitioners further argue that if the overhead costs cannot be recalculated on the basis of actual hours, then the submitted cost data should be rejected.

The respondent argues that in Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From the Republic of Korea (57 FR 42942, September 17, 1992) (Circular Pipe), the Department did not question the use of standard hours as the basis for the allocation of fabrication costs, only depreciation and G&A expenses. The respondent states that, in the instant case, the standard hours approximate the actual hours which were provided at verification. In any event, the respondent provided actual hours.

DOC Position

We agree with the petitioners. The Department's strong preference is to use actual costs for purposes of calculating COM whenever possible. See Final Determination of Sales at Less Than Fair Value: Fresh Chilled Atlantic Salmon from Norway (58 FR 37915, July 14, 1993). After a thorough review of Circular Pipe, it is clear that neither party raised the issue regarding the use of standard hours. Since HSP reported actual hours and we verified these hours, we applied the actual hours to the actual variable and fixed overhead costs to calculate the COM.

Comment 13—Double Use of Conversion Factor

The petitioners argue that HSP has applied the conversion factor which converts the costs of production from an actual to nominal basis, twice: First to material costs and then to total COP and CV. The petitioners maintain that this action causes costs to be understated.

The respondent states that it applied the conversion factor only once at the end of the total cost calculation.

DOC Position

We agree with the respondent that the conversion factor was applied only once. An examination of the cost verification exhibits show that the conversion factor was applied once to the actual material costs to derive the nominal material costs which were then converted to nominal terms. Thus, we agree with the respondent that no adjustment has to be made.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) of the Act (19 USC 1673b(d)(1)), we directed the Customs Service to suspend liquidation of all entries of OCTG from Korea, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after February 2, 1995.

The Customs Service shall require a cash deposit or posting of a bond equal to the estimated dumping margin, as shown below for entries of OCTG from Korea that are entered, or withdrawn from warehouse, for consumption from the date of publication of this notice in the **Federal Register**. The suspension of liquidation will remain in effect until further notice.

Producer/manufacturer/exporter	Margin percentage
Hyundai Steel Pipe Company, Ltd	00.00
Union Steel Manufacturing Company	12.17
All Others	12.17

International Trade Commission (ITC) Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. The ITC will make its determination whether these imports materially injure, or threaten injury to, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that material injury or threat of material injury does exist, the Department will issue an antidumping duty order.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) in this investigation of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20.

Dated: June 19, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–15620 Filed 6–27–95; 8:45 am]

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[A–201–817]

Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 28, 1995.

FOR FURTHER INFORMATION CONTACT: John Beck or Jennifer Stagner, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3464 or (202) 482–1673, respectively.

Final Determination:

Department of Commerce (the Department) determines that oil country tubular goods (OCTG) from Mexico are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination on January 26, 1995, (60 FR 6510, February 2, 1995), the following events have occurred.

In March and April 1995, the Department verified the cost and sales questionnaire responses of Tubos de Acero de Mexico, S.A. (TAMSA).

Verification reports were issued in April and May, 1995. On May 9 and 16, 1995, the interested parties submitted case and rebuttal briefs, respectively. TAMSA submitted revised sales and cost tapes that corrected clerical errors discovered at verification on May 18 and 23, 1995. A public hearing was held on May 19, 1995.

Scope of Investigation

For purposes of this investigation, OCTG are hollow steel products of circular cross-section, including oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The OCTG subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers:

7304.20.10.10, 7304.20.10.20, 7304.20.10.30, 7304.20.10.40, 7304.20.10.50, 7304.20.10.60, 7304.20.10.80, 7304.20.20.10, 7304.20.20.20, 7304.20.20.30, 7304.20.20.40, 7304.20.20.50, 7304.20.20.60, 7304.20.20.80, 7304.20.30.10, 7304.20.30.20, 7304.20.30.30, 7304.20.30.40, 7304.20.30.50, 7304.20.30.60, 7304.20.30.80, 7304.20.40.10, 7304.20.40.20, 7304.20.40.30, 7304.20.40.40, 7304.20.40.50, 7304.20.40.60, 7304.20.40.80, 7304.20.50.15, 7304.20.50.30, 7304.20.50.45, 7304.20.50.60, 7304.20.50.75, 7304.20.60.15, 7304.20.60.30, 7304.20.60.45, 7304.20.60.60, 7304.20.60.75, 7304.20.70.00, 7304.20.80.30, 7304.20.80.45, 7304.20.80.60, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50.

After the publication of the preliminary determination, we found that HTSUS item numbers 7304.20.10.00, 7304.20.20.00, 7304.20.30.00, 7304.20.40.00, 7304.20.50.10, 7304.20.50.50, 7304.20.60.10, 7304.20.60.50, and 7304.20.80.00 were no longer valid HTSUS item numbers. Accordingly, these numbers have been deleted from the scope definition.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is January 1, 1994, through June 30, 1994.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Such or Similar Comparisons

We have determined for purposes of the final determination that OCTG covered by this investigation comprises a single category of "such or similar" merchandise within the meaning of section 771(16) of the Act. Where there were no sales of identical merchandise in the third country [1] to compare to U.S. sales, we made similar merchandise comparisons on the basis of the characteristics listed in Appendix V of the Department's antidumping questionnaire. We made adjustments, where appropriate, for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act.

Fair Value Comparisons

To determine whether TAMSA's sales of OCTG from Mexico to the United States were made at less than fair value, we compared the U.S. price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We calculated USP according to the methodology described in our preliminary determination, with the following exceptions:

1. We applied the net financial expense of the consolidated parent to the further manufacturing costs of the related U.S. company, Texas Pipe Threaders (TPT).
2. We made deductions from gross unit price for movement variances that represent the difference between the accrual and actual movement costs.
3. We recalculated inventory carrying cost for the inventory time in the United States using a U.S. interest rate, in accordance with the Department's practice to use the interest rate applicable to the currency of the transaction (see Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand (60 FR 10552, February 27, 1995)).

Foreign Market Value

As stated in the preliminary determination, under 19 CFR 353.48, we found that the home market was not viable for sales of OCTG and based FMV on sales to Saudi Arabia. During the course of this investigation the petitioner questioned the legitimacy of certain transactions made by TAMSA to the Saudi Arabian market. The Department closely examined these transactions at verification and found no reason to alter its decision to use Saudi Arabia as the appropriate market for determining FMV (see Comment 1 in the "Interested Party Comments" section of this notice).

Cost of Production Analysis

Based on information contained in the petitioner's allegation that TAMSA is selling OCTG in Saudi Arabia at prices below its cost of production (COP), the Department initiated a COP investigation for the Saudi Arabian sales of TAMSA, under 19 CFR 353.51. This COP investigation was initiated on December 22, 1994. Because TAMSA submitted its cost information on February 1, 1995, which was after the preliminary determination, the Department was unable to use this information for purposes of the preliminary determination.

In order to determine whether the third-country prices were below the COP, we calculated the COP based on the sum of TAMSA's reported cost of materials, fabrication, and general expenses, in accordance with 19 CFR 353.51(c). After computing COP, we compared product-specific COP to reported third-country prices, net of movement charges and direct and indirect selling expenses. We accepted TAMSA's COP data, with the following exceptions:

1. We revised TAMSA's financing expense rate to reflect the first two quarters of 1994 consolidated results (see Interested Party Comment 6).
2. We revised costs for TAMSA's allocation methodology for fixed costs and variances based on standard cost (see Interested Party Comment 7).
3. We revised TAMSA's general and administrative (G&A) expenses to reflect 1994 unconsolidated results (see Interested Party Comment 8).

Results of COP Analysis

Under our standard practice, when we find that less than 10 percent of a company's sales are at prices below the COP, we do not disregard any below-cost sales because that company's below-cost sales were not made in substantial quantities. When we find between 10 and 90 percent of the company's sales are at prices below the COP, and the below-cost sales are made over an extended period of time, we disregard only the below-cost sales. When we find that more than 90 percent of the company's sales are at prices below the COP, and the sales were made over an extended period of time, we disregard all sales for that product and calculate FMV based on constructed value (CV), in accordance with 773(b) of the Act.

In accordance with section 773(b)(1) of the Act, in order to determine whether below-cost sales were made over an extended period of time, we compare the number of months in which below-cost sales occurred for each product to the number of months of the POI in which that product was sold. If a product was sold in three or more months of the POI, we do not exclude below-cost sales unless there were below-cost sales in at least three months of the POI. When we find that all sales of a product only occurred in one or two months, the number of months in which the sales occurred constitutes the extended period of time; *i.e.*, where sales of a product were made in only two months, the extended period of time is two months, where sales of a product were made in only one month, the extended period of time is one month (see Preliminary Results and Partial Termination of Antidumping Duty Administrative Review: Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan (58 FR 69336, 69338, December 10, 1993)).

Following the above type of analysis, we determine that sales below cost were in substantial quantities over an extended period of time, and that there were no remaining sales above cost. Accordingly, we compared USP to CV.

Constructed Value

In accordance with section 773(e) of the Act, we calculated CV based on the sum of TAMSA's cost of materials, fabrication, general expenses, and profit. In accordance with section 773(e)(1)(B)(i) and (ii) of the Act, we included in CV: (1) TAMSA's revised general expenses because they were greater than the statutory minimum of ten percent of the COM, and (2) for profit, the statutory minimum of eight percent of the sum of COM and general expenses because it was greater than the actual profit, as calculated on a market-specific basis.

We made the same adjustments to TAMSA's reported CV data as to TAMSA's COP data, as described above.

For CV to U.S. price comparisons, we made deductions from CV, where appropriate, for the weighted-average third country direct selling expenses, in accordance with 19 CFR 353.56. We also deducted the weighted-average third country indirect selling expenses. We limited this adjustment by the amount of indirect selling expenses incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(2).

Currency Conversion

Because certified exchange rates for Mexico were unavailable from the Federal Reserve, we made currency conversions for expenses denominated in Mexican pesos based on the official monthly exchange rates in effect on the dates of the U.S. sales as published by the International Monetary Fund, in accordance with 19 CFR 353.60(a).

Verification

As provided in section 776(b) of the Act, we verified the information used in making our final determination.

Interested Party Comments

Comment 1: Date of Sale Methodology and Home Market Viability.

The petitioner argues that the date of shipment, rather than the date of purchase order, is the appropriate date of sale for all home market transactions. It notes that the Department verified that TAMSA had home market sales that were shipped prior to TAMSA receiving an order, and that this was not revealed prior to verification. The petitioner contends that in Final Determination of Sales at Less Than Fair Value: Certain Forged Stainless Steel Flanges from India (58 FR 68853, December 29, 1993), the Department found significant discrepancies between a company's response and the randomly selected documents and, thus, determined that the response had not been verified. It also notes that in the Final Results of Administrative Review of Roller Chain, Other Than Bicycle, from Japan (Roller Chain from Japan) (54 FR 3099, January 23, 1989), the Department used the shipment date as the date of sale since orders were taken by phone and generally shipped before issuance of the sales documentation.

The petitioner further argues that the home market becomes viable when the date of shipment serves as the date of sale. Because TAMSA did not report home market sales, the Department should therefore reject TAMSA's third country sales and use the best information available (BIA) in its final determination. Because the Department has previously recognized that the misreporting of the date of sale warrants the use of BIA, the petitioner asserts that the Department should use the highest margin provided in the petition, 45.22 percent, as BIA (see Final Determination of Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Mexico (58 FR 37192, July 9, 1993) and Final Determinations of Sales at Less Than Fair Value: Calcium Aluminate Cement, Cement Clinker and Flux from France (59 FR 14136, March 25, 1994)).

TAMSA contends that the Department verified the actual volume and value of TAMSA's home market and third country sales and the basis for the non-viability determination. It argues that the reported date of sale methodology was appropriate because the purchase order date is the date when all substantive terms of sale are finalized.

TAMSA argues that there were a few pre-order shipments in the POI, and those were the result of an "aberrational" request by the customer for shipment before the customer issued the written order. It asserts that the Department verified that shipment before receipt of an order is against company policy and is unusual. TAMSA argues that, in the rare instance where shipment occurred prior to the order, it properly reported the date of shipment as the date of sale pursuant to the Department's instructions and precedent that the date of sale cannot be later than the date of shipment.

DOC Position

We agree with TAMSA. The Department generally defines the date of sale as the date when all substantive terms of the sale, particularly price and quantity terms, are agreed to by interested parties (see Final Determination of Sales at Less Than Fair Value: Certain Forged Steel Crankshafts from the United Kingdom (52 FR 18992, July 28, 1987)). At verification, we thoroughly examined TAMSA's home market sales process, including numerous sales documents, and found that the price and quantity terms did not change between the date of the purchase order and the date of shipment.

Furthermore, Roller Chain from Japan is not applicable to this investigation because, in that investigation, the Department revised the date of sale because most sales were taken over the phone and shipped prior to the issuance of a purchase order. We verified that, in its home market, TAMSA normally ships merchandise after receipt of a

[1] The home market in this case is not viable. Sales to Saudi Arabia are being used as the basis for foreign market value and cost of production analysis.

purchase order and found that, only rarely, were sales shipped prior to receipt of the purchase order.

Thus, based on our findings at verification, we determine that the date of purchase order is the appropriate date of sale, except when date of shipment occurred prior to the purchase order, which occurred rarely. In those instances, date of shipment was the appropriate date of sale. TAMSA, therefore, properly reported its POI sales.

Comment 2: Cancellations.

The petitioner asserts that, in the instances where purchase orders were received prior to the shipment date, a substantial number of those purchase orders in Mexico were cancelled. The petitioner contends that TAMSA erred in its reconciliation of its reported sales to its financial statements at verification because the pre-shipments cancelled orders would not have been recorded as shipments in the financial statements, thus, arguing that TAMSA must have sold and shipped this merchandise during the POI prior to issuing the unexplained cancellations.

In 64K Dynamic Random Access Memory Components from Japan: Final Determination of Sales at Less Than Fair Value (DRAMs from Japan) (51 FR 15943, April 29, 1986), the Department determined that no binding agreement had been entered into as of the purchase order date (because there were significant cancellations) and found that the appropriate date of sale was the shipment date since this was the earliest point in the transaction at which any sort of binding commitment could be inferred. The petitioner thus argues that the purchase order does not constitute a binding commitment between the parties; and, consequently, the Department should find that the shipment date represents the date of sale as it did in DRAMs from Japan.

Moreover, the petitioner contends that if the Department accepts the order date as the basis for determining home market sales and if the Department disallows post-petition credit memos and order cancellations, the home market was viable during the POI. It notes that disallowing post-petition credit memos and order cancellations is consistent with the Department's policy of not allowing rebates which are instituted retroactively after the filing of a petition (see Antidumping Manual and Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Antidumping Duty Investigation of Color Negative Photographic Paper from Japan (59 FR 16177, April 6, 1994)).

TAMSA argues that the invoice cancellations did not affect the terms of the purchase order and had no contractual significance. TAMSA states that the amounts in question represent credit memos, corrections to the booking and invoicing processes, or cancelled invoices, not cancellations in the orders, and that they had no effect on the quantity ordered.

TAMSA asserts that DRAMs from Japan does not support the petitioner's date of sale argument. In that investigation, the Department determined that neither party to the purchase order intended it to be a binding agreement or treated it as such. TAMSA argues that this situation does not apply to its home market sales process because the customer's order constitutes the binding sales agreement between the parties, and the Department found there were no changes in the sales terms from the order date to the invoice date. Thus, its date of sale methodology is correct.

DOC Position

We agree with TAMSA. At verification, we found that these "cancellations" were, for the most part, changes to invoices (*e.g.*, correcting for a wrong shipment date) or were credit memoranda; they were not similar to post-petition rebates as the petitioner claims.

DRAMs from Japan is inapposite because, in that case, the respondent argued that it did not normally acknowledge purchase orders, but instead stated that its normal acceptance of an order occurs when the order is actually shipped. Furthermore, the Department found, in that case, in addition to cancellations by both parties, that there were frequent price revisions.

At verification, we thoroughly examined TAMSA's sales process and found that the purchase order is the binding agreement; the terms did not change between the order date and the shipment date. Thus, we determine that the order date, when used as the basis for date of sale, was appropriate.

Comment 3: Possible Exclusion of a Certain Saudi Arabian Transaction.

The petitioner argues that a certain Saudi Arabian transaction should be excluded because the date of sale was misreported and incorrectly included in the POI. Because the essential terms of sale, specifically the payment terms, for this transaction were not fixed on the reported date of sale, the Department should determine that the date of sale is outside the POI. The petitioner notes that it is the Department's policy to determine the date of sale to be the date on which all substantive or material terms of sale are agreed upon by the parties (see Antidumping Manual). In Roller Chain from Japan, the Department found that the shipping documents were the first written evidence of the merchandise, price, quantity, and payment terms and, therefore, determined that the shipment date was the appropriate date of sale.

The petitioner also contends that its claim is supported by Mexican Commercial Law and notes that the Department has recognized that this type of foreign contract law analysis is relevant in determining when a sale occurs for the purposes of the antidumping laws (see DRAMs from Japan).

TAMSA argues that the verification report acknowledged that the purchase order by the Saudi customer is the "culmination of the negotiating process," establishing the essential terms of sale, which did not change between order and shipment. It argues that communications between the parties between the quote and the order normally are not referenced in the order, and that it is "not unusual for negotiation during this period to take place."

In addition, TAMSA contends that the Department verified that the customer's order constitutes the contract between the parties and that before the order is issued (including the time between bid and order), the parties may conduct negotiations. Since the purchase order is the earliest date of agreement between the parties on the terms of sale, the purchase order date is the proper date of sale.

TAMSA states that the Department normally finds that the purchase order constitutes the date of sale, focusing on the intent of the parties to be bound by the order (see Final Determination of Sales at Less Than Fair Value: Certain Small Business Telephone Systems and Subassemblies Thereof from Taiwan (54 FR 42543, October 17, 1989)). TAMSA notes that, in Notice of Final Determination of Sales at Less Than Fair Value: Disposable Pocket Lighters from the People's Republic of China (60 FR 22359, May 5, 1995), the Department considered the date of sale to be the date on which all substantive terms of sale (normally price and quantity) are agreed to by the parties, and that, in Roller Chain from Japan, the Department found that payment terms are not an essential term of sale.

In DRAMs from Japan, TAMSA maintains that the Department based its date of sale determination on the intent of the parties. TAMSA argues that the opinion by the Mexican lawyer on

Mexican law provided by the petitioner omitted the fact, which the Department verified, that between the quotation and the order there were additional negotiations on the key sales terms in the order, and that the action of the parties illustrate an intent by the parties to contract on the order date.

DOC Position

We agree with TAMSA. The issue regarding the price and quantity differences between the quotation and purchase order was argued extensively by the parties and was examined thoroughly by the Department at verification. At verification, the Department found no written evidence of changes in the sales terms after the purchase order.

The Department normally considers the essential terms of sale to be price and quantity. We believe that, in this case, the term of payment is not an essential term of sale because the terms of payment are similar for all of TAMSA's sales to Saudi Arabia. Furthermore, at verification, the Department examined all relevant sales documentation of the transaction, including the quotation, purchase order, invoices, and letters of credit. We did not find any discrepancies with the documentation. Thus, we are not excluding this transaction from our analysis.

Comment 4: Whether a Certain Saudi Arabian Transaction Was Made Outside the Ordinary Course of Trade.

The petitioner argues that a certain Saudi Arabian transaction should be excluded because it was made outside the ordinary course of trade (i.e., was not made under normal conditions and practices). It cites to Final Determination of Sales at Less Than Fair Value: Sulfur Dyes, including Sulfur Vat Dyes, from the United Kingdom (Sulfur Dyes from the U.K.) (58 FR 3253, January 8, 1993) to support its argument.

TAMSA argues that this Saudi Arabian transaction was consistent with its terms and processes for all of its other Saudi Arabian transactions; thus, it was made in the ordinary course of trade. At verification, the Department examined documentation for the reported Saudi sales and confirmed that they were made with a large, unrelated customer. TAMSA further asserts that the Department verified sales prior and subsequent to the POI, and found that the transaction in question was consistent with the terms and process for other Saudi Arabian sales.

TAMSA argues that this Saudi Arabian transaction was consistent with its practice for other Saudi Arabian transactions. TAMSA argues that the actions of the parties illustrate that the purchase order finalizes the sales terms and concludes the sale; specifically, once it receives an order, it secures a letter of credit guaranteeing payment and begins production based on the terms in the order. Although after the order there are no further contractual communications between the parties until shipment and invoicing, the customer plans and arranges for delivery and payment, and there are no changes to the terms of sale between order and shipment, which TAMSA argues was verified by the Department as the common practice for all Saudi sales.

In Sulfur Dyes, TAMSA maintains that the Department found a sale to be outside the ordinary course of trade because it was larger than other sales and was made at a lower price pursuant to a special agreement. Because the transaction in question was similar to other Saudi Arabian transactions, TAMSA argues that Sulfur Dyes is not applicable to this investigation.

DOC Position

We agree with TAMSA. Under 19 CFR 353.46(b), in determining whether a sale was made in the ordinary course of trade, the Department considers the "conditions and practices" which have been normal in the trade of the subject merchandise. At verification, we found no abnormalities in the sales terms as compared to other Saudi Arabian sales. We also verified that the procedures followed in this transaction were consistent with the procedures in other Saudi Arabian transactions. Regarding the delivery time, we do not believe that differences in average time between order and shipment is evidence that the sales were outside the ordinary course of trade. The shipments were made within the period stipulated in the purchase order.

Furthermore, Sulfur Dyes from the U.K. does not apply to this investigation because the sales terms of the transaction in question are not significantly different than the sales terms of TAMSA's other Saudi Arabian transactions. For these reasons, we are not excluding this sale from our analysis.

Comment 5: Possible Extension of the POI.

The petitioner argues that the Department's decision not to extend the POI to capture TAMSA's sales in the home market contradicts the antidumping statute and regulations. The statutory and regulatory provisions establish a preference for the home market as the basis for FMV, and permits the Department to use third country sales data or constructed value only if it has determined that home market sales are small with respect to third country sales.

The petitioner notes that the Department's regulations state that it can extend the POI "for any additional or alternative period" that it determines is appropriate. The Department has extended the POI in prior proceedings where the six-month period "did not adequately reflect the sales practices of the firms subject to the investigation" (see Preliminary Determination of Sales at Not Less Than Fair Value: Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Therefor from Hong Kong (Thermostats from Hong Kong) (53 FR 50064, December 13, 1988) and Notice of Final Determination of Sales at Less Than Fair Value: Defrost Timers from Japan (59 FR 1928, January 13, 1994)). If the Department expanded the POI an additional six months, TAMSA's home market sales would be viable.

TAMSA argues that the Department's preference for the home market simply means that it should look first to home market prices, and only select alternatives when the home market is not viable. TAMSA asserts that the Department has already determined that the home market is not viable in its November 3, 1994, memorandum from Richard W. Moreland to Barbara R. Stafford. *SKF USA, Inc.* v. *United States*, 762 F. Supp. 344, page 352 (CIT 1991) acknowledged that "as home market sales are the statutorily preferred choice for comparison in FMV calculations, the ITA cannot use third country sales without first making a definitive determination that the home market is not viable" (see also *U.H.F.C. Co.* v. *United States*, 916 F.2d 689, page 696 (Fed. Cir. 1990)).

TAMSA further asserts that the cases cited by the petitioner concern long-term contracts and U.S. and third country sales and do not involve the extension of the POI solely to change home market viability, thus, arguing that those cases do not apply to this investigation.

DOC Position

We agree with TAMSA. According to 19 CFR 353.42(b), the POI will normally include the month in which the petition is filed and the five months prior to the filing of the petition, but the Department has the discretion to examine any other period which it concludes is appropriate.

The Department has previously expanded the POI. In Thermostats from Hong Kong, the home market sales were

inadequate and the Department expanded the POI in order to base FMV on third country sales rather than on constructed value. In Defrost Timers from Japan, the Department extended the POI to include a long-term contract. However, the Department has never extended the POI to change the home market viability ratio.

This investigation is unlike Thermostats from Hong Kong and Defrost Timers from Japan because we have determined that sales to Saudi Arabia is the appropriate basis for calculating FMV and there are no sales made pursuant to long-term contracts.

According to 19 CFR 353.48(a), if the quantity of the subject merchandise sold in the home market is so small in relation to the quantity sold for exportation to third countries (normally less than five percent of the amount sold to third countries) that it is an inadequate basis for FMV, the Department will calculate FMV based on third country sales or constructed value.

We have verified TAMSA's reported home market and third country sales volumes and have determined that the home market is not viable during the POI because the home market sales were less than five percent of sales to countries other than the United States.

For these reasons, we are not extending the period of investigation.

Comment 6: Appropriate Financial Expense.

The petitioner argues that the 1994 financial statements were critically important to this investigation and TAMSA systematically withheld these statements from the Department. The petitioner further asserts that the 1994 financial statements were undeniably available at the time of verification. As proof of this, the petitioner submitted, with its case brief, TAMSA's 1994 financial statements filed with the Mexican securities oversight agency and the Mexico Stock Exchange prior to the completion of verification. The petitioner argues that TAMSA refused to provide 1994 financial statement information because it reflected considerably higher costs than the amounts reported in the submission which were based on 1993 results.

Therefore, the petitioner contends that the Department must use uncooperative BIA in this situation. The petitioner argues that as BIA the COP and CV interest expense should be based on the interest costs of 95 percent from TAMSA's 1994 consolidated financial statements without any adjustment for the extraordinary costs associated with the devaluation of the Mexican currency.

TAMSA asserts that it has fully cooperated with the Department's requests for financial statements. TAMSA refutes the Department's cost verification report, claiming that company officials did not state that 1994 financial statements would be available at a particular time. TAMSA notes that the unaudited, unconsolidated trial balance was presented at the cost verification. At the further manufacturing verification, TAMSA presented a press release which provided summarized unaudited 1994 financial results. Thus, TAMSA contends, it has provided accurate responses to the Department's requests. TAMSA argues that the Department should follow its practice and rely on the most recently available audited financial statements, which in this case would be the 1993 statements, to calculate financial and general and administrative (G&A) expenses. TAMSA notes that in the final determination of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from Thailand (Furfuryl Alcohol from Thailand) (60 FR 22557, May 8, 1995) the Department used the most recent fiscal year for which the respondent had complete and audited financial statements. TAMSA further argues that the dramatic devaluation in the Mexican currency reflected in the 1994 financial statements occurred well after the period of investigation and is not representative of the comparatively stable period experienced in 1993 and the first half of 1994. Finally, TAMSA believes that it would be arbitrary and unjustified to use BIA in this situation.

DOC Position

We agree, in part, with petitioner. In antidumping investigations, we require respondents to provide accurate responses to our requests for information. In this case, the record demonstrates that the Department requested TAMSA's 1994 financial statements. Although the financial statements were not available when TAMSA filed its initial responses to the Department's questionnaires, these statements did become available during the course of the investigation. Indeed, although unaudited, these financial statements were filed with the Mexican Securities Exchange. However, TAMSA failed to provide the 1994 financial data to the Department when it became available, even though the Department specifically requested the information at verification. We believe that a failure to be forthcoming with information during verification is a serious problem.

Section 776(c) of the Act states that the Department will use BIA "whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required" (see also 19 CFR 353.37). Accordingly, because TAMSA withheld information requested by the Department, the statute requires us to use BIA for this information.

As BIA, we calculated interest expense using TAMSA's financial statements for the first two quarters of 1994. The January—June 1994 financing expense is substantially higher than the 1993 amount, in part due to the fact that the Mexican peso lost approximately nine percent of its value during the POI. Our finding is adverse because the full effect of the change in the value of the currency that occurred during the POI is reflected in the cost of financing for the first two quarters of the fiscal year. Had it not been necessary to resort to BIA, our calculation methodology would have resulted in a lower financing expense.

However, contrary to petitioner's request, we have not calculated TAMSA's financial expense based on the annual statements for 1994 because (1) the sudden and severe devaluation in December 1994—a drop of over 50 percent in the value of the Mexican peso—makes TAMSA's annual financial results unrepresentative of the POI and severely distortive, and (2) the devaluation occurred well after the POI.

Thus, we reject TAMSA's request that we use 1993 financial data. This information is not the most current information available, is not indicative of the expenses incurred during the POI, and would reward the respondent for not fully cooperating in the investigation.

Finally, TAMSA's reliance on Furfuryl Alcohol from Thailand to support the use of financial expense from the 1993 audited financial statements is misplaced. In that case, respondents fully cooperated with respect to the Department's request for available information, unlike the situation in this investigation.

Comment 7: Allocation Methodology for Nonstandard Costs.

In its normal accounting system, TAMSA calculates, in total, the amount of the price variances, efficiency variance, total depreciation and other fixed costs. It does not normally allocate these costs to individual products. For financial statement purposes, TAMSA includes the total nonstandard costs in the cost of goods sold. For purposes of responding to the Department's questionnaire, TAMSA developed a methodology to allocate nonstandard costs to its submitted per unit COPs and CVs based on machine time for a single process (the finishing line).

The petitioner argues that TAMSA's allocation methodology for variances, depreciation and other fixed costs (termed "nonstandard" costs) distorts actual production costs because it shifts overhead expenses to products which undergo more finishing. This allocation methodology may also shift costs to products purchased from Siderca S.A.I.C., a related entity, if TAMSA is finishing the Siderca-produced products. Furthermore, the relative finishing line time TAMSA used as the allocation basis for variances and fixed costs is the least accurate method for allocating these costs to specific products. The petitioner asserts that finishing costs are only a fraction of the costs incurred in other production processes. The differences resulting from the finishing process will have little or no relationship to product-specific cost differences in the other processes.

As a result, the petitioner argues that the Department should apply BIA. As BIA, the Department should allocate the costs on a per-ton basis over all production. The petitioner discounts the usage of standard costs as a basis for allocation since the major component of standard costs is materials.

TAMSA argues that machine time at the finishing line is the most appropriate basis for allocating nonstandard costs according to accounting theory. Production, and therefore costs, are dependent on the slowest machine in the entire production process. TAMSA asserts that the finishing line is the slowest process and argues that the alternative of allocating nonstandard costs on a per-ton basis ignores all differences in machine usage and physical differences between products. Similarly, it contends that allocating nonstandard costs based on standard costs would ignore the relationship of machine usage for physically different types of products.

DOC Position

We agree with the petitioner that TAMSA's allocation methodology for fixed costs and variances distorts actual production costs because it shifts overhead expenses to products which undergo more finishing. The basic premise that machine time can be a reasonable and appropriate allocation basis for depreciation costs is well substantiated in both accounting (Davidson & Weil, Handbook of Cost Accounting, Prentice Hall, 1978) and Departmental practice (Final Determination of Sales at Less Than Fair Value; Steel Wire Rope from Korea (58 FR 11029, February 23, 1993)). However, TAMSA did not rely on total machine time as the basis for allocation. Instead, TAMSA based its allocation on the standard time for only one production step, the finishing line. Thus, TAMSA's allocation basis did not reflect the machine time for other processes performed. TAMSA's methodology allocated more than just depreciation expenses based on the finishing line time. It also allocated material and energy price variances, efficiency variance, and other fixed costs on the basis of standard finishing line. TAMSA's chosen allocation methodology ignored the cost drivers for the price variances, efficiency variance and other fixed costs. These costs are not driven by machine time, as they are more closely associated with material and transformation costs. For these reasons, machine time is not the appropriate allocation basis for costs other than depreciation.

The petitioner's recommendation of allocating nonstandard costs on a per-ton basis would allocate the same nonstandard cost to each ton produced. This type of allocation would not accurately reflect the processes needed to produce each product, or the differences in the machine time and labor hours for each product. Similarly, it does not capture the specific costs of the materials required to produce different products.

The petitioners argument against using standard cost as the allocation basis for the variances and fixed costs because a large part of the standard costs is material cost is unfounded. The variances being allocated include material price and material efficiency variances. Therefore, the appropriate cost driver for the material variances (materials) is included in the standard costs.

We have used total standard cost as the appropriate allocation basis for the nonstandard costs. Total standard cost factors in machine time, labor hours, direct and indirect material cost and usage, labor cost and usage, energy cost and usage, other variable costs, maintenance, and other services. Therefore, we revised the COP and CV to include nonstandard costs as a percent of total standard costs.

Comment 8: Calculation of G&A Expenses.

TAMSA submitted G&A expenses based upon 1993 financial statements. The petitioner argues that TAMSA should have used G&A expenses from its 1994 financial statements since they encompass the POI. Further, the petitioner argues that the Department should base G&A expenses on BIA because TAMSA has systematically withheld its 1994 consolidated financial statements from the Department (see complete discussion at Comment 6). As BIA, the petitioner recommends that the Department rely on the reported amounts in the company's consolidated 1994 financial statements which were filed with the Mexican securities oversight agency.

TAMSA refutes the petitioner's arguments saying it has fully cooperated with all Department requests. TAMSA asserts that the different format and form of the information filed on the public record with the U.S. and Mexican authorities and the time lag between publication in the United States and filing with the SEC has led to some confusion.

DOC Position

We agree, in part, with the petitioner that it is inappropriate to use the 1993 G&A expenses. (See DOC position regarding Comment 6.) We disagree with the petitioner, however, that BIA is appropriate because TAMSA provided us with the 1994 G&A information that the Department requested. As indicated in the questionnaire, it is the Department's standard practice to calculate G&A based on the financial statements of the producing company that most closely relates to the POI, which, in this investigation, is January 1, 1994 through June 30, 1994. Therefore, the appropriate financial statement for TAMSA's G&A calculation is TAMSA's unconsolidated 1994 financial statement. We used the 1994 G&A expenses from the unconsolidated producing entity.

All other comments concerning G&A are moot, as they concerned the calculation of G&A using the 1993 financial statements.

Comment 9: Depreciation Expenses.

The petitioner argues that TAMSA's reported depreciation expense was based on overstated useful lives and that TAMSA's appraised value of assets was less than the acquisition cost adjusted for inflation. Therefore, the petitioner argues that the submitted depreciation expense was understated. The petitioner contends that TAMSA's depreciation methodology is contradictory to U.S. practice and distorts the POI actual costs. The petitioner concludes that the Department should increase TAMSA's depreciation expense to reflect the difference between TAMSA's average useful life of all assets and its purported U.S. useful life.

TAMSA argues that its method of reporting depreciation expenses is consistent with Mexican GAAP. TAMSA argues that the petitioner has

not provided any evidence to support its assertion that Mexican GAAP distorts costs. The Department verified the asset values and useful lives at the cost verification and has accepted Mexican GAAP's treatment of assets in Porcelain-on-Steel Cooking Ware from Mexico; Final Results of Antidumping Administrative Review (Cooking Ware from Mexico)(60 FR 2378, January 9, 1995).

DOC Position

We agree with TAMSA. The Department has relied on the revaluations required by Mexican GAAP in other cases, such as Cooking Ware from Mexico. We made no adjustment for the useful life of the assets because there is no evidence that the lives used in the depreciation calculation were overstated. In fact, as reflected in the cost verification report, the Department reviewed the depreciation schedules and calculations and found them to be reasonable. Mexican GAAP requires an annual revaluation of assets. The annual revaluation was performed by an independent appraiser and it calculates the useful life remaining for depreciation expense calculation, and the valuation of the asset. Therefore, the petitioner's assertion that we should use the asset life as prescribed for U.S. income tax depreciation as a surrogate for the asset life determined by the independent appraiser is unfounded.

Comment 10: Periodic Maintenance and Shut-Down Costs.

The petitioner argues that TAMSA's reported costs fail to capture the variance associated with the actual shutdown costs.

The Department should increase the nonstandard costs for the difference between the POI efficiency variance and the entire year efficiency variance. It claims that, since the actual shutdown occurs in August, the appropriate efficiency variance is the annual variance, not the POI variance as used by TAMSA.

TAMSA argues that it properly captured the periodic maintenance and shut-down costs for the POI. TAMSA argues that its accrual for repair and maintenance in the POI was carefully established through a thorough analytical process over a series of months and was approved by plant engineers and management.

DOC Position

We agree with TAMSA. TAMSA accrues a monthly amount for the annual shutdown which occurs in August. The difference between the accrued shutdown expenses and the actual expenses was captured in the efficiency variance. There is no evidence on the record indicating any difference between the accrued and actual plant shutdown costs. The actual expenses for the annual shutdown could be either higher or lower than the accrued amount. The efficiency variance includes elements other than the difference between accrued and actual shutdown costs. It also reflects all other variances in efficiency. The petitioner's argument to use the annual efficiency variance to capture the variance in shutdown costs would have the effect of capturing other variances that did not relate to production in the POI.

Comment 11: CV Interest Offset.

The petitioner asserts that TAMSA improperly included raw materials and semi-finished products and non-customer accounts receivables in the CV interest offset. The petitioner argues that the Department should revise the CV interest offset for the final determination.

TAMSA did not comment on this issue.

DOC Position

We agree with the petitioner. TAMSA's calculation of the CV interest offset was in error. As part of the Department's normal methodology, we allow only finished goods inventory and customer accounts receivable as an offset to CV interest expense. This offset avoids double counting interest expense captured in the imputed inventory carrying cost and the imputed credit expense. We revised the CV financial expense ratio to reflect only the finished goods inventory and the customer accounts receivable as an offset.

Comment 12: Rental Payments in Further Manufacturing Costs.

The petitioner argues that TAMSA's related company which performs further manufacturing in the United States, TPT, reduced its general expenses by net rental income received from Siderca Corp. The petitioner contends that this is inappropriate and the income should be removed.

TAMSA disagrees with the petitioner's assertion and clarifies that the gross rental payments received by TPT are net rental income in excess of expenses. In addition, TAMSA argues that the rental income is directly offset by rent expenses reported on the books of Siderca Corp. TAMSA argues that the petitioner's request would overstate expenses by recognizing the rental expense as a selling expense and by not recognizing the offsetting rental revenue as a reduction to further manufacturing G&A.

DOC Position

We agree with TAMSA. The Department verified that the rental payments made by Siderca are reflected as a selling expense on its books. The depreciation, utilities, taxes, and other expenses associated with the rental property are reflected on TPT's books. If we disallowed the rental income offset, the expenses of the entities as a whole would be overstated.

Comment 13: Financial Expenses in Further Manufacturing Costs.

The petitioner argues that TAMSA failed to add financial expenses to the further manufacturing cost of unrelated companies. The petitioner argues that the consolidated interest expense of TAMSA should be applied to the amount charged to TAMSA by the unrelated further manufacturer.

TAMSA argues that it properly reported the amount charged by the unrelated further manufacturers. The fee it was charged includes an amount for financial expense, because it must be assumed that the unrelated further manufacturer charges an amount that would cover all of its costs, including financial costs. TAMSA also argues that it properly included the financial expenses of TIC and Siderca Corp. as selling expenses and TPT's financial expense as a further manufacturing cost on merchandise processed by TPT.

DOC Position

We agree with TAMSA. We verified that TAMSA included the amount charged by the unrelated further manufacturers in its submitted costs. This fee includes financing and G&A costs incurred by the unrelated further manufacturer. If we added TAMSA's financing costs to the costs reported for the unrelated company, we would be burdening an arm's-length transaction with inappropriate costs. For products further manufactured by TPT, TAMSA included TPT's G&A, and we added the consolidated parents financial expense, pursuant to the Department's practice (see Final Determination of Sales at Less Than Fair Value: New Minivans from Japan (57 FR 21937, May 26, 1992)).

Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we will instruct the Customs Service to require a cash deposit or posting of a bond equal to the estimated final dumping margins, as shown below for entries of OCTG from Mexico that are entered, or withdrawn from warehouse, for consumption from the date of publication of this notice in the **Federal Register**. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted-average margin percentage
Tubos Acero de Mexico, S.A.	23.79
All Others	23.79

International Trade Commission (ITC) Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. The ITC will make its determination whether these imports materially injure, or threaten injury to, a U.S. industry within 75 days of the publication of this notice, in accordance with section 735(b)(3) of the Act. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that material injury or threat of material injury does exist, the Department will issue an antidumping duty order.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) in this investigation of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: June 19, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–15621 Filed 6–27–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–469–806]

Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Spain

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 28, 1995.

FOR FURTHER INFORMATION CONTACT: Magd Zalok or William Crow, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–4162 or 482–0116, respectively.

Final Determination

We determine that oil country tubular goods (OCTG) from Spain are being sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination of sales at less than fair value in this investigation on January 26, 1995 (60 FR 6516, February 2, 1995), the following events have occurred. On February 8, 1995, (60 FR 8632, February 15, 1995) the Department postponed the final determination in accordance with section 735(a)(2) of the Act and 19 CFR 353.20(b)(1).

In March 1995, the Department conducted its sales and cost verifications of the respondent, Tubos Reunidos ("TR") in Spain. Verification reports were issued in April and May 1995.

On May 9, 1995, the petitioners and TR submitted case briefs. Rebuttal briefs were submitted by both parties on May 16, 1995. On May 17, 1995, the Department held a public hearing.

Scope of the Investigation

For purposes of this investigation, OCTG are hollow steel products of circular cross-section, including oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The OCTG subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.20.10.10, 7304.20.10.20, 7304.20.10.30, 7304.20.10.40, 7304.20.10.50, 7304.20.10.60, 7304.20.10.80, 7304.20.20.10, 7304.20.20.20, 7304.20.20.30, 7304.20.20.40, 7304.20.20.50, 7304.20.20.60, 7304.20.20.80, 7304.20.30.10, 7304.20.30.20, 7304.20.30.30, 7304.20.30.40, 7304.20.30.50, 7304.20.30.60, 7304.20.30.80, 7304.20.40.10, 7304.20.40.20, 7304.20.40.30, 7304.20.40.40, 7304.20.40.50, 7304.20.40.60, 7304.20.40.80, 7304.20.50.15, 7304.20.50.30, 7304.20.50.45, 7304.20.50.60, 7304.20.50.75, 7304.20.60.15, 7304.20.60.30, 7304.20.60.45, 7304.20.60.60, 7304.20.60.75, 7304.20.70.00, 7304.20.80.30, 7304.20.80.45, 7304.20.80.60, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50.

After the publication of the preliminary determination, we found that HTSUS item numbers 7304.20.10.00, 7304.20.20.00, 7304.20.30.00, 7304.20.40.00, 7304.20.50.10, 7304.20.50.50, 7304.20.60.10, 7304.20.60.50, and 7304.20.80.00 were no longer valid HTSUS item numbers. Accordingly, these numbers have been deleted from the scope definition.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is January 1, 1994, through June 30, 1994.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Best Information Available (BIA)

We have determined that TR's questionnaire responses provide an inadequate basis for estimating dumping margins. At verification, we discovered significant omissions, discrepancies, and a large number of errors in TR's responses, as well as an overall lack of support for certain of TR's sales data. Instead of reporting the actual prices charged to the first unrelated U.S. customers, as requested by the Department, TR incorrectly reported the U.S. prices invoiced to its related subsidiary, and failed to provide adequate support documentation at verification for the actual prices invoiced to the U.S. customers. TR omitted reporting all charges in the U.S. market for freight, guarantee and return credits and did not provide adequate support documentation at verification for these charges. TR also omitted reporting the sale of certain OCTG products, and provided no evidence at verification that the sales of these products were not covered by the scope of this investigation. In its responses, TR stated that its home market was not viable with respect to the sale of the

subject merchandise. However, the sales of certain OCTG products discovered at verification indicate a viable home market, thereby making the use of a third country market, instead of the home market as a basis for determining foreign market value, questionable. Finally, in addition to the significant omissions, the charges and adjustments reported by TR were replete with discrepancies and errors, making it impossible for the Department to conduct a complete verification of TR's responses.

In order to determine whether sales are made in the United States at less than fair value, it is critical that the Department be provided with accurate and reliable sales information to be used in its analysis. Because of the inaccuracies discovered in TR's submitted information, the Department was unable to verify that information, as required by section 776(1) of the Act. That section of the Act provides that, if the Department is unable to verify, within the time specified, the accuracy and completeness of the factual information submitted, it shall use BIA as the basis for its determination. Consequently, we have based this determination on BIA.

In determining what rate to use as BIA, the Department follows a two-tiered BIA methodology, whereby the Department may impose the most adverse rate upon those respondents who refuse to cooperate or otherwise impede the proceeding, or assign a lower rate for those respondents who have cooperated in an investigation. When a company is determined to be uncooperative, it has been the Department's practice to apply the highest rate alleged in the petition as BIA. When a company is determined to be cooperative, it has been the Department's practice to apply as BIA the higher of: (1) The average of the margins in the petition; or (2) the calculated margin for another firm for the same class or kind of merchandise from the same country. This methodology for assigning BIA has been upheld by the U.S. Court of Appeals for the Federal Circuit. (See *Allied-Signal Aerospace Co.* v. *the United States*, Slip Op. 93–1049 (Fed Cir. June 22, 1993); see also *Krupp Stahl AG. et al* v. *the United States*, Slip Op. 93–84 (CIT May 26, 1993).)

In spite of the numerous errors in its response, we have determined that TR was cooperative during this proceeding and have assigned to it a cooperative BIA margin of 11.95 percent, based on the average of the margins alleged in the petition. For further information on the use of a cooperative BIA margin, see the "DOC Position" section of this notice.

Verification

As provided in section 776(b) of the Act, we attempted to verify TR's information for purposes of the final determination. However, given the significant discrepancies encountered at verification, the use of the respondent's information in the final determination was not possible.

Interested Party Comments

Comment 1—Use of Total Uncooperative BIA

The petitioners maintain that because of the gravity of the mistakes made by TR, the Department should assign to TR an uncooperative BIA margin of 18.6 percent. They point to the verification report which shows that TR failed to report the actual price as invoiced to the first unrelated U.S. customer, and note that many other discrepancies and omissions were found by the Department at verification.

TR maintains that the record clearly reflects that it has cooperated fully with the Department in this investigation, submitting hundreds of pages of responses to the Department questionnaires and supplemental questionnaires within the time allowed. According to the respondent, due to the tight time constraints of antidumping investigations, a number of errors have been made, many of which came to light in preparing documentation for verification. TR maintains that it promptly and fully disclosed the errors to the Department as soon as the respondent became aware of such errors.

Moreover, TR contends that only following receipt of the verification outline on March 7, 1995, did TR's officials, in the course of preparing the payment documentation for verification, see the need to refer to the actual invoices re-issued by TR America, inclusive of the inland freight. TR maintains that, even if it had realized the need earlier to report to the Department the actual invoiced prices inclusive of the U.S. inland freight expenses, it would not have changed the way in which the sales listing was ultimately prepared. TR states that, in order to be able to provide a timely response to the Department's questionnaire, it was necessary to report sales data as it was reflected in TR's computer in Spain. Furthermore, TR argues that it was appropriate not to report sales of class "C" OCTG and couplings stock because these products are not covered in the scope of the investigation. Finally, TR claims that the errors and discrepancies discovered for the remaining sales data are insignificant and offset each other. Therefore, the respondent requests that the Department use the information gathered at verification as a basis for TR's margin calculation in the final determination.

DOC Position

As discussed in the BIA section of this notice, the discrepancies found in TR's response render it unusable. The Department, however, disagrees with the petitioners on assigning TR a non-cooperative BIA margin. Although much of the information found to be deficient could not be remedied at verification, TR made a good faith effort by responding to the Department's questionnaire, by submitting a verifiable cost of production questionnaire response, and by attempting to cooperate at the sales verification. We also believe that the inaccuracy of TR's responses is the result of inadvertent errors in its reporting, and poor verification preparation, not a lack of cooperation on the part of the respondent. Thus, we believe that assigning TR a cooperative BIA margin is appropriate.

Because this final determination is based on BIA, all other comments are moot.

Suspension of Liquidation

Pursuant to the results of this final determination, we will instruct the Customs Service to require a cash deposit or posting of a bond equal to the estimated final dumping margin, as shown below for entries of OCTG from Spain that are entered, or withdrawn from warehouse, for consumption from the date of publication of this notice in the **Federal Register**. The suspension of liquidation will remain in effect until further notice.

Producer/manufacturer/exporter	Margin percentage
Tubos Reunidos S.A	11.95
All Others	11.95

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. The ITC will make its determination whether these imports materially injure, or threaten injury to, a U.S. industry within 75 days of the publication of this notice, in accordance with section 735(b)(3) of the Act. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or canceled. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) in this investigation of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)) and 19 CFR 353.20.

Dated: June 19, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–15622 Filed 6–27–95; 8:45 am]

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[C–475–817]

Final Affirmative Countervailing Duty Determination: Oil Country Tubular Goods ("OCTG") From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 28, 1995.

FOR FURTHER INFORMATION CONTACT: Peter Wilkniss, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0588.

Final Determination

The Department determines that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended ("the Act"), are being provided to manufacturers, producers, or exporters in Italy of OCTG. For information on the estimated net subsidies, please see the *Suspension of Liquidation* section of this notice.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994. References to the Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments, 54 FR 23366 (May 31, 1989) (Proposed Regulations), which has been withdrawn, are provided solely for further explanation of the Department's CVD practice.

Case History

Since the publication of the preliminary determination in the **Federal Register** (59 FR 61870, December 2, 1994), the following events have occurred.

On December 23, 1994, we aligned the final countervailing duty determination in this investigation with the final determination in the companion antidumping investigation of OCTG from Italy (59 FR 66295).

We conducted verification of the responses submitted on behalf of the Government of Italy ("GOI"), and Dalmine S.p.A. ("Dalmine") from January 22 through January 27, 1995.

On April 19, 1995, we postponed the final determination in this case to June 19, 1995 (60 FR 19571).

On May 2, 1995 we received a case brief from respondent. Neither petitioner nor respondent requested a hearing in this investigation.

Scope of Investigation

For purposes of this investigation, OCTG are hollow steel products of circular cross-section, including oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The OCTG subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.20.10.10, 7304.20.10.20, 7304.20.10.30, 7304.20.10.40, 7304.20.10.50, 7304.20.10.60, 7304.20.10.80, 7304.20.20.10, 7304.20.20.20, 7304.20.20.30, 7304.20.20.40, 7304.20.20.50, 7304.20.20.60, 7304.20.20.80, 7304.20.30.10, 7304.20.30.20, 7304.20.30.30, 7304.20.30.40, 7304.20.30.50, 7304.20.30.60, 7304.20.30.80, 7304.20.40.10, 7304.20.40.20, 7304.20.40.30, 7304.20.40.40, 7304.20.40.50, 7304.20.40.60, 7304.20.40.80, 7304.20.50.15, 7304.20.50.30, 7304.20.50.45, 7304.20.50.60, 7304.20.50.75, 7304.20.60.15, 7304.20.60.30, 7304.20.60.45, 7304.20.60.60, 7304.20.60.75, 7304.20.70.00, 7304.20.80.30, 7304.20.80.45, 7304.20.80.60, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50.

After the publication of the preliminary determination, we found that HTSUS item numbers 7304.20.10.00, 7304.20.20.00, 7304.20.30.00, 7304.20.40.00, 7304.20.50.10, 7304.20.50.50, 7304.20.60.10, 7304.20.60.50, and 7304.20.80.00 were no longer valid HTSUS item numbers. Accordingly, these numbers have been deleted from the scope definition.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Injury Test

Because Italy is a "country under the Agreement" within the meaning of section 701(b) of the Act, the U.S. International Trade Commission ("ITC") is required to determine whether imports of OCTG from Italy materially injure, or threaten material injury to, a U.S. industry. On August 3, 1994, the ITC preliminarily determined that there is a reasonable indication that an industry in the United States is being materially injured or threatened with material injury by reason of imports from Italy of the subject merchandise (59 FR 42286, August 17, 1994).

Corporate History of Respondent Dalmine

Prior to its liquidation in 1988, Finsider S.p.A. ("Finsider") was the holding company for all state-owned steel companies in Italy, including Dalmine. Dalmine was an operating company wholly owned by Finsider. After Finsider's liquidation, a new government-owned holding company, ILVA S.p.A. ("ILVA"), was created. ILVA took over the former Finsider companies, among them Dalmine, which became a subsidiary of ILVA in 1989 when Finsider's shareholding in Dalmine was transferred to ILVA.

Between 1990 and 1993, Dalmine itself was radically restructured. Dalmine became a financial holding company, with industrial, trading, and service shareholdings. As part of its restructuring, Dalmine made several asset purchases, sold two of its subsidiaries to private parties, and closed several manufacturing facilities. As of December 31, 1993, the Dalmine Group consisted of a holding company (Dalmine S.p.A.), four wholly-owned, and one majority-owned, manufacturing

companies, and a number of sales and service subsidiaries.

During the POI, ILVA was owned by the Istituto per la Ricostruzione Industriale ("IRI"), a holding company which was wholly-owned by the GOI.

Spin-offs

In its questionnaire response, Dalmine reported that between 1990 and 1991, as part of its overall restructuring process, the company twice sold "productive units" to private buyers. According to Dalmine, these sales involved facilities that do not produce the subject merchandise. In the preliminary determination, we determined that the amount of potentially spun-off benefits was insignificant. We did not learn anything at verification that would lead us to reverse this determination. Therefore, we have not reduced the subsidies allocated to sales of the subject merchandise. (See Final Concurrence Memorandum dated June 19, 1995).

Equityworthiness

Petitioner has alleged that Dalmine was unequityworthy in 1989, the year it received an indirect equity infusion from the GOI, through ILVA S.p.A. ("ILVA"), and that the equity infusion was, therefore, inconsistent with commercial considerations.

In accordance with § 355.44(e)(1) of the Proposed Regulations (Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments ("Proposed Regulations"), 54 FR 23366, May 31, 1989)), we preliminarily determined that ILVA's purchase of Dalmine's shares was consistent with commercial considerations because Dalmine provided evidence that private investors, unrelated to Dalmine or the GOI, purchased a significant percentage of the 1989 equity offering, on the same terms as ILVA. We did not learn anything at verification that would lead us to reverse this finding. Therefore, the Department determines that ILVA's purchase of Dalmine's shares was consistent with commercial considerations.

Creditworthiness

Petitioner has alleged that Dalmine was uncreditworthy in every year between 1979 and 1993. In accordance with § 355.44(b)(6)(i) of the *Proposed Regulations*, we preliminarily determined that Dalmine was creditworthy from 1979 to 1993. In making this determination we examined Dalmine's current, quick, times interest earned, and debt-to-equity ratios, in addition to its profit margin. Specifically, although a number of the financial indicators are weak for certain years, none of the indicators are weak over the medium or long term, and when examined together on a yearly basis, the indicators support the determination that Dalmine was creditworthy in every year examined. (See also Creditworthy Memorandum, November 18, 1994). In addition, Dalmine received long-term, commercial loans from private lenders in several of the years examined.

We did not learn anything new at verification that would lead us to reconsider our preliminary determination. Therefore, we continue to find that Dalmine was creditworthy from 1979 to 1993.

Benchmarks and Discount Rates

Dalmine did not take out any long-term, fixed-rate, lire-denominated loans in any of the years of the government loans under investigation. Therefore, in accordance with § 355.44(b)(4) of the *Proposed Regulations*, in our preliminary determination we used, as the benchmark interest rate, the Bank of Italy reference rate which was determined in Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Italy ("Certain Steel from Italy"), 58 FR, 37327 (July 9, 1993), to be both the best approximation of the cost of long-term borrowing in Italy and the only long-term fixed interest rate commonly available in Italy. We also used this rate as the discount rate for allocating over time the benefit from non-recurring grants for the same reasons as explained in Final Affirmative Countervailing Duty Determination: Certain Steel Products from Spain, 58 FR 37374, 37376 (July 9, 1993).

At verification, we learned that the Bank of Italy reference rate reflects the cost for Italian banks to borrow long-term funds. Therefore, the reference rate does not incorporate the mark-up a bank would charge a corporate client when making a long-term loan. Long-term corporate interest rate data is not available in Italy. Accordingly, we have adjusted the reference rate used in the preliminary determination upward to reflect the mark-up an Italian bank would charge a corporate customer.

In order to approximate this mark-up, we calculated the difference between the average short-term corporate borrowing rate in Italy and the average interest rate on short-term Italian government debt, for each year in which Dalmine received long-term lire loans or non-recurring grants from the government. We then added this mark-up to the Italian reference rate used in the preliminary determination to approximate an average long-term corporate benchmark interest rate. We also used these rates as the discount rates for allocating over time the benefit from non-recurring grants. See Certain Steel Products from Spain, 58 FR at 37376.

For long-term loans denominated in other currencies, we used, as the benchmark interest rate, an average long-term fixed interest rate for loans denominated in the same currency. (See section E—Article 54 Loans below.)

Calculation Methodology

For purposes of this determination, the period for which we are measuring subsidies (the POI) is calendar year 1993. In determining the benefits received under the various programs described below, we used the following calculation methodology. We first calculated the benefit attributable to the POI for each countervailable program, using the methodologies described in each program section below. For each program, we then divided the benefit attributable to Dalmine in the POI by Dalmine's total sales revenue, as none of the programs was limited to either certain subsidiaries or products of Dalmine. Next, we added the benefits for all programs, including the benefits for programs which were not allocated over time, to arrive at Dalmine's total subsidy rate. Because Dalmine is the only respondent company in this investigation, this rate is also the country-wide rate.

Based upon our analysis of the petition, the responses to our questionnaires, verification, and comments by interested parties, we determine the following:

I. Programs Determined to be Countervailable

A. Benefits Provided under Law 675/77

Law 675/77 was enacted to bring about restructuring and reconversion in the following industrial sectors: (1) Electronic technology; (2) the manufacturing industry; (3) the agro-food industry; (4) the chemical industry; (5) the steel industry; (6) the pulp and paper industry; (7) the fashion sector; and (8) the automobile and aviation sectors. Law 675/77 also sought to promote optimal exploitation of energy resources, and ecological and environmental recovery.

A primary goal of this legislation was to bring all government industrial assistance programs under a single law in order to develop a system to replace indiscriminate and random public intervention by the GOI. Other goals

were (1) to reorganize and develop the industrial sector as a whole; (2) to increase employment in the South; and (3) to maintain employment in depressed areas. Among other measures taken, the Interministerial Committee for the Coordination of Industrial Policy ("CIPI") was created as a result of Law 675/77. CIPI approves individual projects in each of the industrial sectors listed above.

Six main programs were provided under Law 675/77: (1) Interest contributions on bank loans; (2) mortgage loans provided by the Ministry of Industry at subsidized interest rates; (3) interest contributions on funds raised by bond issues; (4) capital grants for projects in the South; (5) personnel retraining grants; and (6) VAT reductions on purchases of capital goods by companies in the South. Dalmine reported that it received benefits under items (1), (2), and (5) above.

In its response, the GOI asserts that the steel and automobile industries did not receive a "disproportionate" share of benefits associated with interest contributions when the extent of investment in those industries is compared to the extent of investment in other industries. However, in keeping with past practice, we did not consider the level of investment in the the individual industries receiving benefits under Law 675/77. Instead, we followed the analysis outlined in Final Affirmative Countervailing Duty Determination: Grain-Oriented Electrical Steel from Italy (Grain-Oriented Electrical Steel), 59 FR 18357 (April 18, 1994), and Final Affirmative Countervailing Duty Determination: Certain Steel Products from Brazil, 58 FR 37295, 37295 (July 9, 1993), of comparing the share of benefits received by the steel industry to the collective share of benefits provided to other users of the programs.

According to the information provided by the GOI, of the eight industrial sectors eligible for benefits under Law 675/77, the two dominant users of the interest contribution program were (1) the Italian auto industry which accounted for 34 percent of the benefits, and (2) the Italian steel industry which accounted for 33 percent of the benefits. Likewise, with respect to the mortgage loans, the two dominant users were the auto and steel industries which received 45 percent and 31 percent of the benefits, respectively.

In light of the above evidence, we determine that the steel industry was a dominant user of both the interest contribution and the mortgage loan programs under Law 675/77. (See section 355.43(b)(2)(iii) of the Proposed Regulations). Therefore, we determine that benefits received by Dalmine under these programs are being provided to a specific enterprise or industry or group of enterprises or industries. On this basis, we find Law 675/77 financing to be countervailable to the extent that it is granted on terms inconsistent with commercial considerations.

Under the interest contribution program, Italian commercial banks provided loans to industries designated under Law 675/77. The interest owed by the recipient companies was partially offset by interest contributions from the GOI. Dalmine received bank loans with interest contributions under Law 675/77 which were outstanding in the POI.

Because the GOI interest contributions were automatically available when the loans were taken out, we consider the contributions to constitute reductions in the interest rates charged, rather than grants (see Certain Steel from Italy at 37335).

At verification, we established that Dalmine had repaid each of the loans it received under this program in June 1994. We further found that Dalmine had not yet received a portion of the interest contributions originally owed to it by the GOI under this program, due to delays in GOI approval of several Dalmine internal asset transfers. Finally, we established that Dalmine had paid interest on each of the loans during the loan grace periods, contrary to what Dalmine reported in its questionnaire responses.

Dalmine argues that the GOI terminated the subsidized loan portion of this program in 1982, and that Dalmine repaid each of the loans in June 1994, after the POI, but before the publication of the preliminary determination. Consequently, Dalmine contends, no further benefits can accrue to Dalmine under this program. Therefore, according to Dalmine, the Department should, in accordance with the Department's policy to take program-wide changes into account in setting the duty deposit rate, set Dalmine's deposit rate for this program to zero.

Contrary to Dalmine's assertion, we determine that the termination of the subsidized loan portion of this program does not constitute a program-wide change as defined in § 355.50(b)(1) of the *Proposed Regulations*. Specifically, although Dalmine has repaid the loans it received under the program, there could be other Italian companies with loans that are still outstanding. Therefore, despite termination of the program in 1982, there may still be residual benefits under the program. Under our program-wide change policy, the change at issue cannot be limited to individual firms. Consequently, we determine that the "termination" of the subsidized loan portion of this program does not constitute a program-wide change. See Final Affirmative Countervailing Duty Determination and Countervailing Duty Orders; Certain Welded Carbon Steel Pipe and Tube Products From Argentina (Argentine Pipe), 53 FR 37619 (September 27, 1988); § 355.50(b)(1) of the *Proposed Regulations*.

Alternatively, Dalmine claims that the Department should recalculate the benefits under this program to reflect the delayed receipt of GOI interest contributions, as well as Dalmine's payment of grace period interest.

With respect to the grace period, we have adjusted our calculations to reflect that Dalmine paid interest during that time, as established at verification. However, we are treating the interest contributions as countervailable on the date Dalmine made the corresponding interest payments, despite any delay in receipt by Dalmine. This is because Dalmine's entitlement to the interest contributions was automatic when it made the interest payments. Thus, we find, for purposes of benefit calculation, that the interest contributions were received at the time the interest payments were made. See Steel Wire Nails from New Zealand, 52 FR 37196 (1987).

Under the mortgage loan program, the GOI provides long-term loans at subsidized interest rates. Dalmine received financing under this program which was outstanding in the POI.

To determine whether these programs conferred a benefit, we compared the effective interest rate paid by Dalmine to the benchmark interest rate, discussed above. Based on this comparison, we determine that the financing provided under these programs is inconsistent with commercial considerations, i.e., on terms more favorable than the benchmark financing.

To calculate the benefit from these programs, we used our standard long-term loan methodology as described in § 355.49(c)(1) of the *Proposed Regulations*. We then divided the benefit allocated to the POI for each program by Dalmine's total sales in 1993. On this basis, we determine the net subsidy from these programs to be 0.46 percent ad valorem for all manufacturers, producers, and exporters in Italy of the subject merchandise.

With respect to retraining grants provided to Dalmine under Law 675/77, it is the Department's practice to treat

training benefits as recurring grants. (See Certain Steel General Issues Appendix at 37226). Since the only grant reported under this program was received by Dalmine in 1986, any benefit to Dalmine as a result of this grant cannot be attributed to the POI. Therefore, we determine that retraining benefits provided under Law 675/77 conferred no benefit to Dalmine during the POI.

B. Grants Under Law 193/84

According to the GOI, Articles 2, 3, and 4 of Law 193/84 provide for subsidies to close steel plants. As stated in Art. 20 of Law N. 46 of 17/2/1982, steel enterprises, including enterprises producing seamless pipes, welded pipes, conduits and welded pipes for water and gas, are the recipients of these subsidies. As benefits under this program are limited to the steel industry, we determine that Law 193/84 is *de jure* specific and, therefore, countervailable.

At verification, we found that Dalmine received an additional benefit under this program not reported in its questionnaire responses. We have included this additional benefit in our calculation of the benefits received by Dalmine under this program.

To calculate the benefit during the POI, we used our standard grant methodology (see § 355.49(b) of the Proposed Regulations). We then divided the benefits attributable to Dalmine under Law 193/84 in the POI by Dalmine's total sales. On this basis, we determine the estimated net subsidy to be 0.81 percent *ad valorem* for all manufacturers, producers, and exporters in Italy of the subject merchandise.

C. Exchange Rate Guarantee Program

This program, which was enacted by Law 796/76, provides exchange rate guarantees on foreign currency loans from the European Coal and Steel Community ("ECSC") and The Council of European Resettlement Fund ("CER"). Under the program, repayment amounts are calculated by reference to the exchange rate in effect at the time the loan is agreed upon. The program sets a ceiling and a floor on repayment to limit the effect on the borrower of exchange rate changes over time. For example, if the lire depreciates five percent against the DM (the currency in which the loan is taken out), borrowers would normally find that they would have to repay five percent more (in lire terms). However, under the Exchange Rate Guarantee Program, the ceiling would act to limit the increased repayment amount to two percent. There is also a floor in the program which would apply if the lire appreciated against the DM. The floor would limit any windfall to the borrower.

In Grain-Oriented Electrical Steel, the Department found this program to be not countervailable because of incomplete information regarding the specificity of the program. The Department stated that, because the determination was reached while lacking certain important information, the finding of non-countervailability would not carry over to future investigations.

In this investigation, information provided by the GOI shows that the steel industry received 25% of the benefits under the program. Furthermore, at verification, we found that in the years Dalmine took out loans on which it received exchange rate guarantees under this program, the steel industry received virtually all the benefits under the program. Based on this information, the Department determines that the steel industry was a dominant user of exchange rate guarantees under Law 796/76 and, thus, that benefits received by Dalmine under this law are being provided to a specific enterprise or industry or group of enterprises or industries. (*See* § 355.43(b)(2)(iii) of the *Proposed Regulations*). Therefore, we determine that the exchange rate guarantees offered under the program are countervailable to the extent they are provided on terms inconsistent with commercial considerations.

Dalmine provided information that it could have purchased an exchange rate guarantee from commercial sources. However, Dalmine's information pertained to 1993, not to the period when the government guarantees were provided. The GOI's response indicates that commercial exchange rate guarantees were not available in 1986, the year in which the loans and the guarantees were received. Therefore, we determine the benefit to be the total amount of payments to Dalmine made during the POI by the GOI. (Because the amount the government will pay in any given year will not be known until that year, benefits can only be calculated on a year-by-year basis.) We divided the GOI's payments in 1993 by Dalmine's 1993 total sales. On this basis, we determine the estimated net subsidy from this program to be 0.20 percent ad valorem for all manufacturers, producers, and exporters in Italy of the subject merchandise.

II. Programs Determined To Be Not Countervailable

A. 1988/89 Equity Infusion

In November 1989, Dalmine completed an equity rights offering which allowed existing shareholders to purchase 7 new shares for every 10 shares they already owned. The new shares were offered at a price of LIT 300 per share. At that time, ILVA owned 81.7 percent of Dalmine's equity, with the remaining 18.3 percent owned by private investors. Pursuant to the rights offering, ILVA subscribed to its full allotment of the new shares issued. The remainder of the new shares were purchased by private shareholders. All shares were purchased at LIT 300 per share.

Petitioner argues that, although Dalmine's shares were nominally publicly traded, the vast majority of Dalmine shares were indirectly owned by the GOI and, therefore, shares were not purchased in adequate volume by private investors to establish a valid benchmark. Specifically, petitioner contends that, in 1991, ILVA owned 99.9 percent of Dalmine and, therefore, Dalmine's shares were in fact not publicly traded. Consequently, because essentially no private purchases were being made, the market price at the time of the equity infusion cannot serve as a valid benchmark. Furthermore, petitioner asserts that it is highly likely that the remaining shares not purchased by ILVA were purchased indirectly by the GOI through other holding companies.

In response to our questionnaire, Dalmine provided a list of all purchasers of shares in the 1989 offering. There was no evidence to indicate that the shares not purchased by ILVA were purchased by other government controlled or owned entities, as petitioner suggests. Moreover, the extent of ILVA's ownership in 1991 is not relevant to the choice of a benchmark for the equity investment in 1989.

Therefore, in our preliminarily determination, we determined that, because 18.3 percent of the equity infusion was purchased by private shareholders, the sale of these shares provides the market-determined price for Dalmine's equity. Furthermore, in accordance with § 355.44(e)(1) of the Department's *Proposed Regulations*, we preliminarily determined that the equity infusion is not countervailable because the market-determined price for equity purchased from Dalmine is not less than the price paid by ILVA for the same form of equity. We did not learn anything at verification that would lead us to reconsider our preliminary determination. Therefore, we continue to find that the equity infusion is not countervailable.

B. European Social Fund ("ESF") Grants

The ESF was established by the 1957 European Economic Community Treaty to increase employment and help raise worker living standards.

As described in Grain-Oriented Electrical Steel, the ESF receives its funds from the EC's general budget of which the main revenue sources are customs duties, agricultural levies, value-added taxes collected by the member states, and other member state contributions.

The member states are responsible for selecting the projects to be funded by the EC. The EC then disburses the grants to the member states which manage the funds and implement the projects. According to the EC, ESF grants are available to (1) people over 25 who have been unemployed for more than 12 months; (2) people under 25 who have reached the minimum school-leaving age and who are seeking a job; and (3) certain workers in rural areas and regions characterized by industrial decline or lagging development.

The GOI has stated that the ESF grants received by Italy have been used for vocational training. Certain regions in the South are also eligible for private sector re-entry and retraining schemes. Since 1990, the vocational training grants have been available to unemployed youths and long-term unemployed adults all over Italy, according to the GOI. Before 1990, however, the GOI gave preference to certain regions in Italy.

In Grain-Oriented Electrical Steel, we determined that this program was not regionally specific and not otherwise limited to a specific enterprise or industry, or group of enterprises or industries. Furthermore, we noted that to the extent there is a regional preference (*i.e.*, southern Italy) in the distribution of ESF benefits, it has not resulted in a countervailable benefit to the production of the subject merchandise, which is produced in northern Italy.

Information provided by the GOI in this investigation is consistent with the information provided in Grain-Oriented Electrical Steel. Therefore, we determine that this program is not limited to a specific enterprise or industry, or group of enterprises or industries, and therefore, is not countervailable.

C. ECSC Article 54 Loans

Under Article 54 of the 1951 ECSC Treaty, the European Commission provides loans directly to iron and steel companies for modernization and the purchase of new equipment. The loans finance up to 50 percent of an investment project. The remaining financing needs must be met from other sources. The Article 54 loan program is financed by loans taken by the Commission, which are then re-lent to iron and steel companies in the member states at a slightly higher interest rate than that at which the Commission obtained them.

Consistent with the Department's finding in Grain-Oriented Electrical Steel, we determine that this program is limited to the iron and steel industry. As a result, loans under this program are specific.

Of the Article 54 loans Dalmine had outstanding during the POI, some were denominated in U.S. dollars and others were in Dutch guilders ("NLG"). To determine whether the loans were provided on terms inconsistent with commercial considerations, we used the benchmark interest rates for the currencies in which the loans were denominated. That is, for the U.S. dollar loans we used the average interest rate on long-term fixed-rate U.S. dollar loans obtained in the United States, as reported by the Federal Reserve. For the NLG denominated loan, we used the average long-term bond rate for private borrowers in the Netherlands, as reported by the Organization for Economic Cooperation and Development ("OECD").

Because the interest rates paid on Dalmine's Article 54 loans are higher than the benchmark interest rates, the Department determines that loans provided under this program are not inconsistent with commercial considerations and, therefore, not countervailable.

D. 1989 Provisional Payment in Connection with 1989 Equity Infusion

In March 1989, ILVA made a payment to Dalmine in anticipation of purchasing new shares in Dalmine. The payment was provisional in nature because EC authorization of the capital increase was necessary and, if authorization was not granted, the money would have been repaid to ILVA. The capital increase was not finalized until November 1989, due to delays in EC approval. At that time, the payment became equity capital.

Consistent with the Department's position in Grain-Oriented Electrical Steel, we determine that the funds provided by ILVA to Dalmine are countervailable.

During the period March-November 1989, Dalmine had use of the money and paid no interest on it. Therefore, we have treated the funds provided by ILVA to Dalmine as an interest-free short-term loan from March 1989 to November 1989.

Because any benefit from this interest-free loan would be allocable entirely to 1989, no benefit is attributable to the POI.

III. Programs Determined To Be Not Used

We established at verification that the following programs were not used during the POI.

1. *Preferential IMI Export Financing Under Law 227/77.*
2. *Preferential Insurance Under Law 227/77.*
3. *Retraining Grants under Law 181/89.*
4. *Benefits under ECSC Article 56.*

Verification

In accordance with section 776(b) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, examination of relevant accounting records and examination of original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

Suspension of Liquidation

In accordance with our affirmative preliminary determination, we instructed the U.S. Customs Service to suspend liquidation of all entries of OCTG from Italy, which were entered or withdrawn from warehouse for consumption, on or after December 2, 1994, the date our preliminary determination was published in the **Federal Register**. This final countervailing duty determination was aligned with the final antidumping duty determination of OCTG from Italy, pursuant to section 606 of the Trade and Tariff Act of 1984 (section 705(a)(1) of the Act).

Under article 5, paragraph 3 of the GATT subsidies Code, provisional measures cannot be imposed for more than 120 days without a final affirmative determination of subsidization and injury. Therefore, we instructed the U.S. Customs Service to discontinue the suspension of liquidation on the subject merchandise entered on or after April 1, 1995, but to continue the suspension of liquidation

of all entries, or withdrawals from warehouse, for consumption of the subject merchandise between November 28, 1994, and March 31, 1995. We will reinstate suspension of liquidation under section 703(d) of the Act, if the ITC issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated below.

OCTG

Country-Wide *Ad Valorem* Rate 1.47 percent

ITC Notification

In accordance with section 705(c) of the Act, we have notified the ITC of our determination. The ITC will make its determination whether these imports materially injure, or threaten injury to, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that material injury or threat of material injury does exist, the Department will issue a countervailing duty order.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 705(d) of the Act and 19 CFR 355.20(a)(4).

Dated: June 29, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–15623 Filed 6–27–95; 8:45 am]

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Federal Register

Wednesday
June 28, 1995

Part V

Department of Health and Human Services

Administration for Children and Families

45 CFR Part 400

Refugee Resettlement Program; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Refugee Resettlement

45 CFR Part 400

Refugee Resettlement Program: Requirements for Employability Services, Job Search, and Employment; Refugee Medical Assistance; Refugee Social Services; Targeted Assistance Services; and Federal Funding for Administrative Costs

AGENCY: Administration for Children and Families (ACF), Office of Refugee Resettlement, HHS.

ACTION: Final rule.

SUMMARY: This rule amends or clarifies current requirements governing employability services, job search, employment, refugee medical assistance, social services, and Federal funding for State administrative costs and would establish requirements for the targeted assistance program.

A proposed rule was published in the **Federal Register** on August 12, 1994 (59 FR 41417). Some changes have been made and clarifications provided in this final regulation after consideration of the written comments received.

EFFECTIVE DATE: October 1, 1995.

ADDRESSES: Office of Refugee Resettlement, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade S.W., 6th Floor, Washington, D.C. 20447.

FOR FURTHER INFORMATION CONTACT: Toyo A. Biddle, (202) 401–9253.

SUPPLEMENTARY INFORMATION:

Background

The Refugee Act of 1980 amended the Immigration and Nationality Act (INA) to create a domestic refugee resettlement program to provide assistance and services to refugees resettling in the United States. With the enactment of this legislation, the Office of Refugee Resettlement (ORR) issued a series of regulations, at 45 CFR Part 400, to establish comprehensive requirements for a State-administered Refugee Resettlement Program (RRP), beginning with the publication on September 9, 1980 (45 FR 59318) of a regulation governing State plan and reporting requirements. Subsequent regulations covered cash and medical assistance and Federal funding, published March 12, 1982 (47 FR 10841); grants to States, child welfare services (including services to unaccompanied minors), and Federal funding for State expenditures, published January 30, 1986 (51 FR 3904); and cash and medical assistance, requirements for employability services, job search, and employment, and refugee social services published February 3, 1989 (54 FR 5463).

Discussion of Changes

The changes made in this final regulation, as compared with the proposed rule published on August 12, 1994, are as follows:

1. The proposal to limit the definition of case management to the referral and tracking of refugee participation in employment-related services only has been withdrawn.

2. Section 400.104 has been revised to allow a refugee medical assistance (RMA) recipient who becomes employed to continue to receive RMA for the full time-eligibility period, regardless of whether the recipient obtains private medical coverage, as long as the RMA payment is reduced by the amount of the third party payment.

3. Section 400.145 has been revised to more clearly state that refugee women must have the same opportunities as men to participate in all services funded under the refugee program, including job placement services.

4. The eligibility period for social services has been changed from the proposed 36 months to 60 months, consistent with the eligibility period for targeted assistance. In addition, referral and interpreter services are exempted from the time-limitation in both social services and targeted assistance.

5. The proposed revision to § 400.155(f) has been withdrawn; translation and interpreter services will continue to be allowable regardless of whether such services are available from another source.

6. Section 400.156(d) has been revised to require the provision of refugee-specific services designed to meet refugee needs in lieu of requiring a separate refugee-specific service system in which refugees are the only client group served.

7. We have added a provision under § 400.156 which requires the development of a family self-sufficiency plan for any refugee who participates in refugee program-funded employment-related services.

8. We have added language to § 400.301 which establishes that a replacement designee must adhere to the same regulations that apply to a State-administered program, with the exception of certain specified provisions.

Description of the Regulation

This rule clarifies some current policies, amends others, and sets forth regulatory requirements for the targeted assistance program (TAP).

In recent years, annual refugee admissions have been high, resulting in an expanding pool of refugees in need of services. As of September 30, 1993, 1.6 million refugees had been resettled in the U.S. since 1975. All of these refugees, with the exception of those who have become U.S. citizens, are eligible to receive refugee program services. At the same time, the level of funds appropriated for services has remained essentially unchanged, making it difficult to serve all refugees in need of services with available resources. It is not uncommon, for example, for English language training classes, funded by the refugee program, to have waiting lists so that refugees who arrive in the country are not able to access English language training without a delay. Nine major States have indicated that there are currently waiting lists for refugee services, especially for English language training, in their States.

We believe the increased demand for services makes it necessary to sharpen the program's priorities. Resources in the refugee program are no longer sufficient to provide the level of services needed to assist refugees for an open-ended period of time to become self-sufficient. We have learned from experience in the refugee program that the greatest impact that services can have on a refugee's social adjustment and economic well-being occurs during a refugee's initial years in the United States. These initial services often define a refugee's future experience.

Findings from several studies indicate that comprehensive services, provided soon after a refugee's arrival in the U.S., increase the likelihood of early employment. Under commission from ORR in 1992, Dr. Robert L. Bach, in an examination of data from the Oregon Refugee Early Employment Project (REEP), found that refugees who received job services or pre-employment training in the first 90 days reduced the time to their initial job by almost two months. Dr. Bach's analysis indicated that each job service provided in the first 90 days increased the probability of employment by three percent. A study of the Oregon REEP, conducted by the Refugee Policy Group (RPG) and published in 1989, found that REEP set up client/caseworker ratios that permitted a staff-intensive approach early in the resettlement experience, an element which in large part, according

to RPG, was crucial to REEP's achievement of earlier employment. Similarly, performance reported for the first year of the United States Catholic Conference (USCC) Wilson/Fish project in San Diego indicated that the project was able to reduce the average length of time on cash assistance by over two months through the provision of early comprehensive services aimed at employment.

After the initial years, we believe the effect of services on the achievement of economic self-support diminishes significantly. A report, entitled "Progress Toward Economic Self-Sufficiency Among Southeast Asian Refugees", prepared for ORR in July 1989 by Dr. Robert L. Bach and Rita Argiros, presented findings, based on an analysis of data from the ORR Annual Survey of Southeast Asian Refugees, which underlined the importance of service interventions in the first few years. Bach and Argiros found that the longer a refugee remains out of the labor force, the less likely he or she is to begin to search for a job or find a job in a subsequent year. The most significant move into the labor force occurs in the first and second years, followed by a steady decline in the probability of entering the labor force for those who delayed their initial job search.

We believe it is important, therefore, to target refugee program resources on the provision of comprehensive refugee-specific services to refugees during their first few years of resettlement in order to provide new refugees with the best foundation for economic independence in the future. We believe that after this initial period of special assistance, refugees should be treated like other U.S. residents and have access to the same assistance and service programs that are available to other eligible populations. Thus we have decided to limit service eligibility for refugee social services to refugees who have been in the U.S. 60 months (5 years) or less, effective October 1, 1995.

Similarly, service eligibility for the targeted assistance program will be limited to refugees who have been in the U.S. 60 months or less, effective on the same date. The 5-year limitation on service eligibility is consistent with the 5-year U.S. residency requirement for U.S. citizenship. Once refugees become U.S. citizens, they are no longer eligible for services under the refugee program.

In regard to the provision of refugee social services and targeted assistance, we believe that States and local entities should be given greater flexibility to design appropriate services to fit local refugee needs. The program's emphasis on the provision of employment services to achieve economic self-support, however, will remain. However, we are eliminating the job search requirements currently contained in § 400.80 and the requirement contained in § 400.146 that requires a State to use at least 85 percent of its social service grants to provide employability services if the State's welfare dependency rate is 55 percent or more.

To ensure that refugees receive maximum benefit and maximum results from services provided during the time-limited service eligibility period, it is essential that services be provided in the most efficacious and appropriate manner possible. To accomplish this, program experience dictates that certain principles require greater emphasis in the provision of services to refugees: (1) Services should be provided in a manner that is linguistically and culturally compatible with a refugee's background; (2) refugee-specific services, designed for refugees, should be provided during the initial years of resettlement; (3) English language instruction should be provided in a concurrent, rather than sequential, time period with employment or with other employment-related services; and (4) as required by the Refugee Act, refugee women should have the same opportunities as men to participate in training and instruction.

Under current policy, if a refugee who is receiving refugee medical assistance becomes ineligible solely because of increased earnings from employment, the refugee's medical assistance is extended for a period of 4 months or until the refugee reaches the end of the RMA time-eligibility period (currently the first 8 months after a refugee's arrival in the U.S.), whichever occurs first. The distinction between RMA and extended RMA has caused confusion in some States, with the effect of extended RMA being inappropriately denied to some eligible refugees. In addition, current policy generates administrative costs because eligibility workers need to make separate determinations of refugee eligibility for extended RMA once a refugee becomes ineligible due to increased earnings from employment.

In order to alleviate this confusion, we are removing the distinction between RMA and extended RMA by eliminating the extended RMA provision and by making RMA available to eligible refugees for the full period of time-eligibility determined by the Director in accordance with § 400.204 beginning with the first month the refugee entered the U.S., regardless of whether a refugee receives increased earnings from employment.

Thus, under the 8-month eligibility period currently in effect, once a refugee is determined to be eligible for RMA at time of application, the refugee will be able to continue to receive RMA for a refugee's first 8 months in the U.S. regardless of whether a refugee receives increased earnings from employment during that period of time. This provision replaces the current 4-month extended RMA coverage for employed refugees. We believe this change will make the administration of RMA less confusing to States and, therefore, less subject to error than the current extended RMA provision. At the same time, this change will better ensure continued medical coverage to refugees for a clearly specified period of time.

To summarize, the policy changes are intended to: (1) Ensure that comprehensive refugee-specific services are provided to both refugee men and women within the first few years after arrival in the United States for the purpose of accelerating family economic independence and acculturation; (2) establish a time-eligibility limitation for the receipt of refugee social services and targeted assistance services so that funds will be concentrated on recently arrived refugees to help ensure that employable refugees are placed in jobs as soon as possible after their arrival in the U.S.; (3) increase State and local flexibility in the provision of services; and (4) replace the current 4-month extended RMA provision for employed refugees with a provision that would make RMA available for the full period (currently 8 months) of time-eligibility to RMA recipients, regardless of whether a refugee becomes employed.

In addition, the regulation limits the administrative costs a State may claim to those costs that are determined to be reasonable and allowable as defined by the Administration for Children and Families. This rule also establishes procedures to be used when a State withdraws from the refugee program. Finally, this rule sets forth basic requirements for the administration of the targeted assistance program which has been in operation since FY 1983.

Consistent with the preceding actions, 45 CFR 400.1, 400.4, 400.5, 400.9, 400.11, 400.13, 400.62, 400.70, 400.71, 400.75, 400.76, 400.79, 400.80, 400.82, 400.83, 400.94, 400.100, 400.104, 400.106, 400.107, 400.140, 400.141, 400.145, 400.146, 400.147, 400.152, 400.153, 400.154, 400.155, 400.156, 400.203, 400.204, 400.206, 400.207, 400.210, and subpart K are amended or removed and a new 400.212 and subpart L are added.

Subpart A—Introduction

Section 400.1(a) is amended to provide that 45 CFR Part 400 prescribes requirements concerning grants to States and other public and private non-profit agencies, wherever applicable, under title IV of the Immigration and Nationality Act.

Subpart B—Grants to States for Refugee Resettlement

Section 400.4(b) is amended to require that a State must certify no later than 30 days after the beginning of each fiscal year that the approved State plan is current and continues in effect. If a State wishes to change its plan, a State is required to submit a proposed amendment to the plan for ORR review and approval in accordance with § 400.8.

Section 400.5(h) is revised to expand the types of agencies that a State must meet with on a quarterly basis to plan and coordinate the placement of refugees in advance of their arrival. This revision requires the inclusion of local community service agencies and other agencies that serve refugees in these quarterly meetings. Section 400.5(h), as revised, also advises States that currently have an approved exemption to this requirement that existing exemptions will expire 90 days after the effective date of this rule. Any State wishing an exemption may apply to ORR. An approved exemption will remain in effect for three years, at which time a State may reapply. A number of States were granted exemptions to this requirement in the early years of the program on the basis of the absence of problems associated with the planning and coordination of refugee placement or the small number of refugees in those States. We believe it is time to review these exemptions, given the passage of time, changing refugee flows, and changing circumstances in the States. A State wishing to request an exemption to the provisions regarding the holding or frequency of meetings under § 400.5(h) must set forth the reasons why the State considers these meetings unnecessary because of the absence of problems associated with the planning and coordination of refugee placement. These requests should be submitted in writing to the Director of ORR.

Section 400.11(b) is amended to clarify that States would be required to submit yearly estimates for reimbursable costs for cash and medical assistance, costs for unaccompanied minors, and related administrative costs for the fiscal year in accordance with guidelines prescribed by the Director of ORR.

Section 400.11(b)(2) is amended by requiring that the annual social services plan that a State must submit to ORR must be developed on the basis of a local consultative process. Section 400.11(b)(2) is also amended by changing the submission date for the plan from a date that is no later than 45 days prior to the beginning of the State's planning cycle for social services to a date that is to be prescribed by the Director of ORR.

Section 400.11(b)(3) is amended by removing the word "quarterly" before the word "estimates".

Section 400.11(c) is amended by requiring that final financial reports must be submitted in accordance with the requirements specified under § 400.210. The language regarding the submission of quarterly financial reports remains unchanged; quarterly reports will continue to be due 30 days after the end of each quarter. Thus States must submit fourth-quarter reports by October 30 of each year, instead of the current deadline of December 30 of each year. ORR needs to receive end-of-year financial data from States soon after the end of the fiscal year to enable more timely forecasting for the next fiscal year. Adjustments may continue to be made, under § 400.210, until one year after the end of the fiscal year in the case of grants for cash assistance, medical assistance, and related administrative costs, and 2 years in the case of grants for social services and targeted assistance.

Section 400.13(d) is revised to prohibit the charging of case management costs against the cash assistance, medical assistance, and administrative costs (CMA) grant. This revision conforms to priorities established by ORR in FY 1991.

Subpart E—Refugee Cash Assistance

Section 400.62 is amended to require that refugee cash assistance (RCA) begin on the same date, in relation to the date of application, as assistance under the program of aid to families with dependent children (AFDC) would begin under the State's plan for AFDC. For example, if a State has opted under its AFDC plan to provide assistance no later than the date of authorization or 30 days after the receipt of an application, whichever is earlier, then that same rule will apply regarding RCA. This provision prohibits a State from adopting this rule for AFDC but paying assistance retroactive to the date of application for RCA. This provision thus assures that RCA and AFDC applications and assistance in a given State are treated equitably.

Subpart F—Requirements for Employability Services, Job Search, and Employment

Section 400.70 is revised by removing references to refugees who are applicants or recipients of AFDC or GA.

Section 400.71 is amended by adding a definition of the term "Family self-sufficiency plan".

Section 400.75(a)(1) is amended by requiring, as a condition for receipt of refugee cash assistance, that a refugee who is not exempt under § 400.76 must participate in employment services within 30 days of receipt of aid.

Section 400.76(a)(7) is amended by exempting from participation in employment services and acceptance of appropriate employment, a parent or other caretaker relative of a child under age 3, rather than age 6, who provides full-time care of the child.

Section 400.76(a)(9) is amended by exempting a pregnant woman from registration and participation in employment services if the child is expected to be born within the next 6 months, instead of the next 3 months.

The proposed changes in §§ 400.76(a)(7) and (a)(9) would make ORR policy consistent with the requirements of the Job Opportunities and Basic Skills Training (JOBS) program contained in the Family Support Act of 1988, Pub. L. No. 100–485 (42 U.S.C. § 602(a)(19)).

Section 400.79(a) is amended to emphasize that an employability plan must be developed as part of a family self-sufficiency plan where applicable for each non-exempted recipient of refugee cash assistance in a filing unit.

Section 400.80 is revised by replacing the existing job search requirement with the provision that a State must require job search for employable refugees where appropriate. Other references in the regulation to job search at §§ 400.75(a)(2), 400.76(b), 400.79(c)(3), 400.82, and 400.156(a) are removed.

Section 400.82(b)(3) is amended by removing the paragraph on conciliation.

Section 400.83 is amended by adding the paragraph on conciliation from § 400.82 and changing the heading to "Conciliation and fair hearings".

Subpart G—Refugee Medical Assistance

Section 400.94(a) is amended by clarifying that a State must determine Medicaid eligibility under its Medicaid State plan for each individual member of a family unit that applies for medical assistance. This is to clarify that if any individual in a family unit is eligible for medical assistance under a State's title XIX plan, then the State must provide that assistance under Medicaid and not

RMA. For example, under sections 1902(a)(10) and 1902(l) of the Social Security Act, certain children under age 19 who were born after September 30, 1983, may be eligible for Medicaid even though their parents are eligible for refugee medical assistance. Assistance may not be provided to such children under RMA if they are eligible under Medicaid.

Section 400.100(d) is amended to clarify that only those recipients of refugee cash assistance who are not eligible for Medicaid are eligible for refugee medical assistance.

Section 400.104 is revised by removing the existing provision for extended RMA for recipients who receive increased earnings from employment and replacing it with a provision that would enable RMA recipients who receive earnings from employment to continue to receive RMA until they reach the end of their time-eligibility period, in accordance with § 400.100(b). The provision also requires that in cases where a refugee obtains private medical coverage, any payment of RMA for that individual must be reduced by the amount of the third party payment. Section 400.106 is amended to clarify that a State may provide additional medical services to refugees who are determined eligible under § 400.94 only to the extent that sufficient appropriated funds are available to enable ORR to reimburse costs for refugee Medicaid recipients. Beginning in FY 1991, ORR had to cease reimbursements to States for the costs of assistance to refugee recipients of AFDC, SSI, and Medicaid due to insufficient appropriated funds. We want to make clear that additional services under § 400.106 may not be provided to refugee Medicaid recipients with refugee funding as long as appropriated funds continue to be insufficient to enable ORR reimbursements to States for these costs.

Section 400.107 is amended by replacing the words "health assessments" with the words "medical screening", the term used in the INA.

Subpart I—Refugee Social Services

Section 400.140 is amended to clarify that the requirements in subpart I apply only to formula allocation grants to States.

Section 400.141 is amended by removing references to title XX social services. We have removed references to title XX services in this section and in §§ 400.152, 400.153, and 400.155 in order to limit the scope of services allowable under refugee social services to those services that are most in keeping with the goals and priorities of the refugee program.

Section 400.145 is amended by adding the requirement that a State must insure that women have the same opportunities as men to participate in all services funded under this part, including job placement services.

Section 400.146 is revised by removing the current requirement that a State must use at least 85 percent of its social service grants to provide employability services if a State's dependency rate is 55 percent or more and by replacing it with a general requirement that a State must use its social service grants primarily for employability services designed to enable refugees to obtain jobs within one year of becoming enrolled in services in order to achieve economic self-sufficiency as soon as possible. The proposed revision is intended to provide States greater flexibility in determining how to best allocate refugee resources in keeping with refugee service needs. Social services may continue to be provided after a refugee has entered a job to help the refugee retain employment or move to a better job. Social service funds may not be used for long-term training programs such as vocational training that last for more than a year or educational programs that are not intended to lead to employment within a year.

Section 400.147 is revised by establishing client priorities for services in the following order of priority, except in the most extreme circumstances: (1) All newly arriving refugees during their first year in the U.S., who apply for services; (2) refugees who are receiving cash assistance; (3) unemployed refugees who are not receiving cash assistance; and (4) employed refugees in need of services to retain employment or to attain economic independence. Assignment of first priority to newly arriving refugees is intended to ensure that these refugees receive timely services and are not placed on waiting lists for core refugee services.

Section 400.152 is amended by removing references to title XX services and by revising paragraph (b) to limit the provision of social services, with the exception of referral and interpreter services, to refugees who have been in the U.S. for 60 months or less, except that refugees who are receiving employability services, as defined in § 400.154(a), as of September 30, 1995, as part of an employability plan, may continue to receive those services through September 30, 1996, or until the services are completed, whichever occurs first, regardless of their length of residence in the U.S. As of the effective date of this requirement, the time-limitation on services will apply regardless of which fiscal year of funding is used to provide the services.

Section 400.153 regarding the provision of title XX social services is removed and reserved.

Section 400.154 is amended by adding the development of a family self-sufficiency plan as an allowable service under § 400.154(a). Section 400.154 is also amended to clarify under § 400.154(g) that day care as an allowable service means day care for children. Section 400.154 is further amended by revising paragraph (h) to allow transportation as a job-related expense and by removing the note after paragraph (j) which allows case management costs to be charged against the CMA grant. Because of funding limitations, case management costs may not currently be charged against the CMA grant.

Section 400.155(b) is amended to clarify that outreach services may include activities designed to explain the purpose of available services and to facilitate access to these services.

Section 400.155(c)(1) is amended to clarify that assessment and short-term counseling may be provided to families as well as individual persons.

Section 400.155(d) is amended to clarify that day care as an allowable service means day care for children.

Section 400.155(h) is revised by removing title XX social services from the list of allowable services under refugee social services and by adding, as an allowable service subject to the approval of the Director of ORR, any additional service aimed at strengthening the ability of refugee individuals, families, and refugee communities to achieve and maintain economic self-sufficiency, family stability, and community integration. An example of an allowable service under this provision would be the provision of technical assistance and organizational development training to strengthen the capability of refugee mutual assistance associations (MAAs) to provide employment-related and other services to refugees.

Section 400.156 is amended by revising the heading to read "Service requirements" and by amending § 400.156(b) to clarify that, in planning services, States must take into account the reception and placement (R & P) services provided by resettlement agencies in order to ensure the provision of seamless, coordinated services to refugees that are not duplicative. Section 400.156 is also amended by adding new requirements that States must implement: (1) English

language instruction must be provided in a concurrent, rather than sequential, time period with employment or with other employment-related services; (2) refugee-specific services must be provided, except in the case of vocational or job skills training, on-the-job training (OJT), or English language training, which are specifically designed to meet refugee needs and are in keeping with the rules and objectives of the refugee program; (3) services must be provided to the maximum extent feasible in a manner that is culturally and linguistically compatible with a refugee's language and cultural background; (4) services must be provided to the maximum extent feasible in a manner that includes the use of bilingual/bicultural women on service agency staffs to ensure adequate service access by refugee women; and (5) a family self-sufficiency plan must be developed for anyone who receives employment-related services funded under this part. Providing services in a manner that is culturally and linguistically compatible means that an agency providing services funded under this part must employ or contract with staff who (1) speak the native language of and (2) are either from the same ethnic background as, or are culturally knowledgeable of, the refugee populations the agency serves.

Subpart J—Federal Funding

Sections 400.203 and 400.204 are amended by clarifying that Federal funding is available for the cash and medical assistance programs described in these sections only to the extent that sufficient funds are appropriated. We have added this clarification in light of the steady decline in Federal refugee funding for the State share of aid to families with dependent children (AFDC), supplemental security income (SSI), Medicaid, and general assistance (GA) which began in FY 1986 and has resulted since FY 1991 in no ORR reimbursement to States for the State share of these programs due to insufficient appropriated funds.

Section 400.206 is amended by changing the heading to "Federal funding for social services and targeted assistance services" and by adding a paragraph on Federal funding for targeted assistance services.

Section 400.207 is revised to clarify that Federal funding is available for reasonable and identifiable administrative costs of providing only those assistance and service programs for which Federal funding is currently made available under the refugee program. Thus Federal funding under 45 CFR Part 400 is not available at this time for administrative costs related to the provision of AFDC, Medicaid, GA, or SSI to refugees. This section is further revised to limit the administrative costs that a State may claim to those costs that are determined to be reasonable and allowable as defined by the Administration for Children and Families.

Section 400.10 is revised to clarify time limits for obligating and expending funds as well as for submitting final financial reports on expenditures of CMA grants and social service and targeted assistance grants.

Subpart J is amended to prohibit the use of funds under this part for travel outside the United States, without the written approval of the Director.

Subpart K—Waivers

Subpart K is amended by revising the heading to read "Waivers and Withdrawals" and by revising § 400.300 to allow for a more flexible waiver policy in keeping with Executive Order No. 12875, issued on October 26, 1993, which calls for increased flexibility for State and local waivers. In addition, a new § 400.301 is added which requires that if a State decides to cease participation in the refugee program, the State must provide 120 days advance notice to the Director before withdrawing from the program. Section 400.301 clarifies that in order to participate in the refugee program, a State is expected to operate all components of the refugee program. In the event that a State wishes to retain responsibility for only part of the refugee program, it must obtain prior approval from the Director of ORR. Such approval will be granted only under extraordinary circumstances and if it is in the best interest of the Government. Section 400.301 also provides that when a State withdraws from all or part of the refugee program, the Director may authorize a replacement designee or designees to administer the provision of assistance and/or services, as appropriate, to refugees in that State. Pursuant to the statutory authority in 412(c)(1)(A) and 412(e)(1) of the INA to provide grants to, and contracts with, public or private non-profit agencies for services, cash assistance, and medical assistance to refugees, the Director may authorize a designee to administer the refugee program in place of a State when the State chooses not to participate in the refugee program. This authority is different from the statutory authority in 412(e)(7) of the INA which permits the Director to authorize the development and implementation of alternative projects under the Fish/Wilson program. Section 301 further establishes that a replacement designee must adhere to the same regulations under this part that apply to a State-administered program, with the exception of the following provisions: 45 CFR 400.5(d), 400.7, 400.55(b)(2), 400.56(a)(1), 400.56(a)(2), 400.56(b)(2)(i), 400.94(a), 400.94(b), 400.94(c), and subpart L.

Subpart L—Targeted Assistance

Section 400.310 establishes that the basis and scope of this subpart is to set forth requirements concerning formula allocation grants to States under 412(c)(2) of the INA for targeted assistance.

Section 400.311 establishes a definition for "targeted assistance grants".

Section 400.312 requires that a State must provide any individual wishing to do so an opportunity to apply for targeted assistance services and determine the eligibility of each applicant.

Section 400.313 requires that a State must use its targeted assistance grant primarily for employability services designed to enable refugees to obtain jobs with less than one year's participation in the targeted assistance program in order to achieve economic self-sufficiency as soon as possible. Targeted assistance services may continue to be provided after a refugee has entered a job to help the refugee retain employment or move to a better job. Targeted assistance funds may not be used for long-term training programs such as vocational training that last for more than a year or educational programs that are not intended to lead to employment within a year.

Section 400.314 establishes client priorities for targeted assistance services in the following order of priority, except in the most extreme circumstances: (1) Cash assistance recipients, particularly long-term recipients; (2) unemployed refugees who are not receiving cash assistance; and (3) employed refugees in need of services to retain employment or to attain economic independence.

Section 400.315 establishes that the same standards and criteria that are applied in the determination of eligibility for refugee social services under §§ 400.150 and 400.152(a) shall be applied in the determination of eligibility for targeted assistance services. Section 400.315 limits the provision of targeted assistance services, except referral and interpreter services, to refugees who have been in the U.S. for 60 months or less, except that refugees who are receiving employability services, as defined in § 400.316, as of September 30, 1995, as part of an employability plan, may continue to receive those services through September 30, 1996, or until the services are completed, whichever occurs first, regardless of their length of residence in the U.S. As of the effective date of this requirement, the time-limitation on services will apply regardless of which fiscal year of funding is used to provide the services.

Section 400.316 establishes that a State may provide the same scope of services under targeted assistance as may be provided under refugee social services under §§ 400.154 and 400.155, with the exception of § 400.155(h). Since the purpose of the targeted assistance program is to direct resources to localities that have large refugee populations and high use of public assistance by refugees, our intent is to focus the use of targeted assistance funds on employability services aimed at economic self-sufficiency, while providing States and counties some flexibility to use the funds for non-employment-related services. Thus, we have included the non-employment-related services that are allowable under § 400.155, but have not included the new category of services that has been added under § 400.155(h), which includes services to strengthen family and community.

Section 400.317 establishes that a State must adhere to the same limitations and restrictions in the provision of targeted assistance services as are applied to the provision of refugee social services under § 400.156.

Section 400.318 establishes that eligible grantees under the targeted assistance program are those agencies of State governments which are responsible for the refugee program under § 400.5 in States containing counties which qualify for targeted assistance awards. Section 400.318 also establishes that the use of targeted assistance funds for services to Cuban and Haitian entrants is limited to States which have an approved State plan under the Cuban/Haitian Entrant Program (CHEP).

Section 400.319 establishes that a State with more than one qualifying targeted assistance county may allocate its targeted assistance funds differently from the formula allocations for counties presented in the ORR targeted assistance notice in a fiscal year, only on the basis of its population of refugees who arrived in the U.S. during the most recent 5-year period. A State may use welfare data as an additional factor in the allocation of targeted assistance funds if it so chooses; however, a State may not assign a greater weight to welfare data than it has assigned to population data in its allocation formula. Section 400.319 also establishes that a State must assure that not less than 95 percent of the total award to the State is made available to the qualified county or counties, except in those cases where the qualified county or counties have agreed to let the State administer the targeted assistance program in the county's stead.

Discussion of Comments Received

Fifty-two letters of comments were received in response to the notice of proposed rulemaking published in the **Federal Register** on August 12, 1994. The commenters included State and local governments, national and local voluntary agencies, refugee mutual assistance associations, and refugee service providers. These comments were taken into consideration in the development of this final rule.

The comments are summarized below and are followed in each case by the Department's response.

Effective Date

Comment: Six commenters expressed concern over the effective date for the regulation of October 1, 1994, which appeared in the NPRM. Two of the commenters suggested that the rule should be effective no sooner than 90 days after the issuance of the final regulation. Another commenter suggested an effective date that would allow sufficient time for careful consideration of the comments.

Response: The inclusion in the NPRM of an October 1, 1994, effective date for a final rule was an error. We want to assure the commenters that ORR had no intention of imposing an October 1, 1994, effective date. The effective date for this final rule will be October 1, 1995.

Comments on Subpart A

§ 400.2: *Comment:* Eight commenters expressed opposition to limiting the definition of case management to the referral and tracking of refugee participation in employability services. One commenter supported the proposed elimination of case management for non-employment-related purposes. Commenters expressed concern that the narrowed definition would remove the ability to case manage a wide range of services needed to fully assist refugee families to overcome barriers to self-sufficiency. Several commenters were concerned that the proposed change in definition would preclude coordinating services for the entire family, regardless of employability status. One commenter pointed out that the proposed change runs counter to ORR's emphasis on strengthening families.

Response: After considering these comments, we have decided to drop the change in definition and allow case management to continue to be used to refer and track refugee participation in non-employment-related services, as well as employment-related services. However, we feel strongly that case management should be provided in combination with a package of services leading to employment and self-sufficiency.

Comments on Subpart B

§ 400.4(b): *Comment:* One commenter objected to the requirement that a State must certify no later than 30 days after the beginning of each fiscal year that the approved State plan is current and continues in effect. The commenter recommended that States be given 90 days to provide certification.

Response: If a State requires more time to prepare the certification, since the due date will remain the same each year and thus will be known, a State can allow itself the time it needs by simply starting the preparation as early as needed before the due date.

§ 400.5(h): *Comment:* We received 5 comments on this provision. One commenter objected to the inclusion of local community service agencies in quarterly meetings as impractical and unwieldy. Another commenter, while agreeing with this provision, recommended giving States the flexibility to request meeting less frequently or using telephone conference calls to better use State resources to meet the needs of local communities in the most appropriate manner. A third commenter also called for flexibility, suggesting that meetings should be scheduled in a manner that accommodates State and local resources and activities. One commenter expressed concern that administrative costs would be greatly increased in carrying out these meetings when the numbers of refugees being placed in the State are expected to diminish. Another commenter felt that ORR should clarify the State's role and responsibilities in this effort. The commenter pointed out that the State can facilitate planning efforts and can act in an oversight capacity regarding resettlement within the State, but it cannot enforce coordination efforts.

Response: We believe the benefit of including local community service agencies in quarterly meetings to enable all agencies that serve refugees to be informed and prepared for anticipated arrivals more than offsets any logistical difficulties a State may experience in

organizing such meetings. Regarding flexibility with respect to the frequency and holding of meetings, we are certainly willing to work with States to consider alternative approaches, as necessary. If a State believes it has good reason for holding fewer meetings, using conference calls in lieu of meetings, or using other alternatives to quarterly meetings, a State may request an exemption to this requirement, as described in this provision.

Regarding the State's role under this provision, we agree with the commenter that the State's role is to facilitate coordination, not to enforce it.

§ 400.11(b): *Comment:* One commenter recommended an effective date of October 1, 1995, for submission of a yearly CMA estimate. The commenter also requested input into the development of the form.

Response: We agree with the commenter; the effective date for this provision is October 1, 1995. As § 400.11(b) indicates, States will have to submit yearly CMA estimates in accordance with guidelines prescribed by the Director of ORR, in lieu of a form. As ORR develops these guidelines, States will have an opportunity to provide input and review before the guidelines are made final.

§ 400.11(b)(2): *Comment:* Seven commenters commented on this provision. One commenter objected to the change in due date for the annual services plan since no replacement date was indicated in the NPRM. Two commenters felt a specific date needs to be given. Another commenter agreed with changing the due date. One commenter wondered if the due date for submission will change periodically for all States or whether the due date could vary for each State. While one commenter supported the emphasis on a local consultative process in the planning of services, another commenter recommended the inclusion of a waiver option regarding local consultation. The commenter recommended that States be given the option of determining an appropriate process for local input in the planning process. One commenter suggested that ORR strongly encourage the inclusion of State and local health departments in the ongoing planning of refugee resettlement services. Another commenter, requesting clarification, pointed out that ORR State Letter 94–13 indicates that the Annual Services Plan is to be submitted on the revised Quarterly Performance Plan (QPR), thus eliminating the Annual Services Plan. Another commenter wanted clarification on whether ORR wants the services plan to reflect prospective services planned, based on a needs assessment, or actual services funded. The commenter recommended reporting actual services funded.

Response: The Annual Services Plan has not been eliminated. ORR State Letter 94–13 simply instructs States to submit the Annual Services Plan in Schedule A, as part of the fourth quarter QPR submission. Therefore, the new due date for the Annual Services Plan is November 15 of each year, as stated in ORR State Letter 94–13. Regarding whether the services plan should reflect services planned, based on a needs assessment, or actual services funded, the instructions for Schedule A of the QPR ask for a reporting of actual services funded.

We do not agree with the commenter's suggestion that States should be allowed the option of waiving local consultation in the development of a services plan. Regarding States having the option of determining an appropriate process for local input in the planning process, it is up to each State to determine what process it wants to use; the method for obtaining local consultation is not prescribed. We agree that State and local health departments should be included in the local consultation process in the planning of services and we strongly encourage States to do so.

§ 400.11(b)(3): *Comment:* One commenter indicated that it is unclear what the phrase "quarterly estimates required in paragraph (b)(1)" refers to when § 400.11(b)(1) requires a yearly, not quarterly, estimate.

Response: We thank the commenter for pointing out this discrepancy. We have revised this provision by deleting the word "quarterly".

§ 400.11(c): *Comment:* Six commenters addressed this provision. One commenter objected to the 30-day due date for the 4th quarter financial report and recommended a 90-day due date. Another commenter concurred. One commenter suggested a 45-day or 60-day due date. One commenter pointed out that RMA expenditure claims are difficult to obtain within the 30-day time frame and that States need 12 months after the end of the fiscal year to liquidate all obligations incurred through the end of the fiscal year. Another commenter indicated that the due date would require the State to estimate CMA expenditures with two months less of actual expenditure data, resulting in less accurate reporting. Another commenter expressed concern that this rule change could have an impact on Federal funding for the State. This commenter was concerned that contract obligations might be outstanding and recommended that the close-out date should continue to be December 30 of each year.

Response: Since States will continue to have until one year after the end of the fiscal year in which the Department awarded the grant to liquidate obligations and to submit a final financial report for CMA, and two years after the end of the fiscal year in which the Department awarded the grant to liquidate obligations and to submit a final financial report for social services and targeted assistance formula funds, we do not see a compelling reason to change the 30-day due date for the 4th quarter financial report. We understand that States may have to base their 4th quarter report on a shorter period of actual expenditure data than was the case under the current due date. The 30-day due date for the 4th quarter report will have no impact on Federal funding to the State and should have no impact on the time frame for liquidating obligations and closing out contracts since the one-year and two-year time frames described above and as stated in § 400.210 remain in effect.

§ 400.13(d): *Comment:* Three commenters expressed concern about this provision. Two commenters felt that States should be allowed to charge case management costs to CMA. One of the commenters felt that the program would be well-served by using CMA funds for this purpose especially in light of the early employment emphasis of the regulations. Another commenter recommended that States be allowed to use CMA funds to purchase equipment, software, and consultation services to establish and maintain a case management system. One commenter expressed concern that the prohibition against using CMA funds for case management could cause a State to spend State funds for some case workers and other administrative costs in the CMA program. In one State, State law has prohibited the expenditure of State funds for the refugee program. The CMA restriction could cause the State to be liable for possible Federal exceptions.

Response: In FY 1991, ORR established priorities for reimbursement under CMA since insufficient appropriated funds were available to reimburse costs in all CMA categories. The priority areas to be reimbursed included costs for (1) unaccompanied minors, including any allowable administrative costs of the unaccompanied minors program, (2) RCA and RMA costs and associated administrative costs, and (3) allowable administrative costs incurred for the overall management of the State refugee program. Lower priority categories included (4) the State share of allowable

costs for AFDC, Medicaid, SSI, and foster care payments under title IV–E of the Social Security Act and lastly (5) case management costs during an RCA recipient's first 12 months in the U.S. or an AFDC recipient's first 4 months in the U.S. Since FY 1991, ORR has not had sufficient appropriated funds available to reimburse States for the costs of either category (4) or (5). Thus the prohibition against using CMA funds for case management has been in effect since FY 1991. We do not anticipate any increase in the level of appropriated funds for CMA in the foreseeable future to enable any change in policy regarding reimbursable CMA categories.

Regarding the commenter's concern about liability for possible Federal exceptions, the commenter is right to be concerned. If the State has been inappropriately charging case management costs to CMA, the State is indeed at risk of possible audit disallowances.

Comments on Subpart C

§ 400.25: *Comment:* One commenter observed that § 400.25 which states that a State may not impose requirements as to duration of residence as a condition of participation in the State's program of assistance or services may be in conflict with the 36- and 60-month time-limitation proposed for social services and targeted assistance.

Response: This provision is not in conflict with the time-limitation requirement for services in §§ 400.152 and 400.315. The prohibition against duration of residence requirements in § 400.25 means that a State may not impose a requirement that a refugee must have resided in the State for a required period of time before qualifying for assistance or services.

Comments on Subpart E

§ 400.62: *Comment:* Two commenters expressed support for making the RCA start date in relation to the date of application congruent with AFDC policy, while another commenter objected to this requirement, expressing concern that this requirement would be in conflict with State law in his State because the Home Relief program, which corresponds to the refugee program, has a different requirement than the AFDC program. The commenter recommended deleting this requirement or allowing for a waiver. One of the commenters suggested that ORR and the States should provide clear direction and training to ensure that clients are not penalized by faulty enrollment or eligibility determination procedures that result in delays in receipt of assistance.

Response: Regardless of whether there might be a conflict with State law, a State would be expected to comply with this Federal requirement. The commenter's point regarding the need for clear direction and training to avoid delays in receipt of assistance is well-taken. We agree that States should take measures to ensure that eligibility determination procedures result in timely receipt of assistance.

Comments on Subpart F

§§ 400.71 and 400.79: *Comment:* Two commenters requested clarification on the definition of what constitutes a family. Another commenter recommended that States be allowed to define family broadly to include everyone in a household. One commenter felt that the concept of family self-sufficiency plans needs to be defined more fully to ensure some consistency in the implementation of this provision. One commenter said that family self-sufficiency plans are welcome as long as all employable family members are included in the plan. Another commenter asked whether family self-sufficiency plans would only be required for RCA clients or be required for refugee AFDC clients as well. One commenter requested clarification on whether individual employability plans must also be developed for recipients of AFDC and GA. One commenter felt that it is unclear what should be included in a family self-sufficiency plan and how States should monitor the development and implementation of such a plan. Another commenter suggested putting out guidelines to providers to give them concrete strategies regarding the development of family self-sufficiency plans.

Response: In order to be consistent with how ORR counts families who move off aid, we define a family as those individuals included in a cash assistance filing unit whose needs are taken into account when determining the payment level for the filing unit. Using this definition, a family could constitute a one-person unit as in many RCA cases. States have the flexibility, however, to define family more broadly to include everyone in a household if it so chooses.

We define a family self-sufficiency plan as a plan that includes (1) a determination of the total amount of income a particular family would have to earn to exceed its cash grant and move into self-support without suffering a monetary penalty; (2) a strategy and timetable for obtaining that level of family income through the placement in employment of sufficient numbers of employable family members at sufficient wage levels; and (3) employability plans for every employable member of the family, as a part of (2). Providers should focus on the family, not the individual refugee, as the unit of intervention. Individual employability plans for members of the same family, therefore, should be kept together as part of the family self-sufficiency plan under one case file. We believe family self-sufficiency plans should be developed with the involvement of every employable family member, not just the primary wage earner, to the extent possible.

We appreciate the commenter raising the question of whether family self-sufficiency plans are to be required only for RCA recipients or for refugee AFDC recipients as well. We intend family self-sufficiency plans to be required for anyone who receives employment-related services funded by the refugee program, including recipients of RCA, AFDC, SSI, and GA, as well as refugees who are not receiving cash assistance but who apply for employment-related services. Thus, while references to family self-sufficiency plans in §§ 400.71 and 400.79 apply only to RCA recipients, we have added a provision under § 400.156(g) which requires the development of a family self-sufficiency plan for anyone who participates in refugee program-funded employment-related services. We would expect agencies to coordinate the development of family self-sufficiency plans to avoid duplication of effort if a family self-sufficiency plan for a refugee client already exists.

States should monitor the development and implementation of family self-sufficiency plans in the same manner as they would monitor the development and implementation of employability plans: by conducting a case file review as part of a State's on-site monitoring.

ORR does not plan to issue national guidelines on family self-sufficiency planning. However, some States have developed guidance on family self-sufficiency planning for use within their States.

§ 400.75: *Comment:* One commenter wondered if the requirement for participation in employment services within 30 days of receipt of aid could be required of refugees on AFDC as well. Another commenter asked if non-compliance would result in a client sanction or a negative program review. One commenter expressed concern that the level of funding might be inadequate, resulting in employment

services only to RCA refugees to the exclusion of AFDC recipients. The commenter recommended requiring participation in employment services within 30 days of receipt of aid only if funding is available. Another commenter was concerned that the level of funding might be insufficient to provide services to all RCA refugees and recommended that the rule be revised to require States to include an assurance in their State plan that newly arrived refugees will be enrolled promptly in employment services.

Response: The provisions under subpart F, including the requirement for participation in employment services within 30 days of receipt of aid, apply only to RCA recipients; these regulations do not apply to recipients of AFDC. The AFDC program, administered by the Office of Family Assistance, is governed by separate regulations under 45 CFR Chapter II. However, we refer the commenter to 45 CFR 233.100(a)(6), which requires that within 30 days after the receipt of aid under the AFDC-UP program, unemployed principal earners will participate or apply for participation in a JOBS program.

Non-compliance with § 400.75 would result in a client sanction or a negative program review. Regarding funding availability, we believe it would be a rare situation where service funds would not be sufficient to provide services to all RCA recipients in accordance with § 400.75.

§ 400.76: *Comment:* Two commenters strongly supported ORR's proposal to make exemption requirements consistent with JOBS requirements, while two commenters opposed exempting a parent or caretaker who has a child under 3 years of age and opposed exempting pregnant women from registration and participation in employment services if the child is expected to be born within 6 months. One of the commenters felt that welfare parents should be required to use child care, as non-welfare parents do, in order to work. The commenter also expressed the view that since many non-welfare women continue to work until their 8th month of pregnancy, welfare recipients should not be exempted from participation because of pregnancy. Two commenters expressed concern about the availability of affordable day care. One commenter was concerned that a single parent would not be able to afford day care costs. Another commenter felt that ORR should take into consideration the possible hardship that families may experience finding suitable child care for non-school age refugee children.

Response: We believe the criteria for exemptions from participation in the refugee program should be as consistent as possible with the criteria for exemptions in the JOBS program in order to maintain equity among welfare clients. While we recognize the potential problems that some refugee families may experience finding suitable and affordable child care, we believe there are a number of options available to refugee families for securing subsidized child care through ORR-funded day care or through the JOBS program.

§ 400.80: *Comment:* Six commenters wrote in support of elimination of the job search requirement. We received no comments opposing elimination of this requirement.

Response: We continue to believe that job search is an appropriate activity for certain types of refugees and should be required as part of a refugee's employability plan in such cases. Therefore, we have decided to modify § 400.80 accordingly instead of totally eliminating this requirement. A refugee who refuses to carry out job search would be subject to sanction, in accordance with § 400.77, if job search is a required service in the refugee's employability plan.

§ 400.83: *Comment:* One commenter recommended that since one State has already obtained ORR approval to modify its timeframe for the conciliation period, this provision should be revised to accommodate the State's method of handling the conciliation period.

Response: A revision is not necessary. The State in question was granted a waiver to this provision a few years ago. This waiver is not affected by this regulation.

§ 400.94(a): *Comment:* One commenter was opposed to requiring refugees to be screened for Medicaid eligibility first. Another commenter expressed concern that the requirement to determine the Medicaid eligibility of every individual in an RMA family instead of making a single determination for the family as a unit could have the potential for increased administrative costs as a result of implementing this new method of determination.

Response: The revision in § 400.94(a) does not represent a change in policy; it is simply a clarification of a regulation that has been in effect since its publication as a final rule in the **Federal Register** (54 FR 5480) on February 3, 1989. Therefore, States that are not making Medicaid eligibility determinations for refugees who apply for medical assistance, or are not making Medicaid determinations for each member in a family unit, should take immediate steps to comply with the requirements under § 400.94(a).

§ 400.100(d): *Comment:* One commenter objected to the provision that only those recipients of RCA who are not eligible for Medicaid are eligible for RMA. The commenter expressed concern that RMA may be eliminated in one State because all RCA recipients in the State are eligible for Medical Assistance (MA). The commenter also questioned whether this provision refers to all MA benefits or only Federally mandated or reimbursed MA benefits. Another commenter pointed out that it is essential to ensure that refugees on RMA who are eligible for partial Medicaid benefits are not denied RMA coverage for medical treatment that is not covered by the partial Medicaid coverage.

Response: This provision is simply a restatement or clarification of current policy and refers only to Federally reimbursed benefits under title XIX of the Social Security Act. Regarding RMA coverage for refugees who are eligible for partial Medicaid benefits, since § 400.100(d) does not represent a change in policy, States should continue handling these cases as they do under current policy.

§ 400.104: *Comment:* Twenty-four commenters indicated support for this provision. Two commenters questioned whether a refugee would be required to accept private insurance, if the employer offered the insurance at a cost. One commenter asked if States would be required to impose penalties for refusal to accept private medical coverage. In cases where private insurance only covers the employee, one commenter wondered whether remaining family members would be able to continue on RMA. Three commenters recommended that instead of terminating RMA once private insurance is obtained, RMA could be billed only after any and all private insurance payments were accessed, as is the arrangement in the Medicaid program. One commenter noted that the proposed rule suggests that RMA recipients would be eligible for RMA through the 8th month, regardless of the reason for their ineligibility. The commenter questioned whether RMA recipients would be eligible for continued RMA if they began receiving unearned income or acquired excess resources that would make them ineligible for RMA.

Response: An RMA recipient who becomes employed would not be required to accept health insurance offered by his/her employer; if an RMA recipient chooses not to accept private

insurance, his/her eligibility for continued RMA would not be affected. If an employed RMA recipient obtains private health insurance which covers self only, the remaining family members, if they were RMA recipients, could continue to receive RMA for the full time-eligibility period. Unearned income or excess resources would only be a factor in determining initial eligibility for RMA; once a refugee becomes an RMA recipient, however, he/she would be eligible for continued RMA regardless of whether he/she began receiving unearned income or acquired excess resources.

After considering the commenters' recommendation, we have revised the rule to allow an RMA recipient who becomes employed to continue to receive RMA for the full time-eligibility period, regardless of whether the recipient obtains private medical coverage. However, we have revised this provision to require in cases where a refugee obtains private medical coverage, that RMA payment must take into consideration any third party payments. This policy is similar to Medicaid policy set forth in Medicaid regulations at 42 CFR 433.139.

§ 400.106: *Comment:* One commenter asked for clarification as follows: The preamble states that "* * * additional services under § 400.106 *may not* (emphasis added) be provided to refugee Medicaid recipients with refugee funding as long as appropriated funds continue to be insufficient to enable ORR reimbursements to States for these costs," while the actual proposed regulation states that "the State *may* (emphasis added) provide to refugees who are determined eligible under §§ 400.94, only to the extent that sufficient funds are appropriated, or 400.100 of this part the same services through public facilities."

Response: The meaning is the same; the main point is that appropriated funds have not been sufficient to enable ORR reimbursement for refugees eligible under § 400.94 (Medicaid) since FY 1991, thus additional medical services to refugee Medicaid recipients under § 400.106 may not be provided with ORR funding.

§ 400.107: *Comment:* Four commenters recommended the continued use of the term "health assessment" instead of the term "medical screening", while one commenter supported the change of wording. One commenter felt it was unclear whether the change in terms implied a change in definition. Two commenters stated that the use of the term "medical screening" implies that health assessments can only be done by physicians when in practice non-physician health care providers are the primary resource used for conducting health assessments. One commenter expressed concern that the term "medical screening" may blur the distinction between initial assessment and actual provision of medical care. The commenter felt that the term implied a more comprehensive service than will be provided and that it is important to distinguish that a public health setting is not a comprehensive care delivery setting. Two other commenters felt that the word "screening" is inaccurate to describe the set of health services needed in domestic resettlement. A screening should be understood as one component of a more comprehensive set of services. One commenter requested that ORR provide a definition of medical screening which would allow current practices to continue.

Finally, one commenter indicated that a review of the Immigration and Nationality Act did not reveal the use of the term "medical screening" in relation to domestic health assessments.

Response: We have chosen to use the term "medical screening" in place of the term "health assessment" simply to be consistent with the language of the INA. Section 412(b)(5) of the INA authorizes the Director "to make grants to, and enter into contracts with, State and local health agencies for payments to meet their costs of providing medical screening and initial medical treatment to refugees." The use of the term "medical screening" is in no way intended to suggest that ORR believes that health assessments/medical screenings must be performed by physicians instead of non-physician health care personnel.

We have been working with State refugee health coordinators and the Centers for Disease Control and Prevention during the past year to develop a medical screening protocol, as required under § 400.107(a)(1), that clearly defines what are allowable services under medical screening. We intend to issue this protocol later this fiscal year.

Comments on Subpart I

§§ 400.141, 400.152, and 400.153: *Comment:* One commenter felt that the elimination of title XX services as allowable for refugee program funding would be damaging to the community. One commenter recommended that references to title XX be retained in ORR regulations to enable refugees to access services which they might not otherwise to able to access because of the absence of bilingual staff and limited resources. Another commenter supported the elimination of title XX services. One commenter assumed that the elimination of title XX services from the list of allowable services was intended to increase State and local flexibility in the provision of services. The commenter questioned whether flexibility would, in fact, be increased or whether the elimination would serve as an impediment to flexibility. Another commenter questioned what title XX services ORR considers inappropriate.

Response: As we indicated in the NPRM, the purpose of eliminating title XX services from the list of allowable services that may be provided with ORR funding is to limit the scope of refugee program services to those services that are most in keeping with the goals and priorities of the refugee program. Our intention is to sharpen the focus of refugee funding, not necessarily to increase State flexibility. We do not believe that the full range of allowable services under the title XX program is consonant with the major priorities of the refugee program. We have included in our list of allowable refugee social services those title XX services which we believe fit with the goals and purpose of the refugee program. However, there are other title XX services that we believe go beyond ORR priorities. For example, ORR does not believe that title XX services such as preparation and delivery of meals and day care services for adults fall within the main priorities of employment and economic self-sufficiency in the refugee program. While we believe there are refugees who may need these services, we believe these services should be accessed through the State's title XX program instead of through the refugee program. At the same time we agree with the commenter that refugees often have difficulty accessing mainstream services because of the lack of culturally and linguistically appropriate services. ORR intends to work with other Federal programs over the next few years to increase refugee access to these services. We strongly encourage States to do the same at the State level.

§ 400.145: *Comment:* Six commenters wrote in support of requiring States to insure that women have the same opportunities as men to participate in training and instruction, as required in the Immigration and Nationality Act. One commenter, however, wondered why equal opportunity for employment placement was not included. The commenter also expressed concern that unless child care and transportation are provided for women, equal opportunity for services would be moot. Another commenter, while supporting the

provision, cautioned that ORR, in monitoring this requirement, should not assume that equal opportunity necessarily results in equal participation. The commenter felt that ORR tends to equate unequal participation with unequal access. Another commenter suggested that in light of the proposed time-limitation for service eligibility, the regulation should clearly state that pregnant women who wish to participate in employment services should have access to them, even though they may be exempt from participation under § 400.76(a)(9). One commenter suggested that services to women should be provided within the context of a family self-sufficiency plan.

Response: We agree that refugee women should have equal opportunity to participate in all services, including employment placements. In the proposed rule, we used the phrase "to participate in training and instruction" to be consistent with the language in the INA. However, to more clearly convey our intent to provide women equal opportunity for all services, we have revised § 400.145 in the final rule to read: "A State must insure that women have the same opportunities as men to participate in all services funded under this part, including job placement services."

We concur that services to women should be provided within the context of a family self-sufficiency plan, as should services to refugee men and other employable members of a family. As part of that self-sufficiency plan, we would expect States to make sure that service providers make every effort to arrange transportation and child care for those women who are not able to participate in services without such assistance. We agree with the commenter that without these supportive services equal access to services would be unattainable for many women.

We also agree with the comment that equal access does not necessarily result in equal participation. The emphasis, in our mind, is on providing to refugee women the same opportunity to participate in services as refugee men have. We understand that providing access to services does not guarantee that refugee women will necessarily choose to participate in services or employment placement due to certain cultural constraints. On the other hand, since ORR regulations require that all employable refugee women, with the exception of those who meet the exemption requirements of § 400.76, must participate in employment services, we would not expect to see a great disparity in participation between refugee men and women.

Given the time-limitations for service eligibility that will go into effect with this final regulation, we agree with the comment that pregnant women who wish to participate in employment services may access these services, even though they may be exempt. Section 400.75(b) already requires that a State must permit anyone in any of the exempted categories under § 400.76 to register for employment services if he/she so chooses.

§ 400.146: *Comment:* Eight commenters concurred with the elimination of the 85/15 rule that required any State with a refugee welfare dependency rate of 55% or more to use 85% of its social service funds for employability services and no more than 15% of its social service funds for non-employment-related services.

Three commenters wrote in support of the requirement that employment services must be designed to enable refugees to obtain jobs with less than one year's participation in services. Another commenter disagreed with the prohibition against vocational training that lasts for more than a year or education programs that are not intended to lead to employment within a year, stating that many refugees receiving AFDC will not be able to become self-sufficient in one year due to limited English language ability and job skills. The commenter requested a later effective date if this provision were made final. One commenter requested clarification on whether ESL is considered an educational program and if the one year starts at the beginning of the educational program or at the end of the educational program. Another commenter recommended that a percentage of funds be allowed for the purchase of selected long-term training for qualified refugees as long as the training leads to employment soon after training is completed.

Response: This rule does not require refugees to become self-sufficient with less than one year's participation in services. Section 400.146 requires that services be designed to help a refugee to become employed, not necessarily self-sufficient, with less than one year's participation in services. We recognize that a refugee's first job may not provide sufficient wages to enable self-support; nonetheless, we believe that that first job is an essential step towards self-sufficiency and should occur as soon as possible. Section 400.146 permits the continued provision of services to a refugee for more than one year, as needed, to move a refugee and his or her family to full self-support. We believe the prohibition against training programs that last for more than a year or educational programs that are not intended to lead to employment within a year is reasonable, given limited resources, and is in keeping with the refugee program's statutory requirement that refugees be placed in employment as soon as possible after arrival in the U.S.

We consider ESL to be an educational program that may be provided for more than a year as long as other services designed to lead to employment within one year are being provided concurrently to a refugee as part of an overall self-sufficiency plan. Under the requirements of § 400.146, it would be unacceptable to provide only ESL to a refugee, without the provision of other employment-related services that are intended to lead to employment within one year, since ESL alone is unlikely to enable a refugee to obtain employment with less than one year's participation in ESL. The one year starts at the beginning of the educational program, not at the end.

§ 400.147: *Comment:* Four commenters supported the proposed client priorities. Two commenters agreed that new arrivals should be given first priority. One commenter recommended limiting first priority to all newly arriving refugees on cash assistance during their first year in the U.S. The commenter noted that while § 400.147 places refugees on cash assistance on a lower priority than newly arrived refugees, § 400.75 requires that RCA recipients who are not exempt must participate in employment services within 30 days of receipt of aid. The commenter expressed concern that some counties might not have sufficient funds to serve the top two priority groups. Another commenter asked why RCA clients couldn't be given the same priority status as the first priority group since RCA recipients are within their first year of residence in the U.S. Another commenter recommended that second priority be given to serving employed refugees in need of services to maintain employment so that these refugees would not be tempted to lose their jobs in order to become a higher priority for services. Another commenter noted that according to the proposed client priorities, a newly arrived refugee in priority group #1 who is employed and making $25,000 a year and who wants to upgrade his job, would receive services before a client in priority group #3 who is time-expired, unemployed, and living on the streets but anxious to work. Another commenter wrote that he interprets the priority order to mean that (1) refugees within their first year of residence in the U.S. and receiving cash assistance will have priority over refugees within their first year of residence who are not receiving cash assistance; and (2) refugees within their first year of residence who are not receiving cash assistance will have priority, regardless of their employment status, over refugees receiving cash assistance, but residing in the U.S. longer than one year. The commenter recommends that maximum flexibility be given to States and local service providers in applying these priorities.

Response: To clarify, the first priority group includes both refugees receiving cash assistance, including RCA and AFDC recipients, during their first year in the U.S. and refugees who are not receiving cash assistance during their first year in the U.S. who apply for services. For refugees in their first year in the U.S., we are not making a distinction in terms of priority between refugees on cash assistance and refugees not on cash assistance. We believe that most States and counties would have sufficient refugee funds to serve all first-year refugees, regardless of cash assistance status. However, if for some reason sufficient funds are not available to serve both first year cash assistance and non-cash assistance clients, common sense would suggest that priority be given to RCA recipients for service in order to meet the requirements of § 400.75.

The commenter is correct that refugees in their first year in the U.S. who are not receiving cash assistance are a higher priority, regardless of their employment status, than refugees receiving cash assistance but residing in the U.S. longer than one year. While this rule will require States to follow these priorities, we recognize there may be some instances where States and providers will need to exercise their best judgement in determining who is in greater need of services on a case-by-case basis. We, therefore, have added the phrase "except in certain individual extreme circumstances" at § 400.147 regarding client priorities for the social services program and at § 400.314 regarding client priorities for the targeted assistance program. For example, it may be the best judgement of a provider that a refugee recipient of cash assistance in need of a job who has been in the U.S. for more than a year needs to be served before a refugee in priority group #1 who is earning enough to support his/her family and is not in danger of being laid off, but wants a job upgrade.

Regarding the case of the first-year refugee earning $25,000 a year having priority over the time-expired refugee in priority group #3 who is unemployed, if the refugee is time-expired in terms of being in the U.S. longer than the time frames specified in §§ 400.152 and 400.315, that refugee would not be eligible to receive services funded by the refugee program except those services specified under §§ 400.152(b) and 400.315(b). If, however, the refugee in priority group #3 is not time-expired, and if $25,000 a year is sufficient to enable the first-year refugee to support his/her family, common sense would suggest that you serve the refugee in priority #3.

We do not agree with the commenter who believes that second priority should be given to employed refugees who have been in the U.S. more than one year (priority #4) to avoid the possibility of refugees needing to lose their jobs in order to become a higher priority for services. We do not believe that this scenario is likely to become a problem.

§ 400.152(b) and 400.315: *Comment:* Nineteen commenters opposed the proposed time-limitation for refugee social services and targeted assistance services, while 11 commenters wrote in support of the proposed limitation. One commenter felt that the time-limitation should be advisory, not mandatory. One commenter agreed with the longer time-limitation for targeted assistance, while another commenter supported the staggered implementation of the time-limitation. One commenter felt that limitations on service eligibility impose a needed discipline on providers and recipients alike.

A variety of concerns was expressed regarding the proposed time-limitation: the time-limitation might preclude refugee women, who delay participating in services due to cultural reasons, from accessing services at a later date; the time-limitation will result in the most needy populations being abandoned without a safety net; it will leave a significant number of refugees and entrants without the means to achieve true economic self-sufficiency; the long-term refugee welfare population will no longer receive the services they need; many community-based organizations will fold due to lack of funding; refugee adjustment services, such as mental health and family counseling are required beyond 3 years and will not be provided due to limited State and local resources; many refugees will continue to need bilingual services which are only provided through the refugee program; the time-limitation will pass fiscal responsibility to State and local governments that do not have the resources to serve this population; the time-limitation has the potential of provoking adverse public reaction to the presence of refugees if certain services are not provided to post-36-month refugees with refugee program funding; the limitation will result in bilingual workers having to meet the needs of the time-expired refugees during their lunch break, after regular work hours, or on weekends; and the time-limitation on services will severely limit MAA eligibility for refugee social service funding.

Two commenters questioned limiting services in all States based on the existence of waiting lists in just a few States. One commenter also questioned making a regulatory change for refugees in the 1990s based on study findings primarily of Southeast Asians in the 1980s. One commenter questioned ORR's authority to limit eligibility for services for entrants, citing title V, § 501(d) of the Refugee Education Assistance Act of 1980, which states: "* * * the authorities provided in this section are applicable to assistance and services provided with respect to Cuban and Haitian entrants at any time after their arrival in the United States * * *." Another commenter felt that if ORR ensures that discretionary social service and TAP funds respond to the needs of refugees over 36 months, appropriate attention will have been given to this population.

Several commenters cited problems with having different eligibility periods for social services and targeted assistance. One commenter felt that this difference would create an inequitable situation in service availability between States that have TAP grants and those that do not, and would also create inequity in service availability among communities within a State. Another commenter pointed out that having two different time periods for the provision of social services and TAP, which are often provided by the same agency to the same client, would likely generate considerable confusion for both the refugees and the agencies. One commenter felt it is inconsistent to permit impacted communities to provide employment services for 5 years but not allow other communities to do so. Another commenter indicated that the 36-month time limit for social services would place great stress on TAP funds, since staffing for the post-36 month population would have to be funded solely with TAP funding. One commenter felt that the time limit would force voluntary agencies to place new arrivals only in urban areas where targeted assistance is available. Another commenter felt the two eligibility periods would make data collection

more complex and cumbersome at the agency and State level. One commenter raised the question of when, if a client is served by a dually funded program (social services and TAP), would the refugee cease to be eligible for services—at 36 months or at 60 months. Another commenter asked whether clients who are in the U.S. less than 60 months at the start of the fiscal year, who pass the 60-month mark during the fiscal year, would be allowed to complete the service plan.

Four commenters expressed concern about the lack of refugee access to mainstream services. One commenter was concerned that adding refugee clients to mainstream service systems would have a negative impact on the existing service system, in light of decreasing funds in mainstream programs. Two commenters emphasized that if refugees are to be treated like other U.S. residents and have access to the same assistance and service programs available to other populations after the first 3 years in the U.S., it is incumbent upon ORR to foster interagency cooperation at the Federal level to ensure that refugees have equal access to mainstream programs. One commenter made the point that if we achieved the two goals of obtaining equal access for refugees to mainstream services and achieving citizenship, we wouldn't need to impose a time-limitation on refugee services.

One commenter requested clarification on whether discretionary grants provided by ORR would be subject to the 36-month and 60-month limitation on eligibility. Another commenter requested clarification on whether the time-limitation applies to all services or only to those services listed under § 400.154.

Several commenters offered alternative recommendations to the proposed time-limitations: One commenter recommended allowing the States the flexibility to provide services as they are needed within the priorities described in § 400.147; another commenter recommended adding post-36-month refugees as the last priority under § 400.147; several commenters recommended that a State be allowed the flexibility to serve deserving clients beyond 36 months if a State is able to meet the needs of new arrivals as indicated by an effective and efficient job placement rate; another commenter recommended that the time-limitation should not apply to outreach and crisis services; one commenter recommended excluding community strengthening activities from the time-limitation, while another commenter recommended that services such as mental health services should be excluded from the time-limitation.

One commenter recommended that the time-limitations should be waived for each county that is impacted with Lao-Hmong, Cambodian, or Soviet Pentecostal refugees, while another commenter recommended a waiver to States that have a substantial time-expired welfare population and can demonstrate that they are able to enroll newly arrived refugees in employment services within 30 days of receipt of aid.

Five commenters recommended that, if a time-limited eligibility period must be established, the same time limit of 5 years should apply to both refugee social services and targeted assistance, in congruence with the 5-year residency requirement for citizenship. One of the commenters alternatively suggested that TAP funding be restricted to clients who are not served through refugee social service funding. One commenter proposed that the time-limitation be extended to 60 months for elderly refugees who apply for non-employment-related services such as social adjustment, health, and mental health services. Another commenter recommended that if a time limit must be imposed it should be no less than 10 years after arrival in the U.S. Two commenters recommended allowing a State to spend no more than a fixed percentage of a State's refugee funding on services for post-36-month refugees. One of the commenters suggested allowing a certain percentage of funding for post-36-month refugees only in non-targeted assistance areas.

Response: We continue to believe in the necessity and efficacy of limiting eligibility for services funded by the refugee program to a specified time period after a refugee arrives in the U.S. However, after considering the comments, we have made two revisions to the time-limitation provision: (1) We have extended the eligibility period for social services from 36 months to 60 months, in congruence with the proposed time-limitation for the targeted assistance program and with the 5-year residency requirement for U.S. citizenship; and (2) we are exempting referral and interpreter services from the time-limitation in both programs to enable referral of post-60-month refugees to mainstream services and emergency interpreter services regardless of time in the country. By extending the social services time-limitation to 60 months, refugees will have a longer time to access the services needed to attain self-sufficiency and States and providers will be spared the difficulty of administering different eligibility periods for social services and targeted assistance. We believe these changes will go a long way towards alleviating many of the areas of concern to commenters, while maintaining the time-limitation principle.

On the question of whether title V, section 501(d) of the Refugee Education Assistance Act of 1980 would prohibit ORR from limiting eligibility for services to a certain time period for Cuban and Haitian entrants, the intent of section 501(d) needs to be examined within the context of section 501(a)(1). Section 501(a)(1) states that "[t]he President shall exercise authorities with respect to Cuban and Haitian entrants which are identical to the authorities which are exercised under chapter 2 of title IV of the Immigration and Nationality Act." Regarding this provision, the legislative history states that "it is the intent of the Congress that services provided pursuant to this section shall be provided to Cuban and Haitian entrants by the same agencies, under the same conditions, and to the same extent, that assistance is provided to persons determined to be refugees in accordance with the terms of the Refugee Act of 1980." 126 Cong. Rec. 28470 (September 30, 1980). This indicates that Congress clearly intended that Cuban and Haitian entrants should receive the same benefits that refugees receive pursuant to the INA. We believe the only way to interpret section 501(d) in a way that makes sense in conjunction with section 501(a)(1) is that benefits provided to entrants should not be any more constrained by time barriers than benefits provided to refugees. If interpreted the way the commenter suggests, Cuban and Haitian entrants would receive more extensive services than refugees because services would only be time-limited for refugees. Congress clearly did not intend such unequal treatment.

To clarify, the time limitation applies to all services, not just to those services listed under § 400.154. The time limitation, however, does not apply to services funded with ORR discretionary grants, including both social service discretionary and targeted assistance 10% discretionary grants.

The concerns about the lack of refugee access to mainstream services are well taken. We agree with the commenters' suggestion that more has to be done at the Federal level with other programs to ensure better access by refugees to mainstream programs. We are making it an ORR priority to work with other Federal agencies and mainstream programs over the next two years to increase access and quality of services for refugees.

§ 400.154: *Comment:* Two commenters who supported elimination of job search as a mandatory requirement recommended that job search be included as an allowable employment service. One commenter also recommended including the development of family self-sufficiency plans as an allowable service. Another commenter recommended adding job-related expenses as an allowable employability service. One commenter asked whether match grant clients are excluded from all employment-related services listed under § 400.154. One commenter wrote in support of the day care definition in § 400.154.

Response: Job search is already included as an allowable employability service under § 400.154(a). We have revised § 400.154 to include the development of family self-sufficiency plans as an allowable service under § 400.154(a). Regarding job-related expenses, we believe the most important job-related expenses to include as allowable services are child care and transportation expenses. Child care as a job-related expense is already allowable under § 400.154 and we have amended § 400.154(h) to allow transportation as a job-related expense.

Match grant clients are not excluded from participating in the employment-related services listed under this provision.

§ 400.155: *Comment:* Two commenters expressed concern about the proposed change to § 400.155(f). One of the commenters was concerned that the change in language implies that translation and interpreter services may not be provided as a distinct service in its own right; thus translation/interpretation for a refugee in traffic court or juvenile court might not be allowable under this provision. The commenter recommended that translation and interpreter services be allowed to remain as distinct adjustment services. The other commenter objected to the proposed change to § 400.155(f), arguing that the provision as amended would reduce a State's ability to fund refugee mutual assistance associations for services such as interpreter services. The commenter also felt that by restricting interpreter services to instances in which these services are not available from any other source, ORR would be hampering the desirable goal of assisting refugees to take advantage of mainstream services.

One commenter requested clarification on proposed § 400.155(g) regarding the process for submission, the criteria that will be used to approve additional services, and whether requests will be reviewed uniformly or on a case-by-case basis. Another commenter asked whether volunteer coordination and training for ESL tutors, for example, would require special approval under proposed § 400.155(g). One commenter suggested that technical assistance to strengthen MAA capability is not a direct service and thus would more appropriately be supported through ORR's discretionary program.

One commenter suggested that fraud prevention education should be addressed through refugee orientation and acculturation services.

Response: We have decided to drop the proposed revision to § 400.155(f). Translation and interpreter services will continue to be allowable under § 400.155(f) regardless of whether such services are available from another source.

If a State wishes to provide additional services under proposed § 400.155(g), which now will be § 400.155(h), the State should submit as part of its annual services plan a request which describes the proposed services, documents the absence of waiting lists in the State for core refugee services (employment services, ESL, job training, and case management), demonstrates that the proposed services fit the purpose of strengthening the ability of refugee individuals, families, and refugee communities to achieve and maintain economic self-sufficiency, family stability, and community integration, documents the need for such services, and describes the results the State expects to achieve with the provision of these services.

Volunteer coordination and training for ESL tutors would not require special approval under § 400.155(h). We do not agree with the comment regarding technical assistance to strengthen the capability of MAAs; we believe this is an appropriate activity under § 400.155(h).

Fraud prevention education is allowable as a consumer education service under § 400.155(c)(3).

§ 400.156: *Comment:* One commenter requested clarification of the meaning of the phrase "to the maximum extent feasible". The commenter recommended adding the words "as determined by the State" after the words "to the maximum extent feasible". Another commenter felt that the phrase "to the maximum extent feasible" regarding the hiring of bilingual women on staff would provide a convenient out for agencies.

Two commenters requested flexibility regarding the applicability and feasibility of §§ 400.156 (c), (d), (e), and (f). One of the commenters suggested changing the phrase "must be provided" to "should be provided" to allow some flexibility.

Response: We have revised section 400.156 by removing the phrase "to the maximum extent feasible" in paragraphs (c) and (d) because we believe that in the refugee program, ESL should always be provided concurrently with other employment-related services or employment and that services should always be refugee-specific services designed for refugees and in keeping with the rules and objectives of the refugee program, with the exception of those services stated in § 400.156(d). The phrase "to the maximum extent feasible" is retained in paragraphs (e) and (f) and means that these requirements must be carried out to the fullest extent possible, while recognizing that there may be some circumstances where it may not be feasible or possible to require full compliance with this requirement. For example, it may not be feasible for a service agency to provide linguistically and culturally compatible services for a new ethnic group that includes only 2 individuals. Thus, while we believe these requirements must be met in most cases, we recognize there may be some exceptions where it may be unreasonable, and perhaps not in the best interests of the program, to require full compliance. The use of the phrase "to the maximum extent feasible" should not provide a convenient out regarding the hiring of bilingual women. The phrase acknowledges that there may some exceptions when it may not be feasible; but it does not open the door to non-compliance.

We believe the phrase "to the maximum extent feasible" provides sufficient flexibility regarding feasibility. We do not agree with the suggestion to replace the word "must" with the word "should".

§ 400.156(b): *Comment:* One commenter asked for a definition of seamless services and examples to show that they work. Another commenter, while commenting that the provision of seamless services between reception and placement (R & P) services and State-administered social services is a laudable goal, noted that voluntary agencies provide R & P services under contract with their national offices through a Department of State (DOS) contract. The commenter suggested that a similar requirement should be included in the DOS agreement. Another commenter recommended that coordination as called for under § 400.156(b) should be expressed in a State plan and should reflect policies that ensure service continuity from R & P through self-sufficiency. The

commenter recommended that the case management authority of the voluntary agencies should be respected as refugees move through the service system.

Response: Seamless services means that there is a relationship and a continuum between R & P services and State-funded services and an absence of service gaps or service duplication. This works because avoidance of service duplication results in a more efficient use of resources, and an absence of service gaps results in better service to refugees.

We will forward to the Department of State the commenter's recommendation to add a requirement on seamless services in the R & P agreement.

We do not believe it is necessary to require States to address the coordination required in this provision in State plans. Section 400.11(b)(2), as revised, requires States to develop annual social services plans on the basis of a local consultative process. This would be the logical vehicle for carrying out the coordination required under § 400.156(b).

We believe the case management authority of voluntary agencies should be respected in those cases where the voluntary agency continues to be a refugee family's principal provider as it moves through the service system. In cases where a refugee family's principal provider is another agency, such as an MAA or other organization, the case management authority of that agency should be respected regarding that particular family.

Section 400.156(c): *Comment:* Seven commenters indicated support for the provision of ESL concurrent with employment-related services. Another commenter emphasized that ESL concurrent with employment-related services is not appropriate for all populations. Another commenter wondered in the case of an ESL program where job readiness activities are part of the curriculum and/or the ESL student is also looking for job training, whether these activities constitute employment services. Another commenter wondered whether a student enrolled in an ESL program, who is employed, may attend another ESL program after he/she completes the current ESL program. One commenter recommended that this provision should be expanded to allow for worksite ESL and literacy as desirable services.

Response: We do not believe there is any refugee population that would not benefit, in most cases, from participation in ESL concurrent with participation in other employment-related services. We believe this is an appropriate arrangement for all employable refugees, regardless of ethnic background. The purpose of requiring that ESL be provided concurrently, instead of sequentially, with other employment-related services is to ensure that refugees receive a comprehensive set of services needed to maximize a refugee's chance of becoming employed and self-sufficient in a timely manner. Therefore, the example of enrollment in an ESL class only, even though job readiness activities are a part of the curriculum, as well as the example of an ESL student who happens also to be looking for job training, would not, in our view, constitute ESL concurrent with other services and would not meet the requirement under § 400.156(c).

It is perfectly allowable for an ESL student, who is employed, to enroll in another ESL program after he/she completes the current ESL program. Worksite ESL and literacy are currently allowable under § 400.154.

§ 400.156(d): *Comment:* Ten commenters indicated support for providing services through refugee-specific service systems, while 6 commenters opposed making this a requirement. One commenter recommended making this provision an option instead of a requirement. One commenter noted that the proposed rule would preclude funding to a refugee service unit in a JTPA agency, a refugee mutual assistance association (MAA) that serves refugees along with immigrants and citizens, or a school that provides ESL. Several commenters felt that their current service system effectively provides services tailored to refugees while ensuring refugee access to suitable mainstream programs. They felt that such combined programs have resulted in the leveraging of mainstream program dollars and services in a beneficial way for refugees. One commenter argued that States that can demonstrate effective use of mainstream resources to provide culturally compatible services focused on early employment should be allowed to continue to use these systems. Another commenter felt that as Federal resources diminish, it is particularly incumbent upon States to utilize other resources and to mainstream refugees where possible and where appropriate for the client. One commenter stressed the importance of making clear that this provision is not intended to relieve mainstream providers of their obligation to serve refugees seeking other than employment services or those refugees who have been in the U.S. beyond the 36-month time period.

Response: We concur with the commenters concerns and have revised § 400.156(d) to require the provision of refugee-specific services and have eliminated the requirement that services must be provided through a separate refugee-specific service system in which refugees are the only client group served. We believe this change will address all of the commenters' concerns. The revised provision will allow funding to a refugee service unit in a mainstream agency such as a JTPA agency; it will allow funding to an MAA that serves refugees along with immigrants and citizens, or to a school that provides ESL; and it will not preclude the leveraging of mainstream funds for refugees or the use of mainstream systems that have demonstrated the ability to provide refugee-specific services.

Specifically, § 400.156(d), as revised, requires the provision of refugee-specific services which must be designed to meet the needs of refugees and must be in keeping with the rules and objectives of the refugee program. There are, however, some exceptions to which this requirement does not apply; the following services are exempt from this rule: Vocational or job skills training and on-the-job training (OJT) which involves the purchase of slots for refugees in mainstream programs; and English language training. We do not believe it would be cost-efficient or necessary to require refugee-specific vocational training or OJT. Nor do we feel it is as essential for ESL to be designed specifically for refugees as long as the ESL is effectively designed for non-English speaking populations in general and is provided concurrently with other employment services to refugees.

§ 400.156(e): *Comment*: Five commenters wrote in support of the proposed rule to require culturally and linguistically compatible services. Two commenters cautioned that while culturally and linguistically compatible services can be provided for large groups, it is not possible to do for all groups; it would be too expensive and impractical to provide for just a few refugees of a particular background. One commenter recommended adding language to this provision that would permit the use of "qualified" volunteers. Another commenter asked how providers can be expected to lay off staff with 15 years' experience just because the ethnic groups they represent no longer need services. One commenter felt that the expertise of existing ethnic staff should not be discarded as new refugee populations arrive. The commenter felt that volunteers can often support the cultural and linguistic needs of new populations in concert with experienced staff who may not represent the ethnicity of the new groups.

One commenter suggested that a requirement should be included in the Department of State R & P agreement with voluntary agencies which would require these agencies to work together to facilitate the cluster resettlement of refugees of the same language background so that States and localities can develop culturally and linguistically compatible services.

Response: We learned early in the refugee program that it was important to use bilingual staff who were culturally compatible with the refugee groups being served in order to provide effective resettlement services to these groups. We believe the new incoming groups deserve the same consideration as the earlier groups. It is important to balance the expertise of current staff, regardless of ethnicity, with the linguistic and cultural needs of the new populations. We expect States and providers to be as responsive as possible in carrying out this provision by incorporating the new ethnic groups on staff as much as is needed, either through new hires, contract employment, or when appropriate, through the use of qualified volunteers, while maintaining the expertise of existing staff as much as possible. If volunteers are to be used, we feel strongly that these volunteers need to be properly trained by the agency to ensure that refugees are receiving appropriate and useful bilingual services.

We will forward the commenter's recommendation regarding the cluster resettlement of refugees to the Department of State.

§ 400.156(f): *Comment*: One commenter felt that the principle of equal access for refugee women, which is critical, should not be translated into the rigid staffing pattern suggested by the language in § 400.156(f).

Response: We believe that access to services and communication between client and provider improve significantly for refugee women when there are bilingual women on staff to provide services to these clients. For this reason it is important to ensure that women are adequately represented on service agency staff.

Comments on Subpart J

§§ 400.203 and 400.204: *Comment*: One commenter expressed concern that the policy of reimbursing States for only those cash and medical assistance costs for which ORR has sufficient appropriated funds has the potential of transferring costs for non-reimbursed expenditures to States.

Response: ORR has not had sufficient appropriated funds to cover the costs of all the cash and medical assistance programs listed in §§ 400.203 and 400.204 since FY 1991 and has, since FY 1991, only reimbursed States for the costs of RCA, RMA, State administration, and the unaccompanied minors program. The commenter is correct that the costs for non-reimbursed expenditures have been born by the States.

§ 400.207: *Comment*: One commenter felt it is unclear what change is proposed in this provision. Another commenter questioned who will determine "reasonableness" and felt there should be an appeals process if ACF and the States do not agree on what is allowed. Another commenter recommended that ACF should publish its definition of reasonable and allowable costs and provide States and other interested parties a chance to comment. One commenter felt that ORR should be consistent with the requirements in a variety of OMB Circulars regarding allowable administrative expenses. The commenter further recommended that if ORR decides to further limit allowable administrative costs, it should specify these limitations in rule form.

Two commenters expressed concern that the language in this provision would prohibit States from claiming costs for overall State coordination activities and recommended that ORR clarify in the final rule that overall State coordination and management of the refugee program are allowable costs under § 400.207. One commenter felt that reimbursable costs for State coordination should not be restricted to the 3-year time-limited population since a State Coordinator's work involves coordination beyond the funded services to the time-limited population. Two commenters were concerned that the proposed language in this provision implies that ORR intends to impose percentage limitations on State administrative costs. The commenters pointed out that percentage limitations would make it very difficult for States with small funding allocations to operate. One commenter supported limiting administrative costs a State may charge to refugee social services and to targeted assistance. Two commenters opposed the limitation of Federal reimbursement for only those programs for which funding is currently available under the refugee program, which eliminates reimbursement for administrative costs related to categorical programs such as AFDC and Medicaid. The commenters felt this limitation is unfair since States are required to determine eligibility for AFDC and Medicaid prior to determining RCA/RMA eligibility, which requires extra staff time, resulting in increased State costs.

Response: States may continue to claim administrative costs for the overall management and coordination of the refugee program as they always have. No change was intended to prohibit the claiming of costs for coordination and oversight activities; administrative costs for these activities are allowable under § 400.13(c). Reimbursement of costs for a State Coordinator's oversight activities is not limited to the 3 or 5-year time-eligible population. We also have no intentions of imposing an administrative cap or percentage limitation on State administrative costs. We do intend to review the issue of what constitutes reasonable and allowable administrative costs in the refugee program and, if needed, to develop guidelines defining reasonable and allowable costs in consultation with States. The guidelines, if developed, will be consistent with the requirements in relevant OMB Circulars regarding allowable administrative costs and will be distributed to States for review and comment.

Comments on Subpart K

§ 400.301: *Comment*: One commenter recommended that the advance notice that a State must provide ORR before withdrawing from the refugee program should be 90 days instead of the proposed 120 days. The commenter felt that ORR should not require a longer period of advance notice than the 90-day notice that ORR provides for changes in the RCA/RMA eligibility period. Another commenter recommended that the final rule should clarify that the Director's designation of an alternate agency does not preclude a Wilson/Fish demonstration and operates only as an interim arrangement to ensure service continuity to refugees. Another commenter recommended that if a State withdraws, ORR must make sure that the replacement designee adheres to the same standards as a State-run program, is monitored according to the same standards as a State-run program, and that all assistance and services provided are equitable with State-provided assistance and services. The commenter requested clarification on whether suspension of assistance payments by a State due to a lack of Federal funding would be considered withdrawing from the program or withdrawing from part of the program, without proper notice.

Response: We believe 120 days notice is a reasonable period of time to require when a State is planning to drop out of the program. The purpose of requiring the advance notice is to allow enough time to enable ORR to make alternative arrangements to ensure that refugees in that State continue to receive assistance and services without a break in service. The commenter is correct that the designation of a replacement agency does not preclude the possibility of a Wilson/Fish demonstration project at a later date. Regarding whether a replacement designee would operate as an interim arrangement, the replacement designee would administer the provision of assistance and services to refugees in the State for a period of time allowable in accordance with Federal grant-making rules, followed by the selection of an agency through a competitive grant process.

The replacement designee will be required to adhere to the same ORR regulations that apply to a State-administered program, with the exception of certain provisions described under § 400.301 of this regulation. Certain provisions are excepted because they apply only to States and become moot when a State withdraws and is replaced by another entity. States would continue to be responsible for administering the other excepted provisions because these provisions refer to the administration of other State-run public assistance programs.

ORR would not consider the suspension of RCA/RMA assistance payments by a State due to a lack of Federal funding to be a withdrawal from the program, unless the State indicated that it intended to withdraw from the refugee program.

Comments on Subpart L

Comment: Two commenters wrote in support of establishing regulations for the targeted assistance program (TAP). Another commenter asked for clarification on whether TAP regulations would apply to FY 1994 dollars used for the FY 1995 program.

Response: These regulations would apply to whatever dollars are being used to provide services on October 1, 1995, the effective date of this final rule.

§ 400.312: *Comment:* One commenter felt that the requirement to provide any client with targeted assistance-funded services places an undue burden on a limited funding stream. Another commenter asked what a State's responsibility is if a client is eligible for TAP services but there is insufficient funding to provide services to lower priority applicants. One commenter felt that the language regarding the opportunity to apply for TAP services is vague regarding eligible persons and should be revised to be more specific by stipulating that a State must provide any individual wishing to apply for services who has been in the U.S. 60 months or less the opportunity to do so. Another commenter recommended adding the words "or agencies" after the word "individuals" to read: "* * * a State must provide any individual or agencies wishing to do so an opportunity to apply for targeted assistance services and determine the eligibility of each applicant."

Response: This provision parallels the language regarding social services in the current regulation under § 400.145 which has been in effect since 1989. The provision simply allows any refugee to have the opportunity to apply for services and to have his/her eligibility for services determined, nothing more. Eligibility would be determined based on the eligibility requirements in this regulation, including the time-eligibility requirement. This provision does not require a State to provide services to all individuals who apply for services. If a State does not have sufficient funds to serve lower-priority applicants, it is not required to do so. We do not agree with the suggestion to add the words "or agencies" to this provision. To do so would be inappropriate since agencies do not apply for services under the refugee program; only clients do.

§ 400.313: *Comment:* One commenter recommended that ESL and adult basic education should be allowed to be provided as long as these activities are provided concurrently with other employment services and are within an employment plan designed to lead to employment within one year.

Response: These services are allowed under the targeted assistance program if they are provided concurrently with other employment services designed to lead to employment within one year.

§ 400.314: *Comment:* One commenter felt that the client priorities for the targeted assistance program do not address the 60-month time limit. The commenter recommended adding language to this provision that specifies "refugees who have been in the U.S. less than 61 months". One commenter indicated that the proposed client priorities are not fully consistent with client priorities that were approved for one State's TAP program. Another commenter indicated that the priority #1 emphasis on long-term recipients seemed to be contradictory to the proposed time-limitation of 60 months for the targeted assistance program. Another commenter expressed concern that the TAP formula allocations may not be adequate to cover the additional service costs of the persistently unemployable welfare population in certain States, which raises the specter of cost shifts from the Federal government to the States.

Response: The 60-month eligibility time limit for targeted assistance is included under § 400.315, "General eligibility requirements"; these requirements apply to the client priorities under § 400.314, as well as to all sections under subpart L. The reference to long-term recipients in priority #1 refers to recipients who have been on welfare for a number of years within the 60-month time limit. We would consider an individual who has been a welfare recipient for 3–5 years a long-term recipient. The commenter's concern that the TAP formula allocation in certain States may not be adequate to cover the service costs for the persistently unemployable welfare population, the population in priority #1, is somewhat puzzling, since long-term welfare recipients have always been a priority group for TAP services. It would seem that States would have a better chance of covering the service costs for a 60-month time-limited welfare population with TAP funds than for a welfare population that has been in the U.S. for an open-ended period of time. The State whose approved client priorities may be different from those listed in this provision will be required to adhere to the new client priorities when this rule becomes effective.

§ 400.316: *Comment:* One commenter questioned why services to strengthen families and communities were not included as an allowable service under TAP when one of the client priorities is long-term cash assistance recipients. Another commenter recommended that assistance to emerging refugee community leadership to develop their own resources should be an allowable service under TAP, particularly in light of the proposed time-limitations. One commenter stressed that services designed to employ women must include child care. The commenter felt that there is a need to renew limited funding for child care under the targeted assistance program.

Response: As we explained in the August 12, 1994, NPRM, services to strengthen families and communities, including assistance to refugee community leadership, were not included in the list of allowable services under the targeted assistance program because we wished to focus the use of TAP funds on employability services aimed at helping refugees become self-supporting. We feel this focus is particularly important since the targeted assistance program is the last opportunity to use refugee program dollars to help long-term welfare recipients and other unemployed refugees into employment before they become time-ineligible for our program. Services to strengthen families and communities and to develop refugee leadership may be provided through refugee social service funds and ORR discretionary programs.

We agree that services that are designed to employ women must include child care services. We expect States to emphasize to their providers the need to arrange for child care as part of a family's self-sufficiency plan. Targeted assistance funding has always been available for child care. We have given special emphasis each year to the need for child care services in the notice of targeted assistance allocations to States.

§ 400.319: *Comment:* Four commenters objected to the proposed requirement that States with more than one qualifying TAP county that wish to allocate differently from the formula allocations presented in the ORR TAP notice, must allocate TAP funds based on the most recent 5-year refugee population. One commenter supported this requirement and recommended that States should not be allowed to allocate TAP funds based solely on the numbers of refugees receiving welfare. Two commenters suggested that States should be authorized to allocate social services and targeted assistance funds using welfare data.

Response: We believe it makes sense to require a State that wishes to re-allocate TAP funds to do so based on a population formula that is consistent with the population the TAP program is allowed to serve. Since this rule will limit eligibility for TAP services to refugees who have been in the U.S. 5 years or less, it is reasonable to require that funds be allocated based on the most recent 5-year refugee population. States may use welfare data as an additional factor, but not as the sole factor, in the allocation of targeted assistance funds if they so choose, without additional authorization; however, we do not require them to do so. A State that chooses to use welfare data in its allocation formula may not assign a greater weight to welfare data than it has assigned to population data.

General Comments

Comment: One commenter noted that the proposed rule does not allow for an MAA set-aside. The commenter recommended that there should be at least a 10–20% set-aside for MAAs and that specific language be included which ensures that States and counties give funding priority to MAAs for service provision. The commenter also recommended that the regulation should include language that ensures that MAAs are treated as full partners in all refugee programs. Another commenter urged ORR to consider allocating resources for capacity building in communities that have an over-36-month refugee population. The commenter felt it would be particularly helpful to strengthen MAAs in order to better serve their communities.

Response: We do not believe that regulatory language is the appropriate way to ensure full and equal participation by MAAs in the refugee program. We plan to review our policy on MAAs and to develop a more comprehensive strategy regarding refugee community development over the next few years in order to help refugee communities develop their capacity to be viable, self-sustaining communities. As part of this effort, we will be reviewing the social service and targeted assistance allocations notices to determine if changes are needed to better ensure service funding to qualified MAAs.

Comment: One commenter recommended that ORR and JOBS staff consult to amend any JOBS regulations that may impede refugee AFDC recipients from enrollment in JOBS services. The commenter recommended allowing States with large refugee populations the option to make refugee AFDC recipients a JOBS target group.

Response: We intend to consult with JOBS staff on these issues.

Comment: One commenter expressed concern about the impact that the implementation of the proposed rule will have on the changes to the quarterly performance report (QPR) that ORR is proposing. The commenter recommended that ORR wait to make changes in the QPR reporting form until final decisions are reached on the proposed rule.

Response: Implementation of this rule will not have an adverse impact on the revised QPR. The final QPR form will be consistent, rather than at odds, with the new regulatory requirements.

Regulatory Procedures

Executive Order 12866

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. An assessment of the costs and benefits of available regulatory alternatives (including not regulating) demonstrated that the approach taken in the regulation is the most cost-effective and least burdensome while still achieving the regulatory objectives.

Paperwork Reduction Act

This rule does not contain collection-of-information requirements.

Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96–354) requires the Federal government to anticipate and reduce the impact of regulations and paperwork requirements on small entities. The primary impact of these rules is on State governments and individuals. Therefore, we certify that these rules will not have a significant impact on a substantial number of small entities because they affect benefits to individuals and payments to States. Thus, a regulatory flexibility analysis is not required.

Statutory Authority

Section 412(a)(9) of the Immigration and Nationality Act, 8 U.S.C. 1522(a)(9), authorizes the Secretary of HHS to issue regulations needed to carry out the program.

(Catalogue of Federal Domestic Programs: 93.566, Refugee and Entrant Assistance—State-Administered Programs)

List of Subjects in 45 CFR Part 400

Grant programs—Social programs, Health care, Public assistance programs, Refugees, Reporting and recordkeeping requirements.

Dated: January 9, 1995.

Mary Jo Bane,

Assistant Secretary for Children and Families.

Approved: May 17, 1995.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, 45 CFR part 400 is amended as follows:

PART 400—REFUGEE RESETTLEMENT PROGRAM

1. The authority citation for part 400 continues to read as follows:

Authority: Section 412(a)(9), Immigration and Nationality Act (8 U.S.C. 1522(a)(9)).

§ 400.1 [Amended]

2. Section 400.1(a) is amended by adding the words "and other public and private non-profit agencies, wherever applicable" after the word "States".

3. Section 400.4(b) is revised to read as follows:

§ 400.4 Purpose of the plan.

* * * * *

(b) A State must certify no later than 30 days after the beginning of each Federal fiscal year that the approved State plan is current and continues in effect. If a State wishes to change its plan, a State must submit a proposed amendment to the plan. The proposed amendment will be reviewed and approved or disapproved in accordance with § 400.8.

4. Section 400.5(h) is revised to read as follows:

§ 400.5 Content of the plan.

* * * * *

(h) Provide that the State will, unless exempted from this requirement by the Director, assure that meetings are convened, not less often than quarterly, whereby representatives of local affiliates of voluntary resettlement agencies, local community service agencies, and other agencies that serve refugees meet with representatives of State and local governments to plan and coordinate the appropriate placement of refugees in advance of the refugees' arrival. All existing exemptions to this requirement will expire 90 days after the effective date of this rule. Any State that wishes to be exempted from the provisions regarding the holding and frequency of meetings may apply by submitting a written request to the Director. The request must set forth the reasons why the State considers these meetings unnecessary because of the absence of problems associated with the planning and coordination of refugee placement. An approved exemption will remain in effect for three years, at which time a State may reapply.

§ 400.9 [Amended]

5. Section 400.9(g) is amended to correct the spelling of the word "initiable" to "initial".

§ 400.11 [Amended]

6. Section 400.11(b)(1) is amended by removing the words "on a form" after the word "year" at the end of the paragraph and adding in their place the words "in accordance with guidelines".

7. Section 400.11(b)(2) is amended by adding the words "developed on the basis of a local consultative process" after the word "plan" and by removing the words "no later than 45 days prior to the beginning of the State's annual planning cycle for social services" and adding the words "and at a time" after the word "form".

8. Section 400.11(b)(3) is amended by removing the word "quarterly" before the word "estimates".

9. Section 400.11(c) is amended by adding a period "." after the word "quarter", removing the remainder of the sentence, beginning with the word "except" and ending with the word "year", and replacing it with a new sentence that reads as follows:

* * * * *

(c) * * * Final financial reports must be submitted in accordance with the requirements described in § 400.210.

* * * * *

§ 400.13 [Amended]

10. Section 400.13(a) is amended by adding the words "Refugee Resettlement Program" before the word "RRP" and placing the word "RRP" in parentheses.

11. Section 400.13(d) is revised to read as follows:

§ 400.13 Cost allocation.

* * * * *

(d) Costs of case management services, as defined in § 400.2, may not be charged to the CMA grant.

12. Section 400.62 is amended by adding a new paragraph (c) to read as follows:

§ 400.62 Need standards and payment levels.

* * * * *

(c) The date refugee cash assistance begins must be the same date, in relation to the date of application, as assistance would begin under a State's plan for AFDC under § 206.10(a)(6) of this title.

Subpart F—Requirements for Employability Services and Employment

13. The heading of subpart F is revised to read as set forth above.

14. Section 400.70 is revised to read as follows:

§ 400.70 Basis and scope.

This subpart sets forth requirements for applicants for and recipients of refugee cash assistance concerning registration for employment services, participation in social services or targeted assistance, and acceptance of appropriate employment under section 412(e)(2)(A) of the Act. A refugee who is an applicant for or recipient of refugee cash assistance must comply with the requirements in this subpart.

§ 400.71 [Amended]

15. Section 400.71 is amended by alphabetically adding the definition for the term "family self-sufficiency plan" to read as follows:

* * * * *

Family self-sufficiency plan means a plan that addresses the employment-related service needs of the employable members in a family for the purpose of enabling the family to become self-supporting through the employment of one or more family members.

* * * * *

§ 400.75 [Amended]

16. Section 400.75(a)(1) is amended by adding the words ", within 30 days of receipt of aid," after the word "and". Section 400.75(a)(2) is removed and paragraphs (a)(3), (a)(4), (a)(5), (a)(6), and (a)(7) are redesignated as paragraphs (a)(2), (a)(3), (a)(4), (a)(5), and (a)(6), respectively.

17. Section 400.76 is amended by revising paragraph (a)(7) to read as follows:

§ 400.76 Criteria for exemption from registration for employment services, participation in employability service programs, and acceptance of appropriate offers of employment.

(a) * * *

(7) A parent or other caretaker relative of a child under age 3 who personally provides full-time care of the child with only very brief and infrequent absences from the child. Only one parent or other relative in a case may be exempt under this paragraph.

* * * * *

18. Section 400.76(a)(9) is amended by removing the number "3" and adding in its place the number "6".

19. Section 400.76(b) is amended by removing the words "carrying out job search," after the word "programs,".

§ 400.79 [Amended]

20. Section 400.79(a) is amended by adding the words "as part of a family self-sufficiency plan where applicable" after the words "must be developed" and by adding the words "in a filing unit" after the words "refugee cash assistance".

21. Section 400.79(c)(3) is removed.

22. Section 400.80 is revised to read as follows:

§ 400.80 Job search requirements.

A State must require job search for employable refugees where appropriate.

§ 400.82 [Amended]

23. The heading in section 400.82 and the undesignated centerhead immediately preceding it are amended by removing the words "to carry out job search or" after the word "refusal" in the title.

24. Section 400.82(a) is amended by removing the words "to carry out job search," after the word "services,".

25. Section 400.82 is amended by removing paragraph (b)(3)(iii).

26. The heading of § 400.83 is revised to read as set forth below.

27. Section 400.83 is amended by redesignating the current text as paragraph (b) and by adding a new paragraph (a) to read as follows:

§ 400.83 Conciliation and fair hearings.

(a) A conciliation period prior to the imposition of sanctions must be provided for in accordance with the following time-limitations: The conciliation effort shall begin as soon as possible, but no later than 10 days following the date of failure or refusal to participate, and may continue for a period not to exceed 30 days. Either the State or the recipient may terminate this period sooner when either believes that the dispute cannot be resolved by conciliation.

* * * * *

§ 400.94 [Amended]

28. Section 400.94(a) is amended by removing the words "refugees who apply" and adding in their place the words "each individual member of a family unit that applies" before the words "for medical assistance".

§ 400.100 [Amended]

29. Section 400.100(d) is amended by adding the words "who are not eligible for Medicaid" after the words "cash assistance".

30. Section 400.104 is revised to read as follows:

§ 400.104 Continued coverage of recipients who receive increased earnings from employment.

If a refugee who is receiving refugee medical assistance receives increased earnings from employment, the increased earnings shall not affect the refugee's continued medical assistance eligibility. The refugee shall continue to receive refugee medical assistance until he/she reaches the end of his or her time-eligibility period for refugee medical assistance, in accordance with § 400.100(b). In cases where a refugee obtains private medical coverage, any payment of RMA for that individual must be reduced by the amount of the third party payment.

§ 400.106 [Amended]

31. Section 400.106 is amended by adding the words ", only to the extent that sufficient funds are appropriated," after the words "§§ 400.94".

§ 400.107 [Amended]

32. The heading of § 400.107 is amended by removing the words "Health assessments" and adding in their place the words "Medical screening".

33. Section 400.107(a) is amended by removing the words "a health assessment" and adding in their place the words "medical screening" and by replacing the word "assessment" with the word "screening" each time the word "assessment" is used.

§ 400.140 [Amended]

34. Section 400.140 is amended by adding the words "formula allocation" before the word "grants".

§ 400.141 [Amended]

35. Section 400.141 is amended by removing the words "any title XX social service as defined below or" from the first paragraph and by removing the second paragraph.

36. Section 400.145 is amended by adding a new paragraph (c) that reads as follows:

§ 400.145 Opportunity to apply for services.

* * * * *

(c) A State must insure that women have the same opportunities as men to participate in all services funded under this part, including job placement services.

37. Section 400.146 is revised to read as follows:

§ 400.146 Use of funds.

The State must use its social service grants primarily for employability services designed to enable refugees to obtain jobs within one year of becoming enrolled in services in order to achieve economic self-sufficiency as soon as possible. Social services may continue to be provided after a refugee has entered a job to help the refugee retain employment or move to a better job. Social service funds may not be used for long-term training programs such as vocational training that last for more than a year or educational programs that are not intended to lead to employment within a year.

38. Section 400.147 is revised to read as follows:

§ 400.147 Priority in provision of services.

A State must plan its social service program and allocate its social service funds in such a manner that services are provided to refugees in the following order of priority, except in certain individual extreme circumstances:

(a) All newly arriving refugees during their first year in the U.S., who apply for services;

(b) Refugees who are receiving cash assistance;

(c) Unemployed refugees who are not receiving cash assistance; and

(d) Employed refugees in need of services to retain employment or to attain economic independence.

39. The heading of § 400.152 is revised to read as set forth below.

40. Section 400.152(b) is revised to read as follows:

§ 400.152 Limitations on eligibility for services.

* * * * *

(b) A State may not provide services under this subpart, except for referral and interpreter services, to refugees who have been in the United States for more than 60 months, except that refugees who are receiving employability services, as defined in § 400.154, as of September 30, 1995, as part of an employability plan, may continue to receive those services through September 30, 1996, or until the services are completed, whichever occurs first, regardless of their length of residence in the U.S.

§ 400.153 [Removed]

41. Section 400.153 is removed.

§ 400.154 [Amended]

42. Section 400.154(a) is amended by adding the words "a family self-sufficiency plan and" after the words "development of".

43. Section 400.154(g) is amended by adding the words *"for children"* after the words "Day care".

44. Section 400.154(h) is amended by adding the words "or for the acceptance or retention of employment" after the words "employability service".

45. Section 400.154 is amended by removing the note after paragraph (j).

46. Section 400.155(b) is amended by adding the words ", to explain the purpose of these services, and facilitate access to these services" after the words "available services" at the end of the paragraph.

47. Section 400.155(c)(1) is amended by adding the words "or families" after the word "persons" and before the word "in".

48. Section 400.155(d) is amended by adding the words *"for children"* after the words "Day care".

49. Section 400.155(h) is revised to read as follows:

§ 400.155 Other services.

* * * * *

(h) *Any additional service,* upon submission to and approval by the Director of ORR, aimed at strengthening and supporting the ability of a refugee individual, family, or refugee community to achieve and maintain economic self-sufficiency, family stability, or community integration which has been demonstrated as

effective and is not available from any other funding source.

§ 400.156 [Amended]

50. Section 400.156 is amended by revising the heading to read as set forth below:

51. Section 400.156(a) is amended by removing the words "job search and" after the word "refugee".

52. Section 400.156(b) is amended by removing the words "and not duplicate the provision of such services to such refugee" after the word "sponsors" and adding in their place the words "in order to ensure the provision of seamless, coordinated services to refugees that are not duplicative".

53. Section 400.156 is amended by adding new paragraphs (c), (d), (e), (f) and (g) that read as follows:

§ 400.156 Service requirements.

* * * * *

(c) English language instruction funded under this part must be provided in a concurrent, rather than sequential, time period with employment or with other employment-related services.

(d) Services funded under this part must be refugee-specific services which are designed specifically to meet refugee needs and are in keeping with the rules and objectives of the refugee program, except that vocational or job skills training, on-the-job training, or English language training need not be refugee-specific.

(e) Services funded under this part must be provided to the maximum extent feasible in a manner that is culturally and linguistically compatible with a refugee's language and cultural background.

(f) Services funded under this part must be provided to the maximum extent feasible in a manner that includes the use of bilingual/bicultural women on service agency staffs to ensure adequate service access by refugee women.

(g) A family self-sufficiency plan must be developed for anyone who receives employment-related services funded under this part.

§ 400.203 [Amended]

54. Section 400.203 is amended by adding the words "To the extent that sufficient funds are appropriated," before the words "Federal funding" at the beginning of paragraphs (a) and (c).

§ 400.204 [Amended]

55. Section 400.204 is amended by adding the words "To the extent that sufficient funds are appropriated," before the words "Federal funding" at the beginning of paragraphs (a) and (c).

56. Sections 400.206 is amended by revising the section heading as set forth below, by designating the existing paragraph as paragraph (a), and by adding a new paragraph (b) to read as follows:

§ 400.206 Federal funding for social services and targeted assistance services.

* * * * *

(b) Federal funding is available for targeted assistance services as set forth in subpart L of this part, including reasonable and necessary identifiable State administrative costs of providing such services, not to exceed 5 percent of the total targeted assistance award to the State.

57. Section 400.207 is revised to read as follows:

§ 400.207 Federal funding for administrative costs.

Federal funding is available for reasonable and necessary identifiable administrative costs of providing assistance and services under this part only for those assistance and service programs set forth in §§ 400.203 through 400.205 for which Federal funding is currently made available under the refugee program. A State may claim only those costs that are determined to be reasonable and allowable as defined by the Administration for Children and Families. Such costs may be included in a State's claims against its quarterly grants for the purposes set forth in §§ 400.203 through 400.205 of this part.

58. Section 400.210 is revised to read as follows:

§ 400.210 Time limits for obligating and expending funds and for filing State claims.

Federal funding is available for a State's expenditures for assistance and services to eligible refugees for which the following time limits are met:

(a) *CMA grants*, as described at § 400.11(a)(1) of this part:

(1) Except for services for unaccompanied minors, a State must use its CMA grants for costs attributable to the Federal fiscal year (FFY) in which the Department awards the grants. With respect to CMA funds used for services for unaccompanied minors, the State may use its CMA funds for services provided during the Federal fiscal year following the FFY in which the Department awards the funds.

(2) A State's final financial report on expenditures of CMA grants, including CMA expenditures for services for unaccompanied minors, must be received no later than one year after the end of the FFY in which the Department awarded the grant. At that time, the Department will deobligate any unexpended funds, including any unliquidated obligations.

(b) *Social service grants and targeted assistance grants*, as described, respectively, at §§ 400.11(a)(2) and 400.311 of this part:

(1) A State must obligate its social service and targeted assistance grants no later than one year after the end of the FFY in which the Department awards the grant.

(2) A State's final financial report on expenditures of social service and targeted assistance grants must be received no later than two years after the end of the FFY in which the Department awarded the grant. At that time, the Department will deobligate any unexpended funds, including any unliquidated obligations.

59. Subpart J is amended by adding a new § 400.212 that reads as follows:

§ 400.212 Restrictions in the use of funds.

Federal funding under this part is not available for travel outside the United States without the written approval of the Director.

Subpart K—Waivers and Withdrawals

60. The heading of subpart K is revised to read as set forth above:

61. Subpart K is amended by revising § 400.300 and adding a new § 400.301, that read as follows:

§ 400.300 Waivers.

If a State wishes to apply for a waiver of a requirement of this part, the Director may waive such requirement with respect to such State, unless required by statute, if the Director determines that such waiver will advance the purposes of this part and is appropriate and consistent with Federal refugee policy objectives. To the fullest extent practicable, the Director will approve or disapprove an application for a waiver within 130 days of receipt of such application. The Director shall provide timely written notice of the reasons for denial to States whose applications are disapproved.

§ 400.301 Withdrawal from the refugee program.

(a) In the event that a State decides to cease participation in the refugee program, the State must provide 120 days advance notice to the Director before withdrawing from the program.

(b) To participate in the refugee program, a State is expected to operate all components of the refugee program, including refugee cash and medical assistance, social services, preventive health, and an unaccompanied minors program if appropriate. A State is also expected to play a coordinating role in the provision of assistance and services in accordance with § 400.5(b). In the event that a State wishes to retain responsibility for only part of the refugee program, it must obtain prior approval from the Director of ORR. Such approval will be granted only under extraordinary circumstances and if it is in the best interest of the Government.

(c) When a State withdraws from all or part of the refugee program, the Director may authorize a replacement designee or designees to administer the provision of assistance and services, as appropriate, to refugees in that State. A replacement designee must adhere to the same regulations under this part that apply to a State-administered program, with the exception of the following provisions: 45 CFR 400.5(d), 400.7, 400.55(b)(2), 400.56(a)(1), 400.56(a)(2), 400.56(b)(2)(i), 400.94(a), 400.94(b), 400.94(c), and subpart L. Certain provisions are excepted because they apply only to States and become moot when a State withdraws from participation in the refugee program and is replaced by another entity. States would continue to be responsible for administering the other excepted provisions because these provisions refer to the administration of other State-run public assistance programs.

62. Part 400 is amended by adding a new subpart L, that reads as follows:

Subpart L—Targeted Assistance

Sec.

400.310 Basis and scope.
400.311 Definitions.
400.312 Opportunity to apply for services.

Funding and Service Priorities

400.313 Use of funds.
400.314 Priority in provision of services.
400.315 General eligibility requirements.
400.316 Scope of targeted assistance services.
400.317 Service requirements.
400.318 Eligible grantees.
400.319 Allocation of funds.

Subpart L—Targeted Assistance

§ 400.310 Basis and scope.

This subpart sets forth requirements concerning formula allocation grants to States under section 412(c)(2) of the Act for targeted assistance.

§ 400.311 Definitions.

For purposes of this subpart—

"Targeted assistance grants" means formula allocation funding to States for assistance to counties and similar areas in the States where, because of factors such as unusually large refugee populations (including secondary migration), high refugee concentrations, and high use of public assistance by refugees, there exists and can be demonstrated a specific need for supplementation of available resources for services to refugees.

§ 400.312 Opportunity to apply for services.

A State must provide any individual wishing to do so an opportunity to apply for targeted assistance services and determine the eligibility of each applicant.

Funding and Service Priorities

§ 400.313 Use of funds.

A State must use its targeted assistance funds primarily for employability services designed to enable refugees to obtain jobs with less than one year's participation in the targeted assistance program in order to achieve economic self-sufficiency as soon as possible. Targeted assistance services may continue to be provided after a refugee has entered a job to help the refugee retain employment or move to a better job. Targeted assistance funds may not be used for long-term training programs such as vocational training that last for more than a year or educational programs that are not intended to lead to employment within a year.

§ 400.314 Priority in provision of services.

A State must plan its targeted assistance program and allocate its targeted assistance funds in such a manner that services are provided to refugees in the following order of priority, except in certain individual extreme circumstances:

(a) Cash assistance recipients, particularly long-term recipients;

(b) Unemployed refugees who are not receiving cash assistance; and

(c) Employed refugees in need of services to retain employment or to attain economic independence.

§ 400.315 General eligibility requirements.

(a) For purposes of determining eligibility of refugees for services under this subpart, the same standards and criteria shall be applied as are applied in the determination of eligibility for refugee social services under §§ 400.150 and 400.152(a).

(b) A State may not provide services under this subpart, except for referral and interpreter services, to refugees who have been in the United States for more than 60 months, except that refugees who are receiving employability services, as defined in § 400.316, as of September 30, 1995, as part of an employability plan, may continue to receive those services through September 30, 1996, or until the services are completed, whichever occurs first, regardless of their length of residence in the U.S.

§ 400.316 Scope of targeted assistance services.

A State may provide the same scope of services under this subpart as may be provided to refugees under §§ 400.154 and 400.155, with the exception of § 400.155(h).

§ 400.317 Service requirements.

In providing targeted assistance services to refugees, a State must adhere to the same requirements as are applied to the provision of refugee social services under § 400.156.

§ 400.318 Eligible grantees.

Eligible grantees are those agencies of State governments which are responsible for the refugee program under 45 CFR 400.5 in States containing counties which qualify for targeted assistance awards. The use of targeted assistance funds for services to Cuban and Haitian entrants is limited to States which have an approved State plan under the Cuban/Haitian Entrant Program (CHEP).

§ 400.319 Allocation of funds.

(a) A State with more than one qualifying targeted assistance county may allocate its targeted assistance funds differently from the formula allocations for counties presented in the ORR targeted assistance notice in a fiscal year only on the basis of its population of refugees who arrived in the U.S. during the most recent 5-year period. A State may use welfare data as an additional factor in the allocation of targeted assistance funds if it so chooses; however, a State may not assign a greater weight to welfare data than it has assigned to population data in its allocation formula.

(b) A State must assure that not less than 95 percent of the total award to the State is made available to the qualified county or counties, except in those cases where the qualified county or counties have agreed to let the State administer the targeted assistance program in the county's stead.

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federal register

Wednesday
June 28, 1995

Part VI

Department of Health and Human Services

Food and Drug Administration

Silicone Inflatable Breast Protheses; Information for Women Considering Saline-Filled Breast Implants; Availability; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95N–0007]

Silicone Inflatable Breast Prostheses; Information for Women Considering Saline-Filled Breast Implants; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a patient risk information sheet entitled "Information for Women Considering Saline-filled Breast Implants." The purpose of this information sheet is to provide prospective patients with information about the possible risks involved with silicone inflatable breast prostheses (saline-filled breast implants).

ADDRESSES: Submit written requests for single copies of the information sheet entitled "Information for Women Considering Saline-filled Breast Implants" to the Center for Devices and Radiological Health, Division of Small Manufacturers Assistance (HFZ–220), 1350 Piccard Dr., Rockville, MD 20850. Requests should be identified with the docket number found in brackets in the heading of this document. Send two self-addressed adhesive labels to assist that office in processing your requests, or FAX your request to 301–443–8818. "Information for Women Considering Saline-filled Breast Implants" is available for public examination in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Rosa M. Gilmore, Center for Devices and Radiological Health, Office of Standards and Regulations (HFZ–84), 2094 Gaither Rd., Rockville, MD 20850, 301–594–4765.

SUPPLEMENTARY INFORMATION: Saline-filled breast implants were already on the market when FDA was given the authority to regulate medical devices. After passage of the Medical Device Amendments of 1976, FDA classified this device into class III (premarket approval). Under a "grandfather" clause, manufacturers were permitted to continue marketing class III devices already on the market, with the understanding that at some time in the future FDA would require them to submit preclinical and clinical data showing that their devices are both safe and effective. FDA believes that it is important for prospective recipients of saline-filled breast implants to know that FDA has not yet seen or evaluated preclinical information and clinical trials on these devices. The agency believes that patients should receive information about the possible risks involved before surgery so that they have an opportunity to review the material and discuss it with their doctor. Each woman must decide with her doctor whether she is willing to accept the risks in order to achieve the expected benefits. FDA believes that this decision should be an informed one.

FDA issued a notice to promote the dissemination of information on risks associated with saline-filled breast implants in the **Federal Register** of September 26, 1991 (56 FR 49098). FDA stated in that notice that it would regard saline implants as misbranded under the Federal Food, Drug, and Cosmetic Act (the act) if their labeling does not provide adequate written information to patients on the risks associated with these devices. Included in the **Federal Register** notice was a suggested patient risk information sheet.

Subsequently, in December 1994, FDA solicited comments from health professional groups, consumer organizations, and manufacturers on updating the patient risk information sheet. FDA has sent the updated risk information sheet to the two manufacturers of saline-filled breast implants, Mentor H/S and McGhan Medical, so they can provide it to physicians who perform breast implant surgery. It is the responsibility of these physicians to provide the information sheet to prospective patients before they have decided on surgery so they can read, consider, and discuss the current information before deciding whether to have the surgery.

To ensure that patients receive the revised patient information, these two manufacturers have agreed to send a "Dear Doctor" letter to their physician customers, including a copy of the revised patient risk information sheet, to remind them of the importance of providing this information to all prospective patients. Written confirmation from the physicians that they agree to disseminate the revised patient information will be requested. The manufacturers also agreed to ask the American Society for Plastic and Reconstructive Surgeons to include in their next newsletter an article advising their members of the updated patient information, and reminding them of their responsibility to provide this information to all prospective patients. Lastly, the manufacturers are to ensure that all saline breast implants shipped include the revised patient risk information sheet.

The saline-filled breast implant is currently the only device legally available for breast augmentation. For breast reconstruction, the current legal restrictions on the use of silicone gel-filled implants limit their use to those cases where the saline breast prosthesis is considered medically unsatisfactory.

Because FDA believes it is important that the information in the patient risk information sheet is available to consumers and the general public, FDA is providing the text of this sheet below and will provide single copies on request to the Division of Small Manufacturers Assistance (address above).

Information for Women Considering Saline-filled Breast Implants

Saline-filled breast implants (silicone envelopes filled with salt water) were already in use in 1976 when the Food and Drug Administration (FDA) began regulating medical devices. Under this 1976 law, manufacturers could continue selling devices already on the market ("grandfathered"). But the 1976 law made it clear that at some time in the future, FDA would require manufacturers to submit their research data showing that these products are safe and effective. Women need to know that until this call for research data occurs, laboratory, animal, and human tests on some of these "grandfathered" products—including saline breast implants—may not have been completed by the manufacturer or reviewed by FDA.

Women considering saline-filled breast implants for breast enlargement or reconstruction should receive the following information about implants (and, when appropriate, other options for reconstruction) before surgery is scheduled. This will allow them time to review the material and discuss possible risks and benefits with her doctor. For some women, breast implants can improve their quality of life. Some breast cancer survivors believe that getting implants has been an important part of their recovery. However, other women find external breast forms to be satisfactory. Reconstruction options include breast implants or surgery using tissue from a patient's own abdomen, back, or buttocks to form a new breast. This surgery requires sufficient fat tissue and a longer operation, and like any other procedure, it is not always successful. For each woman, whether her goal is augmentation or reconstruction, the benefits may be different: With her doctor's advice, each woman must decide whether or not she wishes to accept the possible risks in order to achieve the expected results.

Breast implant surgery presents the same general risks associated with anesthesia and any other surgery. After the surgery, there are other special risks related to saline-filled breast implants. (The manufacturer's package insert for these devices gives additional, more detailed information. Your surgeon has a copy and can provide it to you.)

Most Common Risks

Deflation. Breast implants cannot be expected to last forever. Some implants deflate (or rupture) in the first few months after being implanted and some deflate after several years; yet some seem to be intact 10 or more years after the surgery. It is not known when deflation is most likely to happen. The implant can break due to injury to the breast or through normal wear over time, releasing the saline (salt water) filling. Researchers are doing studies to determine rupture rates over time. Whenever a saline-filled implant does deflate, it usually happens quickly and requires surgery to remove and, if desired, replace the ruptured implant. Since salt water is naturally present in the body, the leaked saline from the implant will be absorbed by the body instead of being treated as foreign matter.

Making breast cancer harder to find. The implant could interfere with finding breast cancer during mammography. It can "hide" suspicious-looking patches of tissue in the breast, making it difficult to interpret results. The implant may also make it difficult to perform mammography. Since the breast is squeezed during mammography, it is possible for an implant to rupture during the procedure. It is essential that every woman who has a breast implant tell her mammography technologist before the procedure. The technologist can use special techniques to minimize the possibility of rupture and to get the best possible views of the breast tissue. Because more x-ray views are necessary with these special techniques, women with breast implants will receive more radiation than women without implants who receive a normal exam. However, the benefit of the mammogram in finding cancer outweighs the risk of the additional x-rays.

Capsular contracture. The scar tissue or capsule that normally forms around the implant may tighten and squeeze the implant. This is called capsular contracture. Over several months to years, some women have changes in breast shape, hardness, or pain as a result of this contraction. No good data are available on how often this happens. If these conditions are severe, more surgery may be needed to correct or remove the implants.

Other Known Risks

Calcium deposits in the tissue around the implant. When calcium deposits, which are not harmful, occur, they can be seen on mammograms. These deposits must be identified as different from the calcium that is often a sign of breast cancer. Occasionally, it is necessary to surgically remove and examine a small amount of tissue to see whether or not it is cancer. This can frequently be done without removing the implant.

Additional surgeries. Women should understand there is a fairly high chance they will need to have additional surgery at some point to replace or remove the implant when and if it wears out. Also, problems such as deflation, capsular contracture, infection, shifting, and calcium deposits can require removal of the implants. Discuss the risk of these additional surgeries with your physician. Many women decide to have the implants replaced, but some women do not.

Infection. Infection can occur with any surgery. The frequency of infection with implant surgery is not known, but a prospective patient should ask her surgeon what his or her experience has been. Most infections resulting from surgery appear within a few days to weeks after the operation. However, infection is possible at any time after surgery. Infections with foreign bodies present (such as implants) are harder to treat than infections in normal body tissues. If an infection does not respond to antibiotics, the implant may have to be removed. After the infection is treated, a new breast implant can usually be put in.

Hematoma. A hematoma is a collection of blood inside the body (in this case, around the implant or around the incision). Swelling, pain, and bruising may result. The chance of getting a hematoma is not known, but a woman thinking about breast implants should ask her surgeon about his or her experience. If a hematoma occurs, it will usually be soon after surgery. (It can also occur at any time after injury to the breast.) Small hematomas are absorbed by the body, but large ones may have to be drained surgically for proper healing. Surgical draining causes scarring, which is minimal in most women.

Delayed wound healing. In rare instances, the implant stretches the skin abnormally, depriving it of blood supply and allowing the implant to push out through the skin. This complication usually requires additional surgery.

Changes in feeling in the nipple and breast. Feeling in the nipple and breast can increase or decrease after implant surgery. Changes in feeling can be temporary or permanent and may affect sexual response or the ability to nurse a baby. (See the paragraph on breast-feeding below.)

Shifting of the implant. Sometimes an implant may shift from its initial placement, giving the breasts an unnatural look. An implant may become visible at the surface of the breast as a result of the device pushing through the layers of skin. Further surgery is needed to correct this problem. If the implant shifts, it may become possible to feel the implant through the skin. (Placing the implant beneath the muscle may help to minimize this problem.) Other problems with appearance could include incorrect implant size, visible scars, uneven appearance, and wrinkling of the implant.

Unknown Risks

In addition to these known risks, there are unanswered questions about saline-filled breast implants. For example, can the implants bring on symptoms of autoimmune diseases such as lupus, scleroderma, and rheumatoid arthritis? Can they bring on neurological symptoms similar to multiple sclerosis in some women? Can the implants increase the risk of cancer? (Because saline-filled implants contain only salt water, any risk that might be related to silicone gel would not occur with this type of product.) There is some concern, but little information, about possible risks from the silicone rubber material of the envelope. Also, questions have been raised about the potential for the saline to become contaminated with fungus or bacteria. If so, these organisms might be released into the woman's body if her implant deflated.

Autoimmune diseases. According to scientific studies, women with breast implants in general are not at an increased risk for autoimmune or connective tissue diseases. However, these studies are too small to detect whether there might be a slightly increased risk of any one of these rare diseases. Also, these current studies have looked only for the symptoms of known autoimmune diseases, rather than the variety of symptoms that some women report experiencing. Some of the reported symptoms include:

- Swelling and/or joint pain or arthritis-like pain;
- General aching
- Unusual hair loss
- Unexplained or unusual loss of energy
- Greater chance of getting colds, viruses, and flu
- Swollen glands or lymph nodes
- Rash
- Memory problems, headaches
- Muscle weakness or burning
- Nausea, vomiting
- Irritable bowel syndrome.

Breast-feeding and children. Questions have been raised about whether or not breast implants present safety concerns for nursing infants of women with breast implants. Some women with breast implants have reported health problems in their breast-fed children. Only very limited research has been conducted in this area, and at this time there is no scientific evidence that this is a problem. It is not known if there are risks in nursing for a woman with breast implants or if the children of women with breast implants are more likely to have health problems.

Cancer. At this time, there is no scientific evidence that women with saline-filled breast implants are more susceptible to cancer than other women.

Dated: June 15, 1995.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

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federal register

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June 28, 1995

Part VII

Department of Agriculture

Food and Consumer Service

7 CFR Part 271 et al.

Collecting Food Stamp Recipient Claims From Federal Income Tax Refunds and Federal Salaries; Proposed Rule

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Parts 271, 272 and 273

[Amdt. No. 367]

RIN 0584–AB89

Food Stamp Program: Collecting Food Stamp Recipient Claims From Federal Income Tax Refunds and Federal Salaries

AGENCY: Food and Consumer Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes collecting two types of Food Stamp Program (FSP) recipient claims from Federal income tax refunds and from Federal salaries. The two types of recipient claims are inadvertent household error (IHE) and intentional Program violation (IPV) claims. These claims represent amounts of benefits which households received but to which they were not entitled. This rule proposes to collect these types of claims from individuals who are no longer participating in the FSP. This rule proposes operating procedures, due-process notices, and appeal rights and other rights and responsibilities of individuals. The Department has been testing the Federal income tax refund offset program (FTROP) since 1992 and is currently testing the Federal salary offset program (salary offset).

DATES: Comments must be received on or before July 28, 1995 to be assured of receiving consideration.

ADDRESSES: Comments should be addressed to James I. Porter, Supervisor, Issuance and Accountability Section, State Administration Branch, Program Accountability Division, Food Stamp Program, 3101 Park Center Drive, Room 907, Alexandria, Virginia 22302. Comments can be reviewed at that address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Mr. Porter at the above address or by telephone at (703) 305–2385.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related notice to 7 CFR 3015, Subpart V (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This proposed action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980). William E. Ludwig, Administrator of the Food and Consumer Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities. This rule will affect the State and local agencies which administer the Food Stamp Program and certain individuals who have received excess food stamp benefits. Half of substantially all State and local administrative costs for administering the Food Stamp Program are reimbursed by the Department.

Executive Order 12778

This rulemaking has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Paperwork Reduction Act

This proposed rule contains information collection requirements subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. Section 3507).

This is a new public information collection burden. The reporting and recordkeeping requirements for it were described in a General Notice titled "Food Stamp Program: Recipient Claims Collection: Test of Offsetting Federal Income Tax Refunds," published August 20, 1991 at 56 FR 41325. Because State agencies are continuing to join FTROP, with a resulting increase in the number of individuals subject to collection, average numbers were used to estimate the information collection burden. These were: 30 State agencies and 250,000 individuals. Of the total 58,555 hour estimated information collection burden, 50,330 hours is associated with due-process notices and appeals under FTROP. The burden is shared between State agencies and individuals, the two types of respondents. State agencies had 13,122 hours, of which more than 12,000 hours is associated with the production of due-process notices. Individuals had 37,208 hours, almost all of which is associated with responding to due process notices.

As mentioned above, collecting food stamp recipient claims from Federal salaries is currently being tested. If that test indicates that full implementation of salary offset would result in a measurable increase in the approved information collection burden, the Department will submit an adjustment to that estimate and provide the public due notice and opportunity to comment on that adjustment. An adjustment to reflect the decreased State agency FTROP reporting as proposed in this rule will be submitted if warranted.

On September 27, 1993 OMB approved the information collection requirements through September 30, 1996 (OMB No. 0584–0446). The title of the information collection is "Expansion of Test of Offsetting Federal Income Tax Refunds." Comments regarding this estimated information collection burden, including suggestions for reducing the burden, should be sent to the Department of Agriculture Clearance Officer, Office of Information Resources Management, Room 404–W, Washington, D.C. 20250. Such comments should also be sent to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0584–0446), Washington, D.C. 20503.

Comment Period

The Department believes that a 30-day comment period for this rule is sufficient because while this is a proposed rule, it addresses comments the Department received about the General Notices under which FTROP has been tested. These comments were from a major public interest group and from several State agencies. The rule clarifies several matters and proposes changes in FTROP procedures based on those comments, on numerous State agency questions raised during annual training sessions and submitted to FCS regional offices during the test of FTROP.

Background

A. General

Individuals currently owe the Department about $800 million for IHE and IPV recipient claims. A substantial portion of the $800 million is not being repaid. The Department is concerned about this situation and is augmenting its policies and procedures to improve

collections of this debt. FTROP and salary offset are major initiatives in this effort.

Both collection methods would require that State agencies submit claims to FCS for referral to the Internal Revenue Service (IRS) for collection through FTROP. Automated data processing would be conducted under strict data security procedures and confidentiality restrictions to assure that information about individual debtors would be used only for the authorized purposes of the proposed collection methods. Under the proposed rule, prior to any adverse action (the collection efforts), notice about the intended collection efforts, including advice of appeal rights, must be provided individuals identified as owing FSP recipient claims. Both FTROP and salary offset would only be used when none of the household members liable for the recipient claims to be collected are participating in the State which would be initiating the collection action. FTROP and salary offset would be applied only to IHE and IPV claims meeting this condition because, under current food stamp regulations, both IHE and IPV claims owed by participating households must be collected either by a repayment method of the household's choice or by allotment reduction.

The IRS requires that Federal agencies participating in FTROP use all reasonable collection efforts before referring a debt for collection from Federal income tax refunds. The IRS views salary offset as such an effort and therefore requires participation in salary offset or at a minimum, deletion of claims which can be collected from Federal employees from lists of claims submitted under FTROP. (See 26 CFR 301.6402–6 (b)(1)(iii) and (c)(2) of IRS regulations.)

B. FTROP

1. Authorities for FTROP

The authority for FTROP is Section 2653 of the Deficit Reduction Act of 1984 (Pub. L. 98–369) as amended by Public Law 101–508 (1990) and Public Law 102–589 (1992) (DEFRA). The FTROP provisions are codified at 31 U.S.C. 3720A, 26 U.S.C. 6402 and 26 U.S.C. 6103. As originally enacted in Public Law 98–369, authority for FTROP had a sunset clause and would have expired on January 1, 1989. That date was extended twice, first by Public Law 100–203 and then by Public Law 100–485. The Emergency Unemployment Act of 1991 (Pub. L. 102–164) made the authority to conduct FTROP permanent. In addition, section 4(c) of the Food Stamp Act of 1977 provides broad authority to the Secretary of Agriculture to issue such regulations as the Secretary deems necessary or appropriate for effective and efficient administration of the Food Stamp Program (7 U.S.C. 2013(c)).

The Department began testing FTROP in 1992 pursuant to a General Notice published August 20, 1991 at 56 FR 41325. That General Notice described the procedures for operating FTROP, including associated due-process notices, appeal rights and related responsibilities of individuals with respect to recipient claims subject to collection under FTROP. The test of FTROP was conducted in conformance with applicable IRS regulations. The IRS initially implemented FTROP with temporary regulations at 26 CFR 301.6402–6T. Final IRS regulations (26 CFR 301.6402–6) were published April 15, 1992 at 57 FR 13035.

The test of FTROP for the FSP was continued and expanded during 1993 and 1994. (See General Notices published August 28, 1992 at 57 FR 39176 and August 12, 1993 at 58 FR 42937.) The policies and procedures contained in those Notices, modified as a result of the test of FTROP, are contained in this proposed rule.

The Department notes that a final rule published January 19, 1994 at 59 FR 2725 modified several aspects of FSP recipient claims policy and corrected two technical errors. Parties interested in this proposed rule may want to make sure that their version of FSP regulations incorporates the just cited rule.

2. Overview of FTROP

a. Operations. FTROP is an optional program for State agencies. The first step for participating State agencies is to develop automated lists of FSP recipient claims which meet the criteria for claims which are referable for collection under FTROP. The lists are developed annually, are discrete from lists for other years and are identified by offset year. The term "offset year" means a calendar year during which offsets may be made to collect a particular group of recipient claims from individuals' Federal income tax refunds. The rule proposes at section 272.2 adding this definition of "offset year" to the list of definitions of terms for the FSP. During the year preceding the offset year, State agencies submit automated files of recipient claims to FCS which tests them for compatibility with IRS record specifications and refers them to the IRS. Through FCS the IRS provides State agencies with addresses for individuals contained in the IRS master file of taxpayer addresses. These activities make up the "pre-offset" phase of FTROP. State agencies then use IRS-provided addresses to send due-process (60-day) notices to individuals. The 60-day notices advise individuals of the intended collection action and provide information on how to repay the claim voluntarily and how to appeal the intended action. State agencies then certify to FCS a final list of FSP recipient claims for offset from Federal income tax refunds. Once State agencies submit the certified list to the FCS, claims cannot be added to the list and amounts of claims on the list cannot be increased.

At this point the offset phase begins. During the offset phase IRS offsets the certified claims against any tax refunds otherwise payable to the individual, and notifies the individual and FCS of offsets which have been made. Also, each week of the offset year beginning in late January, State agencies must provide data deleting claims and reducing amounts of claims on the certified file to reflect changes in the status of the claims due to such actions as voluntary payments from individuals.

b. Reasons for the Present Rulemaking. Two factors make it appropriate to add FTROP as a permanent part of the FSP now. First, as mentioned above, Congress has provided permanent authority for FTROP. Second, the Department stated in the August 1991 General Notice that if the test indicated that FTROP was feasible and cost-effective, the procedures would be incorporated into FSP regulations. The Department believes that the test has proven FTROP feasible and cost-effective and a significantly effective method of collecting FSP recipient claims due to IHE's and IPV's. The number of State agencies participating has increased from two in 1992 to 21 for 1994. Eleven more State agencies will begin participating in 1995. With respect to costs, the Department estimates Federal operational costs for the 1994 calendar year, for example, will be less than $1 million. The Department concludes that FTROP has been cost effective for participating State agencies to operate. About 25 percent of the dollar value of claims which meet the criteria for collection under FTROP is being collected. For example, the 21 State agencies participating during offset year 1994 sent out 60-day notices to individuals owing more than $101 million in claims. Through September 1994 collections totaled more than $30 million, more than $27.7 million from Federal income tax refunds and an additional $2.8 million from individuals

who paid voluntarily. For calendar year 1993, based on information from the Department of the Treasury, 38.4 percent of recipient claims submitted to the IRS were offset, and 28.1 percent of the dollar value of claims submitted were collected. Both the percentage of debt collected in whole or in part, and percentage of dollars collected for the FSP were the highest among Federal agencies participating in FTROP.

c. Discussion of Comments on the General Notices. The August 1991 General Notice solicited comments from the public. The Department responded to those comments in the August 1992 General Notice. The August 1992 General Notice also solicited comments from the public. Two comment letters were received on the August 1992 General Notice.

One of those letters was from a State agency which suggested that there should be a priority for offsetting debts from tax refunds and that the first priority should be delinquent child support collections. The priorities for tax refund offsets are established by 26 U.S.C. 6402(d)(2), and IRS regulations state them at 26 CFR 301.6402–6(g). The first priority for FTROP is tax liabilities owed the IRS. The second priority is childsupport payments assigned to a State under certain specified provisions of the Social Security Act. The third priority, which includes FSP recipient claims, is past-due, legally enforceable debts owed Federal agencies. The fourth priority is for child-support payments not assigned to a State.

The second comment letter was from a research and action group concerned with nutrition and related issues. This action group made a series of comments on the August 1992 General Notice. The Department is responding to several of the action group's general comments just below and to comments addressing specific aspects of FTROP in pertinent sections of this preamble.

The action group stated that the Department should rescind the August 1991 Notice until the rulemaking process could resolve the numerous issues which the group raised, especially relating to apparent inconsistencies between FTROP as tested and the Food Stamp Act of 1977, as amended (7 U.S.C. 2011) (the Act). The group stated that Section 13(b)(2) of the Act (7 U.S.C 2022(b)(2)) authorizes collection of IHE claims through recoupment but not through alternative means such as FTROP, and that such alternative means apply only to IPV claims and claims due to State agency error. This is incorrect. Section 13 of the Act provides collection authorities as follows: First, subparagraph (b)(1)(A) requires that households pay IPV claims by agreeing to an allotment reduction (recoupment) or a cash repayment schedule, in lieu of which the claim is collected through allotment reduction. Second, subparagraph (b)(1)(B) provides, in principal part, that IPV claims not collected by recoupment or cash, may be collected through "other means of collection." Third, subparagraph (b)(2)(A) requires that IHE claims be collected through recoupment. Fourth, subparagraph (b)(2)(B) provides that State agencies may use "other means of collection" for any claim not collected by the three preceding methods. Consequently, the Food Stamp Act authorizes "other means of collection," for IPV and IHE claims.

The group also pointed out that Section 13(b)(2)(A) of the Act sets a ceiling on the rate of recoupment on IHE claims at 10 percent or $10 per month, whichever would result in a faster collection rate, but that with FTROP the Department has implemented a 100 percent recoupment rate. The statutory limitation applies to collecting overpayments by reducing the monthly allotments of participating households. Since FTROP is used to collect claims from individuals who are not participating in the FSP, the statutory limitation on the rate of recoupment does not apply to collections made under FTROP.

The action group stated that FTROP defeats Congressional intent because it collects recipient claims from the Earned Income Tax Credit (EITC). The group pointed out that Congress has repeatedly expressed its support for EITC by continuing to expand its scope. The Department does not disagree that Congress has expanded EITC. However, since Congress has not enacted legislation excluding EITC from such debt collection through FTROP, the Department does not believe that collecting food stamp recipient claims from EITC's is inconsistent with Congressional intent.

The action group also stated that it believed that FTROP is unduly punitive and causes severe hardship for poor families. The Department disagrees. First, recipient claims subject to FTROP were caused by the households themselves and are uncollected because households did not pay them in response to demand letters. Second, the 60-day notice (the due-process notice) offers individuals a second opportunity to pay in full or negotiate a payment schedule before claims are referred for tax offset. In addition, food stamp regulations at 7 CFR 273.18(g)(2)(i) provide that if a claim cannot be paid within three years, the State agency may reduce the claim to an amount that the household can pay within three years.

The action group asserted that FTROP would not be cost-effective. In this regard, the group referred to a comment at a public meeting in February 1991 by an FCS official who expressed concern that the priority order for collection from tax refunds might adversely affect the cost-effectiveness of FTROP. Since the IRS does not provide Federal agencies information about debts which are uncollected because of a higher priority debt, the effect of this factor on FSP recipient claims referred to the IRS under FTROP cannot be determined. The priorities for offset from tax refunds notwithstanding, as demonstrated above, the test of FTROP has demonstrated that FTROP is cost-effective.

The action group also commented that the Department lacked criteria for evaluating FTROP in terms of feasibility and cost-effectiveness. The Department disagrees. The test has fully demonstrated the feasibility and cost-effectiveness of the project based on increasing State agency participation, the large dollar volume of collections and the increased efficiency of FSP claims collection.

In another general comment, the action group asserted that instead of focusing on collecting overissued food stamp benefits, the Department should focus on preventing and correcting underissuances. Through the Quality Control System the Department has an ongoing program for identifying and correcting certification and benefit errors. These errors cause both over and underissuance of food stamp benefits. In this regard, it should be noted that a certain percentage of the errors causing such incorrect levels of benefits results from households failing to accurately report their circumstances. In addition to the Quality Control System's efforts to reduce certification and benefit errors, on April 1, 1993 FCS awarded grants to two State agencies for special error reduction initiatives. One grant focuses on client-caused error, the other on State agency-caused error.

3. FTROP—Requirements for State agencies

a. General Requirements. During the testing of FTROP, all participating State agencies were required to submit an annual commitment letter in which they stated they would comply with the requirements of the August 1991 General Notice. This rule proposes at section 273.18(g)(5)(i)(A) that State agencies which choose to implement FTROP must submit a one-time

amendment to their Plan of Operation stating that they will comply with the requirements for FTROP and salary offset. (Section D of this preamble explains why State agencies which implement FTROP must also implement salary offset.) Amendments would be due to FCS regional offices twelve months before the beginning of a State agency's first offset year. Amendments for State agencies currently participating would be due 90 days after publication of the final rule on FTROP. (See the last section of this preamble, "Effective Date.")

The August 1991 General Notice required State agencies to attend a training session on FTROP policy and procedures prior to beginning to test the program. The Department expects to continue to require new State agencies to attend such a training session but is not proposing to include the requirement in regulations.

The IRS specifies what information they need for the various tasks required to match FSP recipient claims to Federal income tax return information, to effect offsets, and for reporting and accounting functions. The IRS also sets schedules for submission of data to them and for the various reports which they produce and distribute. These instructions and schedules are contained in the annually revised IRS Revenue Procedure, "Magnetic Media Reporting for Federal Income Tax Refund Offset Program (Debtor Master File)." FCS conducts field edits to assure that data which State agencies submit conform to IRS formats, and FCS works with State agencies to correct problems which would result in data being rejected by the IRS. State agency data and format problems sometimes require that State agencies resubmit data. For example, magnetic tapes must be preceded by a specific Job Control Language (JCL). If the JCL is incorrect, the State agency may have to produce another tape. On the other hand, FCS is able to correct some problems without requiring a second submission. For example, if Social Security Numbers (SSN's) are not correctly justified in the data field, FCS may be able to shift them to their correct position. The problems which FCS can correct are limited, however, and State agencies have the primary responsibility for detecting and correcting data and format errors prior to submitting recipient claim files to FCS. Since data submitted to the IRS must be correctly formatted, FCS will not submit data from a State agency to the IRS until the State agency's data conforms to IRS format requirements. Consequently, this rule proposes at section 273.18(g)(5)(i)(B) that State agencies must submit data according to the record formats specified by FCS and/or the IRS.

This rule also proposes at section 273.18(g)(5)(i)(B) that State agencies submit data according to schedules provided by FCS. State agencies need to submit files early enough to allow sufficient time for transmittal to FCS, for FCS to conduct field edits and to consolidate State agency submissions, and for FCS to mail files to IRS to meet IRS deadlines. FCS will provide State agencies each year a schedule for State agency data submissions to FCS. This schedule will also include other FTROP due dates so that State agencies have one source as a reference for meeting the various FTROP deadlines.

IRS currently requires that FCS provide data to IRS on magnetic tape. During the early testing of FTROP, State agencies submitted their data to FCS on magnetic tape. Managing tape submissions for the number of State agencies currently participating has proven inefficient. Consequently, during January 1994 FCS began implementing electronic data transmission. To provide for this technology and for future improvements in this area, this rule proposes at section 273.18(g)(5)(i)(B) that State agencies must submit data by means of magnetic tape, electronic data transmission or other method specified by FCS.

b. Claims Referable for Offset. The provisions of DEFRA codified at 31 U.S.C. 3720A(b) and IRS regulations at 26 CFR 301.6402–6(c) specify criteria for debts which can be referred for offset from Federal income tax refunds. The August 1991 General Notice included those criteria as well as additional criteria required for the FSP. This rule proposes at section 273.18(g)(5)(ii) to include substantially the same criteria, the most general of which is specified by DEFRA: All claims submitted for tax offset must be past-due and legally enforceable. The rule then proposes a number of specific criteria for determining claims past-due and legally enforceable. Only recipient claims which meet those criteria may be referred for collection under FTROP.

General Criteria: For purposes of testing FTROP, the Department chose to limit FTROP to IHE and IPV claims. This rule proposes that same limitation at section 273.18(g)(5)(ii)(A). The August 1991 General Notice further specified in paragraph b(1) that these claims had to be "properly established" as required by FSP regulations. This rule expands the statement of that requirement by referencing at section 273.18(g)(5)(ii)(A)(*1*) current rules on recipient claims and disqualification hearings for IPV's. The Department also wants to make clear that State agencies must have documentation that the claims they submit for collection under FTROP are properly established. Consequently, this rule proposes at section 273.18(g)(5)(ii)(A)(*2*) that State agencies must have such documentation on claims which they refer under FTROP. Specifically such documentation would include such items as electronic records and/or paper copies of claim demand letters, results of fair hearings, advance notices of disqualification hearings, results of such hearings, and records of payments. In this context an electronic record would be such items as dates of demand letters and the formats of such letters.

The Three-Month Delinquency Period: Temporary IRS regulations at 26 CFR 301.6402–6T(b)(2) provided that referable debts must be delinquent at least three months at the time the offset is made. The August 1991 General Notice in paragraph b(3) provided that for purposes of FTROP recipient claims must be delinquent at least three months as of the date the State agency certified its final files to FCS. That date is usually in early December. Further in this regard, the August 1991 General Notice specified in paragraphs b(3)(i) and (ii) that a claim could not be considered delinquent for purposes of FTROP if either: (1) the State agency was responding to a request for a fair hearing which was made within the 90 days following the initial demand letter; or (2) the time allowed for responding to the initial demand letter had not elapsed. Final IRS regulations at 26 CFR 301.6402–6 do not include an explicit three-month minimum delinquency nor do those regulations use the term "delinquency." The preamble to the final IRS rule states that a three month minimum delinquency is ensured because of the various notices and actions that must occur prior to referring debts under FTROP.

During the test of FTROP, State agencies raised questions about the criteria for "delinquency" of claims for FTROP purposes. These questions were answered with specific discussion of such considerations as whether payments were being regularly made. This rule incorporates policy developed in response to those questions and does not use the terms "delinquent" or "delinquency" with respect to determining whether a recipient claim may be referred for collection under FTROP. If a claim meets the criteria for being past due and legally enforceable as proposed in this rule, the claim would be subject to FTROP.

The Department wants to make clear that claims may not be considered past due and legally enforceable until individuals have been provided the opportunity to respond to demand letters as required in current food stamp rules. Current FSP regulations at 7 CFR 273.18(d)(4)(iii) state that if any nonparticipating household does not respond to the first demand letter for repayment of a recipient claim, additional demand letters must be sent at reasonable intervals, such as 30 days, until: (1) The household repays the claim or agrees to repay it; (2) collection action can be suspended; or (3) *the State agency initiates other collection actions* (emphasis added). Consequently, at section 273.18(g)(5)(ii)(A)(*1*) this rule would refer to that FSP regulation and the requirement to provide additional demand letters prior to initiating other collection actions. This criterion would replace the criteria stated in paragraphs b(3)(i) and (ii) of the 1991 General Notice.

The action group several times expressed concern that FTROP procedures specified in the August 1991 General Notice did not require that State agencies establish that all other collection had stopped before acting on a claim under FTROP. In the following paragraphs this preamble discusses the criteria for determining whether or not a claim is referable under FTROP and in later sections discusses the content of the 60-day notice. The Department believes that these discussions and the corresponding parts of this proposed rule should make clear both to State agencies and to individuals receiving those 60-day notices that claims are not referable under FTROP if they are being regularly repaid. The Department also addresses this concern by proposing policies on verifying that no liable individual is currently participating in the FSP in the State and on apportioning claims among individuals who are jointly and severally liable for the claims.

Section 13(a)(2) of the Act and FSP regulations at 7 CFR 273.18(a) specify that all adult members of the household are jointly and severally liable for any overissuance of benefits to the household. In addition, the regulations require that State agencies establish claims against any household which contains an adult member who was an adult member of another household which received an overissuance. The Department wants State agencies to take steps to collect FSP recipient claims from households to the maximum extent. On the other hand, as already discussed, both IHE and IPV claims must be recouped from monthly allotments of participating households with members who are liable for recipient claims. Consequently, this rule proposes at section 273.18(g)(5)(ii)(B) that claims are referable for collection through FTROP for which the State agency has verified that no individual participating in the FSP in the State is jointly and severally liable as specified in section 273.18(a).

The IRS regulations at 26 CFR 301.6402–6(c)(7) set a $25 minimum for claims which can be referred for tax offset. The August 1991 General Notice applied the $25 minimum during the test of FTROP, and this rule would apply the same minimum. To avoid the need to change FSP regulations should the IRS change the minimum dollar amount for claims which can be referred under FTROP, this rule proposes at section 273.18(g)(5)(ii)(C) that State agencies may submit only claims in dollar amounts which are at least the minimum dollar amount set by the IRS. FCS will advise State agencies if that amount changes from $25.

The 10-Year Limit: Temporary IRS regulations at 26 CFR 301.6402–6T(b)(2) provided, in part, that debts could only be referred if they were not delinquent for more than 10 years at the time the offset was made except for judgment debts, which were not subject to this 10-year limitation. The August 1991 General Notice in paragraph b(3) provided, in part, that except for claims reduced to final court judgments, recipient claims could be delinquent for no more than nine years, 11 months as of the date State agencies certified their final file of claims to FCS. Final IRS regulations at 26 CFR 301.6402–6(c)(1) specify that except for judgment debts or debts specifically exempt from the requirement (such as certain debts referred by the Department of Education), claims may be referred under FTROP if they are referred within 10 years after *the (Federal) agency's right of action accrues* (emphasis added).

In the preamble to their final regulation on FTROP, the IRS states that only the Federal agency referring the debt for offset is in a position to determine when its right of action to collect a particular debt accrues. The Department considers that its right of action to collect a recipient claim under FTROP accrues on the date of the initial demand letter. The IRS accepts certified FTROP files no later than about January 4 of each offset year. This date is the date claims are considered referred to the IRS and the date from which the 10-year period is measured in order to determine if the right of action on a particular recipient claim accrued within that period. To assure that recipient claims referred for tax offset fall within the IRS 10-year time frame and to provide State agencies a date which remains unchanged year to year, this rule proposes at section 273.18(g)(5)(ii)(D) that, except for claims reduced to final court judgments ordering individuals to pay the debt, FSP recipient claims may be submitted for tax offset only if the date of the initial demand letter is within 10 years of January 31 of the applicable offset year.

The August 1991 General Notice provided in paragraph b(3)(iii) that a claim was not delinquent if the household was making payments pursuant to an agreed upon schedule of payments as provided in 7 CFR 273.18(g)(2). This rule proposes at section 273.18(g)(5)(ii)(A)(*5*) that claims are past due and legally enforceable if the State agency is neither receiving voluntary payments pursuant to an agreed upon schedule of payments as provided in current FSP regulations at 7 CFR 273.18(g)(2) nor is receiving scheduled, involuntary payments such as wage garnishment. The Department proposes to add the second criterion because, as in the case of voluntary payment under an agreement with the State agency, the claim is being repaid regularly. Consequently, the claim should not be referred for collection under FTROP. The rule further proposes to specify that claims for which the State agency has received such payments are considered past-due and legally enforceable under FTROP 30 days after the due date for a regular payment which is not received.

Bankruptcy: As a condition of participating in FTROP, the IRS requires that Federal agencies annually sign a Memorandum of Understanding (MOU) which specifies the respective rights and responsibilities of the Department and the IRS. The MOU specifies that the (Federal) agency must certify to the IRS that collection on claims referred under FTROP is not limited by a bankruptcy filing. The August 1991 General Notice in paragraph b(5) applied this provision to State agencies. This rule proposes the same provision at section 273.18(g)(5)(ii)(A)(*6*). This subject matter is discussed in greater detail later in this preamble.

Notifications: The August 1991 General Notice specified in paragraph b(6), that State agencies could refer only those claims for which they had complied with all of the required FSP notification and review rights explained therein. This rule proposes the same requirement at section 273.18(g)(5)(ii)(A)(*7*).

In addition to these criteria, other criteria must be applied to determine if other recipient claims are past due and legally enforceable.

Other Collection Efforts: Many State agencies collect FSP recipient claims from refunds due individuals from overpayments of State income tax and other sources. The Department is concerned about over collections of claims referred for collection from State tax refunds for the same period they are subject to offset under FTROP. To avoid such over collections, the consequent temporary loss of funds to individuals and the need for State agencies to make refunds, this rule proposes at section 273.18(g)(5)(ii)(B)(*1*) that claims referred under FTROP must be reduced by any amounts referred for collection from State income tax refunds or from other sources which may result in collections during the offset year.

Combined Claims: During the test of FTROP, State agencies were allowed to combine two or more claims against an individual and to submit them as one claim. This rule at section (g)(5)(ii)(B)(*2*) would require that the date of the initial demand letter for each of the claims so combined be within the 10-year period specified in section 273.18(g)(5)(ii)(A)(*4*). The IRS requires that debts reduced to judgment be identified when they are submitted for offset. Consequently, judgment debts cannot be combined with claims which are not reduced to judgment. Accordingly, this rule would prohibit such combinations.

Split Claims: As discussed above, 7 CFR 273.18(a) provides that all adult household members are jointly and severally liable for recipient claims. In addition, 7 CFR 273.18(f), explicitly authorizes State agencies to attempt to collect claims from any household which contains an adult member of a household which received an overissuance. The 1991 General Notice in paragraph b(4) provided that claims could be submitted under FTROP for only one individual or in cases where more than one individual was jointly and severally liable for the claim pursuant to 7 CFR 273.18(a) and (f), the full amount of the claim could be apportioned between two or more liable individuals as long as the sum of the amounts submitted for all liable individuals did not exceed the total amount of the claim. The Department believes that it is unnecessary to state in the regulation that a claim for one individual is referable under FTROP. Consequently, this rule provides at section 273.18(g)(5)(ii)(B)(*3*) that claims may be referred under FTROP which are apportioned between two or more individuals who are jointly and severally liable for the claim pursuant to section 273.18(a) and section 273.18(f) on the condition that the total of the amounts submitted under FTROP for a particular claim do not exceed the amount of the claim.

Credit Bureau Reporting: Finally with regard to the criteria for determining claims referable under FTROP, the IRS at 26 CFR 301.6402–6(c)(6) specifies that, with certain exceptions, debts may not be referred unless they have been disclosed to a consumer reporting agency. In a letter to FCS dated March 25, 1991 the IRS waived this requirement for the FSP on the basis of the disclosure limitations in Section 11(e)(8) of the Act (7 U.S.C. 2020(e)(8)). Consequently, food stamp recipient claims are not referred to consumer reporting agencies as part of FTROP.

c. 60-Day Notice to Individuals. As codified at 31 U.S.C. 3720A(b), DEFRA requires that prior to referring a debt to the IRS for collection from Federal income tax refunds, a Federal agency must notify the person incurring such debt that the agency proposes to take such action and give the person at least 60 days to present evidence that all or part of the debt is not past-due or not legally enforceable. The August 1991 General Notice in paragraph c(1) required State agencies to provide this notice and required that it contain the information specified in paragraph d. of the General Notice. Accordingly, this rule proposes at section 273.18(g)(5)(iii)(A) that, prior to referring claims for collection under FTROP, the State agency provide individuals from whom it seeks to collect such claims with a notice, called a 60-day notice.

Required Information: Because of the importance of complying with the due process provisions of DEFRA, this rule proposes at section 273.18(g)(5)(iii)(B) that, with the exception of such State-specific information as names and positions and information required for contacts, a State agency's 60-day notice shall contain only the information specified in paragraph 273.18(g)(5)(iv) for the 60-day notice. Furthermore, the rule proposes that in the certification letters which must be submitted with final files of claims as stated in paragraph 273.18(g)(5)(vii), State agencies must include a statement that their 60-day notices conform to this requirement. State agencies which need to deviate from the required content of the 60-day notice would need to obtain FCS approval for a waiver to allow the deviation. FCS will provide State agencies with a format for the 60-day notice. The Department believes that this is consistent with Section 11(d) of the Act which prohibits the Secretary, as part of the approval process for a plan of operation, from requiring a State agency to submit for prior approval by the Secretary forms it will use to carry out the FSP.

The action group commented that the 60-day notice is likely to be confusing because several provisions are in technical language which many food stamp households may not possess sufficient reading skills to comprehend. The Department is aware that regulatory language can be technical, and this awareness was, in large part, why the August 1991 General Notice required State agencies to follow the format for the 60-day letter which FCS provided and why this rule proposes a similar requirement. In this regard, the action group also expressed concern about automated forms or forms printed in small type. The Department has received no complaints about such matters during the test but will monitor 60-day notices for legibility and will request State agency corrective action as necessary.

The August 1991 General Notice required in paragraph c(3) that State agencies mail 60-day notices no later than the date specified in operational guidelines issued by FCS for the particular offset year. October 1 was the specified deadline for mailing 60-day notices during the test of FTROP. This rule proposes at § 273.18(g)(5)(iii)(C) that, unless otherwise notified by FCS, the State agency must mail 60-day notices for claims to be referred for collection through FTROP no later than October 1 preceding the offset year during which the claims would be offset.

Addresses for 60-Day Notices: IRS regulations at 26 CFR 301.6402–6(c)(4) require that agencies participating in FTROP provide the debtor, or make a reasonable effort to provide the debtor with the required notice. IRS regulations at 26 CFR 301.6402–6(d)(1) state that use of the most recent address for the debtor provided by the IRS constitutes a reasonable effort to notify the individual about the intended referral for offset. The IRS provides such address information to State agencies during the annual pre-offset cycle. The last cited provision of the IRS regulations also states that the IRS-provided address must be used unless the State agency receives clear and concise notification from the taxpayer that notices from the agency are to be sent to an address different from the address obtained from the IRS. The IRS regulation provides that such clear and concise notification means that the

taxpayer has provided the [State] agency with written notification including the taxpayer's name and identifying number (which is generally an SSN), the taxpayer's new address, and the taxpayer's intent to have agency notices sent to the new address. This rule proposes at section 273.18(g)(5)(iii)(D) to include requirements on addresses for 60-day notices which are consistent with these IRS regulations.

During the test of FTROP several State agencies asked whether claims for which 60-day notices were returned as undeliverable for such reasons as "forwarding address unknown," could be referred for collection. To clarify this matter, this rule proposes at § 273.18(g)(5)(iii)(D) that claims for which 60-day notices addressed as required in that paragraph are returned as undeliverable should be referred for collection.

Finally in regard to addresses for 60-day notices, the August 1991 General Notice provided in paragraph c(4) that the 60-day notice could also be mailed to addresses from State agency files if the State agency believed that such addresses in its files were better than ones provided by the IRS. This policy caused confusion during the test. Some State agencies thought that if the 60-day notice sent to the IRS-provided address was returned, the claim could not be submitted under FTROP unless a second 60-day notice was sent. In view of this problem and the fact that the final IRS regulation requires the use of the IRS address unless the debtor has specifically requested that another address be used, this provision is not included in this proposed rule.

d. Contents of the 60-Day Notice. This rule proposes several changes in the content of the 60-day notice from that used during the test of FTROP. Among other things, these changes would provide individuals with more information about their liability for the claim, clarify the scope of individuals' right to have the intended collection action reviewed, and advise individuals about documents for showing that a claim is not past-due or legally enforceable.

Facts of the Claim; Authority for FTROP: The August 1991 General Notice required in paragraph d(1) that the 60-day notice first inform individuals that State agency records document that the individual, identified with his or her SSN, is liable for a specified, unpaid balance of a claim for overissued food stamp benefits, that the State agency previously notified the individual about the claim, made the required collection efforts, and that the claim is past-due and legally enforceable. To make clear that the claim was properly established, the August 1991 Notice also required that the 60-day notice state that State agency records documented the claim. The individual's SSN was required to help assure that the 60-day notice was sent to the correct individual. The information on the amount of the claim was required to comply with the IRS requirement at 26 CFR 301.6402–6T(b)(5) that the 60-day notice inform the debtor of the amount of the debt and that it was determined past-due and legally enforceable. The statement about previous notification and collection efforts was required to comply with the DEFRA requirement at 31 U.S.C. 3720A(b)(4) that agencies participating in FTROP satisfy the Secretary of the Treasury that they have made reasonable efforts to obtain payment of the debt (prior to referring it for collection through tax offset).

The August 1991 General Notice required in paragraph d(2) that the 60-day notice inform the individual that DEFRA authorizes the IRS to deduct debts (such as claims for overissued food stamp benefits) from tax refunds and that the State agency intends to refer the claim for such deduction unless the individual pays the claim within 60 days or makes other repayment arrangements acceptable to the State agency. As noted in the preceding section of this preamble, DEFRA contains these requirements at 31 U.S.C. 3720A(b).

This rule at §§ sections 273.18(g)(5)(iv) (A) and (B) would reorganize these statements and make some minor modifications in language, in particular to accommodate the proposed requirement that 60-day notices conform to the language specified in this rule. As did the 60-day notice used during the test of FTROP, the 60-day notice proposed here would first state that the State agency has records documenting that the individual, identified by name and SSN, is liable for the unpaid balance of the recipient claim(s) resulting from overissued food stamp benefits the State agency intends to refer for offset.

The 60-day notice would then state that the State agency has previously mailed or otherwise delivered demand letters notifying the individual about the claim, including the right to a fair hearing on the claim, and has made any other required collection efforts. The clause "previously mailed or otherwise delivered" would be used in the 60-day notice in order to be consistent with the recent revision of 7 CFR 273.18(d)(4) cited at the end of section B(1) of this preamble. The reference to the notice of the right to a fair hearing on the claim would serve as a reminder to the individual that the opportunity for a fair hearing has already been provided. The Department wants to include that reminder to help individuals understand why, as discussed below, the 60-day notice offers an opportunity for a review of whether the claim is referable, not an opportunity for a fair hearing.

This proposed rule would require at section 273.18(g)(5)(iv)(B) that the 60-day notice state that the Deficit Reduction Act of 1984, as amended by the Emergency Unemployment Compensation Act of 1991, authorizes the IRS to deduct such debts from tax refunds if they are past due and legally enforceable. The 60-day notice would then state that: (1) The State agency has determined that the debt is past due and legally enforceable according to the criteria specified by the Deficit Reduction Act of 1984, the IRS regulations and the Food Stamp Program (FSP) regulations; and (2) the State agency intends to refer the claim for deduction from the individual's Federal income tax refund unless the individual pays the claim within 60 days of the date of the notice or makes other repayment arrangements acceptable to the State agency.

Offset Fee: During the test of FTROP, the Department of the Treasury (Treasury) charged Federal agencies participating in FTROP a fee for each offset to cover Treasury's administrative costs for FTROP operations. For example, the fee for offset year 1995 is $8.79. Treasury plans to continue this practice. Treasury assesses the offset fee whether the offset satisfies all or only part of the debt. During the test of FTROP (including 1995), these fees were treated as allowable costs for the State agency. This has meant that State agencies and FCS each paid for half of each fee. For example, assuming a $100 claim and an $8 fee, if the IRS offset $100 from a tax return either because that was the amount of the recipient claim referred or because that was all the refund available for offset, the IRS would keep $8 and send FCS $92. FCS would report a $100 offset to the State agency which would credit that amount against the balance of the recipient claim. FCS would also report the $8 offset fee to the State agency which would claim 50 percent of that fee, or $4, as a reimbursable cost from FCS. The fees are costs which can be avoided if individuals pay their claims voluntarily in response to 60-day notices. Consequently, at § 273.18(g)(5)(iv)(C) this rule proposes that the 60-day notice state that if a claim is referred to the IRS, a charge for the administrative cost of collection will be added to the amount of the claim and any amount deducted from the tax refund will first be applied to pay the charge, with the balance applied to the claim, as explained further.

Under this proposal, in the case of a $100 claim and an $8 offset fee, a debt of $108 would be referred to the IRS. If that amount were available for offset, the IRS would keep $8 and send $100 to FCS who would transfer $100 to the State agency for credit against the claim. On the other hand, if only $50 were available for offset, the IRS would keep $8 and $42 would be credited against the claim. A balance of $58 would remain.

The 60-day notice would not cite the exact amount of the charge because during the test the IRS notified FCS of the amount of the offset fee during November, too late for the exact amount to be provided State agencies prior to the October 1 mailing of the 60-day notices. FCS plans to add the exact amount of the fee to each recipient claim submitted by State agencies in their certified files in early December. FCS would advise State agencies of the amount of the fee, but the fee must not be added to the amount of the claim as maintained in State agency food stamp case records. The State agency would ultimately advise the individual of the amount offset, including how much of the offset was applied to the fee and how much to the claim itself.

Joint and Several Liability: During the test of FTROP it was clear that the household composition of many individuals liable for claims subject to FTROP had changed and that some individuals did not understand that they were liable for the overissuances. Consequently, this rule proposes to require at § 273.18(g)(5)(iv)(D) that the 60-day notice advise individuals that all adults who are household members when excess food stamp benefits are issued to the household are jointly and severally liable for the value of those benefits, and that collection of claims for such benefits may be pursued against those individuals.

Action Group Comments: The action group made two comments which pertain to these initial statements in the 60-day notice. First, the group commented that the appeal process is defective because the individual is not given an opportunity to acknowledge that, while a debt is owed, it should not be collected through FTROP. The group cited the example of an individual who has entered into a repayment agreement with a State agency to repay a debt which the State agency in error refers under FTROP. The August 1991 Notice stated in paragraph b(3)(iii) that claims being repaid are not delinquent and so are not referable. This rule proposes that same information be given to individuals in the 60-day notice in two places. First, the rule would require at § 273.18(g)(5)(iv)(D) that the 60-day notice advise households that State agency records do not show that the debt is being repaid according to either a voluntary agreement with the State agency or through scheduled, involuntary payments. Second, as discussed below, the 60-day notice would state that evidence that a claim is being repaid is one type of evidence showing that a claim is not past due. The action group also commented that the individual is never informed that collection efforts concurrent with FTROP are not permissible and are grounds for appeal. The Department believes that the just discussed revisions to the language in the 60-day notice should make that point clear.

Also with regard to the initial statements in the 60-day notice, the action group commented that the 60-day notice as tested does not provide an opportunity for a hearing before the refund is seized because the notice does not state a definite intent to seize the refund. The action group went on to assert that this deficiency means that the FTROP procedures do not comply with due-process mandates and that the FTROP procedures should be withdrawn. The 60-day notice does state an intent to offset the debt against income tax refunds, and the notice fully complies with the requirements of DEFRA which provides, in part, that debts may not be referred to the Secretary of the Treasury for collection from income tax refunds until the Federal agency owed the debts notifies the debtors that the agency proposes to make such referral and provides the debtors 60 days to present evidence that all or part of the debt is not past-due or not legally enforceable (emphasis added). Of course, as the action group states, at the time of the 60-day notice it is not known whether or not there will be a tax refund available for collection. Based on experience during the test of FTROP, there is no confusion on the part of individuals about this matter. Immediately after 60-day notices are mailed, State agencies begin receiving telephone calls about the claims and the intended referral for offset, and individuals do file appeals.

State Agency Contact: The August 1991 General Notice required in paragraph d(3) that the 60-day notice include instructions about how to pay the claim, including the name, address and telephone number of a State agency contact able to discuss the claim and the intended offset with the individual. Such information is needed so that individuals will know how to contact the State agency and where to send payments. During the test of FTROP several State agencies raised concerns about personal safety because of the requirement to provide a name of an individual and/or the street address in the 60-day notice. In view of this concern, this rule proposes to require at § 273.18(g)(5)(iv)(E) that the 60-day notice provide the name of an office, administrative unit and/or individual, street address or post office box, and telephone number for the contact. The 1991 General Notice did not specify that the telephone number for the State agency contact must be toll-free or collect. In its publication "Guidelines for the Federal Tax Refunds Offset Program" (August 1992), Treasury requires such a telephone number on the 60-day notice. Accordingly, this rule would specify that requirement (at § 273.18(g)(5)(iv)(E)).

Requests for Review: The August 1991 General Notice required in paragraph d(4) that the 60-day notice inform the individual of six factors about appealing the intended collection action. Most of these factors are based on the requirements of DEFRA. This rule proposes to require that the 60-day notice address the same factors, modifying them based on experience during the test of FTROP.

The first such modification is the replacement of the term "appeal" with the phrase "request a review" or "review request." The rule proposes this change for two reasons. First, State agencies observed that the use of the word "appeal" in the 60-day notice gave individuals the impression that they were being offered the right to a full-fledged review of all aspects of the claim. Second, during the test of FTROP, several State agencies requested approval of 60-day notices which would offer debtors an opportunity for a fair hearing on the claim itself even though such an opportunity was provided with the initial demand letter. A second opportunity for a fair hearing may be appropriate in certain circumstances, but the Department does not believe that collection of a recipient claim through FTROP is such a circumstance. FTROP is one of several types of "other means of collection" for which 7 CFR 273.18(d)(4)(iv) provides authority, and State agencies do not offer a second fair hearing opportunity before initiating other collection actions such as small claims court proceedings or referral to a collection agency. The proposed

rephrasing should help clarify that an individual's "appeal" right is limited. For additional clarity, the rule proposes using the word "collection" instead of "offset." Accordingly, § 273.18(g)(5)(iv)(F) would require that the 60-day notice advise individuals that they have a right to request a review of the intended collection action.

The August 1991 General Notice required in paragraphs d(4)(iii) and (iv) that the 60-day notice state that claims that have been appealed (for which timely reviews have been requested) will not be referred for offset while under review, and that individuals must provide their SSN's with their appeals (review requests). The rule would make these same requirements at § 273.18(g)(5)(iv)(F). At that same place the rule would require that the review request be written because during the test of FTROP State agencies asked whether they had to review claims based on telephone inquiries. The Department wants to make clear to debtors and State agencies that an oral request, such as an inquiry made over the telephone, does not constitute a review request.

In this regard, the action group commented that the opportunity to appeal provided by the 60-day notice was not meaningful because, whereas recipients are accustomed to working with food stamp offices, the opposing party in this instance is the IRS. Requests for review are made to State agencies and FCS, not the IRS. Only requests to protect the tax refund of a non- liable spouse should be directed to the IRS, as discussed in detail below. During the test there were few reports from the IRS that individuals were contacting IRS offices instead of State agencies about appealing the intended collection from tax refunds. Nonetheless, to help make clear that appeals are directed to the State agency, this rule proposes at § 273.18(g)(5)(iv)(F) that the 60-day notice specify that requests for review be submitted to the State agency address provided in the notice. Requests for review will generally be submitted by mail, but the rule does not propose to require this. Individuals could provide the written requests in person.

DEFRA provides that individuals must be given 60 days to show a debt is not subject to FTROP. The August 1991 General Notice required in paragraph d(4)(ii) that the 60-day notice state that the State agency will not review appeals which it receives later than 60 days after the date of the 60-day notice. The provision was intended: (1) To make as clear as possible to individuals that the 60-day appeal period would be strictly adhered to; and (2) to relieve State agencies of the responsibility for reviewing appeals received after that period expires. This rule proposes at § 273.18(g)(5)(iv)(F) that the 60-day notice advise individuals that their request for review must be received with 60 days of the date of the 60-day notice. During the test of FTROP, after the 60-day period State agencies sometimes received documentation, for example, that the claim was paid. In such circumstances, as required by current food stamp regulations when an over collection is discovered, the State agencies were required to refund the over collection. Consistent with current food stamp regulations on refunding over collections of recipient claims, if after the 60-day notice an individual documents or otherwise demonstrates that the claim is not past due or legally enforceable, and the claim has already been collected from the individual's tax refund, the amount collected on the claim will be refunded.

Bankruptcy: The August 1991 General Notice required in paragraph d(5) that the 60-day notice advise individuals that they should inform the State agency if they believed that a bankruptcy prevents collection of the claim. During the test of FTROP several State agencies asked what documentation of bankruptcy was required. Bankruptcy law forbids requiring documentation of bankruptcy. This rule proposes at § 273.18(g)(5)(iv)(G) to restate the requirement that a claim is not legally enforceable if the individual indicates that a bankruptcy prevents collection of the claim.

Tax Refunds of Non-liable Spouses: The August 1991 General Notice required in paragraph d(6) that 60-day notices state that married individuals may want to contact the IRS in order to protect the refund in cases where spouses are not liable for the claim. This rule proposes this same requirement at § 273.18(g)(5)(iv)(H). That section would also inform the individual that his or her own liability for this claim, including any charge for administrative costs, may be collected from his or her share of a joint refund. The Department wants to make clear that the protection for a non-liable spouse's share of a tax refund against collection by tax refund offset does not extend to the liable spouse's share of the tax refund.

Documenting a Claim is "Not Referable": The August 1991 General Notice stated in paragraph d(4)(iv) that an appeal must provide evidence or documentation why the individual believes that the claim is not past-due or is not legally enforceable, and in paragraph d(4)(v) that an appeal is not considered received until the State agency receives such evidence or documentation. During the test of FTROP, State agencies asked whether they were required to review requests which did not contain any pertinent documentation. The Department believes that all timely, written review requests warrant consideration and a written response, as discussed later in connection with State agency action on review requests. The Department also wants to make clear to individuals that certain documentation is necessary to show that a claim is not subject to FTROP. Accordingly, this rule proposes at § 273.18(g)(5)(iv)(I) that 60-day notices inform individuals that if they request a review of the intent to collect the claim from their income tax refund, they should provide documentation showing at least one reason why the claim is not subject to FTROP and that if they cannot, for example, provide a cancelled check, they should explain in detail why they believe that the claim is not collectible under FTROP. This should allow individuals wide latitude to explain the particular circumstances of the claim and still require that they show some basis for why the claim is not past due and legally enforceable. The 60-day notice would be required at §§ 273.18(g)(5)(iv)(J) and (K) to list the reasons the claim is subject to collection under FTROP.

In the first two weeks after mailing out 60-day notices, State agencies typically receive a large number of telephone calls from individuals asking questions about the recipient claims and the intended collection action described in the notices. Many of these callers assert that they are not liable for the claim. The Department believes that providing individuals information in the 60-day notice about why their claims are subject to collection under FTROP will allow informal inquiries to be handled quickly and may reduce the number of such inquiries. This information should also help individuals decide what information they need to provide in order to substantiate that, for example, they have paid the claim or that the claim has been discharged in bankruptcy.

The action group made several comments concerning the requirements for documenting that a claim is not past due or is not legally enforceable. The group stated that the 10-year time limit for delinquent claims to be referable for tax offset results in an undue burden for documentation on low-income households and recommended that the Department shorten that period. On this matter the action group also commented that some households may have difficulty documenting that no debt is owed. To the same effect, the action group commented that recipients may not have evidence to rebut the intended collection action or the claim itself. They cited the example of a household member alleged to have had unreported earnings (which would have resulted in an overissuance) who is unavailable when the 60-day notice is received. The Department recognizes that recordkeeping for low-income households may be relatively difficult, especially perhaps, as the action group remarks, because low-income households may move relatively often and may have relatively limited resources to devote to household recordkeeping. The Department does not believe that shortening the 10-year period would address this difficulty. The Department believes that it must require a minimum level of documentation that a claim is not past due or is not legally enforceable and that the proposed rule states that minimum level. With respect to rebutting the claim itself, since only IHE and IPV claims which are properly established are subject to FTROP, the household has already been offered an opportunity to rebut the claim itself in fair hearings or administrative disqualification hearings.

The action group also commented that in other contexts households present evidence and the State agency has the burden of defending its actions. The Department understands that by "other contexts" the action group is referring to fair hearing and disqualification hearing procedures. As just discussed, those procedures are part of the process of establishing a claim. Once a claim is established, due process requires permitting the individual an opportunity to establish that the claim is not past due or legally enforceable (is not subject to collection under FTROP). Due process does not require permitting a second opportunity to challenge the substantive basis for the claim.

e. State Agency Action on Requests for Review. DEFRA requires at 31 U.S.C. 3720A(b)(3) that any evidence presented by debtors must be considered and a determination made whether the debt is past-due and legally enforceable. The IRS requires at 26 CFR 301.6402–6(d)(2) that the participating agency notify the debtor of its decision. The August 1991 General Notice required in paragraph e(1) that when a State agency examines documents or evidence submitted with a review request, it determine whether the claim is past due and legally enforceable and notify the individual of its decision in writing. Consistent with the requirements concerning State agency action on review requests already discussed, this rule proposes at § 273.18(g)(5)(v)(A) that State agencies act on all written requests for reviews received within the 60-day period for timely review requests, determine whether or not such claims are past due and legally enforceable, and notify individuals in writing of the result of such determinations.

Section 273.18(g)(5)(v)(B) of this rule proposes that the State agency determine whether or not claims are past-due and legally enforceable based on a review of its records and of documentation, and evidence or other information the individual may submit. The provision in the August 1991 General Notice at paragraph e(2) which contained examples of types of documentation or evidence has been eliminated as unnecessary.

During the test of FTROP State agencies indicated confusion about whether they were required to respond to review requests which contained inadequate or no documentation. To address this concern, this rule proposes to add at § 273.18(g)(5)(v)(C)(*1*) the requirement that the decision letter advise the individual of the reason for the State agency's decision, including the failure to provide adequate evidence or documentation that the claim was not past due and legally enforceable.

The August 1991 General Notice required in paragraph (e)(3)(i) that if the State agency decides a claim is past-due and legally enforceable, the State agency must inform the individual in its written decision that it intends to refer the claim for offset. This rule would make the same requirement at § 273.18(g)(5)(v)(C)(*2*).

Information About FCS Reviews of State Agency Decisions: The IRS regulations at 7 CFR 301.6402–6(d)(2) provide that if the review is conducted by an agent of the Federal agency, in this case the State agency, the individual must be accorded at least 30 days from the agent's determination to request a review by the Federal agency. The August 1991 General Notice required in paragraph e(3)(ii) that the State agency's notice of decision inform the individual that he or she is entitled to ask FCS to review the State agency's decision but that FCS would not review such decisions if it received a request to do so later than 30 days after the date of the State agency decision notice.

Consistent with the August 1991 General Notice, this rule proposes to require at § 273.18(g)(5)(v)(C)(*3*) that the State agency decision advise that the individual has 30 days from the date of the State agency decision to request that FCS review the State agency's decision. If FCS review is timely requested, FCS will provide the individual a written response stating its decision and the reasons for its decision. Consistent with the IRS regulation cited just above, this rule also proposes at § 273.18(g)(5)(v)(C)(*3*) that individuals be advised that the claim will not be referred for offset pending FCS review of the State agency's decision.

The 1991 General Notice required in paragraph e(iii) that the State agency decision: (1) advise the individual that a request for an FCS review must include his or her SSN; (2) be sent to an FCS regional office; and (3) provide the address of that office including a line reading "Tax Offset Review." The purpose of this requirement was to help FCS obtain the correct records from the State agency, to provide individuals the address to which to send their requests for FCS reviews and to identify those requests to regional offices so that action could be taken promptly. This rule would make that same requirement at § 273.18(g)(5)(v)(C)(*4*).

The August 1991 General Notice specified in paragraph e(4) that if the State agency determines that the claim is not past-due or is not legally enforceable, in addition to notifying the individual that the claim will not be referred for offset, the State agency must take any actions required by food stamp regulations with respect to establishing claims and/or holding appropriate hearings, or other required recipient claim actions. The purpose of this requirement was to make sure that State agencies: (1) Corrected any errors in their processing of claims in question; and (2) took actions to properly establish claims and to initiate collection action. Aside from some editorial changes, this rule proposes the same requirement at § 273.18(g)(5)(v)(D).

The August 1991 General Notice specified in paragraph e(5) three groupings for timely appealed claims which could not be referred for offset. Guidance on treatment of the first group, claims which a State agency determines are not past-due or are not legally enforceable, has just been discussed. The third group is claims which FCS either determines are not past due or not legally enforceable, or for which FCS does not complete its review before State agency final files were due. State agency action on these claims is discussed later in this preamble in connection with the certification letter to FCS.

State Agency Reviews not Complete by October 31: The second of the three groups is those claims for which the State agency does not complete its review and notification to the

individual at least 30 days prior to the deadline for the State agency to certify its final file of claims for offset to FCS. The deadline for this final file is in early December. During the test State agencies indicated that they did not understand that if, for example, a review request was received in mid-November, even if the State agency review determined that the claim was past due and legally enforceable, it could not be referred. These claims are not referable because there is not a 30-day opportunity for the individual to appeal to FCS before the deadline for the State agency to refer its final files to FCS. As explained above, IRS regulations at 26 CFR 301.6402–6(d)(2) state that if the review is conducted by an agent of the Federal agency (in this case, the State agency), the individual must be accorded at least 30 days from the agent's determination to request a review by the Federal agency.

To accommodate the schedule for State agency final files and the 30-day opportunity which must be provided individuals to request a Federal-level review, this rule proposes at § 273.18(g)(5)(v)(E) that State agencies cannot refer for offset any claim for which a review request is received unless, by October 31 preceding the offset year, the State agency has completed its review of the claim, determined that the claim is past due and legally enforceable, and provided the individual with its decision. The Department believes that this proposal will not have a major impact on the number of claims referred for FTROP. During the test of FTROP most review requests were received relatively early in the 60-day period provided for those requests.

Some review requests will be received too late for the October 31 deadline but within the 60 days provided for timely review requests. As during the test, such claims are not referable for offset in the immediately upcoming offset year. In such situations State agencies should review the request and provide individuals their decisions on whether the claim is past due and legally enforceable and subject to collection by tax refund offset. Such claims could then be included in the processing cycles for the succeeding offset year.

f. FCS action on Appeals of State Agency Reviews. The August 1991 General Notice provided in paragraph f(1) that FCS would not review State agency decisions on review requests when it received such requests later than 30 days after the date of the State agency decision on the original review. This rule proposes at § 273.18(g)(5)(vi)(A) that FCS act on all timely requests for FCS review of State agency review decisions, and that such a request is timely if it is received by FCS within 30 days of the date of the State agency review decision.

The August 1991 General Notice stated in paragraph f(2) that when FCS received timely requests for reviews of State agency decisions, FCS would either: (1) Complete the requested review and notify the State agency and individual of its determination; or (2) notify the State agency that FCS had not completed its review and that the State agency must delete the claim from its final files certified to FCS for referral for offset. This rule proposes the same actions at § 273.18(g)(5)(vi)(B). In addition, this rule proposes at § 273.18(g)(5)(vi)(B) that FCS provide funds to refund the charge for the offset fee if FCS is late in notifying the State agency to delete a claim, where FCS finds that the claim is not referable and the claim is offset because of the late notification. For timely requests for review received by FCS, where the State agency's decision is dated after October 31 prior to the offset year, FCS will complete its review and notification of the results of its review, but the claim shall not be referred for offset in the immediately upcoming offset year, as specified above. This proposal is found at § 273.18(g)(5)(v)(E) and § 273.18(g)(5)(vi)(C).

The August 1991 General Notice stated in paragraph f(3) the components of FCS reviews of State agency decisions on review requests. Those components were: (1) Requesting documentation from the State agency about the appeal; (2) determining the correctness of the State agency decision; and (3) notifying the individual and State agency of this determination. The August 1991 General Notice stated in paragraph f(3)(iii)(A) that if FCS determined that the State agency was correct (the claim was past due and legally enforceable), FCS would also notify the individual that any further appeals must be made through the courts. The August 1991 General Notice stated in paragraph f(3)(iii)(B) that if FCS determined that the State agency determination that the claim was past due and legally enforceable was incorrect, FCS would request that the State agency take appropriate corrective action. This rule would include these provisions, slightly modified, at § 273.18(g)(5)(vi)(D), (E) and (F). The rule proposes to specify the types of documentation FCS would request from State agencies. These items are consistent with the documentation State agencies would be required to have in order for a claim to be considered referable for collection through FTROP. The types of documentation are: printouts of electronic records and/or copies of claim demand letters, results of fair hearings, advance notices of disqualification hearings, results of such hearings, records of payments, 60-day notices, the review requests and documentation, decision letters, and pertinent records of such things as telephone conversations.

g. Referral of Claims for Offset. The August 1991 General Notice required in paragraph g(1) that State agencies comply with FCS operating guidelines when submitting certified files of claims for tax offset. As discussed earlier in this preamble, this rule proposes replacing the requirement for compliance with operating guidelines with the requirement that State agencies submit data in the format and schedules provided by FCS. Accordingly, this rule at § 273.18(g)(5)(vii)(A) would require that State agencies submit certified files by the date specified by FCS. The August 1991 General Notice required in paragraph g(2) that, by the date specified in the FCS guidelines, State agencies certify in writing to FCS that all claims in the final files of claims meet the requirements for referral under FTROP, including the issuance of all due-process notifications to individuals. This rule proposes at § 273.18(g)(5)(vii)(A) to require this certification letter and statement. The letter and statement are necessary because the IRS requires that Federal agencies provide the IRS such letters and statements with their certified files. In addition, this rule proposes at § 273.18(g)(5)(vii)(A) to require that the certification letter also state that the State agency has not included in the certified file of claims any claim which, as provided in paragraph (g)(5)(vi) of this section, FCS notified the State agency is not past due or is not legally enforceable, or any claim for which FCS notified the State agency that it has not completed its review.

As discussed earlier, the rule proposes to require that State agencies state in the certification letter that their 60-day notice complies with IRS and FCS requirements. State agencies must provide FCS copies of the formats for these letters as required by current food stamp regulations requiring submittal to FCS of State agency operating guidelines and forms. (See 7 CFR 272.3(b)(2).)

The August 1991 General Notice required in paragraph g(3) that State agencies provide the name, address and telephone number of State agency contacts to be included in the notices of offset which IRS sends taxpayers whose

refunds have been offset, and also required that State agencies update that information if and when it changed. This information is the "Agency Address File." The IRS is especially concerned that this information be accurate and requires Federal agencies to specify how they determined that the information provided for contacts is accurate. This rule proposes at section 273.18(g)(5)(vii)(B) that State agencies provide the contact information, state in the certification letter how they determined that the contact information was accurate and update the information as necessary. The IRS also wants the contact telephone number to be toll-free or collect, and the rule would make this a requirement.

h. State Agency Actions on Offsets Made. The August 1991 General Notice required in paragraph h(1) that promptly after receiving notices of offset from the IRS, State agencies were required to notify individuals about offsets made and the resulting status of the claim. The Department required this so that individuals would know the status of the claim against them. State agencies were also required to promptly refund any erroneous offsets made and to do so as close in time as possible to the notice of offset. This rule proposes these same requirements at § 273.18(g)(5)(viii). In addition, that section would require that State agencies inform individuals of the amount of the offset collected to pay the offset fee.

The action group complained that the Department has not offered procedures to compel a State agency to return funds that have been wrongfully offset by the IRS. This is incorrect. Current food stamp regulations at 7 CFR 273.18(i)(4) require that State agencies return overpayments of claims as soon as possible after such overpayments become known. To help clarify that the refund procedure for claim overpayments under FTROP is the same as for other overpayments, the proposed rule would cite that provision at § 273.18(g)(5)(vii)(B). In this regard, the action group cited the example of a debtor who has successfully appealed the referral of a claim which is then erroneously referred and offset. Should this happen, since the debtor would have been notified about both the State agency decision and the offset, a telephone call should be sufficient to bring the error to the State agency's attention and to obtain a refund of the over collection.

Responsibility for Offset Fees for Erroneous Offsets: In the case discussed in the preceding paragraph, the claim was referred and offset because of a State agency error. In such cases, the Department believes that the offset fee should be refunded to the individual and that the cost of the fee should be considered an allowable administrative expense of the State agency. Accordingly, this rule proposes at § 273.18(g)(5)(viii)(C) that if an over collection from an individual's Federal income tax refund is due to the State agency including in the certified file of claims required by § 273.18(g)(5)(vii)(A) a claim which does not meet the criteria specified in § 273.18(g)(5)(ii), such refund shall include any amounts collected to pay for the offset fee charged by the IRS. The section would further specify that the State agency may claim any such amount as an allowable administrative cost under Part 277 of this chapter. As a consequence of this provision, State agencies and FCS would each pay fifty percent of the cost of these offset fees.

Further in regard to refunds of offset fees, under this proposed rule the 60-day notice would advise individuals that spouses who are not liable for recipient claims can prevent offsets against their share of a tax refund by filing the appropriate form with the IRS when they file their tax return. If they do so and the entire tax refund is theirs, no offset will occur, and no administrative charge will be incurred. If the appropriate IRS form is submitted after the tax return is filed, an offset may occur. If it does, the IRS will refund the collection to the non-liable spouse, including the administrative charge. The IRS may refund offsets, including offset fees, to taxpayers for reasons other than a non-liable spouse. In all cases of such IRS refunds, the Department will pay the administrative charge, and the amount of the claim will be charged to the State agency. Consequently, this rule also proposes at § 273.18(g)(5)(viii)(C) that State agencies will not be responsible for refunding the charges for offset fees incurred for IRS reversals of offsets when, for example, the IRS refunds amounts offset, including offset fees, to taxpayers who properly notified the IRS that they are not liable for claims which were collected in whole or part from their share of a joint Federal income tax refund. In cases where part of the tax refund due on a joint tax return is attributable to an individual who is liable for the food stamp claim, the liable individual's portion would be subject to offset and the offset fee could be collected from the individual.

i. Monitoring and Reporting Offset Activities. The August 1991 General Notice required in paragraph i. that State agencies monitor offset activities to accomplish the various requirements of the tax offset program. Particular emphasis was given to the need for State agencies to update IRS files by reducing the amounts of claims and deleting claims to reflect voluntary payments and other events so that IRS records would reflect the current status of the claim. This rule proposes to make this a requirement at § 273.18(g)(5)(ix)(A). This rule also proposes at § 273.18(g)(5)(ix)(B) that State agencies monitor FTROP activities to assure that refunds of over collections are made promptly.

During the test of FTROP State agencies were required to submit a "management report" with their certified files. The report provided data to FCS on such things as numbers of 60-day notices sent and the volume of informal inquiries. This rule proposes at § 273.18(g)(5)(ix)(C) to eliminate this report and instead require that by the tenth of October of the year prior to the offset year State agencies report in writing to the FCS regional office the number of 60-day notices mailed and the total dollar value of associated claims. The Department wants this information as a basis for measuring collections through both voluntary repayments and offsets.

The rule proposes at § 273.18(g)(5)(ix)(D) that State agencies report on two matters as required by the IRS. State agencies participating in the test of FTROP were required to make these reports, and the information collection burdens associated with both were included in the burden estimate discussed earlier in this preamble. One reporting requirement relates to data security as required by the IRS in its publication Tax Information Security Guidelines for Federal, State and Local Agencies. Currently two reports are required. One is the Safeguard Procedures Report, which State agencies are required to submit in the initial year of their participation. The second is the Safeguard Activity Report, which all State agencies are required to submit annually. FCS provides State agencies copies of the IRS publication just cited and guidance on annual due dates and related matters. The IRS also requires quarterly reports of voluntary collections. The rule would require that State agencies provide that information as required by FCS. FCS provides State agencies the format for this report.

During the test State agencies were required to report collections under FTROP, both voluntary and by actual offset from tax refunds, on the appropriate Form FCS–209, Status of Claims Against Households. This rule would include that requirement at § 273.18(g)(5)(ix)(E).

C. Federal Salary Offset

1. Authorities for Salary Offset

The Debt Collection Act of 1982 (Public Law 97–365), amended 5 U.S.C. 5514 to authorize Federal agencies to offset the salaries of Federal employees who are delinquent on debts owed to the Federal government. The Office of Personnel Management (OPM) implemented 5 U.S.C. 5514 by promulgating regulations at 5 CFR 550.1101–1108 (Collection by Offset from Indebted Government Employees). Pursuant to 5 U.S.C. 5514(b)(1), the Department promulgated regulations at 7 CFR 3.51 through 3.68 implementing salary offset. Departmental regulations at 7 CFR 3.68 delegate to individual USDA agencies the authority to act for the Secretary under those regulations and to issue regulations or policies not inconsistent with the Departmental regulations and with the OPM regulations. Section 13941 of the Omnibus Budget Reconciliation Act of 1993 (Public Law 103–66, signed August 10, 1993) authorizes disclosure of food stamp casefile information to Federal agencies for purposes of collecting recipient claims (except those caused by State agency errors) from Federal salaries.

A test of salary offset is currently being conducted under a General Notice published August 29, 1994 at 59 FR 44400. Section 17(b)(1) of the Act (7 U.S.C. 2026(b)(1)) authorizes the Secretary to conduct such projects to test program changes that might increase the efficiency of the FSP. The provisions of this proposed rule relative to salary offset are substantially the same as the provisions of the August 1994 General Notice on salary offset. The Department intends to use experience from the test of salary offset as well as comments on this proposed rule in developing the final salary offset regulations.

Pursuant to Section 13 of the Act (7 U.S.C. 2022), and subject to the standards of FSP regulations at 7 CFR 273.18, the authority to settle claims against households has been delegated to State agencies at 7 CFR 271.4(b). Food stamp coupons issued pursuant to the Act are deemed to be obligations of the United States (7 U.S.C. 2024(d)). Under these statutes and regulations, State agencies establish FSP recipient claims, and collect and maintain records of those claims. State agencies return amounts collected to the Federal government, less a statutory "retention amount" established to encourage collection of recipient claims (7 U.S.C. 2025(a)).

This rule proposes to incorporate the requirements of Departmental regulations on salary offset (7 U.S.C. 3.51 *et seq.*), and to supplement and modify these procedures to the extent necessary to accommodate the position of State agencies as primarily responsible for establishing, collecting and maintaining records on recipient claims. These additions and modifications are consistent with OPM regulations on salary offset.

2. Overview of Salary Offset Procedures for the FSP

Under this proposed rule, salary offset would have three phases and be operated on an annual cycle. In the first phase, FSP recipient claims would be matched against records of all active Federal civilian and military employees, including United States Postal Service (USPS) employees. The recipient claims so matched would be compiled from lists of recipient claims provided by State agencies as part of FTROP procedures. The Federal employee records are maintained by the Department of Defense (DoD) and the USPS. The match would identify Federal employees and their employing agencies, and would provide employee and employing agency addresses to FCS. This match would be conducted in accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a). As required by that statute, the public has been advised of this matching program by the publication of three General Notices. A General Notice was published September 17, 1993 at 58 FR 48633 advising the public of the systems of records involved. A second General Notice was published March 1, 1994 at 59 FR 9733 advising the public of the match with DoD. A third General Notice was published August 17, 1994 at 59 FR 42205 advising the public about the match with the USPS. Recipient claims which these matches identify as obligations of Federal employees will not be referred to the IRS for collection through FTROP.

During the second phase of food stamp salary offset procedures, recipient claims identified in the match would be referred to State agencies. After a review of their records to determine if those recipient claims are still owed and if so their correct amounts, State agencies would send the identified Federal employees advance notices of salary offset (advance notices). The advance notice would provide these individuals 30 days to voluntarily pay the claim or provide documentation that all or part of the claim is not legally collectible. Claims which are not paid, or for which replies are late or do not provide adequate documentation, would be referred to the FCS National Office for collection by salary offset.

In the third phase of salary offset, by means of a notice of intent, FCS would notify Federal employees owing recipient claims referred by State agencies that FCS intends to collect the debt from the employees' salaries. The notice of intent would include information about appeal rights, pertinent time frames and other information which is required for that notice by Departmental regulations on salary offset. Subject to the responses to notices of intent, FCS would proceed with action to collect the debts. FCS would follow the collection procedures in the Departmental rule on salary offset as those procedures would be modified by this rule.

3. Discussion of Proposed Regulatory Provisions for Salary Offset

a. Claims Subject to Salary Offset. This rule proposes at § 273.18(g)(6)(i) that all claims submitted by State agencies participating in FTROP would first be subject to the matching procedures proposed in this rule. Those procedures would identify which of those claims are owed by Federal employees. Individuals so identified would be subject to the salary offset procedures proposed in this rule in lieu of having their claims referred for collection under FTROP. Consequently, all State agencies participating in FTROP would also be required to participate in salary offset.

b. Identification of Recipient Claims Owed by Federal Employees. The rule at § 273.18(g)(6)(ii)(A) would specify the steps of phase one of salary offset.

The Department wants to ensure that State agencies protect information they receive from DoD and USPS from the time they receive it. Consequently, at § 273.18(g)(6)(ii)(B) this rule would provide that when FCS receives Federal employment information for a particular State agency, it would first notify the State agency in writing accompanied by a data security and confidentiality agreement for the State agency to sign and return. When that agreement is returned, FCS would then provide the information to the State agency. Concurrently with publication of this rule, FCS is providing State agencies a sample notification letter with the language of the data security and confidentiality agreement.

The matching of State agency recipient claims with DoD and USPS data files would be conducted under the terms of Memorandums of Agreement (Agreements) between USDA and DoD, and between USDA and the USPS. The Agreements require that if the records obtained from DoD and the USPS are disclosed to a State or local agency, those entities must agree in writing to abide by the data security and confidentiality protection measures specified in the Agreements. This rule at § 273.18(g)(6)(ii)(C) would specify those protection measures and require that State agencies extend them to any contractors or other non-State agency entities to which the records may be disclosed. The requirements are typical data security and usage controls, and should require minimal State agency resources.

This rule would require at § 273.18(g)(6)(ii)(D) that, prior to taking additional action to collect claims from Federal employees, State agencies must review those claims to verify the amount of the recipient claim owed, and to remove any claims which have been paid, are being paid or which for other reasons are not collectible through salary offset. The rule would require this review to verify that the individual identified in the match owes an FSP recipient claim and that the amount of the claim is correct.

c. State Agency Advance Notice of Salary Offset. This rule proposes to require at § 273.18(g)(6)(iii)(A) that, following the review just described, State agencies provide each Federal employee verified as owing a recipient claim (debtor) with an advance notice of salary offset (advance notice). This advance notice would provide the debtor certain information about the recipient claim and would offer the debtor an opportunity to pay the claim voluntarily. Although the debtor would have been offered an opportunity to pay the claim voluntarily in the initial claim demand letter required by food stamp regulations at 7 CFR 272.18(d)(3), the Department is proposing to provide a second voluntary payment opportunity for several reasons. This opportunity would offer debtors a way to repay recipient claims without involving their employing agencies. It would provide State agencies a way to collect such claims without the delay which salary offset entails. Furthermore, recipient claims paid voluntarily to State agencies would save the Federal government the administrative cost of the actual salary offset.

The Department wants State agency collection efforts to proceed promptly. Consequently, this rule proposes at § 273.18(g)(6)(iii)(A) that advance notices must be mailed or otherwise provided to debtors at the addresses provided by FCS within 60 days of State agency receipt from FCS of the list of recipient claims owed by Federal employees. The addresses would be those which DoD and USPS would provide through the matching program. The 60-day period should allow State agencies sufficient time to integrate this task into related administrative processes with the addition of minimal resources.

The rule proposes that recipient claims owed by Federal employees who do not voluntarily pay them directly to the State agency in response to the advance notice would be collected through salary offset. Consequently, it proposes at § 273.18(g)(6)(iii)(B) that within 90 days of the date of the advance notice State agencies refer to FCS all claims for which the State agency does not receive timely and adequate response. The advance notice would allow debtors 30 days to respond to State agencies. The 90-day period would give State agencies 60 days beyond that time frame to refer claims to FCS. This rule proposes that the referral from State agencies would consist of a copy of the advance notice and copies of records relating to the claim. This rule would specify that copies of records relating to the claim would consist of copies of printouts of electronic records and/or copies of claim demand letters, results of fair hearings, advance notices of disqualification hearings, the results of such hearings, records of payments, review requests and documentation, decision letters, and pertinent records of such things as telephone conversations. (This is substantially the same requirement which is proposed for the documents State agencies must submit to FCS for requests for FCS reviews of State agency decisions on referrals of claims under FTROP.)

This rule specifies at § 273.18(g)(6)(iii)(C) the proposed content of the advance notice. (Concurrently with publication of this rule, FCS is providing State agencies a sample format for the advance notice.) First, at § 273.18(g)(6)(iii)(C)(*1*) this rule proposes to require that the advance notice state that, according to State agency records, the debtor is liable for a recipient claim for a specified dollar amount due to receiving excess food stamp benefits. State agencies would be encouraged to include as much other information about the claim as possible, including such things as whether the claim was caused by household error or intentional Program violation, the date of the initial demand letter, any hearings or court actions which related to the claim and what, if any, payments have reduced the amount of the original claim.

This rule proposes at § 273.18(g)(6)(iii)(C)(*2*) that the advance notice state that the debtor was found through a computer match to be employed by a Federal agency and state the name and address of the employing agency. The advance notice would also state that the computer match was conducted according to procedures required by the Privacy Act of 1974, as amended. This information would be required so that debtors know the source of the information about their employment and that it was obtained under authority of law.

This rule proposes at § 273.18(g)(6)(iii)(C)(*3*) that the advance notice further advise debtors that the authority to collect debts such as food stamp recipient claims from Federal salaries is the Debt Collection Act of 1982. The advance notice would also state that the subject claim will be referred to FCS for such collection action unless, within 30 days of the date of the advance notice, the State agency receives payment in full or an acceptable installment payment on the claim. With respect to payments, this rule proposes that the advance notice state several things. First, claims of $50 or less must be paid in full within 30 days or they will be referred to FCS for collection from the debtor's Federal salary. Second, claims of more than $50, if not paid in full within 30 days, must be paid in installments of at least $50 a month, and debtors may pay more than $50 in any installment payment. Third, the advance notice must state the monthly due date of installment payments for the claim and that if a monthly installment payment of at least $50 is not received by the monthly due date, the claim will be referred to FCS for salary offset with no further opportunity to enter a voluntary repayment agreement. (See sections 273.18(g)(6)(iii)(C)(*3*)(*i*), (*ii*) and (*iii*).)

This rule proposes at section 273.18(g)(6)(C)(*4*) that the advance notice must also provide the name, address and a toll-free or collect telephone number of a State agency contact (an individual or unit) for payment and/or discussion of the claim. The 1994 General Notice on salary offset did not require a toll-free or collect telephone number, but the Department believes that such a number is necessary because individuals owing recipient claims may live outside the State which established the claim. State agencies could use the same number provided individuals in the 60-day notice for FTROP.

The advance notice would also advise debtors that they may submit documentation to State agencies

showing such things as payment of all or part of the claim, or other circumstances which would prevent collection. Second, unless the State agency receives such documentation within 30 calendar days of the date of the advance notice and the documentation clearly shows that the claim has been paid or is not legally collectible, the State agency would refer the claim to FCS for collection from the debtor's salary. Third, State agencies would notify debtors in writing when claims will not be referred for collection from salaries. Fourth, the advance notice would state that debtors have the right to a formal appeal to FCS, and that notification about how to make such an appeal is required and will be provided to debtors before any collection action from salaries is taken. (See § 273.18(g)(6)(iii)(C)(5).)

d. State agency retention and reporting of collections. For purposes of calculating amounts of collections which State agencies retain, this rule proposes at § 273.18(g)(6)(iv)(A) that all claims collected under the salary offset provisions of this rule would be treated as if they were collected by the State agency. Specifically, this rule would provide that, for recipient claims paid voluntarily and through salary offsets, State agencies would retain collections at the rates specified at 7 CFR 273.18(h) for the appropriate reporting period for Form FCS–209, Status of Claims Against Households. The rule would also provide at § 273.18(g)(6)(iv)(A) that from time to time as volume warrants, FCS will provide reports and also transfer amounts collected from salaries to State agencies. State agencies would include the collections on the appropriate FCS–209 report. This rule would not require that collections on salary offset claims be identified separately on the FCS–209 from other collections of recipient claims. The Department can determine the levels of such collections based on the number and dollar values of claims which FCS refers to State agencies and the number and dollar values of claims which State agencies refer back to FCS because debtors do not respond or respond inadequately to advance notices.

In this regard, the rule proposes at § 273.18(g)(6)(iv)(B) that if a debtor fails to make an installment payment, within 60 days of the date the payment was due, State agencies would refer the claim to FCS, reporting the default, the dollar amount collected and the balance due. In the August 1994 General Notice initiating the test of salary offset, this period is 90 days. The Department believes that 60 days should be adequate for State agencies to refer claims to FCS when Federal employees default on payments of them.

e. FCS Actions on Claims Referred by State Agencies. This rule proposes at § 273.18(g)(6)(v) that, subject to certain modifications described below, Departmental procedures at 7 CFR 3.51–3.68 will apply to claims referred by State agencies to FCS for salary offset.

Three additions would be made to the definitions set forth at 7 CFR 3.52. The term "debts" would be further defined to include recipient claims established according to 7 CFR 273.18, and the terms "State agency" and "FCS" would be defined as set forth in 7 CFR 271.2. (See section 273.18(g)(6)(v)(A).)

The Departmental rules require that, using the Notice of Intent to Offset Salary (notice of intent) set forth at 7 CFR 3.55, the Department provide notice to the debtor 30 days prior to offsetting the debtor's salary. This rule proposes at § 273.18(g)(6)(v)(E) that this procedure and the notice of intent specified at 7 CFR 3.55 be used for FSP recipient claims as described below.

The provisions of the notice of intent are largely self- explanatory. The notice of intent sets forth the amount of the debt and the facts which gave rise to it, and describes how the actual offset will be conducted, including the frequency and amount of salary deductions. The notice of intent advises the debtor about the method and time period for requesting a hearing and that a timely hearing request will stay the collection proceedings. The notice of intent also advises how the hearing will be conducted and the time frame for issuance of decisions. It also advises the debtor of the penalties for making or submitting any knowingly false or frivolous statements, representations or evidence.

The rule proposes at § 273.18(g)(6)(v)(B), (C), and (D) to modify three sections of the notice of intent in order to apply that notice to FSP recipient claims. First, 7 CFR 3.55(d) requires that the notice of intent explain the Department's requirements regarding payments of interest, penalties and administrative costs, unless such payments are waived in accordance with 31 U.S.C. 3717 and 7 CFR 3.34. These charges would be waived as explained in detail below. Accordingly, the notice of intent for FSP recipient claims would not include an explanation of these charges. Second, 7 CFR 3.55(e) requires that the notice of intent explain the debtor's right to inspect and copy Department records relating to the debt. As explained below, for FSP recipient claims, the notice of intent would also include an explanation of the right to request and receive copies of the records from the Department, and a statement of the time for making such a request which is established under 7 CFR 3.60(a). Third, 7 CFR 3.55(f) requires that the Department's notice of intent advise the debtor of the procedures for proposing a repayment agreement in lieu of salary offset. As explained below, this explanation and procedure would not be included in the FSP notice of intent.

Departmental regulations at 7 CFR 3.65 and 3.55(d) set forth the procedures for charging interest, penalties, and administrative costs for salary offset. As discussed above, this rule proposes at § 273.18(g)(5)(iv)(C) that the offset fee assessed by the IRS for collections under FTROP be paid by the debtor out of funds collected through FTROP. Other than in this proposed regulation, FSP regulations do not authorize collection of interest, penalties or administrative costs for FSP recipient claims. Accordingly, there are no administrative mechanisms in place for the assessment and notice of such charges. The Department believes that it would not be administratively cost effective or feasible to establish such mechanisms at this time but may consider them at some future date. Therefore, pursuant to 7 CFR 3.34(c)(4), the Secretary has determined that collection of such charges is not in the best interests of the United States, and the rule proposes to waive collection of such charges. Accordingly, as noted above, the FSP notice of intent would not include an explanation of interest and related charges.

Departmental regulations at 7 CFR 3.60 set forth procedures for the review of Departmental records relating to debts to be collected by salary offset and provide that, upon a timely request, the Department will permit debtors to inspect and copy those records. This rule proposes at § 273.18(g)(6)(v)(E)(*1*) that, for purposes of FSP salary offset, the debtor may also request that the Department provide copies of the records. The Department believes that this offer is appropriate because these records will be located at the FCS National Office while debtors are located throughout the country. The rule proposes that, for their requests to be considered timely as provided in 7 CFR 3.60(a), FCS must receive a letter requesting copies of the records (or requesting an opportunity to inspect or copy the records) within 30 calendar days of the date of the FSP notice of intent. As stated above, the notice of intent would advise debtors of these procedures and deadlines.

Departmental salary offset regulations at 7 CFR 3.61 provide debtors the opportunity to propose a written repayment agreement in lieu of salary offset, subject to approval by the Secretary. OPM regulations at 5 CFR 550.1104(d)(6) provide that this opportunity is not required if the debtor was previously provided such an opportunity. Current FSP regulations at 7 CFR 273.18(g)(2) provide that opportunity at the time of the initial demand letter on the recipient claim. The State agency advance notice of salary offset would offer a second such opportunity. Accordingly, this rule proposes at § 273.18(g)(6)(v)(E)(*2*) that the FSP notice of intent not offer debtors an opportunity to enter into a written agreement to repay the debt.

The remaining FSP salary offset procedures relate primarily to hearings which debtors may request and to the procedures for the actual offsets from salaries. These procedures would operate as set forth in the Departmental regulations, and they are briefly described below.

The Departmental regulation at 7 CFR 3.56 provides that debtors have 30 days to request a hearing on the existence or amount of the claim, or on the proposed offset schedule (rate and frequency of offset). The notice of intent advises the debtor what information should be included in the request for a hearing, and states the basis for accepting a late request. Section 3.57 provides that a hearing will not be granted if the employee fails to request one as prescribed or fails to appear at the hearing. Section 3.58 describes how hearings will be conducted, and Section 3.59 specifies the format of written hearing decisions.

The Departmental regulation at 7 CFR 3.62 provides that deductions will begin either: (1) As stated in the notice of intent; (2) if a hearing is requested, after a decision in favor of the Secretary; or (3) through administrative offset upon the employee's retirement or resignation as provided by 7 CFR 3.21 through 3.36. Section 3.63 provides that collections will be made in a lump sum or installments, and will be by installments if the debtor cannot repay the debt in one payment or the debt exceeds 15 percent of disposable pay for a pay period. Section 3.64 provides that installments will be at established pay intervals, bear a reasonable relationship to the size of the debt, up to a maximum of 15 percent of disposable pay, and specifies the types of pay (basic pay, incentive pay, etc.) which can be offset. Section 3.66 provides that payment by salary offset will not be interpreted as a waiver of any rights the debtor may have under 5 U.S.C. 5514. Section 3.67 provides for the refund of amounts erroneously offset from salaries under certain conditions such as an administrative or judicial order.

Effective Date

It is proposed that this rule would become effective 30 days after publication of the final rule except that State agencies currently participating in FTROP would be required to submit the amendment to the Plan of Operation required at 7 CFR 272.2(d)(1)(xii) no later than 90 days after publication of that rule.

List of Subjects

7 CFR Part 271

Administrative practice and procedures, Food stamps, Grant programs—social programs.

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Records, Reporting and recordkeeping requirements, Social Security, Students.

Accordingly, 7 CFR parts 271, 272 and 273 are proposed to be amended as follows:

PART 271—GENERAL INFORMATION AND DEFINITIONS

1. The authority citation for parts 271, 272 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

2. In § 271.2, the definition of *Offset year* is added in alphabetical order to read as follows:

§ 271.2 Definitions

* * * * *

Offset year means the calendar year during which offsets may be made to collect certain recipient claims from individuals' Federal income tax refunds.

* * * * *

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

3. In § 272.2, a new sentence is added to the end of paragraph (a)(2) and a new paragraph (d)(1)(xii) is added to read as follows:

§ 272.2 Plan of operation.

(a) *General Purpose and Content*

* * *

(2) *Content.* * * * The Plan's amendments shall also include the commitment to conduct the optional Federal income tax refund offset program and Federal salary offset program.

* * * * *

(d) *Planning Documents.*

(1) * * *

(xii) If the State agency chooses to implement the Federal income tax refund offset program and the Federal salary offset program, the Plan's attachments shall include a statement in which the State agency states that it will comply with the provisions of § 273.18 (g)(5) and (g)(6) of this chapter.

* * * * *

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

4. In § 273.18 new paragraphs (g)(5) and (g)(6) are added to read as follows:

§ 273.18 Claims against households.

* * * * *

(g) *Method of collecting payments.*

* * *

(5) *Federal income tax refund offset program.*

(i) *General requirements.* State agencies which choose to implement the Federal income tax refund offset program (FTROP) shall:

(A) Submit an amendment to their Plan of Operation as specified in § 272.2(d)(1)(xii) of this chapter stating that they will comply with the requirements for FTROP and with the requirements for the Federal salary offset program (salary offset). Such amendments shall be submitted to the appropriate FCS regional office no later than twelve months before the beginning of a State agency's first offset year.

(B) Submit data for FTROP to FCS in the record formats specified by FCS and/or the Internal Revenue Service (IRS), and according to schedules and by means of magnetic tape, electronic data transmission or other method specified by FCS.

(ii) *Claims referable for offset.* State agencies may submit for collection from Federal income tax refunds recipient claims which are past due and legally enforceable.

(A) Such claims must be:

(*1*) Only inadvertent household error claims or intentional Program violation claims. These claims shall be properly established according to the requirements of this section (which pertains to claims against households), including the requirement that additional demand letters be provided prior to initiating other collection actions as required by paragraph (d)(4)(iii) of this section, and the

requirements of section 273.16 (which pertains to disqualification for intentional Program violations). In addition, these claims shall be properly established no later than the date the State transmits its final request for IRS addresses for the particular offset year. Furthermore, the State agency shall have electronic records and/or paper documents showing that the claim was properly established. These records and documents include such items as claim demand letters, results of fair hearings, advance notices of disqualification hearings, results of such hearings, and records of payments.

(*2*) Claims for which the State agency has verified that no individual who is jointly and severally liable as specified in paragraph (a) of this section is also currently participating in the FSP in the State.

(*3*) Claims which meet at least the minimum dollar amount established by the IRS.

(*4*) Claims for which the date of the initial demand letter is within 10 years of January 31 of the offset year, except that claims reduced to final court judgments ordering individuals to pay the debt are not subject to this 10-year limitation.

(*5*) Claims for which the State agency is neither receiving voluntary payments pursuant to an agreed upon schedule of payments as provided in paragraph (g)(2) of this section nor is receiving scheduled, involuntary payments such as wage garnishment. Claims for which the State agency has received such payments are considered past due and legally enforceable 30 days after the due date for a regular payment which is not received.

(*6*) Claims for which collection is not barred by a bankruptcy.

(*7*) Claims for which the State agency has provided the individual with all of the notification and opportunities for review as specified in paragraphs (g)(5)(iii), (g)(5)(iv), (g)(5)(v) and (g)(5)(vi) of this section.

(B) In addition:

(*1*) All claims to be submitted for collection under FTROP shall be reduced by any amounts subject to collection from State income tax refunds or from other sources which may result in collections during the offset year.

(*2*) If a claim to be submitted for collection under FTROP is a combination of two or more recipient claims, the date of the initial demand letter for each claim combined shall be within the 10-year range specified in paragraph (g)(5)(ii)(A)(*4*) of this section. Claims reduced to judgment shall not be combined with claims which are not reduced to judgment.

(*3*) If a claim to be submitted under FTROP is apportioned between two or more individuals who are jointly and severally liable for the claim pursuant to paragraphs (a) and (f) of this section, the sum of the amounts submitted shall not exceed the total amount of the claim.

(iii) *60–Day notice to individuals.* (A) Prior to referring claims for collection under FTROP, the State agency shall provide individuals from whom it seeks to collect such claims with a notice, called a 60-day notice.

(B) With the exception of such State-specific information as names and job titles and information required for State agency contacts, a State agency's 60-day notice shall contain only the information specified in paragraph (g)(5)(iv) of this section. In the certification letter required in paragraph (g)(5)(vii) of this section, the State agency shall include a statement that its 60-day notice conforms to this requirement.

(C) Unless otherwise notified by FCS, the State agency shall mail 60-day notices for claims to be referred for collection through FTROP no later than October 1 preceding the offset year during which the claims would be offset.

(D) The State agency shall mail 60-day notices using the address information provided by the IRS unless the State agency receives clear and concise notification from the taxpayer that notices from the State agency are to be sent to an address different from the address obtained from the IRS. Such clear and concise notification shall mean that the taxpayer has provided the State agency with written notification including the taxpayer's name and identifying number (which is generally the taxpayer's SSN), the taxpayer's new address, and the taxpayer's intent to have notices from the State agency sent to the new address. Claims for which 60-day notices addressed as required in this paragraph are returned as undeliverable may be referred for collection under FTROP.

(iv) *Contents of the 60-day notice.* The State agency's 60-day notice shall state that:

(A) [Name of the State agency or an equivalent phrase] has records documenting that you, [the name of the individual], Social Security Number: [the individual's Social Security Number] are liable for [the unpaid balance of the recipient claim(s) the State agency intends to refer] resulting from overissued food stamp benefits. [The name of the State agency or equivalent phrase] has previously mailed or otherwise delivered demand letters notifying you about the claim, including the right to a fair hearing on the claim, and has made any other required collection efforts.

(B) The Deficit Reduction Act of 1984, as amended, authorizes the Internal Revenue Service (IRS) to deduct such debts from tax refunds if they are past due and legally enforceable. [Name of the State agency or an equivalent phrase] has determined that your debt is past due and legally enforceable as specified by the Deficit Reduction Act of 1984, the IRS regulations, and Food Stamp Program (FSP) regulations. We intend to refer the claim for deduction from your Federal income tax refund unless you pay the claim within 60 days of the date of the notice or make other repayment arrangements acceptable to us.

(C) If we refer your claim to the IRS, a charge for the administrative cost of collection will be added to your claim and that amount will also be deducted if the claim, or any portion of the claim, is deducted from your tax refund.

(D) All adults who were household members when excess food stamp benefits were issued to the household are jointly and severally liable for the value of those benefits, and collection of claims for such benefits may be pursued against all such individuals. Our records do not show that the claim is being paid according to either a voluntary agreement with us or through scheduled, involuntary payments.

(E) To pay the claim voluntarily or to discuss it, you should contact: [an office, administrative unit and/or individual, the contact's street address or post office box, and a toll-free or collect telephone number].

(F) You are entitled to request a review of the intended collection action. We must receive your request for review within 60 days of the date of this notice. Such a request must be written, must be submitted to the address provided in this notice and must contain your Social Security Number. We will not refer your claim for offset while our review is pending.

(G) The claim is not legally enforceable if a bankruptcy prevents collection of the claim.

(H) You may want to contact your local office of the IRS before filing your Federal income tax return. This is true where you are filing a joint return, and your spouse is not liable for the food stamp claim and has income and withholding and/or estimated Federal income tax payments. In such circumstances your spouse may be entitled to receive his or her portion of any joint refund. Your own liability for this claim, including any charge for administrative costs, may still be collected from your share of such a joint refund.

(I) If you request a review of our intent to collect the claim from your income tax refund, you should provide documentation showing that at least one of the items listed below is incorrect for the claim cited in this notice. If you do not have such documentation, for example a cancelled check, you should explain in detail why you believe that the claim is not collectible under FTROP.

(J) The claim cited in this notice is subject to collection from your tax refund for the following reasons:

(*1*) The claim was properly established according to Food Stamp Program regulations and was caused by an inadvertent household error or an intentional Program violation;

(*2*) No individual who is jointly and severally liable for the claim is also currently participating in the Food Stamp Program in [the name of State initiating the collection action];

(*3*) The claim is for at least [the minimum dollar amount required by the IRS];

(*4*) The date of the initial demand letter for the claim is within 10 years of January 31, [the offset year]. If the claim was reduced to a final court judgment ordering you to pay the debt, this 10-year period does not apply, and the date of the initial demand letter may be older than 10 years; and

(*5*) We are neither receiving voluntary payments pursuant to an agreed upon schedule of payments as provided in current Food Stamp Program regulations nor are we receiving scheduled, involuntary payments such as wage garnishment. Claims are considered past due and legally enforceable for collection from Federal income tax refunds 30 days after the due date for such a regular payment which is not received.

(K) In addition, collection of the claim is not barred by bankruptcy.

(v) *State agency action on requests for review.* (A) For all written requests for review received within 60 days of the date of the 60-day notice, the State agency shall determine whether or not the subject claims are past due and legally enforceable, and shall notify individuals in writing of the result of such determinations.

(B) The State agency shall determine whether or not claims are past due and legally enforceable based on a review of its records, and of documentation, evidence or other information the individual may submit.

(C) If the State agency decides that a claim for which a review request is received is past due and legally enforceable, it shall notify the individual that:

(*1*) The claim was determined past due and legally enforceable, and the reason for that determination. Acceptable reasons for such a determination include the individual's failure to provide adequate documentation that the claim is not past due or legally enforceable;

(*2*) The State agency intends to refer the claim to the IRS for offset;

(*3*) The individual may ask FCS to review the State agency decision. FCS must receive the request for review within 30 days of the date of the State agency decision. FCS will provide the individual a written response to such a request stating its decision and the reasons for its decision. The claim will not be referred to the IRS for offset pending the FCS decision; and

(*4*) A request for an FCS review must include the individual's SSN and must be sent to the appropriate FCS regional office. The State agency decision shall provide the address of that regional office, including in that address the phrase "Tax Offset Review."

(D) If the State agency determines that the claim is not past due or legally enforceable, in addition to notifying the individual that the claim will not be referred for offset, the State agency shall take any actions required by food stamp regulations with respect to establishing the claim, including holding appropriate hearings and initiating collection action.

(E) The State agency shall not refer for offset a claim for which a timely State agency review request is received unless by October 31 preceding the offset year the State agency determines the claim past due and legally enforceable, and notifies the individual of that decision as specified in paragraphs (g)(5)(v)(C)(*1*), (g)(5)(v)(C)(*2*) and (g)(5)(v)(C)(*3*) of this section.

(vi) *FCS action on appeals of State agency reviews.*

(A) FCS shall act on all timely requests for FCS reviews of State agency review decisions as specified in paragraph (g)(5)(v)(C) of this section. A request for FCS review is timely if it is received by FCS within 30 days of the date of the State agency's review decision.

(B) If a timely request for FCS review is received, and the State agency's decision is dated on or before October 31 of the year prior to the offset year, FCS shall:

(*1*) Complete a review and notification as specified in paragraphs (g)(5)(vi)(D), (g)(5)(vi)(E), and (g)(5)(vi)(F) of this section, including providing State agencies and individuals the required notification of its decision; or

(*2*) Notify the State agency that it has not completed its review and that the State agency must delete the claims in question from files to be certified to FCS according to paragraph (g)(5)(vii) of this section. If FCS fails to timely notify the State agency and because of that failure a claim is offset which FCS later finds does not meet the criteria specified in paragraph (g)(5)(ii) of this section, FCS will provide funds to the State agency for refunding the charge for the offset fee.

(C) If a timely request for FCS review is received, and the State agency's decision is dated after October 1 of the year prior to the offset year, FCS shall complete a review as specified in paragraphs (g)(5)(vi)(D), (g)(5)(vi)(E) and (g)(5)(vi)(F) of this section, but the claim shall not be referred for offset as specified in paragraph (g)(5)(v)(E) of this section.

(D) When FCS receives an individual's request to review a State agency decision, FCS shall:

(*1*) Request pertinent documentation from the State agency about the claim. Such documentation shall include such things as printouts of electronic records and/or copies of claim demand letters, results of fair hearings, advance notices of disqualification hearings, the results of such hearings, records of payments, 60-day notices, review requests and documentation, decision letters, and pertinent records of such things as telephone conversations; and

(*2*) Decide whether the State agency correctly determined the claim in question is past due and legally enforceable.

(E) If FCS finds that the State agency correctly determined that the claim is past due and legally enforceable, FCS will notify the State agency and individual of its decision, and the reason(s) for that decision, including notice to the individual that any further appeal must be made through the courts.

(F) If FCS finds that the State agency incorrectly determined that the claim is past due and legally enforceable, FCS will notify the State agency and individual of its decision, and the reason(s) for that decision. FCS will also notify the State agency about any corrective action the State agency must take with respect to the claim and related procedures.

(vii) *Referral of claims for offset.* (A) State agencies shall submit to FCS a certified file of claims for collection through FTROP by the date specified by FCS in schedules which FCS will provide as stated in paragraph (g)(5)(i)

of this section. At the same time State agencies shall also provide to their FCS regional office a letter which specifically certifies that all claims contained in that certified file meet the criteria for claims referable for FTROP as specified in paragraph (g)(5)(ii) of this section, and that for all such claims a notice and opportunity to request a review as required in paragraphs (g)(5)(iii), (g)(5)(iv), (g)(5)(v) and (g)(5)(vi) of this section have been provided. The certification letter shall also state that the State agency has not included in the certified file of claims any claim which, as provided in paragraph (g)(5)(vi) of this section, FCS notified the State agency is not past due or is not legally enforceable, or any claim for which FCS notified the State agency that it has not completed a timely requested review, or for which the State agency has not completed a timely requested review. Finally, the certification letter shall also state that with the exception of State-specific information such as names and positions and State-specific information required for State agency contacts, the State agency's 60-day notice contains only the information specified in paragraph (g)(5)(iv) of this section.

(B) The State agency shall provide to FCS the name, address and toll-free or collect telephone numbers of State agency contacts to be included in IRS notices of offset. State agencies shall state in the letter required in paragraph (g)(5)(vii)(A) of this section how they determined that such information is accurate and shall provide FCS updates of that information if and when that information changes.

(viii) *State agency actions on offsets made.* (A) Promptly after receiving notice from FCS that offsets have been made, the State agency shall notify affected individuals of offsets made, including the amount charged for offset fees, and the status of the claims in question.

(B) As close in time as possible to the notice of offset required in paragraph (g)(5)(viii)(A) of this section, the State agency shall refund to the individual (as required by paragraph (i)(4) of this section) any over collection which resulted from the offset of the individual's Federal income tax refund.

(C) If an offset results from a State agency including in the certified file of claims required by paragraph (g)(5)(vii)(A) of this section a claim which does not meet the criteria specified in paragraph (g)(5)(ii) of this section, the State agency shall refund the amount offset to the individual, including any amounts collected to pay for the offset fee charged by the IRS. The State agency may claim any such latter amount as an allowable administrative cost under Part 277 of this chapter. The State agency shall not be responsible for refunding any portion of the charges for offset fees incurred for IRS reversals of offsets when, for example, the IRS refunds amounts offset, including offset fees, to taxpayers who properly notified the IRS that they are not liable for claims which were collected in whole or part from their share of a joint Federal income tax refund.

(ix) *Monitoring and reporting offset activities.* State agencies shall monitor FTROP activities and shall take all necessary steps to:

(A) Update IRS files, reducing the amounts of or deleting claims from those files to reflect payments made after referral to FCS, or deleting claims which for other reasons no longer meet the criteria for being collectible under FTROP.

(B) Promptly refund to the individual any over collection of claims as required in paragraph (g)(5)(viii)(B) of this section.

(C) Annually and no later than the tenth of October of the year prior to the offset year report in writing to the FCS regional office the number of 60-day notices mailed and the total dollar value of the claims associated with those notices.

(D) Submit data security and voluntary payment reports as required by FCS and the IRS.

(E) Report collections of all recipient claims collected under the procedures of paragraph (g)(5) of this section on the appropriate Form PCS–209, Status of Claims Against Households, as required by paragraph (i)(2) of this section.

(6) *Federal salary offset program.*

(i) *Claims subject to salary offset.* All recipient claims submitted by State agencies participating in the Federal income tax refund offset program (FTROP) shall be subject to the matching procedures specified in this paragraph. Individuals identified by the match shall be subject to the salary offset procedures specified in this paragraph.

(ii) *Identification of recipient claims owed by Federal employees.* (A) FCS will match all recipient claims submitted by State agencies participating in FTROP against Federal employment records maintained by the Department of Defense (DoD) and the United States Postal Service (USPS). FCS will remove recipient claims matched during this procedure from the list of recipient claims to be referred to the Internal Revenue Service (IRS) for collection through FTROP.

(B) When FCS receives a list of Federal employees matched against recipient claims for a particular State agency, it will notify the State agency in writing accompanied by a data security and confidentiality agreement containing the requirements specified in paragraph (g)(6)(ii)(C) of this section for the State agency to sign and return. When that agreement is returned, signed by an appropriate official of the State agency, FCS will provide the list of matched Federal employees to the State agency.

(C) State agencies which receive lists of matched employees shall take the actions specified in this paragraph to ensure the security and confidentiality of information about those employees and their apparent debts, and shall ensure that any contractors or other non-State agency entities to which the records may be disclosed also take these actions:

(*1*) By such means as card keys, identification badges and security personnel, limit access to computer facilities handling the data to persons who need to perform official duties related to the salary offset procedures. By means of a security package, limit access to the computer system itself to such persons;

(*2*) During off-duty hours, keep magnetic tapes and other hard copy records of data in locked cabinets in locked rooms. During on-duty hours, maintain those records under conditions that restrict access to persons who need them in connection with official duties related to salary offset procedures;

(*3*) Use the data solely for salary offset purposes as specified in paragraph (g)(6) of this section, including not extracting, duplicating or disseminating the data except for salary offset purposes;

(*4*) Retain the data only as long as needed for salary offset purposes as specified in paragraph (g)(6) of this section, or as otherwise required by FCS;

(*5*) Destroy the data by shredding, burning or electronic erasure; and

(*6*) Advise all personnel having access to the data about the confidential nature of the data and their responsibility to abide by the security and confidentiality provisions stated in paragraph (g)(6)(ii)(C) of this section.

(D) Prior to taking any action to collect recipient claims as specified in paragraph (g)(6)(iii) of this section, State agencies shall review the claims records of matched Federal employees to verify the amount of the recipient claim owed, and to remove from the list of claims any recipient claims which have been paid, which are being paid according to an agreed to schedule, or which for other reasons are not collectible.

(iii) *State agency advance notice of salary offset.* (A) Following the review specified in paragraph (g)(6)(ii)(D) of this section, State agencies shall provide each Federal employee verified as owing a recipient claim (debtor) with an advance notice of salary offset (advance notice). This advance notice shall be mailed to the debtor at the address provided by FCS, or shall be otherwise provided, within 60 days of State agency receipt of the list specified in paragraph (g)(6)(ii)(B) of this section.

(B) Within 90 days of the date of the advance notice, the State agency shall refer to FCS all claims for which the State agency does not receive timely and adequate response as specified in the advance notice. Such referrals shall consist of a copy of the advance notice sent to the debtor and copies of records relating to the recipient claim. Records relating to the recipient claims include such things as copies of printouts of electronic records and/or copies of claim demand letters, results of fair hearings, advance notices of disqualification hearings, the results of such hearings, records of payments, review requests and documentation, decision letters, and pertinent records of such things as telephone conversations.

(C) The advance notice shall state that:

(*1*) According to State agency records the debtor is liable for a claim for a specified dollar amount due to receiving excess food stamp benefits. State agencies are encouraged to include as much other information about the claim as possible, including such things as whether it was caused by household error or intentional Program violation, the date of the initial demand letter, any hearings or court actions which relate to the claim, and what, if any, payments have reduced the amount of the original claim;

(*2*) Through a computer match the debtor was found to be employed by [the name and address of the employing agency of the debtor]. The computer match was conducted under the authority of and according to procedures required by the Privacy Act of 1974, as amended;

(*3*) Collection from the wages of Federal and USPS employees for debts such as food stamp recipient claims is authorized by the Debt Collection Act of 1982. The claim will be referred to FCS for such collection action unless within 30 days of the date of the advance notice the State agency receives either:

(*i*) Payment of the claim in full. Claims of $50 or less shall be paid in full within 30 days or they will be referred to FCS for collection from the individual's Federal salary; or

(*ii*) The first installment payment for the claim. Claims of more than $50, if not paid in full within 30 days, must be paid in installments of at least $50 a month. Debtors may pay more than $50 on any installment payment. The advance notice shall state the monthly due date of installment payments and that if a monthly installment payment of at least $50 is not received by the due date, the claim will be referred to FCS for offset from the individual's Federal salary with no further opportunity to enter a voluntary repayment agreement;

(*4*) The name, address and a toll-free or collect telephone number of a State agency contact (an individual or unit) for repayment and/or discussion of the claim; and

(*5*) Debtors may submit documentation to State agencies showing such things as payments of claims or other circumstances which would prevent collection of claims. Unless the State agency receives such documentation within 30 calendar days of the date of the advance notice and the documentation clearly shows that the claim has been paid or is not legally collectible, the State agency shall refer the claim to FCS for collection from the debtor's salary. The State agency shall notify debtors in writing when claims for which an advance notice was issued will not be referred for collection from salaries. Debtors have the right to a formal appeal to FCS. Notification about how to make such appeals is required and will be provided to debtors before any collection action from salaries is taken.

(iv) *State agency retention and reporting of collections.* (A) State agencies shall retain collections of recipient claims paid voluntarily to State agencies and to FCS through salary offsets at the rates specified in paragraph (h) of this section for the appropriate reporting period for Form FCS–209, Status of Claims Against Households. From time to time as volume warrants, FCS will report and transfer amounts collected from salaries to State agencies. Collections by State agencies and by FCS on all such claims shall be included on the appropriate FCS–209.

(B) If a debtor fails to make an installment payment, within 60 days of the date the payment was due, State agencies shall refer the claim to FCS, reporting the default, the dollar amount collected and the balance due.

(v) *FCS actions on claims referred by State agencies.* Departmental procedures at 7 CFR 3.51–3.68 shall apply to claims referred by State agencies to FCS as required by paragraphs (g)(6)(iii)(B) and (g)(6)(iv)(B) of this section subject to the following modifications:

(A) In addition to the definitions set forth at 7 CFR 3.52, the term "debts" shall further be defined to include recipient claims established according to this section; and the terms "State agency" and "FCS" shall be defined as set forth in section 271.2 of this chapter.

(B) Pursuant to 7 CFR 3.34(c)(4) and 7 CFR 3.55(d), the Secretary has determined that collection of interest, penalties and administrative costs provided at 7 CFR 3.65 is not in the best interests of the United States and hereby waives collection of such charges.

(C) In addition to providing the right to inspect and copy Departmental records as specified at 7 CFR 3.60(a), the Secretary shall provide copies of records relating to the debt in response to timely requests. For a request to be timely, FCS must receive it within 30 calendar days of the date of the notice of intent.

(D) Pursuant to 5 CFR 550.1104(d)(6), an opportunity to establish a written repayment agreement provided at 7 CFR 3.61 shall not be provided.

(E) The notice of intent for FSP salary offset shall comply with the requirements of the Departmental notice of intent which are set forth at 7 CFR 3.55, subject to the following modifications:

(*1*) In addition to the statement that the debtor has the right to inspect and copy Departmental records relating to the debt, the notice of intent shall state that if timely requested by the debtor, the Secretary shall provide the debtor copies of such records. It shall further advise, as required by 7 CFR 3.60(a), that to be timely such requests must be received within 30 days of the date of the notice of intent; and

(*2*) The statement of the right to enter a written repayment agreement provided by 7 CFR 3.55(f) shall not be included.

* * * * *

Dated: June 23, 1995.

Ellen Haas,

Under Secretary for Food, Nutrition and Consumer Services.

[FR Doc. 95–15887 Filed 6–27–95; 8:45 am]

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Federal Register

Wednesday
June 28, 1995

Part VIII

Securities and Exchange Commission

17 CFR Part 250, et al.

Exemption of Issuance and Sale of Certain Securities by Public Utilities and Nonutility Subsidiary Companies, etc.; Final Rule and Proposed Rules

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 250

[Release No. 35–26311, File No. S7–17–92]

RIN 3235–AF49

Exemption of Issuance and Sale of Certain Securities by Public Utility and Nonutility Subsidiary Companies of Registered Public Utility Holding Companies; Exemption of Acquisition by Companies in a Registered Public Utility Holding Company System of Certain Securities of Associate Companies; Exemption of Capital Contributions and Open Account Advances, Without Interest, by Parent Companies to Subsidiary Companies

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending rule 52, which exempts certain financing transactions involving the securities of the public utility subsidiary companies of a registered public utility holding company from the requirement of prior Commission approval under the Public Utility Holding Company Act of 1935 ("Act"). As amended, the rule will exempt certain additional types of securities, and will exempt the issuance and sale of certain types of securities of nonutility subsidiary companies of a registered holding company in connection with routine financing transactions. The Commission is also amending rule 45(b)(4) to exempt from the requirement of prior Commission authorization under section 12(b) of the Act and rule 45(a) all capital contributions and open account advances by a parent company to its subsidiary company. These amendments are intended to eliminate unnecessary regulatory and paperwork burdens associated with seeking Commission approval for routine financings by registered holding companies and their subsidiary companies.

EFFECTIVE DATE: June 28, 1995. These amended rules are substantive rules that grant an exemption or relieve restrictions.[1]

FOR FURTHER INFORMATION CONTACT: William C. Weeden, Associate Director, Joanne C. Rutkowski, Assistant Director, or Bonnie Wilkinson, Staff Attorney, all at (202) 942–0545, Office of Public Utility Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: Rule 52 (17 CFR 250.52) exempts from the requirement of prior Commission approval under section 6(a) the issuance and sale of certain specified types of securities by a public utility subsidiary of a registered holding company, subject to the terms and conditions of the rule. Rule 52 also exempts from the requirement of prior Commission authorization under section 9(a) the acquisition by a parent holding company of the securities issued by an existing public utility subsidiary pursuant to the rule. The Commission is amending rule 52 to broaden the types of debt securities that may be issued in reliance upon the exemption and to make the exemption available to nonutility subsidiaries of a registered holding company in connection with routine financing transactions. The Commission is also amending rule 45 (17 CFR 250.45) to exempt from the requirement of prior Commission authorization under section 12(b) of the Act and rule 45(a) capital contributions and open account advances by a parent company to its subsidiary companies. The Commission proposed these amendments by release issued on July 7, 1992.[2]

In a companion release published today in the **Federal Register**, the Commission is inviting public comment on a further amendment to rule 52 that would extend the exemption to all types of securities issued in connection with routine financing transactions, provided that the conditions of the rule are met. The Commission is also proposing a conforming change to rule 45.

Discussion

Rule 52 exempts from the requirement of prior Commission authorization under section 6(a) the issue and sale of certain specified types of securities by public utility subsidiary companies of registered holding companies.[3] The rule also exempts from the requirement of prior Commission authorization under section 9(a)(1) the acquisition by a company in a registered system of any securities issued by an existing public utility subsidiary pursuant to the rule.[4]

At present, the rule applies only with respect to the issuance of common stock, preferred stock, mortgage bonds and notes issued to a parent holding company, where the interest rate and maturity date of the note is designed to parallel a debenture or preferred stock issued by the parent. The issue and sale of such securities must be solely for the purpose of financing the business of the public utility company, and the relevant state commission must have expressly authorized the financing transactions.

Rule 45 prohibits registered holding companies and their subsidiaries from lending or extending credit to, indemnifying, or making any donation or capital contribution to a company in the same holding company system, except in specified circumstances.[5] The rule provides exceptions from the general provision, including an exception under rule 45(b)(4) for capital contributions or open account advances without interest to any subsidiary in an

[1] 5 U.S.C. 553(d)(1).

[2] Holding Co. Act Release No. 25574 (July 7, 1992), 57 FR 31156 (July 14, 1992) ("Proposing Release").

[3] Section 6(a) requires Commission approval under the standards of section 7 for the issue and sale of any security of a registered holding company or its subsidiary company.

Section 6(b) authorizes the Commission to exempt from the requirements of section 6(a):

> the issue or sale of any security by any subsidiary company of a registered holding company, if the issue and sale of such security are solely for the purpose of financing the business of such subsidiary company and have been expressly authorized by the State commission of the State in which such subsidiary company is organized and doing business.

Congress intended "to exempt the issue of securities by subsidiary companies in cases where holding company abuses are unlikely to exist." H.R. Conf. Rep. No. 1903, 74th Cong., 1st Sess. 66–67 (1935). See generally Holding Co. Act Release No. 25058 (Mar. 19, 1990), 55 FR 11362 (Mar. 28, 1990) (adopting rule 52), and Holding Co. Act Release No. 25573 (July 7, 1992), 57 FR 31120 (July 14, 1992) (amending rule 52).

[4] Section 9(a)(1) in pertinent part requires prior approval under the standards of section 10 for an acquisition of securities by a registered holding company or its subsidiary company. Section 9(c)(3) provides a limited exception from this requirement for the acquisition of:

> such commercial paper and other securities, within such limitations, as the Commission may by rules and regulations or order prescribe as appropriate in the ordinary course of business of a registered holding company or subsidiary company thereof and as not detrimental to the public interest or the interest of investors or consumers.

The exemption under rule 52 does not apply to the issuance of securities to form a new public utility subsidiary of a registered holding company. See rule 52(c).

[5] Rule 45 was adopted under section 12(b), which provides that:

> It shall be unlawful for any registered holding company or subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, directly or indirectly, to lend or in any manner extend its credit to or indemnify any company in the same holding-company system in contravention of such rules and regulations or orders as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or to prevent the circumvention of the provisions of this title or the rules, regulations, or orders thereunder.

Rule 45(a) requires the filing of a declaration and an order of the Commission permitting the declaration to become effective in order for a registered holding company or its subsidiary to engage in these transactions.

aggregate amount of up to $50,000 in any calendar year, after deducting payments during the year.

On July 7, 1992, the Commission proposed amendments to rules 52 and 45(b)(4) under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 *et seq.*).[6] The amendments would (a) broaden the types of debt securities that may be issued by public utility subsidiaries in reliance upon rule 52, (b) extend the exemption under rule 52 to nonutility subsidiaries of registered holding companies, (c) revise the conditions of rule 52 applicable to intrasystem loan transactions, and (d) remove the annual dollar limitation from rule 45(b)(4).

The Commission received comments submitted by or on behalf of seven registered holding companies[7] and by the Council of the City of New Orleans and the National Association of Regulatory Utility Commissioners ("NARUC"). While the registered holding companies generally support adoption of the proposed amendments, New Orleans and NARUC generally oppose the amendments. New Orleans urged that, in the event the amendments are adopted, several additional conditions, including incorporation of a consolidated debt/equity ratio applicable to sales of securities by nonutility subsidiaries, should be included. The Commission had invited comment on the need for such a limitation in its notice of proposed rulemaking. The objections of New Orleans and NARUC are discussed in greater detail in section 5, below.

1. Issue and Sale of Securities by Public Utility Subsidiaries

Rule 52 currently exempts the issue and sale by a public utility subsidiary of any common stock, preferred stock, mortgage bond or note issued to a parent holding company. The rule currently has limited usefulness. With respect to intrasystem loan transactions, the exemption is available only for notes issued to a parent holding company with interest rates and maturity dates that parallel those of the holding company's debentures or preferred stock. This condition prevents the use of the exemption in connection with other common forms of intrasystem financing, such as unsecured short-term and long-term loans, money pool arrangements, and the like, the terms of which are not matched to an actual debenture or preferred stock issued by the acquiring company.[8] In addition, because none of the registered electric utility holding companies currently issues debentures and preferred stocks, their subsidiaries do not benefit from the exemption at all in connection with down-stream loans. The Commission proposed to amend the rule to extend the exemption to all types of debt instruments, including bonds, notes and other forms of indebtedness issued by the subsidiary, having interest rates and maturities designed to parallel the effective cost of capital of the purchaser.[9] All of the holding companies submitting comments support a change that would extend the benefits of rule 52 to all types of indebtedness.

The Commission believes it is appropriate to expand the exemption of rule 52 to include all types of debt securities [10] that may be issued by utility subsidiaries, as proposed. The Commission believes that this expanded exemption is appropriate in view of the continuing requirement of express approval by the state commission of the state in which the public utility is organized and doing business. In 1935, few states exercised jurisdiction over public utility financing. Today, most do, although the extent of such jurisdiction varies greatly.[11] Rule 52 will not apply to utility financings if a state does not regulate financing, nor to a utility in a state which regulates securities sales generally if such state chooses not to regulate a particular type of security, such as short-term debt. CSW and CNG ask the Commission to interpret section 6(b) to permit an extension of the exemption under rule 52 to utility debt issuances where the relevant state government has determined that such issuances need not be reviewed by the state utility commission. Similarly, GPU suggests an expansion of rule 52 to guaranties issued by a holding company where no state commission approval is required. The Commission declines to adopt these suggestions, as section 6(b) does not appear to offer a basis for such action.

In proposing the amendment to rule 52, the Commission contemplated that the effective cost of capital for debt securities which have recently been issued by the purchasing associate company will be the coupon rate of interest plus all expenses, including, but not limited to, underwriters' compensation, discounts, and fees and commissions associated with the issue and sale of such debt; and that, in the event the purchasing associate company has not recently issued debt securities, the effective cost of capital may be tied to an appropriate index such as, but not limited to, the Federal Funds' rate or a published bond index. The Commission invited comment on whether other factors should be considered in determining the effective cost of capital of the purchasing associate company.

APS suggests that filing fees, listing fees, counsel and accountants' fees, Blue Sky survey fees, and transfer agent fees should also be considered.[12] The Commission agrees that all ordinary and necessary costs of a debt offering should be considered.

CNG recommends that the Commission permit use of an appropriate index to determine the effective cost of capital if the associate company has issued debt securities in circumstances where the financing terms are not comparable to the terms of the intrasystem loan.[13] We believe that the language of the final rule is flexible enough to permit use of a published rate or index in these circumstances.

2. Issue and Sale of Securities by Nonutility Subsidiaries

In the Proposing Release, the Commission noted the large volume of debt securities sold by nonutility subsidiaries of registered holding companies. The Commission proposed

[6] See the Proposing Release.

[7] The registered holding companies submitting comments were American Electric Power Company, Inc., Allegheny Power System, Inc. ("APS"), Consolidated Natural Gas Company ("CNG"), Central and South West Corporation ("CSW"), Eastern Utilities Associates, General Public Utilities Corporation ("GPU"), and New England Electric System.

[8] As noted in the Proposing Release, the omission of common intrasystem financing transactions is of particular concern to the registered gas systems. Unlike registered electric systems, these systems typically issue and sell debt to the public at the parent company level and fund their subsidiaries' operations by means of capital contributions, open account advances, money pool arrangements, purcheses of common stock, and short- and long-term loans.

[9] The Commission noted that it has permitted numerous declarations to become effective for the issuance and sale of such securities on this basis. See, e.g., Consolidated Natural Gas Co., Holding Co. Act Release No. 25339 (June 28, 1991), 49 SEC Docket 449 (July 16, 1991), and Holding Co. Act Release No. 25110 (June 29, 1990), 46 SEC Docket 1124 (July 17, 1990) (cost to subsidiaries of borrowing from parent registered holding company tied to Federal Funds' rate for short-term debt and published bond index for long-term debt).

[10] In the Proposing Release, the Commission sought comment on whether rule 52 should be extended to cover guaranties. However, the rule as amended today will specifically exclude guaranties. As discussed below, the Commission is requesting comment in a companion release to be published today on the question of whether rule 52 should be further amended to cover issuance of all types of securities, including guaranties.

[11] See National Association of Regulatory Utility Commissioners Compilation of Utility Regulatory Policy in the United States and Canada, 1993–94 Compilation (NARUC 1994), Tables 59A and B (state jurisdiction with respect to the issue and sale of securities by public-utilities).

[12] APS at 1.

[13] CNG at 2.

to amend rule 52 to encompass nonutility as well as utility subsidiaries. So doing, the Commission noted that absent further amendment of the rule, routine gas intrasystem financings would remain subject to the requirement of prior approval.[14]

Section 6(b) provides that the Commission shall exempt the issue and sale of a security of a nonutility subsidiary of a registered holding company for the purpose of financing the subsidiary's business, subject to such terms and conditions as the Commission deems appropriate in the public interest or for the protection of investors or consumers. In enacting section 6(b), Congress intended the Commission "to exempt the issue of securities by subsidiary companies in cases where holding company abuses are unlikely to exist.[15]

In the past, the Commission has granted exemptions for nonutility financings by order on a case-by-case basis. The Commission, in 1989, also considered an exemption by rule for such financings. In the release proposing the original rule 52, the Commission deferred action, citing its concern "with the adverse consequences that potential growth of debt in the nonutility subsidiary companies could have for the holding-company system and the public utility subsidiaries."[16]

Our experience since that time suggests to the Commission that a case-by-case approach to nonutility financings is no longer necessary. In addition, the extensive reporting requirements imposed on registered holding company systems by the Act and other federal securities laws, and the level of scrutiny of reporting companies by investors and by the financial community suggest that the rule may appropriately encompass nonutility as well as utility subsidiaries. All of the registered holding companies submitting comments support expansion of the rule to exempt routine nonutility subsidiary financings.

GPU, noting the widespread use of partnership interests and other types of securities in nonutility financing, particularly in the context of project finance, recommends the inclusion of such securities in rule 52(b).[17] Because the Commission is proposing a further amendment to rule 52 to extend the exemption of the rule to all types of securities issued by subsidiary companies of a registered holding company, so long as the other conditions of the rule are met, we do not think it necessary to address the status of partnership interests separately at this time.[18]

In the Proposing Release, the Commission invited comment on whether, to avoid excess leveraging, the availability of the exemption for security issuances of nonutility subsidiaries should be conditioned upon a requirement that an issuance not cause the consolidated debt/equity ratio of the holding company system to exceed 65/30.[19] None of the commenting holding companies support such a measure. Most observe that market forces affecting the parent holding company's common stock, as well as the desire to maintain credit quality ratings on public utility debt, will effectively deter management from over-leveraging the holding company capital structure.[20]

GPU notes that financing of independent power project subsidiaries is typically non-recourse to other companies in the holding company system, so that including such debt in a consolidated capitalization ratio would overstate the exposure of the registered system. GPU also states that the use of a consolidated debt/equity ratio would not be consistent with the Commission's approval of higher debt ratios in numerous project financing applications.[21] New Orleans, however, supported by NARUC, believes that such a consolidated capitalization ratio is necessary if proposed rule 52(b) is adopted, which, as previously indicated, these commenters oppose.

Total investment by registered holding companies in nonutility subsidiaries, to date, has not been significant in amount. As of December 31, 1994, the registered holding companies had invested only $1.1 billion (1.4% of over $80 billion of total capitalization) in all energy-related businesses, exclusive of exempt wholesale generators, foreign utility companies and gas holding company transportation and supply operations.

The Commission has concluded that it is unnecessary to condition an exemption under rule 52(b) upon the maintenance of a consolidated debt/equity ratio of 65/30.[22] We agree with the arguments of the holding companies in this respect. We also note that the Commission will continue to have jurisdiction over securities sales by registered holding companies. The Commission will thus be able to monitor, on a continuing basis, the effects of holding company financing on the consolidated capital structure of the registered system.

Because rule 52(c) currently exempts only acquisitions of securities issued and sold by a public utility subsidiary, the Commission proposed to amend rule 52 to extend the exemption to acquisitions of securities of nonutility subsidiaries as well. The Commission is adopting the proposed amendment. Paragraph (c) of the rule, with this change, becomes paragraph (d).

In a separate release, the Commission is today seeking comment on a rule that would allow registered holding companies to diversify through new or existing subsidiaries into certain categories of "energy-related" businesses, subject to financial and other limitations. In this connection, the Commission intends to revisit rule 52(d) to conform or limit its scope.

3. Capital Contributions and Open Account Advances, Without Interest, to Subsidiary Companies

Rule 52, as amended, does not provide an exemption for certain other common intrasystem financing transactions. For example, a capital contribution from a registered holding company to any of its subsidiary companies is regulated as an intercompany loan under section 12(b) and rule 45.[23] Open account advances that do not bear interest are also subject to these provisions.

To facilitate these transactions, the Commission proposed to amend rule 45(b)(4), which exempts up to $50,000 in capital contributions and open account advances, without interest, made to any subsidiary during a calendar year, to remove the dollar limitation of the rule.[24] All of the registered holding companies submitting comments support this change. New Orleans proposes that, if rule 45(b)(4) is amended, it should exempt capital contributions or open account advances subject to an aggregate limitation of $1,000,000 per year.

As the Commission noted in the Proposing Release, the legislative history of the Act makes clear that the Congress, while concerned with holding company abuses, recognized that "[d]own-stream loans * * * may be legitimate sources of credit * * *," and concluded that "the subject is one in which the rule-making power of the Commission is required to meet a host of varying circumstances."[25] Capital contributions and open account advances, without interest, are routine transactions which serve to transfer funds from the parent to its subsidiary. The amounts and types of securities issued by any registered holding company, which remain subject to prior approval by the Commission, must be justified by reference to the need for capital infusions by its subsidiaries, both utility and nonutility. Financing requests must be supported by capital budget projections covering the authorization period. The Commission believes that its ability to supervise intrasystem financing through these means will not be compromised by removal of the dollar limitation in rule 45(b)(4). Accordingly, the Commission declines to incorporate an aggregate dollar limitation in the rule as adopted.[26]

4. Issuance of Other Securities

Finally, the Commission sought comment on whether the amendments to rules 45 and 52 should be extended to exempt financing transactions involving other securities, in particular, guaranties of debt securities issued by other subsidiary companies.[27] Because guaranties are securities under the Act,[28] their issuance and sale are subject to the declaration requirement of section 6, unless exempted under section 6(b). At present, rule 52 does not extend to the issuance and sale of guaranties.

In addition, the guaranty by a subsidiary company of debt securities issued by another subsidiary company is subject to section 12(b) and rule 45 thereunder. Rule 45, with exceptions not relevant here, prohibits the issuance of guaranties by a subsidiary company without the filing of a declaration.[29]

As previously indicated, we are publishing a companion release inviting comment on a further amendment to rule 52 to exempt the issuance of all types of securities. Accordingly, there is no need to address guaranties separately at this time.

5. Comments by the City of New Orleans and NARUC

New Orleans opposes any expansion of the exemptions from the Commission's pre-approval requirement for financings provided by rules 45(b)(4) and 52 which, the city contends, would "widen the existing regulatory gap between federal and state and local regulators."[30] New Orleans urges that, if the amendments are adopted, several additional conditions need to be incorporated. Certain of these additional conditions, or limitations on the availability of the exemptions, have been discussed above. New Orleans states that these conditions are generally necessary to protect public utility subsidiaries of registered holding companies and their customers from the financial effects of financing transactions, particularly in the context of nonutility ventures that are not otherwise subject to effective state oversight.

During the notice period inviting comment on the proposed amendments to rules 45(b)(4) and 52, Congress passed the Energy Policy Act of 1992.[31] Title VII of the Energy Policy Act amended the Act to permit investments by registered holding companies in "exempt wholesale generators" ("EWGs") and "foreign utility companies" ("FUCOs"), defined in new sections 32 and 33, respectively.[32] Those sections exempt EWGs and FUCOs from all provisions of the Act, including sections 6(a), 7 and 12(b), which would otherwise apply to securities and guaranties issued and sold by such entities. However, these sections do not exempt issuance and sale of securities by a registered holding company in cases where the proceeds will be used for EWG or FUCO investments, and these financing transactions continue to require Commission approval under sections 6(a) and 7. Under section 32, Congress directed the Commission to promulgate rules with respect to actions which would be considered to "have a substantial adverse impact on the financial integrity of the registered holding company system" to ensure that actions (*e.g.*, financings, guaranties, etc.) by any registered holding company in respect of EWGs would not have any adverse impact on any utility subsidiary or its customers or on effective state regulation.[33] Similarly, under section 33, Congress directed the Commission to promulgate rules regarding registered holding companies' acquisitions of interests in FUCOs which shall provide for the protection of the customers of associate public utility companies and the financial integrity of the holding company system.[34]

The Commission had not yet initiated the rulemaking effort under new sections 32 and 33 when it proposed the additional amendments to rules 45(b)(4) and 52. In part for that reason, NARUC and New Orleans both urged the Commission to delay any action on the proposed rules pending development of consumer protection measures in the broader context of investments in EWGs and FUCOs, which, for purposes of the

[14] The Commission noted that the nonutility operations of registered gas holding companies rival in size the utility operations, largely because the Act does not include transmission assets in the definition of a gas utility company.

[15] H. R. Conf. Rep. No. 1903, 74th Cong., 1st Sess. 66–67 (1935).

[16] Holding Co. Act Release No. 24891 (May 17, 1989), 54 FR 22314 (May 23, 1989) (proposing rule 52).

[17] GPU at 3.

[18] Filings with the Commission to date suggest that the kinds and types of securities issued by nonutility subsidiaries, such as independent power subsidiaries, will vary more than those issued by public utility subsidiaries.

[19] The Commission noted that this condition is drawn from section 7(d)(1), which requires the Commission, in reviewing an issuance of securities, to consider whether the security is reasonably adapted to the security structure of the company issuing the security and the other companies in the registered holding company system. Under that section, the Commission generally has required a registered holding company system and its public utility subsidiaries to maintain a 65/30 debt/common equity ratio, the balance generally being preferred equity. Such a debt/equity capitalization requirement was included in rule 52, as originally adopted, as applied to securities issued by public utility subsidiaries, but was eliminated in 1992.

[20] The Commission also notes the emphasis placed upon these considerations in many comments received in response to our request for comment concerning the modernization of regulation under the Act. See Holding Co. Act Release No. 26153 (Nov. 2, 1994), 59 FR 55573 (Nov. 8, 1994).

[21] GPU at 3–4.

[22] As in the case of a debt instrument issued by a public utility subsidiary pursuant to the rule, the interest rates and maturity dates of any debt security issued by a nonutility subsidiary to an associate company would be required to parallel the effective cost of capital of the associate company. See the discussion *supra*, at 6–7, 8–9.

[23] Section 12(b) and rule 45(a) generally require prior Commission approval for a registered holding company or its subsidiary company to "lend or in any manner extend its credit to or indemnify any company in the same holding-company system."

[24] Rule 45(b)(4) exempts "[c]apital contributions or open account advances, without interest, to any subsidiary: *Provided*, That after giving effect to the transaction the total net amount which such subsidiary will have received during the calendar year as a result of such transactions will not exceed $50,000 (after deducting payments during the year regardless of the date of the advances)." The rule contained the $50,000 limitation when adopted in 1941. Holding Co. Act Release No. 2694 (Apr. 21, 1941).

[25] S. Rep. No. 621, 74th Cong., 1st Sess. 34–5 (1935).

[26] We also intend to revisit rule 45(b)(4) in the context of any rulemaking on nonutility diversification.

[27] Section 12(e) prohibits the guaranty by subsidiary companies of debt issued by a registered holding company.

[28] See section 2(a)(16) (definition of security).

[29] At present, rule 45(b)(6) exempts certain guaranties "in the ordinary course of business." The rule by its terms does not apply to a guaranty of a subsidiary's indebtedness for borrowed money.

[30] New Orleans, Executive Summary, at 4–5.

[31] P.L. 102–486, 106 Stat. 2776 (1992).

[32] An EWG is defined in section 32(a) of the Holding Company Act as any person determined by the Federal Energy Regulatory Commission to be engaged exclusively in the business of owning and/or operating all or part of one or more facilities that are used for the generation of electric energy, exclusively for sale at wholesale or leased to a utility, and selling electric energy at wholesale. A FUCO is defined in section 33(a) as any person that owns or operates facilities outside the United States used for the generation, transmission or distribution of electric energy for sale or for the distribution at retail of natural or manufactured gas, that derives no part of its income from such utility activities in the United States and is not a public utility company operating in the United States, and that provides notice to the Commission.

[33] See section 32(h)(6).

[34] See section 33(c)(1).

Act, are nonutilities. However, since that time, several related rules have been promulgated under the new provisions, and others are pending.[35] Those rules were intended to carry out the Congressional mandates under sections 32 and 33.[36] We note that those rules are subject to a pending challenge by NARUC and others.[37]

The City of New Orleans recommends that the Commission consider the proposed amendments in light of the Congressional mandates under sections 32 and 33. We do not believe this measure is necessary. As indicated, those provisions exempt EWGs and FUCOs from all provisions of the Act, and the rules adopted under those sections are intended to provide a means to ensure that investments by the holding company and activities of the exempt subsidiaries have not adversely affected the holding company or its utility customers. The proposed amendments to rules 45(b)(4) and 52, in contrast, exempt only public utility financing that has been reviewed and approved by state commissions, and financing by nonutility subsidiaries (other than EWGs and FUCOs) that is non-recourse to the holding company or any utility subsidiary. As a result, the activities exempted by the proposed rule amendments are not nearly so far-reaching as the EWG and FUCO provisions, and do not have the same need for additional consumer protection. Further, and this distinction appears critical, the acquisition by a registered holding company of an interest in a new nonutility business, and any other actions related thereto, such as the organization of a separate subsidiary to conduct that business, the initial capitalization thereof, intrasystem guaranties and any arrangements for the sale of goods and services to the new subsidiary, are, in the absence of any other applicable exemption, subject to the pre-approval process required under applicable provisions of the Act, as well as to ongoing reporting requirements and other requirements of the Act regarding maintenance of books and records, audits, inspections and the like. State commissions, consumer groups and other interested parties have the opportunity to express their views regarding the likely effects of nonutility ventures on consumers and other protected interests and to propose safeguards appropriate in order to protect these interests in connection with this pre-approval process.[38]

In addition to the modifications to the proposed rules mentioned elsewhere in this release, New Orleans recommends that the rules, if adopted, should require prior approval of a holding company's cost of capital by each state and local commission which regulates the parent. The Commission understands this request to involve approval by a commission in each of the states in which the holding company's public utility subsidiaries operate.[39] Because the rules do not exempt holding company financings from our approval, we see no useful purpose to be achieved by requiring a multistate determination of a holding company's cost of capital. The Commission is specifically obligated by section 7(d) to consider the reasonableness of the fees, commissions and other expenses of a securities issuance which would be relevant to the determination of a holding company's effective cost of capital in connection with our consideration of any holding company financing applications.

New Orleans' suggestion that rule 52, as proposed to be amended, also be conditioned upon a requirement for state commission approval in every state in a holding company's service territory for any guaranty is likewise misplaced.[40] As previously stated, the rules do not exempt registered holding companies from the requirement to obtain Commission approval in connection with issuing any guaranty.

In summary, we do not believe that the proposed amendments to rules 45(b)(4) and 52 will compromise our ability to protect consumers and investors, and we do not find that the additional conditions and restrictions proposed by New Orleans are necessary for this purpose. We are therefore adopting the proposed amendments to rules 45(b)(4) and 52 substantially in the form proposed.

Conclusion

The Commission believes that the registered holding-company systems should have a greater ability to engage in routine financings without the regulatory burden of prior Commission authorization, and that this may be done without jeopardizing the interests the Act is designed to protect. The rule amendments adopted today are consistent with those two objectives.

Regulatory Flexibility Act Certification

Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the proposed amended rules will not, if adopted, have a significant economic impact on a substantial number of small entities. The Commission did not receive any comments with respect to the Chairman's certification.

Costs and Benefits

Amended rule 52 will substantially decrease regulatory compliance costs for the registered holding companies. In calendar years 1993 and 1994, 122 applications would not have been filed, had the proposed amended rule 52 been in place. Estimated savings per application would have been approximately $30,000 including the $2,000 filing fee per application, and related legal, accounting, and management costs. Thus, for 122 applications filed in calendar years 1993 and 1994, the aggregate savings would have been approximately $3,660,000 or $1,830,000, respectively, per year. Moreover, the reduction in Commission staff hours associated with reviewing and analyzing these applications would have been approximately 5,700 hours per year (2.5 staff years). The only cost to the registered holding companies in complying with the amended rule will be the cost of completing a Form U–6B–2 after the issue or sale of any security. It is estimated that approximately one hour will be required to complete each form at an estimated cost of $100 per hour. Assuming 61 financing applications per year, the cost of compliance reporting would approximate $6,100 per year.

Paperwork Reduction Act

The proposed amended rules are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 79 *et seq.*) and have been submitted to the Office of Management and Budget for approval to use them through July 31, 1997. Final action is expected by June 23, 1995.

Statutory Authority

The Commission is amending rules 45 and 52 pursuant to sections 6, 9, 12 and 20 of the Public Utility Holding Company Act of 1935.

[35] See Holding Co. Act Release No. 25886 (Sept. 23, 1993), 58 FR 51488 (Oct. 1, 1993).

[36] Rule 53 provides standards for the Commission to determine whether to approve the issue or sale of a security by a registered holding company, in cases where the proceeds of the financing will be used to acquire an EWG. Rule 54 provides that the effect of EWG and FUCO operations on the registered system will not be considered in determining whether to approve any other transactions under the Holding Company Act, if the standards of rule 53 are satisfied. 17 CFR 250.53 and 250.54.

[37] *National Association of Regulatory Utility Commissioners, et al. v. Securities and Exchange Commission*, U.S. Court of Appeals for the District of Columbia Circuit, No. 93–1778.

[38] Further, the amended rules do not create any new exemption from the pre-approval process for guaranties by a registered holding company of the securities or other obligations of any subsidiary.

[39] New Orleans at 15.

[40] New Orleans at 16.

List of Subjects in 17 CFR Part 250

Electric utilities, Holding companies, Natural gas, Reporting and recordkeeping requirements, Securities.

Text of Final Rules

For the reasons set forth in the preamble, Part 250 of chapter II, title 17, of the Code of Federal Regulations is amended as follows:

PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

1. The authority citation for part 250 continues to read as follows:

Authority: 15 U.S.C. 79c, 79f(b), 79i(c)(3), 79t, unless otherwise noted.

2. Section 250.45 is amended by revising paragraph (b)(4) to read as follows:

§ 250.45 Loans, extensions of credit, donations and capital contributions to associate companies.

* * * * *

(b) *Exceptions.* * * *

(4) Capital contributions or open account advances, without interest, by a company to its subsidiary company.

* * * * *

3. Section 250.52 is revised to read as follows:

§ 250.52 Exemption of issue and sale of certain securities.

(a) Any registered holding-company subsidiary which is itself a public utility company shall be exempt from section 6(a) of the Act (15 U.S.C. 79f(a)) and rules thereunder with respect to the issue and sale of any common stock, preferred stock, bond, note or other form of indebtedness, of which it is the issuer (excluding any guaranty and other form of assumption of liability on the obligations of another) if:

(1) The issue and sale of such security are solely for the purpose of financing the business of such public utility subsidiary company;

(2) The issue and sale of such security have been expressly authorized by the state commission of the state in which such subsidiary company is organized and doing business; and

(3) The interest rates and maturity dates of any debt security issued to an associate company are designed to parallel the effective cost of capital of that associate company.

(b) Any subsidiary of a registered holding company which is not a holding company, a public utility company, an investment company, or a fiscal or financing agency of a holding company, a public utility company or an investment company shall be exempt from section 6(a) of the Act (15 U.S.C. 79f(a)) and rules thereunder with respect to the issue and sale of any common stock, preferred stock, bond, note or other form of indebtedness, of which it is the issuer (excluding any guaranty and other form of assumption of liability on the obligations of another) if:

(1) The issue and sale of such security are solely for the purpose of financing the existing business of such subsidiary company; and

(2) The interest rates and maturity dates of any debt security issued to an associate company are designed to parallel the effective cost of capital of that associate company.

(c) Within ten days after the issue or sale of any security exempt under this section, the issuer or seller shall file with the Commission a Certificate of Notification on Form U–6B–2 (17 CFR 259.206) containing the information prescribed by that form. However, with respect to exempt financing transactions between associate companies which involve the repetitive issue or sale of securities or are part of an intrasystem financing program involving the issuance and sale of securities not exempted by this section, the filing of information on Form U–6B–2 may be done on a calendar quarterly basis.

(d) The acquisition by a company in a registered holding company system of any security issued and sold by any associate company, pursuant to this section, is exempt from the requirements of section 9(a) of the Act (15 U.S.C. 79i(a)); provided that the exemption granted by this paragraph (d) shall not apply to any transaction involving the issue and sale of securities to form a new subsidiary company of a registered holding company.

Dated: June 20, 1995.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15836 Filed 6–27–95; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 250

[Release No. 35–26312, File No. S7–11–95]

RIN 3235–AG45

Exemption of Issuance and Sale of Securities By Public-Utility and Nonutility Subsidiary Companies of Registered Public-Utility Holding Companies

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Commission, which today amended rules 45 and 52 under the Public Utility Holding Company Act of 1935 ("Act"), is requesting comment on further amendments. The proposed amendment to rule 52 would permit a subsidiary company of a registered company to issue and sell any security without the need to apply for, or receive, prior Commission approval, where the conditions of the rule are met. The Commission is proposing a conforming amendment to rule 45 with respect to the guaranty of securities. These amendments are intended to eliminate unnecessary regulatory burdens and paperwork associated with seeking Commission approval for routine financings by companies in a registered holding company system.

DATES: Comments must be submitted on or before September 26, 1995.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 6–9, Washington, D.C. 20549. Comment letters should refer to File No. S7–11–95. All comment letters received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: William C. Weeden, Associate Director, Joanne C. Rutkowski, Assistant Director, or Bonnie Wilkinson, Staff Attorney, all at (202) 942–0545, Office of Public Utility Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is requesting comment on proposed amendments to rules 45 and 52 (17 CFR 250.45 and 250.52) under the Public Utility Holding Company Act of 1935 [15 U.S.C. 79 et seq.). Rule 52 has exempted from the requirement of prior Commission approval under section 6(a) the issuance and sale of certain specified types of securities by any subsidiary company of a registered holding company, in accordance with the terms and conditions of the rule. The proposed amendment to rule 52 would broaden the scope of the rule to exempt all types of securities issued and sold by such subsidiary companies, subject to satisfying the other conditions of the rule. A conforming change to rule 45 is also being proposed to conditionally exempt from the requirement of prior Commission approval under section 12(b) any guaranty by a subsidiary company of debt securities issued by any other subsidiary company.

The Commission is also proposing to rescind the statements of policy with respect to first mortgage bonds and preferred stock ("Statements of Policy") and seeks comment on this proposal.[1]

Introduction

Rule 52 exempts from the requirement of prior Commission authorization under section 6(a) the issue and sale of certain specified types of securities by both public-utility and nonutility subsidiary companies of registered public-utility holding companies.[2] Rule 52 also exempts from the requirement of prior Commission authorization under section 9(a)(1) the acquisition by a company in a registered holding company system of any securities issued by any associate company pursuant to the rule.[3]

Rule 52, as originally adopted in 1990, was limited to specified types of securities issued by public-utility companies. The rule was amended in 1992 to, among other things, expand the types of securities within the exemption;[4] and the Commission has today further amended the rule in order to expand the categories of securities covered, to make the exemption more useful in connection with other common forms of intrasystem financing, and to extend the exemption to nonutility companies. As so amended, the rule provides a conditional exemption from the requirement of prior Commission approval for the issue and sale by both public-utility and nonutility subsidiary companies of a registered holding company of any common stock, preferred stock, bond, note or other form of indebtedness of which it is the issuer (excluding guaranties), provided that, in the case of any note issued to an associate company, the interest rate and maturity date of such note are designed to parallel the effective cost of capital of that associate company. To qualify for exemption under rule 52, the issue and sale must be solely for the purpose of financing the business of the subsidiary company and, if the subsidiary company is a public-utility company, must be expressly authorized by the relevant state commission.

The Commission is today proposing a further amendment to rule 52 to exempt the issue and sale of any security by a subsidiary company in a registered holding company where the conditions of the rule are otherwise met. This additional change is intended to eliminate unneeded regulation of routine financings by existing subsidiaries of a registered holding company. The Commission is also proposing a further change to rule 45 to conform the exemption from section 12(b), which is provided by rule 45, to the exemption from section 6(a), which is provided by rule 52. Such a conforming amendment is necessary because a guaranty may be both a security under section 6(a) and an extension of credit under section 12(b).

The Commission is also proposing to rescind the Statements of Policy.

[1] Holding Co. Act Release Nos. 13105 and 13106 (Feb. 16, 1956), as amended in Holding Co. Act Release Nos. 16369 (May 6, 1969) and 16758 (June 22, 1970).

[2] Section 6(a) requires Commission approval under the standards of section 7 of the issue and sale of any security of a registered holding company or its subsidiary company.

Section 6(b) authorizes the Commission to exempt from the declaration requirements of section 5(a):

> the issue or sale of any security by any subsidiary company of a registered holding company, if the issue and sale of such security are solely for the purpose of financing the business of such subsidiary company and have been expressly authorized by the State commission of the State in which such subsidiary company is organized and doing business. * * *

In section 6(a), the Congress intended "to exempt the issue of securities by subsidiary companies in cases where holding company abuses are unlikely to exist." H.R. Conf. Rep. No. 1903, 74th Cong., 1st Sess. 66–67 (1935). See generally Holding Co. Act Release No. 25058 (Mar. 9, 1990), 55 FR 11362 (Mar. 26, 1990) (adopting rule 52), and Holding Co. Act Release No. 25573 (July 7, 1992), 57 FR 31120 (July 14, 1992) (amending rule 52).

[3] Section 9(a)(1) requires prior Commission approval under the standards of section 10 for the acquisition of securities by a registered holding company or its subsidiary company. Section 9(c)(3) provides a limited exception from this requirement for the acquisition of:

> such commercial paper and other securities, within such limitations, as the Commission may by rules and regulations or order prescribe as appropriate in the ordinary course of business of a registered holding company or subsidiary company thereof and as not detrimental to the public interest or the interest of investors or consumers.

The exemption under rule 52 does not apply to the issuance and acquisition of securities to form a new subsidiary company of a registered holding company.

[4] See fn. 2, *supra*.

Discussion

In the 1992 release inviting comments on the proposed amendment to rule 52, adopted today, the Commission requested comments on whether the exemption under rule 52 should also be extended to exempt financing transactions involving other securities, in particular guaranties of debt securities issued by other subsidiary companies.

All of the registered holding companies commenting on the proposed amendment[5] favored extending the exemption to other types of securities, including guaranties. Guaranties by parent companies are frequently used in conjunction with borrowings by their subsidiary companies, and have been approved by order in countless instances.[6] Depending on materiality, such guaranties are required to be disclosed in financial statements. Further, as several commenters noted,[7] guaranties of affiliate company obligations by public-utility companies are subject to public utility commission approval in many states.

Several commenters[8] also supported expansion of rule 52 to exempt other categories of securities, particularly in the context of nonutility subsidiary financings. One holding company,[9] for example, noted the widespread use of partnership interests and other types of securities in nonutility financing, particularly in the context of project finance, and recommended the inclusion of such securities in rule 52(b).[10] The Commission is aware that a majority of states now have adopted limited liability company statutes which create a hybrid between partnerships and corporations.[11] This is an increasingly popular form of business enterprise. Based upon the Commission's experience in recent years with individual applications, it is clear that the kinds and types of securities issued by nonutility subsidiaries, including independent power subsidiaries, tend to vary more than those issued by public-utility subsidiaries.

The Commission is proposing to amend rule 52 to conditionally exempt the issue and sale of all types of securities by public-utility and nonutility subsidiaries alike. Because of the extensive reporting requirements imposed by the Act and other federal securities laws, and the far greater scrutiny of reporting companies since the passage of the Act sixty years ago, the Commission believes that it may be appropriate to condition the exemption under rule 52 solely by reference to the literal requirements of section 6(b), without regard to the form of the security issued.

In this connection, the Commission notes that it has exercised jurisdiction under sections 6(a) and 7 of the Act over interest rate swap agreements and related instruments.[12] Comment is requested on the extent, if any, to which such transactions should be excluded from the rule proposed today.

The Commission is also considering whether compliance with rule 52(b)(2)[13] should be required in situations where a nonutility subsidiary of a registered holding company issues a security that is acquired by another nonutility subsidiary in the same holding company system. Comment is requested on whether rule 52(b)(2) should be amended to create an exception for such situations.

A guaranty of debt securities issued by another subsidiary company is itself a security under the Act,[14] the issuance and sale of which is subject to the declaration requirement of section 6(a), unless exempted under section 6(b). In addition, the guaranty by a subsidiary company of any obligation of another subsidiary company is subject to section 12(b) and rule 45(a) thereunder.[15] An agreement to assume joint liability, as co-maker or otherwise, with respect to the indebtedness of another company is the functional equivalent of a guaranty, and is also subject to both sections 6(a) and 12(b).

Rule 45(a), with exceptions not relevant here, prohibits the issuance of guaranties and similar undertakings by a subsidiary company without the filing of a declaration.[16] We believe, however, that any guaranty or similar undertaking with respect to the indebtedness of another subsidiary company that is issued pursuant to the exemption provided by rule 52 should itself be exempt under rule 45. Accordingly, we are proposing to add a new paragraph to rule 45(b) to conform the related exemptions.[17]

In connection with the amendments to rules 52 and 45 adopted today by the Commission, some commenters have expressed concern that public-utility subsidiaries of registered holding companies and their customers need protection from the financial effects of financing transactions, particularly in the context of nonutility ventures that are not otherwise subject to effective state oversight.[18] The proposed expansion of the exemptions under rules 52 and 45 may heighten these concerns, and the Commission seeks the views of all parties on these issues. As a result, the Commission requests comments as to whether protection is needed and, if so, what form it should take. Commenters are invited to address the need for limitations based on (a) the registered holding company system's capitalization ratios; (b) the financial condition of the registered holding company system; (c) the extent of past losses incurred by registered holding companies in connection with past nonutility ventures; and (d) any other basis specified by the commenter. The

[5] The registered holding companies submitting comments were American Electric Power Company, Inc. ("AEP"), Allegheny Power System, Inc. ("APS"), Consolidated Natural Gas Company ("CNG"), Central and South West Corporation, Eastern Utilities Associates, General Public Utilities Corporation ("GPU"), and New England Electric System.

[6] See, *e.g.*, Eastern Utilities Assocs., Holding Co. Act Release No. 26266 (April 5, 1995)(guaranty by parent holding company of obligations of nonutility subsidiary); American Electric Power Co., Holding Co. Act Release No. 26267 (April 5, 1995)(same); Jersey Central Power & Light Co., Holding Co. Act Release No. 26246 (March 6, 1995)(guaranty by utility of payment obligations on preferred limited partnership interests of investment subsidiary); and Southern Co., Holding Co. Act Release No. 26221 (Jan. 25, 1995)(guaranty by holding company of debt, lease obligations and installment purchase obligations of nonutility subsidiary).

[7] AEP 3 and GPU at 4.

[8] See generally AEP at 3, APS at 2, and CNG at 3.

[9] GPU at 3.

[10] Many of the nonutility investments approved by the Commission in recent years have involved joint ventures with nonassociate companies. It is almost always desirable for the joint venture partners to invest directly or indirectly in an entity (such as a partnership) which for federal and state income tax purposes is treated as a partnership, rather than as a corporation, so that the income, loss and credits associated with the business can be reported directly by the joint venture partners.

[11] We understand that limited liability companies may be treated for tax purposes as partnerships, rather than taxed as corporations.

[12] These related instruments include products referred to as interest rate caps, floors and collars. Registered holding companies and subsidiaries have been using such instruments to limit the range within which the interest rate on the debt underlying such instrument will vary.

[13] Rule 52(b)(2) requires that the interest rate and maturity date of a debt security issued by a nonutility company to an associate company be designed to parallel the effective cost of capital of the associate company.

[14] See Holding Company Act section 2(a)(16)(definition of security), 15 U.S.C. 79b(a)(16).

[15] Section 12(a) prohibits the guaranty by subsidiary companies of debt issued by a registered holding company. 15 U.S.C. 79*l*(a).

[16] At present, rule 45(b)(6) exempts certain guaranties "in the ordinary course of business." The rule by its terms does not apply to a guaranty of a subsidiary's indebtedness for borrowed money.

[17] Under our proposal, it is possible that a subsidiary company providing a guaranty may be exempt from section 12(b) by reason of the proposed amendment to rule 45, but fail to satisfy the conditions for exemption from section 6(a) provided by rule 52.

[18] See the discussion of the comments of the City of New Orleans in the companion release published today in the **Federal Register**.

Commission also seeks comment on whether the rules should incorporate any requirements of notice to interested state commissions of the consummation of financing by nonutility subsidiaries of registered holding companies.

The Commission also proposes to rescind the Statements of Policy. The Statements of Policy were formulated by the Commission's staff nearly forty years ago to specify the terms to be included in new issues of first mortgage bonds and preferred stock. As the securities markets have developed, the Commission has found that the Statements of Policy have become anachronistic and hinder the ability of registered companies to raise capital. As a result, the Commission has permitted more and more deviations on a case-by-case basis from the requirements of the Statements of Policy.[19] In addition, in 1992, for similar reasons, the Commission eliminated compliance with the Statements of Policy as a condition to use of Rule 52.[20] The Commission believes that it is no longer appropriate to require specific terms to be included in securities issues, and requests comment on this proposed rescission.

Conclusion

The Commission believes that the registered holding-company systems should have a greater ability to engage in routine financings without the regulatory burden of prior Commission authorization, and that this may be done without jeopardizing the interests the Act is designed to protect. The rule amendments proposed today are intended to accomplish this purpose.

Regulatory Flexibility Act Certification

Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the proposed amended rules will not, if adopted, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, may be obtained from Bonnie Wilkinson, Office of Public Utility Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

Costs and Benefits

It appears that amended rules 45 and 52 will substantially decrease regulatory compliance costs for the registered holding companies.

Paperwork Reduction Act

The proposed amendment is subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 79 *et seq.*) and will be submitted to the Office of Management and Budget for approval.

Statutory Authority

The Commission is proposing to amend rules 45 and 52 pursuant to sections 6, 9, 12 and 20 of the Act.

List of Subjects in 17 CFR Part 250

Electric utilities, Holding companies, Natural gas, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rules

For the reasons set forth in the preamble, Part 250 of chapter II, title 17, of the Code of Federal Regulations is proposed to be amended as follows:

PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

1. The authority citation for part 250 continues to read as follows.

Authority: 15 U.S.C. 79c, 79f(b), 79i(c)(3), 79t, unless otherwise noted.

2. Section 250.45 is amended by adding paragraph (b)(7) to read as follows:

§ 250.45 Loans, extensions of credit, donations and capital contributions to associate companies.

* * * * *

(b) *Exceptions.* * * *

(7) An agreement by any subsidiary company of a registered holding company to assume liability (as guarantor, co-maker, indemnitor, or otherwise) with respect to any security issued by any other subsidiary company in the same holding company system, provided that the issuance and sale of such security is exempt from the declaration requirements of section 6(a) of the Act (15 U.S.C. 79f(a)) pursuant to § 250.52.

3. Section 250.52 is amended by revising paragraphs (a) and (b) to read as follows:

§ 250.52 Exemption of issue and sale of certain securities.

(a) Any registered holding-company subsidiary which is itself a public-utility company shall be exempt from section 6(a) of the Act (15 U.S.C. 79f(a)) and rules thereunder with respect to the issue and sale of any security, of which it is the issuer if:

(1) The issue and sale of such security are solely for the purpose of financing the business of such public-utility subsidiary company;

(2) The issue and sale of such security have been expressly authorized by the state commission of the state in which such subsidiary company is organized and doing business; and

(3) The interest rates and maturity dates of any debt security issued to an associate company are designed to parallel the effective cost of capital of that associate company.

(b) Any subsidiary of a registered holding company which is not a holding company, a public-utility company, an investment company, or a fiscal or financing agency of a holding company, a public-utility company or an investment company shall be exempt from section 6(a) of the Act (15 U.S.C. 79f(a)) and rules thereunder with respect to the issue and sale of any security, of which it is the issuer if:

(1) The issue and sale of such security are solely for the purpose of financing the existing business of such subsidiary company; and

(2) The interest rates and maturity dates of any debt security issued to an associate company are designed to parallel the effective cost of capital of that associate company.

* * * * *

Dated: June 20, 1995.

By the Commission.

Jonathan G. Katz,

Secretary.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15837 Filed 6–27–95; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 250 and 259

[Release No. 35–26313; File No. S7–12–95]

RIN 3235–AG46

Exemption of Acquisition By Registered Public-Utility Holding Companies of Securities of Nonutility Companies Engaged In Certain Energy-Related and Gas-Related Businesses; Exemption of Capital Contributions and Advances to Such Companies

AGENCY: Securities and Exchange Commission.

[19] See, e.g., Georgia Power Co., Holding Co. Act Release No. 25033 (Feb. 7, 1990)(authorizing deviation from redemption provisions required by Statement of Policy for first mortgage bonds), and System Energy Resources, Inc., Holding Co. Act Release No. 24318 (Feb. 18, 1987) (authorizing charter amendment with earnings coverage requirement different from Statement of Policy for preferred stock). The Statements of Policy themselves contemplate that "deviations from these standards should be permitted in appropriate cases." Holding Co. Act Release Nos. 13105 and 13106 (Feb. 16, 1956).

[20] Holding Co. Act Release No. 25573 (July 7, 1992), 57 FR 31120 (July 14, 1992).

ACTION: Proposed rule and rule amendments.

SUMMARY: The Commission is requesting comment upon proposed rule 58 and related proposed conforming amendments to rules 45(b) and 52(b) under the Public Utility Holding Company Act of 1935 ("Act"). Rule 58 would exempt from the requirement of prior Commission approval under sections 9(a)(1) and 10 of the Act, pursuant to section 9(c)(3), the acquisition by a registered holding company or any subsidiary company of securities of an "energy-related company," as defined in the rule, subject to certain investment limitations and reporting requirements. Rule 58 would also exempt from the requirement of prior Commission approval under sections 9(a)(1) and 10, pursuant to section 9(c)(3), the acquisition by a gas registered holding company or any subsidiary of securities of a "gas-related company," as defined in the rule, subject to certain reporting requirements. The proposed rule and related rule amendments will eliminate unnecessary regulatory burdens and paperwork associated with filings by a registered holding company for Commission approval to invest in nonutility businesses that are closely related to a system's core utility business.

DATES: Comments must be submitted on or before September 26, 1995.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 6–9, Washington, D.C. 20549. Comment letters should refer to File No. S7–12–95. All comment letters received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: William C. Weeden, Associate Director, Joanne C. Rutkowski, Assistant Director, Sidney L. Cimmet, Senior Special Counsel, Robert P. Wason, Chief Financial Analyst, or Bonnie Wilkinson, Staff Attorney, Office of Public Utility Regulation, all at (202) 942–0545, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is requesting comment on proposed rule 58 and related amendments to rule 45(b) and rule 52(b) (17 CFR 250.45(b) and 250.52(b)) under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 *et seq.*). Rule 58 would exempt from the requirement of prior Commission approval under sections 9(a)(1) and 10 of the Act, pursuant to section 9(c)(3), the acquisition by a registered holding company or any subsidiary company of any securities of an energy-related company, subject to certain investment limitations and reporting requirements. The proposed rule defines an energy-related company as one that derives, or will derive, substantially all of its revenues from one or more activities specifically enumerated in the rule, and such other activities as the Commission may, from time to time by order upon application under sections 9(a)(1) and 10, designate as energy-related for purposes of the rule. The exemption provided by the rule would be available only if the aggregate investment by a registered holding company in such energy-related companies does not exceed the greater of $50 million and 15% of the holding company's consolidated capitalization.

Proposed rule 58 would also exempt from the requirement of prior Commission approval under sections 9(a)(1) and 10 of the Act, pursuant to section 9(c)(3), the acquisition by a registered gas-utility holding company or any subsidiary company of any securities of a gas-related company, subject to certain reporting requirements. The proposed rule defines a gas-related company as one that derives, or will derive, substantially all of its revenues from one or more activities permitted under the Gas Related Activities Act of 1990, and such other activities as the Commission may, from time to time, by order upon application under sections 9(a)(1) and 10 and the Gas Related Activities Act, designate as gas-related for purposes of the rule.

The Commission is also proposing amendments to rule 45(b) and rule 52(b) concerning financings by registered holding company system companies: (1) to qualify the exception under rule 45(b) to the requirement of Commission approval under section 12(b) and rule 45(a) for capital contributions and open account advances without interest to an energy-related subsidiary company; and (2) to qualify the exemption provided by rule 52(b) from the requirement of Commission approval under sections 6(a) and 7 for issuances and sales of securities by energy-related subsidiary companies, in each case to conform the rules to the investment limitations of proposed rule 58.

I. Background

In recent years, the volume of applications by registered holding companies seeking approval to engage in various nonutility activities that complement, or are natural extensions of, the electric and gas utility businesses has grown dramatically.[1] It is evident from these filings that the utility industry is evolving toward a broadly based energy-related business that is no longer focused solely on the traditional, regulated, production and distribution functions of a utility. Today, almost all utilities engage in a variety of other energy-related activities that involve applications of resources and capabilities developed in the conduct of utility operations. Many involve new uses of skills and experience gained in utility operations, or new uses of utility infrastructure and technology to provide services to utility as well as nonutility customers.

II. Statutory Framework

Section 9(a)(1) of the Act, among other things, requires prior Commission approval under the standards of section 10 for any direct or indirect acquisition by a registered holding company or any subsidiary company of any securities or an interest in a nonutility business. Of interest here, section 10(c)(1) requires that the Commission shall not approve an acquisition that would be detrimental to the carrying out of section 11. Section 11(b)(1), in turn, limits the nonutility activities of a registered holding company to those that are "reasonably incidental, or economically necessary or appropriate" to the company's utility business when the Commission finds such activities to be "necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of [the integrated] system." Under the orders of the Commission interpreting section 11(b)(1), a registered holding company may acquire an interest in a nonutility business that has an operating or functional relationship to the utility operations of the holding company system.[2] The Commission has also approved the acquisition of a nonutility interest that (1) involves the sale or lease of products or skills of some complexity developed by the holding company at considerable expense for the benefit of its utility

[1] From 1993 through the end of 1994, for example, the Commission reviewed approximately 122 filings under section 10 involving proposals to acquire nonutility interests, usually through investments in nonutility subsidiaries. These filings represented, in staff time, 13,300 hours per year, or 6.5 staff years.

[2] See Michigan Consolidated Gas Co., 44 S.E.C. 361, 363–65 (1970), aff'd, 444 F.2d 913 (D.C. Cir. 1971); General Public Utilities Corp., 32 SEC 807, 839 (1951).

subsidiaries and not readily available to the rest of the public from other sources; (2) generally requires little or no further investment by the holding company; and (3) permits the amortization of product development expenses with little or no risk.[3]

To encourage energy-related activities, Congress has acted to modify the requirements of section 11(b)(1) on several occasions. In 1992, Congress enacted the Gas Related Activities Act of 1990 ("GRAA")[4] to enable the three gas utility holding companies then registered under the Act to participate on an equal footing with other gas companies in the development of new gas markets.[5] Congress intended to promote competition in the natural gas markets through investment in gas production, transportation, storage, marketing and similar activities.

The GRAA provides that the acquisition by a gas registered company "of any interest in any natural gas company[6] or any company organized to participate in activities involving the transportation or storage of natural gas, shall be deemed, for purposes of section 11(b)(1) of the Act, to be reasonably incidental or economically necessary or appropriate to the operation of [the system's] gas utility companies."[7] The GRAA further provides that the acquisition by a gas registered company "of any interest in any company organized to participate in activities (other than those of a natural gas company or involving the transportation or storage of natural gas) related to the supply of natural gas, including exploration, development, production, marketing, manufacture, or other similar activities related to the supply of natural or manufactured gas shall be deemed, for purposes of section 11(b)(1) of the Act, to be reasonably incidental or economically necessary or appropriate to the operation of such gas utility companies, if—

(1) the Commission determines, after notice and opportunity for hearing in which the company proposing the acquisition shall have the burden of proving, that such acquisition is in the interest of consumers of each gas utility company of such registered company or consumers of any other subsidiary of such registered company; and

(2) the Commission determines that such acquisition will not be detrimental to the interest of consumers of any such gas utility company or other subsidiary as to the proper functioning of the registered holding company system."[8] All acquisitions made pursuant to the GRAA thus remain subject to approval under sections 9(a)(1) and 10 of the Act, and related financings remain subject to the applicable provisions of the Act.

In addition, free-standing legislation enacted in 1985, 1986 and 1992 addressed the ownership by registered holding companies of interests in qualifying cogeneration facilities and qualifying small power production facilities (collectively, "QFs"), as defined under the Public Utility Regulatory Policies Act of 1978, as amended ("PURPA"), in light of the requirements of section 11(b)(1) of the Act.[9] For purposes of the Act, a QF is a nonutility interest of a registered holding company.[10] The 1985 amendment permitted gas registered holding companies to acquire cogeneration QFs without regard to the requirement of a functional relationship between the QF and the utility business of the registered system.[11] The 1986 legislation provided similar relief to electric registered holding companies.[12] The two amendments thus permitted registered holding companies and their subsidiaries to own cogeneration QFs without regard to location.[13] The 1992 amendment eliminated the distinction made in the earlier amendments between cogeneration QFs and small power production QFs. Thus, registered holding companies and their subsidiary companies may now own both small power production QFs and cogeneration QFs wherever located. As in the case of the GRAA, however, the acquisition of the securities of a QF entity remains subject to approval under sections 9(a)(1) and 10 of the Act, and related financings by a QF subsidiary company remain subject to the applicable provisions of the Act.

Finally, Congress in 1992 enacted legislation to promote the development of alternative powered vehicles as a part of a national energy policy to reduce automobile emissions.[14] The legislation defines vehicular natural gas as "natural or manufactured gas that is ultimately used as a fuel in a self-propelled vehicle," and provides that a nonutility company that is involved, as a primary business, in the sale of vehicular natural gas, or the manufacture, sale, transport, installation, servicing, or financing of equipment related to the sale for consumption of vehicular gas is a nonutility company for purposes of the Act and may be acquired by a gas registered holding company in any geographic area.[15]

Section 9(c)(3) of the Act provides an exemption from the requirements of section 9(a)(1) for the acquisition of "such commercial paper and other securities, within such limitations, as the Commission may by rules and regulations or order prescribe as appropriate in the ordinary course of business of a registered holding company or subsidiary company thereof and as not detrimental to the public interest or the interest of investors or consumers." (Emphasis added). The Commission has previously issued orders under section 9(c)(3) exempting from section 9(a)(1) acquisitions of small amounts of securities of local industrial development corporations, affordable housing projects, and venture capital concerns, among others.[16] Because the investments in these matters did not result in control or create an affiliate relationship,[17] the Commission reasoned that they did not contravene the requirements of section 10(c) and, by reference, section 11(b).[18] The Commission has also adopted rule 40(a)(5) under section 9(c)(3) to exempt such acquisitions from the requirements of section 9(a)(1), provided that an affiliate relationship does not result, and subject to certain annual dollar limitations.[19]

[3] See Southern Co., Holding Co. Act Release No. 26211 (Dec. 30, 1994) (citing CSW Credit, Inc., Holding Co. Act Release No. 24348 (Mar. 18, 1987)).

[4] Pub. L. No. 101–572, 104 Stat. 2810 (codified at 15 U.S.C. §79k note (1990)).

[5] S. 8367 Cong. Rec. (June 20, 1990). The three gas registered holding companies were Columbia Gas System, Inc. ("Columbia"), Consolidated Natural Gas Company ("CNG") and National Fuel Gas Company ("NFG").

[6] "Natural gas company" is defined to have the same meaning given such term under the Natural Gas Act, 15 U.S.C. 717(a) *et seq.*, *viz.*, an individual or corporation engaged in the transportation of natural gas in interstate commerce or the sale in interstate commerce of natural gas for resale.

[7] Section 2(a), GRAA.

[8] Section 2(b), GRAA. Section 2(c) further provides that each determination under section (b) shall be made on a case-by-case basis, not based on any "preset criteria." Section 2(d) provides that "[n]othing contained herein shall be construed to affect the applicability of any other provisions of the Act to the acquisition or retention of any such interest by any such company."

[9] PURPA appears generally in 16 U.S.C. 2601 *et seq.* Section 3(18) of the Federal Power Act ("FPA"), as amended by PURPA, defines a cogeneration facility as a facility which produces—(i) electric energy, and (ii) steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating, or cooling purposes. 16 U.S.C. 796(18)(A). Section 210 of PURPA encourages energy conservation by directing the Federal Energy Regulatory Commission ("FERC") to define and to prescribe rules that would exempt so-called "qualifying" cogeneration facilities and "qualifying" small power production facilities from the FPA, the Act, and certain state laws "if the [FERC] determines such exemption is necessary to encourage cogeneration and small power production." 16 U.S.C. 824a-3(e)(1). The rules adopted by the FERC concerning qualifying facilities require electric utilities to interconnect with QFs and to offer to purchase power from, and sell power to, QFs, and set the general standard for determining the rates for power sale transactions with QFs. 18 CFR 292.301–308.

[10] Under section 210 of PURPA, a QF is exempt under the Act from the definition of an "electric utility company" and is entitled to other benefits under state and federal law.

[11] Pub. L. 99–186, 99 Stat. 1180 (codified at 15 U.S.C. 79k note (1988)).

[12] Pub. L. 99–553, 100 Stat. 3087 (codified at 15 U.S.C. 79k note (1988)).

[13] Neither bill made any allowance, however, for investments in small power production QFs. As a result, acquisitions of such interests remained subject to the section 11(b)(1) requirement of functional relationship. Prior to the 1992 legislation, this requirement barred gas registered holding companies from investing in small power production facilities and limited electric registered holding companies to investments located within the service territory of their utility subsidiaries.

[14] See Articles IV, V and VI, Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2777 (1992) (codified at 15 U.S.C. 79b note (1992)).

[15] The legislation also provides that the sale or transportation of vehicular natural gas by a company or its subsidiary shall not be taken into consideration in determining whether, under section 3 of the Act, such company is exempt from registration. *Id.*

[16] See, e.g., Hope Gas, Inc., Holding Co. Act Release No. 25739 (Jan. 26, 1993) and Georgia Power Co., Holding Co. Act Release No. 25949 (Dec. 15, 1993) (securities of local venture capital companies); Georgia Power Co., Holding Co. Act Release No. 26220 (Jan. 24, 1995) and East Ohio Gas Co., Holding Co. Act Release No. 25046 (Feb. 27, 1990) (securities of affordable housing partnerships); Potomac Edison Co., Holding Co. Act Release No. 25312 (May 14, 1991) (shares of for-profit economic development corporation).

[17] Section 2(a)(11) in pertinent part defines "affiliate" of a specified company to mean:

(A) any person that directly or indirectly owns, controls, or holds with power to vote, 5 per centum or more of the outstanding voting securities of such specified company; [and]

(B) any company 5 per centum or more of whose outstanding voting securities are owned, controlled, or held with power to vote, directly or indirectly, by such specified company.

[18] The Commission has rejected the attempted use of section 9(c)(3) to circumvent the requirements of section 11(b)(1), referenced in section 10(c)(1). See Michigan Consolidated Gas Company, 44 S.E.C. at 366–67 ("Section 9(c)(3) cannot be employed to evade the proscription of Section 11(b)(1) prohibiting the acquisition by a gas utility company of an interest in a business unrelated to its business").

[19] Under rule 40(a)(5), a holding company or subsidiary may acquire annually up to $5 million of the securities of economic development companies created under special state laws promoting economic development, and up to $1 million annually in local industrial or nonutility enterprises.

III. Proposed Rule 58

Proposed rule 58 would exempt from the requirement of prior Commission approval under sections 9(a)(1) and 10, pursuant to section 9(c)(3), the acquisition by a registered holding company or a subsidiary company of securities of an "energy-related company" or a "gas-related company," as defined in the rule, subject to certain conditions. The proposed rule would not exempt from the requirement of prior Commission authorization under section 10 any acquisition of securities of an electric utility company or a gas utility company within the meaning of the Act, or exempt an energy-related or gas-related subsidiary company from any provision of the Act.[20]

Proposed rule 58(a) would authorize a registered holding company or any subsidiary thereof to acquire securities of an energy-related company, as defined; provided that a registered holding company's aggregate investment in such companies does not exceed the greater of 15% of consolidated capitalization and $50 million. Proposed rule 58(b) would authorize a gas registered holding company or any subsidiary thereof to acquire securities of a gas-related company, as defined, without limitation. All acquisitions pursuant to the rule would be considered to be "appropriate in the ordinary course of business" within the meaning of section 9(c)(3), and thus exempt from the requirements of sections 9(a)(1) and 10.

An energy-related company is defined in proposed rule 58 as a company that derives or will derive substantially all of its revenues from one or more of the activities set forth in subsections (b)(i) through (xii) and such other nonutility activities as the Commission may from time to time, by order upon application under sections 9(a)(1) and 10, authorize a registered holding company to engage in, and, in so doing, designate as energy-related for purposes of rule 58. The rule identifies the following categories of activities as energy-related:

(1) the rendering of energy conservation and demand-side management services;[21]

(2) the development and commercialization of electro-technologies related to energy conservation, storage and conversion, energy efficiency, waste treatment, greenhouse gas reduction, and similar innovations;[22]

(3) the manufacture, conversion, sale and servicing of electric and compressed natural gas powered vehicles and ownership and operation of related refueling and recharging equipment;[23]

(4) the sale, installation, and servicing of electric and gas appliances for residential, commercial and industrial heating and lighting;[24]

(5) the brokering and marketing of energy commodities, including but not limited to electricity or natural or manufactured gas;[25]

(6) the production, conversion, and distribution of thermal energy products, such as process steam, heat, hot water, chilled water, air conditioning, compressed air and similar products; alternative fuels; and renewable energy resources;[26]

[20] In this regard, the Commission notes in particular that it will have jurisdiction under sections 12(f) and 13(b) and the rules thereunder over affiliate transactions with these companies involving the sale of goods or services or other property. The Commission enticipates that the proposed quarterly reporting requirement on Form U–9C–3, discussed *infra*, will provide state commissions with a valuable additional source of information on affiliate transactions.

[21] See Eastern Utilities Associates, Holding Co. Act Release No. 26232 (Feb. 15, 1995); EUA Cogenex Corp., Holding Co. Act Release No. 25636 (Sept. 17, 1992); Northeast Utilities, Holding Co. Act Release No. 25114–A (July 27, 1990); Entergy Corp., Holding Co. Act Release No. 25718 (Dec. 28, 1992).

[22] See Southern Co., Holding Co. Act Release No. 23888 (Oct. 31, 1985) (investment in venture to construct, own and operate facilities for the manufacture and sale of photovoltaic cells); Entergy Corp., Holding Co. Act Release No. 25718 (Dec. 28, 1992) (acquisition of stock interest in company that develops, manufactures and markets energy efficient lighting technologies); American Electric Power Co., Inc., Holding Co. Act Release No. 25424 (Dec. 11, 1991) (acquisition of interest in company to develop, manufacture and market electronic light bulb); Allegheny Power System, Inc., Holding Co. Act Release No. 26225 (Feb. 1, 1995) and General Public Utilities Corp., Holding Co. Act Release No. 26230 (Feb. 8, 1995) (acquisition of limited partnership interest in venture capital fund that will invest in companies commercializing various electro-technologies).

[23] See Consolidated Natural Gas Co., Holding Co. Act Release No. 25615 (Aug. 27, 1992); Central Power and Light Co., Holding Co. Act Release No. 26160 (Nov. 16, 1994). As noted supra, Congress has enacted legislation to promote the development of activities related to vehicular natural gas as a part of a national energy policy to reduce automobile emissions.

[24] Historically, the Commission has allowed registered holding companies to engage in the marketing of standard appliances. See Engineers Public Service Co., 12 S.E.C 41 (1942). As a related matter, rule 48 provides an exemption for the acquisition of evidence of customer indebtedness in connection with the sale of standard appliances. The Commission has permitted the expansion of marketing and sales activities to encompass other types of appliances and energy-utilizing equipment. See, e.g., Consolidated Natural Gas Co., Holding Co. Act Release No. 26234 (Feb. 23, 1995). The Commission contemplates that subsection (b)(1)(iv) will include all present and future types of equipment used for residential, commercial and industrial heating and lighting.

[25] The Commission has authorized registered holding companies to engage in a variety of gas and electricity brokering and marketing activities. See, e.g., Consolidated Natural Gas Co., Holding Co. Act Release No. 24329 (Feb. 27, 1987) (authorizing creation of a subsidiary to compete with independent gas marketing companies); Entergy Corp., Holding Co. Act Release No. 25848 (July 8, 1993) (authorizing sale of consulting services to nonaffiliates, including expertise relating to brokering of power resources); UNITIL Corp., Holding Co. Act Release No. 25816 (May 24, 1993) (authorizing organization of a new subsidiary to serve as power brokering agent).

[26] There are numerous instances in which the Commission has permitted retention of interests in steam production and distribution businesses. See, e.g., General Public Utilities Corp., 32 S.E.C. at 840–41. More recently, the Commission approved an acquisition of existing steam production facilities inside an industrial site. See Southern Co., Holding Company Act Release No. 26185 (Dec. 13, 1994).

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(7) the sale of technical, operational, management, and other similar kinds of services and expertise, developed in the course of utility operations in such areas as power plant and transmission system engineering, development, design and rehabilitation; construction; maintenance and operation; fuel procurement, delivery and management; environmental licensing, testing and remediation; and other similar areas;[27]

(8) the ownership and operation of "qualifying facilities" within the meaning of the Public Utility Regulatory Policies Act of 1978, as amended, and facilities necessary or incidental thereto, including thermal energy utilization facilities purchased or constructed primarily to enable the qualifying facility to satisfy the useful thermal output requirements under PURPA;[28]

(9) the ownership and operation of fuel procurement, transportation, handling and storage facilities, scrubbers, and resource recovery and waste water treatment facilities;[29]

(10) the production, transportation, distribution or storage of all forms of energy other than electricity and natural or manufactured gas;[30]

(11) the development and commercialization of technologies or processes which utilize coal waste by-products as an integral component of such technology or process;[31]

(12) the ownership, sale, leasing or licensing of the use of telecommunications facilities and equipment (such as fiber optic lines, coaxial cable, or other communications capacity, towers and tower sites and other similar properties);[32] and

(13) such other activities and investments as the Commission may, from time to time, upon application under section 10 designate as energy-related for purposes of the rule.

The last category is intended to encompass all other activities, not specifically identified in the first twelve categories, that the Commission may hereafter determine, by order upon application, to be energy-related. This feature of the rule will ensure that it does not remain static as the electric and gas industries continue to evolve. Applications concerning additional nonutility activities will of course be subject to public notice in the **Federal Register** pursuant to rule 23. The notice will specify that Commission approval of the application may involve a designation of the activity in question as energy-related for purposes of rule 58.

Proposed rule 58 defines a gas-related company as a company that derives or will derive substantially all of its revenues from activities permitted under sections 2(a) and 2(b) of the GRAA and such other nonutility activities as the Commission may, from time to time, by order upon application under sections 9(a)(1) and 10 and section 2(b) of the GRAA, authorize a gas registered holding company to engage in, and, in so doing, designate as gas-related for purposes of rule 58.

The proposed rule contemplates that both energy-related and gas-related companies will derive substantially all of their revenues from the respective activities designated in the rule so long as the registered holding company system holds the investment. The Commission requests comment on whether any special reporting requirements may be needed with respect to the revenues derived from any other activities of such companies, to ensure that this requirement is satisfied. The Commission also invites specific comment on whether the proposed rule should include other kinds or categories of energy-related activities.

The Commission believes that it is appropriate, as contemplated by section 9(c)(3), to limit the aggregate investment of a registered holding company in energy-related companies pursuant to the proposed rule, to ensure that these acquisitions are not detrimental to the public interest or the interest of investors or consumers.[33] Accordingly, the Commission proposes to limit acquisitions of the securities of such companies to an amount equal to the greater of 15% of the consolidated capitalization of the holding company and $50 million. Within these parameters, a registered holding company will have discretion and flexibility to invest in energy-related companies. In some cases, a registered holding company or its subsidiary may acquire a limited interest and/or invest a very small amount of capital in an energy-related company. In other cases, those, for example, involving ownership of a QF or a steam production plant, the acquisition may involve a large interest and/or substantial capital outlays.

The Commission contemplates that prior investments in energy-related companies pursuant to orders would not be counted toward the limitation on aggregate investment in proposed rule 58. The Commission requests specific comment, however, on the appropriateness of excluding such prior investment for purposes of the rule.

The proposed limitation to 15% of consolidated capitalization, as reported by the registered holding company in its most recent Form 10–K or Form 10–Q, as applicable, affords significant flexibility for investments in energy-related companies by the larger registered systems.[34] The proposed alternative limitation of $50 million is intended to benefit the smaller registered systems.[35] The Commission invites specific comment on whether the proposed investment limitations are reasonable under the circumstances. The Commission also requests specific comment as to whether a different measure of financial capacity, such as consolidated retained earnings, should be used for purposes of the rule.[36]

The Commission is not proposing a similar limitation upon acquisitions of securities of a gas-related company. The activities contemplated by the GRAA are *per se* closely related to the core utility business of the gas registered holding companies, and currently represent more than 60% of the consolidated assets of these systems. There is no indication that Congress intended for the Commission to place investment limits on these activities.[37] Even if a limitation were deemed appropriate, it is difficult, as a practical matter, to select a limitation that would fairly take account of the disparities among the gas registered holding companies as to the nature and extent of GRAA-related investments to date.[38] The Commission requests particular comment, however, as to the appropriateness of a limitation in proposed rule 58 upon investments in gas-related companies.

The Commission is aware that the magnitude of the investments proposed to be exempted by rule 58 may cause concerns as to whether these investments, together with other factors affecting the registered holding company system, may have potential adverse effects on the system's utility companies and their customers. Consequently, the Commission seeks comment on whether rule 58 should include additional conditions to take account of other adverse conditions that may be present, and what form such conditions should take. Commenters are invited to address the need for additional conditions to use of the rule 58 exemption based on the financial condition of the registered holding company system, the extent of losses experienced by the system over recent periods, prior bankruptcies of system companies, and any other basis specified by the commenter.

The proposed rule defines the term "aggregate investment" to mean all amounts invested or committed to be invested in energy-related companies, for which there is recourse, directly or indirectly, to the registered holding company. The term is intended to have a meaning similar to that given the term in rule 53.[39] Aggregate investment, for purposes of rule 58, would thus include amounts actually invested in an energy-related company, as well as any amounts committed under the terms of subscription agreements or stand-by or other similar capital funding agreements.[40]

In addition, proposed rule 58(c) would require a registered holding company relying upon the rule to file with this Commission and each state commission having jurisdiction over the retail rates of the registered system operating companies a quarterly report disclosing acquisitions pursuant to the rule and certain other information required by proposed Form U–9C–3, discussed further *infra*. The reporting requirements are intended to enable the Commission and the state and local regulatory authorities to monitor energy-related and gas-related investments and activities, including any intrasystem transactions involving the operating companies in registered systems.

The Commission believes it is unnecessary to restrict the extent to which an energy-related company or a gas-related company may serve nonassociate companies.[41] Prior orders of the Commission have not subjected gas-related businesses to any restriction in this regard. In addition, the Commission recently determined that it was appropriate to remove a percentage limitation that had previously been imposed upon the energy management services business of a nonutility subsidiary of a registered holding company.[42] The Commission's decision was based on a number of factors, including evidence of the fundamental changes that the utility industry has undergone in recent years, such that the industry no longer focuses primarily upon the need to meet increased demand through the construction of new generating capacity. Specifically, the Commission noted that energy conservation and demand-side measures are today "an important complement to the utility business," and determined that the energy management services business would further an important national policy, namely, the promotion of energy conservation and efficiency.[43]

On the basis of the Commission's experience to date and its assessment of the significant changes now underway in the energy and energy services industries, the Commission believes that energy-related businesses (as defined in

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The Commission has also approved the development of, and limited investments in, facilities for producing or recovering alternative fuels and energy resources. See Southern Co., Holding Co. Act Release No. 26221 (Jan. 25, 1995); New England Electric System, Holding Co. Act Release No. 26277 (Apr. 26, 1995).

[27] The Commission has authorized a number of registered holding companies to engage in consulting activities. See, e.g., Southern Co., Holding Co. Act Release No. 22132 (July 17, 1981); American Electric Power Co., Inc., Holding Co. Act Release No. 22468 (Apr. 28, 1982); Middle South Utilities, Holding Co. Act Release No. 22818 (Jan. 11, 1983); New England Electric System, Holding Co. Act Release No. 22719 (Nov. 19, 1982).

[28] Although a QF is a nonutility interest under the Act, a subsidiary company of a registered holding company that acquires such an interest remains subject to regulation under the Act. The proposed rule would exempt an acquisition of the securities of such subsidiary companies from section 9(a)(1) if the requirements of the rule are met.

The Commission has approved acquisitions of ancillary facilities, such as an integrated thermal host facility or fuel handling and transportation facilities, in connection with QF acquisitions. See Central and South West Corp., Holding Co. Act Release No. 25399 (Nov. 1, 1991) (18-acre thermal host greenhouse); Energy Initiatives, Inc., Holding Co. Act Release No. 25991 (Feb. 22, 1994) (interests in fuel partnership to supply gas to QF project).

[29] The Commission has authorized the retention and acquisition of interests in such businesses in connection with the utility operations of an integrated system. See, e.g., North American Co., 11 SEC 194, 225–226, 248 (1942); Arkansas Natural Gas Corp. v. SEC, 154 F.2d 597 (5th Cir.), cert. denied, 329 U.S. 738 (1946). See also Ohio Power Co., Holding Co. Act Release No. 19594 (June 25, 1976) (rail-to-barge coal handling facility); Middle South Utilities, Inc., Holding Co. Act Release No. 18221 (Dec. 17, 1973) (bulk oil storage facilities); Jersey Central Power and Light Co., Holding Co. Act Release No. 24664 (June 14, 1988) (reservoir, dam and related facilities for storage and discharge of water); New England Electric System, Holding Co. Act Release No. 26277 (Apr. 26, 1995) (investment in venture that would install equipment at power stations owned by nonaffiliates to separate unburned carbon from coal ash).

[30] See, e.g., Lone Star Gas Corp., 12 S.E.C. 286, 298–99 (1942) (finding gasoline, oil and butane and propane production operations to be related to retainable natural gas production operations).

[31] New England Electric System, Holding Co. Act Release No. 26277 (April 26, 1995).

[32] See, e.g., Consolidated Gas Transmission Corp., Holding Co. Act Release No. 23914 (Nov. 20, 1985) (lease of microwave radio facilities); Appalachian Power Co., Holding Co. Act Release No. 24772 (Dec. 9, 1988) (lease of optical fiber systems); Southern Co., Holding Co. Act Release No. 26211 (Dec. 30, 1994) (mobile radio system).

[33] Proposed rule 58 does not affect the Commission's jurisdiction over the issuance and sale of securities by a registered holding company or its subsidiary to finance investments in an energy-related or a gas-related company. In its review of financing applications under the standards of section 7(d) of the Act, the Commission must consider the effect of any financing on the consolidated capital structure of the registered system and must examine whether the security being sold is reasonably adapted to the underlying earning power of the holding company's subsidiary operations. Thus, in addition to the limitations on nonutility investments incorporated in proposed rule 58, the Commission has other statutory means to monitor the financial and other effects of nonutility activities on registered systems.

[34] As an example, the Southern Company's consolidated capitalization was approximately $17.8 billion for the year ended December 31, 1994. Pursuant to proposed rule 58 and the related proposed amendment to rule 45(b), Southern could invest up to $2.7 billion in energy-related companies, excluding existing subsidiaries.

[35] For example, the consolidated capitalization of UNITIL Corporation, at December 31, 1994, was approximately $129.7 million. The proposed percentage limitation would allow UNITIL to invest an amount of up to $19.451 million in energy-related companies, excluding existing subsidiaries.

[36] See, *e.g.*, rule 53, which creates a safe harbor for a financing in connection with investments in exempt wholesale generators if, among other conditions, aggregate investment in exempt wholesale generators and foreign utility companies would not exceed 50% of consolidated retained earnings.

[37] As noted previously, Congress intended that the GRAA, by permitting gas registered holding companies to invest in gas production, transportation, storage, marketing and similar activities, would promote competition in the natural gas markets. The Commission retains jurisdiction over the financing activities of the gas registered holding companies, which finance the operations of their subsidiaries at the parent company level.

[38] With respect to section 2(a) of the GRAA, NFG had invested approximately $292.1 million in gas pipeline transportation and gas storage as of December 31, 1994, whereas Columbia had invested approximately $1.65 billion and CNG approximately $980.6 million. With respect to section 2(b), CNG had invested approximately $876.5 million in exploration and development as of that date, whereas Columbia had invested approximately $373.1 million and NFG approximately $237.5 million.

[39] See Holding Co. Act Release No. 25886 (Sept. 23, 1993), 58 FR 51486 (Oct. 1, 1993). Rule 53(a)(1)(i) (17 CFR 250.53(a)(1)(i)) defines "aggregate investment" to mean:

> all amounts invested, or committed to be invested, in exempt wholesale generators and foreign utility companies, for which there is recourse, directly or indirectly, to the registered holding company. Among other things, the term includes, but is not limited to, preliminary development expenses that culminate in the acquisition of an exempt wholesale generator or a foreign utility company; and the fair market value of assets acquired by an exempt wholesale generator or a foreign utility company from a system company (other than an exempt wholesale generator or a foreign utility company).

[40] For purposes of the rule, aggregate investment would not include the portion of a registered holding company's book investment in an energy-related company that is attributable to increases in retained earnings or to indebtedness issued by any such subsidiary with respect to which there is no recourse directly or indirectly to the registered holding company. "Aggregate investment" would also not include the amount invested by one energy-related subsidiary company in another such company.

[41] Prior orders of the Commission have sometimes restricted transactions on behalf of nonassociates by imposing conditions to limit, geographically or otherwise, the operations or source of revenues of a nonutility business. See, e.g., Eastern Utilities Associates, Holding Co. Act Release No. 24273 (Dec. 19, 1986) (50% limitation upon energy management service activities outside New England); National Fuel Gas Co., Holding Co. Act Release No. 24361 (May 1, 1987) (50% limitation on gas well and pipeline construction on behalf of nonassociates); CSW Credit, Inc., Holding Co. Act Release No. 25995 (Mar. 2, 1994) (50% limitation on amount of accounts receivable factored for nonassociates).

[42] Eastern Utilities Associates, Holding Co. Act Release No. 26232 (Feb. 15, 1995).

[43] *Id.*

the proposed rule) may now be considered sufficiently related to the core utility business of registered holding companies as not to require the imposition of limitations upon transactions with nonassociates. It is also reasonable to expect that the participation in such activities by registered holding companies, together with exempt holding companies and investor-owned utilities not subject to the Act, will produce benefits to investors, consumers and the public. Further, it does not appear that the participation of registered holding companies will lead to a recurrence of the evils that the Act was intended to address.

IV. Proposed Amendments to Rule 52 and Rule 45

The Commission is also requesting comment on proposed conforming amendments to rules 52 and 45. Financings by registered system companies of the activities of energy-related businesses would be subject to these rules.

Rule 52, as recently amended,[44] exempts from the requirement of Commission approval under sections 6(a) and 7 the issue and sale by a nonutility subsidiary of a registered holding company of any common stock, preferred stock, bond, note or other form of indebtedness, subject to certain conditions. Rule 52 further exempts from the requirement of prior Commission approval under sections 9(a)(1) and 10 the acquisition by a registered holding company of any such security, provided that the transaction does not involve the formation of a new subsidiary. The Commission has proposed to amend rule 52 further to expand the types of securities that qualify for the exemption.[45] The exemptions under rule 52(b) and 52(d), both currently in effect and as proposed to be amended, are broader than, and thus are inconsistent with, the exemption in proposed rule 58. Accordingly, the Commission proposes to amend rule 52 to conform the limitation of the rule upon the aggregate amount of such securities that may be issued and sold by energy-related subsidiaries and acquired by registered holding companies to the limitation of proposed rule 58.

Rule 45(b) currently exempts from the requirement of Commission approval under section 12(b) and rule 45(a) thereunder certain investments by a registered holding company in its existing subsidiaries by means of cash capital contributions or open account advances. In particular, rule 45(b)(4), as recently amended, exempts without limitation any capital contribution or open account advance without interest to a subsidiary company.[46] For purposes of proposed rule 58, the exemption is over-inclusive. Accordingly, the Commission proposes to amend rule 45(b)(4) to conform the aggregate amount of capital contributions and open account advances that may be made to energy-related subsidiary companies to the limitations of proposed rule 58.

V. Proposed Quarterly Reports on Form U–9C–3

In recent years, the Commission has formalized the practice of including in its orders approving acquisitions of nonutility interests under section 10 a requirement for the filing of periodic, usually quarterly, reports under rule 24.[47] These reports typically provide continuous information on authorized business activities, intercompany guaranties and billings, and results of operations. Since these reporting obligations have been imposed on a case-by-case basis, there are instances in which some holding companies now must prepare and file as many as five different periodic reports under rule 24. Proposed Form U–9C–3 would require essentially the same information covered in these reports, and it is intended that a holding company may file a single Form U–9C–3 for all energy-related company subsidiaries in lieu of the separate rule 24 certificates required under the terms of any outstanding Commission orders. This procedure should lessen the reporting burden for holding companies. Moreover, a single, comprehensive report covering all energy-related and gas-related business activities of a registered holding company should be more useful for the state commissions, with which the report must also be filed. The Commission requests comment on the form and content of Form U–9C–3. In particular, the Commission requests comment on whether a report should be filed quarterly or on a semiannual or other basis. The Commission also notes the need to balance, on the one hand, the legitimate needs of regulators for information regarding nonutility activities, and, on the other, the needs of registered holding companies to protect from public disclosure commercially and competitively sensitive information. In this respect, the primary regulatory purposes of the report will be to provide financial and other information on transactions between energy-related company subsidiaries and their regulated associate companies. The report does not call for information that would be commercially sensitive, such as the identity of customers or information regarding revenues and earnings derived from specific business ventures. Nevertheless, there may be instances in which a holding company feels the need to claim confidential treatment under rule 104 for some items of information. Reasonable requests for confidential treatment would not be precluded.

VI. Conclusion

The Commission believes that the registered holding-company systems should be relieved of the regulatory burden of having to file multiple applications for authority to engage in nonutility activities, through investments in the securities of other companies, that are of the same or similar character or type as those the Commission has allowed in previous cases. The proposed rules are intended to permit investments in energy-related companies and gas-related companies, as defined, without geographic limits or other restrictions such as have been selectively incorporated into previous orders. The Commission believes that the proposed limitation of rule 58 on the aggregate amount that a registered holding company system may invest, directly or indirectly, in energy-related companies will assure that financial integrity of a registered holding company system will not be impaired by investments pursuant to the rule. In addition, the proposed reporting requirements should enable the Commission and interested state and local regulators to monitor the financial and other impact of such investments.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the proposed amended rule will not, if adopted, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, may be obtained from Bonnie Wilkinson, Office of Public Utility Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549.

Costs and Benefits

Rule 58 will substantially decrease regulatory costs for the eleven (11) electric and three (3) gas registered holding companies. In calendar years 1993 and 1994, 122 applications would not have been filed had the proposed rule 58 and related rule amendments been in place. Estimated savings per application would have been approximately $70,000 including related legal, accounting, and management costs. Thus, for 122 applications filed in calendar years 1993 and 1994, the aggregate savings would have been approximately $8,540,000 or $4,270,000, respectively, per year. Moreover, the reduction in Commission staff hours would have been approximately 13,300 hours per year (6.5 staff years). The only cost to the registered holding companies in complying with the rule will be the cost of completing and filing Form U–9C–3 on a quarterly basis. It is estimated that approximately 16 hours will be required to complete each form at an estimated cost of $250 per hour. Assuming 61 acquisition applications per year, the cost of compliance reporting would approximate $244,000 per year.

Paperwork Reduction Act

The proposed rule and rule amendments are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 79 *et seq.*) and will be submitted for approval to the Office of Management and Budget.

Statutory Authority

The Commission is proposing to adopt rule 58 and to amend rules 45 and 52 pursuant to sections 6, 9, 12 and 20 of the Act.

List of Subjects in 17 CFR Parts 250 and 259

Electric utilities, Holding companies, Natural gas, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rules

For the reasons set out in the preamble, chapter II, title 17, of the Code of Federal Regulations is proposed to be amended as follows:

PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

1. The authority citation for part 250 continues to read as follows:

Authority: 15 U.S.C. 79c, 79f(b), 79i(c)(3) and 79t, unless otherwise noted.

2. Section 250.45 is amended by revising paragraph (b)(4) to read as follows:

§ 250.45 Loans, extensions of credit, donations and capital contributions to associate companies.

* * * * *

(b) *Exceptions.* * * *

(4) Capital contributions or open account advances, without interest, by a company to its subsidiary company; *Provided*, That capital contributions or open account advances to any energy-related company subsidiary, as defined in rule 58 (§ 250.58), shall not be exempt hereunder unless, after giving effect thereto, the aggregate investment by a registered holding company or any subsidiary thereof in such company and all other such energy-related subsidiary companies does not exceed the limitation in rule 58(a)(1) (§ 250.58(a)(1)).

3. Section 250.52 is amended by revising paragraph (b) as follows:

§ 250.52 Exemption of issue and sale of certain securities.

* * * * *

(b) Any subsidiary of a registered holding company which is not a holding company, a public-utility company, an investment company, or a fiscal or financing agency of a holding company, a public-utility company or an investment company shall be exempt from section 6(a) of the Act (15 U.S.C. 79f(a)) and rules thereunder with respect to the issue and sale of any security of which it is the issuer if:

(1) The issue and sale of such security are solely for the purpose of financing the existing business of such subsidiary company; and

(2) The interest rates and maturity dates of any debt security issued to an associate company are designed to parallel the effective cost of capital of that associate company; Provided, That any security issued to an associate company by any energy-related company subsidiary, as defined in rule 58 (§ 250.58), shall not be exempt hereunder unless, after giving effect thereto, the aggregate investment by a registered holding company or any subsidiary thereof in such subsidiary and all other such energy-related subsidiary companies does not exceed the limitation in rule 58(a)(1) (§ 250.58(a)(1)).

4. Section 250.58 is added to read as follows:

§ 250.58 Exemption of investments in certain nonutility companies.

(a) *Exemption from Section 9(a).* Section 9(a) of the Act (15 U.S.C. 79i(a)) shall not apply to:

(1) The acquisition by a registered holding company, or any subsidiary company thereof, of the securities of an energy-related company; provided that, after giving effect to any such acquisition, the aggregate investment by such registered holding company or any subsidiary thereof in all such companies does not exceed the greater of:

(i) $50 million; and

(ii) 15% of the consolidated capitalization of such registered holding company, as reported in the registered holding company's most recent Annual Report on Form 10–K or Quarterly Report on Form 10–Q (§ 249.308a or § 249.310 of this chapter) filed under the Securities Exchange Act of 1934, as amended (15 U.S.C. 78 *et seq.*); or

(2) The acquisition by a registered gas-utility holding company, or a subsidiary company thereof, of the securities of a gas-related company.

(b) *Definitions.* For the purpose of this section:

(1) The term *energy-related company* shall mean any company that derives or will derive substantially all of its revenues (exclusive of revenues from temporary investments) from one or more of the following businesses:

(i) The rendering of energy conservation and demand-side management services;

(ii) The development and commercialization of electro-technologies related to energy conservation, storage and conversion, energy efficiency, waste treatment, greenhouse gas reduction, and similar innovations;

(iii) The manufacture, conversion, sale and servicing of electric and compressed natural gas powered vehicles and ownership and operation of related refueling and recharging equipment;

(iv) The sale, installation, and servicing of electric and gas appliances for residential, commercial and industrial heating and lighting;

(v) The brokering and marketing of energy commodities, including but not limited to electricity or natural or manufactured gas;

(vi) The production, conversion, and distribution of thermal energy products, such as process steam, heat, hot water, chilled water, air conditioning, compressed air and similar products; alternative fuels; and renewable energy resources;

(vii) The sale of technical, operational, management, and other similar kinds of services and expertise, developed in the course of utility operations in such areas as power plant and transmission system engineering, development, design and rehabilitation;

[44] See Holding Co. Act Release No. 26311 (June 20, 1995).

[45] See Holding Co. Act Release No. 26312 (June 20, 1995).

[46] See Holding Co. Act Release No. 26311 (June 20, 1995).

[47] See, e.g., Southern Co., Holding Co. Act Release Nos. 26212 (Dec. 30, 1994) and 26221 (Jan. 25, 1995); American Electric Power Co., Holding Co. Act Release No. 26267 (Apr. 5, 1995); Entergy Corp., Holding Co. Act Release No. 25848 (July 8, 1993); Northeast Utilities, Holding Co. Act Release No. 26213 (Dec. 30, 1994).

construction; maintenance and operation; fuel procurement, delivery and management; environmental licensing, testing and remediation; and other similar areas;

(viii) The ownership or operation of "qualifying facilities," as defined under the Public Utility Regulatory Policies Act of 1978, as amended ("PURPA"), and facilities necessary or incidental thereto, including thermal energy utilization facilities purchased or constructed primarily to enable the qualifying facility to satisfy the useful thermal output requirements under PURPA;

(ix) The ownership or operation of fuel procurement, transportation, handling and storage facilities, scrubbers, and resource recovery and waste water treatment facilities;

(x) The production, transportation, distribution or storage of all forms of energy other than electricity and natural or manufactured gas;

(xi) The development and commercialization of technologies or processes which utilize coal waste by-products as an integral component of such technology or process;

(xii) The ownership, sale, leasing or licensing of the use of telecommunications facilities and equipment (such as fiber optic lines, coaxial cable, or other communications capacity, towers and tower sites and other similar properties); and

(xiii) Such other activities and investments as the Commission may, from time to time, upon application under section 10 of the Act (15 U.S.C. 79j) designate as energy-related for purposes of this section.

(2) The term *gas-related company* shall mean a business that derives or will derive substantially all of its revenues from activities permitted under the Gas-Related Activities Act of 1990, 104 Stat. 2810, and such other activities and investments as the Commission may, from time to time, upon application under section 10 of the Act (15 U.S.C. 79j) or section 2(b) of the Gas Related Activities Act, designate as gas-related for purposes of this section.

(3) The term *aggregate investment* shall mean all amounts invested or committed to be invested in energy-related companies, for which there is recourse, directly or indirectly, to the registered holding company.

(c) *Report on Related Business Activities.* Within 60 days following the end of the first calendar quarter in which any acquisition that is exempt under this section is made, the registered holding company shall file (and thereafter continuously file) with this Commission and with each state commission having jurisdiction over the retail rates of the public-utility subsidiary companies of such registered holding company a Certificate of Notification on Form U–9C–3 (§ 259.208 of this chapter).

PART 259—FORMS PRESCRIBED UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

5. The authority citation for part 259 continues to read as follows:

Authority: 15 U.S.C. 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q and 79t.

6. Section 259.208 is added to read as follows:

259.208 Form U–9C–3, for notification of acquisition of securities exempt from section 9(a) pursuant to rule 58 (§ 250.58 of this chapter).

This form shall be filed pursuant to rule 58(c) (§ 250.58(c) of this chapter) as the certificate of notification of the acquisition of securities exempted from the application of section 9(a) of the Act pursuant to rule 58 (§ 250.58 of this chapter).

[**Editorial Note:** The text of Form U–9C–3 appears in the Appendix to this document and will not appear in the Code of Federal Regulations.]

Dated: June 20, 1995.

By the Commission.

Margaret H. McFarland

Deputy Secretary.

Note: This form will not appear in the Code of Federal Regulations.

Appendix—United States Securities and Exchange Commission

Washington, DC 20549

Form U–9C–3

Quarterly Report of Investments in Companies Engaged in Certain "Energy-Related" and "Gas-Related" Businesses

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Name and Address of Registered Holding Company

General Instructions

1. Use of Form

A quarterly report containing the information required by Form U–9C–3 shall be filed by a registered holding company with the Commission and with each state public-utility commission that has jurisdiction over the retail rates of a public-utility subsidiary company of the registered holding company. The report shall be filed within 60 days following the end of each calendar quarter commencing with the first calendar quarter in which such registered holding company directly or indirectly acquires any securities of any energy-related or gas-related company in reliance upon the exemption afforded by rule 58, 17 CFR 250.58.

2. Formal Requirements

(a) Two copies of the report on this form, including the exhibits specified, shall be filed with the Commission, and one copy, with exhibits, shall be filed with each of the appropriate state commissions. At least one of the copies filed with the Commission shall be manually signed and filed at the place designated by the Commission for filings under the laws it administers. The second copy shall be addressed to the Division or Office responsible for administering the Act.

(b) The quarterly report, and where practicable all documents filed as a part thereof, shall be on good quality, unglazed white paper, 8½" × 11" in size. All papers included in the quarterly report, except exhibits not especially prepared for such purpose, shall have a margin of at least 1½" for binding, and each copy should be firmly bound on the left side.

(c) The report shall contain the item number and caption of each item in the form, but shall omit all instructions and text. If any item is inapplicable or the answer thereto is negative, it shall be so stated.

(d) The report shall identify and provide a telephone number for a person to whom inquiries concerning the contents of the report may be directed.

3. Definitions

All terms used in this form and the instructions have the same meaning as in the Public Utility Holding Company Act of 1935, as amended, and the rules and regulations thereunder, particularly rule 58, 17 CFR 250.58.

Item 1.

Identify the name and describe the nature of the business of each newly formed energy-related or gas-related company whose securities were acquired during the calendar quarter.

Item 2.

Provide the amount and type (*e.g.*, equity or debt) of capital invested in each energy-related or gas-related company. Identify whether the investment is held by the top holding company or a subsidiary thereof (other than an energy-related or a gas-related subsidiary company). If any institutional third party financings were used or undertaken to finance the acquisition or ongoing business of any such company, identify (a) the name of the institution, bank, or other third party; (b) the amount and type of investment; and (c) the cost of capital terms.

Item 3.

For each energy-related and gas-related company in which the registered holding company has invested, directly or indirectly, provide a balance sheet and a twelve months' ended income statement.

Item 4.

Aggregate Investment Analysis:

(a) State the total investment during the quarter of the registered holding company or any subsidiary thereof in all energy-related companies.

(b) If the total investment disclosed in Item 4(a) is greater than $50 million, state it as a percentage of the registered holding company's consolidated capitalization (as reported in the registered holding company's most recent Form 10–K or Form 10–Q filed under the Securities Exchange Act of 1934).

(c) State the aggregate investment to date of the registered holding company or any subsidiary thereof in all energy-related companies.

(d) If the aggregate investment disclosed in item 4(c) is greater than $50 million, state it as a percentage of the registered holding company's consolidated capitalization (as reported in the registered holding company's most recent Form 10–K or Form 10–Q filed under the Securities Exchange Act of 1934).

(e) State the aggregate investment by any registered gas utility holding company in all "gas-related" companies.

Item 5.

For each quarter following the calendar quarter, provide a narrative description of (a) any new activities within the scope of rule 58(b)(1) undertaken during the quarter by existing subsidiary companies; (b) any services, goods, construction, or other property sold to or purchased from any associate public utility company or service company during the quarter by any energy-related or gas-related subsidiary company, and costs billed therefor, together with a copy of the related contract.

Exhibit A

For each calendar year, provide as an attachment to the first quarterly report an organizational chart of the holding company system that includes the percentage owned of each energy-related or gas-related subsidiary company of the registered holding company.

Signature

The undersigned company has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized pursuant to the requirements of the Public Utility Holding Company Act of 1935, as amended.

(Date)

(Company)

By:_____

(Type or Print Name and Title)

[FR Doc. 95–15838 Filed 6–27–95; 8:45 am]

BILLING CODE 8010–01–P

federal register

Wednesday
June 28, 1995

Part IX

Department of Education

34 CFR Part 201

Funding Under Part C of Title I of the Elementary and Secondary Education Act of 1965; Education of Migratory Children; Final Rule

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Part 201

Funding Under Part C of Title I of the Elementary and Secondary Education Act of 1965 (ESEA); Education of Migratory Children

AGENCY: Department of Education.

ACTION: Notice of final priority.

SUMMARY: The Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) establishes an absolute priority for distribution of Migrant Education Program (MEP) funds under section 1308(a) of Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Improving America's Schools Act (IASA) (Pub. L. 103–382). Under this priority the Department will make grant awards, on a one-time basis in fiscal year (FY) 1995, to provide additional resources to State educational agencies (SEAs) in order to assist them in their responsibilities, under the Migrant Education Program (MEP), to ensure the interstate and intrastate transfer of educational and health records of migratory children.

EFFECTIVE DATE: This priority takes effect on July 28, 1995.

FOR FURTHER INFORMATION CONTACT: James English, Office of Migrant Education, U.S. Department of Education, 600 Independence Avenue, SW, Portals Building, Room 4100, Washington, DC 20202–6135. Telephone: (202) 260–1934. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

The MEP, authorized in Title I, Part C, of the ESEA, is a State-operated, formula grant program under which SEAs receive funds to improve the academic achievement and welfare of migratory children who reside in their States. Under section 1304(b)(3) of the ESEA, SEAs receiving MEP funds have a responsibility to carry out activities that promote the interstate and intrastate coordination of services for migratory children, and to provide for educational continuity through the timely transfer of pertinent school records, including health information, for migratory children.

In the past, the Department assisted SEAs in carrying out their responsibilities regarding the transfer of records on migratory children by contracting, using funds set aside from the overall MEP appropriation, for a national Migrant Student Record Transfer System (MSRTS). However, because the MSRTS is no longer available for records transfer and the contract for its operation will end on June 30, 1995, the SEAs are now in the process of enhancing, and in some cases reexamining, State and local recordkeeping and records transfer capabilities for migratory children. In this regard, the issue of how school records of migratory children can best be transferred after the end of MSRTS has been the subject of considerable discussion among State and local officials over the past year, and many SEAs have identified the enhancement of State and local capacities to maintain and transfer records on migratory children as a critical need that warrants further Federal assistance.

On May 4, 1995, the Department distributed a draft of a priority notice to SEAs that proposed, under the authority of section 1308(a) of the ESEA, to use $2.2 million in available FY 1994 MEP funds for special, one-time grants to the SEAs for activities that support their records transfer responsibilities. This draft notice proposed to award the $2.2 million in equal amounts to each SEA receiving MEP formula grant funds, except that no SEA could receive an amount that would exceed 20 percent of its FY 1995 MEP formula grant award. As of June 1, 1995, 49 of the 51 State ME Directors, as well as two other interested parties, commented on the draft priority notice.

Forty-two of the State MEP Directors expressed complete satisfaction with the proposed distribution of funds, while seven of the State MEP Directors and the two other commenters expressed some concerns about the proposal. Three State MEP Directors and the two other commenters suggested that it would be more reasonable to award additional funds for records transfer proportionally on the basis of the size of a State's MEP rather than in equal State amounts. One of the other commenters suggested a two-tiered distribution approach, with some of the funds to be distributed proportionally based on the size of the States' population of migratory children, and the remaining funds to be distributed equally. Two State MEP Directors suggested that some of the funds be reserved for new, national activities to enhance records transfer in the MEP, while a third State MEP Director noted that the Department was already adequately supporting national activities through the establishment of a Records Exchange Task Force. Two State MEP directors suggested that the funds be clearly reserved to support interstate transfer activities; and one of the other commenters also noted the need to emphasize interstate transfer activities without restricting funds exclusively for this purpose. Finally, one commenter also suggested that SEAs applying for these funds be required to provide more narrative detail than simply an assurance that the funds would be used to support records transfer activities.

In response to the comments, this notice incorporates changes to clarify the priority's intent and encourage the use of funds especially for activities to enhance the interstate transfer of records of migratory children. In addition, the notice expands the formula for distributing funds under this priority, as a result of comments, and also because, after the draft notice was circulated for comments, the Department identified an additional $0.5 million in funds beyond the $2.2 million originally proposed for distribution under this priority.

Priority

Under section 1308(a) of the ESEA, the Department has the authority, after consultation with the States, to issue grants or contracts to SEAs, local educational agencies (LEAs), institutions of higher education (IHEs) and other public or private nonprofit entities to improve the interstate and intrastate coordination of those agencies' educational programs for migratory children. Under this authority, the Department is reserving $2.7 million to be awarded, as an absolute priority in FY 1995, to SEAs for special grants to assist them in their responsibilities to ensure the maintenance and prompt transfer of pertinent educational and health records of migratory children on an interstate and intrastate basis. The Department believes that making these funds available to support SEA-sponsored interstate and intrastate records transfer activities is appropriate in view of the importance of records transfer in the educational continuity of migratory children, and the expressed needs of the SEAs for additional assistance to develop their records transfer capacity. Moreover, under this priority, the $2.7 million to be awarded will retain its original purpose, since the Department originally had reserved this sum from the FY 1994 MEP appropriation to support the SEAs' records transfer activities through MSRTS.

Use of Funds Under This Priority

Funds awarded under this absolute priority must be used only for activities that clearly support an SEA's responsibilities to promote educational continuity of migratory children through the timely transfer of their pertinent educational records, including health information, on an interstate and intrastate basis. Such activities may include, but are not limited to: Development and implementation of procedures that an SEA or its operating agencies will use to maintain and transfer records for migratory children; the purchase of related equipment (e.g., computers, fax machines) and material (e.g., "red bags" to be used by migratory children and their parents to hand carry records from site to site); and the training of State and local educational personnel, as well as parents of migratory children, in the use of these procedures, equipment, and material. Given that greater difficulties may be associated with the timely transfer of records on an interstate basis, the Department encourages SEAs to consider how the funds awarded under this priority can be used to address the particular problems of interstate records transfer.

Amount of the Grant

After carefully considering all the comments received on the initial proposal to award equal grant amounts to SEAs, and because of the availability of additional funds that can be used for this priority, the Department will award a total of $2.7 million under this priority to SEAs receiving an FY 1995 MEP formula grant on the basis of the following two-tiered formula:

— $2.2 million in equal amounts to each SEA; and
— $0.5 million based on each State's calendar year 1994 full-time-equivalent (FTEs) count of migratory children ages 3–21 who are within three years of a qualifying move, as provided in section 1309(2) of the ESEA.

No SEA will receive an award that exceeds 20 percent of its FY 1995 MEP formula grant award. Six SEAs, those of the District of Columbia, New Hampshire, Rhode Island, Tennessee, West Virginia and Wyoming, are affected by this 20 percent limitation on the size of awards.

The Appendix to this notice contains a chart reflecting the size of each SEA's award under this priority assuming that all eligible SEAs apply. If an SEA does not apply for these funds, its share of grant funds under this priority will be distributed to the requesting SEAs, subject to the 20 percent limitation, on the basis of the number of those States' migratory children.

The Department believes that this two-tiered formula for awarding the $2.7 million available under this priority distributes these limited funds effectively to help promote long term benefits for the Nation's migratory children by helping all SEAs focus on the interstate and intrastate transfer of records of migratory children.

Under the first tier of the formula, the $2.2 million originally available for this priority will continue to be distributed in equal amounts to the SEAs (subject to the 20 percent limitation). This distribution method provides like amounts to each State, irrespective of the size of its MEP or its technological sophistication, since each State is likely to encounter threshold costs related to improving its own capacity and that of its operating agencies to maintain and transfer information on eligible migratory children. Indeed, for many States, the one-time grants available under this priority represent only "seed money" for their records transfer efforts. All SEAs may reserve funds from their basic MEP formula allocations to carry out their responsibilities to ensure the transfer of records for eligible migratory children. Yet, for those SEAs with relatively small basic MEP grant allocations, and therefore less flexibility than larger allocation States to use those funds to meet records-transfer needs, the small threshold amount that would be available under the Department's initial proposal will help address some basic development and implementation issues (including staff time). In comments received on this initial proposal, only one State MEP Director suggested that the proposed threshold amount would exceed the amount that some States need to implement the records transfer activities required under the MEP statute. At the same time, other State MEP Directors from large, basic MEP allocation States supported the proposed equal allocation of funds to each State under this priority. As one such State MEP Director noted, while his large, basic MEP allocation State would benefit to a greater degree from a distribution based wholly on numbers of migratory children, the proposed distribution of equal amounts seemed reasonable "since each State has an equal responsibility [under the MEP] to develop and implement a method for transferring information on migrant children as they move." Similarly, another State director from a large, basic MEP allocation State noted that, unless those SEAs with smaller basic MEP allocations are able to develop an adequate records transfer capacity, the larger basic MEP allocation States from which migratory children move will be unable to send to, or receive records from, these States where the children migrate.

While all SEAs that receive MEP funds could use additional funds to meet their statutory responsibilities to ensure the timely transfer of education records of migratory children within and across States, as a practical matter, SEAs with larger basic MEP grant allocations can, as one State Director commented, draw upon those funds to the degree necessary for records transfer, consistent with their other MEP responsibilities, in ways that small-allocation States cannot. For example, with the end of the MSRTS, the larger amounts of funds that these States previously spent on MSRTS terminal operations now are available to meet existing records-transfer needs.

Under the second tier of the formula, the Department will distribute an additional $0.5 million, in excess of the $2.2 million originally identified by the Department. Given that States with larger numbers of migratory children have more student records to transfer, the Department has decided to distribute these additional funds on the basis of the number of migratory children in each State, using the same calendar year 1994 FTE count of migratory children that the Department is using to calculate MEP allocations under the MEP State formula grant formula in section 1303 of the ESEA.

Finally, the Department will limit the amount of an award under this priority to no more than 20 percent of an SEAs' basic MEP grant award.

The Department believes that this two-tiered formula for awarding the $2.7 million, with its 20 percent limitation, represents the most appropriate means of distributing these funds to support the development and implementation of appropriate records transfer procedures so that staff at new schools to which migratory children move, in whatever States they are located, can have the information needed to make sound educational decisions about these children.

Note: The $2.7 million available for award under this priority was originally reserved from the FY 1994 MEP appropriation. Therefore, the Department must obligate these funds by September 30, 1995, and SEAs (and their subrecipients) must do so by September 30, 1996.

Procedure for Award

Only an SEA that receives MEP formula grant funds for FY 1995 may receive a grant under this priority. To receive funding under this priority, an SEA must submit a letter, signed by the Chief State School Officer or his or her authorized representative, requesting funds under this absolute priority and providing an assurance that these funds shall be used only for activities that clearly support the SEA's responsibilities to ensure the maintenance and prompt transfer of pertinent records, including health information, of migratory children on an interstate and intrastate basis. This letter should be received by the Office of Migrant Education contact person identified in the **FOR FURTHER INFORMATION CONTACT** section of this notice on or before July 18, 1996.

After careful consideration of a suggestion by one commenter, the Department has decided not to require SEAs to provide either a description of the proposed use of grant funds or a budget as a condition of receiving funds under this priority. This information would be of limited use since it would reflect only a portion of a State's record transfer activities for migratory children. Instead, the Department intends to use other means of program monitoring to obtain information on the full range of records transfer activities that SEAs and their local operating agencies are conducting, including activities funded under both the MEP formula allocation and this priority.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Department to offer interested parties the opportunity to comment on proposed rulemaking documents. However, in accordance with section 437(d)(1) of the General Education Provisions Act, the Assistant Secretary has determined that it is desirable to waive formal public comment on this priority. At the same time, States were consulted as required under section 1308(a) of the ESEA. The Assistant Secretary makes this determination to waive formal public comment in order that funds under this priority may be made available to the SEAs as quickly as possible to assist them in meeting their records transfer responsibilities, and to ensure that these funds can be distributed to SEAs on or before September 30, 1995, as required by law. This waiver applies only to this FY 1995 priority.

Applicability of 34 CFR Part 75 and 34 CFR Part 205

In view of the process that the Department will use to obtain information and make awards under this priority, the regulations in 34 CFR part 75 (Direct Grant Programs) of the Education Department General Administrative Regulations (EDGAR), and the regulations in 34 CFR part 205 (Migrant Education Coordination Program) do not apply. Instead, grants awarded under this priority will be administered, like the MEP itself, under the provisions of 34 CFR parts 76, 77, 80, 81, 85 and 86 of EDGAR. This includes, among other requirements, responsibility under 34 CFR 76.730 to maintain records, separately from the MEP formula allocation, on how the funds awarded under this priority have been used.

Intergovernmental Review

Grants to SEAs for the MEP are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with this order, this document is intended to provide early notification of the Secretary's specific plans and actions for these programs.

Applicable Program Regulation: 34 CFR Part 201

(Program Authority: 20 U.S.C. 6394(d), 6398(a))

(Catalog of Federal Domestic Assistance Number 84.011, Migratory Education Basic State Formula Grant Program)

(Approved by the Office of Management and Budget under control number 1810–0584)

Dated: June 21, 1995.

Thomas W. Payzant,

Assistant Secretary for Elementary and Secondary Education.

APPENDIX.—AWARD AMOUNTS UNDER SPECIAL FY 1995 MEP RECORDS TRANSFER PRIORITY

Alabama	$50,122
Alaska	57,851
Arizona	58,137
Arkansas	51,897
California	205,815
Colorado	50,918
Connecticut	47,999
Delaware	45,798
District of Columbia	38,501
Florida	84,041
Georgia	53,742
Idaho	54,417
Illinois	47,805
Indiana	49,671
Iowa	45,767
Kansas	55,204
Kentucky	57,154
Louisiana	48,885
Maine	50,044
Maryland	45,595
Massachusetts	48,716
Michigan	60,742
Minnesota	48,846
Mississippi	47,812
Missouri	46,699
Montana	46,373
Nebrasla	49,538
Nevada	46,099
New Hampshire	19,504
New Jersey	46,461
New Mexico	47,622
New York	52,493
North Carolina	52,948
North Dakota	46,240
Ohio	47,964
Oklahoma	47,706
Oregon	61,035
Pennsylvania	52,270
Rhode Island	30,598
South Carolina	46,333
South Dakota	46,407
Tennessee	19,799
Texas	124,769
Utah	47,410
Vermont	46,457
Virginia	46,598
Washington	65,270
West Virginia	19,976
Wisconsin	46,089
Wyoming	34,995
Puerto Rico	56,868
National Totals	2,700,000

[FR Doc. 95–15795 Filed 6–27–95; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Wednesday
June 28, 1995

Part X

Environmental Protection Agency

40 CFR Part 142

National Primary Drinking Water Regulations Implementation Primary Enforcement Responsibility; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 142

[FRL–5227–5]

RIN–2040–AC19

National Primary Drinking Water Regulations Implementation Primary Enforcement Responsibility

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is promulgating final language revising the regulation that sets forth EPA's process for initiating the withdrawal of a State's primary enforcement responsibility (primacy) for the Public Water System Supervision Program under the Safe Drinking Water Act and making technical clarifying amendments to other parts of the primacy regulation. The revised language clarifies issues of EPA's timing and discretion in initiating the primacy withdrawal process and simplifies some of the rule language. The intended effects of these revisions are to eliminate confusion about the Agency's primacy withdrawal policy and to respond to a court ruling that requires a change to the regulatory language on withdrawals. These revisions reflect existing Agency policy and therefore should not impose any burden on States or otherwise affect EPA-State relations.

EFFECTIVE DATE: The final rule will take effect July 28, 1995. In accordance with 40 CFR 23.7, this regulation shall be considered final Agency action for purposes of judicial review at 1 p.m. eastern time on July 12, 1995.

ADDRESSES: Supporting documents for this rulemaking are available for review at EPA's Water Docket; 401 M Street, SW., Washington, DC 20460. For access to the Docket materials, call (202) 260–3027 between 9 a.m. and 3:30 p.m. for an appointment.

FOR FURTHER INFORMATION CONTACT: The Safe Drinking Water Hotline, toll free (800) 426–4791, or Judy Lebowich; Drinking Water Implementation Division; Office of Ground Water and Drinking Water; EPA (4604), 401 M Street, SW., Washington, DC 20460; telephone (202) 260–7595.

SUPPLEMENTARY INFORMATION:

A. Background

40 CFR part 142, subpart B, sets out requirements for States to obtain primacy for the Public Water System Supervision (PWSS) program, as authorized by section 1413 of the Safe Drinking Water Act (SDWA). In 1989, EPA promulgated amendments to these regulations establishing procedures for States to revise their primacy programs to adopt the requirements of new or revised EPA drinking water regulations. (54 FR 52126, December 20, 1989) The 1989 rulemaking also modified the regulatory language pertaining to EPA's initiation of procedures that could lead to withdrawal of primacy status. The provision on withdrawals is contained in § 142.17(a) and is the subject of today's action.

As promulgated in 1989, § 142.17(a)(2) leaves to the Administrator's discretion whether to initiate primacy withdrawal proceedings after he or she has determined that a State no longer meets federal primacy requirements. The National Wildlife Federation (NWF), in a petition for review filed in the U.S. Court of Appeals for the District of Columbia Circuit (*National Wildlife Federation* v. *Reilly*, No. 90–1072) challenged several aspects of the 1989 regulatory amendments, including the primacy withdrawal language.[1] Among other challenges, NWF alleged that EPA was without statutory authority to promulgate a revision making explicit that it is within EPA's discretion whether to initiate proceedings to withdraw a State's PWSS primacy program.

The U.S. Court of Appeals for the D.C. Circuit issued an opinion on December 11, 1992, in response to this challenge. *National Wildlife Federation* v. *EPA*, 980 F.2d 765. The Court found that while EPA has broad discretion under the SDWA on when to "determine" that a State is out of compliance with primacy requirements, once the Administrator has made this determination, the SDWA requires EPA to initiate the primacy withdrawal process by notifying the State of why such a determination was made, allowing the State 30 days to respond, and proceeding toward a final decision, including public notice and opportunity for hearing on decisions to withdraw primacy. The Court found EPA's primacy withdrawal regulation to be invalid because it does not require the Agency to take these steps—instead, the regulation says that after "determining" that the State is out of compliance with primacy, the Administrator "may" initiate withdrawal proceedings. The Court therefore remanded the regulation to EPA for modification.

[1] The Notice of Proposed Rulemaking (59 FR 40458, August 8, 1994), a copy of which is in the Docket, summarizes NWF's challenges to the 1989 rulemaking and the disposition of this litigation.

The Court emphasized that its review focused only on what EPA "may do following a formal determination of noncompliance and does not require delving into the Administrator's complex decision-making process regarding whether to make such a determination in the first instance." *Id.* at 774. The Court acknowledged that the Agency is "free to decide that technical, temporary or otherwise unimportant violations of the primacy requirements do not warrant a 'determination' of noncompliance, or that the better approach for meeting the Act's goals is to negotiate with the offending state or to permit more time for the state to come back into compliance." Thus, EPA may "negotiate with the state as long as necessary before determining that the primacy requirements are no longer met." *Id.* at 771.

The Court also noted that "even where a 'determination' of noncompliance is made, the statute does not require the Agency to immediately withdraw primacy. Rather, the EPA is directed to provide notice and a public hearing before its determination of nonconformity with the primacy standards becomes effective. As a consequence of evidence adduced at the hearing, the EPA is entitled to conclude that its original decision was in error or that the State has remedied any deficiency and to decide against withdrawal." *Id.* at 771 (citations omitted).

In response to the Court's remand, EPA published a Notice of Proposed Rulemaking (59 FR 40458, August 8, 1994) seeking public comment on the following proposed changes to the language of Section 142.17(a):

1. Revise the wording of § 142.17(a)(2) to clarify that the Administrator "shall" initiate primacy withdrawal proceedings once he or she formally "determines" that a State is out of compliance with primacy requirements;
2. Revise the wording of § 142.17(a)(2) to clarify that the Administrator intends to take at least two relevant factors into consideration, if appropriate, in making a formal determination that a State no longer meets primacy requirements. These factors are: (1) Whether the State has been granted, or is awaiting EPA's decision on, an extension of up to two years of the 18-month deadline for having submitted a final program revision application to EPA to address a new or revised federal drinking water regulation; and (2) whether the State is taking corrective actions that the Administrator may have required to correct State program deficiencies;
3. Revise the wording of § 142.17(a)(2) to clarify that the Administrator shall notify the State in writing that "EPA is initiating" (rather than "of EPA's intention to initiate") primacy withdrawal proceedings;
4. Revise the wording of § 142.17(a)(4) to clarify that EPA will make a "final determination" regarding primacy withdrawal after the State has had the opportunity to respond to the Administrator's written notice initiating primacy withdrawal; and
5. Clarify that States must meet all the primacy requirements specified in 40 CFR 142, subpart B, by replacing references to "§ 142.10" in §§ 142.17(a)(1), 142.17(a)(2), and 142.17(a)(4) with references to "40 CFR 142, subpart B."

Today's action promulgates all of the revisions to the primacy withdrawal provisions that were proposed on August 8, 1994.

B. Summary of Comments and EPA Responses

Four groups (consisting of a State, an association of State drinking water programs, and two drinking water trade associations) submitted comments on the proposed regulations. These comments and EPA's response are part of the public Docket. Three of the commenters fully support the proposed rule because they believe it continues to provide EPA broad discretion in considering whether to initiate withdrawal. They stress the need for this discretion and note the importance of the Agency considering whether the conditions for not meeting the requirements for continued primacy are temporary and likely to be corrected or are of an on-going long-term nature. One of these commenters also notes that public health protection should be the key factor in any primacy withdrawal decision.

The fourth commenter agrees that EPA should have broad flexibility in making primacy withdrawal determinations. This commenter expressed concerns, however, that the proposed regulatory changes would severely restrict this flexibility, and this commenter opposes any such change in flexibility. This commenter reads the proposal to say, for example, that EPA must initiate primacy withdrawal if the State exceeds the two-year extension period, even if the State is making a good faith effort towards compliance. The commenter could support changes to the primacy regulations if more weight were given to the two listed factors that the Administrator considers in making the determination that a State is out of compliance with primacy requirements. Specifically, according to the commenter, the regulations should say that EPA "must" or "shall" consider the two listed factors (which are relevant to a State's good faith efforts toward compliance) rather than that EPA "intends" to consider these factors.

The commenter has misinterpreted the meaning and effect of the regulatory changes that were proposed and are now promulgated. To reiterate, even after today's revisions, the primacy regulations afford broad discretion to EPA. They do not set forth any specific factual situation in which the Administrator is required to determine that the State no longer meets primacy requirements and to initiate primacy withdrawal. For example, even where a State fails to have an approved program revision in place within the two-year extension period, the regulations do not require the Administrator to determine that the State no longer meets primacy requirements. It is still within the Administrator's discretion to make this determination, in light of factors that include the extent and timeliness of the State's continuing good faith efforts to adopt the revisions. EPA will judge each case on its own merits. EPA emphasizes, however, that it ordinarily intends to consider this particular example—i.e., where the State misses the two-year extension deadline—to be a strong candidate for initiating primacy withdrawal. Indeed, although the commenter cites specific problems that may prevent a State from meeting this deadline, there have been past instances in which States have resolved such problems only after receiving notice of EPA's intent to initiate primacy withdrawal. When the State provides a reasonable schedule for adopting the regulations and submitting a final primacy revision package to the Agency, the Agency's policy is to cancel the primacy withdrawal proceedings. The revised regulations will not alter this policy.

C. Summary and Explanation of Today's Action

After carefully considering all of the public comments, EPA is retaining the changes to §§ 142.17(a)(1), 142.17(a)(2), and 142.17(a)(4) that were proposed on August 8, 1994. In addition, the Agency is making technical amendments to the language of §§ 142.11 and 142.13 to clarify the timing of the process for public notice and opportunity for comment.

1. Changes to Primacy Withdrawal Provisions

Today's action results in the following changes to the primacy withdrawal provisions.

First, EPA is modifying the language of § 142.17(a)(2) by substituting the term "shall" for "may". Specifically, the language of § 142.17(a)(2), as promulgated in December 1989, states that the Administrator "may" initiate primacy withdrawal proceedings once he or she determines that a State's primacy program fails to continue to meet federal requirements for primacy. Today's action requires the Administrator to initiate primacy withdrawal proceedings once the Administrator makes this formal determination.

The language of § 142.17(a)(2), as promulgated in December 1989, contains the clause, "When, * * *, the Administrator determines * * *, and the State has failed to request or has been denied an extension under § 142.12(b)(2) of the deadlines for meeting those requirements, or has failed to take other corrective action required by the Administrator, * * *." EPA is modifying § 142.17(a)(2) to delete this clause. In its place, EPA is revising the paragraph to read as follows: "When, * * *, the Administrator determines * * *, the Administrator shall initiate proceedings to withdraw primacy approval. Among the factors the Administrator intends to consider as relevant to this determination are the following, where appropriate: Whether the State has requested and has been granted, or is awaiting EPA's decision on, an extension under § 142.12(b)(2) of the deadlines for meeting those requirements; and whether the State is taking corrective actions that may have been required by the Administrator." EPA explained its rationale for making this change in the August 8, 1994 proposal. EPA's intent in making this change is to clarify the Administrator's discretion and to note two cases where the Agency generally expects to find no reason to initiate primacy withdrawal since the State is taking timely and appropriate action to remedy program deficiencies. As discussed above, EPA does not believe that this language limits the Administrator's discretion to determine whether or when a State no longer meets the requirements for retaining primacy.

Section 142.17(a)(2) also requires the Administrator to provide the State written notification that the Agency is initiating primacy withdrawal proceedings. EPA is modifying the language of § 142.17(a)(2) to replace the term "of EPA's intention to initiate" with "that EPA is initiating" to be more direct about the action being taken. The Agency believes the phrase "intention to initiate" may be confusing since it

does not clearly state whether EPA is or is not initiating withdrawal as of that date.

These changes to the language of § 142.17(a)(2) require the Administrator to initiate primacy withdrawal proceedings once the Administrator makes a formal determination that the State no longer meets the requirements for primacy. EPA emphasizes that the Agency still retains full discretion to decide whether and when to reach this formal determination. For example, as explained in the August 8, 1994, proposal there may be no reason to formally determine that a State program no longer meets the requirements for primacy if the State has missed a deadline for adopting new drinking water regulations but has been granted or is seeking an extension of that deadline under § 142.12. Similarly, there may be no reason to makes this formal determination if the State is otherwise carrying out any corrective actions that EPA may have ordered that would eliminate the deficiencies in the State program. Nevertheless, EPA wishes to make clear its general policy and intention to continue to vigorously pursue the need for: corrections to State programs; and initiating primacy withdrawal whenever a State is not acting in good faith to maintain the requirements for primacy.

EPA also is making a minor change to the language of § 142.17(a)(4). As promulgated in December 1989, this provision states that after reviewing a State's submission made in response to the notice that EPA is initiating primacy withdrawal proceedings, "* * * the Administrator shall either determine that the State no longer meets [primacy] requirements * * * or that the State continues to meet those requirements * * *. Any determination that the State no longer meets the requirements * * * shall not become effective except as provided in § 142.13." EPA is modifying the language of § 142.17(a)(4) by substituting the phrase "make a final determination either" for the phrase "either determine." EPA also is substituting the phrase "Any final determination" for the phrase "Any determination." This change, which was discussed in the August 8, 1994 proposal, clarifies that the Administrator's "final determination" under § 142.17(a)(4) is distinct from the initial determination made under § 142.17(a)(2) and is preceded by an opportunity for public comment.

EPA emphasizes that these changes do not alter the primacy withdrawal process. That process consists of the following sequential steps.

1. EPA's receipt of information, either through its annual review of the State program (§ 142.17(a)(1)) or otherwise, that the State program may no longer be in compliance with the requirements for primacy.

2. EPA's formal determination, made at its discretion, that the State no longer meets the primacy requirements and notification to the State that primacy withdrawal is being initiated (§ 142.17(a)(2)).

3. The State's response to EPA's notice (§ 142.17(a)(3)).

4. Final EPA determination that the State meets or does not meet the primacy requirements and notification to the State, including a notice to the public and opportunity for a hearing when the EPA's final determination is that the State does not meet primacy requirements. (§ 142.17(a)(4)).

Finally, EPA is replacing the references to "§ 142.10" contained in §§ 142.17(a)(1), 142.17(a)(2), and 142.17(a)(4) with references to "40 CFR part 142, subpart B." Section 142.10 no longer contains all of the requirements a State must meet to obtain/retain primacy. Section 142.10 contains the basic requirements, however, other portions of 40 CFR part 142, subpart B, contain additional primacy requirements associated with individual drinking water regulations. EPA is therefore revising the language of § 142.17(a) to clarify that States are expected to meet all primacy requirements contained in 40 CFR part 142, subpart B.

2. Other Technical Amendments

EPA is today also making two technical clarifying amendments to the language of §§ 142.11(b)(1) and 142.13(a). First, EPA is replacing the word "determination" whenever it occurs in § 142.13(a) with the words "final determination" to clarify that the public notice and opportunity for public hearing requirements specified in § 142.13 occur after the Administrator has made a final determination on a State's or Tribe's primacy application under § 142.11, program revision application under § 142.12, or to withdraw primacy under § 142.17. Second, in order to clarify the Agency's intent that there be an opportunity for public notice and comment on a State's or Tribe's initial primacy application, regardless of whether the Administrator's final determination is to approve or disapprove that application, EPA is revising § 142.11(b)(2)as follows: (1) insert the word "final" before the word "determination"; replace the words "has met the requirements" with the words "has met or has not met the requirements"; and insert the words "the public notice requirements and related procedures under" before the word "§ 142.13." This change is simply a clarification since § 142.13(a) already requires an opportunity for a public hearing in either case.

Because these changes to section § 142.11(b)(2) and § 142.13(a) are simply minor clarifications and are non-substantive, good cause exists for finding that an additional notice and comment period is unnecessary (see § 553 of the Administrative Procedures Act). Moreover, these changes are logical outgrowths of the proposal, which made it clear that through this rulemaking, EPA is distinguishing between its final determinations and the earlier formal determinations that require initiation of primacy withdrawal. Therefore, an additional comment period is unnecessary in any event.

D. Impact of These Revisions

1. Executive Order 12866

Under Executive Order 12866, (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(a) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(b) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(c) Materially alter the budgetary impact on entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(d) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

2. Regulatory Flexibility Act

Pursuant to section 605(b) of the RFA, 5 U.S.C. 605(b), EPA certifies that this rule will not have a significant economic impact on a substantial number of small entities because it merely revises existing procedural requirements for initiating withdrawal of State primacy by clarifying the extent of EPA discretion in initiating the process; States are not considered small entities under this rulemaking for RFA purposes.

3. Paperwork Reduction Act

This rulemaking contains no new or additional information collection activities and, therefore, no information collection request will be submitted to the Office of Management and Budget for review under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

4. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, which was signed into law on March 22, 1995, sets requirements for EPA with respect to rules that contain federal mandates that may result in certain specified costs to State, local, or tribal governments. Also, before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan.

The UMRA generally defines a federal mandate for regulatory purposes as one that imposes an enforceable duty upon State, local, or tribal governments or the private sector. Today's rule simply addresses the subject of EPA's discretion to initiate primacy withdrawal when a State is not maintaining the requirements for primacy and sets forth the circumstances in which EPA must begin the withdrawal process. This rule does not change the actual requirements that States must meet to maintain primacy or otherwise impose an enforceable duty on States. Similarly, this rule does not impose an enforceable duty on any other entities. Thus, there are no federal mandates in this rule for purposes of the UMRA. In addition, today's action does not establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, and so does not require a small government agency plan under UMRA section 203.

List of Subjects in 40 CFR Part 142

Environmental protection, Administrative practices and procedures, Intergovernmental relations, Reporting and recordkeeping requirements, Water supply, Indians.

Dated: June 21, 1995.

Fred Hansen,

Acting Administrator.

For the reasons set forth in the preamble, part 142, chapter 1, title 40 of the Code of Federal Regulations is amended as follows:

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

1. The authority citation for part 142 continues to read as follows:

Authority: 42 U.S.C. 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4 and 300j–9.

§ 142.11 [Amended]

2. Section 142.11 is amended by revising paragraph (b)(2) to read as follows:

§ 142.11 Initial determination of primary enforcement responsibility.

* * * * *

(b) * * *

(2) A final determination by the Administrator that a State has met or has not met the requirements for primary enforcement responsibility shall take effect in accordance with the public notice requirements and related procedures under § 142.13.

* * * * *

§ 142.13 [Amended]

3. Section 142.13 is amended by inserting the word "final" before the word "determination" in each of the three places where the word "determination" occurs in paragraph (a).

§ 142.17 [Amended]

4. Section 142.17 is amended by revising the word "§ 142.10" in paragraph (a)(1) to read "40 CFR part 142, subpart B," and by revising paragraphs (a)(2) and (a)(4) to read as follows:

§ 142.17 Review of State programs and procedures for withdrawal of approved primacy programs.

(a)(1) * * *

(2) When, on the basis of the Administrator's review or other available information, the Administrator determines that a State no longer meets the requirements set forth in 40 CFR part 142, subpart B, the Administrator shall initiate proceedings to withdraw primacy approval. Among the factors the Administrator intends to consider as relevant to this determination are the following, where appropriate: whether the State has requested and has been granted, or is awaiting EPA's decision on, an extension under § 142.12(b)(2) of the deadlines for meeting those requirements; and whether the State is taking corrective actions that may have been required by the Administrator. The Administrator shall notify the State in writing that EPA is initiating primacy withdrawal proceedings and shall summarize in the notice the information available that indicates that the State no longer meets such requirements.

* * * * *

(4) After reviewing the submission of the State, if any, made pursuant to paragraph (a)(3) of this section, the Administrator shall make a final determination either that the State no longer meets the requirements of 40 CFR part 142, subpart B, or that the State continues to meet those requirements, and shall notify the State of his or her determination. Any final determination that the State no longer meets the requirements of 40 CFR part 142, subpart B, shall not become effective except as provided in § 142.13.

* * * * *

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federal register

Wednesday
June 28, 1995

Part XI

Department of the Treasury

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 19, et al.
Time for Payment and Deposits of Certain Excise Taxes (No. 277); Proposed and Final Rules

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 19, 24, 25, 53, 70, 250, 270, 275 and 285

[Notice No. 813]

RIN 1512–AB39

Implementation of Public Law 103–465, Section 712, Time for Payment and Deposits of Certain Excise Taxes (No. 277)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury

ACTION: Proposed rulemaking cross referenced to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this **Federal Register**, the Bureau of Alcohol, Tobacco and Firearms (ATF) is issuing temporary regulations regarding the implementation of section 712 of Public Law 103–465, the "Uruguay Round Agreements Act." The new law changed payment and deposit requirements for certain excise taxes. These regulations implement the law by incorporating the accelerated payment period for taxes or deposits due on distilled spirits, wine, beer, tobacco products and cigarette papers and tubes and firearms and ammunition for the period September 16-September 26 (or September 25, for non-electronic fund transfer (EFT) taxpayers). Payment of taxes for this period is due on September 29 (or September 28, for non EFT taxpayers). The regulations also amend regulations in 27 CFR Part 53 relating to the requirements for making deposits of firearms and ammunition excise taxes by simplifying existing deposit rules in order to maintain consistency with other manufacturers excise taxes administered by the Internal Revenue Service (IRS). Finally, the regulations add provisions relating to records and variances and makes other technical amendments to regulations in 27 CFR Part 53.

DATES: Written comments must be received on or before September 26,1995.

ADDRESSES: Send written comments to: Chief, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221.

FOR FURTHER INFORMATION CONTACT: Tamara Light, Regulations Branch, 650 Massachusetts Avenue, NW, Washington, DC 20226 (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action as defined by Executive Order 12866, because the economic effects flow directly from the underlying statue and not from the proposed regulations. Therefore, a regulatory assessment is not required.

Regulatory Flexibility Act

It is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The revenue effects of this rulemaking on small businesses flow directly from the underlying statute. Likewise, any secondary or incidental effects, and any reporting, recordkeeping, or other compliance burdens flow directly from the statute. Pursuant to section 7805(f) of the Internal Revenue Code, this proposed regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Paperwork Reduction Act

The collections of information contained in this notice have been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project 1512–0467, 1512–0497 or 1512–0509, Attention: Desk officer for the Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Chief, Information Programs Branch, Room 3450, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226.

The collections of information in this proposed regulation are under control numbers 1512–0467, 1512–0497 and 1512–0509. This information is required by ATF to ensure compliance with the provisions of Public Law 103–465. The likely respondents and recordkeepers are individuals and businesses. The estimated average annual burden associated with 1512–0467 is 0.7 hours per respondent or recordkeeper, the estimated average annual burden associated with 1512–0497 is 0.25 hours per respondent or recordkeeper, and the estimated average annual burden associated with 1512–0509 is 0.21 hours per respondent or recordkeeper.

Public Participation

ATF requests comments on the temporary regulations from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practicable to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date. ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting the comment is not exempt from disclosure. During the comment period, any person may request an opportunity to present oral testimony at a public hearing. However, the Director reserves the right, in light of all circumstances, to determine if a public hearing is necessary.

The temporary regulations in this issue of the **Federal Register** amend the regulations in 27 CFR Parts 19, 24, 25, 53, 70, 250, 270, 275 and 285. For the text of the temporary regulations see T.D. ATF–365 published in the Rules and Regulations section of this issue of the **Federal Register**.

Drafting Information

The principal author of this document is Tamara Light, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

Signed: June 6, 1995.

Daniel R. Black,

Acting Director.

Approved: June 19, 1995.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 95–15549 Filed 6–26–95; 10:47 am]

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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 19, 24, 25, 53, 70, 250, 270, 275 and 285

[T.D. ATF–365]

RIN 1512–AB39

Implementation of Public Law 103–465, Section 712, Time for Payment and Deposits of Certain Excise Taxes (No. 277)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Temporary rule (Treasury decision).

SUMMARY: This temporary rule implements section 712 of Public Law 103–465, "The Uruguay Round Agreements Act." The new law changed payment and deposit requirements for certain excise taxes. These regulations implement the law by incorporating the accelerated payment period for taxes or deposits due on distilled spirits, wine, beer, tobacco products and cigarette papers and tubes and firearms and ammunition for the period September 16–September 26 (or September 25, for non-electronic fund transfer (EFT) taxpayers). Payment of taxes for this period is due on September 29 (or September 28, for non EFT taxpayers). This temporary rule also amends regulations in 27 CFR Part 53, relating to the requirements for making deposits of firearms and ammunition excise taxes, by simplifying existing deposit rules in order to maintain consistency with other manufacturers excise taxes administered by the Internal Revenue Service (IRS). Finally, the temporary rule adds provisions relating to records and variances and makes other technical amendments to the regulations in 27 CFR Part 53. In the Proposed Rules section of this **Federal Register**, ATF is also issuing a notice of proposed rulemaking inviting comments on the temporary rule for a 90-day period following the publication of this temporary rule.

EFFECTIVE DATES: The temporary regulations are effective January 1, 1995, except for section 53.159, which is effective July 1, 1995.

ADDRESSES: Send written comments to: Chief, Alcohol and Tobacco Programs Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221.

FOR FURTHER INFORMATION CONTACT: Tamara Light, Alcohol and Tobacco Programs Division, 650 Massachusetts Avenue, NW, Washington, DC 20226 (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1994, P.L. 103–465 (108 Stat. 4809) was enacted, amending the law relating to the payment and deposit of certain excise taxes. Federal excise taxes are imposed on firearms and ammunition, alcoholic beverages, and tobacco products. For the majority of these taxpayers, excise taxes must be remitted to ATF on a semimonthly basis within a 9–14 day period after the end of the semimonthly period. In order to receive these taxes during the fiscal year to which they relate, rather than in the subsequent fiscal year, P.L. 103–465 accelerates the due date for payment or deposit of such taxes for the second semimonthly period of September.

Alcohol and Tobacco Excise Taxes

With certain exceptions, the taxes on distilled spirits, wine, beer, tobacco products, and cigarette papers and tubes, are paid on the basis of a semimonthly return. The semimonthly periods covered by the tax return are from the 1st day through the 15th day of each month and from the 16th day of each month to the last day of that month. The return must be filed and the taxpayment must be made no later than the 14th day after the last day of each semimonthly period.

The amendments to the regulations covering distilled spirits, wine, beer, tobacco products, and cigarette papers and tubes establish the accelerated period required by P.L. 103–465 by dividing the second semimonthly period in September into two payment periods, beginning from the 16th day through the 26th day, and from the 27th day through the 30th day. The return and taxpayment for the period September 16–26 are due on or before September 29. The return and taxpayment for the period September 27–30 are due on or before October 14. The accelerated payment period does not apply to wine excise taxes that are remitted on an annual basis.

Safe Harbor Rule

The amendments to the law specifically provide that, in the case of taxes on distilled spirits, wine, beer, tobacco products, and cigarette papers and tubes, the accelerated payment requirement will be met if the taxpayer pays not later than September 29 an amount equal to 11/15th (73.3 percent) of the taxpayer's liability for the first semimonthly period in September. This "safe harbor" provision is implemented in the regulations at §§ 19.523(c)(2), 24.271(c)(2), 25.164a(b), 250.112(d), 270.164(b), 275.114(b)(3) and 285.25(g)(3).

Special Rule for Taxpayers Not Required to Remit Taxes by Electronic Fund Transfer

The law provides special rules for taxpayers who are not required to remit taxes by electronic fund transfer for the calendar year. For those taxpayers, payment of taxes for the period September 16–September 25 are due on or before September 28. The regulations implementing this requirement provide that the requirement to pay tax for this period is satisfied if the taxpayer pays an amount equal to ⅔ (66.7 percent) of the taxpayer's liability for the first semimonthly period in September.

Last Day for Making Payment

The amendments to the law revise, in part, the special rules for due dates falling on, Saturday, Sunday, or legal holidays as defined in 26 U.S.C. 7503. The amendment relating to due dates falling on Sunday applies only to the accelerated return period in September. If the required due date for the accelerated payment period falls on a legal holiday or Saturday, taxpayment is due on the immediately preceding day, and as amended, if the required due date for the accelerated payment period falls on a Sunday, taxpayment is due on the following Monday. These amendments are reflected in the regulations at §§ 19.523(c)(3), 24.271(c)(3), 25.164a(c), 70.306(a), 250.112(d), 270.164(c), 275.114(b)(4), and 285.25(g)(4).

Firearms and Ammunition Excise Taxes

Current regulations require taxpayers who incur more than $100 in tax liability for any calendar month (except the last month of the quarter) to make monthly deposits on ATF Form 5300.27, Federal Firearms and Ammunition Excise Tax Deposits. Monthly deposits are due by the last day of the month following the month in which the $100 liability was incurred.

Taxpayers who incur more than $2,000 of tax liability for any calendar month in the preceding calendar quarter are required to make semimonthly deposits for the current calendar quarter on ATF Form 5300.27. Deposits of tax for a semimonthly period generally must equal the amount of tax liability incurred during that semimonthly period. However, current regulations provide four exceptions to this rule. Taxpayers may use one of these exceptions in computing the amount of

tax required to be deposited. Each of the four exceptions requires the taxpayer to estimate and deposit an amount of tax based on certain percentages and requirements prescribed by the particular exception. Semimonthly deposits are due by the ninth day of the semimonthly period following the semimonthly period in which the tax was incurred.

Further, semimonthly depositors must deposit any underpayment of tax for the first and second month of the quarter by the ninth day of the second month following the month in which the tax liability was incurred. Any underpayment of tax for the third month of the quarter which exceeds $100 must be deposited by the last day of the first month following the end of the quarter.

P.L. 103–465 Amendments to the Requirement for Making Deposits

In the case of firearms and ammunition excise taxes required to be remitted on a semimonthly basis, P.L. 103–465 requires an accelerated payment for the period September 16–September 25. The due date for deposit of taxes incurred during this period is September 28. These dates apply because the firearms and ammunition excise taxes are not required to be made by electronic fund transfer. Taxes incurred for the remainder of the semimonthly period, September 26–30, are due on October 9. The amendments to the law enact a special rule where the due date of the deposit falls on Saturday or Sunday. If the required due date for the accelerated payment period falls on a Saturday, taxpayment is due on the preceding Friday. If the required due date for the accelerated payment period falls on a Sunday, taxpayment is due on the following Monday. For due dates falling on a legal holiday, the general rule under 26 U.S.C. 7503 continues to apply, and the deposit is due on the day succeeding the legal holiday.

Simplification of Deposit Rule

This temporary rule modifies current regulations in 27 CFR Part 53 which provide a number of different methods for determining whether a taxpayer has complied with the semimonthly deposit rules. This temporary rule reduces the number of those rules, thereby simplifying the deposit system. The rule also complies with the congressional mandate that ATF modify existing regulatory safe harbors to reflect the accelerated taxpayment period. The legislative history for P.L. 103–465 states that both Congress and the Administration "expected that the Treasury Department will modify existing safe harbors relating to excise deposits to reflect these changes." *See,* H.R. Rep. No. 103–826 (I), 103rd Cong., 2nd Sess. 177 (1984), and "The Uruguay Round Agreements Act Statement of Administrative Action," page 1056. This simplification of the deposit rules enables taxpayers to use clear and concise safe harbors in determining their deposits required for the accelerated period.

The amendments to the regulations eliminate the current monthly and semimonthly deposit rules in order to have a single deposit rule apply to all persons required to make deposits of tax. The new regulation at § 53.159 requires semimonthly deposits of tax from all persons required to file returns. ATF believes that by having one deposit rule apply to all persons, the system will be easier for taxpayers to understand and for ATF to administer.

Generally, under this rule, the amount of tax deposited for a semimonthly period must equal the amount of tax liability incurred during that period. However, the regulations provide the following exceptions to this rule.

Special Rule for One-time or Occasional Filings

A special rule is provided for one-time or occasional filings of returns. A person may file a one-time or occasional return reporting liability with respect to taxable transactions in a calendar quarter if the person reporting tax does not engage in any activity with respect to which tax is reportable on the return in the course of a trade or business.

In addition, no deposit is required in the case of tax reported on a one-time or occasional filing. Instead, the tax reported on a one-time or occasional filing is paid with the quarterly return.

De Minimis Exception to the Deposit Requirement

The deposit requirement provided by these amendments to the regulations will not apply if the total tax liability for the quarter does not exceed $2,000. Instead, any tax incurred for the return period will be paid with the quarterly return.

Safe Harbor Rule

A general safe harbor rule is provided so that taxpayers required to pay firearms and ammunition excise taxes are not required to determine their actual tax liability during each semimonthly period in a quarter. The safe harbor rule allows taxpayers to deposit an estimated amount of tax based on prior liability, delaying calculation of their actual liability until the quarterly return is due. The adoption of this general safe harbor rule facilitates the promulgation of the modified rule, discussed below, for the accelerated deposit period in September.

The safe harbor rule applies to taxpayers who filed ATF Form 5300.26, Firearms and Ammunition Excise Tax Return, reporting tax for the second calendar quarter preceding the current calendar quarter (the look-back quarter). Such persons are considered to have met the semimonthly deposit requirement for the current quarter if (1) the deposit for each semimonthly period in the current quarter is not less than 1/6 of the total tax liability reported on Form 5300.26 for the look-back quarter, (2) each deposit is made on time, and (3) any underpayment for the current quarter is paid by the due date of the return on which the tax would ordinarily be reported. All three requirements must be satisfied in order for the safe harbor rule to apply.

Modification of Safe Harbor Rule Based on Look-back Quarter Liability for the Month of September

Under P.L. 103–465, deposits for the period September 16–25 are due on September 28. The deposit for the remaining 5 days, September 26–30, is due on October 9, the 9th day of the semimonthly period following the semimonthly period for which the tax is reportable. A modified safe harbor rule applies to the third calendar quarter and is met where deposit of taxes for the periods September 16–25 and September 26–30 is not less than 1/12 (8.3 percent) of the tax liability reported for the look-back quarter.

Modification of Safe Harbor Rule Based on Look-back Quarter Liability to Adjust for Tax Rate Increases

Under the safe harbor rule, an increase in the rate of tax would generally not be reflected in deposits made by persons using the look-back quarter until the second quarter after the quarter for which the increased rate is effective (although the increased rate would be reflected in catch-up payments for each quarter). Therefore, the safe harbor deposit amounts for the first and second quarters beginning on or after the effective date of a tax rate increase are required to be calculated as if the new tax rate had been in effect during the look-back quarter. Thus, persons using the safe harbor rule in these quarters must deposit 1/6 of the amount of liability for which they would have been liable in the look-back quarter had the higher rate applied at that time. This rule would ensure that the statutory effective date of tax rate changes would be appropriately reflected in deposits.

Look-back quarter liability is adjusted for determining safe harbor deposit amounts only where there is a change in the law increasing the rate of tax, and not when there is some other change that would have resulted in higher taxes in the look-back quarter.

First Time Filers

In addition to the de minimis exception which applies to all taxpayers, a special rule is provided for first time filers (new return filers). First time filers do not have a look-back quarter because the filing of ATF F 5300.26, Federal Firearms and Ammunition Tax Return, other than for a one-time or occasional return under section 53.151(a)(5), has not been required. Under this special rule, a person is considered to have met the semimonthly deposit requirement if the person's deposit for each semimonthly period in the current quarter is not less than 95 percent of the total tax liability incurred during the semimonthly period, each deposit is made on time, and any underpayment for the current quarter is paid by the due date of the return on which the tax would ordinarily be reported.

Technical and Clarifying Amendments

The definition of "person" is being added to § 53.11 in order to clarify what constitutes a person for purposes of Part 53.

Section 53.22 is being amended by exempting one-time or occasional filers from the requirement of obtaining an employer identification number; instead they may use their social security number.

Section 53.23 is being added to the regulations to advise taxpayers that upon approval by the Director, they may use an alternate method or procedure in lieu of a method or procedure specifically prescribed in this part.

Section 53.24 is also being added to the regulations to impose the requirement to retain records for a period of three years.

Section 53.142 is being amended to incorporate a statutory amendment to section 4222(c), pertaining to tax-free registrations.

Section 53.152 paragraph (c) is being redesignated, as the subject matter is of an administrative nature and is more appropriately placed in a subpart governing administrative matters. As a result, § 53.152(c) is being deleted from subpart L and now appears as § 53.21(d) in subpart C.

Conforming Regulatory Changes to §§ 53.151 and 53.158

Language in §§ 53.151 and 53.158 is being amended to maintain consistency with the new deposit rule.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities or impose or otherwise cause an increase in the reporting, recordkeeping or other compliance burdens on a substantial number of small entities. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Executive Order 12866

It has been determined that this temporary rule is not a significant regulatory action as defined by Executive Order 12866, because the economic effects flow directly from the underlying statute and not from this temporary rule. Therefore, a regulatory assessment is not required.

Administrative Procedure Act

Because this document merely implements the law and because immediate guidance is necessary to implement the provisions of the law, it is found to be impracticable to issue this Treasury decision with notice and public procedure under 5 U.S.C. 553(b), or subject to the effective date limitation in section 553(d).

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in this regulation have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control numbers 1512–0467 and 1512–0509. The estimated average annual burden associated with 1512–0467 is 0.7 hours per respondent or recordkeeper, the estimated average annual burden associated with 1512–0497 is 0.25 hours per respondent or recordkeeper, and the estimated average annual burden associated with 1512–0509 is 0.21 hours per respondent or recordkeeper.

For further information concerning the collection of information, and where to submit comments on the collections of information and the accuracy of the estimated burden, and suggestions for reducing this burden, refer to the preamble to the cross-referenced notice of proposed rulemaking published elsewhere in this issue of the **Federal Register.**

Drafting Information

The principal author of this document is Tamara Light, Alcohol and Tobacco Programs Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic fund transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Security measures, Spices and flavoring, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine.

27 CFR Part 24

Administrative practice and procedure, Authority delegations, Claims, Electronic fund transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavoring, Surety bonds, Taxpaid wine bottling house, Transportation, Vinegar, Warehouses, Wine.

27 CFR Part 25

Administrative practice and procedure, Authority delegations, Beer, Claims, Electronic fund transfer, Excise taxes, labeling, Packaging and containers, Reporting and recordkeeping requirements, Research, Surety bonds, Transportation.

27 CFR Part 53

Administrative practice and procedure, Arms and munitions, Authority delegations, Exports, Imports, Penalties, Reporting and recordkeeping requirements.

27 CFR Part 70

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Excise taxes, Firearms and ammunition, Government employees, Law enforcement, Law enforcement officers, Penalties, Seizures and forfeitures, Surety bonds, Tobacco.

27 CFR Part 250

Alcohol and alcoholic beverages, Caribbean Basin initiative, Claims,

Customs duties and inspection, Electronic fund transfers, Excise taxes, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Virgin Islands, Warehouses.

27 CFR Part 270

Administrative practice and procedure, Authority delegations, Cigars and cigarettes, Claims, Electronic fund transfers, Excise taxes, Labeling, Packaging and containers, Penalties, Reporting requirements, Seizures and forfeitures, Surety bonds.

27 CFR Part 275

Cigars and cigarettes, Claims, Customs duties and inspection, Electronic fund transfers, Excise taxes, Imports, Labeling, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Tobacco, Virgin Islands, Warehouses.

27 CFR Part 285

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Claims, Excise taxes, Packaging and containers, Penalties, Seizures and forfeitures, Surety bonds, Reporting requirements.

Authority and Issuance

27 CFR Parts 19, 24, 25, 53, 70, 250, 270, 275, and 285 are amended as follows:

PART 19—DISTILLED SPIRITS PLANTS

Paragraph 1. The authority citation for 27 CFR Part 19 is revised to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5010, 5041, 5061, 5062, 5066, 5081, 5101, 5111–5113, 5142, 5143, 5146, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7011, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 2. Section 19.522 is amended by revising the second sentence of paragraph (a) to read as follows:

§ 19.522 Taxes to be collected by returns.

(a) *Deferred taxes.* * * * Except as provided in section 19.523(c), the periods to be covered by semimonthly returns on Form 5000.24 shall run from the 1st day through the 15th day of each month, and from the 16th day through the last day of each month. * * *

* * * * *

Par. 3. Section 19.523 is amended by revising paragraph (a) and by adding new paragraph (c) to read as follows:

§ 19.523 Time for filing returns.

(a) *Payment pursuant to semimonthly return.* Where the proprietor of bonded premises has withdrawn spirits from such premises on determination and before payment of tax, the proprietor shall file a semimonthly tax return covering such spirits on Form 5000.24, and remittance, as required by § 19.524 or § 19.525, not later than the 14th day after the last day of the return period, except as provided by paragraph (c) of this section. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance shall be due on the immediately preceding day which is not a Saturday, Sunday, or legal holiday, except as provided by paragraph (c)(3) of this section.

* * * * *

(c) *Special rule for taxes due for the month of September (effective after December 31, 1994).* (1)(i) Except as provided in paragraph (c)(1)(ii) of this section, the second semimonthly period for the month of September shall be divided into two payment periods, from the 16th day through the 26th day, and from the 27th day through the 30th day. The proprietor shall file a return on Form 5000.24, and make remittance, for the period September 16–26, no later than September 29. The proprietor shall file a return on Form 5000.24, and make remittance, for the period September 27–30, no later than October 14.

(ii) *Taxpayment not by electronic fund transfer.* In the case of taxes not required to be remitted by electronic fund transfer as prescribed by § 19.524, the second semimonthly period of September shall be divided into two payment periods, from the 16th day through the 25th day, and the 26th day through the 30th day. The proprietor shall file a return on Form 5000.24, and make remittance, for the period September 16–25, no later than September 28. The proprietor shall file a return on Form 5000.24, and make remittance, for the period September 26–30, no later than October 14.

(2) *Amount of payment: Safe harbor rule.* (i) Taxpayers are considered to have met the requirements of paragraph (c)(1)(i) of this section, if the amount paid no later than September 29 is not less than $^{11}/_{15}$ (73.3 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(ii) Taxpayers are considered to have met the requirements of paragraph (c)(1)(ii) of this section, if the amount paid no later than September 28 is not less than 2/3rds (66.7 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(3) *Last day for payment.* If the required taxpayment due date for the periods September 16–25 or September 16–26 as applicable, falls on a Saturday or legal holiday, the return and remittance shall be due on the immediately preceding day. If the required due date falls on a Sunday, the return and remittance shall be due on the immediately following day.

(4) *Example. Payment of tax for the month of September.* (i) *Facts.* X, a distilled spirits plant proprietor required to pay taxes by electronic fund transfer, incurred tax liability in the amount of $30,000 for the first semimonthly period of September. For the period September 16–26, X incurred tax liability in the amount of $45,000, and for the period September 27–30, X incurred tax liability in the amount of $2,000.

(ii) *Payment requirement.* X's payment of tax in the amount of $30,000 for the first semimonthly period of September is due no later than September 29 (§ 19.522(a)). X's payment of tax for the period September 16–26 is also due no later than September 29 (§ 19.523(c)(1)(i)). X may use the safe harbor rule to determine the amount of payment due for the period of September 16–26 (§ 19.523(c)(2)). Under the safe harbor rule, X's payment of tax must equal $21,990.00, 11/15ths of the tax liability incurred during the first semimonthly period of September. Additionally, X's payment of tax in the amount of $2,000 for the period September 27–30 must be paid no later than October 14 (§ 19.523(c)(1)(i)). X must also pay the underpayment of tax, $23,010.00, for the period September 16–26, no later than October 14 (§ 19.523(c)(2)).

PART 24—WINE

Par. 4. The authority citation for 27 CFR Part 24 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5081, 5111–5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 5. Section 24.271 is amended by revising paragraph (b) and by adding paragraph (c) to read as follows:

§ 24.271 Payment of tax by check, cash or money order.

(a) * * *

(b) *Return periods.* Except as provided for in paragraph (c) of this section and § 24.273, or where there is no tax due, return periods are from the 1st day of each month through the 15th day of that month and from the 16th day of each month through the last day of that month. The proprietor shall file returns with remittances, for each return period not later than the 14th day after the last day of the return period. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance shall be due on the immediately preceding day which is not a Saturday, Sunday, or legal holiday, except as provided by § 24.271(c)(3).

(c) *Special rule for taxes due for the month of September (effective after December 31, 1994).* (1)(i) Except as provided in paragraph (c)(1)(ii) of this section, the second semimonthly period for the month of September shall be divided into two payment periods, from the 16th day through the 26th day, and from the 27th day through the 30th day. The proprietor shall file a return on Form 5000.24, and make remittance, for the period September 16–26, no later than September 29. The proprietor shall file a return on Form 5000.24, and make remittance, for the period September 27–30, no later than October 14.

(ii) *Taxpayment not by electronic fund transfer.* In the case of taxes not required to be remitted by electronic fund transfer as prescribed by § 24.272, the second semimonthly period of September shall be divided into two payment periods, from the 16th day through the 25th day, and the 26th day through the 30th day. The proprietor shall file a return on Form 5000.24, and make remittance, for the period September 16–25, no later than September 28. The proprietor shall file a return on Form 5000.24, and make remittance, for the period September 26–30, no later than October 14.

(2) *Amount of payment: Safe harbor rule.* (i) Taxpayers are considered to have met the requirements of paragraph (c)(1)(i) of this section, if the amount paid no later than September 29 is not less than 11/15 (73.3 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(ii) Taxpayers are considered to have met the requirements of paragraph (c)(1)(ii) of this section, if the amount paid no later than September 28 is not less than 2/3rds (66.7 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(3) *Last day for payment.* If the required due date for taxpayment for the periods September 16–25 or September 16–26 as applicable, falls on a Saturday or legal holiday, the return and remittance shall be due on the immediately preceding day. If the required due date falls on a Sunday, the return and remittance shall be due on the immediately following day.

(4) *Example. Payment of tax for the month of September.* (i) *Facts.* X, a proprietor required to pay taxes by electronic fund transfer, incurred tax liability in the amount of $30,000 for the first semimonthly period of September. For the period September 16–26, X incurred tax liability in the amount of $45,000, and for the period September 27–30, X incurred tax liability in the amount of $2,000.

(ii) *Payment requirement.* X's payment of tax in the amount of $30,000 for the first semimonthly period of September is due no later than September 29 (§ 24.271(b)). X's payment of tax for the period September 16–26 is also due no later than September 29 (§ 24.271(c)(1)(i)). X may use the safe harbor rule to determine the amount of payment due for the period of September 16–26 (§ 24.271(c)(2)). Under the safe harbor rule, X's payment of tax must equal $21,990.00, 11/15ths of the tax liability incurred during the first semimonthly period of September. Additionally, X's payment of tax in the amount of $2,000 for the period September 27–30 must be paid no later than October 14 (§ 24.271(c)(1)(i)). X must also pay the underpayment of tax, $23,010.00, for the period September 16–26, no later than October 14 (§ 24.271(c)(2)).

PART 25—BEER

Par. 6. The authority citation for 27 CFR Part 25 continues to read as follows:

Authority: 19 U.S.C. 81(c); 26 U.S.C. 5002, 5051–5054, 5056, 5061, 5091, 5111, 5113, 5142, 5143, 5146, 5222, 5401–5403, 5411–5417, 5551, 5552, 5555, 5556, 5671, 5673, 5684, 6011, 6061, 6065, 6091, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6651, 6656, 6676, 6806, 7011, 7342, 7606, 7805; 31 U.S.C. 9301, 9303–9308.

Par. 7. Section 25.163 is amended by revising the first sentences as follows:

§ 25.163 Method of tax payment.

A brewer shall pay the tax on beer by return on Form 5000.24, as provided in §§ 25.164, 25.164a, 25.173, and 25.175. * * *

Par. 8. Section 25.164 is amended by revising paragraphs (c) and (d) to read as follows:

§ 25.164 Semimonthly return

* * * * *

(c) *Return periods.* Except as provided in § 25.164a, return periods run from the brewer's business day beginning on the first day of each month through the brewer's business day beginning on the 15th day of that month, and from the brewer's business day beginning on the 16th day of the month through the brewer's business day beginning on the last day of the month.

(d) *Time for filing returns and paying tax.* Except as provided in § 25.164a the brewer shall file the semimonthly tax return, Form 5000.24, for each return period, and make remittance as required by this section, not later than the 14th day after the last day of the return period. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance shall be due on the immediately preceding day which is not a Saturday, Sunday, or legal holiday, except as provided by § 25.164a(c).

* * * * *

Par. 9. Section 25.164a is added to read as follows:

§ 25.164a Special Rule for taxes due for the month of September (effective after December 31, 1994).

(a)(1) Except as provided in paragraph (a)(2) of this section, the second semimonthly period for the month of September shall be divided into two payment periods, from the 16th day through the 26th day, and from the 27th day through the 30th day. The brewer shall file a return on Form 5000.24, and make remittance, for the period September 16–26, no later than September 29. The brewer shall file a return on Form 5000.24, and make remittance, for the period September 27–30, no later than October 14.

(2) *Taxpayment not by electronic fund transfer.* In the case of taxes not required to be remitted by electronic fund transfer as prescribed by § 25.165, the second semimonthly period of September shall be divided into two payment periods, from the 16th day through the 25th day, and the 26th day through the 30th day. The brewer shall file a return on Form 5000.24, and make remittance, for the period September 16–25, no later than September 28. The brewer shall file a return on Form

5000.24, and make remittance, for the period September 26–30, no later than October 14.

(b) *Amount of payment: Safe harbor rule.* (1) Taxpayers are considered to have met the requirements of paragraph (a)(1) of this section, if the amount paid no later than September 29 is not less than 11/15 (73.3 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(2) Taxpayers are considered to have met the requirements of paragraph (a)(2) of this section, if the amount paid no later than September 28 is not less than 2/3rds (66.7 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(c) *Last day for payment.* If the required due date for taxpayment for the periods September 16–25 or September 16–26 as applicable, falls on a Saturday or legal holiday, the return and remittance shall be due on the immediately preceding day. If the required due date falls on a Sunday, the return and remittance shall be due on the immediately following day.

(d) *Example. Payment of tax for the month of September.* (1) *Facts.* X, a brewer required to pay taxes by electronic fund transfer, incurred tax liability in the amount of $30,000 for the first semimonthly period of September. For the period September 16–26, X incurred tax liability in the amount of $45,000, and for the period September 27–30, X incurred tax liability in the amount of $2,000.

(2) *Payment requirement.* X's payment of tax in the amount of $30,000 for the first semimonthly period of September is due no later than September 29 (§ 25.164(d)). X's payment of tax for the period September 16–26 is also due no later than September 29 (§ 25.164a(a)(1)). X may use the safe harbor rule to determine the amount of payment due for the period of September 16–26 (§ 25.164a(b)). Under the safe harbor rule, X's payment of tax must equal $21,990.00, 11/15ths of the tax liability incurred during the first semimonthly period of September. Additionally, X's payment of tax in the amount of $2,000 for the period September 27–30 must be paid no later than October 14 (§ 25.164a(a)(1)). X must also pay the underpayment of tax, $23,010.00, for the period September 16–26, no later than October 14 (§ 25.164a(b)).

PART 53—MANUFACTURERS EXCISE TAXES—FIREARMS AND AMMUNITION

Par. 10. The authority citation for 27 CFR Part 53 is revised to read as follows:

Authority: 26 U.S.C. 4181, 4182, 4216–4219, 4221–4223, 4225, 6001, 6011, 6020, 6021, 6061, 6071, 6081, 6091, 6101–6104, 6109, 6151, 6155, 6161, 6301–6303, 6311, 6402, 6404, 6416, 7502.

Par. 11. Section 53.11 is amended by adding the definition of the term "Person" to read as follows:

§ 53.11 Meaning of terms.

* * * * *

Person. An individual, trust, estate, partnership, association, company, or corporation. When used in connection with penalties, seizures, and forfeitures, the term includes an officer or employee of a corporation, or a member or employee of a partnership, who as an officer, employee or member, is under a duty to perform the act in respect of which the violation occurs.

* * * * *

§§ 53.22 and 53.152 [Amended]

Par. 12. Section 52.152(c) is redesignated as section 53.21(d).

Par. 13. Section 53.22 is amended by revising the first sentence of paragraph (a)(1) and by adding paragraph (a)(3) to read as follows:

§ 53.22 Employer identification number.

(a) * * *

(1) Except for one-time or occasional filers, every person who makes a sale or use of an article with respect to which a tax is imposed by section 4181 of the Code, and who has not earlier been assigned an employer identification number or has not applied for one, shall make an application on Form SS–4 for an employer identification number.

* * * * *

(3) *One-time or occasional filers.* A person who files a return under the provisions of section 53.151(a)(5) is not required to make application for an employer identification number. Such persons may use their social security number on any return, statement or other document submitted to ATF by that person in lieu of an employer identification number.

* * * * *

Par. 14. Sections 53.23 and 53.24 are added to read as follows:

§ 53.23 Alternate methods or procedures.

(a) A taxpayer, on specific approval by the Director as provided in this section, may use an alternate method or procedure in lieu of a method or procedure specifically prescribed in this part. The Director may approve an alternate method or procedure, subject to stated conditions, when—

(1) Good cause has been shown for the use of the alternate method or procedure;

(2) The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the specifically prescribed method or procedure, and affords equivalent security to the revenue; and

(3) The alternate method or procedure will not be contrary to any provision of law and will not result in an increase in cost to the Government or hinder the effective administration of this part. No alternate method or procedure relating to the assessment, payment, or collection of tax shall be authorized under this paragraph.

(b) Where the taxpayer desires to employ an alternate method or procedure, a written application to do so shall be submitted to the regional director for transmittal to the Director. The application shall specifically describe the proposed alternate method or procedure and shall set forth the reasons therefor. Alternate methods or procedures shall not be employed until the application has been approved by the Director. The taxpayer shall, during the period of authorization of an alternate method or procedure, comply with the terms of the approved application. Authorization for any alternate method or procedure may be withdrawn whenever, in the judgment of the Director, the revenue is jeopardized or the effective administration of this part is hindered by the continuation of such authorization.

§ 53.24 Records.

(a) *In general*—(1) *Form of records.* The records required by the regulations in this part shall be kept accurately, but no particular form is required for keeping the records. Such forms and systems of accounting shall be used as will enable an ATF officer to ascertain whether liability for tax is incurred and, if so, the amount thereof.

(2) [Reserved]

(b) *Copies of returns, schedules, and statements.* Every person who is required, by the regulations in this part or by instructions applicable to any form prescribed thereunder, to keep any copy of any return, schedule, statement, or other document, shall keep such copy as a part of the records.

(c) *Records of claimants.* Any person who, pursuant to the regulations in this part, claims a refund, credit, or abatement, shall keep a complete and detailed record with respect to the tax, interest, addition to the tax, additional amount, or assessable penalty to which the claim relates. Such record shall include any records required of the claimant by paragraph (b) of this section and Subpart L of this part.

(d) *Place and period for keeping records.* (1) All records required by this part shall be prepared and kept by the person required to keep them, at one or more convenient and safe locations accessible to ATF officers, and shall at all times be immediately available for inspection by such officers.

(2) Except as otherwise provided in this subparagraph, every person required by the regulations in this part to keep records in respect of a tax shall maintain such records for at least three years after the due date of such tax for the return period to which the records relate, or the date such tax is paid, whichever is later. The records of claimants required by paragraph (c) of this section shall be maintained for a period of at least three years after the date the claim is filed.

(e) *Reproduction of original records.* (1) General books of account, such as cash books, journals, voucher registers, ledgers, etc., shall be maintained and preserved in their original form. However, reproductions of supporting records of details, such as invoices, vouchers, production reports, sales records, certificates, proofs of exportation, etc., may be kept in lieu of the original records. Any process may be used which accurately and timely reproduces the original record, and which forms a durable medium for reproducing and preserving the original record.

(2) *Copies of records treated as original records.* Whenever records are reproduced under this section, the reproduced records shall be preserved in conveniently accessible files, and provisions shall be made for examining, viewing, and using the reproduced records the same as if they were the original record. Such reproduced records shall be treated and considered for all purposes as though they were the original record. All provisions of law and regulations applicable to the original record are applicable to the reproduced record.

Par. 15. Section 53.142 is amended by revising the section heading, the introductory text of paragraph (a), and paragraphs (a)(4) and (b) to read as follows:

§ 53.142 Denial, revocation or suspension of registration.

(a) The regional director is authorized to deny, revoke or temporarily suspend, upon written notice, the registration of any person and the right of such person to sell or purchase articles tax free under section 4221 of the Code in any case in which he finds that:

* * * * *

(4) Such denial, revocation, or suspension is necessary to protect the revenue; or

* * * * *

(b) The denial, revocation, or suspension of registration is in addition to any other penalty that may apply under the law for any act or failure to act.

Par. 16. Section 53.151 is amended by revising the last sentence of paragraph (a)(2), by adding a new paragraph (a)(5), and by revising paragraph (b)(1) to read as follows:

§ 53.151 Returns.

(a) In general. * * *

(2) *Return periods after September 30, 1992.* * * * Except as provided in paragraph (a)(5) of this section, every person required to make a return on ATF Form 5300.26 who does not incur any firearms and ammunition excise tax liability for the entire calendar year and who has not filed a final return in accordance with § 53.152 shall file an annual return on ATF Form 5300.26.

* * * * *

(5) *Special rule for one-time or occasional filings for return periods on or after July 1, 1995.* One-time or occasional filers are not required to file quarterly or annual returns pursuant to paragraph (a)(2) of this section if the person reporting tax does not engage in any activity with respect to which tax is reportable on the return in the course of a trade or business. Such persons shall file and pay tax for periods only when liability is incurred. See § 53.159(b)(2), providing that a deposit of taxes is not required for a one-time or occasional filing.

(b) *Monthly and semimonthly returns.*—(1) *Requirement.* If the regional director determines that any taxpayer who is required to deposit taxes under the provision of §§ 53.157 or 53.159 has failed to make deposits of those taxes, the taxpayer shall be required, if so notified in writing by the regional director, to file a monthly or semimonthly return on ATF Form 5300.26. Every person so notified by the regional director shall file a return for the calendar month or semimonthly period in which the notice is received and for each calendar month or semimonthly period thereafter until the person has filed a final return in accordance with § 53.152 or is required to file returns on the basis of a different return period pursuant to notification as provided in paragraph (b)(2) of this section.

* * * * *

Par. 17. Section 53.157 is amended by revising the section heading and by adding a note preceding paragraph (a) to read as follows:

§ 53.157 Deposit requirement for deposits made for calendar quarters prior to July 1, 1995.

Note: For deposit requirement for deposits made for calendar quarters beginning on or after July 1, 1995, see § 53.159.

* * * * *

Par. 18. Section 53.158 is amended by revising the second sentences of paragraphs (b)(2) and (b)(3) to read as follows:

§ 53.158 Payment of tax by electronic fund transfer.

(b) *Requirements.* * * *

(2) * * * The request will be made to the financial institution early enough for the transfer of funds to be made to the Treasury Account no later than the close of business on the last day for making the deposit or filing the return as prescribed in §§ 53.157 or 53.159, and 53.153. * * *

(3) * * * Taxpayers electing to discontinue making remittances by EFT shall remit the tax with the next deposit or return as prescribed in §§ 53.157 or 53.159, and 53.151 for remittances not made by EFT and notify the regional director by attaching a written notification to the tax deposit form or return stating that remittance of firearms and ammunition excise taxes will no longer be made by EFT.

* * * * *

Par. 19. Section 53.159 is added to read as follows:

§ 53.159 Deposit requirement for deposits made for calendar quarters beginning on or after July 1, 1995.

(a) *Definitions*—

(1) *Definition of tax liability.* For purposes of this section, the term "tax liability" means the total tax liability for the specified period plus or minus any allowable adjustments made in accordance with the instructions applicable to the form on which the return is made.

(2) *Semimonthly period.* Except as provided in paragraph (c)(4)(ii) of this section, the term "semimonthly period" means the first 15 days of a calendar month or the remaining portion of a calendar month following the 15th day of that month.

(b) *In general*—(1) *Semimonthly deposits.* Except as provided in paragraphs (b)(2), (c)(2), and (j) of this

section, any person required to file a quarterly excise tax return on ATF Form 5300.26 must make a deposit of tax for each semimonthly period as prescribed in paragraph (c) of this section.

(2) *One-time or occasional filings.* No deposit is required in the case of any taxes reportable on a one-time or occasional filing (as defined in § 53.151(a)(5)).

(c) *Amount of deposit*—(1) *In general.* Except as provided in paragraphs (c)(2), (c)(3) and (c)(6) of this section, the deposit of tax for each semimonthly period must be equal to the amount of tax liability incurred during that semimonthly period. Except as provided in paragraph (c)(3) of this section, no deposit is required for any semimonthly period in which no tax liability is incurred.

(2) *De minimis exception.* Except as provided in paragraph (c)(3) of this section, any person who has a tax liability for the current calendar quarter of $2,000 or less is not required to make deposits for that quarter. However, semimonthly deposits of tax are required beginning with the semimonthly period in which unpaid tax liability exceeds $2,000 and for every semimonthly period thereafter in which tax liability is incurred. The first deposit for the current quarter shall be equal to the unpaid tax liability; thereafter, deposits shall be equal to the amount of tax liability incurred during that semimonthly period.

(3) *Amount of deposit; safe harbor rule based on look-back quarter liability; In general.* Except as provided in paragraph (c)(6) of this section, any person who made a return of tax on ATF Form 5300.26 reporting taxes for the second preceding calendar quarter (the "look-back quarter"), or who did not file a return for the look-back quarter because of the provisions of § 53.151(a)(2), is considered to have complied with the requirement for deposit of taxes for the current calendar quarter if—

(i) The deposit of taxes for each semimonthly period in the current calendar quarter is an amount equal to not less than 1/6 (16.67 percent) of the total tax liability incurred for the look-back quarter;

(ii) Each deposit is made on time; and

(iii) The amount of any underpayment of taxes for the current calendar quarter is paid by the due date of the return.

(4) *Modification for third calendar quarter.* The safe harbor rule in paragraph (c)(3) of this section does not apply for the third calendar quarter unless—

(i) the deposit of taxes for the semimonthly period July 1–September 15 meets the requirements of paragraph (c)(3) of this section; and

(ii) each deposit of taxes for the periods September 16–25 and September 26–30 is not less than 1/12th (8.34 percent) of the total tax liability incurred for the look-back quarter.

(5) *Modification for tax rate increase.* (i) *Application.* The safe harbor rule as prescribed in paragraph (c)(3) is modified for the first and second calendar quarters beginning on or after the effective date of an increase in the rate of any tax prescribed by 26 U.S.C. 4181 to which this part 53 applies.

(ii) *Modification.* The amount of deposit for calendar quarters referred to in paragraph (c)(3) of this section must be adjusted so that the deposit of taxes for each semimonthly period in the calendar quarter is not less than 1/6 (16.67 percent) of the tax liability the person would have had with respect to the tax for the look-back quarter if the increased rate of tax had been in effect for that look-back quarter.

(6) *First time filers.* Any person who did not file a return of tax on ATF Form 5300.26 for the first and second preceding calendar quarters because they were not engaged in any activity with respect to which tax is reportable on the return in the course of a trade or business, is considered to have complied with the requirement for deposit of taxes for the current calendar quarter if—

(i) The deposit of taxes for each semimonthly period in the calendar quarter is not less than 95 percent of the tax liability incurred with respect to those taxes during the semimonthly period;

(ii) Each deposit is made on time; and

(iii) The amount of any underpayment of taxes for the current calendar quarter is paid by the due date of the return.

(d) *Failure to comply with deposit requirements.* (1) If a person fails to make deposits as required under this part, the regional director may withdraw the person's right to use the safe harbor rule provided by paragraph (c)(3) of this section.

(2) *Cross reference.* The regional director may also require a taxpayer who fails to make deposits of tax to file a monthly or semimonthly return, see § 53.151(b)(1).

(e) *Time for making deposit.* Except for deposits for the period September 16–25, each deposit required to be made by this section shall be made not later than the 9th day of the semimonthly period following the close of the period for which it is made. The deposit for the period September 16–25 shall be made not later than September 28. The deposit for the period September 26–30, is due not later than October 9.

(f) *Last day for filing.* (1) Except as provided by paragraph (f)(2) of this section, if the due date of the deposit falls on a Saturday, Sunday, or legal holiday, the deposit and remittance shall be due on the next succeeding day which is not a Saturday, Sunday, or legal holiday. For purposes of this section, "legal holiday" is defined by section 7503 of the Code and 27 CFR 70.306(b) of this chapter.

(2) If the required due date of the deposit for the period September 16–25 falls on a Saturday, the deposit and remittance shall be due on the preceding day. If such required due date falls on a Sunday, the return and remittance shall be due on the following day.

(g) *Forms and procedures.* Each remittance of amounts required to be deposited shall be accompanied by ATF Form 5300.27, Federal Firearms and Ammunition Excise Tax Deposit form, or ATF Form 5300.26, Federal Firearms and Ammunition Excise Tax Return, which shall be prepared in accordance with the applicable instructions. Taxpayers electing to remit deposits by EFT pursuant to § 53.158 shall prepare and submit ATF Form 5300.26 or ATF Form 5300.27 in accordance with the instructions contained in ATF Procedure 92–1, Publication 5000.11. The timeliness of the deposit will be determined by the date it is received by the lockbox financial institution, or the ATF officer designated on the form accompanying the deposit, or the Treasury Account, when made by EFT. In order for deposits of less than $20,000 made by U.S. Mail to be considered received timely, the date of mailing must be on or before the second day preceding the due date of the deposit as evidenced by the official postmark of the U.S. Postal Service stamped on the cover in which the deposit was mailed. When the postmark on the cover is illegible, the burden of proving when the postmark was made will be on the taxpayer. When the taxpayer sends the deposit by registered mail or by certified mail, the date of registry or the date of the postmark on the sender's receipt of certified mail, as the case may be, shall be treated as the date of delivery of the deposit. Any deposit of $20,000 or more must be received by the last day prescribed for making such deposit, regardless of when mailed. Amounts deposited pursuant to this paragraph shall be considered to be paid on the last day prescribed for filing the return in respect of the tax (determined without regard to any extension of time for filing the returns), or at the time deposited, whichever is later.

(h) *Number of remittances.* A person required by this section to make deposits shall make one deposit for a semimonthly period.

(i) *Procurement of prescribed forms.* Copies of the Federal Firearms and Ammunition Excise Tax Deposit form will be furnished, so far as possible, to persons required to make deposits under this section. Such a person will not be excused from making a deposit however, by the fact that no form has been furnished. A person not supplied with the form is required to obtain the form in ample time to make the required deposits within the time prescribed. Copies of the Federal Firearms and Ammunition Excise Tax Deposit form may be obtained by request from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22153–5950.

(j) *Taxpayers required to file monthly or semimonthly returns.* This section does not apply to taxes for:

(1) Any month or semimonthly period in which the taxpayer receives notice from the regional director pursuant to section 53.151(b) to file ATF Form 5300.26; or

(2) Any subsequent month or semimonthly period for which a return on ATF Form 5300.26 is required.

(3) Taxpayers required to file monthly returns shall make semimonthly deposits of 100 percent of the liability incurred during each semimonthly period by the 9th day of the month following the last day of the semimonthly period. Taxpayers required to file semimonthly returns shall pay any tax due for the semimonthly period with each return.

(k) *Examples.*

Example 1. One-time filing or occasional filing. (1) *Facts.* On October 18, 1995, A, an individual who lives in the United States purchases a custom made rifle outside the United States and imports it into the United States. A uses the rifle on October 20, 1995. A is liable for the firearms excise tax imposed by sections 4181 and 4218(a). Since A does not regularly sell rifles in arm's length transactions, a constructive sale price of $20,000 is determined (§ 53.115(b)). The amount of A's tax liability is $2200, 11 percent of the constructive sale price of the rifle. The liability is incurred during the fourth calendar quarter of 1995, the quarter during which the rifle is used (§ 53.111(d)). A did not import the rifle in the course of its trade or business and does not engage in any activities with respect to which tax is reportable on ATF Form 5300.26 in the course of a trade or business.

(2) *Filing requirement.* A must file a return on Form 5300.26 (§ 53.151(a)) for the fourth calendar quarter of 1995 reporting A's $2200 firearms excise tax liability. The Form 5300.26 is due by January 31, 1996, the last day of the first month following the calendar quarter (§ 53.153(a)). Because A did not import the firearm in the course of its trade or business and does not engage in any activities with respect to which tax is reportable in the course of a trade or business, the return is a one-time filing or occasional filing.

(3) *Payment requirement.* Because A's Form 5300.26 is a one-time filing, A is not required to make deposits of tax (§ 53.159(b)(2)). Instead, A pays the $2200 of tax with the return.

Example 2. Deposit requirement; based on look-back quarter liability. (1) *Facts.* B is a manufacturer of firearms. B sells 75 pistols which have a taxable sale price of $500 each during the second calendar quarter of 1996. B sold 50 of the pistols in the first semimonthly period of May, 1996, and the other 25 pistols in the second semimonthly period of April, 1996. B did not incur tax liability in any other semimonthly period in the second quarter. The amount of B's tax liability for the second calendar quarter is $3,750, 10 percent of the taxable sale price of the pistols. B filed Form 5300.26 for the second preceding calendar quarter, the look-back quarter, on January 31, 1996 reporting tax liability in the amount of $2,700.

(2) *Deposit requirement.* B is required to make deposits of tax for each semimonthly period in the calendar quarter because B has incurred more than $2,000 in liability for the current quarter. B may use the safe harbor rule based on look-back quarter liability to determine the amount of the required deposits (§ 53.159(c)(3)). Under this safe harbor rule, B's deposit for each semimonthly period must equal at least $450.00, 1/6 (16.67 percent) of the tax liability incurred for the look-back quarter. B's deposit must be timely and B must pay the amount of any underpayment by the due date of the return. Accordingly, B meets the deposit requirement if B makes the following deposits:

Semimonthly period	Deposit due by	Amount of deposit
April 1–15	April 24, 1996 .	$450.00
April 16–31	May 9, 1996	450.00
May 1–15	May 24, 1996 ..	450.00
May 16–30	June 10, 1996 .	450.00
June 1–15	June 24, 1996 .	450.00
June 16–30	July 9, 1996	450.00

The deposit due on June 10, 1996, would ordinarily be due on June 9, 1996. However, because June 9, 1996 is a Sunday, under section 7503, B has an additional day to make the required deposit.

(3) *Filing requirement.* B must file a return on Form 5300.26 for the second calendar quarter of 1996 reporting B's $3750 tax liability (§ 53.151(a)). The form 5300.26 is due by July 31, 1996, the last day of the first month following the calendar quarter (§ 53.153(a)). B must also pay $1050.00, the underpayment amount by which the total tax liability for the second calendar quarter exceeds the total tax liability for the look-back quarter, by the due date of the return.

Example 3. Deposit amount; no liability in look-back quarter. (1) *Facts.* C, a manufacturer of ammunition, filed returns for the first, second and third quarters of 1995 reporting C's tax liability. During the fourth quarter of 1995, C did not make any taxable sales of shells or cartridges, thereby incurring no tax liability for that return period. C did not file Form 5300.26 for the fourth calendar quarter since no tax liability was incurred (§ 53.151(a)(2)). C made taxable sales in the second quarter of 1996 amounting to $25,500.00, incurring a tax liability of $2805.

(2) *Deposit requirement.* Ordinarily, C would be required to make deposits of tax for each semimonthly period in the calendar quarter because C's total liability for the current calendar quarter exceeds $2,000. However, since C incurred a tax liability of $0 in the second preceding calendar quarter (the look-back quarter) (§ 53.159(c)(3)), under the safe harbor rule, C is not required to make deposits of tax.

(3) *Filing requirement.* C is required to file a return on Form 5300.26 reporting C's $2805 ammunition excise tax liability. The form 5300.26 is due by July 31, 1996.

(4) *Payment requirement.* C must pay the $2805 tax with the return.

Example 4. Deposit requirement; First time Filer. (1) *Facts.* D, a manufacturer of firearms, began business on 2/16/96. D sold 300 shotguns which had a taxable sales price of $210 each during the first quarter of 1996. D sold 70 shotguns in the second semimonthly period of February, 1996, 130 shotguns in the first semimonthly period of March, 1996 and 100 shotguns in the second semimonthly period of March, 1996. The amount of D's tax liability for the first quarter of 1996 is $6,930, 11 percent of the taxable sale price of the shotguns.

(2) *Deposit requirement.* D is required to make a deposit of tax when D's tax liability exceeds $2,000 (§ 53.159(c)(2)). Therefore, D must make a deposit of tax beginning with the first semimonthly period in March, the semimonthly period in which D's unpaid tax liability exceeded $2,000. Because D, a first time filer, does not have an established look-back quarter, D's deposit of tax must be at least 95 percent of the incurred tax liability. D is required to make deposits of at least 95 percent of incurred tax liability for every semimonthly period in the quarter thereafter. D's deposits must be timely and any underpayment of tax must be paid by the due date of the return. Accordingly, D meets the deposit requirement if D makes the following deposits:

Semimonthly period	Deposit due by	Amount of deposit
Feb. 16–29	March 11, 1996	$0
March 1–15	March 25, 1996	4,389
March 16–31 ...	April 9, 1996 ...	2,194.50

The deposits due on March 11, 1996, and March 25, 1996, would ordinarily be due on March 9, 1996, and March 24, 1996, respectively. However, because March 9, 1996, is a Saturday, and March 24, 1996, is a Sunday, under section 7503, D has until March 11, 1996, to make the deposit due on March 9, 1996, and until March 25, 1996, to make the deposit due on March 24, 1996.

(3) *Filing requirement.* D must file a return on Form 5300.26 for the first calendar quarter of 1996 reporting D's $6,930 tax liability (§ 53.151(a)). The form 5300.26 is due by April 30, 1996, the last day of the first month following the calendar quarter (§ 53.153(a)). D must also pay $346.50, the amount by which the tax liability for the quarter was underpaid, by the due date of the return.

Example 5. Deposit amount; third calendor quarter. (1) *Facts.* E, a manufacturer of firearms, is a semimonthly depositor who makes deposits of tax using the safe harbor rule based on the look-back quarter to determine the amount of tax required to be deposited for the third calendar quarter of 1995. E incurred a tax liability amounting to $38,000 for the third quarter. E filed Form 5300.26 for the second preceding calendar quarter, the look-back quarter on May 1, 1995, reporting tax liability in the amount of $30,000.

(2) *Deposit requirement.* Because E has incurred more than $2,000 in liability and has chosen to make deposits of tax based on the look-back quarter, E is required to make deposits of tax equal to $5,000, 1/6 (16.67 percent) of the tax liability incurred in the look-back quarter, for each semimonthly period in the calendar quarter. However, because of the special rule which modifies the safe harbor rule for deposits of tax for the month of September (§ 53.159(c)(4)), E must make deposits equal to $2500.00 each, 1/12th (8.34 percent) of the tax liability incurred in the look-back quarter for the periods September 16–25 and September 26–30. E's deposits must be timely and E must pay the amount of any underpayment by the due date of the return. Accordingly, E meets the deposit requirement if E makes the following deposits:

Semimonthly period	Deposit due by	Amount of deposit
July 1–15	July 24, 1995 ..	$5000.00
July 16–31	August 9, 1995	5000.00
Aug. 1–15	August 24, 1995.	5000.00
Aug. 16–31	Sept. 11, 1995	5000.00
Sept. 1–15	Sept. 25, 1995	5000.00
Sept. 16–25	Sept. 28, 1995	2500.00
Sept. 26–30	October 9, 1995.	2500.00

The deposits due on September 11, 1995, and September 25, 1995, would ordinarily be due on September 9, 1995, and September 24, 1995, respectively. However, because September 9, 1995, is a Saturday, and September 24, 1995, is a Sunday, under section 7503, D bas until September 11, 1995, to make the deposit due on September 9, 1995, and until September 25, 1995, to make the deposit due on September 24, 1995.

(3) *Filing requirement.* E must file a return on Form 5300.26 for the third calendar quarter of 1995 reporting E's $38,000 tax liability (§ 53.153(a)). E must also pay $8,000, the underpayment amount by which the total tax liability for the third calendar quarter exceeds the total tax liability for the look-back quarter, by the due date of the return.

PART 70—PROCEDURE AND ADMINISTRATION

Par. 20. The authority citation for 27 CFR Part 70 continues to read as follows:

Authority: 5 U.S.C. 301 and 552: 26 U.S.C. 4181, 4182, 5146, 5203, 5207, 5275, 5376, 5415, 5504, 5555, 5684(a), 5741, 5761(b), 6020, 6021, 6064, 6102, 6155, 6159, 6201, 6203, 6204, 6301, 6303, 6311, 6313, 6314, 6321, 6323, 6325, 6326, 6331–6343, 6401–6404, 6407, 6416, 6423, 6501–6503, 6511, 6513, 6514, 6532, 6601, 6602, 6611, 6621, 6622, 6651, 6653, 6656, 6657, 6658, 6665, 6671, 6672, 6701, 6723, 6801, 6862, 6863, 6901, 7011, 7101, 7102, 7121, 7122, 7207, 7209, 7214, 7304, 7401, 7403, 7406, 7423, 7424, 7425, 7426, 7429, 7430, 7432, 7502, 7503, 7505, 7506, 7513, 7601–7606, 7608–7610, 7622, 7623, 7653, 7805.

Par. 21. Section 70.306 paragraph (a) is amended by revising the last sentence to read as follows:

§ 70.306 Time for performance of acts other than payment of tax or filing of any return where last day falls on Saturday, Sunday or legal holiday.

(a) * * * For rules concerning the payment of any tax or filing of any return required under the authority of 26 U.S.C. subtitle E relating to alcohol, tobacco and certain other excise taxes, see 26 U.S.C. §§ 5061 and 6302 and the regulations covering the specific commodity.

* * * * *

PART 250—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

Par. 22. The authority citation for 27 CFR Part 250 continues to read as follows:

Authority: 19 U.S.C. 81c: 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5061, 5081, 5111, 5112, 5114, 5121, 5122, 5124, 5131–5134, 5141, 5146, 5207, 5232, 5271, 5276, 5301, 5314, 5555, 6001, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805: 27 U.S.C. 203, 205: 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 23. Section 250.112 is amended by revising paragraphs (b) and (d) and the last sentence of (c)(1) to read as follows:

§ 250.112 Returns for semimonthly periods.

* * * * *

(b) *Periods.* Except as provided for in paragraph (d) of this section, the periods to be covered by returns on ATF Form 5000.24 shall be semimonthly; such periods to run from the 1st day through the 15th day of each month and from the 16th day through the last day of each month.

(c) * * *

(1) * * * If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance shall be due on the immediately preceding day which is not a Saturday, Sunday, or legal holiday, except as provided by paragraph (d) of this section.

* * * * *

(d) *Special rule for taxes due for the month of September (effective after December 31, 1994).* (1) The second semimonthly period for the month of September shall be divided into two payment periods, from the 16th day through the 26th day, and from the 27th day through the 30th day. The taxpayer shall file a return on Form 5000.24, and make remittance, for the period September 16–26, no later than September 29. The taxpayer shall file a return on Form 5000.24, and make remittance, for the period September 27–30, no later than October 14.

(2) *Taxpayment not by electronic fund transfer.* In the case of taxes not required to be remitted by electronic fund transfer as prescribed by § 250.112a, the second semimonthly period of September shall be divided into two payment periods, from the 16th day through the 25th day, and the 26th day through the 30th day. The taxpayer shall file a return on Form 5000.24, and make remittance, for the period September 16–25, no later than September 28. The taxpayer shall file a return on Form 5000.24, and make remittance, for the period September 26–30, no later than October 14.

(3) *Amount of payment: Safe harbor rule.* (i) Taxpayers are considered to have met the requirements of paragraph (d)(1) of this section, if the amount paid no later than September 29 is not less than 11/15 (73.3 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(ii) Taxpayers are considered to have met the requirements of paragraph (d)(2) of this section, if the amount paid no later than September 28 is not less than 2/3rds (66.7 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(4) *Last day for payment.* If the required due date for taxpayment for the periods September 16–25 or September 16–26 as applicable, falls on a Saturday or legal holiday, the return and remittance shall be due on the immediately preceding day. If the required due date falls on a Sunday, the return and remittance shall be due on the immediately following day.

* * * * *

PART 270—MANUFACTURER OF TOBACCO PRODUCTS

Par. 24. The authority citation for 27 CFR Part 270 continues to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703–5705, 5711–5713, 5721–5723, 5731, 5741, 5751, 5753, 5761–5763, 6061, 6065, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6404, 6423, 6676, 6806, 7011, 7212, 7325, 7342, 7502, 7503, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 25. Section 270.163 is revised to read as follows: § 270.163 Semimonthly tax return periods.

Except as provided in section 270.164, the periods to be covered by semimonthly tax returns shall be from the 1st day of each month through the 15th day of that month and from the 16th day of each month through the last day of that month.

Par. 26. Section 270.164 is added to read as follows:

§ 270.164 Special rule for taxes due for the month of September (effective after December 31, 1994).

(a)(1) Except as provided in paragraph (a)(2) of this section, the second semimonthly period for the month of September shall be divided into two payment periods, from the 16th day through the 26th day, and from the 27th day through the 30th day. The manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 16–26, no later than September 29. The manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 27–30, no later than October 14.

(2) *Taxpayment not by electronic fund transfer.* In the case of taxes not required to be remitted by electronic fund transfer as prescribed by § 270.165a, the second semimonthly period of September shall be divided into two payment periods, from the 16th day through the 25th day, and the 26th day through the 30th day. The manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 16–25, no later than September 28. The manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 26–30, no later than October 14.

(b) *Amount of payment: Safe harbor rule.* (1) Taxpayers are considered to have met the requirements of paragraph (a)(1) of this section, if the amount paid no later than September 29 is not less than 11/15 (73.3 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(2) Taxpayers are considered to have met the requirements of paragraph (a)(2) of this section, if the amount paid no later than September 28 is not less than 2/3rds (66.7 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(c) *Last day for payment.* If the required due date for taxpayment for the periods September 16–25 or September 16–26 as applicable, falls on a Saturday or legal holiday, the return and remittance shall be due on the immediately preceding day. If the required due date falls on a Sunday, the return and remittance shall be due on the immediately following day.

(d) *Example. Payment of tax for the month of September.*

(1) *Facts.* X, a manufacturer of tobacco products required to pay taxes by electronic fund transfer, incurred tax liability in the amount of $30,000 for the first semimonthly period of September. For the period September 16–26, X incurred tax liability in the amount of $45,000, and for the period September 27–30, X incurred tax liability in the amount of $2,000.

(2) *Payment requirement.* X's payment of tax in the amount of $30,000 for the first semimonthly period of September is due no later than September 29 (§ 270.165(a)). X's payment of tax for the period September 16–26 is also due no later than September 29 (§ 270.164(a)(1)). X may use the safe harbor rule to determine the amount of payment due for the period of September 16–26 (§ 270.164(b)). Under the safe harbor rule, X's payment of tax must equal $21,990.00, 11/15ths of the tax liability incurred during the first semimonthly period of September. Additionally, X's payment of tax in the amount of $2,000 for the period September 27–30 must be paid no later than October 14 (§ 270.164(a)(1)). X must also pay the underpayment of tax, $23,010.00, for the period September 16–26, no later than October 14 (§ 270.164(b)).

Par. 27. Section 270.165 is amended by revising paragraph (a), removing paragraph (b) and redesignating existing paragraph (c) as paragraph (b) to read as follows:

§ 270.165 Times for filing semimonthly return.

(a) *General.* Except as provided by § 270.164, and paragraph (b) of this section, semimonthly returns on Form 5000.24 shall be filed, for each return period, not later than the 14th day after the last day of the return period. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance shall be due on the immediately preceding day which is not a Saturday, Sunday, or legal holiday, except as provided by § 270.164(c).

* * * * *

PART 275—IMPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

Par. 28. The authority citation for 27 CFR Part 275 continues to read as follows:

Authority: 26 U.S.C. 5701, 5703, 5704, 5705, 5708, 5722, 5723, 5741, 5761, 5762, 5763, 6301, 6302, 6313, 6404, 7101, 7212, 7342, 7606, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 29. Section 275.113 is revised to read as follows:

§ 275.113 Return periods.

Except as provided by § 275.114, the periods to be covered in the semimonthly tax returns shall be from the 1st day through the 15th day of each month, and from the 16th day through the last day of each month.

Par. 30. Section 275.114 is amended by revising paragraphs (b) and (d) to read as follows:

§ 275.114 Time for filing.

* * * * *

(b) *Special rule for taxes due for the month of September (effective after December 31, 1994).* (1) The second semimonthly period for the month of September shall be divided into two payment periods, from the 16th day through the 26th day, and from the 27th day through the 30th day. The bonded manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 16–26, no later than September 29. The bonded manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 27–30, no later than October 14.

(2) *Taxpayment not by electronic fund transfer.* In the case of taxes not required to be remitted by electronic fund transfer as prescribed by § 275.115a, the second semimonthly period of September shall be divided into two payment periods, from the 16th day through the 25th day, and the 26th day through the 30th day. The bonded

manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 16–25, no later than September 28. The bonded manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 26–30, no later than October 14.

(3) *Amount of payment: Safe harbor rule.* (i) Taxpayers are considered to have met the requirements of paragraph (b)(1) of this section, if the amount paid no later than September 29 is not less than 11/15 (73.3 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(ii) Taxpayers are considered to have met the requirements of paragraph (b)(2) of this section, if the amount paid no later than September 28 is not less than 2/3rds (66.7 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(4) *Last day for payment.* If the required due date for taxpayment for the periods September 16–25 or September 16–26 as applicable, falls on a Saturday or legal holiday, the return and remittance shall be due on the immediately preceding day. If the required due date falls on a Sunday, the return and remittance shall be due on the immediately following day.

* * * * *

(d) *Weekends and holidays.* Except as provided in paragraph (b)(4) of this section, if the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance shall be due on the immediately preceding day which is not a Saturday, Sunday, or legal holiday.

PART 285—MANUFACTURER OF CIGARETTE PAPERS AND TUBES

Par. 31. The authority citation for 27 CFR Part 285 continues to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703–5705, 5711, 5721–5723, 5731, 5741, 5751, 5753, 5761–5763, 6061, 6065, 6109, 6302, 6402, 6404, 6676, 6806, 7011, 7212, 7325, 7342, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 32. Section 285.25 is amended by revising paragraph (c), the first sentence of paragraph (f) and adding paragraph (g) to read as follows:

§ 285.25 Return of manufacturer.

* * * * *

(c) *Semimonthly return periods.* Except as provided by paragraph (g) of this section, semimonthly return periods shall run from the 1st day of the month through the 15th day of the month, and from the 16th day of the month through the last day of the month.

* * * * *

(f) *Time for filing.* Except as provided by paragraph (g) of this section, for each semimonthly return period, the return shall be filed not later than the 14th day after the last day of the return period.

* * *

(g) *Special rule for taxes due for the month of September (effective after December 31, 1994).* (1) Except as provided in paragraph (g)(2) of this section, the second semimonthly period for the month of September shall be divided into two payment periods, from the 16th day through the 26th day, and from the 27th day through the 30th day. The manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 16–26, no later than September 29. The manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 27–30, no later than October 14.

(2) *Taxpayment not by electronic fund transfer.* In the case of taxes not required to be remitted by electronic fund transfer as prescribed by § 285.27, the second semimonthly period of September shall be divided into two payment periods, from the 16th day through the 25th day, and the 26th day through the 30th day. The manufacturer shall file a return on Form 5000.24, and remittance, for the period September 16–25, no later than September 28. The manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 26–30, no later than October 14.

(3) *Amount of payment: Safe harbor rule.* (i) Taxpayers are considered to have met the requirements of paragraph (g)(1) of this section, if the amount paid no later than September 29 is not less than 11/15 (73.3 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15th, and if any underpayment of tax is paid by October 14th.

(ii) Taxpayers are considered to have met the requirements of paragraph (g)(2) of this section, if the amount paid no later than September 28 is not less than 2/3rds (66.7 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(4) *Last day for payment.* If the required due date for taxpayment for the periods September 16–25 or September 16–26 as applicable, falls on a Saturday, the return and remittance shall be due on the immediately preceding day. If the required due date falls on a Sunday, the return and remittance shall be due on the immediately following day.

Signed: June 6, 1995.

Daniel R. Black,

Acting Director.

Approved: June 19, 1995.

John P. Simpson,

Deputy Assistant Secretary, (Regulatory, Toriff and Trade Enforcement).

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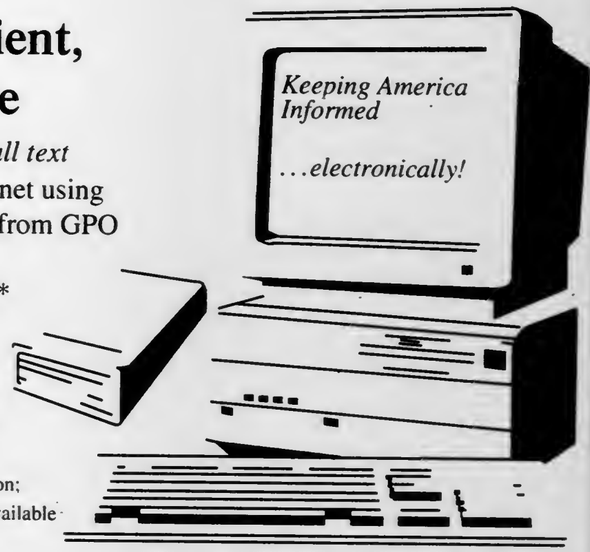
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 906 and 944

[Docket No. FV–95–906–1FR]

Oranges Grown in the Lower Rio Grande Valley in Texas and Imported Oranges; Suspension of Regulations for Domestic and Imported Oranges

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; suspension.

SUMMARY: This rule suspends the handling regulations for oranges grown in the Lower Rio Grande Valley in Texas and the orange import regulations for the period July 1 through August 31 indefinitely. Currently, the effective period for both domestic and imported oranges is January 1 through December 31 of each year. The purpose of the suspension is to remove unnecessary handling regulations applicable to shipments of Texas oranges for the two month period July and August. The suspension of regulations applicable to imported oranges is necessary under section 8e of the amended Agricultural Marketing Agreement Act of 1937.

EFFECTIVE DATE: July 1, 1995.

FOR FURTHER INFORMATION CONTACT:
Charles L. Rush, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone: 202–690–3670;

or

Belinda G. Garza, McAllen Marketing Field Office, USDA/AMS, 1313 East Hackberry, McAllen, TX 78501; telephone: 210–682–2833.

SUPPLEMENTARY INFORMATION: This suspension is issued under Marketing Agreement and Order No. 906 (7 CFR part 906) regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, hereinafter referred to as the "order". The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This suspension is also issued pursuant to section 8e of the Act, which requires the Secretary of Agriculture to issue grade, size, quality, or maturity requirements for certain listed commodities imported into the United States that are the same as, or comparable to, those imposed upon the domestic commodities under Federal marketing orders.

The Department of Agriculture (Department) is issuing this suspension in conformance with Executive Order 12866.

This suspension has been reviewed under Executive Order 12778, Civil Justice Reform. This suspension is not intended to have retroactive effect. This action would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this suspension.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. Import regulations issued under the Act are based on domestic grade, size, quality or maturity regulations established under Federal marketing orders.

There are approximately 15 handlers of oranges and grapefruit regulated under the marketing order each season and approximately 750 orange and grapefruit producers in South Texas. In addition, there are approximately 20 importers of oranges subject to the requirements of the orange import requirements. Small agricultural service firms, which include handlers and importers, have been defined by the Small Business Administration (13 CFR § 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of these handlers, producers, and importers may be classified as small entities.

Oranges grown in the Lower Rio Grande Valley in Texas are subject to a minimum grade requirement of U.S. No. 2 and a minimum size requirement of 2$^{5}/_{16}$ inches in diameter. These requirements are in effect throughout the year on a continuous basis. The grade and size requirements for oranges grown in the Lower Rio Grande Valley in Texas are found in § 906.365 (7 CFR part 906) under the order. In addition, there are container and pack requirements found in § 906.340.

The Texas Valley Citrus Committee (Committee), the agency responsible for local administration of the order, meets prior to and during each season to review the handling regulations effective on a continuous basis for oranges regulated under the order. Committee meetings are open to the public, and interested persons may express their views at these meetings.

The Department reviews Committee recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the handling regulations would tend to effectuate the declared policy of the Act.

The Committee met on March 9, 1995, and recommended by a 14 to 1 vote to relax the effective dates of the regulatory period for oranges from continuous to July 15 through August 31, 1995, for one year. Committee members limited the relaxation to one year because of concerns about imported oranges being in commercial channels after August 31, and the need to study the impact of such a change. The Committee acknowledged that the Texas orange requirements only need to be in effect when there are shipments of Texas oranges.

The Committee member who voted in opposition to the recommended change expressed concern about the potential impact imported oranges could have on the marketing of Texas oranges if substandard imports are in commercial channels when the Texas orange shipping season begins. However, with this rule the quality and size regulations for both Texas and imported oranges will be effective when the Texas shipping season begins and all fruit handled during the Texas shipping season will be subject to these requirements.

According to the Committee, Texas orange shipments typically begin in mid to late September and end in mid to late June. The Texas citrus industry has been in a vigorous recovery since the freeze of 1989. Prior to the freeze, shipments of oranges during the 1986/87 season totaled 1,334,548 cartons, shipments for the 1987/88 season totaled 2,240,181 cartons, and shipments for the 1988/89 season totaled 1,220,101 cartons. The 1989/90 shipping season ended in early January 1990 due to the harsh freeze. There was no commercial production or shipments of oranges during the 1990/91 season due to the December 1989 freeze. Orange shipments were minimal during the 1991/92 season as the recovery from the freeze of 1989 was still underway. Shipments for the 1992/93 season totaled approximately 688,000 cartons and shipments in the 1993/94 season approximated 833,000 cartons. The Committee expects the 1994/95 season to be an excellent year for orange production and sales. A review of 1986/87 to 1993/94 Texas orange shipment data revealed that the industry's shipping season consistently runs from September through the following June. This pattern was consistent in both pre-freeze and post-freeze seasons.

The Department reviewed the Committee's recommendation and determined that the quality and size requirements for Texas oranges should be suspended for the period July 1 through August 31, when there are no Texas orange shipments. The regulatory period would begin in September and end in June. There have been production changes over the last five to six seasons. However, as mentioned above, the change in production is a result of the freeze of 1989. The change in production has not resulted in a change in the industry's shipping pattern. The industry's shipping pattern consistently begins in September and ends in June. Although shipping patterns have not changed to date, in the future there may be changes in production. An annual evaluation will be conducted to determine the impact of the suspension on the Texas orange industry. If it is determined that the suspension has been deleterious to the Texas orange industry, necessary modifications will be made.

Minimum grade and size requirements for fresh oranges grown in Texas are in effect under § 906.365 (7 CFR 906.365). This action suspends the provisions of § 906.365 that apply to oranges during the months of July and August.

Since the grade and size requirements for Texas oranges will be effective during the entire Texas shipping season, this change should not have an adverse impact on the Texas orange industry.

Section 8e of the Act provides that when certain domestically produced commodities, including oranges, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Section 8e further provides that whenever two or more marketing orders regulating the same agricultural commodity produced in different areas of the United States are concurrently in effect, the imports shall be subject to the requirements applicable to the commodity produced in the area with which the imported commodity is in most direct competition. The Secretary has determined that oranges imported into the United States are in most direct competition with oranges grown in Texas regulated under M.O. No. 906, and has found that the minimum grade and size requirements for imported oranges should be the same as those established for oranges under M.O. No. 906.

Imported oranges are subject to minimum grade and size requirements under § 944.312 (7 CFR part 944.312). These requirements are in effect on a continuous basis because domestic oranges are subject to the minimum grade and size requirements under Marketing Order No. 906 on a continuous basis. This rule suspends section 944.312(a) for the period July 1 through August 31 indefinitely so that it is effective September 1 through June 30, the same time period that is effective in the Texas orange regulation. According to the Department's Market News Branch, U.S. fresh orange imports during the 1993/94 season (beginning November 1) totaled 37.2 million pounds, up nearly 60 percent from the 1992/93 total. The increase is attributable to additional supplies from Australia as compared with the prior season. Australia's largest shipments arrive in July and August. By comparison, U.S. orange imports averaged 48.3 million pounds per season from 1988/89 through 1992/93, ranging from a low of nearly 19 million pounds to 137.3 million pounds in 1990/91 when domestic supplies were reduced following freeze damage to the California crop. In both 1992/93 and 1993/94, Australia was the principal source of fresh orange imports. Other sources of orange imports were the Dominican Republic, whose largest shipments arrive in August and September, Mexico, Israel, and Jamaica. In the 1992/93 season, Australia accounted for 10.1 million pounds, or 43 percent of U.S. fresh orange imports and 20.7 million pounds, or 56 percent of the U.S. total in 1993/94. Mexico is an important source of orange imports during the fall and winter. Imports from Israel are most active during the winter, with imports from other countries widely distributed throughout the season.

This rule relaxes import requirements because the orange import regulations will not be in effect during the months of July and August. This may result in reduced costs to importers. This action should not have an adverse impact on the Texas industry, however, because its shipping season does not begin until September. Domestic producers will not be significantly impacted, since all oranges in commercial channels during the domestic shipping season would be subject to the same minimum grade and size requirements.

The purpose of these changes is to assure that applicable quality requirements are in place only during such periods as needed by the Texas orange industry to provide a consistent supply of oranges of acceptable quality to fresh market outlets.

A proposed rule concerning this suspension was issued on April 18, 1995, and published in the **Federal Register** on April 24, 1995 (60 FR 60059). That rule provided a 20-day comment period which ended May 15, 1995. Six comments were received, four in support and two opposed to the proposed rule.

Comments received in favor of suspending the regulations for domestic and imported oranges as proposed were submitted by Mr. David M. Cain of the Citrus Board of South Australia (Citrus Board), Mr. N. Perry Hansen of Waverly Growers Cooperative, and Mr. Gregory P. Nelson on behalf of DNE World Fruit Sales and Bernard Egan & Company.

Mr. Cain states that the Citrus Board speaks on behalf of almost 900 South Australian citrus growers. It is his contention that the suspension of the regulation during the months of July and August, when under current arrangements, South Australian oranges arrive in the United States, will remove an unnecessary obstacle to their importation. He points out that there are no maximum decay level restrictions imposed on imports of U.S. oranges into Australia. Mr. Hansen supports the suspension, as proposed.

Mr. Nelson stated that, as president of a major exporter of Florida citrus and a major grower of Florida citrus, it is important that all import requirements in the United States be reasonable and fair. He further stated that he expects no adverse consequences on the domestic industry as a result of implementation of the proposed suspension.

Comments in opposition to the suspension of the orange regulations were submitted by Mr. Dwayne Bair, Chairman of the Texas Valley Citrus Commitee and Mr. Bobby F. McKown, Executive Vice President/CEO of Florida Citrus Mutual.

Mr. Bair states that the proposal is contrary to the Committee's recommendation which was to relax the Texas orange regulations for a single season rather than suspending them indefinitely as proposed. The Committee recommended relaxing the effective dates of the regulatory period for Texas oranges from July 15 through August 31, 1995, for one year only. As explained earlier in this rule, past and present production and shipping trends support suspending the orange regulations during the period July 1 through August 31 indefinitely. Also as previously stated an annual evaluation will be conducted to determine the impact of this suspension on the Texas orange industry.

Mr. McKown believes that any reduction in the grade, size, quality, or maturity requirements for fresh oranges, could pose long-term adverse consumer perceptions of the quality of fresh oranges offered for sale in the United States by Florida citrus growers. He further postulates that the suspension of the regulations will further depress returns to Florida citrus growers.

The Department currently has no information to support Mr. McKown's contention that the suspension will depress returns to Florida citrus growers. A review of the impact of the suspension will be conducted annually. If it is determined that the domestic industry has been negatively impacted, appropriate modifications will be proposed to the suspension.

This suspension reflects the Department's appraisal of the need to revise the dates of the regulatory period for imported oranges, as hereinafter set forth, to effectuate the declared policy of the Act.

After thoroughly analyzing the comments received and other available information the Department has concluded that its decision to suspend the orange regulations during the above mentioned period is appropriate.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this final rule.

Based on the above, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this suspension, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because this suspension should be in effect on July 1, 1995. Also, a 20-day comment period was provided for in the proposed rule.

List of Subjects

7 CFR Part 906

Oranges, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 944

Avocados, Food grades and standards, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth in the preamble, 7 CFR parts 906 and 944 are amended as follows:

PART 906—ORANGES GROWN IN THE LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for both 7 CFR parts 906 and 944 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 906.365, a new paragraph (a)(7) is added, to read as follows:

§ 906.365 Texas Orange and Grapefruit Regulation 34.

(a) * * *

(7) Beginning in 1995, this paragraph (a) is suspended each year from July 1 through August 31 of each year.

* * * * *

PART 944—FRUITS; IMPORT REGULATIONS

3. In § 944.312, paragraph (a) is amended, by adding a sentence at the end of the paragraph to read as follows:

§ 944.312 Orange import regulation.

(a) * * * Effective July 1 through August 31 of each year this paragraph is suspended.

* * * * *

Dated: June 22, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–15858 Filed 6–26–95; 5:08 pm]

BILLING CODE 3410–02–P

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7 CFR Parts 926 and 944

[Docket No. FV95–926–1FR]

Termination of Marketing Order 926 Covering Tokay Grapes Grown in San Joaquin County, California, and Tokay Grape Import Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination order.

SUMMARY: This action terminates the Federal marketing order for Tokay grapes grown in San Joaquin County, California, and the rules and regulations issued thereunder. For Tokay grapes imported into the United States, this order terminates the applicable Tokay grape import regulation under section 8e of the amended Agricultural Marketing Agreement Act of 1937 (Act). The Secretary of Agriculture has determined that the marketing order no longer tends to effectuate the declared policy of the Act because continuance of the program is no longer supported by growers.

EFFECTIVE DATE: July 31, 1995.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order

Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone (202) 720–5127, or Rose Aguayo, California Marketing Field Office, 2202 Monterey Street, suite 102B, Fresno, California 93721, telephone (209) 487–5901.

SUPPLEMENTARY INFORMATION: This termination order is governed by the provisions of 608c(16)(A) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This termination order is issued under Marketing Order No. 926 (7 CFR part 926), as amended, regulating the handling of Tokay grapes grown in San Joaquin County, California, hereinafter referred to as the "order."

This termination order is also issued under section 8e of the Act, which requires the Secretary of Agriculture to issue grade, size, quality, or maturity requirements for certain listed commodities imported into the United States that are the same as, or comparable to, those imposed upon the domestic commodities under Federal marketing orders.

The Department of Agriculture (Department) is issuing this termination order in conformance with Executive Order 12866.

This termination order has been reviewed under Executive Order 12778, Civil Justice Reform. This order is not intended to have retroactive effect. This termination order will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this order.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has a principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. Import regulations issued under the Act are based on those established under Federal marketing orders.

In recent seasons, 15 California Tokay grape growers within the production area and 3 handlers have been subject to regulation under the marketing order. There are no known importers of Tokay grapes. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of the Tokay grape handlers and growers may be classified as small entities.

Marketing Order No. 926 has been in effect since August 20, 1940. The marketing order provides for the establishment of grade, size, quality, maturity, volume, pack and container requirements. In addition, the order authorizes marketing research and development projects.

This order terminates the provisions of the marketing order regulating the handling of Tokay grapes grown in San Joaquin County, California, and the rules and regulations issued thereunder.

In recent years, it has been difficult for Tokay grape handlers to find a market for their inventory. Lack of demand and increasing production costs have left growers with few outlets and little incentive to produce Tokay grapes. Acreage has declined due to the lack of a market for fresh shipments of Tokay grapes thereby resulting in vines continually being pulled or re-grafted with other varieties. Wineries are less inclined to use Tokay grapes due to competition from other varietal grapes. The number of handlers and growers has also declined.

The Industry Committee (committee), which is responsible for local administration of the order, held a public meeting on October 21, 1994. Growers and handlers were informed of the time, place and date of the meeting. At the meeting, attendees signed a petition requesting that the marketing order be terminated. The industry recommended that the marketing order be terminated at the end of the 1994–95 fiscal period which is March 31, 1995. The industry recommended terminating the marketing order because only three handlers were shipping to the fresh market. The decline in the number of handlers, increased difficulty in finding outlets for their inventory and increased production costs, led to the request.

All of the 15 growers who signed the petition at the October 21, 1994, public meeting, favored termination. This was 100 percent of the growers who produced for market in 1994. As all known growers in the industry participated in the public meeting, there was 100 percent representation.

Given the high level of grower participation at the public meeting, as well as the demonstrated lack of grower support for the order, these results are a reliable indicator of industry sentiment, and clearly demonstrate that growers do not favor continuation of the order.

Section 926.78(b) of the order provides that the Secretary may terminate or suspend the operation of any or all of the provisions of the order whenever he/she finds that any such provision obstructs or does not tend to effectuate the declared policy of the Act.

Therefore, based on the foregoing considerations, pursuant to section 608c(16)(A)(i) of the Act, and § 926.78(b) of the marketing order, it is found that Marketing Order No. 926, covering Tokay grapes grown in San Joaquin County, California, no longer tends to effectuate the declared policy of the Act and is hereby terminated.

Section 8c(16)(A) of the Act requires the Secretary to notify Congress 60 days in advance of the termination of a Federal marketing order. Congress was so notified on February 24, 1995.

This rule also terminates all regulations in effect under the order pertaining to Tokay grapes grown in San Joaquin County, California which are shipped to domestic and foreign markets. These regulations cover grade, size, quality, maturity, volume, pack and container requirements.

Based on the unanimous recommendation of the industry, the Secretary has determined that all members of the Industry Committee will serve as trustees in order to oversee the administrative affairs of the order.

The trustees will be responsible for completing the order's unfinished business, including ensuring termination of all outstanding agreements and contracts, and the payment of all obligations. The trustees will be responsible for safeguarding program assets, holding committee records, and arranging for a financial audit to be conducted. All such actions by the trustees are subject to the approval of the Secretary. Those designated as trustees are John Graffigna, Duane M. Jungblut, Jeryl R. Fry, Jr., Burgess R. Mettler, Bruce A. Mettler, James R. Lauchland, and George H. Mettler. The trustees shall continue in their capacity until discharged by the Secretary.

The remainder of the reserves, after immediate expenses are paid, will be held by the trustees to be used to cover unforeseen, outstanding expenses obligated by the trustees.

In accordance with section 8e of the Act (7 U.S.C. 608e), imported Tokay grapes are subject to the same minimum requirements as domestically produced Tokay grapes. With no effective order for domestic Tokay grapes, there is no basis upon which to continue the import regulation as provided for in sections 944.503(a)(3), 944.503(e), (7 CFR 944.503) and 944.605 (7 CFR 944.605). This order revises provisions of § 944.503 Table Grape Import Regulation 4, paragraph(a)(3), by deleting the reference to Tokay grape import requirements for the period April 20 through August 11 of each year. This order also deletes provisions of § 944.503 paragraph(e) which provide import requirements for Tokay grapes imported into the United States during the period, April 20 through August 11. This order redesignates 944.503(f) as 944.503(e) and terminates section 944.605 in its entirety.

This order also revises § 944.350 Safeguard procedures for avocados, grapefruit, kiwifruit, limes, olives, oranges, table grapes, and Tokay grapes exempt from grade, size, quality, and maturity requirements. Specifically, § 944.350(a)(1) and (2) are revised by deleting all references to Tokay grapes.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this termination order.

Based on available information, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give additional preliminary notice, or to engage in further public procedure with respect to this action, because (1) this action relieves restrictions on handlers by terminating the provisions of part 926 and applicable provisions of part 944; (2) only three handlers were shipping fruit to the fresh market in fiscal period 1994–1995, and (3) the industry recommended terminating the marketing order at a public meeting held on October 21, 1994.

List of Subjects

7 CFR Part 926

Grapes, Marketing Agreements, Reporting and recordkeeping requirements.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth in the preamble, 7 CFR parts 926 and 944 are amended as follows:

PART 926—TOKAY GRAPES GROWN IN SAN JOAQUIN COUNTY, CALIFORNIA

1. The authority citation for 7 CFR parts 926 and 944 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 926—[REMOVED]

2. Accordingly, 7 CFR part 926 is removed.

PART 944—FRUITS; IMPORT REGULATIONS

3. § 944.503 is amended by revising paragraph (a) (3), removing (e) and redesignating paragraph(f) as paragraph (e) to read as follows:

§ 944.503 Table Grape Import Regulation 4.

(a) * * *

(3) All regulated varieties of grapes offered for importation shall be subject to the grape import requirements contained in this section effective April 20 through August 15.

* * * * *

§ 944.605 [Removed]

4. § 944.605 is removed.

§ 944.350 [Amended]

5. § 944.350 is amended by removing the words "Tokay grapes" wherever they appear.

Dated: June 22, 1995.

David R. Shipman,

Acting Deputy Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95–15949 Filed 6–28–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 1230

[No. LS–94–008]

Pork Promotion, Research, and Consumer Information Program—Change in Requirements for Annual Financial Audits

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule and termination order.

SUMMARY: This document terminates the provision of the Pork Promotion, Research, and Consumer Information Order (Order) containing requirements for submission of annual financial reports to the National Pork Board (Board) by organizations that receive less than $10,000 in annual distributed assessments; and issues new requirements in the regulations to implement the Order provisions. The new requirements raise the minimum annual revenue requiring a certified public accountant audit from $10,000 to $30,000. This change facilitates the cost-effective preparation and submission of annual financial reports.

EFFECTIVE DATE: July 31, 1995.

ADDRESSES: Ralph L. Tapp, Chief, Marketing Programs Branch, Livestock and Seed Division, Agricultural Marketing Service (AMS), USDA, Room 2606–S, P.O. Box 96456, Washington, D.C. 20090–6456.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch, 202/720–1115.

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 12778 and Regulatory Flexibility Act

The Department of Agriculture is issuing this rule in conformance with Executive Order 12866.

This action has been reviewed under Executive Order 12778, Civil Justice Reform. This final rule is not intended to have a retroactive effect. The Pork Promotion, Research, and Consumer Information Act (Act) states that the statute is intended to occupy the field of promotion and consumer education involving pork and pork products and of obtaining funds thereof from pork producers and that the regulation of such activity (other than a regulation or requirement relating to a matter of public health or the provision of State or local funds for such activity) that is in addition to or different from the Act may not be imposed by a State.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 1625 of the Act, a person subject to an

Order may file a petition with the Secretary stating that the Order, a provision of the Order, or an obligation imposed in connection with the Order is not in accordance with law, and requesting a modification of or an exemption from the Order. Petitioners have an opportunity for a hearing on the petition. After the hearing, the Secretary will rule on the petition. The Act provides that the district court of the United States in the district in which a person resides or does business has jurisdiction to review the Secretary's decision, if the petitioner files an appeal not later than 20 days after the date the petitioner receives notice of that decision.

This action has also been reviewed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

This action allows State Pork Producer Associations (SPPAs) that receive less than $30,000 in assessments annually to submit unaudited annual financial statements to the Board.

Most SPPAs would be classified as small businesses under the RFA. Raising the minimum dollar amount of distributed annual assessments that triggers the requirement that a SPPA must submit an audited annual financial statement from $10,000 to $30,000, minimizes the cost of preparing annual financial reports for smaller SPPAs. The cost savings will result in increased funds available for financing promotion and research programs.

For these reasons the Administrator of AMS has determined that this action will not have a significant economic effect on a substantial number of small entities.

The Act (7 U.S.C. 4801–4819) approved December 23, 1985, authorized the establishment of a national pork promotion, research, and consumer information program. The program was funded by an initial assessment rate of 0.25 percent of the market value of all porcine animals marketed in the United States and an equivalent amount of assessments on import porcine animals, pork, and pork products. That rate was increased to 0.35 percent effective December 1, 1991 (56 FR 51635) and to 0.45 percent effective September 3, 1995, (60 FR 29962). The final Order establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the **Federal Register** (51 FR 31898; as corrected at 51 FR 36383 and amended at 53 FR 1909, 53 FR 30243, 56 FR 4, and 56 FR 51635) and assessments began on November 1, 1986. The Order is administered by the 15-member Board established pursuant to § 1230.50 of the Order.

Section 1230.74(b) of the Order requires that organizations that receive distributions of funds from the Board shall furnish the Board with an annual report audited by a certified public accountant (CPA) of all funds distributed to them.

There are 45 SPPAs as defined in § 1230.25 who receive a percentage of the annual net assessments collected in their State pursuant to § 1230.72(a) and (b). However, § 1230.74(c) provides that SPPAs that receive less than $10,000 in such annual distributions may submit to the Board annual, unaudited financial statements prepared by State association staff members or individuals who prepare annual financial statements, provided that such statements are certified by two members of the State association. In addition, State associations that receive less than $10,000 annually must submit to the Board a CPA audited financial statement at least every 5 years. Financial statements of SPPAs that receive less than $2,000 annually in distributed assessments are audited by the Board.

The annual minimum dollar amounts of distributed assessments of $10,000 and $2,000 referenced above were established effective August 11, 1988 (53 FR 30243). These minimum dollar requirements were established to enable the smaller SPPAs that receive relatively small amounts of annual assessments to minimize the cost of CPA audits, which could represent a significant proportion of their total assessments.

Since then, the annual amount of assessments distributed by the Board to the SPPAs has increased as a result of an increase in the assessment rate effective December 1, 1991 (56 FR 51635), and some annual fluctuations in domestic hog prices and in the number of hogs marketed. Consequently, it is the Board's view that the minimum dollar amount now is not high enough to enable a sufficient number of the smaller SPPAs to minimize the costs of preparing and submitting annual financial reports and thus have additional funds available to finance promotion and research projects.

The amount of annual assessments distributed to the 45 SPPAs in 1993 ranged from less than $1,000 to nearly $1.4 million. Seventeen State associations received less than $30,000, and four of those State associations received less than $2,000. To minimize the costs of CPA audits for the 13 State associations whose annual assessments are more than $2,000, but less than $30,000, the Board has recommended that the annual minimum dollar amount of distributed assessments that triggers the requirement of an annual CPA audit be increased from $10,000 to $30,000. The provision that the Board audits financial statements of SPPAs that receive less than $2,000 in annual distributed assessments remains unchanged.

Since the establishment in 1988 of the initial minimum dollar amount of assessments for which a CPA audit is required, neither the Board nor the Department has encountered any problems with SPPAs preparing and submitting financial statements or the safeguarding of assessments. Accordingly, based on the Board's findings and its recommendations discussed above, we terminate the provisions of § 1230.74(c).

Further, we revise the requirements for submission of annual audits based on the Board's recommendations and will publish the revisions in the rules and regulations implementing the Order. The revised requirements provide that SPPAs that receive less than $30,000 in assessments will be required to submit unaudited financial statements to the Board.

On March 13, 1995, AMS published in the **Federal Register** (60 FR 13384) a proposed rule which would terminate the provision of the Order containing requirements for submission of annual financial reports to the Board by organizations that receive less than $10,000 in annual distributed assessments; and issue new requirements in the regulations to implement the Order provisions. The proposal was published with a request for comments by April 12, 1995.

The Department received 14 comments after the publication of the proposed rule. All commenters, including the National Pork Board, the National Pork Producers Council, and 12 State Pork Producer Associations supported changing requirements for submission of annual financial reports to Board stating that the change would allow funds to be more appropriately used for research, promotion and consumer information activities.

After consideration of all relevant material presented with regard to the termination of the provision in the Order as hereinafter set forth, it is found that this provision no longer tends to effectuate the declared policy of the Act.

Accordingly, this final rule terminates the provision of the Order containing requirements for submission of annual financial reports to the Board by organizations that receive less than $10,000 in annual distributed assessments and establishes the new requirements in rules and regulations as proposed.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreement, Meat and meat products, Pork and pork products.

For the reasons set forth in the preamble, 7 CFR part 1230 is amended as set forth below:

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR Part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819.

2. In § 1230.74, paragraph (b) is revised and (c) is removed to read as follows:

§ 1230.74 Prohibited use of distributed assessments.

* * * * *

(b) Organizations receiving distributions of assessments from the Board shall furnish the Board with annual financial statements audited by a certified public accountant of all funds distributed to such organizations pursuant to this subpart and any other reports as may be required by the Secretary or the Board in order to verify the use of such funds.

3. A new § 1230.115 is added to Subpart B—Rules and Regulations to read as follows:

§ 1230.115 Submission of annual financial statements.

State Pork Producer Associations, as defined in § 1230.25, that receive distributions of assessments pursuant to § 1230.72 and that receive less than $30,000 in assessments annually, may satisfy the requirements of § 1230.74(b) by providing to the Board unaudited annual financial statements prepared by State association staff members or individuals who prepare annual financial statements, provided that two members of the State association attest to and certify such financial statements. Notwithstanding any provisions of the Order to the contrary, State associations that receive less than $30,000 in distributed assessments annually and submit unaudited annual financial statements to the Board shall be required to submit an annual financial statement audited by a certified public accountant at least once every 5 years, or more frequently if deemed necessary by the Board or the Secretary. The Board may elect to conduct its own audit of the annual financial statements of State Pork Producer Associations that receive less than $2,000 in distributed assessments annually, every 5 years in lieu of the required financial statements.

Dated: June 22, 1995.

David R. Shipman,

Acting Deputy Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95–15948 Filed 6–28–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–ANE–21; Amendment 39–9227; AD 95–10–10]

Airworthiness Directives; Pratt & Whitney JT8D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 95–10–10 applicable to certain Pratt & Whitney (PW) JT8D series turbofan engines that was published in the **Federal Register** on May 22, 1995 (60 FR 27020). The complete listing of affected PW JT8D series turbofan engines in the Applicability paragraph was inadvertently omitted. This document corrects the Applicability paragraph. In all other respects, the original document remains the same.

DATES: Effective July 21, 1995.

SUPPLEMENTARY INFORMATION: A final rule airworthiness directive applicable to Pratt & Whitney (PW) JT8D series turbofan engines, was published in the **Federal Register** on May 22, 1995 (60 FR 27020). The following correction is needed:

On page 27021, in the third column, in the Applicability paragraph, in the third paragraph, third line, that begins with "–17, and –17AR turbofan engines. ", it should read "–17, and –17AR turbofan engines containing front compressor fan hub Part Number (P/N) 817401 with the following serial numbers: J78892 through J80538, K32019 through K34018, L32197 through L34133, or M05722 through M07296; and all serial numbers of fan hubs P/N 594301, 640601, 743301, 749801, 750101, 791801, and 806001. These engines are installed on but not limited to Boeing 727 and 737 series, and McDonnell Douglas DC–9 series aircraft."

Issued in Burlington, MA, on June 14, 1995.

Robert Guyotte,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–15557 Filed 6–28–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–NM–251–AD; Amendment 39–9280; AD 95–12–27]

Airworthiness Directives; Boeing Model 747–400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747–400 series airplanes, that currently requires a revision to the input wiring for the flap control unit (FCU). This amendment requires a new systems test for the wiring of the trailing edge flap, and also expands the applicability of the existing AD to include additional airplanes. This amendment is prompted by a report indicating that a wiring error was not detected by the system test required by the existing AD. The actions specified by this AD are intended to prevent the possibility of an all-flaps-up landing due to the loss of control of all flap operations.

DATES: Effective July 31, 1995.

The incorporation by reference of Boeing Service Bulletin 747–27A2346, Revision 2, dated January 12, 1995, as listed in the regulations, is approved by the Director of the Federal Register as of July 31, 1995.

The incorporation by reference of Boeing Service Bulletin 747–27A2346, Revision 1, dated May 19, 1994, as listed in the regulations, was approved previously by the Director of the Federal Register as of August 10, 1994 (59 FR 35240, July 11, 1994).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kristin Larson, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, Seattle Aircraft Certification

Office, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1760; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 94–14–21, amendment 39–8970 (59 FR 35240, July 11, 1994), which is applicable to certain Boeing Model 747–400 series airplanes, was published in the **Federal Register** on February 15, 1995 (60 FR 8591). The action proposed to continue to require a revision of the input wiring for the flap control unit (FCU), but would include the addition of a new systems test for the wiring of the trailing edge flap. The action also proposed to expand the applicability of the existing AD to include additional airplanes.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The manufacturer states that the numbers referred to as "serial numbers" in paragraphs (a), (b), and (c) of the proposal are designated incorrectly, and requests that the numbers be referred to as "line numbers." The FAA concurs and has revised paragraphs (a), (b), and (c) of the final rule to reflect this change.

One commenter requests that the additional systems test for the wiring, as proposed in paragraph (c) in the AD, be deleted. The commenter states that this testing is unnecessary because the specific procedures provided by Boeing Service Bulletin 747–27A2346, Revision 1, dated May 19, 1994 (which is the appropriate source of service information for existing AD 94–14–21), ensure that the wires are installed in the correct pin locations. The FAA does not concur. This AD was prompted by a report from an operator indicating that a wiring error of the landing gear module was discovered after the accomplishment of the wiring systems check required by AD 94–14–21. The FAA has determined that the wiring systems check required by that AD does not provide adequate verification that the wiring modification was made correctly. Therefore, the additional systems check as specified in paragraph (c) of the final rule is required.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 310 Model 747–400 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 36 airplanes of U.S. registry will be affected by this AD, that it will take approximately 0.5 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,080, or $30 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8970 (59 FR 35240, July 11, 1994), and by adding a new airworthiness directive (AD), amendment 39–9280, to read as follows:

95–12–27 Boeing: Amendment 39–9280. Docket 94–NM–251–AD. Supersedes AD 94–14–21, Amendment 39–8970.

Applicability: Model 747–400 series airplanes having line numbers 696 through 1036 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

Note 2: Paragraph (a) of this AD merely restates the requirements of paragraph (a) of AD 94–14–21, amendment 39–8970. As allowed by the phrase, "unless accomplished previously," if those requirements of AD 94–14–21 have already been accomplished, this AD does not require that those actions be repeated.

To prevent the possibility of an all-flaps-up landing due to the loss of control of flap operations, accomplish the following:

(a) For airplanes having line numbers 696 through 1019 inclusive, and 1021 through 1026 inclusive: Within 30 days after August 10, 1994 (the effective date of AD 94–14–21, amendment 39–8970), revise the input wiring for the flap control unit (FCU) in accordance with Boeing Service Bulletin 747–27A2346, Revision 1, dated May 19, 1994, or Revision 2, dated January 12, 1995.

(b) For airplanes having line numbers 1020, and 1027 through 1036 inclusive: Within 30 days after the effective date of this AD, revise the input wiring for the FCU in accordance with Boeing Service Bulletin 747–27A2346, Revision 2, dated January 12, 1995.

(c) For airplanes having line numbers 696 through 1036 inclusive: Within 120 days after the effective date of this AD, perform the additional systems test for the wiring of the trailing edge flap in accordance with Boeing Service Bulletin 747–27A2346, Revision 2, dated January 12, 1995.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Aircraft Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The wire systems test and wiring revision shall be done in accordance with Boeing Service Bulletin 747–27A2346, Revision 1, dated May 19, 1994, and Boeing Service Bulletin 747–27A2346, Revision 2, dated January 12, 1995. The incorporation by reference is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The incorporation by reference of Boeing Service Bulletin 747–27A2346, Revision 1, dated May 19, 1994, was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of August 10, 1994 (59 FR 35240, July 11, 1994). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on July 31, 1995.

Issued in Renton, Washington, on June 9, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–14632 Filed 6–28–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 93–CE–59–AD; Amendment 39–9289; AD 95–13–09]

Airworthiness Directives; Grob Luft Und Raumfahrt Models G102 Astir CS, Club Astir IIb, Twin Astir, Speed Astir, Standard Astir II, and Speed Astir IIb Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Grob Luft Und Raumfahrt (Grob) Models G102 Astir CS, Club Astir IIb, Twin Astir, Speed Astir, Standard Astir II, and Speed Astir IIb sailplanes. This action requires inspecting all elevator and rudder hinges for damage (delamination, cracks, corrosion, or buckling), and repairing any damaged parts. Several occurrences of inner elevator hinges separating during flight operation prompted this AD action. The actions specified by this AD are intended to prevent these hinges from separating, which could result in sailplane flutter and eventual loss of control of the sailplane.

DATES: Effective August 15, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 15, 1995.

ADDRESSES: Service information that applies to this AD may be obtained from Grob uft und Raumfahrt, D–8939 Mattsies, Germany. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Herman Belderok, Project Officer, Sailplanes, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Grob Models G102 Astir CS, Club Astir IIb, Twin Astir, Speed Astir, Standard Astir II, and Speed Astir IIb sailplanes was published in the **Federal Register** on January 18, 1995 (60 FR 3588). The action proposed to require inspecting all elevator and rudder hinges for damage (delamination, cracks, corrosion, or buckling), and repairing any damaged parts. Accomplishment of the proposed actions would be in accordance with the *III. Procedure* section of Grob Repair Instruction No. 306–27/1 to Service Bulletin TM 306–27/1, dated June 4, 1991.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

The FAA estimates that 146 sailplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per sailplane to accomplish the required action, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $8,760. This figure takes into account that no affected sailplane owner/operator has accomplished the required inspection.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new AD to read as follows:

95-13-09 Grob Luft Und Raumfahrt: Amendment 39-9289; Docket No. 93-CE-59-AD.

Applicability: Models G102 Astir CS, Club Astir IIb, Twin Astir, Speed Astir, Standard Astir II, and Speed Astir IIb Sailplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any sailplane from the applicability of this AD.

Compliance: Required within the next 30 calendar days after the effective date of this AD, unless already accomplished.

To prevent elevator and rudder hinge separation, which could result in sailplane flutter and eventual loss of control of the sailplane, accomplish the following:

(a) Visually inspect all elevator and rudder hinges for damage (delamination, cracks, corrosion, or buckling) in accordance with the *III. Procedure* section of Grob Repair Instruction No. 306-27/1 to Service Bulletin TM 306-27/1, dated June 4, 1991. Prior to further flight, repair any damaged parts in accordance with the service information referenced above.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the sailplanes to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) The inspection required by this AD shall be done in accordance with Grob Repair Instruction No. 306-27/1 to Service Bulletin TM 306-27/1, dated June 4, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Grob uft und Raumfahrt, D-8939 Mattsies, Germany. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment (39-9289) becomes effective on August 15, 1995.

Issued in Kansas City, Missouri, on June 19, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95-15390 Filed 6-28-95; 8:45 am]

BILLING CODE 4910-13-U

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14 CFR Part 39

[Docket No. 95-SW-24-AD; Amendment 39-9299; AD 95-11-09]

Airworthiness Directives; Robinson Helicopter Company Model R22 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 95-11-09 which was sent previously to all known U.S. owners and operators of Robinson Helicopter Company (Robinson) Model R22 helicopters by individual letters. This AD requires installation of a placard in the helicopter, and insertion of a prohibition against low-gravity (G) cyclic pushover maneuvers into the LIMITATIONS section of the Rotorcraft Flight Manual. This amendment is prompted by a recent Federal Aviation Administration (FAA) analysis of the manufacturer's data that indicates a low-G cyclic pushover maneuver may result in mast-bumping on the Robinson Model R22 helicopters. The actions specified by this AD are intended to prevent in-flight main rotor separation or contact between the main rotor blades and the airframe of the helicopter, and subsequent loss of control of the helicopter.

DATES: Effective on July 14, 1995, to all persons except those persons to whom it was made immediately effective by priority letter AD 95-11-09, issued on May 25, 1995, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before August 28, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95-SW-24-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Ms. Lirio Liu, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712-4137, telephone (310) 627-5229; fax (310) 627-5210.

SUPPLEMENTARY INFORMATION: On May 25, 1995, the FAA issued priority letter AD 95-11-09, applicable to Robinson Model R22 helicopters, which requires installation of a placard in the helicopter, and insertion of a prohibition against low-G cyclic pushover maneuvers into the LIMITATIONS section of the Rotorcraft Flight Manual. That action was prompted by a recent Federal Aviation Administration (FAA) analysis of the manufacturer's data that indicates a low-G cyclic pushover maneuver may result in mast-bumping on the Robinson Model R22 helicopters. This condition, if not corrected, could result in in-flight main rotor separation or contact between the main rotor blades and the airframe of the helicopter, and subsequent loss of control of the helicopter.

Since the unsafe condition described is likely to exist or develop on other Robinson Model R22 helicopters of the same type design, the FAA issued priority letter AD 95-11-09 to prevent in-flight main rotor separation or contact between the main rotor blades and the airframe of the helicopter, and subsequent loss of control of the helicopter. The AD requires installation of a placard in the helicopter, in clear view of the pilots, stating that low-G cyclic pushovers are prohibited; and insertion of a prohibition against low-G cyclic pushover maneuvers into SECTION 2, LIMITATIONS, of the Model R22 FAA-approved Rotorcraft Flight Manual.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on May 25, 1995, to all known U.S. owners and operators of Robinson Model R22 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95-SW-24-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 95-11-09 Robinson Helicopter Company: Amendment 39-9299. Docket No. 95-SW-24-AD.

Applicability: Model R22 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required before further flight, unless accomplished previously.

Note 2: Compliance with this AD may be accomplished by completing the "Compliance Procedure" of Robinson Helicopter Company R22 Service Bulletin SB-79, dated May 23, 1995, and by incorporating into the Model R22 FAA-approved Rotorcraft Flight Manual the revised pages 2-7 and 2-12, both of which were approved by the FAA on May 19, 1995.

To prevent in-flight main rotor separation or contact between the main rotor blades and the airframe of the helicopter, and subsequent loss of control of the helicopter, accomplish the following:

(a) Insert the following information into SECTION 2, LIMITATIONS, of the Model R22 FAA-approved Rotorcraft Flight Manual:

Flight and Maneuver Limitations

Low-G cyclic pushovers are prohibited.

Placards

In clear view of the pilots:

Low-G Pushovers Prohibited

(b) Install a placard that contains the following statement in the helicopter in clear view of the pilots. The size and location of the placard must be such that it is easily readable by the pilots:

Low-G Pushovers Prohibited

Note 3: This placard may be produced locally.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance or Operations Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on July 14, 1995, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 95-11-09, issued May 25, 1995, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on June 23, 1995.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 95-16001 Filed 6-28-95; 8:45 am]

BILLING CODE 4910-13-P

14 CFR Part 39

[Docket No. 95–SW–25–AD; Amendment 39–9300; AD 95–11–10]

Airworthiness Directives; Robinson Helicopter Company Model R44 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 95–11–10 which was sent previously to all known U.S. owners and operators of Robinson Helicopter Company (Robinson) Model R44 helicopters by individual letters. This AD requires installation of a placard in the helicopter, and insertion of a prohibition against low-gravity (G) cyclic pushover maneuvers into the LIMITATIONS section of the Rotorcraft Flight Manual. This amendment is prompted by a recent Federal Aviation Administration (FAA) analysis of the manufacturer's data that indicates a low-G cyclic pushover maneuver may result in mast-bumping on the Robinson Model R44 helicopters. The actions specified by this AD are intended to prevent in-flight main rotor separation or contact between the main rotor blades and the airframe of the helicopter, and subsequent loss of control of the helicopter.

DATES: Effective on July 14, 1995, to all persons except those persons to whom it was made immediately effective by priority letter AD 95–11–10, issued on May 25, 1995, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before August 28, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–SW–25–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Ms. Lirio Liu, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712–4137, telephone (310) 627–5229; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: On May 25, 1995, the FAA issued priority letter AD 95–11–10, applicable to Robinson Model R44 helicopters, which requires installation of a placard in the helicopter, and insertion of a prohibition against low-G cyclic pushover maneuvers into the LIMITATIONS section of the Rotorcraft Flight Manual. That action was prompted by a recent Federal Aviation Administration (FAA) analysis of the manufacturer's data that indicates a low-G cyclic pushover maneuver may result in mast-bumping on the Robinson Model R44 helicopters. This condition, if not corrected, could result in in-flight main rotor separation or contact between the main rotor blades and the airframe of the helicopter, and subsequent loss of control of the helicopter.

Since the unsafe condition described is likely to exist or develop on other Robinson Model R44 helicopters of the same type design, the FAA issued priority letter AD 95–11–10 to prevent in-flight main rotor separation or contact between the main rotor blades and the airframe of the helicopter, and subsequent loss of control of the helicopter. The AD requires installation of a placard in the helicopter, in clear view of the pilots, stating that low-G cyclic pushovers are prohibited; and insertion of a prohibition against low-G cyclic pushover maneuvers into SECTION 2, LIMITATIONS, of the Model R44 FAA-approved Rotorcraft Flight Manual.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on May 25, 1995, to all known U.S. owners and operators of Robinson Model R44 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95–SW–25–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 95–11–10 Robinson Helicopter Company: Amendment 39–9300. Docket No. 95–SW–25–AD.

Applicability: Model R44 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required before further flight, unless accomplished previously.

Note 2: Compliance with this AD may be accomplished by completing the "Compliance Procedure" of Robinson Helicopter Company R44 Service Bulletin SB–6, dated May 23, 1995, and by incorporating into the Model R44 FAA-approved Rotorcraft Flight Manual the revised pages 2–7 and 2–12, both of which were approved by the FAA on May 19, 1995.

To prevent in-flight main rotor separation or contact between the main rotor blades and the airframe of the helicopter, and subsequent loss of control of the helicopter, accomplish the following:

(a) Insert the following information into SECTION 2, LIMITATIONS, of the Model R44 FAA-approved Rotorcraft Flight Manual:

Flight and Maneuver Limitations

Low-G cyclic pushovers are prohibited.

Placards

In clear view of the pilots:

Low-G Pushovers Prohibited

(b) Install a placard that contains the following statement in the helicopter in clear view of the pilots. The size and location of the placard must be such that it is easily readable by the pilots:

Low-G Pushovers Prohibited

Note 3: This placard may be produced locally.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance or Operations Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on July 14, 1995, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 95–11–10, issued May 25, 1995, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on June 23, 1995.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 95–16002 Filed 6–28–95; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 97

[Docket No. 28251; Amdt. No. 1671]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description

of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAPs contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPs criteria can be flown by aircraft equipped with Global Positioning System (GPS) equipment. In consideration of the above, the applicable Standard Instrument Approach Procedures (SIAPs) will be altered to include "or GPS" in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS procedure is developed, the procedure title will be altered to remove "or GPS" from these non-localizer, non-precision instrument approach procedure titles.) Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC on June 16, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instruction Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.27, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.27 NDB, NDB/DME; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective SEPT 14, 1995

Prescott, AZ, Ernest A. Love Field, RNAV or GPS RWY 21L, Amdt 2A
Prescott, AZ, Ernest A. Love Field, VOR or GPS RWY 11, Amdt 1
Fresno, CA, Fresno Air Terminal, NDB or GPS RWY 29R, Amdt 23
Orland, CA, Haigh Field, VOR or GPS–A, Amdt 5
Oroville, CA, Oroville Muni, VOR or GPS–A, Amdt 4
Red Bluff, CA, Red Bluff Muni, VOR/DME or GPS RWY 15, Amdt 4
Red Bluff, CA, Red Bluff Muni, VOR or GPS RWY 33, Amdt 5
Fort Lauderdale, FL, Fort Lauderdale/Hollywood Intl, VOR or GPS RWY 27R, Amdt. 10B
Fort Lauderdale, FL, Fort Lauderdale/Hollywood Intl, NDB or GPS RWY 13, Amdt. 14B
Fort Myers, FL, Page Field, NDB or GPS RWY 5, Amdt 5A
Gainesville, FL, Gainesville Regional, RNAV or GPS RWY 28, Amdt 5
Vero Beach, FL, Vero Beach Muni, VOR/DME or GPS RWY 29L, Amdt 2B
Vero Beach, FL, Vero Beach Muni, VOR or GPS RWY 11R, Amdt 12A
Greensboro, GA, Greene County Airpark, NDB or GPS–A, Orig–A
Macon, GA, Middle Georgia Regional, VOR or GPS RWY 13, Amdt 7B
Waycross, GA, Waycross-Ware County, VOR or GPS–A, Amdt 7A
Waycross, GA, Waycross-Ware County, RNAV or GPS RWY 18, Amdt 4A
Seymour, IN, Freeman Muni, NDB or GPS RWY 5, Amdt 3
Fort Madison, IA, Fort Madison Muni, VOR/DME RNAV or GPS RWY 34, Amdt 4
Rantoul, IL, Rantoul National Aviation Center, VOR or GPS RWY 27, Orig
Fort Leavenworth, KS, Sherman AAF, NDB or GPS RWY 33, Amdt 3A CANCELLED
Fort Leavenworth, KS, Sherman AAF, NDB RWY 33, Amdt 3A
Larned, KS, Larned-Pawnee County, NDB or GPS RWY 17, Amdt 3
Meade, KS, Meade Muni, NDB or GPS RWY 17, Amdt 1A
Covington, KY, Cincinnati/Northern Kentucky Intl, NDB or GPS RWY 9, Amdt 13
Covington, KY, Cincinnati/Northern Kentucky Intl, NDB or GPS RWY 18R, Amdt 16
Mayfield, KY, Mayfield Graves County, VOR/DME or GPS–A, Amdt 7
Mayfield, KY, Mayfield Graves County, VOR/DME RNAV or GPS RWY 18, Amdt 3
Mount Sterling, KY, Mount Sterling-Montgomery County, NDB or GPS RWY 3, Amdt 1
Mount Sterling, KY, Mount Sterling-Montgomery County, NDB or GPS RWY 21, Amdt 1
New Orleans, LA, New Orleans Intl (Moisant Field), NDB or GPS RWY 10, Amdt 25A
Ruston, LA, Ruston Muni, VOR/DME or GPS–A, Amdt 11
Slidell, LA, Slidell, NDB or GPS RWY 36, Orig
Menominee, MI, Menominee-Marinette Twin County VOR or GPS–A, Amdt 2A
Hutchinson, MN, Hutchinson Muni-Butler Field, VOR/DME or GPS RWY 33, Amdt 2
Hutchinson, MN, Hutchinson Muni-Butler Field, NDB or GPS RWY 15, Amdt 3
St Paul, MN, St Paul Downtown Holman Fld, NDB or GPS RWY 30, Amdt 7
Winona, MN, Winona Muni-Max Conrad Fld, VOR or GPS–A, Amdt 11B
Jackson MS, Jackson Intl, NDB or GPS RWY 15L, Amdt 4
Mesquite, NV, Mesquite, VOR/DME or GPS–A, Orig
Sand Springs, OK, William R. Pogue Muni, NDB or GPS RWY 35, Amdt 2 CANCELLED
Sand Springs, OK, William R. Pogue Muni, NDB RWY 35, Amdt 2
West Jefferson, NC, Ashe County, NDB or GPS RWY 27, Orig CANCELLED
West Jefferson, NC, Ashe County, NDB RWY 28, Orig
Wallops Island, VA, Wallops Flight Facility, VOR/DME or TACAN or GPS RWY 10, Amdt 3 CANCELLED
Wallops Island, VA, Wallops Flight Facility, VOR/DME or TACAN RWY 10, Amdt 3

[FR Doc. 95–15986 Filed 6–28–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28249; Amdt. No. 1669]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC on June 16, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * *Effective July 20, 1995*

Ruston, LA, Ruston Muni, VOR/DME–A, Amdt 11, CANCELLED
Minneapolis, MN, Minneapolis-St Paul Intl/ Wold-Chamberlain, ILS RWY 11L, Amdt 3
Minneapolis, MN, Minneapolis-St Paul Intl/ Wold-Chamberlain, ILS RWY 11R, Amdt 5
Minneapolis, MN, Minneapolis-St Paul Intl/ Wold-Chamberlain, ILS RWY 29L, Amdt 41
Minneapolis, MN, Minneapolis-St Paul Intl/ Wold-Chamberlain, ILS RWY 29R, Amdt 7
Minocqua-Woodruff, WI Lakeland/Noble F. Lee Memorial Field LOC RWY 36, Orig

** * * Effective August 17, 1995*

Sacramento, CA, Sacramento Metropolitan, NDB RWY 16L, Amdt 1
Sacramento, CA, Sacramento Metropolitan, NDB RWY 16R, Amdt 10
West Palm Beach, FL, North Palm Beach County General Aviation, VOR RWY 8R, Amdt 1
Fort Leavenworth, KS, Sherman AAF, GPS RWY 15, Orig
Fort Leavenworth, KS, Sherman AAF, GPS RWY 33, Orig
Plymouth, MA, Plymouth Muni, NDB RWY 6, Amdt 3
Sand Springs, OK, Williams R. Pogue Muni, GPS RWY 35, Orig

** * * Effective September 14, 1995*

Hampton, GA, Clayton County-Tara Field, GPS RWY 24, Orig
Glasgow, KY, Glasgow Muni, VOR/DME or GPS RWY 7, Amdt 6
Glasgow, KY, Glasgow Muni, SDF RWY 7, Amdt 9
Glasgow, KY, Glasgow Muni, NDB RWY 7, Amdt 10
Bunkie, LA, Bunkie Muni, NDB RWY 35, Orig
Bay St. Louis, Ms, Stennis Intl, GPS Rwy 36, Orig
Claremont, NH, Claremont Muni, GPS RWY 29, Orig
Morristown, NJ, Morristown Muni, ILS RWY 23, Amdt 9
Brookings, SD, Brookings Muni, VOR or GPS RWY 12, Amdt 11
Brookings, SD, Brookings Muni, VOR or GPS RWY 30 Amdt 10
Brookings, SD, Brookings Muni, ILS/DME RWY 30, Amdt 1
Cleburne, TX, Cleburne Muni, VOR/DME–A OR GPS, Amdt 6
Cleburne, TX, Cleburne Muni, VOR/DME RNAV OR GPS RWY 15, Amdt 3
Cleburne, TX, Cleburne Muni, VOR/DME RNAV OR GPS RWY 33, Amdt 4
Gillette, WY, Gillette-Campbell County, LOC/ DME BC RWY 16, Amdt 2

** * * Effective Upon Publication*

Gordonsville, VA, Gordonsville Muni, NDB RWY 23, Amdt 1

Note: The FAA published an Amendment in Docket No. *28226*, Amdt. No. *1665* to Part 97 of the Federal Aviation Regulations (Vol *60* FR No. *105* Page *28532*; dated *June 1, 1995*) under Section *97.27* effective *20 JUL 95*, which is hereby amended as follows:

Hopkinsville, KY, Hopkinsville-Christian County, NDB RWY 26, Amdt 6

should read: NDB or GPS RWY 26, Amdt 6

[FR Doc. 95–15989 Filed 6–28–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28250; Amdt. No. 1670]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace system, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. The amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments require making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedures before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC on June 16, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective Upon Publication

FDC Date	State	City	Airport	FDC No.	SIAP
06/01/95	GA	Toccoa	Toccoa RG Letourneau Field	FDC 5/2431	VOR/DME OR GPS RWY 2 ORIG... *NOTAM published in TL95–13 5/2531 should be 5/2431*
06/01/95	NC	Morganton	Morganton-Lenoir	FDC 5/2450	NDB OR GPS RWY 3 AMDT 4...
06/01/95	TN	Gallatin	Sumner County Regional	FDC 5/2437	NDB OR GPS RWY 35 AMDT 1...
06/01/95	TN	Gallatin	Sumner County Regional	FDC 5/2438	VOR/DME OR GPS-A AMDT 1...
06/02/95	CA	Napa	Napa County	FDC 5/2462	LOC RWY 36L AMDT 2A...
06/05/95	VA	Bridgewater	Bridgewater Airpark	FDC 5/2544	NDB OR GPS-A AMDT 4...
06/06/94	ID	Boise	Boise Air Terminal (Gowen Field)	FDC 5/2550	ILS RWY 10R, AMDT 8...
06/08/95	NM	Roswell	Roswell Industrial Air Center	FDC 5/2593	LOC BC RWY 3 AMDT 8...

Napa

Nopa County

California

LOC RWY 36L AMDT 2A...
FDC Date: 06/02/95
FDC 5/2462/APC/ FI/P NAPA COUNTY, NAPA, CA. LOC RWY 36L AMDT 2A...CHANGE ALL REFERENCES TO LYLLY OM/INT TO LYLLY INT. THIS IS LOC RWY 36L AMDT 2B.

Toccoa

Toccoa RG Letourneau Field

Georgia

VOR/DME OR GPS RWY 2 ORIG...
FDC Date: 06/01/95
NOTAM published in TL95–13 5/2531 should be 5/2431
FDC 5/2431/TOC/ FI/P TOCCOA RG LETOURNEAU FIELD, TOCCOA, GA. VOR/DME OR GPS RWY 2 ORIG...DELETE TERMINAL ROUTE AHN VORTAC TO TESLY TOC 12.5 DME. THIS BECOMES VOR/DME OR GPS RWY 2 ORIG-A.

Boise

Boise Air Terminal (Gowen Field)

Idaho

ILS RWY 10R, AMDT 8...
FDC Date: 06/06/94
FDC 5/2550/BOI/ FI/P BOISE AIR TERMINAL (GOWEN FIELD), BOISE, ID. ILS RWY 10R, AMDT 8...DELETE INITIAL SEGMENT... PARMO INT. I-BOI 29.4 DME TO USTIK LOM, I-BOI 5.4 DME. ADD NOTE... RADAR REQUIRED. THIS BECOMES ILS RWY 10R, AMDT 8A.

Morganton

Morganton-Lenoir

North Carolina

NDB OR GPS RWY 3 AMDT 4...
FDC Date: 06/01/95
FDC 5/2450/MRN/ FI/P MORGANTON-LENOIR, MORGANTON, NC. NDB OR GPS RWY 3 AMDT 4...DELETE HICKORY ALSTG MNMS. DELETE NOTE...OBTAIN LOCAL ALSTG...THRU... HICKORY ALSTG MNMS. ADD NOTE...OBTAIN LOCAL ALSTG ON CTAF; WHEN NOT

RECEIVED USE WILKES COUNTY ALSTG AND INCREASE ALL MDAS 240 FEET AND ALL VIS 3/4 MILE. THIS BECOMES NDB OR GPS RWY 3 AMDT 4A.

Roswell

Roswell Industrial Air Center

New Mexico

LOC BC RWY 3 AMDT 8...
FDC Date: 06/08/95
FDC 5/2593/ROW/ FI/P ROSWELL INDUSTRIAL AIR CENTER, ROSWELL, NM. LOC BC RWY 3 AMDT 8...ALTN MNMS /ILS & LOC/STANDARD-NA WHEN CONTROL TOWER CLOSED. THIS IS LOC BC RWY 3 AMDT 8A.

Gallatin

Sumner County Regional

Tennessee

NDB OR GPS RWY 35 AMDT 1...
FDC Date: 06/01/95
FDC 5/2437/M33/ FI/P SUMNER COUNTY REGIONAL, GALLATIN, TN. NDB OR GPS RWY 35 AMDT 1...CHANGE NOTE TO READ... IF LOCAL ALSTG NOT RECEIVED USE NASHVILLE ALSTG AND INCREASE ALL MDAS 40 FEET. THIS BECOMES NDB OR GPS RWY 35 AMDT 1A.

Gallatin

Sumner County Regional

Tennessee

VOR/DME OR GPS-A AMDT 1...
FDC Date: 06/01/95
FDC 5/2438/M33/ FI/P SUMNER COUNTY REGIONAL, GALLATIN, TN. VOR/DME OR GPS-A AMDT 1...CHANGE NOTE TO READ...IF LOCAL ALSTG NOT RECEIVED USE NASHVILLE ALSTG AND INCREASE ALL MDAS 60 FEET. THIS BECOMES VOR/DME OR GPS-A AMDT 1A.

Bridgewater

Bridgewater Airpark

Virginia

NDB OR GPS-A AMDT 4...
FDC Date: 06/05/95
FDC 5/2544/VBW/ FI/P BRIDGEWATER AIRPARK, BRIDGEWATER, VA. NDB OR GPS-A AMDT 4...DELETE NOTE... PROCEDURE NOT AUTHORIZED AT NIGHT EXCEPT BY PRIOR ARRANGEMENT FOR RUNWAY LIGHT. THIS IS NDB OR GPS-A AMDT 4A.

[FR Doc. 95–15988 Filed 6–28–95; 8:45 am]

BILLING CODE 4910–13–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1273

Grants and Cooperative Agreements to State and Local Governments

AGENCY: Office of Procurement, Contract Management Division, National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: This interim rule is NASA's adoption of the Common Rule, under Office of Management and Budget Circular No. A–102, on grants and cooperative agreements to state and local governments.

DATES: This rule is effective July 31, 1995. Comments must be received on or before August 28, 1995.

ADDRESSES: Submit comments to Rich Kall, Contract Management Division (Code HK), Office of Procurement, NASA Headquarters, Washington, DC 20546. Comments on the paperwork burden should also be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer for NASA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Rich Kall, (202) 358–0459.

SUPPLEMENTARY INFORMATION:

Background

The NASA Research Grant Handbook (14 CFR part 1260) is the current governing rule for NASA research grants and cooperative agreements. It does not address all types of NASA grants and cooperative agreements. NASA intends to issue regulations on all its grant programs thru new CFR parts. These regulations will cover grants and cooperative agreements with state and local governments, grants and cooperative agreements with educational institutions and other nonprofit organizations, and cooperative agreements with commercial firms.

At this time it is our intention to adopt the Common Rule as it applies under OMB Circular No. A–102. This rule is adopted as an interim rule so that it may be used immediately. The Common Rule has already undergone public comment and NASA is not making significant changes. NASA's interim rule is the same as the common rule adopted by other agencies, for example, the National Science Foundation at 45 CFR part 602, except that the following corrections have been made: (1) In § 1273.3, the definition of "share" has been corrected by removing the phrase "to which the acquisition costs under the grant"; (2) in § 1273.21(e), the phrase "provide cash or a working capital advance basis" in the first sentence has been changed to "provide cash on a working capital advance basis"; (3) in § 1273.30(f), "budget formal" has been changed to "budget format"; (4) in § 1273.32(g), "third part" has been changed to "third party"; (5) in § 1273.36(d)(2)(i)(B), "compete effectively and for the business" has been changed to "compete effectively for the business"; and (6) in § 1273.42(f), "records Unless required" has been changed to "records unless required".

Regulatory Flexibility Act

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small entities under Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act

The information collection requirements in this interim rule have been submitted to the Office of Management and Budget for review under 44 U.S.C. 3504(h). The Common Rule as adopted by NASA requires certain reporting and recordkeeping of states and local governments in order to determine eligibility for selection and compliance with the rule. The estimated total annual reporting and recordkeeping burden is 1180 hours. The estimated average burden hours per response is 7 hours. The rule proposes quarterly financial reporting and annual reporting for property and technical results. Other reports are required at the conclusion of the agreement or the occurrence of other events. The estimated number of likely respondents is 30 organizations submitting proposals per year resulting in the award of 10 grants per year.

List of Subjects in 14 CFR Part 1273.

Grant programs, Intergovernmental relations.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 14 CFR part 1273 is added to read as follows:

PART 1273—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.
1273.1 Purpose and scope of this part.
1273.2 Scope of subpart.
1273.3 Definitions.
1273.4 Applicability.
1273.5 Effect on other issuances.
1273.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

1273.10 Forms for applying for grants.
1273.11 State plans.
1273.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

1273.20 Standards for financial management systems.
1273.21 Payment.
1273.22 Allowable costs.
1273.23 Period of availability of funds.
1273.24 Matching or cost sharing.
1273.25 Program income.
1273.26 Non-Federal audit.

Changes, Property, and Subawards

1273.30 Changes.
1273.31 Real property.
1273.32 Equipment.
1273.33 Supplies.
1273.34 Copyrights.
1273.35 Subawards to debarred and suspended parties.
1273.36 Procurement.
1273.37 Subgrants.

Reports, Records, Retention, and Enforcement

1273.40 Monitoring and reporting program performance.
1273.41 Financial reporting.
1273.42 Retention and access requirements for records.
1273.43 Enforcement.
1273.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

1273.50 Closeout.
1273.51 Later disallowances and adjustments.
1273.52 Collection of amounts due.

Subpart E—Entitlements (Reserved)

Authority: 31 U.S.C. 6301 to 6308; 42 U.S.C. 2451, et seq.

Subpart A—General

§ 1273.1 Purpose and scope of this part.

This subpart establishes uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments.

§ 1273.2 Scope of subpart.

This subpart contains general rules pertaining to this part and procedures for control of exceptions from this part.

§ 1273.3 Definitions.

As used in this part:

Accrued expenditures mean the charges incurred by the grantee during a given period requiring the provision of funds for:

(1) Goods and other tangible property received;

(2) Services performed by employees, contractors, subgrantees, subcontractors, and other payees; and

(3) Other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

Accrued income means the sum of:

(1) Earnings during a given period from services performed by the grantee and goods and other tangible property delivered to purchasers, and

(2) Amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

Acquisition cost of an item of purchased equipment means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

Administrative requirements mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from "programmatic" requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

Awarding agency means:

(1) With respect to a grant, the Federal agency, and

(2) With respect to a subgrant, the party that awarded the subgrant.

Cash contributions means the grantee's cash outlay, including the outlay of money contributed to the grantee or subgrantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other assistance agreements may be considered as grantee or subgrantee cash contributions.

Contract means (except as used in the definitions for "grant" and "subgrant" in this section and except where qualified by "Federal") a procurement contract under a grant or subgrant, and means a procurement subcontract under a contract.

Cost sharing or matching means the value of the third party in-kind contributions and the portion of the costs of a federally assisted project or program not borne by the Federal Government.

Cost-type contract means a contract or subcontract under a grant in which the contractor or subcontractor is paid on the basis of the costs it incurs, with or without a fee.

Equipment means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

Expenditure report means:

(1) For nonconstruction grants, the SF–269 "Financial Status Report" (or other equivalent report);

(2) For construction grants, the SF–271 "Outlay Report and Request for Reimbursement" (or other equivalent report).

Federally recognized Indian tribal government means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

Government means a State or local government or a federally recognized Indian tribal government.

Grant means an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.

Grantee means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

Local government means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

Obligations means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the

grantee during the same or a future period.

OMB means the United States Office of Management and Budget.

Outlays (expenditures) mean charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursement for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of inkind contributions applied, and the new increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

Percentage of completion method refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's cost incurred.

Prior approval means documentation evidencing consent prior to incurring specific cost.

Real property means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

Share, when referring to the awarding agency's portion of real property, equipment or supplies, means the same percentage as the awarding agency's portion of the acquiring party's total costs under the grant to which the acquisition cost of the property was charged. Only costs are to be counted—not the value of third-party in-kind contributions.

State means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under United States Housing Act of 1937.

Subgrant means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of "grant" in this subpart.

Subgrantee means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

Supplies means all tangible personal property other than "equipment" as defined in this part.

Suspension means depending on the context, either

(1) Temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee or a decision to terminate the grant; or

(2) An action taken by a suspending official in accordance with agency regulations implementing E.O. 12549 to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

Termination means permanent withdrawal of the authority to obligate previously-awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee. "Termination" does not include:

(1) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period;

(2) Withdrawal of the unobligated balance as of the expiration of a grant;

(3) Refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or

(4) Voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

Terms of a grant or subgrant mean all requirements of the grant or subgrant, whether in statute, regulations, or the award document.

Third party in-kind contributions mean property or services which benefit a federally assisted project or program and which are contributed by non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant agreement.

Unliquidated obligations for reports prepared on a cash basis mean the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

Unobligated balance means the portion of the funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

§ 1273.4 Applicability.

(a) General. Subparts A through D of this part apply to all grants and subgrants to governments, except where inconsistent with Federal statutes or with regulations authorized in accordance with the exception provision of § 1273.6 or:

(1) Grants and subgrants to State and local institutions of higher education or State and local hospitals.

(2) The block grants authorized by the Omnibus Budget Reconciliation Act of 1981 (Community Services; Preventive Health and Health Services; Alcohol, Drug Abuse, and Mental Health Services; Maternal and Child Health Services; Social Services; Low-Income Home Energy Assistance; States' Program of Community Development Block Grants for Small Cities; and Elementary and Secondary Education other than programs administered by the Secretary of Education under Title V, Subtitle D, Chapter 2, Section 583—the Secretary's discretionary grant program) and titles I–III of the Job Training Partnership Act of 1982 and under the Public Health Services Act (Section 1921), Alcohol and Drug Abuse Treatment and Rehabilitation Block Grant and Part C of title V, Mental Health Service for the Homeless Block Grant).

(3) Entitlement grants to carry out the following programs of the Social Security Act:

(i) Aid to Needy Families with Dependent Children (Title IV–A of the Act, not including the Work Incentive Program (WIN) authorized by section 402(a)19(G); HHS grants for WIN are subject to this part);

(ii) Child Support Enforcement and Establishment of Paternity (Title IV–D of the Act);

(iii) Foster Care and Adoption Assistance (Title IV–E of the Act);

(iv) Aid to the Aged, Blind, and Disabled (Titles I, X, XIV, and XVI-AABD of the Act); and

(v) Medical Assistance (Medicaid) (Title XIX of the Act) not including the State Medicaid Fraud Control program authorized by section 1903(a)(6)(B).

(4) Entitlement grants under the following programs of The National School Lunch Act:

(i) School Lunch (section 4 of the Act),

(ii) Commodity Assistance (section 6 of the Act),

(iii) Special Meal Assistance (section 11 of the Act),

(iv) Summer Food Service for Children (section 13 of the Act), and

(v) Child Care Food Program (section 17 of the Act).

(5) Entitlement grants under the following programs of The Child Nutrition Act of 1966:

(i) Special Milk (section 3 of the Act), and

(ii) School Breakfast (section 4 of the Act).

(6) Entitlement grants for State Administrative expenses under The Food Stamp Act of 1977 (section 16 of the Act).

(7) A grant for an experimental, pilot, or demonstration project that is also supported by a grant listed in paragraph (a)(3) of this section;

(8) Grant funds awarded under subsection 412(e) of the Immigration and Nationality Act (8 U.S.C. 1522(e)) and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits;

(9) Grants to local education agencies under 20 U.S.C. 236 through 241–1(a), and 242 through 244 (portions of the Impact Aid program), except for 20 U.S.C. 238(d)(2)(c) and 240(f) (Entitlement Increase for Handicapped Children); and

(10) Payments under the Veterans Administration's State Home Per Diem Program (38 U.S.C. 641(a)).

(b) Entitlement programs. Entitlement programs enumerated above in § 1273.4(a)(3) through (8) are subject to subpart E.

§ 1273.5 Effect on other issuances.

All other grants administration provisions of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with this part are superseded, except to the extent they are required by statute, or authorized in accordance with the exception provision in § 1273.6.

§ 1273.6 Additions and exceptions.

(a) For classes of grants and grantees subject to this part, Federal agencies may not impose additional administrative requirements except in codified regulations published in the **Federal Register**.

(b) Exceptions for classes of grants or grantees may be authorized only by OMB.

(c) Exceptions on a case-by-case basis and for subgrantees may be authorized by the affected Federal agencies.

Subpart B—Pre-Award Requirements

§ 1273.10 Forms for applying for grants.

(a) Scope. (1) This section prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying for grants. This section is not applicable, however, to formula grant programs which do not require applicants to apply for funds on a project basis.

(2) This section applies only to applications to Federal agencies for grants, and is not required to be applied by grantees in dealing with applicants for subgrants. However, grantees are encouraged to avoid more detailed or burdensome application requirements for subgrants.

(b) Authorized forms and instructions for governmental organizations. (1) In applying for grants, applicants shall only use standard application forms or those prescribed by the granting agency with the approval of OMB under the Paperwork Reduction Act of 1980.

(2) Applicants are not required to submit more than the original and two copies of preapplications or applications.

(3) Applicants must follow all applicable instructions that bear OMB clearance numbers. Federal agencies may specify and describe the programs, functions, or activities that will be used to plan, budget, and evaluate the work under a grant. Other supplementary instructions may be issued only with the approval of OMB to the extent required under the Paperwork Reduction Act of 1980. For any standard form, except the SF–424 factsheet, Federal agencies may shade out or instruct the applicant to disregard any line item that is not needed.

(4) When a grantee applies for additional funding (such as a continuation or supplemental award) or amends a previously submitted application, only the affected pages need be submitted. Previously submitted pages with information that is still current need not be resubmitted.

§ 1273.11 State plans.

(a) Scope. The statutes for some programs require States to submit plans before receiving grants. Under regulations implementing Executive Order 12372, "Intergovernmental Review of Federal Programs," States are allowed to simplify, consolidate and substitute plans. This section contains additional provisions for plans that are subject to regulations implementing the Executive Order.

(b) Requirements. A State need meet only Federal administrative or programmatic requirements for a plan that are in statutes or codified regulations.

(c) Assurances. In each plan the State will include an assurance that the State shall comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. For this assurance and other assurances required in the plan, the State may:

(1) Cite by number the statutory or regulatory provisions requiring the assurances and affirm that it gives the assurances required by those provisions,

(2) Repeat the assurance language in the statutes or regulations, or

(3) Develop its own language to the extent permitted by law.

(d) Amendments. A State will amend a plan whenever necessary to reflect:

(1) New or revised Federal statutes or regulations; or

(2) A material change in any State law, organization, policy, or State agency operation. The State will obtain approval for the amendment and its effective date but need submit for approval only the amended portions of the plan.

§ 1273.12 Special grant or subgrant conditions for "high-risk" grantees.

(a) A grantee or subgrantee may be considered "high risk" if an awarding agency determines that a grantee or subgrantee:

(1) Has a history of unsatisfactory performance, or

(2) Is not financially stable, or

(3) Has a management system which does not meet the management standards set forth in this part, or

(4) Has not conformed to terms and conditions of previous awards, or

(5) Is otherwise not responsible; and if the awarding agency determines that an award will be made, special conditions and/or restrictions shall correspond to the high risk condition and shall be included in the award.

(b) Special conditions or restrictions may include:

(1) Payment on a reimbursement basis;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;

(3) Requiring additional, more detailed financial reports;

(4) Additional project monitoring;
(5) Requiring the grantee or subgrantee to obtain technical or management assistance; or
(6) Establishing additional prior approvals.
(c) If an awarding agency decides to impose such conditions, the awarding official will notify the grantee or subgrantee as early as possible, in writing, of:
(1) The nature of the special conditions/restrictions;
(2) The reason(s) for imposing them;
(3) The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions; and
(4) The method of requesting reconsideration of the conditions/restrictions imposed.

Subpart C—Post-Award Requirements

Financial Administration

§ 1273.20 Standards for financial management systems.

(a) A State must expand and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to—
(1) Permit preparation of reports required by this part and the statutes authorizing the grant, and
(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.
(b) The financial management systems of other grantees and subgrantees must meet the following standards:
(1) Financial reporting. Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.
(2) Accounting records. Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.
(3) Internal control. Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.
(4) Budget control. Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.
(5) Allowable cost. Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.
(6) Source documentation. Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.
(7) Cash management. Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by letter-of-credit or electronic transfer of funds methods, the grantee must make drawdowns as close as possible to the time of making disbursements. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.
(c) An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award.

§ 1273.21 Payment.

(a) Scope. This section prescribes the basic standard and the methods under which a Federal agency will make payments to grantees, and grantees will make payments to subgrantees and contractors.
(b) Basic standard. Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR part 205.
(c) Advances. Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.
(d) Reimbursement. Reimbursement shall be the preferred method when the requirements in paragraph (c) of this section are not met. Grantees and subgrantees may also be paid by reimbursement for any construction grant. Except as otherwise specified in regulation, Federal agencies shall not use the percentage of completion method to pay construction grants. The grantee or subgrantee may use that method to pay its construction contractor, and if it does, the awarding agency's payments to the grantee or subgrantee will be based on the grantee's or subgrantee's actual rate of disbursement.
(e) Working capital advances. If a grantee cannot meet the criteria for advance payments described in paragraph (c) of this section, and the Federal agency has determined that reimbursement is not feasible because the grantee lacks sufficient working capital, the awarding agency may provide cash on a working capital advance basis. Under this procedure the awarding agency shall advance cash to the grantee to cover its estimated disbursement needs for an initial period generally geared to the grantee's disbursing cycle. Thereafter, the awarding agency shall reimburse the grantee for its actual cash disbursements. The working capital advance method of payment shall not be used by grantees or subgrantees if the reason for using such method is the unwillingness or inability of the grantee to provide timely advances to the subgrantee to meet the subgrantee's actual cash disbursements.
(f) Effect of program income, refunds, and audit recoveries on payment. (1) Grantees and subgrantees shall disburse repayments to and interest earned on a revolving fund before requesting additional cash payments for the same activity.
(2) Except as provided in paragraph (f)(1) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.
(g) Withholding payments. (1) Unless otherwise required by Federal statute, awarding agencies shall not withhold payments for proper charges incurred by grantees or subgrantees unless-
(i) The grantee or subgrantee has failed to comply with grant award conditions or
(ii) The grantee or subgrantee is indebted to the United States.
(2) Cash withheld for failure to comply with grant award condition, but without suspension of the grant, shall be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with § 1273.43(c).
(3) A Federal agency shall not make payment to grantees for amounts that are withheld by grantees or subgrantees from payment to contractors to assure satisfactory completion of work. Payments shall be made by the Federal agency when the grantees or subgrantees actually disburse the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(h) Cash depositories. (1) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230.
(2) A grantee or subgrantee shall maintain a separate bank account only when required by Federal-State agreement.
(i) Interest earned on advances. Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 *et seq.*) and the Indian Self-Determination Act (23 U.S.C. 450), grantees and subgrantees shall promptly, but at least quarterly, remit interest earned on advances to the Federal agency. The grantee or subgrantee may keep interest amounts up to $100 per year for administrative expenses.

§ 1273.22 Allowable costs.

(a) Limitation on use of funds. Grant funds may be used only for:
(1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and
(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.
(b) Applicable cost principles. For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles.

For the costs of a	Use the principles in:
State, local or Indian tribal government	OMB Circular A–87.
Private nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) organization named in OMB Circular A–122 as not subject to that circular.	OMB Circular A–122.
Educational institutions	OMB Circular A–21.
For-profit organization other than a hospital and an organization named in OMB Circular A–122 as not subject to that circular.	48 CFR part 31, Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency.

§ 1273.23 Period of availability of funds.

(a) General. Where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period.
(b) Liquidation of obligations. A grantee must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the annual Financial Status Report (SF–269). The Federal agency may extend this deadline at the request of the grantee.

§ 1273.24 Matching or cost sharing.

(a) Basic rule: Costs and contributions acceptable. With the qualifications and exceptions listed in paragraph (b) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:
(1) Allowable costs incurred by the grantee, subgrantee or a cost-type contractor under the assistance agreement. This includes allowable costs borne by non-Federal grants or by others cash donations from non-Federal third parties.
(2) The value of third party in-kind contributions applicable to the period to which the cost sharing or matching requirements applies.
(b) Qualifications and exceptions—(1) Costs borne by other Federal grant agreements. Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another Federal grant.
(2) General revenue sharing. For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.
(3) Cost or contributions counted towards other Federal costs-sharing requirements. Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal procurement contract, or any other award of Federal funds.
(4) Costs financed by program income. Costs financed by program income, as defined in § 1273.25, shall not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement. (This use of general program income is described in § 1273.25(g).)
(5) Services or property financed by income earned by contractors. Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.
(6) Records. Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantee or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization

uses to support the allocability of regular personnel costs.

(7) Special standards for third party in-kind contributions. (i) Third party in-kind contributions count towards satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(ii) Some third party in-kind contributions are goods and services that, if the grantee, subgrantee, or contractor receiving the contribution had to pay for them, the payments would have been an indirect costs. Costs sharing or matching credit for such contributions shall be given only if the grantee, subgrantee, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(iii) A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost sharing or matching requirement only if it results in:

(A) An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee) or

(B) A cost savings to the grantee or subgrantee.

(iv) The values placed on third party in-kind contributions for cost sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

(c) Valuation of donated services—(1) Volunteer services. Unpaid services provided to a grantee or subgrantee by individuals will be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. If the grantee or subgrantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) Employees of other organizations. When an employer other than a grantee, subgrantee, or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (c)(1) of this section applies.

(d) Valuation of third party donated supplies and loaned equipment or space. (1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

(e) Valuation of third party donated equipment, buildings, and land. If a third party donates equipment, buildings, or land, and title passes to a grantee or subgrantee, the treatment of the donated property will depend upon the purpose of the grant or subgrant, as follows:

(1) Awards for capital expenditures. If the purpose of the grant or subgrant is to assist the grantee or subgrantee in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching,

(2) Other awards. If assisting in the acquisition of property is not the purpose of the grant or subgrant, paragraphs (e)(2)(i) and (ii) of this section apply:

(i) If approval is obtained from the awarding agency, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In the case of a subgrant, the terms of the grant agreement may require that the approval be obtained from the Federal agency as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.

(ii) If approval is not obtained under paragraph (e)(2)(i) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in § 1273.22, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

(f) Valuation of grantee or subgrantee donated real property for construction/acquisition. If a grantee or subgrantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost sharing or matching.

(g) Appraisal of real property. In some cases under paragraphs (d), (e) and (f) of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the Federal agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee on subgrantees.

§ 1273.25 Program income.

(a) General. Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

(b) Definition of program income. Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. "During the grant period" is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

(c) Cost of generating program income. If authorized by Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.

(d) Governmental revenues. Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement or Federal agency regulations as program income.

(e) Royalties. Income from royalties and license fees for copyrighted material, patents, and inventions developed by a grantee or subgrantee is program income only if the revenues are specifically identified in the grant agreement or Federal agency regulations as program income. (See § 1273.34).

(f) Property. Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of §§ 1273.31 and 1273.32.

(g) Use of program income. Program income shall be deducted from outlays which may be both Federal and non-Federal as described below, unless the Federal agency regulations or the grant agreement specify another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income. When Federal agencies authorize the alternatives in paragraphs (g) (2) and (3) of this section, program income in excess of any limits stipulated shall also be deducted from outlays.

(1) Deduction. Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless the Federal agency authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the Federal agency and grantee contributions rather than to increase the funds committed to the project.

(2) Addition. When authorized, program income may be added to the funds committed to the grant agreement by the Federal agency and the grantee. The program income shall be used for the purposes and under the conditions of the grant agreement.

(3) Cost sharing or matching. When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the Federal grant award remains the same.

(h) Income after the award period. There are no Federal requirements governing the disposition of program income earned after the end of the award period (i.e., until the ending date of the final financial report, see paragraph (a) of this section), unless the terms of the agreement or the Federal agency regulations provide otherwise.

§ 1273.26 Non-Federal audit.

(a) Basic rule. Grantees and subgrantees are responsible for obtaining audits in accordance with the Single Audit Act of 1984-(31 U.S.C. 7501–7507) and Federal agency implementing regulations. The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

(b) Subgrantees. State or local governments, as those terms are defined for purposes of the Single Audit Act, that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subgrantee shall:

(1) Determine whether State or local subgrantees have met the audit requirements of the Act and whether subgrantees covered by OMB Circular A–110, "Uniform Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations" have met the audit requirement. Commercial contractors (private forprofit and private and governmental organizations) providing goods and services to State and local governments are not required to have a single audit performed. State and local governments should use their own procedures to ensure that the contractor has complied with laws and regulations affecting the expenditure of Federal funds;

(2) Determine whether the subgrantee spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subgrantee made in accordance with the Act, Circular A–110, or through other means (e.g., program reviews) if the subgrantee has not had such an audit;

(3) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instance of noncompliance with Federal laws and regulations;

(4) Consider whether subgrantee audits necessitate adjustment of the grantee's own records; and

(5) Require each subgrantee to permit independent auditors to have access to the records and financial statements.

(c) Auditor selection. In arranging for audit services, § 1273.36 shall be followed.

Changes, Property, and Subawards

§ 1273.30 Changes.

(a) General. Grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the awarding agency, certain types of post-award changes in budgets and projects shall require the prior written approval of the awarding agency.

(b) Relation to cost principles. The applicable cost principles (see § 1273.22) contain requirements for prior approval of certain types of costs. Except where waived, those requirements apply to all grants and subgrants even if paragraphs (c) through (f) of this section do not.

(c) Budget changes—(1) Nonconstruction projects. Except as stated in other regulations or an award document, grantees or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following changes is anticipated under a nonconstruction award:

(i) Any revision which would result in the need for additional funding.

(ii) Unless waived by the awarding agency, cumulative† transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed ten percent of the current total approved budget, whenever the awarding agency's share exceeds $100,000.

(iii) Transfer of funds allotted for training allowances (i.e., from direct payments to trainees to other expense categories).

(2) Construction projects. Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.

(3) Combined construction and nonconstruction projects. When a grant or subgrant provides funding for both construction and nonconstruction activities, the grantee or subgrantee must obtain prior written approval from the awarding agency before making any fund or budget transfer from nonconstruction to construction or vice versa.

(d) Programmatic changes. Grantees or subgrantees must obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:

(1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).

(2) Need to extend the period of availability of funds.

(3) Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator shall always require approval unless waived by the awarding agency.

(4) Under nonconstruction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award. This approval requirement is in addition to the approval requirements of § 1273.36

but does not apply to the procurement of equipment, supplies, and general support services.

(e) Additional prior approval requirements. The awarding agency may not require prior approval for any budget revision which is not described in paragraph (c) of this section.

(f) Requesting prior approval. (1) A request for prior approval of any budget revision will be in the same budget format the grantee used in its application and shall be accompanied by a narrative justification for the proposed revision.

(2) A request for a prior approval under the applicable Federal cost principles (see § 1273.22) may be made by letter.

(3) A request by a subgrantee for prior approval will be addressed in writing to the grantee. The grantee will promptly review such request and shall approve or disapprove the request in writing. A grantee will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal grant to the grantee. If the revision, requested by the subgrantee would result in a change to the grantee's approved project which requires Federal prior approval, the grantee will obtain the Federal agency's approval before approving the subgrantee's request.

§ 1273.31 Real property.

(a) Title. Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) Use. Except as otherwise provided by Federal statutes, real property will be used for the originally authorized purposes as long as needed for that purpose, and the grantee or subgrantee shall not dispose of or encumber its title or other interests.

(c) Disposition. When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency. The instructions will provide for one of the following alternatives:

(1) Retention of title. Retain after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) Sale of property. Sell the property and compensate the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) Transfer of title. Transfer title to the awarding agency or to a third-party designated/approved by the awarding agency. The grantee or subgrantee shall be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

§ 1273.32 Equipment.

(a) Title. Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) States. A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Other grantees and subgrantees will follow paragraphs (c) through (e) of this section.

(c) Use. (1) Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.

(2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in § 1273.25(a) to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.

(4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.

(d) Management requirements. Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage or theft shall be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) Disposition. When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than $5,000 may be retained, or sold or otherwise disposed of with no further obligation to the awarding agency.

(2) Items of equipment with a current per unit fair market value in excess of $5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.

(f) Federal equipment. In the event a grantee or subgrantee is provided federally-owned equipment:

(1) Title will remain vested in the Federal Government.

(2) Grantees or subgrantees will manage the equipment in accordance with Federal agency rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from the Federal agency.

(g) Right to transfer title. The Federal awarding agency may reserve the right to transfer title to the Federal Government or a third party named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:

(1) The property shall be identified in the grant or otherwise made known to the grantee in writing.

(2) The Federal awarding agency shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar-day period the grantee shall follow § 1273.32(e).

(3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

§ 1273.33 Supplies.

(a) Title. Title to supplies acquired under a grant or subgrant will vest, upon acquisition, in the grantee or subgrantee respectively.

(b) Disposition. If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other federally sponsored programs or projects, the grantee or subgrantee shall compensate the awarding agency for its share.

§ 1273.34 Copyrights.

The Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

(a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and

(b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

§ 1273.35 Subawards to debarred and suspended parties.

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

§ 1273.36 Procurement.

(a) States. When procuring property and services under a grant, a State will allow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) Procurement standards. (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees an subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item or nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the

significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only—

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) Competition. (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of § 1273.36. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,

(vi) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) Methods of procurement to be followed—(1) *Procurement by small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $100,000). If small purchase procurements are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) *Procurement by* sealed bids *(formal advertising).* Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in § 1273.36(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) *Procurement by competitive proposals.* The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) Contracting with small and minority firms, women's business enterprise and labor surplus area firms. (1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

(f) Contract cost and price. (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see § 1273.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) Awarding agency review. (1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc., when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or

(ii) The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a "brand name" product; or

(iv) The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) Bonding requirements. For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) Contract provisions. A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of $10,000)

(3) Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR part 60). (All construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees)

(4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and subgrants for construction or repair)

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a–7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of $2000 awarded by grantees and subgrantees when required by Federal grant program legislation)

(6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in excess of $2000, and in excess of $2500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of $100,000)

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94–163, 89 Stat. 871).

§ 1273.37 Subgrants.

(a) States. States shall follow state law and procedures when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. States shall:

(1) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations;

(2) Ensure that subgrantees are aware of requirements imposed upon them by Federal statute and regulation;

(3) Ensure that a provision for compliance with § 1273.42 is placed in every cost reimbursement subgrant; and

(4) Conform any advances of grant funds to subgrantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies.

(b) All other grantees. All other grantees shall follow the provisions of this part which are applicable to

awarding agencies when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. Grantees shall:

(1) Ensure that every subgrant includes a provision for compliance with this part;

(2) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations; and

(3) Ensure that subgrantees are aware of requirements imposed upon them by Federal statutes and regulations.

(c) Exceptions. by their own terms, certain provisions of this part do not apply to the award and administration of subgrants:

(1) Section 1273.10;

(2) Section 1273.11;

(3) The letter-of-credit procedures specified in Treasury Regulations at 31 CFR part 205, cited in § 1273.21; and

(4) Section 1273.50.

Reports, Records, Retention, and Enforcement

§ 1273.40 Monitoring and reporting program performance.

(a) Monitoring by grantees. Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.

(b) Nonconstruction performance reports. The Federal agency may, if it decides that performance information available from subsequent applications contains sufficient information to meet its programmatic needs, require the grantee to submit a performance report only upon expiration or termination of grant support. Unless waived by the Federal agency this report will be due on the same date as the final Financial Status Report.

(1) Grantees shall submit annual performance reports unless the awarding agency requires quarterly or semi-annual reports. However, performance reports will not be required more frequently than quarterly. Annual reports shall be due 90 days after the grant year, quarterly or semi-annual reports shall be due 30 days after the reporting period. The final performance report will be due 90 days after the expiration or termination of grant support. If a justified request is submitted by a performance report. Additionally, requirements for unnecessary performance reports may be waived by the Federal agency.

(2) Performance reports will contain, for each grant, brief information on the following:

(i) A comparison of actual accomplishments to the objectives established for the period. Where the output of the project can be quantified, a computation of the cost per unit of output may be required if that information will be useful.

(ii) The reasons for slippage if established objectives were not met.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(3) Grantees will not be required to submit more than the original and two copies of performance reports.

(4) Grantees will adhere to the standards in this section in prescribing performance reporting requirements for subgrantees.

(c) Construction performance reports. For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily by Federal agencies to monitor progress under construction grants and subgrants. The Federal agency will require additional formal performance reports only when considered necessary, and never more frequently than quarterly.

(d) Significant developments. Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the grantee must inform the Federal agency as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

(e) Federal agencies may make site visits as warranted by program needs.

(f) Waivers, extensions. (1) Federal agencies may waive any performance report required by this part if not needed.

(2) The grantee may waive any performance report from a subgrantee when not needed. The grantee may extend the due date for any performance report from a subgrantee if the grantee will still be able to meet its performance reporting obligations to the Federal agency.

§ 1273.41 Financial reporting.

(a) General. (1) Except as provided in paragraphs (a) (2) and (5) of this section, grantees will use only the forms specified in paragraphs (a) through (e) of this section, and such supplementary or other forms as may from time to time be authorized by OMB, for:

(i) Submitting financial reports to Federal agencies, or

(ii) Requesting advances or reimbursements when letters or credit are not used.

(2) Grantees need not apply the forms prescribed in this section in dealing with their subgrantees. However, grantees shall not impose more burdensome requirements on subgrantees.

(3) Grantees shall follow all applicable standard and supplemental Federal agency instructions approved by OMB to the extent required under the Paperwork Reduction Act of 1980 for use in connection with forms specified in paragraphs (b) through (e) of this section. Federal agencies may issue substantive supplementary instructions only with the approval of OMB. Federal agencies may shade out or instruct the grantee to disregard any line item that the Federal agency finds unnecessary for its decisionmaking purposes.

(4) Grantees will not be required to submit more than the original and two copies of forms required under this part.

(5) Federal agencies may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. Federal agencies may accept the required information from grantees in machine usable format or computer printouts instead of prescribed forms.

(6) Federal agencies may waive any report required by this section if not needed.

(7) Federal agencies may extend the due date of any financial report upon receiving a justified request from a grantee.

(b) Financial Status Report—(1) Form. Grantees will use Standard Form 269 or 269A, Financial Status Report, to report the status of funds for all nonconstruction grants and for construction grants when required in accordance with paragraph § 1273.41(e)(2)(iii) of this section.

(2) Accounting basis. Each grantee will report program outlays and program income on a cash or accrual basis as prescribed by the awarding agency. If the Federal agency requires accrual information and the grantee's accounting records are not normally kept on the accrual basis, the grantee

shall not be required to convert its accounting system but shall develop such accrual information through and analysis of the documentation on hand.

(3) Frequency. The Federal agency may prescribe the frequency of the report for each project or program. However, the report will not be required more frequently than quarterly. If the Federal agency does not specify the frequency of the report, it will be submitted annually. A final report will be required upon expiration or termination of grant support.

(4) Due date. When reports are required on a quarterly or semiannual basis, they will be due 30 days after the reporting period. When required on an annual basis, they will be due 90 days after the grant year. Final reports will be due 90 days after the expiration or termination of grant support.

(c) Federal Cash Transactions Report—(1) Form. (i) For grants paid by letter or credit, Treasury check advances or electronic transfer of funds, the grantee will submit the Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272a, unless the terms of the award exempt the grantee from this requirement.

(ii) These reports will be used by the Federal agency to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from grantees. The format of the report may be adapted as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment provided that the information to be submitted is not changed in substance.

(2) Forecasts of Federal cash requirements. Forecasts of Federal cash requirements may be required in the "Remarks" section of the report.

(3) Cash in hands of subgrantees. When considered necessary and feasible by the Federal agency, grantees may be required to report the amount of cash advances in excess of three days' needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(4) Frequency and due date. Grantees must submit the report no later than 15 working days following the end of each quarter. However, where an advance either by letter of credit or electronic transfer of funds is authorized at an annualized rate of one million dollars or more, the Federal agency may require the report to be submitted within 15 working days following the end of each month.

(d) Request for advance or reimbursement—(1) Advance payments. Requests for Treasury check advance payments will be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form will not be used for drawdowns under a letter of credit, electronic funds transfer or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) Reimbursements. Requests for reimbursement under nonconstruction grants will also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see paragraph (e)(1) of this section.)

(3) The frequency for submitting payment requests is treated in § 1273.41(b)(3).

(e) Outlay report and request for reimbursement for construction programs. (1) Grants that support construction activities paid by reimbursement method.

(i) Requests for reimbursement under construction grants will be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. Federal agencies may, however, prescribe the Request for Advance or Reimbursement form, specified in § 1273.41(d), instead of this form.

(ii) The frequency for submitting reimbursement requests is treated in § 1273.41(b)(3).

(2) Grants that support construction activities paid by letter of credit, electronic funds transfer or Treasury check advance.

(i) When a construction grant is paid by letter of credit, electronic funds transfer or Treasury check advances, the grantee will report its outlays to the Federal agency using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. The Federal agency will provide any necessary special instruction. However, frequency and due date shall be governed by § 1273.41(b) (3) and (4).

(ii) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances will be requested on the form specified in § 1273.41(d).

(iii) The Federal agency may substitute the Financial Status Report specified in § 1273.41(b) for the Outlay Report and Request for Reimbursement for Construction Programs.

(3) Accounting basis. The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by § 1273.41(b)(2).

§ 1273.42 Retention and access requirements for records.

(a) Applicability. (1) This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees which are:

(i) Required to be maintained by the terms of this part, program regulations or the grant agreement, or

(ii) Otherwise reasonably considered as pertinent to program regulations or the grant agreement.

(2) This section does not apply to records maintained by contractors or subcontractors. For a requirement to place a provision concerning records in certain kinds of contracts, see § 1273.36(i)(10).

(b) Length of retention period. (1) Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section.

(2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(3) To avoid duplicate recordkeeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use. The awarding agency will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the Federal agency, the 3-year retention requirement is not applicable to the grantee or subgrantee.

(c) Starting date of retention period—(1) General. When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure report has been waived, the retention period starts on the day the report would have been due.

(2) Real property and equipment records. The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of the awarding agency.

(3) Records for income transactions after grant or subgrant support. In some cases grantees must report income after the period of grant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.

(4) Indirect cost rate proposals, cost allocations plans, etc. This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(i) If submitted for negotiation. If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(ii) If not submitted for negotiation. If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal plan, or computation and its supporting records starts from end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(d) Substitution of microfilm. Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(e) Access to records—(1) Records of grantees and subgrantees. The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

(2) Expiration of right of access. The rights of access in this section must not be limited to the required retention period but shall last as long as the records are retained.

(f) Restrictions on public access. The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to records unless required by Federal, State, or local law, grantees and subgrantees are not required to permit public access to their records.

§ 1273.43 Enforcement.

(a) Remedies for noncompliance. If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the award agency may take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency.

(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,

(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,

(4) Withhold further awards for the program, or

(5) Take other remedies that may be legally available.

(b) Hearings, appeals. In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) Effects of suspension and termination. Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period which the termination takes effect.

(d) Relationship to debarment and suspension. The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to "Debarment and Suspension" under E.O. 12549 (see § 1273.35).

§ 1273.44 Termination for convenience.

Except as provided in § 1273.43 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or

(b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either § 1273.43 or paragraph (a) of this section.

Subpart D—After-The-Grant Requirements

§ 1273.50 Closeout.

(a) General. The Federal agency will close out the award when it determines that all applicable administrative actions and all required work of the grant has been completed.

(b) Reports. Within 90 days after the expiration or termination of the grant, the grantee must submit all financial, performance, and other reports required as a condition of the grant. Upon request by the grantee, Federal agencies may extend this timeframe. These may include but are not limited to:

(1) Final performance or progress report.

(2) Financial Status Report (SF 269) or Outlay Report and Request for Reimbursement for Construction Programs (SF–271) (as applicable).

(3) Final request for payment (SF–270) (if applicable).

(4) Invention disclosure (if applicable).

(5) Federally-owned property report: In accordance with § 1273.32(f), a grantee must submit an inventory of all federally owned property (as distinct from property acquired with grant funds) for which it is accountable and request disposition instructions from the Federal agency of property no longer needed.

(c) Cost adjustment. The Federal agency will, within 90 days after receipt of reports in paragraph (b) of this section, make upward or downward adjustments to the allowable costs.

(d) Cash adjustments. (1) The Federal agency will make prompt payment to

the grantee for allowable reimbursable costs.

(2) The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

§ 1273.51 Later disallowances and adjustments.

The closeout of a grant does not affect:

(a) The Federal agency's right to disallow costs and recover funds on the basis of a later audit or other review;

(b) The grantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions;

(c) Records retention as required in § 1273.42;

(d) Property management requirements in §§ 1273.31 and 1273.32; and

(e) Audit requirements in § 1273.26.

§ 1273.52 Collection of amounts due.

(a) Any funds paid to a grantee in excess of the amount to which the grantee is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government. If not paid within a reasonable period after demand, the Federal agency may reduce the debt by:

(1) Making an administrative offset against other requests for reimbursement,

(2) Withholding advance payments otherwise due to the grantee, or

(3) Other action permitted by law.

(b) Except where otherwise provided by statutes or regulations, the Federal agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR Ch. II). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

Subpart E—Entitlements (Reserved)

[FR Doc. 95–15898 Filed 6–28–95; 8:45 am]
BILLING CODE 7510–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 94F–0222]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Calcium Disodium EDTA

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of calcium disodium EDTA (ethylenediaminetetraacetate) to promote color retention for canned, cooked fava beans. This action is in response to a petition filed by Ramico Foods, Inc.

DATES: Effective June 29, 1995; written objections and requests for a hearing by July 31, 1995.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mary E. LaVecchia, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3072.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 14, 1994 (59 FR 35933), FDA announced that a food additive petition (FAP 3A4404) had been filed by Ramico Foods, Inc., 8245 Le Creusot, St-Leonard, Quebec, CANADA H1P 2A2. The petition proposed to amend the food additive regulations in § 172.120 *Calcium disodium EDTA* (21 CFR 172.120) to provide for the safe use of calcium disodium EDTA to promote color retention for canned, cooked fava beans.

FDA has evaluated data in the petition and other relevant material and concludes that the proposed food additive use of calcium disodium EDTA is safe, and that § 172.120 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before July 31, 1995, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: Secs. 201, 401, 402, 409, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 348, 371, 379e).

2. Section 172.120 is amended in the table in paragraph (b)(1) by alphabetically adding a new entry to read as follows:

§ 172.120 Calcium disodium EDTA.

* * * * *

(b) * * *

(1) * * *

Food	Limitation (parts per million)	Use
Fava beans (cooked canned).	365	Promote color retention.

* * * * *

Dated: June 15, 1995.

Janice F. Oliver,

Deputy Director for Systems and Support, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–15924 Filed 6–28–95; 8:45 am]
BILLING CODE 4160–01–F

21 CFR Part 178

[Docket No. 93F–0033]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 3,9-bis[2-{3-(3-*tert*-butyl-4-hydroxy-5-methylphenyl)propionyloxy}-1,1-dimethylethyl]-2,4,8,10-tetraoxaspiro[5.5]undecane as an antioxidant for high density polyethylene intended for use in food-contact articles. This action is in response to a petition filed by Sumitomo Chemical America, Inc.

DATES: Effective June 29, 1995; written objections by July 31, 1995.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3086.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 12, 1993 (58 FR 13604), FDA announced that a food additive petition (FAP 3B4358) had been filed by Sumitomo Chemical America, Inc., 345 Park Ave., New York, NY 10154. The petition proposed to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of 3,9-bis[2-{3-(3-*tert*-butyl-4-hydroxy-5-methylphenyl)propionyloxy}-1,1-dimethylethyl]-2,4,8,10-tetraoxaspiro[5.5]undecane as an antioxidant for polyethylene complying with § 177.1520 *Olefin polymers* (21 CFR 177.1520) intended for use in food-contact articles.

FDA has evaluated the data in the petition and other relevant material. The agency concludes that data in the petition support the safe use of the additive only in high density polyethylene with a minimum density of 0.94, and under limited use conditions. Therefore, the use of the additive has been limited in § 178.2010(b) consistent with these conditions.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before July 31, 1995, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 178.2010 is amended in the table in paragraph (b) by revising the "Limitations" for the entry "3,9-Bis[2-{3-(3-*tert*-butyl-4-hydroxy-5-methylphenyl)propionyloxy}-1,1 dimethylethyl]-2,4,8,10-tetraoxaspiro[5.5]undecane" to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
. . .	. . .
3,9-Bis[2-{3-(3-*tert*-butyl-4-hydroxy-5-methylphenyl)propionyloxy}-1,1-dimethylethyl]-2,4,8,10-tetraoxaspiro[5.5]undecane (CAS Reg. No. 90498–90–1).	For use only: 1. At levels not to exceed 0.2 percent by weight of polypropylene complying with § 177.1520(c), item 1.1 of this chapter. The finished polymer is to be used in contact with food only under conditions of use D through H described in Table 2 of § 176.170(c) of this chapter. 2. At levels not to exceed 0.3 percent by weight of polyethylene complying with § 177.1520(c) of this chapter, item 2.1, provided that the polymer has a minimum density of 0.94 grams per cubic centimeter and is used in contact with food only under conditions of use D through G described in Table 2 of § 176.170(c) of this chapter.
. . .	. . .

Dated: June 15, 1995.

Janice F. Oliver,

Deputy Director for Systems and Support, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–15922 Filed 6–28–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 442

[Docket No. 94N–0132]

Antibiotic Drugs; Cefotetan and Cefotetan Disodium Injection; Technical Amendments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendments.

SUMMARY: The Food and Drug Administration (FDA) is technically amending a final rule that appeared in the **Federal Register** of May 25, 1994 (59 FR 26939). The document amended the antibiotic drug regulations to provide for the inclusion of accepted standards for a new bulk form of cefotetan. The agency received a comment on the final rule that pointed out, among other things, that the correct name of the antibiotic is cefotetan disodium. This document corrects those errors.

EFFECTIVE DATE: June 29, 1995.

FOR FURTHER INFORMATION CONTACT: James M. Timper, Center for Drug Evaluation and Research (HFD–520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6714.

SUPPLEMENTARY INFORMATION: As published, the final regulation contains errors that may prove to be misleading and are in need of clarification. The name of the antibiotic is "cefotetan disodium" not "cefotetan sodium." The calculation for determining cefotetan concentration in the finished dosage form was published incorrectly, and an additional sample preparation, potassium bromide discs, can be used also. Accordingly the agency is amending 21 CFR 442.52 to correct those errors.

List of Subjects in 21 CFR Part 442

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 442 is amended as follows:

PART 442—CEPHA ANTIBIOTIC DRUGS

1. The authority citation for 21 CFR part 442 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

2. Section 442.52 is amended by revising paragraphs (b)(1)(iv) and (b)(3) to read as follows:

§ 442.52 Cefotetan.

(b) * * *

(1) * * *

(iv) *Calculation.* Calculate the micrograms of cefotetan per milligram of sample as follows:

$$\text{Micrograms of cefotetan per milligram} = \frac{A_U \times P_S \times V_f \times 1{,}000}{A_S \times V_s}$$

where:

A_U = Area of the cefotetan peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

A_S = Area of the cefotetan peak in the chromatogram of the cefotetan working standard;

P_S = Cefotetan activity in the cefotetan working standard solution in micrograms per milliliter;

V_f = Volume of flask used to dilute standard; and

V_s = Volume of sample diluted.

* * * * *

(3) *Identity.* Proceed as directed in § 436.211 of this chapter using the potassium bromide discs prepared as described in § 436.211(b)(1) of this chapter or the mineral oil mull prepared as described in § 436.211(b)(2) of this chapter.

Dated: May 9, 1995.

Murray M. Lumpkin,

Deputy Director, Center for Drug Evaluation and Research.

[FR Doc. 95–15923 Filed 6–28–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 637

[FHWA Docket No. 94–13]

RIN 2125–AD35

Quality Assurance Procedures for Construction

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is revising its regulations that establish general requirements for quality assurance procedures for construction on Federal-aid highway projects. The rule provides more flexibility than the existing regulation. The rule allows the use of contractor test results in making the acceptance decision and allows the use of consultants in the independent assurance program and verification sampling and testing. The regulation requires testers and laboratories to be qualified. However, it gives the States the flexibility to establish those qualifications. The revisions will clarify existing policy and procedures and provide additional guidance on the use of contractor-supplied test results in acceptance plans.

EFFECTIVE DATE: July 31, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Rafalowski, Office of Engineering, HNG–23, 202–366–1571; or Mr. Wilbert Baccus, Office of the Chief Counsel, HCC–32, 202–366–0780; Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are 7:45 a.m. to 4:15 p.m., e.t., Monday Through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

The current regulations on sampling and testing of materials and construction appear in 23 CFR Part 637, Construction Inspection and Approval. These regulations were last revised in January 1987. The regulations were written using the concept of the State performing all the sampling and testing, which had been the traditional approach to sampling and testing. The regulations do not address the use of contractor testing. As a result, a number of questions arose in those States which were using contractor testing in their quality control/quality assurance (QC/QA) programs.

The existing regulations do not recognize the use of contractor testing results in an acceptance program. An acceptance program is the process of determining whether the materials and workmanship are in reasonably close conformity with the requirements of the approved plans and specifications. In 1992, the FHWA studied the ramifications of using contractor-performed sampling and testing results. The results of its study are reported in "Limits of Use of Contractor Performed Sampling and Testing," dated July 1, 1993. (A copy of the report is available in the docket for inspection and copying.) One of the report's recommendations was that contractor sampling and testing may be used in acceptance programs, provided adequate checks and balances are in place to protect the public investment. The revisions to part 637 made in this final rule would implement the committee's recommendation.

This final rule provides more flexibility to the States in designing their acceptance programs than currently exists. Acceptance of materials and construction will not be based solely on any one set of information. Each State's verification sampling and testing will be used to ensure the quality of the product. In addition, the rule will permit the use of data from the contractors' quality control sampling and testing programs in acceptance programs if the results from the States' verification sampling and testing programs confirm the quality of the material. The verification sampling and testing must be performed on independent samples obtained by the State or designated agent to verify the quality of the material. If the results of a State's verification sampling and testing program do not confirm the quality of the product, a dispute resolution system must be used to determine payment to the contractor.

The requirement for an independent assurance (IA) program will remain in place. The rule will provide the States more flexibility in designing their IA program. The IA program will allow the use of witnessing, split samples, proficiency samples, and equipment calibration as an independent check of the field sampling and testing procedures and equipment to assure that the testing is being performed properly by both the State and the contractor personnel.

Comments to the Docket

A notice of proposed rulemaking (NPRM) was published in the **Federal Register** on July 12, 1994 (59 FR 35493), in which the FHWA proposed to revise 23 CFR Part 637, Construction Inspection and Approval. A total of 50 commenters responded to the NPRM as follows: 35 State highway agencies, 1 local agency, 1 toll authority, 10 construction industry associations and contractors, and 3 Subcommittees of the American Association of State Highway and Transportation Officials (AASHTO). The major comments and the FHWA's response thereto are summarized as follows.

Supportive of Change

Twenty-six commenters expressed their support for the revisions to the regulation. Fifteen commenters provided comments without indicating support or opposition to the NPRM. The remaining nine commenters were generally opposed to the proposed rule.

Use of Contractor Test Results

Commenters expressed three related concerns over the required system of checks and balances employed when contractor test results are used in the acceptance decision: (1) Requiring the use of independent samples instead of allowing either independent samples or split samples; (2) requiring the use of the F-test and the t-test (which are standard statistical tests for comparing the variances and means of two sets of data) because of the complexity of using the statistical tests; and (3) the perceived duplication of effort between the verification sampling and testing and the testing required by covering the contractor sampling and testing program in the IA program.

The overall intent of the program is to provide adequate assurance that the public is receiving the desired quality in the product produced by the contractor. The first level of assurance is provided by qualifying laboratories and testing personnel. This assures that the equipment and personnel *are capable* of performing the tests properly. The second level of assurance is provided by the IA program. This level assures that the testers and equipment *remain capable* of performing the tests properly. The third level of assurance is provided by verification sampling and testing. This level assures the *quality of the product.*

There appears to have been some misunderstanding of the total level of effort required. The rule as adopted gives the States wide latitude in designing the acceptance program. The system approach to IA assures the capabilities of all equipment and testers regardless of the number of projects or material quantities involved. A broad interpretation of the existing regulations would allow the system approach to IA. However, the final rule explicitly allows the system approach to IA. In those States that are performing a significant amount of testing on split samples and no testing on independent samples, testing on split samples would remain as IA sampling and testing; however, some verification testing on independent samples would be required to confirm the quality of the product. In addition, the verification of the *quality* of the material can be performed on a mix design or grading of material from a given source and is not limited to project-specific data.

Eleven commenters expressed concern over requiring the use of independent samples for the verification sampling and testing program. The

commenters recommended that the use of split samples be permitted for the verification sampling and testing program. The commenters are concerned about the potential problems that may arise with differences in testing results caused by sampling errors.

There are three sources of differences between two test results, differences in the material, differences in test procedures and differences in sampling procedures. Split samples will only address the differences in test procedures and will only provide assurance that the contractor is performing the tests properly. In a balanced system it is also necessary to assure that sampling of materials is performed properly. It is our intent that the verification sampling and testing program be used to independently validate the quality of the material. Using independent samples will insure that all sources of differences are measured. The FHWA recognizes the need to ensure that each contractor performs the tests correctly; that is the reason for extending laboratory and testing personnel qualification requirements and IA program requirements to the contractor if the contractor's test results are to be used in the acceptance decision. The FHWA expects the testing variability between the contractor and the State to be held to a minimum by requiring the contractor's testing program to be covered by an IA program and requiring the testing personnel and laboratories to be qualified. The FHWA has changed the definition of "verification sampling and testing" and § 637.207(a)(1)(ii)(B) to clarify the fact that the verification sampling and testing program is being used to validate the quality of the material.

Eight commenters objected to requiring the use of the F-test and t-test for verifying a contractor's test data. The commenters were concerned about the complexity of the F-test and t-test which would have to be used by field personnel and the lack of flexibility in allowing other comparison systems. The commenters requested that the regulation be revised to allow other types of comparison systems. The FHWA agrees with the concerns and has removed the requirement for a specific comparison procedure. Each State will have the latitude to develop its own verification system.

Three commenters—two State Highway Agencies and one local highway agency—objected to including contractors' testers in States' IA programs. The commenters are concerned over the additional resources involved in extending the IA program to contractor testing.

If a contractor's test results are to be used in the acceptance decision, assurance must be provided that the contractor's testers and equipment remain capable of performing the tests properly. Some States are currently performing split sampling and testing on project sites to validate the contractor's test results. This split sampling and testing would meet the requirements for an IA program on contractor testing. This proposed requirement has been retained in the final rule.

Qualified Sampling and Testing Personnel

Four commenters specifically supported the concept of certifying testing personnel.

Two commenters wanted to change the term certified personnel to qualified personnel. The FHWA agrees with the comments since the goal of the FHWA is to have qualified personnel perform the testing. The term "certified" was deleted from the definition of qualified testing personnel.

Sixteen commenters expressed concern about the cost, specific requirements, and/or two-year implementation period for establishing qualification programs for testing personnel. To allow adequate time to develop qualification programs, we have extended the implementation time from two years to five years. If a State chooses to use a certification program as its qualification program, the FHWA is developing training material that can be modified for State use. The FHWA will also assist the States in adapting the material for their use.

Independent Assurance Program

Thirteen commenters objected to the proposal to remove the requirement that State highway agency (SHA) personnel perform IA testing. The States wanted to continue to perform IA testing as a means to maintain expertise in the materials sampling and testing area and maintain the credibility of their materials programs. Since materials sampling and testing are an essential part of determining the quality of the product that is obtained from the use of Federal-aid funds, the FHWA has an interest in maintaining the States' expertise and credibility. However, in cases where States are using contractor test results in acceptance decisions, the FHWA believes it is important that the States have the option of using consultants to perform IA testing. It is important to note that the final rule does not require a SHA to use consultants in the IA program, but simply gives SHAs the option to do so. The FHWA has added § 637.205(b) which requires States to maintain an adequate, qualified staff with the capability of overseeing the entire quality assurance program and specifically requires the States to maintain a central laboratory. This requirement is consistent with 23 U.S.C. 302 which requires each State to maintain an adequate highway department.

Three commenters requested further clarification on the use of the system approach in performing an IA program. The intent of the system approach to the IA program is to concentrate on assuring that the testing personnel and equipment remain capable of performing the tests properly, regardless of the location or number of projects covered by the equipment and tester. The system approach will permit an SHA to fulfill the requirement for an IA program by implementing a schedule of activities to cover equipment operations and tester competence. The activities may include calibration checks, split samples, proficiency samples, and observations. The schedules and type of activity would be based on the test procedure. In the system approach, the frequency of IA may be independent of the number of tests performed or the quantity of material tested. It is envisioned that the system approach will be especially useful in cases where one tester performs testing for more than one project during a construction season. The previous requirement for IA entailed sampling and testing frequencies based on individual project production. In addition, a State may choose to use the information developed from the IA program in the qualification programs for testers and laboratories. One commenter asked if the NPRM would allow a State to use a hybrid approach, which would include some frequencies based on project quantities and frequencies based on the overall system. This rule as written would allow that approach. It should be noted that the rule does not require a State to use this approach.

One commenter wanted the requirements for the IA program to be less stringent. The requirements in the final rule for IA have been made less prescriptive than the current regulations and give a State more latitude in designing its IA system. The existing regulation requires State personnel to perform the IA sampling and testing. The final rule would allow: (1) The use of accredited consultant laboratories in executing an IA program, (2) a system approach instead of a project approach, (3) proficiency samples instead of split samples, and (4) equipment calibration to cover the testing equipment.

Laboratory Qualification

Four commenters supported the proposed requirements for laboratory qualifications.

Eight commenters expressed concerns about the requirements for laboratory qualifications. The NPRM proposed to include by reference two paragraphs from the "Standard Recommended Practice for Establishing and Implementing a Quality System for Construction Testing Laboratories" (R–18) published by the AASHTO in the "Standard Specifications for Transportation Materials and Methods of Sampling and Testing." The commenters believed that R–18 was not appropriate for field laboratories. It was not the FHWA's intent that the entire R–18 standard be used for the qualification of field laboratories. Due to the confusion caused by specifying only a part of R–18, the rule has been revised to specifically list the minimum requirements for field laboratories and delete the reference to R–18.

Eight commenters wanted clarification of the requirements for accreditation of the SHA central laboratory. It is the intent of the FHWA that the accreditation program must meet the guidelines in ASTM E–994. In addition to the guidelines in ASTM E–994, we have two additional concerns: First, regarding the acceptability of the assessors; and second, concerning the scope of the on-site assessment. For an accreditation program to be acceptable to the FHWA, the assessor must be employees of the accrediting body and not employed by a laboratory which may compete for work with the laboratory being assessed. This would avoid any potential conflicts of interest. In addition, the on-site assessment must include a detailed review of the test procedures in which the laboratory is being accredited. The FHWA believes that only one laboratory accreditation program currently meets the above concerns, and that is the AASHTO Accreditation Program. As we understand the operating procedures of other accreditation programs, they allow reviewers to be employees of other testing laboratories and do not require the laboratory to demonstrate all the tests in which the laboratory is being accredited. If other accreditation programs can satisfy our concerns, we will approve them. Any inquires or requests for approval should be directed to the FHWA's Office of Engineering.

Six commenters expressed concern about the cost and implementation time necessary for accrediting an SHA central laboratory. The commenters believe that two years is too short a time in which to become accredited. At this time 30 SHAs are accredited by the AASHTO Accreditation Program (AAP). The FHWA contacted the AAP to obtain data on the average length of time required by the AAP to accredit a SHA laboratory after receipt of an application for accreditation. Based on the information supplied by AAP, the FHWA believes that two years is an adequate lead time for obtaining accreditation. The requirement for accreditation replaces the inspections by the National Reference Laboratories which are required by § 637.205 of the current regulation. The actual cost of accreditation to the SHA is the same as the cost of inspection program that it replaces. However, there will be some costs associated with developing the quality system for the initial accreditation for the SHAs. The rule provides flexibility to the SHAs to designate private laboratories to perform independent assurance tests and dispute resolution testing. Since the SHAs must review the qualifications of designated laboratories, the SHAs need to be qualified at the highest level, which is accreditation. Therefore, this final rule maintains the laboratory accreditation requirements as originally proposed.

Definitions

Four commenters suggested changes to the definition of quality control. The definition of quality control was adapted from the definition in ANSI 90 and ISO 9000 which are the industry consensus standards for quality assurance. Therefore, the FHWA is retaining the definition as proposed.

Two commenters wanted to delete the word "accredited" from the definition of "qualified laboratories". There appears to be confusion over the use of the term "accreditation" since the NPRM used the word to describe two different levels of qualifications. The FHWA agrees with the comment because of the apparent confusion. The word "accredited" has been removed from the definition of "qualified laboratories".

Two commenters wanted clarification of the term "vendor." A definition of "vendor" has been added to insure that it includes suppliers of project-produced materials. It was the FHWA's intent that the rule cover only project-produced materials and not manufactured materials.

One commenter suggested changes to the definition of "quality assurance". The definition of "quality assurance" was adapted from the definitions in the ANSI 90 and ISO 9000 standards which are the industry consensus standards for quality assurance. Therefore, the FHWA has retained this definition as proposed in the NPRM.

One commenter suggested requiring random sampling. The FHWA agrees with the comment. In order for test data used in the acceptance decision to be properly analyzed, samples must be obtained on a random basis. Section 637.205(e) has been added to require random sampling.

One commenter was concerned with the wording of the definition for IA, which the commenter interpreted as requiring the IA to be performed by a consultant. As stated earlier, it is the FHWA's intent that the States have the option to perform IA sampling and testing themselves or have a qualified designated agent perform the testing. The definition in the final rule has been revised to reflect our intent.

Miscellany

Eight commenters requested a delay in issuing a final rule. Their major concern was over potential conflicts between this final rule and AASHTO's effort to develop guide specifications for Quality Assurance. The AASHTO effort is related to this rulemaking. However, the "AASHTO Quality Assurance Guide Specification" and the "AASHTO Implementation Manual for Quality Assurance" are in the draft stage and are still being reviewed. It may be some time before these documents receive full endorsement by AASHTO. Since the current regulations do not address the practice of using contractor testing in making acceptance decisions, the FHWA believes that it is necessary to proceed with the final rule. The commenters were also concerned that the SHAs did not have adequate time to comment on the regulation. The NPRM provided a 60 day comment period. All comments that were received by the FHWA, including the eleven received after the closing of the comment period, were considered and included in the analysis. In addition, the FHWA received comments from 35 of the 52 SHAs. Therefore, the FHWA believes that adequate time was provided.

Five commenters provided comments on the dispute resolution system. There were comments on both sides of the issue of whether the dispute resolution system should allow third party involvement. Three commenters were in favor of keeping the system in the State; two were in favor of using third parties. In the NPRM the FHWA proposed to permit the SHAs to determine how they wanted to set up the dispute resolution system. The FHWA is aware of cases where a dispute resolution system has

worked well in both cases, so this proposal has been retained in the final rule.

Three commenters requested clarification of the terms "acceptance", "verification", and "assurance". This rule requires an acceptance program which includes the establishment of qualifications of testers and laboratories and inspection of construction operations and testing performed by the SHA or its designated agent. Verification sampling and testing is used to validate the quality of the product. Independent assurance is used specifically to insure that the testing is performed correctly and that the equipment is in calibration.

Two commenters provided comments on the materials certificate. One commenter requested that the wording on the material certificate be revised from requiring the materials and operations to be in "conformity with the approved plans and specifications" to "reasonably close conformity to the approved plans and specification." The commenter was concerned about the added work of adding the individual material exceptions to the project plans and specifications to the materials certificate. The current regulation requires the material certificate to list all materials that do not meet the specifications. The FHWA reserves the right to review the materials certificate to determine if the materials are in conformity with the project plans and specifications. Therefore, the FHWA has retained the wording as proposed in the NPRM. The other commenter wanted to eliminate the requirement for the materials certificate. Section 637.201 limits the rule to projects on the NHS. In addition, § 637.207(a)(3) further limits the requirement for a materials certificate to projects that are subject to FHWA oversight reviews. This will eliminate the requirement for a materials certificate for the vast majority of projects. Since the cost of materials make up a substantial portion of each project and the information supplied by the materials certificate indicates the quality of the material, it is necessary to have the materials certificate in order to make an informed decision on whether to accept those projects for which the FHWA has retained construction oversight. Therefore, the FHWA has retained the proposed requirement for a materials certificate in this final rule.

One commenter indicated that the cost of implementing the regulation was high and a full regulatory review was needed. As noted below the FHWA has determined that this action is not a significant regulatory action under Executive Order 12366, Regulatory Planning and Review, nor significant under DOT Order 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations, and has concluded that a full regulatory evaluation is not required.

Costs to the States. Currently all States must have approved sampling and testing programs which include an IA program. In addition, all States are required to have their central laboratories inspected by the National Reference Laboratories. As indicated in the fee schedule for the AAP, the actual cost of accreditation itself for the SHAs is the same as the current inspection fees. The additional cost to the States for becoming accredited is in developing the quality assurance manuals which are required by the AAP. The justification for requiring accreditation is stated above. Since the vast majority of States have qualification requirements for their subsidiary laboratories, there would be no additional costs for the States that have these requirements. There would be minimal costs to those States that will have to develop qualification requirements for laboratories. There would be some costs in developing qualifications for testers. One aspect of tester qualifications is attendance at training programs. All States have some training for their technicians, but some of this training may have to be upgraded. However, as stated earlier, the FHWA has a training effort that is available to assist the States in setting up certification programs. The certification programs could be used in the States' establishment of tester qualifications.

Costs to the public. There would be no additional costs to the industry if a State chooses not to incorporate contractor tests into the acceptance system. If a State chooses to use contractor tests in acceptance decisions, contractors would be required to hire employees qualified in the appropriate tests and the State would be required to ensure that the contractors maintain a qualified laboratory or hire a qualified laboratory to perform the testing. When a State uses contractor quality control testing results in the acceptance decision, testing performed by the State is reduced. This reduction in testing by the State reduces the overhead costs in the State. However, any additional cost the contractors incur in performing the testing, including costs of obtaining qualified laboratories and testers, will be passed onto the State through higher bid prices. The cost savings by the State due to the reduction of testing by State personnel would be offset by the increase in bid prices charged by the contractors. As a result, the FHWA believes that the additional costs of these actions would be minimal.

One commenter was concerned because its Quality Assurance program is located in several documents and it did not want to consolidate the information into one document. The FHWA does not see the need for all the documentation of a State's Quality Assurance program to be in one document.

One commenter interpreted the NPRM to propose a requirement for a central laboratory and the commenter opposed such a requirement. The NPRM did not expressly propose to require a central laboratory; however, the NPRM did propose to require that each State's central laboratory be accredited by the AAP or a comparable program approved by the FHWA. For the reasons stated above, this final rule now requires a central laboratory.

One commenter was concerned about the effect of these QC/QA regulations on small projects. As indicated in the preamble of the NPRM, it is not the intent of the FHWA in this regulation to require the use of contractor testing in the acceptance decision. In addition, the rule expressly covers only projects on the National Highway system (NHS); projects not on the NHS can use other SHA procedures to accept materials. It is anticipated that the majority of small projects will not be on the NHS.

One commenter was against QC/QA procedures. The rule does not require SHAs to use statistical concepts or to use contractor-supplied test results in the acceptance decision. However, the rule does establish minimum requirements if an SHA chooses to use contractor tests results in the acceptance decision.

One commenter suggested a revision to the portion of § 637.207 concerning inspection to reflect the positive as well as the negative aspects of the quality of the product or construction. The section in the NPRM read, "The SHA shall inspect the product or construction or both for attributes that are detrimental to the performance of the finished product." The FHWA agrees with the comment. Section 637.207(a)(1)(i)(C) has been revised to reflect both benificial and negative aspects of the quality of the finished product.

One commenter indicated that the regulation was too prescriptive. The rule, however, provides more flexibility than the existing regulation. The rule allows the use of contractor test results in making the acceptance decision and allows the use of consultants in the independent assurance program. Neither of these were allowed by the existing regulations. The regulation requires testers and laboratories to be qualified. However, it gives the States the flexibility to establish those qualifications. In addition, the final rule modified Section 637.207 to remove the requirement for a specific comparison procedure to validate the quality of the material. The rule clarifies existing policy and procedures and provides additional guidance on the use of contractor-supplied test results in acceptance plans.

One commenter questioned the title and purpose of the proposed rule, indicating that the rule covers materials and not construction. Over 50 percent of the cost of construction is the cost of the material. In addition, the rule requires each State to inspect construction to insure that the construction procedures do not adversely affect the properties of the material. Therefore, the title of this rule remains unchanged.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation's regulatory policies and procedures. The FHWA, at 23 CFR 637, currently has regulations covering sampling and testing. The rule provides the States with additional flexibility in comparison to the current regulations. States will be allowed to use contractor test results in making acceptance decisions and consultants to perform independent assurance testing. Other changes update the current regulations to accommodate contractor-performed sampling and testing and reinforce existing policy. Therefore, it is anticipated that the economic impact of this rulemaking will be minimal and a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this action on small entities. The FHWA concluded that this action may provide some small testing firms with an opportunity to perform more work than was allowed by the previous regulations. Although the regulation will have a positive impact on these testing firms, the number of firms affected will be small and the amount of additional work would be insignificant. Therefore, the FHWA hereby certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. The rule provides the States with additional flexibility over the current regulations. States will be allowed to use contractor test results in making acceptance decisions and consultants to perform IA testing. Therefore, it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a separate federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520.

National Environmental Policy Act

This rulemaking does not have any effect on the environment. It does not constitute a major action having a significant effect on the environment, and therefore does not require the preparation of an environmental impact statement pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*)

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 637

Grant programs—transportation, Highways and roads, Quality assurance, Materials sampling and testing.

Issued on: June 22, 1995.

Rodney E. Slater,

Federal Highway Administrator

In consideration of the foregoing, the FHWA is amending title 23, Code of Federal Regulations, by revising part 637 to read as follows:

PART 637—CONSTRUCTION INSPECTION AND APPROVAL

Subpart A—[Reserved]

Subpart B—Quality Assurance Procedures for Construction

Sec.

637.201 Purpose.
637.203 Definitions.
637.205 Policy.
637.207 Quality assurance program.
637.209 Laboratory and sampling and testing personnel qualifications.

Appendix A to Subpart B—Guide Letter of Certification by State Engineer

Authority: 23 U.S.C. 109, 114, and 315; 49 CFR 1.48(b).

Subpart A—[Reserved]

Subpart B—Quality Assurance Procedures for Construction

§ 637.201 Purpose.

To prescribe policies, procedures, and guidelines to assure the quality of materials and construction in all Federal-aid highway projects on the National Highway System.

§ 637.203 Definitions.

Acceptance program. All factors that comprise the State highway agency's (SHA) determination of the quality of the product as specified in the contract requirements. These factors include verification sampling, testing, and inspection and may include results of quality control sampling and testing.

Independent assurance program. Activities that are an unbiased and independent evaluation of all the sampling and testing procedures used in the acceptance program. Test procedures used in the acceptance program which are performed in the SHA's central laboratory would not be covered by an independent assurance program.

Proficiency samples. Homogeneous samples that are distributed and tested by two or more laboratories. The test results are compared to assure that the laboratories are obtaining the same results.

Qualified laboratories. Laboratories that are capable as defined by appropriate programs established by each SHA. As a minimum, the qualification program shall include provisions for checking test equipment and the laboratory shall keep records of calibration checks.

Qualified sampling and testing personnel. Personnel who are capable as defined by appropriate programs established by each SHA.

Quality assurance. All those planned and systematic actions necessary to provide confidence that a product or service will satisfy given requirements for quality.

Quality control. All contractor/vendor operational techniques and activities that are performed or conducted to fulfill the contract requirements.

Random sample. A sample drawn from a lot in which each increment in the lot has an equal probability of being chosen.

Vendor. A supplier of project-produced material that is not the contractor.

Verification sampling and testing. Sampling and testing performed to validate the quality of the product.

§ 637.205 Policy.

(a) Quality assurance program. Each SHA shall develop a quality assurance program which will assure that the materials and workmanship incorporated into each Federal-aid highway construction project on the NHS are in conformity with the requirements of the approved plans and specifications, including approved changes. The program must meet the criteria in § 637.207 and be approved by the FHWA.

(b) SHA capabilities. The SHA shall maintain an adequate, qualified staff to administer its quality assurance program. The State shall also maintain a central laboratory. The State's central laboratory shall meet the requirements in § 637.209(a)(2).

(c) Independent assurance program. Independent assurance samples and tests or other procedures shall be performed by qualified sampling and testing personnel employed by the SHA or its designated agent.

(d) Verification sampling and testing. The verification sampling and testing are to be performed by qualified testing personnel employed by the SHA or its designated agent, excluding the contractor and vendor.

(e) Random samples. All samples used for quality control and verification sampling and testing shall be random samples.

§ 637.207 Quality assurance program.

(a) Each SHA's quality assurance program shall provide for an acceptance program and an independent assurance (IA) program consisting of the following:

(1) Acceptance program.

(i) Each SHA's acceptance program shall consist of the following:

(A) Frequency guide schedules for verification sampling and testing which will give general guidance to personnel responsible for the program and allow adaptation to specific project conditions and needs.

(B) Identification of the specific location in the construction or production operation at which verification sampling and testing is to be accomplished.

(C) Identification of the specific attributes to be inspected which reflect the quality of the finished product.

(ii) Quality control sampling and testing results may be used as part of the acceptance decision provided that:

(A) The sampling and testing has been performed by qualified laboratories and qualified sampling and testing personnel.

(B) The quality of the material has been validated by the verification sampling and testing. The verification testing shall be performed on samples that are taken independently of the quality control samples.

(C) The quality control sampling and testing is evaluated by an IA program.

(iii) If the results from the quality control sampling and testing are used in the acceptance program, the SHA shall establish a dispute resolution system. The dispute resolution system shall address the resolution of discrepancies occurring between the verification sampling and testing and the quality control sampling and testing. The dispute resolution system may be administered entirely within the SHA.

(2) The IA program shall evaluate the qualified sampling and testing personnel and the testing equipment. The program shall cover sampling procedures, testing procedures, and testing equipment. Each IA program shall include a schedule of frequency for IA evaluation. The schedule may be established based on either a project basis or a system basis. The frequency can be based on either a unit of production or on a unit of time.

(i) The testing equipment shall be evaluated by using one or more of the following: Calibration checks, split samples, or proficiency samples.

(ii) Testing personnel shall be evaluated by observations and split samples or proficiency samples.

(iii) A prompt comparison and documentation shall be made of test results obtained by the tester being evaluated and the IA tester. The SHA shall develop guidelines including tolerance limits for the comparison of test results.

(iv) If the SHA uses the system approach to the IA program, the SHA shall provide an annual report to the FHWA summarizing the results of the IA program.

(3) The preparation of a materials certification, conforming in substance to Appendix A of this subpart, shall be submitted to the FHWA Division Administrator for each construction project which is subject to FHWA construction oversight activities.

(b) [Reserved]

§ 637.209 Laboratory and sampling and testing personnel qualifications.

(a) Laboratories.

(1) After June 29, 2000, all contractor, vendor, and SHA testing used in the acceptance decision shall be performed by qualified laboratories.

(2) After June 30, 1997, each SHA shall have its central laboratory accredited by the AASHTO Accreditation Program or a comparable laboratory accreditation program approved by the FHWA.

(3) After June 29, 2000, any non-SHA designated laboratory which performs IA sampling and testing shall be accredited in the testing to be performed by the AASHTO Accreditation Program or a comparable laboratory accreditation program approved by the FHWA.

(4) After June 29, 2000, any non-SHA laboratory that is used in dispute resolution sampling and testing shall be accredited in the testing to be performed by the AASHTO Accreditation Program or a comparable laboratory accreditation program approved by the FHWA.

(b) Sampling and testing personnel. After June 29, 2000, all sampling and testing data to be used in the acceptance decision or the IA program shall be executed by qualified sampling and testing personnel.

(c) Conflict of interest. In order to avoid an appearance of a conflict of interest, any qualified non-SHA laboratory shall perform only one of the following types of testing on the same project: Verification testing, quality control testing, IA testing, or dispute resolution testing.

Appendix A to Subpart B—Guide Letter of Certification by State Engineer

Date _____

Project No. _____

This is to certify that:

The results of the tests used in the acceptance program indicate that the materials incorporated in the construction work, and the construction operations controlled by sampling and testing, were in conformity with the approved plans and specifications. (The following sentence should be added if the IA testing frequencies are based on project quantities. All independent assurance samples and tests are within tolerance limits of the samples and tests that are used in the acceptance program.)

Exceptions to the plans and specifications are explained on the back hereof (or on attached sheet).

_____

Director of SHA Laboratory or other appropriate SHA Official.

[FR Doc. 95–15932 Filed 6–28–95; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 3, 7, 15, 18, 23, 32, 33, 36, 40, 43, 45, 48, 56, 57, 70, 71, 75, 77, and 90

Office of Management and Budget Control Numbers Under the Paperwork Reduction Act

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: The Mine Safety and Health Administration (MSHA) is adding a new part to its regulations in order to consolidate the display of Office of Management and Budget (OMB) control numbers approved under the Paperwork Reduction Act. The display references regulations promulgated under the Mine Act containing recordkeeping and reporting requirements. This consolidation will assist the public search for specific information on recordkeeping and reporting requirements approved by OMB and will provide the Agency a format that is simpler to maintain.

EFFECTIVE DATE: June 29, 1995.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, 703–235–1910.

SUPPLEMENTARY INFORMATION: MSHA reviewed its existing regulations requiring collection of information for OMB control number display and accuracy. As part of that review, MSHA is today publishing the control numbers issued by OMB for information collection. The affected regulations are codified in title 30 of the Code of Federal Regulations (30 CFR) parts 7, 15, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, 32, 33, 35, 36, 40, 41, 43, 44, 45, 48, 49, 50, 56, 57, 70, 71, 75, 77, and 90.

MSHA is presenting the OMB control numbers in a table format to be codified in part 3, subchapter A, chapter I, 30 CFR. This part will fulfill the requirements of 44 U.S.C. 3507(f) of the Paperwork Reduction Act which prohibits an agency from engaging in a collection of information without displaying the control number obtained from OMB. The table lists the part and section numbers with reporting and recordkeeping requirements and the OMB control numbers. MSHA selected the list format to provide ease of referencing paperwork burden hours and to allow consistent updating. As a result of this new format, the parenthetical statements containing OMB control numbers currently found in 30 CFR at the end of individual paragraphs can be removed.

The OMB control numbers listed in this document were approved previously by OMB. This document makes no substantive change to the current OMB information collection budget. When control numbers included on this list are not found in 30 CFR, it is due to their having been inadvertently omitted from publication in the **Federal Register**, even though OMB approval had been obtained. When control numbers in this document differ from those currently listed in 30 CFR, it is due to a correction of errors or an earlier consolidation of control numbers. In other cases, OMB control numbers currently listed at the end of individual paragraphs were removed previously from OMB's List of Active Information Collections Approved Under the Paperwork Reduction Act, but not removed from 30 CFR. OMB removed some of these numbers as a result of a 1990 Supreme Court decision on third-party disclosure rendering some types of regulations no longer applicable for OMB review under the 1980 Paperwork Reduction Act. In some cases, MSHA converted a reporting requirement to certification as provided in 44 U.S.C. 3501–3520.

MSHA has determined that public notice and comment is "unnecessary" in this rulemaking because the reformatting of OMB control numbers from the end of the regulatory information collection sections to a composite list constitutes a minor technical amendment which contains no new requirements. As a result, MSHA finds that there is "good cause" under 5 U.S.C. 553 (b)(B) of the Administrative Procedure Act (APA) to issue this table without prior public notice and comment. In addition, MSHA has determined that delaying the effective date is "unnecessary" because the technical amendment contains no new requirements for which the public would need time to plan compliance. MSHA finds, therefore, that there is "good cause" to except this action from the 30-day delayed effective date requirement pursuant to 5 U.S.C. 553(d)(3) of the APA.

List of Subjects in 30 CFR Part 3

Reporting and recordkeeping requirements.

Dated: June 23, 1995.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

Accordingly, under the authority of 30 U.S.C. 957, chapter I of title 30, Code of Federal Regulations is amended as set forth below.

1. Subchapter A heading in chapter I is revised to read as follows:

Subchapter A—Official Emblem and OMB Control Numbers for Recordkeeping and Reporting

2. Part 3 is added to subchapter A to read as follows:

PART 3—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Authority: 30 U.S.C. 957; 44 U.S.C. 3501–3520.

§ 3.1 OMB control numbers.

The collection of information requirements in MSHA regulation sections in this chapter have been approved and assigned control numbers by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. Regulation sections in this chapter containing paperwork requirements and their respective OMB control numbers are displayed in the following table:

TABLE 1.—OMB CONTROL NUMBERS

30 CFR citation	OMB control No.
Subchapter B—Testing, Evaluation, and Approval of Mining Products	
7.3	1219–0100
7.4 (a)	1219–0100
7.6 (c)	1219–0100

TABLE 1.—OMB CONTROL NUMBERS—Continued

30 CFR citation	OMB control No.
7.7 (d)	1219–0100
7.23	1219–0100
7.27	1219–0100
7.28	1219–0100
7.43	1219–0100
7.46	1219–0100
7.47	1219–0100
7.48	1219–0100
7.51	1219–0100
7.63	1219–0100
7.66	1219–0100
7.67	1219–0100
7.68	1219–0100
7.71	1219–0100
7.303	1219–0115
7.306	1219–0115
7.307	1219–0115
7.308	1219–0115
7.309	1219–0115
7.311	1219–0115
7.403	1219–0117
7.407	1219–0117
7.408	1219–0117
15.4	1219–0066
15.7	1219–0066
15.8	1219–0066
18.6	1219–0066
18.15	1219–0066
18.81	1219–0066
18.82	1219–0066
18.93	1219–0066
18.94	1219–0066
19.3	1219–0066
19.13	1219–0066
20.3	1219–0066
20.14 (a)	1219–0066
21.4	1219–0066
21.10 (a)	1219–0066
22.4	1219–0066
22.11	1219–0066
23.3	1219–0066
23.14	1219–0066
26.8 (a), (b)	1219–0066
27.4	1219–0066
27.6	1219–0066
27.11 (a)	1219–0066
28.10	1219–0066
28.25	1219–0066
28.30	1219–0066
28.31	1219–0066
29.10	1219–0066
29.12	1219–0066
29.33	1219–0066
29.35	1219–0066
29.40	1219–0066
29.41	1219–0066
29.43 (a)	1219–0066
29.54 (a), (b)	1219–0066
29.56	1219–0066
32.3	1219–0066
32.8 (a)	1219–0066
33.6	1219–0066
33.12	1219–0066
35.6	1219–0066
35.12	1219–0066
36.6	1219–0066
36.12	1219–0066
Subchapter G—Filing and Other Administrative Requirements	
40.3	1219–0042
40.5	1219–0042

TABLE 1.—OMB CONTROL NUMBERS—Continued

30 CFR citation	OMB control No.
41.20	1219–0008
43.4	1219–0014
43.7	1219–0014
44.10	1219–0065
44.11	1219–0065
45.3	1219–0043
45.4	1219–0040
48.3	1219–0009
48.9 (a), (c)	1219–0070
48.23	1219–0009
48.29 (a), (c)	1219–0070
49.3	1219–0078
49.4 (b), (d), (e)	1219–0078
49.6 (b)	1219–0093
49.8	1219–0077
Subchapter M—Accidents, Injuries, Illnesses, Employment, and Production in Mines	
50.20	1219–0007
50.30	1219–0006
Subchapter N—Metal and Nonmetal Mine Safety and Health	
56.1000	1219–0092
56.5005	1219–0048
56.14100 (d)	1219–0089
56.19022	1219–0034
56.19023	1219–0034
56.19121	1219–0034
57.1000	1219–0092
57.3461	1219–0097
57.5005	1219–0048
57.5037	1219–0003
57.5040	1219–0003
57.5047 (a), (c)	1219–0039
57.8520	1219–0016
57.8525	1219–0012
57.11053	1219–0046
57.14100	1219–0089
57.19022	1219–0034
57.19023	1219–0034
57.19121	1219–0034
57.22004 (c)	1219–0103
57.22204	1219–0030
57.22230	1219–0103
57.22239	1219–0103
57.22401	1219–0096
57.22606	1219–0095
Subchapter O—Coal Mine Safety and Health	
70.209	1219–0011
70.504–1	1219–0001
70.506	1219–0037
70.507	1219–0037
70.508	1219–0037
70.509	1219–0037
70.510 (b)	1219–0017
71.209	1219–0011
71.403	1219–0024
71.404	1219–0024
71.500	1219–0101
71.801	1219–0001
	1219–0037
71.802	1219–0037
71.803	1219–0037
71.804	1219–0037
71.805	1219–0017
75.100	1219–0069
75.153 (c)	1219–0001
75.155 (c)	1219–0069
75.159	1219–0049
75.220	1219–0004
75.221	1219–0004
75.223	1219–0004

TABLE 1.—OMB CONTROL NUMBERS—Continued

30 CFR citation	OMB control No
75.312	1219–0088
75.351 (h)	1219–0088
75.360	1219–0088
75.361	1219–0088
75.362	1219–0088
75.364	1219–0088
75.370	1219–0088
75.512	1219–0067
75.703–3	1219–0067
75.800–4	1219–0067
75.812	1219–0067
75.900–4	1219–0067
75.1001–1	1219–0067
75.1003–2	1219–0067
75.1101–23	1219–0054
75.1204	1219–0073
75.1204–1	1219–0073
75.1321	1219–0025
75.1400–2	1219–0034
75.1400–4	1219–0034
75.1432	1219–0034
75.1433	1219–0034
75.1702	1219–0041
75.1712–4	1219–0024
75.1712–5	1219–0024
75.1712–6	1219–0101
75.1713–3	1219–0085
75.1714–3	1219–0044
75.1716	1219–0020
75.1716–1	1219–0020
75.1716–3	1219–0020
77.100	1219–0069
77.103 (c)	1219–0001
77.105 (b)	1219–0069
77.106	1219–0049
77.215	1219–0015
77.215–2	1219–0015
77.215–3	1219–0015
77.215–4	1219–0015
77.216	1219–0015
77.216–2	1219–0015
77.216–3	1219–0015
77.216–4	1219–0015
77.216–5	1219–0015
77.502	1219–0067
77.800–2	1219–0067
77.900–2	1219–0067
77.1000	1219–0026
77.1000–1	1219–0026
77.1101	1219–0051
77.1404	1219–0034
77.1432	1219–0034
77.1433	1219–0034
77.1703	1219–0085
77.1713	1219–0083
77.1900	1219–0019
77.1901	1219–0082
77.1906	1219–0034
77.1909–1	1219–0025
90.209	1219–0011

3. The following sections are amended by removing the OMB parenthetical found at the end of each section.

30 CFR SECTION CITATIONS

7.3	40.2	57.19022	75.223	75.1716
7.4	43.2	57.19023	75.512	75.1806
7.6	45.3	57.19121	75.800–4	77.106
7.7	48.3	57.22004	75.812	77.215
7.23	48.9	57.22204	75.900–4	77.215–2

30 CFR SECTION CITATIONS—Continued

7.27	48.23	57.22230	75.1001–1	77.215–4
7.28	48.29	57.22239	75.1003–2	77.1000–1
7.43	56.1000	57.22401	75.1100–3	77.1101
7.46	56.5005	70.209	75.1101–23	77.1110
7.47	56.14130	70.508	75.1107–16	77.1404
7.48	56.19022	70.509	75.1204	77.1432
7.51	56.19023	70.510	75.1204–1	77.1433
7.63	56.19121	71.209	75.1301	77.1702
7.71	57.1000	71.403	75.1321	77.1713
15.4	57.5005	71.500	75.1400–4	77.1900
15.7	57.5037	71.802	75.1432	77.1901
15.8	57.5040	71.803	75.1433	77.1906
18.6	57.5047	71.804	75.1702	77.1909–1
23.3	57.8520	71.805	75.1712	90.209
32.3	57.8525	75.159	75.1712–4	
33.6	57.11053	75.220	75.1713	
36.6	57.14130	75.221	75.1714–3	

PART 45—[AMENDED]

4. The authority citation for part 45 is revised to read as follows:

Authority: 30 U.S.C. 802(d), 957.

5. Part 45 is amended by removing the parenthetical immediately preceding § 45.1.

[FR Doc. 95–15973 Filed 6–28–95; 8:45 am]
BILLING CODE 4510–43–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 756, 902, 916, and 944

Navajo Nation, Hopi Tribe, Alaska, Kansas, and Utah Abandoned Mine Land Reclamation (AMLR) Plans and Alaska and Kansas Regulatory Programs

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; technical amendment.

SUMMARY: OSM is making technical amendments to 30 CFR Chapter VII, Subchapters E and T. OSM is updating or adding addresses for the locations of the publicly available copies of the Navajo Nation, Hopi Tribe, Alaska, Kansas, and Utah AMLR plans and the Alaska and Kansas regulatory programs, correcting the codification of the section approving the Utah AMLR plan, and making other minor codification changes for consistency.

EFFECTIVE DATE: June 29, 1995.

FOR FURTHER INFORMATION CONTACT: Leslie Stream, Branch of Environmental and Economic Analysis, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Washington, DC 20240, Telephone: (202) 208–2840.

SUPPLEMENTARY INFORMATION:

I. Background

Since July 1, 1994, the date of the most recent revision to Title 30 of the Code of Federal Regulations (30 CFR Part 700 to End), OSM has become aware of changes that need to be made to the addresses of State, Tribe, and OSM offices involved in certain State and Tribe AMLR plans and to the addresses of State and OSM offices involved in certain State regulatory programs. OSM is updating or adding State, Tribe, and OSM addresses at 30 CFR Parts 756, 902, 916, and 944 to accurately indicate where copies of the Navajo Nation, Hopi Tribe, Alaska, Kansas, and Utah AMLR plans are available for public inspection and copying. Similarly, and in accordance with 30 CFR 732.11(a), OSM is updating State and OSM office addresses at 30 CFR Parts 902 and 916 to accurately indicate where copies of the Alaska and Kansas regulatory programs are available for public inspection and copying.

OSM is also taking this opportunity to correct the codification of the paragraphs within section 30 CFR 944.20 approving the Utah AMLR plan. OSM is correcting the codification set forth in the **Federal Register** on September 27, 1994 (59 FR 49185, 49189).

Lastly, to ensure consistency in the codification of certain AMLR plan and regulatory program sections, OSM is lettering certain paragraphs that were previously unlettered.

II. Procedural Matters

1. Administrative Procedure Act

The minor revisions contained in this rulemaking are technical in nature. Accordingly, pursuant to 5 U.S.C. 553(b)(B), it has been determined that the notice and public comment procedures of the Administrative Procedure Act are unnecessary. For the same reason, it has been determined that in accordance with 5 U.S.C. 553(d), there is good cause to make the rule effective on the date of publication in the **Federal Register**.

2. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

3. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. This rule (1) does not preempt any State, Tribal, or local laws or regulations; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging its provisions.

4. National Environmental Policy Act

This rule has been reviewed by OSM and it has been determined to be categorically excluded from the National Environmental Policy Act (NEPA) process in accordance with the Departmental Manual (516 DM 2 appendix 1.10) and the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR 1507.3).

5. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

6. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule merely revises addresses contained in the regulations.

List of Subjects in 30 CFR Parts 756, 902, 916, and 944

Abandoned mine land reclamation program, Indian lands, Intergovernmental relations, Surface mining, Underground mining.

Dated: June 22, 1995.

Peter A. Rutledge,

Acting Regional Director, Western Regional Coordinating Center.

For the reasons set forth in the preamble, Title 30, Chapter VII, Subchapters E and T of the Code of Federal Regulations are amended as set forth below:

PART 756—INDIAN TRIBE ABANDONED MINE LAND RECLAMATION PROGRAMS

1. The authority citation for Part 756 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.* and Pub. L. 100–71.

2. Section 756.13 is revised to read as follows:

§ 756.13 Approval of the Navajo Nation's Abandoned Mine Land Plan.

The Navajo Nation's Abandoned Mine Land Plan as submitted in June 1982, resubmitted in September 1983, and amended in February 1988, is approved effective May 16, 1988. Copies of the approved program are available at:

(a) The Navajo Nation, Navajo Abandoned Mine Land Reclamation Department, Division of Natural Resources, Navajo Nation Inn—Office Complex, P.O. Box 1875, Window Rock, AZ 86515, Telephone: (520) 871–7593.

(b) Office of Surface Mining Reclamation and Enforcement, Albuquerque Field Office, 505 Marquette Ave., NW., Suite 1200, Albuquerque, NM 87102, Telephone: (505) 766–1486.

3. Section 756.15 is revised to read as follows:

§ 756.15 Approval of the Hopi Tribe's Abandoned Mine Land Reclamation Plan.

The Hopi Tribe's Abandoned Mine Land Reclamation Plan as submitted in July 1983, and amended in March and May 1988, is approved effective June 28, 1988. Copies of the approved plan are available at the following locations:

(a) The Hopi Tribe, Hopi Abandoned Mine Land Program, Department of Natural Resources, Honahni Building, P.O. Box 123, Kykotsmovi, AZ 86039, Telephone: (520) 734–2441.

(b) Office of Surface Mining Reclamation and Enforcement, Albuquerque Field Office, 505 Marquette Ave., NW., Suite 1200, Albuquerque, NM 87102, Telephone: (505) 766–1486.

PART 902—ALASKA

1. The authority citation for Part 902 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 902.10 is revised to read as follows:

§ 902.10 State regulatory program approval.

The Alaska State program as submitted on July 23, 1982, and as amended and clarified on December 13, 1982, and January 11, 1983, is approved effective May 2, 1983. Beginning on that date, the Alaska Department of Natural Resources shall be deemed the regulatory authority in Alaska for all surface coal mining and reclamation operations and all exploration operations on non-Federal and non-Indian lands. Only surface coal mining and reclamation operations on non-Federal and non-Indian lands shall be subject to the provisions of the Alaska permanent regulatory program. Copies of the approved program are available at the following addresses:

(a) Department of Natural Resources, Division of Mining and Water Management, 3601 C Street, Suite 800, Anchorage, AK 99503–5925, Telephone: (907) 762–2149.

(b) Office of Surface Mining Reclamation and Enforcement, Casper Field Office, 100 East B Street, Room 2128, Casper, WY 82601–1918, Telephone: (307) 261–5776.

3. Section 902.20 is revised to read as follows:

§ 902.20 Approval of Alaska Abandoned Mine Land Reclamation Plan.

The Alaska Reclamation Plan, as submitted on August 17, 1983, is approved effective December 23, 1983. Copies of the approved plan are available at:

(a) Department of Natural Resources, Division of Mining and Water Management, 3601 C Street, Suite 800, Anchorage, AK 99503–5925, Telephone: (907)762–2149.

(b) Office of Surface Mining Reclamation and Enforcement, Casper Field Office, 100 East B Street, Room 2128, Casper, WY 82601–1918, Telephone: (307)261–5776.

PART 916—KANSAS

1. The authority citation for Part 916 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 916.10 is revised to read as follows:

§ 916.10 State regulatory program approval.

The Kansas program as submitted on February 26, 1980, and amended on October 31, 1980, was conditionally approved effective January 21, 1981. Beginning on that date, and continuing until July 1, 1988, the Kansas Mined Land Conservation and Reclamation Board was deemed the regulatory authority in Kansas for all surface coal mining and reclamation operations on non-Federal and non-Indian lands. Beginning on July 1, 1988, the Department of Health and Environment shall be deemed the regulatory authority, pursuant to the program transfer provisions of House Bill 3009 as signed by the Governor of Kansas on April 8, 1988. Copies of the approved program, as amended, are available at:

(a) Kansas Department of Health and Environment, Bureau of Environmental Remediation, Surface Mining Section, 1501 South Joplin, P.O. Box 1418, Pittsburg, KS 66762, Telephone: (316)231–8615.

(b) Office of Surface Mining Reclamation and Enforcement, Kansas City Field Office, 934 Wyandotte Street, Room 500, Kansas City, MO 64105, Telephone: (816)374–6405.

3. Section 916.20 is revised to read as follows:

§ 916.20 Approval of Kansas Abandoned Mine Land Reclamation Plan.

The Kansas AMLR Plan as submitted on October 1, 1981, and as amended by Kansas Statute 49–428 on April 14, 1982, is hereby fully approved and all conditions prohibiting the funding of State AML construction grants are deleted. Copies of the approved Kansas AMLR plan are available at:

(a) Kansas Department of Health and Environment, Bureau of Environmental Remediation, Surface Mining Section, 1501 South Joplin, P.O. Box 1418, Pittsburg, KS 66762, Telephone: (316)231–8615.

(b) Office of Surface Mining Reclamation and Enforcement, Kansas City Field Office, 934 Wyandotte Street, Room 500, Kansas City, MO 64105, Telephone: (816)374–6405.

PART 944—UTAH

1. The authority citation for Part 944 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 944.20 is revised to read as follows:

§ 944.20 Approval of Utah Abandoned Mine Plan.

The Utah Abandoned Mine Plan as submitted on February 9, 1983, and as subsequently revised, is approved effective June 3, 1983. Copies of the approved plan are available at:

(a) Division of Oil, Gas and Mining, Department of Natural Resources, 3 Triad Center, Suite 350, 355 West North Temple, Salt Lake City, UT 84180–1203, Telephone: (801)538–5340.

(b) Office of Surface Mining Reclamation and Enforcement, Albuquerque Field Office, 505 Marquette Avenue NW., Suite 1200, Albuquerque, NM 87102, Telephone: (505)766–1486.

[FR Doc. 95–15968 Filed 6–28–95; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE TREASURY

31 CFR Part 103

Amendments to the Bank Secrecy Act Regulations Regarding Reporting and Recordkeeping Requirements by Casinos; Correction

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to regulations related to the Bank Secrecy Act reporting and recordkeeping requirements for casinos.

EFFECTIVE DATE: June 29, 1995.

FOR FURTHER INFORMATION CONTACT: Leonard C. Senia, Compliance Specialist, Office of Regulatory Policy and Enforcement, Financial Crimes Enforcement Network, (703) 905–3931.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections affect casinos which are designated generally as "financial institutions" for purposes of the Bank Secrecy Act *see, e.g.*, 31 CFR 103.11(i)(7). Under the Bank Secrecy Act's implementing regulations, these casinos are subject to particular reporting and recordkeeping requirements, *see, e.g.*, 31 CFR 103.22(a)(2), 103.36 and 103.54.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification. The first correction removes a misleading effective date and the second correction is for a misspelling.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks and banking, Currency, Foreign banking, Investigations, Law enforcement, Reporting and recordkeeping requirements, Taxes.

Accordingly, 31 CFR part 103 is corrected by making the following correcting amendments:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 continues to read as follows:

Authority: Pub. L. No. 91–508, title I, 84 Stat. 1114 (12 U.S.C. 1829b, 1951–1959); 31 U.S.C. 5311–5330.

§ 103.54 [Corrected]

2. In § 103.54, paragraph (a)(1), is revised to read as follows:

§ 103.54 Special rules for casinos.

(a) * * *

(1) Each casino shall develop and implement a written program reasonably designed to assure and monitor compliance with the requirements set forth in 31 U.S.C. chapter 53, subchapter II and the regulations contained in this part.

* * * * *

3. In § 103.54(a)(2)(v)(B), remove "usual" and add in its place "unusual".

Dated: June 23, 1995.

Stanley E. Morris,

Director, Financial Crimes Enforcement Network.

[FR Doc. 95–15910 Filed 6–28–95; 8:45 am]

BILLING CODE 4820–03–P

Office of Foreign Assets Control

31 CFR Parts 520, 540, 545, 555, 565, 570 and 580

Foreign Funds Control Regulations, Nicaraguan Trade Control Regulations, South African Transactions Regulations, Soviet Gold Coin Regulations, Panamanian Transactions Regulations, Kuwaiti Assets Control Regulations, Haitian Transactions Regulations; Removal of Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: This rule removes 31 CFR parts 520, 540, 545, 555, 565, 570 and 580, the Foreign Funds Control Regulations, Nicaraguan Trade Control Regulations, South African Transactions Regulations, Soviet Gold Coin Regulations, Panamanian Transactions Regulations, Kuwaiti Assets Control Regulations, and Haitian Transactions Regulations.

EFFECTIVE DATE: June 29, 1995.

FOR FURTHER INFORMATION CONTACT: Steven I. Pinter, Chief of Licensing (tel.: 202/622–2480), or William B. Hoffman, Chief Counsel (tel.: 202/622–2410), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the **Federal Register**. By modem dial 202/512–1387 and type "/GO/FAC", or call 202/512–1530 for disks or paper copies. This file is available for downloading in WordPerfect 5.1, ASCII, and Postscript formats. The document is also accessible for downloading in ASCII format without charge from Treasury's Electronic Library ("TEL") in the "Business, Trade and Labor Mall" of the FedWorld bulletin board. By modem dial 703/321–3339, and select self-expanding file "T11FR00.EXE" in TEL. For Internet access, use one of the following protocols: Telnet = fedworld.gov (192.239.93.3); World Wide Web (Home Page) = http://www.fedworld.gov; FTP = ftp.fedworld.gov (192.239.92.205).

Background

This rule removes 31 CFR parts 520, 540, 545, 555, 565, 570 and 580, the Foreign Funds Control Regulations, Nicaraguan Trade Control Regulations, South African Transactions Regulations, Soviet Gold Coin Regulations,

Panamanian Transactions Regulations, Kuwaiti Assets Control Regulations, and Haitian Transactions Regulations. Parts 540, 565, 570 and 580 relate to sanctions programs under national emergency declarations that have been terminated by Executive order. Parts 545 and 555 contained sanctions mandated by the Comprehensive Anti–Apartheid Act of 1986, 22 U.S.C. 5001–5116 (1986), that have been lifted upon repeal of the authorizing provisions or terminated by Presidential determination pursuant to that Act. Part 520 contains residual sanctions measures imposed during World War II, including procedural requirements that have no further practical purpose relating to securities looted from their rightful owners by the Nazis. Removal of these parts does not affect ongoing enforcement proceedings, nor prevent the initiation of enforcement proceedings where the relevant statute of limitations has not run.

Because these Regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601–612, does not apply.

List of Subjects

31 CFR Part 520

Administrative practice and procedure, Banks, Banking, Currency, Foreign Assets Control Office, Foreign investments in United States, Penalties, Reporting and recordkeeping requirements, Securities.

31 CFR Part 540

Administrative practice and procedure, Foreign Assets Control Office, Foreign trade, Nicaragua, Penalties, Reporting and recordkeeping requirements.

31 CFR Part 545

Administrative practice and procedure, Banks, Banking, Foreign Assets Control office, Foreign currencies, Gold, Imports, Krugerrands, Penalties, Reporting and recordkeeping requirements, South Africa, United States investments abroad.

31 CFR Part 555

Gold, Imports, Penalties, Reporting and recordkeeping requirements, Treasury Department, Union of Soviet Socialist Republics.

31 CFR Part 565

Administrative practice and procedure, Banks, Banking, Currency, Foreign Assets Control Office, Foreign investments in United States, Panama, Penalties, Reporting and recordkeeping requirements, Securities.

31 CFR Part 570

Administrative practice and procedure, Banks, Banking, Currency, Foreign Assets Control Office, Foreign investments in United States, Foreign trade, Iraq, Kuwait, Penalties, Reporting and recordkeeping requirements, Securities.

31 CFR Part 580

Administrative practice and procedure, Banks, Banking, Currency, Foreign Assets Control Office, Foreign investments in United States, Foreign trade, Haiti, Penalties, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, 31 CFR chapter V is amended by removing parts 520, 540, 545, 555, 565, 570, and 580.

Dated: June 20, 1995

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: June 20, 1995.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 95–15927 Filed 6–23–95; 4:58 pm]

BILLING CODE 4810–25–F

DEPARTMENT OF EDUCATION

34 CFR Part 682

RIN 1840 AC09

Federal Family Education Loan Program

AGENCY: Department of Education.

ACTION: Final regulations—Correction.

On November 30, 1994, and June 15, 1995 the Secretary published in the **Federal Register** final regulations for the Federal Family Education Loan Program (59 FR 61424) and (60 FR 31410). These regulations correct those regulations to read as follows—

1. In the November 30, 1994 regulations (page 61424) under "Effective Date", "682.603" is corrected to read "682.604".

§ 682.603 [Corrected]

2. In the June 15, 1995 regulations, page 31411, item 2, "682.603" is corrected to read "682.604".

FOR FURTHER INFORMATION CONTACT: Pamela Moran, Loans Branch, Division of Policy Development, Policy, Training, and Analysis Service, U.S. Department of Education, 600 Independence Avenue, SW., (Room 3053, ROB–3), Washington, DC 20202–5447. Telephone: (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Dated: June 23, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–15966 Filed 6–28–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

Alaska Federal Subsistence Regional Advisory Council Meetings

AGENCIES: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Notice of meetings.

SUMMARY: This notice informs the public of the Regional Council meetings identified above. The public is invited to attend and observe meeting proceedings. In addition, the public is invited to provide oral testimony before the Councils on the agenda items listed below.

DATES: The Federal Subsistence Board announces the forthcoming public meetings of the Federal Subsistence Regional Advisory Councils (Regional Councils). The Regional Council meetings will be held in the following Alaska locations, and begin at the specified dates and times:

Joint Region 7 (Seward Peninsula) and Region 8 (Northwest Arctic)—Kotzebue, Alaska Technical Center—July 6–7, 1995 at 10:00 a.m.

Region 2 (Southcentral)—Anchorage, July 12, 1995, 8:00 a.m.–12 a.m. Specific location to be determined.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o Richard S. Pospahala, Office of Subsistence Management, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786–3467. For questions related to subsistence management issues on National Forest Service lands, inquiries may also be directed to Ken Thompson, Regional Subsistence Program Manager, USDA, Forest Service, Alaska Region, P.O. Box 21628, Juneau, Alaska 99802–1628; telephone (907) 586–7921.

SUPPLEMENTARY INFORMATION: The following agenda items will be discussed at the respective Regional Council meetings:

Joint Region 7 and Region 8 meeting—Subsistence take of muskox on Federal lands in parts of Units 22 and 23.

Region 2—Proposed customary and traditional use determinations for the Kenai Peninsula and proposed subsistence harvest regulations for the taking of moose on Federal lands in Unit 15.

The Regional Councils have been established in accordance with Section 805 of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and Subsistence Management Regulations for Public Lands in Alaska, subparts A, B, and C (57 FR 22940–22964). The Regional Councils advise the Federal Government on all matters related to the subsistence taking of fish and wildlife on public lands in Alaska and operate in accordance with provisions of the Federal Advisory Committee Act. The identified Regional Council meetings will be open to the public. The public is invited to attend these meetings, observe the proceedings, and provide comments to the Regional Councils.

Dated: June 15, 1995.

Mitch Demientieff,

Chair, Federal Subsistence Board.

[FR Doc. 95–15921 Filed 6–28–95; 8:45 am]

BILLING CODE 3410–11–M; 4310–55–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AK9–1–6975a; FRL–5223–1]

Approval and Promulgation of Implementation Plan for Vehicle Miles Traveled Forecasting and Tracking: Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA today approves the State Implementation Plan (SIP) revision submitted by the State of Alaska for the purpose of forecasting and tracking vehicle miles traveled (VMT) in the Anchorage area. On March 24, 1994, the Alaska Department of Environmental Conservation (ADEC) submitted a SIP revision to EPA to satisfy the requirements of sections 187(a)(2)(A) and 187(a)(3) of the Clean Air Act, as amended in 1990 (CAA).

Section 187(a)(2)(A) requires Moderate and Serious carbon monoxide (CO) non-attainment areas with a design value above 12.7 to submit a SIP revision that contains a forecast of VMT in the non-attainment area for each year before the year in which the SIP projects the National Ambient Air Quality Standard (NAAQS) for CO to be attained. The SIP revision, which was due by November 15, 1992, also requires annual updates of the forecasts and specific contingency measures to be implemented if the annual estimate of actual VMT or a subsequent VMT forecast exceeds the most recent prior forecast of VMT or if the area fails to attain the CO NAAQS by the attainment date.

DATES: This action will be effective on August 28, 1995 unless adverse or critical comments are received by July 31, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, EPA, Air & Radiation Branch (AT–082), 1200 Sixth Avenue, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA, Region 10, Air & Radiation Branch, 1200 Sixth Avenue (AT–082), Seattle, Washington 98101, and ADEC, 410 Willoughby, Suite 105, Juneau, AK 99801–1795.

FOR FURTHER INFORMATION CONTACT: Montel Livingston, Air & Radiation Branch (AT–082), EPA, Seattle, Washington 98101, (206) 553–0180.

SUPPLEMENTARY INFORMATION:

I. Background

Section 187(a)(2)(A) of the Clean Air Act required EPA, in consultation with the U.S. Department of Transportation (DOT), to develop guidance for states to use in complying with the VMT forecasting and tracking provisions of section 187. A Notice of Availability for the resulting *Section 187 VMT Forecasting and Tracking Guidance* was published in the **Federal Register** on March 19, 1992.

The Section 187 Guidance identifies the Federal Highway Administration's Highway Performance Monitoring System (HPMS) as the foundation for VMT estimates and forecasts. HPMS was chosen as the best method for estimating actual VMT since it is a count-based, statistically-based, nationwide program with auditing procedures in place, and since travel demand models would require resource intensive, annual updates of input data and annual validation against traffic counts in order to be useful for estimating annual VMT. EPA believes that these time and resource requirements generally make travel demand models an unrealistic option for estimating actual annual VMT with reasonable accuracy.

To develop growth factors for forecasting VMT, the Section 187 Guidance offers as one alternative the use of network-based travel demand models. If these models are properly updated and validated, and if they use an equilibrium approach to allocating trips, they are considered to be the best predictor of growth factors for VMT forecasts. Moderate areas without a network model that is validated according to the specifications described in the Section 187 Guidance are offered the alternative of developing growth factors based on a linear regression extrapolation of the past six years' HPMS VMT. In both cases, the growth factors are applied to the HPMS VMT reported to the Federal Highway Administration.

As specified in the Act, the contingency measure triggers serve to address as early as possible any situation in which a trend towards higher than expected VMT has been detected, since such a trend may affect the forecasted attainment date.

When determining that actual annual VMT or a VMT forecast has exceeded the most recent prior forecast and, therefore, that contingency measures should be implemented, EPA believes that it is appropriate to take into account the statistical variability in the estimates of VMT generated through HPMS. Consequently, EPA has identified a margin of error to be applied when making VMT comparisons. With the expectation that HPMS sampling procedures will improve over the next few years in response to recent Federal Highway Administration guidance, the margin of error starts at 5.0 percent for VMT comparisons made in 1994, becomes 4.0 percent for VMT comparisons made in

1995, and is reduced to 3.0 percent for VMT comparisons made in 1996 and thereafter. However, since each revised VMT forecast becomes the VMT baseline for triggering contingency measures, the application of a margin of error every year could allow the forecasts to increase without bound, without ever triggering contingencies. To prevent this occurrence, EPA believes it is appropriate to allow the application of the margin of error only as long as, cumulatively, neither an estimate of actual VMT nor a VMT forecast ever exceed by more than 5.0 percent the VMT forecast relied upon in the area's attainment demonstration.

In practice, then, there are two ways in which an estimate of actual VMT or an updated forecast can be found to exceed a prior forecast. Individual yearly comparisons can result in an exceedance of the forecast made 12 months earlier by more than the prescribed percentage for that year, and exceedances can accumulate so that, cumulatively, they exceed the 5.0 percent cap above the attainment demonstration forecast.

EPA interprets the requirement for contingency measures to "take effect without further action by the State or the Administrator" to mean that no further rulemaking activities by the State or EPA would be needed to implement the measures. The *General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990*, published in the **Federal Register** on April 16, 1992, offers guidance on the type and size of contingencies to be included in the SIP revision. This guidance is advisory in nature and is non-binding. (See 57 FR at 13532–33, April 16, 1992.)

The State of Alaska has submitted a SIP revision to EPA in order to satisfy the requirements of sections 187(a)(2)(A) and 187(a)(3). The State submittal provides for each of the following mandatory elements: (1) a forecast of VMT in the non-attainment area for each year prior to the attainment year; (2) a provision for annual updates of the forecasts along with a provision for annual reports describing the extent to which the forecasts proved to be accurate; these reports shall provide estimates of actual VMT in each year for which a forecast was required; (3) adopted and enforceable contingency measures to be implemented without further action by the State or the Administrator if actual annual VMT or an updated forecast exceeds the most recent prior forecast or if the area fails to attain the CO NAAQS by the attainment date.

II. Analysis

The following items are the basis for approval of the SIP revision. The State has met the requirements of sections 187(a)(2)(A) and 187(a)(3) by submitting a SIP revision that implements all required elements.

1. VMT Forecasts

Section 187(a)(2)(A) requires that the State include in its SIP submittal a forecast of VMT in the non-attainment area for each year before the year in which the SIP projects the National Ambient Air Quality Standard for CO to be attained. The forecasts are to be based on guidance developed by EPA in consultation with DOT, i.e., the *Section 187 VMT Forecasting and Tracking Guidance*. To accurately forecast VMT in the Anchorage area, The Municipality of Anchorage and the State Departments of Environmental Conservation and Transportation and Public Facilities used the HPMS. The Central Region portion of the Alaska HPMS database was expanded to contain most of the eligible roads in the Anchorage area, and the HPMS sampling methodology was applied to increase the accuracy of traffic estimates. This procedure resulted in an increase in the number of roads included in the database, and an increase in the number of sample sections on the roads. HPMS provides VMT estimates based on actual traffic counts collected from a representative set of sampling locations. The network-based travel demand modelling process described in *Section 187 VMT Tracking and Forecasting Guidance* was used to project future VMT for calendar years 1993, 1994 and 1995. The MinUPT travel demand model estimated growth in vehicle travel during the forecast period. This model is maintained by the Municipality of Anchorage Department of Economic Development and Planning. Demographic data (population, land use, and employment data) was used as inputs to the model. MinUTP model runs were performed for the base year 1990 and for future year 1995. Runs incorporated a population growth rate of roughly 1.2 percent per year. As a result of the modeling runs, VMT were projected to increase by 13.3 percent over the five-year period, or roughly 2.5 percent per year. VMT during intervening years was estimated from straight-line interpolation. Documentation on the model is contained in the *1985 Anchorage Metropolitan Area Transportation Model Report*. This annual VMT growth rate is more than double the projected increase in population for the same period. The use of a high ratio will provide a conservative estimate of future reductions in emissions and resulting air quality concentrations. A safety margin of 5.5 percent was added to the VMT forecasts. Best estimates of future-year VMT were increased by 5.5 percent. Attainment projections were prepared with this VMT included. For the 1990 base year, model estimates reflect the existing 1990 roadway network and the best available demographic data as inputs, and no safety margin is required.

Below is a table showing the forecasted VMT for Anchorage:

AVERAGE ANNUALIZED DAILY VMT FOR ANCHORAGE

Year	Projected VMT	Safety Margin (percent)	Forecasted VMT
1990	2,854,000	–0–	2,854,000
1993	3,081,530	+5.5	3,249,800
1994	3,157,373	+5.5	3,329,800
1995	3,233,216	+5.5	3,409,700

2. Annual VMT Updates/Reports

Section 187(a)(2)(A) specifies that the SIP revision provide for annual updates of the VMT forecasts and annual reports that describe the accuracy of the forecasts and that provide estimates of actual VMT in each year for which a forecast was required. The *Section 187 VMT Forecasting and Tracking Guidance* specifies that annual reports should be submitted to EPA by September 30 of the year following the year for which the VMT estimate is made.

Annual VMT tracking is done by the Alaska Department of Transportation and Public Facilities using the federally mandated and annually audited HPMS. The 1990 base year VMT estimate was used as a "starting point" for future year VMT projections. The 1990 base year estimate of VMT and the VMT forecasts for future years are summarized in the Anchorage Air Quality Plan for Carbon Monoxide. Two additional reports provide primary support to the estimates contained in the Plan. The first report, *1990 Vehicle Miles of Travel in the Anchorage Bowl*, Alaska Department of Transportation and Public Facilities and the Municipality of Anchorage, February 1992, describes the methods used to generate HPMS estimates of base year VMT. The second report, *Anchorage Metropolitan Area 1990–1995 VMT Forecast Procedures*, July 1992, describes the methods and assumptions used in developing VMT forecasts. Both of these reports are contained in the Appendix to the Air Quality Plan.

In addition, Alaska has committed to meet the annual reporting procedures requirements. The reports will contain annual updates of the VMT forecasts, describe the accuracy of the forecasts, and provide estimates of actual VMT in each year for which a forecast was required. The reports will contain estimates of actual vehicle miles traveled in each year for which the forecast was required. The annual reports will show the comparison of the estimate of actual VMT and the previously forecasted VMT. The reports will show that Anchorage area's actual VMT is well within the forecasted VMT.

3. Contingency Measure

Section 187(a)(3) specifies that the State, in its SIP revision, adopt specific, enforceable contingency measures to be implemented if the annual estimate of actual VMT or a subsequent VMT forecast exceeds the most recent prior forecast of VMT or if the area fails to attain the CO NAAQS by the attainment date. Implementation of the identified contingency measures must not require further rulemaking activities by the State or EPA. Alaska meets this requirement. The contingency measure that will be used by Alaska to satisfy the VMT requirement is the expansion of the oxygenated fuel control area, and the State has amended its regulation 18 AAC 53.015, "Expansion of Control Area," to provide for its implementation, if necessary. This amendment expands the oxygenated fuels' control area for Anchorage to include geographic areas outside of the municipality's boundaries, but within reasonable driving distances of the municipality. At this time, EPA is approving this contingency measure for the purpose of VMT exceedance.

III. Today's Action

In today's action, EPA is approving the SIP revision pertaining to VMT forecast which was submitted by the State of Alaska for the Anchorage area.

The State of Alaska has submitted a SIP revision implementing each of the required elements required by sections 187(a)(2)(A) and 187(a)(3) of the CAA for the Municipality of Anchorage: VMT forecasts, VMT updates/reports, and an enforceable contingency measure. If VMT projections are exceeded by actual VMT in future years, the implementation of the contingency measure will be triggered, together with a revision of the air quality plan, as required by the CAA. EPA is therefore approving this SIP revision.

IV. Administrative Review

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective August 28, 1995 unless, by July 31, 1995, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective August 28, 1995.

The EPA has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993

memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 28, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2), 42 U.S.C. 7607(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the Implementation Plan for the State of Alaska was approved by the Director of the Office of Federal Register on July 1, 1982.

Dated: June 6, 1995.

Chuck Clarke,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart C—Alaska

2. Section 52.70 is amended by adding paragraph (c)(23) to read as follows:

§ 52.70 Identification of plan.

* * * * *

(c) * * *

(23) On March 24, 1994, ADEC submitted a SIP revision to EPA to satisfy the requirements of sections 187(a)(2)(A) and 187(a)(3) of the CAA, forecasting and tracking VMT in the Anchorage area.

(i) Incorporation by reference.

(A) March 24, 1994 letter from the Alaska Governor to the EPA Regional Administrator including as a revision to the SIP the VMT requirement in the Anchorage area, contained in ADEC's State Air Quality Control Plan, Volume III: Appendices, Modifications to Section III.B.6, III.B.8, III.B.10 and III.B.11, adopted January 10, 1994; and further description on pages 10–14, 57–60 and 69–75 contained in ADEC's State Air Quality Control Plan, Volume III: Appendices, Modifications to Section III.B, III.B.1, and III.B.3, adopted January 10, 1994.

[FR Doc. 95–15954 Filed 6–28–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[ME–23–1–6827a; ME–4–1–6848; A–1–FRL–5214–4]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Gasoline Marketing Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maine on July 6, 1994. This revision consists of several regulations which require the implementation of reasonably available control technology (RACT) for controlling volatile organic compound (VOC) emissions from gasoline marketing operations. The intended effect of this action is to approve the gasoline marketing regulations submitted by Maine on July 6, 1994 into the Maine SIP. Some of these regulations are being approved as a direct final action, while others are being approved as a final rulemaking action. This action is being taken in accordance with the Clean Air Act.

DATES: Section 52.1020(c)(35) will become effective July 31, 1995. Section 52.1020(c)(36) and the amendments to §§ 52.1022 and 52.1031 will become effective August 28, 1995, unless notice is received by July 31, 1995 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments on Section 52.1020(c)(36) may be mailed to Susan Studlien, Acting Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, S.W., (LE–131), Washington, D.C. 20460; and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Anne E. Arnold, (617) 565–3166.

SUPPLEMENTARY INFORMATION: On July 11, 1994, EPA received a formal State Implementation Plan (SIP) submittal from the Maine Department of Environmental Protection (DEP) containing the following regulations:

Chapter 100 "Definitions Regulation"
Chapter 112 "Petroleum Liquids Transfer Vapor Recovery"
Chapter 118 "Gasoline Dispensing Facilities Vapor Control"
Chapter 120 "Gasoline Tank Truck Tightness Self-Certification"
Chapter 133 "Petroleum Liquids Transfer Vapor Recovery at Bulk Gasoline Plants"

These regulations had been recently adopted (or amended) pursuant to the requirements of Sections 182(b)(2) and 184(b)(1)(B) of the Clean Air Act (CAA).

Background

Under the pre-amended Clean Air Act, ozone nonattainment areas were required to adopt RACT rules for sources of VOC emissions. EPA issued three sets of control technique guidelines (CTGs) documents, establishing a "presumptive norm" for RACT for various categories of VOC sources. The three sets of CTGs were (1) Group I—issued before January 1978 (15 CTGs); (2) Group II—issued in 1978 (9 CTGs); and (3) Group III—issued in the early 1980's (5 CTGs). Those sources not covered by a CTG were called non-CTG sources. EPA determined that the area's SIP-approved attainment date established which RACT rules the area needed to adopt and implement. Under Section 172(a)(1), ozone nonattainment areas were generally required to attain the ozone standard by December 31, 1982. Those areas that submitted an attainment demonstration projecting attainment by that date were required to adopt RACT for sources covered by the Group I and II CTGs. Those areas that sought an extension of the attainment date under Section 172(a)(2) to as late as December 31, 1987 were required to adopt RACT for all CTG sources and for all major (i.e., 100 ton per year or more of VOC emissions) non-CTG sources.

Under the pre-amended Clean Air Act, portions of Maine were designated as rural nonattainment (i.e., the Metropolitan Portland Intrastate Air Quality Control Region (AQCR) and the Androscoggin Valley Interstate AQCR) and, therefore, were required to adopt

regulations pursuant to the Group I and Group II CTGs for major sources. Based on monitored ozone exceedances in Maine, EPA notified the Governor of Maine on May 25, 1988 and November 8, 1988 that portions of the SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, amendments to the 1977 CAA were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. §§ 7401–7671q. In amended Section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that pre-enactment ozone nonattainment areas that retained their designation of nonattainment and were classified as marginal or above fix their deficient RACT rules for ozone by May 15, 1991. Pursuant to the amended CAA, two counties in Maine were classified as marginal (these two counties constitute one marginal ozone nonattainment area) and seven counties in Maine were classified as moderate (these seven counties constitute three moderate ozone nonattainment areas). 56 FR 56694 (Nov. 6, 1991). In response to the RACT fix-up requirement, Maine submitted revisions to its SIP and EPA approved these revisions on February 3, 1992 and March 22, 1993 (57 FR 3946 and 58 FR 15281).

In addition, Section 182(b)(2) of the amended Act requires States to adopt RACT rules for all areas designated nonattainment for ozone and classified as moderate or above. There are three parts to the Section 182(b)(2) RACT requirement: (1) RACT for sources covered by an existing CTG—i.e., a CTG issued prior to the enactment of the CAAA of 1990; (2) RACT for sources covered by a post-enactment CTG; and (3) all major sources not covered by a CTG, i.e., non-CTG sources. This RACT requirement requires nonattainment areas that previously were exempt from certain RACT requirements to "catch up" to those nonattainment areas that became subject to those requirements during an earlier period. In addition, it requires newly designated ozone nonattainment areas to adopt RACT rules consistent with those for previously designated nonattainment areas. As previously mentioned, the State of Maine contains three moderate ozone nonattainment areas. These areas are thus subject to the Section 182(b)(2) RACT catch-up requirement.

Also, the State of Maine is located in the Northeast Ozone Transport Region (OTR). The entire State is, therefore, subject to Section 184(b) of the amended CAA. Section 184(b) requires that RACT be implemented in the entire state for all VOC sources covered by a CTG issued before or after the enactment of the CAAA of 1990 and for all major VOC sources (defined as 50 tons per year for sources in the OTR).

Since Maine had previously submitted regulations for only bulk gasoline terminals, fixed roof petroleum tanks, and paper coating sources pursuant to the RACT fix-up requirement, in order to meet the RACT catch-up requirement, the State must, therefore, adopt regulations (or affirm that no sources exist) for the remaining 26 CTG categories as well as adopt rules for all major non-CTG sources. (Rules for non-CTG sources are not part of this SIP revision. These rules will addressed in a separate action and, therefore, will not be further discussed in this document.)

In response to the RACT catch-up requirement, on May 14, 1992 and June 12, 1992, Maine submitted negative declarations for 15 CTG categories. Maine then proceeded with the process of adopting regulations to control the remaining CTG categories which included surface coating processes, solvent metal cleaning, graphic arts operations, the use of cutback asphalt, and gasoline marketing operations. On January 13, 1993, Maine submitted a SIP submittal containing regulations for surface coating processes, solvent metal cleaning, graphic arts operations, and the use of cutback asphalt. These regulations were approved into the Maine SIP on June 16, 1994 (59 FR 31154). Maine's gasoline marketing RACT catch-up regulations were not included in the State's January 13, 1993 submittal. On July 6, 1994, Maine submitted a formal SIP revision containing its gasoline marketing regulations. EPA's evaluation of this SIP submittal is summarized below.

EPA's Evaluation of Maine's Submittal

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the Act and EPA regulations, as found in Section 110 and Part D of the Act and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in various EPA policy guidance documents. For the purpose of assisting State and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guidelines (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for RACT for specific source categories. EPA has not yet developed CTGs to cover all sources of VOC emissions. Further interpretations of EPA policy are found in: (1) Those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); (2) the document entitled "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); (3) the existing CTGs; and (4) the "Model Volatile Organic Compound Rules for Reasonably Available Control Technology" issued as a staff working draft in June of 1992. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

The VOC regulations that are included in Maine's July 6, 1994 SIP submittal are briefly summarized below.

Chapter 100: Definitions Regulation

This regulation was amended by adding or revising definitions of the following terms: bulk gasoline plant, gasoline, leak, tank truck, and vapor control system.

Chapter 112: Petroleum Liquids Transfer Vapor Recovery

This regulation requires bulk gasoline terminals which load tank trucks and have a daily throughput of greater than 20,000 gallons to install a vapor control system. This regulation also prohibits bulk terminals from loading gasoline into a tank truck unless the truck has been certified as vapor-tight pursuant to the requirements in Maine's Chapter 120. Chapter 112 was amended to no longer exempt tank trucks with a total capacity of less than or equal to 3500 gallons.

Chapter 118: Gasoline Dispensing Facilities Vapor Control

This regulation requires gasoline dispensing facilities with a throughput of 10,000 gallons or more per month to install and operate a Stage I vapor balance system. Also, all gasoline dispensing facilities, regardless of throughput, must install submerged fill pipes.

Chapter 120: Gasoline Tank Truck Tightness Self-Certification

This regulation requires gasoline tank trucks to undergo annual vapor tightness testing.

Chapter 133: Petroleum Liquids Transfer Vapor Recovery at Bulk Gasoline Plants

This regulation requires bulk gasoline plants with a throughput of 4000 gallons or more per day to install and operate a vapor balance system.

EPA has evaluated Maine's gasoline marketing regulations and has found that they are consistent with EPA model regulations and the following CTG documents: "Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals" (EPA–450/2–77–026); "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems" (EPA–450/2–78–051); "Control of Volatile Organic Emissions from Bulk Gasoline Plants" (EPA–450/2–77–035); and "Hydrocarbon Control Strategies for Gasoline Marketing Operations" (EPA–450/3–78–017). As such, EPA believes that the submitted rules constitute RACT for the applicable sources.

Maine's gasoline marketing regulations and EPA's evaluation are detailed in a memorandum, dated December 29, 1994, entitled "Technical Support Document—Maine—Gasoline Marketing Regulations." Copies of that document are available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

EPA's Previous NPR

Previously, EPA published a notice of proposed rulemaking (NPR) for Maine's Chapter 120 tank truck regulation (57 FR 12791). EPA's NPR proposed approval of Chapter 120 on the condition that Maine address certain outstanding issues prior to final rulemaking. The issues outlined in EPA's NPR and Maine's response are summarized below.

1. The NPR noted that the term "vapor control system" was not used consistently throughout Chapter 120. Chapter 120(3)(B) alternatively used the term "vapor recovery system" which was not defined. The NPR stated that the State should change this term to "vapor control system" or define the term "vapor recovery system." In response to this issue, Maine has revised Chapter 120 so that the term "vapor control system" is used consistently throughout the regulation.

2. The NPR noted that Chapter 120(3)(A)(2) stated that the certification test approval expires June 1 of the year following the test. In some cases, the June 1 date would allow trucks to go longer then 12 months without a test. As stated in the NPR, such a provision is inconsistent with Maine's Chapter 112(3)(A) which requires that the truck has been certified within the last 12 months. The June 1 expiration date is also inconsistent with Chapter 120(4)(B) which requires that a certified tank truck must remain leak-tight for the 12 months following the certification test. For these reasons, EPA's NPR stated that Maine must either amend Chapter 120(3)(A)(2) to read "expires 12 months after the certification test," or the State must change the above referenced sections which are inconsistent with the June 1 expiration date. In response to this issue, Maine has amended Section 3(A)(2) of Chapter 120 to read "expires 12 months after the certification test."

3. Chapter 120(5) requires that the Department be informed at least 24 hours in advance of each certification test. EPA's NPR stated that DEP should require earlier notification of the intent to test, so that the State can have the opportunity to monitor the test. The NPR also noted that EPA's model rules suggest that the State be notified in writing at least 10 days in advance of the test. Maine did not revise Chapter 120 to require earlier notification, however, the revised rule does require that the person conducting the test be registered with the DEP. The State and industry both report that this arrangement is working well. EPA, therefore, considers the testing requirements of Maine's revised Chapter 120 regulation approvable.

4. Finally, EPA's NPR noted that when Maine adopts a bulk gasoline plant regulation, Chapter 120 must be amended to apply to trucks that exclusively service bulk plants. Since the publication of EPA's NPR, Maine has adopted a bulk gasoline plant rule and the State has made the necessary changes to Chapter 120 so that it also applies to tank trucks that exclusively service bulk plants.

As outlined above, Maine has satisfactorily addressed the outstanding issues listed in EPA's previous NPR.

In addition, EPA received two comment letters pursuant to the publication of the Chapter 120 NPR. A summary of the comments received and EPA's response are outlined below.

The Maine Oil Dealers Association (MODA) submitted comments regarding Maine's Chapter 120 certification testing requirements. As previously noted, EPA's NPR stated that Maine should require earlier than 24 hour notification of the intent to test, so that the DEP can have an opportunity to monitor the test. The NPR also noted that EPA's model rules suggest that the State be notified in writing at least 10 days in advance of the test. MODA commented that the 24 hour notice required by Maine's Chapter 120 is adequate notice and that, because of the day to day variations in market demand, it is both unusual and difficult to schedule tank truck testing 10 days in advance.

As previously mentioned, Maine did not revise Chapter 120 to require earlier notification, however, the revised rule included in the State's July 6, 1994 SIP submittal does require that the person conducting the test be registered with the DEP. The State and industry both report that this arrangement is working well. EPA is, therefore, approving the testing requirements of Maine's revised Chapter 120 regulation.

The U.S. Small Business Administration (SBA) also submitted comments pursuant to EPA's NPR. The SBA commented that in EPA's proposal of Maine's Chapter 120 compliance with the Regulatory Flexibility Act was inadequate. SBA noted that, although the NPR stated the proposed action would not have a significant impact on a substantial number of small entities, the notice did not provide an explanation for such a certification. SBA also had expressed similar concerns with **Federal Register** notices prepared by other EPA Regional Offices. In response to SBA's comments, this issue was addressed nationally by EPA's Regional Operations Branch. EPA's justification is addressed fully at the end of this notice. However, the central rationale for the above-mentioned certification is that SIP approvals under Section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, it does not have a significant impact on any small entities affected.

As stated above, Maine has satisfactorily addressed the issues raised in EPA's NPR and comments received pursuant to the NPR have also been addressed. EPA is, therefore, approving Maine's Chapter 120 tank truck tightness regulation as a revision to the Maine SIP.

In addition, as was previously stated, EPA has also evaluated the other gasoline marketing regulations included in Maine's July 6, 1994 SIP submittal and has found that they are consistent with EPA model regulations and the applicable CTG documents. EPA is, therefore, approving Maine's Chapters 100, 112, 118, and 133 without prior proposal because the Agency views these rules as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve these rules should adverse or critical comments be filed. Approval of these rules will be effective August 28, 1995 unless by July 31, 1995 adverse or critical comments are received.

If the EPA receives such comments, approval of Maine's Chapters 100, 112, 118, and 133 will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on August 28, 1995.

Final Action

EPA is approving Maine's Chapter 100 "Definitions Regulation," Chapter 112 "Petroleum Liquids Transfer Vapor Recovery," Chapter 118 "Gasoline Dispensing Facilities Vapor Control," Chapter 120 "Gasoline Tank Truck Tightness Self-Certification," and Chapter 133, "Petroleum Liquids Transfer Vapor Recovery at Bulk Gasoline Plants" as meeting the requirements of Sections 182(b)(2) and 184(b) of the CAA for the following categories of VOC sources: gasoline bulk terminals, gasoline tank trucks, gasoline bulk plants, and gasoline dispensing facilities. EPA is also revising a section of the code, Section 52.1022, that is outdated due to the enactment of the CAAA of 1990.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under Section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410 (a)(2).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to the State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 28, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, and Ozone.

Note: Incorporation by reference of the State Implementation Plan for the State of Maine was approved by the Director of the Federal Register on July 1, 1982.

Dated: May 19, 1995.

John P. DeVillars,

Regional Administrator, Region I.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q

Subpart U—Maine

2. Section 52.1020 is amended by adding paragraphs (c)(35) and (c)(36) to read as follows:

§ 52.1020 Identification of plan.

* * * * *

(c) * * *

(35) Revisions to the State Implementation Plan submitted by the Maine Department of Environmental Protection on June 3, 1991, November 25, 1991, and July 6, 1994.

(i) Incorporation by reference.

(A) Letters from the Maine Department of Environmental Protection dated June 3, 1991, November 25, 1991, and July 6, 1994 submitting a revision to the Maine State Implementation Plan.

(B) Chapter 120 of the Maine Department of Environmental Protection Regulations, "Gasoline Tank Truck Tightness Self-Certification," effective in the State of Maine on July 11, 1994.

(ii) Additional materials.

(A) Nonregulatory portions of the submittal.

(36) Revisions to the State Implementation Plan submitted by the Maine Department of Environmental Protection on July 6, 1994.

(i) Incorporation by reference.

(A) Letter from the Maine Department of Environmental Protection dated July 6, 1994 submitting a revision to the Maine State Implementation Plan.

(B) Chapter 100 of the Maine Department of Environmental Protection Regulations, "Definitions," effective in the State of Maine on July 11, 1994, with the exception of the definitions of the following terms: "curtailment," "federally enforceable," "major modification," " major source," "nonattainment pollutant," "shutdown," "significant emissions," and "significant emissions increase."

(C) Chapter 112 of the Maine Department of Environmental Protection Regulations, "Petroleum Liquids Transfer Vapor Recovery," effective in the State of Maine on July 11, 1994.

(D) Chapter 118 of the Maine Department of Environmental Protection Regulations, "Gasoline Dispensing Facilities Vapor Control," effective in the State of Maine on July 11, 1994.

(E) Chapter 133 of the Maine Department of Environmental Protection Regulations, "Petroleum Liquids Transfer Vapor Recovery at Bulk Gasoline Plants," effective in the State of Maine on July 11, 1994.

(ii) Additional materials.

(A) Nonregulatory portions of the submittal.

§ 52.1022 [Amended]

3. Section 52.1022 is amended by removing all of the text in this section, with the exception of the first sentence.

4. In § 52.1031, Table 52.1031 is amended by adding new entries to existing state citations for Chapter 100 and Chapter 112 and by adding new state citations for Chapter 118, Chapter 120 and Chapter 133 to read as follows:

§ 52.1031 EPA-Approved Maine Regulations.

* * * * *

TABLE 52.1031.—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/Subject	Date adopted by State	Date approved by EPA	Federal Register citation	52.1020	
.	.	.	.	.	.	.
100	Definitions	6/22/94	June 29, 1995.	[Insert *FR* citation from published date].	36	Gasoline marketing definitions added
.	.	.	.	.	.	.
112	Petroleum liquids transfer recover.	6/22/94	June 29, 1995.	[Insert *FR* citation from published date].	36	Deleted exemption for tank trucks less than 3500 gallons
.	.	.	.	.	.	.
118	Gasoline Dispensing Facilities.	6/22/94	June 29, 1995.	[Insert *FR* citation from published date.	36	
.	.	.	.	.	.	.
120	Gasoline Tank Trucks	6/22/94	June 29, 1995.	[Insert *FR* citation from published date].	35	
.	.	.	.	.	.	.
133	Gasoline Bulk Plants	6/22/94	June 29, 1995.	[Insert *FR* citation from published date].	36	

[FR Doc. 95–15957 Filed 6–28–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[WA–29–1–6724, WA–30–1–6725, WA–31–1–6853, WA–37–1–6952; FRL–5218–2]

Approval and Promulgation of Implementation Plans: Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to procedures described at 54 FR 2214 (January 19, 1989), EPA has recently approved a number of minor State implementation plan (SIP) revisions submitted by the Washington Department of Ecology (WDOE), namely local air pollution control agency regulations from Puget Sound Air Pollution Control Agency (PSAPCA) and a recodification of WDOE's SIP table of contents. This document lists the revisions EPA has approved and incorporates the relevant material into the Code of Federal Regulations.

EFFECTIVE DATE: June 29, 1995.

ADDRESSES: Copies of the State SIP revision requests and EPA's letter notices of approval are available for public inspection during normal business hours at the following locations: EPA, Region 10, Air and Radiation Branch, Docket #WA–29–1–6724, WA–30–1–6725, WA–31–1–6853, WA–37–1–6952), 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION: Montel Livingston, Air & Radiation Branch (AT–082), EPA, Seattle, Washington 98101, (206) 553–0180.

SUPPLEMENTARY INFORMATION: EPA Region 10 has approved the following minor SIP revision requests under section 110(a) of the Clean Air Act (Act):

State	Subject matter	Date of submission	Date of approval
WA	Various revised amendments to SIP affecting PSAPCA's regulations I, II, and III. Updates amendments to be consistent with the federal air quality standards, repeals unused definitions, adds new definitions, clarifies applicability of requirements, etc.	5–9–94	11–16–94
WA	Various revised amendments to SIP affecting PSAPCA's regulations I, II, and III. Same reasons as above.	6–2–94	11–16–94
WA	Various revised amendments to SIP affecting PSAPCA's regulations I, II, and III. Same reasons as above.	12–13–94	1–11–95
WA	Recodification of SIP Table of Contents	2–6–95	3–27–95

EPA has determined that each of these SIP revisions complies with all applicable requirements of the Act and EPA policy and regulations concerning such revisions. Due to the minor nature of these revisions, EPA concluded that conducting notice-and-comment rulemaking prior to approving the revisions would have been "unnecessary and contrary to the public interest," and hence, was not required by the Administrative Procedure Act, 5 U.S.C. section 553(b). Each of these SIP approvals became final and effective on the date of EPA approval as listed in the chart above.

The Office of Management and Budget has exempted all SIP approvals from the requirements of section 3 of Executive Order 12866.

Under 5 U.S.C. 605(b), I certify that these SIP revisions will not have a significant impact on a substantial number of small entities. See 46 FR 8709.

Under section 307(b)(1) of the Act, as amended, judicial review of this action is available only by filing a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of this publication date. These actions may not be challenged later in proceedings to enforce their requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements:

Note: Incorporation by reference of the Implementation Plan for the State of Washington was approved by the Director of the Office of Federal Register on July 1, 1982.

Dated: May 16, 1995.

Chuck Clarke,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart WW—Washington

2. Section 52.2470 is amended by adding paragraph (c) (53) to read as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

(53) Various minor revisions consisting of amended regulations affecting a local air agency, the Puget Sound Air Pollution Control Agency, and a recodified Table of Contents for the SIP were submitted to EPA from WDOE for inclusion into the Washington SIP.

(i) Incorporation by reference.

(A) Letters dated April 28, May 25, and December 5, 1994 from the Director of the Washington State Department of Ecology to the EPA Regional Administrator submitting minor revisions to PSAPCA's regulations for inclusion into the SIP: Puget Sound Air Pollution Control Agency, Regulations I, II, and III, adopted on May 4, 1994; Puget Sound Air Pollution Control Agency, Regulations I, II, and III, adopted on May 25, 1994; and Puget Sound Air Pollution Control Agency, Regulations I, II, and III, adopted on December 8, 1994.

(B) Letter dated January 26, 1995 from the Director of the Washington State Department of Ecology to the EPA Regional Administrator submitting the Recodified SIP Table of Contents, dated January 1995, and adopted on February 1, 1995.

* * * * *

3. Section 52.2479 is revised to read as follows:

§ 52.2479 Contents of the federally approved, state submitted implementation plan.

The following sections of the state and local regulations and documents for the Washington State Implementation Plan for Air Quality, for compliance with requirements of the Federal Clean Air Act, have been approved by the U.S. Environmental Protection Agency (EPA), and are part of the current federally-approved, implementation plan.

WASHINGTON STATE IMPLEMENTATION PLAN FOR AIR QUALITY STATE AND LOCAL REQUIREMENTS TABLE OF CONTENTS

Section 1—General [Dates in brackets indicate EPA approval date]

1.2 Energy Facilities Site Evaluation Council (EFSEC) Memorandum of Agreement [02/23/82]
1.3 Air Quality Monitoring, Data Reporting and Surveillance Provisions [04/15/81]
1.4 Maintenance of Pay Provision [08/14/81]

Section 2—State Regulations and Statutes [Dates in brackets indicate date state adopted]

2.2 Department of Ecology Regulations

2.2.400	WAC 173–400	General Regulation for Air Pollution Sources
	173–400–010	Policy and purpose [08/20/93]
	173–400–020	Applicability [08/20/93]
	173–400–030	Definitions [08/20/93]
	173–400–040	General standards for maximum emissions [08/20/93, except for sections (1)(c), (1)(d), (2), (4), and the second paragraph of (6)]
	173–400–050	Emission standards for combustion and incineration units [08/20/93 except for the exception provision in section (3)]
	173–400–060	Emission standards for general process units [08/20/93]
	173–400–070	Emission standards for certain source categories [08/20/93, except for section (7)]
	173–400–081	Startup and shutdown [08/20/93]
	173–400–091	Voluntary limits on emissions [08/20/93]
	173–400–100	Registration [08/20/93]
	173–400–105	Records, monitoring, and reporting [08/20/93]
	173–400–107	Excess Emissions [08/20/93]
	173–400–110	New source review (NSR) [08/20/93]
	173–400–112	Requirements for new souces in nonattainment areas [08/20/93, except for section (8)]
	173–400–113	Requirements for new sources in attainment or unclassifiable areas [08/20/93, except for section (5)]
	173–400–151	Retrofit requirements for visibility protection [08/20/93]
	173–400–161	Compliance schedules [08/20/93]
	173–400–171	Public involvement [08/20/93]
	173–400–190	Requirements for nonattainment areas [08/20/93]
	173–400–200	Creditable stack height and dispersion techniques [08/20/93]
	173–400–205	Adjustment for atmospheric conditions [08/20/93]

WASHINGTON STATE IMPLEMENTATION PLAN FOR AIR QUALITY STATE AND LOCAL REQUIREMENTS TABLE OF CONTENTS—Continued

	173–400–210	Emission requirements of prior jurisdictions [08/20/93]
	173–400–220	Requirements for board members [08/20/93]
	173–400–230	Regulatory actions [08/20/93]
	173–400–240	Criminal penalties [08/20/93]
	173–400–250	Appeals [08/20/93]
	173–400–260	Conflict of interest [08/20/93]
2.2.402	WAC 173–402	Civil Sanctions under Washington Clean Air Act
	173–402–010	Prior regulations [06/24/80]
	173–402–020	Subsequent regulations [06/24/80]
2.2.405	WAC 173–405	Kraft Pulp Mills
	173–405–012	Statement of purpose [02/19/91]
	173–405–021	Definitions [02/19/91]
	173–405–040	Emission standards [02/19/91 except for sections (1)(b), (1)(c), (3)(b), (3)(c), (4), (7), (8), and (9)]
	173–405–045	Creditable stack height and dispersion techniques [02/19/91]
	173–405–061	More restrictive emission standards [02/19/91]
	173–405–072	Monitoring requirements [02/19/91 except section (2)]
	173–405–077	Report of startup, shutdown, breakdown or upset conditions [02/19/91]
	173–405–078	Emission inventory [02/19/91]
	173–405–086	New source review (NSR) [02/19/91]
	173–405–087	Prevention of significant deterioration (PSD) [02/19/91]
	173–405–091	Special studies [02/19/91]
2.2.410	WAC 173–410	Sulfite Pulping Mills
	173–410–012	Statement of purpose [02/19/91]
	173–410–021	Definitions [02/19/91]
	173–410–040	Emission standards [02/19/91 except sections (3) and (5)]
	173–410–045	Creditable stack height and dispersion techniques [02/19/91]
	173–410–062	Monitoring requirements [02/19/91]
	173–410–067	Report of startup, shutdown, breakdown or upset conditions [02/19/91]
	173–410–071	Emission inventory [02/19/91]
	173–410–086	New source review (NSR) [02/19/91]
	173–410–087	Prevention of significant deterioration (PSD) [02/19/91]
	173–410–100	Special studies [02/19/91]
2.2.415	WAC 173–415	Primary Aluminum Plants
	173–415–010	Statement of purpose [02/19/91]
	173–415–020	Definitions [[02/19/91 except sections (1) and (2)]
	173–415–030	Emission standards [02/19/91 except section (3)(b)]
	173–415–045	Creditable stack height and dispersion techniques [02/19/91]
	173–415–050	New source review (NSR) [02/19/91]
	173–415–051	Prevention of significant deterioration (PSD) [02/19/91]
	173–415–060	Monitoring and reporting [02/19/91 except sections (1)(a)(b)(d)]
	173–415–070	Report of startup, shutdown, breakdown or upset conditions [02/19/91]
	173–415–080	Emission inventory [02/19/91]
2.2.422	WAC 173–422	Motor Vehicle Emission Inspection
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40 CFR Part 52

[OH87–1–7075a; FRL–5227–1]

Determination of Attainment of the Ozone Standard by the Cleveland, Toledo, Dayton and the Cincinnati-Hamilton Interstate Ozone Nonattainment Areas and Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: The USEPA is determining, through direct final procedure, that the Cleveland ozone nonattainment area (which includes the Counties of Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage and Summit); Toledo (which includes the Counties of Lucas and Wood); Dayton (which includes the Counties of Clark, Greene, Miami, and Montgomery); and the Ohio portion of the Cincinnati-Hamilton Interstate (which includes the Counties of Butler, Clermont, Hamilton and Warren) ozone nonattainment areas have attained the National Ambient Air Quality Standard (NAAQS) for ozone. This determination is based upon three years of complete, quality-assured, ambient air monitoring data for the 1992 to 1994 ozone seasons that demonstrate that the ozone NAAQS has been attained in each of these areas. On the basis of this determination, USEPA is also determining that certain reasonable-further-progress (RFP) and attainment demonstration requirements, along with certain other related requirements, of Part D of Title 1 of the Clean Air Act are not applicable to the Cleveland, Toledo, Dayton and Cincinnati areas for so long as these areas continue to attain the ozone NAAQS. In the proposed rules section of this **Federal Register**, USEPA is proposing these determinations and soliciting public comment on them. If adverse comments are received on this direct final rule, USEPA will withdraw this final rule and address these comments in a final rule on the related proposed rule which is being published in the proposed rules section of this **Federal Register**.

DATES: This action will be effective on August 14, 1995 unless notice is received by July 31, 1995 that any person wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: A copy of the air quality data and USEPA's analysis are available for inspection at the following location (it is recommended that you contact Richard Schleyer at (312) 353–5089 before visiting the Region 5 office): United States Environmental Protection Agency, Region 5, Air Enforcement Branch, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Written comments can be mailed to: William MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE–17J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Richard Schleyer, Regulation Development Section, Air Enforcement Branch (AE–17J), Region 5, United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604, (312) 353–5089.

SUPPLEMENTARY INFORMATION:

I. Background

Subpart 2 of Part D of Title I of the Clean Air Act (Act) contains various air quality planning and state implementation plan (SIP) submission requirements for ozone nonattainment areas. The USEPA believes it is reasonable to interpret provisions regarding RFP and attainment demonstrations, along with certain other related provisions, so as not to require SIP submissions if an ozone nonattainment area subject to those requirements is monitoring attainment of the ozone standard (i.e., attainment of the NAAQS demonstrated with three consecutive years of complete, quality-assured, air quality monitoring data). As described below, USEPA has previously interpreted the general provisions of subpart 1 of part D of Title I (Sections 171 and 172) so as not to require the submission of SIP revisions concerning RFP, attainment demonstrations, or contingency measures. As explained in a memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, entitled "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," dated May 10, 1995, USEPA believes it is appropriate to interpret the more specific RFP, attainment demonstration and related provisions of subpart 2 in the same manner.

First, with respect to RFP, Section 171(1) of the Act states that, for purposes of part D of Title I, RFP "means such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date." Thus, whether dealing with the general RFP requirement of Section 172(c)(2), or the more specific RFP requirements of subpart 2 for classified ozone nonattainment areas (such as the 15 percent plan requirement of section 182(b)(1)), the stated purpose of RFP is to ensure attainment by the applicable attainment date.[1] If an area has in fact attained the standard, the stated purpose of the RFP requirement will have already been fulfilled and USEPA does not believe that the area need submit revisions providing for the further emission reductions described in the RFP provisions of Section 182(b)(1).

The USEPA notes that it took this view with respect to the general RFP requirement of Section 172(c)(2) in the General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990 (57 FR 13498 (April 16, 1992)), and it is now extending that interpretation to the specific provisions of subpart 2. In the General Preamble, USEPA stated, in the context of a discussion of the requirements applicable to the evaluation of requests to redesignate nonattainment areas to attainment, that the "requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point." (57 FR at 13564)[2]

Second, with respect to the attainment demonstration requirements of Section 182(b)(1), an analogous rationale leads to the same result. Section 182(b)(1) requires that the plan provide for "such specific annual reductions in emissions * * * as necessary to attain the national primary ambient air quality standard by the attainment date applicable under this Act." As with the RFP requirements, if an area has in fact monitored attainment of the standard, USEPA believes there is no need for an area to make a further submission containing additional measures to achieve attainment. This is also consistent with the interpretation of certain Section 172(c) requirements provided by USEPA in the General Preamble to Title I. As USEPA stated in the Preamble, no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since "attainment will have been reached." (57 FR at 13564; *see also* September 1992 Calcagni memorandum at page 6) Upon attainment of the NAAQS, the focus of state planning efforts shifts to the maintenance of the NAAQS and the development of a maintenance plan under Section 175A.

Similar reasoning applies to other related provisions of subpart 2. The first of these are the contingency measure requirements of Section 172(c)(9) of the Act. The USEPA has previously interpreted the contingency measure requirement of Section 172(c)(9) as no longer being applicable once an area has attained the standard since those "contingency measures are directed at ensuring RFP and attainment by the applicable date." (57 FR at 13564; *see also* September 1992 Calcagni memorandum at page 6)

The USEPA emphasizes that the lack of a requirement to submit the SIP revisions discussed above exists only for as long as an area designated nonattainment continues to attain the standard. If USEPA subsequently determines that such an area has violated the NAAQS, the basis for the determination that the area need not make the pertinent SIP revisions would no longer exist. The USEPA would notify the State of that determination and would also provide notice to the public in the **Federal Register**. Such a determination would mean that the area would have to address the pertinent SIP requirements within a reasonable amount of time, which USEPA would establish taking into account the individual circumstances surrounding the particular SIP submissions at issue. Thus, a determination that an area need not submit one of the SIP submittals amounts to no more than a suspension of the requirement for so long as the area continues to attain the standard.

The State must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR Part 58, to verify the attainment status of the area. The air quality data relied upon to determine that the area is attaining the ozone standard must be consistent with 40 CFR Part 58 requirements and other relevant USEPA guidance and recorded in USEPA's—Aerometric Information Retrieval System (AIRS).

These determinations that are being made with this **Federal Register** notice are not equivalent to the redesignation of the area to attainment. Attainment of the ozone NAAQS is only one of the criteria set forth in section 107(d)(3)(E) that must be satisfied for an area to be redesignated to attainment. To be redesignated the state must submit and receive full approval of a redesignation request for the area that satisfies all of the criteria of that section, including the requirement of a demonstration that the improvement in the area's air quality is due to permanent and enforceable reductions and the requirements that the area have a fully approved SIP meeting all of the applicable requirements under section 110 and Part D and a fully approved maintenance plan. Please note that redesignation requests have been submitted for the Cleveland, Toledo, Dayton and Cincinnati areas. These redesignation requests are being evaluated in separate rulemaking actions.

Furthermore, the determinations made in this notice do not shield an area from future USEPA action to require emissions reductions from sources in the area where there is evidence, such as photochemical grid modeling, showing that emissions from sources in the area contribute significantly to nonattainment in, or interfere with maintenance by, any other States with respect to the NAAQS (see section 110(a)(2)(D)). The USEPA has authority under sections 110(a)(2)(A) and 110(a)(2)(D) of the Act to require such emission reductions if necessary and appropriate to deal with transport situations.

Analysis of Air Quality Data

The USEPA has reviewed the ambient air monitoring data for ozone (consistent with the requirements contained in 40 CFR Part 58 and recorded in AIRS) for

[1] USEPA notes that paragraph (1) of subsection 182(b) is entitled "PLAN PROVISIONS FOR REASONABLE FURTHER PROGRESS" and that subparagraph (B) of paragraph 182(c)(2) is entitled "REASONABLE FURTHER PROGRESS DEMONSTRATION," thereby making it clear that both the 15 percent plan requirement of section 182(b)(1) and the 3 percent per year requirement of section 182(c)(2) are specific varieties of RFP requirements.

[2] *See also* "Procedures for Processing Requests to Redesignate Areas to Attainment," from John Calcagni, Director, Air Quality Management Division, to Regional Air Division Directors, September 4, 1992, at page 6 (stating that the "requirements for reasonable further progress * * * will not apply for redesignations because they only have meaning for areas not attaining the standard") (hereinafter referred to as "September 1992 Calcagni memorandum").

the Cleveland, Toledo, Dayton, and Cincinnati ozone nonattainment areas in the State of Ohio from the 1992 through 1994 ozone seasons.[3] The following ozone exceedances were recorded for the period from 1992 to 1994 (the average number of expected exceedances for this three year period are also presented):

Cleveland: Medina County, 6364 Deerview Lane (1994) - 0.127 ppm; average expected exceedances: 0.5 (based only on two years of monitoring data). Cuyahoga County, 891 E. 152 St. (1993) - 0.126 ppm, (1994) 0.127 ppm and 0.125 ppm; average expected exceedances: 1.0.

Cincinnati-Hamilton Interstate Area: Ohio Portion: Butler County, Schuler and Bend (1993) - 0.131 ppm; average expected exceedances: 0.3. Hook Field Municipal (1993) - 0.138 ppm; average expected exceedances: 0.3. Clermont County, 389 Main St. (1994) - 0.128 ppm; average expected exceedances: 0.3. Warren County, Southeast St. (1994) - 0.139 ppm and 0.128 ppm; average expected exceedances: 0.7.

Kentucky Portion: Campbell County, 9th and Maple (1993) - 0.126 ppm; average expected exceedances: 0.3.

Toledo: Lucas County, 306 N. Yondota (1993) 0.126 ppm, (1994) 0.142 ppm; average expected exceedances: 0.7. Friendship Park (1993) 0.126 ppm; average expected exceedances: 0.3.

Dayton: Clark County, 5171 Urbana Road (1994) 0.125 ppm; average expected exceedances: 0.5. Montgomery County, 2100 Timberlane (1993) 0.125 ppm; average expected exceedances: 0.3.

On the basis of this review, USEPA has concluded that these areas have attained the ozone standard during the 1992–94 period and continues to attain the standard at this time.

15% Plan/Attainment Demonstration Submittal Status

On March 14, 1994, the State of Ohio submitted revisions to the ozone portion of the Ohio SIP which included fifteen percent rate of progress plans for the Toledo, Dayton, Cleveland and Cincinnati ozone nonattainment areas. These fifteen percent plans were deemed complete by USEPA on August 8, 1994. Also included in this SIP revision were attainment demonstrations for the Toledo, Dayton and Cleveland ozone nonattainment areas. These attainment demonstrations were deemed complete on September 14, 1994. Upon the effective date of this determination, the State may withdraw these SIP revisions.

If Ohio withdraws the submitted 15 percent plan or attainment demonstration for Cleveland and Cincinnati areas through the submission of a letter from the Governor or his or her designee, the motor vehicle emissions budget test would no longer apply for conformity purposes in that area[4]. The build/no-build and less than-1990 test would apply until a maintenance plan is approved. This is because the area would not be subject to the 15 percent and attainment demonstration requirements of section 182(b)(1) for so long as the area continues to attain the standard. If the submitted SIP is not withdrawn, the budget in that submission will continue to apply for conformity purposes.

However, areas that are already demonstrating conformity to a submitted maintenance plan pursuant to section 51.448(i) (Toledo and Dayton) may continue to do so, or may elect to withdraw the applicability of the submitted maintenance plan budget for conformity purposes until the maintenance plan is approved. If the applicability of the submitted maintenance plan budget is withdrawn for conformity purposes, the build/no-build and less-than 1990 tests will apply until the maintenance plan is approved.

Conclusion

The USEPA has determined that the Cleveland (which includes the Counties of Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage and Summit); Toledo (which includes the Counties of Lucas and Wood); Dayton (which includes the counties of Clark, Greene, Miami and Montgomery); and the Ohio portion of the Cincinnati-Hamilton interstate (which includes the Counties of Butler, Clermont, Hamilton and Warren) ozone nonattainment areas have attained the ozone standard and continue to attain the standard at this time.

As a consequence of this determination that the Cleveland, Toledo, Dayton and Cincinnati ozone nonattainment areas have attained the ozone standard, the requirements of section 182(b)(1) concerning the submission of the 15 percent plan and ozone attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures will not be applicable to the area so long as the area does not violate the ozone standard.

It should be emphasized that these determinations are contingent upon the continued monitoring and continued attainment and maintenance of the ozone NAAQS in the affected area. If a violation of the ozone NAAQS is monitored in the Cleveland, Toledo, Dayton and Cincinnati ozone nonattainment areas (consistent with the requirements contained in 40 CFR part 58 and recorded in AIRS), USEPA will provide notice to the public in the **Federal Register**. Such a violation would mean that the area(s) would thereafter have to address the requirements of section 182(b)(1) and 172(c)(9) since the basis for the determination that they do not apply would no longer exist.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action will become effective on August 14, 1995. However, if USEPA receives adverse comments by July 31, 1995, then USEPA will publish a document that withdraws the action, and will address those comments in the final rule on the requested redesignation and SIP revision which has been proposed for approval in the proposed rules section of this **Federal Register**.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. Today's determination does not create any new requirements, but allows suspension of the indicated requirements. Therefore, because the approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Under Sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, USEPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

The USEPA's final action does not impose any Federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act, upon the State. No additional costs to State, local, or tribal governments, or to the private sector, result from this action, which suspends the indicated requirements. Thus, USEPA has determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 14, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 14, 1995.

David A. Kee,

Acting Regional Administrator.

Part 52, chapter 1, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart KK—Ohio

2. Section 52.1885 is amended by adding new paragraph (w) to read as follows:

§ 52.1885 Control Strategy: Ozone.

* * * * *

(w) Determination—USEPA is determining that, as of May 31, 1995, the Cleveland (which includes the Counties of Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage and Summit); Toledo (which includes the Counties of Lucas and Wood); Dayton (which includes the Counties of Clark, Greene, Miami and Montgomery); and the Ohio portion of the Cincinnati-Hamilton Interstate (which includes the Counties of Butler, Clermont, Hamilton and Warren) ozone nonattainment areas have attained the ozone standard and that the reasonable further progress and attainment demonstration requirements of Section 182(b)(1) and related requirements of Section 172(c)(9) of the Clean Air Act do not apply to the area for so long as the area does not monitor any violations of the ozone standard. If a violation of the ozone NAAQS is monitored in the Cleveland, Toledo, Dayton or Cincinnati-Hamilton Interstate (ambient air monitoring data shall be reviewed for all monitors located in the interstate nonattainment area which includes the State of Kentucky Counties of Boone, Campbell, and Kenton) ozone nonattainment area(s), this determination(s) shall no longer apply.

[FR Doc. 95–15959 Filed 6–28–95; 8:45 am]

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[3] The Cincinnati-Hamilton Interstate Area includes the following counties in Ohio: Butler, Clermont, Hamilton and Warren; and the following counties in Kentucky: Boone, Campbell and Kenton. If a violation were monitored in the Kentucky portion of the interstate area (or the Ohio portion of the Interstate area) these nonattainment area provisions would then be applicable.

[4] For Toledo and Dayton, the Ohio Department of Transportation and metropolitan planning organizations demonstrated conformity to the 15 percent plan and attainment demonstration motor vehicle emissions budgets for illustrative purposes in 1994. The USEPA provided written guidance to the Ohio Department of Transportation and the Ohio Environmental Protection Agency that the submitted maintenance plans for Toledo and Dayton were to be used in lieu of the 15 percent plans and attainment demonstrations in letters dated July 1, 1994, and May 9, 1995. Ohio may withdraw the 15 percent plan and attainment demonstrations submitted for the Dayton and Toledo areas. This will not affect USEPA's interpretation of the applicability of these SIPs for conformity purposes.

40 CFR Part 52

[UT20–3–6773a; FRL–5212–4]

Approval and Promulgation of Air Quality Implementation Plans; Utah; 1990 Base Year Carbon Monoxide Emission Inventories for Utah

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the 1990 base year carbon monoxide (CO) emission inventories for Ogden City, Salt Lake City, and Utah County (which includes Provo-Orem) that were submitted by the State to satisfy certain requirements of the Clean Air Act (CAA), as amended in 1990.

DATES: This final rule will be effective August 28, 1995, unless adverse or critical comments are received by July 31, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: Douglas M. Skie, Chief, Air Programs Branch (8ART–AP), United States Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

Copies of the documents relevant to this action are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday at the following office: United States Environmental Protection Agency, Region 8, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air Programs Branch (8ART–AP), United States Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, (303) 293–1814.

SUPPLEMENTARY INFORMATION: Section 110(a)(2)(H)(i) of the CAA provides the State the opportunity to update its State Implementation Plan (SIP) as needed or to address new statutory requirements. The State is utilizing this authority to include the Ogden City, Salt Lake City, and Utah County 1990 base year CO emission inventories as part of the SIP.

I. Background

As required by the CAA, States have the responsibility to inventory emissions contributing to NAAQS nonattainment, to track these emissions over time, and to ensure that control strategies are being implemented that reduce emissions and move areas toward attainment. The CAA (section 187(a)(1)) required CO nonattainment areas classified as moderate or serious to submit a 1990 base year CO inventory

that represents actual emissions, that occurred in the CO season, by November 15, 1992. This requirement applies to Ogden City and Utah County. In addition, moderate CO nonattainment areas with a design value of 12.7 ppm CO or more were required to submit a plan by November 15, 1992, that demonstrates attainment of the CO NAAQS by December 31, 1995. "Not Classified" CO nonattainment areas, such as Salt Lake City, were required to submit a 1990 base year emission inventory by November 15, 1993 (refer to the General Preamble to Title I of the CAA, 57 FR 13529, dated April 16, 1992, and 57 FR 18070, dated April 28, 1992).

To prepare the attainment demonstration for CO nonattainment areas classified as moderate or serious, a 1990 base year and projected modeling inventories are needed. The 1990 base year inventory is the primary inventory from which the periodic and modeling inventories are derived. Further information on these inventories and their purpose can be found in the document "Emission Inventory Requirements for Carbon Monoxide State Implementation Plans," U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, dated March, 1991.

The air quality planning requirements for CO nonattainment areas are set out in sections 187(a)(1), (a)(5), (a)(7), and 187(d)(1) of Title I of the CAA. EPA previously issued a General Preamble describing EPA's preliminary views on how EPA intended to review SIP revisions submitted under Title I of the CAA, including requirements for the preparation of the 1990 base year inventory (refer to 57 FR 13529, dated April 16, 1992, and 57 FR 18070, dated April 28, 1992). Because EPA is describing its interpretations in this action only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in this action and the supporting rationale.

Those States containing moderate and serious carbon monoxide nonattainment areas were required under Section 182(a)(1) of the CAA to submit by November 15, 1992, a comprehensive, accurate, and current inventory of actual CO season emissions from all sources for each nonattainment area (also, refer to 57 FR 13530, dated April 16, 1992). Classified" CO nonattainment areas were required to submit their inventories by November 15, 1993 (refer to 57 FR 13535, dated April 16, 1992). Stationary point, stationary area, on-road mobile, and non-road mobile sources of carbon monoxide (CO) were to be included in each inventory. This inventory was for calendar year 1990 and was denoted as the base year inventory. The inventory was to address actual CO emissions for the area during the peak CO season. The peak CO season should reflect the months when peak CO air quality concentrations occur. For areas where winter is the peak CO season, as is the case for Ogden City, Salt Lake City, and Utah County, the 1990 base year inventory included the period December 1989 through February 1990. Available guidance for preparing emission inventories was provided in the General Preamble (refer to 57 FR 13498, dated April 16, 1992).

II. Analysis of the State's Submittal

Section 110(k) of the Act sets out provisions governing EPA's review of CO 1990 base year emission inventory submittals in order to determine approval or disapproval for the requirements of section 187(a)(1) and section 172(c) (also, refer to 57 FR 13565–66, April 16, 1992). EPA is approving the CO 1990 base year emission inventories for Ogden City, Salt Lake City, and Utah County, Utah as submitted to EPA in a letter July 11, 1994, based on EPA's Level I, II, and III review findings. The following describes the review procedures associated with determining the acceptability of a 1990 base year emission inventory and discusses the levels of acceptance or disapproval that can result from the findings of the review process.

A. Procedural Background

The CAA requires States to observe certain procedural requirements in developing SIP revisions for submittal to EPA. Section 110(a)(2) of the CAA provides that each SIP revision (including emission inventories) be adopted after going through a reasonable notice and public hearing process prior to being submitted by a State to EPA.[1] CO nonattainment areas with design values greater than 12.7 ppm were required to submit the entire SIP revision (1990 base year emissions inventory, attainment demonstration, and control strategies) by November 15, 1992 (i.e., Utah County). CO areas with design values of 12.7 ppm and below were required to submit a 1990 base year emissions inventory by November 15, 1992 (i.e., Ogden City). "Not Classified" CO nonattainment areas (i.e., Salt Lake City) were required to submit a 1990 base year emissions inventory by November 15, 1993 (refer to section 107(d)(1)(C) and section 172(c) of the CAA, 56 FR 56694, and the interpretation at 57 FR 13535).[2]

The State of Utah held a public hearing on May 5, 1994, for the entire CO SIP revision which also contained the 1990 base year emission inventories for Ogden City, Salt Lake City, and Utah County. The CO SIP revision (including the inventories) was adopted by the State on July 1, 1994, with an effective date of August 31, 1994. The Governor submitted the CO SIP revision, which included the 1990 base year inventories, to EPA in a letter dated July 11, 1994.

Utah's CO SIP revision was reviewed by EPA and found to be complete on July 15, 1994.

B. Review of Utah's Base Year SIP CO Inventories

EPA's Level I, II, and III review process checklists are used to determine if all components of a CO base year inventory are present and approvable. EPA's detailed Level I and II review procedures can be found in the following document; "Quality Review Guidelines for 1990 Base Year Emission Inventories", U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC, July 27, 1992. The Level III review procedures are specified in a memorandum from David Mobley and G. T. Helms to the Regions "1990 O_3/CO SIP Emission Inventory Level III Acceptance Criteria", October 7, 1992[3] and revised in a memorandum from John Seitz to the Regional Air Directors dated June 24, 1993.[4] EPA's review also evaluates the level of supporting documentation provided by the State and assesses whether the emissions were developed, and data quality assured, according to current EPA guidance.

The Level III review process is outlined below and consists of nine requirements that a CO base year inventory must include. For a base year CO emission inventory to be acceptable it must pass all of the following acceptance criteria:

1. An approved Inventory Preparation Plan (IPP) was provided and the Quality Assurance (QA) program contained in the IPP was performed and its implementation documented. Analysis: Utah's IPP was approved by EPA on April 2, 1992. The IPP's QA program requirements were addressed in Section 4. of the Ogden City inventory, in Section 4. of the Salt Lake City inventory, and in Section 4. of the Utah County inventory.

2. Adequate documentation was provided that enabled the reviewer to determine the emission estimation procedures and the data sources used to develop the inventory. Analysis: This requirement was addressed in Sections 1. through 10. in each of the three CO inventories.

3. The point source inventory must be complete.

Analysis: This requirement was addressed in Section 7. of the Utah County inventory. There are no CO major point sources (equal to or greater than 100 tons per year of CO) located in the Ogden City or Salt Lake City CO nonattainment areas.

4. Point source emissions must have been prepared or calculated according to the current EPA guidance.

Analysis: This requirement was addressed in Section 7. of the Utah County inventory.

5. The area source inventory must be complete.

Analysis: This requirement was addressed in Section 5. of the Ogden City inventory, Section 5. of the Salt Lake City inventory, and Section 5. of the Utah County inventory,

6. The area source emissions must have been prepared or calculated according to the current EPA guidance.

Analysis: This requirement was addressed in Section 5. of the Ogden City inventory, Section 5. of the Salt Lake City inventory, and Section 5. of the Utah County inventory.

7. The method (e.g., HPMS or a network transportation planning model) used to develop VMT estimates must follow EPA guidance, which is detailed in the document, "Procedures for Emission Inventory Preparation, Volume IV: Mobile Sources", U.S. Environmental Protection Agency, Office of Mobile Sources and Office of Air Quality Planning and Standards, Ann Arbor, Michigan, and Research Triangle Park, North Carolina, December 1992. The VMT development methods were adequately described and documented in the inventory report.

Analysis: This requirement was addressed in Section 6.1 of the Ogden City inventory, Section 6.1 of the Salt Lake City inventory, and Section 6.1 of the Utah County inventory.

8. The MOBILE model (or EMFAC model for California only) was correctly used to produce emission factors for each of the vehicle classes.

Analysis: This requirement was addressed in Section 6.1 of the Ogden City inventory, Section 6.1 of the Salt Lake City inventory, and Section 6.1 of the Utah County inventory.

9. Non-road mobile emissions were prepared according to current EPA guidance for all of the source categories.

Analysis: This requirement was addressed in Sections 6.2.1, 6.2.2, and 6.2.3 of the Ogden City inventory, Sections 6.2.1, 6.2.2, and 6.2.3 of the Salt Lake City inventory, and Sections 6.2.1, 6.2.2, and 6.2.3 of the Utah County inventory.

Final Action

EPA is approving the carbon monoxide 1990 base year emission inventories for Ogden City, Utah State Implementation Plan, Section IX, Part C.3., Table IX.C.5; Salt Lake City, Utah State Implementation Plan, Section IX, Part C.3., Table IX.C.4; and Utah County, Utah State Implementation Plan, Section IX, Part C.6., Table IX.C.10. These inventories were submitted by the Governor in a letter dated July 11, 1994.

The 1990 base year CO emissions from point sources, area sources, on-road mobile sources, and non-road mobile sources for Ogden City, Salt Lake City, and Utah County are summarized in the following table:

CARBON MONOXIDE SEASONAL EMISSIONS

[In Tons Per Day]

Non-attainment area	Point source emissions[1]	Area source emissions	On-road mobile emissions	Non-road mobile emissions	Total emissions
Ogden City	None Identified	5.60	67.80	0.89	74.29
Salt Lake City	None Identified	13.98	228.78	7.86	250.62
Utah County	145.24	27.19	353.23	4.45	530.11

[1] Major CO point sources (i.e., CO emissions equal to or greater than 100 tons per year).

All supporting calculations and documentation for these three 1990 carbon monoxide base year inventories are contained in the Technical Support Document (TSD) for this action.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective August 28, 1995, unless, by July 31, 1995, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective August 28, 1995.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to any State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

[1] Memorandum from John Calcagni, Director, Air Quality Management Division, and William G. Laxton, Director, Technical Support Division, to Regional Air Division Directors, Region I–X, "Public Hearing Requirements for 1990 Base-Year Emission Inventories for Ozone and Carbon Monoxide Nonattainment Areas," September 29, 1992

[2] Also section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

[3] Memorandum from J. David Mobley, Chief, Emissions Inventory Branch, to Air Branch Chiefs, Region I–X, "Final Emission Inventory Level III Acceptance Criteria," October 7, 1992.

[4] Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, to Regional Air Division Directors, Region I–X, "Emission Inventory Issues," June 24, 1993.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 28, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2) of the CAA).

SIP approvals under Section 110 and Subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under section 187(a)(1) of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the inventories being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this direct final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Approval of this specific revision to the SIP does not indicate EPA approval of the SIP in its entirety.

Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 17, 1995.

Robert L. Duprey,

Acting Regional Administrator.

40 CFR part 52, subpart TT, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart TT—Utah

2. Section 52.2320 is amended by adding paragraph (c)(29) to read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

(29) Revisions to the Utah State Implementation Plan for the 1990 Carbon Monoxide Base Year emission inventories for Ogden City, Salt Lake City, and Utah County were submitted by the Governor in a letter dated July 11, 1994.

(i) Incorporation by reference.

(A) Carbon Monoxide 1990 Base Year Emission Inventories for Ogden City, Utah SIP, Section IX, Part C.3., Table IX.C.5; Salt Lake City, Utah SIP, Section IX, Part C.3., Table IX.C.4; and Utah County, Utah SIP, Section IX, Part C.6., Table IX.C.10 all of which became effective on August 31, 1994.

[FR Doc. 95–16067 Filed 6–28–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 52 and 81

[KY–074–1–6948; FRL–5223–5]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Commonwealth of Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a maintenance plan and a request to redesignate the Kentucky portion of the Ashland-Huntington nonattainment area from nonattainment to attainment for ozone (O_3) submitted on November 12, 1993, by the Commonwealth of Kentucky through the Natural Resources and Environmental Protection Cabinet (Cabinet). The Kentucky portion of the moderate O_3 nonattainment area includes Boyd County and a portion of Greenup County. EPA is also approving the Commonwealth of Kentucky's 1990 baseline emissions inventory because it meets EPA's requirements regarding the approval on baseline emission inventories.

EFFECTIVE DATE: June 29, 1995.

ADDRESSES: Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Scott Southwick, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555 extension 4207. Reference file KY–074–1–6948.

SUPPLEMENTARY INFORMATION: On November 15, 1990, the Clean Air Act Amendments of 1990 (CAA) were enacted. (Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q). Under section 107(d)(1)(C) of the CAA, EPA designated Boyd County of the Ashland-Huntington area as nonattainment by operation of law with respect to O_3, because the area was designated nonattainment immediately before November 15, 1990. The nonattainment area was expanded to include portions of Greenup County per section 107(d)(1)(A)(i) of the CAA (See 56 FR 56694 (Nov. 6, 1991) and 57 FR 56762 (Nov. 30, 1992), codified at 40 CFR 81.318.) The area was classified as moderate.

The moderate nonattainment area has ambient monitoring data that show no violations of the O_3 National Ambient Air Quality Standard (NAAQS) during the period from 1991 through 1993. Therefore, on November 12, 1992, West Virginia requested to redesignate their portion of the Ashland-Huntington nonattainment area and the request was approved on December 21, 1994, by Region 3 (59 FR 65719). Also, Kentucky, on November 12, 1993, submitted for parallel processing an O_3 maintenance plan and requested redesignation of the area to attainment with respect to the O_3 NAAQS and EPA found the request complete. On May 24, 1995, the Cabinet revised the maintenance plan to address public comments, and EPA comments sent to the Cabinet in letters dated December 16, 1993, and May 5, 1994.

On February 7, 1994, Region 4 determined that the information received from the Cabinet constituted a complete redesignation request under the general completeness criteria of 40 CFR 51, appendix V, sections 2.1 and 2.2. However, for purposes of determining what requirements are applicable for redesignation purposes, EPA believes it is necessary to identify when the Cabinet first submitted a redesignation request that meets the completeness criteria. EPA noted in a previous policy memorandum that parallel processing requests for submittals under the amended CAA, including redesignation submittals, would not be determined complete. *See* "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (Act) Deadlines," Memorandum from John Calcagni to Air Programs Division Directors, Regions 1–10, dated October 28, 1992 (Memorandum). The rationale for this conclusion was that the parallel processing exception to the completeness criteria (40 CFR 51, appendix V, section 2.3) was not intended to extend statutory due dates for mandatory submittals. (*See* Memorandum at 3–4). However, since requests for redesignation are not mandatory submittals under the CAA, EPA changed its policy with respect to redesignation submittals to conform to the existing completeness criteria. Therefore, EPA believes the parallel processing exception to the completeness criteria may be applied to redesignation request submittals, at least until such time as the EPA decides to revise that exception (*See* 58 FR 38108 "Approval and Promulgation of Maintenance Plan and Designation of Areas for Air Quality Planning Purposes for Carbon Monoxide, State of New York" published July 15, 1993, and "State Implementation Plans (SIP) Actions submitted in Response to Clean Air Act (CAA) Deadlines," Memorandum from John Calcagni to Air Program Directors, Region 1–10, dated October 28, 1992).

The Cabinet's redesignation request for the Kentucky portion of the Ashland/Huntington moderate O_3 nonattainment area meets the five requirements of section 107(d)(3)(E) of the CAA for redesignation to attainment. The following is a brief description of how the Commonwealth of Kentucky has fulfilled each of these requirements. Because the maintenance plan is a critical element of the redesignation request, EPA will discuss its evaluation of the maintenance plan under its analysis of the redesignation request.

1. The Area Must Have Attained the O_3 NAAQS

The Cabinet's request is based on an analysis of quality assured ambient air quality monitoring data which is relevant to the maintenance plan and to the redesignation request. The ambient air quality monitoring data for calendar years 1991 through 1993 demonstrates attainment of the standard. Kentucky has also committed to continue monitoring the moderate nonattainment area. Therefore, Kentucky has met this requirement.

2. The Area Has Met all Applicable Requirements Under Section 110 and Part D of the CAA

EPA reviewed the Kentucky SIP and in the proposal document, EPA stated that except for sections 182(b)(2) and 182(f) requirements of the CAA, the Kentucky SIP contains all measures due under the amended CAA prior to or at the time the Cabinet submitted its redesignation request. Both sections 182(b)(2) and 182(f) requirements have now been met and are detailed below. For detailed information regarding applicable requirements other than section 182(f), refer to the proposed document published December 16, 1994 (59 FR 65000).

A. Section 182(a)(1)—Emissions Inventory

Kentucky has met this requirement. This notice gives final approval of the emission inventory. For detailed information regarding this requirement, refer to the proposal document.

B. Section 182(a)(2), 182(b)(2)—Reasonably Available Control Technology (RACT)

The proposal document stated that the Ashland-Huntington area would not be redesignated until the Calgon Corporation source specific SIP revision was approved. A document approving this source specific SIP revision was published on May 24, 1995, and the SIP revision became effective on June 16, 1995. See the proposal document for more detailed information. Therefore, Kentucky has met the requirement of RACT on all major sources of VOCs for O_3 nonattainment areas designated moderate and above.

C. Section 182(a)(3)—Emissions Statements

On January 15, 1993, the Cabinet submitted a revision to the SIP to require emission statements. EPA commented on this SIP revision. In the proposal document, EPA stated that revisions were needed to the emission statement rule before EPA would approve the rule. The Cabinet submitted a second and different SIP package on December 29, 1994, which addressed EPA comments and met the federal requirements for emission statements. EPA published the approval of this second SIP revision on May 2, 1995, which became effective on July 10, 1995. For more details on the requirement of emission statements see the proposal document. Kentucky has met the emission statement requirement.

D. Section 182(b)(1)—15% Progress Plans

With the approval of this redesignation request, the requirement to submit a 15% plan is obviated because the redesignation request predated the requirement for a 15% plan. See proposal document for more detail.

E. Section 182(b)(3)—Stage II

On January 24, 1994, EPA promulgated the on board vapor recovery rule (OBVR). Section 202(a)(b) of the CAA provides that once the rule is promulgated, moderate areas are no longer required to implement Stage II. Thus, the Stage II vapor recovery requirement of section 182(b)(3) is no

longer an applicable requirement. See proposal document for more detail.

F. Section 182(b)(4)—Motor Vehicle Inspection and Maintenance (I/M)

With the approval of this redesignation request, the requirement to submit a motor vehicle inspection and maintenance (I/M) rule is obviated because the redesignation request predated the requirement for a 15% plan. See proposal document for more detail.

G. Section 182(b)(5)—New Source Review (NSR)

Kentucky has met this requirement. For detailed information regarding this requirement, refer to the proposal document.

H. Section 182(f)—Oxides of Nitrogen (NOX) Requirements

This redesignation request predated the November 15, 1993, requirement for the submittal of NO_X RACT rules. However, the Cabinet has submitted a 182(f) NO_X requirements exemption. Action on the exemption request will be taken in a different document. For detailed information regarding this requirement, refer to the proposal document.

3. The Area Has a Fully Approved SIP Under Section 110(k) of the CAA

EPA has determined that Kentucky has a fully approved O_3 SIP under section 110(k) for the moderate nonattainment area.

4. The Air Quality Improvement Must Be Permanent and Enforceable

Several control measures have come into place since the Ashland-Huntington nonattainment area violated the O_3 NAAQS. Of these control measures, the reduction of fuel volatility from 10.5 psi in 1988 to 9.0 psi in 1992, as measured by the Reid Vapor Pressure (RVP), and fleet turnover due to the Federal Motor Vehicle Control Program (FMVCP) produced the most significant decreases in VOC emissions. The table below lists the actual enforceable emission reductions in tons per day (tpd) which are responsible for the recent air quality improvement in the Kentucky portion of the nonattainment area. The VOC emissions in the base year are not artificially low due to a depressed economy.

REDUCTIONS IN VOC AND NO_X EMISSIONS FROM 1990 TO 1993

VOC (tpd)	NO_X (tpd)
3.88	0.28

5. The Area Must Have a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation, adequate to assure prompt correction of any air quality problems.

EPA is approving the Commonwealth of Kentucky's maintenance plan for the Ashland-Huntington nonattainment area because EPA finds that the Commonwealth of Kentucky's submittal meets the requirements of section 175A.

A. Emissions Inventory—Base Year Inventory

On November 13, 1992, the Commonwealth of Kentucky submitted comprehensive inventories of VOC, NO_X, and carbon monoxide (CO) emissions from the Ashland-Huntington nonattainment area. The inventory included biogenic, area, stationary, and mobile sources using 1990 as the base year for calculations to demonstrate maintenance. The 1990 inventory was projected to a 1993 attainment inventory using population growth rates. The 1993 inventory can serve as an attainment inventory because the O_3 NAAQS was not violated during the 1993 calendar year. The CO and the biogenic VOC values are included as a part of the 1990 base year emission inventory.

The Commonwealth of Kentucky submittal contains the detailed inventory data and summaries by county and source category. Finally, this inventory was prepared in accordance with EPA guidance. A summary of the base year and projected maintenance year inventories are included in this document for VOCs and NO_X. This document approves the base year inventory for the Ashland-Huntington area.

CO EMISSION INVENTORY SUMMARY FOR 1990 (TPD)

	Point	Area	Mobile	Non-road	Total
Emissions for 1990	133.03	2.41	59.90	14.42	209.76

BIOGENIC EMISSION INVENTORY (TPD) SUMMARY FOR 1990

	Biogenic
Emissions for 1990	23.60

B. Demonstration of Maintenance—Projected Inventories

As summarized in the following tables, totals for VOC, and NO_X emissions were projected from the 1990 base year, to the 1993 attainment year and out to 2005. These projected inventories were prepared in accordance with EPA guidance.

KENTUCKY PORTION OF THE ASHLAND-HUNTINGTON VOC PROJECTION INVENTORY SUMMARY (TPD)

	1990 base	1993 attain base	1996 proj	1999 proj	2002 proj	2005 proj
Point	34.81	33.79	34.12	34.10	34.10	34.10
Area	3.8	3.9	3.68	4.09	4.12	4.20
Mobile	12.43	8.60	8.55	9.40	7.95	7.86
Total	51.04	46.29	46.35	47.60	46.17	46.16

KENTUCKY PORTION OF THE ASHLAND-HUNTINGTON NO_X PROJECTION INVENTORY SUMMARY (TPD)

	1990 base	1993 attain base	1996 proj	1999 proj	2002 proj	2005 proj
Point	25.71	25.59	25.77	25.78	25.78	25.79
Area	0.18	0.18	0.18	0.18	0.18	0.17
Mobile	7.71	7.40	7.51	7.82	7.13	7.11
Total	33.60	33.17	33.46	33.78	33.09	33.08

Projections indicate that there was an emissions decrease in VOCs and NO_X in the nonattainment area from the 1993 attainment baseyear to 2005. However, the projections show a temporary increase in NO_X emissions of less than 2%. EPA believes this increase to be insignificant, and therefore, EPA believes that these emissions projections demonstrate that the nonattainment area will continue to maintain the O_3 NAAQS.

C. Verification of Continued Attainment

Continued attainment of the O_3 NAAQS in the nonattainment area depends, in part, on the Commonwealth of Kentucky's efforts toward tracking indicators of continued attainment during the maintenance period. The Cabinet will develop periodic emission inventories every three years beginning in 1996 and will evaluate these periodic inventories to see if they exceed the baseline emission inventory by more than 10%. If a 10% exceedance occurs, the state will evaluate existing control measures to see if any further emission reduction measures should be implemented.

The Commonwealth of Kentucky's contingency plan can also be triggered by an air quality exceedance. If an exceedance occurs, the Commonwealth will evaluate existing control measures to see if any further emission reduction measures should be implemented. The Commonwealth of Kentucky contingency plan *will be* triggered in the event of a monitored violation of the ozone standard. The Commonwealth then commits to adopt within six months, one or more of the contingency measures listed in the contingency plan. The Commonwealth has also committed to operate the air monitoring network in accordance to 40 CFR 58 with no reductions in the existing network.

D. Contingency Plan

The level of VOC and NO_X emissions in the nonattainment area will largely determine its ability to stay in compliance with the O_3 NAAQS in the future. Despite the Commonwealth's best efforts to demonstrate continued compliance with the NAAQS, the ambient air pollutant concentrations may exceed or violate the NAAQS. Therefore, the Commonwealth of Kentucky has provided contingency measures with a schedule for implementation in the event of a future O_3 air quality problem. The plan contains the following possible contingency measures: (1) Petition EPA to opt into reformulated gasoline (RFG), (2) Inspection and maintenance (I/M), and (3) Stage II. In addition to these contingency measures, the Commonwealth has other miscellaneous options to choose included in their maintenance plan. EPA finds that the contingency measures provided in the Commonwealth of Kentucky's submittal meet the requirements of section 175A(d) of the CAA.

E. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the CAA, the Commonwealth of Kentucky has agreed to submit a revised maintenance SIP eight years after the nonattainment area redesignates to attainment. Such revised SIP will provide for maintenance for an additional ten years.

Final Action

This document makes final, the action which proposed approval of the maintenance plan and request to redesignate the Kentucky portion of the Ashland-Huntington nonattainment area and the baseyear inventory for the area. The document proposing approval was published on December 16, 1994 (59 FR 65000). EPA received no adverse comments on the proposed action.

EPA finds that there is good cause for this redesignation to become effective immediately upon publication because a delayed effective date is unnecessary due to the nature of a redesignation to attainment, which exempts the area from certain Clean Air Act requirements that would otherwise apply to it. The immediate effective date for this redesignation is authorized under both 5 U.S.C. § 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule "grants or recognizes an exemption or relieves a restriction" and § 553(d)(3), which allows an effective date less than 30 days after publication was otherwise provided by the agency for good cause found and published with the rule."

Under section 307(b)(1) of the Act, 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 28, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Act, 42 U.S.C. 7607 (b)(2).)

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant

impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2) and 7410(k)(3).

The OMB has exempted these actions from review under Executive Order 12866.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. The Administrator certifies that the approval of the redesignation request will not affect a substantial number of small entities.

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section 107 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 9, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart S—Kentucky

2. Section 52.920 is amended by adding paragraph (c)(80) to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

(80) The maintenance plan for the Ashland-Huntington area which includes Boyd and a portion of Greenup Counties was submitted by the Commonwealth of Kentucky Natural Resources and Environmental Protection Cabinet on November 13 and May 24, 1995, as part of the Kentucky SIP. The 1990 Baseline Emission Inventory for the Ashland-Huntington area which includes Boyd and a portion of Greenup Counties which was submitted on November 13, 1992.

(i) Incorporation by reference.

(A) Kentucky Natural Resources and Environmental Protection Cabinet Request to Redesignate the Huntington/Ashland Moderate Ozone Nonattainment Area, Maintenance Plan, effective May 24, 1995.

(B) Appendix F Kentucky Projected Emissions Summary: VOC, CO, and NO_X, effective May 24, 1995.

(C) Table 6–1 Summary of Biogenic Emissions Huntington-Ashland MSA, effective May 24, 1995.

(ii) Other material.

(A) May 24, 1995, letter from Phillip J. Shepherd, Secretary, Natural Resources and Environmental Protection Cabinet to John H. Hankinson, Regional Administrator, USEPA Region 4.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42.U.S.C. 7401–7671q.

2. In § 81.318, the ozone table is amended by removing the "Huntington-Ashland area" and its entries in the first alphabetical list and the entry for "Greenup County" in the second alphabetical list and by adding in alphabetical order to the second listing of counties the entries for "Boyd County" and "Greenup County" to read as follows:

§ 81.318 Kentucky.

* * * * *

KENTUCKY-OZONE

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
• •	•	•	•	•
Boyd County	June 29, 1995	Unclassifiable/Attainment.		
• •	•	•	•	•
Greenup County	June 29, 1995	Unclassifiable/Attainment.		

KENTUCKY-OZONE—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
• •	•	•	•	•

[1] This date is November 15, 1990, unless otherwise noted.

[FR Doc. 95–15953 Filed 6–28–95; 8:45 am]
BILLING CODE 6560–60–P

40 CFR Part 271

[FRL–5249–2]

New York: Final Authorization of State Hazardous Waste Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: New York has applied for final authorization of certain revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed New York's application and has made a decision, subject to EPA's receipt and evaluation of public comment, that New York's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve New York's hazardous waste program revisions, which are described later in this Notice. New York's application for program revision is available for public review and comment.

DATES: Final authorization for New York shall be effective August 28, 1995 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on New York's program revision application must be received by the close of business July 31, 1995.

ADDRESSES: Copies of New York's program revision application are available during the business hours of 8 a.m. to 4:30 p.m. at the following addresses for inspection and copying: New York State Department of Environmental Conservation, 50 Wolf Road, Room 204, Albany, New York 12233–7253, (518) 457–3273; U.S. EPA Library (PM 211A), 401 M Street, SW., Washington, DC 20460, 202/382–5926. U.S. EPA Region II Library, 16th Floor, 290 Broadway, New York, New York 10007–1866, Phone (212) 264–2881. Written comments should be sent to: Mr. Conrad Simon, Director, Air and Waste Management Division, U.S. EPA, Region II, 290 Broadway, New York, New York 10007–1866, (212) 637–4218.

FOR FURTHER INFORMATION CONTACT: Stephen Venezia (212) 637–4218.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under § 3006(b) of the Resource Conservation and Recovery Act (RCRA or the Act), 42 U.S.C 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, the Hazardous and Solid Waste Amendments of 1984 (Public Law 98–616, November 8, 1984, hereinafter HSWA) allows States to revise their programs to become equivalent to RCRA requirements promulgated under HSWA authority. Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 260–266, 268, 124 and 270.

New York

New York initially received final authorization on May 29, 1986. New York received authorization for revisions to its program on July 3, 1989, May 7, 1990, October 29, 1991, and May 22, 1992. On December 10, 1993, New York submitted a program revision application for additional program approvals. Today, EPA is proposing approval of New York's program revision in accordance with 40 CFR 271.21(b)(3).

In order to obtain Final Authorization, the State of New York has demonstrated and certified that its authority to regulate the following is equivalent to the Federal RCRA authority, including the requirements promulgated under HSWA authority:

Provision	Federal authority	State authority
Delay of Closure Period for Hazardous Waste Management Facilities (54 FR 33376; 08/14/89.	RCRA § 1006, 2002(a), 3004, 3005 and 3006; 40 CFR 264.13, 264.112, 264.113, 264.142, 265.13, 265.112, 265.113, 265.142, 270.42.	ECL § 27–0900, 0911, 0912, 0913; 6NYCRR 373–1.7(c), 373–2.2(e), 373–2.7(c), (d), 373–2.8(c), 373–3.2(d), 373–3.7(c), (d), 373–3.8(c), and Part 621.
Mining Waste Exclusion I (54 FR 36592; 09/01/89.	RCRA § 3001(b); 40 CFR 261.3 and 261.4	ECL § 27–0903; 6NYCRR 371–1.1(d) and (e).
Testing and Monitoring Activities (54 FR 40260; 09/29/89).	RCRA § 3001, 3004, 3005, 3006; 40 CFR 260.11 and Part 261 Appendix III.	ECL § 27–0903, 0911 and 0913; 6NYCRR 370.1(e)(8) and Appendix.
Testing and Monitoring Activities (54 FR 40260; 09/29/89).	RCRA § 3001, 3004, 3005, 3006; 40 CFR 260.11 and Part 261 Appendix III.	ECL § 27–0903; 0911 and 0913; 6NYCRR 370.1(e)(8) and Appendix.
Changes to Part 124 Not Accounted for by Present Checklists (54 FR 246; 01/04/89).	RCRA § 1006, 3005; 40 CFR 124.3, 124.5, 124.6, 124.10, 124.12.	ECL § 3–0301, 27–0703, 0913, and 70–0107; 6NYCRR 373–1.4, 373–1.6, 373–1.7, 621.2, 621.3, 621.4, 621.6, 621.7, 621.13, 621.14.
Mining Waste Exclusion II (55 FR 2322; 01/23/90).	RCRA § 3001(b)(3)–(A)(ii); 40 CFR 260.10, 261.4(b)(7).	ECL § 27–0903; 6NYCRR 370.2(b), 371.1(e)(2)(vi).
Modifications of F019 Listing (55 FR 5340; 02/14/90).	RCRA § 3001(b); 40 CFR 261.31	ECL § 27–0903; 6NYCRR 371.4(b), (c), Appendices 21 and 22.
Testing and Monitoring Activities (Technical Correction to Checklist 67).	RCRA § 3001, 3004, 3005, 3006; 40 CFR 260.11 and Part 261 Appendix III.	ECL § 27–0903, 0911 and 0913; 6NYCRR 370.1(e)(8) and Appendix 21.

Provision	Federal authority	State authority
Listing of 1,1—Dimethylhydrazine Production Wastes (55 FR 18496; 05/02/90).	RCRA §3001(b); 40 CFR 261.32	ECL §27–0903; 6NYCRR 371.4(b), (c), Appendices 21 and 22.
HSWA Codification Rule: Double Liners; Correction (Correction to Checklist 17H) (55 FR 19262; 05/09/90).	RCRA §1006, 2002(a), 3004, 3005, and 3015(b); 40 CFR 264.221, and 264.301.	ECL §3–0301, 27–0703, 0707, 0911, 0913; 6NYCRR 373–2.11(b), 373–2.14(c).

EPA has reviewed New York's application and has made an immediate final decision that New York's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to New York. The public may submit written comments on EPA's immediate final decision up until July 29, 1995. Copies of New York's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this Notice.

Approval of New York's program revision shall become effective 60 days after the date of publication of this Notice unless an adverse comment pertaining to the State's revision discussed in this Notice is received. EPA will publish either (1) a withdrawal of the immediate final decision or (2) a Notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

New York is applying for final authorization of the following Federal hazardous waste requirements:

RCRA checklist	HSWA/FR reference	Promulgation or HSWA date
Non-HSWA Cluster VI:		
Delay of Closure Period for Hazardous Waste Management Facilities	54 FR 33376	08/14/89
Mining Waste Exclusion I	54 FR 36592	09/01/89
Testing and Monitoring Activities	54 FR 40260	09/29/89
Changes to Part 124 Not Accounted for by Present Checklists	54 FR 246	01/04/89
Mining Waste Exclusion II	55 FR 2322	01/23/90
Modifications to F019 Listing	55 FR 5340	02/14/90
Testing and Monitoring Activities (Technical Correction to Checklist 67)	55 FR 8948	03/09/90
HSWA Cluster II:		
Listing of 1,1 Dimethylhydrazine Production Wastes	55 FR 18496	05/02/90
HSWA Codification Rule: Double Liners; Correction (Correction to Checklist 17H)	55 FR 19262	05/09/90

New York has only applied for authorization for the above listed requirements as part of this particular **Federal Register** approval process.

B. Decision

The EPA concludes, subject to receipt and evaluation of public comment, that New York's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, EPA intends to grant New York final authorization to operate its hazardous waste program as revised.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of New York's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Authority: This Notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: March 15, 1995.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 95–15873 Filed 6–28–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7620]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street SW., room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 et seq., unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 et seq. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Deputy Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Deputy Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective dates of eligibility	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region II				
New York: Evans, town of, Erie County	360240	April 21, 1972, Emerg; September 30, 1977, Reg; July 3, 1995, Susp.	July 3, 1995	July 3, 1995.
Region III				
Pennsylvania: Orbisonia, borough of, Huntingdon County.	421682	October 15, 1975, Emerg; December 31, 1982, Reg; July 3, 1995, Susp.	.....do	Do.
Virginia: Hampton, independent city	515527	March 27, 1970, Emerg; January 15, 1971, Reg; July 3, 1995, Susp.	.....do	Do.

State and location	Community No.	Effective dates of eligibility	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region V				
Ohio: Malvern, village of, Carroll County	390052	May 14, 1975, Emerg; July 3, 1995, Reg; July 3, 1995, Susp.	do	Do.
Region X				
Oregon: Fairview, city of, Multnomah County.	410180	March 31, 1975, Emerg; September 30, 1987, Reg; July 3, 1995, Susp.	do	Do.
Region II				
New York:				
Oswego, town of Oswego County	360657	December 16, 1976, Emerg; September 30, 1981, Reg; July 17, 1995, Susp;.	July 17, 1995	July 17, 1995.
Richland, town of, Oswego County	360660	March 21, 1974, Emerg; February 15, 1978, Reg; July 17, 1995, Susp.	do	Do.
Sandy Creek, town of, Oswego County	360661	August 18, 1975, Emerg; October 15, 1981, Reg; July 17, 1995, Susp.	do	Do.
Region IV				
Georgia: Glynn County, unincorporated areas	130092	January 16, 1974, Emerg; April 15, 1995, Reg; July 17, 1995, Susp.	do	Do.
South Carolina:				
Cayce, city of, Lexington County	450131	February 5, 1974, Emerg; May 1, 1980, Reg; July 17, 1995, Susp.	do	Do.
Lexington County, unincorporated areas	450129	September 6, 1974, Emerg; June 15, 1981, Reg; July 17, 1995, Susp.	do	Do.
West Columbia, city of, Lexington County	450140	December 6, 1973, Emerg; February 15, 1979, Reg; July 17, 1995, Susp.	do	Do.
Region V				
Minnesota: Andover, city of, Anoka County	270689	June 23, 1976, Emerg; September 30, 1980, Reg; July 17, 1995, Susp.	do	Do.
Ohio: Miami County, unincorporated areas	390398	April 1, 1976, Emerg; January 19, 1983, Reg; July 17, 1995, Susp.	do	Do.
Region VI				
Texas:				
Comal County, unincorporated areas	485463	March 5, 1971, Emerg; November 9, 1973, Reg; July 17, 1995, Susp.	do	Do.
Schertz, city of, Bexar County	480269	November 2, 1973; Emerg; September 15, 1977, Reg; July 17, 1995, Susp.	do	Do.
Sherman, city of, Grayson County	485509	May 22, 1970, Emerg; June 4, 1971, Reg; July 17, 1995, Susp.	do	Do.
Region VII				
Missouri: Hayti Heights, city of, Pemiscot County.	290277	March 20, 1975, Emerg; June 15, 1981, Reg; July 17, 1995, Susp.	do	Do.
Nebraska: Blair, city of, Washington County	310228	September 17, 1974, Emerg; July 16, 1981, Reg; July 17, 1995, Susp.	do	Do.
Region X				
Idaho: Coeur d'Alene, city of, Kootenai County	160078	June 25, 1975, Emerg; September 2, 1982, Reg; July 17, 1995, Susp.	do	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: June 23, 1995.

Frank H. Thomas,

Deputy Associate Director, Mitigation Directorate.

[FR Doc. 95–15976 Filed 6–28–95; 8:45 am]

BILLING CODE 6718–21–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 650

[Docket No. 950615156–5156–01; I.D. 050295A]

RIN 0648–AI02

Atlantic Sea Scallop Fishery; Framework 5 Gear Restrictions

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement measures contained in Framework Adjustment 5 to the Fishery Management Plan for the Atlantic Sea Scallop Fishery (FMP). This rule implements measures that prohibit limited access vessels, fishing under the days-at-sea (DAS) program, from using trawl nets, with the exception of vessels that have not used a scallop dredge since January 1, 1988, to the present, and requires all dredges to have a minimum number of rows of steel rings extending from the "after end" to the club stick. The intent is to protect against the overharvest of small, immature sea scallops.

EFFECTIVE DATE: July 31, 1995.

ADDRESSES: Copies of Amendment 4, its regulatory impact review, initial regulatory flexibility analysis (IRFA), the final supplemental environmental impact statement, and the supporting documents for Framework Adjustment 5 are available from Douglas Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (U.S. Route 1), Saugus, MA 01906–1097, telephone 617–231–0422.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 508–281–9273.

SUPPLEMENTARY INFORMATION:

Background

Amendment 4 to the FMP was implemented on March 1, 1994 (59 FR 2757, January 19, 1994). The amendment established controls on total fishing effort through limited entry and a schedule of reductions in allowable time at sea. Although the amendment was approved, NMFS remains concerned about the near-term level of protection of small sea scallops. This concern is reflected in the Director's, Northeast Region, NMFS (Regional Director), approval letter to the New England Fishery Management Council (Council), dated November 5, 1993, that advised the Council that the Regional Director will be monitoring carefully the initial impact of the amendment on fishing mortality rates of small sea scallops. If fishing mortality rates increased beyond anticipated levels, the Council was expected to consider immediately, adjustments for implementation under the framework measure provisions of the amendment.

Ban on Trawl Nets

The final rule prohibits limited access vessels fishing under the DAS program from using trawl nets except for vessels that have not used a scallop dredge since January 1, 1988. The intended effect of this prohibition is to prevent current scallop dredge vessels from switching to trawl nets, a switch that would likely result in a significant increase in the harvest of small scallops in contravention of Amendment 4 objectives. Many of the current dredge operators have commented that the replacement of dredges with trawl nets, in the sea scallop fishery, may result in the further depletion of the resource. The Council's Scallop Plan Development Team supports this concern in its finding that the use of trawl nets tends to circumvent the limits on fishing gear selectivity intended by the regulatory 3¼ (83 mm) and 3½ inch (89 mm) minimum ring size restrictions for dredges. Furthermore, at least one study has shown that trawl nets are not as selective as dredges in regard to the harvest of smaller scallops and that larger numbers of smaller scallops are killed during landing, while on deck, or during or after discarding in the trawl fishery than in the dredge fishery.

For purposes of allowing traditional fishing practices to continue, as analyzed in connection with Amendment 4, Framework Adjustment 5 allows vessels that have not used a scallop dredge since January 1, 1988, to fish for scallops using trawl nets. This exemption will apply only to vessels for which an eligibility determination has been made in 1995. This criterion is intended to allow only those vessels that are incapable of towing dredges due to their lack of sufficient engine power and/or proper construction to participate in the trawl net segment of the fishery. The number of such vessels is projected to be small and, therefore, allowing such vessels to continue to fish with trawl nets is anticipated not to have any significant impact on the stock.

Restrictions on Dredge Configuration

Amendment 4 prohibits the use of any material, device, or net or dredge configuration or design that results in obstructing the release of scallops that would have passed through a legal size net and dredge that did not use any such material, device, or net or dredge configuration or design. The Council is aware of a recent practice of running the twine top along the back of the dredge to the club stick. This practice limits the ability of the dredge to open up as the mesh stretches shut, thereby restricting the escapement of smaller scallops. Framework Adjustment 5 specifies the acceptable twine top configuration for dredges in use by limited access vessels under the DAS program. Specifically, the framework adjustment refines the dredge vessel gear restrictions to require that all dredges that are wider than 8 ft (2.44 m) and all dredges used on double-rigged vessels have at least seven rows (regardless of ring size) of nonoverlapping steel rings between the after end of the twine top and the club stick. Additionally, all single dredges of 8 ft (2.44 m) or less width must have at least four rows (regardless of ring size) of nonoverlapping steel rings between the after end of the twine top and the club stick.

Public Comment

The December 8, 1994, Council meeting was the first of the required public meetings under the framework adjustment process as announced in the **Federal Register** on December 2, 1994 (59 FR 61878). A draft document containing the proposed management measures and their rationale was available to the public on December 28, 1994, and mailed to 260 people, including those serving as scallop industry advisors to the Council. Two subsequent public hearings were held jointly with Council meetings occurring on January 12, 1995, and March 30, 1995. Five written sets of comments were received by the Council. Four commenters favored the framework, while one was opposed to an exemption for traditional net vessels.

Testimony provided by industry members and other interested parties mirrored the concern of the Council regarding net trawls, dredge configuration, and the taking of small

scallops. Traditional net fishers, especially those from the Mid-Atlantic area, voiced concern regarding a prohibition on trawl nets. However, all agreed that an exemption for traditional net vessels from the ban on nets, would address concerns of net fishermen, while providing adequate protection to the resource.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds there is good cause to waive prior notice and opportunity for comments under 5 U.S.C. 553(b)(B). Three Council meetings held by the Council to discuss management measures implemented by this rule provided adequate prior notice opportunity for public comment to be made and considered. Thus additional opportunity for public comment is unnecessary. Because prior notice and an opportunity for comment is not required for this rule, no regulatory flexibility analysis is required or was prepared.

This final rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 650

Fisheries, Reporting and recordkeeping requirements.

Dated: June 23, 1995.

Richard H. Schaefer,

Acting Assistont Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 650 is amended as follows:

PART 650—ATLANTIC SEA SCALLOP FISHERY

1. The authority citation for part 650 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 650.9 is amended by revising paragraphs (a)(5) and (d)(13) and adding paragraphs (b)(25) and (b)(26) to read as follows:

§ 650.9 Prohibitions.

* * * * *

(a) * * *

(5) Make any false statement in connection with an application or declaration under § 650.4, § 650.5 or § 650.21.

(b) * * *

(25) Fish with, possess on board, or land scallops while in possession of trawl nets, when fishing for scallops under the DAS allocation program unless exempted as provided for in § 650.21(f).

(26) Fail to comply with the restriction on twine top described in § 650.21(b)(4)(iv).

* * * * *

(d) * * *

(13) Make any false statement on any report or declaration under § 650.7 or under § 650.21.

3. Section 650.21 is amended by revising paragraph (a) introductory text and adding paragraphs (b)(4)(iv) and (f) to read as follows:

§ 650.21 Gear and crew restrictions.

(a) *Trawl vessel gear restrictions.* Trawl vessels in possession of more than 40 lb (18.14 kg) of shucked scallops or 5 U.S. bushels (176.2 l) of in-shell scallops, trawl vessels fishing for scallops, and trawl vessels issued a limited access scallop permit under § 650.4(a), while fishing under or subject to the DAS allocation program for sea scallops and authorized to fish with or possess on board trawl nets pursuant to § 650.21(f), must comply with the following:

* * * * *

(b) * * *

(4) * * *

(iv) *Twine top restrictions.* Vessels issued limited access scallop permits that are fishing for scallops under the DAS Program are also subject to the following restrictions: For dredges greater than 8 ft (2.44 m) in width or for dredges on a vessel rigged with more than one dredge, regardless of size, at least seven rows of nonoverlapping steel rings unobstructed by netting or any other material, must be between the terminus of the dredge (club stick) and the net material on the top of the dredge (twine top). For dredges less than 8 ft (2.44 m) in width, used singly, at least four rows of nonoverlapping steel rings unobstructed by netting or any other material must be between the club stick and the twine top of the dredge (Figure 2).

* * * * *

(f) *Restriction on the use of trawl nets.* (1) Beginning on August 28, 1995 vessels issued a limited access scallop permit fishing for scallops under the DAS allocation program may not fish with, possess on board, or land scallops while in possession of trawl nets unless such vessels have been determined to be eligible to use trawl nets and have on board a valid letter of authorization as specified and provided for under paragraphs (f)(2) and (3) of this section.

(2) *Determination of eligibility to use trawl nets.* To be eligible for an exemption from the restriction described in paragraph (f) of this section, a vessel may not have fished for scallops with a scallop dredge from January 1, 1988, to the present. NMFS will contact all limited access permit holders to notify them of their initial determination of eligibility for an exemption from the prohibition on the use of trawl nets based on information currently available to NMFS. If a vessel owner agrees with an initial determination that the vessel is eligible to use a trawl net, the owner must, within 30 days of receipt of the initial determination, sign and submit to NMFS a declaration, provided by NMFS, stating that the vessel has not fished for scallops with a scallop dredge from January 1, 1988, to the present. If the vessel owner disagrees with an initial determination that the vessel is not eligible to use a trawl net, the owner must, within 30 days of receipt of the initial determination, sign and submit to NMFS a declaration, provided by NMFS, stating that the vessel has not fished for scallops with a scallop dredge from January 1, 1988, to the present. The signed declaration shall serve as a rebuttable presumption that the vessel qualifies for an exemption from the prohibition on the use of trawl nets. This exemption applies only to vessels that have been issued 1995 limited access scallop permits or that are eligible to be issued such a permit, and for which a determination has been made in 1995, except as provided in paragraph (f)(4) of this section.

(3) *Authorization to use trawl nets.* Vessels determined to have met the criteria for exemption from the prohibition on the use of trawl nets, pursuant to paragraph (f)(2) of this section, shall be issued a letter of authorization by the Regional Director. Such letter must be carried on board the vessel at all times. In subsequent years, eligibility for this exemption will be indicated on the vessel's permit.

(4) *Authorization to use trawl nets by replacement vessels.* To be eligible for an exemption from the restriction described in paragraph (f) of this section, any replacement vessel of a vessel authorized to fish for scallops with trawl nets must meet the eligibility requirements and have on board a valid letter of authorization as specified and provided under paragraphs (f)(2) and (f)(3) of this section. The letter of authorization must be requested at the time the vessel owner initially applies for a permit for the replacement vessel. The determination of a replacement vessel's eligibility for a letter of authorization shall be made in accordance with, and as specified in paragraph (f)(2) of this section.

* * * * *

4. Figure 2 to part 650 is added to part 650 to read as follows:

BILLING CODE 3510-22-F

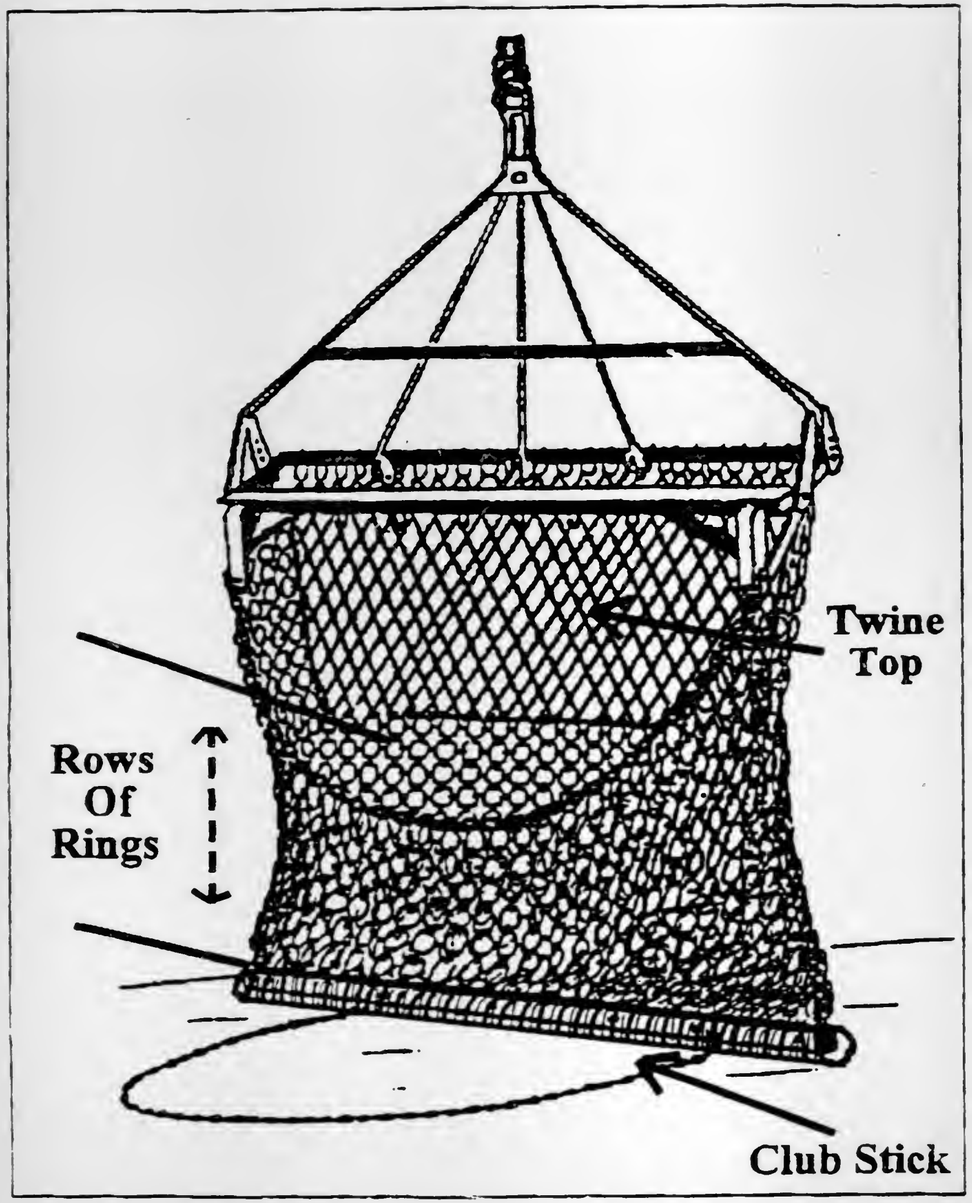


Figure 2 to Part 650—Schematic example of a legal dredge with twine top. Not Drawn to scale

[FR Doc. 95–16007 Filed 6–28–95; 8:45 am]
BILLING CODE 3510–22–C

Proposed Rules

Federal Register
Vol. 60, No. 125
Thursday, June 29, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Docket No. AO–99–A–6; FV–92–065]

Winter Pears Grown in Oregon, Washington, and California; Secretary's Decision and Referendum Order on Proposed Further Amendment of Marketing Agreement and Order No. 927

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This decision proposes amendments to the subject marketing agreement and order (order) and provides winter pear producers with the opportunity to vote in a referendum to determine if they favor the proposed amendments. The proposed amendments were submitted by the Winter Pear Control Committee (WPCC), the agency responsible for local administration of the order. The proposed amendments would redefine "ship or handle" to include shipments of winter pears within the production area, update the definition of "export market" to recognize that there are now 50 states in the United States, authorize the WPCC to accept voluntary contributions and how such funds may be used, and revise the authority for exempting certain shipments from regulation. These proposed amendments are designed to improve the administration, operation and function of the winter pear marketing order program.

DATES: The referendum shall be conducted from November 1 through November 30, 1995.

FOR FURTHER INFORMATION CONTACT: Britthany Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S, Washington, DC 20250–0200; telephone: (202) 720–5127; or Teresa Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW., Third Avenue, room 369, Portland, Oregon, 97204; telephone: (503) 326–2725.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on November 16, 1992, and published in the November 20, 1992, issue of the **Federal Register** (57 FR 54728). Recommended Decision and Opportunity To File Written Exceptions issued on March 15, 1995, and published in the **Federal Register** on March 21, 1995 (60 FR 14914).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements to Executive Order 12866.

Preliminary Statement

The proposed amendments were formulated on the record of a public hearing held in Portland, Oregon, on December 2, 1992, to consider the proposed amendment of the Marketing Agreement and Order No. 927, regulating the handling of winter pears grown in Oregon, Washington, and California hereinafter referred to collectively as the "order." The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the Act, and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR part 900). The Notice of Hearing contained several amendment proposals submitted by the WPCC established under the order to assist in local administration of the program.

The proposals would: (1) Redefine "ship or handle" to include shipments of winter pears within the production area; (2) update the definition of "export market" to recognize that there are now 50 states in the United States; (3) authorize the WPCC to accept voluntary contributions and how such funds may be used; and (4) revise the authority for exempting certain shipments from regulation.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of the Agricultural Marketing Service (AMS) on March 21, 1995, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto by April 20, 1995. None were filed.

Small Business Considerations

In accordance with the provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities. Small agricultural service firms, which include handlers regulated under this order, have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than $5,000,000. Small agricultural producers are defined as those having annual receipts of less than $500,000.

The purpose of the RFA is to fit regulatory actions to the scales of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus both the RFA and the Act have small entity orientation and compatibility. Interested persons were invited to present evidence at the hearing on the probable impact that the proposed amendments to the order would have on small businesses.

During the 1991–92 crop year, 90 handlers were regulated under Marketing Order No. 927. In addition, there were about 1,650 producers of winter pears in the production area. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

All of the amendments are designed to enhance the administration and functioning of the marketing agreement and order which would benefit the industry. If implemented, these amendments might impose some costs on affected handlers and producers. However, the added burden on small entities, if present at all, would not be significant because the benefits of the proposed amendments are expected to outweigh the costs.

The amendments proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the amendments.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 35), any change in the reporting and recordkeeping provisions that may result from the proposed amendments would be submitted to the Office of Management and Budget (OMB). The provisions would not be effective until receiving OMB approval.

Findings and Conclusions and Rulings on Exceptions

The material issues, findings and conclusions, rulings, and general findings and determinations included in the Recommended Decision set forth in the March 21, 1995, issue of the **Federal Register** (60 FR 14914) are hereby approved and adopted without change.

Marketing Agreement and Order

Annexed hereto and made a part hereof is the document entitled "Order Amending the Order Regulating the Handling of Winter Pears Grown in Oregon, Washington, and California." This document has been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions.

It is hereby ordered, That this entire decision be published in the **Federal Register.**

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR part 900.400 *et seq.*) to determine whether the issuance of the annexed order amending the order regulating the handling of winter pears grown in Oregon, Washington, and California is approved or favored by producers, as defined under the terms of the order, who during the representative period were engaged in the production of winter pears grown in Oregon, Washington, and California.

The representative period for the conduct of such referendum is hereby determined to be July 1, 1994, through June 30, 1995.

The agents of the Secretary to conduct such referendum are hereby designated to be Teresa L. Hutchinson, Marketing Specialist, and Gary D. Olson, Officer-in-Charge, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 S.W. Third Avenue, room 369, Portland, Oregon 97204, telephone: 503–326–2725.

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

Dated: June 22, 1995.

David R. Shipman,

Acting Deputy Assistant Secretary, Marketing and Regulatory Programs.

Order amending the Order Regulating the Handling of Winter Pears Grown in Oregon, Washington, and California [1]

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the order; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) Findings and Determinations Upon the Basis of the Hearing Record

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the proposed amendments to the Marketing Agreement and Order No. 927 (7 CFR part 927), regulating the handling of winter pears grown in Oregon, Washington, and California.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The marketing agreement and order, as amended, as hereby proposed to be further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order, as amended, as hereby proposed to be further amended, regulates the handling of winter pears grown in the production area in the same manner as, and is applicable only to persons in the respective classes or commercial and industrial activity specified in the marketing agreement and order upon which hearings have been held;

(3) The marketing agreement and order, as amended; as hereby proposed to be further amended, is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing agreement and order, as amended, as hereby proposed to be further amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of winter pears grown in production area; and

(5) All handling of winter pears grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, all handling of winter pears grown in Oregon, Washington, and California, shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby proposed to be amended as follows:

The provisions of the proposed marketing agreement and the order amending the order contained in the Recommended Decision issued by the Administrator on March 15, 1995, and published in the **Federal Register** on March 21, 1995, shall be and are the terms and provisions of this order amending the order and are set forth in full herein.

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

PART 927—WINTER PEARS GROWN IN OREGON, WASHINGTON, AND CALIFORNIA

1. The authority citation for 7 CFR Part 927 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 927.8 is revised to read as follows:

§ 927.8 Ship or handle.

Ship or *handle* means to sell, deliver, consign or transport pears, within the production area or between the production area and any point outside thereof: Provided, That the term "handle" shall not include the transportation of winter pear shipments within the production area from the orchard where grown to a packing facility located within the production area for preparation for market.

3. Section 927.10 is revised to read as follows:

§ 927.10 Production area.

Production area means and includes the States of Oregon, Washington, and California.

4. Section 927.12 is revised to read as follows:

§ 927.12 Export market.

Export market means any destination which is not within the 50 states, or the District of Columbia, of the United States.

5. In § 927.41, paragraph (a) is revised to read as follows:

§ 927.41 Assessments.

(a) Assessments will be levied only upon handlers who first handle pears. Each handler shall pay assessments on all pears handled by such handler as the pro rata share of the expenses which the Secretary finds are reasonable and likely to be incurred by the Control Committee during a fiscal period. The payment of assessments for the maintenance and functioning of the Control Committee may be required under this part throughout the period such assessments are payable irrespective of whether particular provisions thereof are suspended or become inoperative.

* * * * *

6. Section 927.45 is added to read as follows:

§ 927.45 Contributions.

The Control Committee may accept voluntary contributions but these shall only be used to pay expenses incurred pursuant to § 927.47. Furthermore, such contributions shall be free from any encumbrances by the donor and the Control Committee shall retain complete control of their use.

7. Section 927.47 is revised to read as follows:

§ 927.47 Research and development.

The Control Committee, with the approval of the Secretary, may establish or provide for the establishment of production research, or marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of pears. Such projects may provide for any form of marketing promotion, including paid advertising. The expense of such projects shall be paid from funds collected pursuant to §§ 927.41 and 927.45. Expenditures for a particular variety of pears shall approximate the amount of assessments and voluntary contributions collected for that variety of pears.

8. In § 927.52, paragraph (b)(1) is revised to read as follows:

§ 927.52 Prerequisites to Control Committee recommendations.

* * * * *

(b) * * *

(1) The basis of one vote for each 25,000 boxes (except 2,500 boxes for Forelle and Seckel varieties) of the average quantity of such variety produced in the particular district and shipped therefrom during the immediately preceding three fiscal periods; or

* * * * *

9. In § 927.65, paragraph (b) is revised to read as follows:

§ 927.65 Exemption from regulation.

* * * * *

(b) The Control Committee may prescribe rules and regulations, to become effective upon the approval of the Secretary, whereby quantities of pears or types of pear shipments may be exempted from any or all provisions of this subpart.

* * * * *

[FR Doc. 95–15947 Filed 6–28–95; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL RESERVE SYSTEM

12 CFR Part 220

[Regulation T; Docket No. R–0772]

RIN 7100–AB28

Securities Credit Transactions; Review of Regulation T, "Credit by Brokers and Dealers"

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: As part of a program to periodically review its regulations, the Board is proposing amendments to Regulation T, the regulation that covers extensions of credit by and to broker and dealers (also known as creditors). These amendments reflect consideration of the comments submitted in response to the Board's Advance Notice of Proposed Rulemaking. Many of the proposed amendments feature increased reliance on rules of the Securities and Exchange Commission (SEC) and self-regulatory organizations (SROs) and others would make Regulation T consistent with Regulation G and Regulation U, the regulations covering securities credit by lenders other than broker-dealers. Proposed changes in the options area include permitting loan value for long positions in exchange-traded options and increasing reliance on the margin rules of the exchange that trades the option for customer and specialist transactions. These changes would also allow creditors to recognize the offsetting nature of financial futures in calculating margin for securities options. Proposed amendments in the international area will reduce restrictions on transactions involving foreign securities that are not publicly traded in the United States and foreign securities being sold on an installment basis if the U.S. component is a relatively small percentage of the offering. Broker-dealers would also be given more flexibility in computing overall margin requirements for customer accounts with securities denominated in one or more foreign currencies. In addition to these and other amendments, technical changes are being proposed to clarify areas that have raised questions, update references, or restore language inadvertently deleted. The Board is also soliciting comments on a number of specific proposals. Finally, a number of questions regarding the existing regulation raised by commenters are being answered.

DATES: Comments should be received on or before August 28, 1995.

ADDRESSES: Comments should refer to Docket No. R–0772, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments also may be delivered to Room B–222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street, N.W.) at any time. Comments received will be available for

inspection in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding availability of information.

FOR FURTHER INFORMATION CONTACT: Scott Holz, Senior Attorney, or Angela Desmond, Senior Counsel, Division of Banking Supervision and Regulation (202) 452–2781; for the hearing impaired only, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202) 452–3544.

SUPPLEMENTARY INFORMATION: In 1992, the Board issued an advance notice of proposed rulemaking and request for comment concerning a general review of Regulation T.[1] Comments were received from 31 respondents, some of whom commented more than once. The comments have been analyzed to help prepare proposed amendments to the regulation. These proposed amendments are consistent with the current tenor of the regulation and statutory requirements; however, the comments raised broad issues as to purposes that Regulation T serves in light of the current regulatory environment and market practices. One comment questioned the continuing need for the Regulation T requirements, noting that possible purposes for the regulation, such as broker dealer financial integrity and customer protection, also are addressed by SEC oversight of brokers and dealers by means of net capital and customer protection rules. Comments also suggested broad changes to Regulation T that the commenters believe are appropriate in the current environment. These changes included, but were not limited to: (1) Delegating all responsibility for margins and related requirements to the self-regulatory organizations under the oversight of the SEC; (2) applying the restrictions on arranging credit only to credit that otherwise violates margin rules; (3) eliminating margin requirements on loans to brokers and dealers; (4) exempting from the margin rules transactions in all exempt securities; (5) exempting transactions with sophisticated customers; (6) expansion of permissible arrangements for borrowing and lending securities; and (7) exempting transactions in investment grade securities. While the Board believes that it is important to proceed with the proposed amendments in order to address particular problems, the Board also believes regulatory structures should be reviewed continually, not merely to update them, but also to assess whether different structures would better meet regulatory objectives and even whether regulation is still necessary. Accordingly, the Board requests comments including particular proposals and supporting legal and policy rationale, not only on the specific changes to Regulation T set forth in this notice, but also on the proposals enumerated above, the continuing need for Regulation T, and appropriate changes to its scope and architecture. The supplementary information that follows explains what is being proposed and reasons therefor.

[1] 57 FR 37109, August 18, 1992.

I. Options

A. Exchange-Traded Options

1. Loan Value for Long Options

All securities listed on a national securities exchange have loan value under Regulation T except for options. The Board proposes to eliminate this disparate treatment, which was adopted in the early 1970s, and allow exchange-traded options the same 50 percent loan value currently afforded other margin equity securities. In light of the successful growth of standardized options trading since the 1970s, the positive performance of the Options Clearing Corporation, and the development of new types of options, other securities and financial futures, the Board is proposing to treat long positions in exchange-traded options the same as other registered equity securities for margin purposes.

Granting 50 percent loan value to exchange-traded options would also address a disparity that has arisen in the past few years with the listing of so-called index warrants. Although index warrants resemble long-term options, the use of the word "warrant" to describe this product has led many broker-dealers to allow 50 percent loan value for these instruments while long-term options, such as LEAPs, are not permitted any loan value under the current regulation. Treating exchange-traded options the same as other exchange-traded equity securities would eliminate this disparity.

2. Increased Reliance on SRO Rules

When Regulation T was adopted in 1934, the amount of margin required for writing a put or call was the amount "customarily required" by the creditor. In the 1970s the Board adopted specific requirements based on existing rules of one of the self-regulatory organizations (SROs). Starting in the 1980s, the Board has on more than one occasion amended Regulation T to incorporate by reference SRO margin rules for options transactions. The Board is proposing to continue this process by increasing reliance on SRO options margin rules for customers and specialists.

a. Margin account. The margin account currently specifies positions which may serve in lieu of the margin required for writing an option on an equity security, while incorporating the rules of the SROs for options written on anything other than an equity security (such as a securities index). The Board proposes to allow SRO rules, which must be approved by the SEC, to prescribe appropriate cover for all short options positions.

Many commenters expressed support for a risk-based options margin system and/or a recognition of the offsetting nature of financial futures based on similar indexes, rates, or assets. Under the Board's proposal, the SROs would be able to further these goals in setting cover requirements for all types of securities options.

b. Cash account. Although the writing of an option creates a short position which is normally carried in the margin account, the cash account section was amended in the early 1980s to allow certain covered options transactions to be effected in this account. Board staff has since indicated that the cash account can be used for additional options transactions. These transactions are not "covered" in the sense that the account holds the underlying security. However, the transactions involve a quantifiably limited risk and the cash account in which the transaction is effected contains specified assets of sufficient value to cover this amount or an escrow receipt representing such assets.[2] The Board proposes to adopt generic language under which a "covered option transaction" would be eligible for the cash account under specified conditions. The Board is also adding money market mutual funds to the list of cash equivalents that may be used to cover a put written in the cash account.

c. Market functions account. Regulation T permits the extension of credit on a good faith basis to a specialist for transactions in its specialty security. In addition, options specialists can obtain good faith financing for the underlying security and other specialists can obtain good faith credit for options overlying their specialty securities. These positions are known as "permitted offsets." The regulation specifies which positions must be held in the account to allow permitted offsets and does not provide for offsets in the case of specialists in

[2] See, e.g., Staff Opinion of July 12, 1991, Federal Reserve Regulatory Service (*FRRS*) 5–666.251 and Staff Opinion of October 11, 1991, *FRRS* 5–666.26.

index options. The Board proposes to adopt generic language permitting the extension of good faith credit for permitted offsets, provided the position has been designated as a permitted offset under SEC-approved rules of the appropriate SRO.

B. OTC Options

In 1991, Board staff raised no objection to a broker-dealer that sought to "arrange" for its customer to write an OTC option on foreign securities.[3] This position would be codified by the proposed amendments to the arranging section concerning foreign securities. The Board is not proposing to extend this position to OTC options on securities which are publicly traded in the United States. Allowing broker-dealers to arrange for customers to write OTC options without collecting margin would not be consistent with the requirements of the organized options exchanges. Rules of the New York Stock Exchange (NYSE) and the National Association of Securities Dealers (NASD) both provide that margin is required for the "issuance, guarantee or sale (other than a 'long' sale) for a customer of a put or call." The Board is proposing to add the word "sell" to the language in the cash account to make clear that the Board's rules cover the same situations covered by NYSE and NASD rules.

C. Employee Stock Options and Other Benefit Plans

Section 220.3(e)(4) of Regulation T was added in 1988 to allow creditors to help customers with valuable employee stock options exercise their options by providing short-term financing of the exercise price. The short-term loan is either paid off from the sale of the securities received pursuant to the employee stock option or replaced with a conventional margin loan extended against those securities. This practice has come to be known in the industry as "cashless exercise." Over the last five years, Board staff has not objected to the expansion of the application of § 220.3(e)(4) to other types of securities customers receive under employee benefit plans, such as certain employee stock warrants. In addition, Board staff has allowed brokers to temporarily finance withholding taxes due on stock received under employee benefit plans. New language is being proposed to reflect these staff opinions. The new language would also allow the use of § 220.3(e)(4) for outside directors and consultants who are eligible to participate in employee benefit plans under SEC rules.

[3] Staff Opinion of October 22, 1991, *FRRS* 5–666.27.

II. International Transactions

A. Foreign Broker-Dealers

Any entity required to register as a broker or dealer with the SEC under section 15(a) of the Securities Exchange Act of 1934 (the Act) is a creditor under Regulation T. Although the definitions of "broker" and "dealer" in the Act do not refer to nationality, the SEC's policy is to require registration of foreign broker-dealers only when they are physically operating in the United States.[4] The Board generally follows the SEC in this area and does not consider foreign broker-dealers not required to register with the SEC as creditors under Regulation T.

Although the commenters were mixed on whether the definition of creditor should be amended to include or exclude foreign broker-dealers, there was general agreement that U.S. broker-dealers purchasing securities from or selling securities to a foreign broker-dealer on a DVP basis should be able to effect the trades on a broker-to-broker basis. Proposed language is being added to the Broker-Dealer Credit Account that will make clear that foreign broker-dealers may use this account for DVP transactions with U.S. broker-dealers.

B. Foreign Currency

Since 1990, creditors have been able to extend margin credit denominated in foreign currency if it is secured by foreign margin securities denominated or traded in the same foreign currency. If a customer has securities of various denominations, margin subaccounts (and, if desired, SMA subaccounts) are set up so that credit computed in U.S. dollars and each separate currency can be isolated. Under the current rule, an increase in the value of securities used to support specific foreign currency-denominated debt cannot be used to offset a deficiency in another margin subaccount. At the request of commenters, the Board is proposing to delete this limitation and permit margin requirements denominated in any currency to be offset by equity in any marginable security or a foreign currency deposit made in connection with a security denominated in that currency. Creditors would be free to retain the current system of separate SMAs for each foreign currency denomination.

Another comment concerning foreign currency comes from the Securities Industry Association (SIA), which believes that any freely convertible currency should be able to be treated at its U.S. dollar equivalent for all purposes of Regulation T. Under the current version of Regulation T, foreign currency received in connection with the purchase, sale or loan of a security denominated in that currency may be accounted for in that currency or at its U.S. dollar equivalent. If there is no security denominated in that currency, creditors should convert the currency into its U.S. dollar equivalent upon receipt. The conversion can be effected in a customer's cash or margin account, with the resulting balance maintained in U.S. dollars.

[4] SEC Release No. 34–27017; 54 FR 30013 (July 18, 1989).

C. Foreign Securities

1. Arranging

In 1990, the Board added an exception concerning foreign stocks to the arranging section of Regulation T which permits a creditor to arrange for its customer to receive more credit than the creditor could extend when its customer is purchasing a foreign security with credit from a foreign lender. The exception, found in section 220.13(d), was based on the theory that transactions involving foreign securities do not require the same strictness of regulation because they do not have a substantial effect on the U.S. securities market. Commenters have asked for the Board to expand the foreign stock exception to cover short sales as well. The Board agrees that equal treatment in the arranging area should be afforded to both long and short sales.

In gaining experience with the 1990 amendment, however, it has been noticed that there is an increasing trend for corporations that have issued stock abroad to list the securities for trading in the United States. Therefore, the Board is proposing a somewhat more restricted definition of what constitutes a foreign security for purposes of this section to assure equal treatment of foreign and domestic securities that are publicly traded in the United States. For example, the German conglomerate Daimler-Benz recently listed its shares on the New York Stock Exchange, thereby enabling U.S. broker-dealers to extend 50 percent credit against the stock. Under the current arranging exception for foreign securities, a creditor can arrange for its customer to borrow more than 50 percent on Daimler-Benz stock if the credit is extended by a foreign lender (often a foreign affiliate of the creditor). In contrast, a creditor may not arrange for its customer to buy AT&T stock with less than 50 percent margin, even if the credit were extended by a foreign

lender. Proposed language would address this situation and ensure equal treatment for all stocks that are publicly traded in the United States by permitting a creditor to arrange for the purchase or short sale of a "non-U.S. traded foreign security," defined as a security issued abroad that does not trade on a national securities exchange or NASDAQ.

2. Lending Foreign Securities

Under Regulation T, a creditor may borrow or lend securities for the purpose of making delivery pursuant to a short sale or "fail" transaction. In addition, the regulation limits the type of collateral that must be pledged to secure a loan of securities. Several commenters, such as the SIA and the SIA–Credit Division, request an amendment to permit U.S. broker-dealers to lend foreign securities to a foreign person for any purpose that is lawful in the foreign country. The NYSE would like to ensure that foreign securities loaned abroad do not come back to the U.S. to cover short sales or fails. The Board is therefore proposing to allow loans of foreign securities for any lawful purpose if the securities are "non-U.S. traded foreign securities." This should prevent these securities from being used for transactions in the United States. In addition, the SIA notes that many securities lending transactions occurring outside the U.S. would not meet the collateral requirements of Regulation T. The proposed amendment would allow a creditor to accept any collateral that may be pledged in the foreign country for loans of securities, providing the collateral's value is at least equal to 100 percent of the market value of the securities borrowed.

3. Installment Sales

The United Kingdom began a series of privatizations of state-owned companies in the late 1970s. Investors in the shares of these companies paid for them on an installment basis over a period of at least six months. Installment sales are not uncommon in the U.K., but are generally prohibited in this country under section 11(d) of the Act.[5] The practice is also prohibited under Regulation T if the first installment is less than the initial margin requirement.

Participation of U.S. investors in the U.K. privatizations was accommodated by letters written by Board staff.[6] The Board proposes to amend the arranging provision of Regulation T to state that a creditor is not deemed to have arranged for credit subject to the margin regulations if it sells a foreign security that is being offered on an installment basis, provided that less than 15 percent of the issue is offered to U.S. persons. This generic language would allow U.S. investors to participate in installment sales of foreign securities when the U.S. component of the offering is a relatively small portion of the overall offering and would cover offerings by foreign governments and other foreign issuers.

4. Foreign Margin Stocks

In 1990, the Board amended Regulation T to establish a List of Foreign Margin Stocks (the "Foreign List"). These stocks are treated in the same manner as domestic margin equity securities. The Board established criteria for initial inclusion on the Foreign List and for continued listing. U.S. broker-dealers certify to an SRO that specific foreign securities meet the criteria. The Board uses the information submitted by the SRO in publishing the Foreign List. The Foreign List has grown from approximately 40 stocks in August 1990 to over 700 stocks this year.

Many commenters state that the system is cumbersome and results in all broker-dealers benefitting from the research done by a small number of firms. Some commenters have suggested that a stock included in a major foreign stock index should be automatically marginable if it meets two criteria: (1) the SEC or CFTC has approved trading in the United States of options, warrants, or futures on a foreign securities index that contains the foreign equity security and (2) the SEC has determined that the stock has a "ready market" for purposes of its net capital rule.[7] The Board is soliciting comment whether such a test should be adopted, which securities would be covered under the criteria, and suggestions on how this information could be integrated into the Board's Foreign List.

III. Other Customer Transactions

A. Margin Account/SMA

Most customer transactions involving credit take place in a margin account, which may be maintained in conjunction with a special memorandum account (SMA). Several commenters recommend that more than one customer, such as members of a family, be permitted to share a single SMA. One broker-dealer notes that this would allow the individual customers' accounts to be cross-collateralized and cross-guaranteed. The Board is not proposing to change the SMA at this time. In addition to operational problems raised by linked SMAs, Regulation T and the Board's other margin regulations do not allow a guarantee to have loan value for securities credit transactions.

The SIA-Credit Division suggests elimination of the provision in § 220.4(f)(2)(ii) concerning withdrawals of securities received as part of a distribution attributed to securities already in the margin account. This section is permissive in that it permits some withdrawals which create or increase a margin deficiency. Nevertheless, the Board is soliciting comment on whether such an exception is still warranted.

1. Convertible Bonds

Under Regulations G and U (12 CFR Parts 207 and 221), a debt security convertible into a margin stock is considered a margin stock. Although no comparable rule exists in Regulation T, in 1990 the Board defined foreign margin stock to include a debt security convertible into a margin security. The SIA-Credit Division and several broker-dealers recommend applying this concept to all convertible debt securities in Regulation T and the Board is proposing language to accomplish this.

2. Mutual Funds

a. Exempted securities mutual funds. Since 1968, the definition of margin stock in Regulations G and U has excluded mutual fund shares of companies whose assets are at least 95 percent invested in exempted securities. The exclusion of these funds (exempted securities mutual funds) from the definition of margin stock is equivalent to giving them good faith loan value at lenders other than broker-dealers. The Investment Company Institute has asked the Board to amend Regulation T so that exempted securities mutual funds will be entitled to good faith loan value at broker-dealers as well as other lenders. The Board is proposing to use the regulatory language found in Regulations G and U in Regulation T.

b. Money market mutual funds. In addition to exempted securities mutual funds, the Board is proposing to give good faith loan value to money market mutual funds. Money market mutual funds are subject to additional SEC regulation and are recognized as cash equivalents by the industry and the general public.

3. OTC Margin Bonds

Several commenters suggest that the Board adopt a rating requirement for all debt securities as an alternative to the current requirement that domestic debt securities be registered with the SEC. The Board has adopted the rating requirement for foreign securities because the concept of comity argues against requiring SEC registration. The fact that "mortgage-related securities" require a rating but not SEC registration was Congressionally mandated in the Secondary Mortgage Market Enhancement Act of 1984.

The Board is proposing to strike the word "mortgage" from the second section of the definition of "OTC margin bond" to clarify that all pass-through securities can meet this definition. The Board also confirms that the minimum principal amount required for "OTC margin bonds" applies to shelf registrations of a single issue once the minimum amount has been issued, even though some of the individual tranches sold may be smaller.

Although a 1984 staff opinion took the position that privately-issued Treasury receipts were not exempted securities and not entitled to loan value,[8] the Board, SEC and Treasury Department have become more comfortable over time with viewing these securities as equivalent to exempt securities. For example, a 1994 Board staff opinion concerning the Glass-Steagall Act concluded that the holder of a privately-issued Treasury receipt is, for virtually all purposes, a holder of an interest in the underlying Treasury security.[9] The Board therefore does not object to the treatment of privately-issued Treasury receipts as exempted securities for purposes of Regulation T. The staff opinion to the contrary will be deleted.

4. OTC Margin Stock

A comment was received from an investor who believes stock which does not trade on NASDAQ should be marginable if the issuer has another class of marginable stock whose price is used to determine the sale price of the nonmargin stock. This situation is not being addressed by the proposed amendments. In addition to the complexity of covering such a limited group of stocks, this type of stock cannot be purchased by the general public and therefore no bid prices are available.

5. Nonsecurities Instruments

The Public Securities Association (PSA) and a broker-dealer comment that creditors should be able to extend credit on commercial paper, certificates of deposit (CDs), and bankers acceptances (BAs). All of these instruments may be used collateral for a nonpurpose loan (i.e., a loan that is not made for the purpose of purchasing, carrying, or trading in securities). Section 7(c) of the Act[10] prohibits the Board from permitting broker-dealers to accept nonsecurities as collateral in a margin account. Although commercial paper is a security and can be held in a margin account, Regulation T denies loan value to domestic debt securities that are not SEC-registered. Therefore, commercial paper is a nonmargin, nonexempted security and the Supplement to Regulation T requires a margin of 100 percent if held in a margin account.

B. Cash Account

1. Permissible Transactions

Proposed changes to the cash account concerning options are discussed in this preamble in section I.B.2. In addition, one commenter would like confirmation that customers may purchase CDs and other nonsecurities products in the cash account. A 1988 staff opinion confirmed that industry practice is to use the cash account to record the purchase of both securities and nonsecurities,[11] and the Board is proposing to add language to the cash account section of the regulation to codify this position.

2. Net settlement

In order to guard against free-riding, net settlement of trades in a cash account generally is not permitted. Customers are required to pay for all purchases in full without netting sale proceeds from securities purchased and sold on the same day in order to avoid imposition of the 90-day freeze described in § 220.8(c) of Regulation T. In 1988, Board staff confirmed two statutory exceptions to this general rule for transactions in mortgage-related securities[12] and exempted securities.[13] Some broker-dealers comment that customers should be able to net settle all transactions in a cash account as long as the regulation states that day trading is not permitted in that account. No changes are being proposed in this area as allowing net settlement of all trades in the cash account would complicate a creditor's ability to prevent free-riding in the cash account.

3. 90-Day Freeze

A customer who sells a security purchased in a cash account before making full cash payment must have sufficient funds in the account by trade date for any purchases during the next 90 days. This restriction is known as the "90-day freeze." One broker-dealer suggested the freeze should not apply if the cash account holds marginable securities with sufficient loan value to pay for the securities that have been sold before having been paid for. This suggestion is contrary to the nature of the cash account. A customer who contemplates the need for credit to settle securities purchases should be using a margin account and not a cash account.

Another broker-dealer believes the freeze should not apply if a customer decides to liquidate a purchase made on a DVP basis when the customer is ready to make full payment but the selling broker does not make timely delivery and the security is otherwise unavailable. The Board agrees that a customer should not be subject to the 90-day restriction when it decides to liquidate a transaction that the counterparty cannot complete.

C. Other Accounts

1. Arbitrage Account

Transactions effected in the arbitrage account are not subject to Regulation T margin requirements. The SIA and a broker-dealer have requested that the arbitrage account no longer require that the transactions be entered into to take advantage of a concurrent disparity in prices. However, elimination of the requirement that the two transactions yield an immediate gain would expand this special provision beyond those transactions which perform a market function by bringing together the prices of securities or markets which should be the same. Therefore no changes are being proposed to the arbitrage account.

2. Broker-Dealer Credit Account

The broker-dealer credit account is normally available only for broker-dealers.[14] However, the brokerage industry has developed a service known as "prime brokerage" in which a customer maintains a cash and/or margin account with a "prime broker" to record transactions executed at one or more executing brokers. Industry practice has been for the executing broker to use the broker-dealer credit account to record the transactions sent

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[5] 15 U.S.C. 78k(d).

[6] See, e.g., Staff Opinion of October 24, 1984, *FRRS* 5–615.92.

[7] 17 CFR 240.15c3–1(c)(11).

[8] Staff Opinion of December 13, 1984, *FRRS* 5–628.13.

[9] Staff Opinion of January 10, 1994, *FRRS* 4–655.5.

[10] 15 U.S.C. 78g(c).

[11] *FRRS* 5–615.955.

[12] *FRRS* 5–615.952.

[13] *FRRS* 5–628.17.

[14] As noted in the section on foreign broker-dealers, the Board is proposing to allow foreign broker-dealers to use the broker-dealer credit account when purchasing securities on a DVP basis.

to the prime broker (who enforces Regulation T vis-a-vis the customer). After discussions with Board staff and an SIA committee, the SEC issued a no action letter last year describing requirements that must be followed in connection with prime brokerage.[15] The Board is proposing to add language to the broker-dealer credit account to officially acknowledge its use in prime brokerage transactions.

D. Other Transactions

1. Repurchase Agreements

A repurchase agreement from a broker-dealer's point of view may be viewed as a borrowing by the creditor and should not generally be covered by the Board's margin regulations as long as the security is not subject to the restrictions imposed by section 8(a) of the Act. The repurchase agreements addressed herein are reverse repurchase agreements in which a customer sells a security to a creditor with an agreement to repurchase from the creditor at a later time. Repurchase agreements in government securities are permitted in the government securities account created last year.[16]

In addition to repurchase agreements on government securities the PSA, SIA and several broker-dealers request an amendment that would permit repurchase agreements on all fixed income securities with good faith loan value, although the PSA acknowledges that it may be appropriate to treat these transactions as margin loans. However, broker-dealers traditionally require 20 percent margin when financing nonexempted debt securities and do not lend the 100 percent implied in structuring the transaction as a repurchase agreement. Although the PSA acknowledges the resemblance between repurchase agreements and margin loans, it states that practical problems make the cash account or a new account more appropriate. Although the collection of margin from a customer by a broker-dealer would seem to indicate that the transaction is properly recorded in the margin account, the Board is soliciting comment on the advisability of creating a new account for repurchase agreements on securities other than government securities in which margin would be collected as if the transaction were a conventional margin loan. The PSA, SIA, and a law firm also request creation of a new account to allow forward transactions, which are not permitted under Regulation T unless the security is trading on a when-issued basis or is a government or mortgage-related security. Comment is also invited on the advisability of accommodating forward transactions accompanied by the deposit required for a conventional margin loan in an account other than a margin account.

The PSA and SIA would also like creditors to be able to effect repurchase agreements on money market instruments that may not qualify as securities. Such transactions are permissible in the nonsecurities credit account as long as the proceeds are not used for purpose credit.

2. Two-Tiered Market

The SIA and several broker-dealers believe the Board should establish an account or subaccount where creditors may effect and finance all securities transactions on a good faith basis for customers who meet some level of financial sophistication. In the past, the Board has amended the arranging section of Regulation T to permit creditors to arrange for certain types of credit for sophisticated customers.[17] No further relaxation of the regulation is being proposed in this area at this time.

3. Use of Money Market Funds

As noted above,[18] the Board is proposing to add money market mutual funds to the list of cash equivalents available to cover a put written in the cash account and give the fund shares good faith loan value in a margin account. The SIA-Credit Division and two other broker-dealers believe money market mutual funds should be treated as cash without having to be liquidated. Although the Board recognizes that money market shares are often viewed as cash equivalents, they are not cash. A customer who is required to deposit cash pursuant to Regulation T must liquidate the shares to realize cash.

IV. Broker-Dealer Transactions

A. Credit Extended to Other Broker-Dealers

1. All Broker-Dealers

The commenters were split on the question of whether broker-dealers should continue to be treated as customers under Regulation T. The principal argument in favor of special treatment for broker-dealers is that they are subject to minimum net capital requirements that impose a limit on leverage, albeit greater leverage than that permitted public customers. The Board continues to believe special credit (i.e., lower margin) is appropriate when broker-dealers perform a market function, but is not proposing treatment that differs from that for public customers for reasons of equity.

2. Specialists and Market-Makers

Regulation T permits special credit for broker-dealers performing a market function. The Board is proposing clarifying language to the provisions describing OTC market makers and third-market makers to respond to questions that have arisen since the regulation was last revised.

The SIA would like the Board to permit deficit financing of specialists, eliminate restrictions on their permitted offsets and eliminate the restriction in § 220.12(b)(4) of Regulation T concerning free-riding by specialists. As discussed in this preamble in section I.A.2.c., the Board is proposing to allow any permitted offset that is permissible under SEC-approved rules of the creditor's examining authority. Although the Board supports the concept of good faith credit for specialist transactions, deficit financing is a form of unsecured credit, which is prohibited by section 7(c) of the Act.[19] The restriction on free-riding by specialists by its terms does not apply to any specialist on an exchange that has an SEC-approved rule on the same subject.

One broker-dealer suggested expanding the definition of OTC market-maker to include market makers of convertible bonds who post their prices in the "yellow sheets" or deal in convertible bonds traded pursuant to SEC Rule 144A.[20] Convertible bonds are equity securities under the Act[21] and the Board has designated convertible bonds as OTC margin stock when they meet the criteria in section 220.17 of Regulation T. OTC market-makers are registered with NASDAQ as such and are required to engage in a certain level of market-making, as are specialists. The Board does not permit good faith credit for broker-dealers making a market in equity securities via the "pink sheets." Consistency argues against permitting such credit for broker-dealers making a market in convertible bonds via the "yellow sheets" or those trading pursuant to SEC Rule 144A.

3. Joint Back Office Arrangements

Section 220.11(a)(2) of Regulation T allows broker-dealers to set up a joint back office (JBO). The owners of the JBO are not considered customers of the clearing organization and therefore no Regulation T margin is required, although the clearing firm generally obtains the appropriate securities haircut from its participants. When the JBO section was adopted, the Board assumed there would be a reasonable relationship between the creditors' ownership interests and the amount of business conducted and did not adopt an explicit requirement for the amount of ownership each broker-dealer should have in the JBO. Since adoption of the provision, several stock exchanges have expressed concern that JBOs are permitting credit far in excess of the participant's interest. Much of the activity was attributed to index options specialists seeking good faith financing for stock baskets, which is not otherwise permitted under Regulation T. As discussed in the section on the market functions account under options, the Board is proposing to permit such financing under SEC-approved rules of the exchanges and this change should reduce the pressure on JBOs to extend credit greatly disproportionate to the amount of equity ownership. Nevertheless, the Board is also proposing to state explicitly that the participants' ownership interest in the JBO should be reasonably related to the amount of business conducted through it. Three stock exchanges and one other commenter support changes along these lines.

4. Credit to Other Types of Broker-Dealers

Several commenting broker-dealers suggest additional classes of creditors that should be entitled to good faith credit. One broker-dealer suggests creating a new category of broker-dealers entitled to beneficial margin treatment that would be under some affirmative obligation to add liquidity to the market but would not be required to be present on the trading floor. The Board has traditionally allowed good faith credit for specialists engaged in specialist transactions and deferred to the SEC to determine who is a specialist under the Act. It is unclear what the effect would be on specialists if other broker-dealers with lesser market-making obligations were permitted good faith credit on certain transactions.

The SIA-Credit Division believes that self-clearing broker-dealers who choose to go through another broker-dealer should not be required to post customer margin. Board staff has addressed this issue several times[22] and reiterated that the treatment of a broker-dealer depends on whether it clears the transaction itself and not whether it *could* clear the transaction. In addition, a broker-dealer suggested that affiliated broker-dealers should not be treated as customers. Board staff has indicated that affiliated (sister) firms are treated as customers[23] and no policy reasons for changing this have been presented.

B. Borrowing and Lending Securities

Section 220.16 of Regulation T covers the borrowing and lending of securities. Securities may be borrowed or lent in connection with the need to make delivery in short sales and fails to receive. The section covers the borrowing and lending of all types of securities,[24] including those with good faith loan value, and requires enumerated types of collateral worth at least 100 percent of the market value of the securities on a daily basis. Although stock loans are economically equivalent to repurchase agreements, the former are based on the need to make delivery and are not meant to be financing arrangements for the owner of the securities being lent.[25]

1. Collateral

a. *Foreign sovereign debt.* In 1988, the Board amended Regulation T to give good faith loan value to highly rated foreign sovereign bonds. Shortly thereafter, Board staff indicated that these securities should be acceptable as collateral for stock loans if the currency of the lent security is the same as the sovereign bond.[26] The Board is proposing explicitly to add foreign sovereign bonds to the list of collateral in § 220.16 of Regulation T without restriction as to currency. This change was supported by the SIA, SIA-Credit Division, NYSE and several broker-dealers.

b. *SEC customer protection rule.* While § 220.16 of Regulation T covers all borrowing and lending of securities by creditors, the SEC's customer protection rule[27] also applies if the creditor is borrowing securities from its customer. Both rules specify permissible types of collateral. In 1989 the SEC proposed expanding the types of acceptable collateral specified in its rule[28] and its staff issued a no action letter in the interim. Regulation T currently expressly provides for all of these types of collateral, with the exception of foreign sovereign debt, which is being proposed as part of this package. To ensure that acceptable collateral under § 220.16 of Regulation T is always at least as broad as that required by the SEC when creditors borrow securities from their customers, the Board is proposing to refer to the SEC's customer protection rule in § 220.16 of Regulation T.

c. *Other collateral.* The SIA and a broker-dealer seek confirmation that any freely convertible currency may be treated as cash collateral for borrowings of securities. Although this may present a currency risk not originally anticipated, the Board believes that this is permissible, given that such loans are marked-to-market daily with collateral equal to at least 100 percent of the market value of the securities being borrowed.

Several commenters support expanding acceptable collateral to include options or some or all types of marginable securities, while the NYSE is opposed to this concept. Although the Board has gradually expanded the types of acceptable collateral over the years, it has always required collateral with high liquidity and low volatility.

2. Permitted Purposes

a. *Pre-borrowing.* Although Regulation T currently permits borrowing of securities for short sales that have been effected or are in immediate prospect, several commenters support the concept of "pre-borrowing," the borrowing of securities in anticipation of a short sale that may or may not take place in the near future. Pre-borrowing can lead to an attempt to "squeeze" the market for a security by locking up all available shares and hindering the ability of others to sell that security short.[29]

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[15] Letter of January 25, 1994, from Brandon Becker, Esq. to Mr. Jeffrey C. Bernstein, reprinted in CCH Federal Securities Law Reporter at ¶ 76,819.

[16] See 59 FR 53565 (October 25, 1994).

[17] For example, the exemption in section 220.13(b) requires that the sale of securities be effected pursuant to the SEC's private placement exception from registration. Such sales must be made to sophisticated investors.

[18] See section I.A.2.b. on the cash account under options and section III.A.2.b. on mutual funds above.

[19] 15 U.S.C. 78g(c).

[20] 17 CFR 230.144A.

[21] Section 3(a)(11) of the Act (15 U.S.C. 78c(a)(11)) defines equity security to include any security convertible into an equity security.

[22] See, e.g., Staff Opinion of August 18, 1986, *FRRS* 5–621.16.

[23] Staff Opinion of December 16, 1988, *FRRS* 5–621.18.

[24] The government securities account can be used to conduct all types of permissible transactions involving government securities, including borrowing and lending.

[25] The Financial Accounting Standards Board (FASB) is currently debating the differing treatment of repurchase agreements and stock loans and has tentatively concluded that repurchase agreements should be accounted for as collateralized borrowings if the repurchase agreement entitles the party receiving financial assets subject to repurchase to repledge them but not sell them. Most securities lending transactions that entitle the party receiving the financial assets to sell them would be accounted for as sales. Staff plans to review the Regulation T treatment in this area once FASB reaches a decision on the matter.

[26] Staff Opinion of September 23, 1988, *FRRS* 5–615.15.

[27] SEC Rule 15c3–3, 17 CFR 240.15c3–3.

[28] SEC Release No. 34–26608, 54 FR 10680 (March 15, 1989).

[29] Board staff has indicated that a permissible alternative to pre-borrowing is the payment of a

Continued

b. *Dividend reinvestment and stock purchase plans.* In addition to pre-borrowing, commenters such as the NYSE and several broker-dealers suggest that broker-dealers be permitted to borrow securities in order to participate in an issuer's dividend reinvestment and stock purchase plan. These plans allow dividends, and often additional funds, to be used to purchase additional shares of the issuer, usually at a discount from the current stock price. Board staff opinions and SEC enforcement actions have made clear that Regulation T as currently written does not permit the borrowing of securities for this purpose.[30]

The Board is not proposing to include dividend reinvestment and stock purchase plans as a permitted purpose for borrowing securities. Permitting such borrowing would not be consistent with existing Board policy concerning borrowing and lending securities. The Board has permitted securities lending where it is needed for the smooth operation of the securities markets, i.e. short sales and fails to receive securities. This view was echoed by the Group of Thirty when they recommended removing impediments to securities lending to allow delivery of securities. Participation in dividend reinvestment and stock purchase plans does not help the securities markets complete transactions as broker-dealers do not actually want or need possession of the securities. Nevertheless, in light of comments received indicating that many issuers view these programs as a less costly means of raising capital, the Board is soliciting comment on whether section 220.16 of Regulation T should be amended to accommodate these plans.

c. *Other purposes.* The PSA, SIA and a broker-dealer recommend adding repurchase agreements to the list of permitted purposes. Since a repurchase agreement represents the sale of a security with a promise to repurchase it at a later date, a creditor who does not own the security subject to the repurchase agreement is engaging in a short sale and therefore may borrow the security pursuant to section 220.16 of Regulation T.[31]

One broker-dealer believes institutions such as banks and insurance companies should be able to borrow securities from a creditor if they say it is for a permitted purpose. However, Regulation T and the U.S. securities markets in general presume that the borrowing of securities will be effected by the broker-dealer that executes the trade. Permitting an entity other than a broker-dealer to borrow securities for a transaction effected by a broker-dealer would permit circumvention of the Board's margin requirements.

C. Borrowing by Creditors

All of the commenters addressing section 8(a) of the Act, which limits the source of certain loans to broker-dealers to member banks and some nonmember banks, support expansion of the types of lenders described in section 8(a) or a reduction in the types of transactions subject to the restriction. The SEC has recently exempted all listed debt securities from the scope of section 8(a) of the Act,[32] with the result that only loans secured by exchange-traded equity securities are still subject to the restriction.

A wide variety of commenters recommend legislation be introduced to loosen the restrictions of section 8(a). Such legislation is currently pending in Congress.[33]

V. Section-by-Section Explanation of Proposed Changes

Section 220.2 Definitions

The following new definitions are being proposed: *cash equivalent, covered option transaction, exempted securities mutual fund, foreign person, money market mutual fund, non-U.S. traded foreign security, and permitted offset position.* The following definitions would be modified: *escrow agreement, in the money, margin security, OTC margin bond, OTC margin stock, short call or short put, and underlying security.* The definition of in or at the money would be deleted and SEC-approved rules of the appropriate SRO would govern permitted offsets for specialists.

Section 220.3 General Provisions

Section 220.3(e)(4), "Receipt of funds or securities," is used by creditors to temporarily finance the exercise of a customer's employee stock option. The section would be reworded to permit such short-term financing for anyone entitled to receive or acquire any securities pursuant to an SEC-registered employee benefit plan.

Section 220.3(i), "Variable annuity contracts issued by insurance companies," would be deleted, although no substantive change is intended.

Section 220.4 Margin Account

Section 220.4(b) would contain all provisions of section 220.5, except for those covering specific options transactions. The options provisions would be deleted and SEC-approved rules of the SROs would apply to these transactions.

Section 220.4(c) would no longer prohibit a margin excess in a foreign currency subaccount from offsetting a margin deficiency in another foreign currency subaccount.

Section 220.5 Special Memorandum Account

This account would be moved from section 220.6. No substantive changes are proposed.

Section 220.6 Government Securities Account

This account would be moved from section 220.18. No substantive changes are proposed.

Section 220.8 Cash Account

Section 220.8(a), Permissible transactions," would be amended in two ways. First, the cash account would recognize industry practice and specifically permit the sale to a customer of any asset on a cash basis. Second, the covered options transactions permitted under section 220.8(a)(3) would be broadened to include any eligible transaction designated by the SEC-approved rules of the SROs.

Section 220.8(b), "Time periods for payment; cancellation or liquidation," would permit creditors to accept full cash payment from customers for the purchase of foreign securities up to one day after the regular way settlement date.

Section 220.11 Broker-Dealer Credit Account

Three substantive changes are being proposed to section 220.11(a), "Permissible transactions." First, foreign broker-dealers would be permitted to use the account for delivery-versus-payment transactions with U.S. broker-dealers. Second, joint back office arrangements would require a reasonable relationship between the owners' equity interest and the amount of business effected or financed by the joint back office. Third, "prime broker" arrangements set up under SEC guidelines would be able to use this account for transactions effected at executing broker-dealers.

Section 220.12 Market Functions Account

Section 220.12(b), "Specialists," would be amended to allow SEC-approved rules of the SROs to determine which permitted offsets can be effected on a good faith basis.

Section 220.13 Arranging for Loans by Others

Changes are proposed for this section in two areas. First, the provision allowing U.S. broker-dealers to arrange for customers to obtain credit from a foreign lender to purchase foreign securities would be expanded to cover short sales while the overall coverage of this provision would be limited to foreign securities that are not publicly traded in the United States. Second, the regulation would explicitly permit U.S. broker-dealers to sell its customers foreign securities with installment features if the offering has only a small U.S. component.

Section 220.16 Borrowing and Lending Securities

Two changes are proposed for this section. First, the required collateral would be expanded to include marginable foreign sovereign debt securities and any collateral that is acceptable to the SEC when a broker-dealer borrows securities from its customer. Second, U.S. broker-dealers would be able to lend foreign securities to a foreign person for any legal purpose and against any legal collateral.

Section 220.18 Supplement: Margin Requirements

Several changes are being proposed. Options would be given fifty percent loan value if listed on a national securities exchange. Mutual funds whose portfolio is limited to exempted securities would be given good faith loan value, as would money market mutual funds.

VI. Regulatory Flexibility Act

The Board believes there will be no significant economic impact on a substantial number of small entities if this proposal is adopted. Comments are invited on this statement.

VII. Paperwork Reduction Act

No additional reporting requirements or modification to existing reporting requirements are proposed.

List of Subjects in 12 CFR Part 220

Banks, banking, Bonds, Brokers, Credit, Federal Reserve System, Margin, Margin requirements, Investment companies, Investments, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Board proposes to amend 12 CFR Part 220 as follows:

PART 220—CREDIT BY BROKERS AND DEALERS (REGULATION T)

1. The authority citation for Part 220 continues to read as follows:

Authority: 15 U.S.C. 78c, 78g, 78h, 78q, and 78w.

2. The table of contents for part 220 is amended by revising the entries for §§ 220.1–220.18 and renaming the entry for § 220.19 to read as follows:

Sec.
220.1 Authority, purpose, and scope.
220.2 Definitions.
220.3 General provisions.
220.4 Margin account.
220.5 Special memorandum account.
220.6 Government securities account.
220.7 Arbitrage account.
220.8 Cash account.
220.9 Nonsecurities credit and employee stock ownership account.
220.10 Omnibus account.
220.11 Broker-dealer credit account.
220.12 Market functions account.
220.13 Arranging for loans by others.
220.14 Clearance of securities, options, and futures.
220.15 Borrowing by creditors.
220.16 Borrowing and lending securities.
220.17 Requirements for the list of marginable OTC stocks and the list of foreign margin stocks.
220.18 Supplement: Margin requirements.
* * * * *

3. Sections 220.1 through 220.18 are revised to read as follows:

§ 220.1 Authority, purpose, and scope.

(a) *Authority and purpose.* Regulation T (this part) is issued by the Board of Governors of the Federal Reserve System (the Board) pursuant to the Securities Exchange Act of 1934 (the Act) (15 U.S.C. 78a *et seq.*). Its principal purpose is to regulate extensions of credit by and to brokers and dealers; it also covers related transactions within the Board's authority under the Act. It imposes, among other obligations, initial margin requirements and payment rules on securities transactions.

(b) *Scope.* (1) This part provides a margin account and eight special purpose accounts in which to record all financial relations between a customer and a creditor. Any transaction not specifically permitted in a special account shall be recorded in a margin account.

(2) This part does not preclude any exchange, national securities association, or creditor from imposing additional requirements or taking action for its own protection.

(3) This part does not apply to transactions between a customer and a broker or dealer registered only under section 15C of the Act.

§ 220.2 Definitions.

The terms used in this part have the meanings given them in section 3(a) of the Act or as defined in this section.

Cash equivalent means securities issued or guaranteed by the United States or its agencies, negotiable bank certificates of deposit, bankers acceptances issued by banking institutions in the United States and payable in the United States, or money market mutual funds.

Covered option transaction means:

(1) In the case of a short call, the underlying security (or a security immediately convertible into the underlying security, without the payment of money) is held in or purchased for the account on the same day, and the option premium is held in the account until cash payment for the underlying or convertible security is received; or

(2) In the case of a short put, the creditor obtains cash in an amount equal to the exercise price or holds in the account cash equivalents with a current market value at least equal to the exercise price and with one year or less to maturity; or

(3) Any other transaction involving options or warrants in which the customer's risk is limited to a fixed amount and is not subject to early exercise if:

(i) The amount at risk is held in the account in cash, cash equivalents, or via an escrow receipt; and

(ii) The transaction has been defined as eligible for the cash account by the rules of the registered national securities exchange authorized to trade the option or warrant, provided that all such rules have been approved or amended by the SEC.

Credit balance means the cash amount due the customer in a margin account after debiting amounts transferred to the special memorandum account.

Creditor means any broker or dealer (as defined in sections 3(a)(4) and 3(a)(5) of the Act), any member of a national securities exchange, or any person associated with a broker or dealer (as defined in section 3(a)(18) of the Act), except for business entities controlling or under common control with the creditor.

Customer includes:

(1) Any person or persons acting jointly:

commitment fee to a stock lender. See staff opinion of October 22, 1990, FRRS 5–615.18.

[30] Staff Opinions of March 2, 1984, FRRS 5–615.1 and July 6, 1984, FRRS 5–615.01; see also In re RFG Options, SEC Administrative Proceeding File No. 3–6370, September 26, 1988.

[31] As noted in footnote 29, all transactions involving government securities may be effected in the government securities account without regard to other provisions of Regulation T.

[32] SEC Rule 3a12–11, 17 CFR 240.3a12–11, published at 59 FR 55342, November 7, 1994.

[33] H.R. 1062, 104th Cong., 1st Sess.

(i) To or for whom a creditor extends, arranges, or maintains any credit; or

(ii) Who would be considered a customer of the creditor according to the ordinary usage of the trade;

(2) Any partner in a firm who would be considered a customer of the firm absent the partnership relationship; and

(3) Any joint venture in which a creditor participates and which would be considered a customer of the creditor if the creditor were not a participant.

Debit balance means the cash amount owed to the creditor in a margin account after debiting amounts transferred to the special memorandum account.

Delivery against payment, Payment against delivery, or a C.O.D. transaction refers to an arrangement under which a creditor and a customer agree that the creditor will deliver to, or accept from, the customer, or the customer's agent, a security against full payment of the purchase price.

Equity means the total current market value of security positions held in the margin account plus any credit balance less the debit balance in the margin account.

Escrow agreement means any agreement issued in connection with a call or put option under which a bank or any person designated as a control location under paragraph (c) of SEC Rule 15c3–3 (17 CFR 240.15c3–3), holding the underlying security, foreign currency, certificate of deposit, or required cash, is obligated to deliver to the creditor (in the case of a call option) or accept from the creditor (in the case of a put option) the underlying security, foreign currency, or certificate of deposit against payment of the exercise price upon exercise of the call or put.

Examining authority means:

(1) The national securities exchange or national securities association of which a creditor is a member; or

(2) If a member of more than one self-regulatory organization, the organization designated by the SEC as the examining authority for the creditor.

Exempted securities mutual fund means any security issued by an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8), provided the company has at least 95 percent of its assets continuously invested in exempted securities (as defined in section 3(a)(12) of the Act).

Foreign margin stock means: (1) A foreign security that is an equity security and that appears on the Board's periodically published List of Foreign Margin Stocks based on information submitted by a self-regulatory organization under procedures approved by the Board. *Foreign person* means a person other than a United States person as defined in section 7(f) of the Act.

Foreign security means a security issued in a jurisdiction other than the United States.

Good faith margin means the amount of margin which a creditor, exercising sound credit judgment, would customarily require for a specified security position and which is established without regard to the customer's other assets or securities positions held in connection with unrelated transactions.

In the money means the current market price of the underlying security or index is not below (with respect to a call option) or above (with respect to a put option) the exercise price of the option.

Margin call means a demand by a creditor to a customer for a deposit of additional cash or securities to eliminate or reduce a margin deficiency as required under this part.

Margin deficiency means the amount by which the required margin exceeds the equity in the margin account.

Margin excess means the amount by which the equity in the margin account exceeds the required margin. When the margin excess is represented by securities, the current value of the securities is subject to the percentages set forth in § 220.18 (Supplement: Margin requirements).

Margin security means:

(1) Any registered security;

(2) Any OTC margin stock;

(3) Any OTC margin bond;

(4) Any OTC security designated as qualified for trading in the National Market System under a designation plan approved by the Securities and Exchange Commission (NMS security);

(5) Any security issued by either an open-end investment company or unit investment trust which is registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8);

(6) Any foreign margin stock; or

(7) Any debt security convertible into a margin security.

Money market mutual fund means any security issued by an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8) that is considered a money market fund under SEC Rule 2a–7 (17 CFR 270.2a–7).

Nonexempted security means any security other than an exempted security (as defined in section 3(a)(12) of the Act).

Nonmember bank means a bank that is not a member of the Federal Reserve System.

Non-U.S. traded foreign security means a foreign security that is neither a registered security nor one listed on NASDAQ.

OTC margin bond means:

(1) A debt security not traded on a national securities exchange which meets all of the following requirements:

(i) At the time of the original issue, a principal amount of not less than $25,000,000 of the issue was outstanding;

(ii) The issue was registered under section 5 of the Securities Act of 1933(15 U.S.C. 77e) and the issuer either files periodic reports pursuant to section 13(a) or 15(d) of the Act or is an insurance company which meets all of the conditions specified in section 12(g)(2)(G) of the Act; and

(iii) At the time of the extension of credit, the creditor has a reasonable basis for believing that the issuer is not in default on interest or principal payments; or

(2) A private pass-through security (not guaranteed by an agency of the U.S. government) meeting all of the following requirements:

(i) An aggregate principal amount of not less than $25,000,000 (which maybe issued in series) was issued pursuant to a registration statement filed with the SEC under section 5 of the Securities Act of 1933 (15 U.S.C. 77e);

(ii) Current reports relating to the issue have been filed with the SEC; and

(iii) At the time of the credit extension, the creditor has a reasonable basis for believing that mortgage interest, principal payments and other distributions are being passed through as required and that the servicing agent is meeting its material obligations under the terms of the offering; or

(3) A mortgage related security as defined in section 3(a)(41) of the Act; or

(4) A debt security issued or guaranteed as a general obligation by the government of a foreign country, its provinces, states, or cities, or a supranational entity, if at the time of the extension of credit one of the following is rated in one of the two highest rating categories by a nationally recognized statistical rating organization:

(i) The issue;

(ii) The issuer or guarantor (implicitly); or

(iii) Other outstanding unsecured long-term debt securities issued or guaranteed by the government or entity; or

(5) A foreign security that is a nonconvertible debt security that meets all of the following requirements:

(i) At the time of original issue, a principal amount of at least $100,000,000 was outstanding;

(ii) At the time of the extension of credit, the creditor has a reasonable basis for believing that the issuer is not in default on interest or principal payments; and

(iii) At the time of the extension of credit, the issue is rated in one of the two highest rating categories by a nationally recognized statistical rating organization, except that an issue that has not been rated as of the effective date of this provision shall be considered an OTC margin bond if a subsequent unsecured issue of at least $100,000,000 of the same issuer is rated in one of the two highest rating categories by a nationally recognized statistical rating organization.

OTC margin stock means any equity security traded over-the-counter that the Board has determined has the degree of national investor interest, the depth and breadth of market, the availability of information respecting the security and its issuer, and the character and permanence of the issuer to warrant being treated like an equity security traded on a national securities exchange. An OTC stock is not considered to be an OTC margin stock unless it appears on the Board's periodically published list of OTC margin stocks.

Overlying option means:

(1) A put option purchased or a call option written against a long position in an underlying security in the specialist record in § 220.12(b); or

(2) A call option purchased or a put option written against a short position in an underlying security in the specialist record in § 220.12(b).

Payment period means the number of business days in the standard securities settlement cycle in the United States, as defined in paragraph (a) of SEC Rule 15c6–1 (17 CFR 240.15c6–1), plus two business days.

Permitted offset position means a position in securities or other assets underlying options in which a specialist makes a market or a position in options overlying the securities in which a specialist makes a market, provided the positions qualify as permitted offsets under the rules of the national securities exchange with which the specialist is registered, provided that all such rules have been approved or amended by the SEC.

Purpose credit means credit for the purpose of:

(1) Buying, carrying, or trading in securities; or

(2) Buying or carrying any part of an investment contract security which shall be deemed credit for the purpose of buying or carrying the entire security.

Registered security means any security that:

(1) Is registered on a national securities exchange; or

(2) Has unlisted trading privileges on a national securities exchange.

Short call or short put means a call option or a put option that is issued, endorsed, guaranteed or sold in or for an account.

(1) A short call that is not cash-settled obligates the customer to sell the underlying asset at the exercise price upon receipt of a valid exercise notice.

(2) A short put that is not cash-settled obligates the customer to purchase the underlying asset at the exercise price upon receipt of a valid exercise notice.

(3) A short call or a short put that is cash-settled obligates the customer to pay the holder of an in the money long put or call who has exercised the option the cash difference between the exercise price and the current assigned value of the option as established by the option contract.

Specialist joint account means an account which, by written agreement, provides for the commingling of the security positions of the participants and a sharing of profits and losses from the account on some predetermined ratio.

Underlying security means:

(1) the security that will be delivered upon exercise of an option; or

(2) In the case of a cash-settled option, the securities which comprise the index in the same proportion or any other asset from which the option's value is derived.

§ 220.3 General provisions.

(a) *Records.* The creditor shall maintain a record for each account showing the full details of all transactions.

(b) *Separation of accounts.* Except as provided for in the margin account and the special memorandum account, the requirements of an account may not be met by considering items in any other account. If withdrawals of cash or securities are permitted under the regulation, written entries shall be made when cash or securities are used for purposes of meeting requirements in another account.

(c) *Maintenance of credit.* Except as prohibited by this part, any credit initially extended in compliance with this part may be maintained regardless of:

(1) Reductions in the customer's equity resulting from changes in market prices;

(2) Any security in an account ceasing to be margin or exempted; or

(3) Any change in the margin requirements prescribed under this part.

(d) *Guarantee of accounts.* No guarantee of a customer's account shall be given any effect for purposes of this part.

(e) *Receipt of funds or securities.* (1) A creditor, acting in good faith, may accept as immediate payment:

(i) Cash or any check, draft, or order payable on presentation; or

(ii) Any security with sight draft attached.

(2) A creditor may treat a security, check or draft as received upon written notification from another creditor that the specified security, check, or draft has been sent.

(3) Upon notification that a check, draft, or order has been dishonored or when securities have not been received within a reasonable time, the creditor shall take the action required by this part when payment or securities are not received on time.

(4) To temporarily finance a customer's receipt of stock pursuant to an employee benefit plan registered on SEC Form S–8, a creditor may accept, in lieu of the securities, a properly executed exercise notice and instructions to the issuer to deliver the stock to the creditor. Prior to acceptance, the creditor must verify that the issuer will deliver the securities promptly and the customer must designate the account into which the securities are to be deposited.

(f) *Exchange of securities.* (1) To enable a customer to participate in an offer to exchange securities which is made to all holders of an issue of securities, a creditor may submit for exchange any securities held in a margin account, without regard to the other provisions of this part, provided the consideration received is deposited into the account.

(2) If a nonmargin, nonexempted security is acquired in exchange for a margin security, its retention, withdrawal, or sale within 60 days following its acquisition shall be treated as if the security is a margin security.

(g) *Valuing securities.* The current market value of a security shall be determined as follows:

(1) Throughout the day of the purchase or sale of a security, the creditor shall use the security's total cost of purchase or the net proceeds of its sale including any commissions charged.

(2) At any other time, the creditor shall use the closing sale price of the security on the preceding business day, as shown by any regularly published reporting or quotation service. If there is no closing price, the creditor may use any reasonable estimate of the market value of the security as of the close of business on the preceding business day.

(h) *Innocent mistakes.* If any failure to comply with this part results from a mistake made in good faith in executing a transaction or calculating the amount of margin, the creditor shall not be deemed in violation of this part if, promptly after the discovery of the mistake, the creditor takes appropriate corrective action.

§ 220.4 Margin account.

(a) *Margin transactions.*(1) All transactions not specifically authorized for inclusion in another account shall be recorded in the margin account.

(2) A creditor may establish separate margin accounts for the same person to:

(i) Clear transactions for other creditors where the transactions are introduced to the clearing creditor by separate creditors; or

(ii) Clear transactions through other creditors if the transactions are cleared by separate creditors; or

(iii) Provide one or more accounts over which the creditor or a third party investment adviser has investment discretion.

(b) *Required margin—(1) Applicability.* The required margin for each long or short position in securities is set forth in § 220.18 (Supplement: Margin requirements) and is subject to the following exceptions and special provisions.

(2) *Short sale against the box.* A short sale "against the box" shall be treated as a long sale for the purpose of computing the equity and the required margin.

(3) *When issued securities.* The required margin on a net long or net short commitment in a when issued security is the margin that would be required if the security were an issued margin security, plus any unrealized loss on the commitment or less any unrealized gain.

(4) *Stock used os cover.* (i) When a short position held in the account serves in lieu of the required margin for a short put, the amount prescribed by paragraph (b)(1) of this section as the amount to be added to the required margin in respect of short sales shall be increased by any unrealized loss on the position.

(ii) When a security held in the account serves in lieu of the required margin for a short call, the security shall be valued at no greater than the exercise price of the short call.

(5) *Accounts of portners.* If a partner of the creditor has a margin account with the creditor, the creditor shall disregard the partner's financial relations with the firm (as shown in the partner's capital and ordinary drawing accounts) in calculating the margin or equity of the partner's margin account.

(6) *Contribution to joint venture.* If a margin account is the account of a joint venture in which the creditor participates, any interest of the creditor in the joint account in excess of the interest which the creditor would have on the basis of its right to share in the profits shall be treated as an extension of credit to the joint account and shall be margined as such.

(7) *Transfer of accounts.* (i) A margin account that is transferred from one creditor to another may be treated as if it had been maintained by the transferee from the date of its origin, if the transferee accepts, in good faith, a signed statement of the transferor (or, if that is not practicable, of the customer), that any margin call issued under this part has been satisfied.

(ii) A margin account that is transferred from one customer to another as part of a transaction, not undertaken to avoid the requirements of this part, may be treated as if it had been maintained for the transferee from the date of its origin, if the creditor accepts in good faith and keeps with the transferee account a signed statement of the transferor describing the circumstances for the transfer.

(8) *Credit denominated in foreign currency.* A creditor may extend credit denominated in a foreign currency secured by foreign margin securities denominated or traded in the same foreign currency and specifically identified on the creditor's books and records as securing the foreign currency debit.

(c) *When additional margin is required—(1) Computing deficiency.* All transactions on the same day shall be combined to determine whether additional margin is required by the creditor. For the purpose of computing equity in an account, security positions are established or eliminated and a credit or debit created on the trade date of a security transaction. Additional margin is required on any day when the day's transactions create or increase a margin deficiency in the account and shall be for the amount of the margin deficiency so created or increased.

(2) *Satisfaction of deficiency.* The additional required margin may be satisfied by a transfer from the special memorandum account or by a deposit of cash, margin securities, exempted securities, or any combination thereof.

(3) *Time limits.* (i) A margin call shall be satisfied within one payment period after the margin deficiency was created or increased.

(ii) The payment period may be extended for one or more limited periods upon application by the creditor to its examining authority unless the examining authority believes that the creditor is not acting in good faith or that the creditor has not sufficiently determined that exceptional circumstances warrant such action. Applications shall be filed and acted upon prior to the end of the payment period or the expiration of any subsequent extension.

(4) *Satisfaction restriction.* Any transaction, position, or deposit that is used to satisfy one requirement under this part shall be unavailable to satisfy any other requirement.

(d) *Liquidation in lieu of deposit.* If any margin call is not met in full within the required time, the creditor shall liquidate securities sufficient to meet the margin call or to eliminate any margin deficiency existing on the day such liquidation is required, whichever is less. If the margin deficiency created or increased is $1000 or less, no action need be taken by the creditor.

(e) *Withdrawals of cash or securities.* (1) Cash or securities may be withdrawn from an account, except if:

(i) Additional cash or securities are required to be deposited into the account for a transaction on the same or a previous day; or

(ii) The withdrawal, together with other transactions, deposits, and withdrawals on the same day, would create or increase a margin deficiency.

(2) Margin excess may be withdrawn or,may be transferred to the special memorandum account (§ 220.5) by making a single entry to that account which will represent a debit to the margin account and a credit to the special memorandum account.

(3) If a creditor does not receive a distribution of cash or securities which is payable with respect to any security in a margin account on the day it is payable and withdrawal would not be permitted under paragraph, (e) of this section, a withdrawal transaction shall be deemed to have occurred on the day the distribution is payable.

(f) *Interest, service charges, etc.* (1) Without regard to the other provisions of this section, the creditor, in its usual practice, may debit the following items to a margin account if they are considered in calculating the balance of such account:

(i) Interest charged on credit maintained in the margin account;

(ii) Premiums on securities borrowed in connection with short sales or to effect delivery;

(iii) Dividends, interest, or other distributions due on borrowed securities;

(iv) Communication or shipping charges with respect to transactions in the margin account; and

(v) Any other service charges which the creditor may impose.

(2) A creditor may permit interest, dividends, or other distributions credited to a margin account to be withdrawn from the account if:

(i) The withdrawal does not create or increase a margin deficiency in the account; or

(ii) The current market value of any securities withdrawn does not exceed 10 percent of the current market value of the security with respect to which they were distributed.

§ 220.5 Special memorandum account.

(a) A special memorandum account (SMA) may be maintained in conjunction with a margin account. A single entry amount may be used to represent both a credit to the SMA and a debit to the margin account. A transfer between the two accounts may be effected by an increase or reduction in the entry. When computing the equity in a margin account, the single entry amount shall be considered as a debit in the margin account. A payment to the customer or on the customer's behalf or a transfer to any of the customer's other accounts from the SMA reduces the single entry amount.

(b) The SMA may contain the following entries:

(1) Dividend and interest payments;

(2) Cash not required by this part, including cash deposited to meet a maintenance margin call or to meet any requirement of a self-regulatory organization that is not imposed by this part;

(3) Proceeds of a sale of securities or cash no longer required on any expired or liquidated security position that may be withdrawn under § 220.4(e); and

(4) Margin excess transferred from the margin account under § 220.4(e)(2).

§ 220.6 Government securities account.

In a government securities account, a creditor may effect and finance transactions involving government securities, provided the transaction is not prohibited by section 15C of the Act or any rule thereunder.

§ 220.7 Arbitrage account.

In an arbitrage account a creditor may effect and finance for any customer *bona fide* arbitrage transactions. For the purpose of this section, the term "*bona fide* arbitrage" means:

(a) A purchase or sale of a security in one market together with an offsetting sale or purchase of the same security in a different market at as nearly the same time as practicable for the purpose of taking advantage of a difference in prices in the two markets; or

(b) A purchase of a security which is, without restriction other than the payment of money, exchangeable or convertible within 90 calendar days of the purchase into a second security together with an offsetting sale of the second security at or about the same time, for the purpose of taking advantage of a concurrent disparity in the prices of the two securities.

§ 220.8 Cash account.

(a) *Permissible transactions.* In a cash account, a creditor, may:

(1) Buy for or sell to any customer any security or other asset if:

(i) There are sufficient funds in the account; or

(ii) The creditor accepts in good faith the customer's agreement that the customer will promptly make full cash payment for the security or asset before selling it and does not contemplate selling it prior to making such payment;

(2) Buy from or sell for any customer any security or other asset if:

(i) The security is held in the account; or

(ii) The creditor accepts in good faith the customer's statement that the security is owned by the customer or the customer's principal, and that it will be promptly deposited in the account;

(3) Issue, endorse, guarantee, or sell an option for any customer as part of a covered option transaction; and

(4) Use an escrow agreement in lieu of the cash or underlying security position if:

(i) In the case of a short call or a short put, the creditor is advised by the customer that the required securities or cash are held by a person authorized to issue an escrow agreement and the creditor independently verifies that the appropriate escrow agreement will be delivered by the person promptly; or

(ii) In the case of a call issued, endorsed, guaranteed, or sold on the same day the underlying security is purchased in the account and the underlying security is to be delivered to a person authorized to issue an escrow agreement, the creditor verifies that the appropriate escrow agreement will be delivered by the person promptly.

(b) *Time periods for payment; cancellation or liquidation—(1) Full cash payment.* A creditor shall obtain full cash payment for customer purchases—

(i) Within one payment period of the date:

(A) Any nonexempted security was purchased;

(B) Any when issued security was made available by the issuer for delivery to purchasers;

(C) Any "when distributed" security was distributed under a published plan:

(D) A security owned by the customer has matured or has been redeemed and a new refunding security of the same issuer has been purchased by the customer, provided:

(*1*) The customer purchased the new security no more than 35 calendar days prior to the date of maturity or redemption of the old security;

(*2*) The customer is entitled to the proceeds of the redemption; and

(*3*) The delayed payment does not exceed 103 percent of the proceeds of the old security.

(ii) In the case of the purchase of a foreign security, within one payment period of the trade date or within one day after the date on which settlement is required to occur by the rules of the foreign securities market, provided this period does not exceed the maximum time permitted by this part for delivery against payment transactions.

(2) *Delivery against payment.* If a creditor purchases for or sells to a customer a security in a delivery against payment transaction, the creditor shall have up to 35 calendar days to obtain payment if delivery of the security is delayed due to the mechanics of the transaction and is not related to the customer's willingness or ability to pay.

(3) *Shipment of securities, extension.* If any shipment of securities is incidental to consummation of a transaction, a creditor may extend the payment period by the number of days required for shipment, but not by more than one additional payment period.

(4) *Cancellation; liquidation; minimum amount.* A creditor shall promptly cancel or otherwise liquidate a transaction or any part of a transaction for which the customer has not made full cash payment within the required time. A creditor may, at its option, disregard any sum due from the customer not exceeding $1000.

(c) *90 day freeze.* (1) If a nonexempted security in the account is sold or delivered to another broker or dealer without having been previously paid for in full by the customer, the privilege of delaying payment beyond the trade date shall be withdrawn for 90 calendar days following the date of sale of the security. Cancellation of the transaction other than to correct an error shall constitute a sale.

(2) The 90 day freeze shall not apply if:

(i) Within the period specified in paragraph (b)(1) of this section, full payment is received or any check or draft in payment has cleared and the proceeds from the sale are not withdrawn prior to such payment or check clearance; or

(ii) The purchased security was delivered to another broker or dealer for deposit in a cash account which holds sufficient funds to pay for the security. The creditor may rely on a written statement accepted in good faith from the other broker or dealer that sufficient funds are held in the other cash account.

(d) *Extension of time periods; transfers.* (1) Unless the creditor's examining authority believes that the creditor is not acting in good faith or that the creditor has not sufficiently determined that exceptional circumstances warrant such action, it may upon application by the creditor:

(i) Extend any period specified in paragraph (b) of this section;

(ii) Authorize transfer to another account of any transaction involving the purchase of a margin or exempted security; or

(iii) Grant a waiver from the 90 day freeze.

(2) Applications shall be filed and acted upon prior to the end of the payment period, or in the case of the purchase of a foreign security within the period specified in paragraph (b)(1)(ii) of this section, or the expiration of any subsequent extension.

§ 220.9 Nonsecurities credit and employee stock ownership account.

(a) In a nonsecurities credit account a creditor may:

(1) Effect and carry transactions in commodities;

(2) Effect and carry transactions in foreign exchange;

(3) Extend and maintain secured or unsecured nonpurpose credit, subject to the requirements of paragraph (b) of this section; and

(4) Extend and maintain credit to employee stock ownership plans without regard to the other sections of this part.

(b) Every extension of credit, except as provided in paragraphs (a)(1) and (a)(2) of this section, shall be deemed to be purpose credit unless, prior to extending the credit, the creditor accepts in good faith from the customer a written statement that it is not purpose credit. The statement shall conform to the requirements established by the Board. To accept the customer's statement in good faith, the creditor shall be aware of the circumstances surrounding the extension of credit and shall be satisfied that the statement is truthful.

§ 220.10 Omnibus account.

(a) In an omnibus account, a creditor may effect and finance transactions for a broker or dealer who is registered with the SEC under section 15 of the Act and who gives the creditor written notice that:

(1) All securities will be for the account of customers of the broker or dealer; and

(2) Any short sales effected will be short sales made on behalf of the customers of the broker or dealer other than partners.

(b) The written notice required by paragraph (a) shall conform to any SEC rule on the hypothecation of customers' securities by brokers or dealers.

§ 220.11 Broker-dealer credit account.

(a) *Permissible transactions.* In a broker-dealer credit account, a creditor may:

(1) Purchase any security from or sell any security to another creditor or person regulated by a foreign securities authority under a good faith agreement to promptly deliver the security against full payment of the purchase price.

(2) Effect or finance transactions of any of its owners if the creditor is a clearing and servicing broker or dealer owned jointly or individually by other creditors, provided that the owners' interest is reasonably related to the amount of business they transact through the joint back office.

(3) Extend and maintain credit to any partner or stockholder of the creditor for the purpose of making a capital contribution to, or purchasing stock of, the creditor, affiliated corporation or another creditor.

(4) Extend and maintain, with the approval of the appropriate examining authority:

(i) Credit to meet the emergency needs of any creditor; or

(ii) Subordinated credit to another creditor for capital purposes, if the other creditor:

(A) Is an affiliated corporation or would not be considered a customer of the lender apart from the subordinated loan; or

(B) Will not use the proceeds of the loan to increase the amount of dealing in securities for the account of the creditor, its firm or corporation or an affiliated corporation.

(5) Effect transactions for a customer as part of a "prime broker" arrangement in conformity with SEC guidelines.

(b) *Affiliated corporations.* For purposes of paragraphs (a)(3) and (a)(4) of this section "affiliated corporation" means a corporation all the common stock of which is owned directly or indirectly by the firm or general partners and employees of the firm, or by the corporation or holders of the controlling stock and employees of the corporation and the affiliation has been approved by the creditor's examining authority.

§ 220.12 Market functions account.

(a) *Requirements.* In a market functions account, a creditor may effect or finance the transactions of market participants in accordance with the following provisions. A separate record shall be kept for the transactions specified for each category described in paragraphs (b) through (e) of this section. Any position in a separate record shall not be used to meet the requirements of any other category.

(b) *Specialists*—(1) *Applicability.* A creditor may clear or finance specialist transactions and permitted offset positions for any specialist, or any specialist joint account, in which all participants, or all participants other than the creditor, are registered as specialists on a national securities exchange that requires regular reports on the use of specialist credit from the registered specialists.

(2) *Required margin.* The required margin for a specialist's transactions shall be:

(i) Good faith margin for:

(A) Any long or short position in a security in which the specialist makes a market;

(B) Any wholly-owned margin security or exempted security; or

(C) Any permitted offset position.

(ii) The margin prescribed by § 220.18 (Supplement: Margin requirements) when a security purchased or sold short in the account does not qualify as a specialist or permitted offset position.

(3) *Additional margin; restriction on "free-riding".* (i) Except as required by paragraph (b)(4) of this section, the creditor shall issue a margin call on any day when additional margin is required as a result of specialist transactions. The creditor may allow the specialist a maximum of one payment period to satisfy a margin call.

(ii) If a specialist fails to satisfy a margin call within the period specified in paragraph (b)(3) of this section (and the creditor is required to liquidate securities to satisfy the call), the creditor shall be prohibited for a 15 calendar day period from extending any further credit to the specialist to finance transactions in nonspecialty securities.

(iii) The restriction on "free-riding" shall not apply to:

(A) Any specialist on a national securities exchange that has an SEC-approved rule on "free-riding" by specialists; or

(B) The acquisition or liquidation of a permitted offset position.

(4) *Deficit status.* On any day when a specialist's separate record would liquidate to a deficit, the creditor shall not extend any further specialist credit in the account and shall issue a margin call at least as large as the deficit. If the call is not met by noon of the following business day, the creditor shall liquidate positions in the specialist's account.

(5) *Withdrawals.* Withdrawals may be permitted to the extent that the equity exceeds the margin requirements specified in paragraph (b)(2) of this section.

(c) *Underwriters and distributors.* A creditor may effect or finance for any dealer or group of dealers transactions for the purpose of facilitating the underwriting or distribution of all or a part of an issue of securities with a good faith margin.

(d) *OTC marketmakers and third marketmakers.* (1) A creditor may clear or finance with a good faith margin, marketmaking transactions for a creditor who is a registered NASDAQ marketmaker or a qualified third marketmaker as defined in SEC Rule 3b–8 (17 CFR 240.3b–8).

(2) If the credit extended to a marketmaker ceases to be for the purpose of marketmaking, or the dealer ceases to be a marketmaker for an issue of securities for which credit was extended, the credit shall be subject to the margin specified in § 220.18 (Supplement: Margin requirements).

(e) *Odd-lot dealers.* A creditor may clear and finance odd-lot transactions for any creditor who is registered as an odd-lot dealer on a national securities exchange with a good faith margin.

§ 220.13 Arranging for loans by others.

(a) A creditor may not arrange for the extension or maintenance of credit to or for any customer by any person upon terms and conditions other than those upon which the creditor may itself extend or maintain credit under the provisions of this part, except that this limitation shall not apply to credit arranged for a customer which does not violate parts 207 and 221 of this chapter and results solely from:

(1) Investment banking services, provided by the creditor to the customer, including, but not limited to, underwritings, private placements, and advice and other services in connection with exchange offers, mergers, or acquisitions, except for underwritings that involve the public distribution of an equity security with installment or other deferred payment provisions;

(2) The sale of nonmargin securities (including securities with installment or other deferred payment provisions) if the sale is exempted from the registration requirements of the Securities Act of 1933 under section 4(2) of section 4(6) of the Act;

(3) A subsequent loan or advance on a face-amount certificate as permitted under 15 U.S.C. 80a–28(d); or

(4) Credit extended by a foreign person in connection with the purchase or short sale of non-U.S. traded foreign securities.

(b) A creditor shall not be deemed to have arranged credit by effecting the sale of a foreign security offered on an installment basis if no more than 15 percent of the issue is offered to United States persons as defined in section 7(f) of the Act.

§ 220.14 Clearance of securities, options, and futures.

(a) *Credit for clearance of securities.* The provisions of this part shall not apply to the extension or maintenance of any credit that is not for more than one day if it is incidental to the clearance of transactions in securities directly between members of a national securities exchange or association or through any clearing agency registered with the SEC.

(b) *Deposit of securities with a clearing agency.* The provisions of this part shall not apply to the deposit of securities with an options or futures clearing agency for the purpose of meeting the deposit requirements of the agency if:

(1) The clearing agency:

(i) Issues, guarantees performance on, or clears transactions in, any security (including options on any security, certificate of deposit, securities index or foreign currency); or

(ii) Guarantees performance of contracts for the purchase or sale of a commodity for future delivery or options on such contracts;

(2) The clearing agency is registered with the Securities and Exchange Commission or is the clearing agency for a contract market regulated by the Commodity Futures Trading Commission; and

(3) The deposit consists of any margin security and complies with the rules of the clearing agency that have been approved by the Securities and Exchange Commission or the Commodity Futures Trading Commission.

§ 220.15 Borrowing by creditors.

(a) *Restrictions on borrowing.* A creditor may not borrow in the ordinary course of business as a broker or dealer using as collateral any registered nonexempted security, except:

(1) From or through a member bank of the Federal Reserve System; or

(2) From any nonmember bank that has filed with the Board an agreement as prescribed in paragraph (b) of this section, which agreement is still in effect; or

(3) From another creditor if the loan is permissible under this part.

(b) *Agreements of nonmember banks.* (1) A nonmember bank shall file an agreement that conforms to the requirements of section 8(a) of the Act (See Form FR T–1, T–2).

(2) Any nonmember bank may terminate its agreement if it obtains the written consent of the Board.

§ 220.16 Borrowing and lending securities.

(a) Without regard to the other provisions of this part, a creditor may borrow or lend securities for the purpose of making delivery of the securities in the case of short sales, failure to receive securities required to be delivered, or other similar situations. Each borrowing shall be secured by a deposit of one or more of the following: cash, cash equivalents, foreign sovereign nonconvertible debt securities that are margin securities, collateral acceptable for borrowings of securities pursuant to SEC Rule 15c3–3 (17 CFR 240.15c3–3), or irrevocable letters of credit issued by a bank insured by the Federal Deposit Insurance Corporation or a foreign bank that has filed an agreement with the Board on Form FR T–1, T–2. Such deposit made with the lender of the securities shall have at all times a value at least equal to 100 percent of the market value of the securities borrowed, computed as of the close of the preceding business day.

(b) A creditor may lend non-U.S. traded foreign securities to a foreign person for any purpose lawful in the country in which they are to be used. Each borrowing shall be secured with collateral having at all times a value at least equal to 100 percent of the market value of the securities borrowed, computed as of the close of the preceding business day.

§ 220.17 Requirements for the list of marginable OTC stocks and the list of foreign margin stocks.

(a) *Requirements for inclusion on the list of marginable OTC stocks.* Except as provided in paragraph (f) of this section, OTC margin stock shall meet the following requirements:

(1) Four or more dealers stand willing to, and do in fact, make a market in such stock and regularly submit bona fide bids and offers to an automated quotations system for their own accounts;

(2) The minimum average bid price of such stock, as determined by the Board, is at least $5 per share;

(3) The stock is registered under section 12 of the Act, is issued by an

insurance company subject to section 12(g)(2)(G) of the Act, is issued by a closed-end investment management company subject to registration pursuant to section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8), is an American Depository Receipt (ADR) of a foreign issuer whose securities are registered under section 12 of the Act, or is a stock of an issuer required to file reports under section 15(d) of the Act;

(4) Daily quotations for both bid and asked prices for the stock are continuously available to the general public;

(5) The stock has been publicly traded for at least six months;

(6) The issuer has at least $4 million of capital, surplus, and undivided profits;

(7) There are 400,000 or more shares of such stock outstanding in addition to shares held beneficially by officers, directors or beneficial owners of more than 10 percent of the stock;

(8) There are 1,200 or more holders of record, as defined in SEC Rule 12g5–1(17 CFR 240.12g5–1), of the stock who are not officers, directors or beneficial owners of 10 percent or more of the stock, or the average daily trading volume of such stock as determined by the Board, is at least 500 shares; and

(9) The issuer or a predecessor in interest has been in existence for at least three years.

(b) *Requirements for continued inclusion on the list of marginable OTC stocks.* Except as provided in paragraph (f) of this section, OTC margin stock shall meet the following requirements:

(1) Three or more dealers stand willing to, and do in fact, make a market in such stock and regularly submit bona fide bids and offers to an automated quotations system for their own accounts;

(2) The minimum average bid price of such stocks, as determined by the Board, is at least $2 per share;

(3) The stock is registered as specified in paragraph (a)(3) of this section;

(4) Daily quotations for both bid and asked prices for the stock are continuously available to the general public;

(5) The issuer has at least $1 million of capital, surplus, and undivided profits;

(6) There are 300,000 or more shares of such stock outstanding in addition to shares held beneficially by officers, directors, or beneficial owners of more than 10 percent of the stock; and

(7) There continue to be 800 or more holders of record, as defined in SEC Rule 12g5–1 (17 CFR 240.12g5–1), of the stock who are not officers, directors, or beneficial owners of 10 percent or more of the stock, or the average daily trading volume of such stock, as determined by the Board, is at least 300 shares.

(c) *Requirements for inclusion on the list of foreign margin stocks.* Except as provided in paragraph (f) of this section, foreign margin stock shall meet the following requirements:

(1) The security is listed for trading on or through the facilities of a foreign securities exchange or a recognized foreign securities market and has been trading on such exchange or market for at least six months;

(2) Daily quotations for both bid and asked or last sale prices for the security provided by the foreign securities exchange or foreign securities market on which the security is traded are continuously available to creditors in the United States pursuant to an electronic quotation system;

(3) The aggregate market value of shares, the ownership of which is unrestricted, is not less than $1 billion;

(4) The average weekly trading volume of such security during the preceding six months is either at least 200,000 shares or $1 million; and

(5) The issuer or a predecessor in interest has been in existence for at least five years.

(d) *Requirements for continued inclusion on the list of foreign margin stocks.* Except as provided in paragraph (f) of this section, foreign margin stock shall meet the following requirements:

(1) The security continues to meet the requirements specified in paragraphs (c)(1) and (2) of this section;

(2) The aggregate market value of shares, the ownership of which is unrestricted, is not less than $500 million; and

(3) The average weekly trading volume of such security during the preceding six months is either at least 100,000 shares or $500,000.

(e) *Removal from the lists.* The Board shall periodically remove from the lists any stock that:

(1) Ceases to exist or of which the issuer ceases to exist; or

(2) No longer substantially meets the provisions of paragraphs (b) or (d) of this section or the definition of OTC margin stock.

(f) *Discretionary authority of Board.* Without regard to other paragraphs of this section, the Board may add to, or omit or remove from the list of marginable OTC stocks and the list of foreign margin stocks and equity security, if in the judgment of the Board, such action is necessary or appropriate in the public interest.

(g) *Unlawful representations.* It shall be unlawful for any creditor to make, or cause to be made, any representation to the effect that the inclusion of a security on the list of marginable OTC stocks or the list of foreign margin stocks is evidence that the Board or the SEC has in any way passed upon the merits of, or given approval to, such security or any transactions therein. Any statement in an advertisement or other similar communication containing a reference to the Board in connection with the lists or stocks on those lists shall be an unlawful representation.

§ 220.18 Supplement: Margin requirements.

The required margin for each security position held in a margin account shall be as follows:

(a) Margin equity security, except for an exempted security, money market mutual fund or exempted securities mutual fund: 50 percent of the current market value of the security or the percentage set by the regulatory authority where the trade occurs, whichever is greater.

(b) Exempted security, registered nonconvertible debt security, OTC margin bond, money market mutual fund or exempted securities mutual fund: The margin required by the creditor in good faith or the percentage set by the regulatory authority where the trade occurs, whichever is greater.

(c) Short sale of nonexempted security, except for a registered nonconvertible debt security or OTC margin bond: 150 percent of the current market value of the security, or 100 percent of the current market value if a security exchangeable or convertible within 90 calendar days without restriction other than the payment of money into the security sold short is held in the account.

(d) Short sale of an exempted security, registered nonconvertible debt security or OTC margin bond: 100 percent of the current market value of the security plus the margin required by the creditor in good faith.

(e) Nonmargin, nonexempted security: 100 percent of the current market value.

(f) Short put or short call on a security, certificate of deposit, securities index or foreign currency:

(1) In the case of puts and calls issued by a registered clearing corporation and listed or traded on a registered national securities exchange or a registered securities association, the amount, or other position, specified by the rules of the registered national securities exchange or the registered securities association authorized to trade the option, provided that all such rules have been approved or amended by the SEC; or

(2) In the case of all other puts and calls, the amount, or other position, specified by the maintenance rules of the creditor's examining authority.

§ 220.19 [Removed]

4. Section 229.19 is removed.

By order of the Board of Governors of the Federal Reserve System, June 21, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–15680 Filed 6–28–95; 8:45 am]

BILLING CODE 6210–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ME–23–1–6827b; A–1–FRL–6214–5]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Gasoline Marketing Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Maine on July 6, 1994. This revision consists of regulations which require the implementation of reasonably available control technology (RACT) for controlling volatile organic compound (VOC) emissions from gasoline marketing operations. In the Final Rules Section of this **Federal Register**, EPA is approving the gasoline marketing regulations included in the State's July 6, 1994 SIP submittal. EPA is approving several of these regulations as a direct final rule without prior proposal because the Agency views them as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this proposal. Any parties interested in commenting on this proposal should do so at this time.

DATES: Comments must be received on or before July 31, 1995.

ADDRESSES: Comments may be mailed to Susan Studlien, Acting Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Anne E. Arnold, (617) 565–3166.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 19, 1995.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 95–15958 Filed 6–28–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[WI53–01–6914; FRL–5250–2]

Redesignation of the Forest County Potawatomi Community to a PSD Class I Area; State of Wisconsin

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The purpose of this action is to propose approval and seek public comment on the request by the Forest County Potawatomi (FCP) Tribal Council to redesignate lands within the FCP Reservation in the State of Wisconsin to Class I under USEPA's regulations for prevention of significant deterioration (PSD) of air quality. The Class I designation will result in lowering the allowable increases in ambient concentrations of particulate matter (PM), sulfur dioxide (SO_2), and nitrogen oxides (NO_X) on certain of the FCP Community's lands.

DATES: Comments must be received on or before September 5, 1995. An informational meeting and public hearing on this proposal will be held on August 2, 1995. The informational meeting will start at 2:00 pm CDT and the public hearing will immediately follow it.

ADDRESSES: Written comments should be addressed to: Carlton Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch, United States Environmental Protection Agency, 77 West Jackson Boulevard (AT–18J), Chicago, Illinois 60604.

An informational meeting on Class I PSD redesignations in general and a public hearing on the FCP redesignation request in particular will be held at the Indian Springs Lodge on Highway 32 in Carter, Wisconsin starting at 2:00 pm CDT on August 2, 1995. The hearing will be strictly limited to the subject matter of the proposal, which is that the proposed redesignation meets the procedural requirements.

Supporting information used in developing the proposed rule and materials submitted to USEPA relevant to the proposed action are available during normal business hours for public inspection and copying at the Air Toxics and Radiation Branch, Region 5, United States Environmental Protection Agency, 77 West Jackson Boulevard (AT–18J), Chicago, Illinois 60604. A copy of this information and materials is also available for inspection at the Crandon Public Library, 104 South Lake Avenue, Crandon, Wisconsin 54520–1458.

FOR FURTHER INFORMATION CONTACT: Constantine Blathras, USEPA Region 5 (AT–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–0671.

SUPPLEMENTARY INFORMATION: Part C Title I of the Clean Air Act (Act) provides for the prevention of significant deterioration of air quality. The intent of Part C is to prevent deterioration of existing air quality, in areas having relatively clean air—those areas designated pursuant to Section 107 of the Act, as "unclassifiable", or "attainment" relative to an areas National Ambient Air Quality Standard. These areas are referred to as "PSD areas". The Act provides for three basic classifications applicable to PSD areas located within the United States. Associated with each classification are increments which represent the maximum allowable increase in ambient air pollutant concentrations above a baseline concentration.

Part C initially designated as Federal Class I certain areas, under Section 162(a) of the Act, such as international parks, wilderness areas, national memorial parks, and national parks.[1] The PSD regulations provide special protection for Federal Class I areas. Class II applies to areas in which pollutant increases accompanying moderate growth is allowed. Class III applies to those areas in which

[1] The 1990 CAA Amendments included provisions to allow the boundaries of existing federal Class I areas to be expanded, but no new Class I areas were created.

considerably more air quality deterioration is considered acceptable.

Under the 1977 amendments to the Act, all PSD areas, other than the Federal Class I areas, were initially designated Class II. Section 164 of the Act allows States and Indian governing bodies to reclassify areas under their jurisdiction to accommodate the social, economic, and environmental needs and desires of the local population. Reservations that have previously been reclassified as Class I areas include the Northern Cheyenne, Fort Peck, and Flathead Reservations in Montana and the Spokane Reservation in Washington.

A Class I redesignation results in lowering the allowable increases in ambient concentrations of PM, SO_2, and NO_X. Only facilities defined by the PSD regulations, 40 Code of Federal Regulations (CFR) 51.166 and 52.21, as major stationary sources or major modifications are subject to PSD and required to perform PSD air quality impact analysis. These facilities are typically large industrial sources such as refineries and electric utilities.

It is important to note that no new permits or additional controls to existing sources are required as a result of a redesignation to Class I. The difference between the two designations is that the maximum increase in ambient concentration of a given pollutant [2] allowed over a baseline concentration is lower in a Class I area. This affords a Class I area greater protection from the cumulative impacts of many facilities locating in and around the Class I area.

Forest County Potawatomi Request for Redesignation

On February 14, 1995 the FCP Tribal Council submitted to USEPA a proposal to redesignate certain FCP Reservation lands from Class II to Class I. FCP Reservation lands being requested for redesignation to Class I are limited to parcels over 80 acres, only in Forest County, and that are held in trust for the Tribe by the Federal government. With their request, the Tribal Council submitted a PSD Class I Area Redesignation Technical Report, maps identifying the reservation lands subject to the proposed redesignation, documentation of public notification, a record of the public hearing held on September 29, 1994, comments received by the Tribal Council on the proposed redesignation, and the Tribal Council's response to comments received. On June 14, 1995 the Tribal Council also provided USEPA with information concerning Air Quality Related Values (AQRV) for the proposed redesignated area, including a discussion of the economic and energy effects of a proposed AQRV for mercury. This information is available at the Crandon Public Library and Region 5 offices listed in the **ADDRESSES** section of this proposal.

Statutory and Regulatory Requirements for Redesignation

Section 164 of the Act and Federal regulations set forth at 40 CFR 52.21(g) outline the requirements for redesignation of areas under the PSD program. The Act provides that lands within the exterior boundaries of reservations of federally recognized Indian tribes may be redesignated only by the appropriate Indian Governing Body. Under section 164(b)(2) and 40 CFR 52.21(g)(5), USEPA may disapprove a redesignation only if it finds, after notice and opportunity for hearing, that the redesignation does not meet the procedural requirements of section 164 or is a mandatory Federal Class I area that may not be redesignated. The latter does not apply to the FCP area proposed for redesignation. In addition, the Indian Governing Body may resubmit the proposal after correcting any deficiencies noted by the Administrator, under 40 CFR 52.21(g)(6).

The procedural requirements for a Class I redesignation by an Indian Governing Body are as follows: (1) At least one public hearing must be conducted in accordance with the requirements set forth at 40 CFR 51.102; (2) other States, Indian Governing Bodies, and Federal Land Managers whose lands may be affected by the proposed redesignation must be notified at least 30 days prior to the public hearing; (3) at least 30 days prior to the public hearing, a discussion of the reasons for the proposed redesignation including a satisfactory description and analysis of the health, environmental, economic, social and energy effects of the proposed redesignation must be prepared and made available for public inspection and the public hearing notice must contain appropriate notification of availability of such discussion; (4) prior to the issuance of the public notice for a proposed redesignation of an area that includes Federal lands in the redesignation, the redesignating authorities must provide written notice to the appropriate Federal Land Managers and an opportunity to confer and submit written comments and recommendations; and (5) prior to proposing the redesignation, the Indian Governing Body has consulted with the State(s) in which the Reservation is located and that border the Reservation.

Tribal Council Submittal

The February 14, 1995 request for redesignation includes evidence that all of the statutory and regulatory requirements for redesignation of the FCP Reservation from Class II to Class I have been met by the FCP Tribal Council. The FCP Tribal Council is the Indian Governing Body for the FCP Reservation, and only land parcels within the exterior boundaries of the Reservation are proposed for redesignation.

Pursuant to 40 CFR 51.102, the FCP Tribal Council conducted a public hearing on September 29, 1994 at the Potawatomi Tribal Hall, four miles east of Crandon, Wisconsin. Notice of the hearing was provided to the required parties, other public agencies, and interested parties. It was posted in public locations and was provided to local media. A satisfactory description and analysis of the health, environmental, economic, social, and energy effects of the proposed redesignation entitled, "Forest County Potawatomi Community PSD Class I Area Redesignation Technical Report" was completed in August 1994, and its availability was announced in the public hearing notices. Evidence that the Tribe consulted with State of Wisconsin officials prior to proposing the redesignation is also included in the submittal. Therefore, the documentation submitted by the Tribal Council shows that all statutory and regulatory procedural requirements for redesignation have been met.

Summary of Action

Because USEPA's review has not revealed any procedural deficiencies, the redesignation is hereby proposed for approval. The public is invited to comment on whether the FCP Tribal Council has met all the applicable procedural requirements of 40 CFR 52.21(g)(2) & (g)(4). Comments should be submitted to the Region 5 address listed above. USEPA will hold a public hearing on this redesignation on August 2, 1995,[3] at the Indian Springs Lodge on Highway 32 in Carter, Wisconsin, to receive additional public comment on the subject of this proposal, which is whether the proposed redesignation met the procedural requirements summarized in this action. Public comments received either at the public hearing in Carter or received in writing at the Region 5 offices by September 5, 1995, will be considered in the final rulemaking action taken by USEPA.

[2] There are currently PSD increments established for NO_X, SO_2, and PM. 40 CFR 52.21(c).

[3] The public hearing will immediately follow an informational meeting on the PSD redesignation process, which will start at 2:00 pm CDT

Administrative Review

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for a PSD Class I redesignation. Each request for redesignation shall be considered separately and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. Section 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. sections 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. The proposed action does not have a significant direct impact on small entities and may only prospectively affect the amount of air quality deterioration that is allowed from major stationary sources and major modifications, as defined by 40 CFR 52.21, and will not result in any significant additional requirements for small entities. Therefore, I certify that this action does not have a significant impact on a substantial number of small entities.

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, the USEPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or Tribal governments in the aggregate.

Through submission of the request for redesignation, the Tribal government has elected to adopt an option allowed them under Section 164 of the Act. The redesignation being proposed for approval in this action may bind State, local, and Tribal governments to perform certain actions and also may ultimately lead to the private sector being required to perform certain duties. However, USEPA has also determined that this action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or Tribal governments in the aggregate or to the private sector.

Authority: 42 U.S.C. 7401–7671q.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Environmental Protection, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 19, 1995.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 95–16003 Filed 6–28–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[AK 9–1–6975b; FRL–5223–2]

Approval and Promulgation of State Implementation Plans: Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Alaska for the purpose of forecasting and tracking vehicle miles traveled (VMT) in the Anchorage area. On March 24, 1994, the Alaska Department of Environmental Conservation (ADEC) submitted a SIP revision to EPA to satisfy the requirements of sections 187(a)(2)(A) and 187(a)(3) of the Clean Air Act, as amended in 1990. In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document.

DATES: Comments on this proposed rule must be received in writing by July 31, 1995.

ADDRESSES: Written comments should be addressed to Montel Livingston, Environmental Protection Specialist (AT–082), Air Programs Section, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 10, Air Programs Section, 1200 6th Avenue, Seattle, WA 98101.

The Alaska Department of Environmental Conservation, 410 Willoughby, Suite 105, Juneau, Alaska 99801–1795.

FOR FURTHER INFORMATION CONTACT: Montel Livingston, Air Programs Branch (AT–082), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553–0180.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register.**

Dated: June 6, 1995.

Chuck Clarke,

Regional Administrator.

[FR Doc. 95–15955 Filed 6–28–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[OH87–1–7075b; FRL–5227–2]

Determination of Attainment of the Ozone Standard by the Cleveland, Toledo, Dayton and Cincinnati-Hamilton Interstate Ozone Nonattainment Areas and Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The USEPA is proposing to determine, through direct final procedure, that the Cleveland (which includes the Counties of Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage and Summit); Toledo (which includes the Counties of Lucas and Wood); Dayton (which includes the Counties of Clark, Greene, Miami and Montgomery); and the Ohio portion of the Cincinnati-Hamilton Interstate (which includes the Counties of Butler,

Clermont, Hamilton and Warren) ozone nonattainment areas have attained the National Ambient Air Quality Standard (NAAQS) for ozone. In the Final Rules Section of this **Federal Register**, USEPA is making these determinations without prior proposal because USEPA views this as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse or critical comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If USEPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The USEPA will institute a second comment period on this action only if warranted by revisions to the rulemaking based on comments received. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this action must be received by July 31, 1995.

ADDRESSES: Written comments must be mailed to: William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE–17J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of the air quality data and USEPA's analysis are available for inspection at the following address: Regulation Development Section, Air Enforcement Branch (AE–17J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Richard Schleyer, Environmental Engineer, Regulation Development Section, Air Enforcement Branch (AE–17J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–5089.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule published in the Final Rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 14, 1995.

David A. Kee,

Acting Regional Administrator.

[FR Doc. 95–15960 Filed 6–28–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[UT20–3–6773b; FRL–5212–5]

Approval and Promulgation of Air Quality Implementation Plans; Utah; 1990 Base Year Carbon Monoxide Emission Inventories for Utah

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of the 1990 base year carbon monoxide (CO) emission inventories for Ogden City, Salt Lake City, and Utah County (which includes Provo-Orem) that were submitted by the State to satisfy certain requirements of the Clean Air Act (CAA), as amended in 1990. In the Final Rules Section of this **Federal Register**, EPA is approving the State's State Implementation Plan (SIP) revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by July 31, 1995.

ADDRESSES: Written comments should be addressed to: Douglas M. Skie, Chief, Air Programs Branch (8ART–AP), United States Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2466

Copies of the documents relevant to this action are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday at the following office: United States Environmental Protection Agency, Region 8, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air Programs Branch (8ART–AP), United States Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, (303) 293–1814.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

Dated: May 17, 1995.

Robert L. Duprey,

Acting Regional Administrator.

[FR Doc. 95–16066 Filed 6–28–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 22, 90, and 94

[WT Docket No. 95–70; RM–8200, FCC 95–204]

Routine Use of Signal Boosters

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has released a Notice of Proposed Rule Making that proposes to permit routine use of signal boosters by licensees without separate authorization from the Commission. This action was initiated by a petition from TX RX Systems, Inc. and is necessary to enable licensees to use signal boosters without obtaining a waiver of the rules, thus reducing the workload burden on both the applicant and the Commission.

DATES: Comments must be submitted on or before July 21, 1995, and reply comments on or before August 8, 1995.

ADDRESSES: Federal Communications Commission, 1919 M Street N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Eugene Thomson, Private Wireless Division, Wireless Telecommunications Bureau, (202) 418–0634.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making (Notice), in the Matter of Amendment of Parts 22, 90, and 94 of the Commission's Rules to Permit Routine Use of Signal Boosters, WT Docket No. 95–70, FCC 95–204, adopted May 17, 1995, and released June 22, 1995. The full text of the *Notice* is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street N.W. Washington, D.C. The complete text may be purchased from the Commission's copy contractor, ITS Inc. 2100 M St. N.W., Washington, D.C. 20037, telephone (202) 857–3800.

Summary of Notice of Proposed Rule Making

1. This proceeding was initiated by a petition for rule making filed by TX RX Systems Inc. requesting that Parts 22, 90, and 94 of the Rules and Regulations be amended to permit licensees to routinely use one-way or two-way signal boosters without specific authorization from the Commission.

2. Currently, under Part 90 Private Land Mobile Radio Services rules, signal boosters may be used only on ten Business Radio Service frequency pairs in the 450–470 MHz band for communications related to the servicing and supplying of aircraft at certain specified airports. Under Part 22 Public Mobile Service rules, a form of signal booster, generally called a cellular repeater, may be employed by cellular licensees without separate licensing provided that the repeater does not extend the licensee's signal beyond the authorized cellular service area.

3. The Notice proposes to expand the use of signal boosters to Part 22 common carrier paging operations at 931–932 MHz, to Part 90 land mobile radio operations in all Part 90 frequency bands above 150 MHz, to Part 90 paging operations at 929–930 MHz, and to Part 94 multiple address system operations in the 928–960 MHz band.

4. Additionally, the Notice proposes to define and classify signal boosters as narrowband (Class A) or broadband (Class B), limit booster transmitter output power to 500 milliwatts, permit licensees to use signal boosters without separate authorization, and make licensees responsible for correcting any interference caused by the use of signal boosters.

Ex-Parte

5. This is a non-restricted notice and comment rule making proceeding. See Section 1.1231 of the Commission's Rules, 47 CFR 1.1231, for rules governing permissible *ex porte* contacts.

Initial Regulatory Flexibility Analysis

6. We certify that the Regulatory Flexibility Act of 1980 does not apply to this rule making proceeding because if the proposed rule amendments are promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act.

Paperwork Reduction

7. The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure or record retention requirements, and will not increase burden hours imposed upon the public.

List of Subjects in 47 CFR Parts 22, 90, 94

Communications equipment, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendatory Text

Parts 22, 90, and 94 of chapter I of title 47 of the Code of Federal Regulations are proposed to be amended as follows:

PART 22—PUBLIC MOBILE SERVICE

1. The authority citation for part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 22.99 is amended by adding the definition for "signal booster" in alphabetical order to read as follows:

§ 22.99 Definitions.

* * * * *

Signal booster. A stationary device that automatically reradiates signals from base transmitters without channel translation, for the purpose of providing service in weak signal areas.

* * * * *

3. Section 22.377 is amended by revising the first sentence of the introductory text to read as follows:

§ 22.377 Type-acceptance of transmitters.

Except as provided in paragraph (b) of this section, transmitters used in the Public Mobile Services, including those used with signal boosters, in-building radiation systems and cellular repeaters must be type-accepted for use in the radio services regulated under this part.

* * *

* * * * *

4. A new § 22.385 is added to read as follows:

§ 22.385 Signal boosters.

Licensees may install and operate signal boosters without applying for authorization or notifying the Commission, subject to the requirements of this section.

(a) The location of each signal booster must be within the protected service area of the licensee's authorized base transmitter(s) on the channel being reradiated.

(b) Any signal booster used must be designed such that transmitter output power cannot exceed 500 milliwatts under any normal operating condition.

(c) Licensees must not allow any signal booster that they install and operate to cause interference to the service or operation of any other authorized stations and systems.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read as follows:

Authority: Section 4, 303, and 332, 48 Stat. 1066, 1082, as amended: 47 U.S.C. 154, 303, and 332, unless otherwise noted.

2. Section 90.7 is amended by revising the definition for "signal booster" to read as follows:

§ 90.7 Definitions.

* * * * *

Signal booster. A device which automatically receives, amplifies, and retransmits on a one-way or two-way basis, the signals received from base, fixed, mobile, and portable stations, with no change in frequency or authorize bandwidth. A signal booster may be either narrowband (Class A), in which case the booster amplifies only those discrete frequencies intended to be retransmitted, or broadband (Class B), in which case all signals within the passband of the signal booster filter are amplified.

* * * * *

3. Section 90.75 is amended by revising the introductory text of (c)(25) and paragraphs (c)(25)(i) through (iii), removing paragraphs (c)(25)(iv), (v), (vi), and (vii), and redesignating paragraph (c)(25)(viii) as (c)(25)(iv), to read as follows:

§ 90.75 Business radio service.

* * * * *

(c) * * *

(25) This frequency is available for assignment as follows:

(i) To persons furnishing commercial air transportation service or, pursuant to § 90.179, to an entity furnishing radio communications service to persons so engaged, for stations located on or near the airports listed in paragraph (c)(25)(iv) of this section. Stations will be authorized on a primary basis and may be used only in connection with the servicing and supplying of aircraft.

(ii) To stations in the Business Radio Service for secondary use at locations 80 km (50 mi) or more from the coordinates of the listed airports at a maximum ERP of 300 watts.

(iii) To stations in the Business Radio Service for secondary use at locations 16 km (10 mi) or more from the coordinates of the listed airports at a maximum transmitter output power of 2 watts. Use of the frequency is restricted to the confines of an industrial complex or manufacturing yard area. Stations licensed prior to April 17, 1986 may continue to operate with facilities authorized as of that date.

* * * * *

4. A new § 90.219 is added to read as follows:

§ 90.219 Use of signal boosters.

Licensees authorized to operate radio systems in the frequency bands above 150 MHz may employ signal boosters in accordance with the following criteria:

(a) The amplified signal is retransmitted only on the exact frequency(ies) of the originating base, fixed, mobile, or portable station(s). The booster will fill in only weak signal areas and cannot extend the system's signal coverage area.

(b) The booster must be equipped with automatic gain control circuitry which will limit the total output power of the unit to a maximum of 500 milliwatts under all conditions. Per channel output power on broadband (Class B) units is the total output power (500 mw) divided by the number of channels amplified. All equipment must meet the out-of-band emmission limits of § 90.209.

(c) Boosters must be installed with sufficient isolation between receiving and retransmitting circuits to prevent oscillation.

(d) The licensee is given authority to operate signal boosters without separate authorization from the Commission. Type-accepted equipment must be employed and the licensee must ensure that all applicable rule requirements are met.

(e) Licensees employing Class B signal boosters as defined in § 90.7 are responsible for correcting any harmful interference that the equipment may cause to other systems.

PART 94—PRIVATE OPERATIONAL-FIXED MICROWAVE SERVICE

1. The authority citation for part 94 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 94.3 is amended by adding the definition for "signal booster" in alphabetical order to read as follows:

§ 94.3 Definitions.

* * * * *

Signal booster. A device which automatically receives, amplifies, and retransmits on a one-way or two-way basis, the signals received from base, fixed, mobile, and portable stations, with no change in frequency or authorized bandwidth. A signal booster may be either narrowband (Class A), in which case the booster amplifies only those discrete frequencies intended to retransmitted, or broadband (Class B), in which case all signals within the passband of the signal booster filter are amplified.

* * * * *

3. Section 94.95 is added to read as follows:

§ 94.95 Use of signal boosters.

Licensees authorized to operate multiple address systems in the 928–929/952–960 MHz and 932–932.5/941–941.5 MHz bands may employ signal boosters in accordance with the following criteria:

(a) The amplified signal is retransmitted only on the exact frequency of the originating master or remote station. The booster will fill in only weak signal areas and cannot extend the system's signal coverage area.

(b) The booster must be equipped with automatic gain control circuitry which will limit the total output of the booster to 500 milliwatts under all conditions. Boosters must meet the out-of-band emmission limits of § 94.71.

(c) Boosters will be installed with sufficient isolation between receiving and retransmitting circuits to prevent oscillation.

(d) The licensee is given authority to use signal boosters without separate authorization from the Commission. Type-accepted equipment must be employed and the licensee must ensure that all applicable rule requirements are met.

(e) Licensees employing Class B signal boosters as defined in § 94.3 are responsible for correcting any harmful interference that the signal booster may cause to other systems.

[FR Doc. 95–15673 Filed 6–28–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding for a Petition to List the Queen Charlotte Goshawk as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: The Fish and Wildlife Service (Service) announces a 12-month finding for a petition to list the Queen Charlotte goshawk (*Accipiter gentilis laingi*) under the Endangered Species Act, as amended. After a review of all available scientific information the Service find that listing this species is not warranted at this time.

DATES: The finding announced in this document was made on May 19, 1995.

ADDRESSES: Data, information, comments, or questions concerning this petition should be submitted to the U.S. Fish and Wildlife Service, 3000 Vintage Blvd., Suite 201, Juneau, Alaska 99801. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John Lindell, Endangered Species Biologist, Ecological Services (see **ADDRESSES** section) (907/586–7240).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding within 12 months of the date of the receipt of a valid petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals of higher priority.

On November 21, 1991, the Service published in the **Federal Register** (56 FR 58804) a notice of review for an updated list of animal taxa that are being reviewed for possible addition to the List of Endangered and Threatened Wildlife. Among the species included as Category 2 candidates was the northern goshawk (*Accipiter gentilis*). By inclusion as a subspecies, the Queen Charlotte goshawk was also designated a Category 2 species at that time.

On May 9, 1994, the Service received a petition dated May 2, 1994, from the Southwest Center for Biological Diversity, the Greater Gila Biodiversity Project, the Biodiversity Legal Foundation, Greater Ecosystem Alliance, Save the West, Save America's Forests, Native Forest Network, Native Forest Council, Eric Holle, and Don Muller to list the Queen Charlotte goshawk (*Accipiter gentilis laingi*) as endangered pursuant to the Endangered Species Act. On August 26, 1994, (59 FR 44124) the Service announced a 90-day finding that the petition presented substantial information indicating that the requested action may be warranted and opened a comment period until November 25, 1994. On January 4, 1995, (60 FR 425) the Service extended the comment period until February 9, 1995. On February 24, 1995 (60 FR 10344) the Service extended the comment period until February 28, 1995.

The Service has reviewed the petition, the literature cited in the petition, and other literature and information available in the Service's files, and contacted persons knowledgeable about this species. On the basis of the best scientific and commercial information available, the Service findings the petition is not warranted at this time.

In the 90-day finding the Service recognized the petitioners' concerns for the long-term survival of the Queen Charlotte goshawk. The Service continues to share those concerns. The U.S. Forest Service is evaluating its land management practices through the development of interim management guidelines to maintain viable populations of native wildlife, and considering long-term management actions through revision of the Tongass National Forest Land and Resource Management Plan. The Service believes there is opportunity to manage for the long-term viability of the goshawk through the implementation of these guidelines and the management plan. However, it is clear that without significant changes to the existing Tongass National Forest Land and Resource Management Plan, the long-term viability of the Queen Charlotte goshawk may be seriously imperiled. The Queen Charlotte goshawk will therefore be retained on the Service's list as a Category 2 candidate species. If additional data become available, the Service may reassess the need to list this species.

Author

The primary author of this document is John Lindell, Endangered Species Biologist, Ecological Services (see **ADDRESSES** section) (telephone 907/586–7240).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: May 19, 1995.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 95–15975 Filed 6–28–95; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition To List the Southern Torrent Salamander

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: The Fish and Wildlife Service (Service) announces a 90-day finding on a petition to list the southern torrent salamander (*Rhyacotriton variegatus*), under the Endangered Species Act of 1973, as amended. The Service finds that the petition presented substantial information indicating that listing this species may be warranted. The Service initiates a status review and will prepare a 12-month finding.

DATES: The finding announced in this document was made on June 7, 1995. The Service will consider all comments received by July 31, 1995 in the status review and 12-month finding for this species.

ADDRESSES: Questions, comments, or information concerning this petition should be submitted to the U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E–1823, Sacramento, California, 95825–1846. The petition, petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ann Crisney, staff biologist, at the above address or telephone 916–979–2725.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. A finding is to be based on all information available to the Service at the time the finding is made. To the maximum extent practicable, a finding is to be made within 90 days of the date the petition was received, and the finding is to be published promptly in the **Federal Register**. If the finding is positive, the Service is required to commence a review of the status of the species involved if one has not already been initiated under the Service's internal candidate assessment process.

The Service has made a 90-day finding on a petition to list the southern torrent salamander (*Rhyacotriton variegatus*). On May 31, 1994, the Service received a letter from Stephan C. Volker, attorney for the Environmental Protection Information Center, Northcoast Environmental Center, Oregon Natural Resources Council, California Wilderness Coalition, Friends of the River, South Fork Mountain Defense Committee, Mendocino Environmental Center, Sierra Club, California Sportfishing Protection Alliance, Willits Environmental Center, and Ancient Forest Defense Fund, to list the southern torrent salamander as a threatened species. The letter was dated May 24, 1994, and clearly identified the above mentioned parties as co-petitioners of a petition dated May 23, 1994, authored by John M. Gaffin of the Environmental Protection Information Center, Inc. The petition contained the name, signature, institutional affiliation, and address of the primary petitioner.

The southern torrent salamander has been identified as a species (Good and Wake 1992) that is distinct from the Olympic salamander (*Rhyacotriton olympicus*), and the original sub-species designation of *Rhyacotriton olympicus variegatus* is no longer applicable. The Service is using the species' common name, southern torrent salamander, in accord with Good and Wake (1992). and is not using the former sub-species common name, southern seep salamander, as identified in the petition.

The petitioners requested that the Service list the southern torrent salamander as threatened throughout its range. Historically, the southern torrent salamander has been described as occurring from Tillamook County, Oregon, south along the coast range into northwestern California including Del Norte, Humboldt, Siskiyou, Trinity, and Mendocino counties. The species resides in headwaters habitat of conifer-dominated mature and old-growth forests, and has restrictive habitat requirements. It inhabits mossy seeps of headwaters or the moss-covered rocky substrate (Corn and Bury 1989) of first and second order streams up to 1,200 feet in elevation (Nussbaum *et al.* 1983). They have a low thermal range of 5.8 to 12.0 °C (42 to 53 °F) (Brattstrom 1963, Nussbaum *et al.* 1983), are highly sensitive to desiccation (Ray 1958), and are aquatic obligates. They are probably communal nesters (Nussbaum 1969), and produce few eggs per year (8.4 to 10.0) (Nussbaum *et al.* 1983). The petitioners assert that these characteristics minimize the ability of southern torrent salamander populations to recover from radical habitat alterations.

The petitioners have concerns about localized extinction as a result of continued timber harvest, habitat degradation and fragmentation, and genetic isolation. Although the species appears to be present throughout its historical range, there is evidence of localized population suppression and extirpation in the short-term due to past

forest management activities. The petitioners are concerned that 90 percent of the total range of the southern torrent salamander has undergone rapid and large-scale harvesting of timber or is harvestable, and that there is a lack of protection for the species on those lands, which may place the viability of the species at risk.

The Service has reviewed information in Service files, the petition, and material referenced in the petition. On the basis of the best scientific and commercial information available regarding the present and future threats facing the petitioned species, the Service finds there is substantial information indicating that the listing of the southern torrent salamander may be warranted. This notice initiates a status review for the southern torrent salamander. The Service solicits any additional data, comments, and suggestions from the public, other concerned governmental agencies, the scientific community, industry or any other interested party concerning the status of this species. Within 1 year from the date the petition was received, a finding will be made as to whether listing the southern torrent salamander is warranted, as required by section 4(b)(3)(B) of the Act.

Literature Cited

Brattstrom, Baynard H. 1963. A preliminary review of the thermal requirements of amphibians. Ecology 44:238–255.

Corn, Paul Stephen and R. Bruce Bury 1989 Logging in western Oregon: Responses of headwater habitats and stream amphibians. Forest Ecology and Management 29:39–57.

Good, David A. and David B. Wake. 1992. Geographic variation and speciation in the torrent salamanders of the genus *Rhyacotriton* (Caudata: Rhyacotritonidae). University of California Press. Berkeley. 89 pp.

Nussbaum, R.A. 1969. A nest site of the Olympic salamander, *Rhyacotriton olympicus* (Gaige). Herpetologica 25(4):277–278.

Nussbaum et al. 1983. Amphibians and reptiles of the Pacific Northwest. University of Idaho Press. Moscow, Idaho, 332 pp.

Ray, Carlton. 1958. Vital limits and rates of desiccation in salamanders. Ecology. 39:75–83.

Author

This notice was prepared by Alison Willy (Sacramento Field Office) (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*)

Dated: June 7, 1995.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 95–16005 Filed 6–28–95; 8:45 am]

BILLING CODE 4310–65–P

Notices

Federal Register

Vol. 60, No. 125

Thursday, June 29, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Alternative Agricultural Research and Commercialization (AARC) Center; AARC Center Request for Proposals

AGENCY: Alternative Agricultural Research and Commercialization (AARC) Center, USDA.

ACTION: AARC Center request for proposals.

Program Description

Purpose

The Alternative Agricultural Research and Commercialization (AARC) Center is requesting proposals to use agricultural (traditional and new crops, animal by-products or forestry) materials in industrial products or processes. The authority for the Program is contained in sections 1660 and 1661 of the Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. No. 101–624, 7 U.S.C. 5904. Potential funding for proposals to provide commercialization assistance to private companies using the Cooperative Agreements Program (Program) to assist emerging industrial products/processes involving the use of agricultural materials in non-food, non-feed, non-traditional fiber products or processes. The Board of Directors reserves the right to use only certain types of authorized assistance. Successful projects are expected to repay the AARC Center Revolving Fund through negotiated arrangements. The Program is administered by the AARC Center, which is an independent entity within the U.S. Department of Agriculture.

The objectives of the AARC Center are:

* To search for new non-food, non-feed, non-traditional fiber products that may be produced from agricultural commodities and for processes to produce such products.
* To conduct product and co-product/process development and demonstration projects, as well as provide commercialization assistance for industrial products from agricultural and forestry materials.
* To encourage cooperative development and marketing efforts among manufacturers, private and government laboratories, universities, and financiers to assist in bridging the gap between research results and marketable, competitive products and processes.
* To collect and disseminate information about commercialization projects that use agricultural or forestry materials and industrial products derived therefrom.

Under the Program, the AARC Center will award competitive cooperative agreements to support primarily pre-commercialization or commercialization tasks, including marketing for the development of new industrial products or processes derived from agricultural or forestry materials. All other things equal, the nearer to commercialization a product or process is the higher the likelihood of funding by the AARC Center.

The AARC Center will accept either pre-proposals or full proposals. Pre-proposals will be evaluated to determine if an idea has sufficient merit to warrant a full proposal including if it meets the AARC Center's mission, and to provide suggestions for improvement. Full proposals will require more time to complete and will be evaluated to determine if they warrant funding. The AARC Center may ask applicants submitting either pre-proposals or full proposals to make an oral presentation. All proposals will be evaluated by external reviewers, as well as by the AARC Center staff, before the proposals (along with review comments) are provided to the Board of Directors. The Board makes final funding decisions.

Available Funding

This request for proposals is being announced subject to funding from Congress for Fiscal Year 1996. The Administration's budget request to Congress was $8 million for the AARC Center.

The AARC Center Board expects applicants to, at minimum, match the dollars requested from the AARC Center. A preference may be given to projects for which the ratio of AARC Center funds to non-Center funds would be the lowest.

Eligibility

Proposals are invited from any private firm, individual, public or private educational institution or organization, Federal agency, cooperative, or non-profit organization. Cooperative projects involving combinations of the above organizations, especially with private sector leadership, are strongly encouraged. Since this is basically a program to commercialize new products, and since repayment is expected, it is much more likely that awards will be given to private firms. Small business entrepreneurs are preferred. The private sector partner must take the lead when an educational institution is involved.

Program Emphasis

As determined by the AARC Center Board from a series of public hearings, Congressional Hearings, workshops, and experience from the initial two rounds of proposals, each proposal should focus on products/processes using at least one of the following agricultural or forestry material categories:

Starch/Carbohydrates
Fats and Oils
Fibers
Forest Materials
Animal By-Products
Other Plant Materials used as pharmaceuticals, fine chemicals, encapsulation agents, etc

The AARC Center Board has approved funding for about 40 projects using 1993 and 1994 appropriated funds. Another 14 projects are currently under consideration for funding with 1995 appropriations. Projects include use of a broad range of agricultural and forestry materials such as: Soybean oil, soybean meal cotton lint, peanut hulls, corn husks, wheat straw, milkweed, kenaf, castor oil, rapeseed, cuphea, crambe, ethanol, mesquite, hesperaloe, lesquerella, agricultural and forestry wastes, biomass, and plant proteins. Examples of products include: biocontrol agents, medium-density fiberboard and building materials from straw, plypole, food packaging, bonded paper from kenaf, oil absorbents, fillers and yarn, spinning fibers, highway signposts and railroad ties, building and furniture composites, heating and electricity, potting mixes, biodiesel—as

replacement for petroleum, biodegradable lubricants, coatings cosmetics, detergents, personal care products, compost, carrier for crop protection materials, and cat litter.

Evaluation Criteria

The AARC Center's primary interest, in this request for pre-proposals/proposals, is in providing assistance in pre-commercial activities to move new industrial products from agricultural- and forestry materials into the marketplace. The AARC Center Board seeks projects that will have market impact. This includes expanding use of agricultural or forestry materials in industrial products especially those that expand markets for farmers, create jobs, spur rural development, provide environmental and/or conservation benefits, and improve trade. Emphasis will be given to those proposals whose products are closest to commercialization and have positive impact on rural employment and economic activity.

Proposals and pre-proposals will be evaluated on four primary criteria: management team capability, business and marketing soundness, technical factors, and expected time and magnitude of impacts if successful. Examples of types of information that will enter the decision process on each of the primary categories of criteria include:

Management:
- Capability of the management team
- Amount of matching funds (cash) committed
- Awareness of the financial resources needed to successfully market the product
- Clear identification of project milestones
- Private sector leadership to commercialize the product or process

Business:
- Potential profitability
- Clear Identification of customers
- Structure of the market in terms of size, number, leading competitors, and reaction of competitors to a new product
- Amount and nature of the value added to the agricultural or forestry material
- Ability to replicate in other parts of the country
- Key issues and government policies or regulations that might impact success
- Applicant's ability and willingness to repay the AARC Center for the risk investment made by the American taxpayers

Technical:
- Relation to previous work
- Technical requirements of the product—industry standards or guidelines
- Technical and market testing needed
- Government approvals or permits required
- Major technical hindrances
- Innovative techniques and patents
- Ability to achieve technical claims
- Present stage of development

Impacts:
- Volume of agricultural or forestry material used
- Number and quality of jobs (especially in distressed rural areas) expected to be created—type, rural/urban, timeframe
- Potential positive and negative environmental impacts from production to consumer disposal of product
- Proposed product's implications for helping improve farm income, especially the family farm
- Resource conservation effects such as replacement of stock resources, crop diversification, soil erosion, water use, etc
- Estimated impact on export/import trade balance, commodity support programs and rural economic activity

Other Considerations

With respect to projects carried out with private researchers or commercial companies, the enabling legislation provides that information submitted by applicants incident thereto will be kept confidential. Project information including applications is specifically excluded from release under the Freedom of Information Act, except with the approval of the person providing the information or in a judicial or administrative proceeding in which such information is subject to protective order. However, the information will be reviewed by three reviewers who will be held to confidentiality. Board members are required to exclude themselves from consideration of a proposal where a conflict of interest exists.

Intellectual property rights, such as patents and licenses, shall remain with the owner unless other arrangements are negotiated as part of the agreement. Inventions made under an award under this Program shall be owned by the awardee in accordance with 35 U.S.C. 200–204 and 37 CFR 401.

No agreement may be entered into under the program for the acquisition or construction of a building or facility.

All applicants must file a declaration of compliance with 31 U.S.C. 1352 regarding limitation on the use of appropriated funds to influence certain Federal contracting and financial transactions either prior to or simultaneous with the submission.

Due to limited funds, the AARC Center may not be able to fund all projects meriting support, and awards will be based on merit using the review evaluations and the Board's judgement.

Applicants who submitted a proposal or pre-proposal previously must reapply to be considered for Fiscal Year 1996 funding.

Future Proposals

In the future and until further notice, the AARC Center Board will accept proposals or pre-proposals at any time on AARC Center forms. The Board will meet at least twice a year to select proposals for funding.

Submissions

To be eligible for this round of AARC Center Board decisions, both pre-proposals and full proposals must be received at the AARC Center office by October 1, 1995. One of the following addresses should be used, as applicable:

Regular U.S. Mail

USDA AARC Center, AG Box 0401, 14th & Independence Ave. SW., 0156 South Building, Washington, DC 20250–0401.

Overnight Delivery

USDA AARC Center, 0156 South Building, 14th & Independence Ave., Washington, DC 20250–0401 Tel: 202–690–1633.

For More Information

Proposals must be submitted on forms provided by the AARC Center—either pre-proposals or full proposals. Contact the AARC Center by letter using the addresses above or fax number 202–690–1655 to receive a packet containing the instructions and forms. Specific questions should be directed to Patricia Dunn: Phone 202–690–1634.

Done at Washington, DC, on June 23, 1995.

W. Bruce Crain,

Director, AARC Center.

[FR Doc. 95–15911 Filed 6–28–95; 8:45 am]

BILLING CODE 3410–2B–M

Agricultural Research Service

Notice of Intent to Grant an Exclusive Patent License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of Intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Cell Applications, Inc., San Diego, California, an exclusive domestic license, in specific Fields of Use, for U.S. Patent Application Serial No. 08/133,589, "Hepatocyte Cell Derived from the Epiblast of Pig Blastocysts," filed October 8, 1993.

DATES: Comments must be received on or before August 28, 1995.

ADDRESSES: Send comments to: USDA–ARS–Office of Technology Transfer, Baltimore Boulevard, Building 005, room 419, BARC–W, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: W.J. Phelps, of the Office of Technology Transfer, at the Beltsville address given above; telephone: 301–504–6532.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as said company has submitted a complete and sufficient application for a license, promising therein to bring the benefits of said invention to the U.S. public.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 USC 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 95–15946 Filed 6–28–95; 8:45 am]

BILLING CODE 3410–03–M

Natural Resources Conservation Service

Box Creek Watershed, Mississippi; Notice

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of intent to deauthorize federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act Public Law 83–566, and the Natural Resources Conservation Service Guidelines (7 CFR 622), the Natural Resources Conservation Service gives notice of the intent to deauthorize federal funding for the Box Creek Watershed project, Holmes County, Mississippi.

FOR FURTHER INFORMATION CONTACT: Homer L. Wilkes, State Conservationist, Natural Resources Conservation Service, Suite 1321, Federal Building, 100 West Capitol Street, Jackson, Mississippi 39269, telephone 601–965–5205.

SUPPLEMENTARY INFORMATION: A determination has been made by Homer L. Wilkes that the proposed works of improvement for the Box Creek Watershed project will not be installed. the sponsoring local organizations have concurred in this determination and agree that federal funding should be deauthorized for the project. Information regarding this determination may be obtained from Homer L. Wilkes, State Conservationist, at the address and telephone number previously shown.

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular A–95 regarding state and local clearinghouse review of federal and federally assisted programs and projects is applicable.)

Homer L. Wilkes,

State Conservationist.

[FR Doc. 95–15912 Filed 6–28–95; 8:45 am]

BILLING CODE 3410–16–M

Houlka Creek Watershed, Mississippi

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of intent to deauthorize federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Public Law 83–566, and the Natural Resources Conservation Service Guidelines (7 CFR 622), the Natural Resources Conservation Service gives notice of the intent to deauthorize Federal funding for the Houlka Creek Watershed project, Clay, Chickasaw, and Pontotoc Counties, Mississippi.

FOR FURTHER INFORMATION CONTACT: Homer L. Wilkes, State Conservationist, Natural Resources Conservation Service, Suite 1321, Federal Building, 100 West Capitol Street, Jackson, Mississippi 39269, telephone 601–965–5205.

SUPPLEMENTARY INFORMATION: A determination has been made by Homer L. Wilkes that the proposed works of improvement for the Houlka Creek Watershed project will not be installed. The sponsoring local organizations have concurred in this determination and agree that Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from Homer L. Wilkes, State Conservationist, at the address and telephone number previously shown.

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular A–95 regarding state and local clearinghouse review of Federal and federal assisted programs and projects is applicable.)

Dated: June 21, 1995.

Homer L. Wilkes,

State Conservationist.

[FR Doc. 95–15913 Filed 6–28–95; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Survey of Pollution Abatement Costs and Expenditures, Annual Capital Expenditures Survey–Supplement for Pollution Abatement.

Form Number(s): MA–200, PA–2.

Agency Approval Number: 0607–0176.

Type of Request: Revision of a currently approved collection.

Burden: 44,375 hours.

Number of Respondents: 17,750.

Avg Hours Per Response: 2.5 hours.

Needs and Uses: The Census Bureau uses Forms MA–200 (Survey of Pollution Abatement Costs and Expenditures) and PA–2 (Annual Capital Expenditures Survey – Supplement for Pollution Abatement) to measure private industry's cost to meet increasing Federal, state, and local regulations for controlling pollution. We use the MA–200 to collect data on capital expenditures and operating costs for pollution abatement in manufacturing plants; the PA–2 is for nonmanufacturing plants. The data from these forms are an essential source for monitoring the impact of environmental programs on the U.S. economy and the responsiveness to these programs. The most significant revision being made to this collection is that the PA–2 is now

a supplement to the Annual Capital Expenditures Survey instead of the discontinued Plant and Equipment Expenditures Survey. Some changes have been made to instructions for both forms based on requests from respondents. Additionally, one check box was added to one question at the request of the Environmental Protection Agency.

Affected Public: Business or other for-profit.

Frequency: Annual.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, (202) 395-7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: June 26, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95-16050 Filed 6-28-95; 8:45 am]

BILLING CODE 3510-07-F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Economic Analysis.

Title: Annual Survey of Selected Services Transactions with Unaffiliated Foreign Persons.

Form Number(s): BE-22.

Agency Approval Number: 0608-0060.

Type of Request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Burden: 16,100 hours.

Number of Respondents: 1,400.

Avg Hours Per Response: 11.5 hours.

Needs and Uses: This survey will obtain sample data on transactions in selected services between U.S. and unaffiliated foreign persons. The data from the survey will update the data collected in the quinquennial BE-20 benchmark survey of such services. The information gathered is needed to support U.S. trade policy initiatives, including trade negotiations, and to compile the U.S. balance of payments and the national income and product accounts.

Affected Public: Businesses or other for-profit institutions, not-for profit institutions, state and local governments, or other institutions engaging in international transactions in the covered services.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Paul Bugg, (202) 395-3093.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482-3271, Department of Commerce, Room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Paul Bugg, OMB Desk Officer, Room 10201, New Executive Office Building, Washington, DC 20503.

Dated: June 22, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95-15902 Filed 6-28-95; 8:45 am]

BILLING CODE 3510-CW-F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1995 Census of Agriculture Test.

Form Number(s): 95-A01(X), 95-A02(X), 95-A03(X), 95-A04(X).

Agency Approval Number: None.

Type of Request: New collection.

Burden: 8,880 hours.

Number of Respondents: 8,200.

Avg Hours Per Response: 1 hour and 5 minutes.

Needs and Uses: The Census Bureau will conduct a 5-year census of agriculture in 1997. The agricultural census is the primary source of state and county benchmark data for the agricultural sector of the economy. This 1995 Test will evaluate factors affecting response including format and design of the instrument, new content items, changes to question wording, respondent burden, attitudes affecting response, selected procedural changes, and changes respondents might make during the testing program. The most significant items to be tested are the redesign of the form in a "user-friendly" format, a wording reduction to the land ownership questions, and the order of sections. Four forms having varying content and format will be tested. The forms will be mailed to a national sample of farms. A sub-sample of those farms will be selected for a probing telephone revinterview.

Affected Public: Farms.

Frequency: One-time.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, (202) 395-7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: June 22, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95-15903 Filed 6-28-95; 8:45 am]

BILLING CODE 3510-07-F

Agenoy Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Company Organization Survey.

Form Number(s): NC-9901.

Agency Approval Number: 0607-0444.

Type of Request: Revision of a currently approved collection.

Burden: 169,589 hours.

Number of Respondents: 115,000.

Avg Hours Per Response: 1 hour and 28 minutes.

Needs and Uses: The Census Bureau conducts the Company Organization Survey (COS) annually to update and maintain the Standard Statistical Establishment List (SSEL). The SSEL is a computerized list of all employer organizations and their establishments and contains such information as name, address, physical location, Standard Industrial Classification (SIC) code, employment size code, and company affiliation. It provides a single universe for the selection and maintenance of statistical samples of establishments, legal entities, or enterprises; provides a standard basis for assigning SIC codes; and provides establishment level data from multi-establishment companies that are summarized and published in the annual County Business Patterns series of reports. In this request for revision, we are adding a one-time data user survey to selected respondent mailings to collect information on the respondents' ability and interest in reporting data electronically in subsequent years. We are also deleting an item from the COS report form which collected data on health plans.

Affected Public: Businesses or other for-profit organizations, not for-profit institutions.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez. (202) 395-7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: June 22, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95-15904 Filed 6-28-95; 8:45 am]

BILLING CODE 3510-07-F

International Trade Administration

[A-475-801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Italy; Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative review.

SUMMARY: On February 28, 1995, the Department of Commerce (the Department) published the final results of its administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs) from Italy (60 FR 10959). On May 11, 1995, the Court of International Trade (CIT) ordered the Department to correct two ministerial errors in the final results with respect to AFBs from Italy sold by Meter. Accordingly, we are amending our final results of administrative review with respect to Meter. The review covers the period May 1, 1992, through April 30, 1993. The "class or kind" of merchandise covered by the review of Meter is ball bearings and parts thereof (BBs).

EFFECTIVE DATE: June 29, 1995.

FOR FURTHER INFORMATION CONTACT: Charles Riggle or Michael Rill, Office of Antidumping Compliance, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482-4733.

SUPPLEMENTARY INFORMATION:

Background

On February 28, 1995, the Department published the final results of antidumping duty administrative review and revocation in part of the antidumping duty orders on AFBs from Italy (60 FR 10959). The review period is May 1, 1992, through April 30, 1993. The review covered one class or kind of merchandise, BBs, from Italy sold by Meter S.p.A. For a detailed description of the products covered under this class or kind of merchandise, including a compilation of all pertinent scope determinations, see the "Scope Appendix" of the final results referenced above.

Meter challenged the final results before the CIT, alleging ministerial errors in the final results for AFBs from Italy. On May 11, 1995, the CIT ordered the Department to correct the errors and publish the amended final results in the **Federal Register**.

Amended Final Results of Review

The CIT ordered the Department to make the following corrections to its analysis for Meter: (1) Calculate the cost of manufacturing by applying the computed adjustment percentage only to variable overhead costs, and (2) calculate Meter's general and administrative expense by removing the adjustment for severance costs. We have corrected these ministerial errors in Meter's margin calculation for the period May 1, 1992, through April 30, 1993.

Based on the correction of these ministerial errors in our calculations for Meter, we have determined that the following weighted-average percentage margin exists for the period May 1, 1992, through April 30, 1993:

Manufacturer/Exporter	Country	BBs
Meter	Italy	2.62

Based on these results, the Department will instruct the Customs Service to collect cash deposits of estimated antidumping duties on all appropriate entries in accordance with the procedures discussed in the final results of these reviews. These deposit requirements are effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping occurred and the subsequent assessment of double antidumping duties.

This amendment of final results of review and notice are in accordance with section 751(f) of the Tariff Act (19 U.S.C. 1673(d)) and 19 CFR 353.28(c).

Dated: June 23, 1995.

Paul L. Joffe,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 95-16048 Filed 6-28-95; 8:45 am]

BILLING CODE 3510-DS-P

[C-549-501]

Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Countervailing Duty Administrative Review

June 21, 1995.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On March 28, 1995, the Department of Commerce (the Department) published the preliminary results of its administrative review of the countervailing duty order on certain circular welded carbon steel pipes and tubes from Thailand (60 FR 15901). We have now completed this review and determine the total net subsidy rate to be 0.73 percent *ad valorem* for all

companies for the period January 1, 1992 through December 31, 1992. We will instruct the U.S. Customs Service to assess countervailing duties as indicated above.

EFFECTIVE DATE: June 29, 1995.

FOR FURTHER INFORMATION CONTACT: Penelope Naas or Carole Showers, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, Room B099, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–3534 and 482–3217, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 28, 1995, the Department published in the **Federal Register** (60 FR 15901) the preliminary results of its administrative review of the countervailing duty order on certain circular welded carbon steel pipes and tubes from Thailand (50 FR 32751; August 14, 1985). The Department is conducting this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

We invited interested parties to comment on the preliminary results. On April 27, 1995, a case brief was submitted by the domestic interested parties. On May 4, 1995, a rebuttal brief was submitted by the Royal Thai Government. The review period is January 1, 1992 through December 31, 1992. This review involves one company, Saha Thai Pipe and Tube, and the following programs:

1. Export Packing Credits
2. Tax Certificates for Exporters
3. Tax and Duty Exemptions Under Section 28 of the Investment Promotion Act
4. Repurchase of Industrial Bills
5. Export Processing Zones
6. International Trade Promotion Fund/ Export Promotion Fund
7. Electricity Discounts for Exporters
8. Reduced Business Taxes for Producers of Intermediate Goods for Export Industries
9. Additional Incentives under the IPA

We have now completed this review in accordance with section 751 of the Act. We have made no calculation changes since the preliminary determination. Therefore, we determine that the net subsidy for these final results is the same as in the preliminary determination (60 FR 15091): 0.73 percent *ad volorem* for all exporters and producers of pipe and tube from Thailand.

Scope of Review

Imports covered in this review are shipments of circular welded carbon steel pipes and tubes (pipes and tubes) with an outside diameter of 0.375 inch or more but not over 16 inches, of any wall thickness. These products, commonly referred to in the industry as standard pipe or structural tubing, are produced to various ASTM specifications, most notably A–120, A–53 and A–135. During the review period, this merchandise was classified under item numbers 7306.30.10 and 7306.30.50 of the HTS. The HTS numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Analysis of Comments

Comment 1

Petitioners challenge the Department's decision to publish a country-wide countervailing duty rate. They argue that the statute, legislative history and court precedent give the Department ample authority to calculate a company-specific rate and a separate "all others" rate in the final results of this review. In this case, petitioners argue that the Department does not have a representative sample, since other producers are known to export the subject merchandise to the United States. Petitioners state that section 355.22(d) does not control the results in this review, as the country-wide rate must bear some relation to the average rate for all producers in the country. Thus, the Department should issue a company-specific rate to Saha Thai and an all-others rate to the remaining companies.

Respondents state that section 355.22(d) requires the publication of a single, country-wide rate in this review. Respondents point to the regulations, which state that only if there is a significant differential between producers or exporters during the period under review would the Department issue individual rates. They claim that petitioners' argument, which would require the Department to use the preliminary results of the 1988 review as the basis for an "all other " rate, is not allowed by the statute or the regulations because these results are outside the period under review.

DOC Position

We agree with respondents. At verification, we verified that Saha Thai was the only company that exported the subject merchandise during the period of review (see Verification of the Government of Thailand and Saha Thai, dated May 26, 1994). Thus, based on 355.22(c)(7)(ii), we calculated a country-wide rate. The fact that a producer did not export during the POR, but now exports, will be addressed in a subsequent administrative review if one is requested, and the appropriate rate then will be determined.

Results of Review

As a result of our review, we determine the net subsidy for the period of January 1, 1992, through December 31, 1992, to be 0.73 percent *ad valorem* for all exporters and producers of pipe and tube from Thailand.

Therefore, the Department intends to instruct the Customs Service to assess countervailing duties of 0.73 percent *ad volorem* on the f.o.b. invoice price on all shipments of this merchandise from Thailand entered, or withdrawn from warehouse, for consumption on or after January 1, 1992, and on or before December 31, 1992.

Further, the Department intends to instruct the Customs Service to collect cash deposits of 0.73 percent *ad valorem* on the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from the warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit instruction shall remain in effect until publication of the final results of the next administrative review.

The administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: June 21, 1995.

Susan G. Esserman

Assistant Secretary for Import Administration.

[FR Doc. 95–16049 Filed 6–28–95; 8:45 am]

BILLING CODE 3510–DS–P

Intent to Revoke Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its intent to revoke the countervailing duty order listed below. Domestic interested parties who object to revocation of this order must submit their comments in writing not later than the last day of July 1995.

EFFECTIVE DATE: June 29, 1995.

FOR FURTHER INFORMATION CONTACT: Brian Albright or Cameron Cardozo, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke a countervailing duty order if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by the Department's regulations (at 19 CFR 355.25(d)(4)), we are notifying the public of our intent to revoke the countervailing duty order listed below, for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months.

In accordance with section 355.25(d)(4)(iii) of the Department's regulations, if no domestic interested party (as defined in sections 355.2(i)(3), (i)(4), (i)(5), and (i)(6) of the regulations) objects to the Department's intent to revoke this order pursuant to this notice, and no interested party (as defined in section 355.2(i) of the regulations) requests an administrative review in accordance with the Department's notice of opportunity to request administrative review, we shall conclude that the countervailing duty order is no longer of interest to interested parties and proceed with the revocation. However, if an interested party does request an administrative review in accordance with the Department's notice of opportunity to request administrative review, or a domestic interested party does object to the Department's intent to revoke pursuant to this notice, the Department will not revoke the order.

Countervailing Duty Orders

EC: Sugar (C–408–046)—07/31/78, 43 FR 33237

Opportunity to Object

Not later than the last day of July 1995, domestic interested parties may object to the Department's intent to revoke this countervailing duty order. Any submission objecting to the revocation must contain the name and case number of the order and a statement that explains how the objecting party qualifies as a domestic interested party under sections 355.2(i)(3), (i)(4), (i)(5), or (i)(6) of the Department's regulations.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Ave., N.W., Washington, D.C. 20230.

This notice is in accordance with 19 CFR 355.25(d)(4)(i).

Dated: June 19, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–16047 Filed 6–28–95; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Corps of Engineers

Notice of Availability of Surplus Land and Buildings in Accordance with Public Law 103–421 Located in Hamilton Army Airfield, Novato, California

AGENCY: Corps of Engineers, DOD.

ACTION: Public notice of availability.

SUMMARY: The U.S. Army Corps of Engineers, Sacramento District, on behalf of the Department of the Army announces the availability of surplus land and buildings to the homeless in accordance with Public Law 103–421 located at Hamilton Army Airfield, Novato, California. The area available consists of approximately 667 acres of land and 23 storage type buildings. A former airfield which lies below sea level has potential flooding and access problems once Department of Defense vacates the base and the levees/pumps are inoperable. The buildings are all in various stages of disrepair and contain the presence of asbestos. Any homeless organization interested in acquiring land and/or buiidings should contact Ms. Margit Allen, representing the Hamilton Reuse Planning Authority, 14725 Alton Parkway, P.O. Box 57057, Irvine, CA 92619–7057. The opportunity to apply under the provisions of this notice will terminate on September 15, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Margit Allen at the above address.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–15915 Filed 6–28–95; 8:45 am]

BILLING CODE 3710–GH–M

Inland Waterways Users Board

AGENCY: Corps of Engineers, DOD.

ACTION: Notice of Open Meeting.

SUMMARY: In accordance with 10(a)(2) of the Federal Advisory Committee Act, Public Law (92–463) announcement is made of the next meeting of the Inland Waterways Users Board. The meeting will be held on July 26, 1995 at the Red Lion Inn at the Quay, 100 Columbia Street, Vancouver, Washington 98660 (Tel. 206–694–8341). Registration will begin at 8:30 AM and the meeting is scheduled to adjourn at 4:30 PM. The meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

FOR FURTHER INFORMATION CONTACT: Mr. Norman T. Edwards, Headquarters, U.S. Army Corps of Engineers, CECW–PD, Washington, DC 20314–1000.

SUPPLEMENTARY INFORMATION: Review and approval of the 1995 Annual Report of the Inland Waterways Users Board is a scheduled agenda item.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–15914 Filed 6–28–95; 8:45 am]

BILLING CODE 3719–92–M

Department of the Navy

Community Redevelopment Authority and Available Surplus Buildings and Land at Military Installations Designated for Closure: Naval Station, Philadelphia, PA

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: This Notice provides information regarding: (a) the redevelopment authority established to plan the reuse of the Naval Station, Philadelphia, PA; (b) the surplus property that is located at that base closure site; and (c) the timely election by the redevelopment authority to proceed under the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, Public Law 103–421 ("the Act"). This surplus designation applies only to the Naval Station property and does not pertain to the Naval Shipyard, Philadelphia, PA.

FOR FURTHER INFORMATION CONTACT: John J. Kane, Director, Real Estate Operations Division, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300, telephone (703) 325–0474, or Marian E. DiGiamarino, Special Assistant for Real Estate, Base Closure Team, Northern Division, Naval Facilities Engineering Command, 10 Industrial Highway, Mail Stop #82, Lester, PA 19113–2090, telephone (610) 595–0762. For detailed

information regarding particular properties identified in this Notice (i.e., acreage, floor plans, sanitary facilities, exact street address, etc.), contact Lieutenant Todd Hendricks, Staff Civil Engineer, Naval Station, Philadelphia, PA 19112, telephone (215) 897–5214/5217.

SUPPLEMENTARY INFORMATION: In 1991, the Naval Station, Philadelphia, PA, was designated for closure pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. By this Notice, the land and facilities described below are declared surplus to the needs of the Federal government and available for use by: (a) State and local governments and other interested parties pursuant to various statutes which authorize conveyance of surplus properties, and (b) homeless providers pursuant to the Act.

Election to Proceed Under New Statutory Procedures

The Act was signed into law on October 25, 1994. Section 2 of the Act gives the redevelopment authority at base closure sites the option of following new procedures regarding the manner in which the redevelopment plan for the base is prepared and approved, and how requests are to be made by State and local governments and other interested parties, including homeless assistance providers, for future use of the property. On November 29, 1994, the Mayor of the City of Philadelphia submitted a timely request to be covered by the provisions of the Act. This Notice fulfills the requirement of Section 2(e)(3) of the Act that information describing the redevelopment authority be published in the **Federal Register**.

Also, pursuant Section 2905(b)(7)(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Act, the following information regarding the redevelopment authority for and surplus property at the Naval Station, Philadelphia, PA, is published:

Redevelopment Authority

The redevelopment authority for Naval Station, Philadelphia, PA, for purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, is the City of Philadelphia, acting by and through Mayor Edward G. Rendell. For further information contact Ms. Terry Gillen, Deputy Commerce Director and Director, Office of Defense Conversion, City of Philadelphia, 1600 Arch St., 19th Floor, Philadelphia, PA 19103, telephone (215) 686–3643 and facsimile (215) 686–8304.

Surplus Property Descriptions

The following is a listing of the land and facilities at Naval Station, Philadelphia, PA, that are declared surplus to the needs of the federal government.

Land

Approximately 825 acres of improved and unimproved fee simple land including land under water and filled land at the U.S. Naval Station, in the City of Philadelphia, Philadelphia County, PA.

Buildings

The following is a summary of the facilities and other improvements located on the above described land which will also be available when the station closes on January 31, 1996, unless otherwise indicated. Property numbers are available on request.

—Administrative/office facilities (12 structures). Comments: Approx. 353,644 square feet.
—Administrative storage facilities (10 structures). Comments: Approx. 25,256 square feet.
—Aircraft systems facilities (8 structures). Comments: Approx. 663,445 square feet.
—Armory (2 structures). Comments: Approx. 3,500 square feet.
—Bachelor quarters housing for 2,640 personnel (18 structures). Comments: Approx. 532,641 square feet.
—Communication centers (2 structures). Comments: Approx. 14,985 square feet.
—Community facilities (54 structures). Comments: Approx. 499,957 square feet. Police station, child development center, clubs, chapel, temporary lodging facilities, bowling alley, gyms, theater, service station, exchange facilities, commissary, package store, brig, hobby shops, youth and family service facilities, indoor and outdoor swimming pools, etc.
—Dining facility (1 structure). Comments: Approx. 22,375 square feet.
—Family housing with detached garage or carport (48 structures). Comments: Approx. 60,543 square feet.
—Family housing; single and multi-family units for 545 families (129 structures). Comments: Approx. 1,073,560 square feet.
—Family housing (off-site component); multi-family units for 382 families (48 structures). Comments: Approx. 459,128 square feet.
—General storage facilities (11 structures). Comments: Approx. 181,635 square feet.
—Helicopter land pad (1 structure). Comments: Approx. 1,111 square yards.
—High explosive storage facility (1 structure). Comments: Approx. 175 square feet.
—Laundry facilities (3 structures) Comments: Approx. 6,820 square feet.
—Medical facilities (2 structures). Comments: Approx. 28,786 square feet.
—Medical laboratory (1 structure). Comments: Approx. 646 square feet.
—Medical storage facilities (2 structures). Comments: Approx. 55,777 square feet.
—Miscellaneous facilities (numerous structures). Comments: Measuring systems vary. Flag poles, seaplane ramp, ferry slip, bulkheads, damage control (firefighting) trainer, incinerator, hazardous waste handling facilities, fencing, etc.
—Paved areas. Comments: Measuring systems vary. Parking area, roads and sidewalks.
—Pistol range (1 structure). Comments: Approx. 9,000 square feet.
—Playing courts (10 structures). Comments: Various dimensions; tennis courts.
—Playing fields (18 structures). Comments: Various dimensions. Baseball, softball and football fields.
—Printing plant (1 structure). Comments: Approx. 616 square feet.
—Public works shop and maintenance storage facilities (6 structures). Comments: Approx. 29,390 square feet.
—Science and marine laboratory (2 structures). Comments: Approx. 72,600 square feet.
—Small arms storage facilities (3 structures). Comments: Approx. 189 square feet.
—Potable water storage tanks (2 structures). Comments: Approx. 2.4 million gallons.
—Target house storage facility (1 structure). Comments: Approx. 175 square feet.
—Training facilities (10 structures). Comments: Approx. 73,788 square feet.
—Utilities. Comments: Measuring systems vary. Telephone, electrical, sanitary sewer, storm sewer, potable and non-potable water, steam, and railroads.

Expressions of Interest

Pursuant to Section 2905(b)(7)(c) of the Defense Base Closure and Realignment Act of 1990, State and local governments, representatives of the homeless, and other interested parties located in the vicinity of the Naval Station, Philadelphia, may submit to the redevelopment authority (City of Philadelphia) a notice of interest in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant to Section 2905(b)(7)(C) and (D), the redevelopment authority shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in the City of Philadelphia, PA, the date by which expressions of interest must be submitted. Under Section 2(e)(6) of the Act, the deadline for submissions of expressions of interest may not be less than one (1) month nor more than six (6) months from the date the Mayor of Philadelphia elected to proceed under the Act, i.e., November 29, 1994.

Dated: June 19, 1995.

M. D. Schetzsle,

LT, JAGC, USNR, Alternate Federal Register Lioison Officer.

[FR Doc. 95–15916 Filed 6–28–95; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER94–389–003, et al.]

Tenaska Power Services Co., et al.; Electric Rate and Corporate Regulation Filings

June 22, 1995.

Take notice that the following filings have been made with the Commission:

1. Tenaska Power Company

[Docket No. ER94–389–003]

Take notice that on May 31, 1995, Tenaska Power Services Company (Tenaska) tendered for filing certain information as required by the Commission's letter order dated May 26, 1994 in Docket No. ER94–389–000. Copies of Tenaska's informational filing are on file with the Commission and are available for public inspection.

2. Green Mountain Power Corporation

[Docket No. ER95–978–000]

Take notice that on June 6, 1995, Green Mountain Power Corporation (GMP) tendered for filing a revised definition of "Additional Charges" contained in its FERC Electric Tariff, Original Volume No. 2 ("Opportunity Transactions Tariff") which clarifies the circumstances under which GMP may recover one mill per kilowatt-hour to compensate for difficult-to-quantify costs associated with sales pursuant to that tariff. GMP has requested waiver of the Commission's Regulations to the extent necessary to permit the change to become effective as of May 1, 1995.

Comment date: July 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Northeast Utilities Service Company

[Docket No. ER95–979–000 Company]

Take notice that on May 23, 1995, Northeast Utilities Service Company (NUSCO) tendered for filing on behalf of The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, and Holyoke Power and Electric Company an amendment to a filing for sales of system power to City of Westfield, Gas and Electric Light Department. NUSCO renews its request that the change in rate schedule become effective on May 1, 1995 and that such rate schedule change supersede FERC Rate Schedule No. HP&E 26 at that time.

Comment date: July 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Hadson Electric, Inc.

[Docket No. ER95–1186–000]

Take notice that on June 8, 1995, Hadson Electric, Inc. tendered for filing a Notice of Cancellation FERC Rate Schedule No. 1.

Comment date: July 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Puget Sound Power & Light Company

[Docket No. ER95–1188–000 Company]

Take notice that on June 5, 1995, Puget Sound Power & Light Company tendered for filing certain information related to Puget's Residential Purchase and Sale Agreement with the Bonneville Power Administration under the Pacific Northwest Electric Power Planning and Conservation Act.

Comment date: July 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company and Toledo Edison Company

[Docket No. ER95–1194–000]

Take notice that on June 9, 1995, The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company and Toledo Edison Company, tendered for filing proposed changes in their FERC Electric Service Rate Schedule Nos. 26, 24, 160, 43 and 45, respectively.

The proposed changes amend the utilities' CAPCO Basic Operating Agreement (Agreement) to permit any two parties to the Agreement to provide capacity and associated energy in connection with scheduled maintenance on a willing supplier/willing receiver basis.

Copies of the filing were served upon the Public Utilities Commission of Ohio and the Pennsylvania Public Utility Commission.

Comment date: July 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Consolidated Edison Company of New York, Inc.

[Docket No. ER95–1195–000]

Take notice that on June 9, 1995, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing an agreement to provide interruptible transmission service for New England Power Company (NEP).

Con Edison states that a copy of this filing has been served by mail upon NEP.

Comment date: July 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Florida Power & Light Company

[Docket No. ER95–1196–000]

Take notice that on June 9, 1995, Florida Power & Light Company (FPL), tendered for filing a Notice of Cancellation of FPL's Service Agreement for the Supply of Wholesale Electric Power Service to Municipalities and Rural Electric Cooperatives with the City of Homestead, Florida.

Comment date: July 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Washington Water Power Company

[Docket No. ER95–1197–000]

Take notice that on June 12, 1995, Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, a signed service agreement under FERC Electric Tariff Volume No. 4 with Mock Resources, Inc., dba Wickland Power Services. WWP requests waiver of the prior notice requirement and requests an effective date of July 1, 1995.

Comment date: July 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Commonwealth Electric Company and Cambridge Electric Light Company

[Docket No. ER95–1198–000]

Take notice that on June 12, 1995, Commonwealth Electric Company (Commonwealth) on behalf of itself and Cambridge Electric Light Company (Cambridge), collectively referred to as the Companies, tendered for filing with the Federal Energy Regulatory Commission executed Service Agreements between the Companies and the following Customers:

Burlington Electric Department (Burlington)
Enron Power Marketing, Inc. (Enron)
InterCoast Power Marketing Company (InterCoast)
Village of Northfield, Vermont Electric Department (Northfield)

These Service Agreements specify that the Customers have signed on to and have agreed to the terms and conditions of the Companies' Power Sales and Exchanges Tariffs designated as Commonwealth's Power Sales and Exchanges Tariff (FERC Electric Tariff Original Volume No. 3) and Cambridge's Power Sales and Exchanges Tariff (FERC Electric Tariff Original Volume No. 5). These Tariffs, approved by FERC on April 13, 1995, and which have an effective date of March 20, 1995, will allow the Companies and the Customers to enter into separately scheduled transactions under which the Companies will sell to the Customers capacity and/or energy as the parties may mutually agree.

The Companies request an effective date as specified on each Service Agreement.

Comment date: July 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Wisconsin Power and Light Company

[Docket No. ER95–1199–000]

Take notice that on June 12, 1995, Wisconsin Power and Light Company (WP&L), tendered for filing a signed Service Agreement under WP&L's Bulk Power Tariff between itself and Upper Peninsula Power Company. WP&L respectfully requests a waiver of the Commission's notice requirements, and an effective date of June 1, 1995.

Comment date: July 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Indianapolis Power & Light Company

[Docket No. ER95–1200–000]

Take notice that on June 12, 1995, Indianapolis Power & Light Company (IPL), tendered for filing proposed changes in its FERC Rate Schedule No. 21. The rate schedule supplement consists of Amendment No. 5, dated July 9, 1995 to the Agreement dated October 9, 1986 (1986 Agreement), which sets forth the rates, charges, terms and conditions for wholesale electric service to Wabash Valley Power Association, Inc. (Wabash Valley). Amendment No. 5 extends the 1986 Agreement for a successive term of six (6) months and changes contract language to allow recovery of stranded costs upon termination of service.

The only customer affected by this filing is Wabash Valley, which has executed said Amendment No. 5 and has concurred in this filing.

Copies of this filing were sent to Wabash Valley and to the Indiana Utility Regulatory Commission.

Comment date: July 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Consolidated Edison Company of New York, Inc.

[Docket No. ER95–1201–000]

Take notice that on June 12, 1995, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing an agreement with Associated Power Services, Inc. (APSI) to provide for the sale of energy and capacity. For energy sold by Con Edison the ceiling rate is 100 percent of the incremental energy cost plus up to 10 percent of the SIC (where such 10 percent is limited to 1 mill per Kwhr when the SIC in the hour reflects a purchased power resource). The ceiling rate for capacity sold by Con Edison is $7.70 per megawatt hour. All energy and capacity sold by APSI will be at market-based rates.

Con Edison states that a copy of this filing has been served by mail upon APSI.

Comment date: July 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Panada-Brandywine, L.P.

[Docket No. QF94–31–003]

On June 20, 1995, Panada-Brandywine, L.P. of 4100 Spring Valley Road, Suite 1001, Dallas, Texas 75244, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the topping-cycle cogeneration facility, to be located 1.5 miles south of Brandywine, Maryland, was previously certified as a qualifying cogeneration facility, *Panada-Brandywine, L.P.*, 67 FERC ¶ 62,162 (1994). The instant request for recertification is due to changes in the ownership structure of the facility.

Comment date: On or before July 31, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15934 Filed 6–28–95; 8:45 am]

BILLING CODE 6717–01–P

Notice of Environmental Compliance and Applicant Environmental Report Preparation Training Courses

June 23, 1995.

The Office of Pipeline Regulation (OPR) staff is conducting two sessions of its environmental compliance training course and a new course on what we expect to see in the applicant-prepared environmental report.

These courses are a result of the positive response to our outreach training courses held from 1992 through 1995. We encourage interested organizations and the public to take advantage of the courses to gain an understanding of the requirements and objectives of the Commission in ensuring compliance with all environmental certificate conditions and meeting its responsibilities under the National Environmental Policy Act and other laws and regulations.

Environmental Report Preparation Course

The environmental report preparation course will include a manual covering the following topics:

A. What types of projects require environmental filings.
   1. Natural Gas Act section 7
   2. Natural Gas Policy Act filings
   3. Section 2.55 replacements
B. What filings are required of each type of filing.
C. What to include in each filing.
D. Potential time saving procedures
   1. Applicant-prepared DEA
   2. Third-party EA or EIS

The staff intends the manual to be a cookbook for preparing environmental filings. Because time is limited and the material required for the other types of filings is not as extensive and is listed in the regulations, the actual presentation at the session will be limited to Natural Gas Act filings under section 7. However, the manual will cover the other types of filings as well.

If you have specific questions related to the subject matter of this course, or if you would like the course to address a particular item, please call Mr. John Leiss at (202) 208–1106.

The one-day environmental report preparation course will be held on the dates and at the locations shown below. Attendees must call the numbers listed for the hotels by the listed reservation dates and identify themselves as FERC seminar attendees to receive the discounted group rate.

Session:	August 29	September 19
Location:	University Park Hotel & Suites, 480 Wakara Way, Salt Lake City, Utah 84108, (801) 581–1000	The Plaza Hotel, 16400 J.L. Hudson Drive, Southfield, Michigan 48075, (810) 559–6500
Reservations:	August 7	September 1

Environmental Compliance Training Course

The two-day environmental compliance training course will include the following topics:

A. Postcertificate clearance filings;
B. Environmental inspection as it relates to:
   1. Right-of-way preparation;
   2. Temporary erosion control;
   3. Cultural resources/Paleontology;
   4. Waterbody crossings;
   5. Wetland construction;
   6. Residential area construction;
   7. Right-of-way restoration; and
   8. Techniques for environmental compliance.

The environmental compliance training course will be held on the dates and at the locations shown below. Attendees must call the numbers listed for the hotels by the listed reservation dates and identify themselves as FERC seminar attendees to receive the discounted group rate.

Session:	August 30–31	September 20–21
Location:	University Park Hotel & Suites, 480 Wakara Way, Salt Lake City, Utah 84108, (801) 581–1000	The Plaza Hotel, 16400 J.L. Hudson Drive, Southfield, Michigan 48075, (810) 559–6500
Reservations:	August 7	September 1

The OPR staff and Foster Wheeler Environmental Corporation, the Commission's environmental support contractor for natural gas projects, will conduct the training. There is no fee for the courses, but you must pre-register because space is limited.

If you would like to attend the August or September 1995 session(s) of either of these courses, please call the telephone number listed below to obtain a registration for.[1] NOTE: IF YOU PLAN TO ATTEND BOTH THE ENVIRONMENTAL REPORT PREPARATION SESSION AND THE SUBSEQUENT ENVIRONMENTAL COMPLIANCE TRAINING SESSION, YOU MUST REGISTER SEPARATELY FOR EACH. Attendance will be limited to the first 200 people to register in each course. Call or FAX requests for registration forms to: Ms. Donna Connor, Foster Wheeler Environmental Corporation, 470 Atlantic Avenue, Boston, MA 02210, Telephone: (617) 542–8805, FAX: (617) 695–1587

You will receive confirmation of pre-registration and additional information before the training course(s).

Additional training will be offered in the future. Please indicate whether you would like these courses to be offered again, or if you are interested in any other courses with different topics or audiences. Please indicate your preferences for location and time of year. Suggestions on format are welcome.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15933 Filed 6–28–95; 8:45 am]

BILLING CODE 6717–01–M

[1] The registration forms referenced in this notice are not being printed in the **Federal Register.** Copies of the forms were sent to those receiving this notice in the mail.

[Docket No. CP94–654–001]

Texas Eastern Transmission Corporation; Notice of Availability of the Environmental Assessment for the Proposed Flex-X Riverside Project

June 23, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas facilities proposed by Texas Eastern Transmission Corporation (Texas Eastern) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the proposed facilities including:

- About 2.86 miles of 36-inch-diameter pipeline replacement in Fayette County, Pennsylvania between the Uniontown and Bedford Compressor Stations (Uniontown Replacement);
- About 2.38 miles of 36-inch-diameter pipeline replacement in Bedford County, Pennsylvania between the Bedford and Chambersburg Compressor Stations (Bedford Replacement);
- About 1.98 miles of 36-inch-diameter pipeline replacement in Bucks

County, Pennsylvania between Eagle, Pennsylvania and Lambertville, New Jersey (Eagle Replacement); and

- A new meter and regulation station (Doylestown M&R Station) at Doylestown, Bucks County, Pennsylvania.

The purpose of the proposed facilities would be to provide an additional firm transportation capacity of up to 33,210 dekatherm per day (Dth/d) and a total delivery capacity at Doylestown, Pennsylvania of 50,000 Dth/d.

The EA has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 941 North Capitol Street, NE., Room 3104, Washington, DC 20426, (202) 208–1371

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

A limited number of copies of the EA are available from: Ms. Jennifer Goggin, Environmental Project Manager, Environmental Review and Compliance Branch II, Office of Pipeline Regulation, Room 7312, 825 North Capitol Street, NW., Washington, DC 20426, (202) 208–2226

Any person wishing to comment on the EA may do so. Written comments must reference Docket No. CP94–654–001, and be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426

Comments should be filed as soon as possible, but must be received no later than July 24, 1995, to ensure consideration prior to a Commission decision on this proposal. A copy of any comments should also be sent to Ms. Jennifer Goggin, Environmental Project Manager, at the above address.

Comments will be considered by the Commission but will not serve to make the commenter a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file later interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your comments considered.

Additional information about this project is available from Ms. Jennifer Goggin, Environmental Project Manager.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15962 Filed 6–28–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–566–000, et al.]

Northwest Pipeline Corp., et al.; Natural Gas Certificate Filings

June 22, 1995.

Take notice that the following filings have been made with the Commission:

1. Northwest Pipeline Corporation

[Docket No. CP95–566–000]

Take notice that on June 15, 1995, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP95–566–000 a request pursuant to Sections 157.205, 157.211, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, and 157.216) for authorization to replace certain obsolete and undersized facilities at its Lewiston East Meter Station in Nez Perce County, Idaho in order to better accommodate its existing firm maximum daily delivery obligations (MDDO) to the Washington Water Power Company (Washington Power), under Northwest's blanket certificate issued in Docket No. CP82–433–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest states that it presently has firm obligations to deliver up to a total of 11,000 Dt per day (at 150 psig) under Rate Schedules TF–1 and TF–2, to Washington Power at the Lewiston East delivery point. Northwest further states that the Lewiston East Meter Station has a maximum design delivery capacity of approximately 7,300 Dt per day (at 150 psig). Since the maximum design capacity of the Lewiston East Meter Station is less then Northwest's firm delivery obligation to Washington Power, Northwest is proposing to upgrade the Lewiston East Meter Station by replacing the two existing undersized 4-inch orifice meters with two 6-inch turbine meters. Northwest states that it also plans to install related auxiliary facilities, including a new 750,000 Btu heater, electronic flow measurement equipment and a relocated meter building. It is stated that the proposed facility upgrade will increase the maximum design delivery capacity of the Lewiston East Meter Station from 7,300 Dt per day to approximately 13,367 Dt per day at a delivery pressure of 150 psig. However, it is further averred that the maximum design delivery capacity of the meter station, as limited by the existing regulators, will increase from 7,300 Dt to 12,500 Dt per day at 150 psig.

Northwest has estimated the cost of the proposed facility upgrade at the Lewiston East Meter Station to be approximately $292,352 which includes the cost of removing the old facilities. Northwest avers that since this expenditure is necessary in order for Northwest to better accommodate existing MDDO's at the Lewiston East Meter Station, Northwest will not require any cost reimbursement from Washington Power.

Comment date: August 7, 1995, in accordance with Standard Paragraph G at the end of this notice.

2. Tennessee Gas Pipeline Company

[Docket No. CP95–572–000]

Take notice that on June 20, 1995, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP95–572–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to add a new deliver point in Barren County, Kentucky, to serve Natural Gas of Kentucky, an existing customer, under Tennessee's blanket certificate issued in Docket No. CP82–413–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee states that Natural Gas of Kentucky has requested that Tennessee provide for a delivery point on its system in Barren County, Kentucky which would permit Natural Gas of Kentucky to move up to 2,000 dekatherms per day of natural gas under an existing IT (interruptible) contract held by Tenneco Gas Marketing Company. In order to effectuate the delivery, Tennessee proposes to construct and operate a new 2-inch hot tap assembly on an existing right-of-way located at Tennessee's M.P. 92–4+5.9 in Barren County, Kentucky. Tennessee estimates the cost of establishing this delivery point to be approximately $10,837, which cost will be reimbursed by Natural Gas of Kentucky. Tennessee further states that Natural Gas of Kentucky will install, own, operate, and maintain approximately 40-feet of 2-inch interconnecting pipe on Tennessee's right-of-way and install, own, and maintain a meter at the site to be operated Tennessee.

Additionally, Tennessee states that it is currently anticipated that only interruptible quantities of gas will be delivered at this delivery point and thus the construction of this delivery point will not impact Tennessee's peak day and/or annual deliveries.

Comment date: August 7, 1995, in accordance with Standard Paragraph G at the end of this notice.

3. Northwest Pipeline Corporation

[Docket No. CP95–571–000]

Take notice that on June 19, 1995, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP95–571–000 a request pursuant to Sections 157.205, 157.216 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216, 157.211) for authorization to abandon certain obsolete and undersized facilities at the Pasco Meter Station in Franklin County, Washington and to construct and operate upgraded replacement facilities at this station to accommodate its existing firm maximum daily delivery obligations to Cascade Natural Gas Corporation (Cascade Natural) under Northwest's blanket certificate issued in Docket No. CP82–433–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest proposes to upgrade the Pasco Meter Station by replacing one existing 2-inch regulator with a new 1-inch regulator and one existing 4-inch orifice meter with a new 4-inch turbine meter and appurtenances. These facility replacements will increase the design capacity of the Pasco Meter Station from 2,377 Dth per day to approximately 4,433 Dth per day at 150 psig. Northwest states that it presently has firm maximum daily delivery obligations to deliver up to 4,350 Dth per day, at a pressure of 150 psig, to Cascade Natural at the Pasco delivery point under Rate Schedules TF–1 and TF–2. Northwest further states that total cost of the proposed facility replacements at the Pasco Meter Station is estimated to be $89,570.

Comment date: August 7, 1995, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraph

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15935 Filed 6–28–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–342–003]

Crossroads Pipeline Co.; Notice of Filing

June 23, 1995.

Take notice that on June 19, 1995, Crossroads Pipeline Company (Crossroads), 801 East 86th Avenue, Merrillville, Indiana 46410, filed in Docket No. CP94–342–003 as part of its FERC Gas Tariff, Original Volume No. 1, Substitute Original Tariff Sheet Nos. 62 and 63 and Original Tariff Sheet Nos. 88 through 94.

Crossroads states that Substitute Original Tariff Sheet Nos. 62 and 63 reflect the Commission's policy on capacity release as expressed in Order No. 577, *et seq.*, and that Original Sheet Nos. 88 through 94 include the form of Capacity Release Service Agreement which was omitted from Crossroads original tariff filing made on May 19, 1995 in Docket Nos. CP94–342–001 and MT95–11–000.

Any person desiring to be heard or protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure 18 CFR 385.211 and 385.214. All such motions and protests should be filed on or before June 30, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15936 Filed 6–28–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–570–000]

El Paso Natural Gas Co.; Notice of Request Under Blanket Authorization

June 23, 1995.

Take notice that on June 19, 1995, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP95–570–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to establish certain delivery points originally constructed for the nonjurisdictional delivery of fuel gas, under El Paso's blanket certificate issued in Docket No. CP82–435–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso proposes to construct certain tap and meter facilities located at the points listed below as transportation delivery points for delivery of gas to GPM Corporation.

Delivery Point	Location
GPM Block 11 Booster.	Andrews County, Texas.
GPM Crane Water Station.	Crane County, Texas.
GPM East Hobbs Booster.	Lea County, New Mexico.
GPM Eunice Plant	Lea County, New Mexico.
GPM Eunice Treater	Lea County, New Mexico.
GPM Fullerton Plant	Andrews County, Texas.
GPM Goldsmith Plant	Ector County, Texas.
GPM Hobbs Booster	Lea County, New Mexico.
GPM Lee Plant	Lea County, New Mexico.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the

time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15937 Filed 6–28–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–125–001]

Midwestern Gas Transmission Co.; Notice of Rate Filing

June 23, 1995.

Take notice that on June 20, 1995, Midwestern Gas Transmission Company (Midwestern) filed a request for an extension of time in which to file its report of cashout activity for its first year of operations under restructured services. Midwestern requests permission to file its cashout report within thirty days of its affiliate, Tennessee Gas Pipeline Company (Tennessee), filing an amended first annual cashout report subsequent to final reconciliation of its cashout mechanism. This reconciliation is anticipated to be completed in January, 1996.

Midwestern states that Section 6(f) of its LMS–MA Rate schedule requires Midwestern to file a report and refund plan, if necessary, at the end of each annual period. Due to the dependence of Midwestern's cash out mechanism on that of its affiliate Tennessee, Midwestern contends that it is necessary for Tennessee to file its final amended cashout report prior to Midwestern's submittal in order to ensure the accuracy of Midwestern's report.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commission.

Any person desiring to protest with reference to said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Section 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before June 30, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to this proceeding. Copies of this filing are on file and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15938 Filed 6–28–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–152–003 and RP94–343–012]

NorAm Gas Transmission Co.; Notice of Filing

June 23, 1995.

Take notice that on June 19, 1995, NorAm Gas Transmission Company (NGT) tendered for filing Substitute Original Sheet No. 168, Substitute Original Sheet No. 168A, Substitute Original Sheet No. 233 and Substitute First Revised Sheet No. 233A to reinstitute previously effective tariff sheets, Original Sheet Nos. 168 and 233.

Pursuant to the Commission's May 1, 1995, Order Denying Rehearing, Allowing Withdrawal of Tariff Sheets, and Rejecting Tariff Sheets, NGT states that it is reinstituting the previously effective tariff sheets, Original Sheet Nos. 168 and 233.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before June 30, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15939 Filed 6–28–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–350–000]

Pacific Gas Transmission Co.; Notice of Proposed Changes to FERC Gas Tariff

June 23, 1995.

Take notice that on June 20, 1995, Pacific Gas Transmission Company (PGT) tendered for filing to be a part of its FERC Gas Tariff, First Revised Volume No. 1–A, certain revised tariff sheets, to be made effective May 15, 1995.

PGT states that the tariff sheets which it is submitting conform the Capacity Release provisions of its Transportation General Terms and Conditions to the capacity release provisions in Order Nos. 577 and 577–A. PGT also states that the instant filing incorporates the proposed changes originally filed with the Commission on May 11, 1995, as supplemented to conform with Order No. 577–A, issued on May 31, 1995.

PGT further states it has served a copy of this filing upon all interested state regulatory agencies and PGT's jurisdictional customers and upon the parties on the official service compiled by the Secretary in this proceeding.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 30, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15940 Filed 6–28–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL95–48–000, Project No. 2042–001]

Public Utility District No. 1 of Pend Oreille County, Washington; Notice Establishing Comment Period for Petition for Declaratory Order

June 23, 1995.

On May 24, 1995, the Public Utility District No. 1 of Pend Oreille County, Washington, filed a pleading styled "Petition for a Declaratory Order or, in the Alternative, Application To Amend License, and Request for Hearing" concerning the Box Canyon Project No. 2042. The project is located on the Pend Oreille River in Pend Oreille County, Washington, and Bonner County, Idaho.

The licensee requests that the Commission issue a declaratory order finding, among other things, that its license for the project, as issued in 1952 and as amended in 1963, authorizes the occupancy and use of Indian lands for power generation.[1]

[1] In the alternative, if the Commission declines to issue a declaratory order, the licensee requests that the Commission amend its license to authorize the use and occupancy of Indian lands as necessary to continue with existing project operations, and to establish annual charges for affected Tribal lands under Section 10(e) of the Federal Power Act (FPA). The licensee further requests that, if material issues of fact must be resolved related to either the requested declaratory order or license amendment, an opportunity for an evidentiary hearing be granted.

Pursuant to Rule 213(d) of the Commission's regulations, answers to petitions are due within 30 days after filing, unless otherwise ordered.[2] Some of the issues presented in the petition are currently under review in the complaint docket for Project No. 2042–001. To avoid possible confusion and to ensure adequate notice to all interested persons, the Commission staff has determined that notice of the petition for a declaratory order should be published and that the deadline for filing an answer, comments, protests, or petitions to intervene in connection to the licensee's petition for a declaratory order should be as established in this notice.

Any party to the complaint proceeding may file an answer to the petition for a declaratory order; and any person may file comments, a protest, or a motion to intervene in Docket No. EL95–48–000; in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.213, and 385.214 (1995). In determining the appropriate action to take with respect to the petition, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any answers, comments, protests, or motions to intervene must be received no later than July 24, 1995.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15941 Filed 6–28–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–296–000]

Williams Natural Gas Company; Notice of Filing of Status Report

June 23, 1995.

Take notice that on June 19, 1995, Williams Natural Gas Company (WNG) tendered for filing its report on the status of its cases in litigation.

WNG states that the purpose for the instant filing is to comply with the Commission's order in Docket No. RP94–296–000 issued June 20, 1994. The order directed WNG to file a report on the status of its cases in litigation every 12 months, beginning July 1, 1995, until the cases are resolved. WNG states that this report is provided as Attachment 1 to the filing.

WNG states that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in the dockets referenced above.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 925 North Capital Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before June 30, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15942 Filed 6–28–95; 8:45 am]

BILLING CODE 6717–01–M

[2] 18 CFR 385.213(d)(2) (1995). *See also* 18 CFR 385.202 (1995).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5249–7]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 31, 1995.

FOR FURTHER INFORMATION CONTACT: For further information, or a copy of this ICR, contact Sandy Farmer at (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Protection of Stratospheric Ozone: Labeling (EPA ICR #1757.01). This ICR request approval of a new collection.

Abstract: All products containing a class I or class II ozone depleting substance and products manufactured with a class I substance must be labeled in accordance with the requirements of the Clean Air Act Amendments of 1990 and EPA regulations at 40 CFR 82.100–82.124. The Agency will inspect to ensure that these products contain the appropriate label and will work with Customs to ensure that importers comply with the regulations. The Agency also provides for exemptions from these requirements in cases where no viable alternative exists to the use of a class I substance in manufacturing. Such exemptions are available by petition and the Agency will use the information submitted in a petition to determine whether to grant the petitioner's request.

Burden Statement: Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering the data needed, and completing the collection of information.

Respondents: Manufacturers and importers of products containing class I and class II ozone depleting substances.

Estimated Number of Respondents: 80.

Estimated Total Annual Burden on Respondents: 5040 hours.

Frequency of Collection: as needed.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW, Washington, DC 20460.

and

Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW, Washington, DC 20503.

Dated: June 23, 1995.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 95–15982 Filed 6–28–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5249–8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 31, 1995.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 0168.06.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: National Pollutant Discharge Elimination System (NPDES) and Sewage Sluge Management State Programs (EPA ICR No. 0168.06; OMB Control No. 2040–0057). This is a request for extension of a currently approved information collection.

Abstract: under the NPDES Program, States, Federally recognized Indian tribes, and territories may request authority from EPA to manage the NPDES and sewage sludge disposal programs. The current recordkeeping and reporting requirements for State NPDES and sludge program requests, implementation, and oversight are codified in 40 CFR Parts 123, 124, and 501. In the absence of an approved State program, EPA retains the authority to issue permits that establish the effluent limitations and monitoring requirements.

The burden for State program requests includes the activities States, tribes, and territories must complete to request authority for a new NPDES or sludge management program, or to modify an existing program. The burden for State program implementation includes permit enforcement activities, recordkeeping, and State certification of EPA-issued permits. The burden for State program oversight activities includes submittal of permit information and periodic reports to EPA.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 38 hours per response. This estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information.

Respondents: States, Indian Tribes, and Territories.

Estimated No. of Respondents: 97.

Estimated Total Annual Burden on Respondents: 1,012,595 hours.

Frequency of Collection: Variable, as needed.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to the following address. Please refer to EPA ICR No. 0168.06 and OMB Control No. 2040–0057 in any correspondence.

Ms. Sandy Farmer, EPA ICR No. 0168.06
U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW, Washington, DC 20460.

and

Mr. Tim Hunt, OMB Control No. 2040–0057 Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW, Washington, DC 20503.

Dated: June 23, 1995.

Joseph Retzer,

Director, Regulotory Information Division.

[FR Doc. 95–15983 Filed 6–28–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5221–4]

Public Water System Supervision Program: EPA Tentatively Approves Program Revisions Corresponding to the National Primary Drinking Water Regulations for Phases II/IIB/V, Lead and Copper, and Methodology for Total Coliforms for the State of Iowa

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Iowa is revising its approved State Public Water System Supervision (PWSS) Program. Iowa has adopted regulations for (1) synthetic organic chemicals and inorganic chemicals (Phases II and V), that correspond to the National Primary Drinking Water Regulations (NPDWR) published by EPA on January 30, 1991 (56 FR 3526) and July 17, 1992 (57 FR 31776); (2) volatile organic chemicals (Phase IIB), that correspond to the NPDWR published by EPA on July 1, 1991 (56 FR 30266); (3) lead and copper, that correspond to the NPDWR published by EPA on June 7, 1991 (56 FR 26460), and as amended on July 15, 1991 (56 FR 32112) and June 29, 1992 (57 FR 28785); and total coliforms, that correspond to the NPDWR published by EPA on June 10, 1992 (57 FR 24744).

EPA has determined that these State program revisions are no less stringent than the corresponding Federal regulations. This determination was based upon an evaluation of Iowa's PWSS program in accordance with the requirements stated in 40 CFR 142.10. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties are invited to request a public hearing. A request for a public hearing must be submitted to the Regional Administrator, within thirty (30) days of the date of this Notice, at the address shown below. If a public hearing is requested and granted, this determination shall not become effective until such time following the hearing that the Regional Administrator issues an order affirming or rescinding this action. If no timely and appropriate request for a hearing is received, and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective thirty (30) days from this Notice date.

Insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request is made within thirty (30) days after this notice, a public hearing will be held.

Requests for a public hearing should be addressed to: Ralph Langemeier, Chief, Drinking Water Branch, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Such notice will be made by the Regional Administrator in the **Federal Register** and in newspapers of general circulation in the State of Iowa. A notice will also be sent to the person(s) requesting the hearing as well as to the State of Iowa. The hearing notice will include a statement of purpose, information regarding time and location, and the address and telephone number where interested persons may obtain further information. The Regional Administrator will issue an order affirming or rescinding his determination upon review of the hearing record. Should the determination be affirmed, it will become effective as of the date of the order.

ADDRESSES: A copy of the primacy application relating to this determination is available for inspection between the hours of 7:30 a.m. and 4:30 p.m., Monday through Friday, at the following locations: U.S. EPA Region VII Drinking Water Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101, and the Iowa Department of Natural Resources, Public Drinking Water Program, Wallace State Office Building, Des Moines, Iowa 50319.

FOR FURTHER INFORMATION CONTACT: Pat Ritchey, EPA Region VII Drinking Water Branch, at the above address, telephone (913) 551–7409.

Authority: Sec. 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Dated: May 15, 1995.

Dennis Grams,

Regional Administrator, EPA, Region VII.

[FR Doc. 95–15018 Filed 6–28–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5221–5]

Public Water System Supervision Program: EPA Tentatively Approves Program Revisions Corresponding to the National Primary Drinking Water Regulations for Lead and Copper for the State of Nebraska

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Nebraska is revising its approved State Public Water System Supervision (PWSS) Program. Nebraska has adopted regulations for the Lead and Copper Rule that correspond to the National Primary Drinking Water Regulations for the Lead and Copper Rule published by the EPA on June 7, 1991 (56 FR 26460).

EPA has determined that these State program revisions are no less stringent than the corresponding Federal regulation. This determination was based upon a thorough evaluation of Nebraska's PWSS program in accordance with the requirements stated in 40 CFR 142.10. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties are invited to request a public hearing. A request for a public hearing must be submitted to the Regional Administrator, within thirty (30) days of the date of this Notice, at the address shown below. If a public hearing is requested and granted, this determination shall not become effective until such time following the hearing that the Regional Administrator issues an order affirming or rescinding this action. If no timely and appropriate request for a hearing is received, and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective thirty (30) days from this Notice date.

Insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request is made within thirty (30) days after this notice, a public hearing will be held.

Requests for a public hearing should be addressed to: Ralph Langemeier, Chief; Drinking Water Branch; U.S. Environmental Protection Agency, Region VII; 726 Minnesota Avenue; Kansas City, Kansas 66101–2798.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request, or if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Such notice will be made by the Regional Administrator in the **Federal Register** and in newspapers of general circulation in the State of Nebraska. A notice will also be sent to the person(s) requesting the hearing as well as to the State of Nebraska. The hearing notice will include a statement of purpose, information regarding time and location, and the address and telephone number where interested persons may obtain further information. The Regional Administrator will issue an order affirming or rescinding his determination based upon review of the hearing record. Should the determination be affirmed, it will become effective as of the date of the order.

ADDRESSES: A copy of the primacy application relating to this determination is available for inspection between the hours of 7:30 a.m. and 4:30 p.m., Monday through Friday, at the following locations: U.S. EPA Region VII Drinking Water Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101–2798, and the Nebraska Department of Health, 301 Centennial Mall South, 3rd Floor, Lincoln, Nebraska 68509.

FOR FURTHER INFORMATION CONTACT: David Horak, EPA Region VII Drinking Water Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101–2798, telephone (913) 551–7970.

Authority: Section 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Dated: May 30, 1995.

Dennis Grams,

Regional Administrator, EPA, Region VII.

[FR Doc. 95–15017 Filed 6–28–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Differences in Capital and Accounting Standards Among the Federal Banking and Thrift Agencies; Report to Congressional Committees

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Report to the Committee on Banking and Financial Services of the U.S. House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the United States Senate Regarding Differences in Capital and Accounting Standards Among the Federal Banking and Thrift Agencies as of December 31, 1994.

SUMMARY: This report has been prepared by the FDIC pursuant to Section 37(c) of the Federal Deposit Insurance Act (12 U.S.C. 1831n(c)). Section 37(c) requires each federal banking agency to report annually to the Committee on Banking and Financial Services of the House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the Senate any differences between any accounting or capital standard used by such agency and any accounting or capital standard used by any other such agency. The report must also contain an explanation of the reasons for any discrepancy in such accounting and capital standards and must be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Robert F. Storch, Chief, Accounting Section, Division of Supervision., Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429, telephone (202) 898–8906.

SUPPLEMENTARY INFORMATION: The text of the report follows:

Report to the Committee on Banking and Financial Services of the U.S. House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the United States Senate Regarding Differences in Capital and Accounting Standards Among the Federal Banking and Thrift Agencies as of December 31, 1994

A. Introduction

This report has been prepared by the Federal Deposit Insurance Corporation (FDIC) pursuant to Section 37(c) of the Federal Deposit Insurance Act, which requires the agency to annually submit a report to specified Congressional Committees describing any differences in regulatory capital and accounting standards among the federal banking and thrift agencies, including an explanation of the reasons for these differences. Section 37(c) also requires the FDIC to publish this report in the **Federal Register**.

The FDIC, the Board of Governors of the Federal Reserve System (FRB), and the Office of the Comptroller of the Currency (OCC) (hereafter, the banking agencies) have substantially similar leverage and risk-based capital standards. While the Office of Thrift Supervision (OTS) employs a regulatory capital framework that also includes leverage and risk-based capital requirements, it differs in several respects from that of the banking agencies. Nevertheless, the agencies view the leverage and risk-based capital requirements as minimum standards and most institutions are expected to operate with capital levels well above the minimums, particularly those institutions that are expanding or experiencing unusual or high levels of risk.

The banking agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), have developed uniform Reports of Condition and Income (Call Reports) for all commercial banks and FDIC-supervised savings banks. The reporting standards followed by the banking agencies are substantially consistent with generally accepted accounting principles (GAAP) as they are applied by banks. In the limited number of cases where the bank Call Report standards are different from GAAP, the regulatory reporting requirements are intended to be more conservative then GAAP. The OTS requires each thrift institution to file the Thrift Financial Report (TFR), which is consistent with GAAP as it is applied by thrifts. However, the reporting standards applicable to the TFR differ in some respects from the reporting standards applicable to the bank Call Report.

B. Differences in Capital Standards Among the Federal Banking and Thrift Agencies

B.1. Minimum Leverage Capital

The banking agencies have established leverage capital standards based upon the definition of Tier 1 (or core) capital contained in their risk-based capital standards. These standards require the most highly-rated banks (i.e., those with a composite CAMEL rating of "1") to maintain a minimum leverage capital ratio of at least 3 percent if they are not anticipating or experiencing any significant growth and meet certain other conditions. All other banks must maintain a minimum leverage capital ratio that is at least 100 to 200 basis points above this minimum (i.e., an absolute minimum leverage ratio of not less than 4 percent).

The OTS has a 3 percent core capital and a 1.5 percent tangible capital leverage requirement for thrift institutions. Consistent with the requirements of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), the OTS has proposed revisions to its leverage standard for thrift institutions so that its minimum leverage standard will be at least as stringent as the revised leverage standard that the OCC applies to national banks.

B.2. Interest Rate Risk

Section 305 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) mandates that the agencies' risk-based capital standards take adequate account of interest rate risk. The banking agencies requested comment in August 1992 and September 1993 on proposals to incorporate interest rate risk into their risk-based capital standards. The agencies expect to issue another interest rate risk proposal for public comment during 1995. The delay in completing a final rule has been the result of difficulties in designing a meaningful measurement system for interest rate risk and efforts to seek international agreement on capital standards for this risk.

In 1993, the OTS adopted a final rule which adds an interest rate risk component to its risk-based capital standards. Under this rule, thrift institutions with a greater than normal interest rate exposure must take a deduction from the total capital available to meet their risk-based capital requirement. The deduction is equal to one half of the difference between the institution's actual measured exposure and the normal level of exposure. The OTS has deferred the September 30, 1994, effective date of its interest rate risk rule while the banking agencies continue their work on an interest rate risk rule for banks. The approach ultimately adopted by the banking agencies could differ from that of the OTS.

B.3. Subsidiaries

The banking agencies consolidate all significant majority-owned subsidiaries of the parent organization. The purpose of this practice is to assure that capital requirements are related to all of the risks to which the bank is exposed. For subsidiaries which are not consolidated on a line-for-line basis, their balance sheets may be consolidated on a pro-rata basis, bank investments in such subsidiaries may be deducted entirely from capital, or the investments may be risk-weighted at 100 percent, depending upon the circumstances. These options, with respect to the consolidation or "separate capitalization" of subsidiaries for the purpose of determining the capital adequacy of the parent organization, provide the banking agencies with the flexibility necessary to ensure that adequate capital is being provided commensurate with the actual risks involved.

Under OTS capital guidelines, a distinction, mandated by FIRREA, is drawn between subsidiaries engaged in activities that are permissible for national banks and subsidiaries engaged in "impermissible" activities for national banks. Subsidiaries of thrift institutions that engage only in permissible activities are consolidated on a line-for-line basis, if majority-owned, and on a pro rata basis, if ownership is between 5 percent and 50 percent. As a general rule, investments in, and loans to, subsidiaries that engage in impermissible activities are deducted in determining the capital adequacy of the parent. However, for subsidiaries which were engaged in impermissible activities prior to April 12, 1989, investments in, and loans to, such subsidiaries that were outstanding as of that date were grandfathered and were phased out of capital over a five-year transition period that expired on July 1, 1994. During this transition period, investments in subsidiaries engaged in impermissible activities which had not been phased out of capital were consolidated on a pro rata basis. The phase-out provisions were amended by the Housing and Community

Development Act of 1992 with respect to impermissible subsidiaries that are subject to this requirement solely by reason of their real estate investments and activities. The OTS may extend the transition period until July 1, 1996, on a case-by-case basis if certain conditions are met.

B.4. Intangible Assets

The banking agencies' rules permit purchased credit card relationships and purchased mortgage servicing rights to count toward capital requirements, subject to certain limits. Both forms of intangible assets are in the aggregate limited to 50 percent of core capital. In addition, purchased credit card relationships alone are restricted to no more than 25 percent of an institution's core capital. Any purchased mortgage servicing rights and purchased credit card relationships that exceed these limits, as well as all other intangible assets such as goodwill and core deposit intangibles, are deducted from capital and assets in calculating an institution's core capital.

In February 1994, the OTS issued a final rule making its capital treatment of intangible assets generally consistent with the banking agencies' rules. However, the OTS rule grandfathers preexisting core deposit intangibles up to 25 percent of core capital and all purchased mortgage servicing rights acquired before February 1990.

B.5. Capital Requirements for Recourse Arrangements

B.5.a. Leverage Capital Requirements—The banking agencies require full leverage capital charges on most assets sold with recourse, even when the recourse is limited. This includes transactions where the recourse arises because the seller, as servicer, must absorb credit losses on the assets being serviced. The exceptions to this rule pertain to certain pools of first lien one-to-four family residential mortgages and to certain agricultural mortgage loans.

Banks must maintain leverage capital against most assets sold with recourse because the banking agencies' regulatory reporting rules generally do not permit assets sold with recourse to be removed from a bank's balance sheet (see "Sales of Assets With Recourse" in Section C.1. below for further details). As a result, such assets continue to be included in the asset base which is used to calculate a bank's leverage capital ratio.

Because the regulatory reporting rules for thrifts enable them to remove assets sold with recourse from their balance sheets when such transactions qualify for sales under GAAP, the OTS capital rules do not require thrifts to hold leverage capital against such assets.

B.5.b. Low Level Recourse Transactions—The banking agencies and the OTS generally require a full risk-based capital charge against assets sold with recourse. However, in the case of assets sold with limited recourse, the OTS limits the capital charge to the lesser of the amount of the recourse or the actual amount of capital that would otherwise be required against that asset, i.e., the full effective risk-based capital charge. This is known as the "low level recourse" rule.

The banking agencies proposed in May 1994 to adopt the low level recourse rule that OTS already has in place. Such action was mandated four months later by Section 350 of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA). The FDIC adopted the low level recourse rule on March 21, 1995, and the other banking agencies have taken similar action.

B.5.c. Senior-Subordinated Structures—Some securitized asset arrangements involve the creation of senior and subordinated classes of securities. When a bank originates such a transaction and retains the subordinated interest, the banking agencies require that capital be maintained against the entire amount of the asset pool. However, when a bank acquires a subordinated interest in a pool of assets that it did not own, the banking agencies assign the investment in the subordinated security to the 100 percent risk weight category.

In general, the OTS requires a thrift that holds the subordinated interest in a senior-subordinated structure to maintain capital against the entire amount of the underlying asset pool regardless of whether the subordinated interest has been retained or has been purchased.

In May 1994, the banking agencies proposed to require banking organizations that purchase subordinated interests which absorb the first dollars of losses from the underlying assets to hold capital against the subordinated interest plus all more senior interests.

B.5.d. Recourse Servicing—The right to service loans and other assets may be retained when the assets are sold. This right also may be acquired from another entity. Regardless of whether servicing rights are retained or acquired, recourse is present whenever the servicer must absorb credit losses on the assets being serviced. The banking agencies and the OTS require risk-based capital to be maintained against the full amount of assets upon which a selling institution, as servicer, must absorb credit losses. Additionally, the OTS applies a capital charge to the full amount of assets being serviced by a thrift that has purchased the servicing from another party and is required to absorb credit losses on the assets being serviced.

The banking agencies' May 1994 proposal also would require banking organizations that purchase certain loan servicing rights which provide loss protection to the owners of the loans serviced to hold capital against those loans.

B.6. Collateralized Transactions

The FRB and the OCC have lowered from 20 percent to zero percent the risk weight accorded collateralized claims for which a positive margin of protection is maintained on a daily basis by cash on deposit in the institution or by securities issued or guaranteed by the U.S. Government agencies or the central governments of countries that are members of the Organization of Economic Cooperation and Development (OECD).

The FDIC and the OTS still assign a 20 percent risk weight to claims collateralized by cash on deposit in the institution or by securities issued or guaranteed by U.S. Government agencies or OECD central governments. The FDIC staff is preparing a proposal that will lower the risk weight for collateralized transactions.

B.7. Limitation on Subordinated Debt and Limited Life Preferred Stock

Consistent with the Basle Accord, the banking agencies limit the amount of subordinated debt and intermediate-term preferred stock that may be treated as part of Tier 2 capital to an amount not to exceed 50 percent of Tier 1 capital. In addition, all maturing capital instruments must be discounted by 20 percent each year of the five years before maturity. The banking agencies adopted this approach in order to emphasize equity versus debt in the assessment of capital adequacy.

The OTS has no limitation on the ratio of maturing capital instruments as part of Tier 2. Also, for all maturing instruments issued on or after November 7, 1989 (those issued before are grandfathered with respect to the discounting requirement), thrifts have the option of using either (a) the discounting approach used by the banking regulators, or (b) an approach which allows for the full inclusion of all such instruments provided that the amount maturing in any one year does not exceed 20 percent of the thrift's total capital.

B.8. Presold Residential Construction Loans

The four agencies assign a 50 percent risk weight to loans to builders to finance the construction of one-to-four family residential properties that have been presold and meet certain other criteria. However, the OTS and OCC rules indicate that the property must be presold before the construction loan is made in order for the loan to qualify for the 50 percent risk weight. The FDIC and FRB permit loans to builders for residential construction to qualify for the 50 percent risk weight once the property is presold, even if that event occurs after the construction loan has been made.

B.9. Nonresidential Construction and Land Loans

The banking agencies assign loans for nonresidential real estate development and construction purposes to the 100 percent risk weight category. The OTS generally assigns these loans to the same 100 percent risk category. However, if the amount of the loan exceeds 80 percent of the fair value of the property, the excess portion is deducted from capital.

B.10. Privately-Issued Mortgage-Backed Securities

The banking agencies, in general, place privately-issued mortgage-backed securities in either the 50 percent or 100 percent risk-weight category, depending upon the appropriate risk category of the underlying assets. However, privately-issued mortgage-backed securities, if collateralized by government agency or government-sponsored agency securities, are generally assigned to the 20 percent risk weight category.

The OTS assigns privately-issued high-quality mortgage-related securities to the 20 percent risk weight category. These are, generally, privately-issued mortgage-backed securities with AA or better investment ratings.

B.11. Other Mortgage-Backed Securities

The banking agencies and the OTS automatically assign to the 100 percent risk weight category certain mortgage-backed securities, including interest-only strips, principal-only strips, and residuals. However, once the OTS' interest rate risk amendments to its risk-based capital standards take effect, stripped mortgage-backed securities will be reassigned to the 20 percent or 50 percent risk weight category, depending upon these securities' characteristics. Residuals will remain in the 100 percent risk weight category.

B.12. Junior Liens on One-to-Four Family Residential Properties

In some cases, a bank may make two loans on a single residential property, one loan secured by a first lien, the other by a second lien. In this situation, if the total amount of the two loans exceeds a prudent loan-to-value ratio, the FDIC and the FRB would not consider the loan secured by the first lien to be eligible to receive a 50 percent risk weight. Instead, this loan would be assigned to the 100 percent risk weight category. In all cases, the FDIC would assign the loan secured by the second lien to the 100 percent risk weight category regardless of the aggregate loan-to-value ratio. This approach for first liens is intended to avoid possible circumvention of the capital requirement and to capture the risks associated with the combined transactions.

The OCC and OTS generally assign the loan secured by the first lien to the 50 percent risk weight category and the loan secured by the second lien to the 100 percent risk weight category.

B.13. Mutual Funds

Rather than looking to a mutual fund's actual holdings, the banking agencies assign all of a bank's holdings in a mutual fund to the risk category appropriate to the highest risk asset that a particular mutual fund is permitted to hold under its operating rules. Thus, the banking agencies take into account the maximum degree of risk to which a bank may be exposed when investing in a mutual fund because the composition and risk characteristics of its future holdings cannot be known in advance.

The OTS applies a capital charge appropriate to the riskiest asset that a mutual fund is actually holding at a particular time. In addition, both the OTS and the OCC guidelines also permit, on a case-by-case basis, investments in mutual funds to be allocated on a pro rata basis in a manner consistent with the actual composition of the mutual fund.

B.14. "Covered Assets"

The banking agencies generally place assets subject to guarantee arrangements by the FDIC or the Federal Savings and Loan Insurance Corporation in the 20 percent risk weight category. The OTS places these "covered assets" in the zero percent risk-weight category.

B.15. Pledged Deposits and Nonwithdrawable Accounts

Instruments such as pledged deposits, nonwithdrawable accounts, Income Capital Certificates, and Mutual Capital Certificates do not exist in the banking industry and are not addressed in the capital guidelines of the three banking agencies.

The capital guidelines of OTS permit thrift institutions to include pledged deposits and nonwithdrawable accounts that meet OTS criteria, Income Capital Certificates, and Mutual Capital Certificates in capital.

B.16. Agricultural Loan Loss Amortization

In the computation of regulatory capital, those banks accepted into the agricultural loan loss amortization program pursuant to Title VIII of the Competitive Equality Banking Act of 1987 may defer and amortize certain losses related to agricultural lending that were incurred on or before December 31, 1991. These losses must be amortized over seven years. The unamortized portion of these losses is included as an element of Tier 2 capital under the banking agencies' risk-based capital standards.

Thrifts were not eligible to participate in the agricultural loan loss amortization program established by this statute.

C. Differences in Reporting Standards Among the Federal Banking and Thrift Agencies

C.1. Sales of Assets with Recourse

In accordance with FASB Statement No. 77, a transfer of receivables with recourse is recognized as a sale if: (1) The transferor surrenders control of the future economic benefits, (2) the transferor's obligation under the recourse provisions can be reasonably estimated, and (3) the transferee cannot require repurchase of the receivables except pursuant to the recourse provisions.

The practice of the banking agencies is generally to allow banks to report transfers of receivables as sales only when the transferring institution: (1) Retains no risk of loss from the assets transferred and (2) has no obligation for the payment of principal or interest on the assets transferred. As a result, virtually no transfers of assets with recourse can be reported as sales. However, this rule does not apply to the transfer of first lien one-to-four family residential mortgage loans and agricultural mortgage loans under any one of the government programs (Government National Mortgage Association, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, and Federal Agricultural Mortgage Corporation). Transfers of mortgages under these programs are treated as sales for Call Report purposes, provided the transfers would be reported as sales under GAAP. Furthermore, private transfers of first lien one-to-four family residential mortgages are also reported as sales if the transferring institution retains only an insignificant risk of loss on the assets transferred. However, under the risk-based capital framework, the seller's obligation under any recourse provision resulting from transfers of mortgage loans under the government programs or in private transfers that qualify as sales is viewed as an off-balance sheet exposure that will be assigned a 100 percent credit conversion factor. Thus, for risk-based capital purposes, capital is generally required to be held for any recourse obligation associated with such transactions.

The OTS accounting policy is to follow FASB Statement No. 77. However, in the calculation of risk-based capital under OTS guidelines, off-balance sheet recourse obligations are converted at 100 percent. This effectively negates the sale treatment recognized on a GAAP basis for risk-based capital purposes, but not for leverage capital purposes.

On May 25, 1994, the agencies issued for public comment a proposal addressing certain aspects of the regulatory capital and reporting treatment of assets sold with recourse. If finalized, the proposal could reduce the differences between the bank regulatory reporting requirements and GAAP in this area (which OTS follows) by allowing a larger portion of asset transfers with recourse to be treated as sales for Call Report purposes. In addition, the staffs of the four agencies are working to implement Section 208 of the RCDRIA which mandates that the regulatory reporting requirements applicable to transfers of small business obligations with recourse by qualified insured depository institutions to be consistent with GAAP.

C.2. Futures and Forward Contracts

The banking agencies, as a general rule, do not permit the deferral of losses on futures and forward contracts whether or not they are used for hedging purposes. All changes in market value of futures and forward contracts are reported in current period income. The banking agencies adopted this reporting standard prior to the issuance of FASB Statement No. 80, which permits hedge or deferral accounting under certain circumstances. Hedge accounting in accordance with FASB Statement No. 80 is permitted by the banking agencies only for futures and forward contracts used in mortgage banking operations.

The OTS practice is to follow generally accepted accounting principles for futures and forward contracts. In accordance with FASB Statement No. 80, when hedging criteria are satisfied, the accounting for a contract is related to the accounting for the hedged item. Changes in the market value of the contract are recognized in income when the effects of related changes in the price or interest rate of the hedged item are recognized. Such reporting can result in deferred losses which would be reflected as assets on the balance sheet.

The FASB is working to develop a comprehensive hedge accounting framework for all free-standing derivative instruments, including futures and forward contracts and certain on-balance sheet instruments, that can be applied consistently by all enterprises. The banking agencies and the OTS are monitoring the progress of this project.

C.3. Excess Servicing Fees

As a general rule, the banking agencies do not follow GAAP for excess servicing fees, but require a more conservative treatment. Excess servicing arises when loans are sold with servicing retained and the stated servicing fee rate is greater than a normal servicing fee rate. With the exception of sales of pools of first lien one-to-four family residential mortgages for which the banking agencies' approach is consistent with FASB Statement No. 65, excess servicing fee income in banks must be reported as realized over the life of the transferred asset.

In contrast, the OTS allows the present value of the future excess servicing fee to be treated as an adjustment to the sales price for purposes of recognizing gain or loss on the sale. This approach is consistent with FASB Statement No. 65.

C.4. Specific Valuation Allowances for, and Charge-offs of, Troubled Real Estate Loans not in Foreclosure

A troubled real estate loan is considered "collateral dependent" when the repayment of the debt will be provided solely by the underlying real estate and there are no other available and reliable sources of repayment.

For a troubled collateral dependent real estate loan, the banking agencies generally treat any portion of the loan balance that exceeds the amount that is adequately secured by the value of the collateral, and that can clearly be identified as uncollectible, as a loss that should be charged off. The banking agencies believe that this approach accurately reflects the amount of recovery a financial institution is likely to receive if it is forced to foreclose on the underlying collateral. This banking agency approach is basically consistent with GAAP as it has been applied by banks.

The most recent OTS policy has been to require a specific valuation allowance against (or a partial charge-off of) a loan for the amount by which the recorded investment in the loan (generally, its book value) exceeds its "value," as defined, when it is probable, based on current information and events, that a thrift will be unable to collect all amounts due (both principal and interest) on the loan. The "value" is either the present value of the expected future cash flows on the loan discounted at the loan's effective interest rate, the loan's observable market price, or the fair value of the collateral. Previously, the OTS generally required specific valuation allowances for troubled real estate loans based on the estimated net realizable value of the collateral, an amount that normally exceeds fair value. By revising its policy in 1993, OTS narrowed the accounting difference between banks and thrifts. The revised OTS policy is somewhat similar to the requirements of FASB Statement No. 114 on loan impairment, which was issued in May 1993.

As all banks and thrifts adopt FASB Statement No. 114 during 1995, this accounting difference will be eliminated. When Statement No. 114 is applied for regulatory reporting purposes, impairment of a collateral dependent loan must be measured using the fair value of the collateral.

C.5. Offsetting of Assets and Liabilities

FASB Interpretation No. 39, "Offsetting of Amounts Related to Certain Contracts," became effective in 1994. Interpretation No. 39 interprets the longstanding accounting principle that "the offsetting of assets and liabilities in the balance sheet is improper except where a right of setoff exists." Under Interpretation No. 39, four conditions must be met in order to demonstrate that a right of setoff exists. A debtor with "a valid right of setoff may offset the related asset and liability and report the net amount." The banking agencies allow banks to apply Interpretation No. 39 for Call Report purposes solely as it relates to on-balance sheet amounts associated with off-balance sheet conditional and exchange contracts (e.g., forwards, interest rate swaps, and options). Under the Call Report instructions, netting of other assets and liabilities is not

permitted unless specifically required by the instructions.

The OTS practice is to follow GAAP as it relates to offsetting in the balance sheet.

C.6. Push Down Accounting

Push down accounting is the establishment of a new accounting basis for a depository institution in its separate financial statements as a result of a substantive change in control. Under push down accounting, when a depository institution is acquired, yet retains its separate corporate existence, the assets and liabilities of the acquired institution are restated to their fair values as of the acquisition date. These values, including any goodwill, are reflected in the separate financial statements of the acquired institution as well as in any consolidated financial statements of the institution's parent.

The banking agencies require push down accounting when there is at least a 95 percent change in ownership. This approach is generally consistent with accounting interpretations issued by the staff of the Securities and Exchange Commission.

The OTS requires push down accounting when there is at least a 90 percent change in ownership.

C.7. Negative Goodwill

Under Accounting Principles Board Opinion No. 16, "Business Combinations," negative goodwill arises when the fair value of the net assets acquired in a purchase business combination exceeds the cost of the acquisition and a portion of this excess remains after the values otherwise assignable to the acquired noncurrent assets have been reduced to a zero value.

The banking agencies require negative goodwill to be reported as a liability on the balance sheet and do not permit it to be netted against goodwill that is included as an asset. This ensures that all goodwill assets are deducted in regulatory capital calculations consistent with the internationally agreed-upon Basle Accord.

The OTS permits negative goodwill to offset goodwill assets on the balance sheet.

C.8. In-Substance Defeasance of Debt

The banking agencies do not permit banks to report the defeasance of their liabilities in accordance with FASB Statement No. 76. Defeasance involves a debtor irrevocably placing risk-free monetary assets in a trust established solely for satisfying the debt. In order to qualify for this treatment, the possibility that the debtor will be required to make further payments on the debt, beyond the funds placed in the trust, must be remote. With defeasance, the debt is netted against the assets placed in the trust, a gain or loss results in the current period, and both the assets placed in the trust and the liability are removed from the balance sheet. However, for Call Report purposes, banks must continue to report defeased debt as a liability and the securities contributed to the trust must continue to be reported as assets. No netting is permitted, nor is any recognition of gains or losses on the transaction allowed. The banking agencies have not adopted FASB Statement No. 76 because of uncertainty regarding the irrevocability of trusts established for defeasance purposes. Furthermore, defeasance would not relieve the bank of its contractual obligation to pay depositors or other creditors.

The OTS practice is to follow FASB Statement No. 76.

Dated at Washington, D.C., this 22nd day of June, 1995.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 95–15930 Filed 6–28–95; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1055–DR]

Kentucky; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kentucky, (FEMA–1055–DR), dated June 13, 1995, and related determinations.

EFFECTIVE DATE: June 23, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Kentucky dated June 13, 1995, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 13, 1995:

The counties of Christian, Laurel and Pike for Individual Assistance.

The counties of Carter, Elliott and Floyd for Individual Assistance. (already designated for Public Assistance and Hazard Mitigation Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 95–15980 Filed 6–28–95; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1054–DR]

Missouri; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri, (FEMA–1054–DR), dated June 2, 1995, and related determinations.

EFFECTIVE DATE: June 22, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Missouri dated June 2, 1995, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 2, 1995:

The counties of Andrew, Atchinson, Bates, Chariton, Daviess, Dekalb, Gentry, Henry, Howard, Lafayette, Linn, Macon, Moniteau, Perry and Warren for Individual Assistance. (Already designated for Public Assistance.)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 95–15977 Filed 6–28–95; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1054–DR]

Missouri; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri, (FEMA–1054–DR), dated June 2, 1995, and related determinations.

EFFECTIVE DATE: June 23, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Missouri dated June 2, 1995, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 2, 1995:

The counties of Camden, Jasper, Maries, McDonald, Morgan and New Madrid for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 95–15978 Filed 6–28–95; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1054–DR]

Missouri; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri (FEMA–1054–DR), dated June 2, 1995, and related determinations.

EFFECTIVE DATE: June 23, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective June 23, 1995.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 95–15979 Filed 6–28–95; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL RESERVE SYSTEM

Central Bancompany, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than July 24, 1995.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Central Bancompany, Inc., Jefferson City, Missouri; to acquire 100 percent of the voting shares of Pleasant Hope Bancshares, Inc., Pleasant Hope, Missouri, and thereby indirectly acquire 100 percent of the voting shares of Pleasant Hope Bank, Pleasant Hope, Missouri, and 100 percent of the voting shares of Webster County Bank, Marshfield, Missouri.

Board of Governors of the Federal Reserve System, June 23, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–15964 Filed 6–28–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Report of the Tar, Nicotine, and Carbon Monoxide Content of 1107 Varieties of Domestic Cigarettes

ACTION: Notice.

SUMMARY: The Federal Trade Commission publishes the Report of the Tar, Nicotine, and Carbon Monoxide Content of 1107 Varieties of Domestic Cigarettes.

DATES: June 29, 1995.

ADDRESSES: Copies of the full report are available from the FTC's Public Reference Branch, Room 130, 6th St. and Pennsylvania Ave., N.W., Washington, D.C. 20580. (202) 326–3222.

FOR FURTHER INFORMATION CONTACT: Phillip S. Priesman, Attorney, Federal Trade Commission, Bureau of Consumer Protection, 6th St. and Pennsylvania Ave., N.W., Washington, D.C. 20580. Telephone (202) 326–2484.

SUPPLEMENTARY INFORMATION: These are the most recent test results of the tar, nicotine, and carbon monoxide levels of the smoke of domestic cigarettes reported by the FTC. This Report contains data on 1107 varieties of cigarettes manufactured and sold in the United States in 1993. The Tobacco Institute Testing Laboratory (TITL), a private laboratory operated by the cigarette industry, conducted the tar, nicotine, and carbon monoxide testing for the widely-available domestic cigarette varieties. This testing was conducted under the review of a representative of the FTC through periodic unannounced inspections. TITL provided the results to the respective cigarette companies. The companies provided the data generated by TITL regarding their own brands to the FTC in response to compulsory process issued by the Commission. Cigarette smoke from generic, private label, and not-widely-available cigarettes was not tested by TITL, but was tested by the cigarette companies and provided under compulsory process to the FTC. The methodology, processes, and procedures that the companies and TITL employed are the same as those the Commission has followed in the past.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–15972 Filed 6–28–95; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Notice of Health Care Policy and Research Special Emphasis Panel Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2) announcement is made of the following special emphasis panel scheduled to meet during the month of July 1995:

Name: Health Care Policy and Research Special Emphasis Panel

Date and Time: July 20–21, 1995, 8:30 a.m.

Place: The DoubleTree, 1750 Rockville Pike, Woodmount Room, Rockville, MD 20852. Open July 20, 8:30 a.m. to 9:30 a.m. Closed for remainder of meeting.

Purpose: This Panel is charged with conducting the initial review of grant applications on research that will provide (1) Severity and Acuity Measures for Illness and Injury for Children; (2) Child and Adolescent Patient Outcomes and Outcome Measures; (3) Cost of Emergency Medical Services for Children; and (4) Emergency Medical Services for Children (EMSC) System Organization, Configuration, and Operation.

Agenda: The open session of the meeting on July 20, from 8:30 a.m. to 9:30 a.m., will be devoted to a business meeting covering administrative matters. During the closed session, the committee will be reviewing and discussing grant applications dealing with health services research issues. In accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6), it has been determined that this latter session will be closed because the discussions are likely to reveal personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members or other relevant information should contact Gerald E. Calderone, Ph.D., Agency for Health Care Policy and Research, Suite 400, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 595–2462.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: June 21, 1995.

Clifton R. Gaus,

Administrator.

[FR Doc. 95–15926 Filed 6–28–95; 8:45 am]

BILLING CODE 4160–90–M

Food and Drug Administration

[Docket No. 95N–0185]

Drug Export; Arimidex (Anastrozole) 1 Milligram (mg) Tablet

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Zeneca Pharmaceuticals Inc., has filed an application requesting conditional approval for the export of the human drug Arimidex (Anastrozole) 1 mg tablet to the United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Center for Drug Evaluation and Research (HFD–310), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 301–594–3150.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Zeneca Pharmaceuticals, Inc., 1800 Concord Pike, P.O. Box 15437, Wilmington, DE 19850–5437, has filed an application requesting conditional approval for the export of the human drug Arimidex (Anastrozole) 1 mg tablet to the United Kingdom. This product is used for the treatment of advanced colorectal cancer. The application was received and filed in the Center for Drug Evaluation and Research on May 30, 1995, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by July 10, 1995, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: June 19, 1995.

Betty L. Jones,

Deputy Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 95–15969 Filed 6–28–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95N–0184]

Drug Export; Tomudex® (Paltitrexid) 2 Milligrams (MG) Powder for Infusion and 5 Milliliters (ML) Clear Glass Vial

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Zeneca Pharmaceuticals, Inc., has filed an application requesting conditional approval for the export of the human drug Tomudex® (Paltitrexid) 2 mg powder for infusion and 5 mL clear glass vial to the United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Center for Drug Evaluation and Research (HFD–310), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 301–594–3150.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Zeneca Pharmaceuticals, Inc., 1800 Concord Pike, P.O. Box 15437, Wilmington, DE 19850–5437, has filed an application requesting conditional approval for the export of the human drug Tomudex® (Paltitrexid) 2 mg powder for infusion and 5 mL clear glass vial to the United Kingdom. This product is used for the treatment of advanced colorectal cancer. The application was received and filed in the Center for Drug Evaluation and Research on May 30, 1995, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by July 10, 1995, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: June 19, 1995.

Betty L. Jones,

Deputy Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 95–15925 Filed 6–28–95; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB) for Clearance

The Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to OMB the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Public Law 96–511).

1. *Type of Request:* Reinstatement, without change of a previously approved collection for which approval has expired; *Title of Information Collection:* Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Report; *Form No.:* HCFA–416; *Use:* States are required to submit annual EPSDT program reports to HCFA pursuant to section 1902(a) (43) of the Social Security Act. These reports provide HCFA with data necessary to assess the effectiveness of State EPSDT programs, to develop trend patterns and projections nationally, and to respond to inquiries; *Respondents:* State Medicaid agencies; *Number of Respondents:* 56; *Total Annual Responses:* 56; *Total Annual Hours Requested:* 1,568.

Additional Information or Comments: Call the Reports Clearance Office on (410) 786–1326 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 95–15775 Filed 6–28–95; 8:45 am]

BILLING CODE 4120–03–P

Health Resources and Services Administration

HIV Emergency Relief Grant Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of grants made to eligible metropolitan areas.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that fiscal year 1995 funds have been awarded to the 42 eligible metropolitan areas (EMAs) that have been the most severely affected by the HIV epidemic. Although these funds have already been awarded to the EMAs, HRSA is publishing this notice to inform the general public of the existence of the funds. In addition, HRSA determined that it would be useful for the general public to be aware of the structure of the HIV Emergency Relief Grant Program and the statutory requirements governing the use of the funds.

The purposes of these funds are to deliver or enhance HIV-related (1) outpatient and ambulatory health and support services, including case management and comprehensive treatment services, for individuals and families with HIV disease; and (2) inpatient case management services that prevent unnecessary hospitalization or that expedite discharge, as medically appropriate, from inpatient facilities. The HIV Emergency Relief Grant Program was authorized by Title I of the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act of 1990, Public Law 101–381, which amended Title XXVI of the Public Health Service Act. Funds were appropriated under Public Law 103–333.

FOR FURTHER INFORMATION CONTACT: Individuals interested in the Title I HIV Emergency Relief Grant Program should contact the Office of the Chief Elected Official (CEO) in their locality, and may obtain information on their CEO contact by calling Anita Eichler, M.P.H., Director, Division of HIV Services, at (301) 443–6745.

SUPPLEMENTARY INFORMATION:

Availability of Funds

A total of $349,370,000 was made available for the Title I HIV Emergency Relief Grant Program. Of the amount available, 50 percent was allocated to the 42 EMAs according to a formula based on the number and incidence of AIDS cases reported to the Centers for Disease Control and Prevention (CDC) as of March 31, 1994. The other 50 percent was awarded competitively to the EMAs as supplemental grants. Below is a distribution of grants made to the 42 EMAs.

Grantee	Total award
Alameda County CA (Oakland).	$4,148,299
Austin TX	2,124,274
Baltimore MD	4,715,150
Bergen-Passaic NJ	2,847,639
Boston MA	7,079,242
Broward County FL (Ft. Lauderdale).	5,091,994
Caguas PR	902,928
Chicago IL	12,099,865
Dallas County TX (Dallas)	8,176,385
Denver CO	3,092,041
Detroit MI	2,406,902
Dutchess County NY	609,583
Fulton County GA (Atlanta)	9,091,331
Harris County TX (Houston)	10,233,981
Hudson County NJ (Jersey City).	3,770,366
Jacksonville FL	2,418,868
Kansas City MO	2,726,195
Los Angeles CA	31,037,580
Metro-Dade County FL (Miami).	19,195,347
Nassau/Suffolk NY	3,895,849
New Haven CT	2,711,634
New Orleans LA	3,503,009
New York City NY	93,587,184
Newark NJ	11,791,405
Orange County CA	3,175,288
Orange County FL (Orlando)	3,194,835
Philadelphia PA	9,836,096
Phoenix AZ	2,447,784
Ponce PR	1,908,071
Portland OR	2,402,734

Grantee	Total award
San Antonio TX	1,731,222
San Bernardino CA	2,656,331
San Diego CA	5,628,252
San Francisco CA	31,969,914
San Juan PR	10,269,416
Seattle WA	4,048,484
Sonoma County CA (Santa Rosa).	1,207,605
St Louis MO	2,581,330
Tampa/St Petersburg FL	4,231,119
Vineland NJ	340,644
Washington, DC	10,713,183
West Palm Beach FL	3,770,641

Eligible Grantees

Metropolitan areas which were eligible for grant awards under Title I were those areas for which, as of March 31, 1994, there had been reported to and confirmed by the CDC a cumulative total of more than 2,000 cases of AIDS; or, for which the per capita incidence of cumulative cases of AIDS was not less than 0.0025, as computed on the basis of the most recently available data reported to CDC for the population in the area.

Grants were awarded to the chief elected official of the city or urban county in each EMA that administers the public health agency providing outpatient and ambulatory services to the greatest number of individuals with AIDS.

To be eligible for assistance under Title I, the CEO was required to establish or designate an HIV health services planning council to: (1) Establish priorities for the allocation of funds within the eligible area; (2) develop a comprehensive plan for the organization and delivery of health services described in the statute that is compatible with any State or local plan regarding the provision of health services to individuals with HIV disease; and (3) assess the efficiency of the administrative mechanism in rapidly allocating funds to the areas of greatest need within the eligible area. The planning council must include representatives of: Health care providers; community-based and AIDS service organizations; social services providers; mental health services providers; local public health agencies; hospital planning agencies or health care planning agencies; affected communities, including individuals with HIV disease; non-elected community leaders; State government; and grantees receiving categorical grants for early intervention services under Title III of the CARE Act. The allocation of funds and services within the EMA must be made in accordance with the priorities established by the planning council.

To be eligible to receive a grant under Title I, the EMAs were required to submit an application containing such information as the Secretary required, including assurances adequate to ensure:

- That funds received would be utilized to supplement not supplant State funds provided for HIV-related services;
- That the political subdivisions within the EMA would maintain HIV-related expenditures at a level equal to that expended for the 1-year period preceding the first fiscal year for which the grant was received. Funds received under Title I may not be used in maintaining the required level of expenditures;
- That the EMA has an HIV health services planning council and has entered into intergovernmental agreements with any required political subdivisions and has developed or will develop a comprehensive plan for the organization and delivery of health services, in accordance with the legislation;
- That entities within the EMA that receive Title I funds will participate in an established HIV community-based continuum of care if such continuum exists within the EMA;
- That Title I funds will not be utilized to make payments for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to that item or service (1) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program, or (2) by an entity that provides health services on a prepaid basis; and
- To the maximum extent practicable, that HIV health care and support services provided with Title I assistance will be provided and without regard to the current or past health condition of the individual. Such services will be provided in a setting that is accessible to low-income individuals with HIV disease, and a program of outreach will be provided to inform such individuals of such services.

General Use of Grant Funds

EMAs must use the Title I HIV Emergency Relief grants to provide financial assistance to public or nonprofit entities, for the purpose of delivering or enhancing—

- HIV-related outpatient and ambulatory health and support services, including case management and comprehensive treatment services, for individuals and families with HIV disease; and
- HIV-related inpatient case management services that prevent unnecessary hospitalization or that expedite discharge, as medically appropriate, from inpatient facilities.

Services supported by the Title I grant funds must be accessible to low-income individuals and families, including women and children with HIV infection, minorities, and homeless, and persons affected by chemical dependency.

Federal Smoke-Free Compliance

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–277, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or, in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children.

Executive Order 12372

Grants awarded for the Title I HIV Emergency Relief Grant Program are subject to the provisions of Executive Order 12372, as implemented under 45 CFR Part 100, which allows States the option of setting up a system for reviewing applications within their States for assistance under certain Federal programs. The application packages made available by HRSA to the EMAs contained a listing of States which have chosen to set up such a review system and provided a point of contact in the States for the review.

The catalog of Federal Domestic Assistance Numbers are: Formula Grants—93.915; Supplemental Grants—93.914.

Dated: June 23, 1995.

Ciro V. Sumaya,

Administrator.

[FR Doc. 95–15970 Filed 6–28–95; 8:45 am]

BILLING CODE 4160–15–M

HIV Care Grant Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of grants made to States and territories.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that fiscal year 1995 funds have been awarded to States and territories (hereinafter States) for the HIV Care Grant Program. Although these funds have already been awarded to the States, HRSA is publishing this notice to inform the general public of the existence of the funds. In addition, HRSA determined that it would be useful for the general public to be aware of the structure of the HIV Care Grant Program and the statutory requirements governing the use of the funds.

Funds will be used by the States to improve the quality, availability, and organization of health care and support services for individuals and families with HIV infection. The HIV Care Grant Program was authorized by Title II of the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act of 1990, Public Law 101–381, which amended Title XXVI of the Public Health Service Act. Funds were appropriated under Public Law 103–333.

FOR FURTHER INFORMATION CONTACT: Individuals interested in the HIV Care Grant Program should contact the appropriate office in their State, and may obtain information on their State contact by calling Anita Eichler, M.P.H., Director, Division of HIV Services, at (301) 443–6745.

SUPPLEMENTARY INFORMATION:

Availability of Funds

A total of $174,766,500 was made available for the Title II HIV Care Grant Program. These funds have been allotted to the States according to a formula based on the number of AIDS cases reported to the Centers for Disease Control and Prevention for the 24 months ending September 30, 1994, and a per capita income factor. Below is the distribution of funds by State.

State	Amount
Alabama	$1,349,942
Alaska	100,000
Arizona	1,759,313
Arkansas	753,038
California	27,867,193
Colorado	1,980,699
Connecticut	2,404,858
Delaware	585,604
District of Columbia	2,532,524
Florida	17,780,752
Georgia	4,731,696
Hawaii	499,350
Idaho	138,867
Illinois	5,577,650
Indiana	1,536,770
Iowa	333,360
Kansas	568,263
Kentucky	643,697
Louisiana	2,785,044
Maine	228,492
Maryland	4,684,012
Massachusetts	3,776,077
Michigan	2,675,943
Minnesota	973,550
Mississippi	954,192
Missouri	2,504,335
Montana	100,000
Nebraska	267,083
Nevada	964,174
New Hampshire	175,763
New Jersey	8,958,831
New Mexico	479,074
New York	29,093,044
North Carolina	2,414,668
North Dakota	100,000
Ohio	2,623,138
Oklahoma	1,050,786
Oregon	1,300,587
Pennsylvania	5,177,510
Rhode Island	554,753
South Carolina	2,679,771
South Dakota	100,000
Tennessee	1,846,877
Texas	12,636,414
Utah	428,266
Vermont	103,727
Virginia	2,642,609
Washington	2,310,797
West Virginia	184,768
Wisconsin	1,063,650
Wyoming	100,000
Guam	2,902
Puerto Rico	7,682,087
Virgin Islands [1]	0

[1] Did not apply for FY 1995 funds.

Eligibility Criteria

In order to receive funding under Title II of the CARE Act, each State was required to develop:

- A detailed description of the HIV-related services provided in the State to individuals and families with HIV disease during the year preceding the year for which the grant was requested, and the number of individuals and families receiving such services; and
- A comprehensive plan for the organization and delivery of HIV health care and support services to be funded with the Title II grant, including a description of the purposes for which the State intends to use such assistance.

Each State was also required to submit an application containing such agreements, assurances, and information as the Secretary determined to be necessary to carry out this program, including an assurance that:

- The public health agency that is administering the grant for the State will conduct public hearings concerning the proposed use and distribution of the Title II grant assistance;
- The State will, to the maximum extent practicable, ensure that HIV-related health care and support services delivered with Title II assistance will be provided and without regard to the current or past health condition of the individual; ensure that such services will be provided in a setting that is accessible to low-income individuals with HIV disease, and provide outreach to inform such individuals of the services available; and, in the case of a State that intends to use grant funds for the continuation of health insurance coverage, ensure that the State has established a program that assures that such amounts will be targeted to individuals who would not otherwise be able to afford health insurance coverage, that income, assets, and medical expense criteria will be established and applied by the State to identify those individuals who qualify for assistance, and that information concerning such criteria will be made available to the public;
- The State will provide for periodic independent peer review to assess the quality and appropriateness of health and support services provided by entities that receive Title II funds from the State;
- The State will permit and cooperate with any Federal investigations undertaken regarding programs conducted under Title II;
- The State will maintain HIV-related activities at a level that is equal to not less than the level of such expenditures by the State for the 1-year period preceding the fiscal year for which the State applied to receive a grant under Title II; and
- The State will ensure that grant funds are not utilized to make payments for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to that item or service (1) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program, or (2) by an entity that provides health services on a prepaid basis.

General Use of Grant Funds

States may use the HIV Care Grant funds to:

- Establish and operate HIV care consortia within areas most affected by HIV. The statute defines a consortium as an association of one or more public, and one or more nonprofit private health care and support service providers and community-based organizations operating within areas determined by the State to be most affected by HIV disease.
- Provide home- and community-based care services for individuals with HIV disease. Funding priorities must be given to entities that provide assurances to the State that they will participate in HIV care consortia if such consortia exist within the State, and will utilize the funds for the provision of home- and community-based services to low-income individuals with HIV disease.
- Provide assistance to assure the continuity of health insurance coverage for low-income (as defined by the State)

individuals with HIV disease. The State must establish a program that assures that (1) funds will be targeted to individuals who would not otherwise be able to afford health insurance coverage, and (2) income, asset, and medical expense criteria will be established and applied by the State to identify those individuals who qualify for assistance, and information concerning such criteria shall be made available to the public.

• Provide treatments that have been determined to prolong life or prevent serious deterioration of health for low-income individuals with HIV disease.

A State must use at least 15 percent of its grant funds to provide health and support services to infants, children, women and families with HIV disease.

At least 75 percent of the fiscal year 1995 Title II grant awarded to a State must be obligated to specific programs and projects and made available for expenditure within 120 days of the receipt of the grant by the State.

Federal Smoke-Free Compliance

The Public Health Service strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children.

Executive Order 12372

It has been determined that the Title II HIV Care Grant Program is not subject to the provisions of Executive Order 12372 concerning inter-governmental review of Federal programs.

The Catalog of Federal Domestic Assistance Number is 93.917.

Dated: June 23, 1995.

Ciro V. Sumaya,

Administrator.

[FR Doc. 95–15971 Filed 6–28–95; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Assistant Secretary for Public and Indian Housing

[Docket No. N–95–1742; FR–3646–04]

Submission of Proposed Information Collection to OMB for Indian Housing Program; Amendments

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposal. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503; or Joan Campion, Rules Docket Clerk, Department of Housing and Urban Development (HUD), 451 7th Street, S.W., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development (HUD), 451 7th Street, S.W., Room 4178, Washington, D.C. 20410. (202) 708–0050. This is not a toll-free number. Copies of the documents submitted to OMB may be obtained from Mr. Weaver.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of HUD has submitted to OMB, for expedited processing, an information collection package with respect to information required for the Indian Housing Program: Amendments. It is also requested that OMB complete its review within 15 days.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

(1) Title of the information collection proposal: Indian Housing Program: applications, certifications, resident consultation, reporting, agreements, plans, operating budget and supporting documentation, Indian preference, schedules, conversion proposals etc.

(2) Office of the agency to collect the information: Office of the Assistant Secretary for Public and Indian Housing.

(3) Description of the need for the information and its proposed use: The information that will be collected are necessary for HUD to implement various Indian Housing Programs, to approve eligible applicants for grant funding under these programs and to monitor the effectiveness of the programs for meeting its purpose. Establishing resident admissions and occupancy procedures, resident involvement/consultation during application processing, and notifications are required by HUD statute.

(4) Agency form numbers: HUD–52730, HUD–3188, HUD–53045/53045A

(5) Members of the public who will be affected by the proposal: Indian Housing Authorities

(6) How frequently information submissions will be required: One-time; reporting annually.

(7) An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response: 69,426 Total Burden Hours, 191 IHAs/2,100 Residents, one-time average 35 hours.

(8) Whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement: new and reinstatement.

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department: Deborah Lalancette, HUD, (202) 755–0088, Joseph Lackey, Jr., OMB, (202) 395–7316.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C.; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 22, 1995.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Indian Housing Program; Amendments; Final Rule Parts 905 and 950.

Office: Office of Native American Programs.

Description of the Need for the Information and its Proposed Use: The information that will be collected are necessary for HUD to implement various Indian Housing Programs, to approve eligible applicants for grant funding under these programs and to monitor the effectiveness of the programs for meeting its purpose. Establishing resident admissions and occupancy procedures, resident involvement/consultation during application processing, and notifications are required by HUD statute.

Form Numbers: HUD–52730, HUD–3188, HUD–53045/HUD–53045A.

Respondents: Indian Housing Authorities.

Reporting Burden:

	Number of respondents	×	Frequency of responses	×	Hours per response	=	Burden hours
Application Development; Site Report; Cost Budget; Certifications; Plans; Agreements; Operating Budgets; Notification; Documentation; Reporting.	191		1		Varies		69,426

Status: Reinstatement.

Contact: Debbie Lalancette, HUD, (202) 755–0088.

Dated: June 22, 1955.

Part 950—Indian Housing: Revised Consolidated Program Regulations

A. Justification

1. Approval is requested for information collections (new (N) and existing without OMB Approval (E). The Indian Housing Act of 1988 (Public Law 100–358, 102 Stat. 676) created a separate Title II of the U.S. Housing Act of 1937 (42 U.S.C. 1437aa). The Indian Housing Revised Consolidated Program Regulations (Part 905) were drafted to implement the Indian Housing Act of 1988. HUD has reviewed these regulations and added a new Part 950 which contains the Indian Housing consolidated regulations that were previously set forth in 24 CFR part 905. In addition, Part 950 amends a number of the Indian Housing consolidated regulations to simplify program processes, reduce the number of regulatory requirements, and provide more flexibility to local Tribal and Indian housing authority officials.

(E) Section 950.135(e)—Indian Housing Authorities (IHAs) must prepare and submit a management improvement plan to the Field Office of Native American Programs (FONAP) when it is informed that it lacks administrative capability. The Plan must describe in detail the method for correction of existing deficiencies to achieve administrative capability and the time schedule to be maintained. The Plan shall be approved by the IHA Board of Commissioners and is subject to HUD approval.

(E) Section 950.135 (f)—An IHA may be classified as "high risk" and determined ineligible for certain types of future funding related to the classification of the risk, or may be determined eligible for future funding but subject to special conditions or restrictions corresponding to the high risk classification. Some of the special conditions could be submission to HUD of additional documentation, more detailed financial reports; establishing additional approval by HUD.

(E) Section 950.135(g)—An IHA may appeal a corrective action order or a determination of high risk status to the Administrator, Field Office of Native American Programs (FONAP). The appeal must be in writing. An IHA may appeal the decision of the FONAP Administrator to the Director of ONAP, Headquarters if the case involves actions related to a determination of ineligibility of funding for the upcoming funding cycle. The appeal must be writing.

(E) Section 950.160(a)(4)—An IHA shall maintain records sufficient to detail significant history of an procurement i.e., solicitation and award procedures comply with State, tribal, or local laws, award does not exceed approved budget amount, IHA renewed contractor's qualifications.

(E) Section 950.160(b)—All IHAs must adopt and promulgate rules and regulations for the procurement and administration of supplies, materials, services, and equipment in connection with the development and operations of its projects. As soon as these standards, rules or regulations are adopted, or modified, the IHA must submit a copy to HUD.

(E) Section 950.175—Indian Preference requirements of 7(b) of the Indian Self-determination and Education Assistance Act apply to all procurement under a contract with the IHA. If only one bids received the IHA must request a HUD review in accordance with 24 CFR 85.36 in order to award the contract to the single bidder. (Current OMB Number 2577–0076, expires 8/31/95.)

(E) Section 950.215—The development project production methods are determined by the IHA. If HUD disapproves of the preferred development, the IHA must be provided justification for the disapproval. In all cases where the IHA chooses the Force Account method prior HUD approval must be obtained. The IHA must demonstrate that it has the technical and administrative capability to complete the project within the projected time and budget. (Current OMB Number 2577–0030, expires 2/28/97.)

(E) Section 950.225—Application for a project are submitted in response to a NOFA published by HUD. The applicant must submit information to HUD which enables the Department to rate and rank applications under the competitive process. (2577–0030)

(E) Section 950.229—The IHA shall submit for HUD review and acceptance a development cost budget showing anticipated expenditures and any needed supporting documentation before funds can be obligated or expended. (Current OMB 2577–0032, expires 8/31/95.)

(N) Section 950.230—At the beginning of the development planning process, an IHA prepares a schedule of activities guiding the process. The schedule, and any amendments thereto, are provided to HUD to be used in planning and monitoring activities.

(E) Section 950.231—Upon notification of a development grant approval, the IHA shall schedule a project coordination meeting to plan and schedule the steps needed to develop the project. IHA shall establish a schedule of planning activities with target dates for completion of key activities. The schedule, and any amendments thereto, shall be provided to meeting participants and to HUD to be used in planning and monitoring activities. (2577–0030)

(N) Section 950.247—The need to submit the required documents are the direct results of the change in the environmental review process for public and Indian Housing programs. A statutory change moved the environmental review responsibility from the HUD field office staff to the tribal government. The process now requires the tribe to complete the environmental review and provide the IHA a written certification reflecting the completion of the process and the nature of the findings. The IHA will submit the certification along with a request for release of funds to the area ONAP for each project to be undertaken.

(E) Section 950.250(a)—IHAs must certify to HUD that all conditions that would prevent the site from being included in the project have been

satisfactorily addressed. (Current OMB Number 2577–0031, expires 4/30/95.)

(E) Section 950.260—Upon completion of the project planning stage the IHA must submit to HUD a development cost budget, certification attesting to the completion of all preconstruction activities and project characteristic information. The information should be submitted in accordance with the schedule established at the project coordination meeting. This information will be used to determine compliance with program requirements and concerned when determining the IHA's administrative capacity. If the IHA's submission is not sufficient to meet the requirements of this section, HUD will notify the IHA and allow the IHA to amend or resubmit the documents. (Current OMB Number 2577–0032, expires 8/31/95.)

(E) Section 950.265—Upon award of a construction contract, execution of a contract of sale, or start of construction, an IHA notifies HUD and submits a revised development cost budget, and a certification that all ACC, statutory, and regulatory requirements have been met. If requested, an IHA shall submit copies of construction plans and specifications, the construction or contract of sale, detailed plans for Force Account construction management, notice to proceed, or other applicable contracting documents. These items are necessary to allow HUD to monitor the compliance of IHAs with the ACC and related regulatory requirements for contracting. (Current OMB Number 2577–0039, expires 5/31/95; 2577–0011, expires 8/31/96; 2577–0015 expires 8/31/95; 2577–0027, expires 7/31/96; 2577–0037, expires 3/31/97.)

(E) Section 950.270—When the IHA accepts all or any part of a project, notification shall be provided to HUD. When all units are accepted by the IHA, the IHA shall notify HUD of the date the units were available for occupancy by the residents. At the end of the rent-up period the IHA shall notify HUD.

(E) Section 950.285—Upon completion of development and payment of all debts to contractors and suppliers, an IHA shall submit a certificate of actual development cost and audit verification of expenditures. This requirement allows HUD to close the development grant. (Current OMB Number 2577–0036, expires 5/31/96.)

(E) Section 950.301(a)—IHAs must adopt and promulgate written policies for admission of participants. The policies shall cover all programs operated by the IHA. A copy shall be posted prominently in the IHA's office for examination by prospective participants. (2577–0003 at OMB for review and approval.)

(E) Section 950.308(a)—IHAs must submit a plan to the local Office of Native American Programs for approval prior to allowing the admission to Indian housing of police officers and other security personnel who are not otherwise eligible for such housing under any other admission requirements or procedures. The Plan must identify total number of units, location of units to be occupied, amount of rent to be paid, extent of the crime problem, and the benefits to the community and the IHA. (Current OMB Number 2577–0185, expires 3/31/96)

(E) Section 950.335—Each IHA shall establish and adopt, written policies sufficient to assure the prompt payment and collection of rent and homebuyer payments. A copy of the written policies shall be posted prominently in the IHA office.

(E) Section 950.340—Each IHA shall adopt grievance procedures that are appropriate to local circumstances and shall assure that tenants and homebuyers of these procedures.

(E) Section 950.345(a)—Each IHA shall adopt written policies to assure full performance of the respective maintenance responsibilities of the IHA and tenants. A copy of such policies shall be posted prominently in the IHA office.

(E) Section 950.360(a)—Each IHA shall adopt written policies with respect to the IHA's own employment practices. A copy of these regulations shall be posted in the IHA office.

(E) Section 950.416(C)—Each IHA shall maintain a waiting list, separate from any other IHA waiting list, of families that have applied for MH housing and meet the admission requirements. The IHA shall maintain a Mutual Help waiting list in accordance with requirements prescribed by HUD and shall make selections in the order in which they appear on the list.

(E) Section 950.422(a)—The IHA must notify the homebuyer in writing, once all requirements for occupancy have been met, that the home is available for occupancy as of a date specified in the notice.

(E) Section 950.428(a)—Each IHA shall establish and adopt written policies to assure full performance of the respective maintenance responsibilities of the IHA and homebuyers in the Mutual Help Program. A copy of such written policies shall be posted in the IHA office and provided to an applicant or homebuyer upon entry into the program.

(E) Section 950.428(c)—The IHA shall enforce the provisions of a Mutual Help Occupancy (MHO) Agreement for homebuyer maintenance of the home. The IHA shall conduct a complete interior and exterior examination of each home on a schedule developed by the IHA that ensures that the home is maintained in decent, safe, and sanitary condition and shall furnish a copy of the inspection report to the homebuyer. (OMB Number 2577–0114, expired 8/31/93)

(E) Section 950.432(a)—An IHA shall prepare an operating budget and approriate documentation. (OMB Number 2577–0026, expires 10/31/97)

(E) Section 950.446(a)—In the event the homebuyer fails to comply with any of the obligations of the MHO Agreement, the IHA may terminate the MHO Agreement by written notice to the homebuyer, enforced by eviction procedures applicable to landlord-tenant relationships. (OMB Number 2577–0114)

(E) Section 950.452(a)—Each IHA shall provide an annual statement to the homebuyer that sets forth the credits and debits to the homebuyer equity accounts and reserves during the year and the balance in each account at the end of each IHA fiscal year. The statement shall also set forth the remaining balance of the purchase price. (OMB Number 2577–0114)

(E) Section 950.455(a)—IHAs may apply to the local Field Office of Native American Programs for approval to convert any or all of the units in an existing rental project to the MH program. The request must contain information demonstrating legal sufficiency, Tribal acceptance, demonstration of family interest, evidence units are habitable, and financial feasibility.

(E) Section 950.458(a)—IHAs may apply to the local Field Office of Native American Programs for approval to convert any or all Mutual Help project units to the rental program. The request must contain information demonstrating legal sufficiency, Tribal acceptance, demonstration of family interst, and financial feasibility.

(E) Section 950.480 and Section 950.485—The Self-Help Agreement, executed by the IHA and the families in a group selected by the IHA to participate in a Self-Help Program, will be contingent upon HUD's approval of the development program. The application for a Self-Help development method of Mutual-Help project shall comply with the general requirements of Section 950.225. (OMB Number 2577–0112, expired 6/30/93)

(E) Section 950.495—If the participating family fails to provide its labor contribution, as required in accordance with its agreement, the IHA shall declare the family in default and terminate its participation in the project. The IHA selects an alternate family to take over responsibilities of the terminated family. After counseling, the IHA shall declare the families in default and convert the project to a regular Mutual Help project. The IHA's plan for completing the project shall be submitted to HUD for review and counsel prior to terminating the SH project.

(E) Section 950.503—An IHA may apply to the local Field Office of Native American Programs for approval to convert any or all of the units in an existing Turnkey III development to the rental or MH program. The request must contain information demonstrating legal sufficiency, Tribal acceptance, demonstration of family interest, and financial feasibility.

(E) Section 950.517—The IHA shall establish and maintain a separate Earned Home Payments Account (EHPA) for each homebuyer. The IHA shall provide an annual statement to each homebuyer specifying the amounts in the EHPA. Any maintenance or repair done on the dwelling by the IHA which is chargeable to the EHPA shall be accounted for through a work order, a copy of which shall be sent to the homebuyer.

(E) Section 950.519(a)—The IHA shall establish and maintain a separate Nonroutine Maintenance Reserve (NRMR) for each home, using a portion of the homebuyer's monthly payment.

(E) Section 950.529—In the event a homebuyer should breach the Homebuyer Ownership Opportunity Agreement by failure to make the required monthly payment or other documented reasons, the IHA may terminate the agreement 30 days after giving the homebuyer written notice of its intention to do so.

(E) Section 950.618—IHAs must consult with local officials and residents/homebuyers and develop an application for obtaining approval of a modernization program. IHA's must respond in writing to residents, resident organization, or RMC, indicating its acceptance or rejection of resident recommendations. (Current OMB Number 2577–0044, expires 1/31/96)

(E) Section 950.651—For each six month period until completion of a modernization program or expenditure of all funds, an IHA shall submit a report to the local Field Office of Native American Programs (FONAP). The report shall include obligations and expenditures, progress against the approved schedule and management improvement progress where applicable. (Current OMB Number 2577–0044, expires 1/31/96)

(E) Section 950.669—In its first year of participation in the Comprehensive Grant Program (CGP), each IHA shall verify and provide data to HUD, in a form and at a time to be prescribed by HUD, concerning IHA and development characteristics, so that HUD can develop the IHA's annual funding allocation under CGP. (Current OMB Number 2577–0157, pending OMB review and approval)

(E) Section 950.672—An IHA is required to develop, implement, monitor and annually amend portions of its Comprehensive Plan in consultation with residents of the developments covered by the Comprehensive Plan and with democratically elected resident groups. Annually, the IHA shall submit to HUD, with its Annual Submission, an update of its Five-Year Action Plan, eliminating the previous year and adding an additional year. (OMB Number 2577–0157, pending OMB review and approval)

(E) Sections 950.675, 950.678, 950.684, 950.687—IHAs submit Comprehensive Plan (including the Five-Year Action Plan), or any amendment to the plan for HUD review and approval. IHAs submit documents which include the Annual Statement, Work Statements for years two through five of the Five-Year Action Plan, local government statement, IHA Board Resolution, materials demonstrating the partnership process, and any other documents as prescribed by HUD. The IHA shall submit a Performance and Evaluation Report in a form and at a time to be prescribed by HUD, describing its use of assistance in accordance with the approved Annual Statement. (OMB Number 2577–0157)

(E) Section 950.720—In determining the PFS operating subsidy, units shall not be included in the calculation of unit months available. Units approved for deprogramming shall be listed by IHA and supporting documentation regarding direct costs attributable to such units. IHA shall submit a certification with its PFS calculation that the units are being used for the purpose for which they were approved and that rental income generated as a result of the activity is reported as income in the operating subsidy calculation. The IHA shall maintain specific documentation of the units covered, i.e., listing of units and project/management control numbers. (Current OMB Number 2577–0071, expires 5/31/97)

(E) Section 950.730—IHAs that are eligible for adjustments may only make a request for such adjustments at the time it submits the operating budget for the first budget year under PFS. A request under this paragraph shall include a calculation of the amount per-unit per-month of requested increase in the Base Year Expense Level, and shall show the requested increase as a percentage of the Base Year Expense Level. (Current OMB Number 2577–0071, expires 11/30/97)

(E) Section 950.770—An IHA may prepare and submit a Comprehensive Occupancy Plan (COP) to HUD. The COP shall provide a general IHA-wide strategy for returning to occupancy or deprogramming all vacant units and a specific strategy for returning to occupancy or deprogramming units for each project that has an occupancy percentage of less than 97 percent.

(E) Section 950.805—All IHAs shall complete an energy audit for each IHA-owned project under management. Energy audits shall analyze all of the energy conservation measures, and the payback period for these measures, that are pertinent to the type of buildings and equipment operated by the IHA. A benefit/cost analysis shall be made to determine whether a change from a mastermetering system to individual meters will be cost effective. (OMB Number 2577–0062, pending reinstatement)

(E) Section 950.923 and Section 950.931—IHAs shall submit its demolition or disposition application to HUD in accordance with Section 18 of the United States Housing Act of 1937. The application shall include complete documentation that all requirements have been met; written documentation that resident management corporation, resident organization and resident cooperative of the affected development have been apprised of their opportunity to purchase. (Current OMB Number 2577–0075, expires 4/30/97)

(E) Section 950.935—Replacement Housing Plan. (Current OMB Number 2577–0075, expires 4/30/97)

(E) Section 950.964—An IHA shall provide the residents or any resident organization with current information concerning the IHA's policies on resident participation in management. The IHA and Resident Organization shall put in writing their understanding concerning the elements of their relationship. A management contract between the IHA and a RMC is required for resident management. Section 950.988 Each IHA receiving a grant shall submit to the Area ONAP annual progress report describing and evaluating the use of grant amounts

received under this program. (Current OMB Number 2577–0087, expires 1/31/96)

(E) Section 950.1005—In developing a proposed homeownership plan, and in carrying out the plan after HUD approval, the IHA shall consult with residents of the development involved, and with any resident organization that represents them, as necessary and appropriate to provide them with information and a reasonable opportunity to make their views and recommendations known to the IHA. (Current OMB Number 2577–0201, expires 5/31/97)

(E) Section 950.1017—The IHA shall be responsible for the maintenance of records (including sale and financial records) for all activities incident to implementation of the homeownership plan. (Current OMB Number 2577–0201, expires 5/31/97)

(E) Section 950.1020—Content of homeownership plan. Section 950.1021—Supporting documentation. (Current OMB Number 2577–0210, expires 5/31/97)

(E) Section 950.3011—An IHA shall have a HUD-approved Action Plan that complies with specific requirements to participate in the Family Self-Sufficiency Program. Section 950.3030 Each IHA that carries out an FSS program shall submit to HUD a report regarding its FSS program as outlined in this section. (OMB Number 2577–0178, expires 6/30/95)

OMB Approval Number 2577–0130 was allowed to expire off the inventory inadvertently. HUD was in the process of drafting, clearing and publishing a Proposed Rule which allowed the public to comment on changes in the Indian Housing Program. A Final rule was published on April 10, 1995 (copy attached). HUD is requesting in this justification that that OMB Approval Number be reinstated. This reinstatement will cancel the following OMB Approval Numbers: 2577–0076, 2577–0030, 2577–0032, 2577–0031, 2577–0185. The burden hours associated with these numbers have been included in Item 12 of this justification. It is HUD's intend to incorporate all the information collection for this Rule under one OMB approval number 2577–0130. Burden hours have been calculated for each section of the Rule.

2. The information will be provided by IHAs and used by HUD in monitoring administrative capability, procurement procedures required by 24 CFR 85.36, funding eligible applicants for project development, approving development cost budgets, contract administration, certifications/verifications, lease and grievance procedures, waiting lists, administration of Mutual Help Program, approving operating budgets, funding Comprehensive Improvement Assistance and Comprehensive Grant Programs, statutory compliance to conduct energy audits, approving demolition/disposition requests, Homeownership and Family Self-Sufficiency Programs. Information is submitted one-time or annually.

3. There has been no consideration of information technology to reduce the burden.

4. The information collected does not reflect any duplication of effort since information provided must be updated annually by the Indian housing authority so that requests for funding can be reviewed annually based on current information.

5. The collection of information does not have an significant impact on a number of small businesses or other small entities.

6. The information collection must be conducted and could not be collected less frequently than one-time or annually. Most of the information requires IHAs to prepare applications, proposals to be approved for grant funding on a fiscal year basis.

7. The information collection is not to be conducted in a manner inconsistent with the general information collection guidelines in 5 CFR 1320.6.

8. HUD consulted with the National American Indian Housing Council, regional IHA associations, its six Native American Program Area Offices, and other IHA representatives on the structure of this Program. The Proposed Rule stage allowed for additional public comments to be submitted to HUD for review and consideration.

9. HUD does not require an assurance of confidentiality provided to respondents.

10. HUD does not ask any questions of a sensitive nature.

11. There is no cost to the Federal Government and respondents.

12. The reporting burden calculation is attached.

13. There has been a significant decrease in the number of burden hours on the Indian housing authority (IHA) with the publication of this regulation. For IHAs with administrative capability, document submission such as development programs and operating budgets have been eliminated from this rule. Also, only those IHAs with a corrective action order are required to submit a management improvement plan. Similar decreases have taken place throughout the rule with an emphasis on paperwork reduction.

14. These information collections will not be published.

12. The following estimates are provided for the information collection burden associated with the reporting and recordkeeping burden for this rule:

Descpt. of information collection	Section of 24 CFR affected	No. of respdts.	Total annual respns.	Hrs. per respns.	Total hours
Management Improvement Plan Reqs	950.135.(e) (f) and (g)	60	1	24	1,440
Maintain Procurement Records	950.160(a)(4)	191		.30	57
Adopt & Submit Procurement Rules	950.160(b)	191	1	8	1,528
Preference Requirements	950.175	1,815	1	1.8	2,945
Development Application Requirements	950.215 950.225 950.230 950.231	130	1	8	1,040
Development Cost Budget	950.229	130	1	12	1,560
Environmental Review Documents	950.247	130	1	4	520
Preliminary Site Report	950.250(a)	130	1	5	650
Contract Documents, Plan, Specs. Notice to Proceed etc	950.265	130	1	40	5,200
Notification to HUD Units Available for Occupancy; Rent-up Period	950.270	130	1	3	390
Certificate Actual Development Costs	950.285	130	2	8	2,080

Descpt. of information collection	Section of 24 CFR affected	No. of respdts.	Total annual respns.	Hrs. per respns.	Total hours
Resident Participation in Management; Contract; Grantees Report	950.964	60	2	30	3,600
Homeownership Plan; records; Documentation	950.1005 950.1017 950.1020	15	1	16	240
Action Plan Family Self Sufficiency; Reporting	950.3011	10	1	16	160
Total Reporting Burden					69,426

BILLING CODE 4210–33–M

Preliminary Site Report by Indian Housing Authority

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

DRAFT

OMB Approval No. 2577-0031 (Exp. 4/30/95)

Public Reporting Burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0016), Washington, D.C. 20503. Do not send this completed form to either of these addresses.

Prepare and submit an original and two copies of this report and any attachments.

1. Name of IHA

2. Report Number_____ of _____ Reports for PROJECT NUMBER _____

3. Number of Units
   a. Elderly
   b. Nonelderly
   c. Total

4. Production Method
   a. ☐ Conventional c. ☐ Acquisition
   b. ☐ Turnkey d. ☐ Force Account

2. Program Type
   a. ☐ Mutual Help
   b. ☐ Rental

6. Date of IHA Site Inspection

7. Site Location

8. Congressional District

9. Census Enumeration District

10. Type of Site
   a. ☐ Multiunit
   b. ☐ Scattered

11. Assumed Building Types
   a. ☐ D d. ☐ AW
   b. ☐ SD e. ☐ AE
   c. ☐ R

12. Area of Site
   a. In acres_____
   b. In sq. ft._____

13. Tentative Gross Density
   _____ DU's/Acre

14. Land Status:
   a. (1) ☐ Trust or Restricted (2) ☐ Unrestricted
   b. (1) ☐ Tribally Owned (2) ☐ Individually Owned
   For individually owned trust or restricted land, attach a written assurance from the BIA as to the timely execution of losses.

15. Zoning:
   Identify existing zoning for the site _____;
   If unsuitable, identify zoning required _____
   and source of official assurance

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16. Demolition:
   a. ☐ None involved
   b. ☐ Dwelling Units (Estimated No. of DU's_____)
   c. ☐ Nondwelling Structures

17. Relocation
   a ☐ No Displacement b ☐ Temporary Displacement c. ☐ Permanent Displacement

18. Physical Characteristics: Describe briefly the nature of the site as to topography, subsurface conditions, flooding and relating site selection criteria (Chapter 3 of the Handbook), including those identified below, and note any anticipated problems with respect to obtaining compliance therewith:

a. Indicate the % of area for each site with grades 0 to 5%, 6 to 10%, 11 to 15%, 16% and above:

b. For low-lying and flat-sites, indicate level of rainfall:

c. Describe known subsurface conditions. Where any problems are known to exist, describe the results of the preliminary examination indicating that the adverse conditions can be overcome:

d. Does the site lie within one area identified by HUD as having special flood hazards?

e. State whether the hazard of earthslides exists either on the site or on adjacent or nearby land:

f. State site's exposure to noise (attach letter of advice, if appropriate) and to earthquakes:

g. Other Comments

Program Number:

19. Utilities: Check the utilities proposed for the site and provide information as indicated for each type of utility. Explain how each utility will be provided, including, as applicable, how each extension will be obtained and financed. Attach written assurances in accordance with the Handbook.

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Service	On-Site	Off-Site	Type	Distance To Site	
a. Access Roads				____ Ft.	
b. Sanitary Sewer				____ Ft.	
c. Water				____ Ft.	
d. Gas				____ Ft.	
e. Electricity				____ Ft.	
f. Storm Sewer				____ Ft.	
g. ☐ Bottled Gas	h. ☐ Fuel Oil			i. ☐ Coal	
j. ☐ Wood	k. ☐ Other (Identify)				

20. Locality Map: Attach a map of the locality, locating the sites. Locate on the map existing and proposed facilities, including (a) the principal industrial, commercial, or other areas providing employment opportunities for prospective residents, (b) public schools service the project neighborhood, (c) public transportation lines, (d) neighborhood shopping facilities, and (e) available social, recreational and health facilities and services.

21. Plat: Attach a plat showing site boundaries; parcel ownership; use of adjacent property; access roads and boundary streets; indicating names, width of rights of way and type of surfacing. Where applicable, label unimproved. Include information sufficient to show the specific location of the site in relationship to the nearest points of reference.

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22. Alternate Sites: If alternative sites have been or are able to be submitted, identify all sites and indicate order of preference among the alternatives.

23. Area of Site	Square Feet	Acres
a. Area to be leased		
b. Area to be purchased		
c. Area to be donated		
d. Area to be vacated		
e. Total to be acquired		

Number of Parcels		
Vacant	Improved	Total

24. Estimated Site Costs	
a. Surveys and Maps	$
b. Appraisals	
c. Title information	
d. Option negotiations	
e. Relocation of site occupants	
f. Acquisition	

Program Number:

25. Parcels Comprising Site (Place an * by Parcel Number where MH land contribution is involved.)

Parcel Number	Street Address of Parcel	Area (Sq.Ft.)	Improvement		Asking or Listing Price (If known)
			Type	Condition	

Program Number:

The following is to be completed by the HUD Field Office

1. Interagency Coordination:

a. Environmental Clearances: From BIA, dated _____: From IHS, dated _____.

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b. Site Inspection:	Date	Signature of Appraiser
☐ Made, dated_____: ☐ Not required based on BIA and IHS certification		

2. Recommendations: Insert signature and date in the appropriate column; attach comments; signature indicates that stated BIA and IHS concerns have been considered and are reflected.

Reviewer	Tentative Site Approval Recommended			Disapproval	Reservations or Conditions Satisfied
	As Submitted	With Modifications	Conditional Approval		
Appraiser					
Environmental Clearance Officer					
Chief, Valuation					
CPD					
EMAD					
HM					
Counsel					
MHR					
Director, HPMC					

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3. Date IHA advised of Review

Results _____

4. Date of Final Site Approval

Indian Low Income Housing Programs Application by Indian Housing Authorities

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0030 (Exp. 2/28/97)

Public reporting burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2577-0030), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

This application form is for use only by an Indian Housing Authority applying for housing assistance pursuant to the United States Housing Act of 1937. Submit an original and two copies of this application form and any attachments.

Program Reservation Number: **Internal Use Only**

Name of Indian Housing Authority:	Number of Low-Income Units for which assistance is applied:	Program Reservation Amount Requested: $
Legal Area of Operation:		Amount of Request Intended for Off-Site Water & Sewer Improvements $
Mailing Address of the Indian Housing Authority:	Name & Address Tribe or Governing Body:	

A. Location of Proposed Project (Dwelling Units)

Locality (Community)	Reservation and/or County	Congressional District	Number of Units Proposed

B. Proposed Program Type and Production Method

1. Program Type (Select one per application.)
☐ Mutual-Help Homeownership Opportunity
☐ Rental

2. Production Method (Identify the preferred method for this application.)
☐ Turnkey ☐ Acquisition ☐ Modified Turnkey
☐ Conventional ☐ Force Account ☐ Self-Help

C. Anticipated Dwelling Unit Characteristics

Building Type	Number of Bldgs.	Number of Delling Units By Bredroom Size: Elderly, Handicapped or Disabled: Effic.	1-BR	2-BR	Non-Elderly: 1-BR	2-BR	3-BR	4-BR	5-BR	Total No. of Dwelling Units
Detached										
Row										
Totals										

D. Land Status (Location of proposed project(s))
☐ On Reservation ☐ Off Reservation ☐ Tribally Owned ☐ Individually Owned
☐ Trust or Restricted Land ☐ Unrestricted Land ☐ Land to be Purchased ☐ Land to be Leased

E. Need Totals from waiting lists as determined by applications on file:
MH: LR:

F. Compliance with Section 213
Check one of the following with regard to Section 213 of the Housing and Community Development Act of 1974
☐ In compliance with Section 213 of HCD Act of 1974. Attach a letter of support from the CEO of the local governing body or tribe.
☐ Not in compliance with Section 213 of HCD Act of 1974. If this box is checked, attach statement explaining reason.

G. New Housing Development Certifications

General Instructions: The Certifying Representative of the applicant, in signing and dating the application below, is also certifying to the following:

The Applicant hereby certifies and assures that it will comply with the regulations, guidelines, and requirements with respect to the acceptance and use of Federal funds for this Federally assisted program. Also, the Applicant gives assurance and certifies with respect to the application that:

A: The appropriate governing body has duly authorized the filing of this application, including all understandings and assurances contained in the application and has directed and authorized the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

B: It will administer and enforce the labor standard requirements prescribed by existing regulations.

C: It will adhere to 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973.

D: It will adhere to the Uniform Relocation Assistance and Real Property Acquisition Polices Act of 1970 as amended.

E: It will adhere to the Uniform Accessibility Standards/Architectural Barriers Act of 1968.

F: For IHAs established under State law, that no Federal appropriated funds will be used for lobbying purposes.

G: Where applicable, and only for IHAs established under State law, that a statement disclosing lobbying activities using other than Federal appropriated funds has been completed.

H: For Mutual Help Programs, financial feasibility has been determined by the IHA based upon signed applications as noted in HUD Handbook 7450.1.

I. For low rent programs the IHA has reviewed the estimated income and expenses for the development and certifies to the financial feasibility of the project.

J. That the Tribal Ordinance has not been modified or altered since the date of the last submission to HUD or a copy of any modifications are submitted with this application.

Title & Signature of IHA Authorizing Official & Date:

X

Approved Signature of Field Office Administrator & Date.

X

Development Program for Indian Housing Authority

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Copy No.:

OMB Approval No. 2577-0032 (exp. 8/31/95)

Public Reporting Burden for this collection of information is estimated to average XXXX per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600; and to the Office of Management and Budget, Paperwork Reduction Project (2502-0032), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

This form is used for the submission of a Development Program in accordance with the Indian Housing Regulations and Handbook. It is applicable to rental and Mutual Help projects to be developed under the conventional, turnkey, acquisition or force account production methods. Part 1 of the Development Program relates to development data; Part 2 to project feasibility.

Submit an original and 8 copies to HUD. All attachments should be identified by Part, Subpart and Item Number.

A Development Program should cover all housing to be built under a single construction contract/contract of sale, whether on one or several sites.

Project Number :	Total No. of Dwelling Units :	Program Reservation Number :	Program Type : ☐ Rental ☐ Mutual Help
Project Location :			Production Method : ☐ Conventional ☐ Acquisition ☐ Turnkey ☐ Force Account

This Development Program has been adopted by Resolution No.: _____
of (Legal name of Indian Housing Authority): _____
and is hereby submitted to serve as the basis for an Annual Contributions Contract with a total development cost of $_____

Signature :	Title :	Date :
X		

HUD Field Office Recommendations Signatures:	Recommendation Date:
Director, Equal Opportunity Division	
Counsel	
Director, Economic and Market Analysis Division	
Director, Housing Management Division	
Director, Community Planning and Development Division	
Chief, Architectural Staff	
Chief, Cost Staff	
Multifamily Housing Representative	
Financial Analyst	
Housing Production Manager / Director	

Approved:
Program Director's Signature & Title : Date

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Part 1 - Development Data

Subpart 1A - Budget and Supporting Cost Data (eight items)

The Development Cost Budget is included at the end of this form and must be used for the submission of all Indian housing development cost budgets; i.e., development program; between development program and contract award; between contract of sale and final; and final. Instructions are included for preparing the budget.

Provide supporting data for the cost estimates indicated.

Figures shown in the following example are for a hypothetical project of 120 units in three building types and including 32 designated for the elderly.

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1. **Development Cost Budget.** Complete columns 5 and 6 only of form HUD-53045-A.

2. **Supporting Data for Cost Estimates.** Attach supporting data for Accounts 1410.1 (Nontechnical Salaries), 1410.2 (Technical Salaries), 1410.19 (Sundry), 1430.2 (Consultant Fees), 1430.7 (Inspection Costs), 1465 (Dwelling Equipment), 1475 (Nondwelling Equipment), 1495 (Relocation). For turnkey projects, include a breakdown of "Other" in the Developer's Price to show:
   a. Developer's Fee and Overhead, exclusive of builder-contractor's overhead and profit which is in other items of the developer's price.
   b. Interim Financing.
   c. Closing Costs.

3. **Dwelling Buildings and Units.**
   a. Complete the table below using the sample shown below.
   b. Identify and describe briefly on an attachment:
   (1) The number of units in this project which will be used as a necessary resource for relocating site occupants and indicate the number of these units for nonelderly occupancy and the number designed for elderly occupancy.
   (2) Any units industrialized, factory fabricated, or component construction.
   (3) Any units for congregate housing, or occupancy by the elderly, or to be developed through rehabilitation of existing structures.

Schedule of Buildings and Units

Building Type	Number of Stories	Number of Buildings	Number of Units by Room Count: 3	3 1/2	4 1/2	5 1/2	6 1/2	7 1/2	8 1/2	Number of Rooms	Number of Units
W	8	1		42 (22)	2(2)	36				354	80(24)
R	1	3		4(2)	6(6)	6				74	16(8)
D	1	20					4	8		152	24
AE											
Total		24		46(24)	8(8)	54	4	8		580	120(32)

Sample

3. Schedul of Buildings and Units.

Building Type (1)	Number of Stories	Number of Buildings	Number of Units by Room Count (2) & (3): 3	3 1/2	4 1/2	5 1/2	6 1/2	7 1/2	8 1/2	Number of Rooms	Number of Units
Total											

(1) W = Walk-up, R = Row, D = Detached, AE = Apartment Elevator.
(2) Number of Bedrooms plus 2 1/2 per unit.
(3) Show first, total units for each building type; second, in parentheses, show elderly units.

4. **HUD Total Development Cost (TDC) Standard Cap** Calculate the TDC Standard Cap in the table below. The following example shows computation of Project TDC Standard for the above hypothetical project.

Indian Housing TDC Standards specify:
   a. a geographical area with a defined boundry
   b. a type of construction (detached/duplex, row, or walk-up)
   c. a specific number of bedrooms included in the design
   d. a dollar amount expressed as total development cost or TDC per unit

A published TDC figure rpresents the TDC for one unit of a certain type of construction with a certain number of bedrooms in a certain location.

The TDC Standard for an Indian housing project depends upon the distribution of units within the project and may be calculated as in the following example:

The TDC Standards for 2, 3 and 4 bedroom detached housing units in Indian Standard Area X are $50,000., $60,000., and $70,000., respectively. There are 10 two bedroom units, 20 three bedroom units and 30 four bedroom units.

10 x $ 50,000. = 500,000.
20 x $ 60,000. = 1,200,000.
30 x $ 70,000. = 2,100,000.
} = Project TDC ($ 3,800,000)

The TDC Standards are to be used as guidelines for field office lattitude in the funding of Indian housing projects. **They do not determine an entitlement.**

An Indian housing project is cost approvable when:
a. the TDC is reasonable, and
b. each line item on the standard development budget is rasonable, and
c. a standard breakdown of th dwelling construction line item is reasonable.

If any of the above three components are non-approvable, the entire project is not cost approvable.

"Reasonable" cost is aperationally defined as cost that is consistent with current MIRS cost data on file in the field office.

TDCs do not include off-site water and sewer in these calculations or cost comparisons.

Total Development Cost Standard Cap
IndianStandard Area: Sacaton, Arizona*

Type	0 Bedroom Unit 3 Rooms		1 Bedroom Unit 3 1/2 Rooms		2 Bedroom Unit 4 1/2 Rooms		3 Bedroom Unit 5 1/2 Rooms		4 Bedroom Unit 6 1/2 Rooms		5 Bedroom Unit 7 1/2 Rooms		6 Bedroom Unit 8 1/2 Rooms		TDC
W	(1)	(2)	42	32,675	2	41,031	36	48,645							80
	(3)		1,372,350		82,062		1,751,220								3,205,632
R			4	34,263	6	42,159	6	50,267							16
			137,052		252,954		301,602								691,608
D							12	55,484	4	66,764	8	74,166			24
							665,808		267,056		593,328				1,526,192
AE															
			46		8		54		4		8				120
Total	1,509,402		335,016		2,718,630		267,056		593,328						6,423,432

(1) Enter the number of units by bedroom count and type.
(2) Enter latest TDC Cap per unit per latest HUD instructions
(3) Enter product of (1) and (2).
* Locality shown in HUD instructions for which TDC standards costs have been used.

Sample

4. Total Development Cost Standard Cap

IndianStandard Area:

Type	0 Bedroom Unit 3 Rooms	1 Bedroom Unit 3 1/2 Rooms	2 Bedroom Unit 4 1/2 Rooms	3 Bedroom Unit 5 1/2 Rooms	4 Bedroom Unit 6 1/2 Rooms	5 Bedroom Unit 7 1/2 Rooms	6 Bedroom Unit 8 1/2 Rooms	TDC
W								
R								
D								
AE								
Total								

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5. IHA Estimate of Dwelling Construction and Equipment Cost. The cost of dwelling construction and equipment will be taken from Item 1 (Development Cost Budget), Subpart I - Budget. For turnkey projects, the DC&E will be the sum of the amounts shown in Accounts 1460 and 1465 (line numbers 3 and 4) under Developer's Price plus the amount, if any, shown in Account 1465 (line number 52) under Indian Housing Authority Costs. For conventional projects, the cost of DC&E will be the sum of the amounts shown in Accounts 1460 and 1465 (line numbers 51 and 52) under IHA Costs.

The cost per square foot is the total cost divided by gross area.

The gross area of dwelling space based upon schematic plans supporting this budget should be computed in accordance with the following:

a. The gross area of a building is the sum of the areas of the several floors of the building, classified as dwelling space, including basements, mezzanines, and penthouses of headroom height, measured from the exterior faces of exterior walls or from the center line of walls separating buildings.

b. For porches with roofs connected with a building, access galleries, balconies, and similar spaces, include in the computation of gross area one-half of the actual gross area.

c. Do not include in the gross area features such as pipe trenches, open terraces or steps, chimneys, roof overhangs, or covered outdoor sitting areas connected with a building.

d. Areas of public spaces, such as corridors, stairs, elevator shafts, etc., serving more than one use, e.g., dwelling, maintenance, management, and community, shall be distributed in proportion to the area of the uses served.

6. Total Development Cost Standard Comparison Percentage. Self-explanatory.

7. Area of Nondwelling Building and Spaces. See instructions for item 5. Nondwelling space will be all of the total gross area of a structure not classified as dwelling space. List appropriate net and gross square footage in the appropriate spaces provided.

8. Demonstration of Adequacy of Reasources and Relocation Plan. Self-explanatory.

5. IHA Estimate of Dwelling Construction & Equipment Cost.

a. Nonelderly	Dwelling Construction Cost		$	
No. of Units:	Dwelling Equipment Cost		$	
		Subtotal	$	
	Contingency: ( ) percent		$	
		Total		$
	Estimated gross area of nonelderly dwelling space			
	Cost per square foot of dwelling space	$		
b. Elderly	Dwelling Construction Cost		$	
No. of Units:	Dwelling Equipment Cost		$	
		Subtotal	$	
	Contingency ( ) percent		$	
		Total		$
	Estimated gross area of elderly dwelling space			
	Cost per square foot of dwelling space	$		
c. Total	Dwelling Construction Cost		$	
Total No. of units:	Dwelling Equipment Cost		$	
		Total DC & E (elderly & nonelderly)		$
	Estimated gross area of total dwelling space			
	Cost per square foot of dwelling space	$		
d. Amount of Total DC & E which is attributable to MH Contributions of work, materials or equipment				$

6. TDC Standard Comparison Percentage

a. Total Project TDC Cap (from item 4 above)	TDC = $	
b. Total DC & E Cost Estimate (from item 5c above)	PPC = $	
c. Comparison Percentage	$\frac{PPC}{TDC}$ =	%

7. Areas of Nondwelling Buildings or Spaces

	Net Sq.Ft.	Gross Sq.Ft.
a. Administrative Buildings or Spaces		
b. Maintenance Buildings or Spaces		
c. Community Buildings or Spaces		
d. Central Dining Facilities		

8. Demonstration of Adequacy of Relocation Resources and Relocation Plan (if applicable).
See HUD Relocation Handbook 1371.1 and Indian Housing Handbook.

Subpart 1B. Final Site Approval (three items)

For MH project, in order for the IHA to select homebuyers, obtain the required signed statements and properly complete the Table required by Part II, subpart B, Item 3, it will be necessary to obtain Final Site Approval before a complete Development Program can be submitted (Section 905.217 (b) and 905.406 (d) of the Indian Housing Regulations).

1. TSA Conditions Satisfied Attach any information not previously submitted to demonstrate that all conditions, if any, of tentative Site Approval have been met. Include a listing of all material which is attached or a statement that this is not applicable because no TSA conditions were imposed or that all required information was previously submitted. (The HUD Field Office will incorporate the Preliminary Site Report(s) upon which TSA was granted and any information received showing TSA conditions have been met.)

2. Evidence of Site Control Attach option or offer by owner to sell or lease the approved site to the IHA or other evidence of site control satisfactory to the HUD Field Office. The number of attachments and their identification are given below. (Where the IHA wishes to submit eviddence of site control other than options or offers by owners to sell or lease, the IHA should consult with the HUD Field Office to ascertain whether such evidence will be satisfactory.)

3. Area Map Attach an area map showing existing HUD-assisted low income housing by Project Number, other assisted housing (identify: Tribal, BIA, FmHA, etc.), sites proposed for this project, and locations of existing and proposed schools, employment, health, shopping, transportation, roads and water and sewage facilities. If such facilities are off the scale of the map, indicate on the map the distance to them. Indicate on the map the agency responsible for each facility. Indicate in a statement on the map if certain of these facilities are not available in the area (other than those required by the Indian Housing Regulations and the Handbook). (The Locality Map required by Item 20 of the Preliminary Site Report may be used, if appropriate, as the Area Map required by this Item 3. If the Locality Map is used, it should be revised and updated to provide current information as well as the additional information required by Item 3.)

Subpart 1C. Mutual Help Projects (three items)

For Mutual Help Projects only, provide, in addition to the information required in Part I (Subpart A) and Part II, the information required by this subpart C. Section 905.408 of the Indian Housing Regulations provides detailed instructions concerning this item. See also the case examples provided in Chapter 5 of the Indian Housing Handbook.

1. Counseling Program Attach proposed MH Counseling Program and a justification of its cost included in Budget Account 1418. If previously submitted, indicate here the date of the submission and, if received, the date of approval. If the Counseling Program is to be submitted at a later date, indicate the date by which it will be submitted. (which shall be no later than the submission of the working drawings and specifications).

2. Tribal Contribution If there is to be any MH Tribal Contribution, provide here a statement of the forms and amounts thereof and attach a copy of the required Tribal Resolution stating the tribe's commitment to the IHA to make the contribution on behalf of Homebuyers.

3. Required MH Contributions Attach a statement of:
a. The total amount of MH Contributions to the Project including any additinal amounts.
b. The portion of such total to be provided by each form of contribution (land, work, cash, materials, or equipment) and
c. The amount of non-land contribution per Homebuyer.

Part II. Project Feasibility

Subpart IIA. Rental Project

Section 905.220 of the Indian Housing Regulations requires that the financial feasibility test for a rental project, which must be met before a Development Program for the project can be approved, shall be the test applicable to projects subject to 24 CFR, Part 990.101, et.seq., (Performance Funding System). For a rental project the IHA shall complete in accordance with the Indian Housing Handbook, and attach , as Part II, Subpart A of the Development Program, form HUD-52720B, Worksheet ii; Averages, Square Roots and Formula Expense Level Equations, and all related forms necessary for its completion. In the case of IHAs in Alaska, the IHA may, in lieu of the above, attach documentation to indicate: (1) Estimated total dwelling rental income for the project for the first five fiscal years following the End of Initial Operating Period (EIOP) date will be equal to or greater than the estimated total operating expenditures for the same period; or (2) where the estimated total operating expenditures are greater than the estimated total dwelling rental income, information to indicate that the IHA's current Per Unit Month (PUM) operating subsidy eligibility is equal to or greater than the operating deficit (as a PUM), of the project. The Indian Housing Handbook provides additional information.

Subpart IIB. Mutual Help Projects

Estimates of operating expenses comprising the Administration Charge (as defined in Section 905.419(a) of the Indian Housing Regulations), as well as estimates of utility costs (Section 905.416 (b)), may be based on the operating experience of other similar projects of the IHA, provided such experience reflects efficient and economical operations. In the event that the IHA has no operating experience, the HUD Field Office, upon request, will supply comparable data from the experience of other IHAs or PHAs operating similar projects.

Section 905.404 of the Indian Housing Regulations requires that the Development Program for a MH project include a demonstration by the IHA that there is a sufficient number of selected Homebuyers who are able and willing to pay the Administration Charge and meet the other obligations under MHO Agreements and who have signed statements that they are willing to enter into MHO Agreements. The items herein shall be completed by the IHA to provide the requird demonstration. The IHA may attach any additional information it deems necessary to meet the required demonstration.

1. Estimate of MH Administration Charge The anticipated operating expenses shall be projected for the first full year following the estimated End of Operating Period (EIOP) date. The Per Unit Month amounts shall be entered in Column 1 and Annual Amounts in Column 2. Provide cost estimates for each of the following operating expense items which comprise the MH Administration Charge.

	(PUM) (Col.1)
a. Administrative Expense. (Administrative salaries; travel; legal expense; postage; telephone and telegraph; office rent and overhead, incl. maintenance and utilities; and accounting services; etc.)	
b. General Expense. (The cost of premiums for fire and other insurance; payment in lieu of taxes, if any; payroll taxes; employee benefits; and collection losses; etc.)	
c. Contribution to Operating Reserve. (An estimate of the amount required to accumulate an operating reserve for the project as defined in Section 905.420 of the Indian Housing Regulations.)	
d. Total Administrative Charge. (Sum of the operating expenses in lines a, b, and c above.)	

2. Estimated Monthly Cost of Utilities Refer to the first paragraph of this subpart, IIB. Also see the schedules of rates, current and anticipated, provided with the required written assurances of the respective agencies or utility companies at the time of submission of the Preliminary Site Report and the Comparative Analysis of Utility Costs. Rates should be rechecked if necessary. Provide in the table below the estimated monthly cost of utilities by bedroom size which Homebuyers will be required to provide under the MHO agreement:

2. Estimated Monthly Cost of Utilities

Utility	Estimated Monthly Cost by Bedroom Size						
	0-BR	1-BR	2-BR	3-BR	4-BR	5-BR	6-BR
Water							
Electricity							
Gas							
Other heating (specify)							
Refrigeration							
Cooking fuel							
Sewerage services							

3. Data on Potential MH Homebuyer Families Complete the table below. The information to be provided in this table for each family shall be based on families who have been selected by the IHA, in accordance with Section 905.406 of the Indian Housing Regulations and who have signed statements that they are willing to enter into MHO Agreements. If more space is needed, make a duplicate copy of the table. By submitting this table the IHA certifies that these families are able and willing to pay the Administration Charge and meet the other obligations under MHO Agreements.

(1) Include income of all family members and all sources.

(2) State occupation of family members.

(3) This should be a statement of the amount of each form of M H Contribution provided by each family. The total of the amounts of each form of MH contribution shown for the family is not necessarily the same amount of MH credit to the family since the credits for contributed land are pooled and shared equally (Section 905.408 (c) (2)).

(4) This will be the amount of the Administration Charge from Item 1 or 25 percent of the Homebuyer's Family Income less the Utility Deduction, whichever is greater. (See Section 905.416 of the Indian Housing Regulations.)

(5) Enter from Item 2 the Estimated Utility Cost for the bedroom size unit required by the family.

(6) Enter an "X" in the column only where the family has been selected by the IHA under the "expected reasonably" provision under Section 905.406(b): i.e., if the Administration Charge plus utilities, or the Administration Charge alone, would exceed 25 percent of Family Income.
By placing an "X" in this column the IHA certifies that it has been determined that the family can be reasonably expected to pay the Administration Charge and meet its other obligations under the MHO Agreement, as demonstrated by the family's income, including public assistance, the family's past history, or the family's ability to supplement its income by providing its own food, fuel or other necessities.

3. Data on Potential MH Homebuyer Families (Table for Item 3)

Family	Is Family Head 62 or over? in Family	No. of Persons	Gross Family Income (1)	Source of Income (2)	Amounts and forms of MH Contributions (3)						Estimated Required Mo Payment (4)	Family Est Utility Cost (5)	"Reasonably Expected" Provision (6)
					Land	Work	Materials	Cash	Equipment	Total			

Development Cost Budget

Indian Low Income Housing Program

Copy Number

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0032 (exp. 8/31/95)

Legal Name of Indian Housing Authority:	Budget Submission Sequence, No:	Project Number:
Locality of Project (Site Address):	Production Method:	Program Type:

	Elderly	Nonelderly	Total
No. of Units:			

Status (Check one)

- ☐ Planning Budget
- ☐ Development Program (DP)
- ☐ Between DP & CA
- ☐ Contract Award/Contract of Sale (CA)
- ☐ Between CA & Final
- ☐ Final
- ☐ Quarterly Development Cost Statement
- ☐ Statement of Actual Development Cost (with ADCC)

Subpart I. Budget

Line No.	Account Classificaton	Actual Development Cost Incurred to	Actual/ Estimated Additional to Complete	Total Development Cost Amount (3)+(4)	Total Development Cost Per Unit	Previously Approved Budget
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Developer's Price						
1	1440 Site					
2	1450 Site Improvement					
3	1460 Dwelling Construction					
4	1465 Dwelling Equipment					
5	1470 Nondwelling Construction					
6	1430.1 Architectural and Engineering Services					
7	Other					
8	1482 **Total Developer's Price**					
Indian Housing Authority Costs: Administration						
9	1410.1 Nontechnical Salaries					
10	1410.2 Technical Salaries					
11	1410.3 Work - MH Contribution					
12	1410.4 Legal Expenses					
13	1410.9 Employee Benefit Contribution					
14	1410.10 Travel					
15	1410.12 Publications					
16	1410.14 Membership Dues and Fees					
17	1410.16 Telephone and Telegraph					
18	1410.19 Sundry					
19	1410 **Total Administration**					
20	1415 **Liquidated Damages**					
21	1418 **Counseling Costs**					
Interest						
22	**Total Interest**					
23	1425 **Initial Operating Deficit**					
Planning						
24	1430.1 Architectural and Engineering Fees					
25	1430.2 Consultant Fees					
26	1430.6 Permit Fees					
27	1430.7 Inspection Costs					
28	1430.9 Housing Surveys					
29	1430.19 Sundry Planning Costs					
30	**Total Planning**					

Submitted by (Signature)	Date	Title
*Recommended by(Signature of Authorized Official)	Date	Title
*Approved by (Signature of Authorized Official)	Date	Title

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Project Number:

Line No.	Account Classificaton	Actual Development Cost Incurred to	Actual/ Estimated Additional to Complete	Total Development Cost		Previously Approved Budget
				Amount (3)+(4)	Per Unit	
(1)	(2)	(3)	(4)	(5)	(6)	(7)
	Site Acquisition					
31	1440.1 Property Purchases (or Leases)					
32	1440.4 Surveys and Maps					
33	1440.5 Appraisals					
34	1440.6 Title Informaton					
35	1440.7 Site - MH Contribution					
36	1440.8 Legal Costs - Site					
37	1440.10 Option Negotiations					
38	1440.12 Current Tax Settlement					
39	1440.19 Sundry Site Costs					
40	**Total Site Acquisition**					
41	1450 Site Improvements					
42	1460 Dwelling Construction					
43	1465 Dwelling Equipment					
44	1470 Nondwelling Construction					
45	1475 Nondwelling Equipment					
46	1480 Contract Work In Progress					
47	1495 **Relocation Costs**					
48	**Total Before Contingency**					
49	**Donations**					
50	**Total Before Contingency (Excluding Donations)**					
51	**Contingency: 1% or 5% (or less) of line 50**					
52	**Total Development Costs**					

Project Number:

Subpart II. Detail of Construction and Equipment. Accounts 1450 through 1480.

Line No.	Account Classificaton	Actual Development Cost Incurred to	Actual/ Estimated Additional to Complete	Total Development Cost		Previously Approved Budget
				Amount (3)+(4)	Per Unit	
(1)	(2)	(3)	(4)	(5)	(6)	(7)
	Site Improvement (1450)					
51	Demolition					
52	1450.1 Work-MH Contribution					
53	1450.2 Materials, Supplies and Equipment-MH Contribution					
54	1450.3 On-site Street Improvements					
55	1450.4 Other					
56	**Total Site Improvement**					
	Dwelling Structures (1460)					
57	1460.1 Work - MH Contribution					
58	1460.2 Materials, Supplies and Equipment-MH Contributions					
59	1460.3 Other					
60	**Total Dwelling Structures**					
	Dwelling Equipment (1465)					
61	1465.1 Dwelling Equipment Nonexpendable					
62	1465.2 Dwelling Equipment Expendable					
63	1465.3 Dwelling Equipment-MH Contribution					
64	**Total Dwelling Equipment**					
	Nondwelling Structures (1470)					
65	1470.1 Work-MH Contribution					
66	1470.2 Materials MH Contribution, Supplies & Equipment					
67	1470.3 Other					
68	1470.9 IHS Off-site Water & Sewer					
69	**Total Nondwelling Structures**					
	Nondwelling Equipment (1475)					
70	1475.1 Office Furniture and Equipment					
71	1475.2 Maintenance Equipment					
72	1475.3 Community Space Equipment					
73	1475.4 Computer Equipment					
74	1475.7 Automotive Equipment					
75	1475.9 Expendable Equipment					
76	1475.10 Nondwelling Equipment-MH Contribution					
77	**Total Nondwelling Equipment**					
	Contract Work in Progress (1480)					
78	1480.1					
79	1480.2					
80	1480.3					
81	**Total Contract Work in Progress**					
82	**Total Construction & Equipment**					

Subpart III. Cost of Relocation and Existing Improvements	Subpart IV. Detail of Donations (Not MH Contributions) - Itemized		
	Source of Funds	Account Number	Amount
a. Acquisition Cost:	1.		
b. Demolition Cost:	2.		
c. Relocation Cost:	3.		
d. Total:	4.		
		Total Donations	

Subpart V. Detail of MH Contributions

MH Contribution	Account	Amount	MH Contribution	Account	Amount
a. Total Cash			Materials	1450.2	
b. Total Land	1440.7			1460.2	
Work--Family	1450.1			1470.2	
	1460.1		e. Total Materials		
	1470.1		Equipment	1450.2	
c. Subtotal Family				1460.2	
				1465.3	
Work--IHA Cost	1410.3			1470.2	
d. Total Work				1475.10	
			f. Total Equipment		

Total MH Contributions (Sum of a, b, d, e and f above)	
Total MH Contributions of work, materials and equipment to be utilized by the Contractor in performance of the contract work (sum of c, e, f.) (Should equal the difference between Total Contract Price and the Price Payable to Contractor.)	
Total MH Cash Contribution to be applied toward payment of development cost (a, above)	

Public reporting burden for this collection of information is estimated to average xxx hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2577-0032), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

Instructions for Preparing Development Cost Budgets

A. General.

1. Prepare an original and two copies for all Development Cost Budgets required by the Indian Housing Handbook under the grant program. Submit to the HUD Field Office.

a. For the first budget (Planning Budget), complete only columns (4) and (5) of Subparts I & II.

b. For subsequent budgets, complete as described below .

c. Round off all amounts to the nearest dollar.

d. Where descriptions or supplementary data are required, use an attached sheet, identifying the applicable item.

2. Budgets should cover all of the housing to be built under a single project number, whether on one or several sites.

a. Show in the block at the topof page 1 of the Budget under "Budget Sub. No.' the sequential number of the Budget being submitted.

b. For any project, the Planning Budget is "budget No. 1" the next and suceeding budget submissions would be 2,3, etc.

c. Show in the block at the top of page 1 of the Budget under "Elderly", the total of all units designed specifically for the elderly including any such units which have more than one bedroom.

3. For descriptions of the cost accounts to be used, see HUD Handbook 7510.1, Low-Rent Housing Accounting Handbook. The HUD Field Office will assist IHAs upon request in the distribution of costs of individual accounts.

B. Subpart I. Budget

1. Column Entries.

a. For the initial Planning Budget, complete columns (4) and (5) and leave other columns blank.

b. For subsequent budgets, use column (3) to show the latest readily-available figures from the books of accounts for Accounts 1410 through 1440, and Account 1495. In the heading of column (3), show the date as of which figures were taken. Use column (4) to show additional costs for completing the development work (Account 1410 through 1440 and 1495).

2. Site Improvements; Construction and Equipment. Enter, as applicable, in lines 2 through 5 and/or 41 through 45 the amounts stated for site improvements construction and equipment including related (MH) contributions from Subpart II and as further described below.

3. Turnkey and Conventional Projects.

a. Turnkey. The account classifications for Developer's Price, lines 1 through 8, are to be completed only for projects being developed under the Turnkey method. Where the developer is not providing the site, no entry will be made in line 1, Account 1440; instead, just as for conventional projects, lines 31 through 40 will be completed. For a developer-provided site, entries will be made for site acquisition costs to the IHA, e.g., appraisals (line 33) where required (see paragraph 9 below). The Total Developer's Price will be the price agreed upon at the Feasibility Conference by the developer, the IHA, and HUD. The amounts entered for site, architectural and engineering services should be the amounts to be included with the Preliminary Contract of Sale for the eventuality of separate purchase by the IHA. The amount entered for Other should be the sum of (1) the Developer's Fee and Overhead, (2) Interim Financing, and (3) Closing Costs. In the case of turnkey projects, planning costs approved by the HUD Field Office will allow for entries in lines 24 and 25 as well as in line 6, in addition to the required services for which entry will be made in line 27.

b. Conventional. For conventional projects, lines 1 through 8 will remain blank and instead, those accounts will be completed utilizing lines 24 through 45. For lines 41 through 45, the Schematic Design Documents and Architect's Estimate of Project Construction Cost will provide a basis for reasonable estimates for costs of Site Improvements - Account 1450, Dwelling Structures -Account 1460, and Nondwelling Structures - Account 1470. Any comments from the HUD Field Office as a result of the prior submission of these documents shall be incorporated into the Budget. Close attention shall be given to the amounts for Dwelling Construction and Dwelling Equipment to be included in the Budget. The HUD Field Office may be requested to assist in preparing appropriate estimates for Dwelling and Nondwelling Equipment - Accounts 1465 and 1475. The estimate shall be accompanied by supporting data showing items and the cost of each.

4. 1410. Administration (lines 9 through 19). IHAs with experience in the development and management of low-income housing should estimate administration costs on the basis of such experience, as applicable, for the current development method. For turnkey projects, there will be less administration activity normally than for conventional projects. The amounts for the various subaccounts shall be the costs of the items of expense which are directly traceable to and essential in the planning, construction and completion of the project, and the prorata amounts of the IHA's total administration costs in respect to the items which are not wholly traceable to the project. Administration (1410) and Planning (1430) Costs ordinarily terminate with the End of the Initial Operating Period. After this date only costs of personnel employed in development work specifically applicable to the particular project (e.g., employee or architect engaged in warranty inspections) may be charged to these accounts.

a. 1410.3. Work - MH Contribution (line 11). This account shall be charged with that portion, if any, of the MH contribution attributed to work furnished to the IHA (for which the contractor is not responsible) for administrative purposes by or on behalf of the Homebuyer Families.

b. 1410.1 and 1410.2 (lines 9 and 10). The following supporting data shall accompany the estimates for Non-technical and Technical Salaries: List, by job title, each IHA employee whose salary, or portions thereof, will be chargeable to these accounts. For each, show

the annual rate of the gross salary, the estimated length of time the employee will spend in connection with the development of the project, and the total of the gross salary which is properly chargeable to either of these accounts. If only a portion of the employee's time will be chargeable to this project, show the percentage that will be so chargeable and show, in a footnote, the percentage distribution to other projects and the accounts to which distributed.

c. **1410.19 (line 18).** The estimate for the Sundry Account shall include supporting data as follows: List and show the cost of each item of administrative and general expense for which a specific account is not provided in the 1410 group of accounts. If only a portion of the cost of any item will be chargeable to this project, show the percentage and amount that will be so chargeable and show, in a footnote, the percentage distribution to other projects.

5. 1418. Counseling Costs (line 21). This account shall be charged with the cost (not to exceed $500 multiplied by the number of homes in the project) of counseling to be provided to participating Families.

6. 1420.7 Interest - Income from Investments (line 22). The amount included for this account shall be computed as prescribed in HM 7510.1, Chapter 3, Section 15.

7. 1425. Initial Operating Deficit (line 23). In the absence of dependable previous experience data on which to base a preliminary estimate of the initial operating deficit, an allowance not to exceed $50 per dwelling unit may be used unless more is specifically authorized by HUD.

8. 1430. Planning (lines 24 through 30). For turnkey projects generally, architectural-engineering services will be included in the Developer's price except for periodic inspection of construction by an independent architect employed by the IHA (Account 1430.7).

a. 1430.1. Architectural and Engineering Fees (line 24). Architectural and engineering fees shall not exceed those set forth in the Schedule of Fees of the Architect's Contract.

b. 1430.2. Consultant Fees (line 25). The architect's contract provides that consultants retained by the architect must be paid under the terms of the architect's contract. Fees to be paid to other consultants should be included under this account and shall be accompanied by supporting data.

c. 1430.6. Permit Fees (line 26). If building or other similar fees have to be paid by the IHA, include the estimated amount under this account.

d. 1430.7. Inspection Costs (line 27). This estimate shall be accompanied by supporting data consisting of an itemized breakdown of the costs chargeable to this account. Include in the breakdown, by job title, a list of employees of the architect or (when use of IHA employees has been previously approved) of the IHA who will perform inspection work for the project, and show for each the same information as required by Paragraph 4b above.

e. 1430.9. Housing Surveys (line 28). The cost of all housing surveys and comprehensive planning shall be charged to this account. Include in this account the cost of housing surveys and the printing of reports in connection with them.

f. 1430.19. Sundry Planning Costs (line 29). In the absence of actual experience, the IHA should request the advice of HUD for this estimate.

9. 1440. Site Acquisition (lines 31 through 40). For provisions of cost accounts under this heading which are not explained below, see Accounting Handbook, HM7510.1, Chapter 3, Section 15.

a. 1440.1. Property Purchases (or Leases) (line 31). See Indian Housing Regulations and the Handbook as to limitations on size and cost of sites, terms of leases, requirements for appraisals and appraisal standards and special MH project requirements.

b. 1440.5. Appraisal Fees (line 33). This account shall be charged with (1) the costs incurred by the IHA, if any, for appraisals of land or improvements for sites to be provided by the IHA and (2) with costs incurred for obtaining appraisals of a developer-owned site for a turnkey project. No appraisal fee shall be included if the appraisals were conducted by the Bureau of Indian Affairs.

c. 1440.6. Title Information (line 34). No charge shall be made to this account where a BIA Title Status Report is utilized in accordance with the Interdepartmental Agreement.

10. 1470. Nondwelling Structures (line 44). Under 1470 establish a separate subaccount for any contributions for off-site improvements (i.e., water and sewer, solid waste).

11. 1495. Relocation (line 47). See the Indian Housing Handbook and HUD Relocation Handbook 1371.1, if applicable.

12. Donations. For donations, see account 2850 in HUD Handbook HM 7510.1, Chapter 3, Section 2. A donation represents a cash donation and the reasonable value of property donated to the project. An MH contribution is not a donation. Any cost met from cash donations and the value of any donations in kind will be included under the appropriate cost account and itemized in Subpart IV. Since donations cannot be included in the Total Development Cost, the total of donations will be subtracted from it and the result will be shown in line 50, "Total Before Contingency (Excluding Donations)."

13. Contingency. Enter not more than 5 percent for conventional projects, nor more than 1 percent for turnkey, of the Total Before Contingency, unless specifically approved by the Field Office based on adequate documented justification.

C. Subpart II. Detail of Construction and Equipment. Accounts 1450 through 1480.

1. General. The components of site improvement, construction and equipment costs will be identified in this Subpart. Each particular MH Contribution account (lines 52, 53, 57, 58, 63, 65, 66, and 76) shall be charged with that portion of the Total Development Cost attributed to it under the account classification in which it is listed. Donations will be included as described in paragraph B.12 above. Any off-site construction costs included in the proposed budget for which repayment will not be made by others will be described in an attachment and an explanation of why repayment will not be made by others will be included.

2. Column Entries. For the initial Planning Budget complete columns (4) and (5) and leave the other columns blank. For subsequent budgets:

(a) Enter in Columns (3), (4), and (5) required amounts for Accounts 1450 through 1480 as of the same date used for the entries in these columns in Subpart I.

(b) For a Contract Award Budget, list each proposed construction contract to be included under Account 1480 in Column (2) by name of contractor and type of work. Opposite each such listing, enter in Column (4) the appropriate amount from the corresponding Form HUD-52396, Analysis of Proposed Main Construction Contract.

(c) List all work and equipment not included under a formal construction contract (e.g. utilities extension/connection costs) by type under the applicable account. Identify by showing vendor name in column (2) and adding "NIC" after the item.

(d) Show approved force account work as separate labor and material cost items at each applicable construction or equipment account, and identify each by adding "(FA)" after the item.

(e) Distribution of Construction Contract Amount(s). Show on the Final Budget all construction contract amounts (including al approved changes)which were initially reflected at Account 1480 at contract award. Each final construciton contract amount should be distributed to the appropriate subsidiary account (Accounts 1450 through 1475) after the final billing under each contract has been paid. All such costs will therefore be entered in column (3) as an actual cost incurred. The Final Budget shall be accompanied by supporting data listing (a) the name of the contractor and type of work performed under each construction contract executed; (b) each original contract amount established and shown on form HUD 52396 at Contract Award stage; (c) a listing and identification of account classification for each change order approved for each construction contract; and (d) each final contract amount, including all change orders.

D. Subpart III. Cost of Relocation and Existing Improvements.

Enter information only with the Contract Award Budget. If the site was wholly vacant at the time it was acquired, enter "Site Wholly Vacant" on the total line and make no other entries. If the site included dwelling and/or nondwelling structures at acquisition, the amount entered on the first line shall be determined by prorating the total acquisition cost of the site in the ratio that the appraised value of the improvements bears to the total appraised value of the site. On the second line, show the total amount included under Subpart II for demolition work (line 51), if performed under separate contract or the estimated amount if performed under a single construction contract. On the third line, show the amount included in Subpart I, line 47, Column (5). Attach schedules detailing all costs comprising these amounts.

E. Subpart IV. Detail of Donations (Not MH Contributions).

For the detail of donations, enter an itemized description of donations identifying applicable account (paragraph C.1. above) and deduct the total donations from the Total Development Cost as described in paragraph B.12. above. MH Contributions are not donations.

F. Subpart V. Detail of MH Contributions.

Provide the detail of MH Contributions by showing for the various accounts, as applicable, the amounts comprising each form of MH Contribution.

[FR Doc. 95–15908 Filed 6–28–95; 8:45 am]
BILLING CODE 4210–33–C

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–964–1410–00–P]

Alaska; Notice for Publication F–14938–A2 and F–14938–B2; Alaska Native Claims Selections

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(b) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(b), will be issued to St. Michael Native Corporation for approximately 9,835 acres. The lands involved are in the vicinity of St. Michael, Alaska, within Tps. 24 and 25 S., Rs. 18 W., Kateel River Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Nome Nugget. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 [(907) 271–5960].

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until July 31, 1995 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Ana M. Stafford,

Land Law Examiner, Branch of Northern Adjudication.

[FR Doc. 95–15998 Filed 6–28–95; 8:45 am]

BILLING CODE 4310–JA–P

[AK–964–1410–00–P]

Alaska; Notice for Publication F–14955–A2 and F–14955–B2; Alaska Native Claims Selections

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(b) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(b), will be issued to Wales Native Corporation for approximately 16,573.28 acres. The lands involved are in the vicinity of Wales, Alaska, within Tps. 2 and 3 N., Rs. 43 W., Kateel River Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in The Nome Nugget. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 [(907) 271–5960].

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until July 31, 1995 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Ana M. Stafford,

Land Law Examiner, Branch of Northern Adjudication.

[FR Doc. 95–15999 Filed 6–28–95; 8:45 am]

BILLING CODE 4310–JA–P

[NM017–1430–01]

Emergency Closure Within the Ojito Special Management Area in Sandoval County, New Mexico

AGENCY: Bureau of Land Management, Albuquerque District.

ACTION: Notice of Emergency Closure.

SUMMARY: Notice is hereby given that effective June 29, 1995, mountain bikes (mechanical vehicles) are prohibited on approximately five (5) sections of public land southwest of San Ysidro, New Mexico.

This order is in addition to the 1987 motorized vehicles closure (52 FR 12471, April 16, 1987). The area is located in T. 15 N., R. 1 E., secs. 17, 20, 21, 28, and 29, New Mexico Principal Meridian.

The purpose of this area closure is to prevent unnecessary degradation of resources and undue environmental damage. The emergency area closure is in accordance with the provisions of 43 CFR 8364.1, and applies to all persons. This designation remains in effect until further notice. Bicycle use on the following previously designated open routes is not affected by this order, 15–1–28.1 and 15–1–12.

FOR FURTHER INFORMATION CONTACT: Donna Dudley, Outdoor Recreation Planner at the Bureau of Land Management, Rio Puerco Resource Area, 435 Montano NE., Albuquerque, New Mexico 87107, (505) 761–8913.

Dated: June 23, 1995.

Sue E. Richardson,

Acting District Manager.

[FR Doc. 95–16011 Filed 6–28–95; 8:45 am]

BILLING CODE 4310–FB–M

[OR110–G5–151]

Temporary Vehicle Use Restriction Order

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of temporary vehicle use restriction on the recently acquired Box O Ranch within Jackson County in the Ashland Resource Area, Medford, Oregon.

SUMMARY: This notice informs the public of the establishment of temporary vehicle use restrictions on recently acquired public lands for the protection of resources and to prevent sedimentation. The lands fall within the Ashland Resource Ara, Medford, Oregon.

FOR FURTHER INFORMATION CONTACT: Bill Haight, Wildlife Biologist, Ashland Resource Area, Bureau of Land Management, 3040 Biddle Road, Medford, Oregon 97504, (503) 770–2431.

EFFECTIVE DATE: June 29, 1995.

SUPPLEMENTARY INFORMATION: Under the authority contained in 43 CFR 8364, this emergency action restricts vehicle use on BLM-administered public land, formerly the Box O Ranch, to prevent sedimentation and to protect fragile upland meadows and riparian systems. Vehicle use on roadways is restricted to "administrative access only" and shall be limited to persons specifically designated by the area manager to drive on said roadways. This action will remain in effect until completion of a management plan that adequately addresses public access on these lands. The public land on which these roads are located are described as follows:

T. 40 S., R. 4 E., Willamette Meridian,
Sec. 21, E½SW¼, W½SE¼, SE¼SE¼;
Sec. 22, W½W½;
Sec. 27, W½W½;
Sec. 28, ALL;
Sec. 33, NE¼NW¼.

The area described contains approximately 1,200 acres in Jackson County.

Richard J. Drehobl,

Ashland Area Manager.

[FR Doc. 95–15917 Filed 6–28–95; 8:45 am]

BILLING CODE 4310–33–P

[NM–930–1310–01; NMNM 90814]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 97–451, a petition for reinstatement of Oil and Gas Lease NMNM 90814, Rio Arriba County, New Mexico, was timely filed and was accompanied by all required rentals and royalties accruing from September 1, 1994, the date of termination. No valid lease has been issued affecting the land. The lessee has agreed to new lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, and 16⅔ percent, respectively. Payment of a $500.00 administrative fee has been made. Having met all the requirements for reinstatement of the lease as set in Section 31 (d) and (e) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 188 (d) and (e)), the Bureau of Land Management is proposing to reinstate the lease effective September 1, 1994, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above, and the reimbursement for cost of publication of this Notice.

FOR FURTHER INFORMATION CONTACT: Gloria S. Baca, BLM, New Mexico State Office, (505) 438–7566.

Dated: June 20, 1995.

Gloria S. Baca,

Land Law Examiner.

[FR Doc. 95–16017 Filed 6–28–95; 8:45 am]

BILLING CODE 4310–FB–M

[CO–070–1430–01; COC 57652]

Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Eagle County, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In response to an application from Eagle County, Colorado, the following public lands have been examined and found suitable for classification for conveyance to Eagle County, Colorado, under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The lands would be used for a highway maintenance facility.

Sixth Principal Meridian

T. 2S., R. 84W.,
Sec. 9: lot 2.
Containing 2.28 acres, more or less.

The lands are not needed for Federal purposes. Conveyance of the lands is consistent with current BLM land use planning and would be in the public interest.

A patent, if issued, will be subject to the following reservations, terms, and conditions:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way thereon for ditches and canals constructed by authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

3. All the mineral deposits in the lands so patented, and the right of the United States, or persons authorized by the United States, to prospect for, mine, and remove such deposits from the same under applicable laws and regulations as the Secretary of the Interior may prescribe.

4. The subject lands are withdrawn for power purposes by Power Site Classification No. 244, approved August 29, 1919. The United States reserves the right to itself, its permittees or licensees to enter upon, occupy and use any part or all of the lands necessary for power purposes under Part 1 of the Federal Power Act of August 26, 1935, as amended (16 U.S.C. 818) upon payment of damages to buildings or other improvements caused by such entry. Any improvements or structures placed upon the land which shall be found to interfere with such power development shall be removed or relocated as may be necessary to eliminate interference with power development at no cost to the United States, its permittees or licensees.

5. A reservation for those rights for buried telephone line purposes as have been granted to Eagle Telecommunications, Inc., its successors and assigns, by right-of-way Colorado 27649 under the Act of February 15, 1901, as amended (43 U.S.C. 959).

6. A reservation for those rights for road purposes as have been granted to Eagle County, its successors and assigns, by right-of-way Colorado 43109 under the Act of October 21, 1976 (43 U.S.C. 1761).

7. Title shall revert to the United States upon a finding, after notice and opportunity for a hearing, that, without the approval of the Secretary of the Interior or his delegate, the patentee or its approved successor attempts to transfer title to or control over the lands to another, the lands have been devoted to a use other than that for which the lands were conveyed, or the lands have not been used for the purpose for which the lands were conveyed for a 5-year period. Provided further that the Secretary of the Interior may take action to revest title in the United States if the patentee directly or indirectly permits its agents, employees, contractors, or subcontractors (including without limitation lessees, sublessees, and permittees) to prohibit or restrict the use of any part of the patented lands or any of the facilities thereon by any person because of such person's race, creed, color, sex, or national origin.

R&PP CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for a highway maintenance facility.

Comments on the classification are restricted to whether the land is physically suited for a highway maintenance facility, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

R&PP APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a highway maintenance facility.

Comments received on the classification will be answered by the State Director with the right to further comment to the Secretary. Comments on the application will be answered by the State Director with the right of appeal to the Interior Board of Land Appeals. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Grand Junction District, 2815 H Road, Grand Junction, Colorado.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act. The segregative effect shall terminate upon issuance of a patent, upon final rejection of the application, or two years from the date of filling of the applications, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed classification or conveyance of the lands to the District Manager, Grand Junction District Office, 2815 H Road, Grand Junction, Colorado, 81506. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Mark T. Morse,

District Manager.

[FR Doc. 95–16012 Filed 6–28–95; 8:45 am]

BILLING CODE 4310–JB–P

[NV–930–05–1430–01; N–51468]

Notice of Realty Action, Direct Sale of Public Land, Pershing County, Nevada

SUMMARY: The following described land has been found suitable for direct sale under Sections 203 and 209 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1713 and 1719), at not less than fair market value:

Mount Diablo Meridian, Nevada

T. 27 N., R. 32 E.,
Sec. 8: SW¼SW¼SW¼,
W½SE¼SW¼SW¼.

Containing approximately 15 acres.

The lands are not required for federal purposes. Disposal is consistent with the Bureau's planning for this area and would be in the public's interest. This land is being offered by direct sale to Marian McClellan. It has been determined that the subject parcel contains no known mineral values, except oil and gas and geothermal steam and related geothermal resources. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests having no known value. The applicant will be required to pay a $50.00 non-refundable filing fee for conveyance of the said mineral interests.

The land will not be offered for sale until at least 60 days after publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ken Detweiler, Realty Specialist, Bureau of Land Management, 705 E. 4th St., Winnemucca, NV 89445 (702) 623–1500.

SUPPLEMENTARY INFORMATION: The public lands are being offered to Marian McClellan since she has developed the property which includes a residence. The above described land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statutes, for 270 days from the date of publication of this notice, or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

A Patent, When Issued, Will Contain the Following Reservations to the United States

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945).
2. The oil, gas, and geothermal steam in the land so patented.

And Will Be Subject To

1. Those rights granted to the Lovelock Meadows Water District for a water pipeline under Right-of-way NEV–066294.
3. An easement 30 feet in width along the west and south boundary of the SW¼SW¼SW¼, and along the south boundary of the W½SE¼SW¼SW¼, for road and public utility purposes to insure continued ingress and egress to adjacent lands.

Since the property has been developed, the patent will contain a solid waste/hazardous substance(s) statement indemnifying the United States. Also, since hazardous substances were inventoried on the parcel, the patent will contain a notice describing the hazardous substances inventoried.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Winnemucca District Office, Bureau of Land Management, 705 E. 4th St., Winnemucca NV 89445. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated: June 21, 1995.

Ron Wenker,

District Manager.

[FR Doc. 95–16009 Filed 6–28–95; 8:45 am]

BILLING CODE 4310–HC–P

[NV–930–05–1430–01; N–49636]

Notice of Realty Action, Direct Sale of Public Land, Pershing County, Nevada

SUMMARY: The following described land has been found suitable for direct sale under Sections 203 and 209 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1713 and 1719), at not less than fair market value:

Mount Diablo Meridian, Nevada

T. 27 N., R. 32 E.,
Sec. 8: SE¼NE¼SW¼SW¼,
E½SE¼SW¼SW¼,
SW¼NW¼SE¼SW¼,
NW¼SW¼SE¼SW¼.

Containing approximately 12.5 acres.

The lands are not required for federal purposes. Disposal is consistent with the Bureau's planning for this area and would be in the public's interest. This land is being offered by direct sale to Hallie Pfeifer. It has been determined that the subject parcel contains no known mineral values, except oil and gas and geothermal steam and related geothermal resources. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests having no known value. The applicant will be required to pay a $50.00 non-refundable filing fee for conveyance of the said mineral interests.

The land will not be offered for sale until at least 60 days after publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ken Detweiler, Realty Specialist, Bureau of Land Management, 705 E. 4th St., Winnemucca, NV 89445 (702) 623–1500.

SUPPLEMENTARY INFORMATION: The public lands are being offered to Hallie Pfeifer since he has developed the property which includes a residence. The above described land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statutes, for 270 days from the date of publication of this notice, or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

A Patent, When Issued, Will Contain the Following Reservatiosn to the United States

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945).
2. The oil, gas, and geothermal steam in the land so patented.

And Will Be Subject To

1. Those rights granted to the Lovelock Meadows Water District for a water pipeline under Right-of-way NEV–066294.
2. Those rights granted to the Nevada Department of Transportation for highway purposes under Right-of-way N–6984.
3. An easement 30 feet in width along the south boundary of the E½SE¼SW¼SW¼, for road and public utility purposes to insure continued ingress and egress to adjacent lands.

Since the property has been developed, the patent will contain a solid waste/hazardous substance(s) statement indemnifying the United States.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Winnemucca District Office, Bureau of Land Management, 705 E. 4th St., Winnemucca NV 89445. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated: June 21, 1995.

Ron Wenker,

District Manager,

[FR Doc. 95–16008 Filed 6–28–95; 8:45 am]

BILLING CODE 4310–HC–P

[NV–930–1430–01; N–59496]

Notice of Realty Action; Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and Public purpose lease/conveyance.

SUMMARY: The following described land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The Victory Christian Center proposes to use the land for an activity center, church office, sanctuary with support facilities, a K4 through 12 school, outdoor playground and sports activity areas.

Mount Diablo Meridian, Nevada

T. 22 S., R. 61 E.,
Sec. 20: SW¼SW¼.

Containing 40.00 acres, more or less.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe and will be subject to:

1. An easement 30.00 feet in width along the north and east boundaries, 50.00 feet in width along the west and south boundaries, together with a 25 foot spandrel area in the northwest corner, also a 54 foot spandrel area in the southwest corner, a 25 foot spandrel area in the southeast corner, a 15 foot spandrel area in the northeast corner, in favor of Clark County for roads, public utilities and flood control purposes.

2. Those rights for natural gas pipeline purposes which have been granted to CalNev Pipeline Company by Permit No. NEV–056213 under the Act of February 25, 1920 (3O U.S.C. 185 sec. 28). Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the district Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for a church facility. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a church facility.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register.** The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: June 13, 1995.

Michael F. Dwyer,

District Manager, Las Vegas, NV.

[FR Doc. 95–15918 Filed 6–28–95; 8:45 am]

BILLING CODE 4310–HC–M

[OR 51890; OR–080–05–1430–01: G5–159]

Realty Action; Proposed Modified Competitive Sale

June 22, 1995.

The Notice of Realty Action published in the May 12, 1995, edition of the **Federal Register** (60 FR 25730) is hereby amended as follows:

The appraised fair market value has been determined to be $72,000.00.

Sealed written bids, delivered or mailed, must be received by the Bureau of Land Management, Salem District Office, 1717 Fabry Road SE, Salem, Oregon 97306, prior to 11:00 a.m. on Wednesday, July 11, 1995.

All other conditions of the notice remain in effect.

Robert B. Hershey,

Acting Cascades Area Manager.

[FR Doc. 95–16016 Filed 6–28–95; 8:45 am]

BILLING CODE 4310–33–M

[CO–034–95–1220–00]

Designation Order; Moratorium on Commercial Outfitting Permits for the San Miguel River Special Recreation Management Area and Area of Critical Environmental Concern

AGENCY: Bureau of Land Management, Montrose District, Uncompahgre Basin Resource Area, Montrose Colorado.

ACTION: Establishment of a moratorium on the number of commercial outfitting permits for the San Miguel River Special Recreation Management Area (SRMA) and Area of Critical Environmental Concern (ACEC) administered by the Bureau of Land Management Montrose District.

SUMMARY: The BLM Montrose District, the Telluride Institute, San Miguel County, and the Town of Telluride are jointly sponsoring the writing of a Multi-Objective Plan for the San Miguel River Basin. Partners in the planning effort include over 50 representatives of local, state, and federal agencies, interest groups, and interested individuals. The plan will address

numerous issues concerning the protection of the San Miguel River's natural resources and the management of users, including commercial recreation users that operate under Special Recreation Permits issued by the BLM. The final plan will provide strategies for determining thresholds for commercial use and the means for rationing use should those thresholds be exceeded.

The BLM has determined that a moratorium on the number of commercial outfitting permits is needed to hold the commercial use at 1994 levels while the multi-objective plan is being prepared. The moratorium will allow BLM to direct full management attention to the planning process instead of spending significant amounts of time, personnel, and budget reacting to higher and higher levels of uncontrolled use and resources damage.

The moratorium will go into effect immediately and remain in effect until the final plan is approved. Only those commercial outfitters that had a valid permit in 1994, and properly met the requirements of that permit, will be eligible to obtain permits in 1995 and any future year until the plan is approved.

When the plan is approved, the moratorium will be lifted and constraints on the number of outfitting permits and/or the total number of user days associated with those permit, if any, will be implemented.

Sales of outfitting businesses and any transfer of permits that may apply during the period of the moratorium will be dealt with through BLM Manual H8372–1.

EFFECTIVE DATE: June 15, 1995.

FOR FURTHER INFORMATION CONTACT: Additional information concerning this moratorium on commercial outfitting permits in the San Miguel River Special Recreation Management Area and Area of Critical Environmental Concern may be obtained from Karen Tucker, Recreation Planner, Uncompahgre Basin Resource Area, Montrose District, 2505 South Townsend Ave., Montrose, Colorado 80401, (970) 249–6047.

Authority for implementing this action is contained in 43 CFR 8372.3.

Dated: June 20, 1995.

Jamie Connell,

Associate District Manager.

[FR Doc. 95–16018 Filed 6–28–95; 8:45 am]

BILLING CODE 4310–JB–M

[OR–942–00–1420–00: G5–152]

Filing of Plats of Survey: Oregon/ Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Williamette Merdian

Oregon

T. 9 S., R. 23 E., accepted April 28, 1995
T. 18 S., R. 27 E., accepted June 1, 1995
T. 26 S.,-R. 3 W., accepted June 1, 1995
T. 18 S., R. 8 W., accepted May 10, 1995
T. 22 S., R. 11 W., accepted May 12, 1995

Washington

T. 7 N., R. 46 E., accepted June 1, 1995
T. 7 N., R. 47 E., accepted June 1, 1995
T. 23 N., R. 10 W., accepted May 30, 1995

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1515 S.W. 5th Avenue, Portland, Oregon 97201, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, (1515 S.W. 5th Avenue,) P.O. Box 2965, Portland, Oregon 97208.

Dated: June 16, 1995.

Robert D. DeViney, Jr.,

Acting Chief, Branch of Realty and Records Services.

[FR Doc. 95–16015 Filed 6–28–95; 8:45 am]

BILLING CODE 4310–33–M

[AK–932–1430–01; AA–8964, AA–11330]

Proposed Withdrawal and Opportunity for Public Meeting; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, has filed two applications to withdraw approximately 8.94 acres of public lands, in order to return the lands to national forest status. The lands had been occupied for homesite purposes and were excluded from the Tongass National Forest and restored to entry under the public land laws by Executive Order No. 5449, dated September 25, 1930, and Executive Order No. 5947, dated November 16, 1932, respectively. This notice closes the lands for up to 2 years to those segregations applicable to National Forest System lands; however, the lands are also affected by overlapping Public Land Order No. 5180, as amended, and will remain subject to the segregations established by that order until a further opening order is issued.

DATES: Comments and requests for a public meeting must be received by September 27, 1995.

ADDRESSES: Comments and meeting requests should be sent to the Alaska State Director, BLM Alaska State Office, 222 West 7th Avenue, No. 13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Sue A. Wolf, BLM Alaska State Office, 907–271–5477.

SUPPLEMENTARY INFORMATION: On June 7, 1995, the U.S. Department of Agriculture, Forest Service, filed applications to withdraw the following described public lands, to be managed and subject to the segregations established for National Forest System lands:

Copper River Meridian

(1) Fish Creek Parcel (AA–8964), located within the E½NW¼ of Sec. 23, T. 68 S., R. 99 E., as described in Executive Order No. 5947, this parcel contains approximately 5.00 acres.

(2) Farragut Bay Parcel (AA–11330), located within the NE¼NW¼ of Sec. 21, T. 55 S., R. 77 E., as described in Executive Order No. 5449, this parcel contains approximately 3.94 acres.

The areas affected by this order aggregate approximately 8.94 acres.

The homesite entries were never patented, therefore the exclusions are no longer appropriate. The purpose of the proposed withdrawal is to restore the lands to the Tongass National Forest, and to be managed as National Forest System lands.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Alaska State Director of the Bureau of Land Management at the address indicated above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Alaska State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The applications will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the applications are denied or canceled or the withdrawal is approved prior to that date. The segregation made by this order shall overlap but not otherwise affect the segregation established by Public Land Order No. 5180, as amended.

The lands will be managed in accordance with the various acts that govern occupancy and use of National Forest System lands. Temporary uses which may be permitted during this segregative period would be for land use authorizations that are compatible with intended uses allowed under the discretion of the authorized officer.

Dated: June 20, 1995.

Sue A. Wolf,

Chief, Branch of Land Resources

[FR Doc. 95–16014 Filed 6–28–95; 8:45 am]

BILLING CODE 4310–JA–P

[MT–930–1430–01; MTM 82330]

Opening of Land in a Proposed Withdrawal; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The temporary 2-year segregation of a proposed withdrawal of 19,684.74 acres of public mineral estate for protection of the unique resources within the Sweet Grass Hills expires on August 2, 1995, and the land will be opened to mining. The lands have been and will remain open to surface entry and mineral leasing.

EFFECTIVE DATE: August 2, 1995.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2949, or Jerry Majerus, Lewistown District Office, Lewistown, Montana 59457, 406–538–7461.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Withdrawal was published in the **Federal Register** (58FR41289–91) August 3, 1993, which segregated the lands described therein for up to 2 years from location and entry under the mining laws, subject to valid existing rights, but not from the general land laws or the mineral leasing laws. The 2-year segregation expires August 2, 1995. The withdrawal application will continue to be processed unless it is canceled or denied.

At 9 a.m. on August 2, 1995, the lands will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provision of existing withdrawals, and other segregations of record. Appropriation of any of these lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempting adverse possession under 30 U.S.C. 38 (1988) shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by state law where not in conflict with federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights, since Congress has provided for such determinations in local courts.

Dated: June 20, 1995.

Thomas P. Lonnie,

Deputy State Director, Division of Resources.

[FR Doc. 95–16019 Filed 6–28–95; 8:45 am]

BILLING CODE 4310–DN–P

[NV–943–1430–01; N–59082]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Nevada; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction notice.

SUMMARY: This notice corrects an error in the legal description for the proposed withdrawal of public land for use by the Department of Commerce, National Oceanic and Atmospheric Administration.

FOR FURTHER INFORMATION CONTACT: Dennis J. Samuelson, BLM Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, 702–785–6507.

SUPPLEMENTARY INFORMATION: In the notice of Proposed Withdrawal and Opportunity for Public Meeting; Nevada, 59 FR 65540, December 20, 1994, make the following correction:

1. On page 65540, column 2, under the heading **SUPPLEMENTARY INFORMATION**, the line which reads "T. 34 N., R. 54 E.," is corrected to read "T. 34 N., R. 55 E.,".

Dated: June 19, 1995.

Lee F. Englesby,

Acting Deputy State Director, Operations.

[FR Doc. 95–16010 Filed 6–28–95; 8:45 am]

BILLING CODE 4310–HC–P

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*):

PRT–803881

Applicant: The North Carolina Arboretum, Asheville, NC

Collection and propagation of seeds or cuttings of Cumberland rosemary, *Conradina verticillata*, and Large-flowered skullcap, *Scutellaria montana*, from populations in Obed Wild and Scenic River and Big South Fork National River and Recreation Area, Morgan and Scott Counties, Tennessee and McCreary County Kentucky; Chickamauga Reservoir and Lookout Mountain, Hamilton County, Tennessee and Dade County, Georgia. Plants would be propagated for inclusion in the National Collection of Endangered Plants.

PRT–803883

Applicant: Pierson Environmental Consultation, Calera, Alabama

The applicant requests a permit to take (collect dead shells of each species) 42 species of endangered mussels and snails throughout the southeastern United States for the purpose of enhancement of survival of the species.

Written data or comments on any of these applications should be submitted to: Regional Permit Coordinator, U.S.

Fish and Wildlife Service, 1875 Century Boulevard, Suite 210, Atlanta, Georgia 30345. All data and comments must be received within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 210, Atlanta, Georgia 30345 (Attn: David Dell, Permit Analyst). Telephone: 404/679–7313; Fax: 404/679–7280.

Dated: June 22, 1995.

Jerome M. Butler,

Acting Regional Director.

[FR Doc. 95–15974 Filed 6–28–95; 8:45 am]

BILLING CODE 4310–55–P

National Park Service

Notice of Inventory Completion of Native American Human Remains from the Island of Lanai in the Collections of the Bernice Pauahi Bishop Museum, Honolulu, HI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with the provisions of the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003(d), of the completion of an inventory of human remains from the Island of Lanai by the Bernice Pauahi Bishop Museum, Honolulu, HI.

A detailed inventory and assessment of these human remains and associated funerary objects has been made by the Bishop Museum's professional staff and representatives of the following Native Hawaiian organizations: *Hui Mālama Pono 'O Lāna'i, Hui Mālama I Nā Kupuna 'O Hawai'i Nei*, the Office of Hawaiian Affairs, and the Maui/Lāna'i Island Burial Council, Native Hawaiian organizations under 25 U.S.C. 3001(11).

The human remains represent at least 212 individuals and six associated funerary objects. These remains came to Bishop Museum from the following sources:

In 1914, Felix von Luschan, a Professor of Anthropology at the Berlin Museum, was assisted in his excavations at Awalua, Lanai, by Museum staff John Penchula, August Perry, John F. G. Stokes, and by William Wagner; 83 remains and 4 associated funerary objects (2 small items of personal adornment, one item fishing equipment, and one animal tooth) were donated.

In 1920, Louis R. Sullivan, an employee of the American Museum of Natural History in New York, was assisted by George C. Munro in excavations on the North Coast of Lanai; 1 animal bone and 100 human remains were donated to Bishop Museum.

In 1921, Kenneth Emory, an anthropologist at Bishop Museum, conducted excavations on Lanai that resulted in 1 animal bone and 26 remains.

In 1922, Hector G. Munro donated one skull from Keoneheehee, Lanai.

In 1926, the Museum purchased one skull from Lanai from George C. Munro.

In 1927, George C. Munro donated one skull from Lanai.

No known individuals were identified. In consultation with *Hui Mālama Pono 'O Lana'i, Hui Mālama I Nā Kupuna 'O Hawai'i Nei*, the Office of Hawaiian Affairs, and the Maui/Lāna'i Island Burial Council, the Bishop Museum decided that no attempt would be made to determine age of human remains from Lanai. Geographic location of the remains, types of associated funerary objects, and method of burial preparation are those of Native Hawaiians ancestral to contemporary Native Hawaiians.

Based on the above information, officials of the Bishop Museum, in consultation with representatives of *Hui Mālama Pono 'O Lana'i, Hui Mālama I Nā Kupuna 'O Hawai'i Nei*, the Office of Hawaiian Affairs, and the Maui/Lāna'i Island Burial Council, determined pursuant to 25 U.S.C. 3001(2) that there is a relationship of shared group identity which can be reasonably traced between these remains and *Hui Mālama Pono 'O Lāna'i.*

This notice has been sent to *Hui Mālama Pono 'O Lana'i, Hui Mālama I Nā Kupuna 'O Hawai'i Nef*, the Office of Hawaiian Affairs, and the Maui/Lāna'i Island Burial Council. Representatives of any Native Hawaiian organizations which believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Anita Manning, Assistant Director, Collections Management, Bernice Pauahi Bishop Museum, P. O. Box 19000, Honolulu, Hawai'i, 96817-0916, <manning@bishop.bishop.hawaii.org>, 808-848-4117, before July 31, 1995.

Dated: June 23, 1995.

Veletta Canouts,

Acting, Departmental Consulting Archeologist and

Acting Chief, Archeological Assistance Division

[FR Doc. 95-15963 Filed 6-28-95; 8:45 am]

BILLING CODE 4310–70–F

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32710]

Chicago and North Western Railway Company—Trackage Rights Exemption—Iowa Interstate Railroad Limited

Iowa Interstate Railroad Limited (IAIS) has agreed to grant overhead trackage rights to Chicago and North Western Railway Company (C&NW)[1] over 132 miles of its rail line between milepost 358 at Des Moines, IA, and milepost 490.0 at Council Bluffs, IA.

The purpose of this transaction is to facilitate the maintenance and reconstruction of the existing C&NW track extending east from Council Bluffs to Nevada, IA, then south to Des Moines. The trackage rights will provide an alternate route to permit the efficient and expeditiqus movement of C&NW's traffic between Council Bluffs and Des Moines. The trackage rights are scheduled to become effective on June 30, 1995.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Stuart F. Gassner, 165 North Canal Street, Chicago, IL 60606–1551.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: June 23, 1995.

[1] Union Pacific Corporation acquired control of Chicago and North Western Railway Company in *Union Pacific Corporation, Union Pacific Railroad Company—Control—Chicago and North Western Transportation Company and Chicago and North Western Railway Company*, Finance Docket No. 32133 (ICC served Mar. 7, 1995).

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–16025 Filed 6–28–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32716]

Hampton Railway, Inc.—Acquisition and Operation Exemption—Willamina & Grand Ronde Railway Company

Hampton Railway, Inc. (Hampton), has filed a notice of exemption to acquire and operate 5.2 miles of rail line from Willamina & Grand Ronde Railway Company (WGR).[1] The trackage extends from milepost 0.0 at Willamina to milepost 5.2 at Fort Hill, in Polk and Yamhill Counties, OR. Consummation of the transaction was scheduled to take place on or after June 7, 1995.

Any comments must be filed with the Commission and served on: Fritz R. Kahn, Suite 750 West, 1100 New York Avenue NW., Washington, DC 20005.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time.

The filing of a petition to revoke will not automatically stay the transaction.

Decided: June 21, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–16024 Filed 6–28–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32730]

Iowa Interstate Railroad, Ltd.—Trackage Rights Exemption—Norfolk and Western Railway Company

Norfolk and Western Railway Company (NW) has agreed to grant local trackage rights to Iowa Interstate Railroad, Ltd. (IAIS), over 13.9 miles of its line of railroad between milepost DU–340.8, in Des Moines, IA, to the end of the line at milepost DU–354.7, in Grimes, IA, including the Clive Spur, in Polk County, IA.[1] The trackage rights include all appurtenances, connecting and industrial tracks, and fixed improvements thereon, identified and described in the trackage rights agreement dated June 7, 1995. The trackage rights were scheduled to become effective on June 27, 1995.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: T. Scott Bannister, 405 6th Avenue, 1300 Des Moines Building, Des Moines, IA 50309.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: June 22, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–16026 Filed 6–28–95; 8:45 am]

BILLING CODE 7035–01–P

[1] Hampton, an affiliate of Hampton Lumber Sales Co., will be the owner and operator of the line. However, Hampton will hire a contract operator, Willamette & Pacific Railroad Company, to perform the service in the name of Hampton and for its account.

[1] IAIS concurrently filed a petition for exemption under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 11343–45, to permit IAIS to lease and operate the 13.9-mile line. The petition has been docketed as *Iowa Interstate Railroad, Ltd.—Lease and Operation Exemption—Norfolk and Western Railway Company*, Finance Docket No. 32731.

DEPARTMENT OF JUSTICE

Correction to Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

In the notice of a proposed Amendment to the Consent Decree in *United States* v. *Agrico Chemical Company, et al.*, (N.D. FL.) published in 60 FR 32167, dated June 20, 1995, the civil action number should read Civil Action No. 94–30057, instead of Civil Action No. 93–23–C.

Bruce S. Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–16038 Filed 6–28–95; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Advanced Lead-Acid Battery Consortium

Notice is hereby given that, on May 17, 1995, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Advanced Lead-Acid Battery Consortium ("ALABC"), a discrete program of the International Lead Zinc Research Organization, Inc. ("ILZRO"), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing the withdrawal of three members to the ALABC. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the ALABC advised that Honda R&D; Wako R&D Center; and Electrotek Concepts, Inc. have withdrawn from the ALABC.

No other changes have been made in either the membership or planned activity of the ALABC. Membership in the ALABC remains open and the ALABC intends to file additional written notification disclosing any future changes in membership.

On June 15, 1992, the ALABC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 29, 1992 (57 FR 33522).

The last notification was filed with the Department on February 17, 1995. A notice was published in the **Federal Register** pursuant to section 6(b) on March 30, 1995 (60 FR 16504).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–16040 Filed 6–28–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Cullen Engineering Research Foundation

Notice is hereby given that on March 20, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the participants in the Cullen Engineering Research Foundation (the "Foundation") filed written notifications simultaneously with the Attorney General and with the Federal Trade Commission disclosing (1) the identities of the parties to the

Foundation and (2) the nature and objectives of the project. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties and the general area of planned activity are: Amoco Production Company, Houston, TX; Conoco, Inc., Ponca City, OK; Shell Development Co., Bellaire, TX; Brunswick Composites, Lincoln, NE; Hydril Co., Houston, TX; Amoco Performance Products, Inc., Alpharetta, GA; Hercules, Inc., Wilmington, DE; Brown and Root U.S.A., Inc., Houston, TX; Stress Engineering Services, Inc., Houston, TX; The Composites Engineering and Applications Center for Petroleum Exploration and Production of the University of Houston, Houston, TX; and the Cullen Engineering Research Foundation, Houston, TX.

The purpose of this collaboration is to develop technologies and to qualify the use of composite materials for high-performance Tension Leg Platform ("TLP") production risers.

Information about participating in this Foundation may be obtained by contacting Vita P. Como, Cullen Engineering Research Foundation, Houston, Texas.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–16043 Filed 6–28–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993 Global Silicones Council

Notice is hereby given that, on May 5, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Global Silicones Council ("GSC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing: (1) The identities of the parties to the venture and (2) the nature and objective of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the members in GSC are Bayer AG, Leverkusen, Germany; Dow Corning Corporation, Midland, MI; GE Silicones, Waterford, NY; Th. Goldschmidt AG, Essen, Germany; Huls AG, Marl, Germany; OSi Specialities, Inc., Danbury, CT; Rhone-Poulenc Chimie, Courbevoie, France; Shin-Estu Chemical Co. Ltd., Tokyo, Japan; and Wacker-Chemie GmbH, Munich, Germany. Non-voting participants to the venture are Silicones Environmental, Health and Safety Council; Centre Europeen des Silicones; and Silicone Industry Association of Japan.

GSC's objective is to promote the safe use, stewardship, effectiveness and regulatory approval of organosilicon compounds. In pursuit of this objective, GSC plans to undertake a variety of activities, including research, testing and the collection, analysis and dissemination of information on environmental health and safety issues relating to organosilicon compounds.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–16039 Filed 6–28–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Petroleum Environmental Research Forum Project No. 94–13

Notice is hereby given that, on May 26, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Petroleum Environmental Research Forum ("PERF") Project No. 94–13, titled "Participation Agreement" has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identifies of the parties are Exxon Research and Engineering Company, Florham Park, NJ; British Petroleum Oil Company, Cleveland, OH; Conoco Inc., Houston, TX; Texaco Research and Development, Port Arthur, TX; Chevron Research and Technology Company, Richmond, CA; Amoco Corporation, Naperville, IL; Arco Exploration, Plano, TX; Elf Aquitaine, Washington, D.C.; Mobil Exploration and Production Technology, Dallas, TX; and Phillips Petroleum, Bartlesville, OK. The general area of planned activity is the initial evaluation of phytoremediation as a site remediation technology as applied to soils of petroleum, petrochemical and chemical industry facilities containing residual hydrocarbons.

Participation in this venture will remain open to all interested persons and organizations until the issuance of the final Project Completion Date which is presently anticipated to occur approximately thirty-six (36) months after the Project commences. The participants intend to file additional written notifications disclosing all changes in its membership.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–16042 Filed 6–28–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Portland Cement Association

Notice is hereby given that, on June 12, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Portland Cement Association ("PCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the EPRI Center for Materials Production has become an Associate Member; Claudius Peters, Inc. has changed its name to BMH Americans Inc., and the Northwest Concrete Promotion Group has changed its name to the Northwest Cement Producers Group. In addition, effective June 30, 1995 the Rinker Materials Corporation will resign its membership, and effective July 1, 1995 the North Texas Cement Company, L.P., will become a member.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PCA intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, PCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 5, 1985, 50 FR 5015.

The last notification was filed with the Department on November 22, 1994. A notice was published in the **Federal Register** pursuant to section (6(b) of the Act on March 15, 1995, 60 FR 14003.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–16045 Filed 6–28–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Norton Diamond Film/ Kennametal Research and Production Venture

Notice is hereby given that, on February 27, 1995, pursuant to Section 6(a) of the National Cooperative Research and Product Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Norton Diamond Film Division ("Norton Diamond Film") of Saint-Gobain/Norton Industrial Ceramics Corporation, and Kennametal Inc. ("Kennametal"), have filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of a research and production venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Norton Diamond Film, Northbor, MA and Kennametal Inc., Latrobe PA. Norton Diamond Film is indirectly controlled by Compagnie de Saint-Gobain S.A., Paris, France; Kennamental is not controlled by any other person. The purpose of this joint venture is to combine Kennametal's special carbide formation and Norton Diamond Film's diamond deposition technology in the development and demonstration of the next generation of carbide round tools and wear parts. The activities of the joint venture will be partially funded by an award from the Advanced Technology Program, National Institute of Standards and Technology, Department of Commerce.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–16041 Filed 6–28–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; X Consortium, Inc.

Notice is hereby given that, on June 6, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), X Consortium, Inc. (the "Corporation") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following are no longer members of the Corporation: Apple Computer, Inc.; ATR Institute International; Georgia Institute of Technology; Japan Computer Corp.; Locus Computing Corporation; M3I Systems, Inc.; Openware Technologies; and Phase X Systems.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Corporation intends to file additional written notifications disclosing all changes in membership.

On September 15, 1993, the Corporation field its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 10, 1993 (58 Fed. Reg. 59737).

The last notification was filed with the Department on March 7, 1995. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 27, 1995 (60 FR 20750).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–16044 Filed 6–28–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–00392]

General Mills Incorporated, CFTO-South Chicago Plant, Chicago, IL; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of May 19, 1995, one of the petitioners requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for NAFTA-Transitional Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on April 26, 1995 and was published in the **Federal Register** on May 9, 1995 (60 FR 24653).

The petitioner claims that import data provided by the company were not accurate, and present evidence that imports of cereal from Mexico did impact General Mill's market share.

Conclusion

After careful review of the application, I conclude that the claims are of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 20th day of June 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–16060 Filed 6–28–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00444]

Haggar Clothing Company, Robstown Manufacturing Company, A/K/A Greenville Pant Manufacturing Company, Robstown, Texas; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Notice of Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on June 7, 1995, applicable to all workers at the subject firm. The amended notice will soon be published in the **Federal Register**.

New information received from the State Agency show that some of the workers at Haggar Clothing Company had their unemployment insurance (UI) taxes paid to Greenville Pant Manufacturing Company.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to NAFTA–00444 is hereby issued as follows:

"All workers of workers of Haggar Clothing Company, Robstown Manufacturing Company, a/k/a Greenville Pant Manufacturing Company, located in Robstown, Texas who became totally or partially separated from employment on or after April 27, 1994 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974."

Signed at Washington, DC, this 20th day of June 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–16061 Filed 6–28–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,850]

Haggar Clothing Co., Robstown Manufacturing Co., a/k/a Greenville Pant Manufacturing Co., Robstown, TX; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on May 11, 1995, applicable to all workers of the subject firm. The notice was published in the **Federal Register** on May 25, 1995 (60 FR 27793).

New information received from the company show that some of the workers at Haggar Clothing Company had their unemployment insurance (UI) taxes paid to Greenville Pant Manufacturing Company.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA–W–30,850 is hereby issued as follows:

"All workers of Haggar Clothing Company/ Robstown Manufacturing Company, a/k/a Greenville Pant Manufacturing Company, Robstown, Texas who became totally or partially separated from employment on or after March 16, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 20th day of June 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–16059 Filed 6–28–95; 8:45 am]

BILLING CODE 4510–30–M

[Poughkeepsie, New York, TA–W–29,743 Wappingers Falls, New York, TA–W–29,743A Kingston, New York, TA–W–29,743B Somers, New York, TA–W–29,743C Hopewell Junction, New York, TA–W–29,743D White Plains, New York, TA–W–29,743E]

IBM Corporation; Enterprise Systems Large-Scale Computing Systems; Division and its Successors; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

On March 23, 1995, the Department of Labor issued a Notice of Revised Determination on Reconsideration, applicable to all workers at IBM Corporation, Poughkeepsie, New York. The notice was published in the **Federal Register** on April 5, 1995 (60 FR 17371).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. New information received from the State shows that in addition to the Poughkeepsie location, the IBM Large-Scale Computing Division (LSCD) has workers located in Wappingers Falls, Kingston, Somers, Hopewell Junction, and White Plains, New York. New information shows that originally known as Enterprise Systems, since September 16, 1993, the Mainframe Division has been known as the LSCD. On January 9, 1995, the LSCD was split into two units, the System 390 and the Power Parallel Division.

Further information shows that the workers at these IBM facilities are providing administrative and support services, including systems programming, to IBM's Enterprise Systems and its successors located in various cities within Dutchess, Westchester, and Ulster Counties of New York.

Other findings show that there are other IBM facilities in Poughkeepsie, New York whose employees would not be covered under TA–W–29,743.

The intent of the Department's certification is to include all workers of IBM Corporation, the Enterprise Systems, Large-Scale Computing Systems Division, and its successors who are adversely affected by imports.

The amended notice applicable to TA–W–29,743 is hereby issued as follows:

"All workers of IBM Corporation, Enterprise Systems, Large-Scale Computing Systems Division, and its successors, located in Poughkeepsie, Wappingers Falls, Kingston, Somers, Hopewell Junction, and White Plains, New York who became totally or partially separated from employment on or after March 23, 1993, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 16th day of June 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–16058 Filed 6–28–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,752]

IBM Corporation, East Fishkill Facility, Hopewell, New York; Notice of Revised Determination on Reopening

On June 15, 1995, the Department, on its own motion, reopened its investigation for the former workers of the subject firm engaged in the production of thermal conduction modules and component parts, other than chips.

On August 10, 1994, the Department of Labor issued a Notice of Determination Regarding Eligibility to Apply for Worker Adjustment Assistance applicable to all workers of IBM Corporation, East Fishkill Facility, Hopewell Junction, New York. The workers of the subject firm engaged in the production of chips were certified eligible to apply for adjustment assistance under the Trade Act. The workers of the subject firm engaged in the production of thermal conduction modules were denied because the criterion (3) of the Trade Act Requirements had not been met. The notice was published in the **Federal Register** on August 25, 1994 (59 FR 43867).

On March 23, 1995, the Department issued a revised determination for workers of IBM's Large Scale Computing Division (LSCD) in Poughkeepsie, New York, finding workers eligible to apply for worker adjustment assistance under petition TA–W–29,743. The notice was published in the **Federal Register** on April 5, 1995 (60 FR 17371).

New findings show that the thermal conduction modules and component parts, other than chips, produced by the workers of IBM Corporation, East Fishkill Facility, Hopewell Junction, New York supported the production at IBM's LSCD operations.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that increased imports of articles like or directly competitive with thermal conduction modules and component parts produced at IBM Corporation, East Fishkill Facility, Hopewell Junction, New York contributed importantly to the decline in sales or production and to the total or partial separation of workers of the subject firm. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

"All workers of IBM Corporation, East Fishkill Facility, Hopewell Junction, New York, engaged in employment related to the production of chips, thermal conduction modules and component parts produced at IBM Corporation, East Fishkill Facility, Hopewell Junction, New York who became totally or partially separated from employment on or after April 8, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 16th day of June 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–16055 Filed 6–28–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,762]

Kirschner Medical Corporation a/k/a Biomet, Marlow, Oklahoma; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on June 28, 1994, applicable to all workers of Kirschner Medical Corporation, located in Marlow, Oklahoma, Texas. The notice was published in the **Federal Register** on July 19, 1994 (59 FR 36793).

New information received from the company show that some of the workers at Kirschner Medical Corporation had their unemployment insurance (UI) taxes paid to Biomet, the parent company.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA–W–29,762 is hereby issued as follows:

"All workers of Kirschner Medical Corporation, a/k/a Biomet, Marlow, Oklahoma engaged in cutting and sewing related to the production of orthopedic support products who became totally or partially separated from employment on or after April 4, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 20th day of June 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–16056 Filed 6–28–95; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 10, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 10, 1995.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 19th day of June, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
NETP Inc. (Wkrs)	Niagara Falls, NY	06/19/95	05/30/95	31,128	Wire Harnesses.
Library Bureau, Inc. (IUE)	Herkimer, NY	06/19/95	06/01/95	31,129	Library Shelves & Office Furniture.
Peerless, Co. (IAM)	Tualatin, OR	06/19/95	05/17/95	31,130	Logging Equipment.
Karen Fashions, Inc. (ILGWU)	Secaucus, NJ	06/19/95	05/31/95	31,131	Women's Wool Coats.
Chicago Laser Systems (Wkrs)	Des Plaines, IL	06/19/95	05/30/95	31,132	Lasers.
Sarne Corp. (LGPN)	Edison, NJ	06/19/95	06/01/95	31,133	Handbag & Accessories.
Farah Manufacturing Co. (Wkrs)	El Paso, TX	06/19/95	06/05/95	31,134	Men's & Boys' Pants, Shorts, Jackets.
Greif Bros. Corporation (Wkrs)	Amhurst, NY	06/19/95	05/08/95	31,135	Steel & Fibre Drums, Cartons.
DTH Enterprise, Inc. (Wkrs)	Roswell, NM	06/19/95	05/25/95	31,136	Wiring Harnesses.
Carter-Wallace, Inc. (OCAW)	East Windsor, NJ	06/19/95	06/09/95	31,137	Vitro Diagnostic Devices.
Layton Sportswear (Co.)	Layton, UT	06/19/95	06/02/95	31,138	Men & Boy's Sweat Shirts, Sweat Pants.
Macclenny Products, Inc. (ACTWU)	Macclenny, FL	06/19/95	06/03/95	31,139	zMen's Suits/Sport Coats, Slacks.
Western Gas Resources (Wrks)	Gillette, WY	06/19/95	06/06/95	31,140	Natural Gas.
Colorado Gas Compression, Inc. (Wkrs).	Shawnee, OK	06/19/95	05/31/95	31,141	Propane & Other Gases.
Downhole Pressure Service, Inc. (Co.)	Casper, WY	06/19/95	06/07/95	31,142	Gas Pipeline Services.
Levi Strauss & Co. (Wkrs)	El Paso, TX	06/19/95	05/23/95	31,143	Print Garment Care Labels.
Fruit of the Loom (Wkrs)	Jamestown, KY	06/19/95	05/30/95	31,144	Hooded Sweatshirts.
Moore Business Forms & Systems Div. (Co.).	Buckhannon, WV	06/19/95	02/20/95	31,145	Business Forms.
Olivetti North America (Wkrs)	Liberty Lake, WA	06/19/95	06/06/95	31,146	Computer Systems Software.
Summit Station Manufacturing, Inc. (Wkrs).	Pine Grove, PA	06/19/95	06/06/95	31,147	Men/Women's Sports Outwear.
Delta Drilling Co. (Co.)	Tyler, TX	06/19/95	06/06/95	31,148	Crude Oil & Natural Gas.
SCT Yarns, Inc. (Co.)	Jefferson, GA	06/19/95	06/06/95	31,149	Textile Yarn.
SCT Yarns, Inc. (Co.)	Piedmont, AL	06/19/95	06/06/95	31,150	Textile Yarns.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Caffall Brothers, Forest Products (Wkrs).	Oregon City, OR	06/19/95	06/13/95	31,151	Softwood Lumber.
Lake Manufacturing (Co.)	Lake, MS	06/19/95	06/13/95	31,152	Ladies' & Children's Turtle Neck Shirts.

[FR Doc. 95–16057 Filed 6–28–95; 8:45 am]
BILLING CODE 4510–30–M

Occupational Safety and Health Administration

[Docket No. NRTL–4–93]

Underwriters Laboratories Incorporated

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTIONS: Notice of renewal of recognition as a Nationally Recognized Testing Laboratory.

SUMMARY: This notice announces the Agency's final decision on Underwriters Laboratories Incorporated for renewal of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

FOR FURTHER INFORMATION CONTACT: NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N3653, Washington, D.C. 20210

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

Notice is hereby given that Underwriters Laboratories Incorporated (UL) which made application pursuant to 29 CFR 1910.7 for renewal of its recognition as a Nationally Recognized Testing Laboratory, has had its recognition renewed as an NRTL for the equipment or material listed below.

The addresses of the laboratories covered by this application are:

333 Pfingsten Road, Northbrook, Illinois 60062
1285 Walt Whitman Road, Melville, Long Island, New York 11747
1655 Scott Boulevard, Santa Clara, California 95050
12 Laboratory Drive, P.O. Box 13995 Research Triangle Park, North Carolina 27709
2600 N. W. Lake Road, Camas, Washington 98607
UL International Limited, Veristrong Industrial Centre, Block B, 14th Floor, 34 Au Pui Wan Street, Fo Tan Sha Tin, New Territories, Hong Kong
UL International Services, Ltd. 3rd Floor, No. 35 Chung Yang South Road, Section 2, Pei Tou 11237, Taipei, Taiwan

Background

When OSHA published its standard for NRTLs at 29 CFR 1910.7, it temporarily recognized Underwriters Laboratories Incorporated (UL) and Factory Mutual Research Corporation (FMRC). Both organizations had already been referenced by the Occupational Safety and Health Administration (OSHA) as acceptable organizations for testing or certifying certain workplace equipment and materials. Appendix A of section 1910.7 stated, in part, that Underwriters Laboratories Incorporated was recognized temporarily as a nationally recognized testing laboratory by the Assistant Secretary for a five-year period from June 13, 1988 through June 13, 1993. At the end of this five-year period UL was required to apply for renewal of that OSHA recognition utilizing certain specified procedures. UL applied for renewal of its recognition as an NRTL within the specified time frame (application dated September 30, 1992) and retained temporary recognition pending OSHA's final decision in this renewal process. The final on-site review reports, consisting of on-site evaluations of UL testing facilities, including administrative and technical practices, located in Northbrook, IL; Melville, L.I., NY; Research Triangle Park, NC; Santa Clara, CA; Taipei, Taiwan (2 sites); Hong Kong; and Tokyo, Japan (not UL owned) (Exhibit 2B, dated September 14, 1994), and in Camas, WA (Exhibit 2C, dated March 10, 1995), and the OSHA staff recommendation, were subsequently forwarded to the Assistant Secretary for a preliminary finding on the application. A notice of UL's application for renewal together with a positive preliminary finding was published in the **Federal Register** on March 29, 1995 (60 FR 16171). Interested parties were invited to submit comments.

There was one response to the **Federal Register** notice of the UL application and preliminary finding (Docket No. NRTL–4–93). The response, from UL (Ex. 9–1), suggested that OSHA did not fully and correctly identify the scope of UL's recognition.

UL has a program for testing and evaluation that involves independent organizations that supply data to it. UL tests products for, and accepts test data from, independent, internationally recognized laboratories pursuant to the terms of various memoranda of understanding or cooperative agreements. The laboratory developing the test data conducts these tests according to the appropriate nationally recognized standards. The program requirements include the assessment of the laboratory's quality program, physical resources, equipment, personnel, independence, and data recording procedures for conformance with international and UL criteria. Each laboratory is subject to a formal initial assessment to determine its capability and qualifications to perform testing on a category-by-category, or standard-by-standard basis. Each laboratory facility is reassessed on a regular basis to verify continued conformance with program criteria.

This program must be consistent with the requirements of the second procedure titled "Acceptance of Testing Data From Independent Organizations, Other Than NRTLs", as detailed in the March 9, 1995 **Federal Register** document, "Nationally Recognized Testing Laboratories; Clarification of the Types of Programs and Procedures" (60 FR 12980).

UL also states that it may accept components tested at other laboratories after review of the test data and other relevant documentation and any additional evaluation necessary. The evaluation includes assurance that the other laboratory's performance meets the level that UL would provide had it performed the service.

The Occupational Safety and Health Administration has evaluated the entire record in relation to the regulations set out in 29 CFR 1910.7 and makes the following findings:

Capability

- Section 1910.7(b)(1) states that for each specified item of equipment or material to be listed, labeled or

accepted, the laboratory must have the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform appropriate testing.

The on-site review reports indicate that UL has facilities, personnel, and testing equipment which are appropriate for the areas of recognition it seeks. The various laboratories have available all of the general test equipment to perform the testing required by the standards. If any additional test equipment is necessary, it will be purchased or leased as required.

The various UL facilities have adequate equipment calibration procedures. Typical departments maintain laboratory equipment logs which include information relative to repair, routine maintenance, and calibration.

Published standards, laboratory procedural guides, laboratory operations manuals, engineering department manuals, and test data sheets collectively specify records that are to be maintained for an investigation. Laboratory procedural guides detail the procedures to be followed for given tests. Details such as specific equipment (and alternates) which UL uses to conduct the test, and instructions including steps to be used in conducting the tests, are detailed within these documents.

Where these procedural guides have not yet been developed, technicians are guided by the UL standard which illustrates the test, their knowledge of tests required for the product, data sheets (which contain a "method" section and lay out basic procedures), and by consultation with the project handler.

No single quality assurance manual exists as such. The size and complexity of UL causes the quality assurance system to be dictated by the corporate laboratory operations manuals and the engineering department manuals. The engineering department manuals provide policies, procedures, definitions, and responsibilities encompassing a wide variety of issues.

The laboratory operations manuals identify areas of responsibilities within the laboratory and govern the laboratory quality system. They identify policies and describe the procedures and controls used by engineering and laboratory staff in performing tests and reporting of test results. They also address areas such as the identification of applicable tests, maintenance and calibration of equipment, procedures and practices for conducting tests, personnel training and qualification, data recording, reporting and review, maintenance of records, feedback and corrective action procedures, and internal audit programs. Such audits are carried out at random and are unannounced. Action is taken to correct performance that is below acceptable levels. The laboratory operations manuals specify the procedures associated with corrective actions, which are initiated immediately upon identification of the deficient conditions.

Follow-Up and Field Inspection Procedures

Section 1910.7(b)(2) requires that the NRTL provide certain follow-up procedures, to the extent necessary, for the particular equipment or material to be listed, labeled, or accepted. These include implementation of control procedures for identifying the listed or labeled equipment or materials, inspecting the production run at factories to assure conformance with test standards, and conducting field inspections to monitor and assure the proper use of the label.

A written follow-up program exists. Field representatives make periodic unannounced examinations or tests of products at the factory and may, from time to time, select samples from the factory, the open market, or elsewhere to be sent to a UL testing station for examination or test to determine compliance with UL's requirements. The determination of the frequency of audits is documented and depends on which of UL's follow-up service is implemented. In any event, a minimum of four unannounced visits per year is required.

The base document for follow-up inspections is the follow-up service procedure. This document includes information regarding the use of the UL mark on the product and the conduct of follow-up service.

In situations involving the establishment of follow-up services for a new manufacturer or for the addition of a new product category for an existing manufacturer, a so-called initial production inspection may be required. This inspection is intended to assure that each manufacturer of a certified product is producing the product in accordance with the requirements of a follow-up service procedure commencing with the very first production run. Under this program, the manufacturer may not ship products bearing a UL mark until the initial production inspection has been successfully completed, and products actually being produced are found to comply with the requirements of the follow-up service procedure.

Depending upon the type of service, UL marks are either obtained through UL, or manufacturers are provided with a control number for all their products under a particular product category and purchase the UL mark directly from an authorized printer or supplier once UL has evaluated the original label design and authorizes the format of the mark. Maintaining control of these marks, as well as varying the issue or serial numbers as they are printed, enables UL to monitor and track closely the usage of its mark, to whom they have been released, and the approximate date of their use.

Independence

Section 1910.7(b)(3) requires that the NRTL be completely independent of employers subject to the tested equipment requirements, and of any manufacturers or vendors of equipment or materials being tested for these purposes.

OSHA believes, based upon an examination of the application, that Underwriters Laboratories Inc. is independent of employers subject to the tested equipment requirements and of any manufacturers or vendors of equipment or materials being tested for these purposes, within the meaning of 29 CFR 1910.7(b)(3).

Creditable Reports/Complaint Handling

Section 1910.7(b)(4) provides that an OSHA recognized NRTL must maintain effective procedures for producing creditable findings and reports that are objective and without bias, as well as for handling complaints and disputes under a fair and reasonable system.

UL's application as well as the on-site review reports indicate that UL does maintain effective procedures for producing creditable findings and reports that are objective.

Published standards, laboratory procedural guides, laboratory operations manuals, engineering department manuals, and test data sheets collectively specify records that are to be maintained for an investigation.

Certification reports contain the following information: name and address of the applicant; name and address of the testing location if different from the laboratory; a unique identifier along with an issue date and file number for the report; a detailed description of the product including drawings and photographs; specific conditions for use of the product when needed; construction and testing narratives which describe how the

product complies with the standard; a description of the testing performed and the results of the tests; a statement of measurement uncertainty when appropriate; and an explanation of rationale for any deviations, additions or exclusions from the standard.

Preparation of the certification report preparation is the responsibility of the project engineer. A complete review is conducted by a second engineer. Signatures of the responsible engineer and reviewer, along with other staff involved in the report preparation, appear in the report. Signatures of laboratory staff involved in the testing and data collection appear on the data sheets.

As to complaint handling, if clients disagree with a decision relating to engineering or inspection they can present and discuss their views with the involved engineer, field representative or supervisor in an effort to resolve the disagreement. If the matter cannot be satisfactorily resolved at that level, they are free to appeal up through the managerial chain to the office of the president of UL.

Review procedures are also in place to address complaints from end users and others, and are described in UL's field report program.

Test Standards

Section 1910.7 requires that an NRTL use "appropriate test standards", which are defined, in part, to include any standard that is currently designated as an American National Standards Institute (ANSI) safety designated product standard or an American Society for Testing and Materials (ASTM) test standard used for evaluation of products or materials. As to the non-ANSI, UL test standards for which UL has applied to test products to, OSHA previously had examined the status of the Underwriters Laboratories Inc. Standards for Safety and, in particular, the method of their development, revision and implementation, and had determined that they are appropriate test standards under the criteria described in 29 CFR 1910.7(c) (1), (2), and (3). That is, these standards specify the safety requirements for specific equipment or classes of equipment and are recognized in the United States as safety standards providing adequate levels of safety; they are compatible and remain current with periodic revisions of applicable national codes and installation standards; and they are developed by a standards developing organization under a method providing for input and consideration of views of industry groups, experts, users, consumers, governmental authorities, and others having broad experience in the safety fields involved.

Programs

As discussed in the **Federal Register** notice (60 FR 16171), UL operates a variety of services and organizational programs. The following programs were previously examined and found to be acceptable to OSHA on the basis of the procedures and specific criteria as detailed in 60 FR 12980, March 9, 1995, "Nationally Recognized Testing Laboratories; Clarification of the Types of Programs and Procedures" (Exhibit 8), describing the types of programs and procedures that NRTLs may engage in under the OSHA/NRTL program.

Basic Program—This program is one in which UL performs all of the necessary product testing and evaluation in-house prior to issuing a certification.

Witnessed Test Data Program—This program involves the use of UL Technical Personnel at a manufacturer's test site to witness testing for products that will be listed by UL. The manufacturer's facilities used for this purpose are qualified by the UL engineering department. The follow-up program is the normal one for that product and manufacturer (Ex. 2B, Santa Clara Report, Section 11).

Client Agent Program (CAP)—This program qualifies intermediaries that interface between UL and the client. This usually involves overseas clients utilizing US based agents. This program qualifies the intermediaries in administrative areas, technical areas, or in a combination of both. An intermediary that is qualified in the technical areas can perform testing on behalf of the client. The Client Agent Program does not prohibit an agent from providing technical advice on modifications to the product in order to meet the requirements of the standard. However, the CAP program is not intended to qualify agents in providing technical advice to clients. Administratively qualified intermediaries provide documentation, drawing, and translation support for the client.

China National Import & Export Commodities Inspection Corporation (CCIC) Inspection Program—The CCIC is a Chinese government organization that is retained by the UL Inspection Services to perform follow-up inspections in China. This inspection program is under the oversight control of UL personnel through the Hong Kong facility, and the International Inspection Services Department (Ex. 2b, Melville Report, Sections 8 & 13).

National Certification Body (NCB)—Underwriters Laboratories is one of five NRTLs that are participants in the International Electrotechnical Commission (IEC) Certification Body (CB) Scheme. This is an international program that allows laboratories accredited as Certified Bodies to exchange test reports with each other during the process of certifying products. The IEC has allowed NRTLs to participate in this Scheme because they have been accredited by OSHA. The IEC requires governmental oversight for participants.

Client Test Data Program (CTDP)—This program is the most extensively used and the basic program that involves client participation. This program involves the systematic qualification of the client by reviewing their laboratory, environmental controls, testing instrumentation, electrical power system, the client personnel involved in the program, the access to the latest UL standards, mutual testing, confidence building and the correlation of the testing packages with UL test results. Specific test information is required to be submitted and UL performs verification testing at intervals not known by the participant. There is no change in surveillance conducted by UL's follow-up services. There is an additional review conducted by UL engineering personnel that is conducted at least yearly to assess the participant's continued capability to be in the program. (See Ex. 2B, Research Triangle Park and Santa Clara Reports, Section 11).

Compliance Management and Product Assurance Program (COMPASS)—This program is a voluntary process that allows qualified manufacturers that have successfully utilized the CTDP Program to perform limited self evaluation and testing within specified categories.

For minor changes to already listed products, the client reviews the changes and performs any needed tests, and continues to use the listing mark. The client submits the documentation to UL for review. If the product does not comply, the manufacturer is required to remove the UL marks. This procedure for handling minor changes was designed to handle the real life situations, such as a purchasing department electing to purchase an alternate switch. Rather than wait for a variation notice to be issued by UL's follow-up services representative, this path serves to keep the client and UL in close contact between inspections. Minor changes are defined as modifications which involve the use of an alternate or optional component in a previously accepted product. An example is the substitution of a comparable switch from a different manufacturer.

For major changes or new products the client must submit a sample and all documentation to UL for review. Depending upon the situation, UL may determine that the nature of the change and experience with the client and testing associated are such that additional verification testing is not necessary. In this situation, UL will authorize the use of the listing mark.

UL may determine that immediate verification testing is not needed. In this situation, the authorization to use the Listing mark is given but verification testing is conducted later. In all cases, verification testing is conducted for new products. In all situations where verification testing is needed, if correlation does not exist, the listing marks must be removed.

The follow-up program and engineering department audits are the same as with CTDP, and an additional audit of the client's quality system is performed. Both CDTP and COMPASS involve UL making a determination of the compliance of the product with the standard at some point in the process. (See Ex. 2B, Research Triangle Park and Santa Clara Reports, Section 11).

Total Certification Program (TCP)—This program parallels the manufacturer and UL in a combined evaluation of products. This is in contrast to the sequential process that is used under the COMPASS program where the manufacturer tests and evaluates and then submits the information to UL.

The program involves the testing and evaluation of a product by the manufacturer, and also the manufacturer's determination of compliance with a standard. The manufacturer is subject to continuous involvement with UL throughout the design and production of the product. UL conducts regular audits throughout the process including verification testing. Similar to the COMPASS program, the manufacturer must qualify for this program by demonstrating the ability to test and evaluate a product and it must have a viable quality assurance program, in addition to having the personnel and equipment to provide creditable results. In all cases, it is UL who authorizes the use of the listing mark. The manufacturer is audited four times a year by the UL engineering staff, and twice a year the manufacturer's quality assurance program is reviewed. Follow-up inspectors continue to conduct follow-ups.

Final Decision and Order

Based upon a preponderance of the evidence resulting from an examination of the complete application, the supporting documentation, and the OSHA staff finding including the on-site reports, OSHA finds that Underwriters Laboratories, Inc. has met the requirements of 29 CFR 1910.7 to have its recognition renewed by OSHA as a Nationally Recognized Testing Laboratory to test and certify certain equipment or materials.

Pursuant to the authority in 29 CFR 1910.7, Underwriters Laboratories', Inc. recognition as a Nationally Recognized Testing Laboratory is hereby renewed subject to the conditions listed below. This recognition is limited to equipment or materials which, under 29 CFR part 1910, require testing, listing, labeling, approval, acceptance, or certification, by a Nationally Recognized Testing Laboratory. This recognition is limited to the use of the following test standards for the testing and certification of equipment or materials included within the scope of these standards.

UL has stated that all the standards in these categories are used to test equipment or materials which may be used in environments under OSHA's jurisdiction. These standards are all considered appropriate test standards under 29 CFR 1910.7(c):

ANSI Z21.1b—Household Cooking Gas Appliances
ANSI Z21.5.1—Gas Clothes Dryers—Type 1
ANSI Z21.5.2—Gas Clothes Dryers—Type 2
ANSI Z21.10.1—Gas Water Heaters—Automatic Storage Type Water Heaters with Inputs of 70,000 Btu Per Hour or Less
ANSI Z21.10.2—Water Heaters—Sidearm Type Water Heaters
ANSI Z21.10.3—Water Heaters—Circulating Tank, Instantaneous and Large Automatic Storage Type Water Heaters
ANSI Z21.11.1—Gas-Fired Room Heaters—Vented Room Heaters
ANSI Z21.11.2—Gas-Fired Room Heaters—Unvented Room Heaters
ANSI Z21.12—Listing Requirements for Draft Hoods
ANSI Z21.13—Gas-Fired Low-Pressure Steam and Hot Water Heating Boilers
ANSI Z21.14—Approval Requirements for Industrial Gas Boilers
ANSI Z21.15—Manually Operated Gas Valves
ANSI Z21.16—Gas Unit Heaters
ANSI Z21.17—Domestic Gas Conversion Burners
ANSI Z21.18—Gas Appliance Pressure Regulators
ANSI Z21.19—Refrigerators Using Gas Fuel
ANSI Z21.20—Automatic Gas Ignition Systems and Components
ANSI Z21.21—Automatic Valves for Gas Appliances
ANSI Z21.22—Relief Valves and Automatic Gas Shutoff Devices for Hot Water Supply System
ANSI Z21.23—Gas Appliance Thermostats
ANSI Z21.29—Listing Requirements for Furnace Temperature Limit Controls and Fan Controls
ANSI Z21.35—Gas Filters on Appliances
ANSI Z21.37—Approval Requirements for Dual Oven Type Combination Gas Ranges
ANSI Z21.40.1—Gas-Fired Absorption Summer Air Conditioning Appliances
ANSI Z21.41—Quick-Disconnect Devices for Use with Gas Fuel
ANSI Z21.42—Gas-Fired Illuminating Appliances
ANSI Z21.44—Gas-Fired Gravity and Fan Type Direct Vent Wall Furnaces
ANSI Z21.45—Flexible Connectors of Other Than All-Metal Construction for Gas Appliances
ANSI Z21.47—Gas-Fired Gravity and Forced Air Central Furnaces
ANSI Z21.48—Gas-Fired Gravity and Fan Type Floor Furnaces
ANSI Z21.49—Gas-Fired Gravity and Fan Type Vented Wall Furnaces
ANSI Z21.53—Gas-Fired Heavy Duty Forced Air Heaters
ANSI Z21.54—Gas Hose Connectors for Portable Outdoor Gas-Fired Appliances
ANSI Z21.55—Gas-Fired Sauna Heaters
ANSI Z21.56—Gas-Fired Pool Heaters
ANSI Z21.58—Outdoor Cooking Gas Appliances
ANSI Z21.61—Gas-Fired Toilets
ANSI Z21.64—Direct Vent Central Furnaces
ANSI Z21.66—Automatic Vent Damper Devices for Use With Gas-Fired Appliances
ANSI Z21.69—Connectors for Movable Gas Appliances
ANSI Z21.74—Portable Refrigerators for Use With HD–5 Propane Gas
ANSI Z21.76—Gas-Fired Unvented Catalytic Room Heaters for Use With Liquefied Petroleum (LP) Gases
ANSI Z83.3—Gas Utilization Equipment in Large Boilers
ANSI Z83.4—Direct Gas-Fired Make-Up Air Heaters
ANSI Z83.6—Gas-Fired Infrared Heaters
ANSI Z83.8—Gas Unit Heaters
ANSI Z83.9—Gas-Fired Duct Furnaces
ANSI Z83.10—Separated Combustion System Central Furnaces
ANSI Z83.11—Gas Food Service Equipment—Ranges and Unit Broilers
ANSI Z83.12—Gas Food Service Equipment—Baking and Roasting Ovens
ANSI Z83.13—Gas Food Service Equipment—Deep Fat Fryers
ANSI Z83.14—Gas Food Service Equipment—Counter Appliances
ANSI Z83.15—Gas Food Service Equipment—Kettles, Steam Cookers, and Steam Generators
ANSI Z83.16—Gas-Fired Unvented Commercial and Industrial Heaters
ANSI Z83.17—Direct Gas Fired Door Heaters
ANSI Z83.18—Direct Gas Fired Industrial Air Heaters
ANSI/UL 1—Flexible Metal Conduit
ANSI/UL 3—Flexible Nonmetallic Tubing for Electric Wiring

ANSI/UL 4—Armored Cable
ANSI/UL 5—Surface Metal Raceways and Fittings
UL 6—Rigid Metal Conduit
ANSI/UL 8—Foam Fire Extinguishers
ANSI/UL 9—Fire Tests of Window Assemblies
ANSI/UL 10A—Tin-Clad Fire Doors
ANSI/UL 10B—Fire Tests of Door Assemblies
UL 13—Power-Limited Circuit Cables
ANSI/UL 14B—Sliding Hardware for Standard, Horizontally Mounted Tin-Clad Fire Doors
ANSI/UL 14C—Swinging Hardware for Standard Tin-Clad Fire Doors Mounted Singly or In Pairs
ANSI/UL 17—Vent or Chimney Connector Dampers for Oil-Fired Appliances
ANSI/UL 20—General-Use Snap Switches
ANSI/UL 21—LP-Gas Hose
ANSI/UL 22—Amusement and Gaming Machines
ANSI/UL 25—Meters for Flammable and Combustible Liquids and LP-Gas
ANSI/UL 30—Metal Safety Cans
ANSI/UL 33—Heat Responsive Links for Fire-Protection Service
UL 38—Manually Actuated Signalling Boxes for Use With Fire Protective Signalling Systems
ANSI/UL 44—Rubber-Insulated Wires and Cables
ANSI/UL 45—Portable Electric Tools
ANSI/UL 48—Electric Signs
ANSI/UL 50—Enclosures for Electrical Equipment
ANSI/UL 51—Power-Operated Pumps for Anhydrous Ammonia and LP-Gas
ANSI/UL 58—Steel Underground Tanks for Flammable and Combustible Liquids
ANSI/UL 62—Flexible Cord and Fixture Wire
ANSI/UL 65—Electric Wired Cabinets
ANSI/UL 67—Electric Panelboards
ANSI/UL 69—Electric Fence Controllers
ANSI/UL 73—Electric-Motor-Operated Appliances
ANSI/UL 79—Power-Operated Pumps for Petroleum Product Dispensing Systems
ANSI/UL 80—Steel Inside Tanks for Oil Burner Fuel
ANSI/UL 82—Electric Gardening Appliances
ANSI/UL 83—Thermoplastic-Insulated Wires and Cables
ANSI/UL 87—Power-Operated Dispensing Devices for Petroleum Products
ANSI/UL 92—Fire Extinguisher and Booster Hose
ANSI/UL 94—Tests for Flammability of Plastic Materials for Parts in Devices and Appliances
ANSI/UL 96—Lightning Protection Components
UL 98—Enclosed and Dead-Front Switches
UL 104—Elevator Door Locking Devices and Contacts
UL 109—Tube Fittings for Flammable and Combustible Fluids, Refrigeration Service, and Marine Use
ANSI/UL 122—Photographic Equipment
ANSI/UL 123—Oxy-Fuel Gas Torches
UL 125—Valves for Anhydrous Ammonia and LP-Gas (Other Than Safety Relief)
ANSI/UL 130—Electric Heating Pads
UL 132—Safety Relief Valves for Anhydrous Ammonia and LP-Gas
UL 141—Garment Finishing Appliances
ANSI/UL 142—Steel Aboveground Tanks for Flammable and Combustible Liquids
ANSI/UL 144—Pressure Regulating Valves for LP-Gas
ANSI/UL 147—LP- and MPS-Gas Torches
UL 147A—Nonrefillable (Disposable) Type Fuel Gas Cylinder Assemblies
UL 147B—Nonrefillable (Disposable) Type Metal Container Assemblies for Butane
ANSI/UL 150—Antenna Rotators
ANSI/UL 153—Portable Electric Lamps
ANSI/UL 154—Carbon Dioxide Fire Extinguishers
UL 155—Tests for Fire Resistance of Vault and File Room Doors
UL 162—Foam Equipment and Liquid Concentrates
ANSI/UL 174—Household Electric Storage-Tank Water Heaters
ANSI/UL 180—Liquid-Level Indicating Gauges and Tank-Filling Signals for Petroleum Products
UL 181—Factory-Made Air Ducts and Air Connectors
ANSI/UL 183—Manufactures Wiring Systems
ANSI/UL 187—X-Ray Equipment
ANSI/UL 193—Alarm Valves for Fire-Protection Service
UL 194—Gasketed Joints for Ductile-Iron Pipe and Fittings for Fire Protection Service
ANSI/UL 197—Commercial Electric Cooking Appliances
ANSI/UL 198B—Class H Fuses
ANSI/UL 198C—High-Interrupting-Capacity Fuses, Current Limiting Type
ANSI/UL 198D—High-Interrupting-Capacity Class K Fuses
ANSI/UL 198E—Class R Fuses
ANSI/UL 198F—Plug Fuses
ANSI/UL 198G—Fuse for Supplementary Overcurrent Protection
ANSI/UL 198H—Class T Fuses
ANSI/UL 198L—DC Fuses for Industrial Use
ANSI/UL 199—Automatic Sprinklers for Fire-Protection Service
ANSI/UL 203—Pipe Hanger Equipment for Fire-Protection Service
ANSI/UL 207—Nonelectrical Refrigerant Containing Components and Accessories
ANSI/UL 209—Cellular Metal Floor Electrical Raceways and Fittings
UL 213—Rubber Gasketed Fittings for Fire-Protection Service
ANSI/UL 217—Single and Multiple Station Smoke Detectors
ANSI/UL 224—Extruded Insulating Tubing
UL 228—Door Closers-Holders, and Integral Smoke Detectors
ANSI/UL 244A—Solid-State Controls for Appliances
ANSI/UL 250—Household Refrigerators and Freezers
ANSI/UL 252—Compressed Gas Regulators
UL 260—Dry Pipe and Deluge Valves for Fire-Protection Service
UL 262—Gate Valves for Fire-Protection Service
ANSI/UL 268—Smoke Detectors for Fire Protective Signalling Systems
ANSI/UL 268A—Smoke Detectors for Duct Application
ANSI/UL 291—Automated Teller Systems
ANSI/UL 294—Access Control System Units
ANSI/UL 296—Oil Burners
UL 296A—Waste Oil-Burning Air-Heating Appliances
UL 297—Portable Medium-Pressure Acetylene Generators
ANSI/UL 298—Portable Electric Hand Lamps
ANSI/UL 299—Dry Chemical Fire Extinguishers
ANSI/UL 303—Refrigeration and Air-Conditioning Condensing and Compressor Units
UL 305—Panic Hardware
ANSI/UL 310—Electrical Quick-Connect Terminals
ANSI/UL 312—Check Valves for Fire-Protection Service
ANSI/UL 325—Door, Drapery, Gate, Louver, and Window Operators and Systems
UL 330—Gasoline Hose
ANSI/UL 331—Strainers for Flammable Fluids and Anhydrous Ammonia
ANSI/UL 343—Pumps of Oil-Burning Appliances
ANSI/UL 346—Waterflow Indicators for Fire Protective Signaling Systems
ANSI/UL 347—High-Voltage Industrial Control Equipment
ANSI/UL 351—Electrical Rosettes
ANSI/UL 353—Limit Controls
ANSI/UL 355—Electric Cord Reels
ANSI/UL 360—Liquid Tight Flexible Steel Conduit
ANSI/UL 363—Knife Switches
ANSI/UL 365—Police Station Connected Burglar Alarm Units and Systems
ANSI/UL 372—Primary Safety Controls for Gas- and Oil-Fired Appliances
UL 378—Draft Equipment
ANSI/UL 385—Play Pipes for Water Supply Testing in Fire Protection Service
ANSI/UL 393—Indicating Pressure Gauges for Fire Protection Service
ANSI/UL 399—Drinking-Water Coolers
UL 404—Gauges, Indicating Pressure, for Compressed Gas Service
UL 407—Manifolds for Compressed Gases
UL 408—Stationary Medium Pressure Acetylene Generators
UL 409—Stationary Low-Pressure Acetylene Generators
ANSI/UL 412—Refrigeration Unit Coolers
ANSI/UL 414—Electrical Meter Sockets
UL 416—Refrigerated Medical Equipment
ANSI/UL 427—Refrigerating Units
ANSI/UL 429—Electrically Operated Valves
ANSI/UL 430—Electric Waste Disposers
ANSI/UL 443—Steel Auxiliary Tanks for Oil-Burner Fuel
UL 444—Communications Cables
ANSI/UL 448—Pumps for Fire Protection Service
ANSI/UL 452—Antenna Discharge Units
ANSI/UL 464—Audible Signal Appliances
ANSI/UL 465—Central Cooling Air Conditioners
ANSI/UL 466—Electric Scales
ANSI/UL 467—Electrical Grounding and Bonding Equipment
ANSI/UL 469—Musical Instruments and Accessories
ANSI/UL 471—Commercial Refrigerators and Freezers
ANSI/UL 474—Dehumidifiers
ANSI/UL 482—Portable Sun/Heat Lamps
ANSI/UL 484—Room Air Conditioners

ANSI/UL 486A—Wire Connectors and Soldering Lugs for Use With Copper Conductors
ANSI/UL 486B—Wire Connectors for Use With Aluminum Conductors
ANSI/UL 486C—Splicing Wire Connectors
ANSI/UL 486D—Insulated Wire Connectors for Use With Underground Conductors
ANSI/UL 486E—Equipment Wiring Terminals for Use With Aluminum and/or Copper Conductors
ANSI/UL 489—Molded-Case Circuit Breakers and Circuit-Breaker Enclosures
ANSI/UL 493—Thermoplastic-Insulated Underground Feeder and Branch-Circuit Cables
ANSI/UL 495—Power-Operated Dispensing Devices for LP-Gas
ANSI/UL 496—Edison-Base Lampholders
ANSI/UL 497—Protectors for Communication Circuits
UL 497A—Secondary Protectors for Communication Circuits
ANSI/UL 497B—Protectors for Data Communication and Fire Alarm Circuits
ANSI/UL 498—Attachment Plugs and Receptacles
ANSI/UL 499—Electric Heating Appliances
ANSI/UL 506—Specialty Transformers
ANSI/UL 507—Electric Fans
ANSI/UL 508—Electric Industrial Control Equipment
ANSI/UL 510—Insulating Tape
ANSI/UL 511—Porcelain Electrical Cleats, Knobs, and Tubes
ANSI/UL 512—Fuseholders
ANSI/UL 514A—Metallic Outlet Boxes, Electrical
ANSI/UL 514B—Fittings for Conduit and Outlet Boxes
ANSI/UL 514C—Nonmetallic Outlet Boxes, Flush-Device Boxes and Covers
ANSI/UL 519—Impedance-Protected Motors
ANSI/UL 521—Heat Detectors for Fire Protective Signaling Systems
ANSI/UL 525—Flame Arresters for Use on Vents of Storage Tanks for Petroleum Oil and Gasoline
ANSI/UL 539—Single and Multiple Station Heat Detectors
ANSI/UL 541—Refrigerated Vending Machines
ANSI/UL 542—Lampholders, Starters, and Starter Holders for Fluorescent Lamps
ANSI/UL 543—Impregnated-Fiber Electrical Conduit
UL 544—Electric Medical and Dental Equipment
ANSI/UL 547—Thermal Protectors for Electric Motors
ANSI/UL 551—Transformer-Type Arc-Welding Machines
ANSI/UL 555—Fire Dampers
UL 555S—Leakage Rated Dampers for Use in Smoke Control Systems
ANSI/UL 558—Industrial Trucks, Internal Combustion Engine-Powered
ANSI/UL 559—Heat Pumps
ANSI/UL 560—Electric Home-Laundry Equipment
ANSI/UL 561—Floor Finishing Machines
ANSI/UL 563—Ice Makers
UL 565—Liquid Level Gauges and Indicators for Anhydrous Ammonia and LP-Gas
ANSI/UL 567—Pipe Connectors for Flammable and Combustible Liquids and LP-Gas
ANSI/UL 569—Pigtails and Flexible Hoses
ANSI/UL 574—Electric Oil Heater
ANSI/UL 603—Power Supplies for Use With Burglar-Alarm Systems
ANSI/UL 609—Local Burglar-Alarm Units and Systems
ANSI/UL 611—Central-Station Burglar-Alarm Systems
ANSI/UL 621—Ice Cream Makers
ANSI/UL 626—2-1/2 Gallon Stored Pressure Water Type Fire Extinguishers
ANSI/UL 632—Electrically Actuated Transmitters
ANSI/UL 634—Connectors and Switches for Use With Burglar-Alarm Systems
ANSI/UL 636—Holdup Alarm Units and Systems
ANSI/UL 639—Intrusion-Detection Units
ANSI/UL 644—Container Assemblies for LP-Gas
ANSI/UL 651—Schedule 40 and 80 Rigid PVC Conduit
ANSI/UL 651A—Type EB and A Rigid PVC Conduit and HDPE Conduit
UL 664—Commercial (Class IV) Electric Dry-Cleaning Machines
ANSI/UL 674—Electric Motors and Generators for Use in Hazardous (Classified) Locations
ANSI/UL 676—Underwater Lighting Fixtures
ANSI/UL 680—Emergency Vault Ventilators and Vault Ventilating Parts
ANSI/UL 681—Installation and Classification of Mercantile and Bank Burglar-Alarm Systems
ANSI/UL 696—Electric Toys
ANSI/UL 697—Toy Transformers
ANSI/UL 698—Industrial Control Equipment for Use in Hazardous (Classified) Locations
ANSI/UL 705—Power Ventilators
UL 710—Grease Extractors for Exhaust Ducts
ANSI/UL 711—Rating and Fire Testing of Fire Extinguishers
ANSI/UL 719—Nonmetallic Sheathed Cables
ANSI/UL 726—Oil-Fired Boiler Assemblies
ANSI/UL 727—Oil-Fired Central Furnaces
ANSI/UL 729—Oil-Fired Floor Furnaces
ANSI/UL 730—Oil-Fired Wall Furnaces
ANSI/UL 731—Oil-Fired Unit Heaters
ANSI/UL 732—Oil-Fired Water Heaters
UL 733—Oil-Fired Air Heaters and Direct-Fired Heaters
ANSI/UL 746A—Polymeric Materials—Short Term Property Evaluations
ANSI/UL 746B—Polymeric Materials—Long Term Property Evaluations
ANSI/UL 746C—Polymeric Materials—Use in Electrical Equipment Evaluations
ANSI/UL 746E—Polymeric Materials—Industrial Laminates, Filament Wound Tubing, Vulcanized Fibre, and Materials Used in Printed Wiring Boards
ANSI/UL 749—Household Dishwashers
ANSI/UL 751—Vending Machines
ANSI/UL 753—Alarm Accessories for Automatic Water-Supply Control Valves for Fire-Protection Service
ANSI/UL 756—Coin and Currency Changers and Actuators
UL 763—Motor-Operated Commercial Food Preparing Machines
ANSI/UL 773—Plug-In Locking-Type Photocontrols for Use With Area Lighting
ANSI/UL 773A—Nonindustrial Photoelectric Switches for Lighting Control
UL 775—Graphic Arts Equipment
ANSI/UL 778—Motor-Operated Water Pumps
ANSI/UL 781—Portable Electric Lighting Units for Use in Hazardous (Classified) Locations
ANSI/UL 783—Electric Flashlights and Lanterns for Use in Hazardous Locations, Class I, Group C and D
UL 795—Commercial-Industrial Gas-Heating Equipment
ANSI/UL 796—Printed-Wiring Boards
ANSI/UL 797—Electrical Metallic Tubing
UL 810—Capacitors
ANSI/UL 813—Commercial Audio Equipment
ANSI/UL 814—Gas-Tube-Sign and Ignition Cable
ANSI/UL 817—Cord Sets and Power-Supply Cords
ANSI/UL 823—Electric Heaters for Use in Hazardous (Classified) Locations
ANSI/UL 826—Household Electric Clocks
ANSI/UL 827—Central Stations for Watchman, Fire-Alarm, and Supervisory Services
ANSI/UL 834—Heating, Water Supply, and Power Boilers—Electric
UL 842—Valves for Flammable Fluids
ANSI/UL 844—Electric Lighting Fixtures for Use in Hazardous (Classified) Locations
ANSI/UL 845—Electric Motor Control Centers
ANSI/UL 854—Service Entrance Cable
ANSI/UL 857—Electric Busways and Associated Fittings
ANSI/UL 858—Household Electric Ranges
UL 858A—Safety-Related Solid-State Controls for Electric Ranges
ANSI/UL 859—Personal Grooming Appliance
UL 860—Pipe Unions for Flammeble and Combustible Fluids and Fire Protection Service
ANSI/UL 863—Electric Time-Indicating and -Recording Appliances
ANSI/UL 864—Control Units for Fire-Protective Signaling Systems
ANSI/UL 867—Electrostatic Air Cleaners
ANSI/UL 869—Electrical Service Equipment
ANSI/UL 869A—Reference Standard for Service Equipment
ANSI/UL 870—Wireways, Auxiliary Gutters, and Associated Fittings
ANSI/UL 873—Electrical Temperature-Indicating and -Regulating Equipment
ANSI/UL 875—Electric Dry Bath Heaters
ANSI/UL 877—Circuit Breakers and Circuit-Breaker Enclosure for Use in Hazardous (Classified) Locations
ANSI/UL 879—Electrode Receptacles for Gas-Tube Signs
ANSI/UL 883—Fan-Coil Units and Room-Fan Heater Units
ANSI/UL 884—Underfloor Electrical Raceways and Fittings
ANSI/UL 886—Electrical Outlet Boxes and Fittings for Use in Hazardous (Classified) Locations
ANSI/UL 887—Delayed-Action Timelocks
ANSI/UL 891—Dead-Front Electrical Switchboards

ANSI/UL 894—Switches for Use in Hazardous (Classified) Locations
ANSI/UL 900—Test Performance of Air-Filter Units
ANSI/UL 910—Test Method for Fire and Smoke Characteristics of Electrical and Optical-Fiber Cables
ANSI/UL 913—Intrinsically Safe Apparatus and Associated Apparatus for Use in Class I, II, and III, Division I, Hazardous (Classified) Locations
ANSI/UL 916—Energy Management Equipment
ANSI/UL 917—Clock-Operated Switches
ANSI/UL 921—Commercial Electric Dishwashers
ANSI/UL 923—Microwave Cooking Appliances
ANSI/UL 924—Emergency Lighting and Power Equipment
ANSI/UL 935—Fluorescent-Lamp Ballasts
ANSI/UL 943—Ground-Fault Circuit Interrupters
ANSI/UL 961—Hobby and Sports Equipment
ANSI/UL 964—Electrically Heating Bedding
ANSI/UL 969—Marking and Labeling Systems
ANSI/UL 977—Fused Power-Circuit Devices
ANSI/UL 982—Motor-Operated Food Preparing Machines
ANSI/UL 983—Surveillance Cameras
ANSI/UL 984—Hermetic Refrigerant Motor-Compressors
ANSI/UL 987—Stationary and Fixed Electric Tools
UL 991—Tests for Safety-Related Controls Employing Solid-State Devices
ANSI/UL 998—Humidifiers
ANSI/UL 1002—Electrically Operated Valve for Use in Hazardous (Classified) Locations
ANSI/UL 1004—Electric Motors
ANSI/UL 1005—Electric Flatirons
ANSI/UL 1008—Automatic Transfer Switches
ANSI/UL 1010—Receptacle-Plug Combinations for Use in Hazardous (Classified) Locations
ANSI/UL 1012—Power Supplies
ANSI/UL 1017—Electric Vacuum Cleaning Machines and Blower Cleaners
ANSI/UL 1018—Electric Aquarium Equipment
ANSI/UL 1020—Thermal Cutoffs for Use in Electrical Appliances and Components
UL 1022—Line Isolated Monitors
ANSI/UL 1025—Electric Air Heaters
ANSI/UL 1026—Electric Household Cooking and Food-Serving Appliances
ANSI/UL 1028—Electric Hair-Clipping and -Shaving Appliances
ANSI/UL 1029—High-Intensity Discharge Lamp Ballasts
ANSI/UL 1030—Sheathed Heater Elements
ANSI/UL 1034—Burglary Resistant Electric Locking Mechanisms
ANSI/UL 1037—Antitheft Alarms and Devices
ANSI/UL 1042—Electric Baseboard Heating Equipment
UL 1047—Isolated Power Systems Equipment
ANSI/UL 1053—Ground-Fault Sensing and Relaying Equipment
ANSI/UL 1054—Special-Use Switches
ANSI/UL 1058—Halogenated Agent Extinguishing System Units
UL 1059—Terminal Blocks
ANSI/UL 1062—Unit Substations
ANSI/UL 1063—Machine-Tool Wires and Cables
UL 1066—Low-Voltage AC and DC power Circuit Breakers Used in Enclosures
ANSI/UL 1069—Hospital Signaling and Nurse Call Equipment
ANSI/UL 1072—Medium Voltage Power Cables
ANSI/UL 1076—Proprietary Burglar-Alarm Units and Systems
ANSI/UL 1077—Supplementary Protectors for Use in Electrical Equipment
ANSI/UL 1081—Electric Swimming Pool Pumps, Filters and Chlorinators
ANSI/UL 1082—Household Electric Coffee Makers and Brewing-Type Appliances
ANSI/UL 1083—Household Electric Skillets and Frying-Type Appliances
ANSI/UL 1086—Household Trash Compactors
ANSI/UL 1087—Molded-Case Switches
ANSI/UL 1088—Temporary Lighting Strings
ANSI/UL 1090—Electric Snow Movers
ANSI/UL 1091—Butterfly Valves for Fire Protection Service
ANSI/UL 1093—Halogenated Agent Fire Extinguishers
ANSI/UL 1096—Electric Central Air-Heating Equipment
ANSI/UL 1097—Double Insulation Systems for Use in Electrical Equipment
ANSI/UL 1203—Explosion-Proof and Dust-Ignition-Proof Electrical Equipment for Use in Hazardous (Classified) Locations
UL 1206—Electric Commercial Clothes-Washing Equipment
ANSI/UL 1207—Sewage Pumps for Use in Hazardous (Classified) Locations
ANSI/UL 1230—Amateur Movie Lights
UL 1236—Electric Battery Chargers
ANSI/UL 1238—Control Equipment for Use With Flammable Liquid Dispensing Devices
UL 1240—Electric Commercial Clothes-Drying Equipment
ANSI/UL 1241—Junction Boxes for Swimming Pool Lighting Fixtures
ANSI/UL 1242—Intermediate Metal Conduit
UL 1244—Electrical and Electronic Measuring and Testing Equipment
UL 1254—Pre-Engineered Dry Chemical Extinguishing System Units
ANSI/UL 1261—Electric Water Heaters for Pools and Tubs
ANSI/UL 1262—Laboratory Equipment
UL 1270—Radio Receivers, Audio Systems, and Accessories
ANSI/UL 1277—Electrical Power and Control Tray Cables With Optional Optical-Fiber Members
UL 1278—Movable and Wall- or Ceiling-Hung Electric Room Heaters
ANSI/UL 1283—Electromagnetic-Interference Filter
ANSI/UL 1286—Office Furnishings
ANSI/UL 1310—Direct Plug-In Transformer Units
ANSI/UL 1313—Nonmetallic Safety Cans for Petroleum Products
ANSI/UL 1314—Special-Purpose Containers
ANSI/UL 1316—Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products
ANSI/UL 1322—Fabricated Scaffold Planks and Stages
UL 1323—Scaffold Hoists
ANSI/UL 1332—Organic Coatings for Steel Enclosures for Outdoor Use Electrical Equipment
ANSI/UL 1409—Low-Voltage Video Products Without Cathode- Ray-Tube Displays
ANSI/UL 1410—Television Receivers and High-Voltage Video Products
ANSI/UL 1411—Transformers and Motor Transformers for Use in Audio-, Radio-, and Television-Type Appliances
ANSI/UL 1412—Fusing Resistors and Temperature-Limited Resistors for Radio-, and Television-Type Appliances
ANSI/UL 1413—High-Voltage Components for Television-Type Appliances
ANSI/UL 1414—Across-the-Line, Antenna-Coupling, and Line- by-Pass Capacitors for Radio- and Television-Type Appliances
ANSI/UL 1416—Overcurrent and Overtemperature Protectors for Radio- and Television-Type Appliances
ANSI/UL 1417—Special Fuses for Radio- and Television-Type Appliances
ANSI/UL 1418—Implosion-Protected Cathode-Ray Tubes for Television-Type Appliances
UL 1424—Cables for Power-Limited Fire-Protective-Signaling Circuits
ANSI/UL 1429—Pullout Switches
ANSI/UL 1433—Control Centers for Changing Message Type Electric Signs
ANSI/UL 1436—Outlet Circuit Testers and Similar Indicating Devices
UL 1437—Electrical Analog Instruments, Panelboard Types
ANSI/UL 1438—Household Electric Drip-Type Coffee Makers
ANSI/UL 1441—Coated Electrical Sleeving
ANSI/UL 1445—Electric Water Bed Heaters
ANSI/UL 1446—Systems of Insulating Materials—General
ANSI/UL 1447—Electric Lawn Mowers
ANSI/UL 1448—Electric Hedge Trimmers
UL 1449—Transient Voltage Surge Suppressors
ANSI/UL 1450—Motor-Operated Air Compressors, Vacuum Pumps and Painting Equipment
ANSI/UL 1453—Electric Booster and Commercial Storage Tank Water Heaters
UL 1459—Telephone Equipment
ANSI/UL 1474—Adjustable Drop Nipples for Sprinkler Systems
ANSI/UL 1480—Speakers for Fire Protective Signaling Systems
ANSI/UL 1481—Power Supplies for Fire Protective Signaling Systems
ANSI/UL 1484—Residential Gas Detectors
UL 1486—Quick Opening Devices for Dry Pipe Valves for Fire-Protection Service
UL 1492—Audio and Video Equipment
ANSI/UL 1555—Electric Coin-Operated Clothes-Washing Equipment
ANSI/UL 1556—Electric Coin-Operated Clothes-Drying Equipment
ANSI/UL 1557—Electrically Isolated Semiconductor Devices
UL 1558—Metal-Enclosed Low-Voltage Power Circuit Breaker Switchgear

ANSI/UL 1559—Insect-Control Equipment, Electrocution Type
ANSI/UL 1561—Large General Purpose Transformers
UL 1562—Transformers, Distribution, Dry Type—Over 600 Volts
ANSI/UL 1563—Electric Hot Tubs, Spas, and Associated Equipment
ANSI/UL 1564—Industrial Battery Chargers
ANSI/UL 1565—Wire Positioning Devices
UL 1567—Receptacles and Switches Intended for Use With Aluminum Wire
ANSI/UL 1569—Metal-Clad Cables
ANSI/UL 1570—Fluorescent Lighting Fixtures
ANSI/UL 1571—Incandescent Lighting Fixtures
ANSI/UL 1572—High Intensity Discharge Lighting Fixtures
ANSI/UL 1573—Stage and Studio Lighting Units
ANSI/UL 1574—Track Lighting Systems
ANSI/UL 1577—Optical Isolators
ANSI/UL 1585—Class 2 and Class 3 Transformers
UL 1594—Sewing and Cutting Machines
UL 1604—Electrical Equipment for Use in Class I and II, Division 2 and Class III Hazardous (Classified) Locations
ANSI/UL 1610—Central-Station Burglar-Alarm Units
ANSI/UL 1624—Light Industrial and Fixed Electric Tools
ANSI/UL 1635—Digital Burglar Alarm Communicator System Units
ANSI/UL 1638—Visual Signaling Appliances
ANSI/UL 1647—Motor-Operated Massage and Exercise Machines
UL 1660—Liquid-Tight Flexible Nonmetallic Conduit
ANSI/UL 1662—Electric Chain Saws
ANSI/UL 1664—Immersion-Detection Circuit-Interrupters
ANSI/UL 1666—Standard Test for Flame Propagation Height of Electrical and Optical-Fiber Cables Installed Vertically in Shafts
UL 1673—Electric Space Heating Cables
UL 1676—Discharge Path Resistors
ANSI/UL 1703—Flat Plate Photo Voltaic Modules and Panels
ANSI/UL 1711—Amplifiers for Fire Protective Signaling Systems
ANSI/UL 1726—Automatic Drain Valves for Standpipe Systems
ANSI/UL 1727—Commercial Electric Personal Grooming Appliances
UL 1738—Venting Systems for Gas-Burning Appliances, Categories II, III, and IV
ANSI/UL 1739—Pilot-Operated Pressure-Control Valves for Fire-Protection Service
UL 1767—Early-Suppression Fast-Response Sprinklers
ANSI/UL 1769—Cylinder Valves
ANSI/UL 1773—Termination Boxes
UL 1776—High-Pressure Cleaning Machines
UL 1778—Uninterruptible Power Supply Equipment
ANSI/UL 1786—Nightlights
UL 1795—Hydromassage Bathtubs
UL 1812—Ducted Heat Recovery Ventilators
UL 1815—Nonducted Heat Recovery Ventilators
UL 1863—Communication Circuit Accessories
ANSI/UL 1876—Isolating Signal and Feedback Transformers for Use in Electronic Equipment
UL 1917—Solid-State Fan Speed Controls
UL 1950—Information Technology Equipment Including Electrical Business Equipment
UL 1995—Heating and Cooling Equipment
UL 2006—Halon 1211 Recovery/Recharge Equipment
UL 2097—Reference Standard for Double Insulation Systems for Use in Electronic Equipment

Underwriters Laboratories, Inc. must also abide by the following conditions of its recognition, in addition to those already required by 29 CFR 1910.7:

The Occupational Safety and Health Administration shall be allowed access to UL's facilities and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If UL has reason to doubt the efficacy of any test standard it is using under this program, it shall promptly inform the organization that developed the test standard of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

UL shall not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, UL agrees that it will allow no representation that it is either a recognized or accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

UL shall inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, including details;

UL will continue to meet the requirements for recognition in all areas where it has been recognized; and

UL will always cooperate with OSHA to assure with the letter as well as the spirit of its recognition and 29 CFR 1910.7.

Effective Date: This recognition will become effective on June 29, 1995, and will be valid for a period of five years from that date, until June 29, 2000, unless terminated prior to that date, in accordance with 29 CFR 1910.7.

Signed at Washington, DC, this 26th day of June, 1995.

Joseph A. Dear,

Assistant Secretary.

[FR Doc. 95–16062 Filed 6–28–95; 8:45 am]

BILLING CODE 4510–26–P

Pension and Welfare Benefits Administration

[Application No. D–09582, et al.]

Proposed Exemptions; Retirement Plan for Employees of United Jewish Appeal-Federation of Jewish Philanthropies of New York and Affiliated Agencies and Institutions (the Plan)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Retirement Plan for Employees of United Jewish Appeal-Federation of Jewish Philanthropies of New York, Inc. and Affiliated Agencies and Institutions (the Plan) Located in New York, New York

[Application No. D–09582]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990.) If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply effective May 29, 1990, to the past purchase and sale of certain securities (the Securities) on May 29, 1990, between the Plan and the endowment fund (the Fund) of the United Jewish Appeal-Federation of Jewish Philanthropies of New York, Inc. (the Federation), a sponsor of the Plan and a party in interest with respect to the Plan; provided that the following conditions are satisfied:

(a) The transfer of the Securities was a one-time cash transaction;

(b) The transaction was at fair market value as determined by the closing prices on May 25, 1990, on the New York Stock Exchange (NYSE) and the American Stock Exchange (AMEX);

(c) The Plan paid no commissions with respect to the transaction;

(d) The Federation determined upon consultation with Delaware Investment Advisors (Delaware) to engage in the transaction;

(e) The Securities transferred from the Fund to the Plan were all listed on either the NYSE or AMEX, and constituted exactly a 50% pro rata share of all the securities then owned by the Fund; and

(f) Over a three plan year period, the Federation will contribute $513,009.39 to the Plan to make up the loss sustained by the Plan when the Securities were sold out of the Plan portfolio.

EFFECTIVE DATE: If granted this exemption will be effective as of May 29, 1990.

Summary of Facts and Representations

1. The Plan is a defined benefit multiple employer plan. As of September 30, 1993, the Plan had $76,919,425 million in net assets, and as of October 1, 1994, the Plan had approximately 5634 participants. Chemical Bank (formerly Manufacturers Hanover Trust Company) is the Plan's trustee.

2. The Federation is a not-for-profit corporation which is exempt from federal tax under section 501(c)(3) of the Code. The Federation is a private, local voluntary human service organization. The Fund is a special general asset account of the Federation.[1]

3. The investment committee (the Investment Committee) of the Federation appoints investment managers to manage the Fund's and the Plan's assets. The members of the Investment Committee are appointed by the Board of Directors of the Federation. Delaware Investment Advisors (Delaware), a division of Delaware Management Company Inc., served as an investment manager for the Fund from 1983 through January of 1993, and managed the Fund's assets of approximately $30 million. Fiduciary Trust Co. was the custodian for this account.

4. The applicant represents that early in 1990, the Investment Committee decided that it wanted to hire Delaware to replace another investment manager, Delphi Management (Delphi), with respect to the management of approximately $10 million of the Plan's assets. At that time, the Investment Committee also determined that the total amount of the Federation related assets, including the assets of the Plan and the Fund, managed by any one investment manager should be limited. This would limit the risk to the portfolios of the Fund and the Plan and further protect the Federation, which as the Plan sponsor was ultimately responsible for any losses to the Plan. Because Delaware was already managing a desired maximum level of the Fund's assets, it was determined that one half of this desired maximum should be managed by Delaware for the Plan and one half managed by Delaware for the Fund. Fees charged by Delaware for its investment management services consisted of an annual charge (billed in quarterly installments) based upon the amount of assets under management.

5. In April of 1990, James L. Rothkopf (Mr. Rothkopf), the chief financial officer of the Federation, informed Delaware that the Investment Committee wanted a portion of the Plan's assets at that time managed by Delphi, to be invested with Delaware. Mr. Rothkopf also indicated that to keep the total Federation related assets under Delaware management at the same level, the Fund investment with Delaware would be reduced to one-half the previous level and that one-half of the Fund's investments would be transferred pro-rata to the Plan portfolio. Delaware indicated to the Investment Committee that it wanted the Plan's portfolio to be virtually identical to the Fund's portfolio.

6. The purchase of Securities by the Plan from the Fund took place on May 29, 1990, at the direction of the Assistant Comptroller of the Federation. In order to accomplish the prescribed allocation, and to avoid the Plan paying any commissions on the acquisition of the Securities, approximately fifty percent (50%) of the amount of each Security held in the Fund portfolio was transferred from Fiduciary Trust Co., custodian for the Fund, into the Plan account at Manufacturers Hanover Trust Company, the custodian of the Plan's assets, and cash representing the fair market value of these Securities ($10,577,756.77) was transferred to a portion of the Fund asset portfolio not

[1] The Federation's consolidated essets are composed of amounts received from donor-created endowments and funds designated by the Federation's Board of Directors to provide for the Federation's long-term needs.

managed by Delaware. All the Securities involved in the transaction were securities of companies listed on the NYSE, with the exception of one Security listed on the AMEX. The fair market value of the Securities was determined by using the exchanges' closing prices on Friday, May 25, 1990. It is represented that the Plan did not pay any fees related to the subject transaction.

7. The applicant represents that the actual transfer of the Securities took place on Tuesday, May 29, 1990, because the prior business day Monday, May 28 was a legal holiday and therefore, there was no trading. The applicant represents that the closing price of the Securities on Friday, May 25, 1990, was effectively equal to the opening price of the Securities on Tuesday, May 29, 1990. Upon completion of the transaction, the Plan held legal title to the Securities acquired from the Fund. It is represented that at the time of the transfer, approximately 17% of the Plan's assets were involved in the transaction.

8. Delaware represents that the Federation consummated the transaction upon facilitation by Delaware and approved the transfer of the Securities from the Fund to the Plan. In an affidavit submitted to the Department, Mr. Rothkopf of the Federation stated that Mr. Marion Dixon, a former money manager with Delaware who was responsible for the Fund portfolio and subsequently for the Plan portfolio, advised him that the initial Plan portfolio should represent 50 percent (50%) of the existing Fund portfolio. This would enable the Fund and the Plan to have identical investment portfolios, thereby achieving the portfolio structures desired by Mr. Dixon, and would also save brokerage commissions. Delaware represents that Mr. Dixon agreed that the initial portfolio for the Plan should contain substantially the same securities as were in the Fund portfolio at that time. Delaware represents that they were of the opinion then, as well as now, that the transfer transaction was in the best interest and protective of the Plan.

9. The applicant states that between June 1990 and January 1993, Delaware sold all the Securities purchased by the Plan in the transaction subject to this exemption request. The determination of gains and losses on the sale of the Securities by the Plan was calculated on a "first in first out" basis. The total difference between the aggregate purchase price of the Securities by the Plan and the aggregate sale price of the Securities by the Plan, was an aggregate loss of $513,009.39. The applicant maintains that the Plan portfolio was a managed portfolio with transactions not necessarily based on individual stock profit or loss positions, but based on the portfolio's desired position. As such, stock was sold for a number of reasons, including availability of stock with a better return potential or less downside risk, diversity, cyclical markets, and a variety of other factors. In this regard, stocks were often sold prior to a profit realization because preferable alternative investments were available or concentrations of stock needed to be changed. However, the applicant represents that the Federation is now prepared to contribute to the Plan an amount equal to $513,009.39 over a three plan year period (the Contribution), in order to make up for the loss to the Plan. The Contribution will be made at the same time that the last installment of each annual contribution is made to the Plan for the applicable plan year.

10. The applicant represents that subsequent to the transaction, both the Plan and the Federation were audited by a "Big Six" accounting firm, and the transaction was not identified by the auditors as being prohibited during either audit. In the summer of 1993, counsel for the Federation contacted the law firm of Proskauer Rose Goetz & Mendelson [2] (PRG&M) to discuss the Fund's and the Plan's claims in a class action settlement against the issuer of one of the Securities involved in the subject transaction. When the facts of the transaction surfaced in the discussion, it was questioned whether a prohibited transaction had occurred as a result of the Plan's purchase of the Securities from the Fund. PRG&M then commenced an investigation of the facts surrounding the transaction and the ERISA provisions involved. The applicant then filed an exemption request in this matter.

11. The applicant has requested retroactive relief for the transaction which occurred on May 29, 1990, noting, among other things that: (1) The transaction was a one-time transfer of the Securities for cash; (2) the transaction was in the interest and protective of the Plan because the Plan was able to acquire the Securities at fair market value and not pay any commissions; and (3) the Securities represented a well-diversified portfolio of stock of recognized companies.

12. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The transfer of the Securities was a one-time cash transaction;

(b) The transaction was at fair market value as evidenced by the closing prices on May 25, 1990 on the NYSE and the AMEX;

(c) The Plan paid no commissions with respect to the transaction;

(d) The Federation determined upon consultation with Delaware to engage in the transaction;

(e) The Securities transferred from the Fund to the Plan were all listed on either the NYSE or AMEX and constituted exactly a 50% pro rata share of all the securities then owned by the Fund; and

(f) Over a three plan year period, the Federation will contribute $513,009.39 to the Plan to make up the loss sustained by the Plan when the Securities were sold out of the Plan portfolio.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department at (202) 219–8883. (This is not a toll-free number.)

General Motors Hourly-Rate Employes Pension Plan, General Motors Retirement Program for Salaried Employees (the Salaried Plan), Saturn Individual Retirement Plan for Represented Team Members, Saturn Personal Choices Retirement Plan for Non-Represented Team Members, and Employees' Retirement Plan for GMAC Mortgage Corporation (collectively, the Plans) Located in New York, New York

[Application Nos. D–09859 through D–09863]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective April 9, 1994, to the acquisition by the Plans of limited partnership interests (the Interests) in APA Excelsior III, L.P. from Metropolitan Life Insurance Company (Metropolitan), a party in interest with respect to the Plans; provided that the following conditions are satisfied:

(A) All terms and conditions of the transaction were at least as favorable to the Plans as those which the Plans

[2] This law firm was not counsel to the Federation nor the Plan at the time of the transaction.

could obtain in an arm's-length transaction with an unrelated party;

(B) Metropolitan is not, and has not been, a fiduciary with respect to any assets of the Plans involved in the transaction;

(C) The transaction was a one-time transaction for cash in which the purchase price did not exceed the fair market value of the Interests;

(D) The methodology for determining the fair market value of the Interests was in accordance with standards maintained by professional venture capital valuation specialists for the valuation of limited partnership interests in venture capital partnerships; and

(E) Metropolitan did not participate in the Plans' determination of the fair market value of the Interests.

EFFECTIVE DATE: This exemption, if granted, will be effective as of April 9, 1994.

Summary of Facts and Representations

Introduction: In April 1994, the Plans acquired limited partnership interests (the Interests) in A.P. Excelsior III, Limited Partnership (the Partnership) from Metropolitan Life Insurance Company (Metropolitan). This transaction occurred without a determination having been made that Metropolitan was a party in interest with respect to the Plans. Subsequently, the parties discovered that the entity from which the Plan acquired the Interests, Metropolitan, is a service-provider party in interest with respect to certain of the Plans, and an exemption is now requested for the Plans' past acquisition of the Interests from Metropolitan, under the terms and conditions described herein.

1. The Plans are defined benefit and defined contribution employee benefit plans maintained by General Motors Corporation and its affiliates (GM), with approximately 831,530 participants as of October 1, 1994. The approximate fair market value of the total assets of the Plans as of May 31, 1994 was $41 billion. The assets of the Plans are maintained in two trusts (the Plans' Trusts): The General Motors Salaried Employees Pension Trust, which holds the assets of the Salaried Plan, and the General Motors Hourly-Rate Employees Pension Trust, which holds the assets of the other four Plans. The named fiduciary with respect to each Plan is the Finance Committee of the board of directors of GM (the Finance Committee).

2. The Finance Committee has delegated certain fiduciary responsibilities to the Pension Investment Committee (the PIC), including the responsibility for allocating funds among asset classes in accordance with broad investment guidelines established by the Finance Committee and overseeing in-house investing for a portion of the assets of the trusts which fund the Plans. The PIC is comprised of executive officers of GM. The PIC carries out its investment oversight responsibility through the General Motors Investment Management Corporation (GMIMCO), a registered investment adviser under the Investment Advisers Act of 1940, as amended. Certain members of the PIC serve on the board of directors of GMIMCO. The Finance Committee reviews the actions of the PIC and GMIMCO on a periodic basis to evaluate performance and to assure that the Finance Committee's delegation of authority continues to be prudent.

3. GMIMCO is involved in all aspects of the management of the Plans' assets, and its functions with respect to the Plans' involvement in private market transactions are executed by its private market investments staff (PMI Staff). The PMI Staff consists of twelve professionals (the PMI Staff) who research, document and negotiate private market transactions on behalf of the Plans, with the assistance of GMIMCO's legal staff. Under current procedures, all private market transactions subject to final approval by GM's in-house investment management function are directed to the PMI Staff for review, analysis and, if needed development. After an investment has been reviewed, analyzed and favorably approved by the PMI Staff, the additional levels of approval required for authorization of the investment depends upon the amount of the investment. Final approval authority for private market transactions rests with the PIC, for investments of amounts of $75 million and under, and the Finance Committee, for investments of amounts over $75 million. The PIC's final approval authority for the investment of amounts of $30 million or less is exercised by a special PIC subgroup, the Private Investment Review Team (the PIRT).

4. The current assets of the Plans under the authority of the PIC include the Plans' Trusts' interests in the First Plaza Group Trust (First Plaza). First Plaza, which invests solely in private market investments, is a group trust maintained by GM on behalf of the Plans' Trusts, each of which owns approximately 50 percent. The trustee of First Plaza is Mellon Bank, N.A. (Mellon Bank). On April 19, 1994, pursuant to the direction of the PIC and GMIMCO, First Plaza invested $2,465,784 in the APA Excelsior III, L.P. (the Partnership) by purchasing limited partnership interests (the Interests) from Metropolitan Life Insurance Company (Metropolitan). The Interests purchased by the Plan represent 4.2 percent of the Partnership's total limited partnership interests. The Partnership is a venture capital operating company, the purpose of which is to generate long-term capital appreciation by acquiring a broad portfolio of equity-oriented investment positions in quoted and nonquoted companies in a variety of industries in the United States. As a result of such purchase, First Plaza succeeded to the obligation to make additional capital contributions of $1,150,000 to the Partnership. GM represents that the Interests represent a total capital contributions commitment of $5 million to the Partnership, $3,850,000 of which had been paid by Metropolitan prior to First Plaza's purchase of the Interests. GM states that the difference between the $2,465,784 paid for the Interests by First Plaza and the $3,850,000 invested in the Interests by Metropolitan represents (a) distributions Metropolitan had already received from the Partnership, and (b) a discount negotiated by GMIMCO on behalf of First Plaza. GM represents that in June 1994, the PIC and GMIMCO and Metropolitan became aware that the transaction was a prohibited transaction under the Act, due to the fact that Metropolitan is a service-provider party in interest with respect to the Plans. The PIC and GMIMCO are requesting an exemption for the Plans' past purchase of the Interests from Metropolitan, effective April 9, 1994, under the terms and conditions described herein.

5. Metropolitan is a mutual life insurance company organized under the laws of the state of New York, with total assets under management of approximately $163.4 billion as of December 31, 1993. Metropolitan represents that it offers a wide variety of insurance products, asset management and administrative services for thousands of employee benefit plans subject to the Act. GM and Metropolitan represent that Metropolitan is totally independent from GM, except as provider to the Plans of services which are not involved in the subject transaction. GM represents that Metropolitan's services to the Plans are described as follows:

(a) In 1940, the General Motors Retirement Program for Salaried Employee's was funded by a deferred group annuity contract under which annuities were purchased from Metropolitan and other insurance companies. Effective January 1, 1977, the funding under the deferred group annuity was changed to a deposit administration contract with immediate participation guarantee. It remains in effect but no additional funds have been deposited in the contract since 1985.

(b) Metropolitan coordinates the transfer of all insured after-tax employee contributions to the Plans' trustee for distribution upon a Plan participant's retirement.

(c) Since 1988, Metropolitan has served as recordkeeper under the Saturn Individual Retirement Plan for Represented Team Members and, upon request, provides annuities with respect to employee contributions under the Saturn Personal Choices Retirement Plan for Non-Represented Team Members.

GM represents that neither Metropolitan nor any of its affiliates is a fiduciary with respect to any of the Plans' assets which were used to purchase the Interests or any assets to be used to pay the remaining capital contributions with respect to the Interests. Metropolitan represents that it maintains procedures for determining whether a proposed transaction is prohibited under the Act, and that such procedures were inadvertently not utilized in advance of the subject transaction.

6. GM and Metropolitan represent that the transaction was negotiated at arm's length and in good faith upon the mistaken assumption that Metropolitan was not a party in interest with respect to the Plans, and, accordingly, that the parties were unaware that the transaction with First Plaza was prohibited under section 406(a) of the Act. GM represents that the PIC and GMIMCO maintain comprehensive and up-to-date lists of parties in interest with respect to the Plans in order to guard against inadvertent party in interest transactions, and that Metropolitan was reflected in such lists due to its holding and investment of employee after-tax contributions under the Plans under both separate account and general account arrangements. GM maintains that, as with all investments directed by the PIC and GMIMCO, the normal due diligence procedures were followed. GM notes that the investment contracts with Metropolitan were entered into almost 50 years ago and are not administered by the PMI Staff, which effected the purchase of the Interests from Metropolitan. As a result, Metropolitan was not recognized by the PMI Staff as a party in interest, and the PMI staff did not refer to the party in interest list in advance of the transaction. GM also notes that the current party in interest list indicates 1,375 entities which are parties in interest with respect to the Plans. GM represents that the staffs and attorneys of the PIC and GMIMCO and the PIRT each believed that another responsible party had reviewed the party in interest list as the transaction proceeded.

7. GM represents that the potential purchase of the Interests by First Plaza was an opportunity which was brought to the PMI Staff by the general partner of the Partnership, and not by Metropolitan. GM states that this recommendation was subject to the same thorough investigation and analysis by the PMI Staff as any other private market transaction proposed for the Plans. GM represents that all aspects of the investment analysis, the determination and negotiation of the purchase, and the continued monitoring of the investment have proceeded strictly in accordance with the procedures which the PIC and GMIMCO maintain to ensure that such investments meet the Plans' investment criteria and do not subject the Plans to any unnecessary risk.

8. *Valuation of the Interests:* GM represents that the purchase price paid for the Interests was not in excess of the fair market value of the Interests as of the sale date, as determined by GMIMCO's PMI Staff contemporaneously with the transaction. In this regard, GM represents that the PMI Staff utilized the valuation methodology utilized by GMIMCO in any transaction requiring the calculation of the fair market value of interests in a venture capital fund. GM describes the method of determining the fair market value of the Interests as follows:

The PMI Staff requested and received from the general partner of the Partnership (the General Partner) the most recent statement of the value of Metropolitan's capital account in the Partnership. The PMI Staff adjusted this value by adding all drawdowns to the Partnership by Metropolitan, and subtracting all distributions from the Partnership to Metropolitan, since the date of the statement. Each public company in the Partnership's portfolio was valued using the latest available public market value, and then an appropriate liquidity discount was taken. The specific discount rate applied to each such portfolio company depended on how soon it was then anticipated that its security would be distributed from the Partnership to the limited partners.

The PMI Staff requested and received information from the General Partner regarding the private (i.e. non-publicly-traded) investments in the Partnership. Using this information and other information which the PMI Staff was able to obtain from other sources, the private investments in the Partnership's portfolio were valued by the PMI Staff. In valuing each such company, the PMI Staff elected to use conservative standards and, in fact, valued some companies at zero, not because that was the actual value, but because there was not enough information available at that time to make a reasonable determination of fair market value. GM represents that such "zero valuation" is standard practice of financial analysis in the venture capital industry.

With respect to the Partnership's holdings of interests in publicly-traded companies and those non-public companies for which significant financial performance information was available, the PMI Staff projected what each company would be worth in the future and then discounted that amount back to the present using an appropriate discount rate. The future projections were based on the PMI Staff's knowledge of each particular company, including projected cash flow of the company, probability of when and if the company would be going public, the company's business plan, the anticipated timing of distribution of a company's securities after the company has gone public or the sale proceeds from the sale of the company to a third party, and information regarding the General Partner.

After determining the discounted values of the portfolio companies and the adjusted book value of the Partnership's limited partnership interests, the PMI Staff entered into negotiations with Metropolitan which resulted in a purchase price which was not more than the PMI Staff's determination of the fair market value of the Interests.

9. GM represents that the process and methodology utilized by the PMI Staff, described above, reflects the venture capital industry standards for evaluation. Specifically, GM states that GMIMCO developed this methodology in consultations with two widely-known sponsors of venture capital funds, Brinson Partners, Inc. (Brinson) and Chancellor Capital Management, Inc., each of which uses the same methodology when purchasing limited partnership interests in the secondary market. Brinson, a registered investment adviser which maintains a fund investing solely in limited partnership interests sold on the secondary market, has reviewed and evaluated the methodology utilized by the PMI Staff in determining the fair market value of the Interests for purposes of First Plaza's

purchase of the Interests from Metropolitan. Brinson represents that the methodology used by the PMI Staff was appropriate and reasonable, and that this conclusion is based on Brinson's experience as a seasoned long-term venture capital and secondary partnership investor. GM represents that at no time was Metropolitan a part of the process by which the PMI Staff determined the fair market value of the Interests.

10. In summary, the applicants represent that the criteria of section 408(a) of the Act are satisfied in the subject transaction for the following reasons: (1) The transaction was a one-time transaction for cash; (2) Metropolitan was not and is not a fiduciary with respect to any assets involved in the transaction; (3) The purchase price did not exceed the Interests' fair market value, as determined by the PMI Staff; (4) The fair market value of the Interests was determined by the PMI Staff according to GMIMCO's standard procedures for valuation of interests in venture capital funds; and (5) Brinson determined that the methodology utilized by the PMI Staff in determining the Interests' fair market value was appropriate and reasonable.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

First and Farmers Bank of Somerset, Inc. (the Bank) Located in Somerset, Kentucky

[Application Numbers D–09921 through D–09926]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, as of April 25, 1995, to the cash sale of certain collateralized mortgage obligations (CMOs) held by six employee benefit plans for which the Bank acts as trustee (the Plans) to the Bank, a party in interest with respect to the Plans.

This proposed exemption is subject to the following conditions: (1) Each sale was a one-time transaction for cash; (2) Each Plan received an amount that was equal to the greater of: (a) the outstanding principal balance for each CMO owned by the Plans, plus accrued but unpaid interest, at the time of the sale, (b) the amortized cost for each CMO owned by the Plans, plus accrued but unpaid interest, as determined by the Bank on the date of the sale; or (c) the fair market value of each CMO owned by the Plans as determined by the Bank on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of the Bank at the time of the sale; (3) The Plans did not pay any commissions or other expenses with respect to the sale; (4) The Bank, as trustee of the Plans, determined that the sale of the CMOs is in the best interests of each of the Plans and their participants and beneficiaries at the time of the transaction; (5) The Bank took all appropriate actions necessary to safeguard the interests of the Plans and their participants and beneficiaries in connection with the transactions; and (6) Each Plan received a reasonable rate of return on the CMOs during the period of time that it held the CMOs.

EFFECTIVE DATE: If granted, this proposed exemption would be effective April 25, 1995.

Summary of Facts and Representations

1. The Bank is a Kentucky chartered commercial bank that was organized in November of 1870. First and Farmers Bancshares, Inc., a one-bank holding company incorporated in Kentucky in 1983, owns 80.43 percent of the Bank. The Bank offers the traditional services of a community bank (e.g., checking, savings, loans and trusts) to both individuals and entities in the Somerset area. The Bank serves as trustee of the Plans and has investment discretion with respect to the assets of the Plans.

The Plans are the Adams and Adams Keogh Retirement Plan (the Adams Plan); the Lake Cumberland Home Health Agency Employee Retirement Plan (the Lake Plan); the Bank of Cumberland Money Purchase Pension Plan (the Cumberland Plan); the Childrens Clinic Money Purchase Pension Plan (the Clinic Plan); the Ruckels Farm Supply Defined Contribution Plan (the Ruckels Plan); and the First and Farmers Bank Employee Retirement Plan (the Bank Plan). All of the Plans are defined contribution plans except the Bank Plan, which is a defined benefit plan.

As of December 30, 1994, the Adams Plan had seven participants and total assets of $377,074; the Lake Plan had 271 participants and total assets of $939,926; the Cumberland Plan had twenty-one participants and total assets of $520,996; the Clinic Plan had fifteen participants and total assets of $593,925; the Ruckels Plan had ten participants and total assets of $147,207; and the Bank Plan had 124 participants and total assets of $662,513. Thus, as of December 30, 1994, the Plans had 448 participants and total assets of approximately $3,241,641.

2. The Bank represents that at various times during September, November and December of 1993, assets of the Plans were invested in the CMOs, which were purchased from broker-dealers that were independent of the Plans as well as the Bank and its affiliates. The CMOs are investment products through which investors purchase mortgage-backed securities that represent interests in a pool of residential mortgage loans. In general, investors receive payments of principal and interest or, in some cases, either principal or interest only, depending upon the type of security purchased. Interest payments change monthly in relation to a specific index, such as the London Interbank Offered Rate (LIBOR), contained in a formula used to calculate the interest rate for such securities. Principal payments vary in amount and timing depending upon how quickly the various mortgage-backed securities prepay due to the prepayment speed of the mortgages in the mortgage pools. The repayment of principal and interest is usually guaranteed by various U.S. Government Agencies, such as the Federal National Mortgage Association (FNMA or "Fannie Mae").

3. The CMOs are described as follows: (a) CUSIP 31358JAU5, FNMA Guaranteed REMIC Pass-Through Certificates, Fannie Mae REMIC Trust 1991–110, Class E; (b) CUSIP 31358NCV2, FNMA Guaranteed REMIC Pass-Through Certificates, Fannie Mae REMIC Trust 1992–96, Class E; (c) CUSIP 31359GDX1, FNMA Guaranteed REMIC Pass-Through Certificates, Fannie Mae REMIC Trust 1993–225, Class SM; (d) CUSIP 31359GDTO, FNMA Guaranteed REMIC Pass-Through Certificates, Fannie Mae REMIC Trust 1993–225, Class SO.[3]

[3] The applicant states further that if a plan acquires a "guaranteed governmental mortgage pool certificate", the plan's assets include the certificate but not any of the mortgages underlying such certificate (see 29 CFR 2510.3–101(i)). A "guaranteed governmental mortgage pool certificate" is a certificate (i) that is backed by, or evidences an interest in, specified mortgages or participation interests, and (ii) whose interest and principal payments are guaranteed by the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC or "Freddie Mac"), or FNMA. Thus, the applicant represents that since all of the CMOs have interest and principal payments payable under the CMOs guaranteed by FNMA, the assets of the Plans do not include any of the mortgages underlying such CMOs.

All of the CMOs mentioned above are structured as a real estate mortgage investment conduits ("REMIC") under section 860D of the Code. The various classes of certificates receive principal and, possibly, interest payments in differing portions and at differing times from the cash flows provided from the monthly payments received on the underlying mortgages.

The repayment of principal from the underlying mortgages fluctuates significantly. To facilitate the structuring of such REMICs, the prepayments on the pools of mortgages are commonly measured relative to a variety of prepayment models. The model used for these REMICs is the Public Securities Association's standard prepayment model or "PSA". This model assumes that mortgages will prepay at an annual rate of .2 percent in the first month after origination, then the prepayment rate increases at an annual rate of .2 percent per month up to the 30th month after origination and then the prepayment rate is constant at 6 percent per annum in the 30th and later months. This assumption is called 100 PSA.

The REMIC structure allocates principal payments to the various classes or "tranches" in varying amounts as principal payments are made accordingly to the allocations specified in the prospectuses. The exact date of repayment of all principal to any REMIC class is not known until the mortgage-backed securities are paid in full. The maturity for the various classes is referred to as the "weighted average life" (WAL). The WAL of a class refers to the average amount of time, expressed in years, which will elapse from the date of its issuance until each dollar of principal has been repaid to the investor based on the PSA assumption. The holders of all classes will receive all of their principal back. However, the timing of when that principal is returned is dependent on how quickly the underlying mortgages are repaid or refinanced. In no event will the time for the recovery of principal exceed the final maturity date of the underlying mortgages.

Each month the monthly payments on the underlying mortgages are collected and distributed to the holders of the various REMIC classes. Depending upon the structure of the REMIC, interest may be paid monthly according to a specific formula. The CMOs owned by the Plans, described in further detail below, are either "principal only" or "inverse floaters" indexed to one month LIBOR.

Principal only bonds are similar to Series E savings bonds in that the investor purchases the bond at a discount and receives the principal cash flow off the collateral. The difference in the principal amount invested and the face value equates to the investment's yield. The timing of the cash flows received determines the ultimate yield on the investment. With a principal only bond, the faster the collateral pays down, the higher the yield the investor receives. Income is recognized by accreting the discount over the expected life of the security; however, there are no regular interest payments received on principal only bonds. There is no loss of principal because the investor will ultimately receive face value. However, because there is no guarantee as to the timing of the cash flows, the bond's ultimate yield is unknown.

The remaining CMOs are "inverse floaters" so described, because the formulas used to calculate the interest payments, which adjust monthly for each certificate, usually raise the rate when the index falls and lower the rate when the index rises. "LIBOR" refers to the arithmetic mean of the London Interbank offered quotations for one-month Eurodollar deposits. LIBOR moves up or down as interest rates move up or down. The movement of LIBOR has an inverse relationship with the interest paid on all inverse floating rate classes.

The Bank, as trustee of the Plans, purchased all of the CMOs from Andrew F. Cashiola of Government Securities Corporation of Texas, located in Houston, Texas, and Randy Stevens of Hart Securities, Inc., located in Houston, Texas. The Bank states that neither the brokers (i.e. Mr. Cashiola or Mr. Stevens) nor their brokerage firms have any relationship to the Plans, the employers that maintain the Plans, the Bank or any of its affiliates.

A description of each CMOs, including the respective interest rate formulas, WAL and PSA assumptions are set forth below in the Appendix.

4. At the time of the purchase of the CMOs by the Bank, as trustee of the Plans, the Bank anticipated that each CMO would be retired within one to three years of the date of purchase due to prepayments of the underlying mortgages in each pool as obligors refinanced their mortgages at lower interest rates. Because of recent increases in interest rates, the market value of the CMOs had decreased significantly. On April 25, 1995, the Bank obtained bids to determine the fair market value of each CMO held by the Plans on the date of sale from three different independent broker-dealers—PNC Securities in Louisville, Kentucky; Commerce Union Investments in Memphis, Tennessee; and First Tennessee Corporation in Memphis, Tennessee (the Broker-Dealers). The Bank states that as of the date of the sale, the Broker-Dealers were not related to, or associated with, the Bank or the Plans. The Broker-Dealers provided the following bids as of April 25, 1995:[4]

CUSIP No.	PNC Securities	Commerce Union	First Tennessee	Average bid
31358JAU5	35.00	37.00	46.50	39.50
31358NCV2	42.00	37.00	39.50	39.50
31359GDT0	29.00	29.75	27.25	28.67
31359GDX1	14.00	20.00	24.50	19.50

Based on the pricing information obtained from the Broker-Dealers, the Bank represents that the fair market value of the CMOs was significantly below the original purchase price of the CMOs (as noted in the first table below in Representation #7). The expectation of additional interest rate increases in the near future caused the Bank to believe that the CMOs would not appreciate in the near term. As a result of these changing market conditions, the Bank anticipated that the CMOs will not be retired for fifteen to twenty years due to the slowing of the prepayment speed because of the recent increases in the

[4] The Broker-Dealers' bids shown in the table represent a price quoted per $100 of principal. To determine the fair market value for each CMO based on the average bid quoted, the par value of the CMO would be multiplied by the particular quote, expressed as a percentage of 100. For example, if the par value of the CMO was $10,000 and the average bid for the CMO on April 25, 1995 was $39.50 per $100 of principal, the quoted price would have been $3950 since $10,000 × .3950 = $3950.

interest rates.[5]

5. Under the terms of the Plans and the applicable law, a Plan participant who retires or terminates employment is eligible to receive a distribution of the value of his or her account in the Plan, sometime immediately following retirement or termination. For purposes of this distribution, the value of the participant's account is the value of the account as of the Plan's last valuation date. If the Plans continued to hold the CMOs, the value of each participant's account, as of the valuation date, would reflect the recent decreases in fair market value of the CMOs. In order to mitigate such potential losses, the Bank purchased the CMOs on April 25, 1995 from the Plans at an amount, which in each case was equal to the greater of: (a) The outstanding principal balance for each CMO owned by the Plans, plus accrued but unpaid interest, at the time of the sale, (b) the amortized cost for each CMO owned by the Plans, plus accrued but unpaid interest, as determined by the Bank on the date of sale; or (c) the fair market value of each CMO owned by the Plans on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of the Bank.

6. The Bank calculated the value of the CMOs held by the Plans, as of April 25, 1995, using an amortized cost computation. The Bank states that the computation of the amortized cost was arrived at by a series of computations. First, the Bank determined the amount of the discount paid upon purchase (Purchase price—100 = Discount). The par value or face value of each CMO was 100. The Bank states that any discount must be allocated monthly in order to be properly matched to the principal payments to be received over the life of the investment. Also, any discount must be allocated monthly in order to properly account for the income to be earned over the life of the investment. The number of months to which the Bank allocated each discount was determined by the WAL for each CMO at the time of purchase (expressed in years) multiplied by twelve (WAL × 12 = amortizing months).[6] Then, the Bank determined the amount of each discount to be allocated to each month by dividing each discount by the number of amortizing months. The Bank determined the number of months remaining in the life of each CMO by subtracting from the number of amortizing months the number of months that the Plan actually held each CMO. The Bank states that the remaining months were then multiplied by each monthly discount amount to arrive at the discount balance for each CMO. The discount balance was added to the par value for each CMO (i.e., 100) to arrive at the amortized cost remaining for each CMO. Thus, the Bank states that the formula it used for calculating amortized cost was as follows:[7]

7. The Bank also calculated the remaining principal balance, plus accrued but unpaid interest, on the CMO investments held by each Plan as of April 25, 1995, based on the original cost of the securities and the principal and interest payments received by the Plans through that date. As shown on the table below, the Bank represents that, as of April 25, 1995, all of the Plans would have received more than the remaining principal balances (plus accrued but unpaid interest) on their CMO investments by using the Bank's amortized cost computation for the CMOs. In addition, the table below shows the fair market values of the CMOs held by each Plan, based on the Bank's solicitation of bids from the Broker-Dealers.

Plan	Amort. cost	Prin. bal.	Mkt. value
Adams Plan	$62,321	$53,845	$19,650
Lake Plan	259,723	225,534	80,643
Cumberland Plan	132,126	111,662	34,889
Clinic Plan	139,288	116,543	30,108
Ruckels Plan	14,466	11,698	2,925
Bank Plan	243,234	210,076	72,895

The Bank also determined that, as of April 25, 1995, a sales price for the CMOs held by each Plan based on amortized cost, plus the total principal and interest payments received by the Plans through the date of sale, produced a total return to the Plans that exceeded the Plans' total original cost for the CMOs.

[5] The Department is expressing no opinion in this proposed exemption regarding whether the acquisition and holding of the CMOs by the Plans violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act.

The Department notes that section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan. Section 404(a) of the Act also states that a plan fiduciary should diversify the investments of a plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

In this regard, the Department is not providing any opinion as to whether a particular category of investments or investment strategy would be considered prudent or in the best interests of a plan as required by section 404 of the Act. The determination of the prudence of a particular investment or investment course of action must be made by a plan fiduciary after appropriate consideration to those facts and circumstances that, given the scope of such fiduciary's investment duties, the fiduciary knows or should know are relevant to the particular investment or investment course of action involved, including the plan's potential exposure to losses and the role the investment or investment course of action plays in that portion of the plan's investment portfolio with respect to which the fiduciary has investment duties (see 29 CFR 2550.404a-1). The Department also notes that in order to act prudently in making such investment decisions, a plan fiduciary must consider, among other factors, the availability, risks and potential return of alternative investments for the plan. Thus, a particular investment by a plan, which is selected in preference to other alternative investments, would generally not be prudent if such investment involves a greater risk to the security of a plan's assets than comparable investments offering a similar return or result.

[6] As noted previously in Representation #3, the WAL for a CMO is determined at the time of purchase based on various assumptions about the speed of principal repayments and interest rate changes, using financial data provided by independent sources (such as Bloomberg Financial Markets). The Bank states that changes to the formula for calculating the amortized cost based on WAL assumptions other than at the time of purchase would not provide an administratively acceptable method of allocating the discount for a CMO because such a method would require constant adjustments which are not material to the concept of income recognition as it relates to CMOs.

[7] For example, assume that a particular CMO investment has been held by a Plan for 6 months. If the WAL was 2.02 years and the cost was 90 based on the par value being 100, the formula would be:

$[(90-100)/(2.02 \times 12)] \times [(2.02 \times 12) - 6)] + 100$
$= [(-10/24.24) \times (24.24 - 6)] + 100$
$= (-.4125413 \times 18.24) + 100$
$= -7.5247533 + 100$
$= 92.475247$

As the formula indicates, the amortized cost using the average life at purchase would be $92.475247 as compared to the actual cost of $90.00. Therefore, the Bank states that the amortized cost formula will cause the Plan to be paid an amount for this CMO investment which is slightly more than the Plan's original cost (i.e. basis).

Plan	Interest received	Principal received	Amort. cost	Total receipts	Original cost
Adams Plan	$4,080	.....	$62,321	$66,401	$57,925
Lake Plan	18,117	15,689	259,723	293,529	259,273
Cumberland Plan	10,199	18,826	132,126	161,151	140,688
Clinic Plan	12,376	.....	139,288	151,664	128,884
Ruckels Plan	1,531	.....	14,466	15,997	13,228
Bank Plan	17,513	20,395	243,234	281,142	247,927

The Bank represents that each Plan received a reasonable rate of return on the CMOs during the period of time that it held the CMOs. In this regard, the Bank states that the annualized weighted average rate of return received by each Plan on its CMOs, net of the principal investment, was as follows: (i) 14.28% for the Adams Plan; (ii) 13.57% for the Lake Plan; (iii) 16.62% for the Cumberland Plan; (iv) 17.91% for the Clinic Plan; (v) 21.53% for the Ruckels Plan; and (vi) 14.16% for the Bank Plan.[8]

Based on the Bank's determination that the amortized cost method resulted in the greatest sales price as of April 25, 1995, the Bank purchased the CMOs from the Plans on April 25, 1995 at each CMOs' amortized cost for a total of $851,158.

8. The Bank, as trustee of the Plans, states that the sale of the CMOs was in the best interests of the Plans and their participants and beneficiaries. The Bank states that the sale allowed the Plan participants to insulate themselves from further decreases in the fair market value of the CMOs and to mitigate any losses. In addition, the Bank states that the sale of the CMOs shifted the consequences associated with selling the CMOs before their retirement from the Plan participants to the Bank.

9. The Bank represents that it took all appropriate actions necessary to safeguard the interests of the Plans and their participants and beneficiaries in connection with the sale of the CMOs. The Bank ensures that each Plan received the appropriate amount of cash from the Bank in exchange for such Plan's CMOs on April 25, 1995. The Bank also ensures that the Plans did not pay any commissions or other expenses in connection with the sale of the CMOs to the Bank.

10. In summary, the Bank represents that the sale satisfied the statutory criteria of section 408(a) of the Act and section 4975 of the Code because: (a) Each sale was a one-time transaction for cash; (b) Each Plan received an amount that was equal to the greater of: (i) The outstanding principal balance for each CMO owned by the Plan, plus accrued but unpaid interest, at the time of the sale; (ii) the amortized cost for each CMO owned by the Plans, plus accrued but unpaid interest, as determined by the Bank on the date of sale; or (iii) the fair market value of each CMO owned by the Plan as determined by the Bank on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of the Bank; (c) The Plans did not pay any commissions or other expenses with respect to the sale; (d) The Bank, as trustee of the Plans, determined that the sale of the CMOs would be in the best interests of each Plan and its participants and beneficiaries; (e) The Bank took all appropriate actions necessary to safeguard the interests of the Plans and their participants and beneficiaries in connection with the proposed transactions; and (f) Each Plan received a reasonable rate of return on the CMOs during the period of time it held the CMOs.

Notice to Interested Persons

The applicant states that notice of the proposed exemption shall be made by first class mail to the appropriate Plan fiduciaries within fifteen days following the publication of the proposed exemption in the **Federal Register**. This notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and a supplemental statement (see 29 CFR 2570.43(b)(2)) which informs interested persons of their right to comment on and/or request a hearing with respect to the proposed exemption. Comments and requests for a public hearing are due within forty-five days following the publication of the proposed exemption in the **Federal Register**.

Appendix

A. The FNMA Guaranteed REMIC Pass-Through Certificates, Fannie Mae REMIC Trust 1991–110, Class E were issued by Fannie Mae as part of an issue of pass-through certificates with nine various classes in the total amount of $200,010,000. The Bank, as trustee of the Plans, purchased portions of one of those classes. The Certificates are secured by first lien residential mortgages with an original term to maturity of 360 months or less.

This REMIC uses a 300 PSA assumption regarding principal repayment (3 times 100 PSA). The WAL for the E class based on a 300 PSA was 10.9 years at the time of purchase.

This REMIC is a principal only bond and, therefore, does not bear interest. The initial interest rate and final distribution date for class E was 9.1 percent and May of 2021, respectively.

B. The FNMA Guaranteed REMIC Pass-Through Certificates, Fannie Mae REMIC Trust 1992–96, Class B were issued by Fannie Mae as part of an issue of pass-through certificates with six various classes in the total amount of $300 million. The Bank, as trustee of the Plans, purchased portions of one of those classes. The Certificates are secured by first lien residential mortgages with an original term to maturity of 360 months or less.

This REMIC uses a 375 PSA assumption regarding principal repayment (3.75 times 100 PSA). The WAL for the B class based on a 375 PSA was 5.9 years at the time of purchase.

This REMIC is a principal only bond and, therefore, does not bear interest. The initial interest rate and final distribution date for class B was 8.3 percent and May of 2022, respectively.

C. The FNMA Guaranteed REMIC Pass-Through Certificates, Fannie Mae REMIC Trust 1993–225, Classes SM and SO were issued by Fannie Mae as part of an issue of pass-through certificates with 130 various classes in the total amount of $3,102,000,000. The Bank, as trustee of the Plans, purchased a portion of one class. The Certificates are secured by first lien residential mortgages with an original term to maturity of 360 months or less.

[8] The formula for the annualized rate of return for the months held was computed for each CMO as follows: [(((Interest Collected + Accretion Income) / Number of Months Held) × 12) / Total Cost). The term "Accretion Income" represents the accretion of the discount received off of the face value of each CMO allocated to the number of months each CMO was held. To arrive at an annualized weighted average rate of return for each Plan, the annualized rate of return for each CMO was calculated to reflect the return of each CMO held by each Plan. The individual CMOs held by each Plan were "weighted" according to the amount invested to compute the total weighted average rate of return for each Plan.

This REMIC uses a 200 PSA assumption regarding principal repayment (2 times 100 PSA). The WAL for class SM and SO based on a 200 PSA was 20.2 years and 9.4 years, respectively, at the time of purchase.

The formula for the interest on class SM is 27.7289% − (LIBOR×4.26589) with a minimum rate of 0.0% and a maximum rate of 27.7289%.[9] For class SO, the interest is 23.1358%−− (LIBOR×3.30495) with a minimum rate of 0.0% and a maximum rate of 23.135. As an inverse floater, the movement of LIBOR has an inverse relationship on the interest paid on all inverse floating rate classes. The initial interest rates for the SM and SO classes were 14.92206% and 12.60047, respectively. The final distribution dates for the SM and SO classes were December 2023 and November 2022, respectively. The interest rate for the SM class can drop to 0.0% if LIBOR reaches 6.5% or higher. The interest rate for the SO class can drop to 0.0% if LIBOR reaches 7.0% or higher.

FOR FURTHER INFORMATION CONTACT: Mr. E. F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

PaineWebber Incorporated Located in New York, New York

[Application No. D–09953]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, PaineWebber Incorporated and each of its affiliates (collectively, PaineWebber), shall not be precluded from functioning as a "qualified professional asset manager" pursuant to Prohibited Transaction Class Exemption 84–14 (PTCE 84–14, 49 FR 9494, March 13, 1984) solely because of a failure to satisfy section I(g) of PTCE 84–14, as a result of General Electric Company's ownership interest in PaineWebber, including any current or future affiliate of PaineWebber which is, or in the future may become, eligible to serve as a QPAM under PTCE 84–14; provided the following conditions are satisfied:

(A) This exemption is not applicable to any affiliation by PaineWebber with any person or entity convicted of any of the felonies described in part I(g) of PTCE 84–14, other than G.E; and

(B) This exemption is not applicable with respect to any convictions of G.E. for felonies described in part I(g) of PTCE 84–14 other than those involved in the G.E. Felonies, described below.

Summary of Facts and Representations

Introduction: General Electric Company (G.E.), an approximately 22 percent owner of PaineWebber Group Inc. (P.G.I.), has been convicted during the past ten years of certain felonies relating to G.E.'s government contracts operations prior to its acquisition of interests in P.G.I. Because G.E. acquired ownership interests in P.G.I. during 1994, the felony convictions could bar P.G.I. and its wholly-owned subsidiaries from acting as "qualified professional asset managers" (QPAMs) under Prohibited Transaction Class Exemption 84–14 (PTCE 84–14, 49 FR 9494, March 13, 1984). Part I(g) of PTCE 84–14 requires that no person owning, directly or indirectly, 5 percent or more of the QPAM has been convicted of certain felonies within ten years preceding the transaction for which the QPAM intends to utilize PTCE 84–14. PaineWebber Incorporated (PaineWebber), a wholly-owned subsidiary of P.G.I, and two of PaineWebber's wholly-owned subsidiaries (collectively, the Applicants) are requesting an exemption to enable them to qualify as QPAMs without regard to any failure to satisfy part I(g) of PTCE 84–14 by reason of G.E.'s ownership of P.G.I., under the terms and conditions described herein.

1. PaineWebber, a Delaware corporation which is wholly owned by P.G.I., engages in a variety of securities services, with its principal place of business in New York, New York. PaineWebber is registered as a broker-dealer and an investment adviser, maintaining memberships on all principal securities and commodities exchanges in the United States as well as the National Association of Securities Dealers, Inc. PaineWebber represents that it provides investment advisory services relating to a wide variety of securities, including but not limited to the following: Exchange-listed, over-the-counter and foreign securities; rights and warrants; securities options and futures; corporate and governmental debt securities; commodities futures, contracts and options; bankers' acceptances; and mutual fund shares. PaineWebber is joined in requesting the exemption by two of its wholly-owned subsidiaries: (a) Mitchell Hutchins Asset Management Inc. (MHAM), located in New York, is an investment management services provider which has sponsored and offers interests in a number of limited partnerships and offshore funds; and (b) Mitchell Hutchins Institutional Investors Inc. (MHII), located in New York, provides discretionary investment management services and non-discretionary investment advisory services. MHII provides investment advice relating to privately-placed alternative asset investment vehicles, including funds specializing in venture capital, distressed debt, leveraged buyouts and restructurings, and privately-placed securities.

The Applicants represent that the clientele served by the operations of PaineWebber and its subsidiaries, especially MHAM and MHII, include substantial numbers of large employee benefit plans subject to the Act. The applicants maintain that, given the size and number of the plans which the Applicants represent, the large number of financial service providers engaged by such plans, the breadth of the definition of "party in interest" under the Act, and the wide array of services offered by the Applicants, it would not be uncommon for an Applicant to propose a transaction involving a party in interest with respect to a plan for which the Applicant is acting in a fiduciary capacity. The Applicants represent that the proposing of such transactions is occasionally necessary to offer plan clients adequate investment diversification opportunities, and that such opportunities will be missed if the Applicants are not permitted to function as QPAMs pursuant to PTCE 84–14.

2. PaineWebber represents that prior to October 17, 1994, G.E. did not have any ownership interests in any of the Applicants. On October 17, 1994, an agreement was executed (the Agreement) between P.G.I., G.E. and G.E.'s wholly-owned subsidiary Kidder Peabody Group Inc. (Kidder). Pursuant to the Agreement, P.G.I. acquired certain assets of Kidder, and G.E. acquired 21,500,00 shares of P.G.I. common stock, which is the sole outstanding class of P.G.I. securities entitled to vote in the election of P.G.I. directors. The Agreement also resulted in G.E.'s receipt of 2,500,000 shares of redeemable preferred P.G.I. stock, which does not confer the right to vote for directors or any right to convert to shares of common stock, and 1,000,000 shares of convertible preferred P.G.I. stock, which does not confer any right to vote for directors. G.E. has the right, subject to approval of the shareholders of P.G.I., to convert its shares of convertible preferred stock into P.G.I. common stock, and G.E. submitted a proposal at the May 1995 annual P.G.I. shareholders meeting to enable the conversion of G.E.'s convertible preferred stock into common stock. The Applicants represent that it is estimated that G.E. would acquire an additional 5,521,811 shares of P.G.I. common stock through the conversion of the convertible preferred stock, resulting in G.E.'s ownership in the aggregate of approximately 27,021,811 shares, or approximately 26.4 percent of the outstanding shares, of P.G.I. common stock.

3. On three occasions from 1986 through 1992, G.E. pled guilty or was convicted of felonies relating to the government contract activities of G.E. and its subsidiaries (the G.E. Felonies). The Applicants represent that the G.E. Felonies did not in any way relate to any employee benefit plan or any person's authority with respect to an employee benefit plan. The Applicants describe the G.E. Felonies more specifically as follows:

(a) On May 13, 1986, G.E. pled guilty to four counts of filing false claims with the United States Air Force and 104 counts of filing false statements with the United States Air Force in connection with work performed in 1980 by G.E.'s Re- Entry Systems Operation. The Applicants represent that these counts primarily related to individual time cards that were improperly charged to certain government contracts.

(b) On February 2, 1990, G.E. was convicted of mail fraud and violations of the False Claims Act relating to the conduct in 1983 of two contract employees of a G.E. subsidiary, Management and Technical Services Co., involving failure to notify the United States Army that subcontractors had agreed to prices lower than those contained in projections for the project. The Applicants represent that neither G.E. nor any officer or employee of G.E. was accused of having knowledge of the discrepancy and withholding it from the United States Army.

(c) On July 22, 1992 G.E. pled guilty to violations of 18 U.S.C. 287 (submitting false claims against the United States), 18 U.S.C. 1957 (engaging in monetary transactions in criminally derived property), 15 U.S.C. 78m(b)(2)(A) and 78ff(a) (inaccurate books and records), and 18 U.S.C. 371 (conspiracy to defraud and commit offenses against the United States). The Applicants represent that these violations related to a series of events between 1984 and 1990, involving false statements made by employees of G.E. Aircraft Engines Division to a foreign government that led such foreign government to submit false claims to the United States relating to the purchase of weapons.

4. The Applicants represent that the G.E. Felonies did not relate in any way to the conduct or business of PaineWebber, any PaineWebber securities broker or dealer, investment adviser, bank, insurance company or fiduciary. The Applicants maintain, however, that although none of the unlawful conduct involved the Applicants' investment management activities or any plans covered by the Act, the criminal activities described above could preclude each component of PaineWebber, as an affiliate of G.E., from serving as a "qualified professional asset manager" (QPAM), due to the provisions of sections I(g) and V(d) of PTCE 84–14. Section I(g) of PTCE 84–14 precludes a person who otherwise qualifies as a QPAM from serving as a QPAM if such person or an affiliate thereof has within the 10 years immediately preceding the transaction been either convicted or released from imprisonment as a result of certain criminal activity, including any crime described in section 411 of the Act. Because the G.E. Felonies involved crimes described in section 411 of the Act and monies transferred to or claimed by G.E., the Applicants represent that they may be barred from qualifying as QPAMs.

5. Accordingly, the Applicants request an exemption to enable PaineWebber and its components and subsidiaries to function as QPAMs despite their failure to satisfy section I(g) of PTCE 84–14 solely because of the G.E. Felonies and the Applicants' affiliation with G.E. The Applicants request that the exemption also apply to wholly-owned PaineWebber subsidiaries that are created or acquired in the future. The transactions covered by the proposed exemption would include the full range of transactions that can be executed by investment managers who qualify as QPAMs pursuant to PTCE 84–14. If granted, the exemption will enable PaineWebber and its direct and indirect wholly-owned subsidiaries to qualify as QPAMs by satisfying all conditions of PTCE 84–14, except that G.E.'s convictions and guilty pleas in connection with the G.E. Felonies shall not prevent satisfaction of the condition stated in section I(g) of PTCE 84–14 because of affiliation with G.E. The exemption, if granted, will relate only to the Applicants' affiliation with G.E. and not to their affiliation with any other persons or entities.[10]

6. The Applicants maintain that because of restrictions on G.E.'s ability to influence the management or policies of the Applicants, there is no cause for concern that the affiliation with G.E. will in any way affect the suitability of any of the Applicants to act as a QPAM. The Applicants represent that the Agreement contains the following restrictions and prohibitions which effectively preclude G.E. from controlling the Applicants: (a) At the annual meeting of P.G.I.'s shareholders, G.E. is required to present its shares to establish a quorum and may only vote its shares either as directed by P.G.I.'s board of directors or in proportion as all other shares are voted on a matter; (b) G.E. has only one representative on P.G.I.'s board of directors, comprised of 15 persons, and no representative on P.G.I.'s executive committee; (c) G.E. is given no right, power or privilege to be consulted on decisions of P.G.I. or to be involved in the day-to-day management of P.G.I.; (d) G.E. has not been given any veto power over any corporate action by P.G.I.; and (e) G.E. is prohibited from soliciting proxies or otherwise obtaining proxies in opposition to the P.G.I. board of directors. The Applicants emphasize that G.E.'s acquisition of an ownership interesting P.G.I. did not result in any integration of the separate businesses of G.E. and the Applicants. To the contrary, the Applicants represent that G.E. merely became a shareholder of P.G.I., and the Applicants' businesses remain entirely separate from G.E.'s business.

Furthermore, the Applicants state that they are committed to a strong legal compliance program, involving their own policies and procedures to promote compliance with applicable laws including the Act. In this regard, the Applicants represent that their internal compliance procedures currently are undergoing revision and updating, including an expansion of the materials relating to fiduciary responsibilities and prohibited transactions under the Act, in order to prevent illegal activity in the conduct of their business. The Applicants state that such expanded discussion of the Act will be reflected in newly-promulgated revisions to P.G.I.'s sales practice policy manual and the branch office managers' supervisory manual, each of which will feature updated legal developments and illustrative examples to make sales staff

[9] "LIBOR" refers to the arithmetic mean of the London interbank offered quotations for one-month Eurodollar deposits. LIBOR moves up or down as interest rates move up or down. The movement of LIBOR has an inverse relationship on the interest paid on all inverse floating rate classes.

[10] For example, any affiliation of the Applicants with any company or individual convicted of any of the felonies described in section 411 of the Act, other than G.E. with respect to the G.E. Felonies described herein, is not within the scope of the exemption proposed herein. Furthermore, any future convictions of or guilty pleas by G.E. for felonies described in part I(g) of PTCE 84–14 are not within the scope of the exemption proposed herein.

aware of the restrictions involved in dealing with employee benefit plans.

7. In summary, the Applicants represent that the criteria of section 408(a) of the Act are satisfied for the following reasons: (a) The G.E. Felonies occurred prior to any affiliation between G.E. and the Applicants, and did not involve any conduct on the part of the Applicants; (b) G.E. does not have control or influence over the operations of the Applicants; (c) The Applicants are undertaking reform and revision of their policies and procedures to prevent illegal activity; and (d) The exemption will permit the Applicants to engage in a broader variety of investments and services on behalf of client employee benefit plans which demand diverse investment opportunities.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

LEGENT Retirement Security Plan (the Plan) Located in Pittsburgh, PA

[Application No. D–10015]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale by the Plan of a limited partnership interest in BPT Union City Associates, Inc. (the BPT Interest) to LEGENT Corporation (LEGENT), a party in interest with respect to the Plan.

This proposed exemption is conditioned upon the following requirements: (1) All terms and conditions of the sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party; (2) the sale is a one-time transaction for cash; (3) the Plan is not required to pay any commissions, costs or other expenses in connection with the sale; and (4) the Plan receives a sales price which is not less than the greater of: (a) The fair market value of the BPT Interest as determined by a qualified, independent appraiser, or (b) the total acquisition cost plus opportunity costs attributable to the BPT Interest.

Summary of Facts and Representations

1. The Plan is a defined contribution plan sponsored by LEGENT, a publicly-held Pennsylvania corporation engaged in supplying systems management solutions to large users of computer technology. As of September 30, 1993, the Plan had net assets available for benefits that totaled $49,202,389 and 1,890 participants.

Prior to September 1, 1993, Mellon Bank (Mellon Bank) served as the Plan trustee. Effective September 1, 1993, Fidelity Investments became the trustee of all of the Plan's assets with the exception of certain limited partnership interests (the Interests). Although Mellon Bank continues to serve as Plan trustee with respect these Interests, which the Plan holds as general assets, effective 1989, the Plan has permitted each participant to direct the investments held in his or her individual account among several funds selected by LEGENT.

2. On July 1, 1977, Morino Inc. (Morino), a Delaware corporation engaged in supplying systems management solutions to users of computer technology, adopted the Morino Associates. Inc. Money Purchase Pension Plan (Morino Pension Plan) and the Morino Associates, Inc. Profit Sharing Plan (Morino Profit Sharing Plan; collectively, the Morino Plans). On October 1, 1989, Morino merged with Duquesne Systems, Inc. (Duquesne) and formed LEGENT. Effective October 1, 1989, the Morino Pension Plan merged into the Duquesne Systems, Inc. Pension Plan and the Morino Profit Sharing Plan merged into the Duquesne Systems, Inc. Profit Sharing Plan. The resulting merged plans were amended and restated effective October 1, 1989 as the LEGENT Corporation Pension Plan and the LEGENT Corporation Savings Plan, respectively. Subsequently on October 1, 1992, the LEGENT Corporation Savings Plan was amended and restated as the Plan to reflect the merging of the LEGENT Corporation Pension Plan and the Goal Systems International, Inc. Profit Sharing Plan into the LEGENT Corporation Savings Plan due to the merger of Goal Systems International, Inc. into LEGENT.

3. Among the assets of the Plan is a 6 percent limited partnership interest in BPT, a Tennessee limited partnership that was organized to acquire, own, operate and sell a strip shopping center located in Union City, Tennessee. BPT is an unrelated party. In a private offering memorandum dated June 5, 1985, BPT made an aggregate offering to investors of $1,548,680. In accordance with the terms of the memorandum, BPT offered to sell 35 limited partnership units for a per unit purchase price of $25,677 and 35 participation notes for an issuance price per note of $18,571. The participation notes consist of second deeds of trust on real property and they mature on July 31, 1995.

The Morino Pension Plan and the Morino Profit Sharing Plan acquired two and three participation notes, respectively, from unrelated parties on August 30, 1985 for a total purchase price of $92,855. The acquisition of the BPT Interest was made at the direction of Morino. Although the Plan received income totaling $20,341 from BPT for the years 1990 and 1991, no further income payments were made to the Plan after 1991.

To the extent known, none of the obligors of the notes are parties in interest with respect to the Plan. In addition, the general partners of BPT and the investors in such limited partnership are not related to the Plan or its predecessors. Further, it is represented that LEGENT has never invested in BPT.

4. When Morino was merged with Duquesne, the existing Plan accounts invested in the BPT Interest were not intially frozen. Because the former Morino Plans did not offer individual participant investment elections, the Plan has held the BPT Interest as a general asset with a portion of such Interest being allocated to all participants in the Morino Plans. As these participants terminated their employment with Duquesne, their allocable portion of the BPT Interest was purchased by the Plan using the cash generated from such Interest. The remaining portions of the participant accounts that were invested in the BPT Interest were frozen when Mellon Bank determined that the BPT Interest had no value and there was insufficient cash to purchase any additional portions from terminating employees. Accordingly, LEGENT froze the remaining accounts invested in the BPT Interest. As of January 13, 1995, the BPT Interest was allocated to the accounts of eighty-six former Morino employees.

5. LEGENT represents that the BPT Interest is a highly illiquid investment for which there is a very limited secondary market.[11] Mellon Bank represents, in a letter dated November 29, 1993, that it has made every effort to sell the BPT Interest to unrelated parties. However, due to the insufficient secondary market, no purchaser has been found. Accordingly, LEGENT requests an administrative exemption from the Department in order to purchase the BPT Interest from the Plan.

6. Mellon Bank proposes to sell the BPT Interest to LEGENT for not less than the greater of: (a) The fair market value of the BPT Interest as determined by a qualified, independent appraiser, or (b) the total acquisition cost and opportunity costs attributable to the BPT Interest. The proposed sale will be a one-time transaction for cash. In addition, the Plan will not be required to pay any fees, commissions or expenses in connection with the sale. Mellon Bank represents that it will determine, prior to the sale, whether such transaction is appropriate for the Plan and is in the best interests of the Plan and its participants and beneficiaries.

7. In an appraisal report dated October 20, 1994, G. Dan Poag, President of Bright, Poag & Thompson, Inc., the general partner of BPT, states that the BPT Interest has no fair market value. Mr. Poag explains that the investor notes are subordinate to the first mortgage and have not been serviced in some time. In an addendum to his appraisal report of April 17, 1995, Mr. Poag again confirms that the BPT Interest has a current fair market value of zero as of that date.

8. Because the fair market value of the BPT Interest is less than its acquisition cost, LEGENT will purchase the BPT Interest from the Plan for the latter amount. In addition, LEGENT represents that because the Plan did not receive an adequate rate of return on the BPT Interest, it will pay $18,922 to make up for the Plan's lost opportunity costs.[12]

Accordingly, LEGENT will purchase the BPT Interest from the Plan for an aggregate purchase price of $111,777.[13]

9. In summary, it is represented that the transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) All terms and conditions of the sale will be at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party; (b) the sale will be a one-time transaction for cash; (c) the Plan will not be required to pay any commissions, costs or other expenses in connection with the sale; (d) the Plan will receive a sales price not less than the greater of: (1) The fair market value of the BPT Interest as determined by a qualified, independent appraiser, or (2) the total acquisition cost plus opportunity costs that are attributable to the BPT Interest; and (e) Mellon Bank will determine that the sale is appropriate transaction for the Plan and in the best interests of the Plan and its participants and beneficiaries.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Code, including sections 401(a)(4), 404 and 415.

Notice to Interested Persons

Notice of the proposed exemption will be given to all interested persons by first-class mail within 30 days of the date of publication of the notice of pendency in the **Federal Register**. Such notice will include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment on and/or to request a hearing. Comments with respect to the notice of proposed exemption are due within 60 days after the date of publication of this proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

KeyCorp 401(k) Savings Plan (the Plan) Located in Cleveland, Ohio

[Application No. D–10023]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and 406(b)(2) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed loan of funds (the Loan) to the Plan by KeyCorp (the Employer), the sponsor of the Plan, with respect to Guaranteed Investment Contract No. 62149 (the GIC) issued by Confederation Life Insurance Company of Canada (Confederation), and the potential repayment by the Plan of the Loan upon receipt of payments under the GIC; provided the following conditions are satisfied: (a) No interest and/or other expenses are paid by the Plan in connection with the Loan; (b) All of the terms and conditions of the proposed Loan are no less favorable to the Plan than those which the Plan could obtain in an arm's-length transaction with an unrelated party; (c) The Loan will be no less than the amount described in this Notice of Proposed Exemption; (d) The repayment of the Loan will not exceed the total amount of the Loan; (e) The repayment of the Loan by the Plan will be restricted to funds paid to the Plan under the GIC by Confederation or other responsible third parties with respect to the GIC; and (f) The repayment of the Loan will be waived to the extent the amount of the Loan exceeds the proceeds the Plan receives from the GIC.

Summary of Facts and Representatives

1. The Employer is a financial service holding company headquartered in Cleveland, Ohio, and registered under the Federal Bank Holding Company Act of 1956. The Key Trust Company of Ohio (Key Bank) is a wholly owned subsidiary of the Employer. Society Corporation merged with and into KeyCorp effective March 1, 1994, with Society Corporation becoming the legal successor-in-interest. Also on March 1, 1994, Society Corporation changed its name to KeyCorp. The Society National Bank, formerly a subsidiary of Society Corporation, is now Key Bank.

2. The Plan is a defined contribution profit sharing plan with a cash or deferred arrangement as provided in section 401(k) of the Code, and an employee stock ownership plan as provided in section 4975(e)(7) of the Code. Participants are permitted to direct the investment of their individual accounts among five investment funds, the Equity Fund, the Money Market Fund, the Balanced Fund, the Bond Fund, and the Corporation Stock Fund. Key Bank is the trustee for four of the five investment funds, and Wachovia Bank of North Carolina is the Trustee of the Plan's Corporation Stock Fund. Approximately 21,000 employees of the

[11] The Department expresses no opinion, in this proposed exemption, on whether Plan fiduciaries violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act in acquiring and holding the BPT Interest.

[12] LEGENT represents that the average rates of return for the remaining assets that were held each year by its predecessor Plans is a fair measure of the Plan's lost opportunity costs. Therefore, LEGENT has calculated interest on the amount invested in the BPT Interest for the Plan Years beginning after September 30, 1991 since BPT paid dividends to the Plan through 1991. Using this method of calculation, LEGENT represents that the BPT Interest would have earned aggregate opportunity costs of $18,922.

[13] The applicant represents that the amount by which the purchase price for the BPT Interest exceeds its fair market value, if treated as an employer contribution to the Plan, when added to the balance of the annual additions to such Plan, will not exceed the limitation prescribed by section 415 of the Code.

Employer and its affiliates participate in the Plan. The Plan had assets of $80.8 million as of April 24, 1995.

3. On April 19, 1990, Society National Bank (now, Key Bank) as trustee for the Society Corporation Employee Stock Purchase and Savings Plan (now, the Plan) entered into an agreement with Confederation's Atlanta, Georgia office to purchase the GIC. Under the terms of the GIC, the Plan deposited $1 million at a guaranteed interest rate of 9.4% for 5 years. Pursuant to the terms of the GIC, interest of $94,000 was to be paid on April 16 of each year until the expiration date of the GIC on April 16, 1995. On April 16, 1995 a final payment of $1,094,000 was due to the Plan. In accordance with the terms of the GIC, all interest due was paid to the Plan through April 1994.

On August 11, 1994, the Canadian operations of Confederation were placed in conservatorship and rehabilitation by Canadian regulators. The next day, August 12, 1994, the Michigan Insurance Commission similarly placed Confederation's United States operations into conservatorship and rehabilitation.[14] Consequently, on April 16, 1995, the final payment of $1,094,000 due the Plan under the GIC was not paid. In addition, the applicant represents that it is uncertain as to what portion of the defaulted interest and principal will be paid to the Plan and what timeframe and payment terms will be forthcoming as part of the rehabilitation proceedings.

4. In order to prevent any loss to the Plan, the Employer wishes to make the Loan under the terms described herein. The amount of the Loan will be the final payment due the Plan under the GIC ($1,094,000) plus interest on such amount from April 16, 1995, at the rate of interest earned by the Plan's Bond Fund to the date of the Loan.

The applicant represents that the Bond Fund is primarily invested in the Victory Limited Term Income Fund which is an open-end mutual fund (the Mutual Fund). The Mutual Fund prospectus states that the Mutual Fund invests in high grade fixed income securities with an average maturity of between two and five years. In addition, the Bond Fund holds a second GIC which is not the subject of this proposed exemption. For the three month period ended March 31, 1995, the Bond Fund had a return of 2.87%.

5. No interest or other expenses will be paid by the Plan pursuant to the transaction. Repayment of the Loan is limited to the amounts received by the Plan from Confederation or any other responsible third parties making payment on behalf of Confederation. The Employer will have no recourse against the Plan or any participants or beneficiaries for additional funds to repay the Loan. To the extent the amounts received from Confederation and responsible third parties are insufficient to repay the Loan, repayment will be waived. In no event will the repayment exceed the amount of the Loan.

6. In summary, the applicant represents that the proposed transaction will satisfy the criteria of section 408(a) of the Act because: (a) The Plan will receive the full amount due under the GIC plus interest from the GIC's maturity date to the date of the Loan; (b) no interest or other expenses will be paid by the Plan; (c) the repayment of the Loan is restricted to amounts received from Confederation and other responsible third parties with respect to the GIC; (d) the repayment will not exceed the amount of the Loan; and (e) repayment will be waived to the extent that the proceeds received with respect to the GIC are less than the amount of the Loan.

NOTICE TO INTERESTED PERSONS: Notice to interested persons will be provided within 30 days of the publication of this Notice in the **Federal Register**. Comments and requests for a hearing are due 60 days from the date of publication of this Notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Charles S. Edelstein of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 26th day of June, 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 95–16063 Filed 6–28–95; 8:45 am]

BILLING CODE 4510–29–P

[14] The Department notes that the decisions to acquire and hold the GIC are governed by the fiduciary responsibility provisions of Part 4, Subtitle B, of Title I of the Act. In this regard, the Department is not herein proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the GIC by the Plan.

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act

SUMMARY: Notice is hereby given that the National Science Foundation (NSF) has received a waste management permit application from Adventure Network International (ANI) associated with touristic activities at several locations in Antarctica, submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application on or before July 31, 1995. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT:

Robert S. Cunningham or Peter R. Karasik at the above address or (703) 306–1031.

SUPPLEMENTARY INFORMATION: NSF's Antarctic Waste Regulation, 45 CFR Part 671, requires all U.S. citizens and entities to obtain a permit for the use or release of a designated pollutant and for the release of waste in Antarctica. NSF has received a permit application under this regulation which covers the waste management activities of U.S. citizens participating in antarctic tours managed by ANI. The permit applicant is: Ms. Anne Kershaw, Adventure Network International, Canon House, 27 London End, Beaconsfield, Bucks. HP9 2HN U.K.

ANI offers climbing trips to Vinson Massif, the Ellsworth Mountains, and the Transantarctic Mountains; ski trips to the Ellsworth Mountains; and flights to the South Pole and the Emperor Penguin colony at the Dawson Lambton Glacier as well as trips to other antarctic locations. The permit application is limited to the waste management activities of U.S. citizens participating in the programs. The proposed duration of the permit is from October 25, 1995 through October 24, 2000.

Activity for Which Permit Requested

ANI takes groups which include up to 15 U.S. citizens to locations of tourists interest in Antarctica. In some of the tours, 93 percent octane gasoline is used for vehicles and equipment; propane is used for cooking and heating; and unleaded kerosene (white gas) is used in small camping stoves for cooking by field parties. These substances are designated pollutants under antarctic waste regulations. Wastes and unused supplies are packed out and returned to Punta Arenas, Chile. Conditions of the permit will include requirements to educate all participants with the requirements of the Antarctic Conservation Act (ACA), report on the removal of materials and any accidental releases, and mange human waste in accordance with antarctic waste regulations.

Robert S. Cunningham,

Environmental Compliance Manager, Office of Polar Programs, National Science Foundation.

[FR Doc. 95–16021 Filed 6–28–95; 8:45 am]

BILLING CODE 7555–01–M

Committee Management; Renewals

The Assistant Directors having responsibility for the 29 Advisory Committees listed below have determined that renewing these groups for another two years is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), by 42 USC 1861 et seq. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Advisory Committee for Small Business Industrial Innovation (#61) [formerly called Advisory Committee for Industrial Innovation Interface]
Advisory Committee for Biological Sciences (#1110)
Advisory Committee for Education & Human Resources (#1119)
Advisory Committee for Polar Programs (# 1130)
Advisory Panel for Biochemistry & Molecular Structure & Function (#1134)
Advisory Panel for Cell Biology (#1136)
Advisory Panel for Developmental Mechanisms (#1141)
Advisory Panel for Genetics & Nucleic Acids (#1149)
Advisory Panel for Neuroscience (#1158)
Advisory Panel for Physiology and Behavior (#1160)
Advisory Committee for Engineering (#1170)
Alan T. Waterman Award Committee (#1172)
Federal Networking Council Advisory Committee (#1177)
Special Emphasis Panel in Science Resources Studies (#1211)
Advisory Panel for Instrumentation & Instrument Development (#1215)
Special Emphasis Panel in Science & Technology Infrastructure (#1373)
Earth Sciences Proposal Review Panel (#1569)
Advisory Panel for Ecological Studies (#1751)
Advisory Panel for Long-Term Projects in Environmental Biology (#1752)
Advisory Panel for Systematic & Population Biology (#1753)
Special Emphasis Panel in Biological Sciences (#1754)
Advisory Committee for Geosciences (#1755)
Special Emphasis Panel in Geosciences (#1756)
Advisory Panel for Anthropological & Geographic Sciences (#1757)
Advisory Panel for Cognitive, Psychological & Language Sciences (#1758)
Advisory Panel for Economic, Decision & Management Sciences (#1759)
Advisory Panel for Science, Technology & Society (#1760)
Advisory Panel for Social & Political Sciences (#1761)
Special Emphasis Panel in Social, Behavioral & Economic Research (#1766)

Authority for these Committees will expire on June 30, 1997, unless they are renewed.

Dated: June 26, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–16035 Filed 6–28–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Biological Sciences; Committee of Visitors; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Committee of Visitors (COV) Review of the Genetics and Nucleic Acids Cluster in the Division of Molecular and Cellular Biosciences.

Date and Time: Thursday, July 20 through Friday, July 21, 1995; 8:30 A.M. to 5:00 P.M.

Place: The National Science Foundation, Room 340, 4201 Wilson Boulevard, Arlington, Virginia 22230.

Type of Meeting: Closed.

Contact Person: Maryanna Henkart, Acting Division Director for Molecular and Cellular Biosciences, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia. Telephone: (703) 306–1440.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda: To provide oversight review of the Genetics and Nucleic Acids Cluster in the Division of Molecular & Cellular Biosciences.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: June 26, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–16031 Filed 6–28–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems (1205).

Date and Time: July 17 and July 18, 1995; 8:30 a.m. to 5:00 p.m.

Place: NSF, 4201 Wilson Boulevard, Room 530, Arlington, Virginia.

Contact Person: Dr. Devendra P. Garg, Program Director, Dynamic Systems & Control Program, Division of Civil and Mechanical Systems, Room 545, NSF, 4201 Wilson Blvd., Arlington, VA 22230 703/306–1361, x5068.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government Sunshine Act.

Dated: June 26, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–16029 Filed 6–28–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name and Committee Code: Special Emphasis Panel in Design, Manufacture and Industrial Innovation (#1194)

Date and Time: July 20, 1995, 8:30 am to 5:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Room 565.

Type of Meeting: Closed.

Contact Person: Mr. Charles R. Hauer, Program Manager, Small Business Innovation Research, National Science Foundation, 4201 Wilson Boulevard, Arlington VA 22230. Telephone: (703) 306–1391.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Small Business Innovation Research [SBIR] proposals as part of the selection for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552(c) (4) and (6) of the Government in the Sunshine Act.

Dated: June 26, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–16032 Filed 6–28–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Engineering (# 1170).

Date and Time: July 20–21, 1995: 8:00 AM–5:00 PM.

Place: 4201 Wilson Boulevard, Arlington, Virginia, Rooms 530 and 580.

Type of Meeting: Closed.

Contact Person: Dr. Joy Pauschke, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia, 22230. Telephone: (703) 306–1380.

Purpose of Meeting: Committee of Visitors, Engineering Education Programs, Engineering Education and Centers Division. To provide assessment of program-level technical and managerial matters pertaining to proposal decisions and program operations.

Agenda: To assess the proposal review process and technical management of the Engineering Education Coalitions and the Combined Research Curriculum Development programs.

Reason for Closing: The files being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 26, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–16028 Filed 6–28–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Mathematical and Physical Sciences Committee of Visitors; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Advisory Committee for Mathematical and Physical Sciences Committee of Visitors.

Date and Time: July 20–21, 8:30 am–5:00 pm.

Place: Room 375, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: John B. Hunt, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1857.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda: To provide oversight review of all of the programs of the Division of Chemistry.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they are disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: June 26, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–16033 Filed 6–28–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Polar Programs; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in the Polar Programs.

Date and Time: July 20, 1995; 8:30 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Room 730.

Type of Meeting: Closed.

Contact Person: Dr. Polly A. Penhale, Program Manager, OPP, Room 755 Telephone: (703) 306–1033.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Southern Ocean Joint Global Ocean Flux Modelling proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: June 26, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–16030 Filed 6–28–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Systemic Reform; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Code: Special Emphasis Panel in Systemic Reform (1765).

Date and Time: July 12, 1995 (6:00–8:00 pm); July 13–14, 1995 (8:30–5:00 pm).

Place: National Science Foundation, 4201 Wilson Boulevard, Room 390, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Madeleine J. Long, Daniel D. Burke, Richard P. Mesa, or Paula B. Duckett, Program Directors for Urban Systemic Initiatives Program, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1684.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Urban Systemic Initiative proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 26, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–16034 Filed 6–28–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Undergraduate Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Undergraduate Education.

Date and Time: July 17, 1995 7:30 p.m. to 9:00 p.m.; July 18, 1995; 8:30 a.m. to 5:00 p.m.; July 19, 1995; 8:30 a.m. to 5:00 p.m.; July 20, 1995; 8:30 a.m. to 2:00 p.m.

Place: Doubletree National Airport Hotel, 300 Army/Navy Drive, Arlington, VA 22202.

Type of Meeting: Closed.

Contact Person: Dr. Herbert Levitan, Section Head, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1666.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate unsolicited proposals submitted to the Course and Curriculum Development-Mathematical Sciences and their Application throughout the Curiculum (CCD-MATH) Panel Meeting.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552 b. (c) (4) and (6) of the Government in the Sunshine Act.

Dated: June 26, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–16027 Filed 6–28–95;8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–445]

Texas Utilities Electric Company (Comanche Peak Steam Electric Station, Unit 1); Exemption

I

Texas Utilities Electric Company (the licensee) is the holder of Facility Operating License No. NPF–87 for the Comanche Peak Steam Electric Station (CPSES), Unit No. 1. The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of a pressurized water reactor at the licensee's site in Somervell County, Texas.

II

The Code of Federal Regulations, 10 CFR 50.55a(f)(4)(ii), requires that inservice tests to verify operational readiness of pumps and valves, whose function is required for safety, conducted during successive 120-month intervals must comply with the requirements of the latest edition and addenda of Section XI of the ASME Boiler and Pressure Vessel Code incorporated by reference in paragraph (b) of 10 CFR 50.55a, twelve months prior to the start of the 120-month interval.

NRC regulations in 10 CFR 50.12(a) provide for specific exemptions from the requirements of the regulation in Part 50 if: (1) The exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security; and, (2) special circumstances are present. The regulations in, 10 CFR 50.12(a)(2)(ii) provide that special circumstances are present where application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. The underlying purpose of 10 CFR 50.55a(f)(4)(ii) is to assure that inservice test (IST) programs are routinely updated to conform to advances in the industry in order to assure continued operability of pumps and valves required for safe operation.

III

Pursuant to 10 CFR 50.12, the licensee requested on March 1, 1994, an exemption from the requirement of 10 CFR 50.55a(f)(4)(ii) which would allow the first periodic 120-month interval revision for the CPSES Unit I IST plan to be based on the Unit 2 commercial operation date (August 3, 1993). The first periodic interval for Unit 1 is currently based on the Unit 1 commercial operation date (August 13, 1990). The staff had requested additional information to supplement the March 1, 1994, letter. The licensee provided the requested information in its letter dated August 12, 1994.

CPSES Unit 1 and Unit 2 began commercial operation approximately three years apart and are therefore on different schedules for periodic IST program revisions. In order to maintain the consistency of the IST program between CPSES Units 1 and 2, the licensee intends to perform future 120-month program revisions for both units coincidently. The licensee proposes to accomplish this by performing all future IST program revisions for both units at 120-month intervals based on the Unit 2 commercial operation date. This would effectively extend the first test interval for Unit 1 from 120 months to approximately 156 months.

At the licensee's request, the NRC staff previously granted permission to use the later approved 1989 edition of American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME) Section XI for the interval of inservice testing at CPSES Unit 2 and at the same time granted permission to update the Unit 1 IST program to the use of that same Code. Effectively, the pumps and valves at CPSES Units 1 and

2 are being tested to the requirements of a later Code edition that might otherwise not be required to be implemented until the year 2000 for Unit 1 and the year 2003 for Unit 2. The changes to the 1989 edition of ASME Section XI regarding pump and valve testing represent a substantial technical improvement over the 1986 edition not usually found from edition to edition. Since none of the IST test frequencies are directly tied to the 120-month interval, except for safety and relief valve testing, the test frequencies are unchanged and remain compliant with the committed edition of the code or as modified by approved relief requests. The schedule for safety and relief valves must be maintained on a five- or ten-year frequency; however, this can be accomplished even if both units are placed on a concurrent interval.

IV

Therefore, based on these considerations, it is unlikely that the IST program for Unit 1 will not be updated such that there would be an increase in the risk of failure for operational readiness of pumps and valves whose function is required for the safety of Unit 1. Since the Unit 1 IST was updated to the Code edition required to support the commercial operation of Unit 2 on August 3, 1993, Unit 1 was effectively updated per 10 CFR 50.55a(f)(4)(ii) at that time. Thus, using that date as the start of the 120-month interval will achieve the underlying purpose of 10 CFR 50.55a(f)(4)(ii). However, as noted above, the licensee must maintain the safety and relief valve testing on a 5- and 10-year frequency, in accordance with American National Standards Institute (ANSI)/ASME OM–1, which is referenced in the 1989 edition of ASME Section XI as applicable for testing of safety and relief valves.

Consequently, the Commission concludes that the special circumstances of 10 CFR 50.12(a)(2)(ii) exist in that application of the regulation in this particular circumstance is not necessary to achieve the underlying purpose of the rule.

Further, it is advantageous for a facility with two similar units to implement an IST program which is consistent between units by testing each unit to the same Code edition and by scheduling 120-month program updates on each unit to coincide. CPSES Units 1 and 2 are similar units and the licensee has therefore attempted to capture these advantages through the use of one IST program which specifies the same test requirements for both units based on the same Code Edition.

The advantages include a significant reduction in the administrative effort required in preparing periodic program updates, a corresponding reduction in the program review effort by the NRC staff and a reduction in the potential for personnel errors in the performance of testing requirements. Further, a significant unit difference is eliminated by applying the same Code requirements to the testing of both units. In addition, this exemption increases plant safety through simplification and standardization of plant testing procedures, does not present an undue risk to the public health and safety, and is consistent with the common defense and security.

V

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest and that the special circumstances required by 10 CFR 50.12(a)(ii) are present. Therefore, the Commission hereby grants Texas Utilities Electric Company an exemption from those requirements of 10 CFR 50.55a(f)(4)(ii) such that the CPSES Unit 1, periodic 120-month IST program interval revisions will be based on the Unit 2 commercial operation date (August 3, 1993).

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant effect on the quality of the human environment (60 FR 32356). This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 21st day of June 1995.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Acting Director, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–15965 Filed 6–28–95; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Management Accountability and Control

AGENCY: Office of Management and Budget.

ACTION: Final Revision of OMB Circular No. A–123.

SUMMARY: This Notice revises Office of Management and Budget (OMB) Circular No. A–123, "Management Accountability and Control." The Circular, which was previously titled "Internal Control Systems," implements the Federal Managers' Financial Integrity Act of 1982 (FMFIA).

FOR FURTHER INFORMATION CONTACT: Office of Management and Budget, Office of Federal Financial Management, Management Integrity Branch, Room 6025, New Executive Office Building, Washington, DC 20503, telephone (202) 395–6911 and fax (202) 395–3952. For a copy of the revised Circular, contact Office of Administration, Publications Office, room 2200, New Executive Office Building, Washington, DC 20503, or telephone (202) 395–7332.

ELECTRONIC ACCESS: This Circular is also accessible on the U.S. Department of Commerce's FedWorld Network under the OMB Library of Files.

- The Telnet address for FedWorld via Internet is "fedworld.gov".
- The World Wide Web address is "http://www.fedworld.gov/ftp.htm#omb".
- For file transfer protocol (FTP) access, the address is "ftp://fwux.fedworld.gov/pub/omb/omb.htm".

The telephone number for the FedWorld help desk is (703) 487–4608.

SUPPLEMENTARY INFORMATION:

A. Background

Circular No. A–123 was last issued on August 4, 1986. On March 13, 1995 the Office of Management and Budget requested public comments on a revised version of the Circular (60 FR 13484).

The revision announced here alters requirements for executive agencies on evaluating management controls, consistent with recommendations made by the National Performance Review. The Circular now integrates many policy issuances on management control into a single document, and provides a framework for integrating management control assessments with other work now being performed by agency managers, auditors and evaluators.

The Circular emphasizes that management controls should benefit rather than encumber management, and should make sense for each agency's operating structure and environment. By giving agencies the discretion to determine which tools to use in arriving at the annual assurance statement to the President and the Congress, the Circular represents an important step toward a streamlined management control program that incorporates the reinvention principles of this Administration.

B. Analysis of Comments

Thirty-three responses were received from 23 Federal agencies and the

American Institute of Certified Public Accountants (AICPA). Of the 33 responses, 14 simply agreed with the proposed revision and made no comments on the document, although some had minor comments on a proposal by the Chief Financial Officers' Council to streamline reporting. Almost all of the remaining 19 responses were also in favor of the revision, but made some specific suggestions.

A summary of the transmittal memorandum and the five sections of the Circular follows. Each section indicates which comments were accepted and which were not accepted.

Transmittal Memorandum. This memorandum, signed by the OMB Director, summarizes the purpose, authority, and policy reflected in the Circular, the actions required, and related administrative information. Four agencies made comments relating to the memorandum.

Comments Accepted: The statement describing management accountability is now repeated in Section I of the Circular. The definition of management controls (which appears in both the memorandum and Section II) has been amended to state that controls should ensure reliable "and timely" information. The requirement that agencies report annually on management controls is now explicitly stated in the memorandum. In addition, OMB has added instructions on accessing the Circular electronically.

Comment Not Accepted: One agency suggested that performance appraisals be used to hold managers accountable for management control responsibilities. OMB supports this concept but prefers that the specific content of appraisals be left to each agency.

Section I. Introduction. This section describes a framework for agency management control programs that integrates management control activities with other management requirements and policies, such as the Government Performance and Results Act (GPRA), the Chief Financial Officers (CFOs) Act, the Inspector General (IG) Act, and other congressional and Executive Branch requirements. The foundation of this policy is that management control activities are not stand-alone management practices, but rather are woven into the day-to-day operational responsibilities of agency managers.

Agencies are encouraged to plan for how the requirements of the Circular will be implemented. Agencies are also encouraged to establish senior level management councils to address management accountability and related issues within the broad context of agency operations.

Comments Accepted: At the suggestion of three agencies, the language illustrating how controls can be integrated into the overall management process has been clarified. The text now indicates more clearly that the examples used to make this point are in fact examples, not new Circular requirements. Because the Act encompasses agency operations, as well as program and administrative areas, appropriate language has been included in the Circular. In addition, the Circular states that 24 agencies are covered by the CFOs Act, which reflects the legislation last year that made the Social Security Administration an independent agency from the Department of Health and Human Services.

Comments Not Accepted: Two agencies questioned elimination of the Management Control Plan. The importance of planning has not been diminished in the new Circular, but OMB will no longer dictate the scope and content of an agency's planning document. An agency may choose, for example, to meet the Circular's planning requirement by addressing management controls in a broader strategic plan for agency management.

Section II. Establishing Management Controls. This section defines management controls, and requires agency managers to develop and implement appropriate management controls. Included in this section are general and specific management control standards, drawn in large part from the standards issued by the General Accounting Office (GAO). By including these standards in the Circular, OMB is continuing its efforts to integrate various management control policies into a single document to make it easier for Federal managers to implement good management controls.

Comments Accepted: Four agencies questioned whether the definition of internal controls as a subset of management controls should be limited to conditions "that could have a material effect on [the entity's] financial statements." One agency pointed out that deficiencies in internal controls related to events that have less than a major impact on financial statements, like security weaknesses or conflict of interest problems, could be reportable under the Integrity Act. OMB agrees and has deleted the restrictive phrase.

In response to one agency's comment, language on developing management controls has been expanded to emphasize that controls must be developed as programs are initially implemented, as well as reengineered. At another agency's suggestion, a statement has been included on the value of drawing on the expertise of the CFO and IG as controls are developed.

Responding to two agencies' comments on the standards for management controls, the standard on compliance with law has been expanded to included compliance with regulations, and the standard on delegation of authority now clearly states that managers should ensure that authority, responsibility and accountability are defined and delegated.

Comments Not Accepted: The AICPA recommended that the Circular adopt the framework and definitions of internal controls developed by the Committee of Sponsoring Organizations of the Treadway Commission (the COSO framework). OMB has carefully reviewed the COSO approach and feels confident that the Circular incorporates virtually all of the concepts underlying the COSO framework. It is critical, however, for the Circular to present these concepts in language that is meaningful to Federal program managers as well as financial managers. Therefore, OMB has decided to retain the Circular's broader terminology.

One agency questioned OMB's authority to (i) include management control standards in the Circular and (ii) modify the language of GAO's Standards for Internal Control. OMB has included GAO in discussions about the Circular's revision since the beginning of the effort, and has provided GAO with the opportunity to comment on numerous drafts of the document. GAO has not objected to inclusion of the standards in the Circular, nor has GAO questioned the document's specific language. OMB believes that the Circular accurately incorporates the GAO standards, and appropriately updates the language to reflect developments in this area since GAO issued its standards in 1983.

Two agencies recommended more flexibility in the standard relating to separation of duties, arguing that the principle may be overly rigid in an era of downsizing. One agency described the difficulty of applying this standard in small field offices, and suggested that alternative controls based on advanced technology, such as systems access controls and automated audit trails, may be appropriate. While OMB believes that separation of duties is a key management control standard, it recognizes the validity of these examples. The standard has not been modified because appropriate flexibility is already provided; the language states that key duties "should" be separated among individuals.

One agency questioned whether the Circular adequately emphasizes the

concept of reasonable assurance. OMB recognizes the importance of this concept, and believes that its inclusion as one of the general management control standards is sufficient.

Section III. Assessing and Improving Management Controls. This section states that agency managers should continuously monitor and improve the effectiveness of management controls. This continuous monitoring, and other periodic evaluations, should provide the basis for the agency head's annual assessment of and report on management controls. Agencies are encouraged to use a variety of information sources to arrive at the annual assurance statement to the President and the Congress. Several examples of sources of information are included in this section. The role of the agency's senior management council in making recommendations on the annual assurance statement and on which deficiencies in management controls should be considered material is also addressed.

Comments Accepted: OMB recognizes the need to clarify how the term "material weakness" as used in the Circular differs from the same term as used by Federal auditors. This issue was raised by one agency in its written comments, and by other parties in discussions of earlier drafts. The Circular now recognizes that Federal auditors are required to identify and report weaknesses that, in their opinion, pose a risk or threat to the internal control systems of an entity (such as a program or operation) even if the management of that entity would not report the weakness outside the agency.

Comments Not Accepted: Two agencies found the Circular's requirements on assessing and documenting the sufficiency of management controls to be inadequate, and suggested that the Circular provide more specific guidance in these areas. In keeping with the philosophy behind the Circular, OMB prefers to give agencies the latitude to expand upon the Circular's requirements in these areas, if they believe it is necessary, rather than to impose uniform criteria for determining, for example, what should be reported as a material weakness.

Along those lines, OMB has chosen not to adopt the definitions used by Federal auditors of a reportable condition and material weakness, as advocated by one agency and the AICPA. Those definitions are weighted heavily toward technical, financially-oriented terms that are probably not meaningful to Federal program managers. They also focus on financial statements as the primary end-product of an internal control structure. While financial statements are important tools for the agency head in arriving at an assurance statement on management controls, they are not the only source of information for making this determination. Therefore, it is important that the Circular use language that accurately reflects the broad nature of agency management controls.

Two agencies felt that the Circular should require that agencies test their management controls. OMB agrees that testing is an important method for determining whether controls actually work, and encourages agencies to use some form of testing. Because testing is already implicit in several of the information sources to be used to assess controls, and is less feasible for other information sources, it is not included as a blanket requirement.

Three agencies commented on the composition of an agency's senior management council; two felt that the Circular should be more specific in discussing membership, while one found this section too prescriptive. OMB believes that the current language adequately addresses the importance of including both line and staff management and involving the IG, without infringing on the agency's ability to determine the council's membership.

Section IV. Correcting Management Control Deficiencies. This section states that agency management is responsible for taking timely and effective action to correct management control deficiencies. Correcting these deficiencies is an integral part of management's responsibilities and must be considered a priority by the agency.

The only comment received on this section reflected a misunderstanding of the Circular's requirements on corrective action plans. Plans must be developed, tracked, and reported for all material weaknesses (weaknesses included in the Integrity Act report). For weaknesses that are not included in the report, plans should be developed and tracked at a level deemed appropriate by the agency.

Section V. Reporting on Management Controls. This section describes the required components of the agency's annual Integrity Act report and its distribution to the President and the Congress. This section also describes a initiative to streamline reporting by consolidating Integrity Act information with other performance-related reporting into a broader "Accountability Report" to be issued annually by the agency head. Lastly, this section presents Integrity Act requirements as they pertain to government corporations pursuant to the CFOs Act.

Comments Accepted: At the suggestion of two commenters, agencies are now encouraged to make their Integrity Act reports available electronically. The reference to a House committee has been changed to reflect the nomenclature of the 104th Congress.

This section also describes an new approach towards financial management reporting that could help integrate management initiatives. This approach is being pilot-tested by several agencies for FY 1995. Further information on the implications of this initiative for other agencies will be issued by OMB after the pilot reports have been evaluated.

Comments Not Accepted: One agency questioned the wisdom of permitting agencies to provide a qualified statement of assurance. OMB expects agencies to provide the most direct possible statement of assurance. The option of a qualified statement recognizes that in some cases, the most accurate statement of assurance is one that is qualified by exceptions that are explicitly noted.

The same agency suggested new language in the reporting section to recognize that the Circular broadens the scope of internal control accountability beyond the requirements of the Integrity Act. OMB disagrees with the premise that the link between management controls and program performance is a new one. While the Integrity Act uses financially oriented terminology, the Act "clearly encompasses program and administrative areas, as well as the more traditional accounting and financial management areas" (House Report 98–937, "First-Year Implementation of the Federal Managers' Financial Integrity Act," Committee on Government Operations, August 2, 1984, p. 1).

General Issues. Some comments were not limited to specific sections of the Circular.

Comments Accepted: In response to one agency's suggestion, the acronym "FMFIA" has been replaced throughout the Circular by the term "Integrity Act" to better emphasize the purpose and scope of the law. OMB has also modified the term "should" in several instances where specific agency action is required.

Comments Not Accepted: Two agencies proposed that the Circular broaden the linkage between management controls and other management initiatives, particularly performance measurement and implementation of GPRA. OMB encourages agencies to integrate their efforts to evaluate management controls and program performance, but is not prepared at this time to include policy guidance on performance measurement in this Circular.

One agency proposed inclusion of language describing the applicability of the Circular to discretionary policy matters, as had been done in the 1986 version. OMB does not believe that this language is necessary because it is clear that the President and agency head have full discretion over policymaking functions, including determining and interpreting policy, determining program need, making resource allocation decisions, and pursuing rulemaking.

Two agencies suggested that the Circular specifically address OMB's High Risk Program. OMB has chosen not to do so because implementation of the management control program outlined in the Circular will likely eliminate the need for separate tracking of high risk areas. If agencies report their most serious management deficiencies to the President and the Congress as envisioned by the Circular, the Integrity Act reports will essentially reflect the highest risk areas in government, and a separate High Risk Program may no longer be necessary.

John B. Arthur,

Associate Director for Administration.

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Management and Budget

[Circular No. A–123, Revised]

June 21, 1995.

To the Heads of Executive Departments and Establishments

From: Alice M. Rivlin, Director

Subject: Management Accountability and Control

1. *Purpose and Authority.* As Federal employees develop and implement strategies for reengineering agency programs and operations, they should design management structures that help ensure accountability for results, and include appropriate, cost-effective controls. This Circular provides guidance to Federal managers on improving the accountability and effectiveness of Federal programs and operations by establishing, assessing, correcting, and reporting on management controls.

The Circular is issued under the authority of the Federal Managers' Financial Integrity Act of 1982 as codified in 31 U.S.C. 3512.

The Circular replaces Circular No. A–123, "Internal Control Systems," revised, dated August 4, 1986, and OMB's 1982 "Internal Controls Guidelines" and associated "Questions and Answers" document, which are hereby rescinded.

2. *Policy.* Management accountability is the expectation that managers are responsible for the quality and timeliness of program performance, increasing productivity, controlling costs and mitigating adverse aspects of agency operations, and assuring that programs are managed with integrity and in compliance with applicable law.

Management controls are the organization, policies, and procedures used to reasonably ensure that (i) programs achieve their intended results; (ii) resources are used consistent with agency mission; (iii) programs and resources are protected from waste, fraud, and mismanagement; (iv) laws and regulations are followed; and (v) reliable and timely information is obtained, maintained, reported and used for decision making.

3. *Actions Required.* Agencies and individual Federal managers must take systematic and proactive measures to (i) develop and implement appropriate, cost-effective management controls for results-oriented management; (ii) assess the adequacy of management controls in Federal programs and operations; (iii) identify needed improvements; (iv) take corresponding corrective action; and (v) report annually on management controls.

4. *Effective Date.* This Circular is effective upon issuance.

5. *Inquiries.* Further information concerning this Circular may be obtained from the Management Integrity Branch, Office of Federal Financial Management, Office of Management and Budget, Washington, DC 20503, 202/395–6911.

6. *Copies.* Copies of this Circular may be obtained by telephoning the Executive Office of the President, Publication Services, at 202/395–7332.

7. *Electronic Access.* This document is also accessible on the U.S. Department of Commerce's FedWorld Network under the OMB Library of Files.

- The Telnet address for FedWorld via Internet is "fedworld.gov".
- The World Wide Web address is "http://www.fedworld.gov/ftp.htm#omb".
- For file transfer protocol (FTP) access, the address is "ftp://fwux.fedworld.gov/pub/omb/omb.htm".

The telephone number for the FedWorld help desk is 703/487–4608.

Attachment.

Attachment

I. Introduction

The proper stewardship of Federal resources is a fundamental responsibility of agency managers and staff. Federal employees must ensure that government resources are used efficiently and effectively to achieve intended program results. Resources must be used consistent with agency mission, in compliance with law and regulation, and with minimal potential for waste, fraud, and mismanagement.

To support results-oriented management, the Government Performance and Results Act (GPRA, P.L. 103–62) requires agencies to develop strategic plans, set performance goals, and report annually on actual performance compared to goals. As the Federal government implements this legislation, these plans and goals should be integrated into (i) the budget process, (ii) the operational management of agencies and programs, and (iii) accountability reporting to the public on performance results, and on the integrity, efficiency, and effectiveness with which they are achieved.

Management accountability is the expectation that managers are responsible for the quality and timeliness of program performance, increasing productivity, controlling costs and mitigating adverse aspects of agency operations, and assuring that programs are managed with integrity and in compliance with applicable law.

Management controls—organization, policies, and procedures—are tools to help program and financial managers achieve results and safeguard the integrity of their programs. This Circular provides guidance on using the range of tools at the disposal of agency managers to achieve desired program results and meet the requirements of the Federal Managers' Financial Integrity Act (FMFIA, referred to as the Integrity Act throughout this document).

Framework. The importance of management controls is addressed, both explicitly and implicitly, in many statutes and executive documents. The Federal Managers' Financial Integrity Act (P.L. 97–255) establishes specific requirements with regard to management controls. The agency head must establish controls that reasonably ensure that: (i) obligations and costs comply with applicable law; (ii) assets are safeguarded against waste, loss, unauthorized use or misappropriation; and (iii) revenues and expenditures are properly recorded and accounted for. 31 U.S.C. 3512(c)(1). In addition, the agency head annually must evaluate and report on the control and financial systems that protect the integrity of Federal programs. 31 U.S.C. 3512(d)(2).

The Act encompasses program, operational, and administrative areas as well as accounting and financial management.

Instead of considering controls as an isolated management tool, agencies should integrate their efforts to meet the requirements of the Integrity Act with other efforts to improve effectiveness and accountability. Thus, management controls should be an integral part of the entire cycle of planning, budgeting, management, accounting, and auditing. They should support the effectiveness and the integrity of every step of the process and provide continual feedback to management.

For instance, good management controls can assure that performance measures are complete and accurate. As another example, the management control standard of organization would align staff and authority with the program responsibilities to be carried out, improving both effectiveness and accountability. Similarly, accountability for resources could be improved by more closely aligning budget accounts with programs and charging them with all significant resources used to produce the program's outputs and outcomes.

Meeting the requirements of the Chief Financial Officers Act (P.L. 101–576, as amended) should help agencies both establish and evaluate management controls. The Act requires the preparation and audit of financial statements for 24 Federal agencies. 31 U.S.C. 901(b), 3515. In this process, auditors report on internal controls and

compliance with laws and regulations. Therefore, the agencies covered by the Act have a clear opportunity both to improve controls over their financial activities, and to evaluate the controls that are in place.

The Inspector General Act (P.L. 95–452, as amended) provides for independent reviews of agency programs and operations. Offices of Inspectors General (OIGs) and other external audit organizations frequently cite specific deficiencies in management controls and recommend opportunities for improvements. Agency managers, who are required by the Act to follow up on audit recommendations, should use these reviews to identify and correct problems resulting from inadequate, excessive, or poorly designed controls, and to build appropriate controls into new programs.

Federal managers must carefully consider the appropriate balance of controls in their programs and operations. Fulfilling requirements to eliminate regulations ("Elimination of One-Half of Executive Branch Internal Regulations," Executive Order 12861) should reinforce to agency managers that too many controls can result in inefficient and ineffective government, and therefore that they must ensure an appropriate balance between too many controls and too few controls. Managers should benefit from controls, not be encumbered by them.

Agency Implementation. Appropriate management controls should be integrated into each system established by agency management to direct and guide its operations. A separate management control process need not be instituted, particularly if its sole purpose is to satisfy the Integrity Act's reporting requirements.

Agencies need to plan for how the requirements of this Circular will be implemented. Developing a written strategy for internal agency use may help ensure that appropriate action is taken throughout the year to meet the objectives of the Integrity Act. The absence of such a strategy may itself be a serious management control deficiency.

Identifying and implementing the specific procedures necessary to ensure good management controls, and determining how to evaluate the effectiveness of those controls, is left to the discretion of the agency head. However, agencies should implement and evaluate controls without creating unnecessary processes, consistent with recommendations made by the National Performance Review.

The President's Management Council, composed of the major agencies' chief operating officers, has been established to foster governmentwide management changes ("Implementing Management Reform in the Executive Branch," October 1, 1993). Many agencies are establishing their own senior management council, often chaired by the agency's chief operating officer, to address management accountability and related issues within the broader context of agency operations. Relevant issues for such a council include ensuring the agency's commitment to an appropriate system of management controls; recommending to the agency head which control deficiencies are sufficiently serious to report in the annual Integrity Act report; and providing input for the level and priority of resource needs to correct these deficiencies. (See also Section III of this Circular.)

II. Establishing Management Controls

Definition of Management Controls. Management controls are the organization, policies, and procedures used by agencies to reasonably ensure that (i) programs achieve their intended results; (ii) resources are used consistent with agency mission; (iii) programs and resources are protected from waste, fraud, and mismanagement; (iv) laws and regulations are followed; and (v) reliable and timely information is obtained, maintained, reported and used for decision making.

Management controls, in the broadest sense, include the plan of organization, methods and procedures adopted by management to ensure that its goals are met. Management controls include processes for planning, organizing, directing, and controlling program operations. A subset of management controls are the internal controls used to assure that there is prevention or timely detection of unauthorized acquisition, use, or disposition of the entity's assets.

Developing Management Controls. As Federal employees develop and execute strategies for implementing or reengineering agency programs and operations, they should design management structures that help ensure accountability for results. As part of this process, agencies and individual Federal managers must take systematic and proactive measures to develop and implement appropriate, cost-effective management controls. The expertise of the agency CFO and IG can be valuable in developing appropriate controls.

Management controls guarantee neither the success of agency programs, nor the absence of waste, fraud, and mismanagement, but they are a means of managing the risk associated with Federal programs and operations. To help ensure that controls are appropriate and cost-effective, agencies should consider the extent and cost of controls relative to the importance and risk associated with a given program.

Standards. Agency managers shall incorporate basic management controls in the strategies, plans, guidance and procedures that govern their programs and operations. Controls shall be consistent with the following standards, which are drawn in large part from the "Standards for Internal Control in the Federal Government," issued by the General Accounting Office (GAO).

General management control standards are:

- Compliance With Law. All program operations, obligations and costs must comply with applicable law and regulation. Resources should be efficiently and effectively allocated for duly authorized purposes.
- Reasonable Assurance and Safeguards. Management controls must provide reasonable assurance that assets are safeguarded against waste, loss, unauthorized use, and misappropriation. Management controls developed for agency programs should be logical, applicable, reasonably complete, and effective and efficient in accomplishing management objectives.
- Integrity, Competence, and Attitude. Managers and employees must have personal integrity and are obligated to support the ethics programs in their agencies. The spirit of the Standards of Ethical Conduct requires that they develop and implement effective management controls and maintain a level of competence that allows them to accomplish their assigned duties. Effective communication within and between offices should be encouraged.

Specific management control standards are:

- Delegation of Authority and Organization. Managers should ensure that appropriate authority, responsibility and accountability are defined and delegated to accomplish the mission of the organization, and that an appropriate organizational structure is established to effectively carry out program responsibilities. To the extent possible, controls and related decision-making authority should be in the hands of line managers and staff.
- Separation of Duties and Supervision. Key duties and responsibilities in authorizing, processing, recording, and reviewing official agency transactions should be separated among individuals. Managers should exercise appropriate oversight to ensure individuals do not exceed or abuse their assigned authorities.
- Access to and Accountability for Resources. Access to resources and records should be limited to authorized individuals, and accountability for the custody and use of resources should be assigned and maintained.
- Recording and Documentation. Transactions should be promptly recorded, properly classified and accounted for in order to prepare timely accounts and reliable financial and other reports. The documentation for transactions, management controls, and other significant events must be clear and readily available for examination.
- Resolution of Audit Findings and Other Deficiencies. Managers should promptly evaluate and determine proper actions in response to known deficiencies, reported audit and other findings, and related recommendations. Managers should complete, within established timeframes, all actions that correct or otherwise resolve the appropriate matters brought to management's attention.

Other policy documents may describe additional specific standards for particular functional or program activities. For example, OMB Circular No. A–127, "Financial Management Systems," describes government-wide requirements for financial systems. The Federal Acquisition Regulations define requirements for agency procurement activities.

III. Assessing and Improving Management Controls

Agency managers should continuously monitor and improve the effectiveness of management controls associated with their programs. This continuous monitoring, and other periodic evaluations, should provide the basis for the agency head's annual assessment of and report on management controls, as required by the Integrity Act. Agency management should determine the appropriate level of documentation needed to support this assessment.

Sources of Information. The agency head's assessment of management controls can be performed using a variety of information sources. Management has primary responsibility for monitoring and assessing controls, and should use other sources as a supplement to—not a replacement for—its own judgment. Sources of information include:

- Management knowledge gained from the daily operation of agency programs and systems.
- Management reviews conducted (i) expressly for the purpose of assessing management controls, or (ii) for other purposes with an assessment of management controls as a by-product of the review.
- IG and GAO reports, including audits, inspections, reviews, investigations, outcome of hotline complaints, or other products.
- Program evaluations.
- Audits of financial statements conducted pursuant to the Chief Financial Officers Act, as amended, including: information revealed in preparing the financial statements; the auditor's reports on the financial statements, internal controls, and compliance with laws and regulations; and any other materials prepared relating to the statements.
- Reviews of financial systems which consider whether the requirements of OMB Circular No. A–127 are being met.
- Reviews of systems and applications conducted pursuant to the Computer Security Act of 1987 (40 U.S.C. 759 note) and OMB Circular No. A–130, "Management of Federal Information Resources."
- Annual performance plans and reports pursuant to the Government Performance and Results Act.
- Reports and other information provided by the Congressional committees of jurisdiction.
- Other reviews or reports relating to agency operations, e.g. for the Department of Health and Human Services, quality control reviews of the Medicaid and Aid to Families with Dependent Children programs.

Use of a source of information should take into consideration whether the process included an evaluation of management controls. Agency management should avoid duplicating reviews which assess management controls, and should coordinate their efforts with other evaluations to the extent practicable.

If a Federal manager determines that there is insufficient information available upon which to base an assessment of management controls, then appropriate reviews should be conducted which will provide such a basis.

Identification of Deficiencies. Agency managers and employees should identify deficiencies in management controls from the sources of information described above. A deficiency should be reported if it is or should be of interest to the next level of management. Agency employees and managers generally report deficiencies to the next supervisory level, which allows the chain of command structure to determine the relative importance of each deficiency.

A deficiency that the agency head determines to be significant enough to be reported outside the agency (i.e. included in the annual Integrity Act report to the President and the Congress) shall be considered a "material weakness."[1] This designation requires a judgment by agency managers as to the relative risk and significance of deficiencies. Agencies may wish to use a different term to describe less significant deficiencies, which are reported only internally in an agency. In identifying and assessing the relative importance of deficiencies, particular attention should be paid to the views of the agency's IG.

Agencies should carefully consider whether systemic problems exist that adversely affect management controls across organizational or program lines. The Chief Financial Officer, the Senior Procurement Executive, the Senior IRM Official, and the managers of other functional offices should be involved in identifying and ensuring correction of systemic deficiencies relating to their respective functions.

Agency managers and staff should be encouraged to identify and report deficiencies, as this reflects positively on the agency's commitment to recognizing and addressing management problems. Failing to report a known deficiency would reflect adversely on the agency.

Role of A Senior Management Council. Many agencies have found that a senior management council is a useful forum for assessing and monitoring deficiencies in management controls. The membership of such councils generally includes both line and staff management; consideration should be given to involving the IG. Such councils generally recommend to the agency head which deficiencies are deemed to be material to the agency as a whole, and should therefore be included in the annual Integrity Act report to the President and the Congress. (Such a council need not be exclusively devoted to management control issues.) This process will help identify deficiencies that although minor individually, may constitute a material weakness in the aggregate. Such a council may also be useful in determining when sufficient action has been taken to declare that a deficiency has been corrected.

IV. Correcting Management Control Deficiencies

Agency managers are responsible for taking timely and effective action to correct deficiencies identified by the variety of sources discussed in Section III. Correcting deficiencies is an integral part of management accountability and must be considered a priority by the agency.

The extent to which corrective actions are tracked by the agency should be commensurate with the severity of the deficiency. Corrective action plans should be developed for all material weaknesses, and progress against plans should be periodically assessed and reported to agency management. Management should track progress to ensure timely and effective results. For deficiencies that are not included in the Integrity Act report, corrective action plans should be developed and tracked internally at the appropriate level.

A determination that a deficiency has been corrected should be made only when sufficient corrective actions have been taken and the desired results achieved. This determination should be in writing, and along with other appropriate documentation, should be available for review by appropriate officials. (See also role of senior management council in Section III.)

As managers consider IG and GAO audit reports in identifying and correcting management control deficiencies, they must be mindful of the statutory requirements for audit followup included in the IG Act, as amended. Under this law, management has a responsibility to complete action, in a timely manner, on audit recommendations on which agreement with the IG has been reached. 5 U.S.C. Appendix 3. (Management must make a decision regarding IG audit recommendations within a six month period and implementation of management's decision should be completed within one year to the extent practicable.) Agency managers and the IG share responsibility for ensuring that IG Act requirements are met.

V. Reporting on Management Controls

Reporting Pursuont to Section 2. 31 U.S.C. 3512(d)(2) (commonly referred to as Section 2 of the Integrity Act) requires that annually by December 31, the head of each executive agency submit to the President and the Congress (i) a statement on whether there is reasonable assurance that the agency's controls are achieving their intended objectives; and (ii) a report on material weaknesses in the agency's controls. OMB may provide guidance on the composition of the annual report.

- *Statement of Assurance.* The statement on reasonable assurance represents the agency head's informed judgment as to the overall adequacy and effectiveness of management controls within the agency. The statement must take one of the following forms: statement of assurance; qualified statement of assurance, considering the exceptions explicitly noted; or statement of no assurance.

In deciding on the type of assurance to provide, the agency head should consider information from the sources described in Section III of this Circular, with input from senior program and administrative officials and the IG. The agency head must describe the analytical basis for the type of assurance being provided, and the extent to which agency activities were assessed. The statement of assurance must be signed by the agency head.

- *Report on Material Weaknesses.* The Integrity Act report must include agency plans to correct the material weaknesses and progress against those plans.

[1] This Circular's use of the term "material weakness" should not be confused with use of the same term by government auditors to identify management control weaknesses which, in their opinion, pose a risk or a threat to the internal control systems of an audited entity, such as a program or operation. Auditors are required to identify and report those types of weaknesses at any level of operation or organization, even if the management of the audited entity would not report the weaknesses outside the agency.

Reporting Pursuant to Section 4. 31 U.S.C. 3512(d)(2)(B) (commonly referred to as Section 4 of the Integrity Act) requires an annual statement on whether the agency's financial management systems conform with government-wide requirements. These financial systems requirements are presented in OMB Circular No. A–127, "Financial Management Systems," section 7. If the agency does not conform with financial systems requirements, the statement must discuss the agency's plans for bringing its systems into compliance.

If the agency head judges a deficiency in financial management systems and/or operations to be material when weighed against other agency deficiencies, the issue must be included in the annual Integrity Act report in the same manner as other material weaknesses.

Distribution of Integrity Act Report. The assurance statements and information related to both Sections 2 and 4 should be provided in a single Integrity Act report. Copies of the report are to be transmitted to the President; the President of the Senate; the Speaker of the House of Representatives; the Director of OMB; and the Chairpersons and Ranking Members of the Senate Committee on Governmental Affairs, the House Committee on Government Reform and Oversight, and the relevant authorizing and appropriations committees and subcommittees. In addition, 10 copies of the report are to be provided to OMB's Office of Federal Financial Management, Management Integrity Branch. Agencies are also encouraged to make their reports available electronically.

Streamlined Reporting. The Government Management Reform Act (GMRA) of 1994 (P.L. 103–356) permits OMB for fiscal years 1995 through 1997 to consolidate or adjust the frequency and due dates of certain statutory financial management reports after consultation with the Congress. GMRA prompted the CFO Council to recommend to OMB a new approach towards financial management reporting which could help integrate management initiatives. This proposal is being pilot-tested by several agencies for FY 1995. Further information on the implications of this initiative for other agencies will be issued by OMB after the pilot reports have been evaluated. In the meantime, the reporting requirements outlined in this Circular remain valid except for those agencies identified as pilots by OMB.

Under the CFO Council approach, agencies would consolidate Integrity Act information with other performance-related reporting into a broader "Accountability Report" to be issued annually by the agency head. This report would be issued as soon as possible after the end of the fiscal year, but no later than March 31 for agencies producing audited financial statements and December 31 for all other agencies. The proposed "Accountability Report" would integrate the following information: the Integrity Act report, management's Report on Final Action as required by the IG Act, the CFOs Act Annual Report (including audited financial statements), Civil Monetary Penalty and Prompt Payment Act reports, and available information on agency performance compared to its stated goals and objectives, in preparation for implementation of the GPRA.

Government Corporations. Section 306 of the Chief Financial Officers Act established a reporting requirement related to management controls for corporations covered by the Government Corporation and Control Act. 31 U.S.C. 9106. These corporations must submit an annual management report to the Congress not later than 180 days after the end of the corporation's fiscal year.

This report must include, among other items, a statement on control systems by the head of the management of the corporation consistent with the requirements of the Integrity Act.

The corporation is required to provide the President, the Director of OMB, and the Comptroller General a copy of the management report when it is submitted to Congress.

[FR Doc. 95–15828 Filed 6–28–95; 8:45 am]

BILLING CODE 3110–01–P

POSTAL SERVICE

Privacy Act of 1974; System of Records

AGENCY: Postal Service.

ACTION: Notice of revisions to an existing system of records.

SUMMARY: This document publishes notice of modifications to Privacy Act system of records USPS 070.040, Inquiries and Complaints—Customer Complaint Records. The modifications expand the system locations and purpose statements, make editorial revisions that change the name of the system, clarify the system as a result of the expansions, and correct organization name changes as a result of the restructuring of the Postal Service. The system locations and purpose statements are expanded to note the system's coverage of complaint and inquiry records from individuals, including employees, that indicate potential threats, a potentially volatile workplace climate, and/or significant personal concerns of employees or customers.

DATES: This proposal will become effective without further notice August 8, 1995, unless comments are received on or before that date that result in a contrary determination.

ADDRESSES: Written comments on this proposal should be mailed or delivered to Payroll Accounting/Records, United States Postal Service, 475 L'Enfant Plaza SW, Room 8650, Washington, DC 20260–5242. Copies of all written comments will be available for public inspection and photocopying between 8 a.m. and 4:45 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Betty E. Sheriff, (202) 268–2608.

SUPPLEMENTARY INFORMATION: System of records USPS 070.040 contains records relating to inquiries and complaints from postal customers and employees. Its current description is inaccurate in that it suggests that records in the system are limited to customer inquiries and complaints regarding mail service. In fact, the system has come to include inquiries and complaints of employees as well. This notice expands the purpose statement because some employee inquiries covered by the system pertain to issues other than mail service. These inquiries and complaints frequently relate to an employee's postal employment.

Occasionally a customer or employee complaint may indicate a potential for violence, a potentially volatile workplace climate, and/or significant personal concerns of employees or customers that should receive remedial attention. Because such inquiries and complaints may be referred to the Postal Service's Human Resources office or to its contractor for analysis and proactive attention, the Vice President of Human Resources has been added as a System Manager. Where the threat of violence is particularly strong, the correspondence may be referred to the Postal Inspection Service for investigative action. In those instances, related records may also become part of the Privacy Act system USPS 080.010, Inspection Requirements—Investigative File System. Other system changes clarify existing language, particularly with relation to the above-noted changes, and correct organization names that were changed as a result of a recent restructuring of the Postal Service.

All records within the system are kept in a secured environment, with automated data processing (ADP) physical and administrative security and technical software applied to information on computer media. Contractors who maintain information collected by this system are subject to subsection (m) of the Privacy Act and are required to apply appropriate protections subject to the audit and inspection of the Postal Inspection Service. Further, the only routine uses applied are those that the Postal Service has established and applied to most of its systems of records representing potential uses of information in the conduct of official business. These appear in the Postal Service's last compilation of its records systems, published in the **Federal Register** on October 26, 1989 (54 FR 43652–43715).

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views, or arguments on this proposal. A report of the proposed system has been sent to Congress and to the Office of Management and Budget for their evaluation.

The most recent description of USPS 070.040 was published in the above-referenced compilation at 54 FR 43675. That description is modified as follows:

USPS 070.040

SYSTEM NAME:

[Change to read:]

Inquiries and Complaints—Customer and Employee Complaint Records, 070.040.

SYSTEM LOCATION(S):

[Change to read:]

Consumer Advocate and Human Resources, Postal Service Headquarters; districts; post offices; the Information Service Center at St. Louis, MO; and contractor sites.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

[Change to read:]

Postal Service customers and employees who have contacted the Postal Service with a suggestion or a problem.

CATEGORIES OF RECORDS IN THE SYSTEM:

[Change to read:]

Complaining individual's name and address; nature of the inquiry or complaint; assessment of concerns, findings, and recommendations; and resolution of same. Includes general correspondence and Consumer Service Cards about individuals' complaints/inquiries.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 403, 404.

PURPOSE(S):

[Change to read:]

To process Postal Service customer and employee concerns and inquiries regarding mail services and other issues relating to the Postal Service.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine use statements a, b, c, d, e, f, g, h, j, k, l, and m listed in the prefatory statement at the beginning of the Postal Service's published system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

[Change to read:]

Typed, printed, handwritten or computer-printed form, microfilm, magnetic tape, and worm optical disk.

RETRIEVABILITY:

[Change to read:]

For correspondence and computerized complaint cards, by chronological sequence within subject category as derived from correspondence and the name of inquirer or complainant. Human Resources' records may also be retrieved by work location. For hard copy complaint cards, chronological by retrieval code and preprinted complaint card serial number.

SAFEGUARDS:

[Change to read:]

These are restricted files and are to be maintained in locked file cabinets in secured facilities, with access limited to personnel having an official need. Automated records are protected through computer password security.

RETENTION AND DISPOSAL:

[Change to read:]

Records of referrals to Human Resources: Destroy 3 years after resolution of problem.

Other inquiry/complaint records: Destroy 1 year after resolution of problem.

SYSTEM MANAGER(S) AND ADDRESS:

[Change to read:]

Vice President, Human Resources, United States Postal Service, 475 L'Enfant Plaza SW, Washington DC 20260–4200

Vice President and Consumer Advocate, United States Postal Service, 475 L'Enfant Plaza SW, Washington DC 20260–2200

NOTIFICATION PROCEDURE:

Customers wanting to know whether information about them is maintained in this system of records must address inquiries to the same facility to which they submitted their complaint. Inquiries about complaint cards must contain the date and card serial number.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the notification procedure above and the Postal Service Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

[Change to read:]

Postal Service customers and employees.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

[Change to read:]

Records or information in this system that have been compiled in reasonable anticipation of a civil action or proceeding are exempt from individual access under 5 U.S.C. 552a(d)(5). In addition, the Postal Service has claimed exemptions from certain provisions of the Act for several of its other systems of records as permitted by 5 U.S.C. 552a(j) and (k). See 39 CFR 266.9. To the extent that copies of exempt records from those other systems are incorporated into this system, the exemptions applicable to the original primary system must continue to apply to the incorporated records."

Neva R. Watson,

Acting Chief Counsel, Legislative.

[FR Doc. 95– 15981 Filed 6–28 –95; 8:45 am]

BILLING CODE 7710–12–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Supplemental Information on Accident and Insurance.

(2) *Form(s) submitted:* SI–1c, SI–5, ID–30q ID–3s, ID–3u, ID–30k, ID–30k–1.

(3) *OMB Number:* 3220–0036.

(4) *Expiration date of current OMB clearance:* June 30, 1996.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 33,550.

(8) *Total annual responses:* 33,500.

(9) *Total annual reporting hours:* 1,987.

(10) *Collection description:* The RUIA provides for recovery of sickness benefits paid if the employee receives a settlement for the same injury for which benefits were paid. The collection obtains identifying information about the person or company responsible for such payments and

information needed for determining the amount of the RRB's entitlement.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 95–16022 Filed 6–28–95; 8:45 am]

BILLING CODE 7905–01–M

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Employee's Certification
(2) *Form(s) submitted:* G–346
(3) *OMB Number:* 3220–0140
(4) *Expiration date of current OMB clearance:* October 31, 1995
(5) *Type of request:* Extension of a currently approved collection
(6) *Respondents:* Individuals or households
(7) *Estimated annual number of respondents:* 18,000
(8) *Total annual responses:* 18,000
(9) *Total annual reporting hours:* 1,500
(10) *Collection description:* Under Section 2 of the Railroad Retirement Act, spouses of retired railroad employees may be entitled to an annuity. The collection obtains information from the employee about the employee's previous marriages, if any, to determine if any impediment exists to the marriage between the employee and his or her spouse.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 95–15919 Filed 6–28–95; 8:45 am]

BILLING CODE 7905–01–M

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Report of Medicaid State Office on Beneficiary's Buy-in Status
(2) *Form(s) submitted:* RL–380–F
(3) *OMB Number:* 3220–0185
(4) *Expiration date of current OMB clearance:* September 30, 1995
(5) *Type of request:* Extension of a currently approved collection
(6) *Respondents:* State, Local or Tribal Government
(7) *Estimated annual number of respondents:* 600
(8) *Total annual responses:* 600
(9) *Total annual reporting hours:* 100
(10) *Collection description:* Under the Railroad Retirement Act, the Railroad Retirement Board administers the Medicare program for persons covered by the railroad retirement system. The collection obtains information needed to determine if certain railroad beneficiaries are entitled to receive Supplementary Medical Insurance program coverage under a State buy-in agreement in States in which they reside.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 95–16023 Filed 6–28–95; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35886; File No. SR–Amex–95–20]

Self-Regulatory Organizations; Order Granting Accelerated Approval of a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1 and 2 to the Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Listing and Trading of Indexed Term Notes

June 23, 1995.

On May 30, 1995, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade indexed term notes ("Notes"), the return on which is based in whole or in part on changes in the value of twenty-four (24) equity securities of companies that have been identified by the Note underwriter, The Bear Stearns Companies ("Bear Stearns"), as "consolidation candidates." Notice of the proposal appeared in the **Federal Register** on June 9, 1995.[3] No comment letters were received on the proposal. The Exchange filed Amendment No. 1 to the proposed rule change on June 12, 1995,[4] and Amendment No. 2 on June 20, 1995.[5] This order approves the Amex proposal, as amended.

Under Section 107 of the Amex Company Guide ("Guide"), the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] *See* Securities Exchange Act Release No. 35802 (June 2, 1995), 60 FR 30614.

[4] In Amendment No. 1, the Exchange amended the proposal to provide that at maturity, (1) holders of the Notes will participate in 90% of the percentage change between the "original portfolio value" and the "average portfolio value"; and (2) the average portfolio value will be determined by reference to the average of the monthly closing Index values over the term of the Notes. *See* Letter from William Floyd-Jones, Jr., Assistant General Counsel, Legal & Regulatory Policy Division, Amex, to Michael Walinskas, Branch Chief, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), Commission, dated June 8, 1995 ("Amendment No. 1").

[5] In Amendment No. 2, as described below, the Exchange clarifies the Exchange rules that will govern the trading of the Notes. *See* Letter from Michael Bickford, Vice President, Capital Markets Group, Amex, to Michael Walinskas, Branch Chief, OMS, Division, Commission, dated June 20, 1995 ("Amendment No. 2").

stocks, bonds, debentures, or warrants.[6] The Amex now proposes to list for trading, under Section 107A of the Guide, Notes whose value is based in whole or in part on changes in the value of twenty-four (24) equity securities of companies that have been identified by the Note underwriter as "consolidation candidates" ("Index").[7]

The Notes are non-convertible debt securities of Bear Stearns, and will conform to the listing guidelines under Section 107A of the Guide.[8] The Notes will have a term of three years from the date of issue. The Notes provide for a single payment at maturity, and will bear no periodic payments of interest. At maturity, the Notes will entitle the holder to receive an amount based upon ninety percent (90%) of the percentage change between the "original portfolio value"[9] and the "average portfolio value",[10] provided, however that the amount payable at maturity will not be less than 90% of the principal amount of the Notes. Thus, while there is no cap on the appreciation, investors participate in only 90% of the appreciation, as calculated above.[11] The Notes are cash-settled in that they do not give the holder any right to receive an Index security or any other ownership right or interest in the securities comprising the Index, although the return on the investment is based on the aggregate value of the Index.

According to the Amex, the Notes will allow investors to combine the protection of a portion of the principal amount of the Notes with a potential additional payment based upon the performance of an Index of 24 equity secuities of "consolidation candidates". In particular, the proposed Notes will provide 90% principal protection with the opportunity to participate in 90% of any appreciation of the underlying Index, as calculated above.

The Index consists of 24 securities that satisfy the following criteria: (1) A minimum market capitalization per component of $75 million, except that up to 10% of the number of component securities in the Index may have individual market capitalizations of not less than $50 million; (2) trading volume per Index component in each of the six months prior to the offering of the Notes of not less than one million shares, except that up to 10% of the number of Index component securities may have a trading volume in each of the six months prior to the offering of not less than 500,000; (3) at least 90% of the number of components in the Index will satisfy the then current criteria for standardized options trading set forth in Exchange Rule 915; (4) all components of the Index will be listed on the Amex or the New York Stock Exchange, or will be National Market securities traded through Nasdaq; and (5) all components of the Index will be subject to last sale reporting pursuant to Rule 11Aa3–1 of the Act.

At the outset, each of the securities in the Index will have equal representation. Specifically, each security included in the Index will be assigned a multiplier on the date of issuance of the Notes so that each component represents an equal percentage of the value of the Index on the date of issuance. The multiplier indicates the number of shares of a security, rounded to the nearest whole share, given its market price on an exchange or through Nasdaq, to be included in the calculation of the Index. Accordingly, each of the 24 companies included in the Index will represent approximately 4.17 percent of the weight of the Index at the time of issuance of the Notes. The Index divisor will initially be set to provide a benchmark value of 100.00 at the close of trading on the day preceding the issuance of the Notes.

The number of shares of each component stock in the Index will remain fixed except in the event of certain types of corporate actions such as the payment of a dividend (other than an ordinary cash dividend), a stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, or similar event with respect to the component securities. The number of shares of each component security may also be adjusted, if necessary, in the event of a merger, consolidation, dissolution, or liquidation of an issuer, or in certain other events such as the distribution of property by an issuer to shareholders. Shares of a component security may be replaced (or supplemented) with other securities under certain circumstances, such as the conversion of a component stock into another class of security, or the spin-off of a subsidiary. If the security remains in the Index, the number of shares of that security will be adjusted, if necessary, to the nearest whole share, to maintain the component's relative weight in the Index at the level immediately prior to the corporate action.[12] In all cases, the divisor will be adjusted, if necessary, to ensure continuity of the value of the Index. In the event that a security in the Index is canceled due to a corporate consolidation and the holders of such security receive cash, the cash value of such securities will be included in the Index and will accrue interest at LIBOR to term, compounded daily.

The value of the Index will be calculated continuously by the Amex and will be disseminated every 15 seconds over the Consolidated Tape Association's Network B. The Index value will equal the sum of the products of the most recently available market prices and the applicable multipliers for the securities in the Index.

The Notes may not be redeemed prior to maturity and are not callable by the issuer. Holders of Index Notes will be able to cash-out of their investment only by selling the Notes on the Amex. The Exchange anticipates that the trading value of the Notes in this secondary trading market will depend in large part on the value of the securities compromising the Index and also on such other factors as the level of interest rates, the volatility of the value of the

[6] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990).

[7] The components of the Index are: Agouron Pharmaceuticals, Inc; Biogen, Inc.; Campbell Soup Co.; Crestar Financial Corp.; Electronic Arts, Inc.; Heinz (H.J.) Co.; Healthcare COMPARE Corp.; Integra Financial Corp.; McCormick & Co., Inc.; Mercantile Bancorporation; Mesa, Inc.; Midlantic Corp., Inc.; The Money Store, Inc.; Multicare Companies, Inc.; Oryx Energy Co.; Physician Corp. of America; Protein Design Labs, Inc.; Quaker Oats Co.; Santa Fe Energy Resources; Sierra Health Services, Inc.; Triton Energy Corp.; United Companies Financial Corp.; Upjohn Co.; and Vertex Pharmaceuticals, Inc.

[8] Specifically, the Notes must have: (1) A minimum public distribution of one million trading units; (2) a minimum of 400 holders; (3) an aggregate market value of at least $4 million; and (4) a term of at least one year. Additionally, the issuer of the Notes must have assets of at least $100 million, stockholders' equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in two of the three prior fiscal years. As an alternative to these financial criteria, the issuer may have either: (1) assets in excess of $200 million and stockholders' equity in excess of $10 million; or (2) assets in excess of $100 million and stockholders' equity in excess of $20 million.

[9] The "original portfolio value" is the closing level of the Index at the time that the Notes are priced immediately preceding the issuance of the Notes.

[10] The "average portfolio value" is the average of the closing values of the Index on the last trading day of each of the 36 months during the term of the Notes. *See* Amendment No. 1, *supra* note 4.

[11] The Commission notes that because the average portfolio value is based on an average of closing Index values over the term of the Notes, the percentage change between the "original portfolio value" and the "average portfolio value" may be significantly different than the percentage change in the value of the Index between the date that the Notes are issued and the maturity date for the Notes.

[12] Telephone conference between Michael Bickford, Vice President, Capital Markets Group, Amex, and Brad Ritter, Senior Counsel, OMS, Division, Commission, on June 20, 1995 ("June 20 Conversation"). The issuer will not attempt to find a replacement stock or compensate for the extinction of a security due to bankruptcy or a similar event.

Index, the time remaining to maturity, dividend rates, and the creditworthiness of the issuer, Bear Stearns.[13]

Because Index Notes are linked to an index of equity securities, the Amex's existing equity floor trading rules will apply to the trading of Index Notes.[14] First, pursuant to Amex Rule 411, the exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading Index Notes.[15] Second, consistent with Amex Rule 411, the Exchange will further require that a member or member firm specifically approve a customer's account for trading Index Notes prior to, or promptly after, the completion of the transaction.[16] Third, Index Notes will be subject to the equity margin rules of the Exchange.[17] Fourth, the Exchange will, prior to trading Index Notes, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in Index Notes and highlighting the special risks and characteristics of the Index Notes.[18]

III. Commission Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) of the Act.[19] Specifically, the Commission believes that providing for exchange-trading of the Notes will offer a new and innovative means of participating in the market for securities identified by the issuer of the Notes as consolidation candidates.[20] In particular, the Commission believes that the Notes will permit investors to gain equity exposure in such companies, while at the same time, limiting the downside risk of their original investment. For the reasons discussed in the Indexed Term Note Approval Orders, the Commission finds that the listing and trading of the Notes is consistent with the Act.[21]

As with the other indexed term notes approved for listing by the Exchange, the Notes are not leveraged instruments. Their price, however, will still be derived and based upon the underlying linked securities. Accordingly, the level of risk involved in the purchase or sale of Index Notes is similar to the risk involved in the purchase or sale of traditional common stock. Nonetheless, the Commission has several specific concerns with this type of products because the final rate or return of the Notes is derivatively priced, based on the performance of the underlying securities. The concerns include: (1) Investor protection concerns, (2) dependence on the credit of the issuer of the security, (3) systemic concerns regarding position exposure of issuers with partially hedged positions or dynamically hedged positions, and (4) the impact on the market for the underlying linked securities.[22] The Commission believes the Amex has adequately addressed each of these issues such that the Commission's regulatory concerns are adequately minimized.[23] In particular, by imposing the listing standards, suitability, disclosure, and compliance requirements noted above, the Amex has adequately addressed the potential public customer concerns that could arise from the hybrid nature of the Notes.[24] Moreover, the Commission believes that the Exchange's existing surveillance procedures are adequate to detect and deter any attempts at manipulation of the Notes and the securities in the Index.

Further, the Commission believes that the listing standards and issuance restrictions discussed above, particularly, the objective standards for market capitalization, trading volume, and options eligibility, will ensure that at the time that the Notes are issued, the Index will be composed of highly capitalized, liquid securities. As a result, the Commission believes that any concerns regarding the potential for manipulation of the Index or adverse market impact on the securities comprising the Index are adequately minimized.

The Commission realizes that Index Notes are dependent upon the individual credit of the issuer, Bear Stearns. To some extent this credit risk is minimized by the Exchange's listing standards in Section 107A of the Guide which provide that only issuers satisfying substantial asset and equity requirements may issue securities such as Index Notes.[25] In addition, the Exchange's hybrid listing standards further require that Index Notes have at least $4 million in market value.[26] In any event, financial information regarding Bear Stearns, in addition to the information on the issuers of the securities comprising the Index, will be publicly available.[27]

The Commission finds good cause for approving the proposed rule change and Amendment Nos. 1 and 2 to the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** Specifically, the proposal, as amended, is substantively similar to other indexed term notes that the Commission has approved for listing by the Amex.[28] To the Commission's knowledge, these other issues of notes have traded on the Amex without any material problems occurring.[29] The only substantive differences between these Notes and those previously approved are the composition of the index of securities on which the values of the Notes will be based, the method for calculating the value to be received by holders upon maturity of the Notes, and the amount of participation by investors in the appreciation of the Index during the term of the Notes. With regard to the composition of the Index, as discussed above, the Commission believes that the objective eligibility standards for including a particular security in the Index minimize the potential for manipulation of the Notes and any possible adverse market impact on the securities contained in the Index.

The Commission also believes that the proposed method for calculating the amount to be paid to holders at maturity does not raise any significant regulatory concerns. The formula used here involves the averaging of 36 monthly closing Index values over a three year period. Accordingly, the Commission believes that this calculation method reduces the potential for manipulation. Moreover, as noted above, the Amex has adequate surveillance procedures in place to detect and deter attempts at manipulation involving either the Notes or the securities contained in the Index. Similarly, the Commission also believes that limiting investors' participation in the appreciation of the Index does not raise any regulatory concerns. The Commission has previously approved equity linked products where investors only receive a percentage of the appreciation of the linked securities.[30] As a result, the Commission believes that these aspects of the Notes are consistent with the Act so long as they are adequately disclosed to investors by the issuer and described in the circular to be issued by the Exchange upon issuance of the Notes. Finally, the Commission has not received any comment to date on the proposal and has not received any comment on similarly structured notes previously approved.[31]

Based on the above, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act and finds good cause for approving the proposal and Amendment Nos. 1 and 2 to the proposal on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-95-20 and should be submitted by July 20, 1995.

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,[32] that the proposed rule change (SR-Amex-95-20), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[33]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-16054 Filed 6-28-95; 8:45 am]

BILLING CODE 8010-01-M

[13] *See* Amendment No. 2, *supra* note 5.

[14] *Id.*

[15] *Id.* Amex Rule 411 requires that every member, member firm or member corporation use due diligence to learn the essential facts relative to every customer and to every order or account accepted.

[16] *See* Amendment No. 2, *supra* note 5.

[17] *Id.*

[18] *Id.* The Commission notes that the circular should also highlight the formula for calculating the payment to holders at maturity as well as the participation rate in the appreciation of the Index, as described above.

[19] 15 U.S.C. 78f(b)(2) (1988).

[20] The Commission notes that the Index Notes are very similar in structure to other indexed term notes recently approved by the Commission for listing on the Amex. *See* Securities Exchange Act Release Nos. 34820 (October 11, 1994), 59 FR 52571 (October 18, 1994) (approval for listing of indexed term notes linked to a portfolio of "basic" industry securities), 34723 (September 27, 1994), 59 FR 50631 (October 4, 1994) (approval for listing of indexed term notes linked to a portfolio of banking industry securities), and 33495 (January 19, 1994), 59 FR 3883 (January 27, 1994) (approval for listing of Telecommunications Basket Stock Upside Note Securities) (collectively, Indexed Term Note Approval Orders").

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] The Exchange will also distribute a circular to its membership calling attention to the specific risks associated with the Notes. *See supra* note 18.

[25] *See supra* note 8.

[26] *See* Amex Company Guide § 107A.

[27] The companies that comprise the Index are reporting companies under the Act.

[28] *See* Indexed Term Note Approval Orders, *supra* note 20.

[29] *See* June 20 Conversation, *supra* note 12.

[30] *See* Securities Exchange Act Release No. 32950 (September 23, 1993), 58 FR 50985 (September 29, 1993) (approval for the listing of debt exchangeable for common stock ("DECS") by the New York Stock Exchange).

[31] *See* Indexed Term Note Approval Orders, *supra* note 20.

[32] 15 U.S.C. 78s(b)(2) (1988).

[33] 17 CFR 200.30-3(a)(12) (1994).

[Rel. No. IC-21161; 812-9538]

ASA Limited; Notice of Application

June 23, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under section 7(d) of the Investment Company Act of 1940 (the "Act").

APPLICANT: ASA Limited.

RELEVANT ACT SECTIONS: Order requested under section 7(d) of the Act.

SUMMARY OF APPLICATION: Applicant, a South African company registered as an investment company in the United States, requests an order to allow applicant to appoint Chase Manhattan Bank, N.A. ("Chase") as its custodian and to authorize Chase to appoint Standard Bank of South Africa Limited ("Standard Bank") as applicant's subcustodian. The order would supersede prior orders issued under section 7(d) with respect to applicant's custodial arrangements.

FILING DATE: The application was filed on March 16, 1995 and amended on June 9, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 18, 1995, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 36 Wierda Road West, Sandton 2196, South Africa.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Senior Attorney, at (202) 942-0571, or Robert A. Robertson, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

A. Background

1. ASA Limited (formerly known as American-South African Investment Company, Ltd) is a South African company and a closed-end, non-diversified management investment company. On August 13, 1958, the SEC issued an order (the "Original Order") under section 7(d) of the Act allowing applicant to register as an investment company under the Act and to make a public offering of its securities in the United States.[1] Applicant's custodian is Citibank, N.A. ("Citibank").

2. The Original Order was issued subject to several conditions, including several restrictions imposed on applicant concerning the custody of its assets and the consummation of its portfolio transactions. The Original Order required applicant to, among other things, keep all of its assets, except for $75,000 in cash to cover administrative expenses, in the custody of a bank in the United States. The $75,000 was kept in a non-interest bearing checking account with a South African bank. The Original Order also required applicant to settle all purchases and sales of portfolio securities, other than those executed on certain established stock exchanges, in the United States. As a condition to the relief, applicant agreed not to change its undertakings and agreements contained in the original application, including its custodian agreement with Citibank, without SEC approval. Since the Original Order, applicant has received several orders modifying the restrictions on its custodial arrangements.

3. In 1959, the SEC issued an order allowing applicant to consummate in South Africa purchases and sales of South African Treasury Bills from and to the South African Treasury or the

[1] Investment Company Act Release Nos. 2739 (July 3, 1958) (notice) and 2756 (Aug. 13, 1958) (order).

South African Reserve Bank.[2] That same year, the SEC issued an order allowing applicant to purchase securities in South Africa upon the exercise of rights issued to it as a shareholder of other companies, provided certain conditions were met.[3]

4. In 1981, the SEC issued an order allowing applicant to invest its cash held in U.S. dollars in time deposits and bank certificates of deposits.[4]

5. In 1985, the SEC issued an order (the "1985 Order") allowing applicant to purchase portfolio securities issued by non-South African companies listed on certain foreign stock exchanges and to allow applicant's custodian to settle such transactions in the country where the relevant exchange was located. In the event that removal of these securities becomes prohibited by law or regulation or financially impracticable, the 1985 Order allows applicant's custodian to appoint an "eligible foreign custodian" as that term is defined by rule 17f–5 or an overseas branch of the custodian, to hold these securities in the country where the relevant exchange was located, provided certain conditions were met. The 1985 Order also allowed applicant to maintain in South Africa up to 3% of its assets in short-term rand denominated investments issued or guaranteed by the Republic of South Africa and to authorize its custodian to appoint Barclay's National Bank Limited as applicant's subcustodian in South Africa to hold these investments, subject to compliance with rule 17f–5.

6. In 1991, the SEC issued an order to allow applicant to, among other things, increase from $75,000 to $200,000 the amount of cash applicant may hold outside of the custody of its United States custodian and to invest up to 5% of its assets in rand-denominated interest bearing bank accounts with eligible foreign custodians or overseas branches of qualified U.S. banks located in South Africa, provided applicant complies with rule 17f–5. (These orders modifying the Original Order are referred to as the "Subsequent Orders").

7. Citibank plans to relocate its global custody services to London, England and has informed applicant that it will no longer be able to serve as applicant's custodian as of July 1, 1995. In view of the termination of these custody arrangements, applicant seeks to appoint Chase as its new custodian. On February 3, 1995, applicant's board of directors approved the appointment of Chase, authorized applicant's officers to file the application, and complete the new custodial arrangements upon obtaining SEC approval. Citibank has agreed to remain applicant's custodian for a limited period after July 1, 1995 pending SEC approval of applicant's new custody arrangements.

B. Relief Requested

1. Applicant requests an order to permit it to enter into a new custody arrangement with Chase and to permit Chase to appoint Standard Bank as applicant's South African subcustodian, subject to compliance with rule 17f–5.

2. Applicant states that it is not requested a change in any of the material aspects of its existing custody arrangements under the Original Order as amended by the Subsequent Orders. Applicant, however, intends that any order granting the relief requested in the application supersede the Original and Subsequent Orders with respect to applicant's custodial arrangements. Therefore, applicant reaffirms in the application its prior representations, undertakings and agreements in the Original and Subsequent Orders with respect to its custodial arrangements.

3. Applicant will settle its purchases and sales of portfolio securities in the United States by use of the mails or means of interstate commerce, except for:

(a) Purchases and sales on an "Established Securities Exchange," defined as a national securities exchange as defined in section 2(a)(26) of the Act, London Stock Exchange, the Johannesburg Stock Exchange, the Stock Exchange of Melbourne, Ltd., the Toronto Stock Exchange, the Tokyo Stock Exchange, and Effektenborsenverein Zurich Exchange;

(b) Purchase and sales in South Africa of South African Treasury Bills from and to the South African Treasury or the South African Reserve Bank; and

(c) Purchases in South Africa of securities upon the exercise of rights issued to applicant as shareholder of other companies for the purchase of such securities, provided that (i) the rights so exercised are offered to applicant as a shareholder in another company on the same basis as all other holders of the class or classes of shares of such other company to whom such rights are offered, (ii) the rights exercised do not exceed 10% of the total amount of the rights offered, and (iii) the securities purchased pursuant to the exercise, or securities of the same class, are listed on the Johannesburg Stock Exchange, or application has been made to such exchange for the listing thereon of the securities, or it has been publicly announced that application will be made to such exchange for the listing thereon of the securities, and applicant has no reason to believe that the listing will not be effected.

4. Applicant will keep all of its assets (which may include U.S. dollars invested in time deposits and bank certificates of deposit) in the custody of a United States custodian, except:

(a) $200,000 in cash maintained in an account with an eligible foreign custodian or an overseas branch of a qualified U.S. bank located in South Africa for the purpose of meeting its administrative expenses;

(b) Up to 3% of applicant's assets in short-term rand denominated investments issued or guaranteed by the Republic of South Africa;

(c) Up to 5% of applicant's assets in rand-denominated interest-bearing accounts with eligible foreign custodians or overseas branches of qualified U.S. banks located in South Africa;

(d) If removal of securities purchased on an Established Securities Exchange in Japan, Australia, Switzerland, and Canada becomes either prohibited by law or regulation or financially impracticable, up to 5% of applicant's assets may be held by an eligible foreign custodian or an overseas branch of Chase in each of these countries.

5. Applicant will comply with rule 17f–5 as if it were a registered management investment company organized or incorporated in the United States with respect to any of its assets held by eligible foreign custodians (including Standard Bank) or overseas branches of qualified U.S. banks (including Chase), outside the United States.

6. Applicant represents that Chase and any future custodian will enter into an agreement to comply with ASA's Memorandum and Articles of Association, the provisions of the Act and the rules thereunder, each of the undertakings and agreements contained in the original application and the terms of the Original Order and any other application or order of the SEC relating to applicant's custodial arrangements, as each of the same may from time to time be amended, and to do nothing inconsistent with applicant's undertakings and agreements contained in the original application or required by any present or future rule under the Act.

7. The custodian agreements will insure to the benefit of applicant's shareholders as parties and beneficiaries so as to enable them to maintain actions at law or in equity within the United States and South Africa. Applicant's custodian also will maintain a list of affiliated persons of applicant, its officers, directors, and investment adviser, and will not consummate any otherwise prohibited transaction with such person unless specifically permitted by SEC order. In addition, applicant will perform every action necessary to cause and assist the custodian of its assets to distribute the assets, or proceeds thereof, if the SEC or a court of competent jurisdiction shall have directed so by final order.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–16052 Filed 6–28–95; 8:45 am]

BILLING CODE 8010–01–M

[2] Investment Company Act Release Nos. 2817 (Jan. 5, 1959) (notice) and 2821 (Jan. 20, 1959) (order).

[3] Investment Company Act Release Nos. 2883 (May 22, 1959) (notice) and 2886 (June 9, 1959) (order).

[4] Investment Company Act Release Nos. 11669 (Mar. 6, 1981) (notice) and 11722 (Apr. 7, 1981) (order).

[Rel. No. IC–21163; 811–6037]

GOC Fund, Inc.; Notice of Application

June 23, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: GOC Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on March 23, 1995 and amended on June 19, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 18, 1995, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 19 Old Kings Highway South, Darien, CT 06820–4526.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Senior Attorney, at (202) 942–0579, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, formerly known as The Manager's Fund, Inc., is an open-end diversified management investment company that was organized as a corporation under the laws of the State of Maryland. On February 2, 1990, applicant registered under the Act as an investment company, and filed a registration statement to register its shares under the Securities Act of 1933. The registration statement was declared effective on March 28, 1990, and the initial public offering commenced on that date.

2. On October 12, 1994, applicant's board of directors approved the liquidation of applicant. The directors determined that the liquidation was in the best interest of securityholders because of applicant's inability to achieve its goals, especially the failure to market its shares to a different class of investors from the existing market for applicant's related funds. In addition, all remaining securityholders had holdings below applicant's minimum amount because all were participants in a reinvestment option offered to unitholders of certain unit investment trusts and the minimum investment amount had been waived for each of such participants.

3. On October 19, 1994, a notice of redemption ("Notice") was sent to all remaining securityholders. Because all remaining securityholders had holdings below the minimum amount established by applicant's articles of incorporation, and in accordance with Maryland law, each securityholder received a final distribution representing the net asset value of its shares along with the Notice.

4. On October 18, 1994, applicant had 132,873 shares outstanding, having an aggregate net asset value of $132,873 and a per share net asset value of $1.00.

5. The expenses incurred in connection with the liquidation consists primarily of administrative, legal, and accounting fees, and mailing and telephone expenses. Gabelli-O'Connor Fixed Income Mutual Funds Management Company, applicant's investment adviser, agreed to assume all known and unknown unpaid liabilities of applicant, which are less than $5,000. In addition, the investment adviser assumed the unamortized organizational expenses of applicant, in the amount of $5,122.

6. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

7. Applicant intends to file articles of dissolution with the State of Maryland.

8. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–16053 Filed 6–28–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26318]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

June 23, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 17, 1995, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended,

may be granted and/or permitted to become effective.

The Columbia Gas System, Inc. (70–8627)

The Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company, has filed an application-declaration under sections 6, 7, 9, 10, 11(f), 11(g), 12(b), 12(c) and 12(e) of the Act and rules 42, 43, 45, 62 and 65 thereunder. The application-declaration includes (i) an amended plan of reorganization and disclosure statement for Columbia (the "Columbia Plan" and "Columbia Disclosure Statement," respectively) and (ii) an amended plan of reorganization and disclosure statement for Columbia Gas Transmission Corporation ("Columbia Transmission"), a wholly-owned nonutility subsidiary of Columbia (the "TCO Plan" and "TCO Disclosure Statement," respectively).[1] The Plans and their respective disclosure statements were filed on June 14, 1995 with the United States Bankruptcy Court for the District of Delaware ("Bankruptcy Court") pursuant to the provisions of Chapter 11 of the United States Bankruptcy Code ("Bankruptcy Code").

Columbia proposes that the Commission issue (i) an order pursuant to section 11(f) of the Act approving the Columbia Plan and certain related transactions under the TCO Plan[2] and (ii) a report on the Columbia Plan pursuant to section 11(g) that may accompany a solicitation of creditors and any other interest holders for approval of the Columbia Plan in Columbia's bankruptcy proceedings.[3]

Columbia and Columbia Transmission filed voluntary petitions in the Bankruptcy Court for protection under Chapter 11 of the Bankruptcy Code on July 31, 1991 ("Petition Date"). Since that time, the Debtors have continued to manage their respective businesses and to possess their respective properties as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. The Commission has filed a notice of appearance under section 1109 of the Bankruptcy Code in each Debtor's bankruptcy proceeding. Except for the appointment of a fee examiner to review the reasonableness of fees and expenses incurred by certain professionals involved in each of the Debtors' cases, no trustee or examiner has been appointed by the Bankruptcy Court.

Columbia seeks to retain ownership of Columbia Transmission as a wholly-owned subsidiary, to recapitalize Columbia Transmission and to fund payments to Columbia Transmission's creditors pursuant to the provisions of the TCO Plan. The Debtors contemplate concurrent implementation of the Columbia Plan and the TCO Plan.

Certain transactions contemplated by the Columbia Plan and Columbia's sponsorship of the TCO Plan require Commission authorization. The proposed issuance by Columbia Transmission of securities pursuant to the TCO Plan, however, is exempt from the Act under rule 49(c). The jurisdictional aspects of the Plans are summarized below.

I. The Columbia Plan

A. Overview

As described in the Columbia Disclosure Statement, the Columbia Plan is intended to provide for payment of substantially all liquidated allowed claims of Columbia's creditors on the Plan's effective date ("Effective Date").[4] Holders of claims for borrowed money generally will receive a combination of (i) cash, to the extent available (as determined by Columbia), (ii) new debentures of Columbia ("New Indenture Securities"), to be issued under a new form of indenture (the "New Indenture"), and (iii) equity securities of Columbia. The equity securities proposed under the Columbia Plan will be preferred stock ("Preferred Stock") and Dividend Enhanced Convertible Stock ("DECS"). Under certain circumstances provided in the Columbia Plan, Columbia may redeem the Preferred Stock and DECS for cash.

Under the Columbia Plan, Columbia proposes to issue up to an aggregate of $3.65 billion in new securities, consisting of up to $3.25 billion in debt and up to $400 million in equity. With respect to the debt, Columbia requests authority to issue up to $3 billion of New Indenture Securities, but contemplates issuing up to $2.1 billion of New Indenture Securities and entering into bank credit facilities ("Bank Facilities") aggregating up to $1.15 billion. Columbia also proposes that if cash available from the Bank Facilities or operations is reduced from currently projected levels, the principal amount of New Indenture Securities to be issued pursuant to the Columbia Plan would be proportionately increased, provided that the aggregate of the debt to be issued thereunder would not exceed $3.25 billion. With respect to equity, Columbia proposes to issue up to $200 million in aggregate value each of the Preferred Stock and DECS.

Columbia also proposes to repurchase and possibly reissue common stock of Columbia ("Common Stock") in connection with the termination of the leveraged employee stock ownership feature (the "LESOP") of the Employees' Thrift Plan of Columbia Gas System ("Thrift Plan"). Further, if allowed claims of certain Columbia Transmission creditors exceed the values estimated under the TCO Plan, Columbia proposes to issue Common Stock to fund distributions pursuant to the TCO Plan. In addition, the Columbia Plan gives Columbia the flexibility to, under certain conditions, offer Common Stock with respect to claims relating to litigation against Columbia, certain of its current and former directors and officers, and other non-debtor defendants currently pending before the United States District Court for the District of Delaware (the "Securities Action").

Finally, holders of the Common Stock ("Stockholders") will retain their equity interests in Columbia pursuant to the Columbia Plan and are asked to approve certain amendments to Columbia's certificate of incorporation.

B. New Indenture Securities

The New Indenture Securities will be general, unsecured senior obligations of Columbia. They will be issued in seven series with maturities of approximately five, seven, ten, twelve, fifteen, twenty and thirty years, respectively. Each New Indenture Security will bear interest from the Effective Date (or from the most recent interest payment date to which interest has been paid), which will be payable semi-annually. The interest rates for each series of new Indenture Securities will be based on market rates for comparable securities. It is expected that the interest rate on any series of New Indenture Securities will not exceed 10 percent per annum. The principal amounts of each series of New Indenture Securities will be payable on their respective maturity dates. Certain series of New Indenture Securities may be redeemable at a premium at the option of Columbia.

The application-declaration states that the proposed New Indenture, pursuant to which the New Indenture Securities will be issued, will contain customary affirmative covenants and limitations consistent with market practice for similarly rated companies. The New Indenture also contains limitations on the ability of Columbia's significant subsidiaries to incur long-term debt with or issue preferred stock to third parties and a negative pledge with respect to Columbia, subject to specified exceptions.

C. Preferred Stock

The Preferred Stock proposed under the Columbia Plan will have a liquidation value of $25 per share and, as to dividend and liquidation rights, will rank equally with the DECS but prior to the Common Stock. Holders of Preferred Stock will be entitled to receive, when, as and if declared by Columbia's board of directors, cumulative preferential cash dividends accruing from the Effective Date at a rate per share that is to be determined in accordance with a pricing formula. It is currently expected that the dividend rate for Preferred Stock will not exceed 11 percent per annum. Columbia may, at its option, redeem the Preferred Stock in whole or in part on or prior to the 120th day following the Effective Date, so long as at least $50 million of preferred stock or none remain outstanding or if all Preferred Stock is to be redeemed no DECS are outstanding. If the Preferred Stock is not so redeemed, the dividend rate will be reset and increased by 100 basis points per share per year effective as of the 120th day after the Effective Date. Columbia may also redeem the Preferred Stock in whole or in part on or after the fifth anniversary of the Effective Date. Upon any such redemption by Columbia, a holder of Preferred Stock will receive, in exchange for each share so redeemed, cash in an amount equal to the sum of the liquidation value thereof and all accrued and unpaid dividends thereon to the date fixed for redemption.

The holders of Preferred Stock shall not have voting rights except as required by law and as follows: (i) if dividends on the Preferred Stock are in arrears and unpaid for six quarterly dividend periods, the holders of the Preferred Stock will be entitled to vote, on the basis of one vote for each share, for the election of two directors of Columbia, such directors to be in addition to the number of directors constituting the board of directors immediately prior to the accrual of such right; and (ii) the holders of Preferred Stock will have voting rights with respect to certain modifications of Columbia's certificate of incorporation.

D. DECS

The proposed DECS will be shares of convertible preferred stock of Columbia and have dividend, liquidation and voting rights similar to the Preferred Stock described above. The dividend rate will be determined to make the market value of the DECS comparable to the market value of the Common Stock and the liquidation value will be based on the market value of the Common Stock as of a specified date. It is currently expected that the dividend rate on the DECS will not exceed 11 percent per annum. The DECS will be mandatorily convertible into Common Stock. Columbia will have the right on or prior to the 120th day after the Effective Date to redeem the DECS, so long as at least $50 million DECS or none remain outstanding. If Columbia fails to redeem the DECS, the dividend rate will increase by 100 basis points per share per year effective as of the 120th day after the Effective Date.

Until the fifth anniversary of the Effective Date (the "Mandatory Conversion Date"), a holder of DECS may, at its option, convert its DECS into shares of Common Stock at the applicable conversion rate. On or after the fourth anniversary of the Effective Date or the month before the fifth anniversary after the Effective Date (as determined by Columbia prior to the Effective Date) and prior to the Mandatory Conversion Date, Columbia may redeem the outstanding DECS in whole or in part. Upon any such redemption by Columbia, each holder of DECS will receive, in exchange for each redeemed share, a certain number of shares of Common Stock equal to the call price of the DECS in effect on the date of redemption divided by the current market price of Common Stock on the trading day prior to the public announcement of Columbia's call for redemption. If the DECS have not already been converted by the holder or redeemed by Columbia, as described above, then all the outstanding DECS will convert automatically on the Mandatory Conversion Date into shares of Common Stock at the applicable conversion rate in effect on such date. The Columbia Plan proposes that the conversion rate initially will be subject to adjustment.

E. Bank Facilities

Columbia proposes to enter into the Bank Facilities on or before the Effective Date. Columbia states in its Application-Declaration that it will seek to arrange a senior unsecured term credit facility ("Term Facility") and one or more senior unsecured revolving credit facilities (collectively, the "Revolving Facility") in an aggregate principal amount of up to $1.15 billion. The facilities may be combined in a single facility.

The Term Facility would be used to fund payments to Columbia's creditors pursuant to the Columbia Plan, obligations of Columbia Transmission pursuant to the TCO Plan and for general corporate purposes. It is anticipated that the initial term of the Term Facility will be two years. Interest rates on borrowings under the Term Facility will be, depending on the nature of the borrowing, the prime rate or the applicable LIBOR rate plus no more than .75% or the applicable certificate of deposit rate plus no more than .875%. Amounts borrowed under the Term Facility will be senior unsecured debt of Columbia.

It is contemplated that the Revolving Facility will be used to provide working capital for Columbia and its subsidiaries. It is anticipated that the initial term of the Revolving Facility will not exceed five years. Up to $100 million of the Revolving Facility is expected to be used solely for letters of credit to be issued for the account of Columbia (a portion of which may be denominated in Canadian dollars) in the ordinary course of its business.

Interest rates on borrowings under the Revolving Facility will be, depending on the nature of the borrowing, the prime rate or specified margins over the applicable LIBOR rate or applicable certificate of deposit rate on the same or similar margin and maturity terms as the Term Facility. Amounts borrowed under the Revolving Facility will be senior unsecured debt of Columbia. The specific terms of the Revolving Facility, including, without limitation, interest rates, repayment terms, conditions to borrowings, representations and warranties, covenants and events of default will be negotiated by Columbia and prospective providers of the Revolving Facility.

F. Disposition of LESOP Shares

Columbia established the LESOP in 1990 to pre-fund, on a tax-advantaged basis, a portion of the employer-matching obligation under the terms of

[1] The Columbia Plan and the TCO Plan are collectively referred to herein as the "Plans." Columbia and Columbia Transmission are sometimes collectively referred to herein as the "Debtors."

[2] Section 11(f) provides, in relevant part, that "a reorganization plan for a registered holding company . . . shall not become effective unless such plan shall have been approved by the Commission after opportunity for hearing prior to its submission to the Court."

[3] Section 11(g)(2) of the Act provides, in relevant part, that any solicitation for consents to our authorization of any reorganization plan of a registered holding company or any subsidiary company thereof shall be "accompanied or preceded by a copy of a report on the plan which shall be made by the Commission after an opportunity for a hearing on the plan and other plans submitted to it, or by an abstract of such report made or approved by the Commission."

[4] Both the Columbia Plan and the TCO Plan assume that the Effective Date will occur by December 31, 1995 for purposes of financial projections. The Plans allow for the Effective Date to occur as late as June 28, 1996.

the Thrift Plan. The Columbia Plan proposes that the LESOP will be terminated on the Effective Date in accordance with the provisions of the LESOP trust and that Columbia will concurrently repurchase the Common Stock currently held by the LESOP trust (the "LESOP Shares"). It is Columbia's intention to initially hold the LESOP Shares in treasury and later reissue or otherwise utilize them for one of the following purposes deemed appropriate by Columbia: (i) selling LESOP Shares on the market over time, (ii) funding distributions to Columbia Transmission's creditors pursuant to the TCO Guarantee (defined below), (iii) using them in connection with funding aproved employee benefit programs and/or (iv) funding the settlement of the Securities Action pursuant to the Columbia Plan.

G. Public Offering of Additional Columbia Equity

If Columbia elects to redeem the Preferred Stock and DECS on or prior to the 120th day after the Effective Date and elects to fund such redemption through the issuance and sale of up to 16 million shares of Common Stock or preferred stock, authorization is requested for the issuance of such securities subject to a reservation of jurisdiction over the terms of any such issuance and sale of Common Stock and preferred stock.

H. Potential Offering of Columbia Securities in Connection with Settlement of Securities Action

The Columbia Plan proposes the payment by Columbia and other non-debtor defendants of up to $18 million to settle the claims in connection with the Securities Action. Under the Columbia Plan, Columbia has the option to increase this settlemtn amount if, based on the filing of supplemental proofs of claim or questionnaires, as authorized by the Bankruptcy Court, it is insufficient to meet the range of recoveries provided for in the Columbia Plan. In that event, the Columbia Plan provides that Columbia may elect to pay its portion of the settlement amount exceeding $18 million in the form of Common Stock or may withdraw its settlement offer and elect to pay securities claims, when and if allowed by the Bankruptcy Court, in Common Stock or cash.

I. Restated Certificate of Incorporation

The Columbia Plan provides that Columbia's certificate of incorporation will be amended and restated (the "Restated Certificate of Incorporation") in accordance with applicable provisions of the Delaware General Corporation Law and the Bankruptcy Code. The Restated Certificate of Incorporation, as more specifically described in the application-declaration, would, among other things, prohibit the issuance of non-voting equity securities as required by the Bankruptcy Code and increase the number of authorized shares of Preferred Stock (some of which may be issued on and after the Effective Date in order to effectuate the Columbia Plan as described above).

The Restated Certificate of Incorporation also includes various provisions that are necessary to permit the issuance of Preferred Stock and DECS under the Columbia Plan. These provisions differ from the similar provisions in the current Certificate of Incorporation in that they (i) decrease the par value of Preferred Stock from fifty dollars ($50) to ten dollars ($10), (ii) delete the restriction on Common Stock dividends and amounts of secured debt, (iii) remove and conform specific provisions regarding preferred voting rights, dividend rights and liquidation rights and (iv) permit the Board of Directors to determine the specific rights, powers and preferences of each series of Preferred Stock, and the limitations thereon, at the time of issuance.

J. The Columbia Omnibus Settlement Under the TCO Plan

To facilitate the TCO Plan and in exchange for settlement of the litigation challenging Columbia's claims against Columbia Transmission and certain transfers made by Columbia Transmission to Columbia and another affiliate prior to the Petition Date and retention of its ownership of Columbia Transmission, the Columbia Board of Directors authorized the "Columbia Omnibus Settlement" whereby Columbia will:

(i) Make a capital infusion into Columbia Transmission of approximately $1 billion, said capital contribution to have two components: (A) Columbia will agree to a restructuring of Columbia Transmission secured debt and the acceptance of $1.5 billion in new secured debt in settlement of the $2 billion claim held by Columbia under the existing secured debt, resulting in an approximate $500 million capital contribution of the balance of the claim. (B) Columbia will agree to provide cash to Columbia Transmission necessary so that the total amount distributable under the TCO Plan equals approximately $3.9 billion including the approximate $2 billion of Columbia's secured claim referred to above. Columbia Transmission is projecting cash on hand totaling approximately $1.4 billion as of December 31, 1995. Therefore, the shortfall that Columbia would fund through an additional capital contribution would be approximately $500 million, of which about $300 million could be met by Columbia's proportionate recovery on the Columbia Transmission unsecured debt held by it and recovery by another subsidiary on its claims followed by a dividend out of retained earnings by that subsidiary to Columbia. (ii) Guarantee (the "TCO Guarantee") (a) the settlement reached by Columbia Transmission with its customers and payments to dissenting customers with respect to ultimately allowed claims (the "Customer Settlement") and (b) the payment of the same distribution percentage of ultimately allowed claims of claimants who do not accept the TCO Plan, including producers that ultimately do not accept the Columbia Transmission Producer Settlement ("Dissenting Producers"). In the event that payments required by the TCO Plan to Dissenting Producers (and dissenting customers) increase the total required distributions over the projected $3.9 billion by an amount which requires external funding, Columbia will have the option to utilize Common stock in lieu of cash payments (and, of course, the option to sell Common Stock in the marketplace and utilize the proceeds for such excess distributions). Under these possible circumstances, whichever technique is employed, Columbia's investment in Columbia Transmission will be correspondingly increased.

Accepting producers have agreed to a 5 percent (5%) holdback from the distributions due to them and have agreed that, to the extent that claim values in excess of the settlement values contained in the TCO Plan are agreed to or proven, the holdback will be applied with dollar for dollar matching by Columbia Transmission (and Columbia under the TCO Guarantee) to pay the ultimate distributions to Dissenting Producers. Thus, there is a sharing by the accepting producers of a portion of the risk that the aggregate distribution to producers pursuant to the TCO Plan may exceed the settlement amount contained in the Plan. If the holdback is expended, Columbia Transmission would be required to pay the entire amount of the excess.

Northeast Utilities Service Co., et al. (70–8641)

Northeast Utilities Service Company ("NU Service"), 107 Selden Street, Berlin, Connecticut, 06037, a nonutility subsidiary company of Northeast Utilities ("NU"), a registered holding company, and four electric utility subsidiary companies of NU ("Utilities"), Western Massachusetts Electric Company, 174 Brush Hill Avenue, West Springfield, Massachusetts, 01809; Holyoke Water Power Company, 174 Brush Hill Avenue, West Springfield, Massachusetts, 01809; The Connecticut Light and Power Company, 107 Selden Street, Berlin, Connecticut, 06037; and Public Service Company of New Hampshire, 1000 Elm Street, Manchester, New Hampshire, 03015, have filed an application under sections 9(a) and 10 of the Act.

The application seeks Commission authorization to engage in electric power brokering and marketing transactions ("Proposed Activities") in the northeastern United States, which includes the New England Power Pool ("NEPOOL"). Under the Proposed Activities, the NU system would match electric power supplies with customers that the NU system is unable to supply, for which the NU system would receive a brokerage fee ("Brokering"). Under the Proposed Activities, the NU system also would act as a principal in electric power sales between buyers and sellers ("Marketing"). Marketing transactions may include fuel-for-power transactions in connection with which the NU system would substitute other sources of electric power for electric power generated by the Utilities.

The Proposed Activities would generally be conducted by NU Service on behalf of the Utilities. Revenues from the Proposed Activities would be credited to reduce the costs of operation of the Utilities. Revenues from Brokering are not expected to exceed $1 million in 1995 and in 1996. Revenues from Marketing are not expected to exceed $110 million in 1995 and in 1996.

National Fuel Resources, Inc. (70–8651)

National Fuel Resources, Inc. ("NFR"), 478 Main Street, Buffalo, New York 14202, a wholly-owned nonutility subsidiary of National Fuel Gas Company, a registered public utility holding company, has filed an application-declaration with this Commission under sections 6(a), 7, 9(a) and 10 of the Act.

NFR proposes to engage in electric power marketing and brokering. It is stated that a typical electric power marketing or brokering transaction would involve the purchase of electric power from an electric generator and the resale of that power to another utility (wholesale) or an end-user (retail). The customer or NFR would contract with an electric utility for power transmission capacity. NFR proposes to engage in long-term power purchases and sales. NFR also proposes to trade in any electricity futures market that may develop to cover its obligations in the market.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–16051 filed 6–28–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21160; 811–6063]

Smith Barney Shearson Short-Term World Income Fund; Notice of Application

June 22, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Smith Barney Shearson Short-Term World Income Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on March 31, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 17, 1995, and should be accompanied by proof of service on applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, Smith Barney Inc., 388 Greenwich Street, New York, New York 10013.

FOR FURTHER INFORMATION CONTACT: James M. Curtis, Senior Counsel, at (202) 942–0563, or Robert A. Robertson, Branch Chief, (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company that was organized as a Massachusetts business trust. On March 16, 1990, applicant filed a notice of registration on Form N–8A pursuant to section 8(a) of the Act. Also on March 16, 1990, applicant filed a registration statement under section 8(b) of the Act and under the Securities Act of 1933 on Form N–1A to register an indefinite number of shares. Applicant's registration statement was declared effective on May 30, 1990, and applicant commenced its initial public offering shortly thereafter.

2. On March 29, 1994, the board of trustees of applicant and the board of trustees of Smith Barney Income Funds (the "Acquiring Fund"), respectively, approved an Agreement and Plan of Reorganization (the "Reorganization") providing for the transfer of all or substantially all the assets of applicant to Smith Barney Global Bond Fund, a portfolio of the Acquiring Fund, in exchange for shares of the Acquiring Fund. In accordance with rule 17a–8 under the Act, the board of trustees of applicant, including the trustees who are not interested persons, and the board of trustees of the Acquiring Fund, including the trustees who are not interested persons, concluded that the Reorganization would be in the best interests of their respective investment companies and that the interests of their respective shareholders would not be diluted as a result.

3. The registration statement on Form N–14 was filed with the SEC and the proxy statement/prospectus contained therein was mailed to applicant's shareholders on or about June 2, 1994. At a special meeting of shareholders held on July 5, 1994, the shareholders of applicant approved the Reorganization.

4. As of July 15, 1994, applicant had 6,035,746 Class A shares outstanding having an aggregate net asset value of $37,703,310 and a per share net asset value of $6.25. At such date, applicant also had 2,695,166 Class B shares outstanding, having an aggregate net asset value of $16,840,661 and a per share net asset value of $6.25. Applicant had no other classes of securities outstanding. On July 15, 1994, pursuant to the Reorganization, applicant transferred all its assets to the Acquiring Fund in exchange for shares of the Acquiring Fund. Immediately thereafter.

applicant liquidated and distributed *pro rata* to its shareholders the shares that it received of the Acquiring Fund. Each shareholder of applicant received shares of the Acquiring Fund having an aggregate net asset value equal to the aggregate net asset value of his or her investment in applicant.

5. Applicant and the Acquiring Fund each paid half of the expenses of the Reorganization. Such expenses equaled approximately $130,000 and consisted of accounting, printing, administrative, and certain legal expenses.

6. Applicant has no security holders, assets, debts, or other liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged and does not propose to engage in any business activity other than those necessary for the winding up of its affairs.

7. Applicant intends to file the appropriate notice of termination with the Office of the Secretary of State of the Commonwealth of Massachusetts to effect the termination of applicant as a Massachusetts business trust.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15943 Filed 6–28–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21158; 811–5417]

Smith Barney Shearson Small Capitalization Fund; Notice of Application

June 22, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Smith Barney Shearson Small Capitalization Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on March 31, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 17, 1995, and should be accompanied by proof of service on applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, Smith Barney Inc., 388 Greenwich Street, New York, New York 10013.

FOR FURTHER INFORMATION CONTACT: James M. Curtis, Senior Counsel, at (202) 942–0563, or Robert A. Robertson, Branch Chief, (202) 942–0464 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company that was organized as a Massachusetts business trust. On October 23, 1987, applicant filed a notice of registration on Form N–8A pursuant to section 8(a) of the Act. Also on October 23, 1987, applicant filed a registration statement under section 8(b) of the Act and under the Securities Act of 1933 on Form N–1A to register an indefinite number of shares. Applicant's registration statement was declared effective on December 4, 1987, and applicant commenced its initial public offering shortly thereafter.

2. On August 27, 1993 and August 30, 1993, the board of trustees of applicant and the board of directors of Smith Barney Investment Funds Inc. (the "Acquiring Fund"), respectively, approved an Agreement and Plan of Reorganization (the "Reorganization") providing for the transfer of all or substantially all of the assets of applicant to Smith Barney Special Equities Fund, a portfolio of the Acquiring Fund, in exchange for shares of the Acquiring Fund. In accordance with rule 17a–8 under the Act, the board of trustees of applicant, including the trustees who are not interested persons, and the board of directors of the Acquiring Fund, including the directors who are not interested persons, concluded that the Reorganization would be in the best interests of their respective investment companies and that the interests of their respective shareholders would not be diluted as a result.

3. The registration statement on Form N–14 was filed with the SEC and the proxy statement/prospectus contained therein was mailed to applicant's shareholders on October 4, 1993. At a special meeting of shareholders held on November 18, 1993, the shareholders of applicant approved the Reorganization.

4. As of November 19, 1993, applicant had 2,210,471 Class A shares outstanding having an aggregate net asset value of $34,338,383 and a per share net asset value of $15.53. At such date, applicant also had 346,133 Class B shares outstanding, having an aggregate net asset value of $5,339,634 and a per share net asset value of $15.43. Applicant had no other classes of securities outstanding. On November 19, 1993, pursuant to the Reorganization, applicant transferred all its assets to the Acquiring Fund in exchange for shares of the Acquiring Fund. Immediately thereafter, applicant liquidated and distributed *pro rata* to its shareholders the shares that it received of the Acquiring Fund. Each shareholder of applicant received shares of the Acquiring Fund having an aggregate net asset value equal to the aggregate net asset value of his or her investment in applicant.

5. Applicant and the Acquiring Fund each paid half of the expenses of the Reorganization. Such expenses equaled approximately $30,000 and consisted of accounting, printing, administrative, and certain legal expenses.

6. Applicant has no security holders, assets, debts, or other liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged and does not propose to engage in any business activity other than those necessary for the winding up of its affairs.

7. Applicant intends to file the appropriate notice of termination with the Office of the Secretary of State of the Commonwealth of Massachusetts to effect the termination of applicant as a Massachusetts business trust.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15944 Filed 6–28–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21159; 822–6219]

Smith Barney Shearson Worldwide Prime Assets Fund; Notice of Application

June 22, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Smith Barney Shearson Worldwide Prime Assets Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has cased to be an investment company.

FILING DATES: The application was filed on March 31, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 17, 1995, and should be accompanied by proof of service on applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington D.C. 20559. Applicant, Smith Barney Inc., 388 Greenwich Street, New York, New York 10013.

FOR FURTHER INFORMATION CONTACT: James M. Curtis, Senior Counsel, at (202) 942–0563, or Robert A. Robertson, Branch Chief, (202) 942–0563, or Robert A. Robertson, Branch Chief, (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company that was organized as a Massachusetts business trust. On November 19, 1990, applicant filed a notice of registration on Form N–8A pursuant to section 8(a) of the Act. Also on November 19, 1990, applicant filed a registration statement under section 8(b) of the Act and under the Securities Act of 1933 on Form N–1A to register an indefinite number of shares. Applicant's registration statement was declared effective on January 29, 1991, and applicant commenced its initial public offering shortly thereafter.

2. On March 29, 1994 and March 31, 1994, the board of trustees of applicant and the board of trustees of Smith Barney Income Funds (the "Acquiring Fund"), respectively, approved an Agreement and Plan of Reorganization (the "Reorganization") providing for the transfer of all or substantially all of the assets of applicant to Smith Barney Shearson Limited Maturity Treasury Fund, a portfolio of the Acquiring Fund, in exchange for shares of the Acquiring Fund. In accordance with rule 17a-8 under the Act, the board of trustees of applicant, including the trustees who are not interested persons, and the board of trustees of the Acquiring Fund, including the trustees who are not interested persons, concluded that the Reorganization would be in the best interest of their respective investment companies and that the interest of their respective shareholders would not be diluted as a result.

3. The registration statement of Form N–14 was filed with the SEC and the proxy statement/prospectus contained therein was mailed to applicant's shareholders on June 2, 1994. At a special meeting of shareholders held on July 5, 1994, the shareholders of applicant approved the Reorganization.

4. As of July 15, 1994, applicant had 29,767,799 Class A shares outstanding having an aggregate net asset value of $49,994,241 and a per share net asset value of $1.68. At such date, applicant had no other classes of shares outstanding. On July 15, 1994, pursuant to the Reorganization, applicant transferred all its assets to the Acquiring Fund. Immediately thereafter, applicant liquidated and distributed *pro rata* to its shareholders the shares that it received of the Acquiring Fund. Each shareholder of applicant received shares of the Acquiring Fund having an aggregate net asset value equal to the aggregate net asset value of his or her investment in applicant.

5. Applicant and the Acquiring Fund each paid half of the expenses of the Reorganization. Such expenses equaled approximately $106,000 and consisted of accounting, printing, administrative, and certain legal expenses.

6. Applicant has no security holders, assets, debts, or other liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged and does not propose to engage in any business activity other than those necessary for the winding up of its affairs.

7. Applicant intends to file a letter of withdrawal with the Office of the Secretary of State of the Commonwealth of Massachusetts to effect the termination of applicant as a Massachusetts business trust.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15945 Filed 6–28–95; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

First Meeting of the Representative Payment Advisory Committee

AGENCY: Social Security Administration.

ACTION: Notice.

DATES: July 20, 1995, 9:00 a.m.–5:00 p.m.; July 21, 1995, 9:00 a.m.–3:00 p.m.

ADDRESSES: The Capitol Holiday Inn Hotel, 550 C Street SW., Washington, DC 20004.

SUPPLEMENTARY INFORMATION:

Type of Meeting: The meeting is open to the public.

Purpose: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, the Social Security Administration (SSA) announces the first meeting of the Representative Payment Advisory Committee. The Committee will provide the Commissioner of Social Security independent advice, counsel, and recommendations regarding SSA's responsibilities directly or indirectly associated with the administration of its representative payment program as authorized by sections 205(j) and 1631(a)(2) of the Act. The Committee will advise the Commissioner concerning representative payment policy in five broad areas: (1) Beneficiary incapability; (2) payee selection; (3) payee recruitment and retention; (4) standards for payee performance; and (5) payee oversight. The Committee will review all phases of representative payment policy. The Committee will assess the need for change in representative payment policy and make recommendations for possible legislation. Its deliberations will focus on protecting beneficiary rights, promoting beneficiary well-being and self-sufficiency, and setting appropriate standards for payee performance, as well as sanctions for malfeasance. Specific issues may include whether (and how) SSA should change its policies relating to evidentiary standards for determining beneficiaries' (in)capability, whether special payee investigatory and selection policies are needed for cases involving beneficiaries who are substance abusers or who are homeless, development of more

definitive guidelines on acceptable uses of benefits by payees, and establishing policies for payment for payee services where such payment is authorized by law.

Agenda: The full Committee will meet commencing at 9:00 a.m. on Thursday, July 20, 1995 until 5:00 p.m. and from 9:00 a.m. to 3:00 p.m. on Friday, July 21. Agenda items on July 20 will include, but not be limited to: swearing in of Committee members; brief introductory remarks by Committee members; pronouncement of mission statement; establishment of ground rules for meetings; briefing by SSA officials on various issues, including privacy or ethical concerns; and comments from selected experts in the five broad policy areas being considered. Oral statements are sought from the public for presentation on July 21. Presentation will be limited to 5 minutes per public speaker.

Persons interested in presenting an oral statement should submit a written request, along with a copy of their statement, to the Representative Payment Advisory Committee, P.O. Box 17763, Baltimore, MD 21203–7763. Requests should contain the name, address, telephone number and any business or professional affiliation of the person desiring to make an oral statement. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Representative Payment Advisory Committee will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for presentation, but desire to make an oral statement, may sign up at the meeting site before noon on July 21. These persons will be allowed to present their oral statement as time permits. The Committee also welcomes written comments. They may be sent to the Representative Payment Advisory Committee at P.O. Box 17763, Baltimore, MD 21203–7763.

Records will be kept of all Committee proceedings, and will be available for public inspection at the office of the Representative Payment Advisory Committee, Room 2–N–24, Operations Building, 6401 Security Boulevard, Baltimore, MD 21203 between the hours of 9:00 a.m. to 4:00 p.m. on regular business days. Anyone requiring information regarding the Committee should contact the Representative Payment Advisory Committee at P.O. Box 17763, Baltimore, MD 21203–7763; Telephone: (410) 966–4688; FAX: (410) 966–0980; Internet: adcom@ssa.gov.

Dated: June 23, 1995.

Reba R. Andrew,

Staff Director, Representative Payment Advisory Committee.

[FR Doc. 95–16000 Filed 6–28–95; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended June 23, 1995

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 50410
Date filed: June 19, 1995
Parties: Members of the International Air Transport Association
Subject: TC31 Reso/P 1067 dated May 30, 1995, South Pacific Resos r-1 to r-26
Proposed Effective Date: October 1, 1995

Docket Number: 50411
Date filed: June 19, 1995
Parties: Members of the International Air Transport Association
Subject: TC12 Reso/P 1670 dated May 23, 1995 Mid Atlantic-Europe Resolutions
r-1 to r-33 TC12 Reso/P 1671 dated May 23, 1995 Mid Atlantic-Middle East Resolutions r-34 to r-44
Proposed Effective Date: October 1, 1995.

Paulette V. Twine,

Chief Documentary Services Division.

[FR Doc. 95–16037 Filed 6–28–95; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended June 23, 1995

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due dates for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 50412
Date filed : June 20, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 18, 1995
Description: Application of LTU Lufttransport-Unternehmen GmbH. & Co. KG, pursuant to 49 U.S.C. Section 41302, and Subpart Q of the Regulations, applies to add Daytona Beach, Florida to its Foreign Air Carrier Permit as a coterminal point for scheduled service between Germany and the United States.

Docket Number: 50328
Date filed : June 22, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 21, 1995
Description: Amendment No. 1 to the Application of Atlant-Soyuz Airlines, pursuant to 49 U.S.C. Section 41302 of the Act and Subpart Q of the Regulations, requests an amendment to its foreign air carrier permit to offer passenger service in addition to charter cargo service between the Russian Federation and the United States.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 95–16036 Filed 6–28–95; 8:45 am]

BILLING CODE 4910–62–P

Office of the Secretary

[OST Docket 50125]

Department of Transportation Final Environmental Justice Strategy

AGENCIES: Office of the Secretary: Departmental Office of Civil Rights and Office of Assistant Secretary for Transportation Policy; DOT.

ACTION: Notice of final environmental justice strategy.

SUMMARY: The Department of Transportation is issuing its final environmental justice strategy, which contains the Department's commitment to certain principles of environmental justice embodied in the Secretary's Strategic Plan, and identifies actions the Department intends to take to implement Executive Order 12898. The strategy is published as a final document; however, it should be viewed as a living document that may be adjusted periodically in response to insights acquired while implementing its various provisions.

The strategy is issued in response to Executive Order 12898, signed by President Clinton on February 11, 1994. The Order directs each Federal agency to develop a strategy to address environmental justice concerns in its programs, policies and regulations. The thrust of the Executive Order is to avoid disproportionately high and adverse impacts on minority and low-income populations with respect to human health and the environment.

Published elsewhere in this edition of the **Federal Register** is a proposed Order on environmental justice providing guidance to be followed by the Department of Transportation and its operating administrations to implement executive Order 12898.

FOR FURTHER INFORMATION CONTACT: Ira Laster, Jr., Office of Environment, Energy, and Safety, Office of the Assistant Secretary for Transportation Policy, telephone (202) 366–4859, or Alyce Boyd-Stewart, Departmental Office of Civil Rights, telephone (202) 366–9366, U.S. Department of Transportation, 400 7th Street SW, Washington, D.C. 20590.

Dated: June 21, 1995.

Antonio J. Califa,

Director, Departmental Office of Civil Rights.

Joseph Canny,

Deputy Assistant Secretary for Transportation Policy.

Department of Transportation Environmental Justice Strategy

Introduction

This strategy is issued in response to Executive Order 12898, signed by President Clinton on February 11, 1994, on "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations." This strategy sets forth the Department of Transportation's (DOT) approach to implementing E.O. 12898 in all relevant programs and activities sponsored, supported and undertaken by the Department. The Executive Order requires each Federal agency to develop a specific agency-wide strategy for implementing its provisions. The thrust of the Executive Order is to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of each agency's programs, policies, and activities on minority populations and low-income populations.

The strategy contains the Department's commitment to certain principles of environmental justice embodied in the Secretary's Strategic Plan, and identifies actions the Department intends to take to implement Executive Order 12898. The strategy is published as a final document; however, it should be viewed as a living document that may be adjusted periodically in response to insights acquired while implementing its various provisions. DOT plans further opportunity for public comments on its strategy and implementing actions.

DOT is committed to embracing the objectives of Executive Order 12898 by promoting enforcement of all applicable planning and environmental regulations and legislation, and by promoting non-discrimination in its programs, policies and activities that affect human health and the environment, consistent with Executive Order 12898, and Title VI of the Civil Rights Act of 1964. DOT is also committed to bringing government decisionmaking closer to the communities and people affected by these decisions and ensuring opportunities for greater public participation in decisions relating to human health and the environment.

Many of the objectives of the E.O. are embodied in the missions, goals, and objectives of the Secretary's Strategic Plan and are briefly summarized as follows:

- Improve the environment and public health and safety in the transportation of people and goods, and the development and maintenance of transportation systems and services.
- Harmonize transportation policies and investments with environmental concerns, reflecting an appropriate consideration of economic and social interests.
- Consider the interests, issues, and contributions of affected communities, disclose appropriate information, and give communities an opportunity to be involved in decisionmaking.

The Department will implement the E.O. by integrating its provisions into existing DOT programs, policies, activities, regulations, and guidance to the greatest extent possible.

Development of the DOT Strategy

1. Secretary's Directive

Upon receipt of the Executive Order and the accompanying Presidential Memorandum, Secretary Peña established a Department-wide working group and directed the development of a Department-wide strategy.

During senior level staff meetings in December 1994 and March 1995, Secretary Peña emphasized his commitment to comply with Executive Order 12898 and instructed senior level staff to support the executive order and encouraged them to incorporate the principles of environmental justice in program planning, budgeting, program development, program activities, and program evaluation, as appropriate.

In a recent memorandum to Secretarial offices and operating administrations,* Secretary Peña stated his strong personal endorsement of their efforts to carry out the responsibilities set out in the Department's Environmental Justice Strategy in an effective and timely manner.

a. National Conference on Transportation, Social Equity, and Environmental Justice in Chicago.

This conference, cosponsored by the Federal Transit Administration and the Surface Transportation Policy Project, brought together approximately 150 persons, mostly community activists from around the country, with DOT and other public officials. The meeting, held on November 17–18, 1994, in Chicago identified key transportation-related environmental and social issues of concern to persons living in predominately low-income and minority communities. Suggestions for actions to redress these concerns were also sought.

b. Inter-Departmental Public Meeting in Atlanta

On January 20, 1995, DOT participated, along with other Federal departments/agencies, in a public meeting in Atlanta to solicit comments on environmental justice issues as they relate to Federal Government programs. A portion of the meeting was televised nationwide by satellite to designated downlink sites.

c. Federal Register Notice

DOT published its proposed strategy in the **Federal Register** on February 21, 1995, with a request for comment. In addition, the Department mailed approximately 3,000 copies of the document to Departmental constituent groups and representatives of the environmental justice community. Based on comments received, DOT modified its strategy and streamlined its description in this document.

Elements of the DOT Strategy

1. Public Outreach on Implementation of the Environmental Justice Strategy

DOT plans, and will review with environmental justice stakeholders, its plans for the following activities: (1)

*Operating administrations, a.k.a. modal administrations, include: The United States Coast Guard, the Federal Aviation Administration, the Federal Highway Administration, the Federal Railroad Administration, the National Highway Traffic Safety Administration, the Federal Transit Administration, the St. Lawrence Seaway Development Corporation, the Maritime Administration, and Research and Special Programs Administration.

grass roots meetings to better understand community-based environmental justice concerns and to provide training on the transportation decisionmaking processes; (2) a secretarial level meeting of experts, traditional DOT stakeholders and environmental justice representatives to recommend specific policies and actions to implement Executive Order 12898 and the Department's Environmental Justice Strategy; and (3) regional workshops for state and local officials on implementing the Strategy.

2. DOT Order on Environmental Justice

A key component of the DOT Environmental Justice Strategy is a proposed DOT Order providing guidance to be followed by the Department and its operating administrations to implement Executive Order 12898. The DOT Order will apply to all appropriate DOT regulations, policies, guidance, and program activities as well as to any program, project, or activity undertaken by DOT or that receives financial assistance or permits from DOT, which may have environmental justice implications. The proposed DOT Order would ensure that all appropriate components of the Department will apply this strategy to appropriate aspects of their programs, policies, and activities in a way that integrates environmental justice considerations into existing agency operations rather than creating a separate set of requirements.

While the precise contents of the proposed DOT Order have not yet been fully developed, the Department anticipates that the Order will achieve several objectives. First, under the proposed Order, the Office of the Secretary and operating administrations of DOT would review their regulations, programs, policies, guidance, and procedures that affect human health or the environment to identify those that should be revised and revise them, as appropriate, to comply with Executive Order 12898. This review will include, but not be limited to, regulations, programs, policies, guidance, and procedures related to short and long-range planning and programming, the National Environmental Policy Act (NEPA), pollution prevention, worker safety, environmental compliance, hazardous materials transportation, research, data collection, training, public participation, and relocation.

Second, the proposed DOT Order would set forth guidance to be used by DOT, its operating administrations, the recipients of DOT financial assistance, and state and local officials to determine whether a DOT or a DOT-funded program, policy, project, or activity (DOT action) is likely to have disproportionately high and adverse human health or environmental effects on low-income or minority populations. As part of this process, DOT, its operating administrations, and recipients of Federal financial assistance will provide appropriate and meaningful opportunities for comment by representatives of affected communities.

Third, under the proposed DOT Order, DOT would develop potential strategies and measures to address, as appropriate, disproportionately high and adverse effects of their actions and those of recipients of DOT funds, consistent with requirements of other statutes and procedures. These measures may include pollution prevention, and health and safety measures, as well as mitigation and compensatory measures. This process would include procedures to provide meaningful opportunities for public involvement by low-income and minority populations, including community input in identifying potential mitigation measures for DOT actions.

The proposed DOT Order also would provide for data collection or research as needed to provide information to comply with Executive Order 12898. Public input will be solicited regarding these activities.

The DOT Order will provide guidance on how to achieve compliance with Executive Order 12898 under existing environmental and civil rights laws in cases where disproportionate impacts have been identified. (The DOT Order was distributed for public review in draft form on May 11, 1995, at an environmental justice conference in Atlanta, Georgia.)

3. DOT Training on Environmental Justice

In order to ensure that DOT managers are fully aware of their responsibilities under Executive Order 12898 and pre-existing statutory mandates, DOT will hold information seminars on environmental justice for selected program managers throughout the Department. Representatives of the environmental justice community will be consulted in the planning of these seminars.

In addition, in keeping with the Department's philosophy of integrating environmental justice considerations into all appropriate departmental programs and activities, DOT operating administrations will review and modify existing training courses to ensure adequate coverage of environmental justice principles and to use training examples that include environmental justice aspects. These courses include such subjects as compliance with environmental mandates, infrastructure planning and development, public involvement, and management of departmental facilities and resources. The audience for these training courses includes DOT employees and recipients of DOT funding.

Role of Key DOT Elements in Complying With Environmental Justice Executive Order

Each element of the Department will undertake specific actions needed to implement the DOT Order on environmental justice. The actions undertaken will be developed and refined as the Department's strategy evolves. The following organizations will have key roles to play in the implementation process:

a. Assistant Secretary for Transportation Policy

The Office of the Assistant Secretary for Transportation Policy maintains liaison with various elements of the Department in an effort to ensure that each appropriate element examines its programs and activities and takes appropriate actions to comply with Executive Order 12898. This office is also responsible for monitoring implementation of the DOT environmental justice strategy to help keep the strategy relevant and foster consistency and comprehensiveness in complying with the principles embodied in the Executive Order. In addition, the office will work to keep high-level Departmental officials properly involved in achieving the strategy's objectives and in maintaining liaison with non-DOT departments and agencies as well as the environmental justice community.

The Department will review and update, as appropriate, its Procedures for Considering Environmental Impacts, DOT Order 610.1C, to ensure that it is consistent with Executive Order 12898 and DOT's proposed order on environmental justice. Attachment 2 to Order 5610.1C sets forth guidance on the format and content of environmental review documents and compliance with the National Environmental Policy Act and other environmental statutes, regulations, and executive orders, such as Section 4(f) of the DOT Act (49 U.S.C. 303). This attachment will be updated to reflect the requirements of Executive Order 12898 and to outline the need to address potential disproportionately high and adverse health, or environmental impacts on affected populations and communities. DOT operating administrations also will review and update their own environmental guidance.

b. Departmental Office of Civil Rights

Executive Order 12898 and the accompanying Presidential Memorandum underscore certain provisions of existing laws that can be used to ensure that all persons live in a safe and healthy environment. The Memorandum focuses on Title VI of the Civil Rights Act, which provides that programs and activities of recipients of Federal financial assistance may not discriminate based on race, color or national origin. The proposed DOT Order described above will provide the operating administrations with a framework to ensure that their policies, programs, and procedures comply with the intent of the Executive Order, including meeting the requirements of Title VI.

In addition, the Departmental Office of Civil Rights will provide leadership and technical assistance to the operating administrations and to major recipients of DOT funds in the administration of their Title VI responsibilities which relate to environmental justice. This may take the form of guidelines, memoranda of general applicability, and training designed to achieve environmental justice for members of minority populations.

c. Operating Administrations

DOT and its operating administrations will review the allocation of education and research funds to historically black colleges and universities and other minority institutions and minority students and faculty in light of E.O. 12898. In addition, DOT will review its research programs to determine whether and how minority and low-income populations may be more appropriately included in the scope of particular research projects. Improved outreach to affected populations will be developed.

Each operating administration will implement the DOT strategy, including public outreach, the DOT Order on environmental justice, and training. Each operating administration will continue to cooperate in these matters with the Departmental Office of Civil Rights and the Assistant Secretary for Transportation Policy.

[FR Doc. 95–15665 Filed 6–28–95; 8:45 am]

BILLING CODE 4910–62–P

[OST Docket No. 50125]

Department of Transportation Proposed Order to Address Environmental Justice in Minority Populations and Low-Income Populations

AGENCY: Office of the Secretary: Departmental Office of Civil Rights and Office of the Assistant Secretary for Transportation Policy; Department of Transportation (DOT).

ACTION: Request for comments on U.S. Department of Transportation proposed DOT Order on environmental justice.

SUMMARY: This Notice proposes a DOT Order that would be used by DOT in complying with Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority and Low-Income Populations*. The proposed Order is intended to generally describe the process that the Office of the Secretary and each Operating Administration must use to incorporate environmental justice principles into existing programs, policies, and activities. The proposed Order would require the Office of the Secretary and each Operating Administration within DOT to develop specific procedures to apply the DOT Order and the Executive Order to the programs, policies and activities which they develop or implement. Comments on the proposed Order are requested.

DATES: Comments should be received by August 28, 1995. Late filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent to Docket Clerk, Docket 50125, Department of Transportation, 400 Seventh Street, SW., Room PL 401, Washington, D.C. 20590. To facilitate consideration of the comments, commenters are requested to file six copies of each submission. Comments will be available for inspection at this address from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. Commenters who wish the Department to acknowledge receipt of their comments should include a stamped self-addressed postcard with their comments. The Docket Clerk will date-stamp the postcard and mail it back to the commenter.

FOR FURTHER INFORMATION CONTACT: Ira Laster Jr., Office of Environment, Energy, and Safety, Office of the Assistant Secretary for Transportation Policy, (202) 366–4859, or Alyce Boyd-Stewart, Departmental Office of Civil Rights, (202) 366–9366, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Executive Order 12898, as well as the President's February 11, 1994 Memorandum on Environmental Justice (sent to the heads of all Departments and agencies), are intended to ensure that Federal departments and agencies identify and address disproportionately high and adverse human health or environmental effects on minority populations and low-income populations in their programs, policies and activities.

The proposed Order is a key component of the Department's Environmental Justice Strategy. The proposed Order sets forth a process by which DOT and its Operating Administrations will integrate the goals of the Executive Order into its existing operations (Paragraphs 5a and 7a). This is to be done within the framework of existing requirements, primarily the National Environmental Policy Act, Title VI of the Civil Rights Act of 1964, the Uniform Relocation Assistance and Real Property Acquisition Policies Act, and other applicable statutes, regulations and guidance that concern planning; social, economic, or environmental matters; public health or welfare; or public involvement. The proposed Order is an internal directive to the various components of DOT and does not create any right to judicial review for compliance or noncompliance with the Order.

The proposed Order contains a methodology for (1) identifying adverse impacts (2) identifying mitigation and enhancement measures that will be taken to avoid or offset such impacts, and (3) determining whether the action will have a disproportionately high and adverse effect on minority or low income populations (Paragraph 3 of the Appendix). We recognize that a determination concerning disproportionately high and adverse effects will require the careful assessment of a variety of factors, and specifically request comments on the methodology set forth in paragraph 3c of the Appendix to the proposed Order.

If it is determined that an action will result in a disproportionately high and adverse effect on minority or low-income populations, then, under the Order, the action may not be carried out unless certain requirements are met. Paragraph 6 of the proposed Order sets forth three different options for these requirements, including: (1) Not allowing the action to be carried out unless further mitigation measures or alternatives that would avoid or reduce the disproportionately high and adverse effect are not practicable (Option A); (2) not allowing the action to be carried out unless further mitigation measures or

alternatives that would avoid or reduce the disproportionately high and adverse effect are not practicable, and unless certain more stringent requirements are met with respect to populations protected by Title VI (Option B); and (3) requiring consideration of certain factors with respect to actions that will have a disproportionately high and adverse effect, including whether there is a substantial need for the action and whether less discriminatory alternatives would have more severe impacts or would involve increased costs of extraordinary magnitude, but not otherwise preventing the action from being carried out (Option C). None of these options (or any other part of this Order) would reduce the protections provided by Title VI or any other Federal law.

A duty to address disproportionately high and adverse effects on certain populations may also be found in Title VI of the Civil Rights Act of 1964 and related statutes and regulations. The ability to require specific findings and remedial actions may differ somewhat for populations protected by Title VI and for low-income populations, since low-income persons are not a protected class under Title VI. For this reason, the DOT is considering including a provision in this Order which treats these two groups differently. This difference is seen most clearly in Option B. We will continue to consider DOT's authority with respect to low-income populations, based on the differing legal standards applicable to these populations.

We are soliciting comments on the options presented in Paragraph 6 of the proposed Order, and commenters are invited to suggest additional options for decisional tests or standards that would promote the goals of environmental justice, consistent with existing law, that DOT should consider. Comment is also sought on whether minority populations and low-income populations should be treated differently by the DOT Order.

Following receipt of comments the DOT Order will be finalized and published in the **Federal Register**.

Dated: June 21, 1995.

Antonio J. Califa,

Director, Departmental Office of Civil Rights.

Joseph Canny,

Deputy Assistant Secretary for Transportation Policy.

Proposed DOT Order

Subject: Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

1. Purpose and Authority

a. This Order establishes procedures for the Department of Transportation (DOT) to use in complying with Executive Order 12898, entitled Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations. Relevant definitions are in the appendix.

b. The objective of this DOT Order is to set forth a process by which DOT and its operating administrations will integrate the goals of the Executive Order with existing requirements set forth in Title VI of the Civil Rights Act of 1964 (Title VI), the National Environmental Policy Act (NEPA), the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA), and other applicable statutes, regulations and guidance that concern planning; social, economic, or environmental matters; public health or welfare; or public involvement.

2. Scope

This Order applies to the Office of the Secretary, all operating administrations, and all other DOT components.

3. Background

Executive Order 12898 requires each Federal agency, to the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, to achieve environmental justice as part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including social and economic effects, of its programs, policies, and activities on minority populations and low-income populations in the United States. Compliance with this DOT Order is a key element in the environmental justice strategy adopted by DOT, and can be achieved within the framework of existing laws, regulations, and guidance.

4. Data Collection and Research

a. In complying with this Order DOT will rely upon the data collected (or readily available) for planning, for demonstrating compliance with NEPA or Title VI, or for other purposes. Consideration of the goals and objectives of Executive Order 12898 and this Order shall be an integral part of future DOT data collection and research activities.

b. To the extent permitted by existing law, and whenever practical and appropriate, DOT shall collect, maintain, and analyze information on the race, color, national origin, and income level of persons affected by DOT programs, policies, and activities, and use such information in complying with this Order.

5. Identifying Adverse Impacts and Determining Whether They Have a Disproportionately High and Adverse Effect on Minority or Low-Income Populations

a. The Office of the Secretary and each operating administration shall develop a process for identifying (1) adverse impacts, (2) mitigation and enhancement measures, and (3) disproportionately high and adverse effects on minority or low-income populations, using the methodology in the appendix. The Office of the Secretary and each operating administration shall determine the most effective and efficient way of integrating the processes and objectives of this Order with their existing regulations and guidance, as outlined in paragraph 7.a.

b. *Actions Having a Disproportionately High and Adverse Effect on Minority Populations or Low-Income Populations.*

(1) If, after taking into account all mitigation and enhancement measures that will be taken and all offsetting benefits to the affected minority or low-income populations, the program, policy, or activity will still have an adverse impact, then DOT shall determine whether such adverse impact on minority populations or low-income populations is disproportionately high, using guidance in the appendix.

(2) Determinations made pursuant to this paragraph shall be incorporated in the NEPA or other document, described in paragraph 7.b.(3).

(3) The NEPA or other document described in paragraph 7.b.(3) shall contain a description of any measures that will be taken to address the disproportionately high and adverse effects on minority or low-income populations.

(4) This paragraph does not restrict the application of Title VI of the Civil Rights Act of 1964 to the program, policy, or activity, or otherwise limit or preclude claims by individuals or groups of people with respect to any DOT program, policy, or activity.

6. Actions to Address Disproportionately High and Adverse Effects.

[The following are options for consideration with respect to actions to address disproportionately high and adverse effects on minority populations and low-income populations under the Executive Order.]

Option A

6. Actions to Address Disproportionately High and Adverse Effects

(a) If it is determined pursuant to paragraph 5.b above that the program, policy, or activity (including all offsetting mitigation and enhancement measures that will be taken) will have a disproportionately high and adverse effect on minority or low-income populations, then the program, policy, or activity may not be carried out unless further mitigation measures or alternatives that would avoid or reduce the disproportionately high and adverse effect are not practicable. In determining whether a measure or alternative is "practicable", the social, economic (including costs) and environmental effects of avoiding or mitigating the adverse effects will be taken into account.

(b) Under Title VI of the Civil Rights Act of 1964, each federal agency is required to ensure that no person, on the ground of race, color, or national origin, is excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving Federal financial assistance. DOT's responsibilities under Title VI and related statutes and regulations are not limited by this paragraph, nor does this paragraph limit or preclude claims by individuals or groups of people with respect to any DOT program, policy, or activity under these authorities.

Option B

6. Actions to Address Disproportionately High and Adverse Effects

(a) If it is determined pursuant to paragraph 5.b above that the program, policy, or activity (including all offsetting mitigation and enhancement measures that will be taken) will have a disproportionately high and adverse effect on minority or low-income populations, then the program, policy, or activity may not be carried out unless further mitigation measures or alternatives that would avoid or reduce the disproportionately high and adverse effect are not practicable. In determining whether a measure or alternative is "practicable", the social, economic (including costs) and environmental effects of avoiding or mitigating the adverse effects will be taken into account.

(b) In addition, if the program, policy or activity will have a disproportionately high and adverse effect on populations protected by Title VI of the Civil Rights Act of 1964 ("protected populations"), then the program, policy or activity may not be carried out unless a substantial need for the program, policy or activity, based on the overall public interest, can be demonstrated, *and*

(1) An agreement is reached with the potentially affected protected populations to proceed with the program, policy or activity, *or*

(2) Alternatives that will have less adverse effects on protected populations (and still satisfy the need identified in subparagraph (b) above) *either*

(A) Would have other high adverse social, economic, environmental, or human health impacts that are more severe, *or*

(B) Would involve increased costs of extraordinary magnitude.

(c) Under Title VI of the Civil Rights Act of 1964, each federal agency is required to ensure that no person, on the ground of race, color, or national origin, is excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving Federal financial assistance. DOT's responsibilities under Title VI and related statutes and regulations are not limited by this paragraph, nor does this paragraph limit or preclude claims by individuals or groups of people with respect to any DOT program, policy, or activity under these authorities.

Option C

6. Actions to Address Disproportionately High and Adverse Effects

(a) If it is determined pursuant to paragraph 5.b above that the program, policy, or activity (including all offsetting mitigation and enhancement measures that will be taken) will have a disproportionately high and adverse effect on minority or low-income populations, then the program, policy or activity may not be carried out unless consideration has been given to the following factors:

(1) Whether a substantial need for the program, policy or activity, based on the overall public interest, can be demonstrated, *and*

(2) Whether alternatives that will have less adverse effects on minority or low-income populations (and still satisfy the need identified in subparagraph (1) above) *either*

(A) Would have other high adverse social, economic, environmental, or human health impacts that are more severe, *or*

(B) Would involve increased costs of extraordinary magnitude.

(b) Under Title VI of the Civil Rights Act of 1964, each federal agency is required to ensure that no person, on the ground of race, color, or national origin, is excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving Federal financial assistance. DOT's responsibilities under Title VI and related statutes and regulations are not limited by this paragraph, nor does this paragraph limit or preclude claims by individuals or groups of people with respect to any DOT program, policy, or activity under these authorities.

7. Integration With Existing Operations

a. The Office of the Secretary and each operating administration shall determine the most effective and efficient way of integrating the process and objectives of this Order with their existing regulations and guidance, and utilize existing authority in NEPA, Title VI, the URA and other statutes, regulations, and guidance that concern planning; social, economic, or environmental matters; public health or welfare; public involvement; or related matters. Within 6 months of the date of this Order each operating administration will provide a report to the Assistant Secretary for Transportation Policy and the Director of the Departmental Office of Civil Rights describing the procedures it has developed to integrate, or how it is integrating, the processes and objectives set forth in this Order into its operations. Public input on any procedures developed to comply with this Order should be solicited.

b. In undertaking the integration with existing operations described in paragraph 7.a., DOT shall observe the following principles:

(1) Planning and programming activities, that affect human health or the environment, shall include consideration of such effects on minority populations and low-income populations. Procedures shall be established or expanded, as necessary, to provide meaningful opportunities for public involvement by minority

populations and low-income populations during the planning and development of programs, policies, and activities (including the identification of potential impacts, alternatives, and mitigation measures).

(2) Affirmative steps shall be taken to provide the public, including minority populations and low-income populations, access to public information concerning the human health or environmental impacts of programs, policies, and activities.

(3) The assessment of the effects of actions on minority populations or low-income populations, that is required by this Order, shall be included as part of any environmental document prepared in accordance with NEPA. If a program, policy, or activity that DOT determines is subject to the assessment prescribed by this Order is not subject to NEPA, or for any reason such impacts are not addressed in the NEPA document, a separate written analysis of such impacts shall be prepared and made available to the public. DOT may develop simplified assessments to the extent appropriate. Consideration of alternatives in these documents shall include comparisons of the impacts of each alternative on minority and low-income populations.

(4) DOT shall consider mitigation and enhancement measures to avoid or minimize environmental or human health impacts to minority populations and low-income populations in accordance with paragraph 3.b. of the Appendix.

c. All future rulemaking activities undertaken pursuant to DOT Order 2100.5 (which governs all DOT rulemaking), and the development of any future guidance or procedures for DOT programs, policies, or activities, that affect human health or the environment, shall address compliance with Executive Order 12898 and this Order, as appropriate.

d. The formulation of all future DOT policy statements and proposals for legislation will include consideration of the provisions of Executive Order 12898 and this Order.

8. Ongoing DOT Responsibility

Compliance with the Executive Order is an ongoing DOT responsibility. DOT will continuously monitor its programs, policies, and activities to ensure that potential disproportionately high and adverse effects on minority or low-income populations are avoided, minimized or mitigated in a manner consistent with this Order. The Department's Director of Civil Rights and the Assistant Secretary for Transportation Policy will have joint authority and responsibility for monitoring and enforcing the implementation of this Order. Nothing in this Order creates any right to judicial review of the compliance or noncompliance of DOT, its officers, employees, or any other persons, with this Order.

For the Secretary of Transportation.

Appendix—Guidance for Implementing Provisions of DOT

1. *Definitions.* The following terms where used in this Order shall have the following meanings: [1]

a. *DOT* means the Office of the Secretary, DOT operating administrations, and all other DOT components.

b. *Low-Income* means a person whose median household income is below the Department of Health and Human Services poverty guidelines.

c. *Minority* means a person who is a citizen or lawful permanent resident of the United States and who is:

(1) Black (a person having origins in any of the black racial groups of Africa);

(2) Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);

(3) Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands); or

(4) American Indian and Alaskan Native (a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition).

d. *Programs, policies, and/or activities* means all projects, programs, policies, and activities that affect human health and the environment, and which are undertaken or approved by DOT. These include (but are not limited to) permits, licenses, or financial assistance provided by DOT.

e. *Regulations and guidance* means regulations, programs, policies, guidance, and procedures promulgated, issued, or approved by DOT.

2. References

a. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations February 11, 1994, 59 **Federal Register** 7629.

b. National Environmental Policy Act, 42 USC 4371.

c. Title VI of the Civil Rights Act, 42 USC 2000(d).

3. Identifying Adverse Impacts, Mitigation and Disproportionate Impacts on Minority or Low-Income Populations

a. *Identifying Adverse Impacts.*

(1) As part of infrastructure planning and other developmental processes, DOT shall identify social, economic and environmental effects and determine whether such effects are likely to have adverse impacts on the total population and on minority or low-income populations. In making a determination regarding adverse impacts, DOT shall consider both the impacts of individual projects and the cumulative impacts of its programs and projects on all affected populations and shall provide opportunities for the public, including members of minority populations and low-income populations that could be affected, to provide their input on the potential impact of such DOT programs, policies, and projects.

(2) In the case of DOT programs, policies, or activities that do not involve infrastructure planning or developmental processes, the responsible DOT agency will develop a process for identifying adverse impacts and obtaining public input as appropriate.

(3) In determining whether or not an action will have an adverse impact, consideration shall be given to individual or cumulative effects, as appropriate. Adverse impacts may include, but are not limited to: air, noise, and water pollution and soil contamination; destruction or disruption of man-made or natural resources; destruction or diminution of aesthetic values; destruction or disruption of community cohesion or a community's economic vitality; destruction or disruption of the availability of public and private facilities and service; vibration; adverse employment effects; displacement of persons, businesses, farms, or nonprofit organizations; increased traffic congestion; isolation, exclusion or separation of minority or low-income individuals from the broader community; and the denial of, reduction in, or significant delay in the receipt of, benefits of DOT programs, policies, or activities.

b. *Identifying Mitigation and Enhancement Measures.*

(1) DOT will use its existing statutory authorities, including NEPA, Title VI, the URA, other crosscutting Federal requirements, and statutes that apply only to one or more DOT operating administration (for example 23 U.S.C. 109(h)), as well as related regulations and guidance, to develop effective mitigation and enhancement strategies and specific mitigation and enhancement measures that DOT will employ.

(2) DOT will examine existing programs that have been developed to ensure opportunities for minority populations and low-income populations to develop specific mitigation and enhancement measures that address social, economic, and environmental issues, and will offset disproportionately high and adverse effects.

(3) In determining whether or not there is an adverse impact, DOT shall take into account any offsetting mitigation and enhancement measures that will be taken (including those developed through the public involvement and community participation process), and any other offsetting benefits that will accrue to the affected minority populations or low-income populations as a result of the program, policy, or activity.

(4) The following are general approaches to mitigation and enhancement measures that will be utilized as reasonable and necessary, consistent with existing law:

[1] In the event governmentwide definitions are issued under the Executive Order, these definitions will be modified as necessary to conform to them.

(a) Avoiding or minimizing adverse impacts by reducing the degree or magnitude of the action or its implementation.

(b) Mitigating or eliminating adverse impacts by repairing, rehabilitating, or restoring the affected environment and/or community resource.

(c) Reducing or eliminating adverse impacts over time by long-term preservation and maintenance operations.

(d) Compensating for adverse impacts by replacing adversely impacted resources or providing substitute resources or environments that enhance the affected area.

c. *Determining Whether an Action Has a Disproportionately High and Adverse Effect on Minority Populations or Low-Income Populations.* An adverse impact shall be found to have a disproportionately high and adverse effect on low-income or minority populations when:

(a) The adverse impact is predominantly borne by a minority population and/or a low-income population, or

(b) The adverse impact that will be suffered by the minority population and/or low-income population is more severe or greater in magnitude than the adverse impact that will be suffered by the non-minority population and/or non-low-income population.

[FR Doc. 95–15666 Filed 6–28–95; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Civil Tiltrotor Development Advisory Committee

Pursuant to Section 10(A)(2) of the Federal Advisory Committee Act Public Law (72–362); 5 U.S.C. (App. I), notice is hereby given of a meeting of the Federal Aviation Administration (FAA) sponsored Civil Tiltrotor Development Advisory Committee (CTRDAC) to be held July 25 at 10:00 a.m. The meeting will take place at the U.S. Department of Transportation, 400 7th Street, SW., Washington, D.C. in rooms 10234–10236.

The agenda for the third meeting of the CTRDAC will include:

(1) A review of the October 6 meeting minutes;

(2) Discussion of subcommittee executive summaries;

(3) Discussion of subcommittee reports;

(4) Identification of policy issues;

(5) Review of work plans/schedule;

(6) Other business.

Since access to the DOT building is controlled, all persons who plan to attend the meeting must notify Ms. Lenora Harris, Staff Assistant to the Designated Federal Official on (202) 267–8787 prior to July 20. Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Noncommittee members wishing to present oral statements, obtain information, or who plan to access the building to attend the meeting should also contact Ms. Harris.

Members of the public may present a written statement to the Committee at any time.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Ms. Lenora Harris (202) 267–8787 at least seven days prior to the meeting.

Issued in Washington, D.C. on June 23, 1995.

Dean M. Resch,

Acting Designated Federal Official, Civil Tiltrotor Development, Advisory Committee.

[FR Doc. 95–15991 Filed 6–28–95; 8:45 am]

BILLING CODE 4910–13–M

Research, Engineering and Development Advisory Committee; Aviation Weather Subcommittee

Pursuant to section 10 (A) (2) of the Federal Advisory Committee Act (Public Law 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the Aviation Weather Subcommittee of the Federal Aviation Administration Research Engineering and Development Advisory Committee to be held Thursday, July 13, 1995, 10 a.m. to 5 p.m. and continuing on Friday, July 14, 1995, 8:30 a.m. to 4 p.m. The meeting will take place in Boston, Massachusetts at MIT/LL.

The agenda for this meeting will include Weather Program overview at WSI, Inc. and a tour of Phillips Lab on Thursday and a tour, demo, discussion, and breakout sessions at MIT/LL on Friday.

Attendance is open to the interested public but limited to the space available. With the approval of the subcommittee chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements, obtain information, or attend the meeting should contact Mr. Carl McCullough, ASD–110, 800 Independence Avenue, SW, Washington, DC at (202) 358–5291, who will serve as the FAA Designated Federal Official to the Subcommittee.

Members of the public may present a written statement to the subcommittee at any time.

Issued in Washington, DC, on June 23, 1995.

Clyde A. Miller,

Coordinator for the R, E&D Advisory Committee.

[FR Doc. 95–15990 Filed 6–28–95; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc., Free Flight Implementation Task Force

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Free Flight Implementation Task Force meeting to be held July 19 and 20, 1995. The meeting will be held at ARINC, 2551 Riva Road, Annapolis, Maryland.

The meeting on Wednesday, July 19, will begin at 9:00, when the Task Force Chairman and Working Group Co-Chairs will review Task Force objectives and status.

The agenda for the remainder of July 19 and all of July 20 will be separate and concurrent Working Group deliberations.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on June 23, 1995.

Janice L. Peters,

Designated Official.

[FR Doc. 95–15993 Filed 6–28–95; 8:45 am]

BILLING CODE 4810–13–M

RTCA, Inc.; Joint Special Committee 181/Eurocae WG–13 Standards of Navigation Performance

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Joint Special Committee 181/EUROCAE WG–13 meeting to be held July 17–20, 1995, starting at 9:00 a.m. The meeting will be held at the Experimental Aircraft Association (EAA) Aviation Center, Oshkosh, Wisconsin.

The agenda for Monday, July 17, will include the following: (1) Introductions; (2) Chairman's Remarks and Review of Agenda; (3) Review and Approval of Minutes of Previous Meeting (RTCA Paper No. 348–95/SC181–049); (4) Briefing: Role of the Editorial Group; (5) Review of Amendments of European Basic RNAV Advisory Material AMJ 20x2; (6) Working Group Sessions.

The agenda for Tuesday and Wednesday, July 18 and 19, will be a continuation of the working group sessions.

On Thursday, July 20, the agenda will include: (1) Working Group Status Reports; (2) Old Business (RNP Less than 1; RNP Types 12.6 and 20; Ground Data Bases); (3) New Business (MASPS & MOPS Schedule; Revised Meeting Locations); (4) Future Meeting Schedule; (5) Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax); or Ms. Bonnie Poberezny at the EAA Aviation Center, Oshkosh, Wisconsin; (414) 426–4847 (phone) or (414) 426–6504 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 23, 1995.

Janice L. Peters,

Designated Official.

[FR Doc. 95–15992 Filed 6–28–95; 8:45 am]

BILLING CODE 4810–13–M

Federal Highway Administration

Environmental Impact Statement: Saline County, IL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice of intent to advise the public that an environmental impact statement (EIS) will be prepared for a proposed action in Saline County, Illinois. The proposed action considers the replacement or reconstruction of U.S. Route 45 between Harrisburg and Eldorado and the possible construction of a bypass of the City of Harrisburg. The potential bypass would connect Illinois Route 13 to U.S. Route 45 east of the city. The study area for the project begins at a point on new Illinois Route 13 west of Harrisburg and extends northeasterly to the intersection of U.S. Route 45 with Illinois Route 142 in Eldorado. The estimated length of the proposed project is 13.8 kilometers (8.6 miles).

FOR FURTHER INFORMATION CONTACT: Mr. Walter C. Waidelich, Jr., Design Operations Engineer, Federal Highway Administration, 3250 Executive Park Drive, Springfield, Illinois 62703, Telephone: (217) 492–1622; Mr. Karl Bartelsmeyer, District Engineer, Illinois Department of Transportation, District 9, Old Route 13 West. P.O. Box 100, Carbondale, Illinois 62903–0100, Telephone: (618) 549–2171.

SUPPLEMENTARY INFORMATION: Existing U.S. Route 45 is a north/south route that runs along the eastern edge of Harrisburg. Existing Illinois Route 13 runs through the center of Harrisburg, intersecting with U.S. Route 45 on the east edge of the city. The proposed action would replace or reconstruct U.S. Route 45 between Harrisburg and Eldorado and possibly construct a four lane bypass of the City of Harrisburg. The potential bypass would begin at a point on new Illinois Route 13 west of Harrisburg and intersect with U.S. Route 45 east of the city. The estimated length of the proposed project is 13.8 kilometers (8.6 miles), and would be designed as a rural, four-lane expressway with two 7.6 meter (24 feet) wide pavement separated by a 15 meter (50 feet) wide median. The proposed roadway would be partially access controlled. No direct commercial access would be allowed.

From Harrisburg to Eldorado, existing U.S. Route 45 experiences congestion, with the amount of traffic meeting the warrants for consideration of a four-land highway. Within Harrisburg, Illinois Route 13 also experiences congestion, especially at the existing intersection with U.S. Route 45 in town. Upgrading U.S. Route 45 from Harrisburg to Eldorado and upgrading Illinois Route 13 from west of Harrisburg to U.S. Route 45 or constructing a bypass of Harrisburg would provide continuity of the regional highway system; relieve congestion between the two cities and at critical locations within Harrisburg; improve safety; and provide increased opportunities for development through better access to this economically depressed area of southeastern Illinois. Alternatives to be considered include a no action alternative, reconstruction of the existing facility, construction of a new facility on new alignment, and construction of a bypass of Harrisburg.

The scoping process undertaken as part of this project will include distribution of a scoping information packet; coordination with federal, state and local agencies; and review sessions as appropriate. A formal scoping meeting will not be held. Further details and a scoping information packet may be obtained from one of the contact persons listed above.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA or IDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Walter C. Waidelich, Jr.,

Design Operations Engineer, Federal Highway Administration, Illinois Division, Springfield, Illinois.

[FR Doc. 95–15920 Filed 6–28–95; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

[Docket No. 95–20; Notice 2]

Child Safety Seats; Agreement Between General Motors and U.S. Department of Transportation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice; request for certifications.

SUMMARY: This notice describes an agreement between General Motors (GM) and the U.S. Department of Transportation (DOT), under which GM has agreed to donate funds to one or more qualified national organizations for the purchase and distribution of child safety seats. Organizations that wish to receive such funds are required to certify in writing that they are qualified, in accordance with criteria established in the agreement. To qualify, organizations must demonstrate that they are national in scope, and they must submit a plan showing they are prepared to purchase and distribute child safety seats within 120 days of their receipt of the funds. They must also meet other requirements. Organizations are strongly encouraged to form partnerships and work collaboratively for the purpose of applying for funds. If organizations plan to work collaboratively, they should submit a single combined certification.

This notice requests that organizations submit certifications and it describes the criteria they must meet and the information they must submit with their certifications to be eligible to receive these funds. A similar notice was published in the **Federal Register** on March 31, 1995. As a result of that notice, six organizations were determined by NHTSA to be qualified and were selected by GM to receive a total of $2 million for the purchase and distribution of child safety seats. As a result of today's notice, organizations will be determined by NHTSA to be qualified and selected by GM to receive additional donations for the purchase and distribution of child safety seats under the settlement agreement.

DATES: Certifications must be received no later than September 27, 1995.

ADDRESSES: Certifications should be submitted to: Office of Occupant Protection, NTS–11, Room 5118, 400 Seventh Street, S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Gorcowski, National Organizations Division, NTS–11, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. Telephone (202) 366–2683.

SUPPLEMENTARY INFORMATION:

DOT/GM Settlement Agreement

On December 2, 1994, Secretary of Transportation Federico Peña announced that DOT and GM had agreed in principle to a resolution of the investigation by the National Highway Traffic Safety Administration (NHTSA) into an alleged defect related to motor vehicle safety in certain 1970–1991 GM C/K pickup trucks. The terms of the resolution were finalized in a separate agreement that was executed between GM and DOT on March 7, 1995.

Under the terms of the agreement, GM agreed to provide funds over a period of five years to support highway safety research and programs that will prevent motor vehicle deaths and injuries.

In the area of child safety, GM agreed to donate $8,000,000 to qualified organizations for the purchase and distribution of child safety seats. The agreement provided that, of this amount, $4,000,000 will be donated during the first year after the date of the agreement (approximately $1,000,000 each quarter) and $4,000,000 will be donated over the next four years (approximately $1,000,000 in each year). The seats will be directed to underserved low income and special needs populations.

The agreement between GM and DOT provides:

> DOT shall identify, on an ongoing basis so as to facilitate timely GM donations, qualified organizations which DOT in its sole discretion deems appropriate to receive donations from GM for the purchase and distribution of child safety seats. GM, in its sole discretion, shall select from the list of qualified organizations provided by DOT, the organization(s) to which it will donate funds, and shall decide the exact amount of funds that each such organization will receive.

The agreement provides further that any organization that is interested in being identified as a "qualified organization" must certify to DOT in writing that it will meet a number of criteria set forth in the agreement.

NHTSA estimates that these funds will allow for the purchase and distribution of between 125,000 and 200,000 child safety seats for needy families which, in turn, will save at least 50 lives and prevent approximately 6,000 injuries.

Child Safety

There are approximately 25 million young children under the age of eight years old who need the protection of child safety seats. One fourth of these children come from families that are below the poverty level.

As many as 3 million children in low-income families do not have access to adequate child safety seats. An additional 3 million children or more have access to child safety seats but, for a variety of reasons, are not being secured in these seats properly. Additionally, children with special transportation needs, such as children with disabilities, often require uniquely designed child safety seats that are too expensive for most families of low or average income to afford.

For these and other reasons, millions of children ride each day either unprotected or inadequately protected by child safety seats. A disproportionate number of these children are from low income or rural families or from culturally diverse populations.

To increase child safety seat usage, child safety seats must be made more readily available, particularly to underserved low income and special needs families. These families must also be motivated to use child safety seats and educated about their proper usage.

An effective child safety seat program can reach, and have a major positive impact on, large numbers of children as well as their families. To be most effective, however, the program must ensure that seats are distributed primarily to the populations most at risk, including underserved low income and special needs families. If programs do not target these populations, the seats could be provided instead to families that could otherwise afford to purchase them, with little net benefit.

First Notice

On March 31, 1995, NHTSA published a notice in the **Federal Register** describing the agreement between GM and DOT and requesting that organizations interested in receiving funds certify in writing that they are qualified. NHTSA received over 20 certifications in response to the notice.

Copies of the March 31 notice and the certifications received in response have been placed in NHTSA's Technical Reference Library (TRL), Docket Section, under Docket Number 95–20; Notice 1. Individuals that wish to order a copy of these materials may do so by calling or writing to the TRL at Room 5108, 400 Seventh St., SW, Washington, D.C. 20590 (telephone number 202–366–2768) and referencing this docket number. A fee may be charged, based on the volume of material that is requested.

The certifications that NHTSA received in response to the notice were reviewed by an evaluation panel of experienced NHTSA personnel, who determined whether the certifications met each of the required criteria and evaluated the certifications based on the evaluation factors specified in the notice.

The panel determined that six organizations were qualified to receive donations from GM: National SAFE KIDS Campaign, National Safety Council (NSC), International Association of Chiefs of Police (IACP), National Easter Seal Society, Safe America Foundation/Operation Baby Buckle and the State and Territorial Injury Prevention Directors Association (STIPDA).

GM decided that each of these organizations would receive donations for the purchase and distribution of child safety seats under the settlement agreement. GM donated $1.5 million to SAFE KIDS to coordinate a major child safety seat program with three other qualified organizations (NSC, IACP and STIPDA), and specified that half of the child safety seats purchased by SAFE KIDS will be divided equally among NSC, IACP and STIPDA, to be distributed through their channels. GM also donated $400,000 to the National Easter Seal Society for its unique program that reaches "special needs" infants and children and $100,000 to Operation Baby Buckle for the distribution of seats and its active public education and car safety seat awareness programs.

Today's Notice

Today's notice describes the criteria that an organization must meet, and the information it must submit with its certification, to be identified by DOT as a "qualified organization." Certifications must be received no later than 90 days after the date of publication of today's notice in the **Federal Register**.

NHTSA will convene a panel of experienced agency personnel to evaluate the certifications submitted. The members of the panel will determine whether the certifications meet each of the required criteria and will evaluate the certifications based on the evaluation factors specified in this notice. When the panel completes its review of the certifications, it will prepare a list of organizations it has determined are qualified and appropriate to receive donations for the purchase and distribution of child safety seats. NHTSA will provide the list to GM and place it in the public docket.

This list of organizations will be used by GM during the third and fourth quarters of the first year after the date of the agreement, during which time GM will donate approximately $2 million for the purchase and distribution of child safety seats.

Within approximately six months from the date of publication of today's notice, NHTSA plans to publish a third notice in the **Federal Register** requesting certifications from organizations that wish to receive donations after the first year. Any organization that wishes to be included on the third list, whether or not the organization was included on the first and/or the second list, must submit a certification. NHTSA reserves the right to request at that time the submission of additional information, not identified in today's **Federal Register** notice, from organizations seeking to be included on the third list.

Based on its review of the certifications received in response to the third **Federal Register** notice, NHTSA will prepare a revised list of organizations that have been determined to be qualified and appropriate to receive future donations from GM. (As explained earlier, GM will donate a total of approximately $4 million during the following four-year period, $1 million during each year.)

NHTSA may, from time to time, publish additional notices requesting certifications and prepare additional revised lists of qualified organizations, if it determines it is appropriate to do so.

Certification Criteria

In order to be identified as a "qualified organization," an organization must certify in writing that it shall meet eleven separate criteria. It must also provide information demonstrating that it meets these criteria. The criteria, and the information that organizations must submit to demonstrate compliance, are described below:

(1) Work Through Affiliates

The organization must certify in writing that it shall:

Work, through its state or local affiliates, with agencies such as children's hospitals and health agencies to identify families who could not otherwise afford seats or who have special needs.

Organizations must be national in scope and have established and effective affiliate relationships at the state or local level capable of carrying out the effort. Organizations can satisfy this criterion by showing that they will work through their own state or local affiliates (i.e., units or chapters specifically organized to carry out the organization's mission) or with other affiliates (i.e., state or locally-based child safety-related agencies or organizations, such as children's hospitals or fire and rescue agencies), and by showing that they have commitments from these state or local affiliates.

Organizations that wish to participate in this program, and are state or locally-based rather than national in scope, are encouraged to affiliate with a national organization that plans to submit a certification or to encourage a national organization with which they are already affiliated to submit a certification.

Through these affiliates, organizations must have a network that will enable them to identify families of target populations who have not been reached through traditional channels, including families who could not otherwise afford seats or who have special needs, and to distribute seats and provide education to these families.

Organizations must submit information regarding their structure and a designation of geographic locations of state and local affiliates that are expected to be involved in the effort. Organizations must also submit information regarding the organizations and agencies with which they will be affiliated for purposes of this program. In addition, organizations must describe their relationships with affiliates, including the role that affiliates will play, and they must demonstrate that they have commitments from affiliates (such as by submitting letters of commitment).

(2) Existing Program or Trained Staff

The organization must certify in writing that it shall:

Have an existing loaner or give-away child safety seat program or have staff trained in child passenger safety issues.

Organizations must have experience, either directly or through their affiliates, with a loaner or give-away program or staff trained in child passenger safety issues. Alternatively, organizations may collaborate with organizations that have such experience or trained staff, either directly or through their affiliates. National organizations that have the ability to reach underserved populations, but do not have experience with a child safety seat program or trained staff, for example, are strongly encouraged to collaborate with one or more national organizations that do. The experience or training is necessary to ensure that organizations, and their affiliates, are able to operate child safety seat programs, and to meet the deadlines and requirements established in the agreement for distributing seats and providing education to the recipients of the seats.

Organizations must describe their existing loaner or give-away child safety seat programs and their experience in providing education on the use of child safety seats. They must also describe existing loaner or give-away programs and experience in providing education of agencies or organizations that are affiliated with them or with which they have collaborative relationships.

Organizations must identify the number of current trained staff (of the organization, its affiliates and its collaborators) and provide a description of training conducted or taken by the staff and the dates of last training. If organizations have staff who have not been trained, but who are capable of being trained in child passenger safety issues, the organizations should describe their plans for training the staff.

If organizations plan to work collaboratively, they should submit a single combined certification. The certification must include letters of commitment from all collaborators.

Organizations are advised that NHTSA has trained hundreds of individuals throughout the country in child passenger safety issues. If organizations are interested in receiving assistance from individuals who have received NHTSA training, they should contact one of NHTSA's ten regional offices, or the Governor's Highway Safety Representative in their State. Organizations must keep in mind, however, that they must be prepared to purchase and distribute child safety seats within 120 days of their receipt of the funds. Accordingly, their staff must be trained within the 120-day period.

(3) Low-Income or Special Needs Across Broad Geographic Area

The organization must certify in writing that it shall:

Distribute the seats to low-income families and/or families with special needs across a broad geographical area throughout the United States.

The intent of this provision is to assure that underserved children from culturally diverse populations throughout the United States receive the benefits of the program. Qualified organizations need not distribute seats in every state. However, as stated previously, they must have a program that is national in scope and reaches their target populations throughout the United States.

Organizations must submit their mission statements, a description of the method they will use to identify underserved low income or special needs families, and a list of the geographic locations that would be targeted for receipt of the seats. They must demonstrate the ability to identify underserved low income and special needs families, and the ability to distribute seats to these families at the community level throughout the United States.

(4) Mix of Child Safety Seats

The organization must certify in writing that it shall:

Comply with NHTSA guidelines with respect to the approximate mix of child safety seats (e.g., infant, toddler, booster, special needs).

Children of differing ages and transportation needs require different types of child safety seats. The intent of this provision is to assure that the children who are recipients under this program receive seats that meet their needs. The provision is also intended to assure that organizations purchase the correct mix of seats for their target population.

Organizations will need to identify the ages and transportation needs of the intended recipients and the types of seats needed to properly fit the target group. For example, an organization targeting special needs children may need very specialized seats, while a program targeting older children may need convertible toddler and booster child restraint devices.

Organizations must specify the maximum number of seats they are capable of distributing to local agencies (their affiliates) within 120 days of their receipt of the funds and the amount of funding they are requesting from GM to purchase and distribute this number of seats. Organizations must specify the proposed mix and types of seats needed to serve the age and needs of the populations to be targeted (i.e., 25% booster seats, 50% toddler seats, 20% infant seats and 5% special needs seats), and must describe the method used to derive the mix. They should indicate whether the mix would change if they receive less funding than the full amount requested.

Organizations should also indicate whether they plan to operate a loaner or a give-away program and what fees, if any, they intend to charge. Both types of programs are acceptable. Any fees charged to recipients must be nominal, and any income from these fees must be used for the purchase and distribution of additional child safety seats under the agreement.

(5) Within 120 Days

The organization must certify in writing that it shall:

Distribute all of the seats purchased with the funds provided by GM to the local agencies within 120 days of the receipt of the funds.

Organizations are required, under the agreement, to purchase and distribute all of the seats to local agencies (their affiliates) within 120 days of receipt of the funds. To satisfy this criterion, organizations must clearly demonstrate the ability to meet this requirement.

As stated previously, organizations must submit a plan describing how they will accomplish the purchase and distribution of seats to local agencies (their affiliates) within the 120-day period. The plan must describe how the organization will reach a broad geographical area, how it will identify the low income and special needs families to be served by this program, and it must include a proposed schedule for the purchase and distribution of seats. The plan must clearly demonstrate that the organization is able and prepared to purchase and distribute child safety seats to local agencies (their affiliates) within 120 days of their receipt of the funds and that, if their staff is not already experienced or trained, that they will be trained within the 120-day period.

Organizations that were selected by GM to receive donations for the purchase and distribution of child safety seats under the settlement agreement as a result of the **Federal Register** notice published on March 31, 1995, must also describe the progress they have made, including the schedule they have followed, the number of seats they have distributed to local agencies (their affiliates) and the number of seats that have been provided to recipients, by geographic location.

Organizations must also demonstrate that the distribution and education efforts funded under this program will either create new initiatives or complement (rather than duplicate) existing initiatives, in the geographic areas to be served. In other words, these distribution and education efforts should take place in communities that have either been underserved or not been reached. In addition, organizations must ensure that their efforts do not conflict with activities already planned or underway. This may be demonstrated by including in the plan, a description of new or complementary initiatives that are planned and either letters of support from the organizations that are (or would be) responsible for child safety seat programs in the geographic areas to be served (such as state highway safety offices and state public health agencies) or a description of the organization's plans to coordinate with these responsible organizations.

(6) Educate Recipients

The organization must certify in writing that it shall:

Educate recipients of the seats as to methods of proper installation and use.

While the distribution of child safety seats is vitally important, and can save many children's lives, the effectiveness of those seats in preventing injury and death increases significantly when recipients are trained in and follow proper use and installation instructions. Organizations are required, under the agreement, to provide education to the recipients of the seats regarding the proper installation and use of child safety seats. Education is most effective if it is provided at the time that the seats are being distributed to recipients, and if it includes a number of components, such as conducting a hands-on demonstration, showing a video and having recipients demonstrate that they understand how to properly install and use their child safety seats.

Organizations must describe the specific means they, their affiliates or their collaborators will use to educate families about the proper installation and use of child safety seats.

To assist in this effort, NHTSA will make resources, including materials and technical assistance, available to the selected organizations.

(7) Administrative Expenses

The organization must certify in writing that it shall:

Not use more than 10 percent of the funds provided by GM for administrative expenses related to distribution of the seats.

Organizations shall use no more than 10 percent of the funds provided by GM for administrative expenses related to

the distribution of the seats. Examples of administrative expenses include operational overhead such as secretarial support, telephone expenses, and time of paid staff to help develop the plans for these efforts.

As stated previously, organizations are strongly encouraged to work collaboratively for the purpose of applying for funds. If organizations plan to work collaboratively, they should submit a single combined certification. Any such certification submitted for a group of organizations working collaboratively, must include a statement that provides that the organizations have reached agreement regarding the manner in which funds that may be used for administrative expenses will be allocated among the organizations. The actual agreement need not be provided. No additional information is required to be submitted at this time in support of this element of the certification.

(8) Added to Existing Funds and No Diversions

The organization must certify in writing that it shall:

Add the GM-provided funds to the total of its existing funds spent on the distribution of child safety seats to low-income families and not divert any funds currently budgeted to such activities to other activities.

Organizations shall add the GM-provided funds to the total of their existing funds, if any, spent on the distribution of child safety seats to low income and special needs families and not divert any funds currently budgeted to such activities, if any, to other activities. In other words, the funds provided by GM must represent new and additional resources, and may not be used to replace other funds, if any, that otherwise would have been used for the distribution of child safety seats to low-income families and their related education activities. No additional information is required to be submitted at this time in support of this element of the certification.

(9) Third-Party Audit

The organization must certify in writing that it shall:

Allow the activities conducted pursuant to this program to be audited by such third party as selected by DOT.

Organizations shall allow the activities conducted pursuant to this program to be audited by such third party as may be selected by DOT. Organizations shall also maintain adequate records to allow an audit to be conducted. No additional information is required to be submitted at this time in support of this element of the certification.

(10) Enforceable Commitments and Promises

The organization must certify in writing that it shall:

Acknowledge and agree that such commitments and promises shall be enforceable.

Organizations shall acknowledge and agree that the commitments and promises they make shall be enforceable through legal process or other appropriate means. No additional information is required to be submitted at this time in support of this element of the certification.

(11) No Assumption of Responsibility

The organization must certify in writing that it shall:

Acknowledge and agree that GM does not assume or bear any responsibility for the organization's commitments, the selection of the safety seats actually purchased or distributed, or the education of recipients of the seats as to proper use.

Organizations shall acknowledge and agree that GM does not assume or bear any responsibility for the organization's commitments, the selection of the safety seats actually purchased or distributed, or the education of recipients of the seats as to proper use. No additional information is required to be submitted at this time in support of this element of the certification.

Evaluation Factors

Certifications will be reviewed by an evaluation panel of experienced agency personnel. The panel will determine whether the certifications meet each of the required criteria and will evaluate the certifications based on the following factors:

1. Understanding of the requirements of the agreement and soundness of approach as shown by the organization's plan and certification.
2. The ability to purchase and distribute child safety seats to local agencies (their affiliates) within 120 days of their receipt of the funds as shown by the organization's plan and certification.
3. The ability to identify underserved low income and special needs families.
4. The ability to distribute child safety seats to these target populations at the community level throughout the United States.
   - The experience of the organization, its affiliates or its collaborators, in distributing child safety seats
   - The breadth and diversity of the underserved population the organization, its affiliates or its collaborators can effectively reach
5. The ability to provide education to recipients.
   - The experience of the organization, its affiliates or its collaborators, in providing education on the use of child safety seats
   - The level of training of the staff of the organization, its affiliates or its collaborators
6. The ability to conduct a distribution and education program that either creates new initiatives, or complements (rather than duplicates) existing initiatives, in the geographic areas to be served.

Certification Procedures

To be considered, certifications must be received no later than 90 days after the date on which today's notice is published in the **Federal Register**. Certifications should be submitted to Office of Occupant Protection, NTS–11, Room 5118, 400 Seventh Street, S.W., Washington, D.C. 20590.

Organizations are strongly encouraged to work collaboratively for the purpose of applying for funds. If organizations plan to work collaboratively, they should submit a single combined certification.

Certifications must include each of the following:

(1) Certification Statement

A written statement, signed by an authorized official of the organization, certifying that the organization shall:

(i) Work, through its state or local affiliates, with agencies such as children's hospitals and health agencies to identify families who could not otherwise afford seats or who have special needs; (ii) have an existing loaner or give-away child safety seat program or have staff trained in child passenger safety issues; (iii) distribute the seats to low-income families and/or families with special needs across a broad geographical area throughout the United States; (iv) comply with NHTSA guidelines with respect to the approximate mix of child safety seats (e.g., infant, toddler, booster, special needs); (v) distribute all of the seats purchased with the funds provided by GM to the local agencies within 120 days of the receipt of the funds; (vi) educate recipients of the seats as to methods of proper installation and use; (vii) not use more than 10 percent of the funds provided by GM for administrative expenses related to distribution of the seats; (viii) add the GM-provided funds to the total of its existing funds spent on the distribution of child safety seats to low-income families and not divert any funds currently budgeted to such activities to other activities; (ix) allow the activities conducted pursuant to this program to be audited by such third party as selected by DOT; (x) acknowledge and agree that such commitments and promises shall be enforceable; and (xi) acknowledge and agree that GM does not assume or bear any responsibility for the organization's commitments, the selection of the safety seats actually purchased or distributed, or the education of recipients of the seats as to proper use.

(2) Plan

A plan describing how the organization will accomplish the purchase and distribution of seats to local agencies (their affiliates) within 120 days of receipt of the funds, how the organization will reach a broad geographical area, and how it will identify the low income and special needs families to be served by this program. It must include a proposed schedule for the purchase and distribution of seats, a description of new or complementary initiatives that are planned and either letters of support from the organizations that are (or would be) responsible for child safety seat programs in the geographic areas to be served (such as state highway safety offices and state public health agencies) or a description of the organization's plans to coordinate with these responsible organizations.

The plan must clearly demonstrate that the organization is able and prepared to purchase and distribute child safety seats to local agencies (their affiliates) within 120 days of their receipt of the funds and that, if their staff is not already experienced or trained, that they will be trained within the 120-day period.

Organizations that were selected by GM to receive donations for the purchase and distribution of child safety seats under the settlement agreement as a result of the **Federal Register** notice published on March 31, 1995, must also describe the progress they have made since they received their donations, including the schedule they have followed, the number of seats they have distributed to local agencies (their affiliates) and the number of seats that have been provided to recipients, by geographic location.

(3) Additional Information

The following additional information to ensure that the organization is capable of meeting the objectives of the agreement:

- Information regarding the organization's structure and a designation of geographic locations of state and local affiliates to be involved in the effort;
- Information regarding the organizations and agencies with which the organization will be affiliated for purposes of this program;
- A description of their relationships with affiliates, including the role that affiliates will play, and either letters or some other demonstration of commitment from their affiliates;
- A description of the organization's, its affiliates' or its collaborators': existing loaner or give-away programs; experience in providing education on the use of child safety seats; the number of trained staff; a description of training conducted or taken; and the dates of last training;
- If organizations have staff who have not been trained, but who are capable of being trained in child passenger safety issues, a description of their plans for training the staff and an indication that the training will be completed within 120 days of receipt of the funds;
- If organizations plan to work collaboratively, letters of commitment from all collaborators and a statement that provides that the organizations have reached agreement regarding the manner in which funds that may be used for administrative expenses will be allocated among the organizations (the actual agreement need not be provided);
- A mission statement of the organization;
- The method to be used to identify underserved low income or special needs families;
- A list of the geographic locations that would be targeted for receipt of the seats;
- The maximum number of seats the organization is capable of distributing to local agencies (their affiliates) within 120 days of its receipt of the funds; the amount of funding the organization is requesting from GM to purchase and distribute this number of seats; the proposed mix and types of seats needed to serve the age and needs of the populations to be targeted (i.e., 25% booster seats, 50% toddler seats, 20% infant seats and 5% special needs seats); the method used to derive the mix; and, if applicable, any change in mix if the organization receives less funding than the full amount requested;
- An indication of whether the organization plans to operate a loaner or a give-away program; an identification of the fees, if any, they intend to charge; and a statement that any income from these fees will be used for the purchase and distribution of additional child safety seats under the agreement; and
- A description of the specific means to be used by the organization, its affiliates or its collaborators to educate families about the proper installation and use of child safety seats.

Organizations must submit one original and two copies of their certifications. Certifications shall be subject to 18 U.S.C. 1001, which prohibits the making of false statements. Organizations are requested to submit four additional copies to facilitate the review process, but there is no requirement or obligation to do so. Organizations that would like to be notified upon receipt of their certifications should enclose a self-addressed stamped postcard in the envelope with their certifications. Upon receiving the certifications, the postcard will be returned by mail.

Issued on: June 26, 1995.

James Hedlund,

Acting Associate Administrator for Traffic Safety Programs.

[FR Doc. 95–15987 Filed 6–28–95; 8:45 am]

BILLING CODE 4910–59–P

Sunshine Act Meetings

Federal Register
Vol. 60, No. 125
Thursday, June 29, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

UNITED STATES POSTAL SERVICE

Board of Governors

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 C.F.R. Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 8:30 a.m. on Tuesday, July 11, 1995, in Washington, D.C. The meeting is open to the public and will be held at the U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W., in the Benjamin Franklin Room. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary for the Board, David F. Harris, at (202) 268–4800.

There will also be a session of the Board on Monday, July 10, 1995, but it will consist entirely of briefings and is not open to the public.

Tuesday Session

July 11—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, June 5–6, 1995.
2. Remarks of the Postmaster General/Chief Executive Officer. (Marvin Runyon)
3. Report on Safety Awareness Program. (Larry B. Anderson, Manager, Safety and Risk Management)
4. Environmental Overview. (William J. Dowling, Vice President, Engineering)
5. Capital Investments.
   a. Bulk Mail Centers (BMCs) Process Control Systems Replacement (Info. Briefing). (William J. Bowling, Vice President, Engineering)
   b. 47 Small Parcel and Bundle Sorters (Final Decision). (William J. Dowling, Vie President, Engineering)
6. Tentative Agenda for the July 31-August 1, 1995, meeting in Denver, Colorado.

David F. Harris,
Secretary.

[FR Doc. 95–16167 Filed 6–27–95; 2:24 pm]
BILLING CODE 7710–12–M

federal register

Thursday
June 29, 1995

Part II

Environmental Protection Agency

40 CFR Part 110, et al.
Federal Regulatory Review; Final Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 110, 259, 261, 266, 267, 270, 271, 300 and 373

[FRL–5224–1]

Solid Waste, Hazardous Waste, Oil Discharge and Superfund Programs; Removal of Legally Obsolete Rules

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is removing from the Code of Federal Regulations (CFR) several sections of the CFR pertaining to solid waste, hazardous waste, oil discharges and EPA's Superfund program which are no longer legally in effect. Deleting these sections from the CFR will clarify the legal status of the Agency's regulations for both the regulated community and the public.

EFFECTIVE DATE: This final rule takes effect on June 29, 1995.

FOR FURTHER INFORMATION CONTACT: Jim O'Leary (202–260–0724), Office of Solid Waste, or Jim Fary (703–603–8899), Office of Emergency and Remedial Response, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, or the RCRA/Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 4, 1995 the President directed all Federal agencies and departments to conduct a comprehensive review of the regulations they administer and, by June 1, 1995 to identify those rules that are obsolete or unduly burdensome. EPA has conducted a review of all of its rules, including rules issued under the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 et seq.), and the Deepwater Ports Act (DWPA) (33 U.S.C. 1501 et seq.). Based on this review, EPA is eliminating the following obsolete RCRA, CERCLA and DWPA rules from the CFR. These rules are no longer legally in effect because (1) they implement statutory provisions which have been repealed, (2) they have expired by their own terms or by the terms of the statute, or (3) they have been vacated (i.e., declared void and of no effect) by a court.

The removal of these rules from the CFR because they are no longer legally in effect is not intended to affect the status of any civil or criminal actions that were initiated prior to June 29, 1995 or which may be initiated in the future to redress violations of the rules that occurred when the rules were still legally in effect.

II. Obsolete Rules

Section 110.11 Discharge at Deepwater Ports

Section 18 of the DWPA prohibits the discharge of oil from a deepwater port and establishes liability for the clean-up of oil discharges. On April 2, 1987, EPA issued a regulation defining the term "discharge of oil" for purposes of Section 18.

On August 18, 1990, Section 18 was repealed by Section 2003(a)(3) of the Oil Pollution Act of 1990. Accordingly, EPA is removing from the CFR its definition of "discharge of oil" under Section 18.

Part 259—Standards for the Tracking and Management of Medical Waste

The Medical Waste Tracking Act of 1988 (Subchapter J of RCRA) required EPA to promulgate regulations for tracking and managing medical waste as part of a two-year Federal demonstration program under the Act. The required regulations were issued by EPA on March 24, 1989, and became effective on July 22, 1989.

On July 22, 1991, in accordance with both the Act and the regulations issued by EPA, the two-year demonstration program expired. See RCRA §§ 11001(d) and 40 CFR 259.2(a). All Federal medical waste regulations also expired at that time, with the exception of recordkeeping provisions; those provisions required regulated entities to retain certain records for three years (or longer, if EPA or a State has initiated an enforcement action). See 40 CFR 259.2(b), § 259.54, § 259.77, and § 259.83. This three-year record retention period has now also expired, and EPA is unaware of any pending Federal or State enforcement action regarding Federal medical waste requirements. Accordingly, EPA is removing these medical waste regulations from the CFR.

Section 261.31 Hazardous Wastes From Non-Specific Sources

On February 6, 1991, EPA issued regulations listing certain wood preserving wastes as hazardous wastes. The Agency was sued on these listings, and in response, temporarily stayed the effective date of its listing decision. See § 261.31(a), footnote 1. This stay expired on May 6, 1992. Accordingly, EPA is removing all references to this stay from the CFR.

Section 266.104(f) Alternative HC [hydrocarbon] Limit for Furnaces With Organic Matter in Raw Material

On February 21, 1991, EPA issued standards for boilers and industrial furnaces (BIFs) burning hazardous wastes. Among other things, these standards required BIFs to meet one of three alternative emission standards for carbon monoxide. One of these alternative standards—set forth in 40 CFR 266.104(f)—was designed to address situations where organic matter in the non-waste feed to an industrial furnace made it difficult for the facility to meet one of the other two alternatives.

On February 22, 1994, in *Horsehead Resource Development Co.* v. *Browner*, 16 F.3d 1246 (D.C. Cir. 1994), *cert. denied sub nom. Cement Kiln Recycling Coalition* v. *Browner*, 115 U.S. 72 (1994), a Federal appeals court ruled that EPA had failed to follow proper rulemaking procedures in issuing this standard and vacated it. Accordingly, EPA is removing this standard and all references to this standard from the CFR.

Part 267—Interim Standards for Owners and Operators of New Hazardous Waste Land Disposal Facilities.

RCRA prohibits the treatment, storage or disposal of hazardous waste without a permit or interim status. RCRA §§ 3005(a) and 3005(e). Prior to 1984, permits could not be issued for a particular management practice unless EPA had promulgated permitting standards for that activity. RCRA § 3005(c)(1).

At the end of 1980, EPA had not yet issued final standards for permitting hazardous waste land disposal facilities. This meant that new land disposal facilities, which could not qualify for interim status [1], could not be authorized to operate. To address this problem, on February 13, 1981, EPA issued interim permitting standards for new land disposal facilities that could be used to permit new facilities pending the development of final standards.

By their own terms, these interim standards expired on January 26, 1983, when final permitting standards for land disposal facilities (contained in 40 CFR Part 264, Subparts K–N) became effective. See 40 CFR 267.3.

[1] "Interim status" allows *existing* facilities that make appropriate filings to continue to operate pending a final permit decision. See RCRA § 3005(e).

Accordingly, EPA is removing these regulations from the CFR.

Various Provisions in Parts 270 and 271 Relating to Interim Authorization of State Hazardous Waste Programs.

Under RCRA § 3006, States can be authorized to administer the RCRA hazardous waste program in lieu of EPA. As originally enacted in 1976, RCRA provided for two types of State authorization—interim authorization and final authorization. RCRA §§ 3006(b) and (c). Interim authorization is a temporary authorization and requires that States demonstrate that their program is "substantially equivalent" to EPA's; final authorization is a permanent authorization and requires that States show that their program is "equivalent" to the Federal program and meets other requirements.

In 1984 Congress amended RCRA to limit the availability of interim authorization after January 26, 1986 to requirements and prohibitions mandated by the Hazardous and Solid Waste Amendments of 1984 (HSWA). RCRA § 3006(c)(1). Accordingly, EPA is removing from the CFR all references to interim authorization for non-HSWA requirements (including references to "Phase I" and "Phase II" non-HSWA interim authorization).

Part 300—National Oil and Hazardous Substances Pollution Contingency Plan; Subpart L—Lender Liability Under CERCLA.

On April 29, 1992, EPA issued a rule defining when banks and other secured creditors would be liable as "owners" of contaminated property under CERCLA. In *Kelley* v. *EPA*, 15 F.3d 1100 (D.C. Cir. 1993), *reh. denied*, 25 F.3d. 1088 (D.C. Cir. 1994), *cert. denied*, 115 S. Ct. 900 (1995), a Federal court of appeals ruled that EPA did not have statutory authority to issue the rule and vacated it. Accordingly, EPA is removing this rule from the CFR.

Section 373.1 (General Requirement)

Section 120(h)(1) of CERCLA requires Federal agencies that own property where hazardous substances have been stored or are known to have been released to notify buyers and lessees of the property. On April 16, 1990, EPA issued a rule under this section which limited the notification requirement to situations where the storage or release took place during the period the property was owned by the Federal agency.

On July 12, 1991, in *Hercules Inc.* v. *EPA*, 938 F.2d 276 (D.C. Cir. 1991), a Federal appeals court held that the Agency had no authority to impose this limitation and vacated it. Accordingly, EPA is removing this provision from the rule.

III. Good Cause Exemption from Notice-and-Comment Rulemaking Procedures.

The Administrative Procedure Act generally requires agencies to provide prior notice and opportunity for public comment before issuing a final rule. 5 U.S.C. 553(b). Rules are exempt from this requirement if the issuing agency finds for good cause that notice and comment are unnecessary. 5 U.S.C. 553(b)(3)(B).

EPA has determined that providing prior notice and opportunity for comment on the deletion of these rules from the CFR is unnecessary. For the reasons discussed in Sections I and II, these rules are no longer legally in effect; thus, withdrawing them from the CFR has no legal impact and merely codifies the current legal status of the rules.

For the same reasons, EPA believes there is good cause for making the removal of these rules from the CFR immediately effective. See 5 U.S.C. 553(d).

IV. Analyses under E.O. 12866, the Unfunded Mandates Reform Act of 1995, the Regulatory Flexibility Act and the Paperwork Reduction Act

Because the withdrawal of these rules from the CFR merely reflects their current legal status and thus has no regulatory impact, this action is not a "significant" regulatory action within the meaning of E.O. 12866, and does not impose any Federal mandate on State, local or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995. For the same reasons, pursuant to the Regulatory Flexibility Act, I certify that this action would not have a significant economic impact on a substantial number of small entities. Finally, because these rules are no longer legally in effect, their deletion from the CFR does not affect requirements under the Paperwork Reduction Act.

List of Subjects

40 CFR Part 110

Environmental protection, Deepwater ports, Oil pollution.

40 CFR Part 259

Hazardous materials transportation, Hazardous waste, Intergovernmental relations, Labeling, Packaging and containers, Railroad safety, Reporting and recordkeeping requirements, Waste treatment and disposal.

40 CFR Part 261

Hazardous waste, Wood preserving wastes.

40 CFR Part 266

Boilers and industrial furnaces, Hazardous waste.

40 CFR Part 267

Air pollution control, Hazardous waste, Water supply.

40 CFR Parts 270 and 271

Hazardous waste, Intergovernmental relations, Interim authorization.

40 CFR Part 300

Hazardous substances, Lender liability, Superfund.

40 CFR Part 373

Federal buildings and facilities, Hazardous substances, Reporting and recordkeeping requirements, Superfund.

Dated: June 14, 1995.

Elliott P. Laws,

Assistant Administrator, Office of Solid Waste and Emergency Response.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 110—[AMENDED]

1. The authority citation for part 110 is amended to read as follows:

Authority: 33 U.S.C. 1321(b)(3) and (b)(4) and 1361(a); E.O. 11735, 38 FR 21243, 3 CFR Parts 1971–1975 Comp., p. 793.

§ 110.11 [Removed]

2. Section 110.11 is removed.

PART 259—[REMOVED]

3. Part 259 is removed.

PART 261—[AMENDED]

4. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922 and 6938.

§ 261.31 [Amended]

5. In § 261.31(a), footnote 1 is removed.

PART 266—[AMENDED]

6. The authority citation for part 266 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924 and 6934.

7. In § 266.103, paragraph (c)(5) is revised to read as follows:

§ 266.103 Interim status standards for burners.

* * * * *

(c) * * *

(5) *Special requirements for HC monitoring systems.* When an owner or operator is required to comply with the hydrocarbon (HC) controls provided by § 266.104(c) or paragraph (a)(5)(i)(D) of this section, a conditioned gas monitoring system may be used in conformance with specifications provided in appendix IX of this part provided that the owner or operator submits a certification of compliance without using extensions of time provided by paragraph (c)(7) of this section.

* * * * *

§ 266.104 [Amended]

8. In § 266.104 paragraph (f) is removed, and paragraphs (g), (h) and (i) are redesignated as paragraphs (f), (g) and (h), respectively.

PART 267—[REMOVED]

9. Part 267 is removed.

PART 270—[AMENDED]

10. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939 and 6974.

11. In § 270.2, the definitions of "Phase I" and "Phase II" are removed and the definition of "Interim Authorization" is revised to read as follows:

§ 270.2 Definitions.

* * * * *

Interim authorization means approval by EPA of a State hazardous waste program which has met the requirements of section 3006(g)(2) of RCRA and applicable requirements of part 271, subpart B.

* * * * *

12. In § 270.10, paragraphs (e)(4), (f)(2) and (g)(1) are revised to read as follows:

§ 270.10 General application requirements.

* * * * *

(e) * * *

(4) The owner or operator of an existing hazardous waste management facility may be required to submit part B of their permit application. The State Director may require submission of part B (or equivalent completion of the State RCRA application process) if the State in which the facility is located has received interim or final authorization; if not, the Regional Administrator may require submission of Part B. Any owner or operator shall be allowed at least six months from the date of request to submit part B of the application. Any owner or operator of an existing hazardous waste management facility may voluntarily submit part B of the application at any time. Notwithstanding the above, any owner or operator of an existing hazardous waste management facility must submit a part B permit application in accordance with the dates specified in § 270.73. Any owner or operator of a land disposal facility in existence on the effective date of statutory or regulatory amendments under this Act that render the facility subject to the requirement to have a RCRA permit must submit a part B application in accordance with the dates specified in § 270.73.

* * * * *

(f) * * *

(2) An application for a permit for a new hazardous waste management facility (including both Parts A and B) may be filed any time after promulgation of those standards in part 264, subpart I *et seq.* applicable to such facility. The application shall be filed with the Regional Administrator if at the time of application the State in which the new hazardous waste management facility is proposed to be located has not received interim or final authorization for permitting such facility; otherwise it shall be filed with the State Director. Except as provided in paragraph (f)(3) of this section, all applications must be submitted at least 180 days before physical construction is expected to commence.

* * * * *

(g) *Updating permit applications.* (1) If any owner or operator of a hazardous waste management facility has filed Part A of a permit application and has not yet filed part B, the owner or operator shall file an amended part A application:

(i) With the Regional Administrator if the facility is located in a State which has not obtained interim authorization or final authorization, within six months after the promulgation of revised regulations under part 261 listing or identifying additional hazardous wastes, if the facility is treating, storing or disposing of any of those newly listed or identified wastes.

(ii) With the State Director, if the facility is located in a State which has obtained interim authorization or final authorization, no later than the effective date of regulatory provisions listing or designating wastes as hazardous in that State in addition to those listed or designated under the previously approved State program, if the facility is treating, storing or disposing of any of those newly listed or designated wastes; or

(iii) As necessary to comply with provisions of § 270.72 for changes during interim status or with the analogous provisions of a State program approved for final authorization or interim authorization. Revised Part A applications necessary to comply with the provisions of § 270.72 shall be filed with the Regional Administrator if the State in which the facility in question is located does not have interim authorization or final authorization; otherwise it shall be filed with the State Director (if the State has an analogous provision).

* * * * *

PART 271—[AMENDED]

13. The authority citation for part 271 is amended to read as follows:

Authority: 42 U.S.C. 6905, 6912 and 6926.

§ 271.3 [Amended]

14. In § 271.3, paragraphs (c), (d) and (e) are removed, and paragraph (f) is redesignated as paragraph (c).

15. In § 271.20, paragraph (e) is revised to read as follows:

§ 271.20 Approval process.

* * * * *

(e) Within 90 days of the notice given pursuant to paragraph (d) of this section, the Administrator shall make a final determination whether or not to approve the State's program, taking into account any comments submitted. The Administrator shall give notice of this final determination in the **Federal Register** and in accordance with paragraph (a)(1) of this section. The notification shall include a concise statement of the reasons for this determination, and a response to significant comments received.

§§ 271.121–271.138 [Removed]

16. Subpart B (§§ 271.121 through 271.138) is removed.

PART 300—[AMENDED]

17. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR 187 Comp., p. 193.

§§ 300.1100 and 300.1105 [Removed]

18. Subpart L (§§ 300.1100 and 300.1105) is removed.

PART 373—[AMENDED]

19. The authority citation for part 373 is revised to read as follows:

Authority: 42 U.S.C. 9620.

20. Section 373.1 is revised to read as follows:

§ 373.1 General requirement.

After the last day of the six-month period beginning on April 16, 1990, whenever any department, agency or instrumentality of the United States enters into any contract for the sale or other transfer of real property which is owned by the United States and at which any hazardous substance was stored for one year or more, known to have been released, or disposed of, the head of such department, agency or instrumentality must include in such contract notice of the type and quantity of such hazardous substance and notice of the time at which such storage, release or disposal took place, to the extent such information is available on the basis of a complete search of agency files.

[FR Doc. 95–15028 Filed 6–28–95; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Parts 51, 52, 60, 65, 85, 86

[FRL–5224–5]

Control of Air Pollution; Removal of Legally Obsolete Rules

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is today removing from the Code of Federal Regulations (CFR) more than 200 rules pertaining to air pollution which are no longer legally in effect. Deleting these rules from the CFR will clarify the legal status of these rules for both the regulated community and the public.

EFFECTIVE DATE: This final rule takes effect on June 29, 1995.

FOR FURTHER INFORMATION CONTACT: Maureen Delaney, Office of Air and Radiation, Office of Policy Analysis and Review, (202) 260–7431.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 4, 1995 the President directed all Federal agencies and departments to conduct a comprehensive review of the regulations they administer and, by June 1, 1995, to identify those rules that are obsolete or unduly burdensome. EPA has conducted a review of all of its rules, including rules issued under the Clean Air Act (CAA), as amended (42 U.S.C. 7401 et seq.). Based on this review, EPA is today eliminating the following obsolete CAA rules from the CFR. These rules are no longer legally in effect because (1) they implement statutory provisions which have been repealed, (2) they have expired by their own terms or by the terms of the statute or (3) they have been vacated (i.e., declared void and of no effect) by a court.

The removal of these rules from the CFR because they are no longer legally in effect is not intended to affect the status of any civil or criminal actions that were initiated prior to June 29, 1995 or which may be initiated in the future to redress violations of the rules that occurred when the rules were still legally in effect.

II. Obsolete Rules

A. Portions of Parts 51 and 52

The following deletions have been divided into three basic types of regulations found in 40 CFR parts 51 and 52: (1) Rules applicable on a national basis, without state-specific counterparts; (2) rules applicable on a national basis, supplemented by state-specific rules that implement them; and (3) rules applicable to a specific state, without national counterparts. This notice looks at each of these types in turn, setting forth the reasons that EPA seeks today to remove them from the CFR.

Any deletion of provisions that state plans currently reference is not intended to disturb those references, and EPA interprets those references to be to the version that was in the CFR when the state adopted the reference, unless the state subsequently provides otherwise.

1. National Rules Without State-Specific Counterparts

The following sets of regulations apply on a national basis, and are not further applied or implemented by any state-specific regulations. EPA has reviewed these rules and found them legally obsolete or superseded for the reasons set forth below. EPA in this notice therefore is removing them from the CFR.

40 CFR 51.105 Approval of plans: first sentence only. The first sentence of § 51.105 provides that the Administrator will approve any state implementation plan (SIP) or portion thereof if she determines that it meets the requirements of the Act. This provision has been superseded by the 1990 CAA provisions under Sections 110 (k) and (l). Accordingly, EPA is removing the first sentence of this section from the CFR.

40 CFR 51.111(a)–(c) Description of control measures. Section 51.111(a)–(c) describes what a control strategy must include, including a description of control measures, schedule for implementation, and copies of laws and a description of administrative procedures used to implement each control measure. These provisions have been superseded by the substantive provisions of Part D of Title I of the CAA, Sections 171 et seq., in conjunction with the completeness criteria in 40 CFR part 51, Appendix V. Accordingly, EPA is removing paragraphs (a), (b), and (c) of § 51.111 from the CFR.

40 CFR 51.113 Time period for demonstration of adequacy. Section 51.113 provides the time periods for a demonstration of the adequacy of a control strategy to attain the primary national ambient air quality standard. This provision has been superseded by the 1977 and the 1990 amendments to the CAA, Sections 110, 172, 177, 181 and 182. These Sections include the details of how nonattainment areas are established, what strategies should be included in plans to show attainment in these areas, and when the plans must be submitted. Accordingly, EPA is removing § 51.113 from the CFR.

40 CFR 51.213(b) Transportation control measures, emission data maintenance. Section 51.213(b) provides that for measures involving inspection, maintenance, or retrofit, data must include the results of an emission surveillance program designed to determine actual average per vehicle emissions reductions attributable to an I/M or retrofit measure. This regulation has been superseded by the I/M rules issued under the 1990 amendments to the CAA, Section 182(a)(2)(B)(2), and EPA regulations at § 51.350 et seq.

40 CFR 51.241(a) Nonattainment areas for carbon monoxide (CO) and ozone: last two sentences only. The last two sentences in § 51.241(a) provide that, in determining the organization responsible for developing a revised SIP for nonattainment areas for ozone and CO, the procedures described in the Section 174 Guidelines issued in December, 1977, and published as appendix U to part 51, shall be consulted. These sentences have been superseded by the 1990 CAA amendments to Section 174, and by new Section 174 guidance, including Transportation & Air Quality Planning Guidelines, July 1992. Accordingly, EPA is removing the last two sentences of § 51.241(a) from the CFR.

40 CFR Part 51 Appendix U CAA Section 174 Guidelines, Guidance on designation of lead planning organizations. 40 CFR part 51, appendix U, contains Guidance on the Designation of Lead Planning

Organizations for Nonattainment Areas, and on Determination of Interagency Responsibilities, and is referenced in § 51.241(a) above. It was jointly issued by EPA and the U.S. Department of Transportation in 1977. This guidance has been superseded by the 1990 amendments to CAA Section 174, and by new guidance issued by EPA, as described above.

40 CFR 52.25 Date for submission of set II CTG regulations. This section sets a January, 1981 date for adoption and submittal of reasonably available control technology (RACT) requirements for sources covered by control technique guidelines (CTGs) issued between January 1978 and January 1979 (Set II CTGs). This regulation is rendered obsolete by Sections 182(a)(2)(A) and 182(b)(2) of the CAA, which establish dates for submitting new RACT measures. Accordingly, EPA is removing § 52.25 from the CFR.

2. National Rules With State-Specific Counterparts

The following set of regulations includes national rules which are further implemented or applied by state-specific regulations. The regulations relate to (a) maintenance of national standards, (b) extensions and attainment dates, and (c) indirect source review. EPA has reviewed these rules and found them legally obsolete or superseded for the reasons set forth below. In this notice EPA therefore is deleting these regulations from the CFR.

For each set of regulations, EPA has set forth first the national rules, followed by the corresponding state-specific rules which implement them.

(a) *Maintenance of National Standards*

(i) National Rules.

40 CFR Part 51, Subpart D: Maintenance of National Standards: §§ 51.40–51.63

(Includes the following rules:)

§ 51.40 Scope
§ 51.41 Air Quality Maintenance Area (AQMA) analysis: Submittal date
§ 51.42 AQMA analysis: Analysis period
§ 51.43 AQMA analysis: Guidelines
§ 51.44 AQMA analysis: Projection of emissions
§ 51.45 AQMA analysis: Allocation of emissions
§ 51.46 AQMA analysis: Projection of air quality concentrations
§ 51.47 AQMA analysis: Description of data sources
§ 51.48 AQMA analysis: Data bases
§ 51.49 AQMA analysis: Techniques description
§ 51.50 AQMA analysis: Accuracy factors
§ 51.51 AQMA analysis: Submittal of calculations
§ 51.52 AQMA plan: General
§ 51.53 AQMA plan: Demonstration of adequacy
§ 51.54 AQMA plan: Strategies
§ 51.55 AQMA plan: Legal authority
§ 51.56 AQMA plan: Future strategies
§ 51.57 AQMA plan: Future legal authority
§ 51.58 AQMA plan: Intergovernmental cooperation
§ 51.59 [Reserved]
§ 51.60 AQMA plan: Resources
§ 51.61 AQMA plan: Submittal format
§ 51.62 AQMA analysis and plan: Data availability
§ 51.63 AQMA analysis and plan: Alternative procedures
§ 52.22(a) Maintenance of national standards

(§ 52.22(b) is also being deleted today as obsolete. It is discussed separately under Section (c) below, Indirect Source Review.)

This group of rules deals with maintenance requirements which required, among other things, the submittal of plans by May, 1978. These provisions were superseded by the 1977 and 1990 amendments to the CAA, which replaced the maintenance scheme embodied in the above-cited regulations. Part D of Title I of the CAA, including Section 175A, establishes an entirely new and different attainment and maintenance regulatory structure, which rendered these regulations obsolete. Accordingly, EPA is removing them from the CFR. By removing these provisions, EPA is not affecting any obligation under Section 110(a)(1) for an area never designated non-attainment under the 1990 CAA to have a plan to maintain the national ambient air quality standards.

(ii) State-Specific Rules.

The following state-specific rules implement the provisions of 40 CFR 51.40–51.63 and 40 CFR 52.22(a), and are therefore obsolete. Accordingly, EPA is removing the following state-specific rules from the CFR. The state specific rules have been grouped by the EPA Region responsible for administering them:

REGION 1 (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont)

§ 52.379 Maintenance of national standards
§ 52.1028 Maintenance of national standards
§ 52.1528 Maintenance of national standards
§ 52.2082 Maintenance of national standards
§ 52.2379 Maintenance of national standards

REGION 2 (New Jersey, New York, Puerto Rico, Virgin Islands)

§ 52.1602 Maintenance of national standards
§ 52.1688 Maintenance of national standards
§ 52.2728 Maintenance of national standards
§ 52.2778 Maintenance of national standards

REGION 3 (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia)

§ 52.431 Maintenance of national standards
§ 52.497 Maintenance of national standards
§ 52.1115 Maintenance of national standards
§ 52.2056 Maintenance of national standards
§ 52.2449 Maintenance of national standards
§ 52.2526 Maintenance of national standards

REGION 4 (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee)

§ 52.59 Maintenance of national standards
§ 52.529 Maintenance of national standards
§ 52.580 Maintenance of national standards
§ 52.929 Maintenance of national standards
§ 52.1279 Maintenance of national standards
§ 52.1777 Maintenance of national standards
§ 52.2129 Maintenance of national standards
§ 52.2232 Maintenance of national standards

REGION 5 (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin)

§ 52.735 Maintenance of national standards
§ 52.792 Maintenance of national standards
§ 52.1178 Maintenance of national standards
§ 52.1229 Maintenance of national standards
§ 52.1883 Maintenance of national standards
§ 52.2580 Maintenance of national standards

REGION 6 (Arkansas, Oklahoma, Texas)

§ 52.182 Maintenance of national standards
§ 52.1927 Maintenance of national standards
§ 52.2302 Maintenance of national standards

REGION 7 (Iowa, Kansas, Missouri, Nebraska)

§ 52.832 Maintenance of national standards
§ 52.883 Maintenance of national standards
§ 52.1338 Maintenance of national standards
§ 52.1435 Maintenance of national standards

REGION 8 (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)

§ 52.341 Maintenance of national standards
§ 52.1381 Maintenance of national standards
§ 52.1827 Maintenance of national standards
§ 52.2176 Maintenance of national standards
§ 52.2345 Maintenance of national standards
§ 52.2631 Maintenance of national standards

REGION 9 (Arizona, California, Hawaii, Nevada, American Samoa, Guam)

§ 52.143 Maintenance of national standards
§ 52.267 Maintenance of national standards
§ 52.631 Maintenance of national standards
§ 52.2674 Maintenance of national standards
§ 52.2826 Maintenance of national standards

REGION 10 (Alaska, Idaho, Oregon, Washington)

§ 52.682 Maintenance of national standards
§ 52.1986 Maintenance of national standards

(b) *Extensions and Attainment Dates*

(i) National Rule: § 51.340 Request for 2-year extension.

Section 51.340 provides that the Governor of a State may request the Administrator for a two-year extension of the three-year period for attainment of a primary standard provided by the 1970 CAA, Section 110(e). This regulation deals with submission of plans under the 1970 Act, and is superseded by the CAA of 1990.

2. State-Specific Rules.

The following rules implement the provisions of § 51.340, and related obsolete attainment date and SIP submission deadlines. Accordingly, EPA is deleting them from the CFR.

This group of rules relate to: the two-year attainment date extensions from Section 110(e); extensions under old Section 172(a) for ozone and CO; and other obsolete attainment dates. Yet others deal with long-elapsed extension dates under Section 110(b) for submissions of plans to meet the secondary total suspended particulate (TSP) or sulfur dioxide (SO_2) standards, as well as some of the attainment dates for the secondary SO_2 standard issued under Section 110(e). These old SO_2 secondary attainment and submission dates may be deleted as obsolete for areas that have since attained the standard. Deletion of these dates will have no adverse effect on any continuing obligation to submit any plans for these standards.

REGION 1 (Connecticut, Massachusetts)

§ 52.372 Extensions
§ 52.1122 Extensions

REGION 2 (New Jersey, New York, Puerto Rico, Virgin Islands)

§ 52.1572 Extensions
§ 52.1580 Attainment dates for National Standards
§ 52.1672 Extensions
§ 52.1682 Attainment dates for National Standards
§ 52.2723 Attainment Dates for National Standards
§ 52.2776 Attainment Dates for National Standards

REGION 3 (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia)

§ 52.427 Extensions
§ 52.428 Attainment Dates for National Standards
§ 52.473 Extensions
§ 52.481 Attainment Dates for National Standards
§ 52.1072 Extensions
§ 52.1078 Attainment Dates for National Standards
§ 52.2422 Extensions
§ 52.2428 Extensions
§ 52.2429 Attainment Dates for National Standards

REGION 4 (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee)

§ 52.52 Extensions
§ 52.54 Attainment Dates for National Standards
§ 52.523 Attainment Dates for National Standards
§ 52.575 Attainment Dates for National Standards
§ 52.577 Extensions
§ 52.922 Extensions
§ 52.1273 Attainment Dates for National Standards
§ 52.1773 Attainment Dates for National Standards
§ 52.1776 Extensions
§ 52.2127 Extensions
§ 52.2128 Attainment Dates for National Standards

REGION 5 (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin)

§ 52.723 Extensions
§ 52.772 Extensions
§ 52.783 Attainment Dates for National Standards
§ 52.1177 Attainment Dates for National Standards
§ 52.1226 Attainment Dates for National Standards
§ 52.1235 Extensions
§ 52.1872 Extensions
§ 52.2582 Extensions

REGION 6 (Arkansas, Louisiana, New Mexico, Oklahoma, Texas)

§ 52.173 Extensions
§ 52.176 Attainment Dates for National Standards
§ 52.979 Attainment Dates for National Standards
§ 52.1630 Attainment Dates for National Standards
§ 52.1631 Extensions
§ 52.1925 Attainment Dates for National Standards
§ 52.2272 Extensions
§ 52.2279 Attainment Dates for National Standards

REGION 7 (Iowa, Kansas, Missouri, Nebraska)

§ 52.824 Extensions
§ 52.827 Attainment Dates for National Standards
§ 52.880 Extensions
§ 52.1331 Extensions
§ 52.1332 Attainment Dates for National Standards
§ 52.1426 Extensions
§ 52.1431 Attainment Dates for National Standards

REGION 8 (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)

§ 52.322 Extensions
§ 52.325 Attainment Dates for National Standards
§ 52.1823 Attainment Dates for National Standards
§ 52.2174 Attainment Dates for National Standards
§ 52.2627 Attainment Dates for National Standards

REGION 9 (Arizona, California, Hawaii, Nevada, American Samoa, Guam)

§ 52.122 Extensions
§ 52.131 Attainment Dates for National Standards
§ 52.222 Extensions
§ 52.238 Attainment Dates for National Standards
§ 52.622 Extensions
§ 52.628 Attainment Dates for National Standards
§ 52.1480 Attainment Dates for National Standards
§ 52.1481 Extensions
§ 52.2673 Attainment Dates for National Standards
§ 52.2823 Attainment Dates for National Standards

REGION 10 (Alaska, Idaho, Oregon, Washington)

§ 52.81 Attainment Dates
§ 52.82 Extensions
§ 52.672 Extensions
§ 52.2472 Extensions
§ 52.2478 Attainment dates

(c) *Indirect Source Review*

(i) National Rules.

This group of rules deals with requirements that state plans include a program for the preconstruction review of indirect sources of pollution (e.g., parking garages) in order to gain approval.

40 CFR 52.22(b). Section 52.22(b) includes provisions for indirect source review and for disapproving SIPs for

failing to meet indirect source review requirements contained in § 51.12, which no longer exists. Furthermore, this provision has been suspended since shortly after its creation per § 52.22(b)(16). Finally, Section 110(a)(5)(A) of the CAA provides that the Administrator may not require the states to include indirect source review programs in their plans as a condition of plan approval. These provisions establish such prohibited requirements, and thus are obsolete. Accordingly, § 52.22(b) is being removed from the CFR.

40 CFR 52.06(c) Legal authority. Section 52.06(c) deals with requirements for establishing transportation and land use controls. These have been superseded by the completeness criteria in Appendix V of Part 51 under the 1990 amendments to Section 110(k). In addition, the CAA now restricts EPA's authority to require or impose certain transportation control measures in state plans. See Sections 110(c)(2) and 110(a)(5) of the CAA. Accordingly, EPA is removing § 52.06(c) from the CFR.

Part 52 Appendix A: Interpretive rulings for § 52.22(b) regulation for review of new or modified indirect sources.

Appendix A includes interpretive rulings for § 52.22(b), which is being deleted today as superseded by Section 110(a)(5)(A). Accordingly, EPA is removing Appendix A from the CFR.

(ii) Regional Rules.

The following rules implement the provisions of 40 CFR 52.22(b) and Appendix A to part 52, and accordingly EPA is deleting them from the CFR:

REGION 1 (Massachusetts)

§ 52.1124 (a), (b) Review of new sources and modifications

REGION 2 (New Jersey, Puerto Rico)

§ 52.1578 (a), (b) Review of new sources and modifications
§ 52.2724 Review of new sources and modifications

REGION 3 (Delaware, Pennsylvania)

§ 52.426 Review of new sources and modifications
§ 52.2448 Review of new sources and modifications

REGION 4 (Georgia, Mississippi, South Carolina, Tennessee)

§ 52.574 Review of new sources and modifications
§ 52.1276 Review of new sources and modifications
§ 52.2125 Review of new sources and modifications
§ 52.2228 (a), (b) Review of new sources and modifications

REGION 5 (Wisconsin)

§ 52.2579 Review of new sources and modifications

REGION 7 (Kansas, Missouri)

§ 52.878 Review of new sources and modifications
§ 52.1328 Review of new sources and modifications

REGION 9 (Arizona, Hawaii)

§ 52.129 (e), (f) Review of new sources and modifications
§ 52.629 Review of new sources and modifications

REGION 10 (Alaska)

§ 52.78 Review of new sources and modifications

3. State-Specific Regulations Without National Counterparts

The following set of rules includes rules applicable only on a state-specific basis, unaccompanied by any counterpart national rule. EPA has reviewed these rules and found them to be legally obsolete or superseded for the reasons set forth below. These rules are grouped by the EPA Regional Office responsible for administering them.

REGION 2 (New York, Puerto Rico)

40 CFR 52.1675(f) Control strategy and regulations for sulfur oxides. This rule establishes temporary fuel variances which have expired by their own terms many years ago and have no current effect. Accordingly this rule may be removed from the CFR.

40 CFR 52.2730 Compliance schedules. This regulation sets forth final compliance dates for various sources in Puerto Rico, ranging from 1973 to 1974. These dates are now more than twenty years old, and have been rendered obsolete by the subsequently applicable emission-limiting requirements. Accordingly, this rule may be removed from the CFR.

REGION 3 (Pennsylvania, Virginia, West Virginia)

40 CFR 52.2055(c) Review of new sources and modifications. Section 52.2055 provides that special permit requirement regulations for Pennsylvania are approved on the condition that certain revisions are submitted to EPA. Section 52.2055 was originally promulgated on March 19, 1981 (46 FR 17552 (July 13, 1981)). Pennsylvania submitted revisions which addressed the deficiencies cited by EPA in § 52.2055(c). On February 26, 1982 (47 FR 8358), EPA approved these revised sections as part of the Pennsylvania SIP, and codified the approval at § 52.2020(c)(41). At the same time, EPA modified § 52.2055(a) to reflect EPA's approval of these previously conditionally approved or unapproved regulations. Since § 52.2020(c)(41) reflects EPA's current assessment that the 1981 amendments are fully approvable, § 2055(c) is obsolete, and is being removed from the CFR.

40 CFR 52.2424 General requirements. Section 52.2424 provides that the requirements of § 51.110 (b) and (d) are not met because the Virginia SIP does not provide for CO and ozone attainment as expeditiously as practicable, as evidenced by the State's failure to propose sufficient interim control measures to be implemented during the two-year period for which an extension to attain the national standards was requested. This rule has been superseded by new plan submission requirements and attainment dates in the 1990 amendments to the CAA, and accordingly may be removed from the CFR.

40 CFR 52.2522(a) Approval status. Section 52.2522(a) approves a consent order for a period of three years until July 6, 1985, after which affected sources must comply with the applicable SIP. Since the term of the approval has expired, this rule is obsolete and accordingly may be deleted.

40 CFR 52.2522(d). Section 52.2522(d) provides, among other things, that continued satisfaction of the requirements of Part D for the ozone portion of the West Virginia SIP depends on the submittal of RACT requirements by July, 1980 for sources covered by CTGs. This section has been superseded by the RACT provisions of the 1990 CAA, as described above. Accordingly, EPA is removing § 52.2522(d) from the CFR.

40 CFR 52.2531 Control strategy: hydrocarbons. Section 52.2531 conditionally approves the West Virginia ozone plan for Kanawha Valley on the condition that the state adopt an adequate test method for a certain regulation. The revised test method in state regulation XXIII (for bulk gasoline loading terminals) referred to in this section was submitted by West Virginia on November 6, 1980, approved by EPA on November 20, 1981 (46 FR 57044) and codified at § 52.2425(c)(16). Thus § 52.2531 is obsolete, and accordingly, EPA is removing it from the CFR.

40 CFR 52.2532: Control strategy; particulate matter. Section 52.2532 states that West Virginia does not have approved plans for attaining secondary TSP standards in certain areas. EPA may no longer require development of control strategies designed to attain the secondary TSP standard after the July 1, 1987 promulgation of the particulate matter (PM10) standard and the repeal of the secondary TSP standard. See 52 FR 24634 (July 1, 1987). This regulation is therefore obsolete, and accordingly EPA is removing it from the CFR.

REGION 5 (Ohio)

40 CFR 52.1881(b), the following portions only:

(12) Allen Co.
(13) Ashtabula Co.
(14) Athens Co.
(15) Auglaize Co.
(16) Belmont Co.
(18) Clark Co.
(20) Columbiane Co.
(22) Crawford Co.
(24) Delaware Co.
(25) Erie Co.
(26) Fairfield Co.
(29) Greene Co.
(30) Hamilton Co.
(31) Hancock Co.
(32) Henry Co.
(33) Huron Co.
(34) Jefferson Co.
(36) Lawrence Co.: delete all but (36)(v) (Allied Chemical)
(37) Licking Co.
(41) Marion Co.
(42) Medina Co.
(43) Meigs Co.
(44) Mercer Co.
(45) Miami Co.
(46) Montgomery Co.: delete all but (46)(i) (general limit)
(47) Morgan Co.
(48) Muskingum Co.
(49) Ottawa Co.
(50) Paulding Co.
(51) Pickaway Co.
(53) Richland Co.
(55) Sandusky Co.: delete all but 55(iv) (Martin Marietta)
(56) Scioto Co.
(57) Seneca Co.
(60) Trumbull Co.
(61) Tuscarawas Co.
(62) Vinton Co.
(63) Washington Co.: delete all but (63)(iii) (Shell Oil)
(64) Wayne Co.

The preceding portions of § 52.1881(b) set forth various regulations for the control of sulfur dioxide in the State of Ohio. In 1976, to address the lack of sulfur dioxide SIP limits in Ohio, EPA promulgated a Federal Implementation Plan (FIP). In the early 1980's Ohio adopted and submitted and EPA approved State rules limiting sulfur dioxide emissions for many of the counties regulated in the FIP. Ever since that time, § 52.1881 has stated that approved State rules supersede any corresponding FIP rules. The superseded rules have no effect and are unenforceable, and thus no longer need be retained in the CFR. The table above lists the rules in § CFR 52.1881(b) which have been superseded and are accordingly being removed from the CFR.

REGION 6 (Louisiana, New Mexico, Oklahoma, Texas)

40 CFR 52.980 Compliance schedules. Section 52.980 sets compliance schedules for certain facilities in Louisiana; the latest compliance date set is 1982. Thus these facilities were required to have come into compliance more than twelve years ago, and § 52.980 is now obsolete. Any remaining issues with regard to compliance will be dealt with under the currently applicable requirements. EPA is therefore removing § 52.980 from the CFR.

40 CFR 52.1626 Compliance schedules. Section 52.1626 sets forth compliance schedules for certain sources in New Mexico; final compliance dates are 1980, 1982, and 1984. The facilities covered by this section were therefore required to have come into compliance more than ten years ago. Any remaining issues with regards to compliance will be dealt with under the currently applicable requirements. EPA is therefore removing § 52.1626 from the CFR.

40 CFR 52.1926 General requirements. Section 52.1926 disapproves Oklahoma's definition of best available control technology (BACT). The State subsequently adopted and EPA approved rules to correct this deficiency. Section 52.1926 was superseded by EPA's approval of the Oklahoma prevention of significant deterioration (PSD) SIP revisions. See §§ 52.1929, 52.1920(c)(38)(i)(C); 56 FR 5656 (Feb. 12, 1991). EPA is therefore removing § 52.1926 from the CFR.

40 CFR 52.2275(d) Control strategy and regulations: ozone. Section 52.2275(d) sets forth certain test methods to be used for purposes of Federal enforcement. The State of Texas has adopted rules to cover these areas and EPA has approved them, making § 52.2275(d) obsolete. See § 52.2270(c)(77); 57 FR 44124 (Sept. 24, 1992). Accordingly, EPA is removing this section from the CFR.

REGION 10 (Alaska, Idaho, Oregon, Washington)

40 CFR 52.677 Compliance schedules. Section 52.677 sets forth compliance schedules for certain facilities in Idaho. The final compliance date is 1974, and therefore the facilities covered by this section were required to come into compliance more than 20 years ago. Any remaining issues with regards to compliance will be dealt with under the currently applicable requirements. EPA is therefore removing § 52.677 from the CFR.

40 CFR 52.1975 Compliance schedules. Section 52.1975 sets forth compliance schedules for certain types of facilities, with the latest final compliance date set for January, 1975. The facilities covered by this section were therefore required to come into compliance more than 20 years ago. Any remaining issues with regards to compliance will be dealt with under the currently applicable requirements. EPA is therefore removing § 52.1975 from the CFR.

40 CFR 52.2481 Compliance schedules. Section 52.2481 sets forth compliance schedules for certain types of facilities in Washington, with the final compliance date set for July, 1974. The facilities covered by this section were therefore required to come into compliance more than 20 years ago. Any remaining issues with regards to compliance will be dealt with under the currently applicable requirements. EPA is therefore removing § 52.2481 from the CFR.

40 CFR 52.688 Idaho rules and regulations. Section 52.688 provides that Idaho must ensure that PSD and other new source review and operating permits comply with the applicable provisions of EPA's revised stack height regulations, and must also revise its stack height regulations by April 8, 1985, to be consistent with EPA's revised regulations. The required SIP revision has been submitted and approved. See § 52.670(c)(25); 53 FR 48539 (Dec. 1, 1988). Accordingly, § 52.688 is now obsolete and EPA is removing it from the CFR.

40 CFR 52.689 Idaho lead control strategy. Section 52.689 sets forth a lead control strategy for the Bunker Limited Smelter and the area immediately surrounding it. The source, Bunker Limited, has been dismantled and has ceased to exist. This regulation is therefore obsolete, and EPA is removing it from the CFR.

40 CFR 52.1974 Oregon transportation and land use control. Section 52.1974 provides that the Governor of Oregon must submit to EPA no later than April, 1974, regulations needed to implement inspection/maintenance and retrofit programs. The required SIP revision has been submitted and approved. See § 52.1970; 46 FR 35 (Jan. 2, 1981). Accordingly, § 52.1974 is now obsolete and EPA is removing it from the CFR.

40 CFR 52.1976 Oregon control strategy: particulate matter. Section 52.1976 disapproves certain Oregon rules as inconsistent with the requirements for attainment and

maintenance of the particulate matter NAAQS. The control strategy for the Portland TSP nonattainment area was subsequently submitted and approved. See 46 FR 60017 (Dec. 8, 1981). Since § 52.1976 is now obsolete, EPA is removing it from the CFR.

40 CFR 52.2475 Washington legal authority. Section 52.2475 found that Washington lacked legal authority to implement various transportation control strategies. The required legal authorities and SIP revisions have been submitted and approved. See §§ 52.2470(c)(22) (Seattle), 52.2470(c)(24) (Spokane); 46 FR 45607 (Sept. 14, 1981), 47 FR 1266 (Mar. 22, 1982). Since § 52.2475 is now obsolete, EPA is removing it from the CFR.

Regulations made obsolete by § 52.2470. The following miscellaneous provisions for the State of Washington, which date back to the early 1970's and arise in part from a FIP, are obsolete and have been superseded by approved SIP control strategies (see § 52.2470; 46 FR 45607 (Sept. 14, 1981), 47 FR 1266 (Mar. 22, 1982)):

§ 52.2477 Washington source surveillance.
§ 52.2485 Washington Inspection and Maintenance Program
§ 52.2486 Washington Management of Parking Supply
§ 52.2489 Washington Reduction of Parking Spaces
§ 52.2490 Washington Air bleed to Intake Manifold
§ 52.2491 Washington Exhaust Gas Recirculation-air bleed
§ 52.2492 Washington Computer Carpool Matching System
§ 52.2493 Washington Transit Improvement Measure
§ 52.2494 Washington Bike Lanes and Bike Racks
§ 52.2496 Washington Maintenance of National Standards

B. Portions of Parts 60, 65, 85, and 86

40 CFR Part 60, Subpart D, § 60.47. Subpart D of part 60, promulgated on July 1, 1979, establishes new source performance standards for fossil-fuel-fired steam generators for which construction is commenced after August 17, 1971, pursuant to Section 111 of the CAA. CAA Section 111(j) gives the Administrator the discretion to issue one or more waivers from the requirements of Section 111 upon the request of any person proposing to own or operate a new source using an innovative technological system or systems of continuous emission reduction. Section 60.47 establishes such a waiver for sulfur dioxide emissions from Unit No. 3 at the Homer City Steam Electric Generating Station Center Township in Indiana County, Pennsylvania. Sections 60.47 (b) and (c) expressly state that the waiver expires on November 30, 1981, and that commencing December 1, 1981, and continuing thereafter, the emissions limitations provided in § 60.43(a)(2) apply. Accordingly, since the waiver has expired, EPA is removing § 60.47, including References and Appendix I, from the CFR.

40 CFR Part 60, Subpart BB, § 60.286. Subpart BB of part 60, promulgated on February 23, 1978, and amended on May 20, 1986, establishes new source performance standards for Kraft Pulp Mills pursuant to Section 111 of the CAA. CAA Section 111(j) gives the Administrator the discretion to issue one or more waivers from the requirements of Section 111 upon the request of any person proposing to own or operate a new source using an innovative technological system or systems of continuous emission reduction. Section 60.286 establishes such a waiver for the No. 10 batch digester at Owens-Illinois Incorporated's Valdosta kraft pulp mill in Clyattville, Georgia. Section 60.286(a)(2) expressly states that the waiver expires on or before December 31, 1987. Since the waiver has expired by its own terms, EPA is removing § 60.286 from the CFR.

40 CFR Part 60, Subpart AAA, §§ 60.530(c), 60.530(d), 60.532(a), 60.533(e)(2), 60.533(h), 60.533(j)(1)(i), 60.533(p)(4)(ii)(B), 60.535(a)(2), 60.535(c), 60.537(e), 60.537(b)(2), 60.539a(b)(1). Subpart AAA of part 60 establishes standards of performance for new residential wood heaters pursuant to Section 111 of the CAA. The standards were promulgated on February 26, 1988, and amended on April 12, 1988, April 26, 1988, and February 13, 1992. Section 60.532(b) establishes emission limitations for particulate matter for each wood heater manufactured on or after July 1, 1990, or sold at retail on or after July 1, 1992. Certain provisions of subpart AAA which establish duties, emission limitations, or waivers for the period preceding July 1, 1992, are superseded by § 60.532(b) and are therefore being removed from the CFR. These provisions are:

Section 60.530(c), which exempts certain wood heaters manufactured before July 1, 1990, and sold at retail before July 1, 1992;

Section 60.530(d), which exempts certain wood heaters manufactured between July 1, 1988 and June 30, 1989, and sold at retail before July 1, 1991;

Section 60.532(a), which establishes particulate matter emission limitations for wood heaters manufactured on or after July 1, 1988, or sold at retail on or after July 1, 1990;

Section 60.533(e)(2), which establishes an option for a wood heater application determination for a period ending June 30, 1988;

Section 60.533(h), which specifies the Administrator's duties between the period April 1, 1987 through July 1, 1990 with respect to determining whether an undue certification delay exists;

Section 60.533(j)(1)(i), which states that a certificate of compliance for a model meeting the emissions limitations in § 60.532(a) expires on June 30, 1990;

Section 60.533(p)(4)(ii)(B), which requires the Administrator to publish a decision by July 1, 1990 for each test method and procedure set out in § 60.534(a);

Section 60.535(a)(2), which establishes an option for a laboratory to be certified for a period ending on June 30, 1988;

Section 60.535(c), which applies to laboratories accredited by the State of Oregon prior to 1988 and such accreditations expired in 1993 or earlier;

Section 60.537(b)(2), which requires accredited laboratories to issue certain reports to the Administrator between April 1, 1987 and July 1, 1990;

Section 60.537(e), which establishes the procedures for a manufacturer seeking an exemption under § 60.530(d), which is obsolete (see above); and

Section 60.539a(b)(1), which no longer is applicable because it applies to wood heaters exempted under § 60.530(c), which is obsolete (see above).

40 CFR Part 65. EPA promulgated part 65's regulations on delayed compliance orders in 1978 pursuant to Section 113(d) of the CAA. Section 113(d) authorized the Administrator to issue delayed compliance orders permitting a delay in compliance with applicable regulations contained in a SIP. The 1990 amendments to the CAA amended Section 113(d) and repealed the authority to issue delayed compliance orders. Furthermore, all of the delayed compliance orders listed in part 65 have expired. Accordingly, EPA is removing part 65 from the CFR.

40 CFR Part 85, Subpart E. Prior to 1990, Section 202(b)(7) of the CAA established a research objective to reduce emissions of oxides of nitrogen from light-duty motor vehicles. In 1980, EPA promulgated subpart E of part 85 establishing a research program to implement Section 202(b)(7)'s objective. The 1990 amendments to the CAA repealed Section 202(b)(7), making subpart E obsolete. Accordingly, EPA is now removing subpart E from the CFR.

40 CFR §§ 86.1104–87 and 86.1104–90. Subpart L of 40 CFR part 86 sets forth nonconformance penalties for gasoline-fueled and diesel heavy-duty engines (HDEs) and heavy-duty vehicles (HDVs), including certain light-duty trucks. Section 206(g) of the CAA requires EPA to issue a certificate of conformity for HDEs or HDVs that exceed an applicable emissions standard, but do not exceed an upper limit associated with that standard, if the manufacturer pays a nonconformance penalty (NCP) established by rulemaking.

Over time EPA has promulgated three regulatory sections which set forth the upper emission limit for which an NCP can be established. Each time EPA promulgated one of these regulatory sections, the promulgation of the new section effectively limited the applicability of the existing section. When EPA first passed § 86.1104–87, this section established the upper limit for model year (MY) 1987 and all subsequent model years. But when EPA promulgated § 86.1104–90 for MY1990 and later models, the new section's promulgation limited § 86.1104–87's applicability to MY1987 through MY1989. Similarly, when EPA promulgated § 86.1104–91 for MY1991 and subsequent model years this promulgation had the effect of limiting § 86.1104–90's applicability to MY1990 only.

Because both § 86.1104–87 and § 86.1104–90 are time limited to model years that have passed, they have no legal effect for current or future model years. EPA is therefore removing §§ 86.1104–87 and 86.1104–90 from the CFR.

40 CFR §§ 86.1105–87(b) and 86.1105–87(c)(1). Section 86.1105–87 designates those emission standards for HDEs and HDVs for which the payment of a NCP is an option in the event an HDE or HDV exceeds the applicable emission standard. Some of these NCP provisions are now obsolete because the emission standards to which they relate are no longer in effect for current or future model years. Section 86.1105–87(b), which makes NCPs available for diesel HDEs that exceed an oxides of nitrogen (NO_X) emission standard of 6.0 grams per brake horsepower-hour (g/bhp-hr) beginning in MY1990 or a particulate (PM) emission standard of 0.60 g/bhp-hr beginning in MY1988, is obsolete because these emissions standards no longer apply to current or future model years. Beginning with MY1991 diesel HDEs, the NO_X emission standard changed to 5.0 g/bhp-hr, while the PM standard changed to 0.25 g/bhp-hr. See 40 CFR 86.091–11(a)(1)(iii)–(iv). Similarly, § 86.1105–87(c)(1), which allows NCPs for petroleum-fueled diesel HDEs MY1991 or later that exceed 0.25 PM g/bhp-hr, is now obsolete because the PM standard for MY1994 and later model year diesel HDEs is 0.07 or 0.10 g/bhp-hr, depending on whether the engine is used in an urban bus. See 40 CFR 86.094–11(a)(1)(iv). Accordingly, EPA is removing paragraphs (b) and (c)(1) of § 86.1105–87 from the CFR.

III. Good Cause Exemption from Notice-and-Comment Rulemaking Procedures

The CAA and Administrative Procedure Act generally require EPA to provide prior notice and opportunity for public comment before issuing a final rule. 42 U.S.C. 7607(d), 5 U.S.C. 553(b),(c). Rules are exempt from this requirement if EPA finds for good cause that notice and comment are unnecessary. 42 U.S.C. 7607(d)(1), 5 U.S.C. 553(b)(3)(B).

EPA has determined that providing prior notice and opportunity for comment on the deletion of these rules from the CFR is unnecessary. For the reasons discussed in Sections I and II, these rules are no longer legally in effect; thus, withdrawing them from the CFR has no legal impact and merely codifies the current legal status of the rules.

For the same reasons, EPA believes there is good cause for making the removal of these rules from the CFR immediately effective. See 5 U.S.C. 553(d).

IV. Analyses under E.O. 12866, the Unfunded Mandates Reform Act of 1995, the Regulatory Flexibility Act and the Paperwork Reduction Act

Because the withdrawal of these rules from the CFR merely reflects their current legal status and thus has no regulatory impact, this action is not a "significant" regulatory action within the meaning of E.O. 12866, and does not impose any Federal mandate on State, local or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995. For the same reasons, pursuant to the Regulatory Flexibility Act, I certify that this action would not have a significant economic impact on a substantial number of small entities. Finally, because these rules are no longer legally in effect, their deletion from the CFR does not affect requirements under the Paperwork Reduction Act.

List of Subjects

40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Ammonium sulfate plants, Batteries, Beverages, Carbon monoxide, Cement industry, Coal, Copper, Dry cleaners, Electric power plants, Fertilizers, Fluoride, Gasoline, Glass and glass products, Grains, Graphic arts industry, Heaters, Household appliances, Insulation, Intergovernmental relations, Iron, Labeling, Lead, Lime, Metallic and nonmetallic mineral processing plants, Metals, Motor vehicles, Natural gas, Nitric acid plants, Nitrogen dioxide, Paper and paper products industry, Particulate matter, Paving and roofing materials, Petroleum, Phosphate, Plastics materials and synthetics, Polymers, Reporting and recordkeeping requirements, Sewage disposal, Steel, Sulfur oxides, Sulfuric acid plants, Tires, Urethane, Vinyl, Volatile organic compounds, Waste treatment and disposal, Zinc.

40 CFR Part 65

Environmental protection, Air pollution control.

40 CFR Part 85

Environmental protection, Confidential business information, Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Warranties.

40 CFR Part 86

Environmental protection, Administrative practice and procedure, Confidential business information, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: June 8, 1995.

Mary D. Nichols

Administrator

For the reasons set out in the preamble, and under the authority of 42 U.S.C. 7401–7671q, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 51—[AMENDED]

1. The authority citation for Part 51 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

§ 51.105 [Amended]

2. Section 51.105 is amended by removing the first sentence of the paragraph.

§ 51.111 [Amended]

3. In § 51.111, paragraphs (a), (b) and (c) are removed, and paragraph (d) is redesignated as paragraph (a).

§ 51.113 [Amended]

4. Section 51.113 is removed.

§ 51.213 [Amended]

5. In § 51.213, paragraph (b) is removed, and paragraphs (c) and (d) are redesignated as paragraphs (b) and (c), respectively.

§ 51.241 [Amended]

6. In § 51.241, paragraph (a) is amended by removing the last two sentences of the paragraph.

§ 51.340 [Amended]

7. Section 51.340 is removed.

Subpart D to Part 51 [Removed and reserved]

8. Part 51, Subpart D is removed and reserved.

Appendix U to Part 51 [Removed]

9. Appendix U to Part 51 is removed.

PART 52—[AMENDED]

10. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

§ 52.06 [Amended]

11. In § 52.06, paragraph (c) is removed.

§ 52.22 [Removed]

12. Section 52.22 is removed.

§ 52.25 [Removed]

13. Section 52.25 is removed.

§ 52.52 [Removed]

14. Section 52.52 is removed.

§ 52.54 [Removed]

15. Section 52.54 is removed.

§ 52.59 [Removed]

16. Section 52.59 is removed.

§ 52.78 [Removed]

17. Section 52.78 is removed.

§ 52.81 [Removed and reserved]

18. Section 52.81 is removed and reserved.

§ 52.82 [Removed and reserved]

19. Section 52.82 is removed and reserved.

§ 52.122 [Removed and reserved]

20. Section 52.122 is removed and reserved.

§ 52.129 [Amended]

21. In § 52.129, paragraphs (e) and (f) are removed, and paragraph (g) is redesignated as paragraph (e).

§ 52.131 [Removed and reserved]

22. Section 52.131 is removed and reserved.

§ 52.143 [Removed and reserved]

23. Section 52.143 is removed and reserved.

§ 52.173 [Removed and reserved]

24. Section 52.173 is removed and reserved.

§ 52.176 [Removed and reserved]

25. Section 52.176 is removed and reserved.

§ 52.182 [Removed]

26. Section 52.182 is removed.

§ 52.222 [Removed and reserved]

27. Section 52.222 is removed and reserved.

§ 52.238 [Removed and reserved]

28. Section 52.238 is removed and reserved.

§ 52.267 [Removed and reserved]

29. Section 52.267 is removed and reserved.

§ 52.322 [Removed and reserved]

30. Section 52.322 is removed and reserved.

§ 52.325 [Removed and reserved]

31. Section 52.325 is removed and reserved.

§ 52.341 [Removed and reserved]

32. Section 52.341 is removed and reserved.

§ 52.372 [Removed and reserved]

33. Section 52.372 is removed and reserved.

§ 52.379 [Removed and reserved]

34. Section 52.379 is removed and reserved.

§ 52.426 [Removed and reserved]

35. Section 52.426 is removed and reserved.

§ 52.427 [Removed and reserved]

36. Section 52.427 is removed and reserved.

§ 52.428 [Removed and reserved]

37. Section 52.428 is removed and reserved.

§ 52.431 [Removed and reserved]

38. Section 52.431 is removed and reserved.

§ 52.473 [Removed and reserved]

39. Section 52.473 is removed and reserved.

§ 52.481 [Removed and reserved]

40. Section 52.481 is removed and reserved.

§ 52.497 [Removed and reserved]

41. Section 52.497 is removed and reserved.

§ 52.523 [Removed and reserved]

42. Section 52.523 is removed and reserved.

§ 52.529 [Removed and reserved]

43. Section 52.529 is removed and reserved.

§ 52.574 [Removed and reserved]

44. Section 52.574 is removed and reserved.

§ 52.575 [Removed and reserved]

45. Section 52.575 is removed and reserved.

§ 52.577 [Removed and reserved]

46. Section 52.577 is removed and reserved.

§ 52.580 [Removed and reserved]

47. Section 52.580 is removed and reserved.

§ 52.622 [Removed and reserved]

48. Section 52.622 is removed and reserved.

§ 52.628 [Removed and reserved]

49. Section 52.628 is removed and reserved.

§ 52.629 [Removed and reserved]

50. Section 52.629 is removed and reserved.

§ 52.631 [Removed and reserved]

51. Section 52.631 is removed and reserved.

§ 52.672 [Removed and reserved]

52. Section 52.672 is removed and reserved.

§ 52.677 [Removed and reserved]

53. Section 52.677 is removed and reserved.

§ 52.682 [Removed and reserved]

54. Section 52.682 is removed and reserved.

§ 52.688 [Removed and reserved]

55. Section 52.688 is removed and reserved.

§ 52.689 [Removed and reserved]

56. Section 52.689 is removed and reserved.

§ 52.723 [Removed and reserved]

57. Section 52.723 is removed and reserved.

§ 52.735 [Removed and reserved]

58. Section 52.735 is removed and reserved.

§ 52.772 [Removed and reserved]

59. Section 52.772 is removed and reserved.

§ 52.783 [Removed and reserved]

60. Section 52.783 is removed and reserved.

§ 52.792 [Removed and reserved]

61. Section 52.792 is removed and reserved.

§ 52.824 [Removed and reserved]

62. Section 52.824 is removed and reserved.

§ 52.827 [Removed and reserved]

63. Section 52.827 is removed and reserved.

§ 52.832 [Removed and reserved]

64. Section 52.832 is removed and reserved.

§ 52.878 [Removed and reserved]

65. Section 52.878 is removed and reserved.

§ 52.880 [Removed and reserved]

66. Section 52.880 is removed and reserved.

§ 52.883 [Removed and reserved]

67. Section 52.883 is removed and reserved

§ 52.922 [Removed and reserved]

68. Section 52.922 is removed and reserved.

§ 52.929 [Removed and reserved]

69. Section 52.929 is removed and reserved.

§ 52.979 [Removed and reserved]

70. Section 52.979 is removed and reserved

§ 52.980 [Removed and reserved]

71. Section 52.980 is removed and reserved.

§ 52.1028 [Removed and reserved]

72. Section 52.1028 is removed and reserved.

§ 52.1072 [Removed and reserved]

73. Section 52.1072 is removed and reserved.

§ 52.1078 [Removed and reserved]

74. Section 52.1078 is removed and reserved.

§ 52.1115 [Removed and reserved]

75. Section 52.1115 is removed and reserved.

§ 52.1122 [Removed and reserved]

76. Section 52.1122 is removed and reserved.

§ 52.1124 [Amended]

77. In § 52.1124, paragraphs (a) and (b) are removed, and paragraph (c) is redesignated as paragraph (a).

§ 52.1177 [Removed and reserved]

78. Section 52.1177 is removed and reserved.

§ 52.1178 [Removed and reserved]

79. Section 52.1178 is removed and reserved.

§ 52.1226 [Removed and reserved]

80. Section 52.1226 is removed and reserved.

§ 52.1229 [Removed and reserved]

81. Section 52.1229 is removed and reserved.

§ 52.1235 [Removed and reserved]

82. Section 52.1235 is removed and reserved.

§ 52.1273 [Removed and reserved]

83. Section 52.1273 is removed and reserved.

§ 52.1276 [Removed and reserved]

84. Section 52.1276 is removed and reserved.

§ 52.1279 [Removed and reserved]

85. Section 52.1279 is removed and reserved.

§ 52.1328 [Removed and reserved]

86. Section 52.1328 is removed and reserved.

§ 52.1331 [Removed and reserved]

87. Section 52.1331 is removed and reserved.

§ 52.1332 [Removed and reserved]

88. Section 52.1332 is removed and reserved.

§ 52.1338 [Removed and reserved]

89. Section 52.1338 is removed and reserved.

§ 52.1381 [Removed and reserved]

90. Section 52.1381 is removed and reserved.

§ 52.1426 [Removed and reserved]

91. Section 52.1426 is removed and reserved.

§ 52.1431 [Removed and reserved]

92. Section 52.1431 is removed and reserved.

§ 52.1435 [Removed and reserved]

93. Section 52.1435 is removed and reserved.

§ 52.1480 [Removed and reserved]

94. Section 52.1480 is removed and reserved.

§ 52.1481 [Removed and reserved]

95. Section 52.1481 is removed and reserved.

§ 52.1528 [Removed and reserved]

96. Section 52.1528 is removed and reserved.

§ 52.1572 [Removed and reserved]

97. Section 52.1572 is removed and reserved.

§ 52.1578 [Amended]

98. In § 52.1578, paragraphs (a) and (b) are removed, and paragraph (c) is redesignated as paragraph (a).

§ 52.1580 [Removed and reserved]

99. Section 52.1580 is removed and reserved.

§ 52.1602 [Removed and reserved]

100. Section 52.1602 is removed and reserved.

§ 52.1626 [Removed and reserved]

101. Section 52.1626 is removed and reserved.

§ 52.1630 [Removed and reserved]

102. Section 52.1630 is removed and reserved.

§ 52.1631 [Removed and reserved]

103. Section 52.1631 is removed and reserved.

§ 52.1672 [Removed and reserved]

104. Section 52.1672 is removed and reserved.

§ 52.1675 [Amended]

105. In § 52.1675, paragraph (f) is removed and paragraphs (g) and (h) are redesignated as paragraphs (f) and (g), respectively.

§ 52.1682 [Removed and reserved]

106. Section 52.1682 is removed and reserved.

§ 52.1688 [Removed and reserved]

107. Section 52.1688 is removed and reserved.

§ 52.1773 [Removed and reserved]

108. Section 52.1773 is removed and reserved.

§ 52.1776 [Removed and reserved]

109. Section 52.1776 is removed and reserved.

§ 52.1777 [Removed and reserved]

110. Section 52.1777 is removed and reserved.

§ 52.1823 [Removed and reserved]

111. Section 52.1823 is removed and reserved.

§ 52.1827 [Removed and reserved]

112. Section 52.1827 is removed and reserved.

§ 52.1872 [Removed and reserved]

113–114. Section 52.1872 is removed and reserved.

§ 52.1881 [Amended]

115. In § 52.1881:

a. Paragraphs (b)(12) through (16) are removed and paragraph (b)(17) is redesignated as paragraph (b)(12).

b. Paragraph (b)(18) is removed and paragraph (b)(19) is redesignated as paragraph (b)(13).

c. Paragraph (b)(20) is removed and paragraph (b)(21) is redesignated as paragraph (b)(14).

d. Paragraph (b)(22) is removed and paragraph (b)(23) is redesignated as paragraph (b)(15).

e. Paragraphs (b)(24), (25) and (26) are removed and paragraphs (b)(27) and (28) are redesignated as paragraphs (b)(16) and (17), respectively.

f. Paragraphs (b)(29), (30), (31), (32), (33) and (34) are removed and paragraph (b)(35) is redesignated as paragraph (b)(18).

g. Paragraph (b)(36) is redesignated as paragraph (b)(19), newly redesignated paragraphs (b)(19)(i) through (iv) are removed, and newly redesignated paragraph (b)(19)(v) is further redesignated as paragraph (b)(19)(i).

h. A new paragraph (b)(19)(ii) is added and reserved.

i. Paragraph (b)(37) is removed and paragraphs (b)(38), (39) and (40) are redesignated as paragraphs (b)(20), (21), and (22) respectively.

j. Paragraphs (b)(41), (42), (43), (44), and (45) are removed.

k. Paragraph (b)(46) is redesignated as paragraph (b)(23) and newly redesignated paragraphs (b)(23)(ii) through (vii) are removed.

l. A new paragraph (b)(23)(ii) is added and reserved.

m. Paragraphs (b)(47), (48), (49), (50) and (51) are removed and paragraph (b)(52) is redesignated as paragraph (b)(24).

n. Paragraph (b)(53) is removed and paragraph (b)(54) is redesignated as paragraph (b)(25).

o. Paragraph (b)(55) is redesignated as paragraph (b)(26), newly designated paragraphs (b)(26)(i) through (iii) and (v) are removed, and newly redesignated paragraph (b)(26)(iv) is further redesignated as paragraph (b)(26)(i). A new paragraph (b)(26)(ii) is added and reserved.

p. Paragraphs (b)(56) and (57) are removed and paragraphs (b)(58) and (59) are redesignated as paragraphs (b)(27) and (28), respectively.

q. Paragraphs (b)(60), (61), and (62) are removed.

r. Paragraph (b)(63) is redesignated as paragraph (b)(29), newly redesignated paragraphs (b)(29)(i) and (ii) are removed, and newly redesignated paragraph (b)(29)(iii) is further redesignated as paragraph (b)(29)(i). A new paragraph (b)(29)(ii) is added and reserved.

s. Paragraph (b)(64) is removed and paragraph (b)(65) is redesignated as paragraph (b)(30).

§ 52.1883 [Removed and reserved]

116. Section 52.1883 is removed and reserved.

§ 52.1925 [Removed and reserved]

117. Section 52.1925 is removed and reserved.

§ 52.1926 [Removed and reserved]

118. Section 52.1926 is removed and reserved.

§ 52.1927 [Removed and reserved]

119. Section 52.1927 is removed and reserved.

§ 52.1974 [Removed and reserved]

120. Section 52.1974 is removed and reserved.

§ 52.1975 [Removed and reserved]

121. Section 52.1975 is removed and reserved.

§ 52.1976 [Removed and reserved]

122. Section 52.1976 is removed and reserved.

§ 52.1986 [Removed and reserved]

123. Section 52.1986 is removed and reserved.

§ 52.2055 [Amended]

124. In § 52.2055, paragraph (c) is removed.

§ 52.2056 [Removed and reserved]

125. Section 52.2056 is removed and reserved.

§ 52.2082 [Removed and reserved]

126. Section 52.2082 is removed and reserved.

§ 52.2125 [Removed and reserved]

127. Section 52.2125 is removed and reserved.

§ 52.2127 [Removed and reserved]

128. Section 52.2127 is removed and reserved.

§ 52.2128 [Removed and reserved]

129. Section 52.2128 is removed and reserved.

§ 52.2129 [Removed and reserved]

130. Section 52.2129 is removed and reserved.

§ 52.2174 [Removed and reserved]

131. Section 52.2174 is removed and reserved.

§ 52.2176 [Removed and reserved]

132. Section 52.2176 is removed and reserved.

§ 52.2228 [Amended]

133. In § 52.2228, paragraphs (a) and (b) are removed, and paragraphs (c), (d), (e) and (f) are redesignated as paragraphs (a), (b), (c) and (d) respectively.

§ 52.2232 [Removed]

134. Section 52.2232 is removed.

§ 52.2272 [Removed and reserved]

135. Section 52.2272 is removed and reserved.

§ 52.2275 [Amended]

136. In § 52.2275, paragraph (d) is removed and reserved.

§ 52.2279 [Removed and reserved]

137. Section 52.2279 is removed and reserved.

§ 52.2302 [Removed and reserved]

138. Section 52.2302 is removed and reserved.

§ 52.2345 [Removed and reserved]

139. Section 52.2345 is removed and reserved.

§ 52.2379 [Removed and reserved]

140. Section 52.2379 is removed and reserved.

§ 52.2422 [Removed and reserved]

141. Section 52.2422 is removed and reserved.

§ 52.2424 [Removed and reserved]

142. Section 52.2424 is removed and reserved.

§ 52.2428 [Removed and reserved]

143. Section 52.2428 is removed and reserved.

§ 52.2429 [Removed and reserved]

144. Section 52.2429 is removed and reserved.

§ 52.2448 [Removed and reserved]

145. Section 52.2448 is removed and reserved.

§ 52.2449 [Removed and reserved]

146. Section 52.2449 is removed and reserved.

§ 52.2472 [Removed and reserved]

147. Section 52.2472 is removed and reserved.

§ 52.2475 [Removed and reserved]

148. Section 52.2475 is removed and reserved.

§ 52.2477 [Removed and reserved]

149. Section 52.2477 is removed and reserved.

§ 52.2478 [Removed and reserved]

150. Section 52.2478 is removed and reserved.

§ 52.2481 [Removed and reserved]

151. Section 52.2481 is removed and reserved.

§ 52.2485 [Removed and reserved]

152. Section 52.2485 is removed and reserved.

§ 52.2486 [Removed and reserved]

153. Section 52.2486 is removed and reserved.

§ 52.2489 [Removed and reserved]

154. Section 52.2489 is removed and reserved.

§ 52.2490 [Removed and reserved]

155. Section 52.2490 is removed and reserved.

§ 52.2491 [Removed and reserved]

156. Section 52.2491 is removed and reserved.

§ 52.2492 [Removed and reserved]

157. Section 52.2492 is removed and reserved.

§ 52.2493 [Removed and reserved]

158. Section 52.2493 is removed and reserved.

§ 52.2494 [Removed and reserved]

159. Section 52.2494 is removed and reserved.

§ 52.2496 [Removed and reserved]

160. Section 52.2496 is removed and reserved.

§ 52.2522 [Amended]

161. In § 52.2522, paragraphs (a) and (d) are removed, and paragraphs (b) and (c) are redesignated as paragraphs (a) and (b), respectively; and paragraphs (e) and (f) are redesignated as paragraphs (c) and (d) respectively.

§ 52.2526 [Removed and reserved]

162. Section 52.2526 is removed and reserved.

§ 52.2531 [Removed and reserved]

163. Section 52.2531 is removed and reserved.

§ 52.2532 [Removed and reserved]

164. Section 52.2532 is removed and reserved.

§ 52.2579 [Removed and reserved]

165. Section 52.2579 is removed and reserved.

§ 52.2580 [Removed and reserved]

166. Section 52.2580 is removed and reserved.

§ 52.2582 [Removed and reserved]

167. Section 52.2582 is removed and reserved.

§ 52.2627 [Removed and reserved]

168. Section 52.2627 is removed and reserved.

§ 52.2631 [Removed and reserved]

169. Section 52.2631 is removed and reserved.

§ 52.2673 [Removed and reserved]

170. Section 52.2673 is removed and reserved.

§ 52.2674 [Removed and reserved]

171. Section 52.2674 is removed and reserved.

§ 52.2723 [Removed and reserved]

172. Section 52.2723 is removed and reserved.

§ 52.2724 [Removed and reserved]

173. Section 52.2724 is removed and reserved.

§ 52.2728 [Removed and reserved]

174. Section 52.2728 is removed and reserved.

§ 52.2730 [Removed and reserved]

175. Section 52.2730 is removed and reserved.

§ 52.2776 [Removed and reserved]

176. Section 52.2776 is removed and reserved.

§ 52.2778 [Removed and reserved]

177. Section 52.2778 is removed and reserved.

§ 52.2823 [Removed and reserved]

178. Section 52.2823 is removed and reserved.

§ 52.2826 [Removed and reserved]

179. Section 52.2826 is removed and reserved.

Appendix A part 52 [Removed]

180. Appendix A to part 52 is removed.

PART 60—[AMENDED]

181. The authority citation for Part 60 continues to read as follows:

Authority: 42 U.S.C. 7401–7601.

§ 60.47 [Removed]

182. Section 60.47 (including References and Appendix I) is removed.

§ 60.286 [Removed]

183. Section 60.286 is removed.

§ 60.530 [Amended]

184. In § 60.530, paragraphs (c) and (d) are removed and reserved.

§ 60.532 [Amended]

185. In § 60.532, paragraph (a) is removed and reserved.

§ 60.533 [Amended]

186. In § 60.533, paragraphs (e)(2), (h), (j)(1)(i), and (p)(4)(ii)(B) are removed and reserved.

§ 60.535 [Amended]

187. In § 60.535, paragraphs (a)(2) and (c) are removed and reserved.

§ 60.537 [Amended]

188. In § 60.537, paragraphs (b)(2) and (e) are removed and reserved.

§ 60.539a [Amended]

189. In § 60.539a, paragraph (b)(1) is removed and reserved.

PART 65—[REMOVED]

190. Part 65 is removed.

PART 85—[AMENDED]

191. The authority citation for Part 85 continues to read as follows:

Authority: Sections 203, 205, 207, 208 and 301(a) of the Clean Air Act as amended, 42 U.S.C. 7522, 7524, 7541, 7542, and 7601(a).

Subpart E [Removed and reserved]

192. Part 85, Subpart E is removed and reserved.

PART 86—[AMENDED]

193. The authority citation for Part 86 continues to read as follows:

Authority: Secs. 202, 203, 205, 206, 207, 208, 215, 216, 217, and 301(a), Clean Air Act, as amended (42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, 7552, and 7601(a)).

§ 86.1104–87 [Removed]

194. Section 86.1104–87 is removed.

§ 86.1104–90 [Removed]

195. Section 86.1104–90 is removed.

§ 86.1105–87 [Amended]

196. In § 86.1105–87, paragraphs (b) and (c)(1) are removed and reserved.

[FR Doc. 95–15029 Filed 6–28–95; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Parts 35, 122, 123, 124, 125, 140, 141, 144, 146, 148, 403, 405, 406, 407, 408, 409, 411, 412, 417, 418, 424, 426, 427, 428, 432, 435, 436, 443, 446, 447, 454, 455, 457, 458, 460

[FRL–5223–9]

National Pollutant Discharge Elimination System and Pretreatment Programs; State and Local Assistance Programs; Effluent Limitations Guidelines and Standards; Public Water Supply and Underground Injection Control Programs: Removal of Legally Obsolete or Redundant Rules

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is today removing from the Code of Federal Regulations (CFR) a number of regulations pertaining to its water programs that are obsolete or redundant. Deleting the obsolete regulations from the CFR will clarify the legal status of these regulations for both the regulated community and the public. EPA is also deleting from the CFR the maximum contaminant level goal ("MCLG") and maximum contaminant level ("MCL") for nickel, which have been vacated by a court. In addition, EPA is making one correction due to a typographical error.

EFFECTIVE DATE: This final rule takes effect on June 29, 1995.

FOR FURTHER INFORMATION CONTACT: Cynthia Puskar, Policy and Resources Management Office (4102), U.S. Environmental Protection Agency, 401 M St. SW, Washington, D.C. 20460, (202) 260–8532.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 4, 1995 the President directed all Federal agencies and departments to conduct a comprehensive review of the regulations they administer and, by June 1, 1995 to identify those rules that are obsolete or unduly burdensome. EPA has conducted a review of all of its rules, including rules issued under the Federal Water Pollution Control Act, as amended ("FWPCA") (33 U.S.C. 1158 and 1251 et seq.) (also cited below as the Clean Water Act or "CWA"), the Safe Drinking Water Act ("SDWA") (42 U.S.C. 300f et seq.), and the Marine Protection, Research, and Sanctuaries Act (also known as the Ocean Dumping Act or "ODA") (33 U.S.C. 1401 et seq.). Based on this review, EPA is today deleting a number of FWPCA and SDWA rules from the Code of Federal Regulations, as set forth below. These rules are being deleted either because they are obsolete or because they are redundant with other statutory or regulatory provisions. The rules deemed to be obsolete have expired by their own terms or by the terms of the statute or have been made obsolete by the completion of the grant projects to which they applied. In the case of the maximum contaminant level goal ("MCLG") and maximum contaminant level ("MCL") for nickel, EPA is removing those regulations from the CFR because they have been vacated (i.e., declared void and of no effect) by a court. Today's action does not make any legally substantive changes to the regulatory programs at issue.

Today's removal of rules from the CFR is not intended to affect the status of any civil or criminal actions that were initiated prior to June 29, 1995 or which may be initiated in the future to redress violations of the rules that occurred prior to today's action.

In addition to the regulations addressed in today's action, EPA's Office of Water has identified a number of other regulatory provisions that may provide opportunities for further streamlining beyond the deletion of obsolete and redundant regulations being accomplished today. The Agency intends to address those matters in future actions.

II. Obsolete Rules

A. Federal Water Pollution Control Act Rules

40 CFR Part 35, Subpart C—Grants for Construction of Wastewater Treatment Works. EPA is deleting Part 35, Subpart C, which comprises regulations promulgated under Section 8 of the Federal Water Pollution Control Act, as amended. Section 8 authorized EPA to award grants to municipalities for the construction of treatment works to prevent the discharge of untreated or inadequately treated sewage or other waste into any waters. Subpart C was made obsolete by passage of the CWA and its implementing regulations at 40 CFR Part 35, Subparts E, I and J, as well as completion of most of the projects funded by Subpart C grants, which date to the period prior to the passage of the CWA in 1972. Any remaining active grants will continue to be governed by the Subpart C regulations applicable at the time the grant was awarded.

40 CFR Part 35, Subpart D—Reimbursement Grants. EPA is deleting Part 35, Subpart D, which comprises regulations promulgated under Section 206 of the CWA, as amended. Section 206 authorized EPA to award grants to municipalities for reimbursement of state or local funds used for public sewage treatment works projects on which construction was initiated after June 30, 1956, but before July 1, 1973, and for which a grant was awarded under Section 8 of Public Law 84–660. Subpart D was made obsolete by completion of reimbursements to the eligible projects. In the unlikely event of a question regarding a section 206 reimbursement project, the Subpart D regulations in effect when the grant was awarded should be consulted.

Section 122.1(g). This provision simply recites portions of the Clean Water Act that give EPA authority over NPDES-related matters. This language is superfluous and is therefore deleted by today's rulemaking.

Sections 122.21(m)(3) and (n)(2) and 40 CFR Part 125 Subpart J—Extensions of Deadlines for Meeting Treatment Requirements. CWA sections 301(i)(1) and (2) allowed parties to seek extensions through permit issuance or modification of the statutory deadlines for meeting certain treatment requirements. EPA implemented these provisions in sections 122.21(n)(2) and (m)(3) of the regulations. Section 122.21(n)(2) allowed publicly owned treatment works ("POTWs") that were experiencing delays in construction to seek extensions of the compliance deadlines. Section 122.21(n)(2) set a deadline of August 3, 1987 for POTWs to apply for an extension. Section 122.21(m)(3) allowed point source dischargers to seek their own extensions of treatment requirement deadlines in the event the POTW into which the source was to discharge was experiencing delays in construction. Section 122.21(m)(3) set a deadline of January 30, 1988 for point source dischargers to apply for these extensions. Because both of these dates have passed, these two regulatory provisions are obsolete and are deleted by today's rule.

In addition, 40 CFR Part 125 Subpart J (consisting of sections 125.90 through 125.97) sets forth the criteria for issuing these CWA section 301(i) extensions of time to POTWs and point source dischargers. Because these extensions are no longer available, this provision too is obsolete and is deleted by today's rule.

Section 122.21(m)(4) and Part 125, Subpart C—Variances For Innovative Technology. EPA is deleting Part 125, Subpart C, which comprises regulations promulgated under section 301(k) of the 1977 amendments to the Clean Water Act. Section 301(k) allowed EPA to grant compliance extensions to any industrial facility subject to a NPDES permit if the facility installed innovative technology. The last date to which compliance could be extended under section 301(k) was March 31, 1991. The regulations were challenged in court (*NRDC* v. *EPA*, No. 84–1500 (D.C. Cir.)). In light of the expiration of the statutory extension period, the court dismissed the case and ordered EPA to vacate the regulations. (See court order dated June 2, 1994.) Section 122.21(m)(4), which is also being removed, is a corresponding provision setting the time for applications to be submitted for section 301(k) variances.

Section 122.46(d)—Duration of Permits. The citation in section 122.46(d) to July 1, 1984 as a statutory compliance deadline is no longer accurate, having been revised by the 1987 Water Quality Act. This date is being deleted from section 122.46(d), since no reference to a specific date is necessary in that provision.

Sections 122.62(a)(14), 122.62(a)(17), and 122.63(f)—Causes for Permit Modification. Section 122.62(a)(14) lists as a cause for permit modification the need to conform to changes to sections 122.41(c) and (d) that EPA made pursuant to a judicial settlement agreement dated November 16, 1981 in connection with *NRDC* v. *EPA*, No. 80–1607. Section 122.62(a)(17) lists as a cause for permit modification the need to conform to certain other regulatory changes that EPA made in connection with that settlement agreement. Section 122.62(a)(17) also sets a deadline of January 24, 1985 for the permittee to apply for the modification. Also, section 122.63(f) allows minor permit modifications to be made without the formal Part 124 proceedings in order to conform the permit to certain regulatory changes that were issued on September 26, 1984.

In each of these three cases, over five years have passed since the relevant regulatory changes that would be the basis for a permit modification. Thus, all permits that would have needed a modification to incorporate these regulatory changes have expired, and all newer permits are already subject to these revised regulatory conditions and so need no modification. (Although some of those expired permits may not have been reissued but may currently be under administrative extension, EPA does not modify such permits; see sections 122.6 and 122.46(b)). Moreover, the deadline in section 122.62(a)(17) in particular to apply for permit modifications under that provision expired in 1985. Accordingly, these three provisions are obsolete and are deleted today.

Sections 123.43(b) and 124.58—Copies of Draft Permits. Section 123.43(b) is a requirement for State agencies that administer NPDES permit programs to transmit a second copy of draft general or proposed permits to personnel at EPA Headquarters (under section 123.43(a)(2), the State must provide the first copy to the Regional Administrator). Similarly, in the case of certain EPA-issued general permits, section 124.58 directs the Regional Administrators to send copies of the draft general permits to the Deputy Assistant Administrator for Water Enforcement at EPA Headquarters and gives that official an opportunity to object to the draft permits. The EPA Regional Office has primary responsibility in both of these cases. EPA believes that both of these requirements to notify the relevant Headquarters office in every case of a draft or proposed permit are unnecessary. (In addition, because of reorganization, the two Headquarters positions referred to in these provisions no longer exist in any event.) Therefore, EPA is removing these regulatory requirements (although the Region should consult with Headquarters on draft permits on an as needed basis). These provisions relate only to EPA's internal operating procedures, and therefore they are removed today without notice and comment pursuant to section 553(b)(3)(A) of the Administrative Procedure Act.

Section 140.3(h)—Marine Sanitation Devices. This section is no longer necessary, since it was designed to clarify which of the dates described in the rule between 1975 and 1980 were the "effective dates" for purposes of CWA section 312(g)(1). Since all dates described in the rule have passed, there can be no ambiguity as to whether the rule is effective for purposes of section 312(g)(1).

40 CFR Part 403—Pretreatment Regulations.

Section 403.1(c) (deadlines for submission of category determination requests and reports). This provision extended certain deadlines for the submission of requests by industrial users (requests to determine whether they were covered under various pretreatment standards, variance requests, and applications for net/gross adjustments) and for certain baseline reporting requirements on the part of industrial users. The deadlines and these extensions have long since lapsed, and so this provision is being deleted.

Section 403.5(f) (deadlines for compliance with national pretreatment standards). This provision is obsolete because the compliance deadlines it sets have long since lapsed.

Section 403.8(c), (d), & (f)(1)(vi)(A) (POTW pretreatment requirements). The last sentence of § 403.8(f)(1)(vi)(A) set deadlines for POTWs to submit requests for approvals of modified pretreatment programs. Because these deadlines have lapsed, this sentence is obsolete and is removed today. In addition, in § 403.8(c), EPA is removing an obsolete cross reference to pretreatment program requirements in § 403.10(d) (also being deleted today) for permits issued to POTWs in States not authorized to act as the approval authority. Finally, § 403.8(d), which authorizes compliance schedules in permits to allow time for POTWs to develop pretreatment programs once determined necessary, is obsolete by its terms, and so is removed and reserved. EPA intends to invite comment on appropriate compliance schedules in a future rulemaking.

Section 403.10(b), (c) and (d) (deadlines for modifications). Section 403.10(b) is obsolete because it allowed for an extension of time for States to modify their NPDES programs consistent with the 1977 amendments to the Clean Water Act. The 1977 amendments to the Clean Water Act required modification of any previously approved State NPDES program within one year (or two years if legal authority needed to be enacted) to include a State pretreatment program. The extension has lapsed. Section 403.10(d) provided for POTW permit modification after approval of State program modifications for pretreatment. Any permits that would be affected by section 403.10(d) have long since been issued and expired, thus, modification is unnecessary. Section 403.10(c) previously provided that failure of a State to seek approval of a State Pretreatment Program as provided in 403.10(b) and the failure of an approved State to administer its State Pretreatment Program in accordance with requirements of section 403.10 constituted grounds for withdrawal of NPDES program approval under Clean Water Act section 402(c)(3). Section 403.10(c) is also revised in today's rule simply by deleting the reference to obsolete § 403.10(b) and retaining the provision that failure to comply with the 1977 CWA NPDES program modification obligation is a ground for

withdrawal of the State's NPDES program.

Section 403.12(b) (baseline reporting requirements for industrial users). The second sentence of section 403.12(b) allowed an Industrial User of a POTW to forego resubmission of baseline monitoring reports where reports had been submitted previously according to a now-defunct reporting regulation. This regulatory provision had allowed for transition to new reporting requirements. The sentence is now obsolete because the time for any such reporting required under section 403.12 has lapsed and, in the event any new pretreatment standards are established in the future, Industrial Users would not be able to use this provision because they would not have been required to submit the earlier reports.

Section 403.13(g)(2)(i) (deadlines for variances from pretreatment standards). Section 403.13(g)(2)(i) is obsolete because it established a July 3, 1989, deadline for submission of requests for variances from categorical Pretreatment Standards issued by EPA prior to February 4, 1987. That deadline has now lapsed.

Part 403, Appendix B (list of priority pollutants). Appendix B lists the 65 priority pollutants developed pursuant to the Consent Decree in *Natural Resources Defense Council, Inc.* v. *Costle.* This list is now redundant with the list of priority pollutants published at 40 CFR § 401.15. Regulations in Part 403 do not otherwise refer to Appendix B.

Part 403 Appendix C (list of industrial categories). Appendix C lists the industrial categories subject to national categorical pretreatment standards pursuant to the Consent Decree in *Natural Resources Defense Council, Inc.* v. *Costle.* The list is incomplete and obsolete because EPA has now published national effluent guidelines and pretreatment standards for other industrial categories. Regulations in Part 403 do not otherwise refer to Appendix C.

Parts 405 To 460—Effluent Limitations Guidelines and Standards.

1. *FDF Variances.* An industrial discharger subject to effluent limitations guidelines and standards promulgated by EPA under the Clean Water Act may qualify for a "fundamentally different factors" ("FDF") variance that would allow alternative limitations to those imposed in the effluent guidelines. Subpart D of 40 CFR Part 125 contains the criteria and standards for FDF variances, including the procedures for applying to EPA for such variances. However, the BPT (best practicable technology) provisions of a large number of effluent guidelines themselves (contained in 40 CFR Parts 405 to 460) also discuss the availability of FDF variances and the procedures for applying for them (see, e.g., the first paragraph of section 405.12). In these particular effluent guidelines, this lengthy discussion of FDF variances generally is repeated in the BPT provision for each separate subcategory. Thus, this virtually identical discussion of FDF variances occurs several times within a particular effluent guideline in many cases and a very large number of times over the entire set of effluent guidelines. All of this language in the effluent guidelines is superfluous and redundant with the criteria and standards for FDF variances contained in Part 125, Subpart D. Therefore, this language is deleted today from each place that it occurs in the effluent guidelines. In its place in each affected provision, EPA has added a cross reference to Part 125, Subpart D.

2. *Pretreatment Requirements.* EPA is similarly deleting today obsolete language concerning pretreatment requirements that currently exists in a large number of individual effluent guidelines provisions. In the 1970's, when many of the earlier effluent guidelines were promulgated, the general pretreatment requirements for dischargers to publicly owned treatment works ("POTWs") were contained in 40 CFR Part 128. In 1978, EPA promulgated a revised set of comprehensive pretreatment regulations in 40 CFR Part 403, which superseded the Part 128 regulations. Therefore, EPA deleted Part 128 from the Code of Federal Regulations. See 42 Fed. Reg. 6476 (Feb. 2, 1977) and 43 Fed. Reg. 27736 (June 26, 1978). However, many of the pretreatment standards for existing sources ("PSES") and pretreatment standards for new sources ("PSNS") in the earlier effluent guidelines contain cross-references to the Part 128 pretreatment regulations. To date, those cross-references have not been updated to reflect the replacement of Part 128 by Part 403. EPA is accomplishing this update today.

Typically, the PSES provisions in these effluent guidelines indicate first that the Part 128 pretreatment standards apply, which would include the specific pretreatment prohibitions in section 128.131 (prohibiting wastes that would interfere with POTW performance by causing fires, corrosion, etc.). See, e.g., 40 CFR § 405.14. These specific prohibitions are now contained in Part 403 (see section 403.5), so the reference to section 128.131 is obsolete. Next, these PSES provisions typically set out a table of pretreatment standards that apply to the particular subcategory and provide that these standards take the place of the Part 128 pretreatment standards for "incompatible" pollutants. Accordingly, in the PSES provisions of these effluent guidelines, EPA is retaining the table of PSES standards, but is removing all references to the Part 128 regulations as obsolete. EPA is adding language that simply cross-references the requirements of Part 403.

The PSNS provisions in these guidelines also reference the specific prohibitions in section 128.131 and then replace the Part 128 pretreatment standards for "incompatible" pollutants with specific standards. See, e.g., 40 CFR § 405.16. Generally, however, the replacement standards consist of cross-references to provisions that do not contain any limitations for "incompatible" pollutants as defined in former Part 128. Therefore, to achieve parallel, updated language, the revisions today to these PSNS standards simply cross-reference the Part 403 requirements and contain no other limitations.

As with the other items in today's notice, these revisions simply concern obsolete or redundant language and effect no substantive changes to the FDF variance provisions or the PSES and PSNS provisions in Parts 405 through 460.

B. Safe Drinking Water Act Rules

Public Water Systems

Section 141.11—MCLs For Inorganic Contaminants. Pursuant to section 1412 of the Safe Drinking Water Act, EPA set maximum contaminant levels ("MCLs") in section 141.11(b) of the regulations for a list of eight inorganic contaminants. Subsequently, in two 1991 rulemakings (56 FR 3526, January 30, 1991 and 56 FR 30266, July 1, 1991) EPA revised the MCLs for six of these contaminants—cadmium, chromium, mercury, nitrate, selenium, and barium. The 1991 rulemakings placed the revised MCLs in section 141.62(b) and made them effective 18 months after promulgation. The 1991 rulemakings also established these effective dates for the new regulations as the dates beyond which the original MCLs in section 141.11(b) for these six contaminants would no longer be effective (January 1, 1993 for barium and July 30, 1992 for the others). Because these dates have passed, the MCLs for these six contaminants in 141.11(b) are obsolete and are deleted today. The language of sections 141.11(a) and (b) is revised to reflect these changes.

Section 141.11(c), which contains the MCL for fluoride, is deleted today because it is redundant with the MCL for fluoride that is now contained in section 141.62(b). Section 141.11(d), which addresses an increased MCL for nitrate that may be allowed at the discretion of the State, is unchanged by today's action and remains in effect.

Also, EPA revised its regulations for lead on June 7, 1991 (56 FR 26460) and in that rulemaking established December 7, 1992 as the date beyond which the existing MCL for lead in section 141.11(b) would no longer be effective. Because that date has passed, the MCL for lead in 141.11(b) is obsolete and is deleted today.

The MCL for arsenic in section 141.11(b) is unaffected by today's rulemaking and remains in full force and effect.

Sections 141.51(b), 141.62(b)(14), 141.23(a)(4)(i)(Table), and 141.32(e)(56)—Nickel Drinking Water Regulations. By today's notice, EPA is alerting the public that the Agency has requested and received a court order vacating and remanding the MCL and MCLG (maximum contaminant level goal) for nickel. The remand has already taken effect; today's action simply removes the nickel MCLG and MCL from the Code of Federal Regulations.

On July 17, 1992, EPA promulgated an MCLG of 0.1 mg/L for nickel under the Safe Drinking Water Act ("SDWA"). 57 FR 31776. The MCLG is a non-enforceable health goal that is set at a level at which "no known or anticipated adverse effects on the health of persons occur and which allows an adequate margin of safety" (SDWA section 1412(b)(4)). In the same rulemaking, EPA also promulgated a national primary drinking water regulation ("NPDWR") for nickel, consisting of an MCL of 0.1 mg/L, associated monitoring, analytical testing, and public notice requirements, and identification of best available treatment technologies for nickel. The MCL is an enforceable limit that is set as close to the MCLG as is feasible (SDWA section 1412(b)(4)).

In September, 1992, the Nickel Development Institute (a nickel trade association) and other industry parties filed a petition for review in the U.S. Court of Appeals for the D.C. Circuit challenging the MCLG and MCL for nickel. *Nickel Development Institute, et al.* v. *EPA* (No. 92–1407) and *Specialty Steel Industry of the United States* v. *Browner* (No. 92–1410). The petitioners raised objections over EPA's methodology for determining the MCLG for nickel. Specifically, they raised questions concerning the derivation of the relative source contribution ("RSC") factor and the need for a 3-fold uncertainty factor that EPA applied due to the lack of adequate data on the effects of nickel ingestion on reproductive systems. Because the MCL for nickel was based directly on the MCLG, the petitioners also challenged the nickel MCL.

EPA and the petitioners entered into discussions in an attempt to settle this litigation but could not agree on the merits of the petitioners' challenges. Nevertheless, EPA has agreed that it did not fully address in the public record the petitioner's comments on the proposed methodology for deriving the MCLG for nickel. Therefore, it is in the public interest to conduct further rulemaking to obtain a full public airing of those issues. Accordingly, EPA has agreed to take a remand of the MCLG and MCL for nickel.

The Agency notes that as of the 1992 rulemaking, projections from available data estimated that only seven public drinking water systems nationwide were expected to have nickel levels exceeding the MCL of 0.1 mg/L. Therefore, this remand of the nickel MCL is not expected to have a significant effect nationwide on the levels of nickel in public water systems.

Terms of the remand order. Accordingly, on February 9, 1995, EPA and the nickel industry petitioners filed a joint motion for a voluntary remand of the nickel MCL and MCLG. By orders of February 23, 1995 and March 6, 1995, the court granted this motion and vacated and remanded the following regulations (and dismissed the lawsuit):

1. The MCLG for nickel listed in 40 CFR 141.51(b);
2. The MCL for nickel listed in 40 CFR 141.62(b)(14) and 141.23(a)(4)(i)(Table); and
3. 40 CFR 141.32(e)(56).

All other portions of 40 CFR 141.51(b) and 141.23(a)(4)(i)(Table) are not affected by the court's order.

The MCLGs for contaminants other than nickel listed in § 141.51(b) remain, of course, in full force and effect. Similarly, as to the Table in § 141.23(a)(4)(i), the court vacated only the MCL for nickel, leaving the sampling methodologies and detection limits for nickel (as well as the MCLs, sampling methodologies and detection limits for the other contaminants) in full force and effect, since they were not at issue in the litigation. At EPA's request, the court also vacated the public notice language in § 141.32(e)(56) for nickel because it mentioned the nickel MCL and public notice language is not necessary until the Agency reestablishes an MCL for nickel. No other aspects of the national primary drinking water regulations for nickel were vacated, including monitoring requirements and identification of best available technologies for nickel. EPA emphasizes that monitoring and analytical testing requirements for nickel remain in full force and effect.

The nickel MCLG and MCL should be considered vacated and not in effect as of February 23, 1995, the date of the court's original remand order. Today's action merely formally removes these regulations from the Code of Federal Regulations. Under the Administrative Procedure Act, EPA finds that public comment on today's action is unnecessary, since this remand has been ordered by the court. See 5 U.S.C. § 553(b). Therefore, EPA is issuing today's action as a final rule rather than as a proposed rule for comment.

Health Advisory on Nickel. EPA does not currently have a schedule for reestablishing an MCLG and MCL for nickel. EPA has initiated an effort to prioritize all its drinking water regulatory development activities in order to maximize risk reduction potential. The priority of the nickel reproposal is being considered as part of that effort. To provide guidance for the period prior to new regulations for nickel, the Office of Water has recently issued an updated Health Advisory for nickel. A copy of the Health Advisory can be obtained by contacting the Safe Drinking Water Hotline, whose toll free number is 1–800–426–4791. For further information on Health Advisories, contact Barbara Corcoran, Health Advisory Project Manager at (202) 260–1332.

One of the primary issues raised by the petitioners, as noted, concerned EPA's derivation of the RSC factor used in establishing the nickel MCLG. Since the litigation was filed, EPA's Office of Water has formed a cross-Agency workgroup to reexamine its RSC/human exposure apportionment policy, as noted at the front of the Health Advisory. The charge of the workgroup has since expanded to focus on the development of a consistent Agency-wide approach for assessing total human exposure to a contaminant and, where appropriate, allocating the Reference Dose (RfD) among the media of concern. This workgroup has or will be seeking input from EPA's Science Advisory Board, Science Policy Council and Risk Assessment Forum. EPA expects to publish proposed revisions to this policy in the **Federal Register** for public comment with the revision to the human health methodology for determining water quality criteria. Subsequent to this remand, further rulemaking on nickel will allow the Agency to encompass its ongoing efforts on the RSC issues and will allow a full

public airing of this and all other issues concerning the methodology for deriving the MCLG for nickel, including any new information or analysis that may exist as to the carcinogenic potential of ingested nickel compounds. In future rulemaking on nickel, EPA will consider any new information that has become available since EPA established the MCLG and MCL for nickel.

Section 141.23(k)—Technical Correction to Inorganic Chemical Sampling and Analytical Requirements. EPA is also making one technical correction of a typographical error today. In section 141.23(k)(3)(ii), the analytical acceptance limit for antimony is listed as "6#30 at ≥ 0.006 mg/l". This was a typographical error—as indicated in the **Federal Register** issuance of this rule, the limit should have been listed as "±30 at " 0.006 mg/l" (see 57 FR 31801, July 17, 1992). Today's rule makes this correction. Notice and comment on this minor technical correction are unnecessary (see section 553(b)(3) of the Administrative Procedure Act).

Section 141.34—Public Notice Requirements for Lead. 40 CFR section 141.34 required public water systems to provide, by June 19, 1988, a one-time notice to users that may be affected by lead in drinking water. Since the deadline for providing this notice passed about seven years ago, and the Agency subsequently promulgated comprehensive lead public education provisions in its national primary drinking water regulations for lead (see 40 CFR § 141.85), the Agency is deleting section 141.34 as obsolete.

Underground Injection Control

Section 144.15—Assessment of Class V wells. Section 144.15 required the Director to submit a report and recommendations to EPA regarding the inventory and assessment of Class V wells in the State within three years of the approval of the State UIC program. The assessment of Class V wells has now been completed. Accordingly, EPA is removing section 144.15.

Section 144.23(b)(2)—Closure of Class IV wells. Section 144.23(b)(2) required the owner or operator of a Class IV well to submit to the Regional Administrator for approval a plan for plugging or otherwise closing and abandoning the well. These plans were required to be submitted within 60 days after promulgation of the UIC program in the State. Because all State programs have now been established (in most cases this was accomplished by May or November of 1985), section 144.23(b)(2) is now obsolete and is being removed.

Section 146.52—Class V Inventory and Assessment. Section 146.52 required the Director to submit a report to EPA regarding the inventory and assessment of Class V wells in a State within three years of the approval of the State UIC program. The inventory and assessment of Class V wells has been completed. Accordingly, EPA is removing section 146.52.

Section 148.1(c)(4)—Scope and Applicability. Section 148.1 (promulgated pursuant to authority under section 3004 of the Resource Conservation and Recovery Act) identifies hazardous wastes that are restricted from disposal in Class I hazardous waste injection wells by the land disposal restrictions of the Hazardous and Solid Waste Amendments (HSWA) and defines those circumstances under which a waste, otherwise prohibited from injection, may be injected. Section 148.1(c)(4) provides that contaminated soil and debris from CERCLA and RCRA cleanup actions may continue to be injected until November 8, 1988. EPA is removing section 148.1(c)(4) because this date has passed and the rule is, therefore, obsolete.

III. Good Cause Exemption from Notice-and-Comment Rulemaking Procedures

The Administrative Procedure Act generally requires agencies to provide prior notice and opportunity for public comment before issuing a final rule. 5 U.S.C. § 553(b). Rules are exempt from this requirement if the issuing agency finds for good cause that notice and comment are unnecessary. 5 U.S.C. § 553(b)(3)(B).

EPA has determined that providing prior notice and opportunity for comment on the deletion of these rules from the CFR is unnecessary. For the reasons discussed above, these rules are obsolete or are redundant with other statutory or regulatory requirements, or simply codify court-ordered remands. Thus, withdrawing them from the CFR has no legal impact and merely codifies their current legal status in the case of the obsolete and remanded rules. (In a small number of cases above, EPA has provided independent reasons for a good cause finding that notice and comment are unnecessary.)

For the same reasons, EPA believes there is good cause for making the removal of these rules from the CFR immediately effective. See 5 U.S.C. § 553(d).

IV. Analyses under E.O. 12866, the Unfunded Mandates Reform Act of 1995, the Regulatory Flexibility Act and the Paperwork Reduction Act

Because today's action simply withdraws rules from the CFR that are obsolete or that have already been vacated by a court, or removes regulatory language that is redundant with other statutory or regulatory provisions, this action has no regulatory impact and is not a "significant" regulatory action within the meaning of E.O. 12866. It also does not impose any Federal mandate on State, local or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995. For the same reasons, pursuant to the Regulatory Flexibility Act, I certify that this action would not have a significant economic impact on a substantial number of small entities. Finally, deletion of these rules from the CFR does not affect requirements under the Paperwork Reduction Act.

List of Subjects

40 CFR Part 35

Grant programs—environmental protection, Waste Treatment and Disposal, Water Pollution Control.

40 CFR Parts 122, 123 and 124

Administrative practice and procedure, Water pollution control.

40 CFR Part 125

Water pollution control.

40 CFR Part 140

Sewage disposal, Vessels.

40 CFR Part 141

Chemicals, Water supply.

40 CFR Part 144 and 146

Hazardous waste, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 148

Hazardous waste.

40 CFR Part 403

Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 405

Dairy products, Waste treatment and disposal, Water pollution control.

40 CFR Part 406

Grains, Waste treatment and disposal, Water pollution control.

40 CFR Part 407

Fruits, Vegetables, Waste treatment and disposal, Water pollution control.

40 CFR Part 408

Seafood, Waste treatment and disposal, Water pollution control.

40 CFR Part 409

Sugar, Waste treatment and disposal, Water pollution control.

40 CFR Part 411

Cement Industry, Waste treatment and disposal, Water pollution control.

40 CFR Part 412

Feedlots, Livestock, Waste treatment and disposal, Water pollution control.

40 CFR Part 417

Soap and detergent industry, Waste treatment and disposal, Water pollution control.

40 CFR Part 418

Fertilizers, Waste treatment and disposal, Water pollution control.

40 CFR Part 424

Iron, Metals, Waste treatment and disposal, Water pollution control.

40 CFR Part 426

Glass and glass products, Waste treatment and disposal, Water pollution control.

40 CFR Part 427

Asbestos, Waste treatment and disposal, Water pollution control.

40 CFR Part 428

Rubber and rubber products, Tires, Waste treatment and disposal, Water pollution control.

40 CFR Part 432

Meat and meat products, Waste treatment and disposal, Water pollution control.

40 CFR Part 435

Oil and gas exploration, Waste treatment and disposal, Water pollution control.

40 CFR Part 436

Mines, Waste treatment and disposal, Water pollution control.

40 CFR Part 443

Paving and roofing materials, Waste treatment and disposal, Water pollution control.

40 CFR Part 446

Paint industry, Waste treatment and disposal, Water pollution control.

40 CFR Part 447

Ink industry, Waste treatment and disposal, Water pollution control.

40 CFR Part 454

Chemicals, Waste treatment and disposal, Water pollution control.

40 CFR Part 455

Chemicals, Pesticides and pests, Waste treatment and disposal, Water pollution control.

40 CFR Part 457

Explosives, Waste treatment and disposal, Water pollution control.

40 CFR Part 458

Carbon industry, Waste treatment and disposal, Water pollution control.

40 CFR Part 460

Hospitals, Waste treatment and disposal, Water pollution control.

Dated: June 6, 1995.

Robert Perciasepe,

Assistant Administrator for Water.

For the reasons set out in the preamble, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 35—STATE AND LOCAL ASSISTANCE

1. The authority citation for part 35 continues to read as follows:

Authority: Secs. 105 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7405 and 7601(a)); Secs. 106, 205(g), 205(j), 208, 319, 501(a), and 518 of the Clean Water Act, as amended (33 U.S.C. 1256, 1285(g), 1285(j), 1288, 1361(a) and 1377); secs. 1443, 1450, and 1451 of the Safe Drinking Water Act (42 U.S.C. 300j–2, 300j–9 and 300j–11); secs. 2002(a) and 3011 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6912(a), 6931, 6947, and 6949); and secs. 4, 23, and 25(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. 136(b), 136(u) and 136w(a)).

Subpart C to Part 35 [Removed and reserved]

2. Subpart C is removed and reserved.

Subpart D to Part 35 [Removed and reserved]

3. Subpart D is removed and reserved.

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for Part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

§ 122.1 [Amended]

2. Section 122.1(g) is removed.

§ 122.2 [Amended]

3. Sections 122.21(m)(3), (m)(4) and (n)(2) are removed and reserved.

§ 122.46 [Amended]

4. In § 122.46(d), the words "(July 1, 1984)" are removed.

§ 122.62 [Amended]

5. Sections 122.62(a)(14) and 122.62(a)(17) are removed and reserved.

§ 122.63 [Amended]

6. Section 122.63(f) is removed and reserved.

PART 123—STATE PROGRAM REQUIREMENTS

1. The authority citation for part 123 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

§ 122.43 [Amended]

2. Section 123.43(b) is removed and reserved.

PART 124—PROCEDURES FOR DECISIONMAKING

1. The authority citation for part 124 continues to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.; Safe Drinking Water Act, 42 U.S.C. 300(f) et seq.; Clean Water Act. 33 U.S.C. 1251 et seq.; Clean Air Act, 42 U.S.C. 7401 et seq.

§ 124.58 [Removed and reserved]

2. Section 124.58 is removed and reserved.

PART 125—CRITERIA AND STANDARDS FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for Part 125 continues to read as follows:

Authority: Clean Water Act, as amended by the Clean Water Act of 1977, 33 U.S.C. 1251 et seq., unless otherwise noted.

Subpart C to Part 125 [Removed and reserved]

2. Subpart C is removed and reserved.

Subpart J to Part 125 [Removed and reserved]

3. Subpart J is removed and reserved.

PART 140—MARINE SANITATION DEVICE STANDARD

1. The authority citation for part 140 continues to read as follows:

Authority: Sec. 312, as added Oct. 18, 1972, Pub. L. 92–500, sec. 2, 86 Stat. 871. Interpret or apply sec. 312(b)(1), 33 U.S.C. 1322(b)(1).

§ 140.3 [Amended]

2. Section 140.3(h) is removed.

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, and 300j–9.

2. In § 141.11, paragraphs (a) and (b) are revised (the table in paragraph (b) is removed) to read as follows, and paragraph (c) is removed and reserved:

§ 141.11 Maximum contaminant levels for inorganic chemicals.

(a) The maximum contaminant level for arsenic applies only to community water systems. Compliance with the MCL for arsenic is calculated pursuant to § 141.23.

(b) The maximum contaminant level for arsenic is 0.05 milligrams per liter.

(c) [Reserved]

* * * * *

§ 141.23 [Amended]

3. In § 141.23(a)(4)(i), the entry for nickel in the Table is amended by removing and reserving the listed "MCL (mg/l)" for nickel; all other parts of the entry for nickel in the Table remain unchanged.

4. In § 141.23(k)(3)(ii), the Acceptance Limit for Antimony in the Table is revised to read as follows: "±30 at ≥0.006 mg/l".

§ 141.32 [Amended]

5. Section 141.32(e)(56) is removed and reserved.

§ 141.34 [Amended]

6. Section 141.34 is removed and reserved.

§ 144.51 [Amended]

7. In § 141.51(b), the line in the Table listing the contaminant "Nickel" and the MCLG for nickel is removed.

§ 141.62 [Amended]

8. In § 141.62(b), entry (14) in the Table is removed and reserved.

PART 144—UNDERGROUND INJECTION CONTROL PROGRAM

1. The authority citation for part 144 continues to read as follows:

Authority: Safe Drinking Water Act, 42 U.S.C. 300f et seq; Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.

§ 144.15 [Removed and reserved]

2. Section 144.15 is removed and reserved.

§ 144.23 [Amended]

3. Section 144.23(b)(2) is removed and reserved.

PART 146—UNDERGROUND INJECTION CONTROL PROGRAM: CRITERIA AND STANDARDS

1. The authority citation for part 146 continues to read as follows:

Authority: Safe Drinking Water Act, 42 U.S.C. 300f et seq.; Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.

§ 146.52

[Removed]

2. Section 146.52 is removed.

PART 148—HAZARDOUS WASTE INJECTION RESTRICTIONS

1. The authority citation for part 148 continues to read as follows:

Authority: Secs. 3004, Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.

§ 148.1 [Removed]

2. Section 148.1(c)(4) is removed.

PART 403—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION

1. The authority citation for part 403 continues to read as follows:

Authority: Sec. 54(c)(2) of the Clean Water Act of 1977, (Pub. L. 95–217) sections 204(b)(1)(C), 208(b)(2)(C)(iii), 301(b)(1)(A)(ii), 301(b)(2)(A)(ii), 301(b)(2)(C), 301(h)(5), 301(i)(2), 304(e), 304(g), 307, 308, 309, 402(b), 405 and 501(a) of the Federal Water Pollution Control Act (Pub. L. 92–500) as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987 (Pub. L. 100–4).

§ 403.1 [Amended]

2. Section 403.1(c) is removed.

§ 403.5 [Amended]

3. Section 403.5(f) is removed.

4. Section 403.8(c) is revised and the text of paragraph (d) is removed and reserved to read as follows:

§ 403.8 Pretreatment Program Requirements: Development and Implementation by POTW.

* * * * *

(c) *Incorporation of approved programs in permits.* A POTW may develop an appropriate POTW pretreatment program any time before the time limit set forth in paragraph (b) of this section. If the POTW is located in a State which has an approved State permit program under section 402 of the Act and an approved State pretreatment program in accordance with § 403.10, or if the POTW is located in a State which does not have an approved permit program under section 402 of the Act, the POTW's NPDES Permit will be reissued or modified by the NPDES State or EPA, respectively, to incorporate the approved Program conditions as enforceable conditions of the Permit. The modification of a POTW's NPDES permit for the purposes of incorporating a POTW Pretreatment Program approved in accordance with the procedures in § 403.11 shall be deemed a minor Permit modification subject to the procedures in 40 CFR 122.63.

(d) *Incorporation of compliance schedules in permits.* [Reserved].

* * * * *

§ 403.8 [Amended]

4(a). The last sentence of § 403.8(f)(1)(vi)(A) is removed.

5. Section 403.10 is amended by removing and reserving paragraphs (b) and (d) and revising paragraph (c) to read as follows:

§ 403.10 Development and submission of NPDES State pretreatment programs.

* * * * *

(b) [Reserved]

(c) *Failure to request approval.* Failure of an NPDES State with a permit program approved under section 402 of the Act prior to December 27, 1977, to seek approval of a State Pretreatment Program and failure of an approved State to administer its State Pretreatment Program in accordance with the requirements of this section constitutes grounds for withdrawal of NPDES program approval under section 402(c)(3) of the Act.

(d) [Reserved]

* * * * *

§ 403.12 [Amended]

6. The second sentence after the heading of § 403.12(b) introductory text is removed.

7. Section 403.13 is amended by revising paragraph (g)(2) to read as follows:

§ 403.13 Variances from categorical pretreatment standards for fundamentally different factors.

* * * * *

(g) *Application deadline.*

(1) * * *

(2) In order to be considered, a request for a variance must be submitted no later than 180 days after the date on which a categorical Pretreatment Standard is published in the **Federal Register**.

(3) * * *

* * * * *

Appendix B [Removed and reserved]

8. Appendix B is removed and reserved.

Appendix C [Removed and reserved]

9. Appendix C is removed and reserved.

PART 405—[AMENDED]

In Part 405:

1. The authority citation for part 405 continues to read as follows:

Authority: Secs. 301, 304 (b) and (c), 306 (b) and (c) and 307(c) of the Federal Water Pollution Control Act, as amended (the Act); 33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316 (b) and (c), and 1317(c); 86 Stat. 816, et seq., Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

2. Section 405.12 is amended by revising the introductory text to read as follows:

§ 405.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

3. Section 405.14 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 405.14 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

4. Section 405.16 is revised to read as follows:

§ 405.16 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

5. Section 405.22 is amended by revising the introductory text to read as follows:

§ 405.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

6. Section 405.24 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 405.24 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

7. Section 405.26 is revised to read as follows:

§ 405.26 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

8. Section 405.32 is amended by revising the introductory text to read as follows:

§ 405.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

9. Section 405.34 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 405.34 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

10. Section 405.36 is revised to read as follows:

§ 405.36 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

11. Section 405.42 is amended by revising the introductory text to read as follows:

§ 405.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

12. Section 405.44 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 405.44 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

13. Section 405.46 is revised to read as follows:

§ 405.46 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

14. Section 405.52 is amended by revising the introductory text to read as follows:

§ 405.52 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

15. Section 405.54 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 405.54 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

16. Section 405.56 is revised to read as follows:

§ 405.56 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

17. Section 405.62 is amended by revising the introductory text to read as follows:

§ 405.62 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

18. Section 405.64 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 405.64 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

19. Section 405.66 is revised to read as follows:

§ 405.66 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

20. Section 405.72 is amended by revising the introductory text to read as follows:

§ 405.72 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

21. Section 405.74 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 405.74 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

22. Section 405.76 is revised to read as follows:

§ 405.76 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

23. Section 405.82 is amended by revising the introductory text to read as follows:

§ 405.82 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

24. Section 405.84 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 405.84 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

25. Section 405.86 is revised to read as follows:

§ 405.86 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

26. Section 405.92 is amended by revising the introductory text to read as follows:

§ 405.92 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

27. Section 405.94 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 405.94 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

28. Section 405.96 is revised to read as follows:

§ 405.96 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

29. Section 405.102 is amended by revising the introductory text to read as follows:

§ 405.102 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

30. Section 405.104 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 405.104 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

31. Section 405.106 is revised to read as follows:

§ 405.106 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

32. Section 405.112 is amended by revising the introductory text to read as follows:

§ 405.112 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

33. Section 405.114 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 405.114 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

34. Section 405.116 is revised to read as follows:

§ 405.116 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

35. Section 405.122 is amended by revising the introductory text to read as follows:

§ 405.122 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

36. Section 405.124 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 405.124 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

37. Section 405.126 is revised to read as follows:

§ 405.126 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

PART 406—[AMENDED]

In Part 406:

1. The authority citation for part 406 continues to read as follows:

Authority: Secs. 301, 304 (b) and (c), 306 (b) and (c), 307(c) of the Federal Water Pollution Control Act, as amended; 33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316 (b) and (c), 1317(c); 86 Stat. 816 et seq., Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

2. Section 406.12 is amended by removing paragraph (a), redesignating

paragraph (b) as new paragraph (a), redesignating paragraph (c) as new paragraph (b), and revising the text above the table (the table remains unchanged) in the newly redesignated paragraph (a). The text in the newly redesignated paragraph (b) is amended by removing the words "paragraph (b)" and inserting in their place the words "paragraph (a)". The revised text reads as follows:

§ 406.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

(a) Except as provided in §§ 125.30 through 125.32, and subject to the provisions in paragraph (b) of this section, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

3. Section 406.14 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 406.14 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

4. Section 406.16 is amended by revising the introductory text (the table and paragraph (a) are unchanged) to read as follows:

§ 406.16 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the provisions set forth in paragraph (a) of this section apply, as well as the following pretreatment standard which establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to publicly owned treatment works by a new source subject to the provisions of this subpart.

* * * * *

5. Section 406.22 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 406.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

6. Section 406.24 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 406.24 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

7. Section 406.26 is revised to read as follows:

§ 406.26 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

8. Section 406.32 is revised to read as follows:

§ 406.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process waste water pollutants to navigable waters.

9. Section 406.34 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 406.34 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

10. Section 406.36 is revised to read as follows:

§ 406.36 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

11. Section 406.42 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 406.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

12. Section 406.44 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 406.44 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

13. Section 406.46 is revised to read as follows:

§ 406.46 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

14. Section 406.52 is revised to read as follows:

§ 406.52 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process waste water pollutants to navigable waters.

15. Section 406.54 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 406.54 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

16. Section 406.56 is revised to read as follows:

§ 406.56 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

17. Section 406.62 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 406.62 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

18. Section 406.64 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 406.64 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

19. Section 406.66 is revised to read as follows:

§ 406.66 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

20. Section 406.72 is revised to read as follows:

§ 406.72 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process waste water pollutants to navigable waters.

21. Section 406.76 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 406.76 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged to a publicly owned treatment works by a new point source subject to the provisions of this subpart.

* * * * *

22. Section 406.82 is revised to read as follows:

§ 406.82 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process waste water pollutants to navigable waters.

23. Section 406.86 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 406.86 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged to a publicly owned treatment works by a new point source subject to the provisions of this subpart.

* * * * *

24. Section 406.92 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 406.92 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the

application of the best practicable control technology currently available (BPT):

* * * * *

25. Section 406.96 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 406.96 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged to a publicly owned treatment works by a new point source subject to the provisions of this subpart.

* * * * *

26. Section 406.102 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 406.102 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

27. Section 406.106 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 406.106 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged to a publicly owned treatment works by a new point source subject to the provisions of this subpart.

* * * * *

PART 407—[AMENDED]

In Part 407:

1. The authority citation for part 407 continues to read as follows:

Authority: Secs. 301, 304 (b) and (c), 306 (b) and (c), 307(c) of the Federal Water Pollution Control Act, as amended; 33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316 (b) and (c), 1317(c); 86 Stat. 816 et seq., Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

2. Section 407.12 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 407.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

3. Section 407.14 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 407.14 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

4. Section 407.16 is revised to read as follows:

§ 407.16 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

5. Section 407.22 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 407.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

6. Section 407.24 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 407.24 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

7. Section 407.26 is revised to read as follows:

§ 407.26 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

8. Section 407.32 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 407.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

9. Section 407.34 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 407.34 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

10. Section 407.36 is revised to read as follows:

§ 407.36 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

11. Section 407.42 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 407.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

12. Section 407.44 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 407.44 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

13. Section 407.46 is revised to read as follows:

§ 407.46 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

14. Section 407.52 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 407.52 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

15. Section 407.54 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 407.54 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

16. Section 407.56 is revised to read as follows:

§ 407.56 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

17. Section 407.62 is amended by revising the introductory text to read as follows:

§ 407.62 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

18. Section 407.64 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 407.64 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by any existing point source subject to the provisions of this subpart.

* * * * *

19. Section 407.66 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 407.66 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new point source subject to the provisions of this subpart.

* * * * *

20. Section 407.72 is amended by revising the introductory text to read as follows:

§ 407.72 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

21. Section 407.74 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 407.74 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of

pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by any existing point source subject to the provisions of this subpart.

* * * * *

22. Section 407.76 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 407.76 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new point source subject to the provisions of this subpart.

* * * * *

23. Section 407.82 is amended by revising the introductory text to read as follows:

§ 407.82 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

24. Section 407.84 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 407.84 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by any existing point source subject to the provisions of this subpart.

* * * * *

25. Section 407.86 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 407.86 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new point source subject to the provisions of this subpart.

* * * * *

PART 408—[AMENDED]

In Part 408:

1. The authority citation for part 408 continues to read as follows:

Authority: Secs. 301, 304 (b) and (c), 306 (b) and (c), 307(c), of the Federal Water Pollution Control Act, as amended; 33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316 (b) and (c), 1317(c); 86 Stat. 816 et seq., Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

2. Section 408.12 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

3. Section 408.14 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.14 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

4. Section 408.16 is revised to read as follows:

§ 408.16 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

5. Section 408.22 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

6. Section 408.24 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.24 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

7. Section 408.26 is revised to read as follows:

§ 408.26 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

8. Section 408.32 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

9. Section 408.34 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.34 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

10. Section 408.36 is revised to read as follows:

§ 408.36 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

11. Section 408.42 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

12. Section 408.44 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.44 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

13. Section 408.46 is revised to read as follows:

§ 408.46 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

14. Section 408.52 is revised to read as follows:

§ 408.52 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): No pollutants may be discharged which exceed 1.27 cm (0.5 inch) in any dimension.

15. Section 408.54 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.54 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

16. Section 408.56 is revised to read as follows:

§ 408.56 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

17. Section 408.62 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.62 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

18. Section 408.64 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.64 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

19. Section 408.66 is revised to read as follows:

§ 408.66 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

20. Section 408.72 is revised to read as follows:

§ 408.72 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of

effluent reduction attainable by the application of the best practicable control technology currently available (BPT): No pollutants may be discharged which exceed 1.27 cm (0.5 inch) in any dimension.

21. Section 408.74 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.74 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

22. Section 408.76 is revised to read as follows:

§ 408.76 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

23. Section 408.82 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.82 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

24. Section 408.84 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.84 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

25. Section 408.86 is revised to read as follows:

§ 408.86 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

26. Section 408.92 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.92 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

27. Section 408.94 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.94 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

28. Section 408.96 is revised to read as follows:

§ 408.96 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

29. Section 408.102 is revised to read as follows:

§ 408.102 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): No pollutants may be discharged which exceed 1.27 cm (0.5 inch) in any dimension.

30. Section 408.104 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.104 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

31. Section 408.106 is revised to read as follows:

§ 408.106 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

32. Section 408.112 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.112 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

33. Section 408.114 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.114 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

34. Section 408.116 is revised to read as follows:

§ 408.116 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

35. Section 408.122 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.122 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

36. Section 408.124 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.124 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

37. Section 408.126 is revised to read as follows:

§ 408.126 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

38. Section 408.132 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.132 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

39. Section 408.134 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.134 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

40. Section 408.136 is revised to read as follows:

§ 408.136 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

41. Section 408.142 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.142 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

42. Section 408.144 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.144 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

43. Section 408.146 is revised to read as follows:

§ 408.146 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

44. Section 408.152 is amended by removing paragraph (a); redesignating paragraphs (b) introductory text, (b)(1) and (b)(2) as introductory text to the section and paragraphs (a) and (b), respectively; revising the newly designated introductory text to the section to read as set forth below; and removing in redesignated paragraph (b) the words "§ 408.152(b)(1)" and adding in their place the words "§ 408.152(a)":

§ 408.152 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

45. Section 408.154 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.154 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

46. Section 408.156 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.156 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

47. Section 408.162 is amended by removing paragraph (a); redesignating paragraphs (b) introductory text, (b)(1) and (b)(2) as introductory text to the section and paragraphs (a) and (b), respectively; revising the newly designated introductory text to the section to read as set forth below; and in newly redesignated paragraph (b), the words "§ 408.162(b)(1)" are removed and the words "§ 408.162(a)" are inserted in their place to read as follows:

§ 408.162 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

48. Section 408.164 is amended by revising the text above the table to read as follows:

§ 408.164 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

49. Section 408.166 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.166 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

50. Section 408.172 is amended by removing paragraph (a); redesignating paragraphs (b) introductory text, (b)(1) and (b)(2) as introductory text to the section and paragraphs (a) and (b), respectively; revising the newly designated introductory text to the section to read as set forth below; in newly redesignated paragraph (b) the words "§ 408.172(b)(1)" are removed and the words "§ 408.172(a)" are inserted in their place to read as follows:

§ 408.172 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

51. Section 408.174 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.174 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

52. Section 408.176 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.176 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

53. Section 408.182 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.182 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

54. Section 408.184 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.184 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

55. Section 408.186 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.186 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

56. Section 408.192 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.192 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

57. Section 408.194 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.194 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

58. Section 408.196 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.196 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

59. Section 408.202 is amended by removing paragraph (a); redesignating paragraphs (b) introductory text, (b)(1) and (b)(2) as introductory text to the section and paragraphs (a) and (b), respectively; revising the newly designated introductory text to the section to read as set forth below; in newly redesignated paragraph (b) the words "§ 408.202(b)(1)" are removed and the words "§ 408.202(a)" are inserted in their place to read as follows:

§ 408.202 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

60. Section 408.204 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.204 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

61. Section 408.206 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.206 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

62. Section 408.212 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.212 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

63. Section 408.214 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.214 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

64. Section 408.216 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.216 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the

following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

65. Section 408.222 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.222 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

66. Section 408.224 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.224 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

67. Section 408.226 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.226 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

68. Section 408.232 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.232 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

69. Section 408.234 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.234 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

70. Section 408.236 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.236 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

71. Section 408.242 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.242 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

72. Section 408.244 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.244 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

73. Section 408.246 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.246 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

74. Section 408.252 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.252 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of

effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

75. Section 408.254 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.254 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

76. Section 408.256 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.256 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

77. Section 408.262 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.262 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

78. Section 408.264 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.264 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

79. Section 408.266 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.266 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

80. Section 408.272 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.272 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

81. Section 408.274 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.274 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

82. Section 408.276 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.276 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

83. Section 408.282 is amended by removing paragraph (e); redesignating paragraphs (b) introductory text, (b)(1) and (b)(2) as introductory text to the section and paragraphs (a) and (b), respectively; revising the newly designated introductory text to the section to read as set forth below; in newly redesignated paragraph (b), the words "§ 408.282(b)(1)" are removed and the words "§ 408.282(a)" are inserted in their place to read as follows:

§ 408.282 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

84. Section 408.284 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.284 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of

pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

85. Section 408.286 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.286 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

86. Section 408.292 is amended by removing paragraph (a); redesignating paragraphs (b) introductory text, (b)(1) and (b)(2) as introductory text to the section and paragraphs (a) and (b), respectively; revising the newly designated introductory text to the section to read as set forth below; in newly redesignated paragraph (b) the words "§ 408.292(b)(1)" and adding in their place the words "§ 408.292(a)" are inserted in their place to read as follows:

§ 408.292 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

87. Section 408.294 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.294 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

88. Section 408.296 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.296 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

89. Section 408.302 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.302 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

90. Section 408.304 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.304 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

91. Section 408.306 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.306 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

92. Section 408.312 is amended by removing paragraph (a); redesignating paragraphs (b) introductory text, (b)(1) and (b)(2) as introductory text to the section and paragraphs (a) and (b), respectively; revising the newly designated introductory text to the section to read as set forth below; in newly redesignated paragraph (b) the words "§ 408.312(b)(1)" are removed and the words "§ 408.312(a)" are inserted in their place to read as follows.

§ 408.312 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

93. Section 408.314 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.314 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

94. Section 408.316 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.316 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

95. Section 408.322 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.322 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

96. Section 408.324 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.324 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

97. Section 408.326 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.326 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

98. Section 408.332 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.332 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

99. Section 408.334 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.334 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

100. Section 408.336 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.336 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

PART 409—[AMENDED]

In Part 409:

1. The authority citation for part 409 continues to read as follows:

Authority: Secs. 301, 304 (b) and (c), 306 (b) and (c), 307 (c) and (d), and 316(b) of the Federal Water Pollution Control Act, as amended; 33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316 (b) and (c), 1317 (c), and 1326(c); 86 Stat. 816 et seq., Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

2. Section 409.14 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 409.14 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

3. Section 409.16 is revised to read as follows:

§ 409.16 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

4. Section 409.22 is amended by removing paragraph (a); redesignating paragraphs (b) introductory text, (b)(1) and (b)(2) as introductory text to the section and paragraphs (a) and (b), respectively; and revising the newly designated introductory text to the section to read as follows:

§ 409.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

5. Section 409.24 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 409.24 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

6. Section 409.26 is revised to read as follows:

§ 409.26 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

7. Section 409.32 is amended by removing paragraph (a); redesignating paragraphs (b) introductory text, (b)(1) and (b)(2) as introductory text to the section and paragraphs (a) and (b), respectively; and revising the newly designated introductory text to the section to read as follows:

§ 409.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

8. Section 409.34 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 409.34 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

9. Section 409.36 is revised to read as follows:

§ 409.36 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

10. Section 409.42 is amended by revising the introductory text to read as follows:

§ 409.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

11. Section 409.52 is amended by revising the introductory text to read as follows:

§ 409.52 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, and subject to the provisions of paragraph (a) of this section, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process wastewater pollutants to navigable waters.

* * * * *

12. Section 409.62 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 409.62 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

13. Section 409.72 is amended by revising the introductory text to read as follows:

§ 409.72 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, and subject to the provisions of paragraph (a) of this section, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process waste water pollutants to navigable waters.

* * * * *

14. Section 409.82 is amended by revising the introductory text to read as follows:

§ 409.82 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

PART 411—[AMENDED]

In Part 411:

1. The authority citation for part 411 continues to read as follows:

Authority: Secs. 301, 304 (b) and (c), 306 (b) and (c), and 307(c) of the Federal Water Pollution Control Act, as amended; 33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316 (b) and (c), and 1317(c); 86 Stat. 816 et seq., Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

2. Section 411.12 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 411.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

3. Section 411.14 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 411.14 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

4. Section 411.16 is revised to read as follows:

§ 411.16 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

5. Section 411.22 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 411.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

6. Section 411.24 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 411.24 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard

establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

7. Section 411.26 is revised to read as follows:

§ 411.26 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

8. Section 411.32 is amended by removing the introductory text and revising paragraph (a) (the table remains unchanged) to read as follows:

§ 411.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

(a) Except as provided in §§ 125.30 through 125.32, and subject to the provisions of paragraph (b) of this section, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

9. Section 411.34 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 411.34 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

10. Section 411.36 is revised to read as follows:

§ 411.36 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

PART 412—[AMENDED]

In Part 412:

1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 301, 304 (b) and (c), 306 (b) and (c), and 307(c) of the Federal Water Pollution Control Act, as amended; 33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316 (b) and (c), and 1317(c); 86 Stat. 816 et seq., Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

2. Section 412.12 is amended by removing the introductory text and revising paragraph (a) to read as follows:

§ 412.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

(a) Except as provided in §§ 125.30 through 125.32, and subject to the provisions of paragraph (b) of this section, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process waste water pollutants to navigable waters.

* * * * *

3. Section 412.14 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 412.14 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

4. Section 412.16 is revised to read as follows:

§ 412.16 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

5. Section 412.22 is amended by removing the introductory text and revising the text above the table (the table remains unchanged) to read as follows:

§ 412.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

(a) Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

PART 417—[AMENDED]

In Part 417:

1. The authority citation for part 417 continues to read as follows:

Authority: Secs. 301, 304 (b) and (c), 306 (b) and (c), and 307(c) of the Federal Water Pollution Control Act as amended, (the Act); 33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316 (b) and (c) and 1317(c), 86 Stat. 816 et seq., Pub. L. 92–500.

2. Section 417.12 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

3. Section 417.14 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.14 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

4. Section 417.16 is revised to read as follows:

§ 417.16 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

5. Section 417.22 is amended by revising the introductory text to read as follows:

§ 417.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

6. Section 417.24 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.24 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

7. Section 417.26 is revised to read as follows:

§ 417.26 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

8. Section 417.32 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

9. Section 417.34 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.34 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

10. Section 417.36 is revised to read as follows:

§ 417.36 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

11. Section 417.42 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

12. Section 417.44 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.44 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

13. Section 417.46 is revised to read as follows:

§ 417.46 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

14. Section 417.52 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.52 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

15. Section 417.54 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.54 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

16. Section 417.56 is revised to read as follows:

§ 417.56 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

17. Section 417.62 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.62 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

18. Section 417.64 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.64 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

19. Section 417.66 is revised to read as follows:

§ 417.66 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

20. Section 417.72 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.72 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

21. Section 417.74 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.74 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

22. Section 417.76 is revised to read as follows:

§ 417.76 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

23. Section 417.82 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.82 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

24. Section 417.84 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.84 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

25. Section 417.86 is revised to read as follows:

§ 417.86 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

26. Section 417.92 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.92 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

27. Section 417.94 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.94 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

28. Section 417.96 is revised to read as follows:

§ 417.96 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

29. Section 417.102 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.102 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

30. Section 417.104 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.104 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

31. Section 417.106 is revised to read as follows:

§ 417.106 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

32. Section 417.112 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.112 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

33. Section 417.114 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.114 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

34. Section 417.116 is revised to read as follows:

§ 417.116 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

35. Section 417.122 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.122 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

36. Section 417.124 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.124 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

37. Section 417.126 is revised to read as follows:

§ 417.126 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

38. Section 417.132 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.132 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

39. Section 417.134 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.134 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

40. Section 417.136 is revised to read as follows:

§ 417.136 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

41. Section 417.142 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.142 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

42. Section 417.144 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.144 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

43. Section 417.146 is revised to read as follows:

§ 417.146 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

44. Section 417.152 is amended by revising the introductory text to read as follows:

§ 417.152 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

45. Section 417.156 is amended by revising the introductory text to read as follows:

§ 417.156 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standards establishes the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart.

* * * * *

46. Section 417.162 is amended by revising the introductory text to read as follows:

§ 417.162 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

47. Section 417.166 is amended by revising the introductory text to read as follows:

§ 417.166 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart.

* * * * *

48. Section 417.172 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.172 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

49. Section 417.176 is amended by revising the introductory text to read as follows:

§ 417.176 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standards establishes the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged to a publicly owned

treatment works by a new source subject to the provisions of this subpart.

* * * * *

50. Section 417.182 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.182 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

51. Section 417.186 is amended by revising the introductory text to read as follows:

§ 417.186 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standards establishes the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart.

* * * * *

52. Section 417.192 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.192 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

53. Section 417.194 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.194 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

54. Section 417.196 is revised to read as follows:

§ 417.196 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

PART 418—[AMENDED]

In Part 418:

1. The authority citation for part 418 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

2. Section 418.12 is amended by revising the introductory text to read as follows:

§ 418.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

3. Section 418.22 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 418.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

4. Section 418.32 is amended by revising the introductory text to read as follows:

§ 418.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

5. Section 418.42 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 418.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

6. Section 418.52 is amended by revising the introductory text to read as follows:

§ 418.52 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

7. Section 418.62 is revised to read as follows:

§ 418.62 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process waste water pollutants to navigable waters.

8. Section 418.72 is revised to read as follows:

§ 418.72 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process waste water pollutants to navigable waters.

PART 424—[AMENDED]

In Part 424:

1. The authority citation for part 424 continues to read as follows:

Authority: Secs. 301, 304 (b) and (c), 306 (b) and (c), 307(c) of the Federal Water Pollution Control Act, as amended; 33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316 (b) and (c), 1317(c); 86 Stat. 816 et seq., Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

2. Section 424.12 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 424.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, and subject to the provisions of paragraph (a) of this section, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

3. Section 424.16 is revised to read as follows:

§ 424.16 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

4. Section 424.22 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 424.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

5. Section 424.26 is revised to read as follows:

§ 424.26 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

6. Section 424.32 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 424.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

7. Section 424.36 is revised to read as follows:

§ 424.36 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

8. Section 424.42 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 424.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, and subject to the provisions of paragraph (a) of this section, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

9. Section 424.52 is revised to read as follows:

§ 424.52 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, and subject to the provisions of paragraph (a) of this section, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process waste water pollutants to navigable waters.

10. Section 424.62 is amended by revising the introductory text to read as follows:

§ 424.62 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

11. Section 424.72 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 424.72 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent

limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

PART 426 [AMENDED]

In part 426:

1. The authority citation for part 426 continues to read as follows:

Authority: Secs. 301, 304 (b) and (c), 306 (b) and (c), 307(c), and 316(b) of the Federal Water Pollution Control Act, as amended; 33 U.S.C. 1251, 1311, 1314, 1316 (b) and (c), 1317(b); 86 Stat. 816 *et seq.*, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

2. Section 426.16 is amended by removing and reserving paragraph (b) and adding introductory text to read as follows:

§ 426.16 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

* * * * *

3. Section 426.22 is revised to read as follows:

§ 426.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process waste water pollutants to navigable waters.

4. Section 426.24 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 426.24 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

5. Section 426.26 is revised to read as follows:

§ 426.26 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

6. Section 426.32 is revised to read as follows:

§ 426.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process waste water pollutants to navigable waters.

7. Section 426.34 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 426.34 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

8. Section 426.36 is revised to read as follows:

§ 426.36 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

9. Section 426.42 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 426.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

10. Section 426.44 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 426.44 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

11. Section 426.46 is revised to read as follows:

§ 426.46 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

12. Section 426.52 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 426.52 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

13. Section 426.56 is revised to read as follows:

§ 426.56 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

14. Section 426.62 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 426.62 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

15. Section 426.64 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 426.64 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

16. Section 426.66 is revised to read as follows:

§ 426.66 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

17. Section 426.72 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 426.72 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

18. Section 426.76 is revised to read as follows:

§ 426.76 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

19. Section 426.82 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 426.82 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

20. Section 426.86 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 426.86 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new point source subject to the provisions of this subpart. Because of the recognition that animal and vegetable oils can be adequately removed in a publicly owned treatment works, whereas mineral oil may not be readily removed and may pass through untreated, two separate limitations are established.

* * * * *

21. Section 426.102 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 426.102 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

22. Section 426.106 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 426.106 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new point source subject to the provisions of this subpart.

* * * * *

23. Section 426.112 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 426.112 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT). (The fluoride and lead limitations are applicable to the abrasive polishing and acid polishing waste water streams while the TSS, oil, and pH limitations are applicable to the entire process waste water stream):

* * * * *

24. Section 426.116 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 426.116 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new point source subject to the provisions of this subpart. Because of the recognition that animal

and vegetable oils can be adequately removed in a publicly owned treatment works, whereas mineral oil may not be readily removed and may pass through untreated, two separate limitations are established.

* * * * *

25. Section 426.122 is amended by revising the introductory text to read as follows:

§ 426.122 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

26. Section 426.126 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 426.126 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new point source subject to the provisions of this subpart. Because of the recognition that animal and vegetable oils can be adequately removed in a publicly owned treatment works, whereas mineral oil may not be readily removed and may pass through untreated, two separate limitations are established.

* * * * *

27. Section 426.132 is amended by revising the introductory text to read as follows:

§ 426.132 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

28. Section 426.136 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 426.136 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new point source subject to the provisions of this subpart.

* * * * *

PART 427—[AMENDED]

In Part 427:

1. The authority citation for part 427 continues to read as follows:

Authority: Secs. 301, 304 (b) and (c), 306 (b) and (c), 307(c), Federal Water Pollution Control Act, as amended; 33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316 (b) and (c), 1317(c); 86 Stat. 816 et seq., Pub. L. 92–500.

2. Section 427.12 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 427.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

3. Section 427.14 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 427.14 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

4. Section 427.16 is revised to read as follows:

§ 427.16 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

5. Section 427.22 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 427.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

6. Section 427.24 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 427.24 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

7. Section 427.26 is revised to read as follows:

§ 427.26 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

8. Section 427.32 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 427.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

9. Section 427.34 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 427.34 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

10. Section 427.36 is revised to read as follows:

§ 427.36 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

11. Section 427.42 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 427.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

12. Section 427.44 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 427.44 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

13. Section 427.46 is revised to read as follows:

§ 427.46 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

14. Section 427.52 is revised to read as follows:

§ 427.52 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process waste water pollutants to navigable waters.

15. Section 427.54 is amended by revising the text above the table the table remains unchanged to read as follows:

§ 427.54 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

16. Section 427.56 is revised to read as follows:

§ 427.56 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

17. Section 427.62 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 427.62 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

18. Section 427.64 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 427.64 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

19. Section 427.66 is revised to read as follows:

§ 427.66 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

20. Section 427.72 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 427.72 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall

achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

21. Section 427.74 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 427.74 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

22. Section 427.76 is revised to read as follows:

§ 427.76 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

23. Section 427.82 is revised to read as follows:

§ 427.82 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process wastewater pollutants to navigable waters.

24. Section 427.86 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 427.86 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged to a publicly owned treatment works by a new point source subject to the provisions of this subpart.

* * * * *

25. Section 427.92 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 427.92 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

26. Section 427.96 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 427.96 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged to a publicly owned treatment works by a new point source subject to the provisions of this subpart.

* * * * *

27. Section 427.102 is revised to read as follows:

§ 427.102 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process wastewater pollutants to navigable waters.

28. Section 427.106 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 427.106 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged to a publicly owned treatment works by a new point source subject to the provisions of this subpart.

* * * * *

29. Section 427.112 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 427.112 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

30. Section 427.116 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 427.116 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged to a publicly owned treatment works by a new point source subject to the provisions of this subpart.

* * * * *

PART 428—[AMENDED]

In Part 428:

1. The authority citation for part 428 continues to read as follows:

Authority: Secs. 301, 304 (b) and (c), 306 (b) and (c), 307(c), Federal Water Pollution Control Act, as amended; 33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316 (b) and (c), 1317(c); 86 Stat. 816 *et seq.*, Pub. L. 92–500.

2. Section 428.12 is amended by removing the introductory text and revising the text above the table (the table remains unchanged) in paragraph (a) to read as follows:

§ 428.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

3. Section 428.16 is revised to read as follows:

§ 428.16 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

4. Section 428.22 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 428.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

5. Section 428.32 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 428.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

6. Section 428.42 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 428.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

7. Section 428.46 is revised to read as follows:

§ 428.46 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

8. Section 428.52 is amended by revising the introductory text to read as follows:

§ 428.52 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

9. Section 428.56 is amended by revising the introductory text as follows:

§ 428.56 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403, in addition to the limitations set forth in paragraphs (a) and (b) of this section.

* * * * *

10. Section 428.62 is amended by revising the introductory text to read as follows:

§ 428.62 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

11. Section 428.66 is amended by revising the introductory text as follows:

§ 428.66 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403, in addition to the limitations set forth in paragraphs (a) and (b) of this section.

* * * * *

12. Section 428.72 is amended by revising the introductory text to read as follows:

§ 428.72 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

13. Section 428.76 is amended by revising the introductory text as follows:

§ 428.76 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403, in addition to the limitations set forth in paragraphs (a) and (b) of this section.

* * * * *

14. Section 428.82 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 428.82 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable

control technology currently available (BPT):

* * * * *

15. Section 428.86 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 428.86 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged to a publicly owned treatment works by a new point source subject to the provisions of this subpart:

* * * * *

16. Section 428.92 is amended by revising the introductory text to read as follows:

§ 428.92 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

17. Section 428.96 is amended by revising the introductory text as follows:

§ 428.96 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403, in addition to the limitations set forth in paragraphs (a) and (b) of this section.

* * * * *

18. Section 428.102 is amended by revising the introductory text to read as follows:

§ 428.102 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

19. Section 428.106 is amended by revising the introductory text as follows:

§ 428.106 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403, in addition to the limitations set forth in paragraphs (a) and (b) of this section.

* * * * *

20. Section 428.112 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 428.112 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

21. Section 428.116 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 428.116 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged to a publicly owned treatment works by a new point source subject to the provisions of this subpart:

* * * * *

PART 432—[AMENDED]

In Part 432:

1. The authority citation for part 432 continues to read as follows:

Authority: Secs. 301, 304 (b) and (c), 306 (b) and (c), and 307(c) of the Federal Water Pollution Control Act, as amended; 33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316 (b) and (c), 1317(c); 86 Stat. 816 *et seq.*, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

2. Section 432.12 is amended by revising the introductory text to read as follows:

§ 432.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

3. Section 432.14 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 432.14 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

4. Section 432.16 is revised to read as follows:

§ 432.16 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

5. Section 432.22 is amended by revising the introductory text to read as follows:

§ 432.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

6. Section 432.24 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 432.24 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

7. Section 432.26 is revised to read as follows:

§ 432.26 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

8. Section 432.32 is amended by revising the introductory text to read as follows:

§ 432.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

9. Section 432.34 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 432.34 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

10. Section 432.36 is revised to read as follows:

§ 432.36 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

11. Section 432.42 is amended by revising the introductory text to read as follows:

§ 432.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

12. Section 432.44 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 432.44 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

13. Section 432.46 is revised to read as follows:

§ 432.46 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403

14. Section 432.52 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 432.52 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

15. Section 432.56 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 432.56 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

16. Section 432.62 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 432.62 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

17. Section 432.66 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 432.66 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

18. Section 432.72 is amended by revising the text above the table (the

table remains unchanged) to read as follows:

§ 432.72 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

19. Section 432.76 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 432.76 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

20. Section 432.82 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 432.82 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

21. Section 432.86 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 432.86 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

22. Section 432.92 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 432.92 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

23. Section 432.96 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 432.96 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

24. Section 432.102 is amended by removing the introductory text and revising the text above the table (the table remains unchanged) in paragraph (a) to read as follows:

§ 432.102 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, and subject to the provisions of paragraph (b) of this section, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

25. Section 432.106 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 432.106 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

PART 435—[AMENDED]

In part 435:

1. The authority citation for part 435 continues to read as follows:

Authority: 33 U.S.C. 1311, 1314, 1316, 1317, 1318, and 1361.

2. Section 435.32 is revised to read as follows:

§ 435.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): there shall be no discharge of waste water pollutants into navigable waters from any source associated with production, field exploration, drilling, well completion, or well treatment (i.e., produced water, drilling muds, drill cuttings, and produced sand).

3. Section 435.42 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 435.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

4. Section 435.52 is amended by removing the introductory text; redesignating paragraphs (a) introductory text, (a)(1) and (a)(2) as introductory text to the section, (a) and (b), respectively; and revising the newly designated introductory text to the section to read as follows:

§ 435.52 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

PART 436—[AMENDED]

In part 436:

1. The authority citation for part 436 continues to read as follows:

Authority: Secs. 301, 304 (b) and (c), Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, 1311, 1314 (b) and (c), 86 Stat. 816 *et seq.*, Pub. L. 92–500) (the Act).

2. Section 436.22 is amended by removing the introductory text and revising the introductory text in paragraph (a) to read as follows:

§ 436.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, and subject to the provisions of paragraphs (b) and (c) of this section, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

3. Section 436.32 is amended by removing the introductory text and revising the introductory text in paragraph (a) to read as follows:

§ 436.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, and subject to the provisions of paragraphs (b) and (c) of this section, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

4. Section 436.42 is amended by removing the introductory text and revising the introductory text in paragraph (a) to read as follows:

§ 436.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, and subject to the provisions of paragraphs (b) and (c) of this section, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

5. Section 436.52 is amended by revising the introductory text to read as follows:

§ 436.52 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

6. Section 436.62 is amended by revising the introductory text to read as follows:

§ 436.62 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

7. Section 436.72 is amended by revising the introductory text to read as follows:

§ 436.72 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

8. Section 436.102 is revised to read as follows:

§ 436.102 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): For operations not employing wet processes or flotation processes there shall be no discharge of process generated waste water pollutants into navigable waters.

9. Section 436.112 is revised to read as follows:

§ 436.112 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): For operations not employing heavy media separation or flotation processes there shall be no discharge of process generated waste water pollutants into navigable waters.

10. Section 436.122 is amended by removing the introductory text and revising the text in paragraph (a) to read as follows:

§ 436.122 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, and subject to the provisions of paragraph (b) of this section, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): there shall be no discharge of process waste water pollutants into navigable waters.

* * * * *

11. Section 436.132 is amended by removing the introductory text and revising paragraph (a) to read as follows:

§ 436.132 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, and subject to the provisions of paragraph (b) of this section, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): there shall be no discharge of process waste water pollutants into navigable waters.

* * * * *

12. Section 436.142 is amended by removing the introductory text and revising paragraph (a) to read as follows:

§ 436.142 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, and subject to the provisions of paragraph (b) of this section, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): there shall be no discharge of process waste water pollutants into navigable waters.

* * * * *

13. Section 436.152 is amended by removing the introductory text and revising paragraph (a) to read as follows:

§ 436.152 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, and subject to the provisions of paragraph (b) of this section, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): there shall be no discharge of process waste water pollutants into navigable waters.

* * * * *

14. Section 436.182 is amended by removing the introductory text and revising the introductory text in paragraph (a) to read as follows:

§ 436.182 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, and subject to the provisions of paragraph (b) of this section, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): there shall be no discharge of process waste water pollutants into navigable waters.

* * * * *

15. Section 436.192 is amended by removing the introductory text and revising paragraph (a) to read as follows:

§ 436.192 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, and subject to the provisions of paragraph (b) of this section for operations mining anhydrite deposits, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): there shall be no discharge of process waste water pollutants into navigable waters.

* * * * *

16. Section 436.222 is revised to read as follows:

§ 436.222 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): there shall be no discharge of process generated waste water pollutants into navigable waters.

17. Section 436.232 is amended by removing the introductory text and revising paragraph (a) to read as follows:

§ 436.232 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, and subject to the provisions of paragraph (b) of this section, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): there shall be no discharge of process generated waste water pollutants into navigable waters.

* * * * *

18. Section 436.242 is amended by removing the introductory text and revising paragraph (a) to read as follows:

§ 436.242 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, and subject to the provisions of paragraph (b) of this section, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): there shall be no discharge of process generated waste water pollutants into navigable waters.

* * * * *

19. Section 436.252 is amended by removing the introductory text and revising paragraph (a) to read as follows:

§ 436.252 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, and subject to the provisions of paragraph (b) of this section, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): there shall be no discharge of process generated waste water pollutants into navigable waters.

* * * * *

20. Section 436.262 is amended by removing the introductory text and revising paragraph (a) to read as follows:

§ 436.262 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, and subject to the provisions of paragraph (b) of this section, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): there shall be no discharge of process generated waste water pollutants into navigable waters.

* * * * *

21. Section 436.322 is revised to read as follows:

§ 436.322 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): For operations not employing wet processes there shall be no discharge of process generated waste water pollutants into navigable waters.

22. Section 436.382 is amended by removing the introductory text and revising the text above the table (the table remains unchanged) in paragraph (a) to read as follows:

§ 436.382 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, and subject to the provisions of paragraph (b) of this section, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

PART 443—[AMENDED]

In part 443:

1. The authority citation for part 443 continues to read as follows:

Authority: Secs. 301, 304 (b) and (c), 306 (b) and (c) and 307(c), Federal Water Pollution Control Act, as amended (the Act); 33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316 (b) and (c), 1317(c), 86 Stat. 816 *et seq.*; Pub. L. 92–500.

2. Section 443.12 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 443.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

3. Section 443.16 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 443.16 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

4. Section 443.22 is revised to read as follows:

§ 443.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process waste water pollutants to navigable waters.

5. Section 443.26 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 443.26 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

6. Section 443.32 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 443.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

7. Section 443.36 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 443.36 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of

pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

8. Section 443.42 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 443.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

9. Section 443.46 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 443.46 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

PART 446—[AMENDED]

In part 446:

1. The authority citation for part 446 continues to read as follows:

Authority: Secs. 301, 304 (b) and (c), 306 (b) and (c) and 307(c), Federal Water Pollution Control Act, as amended (the Act); 33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316 (b) and (c) and 1317(c); 86 Stat. 816 *et seq.*; Pub. L. 92–500.

2. Section 446.12 is revised to read as follows:

§ 446.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process waste water pollutants to navigable waters.

3. Section 446.16 is revised to read as follows:

§ 446.16 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart: There shall be no discharge of process waste water pollutants to navigable waters.

PART 447—[AMENDED]

In part 447:

1. The authority citation for part 447 continues to read as follows:

Authority: Secs. 301, 304 (b) and (c), 306 (b) and (c) and 307(c), Federal Water Pollution Control Act, as amended (the Act); 33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316 (b) and (c) and 1317(c); 86 Stat. 816 *et seq.*; Pub. L. 92–500.

2. Section 447.12 is revised to read as follows:

§ 447.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process waste water pollutants to navigable waters.

3. Section 447.16 is revised to read as follows:

§ 447.16 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart: There shall be no discharge of process water pollutants to a publicly owned treatment works.

PART 454—[AMENDED]

In part 454:

1. The authority citation for part 454 continues to read as follows:

Authority: Secs. 301, 304 (b) and (c), 306(b), 307 (b) and (c), Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316(b) and 1317 (b) and (c); 86 Stat. 816 *et seq.*; Pub. L. 92–500) (the Act).

2. Section 454.12 is amended by revising the introductory text to read as follows:

§ 454.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

3. Section 454.22 is amended by revising the introductory text to read as follows:

§ 454.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

4. Section 454.32 is amended by revising the introductory text to read as follows:

§ 454.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

5. Section 454.42 is amended by revising the introductory text to read as follows:

§ 454.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

5. Section 454.52 is amended by revising the introductory text to read as follows:

§ 454.52 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

6. Section 454.62 is amended by revising the introductory text to read as follows:

§ 454.62 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

PART 455—[AMENDED]

In Part 455:

1. The authority citation for part 455 continues to read as follows:

Authority: Secs. 301, 304, 306, 307, and 501, Pub. L. 92–500, 86 Stat. 816, Pub. L 95–217, 91 Stat. 156, and Pub. L. 100–4 (33 U.S.C. 1311, 1314, 1316, 1317, and 1361).

2. Section 455.22 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 455.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT). The following limitations establish the quantity or quality of pollutants or pollutant properties controlled by this paragraph which may be discharged from the manufacture of organic active ingredient:

* * * * *

3. Section 455.32 is revised to read as follows:

§ 455.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart, shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT). The following limitations establish the quantity or quality of pollutants or pollutant properties controlled by this paragraph which may be discharged from the manufacture of metallo-organic active ingredient: There shall be no discharge of process waste water pollutants to navigable waters.

4. Section 455.42 is revised to read as follows:

§ 455.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart, shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT). The following limitations establish the quantity or quality of pollutants or pollutant properties controlled by this paragraph which may be discharged from the formulation and packaging of pesticides: There shall be no discharge of process waste water pollutants to navigable waters.

PART 457—[AMENDED]

In Part 457:

1. The authority citation for part 457 continues to read as follows:

Authority:: Secs. 301, 304 (b) and (c), 306(b), 307 (b) and (c), Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316(b) and 1317 (b) and (c), 86 Stat. 816 et seq.; Pub. L. 92–500)(the Act).

2. Section 457.12 is amended by revising the introductory text to read as follows:

§ 457.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart, shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

3. Section 457.32 is amended by revising the introductory text to read as follows:

§ 457.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart, shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

PART 458—[AMENDED]

In Part 458:

1. The authority citation for part 458 continues to read as follows:

Authority: Secs. 301, 304(b) and (c), 306(b), 307 (b) and (c), Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316(b) and 1317 (b) and (c), 86 Stat. 816 *et seq.*; Pub. L. 92–500)(the Act).

2. Section 458.16 is revised to read as follows:

§ 458.16 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

Pollutant or pollutant property-Oil and grease.

Pretreatment standard-100mg/liter.

3. Section 458.22 is revised to read as follows:

§ 458.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart, shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process waste water pollutants into navigable waters.

4. Section 458.26 is revised to read as follows:

§ 458.26 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

Pollutant or pollutant property-Oil and grease.

Pretreatment standard-100mg/liter.

5. Section 458.32 is revised to read as follows:

§ 458.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart, shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process waste water pollutants into navigable waters.

6. Section 458.36 is revised to read as follows:

§ 458.36 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

Pollutant or pollutant property-Oil and grease.

Pretreatment standard-100mg/liter.

7. Section 458.42 is revised to read as follows:

§ 458.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart, shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process waste water pollutants into navigable waters.

8. Section 458.46 is revised to read as follows:

§ 458.46 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

Pollutant or pollutant property-Oil and grease.

Pretreatment standard-100mg/liter.

PART 460—[AMENDED]

In Part 460:

1. The authority citation continues to read as follows:

Authority: Secs. 301, 304 (b) and (c), 306(b), 307 (b) and (c), Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316(b), and 1317 (b) and (c), 86 Stat. 816 *et seq.*; Pub. L. 92–500)(the Act).

2. Section 460.12 is amended by revising the introductory text to read as follows:

§ 460.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart, shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

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Thursday
June 29, 1995

Part III

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910, et al.

Occupational Exposure to Asbestos; Corrections; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, and 1926

RIN 1218–AB25

Occupational Exposure to Asbestos; Corrections

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Corrections to final rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is correcting and clarifying the preamble to, and correcting certain provisions of the final asbestos standards issued August 10, 1994 (59 FR 40964, 29 CFR 1910.1001, 1915.1001, and 1926.1101).

EFFECTIVE DATE: June 29, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Liblong, Director of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3647, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 219–8151.

SUPPLEMENTARY INFORMATION:

Background

On August 10, 1994 OSHA revised its final asbestos standards in general industry and construction and issued a new shipyard employment standard. Subsequently, technical and typographical errors were discovered in both the preamble and regulatory text. Additionally, members of the regulated public have asked OSHA to clarify, correct, or reconsider certain regulatory provisions.

To address these problems, OSHA has made a number of corrections to both the standard and the preamble. The corrections to the standards include (1) correction of typographical errors; (2) corrections that clarify the agency's intent but do not change the substantive requirements imposed by the standard; and (3) corrections intended to better effectuate the agency's intent when it issued the standard. All these corrections to the standard are deemed to be "minor" amendments within the meaning of 29 CFR 1911.5. Because the corrections are based on the existing rulemaking record and are not intended to affect the protection afforded by the standard in a significant way, OSHA finds good cause, pursuant to 29 CFR 1911.5 and the Administrative Procedure Act, for promulgating the corrections without notice and opportunity for public comment.

The discussion which follows is organized by subject matter, not by paragraph number alone. As in the preamble to the revised standards, each of the standards, general industry, construction, and shipyards, contain overlapping, comparable, and in some cases identical provisions covering various subject headings. However, the general industry standard's paragraph designations differ. In this preamble OSHA is separately discussing, topic by topic, all clarifications which are in the nature of preamble changes, as well as corrections and technical amendments concerning that topic. This way, the reader can be apprised of all changes and clarifications on a particular topic at one time. OSHA is not including in these discussions those corrections to the text which are typographical in nature and which are self-explanatory.

1. Definitions

Paragraph (b) Construction and Shipyards Employment Standards.

OSHA is amending its definition of "disturbance" in order to clarify it to reflect the Agency's original intent. OSHA has found its unamended definition confusing to the regulated community. This will eliminate some terminology, such as use of the word "contact" to describe both Class III and IV operations. Thus, disturbance becomes the operational term to distinguish a Class III operation; while "contact" (without "disturbance") distinguishes Class IV. (See also the discussion clarifying Class IV operations in this document.) The first sentence of the definition now clearly specifies that a disturbance entails "activities that disrupt the matrix of ACM or PACM, crumble or pulverize ACM or PACM, or generates visible debris from ACM or PACM." OSHA also clarifies that work involving dust that is accompanied by debris in the presence of asbestos containing material, must be treated as an asbestos job. OSHA does not believe that this clarification substantively alters the requirements or the intended worker protection of its job classification scheme. Thus, mere "contact" with asbestos is clearly not a Class III activity. The inclusion of the phrase "disrupt the matrix" in the definition allows inclusion of other, undefined operations which might also result in release of fibers from the material in which they are embedded.

OSHA is correcting the General Industry Standard to include certain definitions inadvertently omitted from the August 10, 1994 publication of the final rule. These include definitions for the following terms: Certified Industrial Hygienist, homogeneous area, presumed asbestos containing material, surfacing material, surfacing ACM, thermal system insulation and thermal system insulation ACM. The added definitions are consistent with those in the Construction and Shipyard Employment Standards.

Class IV Work: OSHA has made minor clarifications to the definition of Class IV as it applies in the construction and shipyard employment standards. They more fully realize OSHA's intent in creating this class of work, distinguish it from housekeeping under the general industry standard, and expressly limit its scope to accepted "construction" activities. The definition now reads: "Class IV asbestos work means maintenance and custodial construction activities during which employees contact but do not disturb ACM or PACM and activities to clean up dust, waste and debris resulting from Class I, II and III activities." Because work under the construction standard must be related to and on the worksite of a construction job, the definition now specifies that Class IV work which is "clean-up" must result from Class I, II and III work. In addition, to distinguish Class IV from Class III work, the definition now states that maintenance activities are Class IV only if employees "contact, but do not disturb" ACM or PACM. It should be noted that housekeeping activities in the general industry standard in some cases might include clean-up of asbestos containing materials, however in the absence of a construction job or site, this clean-up is not a construction activity. OSHA notes however, that use of wet methods, HEPA vacuums and immediate clean-up are required for these activities in all cases. The Agency believes that these changes will allow employers and employees to more easily distinguish Class IV from Class III activities. The Agency is confident that these changes will not weaken employee protection. In fact, by clarifying which activities must be treated as Class IV, OSHA believes enforcement will be facilitated, and the level of compliance will rise.

2. Regulated Areas

Several questions have arisen among participants about the need for regulated areas when Class II or III work is performed for which a negative exposure assessment is produced. OSHA continues to believe that it is necessary to assure that by-standers are protected from unwittingly entering areas where the carcinogen asbestos is being disturbed. OSHA wishes to clarify, however, that when the employer can show that which work is performed by properly trained and informed workers in areas to which no other workers have access, OSHA does not believe that demarcation of the area is necessary and therefore, is not required.

3. Exposure Assessments and Monitoring

Paragraph (f) Construction and Shipyard Employment Standards.

In response to the concerns of participants, OSHA is clarifying, but not further amending (f)(2)(iii). Some parties have expressed the view that the distinction between the use of historical data and objective data needs additional clarification. In the 1994 final rule, the definition of objective data was changed from that of the 1986 standard to include activities, as well as products, for which a demonstration is made that operations involving the products and/or activities will not result in fiber levels in excess of the PELs. For example, in a facility such as a refinery, gasket removal is a frequent operation due to the large number of pipe joints. If the employer has monitored these jobs in the past and has collected sufficient data to conclude that this activity will not result in fiber levels in excess of the PELs even when improper work practices and lesser trained personnel are used, it may be concluded that the objective data criteria have been met, in which case, further monitoring is not required.

These data must include situations performed under those work conditions having the greatest potential for releasing asbestos fibers, such as in the example above, where the gasket is difficult to remove fully or where the crew is inexperienced. OSHA believes that "objective data" determinations require basic statistical analysis. At the least, the prior data depended on cannot be the result of chance. Data reflecting the results of many jobs and/or employees are likely to provide adequate data on which to base "objective data" determinations. Certainly, when many different employer's employees have performed a particular task, and levels consistently fall below the PEL, it is likely that future jobs will also fall below the PEL.

In requiring objective data determinations to include the worst-case situation, OSHA does not intend to render this an impossible requirement to meet. Rather, as described earlier, the monitoring results from the situations which the employer has encountered in the activity must be included in the information used by the competent person in evaluation of the job. Therefore, using the earlier example, even if a gasket removal was performed in the past using improper work practices which resulted in elevated fiber levels, and the current job is to be performed correctly in compliance with the standard, this job can still meet the objective data criteria if additional data clearly supports its low exposure potential. The employer is not expected to contrive unlikely scenarios, monitor them and conclude that an objective data exemption cannot be claimed. The judgment of a trained, experienced competent person is essential to making this determination. OSHA anticipates wider use of this exemption in situations where it is warranted.

The extent to which objective data documents the effectiveness of controls will vary depending upon the potential for fiber release. A job with very low exposures, for examples, less than 0.01 f/cc, with simple work practices and little potential for control failure, will need minimal data. However, due to the high potential for fiber release from thermal system insulation and surfacing ACM, OSHA has found that the objective data exemption from monitoring of Class I operations may not be relied on, regardless of the control method used (59 FR p. 40983). For example, in the case of glovebag removals of Class I materials, only historic data may be used in the exposure assessment by the competent person. OSHA continues to believe that annual monitoring is needed to assure the continued effectiveness of control of fiber levels in jobs involving removal of significant amounts of thermal system ACM and surfacing ACM.

OSHA has not specified the number of personal monitoring data points required to make these determinations. Rather, it relies on the training and experience of the competent person to use good judgment in assessing each operation to determine the ability of the data to predict potential exposure of workers in that specific job.

4. Methods of Compliance

Paragraph (g) Construction and Shipyard Employment standards.

OSHA is clarifying the language in paragraph (g)(4)(ii) to reflect the Agency's intention that outdoor Class I work performed in areas where no employees are working in the adjacent area a need not utilize critical barriers, nor is perimeter monitoring required during such work when control methods in (g)(5) are properly used. Several participants submitted data indicating low levels of fibers were measured during outdoor activities (e.g., Ex.7–39 and Ex. 127).

OSHA is clarifying paragraph (g)(5)(ii) of the construction and shipyards standards to explain when glovebag use is allowed. OSHA allowed glovebags to be used in Class I operations or removal of TSI from "straight runs of piping". OSHA was concerned that the seal of the bags would be stressed if bags were used to remove TSI from structures whose configurations made attachment difficult and unreliable. Therefore, the provision limited glove bag use to "straight runs" of piping, clearly a configuration which bags were manufactured to fit. The Agency did not intend that glove bags could not be used to remove TSI from connecting members, joints, elbows and valves which connect and attach to asbestos-covered pipes, if they too, are manufactured and designed to be used for that purpose. These corrections change the regulatory text in paragraph (g)(5)(ii) of the construction and shipyard standards to add that glovebags may be used on connecting configurations so long as they are designed for that purpose, used as designed, and not modified.

In response to concerns expressed by participants, OSHA wishes to clarify (g)(6)(iii) in which a licensed engineer or certified industrial hygienist is required to consider worst-case conditions in determining the adequacy of a alternate method to control asbestos exposure in Class I operations. "Worst-case conditions" do not include every imaginable scenario, but the worst case is one which can reasonably be expected to be encountered in use of the method. For example, in the case of a power failure, would the control method remain capable of containing the fibers and continue to control exposure? What would be expected if all workers using the method were newly trained? These considerations should include circumstances reasonably expected to occur. The certifying hygienist or engineer is not required to make the determination with absolute and unreasonable certainty. OSHA intends that allowing the use of alternate effective control methods will promote the development of new technologies.

Roofing: After the standard was issued, the National Roofing Contractors Association (NRCA) filed a petition with OSHA asking that a number of provisions of the standard be reconsidered or clarified insofar as they applied to roofing operations. Upon examining NRCA's petition in light of the rulemaking record, OSHA has determined that certain corrections and clarifications to the standard would ease compliance burdens on roofing contractors and avoid creating safety hazards without significantly increasing the amount of asbestos to which roofing workers are exposed. OSHA also

determined that certain corrections and interpretations were needed to clarify the agency's original intent as to the meaning of the standard. OSHA also believes that the meritorious recommendations of the petition are properly responded to by the following corrections and clarifications.

(a) Removal of intact cements, coatings, mastics, and flashings.

The original standard classified all removals of asbestos-containing material from roofs as Class II operations. This classification was based on OSHA's evaluation of the risk associated with removal from roofs of asbestos-containing built-up roofing and removal of asbestos-cement (A/C) shingles. Such jobs were assigned the Class II designation because the large quantity of asbestos-containing material on such roofs dictated that care had to be taken to assure that substantial numbers of asbestos fibers were not released by the removal techniques used or by the manner in which the material was handled after removal.

On many roofs, the shingles or built-up roofing do not contain asbestos but asbestos is present in the form of cements, mastics, coatings, and flashings. These products are not the primary roofing material but are typically used for purposes such as weatherproofing openings or edges. For example, on a flat roof with a parapet around the edge, flashing would be used to seal the area where the built-up roofing meets the parapet. When the only ACM on a roof is in the form of cements, mastics, coatings, and flashings, the amount of asbestos present is much less than when the main roofing material contains asbestos, and the potential for worker exposure is correspondingly lower. There is still the potential for significant fiber release if such materials have deteriorated to the point where they are no longer "intact," i.e., where either before or during removal they crumble, are pulverized, or otherwise become deteriorated to the point where the asbestos fibers are no longer likely to be bound with their matrix. However, such materials lose their waterproofing ability, and are therefore usually replaced, before they have deteriorated to the point where they are non-intact. Thus, in the usual circumstances when such materials are intact both before and during removal, the potential for exposure is low and the full range of precautions required during Class II work is not needed to protect workers against excessive asbestos exposure.

Accordingly, OSHA is correcting the standard to provide that removal of intact cements, mastics, coatings, and flashings is not Class II work. A new paragraph (g)(11) is being added to the construction standard that will exclusively govern such removals and is intended to impose only a few straightforward requirements and prohibitions that reflect the limited asbestos exposure potential of such operations. An identical paragraph (g)(12) is being added to the shipyard employment standard. Under paragraph (g)(11), the material must not be sanded, abraded, or ground but must be removed using manual methods that do not render the material non-intact. Material that has been removed from a roof must not be dropped or thrown to the ground and must be removed from the roof by the end of the work shift, either by being carried or passed to the ground by hand or by being lowered to the ground via covered, dust-tight chute, crane or hoist. Prior to the start of the job, the material must be examined by a competent person to determine whether it is intact and is likely to remain intact throughout the job. And the employees must be trained in the hazards of asbestos exposure and the proper work practices and prohibitions applicable to such work. If these conditions are not met, then the job must be treated as a Class II job.

When cements, mastics, coatings, and flashings are manufactured and installed, the asbestos fibers are tightly encapsulated by adhesive bituminous and resinous compounds that effectively prevent the fibers from being released. In order to provide effective waterproofing, these materials must retain their adhesive quality over their useful life. Accordingly, when such materials are intact prior to removal, the use of commonly used manual methods to remove the material will not result in significant fiber release. A variety of hand tools are typically used to remove cements, mastics, coatings, and flashings, including spud, spade, flat-blade or slicing tools, such as axes, mattocks, pry bars, spud bars, crow bars, shovels, flat-blade knives, and utility knives. When these tools are used to slice, cut, strip-off, shear-under, or pry-up the material, in accordance with standard practice in the roofing industry, their use is acceptable under new paragraph (g)(11). If these tools are used in other, unconventional ways which cause the material to crumble or become pulverized, or if other tools or methods which render the material non-intact are employed, then new paragraph (g)(11) does not apply.

Employees working on jobs covered by new paragraph (g)(11) and no other jobs that are covered by the asbestos standard are not subject to the special training requirements for Class II, III or IV work specified in paragraph (k)(9)(iii)–(v). Workers on jobs covered by new paragraph (g)(11) must, however, be trained in the following topics:

- Identification and Recognition of Asbestos-Containing Roofing Materials
  - identification of asbestos
  - Uses in roofing, past and present
  - Characteristics of asbestos
- Potential Health Effects of Asbestos
  - Nature of asbestos-related disease, including latency and medical tests for identifying asbestos diseases
  - Routes of exposure
  - Dose response relationships
  - Relationship between cigarette smoking and asbestos exposure and availability of smoking cessation programs
- Federal OSHA Construction Asbestos Standard
  - Overview of standard
  - Discussion of alternative methods for handling intact asbestos roof coatings, mastics, cements, and flashings
  - Discussion of PEL and significant risk
- Intact versus Non Intact Materials
  - Definitions
  - How to recognize non intact materials
  - Procedures to be followed when material is found or becomes non intact
- Appropriate Work Practices
  - Applying mastics, cements, coatings
  - Manual methods for removing materials
  - Clean up and waste disposal

The competent persons who inspect jobs covered by new paragraph (g)(11), and who do not supervise other jobs that are covered by the asbestos standard, are not subject to the special training requirements for Class II, III or IV work specified in paragraph (o)(4). Such competent persons must, however, be knowledgeable in the following topics in addition to the above topics covered in worker training:

- Methods of Determining Presence of Asbestos-Containing Roofing Material
- Understanding and Interpreting Air Monitoring Data
  - Some states, building owners, etc. require air monitoring on all ACM projects
  - Understanding a negative exposure assessment
- Notification Requirements—Commercial/Industrial Work Only

In addition to exclusively regulating the removal of intact cements, mastics, coatings, and flashings, paragraph (g)(11) also exclusively regulates the installation of ACM on roofs. Because the use of most asbestos products has been phased out, the only asbestos-containing products currently being installed on roofs are certain cements, mastics, and coatings. These materials are installed in a liquid or semi-liquid state in which the asbestos fibers are encapsulated in the bituminous or resinous binders used in these products, and new paragraph (g)(11) therefore does not require special work practices to prevent fiber release during installation. In addition to the requirements that apply to removal, paragraph (g)(11) contains a notification requirement applicable to newly-installed products. When materials labeled as containing asbestos pursuant to paragraph (k)(8) of the standard are installed on non-residential roofs, the contractor must notify the building owner of the presence and location of the asbestos-containing material. Under the standard, building owners must be aware of the presence of ACM, and this notification requirement will give the building owner the information needed to fulfill the owner's compliance duty. The requirement is limited to installation of ACM on non-residential roofs because owners of residential dwellings are typically not employers subject to the standard and are therefore not required to maintain records about the presence of asbestos in their buildings.

Because work on jobs covered by new paragraph (g)(11) is not Class I, Class II, or Class III work, such work is not included under paragraph 1101(m)(1)(i) in the determination of which employees are covered by the medical surveillance provisions of the standard unless during such jobs employees are exposed at or above the TWA or excursion limit or wear negative pressure respirators. In addition, the installation or removal of intact asbestos-containing roof coatings, mastics, cements and flashings are not subject to any provision of the standard other than new paragraph (g)(11) as long as the materials remain intact and the requirements of paragraph (g)(11) are satisfied.

OSHA notes that materials very similar to these "incidental" roofing materials are used for other purposes; for example, asbestos impregnated asphaltic wrap is used for protection of underground pipes. OSHA regards removal of such intact materials as being governed by (g)(11) of the construction standard [(g)(12) of the shipyard employment standard.]

The corrections, clarifications and interpretations that are discussed in the following sections apply to roofing operations in which asbestos is present in the primary roofing material, as in the case of built-up roofing (BUR) and A/C shingle roofs.

(b) *Use of Wet Methods and Respirators During Roof Removals*

The standard recognizes that wet methods are an important means of control during asbestos removal operations. When the surface of material being removed is wet, some asbestos fibers that would otherwise be released when the material is disturbed will adhere to the liquid rather than become airborne. Therefore, paragraph (g)(1)(ii) generally requires that wet methods be used to control worker exposure to asbestos during removal, as well as other, operations. However, paragraph (g)(1)(ii) recognizes that wet methods are sometimes infeasible and provides that wet methods need not be used in such circumstances. One situation in which paragraph (g)(1)(ii) indicates that wet methods may be infeasible is when they would create slipping hazards during roofing work.

This reference to slipping hazards in roofing work was included in the standard because a number of commenters expressed concern that an unconditional requirement to use wet methods could increase safety hazards associated with roofing work. (See 59 FR at 41006). Wetting the surface of a roof can make the surface slippery and increase the likelihood that a worker could slip while walking or working on the roof. This would be particularly dangerous on sloped roofs, where a slip could result in a worker falling off the edge of the roof. OSHA recognizes that the potential for falling from a roof makes roofing work hazardous even under the best of circumstances, and use of wet methods that make the roof surface slippery can add significantly to that hazard.

OSHA believes that the potential for increased safety hazards when wet methods are used on sloped roofs dictates that wet methods should not be used on sloped roofs unless there is a realistic likelihood that the TWA or excursion limit would be exceeded if wet methods are not used. Data in the rulemaking record indicate that exceedances of the TWA or excursion limit will not occur when the material being removed is intact and the work practices specified in the standard are followed. (See 59 FR at 41005). Accordingly, the standard is being amended to provide that wet methods are not required on sloped roofs when the ACM being removed is intact.

Two corrections to the standard are being made to effectuate this intent. Paragraph (g)(1)(ii) is being corrected to state that wet methods need not be used during roofing work when they are not required under paragraph (g)(8)(ii). And paragraph (g)(8)(ii)(B) is being corrected to provide that wet methods must be used to remove roofing materials that are not intact or that will be rendered not intact during removal unless wet methods are not feasible or will create safety hazards. As amended, paragraph (g)(1)(ii) makes clear that roofing materials are only subject to requirements for wet methods that are explicitly contained in paragraph (g)(8)(ii). There are two such requirements. First, paragraph (g)(8)(ii)(B), as amended by this notice, retains the requirement for use of wet methods to remove non-intact material unless the competent person determines that wetting the material is not feasible or would create a safety hazard. Second, paragraph (g)(8)(ii)(C) requires that cutting machines be continuously misted during use unless a competent person determines that misting substantially decreases worker safety. As cutting machines are only used in the removal of built-up roofing, which is not found on sloped roofs, the standard does not require the use of wet methods on sloped roofs when the material being removed is intact.

When wet methods are not used, the increased potential for airborne asbestos may dictate the need for other precautions, such as respirator use. Paragraph (h)(1)(iii), as originally written, required use of respirators during all Class II and Class III work that was not performed using wet methods, without regard to actual or anticipated exposure levels. However, respirator use can also increase the safety hazards associated with roofing work by limiting workers' visibility and mobility. Moreover, roofing work is sometimes done in hot weather, which can add to the discomfort associated with respirator use. Respirator use may also increase the risk that roofing workers performing the often physically demanding labor required of them during hot weather will suffer heat stress. OSHA believes that the drawbacks of respirator use on roofs would lead many roofing contractors to use wet methods rather than respirators on sloped roofs if one or the other is required. Therefore, a requirement that either respirators or wet methods be used would lead to increased use of wet methods on sloped roofs, with an attendant increase in slipping and falling hazards.

OSHA is reluctant to include a requirement in the standard that could increase safety hazards during roofing work unless such a requirement is clearly needed to avoid overexposing workers to airborne asbestos. As noted above, evidence in the rulemaking record indicates that asbestos levels will not exceed the TWA or excursion limit when intact roofing material is removed using proper work practices even when wet methods are not used. For the reasons discussed earlier, OSHA has

therefore concluded that wet methods should not be required during such removals. OSHA further concludes that employers should not be forced to choose between wet methods and respirators because such a choice would undoubtedly lead to use of wet methods in many cases and, even where respirators are selected, roofing workers would be exposed to increased safety hazards. Accordingly, paragraph (h)(1)(iii) is being corrected to provide that even when wet methods are not used on sloped roofs, respirators need not be worn when a negative exposure assessment has been made and the ACM is removed in an intact state.

(c) Lowering Removed Material to the Ground

Once asbestos-containing roofing material has been separated from the roof, it must be lowered to the ground for disposal. Proper handling of the material, both on the roof and on the ground, is needed to reduce the release of asbestos fibers. Even when the material is intact, the large quantity of material that must be moved from the roof to the ground during a Class II roof removal job dictates that care be used in the disposal operation. And when material is non-intact, the potential for release of large numbers of asbestos fibers during disposal operations requires additional precautions.

As originally written, paragraph (g)(8)(ii)(E) required that any ACM removed from a roof either be immediately lowered to the ground via covered, dust-tight chute, crane or hoist, or else be placed in an impermeable waste bag or wrapped in plastic sheeting and lowered to the ground no later than the end of the work shift. By oversight, no distinction was made between intact and non-intact material. To correct this oversight, OSHA is clarifying the wrapping or bagging requirement of paragraph (g)(8)(ii)(E) in the case of intact roofing material. As long as the material is lowered to the ground no later than the end of the work shift, the employer is no longer required to wrap or bag intact material while the material remains on the roof. Wrapping or bagging of intact material is inappropriate for two reasons. First, wrapping or bagging requires additional handling of the material and could increase the likelihood of asbestos fiber release, particularly in the case of large sections of built-up roofing, which can be difficult to wrap or bag. Second, wrapping or bagging increases the time required for the job and would thereby increase the time during which workers are exposed to the safety hazards associated with roofing work. OSHA believes that, when ACM that has been removed from a roof is intact, there is little potential for fiber release if the material remains undisturbed on the roof for a short time.

For non-intact material, however, the potential for significant fiber release requires some means of protection if the material is not immediately lowered to the ground. To minimize fiber release from non-intact material while it remains on the roof, paragraph (g)(8)(ii)(E) requires that such material either be kept wet, wrapped, or bagged if the material is not immediately lowered to the ground. The option to keep the material wet was not available under the original version of the standard. However, keeping the material wet will minimize fiber release and will avoid the need the additional handling required when the material is wrapped or bagged. Although wetting may sometimes not be feasible, there is no reason not to allow its use as an alternative to wrapping or bagging in those situations where it is feasible.

As corrected, paragraph (g)(8)(ii)(E) allows material to be carried or passed to the ground by hand as an alternative to being lowered by means of a dust-tight chute, crane or hoist. This gives employers additional flexibility in situations where manual lowering is feasible. For example, some roofing jobs may involve removal of amounts of ACM sufficiently small that the most feasible method of lowering the material to the ground may be to have it carried off the roof by a worker. Also, where the roof is not too high off the ground, it may be feasible to pass the material to the ground from hand to hand. As long as the material is not dropped or thrown to the ground, OSHA does not wish to prohibit use of lowering methods that do not give rise to the potential for significant fiber release.

Two technical amendments dealing with disposal of asbestos-containing roofing material are also being made. Paragraph (l)(2), the general provision for disposing of asbestos waste, is being corrected to state explicitly that the specific requirements for disposal of roofing waste in paragraph (g)(8)(ii) apply in lieu of the general requirement of paragraph (l)(2). And paragraph (g)(1)(iii), which generally requires prompt clean-up and disposal of asbestos waste and debris in leak-tight containers, is similarly being corrected to state that the specific provisions for clean-up and disposal of roofing waste in paragraph (g)(8)(ii) are exclusive. Thus, disposal of roofing waste is governed exclusively by paragraph (g)(8)(ii)(E), which has been discussed above, and paragraph (g)(8)(ii)(F), which requires that once roofing material has been lowered to the ground, unwrapped material shall be transferred to a closed receptacle in a manner that will preclude the dispersion of dust.

(d) Cleanup of Dust and Debris

The standard contains several requirements aimed at assuring that asbestos-containing dust and debris are cleaned up in a manner that minimizes worker exposure. Paragraph (g)(1)(i) requires that HEPA vacuums be used to collect all dust and debris containing ACM or PACM. The general provision for use of wet methods in paragraph (g)(1)(ii) applies during cleanup operations. And dry sweeping, shoveling, or other dry clean-up methods are prohibited by paragraph (g)(3)(iii).

When a roof is to be removed, there is often dust and debris on the roof that has resulted from the roof's exposure to the elements over a long period of time. The standard does not require HEPA vacuuming of such general environmental contamination before roof removal work begins or during such work. HEPA vacuuming of dust and debris is only required if there is an indication that non-intact ACM is the source of the dust and debris. Similarly, if a roofing contractor does clean up environmental dust and debris that is not associated with non-intact ACM before or during a roof removal job, the standard's prohibition on use of dry clean-up methods does not apply.

When a power roof cutter is used to remove built-up roofing, the dust resulting from the cut is non-intact ACM, and the standard requires that the dust be thoroughly and appropriately cleaned up. Rather than requiring that such dust always be HEPA vacuumed, paragraph (g)(8)(ii)(D) is being corrected to give employers additional flexibility when the dust can be removed by other means that prevent it from becoming airborne. When built-up roofing is removed from a smooth-surface roof (i.e., a non-aggregate built-up roof), paragraph (g)(8)(ii)(D) now permits employers, as an alternative to HEPA vacuuming, to gently sweep and then carefully and thoroughly wipe up the still-wet dust and debris generated by the roof cutter and left along the cut line. As long as the dust is completely wiped up while it is wet, this method will assure that the dust is disposed of without becoming airborne. However, where the built-up roofing has an aggregate surface, sweeping and wiping of the dust generated by the roof cutter is not an effective alternative because some dust will remain in the cracks and crevasses of the aggregate surface.

Therefore, HEPA vacuuming is still required in this situation.

A correcting amendment is being made to paragraph (g)(1)(i), the general provision requiring HEPA vacuuming of dust and debris, to acknowledge that paragraph (g)(8)(ii)(D) contains an exception to the requirement for HEPA vacuuming of dust and debris in the case of removal of built-up roofs from smooth bases. The amendment to paragraph (g)(1)(i) does not affect the general requirement that dust and debris associated with non-intact roofing material be HEPA vacuumed.

(e) Small Removal and Repair Jobs

Before a roof has reached the end of its useful life and must be replaced, it can develop leaks that must be repaired. When only a small area of an asbestos-containing roof is disturbed during a removal or repair job, the potential for exposure is much lower than for a complete roof removal job, and all of the precautions required for Class II or III roof removal jobs are not needed. It would, for example, be unnecessarily burdensome to require a HEPA vacuum to be lifted to a roof and connected to a possibly distant source of electricity if only a negligible amount of dust must be collected. Accordingly, a new paragraph (g)(8)(ii)(H) is being promulgated to provide that removal or repair of intact roofing less than 25 square feet in area does not require use of wet methods or HEPA vacuuming as long as manual methods which do not render the material non-intact are used and no visible dust is created. By requiring that hand methods be used and no visible dust be released, the exception is limited to situations where the work is done in a manner that does not release significant numbers of asbestos fibers. Moreover, OSHA believes that the 25 square foot figure, which represents a 5-foot square area, represents a reasonable cutoff between small repair jobs that do not require the full range of protection and larger jobs that present the potential for significant exposures.

Paragraph (g)(8)(ii)(H) is located in a section of the standard that addresses methods of compliance for Class II work. However, a job that qualifies for the exception also does not require use of wet methods and HEPA vacuuming under provisions of the standard applicable to Class III and Class IV roofing operations.

(f) Clarifying Corrections

Several corrections are being made to the regulatory language to clarify OSHA's intent and avoid uncertainty among employers who must comply with the standard.

Paragraph (f)(2)(ii), which describes the basis for making initial exposure assessments, is being corrected to state more directly that the initial exposure assessment must be based on jobsite monitoring unless a negative exposure assessment has been made.

The introductory sentence of paragraph (g)(8)(iii) is being corrected to clarify OSHA's intent that the requirements of paragraph (g)(8)(iii) do not apply to removal of ACM from roofs but only to removal of ACM from building exteriors other than roofs.

Paragraph (k)(7)(ii) is being corrected to assure that signs demarcating a regulated area provide accurate information as to whether respirators and protective clothing are required in the area. As originally written, the provision required all such signs to state that respirators and protective clothing must be worn in the regulated area. However, this information was sometimes inaccurate, because certain work must be performed in regulated areas even when the employees in the area are not required to wear respirators and protective clothing. For example, all Class II work must be performed in regulated areas, but respirators and/or protective clothing are not required during such work if the material remains substantially intact during removal and a negative exposure assessment has been made. Accordingly, paragraph (k)(7)(ii) is being corrected to provide that signs marking regulated areas must state that respirators and protective clothing must be worn within the area only when the standard in fact requires such protection.

(g) Clarifying Interpretations

Definition of "intact": The term "intact" is used in a number of provisions of the standard relating to roofing work. For example, several paragraphs discussed above differentiate between "intact" and "non-intact" roofing materials. Similarly, paragraph (g)(8)(ii)(A), which applies to Class II roofing removals, requires that roofing material be removed in an "intact" state to the extent feasible. "Intact" is defined at paragraph (b) to mean "that the ACM has not crumbled, been pulverized, or otherwise deteriorated so that it is no longer likely to be bound with its matrix." Accordingly, paragraph (g)(8)(ii)(A) is satisfied when the roofing material is removed in a manner that does not cause it to crumble, become pulverized, or otherwise damaged in a manner that is likely to release asbestos fibers. Also, if asbestos-containing roofing material is not removed "in a substantially intact state," paragraph (h)(1)(ii) requires respirator use. In short, the meaning of the term "intact" has considerable importance in determining whether and how roofing operations are regulated under the standard.

Roofing materials that are separated into pieces in the process of removal or repair are not considered to be "non-intact" solely because the material has been cut, sliced, pried, or otherwise separated into smaller units for the purpose of removal. The condition of the smaller units or pieces of removed roofing (for example, a 2 foot by 2 foot section of built-up roofing) must be evaluated against the definition of the term "intact" in paragraph (b) of the standard in order to determine whether the roofing material has been rendered "non-intact" by a removal or repair operation. For example:

a. Built-up roofing (BUR) that has been cut into smaller sections (e.g., using a power roof cutter) and pried up from the roof is not deemed to be "non-intact" solely because it has been separated into pieces. If the pieces of removed BUR have "not crumbled, been pulverized, or otherwise deteriorated so that [they] are no longer likely to be bound with [their] matrix," then they are "intact" as defined in paragraph (b) of the standard. On the other hand, the dust created by the destructive force of the cutting blade of a power roof cutter would be considered "non-intact."

b. The same interpretation applies to other roofing materials which are typically removed by dividing them into smaller units. For example, roof mastics and cements are usually pried, chipped or scraped off; asphalt felt underlayments are sliced and rolled-up or sometimes scraped-off or chipped-off; and flashings are sliced into manageable units and then pried-up. The fact that roofing materials have been removed in this fashion does not by itself render them non-intact under the standard. Rather, the removed pieces of roofing must be evaluated to determine whether they are "intact" as defined in paragraph 1101(b) of the standard.

c. Likewise, although asbestos-cement (A/C) shingles are pried up by hand and removed as individual units of roofing, occasionally incidental breakage of the shingles will occur even during careful removal procedures. Such incidental breaking does not in and of itself render the material non-intact under the standard; the question is whether the shingles (whether broken or not) have been crumbled, pulverized, or otherwise are not likely to be bound with their cementitious matrix as a result of the removal operation. The same interpretation applies to incidental breakage of other asbestos-containing roofing materials during removal or subsequent handling.

Paragraph (h)(1)(ii) requires that respirators be used if the material is not removed in a "substantially intact state." This provision does not require

that respirators be used during removal of built-up roofing when the BUR is cut into pieces.

HEPA Vacuuming, Wet Methods, and Bagging or Wrapping of Removed Material: Certain of the corrections to the standard that have been described earlier limit the situations in which HEPA vacuuming, wet methods, and bagging or wrapping are needed when asbestos-containing roofing materials are "intact" both prior to and after removal. Because many roof removal jobs involve removal of intact material, it is useful to summarize when these precautions are required.

The only wet method required when removing intact roofing material is continuous misting of the cutting blade of a power roof cutter, unless the competent person determines that misting substantially reduces worker safety, during removal of built-up roofing. HEPA vacuuming is only required to remove the dust that the power roof cutter leaves behind on aggregate-surface built-up roofs. And intact material does not need to be bagged or wrapped while it remains on the roof prior to being lowered to the ground. The material must, however, be lowered to the ground before the end of the work shift.

OSHA emphasizes that additional precautions are required when roofing material is non-intact. All dust and debris associated with such material must be HEPA vacuumed. If non-intact material is not immediately lowered to the ground, it must be kept wet, bagged, or wrapped while it remains on the roof. Additional use of wet methods will often be appropriate. However, because of potential safety hazards and other problems that excessive water on a roof can create, the degree to which wet methods are used is left to the sound judgment of the competent person. When non-intact material is removed, and particularly when wet methods are not used or when their use is limited, precautions such as respirators and protective clothing, which must be used if a negative exposure assessment cannot be made, will be required.

Isolation or Shutdown of Air Intakes: Paragraph (g)(8)(ii)(G) requires that roof level heating and ventilation air intake sources be isolated, or the ventilation system shut down, during Class II roof removal work. The purpose of this provision is to prevent asbestos fibers from entering the building's ventilation system and being inhaled by persons in the building.

In general, paragraph (g)(8)(ii)(G) requires isolation or shutdown only of air intakes in the regulated area. Under paragraph (e), regulated areas must be established and demarcated in a manner that will protect persons outside the area from exposure to asbestos. Therefore, when regulated areas have been properly established, there should not be a significant quantity of airborne asbestos fibers available to enter air intakes outside the regulated area. In some circumstances, however, prudence will dictate that air intakes even outside the regulated area be isolated or shut down. For example, if the opening of an intake outside the regulated is downwind from the removal work, variables such as wind speed and proximity and orientation of the intakes to the air flow may warrant isolation or closure of the intake. OSHA expects the competent person to use good judgment to effectuate the intent of the provision. Forms of isolation that will satisfy paragraph (g)(8)(ii)(G), depending on the circumstances of the particular job, include: (1) the use of 20 foot "buffer zones," subject to the exercise of good judgment by the competent person based on site-specific conditions, as discussed in the August 10, 1994 preamble, 59 Fed. Reg. at 41006; (2) the use of HEPA filters over the air intakes; (3) the use of horizontal or vertical extensions that relocate the opening of the air intake outside or above the regulated area or away from or above a nearby upwind source of asbestos fiber emissions; or (4) covering the intake with plastic sheeting or another kind of barrier.

5. Respiratory Protection

Paragraph (h) of Construction and Shipyard Employment Standards.

Respirators: In Class I operations in which a negative exposure assessment is not obtained, OSHA has clarified its respiratory protection requirements and has determined that the use of tight-fitting powered air-purifying respirators is permitted if the exposure assessment and monitoring show that exposure levels do not exceed 1 f/cc as an 8 hour time weighted average. Further when supplied air respirators are used in such circumstances, either HEPA egress cartridges or auxiliary bottles of air for supplied air respirators will be allowed. Paragraph (h)(2)(iv) in the construction and shipyard standards is corrected to incorporate these changes. The respirator tables remain unchanged.

This clarification is made to address the concerns of participants that although a higher degree of respiratory protection is needed in Class I operations where a negative exposure assessment is not produced, there are times when safety hazards (e.g., tripping), worker acceptability, configuration of the work area, and feasibility considerations make the choice of a supplied-air respirator less optimal. The record showed that tight-fitting powered air-purifying respirators (PAPRs) are widely accepted, offer additional mobility, and are effective at those levels and therefore are a protective alternative to supplied air respirators. Therefore, when an employer's exposure assessment shows that exposure levels will be below 1.0 fibers per cubic centimeter (f/cc) as an 8-hour time-weighted average, OSHA is allowing use of PAPRs. Where a negative exposure assessment is not produced, but fiber levels are controlled and do not vary above 1.0 f/cc as an 8-hour time-weighted average, OSHA believes use of PAPRs is appropriate.

Additionally, OSHA has noted that operations having higher fiber levels are often quite variable and that the time required to receive sampling results may be lengthy, hence the standards continue to require supplied air respirators when fiber levels are above the 1.0 f/cc level. Thus, the higher degree of protection offered by supplied air respirators is needed, as pointed out by rulemaking participants (Ex. 7–54, Ex. 143 at 48 and 63).

OSHA is also allowing the use of HEPA egress cartridges with supplied air respirators. Participants expressed concern that an auxiliary positive pressure self-contained breathing apparatus was not the only means of adequately providing for escape from the work area when the air supply failed. Many felt that HEPA-escape cartridges were equally effective and should be allowed. (See discussion in Ex. 143 at 65–69). OSHA notes that careful training in the use of HEPA-egress methods and of auxiliary positive pressure self-contained breathing apparatus is essential to their effective use in emergency situations.

6. Hygiene Facilities and Practices for Employees

Paragraph (j) Construction and Shipyard Employment Standards

Some participants pointed to an apparent inconsistency in the hygiene requirements in the standard. OSHA is correcting the provision dealing with clean rooms, (j)(1)(i)(C) in both standards, to clarify that showering is required and *then* the worker is to use a clean room provided by the employer to put on street clothes.

Briefly, the overall scheme for showering following asbestos work is as follows:

1. Class I work involving more than 25 linear or 10 square feet of TSI or surfacing ACM, adjacent showers required except where infeasible, on

ships or for outdoor work. These may HEPA vacuum their work clothes, change to clean work clothes and proceed to a non-adjacent shower.

2. Following Class I jobs involving less than 25 linear or 10 square feet of TSI or surfacing ACM, and Class II asbestos operations in which the PELS may be exceeded, showering is required, but the shower need not be adjacent to the work site, so long as the workers HEPA vacuum their work clothes on dropcloths and use proper procedures for clean-up before proceeding to a non-contiguous shower.

3. Following Class III work where the PELs may be exceeded, HEPA vacuuming of work clothes is required.

For Class III operations involving thermal system insulation and/or surfacing ACM/PACM where there is no exceedence of the PELs, HEPA vacuuming of workclothing is highly recommended, though not required.

7. Communication of Hazards

Paragraph (k) of Construction and Shipyard Employment Standards and paragraph (j) of General Industry.

OSHA is making some corrections of the regulatory text to clarify (i) which materials an employer *must* presume are asbestos-containing, (ii) when a reasonable employer must investigate the possibility that other materials are asbestos-containing, (iii) how to refute a required presumption that materials contain asbestos, (iv) when to make these decisions, and (v) whom to inform.

The term "due diligence" is not defined, it means however, that a reasonable employer, informed of this standard and other pertinent regulations, must inquire into the possibility that a building material is asbestos-containing. The required extent of the inquiry may vary, depending on the prevalence of the ACM for that use in that location, previous surveys, inspections, and other knowledge sources, and the date the material was installed.

Paragraph (k)(5)(ii)(B) in the construction and in the shipyard employment standard and paragraph (j)(8)(ii)(B) of the general industry standard are clarified to address concerns of participants regarding the requirement for 3 bulk samples to rebut the presumption that a material is ACM. OSHA clarifying that it is referencing the EPA sampling protocol of 40 CFR 763.86. This requires an accredited inspector (OSHA allows a CIH) to collect samples in a random representative manner from each homogenous area of surfacing material: 3 from each homogeneous area of less than 1,000 square feet, 5 from areas between 1,000 and 5,000 square feet and 7 from areas greater than 5,000 square feet. In addition, one sample is adequate from homogenous patched areas of TSI of less than 6 square or linear feet. For insulated mechanical systems and other "miscellaneous" materials, bulk samples are to be collected "In a manner sufficient to determine whether the material is or is not ACM."

Further, this scheme will allow the inspector or CIH to determine that a TSI is fiberglass, foam glass, rubber or other non-asbestos containing material and sampling is not required for these materials. Thus, the number of samples required will be lessened in some situations and increased in others, depending on the amount of material present. Actual sampling may be conducted under the supervision of a certified industrial hygienist or accredited inspector, but a "visual identificstion" may be made *only* by a CIH or inspector.

Training Requirements: Questions have arisen regarding the time requirements for "refresher" training required in paragraph (k)(9)(ii) of the construction and the shipyard employment standards. OSHA wishes to clarify that for Class I workers and for Class I and Class II competent persons whose training is equivalent to that of 40 CFR part 763, subpart E, appendix C, the annual refresher training shall be of 8 hours duration, equivalent to that in the EPA regulation. For all others trained under the provisions of these standards, annual refresher training is required, but the duration is not specified. OSHA believes that hands-on training is essential for both initial and refresher training. To accomplish this and cover essential health information, a minimum of two hours training will be expected for Class II and III work.

Training for Class II work: In developing the revised standards, OSHA noted that asbestos abatement workers often remove large amounts of the higher hazard materials such as thermal system ACM and sprayed-on ACM and other ACM having somewhat lower exposure potential such as siding, wallboard and other building materials. For this group of workers OSHA continues to believe that training equivalent to that of EPA's asbestos abatement worker training is appropriate.

However, some workers will remove only ACM which is not TSI or surfacing ACM. For those whose work involves removal of only a single generic type of material, OSHA specified that an 8 hour training course would be acceptable. OSHA continues to believe that this time period is necessary for training of workers whose duties include removal of building materials such as roofing, flooring, siding, transite panels and ceiling tiles.

However, it has been brought to the agency's attention that there are some other types of materials other than those listed ACM building components. These other materials include gaskets, firedoors, laboratory hoods, and other materials (for example, see list in Ex. 1–183, EPA's "Greenbook" Appendix G, page 40). However, covering all required training for those other materials is generally not assumed to take 8 hours. The training for these materials continues to require covering all topics in (k)(9)(viii) of the Construction and Shipyard Employment Standard, all pertinent work practices and other controls and must have a "hands-on" component. OSHA believes that such training would be likely to require at least 4 hours to adequately cover the topics, methods, and hands-on portion. OSHA also recognizes that many different operations will be covered in this type of training and that the time required for adequate training will vary and thus the period is not specified.

Training for Class III Work: OSHA has reviewed the training requirements for Class III work for employers with a stable work force which infrequently encounters limited types of asbestos and generates less than a waste bag full of dust and debris (OSHA notes that the waste bag dimensions must not exceed 60" by 60"). These operations occur at various locations such as refineries, power plants, or in the communication industry and may involve rapidly completed operations such as removal of a small gasket from a pipeline or drilling a hole in a shingle to run a cable through it. In submissions to the record, participants (e.g., Exhibits 7–21, 7–99, 7–101, 127, 145) presented sampling data indicating these exposures were well-controlled by the use of work practices by workers trained under the provisions of the earlier standards.

The standards require training equivalent to EPA's "O&M" training as outlined in 40 CFR 763.92. This training, which was originally intended to serve as part of an operation and maintenance program for schools, provides a basis for training for those operations in most other buildings and facilities. However, OSHA has re-evaluated the requirements for this training in light of the fact that Class III operations under its standards include different activities than managing installed asbestos containing building materials in place. This 16 hour course may not serve to properly prepare those

whose duties include other activities such as changing an intact gasket, in a pipeline, replacing packings or making occasional small opening in shingles to run lines. On the other hand, these jobs often involve only small amounts of asbestos and are usually brief in duration, infrequent, and often take place out of doors requiring different skills so that some of the requirements of the 16 hour course are not relevant.

OSHA has clarified that, as for other provisions of the standards, employers may rely on their well-trained competent persons to decide whether the O&M-type course is appropriate to these tasks. If it is determined that the curriculum, equivalent to that of 40 CFR 763.92 does not adequately cover the topics and work practices needed in an operation, the employer's competent person may certify that the training contained in (k)(9)(viii) is more applicable to that situation and may opt to designate this training, as long as the specific work practices, other controls necessary and "hands-on" training will be adequately covered.

OSHA anticipates that the duration of the training will to some extent, reflect the complexity and hazard of the operation, but would be likely to require at least 4 hours of initial training to adequately cover the topics, methods, and hands-on portion. However, the duration of such training is not specified. Annual refresher training for this group of workers is required, without specified duration.

Paragraph (j)(7)(iv) of the General Industry standard is corrected to clarify the requirement for awareness training of housekeepers. The word "facility" is replaced with the word "area." This clarifies OSHA's intention that only those workers whose housekeeping duties require them to work in areas of a building or facility in which asbestos or presumed asbestos is present shall receive awareness training. For example, in a refinery in which the only ACM/PACM is outdoor pipe insulation and the housekeepers duties are only within the office building on the site, the employer is not required to provide them awareness training. Awareness training is required for those whose duties might bring them into contact with ACM/PACM.

Signs: The requirements for signs in the construction standard were inadvertently omitted from the general industry standard. The paragraph (k)(6) of the 1926.1101, which requires asbestos warning signs in areas of buildings where there is ACM/PACM, is added to 1910.1001 and becomes paragraph (j)(3)(v).

8. Medical Surveillance

Paragraph (m) Construction and Shipyard Employment Standard.

OSHA inadvertently included more extensive medical requirements for 2 groups of workers who perform lower risk work. Accordingly, OSHA is clarifying paragraph (m)(1)(i) to reduce requirements for medical surveillance for two groups of workers. For the first group, occasional wearers of respirators, the more comprehensive physical examination required by the asbestos standards is not necessary for workers who are required to wear negative pressure respirators while performing Class I, II, or III work for less than 30 days per year. For this group, a physician must ensure that employees are able to use a respirator. The interval for such determinations is one year. This provision is similar to that of 1910.134, the Respiratory Protection Standard, which is currently in rulemaking. This provision may be amended as a result of that process, at which time OSHA may reconsider this provision in the asbestos standards also.

Class II and Class III Medical Surveillance: The second group are workers who perform Class II and Class III operations very briefly and occasionally, and are exposed below the permissible exposure level (PEL). The standard provides medical surveillance for all workers below the PEL who engaged in Class II or III operations for 30 or more days per year. However, OSHA now clarifies that the 30-day requirement should be corrected to exclude days in which less than one hour is spent in Class II or III work when work practices that fully comply with the standard's requirements are followed. As thus modified, the standard more closely reflects OSHA's policy of requiring medical surveillance for workers exposed at or above an action level for 30 or more days per year.

The 1986 asbestos standard required medical surveillance for workers exposed above the action level (then 0.1 f/cc) for 30 or more days per year. OSHA standards for other toxic air contaminants, including lead, cadmium, benzene, and ethylene oxide, similarly trigger medical surveillance by exposure at or above an action level of 30 or more days per year. When the court of appeals remanded the 1986 standard for OSHA to re-evaluate whether the 8-hour time weighted average exposure limit (then 0.2 f/cc) should be lowered, it also instructed OSHA to reconsider making a corresponding reduction in the action level. However, in lowering the 8-hour time weighted average exposure limit (TWA) to 0.1 f/cc in the present standard, OSHA decided not to set an action level equal to half the new TWA. This decision was based on the difficulty of obtaining reliable and reproducible measurements of asbestos concentrations as low as 0.05 f/cc under jobsite conditions (see 59 FR at 40975).

Instead of triggering medical surveillance by an action level of 0.05 f/cc, the asbestos standard required medical surveillance for all workers who engaged in Class I, II, or III work for 30 days or more per year. Thus, for medical surveillance purposes, the standard uses the classification system as a surrogate for the action level. OSHA believed that using Class II and III work in particular to trigger medical surveillance would be approximately the equivalent of triggering medical surveillance by an action level of 0.05 f/cc, for while most Class II and Class III jobs are not expected to exceed the 8-hour TWA of 0.1 f/cc, they involve the removal of substantial amounts of asbestos containing material and may approach or exceed levels of 0.05 f/cc.

OSHA continues to believe that the classification system is a reasonable surrogate for an action level and that workers who perform Class II and/or Class III work for 30 or more days per year should generally receive medical surveillance under the standard. However, OSHA is correcting the standard to exclude from the 30-day count those days in which the worker engages in Class II or III work for one hour or less when such work is performed in accordance with the work practices required by the standard. When the standard's work practices are followed during Class II and Class III work, the rulemaking record shows that the TWA will usually not be exceeded even if the work continues for all or most of an 8-hour work shift (see 59 FR at 41000–41008). Thus, in most cases, employers will choose not to monitor specific jobs because they have historic and/or objective data.

OSHA believes that where historic and/or objective data exempt an employer from monitoring most exposures will be well below the TWA of 0.1 f/cc, and would also be below 0.05 f/cc, if the job takes less than one hour and the proper work practices are used. Therefore, the classification system will be a more accurate surrogate for an action level if those days in which employees perform Class II or Class III work for one hour or less while using proper work practices are excluded from the number of days that count toward the medical surveillance requirement. OSHA believes that this adjustment better aligns the standard with OSHA's policy of requiring medical surveillance of workers who are exposed to a level equal to or exceeding an action level of half the permissible 8-hour time weighted average for 30 or more days per year.

OSHA believes that the one-hour period is a reasonable cutoff between jobs of brief duration and those that cover a substantial part of the work shift. In addition to more accurately reflecting OSHA's usual medical surveillance policy, this correction will avoid imposing unnecessary recordkeeping burdens on employers by enabling them to avoid recording, for medical surveillance purposes, each day an employee engages in Class II or III work even when that work may last only a few minutes.

9. Appendices

General Industry Standard, Appendix F, Shipyard Employment Standard, Appendix L:

Throughout the discussion of asbestos exposure during brake and clutch repair work in the preamble, OSHA stated that it would require training of technicians/mechanics in the proper use of work practices to be used during these operations. However, language to that effect was inadvertently omitted from the appendices describing the mandatory work practices. This document corrects the text of the appendix in both 1910.1001 and 1915.1001 to include a requirement that technicians/mechanics be trained in the proper use of the preferred or equivalent work practices.

Equivalency of Alternate Methods for Brake Work: OSHA is also correcting Appendix F of the General Industry and Appendix L of the Shipyards Employment standard to indicate that the fiber level required to demonstrate the equivalency of an alternate method of asbestos control in brake and clutch work is 0.016 f/cc. As originally drafted, the standard set the equivalency criterion at 0.004 f/cc. This was based on a NIOSH study (Ex. 1–112) showing that the preferred methods of asbestos control in brake and clutch work could attain exposure levels ranging from 0.004 to 0.016 f/cc. OSHA has determined that the more appropriate value for an equivalent method to attain is the high end of the range of values found to be attainable in this study, or 0.016 f/cc. Setting the equivalency level at this value will assure that an equivalent method provides workers with effective protection against asbestos exposure without making the equivalency criterion so low as to discourage development of alternative methods of protecting brake and clutch workers. The standard lists two preferred methods of asbestos control during brake and clutch work: the Negative Pressure Enclosure/HEPA Vacuum System Method and the Low Pressure/Wet Cleaning Method. The appendices to the general industry and shipyard standards give detailed descriptions of these methods. When these methods are properly used by trained workers, employers are in full compliance with the standard.

The standard also permits the use of equivalent methods that can be shown to comply with the equivalency criterion, as corrected by this document, of 0.016 f/cc. Like the preferred methods, an equivalent method must include a detailed description of the practices that must be followed when the method is used. Since equivalent methods are not set forth in the standard, an employer who uses such a method must have a written description of the method that contains sufficient detail that the method can be reproduced. When the method meets the equivalency criterion and the workers who use it are properly trained, then just as when a preferred method is used, the employer is in full compliance with the standard.

The proposed standard described a method, referred to as the Spray Can/Solvent System Method, that OSHA did not include as a preferred method in the final standard. However, OSHA has determined from the NIOSH study that the Spray Can/Solvent System Method, as described in the proposed standard, meets the corrected equivalency criterion of 0.016 f/cc. Accordingly, the Spray Can/Solvent Spray System Method qualifies as an equivalent method under the corrected equivalency criterion. When employers use the Spray Can/Solvent System Method, they must adhere to the work practices listed in the proposed standard for the method to qualify as an equivalent method. For convenience, those work practices are reiterated here.

(1) The spray can/solvent system shall be used to first wet the brake and clutch parts. Then, the brake and clutch parts shall be wiped clean with a cloth.

(2) The cloth shall be placed in an impermeable, properly labelled, container and then properly disposed of, or the cloth shall be laundered in a way that prevents the release of asbestos fibers in excess of 0.1 fibers per cubic centimeter of air.

(3) Any spills of solvent or any asbestos-containing waste material shall be cleaned up immediately.

(4) The use of dry brushing during solvent spray operations is prohibited.

The foregoing is an adequate written description of the Spray Can Solvent System Method within the meaning of Appendix F to the general industry standard and Appendix L of the shipyard employment standard.

The standard and this correction document are issued under the authority of sections 4, 6(b), 8(c), and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act, 40 U.S.C. 333); Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); and 29 CFR Part 1911.

Correction of Publication

The following corrections are made in the final rule for Occupational Exposure to Asbestos published in the **Federal Register** on August 10, 1994 (59 FR 40964).

1. On page 40964, in the first column, in the first paragraph entitled "Summary," line 23 is corrected by removing the words "high hazard".

2. On page 40972, line 11 of the first column, the word "informing" is corrected to read "inform".

3. On page 40972, in the first column, in the second full paragraph, line 14, the words "after 1979" are corrected to read "no later than 1980".

4. On page 40975, in the first column, in the last paragraph, line 10 is corrected by adding the words "perform housekeeping" after the word "who".

5. On page 40977, line 17 of the second column, the words "Class II" are corrected to read "Class III".

6. On page 40977, in the second to third column, in the paragraph under the heading entitled "*Disturbance,*" lines 4 through 7 are corrected to read "definition, disturbance means activities that disrupt the matrix of ACM or PACM, crumble or pulverize ACM or PACM, or generate visible debris from ACM or PACM. It also includes".

7. On page 40978, in the first column, the paragraph under the heading entitled "*Presumed Asbestos-Containing Material (PACM)*" is corrected to read:

* * * * *

In all three standards, "presumed asbestos containing material," "PACM" means thermal system insulation and sprayed on and/or troweled on, or otherwise applied surfacing material in buildings constructed no later than 1980. In many places in the Preamble, OSHA refers to "high risk" ACM and PACM. These terms are not used in the regulatory text. The term "high risk" refers to the possibility or potential for injury and does not mean injury will necessarily occur. OSHA uses these

terms in the Preamble in a relative sense to describe its findings that TSI and surfacing material are more prevalent and can be more friable than many other asbestos-containing materials in buildings. As discussed elsewhere in the Preamble, OSHA finds that the OSHA-required provisions involving all types of ACM should result in low exposure levels that would protect employees from significant risk. Although these materials may have been installed in small quantities after 1980, OSHA finds that their installation is unlikely after that date.

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8. On page 40986, in the first column, in the first paragraph, line 21, the word "a" is corrected to read "an".

9. On page 40986, line 5 of the third column is corrected by removing the word "listing".

10. On page 40987, in the third column, under the heading entitled "*Floor Maintenance*," in the first paragraph, line 17, the word "speed" is corrected to read "speeds".

11. On page 40988, in the second column, in the second full paragraph, line 15, the word "Method" is corrected to read "Methods".

12. On page 40988, in the third column, in the third full paragraph, line 4 is corrected by removing the comma after the word "prior".

13. On page 40988, in the third column, in the third full paragraph, line 11, the word "if" is corrected to read "is".

14. On page 40988, in the third column, in the last paragraph, line 4 is corrected by adding the word "the" after the word "of".

15. On page 40989, in the second column, under the heading entitled "*Other Basic Controls*," in the first paragraph, line 13, the number "(2)" is corrected to read "(3)".

16. On page 40990, in the first column, in the second full paragraph, the last line, the words "see (g)(4)(F)" are corrected to read "see paragraph (g)(4)(vi)".

17. On page 40990, in the second column, in the third full paragraph, line 7, the words "paragraph B" are corrected to read "paragraph (b)".

18. On page 40991, line 12 of the first column is corrected to read "asbestos panel: 9 square feet; pipe".

19. On page 41000, in the first column, in the first full paragraph, the last line is corrected by removing the words "in a".

20. On page 41000, in the third column, in the first paragraph, line 5, the words "paragraph (g)(ii)(a)" are corrected to read "paragraph (g)(8)(i)".

21. On page 41004, in the second column, under the heading entitled "*Roofing Operations*," in the first paragraph, line 19 is corrected by adding the word "the" after the word "to".

22. On page 41009, in the second column, in the last paragraph, line 3, the number "(9)" is corrected to read "(10)".

23. On page 41009, in the second column, in the last paragraph, line 18, the word "contained" is corrected to read "containing".

24. On page 41009, in the second column, in the last paragraph, line 20, the words "Paragraph (g)(9)" are corrected to read "Paragraph (g)(10)".

25. On page 41009, in the third column, in the first paragraph, line 1, the words "paragraph (g)" are corrected to read "paragraph (g)(10)(i)".

26. On page 41009, in the third column, in the first paragraph, line 11, the words "(g)(g)(iv)" are corrected to read "(g)(10)(i)".

27. On page 41010, in the first column, in the third full paragraph, line 3, the words "engineeromg cpmtrp" are corrected to read "engineering controls".

28. On page 41014, in the third column, in the last paragraph, line 16, the words "before 1980" are corrected to read "no later than 1980".

29. On page 41015, in the first column, in the third full paragraph, line 1 is corrected by removing the word "the".

30. On page 41016, in the first column, in the last paragraph, lines 8, 9, 10, and 15, the words "high hazard" are corrected to read "high risk".

31. On page 41016, in the second column, in the last paragraph, line 6 is corrected by removing the word "a".

32. On page 41016, line 28 of the third column, the words "high hazard" are corrected to read "potentially high risk".

33. On page 41017, in the first column, in the first full paragraph, line 18, the words "before 1980" are corrected to read "no later than 1980".

34. On page 41017, in the second column, beginning in line 6, the sentence "Neither EPA's revised MAP nor OSHA requires specific training or accreditation of persons who only visually inspect the condition of ACM/PACM." is removed.

35. On page 41020, in the first column, under the heading entitled "*Training Requirements for Employees Performing Class III and IV Work*," in the first paragraph, lines 25 through 28 are corrected to read "consistent with EPA requirements for training of local education agency maintenance and custodial staff as set forth at 40 CFR 763.92(a)(2).".

36. On page 41023, in the second column, in the first full paragraph, line 11 is corrected by adding the word "school" after the word "asbestos-containing".

37. On page 41023, in the third column, in the second paragraph, lines 8 through 11 are corrected to read "trained in a course consistent with EPA requirements for training of local education agency maintenance and custodial staff as set forth at 40 CFR 763.92(a)(2). If clean-up work is done within".

38. On page 41044, in Table 7, in the last column entitled "Total annual incremental control costs," the figure "24,787,345" is corrected to read "14,787,345".

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39. On page 41057, in the third column, in § 1910.1001, paragraph (a)(2), line 5, the number "1926.58" is corrected to read "1926.1101".

40. On page 41057, in the third column, in § 1910.1001, paragraph (a)(3), line 7, the number "1915.191" is corrected to read "1915.1001".

41. On page 41058, in the first column, in § 1910.1001, paragraph (b), a definition of "*Certified industrial hygienist*" is added before the definition of "*Director*" to read:

* * * * *

(b) * * *

Certified industrial hygienist (CIH) means one certified in the practice of industrial hygiene by the American Board of Industrial Hygiene.

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42. On page 41058, in the first column, in § 1910.1001, paragraph (b), a definition of "*Homogeneous area*" is added before the definition of "*Industrial hygienist*" to read:

* * * * *

(b) * * *

Homogeneous area means an area of surfacing material or thermal system insulation that is uniform in color and texture.

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43. On page 41058, in the first column, in § 1910.1001, paragraph (b), the definition of "*PACM*" is corrected to read:

* * * * *

(b) * * *

PACM means "presumed asbestos containing material."

* * * * *

44. On page 41058, in the first column, in § 1910.1001, paragraph (b), a definition of "*Presumed asbestos containing material*" is added before the definition of "*Regulated area*" to read:

* * * * *

(b) * * *

Presumed asbestos containing material means thermal system insulation and surfacing material found in buildings constructed no later than 1980. The designation of a material as "PACM" may be rebutted pursuant to paragraph (j)(8) of this section.

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45–48. On page 41058, in the first column, in § 1910.1001, paragraph (b), the following definitions are added in alphabetical order after the definition of "*Regulated area*" to read:

* * * * *

(b) * * *

Surfacing ACM means surfacing material which contains more than 1% asbestos.

Surfacing material means material that is sprayed, troweled-on or otherwise applied to surfaces (such as acoustical plaster on ceilings and fireproofing materials on structural members, or other materials on surfaces for acoustical, fireproofing, and other purposes).

Thermal System Insulation (TSI) means ACM applied to pipes, fittings, boilers, breeching, tanks, ducts or other structural components to prevent heat loss or gain.

Thermal System Insulation ACM means thermal system insulation which contains more than 1% asbestos.

* * * * *

49. On page 41058, in the first column, in § 1910.1001, paragraph (c)(1), line 4 is corrected by adding the word "in" after the word "asbestos".

50. On page 41058, in the first column, in § 1910.1001, paragraph (c)(1), line 8, the word "of" is corrected to read "to".

51. On page 41058, in the first column, in § 1910.1001, paragraph (c)(2), line 7 is corrected by adding the words "as determined by the method prescribed in Appendix A to this section, or by an equivalent method" after the word "minutes".

52. On page 41058, in § 1910.1001, paragraph (d)(5), line 5 of the third column, the words "action level" are corrected to read "PEL".

53. On page 41059, in the second column, in § 1910.1001, paragraph (f)(1)(viii) is corrected by removing the word "of" on the last line of the paragraph.

54. On page 41059, in the third column, in § 1910.1001, paragraph (f)(3)(i), line 24, the words "Appendix F of" are corrected to read "Appendix F to".

55. On page 41060, in the third column above Table 1, in § 1910.1001, paragraph (g)(2)(ii) introductory text, line 2 is corrected by adding the words "tight-fitting" before the word "powered".

56. On page 41060, in § 1910.1001, paragraph (g)(2), in Table 1, under the heading "Airborne concentration of asbestos or conditions of use," lines 1 through 3 are corrected to read "Not in excess of 1 f/cc (10 X PEL)."

57. On page 41060, in the first column below Table 1, in § 1910.1001, paragraph (g)(3)(iii), line 2 is corrected by removing the comma after the word "shall".

58–59. On page 41060, in the first column below Table 1, in § 1910.1001, paragraph (g)(3)(iv), line 10, the word "employee" is corrected to read "employees".

60. On page 41060, in the second column below Table 1, in § 1910.1001, paragraph (g)(4)(ii), line 11, the word "of" is corrected to read "to".

61. On page 41060, in the second column below Table 1, in § 1910.1001, paragraph (g)(4)(ii), the last line, the number "(ii)" is corrected to read "(i)".

62. On page 41060, in the third column below Table 1, in § 1910.1001, paragraph (h)(2)(iv), the last line, the number "(2)" is corrected to read "(4)".

63. On page 41061, in the first column, in § 1910.1001, paragraph (i)(2)(i), line 4 is corrected by adding a comma after the word "limit".

64. On page 41061, in the second column, in § 1910.1001, paragraph (j) introductory text, line 30 is corrected by removing a closed parenthesis after the number "1926.58".

65. On page 41061, in the second column, in § 1910.1001, paragraph (j)(1), line 5 is corrected by adding the words "in buildings constructed no later than 1980" after the word "ACM".

66. On page 41061, in the second column, in § 1910.1001, paragraph (j)(1), line 8, the word "(B)" is corrected to read "(b)".

67. On page 41061, in the second column, in § 1910.1001, paragraph (j)(1), line 9, the word "standard" is corrected to read "section".

68. On page 41061, in § 1910.1001, paragraph (j)(1), line 1 of the third column, the words "paragraph (j)(6)" are corrected to read "paragraph (j)(8)(iii)".

69. On page 41061, in the third column, in § 1910.1001, paragraph (j)(2)(i) is corrected to read:

* * * * *

(j) * * *

(2) * * * (i) Building and facility owners shall determine the presence, location, and quantity of ACM and/or PACM at the work site. Employers and building and facility owners shall exercise due diligence in complying with these requirements to inform employers and employees about the presence and location of ACM and PACM.

* * * * *

70. On page 41061, in the third column, in § 1910.1001, paragraph (j)(2)(iii) is corrected to read:

* * * * *

(j) * * *

(2) * * *

(iii) Building and facility owners shall inform employers of employees, and employers shall inform employees who will perform housekeeping activities in areas which contain ACM and/or PACM of the presence and location of ACM and/or PACM in such areas which may be contacted during such activities.

* * * * *

71. On page 41061, in the third column, in § 1910.1001, paragraph (j)(3)(ii) is corrected to read:

* * * * *

(j) * * *

(3) * * *

(ii) *Sign specifications.* (A) The warning signs required by paragraph (j)(3) of this section shall bear the following information:

DANGER

ASBESTOS

CANCER AND LUNG DISEASE HAZARD

AUTHORIZED PERSONNEL ONLY

(B) In addition, where the use of respirators and protective clothing is required in the regulated area under this section, the warning signs shall include the following:

RESPIRATORS AND PROTECTIVE CLOTHING

ARE REQUIRED IN THIS AREA

* * * * *

72. On page 41061, in the third column, in § 1910.1001, paragraph (j)(3)(iv), line 5, the number "(1)" is corrected to read "(3)".

73. On page 41061, in the third column, in § 1910.1001, a new paragraph (j)(3)(v) is added to read:

* * * * *

(j) * * *

(3) * * *

(v) At the entrance to mechanical rooms/areas in which employees reasonably can be expected to enter and which contain ACM and/or PACM, the building owner shall post signs which identify the material which is present,

its location, and appropriate work practices which, if followed, will ensure that ACM and/or PACM will not be disturbed.

* * * * *

74. On page 41061, in the third column, in § 1910.1001, paragraph (j)(4)(i), line 5 is corrected by adding three sentences after the word "containers." to read:

* * * * *

(j) * * *

(4) * * *

(i) * * * When a building owner or employer identifies previously installed ACM and/or PACM, labels or signs shall be affixed or posted so that employees will be notified of what materials contain ACM and/or PACM. The employer shall attach such labels in areas where they will clearly be noticed by employees who are likely to be exposed, such as at the entrance to mechanical room/areas. Signs required by paragraph (j)(3) of this section may be posted in lieu of labels so long as they contain information required for labelling.

* * * * *

75. On page 41062, in the first column, in § 1910.1001, paragraph (j)(5), line 9, the number "(4)" is corrected to read "(6)".

76. On page 41062, in the first column, in § 1910.1001, paragraph (j)(6), line 2, the number "(2)" is corrected to read "(4)".

77. On page 41062, in the second column, in § 1910.1001, paragraph (j)(7)(iv), line 3, the words "a facility" are corrected to read "an area".

78. On page 41062, in the second column, in § 1910.1001, paragraph (j)(7)(iv), lines 14 and 15, the words "are or will" are corrected to read "perform housekeeping".

79. On page 41062, in § 1910.1001, paragraph (j)(8)(i), line 11 of the third column, the word "(n)" is corrected to read "(m)".

80. On page 41062, in the third column, in § 1910.1001, paragraph (j)(8)(ii)(A), line 4, the word "asbestos" is corrected to read "ACM".

81. On page 41062, in the third column, in § 1910.1001, paragraph (j)(8)(ii)(A), line 5 is corrected by adding the word "or" after the word "material;".

82. On page 41062, in the third column, in § 1910.1001, paragraph (j)(8)(ii)(B), line 3, the word "asbestos" is corrected to read "ACM".

83. On page 41062, in the third column, in § 1910.1001, paragraph (j)(8)(ii)(B), lines 5 through 7 are corrected to read "analysis of bulk samples collected in the manner described in 40 CFR 763.86. The".

84. On page 41062, in the third column, in § 1910.1001, paragraph (j)(8)(ii)(B), line 17, the word "of" is corrected to read "or".

85. On page 41062, in the third column, in § 1910.1001, paragraph (j)(8)(ii)(B), line 19, the word "of" is corrected to read "or".

86. On page 41062, in the third column, in § 1910.1001, paragraph (j)(8)(iii), the last line, the words "asbestos free" are corrected to read "not ACM".

87. On page 41062, in the third column, in § 1910.1001, paragraph (k)(1), lines 3 and 4 are corrected to read "practicable of ACM waste and debris and accompanying dust.".

88. On page 41062, in the third column, in § 1910.1001, paragraph (k)(4), line 3 is corrected by adding the words "asbestos containing waste and debris" after the word "vacuuming".

89. On page 41063, in the first column above Table 2, in § 1910.1001, paragraph (k)(7)(ii), line 3, the word "speed" is corrected to read "speeds".

90. On page 41063, in the first column above Table 2, in § 1910.1001, paragraph (k)(7)(iv) is correctly designated as paragraph (k)(8), and is corrected to read:

* * * * *

(k) * * *

(8) Waste and debris and accompanying dust in an area containing accessible ACM and/or PACM or visibly deteriorated ACM, shall not be dusted or swept dry, or vacuumed without using a HEPA filter.

* * * * *

91. On page 41063, in the first column above Table 2, in § 1910.1001, paragraph (l) entitled "Medical surveillance" is correctly designated as paragraph (l) entitled "Medical surveillance".

92. On page 41063, in § 1910.1001, paragraph (l)(2)(ii), line 6 in the third column is corrected by adding the words "to this section" after the words "Appendix D".

93. On page 41063, in § 1910.1001, paragraph (l)(3)(ii), in Table 2, in the second column heading under the heading of "Age of employee" the number "40" is corrected to read "45".

94. On page 41063, in the third column below Table 2, in § 1910.1001, paragraph (l)(7)(i)(B), line 4 is corrected by removing the word "and".

95. On page 41063, in the third column below Table 2, in § 1910.1001, paragraph (l)(7)(i)(C), line 6 is corrected by removing the period and by adding "; and" after the word "treatment".

96–97. On page 41064, in the second column, in § 1910.1001, paragraph (m)(5)(iii), line 3, the number "(2)" is corrected to read "(3)".

98. On page 41064, in the third column, in § 1910.1001, paragraph (p)(2), line 1 is corrected by removing the letter "F,".

Appendix B to § 1910.1001 [Corrected]

99. On page 41065, in the first and second columns, in § 1910.1001, in Appendix B, the table is corrected so that the word "Air" is removed from between the double lines both places it appears and added following the word "Matrix".

100. On page 41065, in the second column, in § 1910.1001, in Appendix B, under the heading entitled "*1. Introduction,*" in the definition of "*Asbestos,*" the chemical formula for Crocidolite is corrected to read "$Na_2Fe_3{}^{2+}Fe_2{}^{3+}Si_8O_{22}(OH)^2$".

101. On page 41065, in the third column, in § 1910.1001, in Appendix B, in the definition of "*Walton-Beckett Graticule,*" line 4, the "#" sign is corrected to read " ".

102. On page 41065, in the third column, in § 1910.1001, in Appendix B, in the definition of "*Walton-Beckett Graticule,*" line 11, the number "2" is corrected to read "1".

103. On page 41065, in the third column, in § 1910.1001, in Appendix B, in the paragraph under the heading entitled "1.2 Principle," line 6 is corrected by removing the word "a".

104. On page 41066, in the second column, in § 1910.1001, in Appendix B, under the heading entitled "*4. Interferences,*" in the second paragraph, the list of common fibers is corrected to read:

* * * * *

4. Interferences

* * * * *

fiberglass
anhydrite
plant fibers
perlite veins
gypsum
some synthetic fibers
membrane structures
sponge spicules
diatoms
microorganisms
wollastonite

* * * * *

105. On page 41066, in the second column, in § 1910.1001, in Appendix B, under the heading entitled "*5.1.1* Sampling assembly," in the first paragraph, line 8, the number "0.8-" is corrected to read "0.4".

106. On page 41066, in the second column, in § 1910.1001, in Appendix B, under the heading entitled "*5.1.1*

Sampling assembly," a new note (e) is added to read:

* * * * *

5.1.1 * * *

Notes: * * *

(e) Other cassettes, such as the Bell-mouth, may be used within the limits of their validation.

* * * * *

107. On page 41066, in § 1910.1001, in Appendix B, under the heading entitled "*5.1.3* Sampling pump," lines 3 and 4 of the third column, the words "2.5 liters per minute (L/min)" are corrected to read "the collection rate".

108. On page 41066, in the third column, in § 1910.1001, in Appendix B, in the paragraph entitled "*5.2.1,*" line 2 is corrected by removing the words "(see Figure 3)".

109. On page 41066, in the third column, in § 1910.1001, in Appendix B, under the heading entitled "*5.2.5,*" lines 8 and 9 of the "Note" are corrected to read "pressure changes, correct the flow rate using the formula shown in the section "Sampling Pump Flow Rate Corrections" at the end of this appendix.".

110. On page 41067, in the first column, in § 1910.1001, in Appendix B, the paragraph entitled "*5.2.11*" is corrected to read:

* * * * *

5. * * *

5.2 * * *

5.2.11 Attach and secure a sample seal around each sample cassette in such a way as to assure that the end cap and base plugs cannot be removed without destroying the seal. Tape the ends of the seal together since the seal is not long enough to be wrapped end-to-end. Also wrap tape around the cassette at each joint to keep the seal secure.

* * * * *

111. On page 41067, in the first column, in § 1910.1001, in Appendix B, in the paragraph entitled "*5.3.2,*" the last line, the words "without rattling" are corrected to read "in such a manner that they will not rattle".

112. On page 41067, in the second column, in § 1910.1001, in Appendix B, under the heading entitled "6.5 Sample Mounting," the paragraph following the Note is corrected by removing the sentence, "A drawing is shown in Figure 4.".

113. On page 41068, in the first column, in § 1910.1001, in Appendix B, under the heading entitled "*6.6.2* Counting Fibers," paragraph (9), the last line, the number "2" is corrected to read "1".

114. On page 41068, in the third column, in § 1910.1001, in Appendix B, under the heading entitled "7.3. Recount Calculations," the formula in the third paragraph is corrected to read:

* * * * *

7.3 Recount Calculations

* * * * *

$$\left|\sqrt{AC_2}-\sqrt{AC_1}\right| > 2.78 \times \left(\sqrt{AC_{AVG}}\right) \times CV_{FB}$$

* * * * *

115. On page 41069, in the second column, in § 1910.1001, in Appendix B, under the heading entitled "*Quality Control,*" in the first paragraph, lines 6 and 7 are corrected by removing the words "for the CV curve shown below".

116. On page 41069, in the third column, in § 1910.1001, in Appendix B, under the heading entitled "*Walton-Beckett Graticule,*" paragraph (7), line 12 is corrected to read "Field Area = $\pi(D/2)^2$".

Appendix F to § 1910.1001 [Corrected]

117. On page 41070, in the first column, in § 1910.1001, in Appendix F, in the introductory paragraph, line 7 is corrected by adding the words "by trained employees" after the word "practices".

118. On page 41070, in the third column, in § 1910.1001, in Appendix F, under the heading entitled "*[A] Negative Pressure Enclosure/HEPA Vacuum System Method,*" paragraph (6), line 5, the words "paragraph (j)(2)(ii)" are corrected to read "paragraph (j)(4)".

119. On page 41070, in the third column, in § 1910.1001, in Appendix F, under the heading entitled "*[A] Negative Pressure Enclosure/HEPA Vacuum System Method,*" paragraph (7), line 5, the word "the" is corrected to read "this".

120. On page 41071, in the first column, in § 1910.1001, in Appendix F, under the heading entitled "*[B] Low Pressure/Wet Cleaning Method,*" paragraph (6), line 5, the words "paragraph (j)(2)(ii)" are corrected to read "paragraph (j)(4)".

121. On page 41071, in the first column, in § 1910.1001, in Appendix F, under the heading entitled "*[C] Equivalent Methods,*" line 12, the number "0.004" is corrected to read "0.016".

122. On page 41071, in the first column, in § 1910.1001, in Appendix F, under the heading entitled "*[D] Wet Method,*" paragraph (2), line 3, the words "paragraph (j)(2)(ii) of the standard" are corrected to read "paragraph (j)(4) of this section".

123. On page 41071, in the first column, in § 1910.1001, in Appendix F, under the heading entitled "*[D] Wet Method,*" paragraph (2), lines 4 and 5, the words "the standard" are corrected to read "this section".

124. On page 41071, in the first column, in § 1910.1001, in Appendix F, under the heading entitled "*[D] Wet Method,*" paragraph (3), line 4, the words "the standard" are corrected to read "this section".

Appendix G to § 1910.1001 [Corrected]

125. On page 41071, in the second column, in § 1910.1001, in Appendix G, paragraph III.B., line 3, the word "to" is corrected to read "the".

Appendix J to § 1910.1001 [Corrected]

126. On page 41071, in the second column, in § 1910.1001, in Appendix J, line 3 of the title is corrected by removing a closed parenthesis after the word "Non-Mandatory".

127. On page 41073, in the second column, in § 1910.1001, in Appendix J, under the heading entitled "1.8 Toxicology," the last line in the paragraph is corrected by adding the words "and 29 CFR 1915.1001" after the number "1926.1101".

128. On page 41073, in the third column, in § 1910.1001, in Appendix J, under the heading entitled "2.4 Shipment," paragraph (a), line 2 is corrected by removing the words "(such as the OSHA 21)".

129. On page 41078, in the first column, in § 1910.1001, in Appendix J, the heading entitled "*Auxiliary Information*" is correctly designated as "*4. Auxiliary Information*".

130. On page 41078, in the second column, in § 1910.1001, in Appendix J, the paragraph under the heading entitled "4.3 Polarized Light Technique," beginning on line 10, is corrected by removing the sentence, "A compensator is a piece of mineral with known properties that "compensates" for some deficiency in the optical train.".

§ 1915.1001 [Corrected]

131. On page 41080, in the first column, in § 1915.1001, the Authority citation, line 7, the word "(41 FR 35736)" is corrected to read "(41 FR 25059), 9–83 (48 FR 35736),".

132. On page 41080, in the second column, in § 1915.1001, paragraph (b), the definition of "*Building/facility owner*" is corrected to read:

* * * * *

(b) * * *

Building/facility/vessel owner is the legal entity, including a lessee, which exercises control over management and record keeping functions relating to a building, facility, and/or vessel in

which activities covered by this standard take place.

* * * * *

133. On page 41080, in the second column, in § 1915.1001, paragraph (b), the definition of "*Certified Industrial Hygienist*," line 3 is corrected by removing the word "comprehensive".

134. On page 41080, in the third column, in § 1915.1001, paragraph (b), the definition of "*Class IV asbestos work*" is corrected to read:

* * * * *

(b) * * *

Class IV asbestos work means maintenance and custodial activities during which employees contact but do not disturb ACM or PACM and activities to clean up dust, waste and debris resulting from Class I, II, and III activities.

* * * * *

135. On page 41080, in the third column, in § 1915.1001, paragraph (b), the definition of "*Disturbance*," the first sentence is corrected to read:

* * * * *

(b)* * *

Disturbance means activities that disrupt the matrix of ACM or PACM, crumble or pulverize ACM or PACM, or generate visible debris from ACM or PACM.* * *

* * * * *

136. On page 41081, in the first column, in § 1915.1001, paragraph (b), the definition of "*Glovebag*," line 1, the word "an" is corrected to read "not more than a 60 x 60 inch".

137. On page 41081, in the first column, in § 1915.1001, paragraph (b), the definition of "*Intact*," line 3, the word "it" is corrected to read "the asbestos".

138. On page 41081, in the first column, in § 1915.1001, paragraph (b), the definition of "*Modification*," line 2, the words "paragraph (g)(6)(2)" are corrected to read "paragraph (g)(6)(ii) of this section".

139. On page 41081, in the first column, in § 1915.1001, paragraph (b), the definition of "*Modification*," line 12 is corrected by removing the number "(ii)".

140. On page 41081, in the first column, in § 1915.1001, paragraph (b), the definition of "*Negative Initial Exposure Assessment*," line 4, the words "paragraph (f)(iii)" are corrected to read "paragraph (f)(2)(iii)".

141. On page 41081, in the first column, in § 1915.1001, paragraph (b), the definition of "*Presumed Asbestos Containing Material*," line 7, the number "(4)" is corrected to read "(5)".

142. On page 41081, in the first column, in § 1915.1001, paragraph (b), the definition of "*Qualified person*" is corrected to read:

* * * * *

(b) * * *

Qualified person means, in addition to the definition in 29 CFR 1926.32(f), one who is capable of identifying existing asbestos hazards in the workplace and selecting the appropriate control strategy for asbestos exposure, who has the authority to take prompt corrective measures to eliminate them, as specified in 29 CFR 1926.32(f); in addition, for Class I and Class II work who is specially trained in a training course which meets the criteria of EPA's Model Accreditation Plan (40 CFR part 763) for supervisor, or its equivalent, and for Class III and Class IV work, who is trained in a manner consistent with EPA requirements for training of local education agency maintenance and custodial staff as set forth at 40 CFR 763.92(a)(2).

* * * * *

143. On page 41081, in the second column, in § 1915.1001, paragraph (b), the definition of "*Regulated area*," line 12 is corrected by removing the number "(6)".

144. On page 41081, in the second column, in § 1915.1001, paragraph (c)(1), line 8, the word "of" is corrected to read "to".

145. On page 41081, in § 1915.1001, paragraph (c)(2), line 5 of the third column, the word "of" is corrected to read "to".

146. On page 41081, in the third column, in § 1915.1001, paragraph (d)(3), line 13 is corrected by removing the number "(1)".

147. On page 41082, in the first column, in § 1915.1001, paragraph (e)(2), line 6 is corrected by removing the words "concentrations of".

148. On page 41082, in the first column, in § 1915.1001, paragraph (e)(2), line 12, the number "(6)" is corrected to read "(7)".

149. On page 41082, in the first column, in § 1915.1001, paragraph (e)(4), line 3, the number "(2)" is corrected to read "(1)".

150. On page 41082, in the first column, in § 1915.1001, paragraph (f)(1)(i), line 2, the word "of" is corrected to read "or".

151–154. On page 41082, in the second column, in § 1915.1001, paragraph (f)(2)(ii) is corrected to read:

* * * * *

(f) * * *

(2) * * *

(ii) Basis of Initial Exposure Assessment: Unless a negative exposure assessment has been made pursuant to paragraph (f)(2)(iii) of this section, the initial exposure assessment shall, if feasible, be based on monitoring conducted pursuant to paragraph (f)(1)(iii) of this section. The assessment shall take into consideration both the monitoring results and all observations, information or calculations which indicate employee exposure to asbestos, including any previous monitoring conducted in the workplace, or of the operations of the employer which indicate the levels of airborne asbestos likely to be encountered on the job. For Class I asbestos work, until the employer conducts exposure monitoring and documents that employees on that job will not be exposed in excess of the PELs, or otherwise makes a negative exposure assessment pursuant to paragraph (f)(2)(iii) of this section, the employer shall presume that employees are exposed in excess of the TWA and excursion limit.

(iii) * * *

* * * * *

155. On page 41082, in the third column, in § 1915.1001, paragraph (f)(3)(iii), line 4 is corrected to read, "operated in the pressure demand mode, or other positive pressure mode respirator,".

156. On page 41082, in the third column, in § 1915.1001, paragraph (f)(4), line 1 is corrected to read, "(4) *Termination of monitoring.* (i) If".

157. On page 41083, in § 1915.1001, paragraph (f)(4)(i), line 3 of the first column, the word "measurement" is corrected to read "measurements".

158. On page 41083, in the first column, in § 1915.1001, paragraph (f)(5) is redesignated as paragraph (f)(6) and a new paragraph (f)(5) is added to read:

* * * * *

(f) * * *

(5) *Employee notification of monitoring results.* (i) The employer shall notify affected employees of the monitoring results that represent that employee's exposure as soon as possible following receipt of monitoring results.

(ii) The employer shall notify affected employees of the results of monitoring representing the employee's exposure in writing either individually or by posting at a centrally located place that is accessible to affected employees.

* * * * *

159. On page 41083, in the first column, in § 1915.1001, paragraph (g)(1)(i) is corrected to read:

* * * * *

(g) * * *

(1) * * *

(i) Vacuum cleaners equipped with HEPA filters to collect all debris and dust containing ACM and PACM, except as provided in paragraph (g)(8)(ii) of this section in the case of roofing material;

* * * * *

160. On page 41083, in the first column, in § 1915.1001, paragraph (g)(1)(ii), lines 9 and 10, the words "slipping hazards;" are corrected to read "except as provided in paragraph (g)(8)(ii) of this section;".

161. On page 41083, in the first column, in § 1915.1001, paragraph (g)(1)(iii), line 3 is corrected by adding the words "except in roofing operations, where the procedures specified in paragraph (g)(8)(ii) of this section apply" after the word "containers".

162. On page 41083, in the third column, in § 1915.1001, paragraph (g)(4)(ii)(A) is corrected to read:

* * * * *

(g) * * *

(4) * * *

(ii) * * *

(A) Critical barriers shall be placed over all the openings to the regulated area, except where activities are performed outdoors; or

* * * * *

163. On page 41083, in the third column, in § 1915.1001, paragraph (g)(4)(ii)(B), line 13 is corrected by adding the words "Phase Contrast Microscopy" before the word "(PCM)".

164. On page 41083, in the third column, in § 1915.1001, paragraph (g)(4)(ii)(B) is corrected by adding the following sentence to the end of the paragraph, "Exception: For work completed outdoors where employees are not working in areas adjacent to the regulated areas, this paragraph (g)(4)(ii) is satisfied when the specific control methods in paragraph (g)(5) of this section are used.".

165. On page 41083, in the third column, in § 1915.1001, paragraph (g)(5)(i) introductory text, line 2, the word "shall" is corrected to read "may".

166. On page 41084, in the first column, in § 1915.1001, paragraph (g)(5)(i)(B)(*1*), line 3 is corrected by adding the word "be" after the word "shall".

167. On page 41084, in the first column, in § 1915.1001, paragraph (g)(5)(ii) introductory text is corrected to read:

* * * * *

(g) * * *

(5) * * *

(ii) Glove bag systems may be used to remove PACM and/or ACM from straight runs of piping and elbows and other connections with the following specifications and work practices:

* * * * *

168. On page 41084, in the first column, in § 1915.1001, paragraph (g)(5)(ii)(A)(*2*) is corrected to read:

* * * * *

(g) * * *

(5) * * *

(ii) * * *

(A) * * *

(*2*) Glovebags used on elbows and other connections must be designed for that purpose and used without modifications.

* * * * *

169. On page 41084, in the first column, in § 1915.1001, paragraph (g)(5)(ii)(B)(*4*), line 3, the number "150°" is corrected to read "150°F".

170. On page 41084, in the first column, in § 1915.1001, paragraph (g)(5)(ii)(B)(*9*), line 2, the word "removals" is corrected to read "removal operations".

171. On page 41084, in the second column, in § 1915.1001, paragraph (g)(5)(iii) introductory text, line 3, the word "shall" is corrected to read "may".

172. On page 41084, in the second column, in § 1915.1001, paragraph (g)(5)(iii)(A), line 2, the word "bags" is corrected to read "bag".

173. On page 41084, in the second column, in § 1915.1001, paragraph (g)(5)(iii)(B)(*1*), line 3, the number "(2)" is corrected to read "(*4*)".

174. On page 41084, in the second column, in § 1915.1001, paragraph (g)(5)(iii)(B)(*2*), line 4 is corrected by adding the words "until it is completed at which time the bag shall be collapsed prior to removal of the bag from the pipe" after the word "operation".

175. On page 41084, in the second column, in § 1915.1001, paragraph (g)(5)(iv) introductory text, line 3, the word "shall" is corrected to read "may".

176. On page 41084, in the second column, in § 1915.1001, paragraph (g)(5)(iv)(A)(*2*), line 2 is corrected by adding the word "the" after the word "in".

177. On page 41084, in the second column, in § 1915.1001, paragraph (g)(5)(iv)(B)(*2*) is corrected to read:

* * * * *

(g) * * *

(5) * * *

(iv) * * *

(B) * * *

(*2*) The box shall be smoke-tested for leaks and any leaks sealed prior to each use.

* * * * *

178. On page 41084, in the third column, in § 1915.1001, paragraph (g)(5)(vi)(C) is correctly designated as paragraph (g)(5)(vi)(B).

179. On page 41084, in the third column, newly designated paragraph (g)(5)(vi)(B)(*1*) is corrected to read:

* * * * *

(g) * * *

(5) * * *

(vi) * * *

(B) * * *

(*1*) Before use, the mini-enclosure shall be inspected for leaks and smoke-tested to detect breaches, and any breaches sealed.

* * * * *

180. On page 41084, in the third column, in § 1915.1001, newly designated paragraph (g)(5)(vi)(B)(*3*), line 1 is corrected by adding a comma after the word "use".

181–182. On page 41084, in the third column, in § 1915.1001, newly designated paragraph (g)(5)(vi)(B)(*3*), line 4, the word "minienclosure" is corrected to read "mini-enclosure".

183. On page 41085, in the first column, in § 1915.1001, paragraph (g)(6)(ii) introductory text, line 20, the words "(g)(4)(i)(B)(*2*)" are corrected to read "(g)(4)(ii)(B)".

184. On page 41085, in the first column, in § 1915.1001, paragraph (g)(6)(iii), line 6 is corrected by adding the words "of this section" after the words "paragraph (g)(6)".

185. On page 41085, in the first column, in § 1915.1001, paragraph (g)(6)(iii), line 10, the word "Supportm" is corrected to read "Support".

186. On page 41085, in the first column, in § 1915.1001, paragraph (g)(6)(iii) is corrected by adding a sentence to the end of the paragraph to read, "The submission shall not constitute approval by OSHA.".

187. On page 41085, in the first column, in § 1915.1001, paragraph (g)(7)(i), line 1 is corrected by removing the comma after the word "work".

188. On page 41085, in the first column, in § 1915.1001, paragraph (g)(7)(ii) introductory text, line 4, the number "(4)" is corrected to read "(2)".

189. On page 41085, in the first column, in § 1915.1001, paragraph (g)(7)(ii) introductory text, line 5 is corrected by adding a comma after the word "job".

190. On page 41085, in the second column, in § 1915.1001, paragraph (g)(7)(ii)(B), line 8, the words "(g)(4)(i)(B)(2)" are corrected to read "(g)(4)(ii)(B)".

191. On page 41085, in the second column, in § 1915.1001, paragraph (g)(7)(iv), line 4, the words "(g)(3)(i) through (v)" are corrected to read "(g)(1)(i) through (g)(1)(iii)".

192. On page 41085, in the second column, in § 1915.1001, paragraph

(g)(8)(i) introductory text, line 11, the number "(8)" is corrected to read "(9)".

193. On page 41085, in the second column, in § 1915.1001, paragraph (g)(8)(i)(F), line 4, the number "(iv)" is corrected to read "(i)".

194. On page 41085, in the third column, in § 1915.1001, paragraph (g)(8)(ii)(B) is corrected to read:

* * * * *

(g) * * *
(8) * * *
(ii) * * *

(B) Wet methods shall be used to remove roofing materials that are not intact, or that will be rendered not intact during removal, unless such wet methods are not feasible or will create safety hazards.

* * * * *

195. On page 41085, in the third column, in § 1915.1001, paragraph (g)(8)(ii)(D) is corrected to read:

* * * * *

(g) * * *
(8) * * *
(ii) * * *

(D) When removing built-up roofs with asbestos-containing roofing felts and an aggregate surface using a power roof cutter, all dust resulting from the cutting operation shall be collected by a HEPA dust collector, or shall be HEPA vacuumed by vacuuming along the cut line. When removing built-up roofs with asbestos-containing roofing felts and a smooth surface using a power roof cutter, the dust resulting from the cutting operation shall be collected either by a HEPA dust collector or HEPA vacuuming along the cut line, or by gently sweeping and then carefully and completely wiping up the still-wet dust and debris left along the cut line. The dust and debris shall be immediately bagged or placed in covered containers.

* * * * *

196. On page 41085, in the third column, in § 1915.1001, paragraph (g)(8)(ii)(E) is corrected to read:

* * * * *

(g) * * *
(8) * * *
(ii) * * *

(E) Asbestos-containing material that has been removed from a roof shall not be dropped or thrown to the ground. Unless the material is carried or passed to the ground by hand, it shall be lowered to the ground via covered, dust-tight chute, crane or hoist:

(*1*) Any ACM that is not intact shall be lowered to the ground as soon as is practicable, but in any event no later than the end of the work shift. While the material remains on the roof it shall either be kept wet, placed in an impermeable waste bag, or wrapped in plastic sheeting.

(*2*) Intact ACM shall be lowered to the ground as soon as is practicable, but in any event no later than the end of the work shift.

* * * * *

197. On page 41085, in the third column, in § 1915.1001, a new paragraph (g)(8)(ii)(H) is added to read:

* * * * *

(g) * * *
(8) * * *
(ii) * * *

(H) Notwithstanding any other provision of this section, removal or repair of sections of intact roofing less than 25 square feet in area does not require use of wet methods or HEPA vacuuming as long as manual methods which do not render the material non-intact are used to remove the material and no visible dust is created by the removal method used. In determining whether a job involves less than 25 square feet, the employer shall include all removal and repair work performed on the same roof on the same day.

* * * * *

198. On page 41085, in the third column, in § 1915.1001, paragraph (g)(8)(iii) introductory text is corrected to read:

* * * * *

(g) * * *
(8) * * *

(iii) When removing cementitious asbestos-containing siding and shingles or transite panels containing ACM on building exteriors (other than roofs, where paragraph (g)(8)(ii) of this section applies) the employer shall ensure that the following work practices are followed:

* * * * *

199. On page 41086, in the first column, in § 1915.1001, paragraph (g)(8)(v)(A), line 2 is corrected by adding the word "to" after the word "prior".

200. On page 41086, in the second column, in § 1915.1001, paragraph (g)(9)(iii), line 9 is corrected by adding the words "or another isolation method" after the word "section".

201. On page 41086, in the second column, in § 1915.1001, paragraph (g)(9)(iv), line 4, the number "(4)" is corrected to read "(2)".

202. On page 41086, in the second column, in § 1915.1001, paragraph (g)(9)(v), line 7, the words "paragraph (e)(4)(iii)" are corrected to read "paragraph (f)(2)(iii)".

203. On page 41086, in the second column, in § 1915.1001, paragraph (g)(10) introductory text, line 5, the number "(8)" is corrected to read "(9)".

204. On page 41086, in the third column, in § 1915.1001, paragraph (g)(11)(ii), line 19 is corrected by adding the words "to this section" after the words "Appendix L".

205. On page 41086, in the third column, in § 1915.1001, a new paragraph (g)(12) is added to read:

* * * * *

(g) * * *

(12) Alternative methods of compliance for installation, removal, repair, and maintenance of certain roofing materials. Notwithstanding any other provision of this section, an employer who complies with all provisions of this paragraph (g)(12) when installing, removing, repairing, or maintaining intact roof cements, mastics, coatings, or flashings which contain asbestos fibers encapsulated or coated by bituminous or resinous compounds shall be deemed to be in compliance with this section. If an employer does not comply with all provisions of this paragraph (g)(12), or if during the course of the job the material does not remain intact, the provisions of paragraph (g)(8) of this section apply instead of this paragraph (g)(12).

(i) Before work begins and as needed during the job, a qualified person who is capable of identifying asbestos hazards in the workplace and selecting the appropriate control strategy for asbestos exposure, and who has the authority to take prompt corrective measures to eliminate such hazards, shall conduct an inspection of the worksite and determine that the roofing material is intact and will likely remain intact.

(ii) All employees performing work covered by this paragraph (g)(12) shall be trained in a training program that meets the requirements of paragraph (k)(9)(viii) of this section.

(iii) The material shall not be sanded, abraded, or ground. Manual methods which do not render the material non-intact shall be used.

(iv) Material that has been removed from a roof shall not be dropped or thrown to the ground. Unless the material is carried or passed to the ground by hand, it shall be lowered to the ground via covered, dust-tight chute, crane or hoist. All such material shall be removed from the roof as soon as is practicable, but in any event no later than the end of the work shift.

(v) Where roofing products which have been labeled as containing asbestos pursuant to paragraph (k)(8) of this section are installed on non-residential roofs during operations covered by this paragraph (g)(12), the employer shall notify the building owner of the presence and location of such materials no later than the end of the job.

* * * * *

206. On page 41086, in the third column, in § 1915.1001, paragraph (h)(1)(iii) is corrected to read:

* * * * *

(h) * * *
(1) * * *

(iii) During all Class II and III work which is not performed using wet methods, provided, however, that respirators need not be worn during removal of ACM from sloped roofs when a negative exposure assessment has been made and the ACM is removed in an intact state.

* * * * *

207. On page 41087, in the first column above Table 1, in § 1915.1001, paragraph (h)(2)(i), line 5 is corrected by adding the words "or in paragraph (h)(2)(iii) of this section," after the word "Table 1,".

208. On page 41087, in the third column above Table 1, in § 1915.1001, paragraph (h)(2)(iii)(A) is corrected to read:

* * * * *

(h) * * *
(2) * * *
(iii) * * *

(A) An employee chooses to use this type of respirator; and

* * * * *

209. On page 41087, in § 1915.1001, paragraph (h)(2), in Table 1, lines 1 through 3 under the heading "Airborne concentration of asbestos or conditions of use" are corrected to read "Not in excess of 1 f/cc (10 X PEL), or otherwise as required independent of exposure pursuant to paragraph (h)(2)(iv) of this section.".

210. On page 41087, in the first column below Table 1, in § 1915.1001, paragraph (h)(2)(v), line 5, the word "auxiliar76y" is corrected to read "auxiliary".

211. On page 41087, in the second column below Table 1, in § 1915.1001, paragraph (h)(3)(iv), line 10, the word "employee" is corrected to read "employees".

212. On page 41087, in the second column below Table 1, in § 1915.1001, paragraph (h)(3)(iv), line 12 is corrected by adding a comma after the word "position".

213. On page 41087, in § 1915.1001, paragraph (h)(4)(ii), line 2 of the third column below Table 1, the word "of" is corrected to read "to".

214. On page 41087, in § 1915.1001, paragraph (h)(4)(ii), line 6 of the third column below Table 1, the number "(iii)" is corrected to read "(i)".

215. On page 41087, in the third column below Table 1, in § 1915.1001, paragraph (i)(1), line 12, the word "and" is corrected to read "or".

216. On page 41088, in the first column, in § 1915.1001, paragraph (j)(1) introductory text, line 3 is corrected by adding the words "involving over 25 linear or 10 square feet of TSI or surfacing ACM and PACM" after the word "jobs".

217. On page 41088, in § 1915.1001, paragraph (j)(1)(i)(C), line 9 of the second column is corrected by removing the word "Such" and adding the words "Following showering, such" in its place.

218. On page 41088, in the third column, in § 1915.1001, paragraph (j)(2)(iii), line 1, the word "Workclothing" is corrected to read "Work clothing".

219. On page 41088, in the third column, in § 1915.1001, paragraph (k), line 2, the word "Note:" is removed and the text is correctly designated as paragraph (k)(1).

220. On page 41088, in the third column, in § 1915.1001, newly designated paragraph (k)(1), lines 15 and 16, the words "are required to treat" are corrected to read "shall identify".

221. On page 41088, in the third column, in § 1915.1001, newly designated paragraph (k)(1), line 19, the number "(4)" is corrected to read "(5)".

222. On page 41088, in the third column, in § 1915.1001, newly designated paragraph (k)(1), line 25, the words "paragraph (g), of this section" are corrected to read "paragraph (g)(8)(i)(I) of this section,".

223. On page 41089, 8 lines from the top of the first column, in § 1915.1001, paragraph (k)(1) is redesignated as paragraph (k)(2).

224. On page 41089, in the first column, in § 1915.1001, newly redesignated paragraph (k)(2)(i) is corrected to read:

* * * * *

(k) * * *
(2) * * *

(i) Before work subject to this standard is begun, building/vessel and facility owners shall determine the presence, location, and quantity of ACM and/or PACM at the work site pursuant to paragraph (k)(1) of this section.

* * * * *

225. On page 41089, 23 lines from the bottom of the first column, in § 1915.1001, paragraph (k)(2) is redesignated as paragraph (k)(3).

226. On page 41089, in the first column, in § 1915.1001, newly redesignated paragraph (k)(3)(i), line 5 is corrected by adding the words "pursuant to paragraph (k)(1) of this section" after the word "therein".

227. On page 41089, 15 lines from the top of the second column, in § 1915.1001, paragraph (k)(3) is redesignated as paragraph (k)(4).

228. On page 41089, 25 lines from the top of the second column, in § 1915.1001, paragraph (k)(4) is redesignated as paragraph (k)(5).

229. On page 41089, in the second column, in § 1915.1001, newly redesignated paragraph (k)(5)(i), line 11, the number "(4)" is corrected to read "(5)".

230. On page 41089, in the second column, in § 1915.1001, newly redesignated paragraph (k)(5)(ii) introductory text, line 3 is corrected by adding the words "more than 1%" after the word "contain".

231. On page 41089, in the second column, in § 1915.1001, newly redesignated paragraph (k)(5)(ii)(A), line 5 is corrected by adding the word "or" after the word "ACM;".

232. On page 41089, in the second column, in § 1915.1001, newly redesignated paragraph (k)(5)(ii)(B), line 3, the word "asbestos" is corrected to read "ACM".

233. On page 41089, in the second column, in § 1915.1001, newly redesignated paragraph (k)(5)(ii)(B), lines 5 through 7 are corrected to read, "analysis of bulk samples collected in the manner described in 40 CFR 763.86. The".

234. On page 41089, in the second column, in § 1915.1001, newly redesignated paragraph (k)(5)(ii)(B), line 17, the word "of" is corrected to read "or".

235. On page 41089, in the second column, in § 1915.1001, newly redesignated paragraph (k)(5)(ii)(B), line 19, the word "of" is corrected to read "or".

236. On page 41089, in the third column, in § 1915.1001, a new paragraph (k)(5)(iii) is added to read:

* * * * *

(k) * * *
(5) * * *

(iii) The employer and/or building/vessel owner may demonstrate that flooring material including associated mastic and backing does not contain asbestos, by a determination of an industrial hygienist based upon recognized analytical techniques showing that the material is not ACM.

* * * * *

237. On page 41089, 5 lines from the top of the third column, in § 1915.1001, paragraph (k)(5) is redesignated as paragraph (k)(6).

238. On page 41089, in the third column, in § 1915.1001, newly redesignated paragraph (k)(6), lines 4

and 5, the words "TSI or surfacing ACM and PACM" are corrected to read "ACM and/or PACM".

239. On page 41089, 15 lines from the top of the third column, in § 1915.1001, paragraph (k)(6) is redesignated as paragraph (k)(7).

240. On page 41089, in the third column, in § 1915.1001, newly redesignated paragraph (k)(7)(ii) is corrected to read:

* * * * *

(k) * * *

(7) * * *

(ii)(A) The warning signs required by paragraph (k)(7) of this section shall bear the following information:

DANGER

ASBESTOS

CANCER AND LUNG DISEASE HAZARD

AUTHORIZED PERSONNEL ONLY

(B) In addition, where the use of respirators and protective clothing is required in the regulated area under this section, the warning signs shall include the following:

RESPIRATORS AND PROTECTIVE CLOTHING ARE REQUIRED IN THIS AREA

* * * * *

241. On page 41089, in the third column, in § 1915.1001, a new paragraph (k)(7)(iii) is added to read:

* * * * *

(k) * * *

(7) * * *

(iii) The employer shall ensure that employees working in and contiguous to regulated areas comprehend the warning signs required to be posted by paragraph (k)(7)(i) of this section. Means to ensure employee comprehension may include the use of foreign languages, pictographs and graphics.

* * * * *

242. On page 41089, 32 lines from the bottom of the third column, in § 1915.1001, paragraph (k)(7) is redesignated as paragraph (k)(8).

243. On page 41089, in the third column, in § 1915.1001, newly redesignated paragraph (k)(8)(vi) introductory text, lines 2 and 3, the words "paragraphs (k)(2)(i) through (k)(2)(iii)" are corrected to read "paragraphs (k)(8)(i) through (k)(8)(iii)".

244. On page 41090, in the first column, in § 1915.1001, newly redesignated paragraph (k)(8)(vi)(B), lines 2 and 3 are corrected by removing the words "by weight".

245. On page 41090, in the first column, in § 1915.1001, newly redesignated paragraph (k)(8)(vii), line 12, the number "(5)" is corrected to read "(6)".

246. On page 41090, in the first column, in § 1915.1001, paragraph (k)(8) is redesignated as paragraph (k)(9) and is corrected to read:

* * * * *

(k) * * *

(9) *Employee Information and Training.* (i) The employer shall, at no cost to the employee, institute a training program for all employees who are likely to be exposed in excess of a PEL and for all employees who perform Class I through IV asbestos operations, and shall ensure their participation in the program.

(ii) Training shall be provided prior to or at the time of initial assignment and at least annually thereafter.

(iii) Training for Class I operations shall be the equivalent in curriculum, training method and length to the EPA Model Accreditation Plan (MAP) asbestos abatement workers training (40 CFR part 763, subpart E, appendix C).

(iv) Training for Class II work. For work with asbestos containing material involving roofing materials, flooring materials, siding materials, ceiling tiles, or transite panels, training shall include at a minimum all the elements included in paragraph (k)(9)(viii) of this section and in addition, the specific work practices and engineering controls set forth in paragraph (g) of this section which specifically relate to that category. Such course shall include "hands-on" training and shall take at least 8 hours. Exception: For other Class II operations, training shall be provided which shall include at a minimum all the elements included in paragraph (k)(9)(viii) of this section and in addition, the specific work practices and engineering controls set forth in paragraph (g) of this section which specifically relate to that category, and shall include "hands-on" training.

(v) Training for Class III employees shall be consistent with EPA requirements for training of local education agency maintenance and custodial staff as set forth at 40 CFR 763.92(a)(2). Such a course shall also include "hands-on" training and shall take at least 16 hours. Exception: For Class III operations for which the qualified person determines that the EPA curriculum does not adequately cover the training needed to perform that activity, training shall include as a minimum all the elements included in paragraph (k)(9)(viii) of this section and in addition, the specific work practices and engineering controls set forth in paragraph (g) of this section which specifically relate to that activity, and shall include "hands-on" training.

(vi) Training for employees performing Class IV operations shall be consistent with EPA requirements for training of local education agency maintenance and custodial staff as set forth at 40 CFR 763.92(a)(1). Such a course shall include available information concerning the locations of thermal system insulation and surfacing ACM/PACM, and asbestos-containing flooring material, or flooring material where the absence of asbestos has not yet been certified; and instruction in recognition of damage, deterioration, and delamination of asbestos containing building materials. Such course shall take at least 2 hours.

(vii) Training for employees who are likely to be exposed in excess of the PEL and who are not otherwise required to be trained under paragraph (k)(9) (iii) through (vi) of this section, shall meet the requirements of paragraph (k)(9)(viii) of this section.

(viii) The training program shall be conducted in a manner that the employee is able to understand. In addition to the content required by provisions in paragraphs (k)(9) (iii) through (vi) of this section, the employer shall ensure that each such employee is informed of the following:

(A) Methods of recognizing asbestos, including the requirement in paragraph (k)(1) of this section to presume that certain building materials contain asbestos;

(B) The health effects associated with asbestos exposure;

(C) The relationship between smoking and asbestos in producing lung cancer;

(D) The nature of operations that could result in exposure to asbestos, the importance of necessary protective controls to minimize exposure including, as applicable, engineering controls, work practices, respirators, housekeeping procedures, hygiene facilities, protective clothing, decontamination procedures, emergency procedures, and waste disposal procedures, and any necessary instruction in the use of these controls and procedures; where Class III and IV work will be or is performed, the contents of EPA 20T–2003, "Managing Asbestos In-Place" July 1990 or its equivalent in content;

(E) The purpose, proper use, fitting instructions, and limitations of respirators as required by 29 CFR 1910.134;

(F) The appropriate work practices for performing the asbestos job;

(G) Medical surveillance program requirements;

(H) The content of this standard including appendices;

(I) The names, addresses and phone numbers of public health organizations which provide information, materials and/or conduct programs concerning smoking cessation. The employer may distribute the list of such organizations contained in Appendix J to this section, to comply with this requirement; and

(J) The requirements for posting signs and affixing labels and the meaning of the required legends for such signs and labels.

* * * * *

247. On page 41090, 8 lines from the top of the third column, paragraph (k)(9) is redesignated as paragraph (k)(10).

248. On page 41090, in the third column, in § 1915.1001, newly redesignated paragraph (k)(10)(i), line 4 is corrected by adding a comma after the word "cost".

249. On page 41090, in the third column, in § 1915.1001, newly redesignated paragraph (k)(10)(iii), line 10 is corrected by adding the words "to this section" after the words "Appendix J".

250. On page 41090, in the third column, in § 1915.1001, paragraph (l) entitled "Housekeeping" is correctly designated as paragraph (l) entitled "*Housekeeping*".

251. On page 41090, in the third column, in § 1915.1001, paragraph (l)(2), line 7 is corrected by adding the words "except in roofing operations, where the procedures specified in paragraph (g)(8)(ii) of this section apply" after the word "containers".

252. On page 41090, in the third column, in § 1915.1001, paragraph (l)(3)(i), line 6, the words "paragraph (g)" are corrected to read "paragraph (g)(8)(i)(I) of this section".

253. On page 41090, in the third column, in § 1915.1001, the three paragraphs following the first paragraph (l)(3)(i) are redesignated as paragraphs (l)(3)(ii), (l)(3)(iii), and (l)(3)(iv), respectively.

254. On page 41090, in the third column, in § 1915.1001, in newly redesignated paragraph (l)(3)(iii), line 3, the word "speed" is corrected to read "speeds".

255. On page 41090, in the third column, in § 1915.1001, paragraph (l)(4) introductory text is corrected to read:

* * * * *

(l) * * *

(4) Waste and debris and accompanying dust in an area containing accessible thermal system insulation or surfacing ACM/PACM or visibly deteriorated ACM:

* * * * *

256. On page 41091, in the first column, in § 1915.1001, paragraph (l)(4)(ii), line 2 is corrected by adding the word "of" after the word "disposed".

257. On page 41091, in the first column, in § 1915.1001, paragraph (m)(1)(i), is corrected to read:

* * * * *

(m) * * *

(1) * * *

(i) *Employees covered.* (A) The employer shall institute a program for all employees who, for a combined total of 30 or more days per year, are engaged in Class I, II, or III work or are exposed at or above the permissible exposure limit for a combined 30 days or more per year. For purposes of this subparagraph, any day in which a worker engages in Class II or Class III work or a combination thereof for one hour or less and, while doing so, adheres fully to the work practices specified in this standard, shall not be counted.

(B) For employees otherwise required by this standard to wear a negative pressure respirator, employers shall ensure employees are physically able to perform the work and use the equipment. This determination shall be made under the supervision of a physician.

* * * * *

258. On page 41091, in the first column, in § 1915.1001, paragraph (m)(1)(ii), line 1 is corrected by removing the words "by a physician".

259. On page 41091, in the first column, in § 1915.1001, paragraph (m)(2)(i)(B) is corrected to read:

* * * * *

(m) * * *

(2) * * *

(i) * * *

(B) When the employee is assigned to an area where exposure to asbestos may be at or above the permissible exposure limit for 30 or more days per year, or engage in Class I, II, or III work for a combined total of 30 or more days per year, a medical examination must be given within 10 working days following the thirtieth day of exposure;

* * * * *

260. On page 41091, in the second column, in § 1915.1001, paragraph (m)(3)(i), line 2 is corrected by removing the letter "G,".

261. On page 41091, in the third column, in § 1915.1001, paragraph (n)(1)(i), line 3, the word "demonstrate" is corrected to read "demonstrates".

262. On page 41091, in the third column, in § 1915.1001, paragraph (n)(1)(i), line 4 is corrected by adding the words "or the activity involving such products or material" after the words "containing asbestos".

263. On page 41092, in the first column, in § 1915.1001, paragraph (n)(4), line 3, the number "1" is corrected by enclosing it in parenthesis to read "(1)".

264. On page 41092, in the second column, in § 1915.1001, paragraph (o)(3) introductory text, lines 5 and 6, the words "in paragraph (p)(3)(i) and (ii)" are corrected to read "in paragraph (o)(3)(i)".

265. On page 41092, in the second column, in § 1915.1001, paragraph (o)(3) introductory text, lines 9 and 10. the words "Class II and III" are corrected to read "Class II, III, and IV".

266. On page 41092, in the second column, in § 1915.1001, paragraph (o)(3)(i) introductory text, line 4, the words "paragraph (g)(1)" are corrected to read "paragraph (e)(6)".

267. On page 41092, in the second column, in § 1915.1001, paragraph (o)(3)(i)(E), line 3, the words "protective clothing" are corrected to read "respirators".

268. On page 41092, in the second column, in § 1915.1001, paragraph (o)(3)(i)(E), line 4, the word "respirators" is corrected to read "protective clothing".

269. On page 41092, in the second column, in § 1915.1001, paragraph (o)(3)(i)(F), line 2, the words "set up" are corrected to read "set up, use,".

270. On page 41092, in the third column, in § 1915.1001, paragraph (o)(3)(i)(H), line 1, the word "though" is corrected to read "through".

271. On page 41092, in the third column, in § 1915.1001, paragraph (o)(3)(i)(H), line 2 is corrected by adding a comma after the word "inspection".

272. On page 41092, in the third column, in § 1915.1001, paragraph (o)(3)(i)(I), line 2, the words "paragraph (f)(6)" are corrected to read "paragraph (k)".

273. On page 41092, in the third column, in § 1915.1001, paragraph (o)(4)(i), lines 12 through 16 are corrected to read "that meets the criteria of EPA's Model Accredited Plan (40 CFR part 763) or a course equivalent in stringency, content, and length."

274–276. On page 41092, in the second column, in § 1915.1001, paragraph (o)(4)(ii) is corrected to read:

* * * * *

(o) * * *

(4) * * *

(ii) For Class III and IV asbestos work, the qualified person shall be trained in aspects of asbestos handling appropriate for the nature of the work, to include procedures for setting up glove bags and mini-enclosures, practices for reducing asbestos exposures, use of wet methods,

the contents of this standard, and the identification of asbestos. Such training shall include successful completion of a course that is consistent with EPA requirements for training of local education agency maintenance and custodial staff as set forth at 40 CFR 763.92(a)(2), or its equivalent in stringency, content, and length. Qualified persons for Class III and Class IV work may also be trained pursuant to the requirements of paragraph (o)(4)(i) of this section.

* * * * *

Appendix A to § 1915.1001 [Corrected]

277. On page 41093, in the first column, the heading for Appendix A to § 1915.1001 is corrected to read:

Appendix A to § 1915.1001—OSHA Reference Method (Mandatory)"

* * * * *

278. On page 41093, in the first column, in § 1915.1001, in Appendix A, in the introductory paragraph, lines 3 and 4 are corrected by removing the words "tremolite, anthophyllite, and actinolite".

279. On page 41093, in the first column, in § 1915.1001, in Appendix A, in the introductory paragraph, line 11, the word "ID–60" is corrected to read "ID–160".

280. On page 41093, in the first column, in § 1915.1001, in Appendix A, in the introductory paragraph, line 12, the words "NIOSH 7400 method" are corrected to read "NIOSH Method 7400".

281. On page 41093, in the first column, in § 1915.1001, in Appendix A, under the heading entitled "*Sampling and Analytical Procedure,*" paragraph 1, line 5 is corrected by removing the words "tremolite, anthophyllite, and actinolite".

282. On page 41093, in § 1915.1001, in Appendix A, under the heading entitled "*Sampling and Analytical Procedure,*" paragraph 2, line 6 of the second column is corrected by adding a sentence "Other cassettes such as the Bell-mouth may be used within the limits of their validation." after the word "record.".

283. On page 41093, in the second column, in § 1915.1001, in Appendix A, under the heading entitled "*Sampling and Analytical Procedure,*" paragraph 3, line 2, the number "2.5" is corrected to read "5".

284. On page 41093, in the second column, in § 1915.1001, in Appendix A, under the heading "*Sampling and Analytical Procedure,*" paragraph 3, line 5, the number "2.5" is corrected to read "5".

285. On page 41093, in the second to third column, in § 1915.1001, in Appendix A, under the heading entitled "*Sampling and Analytical Procedure,*" paragraph 11 is corrected to read:

* * * * *

11. Each set of samples taken will include 10% field blanks or a minimum of 2 field blanks. These blanks must come from the same lot as the filters used for sample collection. The field blank results shall be averaged and subtracted from the analytical results before reporting. A set consists of any sample or group of samples for which an evaluation for this standard must be made. Any samples represented by a field blank having a fiber count in excess of the detection limit of the method being used shall be rejected.

* * * * *

286. On page 41093, in the third column, in § 1915.1001, in Appendix A, under the heading entitled "*Sampling and Analytical Procedure,*" paragraph 13.b. is corrected to read:

* * * * *

13. * * *

b. In the absence of other information, count all particles as asbestos that have a length-to-width ratio (aspect ratio) of 3 to 1 or greater.

* * * * *

Appendix B to § 1915.1001 [Corrected]

287. On page 41094, in § 1915.1001, in Appendix B, the table is corrected so that the word "Air" is removed from between the double lines at the beginning and added following the word "Matrix".

288. On page 41094, in the first column below the table, in § 1915.1001, in Appendix B, under the heading entitled "*1. Introduction,*" in the definition of "Asbestos," the chemical formula for Crocidolite is corrected to read "$Na_2Fe_3^{2+}Fe_2^{3+}Si_8O_{22}(OH)_2$".

289. On page 41094, in the second column below the table, in § 1915.1001, in Appendix B, in the definition of "*Walton-Beckett Graticule,*" line 11, the number "2" is corrected to read "1".

290. On page 41094, in the third column below the table, in § 1915.1001, in Appendix B, in the paragraph under the heading entitled "1.2 Principle," line 6 is corrected by removing the word "a".

291. On page 41095, in the second column, in § 1915.1001, in Appendix B, under the heading entitled "*4. Interferences,*" in the second paragraph, the list of common fibers is corrected to read:

* * * * *

4. Interferences

* * * * *

fiberglass
anhydrite
plant fibers
perlite veins
gypsum
some synthetic fibers
membrane structures
sponge spicules
diatoms
microorganisms
wollastonite

* * * * *

292. On page 41095, in the second column, in § 1915.1001, in Appendix B, under the heading entitled "*5.1.1* Sample assembly," in the first paragraph, line 8, the number "0.8–" is corrected to read "0.4".

293. On page 41095, in the second column, in § 1915.1001, in Appendix B, under the heading entitled "*5.1.1* Sample assembly," a new note (e) is added to read:

* * * * *

5.1.1 * * *

Notes: * * *

(e) Other cassettes, such as the Bell-mouth, may be used within the limits of their validation.

* * * * *

294. On page 41095, in the second column, in § 1915.1001, in Appendix B, under the heading entitled "*5.1.3* Sampling pump," lines 5 and 6, the words "2.5 liters per minute (L/min)" are corrected to read "the collection rate".

295. On page 41095, in the second column, in § 1915.1001, in Appendix B, in the paragraph entitled "*5.2.1,*" line 2 is corrected by removing the words "(see Figure 3)".

296. On page 41095, in the third column, in § 1915.1001, in Appendix B, under the heading entitled "*5.2.5,*" lines 8 through 10 of the "Note" are corrected to read, "pressure changes, correct the flow rate using the formula shown in the section "Sampling Pump Flow Rate Corrections" at the end of this appendix."

297. On page 41096, in the first column, in § 1915.1001, in Appendix B, the paragraph entitled "*5.2.11*" is corrected to read:

* * * * *

5. * * *

5.2 * * *

5.2.11 Attach and secure a sample seal around each sample cassette in such a way as to assure that the end cap and base plugs cannot be removed without destroying the seal. Tape the ends of the seal together since the seal is not long enough to be wrapped end-to-end. Also wrap tape around the cassette at each joint to keep the seal secure.

* * * * *

298. On page 41096, in the first column, in § 1915.1001, in Appendix B, in the paragraph entitled "*5.3.2,*" line 8, the words "without rattling" are corrected to read "in such a manner that they will not rattle".

299. On page 41097, in the first column, in § 1915.1001, in Appendix B, under the heading entitled "*6.6.2* Counting Fibers," paragraph (9), line 5, the number "2" is corrected to read "1".

300. On page 41097, in the third column, in § 1915.1001, in Appendix B, under the heading entitled "7.3. Recount Calculations," the formula in the third paragraph is corrected to read:

* * * * *

7.3. Recount Calculations

* * * * *

$$\left|\sqrt{AC_2}-\sqrt{AC_1}\right| > 2.78 \times \left(\sqrt{AC_{AVG}}\right) \times CV_{FB}$$

* * * * *

301. On page 41098, in the second column, in § 1915.1001, in Appendix B, under the heading entitled "*Quality Control,*" in the first paragraph, lines 6 and 7 are corrected by removing the words "for the CV curve shown below".

302. On page 41098, in the third column, in § 1915.1001, in Appendix B, under the heading entitled "*Walton-Beckett Graticule,*" paragraph (7), line 12 is corrected to read "Field Area = $\pi(D/2)^2$".

Appendix E to § 1915.1001 [Corrected]

303. On page 41119, in the first column, in § 1915.1001, in Appendix E, paragraph (a) is corrected to read:

* * * * *

(a) Chest roentgenograms shall be interpreted and classified in accordance with a professionally accepted classification system and recorded on an interpretation form following the format of the CDC/NIOSH (M) 2.8 form. As a minimum, the content within the bold lines of this form (items 1 through 4) shall be included. This form is not to be submitted to NIOSH.

* * * * *

Appendix F to § 1915.1001 [Corrected]

304. On page 41121, in the first column, in § 1915.1001, in Appendix F, under the heading entitled "*Cleaning the Work Area,*" in the second paragraph, line 4, the word "encapsulate" is corrected to read "encapsulant".

Appendix H to § 1915.1001 [Corrected]

305. On page 41121, in § 1915.1001, in Appendix H, under the heading entitled "*III. Respirators and Protective Clothing,*" paragraph A, line 6 of the third column is corrected by adding the word "a" after the word "conduct".

306. On page 41121, in the third column, in § 1915.1001, in Appendix H, under the heading entitled "*IV. Disposal Procedures and Clean-up,*" paragraph E, line 1, the word "if" is corrected to read "is".

307. On page 41121, in the third column, in § 1915.1001, in Appendix H, under the heading entitled "*V. Access to Information,*" paragraph B, line 5, the word "trowled-on" is corrected to read "troweled-on".

Appendix K to § 1915.1001 [Corrected]

308. On page 41123, in the first column, in § 1915.1001, in Appendix K, line 3 of the title is corrected by removing a closed parenthesis after the word "Non-Mandatory".

309. On page 41125, in the first column, in § 1915.1001, in Appendix K, under the heading entitled "1.8 Toxicology," line 9 is corrected by adding the words "and 29 CFR 1915.1001" after the number "1926.1101".

310. On page 41125, in the second column, in § 1915.1001, in Appendix K, under the heading entitled "2.4 Shipment," paragraph (a), line 2 is corrected by removing the words "(such as the OSHA 21)".

311. On page 41129, in the first column, in § 1915.1001, in Appendix K, the heading entitled "*Auxiliary Information*" is correctly designated as "*4. Auxiliary Information*".

312. On page 41129, in the second column, in § 1915.1001, in Appendix K, the paragraph under the heading entitled "4.3 Polarized Light Technique," beginning on line 10, is corrected by removing the sentence, "A compensator is a piece of mineral with known properties that "compensates" for some deficiency in the optical train.".

Appendix L to § 1915.1001 [Corrected]

313. On page 41131, in the first column, in § 1915.1001, Appendix L, in the introductory paragraph, line 7 is corrected by adding the words "by trained employees" after the word "practices".

314. On page 41131, in the second column, in § 1915.1001, in Appendix L, under the heading entitled "*[A] Negative Pressure Enclosure/HEPA Vacuum System Method,*" paragraph (6), line 5, the words "paragraph (j)(2)(ii)" are corrected to read "paragraph (k)(8)".

315. On page 41131, in the second column, in § 1915.1001, in Appendix L, under the heading entitled "*[A] Negative Pressure Enclosure/HEPA Vacuum System Method,*" paragraph (6), line 6, the words "paragraph (k)" are corrected to read "paragraph (l)".

316. On page 41131, in the second column, in § 1915.1001, in Appendix L, under the heading entitled "*[A] Negative Pressure Enclosure/HEPA Vacuum System Method,*" paragraph (7), line 5, the words "paragraph (k)" are corrected to read "paragraph (l)".

317. On page 41131, in the second column, in § 1915.1001, in Appendix L, under the heading entitled "*[B] Low Pressure/Wet Cleaning Method,*" paragraph (6), line 5, the words "paragraph (j)(2)(ii)" are corrected to read "paragraph (k)(8)".

318. On page 41131, in the second column, in § 1915.1001, in Appendix L, under the heading entitled "*[B] Low Pressure/Wet Cleaning Method,*" paragraph (6), line 7, the words "paragraph (k)" are corrected to read "paragraph (l)".

319. On page 41131, in the second column, in § 1915.1001, in Appendix L, under the heading entitled "*[B] Low Pressure/Wet Cleaning Method,*" paragraph (7), line 5, the words "paragraph (k)" are corrected to read "paragraph (l)".

320. On page 41131, in the third column, in § 1915.1001, in Appendix L, under the heading entitled "*[C] Equivalent Methods,*" line 12, the number "0.004" is corrected to read "0.016".

321. On page 41131, in the third column, in § 1915.1001, in Appendix L, under the heading "*[D] Wet Methods,*" paragraph (2), line 3, the words "paragraph (j)(2)(ii)" are corrected to read "paragraph (k)(8)".

322. On page 41131, in the third column, in § 1915.1001, in Appendix L, under the heading "*[D] Wet Method,*" paragraph (2), line 4, the words "paragraph (k)" are corrected to read "paragraph (l)".

323. On page 41131, in the third column, in § 1915.1001, in Appendix L, under the heading "*[D] Wet Method,*" paragraph (3), line 3, the words "paragraph (k)" are corrected to read "paragraph (l)".

§ 1926.1101 [Corrected]

324. On page 41132, in § 1926.1101, paragraph (b), the definition of "*Certified Industrial Hygienist (CIH),*" the first line of the second column is corrected by removing the word "comprehensive".

325. On page 41132, in the second column, in § 1926.1101, paragraph (b), the definition of "*Class III asbestos work*" is corrected to read:

* * * * *

(b) * * *

Class III asbestos work means repair and maintenance operations, where "ACM," including TSI and surfacing ACM and PACM, may be disturbed.

* * * * *

326. On page 41132, in the second column, in § 1926.1101, paragraph (b), the definition of "*Class IV asbestos work*" is corrected to read:

* * * * *

(b) * * *

Class IV asbestos work means maintenance and custodial activities during which employees contact but do not disturb ACM or PACM and activities to clean up dust, waste and debris resulting from Class I, II, and III activities.

* * * * *

327. On page 41132, in the second column, in § 1926.1101, paragraph (b), the definition of "*Competent Person,*" lines 12 through 19 are corrected to read "course which meets the criteria of EPA's Model Accreditation Plan (40 CFR part 763) for supervisor, or its equivalent and, for Class III and Class IV work, who is trained in a manner consistent with EPA requirements for training of local education agency maintenance and custodial staff as set forth at 40 CFR 763.92 (a)(2).".

328. On page 41132, in the third column, in § 1926.1101, paragraph (b), the definition of "*Disturbance,*" the first sentence is corrected to read:

* * * * *

(b) * * *

Disturbance means activities that disrupt the matrix of ACM or PACM, crumble or pulverize ACM or PACM, or generate visible debris from ACM or PACM.* * *

* * * * *

329. On page 41132, in the third column, in § 1926.1101, paragraph (b), the definition of "*Glovebag,*" line 1, the word "an" is corrected to read "not more than a 60 × 60 inch".

330. On page 41132, in the third column, in § 1926.1101, paragraph (b), the definition of "*Intact,*" line 3, the word "it" is corrected to read "the asbestos".

331. On page 41133, in § 1926.1101, paragraph (b), in the definition of "*Modification,*" line 8 from the top of the first column is corrected by removing the number "(ii)".

332. On page 41133, in the first column, in § 1926.1101, paragraph (b), the definition of "*Presumed Asbestos Containing Material,*" line 7, the number "(4)" is corrected to read "(5)".

333. On page 41133, in the first column, in § 1926.1101, paragraph (b), the definition of "*Regulated area,*" line 12 is corrected by removing the number "(6)".

334. On page 41133, in the second column, in § 1926.1101, paragraph (c)(1), line 8 the word "of" is corrected to read "to".

335. On page 41133, in the second column, in § 1926.1101, paragraph (c)(2), line 8, the word "of" is corrected to read "to".

336. On page 41133, in the second column, in § 1926.1101, paragraph (d)(3), line 13 is corrected by removing the number "(1)".

337. On page 41133, in the third column, in § 1926.1101, paragraph (e)(2), line 6 is corrected by removing the words "concentrations of".

338. On page 41133, in the third column, in § 1926.1101, paragraph (e)(2), line 12, the number "(6)" is corrected to read "(7)".

339. On page 41133, in the third column, in § 1926.1101, paragraph (e)(4), line 3, the number "(2)" is corrected to read "(1)".

340. On page 41133, in the third column, in § 1926.1101, paragraph (f)(1)(i), line 2, the word "of" is corrected to read "or".

340a. On page 41133, in the first column, in § 1926.1101, paragraph (f)(2)(i), the undesignated paragraph beginning on line 10 is correctly moved to line 9 as the second sentence of paragraph (f)(2)(i).

341–344. On page 41134, in the first column, in § 1926.1101, paragraph (f)(2)(ii) is corrected to read:

* * * * *

(f) * * *

(2) * * *

(ii) Basis of Initial Exposure Assessment: Unless a negative exposure assessment has been made pursuant to paragraph (f)(2)(iii) of this section, the initial exposure assessment shall, if feasible, be based on monitoring conducted pursuant to paragraph (f)(1)(iii) of this section. The assessment shall take into consideration both the monitoring results and all observations, information or calculations which indicate employee exposure to asbestos, including any previous monitoring conducted in the workplace, or of the operations of the employer which indicate the levels of airborne asbestos likely to be encountered on the job. For Class I asbestos work, until the employer conducts exposure monitoring and documents that employees on that job will not be exposed in excess of the PELs, or otherwise makes a negative exposure assessment pursuant to paragraph (f)(2)(iii) of this section, the employer shall presume that employees are exposed in excess of the TWA and excursion limit.

(iii) * * *

* * * * *

345. On page 41134, in the third column, in § 1926.1101, paragraph (f)(3)(iii), line 4 is corrected to read, "operated in the pressure demand mode, or other positive pressure mode respirator,".

346. On page 41134, in the third column, in § 1926.1101, paragraph (f)(4), line 1 is corrected to read, "(4) *Termination of monitoring.* (i) If".

347. On page 41134, in the third column, in § 1926.1101, paragraph (f)(4)(i), line 5, the word "measurement" is corrected to read "measurements".

348. On page 41134, in the third column, in § 1926.1101, paragraph (f)(5) is redesignated as paragraph (f)(6) and a new paragraph (f)(5) is added to read:

* * * * *

(f) * * *

(5) *Employee notification of monitoring results.*

(i) The employer shall notify affected employees of the monitoring results that represent that employee's exposure as soon as possible following receipt of monitoring results.

(ii) The employer shall notify affected employees of the results of monitoring representing the employee's exposure in writing either individually or by posting at a centrally located place that is accessible to affected employees.

* * * * *

349. On page 41135, in the first column, in § 1926.1101, paragraph (g)(1)(i) is corrected to read:

* * * * *

(g) * * *

(1) * * *

(i) Vacuum cleaners equipped with HEPA filters to collect all debris and dust containing ACM and PACM, except as provided in paragraph (g)(8)(ii) of this section in the case of roofing material.

* * * * *

350. On page 41135, in the first column, in § 1926.1101, paragraph (g)(1)(ii), lines 9 and 10, the words "slipping hazards;" are corrected to read "except as provided in paragraph (g)(8)(ii) of this section;".

351. On page 41135, in the first column, in § 1926.1101, paragraph (g)(1)(iii), line 3 is corrected by adding the words "except in roofing operations, where the procedures specified in paragraph (g)(8)(ii) of this section apply" after the word "containers".

352. On page 41135, in the second column, in § 1926.1101, paragraph (g)(4)(ii)(A) is corrected to read:

* * * * *

(g) * * *

(4) * * *

(ii) * * *

(A) Critical barriers shall be placed over all the openings to the regulated area, except where activities are performed outdoors; or

* * * * *

353. On page 41135, in the second column, in § 1926.1101, paragraph (g)(4)(ii)(B), line 13 is corrected by adding the words "Phase Contrast Microscopy" before the word "(PCM)".

354. On page 41135, in the second column, in § 1926.1101, paragraph (g)(4)(ii)(B) is corrected by adding the following sentence to the end of the paragraph, "Exception: For work completed outdoors where employees are not working in areas adjacent to the regulated areas, this paragraph (g)(4)(ii) is satisfied when the specific control methods in paragraph (g)(5) of this section are used."

355. On page 41135, in the third column, in § 1926.1101, paragraph (g)(5)(i) introductory text, line 2, the word "shall" is corrected to read "may".

356. On page 41135, in the third column, in § 1926.1101, paragraph (g)(5)(ii) introductory text is corrected to read:

* * * * *

(g) * * *

(5) * * *

(ii) Glove bag systems may be used to remove PACM and/or ACM from straight runs of piping and elbows and other connections with the following specifications and work practices:

* * * * *

357. On page 41135, in the third column, in § 1926.1101, paragraph (g)(5)(ii)(A)(*2*) is corrected to read:

* * * * *

(g) * * *

(5) * * *

(ii) * * *

(A) * * *

(*2*) Glovebags used on elbows and other connections must be designed for that purpose and used without modifications.

* * * * *

358. On page 41135, in the third column, in § 1926.1101, paragraph (g)(5)(ii)(B)(*4*), line 3, the number "150°" is corrected to read "150°F".

359. On page 41136, in the first column, in § 1926.1101, paragraph (g)(5)(ii)(B)(*9*), line 2, the word "removals" is corrected to read "removal operations".

360. On page 41136, in the first column, in § 1926.1101, paragraph (g)(5)(iii) introductory text, line 3, the word "shall" is corrected to read "may".

361. On page 41136, in the first column, in § 1926.1101, paragraph (g)(5)(iii)(B)(*1*), line 2 is corrected by adding the word "for" after the word "practices".

362. On page 41136, in the first column, in § 1926.1101, paragraph (g)(5)(iii)(B)(*1*), line 4, the number "(*2*)" is corrected to read "(*4*)".

363. On page 41136, in the first column, in § 1926.1101, paragraph (g)(5)(iii)(B)(*2*), line 4 is corrected by adding the words "until it is completed at which time the bag shall be collapsed prior to removal of the bag from the pipe" after the word "operation".

364. On page 41136, in the first column, in § 1926.1101, paragraph (g)(5)(iv) introductory text, line 3, the word "shall" is corrected to read "may".

365. On page 41136, in the first column, in § 1926.1101, paragraph (g)(5)(iv)(A)(*2*), line 2 is corrected by adding the word "the" after the word "in".

366. On page 41136, in the second column, in § 1926.1101, paragraph (g)(5)(iv)(B)(*2*) is corrected to read:

* * * * *

(g) * * *

(5) * * *

(iv) * * *

(B) * * *

(*2*) The box shall be smoke-tested for leaks and any leaks sealed prior to each use.

* * * * *

367. On page 41136, in the second column, in § 1926.1101, paragraph (g)(5)(vi)(B)(*1*) is corrected to read:

* * * * *

(g) * * *

(5) * * *

(vi) * * *

(B) * * *

(*1*) Before use, the mini-enclosure shall be inspected for leaks and smoke-tested to detect breaches, and any breaches sealed.

* * * * *

368. On page 41136, in the second column, in § 1926.1101, paragraph (g)(5)(vi)(B)(*3*), line 1 is corrected by adding a comma after the word "use".

369–370. On page 41136, in § 1926.1101, paragraph (g)(5)(vi)(B)(*3*), line 2 of the third column, the word "minienclosure" is corrected to read "mini-enclosure".

371. On page 41136, in the third column, in § 1926.1101, paragraph (g)(6)(ii), line 19, the words "paragraph (g)(4)(i)(B)(*2*)" are corrected to read "paragraph (g)(4)(ii)(B)".

372. On page 41136, in the third column, in § 1926.1101, paragraph (g)(6)(iii), line 6 is corrected by adding the words "of this section" after the words "paragraph (g)(6)".

373. On page 41136, in the third column, in § 1926.1101, paragraph (g)(6)(iii) is corrected by adding a sentence to the end of the paragraph to read, "The submission shall not constitute approval by OSHA.".

374. On page 41137, in the first column, in § 1926.1101, paragraph (g)(7)(i), line 1 is corrected by removing the comma after the word "work".

375. On page 41137, in the first column, in § 1926.1101, paragraph (g)(7)(ii) introductory text, line 4, the number "(4)" is corrected to read "(2)".

376. On page 41137, in the first column, in § 1926.1101, paragraph (g)(7)(ii) introductory text, line 5 is corrected by adding a comma after the word "job".

377. On page 41137, in the first column, in § 1926.1101, paragraph (g)(7)(ii)(B), line 8, the words "paragraph (g)(4)(i)(B)(2)" are corrected to read "paragraph (g)(4)(ii)(B)".

378. On page 41137, in the first column, in § 1926.1101, paragraph (g)(7)(iv), line 4, the words "(g)(3)(i) through (v)" are corrected to read "(g)(1)(i) through (g)(1)(iii)".

379. On page 41137, in the first column, in § 1926.1101, paragraph (g)(8)(i) introductory text, line 11, the word "(k)(8)" is corrected to read "(k)(9) of this section".

380. On page 41137, in the second column, in § 1926.1101, paragraph (g)(8)(i)(F), line 4, the number "(iv)" is corrected to read "(i)".

381. On page 41137, in the second column, in § 1926.1101, paragraph (g)(8)(ii)(B) is corrected to read:

* * * * *

(g) * * *

(8) * * *

(ii) * * *

(B) Wet methods shall be used to remove roofing materials that are not intact, or that will be rendered not intact during removal, unless such wet methods are not feasible or will create safety hazards.

* * * * *

382. On page 41137, in the second column, in § 1926.1101, paragraph (g)(8)(ii)(D) is corrected to read:

* * * * *

(g) * * *

(8) * * *

(ii) * * *

(D) When removing built-up roofs with asbestos-containing roofing felts and an aggregate surface using a power roof cutter, all dust resulting from the cutting operation shall be collected by a HEPA dust collector, or shall be HEPA vacuumed by vacuuming along the cut line. When removing built-up roofs with asbestos-containing roofing felts and a smooth surface using a power roof cutter, the dust resulting from the cutting operation shall be collected either by a HEPA dust collector or HEPA vacuuming along the cut line, or by gently sweeping and then carefully and completely wiping up the still-wet dust and debris left along the cut line.

The dust and debris shall be immediately bagged or placed in covered containers.

* * * * *

383. On page 41137, in the second column, in § 1926.1101, paragraph (g)(8)(ii)(E) is corrected to read:

* * * * *

(g) * * *
(8) * * *
(ii) * * *

(E) Asbestos-containing material that has been removed from a roof shall not be dropped or thrown to the ground. Unless the material is carried or passed to the ground by hand, it shall be lowered to the ground via covered, dust-tight chute, crane or hoist:

(*1*) Any ACM that is not intact shall be lowered to the ground as soon as is practicable, but in any event no later than the end of the work shift. While the material remains on the roof it shall either be kept wet, placed in an impermeable waste bag, or wrapped in plastic sheeting.

(*2*) Intact ACM shall be lowered to the ground as soon as is practicable, but in any event no later than the end of the work shift.

* * * * *

384. On page 41137, in the second column, in § 1926.1101, a new paragraph (g)(8)(ii)(H) is added to read:

* * * * *

(g) * * *
(8) * * *
(ii) * * *

(H) Notwithstanding any other provision of this section, removal or repair of sections of intact roofing less than 25 square feet in area does not require use of wet methods or HEPA vacuuming as long as manual methods which do not render the material non-intact are used to remove the material and no visible dust is created by the removal method used. In determining whether a job involves less than 25 square feet, the employer shall include all removal and repair work performed on the same roof on the same day.

* * * * *

385. On page 41137, in the second column, in § 1926.1101, paragraph (g)(8)(iii) introductory text is corrected to read:

* * * * *

(g) * * *
(8) * * *

(iii) When removing cementitious asbestos-containing siding and shingles or transite panels containing ACM on building exteriors (other than roofs, where paragraph (g)(8)(ii) of this section applies) the employer shall ensure that the following work practices are followed:

* * * * *

386. On page 41137, in the third column, in § 1926.1101, paragraph (g)(8)(v)(A), line 2 is corrected by adding the word "to" after the word "prior".

387. On page 41138, in the first column, in § 1926.1101, paragraph (g)(9)(iii), line 9 is corrected by adding the words "or another isolation method" after the word "section".

388. On page 41138, in the first column, in § 1926.1101, paragraph (g)(10) introductory text, line 5, the number "(8)" is corrected to read "(9)".

389. On page 41138, in the second column, in § 1926.1101, a new paragraph (g)(11) is added to read:

* * * * *

(g) * * *

(11) Alternative methods of compliance for installation, removal, repair, and maintenance of certain roofing materials. Notwithstanding any other provision of this section, an employer who complies with all provisions of this paragraph (g)(11) when installing, removing, repairing, or maintaining intact roof cements, mastics, coatings, or flashings which contain asbestos fibers encapsulated or coated by bituminous or resinous compounds shall be deemed to be in compliance with this section. If an employer does not comply with all provisions of this paragraph (g)(11), or if during the course of the job the material does not remain intact, the provisions of paragraph (g)(8) of this section apply instead of this paragraph (g)(11).

(i) Before work begins and as needed during the job, a competent person who is capable of identifying asbestos hazards in the workplace and selecting the appropriate control strategy for asbestos exposure, and who has the authority to take prompt corrective measures to eliminate such hazards, shall conduct an inspection of the worksite and determine that the roofing material is intact and will likely remain intact.

(ii) All employees performing work covered by this paragraph (g)(11) shall be trained in a training program that meets the requirements of paragraph (k)(9)(viii) of this section.

(iii) The material shall not be sanded, abraded, or ground. Manual methods which do not render the material non-intact shall be used.

(iv) Material that has been removed from a roof shall not be dropped or thrown to the ground. Unless the material is carried or passed to the ground via covered, dust-tight chute, crane or hoist. All such material shall be removed from the roof as soon as is practicable, but in any event no later than the end of the work shift.

(v) Where roofing products which have been labeled as containing asbestos pursuant to paragraph (k)(8) of this section are installed on non-residential roofs during operations covered by this paragraph (g)(11), the employer shall notify the building owner of the presence and location of such materials no later than the end of the job.

* * * * *

390. On page 41138, in the second column, in § 1926.1101, paragraph (h)(1)(iii) is corrected to read:

* * * * *

(h) * * *
(1) * * *

(iii) During all Class II and III work which is not performed using wet methods, provided, however, that respirators need not be worn during removal of ACM from sloped roofs when a negative exposure assessment has been made and the ACM is removed in an intact state.

* * * * *

391. On page 41138, in the second column, in § 1926.1101, paragraph (h)(2)(i), line 5 is corrected by adding the word "or" after the word "Table 1".

392. On page 41138, in the third column, in § 1926.1101, paragraph (h)(2)(iii), Table 1, lines 5 and 6 under the heading "Airborne concentration of asbestos or conditions of use" are corrected to read, "of exposure pursuant to paragraph (h)(2)(iv) of this section.".

393. On page 41139, in the first column, in § 1926.1101, paragraph (h)(3)(iv), line 10, the word "employee" is corrected to read "employees".

394. On page 41139, in the first column, in § 1926.1101, paragraph (h)(3)(iv), line 12 is corrected by adding a comma after the word "position".

395. On page 41139, in the first column, in § 1926.1101, paragraph (h)(4)(ii), line 15 is corrected by adding the words "to this section" after the words "Appendix C".

396. On page 41139, in the first column, in § 1926.1101, paragraph (h)(4)(ii), line 19, the number "(iii)" is corrected to read "(i)".

397. On page 41139, in § 1926.1101, paragraph (i)(1), line 1 of the second column, the word "and" is corrected to read "or".

398. On page 41139, in the second column, in § 1926.1101, paragraph (j)(1) introductory text, line 4, the word "Tsi" is corrected to read "TSI".

399. On page 41139, in the second column, in § 1926.1101, paragraph (j)(1)(i)(B) introductory text, the undesignated paragraph beginning on line 10 is correctly moved to line 9 as the third sentence of paragraph (j)(1)(i)(B) introductory text.

400. On page 41139, in the third column, paragraph (j)(1)(i)(C), line 14, the word "Such" is corrected to read "Following showering, such".

401. On page 41140, in the first column, in § 1926.1101, paragraph (j)(2)(iii), line 1, the word "Workclothing" is corrected to read "Work clothing".

402. On page 41140, in the first column, in § 1926.1101, paragraph (k), line 1, the word "Note:" is removed and the text beginning on line 2 is correctly designated as paragraph (k)(1).

403. On page 41140, in § 1926.1101, newly designated paragraph (k)(1), lines 4 and 5 of the second column, the words "are required to treat" are corrected to read "shall identify".

404. On page 41140, in § 1926.1101, newly designated paragraph (k)(1), line 9 of the second column, the number "(4)" is corrected to read "(5)".

405. On page 41140, in § 1926.1101, newly designated paragraph (k)(1), line 15 of the second column, the words "paragraph (g)" are corrected to read "paragraph (g)(8)(i)(I)".

406. On page 41140, 30 lines from the top of the second column, in § 1926.1101, paragraph (k)(1) is redesignated as paragraph (k)(2).

407. On page 41140, in the second column, in § 1926.1101, newly redesignated paragraph (k)(2)(i) is corrected to read:

* * * * *

(k) * * *
(2) * * *

(i) Before work subject to this standard is begun, building and facility owners shall determine the presence, location, and quantity of ACM and/or PACM at the work site pursuant to paragraph (k)(1) of this section.

* * * * *

408. On page 41140, 2 lines from the bottom of the second column, in § 1926.1101, paragraph (k)(2) is redesignated as paragraph (k)(3).

409. On page 41140, in the third column, in § 1926.1101, newly redesignated paragraph (k)(3)(i), line 5 is corrected by adding the words "pursuant to paragraph (k)(1) of this section" after the word "therein".

410. On page 41140, 35 lines from the top of the third column, in § 1926.1101, paragraph (k)(3) is redesignated as paragraph (k)(4).

411. On page 41140, 25 lines from the bottom of the third column, in § 1926.1101, paragraph (k)(4) is redesignated as paragraph (k)(5).

412. On page 41140, in the third column, newly redesignated paragraph (k)(5)(i), line 10, the number "(4)" is corrected to read "(5)".

413. On page 41140, in the third column, in § 1926.1101, newly redesignated paragraph (k)(5)(ii) introductory text, line 3 is corrected by adding the words "more than 1%" after the word "contain".

414. On page 41140, in the third column, in § 1926.1101, newly redesignated paragraph (k)(5)(ii)(A), line 1, the word "an" is corrected to read "a".

415. On page 41140, in the third column, in § 1926.1101, newly redesignated paragraph (k)(5)(ii)(A), line 5 is corrected by adding the word "or" after the word "ACM;".

416. On page 41141, in the first column, in § 1926.1101, newly redesignated paragraph (k)(5)(ii)(B), line 3, the word "asbestos" is corrected to read "ACM".

417. On page 41141, in the first column, in § 1926.1101, newly redesignated paragraph (k)(5)(ii)(B), lines 5 through 7 are corrected to read, "analysis of bulk samples collected in the manner described in 40 CFR 763.86. The".

418. On page 41141, in the first column, in § 1926.1101, newly redesignated paragraph (k)(5)(ii)(B), line 17, the word "of" is corrected to read "or".

419. On page 41141, in the first column, in § 1926.1101, newly redesignated paragraph (k)(5)(ii)(B), line 19, the word "of" is corrected to read "or".

420. On page 41141, in the first column, in § 1926.1101, a new paragraph (k)(5)(iii) is added to read:

* * * * *

(k) * * *
(5) * * *

(iii) The employer and/or building owner may demonstrate that flooring material including associated mastic and backing does not contain asbestos, by a determination of an industrial hygienist based upon recognized analytical techniques showing that the material is not ACM.

* * * * *

421. On page 41141, 24 lines from the top of the first column, in § 1926.1101, paragraph (k)(5) is redesignated as paragraph (k)(6).

422. On page 41141, in the first column, in § 1926.1101, newly redesignated paragraph (k)(6), lines 4 and 5, the words "thermal system insulation and surfacing ACM/PACM" are corrected to read "ACM and/or PACM".

423. On page 41141, 35 lines from the top of the first column, in § 1926.1101, paragraph (k)(6) is redesignated as paragraph (k)(7).

424. On page 41141, in the first column, in § 1926.1101, newly redesignated paragraph (k)(7)(ii) is corrected to read:

* * * * *

(k) * * *
(7) * * *

(ii) (A) The warning signs required by paragraph (k)(7) of this section shall bear the following information:

DANGER

ASBESTOS

CANCER AND LUNG DISEASE HAZARD

AUTHORIZED PERSONNEL ONLY

(B) In addition, where the use of respirators and protective clothing is required in the regulated area under this section, the warning signs shall include the following:

RESPIRATORS AND PROTECTIVE CLOTHING ARE REQUIRED IN THIS AREA

* * * * *

425. On page 41141, in the first column, in § 1926.1101, a new paragraph (k)(7)(iii) is added to read:

* * * * *

(k) * * *
(7) * * *

(iii) The employer shall ensure that employees working in and contiguous to regulated areas comprehend the warning signs required to be posted by paragraph (k)(7)(i) of this section. Means to ensure employee comprehension may include the use of foreign languages, pictographs and graphics.

* * * * *

426. On page 41141, 12 lines from the bottom of the first column, in § 1926.1101, paragraph (k)(7) is redesignated as paragraph (k)(8).

427. On page 41141, in the second column, in § 1926.1101, newly redesignated paragraph (k)(8)(vi) introductory text, line 2, the words "paragraphs (k)(2)(i) through (k)(2)(iii)" are corrected to read "paragraphs (k)(8)(i) through (k)(8)(iii) of this section".

428. On page 41141, in the second column, in § 1926.1101, newly redesignated paragraph (k)(8)(vi)(B), lines 2 and 3 are corrected by removing the words "by weight".

429. On page 41141, in the second column, in § 1926.1101, newly redesignated paragraph (k)(8)(vii), line 12, the number "(5)" is corrected to read "(6)".

430. On page 41141, 26 lines from the bottom of the second column, in § 1926.1101, paragraph (k)(8) is redesignated as paragraph (k)(9) and is corrected to read:

* * * * *

(k) * * *

(9) *Employee Information and Training.* (i) The employer shall, at no cost to the employee, institute a training program for all employees who are likely to be exposed in excess of a PEL and for all employees who perform Class I through IV asbestos operations, and shall ensure their participation in the program.

(ii) Training shall be provided prior to or at the time of initial assignment and at least annually thereafter.

(iii) Training for Class I operations shall be the equivalent in curriculum, training method and length to the EPA Model Accreditation Plan (MAP) asbestos abatement workers training (40 CFR part 763, subpart E, appendix C).

(iv) Training for Class II work. For work with asbestos containing material involving roofing materials, flooring materials, siding materials, ceiling tiles, or transite panels, training shall include at a minimum all the elements included in paragraph (k)(9)(viii) of this section and in addition, the specific work practices and engineering controls set forth in paragraph (g) of this section which specifically relate to that category. Such course shall include "hands-on" training and shall take at least 8 hours. Exception: For other Class II operations, training shall be provided which shall include at a minimum all the elements included in paragraph (k)(9)(viii) of this section and in addition, the specific work practices and engineering controls set forth in paragraph (g) of this section which specifically relate to that category, and shall include "hands-on" training.

(v) Training for Class III employees shall be consistent with EPA requirements for training of local education agency maintenance and custodial staff as set forth t 40 CFR 763.92(a)(2). Such a course shall also include "hands-on" training and shall take at least 16 hours. Exception: For Class III operations for which the competent person determines that the EPA curriculum does not adequately cover the training needed to perform that activity, training shall include as a minimum all the elements included in paragraph (k)(9)(viii) of this section and in addition, the specific work practices and engineering controls set forth in paragraph (g) of this section which specifically relate to that activity, and shall include "hands-on" training.

(vi) Training for employees performing Class IV operations shall be consistent with EPA requirements for training of local education agency maintenance and custodial staff as set forth at 40 CFR 763.92(a)(1). Such a course shall include available information concerning the locations of thermal system insulation and surfacing ACM/PACM, and asbestos-containing flooring material, or flooring material where the absence of asbestos has not yet been certified; and instruction in recognition of damage, deterioration, and delamination of asbestos containing building materials. Such course shall take at least 2 hours.

(vii) Training for employees who are likely to be exposed in excess of the PEL and who are not otherwise required to be trained under paragraph (k)(9)(iii) through (vi) of this section, shall meet the requirements of paragraph (k)(9)(viii) of this section.

(viii) The training program shall be conducted in a manner that the employee is able to understand. In addition to the content required by provisions in paragraphs (k)(9)(iii) through (vi) of this section, the employer shall ensure that each such employee is informed of the following:

(A) Methods of recognizing asbestos, including the requirement in paragraph (k)(1) of this section to presume that certain building materials contain asbestos;

(B) The health effects associated with asbestos exposure;

(C) The relationship between smoking and asbestos in producing lung cancer;

(D) The nature of operations that could result in exposure to asbestos, the importance of necessary protective controls to minimize exposure including, as applicable, engineering controls, work practices, respirators, housekeeping procedures, hygiene facilities, protective clothing, decontamination procedures, emergency procedures, and waste disposal procedures, and any necessary instruction in the use of these controls and procedures; where Class III and IV work will be or is performed, the contents of EPA 20T–2003, "Managing Asbestos In-Place" July 1990 or its equivalent in content;

(E) The purpose, proper use, fitting instructions, and limitations of respirators as required by 29 CFR 1910.134;

(F) The appropriate work practices for performing the asbestos job;

(G) Medical surveillance program requirements;

(H) The content of this standard including appendices;

(I) The names, addresses and phone numbers of public health organizations which provide information, materials and/or conduct programs concerning smoking cessation. The employer may distribute the list of such organizations contained in Appendix J to this section, to comply with this requirement; and

(J) The requirements for posting signs and affixing labels and the meaning of the required legends for such signs and labels.

* * * * *

431. On page 41142, in the first column, in § 1926.1101, paragraph (k)(9) is redesignated as paragraph (k)(10).

432. On page 41142, in the first column, in § 1926.1101, paragraph (l)(2), line 7 is corrected by adding "except in roofing operations, where the procedures specified in paragraph (g)(8)(ii) of this section apply" after the word "containers".

433. On page 41142, in § 1926.1101, paragraph (l)(3)(i), line 1 of the second column, the words "paragraph (g)" are corrected to read "paragraph (g)(8)(i)(I)".

434. On page 41142, in the second column, in § 1926.1101, the three paragraphs following the first paragraph (l)(3)(i) are redesignated as paragraphs (l)(3)(ii), (l)(3)(iii), and (l)(3)(iv), respectively.

435. On page 41142, in the second column, in newly redesignated paragraph (l)(3)(iii), line 3, the word "speed" is corrected to read, "speeds".

436. On page 41142, in the second column, in § 1926.1101, paragraph (l)(4) introductory text is corrected to read:

* * * * *

(l) * * *

(4) Waste and debris and accompanying dust in an area containing accessible thermal system insulation or surfacing ACM/PACM or visibly deteriorated ACM:

* * * * *

437. On page 41142, in the second column, in § 1926.1101, paragraph (l)(4)(ii), line 1, the word "clean" is corrected to read "cleaned".

438. On page 41142, in the second column, in § 1926.1101, paragraph (l)(4)(ii), line 2 is corrected by adding the word "of" after the word "disposed".

439. On page 41142, in the second column, in § 1926.1101, paragraph (m)(1)(i) is corrected to read:

* * * * *

(m) * * *

(1) * * *

(i) *Employees covered.* (A) The employer shall institute a program for all employees who, for a combined total of 30 or more days per year, are engaged in Class I, II, or III work or are exposed at or above the permissible exposure limit for a combined 30 days or more per year. For purposes of this subparagraph, any day in which a worker engages in Class II or Class III work or a combination thereof for one hour or less and, while doing so, adheres fully to the work practices specified in this standard, shall not be counted.

(B) For employees otherwise required by this standard to wear a negative pressure respirator, employers shall ensure employees are physically able to perform the work and use the equipment. This determination shall be made under the supervision of a physician.

* * * * *

440. On page 41142, in the second column, in § 1926.1101, paragraph (m)(1)(ii) heading, line 1 is corrected by removing the words "by a physician".

441. On page 41142, in the second column, in § 1926.1101, paragraph (m)(2)(i)(B) is corrected to read:

* * * * *

(m) * * *

(2) * * *

(i) * * *

(B) When the employee is assigned to an area where exposure to asbestos may be at or above the permissible exposure limit for 30 or more days per year, or engage in Class I, II, or III work for a combined total of 30 or more days per year, a medical examination must be given within 10 working days following the thirtieth day of exposure;

* * * * *

442. On page 41142, in the third column, in § 1926.1101, paragraph (m)(3)(i), line 2 is corrected by removing the letter "G,".

443. On page 41143, in the first column, in § 1926.1101, paragraph (n)(1)(i), line 3, the word "demonstrate" is corrected to read "demonstrates".

444. On page 41143, in the first column, in § 1926.1101, paragraph (n)(1)(i), line 4 is corrected by adding the words "or the activity involving such products or material" after the words "containing asbestos".

445. On page 41143, in the second column, in § 1926.1101, paragraph (n)(4), line 3, the number "1" is corrected by enclosing it in parenthesis to read "(1)".

446. On page 41143, in the second column, in § 1926.1101, paragraph (n)(5), line 5, the word "far" is corrected to read "for".

447. On page 41143, in the third column, in § 1926.1101, paragraph (o)(3) introductory text, line 6, the words "(p)(3) (i) and (ii)" are corrected to read "(o)(3)(i)".

448. On page 41143, in the third column, in § 1926.1101, paragraph (o)(3) introductory text, line 10, the words "Class II and III" are corrected to read "Class II, III, and IV".

449. On page 41143, in the third column, in § 1926.1101, paragraph (o)(3)(i) introductory text, line 4, the words "paragraph (g)(1)" are corrected to read "paragraph (e)(6)".

450. On page 41144, in the first column, in § 1926.1101, paragraph (o)(3)(i)(E), line 3, the words "protective clothing" are corrected to read "respirators".

451. On page 41144, in the first column, in § 1926.1101, paragraph (o)(3)(i)(E), line 4, the word "respirators" is corrected to read "protective clothing".

452. On page 41144, in the first column, in § 1926.1101, paragraph (o)(3)(i)(F), line 2, the words "set up" are corrected to read "set up, use,".

453. On page 41144, in the first column, in § 1926.1101, paragraph (o)(3)(i)(H), line 1, the word "though" is corrected to read "through".

454. On page 41144, in the first column, in § 1926.1101, paragraph (o)(3)(i)(H), line 2 is corrected by adding a comma after the word "inspection".

455. On page 41144, in the first column, in § 1926.1101, paragraph (o)(3)(i)(I), line 2, the words "paragraph (f)(6)" are corrected to read "paragraph (k)".

456. On page 41144, in the first column, in § 1926.1101, paragraph (o)(3)(ii) is added and reserved.

457. On page 41144, in the first column, in § 1926.1101, paragraph (o)(4)(i), lines 12 through 16 are corrected to read, "that meets the criteria of EPA's Model Accredited Plan (40 CFR part 763) or a course equivalent in stringency, content, and length.".

458. On page 41144, in the first to second column, in § 1926.1101, paragraph (o)(4)(ii), lines 11 through 17 are corrected to read, "course that is consistent with EPA requirements for training of local education agency maintenance and custodial staff as set forth at 40 CFR 763.92(a)(2), or its equivalent in stringency, content, and length.".

Appendix B to § 1926.1101 [Corrected]

458a. On page 41144, in the third column, the heading for Appendix B to § 1926.1101 is corrected to read:

Appendix B to § 1926.1101—Sampling and Analysis (Non-Mandatory)

* * * * *

459. On page 41145, in § 1926.1101, in Appendix B, the table is corrected so that the word "Air" is removed from between the double lines at the beginning and added following the word "Matrix".

460. On page 41145, in the second column, in § 1926.1101, in Appendix B, under "*1. Introduction,*" in the definition of "*Walton-Beckett Graticule,*" line 11, the number "2" is corrected to read "1".

461. On page 41145, in the second column, in § 1926.1101, in Appendix B, in the paragraph under the heading entitled "1.2 Principle," line 6 is corrected by removing the word "a".

462. On page 41146, in the second column, in § 1926.1101, in Appendix B, under the heading entitled "*4. Interferences,*" in the second paragraph, the list of common fibers is corrected to read:

* * * * *

4. Interferences

* * * * *

fiberglass
anhydrite
plant fibers
perlite veins
gypsum
some synthetic fibers
membrane structures
sponge spicules
diatoms
microorganisms
wollastonite

* * * * *

463. On page 41146, in the second column, in § 1926.1101, in Appendix B, under the heading entitled "*5.1.1* Sample assembly," in the first paragraph, line 8, the number "0.8-" is corrected to read "0.4".

464. On page 41146, in the second column, in § 1926.1101, in Appendix B, under the heading entitled "*5.1.1* Sample assembly," a new note (e) is added to read:

* * * * *

5.1.1 * * *

Notes: * * *

(e) Other cassettes, such as the Bell-mouth, may be used within the limits of their validation.

* * * * *

465. On page 41146, in the second column, in § 1926.1101, in Appendix B, under the heading entitled "*5.1.3* Sampling pump," lines 5 and 6, the words "2.5 liters per minute (L/min)" are corrected to read "the collection rate".

466. On page 41146, in the second column, in § 1926.1101, in Appendix B, in the paragraph entitled "*5.2.1,*" line 2 is corrected by removing the words "(see Figure 3)".

467. On page 41146, in the third column, in § 1926.1101, in Appendix B, under the heading entitled "*5.2.5,*" lines 8 and 9 of the "Note" are corrected to

read, "pressure changes, correct the flow rate using the formula shown in the section "Sampling Pump Flow Rate Corrections" at the end of this appendix.".

468. On page 41147, in the first column, in § 1926.1101, in Appendix B, the paragraph entitled "*5.2.11*" is corrected to read:

* * * * *

5. * * *

5.2 * * *

5.2.11 Attach and secure a sample seal around each sample cassette in such a way as to assure that the end cap and base plugs cannot be removed without destroying the seal. Tape the ends of the seal together since the seal is not long enough to be wrapped end-to-end. Also wrap tape around the cassette at each joint to keep the seal secure.

* * * * *

469. On page 41147, in the first column, in § 1926.1101, in Appendix B, in the paragraph entitled "*5.3.2*," line 8, the words "without rattling" are corrected to read "in such a manner that they will not rattle".

470. On page 41148, in the first column, in § 1926.1101, in Appendix B, under the heading entitled "*6.6.2* Counting Fibers," paragraph (9), line 5, the number "2" is corrected to read "1".

471. On page 41148, in the third column, in § 1926.1101, in Appendix B, under the heading entitled "7.3. Recount Calculations," the formula in the third paragraph is corrected to read:

* * * * *

7.3. Recount Calculations

* * * * *

$$\left|\sqrt{AC_2}-\sqrt{AC_1}\right| > 2.78 \times \left(\sqrt{AC_{AVG}}\right) \times CV_{FB}$$

472. On page 41149, in the first column, in § 1926.1101, in Appendix B, under the heading entitled "*Quality Control*," in the first paragraph, lines 6 and 7 are corrected by removing the words "for the CV curve shown below".

Appendix F to § 1926.1101 [Corrected]

472a. On page 41150, in the second column, the heading of Appendix F to § 1926.1101 is corrected to read:

Appendix F to § 1926.1101—Work Practices and Engineering Controls for Class I Asbestos Operations (Non-Mandatory)

* * * * *

473. On page 41152, in the third column, in § 1926.1101, in Appendix F, under the heading entitled "*Cleaning the Work Area,*" in the second paragraph, line 4, the word "encapsulate" is corrected to read "encapsulant".

Appendix H to § 1926.1101 [Corrected]

474. On page 41153, in the first column, in § 1926.1101, in Appendix H, under the heading entitled "*III. Respirators and Protective Clothing,*" paragraph A, line 17 is corrected by adding the word "a" after the word "conduct".

475. On page 41153, in the first column, in § 1926.1101, in Appendix H, under the heading entitled "*IV. Disposal Procedures and Clean-up,*" paragraph E, line 1, the word "if" is corrected to read "is".

476. On page 41153, in the second column, in § 1926.1101, in Appendix H, under the heading entitled "*V. Access to Information,*" paragraph B, line 5, the word "trowled-on" is corrected to read "troweled-on".

Appendix K to § 1926.1101 [Corrected]

477. On page 41155, in the second column, in § 1926.1101, in Appendix K, under the heading entitled "1.8 Toxicology," line 9 is corrected by adding the words "and 29 CFR 1915.1001" after the number "1926.1101".

478. On page 41155, in the third column, in § 1926.1101, in Appendix K, under the heading entitled "2.4 Shipment," paragraph (a), line 2 is corrected by removing the words "(such as the OSHA 21)".

Signed at Washington, D.C. this 20th day of June, 1995.

Joseph A. Dear,

Assistant Secretary, Occupational Safety and Health Administration.

[FR Doc. 95–15489 Filed 6–28–95; 8:45 am]

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federal register

Thursday
June 29, 1995

Part IV

Federal Communications Commission

47 CFR Part 1

Assessment and Collection of Regulatory Fees for Fiscal Year 1995; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 95–3; FCC 95–227]

Assessment and Collection of Regulatory Fees for Fiscal Year 1995

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The commission has revised its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress has required it to collect for fiscal year 1995. Section 9 of the Communications Act of 1934, as amended, provides for the annual assessment and collection of regulatory fees. For fiscal year 1995 sections 9(b)(2) and (3) provide for annual "Mandatory Adjustments" and "Permitted Amendments" to the Schedule of Regulatory Fees. These revisions will further the National Performance Review goals of reinventing Government by requiring beneficiaries of Commission services to pay for such services.

EFFECTIVE DATE: September 18, 1995.

FOR FURTHER INFORMATION CONTACT: Peter W. Herrick, Office of Managing Director at (202) 418–0443, or Terry D. Johnson, Office of Managing Director at (202) 418–0445.

SUPPLEMENTARY INFORMATION:

In the Matter of: Assessment and Collection of Regulatory Fees for Fiscal Year 1995.

Price Cap Treatment of Regulatory Fees Imposed by Section 9 of the Act.

Report and Order

Adopted: June 14, 1995.

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By the Commission.

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I. Introduction

1. The Congress, pursuant to Section 9 of the Communications Act of 1934, as amended, has required that the Commission collect $116,400,000 in FY 1995 to recover certain of its regulatory costs. On January 12, 1995, the Commission released a Notice of Proposed Rule Making, *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal year 1995*, MD Docket No. 95–3, FCC 95–14 (*Notice*), 60 FR 3807 (1995). In the *Notice*, the Commission asked for comments on proposals to revise its Schedule of Regulatory Fees.[1] The Commission now has under consideration a proposed *Report and Order* to revise its Schedule of Regulatory Fees. *See* 47 CFR 1.1152 through 1.1156.

2. In revising our regulatory fees, we adjusted our Regulatory Fee Schedule to recover $116,400,000 in regulatory costs, consistent with the amount that Congress has appropriated for our enforcement, policy and rule making, international, and user information activities for FY 1995.[2] 47 U.S.C. § 159(a). In addition, we have amended the Schedule to collect regulatory fees from regulatees of services not included in the FY 1994 Schedule and we have modified our method of assessing fees for certain services. 47 U.S.C. §§ 159(b)(1)(A), (b)(3). The revised Regulatory Fee Schedule is set forth in Appendix B.

3. For several categories of service, the regulatory fees for FY 1995 are significantly higher than corresponding fees for FY 1994. *See* 47 U.S.C. § 159(g); *see also Implementation of Section 9 of the Communications Act (FY 1994 Order)*, 9 FCC Rcd 5333 (1994) *Petitions for Reconsideration Pending*, 59 FR 30984 (1994). Our revised assessments result, for the most part, from increases in the amount that Congress has appropriated for Commission activities whose costs must be recovered through regulatory fees. As noted, the amount appropriated and to be recovered through regulatory fees is $116,400,000. That amount is 93 percent greater than the $60,400,000 that Congress required us to recover through regulatory fees in FY 1994. The impact of this increase is, however, lessened for some categories of services by anticipated revenues from categories of regulatees that we added to the Regulatory Fee Schedule and by increases in the number of payment units, *e.g.*, subscribers.[3] Similarly, for some services increases in the fees exceed 93% because of the reallocation of FTEs, decreases in the number of payment units, and modification of the methodology for computing fees to better reflect the benefits derived from the Commission's regulation.

4. In determining the individual fee amounts for FY 1995, Section 9 of the Act requires that we first determine the number of full-time equivalent employees (FTEs)[4] associated with our regulatory activities, and then determine the amount to be recovered from each fee category by estimating the number of FTEs assigned to each category. "Mandatory adjustments" are then made to the Section 9 Regulatory Fee Schedule. An initial attempt to develop individual fees by allocating FTEs down to the individual fee level rather than at the grouped category level proved ineffective. Since we do not have a cost accounting system to gather appropriate data on how Commission employees allocate their time, estimated FTE data yielded anomalous results which would have required substantial "permitted amendments" to resolve obvious inequities.

5. Additionally, it became apparent in the fee development effort that the Commission's options were limited in terms of what it could do to make the fees more equitable and at the same time assure that the Commission collects the $116.4 million that Congress has required. This meant that we could not recommend adoption of proposals that would have resulted in the regulatees being unsure about the amount of their fee payment and the staff having no way to verify that proper payments were made. In addition, we had difficulty developing fees in several areas because the Commission does not always have accurate or complete information concerning the number of regulatees and/or measurement units essential to fee collection verification requirements. Thus, it became necessary in a number of instances to utilize industry estimates of payment volumes instead of relying on information available within the Commission.

6. Finally, much of our policy and rule making efforts are expended in the development of new and emerging technologies and services (*e.g.*, PCS, DBS, and LEOs). We found that, as a practical matter, we had to allocate the costs associated with these activities to existing licensees in other services because there was no operational systems or customer base on which to assess a fee for these new services. To alleviate the regulatory burden on existing licensees, we urge the Congress to allow the Commission to recoup, from amounts received from competitive bidding under Section 309 of the Communications Act, at least such amount as would otherwise be allocable as regulatory fees for such services.

II. Background

7. Section 9(a) of the Act requires us to assess and collect annual regulatory fees to recover the costs, as determined annually by Congress, of our enforcement, policy and rule making, international, and user information activities.[5] 47 U.S.C. 159(a). Congress established our Regulatory Fee Schedule for FY 1995. 47 U.S.C. § 9(g). In our *FY 1994 Report and Order*, 59 FR 30984 (1994), we set forth the Regulatory Fee Schedule for FY 1994 and prescribed rules to govern payment of the fees, as required by Congress.[6] 47 U.S.C. § 159(f)(1); 47 CFR 1.1151–1.1166.

8. For fiscal years after FY 1994, Section 9 requires that we adjust the fees so that we can reasonably expect to collect the amount specified by Congress. 47 U.S.C. § 159(b)(1)(B). Sections 9(b)(2) and (3) provide for annual "Mandatory Adjustments" and "Permitted Amendments" to the Schedule of Regulatory Fees.

9. In making Section 9(b)(2)'s mandatory adjustments, we first consider the amount that we are to collect as set forth in our Appropriations Act. 47 U.S.C. §§ 159(b)(2), (b)(1)(B). Second, we identify the number of FTEs allocated to our enforcement, policy and rule making, user information, and international activities. 47 U.S.C. §159(b)(1)(A). 159(b)(1)(A). Third, we determine the amount to be recovered from each *fee category*, *e.g.*, Common Carrier, by estimating the number of FTEs assigned to each fee category. 47 U.S.C. § 159(b)(2). Finally, we make proportionate adjustments to the individual fees set forth in Section 9(g)'s Regulatory Fee Schedule in order to determine the revised fee for the particular services within each service category for FY 1995. *Id.* In determining individual service fees, we take into consideration the estimated number of payment units, *e.g.*, licensees, for each service. 47 U.S.C. § (b)(2)(A).

10. Once we have determined each service's "mandatory fee," as described above, Section 9(b)(3), relating to "Permitted Amendments" to the Schedule, provides that, if necessary, we shall amend the Schedule of Regulatory Fees, as provided in Section 9(b)(1)(A) to, *inter alia*, reflect the benefits of our regulation to the payers of the fees for each service by considering factors that we determine are necessary in the public interest. 47 U.S.C. §§ 159(b)(3), (b)(1)(A). In making these amendments, we "shall add, delete, or reclassify services in the Schedule to reflect additions, deletions or changes in the nature of its services * * *." 47 U.S.C. § 159(b)(3). Finally, while the fees are not judicially reviewable, we are required to notify Congress of any permitted amendments to the Regulatory Fee Schedule 90 days before those amendments become effective. 47 U.S.C. § 159(b)(2), (3), (4)(B).

III. Discussion

A. FY 1995 Regulatory Fees

1. General Discussion

11. In adjusting our regulatory fees pursuant to Section 9(b)(2)'s provisions for "Mandatory Adjustments", we first identified our directly assigned FY 1995 regulatory fee FTEs in the Wireless, International, Mass Media, Common Carrier and Cable Services Bureaus. We next allocated these regulatory fee FTEs to the appropriate Section 9 regulatory fee category (*i.e.* Private Radio, Mass Media, Cable Services, and Common Carrier). We then identified additional FTEs from bureaus and offices supporting the regulatory fee activities of the operating bureaus.[7]

Appendix C contains a more detailed description of our allocation of FTEs by activity. The resulting allocation of FTEs, rounded to the nearest tenth of a percent, is as follows:

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[1] The pleadings and reply pleadings are listed in Appendix J.

[2] *See* Public Law 103–317, 108 Stat. 1724 at 1737–38 (August 26, 1994).

[3] Payment units represent the number of individual payments available in a particular service to generate the required revenue in that service. Payment units also represent, in a different context, the number by which a payor must multiply the fee amount for a particular service in order to calculate its total fee due for the service. For example, "subscribers" is the payment unit applicable to Cable Television fees. The number of subscribers is divided into the overall Cable Television revenue requirement to determine the fee amount for that service, and it is also used by payors to determine the system's total fee liability (i.e., by multiplying the payment units by the fee amount to determine the system's total fee requirement).

[4] Full Time Equivalent (FTE) employment is the total number of regular straight-time hours (*i.e.*, not including overtime or holiday hours) worked or to be worked by current and future employees divided by the number of compensable hours applicable to each fiscal year. *See* Office of Management and Budget Circular A–11, Section 13.1, Definitions relating to employment.

[5] Our various activities, including those whose costs are subject to recovery through regulatory fees, are described in Appendix I.

[6] In the *FY 1994 Order*, we adopted rules to implement the collection of regulatory fees, including payment procedures, specific exemptions from the payment of regulatory fees, procedures for requesting waivers, reductions and deferments of fee payments, and penalties for late payment or non-payment of the fees. We shall in the near future address petitions for reconsideration of the *FY 1994 Order* and consider whether to make amendments to our implementing rules.

[7] The Compliance and Information Bureau (CIB) (formerly the Field Operations Bureau), the Office of Engineering and Technology (OET), and the Office of Managing Director (OMD) perform activities supporting the operating Bureaus. FTEs assigned to CIB, OET and some elements of OMD supporting the regulatory activities of the operating Bureaus were allocated to the Private Radio, Mass Media, Common Carrier, and Cable Services fee categories on a pro rata basis.

Regulatory fee category	Regulatory fee FTEs	Regulatory fee percentage	Percentage of total FCC FTEs
Private Radio	103	7.3	4.5
Mass Media	253	18.0	11.1
Common Carrier	689	49.0	30.3
Cable Services	361	25.7	15.9
Total	1,406	100.0	61.9

12. Next, we allocated our $116,400,000 revenue requirement to the Private Radio, Mass Media, Common Carrier, and Cable Services activities, based on the regulatory fee percentages shown above. For example, to derive the amount to be recovered from cable services, we calculated that the 25.7 percent of total FTEs representing the 361 FTEs assigned to the cable services activity resulted in $29,914,800 to be recovered through the collection of cable services fees. The resulting allocation of costs, rounded to tenths of a million, by regulatory fee category, is as follows:

Regulatory fee category	Cost allocation (million)
Private Radio	$8.5
Mass Media	21.0
Common Carrier	57.0
Cable Services	29.9

13. After determining these cost allocations, we updated the number of FY 1995 payment units for the individual services within each fee category. For example, we estimate that there are approximately 60,000,000 payment units for cable television systems, i.e., cable subscribers. The number of payment units is based upon information provided by Commission program experts and supplemented by information contained in actual licensee data bases maintained by the Commission, information provided by industry groups or contained in trade publications, actual data from FY 1994 regulatory fee collections, and from data provided in the comments in this proceeding.[8] *See* Appendices D through G.

[8] We have made a number of changes to our payment unit estimates. The revised estimates are provided in each Section pertinent to individual fees beginning at paragraph 27 and are also contained in Appendixes D through G. In applying the pro-rata formula for determining individual fee amounts within each fee category, revised payment units have the effect of raising or lowering the allocated costs (revenue requirements) for individual services, as well as, the calculated fees for all fees in a category depending on whether the payment unit volumes increased or decreased from those shown in the NPRM.

14. Next, in order to make the proportionate changes in the statutory schedule of fees required by Section 9(b)(2), we compared our FY 1995 revenue requirement in each regulatory fee category, *e.g.*, Cable Services, with the total amount that would be collected from all of the services within each category under the FY 1994 fee schedule. For example, we estimated that approximately $22.7 million, or $7.2 million less than its $29.9 million FY 1995 revenue requirement, would be collected from cable system payers based upon our FY 1994 fees. Therefore, we pro-rated the $7.2 million shortfall to the individual services within the cable services fee category (*i.e.*, CARS licensees and cable system subscribers).[9] We then divided the revenue requirement in each service by the payment units to determine the revised amount of the individual fee. These revised fees constitute the "mandatory adjustments" required by Section 9(2).

15. Following our determination of "Mandatory Adjustments", we reviewed each service and its associated fee assessment to determine if the nature of a service or the public interest warranted a fee adjustment pursuant to Section 9(b)(3)'s requirements for "Permitted Amendments." Pursuant to our authority to make permitted amendments to the fees, we revised our method for calculating fees for local exchange carriers (LECs), interexchange carriers (IXCs), and other common carriers and certain international services. Additionally, we are establishing a reduced fee for satellite television stations to distinguish those stations from full service television stations and we are adding a fee requirement for licensees of FM and TV translator and booster stations. Also, we established a fee for one-way paging services separate from the fee for other common carrier mobile services, reduced the fee for space stations, and eliminated the fee for receive only earth stations. After making these permitted amendments, we revised the remaining fees within the affected service category to take into account the impact of the fee modification upon other services within the category.[10]

16. Comsat General and Comsat Video argue that their proposed fee increases are disproportionately high when compared to the increases proposed in other categories of service and within their own category of service, and that the increase constitutes a violation of Section 9(b)(2)'s requirement that we make proportionate adjustments to the statutory fees when recalculating the fees to collect a greater or lesser amount than previously required by Congress. These parties assert that our proposed fee increases with respect to Common Carrier activities and, in particular, geosynchronous space stations are neither proportionate nor in the public interest, and, that they constitute illegal taxes because they do not reasonably reflect the true cost of regulatory service provided to these entities. *See National Cable Television Ass'n.* v. *United States*, 415 U.S. 336, 340 (1974) (*NCTA I*). COMSAT General and Comsat Video state that a fee is distinguishable from a tax in that a fee is "a payment for a special privilege or service rendered, and not a revenue measure." *National Cable Television Ass'n.* v. *F.C.C.*, 554 F.2d 1094, 1106 (D.C. 1976). According to these parties, the fee must be calculated to return the cost of the service or benefit at a rate that reasonably reflects the costs of the services performed and the value conferred on the payor. *Electronic Industries Ass'n.* v. *F.C.C.*, 554 F.2d 1109, 1117 (D.C. 1976).

17. In addition, the parties argue that our proposed allocation of FTEs to the major categories of service fails to comply with the requirements of

[9] Due to revisions to payment units, cost allocations (revenue requirements) may change for a particular service. In addition, cost allocations may change due to changes made pursuant to permitted amendments (see Paragraph 12).

[10] We have not proposed regulatory fees in FY 1995 for the Personal Communications Service (PCS), Commercial Mobile Radio Service (CMRS) other than those listed here (cellular and public mobile), Low Earth Orbital (LEO) Satellite Service an the Direct Broadcasting Satellite (DBS) Service because no facilities were authorized on our proposed dates for calculating fees or a negligible number of FTEs applicable to the regulatory fee program are assigned to these services.

Section 9. These parties contend that our proposed allocation of FTEs to the various major service categories violates Section 9(b)(1)(a) because, in their view, the *Notice* contains insufficient supporting information to permit analysis of the basis for our FTE allocations. Comsat General argues that a detailed accounting of the overhead and employees' time, based on a task code charge system, is necessary to justify the reasonableness of our assignment of FTEs to the common carrier and other categories and to the individual services within these categories.

18. Also, several parties contend that the *Notice* fails to demonstrate that individual fees are "reasonably related to the benefits provided to the payor of the fee," in violation of Section 9(b)(1)(A), and are contrary to the intent of Congress as reflected in the legislative history of Section 9. They also contend that the regulation of their particular service does not justify the fee proposed for the service. GE America Communications, Inc. (GE Americom) states that the amount of cost recovery that we allocated to geosynchronous satellites should be reduced because our regulatory activities with respect to in-orbit domestic satellites are *de minimis* since their licensees are not the subject of enforcement proceedings, our domestic satellite policies are well-established with little need for rule makings, and our deregulatory policies have further reduced the cost of space segment regulation.

19. We reject Comsat General and Comsat Video's arguments that our proposed fees constitute unauthorized taxes. In reviewing a similar fee program enacted by Congress, the Supreme Court held that *NCTA I* stood only for the proposition that Congress must indicate clearly its intention to delegate "discretionary authority to recover administrative costs not inuring directly to the benefit of regulated parties by imposing additional financial burdens, whether characterized as 'fees' or 'taxes' on those parties." *Skinner* v. *Mid-American Pipe Line Co.*, 490 U.S. 212, 224; 109 S.Ct. 1762, 1733 (1989).[11] *Skinner* thus bars any interpretation of *NCTA I* and its progeny in the courts of appeals that would limit Congress to allowing agencies to set regulatory fees only in amounts that reflect services received by the regulated entities. *Skinner* also stated that a congressional delegation of authority to raise funds was proper where Congress provides sufficient guidance to the collecting agency concerning the identity of the entities subject to the fee, the purposes for which the funds may be used, the manner in which the fees are to be established, and the aggregate amount of the fees to be collected. 490 U.S. 219–220, 109 S. Ct. 1731.

20. Subsequent to the Court's decision in *Skinner*, Congress adopted Section 9 directing us to recover the full amount of specified regulatory costs from regulatees. Consistent with the guidance in *Skinner*, Congress identified the categories of service providers subject to the fees, and declared that fees are to be assessed in a rule making proceeding, based upon the number of FTEs within our bureaus and offices performing enforcement, policy and rule making, international, and user information activities. Section 9 further requires us to take into account factors reasonably related to the benefits provided to the payor of the fee by these activities, and we are to recover the costs of these activities only if required in annual Appropriations Acts and only in the aggregate amount annually designated by Congress. As described below, our actions to revise the regulatory fees are consistent with the requirements of Section 9. Thus, our revisions to the Regulatory Fee Schedule in establishing regulatory fees for FY 1995 satisfy the Court's concerns and guidelines regarding unauthorized taxation of persons subject to a fee requirement.

21. The FTE allocations used to calculate the amounts to be recovered from each fee category were developed in full compliance with the requirements of Section 9 of the Act. In developing the FY 1995 regulatory fee schedule, we relied upon estimates of year-end FTEs from our Bureaus and Offices, because actual FTEs utilized are not known until the completion of the fiscal year. Thus, to produce the best possible estimates of FY 1995 year-end FTEs, we conducted a survey in December 1994, immediately prior to releasing the *Notice* in this proceeding to estimate FTEs for this rule making.[12] The Commission performed a review of its staffing, taking into consideration expected new and replacement hiring and attrition through the end of the fiscal year, in order to determine the most accurate estimate of projected FY 1995 year-end FTEs by organization. Next, the Bureaus and Offices allocated their assigned year-end FTEs to each of their major functional activities (e.g., Authorization of Service, Enforcement, Public Information). The staff actually assigned to perform these allocations within the Bureau and Offices were those individuals most familiar with the regulatory programs and associated staffing under their auspices.[13]

22. In contending that their proposed fees are unduly high, commenters generally have failed to recognize that Section 9 requires that we add to our direct FTEs, *i.e.*, those represented by staff directly assigned to our operating Bureaus, any support FTEs representing staff assigned to overhead functions such as our field and laboratory staff and certain staff assigned to the Office of Managing Director. 47 U.S.C. § 159(b)(1)(A). These support FTEs comprise nearly 40% of all FTEs associated with regulatory fees. Therefore, personnel costs to be recovered through regulatory fees are approximately 40% higher than the costs associated with staff directly assigned to an operating Bureau and performing functions covered by the regulatory fee program. Further, personnel costs represent only 75% of our costs to be recovered through regulatory fees. Thus, the addition of non-personnel costs (equipment, rents, contractual services, supplies, etc.) to personnel costs results in an actual cost of regulation significantly exceeding direct staff costs. The addition of benefits and other obligations to the average Commission salary cost results in an addition cost of approximately $33,000 per employee. Although some of the parties view these costs of regulation to be excessive, they often reflect costs associated with our regulatory programs that they may not have fully considered.

23. Support FTEs, and ultimately costs, are allocated to each regulatory fee category (e.g., cable television) based upon the number of direct FTEs assigned to each fee category. We

[11] *Skinner* stated that in *NCTA I*, the Court had expressed doubt whether Congress had intended in the particular statute in question to delegate the authority to recover the costs of benefits to the public by assessing fees on regulated parties. For that reason, it struck down the agency's efforts to recover such costs. 490 U.S. at 223–224; 109 S.Ct. at 1733.

[12] When the survey was conducted, in December 1994, only approximately 20% of the total FTEs expected to be utilized for the entire FY 1995 time frame were actually "accrued". As such, approximately 80% or 1,125 of the 1,406 FTEs for FY 1995 were estimated based on this small 20% "sample".

[13] Congress recognized, in adopting the Schedule of Fees, that the Commission has no cost accounting system in place to assist in the estimation of final fiscal year FTEs and related costs. Public Law 103–66, 107 Stat. 313 at 401 (1993). Although the Commission is developing a cost accounting system and it should be in place for FY 1996, such a system would not provide a definitive count, but only an estimate of year-end FTEs even when fully implemented. In summary, we believe that the estimates of FTEs and costs utilized in this proceeding are reasonable and represent the most accurate information available. We have provided in Appendix C an explanation of how FTEs were calculated for each fee category.

believe our allocations of FTEs reasonably assign personnel and related costs attributable to each fee category. As noted, actual FTE assignments can only be determined once a fiscal year is completed. However, we are satisfied that our estimates, based upon careful review of current and anticipated FTE assignments conducted well into the fiscal year and shortly before the adoption of the *Notice* in this proceeding, yield an accurate estimate of FY 1995 FTE assignments.

24. We also note the concerns of several commenters that certain individual fees seem unreasonable relative to the benefits provided. In general, these commenters fail to recognize the formulaic approach to setting the mandatory fee levels dictated by Congress. Section 9 provides that, in setting individual fee amounts, we prorate increases or decreases to the individual services within each fee category. 47 U.S.C. § 159(b)(2). This statutory requirement remains the relationship between annually calculated fees and the fees initially established by the Congress. It does not provide the flexibility to adjust fees relative to benefits to the payor or in consideration of other factors. These factors, however, are considered in the next stage of the fee development process as permitted amendments, if warranted.

25. As discussed earlier, the Commission is not able to allocate detailed costs to individual fee line items (e.g., VHF Television Stations in the 51–100 markets). Rather, those costs are allocated to broad categories of services by Section 9. Even when the Commission implements a cost accounting system in FY 1996, it may not be cost effective to obtain detailed cost data relative to our regulation of individual services. Since we do not relate specific regulatory costs to particular services within a fee category, we are constrained by Section 9 and by our information collection systems to the formulaic approach to the mandatory adjustment of regulatory fees. However, any inequities resulting from this approach are likely to be small and confined to like services due to the pro-rata formula applied by fee category. As noted, in developing the individual fees, as discussed below, we have carefully examined any apparent inequities computed pursuant to the mandatory formula required by Section 9 and have adjusted certain fees pursuant to our authority to make "permitted" amendments to the fees. In making the permitted amendments, the Commission is not required to calibrate the amount of the regulatory fee collected precisely to the cost of the benefits each regulatee derives from the Commission's regulation. *See United States* v. *Sperry Corp.*, 493 U.S. 52, 60 (1989) (upholding a one and a half percent user fee of amount recovered by claimant before Iran-U.S. Claims Tribunal); *Massachusetts* v. *United States* 435 U.S. 444, 463 (1978) (upholding flat registration fee on civil aircraft). Moreover, the Commission can collect fees from regulatees for their use of frequencies and for the potential benefits of its regulatory activities, even if they do not utilize these activities. *See United States* v. *Sperry Corp.*, 493 U.S. *supra* at 63.

26. Also, many commenters have mistakenly correlated gross increases in fee amounts from FY 1994 to FY 1995 to increases in regulation. Although there may, in fact, be changes in regulatory burden for certain services, the primary reason for increased fees overall is the 93% increase in recoverable fees mandated by Congress. Additionally, Section 9 prohibited any adjustment of individual fees established in the Regulatory Fee Schedule for FY 1994. 9 U.S.C. § 159(b)(2). Thus, the FY 1994 fee was established by Congress and was not adjusted to reflect changes in the allocation of FTEs not considered by Congress. Our development of FY 1995 fees in accordance with Section 9's requirements represents the first allocation of FTEs to appropriate fee categories. This has resulted in a realignment of costs between major fee categories and a redistribution of relative fee revenue requirements among the four major fee categories. As the commenters have noted, certain fees decrease from FY 1994 levels while other fees increase. This primarily reflects the reallocation of FTEs for FY 1995 compared to the Congressionally mandated Regulatory Fee Schedule in effect in FY 1994.

27. We have retained, for fee determination purposes, the regulatory fee category classifications (i.e., Private Radio, Common Carrier, Cable Services and Mass Media) set forth in Section 159 in order to minimize any adverse impact on the fees resulting from changes in classification. Further, for ease in locating particular fees, we have formatted the FY 1995 Schedule of Fees to reflect our new organizational structure even though we have developed those fees based upon the fee activities contained in the FY 1994 Regulatory Fee Schedule. *See* Appendix B. With the exception of annual fees in the amount of $5.00 or less, individual fee amounts have been rounded to the nearest $5 in the case of fees under $1,000, or to the nearest $25 in the case of fees of $1,000 or more in accordance with Section 9(b)(2). Appendices C through G describe the method by which FTEs were assigned to the fee categories and the development of the individual fees within each major category.

28. We have revised the revenue requirements for individual fees in several of the fee categories. Revenue requirements change whenever volume estimates change due to the pro-rata formula associated with the mandatory provisions of Section 9. Likewise, any permitted amendments which reduce fees have the effect of reallocating to other services within a fee category the revenues which would have been collected if the permitted amendment had not been accepted. In effect, each volume change and/or permitted amendment impacts the revenue requirement in each service within the category. Zero-basing each revenue calculation makes any attempt to explain the calculated difference between revenue requirements shown in the *Notice* and in this *Report and Order* meaningless. We, therefore, have not attempted to do this and instead, have explained each permitted amendment we've made and also described the source of any changes to volume estimates.

2. Private Radio Services.

29. In developing the FY 1995 regulatory fees for Private Radio Services (set forth in the Wireless Radio Services category in the FY 1995 Regulatory Fee Schedule), we made mandatory adjustments to the Regulatory Fee Schedule required by 47 U.S.C. § 159, considering the number of FTEs and the estimated volume of payments. We have also taken into account the quality of the frequencies licensed. Accordingly, we have decided to continue to assess the two levels of regulatory fees applied to these services by Congress' fee schedule, *i.e.*, exclusive use services and shared use services, in recognition that those licensees who generally receive a higher quality communications channel, due to exclusive or lightly shared frequencies, should pay a higher fee than licensees who operate on heavily shared frequencies. 47 U.S.C. § 159(2).

30. We are implementing no changes to the rules for calculating fee payments and submitting regulatory fee payments for Private Radio Services. Due to the relatively small regulatory fees generally assessed for the services, we will continue to require applicants for new, reinstatement, and renewal licenses in these services to pay the entire regulatory fee for the full term of their requested license at the time they file their license applications.[14] *See* Appendix D for a description of the development of the fees for the various services within the Private Radio category.

a. *Exclusive use services.* 31. *Land Mobile Services.* The fees for Land Mobile Services are set forth in the FY 1995 Regulatory Fee Schedule within the Wireless Radio Service category and include services authorized under Part 90 of the Commission's Rules to provide high quality voice or digital communications between vehicles or to fixed stations to further the business activities of the licensee. These services, using the 220–222 MHz band and frequencies at 470 MHz and above, may be offered on a private carrier basis in the Specialized Mobile Radio Service (SMRS).

32. The FY 1995 revenue requirement for Land Mobile Services is $396,390. Our estimated payment units for Land Mobile are 13,213 units. Dividing the revenue requirement by the number of payment units and its license term of five years results in an annual fee of $6 per license rather than the $7 annual fee proposed in the *Notice*.[15] Thus, Land Mobile licensees are subject to a $6 annual regulatory fee per license, payable for an entire five or ten year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $30 for a license with a five year term or $60 for a license with a 10 year term. *See* Guidelines, Appendix H at ¶ 4.

33. *Microwave Services.* The fees for Microwave Services are set forth in the FY 1995 Regulatory Fee Schedule within the Wireless Radio Service category. Microwave Services include private microwave systems and private carrier systems authorized under Part 94 of the Commission's Rules to provide telecommunications services between fixed points on a high quality channel of communications. Microwave systems are often used to relay data and to control railroad, pipeline, and utility equipment.

34. The FY 1995 revenue requirement for Microwave Services is $193,200. Payment units for Microwave Services are estimated to be 6,440 licensees. Dividing the revenue requirement for Microwave Services by its payment units and license term of five years results in an annual fee of $6 per license. Thus, Microwave licensees are subject to a $6 annual regulatory fee per license, rather than the $7 annual fee proposed in the *Notice*, payable for an entire five year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee due is $30 for the five year license term. *See* Guidelines, Appendix H at ¶ 6.

35. *Interactive Video Data Service (IVDS).* The fees for IVDS are set forth in the FY 1995 Regulatory Fee Schedule within the Wireless Radio service category. IVDS is a two-way point-to-multi-point radio service allocated high quality channels of communications and authorized under Part 95 of the Commission's Rules. IVDS provides information, products and services, and also the capability to obtain responses from subscribers in a specific service area. IVDS is offered on a private carrier basis.

36. The FY 1995 revenue requirement for IVDS is $43,500. Payment units for IVDS are estimated to be 1,450 licenses. Dividing the revenue requirement of IVDS by its payment units and license term of five years results in an annual fee of $6 per license rather than the $7 fee we proposed in the *Notice*. Thus, IVDS licensees are subject to a $6 annual regulatory fee per license, payable for an entire five year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee due is $30 for the five year term of the license. *See* Guidelines, Appendix H at ¶ 7.

b. *Shared use services.* 37. *Marine (Ship) Service.* Fees for marine (Ship) Service are set forth in the FY 1995 Regulatory Fee Schedule for the Wireless Radio Service category. Marine (Ship) Service is a shipboard radio service authorized under Part 80 of the Commission's Rules to provide telecommunications between watercraft or between watercraft and shore-based stations. Radio installations are required by domestic and international law for large passenger or cargo vessels. Radio equipment may be voluntarily installed on smaller vessels, such as recreational boats.

38. The FY 1995 revenue requirement for the Marine (Ship) Service fee category is $5,070,420. Payment units are estimated to be 169,014 stations. Dividing the revenue requirement of the Marine (Ship) Service by its payment units and license term of ten years results in an annual fee of $3 per station. Thus, as proposed in the *Notice*, Marine (Ship) Station licensees are subject to a $3 annual regulatory fee per station, payable for an entire ten year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee due is $30 for the ten year license term. *See* Guidelines, Appendix H at ¶ 8.

39. *Marine (Coast) Service.* Fees for Marine (Coast) Service are set forth in the FY 1995 Regulatory Fee Schedule for the Wireless Radio service category. Marine (Coast) Service stations are land-based stations in the maritime services, authorized under Part 80 of the Commission's Rules, to provide communications services to ships and other watercraft in coastal and inland waterways.

40. The FY 1995 revenue requirement for this service is $41,955 and the estimated payment units are 2,797 licenses. Dividing the revenue requirement of the Marine (Coast) Service by its payment units and license term of five years results in an annual fee of $3 per license. Thus, as proposed in the *Notice*, Marine (Coast) licensees are subject to a $3 annual regulatory fee per call sign, payable for the entire five year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee due is $15 per call sign for the five year license term. *See* Guidelines, Appendix H at ¶ 9.

41. *Private Land Mobile (Other) Services.* Fees for Private Land Mobile (Other) Services are set forth in the FY 1995 Regulatory Fee Schedule for the Wireless Radio Service category. Private Land Mobile Radio Services are authorized under Parts 90 and 95 of the Commission's Rules. Stations in this category provide one or two way communications between vehicles, persons or to fixed stations on a shared basis and include radiolocation services, private carrier paging services, industrial radio services and land transportation radio services.

42. The FY 1995 revenue requirement for Private Land Mobile (Other) Services is $1,396,275. Payment units are estimated to be 93,085 licenses. Dividing the revenue requirement of these services by their payment units and license term of five years results in an annual fee of $3 per license. Thus, as proposed in the *Notice*, licensees of these services are subject to a $3 annual regulatory fee per call sign, payable for an entire five year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee is $15 for the five year license term. *See* Guidelines, Appendix H at ¶ 10.

43. *Aviation (Aircraft) Service.* The fee for Aviation (Aircraft) Service is set

[14] In the event that the subject application is not granted, the entire regulatory fee submitted will be returned upon request of the payor of the fee. *See* 47 CFR 1.1159(a)(2)(iii).

[15] Although this fee category includes licenses with ten year terms, the estimated volume of ten year license applications is less than one tenth of one percent end, therefore, is statistically insignificant.

forth in the FY 1995 Regulatory Fee Schedule for the Wireless Radio service category. Aviation (Aircraft) stations are authorized to provide communications between aircraft and from aircraft to ground stations. The service includes frequencies used to communicate with air traffic control facilities pursuant to Part 87 of the Commission's Rules.

44. The FY 1995 revenue requirement for the Aviation (Aircraft) Service is $1,130,430. The payment units are estimated to be 37,681 licenses. Dividing the revenue requirement of the Aviation (Aircraft) Service by its payment units and license term of ten years results in an annual fee of $3 per station, as proposed in the *Notice*. Thus, licensees of aircraft stations are subject to a $3 annual regulatory fee per station, payable for the entire ten year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee due is $30 per station for the ten year license term. *See* Guidelines, Appendix H at ¶ 11.

45. *Aviation (Ground) Service.* Fees for Aviation (Ground) Service are set forth in the FY 1995 Regulatory Fee Schedule for the Wireless Radio service category. Aviation (Ground) Service stations provide ground-based communications to aircraft for weather or landing information, or for logistical support pursuant to Part 87 of the Commission's Rules.

46. The FY 1995 revenue requirement for the Aviation (Ground) Service is $39,900. Payment units for the Aviation (Ground) Service are estimated to be 2,660 licenses. Dividing the Service's revenue requirement by its payment units and license term of five years results in an annual fee of $3 per license. Thus, as proposed in the *Notice*, licensees of Aviation Ground stations are subject to a $3 annual regulatory fee per call sign, payable for the entire five year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee due is $15 per call sign for the five year license term. *See* Guidelines, Appendix H at ¶ 12.

47. *General Mobile Radio Service (GMRS).* Fees for the GMRS are set forth in the FY 1995 Regulatory Fee Schedule within the Wireless Radio service category. GMSR licensees provide personal and limited business communications between vehicles or to fixed stations for short-range, two-way communications pursuant to Part 95 of the Commission's Rules.

48. The FY 1995 revenue requirement for GMRS is $41,775. Payment units for GMRS are estimated to be 2,785 licenses. Dividing GMRS' revenue requirement by its payment units and license term of five years results in an annual fee of $3 per license. Thus, as proposed in the *Notice*, GMRS licensees are subject to a $3 annual regulatory fee per license, payable for an entire five year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee due is $15 per license for the five year license term. *See* Guidelines, Appendix H at ¶ 13.

c. *Amateur vanity call signs.* 49. Fees for Amateur Vanity Call signs are set forth in the FY 1995 Regulatory Fee Schedule within the Wireless Radio service category. The fee covers voluntary requests for specific call signs in the Amateur Radio Service. We have concluded our rule making proceeding related to the authorization of vanity call signs. *See Report and Order in PR Docket No. 93–305*, 10 FCC Rcd 1039 (1995), 59 FR 558 (1994). Therefore, amateur radio operators are required to submit a regulatory fee payment with their vanity call sign application in FY 1995.

50. The revenue requirement for vanity call signs is $840,000. We have revised our estimated payment units to 28,000 vanity call sign applications, as a result of further analysis by the Wireless Telecommunications Bureau. Dividing the service's revenue requirement by its estimated payment units and license term of ten years results in a fee of $3 per year per license as proposed in the *Notice*. Thus, holders of amateur vanity call signs are subject to a $3 annual regulatory fee per call sign, payable for an entire ten year license term at the time of application for a vanity call sign. The total regulatory fee is $30 per license for the ten year license term.[16] *See* Guidelines, Appendix H at ¶ 14.

3. Mass Media

51. The regulatory fees for the Mass Media fee category apply to broadcast licensees and permittees in the television, AM and FM services and in several auxiliary services. We have incorporated changes in payment volume estimates for satellite television stations, auxiliary radio licenses, and translator stations. The payment volumes were adjusted after further review of the Commission's licensing data. *See* Appendix E for a description of the development of the fees for services within the Mass Media category; *see also* Guidelines, Appendix H at ¶¶ 15–26.

a. *Commercial AM and FM radio.* 52. These categories include licensed commercial AM (Classes A, B, C, and D) and FM (Classes A, B, B1, C, C1, C2, and C3) radio stations operating under Part 73 of the Commission's Rules. In developing our proposed FY 1995 fees for AM and FM stations, we determined that the public interest requires that we retain the operational class distinctions among AM and FM stations that Congress established in its Regulatory Fee Schedule. 47 U.S.C. § 159. Also, as a permitted amendment, we proposed a further distinction to recognize that the population density of a station's geographic coverage is a public interest factor warranting recognition in the fee schedule. We proposed to distinguish stations located in Arbitron radio markets vis-a-vis those not located in these markets and to allocate the fee burden utilizing a fee ratio between the Arbitron and non-Arbitron markets similar to the ratio of the fee requirement established for larger television station markets and "remaining markets" set forth in the Regulatory Fee Schedule. We proposed no change to the rules for calculating and submitting regulatory fees by AM and FM radio station licensees.

53. Several commenters contend that Arbitron rankings are not useful for establishing the AM and FM fee structure. These parties state that markets are only ranked if a sufficient number of stations located within the market subscribe to the Arbitron service. Also, a station may be placed in a market if it competes with market stations even though the station may not be physically located in a major metropolitan area within the market. The National Association of Broadcasters (NAB) also argues that a station may be placed in an Arbitron market based on promotional programming during the rating period and recommends that a licensee be allowed to show that its placement in an Arbitron market is not representative of its service. Washington Broadcasting Company argues that stations 20 kilometers from the principal city in a market or serving less than 20 percent of the population of a market should not be considered as an Arbitron Market station. A number of licensees argue that fees should be based on a graduated scale by market size, differentiating between markets 1–10; 11–25; 25–50; 51–100; and remaining markets in a manner similar to that in the Regulatory Fee Schedule for television stations. Broadcast Market Associates and James Wagner recommend the fees be based on the population a station serves. Montana Broadcasters Association argues that fees should be based on gross revenues. In contrast, Radio 840, Inc. argues that all stations in the same class be assessed the same fee without distinction as to market size.

54. We agree with commenters that our proposal to base fees on whether a licensee is ranked in an Arbitron market is flawed. The Arbitron rankings data is incomplete for fee determination purposes, and reliance upon it does not provide a sufficiently accurate and equitable methodology for determining fees. we attempted, within the limitations of available data, to compute fees on a graduated scale by market size. The results produced unexpected inequities that not only raised the fees significantly for markets 1–10 and 11–25, but also raised the fees at the low end for remaining markets. Moreover, the Commission's data bases do not contain population and gross revenue data from which we could compute fees. Therefore, we have decided not to implement the proposed fees methodology for AM and FM stations. Instead, for FY 1995 we will retain the fee methodology enacted by Congress for FY 1994.[17] In this regard, we note that although the Regulatory Fee Schedule does not differentiate between markets, the AM and FM fees differentiate between classes of stations and are low enough to avoid placing an onerous burden on most licensees. Thus, the regulatory fees for AM and FM stations for FY 1995 are as follows and represent the mandatory adjustments to the Regulatory Fee Schedule consistent with Section 9 (b)(2):[18]

AM Radio	
Class A	$1,120
Class B	620
Class C	250
Class D	310
FM Radio	
Classes C, C1, C2, B	$1,120
Classes A, B1, C3	745

We have made no change to the rules for calculating and submitting regulatory fees by AM and FM radio station licensees. *See* Guidelines, Appendix H at ¶ 16.

b. *Construction permits—commercial AM radio.* 55. This category includes holders of permits to construct new AM stations under Part 73 of the Commission's Rules. The FY 1995 revenue requirement for the Commercial AM Construction Permit fee category is $9,875. Payment units for the service are estimated to be 79 AM Construction Permits. Dividing the revenue requirement for AM Construction Permits by the estimated payment units results in a regulatory fee of $125 per Construction Permit. Thus, for FY 1995, we are assessing holders of Construction Permits for Commercial AM Stations $125 for each permit held. Upon issuance of an operating license, this fee would no longer be assessed. Instead, for the next regulatory fee period, licensees are required to pay the applicable fee for the designated class of the station. We have made no change in the rules for calculating and submitting the regulatory fee by AM construction permittees. *See* Guidelines, Appendix H at ¶ 17.

c. *Construction permits—Commercial FM radio.* 56. This category includes holders of permits to construct new commercial FM stations covered under Part 73 of the Commission's Rules. The FY 1995 revenue requirement for Commercial FM Radio Construction Permits is $435.860. Our estimate of the payment units is 703 Construction Permits. Dividing the revenue requirement for FM Construction Permits by the estimated payment units results in a regulatory fee of $620 per permit. Thus, for FY 1995, we are assessing permittees $620 for each permit held. Upon issuance of an operating license, this fee would no longer be assessed. Instead, for the next regulatory fee period, licensees must pay a regulatory fee based upon the designated class of he station. We are making no change in the rules for calculating and submitting regulatory fees by FM construction permittees. *See* Guidelines, Appendix H at ¶ 18.

d. *Commercial television stations.* 57. This category includes licensed Commercial VHF and UHF Television Stations covered under Part 73 of the Commission's Rules, except Television Satellite, Translator, and Low Power Stations, addressed separately below. We are assessing Commercial Television Stations annual fees based on a station's market rankings as published by Warren Publishing in the 1994 Edition of the Television and Cable Factbook (No. 62). The FY 1995 revenue requirements for the different categories of VHF and UHF Commercial Television Stations are shown in Appendix E. Payments units for Commercial Television Stations are also shown in Appendix E. Dividing the revenue requirements for each Commercial Television Station category by the payment units for each category results in the following fees for Television Stations in each ADI market grouping:

VHF Markets 1–10	$22,420
VHF Markets 11–25	$19,925
VHF Markets 26–50	$14,950
VHF Markets 51–100	$9, 975
VHF Remaining Markets	$6,225
UHF Markets 1–10	$17,925
UHF Markets 11–25	$15,950
UHF Markets 26–50	$11,950
UHF Markets 51–100	$7,975
UHF Remaining Markets	$4,975

See Guidelines, Appendix at ¶ 19.

58. Several commenters argue that the Arbitron market structure is obsolete and should be replaced with the Nielsen Station Index. Further, commenters argue that the Arbitron market structure is disadvantageous to small non-ADI markets and the stations located on the fringe of larger markets. Various solutions proposed include basing fees on Grade B Contour coverage or percentage of audience share.

59. We decline to consider any change in the methodology established by the Congress and affirmed in the FY 1994 schedule. We were unable to obtain sufficient information to properly evaluate the merits of using the Nielsen Station Index for establishing fees. The Commission's data bases do not contain data necessary to establish fees from Grade B Contour coverage or percentage of audience share. Thus, we will retain the Arbitron market groupings for FY 1995.

e. *Commercial television satellite stations.* 60. Pursuant to our authority to make permissive amendments to our regulatory fees, Television Satellite Stations (authorized pursuant to Note 5 of Section 73.3555 of the Commission's Rules) that retransmit programming of the primary station will be assessed a fee separate from the fee for fully operational television stations. This fee is based upon the $500 fee passed by the House of Representatives for Television Satellite Stations for FY 1994. While not legally binding, the $500 base fee was determined to be appropriate for licensees of Television Satellite Stations in our FY 1994 authorization bill passed in the House of Representatives. *See* H.R. 4522. In addition, pursuant to the instructions of Section 9, 47 U.S.C. § 159(b)(3), a separate fee for Television Satellite Stations would take into account the public interest factors reflected in comments filed in the proceeding to adopt the FY 1994 Schedule of Regulatory Fees. In developing the FY 1995 fee for Television Satellite Stations, we use the $500 fee proposed by the House of

[16] Section 9(h) exempts "amateur radio operator licenses under part 97 of the Commission's Rules (47 C.F.R. Part 97)" from the requirement to pay an annual regulatory fee. However, Section 9(g)'s Regulatory Fee Schedule explicitly includes "Amateur Vanity Call Signs" as a category subject to the payment of a regulatory fee.

[17] Interested parties may file petitions for rule making setting forth a proposed AM and FM fee methodology as long as the proposal is supported by readily available data to be considered in connection with the development of the Notice of Proposed Rulemaking for FY 1996.

[18] Appendix E shows the payment volumes and cost allocations for assessing regulatory fees for AM and FM radio.

Representatives for FY 1994 to calculate a FY 1995 fee for Television Satellite Stations. We divide a "simulated" FY 1994 revenue requirement by the estimated number of Television Satellite Station licensees. Our FY 1995 revenue requirement for Television Satellite Stations is $68,200. Following release of our *Notice*, we revised our estimate of payment units to 110 licensed Television Satellite Stations based on an updated analysis of these stations. Therefore, we are exercising our authority to make permitted amendments to the Regulatory Fee Schedule to establish a Television Satellite fee of $620 per station. We caution that only those stations designated as Television Satellite Stations in the 1994 Edition of the Television and Cable Factbook (No. 62) are eligible to submit the fee applicable to Television Satellite Stations. Full-service television licensees are subject to the regulatory fee payment required for their class of station and market.[19] *See* Guidelines, Appendix H at ¶ 20.

f. *Construction permits—Commercial VHF television stations.* 61. This category includes holders of permits to construct new Commercial VHF Television Stations covered under Part 73 of the Commission's Rules. The FY 1995 revenue requirement for this service category is $54,725. The number of permits is 11. Dividing the revenue requirement for VHF Television Construction Permits by its payment units results in a fee of $4,975. Therefore, for FY 1995, we are assessing permittees $4,975 for each VHF Television Construction Permit held. Upon issuance of an operating license, this fee would no longer be assessed. Instead, for the next regulatory fee period, licensees must pay a fee based upon the designated market of the station. We are making no changes to the rules for calculating and submitting regulatory fees by VHF Television Construction Permittees. *See* Guidelines, Appendix H at ¶ 21.

g. *Construction permits—Commercial UHF television stations.* 62. This category includes holders of permits to construct new UHF Television Stations covered under Part 73 of the Commission's Rules. The FY 1995 revenue requirement for this service category is $576,375. Payment units for UHF Television Construction Permits are estimated to be 145 permits. Dividing the revenue requirement for this service category by its estimated payment units results in a fee of $3,975 for each UHF Television Construction Permit held. Therefore, we are assessing a fee of $3,975 per UHF Television Construction Permit. Upon issuance of an operating license, this fee would no longer be assessed. Instead, for the next regulatory fee period, licensees must pay a fee based upon the designated market of the station. We are making no changes to the rules for calculating and submitting regulatory fees by UHF Television Construction Permittees. *See* Guidelines, Appendix H at ¶ 22.

h. *Construction permits—Satellite television stations.* 63. We are exercising our authority to make permitted amendments to add a new service category to the Regulatory Fee Schedule in recognition that the holders of Construction Permits for UHF and VHF Television Satellite Stations should be charged a separate, lower fee than the fee charged holders of Construction Permits for fully operational Television Stations. *See* ¶ 56 above, where we exercised our authority to make permitted amendments to the Regulatory Fee Schedule relating to the fee for Television Satellite Stations. We developed the fee for Television Satellite Construction Permits by taking the average fee for VHF and UHF Television Stations and relating it to the average fee for Construction Permits for VHF and UHF Television Stations. Using this relationship and the revenue requirement for Television Satellite Stations results in a computed fee of $225 for Construction Permits for Television Satellite Stations. An individual regulatory fee payment is to be made for each Television Satellite Station Construction Permit held. Upon issuance of an operating license, this fee would no long be assessable. Instead, for the next fee period the licensee will be assessed the fee for an operating Television Satellite Station. *See* Guidelines, Appendix H at ¶ 23.

i. *Low power television, FM translator and booster stations, TV translator and booster stations.* 64. This category includes Low Power UHF/VHF Television stations operating under Part 74 of the Commission's Rules with a transmitter power output limited to 0.01kw for a UHF facility and, generally, 1kw for a VHF facility. Low Power Television (LPTV) stations may retransmit the programs and signals of a TV broadcast station, originate programming, and/or operate as a subscription service. This category also includes translators and boosters operating under Part 74 that rebroadcast the signals of full service stations on a frequency different from the parent station (Translators) or on the same frequency (Boosters).

65. We are exercising our authority to make permitted amendments to the Regulatory Fee Schedule to include FM Translator and Booster Stations because we believe these facilities were inadvertently omitted from the Regulatory Fee Schedule and we are unaware of any reason not to establish a fee for these services. The stations in this category are secondary to full service stations in terms of frequency priority.

66. We have also received requests for waivers of the regulatory fees from operators of community based Translators. These Translators are generally not affiliated with commercial broadcasters, they are nonprofit, nonprofitable, or only marginally profitable, serve small rural communities, and are supported financially by the residents of the communities served. We are aware of the difficulties these Translators have in paying even minimal regulatory fees, and we will address those concerns in the ruling on reconsideration of the *FY 1994 Order*.

67. The revenue requirement for this service category is $1,210,400. Our estimated payment units is 7,120 licenses, including licenses covering FM translators. Dividing the revenue requirement for this category by its estimated payment units results in a fee of $170 per license. Thus, for FY 1995, we assess licensees of Low Power Television Stations and licensees of both FM and TV Translators and Boosters an annual regulatory fee of $170 for each license held. We are making no changes to the rules for calculating and submitting regulatory fee payments by licensees in this service category. *See* Guidelines, Appendix H at ¶ 24.

j. *Broadcast auxiliary stations.* 68. This category includes licensees of Remote Pickup Stations, Aural Broadcast Auxiliary Stations, Television Broadcast Auxiliary Stations, and Low Power Auxiliary Stations, authorized under Part 74 of the Commission's Rules. Auxiliary stations are generally associated with a particular Television or Radio Broadcast Station or Cable Television System.

69. The FY 1995 revenue requirement for this category is $900,000. We have revised estimated payment units to 30,000 licenses based upon a review of our license records. Dividing the category's revenue requirement by its estimated payment units results in a fee of $30 per license. Thus, we are assessing licensees of Commercial Auxiliary Stations a $30 annual regulatory fee for FY 1995 on a per call sign basis. We are making no changes to the rules for calculating or submitting regulatory fee payments by licensees of facilities in this service category. *See* Guidelines, Appendix at ¶ 25.

k. *International HF broadcast (Short Wave).* 70. This category covers International HF Broadcast Stations licensed under Part 73 of the Commission's Rules to operate on a frequency in the 5,950 Khz to 26,100 Khz range to provide service to the general public in foreign countries. The proposed fees for International HF Broadcast are set forth in the International Service category in the FY 1995 fee schedule.

71. For FY 1995, the revenue requirement for this category is $4,750. Payment units are estimated to be 19 short wave licenses. Dividing the category's revenue requirement by its estimated payment units results in a fee of $250 per license. *See* Appendix E Thus, for FY 1995, we are assessing an annual regulatory fee of $250 per station license. We are making no changes to the rules for calculating and submitting fees by licensees of facilities in this service category. *See* Guidelines, Appendix at ¶ 26.

4. Cable Services

a. *Cable television systems.* 72. This category includes operators of Cable Television Systems, as that term is defined in Section 76.5 of the Commission's Rules, providing or distributing programming or other services to subscribers under Part 76 of the Commission's Rules.

73. The National Cable Television Association (NCTA), the Small Cable Business Association (SCBA), and the Cable Telecommunications Association contend that our allocation of full-time equivalents (FTEs) to cable television is unsupported and is unduly high. SCBA urges us to exempt small systems from payment of regulatory fees. Finally, NCTA and SCBA contend that we have understated the number of payment units, *i.e.*, cable television subscribers, subject to the fee.

74. We have addressed in paras. 11 through 26 our allocation of FTEs. Therefore, no further discussion of this issue is required here. Further, we find that the Regulatory Fee Schedule adequately considers the financial circumstances of small cable systems by basing the fee payment for cable systems on their number of subscribers so that payments by cable systems reflect their relative size and their relative benefits from our regulation. We have divided the cable system revenue requirement of $29,400,000 by our estimate of 60,000,000 payment units to derive the FY 1995 fee for cable systems of $.49 per subscriber. *See* Appendix F. Therefore, we are assessing a fee of $.49 per cable television subscriber.[20]

75. Payments for cable systems are to be made on a per subscriber basis by community unit determined as of December 31, 1994 as reported on each cable system's 1994 Annual Report of Cable Systems (FCC Form 325). We are making no change in the rules for calculating or submitting regulatory fees by cable system operators. *See* Appendix F for a description of the development of the fee for cable systems, *See also*, Guidelines, Appendix H at ¶ 27.

b. *Cable antenna relay service.* 76. This category includes Cable Television Relay Service (CARS) Stations authorized under Part 78 of the Commission's Rules. These stations transmit television and related audio signals, signals of AM and FM broadcast stations and cablecasting from the point of reception to a terminal point from which the signals are distributed to the public by a cable television system.

77. SCBA contends that the CARS fee is out of proportion to the benefits received from our regulation of these facilities. Since SCBA has provided no support for its argument, we will give no consideration to an adjustment of the CARS fee. Further, we reject the argument of SCBA that we should exempt small cable systems from the CARS fee. SCBA has not demonstrated that the fee is unreasonable or that small cable systems receive any less benefit from our regulation than other cable systems.

78. Our FY 1995 revenue requirements for CARS is $603,780 and our estimated payment units are 2,082 licenses. Dividing the revised revenue requirements for CARS by our estimated payment units results in a fee of $290 per license. *See* Appendix F. Thus, for FY 1995, we are assessing a $290 regulatory fee per CARS license. We are making no change in the rules for calculating and submitting regulatory fees by CARS licensees. *See* Appendix F for a description of the development of the fee for CARS. *See also*, Guidelines, Appendix H at ¶ 29.

5. Common Carrier Services

79. We have received numerous comments from providers of Common Carrier Services objecting to the amount of the fees proposed for their particular categories of service. Several of these parties complain that the FTEs assigned to the Common Carrier category and the costs apportioned to their particular service category are unduly high, and that the *Notice* miscalculated the estimated payment units for their services. We have discussed our FTE allocations, cost allocations and unit estimates in paragraphs 8 through 23. We will, however, address issues related to cost allocation and payment units where the arguments presented have not been previously considered. *See* Appendix G for a description of the development of the fee for services within the Common Carrier category.

80. The Commission is exercising its authority pursuant to Section 9(b)(3) in order to revise the fees associated with regulation by the International Bureau. Numerous commenters have expressed concern that the proposed fees would not be representative of the costs associated with the regulatory activities of the International Bureau, nor would the proposed fees reflect the benefits provided to the payers of the proposed fees.

81. Section 9(b)(3) provides the Commission authority to adjust the Schedule of Regulatory Fees provided the following two conditions are met: (1) the Comission determines that the Schedule requires amendment to comply with the requirements of paragraph (1)(A), which states, "The fees assessed under subsection (a) shall be derived by determining the full-time equivalent number of employees performing the activities described in subsection (a) within the Private Radio Bureau, Mass Media Bureau, Common Carrier Bureau, and *other offices of the Commission*. . . ," and (2) the basis for changing or reclassifying services in the Schedule reflects additions, deletions, or changes in the nature of its services as a consequence of Commission rulemaking proceedings or changes in law.

82. The Commission has determined that the reorganization establishing the International Bureau satisfies both of the requirements described above. Specifically, the reorganization was a Commission rulemaking proceeding, as defined in 47 CFR 1.412(b)(5), which resulted in the Commission being able to determine the full-time equivalent number of employees performing regulatory fee-based activities in the International Bureau.

[19] We recognize that an ongoing rule making proceeding is addressing whether Television Satellite Stations should continue to be exempt from the Commission's national television ownership restrictions. Our decision to assess a regulatory fee for Television Satellite Stations that is less than the amount for Commercial Television Stations should not be taken as a signal that any determination has been made with regard to the outcome of that proceeding.

[20] Consistent with our earlier interpretation of congressional intent, we require payment of the cable system regulatory fees on a per subscriber basis rather than per 1,000 subscribers as set forth in the statutory Regulatory Fee Schedule. *See FY 1994 Order* at para. 100.

83. Specifically, the Commission will adjust the Common Carrier Fee category so that the total collected from the individual services associated with International Bureau fees[21] totals approximately $8.3 million, which is the estimated regulatory cost associated with the International Bureau.[22] The revisions to the Common Carrier fee category have been made by reallocating the difference between what would have been collected under the International Bureau fees proposed in the *Notice* and $8.3 million to all remaining services in the Common Carrier fee category on a proportional basis.

a. *Public mobile/cellular radio services.* 84. Fees for the Public Mobile and Cellular Radio Services are set forth in the FY 1995 Regulatory Fee Schedule within the Wireless Radio service category. These services include common carriers and others (e.g., cellular radio licensees) offering a wide variety of land-based or air-to-ground mobile telephone, paging or data transmission services to the public, under Parts 22 and 24 of the Commission's Rules. Licensees include those using radio to provide telephone services at fixed locations, such as Basic Exchange Telecommunications Radio Services, Rural Radio and Offshore Radio.

85. In the *Notice*, we proposed to assess a fee for this service category based upon the total number of telephone numbers or call signs that a licensee provides to its customers. The Regulatory Fee Schedule assessed the fee based on the number of a licensee's subscribers. Reliance on a subscriber count, however, does not fully reflect the benefit of our regulation *i.e.*, usage of channel capacity, because individual subscribers vary in the number of mobile units or telephone numbers utilized. In order to assure that all cellular/mobile units in operation are, in fact, assessable as customers, we are reviving our fee structure to assess the fee based on mobile units or telephone numbers provided by a licensee as a more equitable payment formulation because it better reflects actual usage of our frequency assignments and related benefits of our regulation. Therefore, for FY 1995, we amend our Regulatory Fee Schedule so that each cellular licensee will pay an annual fee based on the number of telephone numbers provided, and each licensee in the Public Mobile Radio Service pays an annual regulatory fee for each mobile unit, including paging units, assigned to its customers, including resellers of its services.

86. A number of commenters[23] argue that our proposal to base the fees on units (telephone numbers or mobile units) rather than subscribers is inconsistent with the Regulatory Fee Schedule developed by Congress. They assert that the change to units is not an adjustment permitted under Section 9(b)(2) or a change pursuant to law or regulation as required by Section 9(a)(3).

87. Congress, however, has authorized the Commission to modify the Regulatory Fee Schedule to ensure that the fees are reasonably related to the benefits of the Commission's regulatory activities. See 47 U.S.C. 159(b)(1)(A). Under Section 9, "the Commission is required to adjust the fees to reflect proportionate changes in its appropriations, and is permitted through a rule making, to make changes to the Regulatory Fee Schedule, including adding, deleting or reclassifying services when the Commission determines that such changes are necessary to ensure such fees are reasonably related to the benefits provided to the payor of the fee by the Commission's activities." Conference Report H. Rept. No. 213, 103d Cong., 1st Sess. 1188 (1993). Thus, Congress intended that we modify the fee structure in instances where we find that a revision to the Regulatory Fee Schedule better reflects the relative benefits licensees receive from our regulatory activities and achieves a more equitable distribution of the fee burden. We find that assessing fees on the basis of mobile units or telephone numbers, equitably reflects the actual benefit received from the Commission's regulation.

88. Alltel argues the Commission should modify the date for determining fees so that the burden of the fees would be shared by new service providers. It asserts that equity requires that the fee burden be shared by licensees authorized during the year.

89. We recognize that Alltel's suggestion would distribute the fee burden among additional service providers. However, such a system would be difficult to administer and lead to confusion because regulatees are directed to count payment units as of a date certain, and as new regulatees are authorized, would involve utilization of different dates for computing fees for different licensees. Moreover, we do not believe that a calculation date later in the fiscal year would significantly affect the amounts of the fee payments that we are adopting since many new service providers subject to the fee would be in an early start-up phase of their operations and existing providers would have accounted for substantially all their units of payment under the calculation date that we have proposed. In the *FY 1994 Order*, establishing December 31 as the calculation date for regulatees paying fees based upon subscriber lines or circuits, we noted that many regulatees file reports based upon information collected as of that date. 9 FCC Rcd at 5365–66 ¶ 96. In other instances, regulatees calculate subscriber counts as of that date for internal purposes. Reliance on December 31 as a date certain for calculating fees facilitates both the computation of fee payments and our verification that the correct fee payments are submitted. 9 FCC Rcd at 5350, ¶¶ 48–49. Further, since our regulatory fee program is ongoing, new carriers will be subject to payment of fees in the next fiscal year. Thus, we have decided to adopt December 31, 1994, as the date for calculation of fee payments for all mobile regulatees.

90. Frontier and Alltel also argue that cellular and paging licensees are being treated differently from carriers using the interstate network. Frontier asserts that cellular resellers are exempt from the regulatory fee and that this places an unfair burden on facilities-based carriers who must pay for regulatory activities benefitting resellers of mobile services. Also, these parties contend that our treatment of mobile resellers is inconsistent with our proposal to include resellers of interstate services in the fee schedule.

91. We recognize that the fees for mobile service providers are assessed in a manner different from the fee for users of the interstate network and that we are including resellers of interstate services directly in the fee schedule, but not resellers of mobile services. We also recognize that there are substantial equity issues that must be addressed before assessing resellers a fee, in order to protect them from having their mobile units or telephone numbers double counted. For non-mobile common carriers we are adopting a proposal to assess fees on the basis of gross revenues, and we are protecting resellers from double payments by permitting them to deduct from their gross revenues the payment made to facilities based carriers. In the case of mobile resellers, we do not have the data necessary to structure a fee schedule on the basis of gross revenues or in a manner which would protect mobile resellers from double payments.

However, by revising the Regulatory Fee Schedule to require a fee payment for every mobile unit or telephone number made available by a licensee to a third party, we will collect a fee for each unit made available to a licensee's customers, including resellers. Moreover, to the extent that the regulatory fees are included in the carriers' charges to the resellers, the resellers will be sharing in the regulatory burden.

92. A number of mobile regulatees also assert that their fees are increasing at a disproportionate rate because of the increase in the per unit rate and because of the change in counting from subscribers to mobile units or telephone numbers used. Our modification of the methodology for computing fees was required because reliance on a subscriber count does not fully reflect actual usage of the frequencies we have authorized mobile providers to operate. For FY 1994, regulatees often paid only a nominal $.06 fee for a single subscriber even though that subscriber may have subscribed to numerous mobile units or telephone numbers. Thus, as a result of the fee methodology, fee payments did not necessarily reflect the direct benefit of our regulation to individual licensees. For those regulatees whose fees reflected actual usage, the modification in counting units will not result in a significant increase in fees. However, the fact that other regulatees may be subjected to larger increases is only a reflection of the fact that their prior fees did not reflect the benefits they received and does not establish that they are being subjected to an unwarranted or disproportionate increase in fees.

93. Several parties, including PCIA, Mobile Media Communications, and Airtouch Paging, requested that the Commission establish a separate and lower fee category for regulatees offering one-way paging services. We have reviewed these requests and determined that a reduced fee for Part 22 one-way pagers is appropriate in view of the quality of the channels afforded paging entities versus cellular providers. Pagers are authorized only to transmit one-way data messages whereas cellular providers operate systems providing two-way voice communications. We are also aware that the paging industry is very competitive and generally has low profit margins compared to the cellular industry and to other public mobile services. We have therefore established a reduced annual fee of $.02 per pager for FY 1995. This permitted amendment should provide an equitable cost allocation among cellular and other public mobile licensees and paging licensees based upon their relative market pricing structures while minimizing any adverse impact on the one-way paging industry.

94. Our revenue requirement for FY 1995 for Cellular and Other Public Mobile (non-one way paging) carriers is $3,510,000. The revenue requirement for Public Mobile One Way Pagers is $392,000. Based on the comments of parties, we have also revised the estimated payment units for these services to 19.6 million one way pagers and 23.4 million Cellular/Other Public Mobile units. Dividing the revenue requirement for Cellular/Other Public Mobile by its estimated units results in an annual regulatory fee of $.15 per payment unit.[24] Thus, we will assess a fee of $.15 per mobile unit or telephone number in this service. For one way pagers the resulting fee is $.02 per pager.[25] [26] *See* Guidelines, Appendix H at ¶¶ 30–33.

b. *Domestic public fixed radio service.* 95. The Domestic Public Fixed Radio Service includes stations authorized under Part 21 of the Commission's Rules to use microwave frequencies for video and data distribution within the United States. This category includes licensees in the Point-to-Point Microwave Radio Service, Local Television Transmission Radio Service, Digital Electronic Message Service, Multipoint Distribution Service (MDS), and Multichannel Multipoint Distribution Service (MMDS).[27] We received no comments related to the proposed fee.

96. The FY 1995 revenue requirement for this service is $1,960,000, and the payment units are estimated to be 14,000 licenses. Therefore, we will adopt for Domestic Public Fixed Radio Service licensees a $140 annual regulatory fee per call sign payable on a specified date to be announced by the Commission. Moreover, in response to Southwestern Bell Corporation's request, we will modify our fee payment procedures to permit licensees in the Public Fixed Radio Service to file a single Form 159 stating their number of call signs and the total fee amount with an attached listing of each call sign covered by the fee payment. Licensees with up to 100 call signs may submit a hard copy list with their Form 159. However, we require licensees with greater than 100 call signs to file a data diskette containing their listing of call signs along with a hardcopy Form 159. We are adopting no other change to the rules for calculation and submission of the fee payment by licensees in the Domestic Public Fixed Radio Services. *See* Guidelines, Appendix H at ¶34.

c. *International public fixed radio service.* 97. The International Public Fixed Radio Service (IPFRS) is set forth in the FY 1995 Regulatory Fee Schedule within the International fee category. It includes common carriers authorized under Part 23 of the Commission's Rules to provide radio communications between the United States and a foreign point via microwave or H troposcatter systems, other than satellites and satellite earth stations, but not including service between the United States and Mexico and the United States and Canada using frequencies above 72 MHz. The FY 1995 revenue requirement for this service is $4,000, and the payment units are estimated to be 20 licenses. Thus, we are adopting a regulatory fee for IPFRS licensees of $200 per call sign. We are proposing no

[21] Specifically: International Circuits, Space Stations, Earth Stations and International Public Fixed Radio Stations.

[22] There are 72 FTEs within the International Bureau that are directly associated with regulatory fee activities. To the number we have added an additional 40%, or 28 FTEs, for the indirect support FTEs as explained in paragraph 8. The resulting cost is $8.3 million (100 FTEs multiplied by $83,000 per FTE).

[23] See comments filed by Personal Communications Industry Association (PCIA), Alltel Mobile Communications and Alltel Service Corporation (Alltel), Frontier Cellular Holding, Inc. (Frontier), Mobilmedia Communications, Inc., Vanguard Cellular Systems (Vanguard), Arch Communications Group, and Metrocall, Inc. Vanguard also argues that the computation of the regulatory fee based on units could result in disclosure of commercially sensitive information. To date we have not had FOIA or other requests for access to the information submitted by cellular/mobile carriers with their fee proposals. However, any carrier concerned that the information submitted may be used to its detriment, can request that the Commission protect its submission from routine disclosure to the public.

[24] As we decided in our *FY 1994 Order*, we require licensees in the Air-Ground Radiotelephone Service to pay their fee based upon their number of transceivers leased for operation in aircraft.

[25] PCIA notes that the fees for several categories of service proposed in the *Notice* were the same and questions whether the then-proposed fees were developed pursuant to the statutory scheme or whether the Commission decided on the amount of the fee without regard to Section 9's methodology for developing the fees. Plainly, an examination of the methodology used to calculate the mandatory adjustments required by Section 9 reveals that when fee amounts within the same fee category (e.g., Common Carrier) are pro-rated upward or downward, the existing relationship between each fee is retained. Therefore, two fee amounts within the same fee category having the same dollar value would both have similar values after the pro-rata mandatory adjustment is made.

[26] We will incorporate into our fee payment procedures the substance of Public Notice No. 43189, *Paying Regulatory Fees* (July 8, 1994), requiring public mobile providers to list all their call signs on the Form 159/159C and to distribute their total number of mobile units for each call signs in one of the following ways: (1) Allocate one mobile unit for every call sign, except one, and allocate the remainder of mobile units to the remaining call sign; or (2) determine the average number of mobile units per call sign and use this number of mobile units for each call sign. The filer is responsible for documenting its fee payment.

[27] MDS and MMDS are now regulated by the Mass Media Bureau and, therefore, the regulatory fees for these services are shown within the Mass Media category in the FY 1995 fee schedule. *See* Appendix B.

change to the rules for calculating and submitting fees by licensees in the International Public Fixed Radio Services. *See* Guidelines, Appendix H at ¶35.

d. *Earth stations.* 98. Earth stations are set forth in the FY 1995 Regulatory Fee Schedule within the International fee category. The earth station category encompasses *all* domestic and international earth station facilities authorized or registered under Part 25 of the Commission's rules. These facilities include transmit/receive, transmit-only, and receive-only earth stations; Very Small Aperture Terminals (VSATs) operating in the 12/14 GHz frequency bands; Mobile Satellite Earth stations; and equivalent C-band antennas operating in the 4/6 GHz frequency bands authorized pursuant to blanket authority.

99. In Section 9's Schedule of Regulatory Fees, these facilities were grouped into several categories. Within these categories, some fees were assessed on a per meter basis; other fees were assessed on a per 100 antennas basis. For example, in our *FY 1994 Order*, we adopted the Regulatory Fee Schedule's requirement that a higher fee be assessed for fixed satellite earth station antennas of 9 meters or more than for those less than 9 meters. This distinction resulted in the anomaly that antennas performing the same function were subjected to different fees, a fee several thousand percent higher for large earth stations than for small earth stations. To rectify this disparity, we proposed in the *Notice* to exercise our permitted authority to eliminate the dual fee levels for these earth stations. Therefore, we proposed that any earth station antenna in this service category be charged a fee based upon its size as measured in meters in order to eliminate the disparity in fees under the former schedule and to assure that smaller antennas would continue to be subject to a smaller fee requirement than larger antennas.

100. EDS Corporation argues that their small transmit/receive and transmit only earth stations should continue to be assessed fees similar to those charged for earth stations in VSAT networks (a per antenna fee), as Congress prescribed in its fee schedule, instead of fees similar to those for larger transmit/receive, transmit only earth stations (a per antenna-meter fee), as proposed in the *Notice*. EDS contends that since the enactment of Section 9, no change in the regulation of small transmit/receive and transmit only earth stations has taken place that would justify a revision in the manner in which its fees are assessed. In addition, COMSAT Video contends that C-band transmit/receive and transmit only earth stations should be assessed fees distinct from the fees assessed for Ku-band transmit/receive and transmit only earth stations. COMSAT Video questions our estimated payment unit estimates for transmit-receive and receive only earth stations.

101. We reject EDS's argument that we lack the authority to revise the Regulatory Fee Schedule. As noted, Congress specifically provided that we were to adjust the fees to ensure that they are reasonably related to the benefits received. 9 U.S.C. 159(b)(1)(A). We conclude that we cannot find sufficient difference in our regulation of earth stations (regardless of size or intended use) to warrant establishing separate fees for these facilities.

102. For FY 1995, we proposed to modify the Regulatory Fee Schedule for receive-only earth stations by assessing the fee on a per meter basis, in the amount of $120 per meter, regardless of whether a facility was more or less than 9 meters in diameter.

103. The Associated Press (AP) the National Cable Television Association (NCTA), the Cable Telecommunications Association (CATA), Joint Cable Commenters[28] and the Wireless Cable Industry Association (WCIA) object to the substantial increase in fees proposed for receive only earth stations of less than 9 meters. NCTA and the Joint Commenters contend that the proposed fee would amount to as much as a 10,000 percent increase for receive only earth stations smaller than 9 meters in diameter. CATA and WCIA claim that the burden of the increase would fall upon small cable and wireless cable operators in rural areas, unable to share earth stations among systems. Further, CATA and WCIA argue that Congress distinguished between the fees for large and small receive only earth stations in order not to overburden cable and wireless entities.

104. NCTA argues that the assessment for small receive only earth stations is not substantiated by a description of how the assessment was developed. GE American states that our unit estimate for receive only earth stations is low. Further, AP, CATA and NCTA contend that our deregulation of receive only earth stations and, in particular, our policy to permit operators to decide individually whether to register their facilities for interference protection, demonstrates that only a minimal degree of our regulatory activities are involved with regulation of receive only earth stations.

105. In view of the comments received, we have reevaluated our proposed fee for receive only earth stations. We are aware that our regulatory requirements for these facilities have been substantially modified in recent years, notwithstanding the inclusion of receive only earth stations in Section 9(g)'s fee schedule. In particular, we recognize that domestic receive only earth stations are no longer subject to licensing. (International receive only earth stations are currently licensed). Rather, operations of receive only earth stations may register these facilities with us in order to obtain interference protection and other benefits. Further, our review of the resource burden of providing interference protection to receive only earth stations demonstrates to us that regulation of these facilities accounts for an insignificant portion of the costs attributable to these activities. Therefore, we have decided to exercise our authority to make "permitted amendments" and to delete receive only earth stations as a service subject to a regulatory fee requirement for FY 1995. *See* 47 U.S.C. § 159(b)(3). Therefore, we will assess no fee for receive only earth stations.

106. In addition, we have received the fee structure in effect in FY 1994 for earth stations and conclude that the current structure is not the most equitable for regulatory fee purposes. As noted, all satellite earth stations require a certain amount of regulatory activity. Commenters have focused on individual elements of our regulatory activities in arguing against the changes in fees for particular types of earth stations. For example, certain classes of earth stations require more international activity than others (*i.e.*, coordination and consultation); other classes of earth stations require more rulemaking and enforcement activity than others (*i.e.*, zoning related matters). Since we do not yet have a cost accounting system capable of assigning the cost of specific regulatory activities to specific classes of earth stations, we find that assessing the fee on a per authorization or registration basis, rather than a per meter or 100 antennas basis is the most equitable method of allocating the regulatory costs assigned to satellite earth stations. Moreover, we find no reasonable basis for charging a per meter fee when it appears that the regulatory costs associated with a five or nine meter antenna are similar and the benefits to the payer are no less at five meters than at nine meters. Consequently, we are eliminating the

[28] The Cable Industries Corp., Multimedia Cablevision, Inc., Providence Journal Company, and Star Cable Associates jointly filed comments.

size distinctions and assessing fees on a per authorization or registration basis.[29]

107. Accordingly, we have revised our estimate of the number of payment units to conform to the number of authorizations or registrations contained in this service category (includes VSATs, mobile equivalents, transmit/receive and transmit only earth stations). As of October 1, 1994, 3,378 authorizations and registrations had been issued. The FY 1995 revenue requirement attributable to all earth stations is $1,114,740. Dividing the requirement requirement by our estimate of 3,378 earth stations results in a fee of $330 per authorization or registration. *See* Appendix G.

e. *Space stations (Geosynchronous).* 108. Geosynchronous space stations are domestic and international satellites positioned in orbit to remain fixed relative to the earth. They are authorized under Part 25 of the Commission's Rules to provide communications between satellites and earth stations on a common carrier and/or private carrier basis.

109. In addition to issues addressed above relating to FTEs, the satellite parties raise several issues in opposing our proposed space segment fees. Columbia and Panamsat, supported by GE Americom, argue that Comsat is obligated to pay space segment fees for its Intelsat and Inmarsat satellites in addition to the fees it pays for its domestic satellites. Also, Columbia and Panamsat argue that we should base our space segment fee on the number of transponders operated by a licensee rather than its number of operational satellites because transponder usage and bandwidth capacity more rationally reflect the benefits that licensees receive from our regulation. Finally, these parties argue that the number of satellites in operation as of October 1, 1994, the date for calculating fees, is higher than the estimated number of satellites we used to calculate the per satellite fee.

110. We reject the parties' contention that Comsat General must pay fees on a per space station basis for the Intelsat and Inmarsat satellites that it manages. Section 9's legislative history discloses that Congress intended that Comsat General would be subject to a space segment fee only for its licensed operations. Specifically, Congress stated with respect to space station fees that:

> The Committee intends that fees in this category be assessed on operators of U.S. facilities, consistent with FCC jurisdiction. Therefore, these fees will only apply to space stations directly licensed by the Commission under Title III of the Communications Act. Fees will not be applied to space stations operated by international organizations subject to the International Organization Immunities Act, 22 U.S.C. Section 288 et seq.[30]

This language was incorporated by reference in the Conference Report accompanying the 1994 Budget Reconciliation Act, which included the regulatory fee program.[31] Thus Congress did not intend for the Commission to assess a fee per space station for the space segment facilities of Intelsat and Inmarsat. Therefore, we will not require Comsat General to submit fee payments for their satellites. For FY 1996, however, we intend to explore other ways to recover the regulatory costs imposed on the Commission on behalf of Comsat's participation in the Intelsat and Inmarsat programs.

111. Further, we reject the parties' arguments that we should base the space segment fee on transponders aboard operational satellites rather than on the number of operational satellites. Our calculation of fees using space segments rather than transponders is reasonable and reflects Congress' decision to assess satellite fees based on operational satellites. Moreover, Panamsat has provided us with no demonstrable evidence that the costs of regulating the various satellite systems is more closely related to the number of transponders that a satellite carries than to the total number of operational satellites. Nor has Panamsat considered the administrative burden of its proposed fee structure on regulatees subject to the fee and upon our own resources. Because the cost of satellite regulatory activities is reasonably related to the number of operational satellites, we find no basis for modifying our reliance on space stations as payment units.

112. COMSAT General contends that the proposed fee is contrary to the public interest because it will discourage maintenance of older satellites even thought they may remain viable providers of low-cost, full time and occasional use commercial services. COMSAT General further contends that the proposed fee will discourage competitive discounting or exploitation of innovative satellite technologies and is harmful to consumers of satellite services, particularly start-up and small businesses, because it results in higher prices for services.

113. We reject Comsat General's contention that our fees may have an adverse impact on innovation in the satellite and other industries by precluding the use of older satellites. Newer satellites offer the public access to faster, more efficient, and more advanced telecommunications services. Providing an incentive to maintain older, less efficient satellites may have a negative impact on the end users of satellite services. Newer satellites are available to perform any service that Comsat general may have intended for older generation satellites. Although Comsat General states that older satellites "*may* remain viable as providers of low-cost providers of full time and occasional use commercial services", they provide us no documentation that the cost per user to least capacity on a newer, high capacity satellite that can serve more customers.

114. Finally, several satellite parties contend that our estimate of payment units for the satellite fee is flawed because we did not calculate the number of satellites in operation on October 1, 1994, the date for the calculation of fees. We have reviewed our records and find that 39 satellites were operational on October 1, 1994. The revenue requirement for regulation of satellites is $2,925,000. Dividing this by 39 operational satellites yields a fee of $75,000. *See* Guidelines, Appendix H at ¶40.

f. *International bearer circuits.*

115. Regulatory fees for international bearer circuits are set forth in the International Service category in the FY 1995 Regulatory Fee Schedule. The fee proposed in the *Notice* is to be paid by the facilities-based common carrier activating the circuit in any transmission facility for the provision of service to an end user or resale carrier. Also as proposed in the *Notice*, we are modifying our requirements for payment of the fee for bearer circuits by private submarine cable operators to require that they pay fees for circuits sold on an indefeasible right of use (IRU) basis or leased to any customer other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. *Compare FY 1994 Order* at 5367. As provided in the FY 1995 fee schedule, 64 Kbps circuits or their equivalent will be assessed a fee. Equivalent circuits include the 64 Kbps circuit equivalent of larger bit stream circuits. For example, the 64 Kbps

[29] An "authorization" is defined on a per call sign basis. A single call sign may either authorize one earth station antenna, or may provide a "blanket authorization" covering several earth station antennas.

[30] H.R. Rep. No. 102–207, 102d Cong., 1st Sess. 26. Both Intelsat and Inmarsat are subject to the International Organizations Immunities Act. *See* Exec. Order No. 11,996, 42 FR 4331 (1977); Exec. Order No. 12,238, 45 FR 60,877 (1980).

[31] Conference Report H. Rept. No. 213, 103d Cong., 1st Sess. 499 (1993).

circuit equivalent of a 2.048 Mbps circuit is thirty 64 Kbps circuits. Analog circuits such as 3 and 4 KHz circuits used for international service are also included as 64 Kbps circuits. However, circuits derived from 64 Kbps circuits by the use of digital circuit multiplication systems are not equivalent 64 Kbps circuits. Such circuits are not subject to fees. Only the 64 Kbps circuit from which they have been derived will be subject to payment of a fee.

116. In the *Notice* we estimated the volume of active 64 Kbps circuits or equivalent to be 62,000. AT&T, supported by Sprint, contends that our estimate of the number of bearer circuits subject to the fee was low. We have re-examined our estimate of the number of bearer circuits subject to a fee as of October 1, 1994. Based on this re-examination, we have revised the number of bearer circuits to 125,000. The FY 1995 revenue requirement for this service is $500,000. Dividing the revenue requirement for this service by the number of active bearer circuits results in a fee of $4.00 per circuit.

117. For purposes of calculating equivalent units subject to the bearer circuit fee, we will assess fees as follows:

Analog television channel, size in MHz	No. of equivalent 64 Kbps, circuits
36	630
24	288
18	240

See Appendix G. for a description of the development of the fees for international bearer circuits; *see also* Guidelines, Appendix H at ¶41.

g. *Inter-exchange and local exchange carriers, competitive access providers, pay telephone providers, and other non-mobile providers of interstate service.*

118. Inter-Exchange Carriers (long distance telephone companies) and Local Exchange Carriers (local telephone operating companies) provide commercial and private residential telephone service.

119. In the *Notice*, we proposed to require a regulatory fee payment from inter-exchange carriers (IXLs), local exchange carriers (LECs), and competitive access providers (CAPs), consistent with our FY 1994 fee schedule. Also, we proposed to add to the schedule all domestic and international carriers that provide operator services, WATS, 800, 900, telex, telegraph, video, other switched services, interstate access, special access, and alternative access services. We stated that the fee requirement would apply to carriers using their own facilities or reselling facilities and services of other carriers or telephone holding companies, including companies other than traditional telephone companies that provide interstate access service to long distance companies and other customers.

120. In addition, we proposed to modify our methodology for assessing fees upon these carriers generally, including CAPs and resellers, by basing the fee upon the number of customer units, *i.e.*, the number of users of a service. As in FY 1994, inter-exchange and local exchange carriers would be required to calculate their total fee payments based upon their total number of presubscribed lines (PSLs). In the alternative, we proposed to assess fees on providers of interstate services based on their minutes of interstate service in calendar year 1994. For each methodology, we proposed the use of certain equivalency assumptions in recognition that several categories of service providers would be unable to calculate their fees based on either PSLs or minutes of use (MOUs). Moreover, we invited interested parties to file comments proposing "the most efficient and equitable method for assessment of fees." See *Notice* at paragraph 58.

121. Numerous parties submitted comments opposing our proposal to add resellers and other users of the interstate network to the fee schedule.[32] The parties argue that Section 9 authorizes us to add services to the Regulatory Fee Schedule only if a regulation or change in the law so dictates. *See* 47 U.S.C. § 159(b)(3). Thus, in the view of these parties, no such rule making or change in the law has occurred since the enactment of Section 9 to justify the addition of resellers to the fee schedule. Further the interested parties contend that the Regulatory Fee Schedule precludes inclusion of resellers because it specifically limits the fees to providers of "presubscribed lines," and resellers do not provide presubscribed lines. *See* 47 U.S.C. § 9(g). Finally, the commenters argue that the imposition of a fee on resellers is contrary to our procompetitive and deregulatory policies, particularly since resellers, in their view, are subject to minimal regulation and derive little benefit from our regulation.

122. We disagree with the argument that our regulation of resellers is so minimal that these carriers should not be subject to a fee requirement. As we observed in the *Notice*, we required facilities based carriers to remove any restrictions on the resale and sharing of private line facilities and services and our oversight of the interstate communications market has fostered the growth of the strong resale market that currently exists.[33] Nothing that the parties have presented persuades us that their regulation is so minimal or their benefits so attenuated that these carriers should not be subject to a fee. Resellers are subject to tariffing requirements and are obligated to provide their services pursuant to just, reasonable and nondiscriminatory rates and practices in accordance with Sections 201 and 202 of the Act. Their rates and services are also subject to our review pursuant to Section 208 of the Act.

123. In addition, we reject the argument that Section 9 requires a rule making other than the instant proceeding to add services to the Regulatory Fee Schedule. Nor do we believe that the fee schedule's provision that we assess fees for FY 1994 based upon PSLs amounts to a congressional directive that we limit our assessment of fees to interstate service providers capable of calculating their fees by a PSL count. 47 U.S.C. § 159(g). Section 9's legislative history establishes that we "are permitted through a rule making, to make changes to the fee schedule, including adding, deleting, or reclassifying services when the Commission determines that such changes are necessary to ensure such fees are reasonably related to the benefits provided to the payor of the fee by the Commission's activities."[34]

Thus, our inclusion in the Regulatory Fee Schedule of resellers and other carriers using the interstate network is fully consistent with Section 9's provisions.

124. Many common carriers, including inter-exchange carriers, local exchange carriers, resellers, CAPs, and pay telephone operators filed comments addressing our proposal to revise our methodology for assessing fees based on customers units or, in the alternative, on MOUs. In addition, several commenters responded to our invitation to propose a method for assessing regulatory fees on common carriers by urging that we assess the fee based upon the gross revenues of the subject carriers.

125. In describing our proposed methodology, we stated that fees would be assessed based upon the number of customer units. We defined customer units for LECs and pre-selected IXCs as their total number of presubscribed lines, as defined by Section 69.116 of the rules. 47 CFR 69.116. For any other switched services, such as MTS, WATS, 800, 900 and operator service not billed to the number from which the call is placed, the number of units would equal the number of billing accounts less those already associated with those presubscribed lines reported by the carrier. For non-switched service providers, including service provided by CAPs, special access, and private (alternative access) line providers, the number of customer units would be based on the total capacity provided to customers measured as voice equivalent lines. For this purpose, 4 Khz or 64 Kbps equivalents would equate to one voice equivalent line. We proposed to assess the fee for pay phone operators by their number of units based upon the number of pay telephones used for pay telephone compensation.

126. The *Notice*'s alternative fee structure based fee on a carrier's number of MOUs of interstate service in calendar year 1994. For access service provided by local exchange carriers, interstate minutes would equal the number of originating and terminating access minutes. For interstate service subject to access charges, the number of minutes would equal the number of originating and terminating access minutes. For other interstate services billed based on timed usage, the number of minutes would equal the number of billed minutes. For interstate services not billed on the basis of timed usage, minutes would be estimated as the billed revenue in dollars times ten.

127. Several commenters support our proposed assessment of carrier fees based upon customer units.[35] These parties contend that the customer unit methodology parallels the existing fee structure, under which LECs have planned and budgeted for their payments of the fees, and that a count of presubscribed access lines represents both an equitable measure of a carrier's relative market presence and a relatively stable measure. Also, they favor the proposal because its methodology forms the basis for calculation of Universal Service Fund requirements, familiar to the carriers, and because its calculations are simple and straightforward.

128. Other parties disagree that the customer unit approach is the methodology best suited to assessing regulatory fees.[36] These parties claim that allocation mechanisms based on PSLs do not accurately reflect the various interexchange carriers' shares of switched services. According to AT&T, our FY 1994 PSL methodology failed to assess fees upon inter-exchange carrier's in a nondiscriminatory manner because AT&T's customers average significantly less usage and per line revenue than customers of other IXCs and, therefore, discourages its competitors from seeking out and serving low volume users. Further, several carriers state that our proposed equivalency ratios for carriers that cannot calculate their fees by PSLs do not accurately reflect the participation of these carriers in the market.

129. NYNEX and America's Carriers Telecommunications Association (ACTA) support assessing the fee for carriers based on MOUs, as described in the *Notice*'s alternative methodology. NYNEX asserts that the MOU approach better reflects the relative size of each carrier's customer base and its regulatory benefits than do customer units and, thus, would ensure that every carrier pays an equitable share of regulatory costs. Further, NYNEX contends that MOU data is easy to administer and verify and avoids unnecessary reliance on assumptions, calculations and projections. ACTA favors adoption of the MOU approach if resellers are subjected to the fee because, in its view, assessment of the fee by MOUs has the advantages of lower administrative costs and resource burdens since calculation of the fee does not depend on a line count by the LECs or NECA.

130. Several carriers oppose reliance on MOUs due to the large fluctuations in minutes of use which may lead to anomalies that distort the measure of a company's market presence and risk imposing an unfair burden of fees or a windfall in reduced fees for reasons other than a carrier's actual market size.[37] Opponents points out that many LEC services, such as Special Access facilities sold to inter-exchange carriers, are not measured on a minutes of use basis. In this connection, the parties contend that a methodology based on MOUs would be difficult to administer because it relies on complex assumptions in order to calculate the fees for services that are not billed on a time usage basis. Several parties contend that our proposal to rely upon network usage assumptions in assessing fees for competitive access providers will result in excessive and unjustified fees from these carriers.

131. In response to our invitation to propose efficient and equitable methodologies for assessing the carrier fee several commenters support adoption of a methodology based upon a carrier's gross interstate revenues.[38] These parties contend that fees based on a multiplier of each carrier's total gross interstate revenues would result in a fair allocation of costs in as competitively neutral a manner as possible. Further, they argue a gross revenue assessment methodology permits dispensing with assumptions or projections, necessary to the implementation of the customer unit and MOU methodologies. Moreover, they state that gross interstate revenues are widely reported and are readily verifiable by reference to corporate tax filings.

132. Several parties support a revenue-based fee calculation because it would permit the assessment of fees on the basis of data that could be compiled by carriers in a manner similar to our methodology for funding the Telecommunications Relay Service (TRS). NECA states that the TRS model would ensure that the carriers subject to the fee would be equitably charged through use of an interstate revenue

[32] Parties opposed to adding resellers to the Regulatory Fee Schedule include America's Carriers Telecommunications Association (ACTA), Airtouch, Avis Rent A Car (AVIS), Competitive Telecommunications Association (Comptel), GTE Service Corporation (GTE), Hertz Technologies, Inc., LDDS Communications, Inc., and the Telecommunications Resellers Association (TRA). The American Public Communication Counsel (APCC), a trade association consisting, in part, of pay telephone operators, while not opposing inclusion of independent pay phone (IPP) operators in the fee schedule, argues that the fee for OPPs must be reasonable, fairly allocated fee and imposed on all payphones, including payphones operated by the local exchange carriers (LECs).

[33] *See Resale and Shared Use of Common Carrier Services*, 60 FCC Rcd 2d 588, 600 (1977) (In allowing resellers to obtain lines from facilities based carriers, we declared that "' [resale carriers] * * *', whether they be brokers or value added carriers * * *, are equally subject to the requirements of Title II of the Communications Act."); *see also American Tel. and Tel. Co. v. F.C.C.*, 978 F.2d 727, 735 (D.C. Circuit 1992) (finding that resellers and other nondominant carriers must file tariffs and offer their services pursuant to just, reasonable and nondiscriminatory rates and practices pursuant to Sections 201 and 202 of the Act.) Resellers currently are subject to filing fees pursuant to Section 8 of the Communications Act.

[34] Conference Report H. Rept. No. 213, 103d Cong., 1st Sess. 499 (1993).

[35] Commenters supporting assessing the fee by customer units include Bell Atlantic, MCI Telecommunications Corporation (MCI) and Sprint Corporation (Sprint). In addition, Allnet Communications Services, Inc. (Allnet), Avis, Hertz and TRA support assessing the fee by customer units if resellers are added to the schedule.

[36] Parties opposing assessing the fee by customer units include AT&T, LDDS, MFS, SBC and US West. Comptel opposes levying the fee on operator service providers (OSPs) based upon "billing accounts" because, in its view, the methodology proposed in the *Notice* would result in a fee for OSPs higher than the fee imposed on carriers for which fees are based upon the number of presubscribed lines.

[37] Parties opposed to assessing the fee based upon MOUs include Alltel, AT&T, Bell Atlantic, LDDS, MCI, MFS, National Exchange Carriers Association (NECA), Pacific Bell and Nevada Bell, and SBC.

[38] Parties that support reliance on a methodology to assess the fee based on gross interstate revenues include Alltel, Ameritech, AT&T, Cablevision Lightpath, GTE Service Corporation (GTE), MFS, NECA, National Telephone Cooperative Association (NTCA), SBC, Time Warner, U S West, and Teleport Communications Group Inc. (Teleport).

basis, easily administered and based on externally verifiable data. Further, according to NECA, the TRS mechanism would permit the allocation of fees to special access services without administrative difficulty because exchange carriers could base their fees on submitted TRS data. Resellers supporting assessment of the fee by gross revenues urge that we permit carriers to reduce their fee payments by the amount that they pay to other carriers for facilities and services in order to avoid double payment of the fee.

133. MCI and Sprint oppose assessing fees based on gross interstate revenues. MCI contends that the revenue method is flawed because it is the byproduct of a carrier's minutes of use and, therefore, may fluctuate greatly and be unrepresentative of a carrier's market presence. For its part, Sprint contends that the term "gross revenues" is open to several definitions and that revenue figures are more subject to revision than presubscribed line counts that could necessitate delay, or shortfalls, in the collection of fees.

134. After considering the arguments of the many commenters in this proceeding, we have decided to adopt a gross revenues methodology for assessing carrier fees. A revenue based allocation will effectively spread the cost recovery burden of the fee requirement in proportion to the benefits realized by those carriers subject to our jurisdiction. We find that assessing fees by interstate gross revenues is reasonably related to the benefits of the regulation that these carriers receive. Properly administered, a gross revenues methodology will ease administrative burdens of carriers in calculating fee payments, provide reliable and verifiable information upon which to calculate the fee and equitably distribute the fee requirement in a competitively neutral manner. Interstate revenues are widely reported and more easily verifiable than customer units or MOUs and, therefore, avoid the need for burdensome reporting requirements. A revenue based methodology avoids the calculation problems inherent in both the customer unit and minutes of use alternative and permits the assessment of fees without any need to rely upon assumptions and projections.

135. We will require non-mobile common carriers, including resellers, that provide interstate telecommunications services to calculate their fee payments based upon their proportionate share of gross interstate revenues using the methodology that we have adopted for carriers to calculate their contributions to the TRS fund.[39] Interstate revenue data is already reported to NECA due to its role as administrator of the TRS fund.[40] In order to avoid imposing a double payment burden on resellers, we will permit interexchange carriers to subtract from their reported gross interstate revenues any payments made to underlying carriers for telecommunications facilities or services. This would include payments for interstate access services. It should be emphasized that the assessment and collection of regulatory fees is a Commission activity, totally separate and apart from TRS funding. However, we intend that carriers subject to payment of regulatory fees calculate and file their fees consistent with the TRS methodology, as modified by Public Notice to be published in the **Federal Register**. The FY 1995 revenue requirement is $46,310,880, and the total TRS revenue is estimated to be $52,626,000,000, resulting in a fee of 0.00088 per TRS revenue dollar.[41] *See* Guidelines, Appendix H at ¶¶42–44.

136. On October 7, 1994, the Common Carrier Bureau, on its own motion, issued a waiver permitting price cap regulated common carriers to treat the initial assessment of regulatory fees and any subsequent changes in the level of the fees paid, either as a result of Commission modification of the fee schedule, or due to increases or decreases in the number of presubscribed or access lines on which the fees must be paid, as an exogenous cost by making appropriate adjustments to their price cap indexes. *Price Cap Treatment of Regulatory Fees Imposed by Section 9 of the Act*, 9 FCC Rcd 6060 (Com. Car. Bur., 1994), *Erratum*, 9 FCC Rcd 6487 (Com. Car. Bur., 1994). MCI Telecommunications Inc. (MCI) filed a petition for reconsideration of that decision on November 7, 1994. In that petition, as well as in comments in this proceeding, MCI requests that the Commission reverse the Bureau regulatory fees order and require LECs to file for a waiver of the exogenous costs rules. In support of its petition, MCI alleges that the Common Carrier Bureau failed to follow Commission procedures requiring the LECs to file for waivers of the exogenous cost rules, shifted the burden of proof from the LECS, lacked a record on which to make a decision, and prejudged the petitions for reconsideration that were filed on the original regulatory fees order. Several LECs opposed the MCI petition.

137. MCI has not presented any evidence that would undermine the Bureau's conclusion that the Section 9 regulatory fees meet our criteria for exogenous cost treatment. As explained in the Bureau order, regulatory fees imposed pursuant to Section 9 of the Act are a legislatively-imposed charge on telecommunications common carriers, the imposition of which is beyond the control of the carrier. Moreover, MCI has not shown that the grant of the waiver *sua sponte* violates any Commission rules or procedures. In fact, Section 1.3 of the Commission's rules specifically authorizes grant of waivers *sua sponte*. Accordingly, MCI's petition seeking reconsideration of the Bureau's order is denied. In addition, we take this opportunity to clarify that carriers subject to price caps may file tariffs reflecting the effects of Commission-mandated changes in the regulatory fee schedule after the annual tariff filing is due. *See LEC Price Cap Performance Review* at para. 317.

B. Procedures for Payment of Regulatory Fees

138. Generally, as proposed in the *Notice*, we are retaining the procedures established in our *FY 94 Order* for the payment of regulatory fees. Consistent with Section 9(f) of the Act, we are again providing for three categories of fee payments, based upon the category of service for which the fee payment is due and the amount of the fee to be paid. 47 U.S.C. § 159(f). The fee categories are (1) "standard" fees, (2) "large" fees, and (3) "small" fees.

1. Annual Payments of Standard Fees

139. Standard fees are those regulatory fees that are payable in full on an annual basis. Payers of standard fees are not required to make advance payments for their full license term. All standard fees are payable in full on the date we establish for payment of fees in their regulatory fee category. The payment dates for each regulatory fee category will be announced by public notice in the **Federal Register** following the termination of this proceeding.

[39] *See Telecommunications Relay Services*, 8 FCC Rcd 5300 (1993), 58 FR 39671 (1993).

[40] Pursuant to our *FY 1994 Order*, NECA acted as our payment agent for approximately 800 exchange carriers who elected to make their fee payments through NECA. We are instructing the Managing Director to determine what, if any, assistance NECA may provide in the collection of regulatory fees for FY 1995.

[41] For FY 1995, we are limiting the use of gross revenues to assess fees on providers of communications services, including resellers, using the interstate network. It is our intention to monitor and analyze the reliance on gross revenues, and if our experience shows that this methodology results in an equitable and readily administered fee structure, we will consider reliance on gross revenues as the mechanism for determining fees for other carriers, including mobile carriers, for FY 1996 and thereafter.

2. Installment Payments for Large Fees

140. Our *Notice* proposed that regulatees in any category of service with a payment due of $12,000 or greater would be eligible to pay their fees in two installments. However, as a practical matter since the time for collecting fees will be extremely limited, regulatees subject to a fee will be required to submit their fees on a single date. In most instances, the requirement to submit a single payment should work no hardship since regulatees will have had no less than ninety days notice of the amount of their fee requirement and the use of these funds throughout substantially the entire fiscal year.[42]

3. Advance Payments of Small Fees

141. As proposed in the *Notice*, we will again treat regulatory fee payments by certain radio licensees as small fees subject to advance payments. Advance payments will be required from licensees of those services that we decided would be subject to advance payments in our *FY 1994 Order*[43] Payers of advance fees will submit the entire fee due for the full term of their licenses when filing their initial, reinstatement or renewal application. Those subject to the fee must pay the amount due for the current fiscal year multiplied by the number of years in the term of their requested license. The payor would not be subject to the payment of a new fee until filing an application for renewal or reinstatement of the license. Thus, payment for the full license term would be made based upon the regulatory fee applicable at the time the application is filed. Refunds will not be made in cases where the fee for a service is lower for FY 1995 than the fee paid under the FY 1994 fee schedule. The Commission will announce by public notice in the **Federal Register** the effective date for the payment of small fees pursuant to the FY 1995 fee schedule.

4. Timing of Standard Fee Calculations and Payment Dates

142. As noted, the date for payment of standard fees will be published in the **Federal Register**. For licensees, permittees and holders of other authorizations in the Common Carrier, Mass Media, and Cable Services, whose fees are not based on a subscriber, unit or circuit count, fees should be submitted for any authorization held as of October 1, 1994. As in our *FY 1994 Order*, we are establishing October 1 as the date to be used for calculating standard fees since it is the first day of the fiscal year and, therefore, current licensees subject to the fees would have benefited from our regulatory activities from the beginning of the period covered by the payment.

143. In the case of regulatees whose fees are based upon a subscriber, unit or circuit count, the number of a regulatee's, subscribers, licenses or circuits on December 31, 1994, will be used to calculate the fee payment. We have selected the last date of the calendar year because many of these entities file reports with us as of that date. Others calculate their subscriber numbers as of that date for internal purposes. Therefore, calculation of the regulatory fee as of that date will facilitate both an entity's computation of its fee payment and our verification that the correct fee payment has been submitted.[44]

C. Ordering Clauses

144. Accordingly, it is ordered that the rule changes as specified below are adopted.

145. It is further ordered that the rule changes made herein will become effective September 18, 1995. This action is taken pursuant to Sections 4(i), 4(j), 9, and 303(r) of the Communications Act of 1934 as amended, 47 U.S.C. §§ 154(i) and 154(j) and 159 and 303(r).

146. It is further ordered that the petition for reconsideration filed by MCI Telecommunications Inc. is denied.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Communication common carriers, Radio, Telecommunications, Television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Appendix A—Regulatory Flexibility Analysis

Need and Purpose for This Action

This *Report and Order* adopts a Schedule of Regulatory Fees in order to collect $116,400,000, the amount that Congress has required the Commission to recover through regulatory fees for FY 1995. The *Report and Order* seeks to ease the burden of compliance with the fee requirement by increasing estimated payment units, where appropriate, and by revising methodologies for assessing fees to better assure that fee payments are reasonably related to the benefits that regulatees derive from the Commission's regulation. The Commission has also reduced the threshold payment amounts for eligibility for installment payments.

Summary of Comments.

America's Carriers Telecommunications Association (ACTA) argues that proposals set forth in the *Notice of Proposed Rulemaking* would adversely impact on resale carriers, contending that the proposed fee would double the fee for interstate exchange carriers, including resellers and other carriers newly subject to the fee. Further, ACTA contends that resales carriers would be subject to a "double fee payment" because resellers would pay the fee directly and also be charged the fee by facilities-based carriers from whom they obtain facilities and services.

Proposals Adopted

In response to comments by numerous parties, the Commission rejected the methodologies for assessing fees for interstate carriers set forth in the *Notice of Proposed Rulemaking*. Instead, the Commission has adopted a methodology for assessing fees based upon a carrier's gross interstate communications revenues, similar to the method that the Commission adopted for calculating carrier contributions to the fund for the Telecommunications Relay Services (TRS). The Commission found that the TRS methodology provides an efficient and equitable mechanism for assessing fees. Carriers subject to the fee would not be unduly burdened because they already report the information needed to calculate the fee to the National Exchange Carriers Association (NECA), the administrator of the TRS fund. Moreover, the Commission has eliminated the "double fee payment" of concern to ACTA by permitting resale carriers to subtract from their reported gross revenues any payments made for facilities and services to facilities-based carriers.

Appendix B—FY 1995 Schedule of Regulatory Fees

Fee category	Annual regulatory fee
Wireless Radio	
Land Mobile (per license) 220–222 Mhz, above 470 Mhz, Base Station and SMRS) (47 CFR Part 90)	6
Microwave (per license) (47 CFR Part 94)	6
Interactive Video Data Service (per license) (47 CFR Part 95)	6
Marine (Ship) (per station) (47 CFR Part 80)	3

[42] Section 8(b)(4)(B) provides for notification to Congress ninety days before permitted amendments to the Schedule of Regulatory Fees become effective. 47 U.S.C. § 159(b)(4)(B).

[43] Advance payments are required from applicants for new, renewal and reinstatement licenses in services which pay annual fees of $6 or less and are listed in the Wireless Radio category of the Regulatory Fee Schedule. See Appendix B.

[44] Cable systems should calculate their FY 1995 regulatory fees using the subscriber data to be submitted to the Commission in their 1994 Annual Report of Cable Television Systems (FCC Form 325). Accordingly, their number of subscribers will not necessarily be based on December 31, 1994, but rather on "a typical day in the last full week" of December 1994. (*See* FCC Form 325 Instructions).

Fee category	Annual regulatory fee
Marine (Coast) (per license) (47 CFR Part 87)	3
General Mobile Radio Service (per license) (47 CFR Part 95)	3
Land Mobile (per license) (all stations not covered above)	3
Aviation (Aircraft) (per station) (47 CFR Part 87)	3
Aviation (Ground) (per license) (47 CFR Part 87)	3
Amateur Vanity Call Signs (per call sign) (47 CFR Part 97)	3
Cellular (per unit) (47 CFR Part 22)	.15
Public Mobile Radio (per unit) (47 CFR Part 22)	.15
Public Mobile One-Way Paging (per unit) (47 CFR Part 22)	.02
Mass Media	
AM Radio (47 CFR Part 73):	
Class A	1,120
Class B	620
Class C	250
Class D	310
Construction Permits	125
FM Radio (47 CFR Part 73):	
Classes C, C1, C2, B	1,120
Classes A, B1, C3	745
Construction Permits	620
TV (47 CFR Part 73) VHF Commercial:	
Markets 1–10	22,420
Markets 11–25	19,925
Markets 26–50	14,950
Markets 51–190	9,975
Remaining Markets	6,225
Construction Permits	4,975
TV (47 CFR Part 73) UHF Commercial:	
Markets 1–10	17,925
Markets 11–25	15,950
Markets 26–50	11,950
Markets 51–100	7,975
Remaining Markets	4,975
Construction Permits	3,975
Satellite Television Stations (All Markets)	620
Construction Permits—Satellite Television Stations	225
Low Power TV, TV/FM Translators & Boosters (47 CFR Part 74)	170
Broadcast Auxiliary (47 CFR Part 74)	30
Multipoint Distribution Service (per call sign) (47 CFR Part 21)	140
Cable Television	
Cable Antenna Relay Service (47 CFR Part 78)	290
Cable Television Systems (per subscriber) (47 CFR Part 76)	.49
Common Carrier	
Inter-Exchange Carrier (per revenue dollar)	.00088
Local Exchange Carrier (per revenue dollar)	.00088
Competitive Access Provider (per revenue dollar)	.00088
Operator Service Provider/Pay Telephone Operators (per revenue dollar)	.00088
Resellers (per revenue dollar)	.00088
Other Interstate Providers (per revenue dollar)	.00088
Domestic Public Fixed (per call sign) (47 CFR Part 21)	140
International	
Earth Stations (47 CFR Part 25):	
VSATs/Equivalent C-Band/Mobile Earth Stations (per authorization or registration)	330
Transmit/Receive and Transmit Only Earth Stations (per authorization or registration)	330
Space Stations (per operational station in geosynchronous orbit) (47 CFR Part 25)	75,000
International Circuits (per active 64KB circuit)	4
International Public Fixed (per call sign) (47 CFR Part 23)	200
International (HF) Broadcast (47 CFR Part 73)	250

Appendix C—How Full Time Equivalents (FTEs) and Fee Category Cost Allocations Were Calculated

(1) FTE allocations represent how the Commission anticipates FTEs will actually be spent during the course of the fiscal year.[45] Many factors influence how FTEs are actually employed during the year, including varying rates of attribution, speed of hiring new and replacement staff, the use of part time or temporary employees in lieu of permanent staff, changing Commission priorities, and reorganizations and other activities requiring a reallocation or reassignment of staff. The FTE allocations used in the fee development process were updated as of December 1994 to reflect a number of personnel reassignments made incident to recent reorganizations within the Commission. The impact on the fee development process by the reorganizations is negligible since they have not significantly changed the type of work the reassigned staff is performing.[46]

(2) Only the Commission's enforcement, policy and rulemaking, international, and user information activities are covered by the regulatory fee program.[47] Of the Commission's total ceiling of 2,271 FTEs, 846 FTEs are directly assigned to the agency's primary operating bureaus to perform enforcement, policy and rulemaking international, and user information activities. An additional 560 FTEs have been identified by agency officials as supporting these feeable activities.[48] The result of our FTE allocations are as follows:

Fee Category	Direct FTEs	Support FTEs	Total FTEs
Mass Media	152	101	253
Common Carrier	415	274	689
Private Radio	62	41	103
Cable Services	217	144	361
Total	846	704	1406

(3) The total of the costs to be offset by regulatory fees in FY 1995 is $116,400,000. Each fee category (e.g., cable services) was allocated its share of regulatory fee activity costs based upon the ratio of its FTEs to the total number of FTEs allocated to all regulatory fee categories. The results of this allocation of costs are shown below:

Fee Category	FTEs	Regulatory Fee Percentage[49]	Cost allocation (in millions)
Mass Media	253	18.0	$21.0
Common Carrier	689	49.0	57.0
Private Radio	103	7.3	8.5
Cable Services	361	25.7	29.9
Total	1406	100.00	116.4

[49] These percentages represent the FTEs associated with regulatory fees only. As a percent of all FCC FTEs, the regulatory fee FTEs make up the following percentages: Mass Media (11.1%), Common Carrier (30.3%), Private Radio (4.5%) and Cable Services (15.9%).

Appendix D—Development of Private Radio Services Regulatory Fees

Activity Cost Allocation: The Private Radio Activity was allocated 7.3% (103 FTEs) of the total 1,406 FTEs associated with all regulatory fee activities.[50] The same percentage (7.3%) was applied to total regulatory fee activity costs ($116.4 million times 7.3%=$8.5 million).

Revision of Payment Unit Volumes: Payment volume estimates (units of payment) were updated for FY 1995. See Table #1 below.

Projected Revenue Using FY 1994 Fee Amounts & Revised FY 1995 Payment Volumes: Projected revenue for FY 1995 for Private Radio Activities using FY 1994 fee amounts was calculated by multiplying the FY 1995 payment volume in each fee category by the FY 1994 fee amounts. The resulting revenues in these categories totaled approximately $21.7 million. This is the amount of revenue we would collect in this category if we did not change any fee amounts from FY 1994.

Pro-Rata Application of FY 1995 Revenue Requirement: Because projected revenues using FY 1994 fee amounts would have resulted in excess collections of $13.2 million ($21.7 million minus $8.5 million), Private Radio fees for FY 1995 needed to be multiplied by 39% ($8.5 million divided by $21.7 million=39%)[51] so that revenue would better approximate the $8.5 million cost allocation for this Activity. Table #1 below shows revenue requirements that were computed for each fee category within the Private Radio Activity.

Calculation of Fee: We divided each of the individual revenue requirements shown in the chart below by the applicable license term and then divided that result by the FY 1995 projected payment volume to determine the new fee requirement for each fee category within the Private Radio Activity.

TABLE #1

Category	Revenue requirement	Divided by license term (Yrs)	Divided by payment volume	Equals new fee[52]
Land Mobile (220–222 MHz, 470 MHz and above, unless otherwise noted)	$396,390	5	13,213	6
Microwave	193,200	5	6,440	6
IVDS	43,500	5	1,450	6
Marine (Ship)	5,070,420	10	169,014	3
GMRS	41,775	5	2,785	3
Land Mobile (Other)	1,396,275	5	93,085	3
Aviation (Aircraft)	1,130,430	10	37,681	3
Marine (Coast)	41,955	5	2,797	3
Aviation (Ground)	39,900	5	2,660	3
Amateur Vanity Call Signs	840,000	10	28,000	3
Total	8,500,000			

[52] Fees are rounded to the nearest dollar. On subsequent tables the fees have been rounded pursuant to the requirements of 47 U.S.C. § 159.

Appendix E—Development of Mass Media Services Regulatory Fees

Activity Cost Allocation: The Mass Media Activity was allocated 18.0% (253 FTEs) of the total 1,406 FTEs associated with all regulatory fee activities.[53] The same percentage (18.0%) was applied to total regulatory fee activity costs ($116.4 million times 18.0% = $21.0 million).

Revision of Payment Unit Volumes: Payment volume estimates (units of payment) were updated for FY 1995. See Table #2 below.

Projected Revenue Using FY 1994 Fee Amounts & Revised FY 1995 Payment Volumes: Projected revenue for FY 1995 for Mass Media Activities using FY 1994 fee amounts was calculated by multiplying the FY 1995 payment volume in each fee category by the FY 1994 fee amounts. The resulting total revenue in these categories totaled approximately $16.9 million. This is the amount of revenue we would collect in this category if we did not change any fee amounts from FY 1994.

Pro-Rata Application of FY 1995 Revenue Requirement: Because projected revenues using FY 1994 fee amounts would have resulted in collections of $4.1 million less than required ($21.0 million minus $16.9 million), Mass Media fees for FY 1995 needed to be adjusted upward by 24.6% ($4.1 million divided by $16.9 million=24.6%)[54] so that revenue would better approximate the $21.0 million cost allocation for this Activity. Table #2 below shows revenue requirements that were computed for each fee category within the Mass Media Activity.

Calculation of Fee: We divided each of the individual revenue requirements shown in the chart below by the FY 1995 projected payment volume to determine the new fee requirement for each fee category within the Mass Media Activity.

TABLE #2

Category	Revenue requirement	Divided by payment volume	Equals new fee
AM Radio (Class A)	$86,240	77	1,120
AM Radio (Class B)	1,060,820	1,711	620
AM Radio (Class C)	258,250	1,033	250
AM Radio (Class D)	657,200	2,120	310
AM Radio (Construction Permit)	9,875	79	125
FM Radio (Classes C, C1, C2, B)	2,778,720	2,481	1,125
FM Radio (Classes A, B1, C3)	1,926,570	2,586	745
FM Radio (Construction Permit)	435,860	703	620
VHF TV (Mkt 1–10)	964,060	43	22,420
VHF TV (Mkt 11–25)	1,135,725	57	19,925
VHF TV (Mkt 26–50)	1,166,100	78	14,950
VHF TV (Mkt 51–100)	1,007,475	101	9,975
VHF TV (Remaining Mkts)	1,045,800	168	6,225
VHF TV (Construction Permit)	54,725	11	4,975

[45] It should be noted that FTE allocations are year-end estimates and thus represent projected work time of existing staff as well as new and replacement staff yet to be hired. The Office of Management and Budget (OMB) has established a ceiling of 2,271 FTEs for the Commission for FY 1995.

[46] The Commission has chosen to retain, for fee determination purposes, the fee classifications (i.e., Private Radio, Common Carrier, Cable Services and Mass Media) contained in 47 U.S.C. Section 159. Although we believe that we have authority to change the classifications to align them more closely with our current organizational structure, we wanted to prevent any adverse impacts to the schedule brought about solely by such a classification change.

[47] The regulatory fee program encompasses a total of 1,406 FTEs or 61.9% of the agency's total FTEs. The agency's Authorization of Service, Legal Services and Executive Direction Activities cover an additional 865 FTEs. See Section III (A) for a discussion of how FTEs were estimated. Authorization of Service regulatory costs are recovered pursuant to Section 8 of the Communications Act.

[48] These support activities include a proportionate share of field operations, engineering and technology and certain general program support staff FTEs.

[50] Represents 4.5% of all FCC FTEs.

[51] Actual percentage is 39.2368026%.

[53] Represents 11.1% of all FCC FTEs.

[54] Actual percentage is 24.5691982%.

TABLE #2—Continued

Category	Revenue requirement	Divided by payment volume	Equals new fee
UHF TV (Mkt 1–10)	1,541,550	86	17,925
UHF TV (Mkt 11–25)	1,164,350	73	15,950
UHF TV (Mkt 26–50)	1,087,450	91	11,950
UHF TV (Mkt 51–100)	1,084,600	136	7,975
UHF TV (Remaining Mkts)	731,325	147	4,975
UHF TV (Construction Permit)	576,375	145	3,975
Auxiliaries	900,000	30,000	30
LPTV/FM & TV Translators & Boosters	1,210,400	7,120	170
Int'l Short Wave	4,750	19	250
TV Satellite (Any Mkt)[56]	68,200	110	620
TV Satellite (Construction Permit)[56]	1,125	5	225
Multipoint Distribution Service[57]	.....	.....	140
Total	21,000,000		

[55] The FY 1994 legislated fee schedule did not distinguish between full service television stations and satellite television stations. Although the Congress did not pass final legislation to assess satellite stations a reduced fee, the House of Representatives did pass legislation establishing a $500 fee for satellite stations in FY 1994. While not legally binding, we used the $500 fee proposed by the House as a "simulated" FY 1994 fee in order to calculate a FY 1995 fee for satellite stations.

[56] Unlike other fees proposed for FY 1995, the TV satellite station construction permit fee of $225 was determined by taking the average fee for UHF & VHF television stations and relating it to the average UHF/VHF construction permit fee. Using these relationships for satellite television stations results in a computed fee of $225 (rounded to the nearest $5) for satellite television station construction permits.

[57] The fee for single-channel and multi-channel Multipoint Distribution Service (MDS & MMDS) was developed as part of the Domestic Public Fixed Radio Service, a common carrier service. The payment units are included in the total volume for the Domestic Public Fixed Radio Service included in Appendix C. Regulation of the MDS and MMDS services has been transferred to the Mass Media Bureau.

Appendix F—Development of Cable Services Regulatory Fees

Activity Cost Allocation: The Cable Services Activity was allocated 25.7% (361 FTEs) of the total 1,406 FTEs associated with all regulatory fee activities.[58] The same percentage (25.7%) was applied to total regulatory fee activity costs ($116.4 million times 25.7%=$29.9 million).

Revision of Payment Unit Volumes: Payment volume estimates (units of payment) were updated for FY 1995. See Table #3 below.

Projected Revenue Using FY 1994 Fee Amounts & Revised FY 1995 Payment Volumes: Projected revenue for FY 1995 for Cable Services Activities using FY 1994 fee amounts was calculated by multiplying the FY 1995 payment volume in each fee category by the FY 1994 fee amounts. The resulting total revenue in these categories totaled approximately $22.7 million. This is the amount of revenue we would collect in this category if we did not change any fee amounts from FY 1994.

Pro-Rata Application of FY 1995 Revenue Requiremetn: Because projected revenues using FY 1994 fee amounts would have resulted in collections of $7.2 million less than required ($22.7 million minus $29.9 million), proposed Cable Services fees for FY 1995 needed to be adjusted upward by 32.0% ($7.2 million divided by $22.7 million = 32.0%)[59] so that revenue would better approximate the $29.9 million cost allocation for this Activity. Table #3 below shows revenue requirements that were computed for each fee category within the Cable Services Activity.

Calculation of Fee: We divided each of the individual revenue requirements shown in the chart below by the FY 1995 projected payment volume to determine the new fee requirement for each fee category within the Cable Services Activity.

TABLE #3

Category	Revenue requirement	Divided by payment volume	Equals new fee
CARS	$603,780	2,082	290
Cable Television Systems	29,400,000	60,000,000	.49
Total	29,900,000		

Appendix G—Development of Common Carrier Services Regulatory Fees

Activity Cost Allocation: The Common Carrier Activity was allocated 49.0% (689 FTEs) of the total 1,406 FTEs associated with all regulatory fee activities.[60] The same percentage (49.0%) was applied to total regulatory fee activity costs ($116.4 million times 49.0% = $57.0 million).

Revision of Payment Unit Volumes: Payment volume estimates (units of payment) were updated for FY 1995. See Table #4 below.

Projected Revenue Using FY 1994 Fee Amounts & Revised FY 1995 Payment Volumes: Projected revenue for FY 1995 for Common Carrier Activities using FY 1994 fee amounts was calculated by multiplying the FY 1995 payment volume in each fee category by the FY 1994 fee amounts. The resulting total revenue in these categories totaled approximately $28.4 million. This is the amount of revenue we would collect in this category if we did not change any fee amounts from FY 1994.

Pro-Rata Application of FY 1995 Revenue Requirement: Because projected revenues using FY 1994 fee amounts would have resulted in collections of $28.6 million less than required ($57.0 million minus $28.4 million), Common Carrier fees for FY 1995 needed to be adjusted upward by 100.5% ($28.6 million divided by $28.4 million = 100.5%)[61] so that revenue would better approximate the $57.0 million cost allocation for this Activity. Table #4 below shows revenue requirements that were computed for each fee category within the Common Carrier Activity.

Calculation of Fee: We divided each of the individual revenue requirements shown in the chart below by the FY 1995 projected payment volume to determine the new fee requirement for each fee category within the Common Carrier Activity:

[58] Represents 15.9% of all FCC FTEs.

[59] Actual percentage is 31.9619879%.

[60] Represents 30.3% of all FCC FTEs.

[61] Actual percentage is 100.4512615%.

Table #4

Category	Revenue requirement	Divided by payment volume	Equals new fee
Domestic Public Fixed Radio	$1,960,000	14,000	140
Cellular/Public Mobile Radio	3,510,000	23,400,000	.15
Public Mobile One-way Paging	392,000	19,600,000	.02
International Public Fixed Radio	4,000	20	200
Earth Stations (VSATs/Mob. Eq./Tr. & T/R)	1,114,740	3,378	330
Space Stations	2,925,000	39	75,000
IXC, LEC, CAPS, Other Providers	46,310,880	52,626,000,000	.00088
International Circuits	500,000	125,000	4
Total	57,000,000		

Appendix H—FY 1995 Guidelines for Regulatory Fee Categories

1. The guidelines below provide an explanation of regulatory fee categories established by the Schedule of Regulatory Fees in Section 9(g) of the Communications Act, 47 U.S.C. § 159(g) as modified in the instant *Memorandum Opinion and Order*. Where regulatory fee categories need interpretations or clarification, we have relied on the legislative history of Section 9, our own experience in establishing and regulating the Schedule of Regulatory Fees for Fiscal Year (FY) 1994 and the services subject to the fee schedule, and the comments of the parties in our proceeding to adopt fees for FY 1995. The categories and amounts set out in the schedule have been modified to reflect changes in the Commission's appropriation, our costs of providing the regulatory services to be recovered by the fee program, additions and changes in the services subject to the fee requirement and the benefits derived from the Commission's regulatory activities. The schedule may be similarly modified or adjusted in future years to reflect changes in the Commission's budget and in the services regulated by the Commission. *See* 47 U.S.C. § 159(b) (2), (3).

1. Private Radio Services

2. The Private Radio Services are regulated by the Wireless Telecommunications Bureau. Two levels of statutory fees were established—exclusive use services and shared use services. Thus, licensees who generally receive a higher quality communication channel due to exclusive or lightly shared frequency assignments, will pay a higher fee than those who share marginal quality assignments. This dichotomy is consistent with the directive of section 9 that the regulatory fees reflect the benefits provided to the licensees. *See* 47 U.S.C. § 159(b)(1)(A). In addition, because of the generally small amount of the fees assessed against Private Radio Service licensees, applicants for new licenses and reinstatements and for renewal of existing licenses are required to pay a regulatory fee covering the entire license term, with only a percentage of all licensees paying a regulatory fee in any one year. Applications for modification or assignment of existing authorizations do not require the payment of regulatory fees. The expiration date of those authorizations will reflect only the unexpired term of the underlying license rather than a new license term.

3. There have been no changes from FY 1994 in the rules for calculating and paying regulatory fees in the Private Radio Services.

a. Exclusive Use Services

4. *Land Mobile Services*: Regulatees in this category include those authorized under Part 90 of the Commission's Rules to provide limited access Wireless Radio service that allows high quality voice or digital communications between vehicles or to fixed stations to further the business activities of the licensee. These services, using the 220–222 MHz band and frequencies at 470 MHz and above, may be offered on a private carrier basis in the Specialized Mobile Radio Services (SMRS).

5. For FY 1995, Land Mobile licensees will pay a $6 annual regulatory fee per license, payable for an entire five or ten year license term at the time of application for a new, renewal or reinstatement license.[62] The total regulatory fee due is either $30 for a license with a five year term or $60 for a license with a 10 year term.

6. *Microwave Services*: Set forth in the FY 1995 fee schedule within the Wireless Radio Service category, these services include private microwave systems and private carrier systems authorized under Part 94 of the Commission's Rules to provide telecommunications services between fixed points on a high quality channel of communications. Microwave systems are often used to relay data and to control railroad, pipeline and utility equipment. For FY 1995, Microwave licensees will pay a $6 annual regulatory fee per license, payable for an entire five year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee due is $30 for the five year license term.

7. *Interactive Video Data Service (IVDS)*: As set forth in the FY 1995 fee schedule within the Wireless Radio Service category, IVDS is a two-way point-to-multi-point radio service allocated high quality channels of communications and authorized under Part 95 of the Commission's Rules. IVDS provides information, products and services, and also the capability to obtain responses from subscribers in a specific service area. IVDS is offered on a private carrier basis. For FY 1995, IVDS licensees will pay a $6 annual regulatory fee per license, payable for an entire five year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee due is $30 for the five year term of the license.

b. Shared Use Services

8. *Marine (Ship) Service*: This service is a shipboard radio service authorized under Part 80 of the Commission's Rules to provide telecommunications between watercraft or between watercraft and shore-based stations. Radio installations are required by domestic and international law for large passenger or cargo vessels. Radio equipment may be voluntarily installed on smaller vessels, such as recreational boats. For FY 1995, Marine (Ship) Station licensees will pay a $3 annual regulatory fee per station, payable for an entire ten year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee due is $30 for the ten year license term.

9. *Marine (Coast) Service*: This service, set forth in the FY 1995 Schedule of Regulatory Fees within the Wireless Radio Service category, includes land-based stations in the maritime services, authorized under Part 80 of the Commission's Rules, to provide communications services to ships and other watercraft in coastal and inland waterways. For FY 1995, licensees will pay a $3 annual regulatory fee per call sign, payable for the entire five year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee due is $15 per call sign for the five year license term.

10. *Private Land Mobile (Other) Services*: These services, set forth in the FY 1995 Schedule of Regulatory Fees within the Wireless Radio Service category, include Land Mobile Radio Services operating under Parts 90 and 95 of the Commission's Rules. Services in this category provide one or two way communications between vehicles, persons or to fixed stations on a shared basis

[62] Although this fee category includes licenses with ten year terms, the estimated volume of ten year license applications in FY 1995 is less than one tenth of one percent and, therefore, is statistically insignificant.

and include radiolocation services, private carrier paging services, industrial radio services and land transportation radio services. For FY 1995, licensees of services in this category will pay a $3 annual regulatory fee per call sign, payable for an entire five year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee due is $15 for the five year license term. There are no changes to the rules for calculating and submitting regulatory fee payments by Private Land Mobile Service licensees.

11. *Aviation (Aircraft) Service*: These services, set forth in the FY 1995 Schedule of Regulatory Fees within the Wireless Radio Service category, include stations authorized to provide communications between aircraft and from aircraft to ground stations and includes frequencies used to communicate with air traffic control facilities pursuant to Part 87 of the Commission's Rules. For FY 1995, licensees of Aviation (Aircraft) Stations will pay a $3 annual regulatory fee per station, payable for the entire ten year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee due is $30 per station for the ten year license term.

12. *Aviation (Ground) Service*: This service, set forth in the FY 1995 Schedule of Regulatory Fees within the Wireless Radio Service category, includes stations authorized to provide ground-based communications to aircraft for weather or landing information, or for logistical support pursuant to Part 87 of the Commission's Rules. For FY 1995, licensees of Aviation (Ground) Stations will pay a $3 annual regulatory fee per license, payable for the entire five year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee is $15 per call sign for the five year license term.

13. *General Mobile Radio Service (GMRS)*: These services, set forth in the FY 1995 Schedule of Regulatory Fees within the Wireless Radio Service category, include Land Mobile Radio licensees providing personal and limited business communications between vehicles or to fixed stations for short-range, two-way communications pursuant to Part 95 of the Commission's Rules. For FY 1995, GMRS licensees will pay a $3 annual regulatory fee per license, payable for an entire five year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee due is $15 per license for the five year license term.

c. Amateur Radio Vanity Call-Signs

14. *Amateur Vanity Call-Signs:* As set forth in the FY 1995 Schedule of Regulatory Fees within the Wireless Radio Service category, the fee covers voluntary requests for specific call-signs in the Amateur Radio Service authorized under part 97 of the Commission's Rules. For FY 1995, applicants for Amateur Vanity Call-Signs will pay a $3 annual regulatory fee per call-sign, payable for an entire ten year license term at the time of application for a vanity call sign. The total regulatory fee due would be $30 per license for the ten year license term.[63]

2. Mass Media Bureau

15. The regulatory fees for the Mass Media fee category apply to broadcast licensees and permittees. Noncommercial Educational Broadcasters are exempt from the fees.

a. Commercial AM and FM Radio

16. These categories include licensed Commercial AM (Classes A, B, C, and D) and FM (Classes A, B, B1, C, C1, C2, and C3) Radio Stations operating under Part 73 of the Commission's Rules. The regulatory fees for AM and FM Stations for FY 1995 are as follows:

AM Radio	
Class A	$1,120
Class B	620
Class C	250
Class D	310
FM Radio	
Classes C, C1, C2, B	$1,120
Classes A, B1, C3	745

b. Construction Permits—Commercial AM Radio

17. This category includes holders of permits to construct new Commercial AM Stations. For FY 1995 permittees will pay a fee $125 for each permit held. Upon issuance of an operating license, this fee would no longer be applicable and licensees would be required to pay the applicable fee for the designated class of the station.

c. Construction Permits—Commercial FM Radio

18. This category includes holders of permits to construct new Commercial FM Stations. For FY 1995 permittees will pay a fee of $620 for each permit held. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a regulatory fee based upon the designated class of the station. There are no changes in the rules for calculating and submitting regulatory fees by FM construction permittees.

d. Commercial Television Stations

19. This category includes licensed Commercial VHF and UHF Television Stations covered under Part 73 of the Commission's Rules, except commonly owned Television Satellite Stations, addressed separately below. The fees for each category of station are as follows:

VHF Markets 1–10	$22,420
VHF Markets 11–25	19,925
VHF Markets 26–50	14,950
VHF Markets 51–100	9,975
VHF Remaining Markets	6,225
UHF Markets 1–10	$17,925
UHF Markets 11–25	15,950
UHF Markets 26–50	11,950
UHF Markets 51–100	7,975
UHF Remaining Markets	4,975

[63] Section 9(h) exempts "amateur radio operator licenses under Part 97 of the Commission's rules (47 CFR Part 97)" from the requirement. However, Section 9(g)'s fee schedule explicitly includes "Amateur vanity call signs" as a category subject to the payment of a regulatory fee.

e. Commercial Television Satellite Stations

20. Commonly owned Television Satellite Stations in any market (authorized pursuant to Note 5 of Section 73.3555 of the Commission's Rules) that retransmit programming of the primary station are assessed a fee of $620 annually. Only those stations designated as Television Satellite Stations in the 1994 edition of the *Television and Cable Factbook* are eligible to submit the fee applicable to Television Satellite Stations. All other television licensees are subject to the regulatory fee payment required for their class of station and market.

f. Construction Permits—Commercial VHF Television Stations

21. This category includes holders of permits to construct new Commercial VHF Television Stations. For FY 1995 VHF permittees will pay an annual regulatory fee $4,975. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a fee based upon the designated market of the station.

g. Construction Permits—Commercial UHF Television Stations

22. This category includes holders of permits to construct new VHF Television Stations. For FY 1995 UHF Television permittees will pay an annual regulatory fee $3,975. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a fee based upon the designated market of the station.

h. Construction Permits—Satellite Television Stations

23. The fee for UHF and VHF Television Satellite Station construction permits for FY 1995 is $225. An individual regulatory fee payment is to be made for each Television Satellite Station construction permit held.

i. Low Power Television, FM Translator and Booster Stations, TV Translator and Booster Stations

24. This category includes Low Power UHF/VHF Television stations operating under Part 74 of the Commission's Rules with a transmitter power output limited to 0.01 kw for a UHF facility and, generally, 1 kw for a VHF facility. Low Power Television (LPTV) stations may retransmit the programs and signals of a TV Broadcast Station, originate programming, and/or operate as a subscription service. This category also includes translators and boosters operating under Part 74 which rebroadcast the signals of full service stations on a frequency different from the parent station (translators) or on the same frequency (boosters). We have amended the fee schedule to include FM Translator and Booster stations in this fee service because we believe these facilities were inadvertently omitted from the statutory fee schedule and we are unaware of any reason not to establish a fee for these services. We have also received requests for waivers of the regulatory fees from operators of community based Translators. These Translators are generally not affiliated with commercial broadcasters, they are nonprofit, nonprofitable, or only marginally profitable, serve small rural communities, and are supported financially by the residents of the communities served. We are aware of the difficulties these Translators have in paying even minimal regulatory fees, and we will address those concerns in the ruling on reconsideration of the *FY 1994 Order*. The stations in this category are secondary to full service stations in terms of frequency priority. For FY 1995, licensees in this category will pay a regulatory fee of $170 for each license held.

j. Broadcast Auxiliary Stations

25. This category includes licensees of remote pickup stations, Aural Broadcast Auxiliary Stations, Television Broadcast Auxiliary Stations, and Low Power Auxiliary Stations, authorized under Part 74 of the Commission's Rules. Auxiliary Stations are generally associated with a particular television or radio broadcast station or cable television system. For FY 1995 licensees of Commercial Auxiliary Stations will pay a $30 annual regulatory fee on a per call sign basis.

k. International HF Broadcast (Short Wave)

26. This category covers International Broadcast Stations licensed under Part 73 of the Commission's Rules to operate on frequencies in the 5,950 khz to 26,100 Khz range to provide service to the general public in foreign countries. The fees for International HF Broadcast Stations are set forth in the International Service category in the FY 1995 fee schedule. For FY 1995 International HF Broadcast Stations will pay an annual regulatory fee of $250 per station license.

3. Cable Services

a. Cable Television Systems

27. This category includes operators of Cable Television Systems, providing or distributing programming or other services to subscribers under Part 76 of the Commission's Rules. For FY 1995 Cable Systems will pay a regulatory fee of $.49 per subscriber.[64]

28. Payments for Cable Systems are to be made on a per subscriber by community unit basis as of December 31, 1994, as reported on each Cable System's 1994 Annual Report of Cable Systems (FCC Form 325). Cable Systems should determine their subscriber numbers by calculating the number of single family dwellings, the number of individual households in multiple dwelling units, *e.g.*, apartments, condominiums, mobile home parks, etc., paying at the basic subscriber rate, the number of bulk rate customers and the number of courtesy or fee customers. In order to determine the number of bulk rate subscribers, a system should divide its bulk rate charge by the annual subscription rate for individual households. *See FY 1994 Order*, Appendix B at para. 31.

b. Cable Antenna Relay Service

29. This category includes Cable Antenna Relay Service (CARS) stations used to transmit television and related audio signals, signals of AM and FM Broadcast Stations and cablecasting from the point of reception to a terminal point from where the signals are distributed to the public by a Cable Television System. For FY 1995, licensees will pay an annual regulatory fee of $290 per CARS license.

[64] Cable systems are to pay their regulatory fees on a per subscriber basis rather than per 1,000 subscribers as set forth in the statutory fee schedule. *See FY 1994 Order* at para. 100.

4. Common Carrier Services

a. Mobile Services

30. *Public Mobile/Cellular Radio Services:* These services are included within the FY 1995 Schedule of Regulatory Fees in the Wireless Radio Service category. They include common carriers and others (e.g., cellular radio licensees) offering, under Parts 22 and 24 of the Commission's Rules, a wide variety of land-based or air-to-ground mobile telephone, paging or data transmission services to the public. Licensees include those using radio to provide telephone services at fixed locations, such as Basic Exchange Telecommunications Radio Services, Rural Radio and Offshore Radio.

31. For FY 1995, each licensee in the Public Mobile/Cellular Radio Services will pay an annual regulatory fee for each mobile or cellular unit (mobile or cellular call sign or telephone number), including paging units, assigned to its customers, including resellers of its services. For FY 1995, the regulatory fee is $.15 per unit.

32. *Public Mobile One-Way Paging Services:* These services are included within the FY 1995 Schedule of Regulatory Fees in the Wireless Radio Service category. They include common carriers offering, under Parts 22 of the Commission's Rules, one-way paging services to the public.

33. For FY 1995, each licensee in the Public Mobile One-Way Paging Services will pay an annual regulatory fee for each paging unit, assigned to its customers, including resellers of its services. For FY 1995, the regulatory fee of $.02 per unit.

b. Fixed Radio Services

34. *Domestic Public Fixed Radio Service:* This category includes licensees in the Point-to-Point Microwave Radio Service, Local Television Transmission Radio Service, Digital Electronic Message Service, Multipoint Distribution Service (MDS), and Multichannel Multipoint Distribution Service (MMDS), authorized under Part 21 of the Commission's Rules to use microwave frequencies for video and data distribution within the United States. For FY 1995, Domestic Public Fixed Radio Service licensees pay a $140 annual regulatory fee per call sign, payable on a specified date to be announced by the Commission.

35. *International Public Fixed Radio Service:* This fee category includes common carriers authorized under Part 23 of the Commission's Rules to provide radio communications between the United States and a foreign point via microwave or HF troposcatter systems, other than satellites and satellite earth stations, but not including service between the United States and Mexico and the United States and Canada using frequencies above 72 MHz. For FY 1995, International Public Fixed Radio Service licensees will pay a $200 annual regulatory fee per call sign, payable on a specified date to be announced by the Commission.

c. VSATs and Equivalent C-Band Stations/ Mobile Satellite Earth Stations

36. *VSATs and Equivalent C-Band Stations:* This fee category includes VSAT Earth Stations and equivalent C-Band Earth Stations and antennas and earth station systems comprised of very small aperture terminals operating in the 12 and 14 GHz bands and providing a variety of communications services to other stations in the network. *VSAT* systems consist of a network of technically-identical small Fixed-Satellite Earth Stations which often include a larger hub station. VSAT Earth Stations and C-Band Equivalent Earth Stations are authorized pursuant to Part 25 of the Commission's Rules. *Mobile Satellite Earth Stations*, operating pursuant to Part 25 of the Commission's Rules under blanket licenses for mobile antennas (transceivers), are smaller than one meter and provide voice or data communications, including position location information for mobile platforms such as cars, buses or trucks. For FY 1995, licensees of VSATs and Mobile Satellite Earth Stations will pay an annual regulatory fee of $330 per authorization or registration.

d. Fixed Satellite Earth Stations

37. *Transmit/Receive and Transmit Only Earth Stations*. This category includes fixed-satellite transmit/receive and transmit only earth station antennas, authorized or registered under Part 25 of the Commission's Rules, operated by private and public carriers to provide telephone, television, data, and other forms of communications. The proposed fees for this fee category are set forth in the FY 1995 fee schedule in the International Service category. Included in this category are telemetry, tracking, and control (TT&C) ear stations and earth station uplinks.

38. For FY 1995 licensees of transmit/ receive and transmit only earth stations will pay a fee of $330 per authorization or registration.

39. *Received only earth stations*. For FY 1995 there is no regulatory fee for receive-only earth stations.

e. Space Stations (Geosynchronous)

40. Geosynchronous Space Stations set forth in the FY 1995 Schedule of regulatory Fees within the International Service category, are domestic and international satellites positioned in orbit to remain approximately fixed relative to the earth. They are authorized under Part 25 of the Commission's Rules to provide communications between satellites and earth stations on a common carrier and/or private carrier basis. For FY 1995, entities authorized to operate Geosynchronous Space Stations in accordance with section 25.120(d) will be assessed an annual regulatory fee of $75,000 per operational station in orbit. Payment is required for any Geosynchronous Satellite that has been launched and tested and is authorized to provide service.

f. International Bearer Circuits

41. Regulatory fees for International Bearer Circuits are set forth in the International Service category in the FY 1995 fee schedule.

The proposed fee is to be paid by the facilities-based common carrier activating the circuit in any transmission facility for the provision of service to an end user or resale carrier. Payment of the fee for bearer circuits sold on an indefeasible right of use (IRU) basis or leased to any customer other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. *Compare FY 1994 Order* at 5367. The fee is based upon active 64 Kbps circuits, or equivalent circuits. Under this formulation, 64 Kbps circuits or their equivalent will be assessed a fee. Equivalent circuits include the 64 Kbps circuit equivalent of larger bit stream circuits. For example, the 64 Kbps circuit equivalent of a 2.048 Mbps circuit is 30 64 Kbps circuits. Analog circuits such as 3 and 4 KHz circuits used for international service are also included as 64 Kbps circuits. However, circuits derived from 64 Kbps circuits by the use of digital circuit multiplication systems are not equivalent 64 Kbps circuits. Such circuits are not subject to fees. Only the 64 Kbps circuit from which they have been derived will be subject to payment of a fee. For FY 1995, the regulatory fee is $4.00 for each active 64 Kbps circuit or equivalent. For analog television channels we will assess fees as follows:

Analog Television Channel Size in MHz Circuits	No. of equivalent 64 Kbps
36	630
24	288
18	240

g. Inter-Exchange and Local Exchange Carriers, Competitive Access Providers, Pay Telephone Providers, and other Non-Mobile Providers of Interstate Service

42. We have revised the Schedule of Regulatory Fees for carriers to include not only IXCs, LECs and CAPs, but also domestic and international carriers that provide operator services, WATS, 800, 900, telex, telegraph, video, other switched, interstate access, special access, and alternative access services either by using their own facilities or by reselling facilities and services of other carriers or telephone carrier holding companies, and companies other than traditional local telephone companies that provide interstate access services to long distance carriers and other customers.

43. These common carriers, including resellers, must submit fee payments based upon their proportionate share of gross interstate revenues using the methodology that we have adopted for calculating contributions to the TRS fund. *See Telecommunications Relay Services*, 8 FCC Rcd 5300 (1993). In order to avoid imposing any double payment burden on resellers, we will permit carriers to subtract from their gross interstate revenues as reported to NECA in connection with their TRS contribution, any payments made to underlying carriers for the telecommunications facilities or services, including payments for interstate access service. For FY 1995, carriers will multiply their gross revenue figure by the 0.00088 to determine the appropriate fee for this category of service and may reduce this amount by the total amount of their payments to underlying carriers for telecommunications facilities or services.

44. The FY 1995 revenue requirement for this category is $46,310,880. For FY 1995, carriers will multiply their gross revenue figure by 0.00088 to determine the appropriate fee for this category of service and may reduce this amount by the total amount of their payments to underlying carriers for telecommunications facilities or services.

Appendix I—Description of FCC Activities

Executive Direction and Support: Overall policy direction, program development and executive direction as provided by the Chairman and staff, Commissioners and their staffs and by the Managing Director. Also includes support services such as management planning, budgeting and financial management, personnel resource management, information resources management and ADP operations, security, and administrative and office services. Includes the activities of the Office of Legislative Affairs and the Office of the Inspector General. These costs are not recoverable through regulatory fees.

Legal Services: Legal review and support services including matters of administrative law, litigation and adjudication. Includes the Office of General Counsel, Office of Administrative Law Judges and the Review Board. These costs are not recoverable through regulatory fees.

Authorization of Service: The authorization or licensing of radio stations, telecommunications equipment and radio operators. Also includes the authorization of common carrier services and facilities. These costs are not recoverable through regulatory fees.

Policy and Rule Making: Formal inquiries, rule making proceedings to establish or amend the Commission's rules and regulations, action on petitions for rule making and requests for rule interpretations or waivers; economic studies and analyses; spectrum planning, modeling, propagation-interference analyses and allocation; and development of equipment standards. Also includes policy and rule making associated with FCC participation in international organizations, conferences and negotiations. These costs are recoverable through regulatory fees.

Enforcement: Enforcement of the Commission's rules, regulations and authorizations, including investigations, inspections, compliance monitoring and sanctions of all types. Also includes the receipt and disposition of formal and informal complaints regarding common carrier rates and services, the review and acceptance/rejection of carrier tariffs, and the review, prescription and audit of carrier accounting practices. These costs are recoverable through regulatory fees.

International: The preparation for and participation in international, regional and bilateral conferences, meetings and negotiations; and administration of Commission responsibilities under international radio regulations and other treaties, conventions and agreements. Also includes activities associated with international frequency coordination and notification. These costs are recoverable through regulatory fees.

Public Information Services: The publication and dissemination of Commission decisions and actions, and related activities; public reference and library services; the duplication and dissemination of Commission records and databases; the receipt and disposition of public inquiries; consumer, small business and public assistance; and public affairs and media relations. These costs are recoverable through regulatory fees.

Comments were filed:
—Dudman Communications Corp.
—Sandra R. Swanson
—Bruce Hood
—KGRR–FM 97.3
—Sierra Cascade Communications
—Coleman Broadcasting Company
—WTIM et al.
—Aircraft Owners and Pilots Association
—Personal Communications Industries Association
—Fant Broadcasting Company
—Grove Cable Co.
—United States Coast Guard
—AllNet Communication Services, Inc.
—MobileMedia Communications
—KVPA
—Sovereign Broadcasting, Inc.
—KVRW–FM
—Northern Broadcasting, Inc.
—PanAmSat Corporation
—Competitive Telecommunications Association
—LDDS Communications, Inc.
—Ameritech
—Cablevision Industries Corp.
—Montana Broadcasters Association
—Century Cellunet, Inc.
—GTE Services Corp.
—Maine Association of Broadcasters
—James P. Wagner
—Livingston Radio Company
—Associated Press
—Frontier Cellular Holding, Inc.
—Sprint Corporation
—De La Hunt Broadcasting
—Cable Telecommunications Association
—Columbia Communications Corp.
—Hertz Technologies, Inc.
—National Cable Television Association, Inc.
—KUSK, Inc.
—Duhamel Broadcasting Enterprises
—Southwestern Bell, Inc.
—EDS Corp.
—Wireless Cable Association International, Inc.
—MCI Telecommunications Corporation
—MFS Communications Company, Inc.
—AllTell Mobile Communications
—America's Carriers Telecommunications Association
—Mid-State Television, Inc.
—Whithers Broadcasting Company of Texas, el al.
—National Association of Broadcasters
—American Public Communications Council
—Radio 840, Inc.
—Teleport Communication's Group, Inc.
—Bell Atlantic
—Cellular Telecommunications Industry Association
—Comsat General Corp.
—NYNEX companies
—Association for Local TeleCommunications Services
—Telecommunications Resellers Association
—Broadcast Media Associates
—National Exchange Carriers Association, Inc.
—Cablevision Lightpath, Inc.
—Beaverkettle Company
—Comsat Video Enterprises
—Stellar Communications
—Bloomington Broadcasting
—Washington Broadcasting Company
—American Radio Relay League
—U.S. West Communications
—AT&T
—WPKR Radio
—GE American Communications
—Avis Rent A Car
—Airtouch Paging
—Thomas Clements
—KBZQ–FM
—C&S Radio-South Fork L.P.
—National Cable Television Assocation

Reply pleadings were filed by:
—WNAL–TV
—Southwestern Bell Corporation
—Vanguard Cellular Systems, Inc.
—Telecommunications Resellers Association
—National Cable Television Association
—Bell Atlantic
—MCI Telecommunications Corporation
—Personal Communications
—*Columbia Communications
—Sprint Corporation
—*National Wireless Resellers
—*Directv
—LDDS Communications, Inc.
—Time Warner Corporation
—GE American Communications
—Arch Communications Group
—Airtouch Paging
—Alltel Mobile Corporation
—National Association of Broadcasters
—Pacific Bell and Nevada Bell
—Paging Newtwork, Inc.
—AT&T
—Small Cable Business Association
—Ameritech
—NFS Communications Company
—*Comsat
—GTE
—Metrocall, Inc.
—KUSK, Inc.
—Pabamasat Corporation
—Columbia Communications
—American Public Communications Council

*Parties also filed comments.

Rule Changes

47 CFR Part 1 is amended as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for Part 1 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

2. Section 1.1152 is revised to read as follows:

§ 1.1152 Schedule of annual regulatory fees and filing locations for wireless radio services.

Exclusive use services (per license)	Fee amount	Address
1. Land Mobile (Above 470 MHz, Base Station & SMRS) (47 CFR, Part 90):		
(a) 800 MHz: New, Renewal, Reinstatement (FCC 574).	$600	FCC, 800 MHz, P.O. Box 358235, Pittsburgh, PA, 15251–5235.
(b) 900 MHz New, Renewal, Reinstatement (FCC 574).	6.00	FCC, 900 MHz, P.O. Box 358240, Pittsburgh, PA, 15251–5240.
(c) 470–512, 800, 900, 220 MHz, 220 MHz Nationwide: Renewal (FCC 574R, FCC 405A).	6.00	FCC, 470–512, P.O. Box 358245, Pittsburgh, PA, 15251–5245.
(d) Correspondence: Blanket Renewal (470–512, 800, 900, 220 MHz) (Remittance Advice, Correspondence).	6.00	FCC, Corres., P.O. Box 358305, Pittsburgh, PA, 15251–5305.
(e) 220 MHz: New, Renewal, Reinstatement (FCC 574).	6.00	FCC, 220 MHz, P.O. Box 358360, Pittsburgh, PA, 15251–5360.
(f) 470–512 MHz: New, Renewal, Reinstatement (FCC 574).	6.00	FCC, 470–512, P.O. Box 358810, Pittsburgh, PA, 15251–5810.
(g) MHz Nationwide: New, Renewal, Reinstatement.	6.00	FCC, Nationwide, P.O. Box 358820, Pittsburgh, PA, 15251–5820.
2. Microwave (47 CFR Pt. 94):		
(a) Microwave: New, Renewal, Reinstatement (FCC 402).	6.00	FCC, FCC, Microwave, P.O. Box 358250, Pittsburgh, PA 15251–5250.
(b) Microwave: Renewal (FCC 402R).	6.00	FCC, Microwave, P.O. Box 358255, Pittsburgh, PA 15251–5255.
(c) Correspondence: Blank Renewal (Microwave) (Remittance Advice, Correspondence).	6.00	FCC, Corres., P.O. Box 358305, Pittsburgh, PA, 15251–5305.
3. Interactive Video Data Service:		
(a) IVDS: Renewal (FCC 574R, FCC 405A).	6.00	FCC, IVDS, P.O. Box 358245, Pittsburgh, PA 15251–5245.
(b) Correspondence: Blanket Renewal (IVDS) (Remittance Advice, Correspondence).	6.00	FCC, Corres., P.O. Box 358305, Pittsburgh, PA, 15251–5305.
(c) IVDS: New, Renewal Reinstatement (FCC 574)..	6.00	FCC, IVDS, P.O. Box 358365, Pittsburgh, PA 15251–5365.
4. Shared Use Services:		
(a) Land Transportation (LT): New, Renewal, Reinstatement (FCC 574).	3.00	FCC, Land Trans., P.O. Box 358215, Pittsburgh, PA 15251–5215.
(b) Business (Bus.): New, Renewal, Reinstatement (FCC 574).	3.00	FCC, Business, P.O. Box 358220, Pittsburgh, PA, 15251–5220.
(c) Other Industrial (OI): New, Renewal, Reinstatement (FCC 574).	3.00	FCC, Other Indus., P.O. Box 358225, Pittsburgh, PA 15251–5225.
(d) General Mobile Radio Service (GMRS): New, Renewal, Reinstatement (FCC 574).	3.00	FCC, GMRS, P.O. Box 358230, Pittsburgh, PA, 15251–5230.

Exclusive use services (per license)	Fee amount	Address
(e) Business, Other Industrial, Land Transportation, GMRS: Renewal (FCC 574R, FCC 405A).	3.00	FCC, Bus., OI, LT, GMRS, P.O. Box 358245, Pittsburgh, PA, 15251–5245.
(f) Ground: New, Renewal, Reinstatement (FCC 406).	3.00	FCC, Ground, P.O. Box 358260, Pittsburgh, PA, 15251–5260.
(g) Coast: New, Renewal, Reinstatement (FCC 503).	3.00	FCC, Coast, P.O. Box 358265, Pittsburgh, PA, 15251–5265.
(h) Ground: Renewal (FCC 452R).	3.00	FCC, Ground, P.O. Box 358270, Pittsburgh, PA, 15251–5270.
(i) Coast: Renewal (FCC 452R).	3.00	FCC, Coast, P.O. Box 358270, Pittsburgh, PA, 15251–5270.
(j) Ship: New, Renewal, Reinstatement (FCC 506).	3.00	FCC, Ship, P.O. Box 358275, Pittsburgh, PA, 15251–5275.
(k) Aircraft: New, Renewal, Reinstatement (FCC 404).	3.00	FCC, Aircraft, P.O. Box 358280, Pittsburgh, PA 15251–5280.
(l) Ship: Renewal (FCC 405B).	3.00	FCC, Ship, P.O. Box 358920, Pittsburgh, PA, 15251–5290.
(m) Aircraft: Renewal (FCC 405B).	3.00	FCC, Aircraft, P.O. Box 358290, Pittsburgh, PA, 15251–5290.
(n) Correspondence: Blanket Renewal (Bus., OI, LT, GMRS) (Remittance Advice, Correspondence).	3.00	FCC, Corres., P.O. Box 358305, Pittsburgh, PA, 15251–5305.
(o) Correspondence: Blanket Renewal (Ground) (Remittance Advice, Correspondence).	3.00	FCC, Corres., P.O. Box 358305, Pittsburgh, PA, 15251–5305.
(p) Correspondence: Blanket Renewal (Coast) (Remittance Advice, Correspondence).	3.00	FCC, Corres., P.O. Box 358305, Pittsburgh, PA, 15251–5305.
(q) Correspondence: Blanket Renewal (Aircraft) (Remittance Advice, Correspondence).	3.00	FCC, Corres. P.O. Box 35803, Pittsburgh, PA, 15251–5305.
(r) Correspondence: Blanket Renewal (Ship) (Remittance Advice, Correspondence).	3.00	FCC, Corres., P.O. Box 358305, Pittsburgh, PA , 15251–5305.
Amateur Vanity Call Signs.	3.00	FCC, Amateur Vanity, P.O. Box 358924, Pittsburgh, PA, 15251–5924.
Cellular Radio/ Public Mobile (per unit).	.15	FCC, Cellular, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
Public Mobile One-Way Paging (per unit).	.02	FCC, Paging, P.O. Box 358835, Pittsburgh, PA, 15251–5835.

3. Section 1.1153 is revised to read as follows:

§ 1.1153 Schedule of annual regulatory fees and filing locations for mass media services.

	Fee amount	Address
AM RAdio (47 CFR, Part 73):		
1. Class D Daytime.	$310	FCC, Am Branch, P.O. Box 358835, Pittsburgh, PA 15251–5835.
2. Class A Fulltime.	1,120	
3. Class B Fulltime.	620	
4. Class C Fulltime.	250	
5. Construction Permits.	250	
FM Radio (47 CFR, Part 73):		
1. Classes C, C1, C2, B.	1,120	FCC, FM Branch, P.O. Box 358835, Pittsburgh, PA 15251–5835.
2. Classes A, B1, C3.	745	
3. Construction Permits.	620	
TV (47 CFR, Part 73) VHF Commercial:		
1. Makets 1 thru 10.	22,420	FCC, TV Branch, P.O. Box 358835, Pittsburgh, PA 15251–5835.
2. Markets 11 thru 25.	19,925	
3. Markets 26 thru 50.	14,950	
4. Markets 51 thru 100.	9, 975	
5. Remaining Markets.	6,225	
6. Construction Permits.	4,975	
UHF Commercial:		
1. Markets 1 thru 10.	17,925	FCC, UHF Commercial, P.O. Box 348835, Pittsburgh, PA 15251–5835.
2. Markets 11 thru 25.	15,950	
3. Markets 26 thru 50.	11,950	
4. Markets 51 thru 100.	7,975	
5. Remaining Markets.	4,975	
6. Construction Permits.	3,975	
Satellite UHF/ VHF Commercial:		
1. All Markets.	620	FCC Satellite TV, P.O. Box 358835, Pittsburgh, PA 15251–5835.
2. Construction Permits.	225	
Low Power TV, TV/FM Translator, & TV/FM Booster (47 CFR, Part 74).	170	FCC, Low Power, P.O. Box 358835, Pittsburgh, PA 15251–5835.
Broadcast Auxiliary.	30	FCC, Auxiliary, P.O. Box 358835, Pittsburgh, PA 15251–5835.
Multipoint Distribution.	140	FCC, Multipoint P.O. Box 358835, Pittsburgh, PA 15251–5835.

4. Section 1.1154 is revised to read as follows:

§ 1.1154 Schedule of annual regulatory charges and filing locations for common carrier services.

	Fee amount	Address
Radio Facilities:		
1. Domestic Public Fixed.	$140	FCC, Dom. Pub. Fixed, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
Carriers:		
1. Inter-Exchange Carrier (per dollar contributed to TRS Fund).	.00088	FCC, Carriers, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
2. Local Exchange Carrier (per dollar contributed to TRS Fund).	.00088	
3. Competitive Access Provider (per dollar contributed to TRS Fund).	.00088	
4. Other Interexchange Carriers and Service Providers (per dollar contributed to TRS Fund).	.00088	

5. Section 1.1155 is revised to read as follows:

§ 1.1155 Schedule of regulatory fees and filing locations for cable television services.

	Fee amount	Address
1. Cable Antenna Relay Service.	$290	FCC, Cable, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
2. Cable TV System (per subscriber).	.49	

§§ 1.1167 and 1.1168 [Removed]

§§ 1.1156 through 1.1166 [Redesignated as §§ 1.1157 through 1.1167]

6. Sections 1.1167 and 1.1168 are removed, §§ 1.1156 through 1.1166 of Subpart G are redesignated as §§ 1.1157 through 1.1167 respectively and are revised, and a new § 1.1156 is added to read as follows:

§ 1.1156 Schedule of regulatory fees and filing locations for international services.

	Fee amount	Address
Radio Facilities:		
1. International (HF): Broadcast.	$250	FCC, International, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
International Public: Fixed.	200	
Space Stations (Geosynchronous Orbit).	75,000	FCC, Space Stations, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
Earth Stations:		
1. VSAT & Equivalent C–Band antennas, Mobile Satellite Earth Stations, Fixed Earth Stations-Transmit/Receive & Transmit Only (per authorization or registration).	330	FCC, Earth Station, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
Carriers:		
1. International Circuits (per active 64KB circuit or equivalent).	4.00	FCC, International, P.O. Box 358835, Pittsburgh, PA, 15251–5835.

§ 1.1157 Payment of charges for regulatory fees.

Payment of a regulatory fee, required under § § 1.1152 through 1.1156, shall be filed in the following manner:

(a) Payments of regulatory fees shall be submitted with the filing of any application for a new, renewal or reinstatement of a license or other authorization in the wireless radio services. (1) Any regulatory fee submitted with an application in the wireless radio services shall include an advance payment of the total annual regulatory fee payment due for the entire term of the license or other authorization. The amount of the regulatory fee payment due with any application in the wireless radio service shall be the multiple of the number of years in the entire term of the requested license or other authorization multiplied by the annual fee payment required in the Schedule of Regulatory Fees, effective at the time the application is filed. Except as set forth in § 1.1160, advance payments shall be final and shall not be readjusted during the term of the license or authorization, notwithstanding any subsequent increase or decrease in the annual amount of a fee required under the Schedule of Regulatory Fees.

(2) Failure to file the appropriate regulatory fee with an application in the wireless radio service will result in the return of the accompanying application, including an application, for which the Commission has assigned a specific filing deadline.

(b)(1) Payments of standard regulatory fees, applicable to mass media, common carrier, cable and international services, shall be filed in full on an annual basis at a time announced by the Commission or the Managing Director, pursuant to delegated authority, and published in the **Federal Register**.

(2) Large regulatory fees, as annually defined by the Commission, may be submitted in installment payments or in a single payment on a date certain as announced by the Commission or the Managing Director, pursuant to delegated authority, and published in the **Federal Register**.

(c) Standard regulatory fee payments, as well as any installment payment, must be filed with a FCC Form 159, FCC Remittance Advice, and a FCC Form 159C, Remittance Advice Continuation Sheet, if additional space is needed. Failure to submit a copy of FCC Form 159 with a standard regulatory fee payment, or an installment payment, will result in the return of the submission and a 25 percent penalty if the payment is resubmitted after the date the Commission establishes for the payment of standard regulatory fees and for any installment payment.

(1) Any late filed regulatory fee payment will be subject to the penalties set forth in section 1.1164.

(2) If one or more installment payments are untimely submitted or not submitted at all, the eligibility of the subject regulatee to submit installment payments may be cancelled.

§ 1.1158 Form of payment for regulatory.

Any regulatory fee payment must be submitted in the form of a check, bank draft or money order denominated in U.S. dollars and drawn on a United States financial institution and made payable to the Federal Communications Commission or by Visa or Mastercard credit cards only. The Commission discourages applicants from submitting cash payments and will not be responsible for cash sent through the mail. Personal or corporate checks dated more than six months prior to their submission to the Commission's lockbox bank and postdated checks will not be accepted and will be returned as deficient.

(a) Upon authorization from the Commission following a written request, electronic fund transfer (EFT) payment of a regulatory fee may be made as follows:

(1)(i) The payor may instruct its bank to make payment of the regulatory fee directly to the Commission's lockbox bank, or

(ii) The payor may authorize the Commission to direct its lockbox bank to withdraw funds directly from the payor's bank account.

(2) No EFT payment of a regulatory fee will be accepted unless the payor has obtained the written authorization of the Commission to submit regulatory fees electronically. Procedures for electronic payment of regulatory fees will be announced by Public Notice. It is the responsibility of the payor to insure that any electronic payment is made in the manner required by the Commission. Failure to comply with the Commission's procedures for electronic fee payment will result in the return of the fee payment, and a penalty fee of 25 percent if the subsequent refiling of the fee payment is late. Failure to comply will also subject the payor to the penalties set forth in § 1.1164.

(b) Multiple payment instruments for a single regulatory fee are not permitted, except that the Commission will accept multiple money orders in payment of any fee where the fee exceeds the maximum amount for a money order established by the issuing entity and the use of multiple money orders is the only practicable means available for payment.

(c) Payment of multiple standard regulatory fees (including an installment payment) due on the same date, may be made with a single payment instrument and cover mass media, common carrier, international, and cable service fee payments. Each regulatee is solely responsible for accurately accounting for and listing each license or authorization and the number of subscribers, access lines, or other relevant units on the accompanying FCC Form 159 and, if needed, FCC Form 159C and for making full payment for every regulatory fee listed on the accompanying form. Any omission or payment deficiency of a regulatory fee will result in a 25 percent penalty of the amount due and unpaid.

(d) Any regulatory fee payment (including a regulatory fee payment submitted with an application in the wireless radio service) made by credit card or money order must be submitted with a completed FCC Form 159. Failure to accurately enter the credit card number and date of expiration and the payor's signature in the appropriate blocks on FCC Form 159 will result in rejection of the credit card payment.

§ 1.1159 Filing locations and receipts for regulatory fees.

(a) Regulatory fee payments must be directed to the location and address set forth in § § 1.1152 through 1.1156 for the specific category of fee involved. Any regulatory fee required to be submitted with an application must be filed as a part of the application package accompanying the application. The Commission will not take responsibility for matching fees, forms and applications submitted at different times or locations.

(b) Petitions for reconsideration or applications for review of fee decisions submitted with a standard regulatory fee payment pursuant to § § 1.1152 through 1.1156 of the rules are to be filed with the Commission's lockbox bank in the manner set forth in §§ 1.1152 through 1.1156 for payment of the fee subject to the petition for reconsideration or the application for review. Petitions for reconsideration and applications for review that are submitted with no accompanying payment should be filed with the Secretary, Federal Communications Commission, Attention: Managing Director, Washington, D.C. 20554.

(c) Any request for exemption from a regulatory fee shall be filed with the Secretary, Federal Communications Commission, Attention: Managing Director, Washington, D.C. 20554, except that requests for exemption accompanied by a tentative fee payment shall be filed at the lockbox set forth for the appropriate service in § § 1.1152 through 1.1156.

(d) The Commission will furnish a receipt for a regulatory fee payment only upon request. In order to obtain a receipt for a regulatory fee payment, the package must include an extra copy of the Form FCC 159 or, if a Form 159 is not required with the payment, a copy of the first page of the application or other filing submitted with the regulatory fee payment, submitted expressly for the purpose of serving as a receipt for the regulatory fee payment and application fee payment, if required. The document should be clearly marked "copy" and should be the top document in the package. The copy will be date stamped immediately and provided to the bearer of the submission, if hand delivered. For submissions by mail, the receipt copy will be provided through return mail if the filer has attached to the receipt copy a stamped self-addressed envelope of sufficient size to contain the receipt document.

§ 1.1160 Refunds of regulatory fees.

(a) Regulatory fees will be refunded, upon request, only in the following instances:

(1) When no regualtory fee is required or an excessive fee has been paid. In the case of an overpayment, the refund amount will be based on the applicants', permittees', or licensees' entire submission. All refunds will be issued to the payor named in the appropriate block of the FCC Form 159.

(2) In the case of advance payment of regulatory fees, subject to § 1.1152, a refund will be issued based on unexpired full years:

(i) When the Commission adopts new rules that nullify a license or other authorization, or a new law or treaty renders a license or other authorization useless;

(ii) When a licensee in the wireless radio service surrenders the license or other authorization subject to a fee payment to the Commission; or

(iii) When the Commission declines to grant an application submitted with a regulatory fee payment.

(3) When a waiver is granted in accordance with § 1.1166.

(b) No pro-rata refund of an annual fee will be issued.

(c) No refunds will be issued based on unexpired partial years.

(d) No refunds will be processed without a written request from the applicant, permittee, licensee or agent.

§ 1.1161 Conditional license grants and delegated authorizations.

(a) Grant of any application or an instrument of authorization or other filing, for which a regulatory fee is required to accompany the application or filing, will be conditioned upon final payment of the regulatory fee. Final payment shall mean receipt by the U.S. Treasury of funds cleared by the financial institution on which the check, bank draft, money order, credit card, wire or electronic payment is drawn.

(1) If, prior to a grant of an instrument of authorization, the Commission is notified that final payment of the regulatory fee has not been made, the application or filing:

(i) Will be dismissed and returned;

(ii) Shall lose its place in the processing line; and

(iii) Will not be treated as timely filed if resubmitted after the relevant filing deadline.

(2) If, subsequent to a grant of an instrument of authorization or other filing, the Commission is notified that final payment has not been made, the Commission will:

(i) Automatically rescind that instrument of authorization for failure to meet the condition imposed by this subsection;

(ii) Notify the grantee of this action; and

(iii) Treat as late filed any application resubmitted after the original deadline for filing the application.

(3) Upon receipt of a notification of rescission of the authorization, the grantee will immediately cease operations initiated pursuant to the authorization.

(b) In those instances where the Commission has granted a request for deferred payment of a regulatory fee, further processing of the application or filing or the grant of authority shall be conditioned upon final payment of the regulatory fee and any required penalties for late payment prescribed by the deferral decision. Failure to comply with the terms of the deferral decision shall result in the automatic dismissal of the submission or rescission of the Commission authorization. Further, the Commission shall:

(1) Notify the grantee that the authorization has been rescinded. Upon such notification, the grantee will immediately cease operations initiated pursuant to the authorization; and

(2) Treat as late filed any application resubmitted after the original deadline for filing the application.

(c) Where the procedures described in paragraphs (a) and (b) of this section would not provide a meaningful incentive to pay a regulatory fee that is due or would not be a meaningful sanction for failure to pay such a fee, the Commission may, in its discretion, whether the regulatory fee is required to be paid with an application for an instrument of authorization or otherwise, withhold processing and/or grant of any application or filing made by a person or organization who has failed to make full payment of any regulatory fee due.

(1) Before taking such action, the staff will make a written request for the fee, together with any penalties that may be rendered under this subpart. Such request shall inform the regulatee that failure to pay may result in the Commission withholding action on any application or request filed by the applicant. The staff shall also inform the regulatee of the procedures for seeking Commission review of the staff's fee determination.

(2) If, after final determination that the fee is due, payment is not made in a timely manner, the staff may terminate processing and/or withhold any grant or petition requested by the person or organization subject to the fee payment requirement, until the matter is resolved.

§ 1.1162 General exemptions from regulatory fees.

No regulatory fee established in §§ 1.1152 through 1.1156, unless otherwise qualified herein, shall be required for: (a) Applicants, permittees or licensees in the Amateur Radio Service, *except that* any person requesting a vanity call-sign shall be subject to the payment of a regulatory fee, as prescribed in § 1.1152.

(b) Applicants, permittees, or licensees who qualify as government entities. For purposes of this exemption, a government entity is defined as any state, possession, city, county, town, village, municipal corporation, or similar political organization or subpart thereof controlled by publicly elected or duly appointed public officials exercising sovereign direction and control over their respective communities or programs.

(c) Applicants, permittees or licensees who qualify as nonprofit entities. For purposes of this exemption, a nonprofit entity is defined as an organization possessing nonprofit, tax exempt status under section 501 of the Internal Revenue Code, 26 U.S.C. 501.

(d) Applicants, permittees or licensees in the Special Emergency Radio and Public Safety Radio services.

(e) Applicants, permittees or licensees of noncommercial educational broadcast stations in the FM or TV services, as well as AM applicants, permittees or licensees operating in accordance with § 73.503 of this chapter.

(f) Applicants, permittees, or licensees qualifying under paragraph (e) of this section requesting Commission authorization in any other mass media radio service (except the international broadcast (HF) service), wireless radio service, common carrier radio service, or international radio service requiring payment of a regulatory fee, if the service is used in conjunction with their noncommercial educational broadcast station or a noncommercial educational basis.

(g) Other applicants, permittees or licensees providing, or proposing to provide, a noncommercial educational or instructional service, but not qualifying under paragraph (e) of this section, may be exempt from regulatory fees, or be entitled to a refund, in the following circumstances:

(1) The applicant, permittee or licensee is an organization that, like the Public Broadcasting Service or National Public Radio, receives funding directly or indirectly through the Public Broadcasting Fund, 47 U.S.C. 396(k), distributed by the Corporation for Public Broadcasting, where the authorization requested will be used in conjunction with the organization on a noncommercial educational basis;

(2) An applicant, permittee or licensee of a translator or low power television station operating or proposing to operate a noncommercial educational service who, after grant, provides proof that it has received funding for the construction of the station through the National Telecommunications and Information Administration (NTIA) or other showings as required by the Commission; or

(3) An applicant, permittee, or licensee provided a fee refund under § 1.1160 and operating as a noncommercial education station, is exempt from fees for broadcast auxiliary stations (Subparts D, E, and F of Part 74 of this chapter) or stations in the wireless radio, common carrier, or international services where such authorization is to be used in conjunction with the noncommercial educational translator or low power station.

(h) An applicant, permittee or licensee that is the licensee of an instructional television fixed station (Sec. 74.901 through 74.996 of this chapter) is exempt from regulatory fees where the authorization requested will be used by the applicant in conjunction with the provision of the instructional service.

(i) Applications filed in the wireless radio service for the sole purpose of modifying an existing authorization (or a pending application for authorization). However, if the applicant also requests a renewal or reinstatement of its license or other authorization for which the submission of a regulatory fee is required, the appropriate regulatory fee for such additional request must accompany the application.

§ 1.1163 Adjustments to regulatory fees.

(a) For Fiscal Year 1995, the amounts assessed for regulatory fees are set forth in §§ 1.1152 through 1.1156.

(b) For Fiscal year 1996 and thereafter, the Schedule of Regulatory Fees, contained in §§ 1.1152 through 1.1156, may be adjusted annually by the Commission pursuant to section 9 of the Communications Act. 47 U.S.C. 159. Adjustments to the fees established for any category of regulatory fee payment shall include projected cost increases or decreases and an estimate of the volume of licensees or units upon which the regulatory fee is calculated.

(c) The fees assessed shall:

(1) Be derived by determining the full-time equivalent number of employees performing enforcement activities, policy and rulemaking activities, user information services, and international

activities within the Wireless Telecommunications Bureau, Mass Media Bureau, Common Carrier Bureau, Cable Services Bureau, International Bureau and other offices of the Commission, adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities, including such factors as service coverage area, shared use versus exclusive use, and other factors that the Commission determines are necessary in the public interest;

(2) Be established at amounts that will result in collection, during each fiscal year, of an amount that can reasonably be expected to equal the amount appropriated for such fiscal year for the performance of the activities described in paragraph (c)(1) of this section.

(d) The Commission shall by rule amend the Schedule of Regulatory Fees by proportionate increases or decreases that reflect, in accordance with paragraph (c)(2) of this section, changes in the amount appropriated for the performance of the activities described in paragraph (c)(1) of this section, for such fiscal year. Such proportionate increases or decreases shall be adjusted to reflect unexpected increases or decreases in the number of licensees or units subject to payment of such fees and result in collection of an aggregate amount of fees that will approximately equal the amount appropriated for the subject regulatory activities.

(e) The Commission shall, by rule, amend the Schedule of Regulatory Fees if the Commission determines that the Schedule requires amendment to comply with the requirements of paragraph (c)(1) of this section. In making such amendments, the Commission shall add, delete or reclassify services in the Schedule to reflect additional deletions or changes in the nature of its services as a consequence of Commission rulemaking proceedings or changes in law.

(f) In making adjustments to regulatory fees, the Commission will round such fees to the nearest $5.00 in the case of fees under $1,000.00, or to the nearest $25.00 in the case of fees of $1,000.00 or more.

§ 1.1164 Penalties for late or insufficient regulatory fee payments.

Any late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee of installment payment which was not paid in a timely manner. A timely fee payment or installment payment is one received at the Commission's lockbox bank by the due date specified by the Commission or by the Managing Director. A payment will also be considered late filed if the payment instrument (check, money order, bank draft or credit card) is uncollectible.

(a) The Commission may, in its discretion, following one or more late filed installment payments, require a regulatee to pay the entire balance of its regulatory fee by a date certain, in addition to assessing a 25 percent penalty.

(b) In cases were a fee payment fails due to error by the payor's bank, as evidenced by an affidavit of an officer of the bank, the date of the original submission will be considered the date of filing.

(c) If a regulatory fee is paid in a timely manner, the regulatee will be notified of its deficiency. This notice will automatically assess a 25 percent penalty, subject the delinquent payor's pending applications to dismissal, and may require a delinquent payor to show cause why its existing instruments of authorization should not be subject to rescission.

(d)(1) Where a regulatee's new, renewal or reinstatement application is required to be filed with a regulatory fee (as is the case with wireless radio services), the application will be dismissed if the regulatory fee is not included with the application package. In the case of a renewal or reinstatement application, the application may not be refiled unless the appropriate regulatory fee plus the 25 percent penalty charge accompanies the refiled application.

(2) If the application that must be accompanied by a regulatory fee is a mutually exclusive application with a filing deadline, or any other application that must be filed by a date certain, the application will be dismissed if not accompanied by the proper regulatory fee and will be treated as late filed if resubmitted after the original date for filing application.

(e) Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment. The application may be resubmitted only if accompanied by the required regulatory fee and by any assessed penalty payment.

(f) In instances where the Commission may revoke an existing instrument of authorization for failure to file a regulatory fee, the Commission will provide prior notice to the regulatee of such action and shall allow the licensee no less than 60 days to either pay the fee or show cause why the payment assessed is inapplicable or should otherwise be waived or deferred.

(1) An adjudicatory hearing will not be designated unless the response by the regulatee to the Order to Show Cause presents a substantial and material question of fact.

(2) Disposition of the proceeding shall be based upon written evidence only and the burden of proceeding with the introduction of evidence and the burden of proof shall be on the respondent regulatee.

(3) Unless the regulatee substantially prevails in the hearing, the Commission may assess costs for the conduct of the proceeding against the respondent regulatee. *See* 47 U.S.C. 402(b)(5).

(4) Any regulatee failing to submit a regulatory fee, following notice to the regulatee of failure to submit the required fee, is subject to collection of the fee, including interest thereon, any associated penalties, and the full cost of collection to the Federal government pursuant to section 3720A of the Internal Revenue Code, 31 U.S.C. 3717, and to the provisions of the Debt Collection Act, 31 U.S.C. 3717. *See* 47 CFR 1.1901 through 1.1952. The debt collection processes described above may proceed concurrently with any other sanction in this paragraph.

1.1165 Payment by cashier's check for regulatory fees.

Payment by cashier's check may be required when a person or organization makes payment, on one or more occasions, with a payment instrument on which the Commission does not receive final payment and such error is not excused by bank error.

§ 1.1166 Waivers, reductions and deferrals of regulatory fees.

The fees established by sections 1.1152 through 1.1156 may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest. Requests for waivers, reductions or deferrals of regulatory fees for entire categories of payors will not be considered.

(a) Requests for waivers, reductions or deferrals will be acted upon by the Managing Director with the concurrence of the General Counsel. If the request for waiver, reduction or deferral is accompanied by a fee payment, the request must be submitted to the Commission's lockbox bank at the address for the appropriate service set forth in sections 1.1152 through 1.1156 of this subpart. If no fee payment is submitted and the matter is within the scope of the fee rules, the request should be filed with the Commission's Secretary and clearly marked to the attention of the Managing Director.

(b) Defferals of fees will be granted for a period of six months following the date that the fee is initially due.

(c) Petitions for waiver of a regulatory fee must be accompanied by the required fee and FCC Form 159. Submitted fees will be returned if a waiver is granted. Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.

(d) Petitions for reduction of a fee must be accompanied by the full fee payment less the amount of the requested reduction and FCC Form 159. Petitions for reduction accompanied by a fee payment must be addressed to the Federal Communications Commission, Attention: Petitions, Post Office Box 358835, Pittsburgh, Pennsylvania, 15251–5835.

§ 1.1167 Error claims related to regulatory fees.

(a) Challenges to determinations of an insufficient regulatory fee payment should be made in writing. challenges submitted with a fee payment must be submitted to the same location as the original fee payment, marked "Attention: Fee Supervisor". Challenges not accompanied by a fee payment should be filed with the Commission's Secretary and clearly marked to the attention of the Managing Director.

(b) The filing of a petition for reconsideration or an application for review of a fee determination will not relieve licensees from the requirement that full and proper payment of the underlying fee payment be submitted, as required by the Commission's action, or delegated action, on a request for waiver, reduction or deferment. Petitions for reconsideration and applications for review submitted with a fee payment must be submitted to the same location as the original fee payment. Petitions for reconsideration and applications for review not accompanied by a fee payment should be filed with the Commission's Secretary and clearly marked to the attention of the Managing Director.

(1) Failure to submit the fee by the date required will result in the assessment of a 25 percent penalty.

(2) If the fee payment should fail while the Commission is considering the matter, the petition for reconsideration or application for review will be dismissed.

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federal register

Thursday
June 29, 1995

Part V

Department of Transportation

Coast Guard

33 CFR Part 151, et al.
Noxious Liquid Substances Lists, et al.; Final Rules

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 151

[CGD 95–901]

RIN 2115–AF08

Noxious Liquid Substances Lists

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its Noxious Liquid Substances (NLSs) regulations to include substances recently authorized for carriage by the Coast Guard or added to the International Maritime Organization's (IMO) Chemical Codes and by making minor technical and editorial changes and corrections. This action also updates the current lists of oil-like and non-oil-like NLSs allowed for carriage.

EFFECTIVE DATE: This rule is effective on June 29, 1995.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 95–901), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis G. Payne, Hazardous Materials Branch, (202) 267–1577.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Mr. Curtis G. Payne, Project Manager, and Ms. Helen G. Boutrous, Project Counsel, Office of Chief Counsel.

Related Rulemaking

Elsewhere in this edition of the **Federal Register**, the Coast Guard is publishing a final rule concerning bulk hazardous materials tables in 46 CFR parts 30, 150, 151, and 153 (CGD 95–900) and a final rule (CGD 94–902) concerning cargo entries the Coast Guard has reason to believe are obsolete.

Regulatory Information

Because the United States is a party to the International Convention for the Prevention of Pollution from Ships, 1973 as modified by the protocol of 1978 relating thereto (MARPOL 73/78), these amendments are required to ensure that the Coast Guard regulations are consistent with revisions to IMO's chemical codes. Accordingly, the Coast Guard finds that good cause exists under 5 U.S.C. 553(b) and 553(d)(3) to publish this rule without opportunity for comment, effective upon publication in the **Federal Register**.

Background and Purpose

The Coast Guard is revising its lists of Category D NLSs by including in these lists new entries added to table 30.25–1 of 46 CFR part 30 and tables 1 and 2 of 46 CFR part 153 by a separate rulemaking appearing elsewhere in this edition of the **Federal Register** (CGD 95–900). These are chemicals recently authorized or added to the IMO's Chemical Codes ("International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk" (IBC Code), and "Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk" (BCH Code)). This rulemaking merely updates Coast Guard chemical lists in 33 CFR part 151 and makes a non-substantive editorial change.

Discussion of Amendments

The new entries to be added to § 151.47 are—

(a) 2-Ethyl-2-(hydroxymethyl)propane-1,3-diol, C8–C10 ester;

(b) Glycerol monooleate;

(c) Lecithin (*soyabean*);

(d) Polybutenyl succinimide; and

(e) Zinc alkenyl carboxamide.

This action also updates the current lists of oil-like and non-oil-like NLSs in § 151.49(a) by deleting the entry "Dipentene", and adding the entry "Heptane (all isomers)" to follow the entry "Ethylcyclohexane". The non-substantive editorial change would substitute Roman type for bold faced type where it appears in the list in § 151.47.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). This rulemaking would merely update NLS lists by adding cargoes to the Coast Guard lists and by making a non-substantive editorial change. The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant to their fields and (2) governmental jurisdictions with populations of less than 50,000. This rule does not require a general notice of proposed rulemaking and, therefore is exempt from the requirements of the Act. Although this rule is exempt, the Coast Guard has reviewed it for potential impact on small entities.

This rulemaking would merely update NLS lists by adding cargoes recently authorized by the Coast Guard or added to the IMO Chemical Codes and by making a non-substantive editorial change. Because it expects the impact of this final rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Because this rulemaking would merely update current lists in Coast Guard regulations, there are no Federalism implications.

Environment

The Coast Guard has considered the environmental impact of this rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this final rule is categorically excluded from further environmental documentation. This rulemaking is an update of current lists to add chemicals already approved under Coast Guard regulation or international law and clearly would have no impact on the environment. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 151

Administrative practice and procedure, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 151 as follows:

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE AND MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER

1. The authority citation for part 151, subpart A, continues to read as follows:

Authority: 33 U.S.C. 1321(j)(1)(C) and 1903(b); E.O. 11735, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

§ 151.47 [Amended]

2. In § 151.47, remove all boldfaced type wherever it may appear and add, in its place, Roman type.

3. In § 151.47, add the following new entries in chemically proper alphabetized order:

* * * * *

2-Ethyl-2-(hydroxymethyl)propane-1,3-diol, C8-C10 ester
Glycerol monooleate
Lecithin (*soyabean*)
Polybutenyl succinimide
Zinc alkenyl carboxamide

* * * * *

§ 151.49 [Amended]

4. In § 151.49(a), remove the entry "Dipentene", and add the entry "Heptane (all isomers)" to follow the entry "Ethylcyclohexane".

Dated: June 15, 1995.

J. C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

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46 CFR Parts 30, 150, 151, and 153

[CGD 94–902]

RIN 2115–AF06

Obsolete Bulk Hazardous Materials

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its regulations on carriage of bulk hazardous materials by deleting commodities from its regulations that are no longer viable as bulk liquid cargoes, and cancelling the classifications of obsolete commodities not included in those regulations. This action will help to ensure that Coast Guard requirements are current and that the hazardous materials tables and lists are free of entries that unnecessarily complicate the Coast Guard's regulations.

EFFECTIVE DATE: This rule is effective on August 28, 1995.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 95–900), U.S. Coast Guard Headquarters, 2100 Second Street, NW., room 3406, Washington, DC 20593–0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis G. Payne, Hazardous Materials Branch, (202) 267–1577.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Mr. Curtis G. Payne, Project Manager, and Ms. Helen G. Boutrous, Project Counsel, Office of Chief Counsel.

Regulatory History

On August 31, 1994, the Coast Guard published an advanced notice of proposed rulemaking (ANPRM) entitled Obsolete Bulk Hazardous Materials in the **Federal Register** (59 FR 45150). The Coast Guard received four letters commenting on the proposal. A public hearing was not requested and one was not held.

Related Rulemakings

Elsewhere in this edition of the **Federal Register**, the Coast Guard is publishing amendments to its noxious liquid substances list in 33 CFR 151.47 (CGD 95–901) and its bulk hazardous materials lists and tables in 46 CFR parts 30, 150, 151, and 153 (CGD 95–900).

Regulatory Information

This rule removes obsolete commodities from Coast Guard regulations that are no longer viable as bulk liquid cargoes, and cancels the classifications of obsolete commodities not included in those regulations. This action will help to ensure that Coast Guard requirements are current and that the hazardous materials tables and lists are free of entries that unnecessarily complicate the Coast Guard's regulations. Because these commodities are no longer carried in bulk, this action will have no impact on the regulated industry. This action merely serves to remove needless entries from the Coast Guard's lists and tables. Further, the public was provided an opportunity to comment on this action in the ANPRM published on August 31, 1994. In the ANPRM, the Coast Guard proposed commodities for deletion, and asked whether anyone had information on these commodities, or any other commodities that might be appropriate for deletion as well. Four comments were received and are addressed in this rulemaking. Accordingly, the Coast Guard finds that good cause exists under 5 U.S.C. 553(b) to publish this rule without additional opportunity for comment.

Background and Purpose

The Coast Guard has identified obsolete cargo entries in its various tables and lists, as well as obsolete cargo classifications for entries never entered in those tables and lists. Upon review of the comments received in response to the ANPRM, and further review of its own records, the Coast Guard is deleting these obsolete entries and classifications as appropriate. By deleting obsolete entries in its tables and lists, and cancelling the classification of obsolete commodities, the Coast Guard will reduce an internal administrative burden on its regulatory record keeping and ensure that its requirements reflect current needs. In the ANPRM, the Coast Guard provided a list of commodities thought to be obsolete. That list has been further reviewed by the Coast Guard and four letters commenting on the list were received, as discussed below.

Discussion of Comments and Changes

Coast Guard Review

Further review by the Coast Guard revealed that two of the entries included in the list of obsolete commodities in the ANPRM were identified incorrectly. They are:

a. "Nitrilotriacetic acid, sodium salt solution" which should have read "Nitrilotriacetic acid, trisodium salt solution"; and

b. "Sodium sulfide solution" which should have read "Sodium sulfide solution (15% or less)".

These commodities are removed by this final rule.

Comments Received

a. Two comments noted that the commodity ethylidene norbornene is produced in large quantity. Neither comment was able to verify whether this commodity is moved in bulk on water. Having obtained information that the

cargo cannot be considered obsolete, the Coast Guard is not removing ethylidene norbornene from its lists and tables.

b. One comment concurred with the proposed deletion of the commodity 2-mercaptobenzothiazole from Coast Guard lists and tables. However, upon further Coast Guard review, it was determined that the commodity should remain. The cargo 2-mercaptobenzothiazole is almost never moved in bulk by itself. Instead, it is often included as a component of mixtures that are moved in bulk. The inclusion of this cargo in Coast Guard regulations as having been classified for carriage in bulk, will eliminate the need to reevaluate its safety considerations when included in new mixtures being shipped. Therefore, the Coast Guard is not deleting the commodity 2-mercaptobenzothiazole from the Coast Guard tables and lists as suggested in the ANPRM.

c. One of the comments concurred with the proposed deletion of the commodity ethyl chlorothioformate. The comment noted that this commodity is moved in Intermodal (IM) portable tanks and it is not expected to be transported in bulk by tank vessel.

d. One comment concurred with the proposed deletion of all commodities on the list, noting that none of the listed commodities are carried by that company's tank vessels.

e. One comment noted that the commodity polydimethylsiloxane is still an active bulk liquid cargo and requested that it be retained in Coast Guard lists and tables. Having obtained information that the cargo cannot be considered obsolete, the Coast Guard is retaining polydimethylisiloxane in its lists and tables.

f. One comment identified various sections of the bulk hazardous materials regulations of title 46 of the Code of Federal Regulations and recommended that they be deleted. This rulemaking addresses only removing obsolete commodities from the Coast Guard tables and lists in title 46. However, the Coast Guard appreciates the information submitted by the comment and is currently reviewing the sections specified by the comment to determine whether they should be addressed in a future rulemaking project.

The commodities being deleted are listed below. The various commodities are divided into several groups, identified by a number in the right hand column, depending upon the list or table in which they appear in the Code of Federal Regulations, or based on Coast Guard information that the commodity is, or may be obsolete. The commodity status groups are identified following the commodity list.

LIST OF COMMODITIES PROPOSED FOR DELETION

Commodity list	Commodity status group
Acetyl tributyl citrate	2
Alkenylsuccinic acid	2
Alkyl succinate formaldehyde hydroxyamino condensate (3.2% or less) (LOA).	2
Aminoethyl piperazine H.H.	6
Ammonium phosphate solution	5
Amyl tallate	2
Aqueous waste solution (*from the manufacture of a trade name pesticide*).	6
ARCOHIB C–112	6
BASAGRAN (*bentazon-sodium salt solution*).	6
Benzyl chloride	4
Bicyclic terpenel polyamine amide salt (LOA).	2
n-Butylamine (*under the entry* Butylamine (all isomers)).	1,3,4
Butyl by-products (*containing butyl formate, ethyl butyrate, ethyl propionate and methyl butyrate*).	6
(crude) Butyraldehyde	1,3,4
C–6 Aldehydes (mixed) (*distilled croton oil*).	6
Calcium alkylphenate (LOA)	2
Calcium amino nonyl phenolate (LOA).	2
Calcium carboxylate (LOA)	2
Carbonate and Carbolate waste water.	6
Carbon black base (*printing ink base material*).	2
Chlorohydrins (*crude*)	3,4
Cleaning spirit (*unleaded*)	2
Cresylic acid tar	1
Crude hydrocarbon feedstocks (containing ethyl ether).	6
Cycloaliphatic resins	2
Cyclohexane oxidation product acid water, 50% aqueous solution (*trade names:* "COP Acid water", "Acid Water EP306").	6
Cyclopentadiene, Styrene, Benzene mixture.	1
iso-Decyl acrylate (*under the entry* Decyl acrylate (all isomers)).	1,3,4
Depentanized aromatic stream	6
Diammonium salt of Zinc ethylenediamine tetraacetic acid solution.	4
2,4-Dichlorophenoxyacetic acid, dimethylamine salt solution (70% or less).	1
Didecyl dimethyl ammonium chloride, Ethanol mixture solution.	6
Dimer acid	7
Dinitriles	6
Diolefin stream	6
Di(octylphenyl)amine	2
1, 4-Dioxane, Butylene oxide, Nitromethane mixture.	6
DMD–2 ("Dupont Metal Deactivator No. 2").	6
Dodecyldimethylamine, Tetradecyldimethylamine mixture.	1,3,4
Ethyl chlorothioformate	7
Ethylene dichloride, 1, 1, 2-Trichloroethane mixture.	1
Fatty acid amides (LOA)	2
Ferric hydroxyethylethylene diamine triacetic acid, trisodium salt solution (*other name:* Sodium salt of Ferric hydroxyethylethylenediamine triacetic acid solution).	1,5
Glycols, Resins, & Solvents mixture.	2
Heartcut distillate raffinate	6
Heavy aromatic concentrate	6
High molecular weight Lithium amine—amide mixture (*other name:* Polyamine amide mixture).	6
Hydrochloric acid, spent	1,3
Isopentaldehyde	3
Jet fuel: JP–1	2
Jet fuel: JP–3	2
Meleic anhydride copolymer (LOA).	2
Manganese sulfate solution	6
Metallo organic compound containing Barium, Calcium and Sulfur.	6
Methylamine	1,3
4, 4'-Methylenedianiline (43% or less), Polymethylene polyphenylamine, o-Dichlorobenzene mixture.	6
Methyl formal (*dimethyl formal*)	2
alpha-Methyl styrene, Cumene	6
Methyl styrene, Indenes, Alkyl benzenes.	6
Nitrilotriacetic acid, trisodium salt solution (*other name:* Trisodium nitrilotriacetate ("NTA–150 Chelant")).	6
Octyl epoxytallate	2
Oil, edible: Babassu	2
Oil, edible: Grapeseed	2
Oil, edible: Mustard seed	2
Oil, misc: Adsoption	2
Oil, misc: Aviation F2300	2
Oil, misc: Croton	2
Oil, misc: Range	2
Oil, misc: Resin	2
Oil, misc: Resinous petroleum (*possible other name:* Resinous petroleum residue).	2
Oil, misc: Spray	2
Oil, misc: Tanner's	2
Oil, misc: White (mineral)	2
Oil, misc: Wood	2
Paraldehyde	4
Pentene/Miscellaneous hydrocarbon mixture (*hydrogenated pyrolysis oils*).	6
3-Pentenenitrile	6
3-Pentenenitrile (crude)	6
PETROX 214	6
Phosphorus, white (*elemental*)	1,3

LIST OF COMMODITIES PROPOSED FOR DELETION—Continued

Commodity list	Commodity status group
Polyalkenyl succinic anhydride amine (LOA).	2
Polyamine, amide mixture (LOA) (*other name:* High molecular weight Lithium amine—amide mixture).	2
Polyester of alkenyl succinic anhydride caboxylic acid, and Pentaerythritol.	6
Polystyrene dialkyl maleate (LOA)	2
Propanolamine	1,3,4
Propanol, Propyl acetate mixture	6
Pro-Silage (*mixture of ammonium hydroxide, ammonium phosphate and molasses in water*).	6
Reaction product of Styrene and Dialkyldithiophosphoric acid.	6
Reformer prefractionator bottoms	6
Resinous petroleum residue (*possible other name:* Oil, misc: Resinous petroleum).	6
Salicylaldehyde	1
Sodium salt of Ferric hydroxyethylethylenediamine triacetic acid solution (*other name:* Ferric hydroxyethylethylene diamine triacetic acid, trisodium salt solution.	1,5
Sodium sulfide solution (15% or less).	1,4
Sodium sulfite, bisulfite, formate and thiosulfite solution (25% or less) (CO–PRODUCT (B)).	6
Sodium sulfonate	2
Styrene tar	1
T–77 Bottoms	6
T–150 Bottoms	6
TRET–O–LITE PR–980	6
TRET–O–LITE L–1576	6
Triisopropanolamine	1
Trisodium nitrilotriacetate ("NTA–150 Chelant") (*other name:* Nitrilotriacetic acid, trisodium salt solution).	6
Vinyl acetate-fumarate copolymer (LOA).	2
Waxes: Petroleum	2
Wool grease	2
Zinc dialkyldithiophosphate (LOA) (*not to be confused with* Zinc alkyl dithiophosphate (C3–C14) *or* Zinc alkaryl dithiophosphate (C7–C16)).	

Identification of Commodity Status Groups

1. Cargoes identified by the Cargo Classification Working Group of the Chemical Transportation Advisory Committee (CTAC) as possibly inactive. These entries may also appear in Coast Guard tables and lists. If so, this is indicated by additional commodity status group number(s).

2. Entries that appear in Table 30.25–1, 46 CFR part 30. Where the Coast Guard has reason to believe the entry is a lube oil additive or a lube oil additive component, it is identified with "(LOA)".

3. Entries that appear in Table 151.05, 46 CFR part 151.

4. Entries that appear in Table 1, 46 CFR part 153.

5. Entries that appear in Table 2, 46 CFR part 153.

6. Commodities that have been evaluated for carriage but have not been included in the regulations, and for which the Coast Guard has information indicating that they are no longer viable bulk liquid cargoes.

7. Commodities that have been evaluated or proposed for evaluation but which had not been included in the regulations, and for which the Coast Guard has no information as to their viability as bulk liquid cargos.

Commodities Appearing in the IMO Chemical Codes and Coast Guard Regulations

At future IMO meetings, the U.S. will propose that those cargoes listed below be removed from the IMO Chemical Codes. If the proposal for removal from the IMO Codes is adopted, those cargoes listed below will be removed from Coast Guard regulations in a future rulemaking action:

(a) Benzyl chloride.
(b) n-Butylamine.
(c) Chlorohydrins (*crude*).
(d) Cresylic acid tar.
(e) iso-Decyl acrylate.
(f) Dodecyldimethylamine, Tetradecyldimethyl-amine mixture.
(g) Ferric hydroxyethylethylene diamine triacetic acid, trisodium salt solution.
(h) Nitrilotriacetic acid, trisodium salt solution.
(i) Paraldehyde.
(j) Phosphorus, white (*elemental*).
(k) Propanolamine.
(l) Sodium sulfide solution (15% or less).
(m) Triisopropanolamine.

Commodities Previously Permitted for Carriage in Accordance with Classification Letter

The cargo classification of the following commodities are cancelled; they are no longer permitted to be carried in bulk by water mode as cargoes:

Aminoethyl piperazine H.H.
Aqueous waste solution (*from the manufacture of a trade name pesticide*)
ARCOHIB C–112
BASAGRAN (*bentazon-sodium salt solution*)
Butyl by-products (*containing butyl formate, ethyl butyrate, ethyl propionate and methyl butyrate*)
C–6 Aldehydes (mixed) (*distilled croton oil*)
Carbonate and Carbolate waste water
Crude hydrocarbon feedstocks (containing ethyl ether)
Cyclohexane oxidation product acid water, 50% aqueous solution (*trade names:* "COP Acid Water", "Acid Water EP306")
Depentanized aromatic stream
Didecyl dimethyl ammonium chloride, Ethanol mixture solution
Dimer acid
Dinitriles
Diolefin stream
1, 4-Dioxane, Butylene oxide, Nitromethane mixture
DMD–2 ("Dupont Metal Deactivator No. 2")
Ethyl chlorothioformate
Heartcut distillate raffinate
Heavy aromatic concentrate
High molecular weight Lithium amine—amide mixture (*other name:* Polyamine amide mixture)
Manganese sulfate solution
Metallo organic compound containing Barium, Calcium and Sulfur
4,4'-Methylenedianiline (43% or less), Polymethylene polyphenylamine, o-Dichlorobenzene mixture
alpha-Methyl styrene, Cumene
Methyl styrene, Indenes, Alkyl benzenes
Nitrilotriacetic acid, trisodium salt solution (*other name:* Trisodium nitrilotriacetate ("NTA–150 Chelant"))
Pentene/Miscellaneous hydrocarbon mixture (*hydrogenated pyrolysis oils*)
3-Pentenenitrile
3-Pentenenitrile (crude)
PETROX 214
Polyester of alkenyl succinic anhydride caboxylic acid, and Pentaerythritol
Propanol, Propyl acetate mixture
Pro-Silage (*mixture of ammonium hydroxide, ammonium phosphate and molasses in water*)
Reaction product of Styrene and Dialkyldithio-phosphoric acid
Reformer prefractionator bottoms
Resinous petroleum residue (*possible other name:* Oil, misc: Resinous petroleum)
Sodium sulfite, bisulfite, formate and thiosulfite solution (25% or less) (CO–PRODUCT (B))
T–77 Bottoms
T–150 Bottoms
TRET-O-LITE PR–980
TRET-O-LITE L–1576
Trisodium nitrilotriacetate ("NTA–150 Chelant") (*other name:* Nitrilotriacetic acid, trisodium salt solution)

The Coast Guard intends to periodically review its regulations to determine whether any commodities in its tables and lists in titles 33 and 46 of

the Code of Federal Regulations are no longer manufactured or moved in bulk by vessel, and would therefore be appropriate for deletion. Toward that end, the Coast Guard requests the continued assistance of interested parties in identifying obsolete entries and classifications in its regulations. Commodities identified as obsolete will be addressed in future rulemakings.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). This rulemaking deletes obsolete commodities from the Coast Guard's lists and tables. The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. This rule does not require a general notice of proposed rulemaking and, therefore is exempt from the requirements of the Act. Although this rule is exempt, the Coast Guard has reviewed it for potential impact on small entities.

This rulemaking merely updates the Coast Guard's lists and tables by deleting obsolete commodities. Because it expects the impact of this final rule to be minimal, the Coast Guard entities under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

This rulemaking updates the Coast Guard's tables and lists by deleting obsolete cargoes. Therefore this rulemaking has no federalism implications.

Environment

The Coast Guard has considered the environmental impact of this final rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. This rulemaking is merely a revision of tables and lists deleting obsolete chemicals currently approved for carriage by tankbarge or tank ship and clearly will have no impact on the environment. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects

46 CFR Part 30

Cargo vessels, Foreign relations, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 150

Hazardous materials transportation, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements.

46 CFR Part 151

Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements, Water pollution control.

46 CFR Part 153

Administrative practice and procedure, Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements, Water pollution control.

For the reasons set out in the preamble, the Coast Guard amends 46 CFR parts 30, 150, 151, and 153 as follows:

PART 30—GENERAL PROVISIONS

1. The authority citation for part 30 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; 49 U.S.C. 5103; 49 CFR 1.46; Section 30.01–5 also issued under the authority of Sect. 4109, Pub. L. 101–380, 104 Stat 515.

§ 30.25–1 [Amended]

2. In § 30.25–1, amend table 30.25–1 by removing the following entries in their entirety:

a. Acetyl tributyl citrate
b. Alkenylsuccinic acid
c. Alkyl succinate formadehyde hydroxyamino condensate (3.2% or less)
d. Amyl tallate
e. Bicyclic terpenel polyamine amide salt
f. Calcium alkylphenate
g. Calcium amino nonyl phenolate
h. Calcium carboxylate
i. Carbon black base (*printing ink base material*)
j. Cleaning spirit (*unleaded*)
k. Cycloaliphatic resins
l. Di(octylphenyl)amine
m. Fatty acid amides
n. Glycols, Resins, and Solvents mixture
o. Jet fuel: JP–1
p. Jet fuel: JP–3
q. Maleic anhydride copolymer
r. Methyl formal (*dimethyl formal*)
s. Octyl epoxytallate
t. Oil, edible: Babassu
u. Oil, edible: Grapeseed
v. Oil, edible: Mustard seed
w. Oil, misc: Adsoption
x. Oil, misc: Aviation F2300
y. Oil, misc: Croton
z. Oil, misc: Range
aa. Oil, misc: Resin
bb. Oil, misc: Resinous petroleum
cc. Oil, misc: Spray
dd. Oil, misc: Tanner's
ee. Oil, misc: White (mineral)
ff. Oil, misc: Wood
gg. Polyalkenyl succinic anhydride amine
hh. Polyamine, amide mixture
ii. Polystyrene dialkyl maleate
jj. Sodium sulfonate
kk. Vinyl acetate-fumarate copolymer
ll. Waxes: Petroleum
mm. Wool grease
nn. Zinc dialkyldithiophosphate

PART 150—COMPATIBILITY OF CARGOES

3. The authority citation for part 150 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.45, 1.46. Section 150.105 issued under 44 U.S.C. 3507; 49 CFR 1.45.

Table I to Part 150 [Amended]

4. In table I, remove the following entries in their entirety:

a. Actyl tributyl citrate
b. Amyl tallate
c. Carbon black base
d. Cycloaliphatic resins

e. Cyclohexane oxidation product acid water
f. Cyclopentadiene, Styrene, Benzene mixture
g. Diammonium salt of Zinc EDTA solution
h. Didecyl dimethyl ammonium chloride, Ethanol mixture solution
i. Ethyl chlorothioformate
j. Fatty acid amides
k. Glycols, Resins, and Solvents mixture
l. Hydrochloric acid, spent
m. Jet fuel: JP–1
n. Jet fuel: JP–3
o. Maleic anhydride copolymer
p. Methylamine
q. 4,4'-Methylenediniline (43% or less), Polymetnylene polypheylamine, o-Dichlorobenzene mixture
r. Methyl formal
s. Octyl expoxytallate
t. Oil, edible: Babassu
u. Oil, edible: Grapeseed
v. Oil, misc: Adsoption
w. Oil, misc: Range
x. Oil, misc: Resin
y. Oil, misc: Resinous petroleum
z. Oil, misc: Spray
aa. Oil, misc: Tanner's
bb. Oil, misc: White (mineral)
cc. 3-Pentenenitrile
dd. Polyalkenyl succinic anhydride amine
ee. Salicylaldehyde
ff. Vinyl acetate-fumarate copolymer

Table II to Part 150 [Amended]

5. In Table II, in the Group indicated, remove the following entire:

Group 0. Unassigned cargoes.
a. Ethyl chlorothioformate
Group 1. Non-oxidizing mineral acids.
a. Hydrochloric acid, spent
Group 4. Organic acids.
a. Cyclohexane oxidation product acid water
Group 7. Aliphatic amines.
a. Methylamine
Group 9. Aromatic amines.
a. 4,4'-Methylenedianiline (43% or less), Polymethylene polyphenylamine, o-Dichlorobenzene mixture
Group 19. Aldehydes.
a. Salicylaldehyde
Group 30. Olefins.
a. Cyclopentadiene, Styrene, Benzene mixture
Group 31. Paraffins.
a. Cycloaliphatic resins
Group 33. Miscellaneous Hydrocarbon Mixtures
a. Carbon black base
b. Fatty acid amides
c. Glycols, Resins, & Solvents mixture
d. Jet fuel: JP–1
e. Jet fuel: JP–3
f. Maleic anhydride copolymer
g. Oil, misc: Adsoption
h. Oil, misc: Range
i. Oil, misc: Resin
j. Oil, misc: Resinous petroleum
k. Oil, misc: Spray
l. Oil, misc: Tanner's
m. Oil, misc: White (mineral)
n. Polyalkenyl succinic anhydride amine
Group 34. Esters
a. Acetyl tributyl citrate
b. Amyl tallate
c. Octyl epoxytallate
d. Oil, edible: Babassu
e. Oil, edible: Grapeseed
f. Vinyl acetate-fumarate copolymer
Group 37. Nitriles.
a. 3-Pentenenitrile
Group 41. Ethers.
a. Methyl formal
Group 43. Miscellaneous water solutions.
a. Diammonium salt of Zinc EDTA solution
b. Didecyl dimethyl ammonium chloride, Ethanol mixture solution

Appendix I to Part 150 [Amended]

6. In appendix I (b), remove the following words: "Ethyl Chlorothioformate (0) is not compatible with Groups 5, 6, 7, 8, and 9."

PART 151—BARGES CARRYING BULK LIQUID HAZARDOUS MATERIAL CARGOES

7. The authority citation for part 151 continues to read as follows:

Authority: 33 U.S.C. 1903, 46 U.S.C. 3703; 49 CFR 1.46.

Table 151.05 [Amended]

8. In table 151.05, remove the following entries in their entirety:

a. Butyraldehydes (crude)
b. Hydrochloric acid, spent
c. Isopentaldehyde
d. Methylamine (anhydrous)

§ 151.12–5 [Amended]

9. In § 151.12–5, remove the entry "Chlorohydrins (*crude*)".

PART 153—SHIPS CARRYING BULK LIQUID, LIQUEFIED GAS, OR COMPRESSED GAS HAZARDOUS MATERIALS

10. The authority citation for part 153 is revised to read as follows:

Authority: 46 U.S.C. 3703; 49 CFR 1.46. Section 153.40 issued under 49 U.S.C. 5103. Sections 153.470 through 153.491, 153.1100 through 153.1132, and 153.1600 through 153.1608 also issued under 33 U.S.C. 1903 (b).

Table 1 [Amended]

11. In Table 1, remove the following entries in their entirety:

a. (crude) Butyraldehyde
b. Diammonium salt of Zinc ethylenediamine tetraacetic acid solution

Table 2 to Part 153 [Amended]

12. In Table 2, remove the entry "Ammonium phosphate solution".

Dated: June 15, 1995.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–15751 Filed 6–28–95; 8:45 am]
BILLING CODE 4910–14–M

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46 CFR Parts 30, 150, 151, and 153

[CGD 95–900]

RIN 2115–AF07

Bulk Hazardous Materials

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its regulations on carriage of bulk hazardous materials by adding cargoes recently authorized for carriage by the Coast Guard or added to the International Maritime Organization's (IMO) Chemical Codes and by making minor technical and editorial changes and corrections. This action will update the bulk hazardous materials tables and better inform persons shipping a bulk hazardous material of that material's compatibility and special handling requirements.

EFFECTIVE DATE: This rule is effective on August 28, 1995.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 95–900), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis G. Payne, Hazardous Materials Branch, (202) 267–1577.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Mr. Curtis G. Payne, Project Manager, and Ms. Helen G. Boutrous, Project Counsel, Office of Chief Counsel.

Related Rulemaking

Elsewhere in this edition of the **Federal Register**, the Coast Guard is publishing amendments to its noxious liquid substances lists in 33 CFR 151.47 (CGD 95–901). Also in this edition of the **Federal Register**, a final rule (CGD 94–902) is published concerning cargo entries the Coast Guard has reason to believe are obsolete.

Regulatory Information

Because the United States is a party to the International Convention for the Prevention of Pollution from Ships, 1973 as modified by the protocol of 1978 relating thereto (MARPOL 73/78), these amendments are required to ensure that the Coast Guard regulations are consistent with revisions to IMO's chemical codes. Accordingly, the Coast Guard finds that good cause exists under 5 U.S.C. 553(b) to publish this rule without opportunity for comment.

Background and Purpose

This rulemaking updates various Coast Guard hazardous materials tables in 46 CFR parts 30, 150, 151, and 153 to include new chemicals and requirements authorized by Coast Guard regulations or international law. This rulemaking would also make other non-substantive editorial changes and corrections.

Discussion of Amendments

(a) A number of new cargo entries are added to table 30.25–1, tables I and II and appendix I of part 150, and tables 1 and 2 of part 153, as appropriate. These include cargoes recently authorized by the Coast Guard and cargoes to be included in the IMO Chemical Codes ("International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk" (IBC Code), and "Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk" (BCH Code)), but not yet included in Coast Guard regulations. These include new entries approved at an IMO subcommittee meeting of September 13–17, 1993 (BCH 23) and October 19–23, 1994 (BCH 24).

(b) The "Compatibility of Cargoes" tables in part 150 are amended to include the chemicals added by the final rule to the hazardous materials tables in parts 30 and 153. This rule also corrects several current cargo names and cross-references other entries.

(c) The Coast Guard was informed of two erroneous assignments in the current table. They are cresylic acid tar, currently shown as assigned to Group 5 (Caustics) and potassium thiosulfate, currently shown as assigned to Group 0 (Unassigned cargoes). The entry for cresylic acid tar is corrected to reflect its assignment to Group 21 (Phenols, Cresols), and the entry for potassium thiosulfate solution is corrected to reflect its assignment to Group 43 (Miscellaneous Water Solutions). The Coast Guard is appreciative of the assistance it received in discovering these errors.

(d) Section 151.05–2 is revised to address the change for tank barges certificated to carry benzene and benzene containing cargoes from the restricted gauging requirements in § 151.15–10 to closed gauging requirements, and, for tank barges certificated to carry butyl acrylate cargoes, from open to restricted gauging requirements. Section 151.05–2 was added in an August 31, 1994, final rule (CGD 94–900; 59 FR 45136) to require that such tank barges comply with the gauging requirements of Table 151.05 by August 15, 1998. The revision clarifies that until August 15, 1998, those barges must either meet the new gauging requirements of Table 151.05, or the previous gauging requirements in § 151.15–10. Also, the spelling of the word "acrylate" is corrected.

(e) In its continued effort to maintain consistency between the requirements of the tank ship regulations (part 153) and the tankbarge regulations (part 151) where applicable, the Coast Guard proposes to add special requirement 151.50–73, "Chemical protective clothing" to the entries in table 151.05 of part 151 of the tankbarge regulations for the commodities listed below:

(1) Acetic acid
(2) Acetic anhydride
(3) Coal tar naphtha solvent
(4) Coal tar pitch (molten)
(5) Formic acid
(6) Phosphoric acid
(7) Propionic acid
(8) Sodium chlorate solution (50% or less)

This change is in conformance with the current special requirement for these commodities found in tank ship regulations at § 153.933, "Chemical protective clothing".

(f) The carriage requirements of two entries in table 1 of part 153, diethyl sulfate and sodium silicate solution, are changed. The Coast Guard has received information from a manufacturer of the commodity diethyl sulfate demonstrating the need for the protective clothing special requirement of § 153.933. The Coast Guard is adding the special requirement to the entry for that commodity. The entry sodium silicate solution was reviewed by the IMO at BCH 24 and determined to be a nonflammable water solution. Therefore, the fire protection requirement for this entry was removed by the IMO. This same action is adopted in this final rule.

(g) Other minor corrections or modifications are made as required to the various lists and tables.

(h) In appendix I to this final rule, the Coast Guard is providing information intended to provide mariners with insight into revisions that may be addressed in future rulemaking actions. The appendix will not appear in the Code of Federal Regulations, and does not propose changes to current requirements. The appendix is provided for informational purposes only. One issue addressed in the appendix involves the potential for incompatible stowage of isocyanate cargoes, Group 12 and water solutions of chemical cargoes. Shippers of such cargoes should review the appendix for further information.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040 February 26, 1979). This rulemaking updates the Coast Guard's bulk hazardous materials table by adding cargoes recently authorized by the Coast Guard or added to the IMO Chemical Codes and by making non-substantive editorial changes. The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. This rule does not require a general notice of proposed rulemaking and, therefore is exempt from the requirements of the Act. Although this rule is exempt, the Coast Guard has reviewed it for potential impact on small entities.

This rulemaking updates the Coast Guard's bulk hazardous materials table by adding cargoes recently authorized by the Coast Guard or added to the IMO Chemical Codes and by making non-substantive editorial changes and corrections. Therefore this rulemaking has no federalism implications.

Environment

The Coast Guard has considered the environmental impact of this final rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this final rule is categorically excluded from further environmental documentation. This rulemaking updates tables listing chemicals already approved under Coast Guard regulation or international law and clearly would have no impact on the environment. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Collection of Information

This final rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

46 CFR Part 30

Cargo vessels, Foreign relations, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 150

Hazardous materials transportation, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements.

46 CFR Part 151

Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements, Water pollution control.

46 CFR Part 153

Administrative practice and procedure, Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements, Water pollution control.

For the reasons set out in the preamble, the Coast Guard amends 46 CFR parts 30, 150, 151, and 153 as follows:

PART 30—GENERAL PROVISIONS

1. The authority citation for part 30 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; 49 U.S.C. 5103; 49 CFR 1.46; Section 30.01–5 also issued under the authority of Sect. 4109, Pub. L. 101–380, 104 Stat 515.

§ 30.25–1 [Amended]

2. In § 30.25–1, table 30.25–1 is amended as follows:

a. In the "Cargoes" column, remove the "+" symbols that precede the cargo entries.

b. For the entry "Amyl methyl ketone", in the "Pollution category" column, remove the letter "C" and add, in its place, the letter "D".

c. In the "Cargoes" column, remove the words "Calcium long chain phenolic amine (C8–C40)" and add, in their place, the words "· Calcium long chain alkyl phenolic amine (C8–C40)".

d. In the "Cargoes" column, remove the words "Diethylene glycol butyl ether acetate" and add, in their place, the words" Diethylene glycol butyl ether acetate, *see* Poly(2–8)alkylene glycol monoalkyl(C1–C6) ether acetate".

e. In the "Cargoes" column, remove the words "Dimethyl polysiloxane" and add, in their place, the words "· Dimethylpolysiloxane, *see* Polydimethylsiloxane".

f. In the "Cargoes" column, remove the words "Long chain alkylphenate/ Phenol sulfide" and add, in their place, the words "· Long chain alkylphenate/ Phenol sulfide mixture".

g. For the entry "Metolachlor", in the "Pollution category" column, remove the symbol "@".

h. In the "Cargoes" column, remove the words "Polyolefin amide alkeneamine molybdenum oxysulfide" and add, in their place, the words "· Polyolefin amide alkeneamine/ Molybdenum oxysulfide mixture".

i. In the "Cargoes" column, remove the word "Tetradecanol" and add, in its place, the words "· Tetradecanol, *see* Alcohols (C13+)".

3. In § 30.25–1, table 30.25–1 is further amended by adding the following new entries in chemically proper alphabetized order:

TABLE 30.25–1.—LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES

Cargoes	Pollution category
. . . . .	.
2-Ethyl-2-(hydroxymethyl) propane-1,3-diol, C8–C10 ester.	D
. . . . .	.
Glycerol monooleate	D
. . . . .	.
Lecithin (*soyabean*)	[D]
. . . . .	.
N-Methylglucamine solution (70% or less).	III
. . . . .	.
n-Pentyl propionate	C
. . . . .	.
Polybutenyl succinimide	D
. . . . .	.
Soyabean oil (epoxidized)	[D]
. . . . .	.
Zinc alkenyl carboxamide	D
. . . . .	.

4. In § 30.25–1, in the footnotes to table 30.25–1, remove the words "+ denotes newly added products.".

PART 150—COMPATIBILITY OF CARGOES

5. The authority citation for part 150 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703, 49 CFR 1.45, 1.46. Section 150.105 issued under 44 U.S.C. 3507; 49 CFR 1.45.

Table I to Part 150 [Amended]

6. Table I is amended as follows:

a. Remove all bold-faced type wherever it may appear and add, in its place, Roman type.

b. In the "Chemical name" column, remove the "+" symbols that precede chemical name entries.

c. For the entry "Alkanes (C6–C9)", in the "Related CHRIS codes" column, remove the code "HXX" and add, in its place, the code "HXS".

d. For the entry "Alkanes (c10+)", in the "CHRIS code" column, add the code "ALJ".

e. In the "Chemical name" column, remove the work "Butene" and add, in its place, the words "Butene, *see* Butylene".

f. In the "Chemical name" column, remove the words "n-Butyl butyrate" and add, in their place, the words "Butyl butyrate", and in the "CHRIS code" column for the new entry, remove the code "BUB" and add, in its place, the code "BBA", and in the "Related CHRIS codes" column for the new entry, add the codes "BUB/BIB".

g. Delete the entry "iso-Butyl isobutyrate" in its entirety.

h. In the "Chemical name" column, remove the words "Calcium bromide solution" and add, in their place, the words " Calcium bromide solution, *see* Drilling brines", and in the "Related CHRIS codes" column for the new entry, remove the code "CBM", and in its place, add the code "DRB".

i. In the "Chemical name" column, remove the words "Calcium long chain phenolic amine (C8–C40)" and add, in their place, the words "Calcium long chain alkyl phenolic amine (C8–C40)".

j. In the "Chemical name" column, remove the words "Cresylic acid, sodium salt solution" and add, in their place, the words "Cresylic acid, sodium salt solution, *see* Cresylate spent caustic".

k. For the entry "Cresylic acid tar", in the "Group No." column, remove the number "5" and add, in its place, the number "21".

l. In the "Chemical name" column, remove the word "Cumene" and add, in its place, the words "Cumene *(isopropyl benzene), see* Propylbenzene", and in the "Related CHRIS codes" column for the new entry, add the code "PBY".

m. For the entry "Decaldehyde", in the "Related CHRIS codes" column, remove the codes "DA/DAL" and add, in their place, the codes "IDA/DAL".

n. For the entry "Decane", in the "CHRIS code" column, remove the code "DDC" and add, in its place, the code "DCC", and in the "Related CHRIS codes" column, add the code "ALJ".

o. Move the entry "Diphenylamine, reaction product with 2,2,4-Trimethylpentene" in its entirety to follow the entry "Diphenylamines, alkylated".

p. In the "Chemical name" column, remove the word "Diethylaminoethanol" and add, in its place, the words "Diethylaminoethanol, *see* Diethylethanolamine".

q. In the "Chemical name" column, remove the words "Diethylene glycol butyl ether" and add, in their place, the words "Diethylene glycol butyl ether, *see* Poly(2–8)alkylene glycol monoalkyl(C1–C6) ether", and in the Related CHRIS codes" column for the new entry, add the code "PAG".

r. In the "Chemical name" column, remove the words "Diethylene glycol butyl ether acetate" and add, in their place, the words "Diethylene glycol butyl ether acetate, *see* Poly(2–7)alkylene glycol monoalkyl(C1–C6) ether acetate", and in the "Related CHRIS codes" column for the new entry, add the code "PAF".

s. In the "Chemical name" column, remove the words "Diethylene glycol ethyl ether, *see* Poly(2–8)alkylene glycol monoalkyl(C1–C6) ether", and in the "Related CHRIS codes" column for the new entry, add the code "PAG".

t. In the "Chemical name" column, remove the words Diethyl ether" and add, in their place, the words Diethyl ether, *see* Ethyl ether".

u. In the "Chemical name" column, remove the words "Dipropylene glycol methyl ether" and add, in their place, the words "Dipropylene glycol methyl ether, *see* Poly(2–8)alkylene glycol monoalkyl(C1–C6) ether", and in the "Related CHRIS codes" column for the new entry, add the code "PAG".

v. For the entry "2-Dodecenylsuccinic acid, dipotassium salt solution", in the "CHRIS code" column, add the code "DSP".

w. Move the entry "Dodecylamine, Tetradecylamine mixture" in its entirety to follow the entry "Dodecyl alcohol, *see* Dodecanol".

x. In the "Chemical name" column, remove the word "2-Ethoxyethanol" and add, in its place, the words "2-Ethoxyethanol, *see* Ethylene glycol monoalkyl ethers", and in the "Related CHRIS codes" column for the new entry, remove the code "EGE" and add in its place, the codes "EGC/EGE".

y. In the "Chemical name" column, remove the words "Ethylene glycol butyl ether" and add, in their place, the words "Ethylene glycol butyl ether, *see* Ethylene glycol monoalkyl ethers", and in the "Related CHRIS codes" column for the new entry, add the code "EGC".

z. In the "Chemical name" column, remove the words "Ethylene glycol tert-butyl ether" and add, in their place, the words "Ethylene glycol tert-butyl ether, *see* Ethylene glycol monoalkyl ethers", and in the "Related CHRIS codes" column for the new entry, add the code "EGC".

aa. In the "Chemical name" column, remove the words "Ethylene glycol ethyl ether" and add, in their place, the words "Ethylene glycol ethyl ether, *see* Ethylene glycol monalkyl ethers", and in the "Related CHRIS codes" column for the new entry, remove the code "EEO" and add in its place, the codes "EGC/EEO".

bb. In the "Chemical name" column, remove the words "Ethylene glycol ethyl ether acetate" and add, in their place, the words "Ethylene glycol ethyl ether acetate, *see* Ethoxyethyl acetate", and in the "Related CHRIS codes" column for the new entry, add the code "EEA".

cc. In the "Chemical name" column, remove the words "Ethylene glycol isopropyl ether" and add, in their place, the words "Ethylene glycol isopropyl ether, *see* Ethylene glycol monoalkyl ethers", and in the "Related CHRIS codes" column for the new entry, add the code "EGC".

dd. In the "Chemical name" column, remove the words "Ethylene glycol methyl ether" and add, in their place, the words "Ethylene glycol methyl ether, *see* Ethylene glycol monoalkyl ethers", and in the "Related CHRIS codes" column for the new entry, add the code "EGC".

ee. In the "Chemical name" column, remove the words "Ethylene glycol propyl ether" and add, in their place, the words Ethylene glycol propyl ether, *see* Ethylene glycol monoalkyl ethers", and in the "Related CHRIS codes" column, for the new entry add the code "EGC".

ff. For the entry "Fatty acid amides", in the "CHRIS code" column add the code "FAA".

gg. For the entry "Hexamethylenediamine adipate solution" in the "Related CHRIS codes" column, remove the code "HMD".

hh. In the "Chemical name" column, remove the word "Isopropylbenzene" and add, in its place, the words "Isopropylbenzene (*cumene*), *see* Propylbenzene", and in the "Related CHRIS codes" column for the new entry, add the codes "PBY/CUM".

ii. In the "Chemical name" column, remove the words "Long chain alkylphenate/Phenol sulfide" and add, in their place, the words "Long chain alkylphenate/Phenol sulfide mixture".

jj. For the entry "N-Methyl-2-pyrrolidone", in the "Group No." column, add a superscript "2" before the number "9" to read "^{2}9".

kk. For the entry "Nitropropane, Nitroethane mixture", in the "CHRIS code" column, remove the code "NNM", and in the "Related CHRIS codes" column, add the codes "NNM/NNL".

11. Under the entry "Oil, edible", remove the entry "Lanolin" in its entirety.

mm. For the entry "Pine oil", in the "CHRIS code" column, remove the code "POL" and add, in its place, the code "PNL".

nn. In the "Chemical name" column, remove the words "Polyolefin amide alkeneamine molybdenum oxysulfide" and add, in their place, the words "Polyolefin amide alkeneamine/Molybdenum oxysulfide mixture".

oo. For the entry "Poly(5+)propylene", in the "CHRIS code" column, add the code "PLQ".

pp. For the entry "Potassium thiolsulfate solution", in the "Group No." column, remove the number "0" and add, in its place, the number "43".

qq. For the entry "Propylbenzene", in the "CHRIS code" column, remove the code "PBZ" and add, in its place, the code "PBY"; and in the "Related CHRIS codes" column, add the codes "PBZ/CUM".

rr. For the entry "Tallow nitrile", in the "CHRIS code" column, add the code "TAN".

ss. In the "Chemical name" column, remove the word "Tridecanol" and add, in their place, the words "*Tridecanol, see* Alcohols (C13+)".

tt. In the "Chemical name" column, remove the words "Triethylene glycol butyl ether" and add, in their place, the words "Triethylene glycol butyl ether, *see* Poly(2–8)alkylene glycol monoalkyl(C1–C6) ether", and in the "Related CHRIS codes" column for the new entry, add the code "PAG".

uu. For the entry "2,2,4-Trimethyl-1,3-pentanediol diisobutyrate", in the "CHRIS code" column, add the code "TMQ".

vv. In the "Chemical name" column, remove the word "Undecanol" and add, in their place, the words "*Undecanol, see* Undecyl alcohol".

ww. For the entry "Valeraldehyde", in the "CHRIS code" column, add the code "VAK", and in the "Related CHRIS codes" column, remove the codes "IVA/VAL/VAK" and add, in their place, the words "IVA/VAL".

xx. For the entries "Decyloxytetrahydro-thiophene dioxide", "Dodecyl hydroxypropyl sulfide", "Lactic acid", "Long chain alkaryl sulfonic acid (C16–C60)" and "Tall oil fatty acid, barium salt", in the "Group No." column add a superscript "2" to the number "0" to read "^{2}0" for each entry.

8. In Table I, add the following new entries in chemically proper alphabetized order: Table I—Alphabetical List of Cargoes

* * * * *

TABLE 1.—ALPHABETICAL LIST OF CARGOES

Chemical name	Group No.	CHRIS code	Related CHRIS codes
iso- & cyclo-Alkanes (12+)	31		
Ammonia, aqueous, *see* Ammonium hydroxide	6	AMH	
Apple juice	43		
Butyl stearate	34		
Calcium carbonate slurry	34		
Calcium hydroxide slurry	5	COH	
Clay slurry, *see also* Kaolin clay slurry	43		
Dihexyl phthalate	34		
1,4-Dihydro-9,10-dihydroxy anthracene, disodium salt solution	5	DDH	
Diphenylamine, reaction product with 2,2,4-trimethylpentene	7	DAK	
Ethylene carbonate	34		
2-Ethyl-2-(hydroxymethyl)propane-1,3-diol, C8–C10 ester	34	EHD	
Glycerol monooleate	20	GMO	
Glucose solution	43		
Glycidyl ester of C10 trialkyl acetic acid, *see* Glycidyl ester of tridecyl acetic acid	34	GLT	
Glycine, sodium salt solution	7		

TABLE 1.—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	CHRIS code	Related CHRIS codes
Hydroxy terminated polybutadiene, *see* Polybutadiene, hydroxyl terminated	20		
Lard	34		
Lauryl polyglucose (50% or less)	20	LAP	
Lecithin (*soyabean*)	34	LEC	
Magnesium hydroxide slurry	5		
N-Methylglucamine solution (70% or less)	43	MGC	
Milk	43		
Naphtha:			
Aromatic	33		
Heavy	33		
Paraffinic	33		
Octyl phthalate, see Dialkyl(C7–C13)phthalates	34	DAH	
Oils, edible: Maize	34	VEO/OCO	
Oil, misc:			
Gas, high pour	33		
Gas, low pour	33		
Gas, low sulfur	33		
Wood	34		
Phthalate based polyester polyol	[2]0	PBE	
Polyaluminum chloride solution	1		
Polybutenyl succinimide	10	PBS	
Potassium polysulfide, Potassium thiosulfide solution (41% or less)	0	PTG	
Propylene carbonate	34		

TABLE 1.—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	CHRIS code	Related CHRIS codes
Silica slurry	43		
Sludge, treated	43		
Sodium aluminosilicate slurry	34		
Sodium naphthenate solution, *see* Napthenic acid, sodium salt solution	5		
Sodium petroleum sulfonate	33	SPS	
Soyabean oil (epoxidized)	34	OSC/EVO	
Tetrapropylbenzene, see Alkyl(C9+)benzenes	32	AKB	
1,3,5-Trioxane	[2]42	TRO	
Trixylyl phosphate, *see* Trixylenyl phosphate	34	TRP	
Urea solution	43	URE	
Water	43		
Waxes:			
Candelilla	34	WCD	
Petroleum	33		
Zinc alkenyl carboxamide	10	ZAA	

* * * * *

9. In Table I, in the footnote section, remove the words "+ denotes newly added products.".

Table II to Part 150 [Amended]

10. Table II is amended as follows:

a. In Group 0, Unassigned Cargoes, remove the words "Potassium thiosulfate solution" and add, in their place, the words "Potassium polysulfide, Potassium thiosulfide solution (41% or less)".

b. In Group 0, Unassigned Cargoes, for the entries "Decyloxytetrahydro-thiophene dioxide", "Dodecyl hydroxypropyl sulfide", "Lactic acid", "Long chain alkaryl sulfonic acid (C16–C60)" and "Tall oil fatty acid, barium salt" add a superscript "2" to the entries to read "Decyloxytetrahydro-thiophene dioxide [2]", Dodecyl hydroxypropyl sulfide [2]", "Lactic acid [2]", "Long chain alkarl sulfonic acid (C16–C60)" and "Tall oil fatty acid, barium salt [2]" respectively.

c. In Group 5, Caustics, remove the words "Cresylic acid tar".

d. In Group 7, Aliphatic Amines, remove the words "Calcium long chain phenolic amine (C8–C40)" and add, in their place, the words "Calcium long chain alkyl phenolic amine (C8–C40)", and, remove the words "Polyolefin amide alkeneamine molybdenum oxysulfide" and add, in their place, the words "Polyolefin amide alkeneamine/ Molybdenum oxyxsulfide mixture".

e. In Group 9, Aromatic Amines, add a superscript "2" at the end of the entry "N-Methyl-2-pyrrolidone" to read N-Methyl-2-pyrrolidone [2]".

f. In Group 21, Phonols, Cresols, remove the words "Long chain alkylphanate/Phenol sulfide" and add, in their place, the words "Long chain alkylphenate/phenol sulfide mixture".

11. In Table II, add the following new entries in the designated Compatibility Groups, in chemically proper alphabetized order:

Table II—Grouping of Cargoes

* * * * *

0. Unassigned cargoes
Phthalate based polyester polyol [2]
1. Non-oxidizing mineral acids
Polyaluminum chloride solution

5. Caustics
Sodium naphthenate solution
6. Ammonia
Ammonia, aqueous
7. Aliphatic amines
Diphenylamine, reaction product with 2,2,4-trimethylpentene
20. Alcohols, Glycols
Glycerol monooleate
Hydroxy terminated polybutadiene
Lauryl polyglucose (50% or less)
21. Phenols, Cresols
Cresylic acid tar
31. Paraffins
iso- & cyclo-Alkanes (12+)
33. Miscellaneous Hydrocarbon Mixtures
Oil, misc: Gas, high pour
Sodium petroleum sulfonate
Waxes: Petroleum
34. Esters
Dihexyl phthalate
Ethylene carbonate
Glycidyl ester of C10 trialkyl acetic acid
Lecithin (*soyabean*)
Propylene carbonate
Soyabean oil (epoxidized)
Trixylyl phosphate
41. Ethers
Diethyl ether
1,3,5-Trioxane
43. Miscellaneous Water Solutions
Clay slurry
Potassium thiosulfate solution
N-Methylglucamine solution (70% or less)
Urea solution
Water

* * * * *

Appendix to Part 150 [Amended]

12. In appendix I (a), add the new entry "iso-Nonyl alcohol (20)" to follow the entry "Nonyl alcohol (20)" in the column "Compatible with" for the entry "Caustic soda, 50% or less" in the "Member of reactive group" column.

13. In appendix I (a), add the following new listings in chemically proper alphabetized order:

* * * * * * *

Member of reactive group	Compatible with
. . . . .	
gamma-Butyrolactone (0).	N-Methyl-2-pyrrolidone (9)
. . . . .	
Sodium dichromate, 70% (0).	Methyl alcohol (20)
. . . . .	
Sodium hydrosulfide solution (5).	iso-Propyl alcohol (20)
. . . . .	

14. In appendix I (b), add the following new entries in chemically proper alphabetized order to read as follows:

* * * * *

Phthalate based polyester polyol (0) is not compatible with Group 2, 3, 5, 7 and 12.
1,3,5-Trioxane (41) is not compatible with Group 1 (Non-oxidizing mineral acids) and Group 4 (Organic acids).

* * * * *

PART 151—BARGES CARRYING BULK LIQUID HAZARDOUS MATERIAL CARGOES

15. The authority citation for part 151 continues to read as follows:

Authority: 33 U.S.C. 1903, 46 U.S.C. 3703; 49 CFR 1.46.

16. Section 151.05–2 is revised to read as follows:

§ 151.05–2 Compliance with requirements for tank barges carrying benzene and benzene containing cargoes, or butyl acrylate cargoes.

A tank barge certificated to carry benzene and benzene containing cargoes or butyl acrylate cargoes must comply with the gauging requirement of Table 151.05 of this part by August 15, 1998. Until that date, a tank barge certificated to carry benzene and benzene containing cargoes must meet either the gauging requirement of Table 151.05 or the restricted or closed gauging requirements in effect on September 29, 1994; and a tank barge certificated to carry butyl acrylate cargoes must meet either the gauging requirements of Table 151.05 or comply with the open, restricted, or closed gauging requirements in effect on September 29, 1994.

Table 151.05 [Amended]

17. In Table 151.05, for the entries listed below, in the "Cargo identification, Name" column, add a bullet to precede the name, and in the "Special requirements" column for the entries listed below add, in numerical order, ".50–73", in boldface type:

a. Acetic acid
b. Acetic anhydride
c. Coal tar naphtha solvent
d. Coal tar pitch (molten)
e. Formic acid
f. Phosphoric acid
g. Propionic acid
h. Sodium chlorate solution (50% or less)

PART 153—SHIPS CARRYING BULK LIQUID, LIQUEFIED GAS, OR COMPRESSED GAS HAZARDOUS MATERIALS

18. The authority citation for Part 153 is revised to read as follows:

Authority: 46 U.S.C. 3703; 49 CFR 1.46. Section 153.40 issued under 49 U.S.C. 5103. Sections 153.470 through 153.491, 153.1100 through 153.1132, and 153.1600 through 153.1608 also issued under 33 U.S.C. 1903 (b).

19. Section 153.1003 is added to read as follows:

§ 153.1003 Prohibited carriage in deck tanks.

When Table 1 refers to this section, cargoes may not be carried in deck tanks.

Table 1 to Part 153 [Amended]

20. Table 1 is amended as follows:

a. In the "Cargo name" column, remove the "+" symbols that precede the chemical name entries.

b. For the entry "Dinitrotoluene", in the "Cargo name" column and in the "Cargo containment system" column, remove the superscript "5", and in the "Special requirements in 46 CFR Part 153" column for that entry add, in numerical order, ".1003".

c. In the "Cargo name" column, remove the words "Isopropylbenzene, *see* Cumene" and add, in their place, the words "Isopropylbenzene (Cumene), *see* Propylbenzene (all isomers)".

d. For the entry "Metolachlor", in the "Pollution category" column, remove the symbol "@", and in the "Special requirements" column for that entry, remove the word "None" and add, in its place, the number ".409".

21. Table 1 is amended further by adding the following new entries in chemically proper alphabetized order:

Table 1—Summary of Minimum Requirements

* * * * *

TABLE 1.—SUMMARY OF MINIMUM REQUIREMENTS

a.	b.	c.	d.	e.	f.	g.	h.	i.	j.
.	.	.	.	.	.	.	.	.	.
Acetochlor	A	P	II	NR	Open	Open	A	.409	NA
.	.	.	.	.	.	.	.	.	.
Alkyl (C7-C12)phenol poly(4-12) ethoxylate.	B	P	III	NR	Open	Open	A	.409, .440, .488 [1], .908 (a), (b).	I–D
.	.	.	.	.	.	.	.	.	.
Ammonium bisulfite solution (70% or less).	D	S	III	4m	PV	Restr	No	.238(e), .933, .1002	NA
.	.	.	.	.	.	.	.	.	.
Bromochloromethane.	D	S	III	4m	PV	Restr	No	.236 (a), (b), (d), .526, .933.	NA
.	.	.	.	.	.	.	.	.	.
Dibromomethane.	C	S/P	II	4m	PV	Restr	No	.236 (a), (b), (d), .408, .525 (a), (c), (d), (e), .526, .933, .1020.	NA
.	.	.	.	.	.	.	.	.	.
3,4-Dichloro-1-butene.	B	S/P	III	B/3	PV	Closed	A,B,C	.316, .409, .525 (a), (c), (d), (e), .526, .527, .933, .1020.	I–D
.	.	.	.	.	.	.	.	.	.
Icosa (oxypropane-2,3-diyl)s.	B	P	III	NR	Open	Open	A	.409, .440, .908(a)	NA
.	.	.	.	.	.	.	.	.	.
Lauryl polyglucose (50% or less).	[B]	P	III	NR	Open	Open	No	.409, .440, .488, .908 (a), (b).	NA
.	.	.	.	.	.	.	.	.	.
N-(2-Methoxy-1-methylethyl)-2-ethyl-6-methylchloro-acetanilide, *see* Metolachlor									
.	.	.	.	.	.	.	.	.	.
Nitroethane [7]	D	S	III	4m	PV	Restr	[7] A,C	.236(b), .409, .526, .1002 (a), (b), .1003.	I–C
.	.	.	.	.	.	.	.	.	.
Nitro propane (20%), Nitroethane (80%) [7].	D	S	III	4m	PV	Restr	[7] A,C	.236(b), .409, .526, .1002 (a), (b), .1003.	I–C
.	.	.	.	.	.	.	.	.	.
Potassium polysulfide, Potassium thiosulfate solution (41% or less).	[C]	S/P	III	NR	Open	Open	No	.236 (b), (c), .409	NA
.	.	.	.	.	.	.	.	.	.
iso-Propylamine solution (70% or less).	C	S/P	II	B/3	PV	Closed	C,D	.236 (a), (b), (c), (g), .408, .440, .525, .526, .527, .1010.	I–D
.	.	.	.	.	.	.	.	.	.

* * * * *

22. The footnotes to Table 1 to part 153 are amended as follows:

a. Remove the words "+ denotes newly added products.".

b. Remove the words in footnote 5 and add, in their place, the word "Reserved.".

c. In footnote 7, add the word "Nitroethane" to follow the words "Maleic anhydride"; remove the numbers "(60%)" and "(40%)"; and remove the word "mixture" and add, in its place, the word "mixtures".

Table 2 to part 153 [Amended]

23. Table 2 is amended as follows:

a. In the "Cargoes" column, remove the "+" symbols that precede the chemical name entries.

b. Under the entry "Lignin liquor", in the "Cargoes" column, add the subentry, "Ammonium lignosulfonate solution" in chemically proper alphabetized order, and in the "Pollution Category" column for the subentry "Ammonium lignosulfonate solution", insert the symbol "III", and in the "Pollution Category" column for the subentries "Calcium lignosulfonate solution" and "Sodium lignosulfonate solution", remove the symbol "@".

24. Table 2 is amended further by adding the following new entries in chemically proper alphabetized order: Table 2—Cargoes Not Regulated Under Subchapters D or O of this Chapter when carried in Bulk on Non-oceangoing Barges.

* * * * *

Cargoes	Pollution category
. . . . .	.
Ammonium lignosulfonate solution, *see also* Lignin liquor.	III
. . . . .	.
Calcium lignosulfonate solution, *see also* Lignin liquor.	III
. . . . .	.
Caramel solutions	III
. . . . .	.
Sodium lignosulfonate solution, *see also* Lignin liquor.	III
. . . . .	.

25. In the footnotes to Table 2 of part 153 remove the words "+ denotes newly added products."

Dated: June 15, 1995.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

Appendix I

Note—The following appendix will not appear in the Code of Federal Regulations.

Summary: The information contained in this appendix is for informational purposes only, and is intended to provide mariners with insight into revisions that may be addressed in future rulemaking actions. It does not change existing regulations.

Provisional Categorization of Liquid Substances, MEPC/Circ.281/Rev.1.

On March 7, 1995, the International Maritime Organization (IMO), London, U.K. published the circular MEPC/Circ.281/Rev.1, Provisional Categorization of Liquid Substances. This circular contains a number of chemical cargo lists. Among the various lists are several specialty lists which are presented below (in modified format) for the information of interested parties.

(a) Annex 6. *Oil-like substances.*

1. Pollution Category C—See 33 CFR 151.49(a).
   Aviation alkylates (C8 paraffins and iso-paraffins b. pt. 95–120 deg. C)
   Cycloheptane
   Cyclohexane
   Cyclopentane
   p-Cymene
   Ethyl cyclohexane
   Heptane (all isomers)
   Heptene (all isomers)
   Hexane (all isomers)
   Hexene (all isomers)
   Isopropylcyclohexane (iso-Propylcyclohexane)
   Methylcyclohexane
   Nonane (all isomers)
   Octane (all isomers)
   Olefin mixtures (C5–C7)
   Pentane (all isomers)
   Pentene (all isomers)
   1-Phenyl-1-xylyl ethane
   iso-Propylcyclohexane (Isopropylcyclohexane)
   Propylene dimer
   Tetrahydronaphthalene
   Toluene
   Xylenes
2. Pollution Category D—See also 33 CFR 151.49(b). Diisopropyl naphthalene

(b) Annex 7. *Substances not shipped in pure form but as components in mixtures.* The IMO has recognized that many mixtures transported in bulk by water contain components that are themselves not shipped in bulk alone, and which are therefor neither identified in the IBC Code nor in the lists of Tripartite Agreements. To facilitate the classification of mixtures, such components are assigned pollution categories and ship types. Those products on which IMO has sufficient information to enable classification are:

Product name	Pollution category	Ship type
Borax	D	NA
Sodium nitrate	III	NA
Sodium nitrite (solid)	B	3
Tolyl Triazole	[C]	[3]
Nalco 5740S Antifoam.	[B]	[3]
Diphenylol propane ..	[B]	[3]
Poly(17+)olefin amine.	C	3

(c) Annex 10. *Lube-Oil additives*

Product name	Pollution category	Ship type
Alkaryl polyether (C9–C20).	B	3
Alkenyl (C11+) amide.	D	NA
Alkyl(C8+)amine, alkenyl (C12+) acid ester mixture.	D	NA
Alkyl dithiothiadiazole (C6–C24).	D	NA
Aryl polyolefin (C11–C50).	D	NA
Calcium alkyl (C9) phenol sulfide, polyolefin phosphorosulfide mixture.	A	2
Calcium long chain alkaryl sulfonate (C11–C50).	D	NA
Calcium long chain alkyl phenate sulfide (C8–C40).	D	NA
Calcium long chain alkyl salicylate (C13+).	C	3
Calcium long chain phenolic amine (C8–C40).	III	NA
Long chain alkaryl polyether (C11–C20).	C	3
Long chain alkaryl sulfonic acid (C16–C60).	D	NA
Long chain alkylphenate/Phenol sulfide mixture.	III	NA
Magnesium long chain alkaryl sulfonate (C11–C50).	D	NA
Magnesium long chain alkyl salicylate (C11+).	C	3
Olefin/Alkyl ester copolymer (molecular weight 2000+).	D	NA
Oleylamine	C	3
Polyalkyl (C12–C20) methacrylate.	C	3
Polyether (molecular weight 2000+).	D	NA
Polyolefin (molecular weight 300+).	III	NA
Polyolefin amide alkeneamine (C28+).	D	NA
Polyolefin amide alkeneamine borate (C28–C250).	D	NA
Polyolefin amide alkeneamine molybdenum oxysulfide mixture.	III	NA
Polyolefin amide alkeneamine polyol.		NA
Polyolefin anhydride	D	NA
Polyolefin ester (C28–C250).	D	NA
Polyolefin phenolic amine (C28–C250).	D	NA
Polyolefin phosphorosulfide—Barium derivative (C28–C250).	C	3
Sulfohydrocarbon (C3–C88).	D	NA
Sulfohydrocarbon, long chain (C18+) alkylamine mixture.	B	3
Zinc alkaryl dithiophosphate (C7–C16).	C	3
Zinc alkyl dithiophosphate (C3–C14).	B	3

Note: Since publication of MEPC/Circ.281/Rev.1, additional lube-oil additives may have been added to the list.

(d) Annex 11. *Hydrocarbon families in the IBC Code: Pollution Category and Ship type.*

Product name	Pollution category	Ship type
Alkanes (C6–C9)	C	3
n-Alkanes (C10+)	III	NA
iso- & cyclo-Alkanes (C10–C11).	D	NA
iso- & cyclo-Alkanes (C12+).	III	NA
Alkyl (C3–C4) benzenes.	A	3
Alkyl (C5–C8) benzenes.	A	2
Alkyl(C9+)benzenes	III	NA
Poly(2+)cyclic aromatics.	A	2

Potential for incompatible stowage between isocyanates and water solutions of chemical cargoes.

The Coast Guard has been apprised of a potential for incompatible stowage of isocyanate cargoes, Group 12, adjacent to water solutions of other cargoes (chemicals). Currently, the stowage of isocyanate cargoes adjacent to a number of groups is prohibited, including cargoes listed in Group 43 (Miscellaneous Water Solutions). However, a "pure" chemical cargo may be assigned to a Compatibility Group not considered hazardous when stowed adjacent to isocyanates when in fact it could present a hazardous situation if it has a water content. Therefore, the Coast Guard is bringing to the attention of the shipping industry and other interested parties that due caution should be exercised when stowing isocyanates adjacent to water solutions of other cargoes.

The Coast Guard is appreciative of the assistance it received in bringing this potentially hazardous situation to its attention. The Coast Guard is considering the initiation of a rulemaking to restrict stowage of isocyanate cargoes adjacent to water solutions of other cargoes when the "pure" chemical itself would not be so restricted.

3. *Name changes of current entries in the IMO Chemical Codes and Coast Guard regulations that the Coast Guard is planning to propose to the IMO.*

(a) Nonyl phenol poly(4-12)ethoxylate would be renamed Nonyl phenol poly(4+)ethoxylates.

(b) The isomers of butyl alcohol, all of which are now listed separately in the Codes would be included under a new generic entry, "Butyl alcohols (all isomers)".

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Thursday
June 29, 1995

Part VI

Postal Service

39 CFR Part 111
Classification Reform; Implementation Standards; Proposed Rule

POSTAL SERVICE

39 CFR Part 111

Classification Reform; Implementation Standards

AGENCY: Postal Service.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This document provides information on the rulemaking process the Postal Service plans to follow to implement pending mail classification reform proposals, and to obtain comments and proposals on current implementation plans.

DATES: Comments on the proposed implementation plans must be received on or before July 31, 1995.

ADDRESSES: Mail or deliver written comments to the Manager, Mailing Standards, USPS Headquarters, 475 L'Enfant Plaza SW, Room 6800, Washington DC 20260–2419. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in Room 6800 at the above address.

FOR FURTHER INFORMATION CONTACT: Leo F. Raymond, (202) 268–5199.

SUPPLEMENTARY INFORMATION: On March 24, 1995, pursuant to its authority under 39 U.S.C. 3621, *et seq.*, the Postal Service filed with the Postal Rate Commission (PRC) a request for a recommended decision on a number of mail classification reform proposals. The PRC designated the filing as Docket No. MC95–1 and proceedings are currently under way before the PRC in accordance with 39 U.S.C. 3624 and the PRC's rules of practice under 39 CFR 3001. A notice of the filing, with a description of the Postal Service's proposals, was published on April 3, 1995, in the **Federal Register** by the PRC. 60 FR 16888–16893.

In its classification reform Request, the Postal Service proposed the reform of four current subclasses of mail: the current regular First-Class Mail and First-Class postal and post cards subclasses would be replaced by Automation and Retail subclasses of First-Class Mail; the current regular rate bulk third-class mail subclass would be replaced by Regular, Automation, and Enhanced Carrier Route subclasses of Standard Mail; and the current regular second-class mail subclass would be replaced by Regular and Publications Service subclasses of a Periodicals class.

These proposals were developed through nearly 4 years of collaborative work by the Postal Service and approximately 100 customers, many of whom are also representatives on the Mailers Technical Advisory Committee (MTAC), a group of mailing industry and trade association representatives who advise the Postal Service on a variety of mailing issues.

One of the areas on which the Postal Service sought advice was the simplification of mailing rules by, among other things, the standardization of basic requirements and preparation methods for the various classes, subclasses and categories of mail. This effort is reflected in the proposed mailing standards set out below.

The Postal Service also is seeking customer involvement in the development of its classification reform implementation plans and in the development of the mailing standards that it will implement if the classification changes pending before the PRC are adopted. To do so, the Postal Service has again sought the assistance of MTAC in establishing a mechanism to identify and advise the Postal Service on implementation issues.

With the participation of MTAC, the Postal Service established four Implementation Advisory Groups (IAGs), each tasked with a specific area of interest related to the classification reform proposals before the PRC—Letters, Flats, Periodicals, and Addressing. Each IAG is composed of responsible Postal Service managers and staff and members of MTAC and other mailers who have specific interest and expertise in the mailing areas being addressed by the IAG.

Each IAG has been asked to identify and advise the Postal Service on significant implementation issues. Each IAG has met at least twice and has provided advice on the Postal Service's planned implementation proposals and has identified other issues to be considered in the implementation rulemaking process. These issues are included in the discussion of the implementation proposals below.

The next steps in the Postal Service's implementation rulemaking process will be to consider the comments and proposals received in response to this advance notice of proposed rulemaking, along with further input from the IAGs, and formulate and publish a second advance notice that will request further comments and proposals on the planned implementation requirements.

The Postal Service expects to publish this second notice prior to the opening of the National Postal Forum in Philadelphia on August 27, 1995. The National Postal Forum is a semiannual gathering of mailing industry representatives and representatives of the Postal Service that is sponsored by the National Postal Forum, Inc. This second notice of the planned implementation requirements also will be provided to Forum attendees and will be the subject of Forum presentations.

Following receipt and review of comments on this second notice, the Postal Service will incorporate its proposed implementation requirements, with any revisions made as a result of the comments, into restructured Domestic Mail Manual (DMM) provisions and publish those proposed DMM provisions as a proposed rule for notice and comment.

Assuming that the second advanced notice of proposed rulemaking is published in late August 1995, with 30 days for comments and a reasonable time period for review of those comments and revision of the DMM provisions, the Postal Service expects that the DMM proposed rule will be published in late October or early November 1995. Further comments will be sought and reviewed on this proposed rule, in anticipation of the completion of the classification reform docket before the PRC.

Pursuant to 39 U.S.C. 3624, the PRC will issue a recommended decision on the Postal Service's Request to the Governors of the Postal Service. This recommended decision is expected in January 1996. Pursuant to 39 U.S.C. 3625, the Governors will issue a final decision on the PRC's recommendations.

The Board of Governors then will set an implementation date. Publication of a notice announcing the Governors' decision and the issuance of final Domestic Mail Classification Schedule and Rate Schedule changes will be made immediately after the Governors act. A final rule adopting implementing DMM regulations will be published either with the notice of the Governors' decision or as soon thereafter as possible.

The remainder of this notice sets forth the implementation provisions that the Postal Service is currently considering for adoption if its classification reform proposals are recommended by the PRC and approved by the Governors. For the reasons noted above, the provisions have not yet been drafted in DMM language.

For ease of review, this information is organized by the classes, subclasses, and rate categories proposed by the Postal Service in its classification reform Request to the PRC. Each heading is followed by one or more statements of the pertinent classification language proposed by the Postal Service for inclusion or retention in the Domestic Mail Classification Schedule (DMCS). A DMCS section reference is included in parentheses at the end of each statement for identification and reference purposes. (Because these proposed DMCS provisions are under review before the PRC as prescribed by 39 U.S.C. 3623, they are not subject to comment in this rulemaking process.) Where appropriate, following each DMCS statement, and indented under it, are statements of the mailing standards the Postal Service currently plans to implement through DMM changes if the pending classification changes are adopted.

The Postal Service has also included statements of pending issues related to these proposals. It is these planned DMM provisions and pending issues on which the Postal Service is seeking comment. The Postal Service also would like to know whether there are any additional proposals or issues that interested parties believe should be included in these classification reform implementation plans.

Neva R. Watson,

Acting Chief Counsel, Legislative.

I. FIRST-CLASS MAIL

A. GENERAL

- Any matter eligible for mailing (6000) may, at the mailer's option, be mailed as First-Class Mail (210).
- First-Class Mail may not exceed 70 pounds or 108 inches in length and girth combined (231).
- Certain matter must be sent as First-Class Mail (210).
- Postage for First-Class Mail must be paid in accordance with 240 (240).
- First-Class Mail must be deposited at places and times designated by the Postal Service (251).

B. RETAIL SUBCLASS (221)

1. General

- Each piece must weigh 11 ounces or less (221.1).

2. Single-Piece Rate Category

- All mailable matter may be mailed at the single-piece rates (210, 221.2).

3. Presort Rate Category

- Must be prepared in a mailing of at least 500 pieces (221.3a).
- Must be presorted, marked, and presented as prescribed by the Postal Service (221.3b).

—Nonupgradable letters and all flats and parcels must be packaged if there are 10 or more pieces to a 5-digit area, to a 3-digit area, or to an ADC; all remaining mail must be in mixed ADC packages. Packages must be placed in 5-digit, 3-digit, ADC, and mixed ADC trays (letters and flats) or sacks (parcels).

—For flats and nonupgradable letters, all possible 5-digit packages must be prepared before 3-digit packages; same for preparation order for ADC and mixed ADC packages.

—Optional make-up for upgradable letters is full trays to 5-digit (optional), 3-digit, AADC, and mixed AADC (no minimum) sort levels.

—For letters, 1- and 2-foot trays must be used; for flats, flat trays must be used; for parcels, sacks must be used.

- The Postal Service prefers the use of both 1- and 2-foot trays to ensure optimum tray utilization. Industry concerns include the efficiency and cost of a production environment where both sizes are intermingled.
- For flats, a full tray is defined as one that contains at least a single stack of pieces lying flat that reaches the bottom of the hand-holds, but no more than can be contained in the tray with the cover secured in place. Trays of flats must be secured with two straps.

—Presort Accuracy Verification and Evaluation (PAVE) software must be used or standardized documentation must be provided. Unresolved issues include whether PAVE will be mandatory for those categories where it is available, whether standardized documentation may be used instead, and what time period will be allowed for compliance when PAVE does become available.

—Mailing must be entered at an acceptance point designated by the Postal Service.

—Presort rate applies to all pieces in the mailing.

- Must meet the machinability, addressing, and other preparation requirements prescribed by the Postal Service (221.3c).

—Upgradable letters must be letter-size, automation-compatible physical pieces, with machine-printed nonscript addresses, an OCR read area and a barcode clear zone meeting reflectance requirements, and paper that can accept ink.

—Customer moves must be updated at least every 6 months (permissible methods are expected to include National Change of Address (NCOA) verification, Address Correction Service, and Address Change Service. The vendor community has developed several other ideas that could be used to meet this requirement. The Postal Service anticipates that formal proposals will be offered soon for evaluation.

—A certified process must be used at least once a year to ensure the accuracy of 5-digit ZIP Codes.

—A recommended checklist of possible ZIP Code verification options for address lists that are not computerized could be signed as a part of the verification process. Items to appear on the checklist might include manual verification using the most recent ZIP Code directory, a survey of the addressees currently in the address list to inquire about changes to ZIP Code information, participation in the current manual list correction service, turning the list over to someone else to verify, and use of approved software.

—Standardized address element format must be used. Standardized address element format does not refer to guidelines in USPS Publication 28, Postal Addressing Standards.

—Specifically, address element standardization means that the city name, state name, and ZIP Code or ZIP+4 are each elements of an address and must appear as the bottom line in the address block, in that order. The delivery address line must appear on the line immediately above the city, state, and ZIP Code line. For city-style addresses, the order of elements should be street number, predirectional (e.g., N, S, SW), street name, suffix (e.g., ST, AVE, RD), postdirectional (e.g., W, S, NE), and any necessary secondary unit designator (e.g., APT, STE, RM, UNIT) and number. For rural route or highway contract routes with box numbers in the address, the delivery address must contain the route number and box number in that order. With post office box addresses, the box number must follow the designation "PO BOX" or "POST OFFICE BOX." When any delivery address line information exceeds the space allowed, secondary information must be placed on the line above. This overflow information may not be placed on the line below the delivery address line. Address element standardization also means that the delivery address line elements should appear in the correct order.

—To help further clarify and respond to questions on the use of standardized address block format, the following information is provided:

- "Prestigious" city names may be used if associated with the correct ZIP Code.
- A state name may be fully spelled out or abbreviated according to the abbreviations in the USPS City State File.

• A city name must be spelled correctly enough not to create a duplicate within the state.

• Missing elements (e.g., directional or suffix) are not required if their omission does not create an ambiguous match.

• Street names must be spelled correctly enough not to create an ambiguous match.

• Abbreviations of words in street names may be used. (For recommended abbreviations, see USPS Publication 28, Postal Addressing Standards.)

4. Retail Discounts and Surcharges

a. Postal Card and Postcard Discount

• Matter must be a postal card or postcard (221.4) (232).

• Postal card or postcard must be of uniform thickness and must not exceed any of these dimensions: 6 inches long; 4.250 inches wide; 0.016 inch thick (232.1).

b. Nonstandard-Size Surcharge (221.5)

• If the mailpiece weighs 1 ounce or less and its aspect ratio (length of the mailpiece divided by its height) is less than 1.3 or more than 2.5; or if the mailpiece exceeds any of these dimensions: 11.500 inches long; 6.125 inches wide; or 0.250 inch thick (233).

c. Additional Presort Discount

• Applies to each piece weighing more than 2 ounces (221.6).

C. AUTOMATION SUBCLASS (222)

1. General

• Must be prepared in a mailing of at least 500 pieces (222.1).

• Each piece must weigh 11 ounces or less (222.1).

• Must be presorted, marked, and presented as specified by the Postal Service (222.1).

—All mailings must be presorted and presented in trays as described under the appropriate rate categories.

—Presort Accuracy Verification and Evaluation (PAVE) software must be used or standardized documentation provided.

—Mailings must be entered at an acceptance point designated by the Postal Service.

—For flats, a full tray is defined as one that contains at least a single stack of pieces lying flat that reaches the bottom of the hand-holds, but no more than can be contained in the tray with the cover secured in place. Trays of flats must be secured with two straps.

• Must bear a barcode representing no more than 11 digits (not including correction digits) as prescribed by the Postal Service (222.1).

—For letters, the mailing must be 100 percent delivery point barcoded. Production of 100 percent delivery point barcode (DPBC) mailstream requires resolving such issues as preprinted envelopes with less than a DPBC and the coding of destinations assigned a unique 5-digit ZIP Code or ZIP+4. A pure DPBC mailstream is needed to eliminate costly backflow of uncoded or non-DPBC pieces.

—For flats, the mailing must be 100 percent ZIP+4 or delivery point barcoded. For flats, the delivery point barcode will be optional; the ZIP+4 barcode, required. 100 percent barcoding for flats requires that each piece in a mailing (or segment or other subunit of a job) bear a ZIP+4 or DPBC.

• Must meet the machinability, addressing, barcoding, and other preparation requirements prescribed by the Postal Service (222.1).

—The current machinability requirements in DMM C810 must be met for letters, and those in DMM C820 must be met for flats.

—Coding Accuracy Support System (CASS) certified software must be used within 6 months of the mailing date or Multiline Accuracy Support System (MASS) certified equipment must be used to apply the barcode. This simply changes the current requirement for use of such software from within 1 year of mailing to within 6 months of mailing.

—Certified software used must match addresses to current CRIS file within 90 days of mailing date for letter-size carrier route rate mail. The "within 90 days of mailing" standard may require some mailers to update the carrier route codes in their address lists more frequently than every 90 days. This condition is influenced by the mailers' production schedule and when, during that cycle, they would normally update carrier route codes.

—Customer moves must be updated at least every 6 months (permissible methods are expected to include National Change of Address (NCOA) verification, Address Correction Service, and Address Change Service. The vendor community has developed several other ideas that could meet this requirement. The Postal Service anticipates that formal proposals will be offered soon for evaluation.

—Barcoded tray or sack labels must be used. It is proposed that all sack and tray labels be barcoded (as specified in DMM M032), but it is not resolved whether this requirement will be phased in.

—Barcoding must meet the current requirements in DMM C840.

—Courtesy or business reply envelope or card included in an Automation subclass mailing must be automation-compatible and bear a facing identification mark and a correct barcode for the return address. This will be phased in, in the future.

2. Basic Rate Category (Letters) (222.2)

• Must be letter-size mail (222.2).

—Must be presorted to AADC and mixed AADC in trays. A definition will be developed for the sequence of pieces in mixed AADC trays (for example, in 3-digit or AADC groups).

3. Three-Digit Rate Category (Letters) (222.3)

• Must be letter-size mail (222.3).

• Must be presorted to single or multiple 3-digit ZIP Code destinations as prescribed by the Postal Service (222.3).

—The Postal Service will allow 3-digit scheme sortation (that is, preparation of combinations of two or more 3-digit areas processed together in Postal Service schemes). Development of a national matrix is to be completed in the near future.

—Minimum of 150 pieces is required per 3-digit destination.

—Overflow trays are allowed when a full tray for the same destination is already prepared.

—A 3-digit make-up is required if sufficient volume.

4. Five-Digit Rate Category (Letters) (222.4)

• Must be letter-size mail (222.4).

• Must be presorted to single or multiple 5-digit ZIP Code destinations as prescribed by the Postal Service (222.4).

—Minimum of 150 pieces is required per 5-digit destination.

—Overflow trays are allowed when a full tray for the same destination is already prepared.

—A 5-digit scheme sort might be developed at a later date.

—A 5-digit make-up is optional.

5. Carrier Route Rate Category (Letters) (222.5)

• Must be letter-size mail (222.5).

• Must be presorted to carrier routes prescribed by the Postal Service (222.5).

—At least 10 pieces are required per route within 5-digit ZIP Code areas that are manually sorted to walk sequence by letter carrier or are processed on CSBCS equipment to delivery point sequence.

—A system is being developed to allow mailers access to the list of ZIP Codes for which carrier route presort will be allowed; monthly updates are proposed.

—The Postal Service will examine the number of routes that have fewer than 10 possible deliveries and determine whether to allow carrier route rates when pieces are prepared for all stops on such routes.

—Preparation in carrier route and 5-digit carrier routes trays is required.

—Carrier route make-up is optional.

6. Basic Flats Rate Category (222.6)

• Must be flat-size mail (222.6).

—Mail must be presorted to ADC and mixed ADC destinations.

—At least 10 pieces per destination must be prepared in packages.

—Flats trays must be used. For flats, a full tray is defined as one that contains at least a single stack of pieces lying flat that reaches the bottom of the hand-holds, but no more than can be contained in the tray with the cover secured in place. Trays of flats must be secured with two straps.

7. 3/5–Digit Flats Rate Category (222.7)

• Must be flat-size mail (222.7).

• Must be presorted to single or multiple 3- and 5-digit ZIP Code destinations as specified by the Postal Service (222.7).

—At least 10 pieces per destination must be prepared in packages.

—Flats trays must be used. For flats, a full tray is defined as one that contains at least a single stack of pieces lying flat that reaches the bottom of the hand-holds, but no more than can be contained in the tray with the cover secured in place. Trays of flats must be secured with two straps.

8. Automation Discounts

a. Postal Card and Postcard Discount

• Must be a postal card or postcard (222.8).

• Must be of uniform thickness and must not exceed any of these dimensions: 6 inches long; 4.250 inches wide; 0.016 inch thick (232).

b. Additional Presort Discount

• Applies to each piece weighing more than 2 ounces (222.9).

I–1 FIRST-CLASS MAIL

[Automation Subclass—Letters]

Sort level	Opt./req.	Rate qualification minimum	Tray levels	Rates letters [1]	Rates cards (cents)
Carrier route [2]	Opt	10 pieces per route	Carrier route (full, no overflow)	23.2	13.7
Carrier route [2]	do	10 pieces per route	5-digit carrier routes (no min.)	23.2	13.7
5-digit	do	150 pieces	5-digit (full, overflow allowed)	23.5	14.0
3-digit	Req	do	3-digit (full, overflow allowed)	25.0	15.5
AADC	do	N/A	AADC (full, overflow allowed)	27.0	17.5
Mixed AADC	do	do	Mixed AADC (no min., grouped by AADC)	27.0	17.5

[1] First-ounce rate. Each additional ounce is 23.0__. Additional presort discount for pieces over 2 ounces 4.6__.
[2] Carrier route sortation and rates limited to nonautomated and CSBCS sorted ZIP Codes

I–2 FIRST-CLASS MAIL

[Automation Subclass—Flats]

Sort level	Optional/required	Package/rate qualification minimums [1]	Tray levels	Rate [2] (cents)
5-digit	Required	10 pieces	5-digit (full, no overflow)	27.0
3-digit	do	do	3-digit (full, no overflow)	27.0
ADC	do	do	ADC (full, no overflow)	29.0
Mixed ADC	do	No min	Mixed ADC (no min.)	29.0

[1] Rate based on package without regard to the tray in which it is placed.
[2] First-ounce rate. An additional nonstandard surcharge of 5¢ applies to each piece weighing 1 ounce or less that falls outside the standard letter dimensions. Each additional ounce is 23.0¢. An additional presort discount of 4.6¢ applies to each piece weighing over 2 ounces.

I–3 FIRST-CLASS MAIL

[Retail Subclass—Presort Letters]

Sort level	Opt./req.	Package minimum	Tray levels	Rate letters (cents) [1]	Rate cards (cents)
5-Digit	Required	10 pieces	5-Digit (full, no overflow)	30.0	19.0
3-Digit	do	do	3-Digit (full, no overflow)	30.0	19.0
ADC	do	do	ADC (1/2 full, no overflow)	30.0	19.0
Mixed ADC	do	No min	Mixed ADC (no min.)	30.0	19.0
OPTIONAL MAKE-UP FOR UPGRADABLE PIECES					
5-Digit	Optional	N/A	5-Digit (full, no overflow)	30.0	19.0
3-Digit	Required	do	3-Digit (full, no overflow)	30.0	19.0
AADC	do	do	AADC (full-sequenced by 3-digit ZIP Code, no overflow).	30.0	19.0

I–3 FIRST-CLASS MAIL—Continued

[Retail Subclass—Presort Letters]

Sort level	Opt./req.	Package minimum	Tray levels	Rate letters (cents) [1]	Rate cards (cents)
Mixed AADC	.....do	.....do	Mixed AADC (no min., sequenced by 3-digit ZIP Code).	30.0	19.0

[1] First-ounce rate. Each additional ounce is 23.0¢. Additional presort discount for pieces over 2 ounces 4.6¢.
Single-Piece Rates: No presort, no minimum.

I–4 FIRST-CLASS MAIL

[Retail Subclass—Flats, Parcels Under 11 Oz.]

Presort rate				
Sort level	Optional/required	Package minimum	Tray levels (Sacks for parcels)	Rate [1,2] (cents)
5-Digit	Required	10 pieces	5-Digit (full, no overflow)	35.0
3-Digit	.....do	.....do	3-Digit (full, no overflow)	35.0
ADC	.....do	.....do	ADC (full, overflow allowed)	35.0
Mixed ADC	.....do	No min	Mixed ADC (no min., sequenced by 3-digit ZIP Code).	35.0

[1] First-ounce rate of 30¢ plus the 5¢ nonstandard surcharge applicable to pieces weighing 1 ounce or less.
[2] Each additional ounce is 23.0¢. An additional presort discount of 4.6¢ applies to each piece weighing over 2 ounces.
Single-Piece Rates: No presort or minimum.

II. STANDARD MAIL

A. GENERAL

• Any matter eligible for mailing (6000) may, at the mailer's option, be mailed as Standard Mail except certain matter required to be sent First-Class Mail or Periodicals class (311).

• May include printed matter not having the character of actual or personal correspondence (312).

• May have certain written additions (313).

• May not exceed 70 pounds (332).

• Postage must be paid in accordance with 340 (340).

• Must be deposited at places and times designated by the Postal Service (351).

B. REGULAR SUBCLASS

1. General

• Each piece must weigh less than 16 ounces (321.31).

• Must be prepared in a mailing of at least 200 addressed pieces or 50 pounds of addressed pieces (321.31a).

• Must be presorted, marked, and presented as prescribed by the Postal Service (321.31b).

—Nonupgradable letters, flats, and irregular parcels must be packaged if there are 10 or more pieces to a 5-digit area, to a 3-digit area, or to an ADC; all remaining mail must be in mixed ADC packages. Packages must be placed in 5-digit, 3-digit, ADC, and mixed ADC trays (letters) or sacks (flats and irregular parcels). Current exceptions to packaging of irregular parcels in DMM M306.2a and M306.2b apply.

—Machinable parcels must be sacked to 5-digit destinations (optional if 3/5 rates are not claimed) and destination BMCs when there are 10 or more pounds of mail for a sack destination, with remaining parcels sacked to the origin BMC.

—Palletization of flats is permitted and preferred.

—"Fletters" (larger letter-size pieces that are barcoded and claimed at the barcoded rates for flats) may receive the option of being prepared in packages on pallets.

—Optional make-up for upgradable letter pieces is full trays to 5-digit (optional), 3-digit, AADC, and mixed AADC (no minimum) sort levels.

—For letters, 1-foot and 2-foot trays must be used; for flats and parcels, sacks must be used. The Postal Service prefers both 1- and 2-foot trays as a means to ensure optimum tray utilization. Industry concerns include the efficiency and cost of a production environment where both sizes are intermingled.

—Presort Accuracy Verification and Evaluation (PAVE) software must be used or standardized documentation must be provided. Unresolved issues include whether PAVE will be mandatory for those categories where it is available, whether standardized documentation may be used instead, and what time period will be allowed for compliance when PAVE does become available.

—Mailings must be entered at an acceptance point designated by the Postal Service.

• Must meet machinability, addressing, and other preparation requirements prescribed by the Postal Service (321.31c).

—Upgradable letters must be letter-size, automation-compatible physical pieces, with machine-printed nonscript addresses, an OCR read area and a barcode clear zone meeting reflectance requirements, and paper that can accept ink.

—A certified process must be used to ensure the accuracy of 5-digit ZIP Codes at least once a year.

—A recommended checklist of possible ZIP Code verification options for address lists that are not computerized could be signed as a part of the verification process. Items to appear on the checklist might include manual verification using the most recent ZIP Code directory, a survey of the addressees currently in the address list to inquire about changes to ZIP Code information, participation in the current manual list correction service, and turning the list over to someone else to verify use of approved software.

—Standardized address element format must be used. Standardized address element format does not refer to the guidelines in USPS Publication 28, Postal Addressing Standards.

—Specifically, address element standardization means that the city name, state name, and ZIP Code or ZIP+4 are each elements of an address and must appear as the bottom line in the address block, in that order. The delivery address line must appear on the line immediately above the city, state, and ZIP Code line. For city-style addresses, the order of elements should be street number, predirectional (e.g., N, S, SW), street name, suffix (e.g., ST, AVE, RD), postdirectional (e.g., W, S, NE), and any necessary secondary unit designator (e.g., APT, STE, RM, UNIT) and number. For rural route or highway contract routes with box numbers in the address, the delivery address must contain the route number and box number in that order. With post office box addresses, the box number must follow the designation "PO BOX" or "POST OFFICE BOX." When any delivery address line information exceeds the space allowed, secondary information must be placed on the line above. The overflow information may not be placed on the line below the delivery address line. Address element standardization also means that the delivery address line elements should appear in the correct order.

—To help further clarify and respond to questions on the use of standardized address block format, the following information is provided:

• "Prestigious" city names may be used if associated with the correct ZIP Code.

• A state name may be fully spelled out or abbreviated according to the abbreviations in the USPS City State File.

• A city name must be spelled correctly enough not to create a duplicate within the state.

• Missing elements (e.g., directional or suffix) are not required if their omission does not create an ambiguous match.

• Street names must be spelled correctly enough not to create an ambiguous match.

• Abbreviations of words in street names may be used. (For recommended abbreviations, see USPS Publication 28, Postal Addressing Standards.)

2. Basic Rate Category (321.22)

—Must be presorted to ADC or mixed ADC trays (letters) or sacks (flats and irregular parcels).

—Under the optional sortation for upgradable letters, this mail may be presorted to AADC and mixed AADC trays. Machinable parcels are presorted to origin BMC sacks and, if 5-digit sacks are not prepared, presorted to destination BMC sacks.

3. 3/5-Digit Rate Category (321.23)

• Must be presorted to single or multiple 3- and 5-digit ZIP Code destinations, as prescribed by the Postal Service (321.23).

—Must be presorted to 5-digit and 3-digit trays (letters) or sacks (flats and irregular parcels) and to 5-digit and destination BMC sacks (machinable parcels).

4. Destination Entry Discounts (321.24)

• Applies to mail prepared as prescribed by the Postal Service and entered at the destinating BMC or SCF (321.24).

C. AUTOMATION SUBCLASS (321.3)

1. General

• Each piece must weigh less than 16 ounces (321.3).

• Must be prepared in a mailing of at least 200 addressed pieces or 50 pounds of addressed pieces (321.3a).

• Must be presorted, marked, and presented as prescribed by the Postal Service (321.3b).

—Presort must conform to that specified under rate categories.

—Presort Accuracy Verification and Evaluation (PAVE) software must be used or standardized documentation must be provided.

—Mailings must be entered at an acceptance point designated by the Postal Service.

—Separately prepared packages of 100 percent barcoded, 5-digit barcoded, nonbarcoded, and carrier route presort flats may be palletized together in identified and segregated groups, and reported together on mailing statements and supporting documentation.

• Must bear a barcode representing no more than 11 digits (not including correction digits) as prescribed by the Postal Service (321.3c).

—For letters, mail must be 100 percent delivery point barcoded.

—For flats, mail must be 100 percent ZIP+4 or delivery point barcoded. The delivery point barcode will be optional, but the ZIP+4 barcode will be required. This standard requires that each piece in a mailing (or segment or other subunit of a job) bear a ZIP+4 or delivery point barcode.

• Must be letter-size or flat-size as defined by the Postal Service and must meet the machinability, addressing, barcoding, and other preparation requirements prescribed by the Postal Service (321.3d and 321.3e).

—The current machinability requirements in DMM C810 must be met for letters, and those in DMM C820 must be met for flats.

—Coding Accuracy Support System (CASS) certified software must be used within 6 months of the mailing date or Multiline Accuracy Support System (MASS) certified equipment must be used to apply the barcode. (This simply changes the current requirement for use of such software from within 1 year of mailing to within 6 months of mailing.)

—Certified software used must match addresses to current CRIS file within 90 days of the mailing date for letter-size carrier route rate mail. Updating carrier route information within 90 days of the mailing date may require some mailers to update carrier route codes monthly because of the length of their mail production cycles.

—Standardized address element format must be used. Standardized address element format does not refer to the guidelines in USPS Publication 28, Postal Addressing Standards.

—Specifically, address element standardization means that the city name, state name, and ZIP Code or ZIP+4 are each elements of an address and must appear as the bottom line in the address block, in that order. The delivery address line must appear on the line immediately above the city, state, and ZIP Code line. For city-style addresses, the order of elements should be street number, predirectional (e.g., N, S, SW), street name, suffix (e.g., ST, AVE, RD), postdirectional (e.g., W, S, NE), and any necessary secondary unit designator (e.g., APT, STE, RM, UNIT) and number. For rural route or highway contract routes with box numbers in the address, the delivery address must contain the route number and box number in that order. With post office box addresses, the box number must follow the designation "PO BOX" or "POST OFFICE BOX." When any delivery address line information exceeds the space allowed, secondary information must be placed on the line above. This overflow information may not be placed on the line below the delivery address line. Address element standardization also means that the delivery address line elements should appear in the correct order.

—To help further clarify and respond to questions on the use of standardized address block format, the following information is provided:

• "Prestigious" city names may be used if associated with the correct ZIP Code.

• A state name may be fully spelled out or abbreviated according to the abbreviations in the USPS City State File.

• A city name must be spelled correctly enough not to create a duplicate within the state.
• Missing elements (e.g., directional or suffix) are not required if their omission does not create an ambiguous match.
• Street names must be spelled correctly enough not to create an ambiguous match.
• Abbreviations of words in street names may be used. (For recommended abbreviations, see USPS Publication 28, Postal Addressing Standards.)
• Must use barcoded tray or sack labels. For flats, sack and tray labels must be barcoded as specified in DMM M032.
• Barcoding must meet the current requirements in DMM C840.

2. Basic Rate Category (Letters)

• Must be letter-size mail (321.32).
—Mail must be presorted in AADC and mixed AADC trays.
—A definition will be developed for the sequence of pieces in mixed AADC trays (for example, in 3-digit or AADC groups).

3. Three-Digit Rate Category (Letters)

• Must be letter-size mail (321.33).
• Must be presorted to single or multiple 3-digit ZIP Code destinations as prescribed by the Postal Service (321.33).
—The Postal Service will allow 3-digit scheme sortation by customers (that is, preparation of combinations of two or more 3-digit areas that are processed together in Postal Service operating schemes). Development of a national matrix is to be completed in the near future.
—Minimum of 150 pieces is required per 3-digit destination.
—Overflow trays will be allowed when a full tray for the same destination is already prepared.
—A 3-digit make-up is required if sufficient volume.

4. Five-Digit Rate Category (Letters)

• Must be letter-size mail (321.34).
• Must be presorted to single or multiple 5-digit ZIP Code destinations as prescribed by the Postal Service (321.34).
—A minimum of 150 pieces is required per 5-digit destination.
—Overflow trays will be allowed when a full tray for the same destination is already prepared.
—A 5-digit scheme sort may be developed at a later date.
—A 5-digit make-up is optional.

5. Carrier Route Rate Category (Letters)

• Must be letter-size mail (321.35).
• Must be presorted to carrier routes prescribed by the Postal Service (321.35).
—A system is being developed to allow mailers access to the list of ZIP Codes for which carrier route presort is allowed; monthly updates are proposed.
—Must have at least 10 pieces per route within 5-digit ZIP Code areas that are manually sorted to walk sequence or are processed on CSBCS equipment to delivery point sequence.
—The Postal Service will examine the number of routes that have fewer than 10 possible deliveries and determine whether to allow carrier route rates when pieces are prepared for all stops on such routes.
—Mail must be prepared in carrier route and 5-digit carrier routes trays.
—A carrier route make-up is optional.

6. Basic Flats Rate Category

• Must be flat-size mail (321.36).
—Mail must be presorted to ADC and mixed ADC destinations. At least 10 pieces per destination must be prepared in packages.

7. 3/5-Digit Flats Rate Category

• Must be flat-size mail (321.37).
• Must be presorted to single or multiple 3- and 5-digit ZIP Code destinations as specified by the Postal Service (321.37).
—At least 10 pieces per destination must be prepared in packages.

8. Destination Entry Discounts

• Applies to mail prepared as prescribed by the Postal Service and addressed for delivery within the service area of the destination BMC (or ASF), SCF, or DDU. The DDU discount applies only to Carrier Route rate category mail (321.28).

D. ENHANCED CARRIER ROUTE SUBCLASS

1. General

• Each piece must weigh less than 16 ounces (321.3).
• Must be prepared in a mailing of at least 200 addressed pieces or 50 pounds of addressed pieces (321.3a).
• Must be prepared, marked, and presented as prescribed by the Postal Service (321.3b).
—Mailing must be entered at an acceptance point designated by the Postal Service.
• Must be presorted to carrier routes as prescribed by the Postal Service (321.3c).
—Mail must be packaged if there are 10 or more pieces to a carrier route.
—The Postal Service will examine the number of routes that have fewer than 10 possible deliveries and determine whether to allow enhanced carrier route rates when pieces are prepared for all stops on such routes.
—Packages must be placed in carrier route sacks when 125-piece or 15-pound minimum per carrier route is met; remaining packages must be placed in 5-digit carrier routes sacks. Palletization of flats is preferred.
—The Postal Service will carry forward the current provisions applicable to 125-piece walk-sequence rates and allow the high-density rates when pieces are prepared for all possible deliveries on those routes that have fewer than 125 stops.
—Separately prepared packages of 100 percent barcoded, 5-digit barcoded, nonbarcoded, and carrier route presort flats may be palletized together in identified and segregated groups, and reported together on mailing statements and supporting documentation.
—Presort Accuracy Verification and Evaluation (PAVE) software must be used or standardized documentation must be provided.
• Must be sequenced as prescribed by the Postal Service (321.3d).
• Must meet the machinability, addressing, and other preparation requirements prescribed by the Postal Service (321.3e).
—Certified software used must match addresses to current CRIS file within 90 days of the mailing date for carrier route rate mail. Updating carrier route information within 90 days of the mailing date may require some mailers to update carrier route codes monthly due to the lengths of their mail production cycles.
—Standardized address element format must be used. Standardized address element format does not refer to the guidelines in USPS Publication 28, Postal Addressing Standards.
—Specifically, address element standardization means that the city name, state name, and ZIP Code or ZIP+4 are each elements of an address and must appear as the bottom line in the address block, in that order. The delivery address line must appear on the line immediately above the city state and ZIP Code line. For city-style addresses, the order of elements should be street number, predirectional (e.g., N, S, SW), street name, suffix (e.g., ST, AVE, RD), postdirectional (e.g., W, S, NE), and any necessary secondary unit designator (e.g., APT, STE, RM, UNIT) and number. For rural route or highway contract routes with box numbers in the address, the delivery address must contain the route number and box number in that order. With post office box addresses, the box number must follow the designation "PO BOX" or "POST OFFICE BOX." When any delivery address line information exceeds the space allowed, secondary information must be placed on the line above. Such overflow information may not be placed on the line below the delivery address line. Address element standardization also means that the delivery address line elements should appear in the correct order.
—To help further clarify and respond to questions on the use of standardized address block format, the following information is provided:
• "Prestigious" city names may be used if associated with the correct ZIP Code.
• A state name may be fully spelled out or abbreviated according to the abbreviations in the USPS City State File.
• A city name must be spelled correctly enough not to create a duplicate within the state.
• Missing elements (directional or suffix) are not required if their omission does not create an ambiguous match.
• Street names must be spelled correctly enough not to create an ambiguous match.
• Abbreviations of words in street names may be used. (For recommended abbreviations, see USPS Publication 28, Postal Addressing Standards.)

2. Basic Rate Category

—Mailings must be in line-of-travel sequence.
—This is not exact walk-sequence arrangement of the mailpieces. For line-of-travel sequence, the mailpieces are first sorted into the sequence in which the ZIP+4s are delivered by the carrier. The mailpieces are further sorted into ascending or descending numerical sequence within the number range associated with the ZIP+4.
—The Postal Service will examine the number of routes that have fewer than 10 possible deliveries and determine whether to allow enhanced carrier route rates when pieces are prepared for all stops on such routes.

3. High-Density Rate Category

• Applies to mail presented in walk-sequence order and meeting high-density requirements prescribed by the Postal Service (321.43).
—Mail must be at least 125 pieces per carrier route sorted to carrier walk-sequence.
—The Postal Service will examine the number of routes that have fewer than 10 possible deliveries and determine whether to allow carrier route rates when pieces are prepared for all stops on such routes.
—The current methods for walk-sequencing address lists in DMM M304.5 may be used.
—It has been suggested that the Postal Service use line-of-travel sequence as an alternative to exact walk sequence.

4. Saturation Rate Category

• Applies to mail presented in walk-sequence order and meeting the saturation requirements prescribed by the Postal Service (321.44).
—There must be addressed pieces for at least 90 percent of the total active residential deliveries per route, or for at least 75 percent of the total active deliveries per route.
—The current methods for walk-sequencing address lists in DMM M304.5 must be used.
—Further instructions will be developed for the preparation of letter-size pieces in this rate category (for example, use of sacks or trays).

5. Destination Entry Discounts

• Applies to mail prepared as prescribed by the Postal Service and addressed for delivery within the service area of the destination BMC (or ASF), SCF, or DDU (321.45).
—The Postal Service is working to align SCF, ADC, and BMC service area boundaries.
—Destination entry will not be required to mail at high-density or saturation walk-sequence rates.

II–1 STANDARD MAIL

[Automation Subclass—Letters (Third-Class)]

Sort level	Opt./req.	Rate qualification minimum	Tray levels	Rate [1] (cents)
Carrier Route [2]	Opt.	10 pieces per route	Carrier Route (full, no overflow)	14.1
Carrier route [2]	do	do	5-Digit Carrier Routes (no min.)	14.1
5-Digit	do	150 pieces	5-Digit (full, overflow allowed)	15.5
3-Digit	Req.	do	3-Digit (full, overflow allowed)	16.8
AADC	do	N/A	AADC (full, overflow allowed)	17.5
Mixed AADC	do	do	Mixed AADC (no min., grouped by AADC)	17.5

[1] Destination discounts will also be available.
[2] Carrier Route sortation and rates limited to nonautomated and CSBCS sorted ZIP Codes.

II–2 STANDARD MAIL

[Automation Subclass—Flats (Third-Class)]

Sort level	Optional/required	Package minimum	Sacks [2]	Rate [1] (cents)
5-Digit	Required	10 pieces	5-Digit (min. 125 pieces or 15 lbs.)	19.0
3-Digit	do	do	3-Digit (min. 125 pieces or 15 lbs.)	19.0
ADC	do	do	ADC (min. 125 pieces or 15 lbs.)	23.7
Mixed ADC	do	No min	Mixed ADC (no min.)	23.7

[1] Rate is based on type of package regardless of sack in which, or pallet on which, it is placed. Destination discounts will also be available.
[2] Palletization preferred. Pallet destinations are not the same as sack levels shown.

II–3 STANDARD MAIL

[Regular Subclass—Letters (Third-Class)]

Sort level	Opt./req.	Package min.	Tray levels	Rate [1] (cents)
5-Digit	Required	10 pieces	5-Digit (full, no overflow trays)	21.9
3-Digit	...do	...do	3-Digit (full, no overflow trays)	21.9
ADC	...do	...do	ADC (½ full, no overflow trays)	26.1
Mixed ADC	...do	No min	Mixed ADC (no min.)	26.1
OPTIONAL MAKE-UP FOR UPGRADABLE PIECES [1]				
5-Digit	Optional	N/A	5-Digit (full, no overflow)	21.9
3-Digit	...do	...do	3-Digit (full, overflow allowed)	21.9
AADC	...do	...do	AADC (full, sequenced by 3-digit ZIP Code)	26.1
Mixed AADC	...do	...do	Mixed AADC (no min., sequenced by 3-digit ZIP Code).	26.1

[1] Destination discounts will also be available.

II–4 STANDARD MAIL

[Regular Subclass—Flats and Parcels (Third-Class)]

Presort rate				Minimum piece rate [3, 4] (cents)
Sort level	Optional/required	Package minimum [1]	Sacks [1, 2]	
5-Digit	Required	10 pieces	5-Digit (min. 125 pieces or 15 lbs.)	23.7
3-Digit	...do	...do	3-Digit (min. 125 pieces or 15 lbs.)	23.7
ADC	...do	...do	ADC (min. 125 pieces or 15 lbs.)	30.5
Mixed ADC	...do	No min	Mixed ADC (no min.)	30.5

[1] No packaging will be required for machinable parcels. Machinable parcels will be sacked to 5-digit and destination BMC whenever there are 10 pounds or more of mail for a sack destination, with remaining parcels sacked to the origin BMC. The 5-digit sacks will be optional for mail claiming basic rates.
[2] Palletization permitted and preferred. Pallet destinations are different from the sack destinations shown.
[3] Rate is based on sack level for sacked mail. For packages on pallets, the rate is based on the package level.
[4] Destination discounts will also be available.

II–5 STANDARD MAIL

[Enhanced Carrier Route Subclass (Third-Class)]

Sort level	Opt./req.	Package Minimum	Sacks [1]	Minimum per-piece rate (cents)
SATURATION				
Carrier route	Required	90% total active residential deliveries or 75% total active all deliveries per route (100% if simplified address).	CR (min. 125 pcs. or 15 lbs.)	13.5
			5D CR–RTS (no min.)	13.5
HIGH DENSITY				
Carrier route	Required	125 pcs. per route	CR (min. 125 pcs. or 15 lbs.)	14.8
			5D CR–RTS (no min.)	14.8
BASIC				
Carrier route	Required	10 pieces per route	CR (min. 125 pcs. or 15 lbs.)	15.5
			5D CR–RTS (no min.)	15.5

[1] Trays preferred for letters. Palletization preferred for flats.
No Residual.

III. PERIODICALS

The classification reform proposal changes the name for second-class mail to Periodicals. Second-class regular rate mail will be split into two subclasses: Publications Service and Regular Periodicals. Preferred second-class mail preparation rules and rates, including those for in-county mail, will not change as a result of the pending classification reform case.

A. GENERAL

1. Basic Requirements

The requirements listed below represent no change to current standards governing eligibility for second-class rates.

- Must qualify as General Publication, Requester Publication, Publication of Institution and Society, or Publication of a State Department of Agriculture (411.1).
- Must be mailable matter consisting of newspapers and other periodical publications (411.2).
- Must be regularly issued at stated intervals at least four times a year, bear a date of issue, and be numbered consecutively (411.3).
- Must have a known office of publication (411.4).
- Must be formed of printed sheets (411.5).
- No size or weight limits (430).
- Postage must be paid in accordance with 441 (441).
- Must be presorted as prescribed by the Postal Service (442).
- Must be identified as prescribed by the Postal Service (444).
- May have certain attachments and enclosures (443).
- Must file certain information (445).
- May contain enclosures and supplements as prescribed by the Postal Service (446).
- Must be deposited at places and times designated by the Postal Service (451).

2. General Publications

These requirements are the same as current standards for second-class mail.

- Must be for the purpose of disseminating information of a public character or must be devoted to literature, the sciences, art, or some special industry (412.2).
- Must have at least 50 percent paid circulation (412.31).
- Must have a legitimate list of subscribers (412.32).
- Must meet tests to ensure that it is not designed primarily for advertising purposes (for example, advertising may not exceed 75 percent in more than one-half of its issues during any 12-month period) (412.4).

3. Requester Publications

These requirements are the same as current standards for second-class mail.

- Must contain at least 24 pages (413.2).
- Must contain at least 25 percent nonadvertising (413.31).
- Must meet ownership and control test for advertising purposes (413.32).
- Must have a legitimate list of requesters, with at least a 50 percent distribution to requesters (413.41).

4. Publications of Institutions and Societies

These requirements are the same as current standards for second-class mail.

- Must meet General Publications advertising requirements (414.1).
- Must contain only publisher advertising unless certain conditions are met (414.1, 414.2).
- Must be published by an institution or society (414.1).

5. Publications of State Departments of Agriculture

These requirements are the same as current standards for second-class mail.

- Must be issued by a state department of agriculture (415).
- Must contain no advertising and must further the objective of the department (415).

6. Foreign Publications

These requirements are the same as current standards for second-class mail.

- Must have same character as domestic Periodicals (416).

B. REGULAR SUBCLASS

1. General Requirements

With the exception of the change in the description of rate categories, and possible presort changes explained below, the requirements for the Regular subclass have not changed from those currently applicable to regular second-class mail.

- Must be presorted, marked, and presented as prescribed by the Postal Service (421.1).

—Mail must meet current requirements in DMM M010, M020, M030, M041, M042, M200, M800, D200.

- Must meet machinability, addressing, and other preparation requirements prescribed by the Postal Service (421.1).

—Mail must meet current requirements in DMM A200, A800, C200, C800.

2. Regular Subclass Pound-Rate Category

These requirements are the same as current standards for second-class mail.

- An unzoned pound rate applies to nonadvertising portion of the publication (421.2).
- A zoned pound rate (rates are based on 9 zones) applies to the advertising portion (421.2).

3. Regular Piece-Rate Categories (421.3)

—Regular piece-rate categories include basic, 3- and 5-digit, and carrier route. These proposed categories eliminate the rate levels A, B, and C, making the presortation structure for Periodicals more consistent with other classes. The new 3- and 5-digit rate category replaces the current B3 and B5 rates. Mail presorted to all 3-digit destinations (not just to unique 3-digit destinations) will qualify for the 3- and 5-digit rate. This represents a change from today's regular second-class rate structure.

—Industry members of the Periodicals Implementation Advisory Group have suggested that the presort requirements for Regular and Publications Service rates be made the same for simplicity. Although the Postal Service did not anticipate making changes, except as noted to the current presort requirements for Regular Periodicals, it agrees that a single presort scheme would make sense and will evaluate the suggestion. Such changes would include eliminating the optional city, SCF, state, and SDC sortation levels. The Publications Service chart at the end of this section contains additional information on the proposed sortation scheme. The Postal Service is interested in the comments from publishers and other parties on whether the sortation requirements for Regular Periodicals should be the same as those for Publications Service.

4. Basic Rate Category (421.31)

a. Three- and Five-Digit Rate Category

- Must be presorted to single or multiple 3- and 5-digit ZIP Code destinations as prescribed by the Postal Service (421.32).

—In nonautomation rate mailings, rates apply to pieces in 5-digit, optional city, and 3-digit packages of six or more addressed pieces each that are correctly sorted to 5-digit, optional city, or 3-digit sacks.

—In packaged-based automation-rate letter-size mailings, rates apply to pieces in 5-digit packages of 10 or more pieces, and in optional city and 3-digit packages of 50 or more pieces, that are placed in 5-digit, optional city, 3-digit, SCF, or AADC trays.

—In barcoded rate flat-size mailings, rates apply to pieces in 5-digit, optional city, and 3-digit packages of six or more addressed pieces that are sorted to 5-digit, optional city, 3-digit, SCF, ADC, or SDC sacks.

b. Carrier Route Rate Category

These requirements are the same as current standards for second-class mail.

• Must be presorted to carrier routes as prescribed by the Postal Service (421.33).

—Mail must be prepared in packages of six or more addressed pieces each.

5. Regular Subclass Discounts (421.4)

a. Barcoded Letter Discounts

These requirements are the same as current standards for second-class mail.

• Must bear a barcode representing not more than 11 digits (not including correction digits) as prescribed by the Postal Service (421.41).

• Must meet the machinability, addressing, and barcoding specifications and other preparation requirements prescribed by the Postal Service (421.41).

b. Barcoded Flats Discounts

These requirements are the same as current standards for second-class mail.

• Must bear a barcode representing not more than 11 digits (not including correction digits) as prescribed by the Postal Service (421.42).

• Must meet flats machinability, addressing, and barcoding specifications and other preparation requirements prescribed by the Postal Service (421.42).

c. High-Density Discount

High density refers to the current 125-piece walk-sequence category.

• Must be presented in walk-sequence order (421.43).

• Must meet high-density and preparation requirements prescribed by the Postal Service (421.43).

d. Saturation Discount

These requirements are the same as current standards for second-class mail.

• Must be presented in walk-sequence order (421.44).

• Must meet the saturation and preparation requirements prescribed by the Postal Service (421.44).

e. Destination Entry Discounts

These requirements are the same as current standards for second-class mail.

• Must be entered at the destinating SCF or DDU (421.45).

• DDU discount applies only to Carrier Route mail (421.45).

f. Nonadvertising Discount

These requirements are the same as current standards for second-class mail.

• A discount applies, based on the proportion of nonadvertising content (421.46).

C. PUBLICATIONS SERVICE SUBCLASS

1. General Requirements

There are three primary criteria that must be met in order to mail under Publications Service (each is further explained in this section):

(1) At least 75 percent of the mailed volume must be paid (for General Publications) or requested (for Requester circulation);

(2) At least 30 percent of the content in each issue must be nonadvertising matter; and

(3) At least 90 percent of each issue must be presorted to carrier-route, 5-digit, or 3-digit destinations.

The requirements that periodicals must meet to be eligible to mail at Publications Service rates are based on the entire mailed volume of the publication. These standards are based on mailed volume, rather than the entire circulated volume of the publication (that is, the volume that must be accounted for when a publication is audited for eligibility as Periodicals mail).

This change responds to publishers' requests that the Postal Service concern itself with only the mailed portion of a publication's circulation. Mailed volume for the purposes of these proposals includes all mailed copies (including mailed newsstand copies) except for those claimed at in-county, foreign, or First-Class, Priority Mail, or Express Mail rates.

2. 75 Percent Paid or Requester Circulation

• At least 75 percent of the mailed volume must be paid or requested (422.1).

—This differs from current second-class requirements in two ways: it is an increase in the paid/requested requirement from 50 percent to 75 percent and it is applied against the mailed volume, not total circulation.

—Failure to meet this requirement will result in revocation of Publications Service eligibility.

3. 30 Percent Nonadvertising Content

• Must have at least 30 percent nonadvertising content in each issue (mailed volume except within county rate volume) (422.1).

—The 30 percent nonadvertising criterion applies to all mailed copies in the mailed volume (this does not include copies mailed at the in-county, foreign, First-Class, Priority Mail, or Express Mail rates.

—Failure to meet the 30 percent nonadvertising requirement will result in a 40 percent postage penalty assessment on the noncomplying issue.

4. 90 Percent Presorted to 3–Digit or Finer

• Must have at least 90 percent of each issue presorted to 3-digit or 5-digit destinations or to carrier routes (mailed volume except within county rate volume) (422.1).

—Copies count toward the 90 percent density criterion if they are part of a minimum of 24 pieces to a 3-digit destination all of which are properly presorted in packages of six pieces or more to carrier-route, 5-digit, or 3-digit destinations, as appropriate.

—Failure to meet the 90 percent presortation requirement will result in a 40 percent postage penalty assessment on the noncomplying issue.

• Must be presorted, marked, and presented as prescribed by the Postal Service (422.1).

—Barcoded letter mail must be prepared in trays.

—Flats must be packaged if there are six or more pieces to a 5-digit area, to a 3-digit area, or to an ADC; remaining mail prepared in mixed ADC packages. Packages may be placed on pallets or in 5-digit, 3-digit, ADC, and mixed ADC sacks. Flats may be optionally packaged to carrier route when there are six or more pieces per carrier route. Carrier route packages may be placed on pallets or in carrier route sacks or in 5-digit carrier routes sacks.

EXAMPLE OF 90 PERCENT CRITERION

Sort Levels	Publications 90% Criterion ZIP Codes						
	102	202	302	402	502	602	Total
Carrier Route	6	0	18	12	6	124	166
5-Digit	6	6	34	40	56	124	266
3-Digit	18	17	28	2	8	75	148
Total	30	23	80	54	70	323	580
Quantity Toward 90%	30	0	80	52	70	323	555
							95.69

The 23 pieces to ZIP Code 202 do not count toward the 90 percent requirement because there are fewer than 24 pieces to the 3-digit destination.

Two of the pieces to ZIP Code 402 do not count because they are not part of a package of six or more pieces. Because carrier route is an optional sortation level, the customer may choose to move four pieces from the carrier route qualifying portion to the 3-digit level to meet the six-piece minimum (this assumes that the finest level of sort for those four pieces is a 3-digit destination and not part of the 5-digit).

Although firm packages will continue to be considered a single addressed piece for presort and postage purposes, all copies in firm packages of six or more and all copies in firm packages of fewer than six that are included in packages of six or more will count toward meeting the 90 percent presortation requirement.

For the purposes of the 90 percent criterion, an issue is considered to consist of all copies in the mailed volume that are mailed with that window of time during which the main file and most supplemental mailings for a particular title are deposited with the Postal Service. The mailing "window" includes all copies, regardless of cover date, that are mailed between cover dates.

For example, the first copy of the January cover date of *XYZ Monthly* mails on January 1 and the first copy of the February cover date mails on February 1. During January, the issue might include the full main file of the January cover date, at least one supplemental run of the January cover date, at least one supplemental run of the December cover date, and possibly even a supplemental run of the November cover date. The following example shows how this determination is to be made:

Activity	Total pieces	Qualifying pieces	Qualifying percent
January main file	250,000	240,000	96
January supplement [1]	42,000	38,000	90
Do	15,000	14,000	93
January supplement	2,000	800	40
December supplement [1]	23,000	18,000	78
Do	9,000	8,000	89
December supplement	150	0	0
November supplement	1,300	800	62
Do	200	0	0
	342,650	319,600	93

[1] Comailing

In a comailing situation—for purposes of administering the 90 percent criterion — the Postal Service proposes to look at what happened to the individual title within the comailing. In other words, the qualifying pieces in the comailing are added to the qualifying pieces in the main file and any qualifying pieces in supplemental runs that were not comailed, and the final qualifying percentage is derived by dividing the total number of qualifying pieces by the total number of mailed pieces. Each individual PS Form 3541 will not have to meet the 90 percent criterion.

Publications Service titles may be comailed with Regular Periodicals. If a decision is made not to align the presort requirements in Regular Periodicals with that of Publications Service, if Publications Service and Regular Periodicals are comailed, the entire comailing is to be prepared using the Publications Service sortation criteria.

In a comailing, penalties apply to the publication that fails to meet the requirements, not to the publications with which it is comailed.

• Must be presorted, marked, and presented as prescribed by the Postal Service (422.1).

—Barcoded letter mail must be prepared in trays.

—Flats must be packaged if there are six or more pieces to a 5-digit area, to a 3-digit area, or to an ADC; remaining mail prepared in mixed ADC packages. Packages may be placed on pallets or in 5-digit, 3-digit, ADC, and mixed ADC sacks. Flats may be optionally packaged to carrier route when there are six or more pieces per carrier route. Carrier route packages may be placed on pallets or in carrier route sacks or in 5-digit carrier routes sacks.

—Barcoded container labels must be used (tray and sack labels that are either postal-provided or mailer-provided).

—Deposit times must be scheduled.

—Presort Accuracy Verification and Evaluation (PAVE) software must be used or standardized documentation must be provided.

—Mailings must be entered at an acceptance point designated by Postal Service. This requirement is the same as current standards for second-class mail.

• Must meet the machinability, addressing, barcoding, postage payment, containerization, and other preparation requirements prescribed by the Postal Service (422.1).

—For nonautomation compatible, non-carrier route rate mail, must use a certified process to verify the accuracy of mailing lists against USPS 5-digit ZIP Code file at least once a year.

—A recommended checklist of possible ZIP Code verification options for address lists that are not computerized could be signed as a part of the verification process. Items to appear on the checklist might include manual verification using the most recent ZIP Code directory, a survey of the addressees currently in the address list to inquire about changes to ZIP Code information, participation in the current manual list correction service, and turning the list over to someone else to verify, and use of approved software.

—For automation-compatible pieces other than carrier route rate flats, Coding Accuracy Support System (CASS) certified software must be used within 6 months of mailing date or Multiline Accuracy Support System (MASS) certified equipment must be used to apply the barcode. This simply changes the current requirement for use of such software from within 1 year of mailing to within 6 months of mailing.

—Must match addresses to current CRIS file using certified software within 90 days of mailing for carrier route rate mail.

—Standardized address element format must be used. The standard address element format refers to the positioning of elements within the address block, not to address placement on the piece itself. This requirement will apply to nonbarcoded pieces only, however, the Postal Service strongly recommends that all mailpieces contain an address that meets these standards.

—Address Change Service (ACS) must be used.

—Computer-based electronic payment systems must be used when those systems are developed. Electronic payment systems will not be required in the final rule, but they will be strongly recommended.

—New containerization requirements will be developed with mailers. For the purposes of this rulemaking, although sacks may be used, palletized sacks or packages (palletized trays for letter mail) will be the preferred containerization method.

• Must bear a barcode representing not more than 11 digits (not including correction digits) on automation-compatible pieces other than carrier-route rate flats as prescribed by the Postal Service (422.1).

—If a mailpiece meets all machinable requirements, every piece (other than the carrier route flat qualifying portion) must be barcoded. All pieces must bear at least a 5-digit barcode and no less than 85 percent of the pieces must bear a 9-digit or delivery point barcode. If a piece is not machineable, barcoding is not required.

—Barcodes are defined by the current requirements in DMM C840.

—Automation compatibility is defined by the current requirements in DMM C810 for letters and in DMM C820 for flats.

—Must use a certified system or software to determine and document advertising and editorial percentages in each edition/issue when available.

—The Postal Service does not plan to require a certified system to audit advertising/nonadvertising percentages in these implementation rules. When such systems are developed in the future, and the Postal Service has reason to believe that they will be, the Postal Service expects to propose their use in a future rulemaking.

• Must have a legitimate list of subscribers or requesters (422.1). (This requirement is the same as the current standard for second-class mail.)

• Must be audited by a certified public accountant or a national circulation audit service as prescribed by the Postal Service (422.1).

• Must be authorized to mail at Publications Service rates, and, if so authorized, may mail only at Publications Service and Within County rates (483).

—There will be an application process for authorization to mail in Publications Service with a proposed $305 application fee. The application process has yet to be developed; however, it is expected to be similar to the current second-class procedures. A publisher will first have to show that the basic requirements for entry into Periodicals are met (such as frequency of issue). Then, compliance with the additional Publications Service criteria must be shown.

• If a Publications Service authorization is withdrawn or revoked, a new authorization is not issued for 1 year (483).

5. Publications Service Pound-Rate Category

• A zoned pound rate applies to the entire publication (422.3). (This differs from current second-class standards in which only the advertising content of the publication is zone rated.)

• Rates apply to five zones. (This differs from current second-class and Regular Periodicals, which have 9 zones.)

6. Publications Service Piece-Rate Categories (422.4)

7. Basic Rate Category (422.41)

8. Carrier Route Rate Category

• Applies to mail prepared and presorted to carrier routes as prescribed by the Postal Service (422.42).

—Carrier route mail must be prepared in line-of-travel sequence.

—This is not exact walk-sequence arrangement of the mailpieces. For line-of travel sequence, the mailpieces are first sorted into the sequence in which the ZIP+4s are delivered by the carrier. The mailpieces are further sorted into ascending or descending numerical sequence within the number range associated with the ZIP+4.

9. Destination Entry Discounts

• Applies to mail entered at the destination SCF or DDU (422.5).

• DDU discount only applies to Carrier Route mail (422.5).

III–1 PUBLICATIONS SERVICE SUBCLASS—LETTERS

Sort level	Opt./req.	Package minimum	Tray levels	Rate
CR	Opt.	10 pieces per route	CR (full, no overflow)	Pub. Svc. CR
CR	do	do	5D CR–RT (no min.)	Do.
5–Digit	do	N/A	5–Digit (full, overflow allowed)	Pub. Svc.
3–Digit	Req.	do	3–Digit (full overflow allowed)	Do.

III–1 PUBLICATIONS SERVICE SUBCLASS—LETTERS—Continued

Sort level	Opt./req.	Package minimum	Tray levels	Rate
AADC	do	do	AADC (full, overflow allowed)	Do.
Mixed AADC	do	No minimum AADC sequence (with separations).	Mixed AADC (no min.)	Do.

III–2 PUBLICATIONS SERVICE SUBCLASS—FLATS

Sort level	Opt./Req.	Package minimum	Sacks	Rate
Firm	Opt.	2 copies		Pub. Svc. or Pub. Svc. CR (depending on further packaging & sacking)
Carrier route	do	6 pieces per route	Carrier route (min., one 6-pc. pkg., required if 24 or more pieces).	Pub. Svc. CR
		do	5–Digit carrier routes (no min.)	Do.
5–Digit	Req.	6 pieces	5–Digit (min., one 6-pc. pkg., required if 24 or more pieces).	Pub. Svc.
3–Digit	do	do	3–Digit (min., one 6-pc. pkg., required if 24 or more pieces).	Do.
ADC	do	6 pieces (fewer permitted).	ADC (min., one 6-pc. pkg., required if 24 or more pieces).	Do.
Mixed ADC	do	No minimum	Mixed ADC (no min.)	Do.

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federal register

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June 29, 1995

Part VII

Department of Labor

Office of Labor-Management Programs

29 CFR Part 215
Federal Transit Law Guidelines; Proposed Rule

DEPARTMENT OF LABOR

Office of Labor-Management Programs

29 CFR Part 215

RIN 1294–AA14

Guidelines, Section 5333(b), Federal Transit Law

AGENCY: Office of Labor-Management Programs, Office of the American Workplace, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the American Workplace proposes to revise the guidelines concerning its procedures for administering Section 5333(b) of the Federal Transit law, commonly known as Section 13(c). These revised guidelines will replace the existing guidelines in their entirety. Section 5333(b) requires that certain protective arrangements for employees be in place as a condition of Federal financial assistance for transit projects. The proposed changes will allow the agency to certify that the requisite protections are in place in a more expeditious manner and will make the certification process more predictable for the parties involved.

DATES: Interested parties may submit written comments on this proposal by July 31, 1995.

ADDRESSES: Written comments should be submitted to Office of the American Workplace, U.S. Department of Labor, Room S–2203, 200 Constitution Avenue NW., Washington, DC 20210; phone number (202) 219–6045.

FOR FURTHER INFORMATION CONTACT: Charles L. Smith, Deputy Assistant Secretary, Office of the American Workplace, U.S. Department of Labor, 200 Constitution Avenue NW., room S–2203, Washington, DC 20210, (202) 219–6045. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Section 5333(b) of the Federal Transit law, 49 U.S.C. § 5333(b), requires that arrangements be made to protect certain rights of mass transit employees affected by grants of Federal funds for the acquisition, improvement, or operation of a transit system. These rights include the preservation of rights and benefits under existing collective bargaining agreements, the continuation of collective bargaining rights, the protection of individual employees against a worsening of their positions related to employment, assurances of employment to employees of acquired mass transportation systems, priority of reemployment, and paid training or retraining. The current guidelines were introduced in March, 1978. In administering this program, the Department of Labor notifies relevant unions, if any, in the area of the proposed project and provides the grant applicant and the affected union(s) an opportunity to develop the terms and conditions of the protections. The Department provides technical and mediation assistance to the parties during the negotiations.

In the main, these guidelines have functioned effectively—the vast majority of grant applications are processed and the related employee protective arrangements certified within a short time. However, a small percentage of grants require prolonged negotiations to develop appropriate protective arrangements.

The Federal Transit law envisions the innovative, cost-effective use of Federal funds while assuring that the rights of affected employees are protected. In order to better achieve this goal, revised guidelines have been developed to standardize the certification process, thereby insuring certification of protective arrangements in a prompt manner after an application has been submitted.

Administrative Notices

A. Executive Order 12866

These guidelines have been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

B. Regulatory Flexibility Act

The Agency Head has certified that these guidelines are not expected to have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act.

C. Paperwork Reduction Act

These guidelines contain no information collection requirements for purposes of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 29 CFR Part 215

Grant administration; Grants—transportation; Labor-management relations; Labor unions; Mass transportation.

Signed at Washington, DC this 23d day of June, 1995.

Charles L. Smith,

Deputy Assistant Secretary, Office of the American Workplace.

For the reasons set out in the preamble, 29 CFR Chapter II is proposed to be amended by revising Part 215 to read as follows:

PART 215—GUIDELINES, SECTION 5333(b), FEDERAL TRANSIT LAW

Sec.

215.1 Purpose.
215.2 General.
215.3 Employees represented by a labor organization.
215.4 Employees not represented by a labor organization.
215.5 Processing of amendatory applications.
215.6 The Model Agreement.
215.7 Department of Labor contact.

Authority: Secretary's Order No. 2–93, 58 FR 42578, August 10, 1993.

§ 215.1 Purpose.

(a) The purpose of these guidelines is to provide information concerning the Department of Labor's administrative procedures in processing applications for assistance under the Federal Transit law, as codified at 49 U.S.C. chapter 53.

(b) Section 5333(b) of title 49 of the United States Code reads as follows:

> Employee protective arrangements.—(1) As a condition of financial assistance under sections 5307–5312, 5318(d), 5323(a)(1), (b), (d), and (e), 5328, 5337, and 5338(j)(5) of this title, the interests of employees affected by the assistance shall be protected under arrangements the Secretary of Labor concludes are fair and equitable. The agreement granting the assistance under sections 5307–5312, 5318(d), 5323(a)(1), (b), (d), and (e), 5328, 5337, and 5338(j)(5) shall specify the arrangements.
>
> (2) Arrangements under this subsection shall include provisions that may be necessary for—
>
> (A) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise;
>
> (B) the continuation of collective bargaining rights;
>
> (C) the protection of individual employees against a worsening of their positions related to employment;
>
> (D) assurances of employment to employees of acquired mass transportation systems;
>
> (E) assurances of priority of reemployment of employees whose employment is ended or who are laid off; and
>
> (F) paid training or retraining programs.
>
> (3) Arrangements under this subsection shall provide benefits at least equal to benefits established under section 11347 of this title.

§ 215.2 General.

Upon receipt of copies of applications for Federal assistance subject to 49 U.S.C. 5333(b), together with a request for the certification of employee protective arrangements from the Department of Transportation, the Department of Labor will process those applications, which may be in either preliminary or final form. The application will describe the proposed project in a manner which allows an adequate assessment of its impact, identify the labor organizations, if any, representing employees of mass transit providers in the area of the proposed project and describe what steps, if any, have been taken to develop the required employee protections.

§ 215.3 Employees represented by a labor organization.

(a)(1) If affected employees are represented by a labor organization, it is expected that where appropriate, protective arrangements shall be the product of negotiation, pursuant to these guidelines.

(2) In instances where states or political subdivisions are subject to legal restrictions on bargaining with employee organizations, the Department of Labor will utilize special procedures to satisfy the Federal statute in a manner which does not contravene state or local law. For example, employee protective terms and conditions, acceptable to both employee and applicant representatives, may be incorporated into a resolution adopted by the involved local government.

(b) Upon receipt of an application involving affected employees represented by a labor organization, the Department of Labor will refer a copy of the application to that organization and notify the applicant of referral.

(1) If an application involves only a capital grant for routine replacement of equipment of like kind and character and/or facilities of like kind and character, the procedural requirements set forth in paragraphs 215.3(b)(2) through 215.3(h) of these guidelines will not apply absent a potentially material effect on employees. Where no such effect is found, the Department of Labor will certify the application based on the terms and conditions as referenced in paragraphs 215.3(b)(2) and 215.3(b)(3)(ii) and (iii).

(2) For applicants with previously certified arrangements, the referral will be based on those terms and conditions.

(3) For new applicants and applicants for which previously certified arrangements are not appropriate to the current project, the referral will be based on appropriate terms and conditions specified by the Department of Labor, as follows:

(i) for operating grants, the terms and conditions will be based on arrangements similar to those of the Model Agreement (referred to also as the National Agreement);

(ii) for capital grants other than those for replacement equipment or facilities referenced in paragraph (b)(1) of this section, the terms and conditions will be no less protective than those of the Special Warranty applied pursuant to section 5311; and

(iii) for grants under section 5311, the Special Warranty.

(c) Following referral and notification under paragraph (b) of this section, and subject to the exceptions defined in § 215.5, parties will be expected to engage in good faith efforts to reach mutually acceptable protective arrangements through negotiation within the time frames designated under paragraphs (d) and (e) of this section.

(d) As part of the Department of Labor's review of an application, a time schedule for case processing will be established by the Department of Labor and specified in its referral and notification letters under § 215.3(b) or subsequent written communications to the parties.

(1) Parties will be given fifteen (15) days from the date of the referral and notification letters to submit objections, if any, to the referred terms. The parties are encouraged to engage in negotiations during this period with the aim of arriving at a mutually agreeable solution to objections any party has to the terms and conditions of the referral.

(2) Within ten (10) days of its receipt of objections, the Department of Labor will:

(i) determine whether the objections raised are sufficient; and

(ii) take one of the two steps described in paragraphs (d)(5) and (6) of this section, as appropriate.

(3) The Department of Labor will consider an objection to be sufficient when:

(i) the objection raises material issues that may require alternative employee protections under 49 U.S.C. 5333(b); or

(ii) the objection concerns changes in legal or factual circumstances that materially affect the rights or interests of employees.

(4) The Department of Labor will consult with the Federal Transit Administrator for technical advice as to the validity of objections.

(5) If the Department of Labor determines that there are no sufficient objections, the Department will issue its certification to the Federal Transit Administrator.

(6) If the Department of Labor determines that an objection is sufficient, the Department, as appropriate, will direct the parties to commence or continue negotiations, limited to issues that the Department deems appropriate and limited to a period not to exceed thirty (30) days. The parties will be expected to negotiate expeditiously and in good faith. The Department of Labor may provide mediation assistance during this period where appropriate. The parties may agree to waive any negotiations if the Department, after reviewing the objections, develops new terms and conditions acceptable to the parties. At the end of the designated negotiation period, if all issues have not been resolved, each party must submit to the Department its final proposal and a statement describing the issues still in dispute.

(7) The Department will issue a certification to the Federal Transit Administrator within five (5) days after the end of the negotiation period designated under paragraph (d)(6) of this section. The certification will be based on terms and conditions agreed to by the parties that the Department concludes meet the requirements of 49 U.S.C. 5333(b). To the extent that no agreement has been reached, the certification will be based on terms and conditions determined by the Department which are no less protective than the terms and conditions included in the referral pursuant to paragraphs 215.3(b)(2) and 215.3(b)(3).

(8) Notwithstanding that a certification has been issued to the Federal Transit Administrator pursuant to paragraph (d)(7) of this section, no action may be taken which would result in irreparable harm to employees if such action concerns matters subject to the steps set forth in paragraph (e) of this section.

(e) If the certification referred to in paragraph (d)(7) of this section is not based on full mutual agreement of the parties, the Department of Labor will take the following steps to resolve outstanding differences:

(1) The Department will set a schedule that provides for final resolution of the disputed issue(s) within sixty (60) days of the certification referred to in paragraph (d)(7) of this section.

(2) Within ten (10) days of the issuance of the certification referred to in paragraph (d)(7) of this section, and after reviewing the parties' descriptions of the disputed issues, the Department will define the issues still in dispute and set a schedule for final resolution of all such issues.

(3) The Department may establish a briefing schedule, usually allowing no more than twenty (20) days for opening briefs and no more than ten (10) days for reply briefs, when the Department deems reply briefs to be beneficial. In either event, the Secretary will issue a final certification to the Federal Transit Administrator no later than thirty (30) days after the last briefs are due.

(4) The Department of Labor will decide the manner in which the dispute will be resolved. In making this decision, the Department may consider the form(s) of dispute resolution employed by the parties in their previous dealings as well as various forms of third party dispute resolution that may be appropriate. Any dispute resolution proceedings will normally be expected to commence within thirty (30) days of the certification referred to in paragraph (d)(7) of this section, and the Secretary will render a final determination, including the bases therefor, within thirty (30) days of the commencement of the proceedings.

(5) The Department will make available final decisions it renders on disputed issues.

(f) Nothing in these guidelines restricts the parties from continuing to negotiate over final terms and conditions and seeking a final certification of an agreement that meets the requirements of the Act prior to the issuance of a final determination by the Secretary.

(g) If, subsequent to the issuance of the certification referred to in paragraph (d)(7) of this section, the parties reach an agreement on one or more disputed issues that meets the requirements of the Act, and/or the Department of Labor issues a final decision containing revised terms and conditions, the Department will take appropriate steps to substitute the new terms and conditions for those previously certified to the Federal Transit Administrator.

(h) Notwithstanding the foregoing, the Department retains the right to refuse to issue a certification where circumstances so warrant.

§ 215.4 Employees not represented by a labor organization.

(a) The certification made by the Department of Labor will afford the same level of protection to those employees who are not represented by labor organizations.

(b) If there is no labor organization representing employees, the Department of Labor will set forth the protective terms and conditions in the letter of certification in accordance with § 215.3(b)(2) and 215.3(b)(3).

§ 215.5 Processing of amendatory applications.

When an application is supplemental to or revises or amends in immaterial respects an application for which the Department of Labor has already certified that fair and equitable arrangements have been made to protect the interests of mass transit employees affected by the subject project the Department of Labor will on its own initiative apply to the supplemental or other amendatory application the same terms and conditions as were certified for the subject project as originally constituted. The Department of Labor's processing of these applications will be expedited.

§ 215.6 The Model Agreement.

The Model (or National) Agreement mentioned in paragraph (b)(3)(i) of section 215.3 refers to the agreement executed on July 23, 1975 by representatives of the American Public Transit Association and the Amalgamated Transit Union and Transport Workers Union of America and on July 31, 1975 by representatives of the Railway Labor Executives' Association, Brotherhood of Locomotive Engineers, Brotherhood of Railway and Airline Clerks and International Association of Machinists and Aerospace Workers. The agreement is intended to serve as a ready-made employee protective arrangement for adoption by local parties in specific operating assistance project situations. The Department has determined that this agreement provides fair and equitable arrangements to protect the interests of employees in general purpose operating assistance project situations and meets the requirements of 49 U.S.C. 5333(b).

§ 215.7 Department of Labor contact.

Questions concerning the subject matter covered by this part should be addressed to Statutory Programs, Office of the American Workplace, U.S. Department of Labor, suite N5411, 200 Constitution Avenue NW., Washington, DC 20210; phone number 202–219–4473. (Secretary's Order 2–93, 58 FR 42578, August 10, 1993.)

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June 29, 1995

Part VIII

Department of Transportation

Federal Aviation Administration

14 CFR Part 34

Correction to References in the Fuel Venting and Exhaust Emission Requirements for Turbine Engine Powered Airplanes; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 34

[Docket No. 27686, Amdt. No. 34–1]

RIN 2120–AE55

Correction to References in the Fuel Venting and Exhaust Emission Requirements for Turbine Engine Powered Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This document amends a specific reference in a regulation to provide that the preproduction certification compliance program described in Appendix 6 to International Civil Aviation Organization Annex 16 is an acceptable means of compliance with gaseous emission standards. This document also amends specific references to add the effective date of Volume II of Annex 16. This rule is intended to ensure that the regulations accurately reflect what was intended by the originally proposed rule.

EFFECTIVE DATE: July 31, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Edward McQueen, Research and Engineering Branch (AEE–110), Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, DC 20591, telephone (202) 267–3560.

SUPPLEMENTARY INFORMATION:

Background

Section 232 of the Clean Air Act Amendments of 1970, (42 U.S.C. 7401 *et seq.*), requires the Federal Aviation Administration (FAA) to issue regulations that ensure compliance with all aircraft emission standards promulgated by the Environmental Protection Agency (EPA) under Section 231 of the Act. Those emission standards are prescribed in 40 CFR part 87. The FAA issued Special Federal Aviation Regulation (SFAR) Number 27 (38 FR 35427, December 28, 1973) to ensure compliance with the aircraft and aircraft engine emission standards and test procedures issued by the EPA in 40 CFR part 87.

In 1989, the FAA proposed to codify SFAR 27 as 14 CFR part 34 (53 FR 18530, May 23, 1988). The NPRM included proposed § 34.71, which stated that compliance with gaseous emission standards would be shown by comparing the pollutant levels with the applicable emission standards. Proposed § 34.71 also stated that an acceptable means of compliance would be incorporated by reference in proposed § 34.4. Proposed § 34.4 referenced the preproduction program described in Appendix 6 to International Civil Aviation Organization (ICAO) Annex 16, "Environmental Protection, Volume II—Aircraft Engine Emissions, First Edition, June 1981, effective February 18, 1982," as an acceptable means of compliance with § 34.71.

In August of 1990, the proposal was adopted as part 34, "Fuel Venting and Exhaust Emission Requirements for Turbine Engine Powered Airplanes," effective September 10, 1990 (55 FR 32856, August 10, 1990). Part 34 contains all of the applicable aircraft engine fuel venting and exhaust emission requirements of SFAR 27, and the test procedures specified under the regulations implementing the Clean Air Act. § 34.4 was not adopted as proposed, but was "reserved." The FAA had intended to, instead, specifically incorporate in Section 34.71 the reference to Appendix 6 of ICAO Annex 16; however, the reference to an acceptable means of compliance was inadvertently omitted. In addition, the final rule did not state the effective date of Volume II of ICAO Annex 16 in several other sections where this cite was referenced.

After part 34 was adopted, the FAA received several requests for clarification of the compliance standards stated in § 34.71; the FAA also received inquiries asking why Appendix 6 to Volume II of ICAO Annex 16 was omitted as an acceptable alternative to testing every engine. Members of the public stated that §§ 34.4 and 34.71 were different from those proposed in the NPRM. The FAA recognizes that the final rule, as adopted, caused the confusion. In responding to the inquiries, the FAA has stated that the intent of the 1989 proposal was to accept Appendix 6 as an alternative means of compliance. Accordingly, the FAA has determined that § 34.71 should be amended to reflect the intent of the proposal.

Discussion of Comments

On April 13, 1994, the FAA published an NPRM (59 FR 17640) to revise § 34.71 or part 34. This proposal stated that Appendix 6 to ICAO Annex 16, "Environmental Protection, Volume II—Aircraft Engine Emissions, First Edition, June 1981, effective February 18, 1982," is an acceptable means of compliance with that section. In addition, it was proposed that §§ 34.64, 34.82, and 34.89 of part 34 would be revised to state that the effective date of Volume II of Annex 16 is February 18, 1982. No comments were received in the docket after a 60-day comment period.

Regulatory Evaluation Summary

This regulatory evaluation examines the potential costs and benefits of the proposed rule to amend part 34. Changes to Federal regulations are required to undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. With respect to this rule, the FAA has determined that it: (1) is not "a significant regulatory action" as defined in the Executive Order; (2) is not significant as defined in the Department of Transportation's Regulatory Policies and Procedures; (3) will not have a significant impact on a substantial number of entities; and (4) will not constitute a barrier to international trade. Therefore, a full regulatory analysis, which includes the identification and evaluation of cost-reducing alternatives to this rule, has not been prepared. Instead, the agency has prepared a more concise analysis of this rule which is presented in the following paragraph.

There are no known costs associated with this final rule. The purpose of this rule is to correct an inadvertent omission from § 34.71. In that regulation, the FAA intended to but did not fully incorporate by reference Appendix 6 to ICAO Annex 16, Environmental Protection, Volume II—Aircraft Engine Emissions, First Edition, June 1981, effective February 18, 1982, in that regulation. Appendix 6 describes an acceptable alternative to testing every engine for compliance with gaseous emission standard. The benefit of this rule is that it will eliminate the confusion surrounding the omission of the reference, and it will clarify the intent of the regulation in part 34. This revision to part 34 will also eliminate the need for the public to call the FAA to find out whether Appendix 6 to ICAO Annex 16 is an acceptable means of compliance with § 34.71. This rule also revises §§ 34.64, 34.82, and 34.89 to clarify that the effective date of Volume II of Annex 16 is February 18, 1982.

International Trade Impact Assessment

The proposed rule represents a clarifying change and will not impose any costs on either U.S. or foreign operators. Therefore, a competitive trade disadvantage will not be incurred by either U.S. operators abroad or foreign operators in the United States.

Initial Regulatory Flexibility Determination

In accordance with the Regulatory Flexibility Act of 1980, the proposed rule will not have a significant economic impact on a substantial number of small entities. This is because the proposed rule is clarifying in nature and will not impose any costs.

Environmental Analysis

Section 232 of the Clean Air Act Amendments of 1970 mandates that the FAA issue regulations to ensure compliance with the EPA aircraft emissions standards. The EPA has performed all required environmental analyses prior to the issuance of those standards. Since this rule represents a clarifying correction and will not significantly affect the quality of the human environment, no further analyses is required.

Federalism Implications

The regulations herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

The FAA has determined that this rule: (1) is not a significant regulatory action under Executive Order 12866; (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 34

Air pollution control, Aircraft.

The Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 34 of the Federal Aviation Regulations as follows:

PART 34—FUEL VENTING AND EXHAUST EMISSION REQUIREMENTS FOR TURBINE ENGINE POWERED AIRPLANES

1. The authority citation for part 34 continues to read as follows:

Authority: 42 U.S.C. 1857f–10; 49 U.S.C. 106(g); 49 U.S.C. App. 1348(c), 1354(a), 1421, 1423.

2. Section 34.64 is amended by revising the first sentence to read as follows:

§ 34.64 Sampling and analytical procedures for measuring gaseous exhaust emissions.

The system and procedures for sampling and measurement of gaseous emissions shall be done in accordance with Appendices 3 and 5 to ICAO Annex 16, Environmental Protection, Volume II—Aircraft Engine Emissions, First Edition, June 1981, effective February 18, 1982. * * *

3. Section 34.71 is revised to read as follows:

§ 34.71 Compliance with gaseous emission standards.

Compliance with each gaseous emission standard by an aircraft engine shall be determined by comparing the pollutant level in grams/kilonewton/thrust/cycle or grams/kilowatt/cycle as calculated pursuant to § 34.64 with the applicable emission standard under this part. An acceptable alternative to testing every engine is described in Appendix 6 to ICAO Annex 16, Environmental Protection, Volume II—Aircraft Engine Emissions, First Edition, June 1981, effective February 18, 1982. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This document can be obtained from the address listed in § 34.64. Other methods of demonstrating compliance may be approved by the Administrator with the concurrence of the Administrator of the EPA.

4. Section 34.82 is amended by revising the first sentence to read as follows:

§ 34.82 Sampling and analytical procedures for measuring smoke exhaust emissions.

The system and procedures for sampling and measurement of smoke emissions shall be done in accordance with Appendix 2 to ICAO Annex 16, Environmental Protection, Volume II—Aircraft Engine Emissions, First Edition, June 1981, effective February 18, 1982. * * *

5. Section 34.89 is amended by revising the third sentence and adding new fourth and fifth sentences to read as follows:

§ 34.89 Compliance with smoke emission standards.

* * * An acceptable alternative to testing every engine is described in Appendix 6 to ICAO Annex 16, Environmental Protection, Volume II—Aircraft Engine Emissions, First Edition, June 1981, effective February 18, 1982. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This document can be obtained from the address listed in § 34.64.

Issued in Washington, DC on June 22, 1995.

David R. Hinson,

Administrator.

[FR Doc. 95–15961 Filed 6–28–95; 8:45 am]

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federal register

Thursday
June 29, 1995

Part IX

Department of Transportation

Federal Aviation Administration

14 CFR Part 61

Recent Flight Experience: Pilot in Command; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 61

[Docket No. 27682; Amdt. No. 61–97]

RIN 2120–AF32

Recent Flight Experience: Pilot in Command

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This final rule amends the Federal Aviation Regulations governing the recent flight experience requirements for pilots in command (PICs). In an earlier amendment to the recent flight experience requirements, PICs employed by a part 121 or part 135 air carrier, while performing flight operations under part 91, 121, or 135 for the certificate holder, were excepted from compliance with part 61 recency requirements. This amendment makes it clear that only PICs who meet the recent experience requirements of part 121 or part 135 are excepted from compliance with part 61 recency requirements. The FAA is adopting this amendment immediately to ensure that all PICs employed by part 121 and part 135 certificate holders remain qualified under either part 61 or under part 121 or part 135.

DATES: *Effective Date:* June 29, 1995.

Comment Date: August 28, 1995.

ADDRESSES: Comments on this amendment should be mailed, in triplicate, to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 27682, 800 Independence Ave., SW., Washington, DC 20591. Comments delivered must be marked Docket No. 27682. Comments may also be sent electronically to the following Internet address: nprmcmts@mail.hq.faa.gov. Comments may be examined in Room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Alberta Brown, Project Development Branch, AFS–240, Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–8096.

SUPPLEMENTARY INFORMATION:

Comments Invited

This amendment is only a clarification to remove an unintended technical "loophole" and does not involve a change in the fundamental currency requirements as historically understood and complied with by pilots. This change to part 61 is being adopted without notice and prior public comment because of that and because it is necessary to preclude any interpretation that might adversely affect safety. The Regulatory Policies of the Department of Transportation (44 FR 11034; February 26, 1979), however, provide that, to the maximum extent possible, Department of Transportation (DOT) operating administrations should provide an opportunity for public comment on regulations issued without prior notice.

Accordingly, interested persons are invited to participate in the rulemaking process by submitting such written data, views, or arguments as they may desire. Comments relating to environmental, energy, federalism, or international trade impacts that might result from this amendment are also invited. Comments must include the regulatory docket or amendment number and be submitted in triplicate to the address above. All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date will be considered by the Administrator. Late filed comments will be considered to the extent practicable. This final rule may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this final rule must submit a pre-addressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. 27682." The postcard will be date-stamped by the FAA and returned to the commenter.

Availability of Final Rule

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Public Affairs (APA–200), 800 Independence Avenue, S.W., Washington, D.C. 20591, or by calling the Office of Public Affairs at (202) 267–3484. Communications must identify the docket number of this amendment.

Background

On November 14, 1994, the FAA issued a final rule amending § 61.57 of the Federal Aviation Regulations (59 FR 56385). The FAA amended § 61.57 to provide relief from essentially redundant recency requirements for PICs serving in part 121 and part 135 air carrier operations. The FAA had determined that since both part 121 and part 135 operators already had to meet recency requirements that were at least equivalent to the recency requirements of § 61.57, PICs employed by these operators did not need to show compliance with § 61.57 while they were performing flights for part 121 and part 135 operators. Accordingly, as part of the above final rule, the FAA revised § 61.57 (f) to provide that PICs conducting part 91 flights (e.g., ferry flights, training flights, etc.,) for the part 121 or part 135 operator, did not need to show compliance with § 61.57. The FAA made this decision because these operations were under the control of the certificate holder, and these PICs would be current under the qualification and recency requirements of part 121 or part 135.

Since the publication of the final rule, however, the FAA has become aware that some PICs employed by a part 121 or part 135 operator, conducting only part 91 flights, do not comply with the recency requirements under §§ 121.439 or 135.247. Under the wording of the new rule these pilots would technically not have to comply with the recency requirements of § 61.57. This was not the intent of the FAA. The final rule was designed to provide relief to PICs serving in part 121 and part 135 air carrier operations from unnecessary duplicate recordkeeping only when they already complied with qualification, training, and recency requirements found in parts 121 or 135. This approach would continue the current level of safety.

The FAA did not intend to enable PICs employed by part 121 and part 135 operators, in conducting part 91 flight operations for the part 121 or part 135 operator, to avoid requirements to remain qualified and current under part 61 or under parts 121 or 135. This final rule revises § 61.57(f) to provide that PICs employed by a part 121 or part 135 operator are excepted from compliance with the recency requirements of § 61.57, only if they are qualified under §§ 121.437 or 135.243 and meet the recent experience requirements under §§ 121.439 or 135.247. Otherwise, these PICs must show compliance with the recency requirements of § 61.57 in order to conduct part 91 flights.

Immediate Action

There is good cause for immediate adoption of this amendment as it merely restores the pre-existing rule so as to remove an unintended technical "loophole" and does not involve a change in the fundamental recency requirements as understood by pilots. Accordingly, notice and public procedure under 5 U.S.C. 553(b)(B) are unnecessary. Further, immediate action is necessary to avoid any misinterpretation that potentially could result in a significant degradation of safety. Therefore, the FAA is issuing this amendment as a final rule without notice and comment, and finds good cause for making this amendment effective in less than 30 days.

Economic Evaluation

The FAA has determined that this rule is not a "significant regulatory action" under the criteria of Executive Order 12866. The FAA, therefore, is not required to prepare a Regulatory Impact Analysis under either the Executive Order or the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979). In nonsignificant rulemaking actions, the DOT Regulatory Policies and Procedures require the FAA to prepare a regulatory evaluation, analyzing the economic consequences of proposed regulations and quantifying, to the extent practicable, the estimated costs and anticipated benefits and the impacts of regulations.

The amendment in this final rule is merely a clarification to correct an unintended deletion of recency requirements for part 91 operations and does not change the duties or responsibilities of the aviation community. The amendment does not affect the manner in which pilots become qualified or remain current, as it is understood by pilots. The clarification does not, in economic terms, alter the process of becoming qualified or remaining current by a PIC. Accordingly, there are neither economic costs or benefits associated with this amendment.

International Civil Aviation Organization and Joint Aviation Regulations

The FAA has determined that a review of the Convention on International Civil Aviation Standards and Recommended Practices is not warranted because this final rule reinstates a pre-existing rule that was made partially ineffective in circumstances clearly not intended by Amendment No. 61–96.

Regulatory Flexibility Determination

The final rule will not have a significant economic impact, positive or negative, on a substantial number of small entities. Moreover, only national and regional air carriers, rather than small entities, will be affected by this final rule. Therefore, a substantial number of small entities will not experience a significant economic impact as a result of this final rule.

International Trade Impact Analysis

This final rule will have a negligible impact on trade opportunities for U.S. firms doing business overseas or on foreign firms doing business in the U.S. The final rule primarily affects pilots employed by regional and national air carriers, not businesses involved in the sale of aviation products or services.

Federalism Impact

The regulations adopted herein will not have a substantial direct effect of the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this amendment does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no requirements for information collection associated with this rule.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this final rule is not a significant regulatory action under Executive Order 12866. The FAA certifies that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. In addition, this final rule is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The economic impact of this final rule is minimal and accordingly a full economic evaluation is not warranted.

List of Subjects in 14 CFR Part 61

Airmen, Reporting and recordkeeping requirements.

The Amendment

Accordingly, the FAA amends 14 CFR part 61 of the Federal Aviation Regulations as follows:

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

1. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. Appendix 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g).

2. Section 61.57(f) is revised to read as follows:

§ 61.57 Recent Flight Experience: Pilot in Command

* * * * *

(f) *Exceptions.* This section does not apply to a pilot in command, employed by a part 121 or 135 air carrier, engaged in a flight operation under part 91, 121, or 135 for the air carrier, if the pilot is in compliance with § § 121.437 and 121.439 or § § 135.243 and 135.247 respectively.

Issued in Washington, D.C., on June 23, 1995.

David R. Hinson,

Administrator.

[FR Doc. 95–15984 Filed 6–28–95; 8:45 am]

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federal register

Thursday
June 29, 1995

Part X

Environmental Protection Agency

40 CFR Part 141

National Primary and Secondary Drinking Water Regulations; Analytical Methods for Regulated Drinking Water Contaminants; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[WH–FRL–5349–6]

National Primary and Secondary Drinking Water Regulations: Analytical Methods for Regulated Drinking Water Contaminants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical corrections.

SUMMARY: EPA is amending the National Primary Drinking Water Regulations to correct typographical errors and minor technical mistakes or omissions.

EFFECTIVE DATE: These corrections are effective June 29, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. Jitendra Saxena, Drinking Water Standards Division, Office of Ground Water and Drinking Water (4603), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–9579.

SUPPLEMENTARY INFORMATION: In 1994, EPA promulgated the use of several new methods and updated versions of previously approved methods, and withdrew outdated methods for analysis of contaminants in drinking water (59 FR 62456, December 5, 1994). In 1992, EPA promulgated Maximum Contaminant Level Goals and National Primary Drinking Water Regulations for 23 contaminants (Phase V) (57 FR 31776, July 17, 1992). These regulations contained typographical and minor technical errors which are corrected by this rule.

The Administrative Procedures Act, 5 U.S.C. 553, provides that when an Agency finds good cause, it may issue a rule without first providing notice and comment and make the rule immediately effective. This rule corrects errors and omissions in 40 CFR 141. These revisions are very minor and the Agency believes that neither comment nor a delayed effective date is necessary or in the public interest. Accordingly, EPA finds that there is good cause not to solicit comment on this rule and to have the revisions immediately effective.

Corrections to the Regulation

This rule corrects errors in the regulatory language. These corrections are described below:

This rule corrects an omission from footnote 1 to the table in § 141.21(f)(3) by adding a line about storage temperature for samples. The preamble to the final rule (59 FR 62456, December 5, 1994) states that a footnote specifying coliform sample transit time and temperature would be added at § 141.21(f)(3). However, footnote 1 in the final rule covers transit time but omits transit temperature. The revised footnote encourages but does not require systems to hold samples at 10°C. This rule also corrects footnote 2 to the table in § 141.21(f)(3) by adding "and false-negative rate" after "false-positive rate". In deciding if lactose broth as commercially available may be used in lieu of lauryl tryptose broth, both false-positive rate and false-negative rates should be less than 10 percent. The false-negative rate was inadvertently omitted.

This rule makes a correction to the table in § 141.23(k)(1) by changing the analytical method for temperature from 2550B to 2550. The method citation 2550B refers to the second paragraph of Method 2550. Because the first paragraph (paragraph A) contains relevant introductory description, the complete method will be cited as 2550. Reference to Standard Method 2550 throughout the regulatory language should be helpful to avoid confusion.

This rule makes correction to the table in § 141.23(k)(4) by deleting footnote 1. The first sentence in the footnote explained an option to ice samples. The second sentence explained a requirement already contained in the method. Because both sentences can be understood from the method itself, the footnote is redundant and is removed. As a result the remaining footnotes and superscripts in the table referring to footnotes are renumbered. This rule also corrects a typographical error in the table by changing NAOH to NaOH in the preservative column for the contaminant cyanide.

This rule corrects the table in § 141.24(h)(18) by changing Dibromochloropropane (DBCP) to 1,2-Dibromo-3-chloropropane (DBCP). The name of the compound as given in the table covers more than one isomer while the method for DBCP actually measures this specific isomer. The correction in no way affects the ease or difficulty in achieving detection limit for DBCP.

This rule corrects an inadvertent deletion that occurred in the December 5, 1995 document. Today's rule restores the trihalomethane (THM) sampling instructions and maximum total trihalomethane (TTHM) potential instructions previously contained in § 141.30. Part III of Appendix C of § 141.30 has been modified to remove reference to EPA methods 501.1 and 501.2 which were withdrawn. The modified text is no longer called Part III of Appendix C; it is now included as § 141.30(g). Section 141.30(c)(1) has also been amended to include reference to the procedure for maximum TTHM potential.

The rule corrects an omission in footnote 2 to the table in § 141.74(a)(1) by adding a line about storage temperature for samples. The revised footnote encourages but does not require systems to hold samples at 10°C. An omission in footnote 2 to the table in § 141.74(a)(1) has been corrected by adding the term "and false-negative rate" after "false-positive rate." The rationales for these corrections are provided earlier in the section discussing similar corrections to § 141.21(f)(3).

The introductory part of § 141.74(a)(1) has been revised to refer to § 141.23(k)(1) for temperature measurement methodology. This is being done for clarity. As a result of this revision, EPA is deleting the reference to temperature in the table in § 141.74(a)(1). This rule also corrects several typographical errors in the table in § 141.74(a)(1). The corrections include: Addition of superscript 2 on total coliform and on fecal coliform for reference to footnote 2, moving the numbers 3,4,5 next to total coliform fermentation technique from their current position to superscript position, deleting "MPN" from the methodology entitled "Fecal Coliform MPN Procedure" consistent with editorial changes in the 18th edition of *Standard Methods for the Examination of Water and Wastewater, 1992*, changing "Fecal Coliforms" to "Fecal Coliform", and changing Heterot-rophic to Hetero-trophic.

Regulation Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735; October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the executive order. The order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the executive order.

This rule makes only technical and typographical corrections in a previous rule. Therefore, this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act requires EPA to explicitly consider the effect of these regulations on small entities. By policy, EPA has decided to consider regulatory alternatives if there is any economic impact on any small entities. This rule does not impose additional requirements, it only makes minor technical and typographical corrections in previous rules.

C. Paperwork Reduction Act

The rule contains no requests for information and consequently is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

D. Unfunded Mandate Reform Act

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for an EPA rule, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule..The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector because the rule merely corrects typographical errors and minor technical mistakes or omissions. Thus today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. For the same reason, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

List of Subjects in 40 CFR Part 141

Environmental protection, Chemicals, Analytical methods, Water supply.

Dated: June 23, 1995.

Dana D. Minerva,

Deputy Assistant Administrator, Office of Water.

For the reasons set forth in the preamble, part 141 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9.

2. Section 141.21 is amended by revising footnotes 1 and 2 to the table in paragraph (f)(3) to read as follows:

§ 141.21 Coliform sampling.

* * * * *

(f) * * *

(3) * * *

[1] The time from sample collection to initiation of analysis may not exceed 30 hours. Systems are encouraged but not required to hold samples below 10°C during transit.

[2] Lactose broth, as commercially available, may be used in lieu of laurel tryptose broth, if the system conducts at least 25 parallel tests between this medium and lauryl tryptose broth using the water normally tested, and this comparison demonstrates that the false-positive rate and false-negative rate for total coliforms, using lactose broth, is less than 10 percent.

* * * * *

3. In the table in § 141.23(k)(1) the entry "temperature" in the contaminant column is amended by revising the entry "2550B" to read "2550" in the SM column.

4. The table in § 141.23(k)(2) is amended by removing footnote 1 and redesignating footnotes 2 through 4 as footnotes 1 through 3 respectively and by revising the entry for "cyanide" to read as follows:

§ 141.23 Inorganic chemical sampling for analytical requirements.

* * * * *

(k) * * *

(2) * * *

Contaminant	Preservative	Container[1]	Time[2]
*	*	*	*
Cyanide	Cool, 4°C, NaOH to pH>12[3]	P or G	14 days
*	*	*	*

[1] P=plastic, hard or soft; G=glass, hard or soft.
[2] In all cases, samples should be analyzed as soon after collection as possible.
[3] See method(s) for the information for preservation.

* * * * *

§ 141.24 [Amended]

5. The table in § 141.24(h)(18) is amended by revising the contaminant "Dibromochloropropane (DBCP)" to read "1,2-Dibromo-3-chloropropane (DBCP)".

6. Section 141.30 is amended by revising the second sentence in paragraph (c)(1) and revising paragraph (e), and adding a new paragraph (g) to read as follows:

§ 141.30 Total trihalomethane sampling, analytical and other requirements.

* * * * *

(c) * * *

(1) * * * The system shall submit the results of at least one sample for maximum TTHM potential using the procedure specified in paragraph (g) of this section. A sample must be analyzed from each treatment plant used by the system and be taken at a point in the distribution system reflecting the maximum residence time of the water in the system. * * *

* * * * *

(e) Sampling and analyses made pursuant to this section shall be conducted by one of the total trihalomethane methods as directed in § 141.24(e), and the *Technical Notes on Drinking Water Methods*, EPA–600/R–94–173, October 1994, which is available from NTIS, PB–104766. Samples for TTHM shall be dechlorinated upon collection to prevent further production of trihalomethanes, according to the procedures described in the methods, except acidification is not required if only THMs or TTHMs are to be determined. Samples for maximum TTHM potential should not be dechlorinated or acidified, and should be held for seven days at 25°C (or above) prior to analysis.

* * * * *

(g) The water sample for determination of maximum total trihalomethane potential is taken from a point in the distribution system that reflects maximum residence time. Procedures for sample collection and handling are given in the methods. No reducing agent is added to "quench" the chemical reaction producing THMs at the time of sample collection. The intent is to permit the level of THM precursors to be depleted and the concentration of THMs to be maximized for the supply being tested. Four experimental parameters affecting maximum THM production are pH, temperature, reaction time and the presence of a disinfectant residual. These parameters are dealt with as follows: Measure the disinfectant residual at the selected sampling point. Proceed only if a measurable disinfectant residual is present. Collect triplicate 40 ml water samples at the pH prevailing at the time of sampling, and prepare a method blank according to the methods. Seal and store these samples together for seven days at 25°C or above. After this time period, open one of the sample containers and check for disinfectant residual. Absence of a disinfectant residual invalidates the sample for further analysis. Once a disinfectant residual has been demonstrated, open another of the sealed samples and determine total THM concentration using an approved analytical method.

7. Section 141.74 is amended by revising paragraph (a)(1) to read as follows:

§ 141.74 Analytical and monitoring requirements.

(a) * * *

(1) Public water systems must conduct analysis of pH and temperature in accordance with one of the methods listed at § 141.23(k)(1). Public water systems must conduct analysis of total coliforms, fecal coliforms, heterotrophic bacteria, and turbidity in accordance with one of the following analytical methods and by using analytical test procedures contained in *Technical Notes on Drinking Water Methods*, EPA–600/R–94–173, October 1994, which is available at NTIS PB95–104766.

Organism	Methodology	Citation [1]
Total Coliforms [2].	Total Coliform fermentation Technique [3,4,5]	9221A, B, C
	Total coliform membrane filter technique	9222A, B, C
	ONPG-mug test membrane [6]	9223
Fecal Coli forms [2]	Fecal Coliform Procedure [7]	9221E
	Fecal Coliform filter procedure	9222D
Heterotrophic bacteria [2]	Pour Plate method	9215B
Turbidity	Nephelometric method	2130B
	Nephelometric method	180.1 [8]
	Great Lakes instruments	Method 2 [9]

[1] Except where noted, all methods refer to the 18th edition of *Standard Methods for the Examination of Water and Wastewater*, 1992, American Public Health Association, 1015 Fifteenth Street NW, Washington, D.C. 20005.

[2] The time from sample collection to initiation of analysis may not exceed 8 hours. Systems are encouraged but not required to hold samples below 10°C during transit.

[3] Lactose broth, as commercially available, may be used in lieu of lauryl tryptose broth, if the system conducts at least 25 parallel tests between this medium and lauryl tryptose broth using the water normally tested, and this comparison demonstrates that the false positive rate and false negative rate for total coliforms, using lactose broth, is less than 10 percent.

[4] Media should cover inverted tubes at least one-half to two-thirds after the sample is added.

[5] No requirement exists to run the completed phase on 10 percent of all total coliform-positive confirmed tubes.

[6] The ONPG-MUG Test is also known as the Autoanalysis Colilert System.

[7] A–1 Broth may be held up to three months in a tightly closed screwcap tube at 4°C.

[8] "Methods for the Determination of Inorganic Substances in Environmental Samples", EPA–600/R–93–100, August 1993. Available at NTIS, PB94–121811.

[9] GLI Method 2, "Turbidity", November 2, 1992, Great Lakes Instruments, Inc., 8855 North 55th Street, Milwaukee, Wisconsin 53223.

[FR Doc. 95–16004 Filed 6–28–95; 8:45 am]

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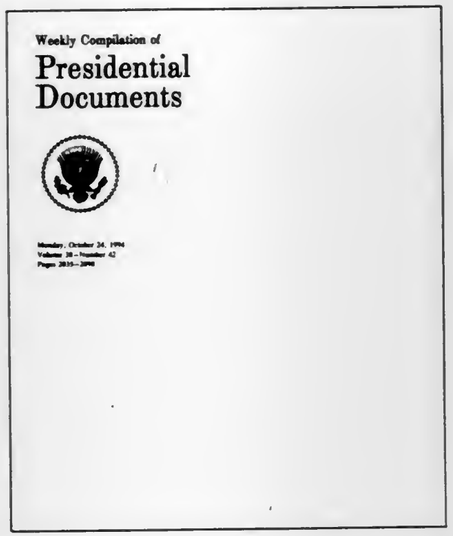
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